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# federal register

Wednesday
July 21, 1993

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**ACTION:** Int
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**OFFICE OF GOVERNMENT ETHICS**

**5 CFR Part 2634**

**RIN 3209–AA00**

## Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Government Ethics is amending its interim rule on executive branch financial disclosure. The amendments contain procedural clarifications for filing public and confidential financial disclosure reports. With regard to public reports, OGE is eliminating the requirement that agencies provide an annual update to the list of nonpolicy-making positions excluded from filing. Additionally, the amendments clarify what constitutes the date of filing for purposes of determining when a public report is subject to a late filing fee. For confidential report filers, the amendments codify earlier informal OGE guidance to agencies on two matters: the exclusion of special Government employees (SGEs) from the requirement for incumbent reports, and the exclusion of employees (other than SGEs) from the requirement for new entrant reports if they are not expected to serve for more than 60 days in a position otherwise designated for filing. Finally, the amendments supply the form number for the standard confidential disclosure form, which was not known when the interim rule was first published.

**DATES:** Interim rule amendments effective July 21, 1993. Public comments on these amendments are welcome and must be received on or before September 20, 1993.

**ADDRESSES:** Comments should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: G. Sid Smith.

**FOR FURTHER INFORMATION CONTACT:** G. Sid Smith, Office of Government Ethics, telephone (202) 523–5757, FAX (202) 523–6325.

**SUPPLEMENTARY INFORMATION:** This document amends an interim rule which revised both the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended by, *inter alia*, the Ethics Reform Act of 1989, Pub. L. 101–194), and Executive Order 12674 of April 12, 1989 (as amended). That interim rule was published on April 7, 1992 (57 FR 11800–11830) and corrected on May 22 and December 31, 1992 at 57 FR 21854–21855 and 57 FR 62605, respectively.

Executive branch employees in certain positions of a confidential or policy-making character which are excepted from the competitive service are required to file public financial disclosure reports, unless excluded under regulatory guidelines. The interim rule which was published in April 1992 requires agencies to provide OGE with a list of such positions being excluded prior to the due dates for reports which such employees would otherwise have to file. That interim rule also required agencies to provide an annual update to that list, reflecting deletions, additions, or an indication of no change. It has been determined that the annual update is unnecessary and redundant. Therefore, that requirement is being eliminated by an amendment to § 2634.203 of subpart B of the interim rule..

For filers of public financial disclosure reports, the interim rule of April 1992 implemented a statutory late filing fee for reports filed more than thirty-days after the normal due date, including any authorized extensions. Questions have arisen as to what should constitute the date of filing for purposes of determining whether a report is filed more than thirty days late. After examining the nature of this thirty-day period, OGE concluded that the date of filing for purposes of determining whether a public report is more than thirty days late should be the date of receipt by the agency (which the rule already requires agencies to note on reports when received), not the filer's submission date. Accordingly, an amendment to § 2634.704 of subpart G of the interim rule specifies that the date of receipt by the agency will constitute the date of filing for purposes of determining whether a report is filed more than thirty days late and therefore subject to a late filing fee. The thirty-day period was not intended to be an extension of the due date, but merely a grace period for purposes of imposing the late filing fee. While it would be reasonable for agencies to consider the filer's submission date and to allow for any attendant administrative delays in determining whether a report meets normal due dates, it would not be reasonable to leave similarly indeterminate the thirty-day grace period for purposes of imposing a late filing fee. That grace period is itself full allowance for administrative delays. To extend the thirty-day grace period for additional administrative delays inappropriately suggests to filers that they may view the thirty days as a due date extension. This has resulted in submission delays by some of those subject to public disclosure until the end of the grace period.

For filers of confidential financial disclosure reports, the April 1992 interim rule included SGEs among those required to file annual incumbent reports if they serve more than sixty days. That was not intended, since SGEs are also required to file new entrant reports upon each annual appointment or reappointment. Therefore, an amendment to § 2634.903 of subpart I of the interim rule eliminates the requirement for SGEs to file incumbent confidential disclosure reports.

The April 1992 interim rule included as new entrant confidential disclosure filers all employees who serve in positions designated for filing, regardless of the number of days it was anticipated that they would be performing duties in the position. That was not intended for employees (other than SGEs) who are not anticipated to perform duties for more than 60 days in a designated filing position, such as employees who serve temporarily in a position in an acting capacity. Therefore, another amendment to § 2634.903 of subpart I of the interim rule eliminates the requirement for

employees (other than SGEs) to file new entrant reports when the agency ethics official determines that they are not anticipated to perform duties for more than 60 days in a confidential filer position.

Finally, at the time the interim rule was published, the form number for the standard confidential disclosure form was not yet known. Therefore, an amendment to § 2634.601 of subpart F of the interim rule supplies that number, SF 450.

**Administrative Procedure Act**

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these amendments to an interim rule concern minor procedural clarifications which conform with current practice. The Office of Government Ethics will review any comments received during the comment period and consider any modifications which appear warranted prior to issuing a final rule.

**Executive Order 12291**

As Director of the Office of Government Ethics, I have determined that these amendments do not constitute a major rule as defined under section 1(b) of Executive Order 12291.

**Regulatory Flexibility Act**

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these amendments to the interim rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal executive branch agencies and employees.

**Paperwork Reduction Act**

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to these amendments to the interim rule because they do not contain any additional information collection requirements which require the approval of the Office of Management and Budget.

**List of Subjects in 5 CFR Part 2634**

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, and Trusts and trustees.

Approved: April 26, 1993.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of subchapter B of Chapter XVI of title 5 of the Code of Federal Regulations as follows:

**PART 2634—[AMENDED]**

1. The authority citation for part 2634 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

**Subpart B—Persons Required To File Public Financial Disclosure Reports**

2. Section 2634.203 is amended by revising paragraph (c)(1) to read as follows:

**§ 2634.203 Persons excluded by rule.**

* * * * *

(c) *Procedure.* (1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of any incumbent employees in those positions. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file.

* * * * *

**Subpart F—Procedure**

3. Section 2634.601 is amended by revising paragraph (a) to read as follows:

**§ 2634.601 Report Forms.**

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration, two standard forms for financial disclosure reporting: the SF 278 (Public Financial Disclosure Report) for reporting the information described in subpart B of this part on executive branch public disclosure; and the SF 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure.

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**Subpart G—Penalties**

4. Section 2634.704 is amended by adding a new paragraph (f) to read as follows:

**§ 2634.704 Late filing fee.**

* * * * *

(f) *Date of filing.* The date of filing for purposes of determining whether a public financial disclosure report is filed more than thirty days late under this section will be the date of receipt by the agency, which should be noted on the report in accordance with § 2634.605(a). The thirty-day grace period on imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports by an agency.

**Subpart I—Confidential Financial Disclosure Reports**

5. Section 2634.903 is amended as set forth below:

A. Revising paragraph (a);

B. Republishing the introductory text of paragraph (b)(2);

C. Revising the last sentence of paragraph (b)(2)(ii); and

D. Adding a new paragraph (b)(2)(iii).

The revisions, republication and addition read as follows:

**§ 2634.903 General requirements, filing dates, and extensions.**

(a) *Incumbents.* A confidential filer who holds a position or office described in § 2634.904 of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the twelve-month period ending September 30 (including more than 60 days in an acting capacity) shall file a confidential report as an incumbent, containing the information prescribed in §§ 2634.907 and 2634.908 of this subpart on or before October 31 immediately following that period. No incumbent reports are required of special Government employees described in § 2634.904(b) of this subpart, but they must file new entrant reports under § 2634.903(b) of this subpart upon each appointment or reappointment. For confidential filers under § 2634.904(c) of this subpart, consult agency supplemental regulations.

(b) *New entrants.* * * *

(2) However, no report shall be required if the individual:

* * * * *

(ii) * * * The agency may request that the individual update such a report if more than six months has expired since it was filed; or

(iii) Is not reasonably expected to perform the duties of an office or position referred to in § 2634.904 of this subpart for more than 60 days in the following twelve-month period, as determined by the designated agency ethics official or delegate. That may

occur most commonly in the case of an employee who temporarily serves in an acting capacity in a position described by § 2634.904(a) of this subpart. If the individual actually performs the duties of such position for more than 60 days in the twelve-month period, then a confidential financial disclosure report must be filed within 15 calendar days after the sixtieth day of such service in the position. Paragraph (b)(2)(iii) of § 2634.903 does not apply to new entrants filing as special Government employees under § 2634.904(b) of this subpart.

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## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Parts 1924, 1930, 1944, 1951, 1955 and 1965

RIN 0575–AA51

### Rural Rental Housing Displacement Prevention

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its rural rental housing (RRH) and labor housing (LH) regulations which address the prepayment of loans, incentives and other actions taken by the Federal Government to avert prepayment. The action is being taken to alleviate problems caused by the displacement of tenants from projects after the FmHA loans are prepaid. This rulemaking action incorporates comments to those portions of the interim rule and make the changes required by the Cranston-Gonzalez Act and the Housing and Community Development Act of 1992.

**EFFECTIVE DATE:** August 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patrick Sheridan, Branch Chief, Multiple Housing Servicing and Property Management Division, FmHA, room 5331, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1599.

**SUPPLMENTARY INFORMATION:**

#### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more, and there will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will also be no significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

#### Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.427, Rural Rental Assistance Payments; 10.415, Rural Renting Housing Loans; and 10.405, Farm Labor Housing Loans and Grants. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V, this program/activity is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the Administrater, FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities, because only one to two hundred borrowers will likely attempt to prepay annually, and FmHA anticipates funding approximately 50–75 applications nationwide each year.

#### Civil Justice Reform

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

#### General Information

*Background and Statutory Authority*

The Housing and Community Development Amendments to the Housing Act of 1949, signed into law in 1979, and the Housing and Community Development Act of 1980, provided that FmHA section 514 and section 515 multi-family housing borrowers who received loans prior to December 21, 1979, and who have not subsequently become subject to restrictions due to specified servicing actions, may prepay their loans and remove their housing from the low- and moderate-income market with minimal restrictions. Those who received loans on or after December 21, 1979, are eligible to prepay only after their restrictive-use requirements expire in either 15 or 20 years from the date of the loan or the servicing action. In some areas of the country, the prepayment of FmHA multi-family loans threatened to lead to acute housing shortages for low- and moderate-income people and severe problems for displaced tenants.

To alleviate these problems, FmHA issued revised regulations on March 19, 1987 (52 FR 8606), to ease the burden of displaced tenants. Several legislative mandates for moratoriums on prepayment had been enacted until legislative action was taken with the passage of the Housing and Community Development Act of 1987 (HCDA 1987). The Act included provisions addressing "Rural Rental Housing Displacement Prevention." As part of the law, Congress mandated that FmHA issue regulations to carry out the legislation within 60 days of enactment. The mandate was addressed by an interim rule with request for comments, published on April 22, 1988 (53 FR 13244). An emergency change to the interim rule due to an initial misinterpretation of the law was published February 13, 1990 (55 FR 4985). Comments to the interim rule were extensive. As a result, a new proposed rule with request for comment was published on July 20, 1990 (55 FR 29601). The new proposed rule addressed comments received on the interim rule, provided additional guidance to field offices on implementation of the law, and made changes in additional regulations which the law impacted and/or in which changes needed to be made to be consistent with these provisions.

In addition, Congress passed the Department of Housing and Urban Development Reform Act of 1989 (H.R. 1), which included, in addition to other actions pertaining to FmHA, the provision that no rural rental housing

loan whose contract was entered into subsequent to December 15, 1989, could be prepaid, nor may FmHA request refinancing. Congress mandated that the provisions of the Act be implemented within 6 months of passage of the Act. An interim rule with comment implementing these and other provisions of the Act was published on July 20, 1990 (55 FR 29558). In November 1990, the Cranston-Gonzalez Act was passed which include a technical amendment retroactively restricting prepayment to initial loans only made on or after December 15, 1989.

In addition, Congress passed the Housing and Community Development Act of 1992, which included, in addition to other actions pertaining to FmHA, provisions that required prepayment prevention incentives to be offered to projects whose initial loans were made between December 21, 1979, and December 15, 1989. The Act also included a provision allowing the offer of excess rents as additional return to owner as an additional incentive to qualified section 8 assisted projects, and called for certain preservation activities to be carried out in the FmHA National Office.

This final rule incorporates changes and comments to the interim and proposed rules addressing restrictions on prepayment (March 19, 1987, 52 FR 8606; April 22, 1988, 53 FR 13244; February 13, 1990, 55 FR 4985; July 20, 1990, 55 FR 29601; and July 20, 1990, 55 FR 29558). Accordingly, the sections of the interim rule published on July 20, 1990, which are hereby finalized are §§ 1944.215, 1944.236, 1944.237 and 1944.238 of subpart E of part 1944, § 1951.251 of subpart F of part 1951, and 1965.90 of subpart B of part 1965, some in slightly revised form or moved to different places in FmHA procedure. Changes required by the 1990 Act and the Housing and Community Development Act of 1992 have also been incorporated.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. However, the actions pertaining to the technical amendments of the Cranston-Gonzales Act and the provisions of the Housing and Community Development Act of 1992 are not published for proposed rulemaking since they involve only rules of agency procedure and internal agency management or are sufficiently clear in legislation to allow for minimal interpretation, thereby making publication for comment unnecessary.

Comments to appraisal issues addressed in the proposed rule written for HCDA 1987, suggested that changes were required to the multi-family housing appraisal procedure (FmHA Instruction 1922–B). All references to the completion of appraisals relating to prepayment, with the exception of one issue, have been deleted from this regulation and reference made to the existing FmHA multi-family housing appraisal procedure. The issue remaining concerns the consideration of value of an FmHA multi-family project as an unsubsidized conventional project when appraising the project for prepayment purposes. The comments suggesting appraisal changes are not addressed in this rule-making action but are incorporated into a revision of FmHA Instruction 1922–B.

This rule will differ from the two interim rules currently in effect in that:

1. An entirely new subpart E to part 1965 will address all prepayments and restrictions on use of multi-family housing loans.

2. Several regulations are being modified to bring provisions into compliance with the prepayment requirements. These regulations include: Subpart C of part 1930, including Exhibits B and E addressing rent increases and rental assistance; subpart D of part 1944 addressing labor housing; subpart E of part 1944 addressing rental housing loan making; subpart L of part 1944 addressing tenant grievances and appeals; subpart F of part 1951 addressing graduation; subpart N of part 1951 addressing unauthorized assistance; and subpart B of part 1965 addressing transfers, reamortizations and payments in full.

3. Subparts A and C of part 1955, addressing foreclosures and sale of inventory property, are being amended to provide the same protections to tenants in foreclosed and inventory projects as are provided in prepaying projects.

4. Guide acceleration notices and notification letters to tenants are being provided to field offices simultaneously with the publication of this regulation. The notices and letters previously were published for comment, but will not become part of the CFR.

5. Guidance to field offices on documenting the ability of a borrower to prepay, developing incentives to avert prepayment and determining the need for housing have been included. A checklist for requesting prepayment and a model for developing incentives to avert prepayment have been developed. With the exception of the checklist, the preceding items are classified "Internal Agency Management" and will not be printed in the CFR. The rationale for changes made are provided in the appropriate portions of the "Comments" section of this Federal Register.

6. No special appraisal instruction, with the exception of mandating that loans for equity and sale to nonprofits be based on unsubsidized conventional appraisals, appears in the procedure. All prepayment guidance on appraisals references FmHA Instruction 1922–B. The rationale for using unsubsidized conventional appraisals for all prepayment-related purposes is provided in the "Appraisal" portion of the "Comments" section to this Federal Register.

7. Discrepancies between the two current interim rules are rectified, and the prohibition on prepayment of new loans is being changed to loans to build or acquire new units, rather than all loans. The legal reference and further rationale for this action is provided in the section addressing H.R. 1 in the "Comments" section to this Federal Register.

8. The use of restrictive-use provisions for the life of the loan is being introduced for accelerated loans made to build or acquire new units made on or after December 15, 1989.

In addition, direction for "grandfathering" actions taken prior to the effective date of this regulation are provided for in the appropriate portions of the "Comments" section to this Federal Register, and will be reiterated in the Procedure Notices sent to the field to implement these regulations. The directions address:

1. Incentive offers already made and accepted;

2. Loans to build or acquire new units obligated and closed on or after December 15, 1989;

3. Subsequent loans obligated and closed on or after December 15, 1989.

A summary of the comments received to the two interim rules and the decisions made concerning the comments follow:

Ten comments were received concerning the proposed rule for HCDA 1987: five from tenant advocacy groups (one submitted two comments); three from borrowers, borrower organizations, or consultants; and two from one FmHA employee. Of the comments received to the interim rule concerning H.R. 1, two contained sections relevant to this rulemaking action, both from a borrower organization or borrower consultant.

*General Comments*

Comments on the regulation in general considered the regulation an improvement over the interim rule. The creation of an entirely new regulation,

including the chronology of prepayment steps and additional processing guidance was considered helpful. Other comments suggested the time that had elapsed between publication of the interim rule and the proposed rule was too long. A few comments stated that the submission of comments was not to imply acceptance of the constitutionality of the law upon which the regulation is based. The provisions of the incentive model were considered unfair by other commentors, who suggested that FmHA was violating a contract. These comments went on to suggest that no borrower would accept an incentive under those conditions, and suggested FmHA could therefore find many projects sold to nonprofit organizations. Other comments suggested FmHA has been violating tenant rights by the inappropriate acceptance of prepayment requests. Finally, several comments considered the regulations still to confusing. Where specific comments were included with the preceding general comments, the specific comments and FmHA's responses are incorporated in the following materials.

There was also several comments which pointed out a discrepancy between the interim rule published in response to H.R. 1 and this rule. H.R. 1 provided that no loan obligated after December 15, 1989, could ever be prepaid. This regulation makes no note of the preceding prohibition and provides for restrictive-use provisions for equity incentive loans. The statutory prohibition on prepayments for the life of a loan has since been limited to initial loans by the Cranston-Gonzalez Housing Act of 1990. Therefore, the aforementioned discrepancy no longer exists. This regulation administratively extends the prohibition on prepayment to all loans made to build or acquire new units obligated on or after December 15, 1989. The prohibition has been included to ensure that subsequent loans to build or acquire new units are not substituted for initial loans in order to avoid the prepayment prohibition.

*Department of Housing and Urban Development Reform Act of 1989*

Comments to the interim rule concerning the above law which are relevant to this procedure and resulting changes are addressed below.

There was a conflict, as stated in the previous section, between the interim rule addressing H.R. 1 and the earlier version of this rule. As previously stated, this discrepancy has been resolved.

Clarification was requested concerning the relationship between the following three new provisions of the Act: prohibition on prepayment, guaranteed equity loans, and occupancy surcharges. Discussion addressing the latter two issues is not included in this final rule. However, the Cranston-Gonzalez Act does provide that the prohibition on prepayment, occupancy surcharges, and guaranteed equity loans applies to initial loans made on or after December 15, 1989. This required prohibition on prepayment is contained in this rule-making action. To implement the Act, the prohibition on prepayment has been extended to all loans made to build or acquire new units. This action was considered necessary to prevent borrowers from by-passing the prepayment prohibition by building or acquiring new phases to projects through a subsequent loan, rather than a new "initial" loan. The Agency believes this to be the intent of Congress when the term "initial" loans was used. Although the prohibition on prepayment has been extended to subsequent loans to build or acquire new units, the prepayment prohibition and provisions for occupancy surcharges do not apply to equity take out subsequent loans.

Clarification was requested on consolidated loans where only one loan is subject to the prepayment prohibition and guaranteed an equity loan in 20 years. Since subsequent loans (except those used to build or acquire new units) are no longer subject to separate prohibitions or prepayment conditions, conflicting restrictions and permissions will not occur if the initial loan was made prior to December 15, 1989. If, however, the initial loan was made after December 15, 1989, none of the consolidated loans may be prepaid. The consolidated loans will be subject to the occupancy surcharge and may receive a guaranteed equity loan when eligible. If a subsequent loan to build or acquire new units is made after December 15, 1989, and consolidated with an initial loan made prior to December 15, 1989, the subsequent loan cannot be prepaid. However, the subsequent loan does not contain a requirement for an occupancy surcharge, nor is the loan able to qualify for an equity take-out loan in 20 years.

The issues may affect loans obligated and closed between the passage of H.R. 1 and/or the Cranston-Gonzalez Act and the promulgation of this regulation.

1. Borrowers with subsequent loans, other than those to build or acquire new units, which were closed with a prohibition on prepayment, must be contacted to determine whether the borrower wishes to have their closing documents refiled, at their own expense, with the prohibition removed and 20-year restrictive-use provisions substituted.

2. Subsequent loans to build or acquire new units, closed during the period in question with restrictive-use provisions rather than a prohibition on prepayment, will be allowed to keep the provisions as they are.

Documentation is to be placed in the casefiles to record any decisions made or actions taken concerning the preceding issues.

*Comments to Subpart E of Part 1965*

Section 1965.202

Several of the definitions were questioned and the need for additional definitions was suggested.

"Affordable housing" is defined as housing whose rents will not create new or increased rent overburden for tenants of prepaying projects.

Several comments addressed the definition of "displaced," along with the discussions of restrictive-use provisions to alleviate displacement. It was suggested that long-term, rather then immediate displacement should be addressed, and particularly displacement which occurs because tenant income falls. The discussions of displacement, rent overburden, and restrictive-use now clarify that tenants whose rent payment is based on 30 percent of income at the time of prepayment (e.g., on rental assistance, section 8 or paying overage) will continue to have rents determined by the same method, even if the rental payments are reduced. Those households paying more than 30 percent of income (e.g., basic or full-profit rents) may have rents based on 30 percent of income, but the rent at time of prepayment may be set as a minimum. The definitions also provide that third party rental payments, if greater than 30 percent of income, will not be classified as rent overburden.

It was suggested that tenant associations and cooperatives be added to the definition of local nonprofit corporations. This was considered unnecessary. Such groups would already be included as eligible if they meet the other relevant criteria established in the regulations.

It was suggested that the definition of "market area" be changed so as not to limit the area to what the market area was at the time of loan approval, but to consider the project's current market area. The definition was clarified to reflect the comment.

Several comments pointed out that there was no definition offered of "minorities," even though decisions concerning minorities must be made in

several instances. The definition of "minorities" has been added.

In response to comments concerning clarity in the use of the term "Protected", we have added a definition of "Protected" population.

"Protected" will refer to those individuals and families to whom a particular restrictive-use provision applies.

Section 1965.203

Two comments suggested that nonprofit organizations not be unilaterally removed from notification lists for not renewing their request for notification annually. In response to the comments, organizations will not be removed unless they are given 30 days notice to renew their listing.

Section 1965.205 and Exhibits B and C

Suggestions were made that the checklist for requesting prepayment should be included in the CFR so that borrowers know what is required, and that additional guidance be included describing what is required to document a complete prepayment request and ability to prepay. The checklist has been changed to a handout which explains what is needed for a complete prepayment request.

Other comments addressing the request to prepay suggest that too much information is required. It was suggested that in some cases borrowers may need a professional market analysis and, additionally, FmHA employees do not have the skill needed to evaluate the materials submitted. It was decided that all information requested by FmHA is necessary, both to be used to craft an incentive offer and to determine if the prepayment can be accepted. In many cases, the information is also necessary in order to evaluate the ability of the borrower to prepay. In communities with strong conventional markets, the data should not be burdensome; where the conventional market is less strong, the borrower is expected to have closely evaluated the financial implications before deciding to prepay, and so should have the required information available. As to the second comment, FmHA employees routinely make complex loan-making decisions similar to the decisions required in this regulation, so there is no reason to doubt their ability to make these decisions.

Sections 1965.205 and 1965.206

Several comments suggested that mandated timeframes needed to be clarified. We therefore clarified that the 180-day tenant notification period prior to acceptance of prepayment does not begin until a prepayment request, judged by the Servicing Office to be complete, has been received. Additionally, tenants, the applicable FmHA State Office, and nonprofit organizations must all be notified within 15 working days of the receipt of a prepayment request determined complete by the Servicing Office.

Sections 1965.206(b)(2), 1965.215 (d)(3) and (d)(4), Notification to Tenants, and Letters of Priority Entitlement

There were several comments concerning issues in the Notifications to Tenants. Several borrowers and borrower organizations suggested that tenants should not be notified if the borrower intent is clearly to receive an equity loan, and not to prepay the project. The suggestion was not adopted, since the regulation applies only to instances where the borrower intends to prepay a loan, in which instance the law mandates that tenants be notified.

Several comments pointed out that the notification letter excludes tenants in 100 percent project-based section 8 projects from commenting if the borrower intends to retain project-based section 8 after the prepayment. Other comments noted that tenants should be advised that restrictive-use provisions for 100 percent project-based section 8 contract projects remain in effect for the period stated, even if section 8 funding runs out before that date. Both comments have been adopted.

Several comments suggested that the notification letter is too long, and that tenants are not given enough information. It was also noted that the tenants' right to comment was not prominently mentioned. It was suggested that the letters include the decision making process FmHA must follow, a description of the exceptions which allow for an early prepayment, a better description of alternative comparable housing, an explanation of the potential effect of HUD section 8 "opt-out" provisions on tenants, the effect an equity loan to avert prepayment may have on tenants, and the limitations of Letters of Priority Entitlement (LOPE) letters. It was also suggested that regardless of the amount of detail a guide letter may contain, if the letter is not issued properly by the Servicing Office, the tenants will not receive necessary information.

The notification letters to tenants have been revised to consist of a cover letter containing basic information with attachments containing more complete information. The request for tenant comment is now stated in capital letters closer to the beginning of the letter. Attachments to the guide notification letters now provide guidance to field offices on completion of the letters. We have also added that tenants must be periodically advised of the status of the prepayment request and the actions being taken.

There were several comments suggesting additional or different wording be included in the notification letter to tenants. In some cases, the suggested language was phrased in industry, rather than lay, terminology. Much of the suggested language was not used in order to keep the letter comprehensible to tenants. Suggestions were followed when possible to do so.

There were several comments concerning LOPEs. One comment suggested that applicants for housing should be issued a LOPE, along with current tenants. This suggestion was not followed. If eligible prospective tenants are already on a waiting list for a project, the prepayment should not be accepted on the project without restrictive-use provisions. Additionally, if the restrictions are to extend for longer than 2 years, LOPEs will not be available. Neither prospective tenants who make applications after the date a prepayment request has been submitted nor tenants who are leased units after a prepayment request is received are considered eligible for a LOPE.

One comment stated that LOPEs give priority only for FmHA multi-family housing, but should give priority for all federally subsidized housing. In some instances, HUD may give preference to holders of LOPEs. However, the current statute limits preference to projects assisted by FmHA.

Tenant advocates suggested that LOPEs be provided after prepayment when restrictive-use provisions are due to expire, or when tenants are displaced for other reasons, such as decreased income. It was also suggested that LOPEs be available to tenants in all prepaying projects, even when restrictive-use provisions remain in place. As situations were eliminated where tenants could be displaced due to reduced income, we have rejected the suggestion. Tenants will be advised at the time of prepayment of the length of time remaining on the restrictions, and advised to seek other housing before that time if they are likely to be affected. LOPEs will not be provided in cases where current tenants are protected for as long as they live at the project, or where the project will remain restricted for at least 2 years. It was determined that including the extended eligibility for LOPEs would benefit prepaying landlords more than tenants. If LOPEs were provided in those cases, landlords

who sign restrictions may encourage tenants to receive LOPEs and move, thus circumventing the intent of the legislation.

Section 1965.206(b)(5) and Exhibit C

One comment suggested that the proposed language to be inserted in the lease of new tenants, notifying a tenant that the housing may not continue as low- or moderate-income housing be submitted to FmHA for approval with the prepayment request. This suggestion was adopted, along with the requirement that the lease language to be used after prepayment, by borrowers proposing to prepay with restrictive-use provisions, be submitted for review.

Section 1965.213 and Exhibit D

There were several comments addressing incentives to avert prepayment and the model for determining these incentives.

Section 1965.213(a)(1)

One borrower representative inquired as to why the FmHA regulation limits the equity loan and outstanding debt to 90 percent of appraised value, while the law allows equity loans for up to 90 percent of the equity. The FmHA regulation complies with the maximum guidelines established by law. If equity loans were granted up to the maximum amount established by law, outstanding debts on projects could potentially equal close to 100 percent of appraised value, which is for a greater percentage than currently allowed for new construction. The proposed limit has therefore been maintained.

Section 1965.213(a)(2)

There appears to be sufficient confusion among comments concerning Rental Assistance (RA) as an incentive to require clarification. In addition, a change was made in the extent to which RA will be granted to avoid its overuse. As a result, RA will be given to the extent necessary to ensure that tenants in the project and on the waiting list are protected after the incentive package is granted, to the same extent that tenants were protected prior to the incentive. When additional RA is granted as an incentive with no other financial incentives, the increase may be justified by a change in market conditions which has led to vacancies at the project which can only be alleviated by RA. Since the entire incentive package is to be obligated at the same time, no incentive will be obligated until there is both sufficient funding and RA available to fund the entire incentive package.

Section 1965.213(a)(3)

A comment was submitted concerning more appropriate factors to use when determining maximum return on investment, and how the information concerning the factors would be distributed to the field. The maximum return on investment has been modified to allow for a redefinition of project equity when incentives are developed. The rate of return will (a) remain the same if an equity loan is being offered as an incentive, or (b) become the greater of the existing rate of return or 2 percent above the 30 year Treasury Bond rate, rounded to the nearest ¼ percent, if no equity loan is offered. The Treasury Bond rate used will be the rate as of the first business day of the month following receipt of the complete prepayment request.

Sections 1965.213 (b)(2), (b)(3), and Exhibit D

Several comments were submitted by tenant advocates which suggested the reason project-based section 8 projects wished to prepay their loans was to gain access to the unlimited return on investment they would receive from the HUD rents if FmHA did not limit returns. In addition, comments by both tenant advocates and industry representatives pointed out that since this housing could be lost to the low-income market when the 20-year Housing Assistance Payment (HAP) contract expires and the FmHA loan has been prepaid, these borrowers should be offered adequate incentives to not prepay. The Housing and Community Development Act of 1992 effectively implements the preceding suggestion. The Act allows FmHA to offer as an additional incentive the permission to owners of projects with project-based section 8 to receive rent in excess of the amount determined necessary by FmHA to defray the cost of long-term repair or maintenance of the project.

Previous Section 1965.213(c)(4) and New (c)(1)

A tenant advocate suggests that legislation mandates restrictive-use provisions for at least 20 years, and asks why no provisions were made for restrictions lasting longer. It was determined that restrictions for varying lengths of time would be too difficult to deal with administratively. However, any borrower may request longer restrictions and a potentially larger incentive. If in agreement, the State Director or other authorized official could agree to the longer term and larger incentives so long as the larger incentives are allowed by statute.

Previous Section 1965.213(d)(3) and New Exhibit E

There appears to be misinterpretation concerning the statement that if prepayment could be accepted without restrictions, an equity loan should not be part of the incentive offer. Comments suggest that it was believed the regulation meant no incentive offer would be made if prepayment were to be accepted with restrictive-use provisions. An attempt to have the borrower agree to extend low-income use must be made in all cases. If after attempts to extend the low-income use have failed, prepayment may be accepted with no restrictions only if the housing is clearly not needed; that is, there is a surplus of suitable, comparable, affordable low-income housing in the community and the situation is not judged to be temporary. This provision was left unchanged.

Previous Section 1965.213(d)(5) and New Exhibit E

Several comments apparently misconstrued the meaning of the provision that incentives offered could be higher to an acceptable transferee than to a current borrower. This is clarified to make clear that the intent is to make incentives commensurate with the borrower's capability and willingness to continue to meet the purposes of the program, as required by law. Therefore, an uncooperative and/or unresponsive borrower would be encouraged by the structuring of the incentive offer to transfer the project. Determination of eligibility for an equity loan would not differ from the determination of eligibility for a loan for new construction or acquisition.

Exhibit D

There were few specific comments about the incentive model during the comment period, except to note its complexity. Comments were received from both a borrower organization and FmHA staff members after the comment period was over. We adopted a suggestion by an FmHA staff member for a simplified method for determining the equity portion of the incentive offer. We also simplified the reminder of the incentive model.

Of the comments received during the comment period, most comments advised us that the incentive model was too complicated for use by our field staff. Many of the comments revolved around the derivation of "cap" rates. One commenter pointed out that since different calculators may determine the "present value" of future money slightly differently, the formula used should be

published. Due to revisions in the model, the comments are not applicable.

One FmHA employee commented that the proposed model uses currently approved budgets which may not have rents set at levels adequate to meet the expenses required under an incentive package. This problem remains under the revised model. However, the model now requires that budgets be adjusted to provide for rents adequate to service expenses under the incentive package. Without the adjustment, the rents and budgets used to determine the equity loan portion of an incentive offer may be artificially low. Other suggestions for modification of the development of the budget were made by various comments and, in most cases, adopted.

Several comments suggested that incentive offers made prior to the effective date of this procedure be "grandfathered." Field offices are advised that incentive offers which were appropriately derived, offered by FmHA and accepted by the borrower are "grandfathered" with the effective date of this procedure.

Several comments suggested that all incentive offers be at the maximum allowed by law; otherwise, the projects may be sold to nonprofit organizations which would be more costly to the government. One borrower organization suggested that:

(1) Maximum incentives need to be offered to encourage borrowers to remain in the program;

(2) Incentives are less expensive than replacing the housing projected to be lost to the program;

(3) It is irrelevant to expect FmHA projects to be taken out of the program by borrowers, as FmHA would not allow the borrowers to prepay anyway;

(4) Since projects appraised as FmHA subsidized housing are not compared to unsubsidized conventional housing, there is no reason for conventional rents to be used for comparison when a borrower wishes to prepay; and

(5) Since priority for fundings goes to low-income areas, it is rare that conventional rents would exceed either FmHA basic or market rents, thereby unfairly penalizing borrowers in those areas when calculating incentives.

Conversely, another comment suggested that borrowers whose projects were included in the proposed Category No. 3 should not receive any equity loan as part of the incentive package as it could be construed that there is no alternative to FmHA housing in their community and the borrower is not losing money by not prepaying. Several comments also suggested that since sales to nonprofit organizations would ultimately save the government money, incentive offers should be set to take into account the reduced cost of the sale option.

The revised incentive model will continue to propose incentives to borrowers in much the same method as the proposed model. Those borrowers who would lose money by not prepaying will be compensated for their foregone opportunity. Borrowers with no apparent alternative use for the housing but who may have the ability to prepay may receive an incentive to compensate for agreeing to forego prepayment for an additional 20 years of low- and moderate-income use. As there is no way to determine the long term costs of lending to a specific for-profit borrower vs. an unknown nonprofit borrower, nor is there any way to be certain that if an incentive offer is rejected, an eligible nonprofit organization would want to purchase a project, an incentive offer derived from the model is clearly the first step FmHA must make after a bonafide prepayment request is received.

One comment suggested that the calculation of the loss to the borrower of not converting to unsubsidized conventional housing should be adjusted by the conversion costs assuming rehabilitation to a market standard. The Agency recognizes that conversion costs should take into account both hard and soft costs, including the cost of adding amenities, making upgrades and otherwise elevating the quality of the housing to its highest and best residential use and include losses due to vacancies, rent skips, rent withholding, legal costs, advertising, etc. However, this suggestion was not addressed in this part of this regulation. The suggestion will be taken into consideration as part of modification to the appraisal regulations referenced as part of this regulation.

Conversely, borrower organizations suggested that an inflation rate be built into the model. This suggestion was not considered practical as part of the new model.

Other suggestions included using the higher of the subsidized or unsubsidized conventional appraisal in determining incentives in all cases and not considering the number of units being added to the conventional market in determining the possible conventional rent, since these units are already in the community. Neither of these suggestions were adopted.

Section 1965.213(c)(6)

One industry representative asked that the time allowed for a borrower to accept the final incentive offer be lengthened to allow partnerships to confer. While FmHA suggests that partnership decisions concerning the acceptable threshold of prepayment incentives would have been made prior to the preliminary acceptance of the offer, the timeframe has been lengthened to 30 days.

Section 1965.215 and Exhibit E

In response to suggestions that FmHA field offices need better guidance on the prepayment decision-making process, and to suggestions that decision-making be better documented, exhibit E was added. This exhibit contains guidance formerly contained in §§ 1965.213 and 1965.215 of the proposed regulation addressing incentives and acceptance of prepayment, as well as guidance on determining the ability to prepay. The exhibit suggests the following information used in making prepayment decisions be documented:

(1) descriptions of what projects are used as comparable housing and whether the projects are subsidized;

(2) "Opt-out" provisions if any;

(3) Applicable restrictive-use provisions and the borrower's understanding of the provisions;

(4) Criteria used to determine the effect of the prepayment on the supply of affordable housing;

(5) Criteria for determining the effect of prepayment on minorities; and

(6) The length of time the housing is considered to be not needed if no restrictions are required.

The exhibit provides guidance on the evaluation and documentation necessary to determine when a request to prepay may require the completion of a market analysis. It should be noted that many of the issues discussed in exhibit E are suggested issues to document in determining the ability of a borrower to prepay and not all are mandatory.

In addition, the Housing and Community Development Act of 1992 calls for an increased role by the FmHA National Office in the processing of prepayment offers and acceptance of prepayments. The regulations have been structured to allow for the future establishment of such a role.

In conjunction with the comments to this regulation, several tenant advocates suggested that prepayments of section 8 projects are being too readily accepted when the borrower agrees to accept restrictive-use provisions for the remainder of a 20-year period. FmHA recognizes this issue and has attempted to address the problem by making field office guidance more explicit, as well as by providing specific calculations in the incentive model for project-based

section 8 projects. In addition, with the enactment of the Housing and Community Development Act of 1992, which allows for the use of excess project rents as an additional incentive, and the authority to offer incentives to projects financed between December 21, 1979, and December 14, 1989, such prepayments will likely be drastically reduced.

One tenant advocate pointed out that while the restrictive-use provisions being signed by borrowers with HAP contracts upon prepayment require low- to moderate-income use for 20 years, the section 8 contract funds could run out prior to the expiration of a 20-year period. The depletion of subsidy funds would not change the incentive offer nor the decision to accept prepayment with restrictions, as the length of time for restricted use would remain, and it would be for the borrower to determine how to meet this commitment. As a precaution, the period of restrictive-use will be explicitly communicated to owners and tenants of prepaid section 8 projects.

Section 1965.215(e)

Several comments from tenant advocates urged FmHA to move the decision to accept prepayment to the National Office. It was pointed out that many prepayments were accepted by FmHA Servicing Offices that contained procedural errors in handling, accepted in error or were accepted without inclusion of restrictive-use provisions. It was determined to leave much of the prepayment decision-making in the Servicing Offices where staff has a greater familiarity with the markets. This familiarity is critical in making informed decisions. However, the regulation has been modified to require that the Servicing Office make a recommendation on acceptance to the State Office or other designated office, where final authorization will be required. In addition, the Housing and Community Development Act of 1992 calls for an increased role for the FmHA National Office in the processing of prepayment offers. This increased role should eliminate much of the inconsistency seen in prepayment processing.

Previous Section 1965.215(b) and New Exhibit E

One comment suggested that the Agency publish a list of areas with traditional discriminatory practices to help with determinations required concerning the effect on minorities from prepayment. This is not possible since such areas could include small localities within communities. As a result, the suggestion was not adopted. However, additional guidelines for determining the effect on minorities have been included.

Previous Section 1965.215(c) and New (e)

One comment noted that while the restrictive-use provisions (contained in exhibit A–4(A) and A–4(B)) provide for borrower attempts to sell the project to a nonprofit organization at the expiration of the 20-year period or when the restrictive-use provisions expire, the procedure gave no guidance on how the required sale is to be accomplished. The procedure now specifies that projects will be advertised for sale to nonprofits for a 6 month period in the same manner as the offer of sale to nonprofit borrowers is required for borrowers not agreeing to accept the incentive package offered at the time of election to prepay.

One comment showed an apparent misunderstanding of the restrictive-use provision intending to protect only current tenants until they move. The comment suggested the provision protect those prospective tenants who wish to enter the project. As this was not the intent of the restrictive use provision contained in exhibit A–4(C), no change was made.

One comment suggested that "very-low income" be included in every instance where the term low- and moderate-income is used. This was determined to be unnecessary. The term "low-income" includes very-low-income and, based on the definitions of "restrictive-use provisions" and "protected populations", very-low-income tenants would continue to be protected in prepaid projects with restrictions to the same degree they would have been protected if the loan had not been prepaid. "Very-low income" is only specifically referenced as required by law.

Section 1965.215(d)(1)(i)

One comment noted that the law requires restrictions for a minimum of 20 years if a borrower prepays and is subject to one of the restrictive-use provisions. It was suggested that FmHA should require restrictions for greater than 20 year periods in high need areas. This suggestion was not adopted as the suggestion appeared to be excessive.

Section 1965.215(d)(1)(ii)

A tenant advocate suggested that borrowers should be precluded from offering tenants incentives to move. The Agency suggests it has no legal authority to adopt this restriction. However, as tenants protected by the restrictive-use provisions may not receive LOPEs, it is considered less likely that tenants not facing the imminent loss of their housing would agree to accepting incentives to move.

Section 1965.215(e)

One comment suggests that FmHA offices have agreed to raised rents immediately prior to prepayments in order to make the prepayment feasible while maintaining tenant protections. The Agency contends that rent increase procedures are clear as to the necessary documentation required to show the need for rent increases. Reviews of project rent increases are available to tenants anytime if rents are believed to have been raised inappropriately. In addition, the issue of an improper rent increase could be raised during the tenant comment period to the prepayment request.

Section 1965.215(e)(5)

Several comments suggested that FmHA require lease language informing tenants of the following prepayment related circumstances:

(1) Tenants who move into a project after a prepayment request has been received are advised that the project may be prepaid;

(2) Tenants who move into a project which has been prepaid with restrictions are advised of the nature and expiration date of the restrictions; and

(3) That incomes must be recertified annually.

As circumstances may vary between projects, it was considered inappropriate for FmHA to provide the required language for each case. Suggestions, rather than required language, are provided in the first instance. For the second, language advising tenants of restrictive-use requirements after prepayment is to be copied from the notifications sent to tenants. In the third case, language requiring recertification may be copied from current required lease language. Owners will be required to submit proposed lease language for approval with their prepayment requests before use.

Section 1965.215(e)

Several tenant advocates suggested that all borrowers, including those prepaying with restrictions, provide budgets to prove they can feasibly operate the project with the proposed tenant population. They also suggested that annual income certifications be mandatory for borrowers prepaying with restrictions, rather than at the option of the borrower. They suggested this was necessary to be certain that appropriate

tenants continue to be served. The first suggestion was determined not necessary in the case of borrowers accepting restrictions as the borrower is required to comply with the restrictions whether financially feasible or not. For those borrowers prepaying without restrictions, budgets and conventional unsubsidized rents are to be evaluated by FmHA. We have accepted the suggestion for annual recertifications for those borrowers prepaying with restrictions. The annual recertifications will provide a method for the borrower to both determine that rents could be raised if the borrower wished to do so, and to ensure that protected tenants are appropriately served.

Sections 1965.215(e) and 1965.222

Several tenant advocacy groups reiterated a comment proposed for the interim rule suggesting that FmHA continue to monitor compliance with restrictive-use provisions after the loan is prepaid. Alternative suggestions were that borrowers certify annually to FmHA that they are complying with the restrictive-use provisions. It was determined that the Agency does not have the capacity to monitor compliance after prepayment. Improved guidance is provided in the final rule concerning the information to be provided to tenants and documentation to be submitted to FmHA prior to FmHA accepting a prepayment. The rule also requires FmHA to notify all area advocacy agencies of the prepayment with restrictions and explain to the borrower the implications of the restrictions agreed to. The final rule recommends that the borrower maintain records documenting that units were rented to appropriate tenants and the appropriate rents were charged. The final rule also establishes the FmHA State Office or other designated office as the responsible office for approving all prepayment requests which are accepted, ensuring that appropriate provisions were followed, and requiring the borrower to annually certify to FmHA that units were rented to appropriate tenants at appropriate rents in accordance with the restrictive-use provisions. It was determined that FmHA will not monitor prepaid projects, but will take appropriate action if a violation is brought to our attention. Finally, the alternative suggestion requiring an annual certification from the former borrower to FmHA stating that the operation of the project is in compliance with the restrictive-use provisions has been adopted, along with a requirement that borrowers prepaying subject to restrictive-use provisions will be required to sign a Restrictive-Use Agreement at the time of the prepayment.

Section 1965.215(f)

An industry representative asked for clarification in this section. The language has been modified to state that the letter denying prepayment may revise the original incentive offer if new information documenting the loss the borrower may suffer if not allowed to prepay has been brought to the attention of FmHA.

Tenant advocates stated that FmHA should attempt to keep housing in the program at all costs. It was decided that if a surplus of comparable housing exists at rent levels the project tenants are currently paying, there is no advantage to tenants to keep the housing in the program. Exhibit E was modified to state that if the project requesting prepayment is full profit with rents at unsubsidized conventional market levels, and subsidized projects are needed in the community, an incentive offer should be made reflecting the need for subsidized housing.

It was suggested that prospective tenants, as well as current tenants, must be taken into account when the need for housing is determined. Exhibit E has been clarified to reinforce existing language requiring the determination of need.

Section 1965.216(a)

There were several suggestions that appraisals required prior to a sale to nonprofit organizations and public agencies should be conducted until a potential purchaser is found. It was also suggested that the advance for loan application costs be made prior to the appraisal. The timing of appraisals for nonprofit or public agency sales, as well as several other requirements for appraisals, are mandated by law and cannot be changed. As for nonprofit and public agency advances, the section has been substantially modified to allow advances to nonprofit organizations and public agencies in the form of grants. Such grants would be obtainable at the time the organization or agency obtains a purchase offer or option. Section 1965.217(d) addresses the eligibility requirements and processing of these advances.

Section 1965.216(b)

A tenant advocate suggested that regional and national nonprofit organizations and public agencies be notified when prepayment sale advertising begins to local nonprofits and public agencies so the organizations will be prepared to make an offer. Conversely, an industry organization suggested that borrowers should not be required to advertise their projects to nonprofit organizations and public agencies; rather, nonprofit organizations and public agencies should keep abreast of the status of projects wishing to prepay, as they receive early notification when the prepayment request is made. As the law requires that a bona fide attempt be made to sell the project to nonprofit organizations or public agency for a minimum of 6 months, the provision was not changed.

There was an apparent misunderstanding of the provision that if advertising ceases while a nonprofit or public agency applicant is being evaluated by FmHA and the applicant is not accepted, advertising must be resumed until an additional 6 months' advertising is completed. The comment apparently interpreted the proposed rule to require that advertising must stop during the evaluation period. This is not the intention; if a local nonprofit or public agency is being evaluated for eligibility, advertising may continue to regional and national nonprofit organizations and public agencies and back-up offers accepted, so long as a minimum of 6 months' advertising is completed. This requirement has been clarified in the procedure.

Several comments suggested changes to issues required by law, such as qualifications of local nonprofits to manage projects and identity of interest requirements. The suggested changes could not be made due to the statutory nature of the requirements.

Section 1965.217(e)(5)

An industry representative suggested that the regulation specify deferred maintenance to be completed prior to a transfer only include maintenance identified in previous inspections and not include items which are identified immediately prior to the transfer. The required maintenance has been clarified in the regulation.

Section 1965.217(f)

Several comments dealt with Debt Forgiveness RA (DFRA). One comment suggested sales to nonprofits should be processed even if DFRA is not available at the time of the transfer. Closing a sale without DFRA is not allowed by law if DFRA is needed.

The second comment made by several tenant advocacy groups questioned why FmHA would transfer regular RA out of the project upon transfer to a nonprofit, and use only DFRA in the project. They suggested that since there is only a limited number of DFRA units, it should be utilized more conservatively. The procedure does not specify that regular

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RA must be transferred, only that regular RA may be transferred when the National Office determines there is sufficient DFRA to serve all projects which will need DFRA during the fiscal year. Since DFRA may not be used for any purpose but prepayment, it is considered the most expedient method to utilize the maximum amount of RA.

Section 1965.218(b)

There were several comments to this section, each apparently taking different positions based upon different interpretations of the same law. Borrower groups suggested that after any one project has been on the waiting list for 15 months, the borrower should be allowed to prepay. This suggestion was not adopted, since it frequently takes more than 15 months to process a request. If the delay is due to borrower procrastination the borrower could conceivably avoid the intent of the law. Advocacy groups agreed with borrower groups that the 15-month waiting period refers separately to each request to prepay, but proposed that the borrower's interpretation does not allow that each project must have been on the list for at least 15 months during the current period of no budgetary authority. The regulation has not been changed. Each prepayment request is to proceed through the entire prepayment process. If, when the end of the process is reached, or at any time after the borrower rejects the incentive, a period of 15 months expires or has already expired in which there is no budgetary authority for sales to nonprofit organizations, FmHA will accept the prepayment with no restrictions.

Section 1965.223

One comment stated that FmHA employees are accepting prepayments in order to avoid foreclosure; that is, accepting it under conditions which would not be applicable if the account were not a problem account. It was suggested that prepayments should never be accepted from uncooperative borrowers, so that prepayment does not become an incentive to default. Exhibit E reiterates that all prepayments, even those in lieu of foreclosure, must meet all guidelines for acceptance of prepayment with or without restrictions.

One comment suggested that projects sold from FmHA inventory as non-program properties should not contain restrictive-use provisions unless the project is made suitable for retention in the program. It is not intended to place restrictions on a project that is not suitable for low and moderate income use. Only current tenants would need to be protected until suitable housing could be found. Such tenants would be provided with LOPEs. No changes were made to this section.

There have been comments from tenant advocacy groups that borrowers who received loans prior to December 21, 1979, may intentionally default on their loans in order to circumvent the prepayment process and the regulations. Specifically, borrowers who wish to prepay and not be subjected to required restrictive-use provisions may purposely default and pay their loan(s) in full in response to an acceleration of the defaulted loan by FmHA. In order to prevent purposeful circumvention such as this, the regulations were modified to require that any loan made on or before December 21, 1979, paid-in-full in response to an acceleration of the account, would be made subject to restrictive-use provisions if the borrower had initiated a prepayment request on the loan anytime within a year prior to the payment-in-full.

*Appeals*

There were comments to various sections of the proposed rule dealing with recommended changes to the appeals procedure, and the rights of tenants to ask for review of decisions. The appeals procedure applies to all FmHA program areas and therefore no substantive changes were made. In response to comments that providing all tenants the opportunity to appear at borrower prepayment appeal hearings could disrupt the hearings, we have modified the regulation to require that tenants be notified if the borrower appeals a decision, but that only one tenant representative, either a tenant, an attorney representing the tenants, or an interested third party chosen by the tenants, may attend the hearing and present evidence on the tenants' behalf. However, all tenants will be allowed to contribute written comments during the appeal process. We have rejected the suggestion that tenants may ask that the decision to accept prepayment be reviewed. Tenants will be allowed an additional 60-day notice before the prepayment is accepted or their rents are modified. Since concurrence and final acceptance is now required from the State Office or other designated office before a prepayment can be accepted, notification to affected tenants and the request for State Office or other designated office concurrence and acceptance may be sent simultaneously.

*Appraisals*

Comments concerning appraisals will be incorporated into a revision of FmHA Instruction 1922–B. These comments include: (1) Considering the value of tax credits in the appraisal; (2) Completion of appraisals by fee appraisers versus FmHA staff; (3) Appraisal of the housing for its highest and best use as rental housing; (4) Valuation of maintenance reserves in the appraisal; and (5) The appraisal contracting process.

Other comments were concerned with the timing of appraisals, including the completion of required appraisals prior to offering the project for sale to nonprofits. No changes to the regulations were made as several of the timeframes are statutory. Other appraisal timeframes contained in the regulation were considered appropriate.

The regulations are clarified to state that all projects being appraised for equity loans and sales to nonprofit organizations will be considered as unsubsidized conventional multi-family housing. Since the borrower has proposed that unsubsidized conventional housing is the highest and best use of the project and is requesting to prepay the mortgage, the appraisal of the project as unsubsidized conventional housing is appropriate. Additional basis for this position is contained in the Cranston-Gonzalez National Affordable Housing Act which, under prepayment regulations applicable to HUD, specifies that preservation appraisals for both equity loans to current borrowers and sales to priority purchasers will assume conversion of the projects from their subsidized use to unsubsidized conventional use.

*Exhibit 1965–E–1*

One comment suggested additional information be added to the form. The information suggested is already captured on the prepayment report, so no change to the regulation was made.

*Other*

Several editorial suggestions were made for changes throughout the regulation to shorten sentences for clarity, to improve definitions and consistency in wording, or to correct typographical errors. These suggestions have been followed in most cases.

The proposed rule invited comments to several items which are not generally required to be published in the CFR, including guide letters. The guide letters are therefore not published as part of the final rule. At the time the proposed rule was published, the checklist for requesting prepayment was not to be published. The earlier decision has been reconsidered and the checklist is now included as additional guidance to borrowers. Exhibits D and E, which address FmHA evaluation of

information submitted and development of the incentive offer, will be made part of the CFR for informational purposes. However, each are considered administrative processes and internal to the Agency.

*Comments to Corollary Regulations*

Subpart E of Part 1944

One comment concerned the information required to apply for an equity loan to avert prepayment. The issues raised apply to applications for all loans and so will not be addressed in this regulation.

Section 1944.215(e)

Two tenant advocates suggested that all graduation requirements, including reviews of eligibility for graduation, be eliminated. The suggestion could not be adopted, as the existing law still requires graduation of borrowers for projects obligated prior to December 15, 1989. However, no displacement should result since graduation may be requested only if refinancing the project would result in the project serving the same tenant population currently served.

Subpart F of Part 1951

Comments similar to those in the preceding paragraph were received concerning graduation. FmHA's response is the same as in the preceding paragraph.

Subpart N of Part 1951

One comment suggested that borrowers asked to prepay due to receipt of unauthorized assistance, should not be subject to restrictive-use provisions. The provision has been retained. Prepayment would not be required except in extreme circumstances, such as where the borrower is clearly at fault. As restrictive-use provisions upon prepayment are statutory and not FmHA policy, retention of the restrictions is not optional. Several tenant advocates suggested that if the penalty for unauthorized assistance was to require prepayment with restrictions, FmHA should first require the borrower to attempt to sell the project within the program, preferably to a nonprofit organization. The provision for sale within the program has been adopted but broadened to allow the sale to be to any acceptable transferee.

Subparts A and C of Part 1955

Several comments suggested that:

(1) Tenants not be notified when projects are foreclosed;

(2) The 180-day notice period is not needed;

(3) No project with tenants occupying the project should be sold out of FmHA inventory even with restrictions;

(4) Tenants in foreclosed properties should not receive LOPEs nor be "forced" to move; and

(5) RA and interest subsidy should not be canceled for foreclosed projects.

One comment was concerned that negative RA could not be paid in foreclosed projects. Another comment suggested attempts should be made to sell foreclosed projects to nonprofits only.

A third comment apparently assumed all inventory projects sold out of the FmHA program were substandard, rather than recognizing that FmHA may sell a project out of the program if there is no market in a certain area for subsidized housing. In response to the comments, FmHA contends that tenant protections should be at least as strong in an FmHA inventory project as in those not in FmHA inventory. The protections include keeping tenants advised of the ownership status of the project and offering tenants LOPEs if they wished to move elsewhere. In addition, all attempts are made to sell the project as expeditiously as possible within the program, whether to nonprofits or otherwise. If a project is determined to be substandard, all efforts would be made to move tenants to other suitable housing prior to the project being sold. Finally, negative RA would continue to be paid by the project to the tenant through a direct voucher. No modifications were made to the regulation.

Subpart B of Part 1965

A borrower organization asked that "scheduled levels" of accounts be defined. FmHA suggests that the term is sufficiently defined elsewhere in FmHA procedures.

**List of Subjects**

*7 CFR Part 1924*

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

*7 CFR Part 1930*

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

*7 CFR Part 1944*

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing, Farm labor housing, Grant programs—Housing and community development, Migrant labor, Public housing.

*7 CFR Part 1951*

Loan programs—Agriculture, Rent subsidies, Rural areas, Subsidies.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

*7 CFR Part 1965*

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

## PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Planning and Performance Construction and Other Development

**Exhibit I to Subpart A [Amended]**

2. In exhibit I of subpart A, section 301–1 is amended by revising the reference from "§ 1944.164 (k), (l) and (m) of subpart D of part 1944 of this chapter" to "§ 1944.164 (l), (m) and (n) of subpart D of part 1944 of this chapter".

## PART 1930—GENERAL

3. The authority citation for part 1930 continues to read as follows:

**Authority:** 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

**Exhibit B to Subpart C [Amended]**

4. In exhibit B of subpart C, paragraph VI C 5 is amended by revising the reference from "§ 1965.90 of subpart B of part 1965 of this chapter" to "subpart E of part 1965 of this chapter", and paragraph VIII C 20 is amended by revising the reference from "§ 1965.90 of subpart B of part 1965 of this chapter" to "§ 1965.215 (e) of subpart E of part 1965 of this chapter."

5. Exhibit E of subpart C is amended by revising the reference in the last sentence of paragraph V. A. 2. from "paragraph V. C. 5." to "paragraph V. D. 5. of this exhibit"; by revising the reference in the last sentence of paragraph XV. B. 1. from "§ 1965.65 (c)(11)" to "§ 1965.65 (c)(12)"; by redesignating current paragraph V. C. as V. D.; by adding new paragraphs II. I., IV. C., V. C., and the words "Form FmHA 1944–27" after the word "Each" in the first sentence of paragraph VI. A.; and by revising newly redesignated paragraphs V. D. 5. b. (3) and V. D. 5. c., and paragraph XV. B. 3. to read as follows:

**Exhibit E to Subpart C—Rental Assistance Program**

* * * * *

II. * * *

I. *Debt Forgiveness RA.* RA allocated to projects purchased by nonprofit corporations and public agencies to avert prepayment in an amount necessary to ensure that the monthly shelter payment made by each low-income family or person residing in the housing does not exceed the maximum shelter payment calculated in accordance with paragraph IV A 2 c of exhibit B of this subpart. Debt Forgiveness RA units come from a separate line item appropriation than regular RA.

* * * * *

IV. * * *

C. *Special Allocations related to Prepayment Actions.* Tenants that are displaced as a result of a prepayment action may receive a Letter of Priority Entitlement (LOPE) to move into another FmHA project. If the tenant was receiving RA at the prepaying project, the RA may be transferred to the FmHA project in the same state to which the tenant moves, as specified in § 1965.215 (e)(4)(iv) of subpart E to part 1965. If the tenant moves to another FmHA project in another state, RA will be transferred and assigned as described in paragraph XV B 3 b of this exhibit.

* * * * *

V. * * *

C. *Debt Forgiveness RA.* Any project sold to a nonprofit corporation or public agency to avert prepayment will receive the number of debt forgiveness RA units necessary to provide RA to all current tenants who will be rent overburdened as a result of the sale.

D. * * *

5. * * *

b. * * *

(3) Third two digits—will always be 00.

c. The AMAS system will track RA and debt forgiveness RA agreements by number.

* * * * *

XV. * * *

B. * * *

3. *Suspension and transfer after a liquidation or prepayment.*

a. When a project with RA prepays or is liquidated through sale outside of the program, the RA will be suspended and transferred to another FmHA financed project in accordance with paragraph XV. B. 3. b. of this exhibit, if tenants receiving RA will be displaced. If no tenants will be displaced, the RA may be transferred to another project in accordance with paragraph XV A 2 of this exhibit.

b. When a tenant receiving RA will be displaced due to prepayment or liquidation, the RA the tenant was receiving will be transferred to any other FmHA project the tenant chooses to move to, regardless of location. If the tenant is unable to immediately occupy a new FmHA project, the RA will be suspended and transferred when the tenant moves into the new project. Once the tenant has moved into the new FmHA project and the corresponding RA unit is transferred to the project, the tenant will be given first priority for the unit of RA, regardless of other priorities for the RA, if all of the following conditions are met:

(1) The borrower is eligible to receive and administer RA;

(2) The tenant is eligible to occupy the project and receive RA;

(3) The tenant has taken all of the following steps to ensure eligibility to receive priority for the unit of RA;

(i) The tenant has been placed on at least one waiting list for an FmHA project with a Letter of Priority Entitlement; and

(ii) The tenant moved to the project as soon as the tenant's name was reached on the waiting list, even if it means temporarily occupying an ineligible unit.

(4) The RA has not been previously transferred as a result of the tenant's current displacement.

c. When a tenant receiving RA is displaced from an FmHA project due to prepayment or liquidation and moves to another FmHA project in another State:

(1) The RA unit the tenant was receiving will be suspended and transferred to another project within the same state in accordance with paragraph XV A 2 of this exhibit; and

(2) The project to which the tenant moves will be allocated a unit of RA by the National Office if no RA is available within the State and the project and the tenant meet the criteria outlined in paragraph XV B 3 b of this exhibit.

d. If the project is transferred to a nonprofit corporation or public body to avert prepayment, RA on the project may be suspended and transferred to another project within the state, and all RA needs for the project met with debt forgiveness RA.

e. Procedures for transferring RA and modifying RA agreements outlined in paragraphs V D and XV A 2 of this exhibit will be followed, but the receiving project borrower need not submit Form FmHA 1944–25 if the RA was received as a result of the occupancy of a displaced tenant.

* * * * *

**PART 1944—HOUSING**

6. The authority citation for part 1944 continues to read as follows:

**Authority:** 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

**Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations**

7. Section 1944.158 is amended by adding paragraph (n) to read as follows:

**§ 1944.158 Loan and grant purposes.**

* * * * *

(n) To make advances in accordance with § 1965.217 (d) of subpart E of part 1965 of this chapter to nonprofit corporations and public agencies to avert prepayment of the loan.

**§ 1944.164 [Amended]**

8. Section 1944.164 (n) is amended in the heading by adding the word "American" after the word "to".

9. Section 1944.164 is amended by revising the last sentence of paragraph (o) and paragraph (p) to read as follows:

**§ 1944.164 Limitations and conditions.**

* * * * *

(o) *Refinancing LH loans.* * * * The provisions of subpart E of part 1965 of this chapter must be followed before the State Director or other designated official can approve or accept prepayment or refinancing of the FmHA loan.

(p) *Restrictive-use provisions for LH loans.* The acceptance of a farm labor housing loan will make the borrower subject to the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter.

* * * * *

10. In § 1944.171(d), the table is amended by revising the paragraph at the end to read as follows:

**§ 1944.171 Preparation of completed loan and/or grant docket.**

* * * * *

(d) * * *

When applicable, include copy of lease or occupancy agreement to be used, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage(s). For subsequent loans made in conjunction with transfers to nonprofit corporations or public agencies to avert prepayment, follow the additional directions in § 1965.65(f) of subpart B of part 1965 of this chapter. For advances made to nonprofit corporations or public agencies to avert prepayment, follow the directions in § 1965.217 of subpart E of part 1965 of this chapter.

* * * * *

11. Section 1944.176 is amended by removing paragraph(d)(3), by redesignating paragraphs (d) (4) through (6) as (d) (3) through (5) respectively, and by revising paragraph (d)(2) to read as follows:

**§ 1944.178 Loan and/or grant closing.**

* * * * *

(d) * * *

(2) For all LH loans, the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter will be included in the mortgage.

* * * * *

**Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations**

12. Section 1944.205 is amended by revising the reference in the definition of "Consumer cooperative", paragraph 3, from "§ 1944.215 (i)" to "§ 1944.215 (h)"; by revising the reference in the definition of "Limited equity" from "subpart E to this part 1944" to "§ 1944.215 (h) and in exhibit H of this subpart"; and by adding a new definition in alphabetical order to read as follows:

**§ 1944.205 Definitions.**

* * * * *

*Loans to build or acquire new units.* Any loan made on or after December 15, 1989, to build or acquire new RRH units. Loans under this category may not be prepaid for the term of the mortgage.

* * * * *

13. Section 1944.211 is amended by redesignating paragraphs (a)(11) through (a)(13) as paragraphs (a)(12) through (a)(14), respectively, by revising the introductory text of paragraph (a)(10)(ii) and paragraph (a)(10)(ii)(B), and by adding a new paragraph (a)(11) to read as follows:

**§ 1944.211 Eligibility requirements.**

(a) * * *

(10) * * *

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(10)(i) of this section, with the exception of (a)(10(i)(C) of this section:

* * * * *

(B) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraph (a)(10)(ii)(A) of this section.

(11) In the case of transfers of projects to nonprofit corporations which receive subsequent loans to avert prepayment, meet the requirements of § 1965.216 (c) of subpart E of part 1965 of this chapter.

* * * * *

14. Section 1944.212 is amended by revising the section heading and by adding a new paragraph (q) to read as follows:

**§ 1944.212 Loan and grant purposes.**

* * * * *

(q) Grants for advances to nonprofit corporations or public agencies for costs to develop an application package or close a loan to purchase a project to avert prepayment. Such grants shall not exceed $10,000 and shall be administered in accordance with § 1965.217 (d) of subpart E of part 1965 of this chapter.

15. In § 1944.213 paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(4) and (b)(5), respectively; paragraph (b)(1) is amended by adding a sentence at the end of the paragraph; and a new paragraph (b)(3) is added to read as follows:

**§ 1944.213 Limitations.**

(b) * * *

(1) * * * Grants made in accordance with § 1944.212 (q) of this subpart are not included in the preceding limitations.

* * * * *

(3) For equity loans to avert prepayment, the amount of the RRH equity loan will be limited to no more than the difference between 90 percent of current value of the project as appraised as conventional unsubsidized housing and current unpaid balance(s).

* * * * *

16. Section 1944.215 is amended by revising the reference in paragraph (b)(2) from "§ 1944.212 (o)" to "§ 1944.212 (p)"; by revising the title of Form FmHA 1944–7 in paragraph (c)(5)(ii) from "Interest Credit and Rental Assistance Agreement" to "Multiple Family Housing Interest Credit and Rental Assistance Agreement"; by revising the reference in paragraph (r)(3) from "paragraph (s)(6) of this section" to "paragraph (r)(6) of this section"; by revising paragraphs (d), (j), the introductory text of paragraph (n) and paragraph (r)(2); and by adding quotes around the words "What is Cooperative Housing?" in paragraph (h)(1), the words "which is available in any FmHA office" after the reference to "FmHA Instruction 1922–B" in paragraph (r)(3), and a new paragraph (n)(3) to read as follows:

**§ 1944.215 Special conditions.**

* * * * *

(d) *Refinancing Loans.* Each borrower, except those borrower(s) whose loans to build or acquire new units were made pursuant to contracts entered into on or after December 15, 1989, must agree to refinance the unpaid balance of the loan when requested by the Agency. The rates and terms of the refinanced loan must be considered reasonable by the Agency to enable the borrower to offer the units to eligible tenants and members at rates within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(5) of this subpart, subpart F of part 1951, and subpart E of part 1965 of this chapter.

* * * * *

(j) *Nondiscrimination in use and occupancy.* The borrower will not discriminate or permit discrimination by any agent, lessee or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital or familial status, mental or physical handicap (tenants must possess the capacity to enter into a legal contract), or national origin, in accordance with subpart E of part 1901 of this chapter.

* * * * *

(n) *Establishing profit base on initial investment.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. For equity loans to avert prepayment, the rate of return and equity position may be set in accordance with § 1965.213 of subpart E of part 1965 of this chapter. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required 3 percent in § 1944.213(b)(2) of this subpart and may include the following:

* * * * *

(3) Borrowers receiving incentives to avert prepayment may have the amount of borrower equity redefined to include the difference between the value used in determining the incentives and the balance of all loans, including the equity loan, if any. Redefined equity may be received only as a part of an incentive offer developed under § 1965.213 of subpart E of part 1965 of this chapter.

* * * * *

(r) * * *

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital or familial status or physical or mental handicap, thereby opening up nonsegregated housing opportunities for minorities.

* * * * *

**§ 1944.224 [Amended]**

17. Section 1944.224 is amended in paragraph (a)(2)(i) by revising the reference in the first sentence from "§ 1944.215(o) of this subpart" to "§ 1944.215(r) of this subpart."

**§ 1944.235 [Amended]**

18. Section 1944.235 is amended by revising the reference in paragraph (a)(1) from "§ 1944.215(f) of this subpart" to "§ 1944.215(e) of this subpart."

19. Section 1944.236 is amended by removing paragraph (b)(5); by redesignating paragraph (b)(6) as (b)(5); by revising newly redesignated paragraph (b)(5); and by adding new paragraphs (b)(6) and (b)(7) to read as follows:

**§ 1944.236 Loan closing.**

* * * * *

(b) * * *

(5) For all section 515 RRH and RCH loans used to build or acquire new units made pursuant to a contract entered into on or after December 15, 1989, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of title V of the Housing Act of 1949, and FmHA regulations then in effect during the full term of this mortgage. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government.

(6) For the following categories of loans, the language set forth in exhibit A–1 or A–2, as appropriate, of subpart E of part 1965 of this chapter will be included in the mortgage instead of the language contained in paragraph (b)(5) of this section:

(i) Equity loans made to avert prepayment.

(ii) Subsequent loans to nonprofit organizations or public agencies made in conjunction with transfers to avert prepayment.

(iii) Subsequent loans for any purpose other than to build or acquire new units.

(7) Additional guidance on closing transfers and loans to nonprofit corporations and public agencies to avert prepayment is contained in § 1965.217(e) of subpart E of part 1965 of this chapter.

* * * * *

20. Section 1944.237 is amended by revising paragraphs (a) and (e), and by adding paragraphs (f) and (g) to read as follows:

**§ 1944.237 Subsequent loans.**

(a) A subsequent RRH loan is made to an applicant/borrower to complete, improve, repair, and/or make modifications to the project initially financed by FmHA, or for equity and/or other purposes when authorized by the provisions of subpart E of part 1965 of this chapter, to avert prepayment.

* * * * *

(e) Subsequent loans, other than those made to a nonprofit corporation or public agency to avert prepayment, will be subject to the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter. Subsequent loans made to nonprofit organizations or public agencies to avert prepayment will be subject to the restrictive-use provisions contained in exhibit A–2 of subpart E of part 1965 of this chapter. The required restrictive-use language for subsequent loans shall be appended to the mortgage referencing all notes for the applicable term, beginning on loan closing. The advice of OGC shall be obtained to carry out the requirements of this paragraph.

(f) For additional requirements in closing quality loans to avert prepayment, see exhibit A–11 of this subpart.

(g) For additional requirements in closing subsequent loans to nonprofit corporations and public agencies made in conjunction with transfers to avert prepayment, see § 1965.65(f) of subpart B of part 1965 of this chapter.

**§ 1944.238 [Amended]**

21. Section 1944.238 is amended by adding the words "made to build or acquire new units" after the word "loan," and by adding the words "regardless of the fact the borrower has received previous RRH loans on the project" after the date "December 15, 1989," in the first sentence.

22. A new exhibit A–11 to subpart E is added to read as follows:

**Exhibit A–11—Processing Guidelines for Loans for Equity To Avert Prepayment**

To apply for an equity loan to avert prepayment, the borrower should submit the following items in accordance with exhibit A–6 of this subpart and this exhibit:

1. Form SF–424.2 with a narrative discussion of the borrower's equity loan request,
2. Current Financial Statement,
3. Proposed budget showing anticipated rents to cover revised financing package, including updated figures on required reserve contributions and return on investment (if any),
4. Data on current tenants' income, rents and RA, and incomes of those on the waiting list to show that new rents will not displace or prevent occupancy by eligible tenants, unless sufficient RA is made available.

**Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure**

23. Section 1944.553 is amended by adding a new paragraph (h) to read as follows:

**§ 1944.553 Exceptions.**

* * * * *

(h) *Displacement or other effects as a result of prepayment.* This subpart does not apply to tenant displacement or other effects due to prepayment of the FmHA loan. Opportunities for tenant input into the prepayment process are outlined in subpart E of part 1965 of this chapter.

**PART 1951—SERVICING AND COLLECTIONS**

24. The authority citation for part 1951 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

**Subpart F—Analyzing Credit Needs and Graduation of Borrowers**

**§ 1951.251 [Amended]**

25. Section 1951.251 is amended in the second sentence by adding the words "made to build or acquire new units" after the first occurrence of the word "loans."

26. Section 1951.252(d) is amended by revising the last sentence to read as follows:

**§ 1951.252 Definitions.**

* * * * *

(d) * * * In the case of multi-family housing (MFH) loans, "reasonable rates and terms" would be considered to mean financing that would allow the units to be offered to eligible tenants at rates consistent with other FmHA multi-family housing.

* * * * *

27. Section 1951.261 is amended by redesignating paragraph (d)(4) as (d)(5); by adding a new paragraph (d)(4); and by revising paragraph (d)(3), the title of Form FmHA 1930–7 in paragraph (e)(2)(iii) from "Statement of Budget and Cash Flow (Excluding Depreciation)" to "Multiple Family Housing Budget", and the reference in paragraph (e)(5) from "paragraph (d)(4) of this section" to "paragraph (d)(5) of this section" to read as follows:

**§ 1951.261 Graduation of FmHA borrowers to other sources of credit.**

* * * * *

(d) * * *

(3) A borrower's ability to accept other credit may be limited by factors over which the borrower has little or no

control, such as a referendum required by a public body borrower. However, the existence of such factors will not preclude FmHA from requesting a borrower to graduate nor the borrower from making a diligent effort to seek other credit should such a request be made. The prepayment restrictions contained in section 502(c)(1) of title V of the Housing Act of 1949, as amended, for RRH, RCH and LH loans are factors which must be considered. Those prepayment restrictions are found in exhibit A–1 of subpart E of part 1965 of this chapter for LH loans and § 1944.238 of subpart E of part 1944 of this chapter for RRH and RCH loans. Tenant notification requirements and restrictive-use provisions, as outlined in § 1965.215 of subpart E of part 1965 of this chapter must also be addressed.

(4) MFH borrowers whose projects have rental assistance (RA) which is being utilized by eligible tenants will not be required to graduate.

* * * * *

28. Section 1951.264 is revised to read as follows:

**§ 1951.264 Special requirements for multifamily housing borrowers.**

All requirements of subpart E of part 1965 of this chapter must be met prior to graduation and acceptance of the full payment from a multifamily housing borrower. The State Director will provide the National Office with a report as described in §§ 1965.215(e)(1) and 1965.219 of subpart E of part 1965 of this chapter. The original report and documentation for the report will be retained indefinitely in the State Office.

**Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing**

29. Section 1951.651 is revised to read as follows:

**§ 1951.651 Purpose.**

This subpart prescribes the policies and procedures for servicing multiple family housing (MFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy granted, any other direct financial assistance, or was not made subject to restrictive-use provisions required by law and/or regulation. As used in this subpart, MFH loans and grants are section 515 rural rental housing (RRH) and rural cooperative housing (RCH) loans and sections 514 and 516 labor housing (LH) loans and grants.

30. Section 1951.652(g) is amended by removing the period at the end of the paragraph and inserting in its place the following words:

**§ 1951.652 Definitions.**

* * * * *

(g) *Recipient.* * * * or was not made subject to restrictive-use provisions required by law and/or regulation.

* * * * *

31. Section 1951.653 is revised to read as follows:

**§ 1951.653 Policy.**

When unauthorized assistance has been received, an effort must be made to collect the sum which is determined to be unauthorized from the recipient, regardless of amount, unless any applicable statute of limitations has expired.

32. Section 1951.654 is amended by adding a new paragraph (e) to read as follows:

**§ 1951.654 Categories of unauthorized assistance.**

* * * * *

(e) The recipient was not subjected to obligations required by the assistance, such as restrictive-use provisions, at the time the assistance was provided.

33. Section 1951.656(e) is amended by removing the period at the end of the paragraph and inserting in its place the following words:

**§ 1951.656 Initial determination that unauthorized assistance was received.**

* * * * *

(e) * * * or which was caused by omission from the instrument of language required by applicable regulation.

34. Section 1951.658 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 1951.658 Decision on servicing actions.**

* * * * *

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in exhibit A of this subpart (available in any FmHA office). The requirements of subpart E of part 1965 will be followed with appropriate modifications for prepayments under this subpart. If the loan was subject to restrictive-use provisions prior to the request for payment in full, the project will remain subject to restrictive-use provisions. Wherever feasible, appropriate, or necessary to protect tenants and the low- and moderate-income population of the community, all attempts to encourage the borrower to sell the project to an acceptable transferee will be made before the prepayment is accepted. All tenant notifications and restrictive-use provisions, when applicable, must be followed when prepayment of all debt on an MFH project is demanded. The District Director will remit collections as follows:

* * * * *

35. In § 1951.661, paragraph (a)(1)(i) is amended by removing the period at the end of the paragraph and inserting in its place a semicolon, and by adding the following words:

**§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.**

* * * * *

(a) * * *

(1) * * *

(i) *Correction of problem.* * * * or where a restrictive-use provision was omitted from a loan document, the provision will be inserted.

* * * * *

36. Section 1951.668 is amended by adding a new paragraph (c) to read as follows:

**§ 1951.668 Servicing unauthorized assistance accounts.**

* * * * *

(c) *Collection of unauthorized assistance.* Collection of unauthorized assistance will be made in accordance with the appropriate sections of subpart K of part 1951 of this chapter. If full prepayment of an MFH loan is required, the prepayment will be accepted in accordance with the requirements of subpart E of part 1965 of this chapter, and appropriate restrictive-use provisions, if applicable, will remain in the deeds of release.

**PART 1955—PROPERTY MANAGEMENT**

37. The authority citation for part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

**Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property**

38. Section 1955.10 is amended by adding 4 sentences to the end of paragraph (h)(6) to read as follows:

**§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.**

* * * * *

(h) * * *

(6) * * * Tenants will be informed of the pending liquidation action and the possible consequences of the action. FmHA Guide Letters 1965–E–2, 1965–E–3, and 1965–E–5 (available in any FmHA office) may be used to inform tenants, but should be modified to reflect the specific action and circumstances. If the project is to be removed from the FmHA program, a minimum of 180 days' notice to the tenants is required. Letters of Priority Entitlement must be made available to any tenants that will be displaced as required by § 1965.215(e)(4) of subpart E of part 1965 of this chapter.

* * * * *

39. Section 1955.15 is amended by removing the phrase "either § 1965.25(d) or § 1965.26(c)(2)" in the first sentence of paragraph (d)(2)(iv)(D) and inserting in its place, the reference "§ 1965.26"; by redesignating paragraphs (f)(2) through (f)(6) as paragraphs (f)(3) through (f)(7), respectively; by revising the references in the first and second sentences of paragraph (f)(6) from "paragraph (f)(6)(ii) of this section" to "paragraph (f)(7)(ii) of this section"; by revising the reference in the last sentence of the introductory text of paragraph (f)(7) from "paragraph (f)(5) of this section" to "paragraph (f)(6) of this section"; by adding new paragraphs (d)(2)(v) and (f)(2); and by revising the first sentence of the introductory text of paragraph (d)(2) and the last sentence of paragraph (d)(3)(ii)(C) to read as follows:

**§ 1955.15 Foreclosure by the Government of loans secured by real estate.**

* * * * *

(d) * * *

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to exhibits B, C, D, or E of this subpart, or for multi-family housing, FmHA Guide Letters 1955–A–1 or 1955–A–2 (available in any FmHA Office), as appropriate, to be signed by the official who approved the foreclosure. * * *

* * * * *

(v) For MFH loans, the acceleration notice will advise the borrower of all applicable prepayment requirements, in accordance with subpart E of part 1965 of this chapter. The requirements include the application of restrictive-use provisions to loans made on or after December 21, 1979, prepaid in response to acceleration notices and all tenant and agency notifications. The acceleration notice will also remind borrowers that rent levels cannot be raised during the acceleration without FmHA approval, even after subsidies are canceled or suspended. Tenants are to be notified of the status of the project and of possible consequences of these actions. FmHA Form Letters 1965–E–2, 1965–E–3 and 1965–E–5 may be used as guides, but modified appropriately. If the borrower wishes to prepay the project in response to the acceleration and FmHA makes a determination that the housing is no longer needed, a minimum of 180 days' notice to tenants is required before the project can be removed from the FmHA program. Letters of Priority Entitlement must be made available in accordance with § 1965.215(e)(4) or subpart E of part 1965 of this chapter.

* * * * *

(3) * * *

(ii) * * *

(c) * * * In the interim, the tenants will continue rental payments in accordance with their leases, and all rental rates and lease renewals and provisions will be continued as if acceleration had not taken place.

* * * * *

(f) * * *

(2) *Restrictive-use provisions for MFH loans.* For MFH loans, the advertisement will state the restrictive-use provisions which will be included in any deed used to transfer title.

* * * * *

40. Section 1955.18 is amended by revising the reference in paragraph (e)(2)(ii) from "§ 1955.15(f)(6)(ii) of this subpart" to "§ 1955.15(f)(7)(ii) of this subpart", and by adding paragraph (l) to read as follows:

**§ 1955.18 Actions required after acquisition of property.**

* * * * *

(l) *Effect of acquisition on tenants in multi-family projects.*

(i) After FmHA acquires title to the project, tenant leases and renewals will be continued and managed in accordance with the provisions of subpart B of part 1930 of this chapter.

(ii) If the project is subsequently sold to a purchaser not using FmHA financing, but is considered needed for affordable housing purposes, restrictive-use provisions will be inserted in the deed. The purchaser will be expected to operate the project in accordance with the applicable provisions of subpart B of part 1930 and subpart E of part 1965 of this chapter. FmHA Guide Letter 1965–E–5 will be required to remain posted at the project.

**Subpart C—Disposal of Inventory Property**

41. Section 1955.113 is amended by adding two sentences to the end of the introductory text to read as follows:

**§ 1955.113 Price (housing).**

* * * Market value for multi-family housing projects will be determined through an appraisal conducted in accordance with subpart B to part 1922 of this chapter. Multi-family housing appraisals conducted shall reflect the impact of any restrictive-use provisions attached to the project as part of the credit sale.

* * * * *

42. Section 1955.114 is amended by revising the word "times" to "by" in paragraph (a)(3)(ii), and by revising paragraph (b) to read as follows:

**§ 1955.114 Sales steps for program property (housing).**

* * * * *

(b) *Multiple family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include a sale price, any restrictive-use provisions the project will be subject to and made part of the title, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program, which will be reviewed by the State Director or designee. The sale/time/location will be established by the District Director and will allow adequate time for advertising and review of applications to determine eligibility in accordance with MFH program requirements. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official, and for program applicants, given appeal rights in accordance with subpart B of part 1900 of this chapter. If an application is rejected, the sale will continue regardless of whether the rejected applicant appeals the adverse decision. Property will not be held pending the outcome of an appeal. An offeror may withdraw an offer prior to the sale date, but not on the sale date. All offers from applicants determined eligible for the type loan being offered will be considered. The District Director, or delegate, and one other FmHA employee will conduct the drawing at which time the public may be present. Offers will be placed in a receptacle and drawn sequentially. Drawn offers will be numbered and

those drawn after the first drawn will be held as back-up offers, unless the offeror has indicated that the offer may not be held as back-up. Award will be made to the first offer drawn provided the offer is acceptable as to the terms and conditions set forth in the sale notice. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, but will be held as a back-up offer. The selection of the offeror was by lot and is therefore not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form FmHA 1955–40, or another appropriate form designated for MFH property, will be used and the property sold to the first eligible program applicant. Any other method of sale must receive prior written authorization from the Assistant Administrator, Housing. Cash sales of program property will remain subject to restrictive-use provisions determined needed and included in the advertisement. The deed will contain the applicable restrictive-use provisions. Tenants and prospective tenants will receive the applicable protections for the specific restrictive-use provision contained in subpart E of part 1965 of this chapter.

* * * * *

43. Section 1955.115 is amended by adding a sentence to the end of paragraph (b) to read as follows:

**§ 1955.115 Sales steps for nonprogram (NP) property (housing).**

* * * * *

(b) * * * If the housing is sold out of the FmHA program as NP property, the closing of the sale may not take place until tenants have received all notifications and benefits afforded to tenants in prepaying projects in accordance with subpart E of part 1965 of this chapter.

* * * * *

44. Section 1955.117 is amended by revising the last sentence of paragraph (b) to read as follows:

**§ 1955.117 Processing credit sales on program terms (housing).**

* * * * *

(b) * * * All credit sales of RRH, RCH, and LH properties will be subject to prepayment and restrictive-use provisions specified by the respective program requirements.

* * * * *

45. Section 1955.118 is amended by revising the second sentence of paragraph (b)(7) to read as follows:

**§ 1955.118 Processing cash sales or credit sales on NP terms (housing).**

* * * * *

(b) * * *

(7) * * * On the promissory note and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, restrictive-use provisions on MFH projects, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted.* * *

* * * * *

46. Section 1955.146 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding new paragraph (c) to read as follows:

**§ 1955.146 Advertising.**

* * * * *

(c) *MFH restrictive-use provisions.* Advertisements for multi-family housing projects will advise prospective purchasers of any restrictive-use requirements that will be attached to the project and added to the title of the property.

* * * * *

## PART 1965—REAL PROPERTY

47. The authority citation for part 1965 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

### Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-only Cases

**§ 1965.11 [Amended]**

48. Section 1965.11 is amended by revising the reference in paragraph (c)(2)(ii)(A) from "§ 1955.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter" to "§ 1955.15(f) (6) and (7) of subpart A of part 1955 of this chapter."

### Subpart B—Security Servicing for Multiple Housing Loans

**§ 1965.55 [Amended]**

49. Section 1965.55 (a)(7) is amended by revising the reference from "§ 1965.90 of this subpart" to "Subpart E of this part."

50. Section 1965.65 is amended by redesignating paragraphs (c)(11) through (15) as paragraphs (c) (12) through (16) respectively, redesignating paragraph (d)(7) as paragraph (d)(8), and redesignating paragraphs (f)(13) and (f)(14) as paragraphs (f)(14) and (f)(15) respectively; by adding new paragraphs (c)(11), (d)(7), and (f)(13); by revising the reference in the fourth sentence of the introductory text of paragraph (c)(10) from "§ 1944.215(k) of Subpart E of Part 1944 of this chapter" to "§ 1944.215(n) of subpart E of part 1944 of this chapter"; by revising the title of Form FmHA 1944–7 in the first sentence of newly redesignated paragraph (c)(12) from "Interest Credit and Rental Assistance Agreement" to "Multiple Family Housing Interest Credit and Rental Assistance Agreement"; by removing the title of Form FmHA 1944–50 in the fourth sentence of newly redesignated paragraph (c)(12); by revising the words "Other Real Estate (ORE)" to "Nonprogram Property (NP)" in the first sentence of newly redesignated paragraph (d)(8); and by revising paragraphs (b)(3), (b)(4), (c)(1), (c)(3), (c)(5), the first sentence of the introductory text of paragraph (c)(10), the introductory text of paragraph (f)(4), the introductory text of paragraph (f)(7), paragraph (f)(8), and the last sentence (in parenthesis) of paragraph (f)(12) to read as follows:

**§ 1965.65 Transfer of real estate security and assumption of loans.**

* * * * *

(b) * * *

(3) The transferor shall not receive an equity payment as part of a transfer unless:

(i) All unpaid FmHA indebtedness against the property is assumed;

(ii) All real estate and personal property taxes owned by the project are current;

(iii) All FmHA loan payments on the project are current;

(iv) The reserve account is at the authorized level at the time of the transfer;

(v) The State Director receives National Office authorization to proceed, if the preceding requirements cannot be met and it can be demonstrated that no other alternative, including liquidation, would be in the best interests of FmHA and the tenants; and

(vi) When the transfer is NOT being made in connection with a request for prepayment of the FmHA loan;

(A) Any equity payment paid to the transferor shall be paid in cash at the time of the transfer; or

(B) If paid on terms;

(*1*) The rates and terms are documented and the transferee is able to show that the obligation can be met from outside sources of income without jeopardizing the operation of the

project. No rental or other project income (except authorized return to owner as specified in the loan agreement or resolution) shall be used to make payments on the obligation;

(2) No present or future liens will be attached to the secured project real estate, personal property, accounts, or revenue from the operation of the project;

(3) The equity payment to the seller will be provided from outside sources or from any authorized return to owner, and not from a planned sale of the project or additional membership interests beyond those identified in the transferee's organizational documents approved by FmHA;

(4) The seller does not and will not have a reversionary interest in the FmHA encumbered property;

(5) In the case of a limited partnership, the right of FmHA to approve or disapprove the substitution of general partners in accordance with § 1965.63 of this subpart has not and will not be superseded by any agreement between the purchaser and seller which implies prior consent by FmHA for partner changes in the case of default; and the right to assign partnership interests is restricted to only the limited partners' interests and such right does not include the general partners' interests;

(6) An opinion is provided from the transferee's legal counsel certifying that the financial and other arrangements comply with all FmHA requirements of this section; and

(7) An assignment of project income will be taken by FmHA in accordance with the requirements of § 1944.221(b) of subpart E of part 1944 of this chapter as additional security with the advice and guidance of OGC;

(vii) When the transfer is being made to avert prepayment of the FmHA loan, an equity loan may be made in accordance with the provisions of subpart E of this part and subpart E of part 1944 of this chapter. If additional equity is to be paid by the purchaser to the seller above the amount of equity recognized by FmHA in the prepayment valuation of the project, the provisions of paragraph (b)(3)(vi) of this section will apply.

(4) No payment will be received by the transferor for regular equity or equity in connection with a prepayment action unless all FmHA loans against the project are assumed in full or the payment to the transferor is applied in total against non-FmHA prior liens. The State Director may require that all or a part of any equity payment be applied against other FmHA loans owed by the borrower on other FmHA projects owned by the borrower that are not current, if the FmHA loans against the project being purchased are assumed in full and all prior liens paid in full.

* * * * *

(c) * * *

(1) All transfers to eligible borrowers will subject the borrower to the appropriate restrictive-use provisions contained in exhibits A–1 or A–2 of subpart E of this part.

* * * * *

(3) For rental and RCH (as applicable) projects, the transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor's supervised bank account which are needed to complete project development, and any equipment purchased with project funds will be transferred to the transferee. Any funds remaining in an RA contract not disbursed by the transferor will be assigned to the transferee, unless RA is not needed for current eligible residents or another form of subsidy is to be used. Any RA determined to not be needed will be reassigned in accordance with the provisions of paragraph XV of exhibit E to subpart C of part 1930 of this chapter.

Funds in the reserve account should be at the scheduled level and transferred to the transferee at the time of transfer. If an equity loan is to be made by FmHA, reserve and other accounts must be at the scheduled level at the time of transfer.

* * * * *

(5) A loan and/or grant may be made to the transferee in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may not be used, however, to pay equity to a transferor unless authorized in accordance with subpart E of this part to avert prepayment.

* * * * *

(10) When the transfer is NOT being made in connection with a request for prepayment of the FmHA loan, a limited profit RRH transferee's initial investment and rate of return in the project will remain the same as that originally provided to the transferor.

* * *

* * * * *

(11) When the transfer is being made to avert prepayment of the FmHA loan, the recognized equity and/or rate of return may be increased in connection with an incentive offer made under the provisions of subpart E of this part.

* * * * *

(d) * * *

(7) Transfers to ineligible applicants of projects subject to restrictive-use provisions will continue to retain the applicable restrictive-use provisions and cause the project to be operated in conformance with FmHA instructions. If it is determined by FmHA that the housing is no longer needed to house eligible tenants in accordance with the provisions of subpart E of this part, the restrictive-use provisions may be released.

* * * * *

(f) * * *

(4) An appraisal will be required for each transfer, except those completed on a same terms basis for which the State Director is satisfied that the security is adequate. (An appraisal will always be required for transfers on new terms.) An FmHA designated MFH appraiser will be responsible for preparing an appraisal report within 30 days of the District Director's receipt of the completed application when the total indebtedness will not be assumed, or the State Director may accept an independent appraisal provided by the transferor or transferee under the conditions later specified in this paragraph when the total debt is being assumed and the FmHA designated MFH appraiser is unable to complete an appraisal within 30 days of the District Office's receipt of the completed application. If the last appraisal is less than 1 year old and the transfer is within the State Director's authority, the FmHA designated appraiser may supplement the present appraisal report, in lieu of preparing a new appraisal by attaching information on the present market value. A new appraisal will be prepared according to the requirements of FmHA Instruction 1922–B (available in any FmHA office) when the current appraisal is over 1 year old, or when the State Director determines a new appraisal report is needed. An independent appraisal may NOT be accepted from the transferor or transferee for the initial appraisal required of FmHA under provisions of subpart E of this part. The conditions under which the State Director may accept an independent appraisal from the transferor or transferee in lieu of an FmHA prepared appraisal are:

* * * * *

(7) The following paragraph is to be inserted in Form FmHA 1965–9 whenever the full amount of equity has not been paid in cash or through an equity loan made by FmHA to avert prepayment:

* * * * *

(8) All RRH, RCH, and LH loans, including those approved prior to December 21, 1979, which are transferred to eligible applicants will

become subject to the restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended. The restrictive-use language set forth in the appropriate exhibits A–1 or A–2 in accordance with §§ 1965.214(g) and 1965.216(c)(3) of subpart E of this part must be added, with the advice of OGC, to the assumption agreement, security instruments, and loan agreement/ resolution. The restrictive-use period will begin on the date the transfer and assumption is closed.

* * * * *

(12) * * * (Subsequent loans will not be made to pay equity unless authorized in accordance with subpart E of this part to avert prepayment.)

(13) The following additional information is required for an equity loan to a nonprofit organization in conjunction with the transfer:

(i) Identity of Interest statement between transferor and transferee,

(ii) Statement of experience of organization and all principals,

(iii) Management Plan and Agreement in accordance with exhibit B of subpart C of part 1930 of this chapter,

(iv) Proposed Application for Occupancy, Lease, and Occupancy Rules and Regulations in accordance with exhibit B of subpart C of part 1930 of this chapter.

(v) Option or purchase agreement,

(vi) Proposed budget showing anticipated rents with updated figures on required reserve contributions,

(vii) Data on current tenants' incomes, rents and RA, and incomes of those on the waiting list to show amount of RA which will be needed for current tenants and other eligible occupants based on the proposed budget.

(viii) If rehabilitation will be undertaken at the time of the loan, plans and specifications and method of construction must be outlined,

(ix) A breakdown of packaging and administration costs to be paid with any advance to nonprofit organizations or public agencies purchasing a project to avert prepayment, if an advance has not previously been applied for.

(x) If needed, a request for initial operating funds and a detailed breakdown of expenses anticipated to be paid from the funds, and

(xi) District Office comments and recommendations and the State Office evaluation.

* * * * *

51. Section 1965.68 is amended by redesignating paragraph (c)(8) as paragraph (c)(9); by adding a new paragraph (c)(8); by revising the reference in paragraph (c)(3) from "subpart C of part 1930 of this chapter" to "exhibit B of subpart C of part 1930 of this chapter"; and by revising paragraph (c)(7) to read as follows:

**§ 1965.68 Consolidation.**

(c) * * *

(7) For consolidation of loan agreements/resolutions of loans in which no loan to build or acquire new units was made on or after December 15, 1989, the restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in exhibit A–1 of subpart E of this part for RRH, RCH or LH loans will be added, with the advice of OGC, to the loan agreement/ resolution and security instruments as a condition of FmHA approval of the action. The restrictive-use period will begin on the date the consolidation is effective.

(8) For consolidation of loan agreements/resolutions of loans for which a loan to build or acquire new units was made on or after December 15, 1989, the consolidated loan may never be prepaid.

* * * * *

52. In § 1965.70, paragraph (b)(3) is redesignated as (b)(4); a new paragraph (b)(3) is added; paragraph (a) is amended by revising the reference "§ 1965.90 of this subpart" to "exhibit A–1 of subpart E of this part"; paragraph (b)(2) is amended by adding the word "or" to the end; and paragraph (d)(8) is revised to read as follows:

**§ 1965.70 Reamortization.**

* * * * *

(b) * * *

(3) The borrower has received an equity loan as an incentive to avert prepayment, or a subsequent loan has been made to a nonprofit corporation or public agency to purchase a project to avert prepayment; or

* * * * *

(d) * * *

(8) The prepayment restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in exhibit A–1 of subpart E of this part for RRH, RCH or LH loans will be added with the advice of OGC, to the loan agreement/ resolution and security instruments, as a condition of FmHA approval of the action. The restrictive-use period will begin on the date the amortization agreement is effective.

* * * * *

**§ 1965.77 [Amended]**

53. Section 1965.77 (d)(2)(iii) is amended by adding the words "and subpart E of this part" after "§ 1965.90 of this subpart."

**§ 1965.89 [Amended]**

54. In § 1965.89, the introductory text of paragraph (c) is amended by revising the reference "Exhibit E of this subpart" to "Subpart E of this part", paragraph (c)(1) is amended by revising the reference "exhibit E of this subpart" to "subpart E of this part", and paragraph (d) is amended by revising the reference "paragraph VI A of exhibit E of this subpart" to "subpart E of this part".

55. Section 1965.90 is revised to read as follows:

**§ 1965.90 Payment in full.**

(a) *Prepayment of multi-family housing loans.* Subpart E of this part must be complied with for all multi-family housing loans that are planned to be prepaid prior to the scheduled final due date of the loan.

(b) *Borrower responsibility.* Borrowers must advise the District Office servicing the account of any plan to pay the account in full 6 months prior to the date of the planned payment in full.

(c) *FmHA responsibility.* The FmHA District Office must ensure payments in full and releases of security are processed in accordance with Subpart D of Part 1951 of this chapter and other appropriate program requirements and regulations. FmHA's interest in property insurance will be released in accordance with § 1806.4 (a)(3) of subpart A of part 1806 of this chapter (paragraph IV A 3 of FmHA Instruction 426.1). In all cases, references to County Supervisors will be construed to mean District Directors when applied to multi-family housing borrowers.

**§ 1965.92 [Amended]**

56. Section 1965.92 is amended by revising the references of "exhibit D" in the third sentence and "exhibit B" in the last sentence to read "exhibit A," and by adding the phrase "within 30 days of the servicing action" to the end of the last sentence of the paragraph.

**§ 1965.100 [Amended]**

57. Section 1965.100 is amended in the first sentence to revise "collection of information" to read "reporting and recordkeeping", to add "contained" after "requirements". The second sentence is amended by revising "5 minutes" to "10 minutes" and ".60 hours" to "1.67 hours".

**Exhibits A, B, C, E, E–1, E–2, E–3, E–4 [Removed]**

58. Exhibits A, B, C, E, E–1, E–2, E–3 and E–4, of subpart B to part 1965 are removed.

59. Subpart E of part 1965 is added to read as follows:

**Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans**

Sec.

1965.201 General.
1965.202 Definitions.
1965.203 Nonprofit organization and public agency interest lists.
1965.204 Processing prepayment requests and related rent increases.
1965.205 Borrower request to prepay.
1965.206 Review of borrower prepayment request by Servicing Office.
1965.207 Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.
1965.208 Restrictive-use provisions related to LH projects with grants.
1965.209 Restrictive-use provisions after prepayment.
1965.210 Loans approved prior to December 14, 1989—FmHA actions when processing prepayment requests.
1965.211 Evaluation of the borrower's ability to prepay the loan.
1965.212 Appraisals.
1965.213 Offer of incentives to borrowers.
1965.214 Offering and processing of incentives.
1965.215 Borrower rejection of incentive offer—approving/disapproving prepayment.
1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.
1965.217 Processing applications for transfers to nonprofit corporations or public agencies.
1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available.
1965.219 FmHA processing of prepayment.
1965.220–1965.221 [Reserved]
1965.222 Violations of restrictive-use provisions.
1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.
1965.224 Prepayment of loans caused by advance payments on the account.
1965.225–1965.248 [Reserved]
1965.249 Exception authority.
1965.250 OMB control number.

Exhibits to Subpart E

Exhibit A–1 Required Clauses for Active Borrowers With Projects Subject to Restrictive-Use Provisions as a Result of Specific Loan Making or Loan Servicing Actions
Exhibit A–2 Required Clauses for Projects Made Subject to Restrictive-Use Provisions When a Loan is Transferred to a Nonprofit Organization or Public Agency to Avert Prepayment
Exhibit A–3 Required Clauses for Prepaid Projects Which Were Subject to Restrictive-Use Provisions Prior to the Prepayment
Exhibit A–4 Required Clauses for Prepaid Projects Which Became Subject to Restrictive-Use Provisions at the Time of Prepayment
Exhibit B Report on Prepayment [Reserved]
Exhibit C Checklist for Requesting Prepayment [Reserved]
Exhibit D Methodology for Determining Prepayment Incentives [Reserved]
Exhibit D–1 Worksheet for Incentive Calculations [Reserved]
Exhibit E Administrative Guidance for Making Prepayment Determinations [Reserved]
Exhibit F Prepayment and Displacement Prevention Grant Agreement
Exhibit G–1 Restrictive-Use Agreement (To be used with Exhibit A–3 of this subpart)
Exhibit G–2 Restrictive-Use Agreement (To be used with paragraph (A) to exhibit A–4 of this subpart)
Exhibit G–3 Restrictive-Use Agreement (To be used with paragraph (B) to exhibit A–4 to this subpart)
Exhibit G–4 Restrictive-Use Agreement (To be used with paragraph (C) to exhibit A–4 to this subpart)

## Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

### § 1965.201 General.

Requests to pay Multi-Family Housing (MFH) loans in full require that certain actions be taken to ensure the affordability of housing for specified tenants for a guaranteed period of time. The requirement applies to all projects, whether or not they are subject to restrictive-use provisions or prohibitions on prepayment. This subpart provides step-by-step guidance for use by Farmers Home Administration (FmHA) and MFH borrowers when prepayment requests are made. The steps outlined are mandated by the Rural Rental Housing Displacement Prevention Provisions of the Housing and Community Development Act of 1987. When a MFH project is subject to multiple FmHA MFH loans, and the borrower offers prepayment or payment in full for one or more but not all of the MFH loans on the project, the borrower will not be allowed to pay off the most restrictive loan without invoking the prepayment provisions of this Subpart, unless the borrower agrees to be bound by the more restrictive provisions for the balance of the time period remaining on the more restrictive loan being paid in full.

### § 1965.202 Definitions.

*Affordable housing.* Housing with a rent rate which does not create new or increased rent overburden for tenants of prepaying projects.

*Displaced tenant.* A displaced tenant is a tenant who is either forced to move from a project or a tenant who experiences new or increased rent overburden as a result of prepayment of a MFH loan. The new or increased rent overburden may occur at the time of prepayment or at any time in the future restrictive-use provisions are in force.

*Income limits.* Very low, low, and moderate income are defined in accordance with exhibit C of subpart A or part 1944 of this chapter (available in any FmHA office).

*Letter of priority entitlement (LOPE).* A letter issued by FmHA to a tenant displaced through a prepayment action that will give the tenant priority on waiting lists at any FmHA project for which they may qualify.

*Local nonprofit corporation or public agency.* A public agency or nonprofit corporation which operates primarily in the local community and its trade area. Local nonprofit corporations must have a broad based board reflecting various interests in the community or trade area. A public agency must be organized in accordance with State and local statutes. Either type of organization must include as one of its primary purposes developing or managing low-income housing or community development projects, which meet the requirements of § 1944.211(a)(10)(i) of subpart E of part 1944 of this chapter. County-wide agencies/corporations may meet the definition of local organization if, in the judgment of the District Office, the community's trade area is county-wide. Tenant associations and cooperatives may meet the definition if they are organized as nonprofit organizations.

*Market Area.* The market area is the community in which the project is located and those outlying rural areas which are impacted by the project (excluding all other established communities).

*Minorities.* Individuals such as members of the following groups: African-American, not of Hispanic Origin; Hispanic; American Indian or Alaskan Native; and Asian or Pacific Islander. Refer to FmHA Instruction 1900–A (available in any FmHA office) for further clarification and a description of each group.

*Prepayment.* A loan which has been paid by the borrower in full, before the loan maturity date. After a prepayment, no FmHA loan remains on the property and the property is removed from the FmHA program, although restrictive-use provisions may remain.

*Prohibition on prepayment.* Loans which may not be prepaid prior to the final amortization date as described in § 1965.208 of this subpart.

*Protected population.* Individuals or families, whether very low, low, or moderate income, who are current tenant or wish to occupy rural rental housing (RRH) or labor housing (LH), and who are protected by a particular restrictive-use provision.

*Regional or national nonprofit corporation or public agency.* Any public agency or nonprofit corporation meeting the conditions in § 1965.216(c) of this subpart, which operates in an area larger than the local community and its trade area, or, if a nonprofit corporation, does not also have a broadly-based membership and board of directors reflecting various interests in the community or trade area, and does not have among its officers or directorate persons or parties with a material interest in (or persons or parties related to any person or party with such an interest) in loans financed under section 515 that have been prepaid. The primary purposes of the organization need not include developing or managing low-income housing or community development projects.

*Rent overburden.* Shelter costs (rent and anticipated utility costs) exceeding 30 percent of a tenant's adjusted income, or the amount of payment designated by a third-party payor as shelter cost, whichever is greater.

*Restrictive-use provisions.* Conditions restricting the use of the property to housing for very low-, low- and/or moderate-income tenants, whether or not the FmHA loan is in force or has been paid in full as described in § 1965.209 of this subpart.

*Section 8.* Tenant rental subsidies as provided under the Housing and Urban Development (HUD) section 8 Housing Assistance Payment Program.

*Unsubsidized conventional housing.* Housing which receives no interest or project based rent subsidies, and which has no maximum income limits for its residents. When a borrower submits a request for prepayment of the FmHA loan, the anticipated use of the project will be considered as unsubsidized conventional housing.

**§ 1965.203 Nonprofit organization and public agency interest lists.**

Nonprofit organizations and public agencies interested in being notified of projects being offered for sale by FmHA borrowers wishing to prepay should contact FmHA. Local nonprofit and public agencies wishing to purchase projects in one district need only contact the applicable FmHA District Office. Organizations or agencies interested in one state only should contact the FmHA State Office. National and regional nonprofit organizations interested in receiving multi-state notifications should contact the FmHA National Office. Interested organizations should submit their names, addresses, contact persons, and the areas in which they wish to purchase. The notification to FmHA must be updated annually if the organization wishes to continue to receive notifications of pending prepayments. FmHA will send notices requesting the update at least 30 days prior to removing the organization's name from the list. The National Office will not verify the eligibility of the organizations requesting notification, but will periodically forward the names of interested organizations to State Offices. The State Office will periodically compile a list of interested nonprofit organizations and public agencies and forward the list to its District Offices.

**§ 1965.204 Processing prepayment requests and related rent increases.**

(a) *Chronological order of steps in processing prepayment requests.* Prior to approving prepayment of an FmHA MFH loan, FmHA must determine the eligibility and ability of the borrower to prepay the loan; attempt to keep needed housing in the very low-, low-, and moderate-income market; and ease the transition of tenants that may be affected by the conversion of a federally-financed project to unsubsidized conventional housing. The remainder of this procedure provides the chronological order for the actions to be taken:

(1) Borrower written request for prepayment (§ 1965.205 and exhibit C of this subpart).

(2) Required notifications (§ 1965.206 of this subpart).

(3) Evaluation of borrower ability to prepay (§ 1965.211 and exhibit E of this subpart).

(4) FmHA incentive offer and borrower decision regarding incentives (§§ 1965.213 and 1965.214 and exhibits D and E of this subpart).

(5) Evaluation of project need by FmHA (§ 1965.210 and exhibit E of this subpart).

(6) Approval of prepayment under exception authority (§ 1965.215 and exhibit E of this subpart).

(7) Sale to nonprofit organizations or public agencies (§§ 1965.216 and 1965.217 of this subpart).

(8) Approval of prepayment in the absence of interest in purchase by nonprofit organization of public agency (§§ 1965.218 and 1965.219 of this subpart).

(9) Actions to be taken in the event of restrictive-use violations (§ 1965.222 of this subpart).

(10) Relationship of these procedures to other servicing actions (§ 1965.223 of this subpart).

(11) Prepayment of loans due to advance payments or completion of amortized payments (§ 1965.224 of this subpart).

(b) *Rent increases resulting from prepayment process.* If rent increases are necessary due to the making of an equity loan to avert prepayment with or without a transfer, the procedures for tenant notifications and comment will be followed as set forth in paragraphs IV C and V B of exhibit C to subpart C of part 1930 of this chapter. The reason for the rent increase will be shown as "to meet the additional expense incurred in order to avert removal of (name of project) from the FmHA program."

**§ 1965.205 Borrower request to prepay.**

(a) Prior to initiating a formal prepayment request, borrowers considering prepaying their loans should meet with the applicable FmHA Servicing Office to discuss the prepayment request and the requirements of this procedure. The borrower will be provided with exhibit C of this subpart, to aid in completing the prepayment request package.

(b) At the meeting, the Servicing Office will inform the borrower that the project will be evaluated as unsubsidized conventional multi-family housing for the purposes of determining eligibility for incentives. An appraisal will be completed to determine if any equity exists in the project when valued as unsubsidized conventional multi-family housing. The components of the incentive offer, if any, will be dependent upon the amount of equity as follows:

(1) If the project has equity in excess of the borrower's initial investment, an equity loan and a combination of additional incentives may be considered;

(2) If no equity exists, but it can be shown that the project can be prepaid and operated successfully in the subject market, a combination of incentives not including an equity loan will be considered; or

(3) If, based upon the Servicing Office's knowledge of the market it appears likely the project would not qualify for an equity loan, the Servicing Office should so inform the borrower during the meeting. However, in no instance will the Servicing Office personnel discourage eligible borrowers from submitting a prepayment request, should the borrower so desire.

(c) Borrowers seeking to prepay MFH loans must submit a complete prepayment request to the Servicing Official at least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with § 1965.215 (f)(2) of this subpart). A prepayment request will not be considered complete nor will the 180-day period begin until all of the following items have been submitted:

(1) A written request to prepay the FmHA loan on a specified date;

(2) Complete and documented information necessary to prepare the prepayment report as outlined in exhibit B of this subpart and to make the required determination needed to develop an incentive offer as outlined in exhibit D of this subpart. Exhibit C of this subpart should be used as guidance for the documentation necessary to complete the request;

(3) Documentation of the borrower's ability to prepay under the conditions specified in the prepayment request. Exhibit C of this subpart should be used as guidance for the documentation necessary;

(4) Certification that the housing will continue to be administered in accordance with Fair Housing Act policies;

(5) A statement from the borrower accepting restrictive-use provisions in the release documents if the borrower wishes to prepay the loan subject to restrictions; and

(6) Evidence that actions required by any applicable State laws related to prepayment have been met.

**§ 1965.206 Review of borrower prepayment request by Servicing Office.**

The Servicing Office will determine whether the prepayment request is in conformance with § 1965.205 of this subpart. Within 15 working days of receipt of a prepayment request, the Servicing Office will take the following actions:

(a) *Return of incomplete requests.* If an incomplete request is submitted, the Servicing Official will return the request to the borrower specifying the additional information needed.

(b) *Receipt of complete requests.* If a complete prepayment request is submitted, the Servicing Official will:

(1) *Acknowledge the request.* Send an acknowledgment letter to the borrower specifying the date of receipt of the complete request and informing the borrower that prepayment commitments should not be finalized until FmHA issues a letter of approval.

(2) *Notify current tenants.* Notify each tenant household by Certified Mail, Return Receipt Requested, of the receipt of the prepayment request and prepare notices for the borrower to post in public areas of the project. The notices are to remain posted until a final determination is made on the prepayment request or the prepayment offer is withdrawn. The Servicing Official will not wait to determine if submitted information is accurate or if the prepayment will be accepted or denied before notifying tenants. FmHA Guide Letter 1965–E–2 (available in any FmHA office) may be used as a guide. The following issues are to be addressed in the letter:

(i) The borrower proposes to prepay the FmHA loan and remove the housing from the FmHA program if all prepayment requirements imposed by FmHA are met;

(ii) FmHA's preliminary determination that the borrower's request to prepay will/will not be approved;

(iii) The likely effect of the prepayment on tenants living at the project. Include:

(A) The level at which rents at the project are projected to be set if prepayment is accepted;

(B) Restrictive-use provisions the borrower has agreed to maintain and the terms of the restrictions;

(C) Whether Section 8 or State or local subsidy will remain with the project; and

(D) Whether the borrower has the option to terminate section 8 assistance at the next renewal period (opt-out), and if so, when.

(iv) FmHA must make a determination as to whether tenants would be displaced due to increased rents, and whether there is alternative housing available in the community that is comparable in quality, size, location and rent structure before deciding to accept the prepayment;

(v) Conditions under which prepayment will be accepted;

(vi) A 30-day tenant comment period will be available for tenants to present comments concerning the proposed prepayment. Tenants will be allowed to review the information used by FmHA to make the determinations regarding prepayment;

(vii) Tenants will be given immediate priority for other federally-financed housing if there will be any displacement;

(viii) Tenants will be kept apprised of all decisions reached regarding acceptance of the prepayment and action dates;

(ix) Tenants will be given the opportunity to submit evidence at any appeal hearing the borrower may request;

(x) If prepayment is accepted, tenants choosing to stay in their units and pay the higher rents, with or without Federal, State, or other subsidy, are entitled to do so, unless evicted for cause unrelated to prepayment; and

(xi) Any other information relevant to the case.

(3) *Notify National Office.* The Servicing Office is to notify the FmHA State Office, who will notify the Assistant Administrator, Housing, FmHA National Office, in writing using the format of FmHA Guide Letter 1965–E–1 (available in any FmHA office). National Office notification must be sent by the State Office within 20 working days of the receipt of a complete request by the Servicing Office.

(4) *Notify other agencies.* The FmHA State and Servicing Offices, as appropriate, will notify other agencies of the borrower's intent to prepay the FmHA loan. The agencies contacted will include nonprofit organizations; local, State, and Federal agencies; and public organizations who have expressed an interest in purchasing a project and who provide housing assistance to low- and moderate-income people. The interest list, compiled in accordance with § 1965.203 of this subpart, is to be used in notifying organizations of the borrower's intent to prepay. Letters sent to the agencies will inform the organizations of the offer to prepay, the extent of any anticipated displacement, and the possibility of transfer with incentives or sale to a nonprofit organization or public agency. Organizations contacted will be advised that an offer to sell may be forthcoming. Generally, the FmHA State Office will notify State and Federal agencies and the appropriate Servicing Office will notify local agencies.

(5) *New tenant notification.* (i) The borrower will be required to submit for approval proposed language to be used as an addendum to leases for all tenants moving into the project while the prepayment request is pending. The language will specify the effect of the prepayment on the tenants if prepayment is accepted. The recommended language to be included in the leases is as follows:

"The mortgage on this project may be repaid to the Federal Government on or after (*date*). (At that time/ (date restrictive-use provisions expire)/ (other relevant date), your rent may be raised to _____/ and/or you may be asked to move from this project."

(ii) The borrower will also be required to provide new tenants with copies of all letters sent to existing tenants advising them of the status of the prepayment. The Servicing Office will

also send new tenants any additional correspondence sent to existing tenants, but will inform the new tenants that they will not be eligible for an LOPE.

(6) *On-going tenant notification.* The Servicing Office will periodically notify tenants of the status of the prepayment request and actions being taken. Tenant notifications are to continue until the loan is prepaid, an incentive or loan to a nonprofit is obligated, or the prepayment request is withdrawn. Notification will be sent to tenants as each decision is made or one year after the last notification, whichever is earlier.

**§ 1965.207 Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.**

Loans made on or after December 15, 1989, to build or acquire new RRH units may not be prepaid for the life of the loan, even if the borrower is willing to sign restrictions agreeing to operate the project for low- and moderate-income people after prepayment. The prohibition and conditions for use are described in subpart E of part 1944 of this chapter.

**§ 1965.208 Restrictive-use provisions related to LH projects with grants.**

For LH projects with *any* size grant, no incentive will be offered since the grant agreement obligates the borrower to operate the housing for its intended use for a 50-year period.

**§ 1965.209 Restrictive-use provisions after prepayment.**

(a) Restrictive-use provisions protect tenants in prepaid projects from future rent increases that would create new or increased rent overburden. Restrictive-use provisions apply to all loans approved between December 21, 1979, and December 14, 1989, all subsequent loans approved on or after December 15, 1989, and those loans approved prior to December 21, 1979, subsequently made subject to restrictive-use provisions as a result of:

(1) A servicing action;

(2) Acceptance of prepayment incentives; or

(3) Restrictions accepted as a condition of prepayment as specified in this subpart and exhibits A–1 through A–4 of this subpart.

(b) The restrictions mandate that conditions of occupancy, rent, and charges other than rent be maintained so that the housing will continue to be affordable to the protected population of tenants. Priority for tenants entering the project after prepayment must continue to be for those tenants in the lowest income category in the protected population, if determined eligible for the units. Borrower responsibilities under restrictive-use provisions are discussed in greater detail in § 1965.215 (e)(6) of this subpart.

**§ 1965.210 Loans approved prior to December 15, 1989—FmHA actions when processing prepayment requests.**

For loans approved prior to December 15, 1989, that have not subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. The guidance provided in §§ 1965.213 and 1965.214 and exhibit E of this subpart will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer accepted has expired.

**§ 1965.211 Evaluation of the borrower's ability to prepay the loan.**

The borrower's ability to prepay the loan will be evaluated in accordance with exhibit E of this subpart. If it is determined the borrower does not have the ability to finance the prepayment, the prepayment request will be denied. The borrower will be notified of the reasons for the decision and appeal rights will be given.

**§ 1965.212 Appraisals.**

To determine the appropriate incentives to offer a borrower, an appraisal must be completed. The purpose of the appraisal is to determine if the borrower's current equity in the project exceeds the initial investment. The project will be appraised as unsubsidized conventional multi-family housing. The effect on value of any hard and soft costs of conversion of the project from subsidized housing to unsubsidized conventional housing will be considered. Additionally, project reserve accounts and the present worth of any unexpired non-FmHA project based tenant subsidies will be valued as assets of the project for inclusion in the appraisal. FmHA Instruction 1922–B (available in any FmHA office) will be used for guidance in conducting multi-family housing appraisals. After receipt of the appraisal, the Servicing Official or other designated official will determine the amount of the equity loan, if any, the number of Rental Assistance (RA) units necessary, the amount of annual return on investment to be offered, and whether excess Section 8 rents may be released to the borrower, if applicable.

**§ 1965.213 Offer of incentives to borrowers.**

The Servicing Official must offer an incentive package to the borrower as an inducement to not prepay if the borrower's loan(s) is not subject to prohibitions on prepayment or the borrower has not previously accepted incentive offers on the project for which the associated restrictive-use period has not expired. If a prepayment incentive offer which includes any equity loan is accepted, the equity loan may be processed and closed with the current borrower or any eligible transferee.

(a) *Available incentives.* One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with exhibits D and E of this subpart:

(1) *Equity loans.* In RRH projects, a subsequent loan may be offered for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project's value appraised as unsubsidized conventional housing. For LP loans, no authority exists to provide equity loans as an incentive.

(2) *Rental assistance.* Additional RA will be offered if needed by current tenants if found necessary by a market determination of need. The number of RA units offered will be based upon:

(i) The increase in rent overburden that will be experienced by tenants, in the project as a result of the incentives offered. The Multiple Housing Tenant File System (MTFS) will be reviewed to determine the number of tenants that will be rent overburdened by the increase in rents resulting from any subsequent loan made for equity. The number of RA units offered will be equal to the number of tenants experiencing rent overburden; and/or

(ii) A change in the market increasing the need for affordable housing. This criteria will usually be used when the project is experiencing substantial vacancies due to market factors. Generally, if the incentive offer contains a substantial equity loan, it would be unlikely that this provision would be consistent with the determination that the project is located in a strong unsubsidized market.

(iii) Reamortizing the existing debt under the provisions of § 1965.70 of subpart B of this part should be examined to determine if reamortization

will lower existing debt service, thereby reducing tenant rent overburden and the need for additional RA.

(3) *Increase the maximum annual return on investment.*

(i) *Borrower equity.* The borrower's equity in the project may be increased. The new equity is the difference between the value of the project appraised as unsubsidized conventional housing in conjunction with the incentive loan (if offered) and the unpaid balances of all loans against the project, including the incentive loan. If no new appraisal is made, equity will be determined by subtracting the outstanding balances of all loans against the project from the value shown in the most recent FmHA appraisal completed for the project prior to receipt of the prepayment request.

(ii) *Rate of return.* Borrowers not eligible to receive an equity loan but who are determined likely to prepay will be offered an incentive package which may include an increased rate of return. The rate to be offered will be the greater of the borrower's current rate established in the initial loan, or 2 percent above the 30-year Treasury Bond rate, rounded to the nearest ¼ percent. The appropriate Treasury Bond rate will be determined from newspapers or available financial publications and will be the rate published for the first day of the month following receipt of the complete prepayment request. The rate of return for borrowers receiving equity loans will remain at the rate currently established in the initial loan.

(iii) *Recept of increased return.* Regardless of any increased return on investment agreed to as part of the incentive offer, the actual withdrawal of the return remains subject to conditions specified in paragraph XII B of exhibit B of subpart C of part 1930 of this chapter.

(4) *Excess section 8 rents.* For projects with project-based section 8 rents, the owner may be permitted to receive rents considered in excess of the amounts needed to meet annual project operating and maintenance, debt service, and reserve expenses. In conjunction with the acceptance of excess section 8 rents as an incentive, the reserve account will be adjusted to reflect adequate funding for long-term repair, replacement and maintenance costs.

(5) *Conversion or modification of interest credit.* Convert full profit loans to limited profit Plan II loans or increase the interest subsidy for loans with section 8 assistance to make contract rents more financially feasible. The conversion would be accomplished by changing the designation of the project to Plan II.

(b) *Development of incentive package.*

(1) *Borrowers requesting immediate conversion from low and moderate-income use.* The required borrower information and criteria to be used in determining the incentives to offer, along with the steps to develop the incentive offer, are listed in Exhibits D and E of this subpart.

(2) *Projects committed to low- and moderate-income use after prepayment by parties other than FmHA.* In accordance with exhibits D and E of this subpart, incentives will be reduced in proportion to the length of time a project is committed to low- and moderate-income use after prepayment through requirements of parties other than FmHA. The commitment for extended use may be voluntary or required by legal restrictions on use. The effect on the value of the project will be taken into consideration during the appraisal process.

(3) *Adjustment of project reserve accounts.* The reserve account must be maintained in conformance with the requirements of paragraph XIII B 2 c of exhibit B of subpart C of part 1930 of this chapter. At the time an incentive offer is developed, the maximum reserve amount should be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project.

(c) *Letter offering incentives to borrowers.* Within 20 days of the end of the tenant comment period, a letter will be sent to borrowers outlining the elements of the incentive offer developed in accordance with this section and exhibits D and E of this subpart. The letter will include the following:

(1) A statement that the package is a one-time incentive being offered in return for the extension of the low and moderate income use of the housing. The letter will establish that, by accepting the incentives outlined in the letter, the borrower will be subject to a restrictive-use provision obligating the housing to low- and moderate-income use in the FmHA program for 20 years from the date the extended use agreement is executed, and prohibited from future incentive offers on the project so long as the restrictive-use provisions remain in effect.

(2) The amount of the equity loan being offered (if any). Any offer of an equity loan will include a statement that the borrower is subject to:

(i) A continued eligibility determination in accordance with subpart E of part 1944 of this chapter; and

(ii) Appropriation limitations. When an incentive offer that includes an equity loan is accepted by a borrower, funding the components of the offer is considered binding on FmHA. If funds are not immediately available to fund an incentive loan, the amount of the offer will be included on a funding waiting list maintained by the National Office. Priority for funding is based on the date of receipt of the original complete prepayment request, as specified in § 1965.205 of this subpart.

(3) The maximum amount of any increased return on investment offered.

(4) The number of RA units that will be provided to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(5) Interest credit or additional interest credit if needed to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(6) The offer of borrower receipt of excess project-based section 8 rents, if applicable.

(7) The offer must be accepted or rejected in writing within 30 days, or the prepayment request will be voided.

(8) Appropriation limitations may restrict available incentives each year. The actual receipt of the preceding incentives may not be forthcoming in the near future. However, the offer is binding on FmHA. Acceptance of the incentive offer by the borrower will cause the request to be maintained on the waiting list for funding until obligated.

**§ 1965.214 Offering and processing of incentives.**

(a) *Borrower does not respond to incentive offer.* If the borrower does not respond to the incentive offer within 30 calendar days of the date of the letter offering incentives, the State Office will advise the National Office by means of FmHA Guide Letter 1965–E–1 (available in any FmHA office) to remove the name from the waiting list. Tenants and any agencies notified in accordance with § 1965.206 (b) of this subpart will be notified by the Servicing Office that the borrower has ceased to pursue the prepayment request and prepayment will not take place.

(b) *Borrower rejects the incentive offer.* If the borrower rejects the incentive offer within 30 calendar days, a determination of the continued need for the housing as subsidized housing will be made in accordance with § 1965.215 (b) and exhibit E of this subpart. Tenants will be notified that

the borrower has rejected the incentive offer and that a decision will be made by FmHA whether to accept the prepayment. The tenants will be informed of the factors used in making the decision.

(c) *Borrower indicates acceptance of the incentive package.* If the borrower indicates a willingness to accept an incentive package which includes an equity loan, a complete loan application in accordance with exhibit A–11 of subpart E of part 1944 of this chapter will be required. If an appraisal of the property has not been completed as required in § 1965.212 of this subpart, one will be made at this time in accordance with FmHA Instruction 1922–B (available in any FmHA office). The Servicing Official will determine the feasibility of the loan, including any needed reamortization of existing loans. No equity loan is to be made without sufficient RA to protect current tenants against new or increased rent overburden.

(d) *Application for transfer with incentives.* If a transfer is to take place simultaneously with the incentive, a complete transfer application package, in accordance with § 1965.65 of subpart B of part 1965 of this chapter, will be submitted. A completed application for an equity loan, if applicable, will be completed and submitted in accordance with paragraph (c) of this section. The determination of borrower eligibility, evaluation of the transfer and any equity loan will be made concurrently. If a proposed transferee is determined not to be eligible for the transfer and assumption, appeal rights concerning transferee eligibility will be provided to the proposed transferee. If the FmHA decision is upheld, the borrower will be given an additional 15 days to reconsider whether to accept the original incentive offer.

(e) *Notification that incentives are ready for funding.* When the borrower indicates that the final incentive offer is acceptable, and the processing of the incentive application is complete, the Servicing Official will notify the State Office, which in turn will notify the National Office of all required information through use of FmHA Guide Letter 1965–E–1 (available in any FmHA office).

(1) All interested agencies contacted in accordance with § 1965.206 (b) of this subpart and tenants will be advised that prepayment of the loan will not take place. If the ownership is to be transmitted, tenants will be so advised. Any rent increases resulting from acceptance of an incentive offer will be processed in accordance with § 1965.204(b) of this subpart.

(2) The National Office will issue authorizations to obligate incentives to the extent possible, depending upon the availability of loan funds and RA. Authorizations will be issued in the order in which complete prepayment requests were received as set forth in § 1965.205 of the subpart. To fully utilize all available prepayment incentive loan funds and RA, projects with fully processed incentive packages may be authorized prior to authorizing packages with earlier receipt dates for which incentives have not been fully processed. Any other required National Office authorizations will be given at the same time.

(f) *Processing the incentives.* When authorization to proceed is received, the Servicing Office will process the incentives, with or without a transfer and make the following amendments to the loan and RA agreements with the assistance of the Office of the General Counsel (OGC), as appropriate:

(Note: If the project is to be transferred at the time the incentive is processed, all obligations will be made to the transferee)

(1) If the annual return on investment is increased, a statement will be added to the loan agreement specifying that, "The maximum annual return on investment is being increased by $_____for a total maximum annual return of $_____." No equity level or rate of return need be mentioned.

(2) If a conversion of profit type is made, the procedures of paragraph IV A 2 e of exhibit B of subpart C of part 1930 of this chapter will be followed. If the interest subsidy is increased, a new Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," will be executed.

(3) Any change in the amount of RA will require the execution of a new RA agreement or a change in the existing RA agreement, as described in paragraph V C of exhibit E of subpart C of part 1930 of this chapter.

(4) Loans for equity will be made in accordance with subpart E of part 1944 of this chapter. In accordance with § 1951.517 (b)(1) of subpart K of part 1951 of this chapter, the equity loan will be established as a Predetermined Amortization Schedule System (PASS) loan and all existing loans on the project will be converted to PASS. All assumptions and transfers will be processed in accordance with § 1965.65 of subpart B of this part. All existing project loans may be consolidated and reamortized in accordance with §§ 1965.68 and 1965.70 of subpart B of this part, unless consolidation is not necessary to maintain feasibility of the project for the current tenants or reduce the level of monthly rental subsidies. All delinquent loans must be brought current, cost items paid in full, and project operating and reserve accounts brought current. All project operating and reserve accounts will remain at authorized levels during and after the closing of the incentive package, regardless of whether a transfer was included as part of the prepayment. All taxes, assessments and other liens must be prorated, brought current or paid in full as appropriate. Deferred maintenance identified in previous inspections must be performed before any equity may be received by the borrower or transferor, as applicable.

(g) *Restrictive-use provisions.* The restrictive-use provisions contained in exhibit A–1 of this subpart will be inserted in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate with the advice of OGC.

### § 1965.215 Borrower rejection of incentive offer—approving/disapproving prepayment

(a) *Approving or disapproving prepayments.* If the borrower rejects the incentive offer and indicates a preference to prepay, prepayment may be approved in accordance with paragraph (d) of this section within 180 days of the decision that the prepayment can be accepted if the determinations required in paragraph (c) of this section can be made. Exhibit E of this subpart provides additional guidance for making the necessary determinations. The State Director or other designated official in the National Office, with the recommendation of the Servicing Official, will make the decision to either approve or disapprove the prepayment request.

(b) *Determining the need for housing.* (1) The Servicing Office or other designated office will review the following, using exhibit E of this subpart as a guide:

(i) Local market conditions;

(ii) Information submitted as support for the prepayment request;

(iii) Responses to the 30-day tenant comment period;

(iv) the effect of the prepayment on minorities, handicapped individuals, and families with children; and

(v) Any other relevant information.

(2) The results of the determination of need will be documented in the case file.

(c) *Conditions under which prepayment may be approved.* In certain instances, prepayment may be approved after a borrower has rejected the incentive offer. If the decision is made

to approve a prepayment request, restrictive-use provisions will be inserted in the deed, deed of release or satisfaction, if the project is determined to be needed under the provisions of the following paragraphs (1)(i) and (ii) of this section. The borrower will also execute the applicable restrictive-use agreement. If the project has section 8 assistance, the local HUD Area Office must be notified. To determine whether a prepayment offer can be approved, the following decision steps must be followed by the Servicing Office:

(1) *The loan is not currently subject to restrictive-use provisions nor prohibition on prepayment.* To determine whether a loan not subject to restrictive-use provisions or prohibition on prepayment may prepay, and if so, what restrictions must be inserted in the release documents, the following determinations must be made.

(i) If the Servicing Office cannot make the determination that housing opportunities to minorities will not be materially affected as a result of the prepayment, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive language found in paragraph (A) or (B) of exhibit A–4 of this subpart, and to execute the applicable Restrictive-Use Agreement found in exhibit G–2 or G–3 of this subpart;

(A) Maintain the housing for low- and moderate-income people for a minimum period of 20 years from the date of the closing of the last loan or servicing action. At the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and paragraph (A) of exhibit A–4 of this subpart; or

(B) If 20 years from the date of the closing of the last loan or servicing action has already lapsed, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and paragraph (B) of exhibit A–4 of this subpart;

(ii) If the Servicing Office determines that housing opportunities to minorities will not be materially affected as a result of prepayment, but that there is an inadequate supply of safe, decent, and affordable rental housing within the market area, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive-use language found in paragraph (C) of exhibit A–4 of this subpart and agrees to execute the Restrictive-Use Agreement found at exhibit G–4 of this subpart:

Maintain the housing for current eligible tenants in occupancy as of the date of the prepayment for the life of the project or until the current tenants are no longer eligible for the housing under FmHA regulations, or the tenants choose to vacate of their own will. The owner will ensure the tenants will not be displaced due to a change in the use of the housing, an increase in the rental or other charges as a result of the prepayment, or a decrease in income. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project.

(iii) If the Servicing Office determines that housing opportunities to minorities will not be materially affected as a result of prepayment, and that there is an adequate supply of safe, decent, and affordable rental housing within the market area for the foreseeable future, the borrower may prepay without restrictions. The provisions of paragraph (c)(3) of this section will apply.

(2) *The loan is subject to restrictive-use provisions and the borrower agrees to continue to adhere to the provisions after prepayment.* In accordance with exhibit A–3 of this subpart, the borrower agrees to continue to maintain the housing in accordance with the restrictions already in effect. The borrower must also agree to execute the Restrictive-Use Agreement found at exhibit G–1 to this subpart.

(3) *It is determined by FmHA that restrictions are not needed.* If actions in accordance with § 1965.206 (b)(2) of this subpart and paragraph (e)(3) of this section have been taken to ensure that alternative rental housing will be made available to each tenant upon displacement, the prepayment may be accepted without restrictions if:

(i) For loans not subject to restrictive-use provisions nor prohibition on prepayment, it is determined by FmHA that housing opportunities for minorities will not be materially affected as a result of the prepayment. Exhibit E of this subpart will be used to assist in making this determination.

(ii) For loans subject to restrictive-use provisions, it is determined Federal or other financial assistance provided to residents will no longer be provided, due to no fault, action or lack of action on the part of the borrower. If a borrower applies to have restrictions removed after prepayment because Federal or other financial assistance will no longer be provided, the restrictions will be released only if the loss of Federal or other financial assistance could not have been reasonably anticipated at the time of acceptance of the prepayment.

(iii) Regardless of whether or not the loan is subject to restrictive-use provisions, a determination is made by FmHA that there is no longer a need for the housing (in accordance with exhibit E of this subpart).

(4) *Projects with both LH loans and grants.* If a prepayment is accepted on an LH loan for a project which also has an LH grant, restrictive-use provisions for the project may be released only under the conditions specified in the Grant Agreement.

(5) *Documentation.* Thorough documentation of the reasons and decision to approve prepayment will be entered in the casefile and appended to the prepayment report. Any additional materials used to reach the decision will be included in the casefile.

(d) *Borrower notification of approval or disapproval of prepayment.* The Servicing Office or other designated office will notify the borrower as to whether the prepayment has been approved or disapproved within:

(1) 15 days of the borrower's rejection of an incentive offer for loans not subject to restrictive-use provisions nor prohibited from prepayment; or

(2) 60 days of a complete prepayment request by a borrower subject to restrictive-use provisions.

(e) *Processing acceptance of prepayment.* After approval of a prepayment, the following actions must be taken:

(1) *Completion of the prepayment report and notification of the National Office.* If prepayment is approved, the Servicing Office or other designated office will complete a prepayment report in the format of exhibit B of this subpart, and submit the report with all documentation on each prepaid loan to the State Director or other designated official for indefinite retention. Any information for the report supplied by the borrower must include documentation and verification by the Servicing Office. For prepayment of on-farm labor housing units, only items relevant to the on-farm units need be completed. The State Office will notify the National Office in the format of FmHA Guide Letter 1965–E–1 (available in any FmHA office) indicating that the prepayment has been accepted. A copy of the prepayment report will be included in the materials forwarded to the National Office.

(2) *Notify interested agencies.* All interested agencies notified in accordance with § 1965.206 (b)(4) of this subpart will be notified of the decision to accept the prepayment. Agencies which may aid displaced tenants will be advised of any anticipated displacement, the level at which post-

prepayment rents will be set and any restrictive-use provisions which will remain in the deeds of release. Other agencies will be advised that no offer to sell will be made.

(3) *Notify tenants.* The Servicing Office will send an additional notice to tenants at least 60 days prior to the prepayment. The prepayment may not take place less than 60 days from the tenant notification or 180 days from the initial notification unless an exception is allowed in accordance with paragraph (f)(2) of this section. Tenant notices will be sent certified mail to each tenant and also posted at the project in public areas. Copies of the notice will remain posted at the project until the prepayment is accepted and all existing tenants voluntarily vacate their units. The notice and attachments will contain all of the following information appropriate for the prepayment action and any other relevant information necessary to allow tenants to make informed choices (FmHA Guide Letter 1965–E–3 (available in any FmHA office) and attachments are provided as a guide for this purpose). The notice will contain the following applicable statements and information:

(i) All relevant information concerning the prepayment has been reviewed and FmHA has decided to accept the prepayment on (date).

(ii) Fully detailed reason(s) describing why the prepayment was approved. Also include the reasons for acceptance of the prepayment in less than 180 days (if applicable).

(iii) At the time of prepayment, rents are expected to be $_____.

(iv) The tenant will be affected by this change on (date the tenant's current lease expires, date of the prepayment or other mandated date, whichever is later.)

(v) (The following statement should be included if the loan is being prepaid but will retain restrictive-use provisions.) All current eligible tenants may continue to occupy the housing until the tenants decide to voluntarily move, the tenants no longer meet eligibility requirements or the restrictive-use provisions expire on (insert expiration date), whichever is sooner. The rents of current eligible tenants may not be increased as a result of current owner actions to exceed levels which create new or increased rent overburden as established by FmHA regulations, in accordance with title V of the Housing Act of 1949, during the period of eligible tenant occupancy during the restricted period. However, declines in tenant income shall not require corresponding reductions in rent levels. A tenant, or those wishing to occupy the housing (if applicable), as well as the Government, may seek enforcement of the provisions. Annual income recertifications will continue to be required in order to protect eligible tenant rents. The preceding requirements are binding on the current owner and any successors in interest.

(vi) (The following statement should be included if the project has project-based section 8 rents.) Eligible tenant rents will continue to be subsidized by the Department of Housing and Urban Development (HUD) until (insert the date the section 8 contract expires). (If applicable, include the following.) If section 8 subsidies are not continued after (insert the date the section 8 contract expires), the owner of the project will continue eligible tenant rents at levels that will not create or increase rent overburden until (insert date the restrictive-use expires. However, declines in tenant income shall not require corresponding reductions in rent levels.

(vii) (The following statement should be included if project-based HUD section 8 or other subsidies will expire prior to 2 years after the prepayment.) Eligible tenants currently residing in the project who may subsequently be displaced or experience rent overburden due to the prepayment may qualify for certain protections. The following protections are available to eligible tenants who believe they have experienced displacement or rent overburden:

(A) Letters of Priority Entitlement (LOPE) to other FmHA housing. Tenants may apply for LOPEs up until the day the tenants' rents are scheduled to be increased. These letters will be valid for 60 days after issuance. All LOPEs will be issued in accordance with title VI of the Civil Rights Act of 1964, as codified in subpart E of part 1901 of this chapter.

(B) Tenants currently receiving rental assistance (RA) will be able to continue to receive RA if they move to other FmHA financed housing in which they are eligible for RA.

(C) Tenants choosing to stay in their units after prepayment and pay higher rents, with or without Federal, State or other subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(viii) Eligible tenants residing in prepaying projects will also be sent:

(A) A list of project names, locations, number of apartments, senior citizen or family designation, and unit sizes of other FmHA projects in the market area.

(B) The names and locations of other subsidized housing; and

(C) Addresses and telephone numbers of the applicable HUD area office, and other agencies which administer housing subsidies or aid in relocation anywhere in the market area.

(ix) Tenants will be allowed to review the information used to make any of the determinations regarding acceptance of the prepayment, prepayment rent increases and alternatives to prepayment.

(4) *Issue LOPEs.* Upon request by a tenant for an LOPE, the Servicing Official will prepare the letter and forward the letter to the tenant (FmHA Guide Letter 1965–E–4 (available in any FmHA office) may be used as a guide). The LOPE, which is to be addressed to FmHA borrowers, will include:

(i) A tenant with an LOPE has 60 days to apply in writing to other FmHA projects in any location in the country.

(ii) A tenant with an LOPE is to be placed at the top of all waiting lists in FmHA projects applied to, which have appropriate units the tenant qualifies for. Such tenants will follow only those tenants with LOPEs who were previously placed on the waiting list. Handicapped tenants on the list for handicapped units which have appropriate design features will maintain priority over non-handicapped tenants with LOPEs.

(iii) The tenant will not be removed from the priority position on the waiting list until the tenant moves to a unit utilizing an LOPE or is purged from the waiting list in accordance with exhibit B or subpart C of part 1930 of this chapter.

(iv) If the tenant holding the LOPE is receiving RA in the prepaying project, and uses the LOPE to move to a Plan II project for which the tenant would qualify for RA, the RA will be transferred to the project to which the tenant moves. The RA will be reassigned to that tenant without competition. RA brought to a project by a tenant from a prepaying project will remain at the receiving project if the tenant subsequently moves to another FmHA project.

(v) If the tenant's current security deposit of (a specified amount) has not been released by the prepaying project by the date a tenant moves, the new landlord will be encouraged to defer collection of the new security deposit until the tenant's current deposit is refunded, even if the date of release is after the date the tenant occupies the new unit.

(5) *Approval of tenant leases.* Prior to accepting the prepayment, the Servicing Office will also review and approve a modified tenant lease to be used for all protected tenants during any applicable

restrictive-use period. This lease will explain the restrictive-use provisions, who is protected, describe the limits on rents during the period of restrictions, explain that no tenant can have a lease renewal denied for other than "good cause" (which cannot include income level), that charges, rules and regulations, and services may not change substantially from those aplicable at present, and explain all other provisions necessary to protect affected tenants including Fair Housing Act Amendment provisions. The lease shall retain provisions for annual income certification. The approved lease, with signatures of both the borrower and FmHA, will be maintained by the Servicing Office until expiration of the restrictive-use period, although FmHA will not be responsible for monitoring compliance. If the owner wishes to make subsequent modifications to the lease, FmHA will review the lease to ensure that none of the modifications are contrary to the intent of this regulation.

(6) *Borrower responsibilities after prepayment.* Prior to accepting the prepayment, the Servicing Official will meet with the borrower to discuss borrower obligations under restrictive-use and fair housing provisions remaining in effect after the prepayment is accepted. The Servicing Official will review the applicable restrictive-use requirements, if any, in detail with the borrower. In particular, the Servicing Official will explain that the applicable provisions of subpart C of part 1930 of this chapter specific to tenant rights and relations shall remain in effect during the restrictive-use period. Owners of prepaid projects will be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forthin subpart C of part 1930 of this chapter, and also adhere to applicable local, State, and Federal laws. The borrower will be informed that it is the borrower's responsibility to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The former borrower must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels in accordance with the applicable restrictive-use provisions. The former borrower must also agree to make the documentation available for Government inspection upon request. The former borrower and any successors in interest will be required to provide the following signed and dated certification to the applicable Servicing Office or other designated office within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions:

(Name of owner) certifies that (name of project) is being operated in compliance with the restrictive-use provisions contained in (applicable release document) and the Restrictive-Use Agreement which set forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations (Name of borrower) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the Government to seek enforcement of the provisions.

The borrower must also agree to execute the applicable Restrictive-Use Agreement found at exhibits G–1 thru 4 to this Subpart.

(7) *Servicing Office responsibilities after prepayment.* Upon prepayment, the Servicing Office will send a notice to all tenants informing the tenants of the acceptance of the prepayment. The borrower will be notified that a copy of the notice must be posted and maintained in public areas in the project until all restrictive-use provisions expire. FmHA Guide Letter 1965–E–5 (available in any FmHA office) will be used for the notice. The Servicing Office or other designated office will monitor receipt of the certaification referred to in paragraph (e)(6) of this section and maintain case files on the prepaid project until such time as the restrictive-use provisions expire. The Servicing Office or other designated office will take such actions as necessary to follow-up on receipt of the annual certifications from each prepaid borrower. If the Servicing Office is unable to obtain borrower cooperation, the Servicing Office shall refer the case to the State Office for transmittal to the National Office for further servicing guidance and/or enforcement actions.

(8) *Payment in full and release of security.* Prior to releasing security instruments, FmHA must be certain that full payment has been received. Security instruments will be released in accordance with § 1965.90 (b) of subpart B of part 1965 of this chapter.

(9) *Sale to nonprofit organization or public agency at end of restrictive-use period.* Borrowers who are subject to the restrictive-use provisions contained in paragraph (A) or (B) of Exhibit A–4 of this subpart are required to attempt to sell the project to a nonprofit organization or public agency at the end of the restrictive-use period. Advertising the project for sale will be carried out in the same manner and time period as required for sale to nonprofits or public agencies within the program as stated in § 1965.216 (b), (c), and (d) of this subpart. Advertising will be conducted for a minimum of 180 days beginning at least 6 months prior to the expiration of the restrictive-use period. If 6 months do not remain between the date of prepayment and the end of the restrictive-use period the project will be advertised for sale for a minimum of 180 days.

(f) *Denial, postponement, waiver, or withdrawal of prepayment request.*

(1) *Denial of prepayment request.* Borrowers for whom there is no prohibition on prepayment will be denied a request to prepay if the conditions required for prepayment stated in paragraph (c) of this section and exhibit E of this subpart cannot be met, or if information submitted with the prepayment request to prepay, the Servicing Official will send a letter to the borrower stating the reasons for the denial and the right to appeal the rejection, in accordance with subpart B of part 1900 of this chapter and §§ 1965.213 and 1965.215 and exhibits D and E of this subpart. The letter denying the prepayment reuest may revise the original incentive offer if new information documenting the loss the borrower may suffer if not allosed to prepay has been brought to the attention of the Servicing Office. If a letter is sent offering a revised incentive, rights to appeal the denial will not be included.

(2) *Postponement of prepayment requests.* Prepayment requests will be denied if the request was received less than 180 days in advance of the project prepayment date unless the Servicing Office determines that there is sufficient time to consider tenant comments, verify information submitted with the prepayment report, and verify that all tenant leases are extended for a 180-day period from the date of the prepayment request and include current rents and conditions. Prepayment will be postponed if necessary to allow sufficient time for the second tenant notification to be sent at least 60 days prior to the prepayment, unless all tenant leases are extended to the end of the 60 days, and at least 30 days has passed since the first notification letters were sent. The extension of tenant leases does not substitute for the

insertion of restrictive-use provisions in the release documents or for allowing sufficient time for tenant comments.

(3) *Withdrawal or cancellation of prepayment requests.* Prepayment authorization will be cancelled if the prepayment is not received within 180 days of the final approval of the prepayment.

(g) *Borrower appeals of prepayment disapproval.* The borrower may appeal the decision to deny prepayment without restrictive-use provisions within 30 days of the receipt of the rejection, in accordance with subpart B of part 1900 of this chapter. The incentive offer may be appealed at the same time if the borrower chooses. Tenants will be notified if a borrower appeal is pending, given the right to send written testimony to the appeal officer, and have one representative at the appeal hearing. If the decision to deny prepayment is upheld or the incentive offer is modified, the borrower will be given an additional 30 days to respond to the incentive offer. Based upon the borrower response and whether the loan is subject to restrictive-use provisions, the Servicing Office will act in accordance with appropriate sections of this subpart. Borrowers subject to restrictive-use provisions will not be granted appeal rights.

**§ 1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.**

In instances where the borrower is not subject to restrictive-use provisions and no incentive agreement can be reached between FmHA and the borrower, and the prepayment cannot be accepted under § 1965.215 and Exhibit E of this subpart because a need remains for the housing, the borrower will be required to offer to sell the project to a nonprofit organization or public agency. The following steps will be taken:

(a) *Determination of fair market value.* Within 60 days of the termination of any appeals or the decision to deny prepayment if no appeal was requested, the fair market value of the project as unsubsidized conventional housing will be determined. The value arrived at will result from two appraisals. One appraisal will be the appraisal contracted and paid for by FmHA that was used to establish the incentives previously offered. The second appraisal will be obtained and paid for by the borrower. Both appraisals will be conducted by qualified independent appraisers in accordance with FmHA Instruction 1922–B (available in any FmHA office). If the fair market values arrived at are within 10 percent of each other, the Servicing Office and the borrower will negotiate to arrive at a mutually acceptable value. If the values differ by more than 10 percent, the independent appraisers will be asked to review their appraisals to determine if the values can be reconciled to within 10 percent. If FmHA and the borrower are unable to negotiate a mutually acceptable value or the appraisers are unable to reconcile their appraisals within 30 days of the completion of the appraisals, the State Office and the borrower will jointly select a third independent qualified appraiser whose appraisal will be binding on FmHA and the borrower. The third appraisal will be completed within 60 days of selection of the appraiser. The cost of the third appraisal shall be divided evenly between FmHA and the borrower.

(b) *Efforts to market and sell the project to nonprofit organizations or public agencies.* Once the fair market value of the project has been established, the borrower is to attempt to market the project to nonprofit organizations and public agencies. The following actions are to take place:

(1) The Servicing Official is to provide the borrower with a list of nonprofit organizations and public agencies which have notified FmHA of their interest in purchasing projects that are attempting to prepay. The list will include nonprofit organizations and public agencies that have notified the FmHA Servicing, State, and National Offices of their interest.

(2) The Servicing Official will instruct the borrower to contact each nonprofit organization and public agency on the list within 10 days of establishing project fair market value. The sequence of contacting nonprofit organizations and public agencies is set forth in paragraphs (b)(3) (i) and (ii) of this section. Materials notifying nonprofit organizations and public agencies of the project's availability will include sufficient information regarding the project and its operation for interested purchasers to make an informed decision. If an interested purchaser requests additional information concerning the project, the borrower shall promptly provide the requested materials.

(3) The borrower must advertise and offer to sell the project for a minimum of 180 days. The borrower may choose to suspend advertising and other sales efforts while eligibility of an interested purchaser is determined. However, if the purchaser is determined to be ineligible, the borrower must resume advertising until a minimum of 180 days has passed. The borrower may satisfy the 180-day requirement by continuing advertising and sales efforts during the eligibility review of an interested purchaser. If additional offers are received during this time period, the offers will be reserved as back-up offers until the eligibility determination of the initial purchaser is completed.

(i) *Sales preference to local nonprofit organizations or public agencies.* The borrower will first advertise the project for sale to qualified local nonprofit organizations or public agencies as defined in § 1965.202 of this subpart. The Servicing Official will be responsible for determining that all appropriate means for contacting such organizations have been utilized including local media, and all necessary information provided. Exclusive advertising to local nonprofit organizations and public agencies must continue for a minimum of 60 days. If more than one qualified nonprofit corporation or public agency submits an offer to purchase the project, a local nonprofit organization or public agency must be given preference over a regional or nationwide organization, regardless of when offers to purchase are received.

(ii) *Advertising to regional or nationwide organizations.* If no qualified local nonprofit organization or public agency is found to purchase the housing within the first 60 days, the Servicing Official will authorize the borrower to advertise for an existing qualified national or regional nonprofit organization to purchase the housing. Advertising must begin between 60 and 120 days after advertising to local organizations began. Advertisements will be placed, as appropriate, in national housing publications and other media determined appropriate by the State Office or other designated office, including those serving minority groups exclusively.

(c) *Qualifications of nonprofit borrower to purchase.* Notwithstanding the requirements of § 1944.211(a)(10) of subpart E of part 1944 of this chapter, nonprofit organizations for the purpose of this paragraph need not be broadly-based (unless qualifying as a local nonprofit organization as defined in § 1965.202 of this subpart) nor organized solely to provide housing. Nonprofit organizations determined qualified to buy the housing through this procedure must:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by self management or through a management agent.

(2) Agree that no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the FmHA Administrator determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities. Generally, transfers between qualified nonprofit organizations and/or public agencies will be acceptable. However, under no condition will a transfer be approved to an entity in which the nonprofit transferor or a member of the nonprofit entity holds an ownership interest.

(3) Agree to obligate itself and successors in interest to maintain the housing for very low- and low-income families or persons for the remaining useful life of the project and related facilities, although no currently eligible moderate-income tenants will be required to move. The provision in exhibit A–2 of this subpart will be used and inserted in the deed, security instrument, loan agreement/resolution and/or assumption agreement, as appropriate.

(4) Show financial feasibility of the project including anticipated funding to be authorized in accordance with § 1965.217(d) of this subpart. Financial feasibility may also include any regular RA or debt forgiveness RA allocations which can reasonably be anticipated to be available for the project at the time of the transfer.

(5) Have no identity of ownership or controlling interest, regardless of degree, except as management agent between:

(i) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such interest) in loans financed under section 515 that have been prepaid; and

(ii) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in the purchasing entity.

(6) Evidence compliance with paragraph (c)(5) of this section. An officer legally authorized to execute documents on behalf of the purchasing nonprofit entity shall execute the following statement:

(Name of purchasing nonprofit entity) certifies that no officer or directorate of (name of purchasing nonprofit entity) has been a person or party with a material interest (or persons or parties related to any person or party with such interest) in any loans financed under section 515 that have been prepaid.

(d) *Priority between nonprofit organizations and public agencies.* If more than one qualified organization or public agency submits an offer to purchase the project, the following criteria, in descending order of importance, will be used to establish priority:

(1) Local nonprofit organizations and public agencies have priority over regional and national nonprofit organizations and public agencies;

(2) Nonprofit organizations and public agencies with the most successful experience in developing and managing subsidized housing; and

(3) Nonprofit organizations and public agencies with the longest experience in developing and managing subsidized housing.

**§ 1965.217 Processing applications for transfers to nonprofit corporations or public agencies.**

(a) *Determining eligibility.* After an option to purchase is signed between a borrower and nonprofit corporation or public agency, the purchasing organization will file a complete application in accordance with § 1965.65 (f) of subpart B of this part. FmHA will make a determination of the eligibility of the borrower and feasibility of the proposed transfer and subsequent loan. Consolidation and reamortization of the loans will be considered when a transfer takes place.

(b) *Appeal rights when a purchaser is not selected.* If a nonprofit organization or public agency is not accepted by FmHA to purchase the project because the purchaser is found to be ineligible, the transfer is found to be not feasible or because the organization has lower priority than another applicant in accordance with § 1965.216 (b), (c), or (d) of this subpart, appeal rights will be given to the applicant organization in accordance with Subpart B of Part 1900 of this chapter.

(c) *Authorization for transfer.* When the transfer and loan(s) are ready to be obligated, the National Office will be notified in the format of FmHA Guide Letter 1965–E–1 (available in any FmHA office). If the loan will exceed the State Director's approval authority, the entire case file shall be sent to the National Office for review. The National Office will give approval authority and authorize funding for purchase of projects which have complied with the provisions outlined in this section. Subject to the nationwide maximum funding allowed, the authorizations will be issued in date order the complete prepayment request was received by the Servicing Office.

(d) *Special loans and grants available to nonprofit organizations and public agencies.* Loans and grants are available to nonprofit organizations and public agencies to purchase and assist in the purchase of prepaying projects and to pay first year operating expenses. Loans to nonprofit organizations and public agencies may not exceed 102 percent of the fair market value of the project. Grants for costs related to purchasing a project may not exceed $10,000.

(1) *Loans to nonprofit organizations and public agencies.* Loans to nonprofit organizations or public agencies will be approved in accordance with subpart E of part 1944 of this chapter for the following purposes:

(i) A loan sufficient to enable the nonprofit organization or public agency to purchase a project at the fair market value;

(ii) With proper justification, first year operating expenses not to exceed 2 percent of the project's appraised fair market value if current operating funds are not sufficient.

(2) *Special advances to nonprofit organizations or public agencies to cover costs related to purchasing a project.* A grant may be made to a nonprofit organization or public agency to cover any direct costs, other than the purchase price, incurred by the organization or agency in purchasing and assuming responsibility for a project and related facilities. To be eligible for grant funds, the organization or agency must be able to obtain an accepted purchase offer for a project offered for sale by a borrower under § 1965.216 of this subpart.

(i) *Grant purposes.* Eligible purposes of the grant include:

(A) Direct costs to the organization or agency that are based on written estimates for legal fees for purchasing the project, architectural fees, and/or other expenses as described in § 1944.222 of subpart E of part 1944 of this chapter and as authorized by the State Director. Legal fees for organizing the entity are not an eligible cost;

(B) Fees, for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the organization or agency in the packaging of the loan docket and project as well as legal, technical, and professional fees incurred. Legal fees for organizing the entity are not an eligible cost. FmHA will allow payments to eligible organizations packaging applications without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such an organization has authority to contract. The packaging organization may not

represent or be associated with anyone else, other than the purchasing nonprofit organization or public agency, who may benefit in any way in the proposed transaction.

(ii) *Administrative requirements.* The following policies and regulations apply to grants made under this section:

(A) The policies and regulations contained in subpart S of part 1940 of this chapter apply to grantees under this subpart.

(B) The policies and regulations contained in subpart Q of part 1940 of this chapter apply to grantees under this subpart.

(C) The grantee will retain records for three years from the date Standard Form (SF)–269A, "Financial Status Report," is submitted. The records will be accessible to FmHA and other Federal officials in accordance with 7 CFR part 3015.

(D) Annual audits will be required if the grantee has received more than $25,000 of Federal assistance in the year in which the grant funds were received. The audits will be due 13 months after the end of the fiscal year in which funds were received.

(*1*) States, State agencies, or units of general local government will complete an audit in accordance with 7 CFR parts 3015 and 3016 and OMB Circular A–128.

(*2*) Nonprofit organizations will complete an audit in accordance with 7 CFR part 3015 and OMB Circular A–133.

(iii) *Obtaining payment for costs.* To obtain advance funds or reimbursement of costs, the nonprofit organization or public agency must:

(A) Submit to the appropriate FmHA Servicing Office SF–270, "Request for Advance or Reimbursement," for an amount not to exceed $10,000;

(B) Submit a copy of the accepted purchase offer or option to purchase and assume responsibility for a prepaying project and related facilities;

(C) As soon as possible after obtaining an accepted purchase offer or option, submit a complete transfer and loan package (if applicable), as described in § 1965.65 of subpart B of part 1965 of this chapter for transfers and subpart E of part 1944 of this chapter for loans to purchase the project;

(D) If less than $10,000 is advanced or reimbursed at the time of submittal of the grant application package and the applicant expects that further advances or reimbursements may be needed, additional funds may be requested so long as the total advanced or reimbursed does not exceed $10,000. SF–270 will be used to request additional advances or requests for reimbursement. If advance funds are requested, the amount requested may not exceed the amount the grantee expects to use during the 30 days following receipt of the advance. The final draw advance or request for reimbursement shall not be later than the closing date of the transfer and loan and shall be submitted on SF–270;

(E) Fully document all requests for advances with line item estimates on SF–270. Requests for reimbursement shall be documented with itemized bills or receipts for each item listed on SF–270;

(F) Include SF–269A with the grant application if the entire amount of the grant is being requested at that time. If the grant will be advanced or reimbursed in more than one draw, SF–269A will be submitted with the final draw;

(G) Include a signed statement for all grant applications which states, "Neither the organization nor any of its employees are associated with or represent anyone in this transaction other than the applicant."

(iv) *Processing grants.* The following actions will be taken by FmHA when a grant application is received:

(A) The FmHA Approval Official will review each grant application package for the amount authorized. The FmHA Approval Official will execute and distribute Form FmHA 1944–51, "Multiple Family Housing Obligation Fund Analysis," in accordance with the Forms Manual Insert;

(B) The Servicing Official will be responsible for reviewing the eligibility of costs estimated to be incurred or submitted for reimbursement;

(C) A grant agreement, prepared in substantially the same format as exhibit F of this subpart and authorized by grant resolution, will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed in the casefile.

(D) A grant resolution authorizing the appropriate officers of the applicant to execute the grant agreement will be adopted by the applicant's board of directors or other form of governing body. A certified copy is to be submitted to FmHA for the file.

(e) *Servicing Office actions when a transfer and subsequent loan is authorized.* When notified by the State Office that the National Office has authorized the transfer and subsequent loan, the Servicing Office will:

(1) Submit the assumption to the State Office for approval in accordance with § 1965.65 of subpart B of this chapter.

(2) Transfer any RA associated with the project to the transferee in accordance with paragraph XV B 1 of Exhibit E of subpart C of part 1930 of this chapter unless debt forgiveness RA is used to replace current project RA.

(3) Notify tenants that prepayment of the loan will not be taking place and to whom the ownership of the housing is being transferred. The notification should state that any rent increases resulting from the transfer and loan will be processed in accordance with § 1965.204 (b) of this subpart.

(4) Transfer all existing loans in the project on new rates and terms and consolidate and reamortize, if necessary, to maintain project feasibility and reduce rental subsidy payments.

(5) Ensure that all delinquent accounts are brought current, cost items paid in full, project accounts brought current and transferred with the project, and all taxes and liens paid or prorated at closing as applicable. Deferred maintenance identified in previous inspections must be acceptably completed before the transferor may retain any equity.

(6) Insert the restrictive-use provisions contained in Exhibit A–2 of this subpart in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate.

(f) *Rental subsidies.* No transfer will be approved unless there is sufficient RA available for every tenant who would experience rent overburden after the transfer, assuming that all units vacated will continue to be filled by very low or low-income tenants. Sufficient debt forgiveness RA (DFRA), must be authorized for obligation in accordance with paragraph V C of exhibit E of subpart C of part 1930 of this chapter, when authorization to process the loan is given. The National Office will advise the State Office whether RA will be transferred with the project or if RA will be suspended and transferred to another project within the State when authorization to process the transfer is given. If the latter is chosen, all RA needs at the project will be met with DFRA.

**§ 1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available.**

Borrowers not subject to restrictive-use provisions or prohibitions on prepayment may prepay without restrictions within 120 days of meeting either of the following requirements.

(a) *No offer to purchase.*

(1) At least 180 days have passed since the offer to sell to a local nonprofit organization or public agency began and the advertisement continued for the full 180 days;

(2) The project has been offered to regional and national organizations for at least a 60-day period of the 180 days;

(3) Documentation is provided showing that all organizations whose names were provided by the District or State Office were contacted in accordance with § 1965.216 (b) of this subpart and offered the housing for purchase;

(4) No qualified nonprofit organization has made a bona fide offer to purchase the property for the appraised fair market value. Note: (An offer will be considered to be bona fide if there is a written offer to purchase the project at fair market value, even if the offer is contingent on FmHA funding when no funding is available.); and

(5) Funds have been available for the purpose of carrying out a transfer/sale during this period.

(b) *Funds are not available.* A borrower may be allowed to prepay even if an eligible nonprofit organization or public agency has offered to purchase the project if the following lack of funding exists. All funds for funding nonprofit organizations and public agencies for the purpose of purchasing any project in the country must have been exhausted for a period of 15 months. This determination is not related to the length of time the particular project has been on the waiting list. The National Office will periodically advise State Offices of the status of the waiting list and the availability of funds.

**§ 1965.219 FmHA processing of prepayment.**

When a prepayment is accepted in accordance with § 1965.218 of this subpart, the Servicing Office will process the prepayment in accordance with the applicable provisions of § 1965.215 (e)(1), (2), (3), (4), and (8) of this subpart.

**§§ 1965.220–1965.221 [Reserved]**

**§ 1965.222 Violations of restrictive-use provisions.**

Should the Servicing Office receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use provisions set out in exhibit A–3 or A–4 of this subpart or the Restrictive-Use Agreements set out in exhibits G–1 thru 4 of this subpart by the owner of a previously FmHA-financed project, the following actions will be taken:

(a) The complainants will be informed that they may pursue enforcement through the courts.

(b) The Servicing Office or other designated office will conduct a preliminary evaluation of the complaint. This evaluation may necessitate the gathering of additional information. Should the preliminary evaluation indicate the complaint is not valid, the complainant will be so informed. Should the preliminary evaluation indicate the complaint is or may be valid, then the complaint, all facts gathered, an evaluation report, and Servicing Office recommendation will be forwarded to the State Office or other designated office for review and action.

(c) If the State Office or other designated office determines that a violation of the restrictive-use provisions has likely occurred, the Administrator will be notified. The State Office or other designated office will ask the OGC to provide advice in such cases and, if appropriate, refer the case to the Department of Justice or other appropriate agency for enforcement. A copy of any complaint requesting enforcement of the restrictive-use provisions submitted to the Department of Justice or other appropriate agency should also be forwarded to the Administrator.

**§ 1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.**

(a) *Acceleration of accounts.* Accelerations of accounts will be prepared in accordance with FmHA Guide Letters 1955–A–1 or 1955–A–2 (available in any FmHA office). Any FmHA loan made after December 21, 1979, prepaid in response to an acceleration of the account will be required to have the appropriate restrictive-use language inserted in the deed of release or satisfaction, as appropriate upon the advice of OGC. Any FmHA loan made on or before December 21, 1979, with payment-in-full made in response to an acceleration of the account, will be required to have the appropriate restrictive-use language inserted on the instrument recorded in the real estate records, as appropriate upon the advice of OGC, only if the payment occurs within 1 year after the borrower had initiated a request to prepay the loan(s). The restrictions used will be those contained in exhibit A–3 of this subpart for loans subject to restrictive-use provisions or prohibited from prepaying. The restrictive-use period will extend for the remaining term of the accelerated loan or length of the existing restrictive-use period, whichever is applicable.

(b) *Foreclosure.* If a project is sold out of the program at a foreclosure sale, the restrictive-use provisions will be retained and added to the deed in accordance with exhibit A–3 or A–4 of this subpart and paragraph (a) of this section.

(c) *Inventory property.* Restrictive-use provisions will be retained for projects taken into or sold out of FmHA inventory in accordance with exhibits A–1 through A–4 of this subpart and paragraph (a) of this section, unless a determination is made in accordance with § 1965.215 and exhibit E of this subpart that the restrictions may be released or that the property is determined non-program property. Tenants will receive all appropriate notifications as they would for prepaying projects not being accelerated.

(d) *Bankruptcy.* Bankruptcy proceedings will have no effect on contractual requirement for restrictive-use.

**§ 1965.224 Prepayment of loans caused by advance payments on the account.**

If the loan on a project, in which the last loan to build or acquire new units was obligated prior to December 15, 1989, reaches or falls below six remaining payments due to borrower voluntary advance payments or mandatory extra payments required by FmHA regulation or law, the borrower will be notified that the final payment on the account cannot be accepted unless a prepayment request is made. FmHA will inform the borrower that, by law, prepayment regulations must be followed for all loans requesting prepayment subsequent to enactment of the law. The borrower will be required to submit all applicable information required by § 1965.205 of this subpart and complete all applicable actions required by this subpart before a final payment can be accepted.

**§§ 1965.225–1965.248 [Reserved]**

**§ 1965.249 Exception authority.**

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, adversely affect the accomplishment of the purposes of the RRH or LH programs, or result in undue hardship on the tenants by applying the requirements. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated.

Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

§ 1955.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0155. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of 1.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB control number 0575–0155), Washington, DC 20503.

**Exhibits to Subpart E**

**Exhibit A–1—Required Clauses for Active Borrowers With Projects Subject to Restrictive-Use Provisions as a Result of Specific Loan Making or Loan Servicing Actions**

The following Multi-Family Housing projects are subject to restrictive-use provisions as set forth in their loan documents or security instruments:

(a) All loans approved between December 21, 1979, and December 15, 1989;

(b) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989;

(c) Any loans approved prior to December 21, 1979, and subsequently made subject to restrictive-use provisions due to a servicing action (e.g., transfer, reamortization, consolidation) as described in subpart B of part 1965 of this chapter, or an incentive to deter prepayment of the loan as described in this subpart.

All loans or servicing actions meeting the above criteria with prepayment incentives obligated or approved after the effective date of this regulation, will be subject to the following restriction. The restriction will be inserted in the deed, conveyance instrument, loan agreement/resolution, assumption agreement, interest credit agreement, or reamortization agreement, as appropriate. The restrictions are applicable for a term of 20 years from the date on which the last loan was closed or made subject to such restrictions as a result of a servicing action or incentive to not prepay.

"The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of title V of the Housing Act of 1949, as amended, and FmHA regulations then extant during this 20 year period beginning (the date the last loan on the project is obligated, or date the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or incentive to not prepay the loan, authorized under this subpart or other subparts). Until (date), no eligible person occupying the housing shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision, as well as the Government."

**Exhibit A–2—Required Clauses for Projects Made Subject to Restrictive-use Provisions When a Loan Is Transferred to a Nonprofit Organization or Public Agency to Avert Prepayment**

Multi-Family Housing projects made subject to restrictive-use provisions because of a transfer and subsequent loan to a nonprofit organization or public agency in order to avert prepayment of the loan as described in this subpart are subject to restrictions which are set forth in the loan instruments or security agreements. Loans meeting the preceding conditions with prepayment incentives obligated after the effective date of this regulation will be required to have the following restriction inserted in the deed, conveyance instrument, loan resolution, and assumption agreement, as applicable:

"The borrower and any successors in interest agree to use the housing for the purpose of housing very low- and low-income people eligible for occupancy as provided in Farmers Home Administration regulations then extant during the remaining useful life of the project. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government. Throughout the remaining useful life of this project, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set to meet these conditions. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower."

The restrictions are intended to protect only very low- and low-income individuals and families for the remaining useful life of the project, unless the Government subsidy is removed without cause or it is determined there is no longer a need for the housing. These restrictions will not be superceded by new restrictions imposed by subsequent transfers. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions. Moderate-income applicants for the housing will continue to retain priority over ineligible applicants for the housing.

**Exhibit A–3—Required Clauses for Prepaid Projects Which Were Subject to Restrictive-Use Provisions Prior to the Prepayment**

The required clauses contained in this exhibit pertain to the following multi-family projects, unless an exception to the restrictive-use provisions have been granted in accordance with this subpart:

(a) Any loan on the project obligated between December 21, 1979, and December 15, 1989, or subsequent loan not made to build or acquire new units approved on or after December 15, 1989;

(b) Any loan made subject to restrictive-use provisions as a result of a transfer, consolidation, or reamortization as set forth in this subpart;

(c) Any loan made subject to restricitive-use provisions as a result of accepting an incentive to not prepay as set forth in this subpart;

(d) Any loan previously subject to restrictive-use provisions being accelerated.

The preceding projects may only be prepaid if the title to the real property is made subject to the following restrictive-use provisions and incorporated in the security releases. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–1 to this subpart.

"The owner and any successors in interest agree that the housing located on this property will be used only as authorized under section 514 or 515 of title V of the Housing Act of 1949, as amended, and 7 CFR part 1965, subpart E, or other regulations then extant until (insert date shown on existing restrictive-use provisions). A tenant or applicant for occupancy may seek enforcement of this provision as well as the Government. During the restricted period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupying will be set so that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner agrees to keep a notice posted at the project, and in a visible place available for tenant inspection, for the remainder of the restrictive-use period, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for (insert "low- and moderate-income" or "very low- and low-income" as shown on existing restrictive-use provisions) tenants for the remainder of the restrictive-use period."

The provisions provide protections to the same categories of tenants who were protected while the loan(s) were in effect, to the same extent that the tenants were protected prior to the prepayment and for the

length of time remaining under the restrictions prior to the prepayment.

### Exhibit A–4—Required Clauses for Prepaid Projects Which Became Subject to Restrictive-Use Provisions at the Time of Prepayment

Multi-Family Housing projects which were not subject to restrictive-use provisions prior to prepayment may, generally, only be prepaid if the title to the real property is made subject to one of the following restrictive-use provisions and the provisions are filed with the security releases. The restrictive-use provisions apply to all loans made prior to December 21, 1979, that were not subsequently made subject to restrictive-use provisions as a result of servicing actions after December 21, 1979. The restrictions will also be used for sales of projects at foreclosure for projects not previously subject to restrictive-use provisions. The conditions for which restrictive-use provisions are not required are set forth in § 1965.215 of this subpart.

(A) 20-year Restrictive-Use Provisions. These provisions are used when the owner agrees to restrictive-use provisions for a minimum of a 20-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public agency in accordance with Farmers Home Administration (FmHA) regulation upon termination of the 20-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–2 to this subpart.

"The owner and any successors in interest agree to use the housing as required in 7 CFR part 1965, subpart E or other regulations then extant during this 20-year period beginning (date of the last loan or servicing action) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the Government. Prior to (date period ends) no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner also agrees to keep a notice posted as the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (date), the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA."

(B) *Loans Over 20 Years Old.* These provisions are used when all loans were obligated and applicable servicing actions took place for the project over 20 years prior to the prepayment, and the owner enters into an agreement to immediately attempt to offer the project for sale to a nonprofit organization or public agency in accordance with § 1965.216 of this subpart. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–3 of this subpart.

"The owners and any successors in interest agree to immediately offer to sell the housing and related facilities to a qualified nonprofit organization or public agency, as determined by Farmers Home Administration."

(C) *Current Tenants Restrictive-Use Provisions.* These provisions are used when the owner enters into an agreement that no current tenants will be displaced due to a change in the use of the housing or an increase in rental or other charges, as a result of the prepayment, for as long as the current tenants wish to remain at the project. The provisions may only be used if it is determined by FmHA that the conditions specified in this subpart, addressing the effect of prepayment on minorities, handicapped individuals, and families with children in the project and market area, can be met, allowing an exception from the requirement to offer the project to sale to a nonprofit organization or public body. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–4 to this subpart.

"The owner and any successors in interest agree to use the housing for the purpose of housing eligible low- and moderate-income people occupying the project at the time the prepayment was accepted, as provided in 7 CFR part 1965, subpart E, and other applicable regulations then extant. No eligible person currently occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant vacates, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates for current tenants as of the date of the prepayment will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision as well as the Government."

### Exhibit B—Report on Prepayment [Reserved]

### Exhibit C—Checklist for Reporting Prepayment [Reserved]

### Exhibit D—Methodology for Determining Prepayment Incentives [Reserved]

### Exhibit D–1—Worksheet for Incentive Calculations [Reserved]

### Exhibit E—Administration Guidance for Making Prepayment Determinations [Reserved]

### Exhibit F—Prepayment and Displacement Prevention Grant Agreement

This agreement dated _____ _____, 19____, between _____which is organized and operating under _____ _____ _____herein call "Grantee,"

(Authorizing Statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," Witnesseth:

Whereas:

Grantee has determined to undertake a project of acquisition of a multi-family housing project financed by the Grantor to house rural residents and has duly authorized the undertaking of such a project.

Grantee wishes to obtain grant funds to assist in the costs of acquisition of such project.

Grantor has agreed to grant the Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time it is determined that the Grantee has failed to comply with the conditions of the grant.

Now, therefore, In consideration of said grant by Grantor to Grantee, to be made pursuant to section 502 of the Housing Act of 1949 to cover any direct costs (other than the purchase price) incurred by the organization or agency in purchasing and assuming responsibility for the housing and related facilities involved, as defined by applicable Farmers Home Administration (FmHA) instructions.

Grantee agrees that grantee will: A. Attempt to acquire said project in accordance with FmHA regulations.

B. If acquired, either directly or through contract, manage, operate and maintain the project continuously in an efficient and economic manner.

C. Make services of said project available within its capacity to all eligible rural residents without discrimination because of race, color, religion, sex, age, handicap, marital or familial status, or national origin.

For more specific requirements see 7 CFR part 15, subparts A and B.

D. Provide Grantor with such periodic reports as it may require and permit periodic inspections of its operations by a representative of the Grantor.

E. To execute Forms FmHA 400–1, "Equal Opportunity Agreement," and FmHA 400–4, "Assurance Agreement," and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan or transfer being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

F. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant, thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made. For further provisions regarding enforcement see 7 CFR 3016.43.

G. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

H. Provide Financial Management Systems, as more specifically provided in 7 CFR 3016.20, which will include:

1. Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds. Grantee shall adequately safeguard all such funds and shall assure that they are used solely for authorized purposes.

4. accounting records supported by source documentation.

I. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

J. Provide an audit report pursuant to 7 CFR part 3016 prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

K. Agree to account for and to return to Grantor interest earned on grant funds pending that disbursements for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

L. Except as specifically provided in this agreement, comply with the applicable provisions of USDA's general grant regulations set out in 7 CFR part 3016.

M. Comply with the requirements of 7 CFR part 3017, subpart F, relating to drug-free workplace requirements and 7 CFR part 3018 relating to restrictions on lobbying.

Grantor agrees that it: A. Will make available to Grantee for the purpose of this Agreement not to exceed $_____which it will advance to Grantee in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist grantee with such assistance as Grantor deems appropriate in acquiring the project.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement: This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph F of this exhibit or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the grant will not produce beneficial results commensurate with the further expenditure of funds.

In Witness Whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized _____and attested and its corporated seal affixed by its duly authorized

_____

Attest: _____
By _____
(Title) _____

By _____
(Title) _____

United States of America Farmers Home Administration.
By _____
(Title) _____

**Exhibit G–1—Restrictive-Use Agreement**

**(To be used with exhibit A–3 to this subpart)**

(Name of Borrower), herein referred to as owner, and any successors in interest agree that the (Name of Project), herein referred to as housing, will be used only as authorized under section 514 or 515 of title V of the Housing Act of 1949, as amended, and 7 Code of Federal Regulations (CFR) part 1965, subpart E, or other Farmers Home Administration (FmHA) regulations then in existence until (Date shown on existing restrictive-use provisions) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. During the restrictive period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set so that the effect will not differ from what would have been had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until (Date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with

the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title) _____

**Exhibit G–2—Restrictive-Use Agreement**

(To be used with paragraph (A) to exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, as required in 7 Code of Federal Regulations (CFR) part 1965, subpart E, or other Farmers Home Administration (FmHA) regulations then in existence during the 20-year period beginning (date of the last loan or servicing action) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to (date period ends) to eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions or occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending (date) the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertification, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until (date restrictive-use period ends):

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title) _____

**Exhibit G–3—Restrictive-Use Agreement**

(To be used with paragraph (B) to exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to immediately attempt to sell the (Name of Project), herein referred to as housing and related facilities to a qualified nonprofit organization or public agency, as determined by Farmers Home Administration (FmHA) in accordance with the provisions of 7 Code of Federal Regulations (CFR) part 1965, subpart E. The owner agrees to use the housing as required in 7 CFR part 1965, subpart E, or other regulations then in existence during the sales period for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to a sale to a nonprofit organization or public agency, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the sales period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the sales period.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930 C, specific to tenant rights and relations for the duration of the sales period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until a sale to nonprofit organization or public agency takes place:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title) _____

**Exhibit G–4—Restrictive-Use Agreement**

(To be used with paragraph (C) to exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, for the purpose of housing low- and moderate-income people occupying the project at the time the prepayment was accepted, as required 7 Code of Federal Regulations (CFR) part 1965, subpart E, and other applicable Farmers Home Administration (FmHA) regulations then in existence. No eligible person occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be

established to meet these conditions for these tenants such that the effect will not differ from what would have been, had the project remained in the FmHA program. Existing tenants are protected to ensure that none experience new or increased rent overburden as a result of owner actions until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a visible place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant voluntarily vacates, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision, as well as the United States.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the remaining useful life of the project or until the last existing tenant voluntarily vacates. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until the last existing tenant voluntarily vacates:

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (Name of Owner) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title) _____

Dated: July 2, 1993.

**Bob Nash,**

*Under Secretary for Small Community and Rural Development.*

[FR Doc. 93-16613 Filed 7-20-93; 8:45 am]

BILLING CODE 3410-07-M

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**7 CFR Part 1955**

**RIN 0575-AB21**

## Disposal of Inventory Property

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its regulation on the sale of inventory property. This action is being taken to comply with recent legislation. The intended effect is to encourage sale of groups of section 502 inventory property as affordable rental housing.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Janis D. Lange, Loan Specialist, Multi-Family Housing Servicing and Property Management Division, FmHA-USDA, room 5331, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250, telephone: (202) 720-1616.

**SUPPLEMENTARY INFORMATION:**

### Classification

This rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprise to compete with foreign-based enterprises in domestic or import markets. In addition, this regulation has been reviewed in light of section 2 of E.O. 12778 and meets the applicable standards provided in section 2(a) and 2(B)(2) of that Order.

### Background/Discussion

Public Law 101-625, the "Cranston-Gonzalez National Affordable Housing Act," dated November 29, 1990, amends the Housing Act of 1949, as amended. The Cranston-Gonzalez Act requires the Secretary to allow sales of Government-owned inventory property for purposes of converting section 502 single family homes to rental units under section 514 with mortgages containing repayment terms with up to 33 years. In addition, these loans may be made to for-profit entities, which have good records of providing low income housing under section 515. These sales will be made to all qualified applicants regardless of race, religion, color, age or sex. FmHA is amending its regulations to comply with the provisions of this law.

It is the policy of this Department that rules relating to public property loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. However, this revision is not being published for comment because the statute mandates specific action.

### Programs Affected

These changes affect the following FmHA programs listed in the Catalog of Federal Domestic Assistance:

10.405 Farm Labor Housing Loans and Grants
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.427 Rural Rental Assistance Payments

### Intergovernmental Consultation

For the reasons set forth in the Final Rule and related Notice(s) to 7 CFR part 2015, subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials: 10.404-Emergency Loans; 10.406-Farm Operating Loans; 10.407-Farm Ownership Loans; 10.416-Soil and Water Loans. However, this activity impacts the following programs which are subject to intergovernmental consultation with State and local officials: 10.405-Farm Labor Housing Loans and Grants; 10.410-Low Income Housing Loans; 10.411-Rural Housing Site Loans; 10.415-Rural Rental Housing Loans; 10.417 Very Low Income Housing Repair Loans and Grants.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1949, Public Law 92-100, an Environmental Impact Statement is not required.

**List of Subjects in 7 CFR Part 1955**

Government acquired property, Sale of government acquired property, Surplus government property.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart C—Disposal of Inventory Property

2. In Section 1955.114, the introductory text of paragraph (c) is revised to read as follows:

**§ 1955.114 Sales steps for program property (housing).**

* * * * *

(c) *Single family inventory converted to MFH.* Written offers by nonprofit organizations, public bodies or for-profit entities, which have good records of providing low income housing under section 515, will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH. Section 514 credit sale mortgages may contain repayment terms up to 33 years and section 515 credit sale mortgage terms may be up to 50 years.

* * * * *

Dated: May 20, 1993.

**Bob Nash,**

*Under Secretary for Small Community and Rural Development.*

[FR Doc. 93–17226 Filed 7–20–93; 8:45 am]

BILLING CODE 3410–07–M

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**7 CFR Part 1940**

**RIN 0575–AB60**

## Section 515 Nonprofit Set Aside Funds

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its section 515 funding regulations. This action is taken to implement section 708 of the Housing and Community Development Act of 1992 (herein referred to as the "Act") which revises section 515 (w) of the Housing Act of 1949. Section 708 reauthorizes the Nonprofit Set Aside (NPSA) and sets the percentage for FY 93 and FY 94 at 9 percent; modifies the applicant eligibility requirements for NPSA funds to allow a partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary, to receive consideration for NPSA funds; and modifies the provisions for reallocation and pooling of unused NPSA funds. The intended effect of this rulemaking action is to bring FmHA regulations into compliance with the Act.

**DATES:** This interim final rule is effective July 21, 1993. Written comments on this interim final rule must be received on or before September 20, 1993.

**ADDRESSES:** Submit written comments, in duplicate, to the Office of the Chief, Regulation Analysis and Control Branch, Farmers Home Administration, room 6348, South Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Linda Armour, Loan Specialist, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5349—South Agriculture Building, Washington, DC 20250, telephone (202) 720–1608.

**SUPPLEMENTARY INFORMATION:**

### Classification

This interim final rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net effect is to comply with section 708 of the Act.

### Background/Discussion

Section 708 of the Act requires that the percentage of Nonprofit Set Aside (NPSA) funds for fiscal years 1993 and 1994 be set at 9 percent of the amounts available to each State for those years; that an eligible applicant for NPSA funds may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary; and requires that, beginning in FY 94, NPSA funds not used by any State within 9 months of the allocation be pooled and made available for any other eligible nonprofit entity in any State, with any funds remaining after funds have been pooled and obligated for 30 days being returned to the States on a proportionate basis for use by any other eligible entity. FmHA is amending its regulations to comply with the provisions of the Act.

Section 708 also provides the authority for the Secretary to provide amounts from NPSA in excess of $750,000 in Small State Allocation Set Aside (SSASA) states if such amounts are necessary to finance a project. While this provision will allow development of larger proposals in many states, FmHA is concerned that it may create a backlog of loan requests for SSASA funds.

States in which 9% of their allocation is less than $750,000 are considered SSASA states. Each SSASA state contributes 9% of their allocation to the SSASA pool of funds. Based upon FY 93 allocations, 28 states are SSASA states. Nine percent of these 28 states' allocation equals $8,804,000. Hence, 28 states will be competing for $8.8 million. If each SSASA state were to develop one application of $876,000 (the average cost of a typical 24-unit project), this would create approximately $24.5 million in loan requests against $8.8 million in available funds. With the anticipated demand for NPSA funds as a result of section 708, we would anticipate there to be a backlog for NPSA, and especially SSASA funds. This delay may be minimized by the fact that these preapplications may also compete for non-NPSA funds and such guidance in provided in the regulation.

To minimize backlogs, the interim final rule encourages loan requests in SSASA states of less than $750,000. To implement the aforementioned provisions of section 708, SSASA states will be permitted to request sufficient funds to develop an average sized project based upon the average construction costs in the state. For example, if the average project size in SSASA State A is 24 units and the average construction cost in the state is $35,000 per unit, the State may be authorized to access $840,000 from SSASA. FmHA believes that some type of ceiling is necessary, otherwise, the delay for funding could be significant. FmHA is especially interested in comments on this provision of section 708 of the Act, and how to minimize

delays in potentially funding SSASA requests.

With regard to pooling of unused NPSA funds, FmHA has interpreted provisions of the Act which reference "9 months after the allocation" to mean 9 months after the beginning of the Fiscal Year; October 1 of each year. Otherwise, if the allocation of section 515 funds was not made available until January 1, the authority for the Section 515 program (which expires September 30th of each year) would end before pooling could begin.

FmHA has also removed administrative provisions, such as the amount of funds, pooling dates, etc., from the text of the regulation. Instead, the Agency intends to provide this guidance in Attachments which will not be published in the Federal Register, but will be available in any FmHA State Office. Much of the administrative guidance, such as amount of NPSA funds, pooling dates, etc., is already published as a Notice in the Federal Register each year when the Agency announces the availability of Housing funds. During the comment period on this interim final rule, copies of the Attachments referenced herein may be obtained from Linda Armour of FmHA at the aforementioned address. Utilizing nonpublished Attachments will provide the Agency with the ability to make administrative changes when the program is reauthorized rather than the lengthy process for promulgating a revised regulation. FmHA proposes to publish such administrative guidance in a Notice in the Federal Register as necessary.

FmHA has provided guidance on pooling of NPSA funds in a separate Attachment. A separate Attachment is used because pooling for FY 93 and FY 94 will be handled differently as required by statute. Briefly, only SSASA funds are pooled in FY 93. Funds from Large State Allocation Set Aside (LSASA) are not pooled. Beginning in FY 94, unused SSASA and LSASA funds will be pooled together for access by any state.

FmHA has revised its definition of nonprofit to comply with section 708 of the Act. More processing guidance for NPSA requests is included, reemphasis of Nondiscrimination policies is added, and consistent with previous years, consumer cooperatives and Indian Tribes are included in the definition of nonprofit.

## Discussion of Use of Interim Final Rule

It is the policy of this Department that rules relating to public property loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to comply with a mandatory statute in the Act and any delay would be contrary to the public interest. The Secretary of Agriculture has provided an exemption to proposed rulemaking in accordance with Section 534 of the Housing Act of 1949. Comments are still being solicited and will be considered in developing a final rule. We anticipate publication of the final rule to coincide with the beginning of Fiscal Year 1994.

## Programs Affected

The affected program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

## Intergovernmental Consultation

For the reasons set forth in the final rule, related Notice(s) to 7 CFR part 3015, subpart V, program 10.415 is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

## Civil Justice Reform

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

## Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

## List of Subjects in 7 CFR Part 1940

Allocations, Administrative practice and procedure, Agriculture, Grant programs-Housing and community development, Loan programs-Agriculture, Rural areas.

Therefor, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

## Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Exhibit B to subpart L is revised to read as follows:

### Exhibit B to Subpart L—Section 515 Nonprofit Set Aside (NPSA)

I. *Objective:* To provide eligible nonprofit entities with a reasonable opportunity to utilize Section 515 funds.

II. *Background:* The Cranston-Gonzalez National Affordable Housing Act of 1990 established the statutory authority for the Section 515 NPSA funds.

III. *Eligible entities.* Amounts set aside shall be available only for nonprofit entities in the State, which may not be wholly or partially owned or controlled by a for-profit entity. An eligible entity may include a partnership, including a limited partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. For the purposes of this exhibit, a nonprofit entity is an organization that:

A. Will own an interest in a project to be financed under this section and will materially participate in the development and the operations of the project; and

B. Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986; and

C. Has among its purposes the planning, development, or management of low-income housing or community development projects; and

D. Is not affiliated with or controlled by a for-profit organization; and

E. May be a consumer cooperative, Indian tribe or tribal housing authority.

IV. *Nondiscrimination.* FmHA reemphasizes the nondiscrimination in use and occupancy, and location requirements of § 1944.215 of subpart E of part 1944 of this chapter.

V. *Amount of Set Aside.* See Attachment 1 of this exhibit (available in any FmHA State Office):

A. *Small State Allocation Set Aside (SSASA).* The allocation for small States has been reserved and combined to form the SSASA, as shown in Attachment 1 of this exhibit (available in any FmHA State Office). The definition of small State is included in Attachment 1 of this exhibit (available in any FmHA State Office).

B. *Large State Allocation Set Aside (LSASA).* The allocation for large States has been reserved in the amounts shown in Attachment 1 of this exhibit (available in any FmHA State Office). The definition of large State is included in Attachment 1 of this exhibit (available in any FmHA State Office).

C. *NPSA Rental Assistance (RA).* NPSA RA has been reserved in the National Office as shown in Attachment 1 of this exhibit (available in any FmHA State Office).

VI. *Access to NPSA funds and RA.* RA is available and may be requested, as needed, with eligible loan requests. NPSA funds and RA should be requested by the State Director using a format similar to Attachment 2 of this exhibit (available in any FmHA State Office). Funds are available as follows:

A. *SSASA:* The SSASA is available to any SSASA State on a first-come-first-served basis until pooling. See Attachment 3 of this exhibit (available in any FmHA State Office) for information regarding pooling.

B. *LSASA:* LSASA states may request LSASA funds up to the amount the state contributed to LSASA until pooling. See Attachment 3 of this exhibit (available in any FmHA State Office) for information regarding pooling.

VII. *General Information on priority/processing of Preapplications.*

A. Preapplications/applications for assistance from eligible nonprofit entities under this subpart must continue to meet all loan making requirements of subpart E of part 1944 of this chapter.

B. A separate processing list will be maintained for NPSA loan requests.

C. The State Director may issue Form AD–622, "Notice of Preapplication Review Action", requesting a formal application to the highest ranking preapplication(s) from eligible nonprofit entities defined in paragraph III of this exhibit as follows:

1. *LSASA.* In LSASA States, AD–622s may not exceed 150 percent of the amount the State contributed to the LSASA. No single Form AD–622 may exceed the amount of funds the State contributed to LSASA.

2. *SSASA.* In SSASA States, AD–622s should not exceed the greater of $750,000 or 150 percent of the amount the State contributed to the SSASA; except that the State Director in a SSASA State may request authorization to issue a Form AD–622, in an amount in excess of $750,000 if additional funds are necessary to finance an average-size proposal based upon average construction costs in the state. For example, if the average size proposal currently being funded in the state is 24 units, and the average construction cost in the state is $35,000 per unit, the state may request authorization to issue an AD–622 for $840,000. The State Director will submit such requests to the National Office including data reflecting average size/cost projects in the State. No single Form AD–622 may exceed the amount of funds the State may receive from SSASA.

D. All AD–622s issued for proposals to be funded from NPSA will be subject to the availability of NPSA funds. Form AD–622 should contain the following or similar language: "This Form AD–622 is issued subject to the availability of Nonprofit Set-Aside (NPSA) funds."

E. If a preapplication requesting NPSA funds has sufficient priority points to compete with non-NPSA loan requests based upon the District or State allocation (as applicable), the preapplication will be maintained on both the NPSA and non-NPSA rating/ranking lists.

F. Provisions for providing preference to loan requests from nonprofits is contained in § 1944.231 of subpart E of part 1944 of this chapter. Limited partnerships, with a nonprofit general partner, do not qualify for nonprofit preference.

VIII. *Exception authority.* The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this exhibit which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or Rural Rental Housing program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from NPSA, or restrict participation in the set aside.

Dated: July 7, 1993.

**Bob Nash,**

*Under Secretary for Small Community and Rural Development.*

[FR Doc. 93–17227 Filed 7–20–93; 8:45 am]

BILLING CODE 3410–07–M

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## 7 CFR Part 1980

RIN 0575–AB35

## Business and Industrial Loan Program

**AGENCY:** Farmers Home Administration and Rural Development Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) and Rural Development Administration (RDA) amend their guaranteed loan program regulations to revise procedures for guaranteeing loans to businesses impacted by natural disasters such as Hurricane Andrew, Hurricane Iniki, and Typhoon Omar as well as providing such assistance for certain injuries caused by microbursts of wind. This action is needed to implement provisions of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. The intended effect is to make loan guarantees available to refinance debts for agricultural producers impacted by natural disasters and provide flexibility to use application and processing procedures of either the Business and Industry Program or Farmer Programs.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:**

M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, room 6327, 14th & Independence Avenue SW., Washington, DC 20250, Telephone (202) 720–6819.

**SUPPLEMENTARY INFORMATION:**

### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.422 Business and Industrial Loans.

### Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this regulation have been approved for use through February, 1995 by the Office of Management and Budget (OMB) and assigned OMB control number 0575–0029.

### Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

### Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

**Environmental Impact Statement**

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, as Environmental Impact Statement is not required.

**Discussion of the Rule**

FmHA and RDA are implementing provisions of the Dire Emergency Supplemental Appropriations Act by amending the existing regulations for the Business and Industry (B&I) loan program. B&I loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock or damage to building structures from a microburst wind occurrence in 1992. Although part of the B&I program, loan guarantees made under this new authority are called Business and Industry Disaster (BID) loans and have some provisions different from other B&I loans.

The regulations implementing BID loans were published as a final rule with comment period in 57 FR 45986 on October 5, 1992 with a 30 day comment period. Two letters were received. One contained two comments.

One comment was that the regulation as published makes refinancing an ineligible loan purpose for loans to agriculture producers and that it should be eligible. It was never the intent of FmHA/RDA to make refinancing ineligible and this action will amend the regulation to correct that problem.

The other comment was that the regulation also makes the purchase of land ineligible and the writer thought land purchases should be allowed. The BID program is limited to financing costs that are a consequence of certain natural disasters. FmHA/RDA believes that the purchase of land would be a change in or expansion of the business and not a consequence of the natural disaster. No change is made regarding the purchase of land.

The third comment objected to the distinction made between agriculture and commercial nurseries in the BID program. The suggestion was that the regulation should be revised to make a distinction in commercial nurseries between nursery farms and retail or landscape nurseries and to recognize that nursery farming is agriculture production while retail or landscape nurseries are not. The definitions of agriculture and commercial nurseries in the section published for comment are consistent with, and need to be consistent with, definitions given in other sections of the regulation. The reason for making a distinction between agriculture and commercial nurseries is that businesses engaged in agriculture production are not eligible for guaranteed Business and Industry (B&I) loans. The BID program is the only exception. The definitions used in the BID program allow all nurseries and agricultural production to be eligible through agriculture production, as defined in the regular B&I program, is not. To change the definition as suggested would make nursery farmers ineligible for regular B&I loans. No change is made in this regard.

This final rule contains additional changes that are a matter of internal management.

**List of Subjects in 7 CFR Part 1980**

Loan programs—Business and Industry—Rural development assistance, Rural areas.

Accordingly, part 1980, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

**PART 1980—GENERAL**

1. The authority citation for part 1980 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23 and 2.70.

**Subpart E—Business and Industrial Loan Program**

2. Section 1980.498 is amended by revising the introductory text of paragraph (m)(5), by revising the introductory text of paragraph (m)(6), by revising the heading of paragraph (m)(8), and by adding paragraph (m)(8)(iii) to read as follows:

**§ 1980.498 Business and industry disaster loans.**

* * * * *

(m) * * *

(5) *Filing and processing preapplications and applications.* If the applicant has already developed material for an FmHA Farmer Programs loan or if the financial and production information required by § 1980.113 of subpart B of part 1980 of this chapter is needed to document repayment ability or is required by the lender, § 1980.113 of subpart B of part 1980 of this chapter may apply with the following exceptions:

* * * * *

(6) *Evaluation of applications.* If the application is developed and processed in accordance with § 1980.113 of subpart B of part 1980 of this chapter, the provisions outlined in § 1980.114 of subpart B of part 1980 of this chapter applies with the following exceptions:

* * * * *

(8) *BID agriculture loan purposes.*

* * *

* * * * *

(iii) Refinancing in accordance with paragraphs (c)(1) and (c)(2) of this section and §§ 1980.411(a)(11), 1980.451(i)(19) and 1980.452 ADMINISTRATIVE C [except 1980.452 ADMINISTRATIVE C 1(d)] of this subpart.

* * * * *

Dated: June 24, 1993.

**Bob J. Nash,**

*Under Secretary, Small Community and Rural Development.*

[FR Doc. 93–17228 Filed 7–20–93; 8:45 am]

BILLING CODE 3410–07–M

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**DEPARTMENT OF JUSTICE**

**8 CFR Part 3**

**[AG Order No. 1764–93]**

**Executive Office for Immigration Review; Criminal Conviction Records**

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes the types of documents that are admissible in proceedings before an Immigration Judge to prove a criminal conviction. It expands the class of documents that will be accepted by an Immigration Judge, and it includes the use of abstracts of convictions and records which have been electronically transferred by individual states to the Immigration and Naturalization Service ("the Service"). These changes implement section 507 of the Immigration Act of 1990 (IMMACT).

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone, (703) 305–0470.

**SUPPLEMENTARY INFORMATION:** The types of documents that may be accepted by Immigration Judges to prove a criminal

conviction have been expanded. Section 507 of IMMACT amended the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) by requiring that individual states that receive grants under the Omnibus Act provide, without fee to the Service, certified records of conviction of aliens who have been convicted of violating the criminal laws of the state. The types of records that will be provided to the Service to prove a criminal conviction may vary from state to state, and provisions have been made to recognize and accept different state documents in immigration proceedings.

A proposed rule concerning criminal conviction records was published on December 22, 1992 at 57 FR 60740. Nineteen comments were received concerning the proposed rule. The comments discussed both the overall effect of the rule, as well as specific suggestions for clarification. A discussion of the comments follows.

Many commenters supported the rule as proposed, but suggested that certain provisions needed clarification. Several commenters requested that the rule indicate that certification of abstracts by state officials may be made by means of a computer-generated signature and statement of authenticity submitted as part of the record. While the proposed rule did not expressly state how a certification of the record was to be made, it was anticipated that a computer-generated certification would be the method used by the state official. The final rule clarifies that any record of conviction or abstract that has been submitted by electronic means to the Service from a state or court record repository may be certified by means of a computer-generated signature and statement of authenticity.

In addition, the proposed rule limited the authority to certify the record to a state "law enforcement" official associated with the state's record repository. Several commenters noted that state officials who manage or maintain the record repositories are not always law enforcement officials. The Bureau of Justice Administration (BJA), which is charged with the administration of section 507 of IMMACT, agrees. Therefore, the reference to "law enforcement" official has been removed from the final rule. Certification may be provided by any state official who is associated with the state's repository of criminal justice records.

The final rule further clarifies that a record may be electronically transmitted to the Service from both the state record repository or the court record repository. Section 3.41(a)(5) provides that an abstract of a record of conviction is admissible if prepared either by the court in which the conviction was entered, or by a state official associated with the state's repository of criminal justice records. However, proposed paragraph (c)(1) referred only to the certification made by the state official associated with the record repository, and omitted reference to certification by an official associated with the court repository. This omission has been corrected, and the rule clarifies that both a state official and a court official may certify abstracts of records from their respective repositories.

One commenter suggested that the rule be expanded to include admission of official criminal history records, or "rap sheets". While a "rap sheet" may contain some evidence of a criminal conviction, it might not include the essential aspects of a record of conviction. Therefore, while an official criminal history record, or "rap sheet" may be admissible under paragraph (d) of the rule as some evidence of a criminal conviction, it lacks the essential protections that an abstract of conviction contains. The abstract, which requires specific and detailed information of a record of a criminal conviction, is intended to provide a reliable and accurate record of conviction. The abstract of conviction will originate directly from the state or court record repositories, and will be certified by both the state official who prepares the record, and the Service official who receives the record. These protections will ensure the completeness, accuracy and reliability of the records.

Commenters who objected to the rule as proposed argued that the rule would diminish the burden upon the INS to prove deportability by "clear, convincing and unequivocal evidence" by allowing documents other than the record of conviction to establish deportability. This is incorrect. The standards for establishing deportability have not been relaxed, nor has the burden of proof shifted from the government to the alien. While the rule sets forth the types of records that are admissible to prove a criminal conviction, and expands the types of documents which have traditionally been submitted to establish a criminal conviction, the burden remains with the Service to prove the underlying issue of deportability by "clear, convincing and unequivocal" evidence. To meet this burden of proof, it may be necessary for the Service to introduce evidence beyond the initial documents presented. It is the Immigration Judge who will determine if the records submitted meet the required standard of proof. As was stated when the proposed rule was published, the rule speaks to admissibility only; it does not state that the document or record is dispositive of the existence of a criminal conviction. For this reason, the title of the rule has been changed from "Record of Conviction" to "Evidence of Criminal Conviction" to more accurately reflect the content of the rule.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612. The rule meets the applicable standards provided in section 2(a) and 2(b)(2) of E.O. 12778.

**List of Subjects in 8 CFR Part 3**

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, title 8, chapter I of the Code of Federal Regulations is amended as follows:

## PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.41 is added to part 3 to read as follows:

### §3.41 Evidence of criminal conviction.

In any proceeding before an Immigration Judge,

(a) Any of the following documents or records shall be admissible as evidence in proving a criminal conviction:

(1) A record of judgment and conviction;

(2) A record of plea, verdict and sentence;

(3) A docket entry from court records that indicates the existence of a conviction;

(4) Minutes of a court proceeding or a transcript of a hearing that indicates the existence of a conviction;

(5) An abstract of a record of conviction prepared by the court in which the conviction was entered, or by a state official associated with the state's repository of criminal justice records, that indicates the following: The charge or section of law violated, the disposition of the case, the existence

and date of conviction, and the sentence;

(6) Any document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(b) Any document or record of the types specified in paragraph (a) of this section may be submitted if it complies with the requirement of § 287.6(a) of this chapter, or a copy of any such document or record may be submitted if it is attested in writing by an immigration officer to be a true and correct copy of the original.

(c) Any record of conviction or abstract that has been submitted by electronic means to the Service from a state or court shall be admissible as evidence to prove a criminal conviction if it:

(1) Is certified by a state official associated with the state's repository of criminal justice records as an official record from its repository or by a court official from the court in which conviction was entered as an official record from its repository. Such certification may be by means of a computer-generated signature and statement of authenticity; and,

(2) Is certified in writing by a Service official as having been received electronically from the state's record repository or the court's record repository.

(d) Any other evidence that reasonably indicates the existence of a criminal conviction may be admissible as evidence thereof.

Dated: July 13, 1993.

**Janet Reno,**

*Attorney General.*

[FR Doc. 93–17268 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–01–M

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Parts 92 and 130**

**[Docket No. 91–021–5]**

**RIN 0579–AA43**

## User Fees—Veterinary Diagnostics

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are establishing user fees for certain veterinary diagnostic services we provide. These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended. The effect of these regulations is to require certain persons to pay fees for services they receive.

We are also amending certain provisions of our current regulations for user fees to either make them consistent with this rule or to clarify their intended meaning. In addition, we are amending certain provisions of our current regulations for user fees that pertain to debtors who fail to pay the fees when due, to make them consistent with provisions of our overtime regulations.

**EFFECTIVE DATE:** September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joan Arnoldi, Director, National Veterinary Services Laboratories, VS, APHIS, USDA, 1800 Dayton Road, P.O. Box 844, Ames, IA 50010, (515) 239–8266.

**SUPPLEMENTARY INFORMATION:**

### Background

*User Fees Authorized Under the Farm Bill*

The Food, Agriculture, Conservation and Trade Act of 1990, as amended, referred to below as the Farm Bill, authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance. (sec. 2509(c)(1) of the Farm Bill).

The Farm Bill further authorizes the Secretary to prescribe and collect fees to recover the costs of carrying out the provisions of 21 U.S.C. 114a, as amended which relate to veterinary diagnostics. (sec. 2509(c)(2) of the Farm Bill) 21 U.S.C. 114a concerns control and eradication of communicable livestock and poultry diseases. Section 2509(c)(5)(C)(ii) also provides procedures for the Secretary to follow in the case of non-payment of assessed fees, late payment penalties, or accrued interest. The section states that the Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest.

Section 2509(d) of the Farm Bill provides in addition that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of section 2509.

*Previously Published Regulations*

On August 7, 1991, we published a document in the **Federal Register** (56 FR 37481–37499, Docket No. 91–021) in which we proposed to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. We also proposed in that document to amend 9 CFR ch. I to establish user fees for veterinary diagnostic services we provide. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells, and to identify those organisms and agents.

On August 21, 1991, and September 24, 1991, documents making various corrections to our published proposal were published in the **Federal Register** (56 FR 41605 and 56 FR 48270).

We solicited comments concerning our proposal for a 30-day period ending September 6, 1991. We received 176 comments by that date. They were from shipping interests, both international and domestic, members of Congress, airlines, state governments, representatives of agricultural industries, importers, exporters, veterinarians, and producers.

After carefully considering all of the comments received, we published a final rule implementing collection of user fees for various inspection and quarantine services. The final rule was published in the **Federal Register** on January 9, 1992 (57 FR 755–773, Docket No. 91–135). However, we did not include in the final rule user fees proposed for veterinary diagnostic services. Instead, we stated that we would "consider further the comments we received on this issue and decide what action to take as soon as feasible."

*Proposed Rule*

On March 22, 1993, we published a document in the **Federal Register** (58 FR 15292–15301, Docket No. 91–021–4) in which we proposed to charge user fees for certain veterinary diagnostic services, including providing certain diagnostic reagents, slide sets, and tissue sets. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells, and to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests required to import or export animals or birds; (2) conducting diagnostic testing on tissue samples referred to the Animal and Plant Health Inspection Service (APHIS or Agency) by veterinarians, State animal health officials, or university representatives who want assistance in establishing or confirming a diagnosis (referred to in this document as reference assistance testing); and (3) providing certain diagnostic reagents, slide sets, and

tissue sets. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. We also consider sterilization by gamma radiation to be a veterinary diagnostic service.

We also proposed to amend the regulations to add definitions of "National Veterinary Services Laboratories (NVSL)" and "National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL)," which are the laboratories where we provide the veterinary diagnostic services covered by this proposed rule, and definitions of "Diagnostic reagent," "Privately operated permanent import-quarantine facility," "Reference assistance testing," and "State animal health official".

In addition, we proposed to amend certain provisions of our current user fee regulations for service provided under title 9, Code of Federal Regulations, to either make them consistent with what we are proposing here or to clarify their intended meaning. We also proposed to amend certain provisions of our current regulations that pertain to debtors who fail to pay fees when due, to make them consistent with certain provisions of our overtime regulations. Further, we proposed to make certain nonsubstantive technical changes.

We solicited comments concerning our proposal for a 30-day comment period ending April 21, 1993. We received 16 comments by that date. They were from veterinarians, veterinary medical associations, and representatives of State and Federal government agencies, including State universities. We carefully considered all of the comments we received. They are discussed below by topic.

*Cost of Doing Business*

Some commenters stated that the fees would increase their cost of doing business. We realize that payment of the user fees will increase the up-front cost of doing business. Various persons are currently subsidized by the taxpayers in general, in that those who benefit from NVSL services do not directly pay for the services. Requiring persons to pay a fee for the services they receive would eliminate the subsidy, general appropriations from taxes would no longer be needed, and costs to taxpayers in general would be reduced.

*General Economic Situation*

Many comments objected in general terms to all the proposed APHIS user fees. Many maintained the proposed APHIS user fees would be detrimental to the livestock industry in general, and individual businesses in particular. Some comments proposed that we exempt certain industries or classes of users from the proposed user fees. Among those mentioned were pet (companion animal) owners. Commenters argued that we should consider the current economic situation, both in the United States and abroad, and the financial health of affected businesses and industries, before adopting APHIS user fees. In addition, several commenters mentioned that NVSL is the sole source of certain tests and reagents.

We are not exempting any industries or businesses from APHIS user fees based on these comments. Because of budget constraints, we do not have the option either not to charge user fees, or to charge user fees which recover less than the full cost of providing a service. If we did so, we would not collect enough money to support the service. However, we have attempted to minimize the cost of our services, thereby keeping APHIS user fees at the lowest possible level.

*Alternate Funding for NVSL Services*

Several comments suggested that NVSL be funded either from general tax revenues, or with funds transferred from other United States Department of Agriculture (USDA) agencies.[1] Commenters stated that the Federal government has a "responsibility to provide a centralized diagnostic laboratory" and that NVSL is for "the common good."

APHIS's appropriation includes funds for NVSL to develop new technology. However, APHIS's appropriation does not include enough funds to continue to provide all NVSL services to the public without charge. Instead, APHIS has been authorized by statute, as explained above, to charge user fees for certain NVSL services. Any increase in our general appropriation is a Congressional prerogative over which we have no control.

*Quality and Quantity of NVSL Services, Including Disease-Monitoring*

Many commenters stated that charging user fees for NVSL services would reduce the quality and quantity of services provided, ultimately harming disease identification and control efforts. Several commenters mentioned specific diseases, such as Eastern equine encephalomyelitis (EEE) and salmonellosis. We have carefully considered these comments, but have determined not to make any changes based on them.

The NVSL does provide services beyond merely performing tests and supplying reagents. Among other things, it collects data and compiles statistics on the incidence of various livestock diseases in the United States, acts as the final arbiter on test results, and helps prevent the introduction of dangerous foreign (exotic) animal diseases into the United States.

It is evident from letters we received that many commenters assume NVSL will be charging APHIS user fees for tests and reagents for program diseases. Program diseases are diseases targeted by a current APHIS program to control or eradicate various domestic diseases or pests. As we stated in our proposal, we do not intend to charge an APHIS user fee for tests and diagnostic reagents provided in the United States in connection with program diseases. NVSL compiles statistics showing the incidence of various diseases in the United States, based on results of tests it performs. According to the commenters, if NVSL charges for program disease tests, people will stop using NVSL for these tests and NVSL will no longer get the data it needs to compile its statistics. However, because APHIS will not charge user fees for program disease tests or for program disease reagents, the number of requests received for these services should not be affected. For example, salmonella, which was mentioned by several commenters, is the subject of several APHIS programs. Samples submitted for testing in connection with any of those programs will not be subject to an APHIS user fee. In addition, certain diseases, such as EEE, which are not now program diseases, would be considered program diseases if there were an outbreak of the disease. In those situations, we would not charge a user fee for testing.

Some commenters also stated that NVSL was the only source of standardized reagents, and that the proposed user fees would encourage other laboratories to produce reagents, which might not be standard and which would thereby jeopardize efforts to control disease. Several other commenters expressed similar general concerns that private and State laboratories would provide services as an option to NVSL, but that doing so would put a strain on them and the services provided would be substandard. One commenter was

[1] This commenter also suggested all USDA research units be phased out, and the bulk of their funding made available to land grant colleges for research. We have not discussed this comment in this document. The allocation of Federal research dollars was not within the scope of our proposed regulations.

concerned that NVSL would eventually be supplanted by private laboratories.

We are not making any changes in the proposed regulations based on these comments. APHIS is authorized to provide various veterinary services to the public, and it is through NVSL that many of these services are provided. However, APHIS is not required by law to provide services. Neither is there any statute which prohibits private laboratories or other entities from providing services in competition with NVSL.

*Missing Fees*

One commenter alerted us that we did not include a user fee for testing the efficacy and possible corrosiveness of disinfectants. Another commenter informed us that there is no fee for "cultures (non-reagent related)." If we determine in the future that user fees for these, or any other services are needed, we will publish proposed fees, for public comment, in the **Federal Register**.

A commenter also pointed out that there is no separate charge for bacterial isolation and identification, as opposed to bacterial identification alone. In addition, this commenter questioned how the user fee would be assessed for testing samples received for isolation and identification. We are making no changes based on these comments. We believe our two proposed user fees for "bacterial identification/isolation, routine" and "bacteriology requiring special characterization" (see proposed § 130.16(a)(1)), cover the testing. Normally, isolation and identification are done for every sample. Our user fees, as our proposed rule states, will be based on the number of tests done.

*Fees To Be Changed*

One commenter stated that our proposed reagent fees are too high, and that we should adopt a "set price" for each class of reagents, regardless of the agent involved. Another commenter suggested that, in general, our proposed user fees for services concerning culture identification might not be high enough because lab personnel cannot know in advance exactly how much work will be required.

We have carefully considered these comments, but have determined not to make any changes in our proposed regulation. We have carefully calculated all of our proposed user fees to correctly reflect the amount, type, and duration of each service required. We took into account variations in the time needed to provide a service by determining the average time necessary.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are adopting in this document. We will publish any necessary adjustments in the **Federal Register**. We do not intend to collect user fees in excess of actual costs.

This same commenter also suggested that we adopt a single fee for each complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization test (VN). This is in contrast to the tiered fees we proposed. Under our proposal, there would be one fee for the first CF, HI, or VN test on a sample, and a second, different, fee for each additional test of the same type on the same sample. The user fee for additional tests would be lower than the user fee for the first test.

As we explained in our proposed regulation, CF, HI, and VN tests are conducted to detect many different diseases. A single sample may be tested many times for different diseases, each time using the same type of test. A given amount of time and effort is required to prepare a sample for the first test. However, once the sample has been prepared for the first test, less time and effort is necessary to ready it for each additional test of the same type. Because of this, costs are lower for each additional test. Therefore, we proposed one user fee for the first CF, HI, or VN test on a sample, and another, lower, user fee for each additional test of the same type on the same sample.

We believe this reasoning is still valid. We are therefore not making any changes in the regulations based on this comment.

*Payment Methods*

One commenter suggested that we allow State agencies to pay for user fees with purchase orders or by setting up a "charge account" with monthly billing. In conjunction with this suggestion, the commenter also stated that, if we adopt the suggestion, we should also exempt State agencies from § 130.51 (b)(3) and (b)(4). Section 130.51(b)(3) and (b)(4) state that APHIS will withhold test results and services if payment is not made or is inadequate or unacceptable.

We have carefully considered this comment and determined that no changes are necessary. Our proposed payment system includes provisions for billing. We included these provisions to accommodate State agencies and others who cannot prepay. If, after these user fees are effective, we determine that a different approach would be better, we will publish proposed amendments for public comment in the **Federal Register**.

*Miscellaneous*

One commenter asked whether conjugates provided by NVSL are concentrate or dilute. Our answer is that all NVSL conjugates are concentrate.

Another commenter questioned why "production agriculture" must pay user fees, and cited restaurants as receiving much of the income spent on food. We agree the commenter's implied statement that other individuals and businesses in the marketing chain benefit from NVSL services. However, they benefit indirectly only—NVSL does not provide any direct services to them. Under these circumstances, it is not practical for us to collect user fees from them, or even to calculate what the appropriate user fee might be. For these reasons we are not making any changes to the proposed regulation based on this comment.

We are making three editorial changes to the regulations we proposed. We are adding the words "agents or" to our proposed definition of "*Diagnostic reagent*," so the definition reads "*Diagnostic reagent.* Substances used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction." We believe this wording is clearer and more accurate. We are also, in proposed new § 130.15, changing "Virus isolation (OP)" to read "Virus isolation (Oesophageal/pharyngeal)." Spelling out this term, rather than abbreviating it, eliminates any possibility of misunderstanding. Finally, in proposed §§ 130.14(b), 130.15(b), and 130.16(b), we have clarified that reimbursable overtime must be paid for the service of performing each test, when service is asked for on a Sunday or holiday, or at any other time outside the normal tour of duty of the employee.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

**Executive Order 12291 and Regulatory Flexibility Act**

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This final rule is one of several rules which require certain persons to pay user fees for APHIS services they receive. We have already published, in three separate documents, final rules adopting user fees for various passengers and means of conveyance. One final rule covered user fees for commercial vessels, commercial trucks,

commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. It was published April 12, 1991 (56 FR 14837–14846, Docket No. 91–028), and was effective May 13, 1991. The second final rule covered user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. It was published April 23, 1991 (56 FR 18496–18502, Docket No. 91–054). It was withdrawn in another document published April 21, 1992 (57 FR 14475, Docket No. 91–142). The third final rule was published January 9, 1992 (57 FR 755–773, Docket No. 91–135), and was effective February 9, 1992. It covered user fees for services provided to commercial aircraft entering the customs territory of the United States, services related to the issuance of phytosanitary certificates for plants and plant products being exported from the United States, and services related to the export or import of animals or birds.

The Final Regulatory Impact Analysis indicates that the rules currently in effect, along with the regulations made final in this document, will provide total savings to taxpayers of $129.9 million annually. The discounted value of this amount is estimated at about $532.6 million over 5 years. The veterinary diagnostic fees alone, as included in this final rule, will contribute approximately $988,000 per year, or less than 1 percent of the total savings. These savings will have a discounted value of approximately $5 million over 5 years. The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of imposing user fees on "small" affected entities. The number of entities which may be qualified as small in each category is not available. Approximately 125,000 diagnostic and reference assistance tests are performed annually at APHIS laboratories. These tests are performed for animal importers and exporters, veterinarians, State and Federal agencies and laboratories, commercial laboratories, educational institutions, and foreign governments, most of whom are not small entities. However, the economic impact of user fees on small entities is expected to be minor since the fee represents a small fraction of the total operating costs for each small entity, and a small amount of the total cost of importing an animal into the United States.

Our final Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the document are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**Executive Order 12372**

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12606**

We have analyzed this final rule in accordance with Executive Order 12606, and have determined that it has no potential impact on family well-being. We have determined that this rule: Will not affect the stability of the family, and particularly, the marital commitment; will not affect the authority and rights of parents in the education, nurture, and supervision of their children; will not help or hinder the family to perform its functions; will not substitute governmental activity for family functions; and will not have any significant effect on family earnings. We have also determined that the benefits of this action justify any impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family, or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget.

**List of Subjects**

*9 CFR Part 92*

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

*9 CFR Part 130*

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping regulations, Tests.

Accordingly, we are amending 9 CFR parts 92 and 130 as follows:

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 is revised to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.106, paragraph (d)(2) is revised to read as follows:

**§ 92.106 Quarantine requirements.**

* * * * *

(d) *Charges for services.* * * *

(2) All applicable user fees, as listed in part 130 of this chapter; and

* * * * *

## PART 130—USER FEES

3. The authority citation for part 130 is revised to read as follows:

**Authority:** 21 U.S.C. 114a, 136, and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

4. In § 130.1, the following definitions are added, in alphabetical order, to read as follows:

**§ 130.1 Definitions.**

* * * * *

*Diagnostic reagent.* Substances used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction.

* * * * *

*National Veterinary Services Laboratories (NVSL).* The National Veterinary Services Laboratories of the Animal and Plant Health Inspection Service, located in Ames, Iowa.

*National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL).* The National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory, located in Greenport, New York.

* * * * *

*Privately operated permanent import-quarantine facility.* Any permanent facility approved under 9 CFR part 92 to quarantine animals or birds, except facilities operated by APHIS.

*Reference assistance testing.* Tests conducted by APHIS at the request of a veterinarian, state animal health official, or university, to either establish or confirm a diagnosis.

* * * * *

*State animal health official.* The State official responsible for livestock and poultry disease control and eradication programs.

* * * * *

5. In § 130.2, the text of paragraph (a) preceding the table is revised to read as follows:

**§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for the following user fees, which include standard care, feed, and handling, and which must be paid for each animal or bird quarantined in an Animal Import Center[5]:

* * * * *

6. In § 130.3, the text of paragraph (a) preceding the table is revised to read as follows:

**§ 130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.**

(a) An importer may, at his or her option, occupy entire quarantine buildings at the Animal Import Centers specified below. The person for whom the service is provided and the person requesting the service are jointly and severally liable for the user fee which will be charged for each building as follows:

* * * * *

7. Section 130.4 is revised to read as follows:

**§ 130.4 User fees for services at privately operated permanent import-quarantine facilities.**

A daily user fee of $49.25 must be paid for each animal quarantined in a privately operated permanent import-quarantine facility. The person for whom the service is provided and the person requesting the service are jointly and severally liable for this user fee.

8. In § 130.5, paragraph (a) is revised to read as follows:

**§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the user fee for each animal quarantined in a privately operated temporary import-quarantine facility.

* * * * *

9. In § 130.6, the text of paragraph (a) preceding the table and the text of paragraph (b)(1) preceding the table are revised to read as follows:

**§ 130.6 User fees for endorsing export health certificates.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the following user fees for each export health certificate requested[7] for the following types of animals, regardless of the number of animals covered by the certificate:

* * * * *

(b)(1) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the following user fees for each export certificate requested for animals and birds, depending on the number of animals or birds covered by the certificate and the number of tests required:

* * * * *

11. In § 130.7, paragraph (a), the introductory text is revised to read as follows:

**§ 130.7 User fees for inspection and supervision services provided within the United States for export animals or birds.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the user fees for the following APHIS services provided within the United States for export animals or birds:

* * * * *

12. In part 130, new §§ 130.14 through 130.18 are added to read as follows:

**§ 130.14 User fees for tests performed at NVSL.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each test listed in this paragraph performed at NVSL in connection with the importation or exportation of animals or birds. All user fees in this paragraph are per test, unless stated otherwise:

| Test | User fee |
|---|---|
| Agar gel immunodiffusion | $4.75 |
| Buffered acidified plate antigen presumptive | 3.50 |
| Card | 2.00 |
| Competitive enzyme linked immunosorbent assay | 4.75 |
| Complement fixation (includes Complement fixation-ovis)[1] | 9.00 |
| Enzyme linked immunosorbent assay | 4.75 |
| Hemagglutination inhibition (includes Hemagglutination inhibition-5)[1] | 7.50 |
| Histopathology | [2]8.50 |
| Indirect fluorescent antibody | 9.00 |
| Latex agglutination | 4.75 |
| Mercaptoethanol | 3.50 |
| Microscopic agglutination | ([3]) |
| Plaque neutralization | 7.50 |
| Parasitology | 17.00 |
| Plate | 3.50 |
| Rivanol | 3.75 |
| Tube agglutination (includes tube agglutination melitensis) | 3.50 |
| Virus neutralization[1] | 7.50 |

[1] The user fees listed are for the first complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization (VN) test performed on a sample. The user fee for each additional test of the same type (CF, HI, or VN) performed on the same sample is 20% of the stated fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests, one HI test and one VN test are performed on the same sample, the user fees are $9.00 for the first CF test, $7.50 for the HI test, $7.50 for the VN test, and, for the second CF test, $2.00, or $1.80 (20% of $9.00), rounded up to the nearest quarter of a dollar.

[2] Per slide.

[3] $10 per accession, plus $2.00 for each serovar in excess of five serovars per accession.

(b) If a test must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for performing each test, in addition to the user fee listed in paragraph (a) of this section.

**§ 130.15 User fees for tests performed at FADDL.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each test listed in this paragraph performed at FADDL in connection with the importation or exportation of animals or birds. All user fees in this paragraph are per test, unless stated otherwise:

| Test | User fee |
|---|---|
| Agar gel immunodiffusion | $13.50 |
| Complement fixation[1] | 30.50 |
| Direct immunofluorescent antibody | 9.50 |
| Enzyme linked immunosorbent assay | 11.00 |

[5] APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

[7] An export certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export certificates as a service to the public.

| Test | User fee |
|---|---|
| Fluorescent antibody neutralization | 22.00 |
| Histopathology | [2] 20.75 |
| In-vivo safety tests | 4,177.00 |
| Indirect fluorescent antibody | 21.50 |
| Latex agglutination | 9.25 |
| Virus isolation | 77.75 |
| Virus isolation (Oesophageal/pharyngeal) | 80.00 |
| Virus isolation in embryonated eggs | 163.75 |
| Virus neutralization [1] | 22.00 |

[1] The user fees listed are for the first complement fixation (CF) and virus neutralization (VN) test performed on a sample. The user fee for each additional test of the same type (CF or VN) performed on the same sample is 20% of the stated user fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests and one VN test are performed on the same sample, the user fees are $30.50 for the first CF test, $22.00 for the VN test, and, for the second CF test, $6.25, or $6.10 (20% of $30.50) rounded up to the nearest quarter of a dollar.

[2] Per slide.

(b) If a test must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for performing each test, in addition to the user fee listed in paragraph (a) of this section.

**§ 130.16 User fees for reference assistance testing.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each reference assistance test listed in this paragraph. All user fees in this paragraph are per test, unless stated otherwise:

| Test | User fee |
|---|---|
| (1) Bacterial identification tests: | |
| Bacterial identification/isolation, routine | $15.00 |
| Bacteriology requiring special characterization | 25.00 |
| Leptospira cultures | 25.00 |
| Leptospira serotyping | 75.00 |
| Phage typing | 10.00 |
| Plasmid typing | 25.00 |
| Salmonella serotyping | 20.00 |
| (2) Toxicology tests: | |
| GC/MS organic compound—Screen | 106.50 |
| Confirmation | 31.00 |
| ICP metals—Screen | 26.25 |
| Confirmation | 6.00 |
| Mycotoxin screen | 30.75 |
| Selenium | 30.50 |
| Pesticide—Screen | 34.25 |
| Quantitation | 47.50 |
| Other toxicant—Screen | 39.75 |
| Quantitation | 39.75 |
| (3) Other tests: | |
| Complement fixation (includes complement fixation-ovis) [1] | 9.00 |
| Agar gel immunodiffusion | 4.75 |
| Hemagglutination inhibition (includes hemagglutination-5) [1] | 7.50 |
| Histopathology | [2] 8.50 |
| Indirect fluorescent antibody | 9.00 |
| Parasitology | 17.00 |
| Virus isolation | 29.75 |
| Virus neutralization | 7.50 |

[1] The user fees listed are for the first complement fixation (CF), hemagglutination inhibition (HI), and virus neturalization (VN) test performed on a sample. The user fee for each additional test of the same type (CF, HI, or VN) performed on the same sample is 20% of the stated user fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests, one HI, and one VN test are performed on the same sample, the user fees are $9.00 for the first CF test, $7.50 for the HI test, $7.50 for the VN test, and, for the second CF test, $2.00, or $1.80 (20% of $9.00) rounded up to the nearest quarter of a dollar.

[2] Per slide.

(b) If a test must be conducted on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for performing each test, in addition to the user fee listed in paragraph (a) of this section.

**§ 130.17 User fees for diagnostic reagents, slide sets, and tissue sets.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each diagnostic reagent listed in this paragraph and obtained from NVSL:

| Diagnostic reagent | Unit (mL) | Fee/unit |
|---|---|---|
| Avian adenovirus 127: | | |
| Antigen | 2 | $39.50 |
| Antiserum | 2 | 21.75 |
| Avian encephalomyelitis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 21.75 |
| Avian influenza: | | |
| Antigen | 2 | 8.75 |
| Antiserum | 6 | 51.00 |
| Avian paramyxovirus-2: | | |
| Virus | 0.6 | 5.25 |
| Antigen | 2 | 39.50 |
| Antiserum | 2 | 21.75 |
| Avian paramyxovirus-3: | | |
| Virus | 0.6 | 5.25 |
| Antigen | 2 | 39.50 |
| Antiserum | 2 | 21.75 |
| Avian reovirus: | | |
| Virus | 0.6 | 5.25 |
| Bluetongue: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Bovine coronavirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Bovine herpes virus: | | |
| Virus: | | |
| Type 1 | 0.6 | 5.25 |
| Type 2 | 0.6 | 5.25 |
| Type 4 | 0.6 | 5.25 |
| Bovine herpes virus continued: | | |
| Antiserum: | | |
| Type 1 | 2 | 83.50 |
| Type 2 | 2 | 83.50 |
| Type 4 | 2 | 83.50 |
| Conjugate: | | |
| Type 1 | 1 | 19.25 |
| Type 2 | 1 | 19.25 |
| Type 4 | 1 | 19.25 |
| Positive control serum: | | |
| Type 1 | 2 | 4.50 |
| Type 2 | 2 | 4.50 |
| Bovine papular stomatitis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Bovine parvovirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 4.50 |
| Bovine respiratory syncytial virus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 4.50 |
| Bovine rotavirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Bovine viral diarrhea: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 4.50 |
| Brucella canis: | | |
| Antigen | 2 | 8.25 |
| Brucella ovis: | | |
| Antigen | 2 | 5.50 |
| Chlamydia psittaci: | | |
| Agent | 0.6 | 5.25 |
| Antiserum | 1 | 21.75 |
| Antigen | 1 | 5.25 |
| Conjugate | 1 | 19.25 |
| CF modifying factor | 1 | 11.50 |
| Contagious ecthyma: | | |
| Virus | 0.6 | 5.25 |
| CF antigen | 1 | 7.00 |
| Antiserum | 2 | 5.25 |
| Conjugate | 1 | 19.25 |
| Duck viral enteritis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 21.75 |
| Conjugate | 1 | 31.25 |
| Encephalomyo-carditis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 6.25 |
| Epizootic hemorrhagic disease: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Equine adenovirus: | | |
| Virus | 0.6 | 5.25 |

| Diagnostic reagent | Unit (ml.) | Fee/ unit |
|---|---|---|
| Antiserum | 2 | 11.50 |
| Conjugate | 1 | 24.00 |
| Equine herpes type 1: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 11.50 |
| Conjugate | 1 | 24.00 |
| Equine herpes type 2: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 11.50 |
| Equine herpes type 3: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 11.50 |
| Equine influenza: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 21.75 |
| Equine viral arteritis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 5 | 48.25 |
| Hemagglutinating encephalomyelitis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum .. | 2 | 6.25 |
| Hog Cholera: | | |
| Tissue set | (1) | 76.75 |
| Infectious bronchitis virus: | | |
| Virus | 0.6 | 4.50 |
| Antiserum | 2 | 21.75 |
| Infectious bursal disease: | | |
| Virus | 0.6 | 5.25 |
| Antigen | 1 | 8.00 |
| Antiserum | 2 | 21.75 |
| Infectious laryngotracheitis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 21.75 |
| Johnin: | | |
| OT | 10 | 12.25 |
| PPD | 2 | 10.75 |
| Lepto FA: | | |
| Conjugate | 1 | 19.25 |
| Flazo-orange | 3 | 6.00 |
| Leptospira: | | |
| Antigen | 10 | 20.00 |
| Antiserum | 2 | 4.50 |
| Lepto transport medium | 10 | 3.00 |
| Newcastle disease: | | |
| Virus | 0.6 | 5.25 |
| Antigen | 2 | 39.50 |
| Antiserum | 2 | 21.75 |
| Parainfluenza-3: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum .. | 2 | 6.25 |
| Pasteurella: | | |
| Antigen | 1 | 3.50 |
| Antiserum | 1 | 10.00 |
| Porcine adenovirus (AV): | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Porcine parvovirus (PPV): | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum .. | 2 | 6.25 |
| Porcine reovirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Porcine rotavirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum .. | 2 | 6.25 |
| Psittacine herpes virus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum (standard) | 2 | 21.75 |
| Conjugate | 1 | 24.00 |
| Quail bronchitis virus: | | |
| Virus | 0.6 | 5.25 |
| Swine influenza: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum .. | 2 | 6.25 |
| Transmissible gastroenteritis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum .. | 2 | 6.25 |

[1] 1 set.

(b) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each diagnostic reagent, slide set, or tissue set listed in this paragraph and obtained from NVSL or FADDL for delivery outside of the United States:

| Diagnostic reagent, slide set, tissue set | Unit (ml.) | Fee/ unit |
|---|---|---|
| African swine fever—Immunosmophoresis antigen | 1 | 60.75 |
| Slide set for direct fluorescent antibody test | (1) | 23.00 |
| Tissue set | (1) | 76.75 |
| Anti-foot-and-mouth disease antigen, Guinea pig origin | 1 | 12.75 |
| Bovine antiserum, any agent | 1 | 2.50 |
| Fluorescent antibody conjugate | 1 | 48.50 |
| Foot-and-mouth disease anti-VIAA serum | 1 | 5.00 |
| Foot-and-mouth disease virus associated antigen | 1 | 36.75 |
| Monoclonal antibodies, mouse ascitic fluid | 1 | 14.75 |
| Ovine antiserum, any agent | 1 | 2.00 |
| Swine antiserum, any agent | 1 | 2.00 |

[1] 1 set.

**§ 130.18 User fees for sterilization by gamma radiation.**

The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of a user fee of $427.75 per can for sterilization by gamma radiation.

13. In § 130.50, paragraphs (a)(1) and (a)(2) are revised; paragraph (a)(3) is amended by removing "and" at the end of the paragraph; paragraph (a)(4) is amended by removing the period at the end of the paragraph and adding a semicolon in its place; and new paragraphs (a)(5) and (a)(6) are added to read as follows:

**§ 130.50 Payment of user fees.**

(a) * * *

(1) User fees for animals and birds in an Animal Import Center or privately operated permanent import-quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid at the time the animals or birds are released from quarantine;

(2) User fees for animals or birds in privately-operated temporary import-quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid at the time the animals or birds are released from quarantine.

* * * * *

(5) User fees for tests, other than reference assistance tests, on samples submitted to NVSL or FADDL, and user fees for diagnostic reagents, slide sets, tissue sets, and sterilization by gamma radiation, must be paid when the test, diagnostic reagent, slide set, tissue set, or sterilization is requested, unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed; and

(6) User fees for reference assistance tests must be paid when billed.

* * * * *

14. In § 130.51, paragraphs (a) and (c) are revised; paragraph (b)(1) is amended by removing the "and" at the end of the paragraph; paragraph (b)(2) is amended by removing the period at the end of the paragraph and adding a semicolon in its place; and new paragraphs (b)(3) and (b)(4) are added to read as follows:

**§ 130.51 Penalties for nonpayment or late payment of user fees.**

(a) If any person for whom the service is provided or the person requesting the service fails to pay when due, any debt to APHIS, including any user fee due under title 7 or title 9, Code of Federal Regulations, then:

(1) Payment must be made for subsequent user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 60 days after date of bill;

(iii) The person requesting the service has not paid the late payment penalty or

interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored;

(2) APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the amount due;

(3) The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt;

(4) Cash payments will be accepted only at a location designated by the APHIS employee during normal business hours; and

(5) Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 90 days after date of bill;

(iii) The person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) * * *

(3) If a user fee is due for a test conducted by APHIS, APHIS will not release the test result or any endorsed certificate; and

(4) If a user fee is due for a diagnostic reagent, slide set, tissue set, or sterilization by gamma radiation, APHIS will not release the diagnostic reagent, slide set, tissue set, or sterilized material.

(c) If for unbilled user fees, the user fees are unpaid 30 days after that date the pertinent regulatory provisions indicates payment is due, or if billed, are unpaid 30 days after the date of the bill, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

* * * * *

Done in Washington, DC, this 15th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-17300 Filed 7-20-93; 8:45 am]

BILLING CODE 3410-34-P

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1700

### Requirements for Child-Resistant Packaging; Products Containing Loperamide

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** Under the Poison Prevention Packaging Act of 1970, the Commission issues a rule requiring child-resistant packaging for products containing more than 0.045 milligrams (mg) of loperamide in a single package. These requirements are issued because the Commission has determined that child-resistant packaging is required to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting loperamide. Loperamide is used as an antidiarrheal medication that is marketed in both prescription and over-the-counter forms.

**EFFECTIVE DATE:** The rule is effective on August 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Bogumill, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0400.

**SUPPLEMENTARY INFORMATION:**

### A. Background

*1. Relevant Statutes and Regulations*

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations have been issued requiring special packaging for a number of household products (§ 1700.14). The findings that the Commission must make in order to issue a standard requiring child-resistant ("CR") packaging for a product are discussed below in Section D of this notice. For the purposes of the PPPA, the amount of a substance "in a single package" that triggers the requirement to place the product in CR packaging refers to the total amount in a single retail unit of the substance.

One of the categories of products for which CR packaging is required is prescription drugs intended for oral administration to humans, with specified exemptions. 16 CFR 1700.14(a)(10). When the FDA releases a drug from prescription requirements and the drug can then be bought over-the-counter ("OTC"), the drug is no longer subject to the child resistant packaging requirements for prescription drugs.

Where prescription drugs are subject to a special packaging standard, section 4(b) of the PPPA allows such products to be sold in non-CR packaging only when (1) directed by the prescribing medical practitioner or (2) requested by the purchaser. 15 U.S.C. 1473(b).

For nonprescription (over-the-counter, or "OTC") products subject to special packaging standards, section 4(a) of the PPPA allows the manufacturer or packer to package the product in non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance in CR packages and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an

opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

*2. Loperamide*

Loperamide is an antidiarrheal medication that was first marketed by its patent holder in 1976 as a prescription drug. A capsule preparation of loperamide is available only by prescription and, since this is an oral prescription drug for humans, is required to be in CR packaging. In 1988, however, the Food and Drug Administration granted OTC status to a caplet (formulation ingredients compressed into the shape of a capsule) containing the same amount of loperamide as the prescription product and to a liquid preparation. These forms of the drug are marketed OTC in CR packaging by the original manufacturer.

The patent for loperamide expired in January of 1990, and other manufacturers may now apply to FDA for approval to make and market loperamide. Additional suppliers have approval to market liquid and solid OTC preparations, containing the same amount of loperamide as the original manufacturer's product.

Loperamide is structurally related to the opium alkaloids and acts by slowing intestinal motility and by reducing stomach and intestinal secretions. Loperamide is not recommended for children less than 2 years of age, as these children appear to be more sensitive to the drug's central nervous system (CNS) effects than are adults. The drug should not be used for any age group if diarrhea is accompanied by fever greater than 101°F or when blood appears in the stool. To prevent toxic accumulation of the drug, loperamide should be used with caution in individuals with liver disorders. Loperamide should not be used for more than 2 days, unless directed by a physician.

The maximum daily nonprescription dosage of loperamide is 8 milligrams (mg) for adults, 6 mg for children 9 to 11 years of age, 4 mg for children 6 to 8 years of age, and 3 mg for children 2 to 5 years of age. Currently, liquid OTC loperamide contains 1 mg of loperamide per 5 milliliters (ml) of liquid and the OTC caplet form contains 2 mg of loperamide per caplet. The original OTC loperamide products on the market are in CR packaging, as are other products that have come on the market. (Ref. No. 1.)

After considering the toxicity of loperamide and its availability in the home, the Commission proposed a rule under the PPPA to require special packaging for products containing more than 0.045 mg of loperamide in a single package. 57 FR 47020 (Oct. 14, 1992). The notice of proposed rulemaking provided a 75 day comment period. The Commission received only one comment which came from the American Society of Hospital Pharmacists ("ASHP") and supported the proposed rule. ASHP's letter stated that ASHP believed that products containing more than 0.045 milligrams of loperamide in a single package are hazardous to children and should be in child-resistant packaging. (Ref. No. 5.)

**B. Toxicity**

Animal and human pharmacological and toxicological data show that overdosage of loperamide can cause stomach and intestinal irritation (nausea, vomiting, abdominal pain, and constipation), abdominal distention and obstruction of the bowel, CNS effects (drowsiness, dizziness, muscular spasms, and convulsions), respiratory depression (periodic cessation of breathing, cyanosis, and coma), and death. In case of overdosage, activated charcoal and washing out the stomach are recommended. The patient should be frequently monitored for CNS and respiratory depression because of the prolonged action of loperamide. If signs of CNS or respiratory depression are present, naloxone, a drug which reverses the depressant effects of narcotics, should be administered.

The majority of the incidents of loperamide toxicity reported in the scientific literature occurred in foreign countries and involved the intentional administration of loperamide to children. The symptoms of overdosage ranged from nausea and dizziness to severe and life-threatening effects, including respiratory depression, coma, convulsions, and bowel obstruction and perforation. There are 11 deaths of children under age 5 reported.[1] The smallest dose reported (measured as mg of loperamide per kilogram (kg) of body weight) that resulted in adverse symptoms was 0.045 mg/kg; this (single oral) dose caused bowel obstruction with stool retention for 7 days in a 1-year-old child. (Ref. No. 1.)

The CPSC Children and Poisoning ("CAP") database for 1978 through April 1993 shows 12 ingestions of loperamide by children under 5 years of age treated in hospital emergency rooms participating in the National Electronic Injury Surveillance System ("NEISS"). Four of the children were admitted to the hospital. (Ref. No. 7.)

The American Association of Poison Control Centers' National Data Collection System ("AAPCC") includes cases of exposure reported by participating poison control centers. For 1990, 505 accidental ingestions of loperamide by children under 5 years of age were reported. Of these, 198 were seen by physicians and 75 experienced mild effects (symptoms resolved without treatment) to moderate effects (some medical treatment required). No life-threatening effects or fatalities were attributed to loperamide from this database. (Ref. Nos. 1 & 7.)

**C. Level for Regulation**

For incidents where the amount of loperamide ingested was known, severe adverse respiratory effects (periodic cessation of breathing, cyanosis, and coma), CNS effects (drowsiness, muscular spasms, and convulsions), and/or gastrointestinal disturbances (abdominal distention, bowel obstruction, and intestinal perforation) were reported following administration of from 0.045 to 2.0 mg/kg of loperamide (with most incidents involving ingestions of between 0.26 and 1.0 mg/kg). In one case, death occurred following a dose of 1.0 mg/kg of loperamide. Insufficient information was available to determine the doses of loperamide involved with the other 10 deaths reported in the medical literature.

Serious illness has been reported after ingestion of 0.045 mg/kg. There is no information about the amount of loperamide that would not cause serious illness, serious injury, or death in infants or children under 2 years of age. Without such data, the Commission's staff recommends that the lowest level known to have caused serious illness in humans (0.045 mg/kg) be reduced by a factor of 10 (referred to as an "uncertainty factor") to take into account biological variability. When this is done for a 10-kg (22.2 lb) child, the staff concludes that loperamide preparations containing more than 0.045 mg of loperamide in a single container should be subject to CR packaging requirements. This amount is contained in one-twentieth of a teaspoon of liquid loperamide or in one-fourtieth of a caplet of loperamide. (Ref. No. 1.)

[1] Seven deaths occurred in the hospital. In four cases the children were seriously ill and the parents requested permission to take them home before they died.

**D. Statutory Considerations**

*1. Hazard to Children*

Although the reported cases of death and life-threatening effects involved intentional administration of loperamide, the toxicity data from these incidents show that the amounts of loperamide available in OTC preparations is sufficient to cause serious illness and serious injury in children. Even though the OTC loperamide preparations currently on the market are voluntarily sold in CR packaging, the Commission concludes that a regulation is needed to ensure that those that are now in child resistant packaging and future products containing loperamide, including products from additional manufacturers that could be introduced now that loperamide's patent has expired, will be subject to CR requirements.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that because of the toxic nature of loperamide preparations, described above, and the accessibility of such preparations to children in the home, the degree and nature of the hazard to children in the availability of such substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances.

*2. Technical Feasibility, Practicability, and Appropriateness*

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging conforming to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use. Because the currently-marketed forms of loperamide are in CR packaging, the Commission concludes that special packaging for loperamide preparations is technically feasible, practicable, and appropriate.

*3. Reasonableness*

In establishing a special packaging standard, section 3(b) of the PPPA requires the Commission to consider the available data concerning whether the standard is reasonable. 15 U.S.C. 1472(b).

After considering the available data, the Commission concludes that there are no data that warrant a conclusion that the rule is not reasonable.

*4. Other Considerations*

Section 3(b) of the PPPA also requires the Commission, in establishing a special packaging standard, to consider:

a. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

b. The manufacturing practices of industries affected by the PPPA; and

c. The nature and use of the household substance. 15 U.S.C. 1472(b).

These items have been considered with respect to the various determinations made in this notice. (Ref. No. 3.)

**E. Effective Date**

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n. Because all loperamide preparations are currently in child-resistant packaging, the Commission concludes that good cause exists for having the regulation take effect 30 days after promulgation of a final rule. Therefore, the rule will become effective 30 days after publication of the final rule, as to all products subject to the rule that are packaged on or after that date. (Ref. Nos. 1 & 3.)

**F. Regulatory Flexibility Act Certification**

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics has prepared a preliminary economic assessment of a rule to require special packaging for loperamide preparations. They concluded that such a requirement would have no effect on current manufacturers and no incremental effect on future manufacturers, since future manufacturers would never have marketed the product in non-child-resistant packaging. Accordingly, for the reasons given above, the Commission concludes that the rule to require special packaging for products containing loperamide will not have any significant economic effect on a substantial number of small entities. (Ref. Nos. 3 & 6.)

**G. Environmental Considerations**

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed Poison Prevention Packaging Act (PPPA) packaging requirements for topical drug preparations containing loperamide.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this rule indicates that CR closures for loperamide preparations will have no significant effects on the environment. This is because the rule will not significantly increase the number of CR closures in use and, in any event, the manufacture, use, and potential disposal of the CR closures present the same potential environmental effects as do the currently used closures.

Therefore, because this rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required. (Ref. Nos. 3 & 6.)

**List of Subjects in 16 CFR Part 1700**

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

**PART 1700—[AMENDED]**

1. The authority citation for part 1700 continues to read as follows:

**Authority:** Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 88 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(21) and republishing the introductory text of paragraph (a) to read as follows:

**§ 1700.14 Substances requiring special packaging.**

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(21) *Loperamide.* Preparations for human use in a dosage form intended for oral administration and containing more than 0.045 mg of loperamide in a single package (*i.e.*, retail unit) shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c).

* * * * *

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

**List of References**

(Note: This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Memorandum from Rita A. Orzel, Ph.D., HSPS, to Virginia A. White, HSPS, "Loperamide Toxicity," March 4, 1992.

2. Memorandum from Charles Wilbur, HSPS, to Rita A. Orzel, Ph.D., HSPS, "Loperamide: Technical Feasibility, Practicability, and Appropriateness Determination," April 1, 1992.

3. Memorandum from Marcia P. Robins, ECSS, to Rita A. Orzel, Ph.D., HSPS, "Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging for OTC Drug Preparations Containing Loperamide," April 6, 1992.

4. Briefing Memorandum with attached briefing package, August 6, 1992.

5. Letter from Beverly L. Black, Director, Federal Regulatory Affairs, American Society of Hospital Pharmacists, to Rita Orzel, December 23, 1992.

6. Memorandum from Marcia P. Robins, ECSS, to Rita A. Orzel, Ph.D., HSPS, "Final Regulatory Flexibility Act Analysis for Proposal to Require Child-Resistant Packaging for OTC Drug Preparations Containing Loperamide," February 19, 1993.

7. Memorandum from Jacqueline N. Ferrante, Ph.D., to James F. Hoebel, Acting AED for Health Sciences, "Updated Review of the Children and Poisoning Data Base for Loperamide Ingestions," dated April 29, 1993.

8. Memorandum from Marcia P. Robins, ECSS, to Jacque N. Ferrante, Ph.D., Project Manager, "Market Up-date: Loperamide," dated April 29, 1993.

9. Briefing Memorandum with attached briefing package, June 3, 1993.

[FR Doc. 93-17096 Filed 7-20-93; 8:45 am]

BILLING CODE 6355-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 2

[Docket No. PL93-3-000]

### Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act, As Amended and Added By the Energy Policy Act of 1992

Issued July 14, 1993.

**AGENCY:** Federal Energy Regulatory Commission DOE.

**ACTION:** Final rule; policy statement.

**SUMMARY:** The Federal Energy Regulatory Commission is adopting guidelines setting forth the elements of what generally constitutes a good faith request for transmission services under sections 211(a) and 213(a) of the Federal Power Act (FPA), as amended and added by the Energy Policy Act of 1992, and of a proper reply to that request. The Commission is issuing this Policy Statement as part of its effort to implement the transmission provisions of the Energy Policy Act of 1992.

**DATES:** Effective July 14, 1993. Comments may be filed on or before August 20, 1993.

**ADDRESSES:** Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:**

Andre Goodson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Telephone: (202) 208-2167

Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Telephone: (202) 208-2128

Margaret J. Jess (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Telephone: (202) 208-0019.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

**Policy Statement**

Issued July 14, 1993.

**I. Introduction**

An essential element in implementing sections 211(a) and 213(a) of the Federal Power Act (FPA), as amended and added by the Energy Policy Act of 1992 respectively,[1] is determining what constitutes a good faith transmission request and reply under those sections. This issue is important for two reasons. First, the Commission may not order transmission services under section 211(a) unless the applicant has made a request for such services to the transmitting utility at least 60 days prior to filing an application with the Commission. Second, under section 213(a), unless the transmitting utility agrees to provide transmission services pursuant to a good faith request, at rates, charges, terms and conditions

[1] Public Law 102-486, 106 Stat. 2776 (1992), 16 U.S.C. 824*l*.

acceptable to the requestor, the transmitting utility is required to respond in writing to the requestor within 60 days of receipt of such request or other mutually agreed upon period.

These 60-day requirements make it important that potential section 211(a) applicants, 213(a) requestors, and transmitting utilities have general guidance, as soon as possible, as to what the Commission considers an acceptable transmission request and transmission reply under the newly amended statute. Accordingly, the Commission is adopting this Policy Statement containing such guidelines. The Commission's guidelines are broad enough to encourage individual initiative and negotiation within a flexible framework, leading to accommodations that will encourage optimum access to this country's transmission system.

## II. Public Reporting Burden

The Policy Statement establishes new reporting requirements that are the minimum guidelines necessary for a party to request transmission services from a transmitting utility and to ensure the proper response from the transmitting utility. The public reporting burden for these information collections is estimated to average 40 hours per request for the requestor and 160 hours per response for the transmitting utility, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for Federal Energy Regulatory Commission).

## III. Background

As amended by the Energy Policy Act, section 211(a) provides that the Commission may not issue an order directing a transmitting utility to provide transmission services unless the person applying for an order has requested the transmission services from the transmitting utility at least 60 days before applying to the Commission. A request for transmission services is, then, a condition precedent to the Commission's ability to order transmission services under section 211 of the FPA.

Section 213(a) of the FPA requires a response by a transmitting utility when any electric utility, Federal power marketing agency, or other person generating electric energy for sale for resale makes a "good faith" request to a transmitting utility[2] to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions of service. Section 213(a) provides that unless the transmitting utility accommodates the request on mutually agreeable terms it shall, within 60 days of receipt of the request, or other mutually agreed upon period, provide the person requesting the services with a detailed written explanation of the basis for the transmitting utility's proposed rates, charges, terms and conditions for such services. The written explanation must also contain an analysis of any physical or other constraints affecting the provision of the requested transmission services. Section 213(a) does not define what is meant by a good faith request for transmission services, nor does the FPA elsewhere contain a definition of the term, and the legislative history of the Energy Policy Act is silent on the subject.

The Commission believes that Congress, in enacting section 213(a) of the FPA, intended that potential applicants for transmission services under section 211 of the FPA and transmitting utilities provide one another with as much information as reasonably available concerning requests for, and ability to provide, transmission services, before a person seeking transmission services avails itself of section 211. The Commission further believes that if potential applicants and transmitting utilities exchange detailed information, this will help to encourage constructive business transactions through negotiated agreements. Accordingly, at this early stage of our administration of sections 211 and 213, we find it appropriate to adopt standards which provide for a broad exchange of information. A broad exchange of information will permit transmission requestors to file focused and more detailed applications under section 211(a) and will allow the Commission to expedite section 211(a) applications. It may also further the goal of encouraging negotiated agreements.

In adopting this Policy Statement, the Commission has read section 211(a) in consonance with section 213(a). On its face, section 211(a) requires that a party need only make "a request" to the transmitting utility. Section 211(a) does not use the adjective "good faith" nor does it require that a section 211(a) applicant specify rates, charges, and other terms and conditions of service when making a request.[3] The Commission believes, however, that for purposes of making a section 211(a) "request," a party's request for transmission services should be the same as a "good faith request" made under section 213(a).[4] If an entity does not make a section 213(a) good faith request 60 days before filing a section 211(a) application, the Commission believes that it has the statutory authority to deny such an application on the basis that a proper request was not made pursuant to section 211(a).

There are several reasons why the Commission finds it appropriate to incorporate the 213(a) good faith requirement as part of what will be deemed to be a satisfactory request under section 211(a). First, because sections 211 and 213 both refer to a 60-day time clock which starts when an entity makes a request for services to a transmitting utility, we believe Congress intended the two sections to work in conjunction with one another. If we were to implement section 211(a) so as to require that a party make only "a request" to a transmitting utility 60 days before filing a section 211 application with the Commission, the two sections would not work in a complementary fashion with one another, because a mere "request" may constitute less than a "good faith" request. Second, requiring two standards—one for "requests" and the other for "good faith requests"—could become administratively burdensome and confusing. Third, if we construed section 211 to require mere "post-card" requests, without requiring that a person requesting transmission services file a good faith request and utilize the "request and response" scenario envisioned by section 213(a), the section 213(a) process could be rendered a nullity. Moreover, it could result in

[2] Section 3(23) of the FPA, as added by the Energy Policy Act, 16 U.S.C. 796(23), defines a "transmitting utility" as any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.

[3] Accordingly, as a legal matter the Commission could implement the request requirement under section 211(a) using a more lenient standard than would be used for "good faith" requests under section 213(a). However, as discussed below, as a policy matter we believe it is appropriate to use the same standard.

[4] See Section 2.20(a)(2) of the Policy Statement.

requestors and transmitting utilities avoiding or circumventing attempts at negotiation. Likewise, perfunctory responses to requests for transmission services could result in avoiding or circumventing attempts at negotiation.

There is no discussion in the Joint Explanatory Statement of the Committee of Conference to guide us as to whether Congress intended potential section 211 applicants and transmitting utilities to attempt negotiation in order to avoid section 211 proceedings when possible. However, in view of the language, structure, and requirements of section 231(a), we believe that as a policy matter sections 211(a) and 213(a) should be implemented in a manner which encourages negotiation. Therefore, the Commission will adopt standards which: (1) Identify the type of information that would facilitate a section 211(a) request; (2) foster greater competition in wholesale electric markets; (3) encourage coordination and cooperation and (4) encourage negotiated agreements where possible.

This Policy Statement sets forth the elements of what the Commission believes will generally constitute a good faith request under sections 211(a) and 213(a) of the FPA and a proper reply to a good faith request. This proceeding is one of several concurrent proceedings in which the Commission is implementing the transmission provisions of the Energy Policy Act. The other proceedings are: (1) The Commission's Request for Public Comments on the Regional Transmission Group Proposal;[5] (2) Proposed New Reporting Requirements Implementing Section 213(b) of the FPA;[6] and (3) the Commission's inquiry regarding transmission pricing.[7]

This Policy Statement contains only those elements that the Commission would generally look to if a party seeking transmission services were to request an order directing a transmitting utility to provide transmission services under section 211 of the FPA. The Commission encourages those engaged in transmission transactions to devise, on their own initiative, creative ways of solving transmission needs, thus avoiding the delay inevitably resulting from case-by-case resolution by the Commission. The Commission emphasizes that the guidelines set forth in this Policy Statement are neither rigid nor all-encompassing. The Commission encourages negotiation and remains open to suggestions on how to accommodate specific concerns as they arise.

## IV. Discussion

### *A. Components of a Good Faith Request*

This Policy Statement contains twelve components of a good faith transmission request. These components are the minimum components that will generally be necessary to provide the transmitting utility with sufficient information so that it can analyze the service request. If a transmitting utility is to be able to analyze a transmission request, the person requesting services must specify the services that it wants. The information that a transmitting utility would need in order to determine how to provide the requested services includes: (1) The identity of the purchaser; (2) assurances that the prospective purchaser of the transmission services is eligible to request the services; and (3) assurances that the Commission is authorized to order the type of services requested under appropriate circumstances.

A good faith request for transmission services should also contain a specific, technical description of the requested services in sufficient detail to permit the transmitting utility to model the additional services on its transmission system. Certain of the technical components of a request for transmission services are discussed below. The others are self-explanatory.

#### Component (4)—Specifying the Type of Services Requested

Section 211 of the FPA does not place any limit on what is meant by "transmission services," nor does the legislative history suggest any limitation on the nature of the wholesale transmission services the Commission can order under section 211. In the absence of any indication that Congress intended to limit the type of transmission services ordered, any party may request network service under section 211. It is important that the specific language of Component (4) not prevent parties from requesting any type of transmission services, particularly network service. As is the case with any request for transmission under section 211, the Commission will determine whether to order network service on a case-by-case basis.

Although the Commission at this time believes that service more flexible than point-to-point can be ordered under section 211, and thus is a proper subject for good faith requests, parties may submit comments on the limitations, if any, on the Commission's authority to order such service.

The party requesting transmission services should specify the character and nature of the services. The nature of transmission service varies along a continuum, starting with point-to-point service, passing through a form of service that might best be characterized as flexible point-to-point service, and culminating with network service. These terms have no industry-wide accepted definitions. However, the Commission has characterized point-to-point service as involving designated points of entry into and exit from the transmitting utility's system with a designated amount of transfer capability at each point.[8] In a Staff Paper issued with the Commission's recent notice of inquiry concerning transmission pricing, the Commission's staff stated that it understood network service to mean transmission service that allows the user to vary its schedule and points of delivery and receipt on the grid without paying an additional charge for each change.[9]

The Commission invites comments on whether specifying point(s) of receipt and delivery will unduly restrict the ability of parties to request the flexibility of the transmission service that some parties may need. "Network service," for example, involves substantial flexibility in moving power between receipt and delivery points.[10] It is possible that the need for network service will be localized within a control area. An example might be the network service needed by an association of distributors to dispatch their own resources, or by an IPP to sell to multiple buyers. This type of local network service might be combined with flexible point-to-point service to import or export power outside the control area. Alternatively, some parties may wish to request network service over the entire grid of the control area utility, which presumably would involve substantially more flexibility of use. Specifying receipt and delivery

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[5] 57 FR 54,580 (Nov. 19, 1992); 61 FERC ¶61,232 (1992).

[6] 58 FR 17,344 (April 5, 1993); IV FERC Stats. & Regs. ¶32,493 (1993).

[7] Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, 58 FR 36,400 (July 7, 1993), IV FERC Stats. & Regs. ¶ _____.

[8] Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,768 (1992).

[9] See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Staff Paper at 13 (Question 18), 58 FR 36,400 (July 7, 1993), IV FERC Stats. & Regs. ¶ _____ (1993).

[10] We note that in the Staff Paper issued in conjunction with the Commission's transmission pricing inquiry, *supra* n.9, persons were asked to comment on whether the staff's definition of network service, contained in that paper, is reasonable. Persons wishing to comment on the parameters of "network service" should do so in that docket.

points may not restrict the provision of local network service, but could restrict parties in requesting system-wide network service.

The Commission understands that the network service issue raises important questions, such as how to price the service and what user rights would be associated with it. Some of these will be addressed in the inquiry concerning transmission pricing that the Commission recently initiated.[11] In this proceeding, we ask the following questions:

Question 1. Does the service specification in Component (4) unduly restrict the ability of parties to request the transmission services that they need? If so, what changes would be appropriate?

Question 2. Does the language in Component (4) give owners of transmission facilities sufficient information to provide network service?

Component (5)—The Names of Other Parties Expected To Be Delivering and/or Receiving Power From the Transmitting Utility

If a requesting party knows that it will need to receive services from multiple transmitting utilities, it should provide such information to the transmitting utilities. In instances in which the party requesting services does not know who all the parties will be, however, it should provide whatever information it has and indicate what information is unknown or tentative at the time it makes the request. The transmitting utilities are usually the control area utilities that either are affected by the power flows in question or that would lie on the contract path if two or more transmitting utilities are involved in the transaction. Transmitting utilities need to know which electric control areas will be involved in a transaction.

Component 8—The Expected Transaction Profile

The information supplied by the requesting party and needed by the transmitting utility should be a function of the type of services being requested. Some types of services may require more detailed information than others. The requesting party should provide enough information to permit the transmitting utility to model the power flow impact on its system of both receipts and deliveries. The "expected transaction profile" means the load factor data that describes the flow of power and energy into the transmitting utility's system, *i.e.*, the hourly quantities of power the requesting party would expect to deliver to the transmitting utility's grid at points of interconnection between electric control area utilities, if known.

Component 9—The Degree of Firmness of the Requested Service

The Commission will leave it to the party requesting the services to specify how firm a service is being requested. The degree of firmness of transmission service is often categorized as firm or interruptible. However, these designations may not adequately describe the service that is sought. Therefore, the requesting party should indicate the specific degree of firmness that it seeks. This will help to reduce the likelihood of misunderstandings.

Component 10—Requests Made in Response to Solicitations

Persons requesting service in order to submit a bid in a solicitation for generation resources should state the purpose of the requested service and identify the solicitation for which they are requesting service. Naming the solicitation will be helpful, because some solicitations could result in duplicative transmission service requests. The transmitting utility will be better able to gauge the aggregate amount of service it may have to provide if it can group duplicate requests.

Component 11—The Terms and Conditions Requested

Section 213(a) provides that the requestor must propose rates, terms and conditions for the services it is requesting. We do not think that it is necessary for the requestor to propose the exact, detailed rates, terms and conditions. Rather, a party requesting transmission services can fulfill the rates, terms and conditions requirement by specifying a rate methodology (e.g., embedded or incremental cost), an existing transmission tariff, an existing transmission contract or an existing rate. The Commission does not intend to allow utilities to delay responses to requests for transmission services by taking an overly rigid or technical approach to the "rates, terms and conditions" element of the request. It is sufficient if the one requesting the services has made an effort to develop workable terms and conditions and has proposed what it sees as reasonable rates. The transmitting utility is not bound by the requesting party's proposed rates, terms and conditions. It may reject the proposed rates, terms and conditions and propose its own.

Component 12—Additional Information

Finally, to improve overall effectiveness and efficiency, the party requesting the service should include any information that enhances the transmitting utility's ability to evaluate the request. This can improve the ability to negotiate and lower costs for all parties and will improve chances to arrange for the requested transmission without resorting to section 211 procedures before the Commission.

*B. Components of a Reply to a Good Faith Request*

This Policy Statement contains five components of a reply to a good faith request for transmission services under section 213(a). These are discussed below.

Component (1)—Acknowledgment of Receipt of the Request

A party requesting transmission services may not seek an order from the Commission under section 211 of the FPA unless it has first requested the transmission services from a transmitting utility 60 days before applying to the Commission. That 60-day period begins to run when the transmitting utility receives the request. A transmitting utility should promptly acknowledge receipt of a request for transmission services. Unless the parties agree on a different time frame for the utility's response, a prompt acknowledgment should occur within 10 days. Receipt of the acknowledgement would alert the one requesting transmission services that its 60-day waiting period has begun.

Component (2)—Requests by the Transmitting Utility for Clarification of Information

The Commission believes that a transmitting utility should be able to ask for clarification of a request if the utility needs more information to evaluate the requested services. In the absence of limitations on requests for such clarifications, however, the processing of requests for transmission could be unduly delayed. Therefore, information clarifications sought by the transmitting utility should be limited to facts needed to evaluate the specific services being requested. A requesting party who believes that a transmitting utility is attempting to frustrate the process by making excessive requests for clarifications can raise this issue when it files a request for a section 211 order with the Commission 60 days after the utility has received its request.

[11] See n. 9, *supra*.

**Component (3)—The Requirement That the Transmitting Utility Respond Within 60 Days**

When the transmitting utility acknowledges receiving a request for transmission services and responds by notifying the party making the request of fees associated with the evaluation of a transmission request, it should specify the date by which it will respond to the request or initiate negotiations that could lead to agreement on some mutually acceptable date other than that set by the 60-day clock. The fees for evaluating transmission service requests should be set based on the cost of processing the request.

**Component (4)—The Transmitting Utility's Response If It Believes It Can Provide the Requested Service From Existing Capacity**

When a transmitting utility determines that it can provide the requested services from existing capacity, it should proceed to offer the party requesting the services a proposed service agreement covering the service that it will provide. The contract should contain detailed specifications of the price at which the transmitting utility proposes to provide the services.

It is not necessary for the proposed service agreement to contain a regulatory "cost-of-service" study of the kind included in rate filings by public utilities. However, the agreement should explain the basis for the charges for each component of service, including the unbundled components of any transmission rate and any other charges.[12] In other words, the agreement should clearly lay out the charges for each component of the proposed service and the total price the party requesting the service would be expected to pay. Similarly, the agreement should explicitly describe all of the applicable terms and conditions of the transmission services provided under the contract.

The transmitting utility should accompany the agreement with a clear statement of the time during which the offer to provide the transmission services will remain open. The Commission recognizes that an open contract offer obligates the seller while imposing no countervailing obligation on the purchaser, and that an unexecuted contract potentially ties up transmission facilities, thus jeopardizing the availability and price for subsequent requests that would use the same facilities.

On the other hand, entities that might request transmission services may frequently be in the position of bidding on a power solicitation or negotiating other related contracts. In such an instance, the transmission agreement is only one element of the whole transaction, and the purchaser may need to finalize all of the pieces at one time. Under these circumstances, the purchaser might want some sort of reservation or contingency arrangement that would extend the period during which the contract is held open until a time certain or until a set of events reaches completion. Preferably, transmitting utilities and the party requesting the services can be flexible and resolve these problems by mutual agreement. However, the Commission feels that, at a minimum, a transmitting utility should permit the party requesting the service sufficient time to review agreements and coordinate multiple stages of joint transactions.

**Component (5)—What the Transmitting Utility Should Do If It Determines That It Must Construct Additional Facilities or Modify Existing Facilities in Order To Provide All or Part of the Requested Services**

In situations in which the transmitting utility determines that it must construct additional facilities or modify existing facilities to provide all or part of the requested services, the transmitting utility must provide a fully documented description of why and for how long its grid is and will be constrained. Only by providing full technical information to a person requesting transmission services can a transmitting utility establish a productive working relationship for negotiating transmission service contracts.

In addition to explaining the determination of existing constraints, the transmitting utility should offer the party requesting services an executable contract for a study to determine how the constraint can be relieved. The study contract should specify the cost and production time for the study. The study itself should result in a determination of how the transmitting utility will remove the constraint, how long it will take and how much it will cost.

Transmitting utilities will usually be able to remove constraints by arranging for some type of physical expansion of the transmission grid, but there may be ways short of new construction to meet a request for transmission services. A party requesting services may find an alternate transmission path, or may be able to purchase someone else's prior transmission rights.

Since finding alternative means to accommodate a transmission request may require information available only to the transmitting utility, the Commission urges transmitting utilities to consider ways of making such information available to persons requesting transmission services. One way might be to post existing and planned transmission rights sales on an electronic bulletin board so that the parties can engage in informed negotiations.

If a transmitting utility determines that it can provide part but not all of the requested services without building new facilities, it should offer to provide the part of the services that does not require expansion of its transmission facilities under a separate contract. In effect, the transmitting utility may be able to treat such a request as two separate transactions—one for service on existing facilities and the other as a request involving expansion decisions.

*C. Other Issues*

**1. Prioritization of Service Requests**

There is no component regarding how the transmitting utility should prioritize service requests. A transmitting utility may find it difficult to prioritize requests in a fair manner, especially if the transmission grid is near capacity and only a limited number of transmission service requests can be accommodated without expansion. Although the Commission recognizes that "first-come, first-served" prioritization will not always produce the most efficient allocation of capacity, at this time it will accept prioritization based on this procedural rule or any reasonable method of allocation. However, the Commission expects that the industry may develop better allocation mechanisms in the future.

**2. The Right of an Applicant to File a Section 211 Request After 60 Days**

Good faith requests for transmission services can always be brought to the Commission 60 days after the request is made to the transmitting utility if the party making the request finds the transmitting utility's response unsatisfactory. However, we reiterate that these minimum elements are intended to serve as guidelines; they should not be viewed as limiting the negotiating options available to the parties so long as they do not require Commission action. The Commission urges parties to communicate freely and openly with each other and to work

[12] These components may be capital costs, such as interconnection charges, or variable costs, such as charges for transmission losses, that the transmitting utility proposes to charge for the service.

together creatively and constructively to eliminate constraints and to explore alternative transmission approaches to efficiently coordinate planning for all transmission users.

### V. Information Collection Statement

The Office of Management and Budget's (OMB) regulations at 5 CFR 1320.12 require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this policy statement are contained in new 18 CFR 2.20.

The Commission is issuing this Policy Statement with the information requirements to carry out its regulatory responsibilities to implement the transmission provisions of the Energy Policy Act of 1992. As provided by the Energy Policy Act, section 211(a) provides that the Commission may not issue an order directing a transmitting utility to provide transmission services unless the party requesting such an order has requested the transmission services from the transmitting utility at least 60 days before applying to the Commission. A request for transmission services is, then, a condition precedent to the Commission's ability to order transmission services under section 211 of the Federal Power Act. Section 213(a) of the FPA requires a response by a transmitting utility when any electric utility, Federal power marketing agency, or any other person generating electric energy for sale or resale makes "a good faith" request to a transmitting utility to provide wholesale transmission services under specific rates, charges, terms and conditions of service. The Commission's Office of Electric Power Regulation uses the data for determination of an acceptable transmission request for service of a wheeling order under section 211 of the FPA, and for a determination as to whether a transmitting utility has provided a sufficient reply under the newly amended statute. These collections of information are intended to be the minimum elements needed to make good faith request and a proper response.

The Commission is submitting to the Office of Management and Budget a notification of these proposed collections of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, (Attention: Desk Officer for Federal Energy Regulatory Commission).

### VI. Public Comment Procedures

The Commission invites interested persons to submit written comments on the matters and questions raised in this Policy Statement. An original and 14 copies of the comments must be filed with the Commission no later than August 20, 1993. Comments should be submitted to the Office of the Secretary, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. PL93–3–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street NE., Washington DC 20426, during normal business hours.

### List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 2, chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

## PART 2—GENERAL POLICY INTERPRETATIONS

1. The authority citation for part 2 is revised to read as follows:

**Authority:** 15 U.S.C. 717–716w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.20, to read as follows:

**§ 2.20 Good faith requests for transmission services and good faith responses by transmitting utilities.**

(a) *General Policy.* (1) This Statement of Policy is adopted in furtherance of the goals of sections 211(a) and 213(a) of the Federal Power Act, as amended and added by the Energy Policy Act of 1992.

(2) Under section 211(a), the Commission may issue an order requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) only if an applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order. The requirement in section 211(a) that an applicant make such a request will be met if such an applicant has, pursuant to section 213(a) of the FPA, made a good faith request to a transmitting utility to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions.

(3) It is the Commission's intention to apply the standards of this Statement of Policy when determining whether and when a valid "good faith" request for service was made.

(4) It is the Commission's intention to encourage an open exchange of information that exhibits a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility.

(5) The Commission intends to apply this Statement of Policy so as to carry out Congress' objective that, subject to appropriate terms and conditions and just and reasonable rates, in conformance with section 212 of the FPA, access to the electric transmission system for the purposes of wholesale transactions be more widely available.

(b) *The Components of a good faith request.* The Commission generally considers the following to constitute the minimum components of a good faith request for transmission services:

(1) The identity, address, telephone number, and facsimile number of the party requesting transmission services, and the same information, if different, for the party's contact person or persons.

(2) A statement that the party requesting transmission services is, or will be upon commencement of service, an entity eligible to request transmission under sections 211(a) and 213(a) of the FPA.

(3) A statement that the request for transmission services is intended to satisfy the "request for transmission services" requirement under sections 211(a) and 213(a) of the FPA, and that the request is not a request for mandatory retail wheeling prohibited under section 212(h) of the FPA.

(4) The party requesting transmission services should specify the character and nature of the services requested. Some types of service may require more detailed information than others. Where point-to-point service is requested, the party requesting transmission services should specify the anticipated point(s) of receipt to the transmitting utility's grid and the anticipated point(s) of delivery from the transmitting utility's grid. Where a party requesting

transmission services requests additional flexibility to schedule multiple resources to meet its needs (*e.g.*, network service), the request for services should contain a description of the requested services in sufficient detail to permit the transmitting utility to model the additional services on its transmission system.

(5) The names of any other parties likely to provide transmission service to deliver electric energy to, and receive electric energy from, the transmitting utility's grid in connection with the requested transmission services.

(6) The proposed dates for initiating and terminating the requested transmission services.

(7) The total amount of transmission capacity being requested.

(8) To the extent it is known or can be estimated, a description of the "expected transaction profile" including load factor data describing the hourly quantities of power and energy the party requesting transmission services would expect to deliver to the transmitting utility's grid at relevant points of interconnection. In the event delivery is to multiple points within the transmitting utility's electric control area, the requestor should describe, to the extent it is known or can be estimated, the expected load (over a given duration of time) at each such delivery point.

(9) Whether firm or non-firm service is being requested. Where a party requests non-firm service, it should specify the priority of service it is willing to accept, or the conditions under which it is willing to accept interruption or curtailment, if known.

(10) A statement as to whether the request is being made in response to a solicitation and a copy of the solicitation if publicly available. This will help the transmitting utility determine whether requests for transmission service are duplicative or mutually exclusive of requests filed by other parties.

(11) The proposed rates, terms and conditions for the requested transmission services as required by section 213(a). It is not necessary for the requestor to propose a specific numerical rate. Rather, a party requesting transmission services can fulfill the rates, terms and conditions requirement by specifying a rate methodology (*e.g.*, embedded or incremental cost) or by referencing an existing formula rate, transmission tariff, or transmission contract. The validity of the good faith request will not depend on the rates proposed by the party requesting transmission services. This requirement is not intended to allow utilities to delay responses to requests for transmission services, or to deny requests for transmission services on the basis of an overly rigid or technical approach to the "rates, terms and conditions" element of the request.

(12) Any other information to facilitate the expeditious processing of its request. Such information will improve the negotiation process, reduce costs, and will improve chances to arrange the requested transmission without resorting to section 211 application procedures before the Commission.

(c) *Components of a Reply to a Good Faith Request.* The Commission generally considers the following to constitute the minimum components of a reply to a good faith request for transmission services under section 213(a):

(1) Unless the parties agree to a different time frame, the transmitting utility must acknowledge the request within 10 days of receipt. The acknowledgement must include a date by which a response will be sent to the party requesting transmission services and a statement of any fees associated with responding to the request (e.g., initial studies).

(2) The transmitting utility may ask the applicant to provide clarification of only the information needed to evaluate and process a "good faith" request. If the person requesting transmission services believes the transmitting utility is attempting to frustrate the process by making excessive requests for clarification, it may raise this issue if, and when, it files a request for a section 211 order with the Commission.

(3) The transmitting utility must respond to a request within 60 days of receipt or some other mutually agreed upon response date. If both parties agree to an alternative schedule, the agreement must be in writing and signed by both parties.

(4) If the transmitting utility determines that it can provide all the requested services from existing capacity, it should respond by offering the party requesting transmission services an executable service agreement that at a minimum contains the following information:

(i) A description of the proposed transmission rate and any other costs. It is not necessary for the proposed service agreement to contain a fully developed cost-of-service. However, the agreement should explain the basis for the charges for each component of service, including the unbundled components of any transmission rate as well as any other charges.

(ii) The proposed service agreement should explicitly describe all of the applicable terms and conditions of the transmission services provided under the agreement.

(iii) The transmitting utility should accompany the proposed service agreement with a clear statement of the time during which the offer to provide the transmission services will remain open. An open agreement offer may obligate the seller while imposing no countervailing obligation on the purchaser, and an unexecuted contract potentially ties up transmission facilities, thus jeopardizing the availability and price for subsequent requests that would use the same facilities. However, at a minimum, a transmitting utility should permit the party requesting transmission services sufficient time to review service agreements and coordinate multiple stages of joint transactions.

(5) If the transmitting utility determines that it must construct additional facilities or modify existing facilities to provide all or part of the requested services, it must:

(i) Identify the specific constraints and their duration that prevent it from providing all the requested services and explain how these constraints prevent it from providing all the requested services or the desired level of firmness.

(ii) Provide to the applicant all studies, computer input and output data, planning, operating and other documents, work papers, assumptions and any other material that forms the basis for determining the constraints.

(iii) Offer to the applicant an executable agreement under which the applicant agrees to reimburse the transmitting utility for all costs of performing any studies necessary to determine what changes to the transmitting utility's grid are needed to overcome the constraint and provide the requested services, their cost, and the estimated time to complete them. At a minimum, the proposed agreement should contain the following:

(A) An estimate of the cost of the study and the time required to complete it, and

(B) A commitment to supply to the party requesting transmission services all computer input and output data, planning, operating and other documents, work papers, assumptions and any other material used to perform the study.

(iv) If a transmitting utility determines that it can provide part but not all of the requested services without building new facilities, it should inform the applicant of any portion of the requested services that can be performed without

constructing additional facilities or modifying existing facilities. In effect, the transmitting utility may be able to treat such a request as two separate transactions—one for service on existing facilities and the other as a request involving expansion decisions. Furthermore, where there are alternative, less expensive means of satisfying all or a portion of a transmission request, the Commission expects the transmitting utility to explore such alternatives (*e.g.*, redispatching certain generating units to alleviate a constraint).

[FR Doc. 93–17216 Filed 7–20–93; 8:45 am]
BILLING CODE 8717–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Anaquest, Inc., to Anaquest, Inc., A Subsidiary of BOC Health Care, Inc.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Judy M. O'Haro, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8737.

**SUPPLEMENTARY INFORMATION:** Anaquest, Inc., Bernards/78, 110 Allen Rd., Liberty Corner, Bernards Township, NJ 07938, has informed FDA of a change of sponsor name and address to Anaquest, Inc., A Subsidiary of BOC Health Care, Inc., Liberty Corner, NJ 07938–0804. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name and address.

### List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Anaquest, Inc.," and by adding in its place a new entry for "Anaquest, Inc., A Subsidiary of BOC Health Care, Inc.," and in the table in paragraph (c)(2) in the entry for "010019" by revising the sponsor name and address to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * | * |
| Anaquest, Inc., A Subsidiary of BOC Health Care, Inc., Liberty Corner, NJ 07938–0804 | 010019 |
| * * * * | * |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * | * |
| 010019 | Anaquest, Inc., A Subsidiary of BOC Health Care, Inc., Liberty Corner, NJ 07938–0804 |
| * * * * | * |

Dated: July 13, 1993.

**George A. Mitchell,**

*Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.*

[FR Doc. 93–17210 Filed 7–20–93; 8:45 am]
BILLING CODE 4160–01–F

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Neomycin Sulfate Solution

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by The Upjohn Co. The ANADA provides for the oral use of a generic neomycin sulfate solution for the treatment and control of colibacillosis in cattle (excluding veal calves), swine, sheep, and goats.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center For Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8643.

**SUPPLEMENTARY INFORMATION:** The Upjohn Co., Kalamazoo, MI 49001–0199, filed ANADA 200–113, which provides for the oral use of a generic 200 milligram/milliliter (mg/mL) neomycin sulfate solution (Biosol® liquid) for the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin in cattle (excluding veal calves), swine, sheep, and goats. The drug is administered at 10 mg neomycin sulfate per pound of body weight per day in divided doses.

Approval of ANADA 200–113 for The Upjohn Co.'s Biosol® liquid is as a generic copy of The Upjohn's Co.'s NADA 11–315 for Neomix® 325 soluble powder. The ANADA is approved as of June 28, 1993, and the regulations are amended by adding new § 520.1485 (21 CFR 520.1485) to reflect the approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.1485 is added to read as follows:

**§ 520.1485 Neomycin sulfate solution.**

(a) *Specifications.* Each milliliter contains 200 milligrams of neomycin sulfate (equivalent to 140 milligrams of neomycin base).

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.430 of this chapter.

(d) *Conditions of use*—(1) *Amount.* 10 milligrams of neomycin sulfate per pound of body weight per day in divided doses for a maximum of 14 days.

(2) *Indications for use.* For the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin in cattle (excluding veal calves), swine, sheep, and goats.

(3) *Limitations.* Administer undiluted or in drinking water. Prepare a fresh solution daily. If symptoms persist after using this preparation for 2 or 3 days, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms, but not to exceed a total of 14 consecutive days. Discontinue treatment prior to slaughter as follows: cattle and goats, 30 days; swine and sheep, 20 days.

Dated: July 14, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–17209 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–01–F

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**21 CFR Part 522**

### Implantation or Injectable Dosage Form New Animal Drugs; Sulfadimethoxine Injectable

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for the use of a generic sulfadimethoxine sterile solution in cattle for the treatment of bovine respiratory disease complex, bacterial pneumonia, and necrotic pododermatitis and calf diphtheria.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Melanie Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8643.

**SUPPLEMENTARY INFORMATION:** Agri Laboratories, Ltd., P.O. Box 3163, St. Joseph, MO 64503, filed ANADA 200–038, which provides for the use of a generic sulfadimethoxine sterile solution in cattle for the treatment of bovine respiratory disease complex (shipping fever complex), bacterial pneumonia associated with *Pasteurella spp.* sensitive to sulfadimethoxine, and necrotic pododermatitis (foot rot), and calf diphtheria caused by *Fusobacterium necrophorum*, sensitive to sulfadimethoxine.

Approval of ANADA 200–038 for Agri Laboratories' sulfadimethoxine injection 40 percent antibacterial is as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 041–245 for Albon® (sulfadimethoxine) injection 40 percent antibacterial. The ANADA is approved as of May 25, 1993, and the regulations are amended in 21 CFR 522.2220 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.2220 is amended by revising paragraph (a)(2) to read as follows:

**§ 522.2220 Sulfadimethoxine injection.**

(a) * * *

(2) *Sponsor.* (i) See No. 000004 in § 510.600(c) of this chapter for conditions of use as in paragraphs (a)(3)(i) through (a)(3)(iii) of this section.

(ii) See No. 057561 for conditions of use as in paragraph (a)(3) of this section.

* * * * *

Dated: July 13, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–17207 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–01–F

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**21 CFR Part 524**

### Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Betamethasone Valerate, Clotrimazole Ointment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Corp. The NADA provides for the use of Otomax® (gentamicin sulfate, betamethasone valerate, clotrimazole) ointment for treatment of canine otitis externa associated with yeast and/or bacteria susceptible to gentamicin.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8614.

**SUPPLEMENTARY INFORMATION:** Schering-Plough Animal Health Corp., P.O. Box 529, Galloping Hill Rd., Kenilworth, NJ 07033, is sponsor of NADA 140–896 which provides for the use of Otomax® (gentamicin sulfate, betamethasone valerate, clotrimazole) ointment. Each gram (g) of ointment contains

gentamicin sulfate equivalent to 3 milligrams (mg) gentamicin base, betamethasone valerate equivalent to 1 mg betamethasone, and 10 mg clotrimazole. Otomax® is used for the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin. The NADA was approved as of June 9, 1993, and the regulations are amended in 21 CFR part 524 by adding new § 524.1044g to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)) provides a 3-year period of exclusivity to this approval beginning June 9, 1993, because new clinical or field investigations (other than bioequivalence or residue studies) essential to this approval were conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 524**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 524.1044g is added to read as follows:

**§ 524.1044g Gentamicin sulfate, betamethasone valerate, clotrimazole ointment.**

(a) *Specifications.* Each gram (g) of ointment contains gentamicin sulfate equivalent to 3 milligrams (mg) gentamicin base, betamethasone valerate equivalent to 1 mg betamethasone, and 10 mg clotrimazole.

(b) *Sponsor.* See 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used for the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin.

(2) For 7.5 or 15 g tube, instill 4 drops of ointment twice daily into the ear canal of dogs weighing less than 30 pounds, instill 8 drops twice daily for dogs weighing 30 pounds or more. For 215 g bottle, instill 2 drops of ointment twice daily into the ear canal of dogs weighing less than 30 pounds, instill 4 drops twice daily for dogs weighing 30 pounds or more. Therapy should continue for 7 consecutive days.

(3) The external ear should be cleaned and dried before treatment. Remove foreign material, debris, crusted exudates, etc., with suitable solutions. Excessive hair should be clipped from the treatment area. If hypersensitivity occurs, treatment should be discontinued and alternate therapy instituted.

(4) Corticosteroids administered to dogs, rabbits, and rodents during pregnancy have resulted in cleft palate in offspring. Other congenital anomalies including deformed forelegs, phocomelia, and anasarca have been reported in offspring of dogs which received corticosteroids during pregnancy. Clinical and experimental data have demonstrated that corticosteroids administered orally or parenterally to animals may induce the first stage of parturition if used during the last trimester of pregnancy and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis.

(5) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 13, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–17208 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Part 635

RIN 2125–AD12

### General Material Requirements

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA is amending its regulations on the Buy America provisions and the use of convict produced materials to comply with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Sections 1041(a) and 1048 of the ISTEA amended and clarified the Buy America provisions. Iron has been added to the materials and products that are covered under the Buy America provisions. The coating of steel has been determined to be a manufacturing process and thereby subject to the Buy America provisions. Section 1019 of the ISTEA clarifies the intent of Congress regarding convict produced materials. Materials produced by convict labor after July 1, 1991, may not be used for Federal-aid highway construction projects unless produced at a prison facility producing convict made materials for Federal-aid construction projects prior to July 1, 1987. This action reaffirms the requirements previously placed on the use of material produced by convict labor on Federal-aid highway projects.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Engineering, 202–366–0392, or Mr. Wilbert Baccus, Office of Chief Counsel, 202–366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Buy America**

On December 18, 1991, the President signed into law the ISTEA (Pub. L. 102–240, 105 Stat. 1914) to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs and mass transit programs, and for other purposes. Section 1048(a) of the ISTEA amended section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2136), which had established Buy America

requirements for Federal-aid highway projects, by inserting the word "iron" after the word "steel." By adding the word "iron," the Congress has expanded Buy America protection to include iron and iron products in addition to steel and steel products, which were previously protected.

Section 1041(a) of the ISTEA requires that existing 23 CFR 635.410 relating to Buy America requirements for the Federal-aid highway program be applied to coating. By its action, the Congress has clarified that the activity of coating is considered a manufacturing process. The material being applied as a coating is not covered under Buy America. Coating is interpreted to mean all processes that protect or enhance the value of a material or product to which it is applied, such as epoxy coatings, galvanizing or painting.

Although the subtitle for section 1041(a) addressed "coating of steel," the text of section 1041(a) refers to "coating" without limitation. The FHWA believes that the Congress intended that the Buy America provisions of 23 CFR 635.410 be applied to the process of coating whenever a material that is subject to Buy America is covered with a coating intended to protect or enhance the value of the material that is coated. Section 1048 of the ISTEA also amended the Buy America Program to add iron to steel as covered by the program. Accordingly, the FHWA is amending section 635.410 to include the process of applying a coating to either steel or iron.

**Convict Produced Materials**

Section 1019 reestablishes the restrictions of 23 U.S.C. 114 on the use of convict produced materials on Federal-aid highway construction projects for materials produced after July 1, 1991. This section overrides the provisions of the Department of Justice's 1989 Appropriations Act which permitted the unrestricted use of these materials in the construction of Federal-aid highways. Now only materials which were produced by convicts prior to July 2, 1991, may be used on Federal-aid highway projects free from the restrictions placed on the use of these materials by 23 U.S.C. 114.

The Surface Transportation and Uniform Relocation Assistance Act (STURAA) became law on April 2, 1987 (Pub. L. 100–17, 101 Stat. 132). Section 112 of the STURAA amended 23 U.S.C. 114(b) to include limitations on convict produced materials. The section as amended limited the use of materials produced by convict labor for use in Federal-aid highway construction to (1) materials produced by convicts who are on parole, supervised release, or probation from a prison or (2) materials produced in a qualified prison facility with the amount of such materials produced during any 12-month period not exceeding the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

Subsequently, section 202 of the Judiciary and Related Agencies Appropriation Act for Fiscal Year 1989 (JRAA), Pub. L. 100–459, 102 Stat. 2186, contained language which nullified the limitations on the use of convict produced materials on Federal-aid projects imposed by section 112 of the STURAA. Section 1019 of the ISTEA negates the nullifying effect of section 202 of the JRAA and thereby reinstates the restrictive requirements of section 112 of the STURAA (23 U.S.C. 114(b)(2)).

**Rulemaking Analysis and Notices**

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, or a significant regulation under the regulatory policies and procedures of the Department of Transportation. Because the revisions in this document substantially reflect statutory language mandated by the ISTEA, the FHWA for good cause finds that public comment is unnecessary under section 553(b)(3)(B) of the Administrative Procedure Act. In addition, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information for the following reasons. First, the FHWA has already issued an informal guidance memorandum in February 1992, informing its regional offices and the State transportation departments of the changes effected by sections 1041 and 1048, so the FHWA has apprised interested persons of the actions covered by this final rule. Second, in revising these regulations to conform to the ISTEA, the FHWA is not interpreting the statute nor exercising discretion in a way that could be meaningfully affected by public comment. The FHWA believes that the Administrative Procedure Act does not require prior notice and opportunity for public comment on the limited interpretation of section 1041(a) as it relates to coating. See 5 U.S.C. 553(b).

This final rule is made effective upon publication. Section 1019 of the ISTEA, reinstating regulatory restrictions of the use of convict produced materials, section 1041(a), requiring that 23 CFR 635.410 be applied so that the process of coating is included in the Buy America program, and section 1048(a), adding iron to the material covered under the Buy America provisions, are self implementing statutory provisions. Therefore, these amendments are merely technical ones which conform the relevant regulatory provisions to the ISTEA, which itself effected these changes. For this reason, and to immediately implement congressional mandates, the FHWA finds that there is good cause for publishing this rule less than 30 days before its effective date, as is ordinarily required under section 553(d) of the Administrative Procedure Act. Additionally, the Administrative Procedure Act provides that the 30-day delay in effective date requirement does not apply to interpretative rules such as the FHWA's amendment to 23 CFR 635.410 incorporating the FHWA's limited interpretation of section 1041(a) as it relates to coating.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. It is anticipated that this rule will have a minimal economic impact. Hence, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this document has federalism implications. However, we believe that the federalism implications are mitigated by the need to meet requirements mandated by statute, and the agency has allowed States the maximum administrative discretion to meet the intent of the statute. Therefore, the FHWA certifies that this action has insufficient federalism implications to warrant the preparation of a separate Federalism Assessment.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

*Regulatory Identification Number*

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 635**

Government contracts, Grant programs—transportation, Highways and roads.

In consideration of the foregoing, the FHWA hereby amends part 635, subpart D of ch. I of title 23, Code of Federal Regulations, as set forth below.

Issued on: July 13, 1993.

**Rodney E. Slater,**

*Federal Highway Administrator.*

## PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for part 635 is revised to read as follows:

**Authority:** 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601, *et seq.*; 49 CFR 1.48(b); §§ 635.410 and 635.417 are also issued under secs. 1019, 1041(a) and 1048, Pub. L. 102–240, 105 Stat. 1914; sec. 10, Pub. L. 98–229, 98 Stat. 55; sec. 165, Pub. L. 97–424, 96 Stat. 2136; sec. 112, Pub. L. 100–17, 101 Stat. 132.

### Subpart D—General Material Requirements

2. In § 635.410 paragraphs (b) (1) through (4) and (c)(1)(ii) are revised to read as follows:

**§ 635.410 Buy America requirements.**

* * * * *

(b) * * *

(1) The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and iron materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.

(4) When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

* * * * *

(c)(1) * * *

(ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

* * * * *

3. In § 635.417, the introductory text of paragraph (a) is revised to read as follows:

**§ 635.417 Convict produced materials.**

(a) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

* * * * *

[FR Doc. 93–17192 Filed 7–20–93; 8:45 am]

BILLING CODE 4910-22-P

## POSTAL RATE COMMISSION

**39 CFR Part 3001**

**[Docket No. RM93–3; Order No. 981]**

**Rules of Practice and Procedure: Correction and Conforming Changes; Other Minor Corrections and Miscellaneous Editorial Revisions**

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This document identifies conforming changes; makes a nomenclature change; and makes other minor editorial changes to the Commission's rules of practice and procedure.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, Acting Legal Advisor, 1333 H Street, NW., Washington, DC 20268–0001, telephone (202) 789–6820.

**SUPPLEMENTARY INFORMATION:** A review of the Commission Rules of Practice and Procedure, involving the comparison of Commission orders with the version appearing in the Code of Federal Regulations, 39 CFR 3001.1 through 3001.117, reveals certain inconsistencies. First, it appears that the changes made effective by Commission Order No. 708 have not been incorporated. Second, Commission Order No. 839, issued August 22, 1989, amended among other sections of the Commission Rules of Practice and Procedure, Rule 54(j), 39 CFR 3001.54(j). That action inadvertently superseded Commission Order No. 835, issued August 9, 1989, which added the following language to rule 54(j):

(7) For third-class bulk mail, subject to paragraph(a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

This provision is revived and renumbered as rule 54(l)(2). Third and finally, minor corrections should be made to clarify language and reflect accurately Commission action in Orders Nos. 363, 492, 529, 640, 676, 697, and 836.

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedure, Postal Service.

For the reasons stated above, the Commission corrects and makes other conforming and miscellaneous changes to the Commission Rules of Practice and Procedure (39 CFR 3001.2 through 3001.116) as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; [5 U.S.C. 553], 80 Stat. 383.

**§ 3001.2 [Added and Reserved]**

2. Section 3001.2 is added and reserved.

**§ 3001.5 [Amended]**

3. In § 3001.5(g), change "has been permitted to intervene" to "has intervened."

**§ 3001.5 [Amended]**

4. In § 3001.5(h), change "granted limited participation" to "who are limited participators".

**§§ 3001.6, 3001.7, 3001.11, 3001.12, 3001.20, 3001.23, 3001.24, 3001.26, 3001.31, 3001.33, 3001.36, 3001.39, 3001.54, 3001.83, 3001.115 [Amended]**

5. In §§ 3001.6(a), (b); 3001.7(a)(1)(ii) and (iii); 3001.7(c)(1) and (d)(1); 3001.11(e); 3001.12(g); 3001.20(b); 3001.23(b); 3001.24(b); 3001.26(a); 3001.31(k)(3)(iv); 3001.33(e); 3001.36; 3001.39(a); 3001.54(p)(2); 3001.83(e); 3001.115(a), change "his" to read "his/her".

**§§ 3001.6, 3001.7, 3001.11, 3001.20, 3001.23, 3001.24, 3001.25, 3001.42 [Amended]**

6. In §§ 3001.6(b) and (c); 3001.7(b)(3); 3001.11(e); 3001.20(e); 3001.23(b) and (d); 3001.24(b) and (e); 3001.25(e); 3001.42(c)(2), change "he" to read "he/she".

**§ 3001.7 [Amended]**

7. In § 3001.7(a)(1)(i), change "Commission" to "Commissioners".

8. In § 3001.7(b)(2), change period after "proceeding" to a semi-colon.

**§ 3001.9 [Amended]**

9. In § 3001.9(a), change "20268" to "20268–0001".

**§ 3001.10 [Amended]**

10. In § 3001.10(a), change "left-handed" to "left-hand".

**§ 3001.11 [Amended]**

11. In § 3001.11(a), change "petition to intervene" to "notice of intervention".

**§ 3001.12 [Amended]**

12. In § 3001.12(e), change "first class mail" to "First-Class Mail"; change "Assistant General Counsel, Postal Rate and Mail Classifications Office" to "Assistant General Counsel, Office of Rate and Classification Law" and change zip code "20260" to 20260–1140.

**§ 3001.13 [Amended]**

13. In § 3001.13, change "hearing, which" to "hearing. Proceedings".

**§ 3001.17 [Amended]**

14. In § 3001.17(c)(3), change comma after "postal services" to semi-colon.

15. In § 3001.17(c)(4), change "petitions for leave to intervene" to "notices of intervention".

16. In § 3001.19, the first sentence is revised to read as follows:

**§ 3001.19 Notice of prehearing conference or hearing.**

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17, the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. * * *

17. In § 3001.19, in the second sentence, remove "and" before "the time and place".

**§ 3001.20 [Amended]**

18. In § 3001.20(b), change "petitioner's" to "intervenor's"; "petitioner" to "intervenor"; and "petition" to "notice".

19. In § 3001.20(c), change "interventions" to "intervention".

20. In § 3001.20a, introductory text, change period after "provisions" to semi-colon.

21. In § 3001.20a(a), change "requestor's" to "intervenor's".

22. In § 3001.20b(b), change "they are" to "it is".

**§ 3001.21 [Amended]**

23. In § 3001.21(b), change "statutary" to "statutory".

**§ 3001.23 [Amended]**

24. In § 3001.23(d), remove "he" before "may be withdrawn by the Commission".

**§ 3001.24 [Amended]**

25. In § 3001.24(d)(1), replace period at end of statement with a semi-colon.

26. In § 3001.24(d)(2), change "with regard to" to "concerning"; replace period at end with a semi-colon.

27. In § 3001.24(d)(3), (4), (5), (6), (7), (8), (9), (10), replace period at end of each statement with a semi-colon.

28. In § 3001.24(d)(11), replace period at end of statement with "; and".

**§ 3001.25 [Amended]**

29. In §§ 3001.25(c), 3001.26(c) and 3001.27(c), change "man-hours" to "work hours".

**§ 3001.26 [Amended]**

30. In § 3001.26(a), change "upon which" to "upon whom".

**§ 3001.31 [Amended]**

31. In § 3001.31(b), add phrase "document and to offer in evidence in like manner other material" after "opportunity to examine the entire".

32. In § 3001.31(d), change "economical" to "economic".

33. In § 3001.31a(b), change "Officers" to "officers".

34. In § 3001.31a(c) in the third sentence change "circumstrances" to "circumstances".

**§ 3001.33 [Amended]**

35. In § 3001.33(h), change "him" to read "him/her."

**§ 3001.36 [Amended]**

36. In § 3001.36, remove words "before him" appearing after "oral argument"; remove word "his" before "hearing such argument".

**§ 3001.42 [Amended]**

37. In § 3001.42a, remove "§ " in last sentence.

**§ 3001.43 [Amended]**

38. In § 3001.43(e)(4), replace period at end of sentence with a colon.

39. The address "2000 L Street, NW., Room 500, Washington, DC. 20268" is revised to read "1333 H Street, NW., Suite 300, Washington, DC. 20268–0001" in § 3001.43(e)(4)(i).

40. In § 3001.43(f)(1), change "his or her" to "his/her" and in the third sentence, change semi-colon after "of this section" to a comma.

41. In § 3001.43(g)(3), change "one copy to each Member," to "one copy to each Commissioner,".

42. In § 3001.43(g)(5), change "Member" to "Commissioner".

43. In § 3001.43(g)(6), in the first sentence change "Commission Member" to "Commissioner" and change "date" to "day"; and in the last sentence change "Docket file" to "docket file".

**§ 3001.54 [Amended]**

44. In § 3001.54(h)(5)(v)(*a*), replace period after phrase "for each time period" with a colon.

45. In § 3001.54(l), redesignate existing paragraph as paragraph (l)(1) and add the following paragraph (l)(2):

**§ 3001.54 Contents of formal request.**

* * * * *

(l) * * *

(1) * * *

(2) For third-class bulk mail, subject to paragraph (a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort

level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

* * * * *

46. In § 3001.54(c) (2)(i) and (3), change "paragraphs (b) through (o)" to "paragraphs (b) through (n)".

47. In § 3001.54(p)(2), change "paragraph (q)" to "paragraph (p)(1)".

48. In § 3001.54(r), change "paragraphs (b) through (r)" to "paragraphs (b) through (q)".

**§ 3001.55 [Amended]**

49. In § 3001.55, remove phrase "or granting petitions to intervene"; change "parties permitted to intervene" to "intervenors"; remove "such" before "service" and change "service" to "Service"; change "have been granted limited participation" to "are limited participators".

**§§ 3001.57, 3001.57c [Amended]**

50. In §§ 3001.57 and 3001.57c, in the heading change "express mail" and "Express mail" respectively to "Express Mail".

**§ 3001.63 [Amended]**

51. In § 3001.63, change "reply" to "rely".

**§ 3001.64 [Amended]**

52. In § 3001.64(c)(1) and (2), change period at end of each paragraph to semi-colon.

**§ 3001.65 [Amended]**

53. In § 3001.65, in first sentence remove clause "or granting petitions to intervene" and change "parties permitted to intervene" to "intervenors"; in second sentence remove "Such" before "service", change "service" to "Service"; and change "have been granted limited participation" to "are limited participators".

**§ 3001.75 [Amended]**

54. In § 3001.75, remove "or granting petitions to intervene" in first sentence and change "parties permitted to intervene" to "intervenors"; in second sentence remove "Such" before "service", change "service" to "Service" and change "have been granted limited participation" to "are limited participators".

**§ 3001.83 [Amended]**

55. In § 3001.83(a), change colon at end of paragraph to a semi-colon.

**§ 3001.101 [Amended]**

56. In section 3001.101, add phrase "on a periodic basis" after "Secretary of the Commission".

**§ 3001.102 [Amended]**

57. In § 3001.102(a)(1), change "previous" to "prior".

58. In § 3001.102(d), introductory text, change "provided" to "filed".

59. In § 3001.102(d)(4), change "Notices" to "Notice".

**§ 3001.110 [Amended]**

60. The address "2000 L Street, NW., Washington, DC 20268" is revised to read "1333 H Street, NW., suite 300, Washington, DC. 20268–0001" in § 3001.110.

**§ 3001.111 [Amended]**

61. In § 3001.111(b), change "representation" to "representative" in first sentence; in first and third sentences, change "petition for leave to intervene" to "notice of intervention"; and change "petition" to "notice" in second and third sentences. In last sentence, change "petitions for leave to intervene" to "notices of intervention".

**§ 3001.114 [Amended]**

62. In § 3001.114(a), change "petition for leave to intervene" to "notice of intervention".

**§ 3001.115 [Amended]**

63. In § 3001.115, change heading from "Briefs on appeal" to "Participant statement or brief."

**§ 3001.116 [Amended]**

64. The address "2000 L Street NW., suite 500, Washington, DC 20268" is revised to read "1333 H Street, NW., suite 300, Washington, DC 20268–0001" in § 3001.116.

Issued by the Commission on June 28, 1993.

Cyril J. Pittack,

*Acting Secretary.*

[FR Doc. 93–17204 Filed 7–20–93; 8:45 am]

BILLING CODE 7710-FW-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[OPP–300281A; FRL–4630–6]**

**RIN 2070–AB78**

## Cross-Linked Polyurea-Type Encapsulating Polymer; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is establishing an exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only. This regulation replaces the current exemption for cross-linked polyurea-type encapsulating polymer when used as an encapsulating material in pesticide formulations applied prior to planting under 40 CFR 180.1039. This regulation was requested by ICI Americas, Inc.

**EFFECTIVE DATE:** This regulation becomes effective on July 21, 1993.

**ADDRESSES:** Written objections, identified by the document control number [OPP-300281A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708M, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 28, 1993 (58 FR 25792), EPA issued a proposed rule announcing that ICI Americas, Inc., Wilmington, DE 19897, had submitted a pesticide petition (PP 2E4146) to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only. The regulation replaces the current exemption from the requirement of a tolerance for this chemical under 40 CFR 180.1039. Because neither the amount nor the use in the formulation has any bearing on the exemption, reference to a specific amount has been dropped.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose;

wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The scientific data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA is establishing the exemption from the requirement of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 1993.

**Douglas D. Campt,**
*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1001(d) table is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * | * * * | * * |
| Cross-linked polyurea-type encapsulating polymer ..... | ..... | Encapsulating agent. |
| * * | * * * | * * |

* * * * *

[FR Doc. 93–17061 Filed 7–20–93; 8:45 am]
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 640**

**[Docket No. 930481–3167; I.D. 032993A]**

**Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS amends the regulations that implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This final rule modifies the 2-day special recreational fishing season in the exclusive economic zone (EEZ) off Florida by changing the season from the last weekend in July to the last Wednesday and Thursday in July; increasing the daily bag and possession limit to 12 spiny lobsters, except off Monroe County, Florida, where the limit remains 6 spiny lobsters; limiting harvesting of spiny lobster to diving and the use of bully nets or hoop nets; and prohibiting harvesting of spiny lobster by diving at night off Monroe County, Florida. The intended effects of this rule are to enhance cooperative Florida/Federal management of the spiny lobster fishery by implementing Florida's rules in the EEZ off Florida, reduce fishing effort off Monroe County, Florida, during the 2-day special recreational season, protect the valuable spiny lobster resource, reduce environmental damage, and otherwise improve the effectiveness of necessary regulations.

**EFFECTIVE DATE:** July 24, 1993.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act)

The FMP contains a regulatory amendment procedure for implementing specified gear and harvest restrictions applicable to the spiny lobster fishery in the EEZ. In accordance with that regulatory amendment procedure, the

Florida Marine Fisheries Commission (FMFC) requested the Director, Southeast Region, NMFS (Regional Director), to implement in the EEZ off Florida, with the Councils' oversight, modifications to certain gear and harvest limitations that were proposed by the FMFC and approved by the Governor and Cabinet of Florida for implementation in Florida's waters.

Specifically, the FMFC requested adoption in the EEZ off Florida of (1) a change in the dates of the special 2-day recreational season from the last weekend in July to the last Wednesday and Thursday in July; (2) an increase in the daily bag and possession limit during that season from six to twelve lobsters in the EEZ off Florida, except off Monroe County, where the limit would remain at six; (3) the elimination of trap fishing in the EEZ off Florida during the 2-day season; and (4) a prohibition on night diving for lobster off Monroe County, Florida, during the 2-day season. The FMFC requested implementation of these changes before the start of their 2-day season on July 28–29, 1993. The procedural requirements for the regulatory amendment procedure and the background and rationale for the requested changes were contained in the proposed rule (58 FR 32639, June 11, 1993) and are not repeated here.

One comment was received on the proposed rule.

*Comment.* The commenter stated his belief that the intention of the rulemaking is to increase the number of spiny lobster available to the commercial trap fishery.

*Response:* The intent of the rulemaking is neither to increase nor decrease the commercial harvest of spiny lobster. Rather, the intent is to reduce the recreational effort off Monroe County, Florida, during the special 2-day recreational season.

## Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is necessary for the conservation and management of the spiny lobster fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that the rule is not a "major rule" under E.O. 12291.

The Councils prepared a regulatory impact review for this rule, the economic effects of which were summarized in the proposed rule.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, because revenues are expected to be redistributed but not foregone. As a result, a regulatory flexibility analysis was not prepared.

The Councils prepared an environmental assessment (EA) for this action. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Florida, the only state affected. This determination was submitted for review by the responsible Florida agencies under section 307 of the Coastal Zone Management Act. The Florida agencies provided information on changes in Florida's legislation on the spiny lobster fishery, such changes not having a substantive effect on implementation of this rule; pointed out a minor error in wording in the Councils' regulatory amendment, which has been corrected; and agreed with the determination of consistency.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act and does not contain policies with federalism implication sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator finds that a delay in implementing this rule beyond July 24, 1993, would unnecessarily prolong incompatible Florida/Federal regulations on spiny lobster, which would be contrary to the public good. In particular, delay beyond July 24 would result in two separate 2-day special recreational fishing seasons in 1993, one in the EEZ off Florida on July 24–25 and the other in Florida's waters on July 28–29. Based on widespread publicity of the expected change in the dates of the 2-day recreational season in the EEZ, the vast majority of the approximately 50,000 people who participate in the spiny lobster fishery during the recreational season have made hotel/motel reservations in the Florida Keys for the July 28–29 dates. Concentration of the entire fishing effort in Florida's waters on these dates would further aggravate environmental damage in these waters. In addition, having two seasons would decrease the effectiveness of Joint Florida/Federal enforcement efforts and increase the cost of enforcement. Accordingly, the Assistant Administrator finds that, under section 553(d)(3) of the Administrative Procedure Act, good cause exists not to delay for 30 days the effective date of this final rule.

## List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 15, 1993.

**Gary Matlock,**

*Acting Assistant Administrator, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 640 is amended as follows:

## PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 640.2, a new definition for "Off Monroe County, Florida" is added in alphabetical order to read as follows:

**§ 640.2 Definitions.**

* * * * *

*Off Monroe County, Florida* means the area from the Florida coast to the outer limit of the EEZ between a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) and a line extending directly west from the Monroe/Collier County, Florida boundary (25°48.0'N. latitude).

* * * * *

3. In § 640.7, in paragraph (g), the comma before "as specified in § 640.21(a)" is revised to semicolon, and paragraphs (l) and (p) through (s) are revised to read as follows:

**§ 640.7 Prohibitions.**

* * * * *

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance; as specified in § 640.20(b) and § 640.22 (a)(1) and (a)(3).

* * * * *

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23 (a) or (b), except as authorized in § 640.23 (c) and (d).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(d).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag

and possession limit, as specified in § 640.23(g).

(z) Transfer or receive at sea spiny lobster in or from the EEZ caught under the bag and possession limits, as specified in § 640.23(h).

* * * * *

4. In § 640.20, paragraph (b) is revised to read as follows:

**§ 640.20 Seasons.**

* * * * *

(b) *Special recreational fishing seasons.*

(1) *EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 640.22(a) for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(2) *EEZ other than off Florida.* There is a 2-day special recreational fishing season in the EEZ other than off Florida during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 640.22(a) for general prohibitions on gear and methods.)

* * * * *

**§ 640.22 [Amended]**

5. In § 640.22, in paragraph (a)(2), the reference to: "§ 640.23(c)" is revised to read "§ 640.23(d)".

6. In § 640.23, paragraphs (b) through (g) are redesignated as paragraphs (c) through (h); in newly designated paragraph (d), in the third sentence, the reference to "this paragraph (c)" is revised to read "this paragraph (d)"; in newly designated paragraph (e), the reference to "paragraph (b) of this section" is revised to read "paragraph (c) of this section"; in newly designated paragraph (f), the reference to "paragraphs (a) or (c) of this section" is revised to read "paragraphs (a), (b), or (d) of this section"; in newly designated paragraph (g), the reference to "paragraph (a) of this section" is revised to read "paragraphs (a) and (b) of this section"; in newly designated paragraph (h), the reference to "paragraph (a) or (c) of this section" is revised to read "paragraphs (a), (b), or (d) of this section"; paragraph (a) is revised; and new paragraph (b) is added to read as follows:

**§ 640.23 Bag and possession limits.**

(a) *Commercial and recreational fishing season.* Except as specified in paragraphs (c) and (d) of this section, during the commercial and recreational fishing season specified in § 640.20(a), the daily bag and possession limit of spiny lobster in or from the EEZ is six per person.

(b) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 640.20(b), the daily bag and possession limit of spiny lobster—

(1) In or from the EEZ off Monroe County, Florida is six per person;

(2) In or from the EEZ off Florida other than off Monroe County, Florida is twelve per person; and

(3) In or from the EEZ other than off Florida is six per person.

* * * * *

[FR Doc. 93-17272 Filed 7-16-93; 3:04 pm]

BILLING CODE 3510-22-M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 655

**[Docket No. 921221-3162; ID No. 101392B]**

### Atlantic Mackerel, Squid, and Butterfish Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final specifications for the 1993 and 1994 Atlantic mackerel, squid, and butterfish fisheries.

**SUMMARY:** NMFS issues these final specifications for the 1993 and 1994 fishing years for Atlantic mackerel, squid, and butterfish. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish specifications for up to 3 consecutive fishing years. This action is intended to fulfill this requirement and promote the development of the U.S. Atlantic mackerel, squid, and butterfish fisheries.

**EFFECTIVE DATES:** January 1, 1993, through December 31, 1994.

**ADDRESSES:** Copies of the Mid-Atlantic Fishery Management Council's "quota paper" and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901. Copies of the environmental assessment are available from Richard B. Roe, Northeast Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, 508-281-9104 or Richard Seamans, 508-281-9244.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 655. These regulations stipulate that the Secretary will publish a notice specifying the initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to 3 consecutive years.

Since an update of the Atlantic mackerel stock assessment will be forthcoming in 1994, the Council has chosen to recommend specifications for 1993 and 1994 only. Procedures for determining the initial annual amounts are found in § 655.22.

Proposed initial specifications for the 1993 and 1994 Atlantic mackerel, squid, and butterfish fisheries were published on December 22, 1992 (57 FR 60786).

The following table contains the final initial specifications for Atlantic mackerel, *Loligo* squid, *Illex* squid, and butterfish. These specifications are based on the recommendations of the Mid-Atlantic Fishery Management Council and public comment.

TABLE.—FINAL INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEARS, JANUARY 1 THROUGH DECEMBER 31, 1993 AND JANUARY 1 THROUGH DECEMBER 31, 1994.

[In metric tons (mt)]

| Specifications | Squid | | Atlantic Mackerel | Butterfish |
|---|---|---|---|---|
| | *Loligo* | *Illex* | | |
| Max OY[1] | 44,000 | 30,000 | [2]N/A | 16,000 |
| ABC[3] | 44,000 | 30,000 | 850,000 | 16,000 |
| IOY | 44,000 | 30,000 | 120,000 | 10,000 |
| DAH | 44,000 | 30,000 | [4]120,000 | 10,000 |
| DAP | 44,000 | 30,000 | 50,000 | 10,000 |
| JVP | 0 | 0 | 55,000 | 0 |
| TALFF | 0 | 0 | 0 | 0 |

[1] Max OY as stated in the FMP;
[2] Not applicable; see the FMP;
[3] IOY can rise to this amount;
[4] Contains 15,000 mt. projected recreational catch based on the formula contained in the regulations (50 CFR part 655).

In addition to these final initial specifications, the Regional Director imposes four special conditions for the 1993 and 1994 Atlantic mackerel fisheries as follows: (1) Joint ventures are allowed, but river herring bycatch south of 37°30' N. latitude may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Director will monitor fishing operations and manage harvest to reduce impacts on marine mammals in prosecuting the Atlantic mackerel fishery; (3) the IOY for Atlantic mackerel may be increased during each fishing year, but the total will not exceed 200,000 mt; and (4) applications from a particular nation for joint ventures for 1993 or 1994 will not be approved until the Regional Director determines, based on an evaluation of performances, that the nation's purchase obligations for 1991 and previous years have been fulfilled.

**Comments and Responses**

Nine sets of comments on the proposed initial specifications were received during the comment period. One set of comments addressed the specifications for *Loligo* and *Illex* squids. All commenters addressed the specification of zero TALFF for the Atlantic mackerel fishery. Six sets of comments opposed zero TALFF and three sets of comments supported zero TALFF. All commenters favored joint venture processing in the Atlantic mackerel fishery.

*Comment:* The ongoing capitalization of the squid fishery in 1992, as the wetboats convert to refrigerated seawater systems (RSW), has greatly increased the physical capacity to take the squid resources. There is no longer any ability to allocate to the JVP without disenfranchising the freezer trawler and RSW fleet. NMFS' proposed reservation of the squid quotas to the DAP is required under the law, and would promote the continuing development of the U.S. industry in the Atlantic.

*Response:* NMFS agrees that the capacity of the squid fishery has expanded with the conversion of vessels to RSW systems. A record harvest of approximately 17,000 mt of *Illex* squid in 1992, up from 11,700 mt in 1991, confirms this. Circumstances at this time require the reservation of squid quotas to DAP; however, NMFS recognizes the dynamic nature of the squid fisheries, and the Council, via the annual quota paper, must continue to defend their annual recommendations for specifications in these fisheries.

*Comment:* NMFS and the Council would be fulfilling the intent of Congress when it strengthened the promotional role of the Councils by enacting the American Fisheries Promotion Act of 1980 (The Act). Commonly called the "Breaux Bill," the Act made three major amendments to the Magnuson Fishery Conservation and Management Act (Magnuson Act) in an attempt to accelerate dramatically the phaseout of the foreign fleets and the growth in the domestic harvesting and processing sectors. Section 233 of the Act amended section 2(b)(6) of the Magnuson Act by declaring as a purpose of the Magnuson Act the need to "ensure that optimum yield determinations promote the development of the U.S. fishing industry."

*Response:* Atlantic mackerel caught and processed by foreign vessels in a directed fishery may compete directly with U.S. products in targeted markets. NMFS recognizes that the heavily capitalized and often subsidized vessels employed by foreign nations can produce mackerel at a lesser cost than the present U.S. fleet and, therefore, undercut prices needed to promote the growth of the domestic fishery. The U.S. processors of Atlantic mackerel must establish a base in foreign markets upon which the U.S. industry can grow. The specification of TALFF can be an impediment to this potential growth. Conversely, the specification of zero TALFF might promote the growth of the domestically produced product.

*Comment:* In its assessment of relative benefits of zero TALFF to the Nation, NMFS should acknowledge in the final rule that there is significant, albeit unquantified, value which can be attributed to employment growth and the ripple effect of such economic activity in the local economies.

*Response:* NMFS recognizes that there may be external benefits of implementing a zero TALFF specification. However, the precise or accurate measurement of a "ripple" or multiplier effect on local or regional economies cannot be accomplished at this time. NMFS also recognizes that there may be external costs of implementing zero TALFF that may appear in the form of geopolitical considerations including political, leverage, goodwill, and diplomacy. NMFS has considered these non-quantifiable benefits and costs in issuing a zero TALFF specification for the 1993/1994 Atlantic mackerel fisheries.

*Comment:* A pro-TALFF argument concurrent with the development of a control date is not consistent policy. This serves only to place restrictions on the domestic fishermen, many of whom are soon to be displaced, while opening access to foreign interests.

*Response:* NMFS notes that establishment of a control date does not place restrictions on domestic fishermen. A control date is intended only to advise the public of potential

risks of entering the fishery after the control date.

*Comment:* The industry has worked very hard and invested large sums of money to develop both at-sea and onshore processing facilities to harvest, process, and sell Atlantic mackerel. These investments, which total many millions of dollars and have resulted in many new jobs in this community, were made with the knowledge that foreign fishing was being phased out. Industry supports and has participated in Federal joint ventures and State internal waters processing projects and feels that the United States must continue in efforts to 'Americanize' the fishery. Any release of TALFF would send the wrong message to those who have invested and are continuing to invest in the growth of this fishery.

*Response:* NMFS and the Council also view TALFF as an impediment to continued domestic investment in the Atlantic mackerel fishery at this time.

*Comment:* The proposed specification of zero TALFF conflicts with the known biological fact that a large Atlantic mackerel biomass that is not adequately harvested perpetuates the present reduced biomasses for higher valued species such as haddock, and thereby reduces the commercial success of U.S. boats fishing for those higher value species.

*Response:* Unpublished studies that exist on this subject are considered too preliminary to describe authoritatively the extent of any ecological relationship between mackerel and haddock.

*Comment:* The proposed specification of zero TALFF compels U.S. boats, which could be utilized effectively as catcher boats for foreign fishing vessels, to remain at the dock, thereby reducing vessel revenues and sacrificing badly needed jobs and incomes for their crews.

*Response:* NMFS recognizes the need to utilize the catcher boats and their economic impacts on individuals and communities involved. A successful JVP has already occurred in the absence of TALFF, and the Council and NMFS believe that a zero TALFF should not be an impediment to future joint ventures. It may be due to a decision made by a foreign company not to undertake a joint venture in the absence of TALFF that causes U.S. catcher boats to remain at the dock. Successful joint ventures have been conducted without allocations to vessels of a country for directed fishing. In addition, there is no assurance that a foreign vessel, once assured of availability of fish for a direct harvest, will necessarily vigorously pursue the joint venture.

NMFS reviewed the estimated domestic annual harvest (DAH) for 1993 and the portion of the harvest that would be processed by U.S. fish processors. On that basis, it initially found that 35,000 mt of the Atlantic mackerel DAH would not be used by domestic processors. That amount was later increased to 55,000 mt when NMFS received more current information in the form of another request for JVP to support a greater DAH and JVP after the proposed specifications were published. Since there was no similar information presented to indicate that the additional 20,000 mt would be needed for the DAP, the full increase in the DAH was then included as part of the JVP.

*Comment:* With respect to joint ventures involving Russian vessels, a zero TALFF specification would undercut the U.S. and allied nations' efforts to foster economic growth that will occur in each participating country from increased trade, an overriding U.S. foreign and trade policy objective.

*Response:* The specification of zero TALFF, in and of itself, does not constitute an obstacle to trade. Russian vessels that existed under the former "Soviet Union" have, in the recent past, purchased large quantities of Atlantic mackerel from both joint ventures (24,000 mt in 1990 and 11,000 mt in 1991) and internal water processing (1,923 mt in 1992) without TALFF. NMFS realizes that TALFF would serve to enhance the profits of foreign partners in joint venture schemes. However, the "fish and chips" policy of the past, where amounts of JVP and purchases of U.S. processed product were conditions of a TALFF fishery, is now viewed by NMFS to be an impediment to the development of the U.S. fishery.

*Comment:* TALFF makes the economics of a joint venture more viable. Offshore processing operations can average their expenses with the lower costs of directed catch. This helps U.S. mackerel compete on the world market. Strict joint ventures or internal water processing projects are not profitable. TALFF contributes to the U.S. government budget via a poundage fee of $58.00 per metric ton. The United States needs to increase its volume of scale to lower unit costs and be more competitive on international markets because the U.S. domestic market is very limited. The commenter recommends a TALFF of 25,000 mt per year for 1993 and 1994.

*Response:* NMFS recognizes that pursuing a "fish and chips" policy will yield benefits to the Nation, especially in the short term. However, the goal of NMFS policy is to secure long-term growth and stability for the Atlantic mackerel fishery. This can happen only in the absence of TALFF.

*Comment:* The key assumption in the Council's benefit-cost analysis is that U.S. caught and processed mackerel tonnages will increase by 20 percent each year for 10 years from 1991 through 2000, and beyond. This assumption is seriously flawed and has already been proven incorrect. According to NMFS, U.S. landings in 1992 will be no more than 12,500 mt, which is more than 7,000 mt less than the approximately 20,000 mt needed to validate the benefit-cost analysis. The record of the 1992 fishery demonstrates that the no-TALFF policy is not contributing to the development of the U.S. fishery.

*Response:* To complement the Council's cost-benefit analysis, which assumed zero domestic growth with the allocation of TALFF and 20 percent per year domestic growth with zero TALFF, NMFS performed a sensitivity analysis that examined the effects of TALFF under different conditions and assumptions. Results of the sensitivity analysis indicated that large TALFF allocations may yield the highest net national benefit under certain conditions and assumptions, especially when there is zero growth in domestic landings. When there is moderate growth in domestic landings (5 percent per year), and/or joint venture and TALFF allocations are rapidly transferred to domestic landings (50 percent per year), then there is little difference, in terms of net national benefit, between zero TALFF and large TALFF allocation policies.

*Comment:* Any direct foreign mackerel fishing carried out by Community (European Economic Community) fishing vessels will be mainly intended for West African markets that are not of interest to the U.S industry. The specifications do not consider the advantages to the U.S. industry of such cooperation with Community enterprises. After all, this is the philosophy behind the Governing International Fisheries Agreements.

*Response:* The U.S. industry has not excluded West Africa as a potential market for U.S. processed Atlantic mackerel. This is especially true with regard to the placing of Atlantic mackerel on the list of commodities for inclusion under the Public Law 480 program of the Department of Agriculture. This program provides credit to underdeveloped nations to purchase U.S. produced agricultural and fisheries products.

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Certain U.S. processors and members of Congress based their opposition to allocations to Russian vessels on concerns that the production from such vessels would be landed in certain foreign markets developed by U.S. processors. NMFS sought to alleviate these concerns through discussions and correspondence with the Russian fishing representatives, in particular by seeking assurances that production would be landed in the Russian Federation for domestic consumption. That matter was not fully resolved because the Russian fishing companies concluded that delays in these specifications made the prosecution of a spring mackerel fishery no longer feasible.

**Changes From the Proposed Specifications**

Several changes from the proposed specifications regarding Atlantic mackerel are made in these final specifications. The specification for IOY, and in turn, DAH, and JVP were increased 20,000 mt to accommodate potential applicants for a JVP fishery in Atlantic mackerel. In addition to an application pending for 10,000 mt of JVP, a firm has made inquiries regarding an additional 20,000 mt of JVP. The proposed initial specifications called for a total of 35,000 mt for the 1993 and 1994 fisheries. Since it is the policy of both the Council and NMFS to promote JVP in this fishery, the Regional Director has increased the DAH and IOY to 120,000 mt from the proposed amount of 100,000 mt to provide for a JVP allocation of 55,000 mt from a proposed level of 35,000 mt. This increase is considered to be in the best overall interest of the Nation.

**Classification**

This action is authorized by 50 CFR part 655 and complies with Executive Order 12291 and the National Environmental Policy Act.

**Authority:** 16 U.S.C. 1801 *et seq.*

**List of Subjects in 50 CFR Part 655**

Fisheries, Reporting and recordkeeping requirements.

Dated: July 15, 1993.

**Nancy Foster,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 93-17273 Filed 7-20-93; 8:45 am]

BILLING CODE [illegible]

VOL 58 ISS 138 JL 21 1993 UMI



# Proposed Rules

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 93-NM-85-AD]

## Airworthiness Directives; Fokker Model F27 Rough Field Version (RFV) Series Airplanes, Excluding Model F27 Mk 050 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 RFV series airplanes. This proposal would require inspection of the main landing gear (MLG) legs to determine if parts are missing or damaged, and modification, if necessary; and periodic measurements of the extension of each MLG shock absorber sliding member. Additionally, this proposal would provide for the accomplishment of a certain modification as optional terminating action for the periodic measurements. This proposal is prompted by reports of overextension of the MLG sliding member due to missing parts in the MLG leg assembly. The actions specified by the proposed AD are intended to prevent loss of the MLG sliding member, which could result in reduced structural integrity of the MLG.

**DATES:** Comments must be received by September 14, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-85-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314; and Dowty Aerospace, Cheltenham Road, Goucester GS2 9QH, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-85-AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-85-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 RFV series airplanes. The RLD advises that one operator recently reported an incident in which a main landing gear (MLG) sliding member over-extended. The sliding member was then restrained only by the torque links. This situation put the torque links in an overcenter position at touch down. Subsequently, the torque link center joint pin failed, which then led to the loss of torsional stability of the wheels, and finally to the loss of the sliding member itself. Further investigation through disassembly of the MLG leg revealed that one castellation on the upper end of the piston rod, part number 200563600, was missing. This condition allowed the dowel pin in the adaptor, part number 200532642, to come out of its position; this condition permitted the piston rod to unscrew from the adaptor and thereby eliminated the sliding member extension out-stop. Loss of the MLG sliding member could lead to loss of directional stability of the wheels and, subsequently, could result in reduced structural integrity of the MLG.

Fokker has issued Service Bulletin F27/32-165, Revision 1, dated April 28, 1993, that describes procedures for inspection of the sliding member end-stop installation of the MLG to determine if parts are missing or damaged, and modification, if necessary. The RLD classified this service bulletin as mandatory and issued a Dutch airworthiness directive in order to assure the continued airworthiness of these airplanes in The Netherlands.

Additionally, Dowty Aerospace (the manufacturer of the subject MLG's) has issued Service Bulletin 32-81W, Revision 2, dated February 3, 1993, which describes detailed procedures for inspecting the MLG piston rod and adapter to confirm the correct installation of the stepped pin and dowel. It also describes procedures for periodic measuring of the extension of the MLG sliding member when the landing gear is fully extended.

Dowty Aerospace also has issued Service Bulletin 32-77W, Revision 4, dated February 3, 1993, which describes procedures for installing a modification

that would eliminate the need for periodic measuring of the extension of the MLG sliding member. This modification entails the installation of a shim between the contact face of the piston rod and adapter, and the installation of a pin in lieu of the currently installed dowel to secure the castellated nut to the adapter.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection of the MLG legs to determine proper installation of parts, and modification, if necessary. The proposed AD also would require periodic measurements (and recording) of the extension of the MLG sliding member. The proposed AD also provides for a modification of the MLG assembly as optional terminating action for the periodic measurements. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $330, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 93–NM–85–AD

*Applicability:* Model F27 Rough Field Version (RFV) series airplanes, excluding Model F27 Mk 050 series airplanes; equipped with Dowty Aerospace main landing gear (MLG), part numbers 200563001, 200679001, 200679002, 200679003, or 200679004; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of the MLG sliding member, which could result in reduced structural integrity of the MLG, accomplish the following:

(a) Within 30 days after the effective date of this AD, inspect the MLG legs to confirm the correct installation of the sliding member out-stop installation in accordance with Fokker Service Bulletin F27/32–165, Revision 1, dated April 28, 1993, and paragraph 2.C. ("Part A Procedure") of Dowty Aerospace Landing Gear Service Bulletin 32–81W, Revision 2, dated February 3, 1993. If any parts are determined to be missing or damaged, prior to further flight, modify the MLG assembly in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993.

(b) Within 30 days after the effective date of this AD, measure and record the extension of the MLG sliding member when the landing gear is fully extended, in accordance with paragraph 2.D. ("Part B Procedure") of Dowty Aerospace Landing Gear Service Bulletin 32–81W, Revision 2, dated February 3, 1993.

(1) If the extension dimension exceeds 410.2 mm (16.15 inches), prior to further flight, modify the MLG assembly in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993.

(2) If the extension dimension is equal to or less than 410.2 mm (16.15 inches), repeat the measurement at intervals not to exceed 500 flight cycles.

(3) If the extension dimension increases by more than 1.0 mm (0.40 inch) above the initially recorded dimension during any measurement required by this paragraph, prior to further flight, inspect the MLG in accordance with paragraph (a) of this AD.

(c) Accomplishment of the modification of the MLG in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993, constitutes terminating action for the actions required by paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17260 Filed 7–20–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–NM–96–AD]**

**Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness

directive (AD), applicable to certain IAI, Ltd., Model 1125 Westwind Astra series airplanes, that currently requires repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings. This action would shorten the interval for the required repetitive inspections and would require the installation of a terminating modification. This proposal is prompted by reports of broken outer lugs found in the horizontal stabilizer hinge splice fitting. The actions specified by the proposed AD are intended to detect cracking in the outer lugs in a timely manner in order to prevent reduced structural integrity of the horizontal stabilizer assembly.

**DATES:** Comments must be received by September 14, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2792; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–96–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–96–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On May 19, 1992, the FAA issued AD 92–12–07, Amendment 39–8268 (57 FR 28603, June 26, 1992), to require visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings on all Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra series airplanes, and replacement of any cracked fittings. These inspections are required to be performed at intervals of 200 hours time-in-service. That action was originally prompted by results of a damage tolerance analysis conducted by the manufacturer, which revealed that cracks may develop in the horizontal stabilizer hinge fitting lugs. Reports were received later of cracks found around the hinge pin head and nut of the outer lugs. The requirements of that AD are intended to detect cracking in a timely manner in order to prevent reduced structural integrity of the horizontal stabilizer assembly.

Since the issuance of that AD, there have been several reports of broken outer lugs of the horizontal stabilizer hinge splice fitting, part number 453005–503. Broken lugs were found on several airplanes during the 200-hour inspection required by the existing AD. The cracks appeared on new airplanes within a very short interval, ranging from 536 to 1,013 total flight hours on the airplane. If the outer lugs fail, all of the stabilizer loads would be carried by the inner lugs, with no additional backup structure. Subsequent cracking in the inner lugs could result in the loss of integrity of the horizontal stabilizer.

IAI, Ltd., has issued Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991, that describes procedures for repetitive visual inspections of the horizontal stabilizer hinge fitting, at 200-flight hour intervals, to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs; and replacement of any cracked fittings. The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, classified this service bulletin as mandatory, and issued Israeli AD No. 93–01, dated January 27, 1993, in order to assure the continued airworthiness of these airplanes in Israel. The CAAI AD mandates that the repetitive inspections be conducted at 100-flight hour intervals, rather than 200-flight hour intervals, however.

Additionally, the manufacturer has developed an improved horizontal stabilizer aft spar splice fitting, part number 453005–509, that is manufactured of titanium and not prone to the subject cracking problems. This improved fitting was installed during production on airplanes beginning with serial number 054; it also was previously installed on airplanes having serial numbers 011, 012, 022, 025, 036, 038, 039, and 043. The CAAI AD mandates that currently-installed aluminum splice fittings be replaced with the titanium splice fittings within one year.

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92–12–07 to reduce the interval required for repetitive visual inspections of the outer lugs of the horizontal stabilizer hinge fittings from the currently required 200 hours time-in-service to 100 hours time-in-service. Reduction of this inspection interval will ensure the detection of the subject cracking in a more timely manner, before the cracking can reach a critical length. The inspection procedures would be required to be accomplished

in accordance with the service bulletin described previously.

Additionally, the proposed AD would require the replacement of aluminum horizontal stabilizer aft spar splice fittings with titanium splice fittings within one year after the effective date of the final rule. The replacement would be required to be accomplished in accordance with the airplane maintenance manual.

The applicability of the proposed rule would apply only to those airplanes that have not been modified with the titanium horizontal stabilizer aft spar splice fittings.

The paragraph designations of the proposed rule have been reformatted for clarity.

The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 200 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $20,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,116,000, or $31,000 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–8268 (57 FR 28603, June 26, 1992), and by adding a new airworthiness directive (AD), to read as follows:

**Israel Aircraft Industries, Ltd.:** Docket 93–NM–96–AD. Supersedes AD 92–12–07, Amendment 39–8268.

Applicability: Model 1125 Westwind Astra series airplanes on which horizontal stabilizer aft spar splice fitting, part number 453005–509, has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced structural integrity of the horizontal stabilizer assembly, accomplish the following:

(a) Within the next 50 hours time-in-service after July 31, 1992 (the effective date of AD 92–12–07, amendment 39–8268), unless previously accomplished within the last 150 hours time-in-service prior to July 31, 1992, perform a visual inspection of the horizontal stabilizer hinge fitting to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs, in accordance with Astra Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991.

(1) If no cracks are found during this inspection, repeat the inspection at intervals not to exceed 200 hours time-in-service until the inspection required by paragraph (b) is accomplished.

(2) If any crack is found during this inspection, prior to further flight, replace the hinge fitting in accordance with Astra Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991. After replacement, repeat the visual inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the inspection required by paragraph (b) is accomplished.

(b) Within 25 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 75 hours time-in-service, perform a visual inspection of the horizontal stabilizer hinge fitting, including the horizontal stabilizer aft spar splice fitting, part number 453005–503 (aluminum), to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs, in accordance with the Accomplishment Instructions of IAI Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(1) If no crack is found during this inspection, repeat the inspection at intervals not to exceed 100 hours time-in-service.

(2) If any crack is found during this inspection, prior to further flight, replace the splice fitting, part number 453005–503 (aluminum), with an improved splice fitting, part number 453005–509 (titanium), in accordance with procedures in the IAI Model 1125 Westwind Astra maintenance manual. Such replacement constitutes terminating action for the inspection requirements of this AD.

(c) Within one year after the effective date of this AD, replace the splice fitting, part number 453005–503 (aluminum), with an improved splice fitting, part number 453005–509 (titanium), in accordance with the IAI Model 1125 Westwind Astra maintenance manual. Such replacement constitutes terminating action for the inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17264 Filed 7–20–93; 8:45 am]

BILLING CODE 4910–13–P

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**Federal Highway Administration**

**23 CFR Parts 710, 712, 713, and 720**

**[FHWA Docket No. 93–7]**

**RIN 2125–AD09**

**Removal of Obsolete and Redundant Right-of-Way Requirements**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Intermodal Surface Transportation Efficiency Act of 1991

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(ISTEA), encourages greater flexibility in establishing the degree to which FHWA will be involved in the development of Federal-aid highway projects. These amendments would permit and encourage such flexibility by eliminating a number of FHWA prior approvals that are applicable to the acquisition of real property for Federal-aid highway projects.

**DATES:** Comments must be received on or before September 20, 1993.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. 93–7, Federal Highway Administration, room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Gerald B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW–20, (202) 366–0142; or Reid Alsop, Office of Chief Counsel, HCC–31, (202) 366–1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** This NPRM would modify several provisions in the FHWA's right-of-way regulations that require the FHWA to grant prior approvals or authorizations for particular actions by a State.

During the past year the FHWA Office of Right-of-Way conducted a review of the right-of-way regulations to identify any FHWA requirements that, based on FHWA's experiences in administering the Federal-aid highway program, imposed burdens on States without any commensurate program benefit. This FHWA review identified a number of FHWA case-by-case approval actions that, based on experience, were not considered necessary to protect the investment of Federal-aid highway funds. These approval actions are divided into two categories set forth below.

The first includes six FHWA approvals or authorizations. It is proposed that the nature of the FHWA approvals required by these provisions be changed from the case-by-case prior approval required by the current regulation to a one-time FHWA approval of State procedures. Oversight by the FHWA would continue through the use of process reviews. In the future, prior approvals may be reinstituted if they are necessary to protect the Federal investment.

It is proposed that the approval or authorization actions required by the following sections be taken by the State in accordance with procedures that have been approved by the FHWA.

| Approval action | 23 CFR section |
|---|---|
| Use of fee negotiators | 710.203(e)(3). |
| Interest on right of entry payments. | 710.304(j)(5). |
| Use of fee attorneys | 712.408(a). |
| Land service facilities | 712.805(c)(1). |
| Temporary use of right-of-way. | 713.103(h)(1). |
| Appraisal fees | 720.202(d)(2). |

The second category includes four FHWA approvals that are proposed to be eliminated on all FHWA funded projects except those on the National Highway Safety (NHS). These concern the long term use or disposal of rights-of-way and are no longer considered necessary or useful on a case-by-case basis for non-NHS projects. FHWA is proposing to retain the case-by-case FHWA approvals or authorizations relating to the use or disposal of NHS rights-of-way, consistent with the provisions of 23 U.S.C. 106(b)(2) which require that a higher level of FHWA oversight be maintained on the NHS.

Accordingly, it is proposed that the approval or authorization actions required by the following sections be taken by the State in accordance with procedures that have been approved by the FHWA, except with regard to facilities or projects that are on the National Highway System (NHS), described in 23 U.S.C. 103. The FHWA approvals or authorizations that are prescribed by the following sections would continue to be required with regard to facilities or projects on the NHS because of FHWA's special interest in the integrity and safety of NHS facilities and right-of-way.

| Approval action | 23 CFR section |
|---|---|
| Non-highway use and occupancy of right-of-way. | 712.203(b)(1). |
| Airspace agreements | 713.204. |
| Disposal of right-of-way no longer needed. | 713.305. |
| Disposal of access—control and relinquishment of right-of-way. | 620.203(d) through (i). |

## Rulemaking Analyses and Notices

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, nor is it a significant rule under the policies and procedures of the Department of Transportation relating to regulations. The rulemaking would not affect the level of funding available in Federal or federally assisted programs covered by the Uniform Act, or otherwise have a significant economic impact, so that a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities since it will make relatively small changes in existing regulatory provisions by eliminating certain FHWA prior approvals.

*Environmental Impacts*

The FHWA also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the human environment.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action, in effect, both clarifies and simplifies current regulatory requirements.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Numbers: 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This proposed rule is not subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), since it does not require the collection or retention of any new data.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects**

*23 CFR Part 710*

Civil rights, Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

*23 CFR Part 712*

Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

*23 CFR Part 713*

Grant programs-transportation, Highways and roads, Property management, Real property acquisition, Rights-of-way.

*23 CFR Part 720*

Appraisal, Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

In accordance with the foregoing, the FHWA proposes to amend parts 710, 712, 713 and 720 of title 23, Code of Federal Regulations, as set forth below.

**PART 710—[AMENDED]**

1. The authority citation for part 710 is revised to read as follows:

**Authority:** 23 U.S.C. 101(a) and 315; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48(b) and (cc) and parts 21 and 24; 23 CFR 1.32.

**§ 710.203 [Amended]**

2. In § 710.203, paragraph (e)(3) is revised to read as follows:

**§ 710.203 General responsibilities.**

* * * * *

(e) * * *

(3) Firms and individuals meeting the SHD's qualification standards may be employed by contract for negotiating purposes in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

3. Section 710.204 is added to read as follows:

**§ 710.204 State approvals.**

Notwithstanding any other provision of this title, the FHWA authorizations or approvals prescribed by §§ 712.203(b)(1), 713.204, 713.305, and 620.203 (d) through (i) of this chapter may, except in the case of facilities or projects on the National Highway System (described in 23 U.S.C. 103), be made by the SHD in accordance with procedures that have been approved by the FHWA.

**§ 710.304 [Amended]**

4. In § 710.304, the first sentence of paragraph (j)(5) is revised to read as follows:

**§ 710.304 Reimbursement policy.**

* * * * *

(j) * * *

(5) Federal participation shall not be allowed in interest cost on payments to an owner where the SHD accepts a voluntary right of entry instead of making such payment available to the owner directly or by deposit with the court, except in cases of unusual circumstances in accordance with SHD procedures that have been approved by the FHWA. * * *

**PART 712—[AMENDED]**

5. The authority citation for part 712 is revised to read as follows:

**Authority:** 23 U.S.C. 101(a), 107, 108, 111, 114, 204, 210, 308, 315, 317 and 323; 42 U.S.C. 2000d–1, 4633, 4651–4655; 49 CFR 1.48 (b) and (cc) and part 24; 23 CFR 1.32.

6. In § 712.406, paragraph (a) is revised to read as follows:

**§ 712.406 Special counsel.**

(a) If part-time assistants or legal counsel are employed for Federal-aid right-of-way procurements, reimbursement may be claimed for the eligible cost of the services of such attorney, provided that such assistants or counsel are employed in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

7. In § 712.805, paragraph (c)(1) is revised to read as follows:

**§ 712.805 Policies.**

* * * * *

(c) *Private use and benefit.* (1) Land service facilities designed for restoration of access to and within a privately owned property shall be justified primarily on the basis of economics. In exceptional cases where the land service facility is not justified economically, but it is believed that access is nevertheless in the public interest, such access may be approved by the SHD, in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

**PART 713—[AMENDED]**

8. The authority citation for part 713 is revised to read as follows:

**Authority:** 23 U.S.C. 101(a), 142(f), 156, and 315; 42 U.S.C. 4633 and 4651–4655; 23 CFR 1.32; 49 CFR 1.48 (b) and (cc), 18.31 and parts 21 and 24.

9. In § 713.103, paragraph (h)(1) is revised to read as follows:

**§ 713.103 Policies and procedures.**

* * * * *

(h) * * *

(1) The SHD has approved temporary right-of-way limits within the overall right-of-way in accordance with SHD procedures approved by the FHWA;

* * * * *

**PART 720—[AMENDED]**

10. The authority citation for part 720 is revised to read as follows:

**Authority:** 23 U.S.C. 101(a) and 315; 42 U.S.C. 4633 and 4651–4655; 23 CFR 1.32; 49 CFR 1.48 (b) and (cc) and part 24.

11. In § 720.202, paragraph (d)(2) is revised to read as follows:

**§ 720.202 Appraisal fees, contracts, and agreements.**

* * * * *

(d) * * *

(2) In instances in which special use or other unusual properties are involved, the SHD may approve the use of a per diem rate contracting method with a stated overall limit which should not be exceeded except by supplemental agreement, provided that such SHD approval is made in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

Issued on: July 13, 1993.

**Rodney E. Slater,**

*Federal Highway Administrator.*

[FR Doc. 93–17191 Filed 7–20–93; 8:45 am]

BILLING CODE 4910-22-P

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 906**

**Colorado Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

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**SUMMARY:** OSM is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Colorado program concerning roads and support facilities; backfilling and grading; coal mine waste, coal processing waste, and noncoal waste disposal; mountaintop removal; and explosives. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This document sets forth the times and locations that the Colorado program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4 p.m., m.d.t. August 20, 1993. If requested, a public hearing on the proposed amendment will be held on August 16, 1993.

Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on August 5, 1993.

**ADDRESSES:** Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Colorado program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, NM 87102. Telephone: (505) 766–1486

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203. Telephone: (303) 866–3567

**FOR FURTHER INFORMATION CONTACT:** Robert H. Hagen, Telephone: (505) 766–1486.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (46 FR 5899). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

## II. Proposed Amendment

By letter dated June 30, 1993, Colorado submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. CO–552). Colorado submitted the proposed amendment in part at its own initiative and in part in response certain issues identified in letters dated May 7, 1986, and March 22, 1990 (Administrative Record Nos. CO–282 and CO–496), that OSM sent to Colorado in accordance with 30 CFR 732.17(c).

The provisions of 2 Code of Colorado Regulations 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board that Colorado proposes to amend are the: Definitions for "road," "haul road," "access road" and "light use road" at Rules 1.04(111) (a) through (c); permit application requirements for support facilities, stream fords used as temporary construction routes, and certification of plans and drawings for haul and access roads at Rules 2.05.3(3)(a) and (c)(vi) and (vii); reclamation plan requirements for all roads at Rule 2.05.4(2); permit application requirements for haul roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.1(1)(a), (b), (d), and (e), 4.03.1(2)(b), 4.03.1(3)(c) and (e)(ix), 4.03.1(6)(c), 4.03.1(7)(b) and (b)(ix); permit application requirements for access roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.2(1)(a), (b), (e), and (f), 4.03.2(2)(b), 4.03.2(3)(c), and (e)(ix), 4.03.2(6) (a) and (c), and 4.03.2(7)(b), and (b)(ix); permit application requirements for light-use roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.3(1) (a) and (b), 4.03.3(2)(b), 4.03.3(3)(c), 4.03.3(6)(c), and 4.03.3(7)(i); performance standards for coal exploration in regard to roads at Rules 4.21.4(3)(b) (i) through (iii), 4.21.4(3)(c) (i) through (iii), and 4.21.4(3)(d) (i) and (ii); permit application requirements for the return of coal mine waste and coal processing waste to abandoned workings at Rules 2.05.3(9)(a) and 2.05.3(1) (a) through (e); performance standards for disposal of spoil in head of hollow fills and disposal of noncoal waste at Rules 4.09.3(2)(c) and 4.11.4(3); general backfilling and grading requirements for cut-and-fill terraces at Rules 4.14.2(2) and (2)(c); performance standards for mountaintop removal operations at Rules 4.26.2(2) and (2) (a) through (c); and performance standards for the use of explosives at Rules 4.08.4(10) and (10) (a) through (c), and 4.08.6(1).

In addition to the above revisions, Colorado's amendment also contains a Statement of Basis, Specific Statutory Authority, and Purpose. This statement provides Colorado's rationale for submitting the revisions proposed in the amendment. In particular, Colorado included a policy statement explaining what it would consider, on a case-by-case basis, in making a determination of the program's jurisdiction over public roads. These considerations include whether the road is constructed or improved by an operator, mining related use, and degree of mining related impacts to the road.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

### *Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

### *Public Hearing*

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m., m.d.t. on August 5, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of hearing is requested as it will greatly assist the transcriber. Submission of written statements in

advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

*Public Meeting*

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

**IV. Procedural Determinations**

*Executive Order 12291*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 906**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 14, 1993.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

[FR Doc. 93-17297 Filed 7-20-93; 8:45 am]

BILLING CODE 4310-05-M

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**30 CFR Part 915**

**Iowa Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** OSM is reopening the public comment period and announcing the receipt of revisions to a previously proposed amendment to the Iowa permanent regulatory program (hereinafter, the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revised amendment proposes further changes of the Iowa regulations pertaining to permanent regulatory program, exemption for coal extraction incidental to the extraction of other minerals, restriction of financial interests of State employees, exemption for coal extraction incident to government-financed highway or other construction, protection of employees, initial regulatory program, areas unsuitable, permits for operations and exploration, small operator assistance, bonding and insurance, permanent program performance standards, inspection and enforcement, blaster certification, and contested cases and public hearings. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This document sets forth the times and locations that the Iowa program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

**DATES:** Written comments must be received by 4 p.m., c.d.t. August 5, 1993.

**ADDRESSES:** Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Iowa program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105; Telephone: (816) 374-6405.

Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, East 9th and Grand Streets,

Des Moines, Iowa 50319; Telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Telephone: (816) 374–6405.

SUPPLEMENTARY INFORMATION:

## I. Background on the Iowa Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Iowa program. General background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.15 and 915.16.

## II. Discussion of Proposed Amendment

From October 1, 1983, to December 20, 1989, a number of changes were made to Federal regulations concerning surface coal mining and reclamation operations. During this time period, pursuant to Federal regulations at 30 CFR 732.17, OSM notified Iowa in four separate 732 letters, listed below, that the State rules must be amended to be consistent with the revised Federal regulations.

1. Regulatory Reform Review II, December 12, 1988, Administrative Record Number, IA–336.

2. Ownership and Control, May 11, 1989, Administrative Record Number, IA–340.

3. Regulatory Reform Review III, November 28, 1989, Administrative Record Number, IA–347.

4. Incidental Coal Extraction, February 7, 1990, Administrative Record Number, IA–349.

By letter dated November 23, 1992 (Administrative Record No. IA–372), Iowa submitted a proposed amendment to its program pursuant to SMCRA. Iowa submitted the proposed amendment with the intent of satisfying the outstanding 732 letters from OSM and the required program amendments at 30 CFR 915.16(a) (56 FR 56578).

OSM announced receipt of the proposed amendment in the January 14, 1993, **Federal Register** (58 FR 4376) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on February 16, 1993. The public hearing scheduled for February 8, 1993, was not held because no one requested an opportunity to testify.

By letter dated May 10, 1993 (Administrative Record No. IA–381), OSM identified 14 deficiencies and 11 editorial comments concerning the November 23, 1992, amendment submission. By letter dated July 8, 1993 (Administrative Record No. IA–383), Iowa submitted a revised amendment. This new amendment submission contains further revisions that are discussed briefly below:

*(1) Reference to Iowa Statute*

The Division's coal regulatory statute, Iowa Code chapter 83 has been changed to Iowa Code chapter 207.

*(2) IAC 27–40.1(3) Professional Land Surveyor*

Iowa deletes the authorization for land surveyors to certify maps and plans.

*(3) IAC 27–40.1(3) Petition for Rulemaking*

Iowa proposes to revise its program by adopting the Iowa rules at 21 IAC chapter 3 and the Iowa Uniform rules of Agency Procedure to address petitions received from related entities.

*(4) IAC 27–40.3(83) General*

Iowa proposes to restore the incorporation by reference of 30 CFR 700.13 notice of citizen suits.

*(5) IAC 27–40.4(10) Full Water Year*

Iowa clarifies its use of the term "full water year" to define what will be accepted as a minimum measure of Iowa's seasonal, climatic variation for quality and quantity in gathering pre-mining groundwater and surface water data as required at 30 CFR 780.21(b) (1) and (2).

*(6) IAC 27–40.21(5) Procedures*

Iowa proposes to adopt the requirement at 30 CFR 761.12(c) that where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under 30 CFR 761.11(B), the applicant shall submit a permit application to the Director for processing under subchapter D of this chapter. Before acting on the permit application, the Director shall ensure that the Secretary's determination has been received and the findings required by section 522(e)(2) of the Act have been made.

*(7) IAC 27–40.31(9) General Word Substitution*

Iowa proposes to remove the general word substitution for "the Act" for this rule.

*(8) IAC 27–40.32(1)(b)(2)(i) Definitions*

Iowa clarifies that incidental boundary revisions are treated as permit revisions.

*(9) IAC 27–40.34(3) General Word Substitution*

Iowa removes the general word substitution for "the Act" at this rule.

*(10) IAC 27–40.39(1) Permits Incorporating Variances From Approximate Original Contour (AOC) Restoration Requirements for Steep Slope Mining*

Iowa proposes to adopt the regulations at 30 CFR 785.15 concerning steep slope mining.

*(11) IAC 27–40.61 (2) and (3) Responsibility*

Iowa proposes to delete 30 CFR 810.4 (b) and (c) and substitute in lieu thereof that (b) the Division shall ensure that performance standards and design requirements are implemented and enforced under the Iowa program and (c) each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with the performance standards and design requirements of the approved Iowa program.

*(12) IAC 27–40.63 Backfilling and Grading: Thick and Thin Overburden*

Iowa proposes to adopt 30 CFR 816.104 and 816.105 concerning thick and thin overburden.

*(13) IAC 27–40.63(12) Disposal of Noncoal Mine Wastes*

Iowa proposes to delete the requirements of 30 CFR 816.89 and replace them with the following requirements: Noncoal mine wastes, including, but not limited to grease garbage, abandoned mining machinery, lumber, and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a landfill permitted by the Iowa Department of Natural Resources pursuant to 561 Iowa Administrative Code Chapters 101, 102, and 103. Lubricants, paints, and flammable liquids may not be buried in the State of Iowa but, along with any other toxic waste, must be disposed of in the legally prescribed manner. Iowa law prohibits final disposal of noncoal mine wastes within the permit area. Pending final disposal at a permitted DNR facility, noncoal mine waste shall be placed and stored in a controlled manner in a designated portion of the permit area so as to ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented and that

the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. Noncoal mine waste shall at no time be deposited in a refuse pile or impounding structure. No excavation for or storage of noncoal mine waste shall be located within 8 feet of any coal outcrop or coal storage area. Final disposal of noncoal mine wastes shall be in a designated, State-approved solid waste disposal site permitted by the Iowa Department of Natural Resources pursuant to 561 Iowa Administrative Code Chapters 101, 102, and 103. Notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 as amended) and 40 CFR part 261 shall be handled in accordance with the requirements of subtitle C of RCRA and any implementing regulations.

*(14) IAC 27–40.67(3) Proximity*

Iowa proposes to clarify that proximity shall not be the decisive factor in deciding to regulate an offsite processing plant.

*(15) IAC 27–40.68(83) Special Permanent Program Performance Standards-In Situ Processing*

Iowa proposed to delete the incorporation by reference of 30 CFR part 828.

*(16) IAC 27–40.74(5) Procedures for Assessment Conference*

Iowa proposes to clarify this provision with several word changes and rule citations.

*(17) IAC 27–40.74(6) Request for a Hearing*

Iowa proposes to delete the request for hearing requirements at 30 CFR 845.19 and replace them with similar requirements that include State specific language and citations. In addition a copy of Division III, Iowa Rules of Civil Procedures are incorporated into the Iowa program for clarification.

The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Iowa program.

*Written Comments*

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative record.

## List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 14, 1993.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

[FR Doc. 93–17298 Filed 7–20–93; 8:45 am]

BILLING CODE 4310-05-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 130, 131, 132, and 137

[CGD 91–005]

RIN 2115–AD–76

### Preliminary Regulatory Impact Analysis for Financial Responsibility for Water Pollution (Vessels)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The Coast Guard has prepared a Preliminary Regulatory Impact Analysis (RIA) which addresses the possible impacts on vessel owners and operators, as well as consequential impacts on the economy, of proposed financial responsibility regulations to implement section 1016 of the Oil Pollution Act of 1990 (OPA 90) and section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Coast Guard solicits comments on the Preliminary RIA.

**DATES:** Comments must be received on or before September 20, 1993.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD–91–005), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–6740. Comments may be faxed to the Executive Secretary at (202) 267–4163. The Executive Secretary maintains the public docket. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

Copies of the Preliminary RIA are also available for inspection at the above address, or may be obtained by contacting Mr. Ernest L. Worden at (703) 235–4793.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest L. Worden, Economist, National Pollution Funds Center, (703) 235–4793.

**SUPPLEMENTARY INFORMATION:**

## Request for Comments

The Coast Guard encourages interested persons to submit written comments on the RIA, with supporting data. Persons submitting comments should submit their name and address, identify the docket (CGD 91–005) and the specific section of the RIA to which each comment applies. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

## Background and Discussion

On September 26, 1991, the Coast Guard published a Notice of Proposed Rulemaking (56 FR 49006) to implement the financial responsibility requirements of section 1016 for OPA 90 (33 U.S.C. 2716) and section 108 of CERCLA (42 U.S.C. 9608). The NPRM listed three methods for vessels to demonstrate guarantied financial responsibility under OPA 90 and CERCLA: Insurance, surety bond, and financial guaranty. Self-insurance was also listed. The Coast Guard solicited comments on how letters of credit could be used as evidence of financial responsibility.

In the preamble to the NPRM the Coast Guard noted that because of the public interest in the rulemaking, and the controversy over the possibility that oceangoing vessel operators might encounter difficulty in obtaining statutorily required guaranties of insurance if the proposed rule went into effect, a RIA would be prepared on the proposed rule. To assist preparing the RIA, the Coast Guard solicited comments, on sixteen questions, from industries that may be affected by the NPRM, as well as from the public. In addition, the Coast Guard also requested comments on other possible scenarios of industry reaction to the proposed financial responsibility regulations.

About 25 commenters addressed the bulk of the questions in detail. These comments as well as others submitted to the docket were evaluated and considered in preparing the Preliminary RIA.

**Summary of Preliminary RIA**

OPA 90 generally requires that any vessel over 300 gross tons operating in United States waters, and a vessel of any size using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States, shall establish and maintain, in accordance with regulations promulgated by the Secretary of Transportation, evidence of financial responsibility sufficient to meet the maximum amount of liability specified under section 1004(a) of OPA 90. The Secretary of Transportation delegated this rulemaking authority to the Commandant of the Coast Guard.

This Preliminary RIA considers four options: (1) Retain the existing rules; (2) adopt the NPRM; (3) amend the NPRM to accept entry in a Protection and Indemnity Club (P&I Club) as an asset for self-insurance; and (4) amend the NPRM's self-insurance formulae (i.e., eliminate the working capital requirement and/or the requirement to maintain assets in the United States by allowing worldwide assets to be measured against worldwide liabilities). Consideration of each alternative has been suggested either by the Coast Guard or a number of commenters. Executive Order 12291 envisages evaluation of a range of alternatives, even those that may not be authorized under existing legislation. The options listed above are the major ones most frequently mentioned. The discussion of these four options in the Preliminary RIA does not preclude consideration of other options that might develop before promulgation of final rules to implement the financial responsibility requirements of OPA 90. A final RIA will be prepared in connection with a final rule.

The four options in the Preliminary RIA were analyzed for their potential economic impacts, including an evaluation of the extent of support of OPA 90's philosophy that the polluter should pay for removal costs and damages associated with an oil spill. Without assurances that vessel owners and operators have financial resources to pay for the increased financial liability for oil spills, the Oil Spill Liability Trust Fund (OSLTF) has an increased exposure to pay for the consequences of oil spills.

Continuation of the existing financial responsibility rules, with their lower guarantied levels of coverage, would increase the probability that the United States taxpayer would pay for removal costs and damages of an oil spill through the OSLTF. In addition, OPA 90 requires that vessel owners and operators must demonstrate substantially greater financial responsibility than under preexisting laws in order to operate in United States waters. Retaining the existing rules would not ensure financial responsibility for the higher limits under OPA 90's more comprehensive liability regime.

Adoption of the NPRM would promote Congressional intent that the polluter pays. However, the P&I Clubs, mutual associations of shipowners and operators, have stated that they will not provide the evidence of financial responsibility that would make them guarantors under OPA 90. Vessel owners and operators solely dependent upon the P&I Clubs for evidence of financial responsibility would not be able to obtain Certificates of Financial Responsibility (COFR) from the Coast Guard. (A COFR is the document issued by the Coast Guard that enables a vessel operating in the United States to show that it has adequate financial responsibility.) The P&I Clubs have been, and remain, the traditional means by which most oceangoing vessel owners and operators have met, and meet, the financial responsibility requirements and obtained COFRs under pre-OPA 90 statutes. Consequently, the RIA discusses the possible economic repercussions should the NRPM be promulgated unamended, and the P&I Clubs subsequently refuse to provide guaranties necessary for vessel owners and operators to obtain COFRs from the Coast Guard. The RIA also examines the economic implications of the worst-case scenario, which assumes that the P&I clubs will not issue financial responsibility guaranties under the NPRM, that most vessel owners and operators are unable or unwilling to use the self-insurance, financial guaranty or surety bond methods to meet the financial responsibility requirements, and that no other methods are available.

Amending the NPRM in order to accept membership in a P&I Club as a $500 million asset, and thus permit the vessel owner and operator to self-insure, has been a proposal frequently mentioned by vessel owners and operators as well as their P&I Clubs. The face value of insurance is not considered an asset under generally accepted or other known accounting principles. In addition, the Coast Guard would not be assured that the P&I Clubs would provide the money needed to pay for the removal costs and damages of an oil spill, since the Clubs could invoke policy defenses. For example, as indemnity insurance, bankruptcy of the insured would be a defense to any payment. That is, before a P&I Club can indemnify a member vessel owner or operator, the member must first pay removal costs and damages from its own resources. Thus, when the owner and operator are bankrupt, if the P&I Club does not, or because of its rules cannot, elect to reimburse the damaged parties directly, the burden then would fall upon the tax payer funded OSLTF.

The fourth option, modification of the proposed self-insurance requirements, might allow some large, foreign-based corporations to self-insure if they chose to do so. (Without United States government access to the financial statements of foreign companies, it is not possible to determine the number of firms that could qualify under a modified self-insurance formula.) However, any modification of the self-insurance requirements would still preclude the majority of United States and foreign independent tank vessel owners and operators from using this method. A substantial volume of oil is shipped by independent foreign owners and operators. This option places a reliance on the availability of foreign-based assets to satisfy removal costs and damages claims, but there are difficulties inherent in attaching foreign-based assets.

Dated: July 15, 1993.

J.W. Kime,

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 93–17262 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–14–M

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 10

[Docket No. 930366–3066]

RIN 0651–AA65

## Cross-Appeals in Patent and Trademark Office Disciplinary Proceedings

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office (PTO) proposes to amend its rules of practice in practitioner disciplinary proceedings. The proposed rule change provides for a time period for a party to a disciplinary proceeding to file a cross-

appeal, after the other party (the respondent or the Director of the Office of Enrollment and Discipline) to the proceeding has appealed from an initial decision of the administrative law judge to the Commissioner. Currently, PTO rules do not provide for a time period for filing a cross-appeal in a disciplinary case. A party in a disciplinary case may be interested in appealing only if the other party has appealed. Allowing a time period for filing a cross-appeal will give parties to disciplinary cases more flexibility after an initial decision by the administrative law judge. A party need not file a contingent appeal simply to preserve rights in the event the other party files an appeal.

**DATES:** Written comments must be received on or before August 20, 1993 to ensure consideration. An oral hearing will not be conducted.

**ADDRESSES:** Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Fred E. McKelvey, Solicitor. Written comments will be available for public inspection in suite 918, on the 9th floor of Crystal Park II, located at 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Fred E. McKelvey by telephone at (703) 305–9035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** Pursuant to 37 CFR 10.132 *et seq.*, the Director of the Office of Enrollment and Discipline within the PTO may initiate a disciplinary proceeding against a practitioner. If the proceeding is contested by the practitioner and the Director continues to prosecute, an administrative law judge for the Department of Commerce enters an initial decision which includes findings of fact, conclusions of law and an order. 37 CFR 10.154.

Either party to the proceeding may appeal from the initial decision of the administrative law judge to the Commissioner within thirty (30) days of the date of the decision. 37 CFR 10.155(a). However, § 10.155(a) does not currently address the filing of a cross-appeal. That is, no period of time is specified for the non-appealing party to file a cross-appeal.

With regard to interference proceedings, 37 CFR 1.304(a) addresses the filing of cross-appeals by stating in pertinent part that:

> The time for filing a cross-appeal [to the Court of Appeals for the Federal Circuit] or cross-action [in a district court] expires (1) 14 days after service of the notice of appeal or the summons and complaint or (2) two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

The proposed rule change is similar to the cross-appeal authorized in interference proceedings.

**Other Considerations**

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of the proposed change is to provide a time period to file a cross-appeal in a PTO disciplinary proceeding.

The PTO has determined that the proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions. There will be no significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The proposed rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

**List of Subjects in 37 CFR Part 10**

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, the PTO proposes to amend 37 CFR part 10 as follows, wherein deletions are indicated by brackets ([ ]) and additions by arrows (→ ←):

**PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE**

1. The authority citation for 37 CFR part 10 would continue to read as follows:

**Authority:** 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.155 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 10.155 Appeal to the Commissioner.**

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge under § 10.154, either party may appeal to the Commissioner. →If an appeal is taken, the time for filing a cross-appeal expires (1) 14 days after service of the appeal or (2) 30 days after the date of the initial decision of the administrative law judge, whichever is later.← An appeal →or cross-appeal← by the respondent will be filed with the Director in duplicate and will include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions. If the Director files the appeal →or cross-appeal←, the Director shall serve a copy of the appeal →or cross-appeal←. Within thirty (30) days after receipt of an appeal →, cross-appeal← or copy thereof, the other party may file a reply brief, in duplicate with the Director. If the Director files the reply brief, the Director shall serve a copy of the reply brief. Upon the filing of an appeal →, cross-appeal, if any,← and [a] reply brief→s←, if any, the Director shall transmit the entire record to the Commissioner.

* * * * *

Dated: July 15, 1993.

**Michael K. Kirk,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 93–17288 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–16–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**42 CFR Part 51a**

**RIN 0905–AD88**

**Maternal and Child Health Project Grants**

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

VOL 58 ISS 138 JL 21 1993 UMI

**SUMMARY:** This proposed rule would amend existing regulations governing the Maternal and Child Health (MCH) Federal Set-Aside programs under section 502(a) and 502(b) of title V of the Social Security Act.

This proposed rule would revise the regulations to: increase flexibility to accommodate changing policy concerns; implement requirements established under the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) which address collection of data from funded projects, and make other changes which are technical or clarifying in nature. This proposed rule will bring the existing regulations up to date with current Department policy and statutory amendments made to sections 501(a), 502(a), 502(b), and 506(a)(3).

**DATES:** Comments must be submitted on or before September 20, 1993.

**ADDRESSES:** All comments concerning this proposed regulation should be addressed to: Lynn Squire, Legislative Officer, Maternal and Child Health Bureau, HRSA, HHS, Office of Program Development, Parklawn Building, room 18–20, 5600 Fishers Lane, Rockville, MD 20857. Comments received timely will be available for public inspection at the above address Monday through Friday 8:30 a.m. to 5 p.m. as they are received.

**FOR FURTHER INFORMATION CONTACT:** Lynn Squire, Legislative Officer, at (301) 443–2778.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. General*

The MCH Federal Set-Aside programs are governed by sections 502(a) and 502(b) of the Social Security Act (the Act) (42 U.S.C. 702(a) and 702(b)), as amended by the OBRA 89. This notice or proposed rulemaking (NPRM) incorporates statutory changes to the Act and accommodates policy changes within the Public Health Service affecting MCH Federal Set-Aside programs since publication of implementing regulations at 51 FR 7726, March 5, 1986. Section 502(b)(1)(A) of the Social Security Act, as amended by OBRA 89, directs that 12.75 percent of amounts appropriated for the Maternal and Child Health Services Block Grant in excess of $600 million be set aside by the Secretary of Health and Human Service (HHS) for special projects, termed Community Integrated Service Systems (CISS) projects, identified under section 501(a)(3) of the Act for the development and expansion of: Maternal and infant home visiting programs; programs to increase the numbers of obstetricians and pediatricians participating in titles V and XIX; integrated MCH service delivery systems; MCH centers operating under not-for-profit hospitals; rural MCH projects; and outpatient and community based services for children with special health care needs. CISS projects are conducted in areas of high infant mortality in coordination with and in complement to the State's MCH Services Block Grant Plan. Assurance of non-federal matching funds at least equal to the amount provided under the project grant is required for CISS projects involving the development and/or expansion of an MCH center under the direction of a not-for-profit hospital.

Of the remainder of the total amount appropriated, 15 percent of the funds are to be set aside by the Secretary to provide (through grants, contracts, or otherwise) for awards authorized under section 502(a): Special projects of regional and national significance; research and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development); genetic disease testing, counseling, and information development and dissemination programs; grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age; and screening of newborns for sickle cell anemia and other genetic disorders, and follow-up services.

The federal set-aside for Special Projects of Regional and National Significance (SPRANS) was established by the Omnibus Budget Reconciliation Act of 1981 (OBRA 81) (Pub. L. 97–35).

### *B. Legislative/Policy Changes*

(1) The legislative changes to title V that are incorporated in this update include the following:

(a) Section 9527 of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272) substituted the term "Children with Special Health Care Needs" for "Crippled Children".

(b) OBRA 89:

(i) Subsection (b) of section 6502(a)(3) established the 12.75 percent set-aside for the CISS program under section 502(b);

(ii) Subsection (a) of section 6501(a)(1) incorporated applicable objectives established by the Secretary under the Public Health Service Act for the year 2000 into section 501;

(iii) Section 6504(b) established new reporting requirements under section 506(a)(3) on numbers of people trained and/or served.

(2) Policy changes affecting title V include the following:

(a) Focus on Healthy People 2000/Healthy Children 2000 objectives;

(b) Focus on culturally distinct populations;

(c) Focus on appropriate coordination with primary care and public health activities.

(3) Obsolete HHS regulations in 42 CFR 51a.7 that are no longer applicable:

(a) 42 CFR Part 122, Health Systems Agencies, Subpart E: Health System agency reviews of certain proposed uses of federal health funds;

(b) 45 CFR Part 19, Limitations on payment or reimbursement for drugs;

(4) Erroneous reference (45 CFR Part 50, Policies of general applicability, Subpart D, is corrected to read as follows: 42 CFR Part 50, Subpart D, Public Health Service grant appeals procedure).

### *C. Analysis of Amendments*

Following is a summary of major items in the proposed regulations. In all sections of the regulations, references to "crippled children" are replaced with "children with special health care needs".

Section 51a.1 To whom does this regulation apply?

The wording of the title of this section is changed to refer to "programs." This change reflects more accurately the intent of the section. The content of the section is expanded to include the CISS program, which was authorized under section 502(b)(1)(A) of the Act by OBRA 89.

Section 51a.3 Who is eligible to apply for Federal Funding?

This section is amended to clarify and more clearly distinguish between eligibility requirements for applicants for research, training, and other grant categories under the Federal Maternal and Child Health Set-Aside program.

Section 51a.4 How is application made for Federal funding?

Wording changes are made in this section to better describe the application process common to all project categories and to delete nonstatutory distinctions among project categories in existing requirements.

Section 51a.5 What criteria will DHHS use to decide which projects to fund?

This section is amended to incorporate into the Secretary's funding decisions consideration of MCH-related Healthy People 2000 objectives, as required under section 501(a) of the Act by OBRA 89. It also incorporates a statutory funding preference for certain

CISS project strategies in areas of high infant mortality, as required under section 502(b)(2) of the Act by OBRA 89. In addition, to better reflect the diversity of project categories for which applications are currently solicited and their responsiveness to changing needs, obsolete and overly-rigid evaluation criteria in the section are replaced. The new criteria would be consistent with Part 116 of the Public Health Service (PHS) Grants Administration Manual, applicable to decisions on funding awards, while increasing opportunities for the MCHB to develop criteria as needed for specific project categories. Category-specific evaluation criteria will be published in program announcements and/or application guidance. This provision allows MCHB to adapt and respond to unique project requirements or overarching agency and PHS objectives.

51.a7 What other DHHS regulations apply?

Several amendments are made to this section. Errors in reference to 42 CFR part 50, subpart D and in the title of 45 CFR part 75 are corrected. References to both 42 CFR part 122 and 45 CFR part 19 are deleted as obsolete.

51a.8 What other conditions apply to these grants?

This section is added to reflect additional conditions which grantees must meet. Requirements in paragraph (a) implement amendments to section 506(a)(3) of the Act made by OBRA 89, which address evaluations performed and collection of data from funded projects regarding the number of individuals served or trained, as appropriate. Paragraph (a) also provides for grantee reporting based on an OBRA 89 amendment to section 501(a) of the Act which requires that title V activities address PHS Healthy People 2000 objectives. Clearance of this data collection by the Office of Management and Budget (OMB) is needed under the Paperwork Reduction Act of 1980. Paragraph (b) of this section adds a provision giving the Secretary discretion to impose such additional conditions on grantees as he or she views as necessary. This clause appears in many PHS grant guidances and is intended to increase the grantor agency's ability to respond to changing administrative and programmatic priorities or initiatives.

**II. Regulatory Flexibility Act and Executive Order 12291**

The proposed rule will implement new requirements established under OBRA 89 which address data collection from funded projects. The Department believes that the resources required to implement the new requirements in this proposed rule are minimal. In accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The Department also has determined that this proposed rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

**III. Paperwork Reduction Act**

This proposed rule contains information collections which must be approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Proposed § 51a.8 requires grantees to collect information concerning the number of individuals served or trained under MCH Federal Set-Aside program grant projects, evaluations performed, and how each project relates to relevant PHS Healthy People 2000 objectives. This collection is necessary to satisfy requirements under section 506(a)(3) added by section 6504(b) of OBRA 89 for inclusion of project impact information in the annual title V report to Congress and requirements added under section 501(a) for addressing PHS Healthy People 2000 objectives. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting, notification and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* SPRANS/CISS Uniform Data Collection Instrument.

*Description:* Information will be collected from funded projects to enable the Secretary to respond to congressional reporting mandates required by OBRA 89 concerning individuals served or trained by projects, their responsiveness to Healthy Children 2000 objectives, and their evaluation status.

*Description of Respondents:* Recipients of SPRANS and CISS project awards.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

| Section | Number of respondents | Responses per respondent | Hours per response | Total hours |
|---|---|---|---|---|
| Reporting: | | | | |
| §51a.8 | 580 | 1 | 4 | 2,320 |
| Total Burden | | | | 2,320 |

The Department has submitted a copy of this proposed rule to OMB for its review of the reporting and recordkeeping requirements. Organizations and individuals desiring to submit comments on these information requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, Attention: Allison Herron Eydt, HRSA Desk Officer, New Executive Office Building, room 3001, Washington, DC 20503.

**IV. List of Subjects in 42 CFR Part 51a**

Grant programs-health, Handicapped, Health care, Health professions, Maternal and child health.

Dated: March 5, 1993.

**Audrey F. Manley,**

*Acting Assistant Secretary for Health.*

Approved: June 15, 1993.

**Donna E. Shalala,**

*Secretary.*

For the reasons set out in the preamble, the Secretary proposes to amend 42 CFR part 51a as follows:

## PART 51a—PROJECT GRANTS FOR MATERNAL AND CHILD HEALTH

1 and 2. The authority citation for part 51a is revised to read as follows:

**Authority:** Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302); sec. 502(a), 502(b)(1)(A), and 506(a)(3) of the Social Security Act, 95 Stat. 819–20 (42 U.S.C. 702(a), 702(b)(1)(A) and 706(a)(3)).

3. Section 51a.1 is revised to read as follows:

### § 51a.1 To which programs does this regulation apply?

The regulation in this part applies to grants, contracts, and other arrangements under section 502(a) and 502(b)(1)(A) of the Social Security Act, as amended (42 U.S.C. 702(a) and 702(b)(1)(A)), the Maternal and Child Health (MCH) Federal Set-Aside project grant programs. Section 502(a) authorizes funding for special projects of regional and national significance (SPRANS), research and training projects with respect to maternal and child health and children with special health care needs (including early intervention training and services development); genetic disease testing, counseling and information programs; comprehensive hemophilia diagnostic and treatment centers; projects for screening and follow-up of newborns for sickle cell anemia and other genetic disorders; and special maternal and child health improvement projects. Section 502(b)(1)(A) authorizes funding for projects termed community integrated service system (CISS) projects for the development and expansion of: Maternal and infant health home visiting; projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs; integrated maternal and child health service systems; maternal and child health centers operating under the direction of not-for-profit hospitals; rural maternal and child health programs; and outpatient and community-based services programs for children with special health care needs.

4. Section 51a.3 is revised to read as follows:

### § 51a.3 Who is eligible to apply for Federal funding?

(a) With the exception of training and research, as described in paragraph (b) of this section, any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for federal funding under this part.

(b) Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants, contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

5. Section 51a.4 is revised to read as follows:

### § 51a.4 How is application made for Federal funding?

(a) An application for funding under the MCH Federal Set-Aside project grant programs must be submitted to the Secretary at such time and in such manner as the Secretary may prescribe.

(b) The application must include a budget and narrative plan of the manner in which the project will meet each of the requirements prescribed by the Secretary. The plan must describe the project in sufficient detail to identify clearly the nature, need, and specific objectives of, and methodology for carrying out, the project.

(Approved by the Office of Management and Budget under control number 0915–0050)

6. Section 51a.5 is revised to read as follows:

### § 51a.5 What criteria will DHHS use to decide which projects to fund?

(a) The Secretary will determine the allocation of funds available under sections 502(a) and 502(b)(1)(A) of the Act for each of the activities described in § 51a.1.

(b) Within the limit of funds determined by the Secretary to be available for each of the activities described in § 51a.1, the Secretary may award Federal funding for projects under this part to applicants which will, in his or her judgment, best promote the purpose of title V of the Social Security Act and address achievement of *Healthy Children 2000* objectives,[1] taking the following factors into account:

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

(c) For CISS projects utilizing any of the following strategies, preference for funding will be given to qualified applicants in areas with a high infant mortality rate (relative to the latest average infant mortality rate in the United States or in the State in which the area is located):

(1) Projects for the development and expansion of maternal and infant health home visiting;

(2) Projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs;

(3) Integrated maternal and child health service systems; maternal and child health centers operating under the direction of not-for-profit hospitals;

(4) Maternal and child health centers operating under the direction of not-for-profit hospitals; and

(5) Rural maternal and child health programs.

7. Section 51a.7 is revised to read as follows:

### § 51a.7 What other DHHS regulations apply?

(a) Several other DHHS regulations apply to awards under this part. These include, but are not limited to:

42 CFR part 50—Policies of general applicability:

Subpart B—Sterilization of persons in federally assisted family planning projects.

Subpart C—Abortions and related medical services in federally assisted programs of the Public Health Service.

Subpart E—Maximum allowable cost for drugs.

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

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[1] Health Children 2000: National Health Promotion and Disease Prevention Objectives Related to Mothers, Infants, Children, Adolescents, and Youth is a special compendium of health status goals and national health objectives affecting mothers, infants, children, adolescents, and youth originally published in Healthy People 2000 in September 1990. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0 or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (telephone (202) 783–3238).

45 CFR part 81—Practice and procedure for hearings under part 80 of this title.

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

(b) In addition to the above regulations, the following apply to projects funded through grants:

42 CFR part 50—Policies of general applicability:

Subpart D—Public Health Service grant appeals procedure.

45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR part 74—Administration of grants to nonprofit organizations.

45 CFR part 75—Informal grant appeals procedures.

45 CFR part 92—Administration of grants to State and local governments.

8. Section 51a.8 is added to read as follows:

**§ 51a.8 What other conditions apply to these grants?**

(a) Recipients of project grants will be required to submit such additional information to the Secretary on an annual basis as the Secretary determines, including:

(1) The number of individuals served or trained, as appropriate under the project;

(2) A copy of any evaluation conducted by the recipient; and

(3) A list of Healthy Children 2000 objectives addressed by the project and data on how the project contributed toward meeting the objectives.

(b) The Secretary may at the time of award of project grants under this part impose additional conditions, including conditions governing the use of information or consent forms, when, in the Secretary's judgment, they are necessary to advance the approved program, the interest of public health, or the conservation of grant funds.

[FR Doc. 93–17053 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–16–M

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 542**

**[Docket No. 93–53; Notice 1]**

**RIN 2127–AE57**

## Motor Vehicle Theft Prevention; Procedures for Selecting Lines Subject to Theft Prevention Standard

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend the procedures for the selection of new passenger motor vehicle lines that are likely to be high theft lines. This notice proposes to require manufacturers to inform NHTSA about new motor vehicle lines that the manufacturers plan to introduce for sale and provide an analysis whether the new line is likely to be a high or low theft line. In addition, this notice proposes amendments to implement changes made by the "Anti Car Theft Act of 1992" to the Motor Vehicle Information and Cost Savings Act.

**DATES:** Comments must be received on or before September 7, 1993.

**ADDRESSES:** All comments should refer to the docket number and notice number cited in the heading of this notice and be submitted, preferably in ten copies to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington DC 20590. Ms. Gray's telephone number is (202) 366–1740.

**SUPPLEMENTARY INFORMATION:**

### Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98–547) (Theft Act), added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to title VI, NHTSA promulgated 49 CFR part 541, titled "Federal Motor Vehicle Theft Prevention Standard." Part 541 establishes performance requirements for inscribing or affixing identification numbers onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 603(a)(2) of title VI states that the specific lines, and the major parts of the vehicles within such lines, that are to be subject to the theft prevention standard may be selected by agreement between a manufacturer and the agency. If the agency and manufacturer disagree as to the selection, the agency must select the subject line and parts, after providing notice to the manufacturer and an opportunity for written comment.

Section 603(c) states that NHTSA "shall, *by rule, require* each manufacturer to provide information necessary to select pursuant to subsection (a)(2) the high theft lines and major parts to be subject to the standard." (Emphasis added.) However, as promulgated on August 28, 1985 (50 FR 34831), the agency's regulations regarding the selection of high theft lines did not require the submission of such information. Those regulations, which are contained in part 542, simply set forth the procedures to be followed by those manufacturers which voluntarily choose to provide the information and to participate in the selection process. The rationale for not including a requirement for the submission of the information was discussed in the June 20, 1985 notice of proposed rulemaking (50 FR 25803) proposing to establish part 542. In essence, the agency anticipated that the manufacturers would cooperate in providing the agency with their views and supporting analyses, and that, therefore, there was no need to adopt such a requirement.

Under the procedures in part 542, the manufacturer wishing to participate in the high theft line selection process applies the criteria in 49 CFR part 541 appendix C in preparing its views as to which of its passenger motor vehicle lines should be selected as high-theft lines for the purpose of the Theft Prevention Standard. Section 542.4 provides that between 18 to 24 months before the introduction of the line, the manufacturer submits its views to the agency, together with the facts it considered and supporting rationale for those views. The agency independently assesses the manufacturer's submission. Within a specified time period, the agency informs the manufacturer in writing of its preliminary determination whether any lines should be selected as high theft lines, and identifies any low theft lines.

If the manufacturer disagrees with the agency's preliminary determination, it may write to the agency, requesting a reconsideration. NHTSA makes its final

determination within 60 days of its receipt of the request for reconsideration. If the agency does not receive a request for reconsideration, NHTSA's preliminary determination becomes final 45 days after the agency sends the preliminary determination letter.

Since the establishment of part 542, some manufacturers have not consistently notified the agency about the introduction of new lines within the specified time frame of 18 to 24 months before introduction of each new line. Section 542.4(c)(3) currently provides that, upon receiving the evaluations of the manufacturers, NHTSA independently evaluates each new line, and preliminarily determines whether the line should be high or low theft. Delays by manufacturers in submitting information about new lines have, on occasion, prevented the agency from making its preliminary determination sufficiently in advance of the introduction of such lines to permit application of the Theft Prevention Standard to those lines during their introductory model year. In order for a new line to be subject to the Standard in its introductory year, it must be selected as high theft not less than 6 months before the beginning of that model year. If manufacturer submissions are untimely, the agency's determinations are untimely as well and, by default, are applied to the following model year. Thus, a year of coverage by the standard is lost.

Under § 542.4(c)(3), the agency attempts to make its preliminary determinations not later than 15 months before the beginning of the introductory model year. In some instances when the agency has learned of apparent plans to introduce a new line, despite the manufacturer's failure to timely provide NHTSA with information about the new line, the agency has found it necessary to rely primarily on information from trade publications (i.e., Automotive News, Road and Track, Motor Trend, Car and Driver, Consumer Reports, etc.) to make preliminary determinations for new car lines. Manufacturers have expressed dissatisfaction with agency reliance on these sources because they believe that the information reported in the trade publication is inaccurate and out-of-date. Manufacturers have also expressed displeasure about agency issuance of preliminary determinations before the manufacturer notifies the agency of its plans to introduce new lines because they perceive such agency action to be an attempt to second guess the manufacturer about the timing of the introduction of new model lines, or prevent the manufacturer from having input into the determination. However, the agency has had to act on its own initiative in such instances because the manufacturers did not notify the agency within the specified period of 18 to 24 months before the introduction of their new lines.

Accordingly, the agency proposes to implement section 603(c) of the Cost Savings Act by requiring that a manufacturer submit, for each of its planned lines, information relevant to the criteria set forth in appendix C of part 541. The agency also proposes that a manufacturer be required to submit such information not less than 18 months before introduction of the planned line. The agency proposes to permit submission of the information prior to 24 months before the introduction of the planned line, in order to provide as much flexibility to manufacturers as possible.

The agency believes that requiring manufacturers to submit the necessary information would provide the agency with more timely submissions of accurate and up-to-date data to evaluate. This would enable the agency to select more effectively and efficiently (by agreement with the manufacturer, if possible) those new lines likely to have a high theft rate. Also, since the information would be provided directly to the agency by the manufacturer, any need for the agency to rely upon trade reporting would presumably be eliminated.

In order to provide manufacturers with lead time to comply with the new mandatory procedures, the agency proposes to permit voluntary submission of information for lines that are introduced before model year 1997, and require compliance with the mandatory procedures for those lines introduced in the 1997 or subsequent model years. Similar proposals regarding voluntary and mandatory submission of information are proposed with respect to low theft new lines with a majority of major parts interchangeable with those of a high theft line.

NHTSA bases its tentative selection of model year 1997 as the first year for which it would be mandatory to submit information pursuant to part 542 on the following time considerations. The agency anticipates that, if made final, the rule amending part 542 would be published in the **Federal Register** by the spring of calendar year 1994. A final rule published in the spring of 1994, and made effective thirty days after publication, would provide ample time for manufacturers of vehicles to be introduced in model year 1997 (even for vehicles to be introduced in the early summer of 1996) to prepare and submit the required information not later than 18 months before the beginning of model year 1997.

NHTSA also proposed to remove from part 542 outdated information about procedures for motor vehicle manufacturers and NHTSA to follow in designation of likely high or likely low theft status for vehicle lines introduced before April 24, 1986 (i.e., pre-standard car lines). April 24, 1986 is the effective date of part 541, the Theft Prevention Standard. Since all new lines that would be subject to the proposed procedures in this notice are post-standard lines (i.e., lines introduced after April 24, 1986), the agency has tentatively concluded it is appropriate to remove the outdated references to lines introduced before April 24, 1986.

**Anti Car Theft Act of 1992**

The "Anti Car Theft Act of 1992" (ACTA), which became law on October 25, 1992, is a comprehensive attack on automotive theft and fraud. The ACTA strengthens Federal penalties for motor vehicle theft, armed robbery of motor vehicles, and motor vehicle titling fraud. In addition to these new provisions, the ACTA amended title VI "Theft Prevention" of the Cost Savings Act.

Title VI was amended to redefine "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." (See section 601(1) of title VI.) Before the amendment of title VI, "passenger motor vehicle" was defined for the purposes of title VI to include passenger cars only. The effect of the redefinition is that certain light-duty truck lines and multipurpose passenger vehicle lines may be determined to be likely high theft vehicles, and thus, may be subject to the parts marking requirements of the Theft Prevention Standard.

Since part 542 specifies procedures for how new "lines" are to be determined as high or low theft without making any reference to "passenger cars," that part need not be amended to make its procedures applicable to light duty trucks and multipurpose passenger vehicles.

The agency draws special attention to part 542's section on procedures for selecting low theft new lines with a majority of major parts interchangeable with those of a high theft line. Before the amendment of title VI, interchangeability of major parts in lines meant interchangeability among major parts of other passenger car lines. With the broader definition of "passenger

motor vehicle," manufacturers and NHTSA must review interchangeability of major parts among all three vehicle classifications (i.e., passenger cars, and certain light-duty trucks and multipurpose passenger vehicles).

For the reasons previously discussed, manufacturers, responsibility to review interchangeability of major parts among vehicle classifications is voluntary for low theft vehicle liens introduced before model year 1997. For low theft vehicle lines introduced in model year 1997 and thereafter, manufacturers are required to review interchangeability of major parts among vehicle classifications, and are required to submit the results of such review to NHTSA.

NHTSA intends to begin its independent review of interchangeability of major parts among vehicle classifications when it makes final the new median theft rate based on 1990 and 1991 theft data. This new median theft rate was mandated in the Anti Car Theft Act of 1992. (See section 603 of the title VI.) NHTSA intends to publish the final median theft rate by December 1993. NHTSA's review will apply to low theft vehicle lines introduced after the calendar years 1990/1991 median theft rate has been made final. In conducting its independent review, NHTSA will rely for information on publicly available sources such as the automotive industry publications mentioned earlier in this notice, on owners' manuals for different motor vehicles, and on repair manuals published by motor vehicle manufacturers.

This proposed rule does not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2020), provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act, (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**Regulatory Impacts**

*A. Executive Order 12291*

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, the agency estimates there would be minimal reporting costs imposed on manufacturers of passenger motor vehicles. The agency estimates that the annual cost per manufacturer per year to report on new vehicle lines is $2,000. The agency estimates that the cost to all affected manufacturers totals $56,000 per year. These doller figures are only a minuscule fraction of the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

The burden on manufacturers of light-duty trucks and multipurpose passenger vehicles would be minimal because relatively few new light-duty truck and multipurpose passenger vehicle lines are introduced in any year. The additional burden on manufacturers with respect to passenger cars, as a result of mandatory reporting, would also be minimal because most manufacturers are already providing new car line information on a voluntary basis.

Since there would be little additional reporting cost, NHTSA does not believe that this proposed rulemaking would affect the impacts described in the regulatory evaluation prepared for the proposal setting forth the substantive requirements of part 541. Accordingly, a separate regulatory evaluation has not been prepared for this proposed rule. Interested persons may wish to examine the regulatory evaluation that was prepared for the proposed rule setting forth the substantive requirements of part 541. Copies of that evaluation have been placed in Docket No. T84–01; Notice 4, and may be obtained in writing to: National Highway Traffic Safety Administration, Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590.

*B. Small Business Impacts*

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The definition of small business for those concerns that may be affected by this rulemaking action are found at 13 CFR part 121 under Standard Industrial Classification (SIC) Code 3711, manufacturers of "Motor Vehicles and Passenger Car Bodies." For SIC Code 3711, the SBA establishes an average of fewer than 1,000 employees during the preceding 12 months as the size standard for small business. I certify that this proposed rule would not, if promulgated as a final rule, have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the reporting costs would be minimal and almost none of the manufacturers of passenger motor vehicles that would be subject to this rule would be considered a small business, a small non-profit organization, or a small governmental entity as defined by the SBA.

*C. Environmental Impacts*

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

*D. Paperwork Reduction Act*

The procedures in this proposed rule for manufacturers to submit preliminary decisions to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 542 have been submitted to and approved by the OMB pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) This collection of information has been assigned OMB Control No. 2127–0539 ("Procedures for selecting lines to be covered by the theft prevention standard") and has been approved for use through August 31, 1995.

*E. Federalism*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Public Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (See 49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting

forth the information specified in the agency's confidential business information regulation. (See 49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 542**

Administrative practice and procedure, National Highway Traffic Safety Administration, reporting requirements.

In consideration of the foregoing, it is proposed that 49 CFR part 542 be revised to read as follows:

## PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

Sec.

542.1 Procedures for selecting new lines that are likely to have high theft rates.
542.2 Procedures for selecting low theft new lines with a majority of major parts interchangeable with those of a high theft line.

**Authority:** 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

### § 542.1 Procedures for selecting new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any new line is likely to have a theft rate above the median theft rate.

(b) *Application.* These procedures apply to each manufacturer that plans to introduce a new line into commerce in the United States on or after April 24, 1986 and to each of those new lines.

(c) *Procedures.*

(1) (i) For each line introduced before the 1997 model year, each manufacturer uses the criteria in appendix C of part 541 of this chapter to evaluate each new line and to conclude whether the new line is likely to have a theft rate exceeding the median theft rate established for calendar years 1990 and 1991.

(ii) For each line introduced in the 1997 or subsequent model years, each manufacturer shall use the criteria in appendix C of part 541 of this chapter to evaluate each new line and to conclude whether the new line is likely to have a theft rate exceeding the median theft rate.

(2) (i) For each new line to be introduced before the 1997 model year, the manufacturer submits its evaluations and conclusions made under paragraph (c)(1)(i) of this section, together with the underlying factual information, to NHTSA not less than 18 months before the date of introduction. The manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(ii) For each new line to be introduced in the 1997 or subsequent model years, the manufacturer shall submit its evaluations and conclusions made under paragraph (c)(1)(ii) of this section, together with the underlying factual information, to NHTSA not less than 18 months before the date of introduction. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than 15 months before the introduction of each new line, whichever is sooner, the agency independently evaluates the new line using the criteria in appendix C of part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.2 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer shall submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3). The request shall include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) shall become final 45 days after the agency sends the letter specified in paragraph (c)(3) unless a request for reconsideration has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

### § 542.2 Procedures for selecting low theft new lines with a majority of major parts interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any new lines that will be likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a line having or likely to have a high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States and that has been listed in appendix A of part 541 of this chapter or that has been identified by the manufacturer or preliminarily or finally determined by NHTSA to be a high-theft line under § 542.1, and

(ii) At least one passenger motor vehicle line that will be introduced into commerce in the United States on or after April 24, 1986 and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely submedian theft rate lines.

(c) *Procedures.*

(1) (i) For each line that is to be introduced before the 1997 model year and that a manufacturer identifies under appendix C as likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any other of its lines that has been listed in appendix A of part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high theft line under § 542.1.

(ii) For each new line that is to be introduced in the 1997 or subsequent model years and that a manufacturer identifies under appendix C as likely to have a theft rate below the median rate, the manufacturer shall identify how many and which of the major parts of that line will be interchangeable with the covered major parts of any other of its lines that has been listed in appendix A of part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high-theft line under § 542.1.

(2) (i) If the manufacturer concludes that a new line that is to be introduced before the 1997 model year has a likely submedian theft rate and will have major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer determines whether all the vehicles of those lines with likely submedian theft rates and interchangeable parts will account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(ii) If the manufacturer concludes that a new line that is to be introduced in the 1997 or subsequent model years has a likely submedian theft rate and will have major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer shall determine whether all the vehicles of those lines with likely submedian theft rates and interchangeable parts will account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) (i) For new lines to be introduced before the 1997 model year, the manufacturer submits its evaluations and identifications made under paragraphs (c)(1)(i) and (2)(i) of this section, together with the underlying factual information, to NHTSA not more than 24 months before introduction of the new line and not less than 18 months before the date of introduction. During this period, the manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(ii) For new lines to be introduced in the 1997 and subsequent model years, the manufacturer shall submit its evaluations and conclusions made under paragraphs (c)(1)(ii) and (2)(ii) of this section, together with the underlying factual information, to NHTSA not less than 18 months before the date of introduction. During this period, the manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(4) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than 15 months before the introduction of each new line, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with likely submedian theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) of this section becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

Issued on: July 15, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–17252 Filed 7–20–93; 8:45 am]

BILLING CODE 4910–59–M

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## DEPARTMENT OF THE INTERIOR

**50 CFR Part 24**

**RIN 1018 AB26**

## Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (the Service) proposes to amend the regulations that establish designated ports for the importation, exportation, and reexportation of plants by adding the U.S. Department of Agriculture (USDA) ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened, under the Endangered Species Act of 1973, as amended (the Act), or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service also proposes to designate the USDA port at Wilmington, NC, as a port for the exportation of Venus flytrap (*Dionaea muscipula*) plants. The USDA has adequate facilities and personnel at these ports to qualify the ports as designated ports for the importation, exportation, and reexportation of plants under the terms of the Act and CITES. The addition of these nine ports to the list of designated ports would facilitate trade and the enforcement of the Act and CITES.

**DATES:** Comments must be submitted on or before September 20, 1993. Requests for a public hearing must be received by September 3, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Comments and materials may be hand-delivered to the same address between the hours of 8 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 430, Arlington, Virginia 22203, telephone (703) 358–2095.

**SUPPLEMENTARY INFORMATION:**

### Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538(f)) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (the Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of

the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations contained in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Plants that are listed as endangered or threatened in 50 CFR 17.12 or are listed in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the 15 USDA ports listed in § 24.12(a) of the regulations. Certain other USDA ports are designated for the importation, exportation, or reexportation of specific listed plants. Section 24.12(e) of the regulations contains a list of 87 USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened or under CITES. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through these 87 ports.)

For the purposes of its enforcement of the Act and CITES, the Service requires that a port have personnel with expertise in identifying endangered or threatened plants, and CITES listed plants, to ensure that such plants are properly identified by their accompanying documentation. A port must also possess adequate facilities for holding live plants and plant material, since plants are subject to seizure if imported, exported, or reexported in violation of the Act or CITES. The Service further requires that, whenever possible, ports be located to coincide with established patterns of plant trade in order to help reduce shipping costs.

**Importation of Logs and Lumber From Listed Trees**

The USDA ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, are currently designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened or under CITES. The Service has been asked to further designate those ports as ports for the importation of logs and lumber from trees listed as endangered or threatened or under CITES. Logs and lumber from listed trees may currently be imported only through one of the 15 USDA ports designated for the importation, exportation, or reexportation of endangered or threatened plants or CITES listed plants. Importers wishing to import logs and lumber from listed trees into ports on the east coast of the United States may only use Hoboken, NJ, or Miami, FL. Importers wishing to import logs and lumber from listed trees into U.S. ports on the Gulf of Mexico have only Brownsville and Houston, TX, and New Orleans, LA.

After consultations with the USDA, the Service has determined that the USDA ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, possess adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, these locations appear to coincide with established patterns of trade. Therefore, the Service proposes to establish these ports as designated ports for the importation of logs and lumber from listed trees.

**Exportation of Venus Flytrap**

The Venus flytrap (*Dionaea muscipula*) was added to Appendix II of CITES during the eighth meeting of the Conference of Parties to CITES, which was held March 2–13, 1992, in Kyoto, Japan. The addition of the Venus flytrap to Appendix II became effective on June 11, 1992. Appendix II includes species that, although not necessarily threatened with extinction, may become so unless trade in them is strictly controlled.

Now that the Venus flytrap has been added to Appendix II, the plant may be exported only through one of the 15 USDA ports designated for the importation, exportation, or reexportation of plants listed as endangered or threatened or under CITES. The Venus flytrap occurs chiefly in North Carolina and is also found in South Carolina, but the nearest ports through which the plant may currently be exported are Miami, FL, and Hoboken, NJ. Therefore, the State of North Carolina and some exporters of the Venus flytrap have requested that the Service establish the USDA port at Wilmington, NC, as a designated port for the exportation of the Venus flytrap.

After consultations with the USDA, the Service has determined that the USDA port at Wilmington, NC, possesses adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, the location appears to coincide with established patterns of trade. Therefore, the Service proposes to add Wilmington, NC, as a designated port for the exportation of the Venus flytrap.

**Miscellaneous**

In addition to the proposed changes set forth above, we correct a typographical error in the list of USDA ports currently found in § 24.12(e).

**Requests for Public Hearing**

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary confers designated port status on any port. Accordingly, the Service will accept public hearing requests within 45 days of the publication of this proposed rule. These requests should be sent to the Office of Management Authority address listed in the "ADDRESSES" section of this document.

**Executive Order 12291 and Regulatory Flexibility Act**

The Service is issuing this proposed rule in conformance with Executive Order 12291, and has determined that it is not a "major rule." The Service has determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Service believes that establishing the USDA ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees listed as endangered or threatened or under CITES would have a positive economic impact. These ports are major ports of entry for logs and lumber, but they currently may not be used to import logs and lumber from listed trees. Importers wishing to import logs and lumber from listed trees into a port on the east coast of the United States may only use Hoboken, NJ, or Miami, FL. Importers wishing to import logs and lumber from listed trees into a U.S.

port on the Gulf of Mexico may only use Brownsville and Houston, TX, and New Orleans, LA. Establishing Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees listed as endangered or threatened or under CITES would result in a savings in time and transportation costs for importers of logs and lumber.

The Service also believes that establishing Wilmington, NC, as a designated port for the exportation of Venus flytrap plants would have a positive economic impact. The Venus flytrap occurs chiefly in North Carolina and also in South Carolina. Before the inclusion of the Venus flytrap in Appendix II of CITES became effective, exporters of the Venus flytrap were able to use Wilmington, NC, and other USDA ports for the exportation of their plants. Since June 11, 1992, however, those exporters have been regulated by the ports designated for the importation, exportation, or reexportation of listed plants, with Miami, FL, and Hoboken, NJ, being the closest such ports to North Carolina and South Carolina. Establishing Wilmington, NC, as a designated port for the exportation of Venus flytrap would result in a savings in time and transportation costs for exporters of the plant.

Under these circumstances, the Service has determined that this action would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 601.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws, regulations, or policies that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

**National Environmental Policy Act**

The Service has determined that this proposed rule to add designated ports under authority of the Endangered Species Act of 1973 for the importation and exportation of plants is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

**Paperwork Reduction Act**

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 50 CFR Part 24**

Import, Export, Endangered and threatened plants, Treaties (Agriculture).

Accordingly, we propose to amend 50 CFR part 24 as follows:

## PART 24—IMPORTATION AND EXPORTATION OF PLANTS

1. The authority citation for part 24 would continue to read as follows:

**Authority:** Secs. 9(f)(1), 11(f), Pub. L. 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

2. In § 24.12, paragraph (e) would be redesignated as paragraph (g), and two new paragraphs, (e) and (f), would be added to read as follows:

**§ 24.12 Designated ports.**

* * * * *

(e) The U.S. Department of Agriculture ports at Philadelphia, Pennsylvania; Baltimore, Maryland; Norfolk, Virginia; Wilmington and Morehead City, North Carolina; Charleston, South Carolina; Savannah, Georgia; and Mobile, Alabama, are designated ports for the importation of logs and lumber from trees which are listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR part 17 or 23.

(f) The U.S. Department of Agriculture port at Wilmington, North Carolina, is a designated port for the exportation of plants of the species *Dionaea muscipula* (Venus flytrap), which is listed in Appendix II of CITES and which is required to be accompanied by documentation under 50 CFR part 23.

* * * * *

3. In newly redesignated § 24.12(g), the list of U.S. Department of Agriculture ports would be amended by removing the words "San Antonia, Texas" and replacing them with the words "San Antonio, Texas".

Dated: June 2, 1993.

**Richard M. Smith,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93–17249 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–55–M

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# Notices

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 30-93]

### Proposed Foreign-Trade Subzone Amoco Oil Company—Refinery/MTBE Facility Whiting, Indiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 152, requesting special-purpose subzone status for the Whiting oil refinery/MTBE facility of Amoco Oil Company, located in the Whiting, Indiana, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 9, 1993.

The facility (1,422 acres) is located at 2815 Indianapolis Boulevard, Whiting, Lake County, Indiana (parts also stretch into the cities of East Chicago and Hammond). The refinery (557,000 BPD; 1,600 employees) is used to produce fuel and chemical products. Fuels produced include gasoline, gasoline blendstocks and charging stocks, gas oil, fuel oil, diesel fuel, jet fuel and residual fuel. The company also plans to produce MTBE at the facility. Chemical products produced include refinery gases such as ethane, propane and butane; petrochemical feedstocks, such as xylene, propylene and butylene; and refinery byproducts, such as asphalt, sulfur, petroleum coke, waxes, and mineral oils. Most of the petroleum coke and sulfur is exported. All of the crude oil (90 percent of inputs), and some feedstocks, such as methanol, and some blendstocks, such as MTBE, are sourced abroad.

Zone procedures would exempt the refinery from Customs dutypayments on the foreign products used in its exports. On domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to choose the finished product duty rate in certain circumstances. For example, the company proposes to choose the zero duty rate that applies to certain refinery gases, such as ethane, propane and butane, certain petrochemical feedstocks, such as xylene, butylene and propylene, and certain refinery by-products, such as asphalt, sulfur and petroleum coke. (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.) Foreign merchandise and merchandise to be exported would also be exempt from state and local *ad valorem* taxes.

MTBE (methyl tertiary butyl ether) is one of the blendstocks sourced from abroad. On MTBE which is blended with gasoline at the refinery and then sold in the U.S., Amoco proposes to choose the finished gasoline duty rate (1.25 cents/gallon). The duty rate on MTBE would otherwise be 5.6%. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 20, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (October 4, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, room 1406, 55 East Monroe St., Chicago, Illinois 60603

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 14, 1993.

John J. DaPonte, Jr.,
*Executive Secretary.*

[FR Doc. 93–17325 Filed 7–20–93; 8:45 am]
BILLING CODE: 3510-DS-P

[Order No. 644; FTZ Docket 18–92]

### Louisville and Jefferson County Riverport Authority for Expanded Subzone Manufacturing Authority Toyota Motor Manufacturing, U.S.A., Inc., FTZ Subzone 29E

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following order:

After consideration of the application of the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, filed with the Foreign-Trade Zones Board on June 16, 1992, requesting authority to expand subzone manufacturing authority at the automobile manufacturing plant of Toyota Motor Manufacturing, U.S.A., Inc., located in Georgetown, Kentucky (Subzone 29E), the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and FTZ Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of July, 1993.

Joseph A. Spetrini,
*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:
John J. Da Ponte, Jr.,
*Executive Secretary.*

[FR Doc. 93–17328 Filed 7–20–93; 8:45 am]
BILLING CODE 3510-DS-P

[Order No. 637]

### Grant of Authority

### Establishment of a Foreign-Trade Zone, Rio Rancho, New Mexico, (Albuquerque Customs Port of Entry Area)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the City of Rio Rancho, New Mexico (the Grantee), has made application (filed 5–22–92, FTZ Docket 15–92, 57 FR 24017, 6/5/92) to the Board, requesting the establishment of a foreign-trade zone at sites in Rio Rancho, adjacent to the Albuquerque Customs port of entry; and,

*Whereas*, notice inviting public comment has been given in the Federal Register and the board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore*, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 194, at the sites described in the application, subject to the Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 7th day of June 1993.

Foreign-Trade Zones Board.

**Ronald H. Brown,**

*Secretary of Commerce, Chairman and Executive Officer.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 93–17326 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–DS–P

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[Order No. 643]

## Grant of Authority for Subzone Status

## Ford Motor Company, (Passenger/ Cargo Vehicles) Avon Lake, OH

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas*, an application from the Cleveland Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, for authority to establish a special-purpose subzone for the passenger and cargo vehicle manufacturing plant of the Ford Motor Company, Avon Lake, Ohio, was filed by the Board on August 14, 1991, and notice inviting public comment was given in the Federal Register (FTZ Docket 47–91, 56 FR 42025, 8–26–91); and,

*Whereas*, the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, the Board hereby authorizes the establishment of a subzone (Subzone 40C) at the Ford Motor Company plant in Avon Lake, Ohio, at the location described in the application, subject to FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of July, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 93–17327 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–DS–P

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## International Trade Administration

## Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with June anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2104.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department of Commerce (the Department) has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with June anniversary dates.

### Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than June 30, 1994.

| Antidumping duty processings | Period to be reviewed |
|---|---|
| Canada: | |
| Oil country tubular goods, A–122–506: | |
| Ipsco, Inc | 6/1/92–5/31/93 |
| Red raspberries, A–122–401: | |
| Clearbrook Packers Inc., Valley Berries Inc | 6/1/92–5/31/93 |
| France: | |
| Large power transformers, A–427–030: | |
| Jeumont-Schneider | 6/1/92–5/31/93 |
| Germany: | |
| High tenacity rayon filament yarn, A–428–810: | |
| Akzo Faser AG | 2/20/91–5/31/93 |
| The Hungarian People's Republic: | |
| Tapered roller bearings and parts thereof, finished and unfinished, A–437–601: | |
| Magyar Gordulocsapagy Muvek | 6/1/92–5/31/93 |
| Italy: | |
| Large power transformers, A–475–031: | |
| Tammanni | 6/1/92–5/31/93 |
| Japan: | |
| Fish Netting of man-made fibers, A–588–029: | |
| Yamaji Fishing Net Co., Ltd | 6/1/92–5/31/93 |
| Industrial belts, A–588–807: | |
| Mitsuboshi Belting Limited | 6/1/92–5/31/93 |
| Polyethylene terephthalate film, sheet and strip, A–588–814: | |
| Diafoil, Teijin, Ltd., Toray Industries, Inc | 6/1/92–5/31/93 |
| The Republic of Korea: | |
| Polyethylene terephthalate film, sheet and strip, A–580–807: | |
| Cheil Synthetics Inc., Kolon Industries, Inc., SKC Limited, STC Corp | 6/1/92–5/31/93 |

| Antidumping duty proceedings | Period to be reviewed |
|---|---|
| New Zealand: | |
| Fresh kiwifruit, A–614–801: | |
| New Zealand Kiwifruit Marketing Board | 11/27/91–5/31/93 |
| The People's Republic of China: | |
| Sparklers, A–570–804: | |
| Guangxi Native Produce Import & Export Corporation, Beihai Fireworks & Firecrackers Branch | 6/1/92–5/31/93 |
| Tapered roller bearings and parts thereof, A–570–601: | |
| Harbin Bearing Factory | 6/1/92–5/31/93 |
| Lucyang Bearing Factory | |
| Wafangdian Bearing Factory | |
| Shanghai General Bearing Co., Ltd. | |
| Shanghai Rolling Bearing Factory | |
| Xiangyang Bearing Factory | |
| Chengdu General Bearing Factory | |
| Hailin Bearing Factory | |
| Gulyang Bearing Factory | |
| Haihong Bearing Factory | |
| Lanzhou Bearing Factory | |
| Xibei Bearing Factory | |
| Changzhi Bearing Factory | |
| Jining Bearing Factory | |
| Shenyang Bearing Factory | |
| Gongzhuling Bearing Factory | |
| Jiamusi Bearing Factory | |
| Hangzhou Bearing Factory | |
| Jiangxi Bearing Factory | |
| Liangshan Bearing Factory | |
| Yantai Bearing Factory | |
| Northwest Bearing Factory | |
| Huangshi Bearing Factory | |
| Guangxi Bearing Factory | |
| Chongqing Bearing Factory | |
| Yunnan Bearing Factory | |
| Baoji Bearing Factory | |
| Xiangtan Bearing Factory | |
| Shaoguan Bearing Factory | |
| Xinjiang Bearing Factory | |
| The Second Bearing Factory of Xuzhou | |
| Yuxi Bearing Factory | |
| Changda Bearing Factory | |
| Chengdu Bearing Factory | |
| Handan Bearing Factory | |
| Xingcheng Bearing Factory | |
| Premier Bearing & Equipment, Ltd. | |
| Chin Jun Industrial, Ltd. | |
| China National Machinery and Equipment Import and Export Corporation (CMEC) | |
| Henan Co., Ltd. | |
| Liaoning Co., Ltd. | |
| Jilin Machinery Import and Export Corporation | |
| Guizhou Machinery Import and Export Corporation | |

**Countervailing Duty Proceedings**

None.

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: July 13, 1993.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–17324 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–DS–M

## COMMODITY FUTURES TRADING COMMISSION

### Financial Products Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee (FPAC) has changed the date of its next public meeting from July 29, 1993 to August 5, 1993. This public meeting will be held in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, from 1:30 p.m. until 5 p.m. The agenda will consist of:

1. A presentation on the AUDIT system being developed by the Chicago Board of Trade and the Chicago Mercantile Exchange;
2. A panel discussion of regulators concerning the capital treatment of derivatives;
3. A panel discussion on the prospects for development of a swaps clearinghouse;
4. Briefings on proposed rule amendments of interest to FPAC including Rule 4.5 and Rule 1.35; and
5. Other items of Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Susan Milligan, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Milligan in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on July 15, 1993.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–17205 Filed 7–20–93; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** DOD.
**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title:* Default for Failure to Submit Revised Delivery Schedule
*Type of Request:* New collection
*Number of Respondents:* 36
*Responses Per Respondent:* 1
*Annual Responses:* 36
*Average Burden Per Response:* 2 hours
*Annual Burden Hours:* 72
*Needs and Uses:* This clause gives Contracting Officers the authority to require a contractor to submit a revised delivery schedule and the failure to do so will be grounds for termination. The need for the clause arises when a contractor fails to meet the delivery schedule and then refuses to cooperate in establishing a revised schedule.
*Affected Public:* Businesses or other for profit; Non-profit institution; and Small businesses or organizations
*Frequency:* On occasion
*Respondent's Obligation:* Required to obtain or retain a benefit
*OMB Desk Officer:* Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.
*DOD Clearance Officer:* Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17239 Filed 7–20–93; 8:45 am]
BILLING CODE 5000-04-M

### Office of the Secretary

### Determination; Armed Forces Assistance

Pursuant to section 515(c) of the Foreign Assistance Act relating to overseas management of assistance and sales programs, and in accordance with the authority delegated by Executive Order 12163 and redelegated on February 12 and February 24, 1972, to the Director, Defense Security Assistance Agency, the Director, Defense Security Assistance Agency, Lt Gen Teddy G. Allen, has determined that United States national interests require that more than six members of the Armed Forces be assigned under section 517 of the FAA to carry out international security assistance programs in Kuwait, and therefore waive the limitation that the number of members of the Armed Forces assigned to a foreign country under section 515 of that Act may not exceed six unless specially authorized by the Congress.

The total number of eleven military personnel authorized to the Office of Military Cooperation (OMC)—Kuwait shall be effective thirty days after the date on which this determination is reported to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17238 Filed 7–20–93; 8:45 am]
BILLING CODE 5000-04-M

### Department of the Army

### Army Science Board; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

*Name of Committee:* Army Science Board (ASB).
*Date of Meeting:* 5 August 1993.
*Time of Meeting:* 0900–1630 hours.
*Place:* Fort Knox, Kentucky.
*Agenda:* The Army Science Board's C31 Issue Group members will travel to Fort Knox, Kentucky to receive orientation briefings. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 93–17201 Filed 7–20–93; 8:45 am]
BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### National Education Goals Panel; Amendment

**AGENCY:** National Education Goals Panel; Education.
**ACTION:** Amendment to notice.

**SUMMARY:** Notice is hereby given of an amendment to the meeting of the National Education Goals Panel scheduled for July 27, 1993 at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC, as published in the **Federal Register** on Thursday, July 8, 1993, Vol. 58, No. 129, page 36657. The location of the meeting is changed to the Holiday Inn Crowne Plaza, Metro Center, 775 12th Street NW., Washington, DC. The meeting will begin at 12:30 p.m. and end at 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ruth Whitman Checon, Public Information, 1850 M Street, NW, suite 270, Washington, DC 20036. Telephone: (202) 632–0952.

Dated: July 16, 1993.

**Ann V. Bailey,**

*Committee Management Officer, U.S. Department of Education.*

[FR Doc. 93–17332 Filed 7–20–93; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Noncompetitive Award of Financial Assistance; American Council for an Energy-Efficient Economy

**AGENCY:** Department of Energy.
**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE), Chicago Field Office, through the Seattle Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to American Council for an Energy Economy (ACEEE). The award amount to ACEEE will be used towards facilities in which a workshop will take place for the transfer of research results in the area of industrial demand side management strategies. Public Law 95–224 provides the statutory authority for the proposed award.

**SUPPLEMENTARY INFORMATION:** ACEEE is an educational and research organization dedicated to the promotion of technologies, policies, and programs that improve energy efficiency. ACEEE has been extensively involved in efforts to improve building energy efficiency. The workshop and the resulting

proceedings will provide needed data to the DOE and will allow for the transfer of research results in the area of industrial demand side management strategies.

The grant application is being accepted by DOE because of the unique combination of resources and experience possessed by ACEEE which will enhance the public benefit. The activity would be conducted by the applicant using its own resources or provided by third parties; however, DOE knows of no other entity which is conducting or is planning to conduct such an activity in the near or distant future. The project period for the grant award is expected to begin in August 1993 for a one week period. DOE plans to provide funding in the amount of $15,000 for this project.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey James, U.S. Department of Energy, Seattle Support Office, 800 Fifth Avenue, suite 3950, Seattle, WA 98104, (206) 553–2079.

Issued in Chicago, Illinois, on July 7, 1993.

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 93–17311 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–M

## Noncompetitive Award of Financial Assistance; Georgia Tech Research Corp.

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE), Chicago Operations Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to the Georgia Tech Research Corporation to support an assessment of the potential for the development, at the Georgia Institute of Technology, of a campus-wide district cooling system incorporating state-of-the-art refrigeration systems, current underground piping technology, thermal storage options, and integrated resource optimization through state-of-the-art control technology.

**FOR FURTHER INFORMATION CONTACT:** Warren Zurn, U.S. Department of Energy, Atlanta Support Office, (404) 347–1047.

**SUPPLEMENTARY INFORMATION:** Facilities planned for the 1996 Olympic Games, ongoing dormitory construction, and future education buildings will require modification of the existing chilled water distribution system and additional central plant facilities or the construction of individual building refrigeration systems. The Georgia Tech Office of Facilities has begun an evaluation of satellite chiller plants and optimization of the existing district cooling system, but the Institute lacks sufficient funds to fully explore development of a campus-wide district cooling system incorporating state-of-the-art technologies. The award of federal funds for this project will enable them to identify suitable technologies for implementation. Since the campus will serve at the Olympic Village during the 1996 Summer Games, it is expected that the resulting project will serve as a showcase for the world of American energy efficiency technologies. The grant application is being accepted by DOE because the Institute is using its own resources to conduct the evaluation, however DOE support would enhance the public benefits to be derived and DOE knows of no other entity is conducting or is planning to conduct a similar project with the potential to provide a showcase for this energy efficiency technology during the 1996 Olympics. The project period for the grant is a sixteen month period expected to begin in June 1993. DOE plans to provide in the amount of $61,816 for this project period.

Issued in Chicago, Illinois, on June 25, 1993.

**Alan E. Smith,**

*Director, Operations Management Support Division.*

[FR Doc. 93–17312 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–M

## Kansas City Support Office

## Noncompetitive Financial Assistance Award to Kansas State University, Engineering Extension Service

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE), Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), DOE intends to make a noncompetitive financial assistance award to Kansas State University, Engineering Extension Service (KSU/EES), for technical assistance in the DOE/HUD Base System Analysis Maintenance Program.

**SUPPLEMENTARY INFORMATION:** KSU/EES provided technical, computer, and software support for the DOE/HUD Initiative in FY91 and FY92. That effort will be continued and evolve in the FY93 project effort. KSU/EES will: (1) Continue field tests of the procurement documents, utility record system and management plan developed in the two previous years; (2) assist in integrating the "tools" and philosophies (item 1), developed during the project, into the HUD/PHA management process; (3) update the current URS (utility record system) Manual to reflect any new version of ENACT, determine the potential contractual options and costs if it were used on a regional or national scale, and append the current manual for use by regional HUD engineers; and (4) develop promotional and presentation materials for/and make presentations to appropriate regional and national meetings. Due to their prior involvement, and associated experience, their staff is uniquely qualified to continue the efforts associated with their assigned tasks. KSY/EES has expended much time and effort in helping analyze the extensive engineering and facility management relationships and complexities that are associated with the program. It would not be cost effective to sever that *base of knowledge* in either time or funds because competition for support would have a significant adverse effect on continuity and completion of the project in the time frame approved by DOE Washington

The project period for the grant award is 12 months, beginning on September 30, 1993, to be completed on/or before September 30, 1994. Total funding for the FY93 portion of the project is expected to be approximately $65,000.

**FOR FURTHER INFORMATION CONTACT:** Kirk M. Bond, Project Engineer, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, suite 1411, Kansas City, MO 64106–2024, Phone: (816) 426–7054, Fax: (816) 426–6860.

Issued in Chicago, Illinois, on: July 7, 1993.

**Timonty S. Crawford,**

*Assistant Manger for Administration.*

[FR Doc. 93–17331 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–M

## Noncompetitive Award of Financial Assistance; The Research Foundation of State University of New York

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent to make an award based on an unsolicited application.

**SUMMARY:** The Department of Energy (DOE), Chicago Operations Office, through the New York Support Office (NYSO), announces, pursuant to the

DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to The Research Foundation of State University of New York, Dr. Deborah D.L. Chung, principal investigator, for the purpose of completing the development of a lighter weight carbon fiber composite while retaining its present superior properties.

**SUPPLEMENTARY INFORMATION:** The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to The Research Foundation of State University of New York, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(i). Advantage over the current technology is that the fatigue life of carbon fiber-reinforced polymer composites would be increased a hundred fold by simply adding a several volume percent of low melting point alloy powder particles at the final stage of the normal processing method for composites. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation and a competitive solicitation would be inappropriate. The extent of the energy savings would be significant, for example, in savings of operating expenses from the reduced weight of operating commercial aircraft. The project period for the grant award is 18-months expected to begin as soon as possible. DOE plans to provide funding in the amount of $95,573.

**FOR FURTHER INFORMATION CONTACT:** Charles F. Baxter, U.S. Department of Energy, New York Support Office, room 3437, New York, NY 10278.

Issued in Chicago, Illinois, on July 8, 1993.

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 93–17313 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–M

## Noncompetitive Financial Assistance Award to the Wisconsin Center for Demand-Side Research

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of noncompetive financial assistance award.

**SUMMARY:** The Department of Energy, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetive financial assistance award to the Wisconsin Center for Demand-Side Research, to carry out activities which will facilitate collaboration between DOE, state governments, industries, utilities, electric motor equipment manufacturers and service companies, and others, on technical and market related issues of electric motor systems in a ten state area (Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin).

**SUPPLEMENTARY INFORMATION:** The Wisconsin Center for Demand-Side Research is a non-profit organization organized to work cooperatively with investor owned and public utilities, utility regulators, public interest groups, and the general public to conduct research and training programs, and to distribute information to help accelerate the adoption of energy efficient options and practices. The Center has worked in partnership with the DOE, national and state energy research organizations, and Canadian utilities on a wide range of energy efficient technology and market issues. In the last three years, the Center has conducted a unique project to identify ways to remove barriers for efficient electric motors and adjustable speed drives. This award will further the objectives of the DOE, Industrial Electric Motor Systems Program in promoting the use of efficient electric motor systems. Therefore, the application is being accepted because DOE knows of no other opportunity to conduct such a project by any other organization or entity.

The project period for this award is 12 months and is expected to begin in August of 1993. DOE plans to provide funding in the amount of $55,000 for this effort.

**FOR FURTHER INFORMATION CONTACT:** Chris Cockrill, Technology Marketing Division, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, Kansas City, MO 64106–2024. (816) 426–4772.

Issued in Chicago, Illinois, on July 7, 1993.

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 93–17314 Filed 7–20–93, 8:45 am]

BILLING CODE 6450–01–M

## Office of Fossil Energy

**[FE Docket No. 93–53–NG]**

## Conoco, Inc.; Application for Blanket Authorization To Import and Export Natural Gas From and to Mexico, and To Export Liquefied Natural Gas to Any Foreign Country

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Conoco, Inc. (Conoco) on June 28, 1993, as amended July 9, 1993, requesting blanket authorization to import and export natural gas from and to Mexico. In addition, Conoco requests authorization to export liquefied natural gas (LNG) to any foreign country. Conoco proposes to import and export up to a combined total of 50 Bcf of natural gas and LNG over a period of two years beginning on the date of the first import or export delivery after July 31, 1993, the expiration date of Conoco's existing blanket import and export authorization granted by DOE/FE Opinion and Order No. 524 (1 FE ¶70,472, July 26, 1991).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address below no later than 4:30 p.m., eastern time, August 20, 1993.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, FE–53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9482.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** Conoco is a Delaware corporation with an office in Houston, Texas. It proposes to import and export the gas and LNG under spot and short-term transactions, either on its own behalf or as the agent for others. Conoco states that the specific terms of these arrangements would be negotiated individually, and the price would be competitive. The imports and exports would take place using existing pipeline and LNG facilities and no new construction would be involved. If this application is approved, Conoco would be required to file quarterly reports with DOE giving the specific details of each transaction.

Conoco's application originally included a request to extend its current authority to import and export natural gas from and to Canada, and to import LNG from any foreign country. That authority also was conferred by DOE/FE Opinion and Order No. 524 and will expire July 31, 1993. However, Conoco amended its application on July 9, 1993, so that these activities would be reviewed in a separate proceeding (93–72–NG). Requests for authority to import/export natural gas from/to Canada, and applications to import LNG generally, are not noticed in the Federal Register for public comment. Proceedings limited to such requests, therefore, are shorter. This reflects section 201 of the Energy Policy Act of 1992, which amended section 3 of the NGA. Under section 3(c), an import of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest and must be granted without modification or delay. Conoco's "Canadian" application meets this public interest finding. This statutory public interest finding also applies to LNG imports, regardless of whether the United States has a free trade agreement with the foreign supplier. DOE will address Conoco's application filed in docket 93–72–NG in a separate order.

The decision on Conoco's request for authority to import natural gas from Mexico will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing Conoco's proposal to export natural gas to Mexico and export LNG to any foreign country, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. Conoco asserts the proposed imports would be competitive and that there is no current need for the domestic gas and LNG that would be exported. Parties opposing Western's application bear the burden of overcoming these assertions.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Conoco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1993.

**Anthony J. Como,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–17452 Filed 7–19–93; 1:27 pm]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

### Liberty Pipeline Project: Postponement of Draft Environmental Impact Statement

July 16, 1993.

In the matter of Liberty Pipeline Company, Docket No. CP92–715–000; Texas Eastern Transmission Corporation, Docket Nos. CP92–716–000, CP92–719–000, CP92–720–000, and CP93–108–000; Texas Eastern Transmission Corporation and Trunkline Gas Company, Docket No. CP92–717–000, Docket No. CP92–718–000; Transcontinental Gas Pipe Line Corporation, Docket No. CP92–721–000; Texas Gas Transmission Corporation, Docket Nos. CP92–730–000, and CP92–734–000.

The Federal Energy Regulatory Commission (Commission) staff notifies all parties that it is postponing its Draft Environmental Impact Statement (DEIS) of the Liberty Pipeline Project (Liberty) due to the actions described below. The Commission staff will publish the DEIS for this project after it reviews forthcoming amended applications for upstream facilities from:

- Texas Gas Transmission Corporation (Texas Gas)—stated on March 26, 1993 that it will amend its applications to relocate 21.9 miles of its proposed upstream facilities; and
- the Liberty partners—notified the Secretary of the Commission on May 25, 1993 that the proposed in-service date for the project has changed from November 1, 1994 to November 1, 1995.

The Liberty partners also stated that they will file certain necessary amendments to their applications with the Secretary of Commission no later than September 1, 1993.

After the Commission's staff receives and analyzes the information in the above-referenced amended applications, the Commission will announce a schedule as soon as it is practicable.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17305 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Project Nos. 2100–054 et al.]

## Hydroelectric Applications [California Department of Water Resources et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Application:* Amendment of License.

b. *Project No:* 2100–054.

c. *Date Filed:* June 1, 1993.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Feather River Project.

f. *Location:* Feather River in Butte County, California.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act.

h. *Applicant Contact:* Mr. Dan Peterson, California Department of Water Resources, Division of Operations and Maintenance, 1416 Ninth Street, P.O. Box 942836, Sacramento, CA 94236–0001, (916) 653–9978.

i. *FERC Contact:* Jon E. Cofrancesco, (202) 219–2650.

j. *Comment Date:* September 28, 1993.

k. *Description of Project:* The California Department of Water Resources (licensee) has filed, for Commission approval, an amended proposed recreation plan for the Feather River Project. The filed plan specifies additional recreational facilities and programs to be provided at the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2. a. *Type of Application:* New License.

b. *Project No.:* 1999–004.

c. *Date-filed:* June 24, 1993.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Wausau Hydroelectric Project.

f. *Location:* On the Wisconsin River, in Marathon County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. T.P. Meinz, Senior Vice President, Wisconsin Public Service Corporation, 700 North Adams, P.O. Box 19002, Green Bay, WI 54307, (414) 433–1293.

i. *FERC Contact:* Michael Dees, (202) 219–2807.

j. *Comment Date:* 60 days from the filing date in paragraph c. (August 23, 1993).

k. *Description of Project:* The project consists of the following features: (1) An existing dam and 284 acre reservoir; (2) an existing powerhouse housing three hydropower units with a combined capacity of 5,400 kW; and (3) appurtenant facilities.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

3. a. *Type of Application:* Subsequent License.

b. *Project No.:* 2394–006.

c. *Date Filed:* June 20, 1991.

d. *Applicant:* Wisconsin Electric Power Company.

e. *Name of Project:* Chalk Hill.

f. *Location:* On the Menominee River in Menominee County, Michigan, and Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David K. Porter, Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201, (906) 779–2400.

(i) *FERC Contact:* Charles T. Raabe, (tag) (202) 219–2811.

j. *Deadline Date:* See attached paragraph D6. (September 13, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.

l. *Description of Project:* The project as licensed consists of the following: (1) A 300-foot-long concrete gravity spillway, which is about 24 feet high, has a crest elevation of 732.4 feet National Geodetic Vertical Datum (NGVD), and has: (a) 11 Taintor gates which are 12 feet high by 24 feet wide; and (b) an inoperable 6-foot-wide fish sluice located near the right end of the spillway; (2) an earthen dike 1,373 feet long and 38 feet high; (3) a reservoir with a surface area of 834 acres and a total volume of 6,757 acre-feet at the normal maximum elevation of 744.2 feet NGVD; (4) a powerhouse near the left bank, which has three turbine-generator units rated at 2,600 kilowatts (kW) each for a total installed capacity of 7,800 kW; (5) one substation located adjacent to the powerhouse; (6) the primary transmission line; and (7) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 43.1 GWh and owns all existing project facilities.

The existing project would be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the license expiration of June 30, 1993, the Applicant's estimated net investment in the project would amount to $367,190.

m. *Purpose of Project:* All project energy generated would be utilized by the Applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and D6.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Electric Power Company Real Estate Department, room A440, 231 West Michigan, Milwaukee, WI 53203, Phone (906) 779–2400.

4. a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2444–002.

c. *Date Filed:* December 20, 1991.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* White River Hydro Project.

f. *Location:* On the White River in Ashland County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839–2621.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Deadline Date:* See paragraph D9. (September 13, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) Two existing earthen embankments, a 400 foot long northern section and a 300 foot long southern section, with a maximum height of 48 feet; (2) an existing reservoir with a surface area of 56 acres and an estimated 391 acre-feet of total storage volume at the normal maximum surface elevation of 711.2 MSL; (3) an existing reinforced concrete spillway section, 70 feet long, composed of (a) a gated spillway section with two 25 foot long by 26.5 foot tall bays, each housing a radial steel Tainter gate, and (b) a reinforced concrete non-overflow section, approximately 20 feet long, with an intake structure for the 7 foot diameter pipeline; (4) existing intake and outlet works consisting of (a) a 7 foot diameter reinforced concrete pipeline, 1,345 feet long, (b) a steel surge tank, 16 feet in diameter by 62 feet tall, and (c) a 54 inch steel y-shaped penstock that feeds water from the surge tank to the powerhouse; (5) an existing powerhouse, constructed of reinforced concrete and brick masonry, 39 feet by 69 feet and 1 story tall, containing (a) two horizontal Francis turbines with a combined hydraulic capacity of 280 cfs, manufactured by S. Morgan Smith, (b) two Westinghouse generators, rated at 500 kW each for a total of 1,000 kW; (6) and existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 5,326 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company, 100 North Barstow Street, Eau Claires, WI or calling (715) 839–2621.

5. a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2475–006.

c. *Date filed:* December 18, 1991.

d. *Applicant:* Northern States Power Company—Wisconsin.

e. *Name of Project:* Thornapple.

f. *Location:* On the Flambeau River near Thornapple and Grant in Rusk County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839–2401.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* See paragraph D9. (September 13, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 370-foot-long gated spillway; (2) a reservoir with a surface area of 295 acres at surface elevation 1,081 feet m.s.l. and a storage area of 1,000 acre feet; (3) a powerhouse containing two generating units each with a rated capacity of 700 kW; and (4) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 8,575,075 kWh. The total book value of the project through 1990 is $1,330,000.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company (Wisconsin), 100 N. Barstow Street, Eau Claire, WI 54702–008 or by calling (715) 839–2621.

6. a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11396–000.

c. *Date filed:* March 25, 1993.

d. *Applicant:* Pine River Irrigation District.

e. *Name of Project:* Morrison Power Plant Project.

f. *Location:* On the Pine River in LaPlata County, Colorado, near the towns of Bayfield, Durango, and Ignacio. T.34N., R7W, sections 10, 11, 14, 3U, 10U, and 15U.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Witt, President, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558; Joe Brown, Manager, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* September 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) A rock rubble intake structure; (2) enlarging the first 12,600 feet of the Morrison Consolidated Canal; (3) a 4-foot-high check structure; (4) a 1,500-foot-long, 6-foot-diameter penstock; (5) a powerhouse containing two generating units with a total capacity of 1,555 kW, producing an average annual energy output of 8,540,000 kWh; (6) a 1,000-foot-long open conduit discharging project flows into Pine River; and (7) a 12.4–kV, 2.5-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $25,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11397–000.

c. *Date filed:* March 25, 1993.

d. *Applicant:* Pine River Irrigation District.

e. *Name of Project:* King Power Plant Project.

f. *Location:* On the Pine River in LaPlata County, Colorado, near the towns of Bayfield, Durango, and Ignacio. T.34N., R.7W, sections 10 and 11.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Witt, President, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558; Joe Brown, Manager, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. *Comment Date:* September 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) A rock rubble intake structure; (2) enlarging the first 5,400 feet of the King

Consolidated Canal; (3) a 4-foot-high check structure; (4) a 700-foot-long, 7-foot-diameter penstock; (5) a powerhouse containing two generating units with a total capacity of 1,455 KW, producing an average annual energy output of 8,252,000 KWh; (6) a tailrace; and (7) a 12.4-kV, 3,000-foot-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $25,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11398–000.

c. *Date filed:* March 25, 1993.

d. *Applicant:* Pine River Irrigation District.

e. *Name of Project:* Thompson-Epperson Water Power Project.

f. *Location:* On the Pine River in LaPlata County, Colorado, near the towns of Bayfield, Durango, and Ignacio. T.34N., R.7W, sections 2, 3, 10 and 11. T.35N., R.7W, sections 23, 26 and 35.

g. *Filed Pursuant to:* Federal Power Act, 18 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Witt, President, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558; Joe Brown, Manager, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. *Comment Date:* September 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) a rock rubble intake structure; (2) 3.5-miles of the Thompson-Epperson Consolidated Canal; (3) a 2.5-foot-high check structure; (4) a 300-foot-long, 2.25-foot-diameter penstock; (5) a powerhouse containing a single generating unit with a total capacity of 240 KW, producing an average annual energy output of 2,100,000 KWh; (6) a tailrace; and (7) a 12.4-kV, 2,000-foot-long transmission line typing into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $15,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9. a. *Type of Application:* New Major License.

b. *Project No.:* 2420–001.

c. *Date filed:* December 23, 1991.

d. *Applicant:* PacifiCorp Electric Operations.

e. *Name of Project:* Cutler Hydroelectric Project.

f. *Location:* On the Bear River near the city of Logan, in Cache and Box Elder Counties, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stanley A. deSousa, Director, Hydro Resources, PacifiCorp Electric Operations, 920 S.W. Sixth Avenue, Portland, Oregon 97204, (503) 464–5343.

i. *FERC Contact:* Mr. Hector Perez, (202) 219–2843.

j. *Comment Date:* September 13, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* This project consists of: (1) A 109-foot-high, 545-foot-long concrete gravity arch dam; (2) a 5,459-acre reservoir; (3) a 1,160-foot-long, 18-foot-diameter flowline; (4) two 120-foot-long, 14-foot-diameter steel penstocks extending from a bifurcation in the flowline to a powerhouse; (5) the powerhouse containing two generating units with a total installed capacity of 30 MW; (6) step-up transformers connecting to transmission facilities; and (7) appurtenant facilities.

The Applicant is not proposing any changes to the existing project facilities as licensed. The estimated average annual generation for the Cutler project is 106,014 MWh.

m. *Purpose of Project:* All energy generated by the project would be utilized by the customers of PacifiCorp Electric Operations.

n. This notice also consists of the following standard paragraphs: D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the office of PacifiCorp Electric Operations, located at 920 S.W. Sixth Avenue, Portland, Oregon 97204, or by calling Mr. Stanley A. deSousa at (503) 464–5343.

10. a. *Type of Application:* Surrender of License.

b. *Project No.:* 7568–027.

c. *Date filed:* June 14, 1993.

d. *Applicant:* Allegheny County, Pennsylvania.

e. *Name of Project:* Dashields Lock and Dam Project.

f. *Location:* U.S. Corps of Engineers' Dashields Locks and Dam, on the Ohio River in Allegheny County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Herbert C. Higginbotham, II, Department of Engineering and Construction, 501 County Office Building, 542 Forbes Avenue, Pittsburgh, PA 15219–2951, (412) 355–5902.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* August 16, 1993.

k. *Description of Project Action:* The license for this project, with a proposed capacity of 25 megawatts, was issued on October 8, 1984. The proposed project was to utilize the existing U.S. Corps of Engineers' Dashields Locks and Dam. The licensee states that it has not been able to secure the necessary agreements to allow the development of the project. No construction has occurred, and the proposed site remains unaltered.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

11. a. *Type of Application:* Surrender of License.

b. *Project No.:* 7909–027.

c. *Date filed:* June 14, 1993.

d. *Applicant:* Allegheny County, Pennsylvania.

e. *Name of Project:* Allegheny River Lock and Dam No. 4.

f. *Location:* U.S. Corps of Engineers' Allegheny River Lock and Dam No. 4, on the Allegheny River in Allegheny and Westmoreland Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Herbert C. Higginbotham, II, Department of Engineering and Construction, 501 County Office Building, 542 Forbes Avenue, Pittsburgh, PA 15219–2951, (412) 355–5902.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* August 16, 1993.

k. *Description of Project Action:* The license for this project, with a proposed capacity of 15 megawatts, was issued on May 13, 1985. The proposed project was to utilize the existing U.S. Corps of Engineers' Allegheny River Lock and Dam No. 4. The licensee states that it has not been able to secure the necessary agreements to allow the development of the project. No construction has occurred, and the proposed site remains unaltered.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

12. a. *Type of Application:* Surrender of License.

b. *Project No.:* 2515–001.

c. *Date filed:* June 30, 1993.

d. *Applicant:* Potomac Edison Company.

e. *Name of Project:* Harper's Ferry Hydro Station.

f. *Location:* Potomac River in Jefferson County, West Virginia, and Washington County, Maryland.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Allegheny Power System, Bulk Power Supply, *Attn:* William E. Costelnock, 800 Cabin Hill Drive, Greensburg, PA 15601–1689, (412) 838–6728.

i. *FERC Contact:* Etta Foster, (202) 219–2679.

j. *Comment Date:* September 1, 1993.

k. *Description of Project:* The principal project works consist of: (1) a 18-foot-high, 1700-foot-long log and stone dam; (2) a 4,500-foot-long headrace channel; (3) a powerhouse containing a generating unit with a rated capacity of 600 kW; (4) a tailrace; (5) a transmission line; and (6) appurtenant facilities.

The Licensee states that it does not intend to file an application for a new FERC license because of the high cost of operating and maintaining the project with little or no generation. Potomac Edison has reached an agreement in principle to convey all remaining rights and interests in the facility to the National Park Service.

l. This notice also consists of the following standard paragraphs: B & C1 and D2.

13. a. *Type of Application:* Transfer of License.

b. *Project No:* 6780–048.

c. *Date Filed:* July 6, 1993.

d. *Applicant:* Nugget Hydroelectric, L.P.

e. *Name of Project:* Deadwood Creek.

f. *Location:* On Deadwood Creek in Yuba County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John R. Roberts, Trustee (for Nugget Hydroelectric, L.P.), 419 Main Street, suite 300, Placerville, CA 95667, (916) 626–6441; Mr. Donn Wilson, Engineer-Administrator, Yuba County Water Agency, 1402 D Street, Marysville, CA 95901, (216) 741–6278.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* August 31, 1993.

k. *Description of Transfer:* The transferor, as listed in paragraph (d), proposes to transfer the license issued on September 28, 1988, to the transferee to facilitate completion of the project. The transferee has proposed to complete and operate the project in accordance with the license. The transferee is a public agency organized pursuant to the Yuba County Water Act. In addition, the transferee is the licensee for the Yuba River Project (FERC Project No. 2246).

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

14. a. *Type of Application:* Exemption.

b. *Project No:* 11423–000.

c. *Date Filed:* July 8, 1993.

d. *Applicant:* Iris M. Anderson.

e. *Name of Project:* Woodcock Creek.

f. *Location:* On Woodcock Creek, in Clackamas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Joseph and Joan Lucero, 13525 SE Marsh Road, Sandy, OR 97055, (503) 668–5259.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Description of Project:* The project consists of: (1) An 11-foot-high existing diversion dam; (2) a 36-inch-diameter, 1,200-foot-long penstock; (3) a powerhouse containing a generating unit with a capacity of 77 kW and an average annual generation of 338,359 kWH; and (4) a short length of transmission line.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO) as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

**Standard Paragraphs**

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include and unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorized construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 13, 1993 for Project No. 2394–006). All reply comments must be filed with the Commission within 105 days from the date of this notice. (October 26, 1993 for Project No. 2394–006).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 13, 1993 for Project Nos. 2444–002, 2475–006 and 2420–001.) All reply comments must be filed with the Commission within 105 days from the date of this notice. (October 26, 1993 for Project Nos. 2444–002, 2475–006 and 2420–001.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the

Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 16, 1993, Washington, DC.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17303 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–12546T Colorado–58]**

## United States Department of the Interior; NGPA Notice Of Determination by Jurisdictional Agency Designating Tight Formation

July 15, 1992.

Take notice that on July 12, 1993, the United States Department of Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Mesaverde Group Formation in the Ignacio Blanco-Mesaverde Field East in La Plata County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The recommended area encompasses approximately 2,240 acres and consists of all or portions of the following acreage.

Township 32 North, Range 8 West
Section 9: E/2
Township 33: North, Range 8 West
Section 33: All
Township 33 North, Range 9 West
Sections 22 and 25: All

The notice of determination also contains BLM's findings that the referenced portions of the Mesaverde Group meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17220 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–12547T Colorado–59]**

## United States Department of the Interior; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 15, 1993.

Take notice that on July 12, 1993, the United States Department of Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Mesaverde Group Formation in the Igancio Blanco-Mesaverde Field within the Southern Ute Indian Reservation in La Plata County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The recommended area encompasses approximately 3,820.49 acres and consists of all or portions of the following acreage:

Township 32 North, Range 9 West
Section 3–4: S/2
Section 9: All
Section 10: S/2
Township 33 North, Range 9 West
Section 27–28: All
Section 33: All
Section 34: S/2

The notice of determination also contains BLM's findings that the referenced portions of the Mesaverde Group meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17221 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–12692T Oklahoma–43]**

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

July 15, 1993.

Take notice that on July 13, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Skinner Formation (also known as the Hart) and the Osborne Formation, underlying a portion of Canadian County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 21, 28, 29, 32 and 33, of Township 11 North, Range 7 West, Canadian County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17217 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–12693T Oklahoma–44]**

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 15, 1993.

Take notice that on July 13, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Skinner Formation (also known as the Hart), underlying a portion of Canadian County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 1 and 2 of Township 10 North, Range 7 West, Canadian County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the

requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17218 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. JD93–12694T Oklahoma–45]

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

July 15, 1993.

Take notice that on July 13, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Skinner Formation (also known as the Hart) and the Osborne Formation, underlying portions of Canadian County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as section 6, 8, and 17 of Township 11 North, Range 7 West, Sections 1, 2, and 12 of Township 11 North, Range 8 West and Section 36, Township 12 North, Range 8 West, Canadian County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17219 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CI93–12–000]

## Columbia Energy Services Corp.; Application for a Blanket Certificate With Pregranted Abandonment

July 15, 1993.

Take notice that on June 24, 1993, Columbia Energy Services Corporation (CES) of Building 200, suite 201, 2581 Washington Road, Pittsburgh, Pennsylvania 15241, filed with the Federal Energy Regulatory Commission (Commission) an application under sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. CES requests that the authorization continue until such time as CES' pipeline affiliate, Columbia Gas Transmission Corporation, is found to be in compliance with Order No. 636. CES' application is on file with the Commission and open for public inspection.

To be heard or to protest the application a person must file a petition to intervene or a protest on or before August 5, 1993. A person filing a petition to intervene or a protest must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All petitions to intervene or protests must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make protestants parties to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a petition to intervene.

Under the procedure provided for here, unless otherwise advised, CES will not have to appear or be represented at any hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17224 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TM93–5–24–000]

## Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

July 16, 1993.

Take notice that on July 14, 1993, Equitrans, Inc. (Equitrans), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 12, with a proposed effective date of August 1, 1993.

Equitrans states that the revisions to adjust Equitrans' demand surcharge for passthrough of take-or-pay surcharges from pipeline suppliers reflects the assessment by Tennessee Gas Pipeline Company (Tennessee) of an additional $69,301 in demand surcharges, including interest, related to Tennessee's take-or-pay buyout and buydown costs. Equitrans' FERC Gas Tariff (Original Volume No. 1, First Revised Sheet No. 177E) provides that any additional take-or-pay costs to Equitrans from Tennessee will be allocated to Equitrans' customers using the same methodology as such charges are allocated to Equitrans. On June 30, 1993, the Commission authorized Tennessee to recover a total of $3.27 million in additional take-or-pay demand costs using the same methodology which the Commission originally approved in Tennessee's Cosmic Settlement. As a result, Equitrans states it is increasing the total monthly demand surcharge for take-or-pay passthrough to $10,865.

Equitrans states that copies of the filing are being served on each of Equitrans' customers and interested state commissions and that copies of this filing are also available for public inspection during regular hours at Equitrans' offices in Pittsburgh, Pennsylvania.

Any person desiring to be heard or protest this application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 23, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93–17304 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP93–154–000]

## Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provision

July 16, 1993.

Take notice that on July 13, 1993, Florida Gas Transmission Company

(FGT), filed a petition for a limited waiver, to the extent necessary, of Commission policy and FGT's FERC Gas Tariff to permit the City of Gainesville, Florida d/b/a Gainesville Regional Utilities (GRU) to retain its existing priority date while adding a new delivery point to an existing firm transportation service agreement under which FGT is currently providing GRU service under Rate Schedule FTS–1.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same customer, GRU; (ii) the new delivery point will be located in the same geographic location as other existing delivery points at which FGT presently serves GRU; and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 23, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93–17306 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP90–138–001]

## Mid Louisiana Gas Co.; Petition To Amend

July 15, 1993.

Take notice that on July 12, 1993, Mid Louisiana Gas Company (Mid Louisiana), 333 Clay Street, suite 2700, Houston, Texas 77002, filed in Docket No. CP90–138–001 a petition to amend its certificate pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate a different standby compressor unit in lieu of a unit previously authorized, all as more fully set forth in the application on file with the Commission and open to public inspection.

Mid Louisiana states that by order issued December 18, 1990, in Docket No. CP90–138–000 (53 FERC ¶61,393), the Commission authorized, *inter alia*, the construction of a new 1,150 horsepower, multi-stage compressor unit and related facilities at its DeSaird Station, Ouachita Parish, Louisiana. It is stated that the compressor would be used as backup for four existing compressors (2,725 horsepower total) at the station. Mid Louisiana further states that the Commission has granted extensions of time in which to install that compressor to permit new owners of Mid Louisiana, Interstate Natural Gas Company, the opportunity to correlate the compression requirements at the DeSaird Station with the operating conditions in the Monroe Field.

Mid Louisiana requests authorization to install an existing Chicago Pneumatic 6FE065 compressor (750 horsepower) in lieu of the new 1,150 horsepower unit. Mid Louisiana states that the existing unit would be relocated from its gathering system in the Monroe Field, where it is no longer in use. Mid Louisiana states that the relocated unit would provide reliable backup service at costs less than would have been incurred with the new unit. Mid Louisiana advises that the total cost of installing the existing unit, including relocation costs, would be approximately $400,000 rather than the original $1,000,000 which was estimated for the new 1,150 horsepower unit.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 5, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17222 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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## United Gas Pipe Line Co; Notice of Request Under Blanket Authorization

[Docket No. CP93–546–000]

July 15, 1993.

Take notice that on July 9, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–546–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new meter and related facilities at an existing meter station under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to install a 2-inch meter and appurtenant natural gas measurement equipment at an existing meter station known as the "Iowa Field Common Point," located in Jefferson Davis Parish, Louisiana. United advises that the meter will permit it to provide transportation service on behalf of United Gas Services Company (UGS) for delivery to Polaris Enterprises (Polaris). United states that the new facilities would enable UGS to deliver to Polaris 300 Mcf per day for lift gas to maintain field pressure. United explains that it would transport the gas for UGS under its blanket certificate in Docket No. CP88–6–000 and Rate Schedule ITS. It is estimated that the facilities would cost $18,347.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17223 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

**Office of Hearings and Appeals**

**Cases Filed During the Week of May 21 Through May 28, 1993**

During the Week of May 21 through May 28, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 14, 1993.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[During the Week of May 21 through May 28, 1993]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 05/10/93 | Arlene & Eunice Rude, Redfield, SD | RR272–105 | Request for Modification/ Recession in the Crude Oil Refund Proceeding. If granted: The April 15, 1993 Decision and Order (Case No. RC272–189) issued to Arlene & Eunice Rude regarding the firm's Application for Refund submitted in the crude oil refund proceeding would be modified. |
| 05/24/93 | Albuquerque Journal, Santa Fe, NM | LFA–0299 | Appeal of an Information Request Denial. If granted: The May 13, 1993 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and the Albuquerque Journal would receive access to records responsive to the identities of all agencies that pay "reimburseables" to Sandia National Laboratories Systems Research Center. |
| 05/25/93 | Economic Regulatory Admin., Washington, DC. | LRZ–0020 | Motion to Dismiss. If granted: Louis Porter would be dismissed as the final party to the Proposed Remedial Order (Case No. HRO–0074) issued by the Economic Regulatory Administration to Dalco Petroleum Company, D. Warren Zang, and Louis Porter. As a result, the Proposed Remedial Order Proceeding would be closed. |

REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 05/11/93 thru 05/28/93 | Atlantic Richfield Refund Applications Received. | RF304–13987 thru RF304–14029 |
| 05/21/93 thru 05/28/93 | Texaco Oil Refund Applications Received. | RF321–19751 thru RF321–19761 |
| 05/21/93 thru 05/28/93 | Crude Oil Refund Applications Received. | RF272–94716 thru RF272–94724 |

REFUND APPLICATIONS RECEIVED—Continued

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 05/21/93 | Shaver Transportation Co. | RC272–199 |
| 05/27/93 | Link's Texaco ... | RF321–19758 |

[FR Doc. 93–17317 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–P

**Cases Filed During the Week of June 18 Through June 25, 1993**

During the Week of June 18 through June 25, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 14, 1993.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[During the Week of June 18 through June 25, 1993]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 6/21/93 | Shapiro, Fussell, Wedge & Smotherman, Atlanta, Georgia. | LFA-0306 | Appeal of an Information Request Denial. If granted: The June 7, 1993 Freedom of Information Request Denial issued by the Strategic Petroleum Reserve Project Management Office would be rescinded, and Shapiro, Fussell, Wedge & Smotherman would receive the document entitled, "Analysis and Recommendations for Final Settlement." |
| 6/23/93 | Arco/Cousins Arco, Atlantic Beach, Florida | RR304-64 | Request for Modification/Rescission in the Arco Refund Proceeding. If granted: The February 10, 1993 Dismissal Letter (Case No. RF304-12901) issued to Cousins Arco would be modified regarding the firm's application for refund submitted in the Arco refund proceeding. |
| 6/25/93 | Energy Products, Inc., Sacramento, California. | LFA-0307 | Appeal of an Information Request Denial. If granted: The June 14, 1993 Freedom of Information Request Denial issued by the Office of Building Energy Research of the Division of Energy Efficiency and Renewable Energy would be rescinded, and Energy Products, Inc. would receive access to the Oak Ridge National Laboratory Report, entitled "Preliminary Evaluation of Radiation Control Coatings for Energy Conservation in Buildings." |

REFUND APPLICATIONS RECEIVED
[During the Week of June 18 Through June 25, 1993]

| Date Received | Name of refund proceeding/Name of refund applicant | Case No. |
|---|---|---|
| 6/21/93 | Chucks Clark Super 100. | RF342-323. |
| 6/25/93 | Van M. Watkins. | RC272-205. |
| 6/18/93 thru 6/25/93 | Atlantic Richfield Applications Received. | RF304-14110 thru RF304-14162. |
| 6/18/93 thru 6/25/93 | Crude Oil Refund Applications Received. | RF272-94757 thru RF272-94768. |
| 6/18/93 thru 6/25/93 | Texaco Oil Refund Applications Received. | RF321-19776 thru RF321-19782. |

[FR Doc. 93-17318 Filed 7-20-93; 8:45 am]
BILLING CODE 6450-01-P

### Cases Filed During the Week of June 25 Through July 2, 1993

During the Week of June 25 through July 2, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 14, 1993.

George B. Breznay,
*Director, Office of Hearings and Appeals.*

| Date received | Name of firm | Case no. |
|---|---|---|
| 6/23/93 | Adolph's Texaco. | RF321-19787 |
| 6/23/93 | Thompson's Gulf #2. | RF321-21746 |
| 6/25/93 thru 7/2/93. | Atlantic Richfield Applications Received. | RF304-14163 thru RF304-14182 |
| 6/25/93 thru 7/2/93. | Crude Oil Refund Applications Received. | RF272-94769 thru RF272-94780 |
| 6/25/93 thru 7/2/93. | Beacon Oil Refund Applications Received. | RF238-93 thru RF238-112 |
| 6/28/93 | Brown Transport Corporation. | RF351-2 |
| 6/28/93 | Bougher Bros. & Son Texaco. | RF321-19783 |
| 6/28/93 | North Lake Texaco. | RF321-19784 |
| 6/28/93 | Chiaro's Texaco... | RF321-19785 |
| 6/28/93 | Ed Knowles Texaco. | RF321-19786 |
| 6/29/93 | Bishop Texaco Sales. | RF321-19790 |

[FR Doc. 93-17319 Filed 7-20-93; 8:45 am]
BILLING CODE 6450-01-P

### Final Filing Deadline in Special Refund Proceeding No. KEF-0102 Involving Agway, Inc.

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of setting final deadline for filing Applications for Refund in Special Refund Proceeding KEF-0102, Agway, Inc.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) has set the final deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and Agway, Inc. (Agway), Special Refund Proceeding No. KEF-0102. The previous deadline was September 26, 1990. The new final deadline is July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018.

SUPPLEMENTARY INFORMATION: On June 21, 1990, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth the final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and Agway, Inc. *Agway, Inc.*, 20 DOE ¶ 85,439 (1990), 55 FR 26492 (June 28, 1990). That Decision established September 26, 1990, as the

filing deadline for the submission of refund applications for direct restitution by purchasers of Agway's refined petroleum products. 20 DOE at 89,027, 55 FR 26497.

We commenced accepting refund applications in the Agway refund proceeding on June 21, 1990, more than three years ago. While the initial deadline for such submissions was September 26, 1990, we have continued to liberally accept applications after the deadline. However, we have now concluded that eligible applicants have been provided with more than ample time to file. Therefore, we will not accept applications that are postmarked after July 26, 1993. All Applications for Refund from the Agway Consent Order fund postmarked after the final filing date of July 26, 1993, will be summarily dismissed. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: July 14, 1993.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 93–17320 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Use of Alternative Dispute Resolution and Negotiated Rulemaking Procedures

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Administrative Dispute Resolution Act (ADRA) Public Law 101–552, codified at 5 U.S.C. 571–583 (1992) and the Negotiated Rulemaking Act (Reg-Neg), Public Law 101–648, 5 U.S.C. 561–570 (1992), encourage agencies to use alternative means of dispute resolution in administrative programs and negotiated rulemaking for prompter and more informal resolution of disputes and development of regulations. The Commission anticipates that alternative dispute resolution and negotiated rulemaking in some areas of its responsibility may be faster, less contentious and more economical than current procedures.

Pursuant to section 3(a) of the ADRA, the Commission intends to adopt a policy statement that addresses the use of "alternative means of dispute resolution and case management in the following areas: (1) formal and informal adjudications, (2) rulemakings, (3) enforcement actions, (4) contract administration, and (5) litigation brought by or against the Commission.

Before adopting any such policy statement, however, the Commission is seeking comments from the public on the use of alternative dispute resolutions in any of the above referenced areas at the Commission. The Commission encourages a broad range of comments, from whether ADR is appropriate in the functional areas noted to whether specific types of ADR are appropriate for specific functional areas. All comments received will be carefully considered before any such policy statement is drafted and finalized.

**DATES:** Comments are due by September 20, 1993.

**ADDRESSES:** Comments should be submitted to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's Library, room 6502, 1801 L Street, NW., Washington, D.C. between the hours of 9:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Associate Legal Counsel for Legal Services, at (202) 663–4640 or TDD (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1–800–669–3362.

**SUPPLEMENTARY INFORMATION:** In 1990, Congress passed the Administrative Dispute Resolution Act (ADRA), Public Law 101–552, and the Negotiated Rulemaking Act, Public Law 101–648. The ADRA encourages federal agencies to use mediation, conciliation, arbitration, negotiated rulemaking and other consensual methods of dispute resolution for the prompt and informal resolution of issues of controversy relating to administrative programs. The Reg-Neg Act sets forth criteria for the use of negotiated rulemaking in appropriate circumstances. Section 3 of the ADRA requires each agency to adopt a policy regarding the use of alternative dispute resolution and case management in a number of areas, including: (1) formal and informal adjudications; (2) rulemakings; (3) enforcement actions; (4) contract administration; and (5) litigation brought by or against the agency.

In enacting the ADRA, Congress expressed concern that administrative proceedings have become too formal and lengthy, and asserted that alternative procedures may, in at least some instances, be faster, less contentious and more economical. ADR techniques, however, will not be appropriate in every situation; the statute indicates, for example, that ADR techniques should not be used for precedent setting cases, those where a formal record is essential and those bearing on significant policy questions.

The Reg-Neg Act amended the Administrative Procedure Act to establish a procedure for negotiating a proposed rule. In enacting the statute, Congress addressed concerns that traditional rulemaking procedures may discourage affected parties from communicating openly with each other and with federal agencies, and encourages them to assume extreme conflicting positions often resulting in costly and time-consuming litigation. While agencies have experimented with alternative techniques to avoid these consequences, the Reg-Neg statute codifies the negotiated rulemaking process.

In addition to the Administrative Dispute Resolution Act, both the Americans With Disabilities Act of 1990, Public Law 101–336, 42 U.S.C. 12101 *et seq.*, and the Civil Rights Act of 1991, Public Law 102–166, 42 U.S.C. 1981 note, explicitly encourage the use of alternative means of dispute resolution where appropriate and to the extent authorized by law. Congress's encouragement and emphasis on the utilization of alternate dispute resolution mechanisms in the labor dispute area along with reported ADR successes are sure to move more employers toward attempting to resolve internal disputes before they are brought in court or into EEOC's administrative programs. This support also encourages EEOC to look toward additive and alternative systems to provide the best and quickest law enforcement service to the public. Therefore, in undertaking the responsibilities of enforcing its two new statutes, the Commission believes that alternatives to its current charge resolution processes must be considered.

Alternative dispute resolution is not a new concept for the Commission. Title VII of the Civil Rights Act of 1964 requires that the Commission conciliate every charge when it makes a determination that reasonable cause exists to believe that discrimination has occurred. In addition, the Commission has undertaken other activities in the past to promote early, negotiated settlement of charges of discrimination, as well as efforts to encourage

alternative methods of resolving its own internal disputes. A few of these previous activities are set forth below.

**Rapid Charge Processing**

In 1977, EEOC established a rapid charge process, emphasizing early, negotiated no-fault settlements between charging party and respondent, on a pilot basis in three model offices. This process was extended to all district offices in 1979. Under the rapid charge process, Commission staff conducted a limited preliminary investigation, then scheduled a fact finding conference with the charging party and the respondent in which EEOC served as moderator/advisor, encouraging the parties to reach a settlement. If a settlement was reached, a no-fault agreement was signed by the parties and EEOC. EEOC made no decision on the merits of the case. If no settlement was reached, EEOC used the preliminary evidence and evidence received at the conference to either close the case with a determination, or return it for further investigation and regular charge processing.

A 1981 report by the General Accounting Office (GAO) found that rapid charge processing had improved charge processing from what it had been, and that, in most instances, rapid charge processing could be effective. However, GAO believed that in some instances EEOC overemphasized negotiated settlements.

**Internal Complaint Resolution**

In 1985 and 1986, EEOC developed materials and case studies for its managers, emphasizing ways to avoid or quickly resolve EEO complaints through improved communications and other actions. Many Commission managers believed that EEO complaints filed against EEOC as employer were due to poor communication between managers and employees, misunderstandings and other barriers. Top managers believed that small problems that could have been resolved quickly often developed into larger, irreconcilable issues, as the parties' positions hardened during lengthy EEO proceedings.

The ADRA requires that agencies consider alternative dispute resolution methods as vehicles for avoiding protracted administrative procedures and litigation. In developing an ADR policy, EEOC intends to explore the use of such techniques to the extent, and only to the extent, that they can improve and enhance the fairness, effectiveness and efficiency of its actions. EEOC intends to consider implementing or expanding the use of ADR techniques wherever such informal dispute resolution methods have a likelihood of proving useful within the resources given to the Commission. The Commission has implemented pilot ADR procedures in several areas. In addition, the Commission believes that ADR is not appropriate in other areas. These areas are discussed below.

**Enforcement—Charge Resolution**

To study the potential impact of ADR in its enforcement and charge solution responsibilities, EEOC initiated a Pilot Mediation Program in four district offices in April 1993. In initiating this Pilot Program, the Commission sought to develop a permanent informal resolution system that will supplement, not replace, the current charge resolution system, be highly effective, and produce a greater number of amicable resolutions in a shorter time period, with a higher level of satisfaction than is achieved through existing procedures.

In the Pilot Mediation Program, professional mediators are mediating 75 cases in each of four district offices: Houston, New Orleans, Philadelphia and Washington, DC Mediation is being offered in selected cases alleging discrimination in discharge, discipline and terms and conditions of employment under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Class action and equal pay charges are not eligible for mediation in the Pilot. Mediation occurs only where both the charging party and the respondent have voluntarily agreed to the process. Either party can opt out of mediation at any time. If an agreement is not reached during a 60-day mediation period, the case will be referred back to EEOC to continue the normal investigative process. Any agreement reached in a mediation will have the same force as any settlement reached through EEOC. Such agreements are enforceable in court. The Pilot Mediation Program is slated for completion in August 1993. A thorough analysis of the Pilot Program will be conducted at the conclusion of the Program.

**ADA Training and Enforcement**

In addition to the Pilot Mediation Program, EEOC emphasized the use of ADR to help resolve disputes arising under the Americans with Disabilities Act in a one-week training program conducted for 400 representatives of the disability community, under an EEOC contract with the Disability Rights Education and Defense Fund. Participants were trained on ADA substantive requirements are alternative dispute resolution techniques. One hundred participants received additional training including intensive training on ADR techniques. These 100 persons serve as resources to EEOC field offices to help resolve EEOC complaints.

**Adjudications**

EEOC is considering an interim rule implementing sections 320 and 321 of the Civil Rights Act of 1991. Sections 320 and 321 provide for formal adjudication under the Administrative Procedure Act of complaints of discrimination brought by previously exempt state and local government employees and Presidential appointees. The interim rule would permit medication by EEOC mediators of each complaint before the formal hearing, and the Commission will request comments on the interim rule.

In addition, in its recent regulations governing the processing of complaints of discrimination brought by federal employees, 29 CFR part 1614, EEOC has provided for an automatic extension of the pre-complaint counseling period when a complainant agrees to participate in an agency's established alternative dispute resolution program. The Commission also encourages agencies' use of ADR procedures during the investigative phase of the federal sector complaints process. Agencies have expressed considerable interest in efforts to train a cadre of expert mediators within the government who could be used by other agencies as neutrals, and other joint efforts to improve handling of federal sector EEO complaints.

**Negotiated Rulemaking**

When created in 1964 by Title VII of the Civil Rights Act of 1964, the Commission did not have the authority to issue substantive, or legislative, rules. When the Commission received the authority to enforce the Age Discrimination in Employment Act (ADEA), and most recently with the passage of the Americans with Disabilities Act (ADA), the Commission was given authority to issue regulations that have the force and effect of law. In carrying out these regulatory functions, the Commission has considered and will continue to consider whether to use Reg-Neg.

**Contract Administration**

EEOC has been party to only two contract disputes in the last 5 years, both of which were settled prior to the institution of formal proceedings. The Disputes Clause of the contract requires that disagreements be raised informally before any formal action in taken. In

addition, the ADRA authorizes agencies to use ADR in the context of any particular dispute. The Commission would be free to consider ADR in the context of any specific dispute raised.

**Internal Complaint Procedures**

The Commission's Office of Equal Employment Opportunity conducted a six-month Alternative Complaint Resolution Program (ACRP) in 1991. Under this program, certain individuals who filed EEO complaints against EEOC as an employer were offered the option of participating in a 30-day mediation program as an alternative to the formal complaint process. The ACRP offered an expedited process, in which a neutral mediator conducted mediation and attempted to resolve the matter within 30 days. If agreement was reached by all parties, the formal complaint was withdrawn; if mediation was not successful in the 30-day period, the complaint returned to the investigative stage of the formal complaint process. The project used trained mediators from federal and local government agencies and a few EEOC attorneys with mediation training.

The Commission seeks comment on its use of ADR and negotiated rulemaking in all of its programs and activities. Particularly, the Commission seeks public comment on the following:

(1) The particular pilot programs and proposals noted above, and whether any parts of them should or should not be adopted generally,

(2) Other areas of EEOC's operations that might readily benefit from the use of ADR techniques,

(3) Any areas of the Commission's operations in which ADR techniques should be limited or not used at all, and

(4) Any other matter that will be of interest or assistance to the Commission in developing its policy.

EEOC will develop its ADR policy in full consultation with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service as required by section 3(a) of the ADRA. To this end, the Commission has designated its Legal Counsel as its ADR Specialist. The Legal Counsel serves as liaison with ACUS and FMCS and as coordinator of EEOC's ADR implementation.

Signed at Washington, DC, this 14 day of July, 1993.

For the Commission.

**Tony E. Gallegos,**

*Chairman.*

[FR Doc. 93-17321 Filed 7-20-93; 8:45 am]

BILLING CODE 6570-06-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 14, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

*OMB Number:* 3060-0470

*Title:* Computer III Remand Proceeding: Bell Operating Company Safeguards, and Tier 1 Local Exchange Company Safeguards (CC Docket No. 90-623) and Implementation of Further Cost Allocation Uniformity (Memorandum Opinion and Order)

*Action:* Revision of a currently approved collection

*Respondents:* Businesses or other for-profit

*Frequency of Response:* Annually, quarterly and on occasion reporting requirements

*Estimated Annual Burden:* 90 responses; 300 hours average burden per response; 27,000 hours total annual burden

*Needs and Uses:* Local exchange carriers (LECs) are required to file a revised cost allocation manual by November 1, 1993, pursuant to the requirements contained in the attached Memorandum Opinion and Order (MO&O) according to the procedural specifications issued in Responsible Accounting Officer Letter No. 19 (RAO Letter 19). Section 64.903(a) codifies the requirement that local exchange carriers with annual operating revenues of $100 million or more file a cost allocation manual. Section 64.903(b) requires that carriers update their cost allocation manuals at least quarterly, except that changes to the cost apportionment table and the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in the cost apportionment table must be quantified in $100,000 increments at the cost pool level. Section 64.904 codifies the independent auditor's certification requirement. The Commission strengthened the standard to be used by independent auditors in preparing their reports on carrier's cost allocation manual implementation and results by requiring that the independent auditors provide the same level of assurance in audits as they provide in a financial statement audit engagement. (Approved under OMB Control number 3060-0384). The cost allocation manuals should state that carriers have established sub-pools and should describe the sub-pools and the apportionment procedures used for the sub-pools. The Commission has also specified cost pools and allocators for ten part 32 accounts.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93-17213 Filed 7-20-93; 8:45 am]

BILLING CODE 6712-01-M

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[Report No. CL-93-121]

### Common Carrier Public Mobile Services Information; New Transmittal Sheet for Phase 2 Unserved Area Applications

July 15, 1993.

Attached is a copy of Form FCC 464-A, "Transmittal Sheet for Phase 2 Cellular Applications for Unserved Areas." Applicants should use the FCC Form 464-A as the cover page for all phase 2 cellular applications for unserved areas. After September 1, 1993 phase 2 cellular applications for unserved areas without the Form 464-A will be returned as unacceptable for filing. The January 1992 version of the FCC Form 464, "Transmittal Sheet for Cellular Applications for Unserved Areas" will continue to be used for phase 1 cellular applications for unserved areas.

Items 1 through 4 must be completed on the FCC Form 464-A. Item 3 should

list all markets in which the proposed service boundary extends and specify for each market number and block whether or not it is in the phase 2 category at the time the application is filed. In Item 4 the blocks for Date Signed, Type/Printed Name, Signature, and Type/Printed Title must be completed. Item 5 is optional.

You may obtain a limited number of copies of the FCC 464–A form in the Public Forms Self-Service Center, room L–17, 1919 M Street, NW., Washington, DC. Additional copies of the forms may be ordered by calling 202–632–FORM or by writing to: Federal Communications Commission, Forms Distribution Center, 2803 52nd Avenue, Hyattsville, MD 20781.

For further information contact Steve Markendorff at 202–653–5560.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–17212 Filed 7–20–93; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

**Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update Listing of Financial Institutions in Liquidation.

**SUMMARY:** The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in July 2, 1992 issue of the **Federal Register** (57 FR 29491). The following is a list of financial institutions which have been placed in liquidation since the May 20, 1993 publication (57 FR 29412).

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION, ALPHA LISTING (NAME)

| Institution name, city/state | Date closed, region | ReNo |
|---|---|---|
| American Bank and Trust, San Jose, CA. | 06/18/93, San Francisco. | 4582 |

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION, ALPHA LISTING (NAME)—Continued

| Institution name, city/state | Date closed, region | ReNo |
|---|---|---|
| Banccentral Amarillo, Amarillo, TX. | 06/10/93, Dallas. | 4581 |
| Capital Bank of California, Los Angles, CA. | 06/18/93, San Francisco. | 4583 |
| Crown National Bank, Charlotte, NC. | 05/07/93, Chicago. | 4578 |
| New England Savings Bank, New London, CT. | 05/21/93, New York. | 4580 |
| Palos Verdes National Bank, Rolling Hill Estates, CA. | 05/20/93, San Francisco. | 4579 |
| Wilshire Center Bank, NA, Los Angeles, CA. | 05/06/93, San Francisco. | 4577 |
| Silverado Banking, Savings & Loan Association, Denver, CO. | 12/9/88, San Francisco. | 7580 |

Dated: July 16, 1993.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 93–17329 Filed 7–20–93; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL RESERVE SYSTEM

**Banc One Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies**

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1993.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Banc One Corporation*, Columbus, Ohio, and Banc One Beta Corporation, Columbus, Ohio; to merge with Firstier Financial, Inc., Omaha, Nebraska, and thereby indirectly acquire Firstier Bank, N.A., Omaha, Omaha, Nebraska; Firstier Bank, N.A., Lincoln, Lincoln, Nebraska; Firstier Bank, N.A., Scottsbluff, Scottsbluff, Nebraska; Firstier Bank, N.A., Norfolk, Norfolk, Nebraska.

In connection with this application, Applicants also propose to acquire Firstier Mortgage Company, Omaha, Nebraska, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1); Firstier Insurance, Inc., Omaha, Nebraska, and thereby engage in the sale of credit-related insurance in connection with extensions of credit by affiliated banks pursuant to § 225.25(b)(8)(i); and Wyoming Trust & Management Co., Gillette, Wyoming, and thereby engage in providing trust and asset management services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

*2. Banc One Corporation*, Columbus, Ohio, and Banc One Oklahoma Corporation, Oklahoma City, Oklahoma,

to merge with Central Banking Group, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Central Bank of Oklahoma City, Oklahoma City, Oklahoma, and Friendly Bank of Oklahoma City, Oklahoma City, Oklahoma.

In connection with this application, Applicants also propose to acquire Central Financial Life Insurance Company, Inc., Phoenix, Arizona, and thereby engage in the sale of credit-related insurance in connection with extensions of credit by affiliated banks pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Firstbank of Illinois Co.*, Springfield, Illinois; to acquire 100 percent of the voting shares of Colonial Bankshares, Inc., Des Peres, Missouri.

In connection with this application, Applicant also proposes to acquire Guido Insurance Agency, Des Peres, Missouri, and thereby engage in the sale of credit-related insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17278 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

## Bank South Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1993.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Bank South Corporation*, Atlanta, Georgia; to engage *de novo* through its subsidiary, Bank South Securities Corporation, Atlanta, Georgia, in investment or financial advice pursuant to § 225.25(b)(4); securities brokerage pursuant to § 225.25(b)(15); and foreign exchange advisory and transactional services pursuant to § 225.25(b)(17); and arranging for commercial real estate financing pursuant to § 225.25(b)(14) of the Board's Regulation Y. These activities will be conducted throughout the State of Georgia.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17279 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

## Ronald Edward Clampitt, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 10, 1993.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Ronald Edward Clampitt*, Odessa, Florida; to retain 13.83 percent; Claude Cornelius Focardi, Largo, Florida, to retain 24.95 percent; and John Benson Wier, Jr., Tierra Verde, Florida; to retain 14.82 percent of the voting shares of Pinellas Bancshares Corporation, St. Petersburg, Florida, and thereby indirectly acquire United Bank of Pinellas, St. Petersburg, Florida.

*2. Charlotte C. Weber and John C. Weber*, Ocala, Florida; together to acquire 12.92 percent of the voting shares of Independent Bancshares, Inc., Ocala, Florida, and thereby indirectly acquire Independent Bank of Ocala, Ocala, Florida.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. V. G. Schaffer Children's Trust & V.G. Schaffer Grandchildren's Trust*, Balaton, Minnesota; to acquire 76.8 percent of the voting shares of Balaton Agency, Inc., Balaton, Minnesota, and thereby indirectly acquire 21st Century Bank, Balaton, Minnesota.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Harlan Lambert*, Fort Stockton, Texas, to acquire 12.76 percent for a total of 28.94 percent; Jim Ivy, Fort Stockton, Texas, to acquire 12.76 percent for a total of 16.32 percent; Bently King, Fort Stockton, Texas, to acquire 12.76 percent for a total of 24.97 percent; Richard Morrow, Fort Stockton, Texas, to acquire 12.76 percent for a total of 13.80 percent; and Ernest Woodward, McCamey, Texas, to acquire 12.76 percent for a total of 15.97 percent of the voting shares of Pecos County Bancshares, Inc., Fort Stockton, Texas, and thereby indirectly acquire The Pecos County State Bank, Fort Stockton, Texas.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17280 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

**CSB Bancorp, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies**

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 13, 1993.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. CSB Bancorp, Inc.*, Walsh, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Colorado State Bank of Walsh, Walsh, Colorado.

*2. InterBank, Inc.*, Sayre, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Sayre, Sayre, Oklahoma.

**B. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. FNB Bancorp*, Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of Founders National Bank of Los Angeles, Los Angeles, California.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17281 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

**Saban, S.A., Marina Bay, Gibraltar; RNYC Holdings Limited, Marina Bay, Gibraltar; Republic New York Corporation, New York, New York; Application to Engage in Nonbanking Activities**

Saban, S.A., Marina Bay, Gibraltar, RNYC Holdings Limited, Marina Bay, Gibraltar; and Republic New York Corporation, New York, New York (Applicants), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, Republic New York Securities Corporation, New York, New York (Company), in the following securities-related activities:

(1) underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. §§ 24 and 336, including banker's acceptances and certificates of deposit (bank-eligible securities);

(2) underwriting and dealing in, to a limited extent, all types of debt and equity securities (bank-ineligible securities);

(3) acting as agent for issuers in the private placement of all types of debt and equity securities, including providing related advisory services;

(4) acting as broker or agent with respect to interest rate and currency swaps, caps, floors, collars, and swap-related products; including providing advice to institutional customers regarding such financial instruments; and

(5) engaging in options, futures, and options on futures transactions in bank-eligible securities and bank-ineligible securities for hedging purposes, as an incident to the proposed underwriting and dealing activities.

Company has previously received Board approval to engage in full-service brokerage activities, riskless principal activities, and other securities-related activities. *See Saban, S.A., et al.*, 78 Federal Reserve Bulletin 955 (1993).

Applicants also propose to transfer to Company all of the existing activities and business of another wholly owned subsidiary, Republic Clearing Corporation, New York, New York, a futures commission merchant (FCM) registered with the Commodity Futures Trading Commission, and thereby offer FCM services through Company. Applicants propose to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board has previously approved, by both order and regulation, underwriting and dealing in bank-eligible securities. *See, e.g.*, 12 CFR 225.25(b)(16); *United Bancorp*, 64 Federal Reserve Bulletin 222 (1978). Applicants have stated that they will conduct the proposed bank-eligible underwriting and dealing activities subject to the requirements and limitations of the Board's Regulation Y.

The Board also has previously approved, by order, underwriting and dealing in, to a limited extent, bank-ineligible securities. *See, e.g., Citicorp, et al.*, 73 Federal Reserve Bulletin 473 (1987) (1987 Section 20 Order), *aff'd sub nom. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988); *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *aff'd sub nom. Securities Industries Ass'n v. Board of*

*Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990), *as modified by* Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order). Applicants have stated that they will conduct the proposed underwriting and dealing activities in bank-ineligible securities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1987 Section 20 Order, and the 1989 Section 20 Order, as modified by the Modification Order, including the Board's 10 percent revenue limitation on such activities. For this reason, Applicants contend that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

The Board also has previously approved, by order, the proposed private placement activities, and Applicant has stated that it will conduct the proposed private placement activities using the same methods and procedures and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

The Board also has previously approved acting as broker or agent with respect to interest rate and currency swaps, caps, floors, collars, and swap-related products, including providing advice to institutional customers regarding such financial instruments. *See, e.g., The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (1991); *The Fuji Bank, Limited*, 76 Federal Reserve Bulletin 768 (1990); *The Sumitomo Bank, Limited*, 75 Federal Reserve Bulletin 582 (1989). Applicants propose to engage in these swap activities subject to the provisions and conditions established by the Board in its previous orders.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicants believe that the proposed activities will benefit the public by promoting competition, lower financing costs, and more innovative financing. Applicants also believe that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicants believe that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 10, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17282 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Institute for Occupational Safety and Health

**[Announcement Number 340]**

### Cooperative Agreement for Occupational Safety and Health Applied Research in Occupational Lung Disease, Notice of Availability of Funds for Fiscal Year 1993

**INTRODUCTION:** The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds for fiscal year (FY) 1993 for a cooperative agreement in occupational lung disease.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000 see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

**Authority:** This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 [42 U.S.C. 241] and 317 (42 U.S.C. 247b) of the Public Health Service Act as amended.

**ELIGIBLE APPLICANTS:** Eligible applicants are nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents, and small, minority and/or women-owned businesses are eligible for this cooperative agreement.

**AVAILABILITY OF FUNDS:** Approximately $50,000 is available in FY 1993 to fund one cooperative agreement award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**PURPOSE:** The purpose of this cooperative agreement is for the recipient organization to conduct a program of applied research in the area of occupational lung disease prevention. The program will consist of identification of applied research needs, formulation of a plan to respond to those needs, modification of the plan on the basis of ongoing program evaluation, and publication of research results. Specifically, this cooperative agreement is intended to involve research which will greatly influence prevention efforts for occupational lung diseases. Potential strategic research agendas may include asbestos, coal workers' pneumoconiosis, asthma, and silicosis.

**PROGRAM REQUIREMENTS:** In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC/NIOSH shall

be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Identify research needs relative to the occupational lung diseases in the selected program.

2. Develop a research protocol or protocols. Obtain peer review of the protocol and revise and finalize as required for approval.

3. Where appropriate, collaborate with NIOSH scientists who are working in complementary research areas.

4. Collaborate with NIOSH and other CDC staff in reporting and disseminating research results and relevant occupational safety and health information to appropriate safety and health constituents.

*B. CDC/NIOSH Activities*

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, review and priority setting related to the cooperative agreement.

2. Engage in scientific collaboration in research areas of mutual interest and investigation for appropriate aspects of the program.

3. Assist in the reporting and dissemination of research results to appropriate Federal, state, and local agencies, health care providers, and the scientific community.

**EVALUATION CRITERIA:** Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement, including the applicant's understanding of the objectives of the proposed cooperative agreement, and the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement, including the proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement, and a proposed method for evaluating the accomplishments. (20%)

3. Strength of the program design in addressing the needs in occupational lung disease research and the specificity with which the applicant's proposal addresses the prevention of occupational lung disease (i.e., organizational structure includes personnel whose research efforts focus on study and prevention of occupational lung disease). (20%)

4. The extent to which the institution has a program of recognized, documented expertise in the area of occupational lung disease research (i.e., published journal literature and recommendations of significant importance and application to industry and the workplace). (20%)

5. Training and experience of proposed Principal Investigator and staff, including a Principal Investigator who is a recognized scientist and technical expert and staff with training or experience sufficient to accomplish proposed program. (10%)

6. Efficiency of resources and uniqueness of program including the efficient use of existing and proposed personnel with assurance of a major time commitment of the Program Director to the program. Evidence of partnership with outside organization (i.e., universities or medical care providers) using shared resources toward common goals and the demonstrated ability to solicit and receive financial resources from outside the applicant's organization. (10%)

7. The extent to which the program budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

**EXECUTIVE ORDER 12372:** Applications are not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.

**PUBLIC HEALTH SYSTEM REPORTING REQUIREMENTS:** This program is not subject to the Public Health System Reporting Requirements.

**CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER (CFDA):** The Catalog of Federal Domestic Assistance Number (CFDA) for this program is 93.262.

**OTHER REQUIREMENTS**

*A. Human Subjects*

If the proposed research program involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the program will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

*B. Paperwork Reduction Act*

Programs that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**APPLICATION SUBMISSION AND DEADLINE:** The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before August 25, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**WHERE TO OBTAIN ADDITIONAL INFORMATION:** To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 340. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6814.

Programmatic technical assistance may be obtained from Gregory R. Wagner, M.D., Director, Division of Respiratory Disease Studies, NIOSH, Centers for Disease Control and Prevention (CDC), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, telephone (304) 291–4474 or David D. Bayse, Ph.D., Assistant Director for Science, NIOSH, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–3525.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report,

Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 13, 1993.

**Richard A. Lemen,**

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17296 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–19–P

## Food and Drug Administration

### Lasalocid-Containing Feed for Chukar Partridges; Availability of Data

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness data and an environmental assessment to be used in support of a new animal drug application (NADA) or supplemental NADA for a lasalocid sodium-containing Type A medicated article intended for further manufacturing into a Type C medicated feed for use in chukar partridges, for the prevention of coccidiosis caused by *Eimeria legionensis*. The data, contained in Public Master File (PMF) 5429, were compiled under Interregional Research Project No. 4 (IR–4), a national agricultural program for obtaining clearances for use of agricultural products for minor or special uses.

**ADDRESSES:** Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

**FOR FURTHER INFORMATION CONTACT:** Janis R. Messenheimer-Hatch, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8651.

**SUPPLEMENTARY INFORMATION:** The use of lasalocid sodium in chukar partridge feed is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, lasalocid sodium is subject to section 512 of the act (21 U.S.C. 360b) which requires that its uses in chukar partridges be the subject of an approved NADA or supplemental NADA. Partridges are a minor species under § 514.1(d) (21 CFR 514.1(d)). The IR–4 Project, Northeastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853–6401, has provided data and information that demonstrate safety and effectiveness to chukar partridges consuming lasalocid-containing feed for the prevention of coccidiosis caused by *Eimeria legionensis*. IR–4 has also provided an environmental assessment that adequately addresses the potential impacts due to use of the drug product.

The drug will be used to treat coccidiosis which is a disease of young birds (up to 8 weeks of age). The birds will not be released until at least 18 to 20 weeks of age. These conditions of use result in an inherent withdrawal of the drug from chukar partridges of at least 10 weeks after administration. Based on the characteristics of lasalocid sodium drug metabolism and the inherent withdrawal time under the labeled conditions of use, the agency has concluded that tissue residue depletion data were not necessary for satisfying human food safety concerns.

The data and information are contained in PMF 5429. Sponsors of NADA's or supplemental NADA's may, without further authorization, refer to the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to a reference to the PMF, animal drug labeling and other data needed for approval, such as information concerning manufacturing methods, facilities, and controls, data supporting extrapolation from a major species in which the drug is currently approved, or authorized reference to such data, and information addressing the potential environmental impacts (including occupational) of the manufacturing process.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of an application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

Dated: July 14, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–17211 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92F–0260]

### Quantum Chemical Corp.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2B4327) proposing that the food additive regulations be amended to provide for the safe use of propylene modified ethylene-*n*-butyl acrylate for use as a component in the manufacture of food-packaging materials.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of July 21, 1992 (57 FR 32227), FDA announced that a food additive petition (FAP 2B4327) had been filed by Quantum Chemical Corp., 11500 Northlake Dr., Cincinnati, OH 45249. The petition proposed that the food additive regulations be amended to provide for the safe use of propylene modified ethylene-*n*-butyl acrylate for use as a component in the manufacture of food-packaging materials. Quantum Chemical Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 12, 1993.

**Janice F. Oliver,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 93–17206 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Availability of a Draft Recovery Plan for Endangered Karst Invertebrates in Travis and Williamson Counties, TX for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces availability for public review of a draft recovery plan for seven karst invertebrates that occur in Travis and Williamson Counties, Texas: The Bee Creek Cave harvestman (*Texella reddelli*), Bone

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Cave harvestman (*Texella reyesi*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Tooth Cave spider (*Neoleptoneta myopica*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), and Coffin Cave mold beetle (*Batrisodes texanus*). These seven invertebrate species spend their entire lives underground in caves, sinkholes, and other "karsts" (underground openings such as fractures, cracks, and fissures) that form in Edwards limestones. Four of the karst invertebrate species (the Tooth Cave spider, Bee Creek Cave harvestman, Tooth Cave pseudoscorpion, and Kretschmarr Cave mold beetle) are restricted to Travis County, Texas, while the Coffin Cave mold beetle is found only in Williamson County, Texas. The Bone Cave harvestman and Tooth Cave ground beetle are found in both Travis and Williamson Counties. Almost all of the species' locations occur on private lands. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before September 7, 1993 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Austin Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; or by telephone (512) 482–5436. Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lisa O'Donnell, U.S. Fish and Wildlife Service Wildlife Biologist, telephone (512) 482–5436 or at the above address.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Five species (Bee Creek Cave harvestman, Tooth Cave pseudoscorpion, Tooth Cave spider, Tooth Cave ground beetle, and Kretschmarr Cave mold beetle) were listed as endangered on September 16, 1988 (53 FR 36029). A refinement of the taxonomy has expanded this group into seven distinct species. Because the bone Cave harvestman and Coffin Cave mold beetle were considered to be the same as the Bee Creek Cave harvestment and Kretschmarr Cave mold beetle, respectively, at the time of listing, and localities of these new species were included in the Final Rule, the species are also considered to be listed as endangered under the Endangered Species Act. A rule containing the taxonomic changes for the two new species is being published separately in the **Federal Register**.

These seven invertebrate species live in caves, sinkholes, and other "karsts" (underground openings such as fractures, cracks, and fissures) that form in Edwards limestones in Travis and Williamson Counties, Texas. These Karst invertebrate species are all threatened by land development activities in an area that is undergoing rapid urban expansion. Few localities where these species are known to occur are adequately protected. Land development activities promote the spread and/or increase of fire ant infestations, which also pose a threat to karst invertebrates.

The objective of the draft recovery plan for endangered karst invertebrates in Travis and Williamson Counties, Texas is downlisting (from endangered to threatened). The downlisting criteria are provided in the plan and call for protecting key areas, and functioning of the karst ecosystems in those areas, throughout the range of these species. Recovery efforts outlined in the draft plan focus on habitat protection, habitat management, control of threats, public education, and additional research on biological and ecological requirements of the species.

In some cases, continued human intervention to control the fire ant threat may be necessary. Without this intervention, the ability of the species to be self-sustaining within these karst ecosystems and prospects for complete recovery are uncertain. Thus, the objective of this recovery plan is downlisting. Since time required to downlist each species may vary, one or more species may be downlisted separately.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. Allasked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. comments received by the date specified above will be considered prior to approval of the plan.

**Authority**

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 12, 1993.

**John G. Rogers,**

*Regional Director, U.S. Fish and Wildlife Service.*

[FR Doc. 93–17251 Filed—7–20–93; 8:45 am]

BILLING CODE 4310–55–M

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**Notice of Receipt of Applications for Permit**

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–779517

*Applicant:* Fossil Rim Wildlife Center, Glen Rose, Texas.

Applicant requests permit to import one captive-bred female maned wolf *(Chrysocyon brachyurus)* from Arax Zoo, Brazil, for enhancement of propagation.

PRT–779518

*Applicant:* Northern Michigan Wolf Sanctuary, Negavner, Michigan.

Applicant requests a permit to export six captive-bred wolves *(Canis lupus)* to Haliburton Forest & Wildlife Reserve Ltd., Haliburton, Ontario, Canada, for educational display.

PRT–780511

*Applicant:* University of Florida, Gainesville, FL.

Applicant requests a permit to import blood, bone, tissue and organ samples of green *(Chelonia mydas)* and hawksbill *(Eretmochelys imbricata)* sea turtles from Nicaragua for scientific research. Researchers will opportunistically collect samples from sea turtles legally harvested by the Miskito Indians of Nicaragua.

PRT–780698

*Applicant:* Sidney Wilhite, West Monroe, LA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd maintained by Mr. D.B. Pohl, "Teafountain", Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–780823

*Applicant:* Thomas Hunt, Foxboro, MA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd maintained by Mr. J. Theron, "Wonderboom, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–780520

*Applicant:* George Carden Circus, Springfield, MO.

The applicant requests a permit to purchase in interstate commerce a pair of wild caught Asian elephants *(Elephas maximus)* from Gary Johnson, Ferris, CA, for the purpose of conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX (703/358–2281).

Dated: July 15, 1993.

**Susan Jacobsen,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 93–17250 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–55–M

## Bureau of Land Management

[WO–610–03–4112–02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004–0135), Washington, DC 20503, telephone 202–395–7340.

*Title:* 43 CFR 3160—Onshore Oil and Gas Operations, Sundry Notices and Reports on Wells

*OMB Approval Number:* (1004–0135)

*Abstract:* Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

*Bureau Form Numbers:* 3160–5.

*Frequency:* On occasion.

*Description of Respondents:* Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

*Estimated Completion Time:* 25 minutes.

*Annual Responses:* 34,000.

*Annual Burden Hours:* 14,166.

*Bureau Clearance Officer (Alternate):* Marsha A. Harley, 202–653–6105.

Dated: June 4, 1993.

**Hillary A. Oden,**

*Assistant Director, Energy and Mineral Resources.*

[FR Doc. 93–17197 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–84–M

[WO–610–03–4113–02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0132), Washington, DC 20503, telephone 202–395–7340.

*Title:* 43 CFR Part 3260, Geothermal Resources Operations.

*OMB Approval Number:* (1004–0132)

*Abstract:* Data submitted by geothermal lessees and operators issued for agency approval of specific and/or additional operations on a well and to report the completion and/or progress of such additional work.

*Bureau Form Numbers:* 3260–2, 3260–3, 3260–4, 3260–5.

*Frequency:* Nonrecurring, on occasion, and monthly.

*Description of Respondents:* Lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight.

*Estimated Completion Time:* 2 hours.

*Annual Responses:* 760.

*Annual Burden Hours:* 1,700.

*Bureau Clearance Officer (Alternate):* Marsha A. Harley, 202–653–6105.

Dated: June 28, 1993.

**Hillary A. Oden,**

*Assistant Director, Energy and Mineral Resources.*

[FR Doc. 93–17198 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–84–M

[AA820–00–4830–14]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0109), Washington, DC 20503, telephone 202–395–7340.

*Title:* Payments in Lieu of Taxes, 43 CFR 1881

*OMB approval number:* 1004–0109
*Abstract:* The information requested is statutorily required to compute payments due units of local government under the Payments in Lieu of Taxes Act (31 U.S.C. 6901–6907). The Act requires that the Governor of each State furnish a statement as to the amounts paid to units of local government under 11 receipt sharing statutes in the prior fiscal year. CFDA Number 15.216.
*Bureau Form Number:* None
*Frequency:* Annually
*Description of Respondents:* States supplying Federal land payment information to the Bureau of Land Management
*Estimated completion time:* 20 hours
*Annual responses:* 50
*Annual burden hours:* 1,000
*Bureau Clearance Officer (Alternate):* Marsha A. Harley (202) 653–6105

Dated: June 23, 1993.

Tom Allen,

*Assistant Director—Management Services.*

[FR Doc. 93–17200 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–84–M

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[NV–060–03–4333–11 NV5–52–93]

## Nevada: Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the 1993 "Gold Coast 300" Off-Highway Vehicle (OHV) Race

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Temporary closure of certain Public Lands in Clark County, Nevada, on and adjacent to the 1993 "Gold Coast 300" race course on August 7, 1993. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

**SUPPLEMENTARY INFORMATION:** Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 0001 hours, August 7, 1993, to 2359 hours, August 7, 1993, to protect persons, property, and public land resources on and adjacent to the Southern California Off Road Racing Enthusiasts SCORE, International, 1993 "Gold Coast 300 OHV race course. Spectators are restricted to the start/finish, and the area shown as the high speed test section, along the paved I–15 frontage road only

These temporary closures and restrictions are made pursuant to 43 CFR part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1993 "Gold Coast 300" OHV race course

The following public lands restricted or closed are described as: The Hidden Valley area, T. 23 S., R. 61 E., all of sections 1 through 36; T 24 S., R. 61 E., all of sections 1 through 36. The Erie area, T. 24 S., R. 60 E., all of sections 1 through 36; T. 23 S., R. 60 E., all of section 36. The Jean area, T. 25 S., R. 59 E., all of sections 1 through 36. The Jean Lake area, T. 25 S., R. 60 E., all of sections 1 through 36; T. 25 S., R. 61 E., all of sections 1 through 36. The Roach Lake area, T., 26 S., R. 59 E., all of sections 1 through 36; T. 27 S., R. 59 E., all of sections 1 through 36. The Beer Bottle Pass area, T. 26 S., R. 60 E., all sections 1 through 36. The Lucy Grey area, T. 27 S., T. 60 E., all of sections 1 through 36.

The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM office: the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 647–5000. Any person who fails to comply with this closure order issued under 43 CFR part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: July 9, 1993.

Gary Ryan,

*Associate District Manager, Las Vegas District.*

[FR Doc. 93–17271 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–HC–M

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[CO–920–03–4120–03; COC 54558]

## Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 54558; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public hearing.

**SUMMARY:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, fair market value of federal coal to be offered. An application for coal lease was filed by Mountain Coal Company requesting the Bureau of Land Management offer for competitive lease 1011.64 acres of federal coal in Delta and Gunnison Counties, Colorado.

**DATES:** The public hearing will be held at 7 p.m., August 16, 1993. Written comments should be received no later than August 23, 1993.

**ADDRESSES:** The public hearing will be held in the Paonia Town Hall, Paonia Community Center Room, 214 Grand Avenue, Paonia, Colorado. Written comments should be addressed to the Bureau of Land Management, Uncompahgre Basin Resource Area Office, 2505 South Townsend Avenue, Montrose, Colorado 81401.

**FOR FURTHER INFORMATION CONTACT:** Allan Belt, Area Manager, Uncompahgre Basin Resource Area Office at the address above, or by telephone at (303) 249–0647.

**SUPPLEMENTARY INFORMATION:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on August 16, 1993, at 7 p.m., in the Paonia Town Hall, 214 Grand Avenue, Paonia, Colorado. An application for coal lease was filed by Mountain Coal Company requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 13 S., R. 90 W., 6th P.M.
Sec. 19, lots 15 to 18, inclusive;
Sec. 30, lots 7 and 8.
T. 13 S., R. 91 W., 6th P.M.
Sec. 23, S½S½NE¼, E½SE¼SW¼, and SE¼;
Sec. 24, S½S½NW¼, and S½;
Sec. 25, lots 1 to 4, inclusive;
Sec. 26, NE¼NE¼.
Containing 1011.64 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered. Written requests to testify orally at the August 16, 1993, public hearing should be received at the Uncompahgre Basin Resource Area Office prior to the close of business August 16, 1993. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the

coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.
2. The price that the mined coal would bring in the market place.
3. The cost of producing the coal.
4. The interest rate at which anticipated income streams would be discounted.
5. Deprication and other accounting factors.
6. The mining method or methods which would achieve maximum economic recovery of the coal.
7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and
8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Uncompahgre Basin Resource Area Office at the above address prior to close of business on August 23, 1993. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Uncompahgre Basin Resource Area Office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado.

Dated: July 15, 1993.

**Richard D. Tate,**

*Chief, Mining Law and Solid Minerals Adjudication Section.*

[FR Doc. 93–17259 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–JB–M

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**[OR–943–2300–02; GP3–295; OR–45815]**

## Order Providing for Opening of Lands; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action will open 1,080 acres of acquired land to surface entry, and 320 acres to mining and mineral leasing. The 760-acre balance has been and continues to be open to mining and mineral leasing.

**EFFECTIVE DATE:** August 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

**SUPPLEMENTARY INFORMATION:** 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

**Willamette Meridian**

T. 32 S., R. 32¾ E.,
Sec. 23, W½;
Sec. 25, S½NW¼, SW¼, and W½SE¼;
Sec. 26, S½NE¼, NW¼, N½SE¼, and SE¼SE¼;
Sec. 35, E½NE¼.

The area described contains 1,080 acres in Harney County.

2. At 8:30 a.m., on August 26, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 26, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. At 8:30 a.m., on August 26, 1993, the following described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

**Willamette Meridian**

T. 32 S., R. 32¾ E.,
Sec. 25, SW¼;
Sec. 26, S½NE¼ and N½SE¼.

The area described contains 320 acres in Harney County.

4. At 8:30 a.m., on August 26, 1993 the land described in paragraph 3 will be opened to applications and offers under the mineral leasing laws.

Dated: July 12, 1993.

**Champ C. Vaughan,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 93–17199 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–33–M

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**[AZ–020–03–4210–04; AZA–27785]**

## Modification of Notice of Realty Action, Exchange of Public and Private Lands in Mohave County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, exchange of public and private lands.

**SUMMARY:** This notice extends the date that interested parties may submit comments to the Area Manager, Kingman Resource Area.

**DATES:** Comments must be submitted on or before August 20, 1993.

**ADDRESSES:** U.S. Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, AZ 86401.

**FOR FURTHER INFORMATION CONTACT:** Ken Drew, Area Manager, Kingman Resource Area, at (602) 757–3161.

**SUPPLEMENTARY INFORMATION:** On May 21, 1993, a Notice of Realty Action was published in the **Federal Register** in Vol. 58, No. 97, Page 29772, and a correction published in the **Federal Register** in Vol. 58, No. 111, Page 32749, on June 11, 1993. The 45-day comment period allowed in the notice, which ended July 5, 1993, is being extended to August 20, 1993. Interested parties may submit comments to the Area Manager, Kingman Resource Area, at the above address. In the absence of timely objections, the proposed exchange notice published on May 21, 1993 and corrected on June 11, 1993, shall become the final determination of the Department of the Interior.

Dated: July 15, 1993.

**G.L. Cheniae,**

*District Manager.*

[FR Doc. 93–17258 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-650 (Preliminary)]

Nitromethane From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] or threatened with material injury [3] by reason of imports from the People's Republic of China of nitromethane, provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 24, 1993, a petition was filed with the Commission and the Department of Commerce by ANGUS Chemical Co., Buffalo Grove, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of nitromethane from the People's Republic of China. Accordingly, effective May 24, 1993, the Commission instituted antidumping investigation No. 731-TA-650 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of June 2, 1993 (58 FR 31415). The conference was held in Washington, DC, on June 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 8, 1993. The views of the Commission are contained in USITC Publication 2661 (July 1993), entitled "Nitromethane from the People's Republic of China: Investigation No. 731-TA-650 (Preliminary)."

By order of the Commission.

Issued: July 14, 1993.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 93-17307 Filed 7-20-93; 8:45 am]

BILLING CODE 7020-02-P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Watson, Commissioner Nuzum, and Commissioner Crawford determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of nitromethane from the People's Republic of China.

[3] Chairman Newquist, Commissioner Rohr, and Commissioner Nuzum determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of nitromethane from the People's Republic of China.

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[Investigation No. 337-TA-354]

Investigation

In the Matter of certain tape dispensers.

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 14, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133. An amended complaint was filed on June 30, 1993. The complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tape dispensers by reason of alleged infringement of U.S. Patent Des. 289,180, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2572.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on July 14, 1993, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain tape dispensers by reason of alleged infringement of the claim of U.S. Patent Des. 289,180; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Minnesota Mining and Manufacturing Company 3M Center, St. Paul, Minnesota 55133.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Acurite Industries Corp., 2/F No. 221-223 Chung Hsiad E Rd Sec 3, Taipei, Taiwan

Fancy International (HK) Ltd., Rm 505-6B Harbour Crystal Ctr., 100 Granville Rd., Tsim Sha Tsui, Kowloon, Hong Kong

Charles Leonard, Inc., 79-11 Cooper Avenue, Glendale, New York 11385

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401Q, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the

date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: July 15, 1993.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 93–17308 Filed 7–20–93; 8:45 am]

BILLING CODE 7020–02–P

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32318]

### Exemption; The Kansas City Southern Railway Company—Merger Exemption—the Graysonia, Nashville, and Ashdown Railroad Co.

The Kansas City Southern Railway Company (KCS) and its wholly owned subsidiary, The Graysonia, Nashville, and Ashdown Railroad Company (GN&A) have filed a notice of exemption to merge GN&A into KCS, with KCS as the surviving corporation. Under the agreement and plan of merger, KCS will assume all rights, obligations and business functions of its subsidiary. The merger can be consummated on or after July 2, 1993.[1]

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). The merger will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family. The purpose of the transaction is to eliminate duplicative recordkeeping, filing, and reporting requirements, and to render more efficient GN&A's current billing and car reporting processes.

To ensure that all employees who may be affected by the transaction are given the minimum protection under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Richard P. Bruening and Robert K. Dreiling, 114 West 11th St., Kansas City, MO 64105.

Decided: July 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 93–17309 Filed 7–20–93; 8:45 am]

BILLING CODE 7035–01–M

[1] The parties indicated that consummation was expected to occur on or after July 1, 1993. Under the class exemption invoked here, consummation may not occur until at least 1 week after the notice of exemption is filed. 49 CFR 1180.4(g)(1). This notice was filed with the Commission on June 25, 1993. Under 49 CFR 1104.7, when computing any period of time, the date of the act (filing) upon which the designated period of time begins to run is not included. This makes July 2, 1993 the earliest allowable consummation date.

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree In Action Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 6922, and Departmental policy, 28 CFR 50.7, notice is hereby given that on July 8, 1993, the United States Department of Justice, by the authority of the Attorney General and acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency, lodged a Consent Decree in *United States* v. *Allen-Bradely Co., et al.*, Civil Action No. S90–00593, with the United States District Court for the Northern District of Indiana. The Consent Decree addressees the liability of certain parties ("the Settling Defendants") under section 107 of CERCLA, 42 U.S.C. 9607, for certain response costs incurred by the United States at the Cam-Or site in Westville, La Porte County, Indiana. The Consent Decree requires the Settling Defendants to pay $2.66 million in reimbursement for past costs and prejudgment interest, as well as all of EPA's future oversight costs for completion of work at the site under a unilateral administrative order issued by EPA on September 18, 1989. The Settling Defendants also must pay interest on the sum $2.66 million accruing from July 1, 1992 (the date of the Settling Defendants' agreement in principle with the United States) to the date of payment.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Allen-Bradley Co., et al.*, DOJ Reference No. 90–11–3–609A.

The Consent Decree may be examined at the Region V Office of Regional Counsel, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, United States Department of Justice, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (20-2–624–0892). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check for $4.50 (25 cents per page reproduction cost) payable to Consent Decree Library.

Peter R. Steenland, Jr.,

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93–17195 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree; United States v. Allied Signal Inc., et al.

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that an amended complaint was filed on June 24, 1993, in *United States* v. *AlliedSignal Inc., et al.*, Civil Action No. H–91–3529, in the United States District Court for the Southern District of Texas, Houston Division, and, simultaneously, a Consent Decree between the United States and four parties was lodged with the court. This Consent Decree, along with three consent decrees earlier lodged on December 3, 1991 against 117 other parties, notice of which was published in the Federal Register on 12/19/91, Vol. 56, No. 244, p. 65913, settles the government's claims in the amended complaint pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for (1) injunctive relief to abate an imminent and substantial endangerment

to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility located near Hempstead, Waller County, Texas, and known as the "Sheridan Site," and for (2) recovery of all response costs incurred by the United States. The amended complaint alleged, among other things, that certain defendants were owners or operators of the facility at the time of disposal of hazardous substances at the Sheridan Site and that certain defendants were persons who by contract, agreement or otherwise arranged for disposal of hazardous substances at the Site or who arranged for transport of hazardous substances to the Site. The complaint further alleged that the United States has incurred response costs in response to actual or threatened releases of hazardous substances at or from the Sheridan Site.

Under the terms of the proposed consent decree, Darling-Delaware Corporation (on behalf of Pepper Rendering), AlliedSignal Inc., J.M. Huber Corporation, and Groendyke Transport agreed to pay $2.5 million towards the government's past response costs and future oversight costs. The $2.5 million dollar settlement, in conjunction with the three currently lodged consent decrees, fully compensates the United States for its costs, as well as funds and implements a remedy at the Site that includes bioremediation of sludges and contaminated soil, residue stabilization, installation of a RCRA compliant cap over the pond and dike area, installation of a flexible spur jetty to control erosion of the Brazos River bank, groundwater monitoring, decontamination of all on-site tanks and processing equipment, and treatment of storm water and wastewater before discharge into the Brazos River. The settlement also provides $20,000 for all costs incurred, and to be incurred, with regard to a wildlife mitigation plan.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *AlliedSignal Inc., et al.*, D.J. Ref. No. 90–11–2–445.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

*EPA Region VI*
Contact: Anne M. Foster, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 655–2169
*United States Attorney's Office*
Assistant United States Attorney, Civil Division, The Lyric Center, 440 Louisiana, 9th Floor, Houston, Texas 77002, (713) 229–2600

Copies of the proposed Consent Decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy of the Decree, please enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Peter R. Steenland, Jr.,**
*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93–17266 Filed 7–20–93; 8:45 am]
BILLING CODE 4410–01–M

## Lodging of Consent Decree Pursuant to the Clean Water Act; Stoeco Development, Ltd., et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent order in *Stoeco Development, Ltd., et al.* versus *Department of the Army Corps of Engineers* and *United States* versus *Stoeco Homes, Inc., et al.*, Civil Action No. 88–0054 (D.N.J.) was lodged with the United States District Court for the District of New Jersey on June 30, 1993.

The proposed consent order arises from consolidated lawsuits concerning the delineation of federally regulated wetlands and alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, as a result of the discharge of dredge and fill materials into certain areas claimed to be wetlands in Ocean City, New Jersey. One portion of the site claimed to be wetlands is owned by Stoeco Development, Ltd.; another portion of the site is owned by Stainton-Burrell Development, Ltd.; The Shore Memorial Hospital and The Pennington School have beneficial interests in the site. These parties (collectively, "Stoeco") built residential buildings, including the discharge of fill materials, on a portion of the site without authorization from the U.S. Army Corps of Engineers ("Corps") under 33 U.S.C. 1344. Stoeco brought suit to challenge the Corps' jurisdictional determination of wetlands on the site; the United States brought suit to seek relief for alleged violations of the Clean Water Act.

The consent order requires Stoeco to mitigate, enhance, and maintain wetlands on a portion of the site (Blocks 2505, 2605, 2606, 2705, 2706, 2805), and on an additional parcel (a portion of Block 3350), in accordance with a wetlands mitigation and enhancement plan to be prepared by an environmental consultant and approved by the Corps. The consent order also prohibits Stoeco from bringing any action for a government taking with regard to the site subject to this litigation. The consent order further provides that the Corps' Cease and Desist Order will be rescinded as to certain other portions of the site.

The Department of Justice will receive written comments relating to the consent order for a period of 30 days from the date of publication of this notice. Comments should be addressed to: Irene Dowdy, Assistant United States Attorney, 402 East State Street, room 502, Trenton, New Jersey 08608, and should refer to *Stoeco Development, Ltd.* versus *Department of the Army Corps of Engineers*, Civil Action No. 88–0054 (D.N.J.).

The consent order may be examined at the Clerk's Office, United States District Court, 401 Market Street, Camden, New Jersey 08101.

**Myles E. Flint,**
*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93–17269 Filed 7–20–93; 8:45 am]
BILLING CODE 4410–01–M

[AAG/A Order No. 77–93]

## Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Automated Data Processing Equipment Inventory Management System (AIMS), JUSTICE/INS–018, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) and (11) has been published.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses of a proposed system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its

review of the system. Therefore, please submit any comments by August 20, 1993. The public, OMB and the Congress are invited to submit any comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Room 850 WCTR, Washington, DC 20530.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: July 7, 1993.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

**JUSTICE/INS–016**

**SYSTEM NAME:**

Automated Data Processing Equipment Inventory Management System (AIMS).

**SYSTEM LOCATION:**

Headquarters, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

INS employees who are responsible for the procurement and management of automated data processing equipment (ADPE); and, contractors who have been assigned ADPE to use in developing software programs for INS.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

An inventory reflecting (1) the ADPE procurement and management activities of INS employees and (2) the identity of contractors using such equipment to develop software programs for INS. The inventory will include information relating to the kinds and quantity of ADPE equipment procured, the disposition of such equipment and the purpose for such disposition, and/or (where appropriate) information relating to the reassignment of responsibility for the equipment. Such reassignment may be made based upon the resignation or transfer of responsible employees, upon the expiration of the subject contracts, or otherwise upon the need to track the status or disposition of the equipment and identify the management employee responsible therefor, e.g., removal of the equipment from the inventory for repair purposes. Records will include identifying information such as INS employee or contractor name/title, social security number, office location/address and phone number, company name of the contractor, and other relevant information such as the level of responsibility assigned to the INS employee.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

8 U.S.C. 1103 and 40 U.S.C. 483.

**PURPOSE(S):**

To provide accountability records relating to (1) INS employee management and disposition of ADPE equipment and (2) contractor use of such equipment in developing software programs for INS. The records will be used by management to track and account for the procurement and disposition of all ADPE, and thus ensure the integrity and security of the ADPE inventory.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Relevant information contained in this system of records may be disclosed as follows:

A. Where there is an indication of a violation or potential violation of law (whether civil, criminal, or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign) charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute and/or the rule, regulation or order issued pursuant thereto.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To the new media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The records are stored in a data base on magnetic disk.

**RETRIEVABILITY:**

These records may be retrieved by INS employee and contractor name, social security number, company name, or office location.

**SAFEGUARDS:**

The records are accessed from mainframe computer terminals located in INS offices that are locked during non-duty hours. Access is obtained through terminals which require the use of restricted passwords and user identification numbers. Only designated property management officers and their supervisors have access to AIMS for creating and updating ADPE Inventory records within their jurisdiction.

**RETENTION AND DISPOSAL:**

A schedule for the retention and disposal of these records is under review and development.

**SYSTEM MANAGER AND ADDRESS:**

The Servicewide system manager is the Director, Technical Services Branch, Data Systems Division, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

**NOTIFICATION PROCEDURES:**

Address your inquiries to the system manager identified above.

**RECORDS ACCESS PROCEDURES:**

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the address identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the full name, social security number, user identification number, and notarized signature of the individual who is the subject of the records, and a return address.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information to the FOIA/PA Officer at the address identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

**RECORD SOURCE CATEGORIES:**

The individuals covered by the system are the record sources.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 93–17196 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–16–M

VOL 58 ISS 138 JL 21 1993 UMI

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Glycols Joint Venture

Notice is hereby given that, on June 25, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Amrep Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership to the Glycols Joint Venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notification stated the addition of Blue Coral, Inc., Cleveland, OH to the venture.

No other changes have been made in either the membership or planned activity of the venture. Membership in this venture remains open, and the parties intend to file additional written notification disclosing all changes in membership.

On May 16, 1991, Amrep Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 6, 1991 (56 FR 26162).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93–17193 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–01–M

### Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on May 25, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") and the other parties to the ANSA Sponsorship Agreement ("ANSA"), identified below, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; BNR Europe Limited, Essex, United Kingdom; British Telecommunications, plc, London, United Kingdom; Digital Equipment International B.V., Nijmegen, Netherlands; Marconi Instruments Limited, Middlesex, United Kingdom; GPT Limited, West Midlands, United Kingdom; Hewlett-Packard Limited, Bristol, United Kingdom; International Computers Limited, London, United Kingdom; Open Connexion Pty. Limited, Melbourne, Australia; and France Telecom-Centre National D'Etudes Des Telecommunications, Issy-les-Moulineaux Cedex, France. Bellcore and the other parties identified above entered into an agreement effective as of December 8, 1992 to engage in cooperative activity to explore and research technologies for open distributed computing including the use of such technologies over telecommunications facilities for exchange and exchange access services.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93–17194 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–01–M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 18, 1993, Abbott Laboratories, 14th Street & Sheridan Road, Attn: Customer Service D–345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Dextropropoxyphene, bulk (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 20, 1993.

Dated: July 12, 1993.

**Gene R. Haislip,**

*Director, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 93–17293 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–09–M

### Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 3, 1993, Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Methcathinone (1237) | I |
| N-Ethylamphetamine (1475) | I |
| N,N-Dimethylamphetamine (1480). | I |
| 4-Methylaminorex (cis isomer) (1590). | I |
| Lysergic acid diethylamide (7315). | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 3, 4-Methylenedioxyamphetamine (7400). | I |
| N-Hydroxy-3, 4-methylenedioxyamphetamine (7402). | I |
| 3, 4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3, 4-Methylenedioxymethamphetamine (7405). | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| N-Ethyl-1-phenylcyclohexylamine (7455). | I |
| 1-(1-Phenylcyclohexyl) pyrrolidine (7458). | I |
| 1-[1-(2-Thienyl) cyclohexyl] piperidine (7470). | I |
| Dihydromorphine (9145) | I |
| Normorphine (9313) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Phenylcyclohexylamine (7460) | II |
| Phencyclidine (7471) | II |
| Phenylacetone (8501) | II |
| 1-Piperidinocyclohexanecarbonitrile (8603). | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Benzoylecgonine (9180) | II |
| Morphine (9300) | II |
| Oxymorphone (9652) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the

issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 20, 1993.

Dated: July 12, 1993.

**Gene R. Haislip,**

*Director, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 93–17294 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–09–M

## Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 2, 1993, Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Oxymorphone (9652) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 20, 1993.

Dated: July 12, 1993.

**Gene R. Haislip,**

*Director, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 93–17292 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–09–M

## Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 24, 1993, Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Colorado 80924, made application to the Drug Enforcement Administration to be registered as an importer of Carfentanil (9743) a basic class of controlled substance Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 20, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 12, 1993.

**Gene R. Haislip, Director,**

*Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 93–17295 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–09–M

# NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## Application and Opportunity To Request Information Meeting

**ACTION:** Notice of application and opportunity to request an informational meeting.

**SUMMARY:** The National Archives and Records Administration gives notice that an application has been filed with the Maryland Department of the Environment to install four natural gas/no. 2 oil fired boilers at the National Archives at College Park (Archives II), Maryland.

**FOR FURTHER INFORMATION CONTACT:** The Maryland Department of the Environment at 401–631–3230, or Marvin Shenkler of NARA at 301–713–6500.

**SUPPLEMENTARY INFORMATION:** The National Archives and Records Administration (NARA) has submitted to the Maryland Department of the Environment, Air and Radiation Management Administration (the Department) an application for a Permit to Construct to install four natural gas/no. 2 oil fired boilers rated at 16.7 million BTU/hour at the National Archives at College Park (Archives II). The plant will be located at 8601 Adelphi Road, Adelphi, Maryland, Prince George's County.

Copies of the application and other supporting documents, Docket #26–93, are available for public inspection at the following locations during normal business hours: Maryland Department of the Environment, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224, or, Prince George's County Public Library, Hyattsville Branch, 6530 Adelphi Road, Hyattsville, MD 20782.

Interested persons may request an informational meeting. Requests for an informational meeting must be submitted in writing and must be received by the Department no later than 10 days from the date of this notice. All requests for an informational meeting should be directed to the attention of Ms. Caryn Coyle, Office of the Director, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224.

Dated: July 14, 1993.
**James C. Megronigle,**
*Assistant Archivist for Management and Administration.*
[FR Doc. 93–17275 Filed 7–20–93; 8:45 am]
BILLING CODE 7515–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by August 25, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by August 21, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Automated Panel Bank System Data Collection Form.

*Frequency of Collection:* Triennially.

*Respondents:* Individuals wishing to be considered for panel service.

*Use:* The form is used to collect basic information from qualified individuals who have recommended for panel service. Information is entered into a computer database which serves as a reference tool for Endowment staff to aid in assembling advisory panels which meet Congressional requirements for broad representation.

*Estimated Number of Respondents:* 1,000.

*Average Burden Hours Per Response:* .5.

*Total Estimated Burden:* 500.

**Judith E. O'Brien,**
*Management Analyst, Administrative Services Division, National Endowment for the Arts.*
[FR Doc. 93–17079 Filed 7–20–93; 8:45 am]
BILLING CODE 7537–01–M

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by August 20, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

**SUPPLEMENTARY INFORMATION:** The Endowment request the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* FY 95 Music Fellowship Application Guidelines.

*Frequency of Collection:* One-time.

*Respondents:* Individuals.

*Use:* Guideline instructions and applications elicit relevant information from individual musicians who apply in the Music Program. This information is necessary for the accurate, fair and thorough consideration of competing proposal in the review process.

*Estimated Number of Respondents:* 730.

*Average Burden Hours Per Response:* 20.

*Total Estimated Burden:* 14,600.

**Judith E. O'Brien,**
*Management Analyst, Administrative Services Division, National Endowment for the Arts.*
[FR Doc. 93–17080 Filed 7–20–93; 8:45 am]
BILLING CODE 7537–01–M

### National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on August 6–7, 1993, from 9 a.m. to 5:30 p.m. on August 6, 1993 and from 9 a.m. to 2:30 p.m. on August 7, 1993, in room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public. Topics for discussion will include opening remarks; Legislative update; reports from the Arts Education Advisory Council Steering Group and NASSA; Cultural Diversity Task Force Update; FY 95 Budget; and Program Review and/or Guidelines and/or Application Review for Local Arts Agencies, Theater, Museum, Dance on Tour, Presenting and Commissioning-Artists' Projects Regional Initiatives, Music-Fellowships, International, Dance, Design Arts, Expansion Arts, Folk Arts, Literature, Media Arts, and Visual Arts.

If, in the course of application discussion review, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about

individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TYY 202/682–5496, at least seven (7) days prior to the meeting. Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 15, 1993.

**Yvonne M. Sabine,**

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17284 Filed 7–20–93; 8:45 am]

BILLING CODE 7537-01-M

## National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Music Section) to the National Council on the Arts will be held on August 11–12, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 11, 1993, from 9 a.m. to 10:15 a.m. for introductions.

The remaining portion of this meeting from 10:15 a.m. to 5:30 p.m. on August 11, 1993 and from 9 a.m. to 5:30 p.m. on August 12, 1993, is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the descretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 15, 1993.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17286 Filed 7–20–93; 8:45 am]

BILLING CODE 7537-01-M

## National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Music Presenters B Section) to the National Council on the Arts will be held on from 9 a.m. to 6:30 p.m. on August 10, 1993, and from 8:30 a.m. to 6:30 p.m. on August 11–13, 1993. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Portions of these meetings will be open to the public from 8:30 a.m. to 9 a.m. on August 11–13, 1993, and from 4 p.m. to 6:30 p.m. on August 13, 1993. Topics of discussion will include policy and guidelines.

The remaining portions of these meetings from 9 a.m. to 6:30 p.m., on August 10–12, 1993, and 9 a.m. to 4 p.m. on August 13, 1993, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5439.

Dated: July 13, 1993.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17285 Filed 7–20–93; 8:45 am]

BILLING CODE 7537-01-M

# NATIONAL SCIENCE FOUNDATION

## Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by August 20, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

*Title:* Survey of Scientific and Engineering Expenditures at Universities and Colleges, FY 1993, FY 1994, and FY 1995.

*Affected Public:* Non-profit institutions.

*Respondents/Reporting Burden:* 525 respondents, 16 hours per response.

*Abstract:* This survey provides academic R&D expenditures data by source and discipline, including research equipment. Data are used for planning and policy formulation related to academic science and engineering infrastructure. Users

include Congress, Federal agencies, States, industry, universities, etc. Affected public-higher education and associated federally funded R&D centers.

Dated: July 15, 1993.

Herman G. Fleming,

*Reports Clearance Officer.*

[FR Doc. 93-17215 Filed 7-20-93; 8:45 am]

BILLING CODE 7590-01-M

## NUCLEAR REGULATORY COMMISSION

### Proposed Generic Communication; Long-Term Solutions and Upgrade of Interim Corrective Actions for Thermal-Hydraulic Instabilities in Boiling Water Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or, (3) transmits information to licensees regarding approved changes to rules or regulations, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures.

This generic letter requests each BWR holder of an operating license (except for Big Rock Point which does not have capability for operation at reduced flow conditions) (1) take the appropriate actions to augment its respective procedures and training for preventing thermal-hydraulic instabilities in its reactor and (2) submit to the NRC a plan describing the long-term stability solution option it has selected and the implementation schedule it proposes for the modification of plant protection system to ensure compliance with General Design Criteria 10 and 12 in appendix A to part 50 of title 10 of the Code of Federal Regulations (10 CFR part 50). The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were discussed in meeting number 240 of the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR to support their review of the proposed generic letter is available in the Public Document Rooms under accession number 9307140002. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

**DATES:** Comment period expires August 20, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington DC.

**FOR FURTHER INFORMATION CONTACT:** Larry Phillips (301) 504-3232.

**SUPPLEMENTARY INFORMATION:** The proposed generic letter text is given in its entirety below.

**To: All Holders of Operating Licenses for Boiling Water Reactors (BWRs)**

**Subject: Long-Term Solutions and Upgrade of Interim Corrective Actions for Thermal-Hydraulic Instabilities in Boiling Water Reactors**

*Purpose*

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to request that each addressee (1) take the appropriate actions to augment its respective procedures and training for preventing thermal-hydraulic instabilities in its reactor and (2) submit to the NRC a plan describing the long-term stability solution option it has selected and the implementation schedule it proposes for the modification of plant protection systems to ensure compliance with General Design Criteria (GDC) 10 and 12 in appendix A to part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50).

*Background*

The possibility of power oscillations due to thermal-hydraulic instabilities in boiling water reactors (BWRs) and the consequences of such events have been of concern for many years. The staff evaluated thermal-hydraulic stability as Generic Issue B-19 and recommended closure actions for resolution in Generic Letter 86-02, "Long-Term Solutions to Thermal-Hydraulic Instabilities in Boiling Water Reactors," which requested licensees to examine each core reload and to impose operating limitations, as appropriate, to ensure compliance with GDC 10 and 12. GDC 10 requires that the reactor core be designed with a appropriate margin to assure that specified fuel design limits will not be exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. GDC 12 requires assurance that power oscillations which can result in conditions exceeding specified acceptable fuel design limits are either not possible or can be reliably and readily detected and suppressed.

On March 9, 1988, LaSalle Unit 2 experienced an instability event. The ensuing work by both the staff and industry organizations have provided additional insight into thermal-hydraulic instabilities in BWR cores. The LaSalle event is described in NRC Information Notice 88-39, "LaSalle Unit 2 Loss of Recirculation Pumps With Power Oscillation Event," dated June 15, 1988. NRC Bulletin 88-07, also dated June 15, 1988, highlighted the generic concerns identified by the LaSalle event and requested all BWR licensees, regardless of BWR type or analytical core stability margin, to review the adequacy of procedures, instrumentation, and operator training programs to respond to power oscillations. In response to these concerns, the BWR Owners' Group (BWROG) initiated a project to investigate actions that should be taken to resolve the BWR stability issue.

On October 28, 1988, the General Electric Company (GE) notified the NRC under 10 CFR part 21 that thermal margins might not be sufficient to prevent violation of the minimum critical power ratio safety limit for some BWR plants if a 10-percent average power range monitor (APRM) oscillation was used as a procedural action point for manual scram of the plant. Based on this possibility, GE recommended stability "interim corrective actions" in a November 1988 letter to BWR utilities. On December 30, 1988, the NRC issued Bulletin 88-07, Supplement 1,

approving the proposed BWROG/GE interim operating recommendations and stating additional conditions. One of these conditions addressed the applicability of the experience-based stability exclusion boundaries defined in the interim corrective actions, and noted the need to reevaluate and justify these boundaries for cores that include new fuel designs. This bulletin also discussed long-term corrective actions. Such corrective actions might include hardware modifications or additions to facilitate manual or automatic protective response to avoid neutron flux oscillations or to suppress oscillations should they occur. Since it is possible for some oscillations to grow to levels exceeding NRC safety limits in the order of a minute, automatic protection action is generally indicated. These actions are being defined by a greatly expanded post-LaSalle BWROG study to develop a generic resolution to the stability issue.

In June 1991, the BWROG issued NEDO–31960 (Ref. 1) which documented proposed long-term solutions to the stability issue as well as methodologies that have been developed to support the design of these long-term solutions. Supplement 1 to NEDO–31960 (Ref. 2) was issued in March 1992 and contained final methodology details and additional information requested by the NRC. By a July 1993 letter from A.C. Thadani (NRC) to L.A. England (BWROG), the NRC transmitted its safety evaluation report on NEDO–31960 and its Supplement 1 (Ref. 3) to BWROG. Reference 3 describes the regulatory positions resulting from the staff review of the proposed solution concepts and associated methodologies. This letter requests information about licensee plans for implementation of the approved solution concepts and about actions taken to ensure that interim stability protection is adequate until the long-term solution is implemented.

This resolution assumes the protection system will function when required and does not consider the combination of instability and anticipated transients without scram (ATWS). That subject is being addressed by other NRC and BWROG activities.

*Need for Modification to Interim Corrective Actions*

In early 1992, the BWROG, citing its continuing studies, provided its members additional guidance on implementation of the interim corrective actions attached to NRC Bulletin 88–07, Supplement 1. In this guidance, the BWROG emphasized the need for caution when operating near the exclusion regions and recommended reexamination of procedures and training to ensure that uncertainties in the definition of exclusion region boundaries were appropriately reflected. The NRC staff considered this guidance in conjunction with an Augmented Inspection Team (AIT) review of a Washington Nuclear Power Unit 2 (WNP–2) 1992 instability event. The AIT report (Ref. 4) discusses that review and the BWROG guidance.

On August 15, 1992, Washington Nuclear Power Unit 2 (WNP–2) experienced power oscillations during startup. The NRC evaluated this event, concluding that the primary cause of the oscillations was very skewed radial and bottom peaked axial power distributions due to insufficient procedural control of control rod removal patterns during power ascension. It was concluded from discussions with other licensees that similar procedural practices were not unusual for some other BWRs. However, the vulnerability to instability was magnified in WNP–2 because the core loading consisted of a mixture of 9x9 and 8x8 fuel types which caused unbalanced flow and pressure drop characteristics. The WNP–2 event is described in NRC Information Notice 92–74, "Power Oscillations at Washington Nuclear Power Unit 2," dated November 10, 1992.

Most of the BWROG long-term solutions proposed in NEDO–31960 (Ref. 1) involve substantial modifications to the plant protection system hardware; these modifications are not expected to be ready for implementation until 1995–1996. The staff review of analytical studies in support of these solutions, and the circumstances leading to the WNP–2 event, have identified the following vulnerabilities which reflect uncertainty in the effectiveness of the current interim corrective actions to provide protection until implementation of the long-term solutions can be accomplished:

(1) Bulletin 88–07, Supplement 1, requested licensees of BWRs to take actions including a procedural requirement for a manual scram under all circumstances resulting in no recirculation pumps operating with the reactor in the RUN mode. This action was not applicable to plants with effective automatic scram protection against out-of-phase regional oscillations. Bulletin 88–07, Supplement 1 indicated that a flow-biased APRM scram circuit without a simulated thermal power monitor (filtered APRM signals) would provide such protection. However, more recent analyses by BWROG show that the flow-biased APRM scram does not provide sufficient protection for the out-of-phase mode of instability, which can produce very large asymmetric oscillations before exceeding the average power scram set point. The need for protection against out-of-phase oscillations remains under review for a few small core plants with small inlet orifices. Therefore, prior to completion of the long-term solutions reviews, the only plants that qualify for an exception to the Supplement 1 requested procedural requirement for manual scram are the BWR2 plants, Oyster Creek and Nine Mile Point 1, which have quadrant-based APRM scram protection.

(2) Bulletin 88–07, Supplement 1, endorsed the experience-based power/flow boundaries of the interim corrective actions based on the assumption that other factors important to the core stability characteristics (e.g., radial and axial peaking, feedwater temperature, and thermal-hydraulic compatibility of mixed fuel types) were consistent with previous experience and the bounding values expected during normal operation. The BWROG studies and the precautions recommended in the early 1992 letter to its members indicated that uncertainties existed in the definition of these boundaries (Ref. 4). The WNP–2 instability event and subsequent NRC evaluation determined that many licensees have given inadequate attention to the impact on core stability of the reload core design and operating procedures for changing reactor power. The WNP–2 experience also highlighted the value of using on-line stability monitors as an operational aid to avoid unstable operation; the capability for on-line stability monitoring does not exist currently for most BWRs.

*Requested Actions*

1. Within 60 days of receipt of this letter, all BWR licensees, except for Consumers Power Company (Big Rock Point, which does not have the capability for operation under variable flow conditions), are requested to review their operating procedures and operator training programs developed for the interim corrective actions and modify them as appropriate to strengthen the administrative provisions intended to avoid power oscillations or to detect and suppress them if they occur before the long-term solution can be implemented. The experience gained at WNP–2 should be a primary guide in this review. In doing this, each BWR licensee (except for Big Rock Point) should:

a. For all reactors except Oyster Creek and Nine Mile Point Unit 1, include procedural requirements for a manual

scram under all operating conditions when two recirculation pumps trip (or there are no pumps operating) with the reactor in the RUN mode;

b. Ensure that factors important to core stability characteristics (e.g., radial and axial peaking, feedwater temperature, and thermal hydraulic compatibility of mixed fuel types) are controlled within appropriate limits consistent with the core design, power/flow exclusion boundaries, and core monitoring capabilities of the reactor in question, and that these factors are controlled through procedures governing changes in reactor power, including startup and shutdown, particularly at low-flow operating conditions. If it is concluded that a near-term upgrade of core monitoring capability is called for to ease the burden on operators, determine the need to incorporate on-line stability monitoring or improved power distribution and thermal limits monitors, and inform the NRC of the schedule for such upgrades found to be necessary. The procedural operation controls implemented for the interim corrective actions should be considered for retention as appropriate to compliment plant specific long-term solution approaches.

2. By January 31, 1994, all BWR licensees, except for Big Rock Point, are requested to develop and submit to the NRC a plan for long-term stability corrective actions, including design specifications for any hardware modifications or additions to facilitate manual or automatic protective response needed to ensure that the plant is in compliance with General Design Criteria 10 and 12. An acceptable plan could provide for implementing one of the long-term stability solution options proposed by the BWROG and approved by the NRC in Reference 3 or in subsequent documentation. The plan should include a description of the action proposed and a schedule of any submittals requiring plant-specific design review and approval by the NRC and an installation schedule (if applicable). The plan should also address the need for near-term and long-term technical specification modifications.

*Reporting Requirements*

Pursuant to Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), each holder of a BWR operating license, except for Big Rock Point, shall:

1. Within sixty (60) days of the date of this letter:

a. Inform the NRC, in writing and under oath or affirmation, of the licensee's plans and status with respect to the actions requested in this letter;

b. If the licensee does not plan to take an action requested in this letter, the reasons for not taking the action, a description of the nature of any substitute action, and a schedule for completing or implementing the substitute action;

2. If the licensee plans to take an action requested, or a substitute action, within thirty (30) days of the completion of the action inform the NRC, in writing and under oath or affirmation, of the action taken and verify its completion or implementation.

Each submittal shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy shall also be submitted to the appropriate Regional Administrator.

This generic letter requests information that will enable the NRC to verify that the licensee is complying with its current licensing basis regarding GDC 10 and 12. Accordingly, an evaluation justifying this information request is not necessary under 10 CFR 50.54(f).

*References*


1. NEDO–31960, "BWR Owners' Group, Long-Term Stability Solution Licensing Methodology," May 1991.
2. NEDO–31960, Supplement 1, "BWR Owners' Group Long-Term Stability Solutions Licensing Methodology," March 1992.
3. Letter from A. Thadani, NRC, to L.A. England, Chairman, BWR Owners' Group, Acceptance for Referencing of Topical Reports NEDO–31960 and NEDO–31960, Supplement 1, "BWR Owners' Group Long-Term Stability Solutions Licensing Methodology," dated July 1993.
4. Letter from J.B. Martin, NRC, to A.L. Oxsen, Washington Public Power Supply System, "NRC Augmented Inspection of Washington Nuclear Project, Unit 2", September 29, 1992.


*Backfit Discussion*

This generic letter defines the requested actions and reporting requirements to be met by all holders of BWR operating licensees, except for Consumers Power Company (Big Rock Point), in order to enhance the current interim corrective action and to provide a long-term solution to the issue of thermal-hydraulic instabilities in BWRs. The staff has concluded that these requested actions and reporting requirements are a backfit that is necessary to ensure compliance with GDC 10 and 12. The basis for the determination is stated in the preceding discussion of the generic letter. Accordingly, pursuant to 10 CFR 50.109(a)(4)(i), a backfit analysis is not required.

Dated at Rockville, Maryland, this 14th day of July, 1993.

For The Nuclear Regulatory Commission.

**Gail H. Marcus,**

*Chief, Generic Communications Branch, Division of Operating Reactor Support Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17301 Filed 7–20–93; 8:45 am]

BILLING CODE 7590–01–M

## Biweekly Notice

### Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

**I. Background**

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 25, 1993, through July 9, 1993. The last biweekly notice was published on July 7, 1993 (58 FR 36423).

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 20, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory

Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of amendment request:* June 11, 1993

*Description of amendment request:* The proposed amendment revises Technical Specification Surveillance Requirement 4.1.1.1.1 pertaining to the determination of shutdown margin by adding an "and" at the end of 4.1.1.1.1.c and removing the "and" and adding a semicolon at the end of 4.1.1.1.1.d. It also proposes to change the reference to 4.1.1.1.1.e in Surveillance Requirement 4.1.1.1.2 to read 4.1.1.1.1.d.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These administrative changes to Technical Specification Surveillance Requirement 4.1.1.1.1 have no affect on equipment, procedures or accident initiators. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since these are administrative changes, there are no modifications or additions to the plant equipment. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not affect parameters which relate to the margin of safety as defined in the Technical Specifications. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602NRC Acting Project Director: S. Singh Bajwa

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* June 17, 1993

*Description of amendment request:* The proposed amendments would modify Technical Specification (TS) 5.3.1, Design Features of Fuel Assemblies, in accordance with the NRC's Generic Letter (GL) 90-02, Supplement 1, "Alternative Requirements for Fuel Assemblies in the Design Features Section of Technical Specifications." The licensee proposes to adopt the model TS provided with Supplement 1 to the GL. This change would provide flexibility in the repair of fuel assemblies containing damaged and leaking fuel rods by reconstituting the assemblies.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change to the requirements for "Fuel Assemblies" in the "Design Features" section of TS will not involve a significant increase in the probability or consequences of an accident previously evaluated because the modification merely provides a broader blanket under which any future specific modifications to the plant or changes to its safety analysis may be performed, while still requiring that any such changes meet the same standards and criteria that they would have been subject to.

The creation of a new or different kind of accident from any previously evaluated accident is not considered a possibility because the change is administrative in nature and does not represent an actual modification to the plant or change to its safety analyses.

The margin of safety is maintained by adherence to other fuel related TS limits and the FSAR [Final Safety Analysis Report] design bases. The change does not directly affect any safety system or the safety limits, and thus does not affect the plant margin of safety.

Accordingly, this proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* June 23, 1993, as supplemented July 1, 1993

*Description of amendment request:* The proposed amendments would be a one time change to make the allowable combined bypass leakage rate given in Technical Specification 3.6.1.2 a value of 0.104 $L_a$ from the current value of 0.07 $L_a$ for Unit 1, Cycle 9.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

*(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:*

The increase in leakage through the main steam penetration bellows results in an increase in the consequence for accidents which require containment integrity for accident mitigation. Analysis of these accidents show that all dose consequences are within the McGuire licensing limits considering increased containment bypass leakage. There is no increase in the probability of an accident since no accident initiators are involved with this change.

*(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:*

Operation of McGuire Unit 1 in accordance with the revised containment bypass leakage rate will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

*(3) Involve a significant reduction in a margin of safety;*

While the conservatively measured leakage through one mechanical penetration bellows increased this outage, this leakage represents a small fraction of the allowable containment leakage. The proposed Technical Specification change increases the allowable containment bypass leakage rate. This still assumes that the containment remains operable and performs its safety function. The proposed changes to the Technical Specifications will not impact the overall performance of the containment and will not prevent it from performing its safety function. Even with the Technical Specification change, the containment will continue to prevent uncontrolled releases to the environment. All other fission product barriers remain in place and function to limit accident consequences. In the event of a postulated design basis accident (DBA), the proposed Technical Specification change would not result in doses in excess of NRC acceptance criteria. Analysis results indicated a very slight increase in the radiation dose to control room personnel. Accordingly, the proposed Technical Specification change would not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* March 19, 1993

*Description of amendment request:* The proposed amendment would change Technical Specification 4.18.6 and Table 4.18-2 to make the requirements for C-3 reports consistent with the Babcock & Wilcox Standard Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[The proposed change] Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not affect reactor operations or accident analyses and has no radiological consequences. The proposed change deletes a purely administrative burden and provides clarification to existing Technical Specification requirements concerning Category C-3 Reports. Therefore this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[The proposed change] Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change deletes an administrative requirement and provides clarification to existing Technical Specification requirements. Since the proposed amendment would not change the design, configuration or method of operation of the plant, it would not create the possibility of a new or different kind of accident from any previously evaluated.

[The proposed change] Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change is administrative and concerns reporting requirements only. It does not change a safety limit, an LCO [limiting condition for operation], or a surveillance requirement on equipment required to operate the plant. The NRC retains the authority to review Entergy endeavors and take whatever action deemed necessary to ensure public health and safety. Therefore, no significant reduction in Margin of Safety is incurred.

Based on the above evaluation it is concluded that the proposed Technical Specification change does not constitute a significant hazards concern.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

*NRC Project Director:* Terence L. Chan (Acting)

**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* May 7, 1993

*Description of amendment request:* The amendment would change Technical Specification (TS) 6.12.3 by replacing the current references to Babcock & Wilcox topical reports with references to BAW-10179P-A, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses." The specification would also indicate that the approved revision number would be identified in the Core Operating Limits Report (COLR).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The removal of specific methodologies from the administrative controls section of [the] Technical Specifications and referencing them in a specific topical report (BAW-10179P-A) has no impact on plant operation or safety. This change is administrative in nature. The proposed change does not affect the safety analyses, physical design, or operation of the plant. Future revisions to BAW-10179P-A will be reviewed and approved by the NRC prior to use for reload analyses.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated

The proposed change is administrative in nature. No physical alterations of plant configuration, changes to plant operating procedures or operating parameters are proposed. Because no new equipment is being introduced, and no equipment is being operated in a manner inconsistent with its design, the possibility of equipment malfunction is not increased. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety

The proposed changes are administrative in nature and do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. NRC review and approval of the methodologies used to perform the ANO-1 cycle-specific reload analysis is not affected by this change. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the discussion of this amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

*NRC Project Director:* Terence L. Chan, Acting

**Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* June 25, 1993

*Description of amendment request:* This amendment proposes to modify the technical specifications to reflect appropriate portions of the guidance of NUREG-1434 (including relocating required surveillance and other editorial changes). In addition, the licensee proposes to relocate to plant administrative control procedures the requirement for the 31 day surveillance of the blowers and heaters identified in NUREG-1434 and the current technical specifications.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The relocation of the control of these surveillance requirements relating to the main steam isolation valve leakage control system (MSIV-LCS) involve no substantive changes to the surveillance and operability requirements currently contained in the Grand Gulf Nuclear Station (GGNS) Technical Specification (TS). The details of the surveillance requirements are currently in plant procedures. GGNS adheres to a policy of verbatim compliance with all plant procedures.

The information will be adequately controlled via the administrative requirements specified in TS 6.8 and TS 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10 CFR 50.59. The requirements of 10 CFR 50.59 include a review of the evaluated change for impact on the probability or consequences of an accident previously evaluated. The requirements of 10 CFR 50.59 prevent any evaluated change which increases the probability or consequences of an accident previously evaluated from being made without prior NRC approval. These changes, therefore, constitute an administrative revision only.

Therefore, there is no significant increase in the probability or consequences of a previously evaluated accident due to the proposed changes.

b. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

The relocation of the control of these surveillance requirements involve no substantive changes to the surveillance and operability requirements currently contained in the Grand Gulf Nuclear Station (GGNS) Technical Specification (TS). The details of the surveillance requirements are currently in plant procedures. GGNS adheres to a policy of verbatim compliance with all plant procedures.

The information will be adequately controlled via the administrative requirements in TS 6.8 and TS 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10 CFR 50.59. The requirements of 10 CFR 50.59 include a review of the evaluated change to ensure that the change would not create the possibility of a new or different kind of accident from any previously analyzed. The requirements of 10 CFR 50.59 prevent any evaluated change which would not create the possibility of a new or different kind of accident from any previously analyzed from being made without prior NRC approval. These changes, therefore, constitute an administrative revision only.

Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

c. This change would not involve a significant reduction in the margin of safety.

The relocation of the control of these surveillance requirements involve no substantive changes to the surveillance and operability requirements currently contained in the Grand Gulf Nuclear Station (GGNS) Technical Specification (TS). The details of the surveillance requirements are currently in plant procedures. GGNS adheres to a policy of verbatim compliance with all plant procedures.

The information will be adequately controlled via the administrative requirements in TS 6.8 and TS 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10 CFR 50.59. The requirements of 10 CFR 50.59 include a review of the evaluated change for impact on the margin of safety. The requirements of 10 CFR 50.59 prevent any evaluated change which decreases the margin of safety from being made without prior NRC approval. These changes, therefore, constitute an administrative revision only.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

Based on the above evaluation, Entergy Operations, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

*NRC Project Director:* Terence L. Chan (Acting)

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of amendment request:* June 21, 1993

*Description of amendment request:* The proposed amendments will change Technical Specifications (TS) Section 6.0, "Administrative Controls,≥by (a) revising unit staff titles to those of the current FPL Nuclear Division organization, (b) revising the composition of the Facility Review Group (FRG) to broaden the scope of available expertise, and (c) making minor editorial corrections.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revises certain administrative controls and does not alter any parameter or equipment reliability assumptions that are contained in the plant safety analyses to evaluate the consequences of an accident. Technical Specifications that are in place to preserve safety analysis assumptions or that provide assurance that the unit operating staff qualifications are acceptable have not been changed. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of plant operation defined in the Facility License. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Changes proposed for the composition of the Facility Review Group will expand the scope of available expertise represented in that group and preserve its currently established qualifications, safety-related functions, responsibilities, and authority. The proposed amendment will not change the basis for any Technical Specification that is related to the establishment of or maintenance of nuclear safety margins. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of amendment request:* June 28, 1993

*Description of amendment request:* The proposed amendments would revise the Hatch Units 1 and 2 Technical Specifications (TS), Appendix A to Operating Licenses DRP-57 and NPF-5. Specifically, the request is to revise Unit 1 TS 3.7.A.4 and Unit 2 TS 3.6.4.1, and their associated Bases, to allow one or more suppression chamber - drywell vacuum breakers to open during surveillance testing or when performing their intended function without considering them inoperable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accident of concern which requires vacuum breaker operability is the loss of coolant accident (LOCA). The requirement for all suppression chamber - drywell vacuum breakers to be closed ensures steam from a postulated LOCA is directed through the vent lines and is discharged under the water in the suppression chamber where it is condensed. If this steam avoids being condensed by traveling directly from the drywell to the suppression chamber air space through an open vacuum breaker, it could cause an unacceptable increase in containment pressure.

The Unit 2 hydrogen recombiner functional test involves operating the recombiner for 3 hours and is performed once per 6 months on each recombiner. Therefore, the total time any vacuum breaker may be open for this reason is approximately 12 hours per year. Since Unit 1 does not have a hydrogen recombiner system installed, the Unit 1 vacuum breakers would never be open for this reason. Since inerting and deinerting are only performed during plant startup and shutdown, vacuum breaker opening for this reason is also extremely infrequent. The probability of a LOCA occurring during one of these brief time periods is extremely small. Since the differential pressure increase is gradual for the above operations, it is expected that the degree of vacuum breaker opening is small. If a LOCA were to occur during this time, the resultant drywell pressure increase would force the vacuum breakers back to their closed position, thus eliminating the bypass leakage path. Since this proposed amendment will only allow vacuum breakers to open for a very short period of time, and the vacuum breakers would close if required to do so, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of vacuum breakers being open and the effect this could have on containment response to a LOCA have already been analyzed. In this situation, the vacuum breakers will be opening to relieve differential pressure between the suppression chamber and the drywell. Thus, the vacuum breakers would be operating per design for the purpose of performing their intended function. Allowing vacuum breakers to be open under these circumstances will not result in any new modes of plant operation or create any new failure modes. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

In the unlikely event a LOCA were to occur during the brief period of time the vacuum breakers are open, the resultant rapid increase in drywell pressure would cause the vacuum breakers to close. This would eliminate the bypass leakage path, and the containment pressure response to the LOCA would match the analyzed response. The resultant peak pressure would not exceed the design acceptance limit and the margin of safety would be unaffected. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* David B. Matthews

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* March 24, 1993

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) by modifying the requirements of the TS Section 3.8/4.8 to improve organization and clarity. This is part of the Duane Arnold TS improvement program. This amendment request also proposes, upon the loss of one emergency diesel generator, to eliminate the requirement to synchronize to the grid while determining operability of the remaining emergency diesel generator. This submittal corrects inconsistencies and supersedes in entirety, an amendment request dated October 30, 1992, on the same subject.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested

revisions do not affect the FSAR safety analysis involving these systems.

AC Power Systems

The revision to the applicability of TS Section 3/4.8.A, "AC Power Systems" only clarifies the wording. The systems are still required to be OPERABLE under the same conditions. The revisions to the LCO statements are also clarifications of the current specifications and the normal responses of plant operations personnel. The revision to the shutdown requirement is consistent with STS and other sections in DAEC TS. Separating the start and loading portions of the EDG connected to the bus following a loss of the other EDG decreases the probability of the EDG being subject to grid transients or attempting to pick up non-safety related loads during loss of offsite power. No changes are proposed to the systems or operation of the DAEC. The AC electrical power systems will still be available for operation of normal and safety-related systems and components under the same conditions so that these changes will not increase the probability or consequences of an accident previously evaluated.

DC Power Systems

The changes to TS Section 3/4.8.B, "DC Power Systems" are administrative in nature: the applicability statement is revised consistent with 3/4.8.A; a shutdown requirement consistent with STS and other DAEC TS is specified; a reference to 3.7.D is added for the case when the 250 Volt DC System is inoperable; and references to 3.1 and 3.2 are added for the case when a +/- 24 Volt DC System is inoperable. These changes do not alter the system or its OPERABILITY. The DC power systems will still function when required to support plant operation. These changes will not significantly increase the probability or consequences of an accident previously evaluated.

Onsite Power Distribution Systems

The proposed new TS Section 3/4.8.C, "Onsite Power Distribution Systems" consolidates the OPERABILITY requirements and Surveillance Requirements for these systems into one section. This change also includes LCOs for the various AC buses consistent with the equipment powered by the respective buses. These changes result in an enhancement to the specification by clearly stating the system OPERABILITY, Surveillance and LCO requirements in one place. This change will not significantly increase the probability or consequences of an accident previously evaluated because no equipment or operational changes are proposed.

Auxiliary Electrical Equipment - CORE ALTERATIONS

No changes are proposed to this section except to renumber it consistent with the other proposed changes.

Emergency Service Water System

Minor editorial changes are proposed for this section as well as revising the conditional surveillance requirement. The proposed new requirement to "verify" instead of "demonstrate" that one pump or loop of Emergency Service Water (ESW) is still OPERABLE when the other pump or loop becomes inoperable will not degrade the reliability of ESW to function as required. The assurance that the OPERABLE pump or loop will function as required is provided by the ASME Section XI IST Program.

The probability of human error will decrease with reduced testing. Human error such as misalignment of valves after the system is returned to its normal configuration following testing and the distraction of operator attention from monitoring and directing plant operation is less likely to occur if this testing is eliminated. Additionally, reducing the scope and frequency of surveillance testing will decrease the probability of equipment failure (due to excessive testing) which could require plant shutdown. Therefore, this change will not increase the probability of occurrence or consequences of an accident previously evaluated.

The revisions to the Bases are administrative in that they only reflect the changes to the individual specifications described previously in this section. All changes are consistent with the applicable specifications.

(2) The proposed amendment will not increase the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons:

As described above in response to question #1, none of the proposed changes alters the design of the plant or equipment or the plant's transient response. The changes to the Limiting Conditions for Operation applicable to TS Section 3.8 are consistent with STS and better ensure that equipment assumed to be OPERABLE in our accident analysis will be OPERABLE upon demand. The addition of Limiting Condition for Operation will better ensure that the assumptions in our accident analysis remain valid.

The changes to the Surveillance Requirements are consistent with the STS. Those systems required to mitigate accidents evaluated in the UFSAR will still be OPERABLE and available.

The reduction in conditional surveillance testing of certain systems and equipment will reduce the probability of equipment failure as a result of excessive testing or due to human error.

(3) The proposed amendment will not involve a significant reduction in a margin of safety for the following reasons:

The revisions to the Limiting Conditions for Operation in Section 3.8 of the TS will not invalidate the original licensing basis assumptions and will not invalidate any assumptions or input parameters for any DAEC event analysis. These changes provide more specific guidance only and are in accordance with the STS.

Extending the time period within which the DAEC must achieve COLD SHUTDOWN conditions will permit increased operator attention and minimal distractions for operators during shutdown, thus minimizing the risk of unexpected operational transients.

Additional surveillance testing for certain systems will provide additional assurance that these systems will be available when needed.

Elimination of unnecessary or conditional surveillance testing will not reduce the minimum necessary equipment OPERABILITY requirements or equipment reliability. Elimination of the redundant testing will reduce equipment failure due to excessive testing or human error.

In summary, the proposed administrative changes do not change the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident and do not involve a reduction in the margin of safety.

Therefore, the proposed license amendment is judged to involve no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

*NRC Project Director:* John N. Hannon

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* June 4, 1993

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) by modifying the requirements of the TS Section 3.6, "Primary Systems Boundary" and adding definitions into Section 1.0, "Definitions." The proposed changes provide additional definitions and improve clarity and consistency of LCOs and SRs. Most of the changes are consistent with Standard TS (NUREG-1202) while other changes are editorial or administrative in nature. Guidance provided by Generic Letters (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," and GL 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications," was used. This submittal corrects inconsistancies and supersedes in entirety, an amendment request dated December 31, 1992, on the same subject.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The proposed changes discussed in this section are provided to enhance the overall quality and safety significance of the existing DAEC TS. The proposed TS do not change any accident analysis, plant safety analysis, calculations, degrade existing plant programs, modify any functions of safety related systems, or accident mitigation functions DAEC has previously been credited with. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. These changes have no effect on the consequences of a previously evaluated accident.

2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter any plant parameters, revise any safety limit setpoint, or provide any new release pathways. In addition, the proposed changes do not modify the operation or function of any safety related equipment, nor do they introduce any new modes of operation, failure modes, or physical changes to the plant. The proposed changes do not change any plant parameters or transient responses assumed in the Design Bases of the plant and therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. Therefore, the proposed changes and corrections do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not require any modifications to existing plant systems or equipment, Emergency Operating Procedures, safety limit settings, or parameters utilized in the licensing bases for the safety analysis. These proposed changes are being made to enhance TS Section 3.6 by clarifying and making LCOs and SRs consistent throughout the section. In addition, several LCOs and SRs have been added, providing additional information that did not exist in the current TS. As discussed above, the proposed changes do not change any safety analysis or any accident mitigation actions for which DAEC has previously taken credit. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. These changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* John N. Hannon

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* May 12, 1993

*Description of amendment request:* The proposed amendment would delete the surveillance requirements for environmental monitors from the Technical Specifications (TS). A previous amendment relocated the surveillance requirements for the environmental monitors to the offsite dose calculation manual (ODCM), but through an administrative error, the surveillance requirements were not deleted from TS Table 4.1-3, Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither accident assumptions nor analyses of the Maine Yankee Final Safety Analysis Report are affected by the proposed change. This is an administrative change to the TS. A previous amendment (T3Amendment No. 125, dated December 4, 1991), relocated the radiological environmental monitoring program (REMP) to the ODCM. The surveillance requirements for the air samplers were inadvertently left in the TS when the REMP was relocated to the ODCM. Requirements for continuous sampling--and at least weekly analysis--of airborne radioiodine and particulates, are found in Table 2.3 (page 53) of the licensee's ODCM.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither accident assumptions nor analyses of the Maine Yankee Final Safety Analysis Report are affected by the proposed change. The proposed change is an administrative change to the TS. The proposed change does not involve a test or experiment, or a modification to a system, and does not affect any plant equipment or operating procedures.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature, and does not affect any operating practice or operating limit. The proposed change affects no plant equipment or systems.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

*Attorney for licensee:* Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336

*NRC Project Director:* Walter R. Butler

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* June 7, 1993

*Description of amendment request:* The proposed amendment would modify Technical Specification (TS) 4.6.A, Safety Injection and Containment Spray Systems, to 1) require quarterly, vice monthly, testing of automatic core flooding and containment spray valves, 2) require that containment isolation valves not tested quarterly during reactor operation be tested during the next refueling outage, and 3) require an air flow test of all containment spray nozzles every 10 years, vice every 5 years. The proposed amendment also would modify TS 4.6.B, Emergency Feedwater Pumps, to require quarterly, vice monthly, testing of emergency and auxiliary feedwater pumps. Finally, minor editorial changes are made throughout TS 4.6.A and B to clarify existing requirements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1.The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the surveillance testing frequency for the subject valves, spray headers and feedwater pumps. The overall reliability of these motor operated valves is established and maintained through the licensee's adherence to NRC Generic Letter 89-10, Safety Related Motor-Operated Valve (MOV) Testing and Surveillance, and its supplements, as well as the In-Service Program required by 10 CFR 50.55a and Section XI of the ASME Boiler and Pressure Vessel Code. The revised surveillance frequency for feedwater pumps and containment spray nozzles is consistent with the requirements of NUREG-1432, Standard Technical Specifications, Combustion Engineering Plants, Sections 3.6.6 and 3.7.5, respectively.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the surveillance testing frequency of the subject valves, spray headers and feedwater pumps maintains operability verification, by performance of the existing surveillance tests for these components. No changes are made to any structures, systems or components.

3. The proposed amendment would not involve a significant reduction in a margin of safety.

The proposed change maintains operability verification for the subject valves, spray headers and feedwater pumps through performance of existing surveillance tests. Only the performance frequency of these surveillance tests is changed. The surveillance test frequency will be consistent with the applicable requirements of ASME Code Section XI and the Combustion Engineering Standard Technical Specifications.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

*Attorney for licensee:* Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336

*NRC Project Director:* Walter R. Butler

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of amendment request:* June 11, 1993

*Description of amendment request:* The proposed amendment revises the pressure/temperature (P/T) limits for the reactor vessel. Specifically, Figure 3.4-2, "Millstone Unit 2 Reactor Coolant System Pressure-Temperature Limitations for 12 Full Power Years," on page 3/4 4-19, is being revised to reflect the change in the curves and the title changed to "Millstone Unit 2 Reactor Coolant System Pressure-Temperature Limitations for 20 EFPY [effective full power years]."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed curves will not result in any plant operational or hardware modifications. They are adjusted to incorporate the results of the testing program on surveillance capsule W-104 which was removed from Millstone Unit No. 2 vessel after 9 EFPY. The proposed change upgrades the P/T limits to account for the neutron irradiation damage and it incorporates the recently developed LTOP [low-temperature overpressure protection] criteria recommended by the ASME Code which specifies a maximum LTOP pressure of 110 percent of the Appendix G pressure. The previous criteria required that the LTOP pressure be maintained below the Appendix G allowable pressure. This change is found to be acceptable since it will continue to preclude nonductile failure of the RCS [reactor coolant system] while providing operator flexibility and minimizing the frequency of challenges to the LTOP system. The parameters identified in Regulatory Guide 1.99, Revision 2, have been addressed and have showed acceptable results. Therefore, the probability of occurrence or consequences of an accident previously analyzed have not been increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed curves will not result in any plant operational changes. The P/T limit curves were developed and implemented under a rigorous Quality Assurance Program to preclude nonductile failure of the RCS. In addition, the vessel neutron irradiation damage estimation has been validated through the Millstone Unit No. 2 surveillance program, including the evaluation of surveillance capsule W-104. This evaluation also demonstrated that the USE [upper-shelf energy] for the limiting vessel materials will remain above the 10CFR50, Appendix G requirement of 50 ft-lbs, through the remainder of the vessel design life. The adherence to the P/T curves will ensure that no new or different kinds of accidents are created.

3. Involve a significant reduction in a margin of safety.

The margins of safety against nonductile failure of the RCS are ensured through the requirements of 10CFR50.61, which states that failure of the RCS under worst case pressurized thermal shock events is highly unlikely as long as the maximum $RT_{NDT}$ [Reference Temperature Nil Ductility Transition] does not exceed 270°F anywhere in the RCS. The 270°F requirement is not expected to be exceeded during the current design license of the RCS.

The adherence of these curves will ensure that the plant is maintained in a safe condition. These curves have been developed so that the reactor coolant pressure boundary is maintained with sufficient margin to ensure that, when stressed under operating, maintenance, testing, and postulated accident conditions that the boundary behaves in a nonbrittle manner, and that the probability of rapidly propagating fracture is minimized. In addition, these analyses have been performed to ensure that the fracture toughness of the reactor vessel materials caused by neutron radiation is maintained within the required range.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

*Date of amendments request:* June 11, 1993, as revised June 30, 1993.

*Description of amendments requests:* The proposed amendments would revise the Technical Specifications to increase fuel enrichment from 4.25 weight percent to 5.0 weight percent. This includes a revision to the Technical Specifications to allow 5.0 weight percent U-235 fuel to be stored in the new fuel vault and the spent fuel pool and used in the core. In addition, Technical Specifications are being

revised to increase the minimum RWST boron concentration and incorporate references to natural uranium and ZIRLO clad material into the reactor core design description.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

*[Fuel Enrichment Limit Changes]*

*1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

*Fuel Storage*

There is no increase in the probability of a fuel assembly drop accident in the new fuel storage area or the spent fuel pool since the mass of a fuel assembly does not increase when the fuel enrichment is increased.

There is not a significant increase in the consequences of a fuel assembly drop accident in the spent fuel pool since the fission product inventories in the fuel assemblies do not change significantly due to an increase in the fuel enrichment. Spent fuel gap activities, which are a function of fuel assembly burnup, are not directly affected by an increase in fuel assembly enrichment. The spent fuel gap activities are a function of fuel burnup, which will be increased by the use [of] higher enriched fuel. However, the increase in fuel burnup anticipated with the proposed increase in fuel enrichment is not expected to significantly effect the fuel gap activity. Additionally, fuel burnup is not expected to increase beyond the value currently assumed in the accident analysis until late in 1996. The possible offsite dose consequences of extending fuel burnup during subsequent cycles will be evaluated to ensure compliance with 10 CFR Part 100 requirements prior to the startup of the first cycle where the maximum fuel burnup currently assumed in the accident analysis is expected to be exceeded.

There is no increase in the probability or consequences of misplacing fuel assemblies in the spent fuel pool or new fuel storage racks as a result of an increase in fuel enrichment. The probability of misplacing a fuel assembly in the spent fuel pool or new fuel vault is not increased because fuel assembly placement will be controlled pursuant to the current approved fuel handling procedures and the requirements of the proposed Technical Specifications [TS]. Additionally, there is no increase in the probability of misplacing fuel assemblies in the new fuel storage racks because the racks will be modified to prevent the insertion of fuel assemblies in the central 14 cell locations assumed to be open in the criticality analysis.

There is no increase in the consequences of misplacing fuel assemblies in the spent fuel pool because criticality analyses demonstrate that the pool will remain subcritical assuming misplacement does occur if the pool contains an adequate boron concentration. The proposed [TS] will ensure that the adequate boron concentration is maintained when required.

There is no increase in the consequences of misplacing fuel assemblies in the new fuel storage racks because for any such event, the absence of a moderator in the new fuel storage racks can be assumed as a realistic initial condition since assuming its presence would be a second unlikely event. Since the normal, dry new fuel rack reactivity is less than 0.62 (Fig. 5, Exhibit D), there is sufficient reactivity margin to the 0.95 limit to cover any possible misplacement.

There is no increase in the probability of introducing optimum moderation conditions in the new fuel storage vault as a result of an increase in fuel enrichment. The increase in fuel enrichment will have no effect on the possible introduction of a moderating material into the new fuel vault.

There is no increase in the consequences of introducing optimum moderation conditions in the new fuel storage vault as a result of an increase in fuel enrichment. The new fuel vault has been analyzed under a range of moderation conditions from fully flooded to optimum moderation at the increased fuel enrichment. These analyses demonstrate that the new fuel storage racks remain subcritical under these moderation conditions.

*Reactor Core*

Operation of Prairie Island Units 1 and 2 with 5.0 weight percent U-235 fuel in the reactor core does not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

1. The use of 5.0 weight percent U-235 fuel in the reactor core will be evaluated as part of cycle specific reload analyses using NRC approved methodology. These cycle specific analyses will confirm that reactor operation with the higher enrichment reload fuel will meet all applicable requirements and acceptable criteria.

2. Neither actuation of safety systems nor accident mitigating capabilities will be adversely affected by operation of the Prairie Island reactors with 5.0 weight percent U-235 fuel.

3. The proposed enrichment increase does not pose a challenge to installed safety systems. Therefore, no new performance requirements are being imposed on any system or component such that any design [criteria] will be exceeded.

*Conclusions*

Based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

*Fuel Storage*

Spent fuel handling accidents are not new or different types of accidents, in that they are already analyzed in the Updated Safety Analysis Report [USAR]. Criticality accidents in the new fuel storage vault or the spent fuel pool are not new or different types of accidents in that they are already analyzed inthe [USAR] for fuel enrichments up to 4.25 weight percent U-235. Additional criticality analyses (Exhibit D) have been performed for fuel enrichments up to 5.0 weight percent U-235.

As described above, the storage of higher enrichment fuel in the new fuel racks will require the modification of 14 central cells of the new fuel storage racks to prevent insertion of new fuel assemblies. The modifications and their installation will be minor in nature and as such will not create the possibility of a new or different kind of accident.

The administrative controls which will be implemented to control the storage of higher enrichment fuel will only affect where spent fuel assemblies can be stored and the required spent fuel pool boron concentration. Limiting where fuel assemblies can be stored in the spent fuel pool will have little affect on fuel handling operations and the boron concentration required for the storage of higher enriched fuel is well below the boron concentration normally maintained in the spent fuel pool. Therefore, the implementation of these administrative controls will not create the possibility of a new or different kind of accident.

The Prairie Island spent fuel racks utilize boraflex sheets between the storage cells to assure subcriticality of the racks. Even though the boraflex sheets in the spent fuel racks were not adhesively constrained during construction, which reduces the likelihood of gaps forming, concerns related to the possibility of gaps having formed in the boraflex sheets due to radiation induced shrinkage, were addressed in the criticality analysis by assuming four inch axial gaps at the axial center of the active fuel in all the boraflex panels in the spent fuel pool. This four inch gap is considered conservative based on neutron radioassay measurements of the boraflex poison material. The centerline positioning of the gap is also considered conservative because it resulted in the highest calculated $K_{eff}$.

Fuel assembly decay heat production is a function of core power level, and since the core power level remains unchanged, the decay heat load on the spent fuel pool cooling system will not be significantly impacted by the proposed enrichment limits.

*Reactor Core*

Operation of the Prairie Island reactors with 5.0 weight percent U-235 fuel will not create any initiators for accidents, including any accidents that may be different from those already evaluated in the [USAR].

*Conclusions*

As discussed above, the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology. Therefore, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the [USAR] remain bounding.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

*Fuel Storage*

The spent fuel pool storage configuration required by proposed specification 3.8.E will provide the administrative controls necessary to assure that fuel assemblies with the potential to form a critical array in the spent

fuel pool are segregated such that $K_{eff}$ will remain less than 0.95. The spent fuel pool boron required by proposed Specification 3.8.E will provide an additional safety margin to ensure criticality will not occur even if fuel assemblies were not stored in the required configuration.

The criticality analysis showed that $K_{eff}$ for the existing new fuel rack configuration would remain less than 0.95 with full density moderation.

The modification to prevent storage of new fuel assemblies in central 14 cells of the new fuel storage rack will assure that $K_{eff}$ will remain less than 0.98 when the new fuel racks are under optimum moderation conditions.

Therefore, since the calculated values of $K_{eff}$ have been shown to be bulated $K_{eff}$.

Fuel assembly decay heat production is a function of core power level, and since the core power level remains unchanged, the decay heat load on the spent fuel pool cooling system will not be significantly impacted by the proposed enrichment limits.

*Reactor Core*

Operation of the Prairie Island reactors with 5.0 weight percent U-235 fuel will not create any initiators for accidents, including any accidents that may be different from those already evaluated in the [USAR].

*Conclusions*

As discussed above, the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology. Therefore, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the [USAR] remain bounding.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

*Fuel Storage*

The spent fuel pool storage configuration required by proposed specification 3.8.E will provide the administrative controls necessary to assure that fuel assemblies with the potential to form a critical array in the spent fuel pool are segregated such that $K_{eff}$ will remain less than 0.95, The spent fuel pool boron required by proposed Specification 3.8.E will provide an additional safety margin to ensure criticality will not occur even if fuel assemblies were not stored in the required configuration.

The criticality analysis showed that $K_{eff}$ for the existing new fuel rack configuration would remain less than 0.95 with full density moderation.

The modification to prevent storage of new fuel assemblies in central 14 cells of the new fuel storage rack will assure that $K_{eff}$ will remain less than 0.98 when the new fuel racks are under optimum moderation conditions.

Therefore, since the calculated values of $K_{eff}$ have been shown to be below the regulatory limits and because they reflect a substantial sub-critical configuration for both the fuel storage areas under adverse conditions, the proposed changes will not result in a significant reduction in the plant's margin of safety.

*Reactor Core*

Operation of the Prairie Island reactors with 5.0 weight percent U-235 fuel will not involve a significant reduction in a margin of safety because increasing the fuel enrichment in the reactor core does not change the conclusions of the accident analysis or safety limits of the plant. Additionally, the use of higher enrichment fuel will not adversely affect the operation of the fuel in the reactor core and does not decrease the margin of safety as described in the bases to any [TS.]

*Conclusions*

Based on the conclusions of the above analysis, the proposed changes will not involve a significant reduction in the margin of safety.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

*[Refueling Water Storage Tank Boron Concentration Limit Changes]*

*1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

An increase in the required minimum RWST boron concentration has no effect on the probability of any accident previously evaluated.

The increase in the required minimum RWST boron concentration will ensure that the reactor will remain subcritical following a LOCA for reload cores utilizing fuel enriched to 5.0 weight percent U-235. Therefore, the proposed change will ensure [that] there is no increase in the consequences of a LOCA when fuel enriched up [to] 5.0 weight percent U-235 is utilized in the core.

Therefore, based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

Increasing the minimum RWST boron concentration to 2500 ppm will have no significant impact on plant operations since the actual RWST boron concentration is normally above that concentration and because no change is required in the way RWST boron concentration is controlled and maintained.

Because the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the [USAR] remain bounding.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

Increasing the minimum RWST boron concentration required by Technical Specification 3.3.A.1.a to 2500 ppm will provide adequate negative reactivity to ensure that the reactor will remain subcritical following a LOCA for reload cores utilizing fuel enriched to 5.0 weight percent U-235. The evaluation of post-LOCA long term shutdown margin performed as a part of each Reload Safety Evaluation will provide continued assurance that the 2500 ppm RWST boron concentration limit is adequate to maintain post-LOCA shutdown margin.

Therefore, since the increased RWST minimum boron concentration and cycle specific Reload Safety Evaluations will ensure that the reactor will remain subcritical following a LOCA, the proposed changes will not result in a significant reduction in the plant's margin of safety.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

*[Reactor Core Design Description Changes]*

*1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The incorporation of natural uranium and ZIRLO clad into the Technical Specification reactor core design description and use of those materials in the reactor core will not [affect] the probability of any accident previously evaluated.

The incorporation of natural uranium into the reactor core design description in Section 5.3.A.1 of the Prairie Island [TS] is strictly a clarification. Natural uranium has been previously used in the Prairie Island reactor cores in the form of axial blankets and replacement fuel rods. Natural uranium will respond to accident conditions in a manner similar to slightly enriched uranium. Additionally, fuel rods containing natural uranium instead of slightly enriched uranium will have lower gap activities which would slightly reduce the consequences of an accident. Therefore, the use of natural uranium in the reactor core has no significant effect on the consequences of an accident.

The use of ZIRLO clad material will not increase the consequences of an accident. ZIRLO clad has improved mechanical properties such as a lower corrosion rate and reduced radiation induced growth which may improve the fuel clad response to accident conditions. The NRC revised the acceptance criteria in 10 CFR Part 50, Sections 50.44 and 50.46 (Federal Register dated August 31, 1992), relating to evaluations of emergency core cooling systems and combustible gas control applicable to zircaloy clad fuel to include ZIRLO clad fuel. This revision to the federal regulations made ZIRLO an acceptable zirconium based cladding material along with zircaloy.

Therefore, based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analysed.*

Because the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the [USAR] remain bounding.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

The incorporation of natural uranium into the reactor core design description of the Prairie Island [TS] is strictly a clarification. Natural uranium has been previously used in the Prairie Island reactor cores in the form of axial blankets and replacement fuel rods. Any use of natural uranium in the reactor cores will be evaluated with NRC approved methodologies prior to use. The use of natural uranium has no effect on the safe operation of the reactor. The incorporation of natural uranium into the reactor core design description is consistent with the guidance provided in Section 4.2.1 of the Westinghouse Standard Technical Specifications, NUREG-1431.

ZIRLO clad has a lower corrosion rate and reduced radiation induced growth which will enhance the safe operation of the Prairie Island reactors. Any use of ZIRLO clad fuel in the reactor cores will be evaluated with NRC approved methodologies prior to use. The neutronic properties of ZIRLO are nearly identical to those of Zircaloy and therefore the use of ZIRLO is not expected to have any significant effect on the results of the core reload analyses. The NRC revised the acceptance criteria in 10 CFR Part 50, Sections 50.44 and 50.46 (Federal Register dated August 31, 1992), relating to evaluations of emergency core cooling systems and combustible gas control applicable to zircaloy clad fuel to include ZIRLO clad fuel. This revision to the federal regulations [made] ZIRLO an acceptable zirconium based cladding material along with zircaloy.

Therefore, the proposed changes will not result in a significant reduction in the plant's margin of safety.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037NRC Acting Project Director: W. M. Dean

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, Califuraia**

*Date of amendment requests:* May 7, 1993 (Reference LAR 93-01)

T3

*Description of amendment requests:* The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to amend TS 3/4.3.3.5, "Remote Shutdown Instrumentation." The proposed changes add remote shutdown control functions, increase the allowed outage time (AOT) for an inoperable remote shutdown function (instrumentation and control) from 7 days to 30 days, add an Action Statement that clarifies that separate entry is permitted for each function listed in Table 3.3-9, and revise the associated TS Bases.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to TS 3.3.3.5 do not alter the plant configuration or operation. The inclusion of remote shutdown control functions constitute additional restrictions over the remote shutdown system. Since the remote shutdown instrumentation and controls are not part of the primary success path to mitigate a design basis accident or transient [that] either assumes the failure or [presents] challenges to the integrity of a fission product barrier, and since the probability of an event that would require evacuation of the control room is low, the 30-day AOT [allowed outage time] is

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to TS 3.3.3.5 do not require physical alteration to any plant system or change the method by which any safety-related system performs its function. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes to TS 3.3.3.5 will not change any assumptions, initial conditions, or results of any accident analysis. Consequently, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

*Attorney for licensee:* Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

*NRC Project Director:* Theodore R. Quay

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of amendment requests:* May 14, 1993 (Reference LAR 93-02)

T3

*Description of amendment requests:* The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise Technical Specification (TS) 3.3.1, "Reactor Trip System Instrumentation," regarding the Reactor Protection System (RPS). The proposed TS corrects a typographical error in Table 3.3-1, Action 26, by adding the words "the next," to clearly state that a total of 12 hours is allowed to perform maintenance.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The TS revisions proposed in this LAR do not change the operating methodology of Diablo Canyon. The proposed administrative change corrects the Action statement as previously approved and is consistent with NRC [Safety Evaluation Report] SER dated April 30, 1990.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions to the Diablo Canyon TS are administrative in nature. Further, the proposed change would not result in any physical alteration to any plant system not previously approved, and there would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

[These administrative changes do not alter the basic regulatory requirements and do not affect any safety analyses.]

The proposed change corrects the Diablo Canyon Power Plant RPS [allowed outage times] AOT, this change is consistent with previous NRC review and approval in [License Amendments] LA 61 and 60.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

*Attorney for licensee:* Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

*NRC Project Director:* Theodore R. Quay

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* April 1, 1993

*Description of amendment request:* The licensee requested changes to the Peach Bottom Atomic Power Station, Units 2 and 3 Technical Specifications (TS) that will allow operation in an expanded operating domain. The existing operating domain would be modified to include the extended operating region on the reactor power-to-flow map bounded by the rod line that passes through the 100% power/75% core flow point (at approximately the 121% rod line). Operation in the expanded domain will require changes to the Average Power Range Monitor (APRM) and Rod Block Monitor (RBM) systems and associated TS. Operation in the expanded domain is based on the Maximum Extended Load Line Limit Analyses (MELLLA) performed by the General Electric Company (GE) in a Peach Bottom plant-specific report. The licensee has evaluated the proposed TS revisions as three separate changes. The first proposed change deletes the flow-biased APRM scram and rod block trip setpoint setdown requirements, deletes reference to the $k_f$ flow adjustment factor, introduces power and flow dependent adjustments to the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Minimum Critical Power Ratio (MCPR) limits, revises the documentation requirements of the Core Operating Limits Report (COLR) and deletes the definitions of the Fraction of Rated Thermal Power (FRP) and the Maximum Limiting Power Density (MFLPD). The second proposed change modifies the flow-biased APRM scram and rod block trip equations to accommodate an expanded operating domain. The third proposed change modifies the RBM trip setpoints.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Proposed Change 1: There will be no impact on the probability of any accident previously evaluated since the change applies a new methodology for assuring that the fuel thermal and mechanical design bases are satisfied and has no effect upon any accident initiating mechanism. The proposed change identifies that the adjustments to the MCPR and MAPLHGR limits, as specified in the Core Operating Limits Report, will be made as a function of core flow and power. These adjustments are determined using NRC approved methods as required by Technical Specification 6.9.1.e.2. Operation within the operating limits will ensure that the consequences of any accident which could occur would be within the acceptable limits. Thus, there is no significant change in the consequences of any accident previously evaluated.

Proposed Change 2: The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the flow-biased APRM rod block and scram trip setpoints. The probability of any accident is not increased by operating in the expanded operating domain because formulation of the flow-biased APRM rod block trip equation (including a new maximum value for the APRM rod block) has been established to maintain margin between the rod block setpoint and the scram setpoint. Additionally, this change will have no effect on any accident initiating mechanisms. The consequences of anticipated operational occurrences have been evaluated using NRC approved methods and the proposed setpoint formulations have been selected such that the consequences of any accident remain bounded by NRC approved criteria.

Proposed Change 3: The RBM system is not involved in the initiation of any accident and does not increase the probability of the occurrence of any accident. The RBM system only serves to mitigate the consequences of one event; the rod withdrawal error (RWE) anticipated operational occurrence. Analyses of the RWE were performed using NRC approved methods for the modified RBM configuration and setpoints. The results demonstrate that the consequences of the RWE event are less severe with the modified RBM system than with the current configuration. Therefore, the proposed change does not involve an increase in the consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Proposed Change 1: The proposed change eliminates the requirement for setdown of the flow-biased APRM scram and rod block trip setpoints under specified conditions and substitutes adjustments to the MCPR and MAPLHGR operating limits. Because the MCPR and MAPLHGR limits will continue to be met, no transient event will escalate into a new or different type of accident from any accident previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 2: Changing the formulation for the flow-biased APRM rod block and scram trip setpoints does not change their respective functions and manner of operation. The change does not introduce a sequence of events or introduce a new failure mode that would create a new or different type of accident. The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the increasing power/flow condition continues beyond the APRM rod block setpoint. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 3: The proposed change does not alter the function of any component or system other than the RBM system. The changes to the RBM system have been designed to enhance the reliability and accuracy of the RBM system without impacting the degree of isolation of the RBM system from other plant systems. The function of the RBM system does not change. The change does not involve a new sequence of events or the introduction of a new failure mode that could create a new or different kind of accident. Therefore, the proposed change does not create the possibility of a

new or different kind of accident from any accident previously evaluated.

3. The proposed change does not result in a significant reduction in a margin of safety.

Proposed Change 1: The changes in the operating limits will maintain the existing margin to safety limits. The new adjustments impose thermal limit restrictions such that the consequences of anticipated operational occurrences are no more severe than the most limiting conditions with the current Technical Specifications with the flow-biased APRM scram and rod block setpoint setdown provisions. The flow and power adjustment factors were determined using NRC approved methods and satisfy the same NRC approved criteria met by analyses assuming setdown of the flow-biased APRM scram and rod block setpoints. The impact of eliminating the setdown requirements on the LOCA response has been evaluated at low flow conditions and all 10 CFR 50.46 and 10 CFR 50, Appendix K criteria have been met. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Proposed Change 2: The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the increasing power/flow condition continues beyond the APRM rod block setpoint. Operation in the new expanded operating domain has been analyzed by General Electric and sufficient margin to design limits exist. Therefore, the proposed change does not involve a reduction in the margin of safety.

Proposed Change 3: The proposed change revises the setpoints for the RBM system which is solely designed to mitigate the consequences of the RWE event. The RBM setpoint is being changed from a flow biased equation to 3 discrete power dependent setpoints. Analyses of the RWE event are used to derive the setpoints such that the safety limit for the minimum critical power ratio (MCPR) will not be challenged. By an appropriate selection of the setpoints, the RWE will not be the limiting event and will not determine the operating limit MCPR. In this respect, the RBM setpoints are dependent upon the operating limit MCPR values which depend on the cycle-specific conditions. For this reason, the proposed change also identifies that these setpoints are specified in the COLR. The COLR is prepared based on the results of analyses using NRC approved methods as required by Technical Specification requirements for the COLR. The operating limit MCPR maintains the margin of safety for this thermal limit. Thus, the proposed change does not involve a reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* Charles L. Miller

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* May 25, 1993

*Description of amendment request:* The licensee proposes to make several administrative changes to the Technical Specifications. The first change (licensee technical specification change request (TSCR) 92-06) removes reference to the service platform hoist from TS 3.10.A.4, TS Bases Section 3.10 and TS 4.10.A.3. The service platform hoist has been removed since 1985 and the proposed changes update the TS to reflect the removal of the service platform hoist. The second change (licensee TSCR 93-03) corrects a typographical error to TS Table 3.2.B. The revision will reflect the correct setpoint tolerance (plus or minus 5%) for the Emergency Transformer Degraded Voltage Inverse Time relays. The setpoint tolerance was incorrectly listed as plus-5% when the setpoint was originally incorporated into the TS by amendments 97 (Unit 2) and 99 (Unit 3). The third change (licensee TSCR 93-04) clarifies the bases for the Turbine Control Valve Fast Closure and Turbine Stop Valve Closure scram signal bypass setpoints. The updated bases change is made to Note 4 to TS Table 3.1.1 and to TS Bases Section 3.1.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Licensee proposes that this application does not involve significant hazards considerations for the following reasons:

i) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TSCR 92-06 proposes to delete references to the Service Platform Hoist due to the fact that it has been physically removed from service. Deletion of these references will enhance safety by providing clarity when interpreting the Technical Specifications.

TSCR 93-03 proposes to correct a typographical error regarding the setpoint tolerance of the Emergency Transformer Degraded Voltage Relay. Correction of this typographical error will enhance safety by eliminating confusion in interpreting the Technical Specifications.

TSCR 93-04 proposes to change the basis, based on GE SIL 423, for which the bypass setpoint for the Turbine Stop Valve Closure and the Control Valve Fact Closure scram signals are established.

Because the above proposed changes are administrative in nature, they do not affect the initial conditions or precursors assumed in the Updated Final Safety Analysis Report Section 14. These changes do not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents.

Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

ii) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not make any physical changes to the plant or changes to operating procedures. Therefore, implementation of the proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

iii) The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature and are intended to provide clarification or eliminate confusion when interpreting the Technical Specifications. The proposed changes do not adversely affect the assumptions or sequences of events used in any accident analysis.

Therefore, the proposed changes do not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* Charles L. Miller

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* June 28, 1993

*Description of amendment request:* The proposed change would add a footnote to Technical Specification (TS) 4.7.A.2.f to indicate that a Type A, B, or C test is not required following the replacement of piping and welds in the Core Spray System minimum flow lines during the 1993 maintenance outage. Replacement of sections of these lines is necessary because wall thinning was discovered during the 1992 refueling outage. The licensee has proposed to implement an alternate inspection program in lieu of a Type A, B, or C test currently required by the TSs and 10 CFR Part 50, Appendix J, Section IV.A. The licensee submitted a request for an exemption from this requirement of 10 CFR Part 50, Appendix J, concurrent with the request for amendment of the TSs.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability of an accident or consequence previously evaluated. The proposed change would allow for the replacement of piping and welds which constitute the Core Spray System minimum flow lines (32-W23-152-7A, B), without performing a leakage test as required by Technical Specifications. This replacement will improve the structural capability of the Core Spray System by use of improved materials. [Performance of] 100% radiography, system leakage test, and surface examinations on the new welds forming a portion of the primary containment boundary will assure structural integrity of the new welds and the lack of any flaws through which a leakage path could develop. Since the structural integrity of the containment pressure boundary through these new welds are assured, the probability of occurrence or consequences of any accident previously evaluated is not significantly increased.

2. create the possibility of a new or different kind of accident from those previously evaluated. Not performing an ILRT [integrated leak rate test] during the Fall 1993 maintenance outage cannot initiate any type of accident. The replacement of piping and welds which constitute the Core Spray System minimum flow lines (32-W23-152-7A,B) improves the Core Spray System structural capability. Using the improved material for this piping reduces the probability of cavitation induced pitting in the future. The planned compensatory measures provide assurance of the structural and leak integrity of the piping. Since the structural integrity of the containment pressure boundary through these welds are assured, no change is made to the possibility of a new kind of accident from those previously evaluated.

3. involve a significant reduction in the margin of safety. Performance of 100% radiography, surface examinations, and a system leakage test, in lieu of a pneumatic leak rate test on the new welds, is conservative. These examinations assure the structural integrity of the new welds and the lack of any flaws through which a leakage path could develop. In combination, these examinations ensure zero leakage through the new welds. The construction code (ANSI B-31.1-1967) allows for 100% radiograph as an alternate to leakage testing when such testing is not practicable. There is no reduction of any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama**

*Date of amendments request:* March 4, 1993, as supplemented June 29, 1993

*Description of amendments request:* The requested amendment would (1) delete the references to diesel generator 2C from Technical Specifications (TS) 3/4.8.1.1 and 3/4.8.1.2; (2) revise the diesel generator test schedule based upon the Nuclear Management and Resources Council (NUMARC) guidance for determining the number of allowable failures and valid demands;(3) delete 600 volt load centers J and H as listed in TS 3/4.8.2; and(4) revise the requirements of TS 6.9.1.12 for the Annual Diesel Generator Reliability Report; and (5) revise TS 6.8.1 to include a reference to the document that provides the testing, maintenance, and procurement requirements applicable to the 2C diesel generator and to include a requirement to inform the NRC if the 2C diesel generator is out of service for more than 10 days.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes to the electrical system technical specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated. The elimination of diesel generator 2C as an emergency power source will not impact the remaining four EDGs ability to supply all shutdown loads during the worst case design basis accident with LOSP [loss of offsite power]. The revised testing schedule will provide asssurance that individual EDGs are maintained in a high degree of reliability and that the calculated unit reliability is within the limits required by the SBO rule.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new failure mechanisms are being introduced which could create a new or different accident than those previously evaluated. All equipment required to complete a safe unit shutdown following a design basis event will continue to receive emergency electrical power should a total loss of offsite power occur.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The emergency electrical power system's ability to cope with the worst case design event, considering a single failure, is unaffected by the proposed technical specification changes. The minor increase in electrical loading on the remaining train B EDGs, as a result of the designation of DG 2C as the SBO AAC, will not exceed the rated capacity of the EDGs. The assumptions used in the analyses of the design basis events will not be impacted by the proposed elimination of DG 2C. The revised test schedule is consistent with the SBO rule's goal of enhanced EDG reliability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

*Attorney for licensee:* James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

*NRC Project Director:* S. Singh Bajwa

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment request:* March 15, 1993, resubmitted April 21, 1993

*Description of amendment request:* The proposed amendments to the Technical Specifications (TS) would permit use of the two new Main Control Room and Emergency Switchgear Room (ESGR) Air Conditioning System chillers to meet the Limiting Condition for Operation and establish an allowed time period to restore a chiller to operable status when two of the required three chillers become inoperable. An action statement is being added to allow one hour to restore one of two inoperable chillers to operable, when two of the three required chillers become inoperable, prior to shutting down both Surry units. Since the Air Handling Units (AHU) associated with the chiller system have been returned to 100% capacity, the associated fire watch is no longer necessary in the ESGRs, thus the Basis section of the TS is being revised to delete the required fire watch in the ESGRs. Defined words are being capitalized throughout TS Section 3.23 and system names are being capitalized and acronyms are being spelled out for consistency

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below. The proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The Main Control Room and Emergency Switchgear Room Air Conditioning System is not involved in the initiation of any previously evaluated accidents. Therefore, the probability of such accidents is not affected. The requirement to have three chillers operable whenever either unit is above Cold Shutdown is being maintained. Any three operable chillers, powered from three of the four emergency buses with one of the chillers capable of being powered from the fourth emergency bus, will continue to provide equivalent capacity and redundancy to remove the heat load during normal and accident conditions. Providing one hour to restore a second chiller to operable status when there is only one operable chiller does not change air conditioning system or equipment operation. Therefore, the probability of occurrence and the consequence of an accident previously evaluated is not increased.

Elimination of the fire watch in the emergency switchgear rooms does not affect the probability or consequences of any previously analyzed accident. The firewatch was an interim measure pending completion of the AHU upgrade restoring air handling capacity to original design. The AHU modifications are complete and the interim firewatch is no longer necessary. Therefore, the fire watch has no impact on the probability of occurrence or consequences of an accident. The administrative changes do not impact plant operation or system design. Thus, the consequences of an accident are not being affected by this change.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any new failure modes or accident precursors. Eliminating the specific chiller identification from the operability requirements does not create any new or different kind of accident scenarios. Operation of the Main Control Room and Emergency Switchgear Room Air Conditioning System does not change. Providing one hour to restore a second chiller to operable status when there is only one operable chiller does not change air conditioning system or equipment operation.

Elimination of the fire watch in the Emergency Switchgear Rooms does not create any new or different kind of accident scenario. The air handling capacity in the Main Control and Emergency Switchgear Rooms has been restored to original design capacity. Therefore, the interim firewatch is unnecessary for Appendix R considerations. The administrative changes do not impact plant operation or system design. Therefore, no new or different kind of accident is being created.

3. Involve a significant reduction in a margin of safety.

The revised Technical Specification maintains the required capacity and redundancy in the Main Control Room and Emergency Switchgear Room Air Conditioning System to ensure sufficient heat removal during normal and accident conditions. Providing one hour to restore a second chiller to operable status when there is only one operable chiller does not significantly reduce the margin of safety.

The air handling capacity in the Main Control Room and Emergency Switchgear Room has been restored to original design capacity. Therefore, the interim firewatch is unnecessary for Appendix R considerations. The administrative changes do not impact plant operation or system design. Therefore, the margin of safety as defined in any Technical Specification is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

*NRC Project Director:* Herbert N. Berkow

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment request:* February 23, 1993

*Description of amendment request:* This amendment would revise the Technical Specifications (TS) in Section 3.5, "Instrumentation System," Table 3.5-6, "Instrumentation Operating Conditions for Indication," and Table 4.4-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." The proposed amendment would add operability and surveillance requirements for the reactor vessel level indication and core exit thermocouple instrumentation installed at Kewaunee in 1987 as part of the instrumentation to detect inadequate core cooling. Similar additions are proposed for the wide range steam generator level instrumentation upgraded in 1992. Administrative changes are also being proposed dealing with format and typographical inconsistencies.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are consistent with the guidance provided in NRC Generic Letter 83-37. Specifically, surveillance requirements, limiting conditions for operation, and required actions are provided for the instrumentation. These new specifications help to ensure instrument reliability and availability, and add restrictions not presently included in the TS. The other proposed changes are administrative in nature. Hence, the probability or consequences of an accident previously evaluated would not be increased.

The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would not alter the plant configuration, operating set points or overall plant performance. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

The proposed changes would not involve a significant reduction in the

margin of safety. The proposed changes include enhancements to the specifications and additional controls and limitations. Hence, overall plant safety would be enhanced, and the margin of safety would not be reduced.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

*NRC Project Director:* John N. Hannon.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment request:* May 4, 1993

*Description of amendment request:* This proposed amendment would remove the Radiological Effluent Technical Specifications (RETS) from the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications. This proposed amendment is in accordance with the Nuclear Regulatory Commission's (NRC) Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or the Process Control Program," dated January 31, 1989. Generic Letter 89-01 summarizes the results of the NRC's study of the RETS as it relates to the Commission's Interim Policy Statement on Technical Specification Improvements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because relocating the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) or the Process Control Program (PCP) is strictly an administrative change that does not reduce or modify any existing safety requirement or procedure.

The proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated because no new accident scenario is created and no previously evaluated accident scenario is changed by relocating procedural requirements from one controlled document to another.

The proposed change does not involve a significant reduction in a margin of safety because no modification of any plant structure, system, component, or operating procedure is associated with this administrative change, so all safety margins remain unchanged.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

*NRC Project Director:* John N. Hannon.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment request:* May 5, 1993

*Description of amendment request:* The proposed amendment would change the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications to satisfy commitments made by the licensee regarding NRC Generic Letter 90-06. This letter deals with Generic Issue 70 and Generic Issue 94, which focus on power-operated relief valve and block valve reliability and additional low-temperature overpressure protection. The proposed amendment includes restrictions on the restart of an inactive reactor coolant pump, modifications to the limiting conditions for operation of the pressurizer power-operated relief valves (PORVs) and associated block valves, modifications to the limiting conditions for operation for reactor coolant temperature and pressure, and provisions to ensure that adequate low-temperature overpressure protection (LTOP) is available. This amendment request supersedes the amendment request on the same subject that was submitted on May 9, 1991, and supplemented on June 26, 1991 and July 24, 1992. The previous amendment request was noticed on July 24, 1991 (56 FR 33962).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(a) Reactor coolant pump starting prohibitions

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

LTOP is required in pressurized water reactors to provide protection against brittle fracture of the reactor pressure vessel. The licensing basis of the KNPP LTOP system assumes that the maximum temperature difference between the secondary side heat sink and the reactor coolant system cold leg will be less than or equal to 100°F when a reactor coolant pump is started. This proposed TS provides an additional control to ensure that the licensing basis of the LTOP system is satisfied. Consequently, this proposed TS provides increased assurance that the KNPP Appendix G pressure-temperature limits (proposed Figure TS 3.1-4) will not be exceeded due to an energy input event. Therefore, this proposed change does not increase the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS provides an additional restriction to assure that the design basis of the KNPP LTOP system is met. Therefore, the proposed TS change would not allow the KNPP to operate outside of its design basis.

3) involve a significant reduction in the margin of safety.

This proposed TS change will not reduce the margin of safety. Rather, the proposed change provides an additional administrative control to ensure plant operation remains within the design basis of the LTOP system. Consequently, the likelihood of the KNPP experiencing a pressure transient due to an energy input event that challenges the LTOP system and the Appendix G pressure/temperature limits is reduced.

(b) Modifications to the limiting conditions for operation of the pressurizer PORVs and associated block valves

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated will not be increased by this TS

change. The accident of interest is a design-basis steam generator tube rupture (SGTR). The probability of a SGTR will not be increased as a result of providing an additional administrative control to ensure the availability of the pressurizer PORVs and block valves.

In addition, the consequences of an accident previously evaluated will not be increased by this TS change. The proposed change provides increased assurance that the pressurizer PORVs and block valves will be available to assist in the mitigation of a SGTR and thus limit the consequences of a SGTR.

2) create the possibility of a new or different kind of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS is for the purpose of providing reasonable assurance that the pressurizer PORVs and block valves are available when called upon to perform a function. Ensuring the availability of the PORVs and block valves will not alter the plant configuration, or plant performance.

3) involve a significant reduction in the margin of safety.

The margin of safety will not be reduced by this change to the Technical Specifications. This TS change increases the assurance that the pressurizer PORVs and block valves will be available when called upon to perform a function. Therefore, plant safety is enhanced and the risk to the health and safety of the public is reduced.

(c) Modifications to the limiting conditions for operation for reactor coolant temperature and pressure

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The use of RG 1.99 Regulatory Position C.2 does not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, construction standards, or setpoints. The probability of a LTOP event occurring is independent of the pressure temperature limits for the RCS pressure boundary. Therefore, the probability of a LTOP event occurring remains unchanged.

The use of predicted fluence values through the end of operating cycle 20 is appropriately considered within the calculations in accordance with standard industry methodology previously docketed under WCAP 13227. Revised flux values were used for Cycles 16, 17, and 18 based on actual core reload designs. All other flux values were taken from WCAP 12333.

The calculation of pressure temperature limits in accordance with approved regulatory methods provides assurance that reactor pressure vessel fracture toughness requirements are met and the integrity of the RCS pressure boundary is maintained.

The use of Regulatory Position C.2 and fluence values through EOC 20 meet previously established criteria for protection of the health and safety of the public. The consequences of a LTOP transient therefore, remain unchanged.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

The use of Regulatory Position C.2 and fluence through EOC 20 does not modify the reactor coolant system pressure boundary, nor make any physical changes to the LTOP setpoint or system design.

Therefore, no new failure mechanisms are created that could create the possibility of an accident of a new or different type.

3) involve a significant reduction in the margin of safety.

The appendix G pressure temperature limitations are calculated in accordance with regulatory requirements and calculational limitations specified in RG 1.99, Revision 2. RG 1.99 is an acceptable method for implementing the requirements of 10 CFR 50 Appendices G and H.

The revised calculations meet the NRC acceptance criteria for the LTOP setpoint and system design as described in NRC Safety Evaluation Report (SER) dated September 6, 1985, which concluded that "the spectrum of postulated pressure transients would be mitigated...such that the temperature pressure limits of Appendix G to 10 CFR 50 are maintained."

The use of Regulatory Position C.2, meets previously established criteria for the pressure temperature limits for the LTOP system and setpoint. Thus, the margin of safety as described in the NRC SER is not reduced.

(d) Operability requirements of the LTOP system

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

LTOP is required in pressurized water reactors to provide protection against brittle failure of the reactor pressure vessel. This proposed TS provides additional administrative assurance that LTOP will be available to mitigate a pressure transient event. The proposed TS is consistent with the design basis of the LTOP system. Consequently, this proposed TS provides increased assurance that the KNPP Appendix G pressure/temperature limits will not be exceeded during an overpressure event. Therefore, this proposed change will not increase the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS is for the purpose of providing additional administrative assurance that LTOP will be available at the KNPP. The proposed TS is consistent with current plant practice regarding LTOP and will not alter the plant configuration or performance.

3) involve a significant reduction in the margin of safety.

This proposed TS change will not reduce the margin of safety. Rather, the proposed TS change provides an additional administrative control to ensure LTOP availability. Consequently, the likelihood of a pressure transient exceeding the KNPP Appendix G pressure/temperature limits at low temperatures is reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

*NRC Project Director:* John N. Hannon.

## Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* June 17, 1993

*Brief description of amendment request:* The proposed amendment would change the Salem Nuclear Generating Station, Units 1 and 2, Updated Final Safety Analysis Report (UFSAR), Section 4.3 and 15.3.5, relative to single rod control cluster assembly (RCCA) withdrawal events. The change would incorporate a new assumption that a potential single failure in the rod control system can cause misoperation of a single or multiple RCCAs and provides the necessary analysis to show continued

compliance with General Design Criterion (GDC) 25. As a result, the changes would reclassify the single RCCA withdrawal event from a Condition III event to a Condition II event. This reclassification would assume an increased frequency in the occurrence of the event, but would show that the fuel design limits would not be exceeded.

*Date of publication of individual notice in* **Federal Register:** June 29, 1993 (58 FR 34833)

*Expiration date of individual notice:* July 29, 1993

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

**Notice of Issuance of amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, and at the local public document rooms for the particular facilities involved.

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois**

*Date of application for amendments:* March 11, 1993, as supplemented June 21, 1993

*Brief description of amendments:* The amendments modify the Technical Specifications in accordance with Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications (RETS) in the Administrative Controls Section of the Technical Specifications and Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP)." The amendments implement the Generic Letter by relocating the procedural details of the current radioactive effluent and radiological environmental monitoring program and solid radioactive waste program to the offsite dose calculation manual and process control program, respectively; and incorporate related programmatic controls into the Administrative Controls section of the TS.

*Date of issuance:* June 29, 1993

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 146 and 134

*Facility Operating License Nos.* DPR-39 and DPR-48. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 28, 1993 (58 FR 25853) The June 21, 1993, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of application for amendment:* April 30, 1993, as supplemented by letter dated May 26, 1993.

*Brief description of amendment:* The amendment modifies Technical Specification 3/4.8, "Electrical Power Systems," paragraph 4.8.1.1.2.b, to reflect a design change that would change the allowable elapsed time for the automatic load sequencer for the "backup" containment air recirculation fans to 5 minutes plus or minus 30 seconds from 48 seconds plus or minus 5 seconds. The amendment also makes two editorial changes to amend the wording of "Backup" to "Second Containment Recirc. Fan" and add "First" to the beginning of "Containment Recirc. Fan" on the previous line.

*Date of issuance:* June 28, 1993

*Effective date:* June 28, 1993

*Amendment No.:* 160

*Facility Operating License No.* DPR-51. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30191) The May 26, 1993 submittal provided supplemental information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 28, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* June 27, 1991

*Brief description of amendment:* The amendment changed Technical Specifications (TS) 5.3.1.6 and 5.4.1.1 to increase the maximum allowable enrichment for future reload fuel from 3.5 to 4.1 weight percent uranium-235 (U-235). TS 5.4.1.1 was also revised to delineate the allowable storage positions in the fresh fuel rack. Additionally, "235U" is corrected to "U-235."

*Date of issuance:* June 28, 1993

*Effective date:* June 28, 1993

*Amendment No.:* 166

*Facility Operating License No.* DPR-51. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 7, 1991 (56 FR 37580) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas**

*Date of application for amendment:* February 24, 1993

*Brief description of amendment:* The amendment changed the flow test acceptance criteria for a single pump in the high pressure safety injection (HPSI) system from a minimum of 196 gallons-per-minute (gpm) for each injection leg to a total flow of 570 gpm, excluding the highest injection leg's flow rate.

*Date of issuance:* June 28, 1993

*Effective date:* June 28, 1993

*Amendment No.:* 148

*Facility Operating License No.* NPF-6. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 31, 1993 (58 FR 16859) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of application for amendments:* September 2, 1992

*Brief description of amendments:* The amendments would correct the reactor pressure vessel water level corresponding to the Top of Active Fuel for both units. The correct value is 6 inches higher than the value shown in TS Figure 2.1-1 for Unit 1 and Figure B 3/4 3-1 for Unit 2.

*Date of issuance:* July 1, 1993

*Effective date:* To be implemented no later than 60 days from the date of issuance

*Amendment Nos.:* 187 and 126

*Facility Operating License Nos.* DPR-57 and NPF-5. Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: April 14, 1993 (58 FR 19480) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of application for amendment:* April 29, 1993

*Brief description of amendment request:* The amendments revise Technical Specification (TS) Definition 1.19, "Offsite Dose Calculation Manual," TS 3.11.1.4, "Liquid Holdup Tanks," TS 3.11.2.6, "Gas Storage Tanks," TS 6.9.1.4, "Semiannual Radioactive Effluent Release Report," and TS 6.14, "Offsite Dose Calculation Manual," to extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual in accordance with the revised 10 CFR 50.36a.

*Date of issuance:* June 29, 1993

*Effective date:* June 29, 1993

*Amendment Nos.:* 52 and 41

*Facility Operating License Nos.* NPF-76 and NPF-80. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: May 26, 1993 (58 FR 30196) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 1993

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488.

**Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan**

*Date of application for amendments:* May 1, 1992, as supplemented June 18, 1993.

*Brief description of amendments:* The amendments change the Technical Specifications (TS) in accordance with the guidance provided in Generic Letter (GL) 90-09. The changes revise the snubber visual inspection surveillance requirements in Unit 1 TS 3/4.7.8, Unit 2 TS 3/4.7.7, and their associated bases. The amendments also remove the Unit 1 and Unit 2 snubber components lists from TS Tables 3.7.4 and 3.7.9 of Unit 1 TS 3/4.7.8 and Unit 2 TS 3/4.7.7, respectively in accordance with the guidance contained in GL 84-13.

*Date of issuance:* July 9, 1993

*Effective date:* July 9, 1993

*Amendment Nos.:* 173 and 156

*Facility Operating License Nos.* DPR-58 and DPR-74. Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: March 3, 1993 (58 FR 12261). The June 18, 1993, letter provided updated TS pages only and did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Maine Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of application for amendment:* April 7, 1993

*Brief description of amendment:* This amendment increases the membership and quorum requirements of the Plant Operation Review Committee (PORC), to reflect current plant management positions, and adds three analytical methods to the list of analytical methods approved by the NRC for determining core operating limits.

*Date of issuance:* July 1, 1993

*Effective date:* July 1, 1993

*Amendment No.:* 139

*Facility Operating License No.* DPR-36: Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: May 12, 1993 (58 FR 28057) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* February 25, 1992, as supplemented by letters dated June 9, 1992, and June 14, 1993.

*Brief description of amendment:* The amendment clarifies the performance criteria and surveillance requirements for the Cooper Nuclear Station DC power systems by adding new specifications and surveillance requirements, and by reformatting, to incorporate many features of the BWR/4 Standard Technical Specifications.

*Date of issuance:* July 7, 1993

*Effective date:* Within 30 days of the date of issuance.

*Amendment No.:* 164

*Facility Operating License No.* DPR-46. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 10, 1992 (57 FR 24673). The additional information contained in the supplemental letters dated June 9, 1992, and June 14, 1993, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of application for amendment:* December 31, 1992

*Brief description of amendment:* The amendment revises Technical Specification Surveillance Requirement 4.13.B.1.a, "Fire Suppression Water System," by changing the American Society for Testing and Materials (ASTM) standards which are to be followed when performing required sampling and analysis of the diesel fire pump fuel oil supply.

*Date of issuance:* June 29, 1993

*Effective date:* June 29, 1993

*Amendment No.:* 85

*Facility Operating License No.* DPR-22: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 28, 1993 (58 FR 25861) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

**Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* February 25, 1993, as supplemented by letter dated May 24, 1993

*Brief description of amendments:* These amendments modify the existing Limiting Conditions for Operation, surveillance requirements, and bases to reflect the new containment monitoring system hydrogen/oxygen analyzers. The new analyzers are to be installed in Unit 3 during the scheduled September 1993 refueling outage and will support the Containment Atmospheric Dilution (CAD) system and the Containment Atmospheric Control (CAC) system. The new requirements apply to the Unit 3 TS. The Unit 2 TS 3.7.A.6.c CAD requirements have been changed to eliminate a reference to "either" reactor.

*Date of issuance:* July 1, 1993

*Effective date:* As of startup of Unit 3 following refueling outage 3R09.

*Amendments Nos.: 177 and 180*

*Facility Operating License Nos.* DPR-44 and DPR-56: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 14, 1993 (58 FR 19486) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* March 9, 1993

*Brief description of amendment:* The amendment revises the Technical Specifications (TSs) to incorporate editorial changes, correct typographical errors, and adjust line spacing and text formats. In addition, the amendment deletes pertinent portions of the TSs that relate to exceptions that are no longer applicable. The amendment does not make any substantive changes to the TSs.

*Date of issuance:* June 29, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 190

*Facility Operating License No.* DPR-59: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30198) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* April 16, 1993

*Brief description of amendment:* The amendment modifies Technical Specification (TS) 4.12.F.1 to require a visual inspection of all fire barrier penetration seals for each protected area once per operating cycle, in lieu of once per 1.5 years. In addition, the modification deletes the footnote to TS 4.12.F.1 that was added under TS Amendment No. 177. The amendment, which allowed a one-time 3 month extension of the surveillance interval for visually inspecting the fire barrier penetration seals, is no longer applicable to the facility.

*Date of issuance:* July 7, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 191

*Facility Operating License No.* DPR-59: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30198) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* August 27, 1991; supplemented November 6, 1992 (TS 91-09)

*Brief description of amendments:* The amendments incorporate various changes to the Technical Specifications related to the Containment Gas and Particulate Radiation Monitor System, the Containment Purge Air Radiation Monitor System, and the switches associated with a manual trip of the Containment Spray System and the Phase "B" Isolation System.

*Date of issuance:* June 25, 1993

*Effective date:* June 25, 1993

*Amendment Nos.:* Unit 1 - 168, Unit 2 - 158

*Facility Operating License Nos.* DPR-77 and DPR-79: Amendments revise the technical specifications.

*Date of initial notice in* **Federal Register:** October 2, 1991 (56 FR 49928).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 25, 1993.

No significant hazards consideration comments received: None

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

**TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas**

*Date of amendment requests:* May 14, 1993.

*Brief description of amendment:* The amendments revised the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2 Technical Specifications to extend the period for the removal of the operability requirements of the boron dilution mitigation system.

*Date of issuance:* June 28, 1993

*Effective date:* June 28, 1993, to be implemented within 30 days of issuance.

*Amendment Nos.:* 16 and 2

*Facility Operating License Nos.* NPF-87 and NPF-89: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 27, 1993 (58 FR 30827).

No significant hazards consideration comments received: No

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* November 10, 1992, and April 16, 1993

*Brief description of amendment:* The amendment revises the Technical Specification 3.9.7 to allow movement of the spent fuel transfer gates over the spent fuel pool during refueling activities, fuel handling system maintenance and transfer gate seal replacement.

*Date of issuance:* June 29, 1993

*Effective date:* June 29, 1993

*Amendment No.:* 81

*Facility Operating License No.* NPF-30. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 12, 1993 (58 FR 28061) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* November 5, 1992

*Brief description of amendment:* The amendment modifies Technical Specification 4.2.1.1 associated with monitoring and logging of axial flux difference (AFD). The change eliminates the increased monitoring frequency following the restoration of the AFD monitor alarm and the increased monitoring and logging frequency (to once per 30 minutes) associated with the alarm being inoperable for greater than 24 hours.

*Date of issuance:* July 7, 1993

*Effective date:* July 7, 1993

*Amendment No.:* 64

*Facility Operating License No.* NPF-42. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 23, 1992(57 FR 61123). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1993

No significant hazards consideration comments received: No.

*Local Public Document Room Locations:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 14th day of July 1993.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation.*

[Doc. 93-17185 Filed 7-20-93; 8:45 am]

BILLING CODE 7590-01-F

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-32633; File No. SR-CBOE-93-24]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Telephones Located on the Floor of the Exchange

July 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 7, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to treat as a rule of the Exchange the conditions governing the use of member-owned and Exchange-owned telephones located at equity option trading posts on the floor of the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to incorporate into the rules of the Exchange the conditions recently imposed by the Exchange as governing the use of member-owned and Exchange-owned telephones located at equity option trading posts on the floor of the Exchange. Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor. Pursuant to this Rule, prior to October 1992 the Exchange did not permit any telephones at equity option posts on the trading floor, other than at posts where a Designated Primary Market-Maker had been appointed, and other than intercom telephones connecting the floor with other locations within the Exchange, but

incapable of making or receiving outside calls.

In October 1992, the Exchange determined to modify its policy to permit the installation of both Exchange-owned and member-owned telephones at equity option posts on the trading floor, and it promulgated Information Circular IC92–118 ("Circular") to inform the membership of this new policy and the fees, charges, and conditions associated with the use of such telephones.[1] At the time it issued the Circular, the Exchange determined that the conditions applicable to the use of floor telephones would not be treated as rules of the Exchange, and accordingly would neither impose surveillance obligations on the Exchange nor subject members to formal disciplinary proceedings for violations. Instead, the Exchange treated these conditions as requirements that would have to be satisfied if the Exchange were to continue to permit telephones to be located on the equity option trading floor.

Now that the Exchange has had several months of experience with floor telephones, it proposes to incorporate into its rules those conditions set forth in the Circular as applying to the use of telephones at equity options trading posts. Specially, these conditions are the following:

1. There will be no restrictions on where a Member may call.
2. Floor telephones may not be used to receive orders, although they may be used to provide quotations.
3. Members may give their clerks their personal identification number ("PIN") access codes. Although both Members and clerks may use the post telephones, Members will have priority. Liability for all calls made using a Member's PIN access code will be that of the Member.
4. Stock clerks will not be permitted to establish a base of operations utilizing post telephones.
5. Members and their clerks using the telephones consent to the Exchange requiring that any telephone or line be subject to tape recording.
6. The telephones will be used for voice service only. Data (PC's fax, etc.) will remain subject to Exchange consent under a separate program.
7. Cellular or portable telephones may not be used on the trading floor.
8. Telephone headsets may not be used on the equity options floor.

[1] Fees and charges applicable to the use of telephones located at equity option trading posts on the floor of the Exchange were filed on February 23, 1993, and June 10, 1993. See Securities Exchange Act Release No. 32483 (June 15, 1993), 58 FR 33850, and Securities Exchange Act Release No. 32515 (June 23, 1993), 58 FR 33860.

Upon the approval of these conditions as rules of the Exchange, the Circular will be republished as a Regulatory Circular in order to inform members that these conditions are rules, and that violations may lead to disciplinary proceedings.

The Exchange believes it is now appropriate to treat these conditions as Exchange rules in order to be able to utilize both informal and formal disciplinary proceedings and sanctions to promote compliance. In the case of the prohibition against telephoned orders, the Exchange believes that it is important that orders be entered through properly registered persons at member firms that are specifically qualified to do a public customer business, so that all of the investor protection and safeguards embodied in Exchange customer protection rules may apply. By restricting floor telephones to hard-wired devices only and not allowing cellular, portable or headset telephones, the Exchange believes it will better be able to monitor and control telephone usage on the floor. In addition, the Exchange believes that currently available technology would not permit a large number of portable or cellular telephones to be used in the environment of the trading floor without significant deterioration or interruption of service.

The Exchange intends to police compliance with these conditions by means of customary floor surveillance procedures, including reliance on surveillance by floor officials and Exchange employees. However, the Exchange does not intend to monitor or record incoming or outgoing telephone calls. The Exchange believes that recording or monitoring calls raises serious questions of legality under Illinois law, as well as other significant privacy issues. Further, the Exchange does not believe that it would be cost effective to monitor what could well amount to thousands of hours of telephone conversations annually, when reliance on customary floor surveillance procedures and self-policing by members should be sufficient to identify significant rule violations.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, in that they are designed to improve communications to and from the Exchange's equity options trading floor in a manner that promotes just and equitable principles of trade, perfects the mechanism of a free and open market, and protects investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–24 and should be submitted by August 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

[2] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
*Deputy Secretary.*
[FR Doc. 93–17230 Filed 7–20–93; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–32831; File No. SR–MSE–93–10]

## Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to the Permanent Approval of SuperMAX and a Two-Tiered Fill-Size Parameter for SuperMAX Issues

July 14, 1993.

On May 5, 1993, the Midwest Stock Exchange, Inc. ("MSE")[1] filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSE–93–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1a] The purpose of the proposal is to establish the MSE's Super MAX system on a permanent basis and to amend the current SuperMAX "fill-size" parameters for eligible issues by establishing a two-tiered system for SuperMAX fills. Notice of the proposal appeared in the Federal Register on June 23, 1993.[2] The Commission has received no comments on the proposal. For the reasons discussed below, the Commission is granting accelerated approval to the proposal.

### I. Description

The purpose of the rule change is to permanently approve the Exchange's SuperMAX system[3] on a voluntary basis and to raise the "fill size" parameters for certain SuperMAX issues by establishing a two-tiered system for SuperMAX fills. The two-tiered system will consist of: (1) The top 500 most actively traded issues, which will have an increased fill size parameter set at 1099 shares; and (2) all other issues, which will continue at the current fill size parameter of 599 shares.

SuperMAX, which is currently operating as a pilot program, provides that the execution price of small agency market orders received over the Midwest Automated Execution System (MAX) may be automatically improved from the consolidated best bid or offer according to certain pre-defined criteria. The Exchange seeks Commission approval of SuperMAX on a permanent basis while continuing to operate SuperMAX as a voluntary system, by specialist, on a stock by stock basis.

MAX executes agency market orders through the SuperMAX program without any specialist intervention based upon the following criteria:

(1) Both buy and sell orders in market quoted with a minimum variation (⅛th spread or orders which do not meet the criteria in 2 or 3 below) will be executed based upon the consolidated best bid or offer.

(2) Buy orders in markets quoted with more than ⅛th spread will be executed at a price ⅛th better than the consolidated best offer if (a) an execution at the consolidated best offer would create a double up-tick based upon the last sale in the primary market or (b) an execution at the consolidated best offer would result in a greater than a ⅛th price change from the last sale in the primary market.

(3) Sell orders in markets quoted with more than ⅛th spread will be executed at a price ⅛th better than the consolidated best bid if (a) an execution at the consolidated best bid would create a double down-tick based upon the last sale in the primary market or (b) an execution at the consolidated best bid would result in a greater than a ⅛th price change from the last sale in the primary market.

For example, the execution price for a market buy order in a ¼–½ quoted market is as follows:

| Tick/last sale | Execution price |
|---|---|
| +½ | ½ |
| +⅜ | ⅜ |
| –⅜ | ½ |
| – ¼ | ⅜ |
| +¼ | ⅜ (if in range) |

The execution price for a market buy order in a ¼–⅜ quoted market, is as follows:

| Tick/last sale | Execution price |
|---|---|
| +⅝ | ⅝ |
| +½ | ½ |
| +⅜ | ½ |
| – ½ | ⅝ |
| – ⅜ | ½ |
| +¼ | ½ |

The execution price for a market sell order in a ¼–½ quoted market, is as follows:

| Tick/last sale | Execution price |
|---|---|
| – ¼ | ¼ |
| – ⅜ | ⅜ |
| +⅜ | ¼ |
| +½ | ⅜ |

Any eligible order in a stock included in SuperMAX which is manually presented at the specialist post by a floor broker must also be guaranteed an execution by the specialist pursuant to the above listed criteria. In the event that a contra side order which would better a SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the SuperMAX criteria must be adjusted to the better price.

SuperMAX will operate during the trading day from 8:30 a.m. (CST) until the close. During volatile periods, individual stocks or all stocks may be removed from SuperMAX with the approval of two members of the Committee on Floor Procedure.

In support of its request seeking permanent approval, and consistent with the Commission's interest in receiving information regarding SuperMAX, the Exchange's Specialist participation in SuperMAX is approximately 80 percent for the 900 issues traded over the SuperMAX system, or about 40 percent of the total issues traded on the Exchange. While the Exchange cannot provide historical information regarding the number of times an execution is bettered through SuperMAX, there is never an instance where SuperMAX provides an inferior fill to a regular MAX execution. However, when a market is quoted with a one quarter point spread, or more, and an execution would result in a double up-tick or double down-tick, or in an execution more than ⅛ point away from the last sale, customers receive price improvement 100% of the time.[4]

### II. Discussion

The Commission finds that approval of the proposed change is consistent

[1] On July 8, 1993, The Midwest Stock Exchange formerly changed its name to the Chicago Stock Exchange. For purposes of convenience and consistency, the old name and acronym are used in this order.

[1a] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 32484 (June 16, 1993), 58 FR 34112.

[3] The Exchange initially established SuperMAX as a pilot program on May 14, 1990. See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20990 (order approving SR–MSE–90–05). The Exchange initially sought permanent approval for SuperMAX in its filing SR–MSE–90–17; however, that request was held in abeyance while the Exchange operated both the SuperMAX and the Enhanced SuperMAX pilot programs. The pilot program for Enhanced SuperMAX expired on April 14, 1993. The Exchange did not seek permanent approval for enhanced SuperMAX at any time, nor does it seek permanent approval here.

[4] For example, if the market in ABC stock is ⅛–½ with the last sale at ⅜ on an uptick, and an agency market order is received to buy 200 shares of ABC at the market, the order would automatically be filled at ⅜.

with Sections 6 and 11A of the Act, in that it will promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system and in general, further investor protection and the public interest, as well facilitate the practicability of brokers executing investors' orders in the best market, and finally, contribute to the best execution of such orders.

Permanent approval of SuperMAX will allow for small agency market orders to receive an execution at a price that may be better than the consolidated best bid or offer according to certain predefined criteria. The automated execution feature of SuperMAX provides a much more efficient means of bettering the execution price on a large volume of machine delivered market orders than manual processing could. The execution criteria of SuperMAX also contributes to an orderly market because they help to reduce variations from trade to trade on small volume.

By increasing the fill size parameters for SuperMAX issues in the top 500 most actively traded issues to 1099 shares (while keeping the fill size for other SuperMAX issues at 599), a larger universe of agency market orders are eligible for SuperMAX executions. Because SuperMAX allows for small agency market orders to be guaranteed an execution at a price that is better than the consolidated best bid or offer according to certain pre-defined criteria, this change works to increase the number of agency market orders that could benefit from better price executions through SuperMAX.

The Commission finds good cause for approving the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of the notice of filing thereof in that the pilot program under which SuperMAX is currently operating is set to expire on July 15, 1993.[5] Accelerated approval will permit the MSE to continue using SuperMAX without interruption.

### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the MSE and in particular, Sections 6 and 11A of the Act.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule relating to the SuperMAX system be, and hereby is, approved.

[5] See Securities Exchange Act Release No. 32407 (June 3, 1993), 58 FR 32554.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17291 Filed 7–20–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32639; File No. SR–NASD–92–51]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Enforcement of Arbitrators' Orders Under the NASD Code of Arbitration Procedure

July 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended on June 11, 1993 [1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Part I, Section 1 and Part II, Sections 8 and 9 of the NASD Code of Arbitration Procedure ("Code"). Below is the text of the proposed rule change. Proposed new language is in italics, proposed deletions are in brackets.

Code of Arbitration Procedure

Part I—Administrative Provisions

Matters Eligible for Submission

Sec. 1. This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)(3) of the By-Laws of the National Association of Securities Dealers, Inc., (the Association) for the arbitration of any dispute, claim or controversy arising out of or in connection with the business of any member of the Association, *or arising out of the employment or termination of employment of associated person(s) with any member,* with the exception of disputes involving the insurance business of any member which is also an insurance company:

(1) between or among members;

*(2) between or among members and associated persons;*

[2] (*3*) between or among members *or associated persons* and public customers, or others; and

[3] (*4*) between or among members, registered clearing agencies with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures, and participants, pledgees or other persons using the facilities of a registered clearing agency, as these terms are defined under the rules of such a registered clearing agency.

* * * * *

Part II—Industry and Clearing Controversies

Required Submission

Sec. 8. (a) Any dispute, claim or controversy eligible for submission under Part I of this Code between or among members and/or associated persons, and/or certain others, arising in connection with the business of such member(s) or in connection with the activities of such associated persons(s), *or arising out of the employment or termination of employment of such associated person(s) with such member,* shall be arbitrated under this Code, at the instance of:

(1) A member against another member;

(2) A member against a person associated with a member or a person associated with a member against a member; and,

(3) A person associated with a member against a person associated with a member.

(b) Unchanged.

Composition of Panels

Sec. 9. (a) *In disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes, or receipt of commissions, the panel of arbitrators shall be appointed as provided by Sections 9(b)(i), (b)(ii) or 10 of the Code, whichever is applicable. In all other disputes arising out of the employment or termination of employment of an associated person, the panel of arbitrators shall be appointed as provided by Section 13 or 19 of the Code, whichever is applicable.*

[1] Amendment No. 1 to SR–NASD–92–51 was filed on February 9, 1993 to modify the rule language of Section 9(a) to Part II of the Code of Arbitration Procedure to delete a reference to disputes claiming "wrongful discharge." Amendments No. 2 and 3 were filed on May 18, 1993 and June 11, 1993 respectively, to amend Part I, Section 1 of the Code to clarify the applicability of the Code to employment related disputes.

[(a)] *(b) (i)* Except as otherwise provided in Section *9(a) or* 10 of the Code, in all arbitration matters between or among members and/or persons associated with members, and where the amount in controversy does not exceed $30,000, the Director of Arbitration shall appoint a single arbitrator to decide the matter in controversy. The arbitrator chosen shall be from the securities industry. Upon the request of a party in its initial filing or the arbitrator, the Director of Arbitration shall appoint a panel of three (3) arbitrators, all of whom shall be from the securities industry.

[(b)] *(ii)* In all arbitration matters between or among members and/or persons associated with members and where the amount in controversy exceeds $30,000, a panel shall consist of three arbitrators, all of whom shall be from the securities industry.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) The NASD is proposing to amend Section 1 of Part I and Sections 8 and 9 of Part II of the Code to clarify that employment-related disputes are arbitrable under Section 8, and to provide that in cases involving employment discrimination claims or claims involving public policy issues, the panel should consist of a majority of public arbitrators.

The NASD is proposing to amend Section 1 of the Code to provide that disputes, claims or controversies arising out of the employment or termination of employment of an associated person are eligible for submission to arbitration. A parallel rule change is also proposed to Section 8, which addresses industry and clearing controversies that are required to be submitted to arbitration. In addition, the NASD is proposing to amend Section 1 to clarify that disputes between or among members and associated persons are eligible for submission to arbitration under the Code. These changes are intended to assure that the arbitration of industry employment disputes may be compelled at the instance of one of the parties to the dispute.

The NASD is also proposing to amend Section 1 to clarify that disputes between or among associated persons and public customers are eligible for submission to arbitration.

Section 9(a) is also proposed to be amended to provide that, in disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes, or receipt of commissions, the panel of arbitrators shall be made up of industry arbitrators as provided by Sections 9(b)(i), (b)(ii) or 10 of the Code. In all other instances,[2] which would normally include claims of employment discrimination on the basis of age, sex or race, or relating to sexual harassment, the panel of arbitrators would be chosen under Section 13 or 19, whichever is applicable. This would result in a panel with a single public arbitrator or a majority of public arbitrators. The NASD's action in proposing this rule change is not meant to indicate that industry panels have not fairly handled these cases, but is rather intended to recognize the public policy implications of such cases.

The proposed rule change to Sections 1 and 8 was prompted by a decision of the California Court of Appeals, *Higgins* v. *The Superior Court of Los Angeles County,* (Cal. App. Oct. 8, 1991), review denied and decision ordered not officially published, 1 Cal.Rptr. 2d 57 (1992), in which the court held that the NASD's Section 8 language did not cover employment disputes, but only covered disputes arising out of or in connection with business transactions. The court distinguished prior case precedent, including *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. _____, 111 S. Ct. 1647, 114 L.Ed 2d 26 (1991), which compelled arbitration of an age discrimination claim before the New York Stock Exchange (NYSE). The court found dispositive the difference between the language of Section 8 and the NYSE rule governing industry disputes. NYSE Rule 347 requires arbitration of "[a]ny controversary between a registered representative and any member of member organization arising out of the employment or termination of employment of such registered representative." The NASD has taken the position that employment disputes are arbitrable under Section 8, but in order to clear up any ambiguity, it is proposing the changes described above, which parallel the NYSE rule language.

With regard to the proposed change to Section 9(a), securities industry panels are currently utilized in all claims involving the employment or termination of employment of associated persons. The staff of the NASD's Arbitration Department strives to select a balanced panel that might include an arbitrator involved in management, a registered representative, and an attorney who devotes a substantial portion of his or her work effort to securities industry clients. On occasion, the parties will stipulate to one or more public arbitrators on the panel, depending on the subject matter of the claim. The NYSE, by contrast, considers associated persons to be non-members, and thus requires that they be assigned a panel with a majority of public arbitrators, unless they request an industry panel.[3]

The NASD has determined that in certain types of disputes, involving employment contracts, promissory notes, receipt of commissions and wrongful discharge, the issues relate to industry practice and require industry experience. In other disputes, involving public policy issues such as employment discrimination and sexual harassment, there is less need for an industry panel and the interests of the parties may be better served by a panel consisting of a majority of public arbitrations.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] in that the proposed rule change will facilitate the arbitration process in the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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[2] The NASD clarified in Amendment No. 1 to the proposed rule change that where a claim of wrongful discharge contains allegations that would indicate violations of any federal, state or local anti-discrimination law, the NASD intends that such claims be heard by a panel with a majority of public arbitrators.

[3] See NYSE Rules 607(a)(1) and 632.

[4] 15 U.S.C. 78*o*–3.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-17290 Filed 7-20-93; 8:45 am]

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**[Release No. 34-32632; File No. SR-NASD-90-30]**

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Close-Out Requirements for Short Sales and an Interpretation on Prompt Receipt and Delivery of Securities**

July 14, 1993.

**I. Introduction**

On May 23, 1990,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b-4 thereunder.[3] The rule change adds section 71 to the NASD's Uniform Practice Code ("Code") to set forth a new requirement to close-out short sales in Nasdaq securities that meet a certain short position threshold. In addition, the proposal amends the NASD Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities ("Interpretation")[4] to set forth examples of "bona fide fully hedged" and "bona fide fully arbitraged" for the purposes of exemptions from various short sale requirements. Set out in the Appendix to this Order is the text of the rule change, as amended. Additions to the rule appear in italics.

Notice of the proposed rule change appeared in the **Federal Register** on July 16, 1990.[5] The Commission received eight letters from four commentators addressing the rule change,[6] the substance of which is discussed below. This order approves the proposed rule change, as amended.

**II. Background**

In July 1986, the NASD issued a report detailing a study of short selling practices in the over-the-counter ("OTC") securities market ("Pollack Study").[7] As a result of recommendations contained in the Pollack Study, the NASD has taken a number of regulatory initiatives regarding short selling. The NASD now requires members to mark all sale transactions either "long" or "short,"[8] requires members to make an affirmative determination that they will receive delivery of a security from a customer or that they can borrow a security on behalf of a customer prior to accepting a short sale from a customer,[9] requires a member to make an affirmative determination that it can borrow the security before effecting a short sale for its own account (certain transactions in corporate debt securities, bona fide market making activities and fully hedged or arbitraged positions are exempt);[10] imposes mandatory buy-in requirements for cash or guaranteed delivery for Nasdaq securities where the buyer is a customer other than another NASD member, upon failure of a clearing corporation to effect delivery pursuant to a buy-in notice;[11] and requires members to report, as of the 15th of each month, aggregate short positions in all customer and proprietary accounts in securities

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[1] On September 11, 1991, the NASD submitted Amendment No. 1 to the proposed rule change. On January 3, 1992, the NASD withdrew Amendment No. 1 and provided substitute Amendment No. 1. Substitute Amendment No. 1, which is a technical amendment, clarifies the language contained in the examples of "bona fide fully hedged" and "bona fide fully arbitraged" and states that the examples provided are for illustrative purposes and are not intended to limit the NASD's ability to determine the proper scope of those terms.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b-4 (1922).

[4] NASD Manual, Rules of Fair Practice, Art. III, Sec. 1, (CCH) ¶ 2151.04.

[5] See Securities Exchange Act Release No. 28192, July 10, 1990, 55 FR 28972.

[6] Letter from Thomas J. Jennings, to Katherine England, Branch Chief, OTC Regulation, SEC, dated June 27, 1990; Honorable Doug Barnard, Jr., Chairman, Congress of the United States, House of Representatives, Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, to Hon. Richard Breeden, Chairman, SEC, dated March 26, 1991; Honorable Doug Barnard, Jr., Chairman, Congress of the United States, House of Representatives, Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, to Jonathan Katz, Secretary, SEC, dated March 27, 1991; Robert A. Mackie, R.A. Mackie & Co., Inc., to Lewis Antons, Division of Market Regulation, SEC, dated November 20, 1991; Robert A. Mackie, R.A. Mackie & Co., Inc., to Katherine England, Branch Chief, OTC Regulation, SEC, dated February 16, 1992; E.E. Geduld, President, John E. Herzog, Chairman/CEO, Herzog, Heine, Geduld, to Katherine England, Branch Chief, OTC Regulation, SEC dated May 6, 1992; Robert A. Mackie, Allen & Co., Inc., to Katherine England, Branch Chief, OTC Regulation, SEC, dated June 9, 1992; and E.E. Geduld; President, John E. Herzog, Chairman/CEO, Herzog, Heine, Geduld, to Katherine England, Branch Chief, OTC Regulation SEC, dated August 14, 1992.

[7] I. Pollack, Short-Sale Regulation of Nasdaq Securities (July 1986).

[8] Securities Exchange Act Release No. 23572 (August 28, 1986), 51 FR 31865 (September 5, 1986). NASD Manual, Rules of Fair Practice, Art. III, Sec. 21(b)(i), (CCH) ¶2171.

[9] Securities Exchange Act Release No. 23572 (August 28, 1986), 51 FR 31865 (September 5, 1986). NASD Manual, Rules of Fair Practice, Art. III, Sec. 1, Interpretation of the Board of Governors on Prompt Receipt and Delivery of Securities, (CCH) ¶2151.04.

[10] Securities Exchange Act Release No. 28186 (July 5, 1990), 55 FR 28703 (July 12, 1990).

[11] Securities Exchange Act Release No. 26694 (April 4, 1989), 54 FR 14404 (April 11, 1989). NASD Manual, Uniform Practice Code, Sec. 59, (CCH) ¶3559.

included on Nasdaq.[12] In addition, the NASD has proposed a rule change that would prohibit short sales of Nasdaq/National Market System securities at or below the current inside bid when that bid is lower than the previous inside bid.[13]

In addition to the changes mentioned above, the Pollack Study recommended that the NASD address the fail-to-deliver/fail-to-receive[14] problem created by naked short selling.[15] The Pollack Study indicated that the lack of an automatic mechanism for preventing the build-up of short positions at clearing corporations carried the potential for serious problems, especially in times of market stress.[16] As a result of the recommendations contained in the Pollack Study, the NASD proposed to its membership that it adopt a mandatory buy-in requirement for all transactions that were not settled within a certain numbers of days.[17] Overwhelming negative comment led the NASD to recast the proposal to require members to close-out short sales in certain securities.

### III. Description of the Rule Change

New section 71 of the Code requires the short seller's broker to close-out a short sale of specific securities ten days after the normal settlement date if delivery of securities has not occurred and an exemption from the close-out requirement is not warranted. Securities subject to the close-out requirement are those that the NASD determines have an aggregate "clearing" short position of 10,000 shares or more that equals or exceeds one half of one percent of the total shares outstanding. The NASD will identify these securities daily based on data from the National Securities Clearing Corporation ("NSCC") and will compile a "restricted list,"[18] meaning that any subsequent short sale transaction not completed by delivery of shares within the prescribed time frames will be subject to mandatory close-out if a "fail-to-deliver" situation exists ten days after normal settlement date.

The rule applies to customer and proprietary short sales, but exempts "bona fide" market making activities and short sales in which the resulting position is "bona fide" fully hedged or arbitraged.[19] For example, the close-out rule applies if a broker-dealer sells a restricted security short from its proprietary account to another broker-dealer and fails to deliver the security within 10 days of normal settlement date. The rule also applies if the firm makes the same transaction for a customer.[20] However, if the short sale is part of a bona fide market making transaction, the firm is exempt from the close-out requirement. Any short sale of a restricted security that results in a position that is fully hedged or fully arbitraged, also is exempt from the mandatory close-out requirement.[21]

### IV. Comment Letters

As noted above, four commentators addressed the proposal, three of whom were critical of the rule change in some respect.[22] One commentator expressed concern that the proposal did not go far enough in addressing potential problems associated with short sales and suggested that the rule should be broadened to cover more securities and apply, without exceptions, when unsettled trades in a security exceed certain nominal thresholds. This reflected a concern about widespread naked short selling of Nasdaq issues in violation of NASD rules that resulted in persistent open clearing positions. This commentator also expressed concern that the rule change could be evaded easily because the exemption for hedged transactions did not prevent the investor from later selling the assets that hedged the short sale transactions and two persons could arrange periodic trades to cover short positions temporarily.

In response,[23] the NASD stated that there are many reasons why certain securities have unsettled trades at clearing corporations for lengthy periods, which may be completely unrelated to short selling, such as a member firm's segregation requirements under Rule 15c3–3 of the Act,[24] transfer delays or some characteristic of the security that prevents delivery.[25] The NASD concluded that nearly all stocks that develop large, persistent fails-to-deliver conditions at clearing corporations would be covered by the close-out rule because the rule focuses on persistent rather than temporary fail-to-deliver situations.

In response to concerns regarding possible evasion of the rule by selling assets used to hedge an exempted short position, the NASD indicated that hedged positions accounted for less than 2% of the total shares of reported short interest in the stocks covered by its analysis. The NASD further indicated that any evasion of the rule will be monitored by its Market Surveillance Department and that violations of short sale rules in the past have been the subject of disciplinary action by the Market Surveillance Committee. In conclusion, the NASD stated that the close-out rule would add substantially to the ability of the NASD to eliminate naked short selling as a regulatory problem and would address the few cases in which the potential effects of unsettled trades may create regulatory or market concern.

The remaining commentators expressed concern that the exemption from the close-out rule for warrant hedging is unnecessarily restrictive.[26]

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[12] Securities Exchange Act Release No. 23655 (December 1, 1986), 51 FR 44170 (December 8, 1986). NASD Manual, Rules of Fair Practice, Art. III, Sec. 41, (CCH) ¶2200A.

[13] Securities Exchange Act Release No. 31003 (August 6, 1992), 57 FR 36421 (August 13, 1992), providing notice of File No. SR–NASD–92–12. Securities Exchange Act Release No. 31729 (January 17, 1993), 58 FR 5791 (January 22, 1993), providing notice of Amendment No. 3. The proposal also contains an exemption for "qualified" market makers.

[14] In fail-to-deliver or fail-to-receive transactions the normal clearance and settlement process is interrupted by a failure to either receive or deliver the security in question.

[15] Pollack Study at 69.

[16] Id.

[17] NASD Notice to Members 89–56 (August 1989).

[18] Nasdaq Level 2 and Level 3 subscribers with Workstations will see a short sale restriction indicator on their bid/ask screens.

[19] The proposal includes guidelines for the use of the exemption from short sale requirements for bona fide fully hedged and arbitraged transactions provided in new Section 71 and in Section 2(b) of the Interpretation. According to the NASD, the guidelines are for illustrative purposes and are not intended to limit the NASD's ability to determine the scope of the terms "bona fide fully hedged" and "bona fide fully arbitraged." See File No. SR–NASD–90–30, substitute Amendment No. 1, filed January 3, 1992.

[20] The broker-dealer firm that enters a short sale transaction in a restricted security on behalf of a customer is obliged to inform that customer of the mandatory close-out requirement. Even if the security is subsequently dropped from the restricted list, the trade must be closed-out. On the other hand, if the security is placed on the list after the trade is executed, close-out would not be required.

[21] See Appendix for examples of what constitutes a "bona fide fully hedged" or "bona fide fully arbitraged" position.

[22] The letter received from Thomas Jennings supported the rule change and suggested additional ways in which the NASD could limit abusive short selling.

[23] Letter from John E. Pinto, Jr., Executive Vice President, Compliance, NASD, to the Honorable Douglas Barnard, Jr., Chairman, Commerce, Consumer & Monetary Affairs Subcommittee of the Committee on Government Operations, dated August 2, 1991.

[24] 17 CFR 240.15c3–3 (1992).

[25] The NASD undertook an analysis of the factors affecting fails-to-deliver to the NSCC and the fluctuations in such fails-to-deliver. The NASD's analysis indicated that when fails-to-deliver develop in stocks at NSCC, the dominant reasons are high average daily volume and (inversely related) the amount of float in the security. The NASD's analysis further suggested that the existence of fails-to-deliver at NSCC confirms little or nothing about short sales, unless the fail-to-deliver condition is large and persistent.

[26] The guideline regarding warrants states that the following transaction will be considered bona fide fully hedged and, therefore, exempt from the close-out requirement, "Short a security and long a

Continued

One commentator noted that implementation of the proposal in its present form will result in severely curtailing a generally beneficial trading activity and that the proper relief should allow one who is long warrants to short a number of common shares that is equal to the number of common shares into which the warrants are exercisable regardless if the warrants are in or out of the money and would prevent some hedges that were "bullish."[27] Another commentator noted that while the rule does not affect bona fide market making activity, the overall effect would be to shrink activity in warrant/common hedging situations which could diminish depth and reduce liquidity.[28]

In response to these comments, the NASD stated that the modification proposed by the commentators would create a "substantial loophole in the rule."[29] The NASD believes that the transactions envisioned by the commentators would enable short selling without the need to close-out transactions under the rule. "A warrant price near zero would permit virtually unlimited short selling, with no delivery requirement."[30] The NASD acknowledged that normally the number of shares necessary to establish a hedge could be determined by calculating a hedging ratio. The NASD, however, stated that the reason a hedge ratio was not proposed for the instant rule change is that the NASD expects that only about 80–90 securities will be subject to the rule on a given date, and that the stocks that are subject to the rule are for the most part thinly-traded, making calculation of a hedging ratio exceedingly difficult and imprecise. In addition, the NASD stated that basing the exemption on a hedging ratio would severely complicate the ability to surveil compliance with the rule and would raise the cost of both compliance by member firms and surveillance by the NASD. The NASD stated that the rule is an attempt to balance the need to require delivery of the class of securities meeting the requirements of the rule with the "desirable warrant hedging function."[31]

## V. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes that the proposed rule change is consistent with the requirements of section 15A(b)(6) of the Act.[32] Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent manipulation of the marketplace, to promote just and equitable trading rules and to protect investors and the public interest. As mentioned in the Pollack Study, the fail-to-deliver/fail-to-receive problem has the potential for causing serious difficulties in a lengthy bear market. Where unsettled trades become extreme in size, market mechanisms can be disrupted. Public customers' reasonable expectations that their securities have been delivered should be met. Additionally, naked short selling can present substantial manipulative concerns. While naked short sellers must deposit margin with either their broker-dealer or with a clearing corporation, they enjoy great leverage than if they were required to close-out their short positions within a reasonable time frame. The ability of naked short sellers to employ this leverage to effect "bear raids" supports the NASD's decision to impose additional discipline on naked short selling via a close-out requirement. Therefore, the Commission believes that the instant rule change will assist in preventing manipulation of Nasdaq securities through excessive naked short selling. As originally recommended in the Pollack Study, a buy-in or close-out requirement will add to the stability of the marketplace by assuring that securities are available to cover short positions, especially in times of volatility. Such a requirement also will help enhance the integrity of the Nasdaq market. In addition, the close-out rule may help to prevent short selling abuses that have the potential to harm investors and the public interest.

As noted above, the rule contains an exception for bona fide market making transactions. The Commission believes that for the qualifier "bona fide" to have any substance, it must mean more than the fact that the transactions in question are effected in a market making account. At a bare minimum, to qualify for the exception, a market maker's short selling activity must be reasonably related to its market making activities.[33] In addition, the Commission believes that a bona fide market maker is a broker-dealer that deals on a regular basis with other broker-dealers, actively buying and selling the subject security as well as regularly and continuously placing quotations in a quotation medium on both the bid and ask side of the market.[34] Accordingly, the Commission expects the NASD to monitor closely use of the exception for bona fide market making transactions.

The Commission believes that the NASD's guidelines for the warrant hedging exemption strike an appropriate balance between allowing some hedging without providing a means to undermine the close-out rule. Although the warrant hedging guideline may not provide the optimal formula for matching long warrants with the short underlying common stock, the Commission believes that the NASD has demonstrated that the solution proposed by the commentators may undermine the efficacy of the close-out rule in warrant hedging transactions. In addition, the Commission believes the NASD's representation that the use of an appropriate "ratio" to determine the proper balance between the short common stock and the long warrants would be unduly burdensome on both the NASD and its member firms. The set of securities subject to the close-out provision may change on a daily basis making application of a hedge ratio difficult. In addition, use of a hedge ratio would make surveillance for compliance with the rule unnecessarily complicated.

In sum, the Commission believes that the NASD's proposal is a measured step in regulating short sales in Nasdaq securities and that the NASD has struck an appropriate balance is designing the rule by focussing on those securities that have persistently large, unsettled short trades. Commentators urged or implicitly suggested that the NASD either has gone too far or not far enough in requiring members to close-out open short trades as a means of reducing large short positions in Nasdaq securities. The Pollack study suggests that the most egregious concerns involve securities

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position in warrants or rights which are exercisable within 90 days into the short security. To the extent that the long warrants or rights are 'out of the money,' then the short position shall be exempt up to the *market value* of the long warrants or rights" (emphasis added).

[27] Letter from Robert A. Mackie, R.A. Mackie & Co., Inc., to Lewis Antoce, Division of Market Regulation, SEC, dated November 20, 1991, at 1.

[28] E.E. Geduld, President, John E. Herzog, Chairman/CEO, Herzog, Heine, Geduld, to Katherine England, Branch Chief, OTC Regulation, SEC, dated August 14, 1992, at 1.

[29] Letter from T. Grant Callery, Vice President and Deputy General Counsel, NASD, to Selwyn Notalovitz, Branch Chief, Over-the-Counter Regulation, SEC, dated December 9, 1992, at 2.

[30] *Id.*

[31] *Id.* at 1.

[32] 15 U.S.C. 78o-3(b)(6) (1988).

[33] See also Securities Exchange Act Release No. 28186 (July 5, 1990), 55 FR 28703, approving File No. SR–NASD–89–5.

[34] In the context of a mark-up case, the Commission has stated that, "In order for a dealer to meet the statutory definition of market maker, it must in fact be willing *both* to buy and sell the security in question in the inter-dealer market." (emphasis in the original). Adams Securities, Inc., Securities Exchange Act Rel. No. 31971 (March 9, 1993), 53 SEC Docket 2379, (firm was held not to be a market maker although it was listed as a market maker in the pink sheets.)

with the largest persistent short positions[35] and the NASD's proposal is designed to address those situations. The Commission expects to monitor closely the effect of the proposal and will review with the NASD whether further modifications are necessary or appropriate given that experience.[36]

## VI. Conclusion

In conclusion, the Commission believes that the close-out rule approved herein, is consistent with the Act. The rule will impose discipline on naked short selling and will assist in preventing manipulation. Such a requirement will thereby strengthen the integrity of the Nasdaq market.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.[37]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

**Margaret H. McFarland,**

*Deputy Secretary.*

Appendix

**NASD Uniform Practice Code**

*Sec. 71 Mandatory Close-Out for Short Sales*

*A contract involving a short sale in Nasdaq securities described in sub-paragraph (a) below, for the account of a customer or for a member's own account, which has not resulted in delivery by the broker-dealer representing the seller within 10 business days after the normal settlement date, must be closed by the broker-dealer representing the seller by purchasing for cash or guaranteed delivery securities of like kind and quantity.*

*(a) This requirement shall apply to Nasdaq securities, as published by the Association, which have clearing short positions of 10,000 shares or more and that are equal to at least one-half (½) of one percent of the issue's total shares outstanding.*

*(b) This mandatory close-out requirement shall not apply to bona fide market making transactions and transactions that result in bona fide fully hedged or bona fide fully arbitraged positions.*

Artice III, Section 1 of the NASD Rules of Fair Practice

Interpretation of the Board of Governors on Prompt Receipt and Delivery of Securities

* * * * *

*(5) "Bona Fide Fully Hedged" and "Bona Fide Fully Arbitraged"*

*In determining the availability of the exemption provided in Section (2)(b) above and in Section 71 of the Uniform Practice Code from short sale requirements for "bona fide fully hedged" and "bona fide fully arbitraged" transactions, the following guidelines shall apply. These guidelines are for illustrative purposes and are not intended to limit the Association's ability to determine the proper scope of the terms "bona fide fully hedged" or "bona fide fully arbitraged" pursuant to this provision, on a case-by-case basis.*

*(a) Bona Fide Fully Hedged*

*The following transactions shall be considered bona fide fully hedged:*

*1. Short a security and long a convertible debenture, preferred or other security which has a conversion price at or in the money and is convertible within ninety days into the short security.*

*Example: Long ABCD Company 9% convertible subordinated debentures due 1998. Each debenture is convertible into common at $27.90 per share of common equal to 35.842 shares of common per IM debenture.*

- *With the price of the ABCD at 8¾–9 and a short position of 100 shares of ABCD the short position would not be exempt.*
- *If the price of ABCD was $28 with a short position of 100 shares, 35 shares would be exempt and the remaining 65 shares would not be exempt.,*

*2. Short a security and long a call which has a strike price at or in the money and which is exercisable within 90 calendar days into the underlying short security.*

*Example: Long 1 call of EFGH (44⅛) with a strike price of 40 expiring within 90 calendar days.*

- *With the circumstances as above 100 shares would be exempt.*
- *If the strike price was 50 a short position of 100 shares would not be exempt.*
- *With any strike price and the call expiring in more than 90 days any short of the common would not be exempt.*

*3. Short a security and long a position in warrants or rights which are exercisable within 90 days into the short security. To the extent that the long warrants or rights are "out of the money," then the short position shall be exempt up to the market value of the long warrants or rights.*

*Example: Long 100 warrants of IJKL (IJKLW: 2⅛–2¾). Each warrant is exercisable into 1 share of common at $2. (IJKL: 4–4⅛).*

- *With the circumstances as above a short position of 100 shares would be exempt.*
- *If the price of IJKL is $1.50 and the market value of long warrants is ⅛, a short position of 16 shares would be exempt.*

*(b) Bona Fide Fully Arbitraged*

*The following transactions shall be considered bona fide fully arbitraged:*

*1. Long a security purchased in one market together with a short position from an offsetting sale of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in price in the 2 markets.*

*Example: Purchase 100 shares of EFGH on the London Stock Exchange and simultaneously effecting a short sale of 100 shares of EFGH on Nasdaq.*

- *Under the above circumstances, the 100 share short position would be exempt.*

*2. Long a security which is without restriction other than the payment of money exchangeable or convertible within 90 calendar days of the purchase into a second security together with a short position from an off-setting sale of the second security at or about the same time for the purpose of taking advantage of a concurrent disparity in the prices of the 2 securities.*

*Example: Long 100 shares of MNOP (MNOP: 51–51¼) which is being acquired by ORST Corp. (ORST: 52⅛–52⅜) at the rate of 1.15 shares per MNOP share.*

- *If the exchange is to take place within 90 days then a short of 115 shares of ORST would be exempt from the mandatory buy-in. Also, if the exchange was to take place at a date later than 90 days, all short positions in the above example would be subject to the mandatory buy-in.*

*(c) The transaction date of the short sale shall govern when a fully hedged or fully arbitraged position exists.*

[FR Doc. 93–17229 Filed 7–20–93; 8:45 am]

BILLING CODE 8101–01–M

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[Rel. No. IC–19574; File No. 812–8288]

## The Equitable Life Assurance Society of the United States, et al.

July 14, 1993.

**AGENCY:** Securities and Exchange Commission (the "Commission" or the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** The Equitable Life Assurance Society of the United States ("Equitable") and Separate Account A of The Equitable Life Assurance Society of the United States (the "Separate Account").

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain group variable annuity contracts.

**FILING DATE:** February 25, 1993.

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[35] Pollack Study at 6 and 52.

[36] The NASD represents that it will provide the Commission with the results of a study regarding the efficacy of the close-out rule six months from the effective date of the rule change. Letter from T. Grant Callery, Vice-President and General Counsel, NASD to Katherine A. England, Assistant Director, SEC, dated July 14, 1993.

[37] The NASD states that the mandatory close-out rule will become effective within 90 days of Commission approval on a date to be announced in a Notice to Members.

[38] 17 CFR 200.30–3(a)(12) (1992).

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 9, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: The Equitable Life Assurance Society of the United States, 787 Seventh Avenue, New York, NY 10019, Attn: Mary P. Breen, Vice President & Counsel.

**FOR FURTHER INFORMATION CONTACT:** Wendy Finck Friedlander, Senior Attorney, or Michael V. Wible, Special Counsel, (202) 272–2060, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

**Applicant's Representations**

1. Equitable is a stock life insurance company that has been in business since 1859. Equitable is the depositor and principal underwriter of the Separate Account.

2. The Separate Account was established on August 1, 1968 under New York Insurance Law and is registered under the Act as a unit investment trust. The Separate Account is used to fund benefits under group variable annuity contracts and certificates, as well as individual variable annuity contracts, issued by Equitable. The Separate Account will be used to fund a new series of group variable annuity contracts designed to fund retirement plans that are qualified under the Internal Revenue Code (the "Momentum Plus Contract"). The Separate Account is divided into investment divisions, each of which invests solely in the shares of one of the corresponding portfolios of The Hudson River Trust.

3. A charge of up to $7.50 is deducted from a participant's account value on the last business day of each calendar quarter. Equitable has reserved the right to increase this charge upon 90 days written notice to employers or plan trustees. Applicants represent that this charge, on an annual basis, is no greater than the cost of administering the Momentum Plus Contract for one year.

4. Equitable will also assess each Investment Division of the Separate Account with a daily asset charge at an effective annual rate of .25% for administrative expenses associated with the Momentum Plus Contract. This charge is a guaranteed maximum and cannot be increased for retirement plans which are covered under the Momentum Plus Contract. Applicants do not expect that the total administrative charge, together with the quarterly administrative charge, will exceed the expected costs of the administrative services rendered.

5. A $25 loan set-up fee will be deducted from a participant's account value at the time a loan is established. In addition, a $6 loan recordkeeping fee is deducted at the end of each calendar quarter during which a participant had a loan outstanding. Equitable has reserved the right to increase these charges although it does not expect to profit from them.

6. In addition to offering the Momentum Plus Contract as the funding vehicle to retirement plans, Equitable intends to offer its services as plan recordkeeper to defined contribution plans qualified under section 401(a) of the Internal Revenue Code. The basic plan recordkeeping service, which is not option, will be provided at an annual charge of $300 per plan. The employer will be billed directly for these services and Equitable will make no deduction from participant account values in order to cover these charges.[1]

7. Equitable proposes to deduct from the Separate Account a daily asset charge for mortality and expense risks at an effective annual rate of 1.10% The charge is .50% for mortality risks and .60% for expense risks.

8. Equitable assumes a mortality risk by its contractual obligation to continue to make annuity payments for the entire life of the annuitant under guaranteed fixed annuity options involving life contingencies. Equitable assumes an additional mortality risk by its contractual guarantees related to annuity purchase rates. Finally, Equitable assumes a mortality risk by its contractual obligation to waive the contingent deferred sales charge upon payment of the death benefit.

9. Equitable assumes an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. Equitable commits itself throughout the life of the Momentum Plus Contract to pay all expenses, without limit as to amounts, relating to the administration of the Momentum Plus Contract and the Separate Account.

10. If the administrative charges and the mortality and expense risk charge are insufficient to cover the expenses and costs assumed, the loss will be borne by Equitable. Conversely, if the mortality and expense risk charge proves more than sufficient, the excess will be profit to Equitable. Equitable expects a profit from the mortality and expense risk charge.

11. No front-end sales charge is collected or deducted at the time contributions are made. A contingent deferred sales charge will be assessed against certain withdrawals. The charge is (i) 6% of the amount withdrawn or, if less, (ii) 8.5% of contributions made on behalf of the participant for whom the withdrawal is made (less any contingent deferred sales charges previously deducted). Under certain circumstances, a withdrawal charge will not be assessed. The amounts obtained from this charge will be used to reimburse Equitable for sale expenses including commissions and other promotional or distribution expenses associated with printing and distribution of prospectuses and sales literature. To the extent that the contingent deferred sales charge is insufficient to cover the actual costs of distribution, the expenses will be paid from Equitable's general assets, which will include profit, if any, derived from the mortality and expense risk charge.

12. Equitable's current practice is to deduct a charge for premium taxes from the amount applied to provide an annuity benefit. Equitable has reserved the right to deduct any such charge from contributions or from amounts withdrawn or surrendered. Equitable does not expect to profit from this charge.

**Applicants' Legal Analysis and Conditions**

1. Sections 26(a)(2)(C) and 27(c)(2) prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the

[1] Applicants represent that the application will be amended during the Notice Period to make these representations.

Commission may prescribe, for performing bookkeeping and other administrative services. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Account under the Momentum Plus Contract.

2. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as: death benefits; the existence of guaranteed annuity purchase rates; market sector; current charge levels; the existence of charge level guarantees; and the manner in which charges are imposed. Based upon this review, Applicants have concluded that the mortality and expense risk charge is within the range of charges determined by industry practice for comparable products. Applicants will maintain at their principal office, and make available on request to the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, Equitable's comparative review.

3. The contingent deferred sales charge may be insufficient to cover all distribution costs. In that event, if a profit is realized over time from the mortality and expense risk charge, all or a portion of the mortality and expense risk charge might be viewed as providing for a portion of these distribution costs. Notwithstanding the foregoing, Equitable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and investors. The basis for such conclusion is set forth in a memorandum which will be maintained by Equitable at its principal office and will be available on request to the Commission or its staff.

4. Equitable also represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

**Conclusion**

Applicants submit that, for all of the reasons stated herein, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act meet the standards set out in Section 6(c). Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17232 Filed 7–20–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19575; File No. 812–8444]**

## International Life Investors Insurance Co.; Application for Exemption

July 14, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** International Life Investors Insurance Company ("Life Investors"), ILI Endeavor Variable Annuity Account ("Variable Account"), and AEGON USA Securities, Inc. ("AEGON Securities"), referred to collectively as the "Applicants."

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account which serves as the funding medium for certain flexible premium variable annuity contracts (the "Policies").

**FILING DATE:** The application was filed on June 14, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 9, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Craig D. Vermie, Esq., International Life Investors Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

**FOR FURTHER INFORMATION CONTACT:** Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

**Applicants' Representations**

1. Life Investors is a stock life insurance company incorporated under the laws of the State of New York on January 22, 1987. Life Investors is an indirect wholly-owned subsidiary of AEGON USA, Inc. which, in turn, is indirectly owned by AEGON n.v.

2. Life Investors established the Variable Account as a separate account under the laws of the State of New York on June 10, 1993. Concurrent with the filing of this application, the Variable Account filed a Form N–4 registration statement with the Commission to register under the 1940 Act as a unit investment trust, and to register the Policies under the Securities Act of 1933.

3. The Variable Account consists of several subaccounts, each of which invests solely in the shares of one or more of the investment portfolios of the Endeavor Series Trust (the "Series Fund"), or in the shares of the WRL Growth Portfolio of the WRL Series Fund, Inc. Both the Series Fund and WRL Series Fund, Inc. are open-end management investment companies.

4. An affiliate of Life Investors, AEGON Securities will serve as the distributor and principal underwriter of the Policies. AEGON Securities is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers.

5. The Policies may be purchased on a non-tax qualified basis (the "Non-Qualified Policies") or they may be purchased and used in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment ("Qualified Policies"). Non-Qualified Policies may be purchased with an initial premium payment of $5,000, and Qualified Policies may be purchased with an initial premium payment of $1,000. Initial payments of $50 will be permitted for a Policy purchased and used in connection with a tax-deferred 403(b) annuity. Additional premium

payments under both Qualified and Non-Qualified Policies must be at least $500 (or $50 for a Policy used in connection with a tax-deferred 403(b) annuity) and must be in advance of the date on which annuity payments commence (the "Annuity Commencement Date").

6. The Policy owner may allocate premium payments to one or more subaccounts of the Variable Account. The minimum amount allocable to any subaccount is $500.

7. Prior to the Annuity Commencement Date, a Policy owner may surrender all or a portion of the Policy Value.[1] In addition to any applicable contingent deferred sales charge (described below) and premium taxes, surrenders may be subject to income taxes and tax penalties. A Policy owner also may transfer Policy Value between subaccounts of the Variable Account prior to the Annuity Commencement Date. The minimum amount that can be withdrawn or transferred from a subaccount is the lesser of $500 or the entire subaccount value.

8. Life Investors currently does not impose charges for any transfers, but reserves the right to impose a $25 charge for the thirteenth and each subsequent transfer request made by the Policy owner during a single Policy year. Life Investors does not anticipate any profit from the assessment of transfer charges.

9. The Policy owner may select from several annuity payment options on both a fixed and variable basis. If the annuitant who also is the Policy owner dies prior to the Annuity Commencement Date, a death benefit is payable upon receipt of due proof of death as well as proof that the annuitant died prior to the Annuity Commencement Date. The death benefit is equal to the greater of (a) the Policy Value or (b) premium payments (net of withdrawals) plus 5.0% annual interest. If the annuitant is not the Policy owner, the Policy owner generally will become the annuitant on the annuitant's death.

10. Life Investors will deduct an annual policy maintenance charge of the lesser of 2% of Policy Value or $35 per Policy year from each subaccount in which the Policy owner has invested at the end of each Policy year prior to the Annuity Commencement Date (and upon full surrender on any date other than a Policy anniversary). This annual charge will compensate Life Investors for the administrative services it provides to Policy owners, and will not be increased in the future.

11. In addition, prior to the Annuity Commencement Date, Life Investors will deduct from the assets of each subaccount of the Variable Account a daily administrative expense charge at an effective annual rate of 0.15% of the net assets of the subaccount. If a variable annuity payment option is chosen, however, the daily administrative expense charge will continue to apply after the Annuity Commencement Date. The administrative expense charge may increase, but Life Investors guarantees that the charge will never exceed an effective annual rate of 0.30% of the net assets of the subaccount.

12. Life Investors does not anticipate any profit from, and will monitor to ensure compliance with Rule 26a–1 of the 1940 Act by, its charges for administrative expenses and the proceeds derived therefrom.

13. No front-end sales charges will be imposed when purchase payments are applied under the Policies. However, during the first seven Policy years, a contingent deferred sales charge (the "CDSC") will be assessed against certain full or partial Policy surrenders to cover the expenses relating to the sales of the Policies. After the first Policy year, however, no CDSC will be applied to that portion of the first surrender in the Policy year equal to 10% or less of the Policy Value. Moreover, under certain circumstances, the CDSC also will not apply if the Policy Value is applied to provide an annuity under one of the annuity payment options.

14. For purposes of computing the CDSC, the earliest premium payments will be deemed to be withdrawn first. The amount of CDSC, expressed as a percentage of each premium payment withdrawn, is as follows:

| Policy years since premium was paid | Applicable CDSC (percent) |
|---|---|
| Fewer than 1 | 7 |
| At least 1 and fewer than 2 | 6 |
| At least 2 and fewer than 3 | 5 |
| At least 3 and fewer than 4 | 4 |
| At least 4 and fewer than 5 | 3 |
| At least 5 and fewer than 6 | 2 |
| At least 6 and fewer than 7 | 1 |

15. Life Investors does not anticipate that the CDSC will generate sufficient revenues to cover the cost of distributing the Policies. The deficiency will be met from general assets of Life Investors, which may include amounts derived from the charge for mortality and expense risks (described below).

16. Life Investors will deduct from the Policy Value on the Annuity Commencement Date (or upon full surrender or payment of the death benefit) the aggregate premium taxes paid on behalf of a particular Policy. Although no charges currently are made for federal, state, or local taxes other than premium taxes, Life Investors reserves the right to deduct such taxes from the Variable Account in the future.

17. Life Investors will assess a daily charge for bearing certain mortality and expense risks in connection with the Policies. The charge will be equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account. Of that 1.25%, approximately 0.45% is attributable to mortality risks, and approximately .80% is attributable to expense risks. Life Investors guarantees that the combined total of the mortality and expense risk charge and the 0.15% administrative expense charge will never exceed 1.40%. The mortality and expense risk charge will apply prior to the Annuity Commencement Date, and will continue to apply after the Annuity Commencement Date if the annuitant selects a variable annuity payment option.

18. The mortality risk borne by Life Investors arises primarily from its contractual obligation: (a) To make annuity payments for the life of the annuitant(s) under annuity payment options involving life contingencies; and (b) to pay death benefits prior to the Annuity Commencement Date.

19. The expense risk assumed by Life Investors is the risk that Life Investors' actual administrative costs will exceed the amount recovered through the administrative and policy maintenance charges.

20. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Life Investors. Conversely, if the amount deducted proves more than sufficient, the excess will be profit to Life Investors. Life Investors currently anticipates earning a profit from the mortality and expense risk charge.

**Applicant's Legal Analysis and Conclusions**

1. The Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of a mortality and expense risk charge from the assets of the Variable Account which serves as a funding medium for the Policies.

[1] The "Policy Value" is the sum of the value of all accumulation units credited to a Policy for a particular valuation period (i.e., the period of time from one determination of accumulation unit and annuity unit values to the next determination of such values) in the Variable Account, plus the value in the fixed account of Life Investors.

2. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefore from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that Life Investors is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the assessment to the Policies of a 1.25% mortality and expense risk charge is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate Life Investors for the risks that: (a) Annuitants under the Policies will live longer as a group than has been anticipated; (b) the Policy Value will be less than the death benefit; and (c) the administrative expenses will exceed the amounts derived from the administrative charges.

4. Life Investors represents that the level of the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. This representation is based upon Life Investors' analysis of publicly available information about similar industry products, taking into account such factors as: current charge levels, the existence of charge level guarantees; guaranteed death benefits; and guaranteed annuity rates. Life Investors represents that it will maintain at its administrative offices, and make available to the Commission, a memorandum setting forth in detail the variable annuity products analyzed in, and the methodology and results of, its comparative survey.

5. Applicants acknowledge that the CDSC may be insufficient to cover all costs relating to the distribution of the Policies. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the CDSC. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of Policies. Life Investors concludes that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and the Policy owners. The basis for this conclusion is set forth in a memorandum which Life Investors will maintain and make available to the Commission at its administrative offices.

6. Life Investors represents that the Variable Account will invest only in management investment companies which undertake, in the event such companies adopt plans under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have boards of directors (or trustees)—a majority of whom are not interested persons of the respective company—formulate and approve any such plans under Rule 12b–1.

**Conclusion**

Applicants assert that, for the reasons set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct a mortality and expense risk charge under the Policies meet the standards in section 6(c) of the 1940 Act. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17231 Filed 7–20–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. IC–19571; 813–118]**

## PB–SB 1983 Investment Partnership I, et al.; Application

July 14, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** PB–SB 1983 Investment Partnership I, PB–SB 1983 Investment Partnership IA, PB–SB 1984 Investment Partnership I, PB–SB 1985 Investment Partnership I and PB–SB 1986 Investment Partnership VI, (the "Real Estate Partnerships"), PB–SB 1983 Investment Partnership III, PB–SB 1985 Investment Partnership VII, (the "Venture Capital Partnerships"), and PB–SB Investments Inc. and PB–SB Ventures Inc (the "General Partners").

**RELEVANT ACT SECTIONS:** Applicants seek an order under sections 6(b) and 6(e).

**SUMMARY OF APPLICATION:** Applicants seek an amendment to several previous orders granted to certain employees' securities companies. The amendment would eliminate the requirement that such companies file annual and semi-annual reports with the SEC.

**FILING DATES:** The application was filed on November 17, 1992, and amended on March 30, 1993. By supplemental letter dated July 14, 1993, counsel, on behalf of applicants, agreed to file another amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally, or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 9, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC 450 Fifth Street, NW., Washington, DC 20549. Applicants, Seven World Trade Center, New York, New York 10048.

**FOR FURTHER INFORMATION CONTACT:** Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicants' Representations and Analysis**

1. The Real Estate Partnerships and Venture Capital Partnerships are employees' securities companies, limited partnerships formed under the laws of the State of New York and registered under the Act as closed-end management investment companies. PB–SB Investments Inc and PB–SB Ventures Inc are the general partners of the Real Estate Partnerships and Venture Capital Partnerships, respectively.

2. Applicants request that the proposed relief extend to partnerships that may be formed in the future by Salomon Inc, a Delaware corporation (previously known as Phibro-Salomon Inc), its affiliates and their successors in interest to pool their investment resources and make real estate, real estate-related, venture capital, equity, or municipal bond investments. Currently there are no partnerships in existence that invest in equity ("Equity Partnerships") or municipal bonds ("Municipal Bond Partnerships"). (Future Equity Partnerships and Municipal Bond Partnerships and Venture Capital Partnerships are collectively referred to as the "Partnerships.")

3. The Partnerships enable participating employees to pool their investment resources and make real estate, real estate-related, venture capital investments, equity, and municipal bond investments. Interests in the Partnerships are offered to eligible persons who qualify as "accredited investors" within the meaning of Regulation D under the Securities Act of 1933, who have received incomes of at least $150,000 in the calendar year preceding acquisition of partnership interests, and who generally have substantial knowledge of and experience in financial matters, including investments of the type represented by interests in the partnerships.

4. The Partnerships are subject to certain prior exemptive orders (the "Orders")[1] that require each Partnership to file annual and semi-annual reports with the SEC. Applicants seek an amendment to the Orders to eliminate the requirement that each of the Partnerships file with the SEC (a) annual reports provided to the limited partners under the terms of the respective partnership agreements and (b) annual and semi-annual reports on Form N–SAR.

5. Applicants believe that no purpose under the Act is served by continuing to require the filing of annual reports with the SEC by the Partnerships. The Partnerships' initial undertakings to file such annual reports with the SEC were made prior to the adoption by the SEC of rule 30a–1, which exempts filers of reports on Form N–SAR from filing annual reports under the Act. In addition, applicants note that, pursuant to the terms of the partnership agreements, the annual reports will continue to be provided to the limited partners, and they will also be available to the limited partners upon requests.

6. Applicants also believe that the usual reasons for requiring filings on Form N–SAR with the SEC do not exist where, as here, investments in the Partnerships are not available to the public; the limited partners are sophisticated investors; the Partnerships provide the limited partners with alternative reports under the terms of the partnership agreements, which reports are tailored to the distinct nature of the Partnerships and the particular needs of the limited partners for tax-related reporting; and there is no trading of partnership units.

7. In requesting relief from the Partnerships' prior undertakings in the Orders for providing copies to their respective limited partners of reports filed with the SEC on Form N–SAR, applicants note that the Partnerships have not made any other representations to their respective limited partners regarding the availability of these reports. Applicants further note that while these reports have been made available to limited partners upon request, no limited partner has ever requested any such report on Form N–SAR. In light of this fact, and in view of the alternative reports that are provided to the limited partners by the Partnership as discussed above, applicants submit that it would be appropriate for the Partnerships to discontinue the availability of the reports on Form N–SAR.

8. Each Partnership will permanently maintain and preserve such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the limited partners. The General Partners will permanently maintain and preserve all accounts, books, and other documents as are necessary or appropriate to record its transactions with the Partnerships. All such accounts, books, and other records maintained by the Partnerships and/or the General Partners will be subject to examination by the SEC or its staff.

[1] For the most recent amendment to all relevant Orders, see Investment Company Act Release Nos. 15286 (Sept. 8, 1986) (notice) and 15354 (Oct. 9, 1986) (order). The previous Orders include: Investment Company Act Release Nos. 12633 (Sept. 3, 1982) (notice) and 12726 (Oct. 12, 1982) (order) (Real Estate Partnerships); Investment Company Act Release Nos. 13479 (Sept. 1, 1983) (notice) and 13539 (Sept. 27, 1983) (order) (Venture Capital Partnerships); Investment Company Act Release Nos. 13653 (Dec. 2, 1983) (notice) and 13683 (Dec. 29, 1983) (order) and Investment Company Act Release Nos. 13802 (Mar. 1, 1984) (notice) and 13860 (Apr. 2, 1984) (order) (Equity Partnerships); and Investment Company Act Release Nos. 14049 (July 24, 1984) (notice) and 14110 (Aug. 24, 1984) (order) (Municipal Bond Partnerships).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17233 Filed 7–20–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19570; 813–95]**

## Werconn Limited Partnership et al.; Application for Exemption

July 14, 1993.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Werconn Limited Partnership (the "Initial Partnership"). Patrick J. Borruso, on behalf of all the managing general partners of the Initial Partnership, joins the Initial Partnership in its request on behalf of other similar partnerships that may be offered to the same class of limited partner investors (the "Subsequent Partnerships").

**RELEVANT ACT SECTIONS:** Applicants seek an order under sections 6(b) and 6(e) of the Act granting an exemption from all the provisions of the Act, and the rules and regulations thereunder, except section 9, certain provisions of sections 17 and 30, and sections 36 through 53, and the rules and regulations thereunder.

**SUMMARY OF APPLICATION:** The Initial Partnership and Patrick J. Borruso seek an order that would grant the Initial Partnership and the Subsequent Partnerships (the "Partnerships") an exemption from most provisions of the Act and would permit certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

**FILING DATE:** The application was filed on March 11, 1991 and amended on July 20, 1992, December 7, 1992, and July 13, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 9, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Patrick J. Borruso, Wertheim Schroder & Co. Inc., 787 7th Avenue, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Special Counsel, at (202) 504–2259, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicants' Representations**

1. The Initial Partnership is a Connecticut limited partnership formed in 1985 that has made numerous investments since its formation. The Managing Partners of the Initial Partnership are individuals who also are officers and directors of Wertheim Schroder & Co. Incorporated ("Wertheim Schroder") a wholly-owned subsidiary of Wertheim Schroder Holdings, Inc., a Delaware corporation ("Holdings").[1] Wertheim Schroder, a Delaware corporation, is a broker-dealer registered under the Securities Exchange Act of 1934. Wertheim Schroder also is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Holdings and its subsidiaries (collectively, the "Wertheim Schroder Group") are involved in investment banking, sales and trading, securities research, and money management.

2. The Initial Partnership is the first of several anticipated investment partnerships that the Managing Partners plan to establish to enable certain key employees of the Wertheim Schroder Group to pool their investment resources and to receive the benefit of certain investment opportunities which come to the attention of the Wertheim Schroder Group, without each investor having to identify such opportunities and analyze their investment merit. In addition, the pooling of resources should allow the investors to achieve diversification of investments and participation in investments that usually would not be offered to them as individual investors. The ultimate purpose of the Partnerships is to reward and retain key personnel and to attract other such individuals to the Wertheim Schroder Group. The partnership agreement of the Initial Partnership (the "Partnership Agreement") provides, however, that all parties understand that the interests of the clients of members of the Wertheim Schroder Group and the legal and ethical obligations of members of the Wertheim Schroder Group are paramount and prior to the interests of the Partnership or any Partner.

3. Partnership interests in the Partnerships ("Interests") will be offered without registration under a claim of exemption under section 4(2) of the Securities Act of 1933 (the "1933 Act"). Interests will be offered and sold only to eligible employees of the Wertheim Schroder Group ("Eligible Employees"), Holdings, Wertheim Schroder, and certain corporate members of the Wertheim Schroder Group. To be an Eligible Employee, an employee must be a current employee, officer, or director of a member of the Wertheim Schroder Group and, except as noted below, an "accredited investor" under rule 501(a)(6) of Regulation D under the 1933 Act. A small number (under 20) of existing Limited Partners (as defined below) in the Initial Partnership who are not accredited investors have been admitted upon their representations that they are sophisticated investors, that they had reportable income from all sources (including any profit shares and bonus) in the calendar year immediately preceding their investment in the Initial Partnership in excess of $150,000, and that they had a reasonable expectation of reportable income in the year of their investment of at least $150,000. Each Partnership meets the definition of "employees' securities company" in section 2(a)(13) of the Act.

4. Holdings will participate as a Limited Partner in the Initial Partnership on the same terms as the other Limited Partners, but may convey portions of its Interests to Eligible Employees (and certain cooperate members of the Wertheim Schroder Group).

5. The Partnerships will be similar structurally and operationally in all material respects except as specifically discussed in the application. The management and control of each Partnership, including all investment decisions, will be exclusively vested in the Managing Partners. The Managing Partners will impose minimum income requirements and minimum Capital Contributions (as defined in the Partnership Agreement) for participants, and will impose restrictions with respect to such characteristics as admission and transferability. Individual general and limited partners of the Partnerships (the "General Partners" and "Limited Partners," respectively, and collectively the "Partners") will share in the net profits or net losses of the partnerships for each fiscal year generally based on the proportion that the proportion that the amounts of their Capital Contributions allocated by the Managing Partners to Partnership investments bear to the aggregate amount of the Capital Contributions of all Partners allocated by the Managing Partners to such investments. The Partnerships may desire to invest in transactions or companies (each, a "Related Entity") with respect to which a member of the Wertheim Schroder Group provides management, investment management, or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including, without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains, or similar compensation.

6. The Managing Partners will determine, in their sole discretion, whether and the terms and conditions upon which individual Partners will be permitted to make Capital Contributions to the Partnerships, including the amount and timing of such contributions, the collateralization of any obligation to contribute capital in the future, the setting of minimum financial or sophistication requirements to be met as a condition of being permitted to contribute capital, and the terms and conditions of subscription agreements, if any.

7. The Managing Partners will determine, in their sole discretion, the particular investments to be made by the Partnership and the particular investments to which a Partner's Capital Contributions will be attributed and in which such Partner will have an interest. Such determinations will depend on many different factors such as the particular investment opportunity, the introduction of the investment opportunity to the Partnerships, and the length of service of the Partner in the Wertheim Schroder Group. Once allocations are made, in all cases similarly situated Limited Partners will be treated similarly under the Partnership Agreement.

[1] The General Partners of Subsequent Partnerships may include individual executives of the Wertheim Schroder Group or its members. The managing general partners of the Initial Partnership and the Subsequent Partnerships are collectively referred to as the "Managing Partners."

5. The minimum initial investment of each Limited Partner of a Partnership shall be $10,000. The minimum initial investment of each General Partner of a Partnership shall be $50,000. The Managing Partners are authorized to cause the Partnerships to raise additional capital.

9. Interests in the Initial Partnership are non-transferable except with the prior written consent of the Managing Partners, which consent may be withheld in their absolute discretion. In addition, no person may become a transferee or substitute Partner of any of the Partnerships unless the person is a member of one of the classes of persons listed in section 2(a)(13) of the Act, except that a legal representative or executor may hold an interest in a Partnership in order to settle an estate of a decedent or bankrupt or for similar purposes. Interests are not redeemable even upon the Eligible Employee's termination of employment from the Wertheim Schroder Group.

10. Each managing Partner of the Initial Partnership is a "person associated with an investment adviser" within the meaning of section 202(a)(17) of the Advisers Act by virtue of his status as an officer and director of Wertheim Schroder, and is listed on Wertheim Schroder's Form ADV. To the extent that a Managing Partner of any Subsequent Partnership is neither listed on Wertheim Schroder's Form ADV nor registered as an investment adviser under the Advisers Act, applicants will consider, at the time of formation of the Subsequent Partnership, whether that Managing Partner will be required to register as an investment adviser under the Advisers Act.

11. No compensation will be paid to the Managing Partners by the Partnership for their services. Reasonable and necessary out-of-pocket expenses, however, may be paid to the Managing Partners in reimbursement of actual third party expenses incurred on behalf of the Partnerships. Such out-of-pocket expenses may include mailing costs, travel expenses, telephone charges applicable to the Partnerships' business and similar costs. Otherwise, except as stated in the next sentence and the next paragraph, the Wertheim Schroder Group will bear all expenses in connection with the organization and internal operations of the Partnerships in connection with the Nominal Accounts,[2] including all third party legal and accounting fees, and all overhead and administrative expenses. As contemplated by and pursuant to section 17(e) of the Act, a Partnership may pay commissions to members of the Wertheim Schroder Group for Transactions in Partnership portfolio securities.

12. With respect to Related Entity transactions into which a Partnership, may enter, a member of the Wertheim Schroder Group may charge and receive, and the Partnership, directly or through an entity in which it has invested, may pay to such member fees (including without limitation, performance fees, advisory fees, management fees, and fees for brokerage and clearing services), its share of direct and indirect out-of-pocket and organizational expenses in connection with such investment, and compensation in the form of carried interests entitling such member to share disproportionately in income and capital gains or similar compensation. In such a case, however, the Wertheim Schroder Group reserves the right to not charge or to waive all or part of any such fees, out-of-pocket and organizational expenses and compensation that such Partnerships otherwise might incur or bear directly or indirectly.

13. The General Partners will share in the net profits or net losses of the Partnerships for each fiscal year generally based on the proportion that the amounts of their Capital Contributions allocated to Partnership investments bear to the aggregated amount of the Capital Contributions of all Partners allocated to such investments.[3]

14. Any natural person who is not now, but later seeks to become, a General Partner in the Initial Partnership will be required to be an "accredited investor" under rule 501(a)(6) of Regulation D under the 1933 Act. Any natural person who seeks to become a General Partner in a Subsequent Partnership will also be required to be an "accredited investor" under rule 501(a)(6).

15. The General Partners of the Initial Partnership who are not also Managing Partners of the Initial Partnership ("Passive General Partners") will not be actively involved in managing the Initial Partnership. It is not currently intended that new Passive General Partners will be admitted to the Initial Partnership. New Passive General Partners will be admitted to the Initial Partnership, however, and Passive General Partners will be admitted to Subsequent Partnerships, only if they are entitled to receive indemnification from Wertheim Schroder for acting as General Partners.

16. The Partnerships will seek capital appreciation through direct or indirect investment in risk capital opportunities which are expected to include (a) interests, including warrants, options, and partnership interests (e.g., private placements), in new ventures, (b) emerging private companies thought to have high growth potential, (c) leveraged buyouts (including divisional and partial leveraged buyouts), (d) leveraged buyout or equity public or private investment partnerships or funds sponsored or managed by unaffiliated third parties or by the General Partners or members of the Wertheim Schroder Group, in which the General Partners or other members of the Wertheim Schroder Group have an interest as general or limited partners, and which may invest in any of the types of securities and in any of the same situations that the Partnerships may invest in, (e) strategic blocks of equity and equity-related securities where there is perceived financial or operational undervaluation, (f) equity in private and public company recapitalizations (including "white squire" preferred and similar securities), restructurings, acquisitions, bridge financings, and other forms of equity and mezzanine financing, and (g) private investment partnerships that invest directly or indirectly in real estate and oil and gas ventures. The Partnerships generally will not seek high current income or maintenance of liquidity.

17. No Partnership will invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds), and no Partnership will acquire any security issued by a registered investment company if immediately after such acquisition the Partnership owns more than 3% of the outstanding voting stock of the registered investment company.

18. The Applicants expect that the Partnerships will be offered investment opportunities which require a larger investment than any individual investor or Eligible Employee would be likely to

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[2] The term "Account" means any account of the Initial Partnership to which a Partner's Capital Contributions and share of profits and losses with respect to certain investments are credited. A "Nominal Account" is any Account established after the date of the Initial Partnership's Second Restated Articles of Partnership.

[3] The word "generally" is used to reflect the fact that each Partner's share of a Partnership's net profit and net loss arising from a Nominal Account is based on the proportion that his or her capital contributions to that Account bear to the Capital Contributions of all Partners attributed to that Account. In each case, however, the sharing of profit and loss is subject to special allocations in accordance with the Partnership Agreement, which are necessary to comply with and are in accordance with Federal income tax laws and Treasury regulations.

make and that, because of their affiliation with the Wertheim Schroder Group, the Partnerships will be offered participation in investment opportunities which would not be offered to most of the individual General and Limited Partners. In general, the Partnerships intend to invest in investment opportunities offered to, or which come to the attention of, the Wertheim Schroder Group, including opportunities in which the Wertheim Schroder Group (including its Related Entities) or its offerors, directors, and employees invest for their own account. In some instances, the Partnerships and individual employees, officers, and directors of a member of the Wertheim Schroder Group may acquire investments or interests directly or indirectly from the Wertheim Schroder Group acting as principal, including an investment in a Related Entity in which the Partnerships are or will be direct or indirect participants (and in which the Wertheim Schroder Group may or may not remain invested). In addition, the Wertheim Schroder Group may assign to the Partnership directly or indirectly and the Partnership may directly or indirectly assume, parts of the Wertheim Schroder Group's rights and obligations to make additional investments. In instances where a co-investment is made directly or indirectly by the Partnership in securities in which a member of the Wertheim Schroder Group (or a partnership that is a Related Entity in which the Partnership directly or indirectly is a participant) also invests at the same time, the Partnership must pay a price for the securities that is no more than the fair value (which may include carrying costs and certain organizational expenses) and otherwise purchase the securities on the same terms as are available to similarly situated investors[4] in the Wertheim Schroder Group (or such Related Entity).

19. The Wertheim Schroder Group may lend funds directly or indirectly to a Partnership if the Managing Partners commit to an investment on the Partnership's behalf prior to the Partners' funding of their Capital Contributions. In such instances the Wertheim Schroder Group may receive reimbursement for out-of-pocket expenses as well as interest on such funds at its then prevailing broker call rate (i.e., the interest rate at which brokers borrow from banks to cover the securities positions of their clients). Pending investment of Capital Contributions from the Partners and any distribution of proceeds to the Partners, a Partnership's funds may be invested in all types of securities, including without limitation, short-term money market instruments, U.S. Government securities, certificates of deposit and repurchase agreements purchased from or entered into with the Wertheim Schroder Group or third parties, or such funds may be invested in money market funds which may be advised by the Wertheim Schroder Group.

20. The Partnerships may invest, directly or indirectly, all of their assets in one or more transactions involving Related Entities. Such transactions may include but will not be limited to (a) co-investments with the Wertheim Schroder Group in debt, equity, or similar securities of the same class or a different class of the same issuer, including Related Entities in which the Partnerships (directly or indirectly) and the Wertheim Schroder Group have an interest; (b) purchases or sales from or to the Wertheim Schroder Group of debt, equity, or similar securities of the same class or a different class of the same issuer, including Related Entities in which the Partnerships (directly or indirectly) and the Wertheim Schroder Group have an interest; and (c) purchases of limited partnership interests in equity partnerships (public or private) in which the Partnerships (directly or indirectly) or the Wertheim Schroder Group have an interest (e.g., as a limited partner), whether or not the equity partnerships were managed or sponsored by the Wertheim Schroder Group (as the general partner or adviser), or structured, underwritten, or arranged by the Wertheim Schroder Group. With regard to the above mentioned transactions, the Managing Partners must determine prior to making such investment that the terms of the transaction are fair to the Partners and the Partnerships.

21. A Partnership may be dissolved at any time by General Partners representing 60% or more of the then aggregate Capital (as defined in the Partnership Agreement) of the Partnership. In addition, a Partnership may be dissolved at any time (a) by the vote or consent of the General Partners and Limited Partners, the credit balances of whose Capital Accounts then represent at least two-thirds in interest of the aggregate credit balances of the Capital Accounts of all Partners, (b) upon termination of the Partnership as provided in the Partnership Agreement, and (c) in the event the Managing Partners are empowered to liquidate the affairs, business, assets, and liabilities of the Partnership. Also, pursuant to the Partnership Agreement, a General Partner may be removed by the vote or consent of two-thirds in interest of the Partnership; upon removal, a General Partner's interest will be converted into that of a Limited Partner. The retirement, withdrawal, transfer of interest, insanity, bankruptcy, or death of the last remaining General Partner shall terminate the Partnership; provided, however, that the retirement, withdrawal, transfer of interest, insanity, bankruptcy, or death of any other General or Limited Partner shall not dissolve the Partnership but the Partnership shall thereafter be continued by the remaining General Partners.

22. For purposes of valuing assets of a Partnership, the securities for which market quotations are readily available shall be valued at market value as of the end of the fiscal year; all other securities and Partnership assets other than securities shall be valued at their fair value as determined in good faith by the Managing Partners or any adviser or consultant, taking into account all factors which the Managing Partners or any adviser or consultant retained by the Managing Partners for such purpose may deem relevant, including costs of liquidation, brokerage, restrictive agreements, and other factors. Distributions to the Partners will be made at such times and in such amounts as determined by the Managing Partners in their sole discretion and, to the extent made, will consist, in the sole discretion of the Managing Partners, of cash, property, or both. When distributing cash or property to Partners, the Managing Partners will use their best efforts to distribute such cash or property, as the case may be, *pro rata* to all Partners entitled to such distribution.

23. The Managing Partners are authorized, in their sole discretion, to sell or dispose of the assets of the Partnership, or make a distribution in kind of the assets held by the Partnership, provided, however, that in the event of a sale or disposition of any such asset (other than a short-term investment pending identification of a suitable investment opportunity or a bridge loan in connection with an equity investment), the proceeds received shall not be reinvested but shall be distributed as soon as is

[4] The term "similarly situated investors" means, for example, that if a Partnership invests in a limited partnership, it does so on the same basis as other limited partners. Similarly, if a Partnership invests in a class of equity securities, it does so on the same basis as other investors in that class of equity securities, but not necessarily on the same basis as investors in different classes of equity or on the same basis as debt investors.

practicable to the Partners entitled thereto.

24. If any Partner (the "Defaulting Partner") who has agreed to make a Capital Contribution shall fail to make all or any portion of such contribution when due or when called by the Managing Partners, the Managing partners may: (a) Exercise all voting, partnership, and other rights of the Defaulting Partner; (b) transfer all or any part of any collateral securing the Defaulting Partner's obligation to make Capital Contributions into the Partnership's name or in the name of its nominee or nominees; (c) declare the entire amount of Capital Contributions immediately due and payable; (d) sell or otherwise dispose of any or all of the collateral; (e) cause the partnership to bring an action against the Defaulting Partner seeking damages and any other remedies available at law; (f) arrange for another person to make the Capital Contribution in lieu of the Defaulting Partner, in which case that other person shall be deemed to be the assignee of that portion of the Defaulting Partner's Partnership Interest; (g) enforce any rights or remedies that the partnership may have as a secured party under the Uniform Commercial Code or any other applicable law, and (h) exercise any rights of setoff against any property of the Defaulting Partner or any other fight that the Partnership is granted under any subscription agreement of the Defaulting Partner. These rights and remedies are cumulative, and the managing Partners may pursue any other remedies available to them or the Partnership to enforce the obligation of the Defaulting Partner. The Defaulting Partner is liable for all costs of the Partnership, including attorney's fees incurred with respect to the collection of any of the Capital Contributions and the enforcement of any of the rights of the Partnership.

25. During the existence of the Partnerships, full and faithful books of account shall be kept, in which the Managing Partners shall enter, or cause to be entered, all business transacted by the Partnerships and all moneys and other things received, advanced, and paid out or delivered on behalf of the Partnerships, the results of the Partnerships' operations, and each Partner's capital, and such books shall at all times be accessible to all Partners.

**Applicants' Legal Analysis**

1. On behalf of the Partnerships, applicants request exemptions from all the provisions of the Act, and the rules and regulations thereunder, except section 9, certain provisions of sections 17 and 30, and sections 36 through 53, and the rules and regulations thereunder.

2. An exemption is requested from section 17(a) of the Act to the extent necessary to: (a) Permit the Wertheim Schroeder Group, acting as principal, to engage in any transaction directly or indirectly with a Partnership; and (b) permit a Partnership to invest in or engage in other transactions with an entity in which the Wertheim Schroder Group or a Partnership has invested or will invest, or with an entity with which the Wertheim Schroder Group or a Partnership is or will become otherwise affiliated. This exemption is requested to permit the Partnerships to directly or indirectly, without limitation, (a) purchase, invest in, sell, or resell as appropriate, securities of companies or investment vehicles (including Related Entities in which the Partnerships and other members of the Wertheim Schroder Group have an interest) and other investment properties offered from, by, or to the Wertheim Schroder Group, on a principal basis, including interests previously acquired for the account of the Wertheim Schroder Group, of the types which are consistent with the investment objectives of the Partnerships (such transactions may include, without limitation, transactions in which a Partnership participates as a selling security holder in a public offering that is underwritten on a principal basis by the Wertheim Schroder Group, including as a member of the underwriting or selling group); (b) purchase interests or property in, or lend money to (subject to the restrictions described below), a company or other investment vehicle (generally, a partnership, trust, or joint venture) in which the Wertheim Schroder Group, or its individual directors, officers, or employees will own or already own 5% or more of the voting (or non-voting) securities (or general or limited partnership interests) of the company or vehicle, or where such company or vehicle is otherwise affiliated with the Wertheim Schroder Group or a Partnership (including through the Partnership's ownership of 5% or more of the voting securities of such entity); (c) sell, put, or tender, or grant options in securities or interests in a company or investment vehicle back to such entity, where that entity is affiliated with the Wertheim Schroder Group, or its individual directors, officers, or employees otherwise than as a result of the Partnership's ownership of voting securities; and (d) purchase securities of the type consistent with the investment objectives of the Partnerships, underwritten on a principal basis by the Wertheim Schroder Group (including as a member of a selling group) on terms at least as favorable as those offered to investors other than affiliated persons of the Wertheim Schroder Group.

3. These transactions will only be effected upon a determination by the Managing Partners that the terms of the transaction are reasonable and fair to the Partners of the Partnerships involved in the transaction and do not involve overreaching of the Partnerships or its Partners on the part of any person concerned.

4. The foregoing exemption is requested on the undertaking that no Partnership will make loans to any member of the Wertheim Schroder Group, or any officer, director, or employee of the Wertheim Schroder Group, with the exception of short term repurchase agreements or other fully secured loans to the Wertheim Schroder Group. In addition, the Partnership will not sell or lease any property to any member of the Wertheim Schroder Group except on terms at least as favorable as those obtainable from unaffiliated third parties, except that this will not prohibit any transaction involving the sale of a general partner interest or a limited partner interest or permitted by the terms of any partnership agreement or investment contract into which the Partnership may enter by virtue of its investment as a general or limited partner, where a member of the Wertheim Schroder Group also acts as general partner of such partnership.

5. An exemption from section 17(a) is consistent with the policy of the Partnerships and the protection of investors and necessary to promote the basic purpose of the Partnerships, as more fully discussed below with respect to the requested exemption from section 17(d) and rule 17d–1. The Partners will have been fully informed of the possible extent of the Partnerships' dealings with the Wertheim Schroder Group and, as successful professionals employed in the securities business, will be able to understand and evaluate the attendant risks. The community of interest among the Partners and the Wertheim Schroder Group is the best insurance against any risk of abuse in this regard.

6. An exemption is requested from section 17(d) of the Act and rule 17d–1 thereunder to the extent necessary to permit the Partnerships to engage in any transactions in which affiliated persons of the Partnerships (including the General Partners and members of the Wertheim Schroder Group), or affiliated persons of such affiliated persons, are participants. For example, the

Partnerships' investments may include, but will not be limited to (a) co-investments with the Wertheim Schroder Group in debt, equity, or similar securities of the same class or a different class of the same issuer, including Related Entities in which the Partnerships (directly or indirectly) and the Wertheim Schroder Group have an interest; (b) purchases or sales from or to the Wertheim Schroder Group of debt, equity, or similar securities of the same class or a different class of the same issuer, including Related Entities in which the Partnerships (directly or indirectly) and the Wertheim Schroder Group have an interest; and (c) purchases of limited partnership interests in equity partnerships (public or private) in which the Partnerships (directly or indirectly) or the Wertheim Schroder Group have an interest (e.g., as a limited partner), whether or not the equity partnerships were managed or sponsored by the Wertheim Schroder Group (as the general partner or adviser), or structured, underwritten, or arranged by the Wertheim Schroder Group.

7. The restrictions of section 17(d) and rule 17d–1 would undermine the principal rationale of the Partnerships, which is to provide a vehicle for Eligible Employees to invest with other employees, directors, officers, and entities that are members of the Wertheim Schroder Group. Because of the number and sophistication of the potential Partners of the Partnerships and persons affiliated with such Partners, strict compliance with section 17(d) would cause the Partnerships to forego investment opportunities simply because a Partner or other affiliated person of a Partnership, or an affiliated person of such an affiliated person, also had, or contemplated making, a similar investment. In addition, because attractive investment opportunities of the types considered by the Partnerships often require that each participant make available funds in an amount that may be substantially greater than may be available to a Partnership alone, the only way in which a Partnership may be able to take advantage of certain attractive opportunities will be as a participant with other persons, including affiliates. The flexibility to structure co- and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. The concern that permitting co- and joint investments by the Wertheim Schroder Group or affiliated persons of the Wertheim Schroder Group on the one hand, and a Partnership on the other, might lead to less advantageous treatment of the Partnership should be mitigated by the fact that (a) the Wertheim Schroder Group, in addition to its substantial stake as a general and/or limited partner in partnerships in which the Partnerships will make investments and its investments in the Partnerships themselves, will be acutely concerned with its relationship with the key employees who invest in the Partnerships; and (b) principals of the Wertheim Schroder Group, including officers and directors of Holdings and Wertheim Schroder, will be investing in the Partnerships.

8. An exemption is requested from section 17(f) and rule 17f–1 to the extent necessary to permit the Wertheim Schroder Group to act as custodian without a written contract. Since there is such a close association between the Partnerships and the Wertheim Schroder Group, requiring a written contract would expose the Partnerships to unnecessary burden and expense where none is necessary. Furthermore, any securities of the Partnership held by the Wertheim Schroder Group will have the protection of fidelity bonds. An exemption is also requested from rule 17f–1(b)(4), as applicant does not believe the expense of retaining an independent accountant to conduct periodic verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

9. An exemption is requested from section 17(g) and rule 17g–1 to the extent necessary to permit the Partnerships to comply with rule 17g–1 by having a majority of the Managing Partners take such action and make such approvals as are set forth in the rule.

10. Section 17(j) and rule 17j–1 require that every registered investment company adopt a written code of ethics and every access person of a registered investment company report to the investment company with respect to transactions in any security in which the access person has, or by reason of the transactions acquires, any direct or indirect beneficial ownership in the security. Applicants request an exemption from rule 17j–1, with the exception of rule 17j–1(a), because they are burdensome and unnecessary and because the exemption is consistent with the policy of the Act. Requiring the Partnerships to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time-consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners of the Partnerships by virtue of their common association in the Wertheim Schroder Group; the substantial and largely overlapping protections afforded by the conditions (as set forth below) with which applicants have agreed to comply; the concerns of the Wertheim Schroder Group that the employees who participate in the Partnerships actually receive the benefits they expected to receive when investing in the Partnerships; and the fact that the investments of the Partnerships will be investments that usually would not be offered to the Partners, including those Partners who would be deemed access persons, as individual investors. Accordingly, the requested exemption is consistent with the purposes of the Act, because the dangers against which section 17(j) and rule 17j–1 are intended to guard are not present in the case of the Partnerships.

11. Sections 30(a), 30(b), and 30(d), and the rules under those sections, require that registered investment companies file with the Commission and mail to their shareholders certain periodic reports and financial statements. The forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Partners. Exemptive relief is requested to the extent necessary to permit the Partnerships to report annually to the Limited Partners and the General Partners in the manner prescribed by the Partnership Agreement. An exemption also is requested from section 30(f) to the extent necessary to exempt the General Partners (including the Managing Partners) and any other persons who may be deemed members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16 of the Securities Exchange Act of 1934 with respect to their ownership of Interests in the Partnerships.

12. Applicants submit that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all the parties and the fact that each Partnership is an "employees' securities company" as defined in section 2(a)(13) of the Act. Applicants further submit that a substantial community of economic and other interests exists among the Partners which obviates the need for protection of investors under the Act. The Partnerships were conceived and will be organized and managed by persons who will be investing in the Partnerships, and will not be promoted by persons

seeking to profit from fees or investment advice or from the distribution of securities. Applicants also submit that the terms of the proposed affiliated transactions will be reasonable and fair and free from overreaching. The exemptions are being requested because they are considered necessary or relevant to the operations of the Partnerships as an investment program uniquely adapted to the needs and desires of Eligible Employees of the Wertheim Schroder Group.

**Applicants' Conditions**

Applicants will comply with the following conditions if the requested order is granted:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if a majority of the Managing Partners determine that:

a. The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and

b. The transaction is consistent with the interests of the Partners, the Partnership's organizational documents and the Partnership's reports to its Partners.

In addition, the Managing Partners will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the Commission and its staff.*

2. In connection with the Section 17 Transactions, the Managing Partners will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

3. As a condition to the relief requested from section 17(d) and rule 17d–1, the Managing Partners will not invest the funds of any Partnership in any investment in which a "Co-Investor" has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the Managing Partners sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (a) An "affiliated person" (as such term is defined in the Act) of the Partnership; (b) a member of the Wertheim Schroder Group; (c) an officer or director of a member of the Wertheim Schroder Group; (d) a Related Entity; or (e) a company in which a Managing Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this Condition "3," however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934, as amended (the "1934 Act"); or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 thereunder.

4. Each Partnership and the Managing Partners will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partners, and each annual report of such Partnership required by the terms of the Partnership Agreement of the Initial Partnership, or the applicable partnership agreement of any Subsequent Partnership, as the case may be, to be sent to the Partners, and agree that all such records will be subject to examination by the Commission and its staff.*

5. The Managing Partners will send to each Partner who had an interest in each Nominal Account of the Initial Partnership and in each Subsequent Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the Managing Partners will make an appraisal or have an appraisal made of all of the assets of the Partnership in any Nominal Account as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the Managing Partners and deemed qualified by the Managing Partners to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets and liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the Managing Partners may revise the appraisal as they, in their good faith and sole discretion, deem appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the Managing Partners shall send a report to each person who was a Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Partner of his or its federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. In any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a Wertheim Schroder Group director, officer or employee, such individual will not participate in the Partnership's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17234 Filed 7–20–93; 8:45 am]

BILLING CODE 8010-01-M

* Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

* Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 90-051]

RIN 2115-AD61

### Double Hull Standards for Vessels Carrying Oil in Bulk; U.S. Position on International Standards for Tank Vessel Design

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice.

**SUMMARY:** International standards for new and existing tank vessel designs were developed and adopted by the International Maritime Organization (IMO) in March 1992. The U.S. has taken a position with IMO that the express approval of the U.S. Government would be necessary before these international tank vessel design standards will be enforced by the U.S. This is due to technical differences with the mandated requirements of the Oil Pollution Act of 1990 (OPA 90) and IMO's adopted international tank vessel design standards.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Gauvin, Project Manager, Merchant Vessel Inspection and Documentation Division (G-MVI-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-1181.

**SUPPLEMENTARY INFORMATION:** Pursuant to OPA 90, the Coast Guard published an Interim Final Rule (IFR) on August 12, 1992, entitled Double Hull Standards for Vessels Carrying Oil in Bulk (57 FR 36222). The IFR established technical standards for double hulls on vessels carrying oil in bulk, as cargo or cargo residue, that are constructed or undergo a major conversion under contracts awarded after June 30, 1990. The IFR also included a phase-out schedule for existing single hulled tank vessels. The IFR amends sections of title 33, Code of Federal Regulations (CFR) part 157.

On March 6, 1992, the 32nd session of IMO's Marine Environment Protection Committee (MEPC 32), adopted Regulations 13F and 13G to Annex I of the International Convention for the Prevention of Pollution of Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Regulation 13F requires new tank vessels be designed and constructed with a double hull or mid-deck configuration. Regulation 13F is applicable to tank vessels of or over 600 deadweight tons (DWT) contracted on or after July 6, 1993, or which are delivered on or after July 6, 1996.

Regulation 13G establishes a phase-out schedule which begins on July 6, 1995, for existing single hulled tank vessels to be removed from service or converted into a double hull or mid-deck configuration. Regulation 13G is applicable to existing crude oil carriers of 20,000 DWT or over, or product carriers of 30,000 DWT or over. (For the convenience of the reader, Regulations 13F and 13G appeared as appendix in the IFR (57 FR 36236)).

On December 23, 1992, the U.S. Embassy in London deposited a declaration with IMO stating that the express approval of the U.S. Government will be necessary before Regulations 13F and 13G of MARPOL 73/78, would enter into force for the U.S. In this declaration, the U.S. cited the technical differences between MARPOL amendments for new and existing tankers, and OPA 90.

Compliance with Regulation 13F's double hull standards alone will not be sufficient to trade in the U.S. All foreign vessels which wish to operate in U.S. trade must document their compliance with OPA 90's double hull design standards by completing the requirements of 33 CFR 157.24.

Dated: July 14, 1993.

**Joseph J. Angelo,**

*Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 93-17265 Filed 7-20-93; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Alpha Indian Rock Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Alpha Indian Rock Federal Savings and Loan Association, Manayunk, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 9, 1993.

Dated: July 15, 1993.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 93-17255 Filed 7-20-93; 8:45 am]

BILLING CODE 6720-01-M

[AC-30; OTS No. 6304]

### First Federal Savings and Loan Association of Englewood, Englewood, FL; Approval of Conversion Application

Notice is hereby given that on July 14, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Englewood, Englewood, Florida to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: July 15, 1993.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 93-17256 Filed 7-20-93; 8:45 am]

BILLING CODE 6720-01-M

[AC-29; OTS No. 6458]

### First Federal Savings and Loan Association of Wood County, Bowling Green, OH; Approval of Conversion Application

Notice is hereby given that on July 12, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Wood County, Bowling Green, Ohio to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: July 15, 1993.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 93-17257 Filed 7-20-93; 8:45 am]

BILLING CODE 6720-01-M

## UNITED STATES INFORMATION AGENCY

### Reporting and Information Collection Requirements Under OMB Review

**AGENCY:** United States Information Agency.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256. USIA is requesting approval for a three-year clearance of a new information collection entitled "Application Package, United States Information Agency, Bureau of Educational and Cultural Affairs". Estimated burden hours per response is 20 hours. Respondents will be required to respond only one time.

**DATES:** Comments are due on or before August 20, 1993.

**COPIES:** Copies of the Request for Clearance (SF–83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 619–5503; and OMB review: Mr. Jeffery Hill, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395–7340.

**SUPPLEMENTARY INFORMATION:** Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–XXXX) is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

*Title:* Application Package, United States Information Agency, Bureau of Educational and Cultural Affairs.

*Form Number:* None.

*Abstract:* This package contains a checklist, instructions and a number of forms needed to provide information necessary to complete the grant review by panel and Associate Director.

*Proposed Frequency of Responses:* No. of Respondents—2,000, Recordkeeping Hours—400, Total Annual Burden—40,000.

Dated: July 15, 1993.

**Rose Royal,**

*Federal Register Liaison.*

[FR Doc. 93–17253 Filed 7–20–93; 8:45 am]

BILLING CODE 8230–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; Amendment of System of Records; New Routine Use Statement

Notice is hereby given that the Department of Veterans Affairs (VA) is amending a system of records entitled "Personnel and Accounting Pay System—VA" (27VA047), which is set forth on pages 942–943 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II."

VA is proposing to add a new routine use No. 27 to this system of records. This new routine use will specifically permit the disclosure of information concerning interns and residents employed at VA Medical Centers to the Health Care Financing Administration (HCFA) by means of a computer matching program. The purpose of this matching program is to assure that no VA intern or resident is counted as more than one full-time equivalent in accordance with program regulations governing Medicare payments to hospitals for medical education costs.

VA has determined that the release of information for this purpose is a necessary and proper use of the information in this system of records and that the new specific routine use for transfer of this information is appropriate. The provisions of the Computer Matching and Privacy Protection Act of 1988 do not apply to the proposed computer match with HCFA because the match seeks only to assure accurate counting of personnel in terms of Medicare billing. The match will not affect an individual's eligibility to a federal benefit program or lead to efforts to collect money owed by any individual as a result of participation in a federal benefits program.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Secretary (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. All relevant material received before August 20, 1993, will be considered. All written comments received will be available for public inspection in the Veterans Service Unit, room 170, at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 30, 1993.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the new routine use statement is effective August 20, 1993.

Approved: July 13, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

### Notice of Amendment to System of Records

In the system of records identified as 27VA047, "Personnel and Accounting Pay System—VA," set forth on pages 942–943 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the system is amended as follows:

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

* * * * *

27. Relevant information from this system of records concerning residents and interns employed at VA Medical Centers, including names, social security numbers, occupational titles, and dates of service, may be disclosed to the Health Care Financing Administration (HCFA) as part of an ongoing computer matching program. The purpose of this computer matching program is to help assure that no intern or resident is counted as more than one full-time equivalent in accordance with

program regulations governing Medicare education costs.

[FR Doc. 93-17203 Filed 7-20-93; 8:45 am]
BILLING CODE 4000-01-M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 6, 1993.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 93–17492 Filed 7–6–93; 3:19 pm]

BILLING CODE 6351-01-M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 13, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 93–17493 Filed 7–19–93; 3:19 pm]

BILLING CODE 6351-01-M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 20, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 93–17494 Filed 7–19–93; 3:19 pm]

BILLING CODE 6351-01-M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, August 27, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 93–17495 Filed 7–19–93; 3:19 pm]

BILLING CODE 6351-01-M

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FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., July 28, 1993.

PLACE: 1st Floor Hearing Room, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 92–12—*Save on Shipping, Inc. v. Puerto Rico Maritime Shipping Authority*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

*Secretary.*

[FR Doc. 93–17471 Filed 7–19–93; 2:25 pm]

BILLING CODE 6730-01-M

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, July 29, 1993.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open and Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: In Closed session, the Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Donald L. Gregory et al. v. Thunder Basin Coal Co.*, Docket No. WEST 92–279–D, etc. (Issues include whether the judge erred in dismission these proceedings because the Secretary refused to provide Thunder Basin with certain documents during discovery.)

In open session, the Commission will consider and act upon the following:

2. *Energy West Mining Co.*, Docket No. WEST 91–251. (Issues include whether the judge erred in concluding that Energy West's violation of 30 CFR 75.503 was of a significant and substantial nature and in assessing a civil penalty for the violation.)

3. *Aluminum Company of America*, Docket No. CENT 92–362–RM. (Issues include whether the judge erred in vacating an accident control order issued to Alcoa pursuant to 30 U.S.C. § 813(k) on the ground that the Secretary of Labor failed to prove that an accident had occurred.)

Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202)653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: July 16, 1993.

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 93–17387 Filed 7–19–93; 10:23 am]

BILLING CODE 6735-01-M

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, July 26, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 16, 1993

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 93–17386 Filed 7–19–93; 10:22 am]

BILLING CODE 6210-01-P

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U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Open Forum on Children and Youth Services: Redefining the Federal Role for Libraries

DATE AND TIME: September 2, 9:00 a.m. to 4:30 p.m.

**PLACE:** California State Library, Room 500, 1001 6th Street, Sacramento, CA 95814.

**STATUS:** Open.

**PURPOSE OF THE FORUM:** Open forum on the changing role of the Federal government in support of library and information services, and literacy programs for children and youth. The forum provides and opportunity for representatives from elected officials, community advocacy groups and organizations, school library media centers, public libraries, academic libraries educational, literacy and information services organizations, companies, associations, and institutions to offer comments, observations, and suggestions related to Federal roles and responsibilities for library and information services, and literacy programs offered to children and youth.

Parties interested in presenting oral or written statements should notify Kim Miller or Peter Young at NCLIS, 1110 Vermont Avenue, N.W., Suite 820, Washington, D.C. 20005–3522 (202) 606–9200 by August 16, 1993. Written statements must be received at the NCLIS office by October 15, 1993.

To request further information or to make special arrangements for physically challenged persons, contact Kim Miller, NCLIS, no later than one week in advance of the forum.

Dated: July 15, 1993.

**Peter R. Young,**

*NCLIS Executive Director.*

[FR Doc. 93–17496 Filed 7–19–93; 3:20 pm]

BILLING CODE 7527–01–M

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**NATIONAL CREDIT UNION ADMINISTRATION**

**NOTICE OF PREVIOUSLY HELD EMERGENCY MEETING**

**TIME AND DATE:** 3:30 p.m., Thursday, July 15, 1993.

**PLACE:** Embassy Suites Hotel, 1881 Curtis Street, Denver, Colorado 80202.

**STATUS:** Closed.

**MATTERS CONSIDERED:**

1. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).

The Board voted that agency business required that a meeting be held with less than the usual seven days advance notice. Earlier announcement of this was not possible.

The Board voted to close the meeting under the exemption stated above. General Counsel Robert Fenner certified that the meeting could be closed under the exemption.

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 93–17437 Filed 7–19–93 12:57 pm]

BILLING CODE 7535–01–M

VOL 58 ISS 138 JL 21 1993 UMI



# Corrections

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**42 CFR Parts 435 and 436**

**[MB-001-FC]**
**RIN 0938-AA58**

**Medicaid Program; Eligibility and Coverage Requirements**

*Correction*

In rule document 93-880 beginning on page 4908 in the issue of Tuesday, January 19, 1993, make the following corrections:

1. On page 4927, in the first column, amendatory instruction 7. was omitted just before § 435.201, it should read as follows:

7. Section 435.201 is revised to read as follows:

2. On page 4932, in the second column, the heading above amendatory instruction 39. should read "§ 435.733 [Amended]".

3. On page 4935, in the first column, in amendatory instruction 5., in the second line, "§ 436.211" should read "§ 436.210."

BILLING CODE 1505-01-D

## NUCLEAR REGULATORY COMMISSION

**10 CFR Part 50**

**RIN 3150-AD60**

**Training and Qualification of Nuclear Power Plant Personnel**

*Correction*

In rule document 93-9651 beginning on page 21904 in the issue of Monday, April 26, 1993, make the following corrections:

**§ 50.120 [Corrected]**

On page 21912, in the first column, in § 50.120(b)(1), beginning in the second and sixth lines, "[October 25, 1993, publication]" should read "November 22, 1993" each time it appears.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD 92-046]**

**National Boating Safety Advisory Council; Applications for Appointment**

*Correction*

In notice document 93-16705 beginning on page 38158, in the issue of Thursday, July 15, 1993, make the following correction:

On page 38159, in the first column, in the FR Doc. line, "93-16765" should read "93-16705".

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federal register

Wednesday
July 21, 1993

Part II

# Department of Justice

**Prisons Bureau**
**28 CFR Parts 540, et al.**
**Control, Custody, Care, Treatment and Instruction of Inmates; Rules and Proposed Rules**

**Federal Prison Industries, Inc.**
**28 CFR Part 301**
**Inmate Accident Compensation; Proposed Rule**

VOL 58 ISS 138 JL 21 1993 UMI

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 540, 541

RIN 1120 AA-02

**Control, Custody, Care, Treatment and Instruction of Inmates; Visiting Regulations and Inmate Discipline**

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rules on Visiting Regulations and Inmate Discipline and Special Housing Units. The amendment makes minor procedural changes for the preparation of the visiting list; updates references to statutory penalties for providing or attempting to provide contraband to inmates; and makes other editorial changes. This amendment also clarifies visiting procedures for inmates in detention and special housing, and it makes a further clarification to the Bureau's general policy on loss of privileges. The intended effect of this amendment is to provide for the continued orderly operation of inmate visiting.

EFFECTIVE DATE: August 20, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its rule on Visiting Regulations. A proposed rule on this subject was published in the Federal Register on February 8, 1991 (56 FR 5303 et seq.). A summary of public comment follows.

Several commenters disagreed with the proposed amendment to § 540.44(e) raising the age from 16 years to 18 years for visits by children unaccompanied by a responsible adult. The commenters stated the change appeared unnecessary and a punishment to imprisoned mothers or fathers and their children; that to change existing policy is unfair; and that because it is not always easy to find an adult to bring with you, the modification will make it more difficult for younger persons to visit. One of the commenters stated that children between the ages of 16 and 18 are, in many ways, treated as mature adults, and objected to the absence of statistical or anecdotal information concerning the number of children affected or problems with children in this age group. This commenter speculated that children of inmates are likely to be from one-parent or dysfunctional families where there may be no other adult to accompany them for a visit, and that most one-parent families are headed by women so that the proposal disproportionately affected women prisoners.

The Bureau recognizes the value of a child's visit to an inmate in maintaining family relationships, and its proposed revision was not intended to adversely impact on that value. The requirement for adult supervision was not intended to limit visitation access, but to prevent disruptions or security violations by a child lacking the maturity to understand the Bureau's visiting regulations or who is unable to fully comprehend or be held fully accountable for the ramifications of his or her actions. The Bureau wishes to consider further its response to comments and therefore has not adopted the proposed revision to § 540.44(e) in this document. The age requirement for unaccompanied visits by children remains at sixteen.

One commenter objected to the statutorily conforming amendment regarding fines and penalties for introducing or attempting to introduce contraband into an institution. This revision merely reflects the current statutory provision contained in 18 U.S.C. 1791.

Another commenter objected to the change in § 540.50(c) regarding visits to inmates not in regular population status, stating that the revision was a total change in visitation rights of prisoners in detention or segregated status. This commenter stated that the existing text prevents any staff member from interfering with the visits of immediate family members unless a violation of visiting privileges has occurred, and that under the revised rule, the Bureau of Prisons will do so.

The proposed rule was not intended to make a "total change" in the visitation rights of inmates in detention or segregation status. To indicate this, we have revised § 540.50(c) to make two clarifications. The first clarification is to indicate that the presumption against loss of visiting privileges is limited to incidents occurring while the inmate is in detention or segregation status, and does not interrupt or delay a loss of privilege sanction imposed while the inmate was in general population status prior to placement in detention or segregation status. The second clarification is that exceptions to the stated criteria for loss of an inmate's visiting privileges requires the inmate to receive a hearing before the Discipline Hearing Officer (DHO) in accordance with the provisions of 28 CFR 541.17, following those provisions which are appropriate to the circumstances. A loss of visiting privileges for other than visiting-related reasons requires a finding by the DHO that the inmate committed a prohibited act and that there is a lack of other appropriate sanctions or when imposition of the appropriate sanction upon the inmate previously has been ineffective. An inmate who disagrees with the loss of privilege may file a grievance under the administrative remedy procedure (see 28 CFR part 542). As a further clarification of its policy on loss of privileges, the Bureau is herein amending paragraph (g) of Table 4 in § 541.13. Paragraph (g) had specified that ordinarily loss of a privilege is used as a sanction in response to an abuse of that privilege. The paragraph had further specified, however, that the loss of certain privileges could be appropriate sanctions in some cases for misconduct not related to the privilege. As revised, paragraph (g) now states that the DHO or Unit Discipline Committee (UDC) may impose a loss of privilege sanction not directly related to the offense provided that the DHO or UDC determines there is a lack of other appropriate sanctions or when those sanctions have previously been ineffective. This revision provides the standard for the DHO or UDC to impose loss of privileges as a sanction not directly related to the offense. Finally, this document makes a nomenclature change by revising references to Security Levels which appear in Table 3 of § 541.13.

After due consideration of the comments received, the Bureau is adopting the proposal as a final rule with the modification to § 540.50(c) and the additional changes to § 541.13 as described above, and without revision to § 540.44(e).

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the Federal Register.

**List of Subjects in 28 CFR Parts 540 and 541**

Prisoners.

Dated: July 14, 1993.

James A. Make,

*Acting Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 540 and 541 in subchapter C of 28 CFR, chapter V are amended as set forth below.

## SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR 540 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

**§ 540.40 [Amended]**

2. Section 540.40 is amended by revising, in the last sentence, the word "insure" to read "ensure".

**§ 540.50 [Amended]**

3. In § 540.50, paragraph (b)(1) is amended by revising the phrase "Health Systems Administrator" to read "Health Services Administrator".

4. In § 540.50, paragraph (c) is revised to read as follows:

**§ 540.50 Visits to inmates not in regular population status.**

* * * * *

(c) Detention or segregation status—Ordinarily, an inmate retains visiting privileges while in detention or segregation status. Visiting may be restricted or disallowed, however, when an inmate, while in detention or segregation status, is charged with, or has been found to have committed, a prohibited act having to do with visiting guidelines or has otherwise acted in a way that would reasonably indicate that he or she would be a threat to the orderliness or security of the visiting room. Loss of an inmate's visiting privileges for other reasons may not occur unless the inmate is provided a hearing before the Discipline Hearing Officer (DHO) in accordance with the provisions of § 541.17 of this chapter, following those provisions which are appropriate to the circumstances, which results in a finding by the DHO that the inmate committed a prohibited act and that there is a lack of other appropriate sanctions or that imposition of an appropriate sanction previously has been ineffective. The Unit Discipline Committee (UDC) may not impose a loss of visiting privileges for inmates in detention or segregation status. The provisions of this paragraph (c) do not interrupt or delay a loss of visiting sanction imposed by the UDC or DHO prior to the inmate's placement in detention or segregation status.

5. In § 540.51, paragraph (g)(2) is amended by adding a comma after the word "embracing" in the first and in the second sentences, paragraph (g)(4) is amended by revising, in the first sentence, the word "officer" to read "visiting room officer", paragraph (b)(1) is revised, and paragraph (b)(4) is amended by revising the last sentence to read as follows:

**§ 540.51 Procedures.**

* * * * *

(b) * * *

(1) Staff shall ask each inmate to submit during the admission-orientation process a list of proposed visitors. After appropriate investigation, staff shall compile a visiting list for each inmate and distribute that list to the inmate and the visiting room officer.

* * * * *

(4) * * * The visiting guidelines shall include specific directions for reaching the institution and shall cite 18 U.S.C. 1791, which provides a penalty of imprisonment for not more than twenty years, a fine, or both for providing or attempting to provide to an inmate anything whatsoever without the knowledge and consent of the Warden.

* * * * *

## PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

6. The authority citation for 28 CFR part 541 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

7. In § 541.13, Table 3 is amended by revising in the description under the Prohibited acts column for Code 102 the phrases "Security level 2 through 6" and "Security level 1" to read "low, medium, and high security level," and "minimum" respectively, and by revising in the description under the Prohibited acts column for Code 200 the phrase "Security Level 1" to read "minimum"; Table 4 is amended by revising paragraph 2.(g) to read as follows:

**§ 541.13 Prohibited acts and disciplinary severity scale.**

* * * * *

Table 4—Sanctions

* * * * *

2. * * *

(g) *Loss of privileges:* The DHO or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege. However, the DHO or UDC may impose a loss of privilege sanction not directly related to the offense when there is a lack of other appropriate sanctions or when imposition of an appropriate sanction previously has been ineffective.

* * * * *

[FR Doc. 93–17237 Filed 7–20–93; 8:45 am]

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 540 and 545

RIN 1120 AA-06

**Control, Custody, Care, Treatment and Instruction of Inmates; Telephone Regulations and Inmate Financial Responsibility**

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed Rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its rule on Telephone Regulations in order to provide for the operation of a debit billing system for inmates and to clarify references to loss of telephone privileges under institutional disciplinary sanctions. This document also proposes an amendment to the Bureau's rule on Inmate Financial Responsibility. The amendment states that an inmate who refuses participation in the inmate financial responsibility program is limited to one telephone call every three months, the minimum provided in existing § 540.100. These proposed amendments are intended to reduce generally the cost of telephone calls both for the Bureau and the parties involved, to continue to provide for the secure and safe operation of the institution, and to recognize the role of inmate financial responsibility.

DATES: Comments must be submitted by August 20, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, telephone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its rules on Telephone Regulations and on Inmate Financial Responsibility Program. A final rule on Telephone Regulations was published in the Federal Register June 29, 1979 (44 FR 38249) and was amended June 1, 1983 (48 FR 24622). A final rule on the Inmate Financial Responsibility Program was published in the Federal Register May 21, 1991 (56 FR 23477).

The Bureau of Prisons provides inmates with several means of communicating with the public. Primary among these is written correspondence, with visiting and telephone privileges serving as two alternate means of communications.

Current regulations in 28 CFR part 540, subpart I, stipulate that inmate calls shall ordinarily be made collect to the party called. In order to take advantage of the economies offered by the use of a debit billing system, the Bureau is amending its regulations to remove exclusive reference to the placement of collect telephone calls and to add procedures necessary to help protect the public from possible abuse of inmate telephone calls under the new billing system. To that end, the Bureau is redesignating §§ 540.101 through 540.105 as §§ 540.102 through 540.106 in order to add a new § 540.101 containing procedures necessary for the secure operation of the debit billing system and incorporating existing general telephone procedures previously stated in § 540.100. Under debit billing, the charges for most telephone calls will be less expensive than for equivalent calls placed under the current collect calling system. Inmate calls would be processed under the same rate structure regardless of the time of day or day of the week in which the call is placed. Telephone calls placed under the new system also would be less likely to be blocked during peak calling periods, such as holidays. A summary of the specific changes follows.

In § 540.100, a sentence is added to articulate the Bureau's purpose in extending telephone privileges to inmates, and a reference to the inmate financial responsibility program (28 CFR 545.11) is added. The inmate financial responsibility program offers inmates the opportunity to develop a financial plan designed to meet certain legitimate financial obligations (for example, court-ordered restitution, fines, or other federal government obligations) and to make payments toward fulfilling that plan. As proposed herein, a new paragraph (d)(10) of § 545.11 would specify that refusal by an inmate to participate in the financial responsibility program or to comply with the provisions of the financial plan ordinarily shall result in the inmate's being limited to placing no more than one telephone call every three months. This limitation is consistent with the minimum telephone call provisions contained in existing § 540.100. Any exception to this requires approval of the Warden. Section 540.100 is also amended to specify that an inmate may request to call a person of his or her choice. This change is necessary to reflect the use of the telephone list as a replacement for a collect call. Section 540.100 is further amended to clarify that restrictions on inmate telephone use may result from institutional disciplinary action. Ordinarily, such restriction will be imposed as the result of abuse of telephone use. The Bureau's procedures for institutional disciplinary action (see subpart B of 28 CFR 541) allow for imposition of the sanction in certain other circumstances.

New § 540.101 states the Warden shall permit an inmate who has not been restricted from telephone use to make at least one telephone call each three months. As noted above, this provision previously appeared in § 540.100. Paragraph (a) of new § 540.101 requires that an inmate telephone call ordinarily shall be made to a party identified on the inmate's official telephone list, which is prepared during admission and orientation. This list may contain up to twenty names. Upon such submission, the inmate shall acknowledge in writing that the person or persons on the list are agreeable to receiving a telephone call from the inmate and that any call made is for a purpose allowable under Bureau policy or institution guidelines, such as maintaining social contact with family and friends. Persons who have been approved for the inmate's visiting list ordinarily may be placed on the inmate's telephone list without further verification. Subject to staff approval, other persons may be placed on the telephone list upon receipt by staff of a completed telephone authorization form from the proposed telephone recipient. The inmate is responsible for mailing a telephone authorization form to proposed telephone call recipients. Paragraph (a) also allows an inmate the opportunity to submit changes to his or her telephone list. Paragraph (b) specifies that an inmate may not possess another inmate's telephone access code number, may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff. Paragraph (c) specifies that the placement and duration of any telephone call is subject to availability of inmate funds and that the maximum length for any call shall be determined by the Warden. The minimum length, subject to inmate availability of funds is ordinarily three minutes for each call, as specified in existing § 540.100. Paragraph (d) provides that the Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates housed in Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers, pretrial inmates, inmates in holdover status, and in cases of family emergencies.

Newly designated § 540.105 is amended to state that telephone expenses for which an inmate is responsible may include a fee for replacement of the inmate's telephone access code. A telephone access code is to be used in an institution which has implemented debit billing for inmate telephone calls. Under debit billing, an inmate has the opportunity to keep track of his or her telephone expenditures and is responsible for being aware of his or her account balance. Section 540.105 is further amended by allowing for the use of collect calls in certain circumstances and by removing extraneous examples. Newly designated § 540.106 is amended by removing discussion of restrictions on telephone privileges which result from institutional disciplinary action. Revised § 540.100 contains a reference to this matter, which is more completely addressed in subpart B of 28 CFR 541.

Interested persons may participate in this proposed rulemaking by submitting comments in writing to the previously cited address. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

**List of Subjects in 28 CFR Part 540 and 545**

Prisoners.

Dated: July 14, 1993.

**James A. Meko,**

*Acting Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 540 and 545 in subchapter C of 28 CFR, chapter V are proposed to be amended as set forth below.

**SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**

**PART 540—CONTACT WITH PERSONS IN THE COMMUNITY**

1. The authority citation for 28 CFR part 540 continues to read as follows:

**Authority:** 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 540.100 is revised to read as follows:

**§ 540.100 Purpose and scope.**

The Bureau of Prisons extends telephone privileges to inmates as a supplemental means of maintaining community and family ties. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations set forth under the inmate financial responsibility program (see 28 CFR 545.11) and those which the Warden determines are necessary to ensure the security, good order, and discipline of the institution and to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).

**§§ 540.101 through 540.105 [Redesignated as §§ 540.102 through 540.106]**

3. Sections 540.101 through 540.105 are redesignated as §§ 540.102 through 540.106.

4. New § 540.101 is added to read as follows:

**§ 540.101 Procedures.**

The Warden shall permit an inmate who has not been restricted from telephone use as the result of an institutional disciplinary action (see part 541, subpart B) to make at least one telephone call each three months.

(a) *Telephone list.* An inmate telephone call shall ordinarily be made to a party identified on the inmate's official telephone list. Ordinarily, this list may contain up to twenty names. Staff shall ask each inmate to submit during admission and orientation a list of proposed names and telephone numbers which the inmate wants to include on his or her telephone list. Upon such submission, the inmate shall acknowledge in writing that the person or persons on the list are agreeable to receiving a telephone call from the inmate and that any call made is to be for a purpose allowable under Bureau policy or institution guidelines, such as maintaining social contact with family and friends. Persons who have been approved for the inmate's visiting list ordinarily may be placed on the inmate's telephone list without further verification. Subject to staff approval, other persons may be placed on the list upon receipt by staff of a completed telephone authorization form from the proposed telephone call recipient. The inmate is responsible for mailing the telephone authorization form to each proposed telephone call recipient. The Warden may exercise discretion in approving or disapproving on grounds of a threat to institution security and good order, rehabilitative goals, or threat to the public. Any disapproval must be documented in writing. An inmate shall be allowed the opportunity to submit changes to the list on a quarterly basis.

(b) *Telephone access codes.* An inmate may not possess another inmate's telephone access code number. An inmate may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff.

(c) *Placement and duration of telephone call.* The placement and duration of any telephone call is subject to availability of inmate funds. Ordinarily, an inmate who has sufficient funds is allowed at least three minutes for a telephone call. The maximum length of a telephone call shall be determined by the Warden.

(d) *Exception.* The Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates housed in Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers, pretrial inmates, inmates in holdover status, and in cases of family emergencies.

5. Newly designated § 540.105 is revised to read as follows:

**§ 540.105 Expenses of inmate telephone use.**

An inmate is responsible for the expenses of inmate telephone use. Such expenses may include a fee for replacement of an inmate's telephone access code that is used in an institution which has implemented debit billing for inmate telephone calls. In institutions which have implemented debit billing, each inmate is responsible for staying aware of his or her account balance. Third party billing and electronic transfer of a call to a third party are not permitted. The Warden may direct the government to bear the expense of inmate telephone use or allow a call to be made collect under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.

**§ 540.106 [Amended]**

6. Newly designated § 540.106 is amended by removing the third sentence.

**PART 545—WORK AND COMPENSATION**

6. The authority citation for 28 CFR part 545 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

7. In § 545.11, paragraph (d)(10) is added to read as follows:

**§ 545.11 Procedures.**

* * * * *

(d) * * *

(10) The inmate will not be allowed to place more than one telephone call every three months. Any exception to this requires approval of the Warden.

[FR Doc. 93–17236 Filed 7–20–93; 8:45 am]
BILLING CODE 4410–05–P

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 301**

**RIN 1120–AA05**

**Inmate Accident Compensation**

**AGENCY:** Federal Prison Industries, Inc., Bureau of Prisons, DOJ.

**ACTION:** Proposed Rule.

**SUMMARY:** In this document, the Bureau of Prisons is proposing to extend coverage under Inmate Accident Compensation to inmates participating in approved work assignments for other federal agencies. Because inmates participating in such assignments may be housed in a community corrections center, it is necessary to add procedures appropriate for treatment and reporting of injuries and for processing claims which may arise from such assignments. This amendment also clarifies the applicability of lost-time wages, clarifies the effects of subsequent incarceration, clarifies the definition of "release", clarifies payment procedures for medical treatment, and corrects a typographical error in the citation of a court case. This amendment is intended to allow for the continued efficient operation of inmate work assignments.

**DATES:** Comments due by September 7, 1993.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is proposing to amend its regulations on Inmate Accident Compensation. A final rule on this subject was published in the Federal Register on March 12, 1990 (55 FR 9296).

Section 4125 of title 18 of the United States Codes allows for the use by Federal entities of inmate services in public works. This amendment would clarify the applicability of the Bureau's Inmate Accident Compensation to such work assignments by adding provisions for the reporting and treating of injuries and processing of claims which may arise in such assignments. Inmates participating in such assignments may be based in a community corrections center; consequently it is necessary to add provisions specific to that location. This includes clarification of the definition of "release" as it applies to inmates who suffer a work-related injury while housed at a community corrections center.

This amendment also clarifies that lost-time wages shall be available only for inmates based at Bureau of Prisons institutions (see new § 301.201) and that the amount of a payment for medical treatment is limited to reasonable expenses incurred, such as those amounts authorized under the applicable fee schedule established for the Department of Health and Human Services Medicare program (see § 301.317). This amendment also amends the definition of "release" in § 301.102 to include reference to pretrial inmates. This amendment also clarifies § 301.316 by rewording its provisions regarding subsequent incarceration of a compensation recipient. There is no change in the intent of this section. Finally, this amendment corrects a typographical error in the citation of the court case *U.S.* v. *Demko* which appears in § 301.319.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

**List of Subjects in 28 CFR Part 301**

Prisoners.

Dated: July 14, 1993.

**James A. Meko,**

*Acting Commissioner of Federal Prison Industries, and Acting Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p) and 0.99, it is proposed to amend part 301 of 28 CFR, chapter III as set forth below.

**CHAPTER III—FEDERAL PRISONS INDUSTRIES, INC., DEPARTMENT OF JUSTICE**

**PART 301—INMATE ACCIDENT COMPENSATION**

1. The authority citation for 28 CFR part 301 continues to read as follows:

**Authority:** 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

2. In § 301.101, paragraphs (a) and (b) are revised to read as follows:

**§ 301.101 Purpose and scope.**

* * * * *

(a) Inmate Accident Compensation may be awarded to former federal inmates or their dependents for physical impairment or death resultant from injuries sustained while performing work assignments in Federal Prison Industries, Inc., in institutional work assignments involving the operation or maintenance of a federal correctional facility, or in approved work assignments for other federal entities; or,

(b) Lost-time wages may be awarded to inmates assigned to Federal Prison Industries, Inc., to paid institutional work assignments involving the operation or maintenance of a federal correctional facility, or in approved work assignments for other federal entities for work-related injuries resulting in time lost from the work assignment.

3. In § 301.102, paragraph (b) is revised and paragraphs (d) and (e) are added to read as follows:

**§ 301.102 Definitions.**

* * * * *

(b)(1) For purposes of this part, the term "release" is defined as the removal of an inmate from a Bureau of Prisons correctional facility upon expiration of

sentence, parole, final discharge from incarceration of a pretrial inmate, or transfer to a community corrections center or other non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(2) In the case of an inmate who suffers a work-related injury while housed at a community corrections center, "release" is defined as the removal of the inmate from the community corrections center upon expiration of sentence, parole, or transfer to any non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(3) In the case of an inmate who suffers a work-related injury while housed at a community corrections center and is subsequently transferred to a Bureau of Prisons facility, "release" is defined as the removal of the inmate from the Bureau of Prisons facility upon expiration of sentence, parole, or transfer to a community corrections center or other non-federal facility.

* * * * *

(d) For purposes of this part, the term "work detail supervisor" may refer to either a Bureau of Prisons or a non-Bureau of Prisons supervisor.

(e) For the purposes of this part, the phrase "housed at" or "based at" a "Bureau of Prisons institution" shall refer to an inmate that has a work assignment with a Bureau of Prisons institution or with another federal entity and is incarcerated at a Bureau of Prisons institution. For the purposes of this part, the phrase "based at" or "housed at" a "community corrections center" shall refer to an inmate that has a work assignment for a non-Bureau of Prisons federal entity and is incarcerated at a community corrections center.

**§ 301.103 [Amended]**

4. Section 301.103 is amended by revising the phrase "institutional work assignments" to read "work assignments".

5. Section 301.104 is revised to read as follows:

**§ 301.104 Medical attention.**

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of the extent of the injury, the inmate shall immediately report the injury to his official work detail supervisor. In the case of injuries on work details for other federal entities, the inmate shall also report the injury as soon as possible to community corrections or institution staff, as appropriate. The work detail supervisor shall immediately secure such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injured inmate. First aid treatment may be provided by any knowledgeable individual. Medical, surgical, and hospital care shall be rendered under the direction of institution medical staff for all inmates based at Bureau of Prisons institutions. In the case of inmates based at community corrections centers, medical care shall be arranged for by the work supervisor or by community corrections center staff in accordance with the medical needs of the inmate. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment recommended by medical staff or by other medical professionals may result in denial of any claim for compensation for any impairment resulting from the injury.

6. Section 301.105 is revised to read as follows:

**§ 301.105 Investigation and report of injury.**

(a) After initiating necessary action for medical attention, the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury. The work detail supervisor shall complete a BP–140, Injury Report (Inmate), on all injuries reported by the inmate, as well as injuries observed by staff. In the case of injuries on work details for other federal entities, the work supervisor shall also immediately inform community corrections or institution staff, as appropriate, of the injury. The injury report shall contain a signed statement from the inmate on how the accident occurred. The names and statements of all witnesses (e.g., staff, inmates, or others) shall be included in the report. If the injury resulted from the operation of mechanical equipment, an identifying description or photograph of the machine or instrument causing the injury shall be obtained, to include a description of all safety equipment used by the injured inmate at the time of the injury. Staff shall provide the inmate with a copy of the injury report. Staff shall then forward the original and remaining copies of the injury report to the Institutional Safety Manager for review. In the case of inmates based at community corrections centers, the work detail supervisor shall provide the inmate with a copy of the injury report and shall forward the original and remaining copies of the injury report to the Community Corrections Manager responsible for the particular community corrections center where the inmate is housed.

(b) The Institution Safety Manager or Community Corrections Manager shall ensure that a medical description of the injury is included on the BP–140 whenever the injury is such as to require medical attention. The Institution Safety Manager or Community Corrections Manager shall also ensure that the appropriate sections of BP–140, Page 2, Injury-Lost-Time Follow-Up Report, are completed and that all reported work injuries are properly documented.

7. In subpart B, §§ 301.201 through 301.204 are redesignated as §§ 301.202 through 301.205, and a new § 301.201 is added to read as follows:

**§§ 301.201–301.204 [Redesignated as 301.202–301.205]**

**§ 301.201 Applicability.**

Lost-time wages shall be available only for inmates based at Bureau of Prisons institutions.

8. In § 301.303, paragraph (a) is amended by revising the first and the fourth sentences, paragraphs (b) through (e) are redesignated as (c) through (f), a new paragraph (b) is added, and newly designated paragraph (d) is amended by revising the first sentence to read as follows:

**§ 301.303 Time parameters for filing a claim.**

(a) No more than 45 days prior to the date of an inmate's release, but no less than 15 days prior to this date, each inmate who feels that a residual physical impairment exists as a result of an industrial, institution, or other work-related injury shall submit an FPI Form 43, Inmate Claim for Compensation on Account of Work Injury. * * * The completed claim form shall be submitted to the Institution Safety Manager or Community Corrections Manager for processing.

(b) In the case of an inmate based at a community corrections center who is being transferred to a Bureau of Prisons institution, the Community Corrections Manager shall forward all materials relating to an inmate's work-related injury to the Institution Safety Manager at the particular institution where an inmate is being transferred, for eventual processing by the Safety Manager prior to the inmate's release from that institution.

* * * * *

(d) The claim, after completion by the physician conducting the impairment examination, shall be returned to the Institution Safety Manager or Community Corrections Manager for final processing. * * *

* * * * *

9. Section 301.316 is revised to read as follows:

**§ 301.316 Subsequent incarceration of compensation recipient.**

If a claimant, who has been awarded compensation on a monthly basis, is or becomes incarcerated at any federal, state, or local correctional facility, monthly compensation payments payable to the claimant shall ordinarily be suspended until such time as the claimant is released from the correctional facility.

10. Section 301.317 is amended by adding a sentence at the end to read as follows:

**§ 301.317 Medical treatment following release.**

* * * The amount of a payment for medical treatment is limited to reasonable expenses incurred, such as those amounts authorized under the applicable fee schedule established pursuant to 42 U.S.C. 1395w–4 for the Department of Health and Human Services Medicare program.

11. Section 301.319 is amended by revising the citation at the end to read as follows:

**§ 301.319 Exclusiveness of remedy.**

* * * *U.S.* v. *Demko*, 385 U.S. 149 (1966).

[FR Doc. 93–17235 Filed 7–20–93; 8:45 am]
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Part III

# Department of Commerce

**Patent and Trademark Office**

**37 CFR Part 2**

**Revision of Trademark Fees; Notice of Proposed Rulemaking**

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 930506-3106]

RIN 0651-AA61

## Revision of Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Patent and Trademark Office (PTO) proposes to amend the rules of practice in patent and trademark cases, part 2 of title 37, Code of Federal Regulations. The PTO proposes that the fee amount for filing a trademark application be set at $245, in accordance with the applicable provisions of H.R. 2632. No other fees will be affected by this rulemaking.

DATES: Written comments must be submitted on or before August 20, 1993. A public hearing will not be held.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Robert Kopson, suite 507, Crystal Park 1, or by FAX to (703) 305-8525. Written comments will be available for public inspection in suite 507 of Crystal Park 1, at 2011 Crystal Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert Kopson by telephone at (703) 305-8510 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This proposed rule change would adjust the fee for filing a trademark application in accordance with the provisions of H.R. 2632. The proposed trademark fee increase is due to an expected funding shortfall for the trademark operation in fiscal year 1994. In order to collect the needed funds, and to keep the fee adjustment as limited as possible, only the trademark application fee is proposed to be increased.

The PTO will not adjust any other fees. The PTO's fiscal year 1994 operating expenses are approximately $21 million less than planned. This reduction is attributable to: (1) The policies of the Administration to effect administrative reductions throughout the Federal Government and to constrain growth in Federal employment levels; and (2) the actions of the General Services Administration in reappraising the agency's space rental costs which have resulted in a reduction in rental payments. These cost reductions preclude the need for a fee increase.

### Statutory Provisions

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials furnished by the PTO relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113(a)), as amended by Public Law 102-204, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding twelve months in the Consumer Price Index.

H.R. 2632, if enacted, would authorize the Commissioner to adjust the fee for filing a trademark application without regard to the fluctuations in the Consumer Price Index during the preceding twelve months.

Section 31 also allows new fee amounts to take effect thirty days after notice in the Federal Register and the Official Gazette of the Patent and Trademark Office.

### Recovery Level Determinations

The existing fee schedule, along with the proposed adjustment to the trademark application fee, would recover $518,692,000 in fiscal year 1994, as proposed in the Administration's budget request to the Congress.

Patent statutory fees are subject to the provisions of the Omnibus Budget Reconciliation Act of 1990, as amended by Public Law 102-204. Of the total amount of section 41(a) and (b) income expected to be collected in 1994, $103 million must be deposited to the Fee Surcharge Fund for deficit reduction purposes in lieu of seeking general taxpayer funds from the U.S. Treasury. The $103 million is deposited in a special account in the U.S. Treasury, reserved exclusively for use by the PTO, and is made available to the PTO through the appropriation process.

### Fee Analyses

In response to comments on the proposed fee adjustment for fiscal year 1993 (see 57 FR 21535), the PTO initiated a study of Patent Cooperation Treaty (PCT) fee amounts and maintenance fee amounts. The final results of these studies will be published in the notice of proposed rulemaking for fee adjustments to take effect in October 1994.

### General Procedures

Any fee amount that is paid on or after the effective date of the fee increase, would be subject to the new fees then in effect. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee, including trademark applications, to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

### Discussion of Specific Rules

*37 CFR 2.6 Trademark Fees*

Section 2.6, subparagraph (a)(1), if revised as proposed, would adjust the fee authorized by the Trademark (Lanham ) Act of 1946 in accordance with the provisions of H.R. 2632.

### Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); Executive Orders 12291 and 12612; and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to patent and trademark fee rules.

The PTO has determined that this proposed rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). Less than 10 percent of the revenue generated in fiscal year 1994 will come from the payment of trademark fees. Small entities have the option of not registering their marks under the Federal system, but can choose to use their mark under common law. While the trademark application fee is proposed to be increased from $210 to $245, PTO has attempted to keep trademark application fees as low as practicable to encourage small entities to enter the trademark system. No other fees are proposed to be increased at this time.

The PTO has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be

less than $100 million. There would be no major increase in costs of prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 37 CFR Part 2**

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is proposing to amend title 37 of the Code of Federal Regulations, Chapter I, as set forth below.

## PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraph (a)(1) to read as follows:

**§2.6 Trademark fees.**

* * * * *

(a) Trademark process fees.

| | |
|---|---|
| (1) For filing an application, per class | $245.00 |

* * * * *

Dated: July 15, 1993.

**Michael K. Kirk,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 93-17289 Filed 7-20-93; 8:45 am]

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Part IV

# The President

Executive Order 12855—Amendment to Executive Order No. 12852

Memorandum of July 19—Delegation of Authority Regarding the Horn of Africa Recovery and Food Security Act Reporting Requirement

Notice of July 20—Continuation of Iraqi Emergency

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# Presidential Documents

Title 3—

## The President

### Executive Order 12855 of July 19, 1993

### Amendment to Executive Order No. 12852

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to amend Executive Order No. 12852, it is hereby ordered that Executive Order No. 12852 is amended by deleting the text of Section 3(d) of that order and inserting in lieu thereof the following text: "The Department of the Interior shall, on a reimbursable basis, provide such administrative services for the Council as may be required" and by deleting the words "Office of Administration in the Executive Office of the President" in Section 4 of that order and inserting the "Department of the Interior" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
*July 19, 1993.*

[FR Doc. 93-17557
Filed 7-20-93; 11:30 am]
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# Presidential Documents

**Memorandum of July 19, 1993**

## Delegation of Authority Regarding the Horn of Africa Recovery and Food Security Act Reporting Requirement

**Memorandum for the Administrator of the Agency for International Development**

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 9 of the Horn of Africa Recovery and Food Security Act, Public Law 102–274, I hereby delegate to the Administrator of the Agency for International Development (AID) the functions vested in me by section 9 of that Act.

The Administrator of AID is authorized and directed to publish this memorandum is the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, July 19, 1993.*

[FR Doc. 93–17564
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## Presidential Documents

**Notice of July 20, 1993**

### Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order No. 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2, 1990, and 12724 of August 9, 1990, President Bush imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1993. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
*July 20, 1993.*

[FR Doc. 93-17565
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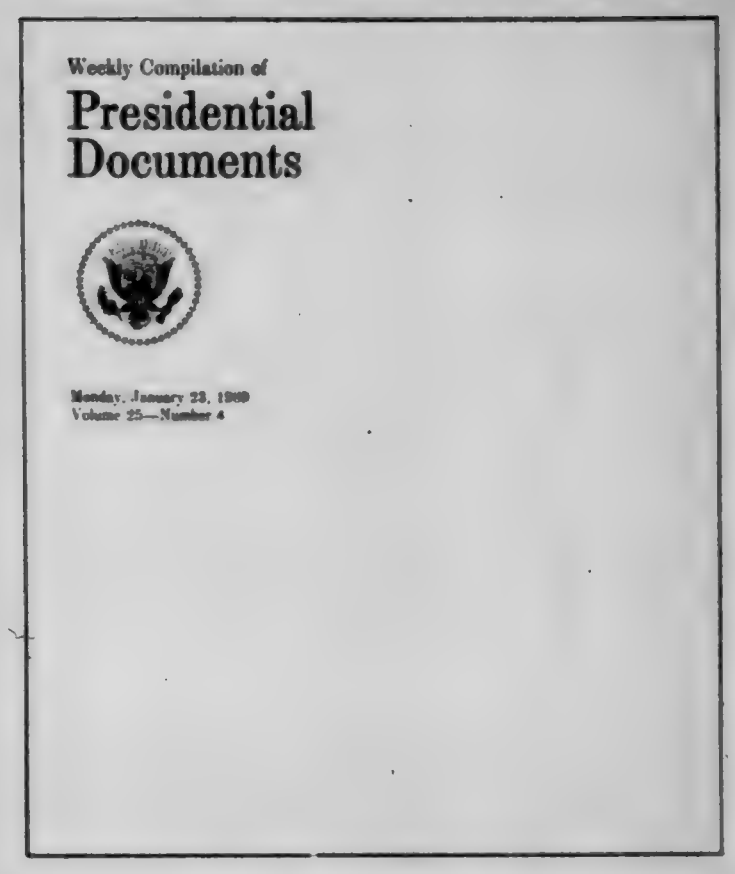


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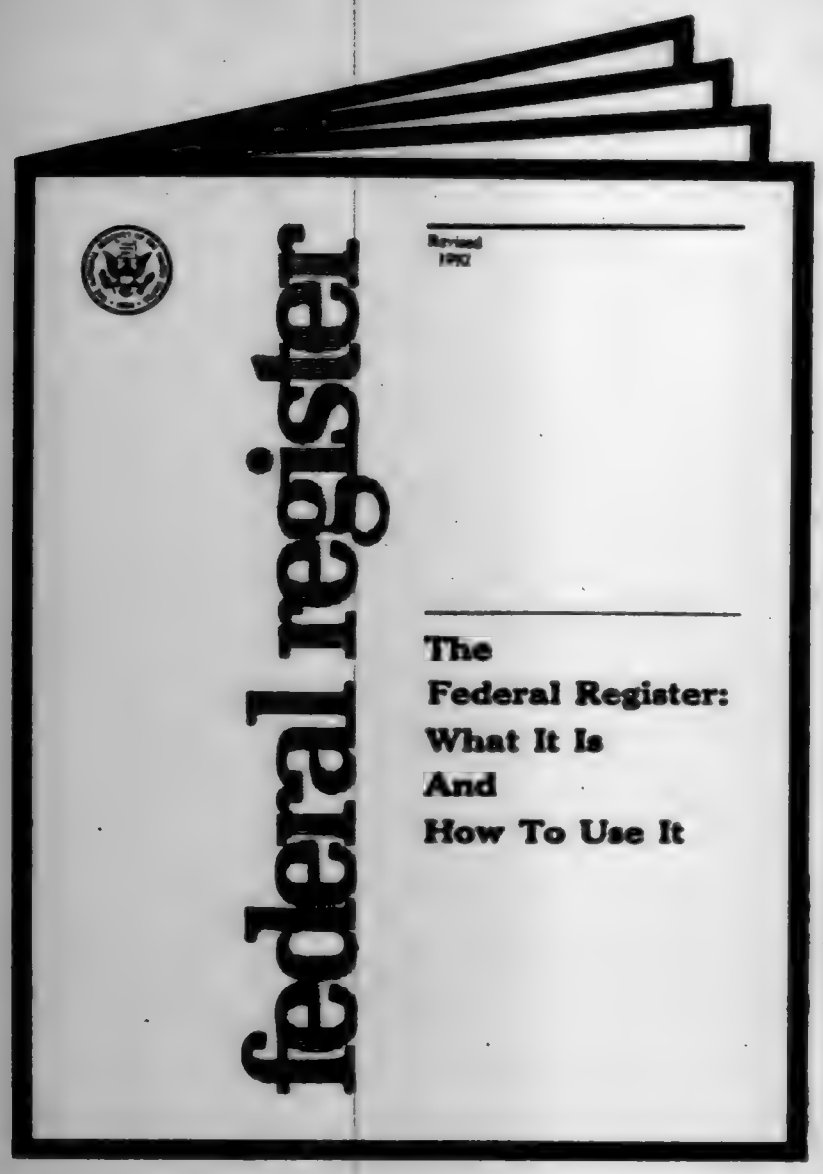


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# Rules and Regulations

Federal Register
Vol. 58, No. 139
Thursday, July 22, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 240 and 250

### Cash in Lieu of Donated Foods and Donation of Foods for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Food Distribution Program Regulations (7 CFR part 250) to incorporate revisions made to two previously published interim rules on which comments were solicited. This rule concerns the following requirements of Public Law 100–237, the Commodity Distribution Reform Act and WIC Amendments of 1987:

(1) Dissemination of summaries of product specifications to recipient agencies;

(2) Commodity delivery schedules;

(3) Procedures for the replacement of commodities;

(4) Collection of commodity acceptability information from recipient agencies, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990;

(5) Purchase of domestically produced products ("Buy American");

(6) Testing and monitoring of processed commodities;

(7) Allocation procedures;

(8) Establishing commodity values; and

(9) Offering the per-meal value of commodities to school food authorities. These changes improve the manner in which commodities are purchased and distributed.

In addition, this rule amends the Food Distribution Program Regulations and the Cash in Lieu of Donated Foods Regulations (7 CFR part 240) to incorporate portions of Public Law 101–147, the Child Nutrition and WIC Reauthorization Act of 1989, that require the calculation of commodity assistance or cash in lieu of commodities for the National School Lunch Program and for the Child and Adult Care Food Program, based on the number of meals served in those programs in the previous school year.

**EFFECTIVE DATE:** August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lillie Ragan, Section Head, Policy and Family Assistance Section, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Park Office Center—Fifth Floor, 3101 Park Center Drive, Alexandria, Virginia 22302–1594; or telephone (703) 305–2660.

**SUPPLEMENTARY INFORMATION:**

#### Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this rule will not have an annual impact on the economy of more than $100 million. No major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. This action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–12). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Most of the new provisions in this rule affect distributing and recipient agencies. While some of these agencies may be considered "small entities", the cost of the compliance with the changes made in this rule will be minimal because the time and cost of preparing any paperwork and arranging deliveries relative to participation will be very limited.

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), the additional recordkeeping and reporting requirements contained in § 250.13(k) of this rule were reviewed and approved by the Office of Management and Budget (OMB) under control number 0584–0384. Current reporting and recordkeeping requirements for part 250 were approved by OMB under control number 0584–0007. Current reporting and recordkeeping requirements for part 240 were approved by OMB under control number 0584–0280.

This final rule amends the Food Distribution Program Regulations (7 CFR part 250) to incorporate revisions made to two previously published interim rules on which comments were solicited. See 53 FR 22466 published on June 16, 1988 and 53 FR 27469 published on July 21, 1988. This rule also incorporates sections 131(a)(1)(C) and (b)(1)(A–C) of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147), that was enacted on November 10, 1989. These sections of Public Law 101–147 amend sections 6(e) and 17(h) of the National School Lunch Act (42 U.S.C. 1755(e) and 1766(h)) to require that the Department calculate commodity assistance and cash in lieu of commodities for the National School Lunch and Child and Adult Care Programs on the basis of the number of meals served by participating schools and institutions in the preceding school year. Section 131(c) of Public Law 101–147 made these requirements retroactively effective on July 1, 1989. In addition, section 1773(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624) amends section 3(f)(2) of Public Law 100–237 to require that the Department solicit information from recipient agencies regarding useful types and forms of commodities at least annually. Pursuant to section 1781(b) of Public Law 101–624, this provision became effective on November 28, 1990, the date of enactment of the Law. Hence, the Administrator of the Food and Nutrition Service has found, in

accordance with 5 U.S.C. 553(b), that prior notice and comment are impracticable, unnecessary and contrary to public interest, and that good cause exists for publishing revisions to 7 CFR 240.1 (c) and (f), 240.3(b), 240.4(a), 250.13(k)(3), 250.48 (b)(1) and (c)(1), and 250.49(b) without prior public notice and comment. Other provisions contained in this rule were previously published as interim rules with requests for public comment, and the comments received are addressed in this rule.

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of the preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by state or local governments. For disputes involving procurements by state agencies and sponsors, this includes any administrative appeal procedures to the extent required by 7 CFR part 3015 or part 3016.

**Food Distribution Provisions of the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101–147)**

This rule incorporates those portions of Public Law 101–147 that require the number of meals served in the preceding school year to be the basis for calculating the amount of commodity assistance or cash in lieu thereof for schools and institutions participating in the National School Lunch Program and the Child and Adult Care Food Program. In the past, the Department used meals served in the current school year to determine commodity assistance or cash in lieu thereof for the National School Lunch Program. The same basic approach was used in the Child and Adult Care Food Program. This process necessitated the use of estimates, recalculations and revised figures during each school year.

Since these provisions were made retroactively effective to July 1, 1989, by section 131(c) of Public Law 101–147, they were implemented by the Department in November of 1989. Thus, commodity assistance or cash in lieu thereof was provided for schools and child and adult care institutions for School Year 1990 on the basis of the number of meals served by these institutions in School Year 1989. The use of participation figures from the previous year greatly facilitated the process of announcing and offering more precise commodity allotments early for the 1991 school year. Because of the expedited commodity allotments, this process has, and will continue to reduce the possibility of cash payments being made to States in place of the preferred delivery of commodities as required for schools participating in the school lunch program by section 6(b) of the National School Lunch Act. The pertinent sections of Public Law 101–147 and the corresponding regulatory amendments are discussed below.

Sections 131 (a) and (b) of Public Law 101–147 amend sections 6(e) and 17(h), respectively, of the National School Lunch Act (42 U.S.C. 1755(e) and 1766(h)) to require the Department to revise the procedures used to calculate the commodity assistance levels (or cash in lieu thereof) provided to States for school food authorities and child and adult care institutions. The Department is directed by this legislation to multiply the number of meals served in participating schools and institutions in the preceding school year by the current national average per-meal value to determine the commodity assistance levels or cash in lieu thereof available to each State for the current school year. The legislation requires that, after the end of each school year, the Department reconcile the number of meals served in each State in such school year with the number served in the preceding school year and, based on such reconciliation, increase or reduce each State's subsequent commodity assistance (or cash in lieu thereof).

Sections 240.3(b), 250.48(b)(1), and 250.49(b) are revised to specify that States will receive commodity assistance based on the number of meals served in the preceding school year. Further, at the Department's discretion, current year commodity adjustments may be made for significant variations in the number of reimbursable meals served. Such current year commodity adjustments would not be routine and would only be made for unusual situations encountered in a State, such as a teachers' strike or a major disaster that necessitates school closures for a prolonged period of time. Making such adjustments will, in most instances, eliminate the possibility of significant adjustments being made to a State's commodity assistance level as a result of reconciliation.

Section 250.48(c)(1) is also revised to specify that the per-meal value of commodity assistance offered by States to school food authorities will be based on the number of meals served in the preceding school year, unless the distributing agency prefers and can justify as equitable an alternative method.

Sections 240.4(a) and 240.6 are revised to make clear that State agencies electing to receive cash-in-lieu of commodities for the Child and Adult Care Food Program and in the National School Lunch Program will continue to receive payments based on the number of meals actually served during the current school year. The Child and Adult Care Food Program regulations in 7 CFR part 226 will be amended by the Department in a separate rulemaking to reflect these changes and clarifications.

Because FNS will not need to make commodity adjustments and reconciliations in instances where States use the cash-in-lieu payment option, it will not be necessary for FNS to make mid-year adjustments like those made to commodity assistance levels for school food authorities. Ultimately, school food authorities and child and adult care institutions participating in the program will receive assistance based on the actual number of meals served. The school food authorities and institutions receiving commodity assistance will receive assistance based on the number of meals served in the preceding year, as adjusted for significant variations in the number of reimbursable meals served in the current year. School food authorities and institutions receiving cash-in-lieu of commodities will receive reimbursements based on the actual number of meals served in the school year, thereby avoiding any overpayments and subsequent payment reductions. Under both methods, the participating schools and institutions will ultimately receive commodity assistance or cash in lieu thereof based on the actual number of reimbursable meals served in a given school year.

Further, changes are made to the definition of "nonresidential child care institution" in § 250.3 and to § 250.49 to reflect the change in the name of the Child Care Food Program to the Child and Adult Care Food Program and the eligibility of nonresidential adult care institutions for participation in that program pursuant to section 17(o) of the National School Lunch Act.

The following regulatory revisions are made in the final rule to implement these requirements of Public Law 101–147.

**Background of Commodity Distribution Reform Act and WIC Amendments of 1987**

This rule amends two prior interim rules which implemented a number of provisions contained in the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237). On January 6, 1988, Public Law 100–237 was enacted to improve the manner in which agricultural commodities are distributed to recipient agencies, to improve the quality of the commodities that are distributed, and to increase the degree to which the distribution responds to the needs of recipient agencies while still carrying out the Department's responsibilities to support agricultural prices and remove surpluses from the market.

On June 16, 1988, an interim rule (53 FR 22466) was published to implement provisions of the Act regarding commodity delivery schedules and replacement procedures. On July 21, 1988, a second interim rule (53 FR 27469) implemented those provisions of the Act requiring:

(1) Dissemination of summaries of product specifications to recipient agencies;

(2) Semiannual collection of commodity acceptability information from recipient agencies;

(3) Purchase of domestically-produced products;

(4) Testing and monitoring of processed commodities;

(5) Allocation procedures;

(6) Establishment of commodity values; and

(7) Offering of the per-meal value of commodities to school food authorities.

Please note that a typographical error in the interim rule published on July 21, 1988 (53 FR 27475) misidentified § 250.13 as § 250.12. The Department apologizes for any inconvenience this may have caused in reviewing the interim regulations for comment. Throughout this final rule, the correct section number will be referred to when discussing provisions of that interim rule in order to avoid further confusion.

**Overview of Comments Received**

The Department solicited comments on both interim rules. The June 16, 1988 interim rule generated 48 comment letters from distributing agencies, recipient agencies and various school-related associations. The July 21, 1988, interim rule generated 59 comment letters from entities such as distributing agencies, recipient agencies, and private sector representatives including distributors, food processors, attorneys and associations. The requirements most commented upon are:

(1) Commodity delivery schedules;

(2) Establishing commodity values;

(3) Semiannual collection of commodity acceptability information; and

(4) Testing and monitoring of processed commodities.

The remainder of this preamble discusses concerns expressed by commenters and the specific changes being made in this final rulemaking. For ease in reference, the commenter concerns and any corresponding changes are explained under the interim rule section headings. The preamble does not address sections for which no substantive objections were raised by commenters or those comments which resulted in nonsubstantive revisions which simply serve to clarify the regulatory wording. Further, provisions of the interim rules not amended in this final regulation are not restated herein and remain as set forth in the interim rules. Only those sections being revised are restated in this final regulation.

Readers should refer to the preambles of the interim rules for a more comprehensive description of the legislative requirements.

*Commodity Value (Section 250.13(a)(5))*

Section 3(b)(7) of the Act requires the Secretary to establish a value (i.e., cost per pound) for donated commodities and products to be used by distributing agencies in the allocation or charging of commodities against entitlements. The established commodity values are also to be used by distributing agencies in determining the value of commodities offered to recipient agencies to meet planned commodity assistance levels. The planned commodity assistance level represents the volume of commodities expected to be needed in order to meet the anticipated assistance at the local level, as determined by the distributing agencies. In accordance with Public Law 100–237, § 250.13(a)(5) was added in the interim rule to require that States use either the estimated cost-per-pound data or actual cost-per-pound data provided by USDA to value commodities offered to recipient agencies and to credit recipient agencies' assistance levels. The same section of the interim rule also established definitions for actual and estimated cost data depending on the commodity.

Thirty comments were received, of which 20 opposed this method of establishing a value for commodities, stating the method was too restrictive, confusing and complicated. Many commenters recommended that the Department establish one value to be used throughout the year. These commenters offered several alternative definitions for the commodity value in an attempt to simplify the process. The Department is sensitive to commenter concerns on this issue and has established a less complex definition of commodity value in the final rule. At the option of the distributing agency, the commodity value must now be based on:

(1) Actual cost-per-pound data used to charge a State's commodity entitlement;

(2) Estimated cost-per-pound data provided by the Department; or

(3) USDA commodity file data as of a date specified by the distributing agency. The change in the definition will allow States the flexibility to define commodity values consistent with their data processing system needs and to select one definition of commodity value to be used throughout the year. The cost data used to value commodities must still be applied consistently throughout the State.

Also, this final rule requires the distributing agency to document the method used to determine the commodity value and the specific source of the value used. This documentation must be maintained on file for FNS review.

Please note that the definition of the "minimum donation" of these commodities (§ 250.13(a)(3)) was changed from carload to truckload in this final rule to reflect the Department s change in purchasing policy. Donations measured by truckload, gauged at 40,000 pounds, offer greater ordering flexibility than donations measured by railcar load, estimated at 80,000 pounds each. Also, there has been a non-substantive restructuring of the subparagraphs in § 250.13(a).

*Announcement and Delivery of Commodities (Section 250.13(a)(6))*

Section 3(e)(1)(D) of Public Law 100–237 requires the Secretary to mandate delivery schedules for the distribution of commodities that are consistent with the needs of recipient agencies, taking into account the duties of the Secretary to remove surplus agricultural commodities from the marketplace and to make direct purchases under several distinct provisions of legislation that are specified in Public Law 100–237. While the Department makes commodities available in accordance with the needs and requests of recipient agencies to the fullest extent possible, this will not always be possible. As recognized throughout the legislation, the Department must continue to consider agricultural market conditions as well as the costs associated with the purchase and distribution of all commodities.

The interim rule revised § 250.13(a)(6) to require the Department and the distributing agency to consider the needs of recipient agencies prior to ordering and delivering donated foods. The interim rule specified that the Department shall, to the extent practicable, arrange deliveries based on information obtained from distributing agencies. To avoid untimely deliveries to recipient agencies, the interim rule also required distributing agencies to notify recipient agencies of:

(1) Anticipated Department purchases and estimated shipping periods as such information becomes available;

(2) Anticipated State delivery schedules at least quarterly; and

(3) Changes in delivery schedules as they become known.

Fifteen commenters supported the requirement to notify recipient agencies of anticipated Department purchases and estimated shipping periods. However, six commenters believed providing USDA shipment information as it became available would be too frequent and could be misleading. Four commenters pointed out that despite a State's efforts, delivery schedules would not prevent "untimely" deliveries, since they are the result of untimely shipments. Six commenters stated that the information recipient agencies needed to know the most was States' delivery schedules and the actual types and quantities of commodities to be delivered to the recipient agency. Two commenters stated that changes in delivery schedules need to be communicated only to the recipient agency affected.

In response to these comments, the Department has amended the notification requirements in this final rule to require distributing agencies to notify recipient agencies of:

(i) General USDA purchase information at least quarterly;

(ii) Anticipated State delivery schedules at least quarterly, including the types and quantities of commodities to be available; and

(iii) Changes in delivery schedules when such changes affect the recipient agency.

The Department anticipates that these changes will help eliminate some of the confusion about the different notification requirements. In many instances, requirements (i) and (ii) could be met with one notice. The Department wishes to emphasize, however, that this "quarterly" requirement is a minimum standard and there may be times when more frequent notification is appropriate.

Section 250.13(a)(6) of the interim rule also required distributing agencies to maintain distribution schedules to recipient agencies which are equitable and reliable and recognize hours of operation, holidays, vacations and other special needs of recipient agencies. One commenter indicated that meeting all recipient agencies' special needs is not possible. The Department is keenly aware of this and intends that the distributing agency exercise judgement in meeting special needs. Accordingly, the mandate to recognize special needs has been qualified with the phrase "whenever possible."

Also under § 250.13(a)(6) of the interim rule, distributing agencies were required to make donated foods available to recipient agencies at least monthly. This requirement attracted the greatest response with forty commenters opposed to requiring minimum monthly deliveries of commodities to all recipient agencies. Commenters opposed to the requirement asserted that if mutually agreed upon by the recipient agencies and distributing agencies, deliveries less frequent than monthly should be allowed.

The Department agrees with commenter response and does not wish to preclude a distributing agency and a recipient agency from agreeing to commodity distributions less frequent than monthly. Certain circumstances could make monthly deliveries impractical, e.g. location of school food authorities in very rural areas where monthly deliveries are not cost effective. However, the Department is of the opinion that unless extenuating circumstances do exist, distributing agencies should provide for monthly deliveries. Thus, in response to commenter concerns, the Department amends this provision as set forth in the interim rule to allow for the arrangement of less frequent deliveries by the distributing agency upon request by the recipient agency when the distributing agency determines that monthly service is not cost effective, or for other reasons.

*Replacement of Commodities (Section 250.13(g))*

Section 3(b)(5) of Public Law 100–237 requires the Secretary to establish procedures for the replacement of commodities received by recipient agencies that are stale, spoiled, out of condition, or not in compliance with specifications. Section 250.13(g) of the interim rule stated that the Department would replace commodities under the following conditions:

(1) The donated foods have been provided as part of the State's authorized level of assistance (entitlement) as established by law or when the donated foods have been provided in addition to the State's entitlement (as a bonus) but the total amount which the State can order has been capped by the Department;

(2) It is clearly determined that the donated foods were not fit for use in the Food Distribution Program at the time they were delivered by the Department;

(3) The loss is reported to the FNSRO within three months of the date the donated foods were received in the State;

(4) A signed consignee receipt or acceptable written documentation of delivery is submitted to the FNSRO; and

(5) At the request of the Department, the donated foods have been reinspected and determined to be unfit for use in the Food Distribution Program.

Twenty-seven commenters responded to § 250.13(g) of the interim rule, and 18 of the commenters approved of the requirements. Two of the comments received on § 250.13(g)(2) of the interim rule objected to the language "not fit for use in the Food Distribution Program." Commenters noted this language was unclear and did not reflect the language of the Act. Therefore, the language has been clarified in § 250.13(g)(1)(i) of this rule to state the following: "the distributing agency documents that the donated foods were stale, spoiled, out of condition or not in compliance with USDA specifications at the time they were delivered by the Department." A conforming change has been made to § 250.13(g)(1)(v) (formerly § 250.13(g)(5)).

Four commenters requested that the timeframes set forth in § 250.13(g)(3) of the interim rule for reporting the loss be longer than 3 months. This timeframe was established to allow the detection of hidden damage not visible upon receipt of the commodity. Prior to accepting delivery, the Department expects the distributing agency or recipient agency to examine the commodities and to report any damage as soon as possible. However, since in § 250.14(f)(2) the Department permits a maximum six-month inventory of donated food, and some commodities have much longer warranty periods, this rule restructures the timeframe in § 250.13(g)(1)(iii) to provide a longer timeframe for the reporting of canned commodities to be replaced. The timeframe is extended to six months only for canned commodities due to the longer warranty periods for the various canned products and the fact that canned products are not as vulnerable as other commodities to storage and handling abuses. The three month timeframe remains in effect for all other commodities.

One commenter questioned whether problems with commodities that are stale, spoiled, out of condition or not in compliance with specifications should be reported if the problems are detected after the deadline. The Department does not intend for distributing agencies to stop reporting commodity losses or problems detected outside the reporting timeframe. However, replacement is assured only if the criteria outlined in § 250.13(g) of the regulations have been fulfilled. The Department will continue to receive, record and pursue the resolution of all commodity losses and complaints that are submitted with the pertinent information.

Several commenters requested that timeframes be established for USDA and the distributing agencies' resolution of replacement requests. However, since the time required to resolve complaints depends on the method used to replace commodities and, in many instances, the cooperation of vendors, the Department is reluctant to set a timeframe.

Three commenters requested clarification of the necessity for the reinspections referred to in § 250.13(g)(1)(v) and (5) of the interim rule. As stated in the interim rule, the Department will, at a minimum, require a reinspection in instances when the loss is significant or when it is determined that a potential health hazard exists. The purpose of the reinspection is to determine if the donated food is stale, spoiled, out of condition or does not meet USDA specifications, and to assist in establishing at what point in time the loss occurred. Since it is necessary for USDA to ascertain this information in order to pursue replacement by the vendor or establish a claim, the Department will continue to require reinspections in instances when they are warranted.

Nine commenters objected to the requirement that distributing agencies pay for reinspections which establish that the commodity was in good condition when delivered. One commenter claimed that this requirement discourages reporting. The Department did not intend for this requirement to discourage reporting. The intent is to place responsibility on the distributing agency (and indirectly on the recipient agency) to ensure that only bona fide losses are reported. Therefore, the requirement has not been revised in this rule.

One commenter believed that distributing agencies and recipient agencies should be reimbursed for storage and handling costs of replaced commodities. However, the Department cannot reimburse agencies since no authority or funds are currently available to restore these costs. The Department is, however, exploring modifying commodity contracting procedures to allow for such reimbursement.

Three commenters recommended that the Department handle replacing commodities by an annual adjustment to a State's entitlement and that States also be allowed to make one annual adjustment to a recipient agency's planned commodity assistance level. While adjusting commodity entitlements is an option, the Department does not wish this to be the sole method for replacing commodities. Ideally, commodities should be replaced with the identical commodity. However, as permitted by the interim rule, when very small quantities are involved, cash from the vendor to the distributing or recipient agency is sometimes a more practical alternative. Further, when entitlement crediting is the method of replacement, to ensure an accurate reflection of a State's entitlement, adjustments for replacements should take place as soon as possible, not annually. Therefore, this rule continues to provide for replacement through entitlement crediting and cash payments.

Four commenters opposed vendors providing cash to distributing or recipient agencies. According to these commenters, cash causes problems if the distributing agency does not have authority to deposit the payment and later make cash disbursements to the recipient agencies which lost the value of the donated food.

Since cash payments may only be made with the Department's approval, before pursuing cash replacement with the vendor, FNS will ensure that a system is in place for the distributing or recipient agency to accept the funds.

In this final rule, § 250.13(g) has been restructured to provide additional clarity.

*Commodity Acceptability Information (Section 250.13(k))*

Section 250.13(k) of the interim rule was set forth in three subparagraphs:

(1) Information collection, which specified the types of information to be reported;

(2) Samples and Representation, which specified who should submit commodity acceptability reports; and

(3) Timeframes for submission of the reports on April 30th and November 30th of each year.

When the interim rule was published, section 3(f)(2) of Public Law 100–237 required the Secretary to establish procedures to ensure that information was received from recipient agencies at least semiannually about the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies. However, section 1773(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101624), which became effective upon the date of enactment, November 28, 1990, amended section 3(f)(2) of Public Law 100–237 to require annual collection of commodity acceptability information rather than semiannual collection. Consequently, § 250.13(k)(3) of this final rule specifies that commodity acceptability reports are to be submitted annually by distributing agencies. Reports for summer camps and the Summer Food Service Programs must be submitted to the appropriate FNSRO by November 30th of each year. Reports for all other programs must be submitted to the appropriate FNSRO by April 30th of each year.

Section 250.13(k) drew 20 comments which were almost evenly split between approval and disapproval. Eleven commenters opposed the semiannual commodity acceptability reporting requirement, claiming that twice a year is redundant, burdensome and costly. As explained above, the requirement has been statutorily reduced to an annual requirement.

Several commenters pointed out that commodity preference information is already captured for certain commodity programs in State advisory council reports. The Department acknowledges that reports submitted by State Food Distribution Advisory Councils may include a portion of the commodity preference information for schools. In fact, § 250.13(k)(2) of the interim rule, as published in the **Federal Register** on July 21, 1988 (53 FR 27476), permitted distributing agencies to use information contained in these reports to represent one of the semiannual reports for schools. However, since the semiannual reporting requirement has been reduced to an annual requirement and since the contents of State advisory council reports vary considerably, the Department has determined that use of data contained in these reports alone is not sufficient. As reflected in the final rule, information contained in these reports is one source distributing agencies may use in collecting annual commodity acceptability information. As discussed below, the Department strongly encourages use of form FNS–663, Food Distribution Commodity Acceptability Report, for collecting commodity preference information from recipient agencies.

Some commenters did not understand the importance of submitting information for each commodity program. Separate information for each commodity program is necessary because of the target populations served and the differing authorities which govern the new forms and varieties of foods that are donated by the Department. While some of the commodities may be received through more than one program, each recipient agency or target population may feel differently about the acceptability of a product. For example, a product well received by the elderly through the Commodity Supplemental Food Program may cause a different reaction from students participating in the National School Lunch Program. The diversity of the programs and the people served requires that commodity acceptability information be reported separately for each commodity program. Consolidated report information does not accurately reflect feedback on any one commodity program, and the Department has not found this information useful in making program improvements.

The Department wishes to clarify that the Food and Nutrition Service's commodity acceptability report, Form FNS-663, does not have to be the instrument used to solicit information from recipient agencies. However, pursuant to § 250.13(k)(3) of the final regulation, distributing agencies will be required to complete this standard form and submit it to FNS.

The Department would like to emphasize at this time the importance of the Commodity Acceptability Reports in evaluating and modifying the specifications for the commodities distributed through the Food Distribution Programs. Form FNS-663 is a tool crucial to the Department's efforts to improve the commodities so that they meet the needs of each group served. As an example, FNS-663 feedback led to modification of the peanut butter specifications so that the peanut butter would spread more easily. The Department strongly supports the concept of collecting recipient-level feedback on federally donated commodities and promotes the use of the FNS-663 form as the best means for incorporating the views and preferences of program recipients.

*Buy American (Section 250.23)*

Section 3(h) of the Act specifies that the Secretary shall require recipient agencies to purchase only food products that are produced in the United States (U.S.) whenever possible. The Act also exempts specific States and territories from this requirement and permits the Secretary to grant waivers of the "Buy American" requirement for those recipient agencies that have unusual or ethnic preferences in food products or in such other circumstances as the Secretary considers appropriate.

In order to incorporate these provisions into the interim rule, § 250.23 was added to require that, whenever possible, recipient agencies, with the exception of those outside of the contiguous U.S., purchase only food products that are produced in the U.S. Twenty-nine comments were submitted and only 9 of those did not support the interim rule on the "Buy American" requirements.

The interim regulations limited the applicability of the "Buy American" provision to purchases of food products with Federal funds. In response to commenters' support of this provision, this requirement will be retained in the final rule.

In accordance with the legislation, § 250.23(b) of the interim rule permitted recipient agencies to purchase food products which are not produced in the U.S. when recipients have unusual or ethnic food preferences which can only be met through purchases of food products not produced in the U.S. The interim rule identified two other situations which warrant a waiver to permit purchase of foreign products:

(1) The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; and

(2) Competitive bids reveal the cost of a U.S. product is significantly higher than a foreign product. Three commenters requested that the Department define "significantly higher". While this language is open to interpretation, the Department believes the recipient agency is in the best position to determine what constitutes a significantly higher cost. Such determinations need to be made on a case-by-case basis since procurement situations vary depending on the product. Therefore, the Department will continue to allow recipient agencies to use their discretion in implementing the cost waiver provision.

Some commenters noted that the "Buy American" requirements should also be incorporated into the regulations governing the National School Lunch Program, Child and Adult Care Food Program, School Breakfast Program, Special Milk Programs, and Summer Food Service Program. Commenters contended, and the Department agrees, that the State agency with oversight for these particular recipient agencies should be responsible for ensuring compliance with this requirement. Therefore, in a separate rulemaking, the Department will amend parts 210, 215, 220, 225, and 226 to include reference to the Act's "Buy American" requirement, as contained in § 250.23.

Section 250.3 of the interim rule defined "food products produced in the U.S." as an unmanufactured food product produced in the U.S. or a food product manufactured in the U.S. Defining food products produced in the U.S. in this manner eliminated the need for recipient agencies to determine if the ingredients in a processed product were produced in the U.S. In addition, purchases of processed food products can be easily monitored to ensure compliance since imported processed food items are labeled with the country of origin.

Several commenters supported this definition of "food product produced in the U.S." One commenter requested that the Department establish special ingredient requirements for specific food products. The Department originally considered several options in defining what foods would be classified as "food products produced in the U.S." The Department did consider requiring that manufactured products primarily contain ingredients of U.S. origin and be manufactured by a company located in the U.S. However, many manufactured products that are labeled and canned in the U.S. may have foreign ingredients. The Department also maintains that requiring recipient agencies to determine which ingredients are of U.S. origin would be burdensome. While a method may exist to verify the origins of individual ingredients in a manufactured product, this would likely require on-site inspection of a food processor's records. Therefore, in the final rule the definition of "food product produced in the U.S." is unchanged except that it has been moved into § 250.23(a) to facilitate its use.

*Testing and Monitoring Processed End Products (Section 250.30(b)(1))*

In accordance with section 3(d)(5) of the 1987 Act, § 250.30(b)(1) of the interim rule required each distributing agency to:

(1) Assure that the acceptability of processed end products is tested with recipient agencies eligible to receive them prior to entering into a processing contract; and

(2) Develop a system to monitor product acceptability.

Of the almost 40 comments received on these requirements, 27 commenters opposed them. Most commenters indicated that end product testing and

monitoring should occur at the recipient agency level between the processor and the purchasing party. Commenters assumed that the Department intended to require that the actual testing and monitoring occur at the distributing agency level. It is the Department's position that the distributing agency has oversight responsibility to ensure that testing and monitoring occur, but that the actual functions may be performed at the recipient agency level.

As one commenter noted, when a distributing agency negotiates the contract and commits or contracts for the actual purchase of end products on behalf of recipient agencies, the distributing agency should be actively involved with testing the specific product with recipient agencies. This involvement should occur prior to entering into the contract. However, when recipient agencies negotiate purchases on their own behalf, it is appropriate for the recipient agency to perform this function. Several commenters recommended that end products be exempted from testing when the receipt of such end product is based on a voluntary purchase by a recipient agency. Commenters indicated that entering into a processing agreement does not automatically mean an end product will be sold or offered to a recipient agency. While the Department recognizes this point, the Department has no authority to exempt certain end products from this provision since the Act clearly states that product testing must occur prior to entering the contract. Therefore, the distributing agency must ensure that all end products are tested with recipient agencies prior to entering into a contract.

The interim rule did not establish specific, detailed procedures for distributing agencies to test and monitor the acceptability of end products. Instead, the Department solicited comments from all interested parties about establishing specific procedures for testing and monitoring end products. A few commenters submitted recommendations regarding this provision. Three commenters recommended that documented proof of marketability supplied by the processor, in accordance with § 250.30(c)(1)(ii), be considered a form of product testing. While the interim rule did not specify this as an option, evidence of historical commercial purchases of a product by recipient agencies or documented interest in a specific new product would be considered adequate documentation of end product testing.

Four commenters wanted flexible monitoring procedures that would not be burdensome. In recognition that many methods exist to test and to monitor product acceptability and that distributing agencies need some flexibility to develop an appropriate system, the Department has chosen not to outline specific procedures via regulation. The distributing agency must, however, develop a testing and monitoring system and communicate such system to recipient agencies.

One commenter recommended required testing only for new items. The Department agrees that if an item has been purchased previously from a processor and has been determined by the distributing agency to be acceptable by recipient agencies, and the specifications have not changed, retesting would not be necessary. In § 250.30(b)(1), language has been added to this effect.

**Summary of Implementation of Public Law 100–237**

All requirements of Public Law 100–237 that pertain to the distribution of commodity foods have been implemented as described below. Readers may acquire additional background on the legislation and the rationale for the Department's actions to implement the requirements of the law by referring to the following issues of the **Federal Register**.

- *Notice*—April 19, 1988 (53 FR 12794): Description of the legislation and the Department's plans for implementation.
- *Interim Rule*—June 16, 1988 (53 FR 22466): Requirements for the replacement of damaged commodities and for commodity delivery schedules.
- *Interim Rule*—July 21, 1988 (53 FR 27469): Requirements for summaries of product specifications, commodity acceptability reports, "Buy-American"; testing and monitoring of processed commodities; allocation procedures; commodity values; and per-meal values.
- *Proposed Rule*—October 20, 1988 (53 FR 41172): Requirements for commercial warehousing and distribution; distribution charges; and basic performance standards.
- *Final Rule*—October 17, 1989 (54 FR 42467): Finalization of requirements listed immediately above. Readers should note, however, that section 3(d) of the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237) was amended by section 1773(c) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) to exempt the evaluation of warehousing and distribution systems for some smaller programs (such as the Food Distribution Program on Indian Reservations), to partially exempt evaluations for distributing agencies that do not charge warehousing and distributing fees to recipient agencies, to specify the costs to recipient agencies in State systems that are to be compared to commercial systems, and to postpone implementation of mandatory conversion to commercial systems.

**Cost-Benefit Analysis**

Section 3(f)(1) of the Act requires the Department to provide for a systematic review of the costs and benefits of providing commodities of the kind and quantity suitable to the needs of recipient agencies. See 53 FR 12794. The implementation of other requirements of the Act has enhanced the Department's data base for this cost benefit analysis. The Department has determined that the following currently provide for a systematic review by FNS of user needs: Annual collection of recipient agency commodity acceptability reports, field testing, semiannual meetings with members of the Food Distribution Advisory Council, and ongoing analysis of complaints concerning vendor performance to determine if specifications for a particular product are in need of revision. A systematic review of the cost of providing the commodities to recipient agencies is accomplished through commodity market monitoring and research routinely done by the Agricultural Marketing Service (AMS) and Agricultural Stabilization and Conservation Service (ASCS), quarterly purchase meetings and regular Department initiative meetings involving FNS, AMS, and ASCS. Thus, the Department has determined that additional formalization of cost-benefit analysis procedures is unnecessary.

**Testing Commodities for Acceptability**

Section 3(g) of the Act requires ongoing field testing of present and anticipated commodity and product purchases to establish product acceptability with program participants.

The Department's initial plans for implementing this requirement, discussed in the notice published April 19, 1988 (53 FR 12794), included the development of a standard field-test survey form. However, preliminary work in this area revealed that this is not feasible. The Department found that in order to be useful, questions must be tailored to the specific commodity being tested. Therefore, the Department will be developing survey questions as new commodities become available. The field-testing requirement is further satisfied by the regulatory requirements now in place for annual collection of

commodity acceptability reports (§ 250.13(k)) and for testing and monitoring end products by the distributing and recipient agencies (§ 250.30(b)(1)).

**List of Subjects**

*7 CFR Part 240*

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

*7 CFR Part 250*

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 240 and 250 are amended to read as follows:

## PART 240—CASH IN LIEU OF DONATED FOODS

1. The authority citation for part 240 is revised to read as follows:

**Authority:** 42 U.S.C. 612c note, 1751, 1755, 1762a, 1765, 1766, 1779.

2. In § 240.1, paragraphs (c) and (f) are revised to read as follows:

**§ 240.1 General purpose and scope.**

* * * * *

(c) Section 6(e)(1) of the Act requires:

(1) That for each school year, the total commodity assistance, or cash in lieu thereof, available to each State for the National School Lunch Program shall be the amount obtained by multiplying the national average value of donated foods, described in paragraph (c)(2) of this section, by the number of lunches served in that State in the preceding school year; and

(2) That the national average value of foods donated to schools participating in the National School Lunch Program, or cash payments made in lieu thereof, shall be 11 cents, adjusted on July 1, 1982, and each July 1 thereafter to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 6(e)(1) further requires that not less than 75 percent of the assistance under that section shall be in the form of donated foods for the National School Lunch Program. After the end of each school year, FNS shall reconcile the number of lunches served by schools in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance or cash in lieu thereof provided to each State.

* * * * *

(f) Sections 17(h)(1) (B) and (C) of the Act provide that the value of commodities, or cash in lieu thereof, donated to States for use in nonresidential child or adult care institutions participating in the Child and Adult Care Food Program (7 CFR part 226) for any school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served during the preceding school year by the rate established for lunches for that school year under section 6(e) of the Act. At the end of each school year, FNS shall reconcile the number of lunches and suppers served in participating institutions in each State during such school year with the number of lunches and suppers served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance or cash in lieu of commodities provided to each State.

* * * * *

**§ 240.31 [Amended]**

3. In § 240.3, paragraph (b) is amended by removing the words "during that school year".

4. In § 240.4, the section heading and the first two sentences in paragraph (a) are revised to read as follows:

**§ 240.4 Cash in lieu of donated foods for nonresidential child and adult care institutions.**

(a) For each school year any State agency may, upon application to FNS prior to the beginning of the school year, elect to receive cash in lieu of donated foods for use in nonresidential child care or adult care institutions participating in the Child and Adult Care Food Program. FNS shall pay each State agency making such election, at a minimum, an amount calculated by multiplying the number of lunches and suppers served in the State's nonresidential child and adult care institutions which meet the meal pattern requirements prescribed in the regulations for the Child and Adult Care Food Program under part 226 of this chapter by the national average value of donated food prescribed in section 6(e)(1) of the Act. * * *

* * * * *

**§ 240.6 [Amended]**

5. Section 240.6 is amended by adding the following words before the period at the end of the section: ", except that the amount may be based on the number of meals served in the current school year, rather than on the number of meals served in the preceding school year with a subsequent reconciliation."

## PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 612 note, 612c, 612c note, 1431, 1431b, 1431(e), 1431 note, 1446a–1, 1859; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. Section 250.3 is amended by:

a. Removing the definition of "Food products produced in the U.S"; and

b. Revising the definition of "Nonresidential child care institution" to read as follows:

**§ 250.3 Definitions.**

* * * * *

*Nonresidential child or adult care institution* means any child or adult care institution (as defined in part 226 of this chapter) which participates in the Child and Adult Care Food Program authorized under section 17 of the National School Lunch Act, as amended (42 U.S.C. 1766).

* * * * *

3. In § 250.13, paragraphs (a), (g) and (k) are revised to read as follows:

**§ 250.13 Distribution and control of donated foods.**

(a) *Availability and use of donated foods*—(1) *General.* (i) Donated foods shall be available only for distribution and use in accordance with the provisions of this part and, with respect to distribution to households on all or part of an Indian reservation, of parts 253 and 254 of this chapter.

(ii) Donated foods shall not be sold, exchanged or otherwise disposed of without the approval of the Department.

(iii) Donated foods which are provided as part of an approved food package or authorized level of assistance may be transferred between like recipient agencies only with prior authorization of the distributing agency. Donated foods which are provided in addition to the State's authorized level of assistance may be transferred between recipient agencies which are eligible to receive such foods with the

prior authorization of the distributing agency. However, the transfer of donated foods between unlike recipient agencies (e.g., from schools to charitable institutions), which have been provided as part of an approved food package or authorized level of assistance, must be approved by the appropriate FNSRO.

(iv) Food donated under section 32 of Public Law 74–320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under part 251 of this chapter. A transfer between recipient agencies and emergency feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP.

(v) All transfers of donated foods shall be documented. Such documentation shall be maintained in accordance with the recordkeeping requirements in §§ 250.16 and 251.10(a) of this chapter.

(2) *Quantities.* (i) The quantity of donated foods to be made available for donation under this part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation.

(ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower truck load freight rate, except as the Department determines to be in the best interest of the program.

(4) *Allocations.* As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food, in addition to the general terms and conditions set forth herein.

When a commodity is available in limited quantities, the Department shall allocate such commodities among the States using allocation percentages which are based on appropriate participation data for the program designated to receive the commodity.

(5) *Commodity value.* Distributing agencies shall establish a value for each commodity for school food authorities and nonresidential child and adult care institutions for purposes of offering and crediting each recipient agency with the correct amount of commodities to fulfill planned commodity assistance levels (i.e., volume of commodities expected to be needed in order to meet the anticipated assistance at the local level, as determined by the distributing agency). Each commodity value shall be used consistently throughout the State to value commodities. The distributing agencies shall document and maintain on file for FNS review the method used to determine commodity values. Distributing agencies shall notify recipient agencies of the cost-per-pound used to value commodities at the time a commodity is offered to recipient agencies. If the cost used to credit a commodity differs from the cost used to offer a commodity, distributing agencies shall also advise recipient agencies of the cost used to credit a commodity. To value a commodity offered to a recipient agency and to credit a commodity towards a recipient agency's planned commodity assistance level, distributing agencies shall use one of the following: The actual cost-per-pound data used to charge a State's commodity entitlement; the estimated cost-per-pound data provided by the Department; or the USDA commodity file cost as of a specified date. Actual cost data shall be defined as the cost-per-pound for an individual commodity charged to a State's entitlement on the Entitlement Food Order Report, which is based on the USDA purchase cost. Estimated cost data shall be defined as the cost provided by USDA on commodity survey memoranda. The USDA commodity file cost shall be defined as the cost that is listed for a commodity as of a date specified by the distributing agency.

(6) *Announcement and delivery of commodities.* The Department shall make every reasonable effort to arrange commodity deliveries based on information obtained from distributing agencies. However, the Department shall not be held fiscally responsible for any delay in delivering or for nondelivery of donated foods due to any cause. Distributing agencies shall maintain monthly distribution schedules which provide for equitable and reliable deliveries to recipient agencies, recognize local hours of operation, holidays and vacations and, whenever possible, other special needs of recipient agencies. Upon request by the recipient agency, the distributing agency may make deliveries less frequent than monthly when the distributing agency determines that monthly service is not cost effective, due to distance or the size of a food order, or other necessary reasons, such as seasonal school closures. Distributing agencies shall notify recipient agencies of:

(i) General USDA purchase information at least quarterly;

(ii) Anticipated State delivery schedules at least quarterly, including the types and quantities of commodities available; and

(iii) Changes in delivery schedules when such changes affect the recipient agency.

(7) *Demonstrations and tests.* Notwithstanding any other provision of this part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonstrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

* * * * *

(g) *Replacement of damaged commodities.* (1) The Department shall replace donated foods received by distributing or recipient agencies when:

(i) The distributing agency documents that the donated foods were stale, spoiled, out of condition or not in compliance with USDA specifications at the time they were delivered by the Department;

(ii) The donated foods have been provided as part of the State's authorized level of assistance (entitlement) as established by law; or, when the donated foods have been provided in addition to the State's entitlement, but the total amount of the specific donated food which the distributing agency can order is limited by the Department;

(iii) The loss is reported to the FNSRO within three months of the date the donated foods were received in the State, except that for canned commodities the reporting deadline shall be six months after receipt;

(iv) A signed consignee receipt or acceptable written documentation of delivery is submitted to the FNSRO; and

(v) At the request of the Department, the product has been reinspected and has been determined to be stale, spoiled, out of condition or not in compliance with USDA specifications.

(2) In instances in which a recipient agency seeks replacement of donated foods, the recipient agency shall submit the information listed above to its distributing agency. The distributing

agency shall promptly submit the information to the FNSRO.

(3) Replacement by the vendor shall be made with either the same or similar food agreed to by the Department. Physical replacement shall be on a per-pound or per-case basis. In rare instances, and only with the approval of the Department, distributing agency and recipient agency, vendor replacement will be made with a cash payment to the recipient or distributing agency. Any such cash payments shall be used to purchase replacement commodities which are the same or similar to the original commodities. Cash payments shall be made on the basis of the dollar value established by the Department of the donated food at the time the product was delivered or the cost to the Department for replacement, whichever is higher.

(4) Replacement by the Department shall be with either the same or similar food or by crediting the State's entitlement or cap. Physical replacement shall be on a per-pound or per-case basis. Entitlement or cap crediting shall be equal to the dollar value or the number of pounds which was deducted from the State's entitlement or cap for that shipment. The Department shall arrange for delivery of the replacement donated foods when the quantities to be delivered are sufficient to make it cost effective. Once the Department has replaced the donated foods, the distributing agency shall make arrangements for providing replacement donated foods to the recipient agency which incurred the loss.

(5) In instances in which it is determined that the donated foods were in good condition at the time they were delivered by the Department, the cost of the reinspection shall be borne by the distributing agency and the distributing agency shall follow the claims procedures contained in § 250.15(c) of this part and FNS Instruction 410–1, Non-Audit Claims—FNS Distribution Program.

* * * * *

(k) *Commodity acceptability reports.* To ensure that the Department is kept apprised of the commodities and packaging that are preferred by recipients and participating agencies, information shall be collected as follows:

(1) *Information collection.* Distributing agencies shall obtain information from recipient agencies which reflects:

(i) The types and forms of donated foods that are most useful to recipients;

(ii) Commodity specification recommendations; and

(iii) Requests for options regarding package sizes and forms of commodities.

(2) *Samples and representation.* The distributing agency shall collect information from recipient agencies from each of the following program categories: The National School Lunch Program, the Child and Adult Care Food Program, the Summer Food Service Program, the Nutrition Program for the Elderly, the Commodity Supplemental Food Program, charitable institutions, summer camps, the Food Distribution Program on Indian Reservations, and the Emergency Food Assistance Program. At a minimum, distributing agencies shall obtain this information from a sample of at least 10 percent or 100 recipient agencies in each program category, whichever is less. To ensure that the sample is representative of all recipient agencies, distributing agencies shall consider the size and geographic location of all recipient agencies within the State and alternate among them so that over time each recipient agency is provided an opportunity to express its views. Distributing agencies are encouraged to extract information regarding commodity acceptability from all available sources, including, for example, State Food Distribution Advisory Council Reports.

(3) *Timeframes for submission.* Distributing agencies shall submit commodity acceptability reports to the appropriate FNSRO annually as requested on Form FNS–663. Reports for summer camps and the Summer Food Service Programs shall be submitted by November 30th of each year; all other reports shall be submitted by April 30th of each year.

4. In § 250.23, paragraph (a) is revised to read as follows:

**§ 250.23 Buy American.**

(a) *Purchase requirements.* When purchasing food products with Federal funds, whenever possible, recipient agencies shall purchase only food products that are produced in the United States (U.S.). Food products produced in the U.S. means:

(1) An unmanufactured food product produced in the U.S.; or

(2) A food product that is manufactured in the U.S.

* * * * *

5. In § 250.30 a new sentence is added to the end of paragraph (b)(1) to read as follows:

**§ 250.30 State processing of donated foods.**

* * * * *

(b) *Permissible contractual arrangements.* (1) * * * Distributing agencies may exempt end products from testing if they have been used previously, have been determined by the distributing agency to be acceptable by recipient agencies, and have had no changes in specifications.

* * * * *

6. In § 250.48, paragraphs (b)(1) and (c) are revised to read as follows:

**§ 250.48 School food authorities and commodity schools.**

* * * * *

(b) *Quantities and Value of Donated Foods*—(1) *Quantities.* Distribution of donated food to a State for school food authorities shall be calculated by multiplying the number of lunches served in the preceding school year which meet the mealpattern requirements (reimbursable) prescribed in the regulations for the National School Lunch Program under part 210 of this chapter, by the national average value of donated food as described in paragraph (b)(2) of this section. The number of reimbursable lunches served shall be derived from the monthly claims submitted by school food authorities and States as required by regulations for the National School Lunch Program at § 210.8 of this chapter. After the end of each school year, FNS shall reconcile the number of reimbursable lunches served by schools in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance provided to each State. As early as practicable each school year, but not later than September 1, the estimated number of lunches served in the preceding school year and requests for adjustments shall be provided by the administering State agency or the FNSRO to the distributing agency. At the discretion of FNS, current year adjustments may be made for significant variations in the number of reimbursable lunches served. Such current year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a teachers' strike or a disaster that necessitates school closures for a prolonged period of time.

* * * * *

(c) *Offering the per-meal value of donated foods*— (1) *Commodity offer value.* Distributing agencies shall offer each school food authority no less than the national average per-meal value of donated foods established by the Department on July 1 of each year, in accordance with paragraph (b)(2) of this section. This value shall be referred to as the commodity offer value. The total value of donated foods which must be

offered to school food authorities shall be calculated by multiplying the per-meal value of donated foods times the number of reimbursable meals served by the school food authority during the preceding school year; or by another method which the distributing agency prefers and can justify as providing each school food authority an equitable share of donated food. Distributing agencies shall communicate to school food authorities and FNS regional offices the methods used to establish the commodity offer value. Distributing agencies shall document commodity offerings and refusals in order to verify that the per-meal value of commodities was offered to all school food authorities.

(2) *Commodity variety offered.* Distributing agencies shall offer and efficiently deliver to each school food authority the full range of all commodities equitably and consistently to the extent that quantities requested or made available are sufficient to make a statewide distribution. At least annually, distributing agencies shall develop and disseminate to school food authorities a procedure for the allocation of commodities when the amount received from the Department is not sufficient to make a statewide distribution to all school food authorities.

(3) *Bonus commodities.* Bonus commodities (i.e., commodities provided in addition to a State's authorized level of assistance) offered shall be distinguished from entitlement commodities (i.e., commodities provided as part of an authorized level of assistance) and shall not be included as a part of the per-meal value of donated foods which must be offered to school food authorities.

* * * * *

7. In § 250.49, the heading of the section and paragraph (b)(1) are revised to read as follows:

**§ 250.49 Nonresidential child and adult care institutions.**

* * * * *

(b) *Quantities and value of donated foods*—(1) *Quantities.* Distribution of donated food to a State for nonresidential child and adult care institutions shall be calculated by multiplying the number of lunches and suppers served in the preceding school year which meet the meal-pattern requirements (reimburseable) prescribed in the regulations for the Child and Adult Care Food Program under part 226 of this chapter by the national average value of donated food as described in paragraph (b)(2) of this section. The number of lunches and suppers served shall be derived from the monthly claims submitted by participating institutions as required by Child and Adult Care Food Program regulations at § 226.11(b) of this chapter. After the end of the school year, FNS shall reconcile the number of reimbursable meals served in each State with the number served in the preceding school year and, based on such reconciliation, shall increase or reduce subsequent commodity assistance provided to each State. As early as practicable each year, but not later than September 1, the estimated number of lunches and suppers served in the preceding school year and requests for adjustments shall be provided by the administering State agency or the FNSRO to the distributing agency. At the discretion of FNS, current year adjustments may be made for significant variations in the number of meals served. Such current year adjustments will not be routine and will only be made for unusual problems encountered in a State, such as a disaster that necessitates institutional closures for a prolonged period of time.

* * * * *

Dated: July 12, 1993.

Ellen Haas,

*Assistant Secretary for Food and Consumer Services.*

[FR Doc. 93-17267 Filed 7-21-93; 8:45 am]

BILLING CODE 3410-30-U

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## Animal and Plant Health Inspection Service

### 7 CFR Part 301

[Docket 91-155-5]

## Mediterranean Fruit Fly; Removal From the Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Mediterranean fruit fly regulations by removing from the list of quarantined areas in California the quarantined area in San Diego County. We have determined that the Mediterranean fruit fly has been eradicated from this area and that the restrictions are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area.

**DATES:** Interim rule effective July 16, 1993. Consideration will be given only to comments received on or before September 20, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-155-5. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

**SUPPLEMENTARY INFORMATION:**

### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR 301.78 through 301.78-10 (referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. In a document effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573-57579, Docket No. 91-155), we quarantined the Hancock Park area of Los Angeles County, CA. In an interim rule effective on September 10, 1992, and published in the **Federal Register** on September 15, 1992 (57 FR 42485-42486, Docket No. 91-155-2), we amended the regulations by adding a portion of Santa Clara County, CA, to the list of quarantined areas. Also, effective on November 12, 1992, and published in the **Federal Register** on November 17, 1992 (57 FR 54166-54169, Docket No. 91-155-3), we amended the regulations by expanding the quarantined area in Los Angeles County, CA, to include other portions of Los Angeles County, including Duarte, Griffith Park, Inglewood, and Pasadena. In an interim rule effective January 19,

1993, and published in the Federal Register on January 28, 1993 (58 FR 6343–6346, Docket No. 91–155–4), we amended the regulations by expanding the previously quarantined area in Los Angeles County, and including a portion of Orange County, and by adding a portion of San Diego County, CA, to the list of quarantined areas.

Based on trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service we have determined that the Medfly has been eradicated from the quarantined area in San Diego County, CA. The last finding of the Medfly thought to be associated with the infestation in this area was made on November 11, 1992. Since then, no evidence of infestation has been found in this area. We have determined that the Medfly no longer exists in this area, and we are therefore removing it from the list of areas in § 301.78–3(c) quarantined because of the Mediterranean fruit fly. As a result of this action there are no longer any quarantined areas in San Diego County. Portions of Los Angeles, Orange and Santa Clara Counties remain quarantined.

**Immediate Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The area in California affected by this document was quarantined due to the possibility that the Mediterranean fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, and the continued quarantined status of this area would impose unnecessary regulatory restrictions on the public, immediate action is warranted to remove restrictions from the noninfested areas.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This rule affects the interstate movement of regulated articles from the Oceanside area of San Diego County in California. There are approximately 132 small entities that could be affected, including 40 retail/wholesale fruit stands, 59 nurseries, 3 packers, 2 farmers' markets, and 25 fruit vendors. There are also 3 farms totalling 2.7 acres.

The effect of this rule on these entities should be insignificant since most of these small entities handle regulated articles primarily for local intrastate movement, not interstate movement, and the distribution of these articles was not affected by the regulatory provisions we are removing.

Many of these entities also handle other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow the interstate movement of most articles without significant added costs. These small entities comprise less than 1 percent of the total number of similar entities operating in the State of California.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are inconsistent with this rule;

(2) Has no retroactive effect; and

(3) Does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 301.78–3 [Amended]**

2. In § 301.78–3, paragraph (c) is amended by removing the entry for San Diego County.

Done in Washington, DC, this 16th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17438 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–34–P

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**9 CFR Parts 1 and 2**

**[Docket No. 91–035–3]**

**RIN 0579–AA42**

## Random Source Dogs and Cats

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations under the Animal Welfare Act (Act) to require that dogs and cats acquired by pounds and shelters owned

and operated by States, counties, and cities, private entities established for the purpose of caring for animals, such as humane societies or contract pounds or shelters, and research facilities licensed as dealers by the United States Department of Agriculture, be held and cared for at those establishments for at least 5 days before being provided to a dealer. We are also amending the regulations to require that dealers provide a valid certification to anyone acquiring random source dogs and cats from them. These amendments are being made pursuant to the most recent amendment of the Act. The amendment to the Act was enacted to prevent the use of stolen pets in research and to provide owners the opportunity to locate their animals.

**EFFECTIVE DATE:** August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dr. R.L. Crawford, Acting Assistant Deputy Administrator, Animal Care, Regulatory Enforcement and Animal Care, APHIS, USDA, room 554, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4981.

**SUPPLEMENTARY INFORMATION:**

## Background

The Animal Welfare Regulations (the regulations) are contained in title 9 of the Code of Federal Regulations, chapter 1, subchapter A, parts 1, 2, and 3. Part 1 provides definitions of the terms used in parts 2 and 3. Part 2 sets forth the administrative and institutional responsibilities of regulated persons under the Animal Welfare Act (7 U.S.C. 2131, *et seq.*) (the Act). Part 3 provides specifications for the humane handling, care, treatment, and transportation, by regulated persons, of animals covered under the Act.

On November 15, 1992, we published in the **Federal Register** (56 FR 57991–57994, Docket No. 91–035) a document proposing to add new provisions to 9 CFR part 2, subpart I, regarding the length of time certain pounds, shelters, and research facilities must hold dogs and cats, in accordance with the Act. We also proposed to add to 9 CFR part 2, subpart I, provisions requiring certification to accompany random source dogs and cats sold, provided, or made available by dealers to any individual or entity.

We invited comments on our proposed rule, requiring that they be received on or before December 16, 1991. We received 49 comments by that date. The commenters included members of the academic and research communities, biological supply companies, municipal animal holding facilities, humane organizations, and other members of the general public. A number of the commenters requested that the comment period be extended. We made no changes to the comment period based on these requests. We consider the 30-day comment period provided to have been sufficient time for the public to have reviewed and responded to the proposed rule.

Of the commenters that addressed the proposed rule, one opposed it in general. The remainder of the commenters recommended specific changes to the proposed provisions. We carefully considered all comments, and discuss the commenters' recommendations below. Based on the reasons set forth in the proposal and in this document, we are adopting the provisions of the proposed rule, with the changes discussed in this document.

## Holding Period

In proposed § 2.133 (a)(1) through (a)(3), we proposed that any dog or cat acquired by (1) a State, county, or city owned and operated pound or shelter, (2) a private entity established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis, or (3) a research facility which is licensed by the United States Department of Agriculture (USDA) as a dealer, must be held and provided care for at least 5 full days before being sold to a dealer. We proposed further that this 5-day period would not include the day of acquisition or time in transit. (Additionally, the day of disposition is also excluded from the holding period because it is not a full day.) We proposed that this holding period would include a Saturday, in order to provide owners and other individuals the opportunity to recover or adopt such animals on a weekend.

A number of commenters expressed concern that the 5-day holding period would significantly raise the operating costs of shelters that are not currently holding animals for that length of time, and that these costs would have to be passed along in the form of increased taxes or higher prices to dealers. In the latter case, said the commenters, the costs would then be passed along to colleges and universities that use the animals for research. One commenter recommended that a holding period of 10 days be required.

We are making no changes based on these comments. While we recognize that the rule may increase costs in some cases, the statute requires the establishment of at least a 5-day holding period. The intent of the holding period is to provide a reasonable period of time for a dog or cat to be either recovered by its original owner or adopted by other individuals before the dog or cat is provided to a dealer. We continue to consider the holding period required by this rule to be consistent with that intent.

Several commenters specifically supported the provision that the holding period include a Saturday. One commenter opposed that provision, stating that Congress withdrew that requirement in conference before amending the Act. We are making no changes based on this comment. Although a Saturday holding requirement does not appear in the Act, the legislative history regarding the amendment to the Act clearly shows that Congress supported the concept of holding dogs and cats over a Saturday. We are confident that such a requirement will be, in many cases, a significant aid to owners attempting to recover lost pets.

A number of commenters stated that if the intent of the proposal was to give owners the opportunity to recover pets, then the 5-day holding period should be extended to all dogs and cats at pounds and shelters, not just to those sold to dealers. Some of these commenters stated that the number of dogs and cats sold to dealers is a small percentage of the total number of dogs and cats at pounds and shelters. We are making no changes based on these comments. The statute does not authorize imposition of such requirements.

A number of commenters recommended that the holding period be waived in cases where the owner of the dog or cat indicates that he or she allows the dog or cat to be used in research. Several commenters specifically opposed such a change to the proposal. One of these commenters expressed concern that such a provision would result in dogs and cats being fraudulently identified, unless the individual releasing the dog or cat were to show verifiable proof of ownership. We are making no changes to the regulations based on these comments. The intent of the 5-day holding period, as set forth in the Act, is both to enable dogs and cats to be recovered by their owners and to allow dogs and cats to be adopted by other individuals. Establishing an owner-option waiver would not further the goal of allowing additional time for adoption of dogs and cats.

A number of commenters recommended that the proposed holding period be applied only to live dogs and cats. Many of these

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commenters stated that dogs and cats euthanized without being held for 5 days would likely be disposed of through other means, such as disposal at landfills or incinerators. The commenters expressed concern that this would reduce the supply and raise the cost of dead dogs and cats used for educational purposes. Upon consideration of these comments and of the amendment's provisions, we agree with the commenters. The purpose of the amendment is to provide pet owners a greater opportunity to recover any lost or stolen dogs and cats, and to allow others to adopt stray dogs and cats. The amendment does not require pounds and shelters to hold dogs and cats before euthanizing them. No purpose would be served by precluding pounds and shelters from selling or otherwise disposing of euthanized dogs and cats to dealers. Accordingly, the proposed regulations are modified in this final rule to make it clear that they apply only to live dogs and cats.

Several commenters requested that language be added to the proposed provisions to make clear that the holding period would apply only to dogs and cats acquired by dealers, and not to those made available by pounds and shelters directly to research facilities. Another commenter recommended that the holding period be extended to include any dog or cat released from a pound or shelter, regardless of whether it is sold directly to a research facility. We are making no changes based on these comments. The statute clearly states that the holding period applies only to dogs and cats provided to dealers. It should be noted, however, that research facilities that sell animals (other than those that are government-operated) must be licensed as "dealers," and therefore the holding period would apply in such cases.

One commenter objected to the provision that the holding period would exclude the time a dog or cat spends in transit, stating that this provision would be difficult to enforce. We do not agree. We are already enforcing regulations in 9 CFR part 2 that require dealers and exhibitors to meet certain holding periods, and these holding periods are exclusive of time dogs and cats are in transit. We have not found it difficult to enforce these regulations.

One commenter stated that, because of their functional differences, it is misleading to include pounds and shelters in the same definition. The commenter recommended that separate definitions be developed for each type of facility. We are making no changes based on this comment. Although there may be differences between pounds and shelters in other contexts, when they engage in activities subject to the regulations there are no legally significant differences.

One commenter recommended that language be inserted into the proposed regulations to clarify that State laws prohibiting the release of pound and shelter dogs and cats would not be superseded. We are making no changes based on this comment. It is nowhere implied in the proposed regulations that pounds and shelters would be required to release dogs and cats to dealers.

**Clarification**

We are also making a change to the regulations as proposed to clarify which dogs and cats are subject to the holding period. In accordance with the statutory requirements, the certification requirements in proposed § 2.133(b) apply to random source dogs and cats acquired by a dealer from any person, pound, or shelter. However, proposed § 2.133(a) refers only to entities "selling" dogs or cats. Therefore, to eliminate any possible confusion, proposed § 2.133(a) is modified in this final rule to provide that the holding period will apply to dogs and cats that are sold or in any way "provided" to dealers by the entities described in § 2.133(a).

**Certification**

In our proposed rule, we also proposed to establish requirements for certification to accompany random source dogs and cats that are sold, provided, or otherwise made available by dealers to any individual or entity. A number of commenters recommended that the requirement that the dealer certify that the person, pound, or shelter releasing the dog or cat was informed that it might be used in research or education be changed to require that the notice be in writing. We are making no changes based on this comment. We consider the written certification adequate to facilitate our enforcement of the proposed provisions.

The certification as proposed would also have to include a description of the dog or cat, which would include the following: (1) The species, breed, or type; (2) the sex; (3) the date of birth or, if unknown, the approximate age; (4) the color and any distinctive markings; and (5) the official USDA-approved identification number of the dog or cat. Several commenters recommended that the description be required to include additional information, including length, height, and weight, and, for mixed breeds, an estimate of the dominant breeds. One commenter recommended that the regulations require each dog or cat to be photographed.

We agree that mixed breeds could be better identified if an estimate were made of the dominant breeds or types. Therefore, § 2.133(b)(3)(i) as proposed is modified in this final rule to provide that, for mixed breeds, the certification must indicate an estimate of the two dominant breeds or types. We do not agree that adding length, height, and weight would aid significantly in identification. Except in infrequent situations, a dog or cat identified by its breed or mix will fall into an identifiable size range, and the specificity gained by actually measuring them would not justify the added burden involved. Weight would not necessarily be a good method of identification, because, in many cases, strays suffer significantly weight loss. We also do not agree that requiring that each dog or cat be photographed would be justifiable or necessary. We consider the information required by this final rule to be adequate for identification. The significant additional cost of photographing each dog or cat would not be justified by any additional specificity the photograph might provide.

Several commenters requested clarification of whether the certification requirements would apply to dogs and cats that have been euthanized, and objected to such an application. One commenter recommended that, if the regulations were to apply to dead animals, it be provided that the certification requirements cease with the first recipient of the animals. The commenters expressed concern that applying the certification requirements to dead animals would create unwieldy recordkeeping requirements for catalog supply houses, which, the commenters stated, would have to maintain certification records on specific animals through the processing cycle, send the specified certification records to the end use (schools), and require return of verification of receipt of such certification. We agree with these comments and, as stated above, the regulations as proposed are modified in this final rule to make it clear that they apply only to live dogs and cats.

Section 2.133(b)(4) as proposed provides that the certification that would have to accompany the dog or cat must contain the name and address of the person, pound, or shelter from which the dog or cat was acquired by the dealer. Proposed § 2.133(b)(5) provides, additionally, that the certification must include the date the dealer acquired the dog or cat. One commenter stated that these proposed

provisions are in conflict with current § 2.75(a)(4), which provides that the source and date of acquisition of a dog or cat need not appear on the copy of the record that must accompany the shipment under the current regulations. The commenter stated that the proposed regulations create a similar discrepancy under current § 2.35(e) with regard to registered research facilities that dispose of dogs and cats acquired from dealers to any other facility.

We agree that this apparent discrepancy could be confusing. The proposed regulations are intended to supplement the recordkeeping requirements in the current regulations in situations where random source dogs and cats are involved. In such cases, the proposed regulations would supersede the "freedom from disclosure" provisions in current §§ 2.75 and 2.35. Therefore, we are amending current §§ 2.75(a)(4) and 2.35(e) to clarify that the provisions in those sections that state that the date and source of acquisition of dogs and cats need not appear on records accompanying shipments of dogs and cats are applicable except as provided in § 2.133.

Section 2.133(b)(1) as proposed provides that the certification to accompany the dog or cat must include the name, address, USDA license number, and signature of any dealer providing a dog or cat covered by the proposed provisions to another party. One commenter recommended that this identification requirement be expanded to include the vehicle license number and State of the individual delivering the dog or cat, that individual's driver's license and State, and the State of the individual. The commenter stated that, because some dealers employ many employees and subcontractors, this additional identification would be necessary to resolve any theft problems. We are making no changes based on this comment. We consider the information available to us under § 2.75 of the current regulations ("Records: Dealers and exhibitors"), and in the regulations as proposed, to be sufficient to trace the address and location of any dealer supplying dogs or cats.

Section 2.133(g) as proposed requires that, in instances where a research facility transfers a random source dog or cat acquired from a dealer to another research facility, a copy of the required certification must accompany the dog or cat transferred. Several commenters requested clarification of whether the word "transfers" refers to an actual change of ownership, or simply to a physical transfer of the dog or cat for the purpose of maintaining it in a different facility for part of a study. Another commenter recommended that the regulations specify that, in the case of two or more research institutions transferring dogs or cats among themselves, each facility must maintain copies of the certification. The word "transfers" as we used it in the proposal was intended to refer to change of ownership. If no change of ownership occurs, the records maintained by the first facility will be sufficient for identification and tracing of the animal. We are therefore amending § 2.133(g), as proposed, to read: "In instances where a research facility transfers ownership of a live random source dog or cat acquired from a dealer to another research facility, a copy of the certification required by paragraph (b) of this section must accompany the dog or cat transferred * * *."

Sections 2.133 (f) and (g) as proposed provide that research facilities must keep copies of the required certification for at least 1 year following disposition of the animal. One commenter stated that this period is not consistent with § 2.35(f) of the current regulations, which requires all registered research facilities to maintain acquisition and disposition records for dogs and cats for a minimum of 3 years. We agree that the record retention requirement should be consistent and should be 3 years. Accordingly, § 2.133(f) as proposed is modified in this final rule to provide that a research facility that acquires any random source dog or cat from a dealer shall keep, maintain, and make available for APHIS inspection a copy of the required certification for at least 3 years following disposition of the dog or cat. Also, § 2.133(g) as proposed is modified in this final rule to require that research facilities that obtain ownership from another research facility of a random source dog or cat acquired from a dealer shall keep, maintain, and make available for APHIS inspection a copy of the required certification for at least 3 years following disposition of the dog or cat.

**Nonsubstantive Changes**

We are changing the references to "the Department" in the rule to read "USDA." This change will make the terminology in the rule consistent with the terminology in the remainder of 9 CFR part 2. We are also updating the authority citation for this rule to reflect the most recent amendments to the act. Additionally, we are making nonsubstantive changes for purposes of clarity.

**Public Comments on the Initial Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act (Pub. L. 96–354), we conducted an initial regulatory flexibility analysis regarding the proposed rule, and we encouraged comments on the analysis. We received a small number of comments regarding the analysis.

In our initial regulatory flexibility analysis, we assumed an average holding period of 3 days for dogs and cats at pounds and shelters. Several commenters suggested that we should have assumed a longer average holding period. These commenters stated that many shelters already hold dogs and cats for 5 or more days. While we agree that many shelters may hold dogs and cats for periods in excess of 3 days, we nonetheless believe that a 3-day average is a reasonable average upon which to base our analysis.

One commenter stated that our estimate that 2,200 to 3,800 pounds and shelters in the United States sell dogs and cats to dealers was too high, because many county and local laws prohibit the sale or release of dogs and cats to dealers. We agree that, in many cases, whether dogs and cats may be released to dealers is determined by the laws and ordinances of local jurisdictions. Because of this, it is impossible, without conducting a costly and comprehensive survey, to determine precisely how many facilities do release dogs and cats to dealers. That is why we provided such a wide range in our estimate, which we continue to consider a reasonable one based on the information available to us.

One commenter stated that our estimated numbers of dogs and cats sold or otherwise provided by pounds or shelters to dealers (80,000 for dogs and 50,000 for cats) were to high. The estimates we provided in our proposal were based on data from 1985–1990. Trends in the use of dogs and cats in research have been changing, and we agree with the commenter that the most recent figures available show a decline from previous years. Therefore, we have revised our estimates of the number of dogs and cats sold or provided annually from pounds and shelters to 67,000 dogs and 31,000 cats.

One commenter felt that the $7 figure we used as the cost per day to care for each dog or cat was to high. We based this figure on 30 minutes of labor and $1–$3 worth of food, cleaning materials, and water. We consider it to be a reasonable cost figure.

Several commenters suggested that shelters are generally full, and that, in

order to hold dogs and cats for 5 days, additional space and cages would be necessary at these facilities. Although we agree that some pounds and shelters may often be used to capacity, it would be extremely costly and difficult to determine how much pound or shelter capacity is utilized on a daily or weekly basis across the United States. The regulations in this rule, however, do not apply to all dogs and cats held at pounds or shelters, but only to those provided to dealers. Therefore, pounds and shelters that generally operate at capacity would have to add space only if they wanted to sell dogs and cats to dealers. At this time, we have no way of determining how many dogs and cats will be provided to dealers once the provisions in this rule are implemented.

Several commenters questioned the statement in the initial regulatory flexibility analysis that the increased costs arising from the proposed regulation would be borne by taxpayers. We agree that this statement may be an oversimplification. Increased costs faced by pounds and shelters as a result of this rule will need to be absorbed by the pound or shelter either through: (1) Increased funding from either private donations, or State, county, or city funds, or (2) increased income from the sale of each dog or cat. This statement is included in the regulatory flexibility analysis discussed below.

In our initial regulatory flexibility analysis, we stated that the sales of dogs and cats from pounds and shelters are currently prohibited in 12 states. One commenter correctly stated that a thirteenth state, West Virginia, also prohibits such sales, and we have amended our analysis accordingly.

**Miscellaneous**

A number of commenters addressed issues outside the scope of the proposal. One commenter recommended that it be required that owners who voluntarily deliver a dog or cat to a pound or shelter be informed in writing if that facility might transfer the animal to a dealer or research facility. One commenter requested that the definition of dealer in 9 CFR part 1 be amended to exclude "a pound/shelter municipally owned and operated or a pound or shelter operated under contract with a State, county, city, or other jurisdiction." One commenter expressed the opinion that it is essential that the pet-owning public have free access to animals at a pound or shelter during regular business hours and a Saturday. One commenter recommended that we consider a more permanent form of identification for dogs and cats than that required by the current regulations. The same commenter requested that we license pounds and shelters that sell animals for research or education purposes as "Class B dealers." (We are already following such a practice, except with regard to municipal pounds and shelters.) One commenter recommended that dealers that also operate pounds or shelters be liable for proper care of the animals present. (Standards for such care already exist in 9 CFR part 3, subpart A.) One commenter requested that APHIS investigate means by which the perception that pets are widely used in research could be corrected, and also that APHIS conduct a study of the effectiveness and impact of the proposed rule, once implemented, and present it to Congress. Although we are making no changes based on these comments, we have reviewed them carefully, and, if necessary, will take whatever action is appropriate.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less that $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Analysis**

In accordance with 5 U.S.C. 603, we have performed a regulatory flexibility analysis regarding the potential impact of this rule on small entities. This analysis is set forth below.

Under this rule, municipally owned and operated pounds and shelters, humane societies and contract pounds or shelters, and licensed research facilities that provide random source dogs and cats to dealers must comply with the holding period. Sales of dogs and cats for research from pounds and shelters are currently prohibited in the following 13 States: Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, and West Virginia. Pounds and shelters in these 13 States would, therefore, be unaffected by the proposed regulations. Individual shelters in the remaining 37 States and the District of Columbia that choose not to make such sales would also be unaffected. Under part 2, subpart C, § 2.38(j) of the Animal Welfare regulations, research facilities are already required to hold for 5 full days dogs or cats that they acquire from sources other than dealers, exhibitors and exempt persons. The only change from the current regulations in this regard would be the addition of the requirement that the dogs and cats at licensed research facilities be held over at least one Saturday.

The total number of pounds and shelters in the United States is estimated by the Humane Society of the United States to be between 3,000, 5,000. For purpose of the Regulatory Flexibility Act, all of these pounds and shelters would be considered small. For this analysis, it was assumed that approximately 2,200 to 3,800 pounds and shelters in the United States may sell dogs and cats to dealers. It is estimated that as many as 67,000 dogs and 31,000 cats may be sold or provided to dealers from these pounds and shelters each year. These 2,200 to 3,800 pounds and shelters will be affected by the regulations. The extent of the impact of the regulation on these pounds and shelters will depend on whether the pound or shelter currently holds dogs and cats at least 5 days, including a Saturday, before selling them to a dealer.

Holding periods for pounds and shelters are currently prescribed by State or local governments and by shelter operators. While it was known that at least one State, Minnesota, requires dogs and cats to be held for 5 days before they can be sold, specific information for other State and local governments was not available. A 3-day average holding period was assumed for this analysis. Therefore, this regulation will require pounds and shelters to hold and care for each dog or cat, on average, for an additional 2 to 4 days, in order to hold each dog and cat for 5 days including a Saturday. The daily cost for labor and materials to feed, water, and clean up after each dog or cat was estimated at $7. The increased cost to each affected pound or shelter for each dog or cat is, therefore, estimated at approximately $14 to $28. The increased annual cost for each affected shelter is estimated at approximately $370 to $1,250.

Some of the pounds or shelters that sell, provide, or make available dogs or cats to dealers may currently be operating at capacity. The holding requirements set forth in this rule may result in these pounds and shelters

adding space and/or cages. It was not possible to determine how many pounds or shelters might be affected in this manner or to estimate the cost of this impact.

To absorb the increased costs resulting from this rule, pounds and shelters must either increase their funding and/or increase their income from the sale of each dog or cat. Increased funding could come from increased private donations or increased monies from State, county, or city finances. Taxpayers and purchasers of these dogs and cats could be affected.

Under this rule, any dealer selling, providing, or making available to any person a random source dog or cat will be required to provide the recipient of the dog or cat with certain certification, as discussed in the supplementary information of this document under the heading "Certification." These proposed requirements overlap the current provisions of part 2 of the Animal Welfare regulations. Under the regulations prior to the effective date of this rule, dealers are already required to enclose a record with each shipment of any dog or cat. This record must contain the following:

1. The name and address of the person to whom a dog or cat was sold or given and that person's license or registration number if he or she is licensed or registered under the Act;
2. The official USDA tag number or tattoo assigned to a dog or cat; and
3. A description of the dog or cat.

Dealers are also currently required to maintain records of the following information for each dog or cat:

1. The name and address of the person from whom a dog or cat was purchased or otherwise acquired, whether or not the person is required to be licensed or registered under the Act;
2. The USDA license or registration number of the person if he or she is licensed or registered under the Act;
3. The vehicle license number and state, and the driver's license number and State, and State of the person, if he or she is not licensed or registered under the Act;
4. The date a dog or cat was acquired or disposed of, including by euthanasia;
5. The method of transportation, including the name of the initial carrier or intermediate handler or, if a privately owned vehicle is used to transport a dog or cat, the name of the owner of the privately owned vehicle; and
6. The date and method of disposition of a dog or cat—e.g., sale, death, euthanasia, or donation.

Because, as noted above, the certification requirements contained in this rule are comprised in large measure of information already required, the reporting requirements of this regulation are not expected to increase dealers' cost.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V).

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

**Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given OMB control number 0579–0036.

**List of Subjects**

*9 CFR Part 1*

Animal welfare, Animal housing, Dealers, Exhibitors, Research facilities, Humane animal handling.

*9 CFR Part 2*

Adequate veterinary care, Identification of animals, Institutional animal care and use committees, Licensing, Miscellaneous, Records, Registration.

Accordingly, 9 CFR parts 1 and 2 are amended as follows:

## PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 is amended to read as follows:

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.17, 2.51, and 371.2(g).

2. Section 1.1 is amended by adding, in alphabetical order, a definition of "Pound or shelter" to read as follows:

**§ 1.1 Definitions.**

* * * * *

*Pound or shelter* means a facility that accepts and/or seizes animals for the purpose of caring for them, placing them through adoption, or carrying out law enforcement, whether or not the facility is operated for profit.

* * * * *

## PART 2—REGULATIONS

3. The authority citation for part 2 is revised to read as follows:

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.17, 2.51, and 371.2(g).

4. In subpart C, § 2.35(a) is amended by revising the first sentence to read as follows:

**§ 2.35 Recordkeeping requirements.**

* * * * *

(a) One copy of the record containing the information required by paragraphs (b) and (c) of this section shall accompany each shipment of any live dog or cat sold or otherwise disposed of by a research facility; *Provided, however,* That, except as provided in § 2.133 of this part, information that indicates the source and date of acquisition of any dog or cat need not appear on the copy of the record accompanying the shipment.

* * *

* * * * *

5. In subpart C, § 2.38, a new paragraph (k)(4) is added to read as follows:

**§ 2.38 Miscellaneous.**

* * * * *

(k) * * *

(4) Each research facility shall comply with the regulations set forth in § 2.133 of subpart I of this part.

6. In subpart C, § 2.75(a)(4) is amended by revising the second sentence to read as follows:

**§ 2.75 Records: Dealers and exhibitors.**

(a) * * *

(4) * * * One copy of the record containing the information required by paragraph (a)(1) of this section shall accompany each shipment of any dog or cat *however,* that, except as provided in § 2.133(b) of this part for dealers, information that indicates the source and date of acquisition of a dog or cat need not appear on the copy of the record accompanying the shipment.

* * *

* * * * *

7. Part 2, subpart I, is amended by adding a new § 2.133 to read as follows:

**§ 2.133 Certification for random source dogs and cats.**

(a) Each of the entities listed in paragraphs (a)(1) through (a)(3) of this section that acquire any live dog or cat shall, before selling or providing the live dog or cat to a dealer, hold and care for the dog or cat for a period of not less

than 5 full days after acquiring the animal, not including the date of acquisition and excluding time in transit. This holding period shall include at least one Saturday. The provisions of this paragraph apply to:

(1) Each pound or shelter owned and operated by a State, county, or city;

(2) Each private pound or shelter established for the purpose of caring for animals, such as a humane society, or other organization that is under contract with a State, county, or city, that operates as a pound or shelter, and that releases animals on a voluntary basis; and

(3) Each research facility licensed by USDA as a dealer.

(b) A dealer shall not sell, provide, or make available to any person a live random source dog or cat unless the dealer provides the recipient of the dog or cat with certification that contains the following information:

(1) The name, address, USDA license number, and signature of the dealer;

(2) The name, address, USDA license or registration number, if such number exists, and signature of the recipient of the dog or cat;

(3) A description of each dog or cat being sold, provided, or made available that shall include:

(i) The species and breed or type (for mixed breeds, estimate the two dominant breeds or types);

(ii) The sex;

(iii) The date of birth or, if unknown, then the approximate age;

(iv) The color and any distinctive markings; and

(v) The Official USDA-approved identification number of the animal. However, if the certification is attached to a certificate provided by a prior dealer which contains the required description, then only the official identification numbers are required;

(4) The name and address of the person, pound, or shelter from which the dog or cat was acquired by the dealer, and an assurance that the person, pound, or shelter was notified that the cat or dog might be used for research or educational purposes;

(5) The date the dealer acquired the dog or cat from the person, pound, or shelter referred to in paragraph (b)(4) of this section; and

(6) If the dealer acquired the dog or cat from a pound or shelter, a signed statement by the pound or shelter that it met the requirements of paragraph (a) of this section. This statement must at least describe the animals by their official USDA identification numbers. It may be incorporated within the certification if the dealer makes the certification at the time that the animals are acquired from the pound or shelter or it may be made separately and attached to the certification later. If made separately, it must include the same information describing each animal as is required in the certification. A photocopy of the statement will be regarded as a duplicate original.

(c) The original certification required under paragraph (b) of this section shall accompany the shipment of a live dog or cat to be sold, provided, or otherwise made available by the dealer.

(d) A dealer who acquires a live dog or cat from another dealer must obtain from that dealer the certification required by paragraph (b) of this section and must attach that certification (including any previously attached certification) to the certification which he or she provides pursuant to paragraph (b) of this section (a photocopy of the original certification will be deemed a duplicate original if the dealer does not dispose of all of the dogs or cats in a single transaction).

(e) A dealer who completes, provides, or receives a certification required under paragraph (b) of this section shall keep, maintain, and make available for APHIS inspection a copy of the certification for at least 1 year following disposition.

(f) A research facility which acquires any live random source dog or cat from a dealer must obtain the certification required under paragraph (b) of this section and shall keep, maintain, and make available for APHIS inspection the original for at least 3 years following disposition.

(g) In instances where a research facility transfers ownership of a live random source dog or cat acquired from a dealer to another research facility, a copy of the certification required by paragraph (b) of this section must accompany the dog or cat transferred. The research facility to which the dog or cat is transferred shall keep, maintain, and make available for APHIS inspection the copy of the certification for at least 3 years following disposition.

Done in Washington, DC, this 16th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17439 Filed 7–21–93; 8:45 am]

BILLING CODE 3410-34-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30 and 35

RIN 3150—AE58

### Prepare Radiopharmaceutical Reagent Kits and Elute Radiopharmaceutical Generators; Use of Radiopharmaceuticals for Therapy; Extension of Expiration Date

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule: Extension of expiration date.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is extending the expiration date of the interim final rule related to the preparation and therapeutic use of radiopharmaceuticals from August 23, 1993, to December 31, 1994. The action allows licensees to continue to use byproduct material under the provisions of the interim final rule until the NRC completes a related rulemaking to address broader issues for the medical use of byproduct material (including those issues addressed by the interim final rule). The NRC expects that this broader rule would be completed and issued as a final rule before the end of 1994. This extension of the expiration date is necessary to maintain the relief provided by the interim final rule.

**EFFECTIVE DATE:** August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3797.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 5, 1989, the American College of Nuclear Physicians (ACNP) and the Society of Nuclear Medicine (SNM) submitted a petition for rulemaking (PRM–35–9), requesting the Commission to amend its regulations to permit licensed nuclear pharmacists and physicians greater flexibility in the preparation and use of radiopharmaceuticals. After reviewing the petition and consulting with the U.S. Food and Drug Administration (FDA), the NRC determined that some issues raised in the petition needed to be resolved expeditiously.

Subsequently, on August 23, 1990 (55 FR 34513), the Commission published an interim final rule in the Federal Register to allow medical use licensees, under certain conditions and limitations, to use therapeutic radiopharmaceuticals for indications

and methods of administration not listed in the FDA-approved package inserts. In addition, the interim final rule allows medical use licensees and commercial nuclear pharmacies to depart from the manufacturer's instructions for preparing diagnostic radiopharmaceuticals using radionuclide generators and reagent kits, provided that the licensees follow the directions of a physician authorized user. The NRC amended the interim final rule to eliminate certain recordkeeping requirements related to the preparation and use of radiopharmaceuticals (57 FR 45568, October 2, 1992). The interim final rule will expire on August 23, 1993 unless it is extended.

The NRC has published for comment a broader proposed rule in response to PRM–35–9 (58 FR 33396, June 17, 1993) that would resolve the issues raised in the petition, including the issues addressed by the interim final rule. The Commission intends to replace the provisions of the interim final rule with the provisions of this broader rule. The NRC expects that this broader rule will be promulgated and effective before the end of 1994.

**The Proposed Rule and Public Comment**

The NRC proposed to extend the expiration date of the interim final rule from August 23, 1993, to December 31, 1994 (58 FR 26938, May 6, 1993). A 30-day public comment period expired on June 7, 1993. Comments were received from three respondents. All three commenters supported, without modifications, the proposed extension of the expiration date of the interim final rule.

**Discussion of the Final Rule**

Because no suggestions were made to modify the proposed rule, the regulatory text in the final rule is the same as the proposed rule.

*Section 30.34 Terms and Conditions of Licenses*

The NRC is extending the expiration date in paragraph (i)(1) of this section from August 23, 1993, to December 31, 1994. This extension is necessary to allow commercial nuclear pharmacies to continue to prepare byproduct material under the provisions of the interim final rule until the broader rule is effective.

*Section 35.200 Use of Radiopharmaceuticals, Generators, and Reagent Kits for Imaging and Localization Studies*

The NRC is extending the expiration date in paragraph (c)(1) of this section from August 23, 1993, to December 31, 1994. This extension is necessary to allow medical use licensees to continue to use byproduct material under the provisions of the interim final rule until the broader rule is effective.

*Section 35.300 Use of Radiopharmaceuticals for Therapy*

The NRC is extending the expiration date in paragraph (b)(1) of this section from August 23, 1993, to December 31, 1994. This extension is necessary to allow medical use licensees to continue to use byproduct material under the provisions of the interim final rule until the broader rule is effective.

Also, the NRC is replacing the word "method" with the word "methods" in paragraph (b)(1) of this section to correct a typographical error.

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under approval numbers 3150–0010 and 3150–0017.

**Regulatory Analysis**

In August 1990, the NRC implemented an Interim Final Rule allowing licensees to depart from (a) the manufacturer's instructions for preparing diagnostic radiopharmaceuticals and (b) the package insert instructions regarding use of radiopharmaceuticals for therapy. The effective period for the rule is from August 23, 1990, to August 23, 1993.

The NRC is extending the expiration date from August 23, 1993, to December 31, 1994. This extension allows licensees to continue to use byproduct material under the provisions of the interim final rule until there is an effective final rule in a related rulemaking in response to the ACNP-SNM petition to address broader issues for the medical use of byproduct material (including those issues addressed by the interim final rule). The NRC expects that this broader rule would be completed and effective before the end of 1994. This extension of the expiration date is necessary to continue the relief from restrictions provided by the interim final rule until the effective date of the broader rule.

The alternative to this extension is to maintain the existing expiration date. Under this alternative, the provisions in the interim final rule would expire on August 23, 1993, as would the relief from restrictions provided by the interim final rule.

The NRC concludes that this extension is justified to continue to allow licensees to use byproduct material under the provisions of the interim final rule until the broader rule is effective.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects medical use licensees including some private practice physicians. Some of these licensees would be considered small entities under the NRC's size standards published in the Federal Register on November 6, 1991 (56 FR 56672). This rule extends the expiration date of the interim final rule from August 23, 1993, to December 31, 1994. The extension allows licensees to continue to use byproduct material under the provisions of the interim final rule until the NRC completes a related rulemaking to address broader issues for the medical use of byproduct material (including those issues addressed by the interim final rule). Therefore, for the reasons provided above, this rule does not have a significant economic impact on a substantial number of small entities.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because this amendment does not impose requirements on existing nuclear power reactor licensees. Therefore, a backfit analysis was not prepared for this final rule.

**List of Subjects**

*10 CFR Part 30*

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 35*

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety

and health, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30 and 35.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for Part 30 continues to read as follows:

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.34, paragraph (i)(1) is revised to read as follows:

**§ 30.34 Terms and conditions of licenses.**

* * * * *

(i)(1) From August 23, 1990, to December 31, 1994, each licensee eluting generators and processing radioactive material with diagnostic reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), may depart from the manufacturer's elution and preparation instructions (for radiopharmaceuticals authorized for use pursuant to 10 CFR 35.200), provided that the licensee follows the directions of an authorized user physician.

* * * * *

## PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

3. The authority citation for part 35 continues to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

4. In § 35.200, paragraph (c)(1) is revised to read as follows:

**§ 35.200 Use of radiopharmaceuticals, generators, and reagent kits for imaging and localization studies.**

* * * * *

(c)(1) From August 23, 1990, to December 31, 1994, a licensee may depart from the manufacturer's instructions for eluting generators and preparing reagent kits for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), by following the directions of an authorized user physician.

* * * * *

5. In § 35.300, paragraph (b)(1) is revised to read as follows:

**§ 35.300 Use of radiopharmaceuticals for therapy.**

* * * * *

(b)(1) From August 23, 1990, to December 31, 1994, a licensee may depart from the package insert instructions regarding indications or methods of administration for a radiopharmaceutical for which the Food and Drug Administration (FDA) has approved a "New Drug Application" (NDA), provided that the authorized user physician has prepared a written directive as required by § 35.32(a).

* * * * *

Dated at Rockville, Maryland, this 9th day of July, 1993.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc. 93–17463 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–P

## 10 CFR Part 50

### Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final policy statement.

**SUMMARY:** This statement presents the policy of the Nuclear Regulatory Commission (NRC) with respect to the scope and purpose of Technical Specifications for nuclear power plants as required by 10 CFR 50.36. It establishes a specific set of objective criteria as guidance for determining which regulatory requirements and operating restrictions should be included in Technical Specifications. It encourages licensees to implement a voluntary program to update their Technical Specifications to be consistent with improved vendor-specific Standard Technical Specifications (STS) issued by the NRC in September 1992. The improved STS were published as the following NRC Reports: NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants", NUREG–1431, "Standard Technical Specifications, Westinghouse Plants", NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants", NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4", NUREG–1434, "Standard Technical Specifications, General Electric Plants, BWR/6".

These improved STS were the result of extensive technical meetings and discussions among the NRC staff, industry owners groups, vendors, and the Nuclear Management and Resources Council (NUMARC). The improved STS were developed based on the criteria in the interim Policy Statement published in February 1987. The Policy Statement now reflects modifications resulting from public comments on the interim Policy Statement and from the experience gained in developing the improved STS. Implementation of the Policy Statement through implementation of the improved STS is expected to produce an improvement in the safety of nuclear power plants through the use of more operator-oriented Technical Specifications, improved Technical Specification Bases, reduced action statement induced plant transients, and more efficient use of NRC and industry resources. The Policy Statement is not a regulation and does not establish binding requirements or limit the scope of safety issues for case-specific adjudication.

**EFFECTIVE DATE:** July 22, 1993.

**ADDRESSES:** Copies of NUREGs–1430, 1431, 1432, 1433, and 1434 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC. The NUREGs can also be accessed through the NRC electronic bulletin board system. Details of how to use this system were published in the **Federal Register** on November 25, 1992 (57 FR 55602).

**FOR FURTHER INFORMATION CONTACT:** Nanette V. Gilles, Technical Specifications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1180.

SUPPLEMENTARY INFORMATION:

## I. Background

Section 182a. of the Atomic Energy Act of 1954 (Act), as amended (42 U.S.C. 2232), mandates the inclusion of Technical Specifications in licenses for the operation of production and utilization facilities. The Act requires that Technical Specifications include information of the amount, kind, and source of special nuclear material, the place of use, and the specific characteristics of the facility. That section also indicates that Technical Specifications should contain such information as the Commission may by rule deem necessary to enable it to find that the utilization of special nuclear material will be in accord with the common defense and security and will provide adequate protection of public health and safety. Finally, that section requires Technical Specifications to be made a part of any license issued to operate production or utilization facilities.

Section 50.36, "Technical Specifications," which implements section 182a. of the Atomic Energy Act, was promulgated by the Commission on December 17, 1968 (33 FR 18610). This rule delineates requirements for determining the contents of Technical Specifications. Technical Specifications set forth the specific characteristics of the facility and the conditions for its operation that are required to provide adequate protection to the health and safety of the public. Specifically, 10 CFR 50.36 requires that:

> Each license authorizing operation of a production or utilization facility of a type described in § 50.21 or § 50.22 will include technical specifications. The technical specifications will be derived from the analyses and evaluation included in the safety analysis report, and amendments thereto, submitted pursuant to § 50.34. The Commission may include such additional technical specifications as the Commission finds appropriate.

Technical Specifications cannot be changed by licensees without prior NRC approval. However, since 1969, there has been a trend towards including in Technical Specifications not only those requirements derived from the analyses and evaluation included in the safety analysis report but also essentially all other Commission requirements governing the operation of nuclear power reactors. This extensive use of Technical Specifications is due in part to a lack of well-defined criteria (in either the body of the rule or in some other regulatory document) for what should be included in Technical Specifications. This has contributed to the volume of Technical Specifications and to the several-fold increase, since 1969, in the number of license amendment applications to effect changes to the Technical Specifications. It has diverted both staff and licensee attention from the more important requirements in these documents to the extent that it has resulted in an adverse but unquantifiable impact on safety.

On March 30, 1982, the NRC published in the **Federal Register** (47 FR 13369) a proposed amendment to its regulations, 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities." The proposed amendment would have revised § 50.36, "Technical Specifications," to establish a new system of specifications divided into two general categories. Only those specifications contained in the first general category as Technical Specifications would have become part of the operating license and would have required prior NRC approval for any changes. Those specifications contained in the second general category would have become supplemental specifications and would not have required prior NRC approval for most changes. The NRC review of the first general category of specifications would have been the same as currently performed for Technical Specification changes, which are amendments to the operating license. For the second category, supplemental specifications, the licensee would have been allowed to make changes within specified conditions without prior NRC approval. The NRC would have reviewed these changes when they were made and would have done so in a manner similar to that currently used for reviewing design changes, tests, and experiments performed under the provisions of 10 CFR 50.59. Because of difficulties with defining the criteria for dividing the Technical Specifications into the two categories of the proposed rule and because of other higher priority licensing work, the rule change was deferred.

In the early 1980s, the nuclear industry and the NRC staff began studying the question of whether improvement to the existing system of establishing Technical Specification requirements for nuclear power plants was needed. During this time frame, two studies of this issue were performed by an NRC task group known as the Technical Specifications Improvement Project (TSIP) and a Subcommittee of the Atomic Industrial Forum's (AIF) Committee on Reactor Licensing and Safety.[1] The overall conclusion of these studies was that many improvements in the scope and content of Technical Specifications were needed, and that a joint NRC and industry program should be initiated to implement these improvements. Both of these groups made specific recommendations which are summarized as follows:

(1) The NRC should adopt the criteria for defining the scope of Technical Specifications proposed in the AIF and TSIP reports. Those criteria should then be used by the NRC and each of the nuclear steam supply system vendor owners groups to completely rewrite and streamline the existing STS. This process would result in many requirements being transferred from control by Technical Specifications requirements to control by other mechanisms (e.g., the Final Safety Analysis Report (FSAR), Operating Procedures, Quality Assurance (QA) Plan) which would not require a license amendment or prior NRC approval when changes are needed. The new STS should include greater emphasis on human factors principles in order to add clarity and understanding to the text of the STS. The new STS should also provide improvements to the Bases Section of Technical Specifications which provides the purpose for each requirement in the specification.

(2) A parallel program of short-term improvements in both the scope and substance of the existing Technical Specifications should be initiated in addition to developing a new STS as identified in paragraph (1) above.

On February 6, 1987, the NRC published in the **Federal Register** for public comment (52 FR 3788) an interim Policy Statement on Technical Specification Improvements for Nuclear Power Reactors containing proposed criteria in response to item (1). These criteria were generally derived from the criteria proposed in the AIF and TSIP reports and were modified slightly based on discussions between the NRC staff and the industry. The public comment period expired on March 23, 1987.

The NRC has developed a program for short-term improvements as described in item (2). These are known as "line-item" improvements and are generic improvements developed and

[1] SECY-88-10, "Recommendations for Improving Technical Specifications," dated January 13, 1988, contains both "Recommendations for Improving Technical Specifications," NRC Technical Specifications Improvement Project, September 30, 1985, and "Technical Specifications Improvements," AIF Subcommittee on Technical Specifications Improvements, October 1, 1985.

promulgated by the NRC staff for voluntary adoption by licensees.

Subsequently, improved vendor-specific STS were developed and issued by the NRC in September 1992. The improved STS were published as the following NRC Reports:

- NUREG–1430, "Standard Technical Specifications, Babcock and Wilcox Plants"
- NUREG–1431, "Standard Technical Specifications, Westinghouse Plants"
- NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants"
- NUREG–1433, "Standard Technical Specifications, General Electric Plants, BWR/4"
- NUREG–1434, "Standard Technical Specifications, General Electric Plants, BWR/6"

These improved STS were the result of extensive technical meetings and discussions among the NRC staff, industry owners groups, vendors, and NUMARC.

## II. Summary of Public Comments on the Interim Policy Statement and NRC Responses

In early 1987, the Commission received 29 letters with comments on the Interim Policy Statement on Technical Specification Improvements. A list of the commenters and a detailed analysis of public comments are available for public inspection in the NRC Public Document Room at 2120 L Street NW., Lower Level of the Gelman Building, Washington, DC 20555.

Twenty-five of the 29 commenters were generally supportive of the Commission Policy Statement and the overall Technical Specifications Improvement Program; 3 commenters were generally not supportive; and 1 commenter was neutral. Of the 29 commenters, 23 can be categorized as representing industry views, 3 are government agencies, and 3 are interested members of the public. The industry group stated strong support for the Policy Statement and its criteria. The comments included extensive support for the overall Commission objectives of improving Technical Specifications so they are clearer and less ambiguous. The three commenters opposed to the Policy Statement were primarily concerned that moving any requirements to other documents might make them "less enforceable" than Technical Specifications or might weaken the inspection process.

Based on the criteria in this Policy Statement that define requirements that should be controlled by Technical Specifications, the Commission concludes that some requirements previously contained in Technical Specifications should be relocated to other documents that do not have the direct enforceability of Technical Specifications and do not require NRC staff approval before changes are made. Many of the requirements will be relocated to the FSAR and will be controlled through 10 CFR 50.59. Other requirements will be relocated to more appropriate documents (e.g., Security Plan, QA Plan) and controlled by the applicable regulatory requirements. The adequacy of controls for relocated requirements which do not fit in the above categories will be reviewed and approved by the NRC staff on a case-by-case basis to determine, among other things, whether an enforceable control method will need to be established. NRC approval would still be required for any changes to requirements covered by 10 CFR 50.59 that involved an unreviewed safety question and for changes which exceed the threshold criteria in the regulations for other controlled documents. The Commission believes that this control and enforcement posture is commensurate with the safety importance of the relocated requirements.

Many of the commenters addressed specific issues discussed in the Policy Statement. The following paragraphs discuss issues addressed by a significant portion of the commenters or that are of particular interest.

A slight majority of the industry commenters stated that they agreed with the Policy Statement that improvements should be voluntary. In addition, four of the commenters stated that if licensees elect to implement the Policy Statement, they should not be required to convert to STS. The Commission has concluded that where STS requirements are generally applicable, the STS should be adopted unless adequate justification for acceptance of a plant-specific Technical Specification is provided. Cases may arise where there is a question concerning the NRC staff proposed addition of requirements in the improved STS that are not in a licensee's current Technical Specifications. In such cases, the Commission intends to control the process by evaluating the imposition of additional requirements in accordance with the Commission regulations on backfitting (10 CFR 50.109).

The interim Policy Statement identified three criteria to be used to define which of the current Technical Specification requirements should be retained or included in Technical Specifications and which requirements could be relocated to licensee-controlled documents. Half of the industry commenters stated that licensees should be allowed to selectively apply the criteria without fully adopting the improvement process (e.g., not improving Bases and not applying accepted human factors principles to Technical Specifications). In this regard, it is the Commission policy that licensees may adopt portions of the improved STS without fully implementing all STS improvements. The Commission will, however, place the highest priority on the review and approval of Technical Specifications related submittals for complete conversions to the improved STS. For licensees who adopt portions of the improved STS, these portions shall include all related requirements and will normally be developed as line-item improvements by the NRC staff. In all cases, the Commission expects improved Bases to accompany requests for improved Technical Specifications. The Commission realizes, however, that it may not always be practical for licensees to apply all of the human factors principles used in the improved STS. The Commission believes that the above approach will result in safety improvements as well as consistency in Technical Specifications requirements and will allow the most efficient use of NRC and industry resources.

When the interim Policy Statement was issued, the Commission believed that it was only the overall package of improvements which, if adopted, would produce an improvement in safety. However, experience in the development of the improved STS and in the review of license amendment requests has led the Commission to conclude that safety benefits can be realized from adopting portions of the improved STS without fully implementing all STS improvements. The NRC staff has developed several line-item improvements since the publication of the interim Policy Statement. These improvements have been reviewed by the Committee to Review Generic Requirements and have been made available for voluntary implementation through generic letters. While the Commission continues to believe that the greatest improvement to safety can be realized by implementing all of the improvements in the improved STS, it also believes there is considerable merit in allowing licensees to improve portions of their Technical Specifications that could result in a safety benefit.

Fifteen industry respondents strongly supported the use of the criteria to determine which future requirements (e.g., from generic issues) would be included in Technical Specifications.

This has been the Commission intent and the Policy Statement has been modified accordingly.

Ten commenters stated that the proposed criteria were acceptable as is, and several recommended prompt rulemaking to codify the criteria. Five other commenters indicated that the criteria were inadequate or that additional discussion of the criteria scope and intent was needed. After studying comments and use of the criteria, the Commission determined that further discussion of the criteria was needed and this is included in Section IV. The Department of Nuclear Safety, State of Illinois, recommended adding a fourth criterion and delaying implementation of the Policy Statement until rule changes necessary for implementation are promulgated. The criterion suggested would expand on Criterion 3 to cover all anticipated operational sequences. The Commission believes that safety significant operational sequences are adequately addressed by Criteria 2 and 3. The Commission has added a fourth criterion (different from that proposed by the State of Illinois) to capture requirements which operating experience or probabilistic safety assessment (PSA) show to be significant to public health and safety.

In considering the specific comments on the criteria and based on experience in applying the criteria, the Commission concluded that the criteria should be codified through rulemaking. Currently, there is a common understanding between the NRC staff and the industry that the criteria provide a template to develop improved Technical Specifications. The criteria are being used by licensees to prepare Technical Specification submittals to the NRC. If the NRC staff does not believe a licensee has properly applied the criteria, the staff will not issue a license amendment until the licensee has properly applied the criteria. For these reasons, the Commission believes it is appropriate to codify the criteria in a rule which will be consistent with this Policy Statement. The Commission will ensure that the voluntary nature of the Technical Specifications Improvement Program is preserved in the rulemaking process. Comments on this Policy Statement are welcomed and will be considered and addressed during preparation of the proposed rule.

In addition to the comments on the three original criteria, seven of the commenters were opposed to using PSA to define the contents of the Technical Specifications. They expressed concern that PSA has only limited applicability and that its use is not well defined. Moreover, these commenters noted that plant licensing is based primarily on Design Basis Accident analysis which lends itself to a deterministic process rather than a PSA-based process for identifying Technical Specification requirements. The Commission believes that plant- and design-specific PSAs have yielded valuable insight to unique plant vulnerabilities not fully recognized in the safety analysis report Design Basis Accident or Transient analyses.

Some commenters stated that if PSA is used to impose Technical Specifications for some high-risk items, it should also be used to remove some low-risk items. The Commission notes that this approach to Technical Specifications has been considered at length during the development of the Policy Statement. Since the first three criteria in the Policy Statement are derived from the plant safety analysis report which is deterministic in nature, (but which itself incorporates qualitative risk insights) the Commission believes that a broad application of PSA to remove individual requirements from Technical Specifications is generally counter to the philosophy of the first three criteria. However, risk insights were used to determine the values of some completion times and surveillance frequencies for items retained in the improved STS.

The extension of the sole use of PSA to remove individual requirements from Technical Specifications would need to be founded in a broader policy of risk-based regulation which the Commission is currently pursuing at a level more inclusive than Technical Specifications improvements. Specifically, if a requirement meets any one of the four criteria, it should be retained or included in Technical Specifications. The Commission believes that it would be inappropriate at this time to allow requirements which meet one or more of the first three criteria to be deleted from Technical Specifications based solely on PSA (Criterion 4). However, if the results of PSA indicate that Technical Specifications can be relaxed or removed, a deterministic review will be performed. If the results of the deterministic review also support relaxing or removing the Technical Specifications, the NRC staff will not preclude relaxing or removing such Technical Specifications.

The Commission Policy in this regard is consistent with its Policy Statement on "Safety Goals for the Operation of Nuclear Power Plants," 51 FR 30028, published on August 21, 1986. The Policy Statement on Safety Goals states in part, "* * * probabilistic results should also be reasonably balanced and supported through use of deterministic arguments. In this way, judgments can be made * * * about the degree of confidence to be given to these [probabilistic] estimates and assumptions. This is a key part of the process of determining the degree of regulatory conservatism that may be warranted for particular decisions. This defense-in-depth approach is expected to continue to ensure the protection of public health and safety." At its conclusion, the Policy Statement on Safety Goals adds, "Nor are the safety goals and these implementation guidelines in and of themselves meant to serve as a sole basis for licensing decisions. However, if pursuant to these guidelines, information is developed that is applicable to a particular licensing decision, it may be considered as one factor in the licensing decision."

The Commission will continue to use PSA, consistent with its policy on Safety Goals, as a tool in evaluating specific line-item improvements to Technical Specifications, new requirements, and industry proposals for risk-based Technical Specification changes.

About a third of the respondents stated that NRC should place a high priority on making available specific line-item improvements to current Technical Specifications. The Commission agrees with these comments but will continue to give the highest priority to complete conversions to the improved STS.

### III. Discussion

The Commission recognizes the advantages of improved Technical Specifications. Clarification of the scope and purpose of Technical Specifications has provided useful guidance to both the NRC and industry and has served as an important incentive for industry participation in a voluntary program to improve Technical Specifications. It has resulted in improved STS that are intended to focus licensee and plant operator attention on those plant conditions most important to safety. This should also result in more efficient use of agency and industry resources.

The Policy Statement identifies four criteria for defining the scope of Technical Specifications. These criteria are intended to be consistent with the scope of Technical Specifications as stated in the Statement of Consideration accompanying the current rule, 10 CFR 50.36.

The Statement of Consideration for the final rule issuing 10 CFR 50.36 (33 FR 18610, December 17, 1968) discusses

the scope of Technical Specifications as including the following:

In the revised system, emphasis is placed on two general classes of technical matters: (1) those related to prevention of accidents, and (2) those related to mitigation of the consequences of accidents. By systematic analysis and evaluation of a particular facility, each applicant is required to identify at the construction permit stage, those items that are directly related to maintaining the integrity of the physical barriers designed to contain radioactivity. Such items are expected to be the subjects of Technical Specifications in the operating license.

The first of these two general classes of technical matters to be included in Technical Specifications is captured by criteria (1), (4), and to some extent criterion (2) in that they address systems and process variables that alert the operator to a situation when accident initiation is more likely. The second general class of technical matters is explicitly addressed and captured by criteria (2), (3), and (4). By applying the four criteria contained in the Policy Statement a licensee should capture all of those specific characteristics of its facility and the conditions for its operation that are required to meet the principal operative standard in Section 182a. of the Atomic Energy Act, that is, that adequate protection is provided to the health and safety of the public.

The Commission recognizes that the four criteria carry a theme of focusing on the technical requirements for features of controlling importance to safety. Since many of the requirements are of immediate concern to the health and safety of the public, this Policy Statement adopts, for the purpose of relocating requirements from Technical Specifications to licensee-controlled documents, the subjective statement of the purpose of Technical Specifications expressed by the Atomic Safety and Licensing Appeal Board in Portland General Electric Company (Trojan Nuclear Plant), ALAB–531, 9 NRC 263 (1979). There, the Appeal Board interpreted Technical Specifications as being reserved for those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety.

The Commission wishes to emphasize that this Policy Statement is intended to be consistent with the language of section 182a. of the Atomic Energy Act, 10 CFR 50.36, and previous interpretations of the regulations. The Policy Statement merely clarifies the scope and purpose of Technical Specifications by identifying criteria which can be used to establish, more clearly, the framework for Technical Specifications (i.e., identify those requirements derived from the analyses and evaluation included in the safety analysis report and which are of immediate concern to the health and safety of the public). The Commission intends to codify these criteria in a rule which will be consistent with the Policy Statement. The Policy Statement also describes a mechanism whereby requirements that do not meet these criteria can be identified and controlled through mechanisms other than Technical Specifications.

Over the past several years, the Commission has seen an improvement in industry development of effective maintenance programs. In addition, there has been an overall improvement in the industry in the conduct of 10 CFR 50.59 safety evaluations since the NUMARC publication of NSAC–125, "Guidelines for 10 CFR 50.59 Safety Evaluations," in June 1989. Furthermore, the ongoing NRC study on shutdown and low-power operation should provide some important insights for additional Technical Specification improvements in the areas of shutdown and low power operations. The Commission believes that these improvements, combined with improved Technical Specifications developed based on this Policy Statement, can lead to significant improvements in the operational safety of nuclear power facilities.

## IV. The Commission Policy

The purpose of Technical Specifications is to impose those conditions or limitations upon reactor operation necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety by identifying those features that are of controlling importance to safety and establishing on them certain conditions of operation which cannot be changed without prior Commission approval.

Licensees are encouraged to implement a program to upgrade their Technical Specifications consistent with this purpose. The Commission will place the highest priority on requests based on the criteria below (as clarified by the supporting discussion) for individual license amendments that evaluate all of the Limiting Conditions for Operation (LCOs) for an individual plant to determine which LCOs should be included in the Technical Specifications. In addition, the Commission will also entertain requests to adopt portions of the improved STS, even if the licensee does not adopt all STS improvements. These portions shall include all related requirements and will normally be developed as line-item improvements by the NRC staff. The Commission encourages all licensees who submit Technical Specification related submittals based on this Policy Statement to emphasize human factors principles.

LCOs which do not meet any of the criteria below may be proposed for removal from the Technical Specifications and relocation to licensee-controlled documents, such as the FSAR. The criteria may be applied to either standard or custom Technical Specifications. The Commission will also consider the criteria in evaluating future generic requirements for inclusion in Technical Specifications.

In accordance with this Policy Statement, improved STS have been developed and will be maintained for each NSSS owners group. The Commission encourages licensees to use the improved STS as the basis for plant-specific Technical Specifications. During individual Technical Specification conversions, the nonvoluntary addition of new requirements from the improved STS to individual plant Technical Specifications will be evaluated in accordance with the Commission regulations on backfitting (10 CFR 50.109) unless the staff suggested additional changes are needed to make the licensee requested changes acceptable from the standpoint of adequate protection or compliance with NRC regulations, in which case § 50.109 does not apply and the request may be denied without the additional items. However, in all other cases, it is the Commission intent that the wording and Bases of the improved STS be used in the Technical Specification related submittal to the extent practicable.

The following criteria delineate those constraints on design and operation of nuclear power plants that are derived from the plant safety analysis report or PSA information and that belong in Technical Specifications in accordance with 10 CFR 50.36 and the purpose of Technical Specifications stated above.

*Criterion 1*

Installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary.

Discussion of Criterion 1

A basic concept in the adequate protection of the public health and safety is the prevention of accidents. Instrumentation is installed to detect significant abnormal degradation of the

reactor coolant pressure boundary so as to allow operator actions to either correct the condition or to shut down the plant safely, thus reducing the likelihood of a loss-of-coolant accident.

This criterion is intended to ensure that Technical Specifications control those instruments specifically installed to detect excessive reactor coolant system leakage. This criterion should not, however, be interpreted to include instrumentation to detect precursors to reactor coolant pressure boundary leakage or instrumentation to identify the source of actual leakage (e.g., loose parts monitor, seismic instrumentation, valve position indicators).

*Criterion 2*

A process variable, design feature, or operating restriction that is an initial condition of a Design Basis Accident or Transient analysis that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

Discussion of Criterion 2

Another basic concept in the adequate protection of the public health and safety is that the plant shall be operated within the bounds of the initial conditions assumed in the existing Design Basis Accident and Transient analyses and that the plant will be operated to preclude unanalyzed transients and accidents. These analyses consist of postulated events, analyzed in the FSAR, for which a structure, system, or component must meet specified functional goals.

These analyses are contained in Chapters 6 and 15 of the FSAR (or equivalent chapters) and are identified as Condition II, III, or IV events (ANSI N 18.2) (or equivalent) that either assume the failure of or present a challenge to the integrity of a fission product barrier.

As used in Criterion 2, process variables are only those parameters for which specific values or ranges of values have been chosen as reference bounds in the Design Basis Accident or Transient analyses and which are monitored and controlled during power operation such that process values remain within the analysis bounds. Process variables captured by Criterion 2 are not, however, limited to only those directly monitored and controlled from the control room. These could also include other features or characteristics that are specifically assumed in Design Basis Accident and Transient analyses even if they cannot be directly observed in the control room (e.g., moderator temperature coefficient and hot channel factors).

The purpose of this criterion is to capture those process variables that have initial values assumed in the Design Basis Accident and Transient analyses, and which are monitored and controlled during power operation. As long as these variables are maintained within the established values, risk to the public safety is presumed to be acceptably low. This criterion also includes active design features (e.g., high pressure/low pressure system valves and interlocks) and operating restrictions (pressure/temperature limits) needed to preclude unanalyzed accidents and transients.

*Criterion 3*

A structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a Design Basis Accident or Transient that either assumes the failure of or presents a challenge to the integrity of a fission product barrier.

Discussion of Criterion 3

A third concept in the adequate protection of the public health and safety is that in the event that a postulated Design Basis Accident or Transient should occur, structures, systems, and components are available to function or to actuate in order to mitigate the consequence of the Design Basis Accident or Transient. Safety sequence analyses or their equivalent have been performed in recent years and provide a method of presenting the plant response to an accident. These can be used to define the primary success paths.

A safety sequence analysis is a systematic examination of the actions required to mitigate the consequences of events considered in the plant's Design Basis Accident and Transient analyses, as presented in Chapters 6 and 15 of the plant's FSAR (or equivalent chapters). Such a safety sequence analysis considers all applicable events, whether explicitly or implicitly presented. The primary success path of a safety sequence analysis consists of the combination and sequences of equipment needed to operate (including consideration of the single failure criteria), so that the plant response to Design Basis Accidents and Transients limits the consequences of these events to within the appropriate acceptance criteria.

It is the intent of this criterion to capture into Technical Specifications only those structures, systems, and components that are part of the primary success path of a safety sequence analysis. Also captured by this criterion are those support and actuation systems that are necessary for items in the primary success path to successfully function. The primary success path for a particular mode of operation does not include backup and diverse equipment (e.g., rod withdrawal block which is a backup to the average power range monitor high flux trip in the startup mode, safety valves which are backup to low temperature overpressure relief valves during cold shutdown).

*Criterion 4*

A structure, system, or component which operating experience or probabilistic safety assessment has shown to be significant to public health and safety.

Discussion of Criterion 4

It is the Commission policy that licensees retain in their Technical Specifications LCOs, action statements and Surveillance Requirements for the following systems (as applicable), which operating experience and PSA have generally shown to be significant to public health and safety and any other structures, systems, or components that meet this criterion:

- Reactor Core Isolation Cooling/ Isolation Condenser,
- Residual Heat Removal,
- Standby Liquid Control, and
- Recirculation Pump Trip.

The Commission recognizes that other structures, systems, or components may meet this criterion. Plant- and design-specific PSAs have yielded valuable insight to unique plant vulnerabilities not fully recognized in the safety analysis report Design Basis Accident or Transient analyses. It is the intent of this criterion that those requirements that PSA or operating experience exposes as significant to public health and safety, consistent with the Commission's Safety Goal and Severe Accident Policies, be retained or included in Technical Specifications.

The Commission expects that licensees, in preparing their Technical Specification related submittals, will utilize any plant-specific PSA or risk survey and any available literature on risk insights and PSAs. This material should be employed to strengthen the technical bases for those requirements that remain in Technical Specifications, when applicable, and to verify that none of the requirements to be relocated contain constraints of prime importance in limiting the likelihood or severity of the accident sequences that are commonly found to dominate risk. Similarly, the NRC staff will also employ risk insights and PSAs in evaluating Technical Specifications related submittals. Further, as a part of

the Commission's ongoing program of improving Technical Specifications, it will continue to consider methods to make better use of risk and reliability information for defining future generic Technical Specification requirements.

Requirements which would be relocated from Technical Specifications to a licensee-controlled document (e.g., the FSAR, the Security Plan, the QA Plan, or Fire Protection Plan) may be changed or deleted in conjunction with the filing of individual Technical Specifications related requests to implement this Policy Statement. The package containing the amendment request must contain a clear statement of the basis for the change or deletion, a safety evaluation, and a statement that the changes have been reviewed by a multidisciplinary group of responsible, technical supervisory personnel, including onsite operations personnel.

Appropriate Surveillance Requirements and Actions should be retained for each LCO which remains or is included in the Technical Specifications. Each LCO, Action, and Surveillance Requirement should have supporting Bases. The Bases should at a minimum address the following questions and cite references to appropriate licensing documentation (e.g., FSAR, Topical Report) to support the Bases.

1. What is the justification for the Technical Specification, i.e., which Policy Statement criterion requires it to be in the Technical Specifications?

2. What are the Bases for each LCO, i.e., why was it determined to be the lowest functional capability or performance level for the system or component in question necessary for safe operation of the facility and, what are the reasons for the Applicability of the LCO?

3. What are the Bases for each Action, i.e., why should this remedial action be taken if the associated LCO cannot be met; how does this Action relate to other Actions associated with the LCO; and what justifies continued operation of the system or component at the reduced state from the state specified in the LCO for the allowed time period?

4. What are the Bases for each Safety Limit?

5. What are the Bases for each Surveillance Requirement and Surveillance Frequency; i.e., what specific functional requirement is the surveillance designed to verify? Why is this surveillance necessary at the specified frequency to assure that the system or component function is maintained, that facility operation will be within the Safety Limits, and that the LCO will be met?

**Note:** In answering these questions the Bases for each number (e.g., Allowable Value, Response Time, Completion Time, Surveillance Frequency), state, condition, and definition (e.g., operability) should be clearly specified. As an example, a number might be based on engineering judgment, past experience, or PSA insights; but this should be clearly stated.

When licensees submit amendment requests based on this Policy Statement, they should identify the location of and controls for the technical and administrative requirements of the relocated requirements. The NRC staff will carefully review these submittals to ensure the accountability and the acceptability of controls for each relocated requirement. Many of the requirements will be relocated to the FSAR and will be enforceable through 10 CFR 50.59. Other requirements will be relocated to more appropriate documents (e.g., Security Plan, QA Plan) and controlled by the applicable regulatory requirements. The adequacy of controls for relocated requirements which do not fit in the above categories will be reviewed and approved by the NRC staff on a case-by-case basis to determine, among other things, whether an enforceable control method will need to be established.

Since some of the requirements currently contained in the Technical Specifications will be relocated to licensee-controlled documents to which changes will be controlled by 10 CFR 50.59, the NRC has been giving increased attention to the 10 CFR 50.59 change process. In the interim Policy Statement the Commission encouraged industry to obtain the support of NUMARC in sponsoring activities to encourage the highest quality for utility review of changes made pursuant to 10 CFR 50.59. In June 1989, NUMARC published NSAC–25, "Guidelines for 10 CFR 50.59 Safety Evaluations." During the development of these guidelines, the NRC staff and NUMARC met on several occasions to discuss the content of NSAC–25. Since its publication, nearly all of the industry has been using NSAC–25 as guidance in performing 10 CFR 50.59 safety evaluations. While the NRC and the industry do not fully agree on all issues associated with NSAC–25, based on inspections and reviews since its issuance, the NRC staff has seen an overall improvement in the conduct of 10 CFR 50.59 safety evaluations. Moreover, the guidelines described in NSAC–25 go beyond what is required by 10 CFR 50.59 in certain respects. Thus, the Commission does not believe that the guidelines are appropriate for endorsement as regulatory guidance.

In addition, in December 1992, the Office of Nuclear Reactor Regulation issued Inspection Procedure 37001, "10 CFR 50.59 Safety Evaluation Program," to provide NRC inspectors with updated guidance for evaluating utility performance in implementing the requirements of 10 CFR 50.59. The Commission believes use of this inspection guidance will provide continued assurance that the NRC is appropriately monitoring 10 CFR 50.59 safety evaluation programs for licensees who convert to the improved STS.

The Commission emphasizes the importance of a well-planned transition for licensees who plan to convert to the improved STS. Such a transition should include careful consideration of procedure revisions and operator training to ensure safe operation during and following the conversion.

The NRC will, consistent with its mission, allocate resources as necessary to implement this Policy Statement.

## V. Enforcement Policy

Any changes to a licensee's Technical Specifications to apply this Policy Statement's criteria will be made by the license amendment process prior to implementation. Compliance with Technical Specifications is required by the Commission, and adherence to commitments contained in licensee-controlled documents is expected by the Commission. Violations and deviations will, as in the past, be handled in accordance with the NRC Enforcement Policy in 10 CFR part 2, appendix C (1992).

If a licensee elects to apply these criteria, the requirements of the removed specifications will be relocated to the FSAR or other licensee-controlled documents. Licensees are to operate their facilities in conformance with the descriptions of their facilities and procedures in their FSAR. Changes to the facility or to procedures described in the FSAR are to be made in accordance with 10 CFR 50.59. The Commission will take appropriate enforcement action to ensure that licensees comply with 10 CFR 50.59. Changes made in accordance with the provisions of other licensee-controlled documents (e.g., QA plan, Security Plan) are subject to the specific requirements for those documents. Nothing in this Policy Statement shall limit the authority of the NRC to conduct inspections as deemed necessary and to take appropriate enforcement action when regulatory requirements or commitments are not met.

This draft final Policy Statement amends information collection requirements that are subject to the

Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*). This Policy Statement has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this voluntary collection of information is estimated to average 4000 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–0019, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Dated at Washington, DC, this 16th day of July, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–25; Amendment 39–8583; AD 93–09–04]

# Airworthiness Directives; Hartzell Model HC–B4TN–5(D,G,J)L Propellers Installed on Mitsubishi Model MU–2B–60 Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 93–09–04 that was sent previously to all known U.S. owners and operators of Hartzell Model HC–B4TN–5(D,G,J)L propellers Installed on Mitsubishi Model MU–2B–60 aircraft by individual letters. This AD requires removal from service of propeller hub assemblies and replacement with serviceable propeller hub assemblies. This amendment is prompted by two reports of propeller hub arm assembly fatigue failures and subsequent propeller blade separations from aircraft in flight. The actions specified by this AD are intended to prevent fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, and may result in engine separation and subsequent loss of aircraft control.

DATES: Effective August 6, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–09–04, issued on April 28, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 6, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–25, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, room 232, Des Plaines, IL 60018; telephone (312) 694–7130, fax (312) 694–7834.

SUPPLEMENTARY INFORMATION: On April 28, 1993, the Federal Aviation Administration (FAA) issued priority letter AD 93–09–04, applicable to Hartzell Model HC–B4TN–5(D,G,J)L propellers Installed on Mitsubishi Model MU–2B–60 aircraft, which requires removal from service of propeller hub assemblies and replacement with serviceable propeller hub assemblies. That action was prompted by two reports of propeller hub arm assembly fatigue failures and subsequent propeller blade separations from aircraft in flight. Preliminary data indicates that fatigue cracks can originate in the propeller hub arm assembly. This condition, if not corrected, could result in fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, and may result in engine separation and subsequent loss of aircraft control.

The FAA has reviewed and approved the technical contents of Hartzell Alert Service Bulletin (ASB) No. A182, dated April 28, 1993, that describes procedures for removal from service, inspection, rework, and replacement of propeller hub assemblies.

Since the unsafe condition described is likely to exist or develop on other propellers of the same type design, the FAA issued priority letter AD 93–09–04 to prevent propeller hub arm assembly failure. The AD requires removal from service of propeller hub assemblies and replacement with serviceable propeller hub assemblies. This AD is an interim action until more data is available on the cause of propeller hub arm assembly failures. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 28, 1993, to all known U.S. owners and operators of Hartzell Model HC–B4TN–5(D,G,J)L propellers installed on Mitsubishi Model MU–2B–60 aircraft. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–25." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–09–04 Hartzell Propeller Inc.:** Amendment 39–8583. Docket 93–ANE–25.

*Applicability:* Hartzell Propeller Inc. HC–B4TN–5(D,G,J)L/LT10282(B,K)–5.3R and HC–B4TN–5(D,G,J)L/LT10282N(B,K)–5.3R Propellers installed on Mitsubishi Model MU–2B–60 Aircraft.

**Note:** The parentheses indicate the presence or absence of an additional letter(s) which vary the basic propeller hub and blade model designation. This Airworthiness Directive (AD) still applies regardless of whether these letters are present or absent on the propeller hub and blade model designation.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracks in propeller hub arm assemblies progressing to failure, resulting in departure of the hub arm and blade, and that may result in engine separation and subsequent loss of aircraft control, accomplish the following in accordance with the compliance schedule as indicated:

| Time-since-new (TSN) in hours on the effective date of this ad or propeller hub assemblies that have experienced a blade strike | Compliance required |
|---|---|
| TSN greater than or equal to 3000 hours or TSN unknown. | Within the next 10 hours time in service (TIS) or two calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first. |
| TSN less than 3000 hours. | Prior to the accumulation of 3010 hours TSN, or within the next 200 hours TIS or 12 months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first. |
| Regardless of TSN, propeller hub assemblies that have experienced a blade strike prior to the effective date of this AD. See paragraph (c) of this AD for the definition of a blade strike. | Within the next 10 hours TIS or two calendar months after the effective date of this AD, whichever occurs first and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first. |
| Regardless of TSN, propeller hub assemblies that experience a blade strike after the effective date of this AD. See paragraph (c) of this AD for the definition of a blade strike. | Prior to further flight, and thereafter at intervals not to exceed 600 hours TIS or 60 calendar months since last inspection, whichever occurs first. |

(a) Remove affected propeller hub assemblies from the aircraft and return to Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634 U.S.A. for inspection and specified rework procedures, in accordance with Hartzell Alert Service Bulletin (ASB) No. A182, dated April 28, 1993. Propeller hubs removed from Mitsubishi Model MU–2B–60 aircraft may not be installed on any other aircraft unless an inspection is performed in accordance with Hartzell ASB No. A182, dated April 28, 1993.

(b) Reinstall affected propeller hub assemblies that have had the hub arm bores inspected and reworked as necessary, pilot tubes replaced, and marked at the end of the hub serial number with suffix letter "M", followed by a number (1,2,3, etc.) to indicate the number of repetitive inspections performed in accordance with Hartzell ASB No. A182, dated April 28, 1993; or install new production hubs which have passed the inspection and have been marked at the end of the hub serial number with the suffix letter "M".

(c) A blade strike is defined as a propeller having any blade(s) that has been bent beyond repair limits in accordance with

Hartzell Service Letter 61R, dated February 28, 1992.

(d) The "calendar month" compliance time stated in this AD allow the performance of the required action prior to the last day of the month in which compliance is required.

**Note:** For example, if action is required 2 calendar months from April 28, 1993, the required actions are to be performed not later than June 30, 1993.

(e) An alternate method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

**Note 1:** Information concerning the existence of approved alternative methods of compliance with this Airworthiness Directive, if any, may be obtained from Chicago Aircraft Certification Office.

**Note 2:** Although Hartzell Propeller is presently the only FAA-approved repair facility authorized to conduct the requirements of this AD, other facilities may be authorized through the alternative method of compliance procedure in paragraph (e) of this AD.

(f) Except when propeller hub assemblies experience a blade strike after the effective date of this AD, special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The removal from service, inspection, rework, and reinstallation shall be done in accordance with the following alert service bulletin:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| Hartzell ASB No. A182 | 1–3 | Original | April 28, 1993. |

Total pages: 3.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective August 6, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–09–04, issued April 28, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on June 17, 1993.

**Michael H. Borfitz,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17420 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 5

### Delegations of Authority and Organization; FDA Center Directors

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to redelegate to center directors the authority of the Commissioner of Food and Drugs (the Commissioner) or the Commissioner's designee to select temporary voting members for advisory committees if the temporary voting members are already serving on other advisory committees within the center. In addition, this delegation will add to the authorities listed in 21 CFR part 5 the current authority of the center directors to sign conflict of interest waivers.

**EFFECTIVE DATE:** July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

**SUPPLEMENTARY INFORMATION:** FDA is amending the delegations of authority under 21 CFR part 5 by adding new § 5.34 *Authority to select temporary voting members for advisory committees and authority to sign conflict of interest waivers.* This section redelegates to center directors for advisory committees under their management the authority of the Commissioner or the Commissioner's designee to select members and consultants from one advisory committee to serve as temporary voting members on another advisory committee if expertise is required that is unavailable among current voting standing members of a committee or to comprise a quorum. In addition, FDA is publishing as part of new § 5.34 the current authority of center directors, under 18 U.S.C. 208(b)(1), to sign conflict of interest waivers for special government employees without substantial interest to serve as consultants to advisory committees or in any other capacity within the centers except as advisory committee members.

The authority to select temporary voting members to advisory committees if such members are serving on an advisory committee managed by another center is not redelegated. This authority will continue to be administered by the Commissioner or the Deputy Commissioner for Operations. Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

### List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. New § 5.34 is added to subpart B to read as follows:

**§ 5.34 Authority to select temporary voting members for advisory committees and authority to sign conflict of interest waivers.**

(a) Each center director is authorized to select members of, and consultants to, scientific and technical FDA advisory committees under that center's management to serve temporarily as voting members on another advisory committee under that center's management when expertise is required that is not available among current voting standing members of a committee or to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. When additional voting members are added to a committee to provide needed expertise not available among current voting standing members of a committee, a quorum will be based on the total of regular and added members. Authority to select temporary voting members to advisory committees if such voting members are serving on an advisory committee managed by another center has not been redelegated. This authority will continue to be exercised by the Commissioner or his designee.

(b) Each center director is authorized, under 18 U.S.C. 208(b)(1), to sign conflict of interest waivers for special government employees without substantial interest to serve as consultants to advisory committees or in any other capacity within the centers except as advisory committee members.

Dated: July 13, 1993.

Jane E. Henney,

*Deputy Commissioner for Operations.*

[FR Doc. 93-17345 Filed 7-21-93; 8:45 am]

BILLING CODE 4160-01-F

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Part 140

RIN 2125-AD15

## Construction Engineering Costs

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA is amending its regulations on reimbursement for construction engineering (CE) costs to comply with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA of 1991). Under the existing regulation, CE costs were limited to 15% of the cost per construction project. Section 1018 of the ISTEA of 1991 established that a State highway agency's (SHA's) obligations for CE costs will be limited, per fiscal year, to 15 percent of the total estimated costs of all projects financed within the State with Federal-aid highway funds, excluding the estimated costs of right-of-way, preliminary engineering, and CE. This regulation establishes a uniform process for controlling the CE limitation.

**EFFECTIVE DATE:** July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Engineering, 202-366-0392; Mr. Wilbert Baccus, Office of Chief Counsel, 202-366-0780; or Mr. Max Inman, Chief, Federal/States Financial Management Branch, 202-366-2853, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** On December 18, 1991, the President signed into law the ISTEA of 1991 (Pub. L. 102-240, 105 Stat. 1914) to develop a national intermodal surface transportation system, and to authorize funds for construction of highways, for highway safety programs, for mass transit programs, and for other purposes. Section 1018(a) of the ISTEA of 1991 amended sections 106(c) and 121(d) of title 23, United States Code, and thus changed the 15 percent CE limitation from a project cost basis to an aggregate of all estimates (obligations) for projects financed with applicable Federal-aid funds within a State during a fiscal year. The specific changes for each section of the regulation are as follows:

### Section 140.201 Purpose

This section has not been changed.

### Section 140.203 Policy

Section 140.203(a) is retained unchanged but the provisions relating to the 15 percent limitation have been revised in accordance with section 1018(a) of the ISTEA, and moved to a new § 140.205, Limitation. The new § 140.203(b) references the limitation provisions of § 140.205.

### Section 140.205 Limitation

The title and provisions of former § 140.205, Application of Limitation, have been moved to a new § 140.207. A new § 140.205, Limitation, has been added which includes provisions relating to the revised 15 percent limitation and FHWA's policy on reimbursement of CE costs.

(1) Section 140.205(a) sets forth the basic limitation policy that estimated CE costs approved for a SHA for a fiscal year cannot exceed 15 percent of the total estimated costs of all projects financed within the State with Federal-aid highway funds in the fiscal year, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

(2) Section 140.205(b) establishes a uniform process for controlling the CE limitation. It provides that a SHA's CE limitation percentage be determined by the ratio of the total amount obligated for CE to the total amount obligated for all projects financed with Federal-aid highway funds during the fiscal year, after excluding the obligated amounts for rights-of-way, preliminary engineering, and CE. It further provides that a SHA may use, as the annual period for CE limitation determination, either the Federal or State fiscal year. The CE limitation determination for each fiscal year is to be treated separately and may not be adjusted after the end of that fiscal year.

Because the CE limitation is calculated based on the total construction costs obligated during the fiscal year, initial fiscal year project requests containing estimated CE costs higher than 15 percent may be authorized and funds obligated. More restrictive CE obligation limitations may have to be implemented toward the end of a fiscal year if it becomes apparent that total CE obligations for the fiscal year are at or near 15 percent of the total construction obligation.

(3) Section 140.205(c) provides guidance for projects that were closed (final voucher processed) as of December 18, 1991. These projects may be reopened to accept adjustments and additional eligible project charges with the obligation/deobligation adjustments included in the current fiscal year calculation. However, the CE cost of each of these projects shall be limited to 15 percent of the project construction cost in accordance with the provisions in effect prior to enactment of section 1018.

(4) Section 140.205(d) addresses the situation where a SHA may wish to claim CE costs as an average percentage of the actual construction costs in accordance with 23 U.S.C. 120(g). In these cases, the average rate will be determined based upon reimbursable CE costs and cannot exceed 15 percent, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

### Section 140.207 Application of Limitation

This new section (formerly § 140.205) has been changed to conform to the requirements of 23 U.S.C. 106(c). The limitation applies to all projects

financed with Federal-aid highway funds.

**Rulemaking Analysis and Notices**

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, or a significant regulation. Because the revisions in this document substantially reflect statutory language mandated by the ISTEA of 1991, the FHWA for good cause finds that public comment is unnecessary under section 553(b)(3)(B) of the Administrative Procedure Act. In addition, notice and opportunity for comment are not required because the FHWA for good cause finds that such action would not result in meaningful or practicable comments. First, in revising these regulations to conform to the ISTEA, the FHWA has issued informal guidance in February 1992, informing its regional offices and the State transportation departments of the changes effected by section 1018, so the FHWA has apprised interested persons of the actions covered by this final rule. Second, in revising these regulations to conform to the ISTEA, the FHWA is not interpreting the statute nor exercising discretion in a way that could be meaningfully affected by public comment. The required publication or service of a substantive rule 30 days before its effective date is being waived for the reasons expressed above relating to notice and opportunity for comment. The FHWA finds for good cause shown that the rule should be made effective upon publication since the rule implements the provisions of Section 1018 of the ISTEA.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. The rule impacts State highway agencies and should not have an effect on small business entities. Hence, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this document has federalism implications. However, we believe that the federalism implications are mitigated by the need to meet requirements mandated by statute, and the agency has allowed the States maximum administrative discretion to meet the intent of the statute. Therefore, the FHWA certifies that this action has insufficient federalism implications to warrant the preparation of a separate Federalism Assessment.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*).

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 140**

Accounting, Grant programs—transportation, Highways and roads.

Issued on: July 14, 1993.

**Rodney E. Slater,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA hereby amends part 140 of chapter I of title 23, Code of Federal Regulations, as set forth below.

**PART 140—REIMBURSEMENT 1**

The authority citation for part 140 is revised to read as follows:

**Authority:** 23 U.S.C. 101(e), 106(c), 109(e), 114(a), 120(g), 121(d), 122, 130, and 315; and 49 CFR 1.48(b).

2. Subpart B of part 140 is revised to read as follows:

**Subpart B—Construction Engineering Costs**

140.201 Purpose.
140.203 Policy.
140.205 Limitation
140.207 Application of limitation.

## Subpart B—Construction Engineering Costs

**§ 140.201 Purpose.**

The purpose of this subpart is to prescribe policies for claiming reimbursement for eligible construction engineering (CE) costs.

**§ 140.203 Policy.**

(a) State highway agencies (SHA) may be reimbursed for the Federal share of CE costs incurred as described in § 140.703.

(b) Reimbursement for CE costs for Federal-aid construction projects shall be subject to the limitation set forth in § 140.205.

**§ 140.205 Limitation.**

(a) The estimated CE costs for a SHA for a fiscal year shall not exceed, in the aggregate, 15 percent of the total estimated costs of all projects financed within the boundaries of the State with Federal-aid highway funds in such fiscal year, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

(b) For control purposes, a SHA's estimated CE costs percentage will be determined by the ratio of the total amount obligated for CE to the total amount obligated for all projects financed with Federal-aid highway funds during the fiscal year, after excluding from such totals, the obligations for rights-of-way, preliminary engineering, and CE. This percentage shall not exceed 15 percent at the end of the fiscal year. The CE limitation may be applied on either a Federal or State fiscal year basis.

(1) Amounts to be included in the determination for CE will be the aggregate total of all obligations of CE, including original project obligations at the authorization stage, all subsequent adjustments during the fiscal year, and all adjustments (debits or credits) to projects authorized in previous fiscal years.

(2) The CE limitation determination for each fiscal year will be treated separately and may not be adjusted after the end of that fiscal year.

(c) Projects which are closed (final voucher processed) as of December 18, 1991, may be reopened to accept adjustments and additional eligible project charges. All obligation/deobligation adjustments must be included in the current fiscal year

calculation. However, the CE cost for each of these projects shall be limited to 15 percent of each project construction cost in accordance with the provisions in effect prior to December 18, 1991.

(d) If the SHA claims CE costs as an average percentage of the actual construction costs in accordance with 23 U.S.C. 120(g), the average rate shall be determined based upon reimbursable CE costs and shall not exceed 15 percent, exclusive of the costs of rights-of-way, preliminary engineering, and CE.

**§ 140.207 Application of limitation.**

The limitation applies to all projects financed with Federal-aid highway funds.

[FR Doc. 93-17310 Filed 7-21-93; 8:45 am]
BILLING CODE 4910-22-P

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**Coast Guard**

**33 CFR Part 100**

**[CGD02 93-009]**

## Special Local Regulations; Lacrosse Thunderfest 1993

**AGENCY:** Coast Guard, DOT.
**ACTION:** Temporary final rule.

**SUMMARY:** Special local regulations are being adopted for the Lacrosse Thunderfest 1993 which will be held on the Mississippi River near Lacrosse, Wisconsin on August 19, 20 and 21, 1993. These regulations are needed to control vessel traffic in the immediate vicinity of the event. The regulations will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

**EFFECTIVE DATE:** These regulations become effective daily from 9:30 p.m. to 11:30 p.m. local time on August 19, 20, and 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis Missouri 63103-2832. The telephone number is (314) 539-3971, fax (314) 539-2685.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of these regulations are ENS D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, although the sponsor's application was received on May 3, 1993, the event had to be rescheduled because of flood conditions on the Mississippi River eventually leaving insufficient time to publish a notice of proposed rulemaking in advance of the rescheduled event.

### Background and Purpose

The 1993 Lacrosse Thunderfest is a three-day event consisting of a nightly fireworks display competition. The fireworks will be shot over the Upper Mississippi River at Lacrosse, Wisconsin. The event will be held from August 19, 1993 through August 21, 1993, from 9:30 p.m. until 11:30 p.m. local time each day. Last year the event attracted an audience ranging from 5,000 to 50,000 each night. Many spectators will moor their vessels in the main channel of the Mississippi River. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during part or all of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

### Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to its short duration.

### Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environmental Assessment

Under section 2.B.2.c of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

### Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T0209 is added, to read as follows:

**§ 100.35-T0209 Mississippi River, Lacrosse, Wisconsin.**

(a) *Regulated area.* Upper Mississippi River from mile 697.5 to mile 699.0.

(b) *Special local regulations.* (1) Except for participants in the Lacrosse Thunderfest and for vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, USCG Group Upper Mississippi River and may be contacted, during the event, on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area,

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed before another event begins.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the

prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of the regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective dates.* These regulations become effective daily from 9:30 p.m. to 11:30 p.m. local time on August 19, 20 and 21, 1993.

Dated: July 2, 1993.

**N.T. Saunders,**

*Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.*

[FR Doc. 93-17448 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 117**

**[CGD 11-93-006]**

## Deviation From Drawbridge Operation Regulations; Cerritos Channel, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of deviation.

**SUMMARY:** On December 7, 1992, the Coast Guard issued authorization for temporary deviation from the drawbridge operation regulation for the Commodore Schuyler Heim Bridge (Heim Bridge) which crosses Cerritos Channel of Los Angeles/Long Beach Harbor. The deviation is needed to facilitate replacement of a submarine control cable, and will take the bridge out of service to navigation from August 2, 1993 until August 20, 1993. The bridge will not be required to open for the passage of vessels during that period. The Heim Bridge carries California Route 47 across Cerritos Channel between Wilmington and Terminal Island in Los Angeles County, California.

**EFFECTIVE DATE:** The deviation is effective from August 2, 1993 through August 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** Susan Worden, Bridge Section, Office of Aids to Navigation and Waterways Management Branch; Address: Commander (oan-br), Eleventh Coast Guard District, room 214, Building 10, Coast Guard Island, CA 94501-5100; Telephone: (510) 437-3514.

**SUPPLEMENTARY INFORMATION:** At the request of the California Department of Transportation (CalTrans), the Coast Guard has issued authorization for temporary deviation from the drawbridge operation regulation Heim Bridge over the Cerritos Channel (33 CFR 117.147), mile 4.5 at Long Beach, a secondary waterway in the Los Angeles/Long Beach Harbor complex which connects the Port of Long Beach and the Port of Los Angeles. An alternate route past the bridge is available through the outer harbor. The maximum distance via the alternate route is 10 miles. Current regulations allow the bridge to remain closed during the peak traffic hours from 6 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m., Monday through Friday except Federal Holidays. The bridge opens upon demand at all other times.

The submarine cable which controls the operation of the bridge is damaged and must be replaced. The existing cable must be removed to provide sufficient room for the new cable to be placed in the cable runs on the bridge. The bridge cannot be safely operated without this control cable. The bridge will therefore not be required to open for the passage of vessels during the period from 6 a.m. August 2, 1993, through 6 p.m. August 20, 1993. The Coast Guard has met with CalTrans representatives and reviewed the proposed work, and the time requirements are the minimum needed to complete the work safely. Authority for the deviation alleviating the requirement to open for the passage of vessels is found at 33 CFR 117.35(d).

A temporary channel closure will also be needed to safeguard divers entrenching the cable. The Captain of the Port Los Angeles/Long Beach will establish a safety zone within 100 yards of the bridge during the period August 9 through August 13, 1993 for those diving operations.

Dated: June 23, 1993.

**M.E. Gilbert,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 93-17441 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-14-M

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**33 CFR Part 117**

**[CGD07-93-019]**

## Drawbridge Operation Regulations; Marathon, FL

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the County Administrator of Monroe County, the Coast Guard is adding regulations governing the operation of the Boot Key Harbor Drawbridge, at mile 0.13, between Marathon and Boot Key, Monroe County, Florida, by requiring two-hour advance notification for an opening of the draw during certain periods. This addition is being made because of infrequent requests to open the draw during the nighttime hours from 10 p.m. to 6 a.m. This action would relieve the bridgeowner of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

**EFFECTIVE DATE:** August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Brodie Rich, Project Manager, Bridge Section at (305) 536-4103.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager, and LT J.M. Losego, Project Counsel.

### Regulatory History

On May 3, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations in the **Federal Register** (58 FR 26281). The Coast Guard received no letters commenting on the rule. A public hearing was not requested and one was not held.

### Background and Purpose

The drawbridge presently opens on signal. The owner of the Boot Key Harbor drawbridge has requested relief from the requirement to maintain full time drawtender service due to the lack of openings during evening hours from 10 p.m. to 6 a.m. The Coast Guard is adding an advance notification requirement of 2 hours daily from 10 p.m. to 6 a.m. This should reduce the owner's operating cost while still meeting the needs of navigation.

### Discussion of Comments and Changes

A Coast Guard analysis showed there were 67 vessels logged through the Boot Key Harbor drawbridge from September 1991 through September 1992 between the hours of 10 p.m. to 6 a.m. This represents an average of only 1.3 openings per week during that time period.

This rule would reduce the operating costs for the owner while still providing for the reasonable needs of navigation at Boot Key Harbor.

### Regulatory Evaluation

This rule is not major under Executive Order 12291 and not sufficient under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a regulatory evaluation is unnecessary. We conclude this because there is no commercial traffic on the waterway.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since the rule effects no commercial users, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. § 117.272 is added to read as follows:

**§ 117.272 Boot Key Harbor.**

The draw of the Boot Key Harbor drawbridge, mile 0.13, between Marathon and Book Key, shall open on signal; except that during the evening hours from 10 p.m. to 6 a.m., the draw shall open on signal if at least 2 hours notice is given.

Dated: July 1, 1993

**William P. Leahy,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 93–17442 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 117**

**[CGD05–93–033]**

## Drawbridge Operation Regulations; Scuppernong River, Columbia, NC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment removes the regulations for the US 64 bridge across the Scuppernong River, mile 4.5, Columbia, North Carolina, because the swing bridge has been removed. A notice of proposed rulemaking has not been issued for this regulation because removal of the bridge eliminates the need for regulation.

**EFFECTIVE DATE:** These regulations become effective on August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principle persons involved in drafting this document are Linda L. Gilliam, Project Officer, and LCDR C.A. Abel, Project Attorney.

**Background and Purpose**

The swing bridge across the Scuppernong River, mile 4.5 in Columbia, North Carolina, was removed, making it necessary to remove 33 CFR 117.839. This action has no economic consequences. It merely removes regulations for a swing bridge that no longer exists.

**Regulatory Evaluation**

This action is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Furthermore, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not raise sufficient federalism implications to warrant the preparation of a federalism assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations to read as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

**§ 117.839 [Removed]**

2. Section 117.839 is removed.

Dated: June 23, 1993.

**W.T. Leland,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 93–17444 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 117**

**[CCGD01–91–029]**

## Drawbridge Operation Regulations; Hackensack River, NJ, et al.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of New Jersey Transit Rail Operations (NJTRO) and Bergen County Department of Public Works, the Coast Guard is changing the regulations governing the NJTRO, Lower Hack drawbridge, mile 3.4 at Jersey City,

N.J., the NJTRO, Upper Hack drawbridge, mile 6.9 at Secaucus, N.J., the NJTRO, HX (Jacknife) drawbridge, mile 7.7 at Secaucus, N.J., and the Harold J. Dillard Memorial (Court Street) drawbridge, mile 16.2 at Hackensack, N.J. all across the Hackensack River and the NJTRO, Newark-Harrison (Morristown Line) drawbridge across the Passaic River, mile 5.8 at Harrison, New Jersey. The NJTRO change permits their drawbridges to be operated on an advance notice basis using roving crews. The Bergen County change permits a one hour shift in the crewing and staffing time of the Harold J. Dillard Memorial (Court Street) Bridge and requires at least eight (8) hours advance notice for openings at night and at all times on weekends and Federal Holidays. These changes relieve the bridge owners of the burden of having persons constantly available at each draw, but will still provide for the reasonable needs of navigation. Editorial changes were made to clarify the proposed regulations and to update call sign information in appendix A.

**EFFECTIVE DATE:** This rule becomes effective August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** William C. Heming, Bridge Administrator, First Coast Guard District at (212) 668–7170.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are Mr. Si Brown, Project Manager, and Lieutenant Commander Jeffrey Stieb, Project Counsel, First Coast Guard District, Legal Office.

**Regulatory History**

On June 4, 1991, the Coast Guard published proposed rules (56 FR 25397), concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1–748 dated June 14, 1991. Interested persons were given until July 19 and July 15, 1991, respectively, to submit comments. The Coast Guard received six letters commenting on the proposals. The Coast Guard determined there was no need for a public hearing and none was held.

**Background and Purpose**

The Hackensack and Passaic Rivers in New Jersey contain a mix of commercial and recreational traffic. Presently all the aforementioned NJTRO bridges are crewed and staffed 24 hours per day throughout the entire year and open on signal, except NJTRO's Newark/Harrison bridge which need not open during weekday morning and evening rush hours. There has been a steady decrease in requests for openings at these bridges to the extent that two of them, Lower Hack and Newark/Harrison now open on an average of once every two and a half days.

NJTRO plans to operate these four (4) bridges utilizing around the clock, two person roving crews. Each crew would be split between the HX and Upper Hack Bridges. The Upper Hack drawtender would provide openings of the Upper Hack and would also operate HX bridge when the HX operator was not present. The HX drawtender would normally handle requests for openings at the HX, Lower Hack and Newark/Harrison bridges. NJTRO made this request because of the proximity and limited number of openings of these bridges, as well as a desire to achieve more effective use of its workforce.

Bergen County's Harold J. Dillard Memorial (Court Street) Bridge, mile 16.2 across the Hackensack River provides a vertical clearance of 7 feet at MHW and 12 feet at MLW. Current regulations provide that the drawbridge shall open on signal from 8 a.m. to 12 midnight. From 12 midnight to 8 a.m., the draw opens on signal if at least eight (8) hours notice is given. The regulation will advance the time period one hour when the bridge is crewed and staffed (7 a.m. to 11 p.m.) and will place the bridge on eight hour advance notice from 11 p.m. to 7 a.m. and all day on weekends and federal holidays. Bergen County will maintain an on-call rotating work shift that will provide emergency and eight hour advance notice openings.

**Discussion of Comments and Changes**

Five letters were received in response to Public Notice 1–748 and one letter was received referencing the Federal Register Notice of Proposed Rulemaking. No objections were received regarding the Harold J. Dillard Memorial (Court Street) Bridge. Five (5) of six (6) responses opposed the NJTRO proposal to use a roving crew to respond to requests for openings. The other response only requested clarification regarding the special whistle signal for demand opening vessels. Clarification was provided to this individual by separate correspondence. One (1) of the six (6) responses requested a public hearing. The five (5) responses opposing the NJTRO proposal represented a labor union, recreational boaters, fishermen, commercial towboats, and the Towboat and Harbor Carrier's Conference. The following paragraphs address the concerns raised.

*A. Opening Delays*

As discussed in the Notice of Proposed Rulemaking (NPRM), the Coast Guard believes that the use of the two person roving crews will respond to the mariner's needs with minimal or no delays provided advance notice of the desired time of transit is given. This opinion is based on the limited number of openings at all the NJTRO bridges but particularly at the Lower Hack Bridge on the Hackensack River and the Newark-Harrison Bridge on the Passaic River.

To further minimize the occasional possibility of concurrent or short notice openings at the HX and Upper Hack, the two lower level bridges, NJTRO clarified their roving crew proposal to provide that the crew would normally man both of these bridges, unless responding to a request for opening at Lower Hack or Newark/Harrison bridges. Paragraph (a)(4) of both Hackensack and Passaic River regulations, paragraphs (b), (d) and (e) of the Hackensack River regulation, and paragraph (e)(1) of the Passaic River regulation were reworded to reflect this change.

On August 31, 1992, to demonstrate their confidence in this concept, New Jersey Transit entered into a written, private agreement with the Towboat and Harbor Carrier's Association which include specific language that the Association requested in order to insure that the roving crews would respond to the advance notice requests in a timely fashion. Further, the agreement provides a commitment that New Jersey Transit will intensively monitor the roving crew program during the initial three months of operation and at three month intervals thereafter to insure that the change in operation mode is continuing to meet the needs of the mariners. This private agreement was not a condition imposed by the Coast Guard but was considered by the Coast Guard in evaluating the comments received. Should they prove unable to open these bridges in accordance with these new regulations, the Coast Guard will consider changing this rule.

NJTRO has also stated that establishment of the roving crews will permit them to enhance personnel training, and provide additional people for improving maintenance and upgrading the bridges.

In response to the concerns of the pleasure boat owners, paragraphs (d) and (e) of the Hackensack River Regulations 33 CFR 117.723 were revised to reduce the permissible delay at the Upper Hack Bridge from one hour to one half hour and clarify its mandatory language, and to reduce the

advance notification required for HX Bridge from one hour to one half hour.

*B. Ability of Tenders To Get Between Bridges*

The mariners were concerned that the drawtender would not be able to travel between the bridges in sufficient time to provide the requested openings. As stated in the NPRM, the Coast Guard examined both the driving time, the marine transit time and the access road improvements being made by NJTRO and concluded that sufficient time was provided. NJTRO has also divided the drawtenders between Upper Hack and HX bridges to facilitate timely openings.

*C. Security of Unattended Structures*

Concern over security of the structures from vandalism or as a result of an allision when unattended was raised by the mariners and the union. NJTRO has performed an extensive security survey of these bridges and is now in the process of installing fencing and intrusion deterrents to assure the security of the bridge operating cabins and controls, as well as the bridge operating mechanisms. Additionally, paragraph (a)(4) of both the Hackensack and Passaic River regulations were reworded to require NJTRO to maintain security measures at each bridge.

*D. Adverse Weather*

The ability to accommodate the needs of mariners in adverse weather conditions with roving crew was a concern. 33 CFR 117.59 provides adequate provisions for the District Commander to require NJTRO to crew and staff any or all of these bridges in the event of hazardous conditions such as major storms, floods or damage to the bridge or its appurtenances. The Coast Guard believes that the NPRM adequately addressed the concerns regarding the ability of the drawtender to provide timely openings.

*E. Ability To Give and Receive Timely Notice*

With regard to giving timely advance notice to the drawtender for an opening, each of the affected NJTRO bridges are equipped with a marine radio capable of receiving and sending on channels 13 and 16 as well as cellular telephones. Additionally, the roving crew vehicles are equipped to answer channel 13 calls while in transit. Existing sections 117.55 and 117.57 provide that adequate information for contacting the drawtender by telephone or marine radio be posted at each bridge. No additional requirements for signage are deemed warranted.

*F. Clearance Gauges*

Comments supporting the requirement for clearance gauges at all bridges were received. The NPRM proposed changing the height of the numbers on the clearance gauges on Hackensack River bridges below the turning basin at mile 4.0 so as to enhance navigation safety.

*G. Need for Public Hearing*

The Coast Guard determined that in light of meetings between NJTRO and the commercial and recreational interests, there was no need for a public hearing.

*H. Minor Changes*

Subparagraph 117.739(a)(3) of the Passaic River regulations has been modified to include a prior omission with respect to referencing both paragraph (a)(1) and (c) in the exception clause and by adding the phase "or reversing" to the last sentence in order to provide consistent language with respect to rail operations for the Passaic and Hackensack River regulations. Appendix A to part 117, which is primarily informational, has been updated in the final rule to reflect the most current information regarding radiotelephone equipped bridges on these waterways and their call signs.

**Regulatory Evaluation**

This rulemaking is not major under Executive Order 12291 on Federal Regulation, and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a Regulatory Evaluation is unnecessary. This opinion is based on the fact that regulations will not prevent the mariners from transiting the bridges, but just require advance planning and notice for openings. The commercial marine interests regularly provide this type of notification and, thus, there will not be a substantial burden on commercial users.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because of the reasons discussed in the Regulation Evaluation above, the Coast Guard certifies under U.S.C. 605(b) that this action will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federal Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.g(5) of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection at the office of Commander, First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073.

**List of Subjects in 33 CFR Part 177**

Bridges.

**Regulations**

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows;

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.723 is revised to read as follows:

**§ 117.723 Hackensack River.**

(a) The following requirements apply to all bridges across the Hackensack River:

(1) Public vessels of the United States, state or local vessels used for public safety, and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay. The opening signal for these vessels is four or more short blasts of a whistle or horn, or a radio request.

(2) The owners of each bridge shall provide and keep in good legible condition clearance gauges for each draw, with figures not less than 18 inches high for bridges below the turning basin at mile 4.0, and 12 inches

high for bridges above mile 4.0. The gauges shall be designed, installed and maintained according to the provisions of section 118.160 of this chapter.

(3) Train and locomotives shall be controlled so that any delay in opening the draw shall not exceed 10 minutes except as provided in paragraph (a)(1) of this section. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting the opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping or reversing.

(4) New Jersey Transit Rail Operations' (NJTRO) roving crews shall consist of two qualified operators on each shift, each having a vehicle which is equipped with marine and railroad radios, a cellular telephone, and emergency bridge repair and maintenance tools. This crew shall be split with one drawtender stationed at Upper Hack and the other drawtender at the HX drawbridge. Adequate security measures shall be provided to prevent vandalism to the bridge operating controls and mechanisms to ensure prompt openings of NJTRO bridges.

(5) Except as provided in paragraphs (b) through (h) of this section, the draws shall open on signal.

(b) Except as provided in paragraph (a)(1) of this section, the draw of the NJTRO Lower Hack Bridge, mile 3.4 at Jersey City shall open on signal if at least one hour advance notice is given to the drawtender at the Upper Hack bridge, mile 6.9 at Secaucus, New Jersey. In the event the HX drawtender is at the Newark/Harrison (Morristown Line) Bridge, mile 5.8 on the Passaic River, up to an additional half hour delay is permitted.

(c) Except as provided in paragraph (a)(1) of this section, the draw of AMTRAK's Portal bridge, mile 5.0 at Little Snake Hill, need not be opened Monday through Friday, except federal holidays, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m. At all other times, an opening may not be delayed for more than 10 minutes, unless the drawtender and the vessel operator communicating by radiotelephone, agree to a longer delay.

(d) Except as provided in paragraph (a)(1) of this section, the draw of the NJTRO Upper Hack Bridge, mile 6.9 at Secaucus, N.J. shall open on signal unless the drawtender is at the HX bridge, mile 7.7 at Secaucus, N.J. over the Hackensack River; then up to a half hour delay is permitted.

(e) Except as provided in paragraph (a)(1) of this section, the draw of the NJTRO HX bridge, mile 7.7 at Secaucus, shall open on signal if at least one half hour notice is given to the drawtender at the Upper Hack Bridge.

(f) Except as provided by paragraph (a)(1) of this section, the draw of the S46 bridge mile 14.0 at Little Ferry, shall open on signal if at least six hours notice is given.

(g) The draw of the Harold J. Dillard Memorial (Court Street) bridge, mile 16.2 at Hackensack, N.J. shall open on signal from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m., and at all times on weekends and Federal Holidays, the draw shall open on signal if at least eight hours notice is given to the drawtender or the Bergen County Police Communication Center in Hackensack, New Jersey, except as provided by paragraph (a)(1) of this section.

(h) The draw of the New York Susquehanna and Western Railroad bridge, mile 16.3, and the Midtown bridge, mile 16.5, both at Hackensack, need not be opened for the passage of vessels, however, the draws shall be restored to operable condition within 12 months after notification by the District Commander to do so.

3. Section 117.739 is amended by adding paragraph (a)(5) and revising paragraphs (a) (3) and (4) and (e) to read as follows:

**§ 117.739 Passaic River.**

(a) * * *

(3) Trains and locomotives shall be controlled so that any delay in opening the draws shall not exceed five (5) minutes except as provided in paragraphs (a) (1) and (c) of this section However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting the opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping or reversing.

(4) New Jersey Transit Rail Operations' (NJTRO) roving crews shall consist of two qualified operators, on each shift, each having a vehicle which is equipped with marine and railroad radios, a cellular telphone, and emergency bridge repair and maintenance tools. This crew shall be split with one drawtender stationed at the Upper Hack and the other drawtender at the HX drawbridge on the Hackensack River. "Adequate security measures" shall be provided to prevent vandalism to the bridge operating controls and mechanisms to insure prompt openings of NJTRO bridges.

(5) Except as provided in paragraphs (b) through (m) of this section, the draws shall open on signal.

* * * * *

(e) The draw of the NJTRO Newark-Harrison (Morristown Line) bridge, mile 5.8 at Harrison, New Jersey shall operate as follows:

(1) Open on signal if at least one hour advance notice is given to the drawtender at the Upper Hack bridge mile 6.9, across the Hackensack River at Secaucus, N.J. In the event, the HX drawtender is at the Lower Hack Bridge, mile 3.4 on the Hackensack River at Jersey City then up to an additional half hour delay is permitted.

(2) Need not open from 7:15 a.m. to 9 a.m. and from 4:30 p.m. to 6:50 p.m. Monday through Friday except federal holidays.

* * * * *

4. Appendix to part 117 is amended to revise Hackensack River and the Passaic River entries under the State of New Jersey.

APPENDIX A TO PART 117—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| New Jersey: | | | | | | |
| * | * | * | * | * | * | * |
| Hackensack River .... | 1.8 | Jersey City ..... | Lincoln Hwy (Rt 1&9), NJDOT ..... | WHG 954 | 13 | 13 |
| | 3.0 | Jersey City ..... | PATH, PATH ..... | KQ 7198 | 13 | 13 |
| | 3.1 | Jersey City ..... | Hack Freight, Conrail ..... | KQ 7196 | 13 | 13 |
| | 3.1 | Jersey City ..... | Witt-Penn, NJDOT ..... | KZH 872 | 13 | 13 |

APPENDIX A TO PART 117—DRAWBRIDGE EQUIPPED WITH RADIOTELEPHONES—Continued

| Waterway | Mile | Location | Bridge name and owner | Call sign | Calling channel | Working channel |
|---|---|---|---|---|---|---|
| | 3.4 | Jersey City | Laurel Hill (Lower Hack), NJTRO | KX 7485 | 13 | 13 |
| | 5.0 | Snake Hill | Portal, Amtrak | KMC 297 | 13 | 13 |
| | 5.4 | Snake Hill | DB (Erie Swing), NJTRO | KR 6962 | 13 | 13 |
| | 6.8 | Secaucus | Erie Lift (Upper Hack), NJTRO | KR 7035 | 13 | 13 |
| | 7.7 | Secaucus | Jackknife (HX), NJTRO | KR 7034 | 13 | 13 |
| • | • | • | • | • | • | • |
| Passaic River | 1.8 | Newark | Lincoln Hwy (Rt 1&9), NJDOT | WHN 329 | 13 | 13 |
| | 2.8 | Newark | Point-No-Point, Conrail | KR 6936 | 13 | 13 |
| | 5.0 | Newark | Dock, Amtrak | WRY 593 | 13 | 13 |
| | 5.8 | Newark | Morristown Line, NJTRO | KH6 109 | 13 | 13 |
| | | | Route 7 (Belleville) | WHD 768 | 13 | 13 |
| | 11.7 | Lyndhurst | Lyndhurst, NJTRO | KR 7041 | 13 | 13 |
| • | • | • | • | • | • | • |

Dated: July 12, 1993.

Kent H. Williams,

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 93-17443 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD01-93-087]

**Safety Zone Regulations; Kill Van Kull, NY and NJ**

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the waters near Bergen Point West Reach in the Kill Van Kull of New York and New Jersey. This regulation replaces the previous regulation 33 CFR 165.T 01-019 published on Friday, May 28, 1993 (58 FR 30987). This zone imposes requirements in addition to the Regulated Navigation Area (RNA) already in existence for these waters. This zone is divided into two sections. The first is the southern portion of the channel which contains a work area where concentrated drilling and blasting will be conducted and no vessel is permitted to transit. The second section includes the remainder of the safety zone which surrounds the work area. Vessel passage in this section is permitted under the criteria set forth in these regulations. This action is necessary to protect the maritime community from the possible dangers and hazards to navigation associated with the extensive blasting and dredging operations which are being conducted in the work area of the channel and with the restrictions in channel width.

EFFECTIVE DATE: These regulations become effective at 8 a.m., July 7, 1993 and will terminate at 8 a.m., December 1, 1993, unless terminated sooner by Captain of the Port (COTP) NY.

FOR FURTHER INFORMATION CONTACT:

LT R. Trabocchi of Captain of the Port, New York, (212) 668-7934.

SUPPLEMENTARY INFORMATION:

**Drafting Information**

The principal persons involved in drafting this document are LT R. Trabocchi, Project Manager, Captain of the Port, New York, and LCDR J. Stieb, Project Attorney, First Coast Guard District, Legal Office.

**Regulatory History**

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM would be contrary to the public interest since this regulation is intended to lessen the restrictions imposed on vessels transiting this area while maintaining requirements sufficient to ensure the safety of the port.

On May 28, 1993, the U.S. Coast Guard Captain of the Port, New York published a final rule (58 FR 30987) implementing requirements in addition to the RNA in existence in the Kill Van Kull located at 33 CFR 165.165. Due to comments received from the local industry, the Coast Guard Captain of the Port deems it appropriate to lessen the restrictions imposed by that final rule. This final rule replaces 33 CFR 165.T-019 (58 FR 30987).

**Background and Purpose**

The area included within this safety zone is now regulated by regulations (1) through (7) of the RNA and the additional regulations implemented in this rulemaking. These safety zone regulations, in conjunction with the existing RNA regulations, are designed to allow vessels to transit safely and to protect the port and maritime community. Due to the experience gained through the duration of this project, the Coast Guard Captain of the Port, New York considered it appropriate to lessen the restrictions previously imposed. The previous requirements for tugs read that all vessels 350 feet to 700 feet require one assist vessel and all vessels greater than 700 feet require tow assist vessels when transiting for the Kill Van Kull (or vice versa) or from Newark Bay to the Arthur Kill (or vice versa) by way of the work area. The new requirement eliminates the need for assist vessels if under 700 feet and only requires vessels greater than 700 feet to have two assist vessels when transiting from Kill Van Kull to the Author Kill (or vice versa). This rule also removes the restrictions of having an assist vessel accompany all hawser tows. Removing these restrictions will create less of a burden on the vessel traffic needing to transit this area".

**Regulatory Evaluation**

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). In light of the regulations limited scope, the small size of the affected area, the minimal restrictions that are in place and the advance notice available to the community, the Coast Guard

expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary. The channel will not be completely closed therefore allowing vessels to still make their destination with minor restrictions. Vessel operators who do not wish to comply with the safety zone restrictions in this area of the KVK have the option of choosing an alternative route by taking the Arthur Kill to or from Newark Bay.

**Small Entities**

Because it expects the impact of these regulations to be minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to protect public safety, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

**Regulations**

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

2. A temporary § 165.T 01–87 is added to read as follows:

**§ 165.T 01–87 Safety Zone: Kill Van Kull, Bergen Point West Reach (Western Portion)—New York and New Jersey.**

(a) *Location.* (1) The following area has been declared a Safety Zone: All waters of the Kill Van Kull West of the 074°08′00″W line of longitude, East of the 074°09′36″W line of longitude and South of the 40°39′06″N line of latitude.

(2) Within this safety zone exists a "Work Area" where concentrated drilling and blasting is being conducted. The "Work Area" includes all waters bounded by the following points:

| *Latitude* | *Longitude* |
|---|---|
| 40°38′24″N | 074°08′52″W |
| 40°38′24″N | 074°09′03″W |
| 40°38′31″N | 074°09′15″W |
| 40°38′37″N | 074°09′06″W |
| 40°38′31″N | 074°08′54″W |

Thence to the point of the beginning.

The eastern and western edges of this "Work Area" are marked by lighted buoys set by the Coast Guard.

(b) *Effective date.* These regulations become effective at 8 a.m., on July 7, 1993 and will terminate at 8 a.m., December 1, 1993, unless terminated sooner by Captain of the Port, New York.

(c) *Regulations.* (1) "Work Area": In accordance with the general regulations in Section 165.23 of this part, entry into or movement within the "Work Area" of the safety zone is prohibited unless authorized by the Captain of the Port.

(2) For all other waters of the safety zone described in paragraph (a)(1) the COTP has included the following requirement in addition to paragraphs (d)(1) through (6) of § 165.165:

(i) Prior to entering this safety zone, the master, pilot, or operator of each vessel, 300 gross tons or greater and tugs with tows, shall notify Vessel Traffic Center (VTC) New York regarding the employment of assist vessels and intentions while transiting the safety zone.

(ii) Tug requirements: All vessels greater than 700 feet require two assist vessels when transiting from Kill Van Kull to the Arthur Kill (or vice versa).

(iii) Transit between Bergen Point West Reach and South of Shooters Island Reach is prohibited.

(3) Waiver. The Captain of the Port New York may, upon request, authorize a deviation from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received at least 4 hours before the intended operation(s) and must state the need and describe the proposal.

**§ 165.T01–019 [Removed]**

3. Section 165.T 01–919 is removed.

Dated: July 1, 1993.

**T.H. Gilmour,**

*Captain, U.S. Coast Guard, Captain of the Port, New York.*

[FR Doc. 93–17445 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 165**

**[COTP St. Louis Regulation 93–025]**

**Safety Zone Regulations: Upper Mississippi River Between Mile 179.0 and 184.0**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Upper Mississippi River between mile 179.0 and 184.0, requiring minimum horsepower for all towboats and restricting the length of south bound tows during night transit. The safety zone is necessary to protect commercial vessels from hazards associated with high water conditions.

**EFFECTIVE DATE:** This regulation is effective on June 26, 1993 and will terminate on July 28, 1993 unless sooner terminated by the Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** LT Tim Deal, Operations Officer, Captain of the Port St. Louis, Missouri at 314–539–3823.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after publication in the **Federal Register.** Publishing an NPRM and delaying the effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the regulated area.

**DRAFTING INFORMATION:** The drafter of this regulation is Chief Joseph D. Cosgrove, Port Environmental Safety Officer, under the Captain of the Port.

**DISCUSSION OF REGULATION:** The circumstance requiring this regulation is the rapid rise in the Upper Mississippi River water level as determined by the Captain of the Port. This regulation will be in effect from June 26, 1993 and remain in effect until July 28, 1993 unless sooner terminated by the Captain of the Port. This regulation is required to protect the port and commercial vessels from dangers associated with high water levels on the Upper Mississippi River. Entry into this zone is prohibited for towing vessels unless they have at least 250 horsepower for each 1500 tons of cargo. South bound

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tows greater than 600 feet in length (excluding the tow boat) may transit the safety zone during daylight hours only. Questions can be directed to Coast Guard Group Upper Mississippi River on VHF channel 16. Reopening broadcasts will be made by Coast Guard Group Upper Mississippi River. This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of 33 CFR part 165.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0248 is added to read as follows:

**§ 165.T0248 Safety Zone: Upper Mississippi River.**

(a) *Location.* The following area is a safety zone: Upper Mississippi River between mile 179.0 through 184.0.

(b) *Effective date.* This regulation becomes effective at 9 a.m. local time on June 25, 1993 and will remain in effect until July 28, 1993 unless sooner terminated by the Captain of the Port.

(c) *Regulations.* Entry into this zone by towing vessels is prohibited unless the following restrictions are complied with:

(1) The towing vessel must have a minimum of 250 horsepower for each 1500 tons of cargo.

(2) South bound tows greater than 600 feet in length (excluding the towboat) may transit the safety zone during daylight hours only.

Dated: 28 June 1993.

**Scott P. Cooper**

*Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.*

[FR Doc. 93–17447 Filed 7–21–93; 8:45 am]

BILLING CODE 4910–14–M

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Parts 2 and 14**

**RIN 2900–AF96**

**Delegations of Authority/Claims for Cost of Medical Care and Services**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final regulations.

**SUMMARY:** The Department of Veterans Affairs (VA) has amended VA regulations to increase the settlement and waiver authority delegated to officials within the Office of the General Counsel and District Counsels. This change follows increased authority delegated by the Department of Justice to heads of departments and agencies of the United States.

**EFFECTIVE DATE:** March 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Bartow, Director of Debt Management (021G), Department of Veterans Affairs, Office of the General Counsel, 810 Vermont Avenue NW., Washington, DC 20420 (202) 523–3355.

**SUPPLEMENTARY INFORMATION:** AG Order No. 1594–92, published in the **Federal Register** of June 19, 1992, at pages 27356 and 27357, amended Department of Justice regulations (28 CFR part 43) pertaining to the recovery of the cost of hospital and medical care and treatment furnished by the United States. This change increased the settlement and waiver authority delegated to heads of departments and agencies of the United States responsible for the furnishing of hospital, medical surgical, or dental care.

Under the prior authority VA was permitted to compromise, settle, or waive claims not in excess of $40,000. AG Order No. 1594–92 increases VA's authority to $100,000. This change was intended to correspond to the increased cost of medical care and treatment since the last change to this authority in 1978.

VA has amended 38 CFR 2.6(e)(3) and 14.619 in order to further delegate this authority to the General Counsel, Deputy General Counsel, Assistant General Counsels, Deputy Assistant General Counsels, Director of Debt Management, and District Counsels, or those acting for them, except that claims being compromised, settled, or waived by District Counsels in excess of $40,000 will require approval of the Office of the General Counsel.

VA for good cause finds that prior publication of these changes for public notice and comment is unnecessary since they concern Department management and are primarily internal to VA. Because a notice of proposed rule making will not be published, these changes do not come within the definition of a "rule" (5 U.S.C. 601(2)) subject to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Nevertheless, these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA because their effect is primarily internal to the Department of Veterans Affairs.

These final regulations have also been reviewed under Executive Order 12291 and have been determined to be nonmajor because they will not have a $100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

**List of Subjects**

*38 CFR Part 2*

Authority, Delegations (government agencies).

*38 CFR Part 14*

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions, Veterans.

Approved: March 5, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR parts 2 and 14 are amended as set forth below:

**PART 2—DELEGATIONS OF AUTHORITY**

1. The authority citation for part 2 continues to read as follows:

**Authority:** 72 Stat. 1114; 38 U.S.C. 510, unless otherwise noted.

2. In § 2.6, paragraph (e)(3) is revised to read as follows:

**§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).**

* * * * *

(e) General Counsel.

* * * * *

(3) Under the provisions of "The Federal Medical Care Recovery Act," 42 U.S.C. 2651, *et seq.* (as implemented by part 43, title 28, Code of Federal Regulations), authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel, Director of Debt Management, and District Counsels or those authorized to

act for them, to collect in full, compromise, settle, or waive any claim and execute the release thereof; however, claims in excess of $40,000 may be compromised, settled, or waived only with the prior approval of the Office of the General Counsel, and further provided that claims in excess of $100,00 may be compromised, settled, or waived only with the prior approval of the Department of Justice.

* * * * *

**PART 14—LEGAL SERVICES, GENERAL COUNSEL**

1. The authority citation for part 14 is amended to read as follows:

**Authority:** 72 Stat. 1114, 1236; 38 U.S.C. 510, 5901–5905, unless otherwise noted.

2. In § 14.619, paragraph (b) is revised to read as follows:

**§ 14.619 Collection action.**

* * * * *

(b) The District Counsel may collect, compromise, suspend, or terminate collection activity on any such claim as is authorized under § 2.6(e)(3) of this chapter. However, claims in excess of $40,000 may be compromised, settled, or waived only with the prior approval of the General Counsel and claims in excess of $100,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice, which will be obtained through the General Counsel. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated will be referred by the District Counsel to the appropriate U.S. Attorney along with appropriate information necessary to protect the interest of the Government. A copy of the referral to the U.S. Attorney will be sent to the General Counsel's office.

* * * * *

[FR Doc. 93–17456 Filed 7–21–93; 8:45 am]
BILLING CODE 6560–01–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[OPP–300242A; FRL–4590–6]**

**RIN 2070–AB78**

**Sodium Arsenite; Revocation of Tolerances**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule removes all tolerances listed in 40 CFR part 180 for sodium arsenite. All tolerances for sodium arsenite residues (expressed as arsenic trioxide ($As_2O_3$)) resulting from the insecticidal use of sodium arsenite under 40 CFR 180.335 for use in liver, kidney, fat, meat, and meat byproducts of cattle and horses are being revoked immediately, and the interim tolerance for residues of sodium arsenite, expressed as arsenic trioxide ($As_2O_3$), resulting from the fungicidal use of sodium arsenite in or on grapes under 40 CFR 180.319 are being revoked as of June 30, 1994. These actions are being taken because EPA canceled the insecticidal use of sodium arsenite in 1988, and Agtrol Chemical Products, the sole registrant of the fungicidal use, requested and was granted voluntary cancellation of its two registrations of products containing sodium arsenite (EPA registration numbers 55146-35 and 55146-25).

**EFFECTIVE DATE:** July 22, 1993.

**ADDRESSES:** Written objections and/or requests for a hearing, identified by the document control number OPP-300242A, may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** By mail: Brian Steinwand, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32N4, 2800 Jefferson Davis Hwy., Arlington, VA, (703)-308-8174.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of January 13, 1992 (57 FR 1244), EPA proposed to revoke all tolerances and the interim tolerance for sodium arsenite expressed as arsenic trioxide ($As_2O_3$), under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq. No requests for referral to an advisory committee or comments were submitted related to EPA's rationale for revoking sodium arsenite tolerances set forth in the January 13, 1992 proposal, on the schedules set for expiration of the tolerances and interim tolerance, or on any other issue related to these tolerance revocations.

Tolerances for residues of sodium arsenite in or on raw agricultural commodities, expressed in parts per million (ppm) arsenic trioxide, are listed at 40 CFR 180.335. The tolerances are 2.7 ppm in the kidney and liver of cattle and horses and 0.7 ppm in the meat, fat, and meat byproducts (except kidney and liver) of cattle and horses. For grapes, an interim tolerance of 0.05 ppm is listed at 40 CFR 180.319.

In the Federal Register of June 30, 1988 (53 FR 24787), EPA issued the Final Notice of Intent to Cancel for the nonwood preservative uses of inorganic arsenicals. In that Notice, any sale, distribution, or use of products containing sodium arsenite, except the fungicidal use on grapes, was prohibited effective August 1, 1988. A provision for the sale and/or use of existing stocks was not granted because EPA determined that carcinogenic risks posed to workers and acute risks due to accidental ingestion by the insecticidal use of sodium arsenite outweighed the limited benefits of allowing sale and use of existing stocks. EPA deferred action on the fungicidal use of sodium arsenite until further information could be obtained on dietary exposure to inorganic arsenicals (worker risks for this use are estimated to be small since the application system yields low exposures).

The sole registrant of fungicidal-use products, Agtrol Chemicals Products, requested voluntary cancellation of the last two sodium arsenite registrations in November 1990. A final order canceling these registrations was published in the Federal Register of January 13, 1992 (57 FR 1262).

EPA predicts there will be insignificant or no economic impact from revoking the tolerances at 40 CFR 180.335 because the insecticidal use of sodium arsenite was canceled in 1988. Consequently, ample time has passed to allow legally treated commodities (i.e., treated before the 1988 cancellation) to pass through the channels of trade.

In the January 13, 1992 cancellation order, EPA announced Agtrol Chemical Products would be allowed to sell its existing stocks until January 13, 1993 and any other person would be allowed to distribute, sell, and use existing stocks until depletion. EPA believes all existing sodium arsenite stocks will be exhausted by January 1994. EPA believes that all legally treated grapes will pass through the channels of trade prior to June 30, 1994. EPA expects little adverse economic impact from revoking the interim tolerance since ample time is being granted for use of stocks and clearance of treated commodities through channels of trade.

This tolerance revocation will make it unlawful to import any food commodity containing sodium arsenite. Based on the reasons set forth above and in the January 13, 1992 proposal, EPA is revoking the tolerances for sodium arsenite on animal parts at this time, and revoking the interim tolerance for sodium arsenite on grapes by amending

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that tolerance to include an expiration date of June 30, 1994.

**Request for a Hearing and Objections**

Pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), and 40 CFR part 178, any person adversely affected by this regulation revoking the tolerances for sodium arsenite may, within 30 days after the date of publication of this final rule in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestors' contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

**Executive Order 12291**

As explained in the proposal of January 13, 1992 (57 FR 1244), EPA determined, pursuant to the requirements of E.O. 12291, that the revocation of these tolerances will not cause a major increase in prices and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule has been reviewed by the Office of Management and Budget as required under section 3 of E.O. 12291.

**Regulatory Flexibility Act**

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the January 13, 1992 proposal.

Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

**Paperwork Reduction Act**

This regulatory action does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.
(Section 408(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346 (m)).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 1993.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*

Therefore, 40 CFR part 180 is amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

**§ 180.319 [Amended]**

2. By amending § 180.319 *Interim tolerances* in the table therein by revising the footnote at the end of the table that references the entry for sodium arsenite and currently reads "[1]Calculated as $As_2O_3$" to read "[1]Calculated as $As_2O_3$ and expires on June 30, 1994."

**§ 180.335 [Removed]**

3. By removing § 180.335 *Sodium Arsenite; tolerances for residues.*

[FR Doc. 93-17426 Filed 7-21-93; 8:45 am]
BILLING CODE 6560-50-F

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 493**

**[HSQ-202-CN]**

**Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988**

**AGENCY:** Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** On January 19, 1993, we updated the rules originally published on February 28, 1992, concerning requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We have identified a number of typographical errors and we are correcting them in this notice. We also add regulatory text that was inadvertently omitted on January 19, 1993 relating to quality control requirements for cytology testing and qualifications for general supervision.

**EFFECTIVE DATE:** This correction is effective January 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Tracy Mummert, (410) 597-5904.

**SUPPLEMENTARY INFORMATION:**

**Omitted Material**

In **Federal Register** document 93-1169, (58 FR 5215), published on January 19, 1993, we explained in the preamble to that rule (58 FR 5219) that we were modifying § 493.1461 to prevent the inadvertent exclusion of those individuals who qualified or could have qualified as general supervisor under § 493.1427 of our March 14, 1990 regulations, which these rules supersede. Those 1990 rules permitted persons who were serving as general supervisors and who had successfully completed the examination offered by HHS plus 6 years of experience, to continue in the capacity as general supervisors. We explained in the January 19 publication that, because this examination was discontinued in 1987, we inadvertently excluded, as qualified supervisors, those individuals who successfully completed the examination after March 1, 1986 but who, as of September 1, 1992, when the CLIA regulations generally became effective, would have had less than 6 years of experience, thus leaving them unqualified to continue in a general supervisor capacity under the February 28, 1992, rule. In preparing the January 19 document for publication, however the regulations text resolving this issue was omitted. We are publishing it now as a new § 493.1461(c)(3). Because the content of the March 14, 1990 rule has been superseded, we are adding a new § 493.1462 that presents the requirements of the March 14, 1990 rule.

Inasmuch as this new section for general supervisor qualification requirements includes reference to the previous laboratory regulation for technologist, and because we want readers to have ready access to this language instead of referring them to the previous regulations under which they are now qualifying, we are also

republishing in substance the regulations for laboratory technologist that appeared at 42 CFR 493.1433 (published on March 14, 1990), as a new § 493.1491.

At § 493.1257, we are reinserting the word "gynecologic" to specifically include gynecologic as well as nongynecologic slide preparations made using non-traditional techniques to be counted as half-slides for purposes of workload calculations. We inadvertently omitted the word gynecologic in the January 19 publication in paragraph (b)(2), which concerns workload calculations. No change was intended in this area.

Those comments that may have been submitted from the public based on omissions will be reviewed, evaluated and addressed in the publication of a subsequent CLIA rule.

**Corrections**

We also correct a number of editorial errors and typographical errors.

**§ 493.20 [Corrected]**

1. On page 5222, in column two, § 493.20(b), line four is corrected to read, "in subpart C, registration certificate, certificate for physician-performed microscopy procedures, and ".

**§ 493.43 [Corrected]**

2. On page 5223, in the first column, § 493.43(c)(2), line eight "Act;" is corrected to read "Act; and"

**§ 493.45 [Corrected]**

3. On page 5223, in column one, § 493.45(a)(1), line three, "of moderate and high complexity" is corrected to read "of moderate or high complexity, or both".

**§ 493.53 [Corrected]**

4. We are making the following corrections to § 493.53:

a. On page 5224, in column one, in the third line of the section heading, "physician-performed microscopy." is corrected to read "physician-performed microscopy procedures."

b. On page 5224, column one, § 493.53(a), line three, "§§ 493.15" is corrected to read "§§ 493.15(c)".

5. On page 5224, in the first column, in the first line of amendment 16, "493.35" is corrected to read "493.55".

**§ 493.55 [Corrected]**

6. On page 5224, in column one, § 493.55(b)(1), line two, "are not a fixed location, that is" is corrected to read, "are not at fixed locations, that is,".

**§ 493.646 [Corrected]**

7. On page 5228, in column one, § 493.646(a), line one, "State-exempt" is corrected to read "CLIA-exempt".

**§ 493.1215 [Corrected]**

8. On page 5231, in column one, § 493.1215(a)(1)(ii), line one, "(ii) Document as maintenance" is corrected to read, "(ii) Document all maintenance".

**§ 493.1257 [Corrected]**

9. On page 5232, in column three, § 493.1257(b)(2), line three, "(nongynecologic) made using" is corrected to read "(gynecologic and nongynecologic) made using".

10. On page 5235, in column two, line two of amendment 73, "revising paragraphs (c)(1) and (d)(2) to" is corrected to read, "revising paragraphs (c)(1), (c)(3), and (d)(2) to".

**§ 493.1461 [Corrected]**

11. On page 5235, in the third column, immediately preceding § 493.1461(d), add revised paragraph (c)(3) to read as follows:

"(3)(i) Except as specified in paragraph (3)(ii) of this section, have previously qualified as a general supervisor under § 493.1462 on or before February 28, 1992.

(ii) *Exception.* An individual who achieved a satisfactory grade in a proficiency examination for technologist given by HHS between March 1, 1986 and December 31, 1987, qualifies as a general supervisor if he or she meets the requirements of § 493.1462 on or before January 1, 1994."

12. On page 5235, in the third column, immediately before amendment 74, insert the following:

"73a. A new § 493.1462 is added to read as follows:

**§ 493.1462 General supervisor qualifications on or before February 28, 1992.**

To qualify as a general supervisor under § 493.1461(c)(3), an individual must have met or could have met the following qualifications as they were in effect on or before February 28, 1992.

(a) Each supervisor possesses a current license as a laboratory supervisor issued by the State, if such licensing exists; and

(b) The laboratory supervisor—

(1) Who qualifies as a laboratory director under § 493.1406(b)(1), (2), (4), or (5) is also qualified as a general supervisor; therefore, depending upon the size and functions of the laboratory, the laboratory director may also serve as the laboratory supervisor; or

(2)(i) Is a physician or has earned a doctoral degree from an accredited institution with a major in one of the chemical, physical, or biological sciences; and

(ii) Subsequent to graduation, has had at least 2 years of experience in one of the laboratory specialties in a laboratory; or

(3)(i) Holds a master's degree from an accredited institution with a major in one of the chemical, physical, or biological sciences; and

(ii) Subsequent to graduation has had at least 4 years of pertinent full-time laboratory experience of which not less than 2 years have been spent working in the designated specialty in a laboratory; or

(4)(i) Is qualified as a laboratory technologist under § 493.1491; and

(ii) After qualifying as a laboratory technologist, has had at least 6 years of pertinent full-time laboratory experience of which not less than 2 years have been spent working in the designated laboratory specialty in a laboratory; or

(5) With respect to individuals first qualifying before July 1, 1971, has had at least 15 years of pertinent full-time laboratory experience before January 1, 1968; this required experience may be met by the substitution of education for experience."

13. On page 5235, in the third column, line one of amendment 75, "(b)(3)," is inserted after "(b)(1),".

**§ 493.1489 [Corrected]**

14. On page 5236, in the first column, immediately before § 493.1489(b)(4), insert the following:

"(3) Have previously qualified or could have qualified as a technologist under § 493.1491 on or before February 28, 1992;"

15. On page 5236, in the first column, immediately before amendment 76, insert the following:

"75a. A new § 493.1491 is added to read as follows:

**§ 493.1491 Technologist qualifications on or before February 28, 1992.**

In order to qualify as high complexity testing personnel under § 493.1489(b)(3), the individual must have met or could have met the following qualifications for technologist as they were in effect on or before February 28, 1992. Each technologist must—

(a) Possess a current license as a laboratory technologist issued by the State, if such licensing exists; and

(b)(1) Have earned a bachelor's degree in medical technology from an accredited university; or

(2) Have successfully completed 3 years of academic study (a minimum of

90 semester hours or equivalent) in an accredited college or university, which met the specific requirements for entrance into a school of medical technology accredited by an accrediting agency approved by the Secretary, and has successfully completed a course of training of at least 12 months in such a school; or

(3) Have earned a bachelor's degree in one of the chemical, physical, or biological sciences and, in addition, has at least 1 year of pertinent full-time laboratory experience or training, or both, in the specialty or subspecialty in which the individual performs tests; or

(4)(i) Have successfully completed 3 years (90 semester hours or equivalent) in an accredited college or university with the following distribution of courses—

(A) *For those whose training was completed before September 15, 1963.* At least 24 semester hours in chemistry and biology courses of which—

(*1*) At least 6 semester hours were in inorganic chemistry and at least 3 semester hours were in other chemistry courses; and

(*2*) At least 12 semester hours in biology courses pertinent to the medical sciences; or

(B) *For those whose training was completed after September 14, 1963.*

(*1*) 16 semester hours in chemistry courses that included at least 6 semester hours in inorganic chemistry and that are acceptable toward a major in chemistry;

(*2*) 16 semester hours in biology courses that are pertinent to the medical sciences and are acceptable toward a major in the biological sciences; and

(*3*) 3 semester hours of mathematics; and

(ii) Has experience, training, or both, covering several fields of medical laboratory work of at least 1 year and of such quality as to provide him or her with education and training in medical technology equivalent to that described in paragraphs (b)(1) and (2) of this section; or

(5) With respect to individuals first qualifying before July 1, 1971, the technologist—

(i) Was performing the duties of a laboratory technologist at any time between July 1, 1961, and January 1, 1968, and

(ii) Has had at least 10 years of pertinent laboratory experience prior to January 1, 1968. (This required experience may be met by the substitution of education for experience); or

(6) Achieves a satisfactory grade in a proficiency examination approved by HHS.

**§ 493.1776 [Corrected]**

16. On page 5236, in the third column, § 493.1776(b)(1), in line seven, "noted in paragraph (e) of this section;" is corrected to read "noted in § 493.16 (e) of this part;".

**§ 493.1780 [Corrected]**

17. On page 5237, in the first column, § 493.1780(e)(4), in line two, "3 years" is corrected to read "2 years".

**Authority:** Sec. 353 of the Public Health Service Act (42 U.S.C. 263a)

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program), Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, (Medicare—Supplementary Medical Insurance Program)

Dated: July 14, 1993.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 93-17276 Filed 7-21-93; 8:45 am]

BILLING CODE 4120-01-P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 76**

**[MM Docket No. 93-8, FCC 93-345]**

### Cable Television Service; Cable Carriage of Home Shopping Broadcast Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This rule finds that television broadcast stations that are predominantly utilized for the transmission of sales presentations or program length commercials ("home shopping stations") are serving the public interest, convenience, and necessity. The rule further qualifies such stations as local commercial television stations for the purposes of mandatory cable carriage. The rule was prompted by section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, and is intended to implement section 4(g) of the Act by determining whether home shopping stations are serving the public interest and whether they should be qualified for mandatory cable carriage.

**EFFECTIVE DATE:** August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Paul R. Gordon, Mass Media Bureau, Video Services Division, (202) 632-6357.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order in MM Docket No. 93-8, adopted July 2, 1993, and released July 19, 1993. The Notice of Proposed Rulemaking initiating this proceeding may be found at 58 FR 7875 (February 10, 1993).

The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, at the Federal Communications Commission, 1919 M Street, NW., Washington, DC, 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

### Synopsis of Report and Order

1. This R&O adopts the rules and policies needed to implement the provision of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992" or "1992 Cable Act") relating to stations that are predominantly utilized for the transmission of sales presentations or program length commercials ("home shopping stations") and issues regarding the carriage of such stations on cable systems.

2. Section 4(g) of the 1992 Cable Act added a new section 614(g) to the Communications Act of 1934, as amended, 47 U.S.C. 533(g), which requires the Commission to determine, regardless of prior proceedings, whether home shopping broadcast stations are serving the public interest. That section further provides that we shall consider in making our determination the viewing of home shopping stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast services offering similar programming. The 1992 Cable Act further requires that if we find that these stations do serve the public interest, then we shall qualify them as local commercial television stations for the purposes of mandatory cable carriages ("must-carry"). If the Commission finds that one or more such stations do not serve the public interest, then the Act requires that the Commission provide them with reasonable time to provide different programming. Based on the record before us, we conclude that home shopping stations serve the public interest, and we thereby qualify them as local commercial television stations for the purposes of mandatory cable carriage.[1]

[1] The Commission recently adopted rules concerning the mandatory cable carriage of

**Are Home Shopping Stations Serving the "Public Interest, Convenience, and Necessity?"**

*The Three Statutory Factors*

3. Viewership. To the extent data on the viewership of home shopping stations may not generally be reported, we asked how we can best determine the levels of viewership of home shopping broadcast stations. Although commenters did not present specific ratings data, several argued that conventional ratings are not the most appropriate method for ascertaining viewership. For example, NAB and NABOB assert that the quantity of viewers of a service does not reflect its importance to those viewers.

4. Several commenters suggested that the best way to gauge the viewership of home shopping stations is to determine how many people purchase the products sold by such stations. Silver King claims that seven to 15% of the television households in each of its markets (or approximately 27,526,000 households) are members of the Home Shopping Club. A number of commenters contend that additional evidence of significant viewership of home shopping stations is their inception and rapid growth since 1984, when the format was first allowed. In that regard, HSN states that its programming is carried "full time" by 35 television stations and part time by approximately 70 television stations.

5. Based on the information before us, and with no quantifiable data demonstrating otherwise, we conclude that home shopping stations have significant viewership. Moreover, we agree with the commenters who state that the format's continued success and expansion would not likely occur without significant viewer support.

6. Competing Demands for the Spectrum. The second factor on which we sought comment involves the level of competing demands for the spectrum allocated to home shopping stations. We first asked whether the 1992 Cable Act directs the Commission to consider the demands only of other television broadcasters or, more generally, those of applicants, permittees, and licensees in other services (such as land mobile and advanced television). Several commenters argue that Congress did not intend for the Commission to reallocate spectrum from the broadcast service as a result of this proceeding. For example, NAB states that, by directing the Commission to allow home shopping licensees to develop other broadcast formats if their stations were found not to serve the public interest, Congress contemplated only broadcast uses for those channels. Several other commenters also contend that this proceeding is not the appropriate forum to consider spectrum reallocation, because there is nothing unique about the spectrum (as opposed to the programming) utilized by home shopping stations. On the other hand, CSC states that the language and legislative history of the statute compel a broader interpretation. In that regard, CSC argues that the spectrum could be better used for public safety, emergency, or high definition television use, as well as for traditional television broadcasting.

7. We disagree with CSC. We do not believe that Congress intended for us to consider the demands of nonbroadcast services in this proceeding. In support of its position, CSC's only citation to the legislative history is an exchange between Representatives Eckart and Dingell, in which they affirm that the Commission "should consider the scarcity of broadcasting frequencies" in making the public interest determination. We reject CSC's claim that this exchange demonstrates Congress's intent that we consider the demands of other, nonbroadcast services. If anything, in discussing the scarcity of broadcasting frequencies, this exchange implies a concern with spectrum scarcity for broadcasters and whether home shopping stations were precluding other potential broadcasters from the spectrum. We also believe that there is nothing unique about the spectrum now utilized by home shopping stations that justifies a reallocation inquiry. Finally, we believe that by directing the Commission to allow home shopping licensees to develop other broadcast formats if their stations were found not to serve the public interest, Congress contemplated only broadcast uses for those channels. Accordingly, we interpret the second criterion to refer to competing demands only of other television broadcasters.

8. In the Notice we observed that the licensees of home shopping stations, like those of all other television broadcast stations, must demonstrate every five years to the Commission that the public interest will be served by renewal of their licenses. We also stated that home shopping stations already have the same fundamental obligation as other broadcast stations to provide programming that responds to issues of concern to their communities of license, as well as programming that serves the needs and interests of children. Moreover, we noted that any party qualified to hold a Commission license can file a competing application against the renewal of a home shopping station licensee, giving the challenger the opportunity to replace the existing licensee, should that be in the public interest. We therefore asked commenters to address whether the existing license renewal scheme adequately takes into account the competing demands of applicants for the television broadcast spectrum.

9. Several commenters addressed this aspect of our inquiry in the affirmative. HSN, for example, states that a competing application against a license renewal is the best indicator of any competing demand for the particular spectrum. NAB asserts that the fact that no home shopping station has been denied renewal demonstrates either that there is little competing demand for the spectrum, or that home shopping stations have been able to demonstrate that they are serving the public interest. Moreover, a significant number of licensees note that the only factor that allowed them to complete the construction of their stations or to keep them from going dark was the financial assistance that affiliation agreements with HSN provided. HSN and Silver King claim that the Commission can therefore conclude that there are no competing broadcast demands for those channels.

10. In response, CSC argues that there may now be competing demands for those channels, even if none existed when the affiliation agreements were negotiated. Further, CSC states that applicants face hurdles that prevent them from filing competing applications against a license renewal. Specifically, according to CSC, renewal expectancy and limitations on settlements make renewal challenges costly and futile.

11. Based on the evidence before us, we conclude that the existing renewal system, as well as the initial licensing process, adequately takes into account the competing demands of television broadcasters for the television broadcast spectrum. Moreover, we find the lack of competing applications against the renewal of home shopping stations to be a compelling indication that the level of competing demands for the spectrum utilized by home shopping stations is minimal.

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television broadcast stations in general. Report and Order in MM Docket No. 92–259 (Broadcast Signal Carriage Issues), 58 FR 17350 (April 2, 1993). In that proceeding, we defined on an interim basis stations that are predominantly utilized for sales presentations and program length commercials as stations devoting more than 50% of their programming to such commercial material. However, based on our conclusions in this proceeding, the question of how to define "predominantly utilized" is moot. Accordingly, we are eliminating the interim definition.

12. Competition With Nonbroadcast Home Shopping Services. The third factor the 1992 Cable Act requires us to consider is the role of home shopping stations in providing competition to nonbroadcast services offering similar programming. We stated in the Notice that two aspects of the competitive relationship appear to be implicated in addressing this statutory factor. First, we asked whether broadcast services suffer from potential commercial disadvantages as a result of their Commission-imposed public interest obligations, and whether a conclusion that broadcast home shopping stations are operating in the public interest (thus entitling them to local cable carriage) is an appropriate response to any potential competitive disparity.

13. The limited comments addressing the first issue are conclusory and unsupported by substantiating data. Thus, they do not provide information upon which we can rely in determining whether broadcast stations do in fact suffer from potential commercial disadvantages as a result of their Commission-imposed public interest obligations.

14. The second aspect of the competitive analysis involves the question of the public interest in providing competitive home shopping options to television viewers. The Notice observed that competition could be affected by a cable operator's having either an ownership or a contractual interest in a nonbroadcast provider of home shopping programming. We therefore sought comment on whether cable operators with either ownership or contractual interests in nonbroadcast providers of home shopping programming have elected not to carry home shopping broadcast stations or have treated such stations less favorably than nonbroadcast home shopping services with which they are affiliated. We also requested comment on whether any such carriage decisions have resulted in stifling competition and reducing the viewing choices of the public.

15. Based on the comments submitted in this proceeding, we cannot determine whether cable operators with either ownership or contractual interests in nonbroadcast providers of home shopping programming have discriminated against home shopping broadcast stations. None of the commenters addressing this issue has submitted any specific information to support its conclusions. However, we note one of the findings upon which Congress expressly based the 1992 Cable Act: That vertically integrated cable systems have an incentive and ability to favor their affiliated programmers. Keeping that in mind, we will look elsewhere in order to analyze the role of home shopping stations in providing competition to nonbroadcast services offering similar programming.

16. In this regard, HSN and Silver King claim that home shopping broadcast stations provide the principal competition to cable home shopping providers. They allege that denial of carriage to broadcast home shopping stations would limit viewers to services offered only on cable. However, CSC asserts that any benefit from competition between cable and broadcast home shopping services is undermined by growing common ownership of QVC and HSN. NCTA claims that mandatory carriage would destroy competition in home shopping programming, because only broadcast stations would be ensured carriage on the basic tier, while their competitors would have to vie for carriage in the marketplace of a diminished number of available cable channels.

17. Continental contends that competition has not produced materially different programming services. Therefore, according to Continental, requiring carriage of both a nonbroadcast and a broadcast home shopping channel could diminish the much greater program diversity that it claims exists between other services. In addition, Continental suggests that a cable operator that carries HSN's cable channel should not be required to carry an HSN-affiliated broadcast station that is largely duplicative of the cable version. Moreover, Continental claims that must-carry of home shopping broadcast stations would result in HSN's having an unfair market advantage over QVC and any new market players, because it would enjoy carriage of both its broadcast (through must-carry) and its cable (through negotiated agreements) programming services. At the same time, Continental also contends that granting must-carry status to home shopping stations would encourage new entrants into the market, by forcing home shopping programmers either to purchase or affiliate with broadcast stations in order to have guaranteed access to a cable channel; Continental claims that the Commission would be replacing the marketplace in determining the level of home shopping programming.

18. Valuevision further addresses the effect of our public interest determination on new market entrants. Claiming that the television home shopping industry is highly concentrated and vertically integrated, Valuevision asserts that must-carry is essential to the ability of new home shopping program providers to obtain and maintain access to cable subscribers, who compose the majority of television viewers. Valuevision adds that without carriage, many such small program providers have failed.

19. We reject the claims of some commenters that grant of must-carry status would create an unfair competitive advantage for broadcast home shopping stations in general, and for HSN in particular. Proponents of that view seem mistakenly to assume that HSN, for example, could enjoy two channels on a cable system, one broadcast and the other nonbroadcast. However, cable operators are not required to carry specific cable home shopping program providers (such as HSN, QVC, or any combination of these cable services). Further, Continental's suggestion that a cable system already carrying HSN's cable programming not be required to carry a home shopping broadcast station ignores the fundamental purpose of Congress's must-carry scheme: Preservation of local television service and the local public interest programming provided by these broadcast stations. Finally, we note that Congress expressly based the 1992 Cable Act on a finding that vertically integrated cable systems have an incentive and ability to favor their affiliated programmers. We find no evidence in the record that Congress's general finding is not applicable to the specific environment of home shopping programming. Moreover, we seek under this criterion to enhance the menu of competitive choices available to viewers who desire the advantages of home shopping. In this regard, we believe the public would not be served by diminishing the competition to cable home shopping services. Accordingly, we conclude that the existence and carriage of home shopping broadcast stations play a role in providing competition for nonbroadcast services supplying similar programming.

20. In summary, we find that each of the three factors which Congress directed us to consider in our analysis leads us to conclude that home shopping stations are serving the public interest. We shall now turn to other matters that may also affect our determination.

*Other Public Interest Factors*

21. Assumptions of Deregulation. We invited commenters to address whether the assumptions underlying the deregulation of the commercial guidelines are still valid. CSC notes that the Commission premised the deregulation of commercial time on the

assumption that market forces would protect the public from excessive commercialization. However, according to CSC, use of a home shopping format allows licensees to "evade" market forces, thereby demonstrating that the market has failed. CSC also argues that the 1992 Cable Act and its legislative history demonstrate Congress's belief that the market has failed to control commercial levels, thereby prompting this proceeding. Further, CSC claims that Congress's recent institution of commercial limits during children's programming demonstrates the failure of market forces to prevent excessive commercialization during such programming. NAB, on the other hand, cites the commercial success of HSN and argues that market forces have succeeded in reflecting viewer preferences. NIMA asserts that new forms of video advertising, including program length commercials, are made possible only by consumer interest, and that they are a product of the commercial flexibility that the Commission believed would develop in response to the deregulation of commercial time.

22. There is no evidence that the marketplace has failed to serve television viewers with its evolution to the present number and variety of home shopping services. CSC's claim that the use of a home shopping format allows broadcasters to "evade" market forces is not supported by any data. Indeed, the record clearly demonstrates that market forces have revealed a desire among a significant number of television viewers for home shopping programming. We find no reason to believe that home shopping stations would survive in an increasingly competitive video marketplace if viewers were dissatisfied with their level of commercialization. We also disagree with CSC's interpretation of the 1992 Cable Act and its legislative history. We note that the passages cited by CSC expressly state that the Commission would undertake a *de novo* review of the overall regulatory treatment of home shopping stations, which includes commercial time limits. They do not express a finding that the marketplace has failed to control the level of commercialization. Had Congress found that the market had failed, we believe that it would specifically have so stated.

23. Services Provided by Home Shopping Stations. Several commenters state that they provide valuable services to the disabled and others confined to their homes, the elderly, families without time to shop by other means, people without ready access to retail outlets or whose outlets do not stock the goods they want, people without cars or other transportation, people who dislike shopping, and people who are afraid of violent crime in conventional shopping areas. Accordingly, based on the record before us, we find that home shopping stations provide an important service to viewers who either have difficulty obtaining or do not otherwise wish to purchase goods in a more traditional manner.

24. Public Interest Obligations. Commenters were also invited to demonstrate how home shopping stations have satisfied their obligation to address the needs and interests of their communities of license. In response, we have received detailed listings of the public interest programming of many licensees of home shopping stations. According to these submissions, licensees of home shopping stations have addressed such issues as drug and alcohol abuse, AIDS, race relations, homelessness, basic legal knowledge for non-English-speaking viewers, and local political debates and election returns. These commenters assert that home shopping stations utilize a variety of formats for this type of programming, including public service announcements (PSAs) and program length features. In addition, Silver King contends that its stations meet or exceed the former levels of public interest programming that required full Commission review of renewal under previous Commission policies. Finally, several commenters submit evidence that their stations' proportion of local and public interest programming meets or exceeds that of most independent UHF television stations in their respective markets.

25. Based upon the record before us, it appears that the chosen format of home shopping stations generally does not preclude them from adequately addressing the needs and interests of their communities of license. Further, with regard to serving the needs and interests of children, home shopping stations must comply with the same rules that apply to other television broadcast stations.

26. Effect on Minority Ownership of Television Stations. Several commenters assert that a determination that home shopping stations are not serving the public interest would have a devastating effect on the minority ownership of television broadcast stations. Silver King and HSN state that the latter is affiliated with 30% of all the nation's 34 minority-owned television stations. Since 1986, according to HSN, it has funded the acquisition or construction of seven minority-owned stations and has furthered the development of others through affiliation agreements that have been the owners' only source of financing.

27. According to CSC, because home shopping stations often devote 90% or more of their broadcast day to sales presentations provided by an often distant, non-minority-owned programmer, the licensees have little actual opportunity to influence the stations' programming. The Commission's minority ownership policies are intended to enhance the diversity of views and information available to the public, CSC argues, and this goal is not achieved by home shopping stations.

28. In this regard, however, we note Jovon's assertion that 49% of its broadcast day is nonentertainment programming and Pan Pacific's assertion that it devotes only 25% of its prime-time programming to home shopping. Moreover, even if a minority-controlled station devotes 90% of its broadcast day to HSN's programming, as claimed by CSC, the licensee still retains both the opportunity and the responsibility to control the station's programming generally, and its public interest programming specifically. We thus conclude that minority-controlled licensees of home shopping stations enhance the diversity of views and information available to the public.

29. As we have found earlier, it appears that home shopping stations, including those that are minority-owned, have generally been meeting their programming obligations. Moreover, several minority-controlled and other small and marginal station licensees have stated that their stations currently operate only because of their affiliation with HSN. We also note the express assertions of several minority-owned licensees that the income from their affiliation with HSN allows them to finance public interest programming that they otherwise would not be able to provide. For example, Pan Pacific states that it broadcasts Chinese language news and other public interest programming approximately 1.5 hours each night during prime time. Because a significant proportion of minority-owned television stations are affiliated with HSN, we find that requiring home shopping stations to substantially modify their format would have a destabilizing impact on the minority ownership of television stations. In addition, the record demonstrates that the home shopping format is important to the survival of a number of other small and marginal stations.

30. Accordingly, based on a wide variety of factors, we conclude that home shopping stations are serving the

public interest, convenience, and necessity. We thus find no need to require such stations to modify their program formats in order to retain or obtain renewal of their licenses. We also reject CSC's suggestion that such stations, due to the level of their commercial programming, should receive no renewal expectancy. Section 4(g)(2) of the 1992 Cable Act directs the Commission not to use home shopping stations' format as a basis to deny them a renewal expectancy, even if their commercial programming is found not to serve the public interest. Moreover, independent of whether we have the authority to deny a renewal expectancy to home shopping stations, the record reflects no detriment to the public caused by their existing program operations.

**Process Following Public Interest Decision**

*Mandatory Carriage of Home Shopping Stations*

31. Given our conclusion that home shopping stations are operating in the public interest, section 4(g)(2) of the 1992 Cable Act seems to suggest that such stations are automatically eligible for mandatory cable carriage. However, the Notice stated that another option might be to find that home shopping stations, although operating in the public interest in such a manner as to warrant continued authorization and renewal, do not warrant mandatory cable carriage. Noting that the language of the Act appears to preclude such a conclusion, we asked commenters to address whether the 1992 Cable Act permits the latter approach and, if so, what criteria we might use to distinguish those home shopping stations entitled to carriage.

32. Several commenters assert that the Act does not allow the Commission to authorize the continued operation of home shopping stations without making them eligible for mandatory carriage. Smolla claims that the must-carry rules have been upheld only because they are content-neutral, and that the must-carry system would be jeopardized by not granting eligibility to home shopping stations. Time Warner asserts that broadcast and nonbroadcast home shopping programming are similar, and that cable operators should have the discretion to determine which would best meet the needs of its subscribers. Time Warner and NCTA argue that home shopping stations do not carry the quality public interest programming that Congress crafted the must-carry rules to protect. Thus, according to NCTA, mandatory carriage of home shopping stations would displace cable channel space that could otherwise carry more substantive news programming, such as CNN or C–Span.

33. We are not persuaded that the 1992 Cable Act would allow the continued authorization of home shopping stations without granting them eligibility for mandatory carriage. Section 4(g)(2) provides that the Commission "shall" qualify such stations for mandatory carriage upon a finding that they are serving the public interest. We have made such a finding. Commenters opposing this interpretation have provided no reasonable means to read the statute otherwise. Moreover, we agree with Smolla that the failure to qualify certain licensed stations based upon their programming decisions would place the content-neutrality of the must-carry rules into serious doubt, thereby jeopardizing their constitutionality. We conclude that as long as a home shopping broadcast station remains authorized to hold a Commission license, it should be qualified for mandatory carriage.

*Coordination With the Must-Carry Rule*

34. Cable systems were required to begin carrying their full complement of must-carry broadcast stations by June 2, 1993, and broadcast stations were required to make their initial must-carry/retransmission consent elections by June 17, 1993. Silver King states that home shopping stations will be excluded from the pool of local broadcast stations for the purpose of mandatory carriage for at least six months, because:

(1) The note to § 76.58(a) of the Commission's rules prohibits cable systems from deleting or repositioning local commercial television stations during a major ratings ascertainment period (such as will occur in July, 1993);

(2) Section 76.58(a) of the Commission's rules directs cable system operators to provide 30 days' notice to a broadcast station before deleting or repositioning that station; and

(3) Retransmission consent agreements should be completed by mid-August, which will further finalize channel carriage and positioning.

Accordingly, Silver King requests a blanket waiver of the 30-day notice requirement thereby permitting cable systems to add home shopping stations that elect must-carry status immediately upon receipt of their must-carry elections.

35. We deny the waiver request. Silver King has failed to demonstrate that it would be unfairly harmed by application of the notice requirement. It has not shown that a significant number of cable systems carry enough broadcast stations on a must-carry basis to allow them to reject carriage of home shopping stations. It also has not demonstrated that the public interest reasons supporting the notice requirement will not be harmed by grant of the waiver request.

36. Pending our determination in the proceeding, cable systems were not required to carry home shopping stations, as defined by our interim rule. However, home shopping stations now are to be treated no differently from other local commercial television stations for purposes of cable carriage. Thus, these stations are, in terms of cable carriage rights, effectively equivalent to newly operating television stations. Accordingly, we shall commence the process of implementing these stations mandatory carriage, channel position, and retransmission consent rights on the same general schedule established in § 76.64(f)(4) for new stations making their initial election. Home shopping stations must make their initial must-carry/retransmission consent election by August 23, 1993.[2] Those stations that elect mandatory carriage must also notify cable operators of their preferred channel positions by the same date. The initial channel position and mandatory carriage obligations for stations not currently carried and that do select mandatory carriage by August 23, 1993 will take effect on October 6, 1993, in order that these carriage obligations may be coordinated with the other obligations that take effect on that date. Stations eligible for mandatory carriage that are already being carried will become subject to the mandatory carriage requirement (subject to the channel capacity and other limits set forth in the rules) July 22, 1993.

**Conclusion**

37. Based on the information submitted in this proceeding, we find that broadcast stations that are predominantly utilized for the transmission of sales presentations or program length commercials serve the public interest. Further, we qualify such stations as local commercial television stations for the purposes of cable carriage upon adoption of this Report and Order.

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[2] This applies only to those stations tentatively defined as home shopping stations in Broadcast Signal Carriage Issues at 3003. Stations not meeting that definition were required to make their initial election on June 17, 1993.

**Administrative Matters**

*Final Regulatory Flexibility Analysis*

38. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

39. Need and purpose of this action. This action is taken to implement the provisions of the Cable Television Consumer Protection and Competition Act of 1992 relating to the development of mandatory cable carriage of home shopping stations.

40. Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis. No comments were received in response to the Initial Regulatory Flexibility Analysis. However, comments received in response to the Notice of Proposed Rulemaking indicate that small, independent television stations that broadcast home shopping programming are concerned about their ability to compete effectively with television stations carried on cable systems.

41. Significant alternatives considered and rejected. We considered two other options before adopting the policies and rules set forth in this Report and Order. The first option, to terminate the authorization of home shopping stations, would impede the ability of small, independent television stations that broadcast home shopping programming to compete effectively with television stations carried on cable systems. The second option, to continue authorization without eligibility for mandatory cable carriage, would seem to be prohibited by statute. It would also fail to provide cable subscribers with the access to local news and public affairs programming that Congress intended to foster in passing the 1992 Cable Act.

*Ordering Clauses*

42. *It is ordered,* That the request of Silver King Communications, Inc. for waiver of § 76.58(a) of the Commission's Rules is denied.

43. *It is further ordered,* That, pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, sections 154 and 303, and section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, part 76 of the Commission's Rules, 47 CFR part 76, is amended as set forth below, effective August 23, 1993.

44. *It is further ordered,* That, pursuant to the need to avoid disruption to cable subscribers and broadcast television stations during the transition to the new broadcast signal carriage rules and the authority contained in the Administrative Procedure Act, 5 U.S.C. 553(d)(3), home shopping stations that are eligible for mandatory carriage and that are already being carried will become subject to the mandatory carriage requirement July 22, 1993.

45. *It is further ordered,* That MM Docket No. 93–8 is terminated.

**List of Subjects in 47 CFR Part 76**

Cable television.

**Amendatory Text**

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

**PART 76—CABLE TELEVISION SERVICE**

1. The authority citation for part 76 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat. 1460.

**§ 76.56 [Amended]**

2. Section 76.56 is amended by removing paragraph (b)(6).

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–17481 Filed 7–21–93; 8:45 am]

BILLING CODE 6712–01–M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 661**

**[Docket No. 930402–3134; I.D. 071293A]**

**Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Inseason adjustments.

**SUMMARY:** NMFS announces that the recreational salmon fishery in the subarea from the Queets River to Leadbetter Point, Washington, was opened from 0 to 200 miles off shore beginning July 11, 1993. The Director, Northwest Region, NMFS (Regional Director), has determined that the preseason restriction for this subarea (open only inside the 25 fathom curve) should be rescinded because its use as a catch-dampening measure is too restrictive. This adjustment is intended to provide additional fishing opportunities to recreational fishermen and to maximize the harvest of chinook and coho salmon without exceeding the ocean share allocated to the recreational fishery in the this subarea.

**DATES:** *Effective* at 0001 hours local time, July 11, 1993. Comments will be accepted through August 5, 1993.

**ADDRESSES:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at (206) 526–6140.

**SUPPLEMENTARY INFORMATION:** In its amended emergency interim rule [58 FR 31664, June 4, 1993], NMFS announced that the 1993 recreational fishery in the subarea between the Queets River and Leadbetter Point, Washington, would allow fishing only within the 25 fathom curve.

Based on the best available information on July 8, 1993, recreational catch rates have been relatively low. The preseason objective for implementing the area closure outside 25 fathoms was to dampen catch rates and extend the fishing season for as long as possible. Recreational fishing representatives expressed their concern, and NMFS agrees, that the area closure is too restrictive and that additional fishing opportunities should be provided to recreational fishermen to increase access to coho and chinook salmon. Therefore, the recreational fishery in the subarea from the Queets River to Leadbetter Point, Washington, will be open from 0 to 200 miles off shore effective 0001 hours local time, July 11, 1993.

Modifications of boundaries and closed areas are authorized by regulations at 50 CFR 661.21(b)(1)(v). All other restrictions that apply to this subarea and fishery remain in effect as announced in the amended emergency rule (58 FR 31664) and apply from 0 to 200 miles off shore.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this adjustment affecting the recreational fishery from the Queets River to Leadbetter Point, Washington. The State of Washington supports this opening and will manage the recreational fishery in state waters

adjacent to this area of the EEZ in accordance with this Federal action. In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, July 11, 1993, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 kHz. Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

### Classification

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** July 16, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–17459 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–22–M

## 50 CFR Part 675

**[Docket No. 921185–3021; I.D. 071693A]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of the "other red rockfish" target species category in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI) and Greenland turbot in the BSAI. NMFS is requiring that incidental catches of these species categories be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the "other red rockfish" target species category total allowable catch (TAC) in the BS and the Greenland turbot TAC in the BSAI has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 16, 1993, through 12 midnight A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a), the final 1993 specifications (58 FR 8703, February 17, 1993) established the TAC specifications for "other red rockfish" target species category in the BS subarea as 1,200 metric tons (mt) and the Greenland turbot in the BSAI as 7,000 mt.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the TAC for the "other red rockfish" species group in the BS and the TAC for Greenland turbot in the BSAI have been reached. Therefore, NMFS is requiring that further catches of the "other red rockfish" target species category in the BS and Greenland turbot in the BSAI be treated as prohibited species in accordance with § 675.20(c)(3), and is prohibiting their retention effective from 12 noon, A.l.t. July 16, 1993, through 12 midnight, A.l.t., December 31, 1993.

### Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

### List of Subjects in CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** July 16, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–17361 Filed 7–16–93; 4:57 pm]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 58, No. 139
Thursday, July 22, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 130 and 155

[Docket No. 92-042-1]

RIN 0579-AA63

## User Fees—Import- and Export-Related Veterinary Services

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish user fees for certain import-related services we provide for live animals, animal products, organisms and vectors, and germplasm. This proposed rule replaces a portion of a proposed rule published in the Federal Register on August 7, 1991. We are also proposing to amend existing hourly user fees for certain export services provided for live animals.

These proposed user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended.

The effect of these regulations would be to require certain persons to pay fees for services they receive.

**DATES:** Consideration will be given only to comments received on or before August 23, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-042-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independance Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817) to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** For information concerning services provided for live animals and germplasm, contact Dr. David Vogt, Senior Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 767, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8172.

For information concerning services provided for animal products and byproducts, contact Dr. Kathleen Akin, Senior Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 755, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7830.

For information concerning fees, contact Ms. Barbara Thompson, Chief, User Fee Branch, Budget and Accounting Division, M&B, APHIS, USDA, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-5901.

**SUPPLEMENTARY INFORMATION:**

### Background

*User Fees Authorized Under the Farm Bill*

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance. (Section 2509(c)(1) of the Farm Bill.)

Section 2509(c) also provides procedures for the Secretary to follow in the case of nonpayment of assessed fees, late payment penalties, or accrued interest. The section states that the Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest.

Section 2509(d) of the Farm Bill provides in addition that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of section 2509.

*Previously Published Regulations*

We have previously published documents in the Federal Register establishing, or proposing to establish, user fees for various services provided by the Animal and Plant Health Inspection Service (APHIS). APHIS user fees currently in effect are published in 7 CFR 354.3 and 354.4, and 9 CFR part 130. Currently effective user fees include fees for:

(1) Inspecting various passengers and commercial aircraft, vessels, trucks and railroad cars arriving within the customs territory of the United States;

(2) Issuing certain certificates, such as phytosanitary certificates for plants and plant products, and endorsing export certificates for animals;

(3) Providing quarantine services within the United States for imported animals;

(4) Providing certain inspection and supervision services within the United States for animals intended for export; and

(5) Conducting certain veterinary inspections outside the United States.

On August 7, 1991, we published a document in the Federal Register (56 FR 37481-37499, Docket No. 91-021) in which we proposed to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certain certification, inspection, and testing services we provide. On August 21, 1991, and September 24, 1991, documents were published in the Federal Register (56 FR 41605 and 56 FR 48270) which made various corrections to our proposals.

We made a portion of these regulations final in a document published in the Federal Register January 9, 1992 (57 FR 755-773, Docket No. 91-135). That document covered all of the APHIS user fees proposed in Docket No. 91-021, except the following three categories of fees: (1) User fees for inspecting commercial aircraft and commercial vessels departing Hawaii and Puerto Rico for other parts of the United States; (2) User fees for veterinary diagnostic services and diagnostic reagents; and (3) User fees for export health certificates for animal products and byproducts and germplasm.

Since then we have published documents dealing with two of these three fee categories. On April 21, 1992, we published in the Federal Register a document withdrawing our proposed user fees for inspecting commercial aircraft and commercial vessels departing Hawaii and Puerto Rico for other parts of the United States (57 FR 14198-14499, Docket No. 91-140).

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Then, on March 22, 1993, we published in the **Federal Register** a document reproposing APHIS user fees for veterinary diagnostic services (58 FR 15292–15301, Docket No. 91–021–4).

**Proposed Rule**

This docket deals, among other things, with the third category of fees—user fees for export health certificates for animal products and byproducts and germplasm, which were discussed in the proposal published on August 7, 1991. In this docket, we are reproposing user fees for endorsing export certificates for germplasm. To the extent fees for this service were included in our document of August 7, 1991, the regulations proposed at that time are superseded by regulations proposed in this document.

We are also proposing to establish other user fees for various services we provide related to importation of live animals, animal products, organisms and vectors, and germplasm. These fees cover import-related inspections and services provided at ports along the United States border with Mexico and at other ports of entry; inspection and approval of facilities handling imported animals or certain animal products, organisms, or vectors; and miscellaneous services related to the import or export of live animals, animal products, organisms and vectors.

We have not proposed specific user fees for services we do not currently provide, even if our regulations provide for the services. For example, at this time animals are not shipped in-bond from Canada into the United States, although the regulations in title 9, Code of Federal Regulations, part 92, allow it. As another example, the regulations in 9 CFR part 92 also allow the importation of commercial birds into the United States through ports of entry along the United States-Mexico border. However, at this time shipments of commercial birds are not presented for importation through any of those ports.

If there is no demand for a service, we do not provide the service, and we are not proposing a specific user fee for it. If in the future there is demand for a service, we will determine the cost of providing that specific service and publish a proposed user fee for public comment in the **Federal Register**. In the meantime, if we are asked to provide an authorized service for which there is no demand and therefore no user fee, we would charge the hourly user fee proposed in this document.

*User Fees for Services for Live Animals Provided at Ports on the United States-Mexico Border (proposed new Section 130.6)*

Along the United States-Mexico border, APHIS provides various services related to import or entry of live animals into the United States. These services include clearing the following for import into the United States: feeder animals; slaughter animals; horses other than slaughter; in-bond and in transit animals; and any other ruminants.

We are proposing to charge an APHIS user fee for these services. A user fee would be charged for each animal imported into the United States or being moved through the United States. The user fee would be charged per animal, as all animals being imported into the United States through a port along the United States-Mexico border are individually handled. The proposed user fees vary with the type of animal, as different types of animals require different amounts and types of services. How our proposed user fees were calculated, and what costs they include, are discussed separately below. In addition, there would be a minimum user fee of $16.00. Our proposed minimum user fee is also discussed separately below.

Please note that the user fees proposed for services at ports along the United States-Mexico border are not identical to user fees proposed for similar services provided at other ports. This is because the cost of providing services for live animals at ports along the United States-Mexico border is not the same as at other ports of entry. Animals imported from Mexico must meet different requirements and require more services than animals imported from other locations (see 9 CFR part 92 for regulations concerning the importation of animals). For example, animals from Mexico must be individually inspected and dipped for ticks. This results in higher costs at ports along the United States-Mexico border. The user fees proposed in this section for animals from Mexico reflect these higher costs.

In addition, please note that pet birds imported from Mexico, which do not need to meet different requirements and therefore do not require more services than birds imported from other locations, are covered under proposed § 130.8.

*User Fees for Services for Live Animals Provided at All Other Ports of Entry (proposed new Section 130.7)*

APHIS provides inspection services related to the import or entry of live animals into the United States at ports of entry other than ports along the United States-Mexico border. These services include inspecting and processing importations of breeding animals (grade and registered); horses; feeder animals (cattle, swine and sheep); poultry (including eggs); and cattle, swine, sheep and goats moving in transit through the United States.

We are proposing to charge an APHIS user fee for each animal or each load of animals, as appropriate, imported into the United States or being moved in transit through the United States. Most animals are handled individually when presented for importation or in transit movement. Therefore, for most animals we are proposing to charge a user fee per animal. However, slaughter animals and poultry are handled as a group. In their cases, we are proposing to charge a user fee per load. We are also proposing to charge different user fees for different types of animals because the amount, duration, and type of services required are different. How our proposed user fees were calculated, and what costs they include, are discussed separately below. In addition, there would be a minimum user fee of $16.00. Our proposed minimum user fee is also discussed separately below.

In the case of animals moving in transit through the United States, we are proposing to charge a user fee for services when they enter the United States. We would also charge our proposed hourly user fee at the time they leave the United States. This is necessary because we provide services at both entry and exit points. As with all of our proposed fees, the amount of the user fee reflects the amount, type and duration of service required. The proposed user fee for animals entering the United States would be charged per head—these animals are individually inspected. The proposed user fee for animals exiting the United States would be charged per hour—these animals are handled as a group.

*User Fees for Other Services (proposed new Section 130.8)*

APHIS provides a variety of other services related to import or export of live animals and birds, animal products, organisms and vectors, and germplasm into or from the United States. These services may be provided at ports of entry or at other locations within the United States. These services include:

1. Approving slaughter establishments;

2. Inspecting pet birds returning to the United States and supervising their home quarantine;

3. Issuing import permits for live animals, birds, germplasm, fetal bovine serum (FBS), animal products, and organisms and vectors;
4. Endorsing export certificates for germplasm;
5. Pre-entry equine piroplasmosis screening;
6. Import compliance assistance;
7. Processing releases from export agricultural hold; and
8. Approving establishments to import animal products, organisms and vectors.

We are proposing to charge an APHIS user fee for these services.

One service for which we propose to charge a user fee is approving slaughter establishments. Slaughter establishments are approved, and reapproved, on a yearly basis, pursuant to 9 CFR part 92, subparts C, D and E. The user fee we are proposing—$235.75 for the first year of approval and $205.00 for each year the approval is renewed—would cover all inspections and other services required during the year. For example, we inspect slaughter establishments to ensure that animals can be safely unloaded and held separate from other animals until slaughtered. As discussed below, these proposed fees reflect the amount, type and duration of service required.

We are also proposing a user fee to cover the costs of inspecting pet birds returning to the United States. Under the requirements of 9 CFR 92.101, pet birds out of the United States 60 days or less may enter the country if they are accompanied by certain documents and are individually identified with a leg band or tattoo. At the port of entry all this information must be checked and verified. Pet birds out of the United States more than 60 days must be accompanied by certain paperwork and must be quarantined for not less than 30 days. Normally these birds are quarantined in the owner's home. An APHIS inspector must inspect the birds while in quarantine and release the birds from quarantine. Our proposed user fees for these services include all necessary paperwork, verification, travel, and inspections.

Another user fee we are proposing concerns imports of FBS. FBS requires a permit to be imported into the United States. Nothing else is required to import FBS from Canada and New Zealand. However, importers of FBS from other locations must, at the time they apply for import permits, specify whether they want to have the FBS irradiated at a facility in the United States, or allow APHIS to sample and verify every shipment on arrival at the processing facility in the United States. Importers's choices are specified on the import permits and in compliance agreements signed by both APHIS and the importer. Processing facilities in the United States which have not previously been inspected must be inspected prior to the first import of FBS to the facility. If inspection is required, that requirement is specified on the permit.

We are proposing to charge a user fee of $207.25 for handling the permit application, if the processing facility in the United States must be inspected. The proposed fee includes inspecting the processing facility and all costs of handling the application and issuing the compliance agreement. If no facility inspection is required, we propose to charge a user fee of $26.50. This is the same user fee we are proposing for all other applications for import permits, and includes all costs of handling the application and issuing the compliance agreement.

Permits for importing FBS are valid for an unlimited number of FBS shipments within 1 year from the date of issuance. However, each shipment of FBS must comply with the irradiation or sample verification requirements stated on the permit and included in the compliance agreement. If FBS is to be irradiated, importers make their own arrangements, including payment, to have the FBS irradiated. APHIS is not involved. However, if FBS is to be sampled and verified, APHIS must collect and verify the samples. We propose to charge a user fee of $660.75 for this service.

Occasionally FBS importers need to amend their permit applications. Permit applications contain various information, including, for example, the source of the FBS, the port of arrival in the United States, and the location of storage facilities. If the importer has to change any information after the application is submitted, we must adjust our paperwork and amend the permit if we have already issued it. We are proposing to charge a user fee of $11.00 per amended application for this service.

We are also proposing to charge a user fee for each permit we issue for germplasm being imported into the United States and each certificate we endorse for germplasm being exported from the United States. This includes checking the accuracy of information submitted, completing various forms, maintaining files, and issuing or endorsing documents. With regard to embryos being exported from the United States, the user fee would vary depending on the number of pairs of donor animals listed on the certificate. A user fee of $54.75 per certificate would cover up to 5 donor pairs. A user fee of $24.75 would be charged for each additional group of donor pairs, up to 5 pairs per group.

We are also proposing a user fee for pre-entry equine piroplasmosis screening. Piroplasmosis is an insect-borne disease of equines. As a courtesy, we offer pre-entry screening for this disease. If an importer uses the service, and we determine that an animal they wish to import is infected with the disease, and therefore ineligible for importation, the importer is saved the expense of shipping the animal to the United States, paying for quarantine and testing in this country, and then shipping the animal back or otherwise disposing of it. Importers must obtain an import permit for the sample. The user fee we propose to charge covers the costs of processing the permit application and informing the importer of the results of the test. The importer would also have to pay a user fee for the laboratory test itself. We proposed user fees for veterinary diagnostic tests on March 22, 1993 (58 FR 15292–15301, Docket No. 91–021–4).

Another service for which we are proposing to charge a user fee is "Import compliance assistance." We must determine whether all animals, animal products, organisms and vectors presented for importation into the United States meet all import requirements. Usually the necessary paperwork and other requirements have been met before the shipment arrives in the United States, and the importation is handled routinely. The cost of this routine handling is included in our proposed user fees for import permits.

However, if a shipment which does not meet all import requirements arrives at a port of entry, we must provide "import compliance assistance." In other words, APHIS personnel must assist the importer, if the shipment is to be brought into compliance. When paperwork has not been completed, or completed improperly, in advance as required, it must be done on an emergency basis after the shipment has arrived. APHIS personnel must fax forms, check them, refax them, and make numerous telephone calls. The costs of providing this service cannot be built into our standard user fees, because they do not apply in most cases, and it would be unfair to make all users pay for extraordinary service we provide only on an occasional basis.

We are also proposing to charge an APHIS user fee for getting certain shipments of exported animals and agricultural products released from agricultural holds placed by foreign

governments. This situation occurs when a shipment from the United States arrives in a foreign country and does not meet all of that country's import requirements. APHIS services are not necessary for most exports. However, when paperwork is missing or other requirements have not been met, APHIS provides special services to get shipments released. APHIS personnel fax information, check it, refax it, and make numerous telephone calls, all on an emergency basis. The cost of providing these services cannot be built into standard user fees because they do not apply in most cases and it would be unfair to make all users pay for extraordinary services we provide only on an occasional basis.

We are also proposing to charge a user fee for approving establishments, warehouses, and facilities under 9 CFR parts 94 through 96, to receive or treat various animal products and byproducts imported into the United States. Several inspections are required during the first year of approval. We propose to charge a user fee of $252.75 for all paperwork, agreements, and inspections required during that time. For each year that the original approval and compliance agreement is renewed, usually a maximum of 2 additional years, we propose to charge a user fee of $146.00. The proposed fee for each renewal is less than the user fee proposed for the first year of approval because the time needed for inspections is less, and because the compliance agreement remains in force and does not need to be redone.

*Hourly User Fees for Miscellaneous Import- and Entry-Related Veterinary Services (proposed new Section 130.9) and for Export-Related Veterinary Services (Section 130.7, redesignated as Section 130.21)*

We are proposing to adopt hourly fees for providing miscellaneous veterinary services related to the import or entry of live animals, animal products, organisms and vectors, and germplasm (proposed new § 130.9). For example, we would charge an hourly fee for the following services:

(1) Conducting inspections, including laboratory and facility inspections, required to obtain permits either to import animal products, organisms and vectors, or to maintain compliance with import permits;

(2) Obtaining samples required to be tested either to obtain import permits or to ensure compliance with import permits;

(3) Supervising the opening of in-bond shipments; and

(4) Other import or entry services not specified elsewhere in our user fee regulations.

The regulations at § 130.7 (which would be redesignated as § 130.21), currently list veterinary services provided for export animals and birds. We propose to amend the list of covered services to add inspecting means of conveyance used to transport export animals or birds, and conducting inspections under 9 CFR part 156. We also propose to amend § 130.7 (which would be redesignated as § 130.21), to clarify that when we inspect an export isolation facility, we also inspect the animals in the facility.

We are also proposing to amend § 156.7, Fees and Charges, to specify that user fees under part 130 may be due for services we provide under part 156, and to provide that they would be payable in the same manner as other fees and charges due for services provided under part 156.

The user fee we propose to charge for all of these services, both in proposed new § 130.9 and in current § 130.7, redesignated as § 130.21, is a single hourly fee. Our current regulations specify different fees for services provided by a veterinarian and services provided by an animal health technician (AHT). As many services are provided by both veterinarians and AHT's, we believe a single fee for veterinary services would be fairer to users.

We have determined that the hourly user fees should be $50.00 per hour, or $12.50 per quarter-hour.

We are also proposing to adopt a $16.00 minimum fee for any veterinary service provided in connection with the importation or exportation of animals and for other miscellaneous import services on a hourly basis. The proposed minimum user fee for services provided on an hourly basis is discussed separately below.

We are proposing to amend §§ 130.5 and 130.7 of the regulations in accordance with these determinations.

If an hourly user fee was payable for a service, the total due would be calculated as follows:

*Example 1.* If someone received veterinary services subject to the hourly fee, and those services took 10 minutes to perform, the person would owe the minimum user fee of $16.00.

*Example 2.* If someone received veterinary services subject to the hourly fee, and those services took 20 minutes to perform, the person would owe APHIS a user fee of $25.00, or twice the quarter-hour fee of $12.50.

*Example 3.* If someone received veterinary services subject to the hourly fee, and those services took 1 hour and 15 minutes to perform, the person would owe APHIS a user fee of $62.50, once the fee for one hour, plus once the fee for a quarter-hour.

*User Fees for Individual Animals and Birds Quarantined in APHIS Animal Import Centers (Section 130.2)*

We are proposing to amend § 130.2 of the regulations to add specific user fees for ratites and miniature horses quarantined in APHIS Animal Import Centers. There are no individual fees for these animals at this time. Instead, for ratites we are currently charging the highest applicable user fee for birds; for miniature horses we are currently charging the applicable user fee for equines, based on the number of days they are in quarantine.

The care, feed and handling required by ratites are different than that required by other birds. Ratites generally require more individual care and more expensive feed. They also require pesticide treatments not required by other birds. In addition, the cost of providing quarantine services to ratites is dependent on their age. Therefore, we are proposing to charge daily user fees of $5.50 for each ratite chick (from hatching to 3 months of age); $7.75 for each ratite juvenile (from 3 months to 11 months of age); and $15.50 for each adult ratite (11 months and older). These proposed fees are lower for ratite chicks and higher for ratite juveniles and adults than the user fees we are currently charging for ratites.

Miniature horses require less stall space, feed, and handling than other horses. Therefore, charging the same user fee for miniature horses as for other equines is not justified. We are therefore proposing to charge a daily user fee of $39.00 for each miniature horse. This proposed fee is less than the user fee we are currently charging for miniature horses.

*User Fees for Exclusive Use of Buildings at APHIS Animal Import Centers (Section 130.3)*

We are proposing to amend § 130.3(a) of the regulations to provide that an importer may have exclusive use of certain space at our Animal Import Center in Miami, FL. The regulations currently permit importers to occupy an entire building at our Animal Import Center in Newburgh, NY, but not at our other Animal Import Centers.

At our Animal Import Center in Miami, FL, there is no free-standing building available for exclusive use of importers. However, there is a building at that facility which is comprised of three discrete wings. Two of these wings can be made biologically secure from the rest of the building. Therefore, we are proposing to amend the regulation to

designate these two wings as being available for exclusive use of importers.

We are also proposing to amend the heading for § 130.3 and the text of § 130.3(a) to reflect this change by removing references to "buildings" and replacing them with "space" or "available space." In addition, we would amend the table in § 130.3(a) to show the square footage of the space available, rather than the dimensions of the space. We believe this information would be more useful.

Please note that the fee for exclusive use at our Animal Import Center in Newburgh, NY, is higher per square foot than the fee for exclusive use of space at our Animal Import Center in Miami, FL. The reason for this is that heating costs are considerably higher at the Newburgh facility, and a higher user fee is necessary to fully recover our operating costs.

To avoid problems collecting fees, we are proposing to amend § 130.3(a) to require that "the person for whom the service is provided and the person requesting the service are jointly and severally liable" for payment of the APHIS user fees. As explained above, this change, along with similar changes to other sections of the regulations, has already been proposed in another document (Docket No. 91–021–4; 58 FR 15292–15301, published March 22, 1993).

We are also proposing to add new paragraphs (1), (2), and (3) to § 130.3(a) to state that importers who reserve space for their exclusive use at an Animal Import Center must pay a minimum 30-day user fee, and must pay 1/30th of the minimum fee for each additional day or part of a day they retain use of the space beyond 30 days. Unless the reservation is canceled in time to refund the reservation fee (see 9 CFR 92.103, 92.204, 92.304, 92.404, or 92.504, as appropriate), the user would be liable for the minimum 30-day user fee as of the first day for which the space was reserved.

The 30-day minimum user fee for exclusive use of space at Animal Import Centers includes the services of two AHT's. However, certain importations, such as chicks requiring individual hand-feeding, may require additional service. We are proposing to amend § 130.3(c) to require importers to either eliminate the need for additional personnel by reducing the number of animals or birds to be quarantined in a space to the number which two AHT's could feed and care for, or pay, on an hourly basis, for the necessary additional veterinary services. If the importer chooses to pay for necessary additional veterinary services on an hourly basis, the user fees would be $50.00 per hour or $12.50 per quarter hour.

This is the same hourly user fee we are proposing to charge for other veterinary services we provide on an hourly basis (see proposed amendments to § 130.5, § 130.7 (which we propose to redesignate as § 130.21), and new proposed §§ 130.6, 130.7, and 130.9). Charging the same hourly user fee would eliminate confusion for importers, and would simplify calculation, billing, and collection.

However, we are not proposing to charge the $16.00 minimum user fee proposed elsewhere in our regulations (see proposed amendments to § 130.5, § 130.7 (which we propose to redesignate as § 130.21), and new proposed §§ 130.6, 130.7, and 130.9) in conjunction with hourly user fees. In this situation, we consider feeding and caring for the animals in quarantine to be a single service which occurs over a period of days. Therefore, we intend to keep a running account of the hours of additional veterinary service provided, and to charge for the actual time.

APHIS personnel at the Animal Import Center would determine how much additional service was needed.

*Definitions (§ 130.1)*

The term "germplasm" as used in our proposed regulations is standard industry terminology. It includes semen, embryos, and ova. We therefore propose to amend the regulations in 9 CFR part 130 to add a definition of "germplasm," as follows:

*Germplasm.* Embryos, semen or ova.

We are also proposing to amend the regulations to add definitions of "Breeding animal", "Feeder animal", "Grade animal", "In-bond", "Load", "Miniature horse", "Slaughter animal", and "Registered animal" as follows:

*Breeding animal.* Any animal imported into the United States for breeding purposes.

*Feeder animal.* Any animal imported into the United States under title 9, Code of Federal Regulations, part 92, for feeding at a quarantined feedlot under 9 CFR part 92.

*Grade animal.* Any unregistered animal.

*In-bond animal.* Any animal imported into the United States under a United States Customs Service bond, as described in title 19, Code of Federal Regulations, part 113.

*Load.* All the animals or birds carried on one vehicle.

*Miniature horse.* Any horse which at maturity measures 34 inches high or less from the ground to the base of the last hair of the mane at the withers.

*Registered animal.* Any animal recorded in the book of record of an animal registry association which issues certificates concerning the pedigree of animals.

*Slaughter animal.* Any animal moving directly to slaughter.

These definitions are consistent with general industry usage of the terms. With regard to a load, the type of animals or birds, and the size, capacity, and type of vehicle, are irrelevant when deciding what is a "load." For example, a load of cattle might be 45–60 animals on a tractor trailer, while a load of poultry might be 20,000 chickens on the same vehicle.

We are also proposing to add definitions of the terms "Approved establishment" and "Pet bird", consistent with definitions elsewhere in our regulations.

In addition, we are proposing to amend the existing definition of "Animal Import Center" to clarify that the Harry S Truman Animal Import Center (HSTAIC), is not an Animal Import Center within the meaning of 9 CFR part 130. This means that user fees in 9 CFR part 130, which apply to animals in quarantine at animal import centers, do not apply to animals in quarantine at HSTAIC.

*Payment Procedures (Section 130.50)*

We propose to add a new paragraph (a)(5) to § 130.50 to require that user fees for live animals presented for importation at any port of entry be paid either when the animals are presented or within the time specified in the bill for the fees. If hourly user fees are due, we propose that they must be paid when the service is provided or within the time specified in the bill.

Users would have to pay user fees at the time they receive the service until they have established an acceptable credit history. Once a user has established an acceptable credit history, they may choose either to pay when they receive the service or within the time specified in the bill.

We also propose to require that user fees for services specified in proposed new § 130.8 (miscellaneous import- and export-related inspection and permit services), accompany requests for service.

We are also proposing to amend § 130.50 to change the reference to § 130.7, which we are proposing in this document to redesignate as § 130.21, and to clarify that if user fees are due for services provided under 9 CFR part 156, those user fees are payable in accordance with the cooperative agreement signed in accordance with that part.

*Penalties for Nonpayment*

Under our current regulations in § 130.51(a), if a person requesting a service for which an APHIS user fee is payable, is delinquent in paying any APHIS user fee due under either title 7 or title 9, Code of Federal Regulations, or is delinquent in paying the interest on any delinquent APHIS user fee, then APHIS will not provide the service requested. Our current regulations in § 130.51(b)(1) and (2) further provide that when APHIS is in the process of providing services for which a user fee is due, and the user has not paid the fee within the time required, or payment offered by the user is inadequate or unacceptable, then we will not, as appropriate, either release animals in quarantine or provide export health certificates. Section 130.51(c) further states that, if user fees are paid later than 30 days after payment is due, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717. In addition, § 130.50(b) lists the forms of payment we will accept for APHIS user fees as follows: (1) Cash, if payment is made at area office or an Animal Import Center; (2) all types of checks, including traveler's checks; (3) money orders; and (4) credit cards (VISA and Master Card) if payment is made at the Animal Import Centers in Newburgh, NY, or in Miami, FL, or at the USDA, APHIS, VS, office at John F. Kennedy International Airport, Jamaica, NY. We are not proposing any amendments to § 130.50(b), which concerns methods of payment.

We intended that user fees unpaid after 30 days be considered delinquent. To ensure that this is clear in the regulations, we have proposed, in another document published in the Federal Register on March 22, 1993 (58 FR 15292–15301, Docket No. 91–021–4), to revise § 130.51, paragraphs (a) and (c), to clarify that accounts would be considered delinquent if fees are unpaid 30 days after service is provided, or if billed, 30 days after date of bill. If any person for whom a service is provided, or the person requesting the service, fails to pay when due, any debt to APHIS, payment must be made for subsequent user fee services before the service is provided, whether or not the fee is delinquent. An account is not delinquent and does not begin to accrue interest and penalties until 30 days after the services are rendered or 30 days after the date of the bill, if a bill was issued. A full explanation of this proposed change appears in that document.

*Liability for Payment (Section 130.3 and proposed new Sections 130.6, 130.7, 130.8, and 130.9)*

We are proposing to specify, wherever applicable in these proposed regulations (§ 130.3 and proposed new §§ 130.6, 130.7, 130.8, and 130.9), that "the person for whom the service is provided and the person requesting the service are jointly and severally liable" for payment of any APHIS fees due. We believe this is necessary to effectively collect fees, since the actual identity of the person for whom the service is provided may be unknown to us. We have already proposed (58 FR 15292–15301, Docket No. 91–021–4, published March 22, 1993) to amend our current regulations to add this language regarding most other APHIS user fees for services provided under title 9, Code of Federal Regulations. We are not proposing to amend current § 130.8, which concerns APHIS user fees for services outside the United States. That section, which would be redesignated § 130.23 under this proposed rule, already contains clear wording concerning liability for payment.

*Minimum User Fee*

We are proposing to charge a minimum user fee for the services we provide that are listed in § 130.5, § 130.7 (which we propose to redesignate as § 130.21), and new proposed §§ 130.6, 130.7, and 130.9). The proposed minimum fee was developed primarily to cover the costs of handling unusually small importations at ports of entry. Our proposed user fees are calculated to recover our costs to provide routine services. For example, feeder swine are almost always imported by the tractor-trailer load. Therefore, our proposed user fees for feeder swine were calculated to cover the cost of providing services for tractor-trailer loads of swine. However, there are occasional importations of 1 or 2 animals. We cannot predict or control the frequency of these importations. Therefore we cannot account for the cost of providing service for them when calculating our proposed fees. As a result, the proposed fees, applied at the same rate per head for 1 or 2 animals as for animals in a tractor-trailer load, would not recover our costs to provide services for 1 or 2 animals. Therefore, to ensure that our basic costs are always covered, we have determined that it is necessary to charge a minimum user fee.

We have calculated our minimum fee as follows: We determined that, of all the services we routinely provide nationwide at land border ports, the one which takes the least amount of time to provide is inspecting loads of slaughter animals at ports other than those along the United States-Mexico border. All other services take longer to provide, and therefore are more costly for us to provide. We then determined that the number of slaughter animals in a load does not significantly affect the minimum amount of time needed to provide this service. Therefore, we took the minimum time and, as explained later in this document, determined the cost of providing that amount of service. The result of these calculations was a proposed minimum user fee of $16.00.

*Overtime (Section 130.6, redesignated as Section 130.20)*

Veterinary Services offices occasionally receive requests for services outside of employees' normal tours of duty, to expedite a certificate or inspection. If we must provide any service covered under proposed §§ 130.6, 130.7, 130.8, or 130.9 on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, we propose to require those requesting the service to pay reimbursable overtime in accordance with existing regulations, in addition to the APHIS user fee for each service.

This is necessary to discourage unnecessary demands for overtime work and resulting high costs to APHIS, and to ensure full cost recovery. To date, reimbursable overtime costs have not been included in our proposed user fees.

Regulations governing reimbursable overtime are found in 9 CFR part 97.

In a previous document published January 9, 1992 (57 FR 755–773, Docket No. 91–135), we adopted user fees for various certification, inspection and testing services we provide. These user fees were effective February 9, 1992. Endorsement of export certificates for live animals was one of the services covered. At the time, we stated that we would charge either the user fee or reimbursable overtime for export certificate endorsement, but we would not charge both.

Unfortunately, this policy has resulted in incomplete cost recovery for services provided outside of normal business hours. Overtime charges do not cover the full cost of providing services, but user fees do. To fully recover costs and discourage unnecessary demands for overtime work and the resulting high cost to APHIS, it is necessary to charge both reimbursable overtime and APHIS user fees. We are therefore proposing to amend current § 130.6, which would be redesignated under this proposal as § 130.20, to state that we will charge reimbursable overtime for export

certificates endorsed outside of the normal tour of duty of the employee, in addition to the export certification user fee.

*Costs Included in Proposed User Fees*

We are proposing to charge a specific dollar amount for each individual service associated with import or entry of live animals, animal products, organisms and vectors, and germplasm. Each fee has been calculated to cover the full cost of providing the service, including direct labor, direct materials, administrative support, Agency overhead, and Departmental charges.

Direct labor costs are the costs of employee time spent specifically to provide the service. For example, the time to review paperwork or inspect animals for ticks would be part of the direct labor costs for processing cattle imported into the United States. Direct labor costs vary with the service provided.

Direct material costs include the cost of any materials needed to provide the service. For example, direct material costs would include the cost for facsimile paper. Again, direct material costs vary for different services.

Administrative support costs are incurred at the local level, that is, at the port or office where the service is obtained. They include clerical and administrative activities; indirect labor hours (supervision of personnel and time spent doing necessary work that is not directly connected with the service, such as repairing equipment); travel and transportation for personnel, supplies, equipment, and other necessary items; training; general supplies for offices, washrooms, cleaning, etc.; contractual services (such as guard service, maintenance, trash pickup, etc.); grounds maintenance; chemicals and glassware; and utilities (such as water, trash pickup, telephone, electricity, natural and propane gas, heating and diesel oil). Some administrative support items may be contractual or not, depending on local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all administrative support. As with direct labor and direct material costs, the type, amount, and cost of administrative support vary.

Agency overhead is the pro-rata share, attributable to a particular service, of the management and support cost for all Agency activities at the regional level and above. Included are the cost of providing budget and accounting services, management support at the headquarters and regional levels, including the Administrator's office, and personnel services, public information service, and liaison with Congress.

Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the U.S. Department of Agriculture. Services the Department provides centrally include the Federal telephone service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and Department forms. The Department notifies APHIS how much the Agency owes for these services. We have included a pro-rata share of these Departmental charges, as attributable to a particular service, in our fee calculations. An outline of the basic process is shown below. The actual components, quantities, and costs used to calculate the fee are different for each service.

*Calculation of Proposed User Fees*

The basic steps in the calculation, for each particular service, are:

1. Determine the following costs: direct labor; direct materials; pro-rata share of administrative support; pro-rata share of agency overhead; and pro-rata share of Departmental charges.
2. Add all costs; and
3. Round total costs up to the nearest quarter of a dollar.

The result of these calculations is a user fee which covers the total cost to provide a particular service one time, rounded up to the nearest quarter of a dollar.

We have individually calculated costs for each type of service using the same method of calculation we have used to determine user fees we have already implemented. Following are outlines of our calculations for certain user fees proposed in this document.

To arrive at the proposed hourly user fee, we determined the average salary of APHIS personnel performing the services which would be covered by the hourly user fee. We then added administrative support costs, Agency overhead, and Departmental charges.

To arrive at the proposed user fees for import or entry services for live animals at ports of entry along the United States-Mexico border, we determined the time in hours needed to provide services for each type of animal. Direct labor costs vary by category of animal. We then multiplied the number of hours per activity by the average hourly salary of personnel providing the service, and added direct material costs, administrative support costs, Agency overhead, and Departmental charges.

To arrive at the proposed user fees for import or entry services for live animals at all other ports of entry, we determined the time in hours needed to provide services for each category of animal. Direct labor costs vary by category of animal. We then multiplied the number of hours per activity by the average hourly salary of APHIS personnel providing the service, and added direct material costs, administrative support costs, Agency overhead, and Departmental charges.

To arrive at user fees for other services, we determined the time in hours needed to provide these services for each category of service. Direct labor costs vary by category of service. We then multiplied the number of hours per activity by the average hourly salary of APHIS personnel providing the service, and added direct material costs, administrative support costs, Agency overhead, and Departmental charges.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are proposing in this document. We will publish any necessary adjustments in the Federal Register. We do not intend to collect user fees in excess of actual costs.

Additional data and computations for the fees we are proposing in this document are available for inspection at APHIS, Budget and Accounting Division, User Fee Branch, room 263, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

*Rounding*

We have rounded our proposed user fees up to the nearest quarter. This is consistent with the methodology used to determine APHIS user fees for issuing phytosanitary certificates for plants and plant products being exported from the United States, and for services related to export or import of animals and birds, including APHIS user fees we have proposed for veterinary diagnostic services.

Based on our experience with billings and collections, we believe rounding up our fees is most practical. It makes calculations easier, reduces billing and collection errors, and compensates for the impossibility of calculating the exact cost of any service. Determining the exact cost is impossible because costs are based on many factors which vary unpredictably over time. For example, we cannot determine, in advance, exactly how many times a particular service will be requested during a year,

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and we cannot know, in advance, the exact costs of direct materials that will be utilized over the course of a year. That is a function, among other things, of who wants to import or export animals, which types of animals are involved, and where the animals are being exported to or imported from. None of this data can be definitely determined in advance. Therefore, we must estimate, based on past experience.

Rounding up is also most practical because it would compensate APHIS for the portion of user fees which will never be paid and which we cannot collect. Based on our experience charging APHIS user fees for other services, we anticipate that unpaid user fees will be minimal.

**Executive Order 12291 and Regulatory Flexibility Act**

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This proposed rule is one of several rules which require certain persons to pay user fees for APHIS services they receive. We have already published final rules adopting user fees for various services we provide.

Rules covering user fees for commercial vessels, commercial trucks, commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country were effective May 13, 1991 (final rule published in the **Federal Register** on April 12, 1991 (56 FR 14837–14846)). Rules covering user fees for export certification and animal quarantine services were effective February 9, 1992 (final rule published in the **Federal Register** January 9, 1992 (57 FR 755–773)). On March 22, 1993, we published in the **Federal Register** proposed rules covering user fees for veterinary diagnostics (tests and reagents) (58 FR 15292–15301, Docket No. 91–021–4).

The rules currently in effect, along with the regulations proposed in the document of March 22, 1993 and in this document, are expected to provide total savings to taxpayers of $134.5 million annually. The discounted value of this amount is estimated at about $551.5 million over 5 years. The fees on the services proposed in this rule are expected to contribute between $3.5 to $4.6 million per year, or about 3 percent of the total savings. These anticipated savings would have a discounted value of between $14.6 and $18.9 million over 5 years.

Amended quarantine fees for imported ratites and miniature horses would decrease the user fee for importing ratite chicks and miniature horses and increase the user fee for ratite juveniles and adults. APHIS estimates that proposed fee reductions for ratite chicks and miniature horses would save importers about $58,275 per year. Conversely, importers of juvenile and adult ratites would incur additional costs totaling about $4,890 annually. APHIS estimates that revised quarantine fees for imported ratites and miniature horses would reduce total charges to importers by about $53,385 annually.

This proposed action may have a significant economic impact on a substantial number of small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential impacts. In particular, we are interested in determining the number and kind of small entities which may incur benefits or costs from the implementation of user fees for:

(1) Processing imported shipments of live animals, birds, and poultry;

(2) Processing imported shipments of animal products; and

(3) Issuing import permits and inspection certificates.

Our preliminary Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the document are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**Executive Order 12372**

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12606**

We have analyzed these regulations in accordance with Executive Order 12606, and have determined that it would have no potential impact on family well-being. We have determined that this proposed rule: Would not affect the stability of the family, and particularly, the marital commitment; would not affect the authority and rights of parents in the education, nurture, and supervision of their children; would not help or hinder the family to perform its functions; would not substitute governmental activity for family functions; and would not have any significant effect on family earnings. We have also determined that the benefits of this action justify any impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to:

(1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; and

(2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**Lists of Subjects**

*9 CFR Part 130*

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

*9 CFR Part 156*

Exports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 130 and 156 would be amended as follows:

**PART 130—USER FEES**

1. The authority citation for part 130 would be revised to read as follows:

**Authority:** 21 U.S.C. 114, 114a, 136, and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 130.1, the definition of "Animal Import Center" would be revised, and the following definitions would be added, in alphabetical order, to read as follows:

**§ 130.1 Definitions.**

* * * * *

*Animal Import Center.* Quarantine facilities operated by APHIS in Newburgh, New York; Miami, Florida; and Honolulu, Hawaii.[1] The Harry S Truman Animal Import Center (HSTAIC) on Fleming Key, Florida, is not an "animal import center" within this definition.

* * * * *

*Approved establishment.* An establishment approved by the Animal and Plant Health Inspection Service for the receipt and handling of restricted import animal products or byproducts under 9 CFR chapter I, subchapter D.

* * * * *

*Breeding animal.* Any animal imported into the United States for breeding purposes.

* * * * *

*Feeder animal.* Any animal imported into the United States under 9 CFR part 92, for feeding at a quarantined feedlot.

*Germplasm.* Semen, embryos, or ova.

*Grade animal.* Any unregistered animal.

*In-bond animal.* Any animal imported into the United States under a United States Customs Service bond, as described in 19 CFR part 113.

*Load.* All the animals or birds carried on one vehicle.

*Miniature horse.* Any horse which at maturity measures 34 inches high or less from the ground to the base of the last hair of the mane at the withers.

* * * * *

*Pet bird.* Birds which are imported for the personal pleasure of their individual owners and are not intended for resale.

* * * * *

*Registered animal.* Any animal recorded in the book of record of an animal registry association which issues certificates concerning the pedigree of animals.

*Slaughter animal.* Any animal moving directly to slaughter.

* * * * *

3. In § 130.2, the table in paragraph (a) would be amended by revising the category headings for "Birds" and "Equines"; by adding a category for "Ratites" before the category for "Poultry"; and by adding a category for "Miniature horses" before the category for "Zoo animals" to read as follows:

**§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.**

(a) * * *

| Animal or bird | Daily fee |
|---|---|
| Birds (including zoo birds, but excluding ratites): | |
| * * * * * | |
| Ratites: | |
| Chicks (less than 3 months of age) | 5.50 |
| Juveniles (3 months through 10 months of age) | 7.75 |
| Adults (11 months of age and older) | 15.50 |
| * * * * * | |
| Equines (including zoo equines, but excluding miniature horses): | |
| * * * * * | |
| Miniature horses | 39.00 |
| * * * * * | |

**§ 130.3 [Amended]**

4. Section 130.3 would be amended as follows:

a. The section heading and paragraph (a) would be revised to read as set forth below.

b. Paragraph (c) would be redesignated as paragraph (c)(1) and new paragraphs (c)(2) and (c)(3) would be added to read as set forth below.

As amended, § 130.3 would read as follows:

**§ 130.3 User fee for exclusive use of space at APHIS Animal Import Centers.**

(a)(1) An importer may, at his or her option, exclusively occupy space at APHIS Animal Import Centers as specified below. The person for whom the service is provided and the person requesting the service are jointly and severally liable for the user fee which will be charged for the space as follows:

| Animal import center | Space available | Monthly fee |
|---|---|---|
| Miami, FL South Wing | 6,952 sq. ft (645.9 sq. m.) | $25,233 |
| North Wing | 6,545 sq. ft (608.1 sq. m.) | 24,476 |
| Newburgh, NY. | 5,904 sq. ft (548.5 sq. m.) | 39,450 |

(2) Any importer who occupies space for more than 30 days must pay 1/30th of the 30-day fee for each additional day or part of a day. The person for whom the service is provided and the person requesting the service are jointly and severally liable for any additional charges.

(3) Unless the importer cancels the reservation for exclusive use of space in time to receive a refund of the reservation fee in accordance with 9 CFR 92.103, 92.204, 92.304, 92.404, or 92.504, as appropriate, the 30-day user fee will be effective as of the first day for which the importer has reserved the space, regardless of whether the user occupies the space on that date or not.

* * * * *

(c)(1) * * *

(2) If the number of animals and birds requested by the importer can be housed in the space requested, as determined by APHIS personnel at the Animal Import Center, but two animal health technicians cannot fulfill the routine husbandry needs of the number of animals or birds proposed by the importer, then the importer must pay for additional services on an hourly basis, or reduce the number of animals or birds to be quarantined to a number which APHIS personnel at the Animal Import Center determine can be handled by two animal health technicians.

(3) If the importer chooses to pay for additional services on an hourly basis, the user fees are:

(i) $50.00 per hour; and

(ii) $12.50 per quarter-hour.

* * * * *

5. In § 130.5, paragraph (b) would be revised to read as follows:

**§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.**

* * * * *

(b) The user fees are:

(1) $50.00 per hour; and

(2) $12.50 per quarter-hour;

(3) with a minimum user fee of $16.00 for any service provided on an hourly basis.

**§§ 130.20–130.23 [Redesignated from §§ 130.6–130.9]**

6. Sections 130.6 through 130.9 would be redesignated as §§ 130.20 through 130.23, and new §§ 130.6 through 130.9 would be added to read as follows:

**§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of the following user fees, with a minimum fee of $16.00, for

[1] The addresses of Animal Import Centers may be obtained from the Deputy Administrator, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

live animals imported into or entering the United States through a land border port along the United States-Mexico border:

| Type of live animal | User fee (per head) |
|---|---|
| Feeder animals | $1.50 |
| Slaughter animals | 2.50 |
| Horses, other than slaughter | 28.25 |
| In-bond or in transit animals | 2.25 |
| Any ruminants not covered above | 5.75 |

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in 9 CFR part 97, must be paid for each service, in addition to the user fee listed in this section.

**§ 130.7 User fees for import or entry services for live animals at all other ports of entry.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of the following user fees, with a minimum fee of $16.00, for live animals imported into or entering the United States through any port of entry other than a land border port along the border between the United States and Mexico:

| Type of live animal | User fee |
|---|---|
| Animals being imported into the United States: | |
| Horses, other than slaughter and in transit horses. | $18.25 per head. |
| Breeding animals, except horses: | |
| Grade animals | |
| Swine | 0.50 per head. |
| Sheep and goats. | 0.50 per head. |
| All others | 2.25 per head. |
| Registered animals, all types. | 3.75 per head. |
| Feeder animals: | |
| Cattle (not including calves). | 1.00 per head. |
| Swine | 0.25 per head. |
| Sheep and calves | 0.25 per head. |
| Slaughter animals, all types. | 16.00 per load. |
| Poultry (including eggs), imported for any purpose:. | 30.25 per load. |

| Type of live animal | User fee |
|---|---|
| Animals transiting [1] the United States: | |
| Cattle | 0.75 per head. |
| Swine | 0.25 per head. |
| Sheep and goats | 0.25 per head. |
| Horses and all other animals. | 3.00 per head. |

[1] The user fee in this section will be charged for services provided to animals transiting the United States at the port of entry. The hourly user fee will be charged for services provided at the port where animals leave the United States.

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for 9 CFR part 97, must be paid for each service, in addition to the user fee listed in this section.

**§ 130.8 User fees for other services.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for the following services:

| Service | User fee |
|---|---|
| Inspection for approval of slaughter establishment: | |
| Initial approval | $236.75 for all inspections required during year. |
| Renewal | 205.00 for all inspections required during year. |
| Pet birds: | |
| which have been out of United States more than 60 days | 163.25 per lot. |
| which have been out of United States 60 days or less | 68.50 per lot. |
| Germplasm: | |
| Being imported | |
| Semen | 38.00 per permit. |
| Embryo | 38.00 per permit. |
| Being exported | |
| Semen | 33.50 per certificate. |
| Embryo (up to 5 donor pairs) | 54.75 per certificate. |
| Embryo (each additional group of donor pairs, up to 5 pairs per group) | 24.75 per group of donor pairs. |
| Pre-entry equine piroplasmosis screening: | 58.50 per permit. |
| Processing VS form 16–3, "Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors" and any applicable VS form 16–7, "Additional Information for Cell Cultures and Their Products": | |
| Original application: | |
| For permit to import fetal bovine serum when facility inspection is required | 207.25 per application. |
| For all other permits | 26.50 per application. |
| Amended application | 11.00 per amended application. |
| Application renewal | 14.50 per application. |
| Fetal Bovine Serum sample verification: | 660.75 per verification. |
| Import compliance assistance: | 22.75 per release. |
| Release from export agricultural hold: | 22.75 per release. |
| Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96: | |
| Approval (Compliance Agreement) | 252.50 for first year of 3-year approval. |
| Renewed approval | 146.00 per year for second and third years of 3-year approval. |

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

**§ 130.9 User fees for miscellaneous import or entry services.**

(a) The person for whom the service is provided and the person requesting

the service are jointly and severally liable for payment of user fees for any import or entry services listed below, of $50.00 per hour, or $12.50 per quarter hour, with a minimum fee of $16.00:

(1) Conducting inspections, including laboratory and facility inspections, required to obtain permits either to import animal products, organisms and vectors, or to maintain compliance with import permits;

(2) Obtaining samples required to be tested either to obtain import permits or to ensure compliance with import permits;

(3) Supervising the opening of in-bond shipments; and

(4) Other import or entry services not specified elsewhere in this part.

(b) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in paragraph (a) of this section.

7. In redesignated § 130.20, a new paragraph (d) would be added to read as follows:

**§ 130.20 User fees for endorsing export health certificates.**

* * * * *

(d) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

8. Redesignated § 130.21 would be amended as follows:

a. The section heading would be revised to read as set forth below.

b. In paragraph (a)(1), the words "and the animals in it" would be added after the words "isolation facility".

c. At the end of paragraph (a)(2), the word "and" would be removed.

d. At the end of paragraph (a)(3), the period would be removed and a semicolon would be added in its place.

e. New paragraphs (a)(4) and (a)(5) would be added to read as set forth below.

f. Paragraph (b) would be revised to read as set forth below.

g. A new paragraph (c) would be added to read as set forth below.

As amended, redesignated § 130.21 would read as follows:

**§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products and byproducts.**

(a) * * *

(4) Inspect means of conveyance used to export animals or birds; and

(5) Conduct inspections under authority of 9 CFR part 156.

(b) The user fees are:

(1) $50.00 per hour; and

(2) $12.50 per quarter-hour;

(3) with a minimum user fee of $16.00 for any service provided on an hourly basis.

(c) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

9. Section 130.50 would be amended as follows:

a. Paragraph (a)(3) would be revised as set forth below.

b. At the end of paragraph (a)(4), the period would be removed and a semicolon added in its place.

c. New paragraphs (a)(5) through (a)(7) would be added to read as set forth below.

As amended, § 130.50 would read as follows:

**§ 130.50 Payment of user fees.**

(a) * * *

(3) User fees for supervision and inspection services specified in § 130.21 must be paid when billed, or, if covered by a compliance agreement signed in accordance with 9 CFR part 156, must be paid when specified in the agreement;

* * * * *

(5) User fees for live animals presented for importation at a port of entry must be paid either when presented or when billed;

(6) User fees for inspection and permit services listed in § 130.8 must accompany the request for service;

(7) User fees assessed at an hourly rate under § 130.9 must be paid when the service is provided or within the time specified in the bill.

* * * * *

## PART 156—INSPECTION AND CERTIFICATION OF ANIMAL BYPRODUCTS

10. The authority citation for part 156 would be revised to read as follows:

**Authority:** 7 U.S.C. 1622 and 1624; 21 U.S.C. 136a; 7 CFR 3.17, 2.51, and 371.2(d).

**§ 156.7 [Amended]**

11. Section 156.7 would be amended as follows:

a. The heading would be revised to read:

**§ 156.7 Fees and charges, including user fees under 9 CFR part 130.**

b. Once in the first sentence, once in the second sentence, and twice in the third sentence, the phrase ", and user fees under 9 CFR part 130," would be added after "fees and charges".

Done in Washington, DC, this 16th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17440 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–34–P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 20

**[Docket No. PRM–20–14]**

### University of Utah; Withdrawal of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioners request, a petition for rulemaking (PRM–20–14) (49 FR 3667, January 30, 1984) filed by Keith J. Schiager, Ph.D., on behalf of the University of Utah, Salt Lake City, Utah. In PRM–20–14, the petitioner requested that the Commission amend its regulations to provide additional options for the disposal of very low concentrations of short-lived radionuclides, specifically to alleviate a number of problems associated with disposal of experimental animal waste material and certain radionuclide components that many licensees apparently are experiencing under the current regulations.

**ADDRESSES:** A copy of the petitioner's letter, dated June 1, 1993, requesting the withdrawal of the petition is available for public inspection, or copying for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Single copies of the petitioner's letter may be obtained free of charge by writing to the Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services,

Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7758 or Toll Free: 800–368–5642.

Dated at Rockville, Maryland this 16th day of July, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 93–17342 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

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**10 CFR Parts 170 and 171**

**RIN 3150–AE54**

## NRC Fee Policy; Request for Public Comment, Extension of Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for public comment; extension of comment period.

**SUMMARY:** On April 19, 1993 (58 FR 21116), the NRC published a notice requesting comments on the need for changes to its fee policy and associated legislation in accordance with section 2903(c) of the Energy Policy Act. The notice also announced receipt of and requested comment on a petition for rulemaking submitted by the American Mining Congress (PRM–170–4). The comment period for this notice expired July 19, 1993. The National Organization of Test, Research, and Training Reactors (TRTR) has requested a thirty-day extension of the comment period. The request for extension is based on the need to review the Federal Register notice establishing the licensing, inspection, and annual fees that NRC licensees will be assessed for FY 1993. The FY 1993 final rule, which establishes the fees for FY 1993 and changes some prior agency policies, was published in the Federal Register on July 20, 1993. In view of the importance of the NRC fee policy review, the Commission, as requested, has extended the comment period for an additional thirty days.

**DATES:** The comment period has been extended and now expires August 18, 1993. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received before this date.

**ADDRESSES:** Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4301.

Dated at Rockville, Maryland, this 16th day of July 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 93–17462 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

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## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 14**

**RIN 2900–AE 76**

## Testimony of Department Personnel and Production of Department Records in Legal Proceedings

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to establish procedures governing the appearance of VA personnel, as defined in the proposed rules, as witnesses in order to testify or produce official documents in legal proceedings, in response to requests or demands for such documents or testimony. These procedures are necessary for reasons including to ensure more efficient use of VA resources in meeting the agency mission (VA attorneys and employees currently spend a considerable amount of time responding to requests for documents or testimony), to minimize the possibility of involving VA in controversial issues not related to its mission, to maintain the impartiality of VA among persons and entities involved in disputes in which the United States does not have an interest, to protect sensitive, confidential information and the deliberative processes of VA, and to enhance VA's ability to respond to such requests.

**DATES:** Comments must be received on or before August 23, 1993. Comments will be available for public inspection until August 31, 1993.

**ADDRESSES:** Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except) holidays until August 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey C. Corzatt, Staff Attorney (024H2), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 633–7240.

**SUPPLEMENTARY INFORMATION:** Section 301 of title 5, United States Code, provides that the head of an Executive department may prescribe regulations for the custody, use and preservation of its records. VA currently does not have such regulations. The Supreme Court has upheld the ability of Federal agencies to establish procedures in section 301 regulations governing the production of records and testimony by personnel in legal proceedings in which the government is not a party. *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

The proposed rules establish VA policies and procedures applicable to the production of official Department records or testimony by VA personnel in legal proceedings as that term is defined in the proposed rules. Basically, legal proceedings addressed in the proposed rules are any administrative or judicial activities traditionally conducted within the executive or judicial branches of Federal, state, local, or foreign governmental entities in which the United States: (i) Is not a party; (ii) is not represented; (iii) does not have a direct and substantial interest; and (iv) is not providing representation to an individual or entity that is a party. Additionally, the proposed rules do not cover activities that are covered by a statute, such as 5 U.S.C. 6322, which places rulemaking responsibility with another Federal agency.

Similarly, the proposed rules do not cover activities that are not legal proceedings, such as Congressional requests for records or testimony, or requests for records under the Freedom of Information Act, 5 U.S.C. 552. The proposed rules do not infringe upon or displace responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States. Finally, the proposed rules do not remove the need to comply with any applicable confidentiality provisions, such as the Privacy Act, 5 U.S.C. 552a, before there is legal authority to release records or provide testimony pursuant to a request or demand covered by these rules. In fact, if the requirements of those confidentiality statutes or regulations are not met, records or testimony cannot be provided even where the requirements of these regulations are met.

Also, the proposed rules cover the broad spectrum of informal or formal requests or demands for records or testimony by individuals or entities in situations involving legal proceedings, either existing or reasonably anticipated. Thus, all methods for procuring records and testimony, from the subpoena to a simple telephone call from an attorney, fall within the rules. However, the proposed rules do not cover disclosures on VA's own initiative in the absence of a request or demand, such as commenting upon litigation.

The proposed rules cover requests or demands for records or testimony concerning information in the custody or control of VA or acquired by individuals as part of their official duties or because of their official status. Thus, the rules cover present and former employees and officers appointed by, or subject to the supervision of a VA official, as well as: (i) Individuals hired by contractual agreements with or on behalf of VA; (ii) individuals performing services under such agreements for VA; and (iii) individuals who serve in an advisory capacity to VA, whether formal or informal. With the exception of expert or opinion testimony, the proposed rules generally do not address the activities of VA personnel on their own time or in their private capacities. The proposed rules are not intended to deny VA personnel or veterans access to the courts.

The Department of Veterans Affairs has a large hospital and benefits delivery system serving millions of veterans and their dependents. Further, VA participates in a wide range of activities, such as medical research that benefits not only our veteran population, but also the general population. All of these activities generate records that contain information concerning individuals or issues of local or national significance. These documents and our personnel's expertise are being sought more often for use in legal proceedings in which the United States is neither involved nor has an interest. As a result, VA receives thousands of requests or demands for records and testimony annually. The number of requests and demands for records and testimony seems to be increasing.

Given the need for the entire Federal government, including VA, to use its resources more efficiently, VA has determined that it is necessary to establish procedures governing the appearance of VA personnel as witnesses in order to testify or produce official documents in legal proceedings, as well as the production of those documents.

The proposed regulations are intended to address VA's concern over the need to conserve official personnel resources for the performance of our agency's statutory duties while at the same time attempting to accommodate legitimate requests or demands for official records or testimony to the extent possible. Additionally, there is a need for uniformity within the VA system in our responses to these requests or demands for records or testimony in legal proceedings.

The rules are reasonable and consistent with law. The procedures established by the proposed rules provide necessary internal control for management of VA personnel on official duty and for VA records. Requiring review by VA's legal counsel is appropriate for matters related to legal proceedings. Processing the review through the Office of General Counsel and District Counsel offices allows consistent determinations and facilitates coordination with the Department of Justice and United States Attorneys' offices where appropriate. The factors that the determining attorney should consider constitute those factors that are reasonably related to:

(i) VA's allocation of resources to perform its statutory duties, such as the need to conserve the time of VA personnel for conducting their official duties;

(ii) The ability of the Federal government or VA to conduct its business, such as the need to avoid interfering with ongoing law enforcement activities or compromising national security interests;

(iii) Whether the provision of records or testimony could adversely affect a right or interest of a private individual or entity, such as compromising constitutional rights, revealing sensitive medical information, or revealing trade secrets or similarly confidential commercial or financial information;

(iv) Whether the provision of records or testimony could adversely affect the public interest generally, such as hampering VA or private health care research activities, or creating the impression that the government or VA supports or endorses a private party in litigation or a position taken by that party; and

(v) Areas of inquiry traditionally covered by competent attorneys advising their clients as to the appropriate responses to requests or demands for testimony or records in litigation in which the clients are sought solely as witnesses, such as the application of an evidentiary privilege or the burden of complying with the request or demand.

The proposed rule is "outcome-neutral," as nothing in the rule mandates a blanket refusal or rejection of all requests or demands for the production of records or testimony. The regulation does not authorize any VA personnel to refuse to comply with the law.

Although the rule contemplates situations where VA officials may, under certain circumstances, refuse to comply with a court order, such refusal would stem from the lack of compliance with these proposed rules, or a determination by counsel that a good challenge to, or immediate review of, the order is legally appropriate. VA procedures do not infringe upon the judiciary or create new privileges not previously recognized by law, but simply make uniform a process of responding to each request or demand for the production of records or testimony by VA personnel in private controversies. Because the proposed rule recognizes the authority of the courts as the final arbiter of disagreements over requests or demands for testimony or records, no infringement with the judicial branch exists. Finally, the proposed rule is sufficiently precise to avoid interference with the rights of VA personnel as private citizens or the rights of veterans and other private parties to invoke the powers of the courts.

VA has determined that these proposed rules do not contain a major rule as that term is defined by Executive Order 12291, entitled Federal Regulation. The rules will not have a $100 million annual effect on the economy, and will not cause a major increase in costs of prices to anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the rules affect the conduct of VA activities and actions of VA personnel. They will have no significant economic impact on small entities, i.e., small businesses, small private and

nonprofit organizations and small governmental jurisdictions.

There are no Catalog of Federal Domestic Assistance numbers for this program.

**List of Subjects in 38 CFR Part 14**

Government employees, Lawyers, Legal services, Veterans.

Approved: March 15, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

38 CFR part 14, Legal Services, General Counsel, is proposed to be amended as follows:

## PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation is revised to read as follows:

**Authority:** 5 U.S.C. 301, 38 U.S.C. 501(a), 5502, 5902–05, unless otherwise noted.

2. In part 14, §§ 14.800 through 14.810 and an undesignated center heading prior to § 14.800 are added to read as follows:

**Testimony of Department Personnel and Production of Department Records in Legal Proceedings**

Sec.

14.800 Purpose.
14.801 Applicability.
14.802 Definitions.
14.803 Policy.
14.804 Factors to consider.
14.805 Contents of a demand or request.
14.806 Scope of testimony or production.
14.807 Procedure when demand or request is made.
14.808 Expert or opinion testimony.
14.809 Demands or requests in legal proceedings for records protected by confidentiality statutes.
14.810 Fees.

**Testimony of Department Personnel and Production of Department Records in Legal Proceedings**

**§ 14.800 Purpose.**

Sections 14.800 through 14.810 establish policy, assign responsibilities and prescribe procedures with respect to:

(a) the production or disclosure of official information or records of the Department of Veterans Affairs (VA); and

(b) the testimony of present or former VA personnel relating to any official information acquired by any individual as part of that individual's performance of official duties, or by virtue of that individual's official status, in federal, state or other legal proceedings covered by these regulations.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)

**§ 14.801 Applicability.**

(a) Sections 14.800 through 14.810 apply to:

(1) Contractors and subcontractors which undertake a VA activity or maintain VA records when the contract covering their actions provides that these regulations apply, as well as the personnel of contractors and subcontractors.

(2) All components of the Department, including Canteen Service, the Office of Inspector General, and all staff offices, services and administrations, and their personnel.

(b) Sections 14.800 through 14.810 do not apply to:

(1) Testimony or records provided in accordance with Office of Personnel Management regulations implementing 5 U.S.C. 6322.

(2)(i) Legal proceedings in which the Department of Veterans Affairs or the United States is a party, is represented or has a direct and substantial interest; or

(ii) Legal proceedings in which an individual or entity is a party for whom the United States is providing representation.

(3) Legal proceedings in which VA personnel are to testify while in leave or off-duty status as to matters which are purely personal and that do not arise out of, or relate in any way to, the personnel's official duties or to the functions and activities of the VA or the United States.

(4) Official comments on matters in legal proceedings, where appropriate.

(5) Disclosures, in the absence of a request or demand, of information or records by VA components, particularly the Office of Inspector General, to federal, state, local and foreign law enforcement or regulatory agencies.

(6) Congressional demands or requests for testimony or documents.

(7) Requests for, and release of, records under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

(8) Disclosures in child support and alimony proceedings under the authority of 42 U.S.C. 659 and regulations promulgated by the Office of Personnel Management implementing that section.

(c) Sections 14.800 through 14.810 are not intended to, and do not:

(1) Waive the sovereign immunity of the United States;

(2) Infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases;

(3) Remove the need for the Department to comply with any applicable legal confidentiality provisions, such as the Privacy Act, before having the legal authority to make any disclosure or providing any testimony under these regulations. (Sections 14.800 through 14.810 do not give VA disclosure authority under applicable confidentiality statutes; absent disclosure authority granted by those statutes, information and records subject to those laws may not be disclosed, or testimony given as to them, under the procedures established in these regulations); or

(4) Preclude treating any written request for agency records that is not in the nature of a request or demand related to legal proceedings as a request under the Freedom of Information or Privacy Acts.

(d) Sections 14.800 through 14.810 are intended only to provide guidance for the internal operation of the Department of Veterans Affairs and are not intended to create, do not create, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)

**§ 14.802 Definitions.**

(a) *Demand.* Order, subpoena, or other demand of a court of competent jurisdiction, or other specific authority or under color of law, for the production, disclosure, or release of VA information or records or for the appearance and testimony of VA personnel as witnesses.

(b) *Request.* Any informal request, by whatever method, from a party, a party's attorney, or any person acting on behalf of a party, for the production of VA records or information or for the testimony of VA personnel as witnesses, which has not been ordered by a court of competent jurisdiction or other specific authority or under color of law.

(c) *VA personnel.* All present and former officers and employees of the VA and any other individuals who are or have been appointed by, or subject to the supervision, jurisdiction, or control of the Secretary of Veterans Affairs or another official of the VA, including nonappropriated fund activity employees, and other individuals hired through contractual agreements by or on behalf of the VA, or performing services under such agreements for VA, such as consultants, contractors, subcontractors, their employees and personnel. This phrase also includes individuals who served or are serving on any advisory committee or in any advisory capacity, whether formal or informal.

(d) *Legal proceedings.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, or other tribunals, foreign or domestic that are not specified in § 14.801(b). This phrase includes depositions and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving legal proceedings not specified in § 14.801(b).

(e) *Official VA information.* All information of any kind, however stored, that is in the custody and control of VA or was acquired by VA personnel as part of their official duties or because of their official status.

(f) *Testimony.* Testimony in any form, including personal appearances in court, depositions, recorded interviews, telephonic, televised or videotaped testimony or any response during discovery or similar proceedings, which response would involve more than the production of records.

(g) *VA records.* All documents which are records of the Department of Veterans Affairs for purposes of the Freedom of Information Act, 5 U.S.C. 552, regardless of storage media, including the term "record" as defined in 44 U.S.C. 3301, and implementing regulations.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

**§ 14.803 Policy.**

(a) VA personnel may provide testimony or produce VA records in legal proceedings covered by §§ 14.800 through 14.810 only as authorized in accordance with these regulations. In determining whether to authorize testimony or the production of records, the determining official will consider the effect in this case, as well as in future cases generally, based on the factors set forth in § 14.804, which testifying or producing records not available for public disclosure will have on the ability of the agency or VA personnel to perform their official duties.

(b) The Department of Veterans Affairs does not seek to deny its employees access to the courts as citizens, or in the employees' private capacities on off-duty time.

(c) The Department of Veterans Affairs does not seek to deny the Nation's veterans access to the courts.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

**§ 14.804 Factors to consider.**

In deciding whether to authorize the disclosure of VA records or information or the testimony of VA personnel, VA personnel responsible for making the decision should consider the following types of factors:

(a) The need to avoid spending the time and money of the United States for private purposes and to conserve the time of VA personnel for conducting their official duties concerning serving the Nation's veteran population;

(b) How the testimony or production of records would assist VA in performing its statutory duties;

(c) Whether the disclosure of the records or presentation of testimony is necessary to prevent the perpetration of fraud or other injustice in the matter in question;

(d) Whether the demand or request is unduly burdensome or otherwise inappropriate under the applicable court or administrative rules;

(e) Whether the testimony or production of records, including release *in camera*, is appropriate or necessary under the rules of procedure governing the case or matter in which the demand or request arose, or under the relevant substantive law concerning privilege;

(f) Whether the testimony or production of records would violate a statute, executive order, regulation or directive. (Where the production of a record or testimony as to the content of a record or about information contained in a record would violate a confidentiality statute's prohibition against disclosure, disclosure will not be made. Examples of such statutes are the Privacy Act, 5 U.S.C. 552a, and sections 5701, 5705 and 7332 of title 38, United States Code.);

(g) Whether the testimony or production of records, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to applicable statutes or Executive Orders;

(h) Whether the testimony would interfere with ongoing law enforcement proceedings, compromise constitutional rights, compromise national security interests, hamper VA or private health care research activities, reveal sensitive patient or beneficiary information, interfere with patient care, disclose trade secrets or similarly confidential commercial or financial information or otherwise be inappropriate under the circumstances.

(i) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government favoring one litigant over another;

(j) Whether such release or testimony reasonably could be expected to result in the appearance of VA or the Federal government endorsing or supporting a position advocated by a party to the proceeding;

(k) The need to prevent the public's possible misconstruction of variances between personal opinions of VA personnel and VA or Federal policy.

(l) The need to minimize VA's possible involvement in issues unrelated to its mission;

(m) Whether the demand or request is within the authority of the party making it;

(n) Whether the demand or request is sufficiently specific to be answered;

(o) Other matters or concerns presented for consideration in making the decision.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

**§ 14.805 Contents of a demand or request.**

The request or demand for testimony or production of documents shall set forth in, or be accompanied by, an affidavit, or if that is not feasible, in, or accompanied by, a written statement by the party seeking the testimony or records or by the party's attorney, a summary of the nature and relevance of the testimony or records sought in the legal proceedings containing sufficient information for the responsible VA official to determine whether VA personnel should be allowed to testify or records should be produced. Where the materials are considered insufficient to make the determination as described in § 14.807, the responsible VA official may ask the requester to provide additional information.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

**§ 14.806 Scope of testimony or production.**

VA personnel shall not, in response to a request or demand for testimony or production of records in legal proceedings, comment or testify or produce records without the prior written approval of the responsible VA official designated in § 14.807(b). VA personnel may only testify concerning or comment upon official VA information, subjects or activities, or produce records, that were specified in writing, submitted to and properly approved by the responsible VA official.

(Authority: 38 U.S.C. 501(a) and (b); 5 U.S.C. 301.)

**§ 14.807 Procedure when demand or request is made.**

(a) VA personnel upon whom a demand or request for testimony or the

production of records is made shall notify the head of his or her field station, or if in Central Office, the head of the component for which he or she works. VA personnel who are former employees or officials shall notify the head of the field station or Central Office component for which they worked immediately before leaving employment with VA. The field station or Central Office component shall notify the responsible VA official designated in § 14.807(b).

(b) In response to a demand or request for the production of records or the testimony of VA personnel, other than personnel in the Office of the Inspector General (OIG), as witnesses in legal proceedings covered by these regulations, the General Counsel, the District Counsel, an attorney in the Office of General Counsel designated by the General Counsel, or an attorney in the District Counsel office designated by the District Counsel is the responsible VA official authorized to determine whether VA personnel may be interviewed, contacted or used as witnesses, including used as expert witnesses, and whether VA records may be produced; and what, if any, conditions will be imposed upon such interview, contact, testimony or production of records. For personnel in the OIG, the Counselor to the Inspector General, or an attorney designated by the Counselor to the Inspector General, is the responsible VA official authorized to make the determinations provided in § 14.807, and that official will keep the General Counsel informed of such determinations for purposes of litigation or claims of privilege.

(c) In appropriate cases, the responsible VA official shall promptly notify the Department of Justice of the demand or request. After consultation and coordination with the Department of Justice, as required, and after any necessary consultation with the VA component which employs or employed the VA personnel whose testimony is sought or which is responsible for the maintenance of the records sought, the VA official shall determine in writing whether the individual is required to comply with the demand or request and shall notify the requester or the court or other authority of the determination reached where the determination is that VA will not comply fully with the request or demand. The responsible VA official shall give notice of the decision to other persons as circumstances may warrant. Oral approval may be granted, and a record of such approval made and retained in accordance with the procedures in § 14.807(f) concerning oral requests or demands.

(d) If, after VA personnel have received a request or demand in a legal proceeding and have notified the responsible VA official in accordance with this section, a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph (b) of this section shall furnish the requester or the court or other authority with a copy of §§ 14.800 through 14.810 and any other relevant documentation, inform the requester or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the VA official concerned.

(e) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the demand or request in response to action taken pursuant to § 14.807(d), or if such court or other authority orders that the demand or request be complied with notwithstanding the final decision of the responsible VA official, the VA personnel upon whom the demand or request was made shall notify the responsible VA official of such ruling or order. If the responsible VA official determines that no further legal review of or challenge to the ruling or order will be sought, the affected VA personnel shall comply with the demand, order or request. If directed by the responsible VA official after consultation with the appropriate United States Attorney's office, however, the affected VA personnel shall respectfully decline to comply with the demand, request or order. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(f) Normally, written demands or requests allowing reasonable lead time for evaluation and processing are required. However, in emergency situations where response time is limited and a written demand or request is impractical, the following procedures should be followed:

(1) The responsible VA official has the authority to waive the requirement of a written demand or request and may expedite a response in the event of an emergency under conditions which could not be anticipated in the course of proper planning or which demonstrate a good faith attempt to comply with these regulations. Determinations on oral demands or requests should be reserved for instances where insistence on compliance with the requirements of a proper written request would result in the effective denial of the request and cause an injustice in the outcome of the legal proceeding for which the testimony or records are sought. No requester has a right to make an oral demand or request and receive a determination, however. Whether to permit such an exceptional procedure is a decision within the sole discretion of the responsible VA official.

(2) If the responsible VA official concludes that the demand or request, or any portion of it, should be granted (after considering the factors listed in § 14.804), the responsible VA official will then orally advise the requester of the determination in accordance with the procedures provided in § 14.807(c), including any limitations on such testimony or production of records, and seek a written confirmation of the oral demand or request. The responsible VA official will make a written record of the determination made concerning the oral demand or request, including the grant or denial, the circumstances requiring the procedure, and the conditions to which the requester agreed.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

**§ 14.808 Expert or opinion testimony.**

(a) VA personnel shall not provide, with or without compensation, opinion or expert testimony in any legal proceedings concerning official VA information, subjects or activities, except on behalf of the United States or a party represented by the United States Department of Justice. Upon a showing by the requester or court or other appropriate authority that, in light of the factors listed in § 14.804, there are exceptional circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Veterans Affairs or to the United States, the responsible VA official designated in paragraph 14.807(b) may, in writing, grant special authorization for VA personnel to appear and testify. If, despite the final determination of the responsible VA official, a court of competent jurisdiction or other appropriate authority, orders the expert or opinion testimony of VA personnel, the personnel shall notify the responsible VA official of such order. If the responsible VA official determines that no further legal review of or challenge to the order will be sought, the affected VA personnel shall comply with the order. If directed by the responsible VA official after consultation with the appropriate United States Attorney's office, however, the affected VA personnel shall respectfully decline to comply with the demand, request or order. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(b)(1) If, while testifying in any legal proceeding, VA personnel are asked for expert or opinion testimony concerning official VA information, subjects or activities, which testimony has not been approved in advance in accordance with these regulations, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by these regulations;

(ii) Request an opportunity to consult with the responsible VA official mentioned in § 14.807(b) before giving such testimony;

(iii) Explain that, upon such consultation, approval for such testimony may be provided; and

(iv) Explain that providing such testimony absent such approval may expose the individual to criminal liability under 18 U.S.C. 201–209 and to disciplinary or other adverse personnel action.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony concerning official VA information, subjects or activities without the opportunity to consult with the responsible VA official, the witness respectfully shall refuse to do so. See *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(c) Upon notification by the witness of a request for opinion or expert testimony concerning official VA information, subjects or activities during § 14.802(d) legal proceedings, the responsible VA official shall follow the procedures contained in this section to determine whether such testimony shall be approved.

(d) If VA personnel who are unaware of these regulations provide expert or opinion testimony concerning official VA information, subjects or activities in any legal proceeding, including one mentioned in § 14.802(d) in which the United States is not already represented, without consulting with the responsible VA official, the witness, as soon after testifying as possible, shall inform the responsible VA official of the fact that such testimony was given and provide a summary of the expert or opinion testimony given.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

**§ 14.808 Demands or requests in legal proceedings for records protected by confidentiality statutes.**

In addition to complying with the requirements of §§ 14.800 through 14.810, requests or demands in legal proceedings for the production of records, or for testimony of VA employees concerning information, protected by the Privacy Act, 5 U.S.C. 552a, or other confidentiality statutes, such as 38 U.S.C. 5701, 5705 and 7332, must satisfy the requirements for disclosure imposed by those statutes, and implementing regulations, such as 38 CFR 1.511, before the records may be provided or testimony given. . Accordingly, the responsible VA official may first determine whether there is legal authority to provide the testimony or records sought under applicable confidentiality statutes before applying §§ 14.800 through 14.810. Where an applicable confidentiality statute mandates disclosure, §§ 14.800 through 14.810 will not apply.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C. 301.)

**§ 14.810 Fees.**

(a) The testimony of VA personnel as witnesses, particularly as expert witnesses, and the production of VA records in legal proceedings subject to §§ 14.800 through 14.810 are services which convey special benefits to the individuals or entities seeking such testimony or production of records above and beyond those accruing to the general public. These services are not regularly received by or available without charge to the public at large. Consequently, these are the sort of services for which the VA may establish a charge for providing under 31 U.S.C. 9701. The responsible VA official will determine all fees associated with §§ 14.800 through 14.810, and shall timely notify the requester of the fees, particularly those which are to be paid in advance.

(b)(1) When a request is granted under § 14.808 to permit VA personnel to testify in whole or in part as to expert, opinion or policy matters, the requester shall pay to the Government a fee calculated to reimburse the cost of providing the witness. The fee shall include:

(i) Costs of the time expended by VA personnel to process and respond to the demand or request;

(ii) Costs of attorney time expended in reviewing the demand or request and any information located in connection with the demand or request;

(iii) Expenses generated by materials and equipment used to search for, produce, and copy the responsive information;

(iv) The cost of the time expended by the witness to prepare to testify; and

(v) Costs of travel by the witness and attendance at trial.

(2) All costs for documents necessary for such expert testimony shall be calculated as provided in VA regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) When an individual testifies in legal proceedings covered by these regulations in any capacity other than as an expert witness, the requester shall pay to the witness the fee and expenses prescribed for attendance by the applicable rule of court. If no such fee is prescribed, the applicable Federal rule, such as a local Federal district court rule, will apply. No additional fee will be prescribed for the time spent while testifying or in attendance to do so.

(d) When a requester wishes to interview VA personnel as part of legal proceedings covered by these regulations, and such interview has been approved in accordance with these regulations, the requester shall pay a fee calculated upon the total hourly pay of the individual interviewed.

(e) When VA produces records in legal proceedings pursuant to §§ 14.800 through 14.810, the fees to be charged and paid prior to production of the records shall be the fees charged by VA under its regulations implementing the fee provisions of the Freedom of Information Act, 5 U.S.C. 552.

(f) Fees shall be paid as follows:

(1) Fees for copies of documents, blueprints, electronic tapes, or other VA records will be paid to the VA office or station providing the records, and covered to the General Fund of the Department of the Treasury.

(2) Witness fees for testimony shall be paid to the witness, who shall endorse the check "pay to the United States," and surrender it to his or her supervisor. It shall thereafter be deposited in the General Fund.

(3) The private party requesting a VA witness shall forward in advance necessary round-trip tickets and all requisite travel and per diem funds.

(g) A waiver of any fees in connection with the testimony of an expert witness may be granted by the responsible VA official at the official's discretion provided that the waiver is in the interest of the United States. Fee waivers shall not be routinely granted, nor shall they be granted under circumstances which might create the appearance that the VA or the United States favors one party or a position advocated by a party to the legal proceeding.

(Authority: 38 U.S.C. 501 (a) and (b); 5 U.S.C 301.)

[FR Doc. 93–17454 Filed 7–21–93; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 186

[FAP 3H5665/P564; FRL-4630-5]

RIN 2070-AC18

## Temporary Feed Additive Tolerance for Pentyl 2-Chloro-4-Fluoro-5-(3,4,5,6-Tetrahydrophthalimido) Phenoxyacetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a temporary feed additive tolerance for residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate in or on the animal feed soybean hulls at 0.02 part per million (ppm). This regulation was requested by Valent U.S.A. Corp. and would establish the maximum permissible level for residues of the herbicide in or on this animal feed. This regulation would expire on March 1, 1995.

DATES: Written comments and/or objections, identified by the document control number, [FAP 3H5665/P564], must be received on or before August 23, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall Bldg. #2, 1921 Jefferson Davis Highway Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM 23), Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496, submitted pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348, a food/feed additive petition (FAP) 3H5665, which proposed to amend 40 CFR part 186 by establishing a temporary feed additive regulation to permit residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido) phenoxyacetate in or on the animal feed soybean hulls at 0.02 part per million (ppm).

On the basis of the information furnished by Valent U.S.A. Corp., an experimental use permit (EUP) has been issued for the pesticide under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 983). This permit authorizes the use of 45.95 pounds per year of the herbicide on soybeans for 2 years in the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Dakota, Tennessee, and Wisconsin. The use of the herbicide on soybeans is authorized on the condition that all treated soybean crops are destroyed or used for research purposes only. If this feed additive regulation is established, the crop destruction condition will be removed.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance.

1. A 90-day feeding study in rats fed at 0, 6.6, 67, 664, and 1,359 milligrams/kilogram/day (mg/kg/day) (males) and 0, 7.4, 73.8, 726, and 1,574 (females) with the no-observed-effect level (NOEL) of 664 mg/kg/day (males) based on increased relative liver weights and 7.4 mg/kg/day (females) based on increased cholinesterase activity.

2. Teratology. Developmental toxicity studies performed on rabbits and rats at doses up to 1,500 mg/kg/day. No developmental toxicity was present at the highest dose tested in any of the four studies performed.

3. A dietary two-generation reproduction study in rats at dosages of 0, 200, 10,000, or 20,000 parts per million (ppm) in males, females prior to breeding, females during gestation, and females during lactation. The respective milligrams/kilogram/day (mg/kg/day) was 16, 878, and 1,715 mg/kg/day (males), and 18, 829, and 1,889 mg/kg/day (females—prior to breeding); 14, 746, and 1,551 mg/kg/day (females—during gestation); 32, 1,670, 3,226 (females—during lactation) for two generations. The systemic NOEL was 200 ppm based on increased absolute and relative liver and kidney weights. Reproductive NOEL was 200 ppm based on increased pup death on day 0.

4. A micronucleus study was performed to test structural chromosomal aberration on male and female ICR mice. No significant differences in the frequency of micronucleated cells were noted in the bone marrow cells of the treated animals.

5. An *in vitro* unscheduled DNA synthesis assay was performed on rats to examine other genotoxic effects. At concentrations up to 300 ug/mL, unscheduled DNA synthesis was not elicited in primary cultures of rat hepatocytes.

The pesticide is considered capable of achieving its intended physical or technical effect.

The nature of the residue is adequately understood for the purpose of establishing this temporary feed additive tolerance. Adequate methodology is available for enforcing of the proposed temporary tolerance on soybean hulls (gas chromatography with a thermionic specifice detector). Due to the extremely low residues on the feed item (i.e., *ca.* 0.01 ppm), detectable residues are not expected in meat, milk, poultry, and eggs. Therefore, tolerances are not needed for meat, milk, poultry, and eggs.

Based upon the information cited above, the Agency has determined that use of the pesticide in accordance with the proposed feed additive regulation will be safe. It is proposed, therefore, that the feed additive regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Documents relied upon by EPA in issuing this proposal are available to the public in the Office of Pesticide Programs docket at the Public Response and Program Resources Branch, at the address given above.

Comments must bear a notation indicating the document control number, [FAP 3H5665/P564]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels, or establishing or raising food/feed additive regulations, or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 186**

Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 8, 1993.

**Daniel M. Barolo,**

*Acting Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 186 be amended as follows:

**PART 186—[AMENDED]**

1. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 348.

2. By adding new § 186.4725 to read as follows:

**§ 186.4725 Pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate.**

(a) A feed additive regulation is established permitting residues of the herbicide pentyl 2-chloro-4-fluoro-5-(3,4,5,6-tetrahydrophthalimido)phenoxyacetate in or on the following feed resulting from application of the herbicide to soybeans in accordance with an experimental program. The conditions set forth in this section shall be met.

| Feed | Parts per million | Expiration date |
|---|---|---|
| Soybean hulls | 0.02 | March 1, 1995 |

(b) Residues in the feed not in excess of the established tolerance resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental program will not be considered to be actionable if the herbicide is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(c) The company concerned shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 93-17427 Filed 7-21-93; 8:45 am]
BILLING CODE 6560-50-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Part 400

### Refugee Resettlement Program: Refugee Cash Assistance and Refugee Medical Assistance

**AGENCY:** Office of Refugee Resettlement, Administration for Children and Families (ACF), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department anticipates that adjustments in the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) will continue to be necessary in future fiscal years to accommodate changing appropriation levels and changing refugee flows. Therefore, the Department proposes to amend current regulations to establish a procedure by which a final notice would be published in the **Federal Register** in lieu of publishing a regulation each time a change in the RCA/RMA eligibility period is necessitated by the amount of funds appropriated.

**DATES:** Comments must be received by August 18, 1993.

**ADDRESSES:** Comments should be addressed to Toyo A. Biddle, Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade SW., 6th Floor, Washington, DC 20447.

Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately one month after publication, at the above address on Monday through Friday of each week from 9:30 a.m. to 4 p.m., except Federal holidays. Although we will not be able to acknowledge or respond to comments individually, in preparing the final rule, we will respond to comments in the preamble to the final rule.

**FOR FURTHER INFORMATION CONTACT:** Toyo A. Biddle, (202) 401-9253.

**SUPPLEMENTARY INFORMATION:**

**Background**

Current regulations at 45 CFR 400.203(b) and 400.204(b) provide for Federal refugee funding, subject to the availability of funds (45 CFR 400.202), for the State-administered special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) as set forth in 45 CFR part 400 subparts E and G. RCA, which provides monthly cash assistance payments to refugees, and RMA, which provides payment of hospital and medical bills, were established to assist needy refugees who do not meet the categorical eligibility requirements for the programs of Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI) for the aged, blind, and disabled, and Medicaid.

Prior to 1982, RCA and RMA were available during an eligible refugee's first 36 months in the U.S. An interim final rule, published March 12, 1982 (47 FR 10841), reduced the period to 18 months, and a final regulation, published August 24, 1988 (53 FR 32222), further reduced the eligibility period to 12 months. Due to limited funds appropriated for these programs in FY 1992, a final rule was published on January 10, 1992 (57 FR 1114), further reducing the RCA/RMA eligibility period to 8 months in FY 1992. On September 17, 1992 (57 FR 42896), a final rule was published

maintaining the eligibility period at 8 months for FY 1993. Finally, due to the limited amount of appropriated funds available for the remainder of the fiscal year, a final rule was published on March 1, 1993 (58 FR 11793), reducing the RCA/RMA eligibility period for the remainder of FY 1993 to 5 months. Subsequently, on March 31, 1993, based on the Department's intent to seek supplemental funding during FY 1993 to enable the RCA/RMA eligibility period to be maintained at 8 months for the remainder of FY 1993, the regulation establishing a 5-month RCA/RMA eligibility period was withdrawn (58 FR 16777). A final rule was published simultaneously to reduce the RCA/RMA eligibility period from 8 months to 3 months, effective June 1, 1993, in the event that the Department is not successful in obtaining supplemental funding. Subsequently, a rule delaying the effective date of the 3-month regulation to August 1, 1993, was published on May 25, 1993 (58 FR 29981), based on the availability of additional funds for the RCA/RMA program due to a lower level of FY 1993 funding needed for the matching grant program than was first estimated and the fact that more recent RCA/RMA data indicated a lower per capita cost than originally estimated.

**Description of the Proposed Regulation**

This proposed rule would remove from 45 CFR part 400 all references to a specific duration of eligibility for RCA and RMA and would establish a methodology by which the Office of Refugee Resettlement would determine each year the duration of eligibility for RCA and RMA, based on available appropriated funds for the year. The Director of ORR would make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, as needed, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The eligibility period in effect at the close of FY 1993 will continue to remain in effect until an appropriation for FY 1994 is known and the Director determines that the eligibility period needs to be changed based on the methodology described in this regulation to accommodate the level of appropriated funds. Currently, cash and medical assistance are provided under the line item for transitional and medical services (TAMS), which also provides for State administrative costs, the unaccompanied minors program, and the voluntary agency matching grant program. In making a determination, the Director would first subtract from the amount available for TAMS under the appropriation, the anticipated costs of the unaccompanied minors program, the matching grant program, and any other program component, other than the RCA/RMA program and State administration, that is included in the future in the TAMS line item. The Director would then determine the duration of RCA/RMA eligibility to be provided and the estimated State administrative costs based on the balance of appropriated funds available. If the Director determines, based on the methodology, that the period of RCA/RMA eligibility needs to be changed from the eligibility period in effect at the time, ORR would publish a final notice in the **Federal Register**, announcing the new period of RCA/RMA eligibility and the effective date for implementing the new eligibility period. States would be given a minimum of 30 days' notice before the effective date, or a longer period of notice, if circumstances permit.

*Proposed Methodology for Determining RCA/RMA Eligibility Period*

The methodology described below applies only to the determination of the RCA/RMA eligibility period and State administrative costs. The methodology would be applied to various RCA/RMA time-eligibility periods in order to determine the time-eligibility period which would provide the most number of months within the funds appropriated for the fiscal year. The Federal Government is prohibited from obligating more funds than are appropriated.

The proposed method to be used to determine the RCA/RMA eligibility period would include the following steps:

1. The time-eligible population for the projected fiscal year would be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year would be estimated based on the best historical and current refugee flow information that will most accurately forecast the refugee flow for the projected fiscal year. These arrival figures would then be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

2. The average annual number of RAC and RMA recipients would be determined by multiplying the estimated time-eligible population established in step 1 by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also eligible for RMA, and RMA-only recipients. The appropriate participation rates for various RCA/RMA time-eligibility periods are derived from recipient data from quarterly performance reports submitted by States in previous fiscal years.

3. The average annual per recipient cost for RCA and RMA would be estimated separately, based on estimated per recipient costs for the most recent fiscal year and inflated for the projected fiscal year using projected increases in per capita AFDC cash assistance costs for RCA and per capita AFDC Medicaid costs for RMA.

4. The expected average annual number of RCA recipients would be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients would be multiplied by the expected RMA per recipients cost to derive estimated RMA costs.

5. State administrative costs for the projected fiscal year would be based on anticipated changes in program participation (numbers of recipients) and inflated by the Consumer Price Index (CPI) for all times as estimated by the Office of Management and Budget (OMB). Increases or decreases in program participation from the previous fiscal year would result in corresponding increases or decreases in projected State administrative costs.

6. The total estimated costs for the projected fiscal year would equal the combined estimated costs for RCA, RMA, and State administration as calculated in steps 1 through 5.

ORR would notify States through a notice published in the **Federal Register** if the RCA/RMA eligibility period determined for the fiscal year is different from the RCA/RMA eligibility period in effect at that time.

The following example, using hypothetical numbers, illustrates how the methodology would work:

1. Suppose that the refugee admissions ceiling for FY 1994 is established at 1,000 and, based on available data, it is determined that an additional 200 persons eligible for refugee assistance are expected to arrive resulting in a total expected arrival population of 1,200. Suppose that the same number, 1,200, arrived in the previous fiscal year (FY 1993). Based on an examination of the refugee flow from the previous year, suppose it is determined that the monthly flow in the

projected fiscal year will be the same as in the previous fiscal year, with the monthly arrivals for both years as follows:

| | Arrivals | FY 1994 8-month time-eligible population |
|---|---|---|
| MAR93 | 107 | |
| APR93 | 87 | |
| MAY93 | 87 | |
| JUN93 | 92 | |
| JUL93 | 93 | |
| AUG93 | 110 | |
| SEP93 | 158 | |
| | 734 | |
| OCT93 | 65 | 799 |
| NOV93 | 92 | 784 |
| DEC93 | 124 | 821 |
| JAN94 | 90 | 824 |
| FEB94 | 95 | 827 |
| MAR94 | 107 | 841 |
| APR94 | 87 | 818 |
| MAY94 | 87 | 747 |
| JUN94 | 92 | 774 |
| JUL94 | 93 | 775 |
| AUG94 | 110 | 761 |
| SEP94 | 158 | 829 |
| Total | 1,200 | 9,600 |
| Average time-eligible | | 800 |

Assuming that the RCA/RMA time-eligibility period is 8 months, the time-eligible population in October would be the arrivals in October, plus refugees who arrived in the previous 7 months (March-September). The time-eligible population in October would be 799 refugees. The time-eligible population for each month in the fiscal year would be determined in the same manner as for October and then averaged across all months, for an average of 800 in this example.

2. Based on an examination of RCA and RMA participation rates in previous fiscal years, suppose it is estimated that for an 8-month eligibility period, 35% of the time-eligible population will receive RCA benefits and 50% will receive RMA benefits. (The RMA participation rate includes refugees receiving both RCA and RMA and refugees receiving RMA only.) The figure of 800 determined in Step 1 is then multiplied by the RCA participation rate of 35% for a total of 280 RCA recipients and by the RMA participation rate of 50% for a total of 400 RMA recipients. These figures reflect the average annual number of RCA and RMA recipients.

3. If in the previous year, the average annual RCA cost per recipient was $1,000 and the average annual RMA cost per recipient was $1,500, we would expect the average RCA cost per recipient to be $1,020 for the projected year (assuming a 2% increase in per capita AFDC costs), while the average RMA cost per recipient would be expected to be $1,680 (assuming a 12% increase in per capita AFDC Medicaid costs).

4. Total RCA costs would equal the number of recipients (280) multiplied by the per recipient cost ($1,020), equaling $285,600. Total RMA costs would equal the number of recipients (400) multiplied by the per recipient cost ($1,680), equaling $672,000.

5. Assuming no change in the number of RCA/RMA recipients, we would assume that State administrative costs will be the same as last year, adjusted for inflation. Suppose that last year the administrative costs were $250,000. Also suppose that OMB's CPI rate is 4%. Therefore, we would expect administrative costs to equal $250,000 times 1.04, totalling $260,000.

6. Total costs would equal the sum of $285,600 for RCA, $672,000 for RMA, and $260,000 for administrative costs, equaling $1,217,600.

Suppose the appropriation level for TAMS is $1,955,000, the anticipated costs of the unaccompanied minors program are $290,000, and the costs of the matching grant program are expected to be $390,000. Therefore, appropriated funds available for RCA, RMA, and State administrative costs would equal $1,275,000, after the costs of the unaccompanied minors program and the matching grant program are deducted from the amount available for TAMS under the appropriation. Suppose, using the methodology described above, the cost of a 9-month RCA/RMA eligibility period was estimated to be $1,290,000, thus exceeding the level of available appropriated funds for RCA, RMA, and State administrative costs. Based on these estimates, the Director would determine that an 8-month time-eligibility period would provide the most number of months of benefits without incurring a shortfall in funds for the fiscal year.

Consistent with the preceding actions, 45 CFR 400.2, 400.60(b), 400.100(b), and subpart J are being amended.

## Regulatory Procedures

### *Regulatory Impact Analysis*

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual affect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that these rules are not major rules within the Executive Order because they will not have an annual effect on the economy of $100 million or more; nor will they result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, they will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign/based enterprises in domestic or import markets.

This proposed rule would establish a more efficient and timely procedure for notifying States whenever changes in the eligibility period for refugee cash assistance (RCA) and refugee medical assistance (RMA) are necessary to contain refugee cash and medical assistance costs within the operating fiscal year appropriation level.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant impact on a substantial number of small entities because they affect benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

### *Paperwork Reduction Act*

This rule does not contain collection-of-information requirements.

## Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

## List of Subjects in 45 CFR Part 400

Grant programs—Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

Dated: June 9, 1993.

**Laurence J. Love,**

*Acting Assistant Secretary for Children and Families.*

Approved: July 1, 1993.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

For reasons set forth in the preamble, 45 CFR part 400 is proposed to be amended as follows:

**PART 400—REFUGEE RESETTLEMENT PROGRAM**

1. The authority citation for part 400 continues to read as follows:

**Authority:** Sec. 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

**§ 400.2 [Amended]**

2. Section 400.2 is amended by amending the definition of "Refugee cash assistance" by removing the words "and who have resided in the United States for less than a 12-month period (except during Federal FY 1993, less than an 8-month period) from their initial entry into the country" after the word "SSI", by amending the definition of "Refugee medical assistance" by removing the words "and who have resided in the United States for less than a 12-month period (except during Federal FY 1993, less than an 8-month period) from their initial entry into the country" after the words "Medicaid program", and by amending the definition of "Time-eligibility" by removing the "(a)" after §§ 400.203 and 400.204.

**§ 400.60 [Amended]**

3. Section 400.60(b) is amended by removing the words "the 12-month period (except during Federal FY 1993, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period to be determined by the Director in accordance with § 400.211".

**§ 400.100 [Amended]**

4. Section 400.100(b) is amended by removing the words "the 12-month period (except during Federal FY 1993, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

**§ 400.203 [Amended]**

5. Section 400.203(b) is amended by removing the words "the 12-month period (except during Federal FY 1993, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

**§ 400.204 [Amended]**

6. Section 400.204(b) is amended by removing the words "the 12-month period (except during Federal FY 1993, 8-month period) beginning with the first month the refugee entered the United States" after the word "during" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

**§ 400.209 [Amended]**

7. Section 400.209(b) is amended by removing the words "12 months (except during Federal FY 1993, 8 months)" after the word "than" and adding in their place the words "a period of time to be determined by the Director in accordance with § 400.211".

8. Subpart J is amended by adding a new § 400.211, that reads as follows:

**§ 400.211 Methodology to be used to determine time-eligibility of refugees.**

(a) The time-eligibility period for refugee cash assistance and refugee medical assistance will be determined by the Director each year, based on appropriated funds available for the fiscal year. The Director will make a determination of the eligibility period each year as soon as possible after funds are appropriated for the refugee program, and also at subsequent points during the fiscal year, as needed, based on updated information on refugee flows and State reports on receipt of assistance and expenditures. The method to be used to determine the RCA/RMA eligibility period will include the following steps and will be applied to various RCA/RMA time-eligibility periods in order to determine the time-eligibility period which will provide the most number of months without incurring a shortfall in funds for the fiscal year.

(1) The time-eligible population for the projected fiscal year will be estimated on the basis of the refugee admissions ceiling established by the President for that fiscal year and the anticipated arrival of other persons eligible for refugee assistance, to the extent that data on these persons are available. The anticipated pattern of refugee flow for the projected fiscal year will be estimated based on the best available historical and current refugee flow information that will most accurately forecast the refugee flow for the projected fiscal year. These arrival figures will then be used to determine the time-eligible population for a given duration of RCA/RMA benefits.

(2) The average annual number of RCA and RMA recipients will be determined by multiplying the estimated time-eligible population established in paragraph (a)(1) of this section by the estimated RCA and RMA participation rates. The RMA participation rate will take into account both RCA recipients, who are also eligible for RMA, and RMA-only recipients. Recipient data from quarterly performance reports submitted by States in previous fiscal years will be used to determine the appropriate participation rates for various RCA/RMA time-eligibility periods.

(3) The average annual per recipient cost for RCA and RMA will be estimated separately, based on estimated per recipient costs for the most recent fiscal year and inflated for the projected fiscal year using projected increases in per capita AFDC cash assistance costs for RCA and per capita AFDC Medicaid costs for RMA.

(4) The expected average annual number of RCA recipients will be multiplied by the expected RCA per recipient cost to derive estimated RCA costs. The expected average annual number of RMA recipients will be multiplied by the expected RMA per recipient cost to derive estimated RMA costs.

(5) State administrative costs for the projected fiscal year will be based on changes in program participation (numbers of recipients) and inflated by the Consumer Price Index (CPI) for all items as estimated by the Office of Management and Budget (OMB). Increases or decreases in program participation in the previous fiscal year will result in corresponding increases or decreases in projected State administrative costs.

(6) The total estimated costs for the projected fiscal year will equal the combined estimated costs for RCA, RMA, and State administration as calculated in paragraphs (a)(1) through (5) of this section.

(b) If, as the Director determines, the period of eligibility needs to be changed from the eligibility period in effect at the time, the Director will publish a final notice in the **Federal Register**, announcing the new period of eligibility for refugee cash assistance and refugee medical assistance and the effective date for implementing the new eligibility period. States will be given a minimum of 30 days' notice before the effective date, or, if circumstances permit, a longer period of notice.

[FR Doc. 93–17353 Filed 7–19–93; 3:02 pm]
BILLING CODE 4184–01–M

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 76**

**[MM Docket No. 93–207; DA 93–817]**

**Cable Television Service; List of Major Television Markets**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission invites comments on its proposal, initiated by a request filed by Fouce Amusement Enterprises, Inc. ("Fouce"), to amend the Commission's Rules to change the designation of the Los Angeles-San Bernardino-Corona-Fontana, California television market to include the community of Riverside, California. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

**DATES:** Comments are due on or before August 18, 1993, and reply comments are due on or before September 2, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–207, adopted July 2, 1993, and released July 15, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

**Synopsis of the Notice of Proposed Rule Making**

1. The Commission, in response to a Petition for Rulemaking filed by Fouce Amusement Enterprises, Inc., licensee KRCA(TV), Riverside, California, proposed to amend § 76.51 of the Rules to change the designation of the Los Angeles-San Bernardino-Corona-Fontana, California television market to include the community of Riverside, California.

2. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. Therefore, comment is requested on this proposal to amend § 76.51 of the Commission's Rules by adding Riverside to the Los Angeles-San Bernardino-Corona-Fontana, California market designation.

**Initial Regulatory Flexibility Analysis**

3. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 stat. 1164, 5 U.S.C. section 601 et seq. (1981).

**Ex Parte**

4. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

**Comment Dates**

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 18, 1993, and reply comments on or before September 2, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

6. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Mass Media Bureau.*

[FR Doc. 93–17339 Filed 7–21–93; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 76**

**[MM Docket No. 93–212; DA 93–824]**

**Cable Television Service; List of Major Television Markets**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission invites comments on its proposal, initiated by a request filed by Group H Broadcasting Corporation ("Group H"), to amend the Commission's Rules to change the designation of the Raleigh-Durham, North Carolina television market to include the community of Goldsboro, North Carolina. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

**DATES:** Comments are due on or before August 23, 1993, and reply comments are due on or before September 7, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–212, adopted July 8, 1993, and released July 15, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Washington, DC 20037.

**Synopsis of the Notice of Proposed Rule Making**

1. The Commission, in response to a Petition for Rulemaking filed by Group H Broadcasting Corporation, licensee of WYED(TV), Goldsboro, North Carolina, proposed to amend § 76.51 of the Rules to change the designation of the Raleigh-Durham, North Carolina television market to include the community of Goldsboro, North Carolina.

2. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. Therefore, comment is requested on this proposal to amend § 76.51 of the Commission's Rules by adding

Goldsboro, North Carolina to the Raleigh-Durham, North Carolina market designation.

**Initial Regulatory Flexibility Analysis**

3. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a copy of the Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

**Ex Parte**

4. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

**Comment Dates**

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 23, 1993, and reply comments on or before September 7, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20054. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

6. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Mass Media Bureau.*

[FR Doc. 93–17338 Filed 7–21–93; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 669

**[Docket No. 930773–3173; I.D. 062893B]**

**RIN–0648–AE53**

## Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). Amendment 2 and this proposed rule would incorporate the major species of the deep-water reef fish fishery and the marine aquarium finfish fishery into the reef fish management unit; retitle the FMP to encompass the revised management unit; restrict the collection of marine aquarium fishes to hand-held dip nets and slurp guns; prohibit the harvest/possession/sale of certain species used in the marine aquarium trade; remove a requirement that the two escape panels required for each fish trap be located on opposite sides of the trap; prohibit the harvest or possession of jewfish; close two additional red hind spawning aggregation areas from December through February; and close a spawning aggregation area for mutton snapper from March through June of each year. This proposed rule is intended to protect and conserve the highly exploited reef fish resources of Puerto Rico and the U.S. Virgin Islands.

**DATES:** Written comments must be received on or before September 2, 1993.

**ADDRESSES:** Comments on the proposed rule should be sent to William R. Turner, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburgh, FL 33702.

Requests for copies of Amendment 2, which contains a draft regulatory impact review/initial regulatory flexibility analysis/final supplemental environmental impact statement, should be sent to the Caribbean Fishery Management Council, 268 Ave Muñoz Rivera, Suite 1108, San Juan, PR 00918–2577.

**FOR FURTHER INFORMATION CONTACT:** Miquel A. Rolon, 809–753–6910 or William R. Turner, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The shallow-water reef fish fishery is managed under the FMP prepared by the Caribbean Fishery Management Council (Council), and its implementing regulations at 50 CFR part 669, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 2 addresses continuing and growing concerns by the Council over scarce resources, the need to protect important species when they aggregate for spawning, and the need to extend protection to other reef-associated species not presently in the management unit.

The basic objectives of the FMP would be unchanged by Amendment 2. However, Amendment 2 extends these objectives to deep water reef fishes and marine aquarium fishes so that the added species will be maintained at levels that sustain recruitment adequate to replenish the populations. Amendment 2 requests the local governments of Puerto Rico and the U.S. Virgin Islands to institute permitting and mandatory reporting requirements for fishing in both state and Federal waters so that data on catch/effort relationships of species in the management unit may be obtained. These data would be used to assess stocks, monitor population trends, and to restore and maintain stocks at optimum levels. Permits also would provide a sampling universe in the event that some type of limited access program is considered for the future. Amendment 2 also recommends establishing coral reef reserves and prohibiting the introduction of exotic species.

**Expansion of the Management Unit**

Of some 350 species of shallow-water reef fish in the Caribbean, about 180 are landed throughout the region and collectively comprise the most important fishery in the islands. The management unit currently includes the 64 most commonly landed species that dominate the catch from the shoreline to the edge of the insular platform. At greater depths beyond the edge of the platform, another fishery occurs—the deep-water reef fish fishery.

Initially, the Council anticipated developing a separate FMP for deep-

water reef fish species; however, the Council decided that it would be more practicable and economical to establish a single management unit for all reef fish. Distribution of some of the deep-water reef fishes overlaps shallow-water reef fish distributions, although the deep-water species are more abundant as adults in deeper waters. Restrictive measures are not envisioned initially for deep-water species due to lack of data on the status of their populations; however, including them in the management unit permits regulatory action if necessary.

A large number of juvenile reef fishes and other small reef-associated species are taken by the marine aquarium industry. A decline in abundance has been noted for some of the more desirable species in certain localities. The ecological effects of their removal are unknown, and some of the most widely used collecting methods employ chemicals that damage the reef habitat and inflict mortality upon associated fishes and invertebrates. Expanding the management unit to include marine aquarium species would obviate the need for a separate FMP and provide a mechanism to initially manage this select group of fishes under the existing drug and chemical harvest prohibition of the reef fish regulations. Harvest of certain species could be regulated or prohibited as necessary.

Including additional species in the reef fish fishery requires changing the title of the FMP, expanding the management unit, and updating the FMP to describe the fisheries incorporated. A discussion of the significance of the reef fish habitat to reef fish species and the effects of changes in that habitat on the fisheries was included in Amendment 1 to the FMP. Marine aquarium invertebrate species are included in the coral fishery management plan, currently being developed, which contains further discussion of the significance of the coral reef habitat and the effects of changes in that habitat.

**Allowable Gear in the Marine Aquarium Fishery**

Under Amendment 2, only hand-held dip nets and slurp guns could be used to harvest marine aquarium fishes. Other gears currently or traditionally used for collecting marine aquarium fishes have been shown to damage either the resource, its habitat, or both. Perhaps the most prevalent method of collection is by the use of chemical substances, the most common of which is quinaldine. Although the long- and short-term effects on reefs and associated organisms of using quinaldine to stun fish are inconclusive, many dealers are reluctant to purchase fish taken by this method because mortality rates appear higher than with those collected by other methods. The use of other chemical agents, such as bleach, formalin, and gasoline for collecting marine aquarium fishes, has been reported from various areas. Amendment 2 and this proposed rule would prohibit all of them because of their toxic effects on marine organisms, including corals. The use of chemical substances and explosives is currently prohibited in the shallow-water reef fish fishery.

Cast nets (drop nets), barrier nets (gill nets), and specialized small mesh fish traps are other gears traditionally used to harvest marine aquarium fishes. These gears all have a potential for damaging reefs or reef resources. Small mesh fish traps are already prohibited under existing minimum mesh-size regulations.

To distinguish between fish in the aquarium trade and food fish, the proposed rule would define a marine aquarium fish as any fish in the reef fish fishery that is smaller than 5.5 inches (14.0 cm), total length. This length approximates the largest size of fish believed to be harvested customarily for the marine aquarium trade. Establishing a larger size limit for marine aquarium fish would adversely affect the harvest of reef fish as food fish.

**Limitations on Certain Species of Marine Aquarium Fish**

The status of many species of marine aquarium fishes has not been determined, but some are uncommon while others are heavily exploited without restriction. All marine aquarium fishes would benefit from the gear restrictions contained in Amendment 2.

Because of the intensifying and uncontrolled harvest of marine aquarium fishes in Puerto Rico, and based on experiences elsewhere, there is a need to regulate this fishery. By adding marine aquarium fishes to the FMP, the harvest and possession of the young of species that presently are in a rebuilding mode could be prohibited until those resources have recovered. This group currently includes red hind and mutton snapper.

Species that are locally rare are potentially vulnerable to harvest for the aquarium trade because the scarcity and the higher value associated with rare species often result in greater effort expended for their harvest. Fish that may be considered rare or uncommon in the management area are the seahorses and the swissguard basslet. Since the latter are collected mainly by chemicals, such as quinaldine, and harvest by chemicals would be prohibited, no additional protection for swissguard basslet would be required.

Some species are considered unsuited for the aquarium trade because they do not survive well in captivity. A number of butterflyfishes do not feed well in captivity and consequently experience high mortality. Permitting harvest of these species for the aquarium trade would constitute inefficient and wasteful use of these resources.

Accordingly, restrictions on the harvest/sale of the following species are proposed: Seahorses; red hind; mutton snapper; foureye butterflyfish; banded butterflyfish; and longsnout butterflyfish. Since there is no known use of seahorses and butterflyfishes as food fish, this rule proposes a total prohibition on their harvest or possession. Since red hind and mutton snapper, as adults, are commonly harvested as food fish, this rule proposes that their use in the marine aquarium trade by prohibited, that is, they may not be sold, traded, purchased, or bartered alive.

**Protecting Jewfish**

A pronounced decline in the abundance of jewfish has been noted throughout the management area and may extend throughout the Caribbean Basin. Similar declines in the Gulf of Mexico and off the southern Atlantic states led to a total prohibition on jewfish harvest in those areas. The Council believes that jewfish should be protected throughout its range. The species appears to be scarce wherever it occurs and has unique biological characteristics that make it highly susceptible to overfishing. The U.S. Virgin Islands Government has listed jewfish as a protected species and prohibits its take in Territorial waters. Accordingly, Amendment 2 contains a prohibition on all harvest of jewfish in the EEZ.

**Red Hind Spawning Areas**

Following collapse of the Nassau grouper resource, red hind became an important species in the fishery; however, the Council's Stock Assessment Group concluded that statistics show a decrease in the number of young fish in the population. Whenever possible, the Council relies upon closing aggregation sites during spawning seasons to enhance reproductive capacity. Most species that aggregate during the spawning season are highly vulnerable to capture at that time. Allowing mature individuals the opportunity to spawn is important to

reverse declines in abundance. Even some fishermen have requested closure of spawning aggregation areas for red hind. A spawning aggregation area off St. Thomas has been closed during the spawning season (December-February) since December 1989. Amendment 2 would close two additional red hind spawning areas.

**Mutton Snapper Spawning Area**

A mutton snapper spawning aggregation area has been identified in the EEZ off the southwest coast of St. Croix. The U.S. Virgin Islands, Division of Fish and Wildlife, has recommended that the area be closed to all fishing from March through June of each year to protect the species. Accordingly, such a provision is included in Amendment 2. The aggregation area is located between 2.1 and 3.2 nautical miles southwest of Long Point in 10 to 27 fathoms (18.3 to 49.4 m) of water. Commercial landings indicate that mutton snapper have been fished to the extent that production from the aggregation is declining and average individual weights have decreased.

Mutton snapper appear to be especially vulnerable to harvest when aggregated for spawning. This has prompted the curtailment of fishing activity during the spawning season in waters under the jurisdiction of the South Atlantic Fishery Management Council and similar action soon will be contemplated by the Gulf of Mexico Fishery Management Council. To allow spawning populations to be overexploited during periods of unusual vulnerability is not a biologically sound practice. Accordingly, Amendment 2 would close the identified mutton snapper spawning area.

**Fish Trap Specifications**

The current regulations require that bare-wire fish traps with hexagonal mesh openings have a minimum mesh size of 1.5 inches (3.8 cm) in the smallest dimension, and that fish traps with other than hexagonal mesh openings, regardless of the material, have a minimum mesh size of 2.0 inches (5.1 cm) in the smallest dimension. Through September 13, 1993, fish traps with rectangular mesh openings may have a minimum mesh size of 1.5 inches (3.8 cm). Amendment 2 confirms the Council's previous decision to end, on September 14, 1993, this exemption from the 2.0 (5.1 cm) minimum mesh requirement for fish traps with rectangular mesh openings.

Fishermen reported that locating the escape panels on opposite sides of a trap, as presently required, can cause premature release of the catch from the weight of fish on the panel opposite the bridle during trap retrieval. Locating the escape openings on adjacent sides of a trap eliminates this problem. Amendment 2 would eliminate the requirement that the degradable escape panels be located on opposite sides of a trap.

Some fishermen have contended that the requirement to use jute twine of ⅛-inch (.3-cm) or less in diameter as the degradable fastenings for the panels on the escape openings is overly burdensome because of the amount of time required to retie the fastenings each time a trap is hauled. Amendment 2 would have allowed, as an alternative to jute twine of ⅛-inch (.3-cm) or less in diameter, the use of 18-gauge ungalvanized wire fasteners on traps without zinc anodes. Based on a preliminary review of Amendment 2, the Secretary of Commerce (Secretary) disapproved this provision of Amendment 2 because it was determined to be inconsistent with national standard 1 requiring fishery management plans and amendments to prevent overfishing and with national standard 2 requiring measures to be based on the best available scientific information. The use of such wire fasteners has not been scientifically tested to determine if their degradation time would prevent overfishing.

Additional information on the measures in this proposed rule and on the preliminarily disapproved measure is contained in Amendment 2, the availability of which was announced in the **Federal Register** on June 30, 1993 (58 FR 34982).

**Classification**

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that the measures in Amendment 2 that this proposed rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. As discussed above, the Secretary has disapproved the provision in Amendment 2 that would authorize the use of 18-gauge ungalvanized wire as fasteners of escape panels on fish traps because of insufficient scientific justification. Accordingly, such authorized use is not contained in this proposed rule. The Secretary, in making final determinations, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedure of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR), which concludes this rule would have national net economic benefits, summarized as follows. Expanding the management unit to include deep-water reef and marine aquarium fishes would increase administrative costs of the FMP but would be cost-effective when compared to the costs of developing separate FMPs for the same species. For the measures that regulate gear use, the aggregate outcome would be positive because increased biological yields would eventually translate into positive economic changes. The prohibition on harvest of jewfish would have long-term economic benefits because the abundance of jewfish is currently so low the resource produces extremely small values. The prohibition on harvest of certain aquarium fishes would have long-term economic benefits because the prohibited species are either not well suited to the aquarium trade or have greater value either as food fish or by maintaining the diversity of the marine ecosystem. Spawning area closures would have beneficial impacts via maintenance of economically viable levels of biomass for harvest on a continuing basis. Realization of the projected benefits would depend heavily on adequate compliance with the rules and on the cooperation of Puerto Rico and the U.S. Virgin Islands. This cooperation would need to include the adoption of compatible regulations, assistance with education and law enforcement, and implementation of suitable permit and data collection systems. The benefits gained by the rule would be of a temporary nature because the fishery operates under an open access management regime. Under this

style of management, increased benefits inevitably lead to increased effort and the benefits are eventually eroded. This occurs because of the increased costs implied by an expanding amount of effort expended in the taking of a maximum biological yield that is essentially fixed in the long term. A copy of the RIR is available (see **ADDRESSES**).

The Council prepared an initial regulatory flexibility analysis (RFA) as part of the RIR, which concludes that this proposed rule, if adopted, would have significant effects on small entities. Almost all the 1,500 to 2,000 small business entities dependent upon the fishery resources governed by the FMP would be impacted by the actions contemplated by Amendment 2. Further, it was concluded that the aggregate impact on gross revenues would exceed 5 percent. A copy of the initial RFA is available (see **ADDRESSES**).

The Council prepared a draft supplemental environmental impact statement for Amendment 2. A notice of availability was published on December 11, 1992 (57 FR 58805). A final supplemental environmental impact statement was prepared by the Council for Amendment 2 and will be filed for public review with the Environmental Protection Agency on or before August 20, 1993, to begin a 30-day public review period.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Puerto Rico and the U.S. Virgin Islands. This determination has been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

**List of Subjects in 50 CFR Part 669**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 16, 1993.

**Samuel W. McKeen,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 669 is proposed to be amended as follows:

## PART 669—REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. The title for part 669 is revised to read as set forth above.

3. In § 669.2, the definition for "*Fish in the shallow-water reef fish fishery*" is removed and a definition for "*Fish in the reef fish fishery*" is added in its place to read as follows:

**§ 669.2 Definitions.**

* * * * *

*Fish in the reef fish fishery* means any of the following species:

*Morays—Muraenidae*

Chain moray, *Echidna catenata*
Green moray, *Gymnothorax funebris*
Goldentail moray, *Gymnothorax miliaris*

*Snake eels—Ophichthidae*

Goldspotted eel, *Myrichthys ocellatus*

*Lizardfishes—Synodontidae*

Sand diver, *Synodus intermedius*

*Frogfishes—Antennariidae*

Frogfish, *Antennarius* spp.

*Batfishes—Ogcocephalidae*

Batfish, *Ogcocepahalus* spp.

*Squirrelfishes—Holocentridae*

Squirrelfish, *Holocentrus adscensionis*
Longspine squirrelfish, *Holocentrus rufus*
Blackbar soldierfish, *Myripristis jacobus*
Cardinal soldierfish, *Plectrypops retrospinis*

*Trumpetfishes—Aulostomidae*

Trumpetfish, *Aulostomus maculatus*

*Pipefishes—Syngnathidae*

Seahorses, *Hippocampus* spp.
Pipefishes, *Syngnathus* spp.

*Flying gurnards—Dactylopteridae*

Flying gurnard, *Dactylopterus volitans*

*Scorpionfishes—Scorpaenidae*

*Sea basses—Serranidae*

Rock hind, *Epinephelus adscensionis*
Graysby, *Epinephelus cruentatus*
Yellowedge grouper, *Epinephelus flavolimbatus*
Coney, *Epinephelus fulvus*
Red hind, *Epinephelus guttatus*
Jewfish, *Epinephelus itajara*
Red grouper, *Epinephelus morio*
Misty grouper, *Epinephelus mystacinus*
Nassau grouper, *Epinephelus striatus*
Butter hamlet, *Hypoplectrus unicolor*
Swissguard basslet, *Liopropoma rubre*
Yellowfin grouper, *Mycteroperca venenosa*
Tiger grouper, *Mycteroperca tigris*
Creole-fish, *Paranthias furcifer*
Greater soapfish, *Rypticus saponaceus*
Orangeback bass, *Serranus annularis*
Lantern bass, *Serranus baldwini*
Tobaccofish, *Serranus tabacarius*
Harlequin bass, *Serranus tigrinus*
Chalk bass, *Serranus tortugarum*

*Basslets—Grammatidae*

Royal gramma, *Gramma loreto*

*Bigeyes—Priacanthidae*

Bigeye, *Priacanthus arenatus*
Glasseye snapper, *Priacanthus cruentatus*

*Cardinalfishes—Apogonidae*

Flamefish, *Apogon maculatus*
Conchfish, *Astrapogen stellatus*

*Tilefishes—Malacanthidae*

Blackline tilefish, *Caulolatilus cyanops*
Sand tilefish, *Malacanthus plumieri*

*Jacks—Carangidae*

Yellow jack, *Caranx bartholomaei*
Blue runner, *Caranx crysos*
Horse-eye jack, *Caranx latus*
Black jack, *Caranx lugubris*
Bar jack, *Caranx ruber*
Greater amberjack, *Seriola dumerili*
Almaco jack, *Seriola rivoliana*

*Snappers—Lutjanidae*

Black snapper, *Apsilus dentatus*
Queen snapper, *Etelis oculatus*
Mutton snapper, *Lutjanus analis*
Schoolmaster, *Lutjanus apodus*
Blackfin snapper, *Lutjanus buccanella*
Gray snapper, *Lutjanus griseus*
Dog snapper, *Lutjanus jocu*
Mahogany snapper, *Lutjanus mahogani*
Lane snapper, *Lutjanus synagris*
Silk snapper, *Lutjanus vivanus*
Yellowtail snapper, *Ocyurus chrysurus*
Wenchman, *Pristipomoides aquilonaris*
Vermilion snapper, *Rhomboplites aurorubens*

*Grunts—Haemulidae*

Porkfish, *Anisotremus virginicus*
Margate, *Haemulon album*
Tomtate, *Haemulon aurolineatum*
French grunt, *Haemulon flavolineatum*
White grunt, *Haemulon plumieri*
Bluestriped grunt, *Haemulon sciurus*

*Porgies—Sparidae*

Sea bream, *Archosargus rhomboidalis*
Jolthead porgy, *Calamus bajonado*
Sheepshead porgy, *Calamus penna*
Pluma, *Calamus pennatula*

*Drums—Sciaenidae*

High-hat, *Equetus acuminatus*
Jackknife-fish, *Equetus lanceolatus*
Spotted drum, *Equetus punctatus*

*Goatfishes—Mullidae*

Yellow goatfish, *Mulloidichthys martinicus*
Spotted goatfish, *Pseudupeneus maculatus*

*Spadefishes—Ephippidae*

Atlantic spadefish, *Chaetodipterus faber*

*Butterflyfishes—Chaetodontidae*

Longsnout butterflyfish, *Chaetodon aculeatus*
Foureye butterflyfish, *Chaetodon capistratus*
Spotfin butterflyfish, *Chaetodon ocellatus*
Banded butterflyfish, *Chaetodon striatus*

*Angelfishes—Pomacanthidae*

Cherubfish, *Centropyge argi*

Queen angelfish, *Holacanthus ciliaris*
Rock beauty, *Holacanthus tricolor*
Gray angelfish, *Pomacanthus arcuatus*
French angelfish, *Pomacanthus paru*

*Damselfishes—Pomacentridae*

Sergeant major, *Abudefduf saxatilis*
Blue chromis, *Chromis cyanea*
Sunshinefish, *Chromis insolata*
Yellowtail damselfish, *Microspathodon chrysurus*
Dusky damselfish, *Pomacentrus fuscus*
Beaugregory, *Pomacentrus leucostictus*
Bicolor damselfish, *Pomacentrus partitus*
Threespot damselfish, *Pomacentrus planifrons*

*Hawkfishes—Cirrhitidae*

Redspotted hawkfish, *Amblycirrhitus pinos*

*Wrasses—Labridae*

Spanish hogfish, *Bodianus rufus*
Creole wrasse, *Clepticus parrae*
Yellowcheek wrasse, *Halichoeres cyanocephalus*
Yellowhead wrasse, *Halichoeres garnoti*
Clown wrasse, *Halichoeres maculipinna*
Puddingwife, *Halichoeres radiatus*
Pearly razorfish, *Hemipteronotus novacula*
Green razorfish, *Hemipteronotus splendens*
Hogfish, *Lachnolaimus maximus*
Bluehead wrasse, *Thalassoma bifasciatum*

*Parrotfishes—Scaridae*

Midnight parrotfish, *Scarus coelestinus*
Blue parrotfish, *Scarus coeruleus*
Striped parrotfish, *Scarus croicensis*
Rainbow parrotfish, *Scarus guacamaia*
Princess parrotfish, *Scarus taeniopterus*
Queen parrotfish, *Scarus vetula*
Redband parrotfish, *Sparisoma aurofrenatum*
Redtail parrotfish, *Sparisoma chrysopterum*
Redfin parrotfish, *Sparisoma rubripinne*
Stoplight parrotfish, *Sparisoma viride*

*Jawfishes—Opistognathidae*

Yellowhead jawfish, *Opistognathus aurifrons*
Dusky jawfish, *Opistognathus whitehursti*

*Combtooth blennies—Blenniidae*

Redlip blenny, *Ophioblennius atlanticus*

*Gobies—Gobiidae*

Neon goby, *Gobiosoma oceanops*
Rusty goby, *Priolepis hipoliti*

*Surgeonfishes—Acanthuridae*

Ocean surgeonfish, *Acanthurus bahianus*
Doctorfish, *Acanthurus chirurgus*
Blue tang, *Acanthurus coeruleus*

*Lefteye flounders—Bothidae*

Peacock flounder, *Bothus lunatus*

*Soles—Soleidae*

Caribbean tonguefish, *Symphurus arawak*

*Leatherjackets—Balistidae*

Scrawled filefish, *Aluterus scriptus*
Queen triggerfish, *Balistes vetula*
Whitespotted filefish, *Cantherhines macrocerus*
Ocean triggerfish, *Canthidermis sufflamen*
Black durgon, *Melichthys niger*
Sargassum triggerfish, *Xanthichthys rigens*

*Boxfishes—Ostraciidae*

Spotted trunkfish, *Lactophrys bicaudalis*
Honeycomb cowfish, *Lactophrys polygonia*
Scrawled cowfish, *Lactophrys quadricornis*
Trunkfish, *Lactophrys trigonus*
Smooth trunkfish, *Lactophrys triqueter*

*Puffers—Tetraodontidae*

Sharpnose puffer, *Canthigaster rostrata*
Porcupinefish, *Diodon hystrix*

* * * * *

4. Section 669.7 is revised to read as follows:

**§ 669.7 Prohibitions.**

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish with a fish trap in the EEZ without a vessel identification number and color code, as specified in § 669.6(a).

(b) Falsify or fail to display and maintain vessel and gear identification, as specified in § 669.6(c), (d), and (e).

(c) Fish in an area during a seasonal closure, as specified in § 669.21.

(d) Harvest or possess a Nassau grouper, jewfish, seahorse, or foureye, banded, or longsnout butterflyfish in or from the EEZ, or fail to release such fish immediately with a minimum of harm; as specified in § 669.22(a) and (b).

(e) Harvest in the EEZ a marine aquarium fish by means other than a hand-held dip net or a hand-held slurp gun, as specified in § 669.22(c).

(f) Possess a yellowtail snapper in or from the EEZ that is smaller than the minimum size limit or is without its head and fins intact; or fail to release immediately with a minimum of harm an undersized yellowtail snapper caught in the EEZ; as specified in § 669.22(d).

(g) Fish in the EEZ with explosives or possess on board a vessel in the reef fish fishery any dynamite or similar explosive substance, as specified in § 669.23(a)(1).

(h) Fish in the EEZ with poisons, drugs, other chemicals, or a powerhead, as specified in § 669.23(a)(2) and (a)(3).

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for mesh sizes and escape panels, as specified in § 669.23(b)(1) and (b)(2).

(j) Tend, open, pull, molest, or have in possession another person's fish trap in the EEZ, except as specified in § 669.23(b)(3).

(k) Sell, purchase, trade, or barter alive, or attempt to sell, purchase, trade, or barter alive, a red hind or mutton snapper, as specified in § 669.24.

(l) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(m) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, sale, purchase, trade, barter, possession, or transfer of a reef fish.

5. Subpart B of part 669 is revised to read as follows:

**Subpart B—Management Measures**

Sec.
669.20 Fishing year.
669.21 Seasonal area closures.
669.22 Harvest limitations.
669.23 Gear restrictions.
669.24 Limitations on sale.
669.25 Specifically authorized activities.

## Subpart B—Management Measures

### § 669.20 Fishing year.

The fishing year for the reef fish fishery begins on January 1 and ends on December 31.

### § 669.21 Seasonal area closures.

(a) *Red hind spawning aggregation areas.* From December 1 through February 28, each year, fishing is prohibited in the following three areas. Each area is bounded by rhumb lines connecting the points in the order listed.

(1) *South of St. Thomas:*

| Point | Latitude | Longitude |
|---|---|---|
| A | 18°13.2'N. | 65°06.0'W. |
| B | 18°13.2'N. | 64°59.0'W. |
| C | 18°11.6'N. | 64°59.0'W. |
| D | 18°10.7'N. | 65°06.0'W. |
| A | 18°13.2'N. | 65°06.0'W. |

(2) *West of Puerto Rico:*

| Point | Latitude | Longitude |
|---|---|---|
| A | 18°11.0'N. | 67°25.5'W. |
| B | 18°11.0'N. | 67°20.4'W. |
| C | 18°06.0'N. | 67°20.4'W. |
| D | 18°06.0'N. | 67°25.5'W. |
| A | 18°11.0'N. | 67°25.5'W. |

(3) *East of St. Croix:*

| Point | Latitude | Longitude |
|---|---|---|
| A | 17°50.2'N. | 64°27.9'W. |
| B | 17°50.1'N. | 64°26.1'W. |
| C | 17°49.2'N. | 64°25.8'W. |
| D | 17°48.6'N. | 64°25.8'W. |
| E | 17°48.1'N. | 64°26.1'W. |
| F | 17°47.5'N. | 64°26.9'W. |
| A | 17°50.2'N. | 64°27.9'W. |

(b) *Mutton snapper spawning aggregation area.* From March 1 through June 30, each year, fishing is prohibited in the following area bounded by rhumb lines connecting the points in the order listed:

| Point | Latitude | Longitude |
|---|---|---|
| A | 17°37.9'N. | 64°52.6'W. |
| B | 17°38.2'N. | 64°52.1'W. |
| C | 17°38.3'N. | 64°51.8'W. |
| D | 17°38.1'N. | 64°51.4'W. |
| A | 17°37.9'N. | 64°52.6'W. |

**§ 669.22 Harvest limitations.**

(a) *Nassau grouper and jewfish.* Nassau grouper and jewfish may not be harvested or possessed in or from the EEZ. A Nassau grouper or jewfish caught in the EEZ must be released immediately with a minimum of harm.

(b) *Seahorses and foureye, banded, and longsnout butterflyfish.* Seahorses and foureye, banded, and longsnout butterflyfish may not be harvested or possessed in or from the EEZ. Such fish caught in the EEZ must be released immediately with a minimum of harm.

(c) *Marine aquarium fish.* A marine aquarium fish may be harvested in the EEZ only by a hand-held dip net or by a hand-held slurp gun. For the purposes of § 669.7(e) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber, and a marine aquarium fish is a fish in the reef fish fishery that is smaller than 5.5 inches (14.0 cm), total length.

(d) *Yellowtail snapper*—(1) *Minimum size limit.* The minimum size limit for the possession of yellowtail snapper in or from the EEZ is 12 inches (30.5 cm) total length. An undersized yellowtail snapper caught in the EEZ must be released immediately with a minimum of harm.

(2) *Head and fins intact.* A yellowtail snapper possessed in the EEZ must have its head and fins intact and a yellowtail snapper taken from the EEZ must have its head and fins intact through offloading at a dock, berth, beach, seawall, or ramp. Such yellowtail snapper may be eviscerated but must otherwise be maintained in a whole condition.

**§ 669.23 Gear restrictions.**

(a) *Explosives, poisons, and powerheads.* (1) Explosives may not be used in the EEZ to fish for fish in the reef fish fishery. A vessel in the reef fish fishery may not possess on board any dynamite or similar explosive substances.

(2) Poisons, drugs, or other chemicals may not be used in the EEZ to fish for fish in the reef fish fishery.

(3) A powerhead may not be used in the EEZ to fish for fish in the reef fish fishery. Possession of a powerhead and a mutilated fish in the reef fish fishery aboard a vessel in the EEZ or aboard a vessel after having fished in the EEZ constitutes *prima facie* evidence that such reef fish was taken with a powerhead in the EEZ.

(b) *Fish traps*—(1) *Mesh size.* A bare-wire fish trap used or possessed in the EEZ that has hexagonal mesh openings of bare wire must have a minimum mesh size of 1.5 inches (3.8 cm), in the smallest dimension measured between centers of strands. A bare-wire fish trap used or possessed in the EEZ that has other than hexagonal mesh openings of bare wire must have a minimum mesh size of 2.0 inches (5.1 cm), in the smallest dimension measured between centers of strands. A fish trap of other than bare wire, such as coated wire or plastic, used or possessed in the EEZ must have a minimum mesh size of 2.0 inches (5.1 cm), in the smallest dimension of the opening (rather than between centers of strands).

(2) *Escape panels.* A panel must be located on each of two sides of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by a panel must measure not less than 8 inches (20.3 cm) by 8 inches (20.3 cm). The mesh size of a panel may not be smaller than the mesh size of the trap. A panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛ inch (.3 cm). An access door may serve as one of the panels, provided it is on an appropriate side, it is hinged only at its bottom, its only other fastening is at the top of the door so that the door will fall open when such other fastening degrades, and such other fastening is untreated jute twine with a diameter not exceeding ⅛ inch (.3 cm). Jute twine used to secure a panel may not be wrapped or overlapped.

(3) *Tending traps.* A fish trap in the EEZ may be tended or pulled only by a person (other than an authorized officer) aboard the fish trap owner's vessel(s), or aboard another vessel if such vessel has on board written consent of the fish trap owner, or if the fish trap owner is aboard and has documentation verifying his identification number and color code. An owner's written consent must specify the time period such consent is effective and the trap owner's identification number and color code. (See § 669.6 regarding identification numbers and color codes.)

**§ 669.24 Limitations on sale.**

Red hind or mutton snapper in or from the EEZ may not be sold, purchased, traded, or bartered alive, or attempted to be sold, purchased, traded, or bartered alive, that is, used in the marine aquarium trade.

**§ 669.25 Specifically authorized activities.**

The Secretary may authorize, for the acquisition of information and data, activities which are otherwise prohibited by these regulations.

**§§ 669.1, 669.4, and 669.6 [Amended]**

6. In addition to the amendments set forth above, in 50 CFR part 669, the words "shallow-water" are removed where they appear in the following places: § 669.1 (a) and (b); § 669.4; and § 669.6 (a), (e)(1) introductory text, (e)(2) (two places), and (e)(3).

[FR Doc. 93–17360 Filed 7–19–93; 9:42 am]
BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 58, No. 139
Thursday, July 22, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

July 16, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250. (202) 690–2118.

**Revision**

*Agricultural Stabilization and Conservation Service*

7 CFR 1427.101–109—Upland Cotton First Handler and Domestic User/ Exporter Agreement and Payment Program, CCC–1044,1045, 1045(Amend 1), 1045–1 Recordkeeping; On occasion; Weekly Farms; Small businesses or organizations; 29,850 responses; 92,833 hours.

Janice Zygmont, (202) 720–6734.

**Larry K. Roberson,**
*Deputy Department Clearance Officer.*

[FR Doc. 93–17369 Filed 7–21–93; 8:45 am]
BILLING CODE 3410–01–M

## Forest Service

### Timber Salvage Sales, Black Hills National Forest, Lawrence County, SD and Crook County, WY

**AGENCY:** Forest Service, USDA.

**ACTION:** Notification that decisions related to harvesting downed and damaged trees from a natural blowdown area on the Spearfish and Bearlodge Ranger Districts are exempt from appeals under provisions of 36 CFR part 217.

**SUMMARY:** Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Rocky Mountain Region has determined there is good cause to exempt from administrative appeal timber sales designed to remove downed and damaged trees from a natural blowdown area located on the Black Hills National Forest.

**DATES:** Effective July 22, 1993.

**ADDRESSES:** Send any written comments to Roberta Moltzen, Forest Supervisor, Black Hills National Forest, RR 2, Box 200, Custer, SD 57730, (605) 673–2251.

**FOR FURTHER INFORMATION CONTACT:** John P. Halligan, Appeals and Litigation Coordinator, Rocky Mountain Region, USDA Forest Service, 740 Simms, P.O. Box 25127, Lakewood, CO 80225, (303) 275–5148.

**SUPPLEMENTARY INFORMATION:** A storm with high winds up to 110 miles per hour occurred on June 29, 1993, on portions of the Black Hills National Forest. This storm caused several hundred acres of trees to blow down or have the tops broken off. Large losses of timber volume will occur if no action is taken. Fuel loadings have also increased as a result of downed timber. This increases the risk of catastrophic fires and the difficulty of fire control.

With full consideration given to environmental values and Forest Plan standards and guidelines; specific management objectives for the area are to:

1. Harvest the downed timber within 90 days to reduce incidence of blue stain fungus, which lowers the grade quality of the wood fiber, and to reduce rot which degrades the wood fiber,
2. Reduce the potential for Ips beetles attacking the remaining timber,
3. Reduce the heavy fuel loading,
3. Maintain wood fiber production capability,
4. Increase accessibility for wildlife, livestock, and dispersed recreationalists in areas now impeded by downed timber, and
5. Enhance visual quality of the storm area by removing downed and broken topped trees not needed for wildlife habitat.

Environmental analysis of proposed actions is currently under way. Pursuant to 40 CFR 1501.7, scoping in progress. Scoping is being conducted by the Spearfish District Ranger to determine the issues to be addressed in the environmental analysis.

The Spearfish and Bearlodge Ranger Districts are expected to complete the environmental analysis and documentation in July 1993. Decisions are expected at that time. The environmental documents will be available for public review at the Spearfish Ranger District Office, 2014 North Main, Spearfish, SD 57783, and the Bearlodge Ranger District Office, West Highway 14, Sundance WY 82729.

There are a number of management areas in the project area which emphasize wood fiber production, perpetuation of aspen and birch and riparian area management. The Black Hills Land and Resource Management Plan defines the objectives for these management areas.

The interdisciplinary team is planning to salvage harvest the merchantable downed and damaged trees in a gross area of approximately 8,000 acres. Timber harvesting is expected on approximately 1,500 acres outside of active timber sale units. Little or no road construction or reconstruction is planned.

The interdisciplinary team has reviewed the area and concluded that a large portion of the Baldy, Lone Grave, Beartown Hill, Rattlesnake, Kirley, and Stanton Draw areas has been heavily damaged by the blowdown. The amount of losses are currently being estimated.

If salvage harvesting is not completed before October 1, 1993, there will be corresponding losses of timber volume and value and wood fiber production. To accomplish this, environmental

analysis and timber sale preparation must be completed during the summer of 1993 so that the resulting timber sales can be sold and harvested prior to October 1993. Therefore, I am exempting those and attendant actions, from appeal under provisions of 36 CFR part 217 if, through environmental analysis, it is found these actions are feasible.

The timber salvage sales, and attendant actions to which this exemption applies will be identified in any documentation as part of the Blowdown Project.

Dated: July 12, 1993.

**Elizabeth Estill,**

*Regional Forester.*

[FR Doc. 93–17402 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–11–M

## Exemption of 685 Salvage Timber Sale Project From Appeal

**AGENCY:** Forest Service, USDA.

**ACTION:** Notification that a timber salvage and rehabilitation project designed to recover blown-down timber is exempt from appeal as per provisions of 36 CFR part 217.

**SUMMARY:** During the summer of 1992, severe wind storms in the Sheep Mountain area of the North Fork Ranger District, Clearwater National Forest, produced areas of wind-thrown timber. The North Fork District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area.

The District Ranger has determined, through a Decision Notice and environmental analysis in the supporting project file, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration.

**EFFECTIVE DATE:** Effective on July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** Art Bourassa; District Ranger; North Fork Ranger District; Clearwater National Forest; P.O. Box 2139; Orofino, ID 83544; Telephone (208) 476–3775.

**SUPPLEMENTARY INFORMATION:** Severe wind storms during the summer of 1992 damaged approximately 253 acres of timber in the Sheep Mountain area. In 1992, the North Fork District Ranger proposed the salvage harvest of the wind-thrown timber. The wind-thrown timber is located in Management Area E–1, which is allocated to timber management (Clearwater Forest Plan, September 1987). This proposal was designed to meet the following needs, (a) reduce the potential for epidemic insect infestation, (b) reduce the threat of wildfire due to excessive fuel loading and reduce barriers to big-game travel, (c) rehabilitate timber stands through regeneration, and (d) salvage merchantable timber products and contribute to a continuous supply of timber by recovering sawtimber before it deteriorates in value.

An interdisciplinary team was convened and scoping began. Scoping and resource specialists findings revealed no extraordinary circumstances. From this information, two alternatives were developed and analyzed; no treatment (no action) and a salvage/rehabilitation alternative (proposed action). The selected alternative will salvage approximately 1.2 MMBF of timber from approximately 253 acres. All salvage areas are accessible from existing roads; no road construction or reconstruction will occur.

This sale and accompanying work is designed to accomplish the objectives as quickly as possible to minimize the risk of an insect epidemic, reduce the potential for wildfire and to recover merchantable sawtimber before it deteriorates and removal becomes infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this regulation, the following may be exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of Forest Resources from natural disasters or other natural phenomena, such as * * * severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the information presented in the 685 Salvage Timber Sale Project File, Environmental Assessment and Decision Notice, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: July 15, 1993.

**Jack A. Blackwell,**

*Acting Deputy Regional Forester, Northern Region.*

[FR Doc. 93–17377 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–11–M

## Exemption of Upper Sunday Salvage Timber Sales From Appeal

**AGENCY:** Forest Service, USDA.

**ACTION:** Notification that a timber salvage project to recover insect-killed, dead and down, and high-risk timber is exempt from appeal under the provisions of 36 CFR part 217.

**SUMMARY:** A mountain pine beetle epidemic in the Upper Sunday Creek drainage on the Fortine Ranger District, Kootenai National Forest, has killed approximately 70 to 100 percent of the lodgepole pine within the analysis area. In 1993, the Fortine District Ranger proposed a salvage timber sale to recover damaged sawtimber in the affected area. The District Ranger has determined, through an environmental analysis documented in the Decision Memo and project file for the Upper Sunday Salvage Timber Sales, that there is good cause to expedite these actions to rehabilitate National Forest System lands and recover damaged resources. Salvage of commercial sawtimber within the area affected must be accomplished quickly to avoid further deterioration of sawtimber, minimize fire danger by removing accumulations of merchantable dead lodgepole pine timber, and reduce the spruce bark beetle infestation that could damage adjacent standing green spruce.

**EFFECTIVE DATE:** Effective on July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jane P. Kollmeyer; Fortine District Ranger; Kootenai National Forest; P.O. Box 116; Fortine, MT 59918. Telephone: (406) 882–4451.

**SUPPLEMENTARY INFORMATION:** A mountain pine beetle epidemic occurred in the Upper Sunday Creek drainage on the Fortine Ranger District, Kootenai National Forest, during the last several years. The project area is located within Management Areas 12 and 15 as designated by the Kootenai Forest Plan (September 1987) as suitable timberland with timber management goals.

In January of 1993, the Fortine District Ranger proposed a timber harvest within the Upper Sunday Creek drainage. This proposal is designed to meet the following needs:

(1) Reduce the risk of catastrophic wildfire in stands killed by the beetle infestation by reducing fuel loading;

(2) Reduce spruce bark beetle levels by harvesting down spruce trees;

(3) Reduce open-road density levels by timing of timber sales projects;

(4) Clear road surfaces and ditches of dead lodgepole pine to enable road maintenance, reduce erosion potential

and allow access for fire suppression; and

(5) Contribute to a continuing supply of timber for industry by salvaging dead lodgepole pine before it deteriorates in value.

An interdisciplinary team was convened, and public scoping began in March 1993. Two alternatives were analyzed, no treatment (no action) and a salvage and rehabilitation proposal (proposed action). The selected alternative would salvage approximately 800 MBF from 400 acres. The Silvicultural prescription includes 400 acres intermediate sanitation salvage (a stocked stand would remain). The proposal would be implemented with four small salvage sales ranging in size from 40 to 400 MBF. All sales would use existing roads.

The salvage timber sale project is designed to accomplish the objectives as quickly as possible to reduce the potential for catastrophic wildfire, and to recover merchantable sawtimber before it deteriorates and removal becomes economically infeasible. To expedite implementation of this decision, procedures outlined in 36 CFR 217.4(a)(11) are being followed. Under this Regulation the following may be exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena when the Regional Forester determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based upon the environmental analysis documented in the Decision Memo for the Upper Sunday Salvage Timber Sales, I have determined that good cause exists to exempt this decision from administrative review. Therefore, upon publication of this notice, this project would not be subject to review under 36 CFR part 217.

Dated: July 15, 1993.

**Jack A. Blackwell,**

*Acting Deputy Regional Forester, Northern Region.*

[FR Doc. 93–17376 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–11–M

## Babbitt Helicopter, Jammer, and Boundary Insect Salvage Timber Sales, Tahoe National Forest; Exemption

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of Exemption from Appeal, Babbitt Helicopter, Jammer, and Boundary Insect Salvage Timber Sale Decisions, Sierraville Ranger District, Tahoe National Forest.

**SUMMARY:** The Forest Service is exempting from appeal the Babbitt Helicopter, Jammer, and Boundary Insect Salvage Timber Sale Decisions on the Sierraville Ranger District. These environmental documents are being prepared in response to the severe timber mortality caused by drought and related insect infestation on the east side of the Sierraville Ranger District. The Babbitt Helicopter analysis area is within the Smithneck Creek watershed, approximately seven miles southeast of Loyalton, California. The Jammer analysis area is within the Sardine watershed, approximately 12 miles southeast of Loyalton; and the Boundary analysis area is within the Independence and Sagehen Creek watersheds, approximately 10 miles southeast of Sierraville, California.

There are higher than normal levels of tree mortality occurring on the east side of the Tahoe National Forest as a result of six consecutive years of below normal precipitation. In the Babbitt Helicopter Insect Salvage analysis, the Forest is proposing helicopter harvest of up to 2.0 million board feet (MMBF) and tractor harvest of up to 1.0 MMBF, on 880 acres. Jammer Insect Salvage would entail tractor harvest of up to 1.0 MMBF from 475 acres, and Boundary Insect Salvage involves tractor harvest of up to 1.0 MMBF from 425 acres. No new road construction is planned, although up to 3.5 miles of road reconstruction would be required in Babbitt Helicopter Insect Salvage, and up to 1.5 miles of road reconstruction would be required in the Jammer Insect Salvage. All three of these proposals are fully consistent with direction in the Forest's approved Land and Resources Management Plan (LRMP). Important analysis features include the Babbitt Peak Research Natural Area and the Little Truckee River, which is eligible for Recreational status within the Wild and Scenic Rivers system.

The drought has had the greatest effect on over-stocked young sawtimber stands and older mature trees, reducing their vigor, weakening their natural defense mechanisms, and predisposing them to attack by the bark beetles. The greatest mortality, occurring among white fir, ranges from 25% to 40% of current stocking. This white fir is located within the Mixed Conifer and Eastside Pine types, at elevations of 6200–7200 feet. The rapid deterioration rate of white fir requires that it be removed as soon as possible if the timber is to be utilized, its value is to be recovered, and the fire hazard is to be reduced. Prompt removal is critical, particularly in the Babbitt Helicopter analysis area, where helicopter salvage is proposed. This is because helicopter harvest is expensive, and salvage is also costly as compared with green timber sales, due to the relatively low volumes per acre harvested. Delays could make the proposed helicopter sale uneconomical and reduce the value of the tractor sales.

Regional entomologists have visited these areas and have stated that because of the lingering effects of the drought, overstocking, and the large acreage involved, no economical or practical means exist to control the insect epidemic. Though salvage harvesting will not control the insect epidemic, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. Excessive numbers of dead trees produce heavy fuel concentrations, which make wildfire control extremely difficult.

It is extremely important to remove dead and dying timber prior to its deterioration and subsequent value loss. Timber sales themselves, or the deposits associated with them, can provide for fuel treatment that might not otherwise be funded. Prompt harvest of dead and dying timber provides not only the highest return to the government, but also the opportunity to collect funds to rehabilitate resource values affected by extensive tree mortality. Prompt harvest of dead and dying timber also stimulates the economies of rural communities impacted by reduced timber harvests.

The decisions of the Babbitt Helicopter, Jammer, and Boundary analysis areas are scheduled for late July or early August. Implementation of these projects will occur in late August or September of 1993, when the timber will be offered for sale. Harvest is expected to begin immediately after award of these sales. Delays due to appeals (which can range from 100 days to six months, with an additional 15–20 days for discretionary review of the Chief of the Forest Service) could cause these projects not to be implemented this field season; access could also be difficult for winter operations. Because of the small size of the timber involved and its rapid deterioration rate, delays of these salvage operations until 1994 could cause value losses of as much as $400,000.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal, decisions relating to the harvest and restoration of lands covered by the Babbitt Helicopter, Jammer, and Boundary Insect Salvage Timber Sale proposals on the Sierraville Range District, Tahoe National Forest. The three environmental documents being prepared will address the effects of the proposed actions on the environment,

will document public involvement, and will address the issues raised by the public.

**EFFECTIVE DATE:** This decision is effective July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** Questions about this decision should be addressed to Ed Whitmore, Forest Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2684; or to John H. Skinner, Forest Supervisor, Tahoe National Forest, 631 Coyote Street, P.O. Box 6003, Nevada City, CA 95959, (916) 265–4531

**SUPPLEMENTARY INFORMATION:** Environmental analyses for these proposals will be documented in the Babbitt Helicopter Insect Salvage Environmental Assessment, the Jammer Insect Salvage Decision Memo, and Boundary Insect Salvage Decision Memo. The Sierraville District Range has conducted scoping to determine the issues and concerns to be addressed. Letters were mailed to 40 agencies, permittees, environmental organizations, the timber industry, local landowners, and other parties known to be interested. No replies to these letters have been received. Project files, related maps, and copies of the public involvement letters are available for public review at the Sierraville Range Station, Highway 89, P.O. Box 95, Sierraville, CA 96126.

The catastrophic damage presently occurring within these three analysis areas involves approximately 1,780 acres, with an associated timber volume of 4–5 million board feet. The value to the Forest Service of the Salvage volume is estimated at $670,000–825,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Sierra County will share 25% of the selling value for any of the timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures necessary for watershed protection, erosion prevention, and fuels reduction will be implemented.

None of these proposals is expected to adversely affect any known pairs of California spotted owls, nor do these proposals entail harvest in any spotted Owl Habitat Areas. Most harvest areas lie within the Eastside Pine type, which was heavily logged at the turn of the century and now consists of young, overstocked timber stands. Less than 70 acres of over mature forest lie within these three analysis areas.

None of these proposals is expected to adversely affect snag-dependent wildlife species. All three proposals will require retention of snags in sufficient number and of sufficient size to meet wildlife needs. Monitoring indicates that recent salvage operations on this forest have retained 2.5 times the average snag densities called for in the forest's approved LRMP. Proposed salvage operations are sufficiently separated by distance, topography, and vegetative screening from the Little Truckee River, to ensure that its character will be preserved along with its eligibility for Recreational status within the Wild and Scenic Rivers system. No harvesting will occur in the Babbitt Peak Research Natural Area. None of the three analysis areas includes any portion of any Wilderness areas or roadless areas. Management requirements for Streamside Management Zones, meadows, soil productivity, and fuels will be consistent with direction in the forest's approved LRMP. Final field design of all three proposals will avoid any areas which may be sensitive in terms of their heritage resources, wildlife habitat, or botanical resources.

Dated: July 15, 1993.

**Dale N. Bosworth,**

*Deputy Regional Forester.*

[FR Doc. 93–17375 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–11–M

## Soil Conservation Service

### Lower Caney Bayou Watershed, Arkansas

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of intent to deauthorize federal funding.

**SUMMARY:** Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for Lower Caney Bayou Watershed project (Chicot County, Arkansas).

**FOR FURTHER INFORMATION CONTACT:** Ronnie D. Murphy, State Conservationist, Soil Conservation Service, Room 5404, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201. Telephone: (501) 324–5445.

**SUPPLEMENTARY INFORMATION:** A determination has been made by Ronnie D. Murphy that the proposed works of improvement for the Lower Caney Bayou Watershed Project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Ronnie D. Murphy, state conservationist, at the above address and telephone number. No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: July 13, 1993.

**Ronnie D. Murphy,**

*State Conservationist.*

[FR Doc. 93–17369 Filed 7–21–93; 8:45 am]

BILLING CODE 3410–16–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Ohio Advisory Committee to the Commission will be held on Thursday, August 19, 1993, from 9 a.m. until 4:30 p.m. and on Friday, August 20, 1993, from 9 a.m. until 1 p.m., at the Holiday Inn Lakeside City Center, 1111 Lakeside Avenue, Cleveland, Ohio. The purpose of the meeting is to gather information on hate crime activity in Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lynwood L. Battle, 513–983–2843, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 14, 1993.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93–17409 Filed 7–21–93; 8:45 am]

BILLING CODE 6335–01–P

**Agenda and Notice of Public Meeting of the Ohio Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the Commission on Civil Rights, that a factfinding meeting of the Ohio Advisory Committee to the Commission will be held on Thursday, August 12, 1993, from 9:00 a.m. until 4:30 p.m., and on Friday, August 13, 1993, from 9:00 a.m. until 1:00 p.m., at the Hyatt Regency, 151 West Fifth Street, Cincinnati, Ohio. The purpose of the meeting is to gather information on hate crime activity in Ohio.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lynwood L. Battle, 513–983–2843, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 14, 1993.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93–17410 Filed 7–21–93; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

**Agency Form Under Review by the Office of Management and Budget**

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1993 National Census Test III (Spanish Forms Availability Test).

*Form Number(s):* DE–1B, DE–1C, DE–1C(S), DE–1D, DE–17.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 4,815 hours.

*Number of Respondents:* 29,000.

*Avg Hours Per Response:* 10 minutes.

*Needs and Uses:* As part of a program of research and development to assist in formulating policy and design options for the Year 2000 Census of Population and Housing, the Census Bureau plans to conduct the fifth in a series of National Census Tests. This test, the 1993 National Census Test III (Spanish Forms Availability Test), will measure the effect of mailing Spanish forms to targeted areas with high concentrations of persons who speak Spanish and either do not speak English very well or do not speak English at all. In previous censuses, the Census Bureau has made Spanish questionnaires available to respondents who call and request one but has never included Spanish questionnaires with the initial mail–out. Our goal is to determine if initially mailing a Spanish language questionnaire to respondents in targeted areas of the country will improve response rates, and thus whether its use might be considered in the 2000 census.

*Affected Public:* Individuals or households.

*Frequency:* One time only.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 19, 1993

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 93–17460 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–07–F

**Foreign-Trade Zones Board**

**[Docket 31–93]**

**Foreign-Trade Zone 120—Cowlitz County, WA; Application for Subzone, Sharp Microelectronics Technology, Inc., Plant (Liquid Crystal Displays), Camas, WA**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cowlitz Economic Development Council, grantee of FTZ 120 (in cooperation with the Port of Portland and the Port of Kalama), requesting special-purpose subzone status for the liquid crystal display (passive matrix) manufacturing plant of Sharp Microelectronics Technology, Inc. (SMT), (subsidiary of Sharp Corporation of Japan) in Camas (Clark County), Washington, adjacent to the Portland, Oregon, Customs port of entry. The application has been submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 9, 1993.

SMT's facility (120 acres) is located at 5700 NW Pacific Rim Boulevard, Camas, Washington, 10 miles northeast of Portland, Oregon. The facility is used to manufacture and repair passive matrix liquid crystal displays (LCDs). The application requests authority for existing and planned LCD manufacturing capacity (total: 160,000 sq. ft.; 300 employees).

Foreign components currently account for 60 percent of the value of the displays. Specific items sourced from abroad include liquid crystal display glass, large-scale flexible integrated circuits, printed wiring boards, plastic or metal display bezels, backlight assemblies (containing a chassis, a cold cathode fluorescent tube, reflector material and associated parts), jumpers, solder, flux, protective sheets, tape, plastic trays, and inner packaging.

Zone procedures would exempt SMT from Customs duty payments on foreign components used in production for export. On domestic sales, the company would be able to choose the duty rate that applies to the finished product. LCDs such as those produced at the Camas plant have been classified as duty-free, but recent Customs rulings indicate that certain LCDs may be subject to duty rates ranging from 3.7 to 9 percent. The duty rates on foreign components range from duty-free to 9 percent. SMT currently is able to import certain unassembled LCD kits duty-free, under the Customs entireties provision. The kits are comprised of the main LCD components, all sourced abroad: LCD glass, jumpers, integrated circuits and printed wiring boards. The application indicates that zone procedures will improve the plant's international competitiveness and will encourage domestic sourcing by allowing SMT to continue to qualify for the same finished product duty rate as is currently available under the Customs entireties provision, but with the flexibility to source key components domestically.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 20, 1993. Rebuttal comments in response to material submitted during the foregoing

period may be submitted during the subsequent 15-day period (to October 5, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, One World Trade Center, Suite 242, 121 S.W. Salmon St., Portland, Oregon 97204.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 14, 1993.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 93–17458 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–DS–P

## International Trade Administration

**[C–469–004]**

## Stainless Steel Wire Rod From Spain; Termination of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of Termination of Countervailing Duty Administrative Review.

**SUMMARY:** The Department of Commerce (the Department) has terminated the countervailing duty administrative review of stainless steel wire rod from Spain, initiated on March 8, 1993.

**EFFECTIVE DATE:** July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** Anna T. Milone or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

**SUPPLEMENTARY INFORMATION:** On January 29, 1993, A1 Tech Specialty Steel Corporation, Armco Stainless & Alloy Products, Carpenter Technology Corporations, Republic Engineered Steels, and Talley Metals Technology, Inc., requested that the Department conduct an administrative review of the countervailing duty order on stainless steel wire rod from Spain (48 FR 52, January 3, 1983) for the period January 1, 1992 through December 31, 1992. These companies are domestic producers of the subject merchandise and are interested parties pursuant to §355.2(i) of the Departments regulations. Of the aforementioned companies, A1 Tech Specialty Corporation, Armco Stainless & Alloy Products, and Carpenter Technology Corporations, were petitioners in the original investigation. No other interested party requested the review.

On March 8, 1993, the Department initiated the administrative review for that period (58 FR 12931). On June 7, 1993, the aforementioned companies withdrew their request for an administrative review. Since the request for withdrawal was timely in accordance with 19 CFR 355.22(a)(3), the Department is terminating this review.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: July 14, 1993.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–17457 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–DS–P

## Minority Business Development Agency

## MEGA Center Applications: Los Angeles Metropolitan Statistical Area With Selected Services Throughout the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington; Correction

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Correction.

**SUMMARY:** In notice Docket Number 930664–3164 beginning on page 38115 in the issue of Thursday, July 15, 1993, make the following correction:

On page 38116 in the first column, first paragraph, the award period for the Los Angeles MEGA Center was given from November 1, 1993 to January 1, 1995. This should be changed to read from November 1, 1993 to January 31, 1995.

Dated: July 15, 1993.

**Loretta Young,**

*Acting Deputy Director, Minority Business Development Agency.*

[FR Doc. 93–17398 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–21–M

## National Oceanic and Atmospheric Administration

## Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Issuance of Scientific Research Permit No. 866 (P537).

On May 13, 1993, notice was published in the **Federal Register** (58 FR 28395) that an application had been filed by Mr. Fred A. Sharpe, Behavioral Ecology Research Group, Department of Biological Sciences, Simon Fraser University, Burnaby, B.C. Canada V5A 1S6 to conduct observational/photo-identification/side scan sonar studies on up to 1000 humpback whales (*Megaptera novaeangliae*) in Alaskan waters over a 4-year period, and to conduct opportunistic photo-identification of up to 100 killer whales (*Orcinus orca*) annually during the proposed humpback whale research.

Notice is hereby given that on July 15, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), NMFS issued the requested Permit for the above activities subject to Special Conditions set forth therein.

Issuance of this Permit, as required by the ESA, was based on a finding that such Permit:

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of the endangered species which is the subject of this Permit; and

(3) Is consistent with the purposes and policies set forth in section 2 of the ESA.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East West Highway, room 7330, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221).

Dated: July 15, 1993.

**Herbert Kaufman,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–17384 Filed 7–21–93; 8:45 am]

BILLING CODE 3510–22–M

## Marine Mammals

**AGENCY:** National Marine Fisheries Service, (NMFS), NOAA, Commerce.

**ACTION:** Issuance of permit modification (P517).

**SUMMARY:** Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing

the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 789 issued to Dr. Kathryn A. Ono, Assistant Research Marine Biologist, Biology Board of Studies and Institute of Marine Sciences, University of California, Santa Cruz, CA 95064, to conduct scientific research on Steller sea lions (*Eumetopias jubatus*) and California sea lions (*Zalophus californianus*) has been modified to allow tagging and handling of an additional 40 California sea lions of which 2 may be accidentally killed.

**ADDRESSES:** The Permit is available for review, by appointment, in the Permit Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Long Beach, CA 90802–4213 (310/980–4015).

Dated: July 15, 1993.

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–17385 Filed 7–21–93; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35).

*Title and OMB Control Number:* DoD FAR Supplement, part 215, Contracting by Negotiation, and the Clauses at 252.215; OMB Control No. 0704–0232.

*Type of Request:* Revision.

*Number of Respondents:* 199,400.

*Responses per Respondent:* Approximately 1.

*Annual Responses:* 199,515.

*Average Burden per Response:* Approximately 5 hours.

*Annual Burden Hours:* 910,500.

*Needs and Uses:* The information collected by part 215 of the DoD FAR Supplement provides data necessary for the negotiation of contracts and in the performance of estimating system surveys.

*Affected Public:* Businesses of other for-profit, Non-profit institutions, and Small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 19, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17408 Filed 7–21–93; 8:45 am]

BILLING CODE 3810-04-M

## Department of the Army

### Performance Review Boards Membership

**AGENCY:** Office of the Secretary of the Army (Manpower and Reserve Affairs), DoD.

**ACTION:** Notice.

**SUMMARY:** Notice if given of the names of members of the Performance Review Boards for the Department of the Army.

**EFFECTIVE DATE:** August 1, 1993.

**ADDRESSES:** U.S. Army Senior Executive Service, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), ATTN: SAME–CPP(SES), 111 Army Pentagon, Washington, DC 20310–0111.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Raymos, (703) 695–2975.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of title 5, U.S. Code, requires each agency to establish, one or more Senior Executive Service Performance Review Boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

The members of the Performance Review Board, Office, Secretary of the Army are:

1. Thomas Druzgal, Deputy Auditor General, Army Audit Agency.
2. Evert W. Oarding, Director, Logistical & Financial Audits Army Audit Agency.
3. Steven Dola, Deputy Assistant Secretary of the Army (Management and Budget), Office of the Assistant Secretary of the Army (Civil Works).
4. Robert N. Stearns, Deputy Assistant Secretary of the Army (Project Management), Office of the Assistant Secretary of the Army (Civil Works).
5. Milton H. Hamilton, Administrative Assistant to the Secretary of the Army, Office, Secretary of the Army.
6. Peter Stein, Deputy Administrative Assistant to the Secretary of the Army, Office, Secretary of the Army.
7. James E. DeWire, Deputy for Programs and Installation Assistance, Office of the Assistant Secretary of the Army Installations, Logistics and Environment).
8. Eric A. Orsini, Deputy Assistant Secretary of the Army (Logistics), Office of the Assistant Secretary of the Army (Installations, Logistics and Environment).
9. Anthony H. Gamboa, Deputy General Counsel (Acquisition), Office of the General Counsel.
10. Darrell L. Peck, Deputy General Counsel (Military & Civil Affairs), Office of the General Counsel.
11. Brigadier General David E. White, Director, Plans and Programs Directorate, Director of Information Systems for Command, Control, Communications and Computers.
12. Earl J. Holliman, Army Spectrum Manager, Director of Information Systems for Command, Control, Communications and Computers.
13. William K. Takakoshi, Special Assistant to the Under Secretary, Office of the Under Secretary of the Army.
14. Charles H. Church, Director for Advanced Concepts and Technology Assessment, Office of the Assistant Secretary of the Army (Research, Development and Acquisition).
15. Joseph R. Varady, Director for Procurement Policy, Office of the Assistant Secretary of the Army (Research, Development and Acquisition).
16. Erin J. Hausman, Assistant Deputy Assistant Secretary of the Army for Army Budget, Office of the Assistant Secretary of the Army (Financial Management).
17. Robert W. Young, Deputy for Cost Analysis, Office of the Assistant Secretary of the Army (Financial Management).
18. John W. Matthews, Deputy Assistant Secretary of the Army (DA Review Boards & EEO Compliance & Complaints Review), Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs).

19. Michael W. Owen, Acting Assistant Secretary of the Army (Installations, Logistics & Environment), Office of the Assistant Secretary of the Army (Installations, Logistics & Environment).

20. William D. Clark, Acting Assistant Secretary of the Army (Manpower & Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower & Reserve Affairs).

21. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary of the Army.

The members of the Performance Review Board for the Chief of Staff, Army are:

1. Zane M. Phillips, Principal Assistant Responsible for Contracting, U.S. Army Space & Strategic Defense Command.

2. Edward L. Wilkinson, Director, Kinetic Energy Weapons Directorate, U.S. Army Space & Strategic Defense Command.

3. William P. Neal, Executive Director, Strategic Logistics Agency, Office, Deputy Chief of Staff for Logistics.

4. A. David Mills, Assistant Director for Maintenance Management, Office, Deputy Chief of Staff for Logistics.

5. Brigadier General James M. Wright, Director, Plans and Operations Office, Deputy Chief of Staff for Logistics.

6. Charles W. Weatherholt, Deputy Director of Civilian Personnel Office, Deputy Chief of Staff for Personnel.

7. Joseph E. Galbraith, Director, Civilian Personnel Management U.S. Total Army Personnel Command, Office, Deputy Chief of Staff for Personnel.

8. Major General Wallace Arnold, Assistant Deputy Chief of Staff for Personnel, Office, Deputy Chief of Staff for Personnel. (9)

9. Brigadier General George A. Landis, Commander, Personnel Information Systems, U.S. Total Army Personnel Command, Office, Deputy Chief of Staff for Personnel.

10. Major General Steven L. Arnold, Assistant Deputy Chief of Staff for Operations and Plans, Office, Deputy Chief of Staff for Operations and Plans.

11. John A. Riente, Technical Advisor to the Deputy Chief of Staff for Operations and Plans, Office, Deputy Chief of Staff for Operations and Plans.

12. Major General John C. Ellerson, Director, Strategy, Plans and Policy, Office, Deputy Chief of Staff for Operations and Plans.

13. Brigadier General Trent Thomas, Assistant Deputy Chief of Staff for Intelligence, Office, Deputy Chief of Staff for Intelligence.

14. James D. Davis, Assistant Deputy Chief of Staff for Intelligence, Office, Deputy Chief of Staff for Intelligence.

15. Janet C. Menig, Deputy Director of Management (Installation Management and Resourcing), Office of the Chief of Staff.

16. Margaret E. Myers, Deputy to the Commander/Technical Director, Operational Evaluation Center, U.S. Army Operational Test & Evaluation Command.

The members of the Performance Review Board for Army Acquisition Executive are:

1. Dale Adams, Program Executive Officer, Armaments.

2. George G. Williams, Program Executive Officer, Tactical Missiles.

3. Major General DeWitt T. Irby, Program Executive Officer Aviation.

4. Major General Peter M. McVey, Program Executive Officer Armored Systems Modernization.

5. Major General William S. Chen, Program Executive Officer Missile Defense.

6. Maurice R. Donnelly, Assistant Deputy for Plans and Programs, Assistant Secretary of the Army (Research, Development and Acquisition).

7. Mr. Joseph R. Varady, Director for Procurement Policy Assistant Secretary of the Army (Research, Development and Acquisition).

8. Brigadier General (P) William H. Campbell, Program Executive Officer, Command & Control Systems.

9. Charles S. Austin, Program Executive Officer, Standard Army Management Information System.

10. Neal W. Atkinson, Deputy Program Executive Officer Communication Systems.

The members of the Performance Review Board for the Consolidated Commands are:

1. Mervin A. Frantz, Jr., Assistant Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army Training and Doctrine Command.

2. Toni B. Wainwright, Assistant Deputy Chief of Staff for Base Operations Support, Headquarters, U.S. Army Training and Doctrine Command.

3. Major General John Herrling, Chief of Staff, Headquarters, U.S. Army Training and Doctrine Command.

4. Major General Walter Bryde, Deputy Chief of Staff for Base Operations Support, Headquarters, U.S. Army Training and Doctrine Command.

5. Michael L. Gentry, Technical Director, U.S. Army Information Systems Engineering Command, U.S. Army Information Systems Command.

6. Leonard J. Mabius, Technical Director, Headquarters, U.S. Army Information Systems Command.

7. Brigadier General John M. Watkins, Jr., Deputy Commander for U.S. Army Information Systems Command, U.S. Army Information Systems Command.

8. Brigadier General George A. Landis, Commanding General, Personnel Information Systems Command, U.S. Army Information Systems Command.

9. Brigadier General John G. Zierdt, Jr., Director of Logistics, J4, Headquarters, Forces Command.

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10. William S. Fraim, Civilian Personnel Director, Headquarters, Forces Command.

11. William M. Wilkinson, Deputy Comptroller, Headquarters, Forces Command.

12. Thomas D. Collinsworth, Director, Transportation Engineering Agency, Military Traffic Management Command.

13. Mary Lou McHugh, Deputy Chief of Staff for Operations (Senior Transportation Advisor), Headquarters, Military Traffic Management Command.

14. William R. Lucas, Deputy to the Commander, Headquarters, Military Traffic Management Command.

15. Larry C. Hanson, Assistant Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army, Europe, and Seventh Army.

16. Archie D. Grimmett, Assistant Deputy Chief of Staff for Personnel (Civilian Personnel), Headquarters, U.S. Army, Europe, and Seventh Army.

17. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary of the Army.

18. Edgar B. Vandiver III, Director, Concepts Analysis Agency, Office of the Chief of Staff, Army.

19. Major General Samuel A. Leffler, Commander, U.S. Army Information Systems Command.

The members of the Performance Review Board for the Surgeon General are:

1. Major General Ronald H. Blanck, Commander, Walter Reed Army Medical Center.

2. Brigadier General Nancy R. Adams, Director of Personnel, Chief, Army Nurse Corps, and Assistant Surgeon General, Office of the Surgeon General.

3. Bhupendra P. Doctor, Ph.D., Director, Division of Biochemistry, Walter Reed Institute of Research.

4. Robert R. Engle, Ph.D., Deputy Director, Division of Experimental Therapeutics, Walter Reed Army Institute of Research.

5. Melvin H. Heiffer, Ph.D., Chief, Department of Pharmacology, Walter Reed Army Institute of Research.

6. Nelson S. Irey, M.D., Chairman, Department of Environmental and Drug Induced Pathology, Armed Forces Institute of Pathology.

7. Fathollah K. Mostofi, M.D., Chairman, Department of Genito-urinary Pathology, Armed Forces Institute of Pathology.
8. Florabel G. Mullick, M.D., Associate Director, Center for Advanced Pathology, Armed Forces Institute of Pathology.
9. Timothy J. O'Leary, M.D., Chairman, Department of Cellular Pathology, Armed Forces Institute of Pathology.
10. Donald E. Sweet, M.D., Chairman, Department of Orthopedic Pathology, Armed Forces Institute of Pathology.

The members of the Performance Review Board for the Corps of Engineers are:

1. Major General John F. Sobke, Deputy Commander, Headquarters, U.S. Army Corps of Engineers, Headquarters, U.S. Army Corps of Engineers.
2. Mr. Charles N. Dunnam, Deputy Chief, Construction Division (Engineering & Construction), Headquarters, U.S. Army Corps of Engineers.
3. Brigadier General Albert J. Genetti, Jr., Commander, Ohio River Division, U.S. Army Corps of Engineers.
4. Brigadier General Milton Hunter, Commander, South Pacific Division, U.S. Army Corps of Engineers.
5. Mr. John P. Elmore, Chief, Construction Operations & Readiness Division, Headquarters, U.S. Army Corps of Engineers.
6. Mr. James R. Hanchey, Chief Lower Mississippi Valley Division, U.S. Army Corps of Engineers.
7. Mr. Arthur D. Denys, Chief, Engineering, Southwestern Division, U.S. Army Corps of Engineers.
8. Mr. Jimmy Bates, Chief, Planning Division, Headquarters, U.S. Army Corps of Engineers.
9. Mr. Walter E. Boge, Director, Topographic Engineering Center, U.S. Army Corps of Engineers.
10. Mr. C. Cary Jones, Chief, Environmental Restoration Division, Headquarters, U.S. Army Corps of Engineers.
11. Mr. John Wallace, Director, Resource Management, Headquarters, U.S. Army Corps of Engineers.
12. Mr. Kisuk Cheung, Chief, Engineering Pacific Ocean Division, U.S. Army Corps of Engineers.
13. Mr. Louis Pinata, Director, Construction Operations, North Atlantic Division, U.S. Army Corps of Engineers.
14. Dr. John Harrison, Director, Environmental Laborstory, U.S. Army Engineer Waterways Experiment Station.
15. Mr. Richard Armstrong, Chief, Engineering, Headquarters, U.S. Army Corps of Engineers.

The members of the Performance Review Board for Army Materiel Command are:

1. Major General Dewitt T. Irby Jr., Program Executive Officer-Aviation.
2. Major General Thomas L. Prather, Deputy Chief of Staff for Research and Development, U.S. Army Materiel Command.
3. Brigadier General J.W. Boddie, Jr., Deputy CG for Procurement and Readiness, U.S. Army Armament, Munitions and Chemical Command, AMC.
4. Brigadier General Harvey E. Brown, Deputy Commanding General for Armament, U.S. Army Armament, Munitions and Chemical Command, AMC.
5. Brigadier General William R. Holmes, Deputy Chief of Staff for Ammunition, U.S. Army Materiel Command.
6. Brigadier General Richard W. Wharton, Jr., Commander, White Sands Missile Range, U.S. Army Test and Evaluation Command, AMC.
7. Mr. Grady Bannister, Technical Director, U.S. Army Electronic Proving Ground, U.S. Army Test and Evaluation Command, AMC.
8. Dr. Rudolph G. Buser, Director Night Vision and Electronic Sensors, U.S. Army Communications-Electronics Command, AMC.
9. Dr. Richard Chait, Principal Deputy for Technology, U.S. Army Materiel Command.
10. Mr. Jerry L. Chapin, Deputy PEO. Armored Systems Modernization.
11. Dr. Charles H. Church, Director, Advanced Concepts and Technology Assessments, HQDA.
12. Mr. Walter W. Clifford, Chief, Air Warfare Division, U.S. Army Materiel Systems Analysis Activity, AMC.
13. Dr. Larry O. Daniel, Director, System Engineering and Production, RD&E Center, U.S. Army Missile Command, AMC.
14. Dr. Wolf Elber, Directorate Executive, Vehicle Structures, U.S. Army Research Laboratory, AMC.
15. Ms. Louann Elledge, Dir, Systems Integration & Mgt Activity, AMC.
16. Mr. Victor J. Ferlise, Deputy to the Commander, U.S. Army Communications-Electronics Command, AMC.
17. Mr. Frank E. Fiorilli, Comptroller, U.S. Army Communications-Electronics Command, AMC.
18. Mr. James L. Flynn, III, Director, Integrated Materiel Management Center, U.S. Army Missile Command, AMC.
19. Dr. John T. Frasier, Dir, BRL, U.S. Army Laboratory Command, AMC.
20. Mr. David V. Gaggin, Director, Command/Control & Systems Integration, U.S. Army Communications-Electronics Command, AMC.
21. Mr. Feliciano Giordano, Assoc Tech Director, RD&E Center, U.S. Army Communications-Electronics Command, AMC.
22. Mr. Darold Griffin, Principal Deputy for Acquisition, U.S. Army Materiel Command.
23. Dr. Joseph W. Holmes, Director, Missile and Space Intelligence Center, Defense Intelligence Agency.
24. Mr. Thomas L. House, Technical Director, U.S. Army Aviation Systems Command, AMC.
25. Mr. George L. Jones, Deputy Chief of Staff for Personnel, U.S. Army Materiel Command.
26. Mr. Henry B. Jones, Director, Acquisition Center, U.S. Army Tank-Automotive Command, AMC.
27. Dr. Robin L. Keesee, Director, Human Research Engineering, U.S. Army Research Laboratory, AMC.
28. Mr. James C. Kelton, Technical Director, Combat Systems Test Activity, U.S. Army Test and Evaluation Command, AMC.
29. Mr. Arthur Keltz, Principal Deputy for Logistics, U.S. Army Materiel Command.
30. Dr. Clarence W. Kitchens, Jr., Chief, Terminal Ballistics Division, BRL, U.S. Army Laboratory Command, AMC.
31. Dr. Robert W. Lewis, Technical Director, Natick RD&E Center, U.S. Army Troop-Support Command, AMC.
32. Mr. Victor Lindner, Associate Technical Director, Systems Development and Engineering, ARDEC, U.S. Army Armament, Munitions, and Chemical Command, AMC.
33. Mr. Colin F. MacDonnell, Dir, C3I Logistics & Readiness Center, U.S. Army Communications-Electronics Command, AMC.
34. Mr. Robert B. Macfarlane, Deputy Command Counsel, U.S. Army Materiel Command.
35. Mr. William H. Mermagen, Sr., Directorate Executive, Advanced Computational and Information Sciences Directorate, ARL, AMC.
36. Dr. James W. Mink, Director, Electronics Division, U.S. Army Research Office, AMC.
37. Dr. Kenneth J. Oscar, Dir, RD&E, U.S. Army Tank-Automotive Command, AMC.
38. Mr. Michael A. Parker, Technical Director, Chemical, CRDEC, U.S. Army Armament Munitions and Chemical Command, AMC.
39. Dr. Bennie H. Pinckley, Dep Program Executive Officer, Air Defense.
40. Mr. Raymond G. Pollard, III, Technical Director, U.S. Army Test and Evaluation Command, AMC.
41. Ms. Re... ARDEC, U.S... Munitions, ... AMC.
42. Mr. Jos... Director, CE... U.S. Army C... Command, ...
43. Mr. Jer... U.S. Army R...
44. Mr. Al... Acquisition ... Command, ...
45. Mr. De... Director, U.S... Command, ...
46. Mr. Mi... Chief of Staf... Evaluation, ... Command.
47. Dr. Rol... Engineering ... Division, U.S...
48. Mr. Ro... for Sys & Lo... Automative ...
49. Mr. Joe... Research Dir... Army Armam... Chemical Co...
50. Mr. Ro... Assistant De... Resource Ma... Material Co...
51. Mr. Wa... RD&E Ctr, U... Command, ...

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DEPARTME...

Proposed In... Requests

AGENCY: Dep...

ACTION: Noti... collection re...

SUMMARY: Th... Resources M... comments o... collection re... Paperwork R...

DATES: Intere... submit comm... 23, 1993.

ADDRESSES: ... be addressed ... Information ... Attention: D... Department ... Management ... Place, NW., ... Office Buildi...

Requests for ... information ...

41. Ms. Renata Price, Assoc Tech Dir, ARDEC, U.S. Army Armament, Munitions, and Chemical Command, AMC.

42. Mr. Joseph J. Pucilowski, Jr., Director, CECOM Center for C3 Systems, U.S. Army Communications-Electronics Command, AMC.

43. Mr. Jerry L. Reed, Dir, Operations, U.S. Army Research Laboratory, AMC.

44. Mr. Alfred D. Reeder, Director, Acquisition Center, U.S. Army Missile Command, AMC.

45. Mr. Daniel J. Rubery, Logistics Director, U.S. Army Aviation Systems Command, AMC.

46. Mr. Michael Sandusky, Deputy Chief of Staff for Program Analysis and Evaluation, U.S. Army Materiel Command.

47. Dr. Robert E. Singleton, Director, Engineering & Environmental Sciences Division, U.S. Army Research Office.

48. Mr. Robert L. Swint, Acting Dep for Sys & Log, U.S. Army Tank-Automotive Command, AMC.

49. Mr. Joseph J. Vervier, Director, Research Directorate, CRDEC, U.S. Army Armament, Munitions and Chemical Command, AMC.

50. Mr. Robert Weidenmuller, Assistant Deputy Chief of Staff for Resource Management, U.S. Army Materiel Command, AMC.

51. Mr. Wayne Wheelock, Tech Dir, RD&E Ctr, U.S. Army Tank-Automotive Command, AMC.

[FR Doc. 93-17390 Filed 7-21-93; 8:45 am]
BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before August 23, 1993.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:** Cary Green (202) 401-3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;
(2) Title;
(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 16, 1993.

**Cary Green,**

*Director, Information Resources Management Service.*

**Office of Postsecondary Education**

*Type of Review:* Reinstatement.
*Title:* Performance Report for the Ronald E. McNair Postbaccalaureate Achievement Program.
*Frequency:* Annually.
*Affected Public:* Non-profit institutions.
*Reporting Burden:* Responses: 68; Burden Hours: 340.
*Recordkeeping Burden:* Recordkeepers: 0; Burden Hours: 0.
*Abstract:* Grantees that have participated in the Ronald E. McNair Postbaccalaureate Achievement Program are to submit these reports to the Department. The Department uses the information to evaluate project accomplishments, compliance, prior experiences and collect impact data for budget submissions and congressional hearings.

**Office of Postsecondary Education**

*Type of Review:* Reinstatement.
*Title:* Quarterly Cumulative Caseload Report.
*Frequency:* Quarterly.
*Affected Public:* State or local governments.
*Reporting Burden:* Responses: 324; Burden Hours: 324.
*Recordkeeping Burden:* Recordkeepers: 81; Burden Hours: 81.
*Abstract:* This report, submitted by State Vocational Rehabilitation agencies, collects data on caseload flows which includes persons served, rehabilitated and accepted for VR services. The Department will use the information for program management and budgeting purposes.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement.
*Title:* Case Service Report.
*Frequency:* Annually.
*Affected Public:* State or local governments.
*Reporting Burden:* Responses: 81; Burden Hours: 3,464.
*Recordkeeping Burden:* Recordkeepers: 0; Burden Hours: 0.
*Abstract:* State Vocational Rehabilitative (VR) agencies report client and program data. The Department uses the information to assess the accomplishments of program goals and objectives, and to prepare the annual report to Congress.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Extension.
*Title:* Report of Program Setting Where Early Intervention Services are Provided to Infants and Toddlers with Disabilities and Their Families.
*Frequency:* Annually.
*Affected Public:* State or local governments.
*Reporting Burden:* Responses: 58; Burden Hours: 928.
*Recordkeeping Burden:* Recordkeepers: 0; Burden Hours: 0.
*Abstract:* This package provides instructions and forms for States to report the program setting where infants and toddlers with disabilities receive services. These data serve as the basis for monitoring, implementing Federal programs and reporting to Congress

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement.
*Title:* Resolution of Applicant/Client Appeals.
*Frequency:* Annually.
*Affected Public:* State or local governments.
*Reporting Burden:* Responses: 81; Burden Hours: 81.
*Recordkeeping Burden:* Recordkeepers: 81; Burden Hours: 81.
*Abstract:* This form will be used to meet specific data requirements, collecting information on the number and types of Vocational Rehabilitation agency applicant/client appeals handled, the types of complaints/issues, and the resolution of those appeals. The Department will use the information to monitor program management and compliance.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement.
*Title:* Annual Client Assistant Program (CAP) Report.
*Frequency:* Annually.
*Affected Public:* State or local governments; non-profit institutions.
*Reporting Burden:* Responses: 57; Burden Hours: 228.
*Recordkeeping Burden:* Recordkeepers: 0; Burden Hours: 0.
*Abstract:* Client Assistant Program agencies use this form to report to the Department on their progress in administering the program. The Department uses the information to evaluate the program and make recommendations to Congress.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Reinstatement.
*Title:* Annual Report on Post-Employment Services and Annual Reviews.
*Frequency:* Annually.
*Affected Public:* State or local governments.
*Reporting Burden:* Responses: 81; Burden Hours: 81.
*Recordkeeping Burden:* Recordkeepers: 0; Burden Hours: 0.
*Abstract:* State Vocational Rehabilitative (VR) agencies submit this report to the Department on the post-employment status of handicapped individuals. The Department uses the information collected to monitor post-closure activities of the VR clientele.

[FR Doc. 93–17357 Filed 7–21–93; 8:45 am]
BILLING CODE 4000–01–M

[CFDA No.: 84.129U]

## Parent Information and Training Programs; Notice Extending the Closing Date for Transmittal of Applications for New Awards for Fiscal Year (FY) 1993

**DEADLINE FOR TRANSMITTAL OF APPLICATIONS:** The deadline date for transmittal of applications is extended from July 16, 1993, to August 5, 1993.

On May 12, 1993, the Department of Education published in the **Federal Register** (58 FR 28001) a notice inviting applications under the Parent Information and Training Programs.

While the notice specifically referenced section 803(c) of the Rehabilitation Act of 1973, as amended, as the statutory authority governing this program, not all of the statutory requirements were specifically highlighted. By this notice, the Department wants to ensure that all applicants are aware of the requirement in section 803(c)(4)(C). This section requires that each private nonprofit organization serve individuals with a full range of disabilities, and the parents, family members, guardians, advocates, or authorized representatives of the individuals.

The purpose of this notice is to extend the deadline date for transmittal of applications. This will enable applicants to submit or amend their proposals.

**DEADLINE FOR INTERGOVERNMENTAL REVIEW:** October 4, 1993.

**FOR APPLICATIONS:** To request an application, telephone (202) 205–9343. Deaf and hearing impaired individuals may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Beverly Brightly, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3322, Switzer Building, Washington, D.C. 20202–2649. Telephone: (202) 205–9561.

**PROGRAM AUTHORITY:** 29 U.S.C. 774.

Dated: July 16, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education, and Rehabilitative Services.*

[FR Doc. 93–17359 Filed 7–21–93; 8:45 am]
BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

## Inertial Confinement Fusion Advisory Committee/Defense Programs; Partially Closed Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following meeting:

*Name:* Inertial Confinement Fusion Advisory Committee/Defense Programs
*Date and Time: Agenda is subject to revision*
Wednesday, August 25, 1993, 9 a.m.–10:05 a.m.—Open
Wednesday, August 25, 1993, 10 a.m.–12:30 p.m.—Closed
Wednesday, August 25, 1993, 1:30 p.m.–6 p.m.—Open
Thursday, August 26, 1993, 9 a.m.–12:25 p.m.—Open
Thursday, August 26, 1993, 1:25 p.m.–2:55 p.m.—Closed
Thursday, August 26, 1993, 3:10 p.m.–6 p.m.—Open
Friday, August 27, 1993, 8:55 a.m.–11 a.m.—Closed
Friday, August 27, 1993, 11:15 a.m.–12:30 p.m.—Open
*Place:* Naval Research Laboratory, Washington, DC, Building 222, Auditorium (See below for restricted access procedures)
*Contact:* Marshall M. Sluyter, Designated Federal Officer, Office of Inertial Confinement Fusion (DP–28), Office of Defense Programs, Washington, DC 20585, Telephone: (301) 903–3345

Persons wishing to attend the meeting must contract Robert Robenseifner at (301) 903–8635, to arrange for visitor passes to the meeting room at the Naval Research Laboratory. Visits are restricted to U.S. citizens.

*Purpose of the Committee:* To provide advice and guidance to the Assistant Secretary for Defense Programs on both technical and management aspects of the Inertial Confinement Fusion program.
*Purpose of the Meeting:* To identify the appropriate program strategy for the Krypton fluoride laser fusion driver activities, as well as the relative importance of the Krypton fluoride laser fusion activity in relation to other activities of the Inertial Confinement Fusion Program.
*Tentative Agenda: Subject to Revision*
August 25, 1993
9 a.m. Introductory Remarks and Summary of Events Since Previous Advisory Committee Meeting
9:30 a.m. The Sandia Light Ion Technical Contract
10:20 a.m. Closed Meeting
1:30 p.m. The Naval Research Laboratory Krypton Fluoride Program
August 26, 1993
9 a.m. The Naval Research Laboratory Krypton Fluoride Program
10:25 a.m. The Los Alamos National Lab. Krypton Fluoride Program
1:25 p.m. Closed Meeting
3:10 p.m. Comments on the Krypton Fluoride Laser Fusion Program

4:40 p.m. Opportunity for Public Comment and Committee Discussion Period (oral presentations limited to 10 minutes)
August 27, 1993
8:55 a.m. Closed Meeting
11:15 a.m. Committee Discussion and Summary Wrap-Up

*Open to the Public:* On August 25, 1993, from 9 a.m. to 10:05 a.m., and from 1:30 p.m. to 6 p.m.; on August 26, 1993, from 9 a.m. to 12:25 p.m., and from 3:10 p.m. to 6 p.m.; and on August 27, 1993, from 11:15 a.m. until adjournment the meeting is open to the public. The Chairman of the Committee is empowered to guide the meeting in a manner that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement pertaining to agenda items should contact Robert Robenseifner at the phone number given above. Requests must be received before 3 p.m. (eastern daylight time) Friday, August 20, 1993. Reasonable provisions will be made to include the presentation during the public comment period. Oral presenters are asked to provide 25 copies of their statements at the time of their presentations.

Written statements pertaining to agenda items may also be submitted prior to the meeting. Written statements must be received by the Designated Federal Officer at the address shown above before 3 p.m. (eastern daylight time) Friday, August 20, 1993, to assure they are considered by the Committee during the meeting.

*Closed Meeting:* Pursuant to section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (title 5, United States Code, App. 2), section 7234(b), title 42, United States Code, and section 552b(c)(1), title 5, United States Code, the portions of the meeting from 10:20 a.m. to 12:30 p.m. on August 25, 1993, from 1:25 p.m. to 2:55 p.m. on August 26, 1993, and from 8:55 a.m. to 11 a.m. on August 27, 1993, will be closed to the public in the interest of national security.

*Minutes:* Minutes of the open portions of the meeting will be available for public view and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, room 1E–190, U.S. Department of Energy, 100 Independence Avenue, SW., Washington, DC, 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on July 16, 1993.
Marcia L. Morris,
*Deputy Advisory Committee Management Officer.*
[FR Doc. 93–17453 Filed 7–21–93; 8:45 am]
BILLING CODE 6450–01–M

## Office of Fossil Energy

**[Docket No. FE C&E 93–22—Certification Notice—122]**

## Filing Certification of Compliance; Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

**AGENCY:** Office of Fossil Energy, Department of Energy.
**ACTION:** Notice of filing.

**SUMMARY:** Tenaska Washington Partners II, L.P. (Tenaska) has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586–9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

*Owner:* Tenaska
*Operator:* Tenaska
*Location:* Tacoma, Washington
*Plant Configuration:* Combined cycle cogeneration
*Capacity:* 248 megawatts
*Fuel:* Natural gas
*Purchasing Utilities:* Bonneville Power Administration
*Expected In-Service Date:* 3rd Quarter, 1996

Issued in Washington, DC, July 19, 1993.
Anthony J. Como,
*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*
[FR Doc. 93–17451 Filed 7–21–93; 8:45 am]
BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–4680–8]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).
**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 23, 1993.

**FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT:** Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Water

*Title:* 404 State Permit Applications and 404 State Program Annual Report (EPA ICR No. 220.05; OMB Control No. 2040–0015).

*Abstract:* This ICR is an extension of an existing collection for the information collection activities associated with State 404 Permit Applications and State Program Annual Reports. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) permitting authority may, in certain instances, be transferred to a State upon approval by the EPA. In accordance with 40 CFR part 233, States requesting a transfer of permitting authority must provide EPA with information before, and subsequent to, EPA approval. The EPA will use this information to satisfy specific requirements set forth by section 404 of the Clean Water Act.

This ICR, once approved, will continue to require State governments requesting a transfer of permitting

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authority to complete an application to the EPA consisting of legal documents, correspondence from State Officials, Memoranda of Agreement with the Secretary of the Army and the EPA Regional Administrator, a complete program description, and appropriate State Statutes and regulations. Following the transfer of authority, States must provide EPA with: (1) Pre-notification by permit holders or reporting pursuant to a general permit; (2) an annual report providing statistics and describing the status of the State permit program; and (3) sufficient information for Federal review of individual applications where Federal review is not waived.

Presently one State has received permitting authority, with an estimated four additional States requesting transfer of authority over the next three years.

*Burden Statement:* Public reporting burden for this collection of information is estimated to average 16.6 hours per response including time for reviewing regulations, gathering and compiling the data needed, and completing and reviewing the information.

*Respondents:* State governments and permit holders, as appropriate.

*Estimated Number of Respondents:* 1,635.

*Estimated Number of Responses Per Respondent:* 1.

*Frequency of Collection:* On occasion of application by State for transfer of permit authority or notification of intent to discharge by a general permit holder; annual submission of State program report.

*Estimated Total Annual Burden on Respondents:* 27,190 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 14, 1993.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 93–17337 Filed 7–21–93; 8:45 am]

BILLING CODE 6560-60-F

[FRL–4681–9]

## Policy Regarding the Sale of 1995 and Subsequent Model Year California Vehicles; Public Workshop

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public workshop and request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) is currently developing policy regarding the sale of 1995 and subsequent model year motor vehicles certified only to California standards. To aid the Agency in this process, a public workshop will be held to discuss the issues relevant to the sale of these California vehicles. The Agency is also inviting written comment on these issues. All interested parties are invited to attend the public workshop and provide input on all relevant issues.

**DATES:** The workshop will be held on Wednesday, August 11, 1993, beginning at 10 a.m. in Washington, DC. Persons interested in making presentations at the workshop are requested to notify the Agency contact below at least two weeks prior to the workshop so that a final agenda can be prepared. Written comments may be submitted to Public Docket No. A–93–30 until thirty days after the workshop.

**ADDRESSES:** The workshop will be held at L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington DC, 20024. Phone Number: 202–484–1000. Written comments may be submitted to Public Docket No. A–93–30 at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for public inspection from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Mitchell Greenberg, Manufacturers Programs Branch, Manufacturers Operations Division (6405J), U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Telephone (202) 233–9269.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Prior to New York's adoption of California motor vehicle emission standards, EPA's policy regarding the sale of California vehicles had been that these vehicles could not be sold outside of the State of California, unless the ultimate purchaser principally used, titled, or registered the vehicle in California.

The State of New York adopted California motor vehicle emission standards for light duty vehicles and light duty trucks beginning with the 1993 model year. State regulations implementing those standards took effect for engine families that began production on or after November 22, 1992. Due to the significant interstate sales between motor vehicle dealers located in New York and dealers located in its border states, concerns developed about potential economic burdens that dealers in New York and in contiguous states may face. To alleviate these concerns, EPA modified its existing policy regarding the sale of California vehicles. Under the modified policy, light duty vehicles and light duty trucks certified to California standards could be sold in California, New York (the only state to adopt California standards pursuant to section 177 for model years 1993 and 1994) and states contiguous to those two states.[1] EPA described this modified policy as it applies to the New York area and its legal basis in an April 28, 1993 letter sent to the Commissioner of New York's Department of Motor Vehicles (a copy of which has been placed in Public Docket No. A–93–30). In a June 10, 1993 response to a General Motors inquiry (also placed in Public Docket No. A–93–30), EPA described this policy in more detail. This modified policy, however, is effective for only the 1993 and 1994 model years. Additionally, several other states have adopted or are planning to adopt California standards which will also affect the 1995 and subsequent model years.

### II. Information Requested

EPA is interested in obtaining all relevant information on the sale of new motor vehicles certified to California emission standards to assist us in evaluating the original (prior to 1993) and the current 1993/1994 model year policy. We are interested in discussion regarding the possibility of the continuation of the 1993/1994 policy into later model years or whether other options are more reasonable. Relevant information includes the impact of various policy options on the public, motor vehicle dealers and manufacturers, as well as air quality. EPA also requests comments regarding its legal authority to permit the sale of vehicles certified to California standards in states other than California or those

[1] New York did not adopt California medium duty vehicle (MDV) standards, therefore California MDVs may be sold only in California and its contiguous states.

that adopt the California standards pursuant to section 177.

Parties submitting written comments may assert a business confidentiality claim covering all or part of the information provided. A claim of business confidentiality regarding any information submitted should be made in a manner consistent with 40 CFR 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR part 2, subpart B. If no claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the submitting party.

### III. Workshop Structure

EPA will arrange the workshop agenda to accommodate those persons who want to make presentations and who notify the Agency contact listed above at least two weeks prior to the workshop. Persons who have not previously contacted the Agency but who wish to make oral presentations on the day of the workshop may do so to the extent time permits. Written comments may also be submitted to Public Docket No. A–93–30 for 30 days after the workshop.

Dated: July 15, 1993.

**Robert D. Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 93–17421 Filed 7–21–93; 8:45 am]

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**[OPP–66180; FRL–4634–3]**

## Arsenic Acid; Receipt of Request to Cancel; Cancellation Order

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This Notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), announces EPA's receipt of a request from Drexel Chemical Company to cancel the registration of its Drexel Arsenic Acid Cotton Desiccant. EPA grants this voluntary cancellation effective July 22, 1993.

**DATES:** The cancellation order shall become effective July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** By mail: Ann Sibold, Special Review and Reregistration Division (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8033.

**SUPPLEMENTARY INFORMATION:** This Notice announces the receipt of a request for cancellation of Drexel Arsenic Acid Cotton Desiccant.

### I. Request for Voluntary Cancellation

Arsenic acid is used as a desiccant on cotton in certain areas of Texas and Oklahoma to facilitate harvest by mechanical cotton strippers. EPA initiated a Rebuttable Presumption against Reregistration ((RPAR), now called a Special Review) on this chemical and other inorganic arsenicals on October 18, 1978 (43 FR 48267). That Notice was based on a determination that use of the inorganic arsenicals met or exceeded the risk criteria for carcinogenicity, teratogenicity, and mutagenicity under 40 CFR 162.11 (now 40 CFR 154.7). EPA issued a Notice of Preliminary Determination to Cancel Registration (PD 2/3) on October 7, 1991 (56 FR 50576), for arsenic acid registered for use as a desiccant on cotton. After negotiations with EPA, the two registrants who were actively producing Arsenic Acid desiccant for use on cotton, Elf Atochem North America and Voluntary Purchasing Groups, Inc. (VPG) requested cancellation of these registrations. On May 6, 1993 (58 FR 26975), EPA granted these requests, issued a cancellation order, and provided for sale and use of existing stocks of Atochem and VPG arsenic acid desiccant.

Subsequently, EPA found that Drexel Chemical Company, who was not producing arsenic acid at the time negotiations were initiated with the other registrants, still had an active registration of arsenic acid. In 1985 and again in 1986, Drexel did not respond to two separate Data Call-Ins (DCIs) issued under section 3(c)2(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for arsenic acid, and requested voluntary suspension of its registration of arsenic acid. Accordingly, in letters dated December 9, 1985, and December 12, 1986, EPA suspended the registration, as required by FIFRA section 3(c)2(b), for failure to respond to these two DCIs. On December 18, 1986, EPA issued a "stop-sale" order, which ordered the company not to use, distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, receive and (having so received) deliver or offer to deliver, or remove the suspended pesticide.

After being contacted recently by EPA, Drexel requested the cancellation of its product Drexel Arsenic Acid Cotton Desiccant, registration number 19713–103, in a letter dated May 21, 1993. Drexel also requested a waiver of the public comment period.

### II. EPA's Decisions on the Request for Voluntary Cancellation, the Cancellation Order, and Provision for Existing Stocks

EPA hereby grants Drexel's request that the registration of the product Drexel Arsenic Acid Cotton Desiccant, registration number 19713–103, which contains the active ingredient arsenic acid, be voluntarily canceled. Concurrently, EPA is issuing this Cancellation Order for Drexel's arsenic acid cotton desiccant.

Under section 6(f)(1) of FIFRA, a registrant may request at any time that EPA cancel any of its pesticide registrations. EPA must publish in the **Federal Register** a notice of receipt of the request and allow public comment before granting the request unless either the registrant requests a waiver of the comment period or the Administrator determines that the continued use of the pesticide would pose an unreasonable adverse effect on the environment. By letter dated May 21, 1993, Drexel requested a waiver of the comment period. For this reason, this Cancellation order shall become effective on July 22, 1993.

Accordingly, as of July 22, 1993, no person may distribute, sell, or use Drexel Arsenic Acid Desiccant.

### III. Availability of the Public Docket

Copies of documents referred to in this Notice are available in the Public Docket, located in CM #2, Rm. 1128, 1921 Jefferson Davis Highway, Arlington, VA. Hours are from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

Dated: July 14, 1993.

**Daniel M. Barolo,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 93–17425 Filed 7–21–93; 8:45 am]

BILLING CODE [illegible]

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## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

July 14, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription

Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

*OMB Number:* 3060–0236.

*Title:* Section 74.703, Interference.

*Action:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion reporting requirements.

*Estimated Annual Burden:* 10 responses; 2 hours average burden per response; 20 hours total annual burden.

*Needs and Uses:* Section 74.703(f) requires licensees of low power TV or TV translator stations causing interference to other stations to submit a report to the FCC detailing the nature of interference, source of interfering signals, and remedial steps to eliminate the interference. This report is to be submitted after operation of the station has resumed. The data is used by FCC staff to determine that the licensee has eliminated all interference caused by operation of their station.

*OMB Number:* 3060–0248.

*Title:* Section 74.751, Modification of transmission system.

*Action:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of Response:* Recordkeeping and on occasion reporting requirement.

*Estimated Annual Burden:* 25 responses, 0.5 hours average burden per response, 13 hours total annual burden per response; recordkeepers, 0.5 hours average burden per recordkeeper, 13 hours total annual burden per recordkeeper = 26 hours total annual burden.

*Needs and Uses:* Section 74.751(c) requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application. Section 74.751(d) requires that licensees of low power TV or TV translator stations place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with the technical requirements of this section and the station authorization. The notifications and certifications of equipment changes are used by FCC staff to assure that the equipment changes made are in full compliance with the technical requirements of this section and the station authorizations and will not cause interference to other authorized stations.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–17340 Filed 7–21–93; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–997–DR]**

### Illinois; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 14, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the president in his declaration of July 9, 1993:

Boone, Lake, McHenry, Stephenson, and Winnebago for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–17428 Filed 7–21–93; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–997–DR]**

### Illinois; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–997–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 9, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms, Mississippi River flooding, and other riverine flooding on June 7, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Walter Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this declared major disaster:

Adams, Calhoun, Carroll, Hancock, Henderson, Henry, Jersey, Jo Daviess, Mercer, Pike, Rock Island, and Whiteside Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**James Lee Witt,**

*Director.*

[FR Doc. 93–17429 Filed 7–21–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA-996-DR]

## Iowa; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA-996-DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 9, 1993.

**FOR FURTHER INFORMATION CONTACT:**
Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 9, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on April 13, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster:

The counties of Clayton, Clinton, Des Moines, Dickinson, Humboldt, Jackson, Johnson, Louisa, Muscatine, Scott, and Wapello for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**James Lee Witt,**

*Director.*

[FR Doc. 93-17430 Filed 7-21-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-995-DR]

## Missouri, Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA-995-DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 9, 1993.

**FOR FURTHER INFORMATION CONTACT:**
Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 9, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and flooding on June 28, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Lewis, Lincoln, Marion, Pike, and St. Charles Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**James Lee Witt,**

*Director.*

[FR Doc. 93-17431 Filed 7-21-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-991-DR]

## Oklahoma; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA)

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Oklahoma, (FEMA-991-DR), dated May 12, 1993, and related determinations.

**EFFECTIVE DATE:** July 15, 1993.

**FOR FURTHER INFORMATION CONTACT:**
Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Oklahoma dated May 12, 1993, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 12, 1993:

Oklahoma County for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93-17432 Filed 7-21-93; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Epirotiki Lines, Inc. and Hellenic Company Overseas Cruise Vessels S.A., 551 Fifth Avenue, New York, NY 10176
Vessel: WORLD RENAISSANCE.
Dated: July 19, 1993.

Joseph C. Polking,
*Secretary.*

[FR Doc. 93–17412 Filed 7–21–93; 8:45 am]
BILLING CODE 6730–01–M

## GENERAL SERVICES ADMINISTRATION

### Report on Revised System of Records Under the Privacy Act of 1974

**AGENCY:** General Services Administration.

**ACTION:** Notification of revised system of records.

**SUMMARY:** The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent by the General Services Administration (GSA) to revise a system of records maintained by GSA. The system of records, Incident Reporting, Investigation, Contingency Planning/Analysis and Security Case Files, PBS–3, will be revised to comply with 42 U.S.C. 13041, to show that GSA will conduct criminal history background checks of individuals involved with the provision of child care services by Federal agencies to children under the age of 18. A revised system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget.

**DATES:** Any interested party may submit written comments about this revision. Comments must be received on or before August 23, 1993. The system will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

**ADDRESSES:** Address comments to the General Services Administration (CAIR) Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Cunningham, GSA Privacy Act Officer, telephone (202) 501–2691.

### Background

The system of records, Incident Reporting, Investigation, Contingency Planning/Analysis, and Security Case Files, PBS–3, is being revised to show that GSA will conduct criminal history background checks of individuals involved with the provision of child care services by Federal agencies to children under the age of 18.

### GSA/PBS–3

**SYSTEM NAME:** Incident Reporting, Investigation, Contingency Planning/Analysis, and Security Case Files.

**SYSTEM LOCATION:** This system of records is located in the General Services Administration in the Office of Physical Security and Law Enforcement and the regional offices of the Federal Protective Service Divisions at the listed addresses following this notice.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:** a. Persons who were the source of (1) initial complaint and (2) an allegation that a crime took place.

b. Witnesses having information or evidence about any aspect of an investigation;

c. Persons who are, or who may become, suspects in an investigation of criminal activity;

d. Subjects of investigations on noncriminal matters;

e. Employees of GSA contractors performing contract services in buildings and areas under GSA jurisdiction;

f. Individuals involved with the provision to children under the age of 18 of child care services in facilities operated by the Federal Government;

g. Current and former applicants for the position of Federal Protective Officer;

h. Individuals associated with terrorists or terrorist groups and activities and names of regional and nationwide terrorist organizations; and

i. Sources of information and evidence vital to the outcome of administrative procedures and civil and criminal cases.

Note: The identity of these individuals and the subject matter they contribute are confidential.

**CATEGORIES OF RECORDS IN THE SYSTEM:** Records include:

a. Preliminary and other reports of criminal investigations from the opening of a case until it is closed. These records are instituted and maintained at varying points in the process. The processes of criminal justice and civil or administrative remedies require their partial or total disclosure.

b. Security files. These records contain information such as name, date and place of birth, address, Social Security Number, education, occupation, experience, and investigatory material.

c. Contingency Planning/Analysis files. These records contain information such as name and other identifying information and investigatory material on an individual associated with terrorists or terrorist groups and activities.

They also contain information about regional and nationwide terrorist organizations and their effects on security of GSA-owned or -controlled facilities.

d. Intelligence briefs; tactical, operational and strategic information reports; regional and nationwide contingency analyses; contingency action plans; and patterns and trends of potential or actual terrorist groups, or other activities that could disrupt the orderly operation of GSA-owned or -controlled facilities.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:** Executive Order 10450, April 27, 1953, as amended; Executive Order 12065, June 28, 1978; 31 U.S.C. 1535; and 40 U.S.C. 318(a) through 318d; 42 U.S.C. 13041.

**PURPOSE:** To assemble in one system information on (1) preliminary and other criminal investigation reports that are used to enforce criminal law and rules and regulations for punitive action; to prevent, control, or reduce crime and apprehend criminals; and for correction, probation and pardon, and parole and parole activities; (2) security files that are used as a basis for suitability decisions for GSA contract personnel and for individuals involved with the provision to children under the age of 18 of child care services in facilities operated by the Federal government or for the Federal government by contractors; and (3) contingency action plans that provide patterns and trends of potential or actual terrorist group activities or other activities that could disrupt orderly operation of GSA-owned or -controlled facilities.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:** a. To disclose information to a Federal, State, local, or foreign agency responsible for investigating,

prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agencies become aware of a violation or potential violation of civil or criminal law or regulation.

b. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made at the request of that individual.

c. To disclose information to a Federal, State, or local agency keeping civil, criminal, enforcement, or other information to get information relevant in making a decision on hiring or retaining an employee; issuing a security clearance; letting a contract; or issuing a license, grant, or other benefit.

d. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee; issuing a security clearance; reporting an employee investigation; clarifying a job; letting a contract; or issuing a license, grant, or other benefit by the requesting agency where the information is relevant and necessary for a decision.

e. To disclose information to an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative or other official engaged in investigating or settling a grievance, complaint, or appeal filed by an employee.

f. To disclose information to the Office of Personnel Management under the agency's responsibility for evaluating Federal personnel management.

g. To disclose information to various bureaus and divisions of Department of Justice that have primary jurisdiction over subject matters and locations which the Office of Physical Security and Law Enforcement shares.

h. To disclose information to subdivisions of the Department of Justice that have responsibility for prosecuting criminal cases and pursuing civil cases arising from authorized activities of the Office of Physical Security and Law Enforcement.

i. To disclose information to law enforcement agencies which have lawfully participated in an investigation jointly conducted with the Office of Physical Security and Law Enforcement.

j. To disclose information to the Department of Justice when the agency, and agency employee, or the United States is party to or has interest in litigation, and using the records is relevant and necessary and compatible with the purpose of collecting the information.

k. To disclose information to a court or adjudicative body when the agency, any agency employee, or United States is party to or has interest in litigation, and using the records is relevant and necessary and compatible with the purpose of collecting the information.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:** Paper records in file folders, card files and cabinets; magnetic tapes and cards in cabinets and storage libraries; and computer records within a computer and attached equipment.

**RETRIEVABILITY:** Filed by name, file number, case number, incident and location, and type of incident.

**SAFEGUARDS:** Records stored in lockable containers with built-in 3 position dial type combination safe locks and in secured rooms. Magnetic tapes which store unclassified records protected by password system.

**RETENTION AND DISPOSAL:** Disposal of records is described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2).

**SYSTEM MANAGER AND ADDRESS:** Assistant Commissioner, Office of Physical Security and Law Enforcement (PS), Public Building Service, General Services Administration, 18th and F Streets, NW., Washington, DC 20405.

**NOTIFICATION PROCEDURE:** Inquiries from individuals should be addressed to the system manager.

**RECORD ACCESS PROCEDURES:** Requests from individuals should be addressed to the system manager. Individuals must furnish their full name, Social Security number, address, and telephone number. For identification requirements, refer to the agency regulations outlined in 41 CFR part 105–64 of the Code of Federal Regulations.

**CONTESTING RECORD PROCEDURES:** General Services Administration rules for contesting the contents and appealing initial decisions are issued in 41 CFR part 105–64.

**RECORD SOURCE CATEGORIES:** Investigations, informants, witnesses, official records, investigative leads, statements, depositions, business records, or any other information source available to the Office of Physical Security and Law Enforcement.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:** Under 5 U.S.C. 552a(j), the criminal investigation case files and contingency planning/analysis files in this system of records are exempt from all provisions of the Privacy Act of 1974 with the exception of subsection (b); (c) (1) and (2); (e)(4) (A) through (F); (e) (6), (7), (9), (10), (11), and (i) of the act. Under 5 U.S.C. 552a(k), the general investigation and security files in this system of records are exempt from subsections (c)(3); (d); (e)(i); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974.

Dated: July 9, 1993.

**Emily C. Karam,**

*Director, Information Management Division.*

[FR Doc. 93–17386 Filed 7–21–93; 8:45 am]

BILLING CODE 6820–34

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[CDC–347]**

### Announcement of a Grant to Albert Einstein College of Medicine

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a sole source grant to Albert Einstein College of Medicine (AECM) to refine and use a mycobacteriophage-based diagnostic system to detect the presence of *Mycobacterium tuberculosis* (TB) in clinical specimens and to define the drug susceptibility patterns of these clinical isolates. Approximately $150,000 is available in FY 1993 to support this project. It is expected that the award will begin on or about August 1, 1993, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change. A continuation award within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this grant is to provide resources to AECM to refine and adapt the recently developed mycobacteriophage technology to the isolation and identification of *M. tuberculosis* in clinical specimens and to the characterization of drug-susceptibility patterns.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

**AUTHORITY:** This grant is authorized under the Public Health Service Act, section 317(k)(2) (42 U.S.C. 247b(k)(2)).

**ELIGIBLE APPLICANT:** Assistance will be provided only to the AECM for conducting this project. No other applications are solicited. The Program Announcement and application kit have been sent to the AECM.

The AECM is the most appropriate organization to conduct the work under this grant because:

1. The mycobacteriophage-based diagnostic system exploits the photon generating enzyme of *Photinus pyralis* (firefly); the system was developed at AECM. The further refinements of this technology to adapt it for use in the management of clinical specimens can only be done at AECM.

2. The scientist who developed the original assay is available to continue his work and is familiar with the basic concept, reactions, and goals. In addition, there are several investigators on the staff of AECM, who are world recognized for their work in molecular biology and disease definition, available to consult on the project.

3. The project requires access to samples from recent outbreaks of Multi-drug Resistant Tuberculosis (MDR–TB), which can most readily be obtained in New York City where several outbreaks of MDR–TB have occurred.

**EXECUTIVE ORDER 12372 REVIEW:** The Intergovernmental Review Requirements of Executive Order 12372, as established by DHHS regulations in 45 CFR part 100, are not applicable to this program.

**PUBLIC HEALTH SYSTEM REPORTING REQUIREMENTS:** This program is not subject to the Public Health System Reporting Requirements.

**CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** The Catalog of Federal Domestic Assistance number is 93.283.

**WHERE TO OBTAIN ADDITIONAL INFORMATION:** If you are interested in obtaining additional information regarding this program, please refer to Announcement Number 347 and contact Leah Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mail Stop E–18, Atlanta, GA 30305, (404) 842–6803, for business management technical information.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **SUMMARY** may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone: (202) 783–3238.

Dated: July 15, 1993.

**Robert L. Foster,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17378 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–18–P

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**[Announcement Number 322]**

## Surveillance of the Complications of Hemophilia; Availability of Funds for Fiscal Year 1993

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program to conduct active surveillance for hemophilia A and B (henceforth referred to as hemophilia) and their complications. The ICD code definition of hemophilia A is congenital factor VIII disorder and hemophilia B is congenital factor IX disorder. Applicants must target individuals with hemophilia who receive their care both within and outside hemophilia treatment centers and comprehensive care centers. Targeted individuals should include: Persons who do not access traditional hemophilia treatment services and may receive inadequate care (and are possibly over-represented by persons who are economically disadvantaged), persons who live in rural areas or inner cities; or, persons who are members of one of four federally-recognized minority groups: (1) Black, African-American or Caribbean; (2) Hispanic; Central American, South American, Mexican American, Dominican, Cuban, or Puerto Rican; (3) Asian/Pacific Islander, or (4) Native American.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000 a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Diabetes and Chronic Disabling Conditions. (For ordering a copy of Healthy People 2000, see the section *Where to Obtain Additional Information.*)

### *Authority*

This program is authorized under sections 301(a) and 317(k)(3) of the Public Health Service Act, as amended (42 U.S.C. 241(a) and 247b(k)(3)). Applicable program regulations are found in 42 CFR Part 51b—Project Grants for Preventive Health Services.

### Eligible Applicants

Assistance will be provided only to the official public health agencies of states or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

Because of the low prevalence of hemophilia, competition is limited to the official public health agencies of states because the project requires experience in conducting active surveillance programs and experience in collaborations with organizations having the ability to reach a wide variety of demographically distinct populations, including the traditionally underserved populations.

### Availability of Funds

Approximately $1,500,000 is available in FY 1993 to fund approximately 3 to 6 awards. It is expected that the average award will be $365,000 ranging from $250,000 to $400,000. It is expected that the awards will begin on or about September 30, 1993 and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

### Purpose

The purpose of the hemophilia cooperative agreement program is to assist recipients in characterizing the epidemiology of hemophilia and its complications, and determining its impact among three populations: (a) Those who access traditional hemophilia treatment and comprehensive care services, (b) those who are not receiving care or are undiagnosed, and (c) those who receive their care elsewhere. The latter (c) may receive inadequate care and are possibly over-represented by persons who are economically disadvantaged, who live in rural areas or inner cities, or who belong to one of four minority groups. Inadequate care would include: Less than prompt treatment, from improperly trained personnel, and poor access to comprehensive care which includes dental, psychosocial, and orthopedic services with patient training and counselling. The data collected through this surveillance program can assist

hemophilia treatment providers and states in developing, implementing, and evaluating education and prevention programs designed to reduce the morbidity, mortality, and costs of hemophilia and its complications.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A. below, and CDC shall be responsible for conducting activities under B. below.

*A. Recipient Activities*

All recipients must conduct activities in collaboration and coordination with the Centers for Disease Control and Prevention (CDC).

Required Activities for All Recipients

1. Meet with representatives from CDC and other recipients initially, and periodically thereafter, to (1) identify optimal surveillance methods, (2) develop standardized surveillance protocols, data collection instruments, interview questionnaires, progress report forms, and (3) amend previous surveillance protocols with new activities or procedures. All activities will be conducted in appropriate language for the specific target populations.

2. Use standard surveillance protocols as a basis to design, implement, and evaluate statewide surveillance programs for adult, adolescent, and pediatric cases of hemophilia and its complications, and if funded, studies of the psychosocial and economic impact of hemophilia.

3. Train surveillance workers in methods of active surveillance, use of standard data abstraction instruments, techniques of reviewing medical records and interviewing patients, and other methods of surveillance as appropriate and provided for in standard hemophilia surveillance protocols.

4. Develop appropriate management and evaluation systems that ensure surveillance employees conduct active surveillance, and use data collection and interview instruments according to standard hemophilia surveillance protocols.

5. Maintain secure databases of all reported cases of hemophilia and its complications.

6. Develop and maintain strict policies on protecting the confidentiality of persons with hemophilia, and ensure the security of databases and other records through controlled access to areas with confidential information, database password protection, locking file cabinets, and other security features.

7. Using a standardized format, prepare and submit progress reports on a semiannual basis that address the achievement of specific and time-phased hemophilia surveillance program goals and objectives.

8. Provide site-specific surveillance feedback in the form of monthly or quarterly reports within their state or region.

9. From data collected, analyze, present, and publish state or regional hemophilia surveillance outcomes.

10. Assist state or regional programs in the use of data to develop or improve hemophilia care programs.

Surveillance of Hemophilia: Specific Required Activities

1. Establish liaison with potential reporting sources within and outside of the traditional hemophilia treatment system. These potential reporting sources include, but are not limited to, state or regional hemophilia chapters or associations, hospitals, emergency care centers, hematology clinics, private physicians, organizations that provide home-infusion therapy, distributors of home-infusion factor concentrates, and others.

2. In accordance with standard protocols, implement active hemophilia surveillance among reporting sources outside of the traditional hemophilia care system, and in the collaborative network of hemophilia treatment centers to determine the statewide prevalence of hemophilia.

3. In accordance with standard protocols, redirect current surveillance activities as indicated through critical review of data and evaluation of yield from various surveillance activities. Initiate additional methods of surveillance for hemophilia as appropriate.

4. Augment surveillance through the use of at least one alternate database (e.g., death certificates, state hospital-discharge summaries, state reimbursement programs), and document methods, results, and if appropriate, the redirection of surveillance activities in the semiannual progress report.

5. Through death certificate review and active surveillance, collect data on deaths attributed to hemophilia to calculate state or regional hemophilia-specific mortality rates. Collect epidemiologic data that could be used to determine the sensitivity of death certificates in documenting deaths attributed to hemophilia.

Surveillance of Hemophilia-Related Complications: Specific Required Activities

1. Through medical record review or other methods proposed by the applicant, describe the source, frequency, and type of preventive and medical care among persons with hemophilia, and determine the prevalence of the following hemophilia-related complications:

Joint disease
Liver disease
Inhibitors
Immunosuppression

2. Sampling methods, if used, will be developed in collaboration with CDC to insure sufficient representation of persons of different race/ethnicity, age, HIV status, severity of hemophilia, and source of care.

3. Conduct longitudinal follow-up of persons with hemophilia-related joint disease to relate the source, frequency, and type of preventive and medical care to health outcome (e.g., severity of joint disease, degree of disability). In addition to joint disease, applicants are encouraged to propose and conduct longitudinal follow-up of persons with other hemophilia-related complications.

*B. CDC Activities*

1. Provide consultation, and scientific and technical assistance in planning, implementing, and evaluating hemophilia surveillance activities. This assistance includes the development of standard surveillance protocols, data abstraction instruments, interview questionnaires, consent and progress report forms, and database software. All activities will be conducted in appropriate language for the specific target populations.

2. Plan, coordinate, and facilitate initial and periodic meetings with recipients to exchange operational experiences, and to provide consultation and assistance in the modification of standard surveillance protocols as needed.

3. Provide programmatic coordination of surveillance initiatives among the recipients.

4. Assist the analysis and reporting of aggregate surveillance data collected from funded initiatives; coordinate and consolidate the transfer of tabulated data, analyses, and conclusions among recipients.

5. Assist national, state, or regional programs in the use of data to develop or improve hemophilia care programs.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria: (Total 100 points)

*A. Capacity*

1. The capacity of the applicant to access the state or regional hemophilia community that is receiving care within and outside of the traditional hemophilia treatment system. The capacity to access the hemophilia community is measured by (1) the extent that this proposal incorporates shared responsibility between hemophilia treatment centers and state or local health departments as delineated in letters of agreement, and (2) the extent of collaboration obtained from these entities with other organizations involved in the delivery of care to persons with hemophilia. (25 points)

2. The scope and magnitude of previous cooperative efforts between regional or state hemophilia treatment centers and state or local health departments that propose to collaborate in this application. (5 points)

3. The allocation of time, number, and qualifications of proposed staff to meet stated objectives and goals, and the availability of facilities to be used during the project period. (5 points)

4. The extent to which applicant has experience with or ties to racial/ethnic minority communities or demonstration of minority organizations involvement in the project. (5 points)

*B. Goals and Objectives*

The extent to which the applicant's proposed goals and objectives meet the required activities specified under section A. "Recipient Activities" of this announcement, and that are measurable, specific, time-phased, and realistic. (20 points)

*C. Methods and Activities*

1. The quality of the applicant's plan for conducting program activities and the extent to which surveillance methods proposed are: (1) Appropriate to accomplish stated goals and objectives; (2) adaptable to a variety of health care settings, multiple complications of hemophilia, and the collection of longitudinal data; (3) accurate to produce valid and reliable data, and (4) feasible within programmatic and fiscal restrictions. (20 points)

2. The applicant's willingness to cooperate with CDC and other funded applicants to (1) identify optimal surveillance methods, (2) develop standardized surveillance protocols, data collection instruments, interview questionnaires, progress report forms, and database software, and (3) modify proposed methods and activities to conform to standardized protocols. (10 points)

*D. Program Management and Evaluation*

The extent to which management systems, including the types, frequency, and methods of evaluation, are used to assure valid and reliable data obtained from active surveillance, medical record abstractions, patient interviews, data collection instruments, and record systems. (10 points)

*E. Budget*

The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds. (not scored)

**Funding Priorities**

In order to draw reasonable conclusions about the hemophilia community in the United States, funding priorities will take into consideration (1) geographic representation which would distribute recipients across a broad geographic spectrum minimizing the possibility of concentration within one region and (2) the extent of representation among persons with hemophilia who do not access traditional hemophilia treatment services, and (3) the demonstration of collaboration between health departments and hemophilia treatment centers.

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should reference this announcement number (322) and forward recommendations to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, Georgia 30305. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. CDC does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.283, Centers for Disease Control and Prevention (CDC)—Investigations and Technical Assistance.

**Other Requirements**

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided which demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

All information obtained in connection with this surveillance program shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him or her or as may be required by a law of a state or political subdivision of a state. Information derived from any such program may be disclosed: (1) In summary, statistical, or other form, or (2) for clinical or research proposed, but only if the identity of the individuals under such program is not disclosed.

*HIV/AIDS Requirements*

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the content guidelines.

The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved, this includes conference agendas.

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1 (Revised 7–94, and approved by OMB under control number 0937–0189) must be submitted to Edward L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, Georgia 30305, on or before July 23, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–18, Atlanta, Georgia 30305, (404) 842–6595. Programmatic technical assistance may be obtained from Sarah Wiley, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop G–29, Atlanta, Georgia 30333, (404) 639–2016.

Please refer to Announcement Number 322 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (telephone 202–783–3238).

Dated: July 16, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17379 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–18–P

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**[Program Announcement 341]**

## Model TB Prevention and Control Centers (Supplement to TB Surveillance, Prevention and Control/ Elimination Cooperative Agreements)

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds to provide support for Model TB Prevention and Control Centers as a competitive supplement to the Surveillance, Prevention and Control/ Elimination cooperative agreements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of HIV Infection and Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section "WHERE TO OBTAIN ADDITIONAL INFORMATION.")

**Authority**

This program is authorized under section 301(a) (42 U.S.C. 241(a)), as amended; and section 317 (42 U.S.C. 247b). Regulations governing programs for preventive health services are codified at 42 CFR part 51b. Subpart A contains general provisions relating to the program.

**Eligible Applicants**

Public Law 102–394, Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1993, appropriated funds to support emergency TB grants to address the serious TB problem in certain states and cities. The House Committee Report accompanying this law directs CDC to target these funds to the states and cities that have experienced the largest number of tuberculosis cases. Therefore, eligibility is limited to the 13 health departments (California, Florida, Georgia, New Jersey, New York, Texas, Chicago, Houston, Los Angeles, New York City, Philadelphia, San Diego, and San Francisco) which reported the largest number of TB cases in 1992, the most recent year for which data is available.

Eligible applicants must document the ability of the proposed model center to provide ongoing medical management to at least 125 confirmed active TB cases per year and must be affiliated with a licensed school of medicine or school of public health.

**Availability of Funds**

Approximately $4,000,000 is available in FY 1993 to supplement one to three cooperative agreements. Awards are expected to begin on or about September 15, 1993, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

**Purpose**

The purpose of this program is to support model TB centers in high incidence urban areas that will provide (a) comprehensive and coordinated state-of-the-art diagnostic, treatment, prevention, and patient education services for TB cases, suspects, contacts, and preventive therapy subjects; (b) innovative approaches for ensuring adherence with drug therapy and for carrying out other prevention and control activities; and (c) training for all levels of health care workers providing TB screening, prevention and control services in the area. These activities should result in a substantial and documented improvement in the achievement of national TB objectives which should lead to a significant decrease in the incidence of active tuberculosis within the targeted area.

**Program Requirements**

In conducting the activities to achieve the purpose of this program, the recipient shall be responsible for conducting the activities under A. and

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CDC shall be responsible for conducting the activities under B.

*A. Recipient Activities*

1. The recipient will ensure that the model TB center supported through this project will provide:

a. Comprehensive, state-of-the-art diagnostic, treatment, and prevention services consistent with CDC recommendations for TB patients, suspects, contacts, and other infected persons at high risk for TB.

b. On-site state-of-the-art radiographic and sputum induction services.

c. Availability of state-of-the-art mycobacteriology laboratory services.

d. Implementation of aggressive, on-site TB screening and use of directly observed preventive therapy or other innovative means of assuring completion of preventive therapy among clients at high risk for TB.

e. Screening and preventive therapy through collaborative arrangements with other healthcare providers, local drug treatment centers, and community-based organizations to address the serious problem of TB in medically under-served, low income persons, including high-risk racial and ethnic minority populations, and those entering the United States from areas of the world with high rates of TB.

f. Services which are readily accessible to the clients (e.g., through public transportation) at convenient hours, with reasonable waiting times in a comfortable setting which fosters a sense of privacy.

g. Innovative mechanisms such as providing special transportation arrangements, food, or other incentives and enablers to help ensure adherence with clinic appointments and drug therapy.

h. Medical evaluation of each patient and basic primary care (e.g., for diabetes, early stages of HIV infection, hypertension, substance abuse counseling and treatment) either onsite or through referral to another facility; if the latter, the model center should have a case management system in place to help ensure that the referral services have been provided and that feedback is received by the center.

i. Referral of patients to an inpatient facility through an efficient operating agreement. The inpatient facility should have (a) expertise in managing TB patients, (b) plans for full implementation of CDC recommendations to limit TB transmission within the facility, and (c) well-coordinated procedures with the health department for contact investigation and discharge planning.

j. Directly observed therapy for all TB cases and suspects. Therapy for TB should be directly observed by a health care provider or other designated person. The method of observation should be defined for each individual, based on a thorough assessment of each patient's needs, living/employment conditions, preferences and confidentiality.

k. Patient education which is medically accurate, linguistically appropriate, and culturally sensitive.

l. Interpreter services as needed.

m. Basic social service counseling and referral as needed.

n. Mechanisms to assess client satisfaction with services provided by the center.

o. A major training and teaching program to develop a cadre of knowledgeable TB health care workers at all levels and from a variety of facilities serving persons with or at high risk for TB (e.g., health department clinics, hospitals, drug treatment clinics, correctional facilities, HIV/AIDS service centers). Highest priority should be given to training medical staff responsible for managing patients with TB disease—including MDR TB—and their contacts. Training activities may include: (a) rotations of attending physicians, fellows, residents, medical students, nurses, nursing students, social workers, community health outreach workers, and others to provide experience and training, as well as integrated care for TB patients; (b) development of training courses with mechanisms for awarding CMEs, CEUs, and nursing contact hours.

2. In collaboration with the health department's HIV/AIDS prevention program and local drug treatment centers, the model center will: (1) Offer HIV counseling and testing for all TB cases, suspects, contacts, and persons with TB infection who have HIV risk factors; and (2) establish standards and implement procedures for the confidential notification of sex and needle sharing partners of persons with AIDS and HIV infection. The standards should emphasize: The role of the seropositive person in informing partners; training for seropositive persons in techniques for notifying partners; and, where appropriate, the assistance of health agencies in the confidential notification of partners.

3. The model center will participate in epidemiologic, clinical, laboratory, or operational research. (Funds for research activities should be sought separately from other sources.)

4. The model center will electronically collect and analyze data concerning demographic, clinical, laboratory, epidemiologic, and other types of relevant information on model center clients, with adequate security provisions to safeguard confidentiality.

5. The recipient will develop and implement an evaluation plan to measure the effectiveness of the model center's programs in meeting long and short term objectives. Applicants should seek assistance and collaboration on designing and implementing evaluation techniques from within their agency, from CDC, and from other institutions such as schools of public health.

*B. CDC Activities*

1. Provide medical, epidemiologic, programmatic, and educational consultation and technical assistance in planning, operating, improving, and evaluating a model TB center.

2. Assist in the investigation and analysis of special problems such as MDR TB and TB in HIV-infected persons.

3. Assist in disseminating the findings of the model center.

**Review and Evaluation Criteria**

Each application will be reviewed and evaluated individually against the following criteria:

A. The extent to which the applicant (1) describes the TB problem in the service area, (2) identifies TB prevention and control needs within high-risk populations in the service area, and (3) provides baseline data on current performance levels in achieving national TB prevention and control objectives. 20 points

B. The estimated number of (1) TB patients, suspects, contacts and preventive therapy subjects to be served each year by the center and (2) health care workers, who serve TB high-risk populations in the target area, to be trained at the center. 25 points

C. The extent to which the applicant documents collaborative relationships with appropriate health care facilities and community groups in planning, implementing, and evaluating services to be provided by the model center. 10 points

D. The soundness, practicability and feasibility of the proposed approach, including objectives, methods, and evaluation plans. 10 points

E. The extent to which proposed methods are innovative, cost-effective, and transferrable to other areas. 20 points

F. The qualifications and experience of the project director and key staff involved in the proposed activities of the model center. 15 points

In addition, consideration will be given to the extent to which the budget

is reasonable and clearly supplements existing Federal, state, and local resources for TB prevention and control activities.

**Recipient Financial Participation**

Applicants must document at least $1 of nonfederal support for every $3 of Federal funds for each budget year of this program. (An information paper on matching funds will be provided with each application kit).

**Executive Order 12373 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instruction on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 30 days following application deadline date. (A waiver for the 60 day requirement has been requested.) The Program Announcement Number (341) and the Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.116.

**Other Requirements**

*Confidentiality*

Applicants must have in place systems to ensure the confidentiality of all patient records. All information obtained in connection with the examination, care, or treatment of any individual under any program which is being carried out with a cooperative agreement made under this announcement shall not, without such individual's consent, be disclosed except as may be necessary to provide service to him or as may be required by a law of a state or political subdivision of a state. Information derived from any such program may be disclosed—

(a) in summary, statistical, or other form, or

(b) for clinical or research purposes, but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

*Pre- and Post-Test Counseling and Partner Notification*

Recipients are required to provide HIV antibody testing to determine a person's HIV infection status; therefore, they must comply with state laws and regulations and CDC guidelines regarding pre- and post-test counseling and partner notification of HIV-seropositive patients, a copy of which will be included in the application kit. Recipients must also comply with state and local health department requirements relating to specific reportable disease or conditions. Recipients must provide referrals for HIV diagnosis and treatment.

*HIV/AIDS Requirements*

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions" (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which also will be included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Application Submission and Deadline**

The original and two copies of each application (Form PHS–5161–1) must be submitted to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–16, Atlanta, GA 30305 on or before August 2, 1993.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

B. *Late Applications:* Applications that do not meet the criteria in A.1. or A.2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Manuel Lambrinos, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6777. Programmatic technical assistance may be obtained from John Seggerson, Division of Tuberculosis Elimination, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, (404) 639–8125.

Please refer to Announcement Number 341 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238).

Dated: July 16, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17380 Filed 7–21–93; 8:45 am]

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Food and Drug Administration

[Docket No. 93M-0216]

**Ventritex, Inc.; Premarket Approval of the Cadence® Tiered Therapy Defibrillator System**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Ventritex, Inc., Sunnyvale, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the Cadence® Tiered Therapy Defibrillator System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 30, 1993, of the approval of the application.

DATES: Petitions for administrative review by August 23, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Doris Terry, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1018.

SUPPLEMENTARY INFORMATION: On October 1, 1991, Ventritex, Inc., Sunnyvale, CA 94086, submitted to CDRH an application for premarket approval of the Cadence® Tiered Therapy Defibrillator System. The Cadence® Tiered Therapy Defibrillator System consists of the following: the Cadence® Pulse Generator, Models V-100, V-100B, and V-100C, Models DP-5019 and DP-5038 Defibrillation patch leads (hereinafter referred to as the epicardial patch lead) or the commercially available Cardiac Pacemakers, Inc. (CPI) patch leads; the Model LA-6450 Adapter; the commercially available pace/sense leads; the HVS®-02 Cardiac Electrophysiology Device (hereinafter referred to as the HVS®-02); and the Models PR-1000 and PR-1001 Programmers with the Model AC-1020 Isolated Output Cable. Accessories for the HVS®-02 include the Model AC-2000 HVS Patient Cable, the Models AC-2480 and AC-2880 Adapter Blocks, and the Model 2300 Test Load. Programmer accessories include the Model AC-1010 Light Pen and the Model AC-1000 Programming Wand. The device is an implantable pacer cardioverter defibrillator and is indicated for use in patients with a history of hemodynamically compromising ventricular tachyarrhythmias. Those patients may have experienced a cardiac arrest not associated with acute myocardial infarction or have ventricular tachyarrhythmias. In addition, the Cadence® can be used in patients whose primary therapy for hemodynamically significant, sustained ventricular tachycardia is antitachycardia pacing; the defibrillation capabilities of the device provide high energy therapy in the event that the arrhythmia accelerates.

The Cadence® is intended for use with the defibrillation lead systems with which it has been tested: Ventritex epicardial defibrillation leads, and commercially available CPI defibrillation patch leads and superior vena cava (SVC) spring leads. When used with the CPI patch leads or SVC leads, the Cadence® is intended for use as a replacement for CPI automatic implantable cardioverter defibrillators.

On February 4, 1992, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On April 30, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

**Opportunity for Administrative Review**

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 23, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 14, 1993.

**Joseph A. Levitt,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 93-17348 Filed 7-21-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93M-0210]

**Collagen Corp. and Zimmer, Inc.; Premarket Approval of Collagraft® Bone Graft Matrix**

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Collagen Corp., Palo Alto, CA, and Zimmer, Inc., Warsaw, IN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Collagraft® Bone Graft Matrix. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of May 28, 1993, of the approval of the application.

**DATES:** Petitions for administrative review by August 23, 1993.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Nirmal K. Mishra, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

**SUPPLEMENTARY INFORMATION:** On March 6, 1991, Collagen Corp., Palo Alto, CA 94303, and Zimmer, Inc., Warsaw, IN 46580, submitted to CDRH an application for premarket approval of Collagraft® Bone Graft Matrix. The device is a nonosteoinductive bone void filler and is indicated, when mixed with autogenous bone marrow, for use in acute long bone fractures and traumatic osseous defects to provide a matrix for the repair process of bone. The fracture must be externally or internally fixed and should be no greater than 30 milliliters.

On August 16, 1991, the Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 28, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

**Opportunity for Administrative Review**

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 23, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 14, 1993.

**Joseph A. Levitt,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 93–17346 Filed 7–21–93; 8:45 am]

BILLING CODE 4160–01–F

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[Docket No. 93M–0212]

## Cook, Inc.; Premarket Approval of Gianturco-Roubin Flex-Stent™ Coronary Stent

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Cook, Inc., Bloomington, IN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the Gianturco-Roubin Flex-Stent™ Coronary Stent. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 28, 1993, of the approval of the application.

**DATES:** Petitions for administrative review by August 23, 1993.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Tara A. Ryan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1197.

**SUPPLEMENTARY INFORMATION:** On June 6, 1991, Cook, Inc., Bloomington, IN 47402, submitted to CDRH an application for premarket approval of the Gianturco-Roubin Flex-Stent™ Coronary Stent. The device is an intravascular stent indicated for chronic placement in a coronary artery or graft to obtain vessel patency in the treatment of acute or threatened closure associated with an interventional procedure.

On May 11, 1992, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 28, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

**Opportunity for Administrative Review**

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or

independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 23, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 14, 1993.

**Joseph A. Levitt,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 93-17347 Filed 7-21-93; 8:45 am]

BILLING CODE 4160-01-F

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[Docket No. 93D-0177]

## Proper Drug Use and Residue Avoidance by Nonveterinarians; Compliance Policy Guide; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a new Compliance Policy Guide (CPG) 7125.37 entitled "Proper Drug Use and Residue Avoidance By Nonveterinarians." The CPG was established to provide regulatory guidance for the development of cases resulting from the use in food-producing animals of animal drugs contrary to label directions ("extra-label use") by nonveterinarians. It also provides guidance on measures that can be taken by nonveterinarians to ensure proper drug use and avoid illegal residues.

**ADDRESSES:** Submit written requests for single copies of CPG 7125.37 entitled "Proper Drug Use and Residue Avoidance by Nonveterinarians" to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7125.37 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Gloria J. Dunnavan, Center for Veterinary Medicine (HFV-236), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8785.

**SUPPLEMENTARY INFORMATION:** Extra-label use of drugs by nonveterinarians in food-producing animals is a significant public health concern and a contributing factor in illegal residues in edible animal tissue. Use of drug products by nonveterinarians in food-producing animals contrary to label directions is a violation of section 501(a)(5) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(a)(5)). The presence of a residue of a new animal drug in food above permitted levels causes the food to be adulterated under section 402(a)(2)(D) of the act (21 U.S.C. 342(a)(2)(D)). Failure of persons who produce and sell food-producing animals and animal products to establish and utilize adequate controls with respect to use of animal drugs could result in a reasonable possibility of injury to human health because illegal drug residues often result. If inadequate control measures are documented, the food (edible animal tissues, milk, or eggs) may be adulterated under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)).

Statements made in a CPG are not intended to bind the courts, the public, or FDA or to create or confer any rights, privileges, immunities, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: July 15, 1993.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 93-17349 Filed 7-21-93; 8:45 am]

BILLING CODE 4160-01-F

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## Health Resources and Services Administration

[PN 2053]

## Availability of Funds for the National Health Service Corps Loan Repayment Program and Grants for State Loan Repayment Programs

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that approximately $47.5 million will be available in fiscal year (FY) 1993 for: (1) Awards for educational loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (LRP) (section 338B of the Public Health Service (PHS) Act) and (2) grants to States to operate loan repayment programs (section 338I of the PHS Act).

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC LRP and invites States to apply for grants to operate State Loan Repayment Programs (LRPs). The HRSA estimates that approximately 495 NHSC Loan Repayment awards totaling $41.3 million may be made to primary care physicians, dentists, nurse midwives, nurse practitioners, and physician assistants. Approximately $6.2 million in discretionary grants will be awarded to States to operate LRPs. Approximately $3.9 million will be awarded for up to 19 competing continuation grants and 3-5 new starts. The range for these grants is approximately $20,000 to $1,000,000. Approximately $2.3 million is available for 8 noncompeting continuation grants. Awards will be made for a 1-year budget period and for up to a 3-year project period.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting health priority areas. These programs will contribute to the Healthy People 2000 objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-00100474-01) or Healthy People 2000 (Summary Report; Stock No. 017001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

Part A of this notice contains specific information concerning the NHSC LRP, and Part B contains specific information concerning grants for State LRPs.

**Part A—NHSC Loan Repayment Program**

**ADDRESSES:** Application materials may be obtained by calling or writing, and completed applications should be returned to: Mr. Gerald Anderson, Deputy Chief, Loan Repayment Programs Branch, Division of Scholarships and Loan Repayments, Bureau of Primary Health Care, HRSA, room 7–22, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0743. The 24-hour toll-free phone number is 1–800–435–6464, and the FAX number is (301) 443–0350. This application has been approved under Office of Management and Budget (OMB) Number 0915–0127.

**DATES:** To receive consideration for funding, health professionals must submit their applications by September 1, 1993. To assure early processing of the application and approval for site matching, individuals are encouraged to submit applications well ahead of the September 1 deadline.

Applications will be considered to be on time if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the announced closing date will not be considered for funding.

**FOR FURTHER INFORMATION CONTACT:** For further program information, technical assistance, and business management issues, please contact Mr. Anderson at the above address, phone or FAX number.

**SUPPLEMENTARY INFORMATION:** Section 338B of the Public Health Service Act (42 U.S.C. 2541–1) authorizes the Secretary to establish the NHSC LRP to help in assuring, with respect to the provision of primary health services, an adequate supply of trained primary care health professionals for the NHSC. The NHSC is used by the Secretary to provide primary health services in federally designated health professional shortage areas (HPSAs). Primary health services are services regarding family medicine, internal medicine, pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

Under the NHSC LRP, the Secretary will repay graduate and undergraduate educational loans incurred by primary care health professionals. For the first 2 years of full-time service at an approved site in a federally designated HPSA, the Secretary will repay up to $25,000 per year of the educational loans of such individual. (There is a minimum 2-year service obligation.) For subsequent years of full-time service, if the NHSC LRP contract is extended, the Secretary will repay up to $35,000 per year. The Secretary will provide tax liability payments in an amount equal to 39 percent of the total loan repayments made during that tax year to reimburse the Program participants for increased tax liability resulting from loan repayments received under this Program. The increase in the amount of the tax liability payment made applies only to contracts entered into after November 16, 1990.

Payments may be made to participants on: (1) An advanced quarterly basis (one quarter in advance during the entire service obligation); (2) an advanced annual lump-sum basis for each of the first 2 years of a contract; or (3) an advanced lump sum payment for the total 2-year contract (one lump sum payment not to exceed $50,000 plus the 39 percent tax liability reimbursement). In addition to these amounts, NHSC LRP participants will receive a salary from a private nonprofit or public entity or, in some cases, the Federal Government during the term of their service.

The Secretary will identify and make available annually a list of those HPSA sites which will be available for service repayment under the NHSC LRP. The Secretary will select applicants for consideration for participation in the NHSC LRP according to the following criteria:

(1) The extent to which an individual's training in a health profession or specialty is determined by the Secretary to be needed by the NHSC in providing primary health services. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined in this notice at the end of Part A.

(2) The extent to which an individual is determined by the Secretary to be committed to serve in a HPSA.

(3) The extent of an individual's demonstrated interest in providing primary health services.

(4) The immediacy of an individual's availability for service. Individuals who have a degree, have completed all necessary postgraduate training in their professions and specialties (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board), have a current and unrestricted license to practice their profession in a State, will receive highest consideration.

(5) The academic standing, prior professional experience in a HPSA, board certification, residency achievements, peer recommendations, and other criteria related to professional competence or conduct will also be considered.

In providing contracts under the NHSC LRP, priority will be given to those applicants:

(1) Whose health profession or specialty is most needed by the NHSC;

(2) Who have and whose spouses, if any, have characteristics that increase the probability of their continuing to serve in a HPSA upon completion of their service obligations; and

(3) Subject to subparagraph (2) immediately preceding this one, who are from disadvantaged backgrounds.

**Eligible Participants**

To be eligible to participate in the NHSC LRP, an individual must:

(1)(a) Have a degree in allopathic or osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practitioner, or physician assistant;

(b) Be enrolled in an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession; or

(c) Be enrolled as a full-time student at an accredited school in a State and in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, dentistry, or other health profession;

(2) Be eligible for appointment as a commissioned officer in the Regular or Reserve Corps of the PHS or be eligible for selection for civilian service in the NHSC; and

(3) Submit an application for a contract to participate in the NHSC LRP which contract describes the repayment of educational loans in return for the individual serving for an obligated period.

Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC LRP unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is

ineligible to participate in the NHSC LRP.

No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC LRP contract. All individuals must have a current and unrestricted license to practice their profession in a State prior to beginning service under this Program.

**Professions and Specialties Needed By the NHSC**

At this time, the Secretary has determined that priority will be given to physicians who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, osteopathic general practice, obstetrics/gynecology, internal medicine, and pediatrics.

**Other Award Information**

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals. In addition, this program is not subject to the Public Health System Reporting Requirements, since the requirements do not cover payment to individuals.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.162.

**Part B—Grants for State Loan Repayment Programs**

**ADDRESSES:** Application materials for State Loan Repayment Programs may be obtained from, and completed applications should be returned to: Alice H. Thomas, Grants Management Officer, Bureau of Primary Health Care, HRSA, 12100 Parklawn Drive, Rockville, Maryland 20857, (301) 443–5887. The Grants Managements staff is available to provide assistance on business management issues.

Application for these grants will be made on PHS Form 5161–1 with face sheet DHHS Form 424, revised as of July 1992, and approved by the OMB under control number 0937–0189. Specific instructions for completing the application form for this program will be sent to any State requesting an application package.

**DATES:** Applications are due July 1, 1993. Applications will be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will not be considered for funding and will be returned to the applicant. The application deadline date for this program was published on April 16, 1993 at 58 FR 19827.

**FOR FURTHER INFORMATION CONTACT:** For general program information and technical assistance, please contact Betty Deberry-Sumner, D.D.S., M.P.H., Chief, Site Development and Placement Branch, National Health Service Corps, Bureau of Primary Health Care, HRSA, 5600 Fishers Lane, room 7A–19, Rockville, MD 20857, (301) 443–1400, the FAX number is (301) 443–4785.

**SUPPLEMENTARY INFORMATION:** Section 338I of the PHS Act (42 U.S.C. 254q-1) authorizes the Secretary, acting through the Administrator, HRSA, to make grants to States for the purpose of assisting the States in operating programs as described in this notice for the repayment of educational loans of health professionals in return for their practice in federally designated HPSAs to increase the availability of primary health services in federally designated HPSAs.

**Eligibility Requirements**

State Loan Repayment Programs (LRPs) eligible for funding under this announcement must meet the following requirements:

(1) Direct administration by a State agency;

(2) Payment of all or part of the qualifying educational loans (including principal, interest, and related educational loan expenses) of health professionals agreeing to provide primary health services in federally designated HPSAs. "Qualifying educational loans" are Government and commercial loans for actual costs paid for tuition, reasonable educational expenses, and reasonable living expenses relating to the graduate or undergraduate education of a health professional;

(3) Assignment of participating health professionals only to public and nonprofit private entities located in and providing primary health services in federally designated HPSAs; and

(4) Participant contracts which provide remedies for any breach of contract by participating health professionals.

**Contract Requirements**

Contracts provided by a State are not to be on terms that are more favorable to health professionals than the most favorable terms the Secretary is authorized to provide for contracts under the Federal NHSC Loan Repayment Programs under section 338B of the PHS Act, including terms regarding:

(a) The annual amount of payments provided on behalf of the professionals regarding educational loans; and

(b) The availability of remedies for any breach of the contracts by the health professionals involved.

States are required to develop contracts that reflect a minimum of 2 years of obligated full-time service. The annual amount of payments under a contract will not exceed the maximum amount of $35,000 authorized in section 338B(g)(2)(A) of the PHS Act unless: (1) This excess amount is paid solely from non-Federal contributions, and (2) the contract provides that the health professional involved will satisfy the requirement of obligated service under the contract solely through the provision of primary health services in a federally designated HPSA that is receiving priority for the purposes of section 333A(a)(1), and is authorized to receive assignments of individuals who are participating in the NHSC Scholarship Program.

No loan repayments will be made for any professional practice performed prior to the effective date of the health professional's State Loan Repayment Program contract, and no credit will be given for any practice done while the provider is in a professional school or graduate training program. Any individual who previously incurred an obligation for health professional service to the Federal Government, a State Government, or other entity is ineligible to participate in the State LRP unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the State LRP.

**Program Requirements**

States seeking support under this notice for the cost of State LRPs must provide adequate assurances that:

(1) With respect to the costs of making loan repayments under contracts with health professions, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant. The federal grant funds and the State matching funds will be used only for loan repayments to health professionals who have entered into contracts with States. In determining the amount of non-Federal contributions in

cash that a State has to provide, no other Federal funds may be used.

(2) The State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing primary health services in federally designated HPSAs.

(3) Applications must identify the State entity and key personnel who will administer the grant.

**Future Support**

The Secretary must determine that the State has complied with each of the agreements of the grant in order for funding to continue. Before making a grant for a subsequent year of State LRP support, the Secretary will, in the case of a State with one or more initial breaches by health professionals of the repayment contracts, reduce the amount of a grant to the State for the fiscal year involved. The grant will be reduced by an amount equal to the sum of the expenditures of Federal funds made regarding the State LRP contracts involved, including interest on the amount of such expenditures, determined on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States. The Secretary may waive the reduction in the subsequent grant award if the Secretary determines that a health professional's breach was attributable solely to the professional having a serious illness or death.

**Evaluation Criteria**

For new and competing continuation grants the following criteria will be used to evaluate State applications to determine which States are to be supported under this notice:

(a) The extent of State's need for health professionals consistent with the health professions and specialties identified later in this notice;

(b) The extent to which special consideration will be extended to federally designated HPSAs with large minority populations;

(c) The number and type of providers the State proposes to support through this program;

(d) The appropriateness of the proposed placements of State LRP recipients (e.g., consistency and coordination with State-based plans to improve access to primary health services for the underserved communities and individuals);

(e) The appropriateness of the qualifications, the administrative, and managerial ability of the staff to implement the proposed project;

(f) The suitability of the State's approach and the degree to which the plan of a State is coordinated with Federal, State, and other programs for meeting the State's health professional needs and resources, including mechanisms for ongoing evaluation of the program's activities;

(g) The source and plans for the use of the State match (the degree to which the State match exceeds the minimum requirements or has increased over time, and the amount of the match relative to the needs and resources of the State);

(h) For competing continuation applicants only, the grantees progress in achieving stated goals and objectives for the previous year's grant: this includes a progress report on the impact the State LRP placements have had on the State's short-term and long-term professional needs;

(i) An assessment of the reasons for initial breaches by health professionals of repayment contracts; and

(j) The grantee's history of compliance with reporting requirements.

Noncompeting continuation applications will be evaluated on the following criteria: (a) The grantee's progress in achieving stated goals and objectives for the previous year's grant: This includes a progress report on the impact the State LRP placements have had on the State's short-term and long-term professional needs;

(b) An assessment of the reasons for initial breaches by health professionals of repayment contracts;

(c) The grantee's history of compliance with reporting activities including goals, objectives, evaluation plans, organizational structure, financial management, and personnel changes; and

(d) The adequacy and appropriateness of the proposed budget.

No funding preferences will be applied.

**Professions and Specialties Needed**

To be supported under this program, the State Program must establish State priorities for the selection of health professionals consistent with the NHSC LRP. At this time, the Secretary has determined that to be eligible, an individual must have a degree in allopathic or osteopathic medicine, dentistry, or other health profession, or, be certified as a nurse midwife, nurse practitioner, or physician assistant.

**Other Award Information**

This program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system to review applications from within their States for assistance under certain Federal programs. The application kit, to be made available under this notice, will contain a listing of States which have chosen to set up a review system and will provide a single point of contact (SPOC) in the States for that review. Applicants (other than Federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the appropriate application deadline date. The BPHC does not guarantee that it will accommodate or explain its response to State process recommendations received after the due date.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.165.

Dated: July 16, 1993.

**William A. Robinson,**

*Acting Administrator.*

[FR Doc. 93-17407 Filed 7-21-93; 8:45 am]

BILLING CODE 4160-15-P

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**National Institutes of Health**

**Division of Research Grants; Meeting**

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-594-7265, will furnish summaries of the meeting and roster of panel members.

**Meeting To Review Small Business Innovation Research Program Applications**

*Scientific Review Administrator:* Dr. Peggy McCardle, (301) 594–7293.
*Date of Meeting:* August 2, 1993.
*Place of Meeting:* Westwood Bldg., Rm. 305, NIH, Bethesda, MD (Telephone Conference).
*Time of Meeting:* 1:00 p.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 15, 1993.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 93–17470 Filed 7–21–93; 8:45 am]

BILLING CODE 4140–01–M

**Prospective Grant of Exclusive Patent License**

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent 4,883,761 (issued from U.S. Patent Application 06/843,727) entitled "Pertussis Toxin Gene: Cloning and Expression of Protective Antigen" to the Biocine Company having a place of business at Emeryville, California. The patent rights in these inventions have been assigned to the United States of America. No foreign patent applications have been filed on the inventions embodied in U.S. Patent 4,883,761.

The prospective exclusive license will be for the field of vaccines. It will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

These inventions relate to the DNA sequence of the *Bordetella pertussis* toxin. Related inventions, including mutants of the *Bordetella pertussis* toxin (U.S. Patent Applications 07/311,612 and 07/542,149), will be licensed at a later date. The availability of U.S. Patent 4,883,761 for licensing was published in the July 18, 1990 edition of the Federal Register.

**ADDRESSES:** Requests for a copy of the above identified patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Mark Hankins, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892; Telephone: (301) 496–7735; FAX: (301) 402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: July 13, 1993.

Reid G. Adler,

*Director, Office of Technology Transfer.*

[FR Doc. 93–17469 Filed 7–21–93; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF THE INTERIOR

**Bureau of Land Management**

**[WO–610–03–4112–02]**

**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004–0134), Washington, DC 20503, telephone 202–395–7340.

*Title:* 43 CFR 3160—Onshore Oil and Gas Operations, Non-form Items
*OMB Approval Number:* (1004–0134)
*Abstract:* Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.
*Bureau Form Numbers:* None.
*Frequency:* Nonrecurring.
*Description of Respondents:* Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.
*Estimated Completion Time:* ½ hour.
*Annual Responses:* 193,855.
*Annual Burden Hours:* 96,190.
*Bureau Clearance Officer (Alternate):* Marsha A. Harley (202) 653–6105.

Dated: May 21, 1993.

Hillary A. Oden,

*Assistant Director, Energy and Mineral Resources.*

[FR Doc. 93–17403 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–84–M

**Bureau of Land Management**

**[OR–066–03–6332–02; GP3–316]**

**Emergency Closure of Public Lands; Lane County, OR**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Emergency closure of public lands in Lane County, Oregon.

**SUMMARY:** Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to sliding, wading, swimming and all other activities within the waters of Lake Creek, from July 17, 1993 until a notice rescinding this closure is published in the Federal Register. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as the Lake Creek Slide, a natural bedrock feature in the bed of Lake Creek, within public lands located as follows:

**Willamette Meridian, Oregon**

T. 16 S., R. 7 W.
T. 16 S., R. 7 W.
Sec. 19: Metes and Bounds within the SE¼SE¼.

Containing approximately 2 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement personnel; Bureau contractors and their subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine

not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this emergency temporary closure is to protect the public from injury incurred by sliding into a rock ledge that has recently developed near the base of the slide as a result of a shift in the bedrock of Lake Creek.

**DATES:** This closure is effective from July 17, 1993.

**ADDRESSES:** Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Elliott, Coast Range Area Manager, Eugene District Office, at (503) 683–6600.

Dated: July 16, 1993.

**Wayne E. Elliott,**

*Area Manager.*

[FR Doc. 93–17381 Filed 7–21–93; 8:45 am]

BILLING CODE 4310-33-M

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[MT–930–4320–01]

## Intent To Prepare Environmental Assessment of Animal Damage Control; Statewide (Miles City, Lewistown, and Butte District Offices) MT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management and the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), will prepare an Environmental Assessment (EA) to disclose the environmental effects of the proposed Animal Damage Control (ADC) alternatives for BLM lands in Montana. This analysis will be tiered to the EIS relating to ADC, completed in 1979, by the U.S. Fish and Wildlife Service (USFWS).

**EFFECTIVE DATE:** Persons wishing to submit written comments regarding the scope of the EA, including alternatives and environmental effects to be addressed, should do so by August 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sandy Brooks, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2929.

**SUPPLEMENTARY INFORMATION:** Controlling predatory animals on public land is the responsibility of the ADC unit of the U.S. Department of Agriculture, APHIS. Animal Damage Control activities are directed toward individual predators or local populations of predators where loss or damage to livestock has been verified and the livestock owner has requested control services from APHIS. The proposed ADC EA will address the following topics:

- Predators to be controlled;
- The conditions under which control may or may not be allowed (e.g., high use recreation areas) and potential seasonal restrictions (e.g., bird hunting season);
- The methods of control allowed (e.g., aerial gunning; call and shoot; traps and snares; denning; electronic "guards;" guard dogs; or M–44s, a spring-activated device using sodium cyanide). The following alternatives, in addition to any others that may be developed in the public participation process, will be considered in the EA:

**I. Integrated Pest Management (ADC BLM-proposed action)**

This alternative emphasizes an Integrated Pest Management (IPM) approach to reduce animal damage. Integrated Pest Management is the process of applying a variety of practical methods for prevention and control to keep animal damage to livestock or human health as low as possible. This IPM process draws from a large array of options using lethal and non-lethal techniques, depending on the nature of the problem. These techniques would be applied as either corrective (in response to actual loss or repeated harassment) or preventive (in response to historical losses) strategies.

**II. No Preventative Control**

This alternative would be similar to Alternative I except that lethal preventative control measures would not be authorized. The corrective control techniques described in Alternative I would be applied after ADC has confirmed a recent loss of livestock to predation.

**III. No Action (Emergency Control Only)**

This alternative would be similar to Alternative II in that lethal preventative control measures would not be authorized, and corrective control techniques would be applied only where losses are confirmed. The difference between these alternatives is the additional administrative procedures required under this alternative. Emergency ADC is requested by an operator when losses are occurring. Under this alternative, BLM reviews and approves/disapproves these requests on a case-by-case basis, which is not the case for Alternative II.

**IV. No ADC Activities on BLM Lands**

Under this alternative, no APHIC ADC programs would be authorized on BLM land in Montana. However, private landowners would continue to be able to enter into agreements with ADC to carry out ADC on private, state, and other non-BLM lands. No organized ADC control activities would occur on BLM land, although predators could continue to be taken by individuals pursuant to state law.

Dated: July 12, 1993.

**John A. Kwiatkowski,**

*Deputy State Director, Division of Lands and Renewable Resources.*

[FR Doc. 93–17400 Filed 7–21–93; 8:45 am]

BILLING CODE 4310-DN-M

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[OR–030–03–4710–06; G3–299]

## Road Closure; Oregon

**AGENCY:** Vale District, Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following order closes approximately 2000 feet of road along South Fork Walla Walla River on public land in WM, T.4 N., R.37 E., sections 10, 14, and 15 in Umatilla County, Oregon.

The purpose of this order is to close this road for the duration of the construction of a trail head at the end of the road. Use of the road could pose a safety hazard to members of the public and workers at the site. Under the authority of 43 CFR 8364.1, the above described road is closed to public use and access through the completion of construction.

Persons exempt from this order include emergency service and law enforcement personnel, Bureau of Land Management and U.S. Forest Service employees performing official duties, contractors and sub-contractors working at the site, and persons acting under specific authorizations granted by the Bureau of Land Management.

**EFFECTIVE DATE:** August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Gerry Meyer, BLM Baker Resource Area, P.O. Box 987, Baker City, Oregon 97814, (503) 523-6391.

Dated: July 12, 1993.

**Larry A. Taylor,**

*Area Manager.*

[FR Doc. 93–17404 Filed 7–21–93; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-03-4111-15; CACA 24209]

**California: Proposed Reinstatement of Terminated Oil and Gas Lease**

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 24209 for lands in Glenn County, California, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1992, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: July 15, 1993.

**Fred O'Ferrall,**

*Chief, Leasable Minerals Section.*

[FR Doc. 93–17390 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–84–M

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[OR-943-2360-02; GP3-294; OR-44990]

**Order Providing for Opening of Lands; Oregon**

**AGENCY:** Bureau of Land Management, Interior

**ACTION:** Notice.

**SUMMARY:** This action will open 2,359.24 acres of acquired lands to surface entry, and 1,190.72 acres to mining and mineral leasing. Of the balance, 440 acres are already open to mining and mineral leasing, the mineral estate in 246.80 acres is not in Federal ownership, and the 481.72-acre balance will be opened to the mining and mineral leasing laws to the extent that the minerals are in Federal ownership.

**EFFECTIVE DATE:** August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

**SUPPLEMENTARY INFORMATION:** 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described lands were acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 34 S., R. 25 E.,
Sec. 36, lots 1, 2, 3, and 4.
T. 35 S., R. 25 E.,
Sec. 3, lots 1 to 15, inclusive N½SW¼, and NW¼SE¼;
Sec. 4, lot 1, SW¼SW¼, and NE¼SE¼;
Sec. 5, lots 1 and 3;
Sec. 7, lots 1 to 5, inclusive, 9, and 10;
Sec. 8, NE¼, E½ NW¼, NW¼NW¼, E½SW¼, and SE¼;
Sec. 9, NW¼NW¼;
Sec. 16, NW¼;
Sec. 17, lot 1, NE¼, NE¼NW¼, S½NW¼, E½SW¼, NW¼SW¼, and SE¼;
Sec. 19, lot 2;
Sec. 20, NE¼NW¼;
Sec. 30, lots 2, 3, 6, 7, 10, and 11.

The areas described aggregate 2,359.24 acres in Lake County.

2. At 8:30 a.m., on August 27, 1993, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 27, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. At 8:30 a.m., on August 27, 1993, the following described land will be opened to location and entry under the United States mining laws, or to the extent that the minerals are in United States ownership. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 35 S., R. 25 E.,
Sec. 3, lots 1 to 5, inclusive, and N½SW¼;
Sec. 5, lot 1;
Sec. 7, lots 1 to 5, inclusive, 9, and 10;
Sec. 8, NW¼NE¼, S½NE¼, E½NW¼, NW¼NW¼, and E½SW¼;
Sec. 16, NW¼;
Sec. 17, NE¼NW¼;
Sec. 30, lots 6, 7, 10, and 11.

The areas described aggregate 1,190.172 acres in Lake County.

Willamette Meridian

Four-fifths Interest in United States Ownership

T. 35 S., R. 25 E.,
Sec. 4, lot 1 and SW¼SW¼;
Sec. 5, lot 3;
Sec. 8, SW¼SE¼;
Sec. 9, NW¼NW¼;
Sec. 17, lot 1, NW¼NE¼, S½NW¼, N½SW¼,and SE¼SW¼;
Sec. 20, NE¼NW¼.

The areas described aggregate 481.72 acres in Lake County.

4. At 8:30 a.m., on August 27, 1993 the land described in paragraph 3 will be opened to applications and offers under the mineral leasing laws or to the extent that the minerals are in United States ownership.

Dated: July 13, 1993.

**Champ C. Vaughan,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 93–17388 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–33–M

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[CA–010–03–4210–04; CA–32584 FD]

**Realty Action Exchange of Public Lands, El Dorado County, CA**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action: exchange of public lands, CA–32584 FD.

**SUMMARY:** The following described public land (surface and mineral estate) located in El Dorado County is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Selected Public Lands:

Mount Diablo Meridian, California

T. 9 N., R. 11 E.
Sec. 6: Lot 20.
Containing 4.35 acres, more or less.

**SUPPLEMENTARY INFORMATION:** The purpose of this exchange is to resolve an encroachment problem. A survey revealed that a portion of the adjacent landowner's home (Sherman Schroder) was erroneously built on the above-described public lands. The subject land would be exchanged to the Nature Conservancy (TNC) who, in turn, would sell the property to Mr. and Mrs. Sherman Schroder at the appraised fair market value. In exchange for the above public land, TNC would offer to the United States valuable wetlands and waterfowl habitat located in the Central Valley of California. The proposed exchange is consistent with the North American Waterfowl Management Plan and the Central Valley Habitat Venture as well as with the Bureau of Land

Management's land use plans. The public interest will be served if this exchange is completed because it will enable the Bureau to acquire lands with high public values, and will increase management efficiency of public lands.

The tract of land would be transferred from the United States subject to a reservation for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945). All necessary clearances, including clearances for cultural and historical resources, Threatened and Endangered Plants and Animals, have been completed on these lands.

This notice, as provided in 43 CFR 2201.1(b), segregates the above-described public land being considered for this exchange from settlement, location and entry under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, c/o Folsom Resource Area Manager, Folsom Resource Area, 63 Natoma St., Folsom, CA 95630.

**FOR FURTHER INFORMATION CONTACT:** Marianne Wetzel Lopez, Realty Specialist, BLM Folsom Resource Area, 63 Natoma St., Folsom, CA 95630, (916) 985–4474.

Dated: July 13, 1993.

**D. K. Swickard,**

*Area Manager.*

[FR Doc. 93–17392 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–40–M

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**[OR–015–4210–05: GP–3–310]**

## Realty Action; Competitive and Modified Competitive Sale of Public Land in Lake County, Oregon

The following parcels of public land are suitable for competitive and modified competitive sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the appraised fair market value. The land will not be offered for sale for at least 60 days following the publication of this notice in the **Federal Register**.

| Legal description | Acreage | Sale price | Deposit |
|---|---|---|---|
| Parcel No. 1, OR 49385 | | | |
| T.26S., R.18E., W.M., Oregon | 40 | $2,600.00 | $780.00 |
| Section 5: SW¼SE¼ | | | |
| Parcel No. 2, OR 49386 | | | |
| T.25S., R.14E., W.M., Oregon | 935 | 75,000.00 | 7,500.00 |
| Section 28: S½ | | | |
| Section 33: N½, N½SW¼, E½SW¼SW¼, SE¼SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼, N½SE¼SE¼SE¼ | | | |
| Parcel No. 3, OR 49387 | | | |
| T.25S., R.14E., W.M., Oregon | 320 | 25,700.00 | 2,570.00 |
| Section 34: S½ | | | |
| Parcel No. 4, OR 49388 | | | |
| T.25S., R.14E., W.M., Oregon | 480.89 | 38,800.00 | 3,880.00 |
| Section 28: NW¼ | | | |
| T.25S., R.15E., W.M., Oregon | | | |
| Section 31: Lots 3, 4, E½SW¼, SE¼ | | | |
| Parcel No. 5, OR 49389 | | | |
| T.25S., R.14E., W.M., Oregon | 960.00 | 79,400.00 | 7,940.00 |
| Section 24: S½ | | | |
| Section 25: All | | | |

The above described land parcels are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute for 270 days from the date of publication or until title transfers are completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land will be offered for sale in accordance with a congressionally directed plan to restore and maintain the public/private ownership ratio in Lake County. The land is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with Bureau planning for the land involved and will serve important public objectives.

Sale parcel OR 49385 will be offered under competitive sale procedures. Sale parcels OR 49386, OR 49387, OR 49388 and OR 49389 will be offered using modified competitive sale procedures. Under the modified sale procedures the following designated bidders will be provided the opportunity to match the highest bid received as specified. Ken Kruse of Fort Rock, Oregon for sale parcels OR 49386 and OR 49387, Alan Parks (Poplars Ranch Inc.) of Fort Rock, Oregon and Gordon Wanek of LaPine, Oregon for sale parcels OR 49388 and OR 49389, respectively. The above preferences will not apply beyond the date of first sale offering. Modified competitive sale procedures are considered appropriate, in these cases, as the designated bidders are adjoining landowners and/or existing users of the land who wish to consolidate the subject properties into their existing business operations. Both sale procedures are authorized under 43 CFR 2711.3–3.

The land will be offered for sale at public auction beginning at 10 am p.s.t., on October 29, 1993, and will be by sealed bid only. All sealed bids must be submitted to the BLM, Lakeview District Office at P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630, no later than 4:30 pm p.s.t., October 28, 1993. A separate written bid must be submitted for each parcel desired and bids must be for not less than the appraised sale price indicated. Each written sealed bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior-BLM for not less than the bid deposit specified in this notice. All bids

shall be enclosed in a sealed envelope clearly marked, in the lower left hand corner, "Bid for Public Land Sale OR (number), Lake County, Oregon, October 29, 1993." The total purchase price for the land shall be paid within 180 days of the date of sale or the bid deposit will be forfeited and the parcel(s) will be reoffered to the public.

The terms, conditions and reservations applicable to the sales are as follows:

*1.* Patents to all sale parcels will contain a reservation to the United States for ditches and canals.

*2.* The sale parcels will be subject to all valid existing rights of record at the time of patent issuance.

*3.* The mineral interests being offered for conveyance with the sale parcels have no known value. A deposit or bid to purchase a parcel(s) will also constitute an application for conveyance of the mineral estate with the following reservations;

a. The oil and gas and geothermal resources will be reserved to the United States for all sale parcels, except the SW¼ of section 28 of Parcel OR 49389 where the minerals are privately owned.

b. Diatomite will be reserved to the United States on parcels OR 49385, OR 49386, OR 49387 and OR 49388, the NW¼ of section 28 only.

The above mineral reservations are being made in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

All qualified bidder(s) must include with their bid deposit a non-refundable $50.00 filing fee for conveyance of the mineral estate.

*4.* Sale parcels OR 49386 and OR 49387 will be subject to the grazing use occurring within the Highway Grazing Allotment No. 904 by the existing permittee, Kenneth Kruse. The privilege to graze domestic livestock on the subject property according to the terms and conditions in operator record No. 361475 dated March 1, 1989, shall cease on February 28, 1998. The level of use allowed on the subject property will not exceed 126 animal unit months annually.

Sale parcel OR 49388 will be subject to the grazing use occurring within the Valley Grazing Allotment No. 911 by the existing permittee, Alan Parks (Poplars Ranch Inc.). The privilege to graze domestic livestock on the subject property according to the terms and conditions in operator record No. 361473 dated March 1, 1991, shall cease on February 28, 2001. The level of use allowed on the subject property will not exceed 78 animal unit months annually.

Sale parcel OR 49389 will be subject to the grazing use occurring within the Homestead Grazing Allotment No. 905 by the existing permittee, Gordon Wanek. The privilege to graze domestic livestock on the subject property according to the terms and conditions in operator record No. 361470 dated March 1, 1988, shall cease on February 28, 1998. The level of use allowed on the subject property will not exceed 120 animal unit months annually.

The successful bidder is entitled to receive annual grazing fees from the current permittee(s) in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register**. If the present permittee(s) are determined to be the successful bidders(s) or if, any time prior to the expiration date above, the permittee(s) sells or leases the base property to another person, the above conditions of patent will become null and void. The preference affected by this sale is non-transferable.

Federal law requires that all bidders must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

Under modified competitive sale procedures, an apparent high bid will be declared at public auction. In the event of a tie, the tied bidders will be notified and given the opportunity to modify their original bids. The apparent high bidder and the designated bidder(s) will then be notified. The designated bidder(s) shall have 15 days from the date of high bid notification to exercise the preference consideration given to match the high bid. Should the designated bidder fail to submit a bid that matches the apparent high bid within the specified time period, the apparent high bidder shall be declared the higher bidder.

If the land identified in this notice is not sold on the date of first sale offering, the unsold parcels will be available on an over-the-counter competitive sale basis. No purchase preference shall be awarded for over-the-counter sales. All over-the-counter sale parcels will be sold subject to the above terms and conditions and at no less than the indicated sale price. Sealed bids will be accepted on the unsold parcels at the Lakeview District Office during regular business hours (7:45 a.m. to 4:30 p.m. p.s.t. Monday through Friday) at the address shown below. All sealed bids received will be opened the first Wednesday of each subsequent month until the land is either sold or withdrawn from sale. Prospective buyers should inquire about unsold parcels after October 29, 1993.

Detailed information concerning the sale, including the reservations, sale procedures, terms and conditions, planning and environmental documentation, is available at the Lakeview District Office, P.O. Box 151, 1000 South Ninth Street, Lakeview, Oregon 97630.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Lakeview Resource Area Manager, Bureau of Land Management, at the above address. Objections will be reviewed by the District Manager who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 14, 1993.

**Scott R. Florence,**

*Manager, Lakeview Resource Area.*

[FR Doc. 93–17406 Filed 7–21–93; 8:45 am]

BILLING CODE 4310-33-M

## East Mojave National Scenic Area; Adjustment of Daily Recreation Use Fees

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Daily recreation use fees at Mid Hills and Hole-in-the-Wall Campgrounds in the East Mojave National Scenic Area, CA are increased from $4.00 per campsite to $6.00 per campsite. This action is necessary to recover increasing costs associated with campground maintenance.

**EFFECTIVE DATE:** September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jim Foote, Outdoor Recreation Planner, Needles Resource Area, P.O. Box 888, Needles, CA 92363; telephone (619) 326–3896.

**SUPPLEMENTARY INFORMATION:** Mid Hills and Hole-in-the-Wall Campgrounds were developed and daily recreation use fees established during the mid-1960s. The current use fee of $4.00 has been charged for more than a decade; information pertaining to use fees for these sites prior to the 1980s is unavailable.

An increase in daily recreation use fees reflects steadily increasing costs associated with maintenance of campground facilities. This action does not result in fees which exceed those established for similar facilities by other Federal agencies, non-Federal public agencies and the private sector located

within the service area of Mid Hills and Hole-in-the-Wall Campgrounds.

Authority for establishing daily recreation use fees is found at 36 CFR part 71 as promulgated pursuant to section 4, Land and Water Conservation Fund Act of 1965, 16 U.S.C.A. 4601–6a (Supp., 1974), and section 3, Act of July 11, 1972, 86 Stat. 461.

Dated: July 9, 1993.

**Henri Bisson,**

*District Manager, California Desert.*

[FR Doc. 93–17394 Filed 7–21–93; 8:45 am]

BILLING CODE 4335–04–M

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**[MT–070–03–4090–03]**

**Resource Management Plan**

**AGENCY:** Butte District Office, Bureau of Land Management, DOI.

**ACTION:** Amendment to the notice of intent to prepare a Resource Management Plan (RMP) Amendment for acquired lands located in the Garnet Resource Area, Montana.

**SUMMARY:** The original Notice of Intent to prepare an amendment to the Garnet RMP was published in the **Federal Register**, Vol. 56, No. 27 (February 8, 1991). It did not include the announcement that two tracts are being proposed for designation as Areas of Critical Environmental Concern (ACECs). Since proposed ACECs are to be described for public consideration and comment, the original notice is herein amended to bring that information before the public.

The two tracts of land that are being proposed for ACEC designation are Tract 10 (Squaw Rock) and Tract 11 (Bear Creek Flats). Descriptions of those tracts are:

**Squaw Rock Tract**

Size: 640 acres
Location: T 7 N, R 16 W, Sec. 16, PMM

Special Features: Wildlife/fisheries, watershed, recreation and scenic values are the outstanding features of this tract. It is within a high-value bighorn sheep spring/summer/fall habitat, and is particularly important as a lambing area for the Upper Rock Creek Bighorn Sheep herd. It also provides high-value deer, elk and bighorn sheep winter range. An extensive rock cliff complex overlooking Rock Creek provides excellent raptor nesting habitat.

A portion of Rock Creek flows across the southern end of the tract. Rock Creek is a blue ribbon trout stream and renowned nationwide for its fishing.

Rock Creek and the rock cliffs above it afford a high quality visual zone on the tract. Observers are able to view bighorn lambs on the rock cliffs during the spring lambing season from a nearby county road.

**Bear Creek Flats Tract**

Size: 669 acres
Location: T 14 N, R 14 W, Secs. 1, 2, 11 and 12

Special Features: This tract was purchased with Land and Water Conservation Funds for its wildlife/fisheries, watershed, recreation and scenic values. Portions of the tract provide big game winter habitat. The Blackfoot River and its associated riparian zone provide important foraging and winter roosting habitat for bald eagles.

The tract is part of the Blackfoot River Recreation Corridor, a cooperative management area established to preserve the natural and recreational values of the river. The Blackfoot River is appreciated locally and nationally for its recreational opportunities (floating, fishing, camping) and natural beauty. Consequently, there is wide concern about what is happening to the river; increasing recreational use and the effects of other past and present uses (mining, logging, grazing, etc.).

Riparian values are another important feature of the tract. The west boundary of the tract is formed by the Blackfoot River and its associated riparian zone. Bear Creek and its associated riparian zone cross the southern end of the tract and join the river. Approximately 3 miles of riparian habitat are associated with this tract.

The public is also invited to nominate any of the other ten (10) tracts for consideration as an ACEC. Each tract nominated will be evaluated by the criteria for relevance and importance to determine if it qualifies for designation. Relevance refers to significant natural, historic or cultural values; or significant natural systems or processes associated with the tract; or any natural hazards of the tract. Importance is determined by the significance of the values, and generally requires more than local significance.

**DATES:** The period for nominating other tracts for ACECs is until August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Attention: Delon Potter, 3255 Fort Missoula Road, Missoula, Montana 59801, Phone: 406–329–3824.

Dated: July 13, 1993.

**Gary L. Gerth,**

*Acting District Manager.*

[FR Doc. 93–17395 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–DN–M

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**Bureau of Reclamation**

**River Maintenance Program for the Rio Grande—Velarde to Caballo Dam—Rio Grande and Middle Rio Grande Projects, New Mexico**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of final supplement to the 1977 final environmental impact statement (FSFEIS), INT–FES–93–15.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a final supplement to the 1977 final environmental impact statement (FSFEIS) on a reformulated river maintenance program within the Rio Grande floodway. The proposed maintenance program consists of 6 broad-based alternatives for river channel maintenance, based on 10 distinctive morphological reaches of the Rio Grande.

**ADDRESSES:** Single copies of the final supplement to the FSFEIS may be requested from Reclamation's offices at the addresses below.

Copies of the FSFEIS are available for inspection at the following locations:

- Regional Director, Bureau of Reclamation, Upper Colorado Regional Office, Federal Building, 125 South State Street, Attention: UC–700, Salt Lake City, UT 84147–0568; telephone: (801) 524–5517.
- Projects Manager, Bureau of Reclamation, Albuquerque Projects Office, 505 Marquette, NW., suite 1313, Attention: ALB–150, Albuquerque, NM 87102–2162; telephone: (505) 766–1753.
- Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, room 167, Denver, CO 80225; telephone: (303) 236–6963.
- Middle Rio Grande Conservancy District, 193 Second Street, SW., Albuquerque, NM 87103; telephone: (505) 247–0234.

*Libraries*

Albuquerque City Libraries:
Main Library, 501 Copper Avenue, NW.
Erna Ferguson, 3700 San Mateo Boulevard, NE.
Ernie Pyle, 900 Girard Boulevard, SE.
Esperanza, 5600 Esperanza Drive, NW.
Juan Tabo, 3407 Juan Tabo Boulevard,

NE.
Lomas and Tramway, 908 Eastridge Drive, NE.
Los Griegos, 1000 Griegos Road, NW.
San Pedro, 5600 Trumbull Avenue, SE.
South Valley, Bernalillo County, 3908 Isleta Boulevard, SW.
Taylor Ranch, 5700 Bogart, NW.
University of New Mexico, Albuquerque, New Mexico
New Mexico State University, Las Cruces, New Mexico

**FOR FURTHER INFORMATION CONTACT:** Mr. William E. Burleigh, Activity Manager, Albuquerque Projects Office, Attention: ALB–150, 505 Marquette, NW., suite 1313, Albuquerque, NM 87102–2162; telephone: (505) 766–2518.

**SUPPLEMENTARY INFORMATION:** Under the reformulated river maintenance program, river channel maintenance was designed based on the hydrologic characteristics of the Rio Grande and consideration of the environmental values associated with each reach. Future mitigation measures will be addressed on a site-specific basis based on "best management practices."

Dated: June 2, 1993.

**Dee D. Hall,**

*Deputy Commissioner.*

[FR Doc. 93–17336 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–09–M

## Fish and Wildlife Service

### Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–697823

*Applicant:* Regional Director, Region 5, U.S. Fish and Wildlife Service, Hadley, MA.

Applicant requests amendment to their current permit to take Karner blue butterfly (*Lycaeides melissa samuelis*) for purposes of scientific research and enhancement of propagation of survival of the species in accordance with recovery documents.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420c, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420c, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 19, 1993.

**Margaret Tieger,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 93–17413 Filed 7–21–93; 8:45 am]

BILLING CODE 4310–55–M

### Availability of Draft Recovery Plan for "Hibiscadelphus Distans"

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Hibiscadelphus distans*. This species is known only from the island of Kauai, Hawaii, and is currently limited to only two wild populations, made up of approximately 100 individuals; only 56 are reproductively mature.

**DATES:** Comments on the draft recovery plan must be received on or before September 20, 1993 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (Building address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813) (Phone: 808–541–2749). Copies of the draft plan are available for inspection at the Lihue Public Library, 4344 Hardy Ave., Lihue, Hawaii 96766 (Phone: 808–245–3617). Written comments and materials regarding the plan should be addressed to Robert P. Smith, Field Supervisor of the Pacific Islands Office at the above Honolulu address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours, at the above Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Karen Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States, its Territories and Commonwealths. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan is *Hibiscadelphus distans* The genus *Hibiscadelphus* is endemic to Hawaii, and is considered to be one of the world's rarest groups of trees. This genus once inhabited the diverse mesic forests found at middle elevations. Introduced animals and land clearing for agriculture over the past 200 years have altered these forests so extensively that little primary habitat remains. *H. distans* was discovered in 1972 in a highly degraded native dryland forest. Browsing by introduced goats, competition with alien plants, and landslides are now the major threats to the species' survival. Other threats are introduced insect predators and pathogens.

*Hibiscadelphus distans* is currently represented by only two populations, made up of less than 60 reproductive individuals in total. The areas of emphasis for recovery actions are the population sites located in Kosie Valley, Waiamea Canyon. In addition, the recovery plan emphasizes establishing

new populations in the Waiamea Canyon area.

Recovery efforts will focus on protection of all extant individuals from goats, alien plant species, landslides, insect predators and pathogens, propagation of genetically suitable plants to augment the existing populations, and establishment of new populations in suitable habitat areas.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 14, 1993.

**William E. Martin,**

*Acting Regional Director, U.S. Fish and Wildlife Service.*

[FR Doc. 93-17401 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-55-M

**Receipt of Application for Permit**

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 161 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

*Applicant:* Alaska Fish and Wildlife Research Center PRT-740507 Anchorage, AK

*Type of Permit:* Scientific Research

*Name and Number of Animals:* Alaska sea otters (*Enhydra lutris*)

*Summary of Activity to be Authorized:* The applicant requests amendment to their permit for import of blood samples collected from live sea otters in Canada and Russia while conducting research with foreign counterparts. Samples will be imported for analyses of serum chemistry, serum hormones, and genetics.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 420c, Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director submit request to: U.S. Fish and Wildlife Service, OMA, 4401 North Fairfax Drive, room 420c, Arlington, VA 22203. Phone: (1-800-358-2104); Fax: (703/358-2281).

Dated: July 16, 1993.

**Susan Jacobsen,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 93-17363 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-55-M

**Damage Assessment Plan: Southern Lakes Trap and Skeet Club, Lake Geneva, WI**

**AGENCY:** U.S. Fish and Wildlife Service, Region 3, Department of the Interior.

**ACTION:** Notice of 30-day comment period.

**SUMMARY:** Notice is given that the draft document entitled: "Damage Assessment Plan: Southern Lakes Trap and Skeet Club, Lake Geneva, Wisconsin" is available for public review and comment.

The Service is acting as trustee for migratory birds, endangered species, and certain anadromous fish, on behalf of the Secretary of the Department of Interior, pursuant to section 107(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9602 *et seq.* and Federal Regulations at 43 CFR 11.32(c)(1).

The Service is undertaking an assessment of damages to the migratory birds of the United States, and the habitats which support them, that have been injured by exposure to a hazardous substance. In particular, the Service believes that Canada geese (*Branta canadensis*) have been killed by ingesting lead shot at the site. Lead is listed as a hazardous substance, pursuant to CERCLA, in Federal regulations at 40 CFR 302.4. Canada geese are migratory birds pursuant to the Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. 703 *et seq.*

The Service is following the Federal Regulations at 43 CFR part 11, issued by the Department of the Interior in conducted this damage assessment. The public review of this draft Damage Assessment Plan, announced by this notice, is provided at 43 CFR 11.32(c).

Interested members of the public are invited to request a copy of this Plan and the Service's Preassessment Screen and Determination issued on January 22, 1993, from the Assistant Regional Director for Ecological Services, U.S. Fish and Wildlife Service, Region 3, at the address given below. All written comments will be considered by the Service and incorporated into the Report of Assessment.

**DATES:** Comments may be submitted on or before August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** John A. Blankenship, Assistant Regional Director for Ecological Services, US FWS Region 3 (ATTN: ES/EC-NRDA), Federal Building, 1 Federal Drive, Ft. Snelling, MN 55111 (phone 612/725-3593 or fax 612/725-3526).

**SUPPLEMENTARY INFORMATION:** On behalf of the Secretary of the Department of Interior, the trustee for migratory birds, the Service is authorized by section 107(f) of CERCLA to recover damages for the injury, destruction or loss of migratory birds, and the habitats which support them, caused by the release of hazardous substances. Under this authority, the Service issued a Preassessment Screen and Determination on January 22, 1993, in which the Service conducted a preliminary review of existing and readily available information concerning the facts of this case and determined that a damage assessment could and should be done.

The purpose of the draft Damage Assessment Plan announced here is to ensure that the assessment is performed in a planned and systematic manner and that the methodologies selected can be conducted at reasonable cost. This notice invites comments on that document.

On November 25, 1992, the Service notified the Wisconsin Department of Natural Resources (WDNR) of potential co-trusteeship at the site. The WDNR has declined to participate as a trustee for this case.

The Service, and the U.S. Environmental Protection Agency (EPA) pursuant to their response authority under CERCLA, have begun discussions with the potentially responsible parties on how to proceed with removal, remediation, and restoration at this site. The Damage Assessment Plan will provide the basis for investigations at the site to determine the extent of injury to trust resources at the site and the monetary value of damages to the public.

The intent of the Service is to calculate damages as the cost of restoring the functions of the disturbed

wetland on the site and surrounding habitat, plus the approximate value of lost waterfowl, plus the costs to the Service of assessing damages at the site. The Service is particularly interested in receiving information from the public on methods for easily estimating the value of lost waterfowl.

The Damage Assessment Plan provides for: (1) Mapping the distribution of lead shot; (2) inventorying site flora; (3) evaluating site habitats; (4) characterizing site physical features; and (5) development of a clean-up criterion. This information will be used to estimate the cost of restoration.

As an initial step in the assessment, the horizontal and vertical distribution of lead shot pellets will be determined through analysis of sediment core samples. This information will be used to evaluate options for removal of the lead and restoration of the site. Options will be evaluated based on effectiveness, feasibility, and cost. The cost estimate of the selected option will become an element of the restoration-based liability for this site.

An inventory of the flora, a habitat evaluation, and a characterization of the physical features will be conducted to establish the condition of the habitat prior to removal of the lead and to establish goals for the restoration.

Sampling and analysis of sediment, water, and vegetation will be conducted to determine if pathways exist for exposure of geese to lead, other than direct ingestion, for exposure to polynuclear aromatic hydrocarbons from remnant clay targets ("clay pigeons").

As part of the assessment, a clean-up criterion for acceptable lead shot residual levels (those levels which will be protective of trust species using the site following restoration) will be developed. Using the probability of waterfowl ingesting a toxicologically significant number of pellets, an objective expressed as the maximum permissible number of lead pellets per unit area will be calculated.

The potential responsible parties have been invited to participate in the development of the Damage Assessment Plan announced here. The Service intends to allow them and their consultants to implement any part of the Plan under the direction, guidance, and supervision of the Service. In addition, the Service will continue to coordinate closely with the EPA in recognition of the possibility that EPA-led activities at the site may satisfy goals of the Plan.

Comments are being solicited to ensure that important resource concerns are not omitted from the assessment, that methodologies are given an independent review and appropriate methodologies are chosen for the assessment, and that costs of assessment are reasonable.

**Marvin E. Moriarty,**

*Acting Regional Director, U.S. Fish and Wildlife Service, Region 3.*

[FR Doc. 93-17382 Filed 7-21-93; 8:45 am]

BILLING CODE 4310-55-M

## Geological Survey

### Privacy Act of 1974—Deletion of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting from its inventory of Privacy Act systems of records two notices describing records maintained by the U.S. Geological Survey. The systems of records notices being abolished are entitled "Accounts Receivable—Interior, USGS–3," which was previously published in the Federal Register on September 7, 1990 (55 FR 36904) and "Travel Files—Interior, GS–14," which was previously published in the Federal Register on June 4, 1985 (50 FR 23523). These systems of records are no longer being maintained in the Department of the Interior.

Prior to October 14, 1992, the U.S. Geological Survey maintained a separate record of persons and corporate entities who owed money to the U.S. Geological Survey for the purpose of billing debtors and accounting for payments received (USGS–3), and a record of employee travel for the purpose of processing travel authorizations and claims (GS–14). With the establishment of the Departmentwide system of records "Federal Financial System—Interior, OS–90" (57 FR 47118), these systems became obsolete. On December 14, 1992, the records maintained in these systems were incorporated into the Federal Financial System.

These changes shall be effective on publication in the Federal Register (July 22, 1993). Additional information regarding this action may be obtained from the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, PMO, 1849 "C" Street NW., Mail Stop 5412 MIB, Washington, D.C. 20240, telephone (202) 208–6045.

Dated: July 16, 1993.

**Albert C. Carnache,**

*Director, Office of Administrative Services.*

**INTERIOR/USGS–18**

**SYSTEM NAME:**

Computer Registration System—Interior, USGS–18.

**SYSTEM LOCATION:**

Information Systems Division, National Center, U.S. Geological Survey, Mail Stop 801, Reston, Virginia 22092; Menlo Park Service Center, 345 Middlefield Road, Menlo Park, California 94025; Flagstaff Service Center, 2255 N. Gemini Drive, Flagstaff, Arizona 86001.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Users of computer services.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, computer user number, city/state telephone number, subsystem registration, account number.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

40 U.S.C. 486(c); 41 CFR part 201–7.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary use of the records is: (a) To record registration information for computer users; and (b) to contact computer users. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) To a Federal agency which has requested information relevant or necessary to its hiring or

retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; and (5) To Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic disk.

RETRIEVABILITY:

By user name, user number, city/state telephone number, subsystem, account number.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule, RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Division, U.S. Geological Survey, Mail Stop 801, National Center, Reston, Virginia 22092; Chief, Menlo Park Service Center, U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025; Chief, Flagstaff Service Center, U.S. Geological Survey, 2255 N. Gemini Drive, Flagstaff, Arizona 86001.

NOTIFICATION PROCEDURES:

A request for notification of the existence of records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual users of computer services.

**Interior/USGS–24**

SYSTEM NAME:

Employee Work Report Edit and Individual Employee Production Rates—Interior, USGS–24.

SYSTEM LOCATION:

1. Eastern Mapping Center, National Mapping Division, U.S. Geological Survey, National Center, Mail Stop 567, Reston, Virginia 22092.

2. Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, 1400 Independence Road, Rolla, Missouri 65401.

3. Rocky Mountain Mapping Center, National Mapping Division, U.S. Geological Survey, Box 25046, Mail Stop 510, Denver, Colorado 80225.

4. Western Mapping Center, National Mapping Division, U.S. Geological Survey, 345 Middlefield Road, Mail Stop 531, Menlo Park, California 94025.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Production employees in Mapping Centers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, social security number, hours, and square miles mapped by individual production employees in each of the offices listed above, as well as Geological Survey professionals (geographers, cartographers, etc.) who conducted research and investigations for which results are published in Geological Survey reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 3010; 43 U.S.C. 31, 1467.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is for analysis of cost and production rates for individual employees and for units of National Mapping Division. Disclosure outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department or, when represented by the Government, an employee of the Department is party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order, or license to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (4) To a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (5) To Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on magnetic tape and disc.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access restricted to authorized persons only from locked storage.

RETENTION AND DISPOSAL:

Retained and disposed of according to Bureau Records Disposition Schedule. RCS/Item 102–01.

SYSTEM MANAGER(S) AND ADDRESS:

1. Chief, Branch of Program Management, Eastern Mapping Center, National Mapping Division, U.S. Geological Survey, National Center, Mail Stop 567, Reston, Virginia 22092.

2. Chief, Branch of Program Management, Mid-Continent Mapping Center, National Mapping Division, U.S. Geological Survey, 1440 Independence Road, Rolla, Missouri 65401.

3. Chief, Branch of Program Management, Rock Mountain Mapping Center, National Mapping Division, U.S. Geological Survey, Box 25046, Mail Stop 510, Denver, Colorado 80225.

4. Assistant Chief, Western Mapping Center, National Mapping Division, U.S. Geological Survey, 345 Middlefield Road, Mail Stop 531, Menlo Park, California 94025.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed

to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the appropriate System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Data from work prepared by individuals.

[FR Doc. 93-17397 Filed 7-21-93; 8:45 am]
BILLING CODE 4210-01

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 875-1608, FA/AS/ISS/RM, room 930B, N.S., Washington, DC 20523.

*Date Submitted:* July 2, 1993
*Submitting Agency:* Agency for International Development
*OMB Number:* 0412-0020
*Form Number:* AID 1450-4
*Type of Submission:* Renewal
*Title:* Supplier's Certificate and Agreement with A.I.D. for Project Commodities/Invoice and Contract Abstract
*Purpose:* When A.I.D. is not a party to a contract which it finances, it must monitor those contracts to assure adherence to A.I.D. requirements. This information collection item enables A.I.D. to keep records of commodity expenditures for program management purposes and required reports. It also allows A.I.D. to measure the extent of small and minority business participation in the commodity program. Respondents are identified as Supplier of commodities who must submit data per each transaction. The total annual collective burden on respondents is estimated at $3,408. These costs are projected from such items as personnel, recordkeeping, reporting, and overhead costs.
*Annual Reporting Burden:* Respondents: 100, annual responses: 200; average hours per response: .50; annual burden hours: 100
*Reviewer:* Jeffery Hill (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503

Dated: July 6, 1993.
Elizabeth Baltimore,
*Information Support Services Division.*
[FR Doc. 93-17405 Filed 7-21-93; 8:45 am]
BILLING CODE 6116-01-M

## INTERSTATE COMMERCE COMMISSION

### Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, Room 3219, Washington, DC 20423, (202) 927-5750 or (202) 927-6212.

Comments on the following assessment are due 15 days after the date of availability:

AB-265 (Sub-No. 3X), State of Vermont and Vermont Railway, Inc.—Discontinuance of Service Over North Burlington Branch in Chittenden County, Vermont. EA available July 13, 1993.

AB-55 (Sub-No. 465X), CSX Transportation, Inc.—Abandonment and Discontinuance of Trackage Rights in Fayette County, West Virginia. EA available July 16, 1993.

AB-6 (Sub-No. 351X), Burlington Northern Railroad Co. Abandonment in St. Cloud, Stearns County, Minnesota. EA available July 16, 1993.

AB-32 (Sub-No. 52X), Boston & Maine Corporation and Springfield Terminal Railway Company—Abandonment and Discontinuance of Service—Stafford County, New Hampshire. EA available July 12, 1993.

Comments on the following assessment are due 30 days after the date of availability: None.

Sidney L. Strickland, Jr.,
*Secretary.*
[FR Doc. 93-17435 Filed 7-21-93; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 459X)]

### CSX Transportation, Inc.—Abandonment Exemption—In Montgomery County, AL

AGENCY: Interstate Commerce Commission.
ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of 1.45 miles of rail line extending between mileposts SL-827.08 and SL-828.53 near Eastmont, Montgomery County, AL, subject to standard labor protective conditions.

DATES: This exemption will be effective on August 21, 1993. If no formal expression of intent to file an offer of financial assistance has been filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by August 2, 1993, petitions to stay must be filed by August 6, 1993, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 11, 1993, and petitions to reopen must be filed by August 16, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 459X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Charles M. Rosenberger, 500 Water Street, Speed Code J-150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw (202) 927-5610. (TDD for hearing impaired: (202) 927-5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone:

[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

(202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: July 13, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17436 Filed 7–21–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32316]

**Exemption; Decatur Terminal Railway Co.—Acquisition and Operation Exemption—Indiana Hi-Rail Corp.**

Decatur Terminal Railway Co. (Decatur), a noncarrier, has filed a notice of exemption to acquire from Indiana HiRail Corporation (IHRC) its rights as current operator of certain rail lines in the State of Illinois and to operate those lines. IHRC operates the following lines under contract: (1) Approximately 17.54 miles between milepost A 728.00 at Assumption and milepost A 745.54 near Elwin, IL, owned by Central Illinois Shippers, Inc.; and (2) approximately 13.47 miles between milepost 14.22 at Cisco, IL, and milepost 27.63 at Green's Switch, owned by Cisco Grain Cooperative Company. In addition, IHRC will assign to Decatur its interchange rights over lines of the Illinois Central Railroad at Decatur, IL.

This transaction is related to a notice of exemption filed concurrently in Finance Docket No. 32315, Pioneer Railcorp—Continuance in Control Exemption—Decatur Terminal Railway Co., in which Decatur's parent, noncarrier Pioneer Railcorp, seeks to continue in control of Decatur and six other rail carriers upon Decatur's becoming a carrier.

Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., suite 1107, Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 16, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17433 Filed 7–21–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32315]

**Exemption; Pioneer Railcorp—Continuance in Control Exemption—Decatur Terminal Railway Co.**

Pioneer Railcorp (Pioneer), a noncarrier, has filed a notice of exemption to continue to control Decatur Terminal Railway Co. (Decatur), a newly established noncarrier, upon Decatur's becoming a carrier. Decatur has concurrently filed a notice of exemption in Finance Docket No. 32316, Decatur Terminal Railway Co.—Acquisition and Operation Exemption—Indiana Hi-Rail Corporation to acquire from Indiana Hi-Rail Corporation (IHRC) its rights as current operator of certain rail lines in the State of Illinois and to operate those lines, which consist of the following: (1) Approximately 17.54 miles between milepost A 728.00 at Assumption and milepost A 745.54 near Elwin, IL, owned by Central Illinois Shippers, Inc.; and (2) approximately 13.47 miles between milepost 14.22 at Cisco, IL, and milepost 27.63 at Green's Switch, owned by Cisco Grain Cooperative Company. Also included in the acquisition is IHRC's assignment to Decatur of its interchange rights over lines of the Illinois Central Railroad at Decatur, IL.

Pioneer owns and controls the following class III rail common carriers: Alabama Railroad Co., Alabama & Florida Railway Co., Fort Smith Railroad Co., Mississippi Central Railroad, Wabash & Grand River Railway Co., and West Jersey Railroad Co. It indicates that: (1) The properties operated by the named railroads will not connect with each other; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Precup, 1700 K Street, NW., suite 1107, Washington, DC 20006.

Decided: July 16, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17434 Filed 7–21–93; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**BACKGROUND:** The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

**LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW:** As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**COMMENTS AND QUESTIONS:** Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202–219–5095).

Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution

Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202)–395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

**Extension**

*Mine Safety and Health Administration*

Mine Operator Dust Data Card
1219–0011
Bimonthly
Businesses or other for-profit; Small businesses or organizations 80,700 responses; 1 hour, 1 minute average per response; 81,991 total hours

Approximately 50 percent of coal mine operators are required to collect and submit respirable dust samples to MSHA for analysis. Pertinent information associated with identifying and analyzing these samples is submitted on the dust data card that accompanies the samples.

Signed at Washington, DC this 15th day of July, 1993.

**Kenneth A. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 93–17372 Filed 7–21–93; 8:45 am]

BILLING CODE 4510–43–M

## Employment and Training Administration

**[TA–W–28,475]**

### Airfoil Forging Textron, Euclid, OH; Negative Determination Regarding Application for Reconsideration

By an application dated June 14, 1993, Local #2562 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 17, 1993 and published in the **Federal Register** on June 15, 1993 (58 FR 33121).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers at the Euclid plant produce unfinished forgings for jet engine blades. The Euclid plant has no outside customers but ships its forgings to two other corporate domestic plants neither of which have workers certified for TAA. The findings also show that Airfoil Forging does not import forgings for jet engine blades.

The union claims that several Congressional and Governmental reports support their position that imported jet aircraft have adversely affected their employment.

Imported jet aircraft, like the European Airbus, cited by the union as having taken marketshare away from U.S. aircraft manufacturers, are not like or directly competitive with unfinished jet forgings for jet engine blades produced by the Airfoil Forging Division at Euclid.

Early in the administration of the worker adjustment assistance program, the courts addressed the issue of component and finished articles. In *United Shoe Workers of America, AFL–CIO* v. *Bedell*, 506 F2d 174 (D.C. Cir. 1974), the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, unfinished jet forgings for jet engine blades cannot be considered like or directly competitive with jet airplanes or jet engines.

Other findings show that the decline in production of forgings are the result of factors unrelated to increased imports of forgings.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 13th day of July 1993.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.*

[FR Doc. 93–17373 Filed 7–21–93; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–26,733]**

### ICI Americas, Inc. a/k/a Zeneca, Inc., Dighton, MA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 1992, applicable to all workers of ICI Americas, Inc., Dighton, Massachusetts. The notice was published in the **Federal Register** on March 31, 1992 (57 FR 10924).

At the request of the company, the Department reviewed the subject certification. The investigation findings show that on June 1, 1993, Zeneca, Inc., replaced ICI Americas as the employer of the former ICI workers. Zeneca produces the same products as ICI did before.

Accordingly, the Department is amending the certification to show that Zeneca, Inc. is the successor-in-interest firm.

The amended notice applicable to TA–W–26,733 is hereby issued as follow:

All workers of Zeneca, Inc., Dighton, Massachusetts, the successor-in-interest firm of ICI Americas, in Dighton, Massachusetts who became totally or partially separated from employment on or after December 31, 1990 are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of July 1993.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93–17371 Filed 7–21–93; 8:45 am]

BILLING CODE 4510–30–M

## Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977:

**1. BHP Mineral International, Inc.**

[Docket No. M–93–77–C]

BHP Mineral International, Inc., P.O. Box 155, Fruitland, New Mexico 87416 has filed a petition to modify the application of 30 CFR 77.1304(a) (blasting agents; special provisions) to its Navajo Mine (I.D. No. 29–00097) located in San Juan County, New Mexico. The petitioner proposes to use fuel oil blended with recycled oil as a

blasting agent. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**2. Power Operating Co., Inc.**

[Docket No. M–93–78–C]

Power Operating Company, Inc., P.O. Box 25, Osceola Mills, Pennsylvania 16666 has filed a petition to modify the application of 30 CFR 77.1607(aa) (loading and haulage equipment; operation) to its Frenchtown Mine (I.D. No. 36–02713) located in Clearfield County, Pennsylvania. The petitioner requests that the cited standard be modified to exclude coverage of rock trucks hauling overburden in the pit area. The petitioner proposes to eliminate pedestrians from the working areas of the pit, including tipping areas, and to ensure that all vehicles in the pit respect the working radius of any other equipment. The petitioner states that the proposed alternate method would ensure the safety of the miners at the mine.

**3. Snyder Coal Co.**

[Docket No. M–93–80–C]

Snyder Coal Company, R.D. #2, Box 93, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its N and L Slope (I.D. No. 36–02203) located in Northumberland County, Pennsylvania. The petitioner proposes to use bar and pin or link and pin couplers on underground haulage equipment instead of automatic couplers. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**4. Consolidation Coal Co.**

[Docket No. M–93–81–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Osage No. 3 Mine (I.D. No. 46–01455) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, certain areas of the return air course cannot be safely traveled. The petitioner proposes to establish evaluation check points to monitor the affected area and test for methane and the quantity of air would be determined weekly by a certified person. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**5. New Warwick Mining Co.**

[Docket No. M–93–82–C]

New Warwick Mining Company, R.D. 1, Box 167A, Mount Morris, Pennsylvania 15349 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Warwick Mine (I.D. No. 36–02374) located in Greene County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the return air course cannot be safely traveled. The petitioner proposes to establish a check point to monitor the air in the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**6. Consolidation Coal Co.**

[Docket No. M–93–83–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.380 (d)(4) (escapeways; bituminous and lignite mines) to its Dilworth Mine (I.D. No. 36–04281) located in Greene County, Pennsylvania. The petitioner seeks to modify the requirement that escapeways be maintained at least 6 feet wide. As an alternative, the petitioner proposes to establish two separate and distinct escapeways with a clearance of 42 inches on one side of the supply cars when an unattended trip of the cars, not to exceed 300 feet in length, is parked in the track/intake escapeway entry of the three-entry development sections. A reflective sign would be posted at both the inby and outby ends of the trip of cars to indicate the side of travel. The petitioner would establish two separate and distinct escapeways identified with signs and markers. The secondary escapeway would be in the belt entry from the longwall face to the track entry at a distance not to exceed 1,000 feet. The minimum width of the travelway in the belt entry would be at 2 feet with a reflective sign posted at both the inby and outby end of the area. Walkways would be clear and free of obstructions; personnel would be instructed to use the primary escapeway in an emergency when the primary escapeway is impassable to transport persons; the longwall machine belt line would be deenergized; and personnel would be trained prior to implementing the alternate method. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**7. Neumeister Coal Co.**

[Docket No. M–93–84–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**8. Neumeister Coal Co.**

[Docket No. M–93–85–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**9. Neumeister Coal Co.**

[Docket No. M–93–86–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate

method would provide at least the same measure of protection as would the mandatory standard.

**10. Neumeister Coal Co.**

[Docket No. M–93–87–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**11. Neumeister Coal Co.**

[Docket No. M–93–88–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**12. Neumeister Coal Co.**

[Docket No. M–93–89–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**13. Neumeister Coal Co.**

[Docket No. M–93–90–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**14. Neumeister Coal Co.**

[Docket No. M–93–91–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**15. Neumeister Coal Company**

[Docket No. M–93–92–C]

Neumeister Coal Company, R.D. #1, Box 327–D, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 2 Slope (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**16. E & E Fuels**

[Docket No. M–93–93–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**17. E & E Fuels**

[Docket No. M–93–94–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner request a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**18. E & E Fuels**

[Docket No. M–93–95–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the

monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**19. E & E Fuels**

[Docket No. M–93–96–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**20. E & E Fuels**

[Docket No. M–93–97–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**21. E & E Fuels**

[Docket No. M–93–98–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**22. E & E Fuels**

[Docket No. M–93–99–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**23. E & E Fuels**

[Docket No. M–93–100–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**24. E & E Fuels**

[Docket No. M–93–101–C]

E & E Fuels, Box 322, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Orchard Slope (I.D. No. 36–08346) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**25. J. R. & L. Coal Co.**

[Docket No. M–93–102–C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its No. 2 Middle Split Slope (I.D. No. 36–08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**26. J. R. & L. Coal Co.**

[Docket No. M–93–103–C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Middle Split Slope (I.D. No. 36–08305) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in 10 the psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**27. J. R. & L. Coal Co.**

[Docket No. M–93–104–C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 2 Middle Split Slope (I.D. No. 36–08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination

after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**28. J. R. & L. Coal Co.**

[Docket No. M–93–105–C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its No. 2 Middle Split Slope (I.D. No. 36–08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**29. J. R. & L. Coal Co.**

[Docket No. M–93–106–C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its No. 2 Middle Split Slope (I.D. No. 36–08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**30. J. R. & L. Coal Co.**

[Docket No. M–93–107–C]

J. R. & L. Coal Company, P.O. Box 676, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 2 Middle Split Slope (I.D. No. 36–08305) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**31. Wenrich Coal Co.**

[Docket No. M–93–108–C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Buck Mt. Slope (I.D. No. 36–05717) located in Schuylkill County, Pennsylvania. The petitioner request a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**32. Wenrich Coal Co.**

[Docket No. M–93–109–C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Buck Mt. Slope (I.D. No. 36–05717) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**33. Wenrich Coal Co.**

[Docket No. M–93–110–C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Buck Mt. Slope (I.D. No. 36–05717) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**34. Wenrich Coal Co.**

[Docket No. M–93–111–C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Buck Mt. Slope (I.D. No. 36–05717) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**35. Wenrich Coal Co.**

[Docket No. M–93–112–C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its Buck Mt. Slope (I.D. No. 36–05717) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**36. Wenrich Coal Co.**

[Docket No. M–93–113–C]

Wenrich Coal Company, HCR 1, Box 44, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Buck Mt. Slope (I.D. No. 36–05717) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**37. Buck Mt. Coal Company No. 2**

[Docket No. M–93–114–C]

Buck Mt. Coal Company No. 2, RD 2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its Buck Mt. Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**38. Buck Mt. Coal Company No. 2**

[Docket No. M–93–115–C]

Buck Mt. Coal Company No. 2, RD 2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Buck Mt. Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**39. Buck Mt. Coal Company No. 2**

[Docket No. M–93–116–C]

Buck Mt. Coal Company No. 2, RD 2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Buck Mt. Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**40. Buck Mt. Coal Company No. 2**

[Docket No. M–93–117–C]

Buck Mt. Coal Company No. 2, RD 2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Buck Mt. Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**41. Buck Mt. Coal Company No. 2**

[Docket No. M–93–118–C]

Buck Mt. Coal Company No. 2, RD 2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its Buck Mt. Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation any time the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**42. Buck Mt. Coal Company No. 2**

[Docket No. M–93–119–C]

Buck Mt. Coal Company No. 2, RD 2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its Buck Mt. Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**43. Buck Mt. Coal Company No. 2**

[Docket No. M–93–120–C]

Buck Mt. Coal Company, RD 2, Box 425–B2, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Buck Mt. Slope (I.D. No. 36–02053) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6-month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**44. Kintzel Coal Co.**

[Docket No. M–93–121–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed

alternate method would provide at least the same measure of protection as would the mandatory standard.

**45. Kintzel Coal Co.**

[Docket No. M–93–122–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**46. Kintzel Coal Co.**

[Docket No. M–93–123–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**47. Kintzel Coal Co.**

[Docket No. M–93–124–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**48. Kintzel Coal Co.**

[Docket No. M–93–125–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b) (1), (4), and (5) (weekly examination) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**49. Kintzel Coal Co.**

[Docket No. M–93–126–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**50. Kintzel Coal Co.**

[Docket No. M–93–127–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**51. Kintzel Coal Co.**

[Docket No. M–93–128–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**52. Kintzel Coal Co.**

[Docket No. M–93–129–C]

Kintzel Coal Company, 43 Laurel Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Lykens Valley 6 (I.D. No. 36–01886) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**53. M&S Coal Co.**

[Docket No. M–93–130–C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.332 (b)(1) and (b)(2) (working sections and working places) to its Buck Mt. Slope (I.D. No. 36–05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure

air quality by sampling intake air during pre-shift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**54. M&S Coal Co.**

[Docket No. M-93-131-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner request a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**55. M&S Coal Co.**

[Docket No. M-93-132-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**56. M&S Coal Co.**

[Docket No. M-93-133-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be safely traveled. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**57. M&S Coal Co.**

[Docket No. M-93-134-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**58. M&S Coal Co.**

[Docket No. M-93-135-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**59. M&S Coal Co.**

[Docket No. M-93-136-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**60. M&S Coal Co.**

[Docket No. M-93-137-C]

M&S Coal Company, P.O. Box 604, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Buck Mt. Slope (I.D. No. 36-05619) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**61. Jeff Coal Co.**

[Docket No. M-93-138-C]

Jeff Coal Company, RD #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Tracey Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**62. Jeff Coal Co.**

[Docket No. M-93-139-C]

Jeff Coal Company, RD #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its Tracey Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The

petitioner proposes to use only portable fire extinguishers where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**63. Jeff Coal Co.**

[Docket No. M-93-140-C]

Jeff Coal Company, RD #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1200 (d) and (i) (mine map) to its Tracey Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**64. Jeff Coal Co.**

[Docket No. M-93-141-C]

Jeff Coal Company, RD #1, Box 12-A, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Tracey Vein Slope (I.D. No. 36-07328) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**65. B&E Anthracite Coal Co.**

[Docket No. M-93-142-C]

B&E Anthracite Coal Company, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Rock Ridge Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petitioner request a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**66. B&E Anthracite Coal Co.**

[Docket No. M-93-143-C]

B&E Anthracite Coal Company, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Rock Ridge Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have the intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**67. Kocher Coal Co.**

[Docket No. M-93-144-C]

Kocher Coal Company, P.O. Box 127, Valley View, Pennsylvania 17983 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its Porter Tunnel (I.D. No. 36-01892) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 23, 1993. Copies of these petitions are available for inspection at that address.

Dated: July 14, 1993.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 93-17374 Filed 7-21-93; 8:45 am]

BILLING CODE 4510-43-P

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## Office of the Assistant Secretary for Veterans' Employment and Training

## Procedures for Application for Funds; Stewart B. McKinney Homeless Assistance Act, FY 1993—Rural Projects

**AGENCY:** Office of the Assistant Secretary for Veterans' Employment and Training (OASVET), Labor.

**ACTION:** Notice of availability of funds and of solicitation for grant applications for Homeless Veterans Reintegration Projects (HVRPs) in rural areas.

**SUMMARY:** This notice sets forth the procedures for obtaining an application for funds for a Homeless Veterans Reintegration Project (HVRP) funded under the Stewart B. McKinney Homeless Assistance Act, title VII, subtitle C, section 738 to operate in a rural area. Projects will be administered by the Department of Labor through grants with State and local public agencies and nonprofit organizations.

**DATES:** The closing date for receipt of a completed application package in response to this notice is August 24, 1993. Applications received after that time will be considered for award according to the instructions in the application package governing late proposals.

**ADDRESSES:** A copy of the application package and instructions for completion may be obtained by fax or written request directed to: U.S. Department of Labor, Office of Procurement Services, room. S5220, 200 Constitution Avenue NW., Washington DC 20210, Grant Officer, Attention: Robert MacLeod, Reference SGA 93-04. Self-addressed mailing labels will be appreciated. The fax number is 202-219-6853.

**FOR FURTHER INFORMATION CONTACT:** Robert MacLeod, U.S. Department of Labor, Office of Procurement Services, 200 Constitution Avenue NW., room S5220, Washington, DC 20210, Telephone (202) 219-6246.

**SUPPLEMENTARY INFORMATION:** The Office of the Assistant Secretary for Veterans' Employment and Training (OASVET) announces the availability of an application package for Fiscal Year 1993 HVRP funds to serve homeless veterans

in rural areas. Funding for these projects is authorized by section 738 of the Stewart B. McKinney Homeless Assistance Act, (Pub. L. 100–77). Most recently under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Pub. L. 102–590, enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995.

The McKinney Act provides funds to various Federal agencies to administer a variety of programs for homeless persons. Title VII, subtitle C, section 738 of the Act authorizes programs "to expedite the reintegration of homeless veterans into the labor force." There is approximately $400,000 available in Fiscal Year 1993 to carry out demonstration HVRPs in rural areas. A separate competition for urban projects was announced in the **Federal Register** on April 7, 1993 with a closing date of May 14, 1993.

Awards are expected to range from $75,000 to $100,000. Between 3 and 5 projects will be funded. Projects will begin no later than September 30, 1993 for a one-year period with an option to renew for an additional year.

In keeping with the demonstration nature of the McKinney Act, the program is designed to provide each potential program operator with flexibility in determining the range of supportive and training-related activities which best meet the need of the homeless veteran population in a rural jurisdiction.

There are three elements, however, which will be required in each HVRP:

(1) An outreach component focusing on reaching rural homeless veterans and facilitating their entry into the program as well as outreach efforts in the community to other potential service providers who can assist the homeless veterans;

(2) Linkages with providers of employment and training and supportive services, including, where applicable, other recipients of funds under the McKinney Act; and

(3) Projects must be employment-focused in order to provide the employment and training services needed to reintegrate rural homeless veterans into the labor force.

Potential jurisdictions which will be served under this solicitation are sparsely populated areas of a State, the Commonwealth of Puerto Rico, or territories which are outside of metropolitan areas and not contiguous to them or part of their Standard Metropolitan Statistical Area (SMSA). Urbanized areas are usually those with a population of 50,000 or above and a minimum population density of 1,000 people per square mile. Generally a rural area may have a unit or units (towns, townships, village) with a population of up to 2,500 people. The intent of this solicitation is to fund programs that will operate in non-metropolitan areas that are not densely populated and are not residential areas surrounding major cities. It will be incumbent upon the applicant to demonstrate the rural nature of the proposed jurisdiction to be served. Such proposed areas should be contiguous to the extent possible, as in adjoining counties or a similar configuration, but this is not mandatory.

Entities which are eligible to submit applications for serving the jurisdictions listed above are:

(1) State and local public agencies; and

(2) Nonprofit organizations.

"Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties).

Nonprofit organizations invited to apply are those who have operated employment and training program for the homeless or veterans; have proven capacity to manage Federal grants; and will provide or develop the necessary linkages for services in rural areas.

The application instructions will include a more detailed program description, program guidelines, and approach to implementation. The application package will consist of a standard application form, a narrative description of proposed activities and current services, and a detailed budget.

Criteria for identifying the most promising and effective proposals will be applied, and between 3–5 applicants will be identified as potential grantees. Applicants are advised that discussions may be necessary to clarify any inconsistencies in their applications. The final decision on the award will be based upon what is advantageous to the Federal Government as determined by the Grant Officer.

Signed at Washington, DC this 16th day of July, 1993.

**Jeffrey C. Crandall,**

*Acting Assistant Secretary for Veterans' Employment and Training.*

[FR Doc. 93–17370 Filed 7–21–93; 8:45 am]

BILLING CODE 4510-79-P

## NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

### Meetings

**AGENCY:** National Commission on Judicial Discipline and Removal.

**ACTION:** Notice of public meeting; correction.

**SUMMARY:** In the **Federal Register** issue of July 16, 1993, page 58 FR 38444, third column, please amend the following; change the date from July 23, 1993, to July 28, 1993, and change the meeting room from room 2237 of the Rayburn House Office Building to room B352 of the Rayburn House Office Building.

**CONTACT PERSONS FOR FURTHER INFORMATION:** Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Ave, NW., Washington, DC 20037–3202; or call (202) 254–8169.

**William J. Weller,**

*Deputy Director.*

[FR Doc. 93–17450 Filed 7–21–93; 8:45 am]

BILLING CODE 8120-08-M

## NUCLEAR REGULATORY COMMISSION

### Proposed Generic Letter 89–10, Supplement 6 "Information on Schedule and Grouping, and Staff Responses to Additional Public Questions"

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter supplement. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or (3) transmits information to licensees regarding approved changes to rules or regulations, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures. This draft generic letter supplement provides (1) additional information with respect to the staff's positions regarding schedule delays and grouping of motor-operated valves and (2) staff responses to questions raised at the February 25, 1993, public meeting with the Motor-Operated Valve Users

Group. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter supplement presented under the **SUPPLEMENTARY INFORMATION** heading. This proposed generic letter supplement and supporting documentation were discussed in meeting number 243 of the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR to support their review of the proposed generic letter supplement is available in the Public Document Rooms under accession number 9307150128. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter supplement. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter supplement be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

**DATES:** Comment period expires August 23, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas G. Scarbrough (301) 504–2794.

**SUPPLEMENTARY INFORMATION:**

**TO: ALL LICENSEES OF OPERATING NUCLEAR POWER PLANTS AND HOLDERS OF CONSTRUCTION PERMITS FOR NUCLEAR POWER PLANTS**

**SUBJECT: GENERIC LETTER 89–10, SUPPLEMENT 6, "INFORMATION ON SCHEDULE AND GROUPING, AND STAFF RESPONSES TO ADDITIONAL PUBLIC QUESTIONS"**

**Background**

In Generic Letter (GL) 89–10 (June 28, 1989), "Safety-Related Motor-Operated Valve Testing and Surveillance," the U.S. Nuclear Regulatory Commission (NRC) staff requested holders of operating licenses and construction permits to provide additional assurance of the capability of safety-related motor-operated valves (MOVs) and certain other MOVs in safety-related systems by reviewing MOV design bases, verifying MOV switch settings initially and periodically, testing MOVs under design basis conditions where practicable, improving evaluations of MOV failures and necessary corrective action, and trending MOV problems. Supplement 1 to GL 89–10 (June 13, 1990) provided the results of public workshops held to discuss the GL. In Supplement 2 to GL 89–10 (August 3, 1990), the NRC staff stated that inspections of program descriptions would not commence until January 1, 1991; thus, the program descriptions did not need to be available on site until that date. Based on the results of NRC-sponsored MOV tests, Supplement 3 to GL 89–10 (October 25, 1990) requested licensees of boiling-water reactor (BWR) nuclear plants to taken action in advance of the GL 89–10 schedule to resolve concerns about the capability of MOVs used for containment isolation in the steam supply line of the high pressure coolant injection and reactor core isolation cooling systems and in the supply line of the reactor water cleanup system, as well as other systems directly connected to the reactor vessel. Supplement 4 to GL 89–10 (February 12, 1992) allowed BWR licensees to not address inadvertent MOV operation as part of their GL 89–10 program because a staff study indicated no significant increase in core melt probability resulting from inadvertent MOV operation in BWR plants. Supplement 5 to GL 89–10 addresses MOV diagnostic equipment accuracy.

**Discussion**

On February 25, 1993, the NRC staff held a public workshop to discuss GL 89–10 and to answer questions from the public on the inspections of licensee programs developed in response to the GL. In this supplement to the GL, the staff further clarifies the positions on the schedule for completing the MOV testing to verify design-basis capability recommended in GL 89–10 and grouping of MOVs to establish valve setup conditions. The staff responses to other general public questions and a list of recently issued NRC GLs are also provided in the enclosures to this supplement.

*GL 89–10 Schedule*

In GL 89–10, the NRC staff requested nuclear power plant licensees to develop a program to verify the capability of safety-related MOVs to perform their safety function by June 28, 1994, or three refueling outages after December 28, 1989 (whichever is later). Some licensees justified longer schedules. From its inspections of GL 89–10 programs, the NRC staff found some licensees to have made insufficient progress toward completing their GL 89–10 programs in a timely manner. In GL 89–10, the staff stated that nuclear power plant licensees must notify the staff of any changes to their schedule commitments to GL 89–10 but that licensees should retain the justification on site for NRC staff review.

Licensees are responsible for taking actions to correctly set up MOVs with known inadequacies. GL 89–10 requested licensees to develop and implement a program to verify the capability of their MOVs to operate under design-basis conditions. As a minimum, the staff expects all licensees to have their valves set up with the best available industry data by the original completion date accepted by the staff, whether or not all testing has been completed. The staff will consider whether subsequent MOV failures represent inadequate corrective action for known MOV inadequacies contrary to the requirements of Criterion XVI, Corrective Action, of Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," of part 50 to title 10 of the Code of Federal Regulations (10 CFR).

If a licensee does not believe that it can meet its original schedular commitment for verifying the capability of MOVs within the scope of GL 89–10, the following information would be helpful to the staff in evaluating the licensee's justification for extending the GL 89–10 test program for capability verification and establishing appropriate audit/inspection plans and schedules:

(1) The completion status of the licensee's GL 89–10 program as of the program commitment date, including the valve type, size, safety function, and risk significance of the MOVs whose capability has not yet been verified by dynamic test data under the program by the schedule completion date;

(2) The basis used for confirming the operability of each MOV whose capability has not yet been verified by dynamic test data under the program by the scheduled completion date; and

(3) The schedule for completing MOV testing and any modifications for those MOVs whose capability has not yet been verified by dynamic test data under the program by the schedule completion date.

In addition to reviewing the above information, the staff will consider the following factors in assessing the licensee's justification for schedule extensions:

(1) The extent of completed MOV testing under dynamic conditions;

(2) The extent that plant and industry data have been used to establish the sizing and setting methodology;

(3) The maintenance and modification activities to improve the performance of the MOVs and to provide assurance that marginal and deficient MOVs have been addressed; and

(4) The justifications for any grouping methods including design-basis test data and comparison with industry data.

*MOV Grouping*

In GL 89–10 and its supplements, the NRC staff requests that licensees test each MOV under design-basis differential pressure and flow conditions where practicable. However, the staff recognizes that it is not practicable to test each MOV within the scope of GL 89–10 in situ under dynamic conditions. Therefore, if a licensee does not perform prototype testing for each MOV that is not practicable to test in situ, the licensee will have to group MOVs that are not practicable to test in a manner that provides adequate confidence that the MOVs are capable of performing their design-basis function. As indicated in NRC Information Notice (IN) 92–17 (February 26, 1992), "NRC Inspections of Programs Being Developed at Nuclear Power Plants in Response to Generic Letter 89–10," some licensees are attempting to group MOVs, which could be dynamically tested in situ, to reduce the number of MOVs to be dynamically tested under their GL 89–10 programs.

The staff continues to recommend testing MOVs under design-basis conditions where practicable. Paragraph 1 of GL 89–10 allows licensees to propose alternatives to the recommendations of the generic letter where justification is provided. Grouping data from design-basis differential pressure testing of similar MOVs at or near design-basis test conditions may be an acceptable option to establish design-basis valve setup conditions.

If a licensee chooses to group MOVs, the staff believes the following considerations are particularly important:

(1) Verification of design adequacy of the grouped MOVs through a review and analysis of both industry and plant-specific data;

(2) Use of benchmarked data from a representative sample of the MOVs (nominally 30 percent and no less than two MOVs) in the group tested at or near plant-specific design basis conditions;

(3) Diagnostic testing of each MOV in the group under at least static conditions;

(4) To the extent practicable, selection of valves for dynamic testing in the group based on a prioritization scheme that considers greatest safety-significance and least performance margin;

(5) Validation of design-basis assumptions for all MOVs in the group based on benchmarked data;

(6) In assessing group feasibility, consideration and documentation of such similarities as: valve manufacturer, model and size; valve flow, temperature, pressure, hydraulics, and installation configuration; valve material condition; and performance during static and dynamic testing as evidenced by full-stroke diagnostic traces; and

(7) If an MOV in a group fails or reveals adverse performance during testing or operations, evaluation of the applicability of that information to each MOV in the group.

In response to Question 24 in Supplement 1 to 89–10, the staff stated that it expects licensees to ensure that data intended for use in demonstrating the operability of an MOV have been obtained under the provisions of a quality assurance program in accordance with appendix B of 10 CFR part 50. As further information, licensees using data from tests performed under an approved program (for example, other licensee data) developed in accordance with appendix B of 10 CFR part 50 need not verify or audit the tests covered by other licensee appendix B procedures or processes.

*Additional Public Questions*

In an enclosure to this GL supplement, the staff responds to the additional questions raised during the February 25 public workshop, including questions involving the scope of GL 89–10 programs and the prioritization of MOVs based on probabilistic risk assessments. The staff has paraphrased these additional questions and grouped them by subject. The staff addressed many of the questions previously either in general or in detail. The staff references other documents where particular questions have been addressed. Licensees may contact their NRC project manager for discussion of plant-specific questions.

**Backfit Discussion**

On the basis of operating experience and research results, the NRC staff determined several years ago that MOV tests beyond those previously accepted under the inservice testing program are necessary to satisfy the NRC regulations. As that determination constituted a backfit, the staff prepared GL 89–10 in accordance with NRC procedures for the issuance of staff guidance containing backfit provisions. This GL supplement and its enclosure (1) restate staff positions contained in the GL and its earlier supplements, (2) provide additional guidance for meeting the staff positions contained in the generic letter and its earlier supplements, and (3) relax the staff position on the need for in situ testing of each MOV.

Backfit analyses for the restated and relaxed staff positions are not required. A backfit analysis was not prepared for the additional guidance in this GL 89–10 supplement because the compliance backfit analysis associated with the original GL and its earlier supplements is applicable. This guidance does not increase the recommendations associated with the staff positions contained in the GL or its earlier supplements. Rather, the guidance provides detailed methods of implementation of the basic GL 89–10 program which the staff has found to be acceptable based on the individual inspections and reviews of licensee programs which the staff has conducted to date. The use of this guidance is voluntary and the staff will review alternate methods on a case by case basis.

The staff prepared this GL supplement in response to questions and comments received during a public workshop on February 25, 1993. Some licensees have indicated their intention to extend their schedule commitment for completing MOV testing under the GL 89–10 programs. The staff has evaluated the justifications prepared by those licensees on a case-by-case basis. In this GL supplement, the staff describes the information that the staff has used in evaluating the licensees' justifications for schedule extensions. In their original response to GL 89–10, certain licensees did not commit to the recommendation in GL 89–10 to test each safety-related MOV where practicable, but rather, indicated plans to group MOVs to limit the amount of dynamic testing. In this GL supplement, the staff describes important considerations in grouping MOVs that the staff has been discussing with those licensees. If a licensee intends to extend its MOV dynamic testing schedule, the staff will expect the licensee to provide assurance that all MOVs are set up adequately by the original completion date accepted by the staff. If a licensee intends to group MOVs, the staff will expect the licensee to justify valve grouping including the applicability of the dynamic test data of MOVs in the

group and to take action for all MOVs in the group in response to any adverse performance of the dynamically-tested MOVs. Therefore, if a licensee modifies its commitments regarding schedule or grouping of MOVs in accordance with the provisions of this GL supplement, the staff has determined that adequate protection of the public health and safety will be maintained.

This GL supplement is being issued without a public comment period so that (1) licensees are notified at the earliest possible time of the importance of ensuring that MOVs within the scope of GL 89–10 are set up adequately in accordance with the original completion date accepted by the staff and (2) licensees can adjust their plans for MOV tests to be performed during their upcoming outages, as necessary.

**Reporting Requirements**

GL 89–10 and certain of its earlier supplements specify reporting requirements. The staff does not request that licensees provide a separate submittal in response to this GL supplement.

If you have any questions about this matter, please contact the technical contact or lead project manager listed below, or the appropriate Office of Nuclear Reactor Regulation project manager.

*Enclosure*

1. Public Questions during the February 1993 Workshop on GL 89–10

**ENCLOSURE TO DRAFT GENERIC LETTER 89–10 SUPPLEMENT 6**

**PUBLIC QUESTIONS DURING THE FEBRUARY 1993 WORKSHOP ON GENERIC LETTER 89–10**

**General**

The NRC staff received general questions regarding the need for a single approach to resolving the motor-operated valve (MOV) issue throughout the industry, the need to continue licensee efforts to improve MOV performance, the parallel efforts of the NRC staff and industry in such areas as probabilistic risk assessment (PRA) studies, and the sharing of technical information among the NRC staff and licensees.

**NRC Response**

As discussed under **Background** in Generic Letter (GL) 89–10, the NRC staff issued GL 89–10 to request that nuclear power plant licensees develop programs to verify the capability of safety-related MOVs to perform their design-basis functions as a result of NRC Bulletin 85–03, NRC-sponsored MOV research, and operating experience at nuclear power plants. GL 89–10 and its supplements provided one recommended approach to the resolution of the concerns regarding the performance of MOVs in nuclear power plants. The NRC staff required licensees to respond to the recommendations of the GL, but did not require licensees to follow its specific recommendations if a licensee could justify a different approach. For example, some licensees provided a response that indicated their intent to develop a justifiable grouping methodology to minimize the number of MOVs to be tested under dynamic conditions. The staff indicated in its replies to those licensee submittals, and during inspections, that licensees will be expected to justify that their particular approach will resolve the concern for the performance of safety-related MOVs at their plants.

During the implementation of GL 89–10, licensees have discovered more MOV problems than envisioned by the staff when the generic letter was issued in 1989. Although the staff believes that licensees have made progress toward resolving the concerns regarding the performance of MOVs in nuclear power plants, the staff does not consider that sufficient progress has been made at all plants to generically reduce the scope of the program or lengthen its completion schedule. The staff will discuss proposals on specific MOV programs with licensees as requested. Information on individual schedule extensions is provided in the body of Supplement 6 to GL 89–10.

The staff performs independent regulatory oversight of activities on MOV issues performed by licensees, the Electric Power Research Institute (EPRI), and the Nuclear Management and Resources Council (NUMARC). The staff will continue to meet with the industry to discuss MOV issues.

The staff periodically informs licensees of generic information on MOV issues. For example, the staff issues information notices and participates in meetings of the MOV Users Group. The staff believes that licensees would benefit from increased cooperative efforts to resolve concerns regarding the performance of MOVs.

**Scope and the Use of PRA Studies in Prioritizing MOVs**

The NRC staff received questions on the scope of GL 89–10 involving such areas as the status of the staff's study of valve mispositioning in pressurized-water reactor (PWR) nuclear plants, the use of PRA studies within the GL 89–10 program, the removal of certain valves under various flow conditions from the GL 89–10 program, and the consideration of MOVs identified in emergency operating procedures.

**NRC Staff Response**

The staff discussed the scope of GL 89–10 in response to Questions 3 to 13 and 25 in Supplement 1 and in Supplement 4 to the generic letter. The staff has not changed the scope of GL 89–10 from the discussions in Supplements 1 and 4. Except where valve mispositioning is applicable, a licensee may eliminate MOVs from its GL 89–10 program where the licensee can clearly demonstrate that operation of that valve does not represent a safety function and that its operation is not necessary to permit the operation of its safety-related equipment. In addition, a licensee might determine that the scope of MOVs to be dynamically tested may be reduced by eliminating MOVs in hard-piping ventilation systems with low design-basis differential pressure in which static loads are significant compared to dynamic loads. Licensees may determine that certain MOVs are not practicable to test or that the test would not provide useful results in justifying design-basis capability. However, the licensee should continue to include those MOVs within the other aspects of the GL 89–10 program.

As discussed in Supplement 4 to GL 89–10 and NRC Information Notice (IN) 92–17 (February 26, 1992), "NRC Inspections of Programs Being Developed at Nuclear Power Plants in Response to Generic Letter 89–10," the NRC staff has contracted a national laboratory to perform a core melt frequency study of the effect of valve mispositioning in PWR plants. When this study is completed, the staff will consider the findings and make a determination on the issue.

In response to Question 12 in Supplement 1 to GL 89–10, the staff stated that a licensee may choose to give priority to MOVs that it considers to be most important to safe and reliable operations. In Supplement 3 to GL 89–10, the staff requested BWR licensees to give high priority to MOVs used for containment isolation in certain high pressure systems connected directly to the reactor vessel. In discussing possible extensions of the schedule for completing MOV testing under GL 89–10, the staff has requested individual licensees to prioritize their MOVs to ensure that testing for the most safety significant MOVs is completed in a timely manner. For example, the staff will consider whether the licensee assigned a higher priority to testing of MOVs that must operate to perform an active safety function than to testing of MOVs that only receive a confirmatory

signal to operate. Also, the licensee could assign a lower priority to MOVs with significant design margin.

The staff considers the use of PRA studies to be appropriate as an input for prioritizing the schedule for testing MOVs in response to GL 89–10. However, the staff does not consider PRA studies to be sufficiently reliable to allow their use as the sole basis for eliminating safety-related MOVs from the GL 89–10 program. Further, PRA studies are not well-suited for common-mode problems such as the weakness in the original design and qualification of MOVs. The staff is performing an independent assessment of the use of PRA studies for prioritizing MOVs within the GL 89–10 program. Upon request, the staff will meet with industry representatives to discuss this issue.

As discussed in response to Question 3 in Supplement 1 to GL 89–10, the GL scope includes gate, butterfly, and global valves. Although licensees have found gate valves to be susceptible to the largest number of performance problems, they also have discovered performance problems with butterfly valves at several plants. The staff does not believe that GL 89–10 should be limited to gate valves.

The staff discussed the removal of MOVs from the scope of GL 89–10 programs in response to Questions 3 and 6 in Supplement 1 to GL 89–10. For example, the staff eliminated MOVs in sheet-metal ducting systems because static running loads would likely be significant compared to dynamic loads. In light of Supplement 4 to GL 89–10 on mispositioning, a BWR licensee may delete an MOV from its GL 89–10 program if the licensee can demonstrate that the MOV does not have to change position to perform a safety function. In response to a specific question, if an MOV is pulled closed by flow (such as a globe valve with flow over the seat), the licensee could justify that the MOV does not need to be included in the GL 89–10 test program for the closing direction.

As indicated by the discussion of scope in Supplement 1 to GL 89–10, except where valve mispositioning is applicable, licensees do not need to consider MOVs identified in emergency operating procedures as within the scope of GL 89–10 if they are not within the design basis of the plant.

Additional information on grouping of MOVs is provided in the body of Supplement 6 to GL 89–10.

**MOV Sizing and Switch Settings**

The NRC staff received questions regarding the responsibility of licensees to validate assumptions used in their calculations (including parameters provided by valve vendors), to consider various uncertainties within the MOV calculations, to ensure the structural capability of safety-related MOVs in performing their design-basis functions, and to justify the use of a contractor study on the overthrust capability of certain valve actuators.

**NRC Staff Response**

As discussed in response to Questions 19 and 20 in Supplement 1 to GL 89–10, MOV tests and problems have revealed that valve vendors underestimated the thrust and torque required to operate many valves under dynamic conditions. As indicated in IN 92–17, the staff has found during inspections of GL 89–10 programs that some licensees had not justified their assumptions used in validating the size and settings of the MOVs within the scope of GL 89–10. The staff expects licensees to validate their assumptions for thrust and torque requirements to open and close their valves based on the best available MOV test data.

As further information, the staff considers the best available MOV test data (in order of reliability ) to be valve-specific data, plant-specific data, EPRI test data, and industry test data. Where it is not practicable to test an MOV under sufficient dynamic conditions to demonstrate design-basis capability, licensees may use engineering or statistical methods to determine appropriate assumptions for such parameters as valve and stem friction, and load sensitive behavior from other MOVs, where justified.

As required by Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," of part 50 to title 10 of the Code of Federal Regulations (10 CFR), the staff expects licensees to include appropriate margin to account for uncertainties in their design assumptions. As discussed in IN 92–17, staff inspections found that some licensees had not addressed uncertainties such as actuator repeatability and diagnostic equipment inaccuracy. The staff also expects licensees to include sufficient margin to provide assurance that the MOV will remain capable of performing its design-basis function until the next test.

Under **Background** in GL 89–10, the staff stated that licensees should be aware that increasing MOV thrust by increasing torque switch settings may subject the valve components to increased forces. In IN 92–83 (December 17, 1992), "Thrust Limits for Limitorque Actuators and Potential Overstressing of Motor-Operated Valves," the staff alerted licensees to possible overstressing of MOVs during operation and testing. As further explanation, the staff expects licensees to provide adequate justification to ensure that the structural or operating capability of the MOVs within the scope of GL 89–10 is not exceeded when performing their design-basis functions. The staff will review this justification during GL 89–10 inspections.

Several licensees contracted Kalsi Engineering to evaluate the structural thrust capability of Limitorque actuators. Limitorque had endorsed the Kalsi study to justify specific thrust limits above the published structural ratings of the actuators but, at this time, has not increased the structural ratings of its actuators. In IN 92-83, the staff alerted licensees to the review by the NRC staff of the Kalsi study. As is the staff's longstanding practice, licensees that rely on contractor studies are responsible for justifying their use. For example, licensees using the Kalsi overthrust report will be expected to implement the provisions of that report and to periodically inspect the actuators to identify any adverse effects from the increased thrust above the structural ratings. Licensees that rely on contractor studies are responsible for evaluating any subsequent MOV problems that might be attributable to the contractor study and taking corrective action to address the problem for all MOVs whose setup is based on the contractor study. The staff will consider whether any such failure indicates that the licensee may not have met the NRC regulations for design control.

**MOV Testing**

The NRC staff received questions in such areas as the testing of MOVs where practicable, the testing of MOVs under all design-basis conditions (including degraded voltage), the collection of test data during MOV testing, the measurement of thrust and torque during MOV testing, the acceptance criteria for evaluating MOV tests, the extrapolation of test data, the discovery of new information that might reveal problems with design-basis capability of MOVs, the need to verify design-basis capability for those valve types for which reliable diagnostic equipment might not be available, the determination of minimum voltage at the motor terminals, the application of prototype test data for MOVs installed in nuclear plants, the use of the results of the EPRI MOV Performance Prediction Program, and quality assurance controls for the proposed industry MOV test data base.

**NRC Staff Response**

GL 89–10 and its supplements recommend that licensees test MOVs within the scope of the generic letter under design-basis differential pressure and flow conditions where practicable. For MOVs that cannot be tested under these conditions, Supplement 1 to GL 89–10 recommend that the MOVs be tested under maximum achievable conditions to provide the best available MOV test data. Since then, licensee results from testing similar MOVs have shown that specific valve testing provides the best available data. However, a licensee might justify an alternative approach, such as grouping, where the licensee has sufficient information to demonstrate the validity of its approach. For example, licensee test results have indicated that grouping globe valves may be justifiable. Information on grouping is provided in the body of Supplement 6 to GL 89–10.

In response to Question 22 in Supplement 1 to GL 89–10, the staff stated that licensees should consider the safety implications of performing design-basis testing of MOVs in situ. As further explanation, the staff does not expect licensees to test MOVs under all design-basis conditions (such as degraded voltage). Such testing might damage the MOV or jeopardize the safety of the plan and is impractical to perform. The staff expects licensees to demonstrate the degraded voltage capability of MOVs by a justifiable analytical method.

In response to Question 30 in Supplement 1 to GL 89–10, the staff stated that measured parameters from MOV tests should be capable of providing information to assist the licensee in demonstrating that the MOV will operate under design-basis conditions. As further explanation, licensees need only collect information that is required to evaluate the test data. If the collection of that information can be performed with sufficient accuracy without installation of additional test equipment, the staff does not expect licensees to modify plant systems to obtain test data.

In response to Question 31 in Supplement 1 to GL 89–10, the staff stated that the actuator must be able to deliver the required amount of torque or thrust. In response to Question 30 in Supplement 1 to GL 89–10, the staff stated that if only one parameter (such as thrust) was measured rather than two or more parameters (such as torque and thrust), the licensee may need to ensure that additional margin is available in the demonstration that the MOV will operate under design-basis conditions. As further explanation, if a licensee measures only thrust and assumes a stem friction coefficient to estimate the torque required to operate the valve, the staff expects the licensee to validate its assumption for stem friction coefficient. Licensee testing had indicated that stem friction coefficients are valve specific and may range from less than 0.1 to greater than 0.2. Although laboratory testing might show a low stem friction coefficient, licensees have not demonstrated that a specific assumption for stem friction coefficient can be made at a nuclear plant based on laboratory test results.

NRC regulations in appendix B to 10 CFR part 50 require that tests of safety-related MOVs be evaluated. In IN 92–17, the staff reported that weaknesses had been found during GL 89–10 inspections in acceptance criteria at some plants for MOV testing before returning the MOV to service. Several licensees (for example, Comanche Peak) have developed detailed acceptance criteria that the staff considers acceptable. Further, the BWR Owners' Group is developing acceptance criteria that may be adequate when completed. Below, the staff summarizes criteria for the evaluation of test data that have been found acceptable:

*1. Static Test Acceptance*

- Available thrust and torque is within the window defined by the license design-basis calculations and margins.
- Diagnostic traces do not indicate significant abnormalities or anomalies.
- Valve stroke times conform with requirements of Section XI of the American Society of Mechanical Engineers (ASME) Code and the applicable technical specifications.

*2. Differential Pressure Test Acceptance*

- The valve fully opens with appropriate open torque switch bypass indication and fully closes with diagnostic indication of hard seat contact and control room indication.
- The control switch settings provides adequate thrust margin to overcome design-basis requirements, including consideration of diagnostic equipment inaccuracy, control switch repeatability, load sensitive behavior, and margin for degradation until the next test.
- The motor output capability at degraded voltage is in excess of the control switch setting including consideration of diagnostic equipment inaccuracy, control switch repeatability, load sensitive behavior, and margin for degradation until the next test.
- The maximum thrust and torque achieved by the MOV including diagnostic equipment inaccuracy and control switch repeatability do not exceed the allowable structural capability limits for the individual parts of the MOV.
- The diagnostic traces do not indicate any significant abnormalities or anomalies.

After returning the MOV to service, the licensee performs a more detailed followup evaluation of test data for such items as the following:

- In the event of greater-than-predicted thrust or torque requirements, evaluate other applicable MOVs (such as parallel train valves) before plant startup. If plant is operating, evaluate promptly in accordance with GL 91–18 (November 7, 1991), "Information to Licensees Regarding Two NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions and on Operability."
- Perform a detailed evaluation of the diagnostic trace for such items as bent stem, spring pack gap, and stem/stem nut interface problems. For example, training for the VOTES diagnostic equipment for MOVs recommends comparing in-rush motor current to running current for magnesium rotor degradation.
- Incorporate valve factors and stem friction coefficients into MOV sizing and switch setting methodology to ensure thrust windows are correct.

In response to Question 25 in Supplement 1 to GL 89–10, the staff stated that licensees may extrapolate the results of MOV tests to design-basis conditions where justified. As further explanation, the staff does not have a specific percentage of design-basis differential pressure where the test results can be reliably extrapolated to design-basis conditions. Licensees may justify their own method of extrapolation and the extent of that extrapolation. The staff describes one extrapolation method developed by the Idaho National Engineering Laboratory (INEL) in NUREG/CR–5720 (June 1992), "Motor-Operated Valve Research Update." Licensees may use that method if justified for their MOVs. The staff does not have any current plans to mandate the use of the extrapolation method outlined in NUREG/CR–5720.

At the February 25 workshop, a participant asked a question on whether unwedging forces need to be extrapolated. The staff believes that only thrust and torque required to overcome dynamic fluid forces need to be extrapolated from test conditions to design-basis conditions. A licensee

might justify that unwedging forces do not need to be extrapolated from test conditions to design-basis conditions.

As required through Criterion XVI, Corrective Action, of Appendix B to 10 CFR part 50, it is the responsibility of licensees to ensure that adverse information from MOV testing does not reveal a problem with other MOVs in the plant. In IN 92–17, the staff reported that GL 89–10 inspections had found that some licensees did not appear to be aware of their obligations in this area. Although test information might not be sufficient to justify the capability of a similar MOV, adverse test information can reveal a potential operability problem with other MOVs that a licensee must address. The requirements in Criterion XVI of Appendix B also apply to new information that might reveal a problem with the design-basis capability of MOVs, such as increased MOV diagnostic equipment inaccuracy.

In response to Question 30 in Supplement 1 to GL 89–10, the staff stated that it did not plan to insist that licensees use diagnostic equipment in implementing GL 89–10, but believed that such equipment would be almost essential for adequate implementation of the generic letter. As further explanation, licensees are responsible for demonstrating the design-basis capability of MOVs even where uncertainties exist in available diagnostic equipment. However, the staff will consider this factor in reviewing justifications for Schedule extensions for completing testing under GL 89–10. In response to Question 36 in Supplement 1 to GL 89–10, the staff briefly described its position on the consideration of degraded voltage in evaluating MOV capability under GL 89–10. In IN 92–17, the staff reported that many licensees are updating their degraded voltage studies. Below, the staff provides a more detailed explanation of an acceptable approach to considering degraded voltage with respect to MOV capability.

For 480-Vac motors, the licensee determines minimum voltage at the motor terminals considering cable size and length, temperature, and thermal overload resistance. The licensee considers the worst-case postulated motor control center (MCC) voltage based either on the lower of the voltage supplied from the diesel generator or the offsite supply. Where the offsite supply is the limiting case, as is typical, the licensee uses the degraded grid relay set point as the starting point for determining the minimum voltage at the motor terminals for ac motors. The appropriate set point to be used is for the degraded grid relay which provides for separation from the offsite supply, and connection to the emergency diesel generator with or without a specific time delay or concurrent accident signal.

In addition to the degraded grid voltage relays, some plants use an additional alarm relay (set higher than the degraded grid voltage relays) to alert the operator to a sustained degraded grid condition. The licensee would not use the alarm relay setting to calculate the voltage required at the MOVs. Likewise, the staff does not consider taking credit for administrative procedures and operator response (to separate from the offsite supply) to be acceptable unless these actions have been accepted generically for all safety equipment.

For dc motors, the licensee uses the worst-case battery voltage profile (including aging and temperature factors). The licensee properly accounts for voltage drops from the battery to the MCC. After determining the minimum voltage at the motor, the degraded voltage factor is calculated. The degraded voltage factor is then multiplied by the rated motor output torque and compared to the torque required.

In Technical Update 92–02, Limitorque states that, between 90 and 99 percent of rated voltage, the degraded voltage factor is equal to one and that the application factor makes allowances for motor torque loss up to 90 percent voltage. In Technical Update 92–02, Limitorque also states that the degraded voltage factor is applied if motor terminal input voltage is less than 90 percent of the motor rated voltage at any time during the valve stroke. For ac-powered MOVs, the degraded voltage factor is equal to the square of the ratio of the minimum motor terminal voltage to the motor rated voltage. For dc-powered MOVs, the degraded voltage factor is equal to the minimum motor terminal voltage divided by the motor rated voltage. However, Limitorque has only approved this approximation for motor voltages over 70 percent.

The following is a summation of two acceptable methods for calculating the expected ac-motor terminal voltage at degraded bus voltage conditions:

*Method One:* A motor circuit one-line diagram is constructed consisting of the known cable and overload heater impedances. The motor impedance is calculated by the following formula:

$$Z(m) = \frac{V(r)}{SQRT(3) \times I(lr)}$$

where: Z(m)=motor impedance
V(r)=motor nominal voltage
I(lr)=rated locked rotor current

Then, a voltage divider calculation is performed with the result being the calculated motor terminal voltage under worst-case bus voltage conditions.

*Method Two:* A motor current value, representative of worst-case conditions, is assumed. Some licensees assume nominal locked rotor current, which should be the most conservative. Other licensees are assuming alternate values such as current at torque switch trip, which may not be conservative because the current at torque switch trip may depend on the applied voltage and consequently may be higher under degraded voltage conditions. Additionally, current at torque switch trip is not always the worst case because unseating current could be higher in some cases. Also, if the current was derived from a test at less than full differential pressure, the current at torque switch trip also might be underestimated as a result of differences in inertial forces. Therefore, the licensee justifies the use of any current value less than that of nominal locked-rotor current. Motor terminal voltage is then calculated by multiplying the assumed motor current times the cable and overload impedances and subtracting this value from the worst-case bus voltage. The licensee uses the power factor specified in a table provided by Limitorque for locked-rotor conditions.

For dc motors, an acceptable approach to determine the worst-case motor torque is more straightforward. The locked-rotor resistance of the motor is calculated from actual locked-rotor current test data. Then, appropriate values are assumed for cable, overload heater, and starting resistor resistances. The licensee accounts for uncertainties in the generic motor curves. An example calculation for determining dc motor torque is shown in a Limitorque Maintenance Update dated August 17, 1988.

In response to Question 26 in Supplement 1 to GL 89–10, the staff describes the demonstration of the applicability of prototype test data to MOVs installed in their plants. As indicated in Supplement 1, the staff believes that the most justifiable method of demonstrating applicability is to use performance-based criteria where the MOV in question is tested under partial dynamic conditions and its performance is related to the performance of the prototype MOV under similar conditions. However, each licensee may develop its own method of justifying the applicability of prototype test data.

Since the staff issued Supplement 1 to GL 89–10, EPRI has established an MOV

Performance Prediction Program that might provide important information to assist licensees in demonstrating the design-basis capability of MOVs that cannot practicably be tested under dynamic conditions. The staff expects licensees to proceed with their GL 89–10 programs and not to wait for the completion of the EPRI program. Where the EPRI program does not provide sufficient information regarding an MOV, the staff expects each licensee to provide justification for the design-basis capability of the MOV.

In response to Question 28 in Supplement 1 to GL 89–10, the staff stated that the capability of an MOV under design-basis conditions might be demonstrated by means of a data base of test results if properly justified. The staff also indicated that the MOV Users Group might be able to provide assistance in developing such a data base. Recently, the MOV Users Group indicated that it is planning to develop a data base of test results. The staff expects the industry MOV test data base to be established and maintained with appropriate quality assurance controls. The staff may audit the data base to provide an independent assessment of the quality of the data. The staff currently does not plan to mandate its use, but licensees will be expected to be aware of its contents to help ensure that a potential plant-specific MOV problem is not revealed by the data base.

**Periodic Verification and Post-Maintenance Testing**

The NRC staff received questions on the use of static tests to satisfy the recommendation in GL 89–10 to periodically verify the design-basis capability of MOVs, the frequency of periodic verification of design-basis capability, and the use of motor current following valve packing adjustments or replacement.

**NRC Staff Response**

Recommendation d of GL 89–10 requests licensees to periodically verify that MOVs within the scope of GL 89–10 are capable of performing their design-basis functions. In response to Question 33 in Supplement 1 to GL 89–10, the staff stated that the licensee should develop a method to ensure that, following the initial demonstration that the MOV would operate under design-basis conditions, the MOV switches remain set adequately. As indicated in IN 92–17, many licensees have stated their intent to rely on static test data to address the GL 89–10 recommendation on periodic verification. In recommendation d of GL 89–10 and in response to Question 35 in Supplement 1 to GL 89–10, the staff stated that the ASME Code Section XI stroke-time testing required by 10 CFR Part 50 would not satisfy this provision of GL 89–10. The staff discussed the relationship between ASME Section XI and GL 89–10 in response to Question 49 in Supplement 1 to GL 89–10.

Based on the results of GL 89–10 inspections to date, no licensee has as yet justified the use of static test data for periodically demonstrating the design-basis capability of MOVs. The staff will review the jurisdiction provided by licensees during inspections when licensees begin implementing their method for periodically verifying the design-basis capability of MOVs.

In GL 89–10, the staff recommend that the design-basis capability of MOVs be verified approximately every 5 years but noted that an alternative schedule might be justified. As further information, a licensee may evaluate the safety significance of an MOV in determining an appropriate frequency for periodically verifying design-basis capability.

In response to Question 38 in Supplement 1 to GL 89–10, the staff stated that the licensee should justify that the MOV switch settings remain correct, or have been adjusted adequately, upon completion of any activity involving the MOV that might affect its ability to operate under design-basis conditions.

Since then, the industry has found the use of motor current to not always reliably predict changes in thrust delivered in operating a valve. However, Commonwealth Edison Company has developed a method of using motor current when sufficient margin is available following valve packing adjustments. The staff will be meeting with Commonwealth Edison to review the acceptability of its methodology for post-maintenance testing.

**Trending**

The NRC staff received a question on the staff's expectations regarding tracking and trending of MOV problems in response of GL 89–10.

**NRC Staff Response**

In response to Question 39 in Supplement 1 to GL 89–10, the staff referred licensees to Attachment A to GL 89–10 for MOV problems that could be trended. The staff has documented in its GL 89–10 inspection reports instances in which licensees have developed thorough trending programs.

**Schedule**

The NRC staff received questions on the need to complete the GL 89–10 program within the schedule recommended in the generic letter and the justification necessary to extend the schedule commitment date.

**NRC Staff Response**

Information on schedule is provided in the body of Supplement 76 to GL 89–10.

In addition to testing under recommendation c of GL 89–10, the staff discusses the long-term aspects of the MOV program in recommendations d, f, h and j of the generic letter.

**Pressure Locking and Thermal Binding of Gate Valves**

The NRC staff received questions on the need to consider pressure locking and thermal binding of gate valves as part of a licensee's response to GL 89–10, the drilling of a hold in the valve disk to prevent pressure locking, the schedule for evaluating pressure locking and thermal binding, and the need for detailed measurements of external heat loads in evaluating the potential for pressure locking and thermal binding.

**NRC Staff Response**

The NRC Office for Analysis and Evaluation of Operational Data (AEOD) has completed AEOD Special Study AEOD/S92–07 (December 1992), "Pressure Locking and Thermal Binding of Gate Valves." The staff issued the AEOD report in NUREG–1275, Volume 9 (March 1993), "Operating Experience Feedback Report—Pressure Locking and Thermal Binding of Gate Valves." In its report, AEOD concludes that licensees have not taken sufficient action to provide assurance that pressure locking and thermal binding will not prevent a gate valve from performing its safety function.

The NRC regulations require that licensees design safety-related systems to provide assurance that those systems can perform their safety functions. In GL 89–10, the staff requested licensees to review the design bases of their safety-related MOVs. In complying with the NRC regulations, licensees are expected to have evaluated the potential for pressure locking and thermal binding of gate valves and taken action to ensure that these phenomena do not affect the capability of MOVs to perform their safety-related functions. If a licensee identifies a potential for pressure locking and thermal binding of gate valves, the NRC regulations require that the licensee take action to resolve that problem.

Based on information from staff inspections and discussions, the staff considers the following to be an acceptable approach to addressing

pressure locking and thermal binding of gate valves within the scope of GL 89–10:

1. Document an evaluation of the gate valves within the scope of GL 89–10 as having operational configurations with a potential for pressure locking or thermal binding, including the basis for determining whether the valves (a) are susceptible to pressure locking or thermal binding or (b) can be removed from further consideration. For example, solid wedge disc gate valves might not be susceptible to pressure locking. Double disc gate valves are not likely to be susceptible to thermal binding.

The evaluation would include consideration of the potential for an MOV to undergo pressure locking or thermal binding during surveillance testing. For example, the inboard containment isolation MOV in the reactor core isolation cooling (RCIC) system steam line at a plant recently failed in the closed position following closure for routine surveillance testing. The cause was believed to be pressure locking.

The evaluation also would include review of generic studies for site-specific applicability, such as in the areas of thermal effects and design-basis depressurization.

Examples of unacceptable reasons for eliminating valves from consideration of pressure locking or thermal binding are (1) leakage rate, (2) engineering judgment without justification, and (3) lack of event occurrence at the specific plant.

The AEOD study indicated that safety-related gate valves involved in pressure locking events were:

- Low pressure coolant injection (LPCI) and low pressure core spray (LPCS) system injection valves
- Core spray (CS) valves
- Residual heat removal (RHR) shutdown cooling (SDC) isolation valves
- RHR hot leg crossover isolation valves
- RHR containment sump and suppression pool suction valves
- High pressure coolant injection (HPCI) steam admission valves
- RHR heat exchanger outlet valves
- Emergency feedwater isolation valves

The AEOD study indicated that safety-related gate valves involved in thermal binding events were

- Reactor depressurization system isolation valves
- RHR inboard suction isolation valves
- HPCI steam admission valves
- Power-operated relief valve (PORV) block valves
- Reactor coolant system letdown isolation valves
- RHR suppression pool suction valves
- Containment isolation valves (sample line, letdown heat exchanger inlet header)
- Condensate discharge valves
- Reactor feedwater pump discharge valves

A recent event at a plant involving possible pressure locking of a RCIC valve indicates that MOVs in steam lines also are susceptible to pressure locking.

2. Document an analysis of the safety-related gate valves (identified in 1 above) with the potential for either pressure locking or thermal binding to ensure all such valves can be opened to perform their safety function under all modes of plant operation. Credit for bonnet pressure decay within the valve response time might not be acceptable unless operation of the actuator motor at locked-rotor conditions would not degrade motor torque capability.

Specific acceptable modifications and actions to prevent pressure locking or thermal binding are listed on page 7 of NUREG/CR–1275.

The NRC regulations require an analysis under 10 CFR 50.59 for any valve modifications and the establishment of adequate post-modification and inservice testing of any valves installed as part of the modification. For example, the licensee would evaluate the effects of drilling the hole in the disk if used to resolve a pressure locking concern. One consideration in this evaluation is the fact that the MOV will be leaktight in only one direction.

As required through appendix B to 10 CFR part 50, the licensee would establish training for plant personnel to perform any necessary actions and incorporate specific procedural precautions/revisions into the existing plant operating procedures. For example, plant personnel might periodically stroke certain valves to reduce the potential for thermal binding.

If an MOV is found to be susceptible to pressure locking or thermal binding and the licensee relies on the capability of the MOV to overcome pressure locking or thermal binding, the staff will review the licensee justification during inspections in consideration of the uncertainties surrounding the prediction of the required thrust to overcome these phenomena. If the staff finds that a licensee has not adequately addressed the potential for pressure locking and thermal binding of gate valves, enforcement actions and schedules for response will depend on the safety significance of the issue at the plant.

With respect to a particular question on the consideration of external heat loads, licensees may evaluate the effects of these loads in a bounding manner to minimize the need for detailed measurements and analyses in the plant.

From the evaluation of licensee activities during GL 89–10 inspections, the staff will determine whether regulatory action is necessary with respect to other types of power-operated valves (such as air-operated valves) in regard to the potential for pressure locking and thermal binding.

**Miscellaneous**

The NRC staff received miscellaneous new questions on plans for a generic letter on air-operated valves (AOVs), the need for on-line continuous monitoring of MOVs, the plans for a proposed NRC staff meeting with MOV experts from other countries, the role of vendors in resolving the MOV issue, and the status of NRC staff comments on the EPRI MOV Performance Prediction Program.

**NRC Staff Response**

The staff has been considering the issue of performance of AOVs and currently does not believe that a generic letter is necessary.

Use of on-line continuous monitoring would be a licensee decision.

The staff has requested the International Atomic Energy Agency (IAEA) to set up a meeting under the aging program to discuss problems with the performance of MOVs in other countries and the resolution of those problems.

The staff encourages licensees to work closely with the vendors to resolve MOV performance concerns.

The staff sent a letter in December 1992 to EPRI discussing issues regarding the EPRI MOV program.

Dated at Rockville, Maryland, this 15th day of July 1993.

For the Nuclear Regulatory Commission.

**Gail H. Marcus,**

*Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.*

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## Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following

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preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published June 23, 1993 (58 FR 34067). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS, Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EDT).

**ACRS Subcommittee Meetings**

*Auxiliary and Secondary Systems,* July 27 (8:30 a.m. until close of business) and 28, 1993 (8:30 a.m.–10:30 a.m.), Bethesda, MD. The Subcommittee will review the La Salle Fire PRA and the proposed resolution of Generic Issue 57, "Effects of Fire Protection System Actuation on Safety-Related Equipment."

*Advanced Boiling Water Reactors,* July 28, 1993, Bethesda, MD (11 a.m.). The Subcommittee will discuss fire PRA, fire hazards analysis, and fire barrier design associated with the Advanced Boiling Water Reactor design.

*Improved Light Water Reactors,* August 4, 1993, Bethesda, MD. The Subcommittee will discuss the NRC staff's response to ACRS comments and recommendations related to certain policy, technical, and licensing issues pertaining to evolutionary and advanced light-water reactor designs. Also, the Subcommittee will discuss the staff positions on certain remaining policy issues for passive plant designs.

*Planning and Procedures,* August 4, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

*Materials and Metallurgy,* August 16, 1993, Bethesda, MD (12 noon). The Subcommittee will review proposed rulemaking on fracture toughness requirements for reactor pressure vessels—revisions to 10 CFR 50.61, Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, Appendix G, Fracture Toughness Requirements, Appendix H, Reactor Vessel Material Surveillance Program Requirements, and a new rule on reactor vessel thermal annealing (10 CFR 50.66).

*Mechanical Components,* August 17, 1993, Bethesda, MD. The Subcommittee will discuss the status of the ongoing NRC and industry activities associated with motor-operated valves, check valves, butterfly valves, and other related matters.

*Advanced Boiling Water Reactors,* September 8, 1993, Bethesda, MD. The Subcommittee will discuss the status of resolution of the remaining open issues in the ABWR Standard Safety Analysis Report and the resolution of USIs and GSIs. Also, it will discuss the NRC staff's schedule for submittal of the Final Safety Evaluation Report.

*Planning and Procedures,* September 8, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

*Computers in Nuclear Power Plant Operations,* September 15, 1993, Bethesda, MD—POSTPONED.

*Thermal Hydraulic Phenomena,* September 21, 1993 (tentative), Oregon State University (OSU), Corvallis, OR. The Subcommittee will continue its review of the Westinghouse and NRC integral systems and separate effects test programs supporting the AP600 design certification effort. The meeting discussion will focus on the OSU integral systems test facility program.

*Severe Accidents,* September 22–24, 1993, Los Angeles, CA or Portland, OR. The Subcommittee will continue its review of the severe accident issues associated with the GE ABWR design certification review.

*Planning and Procedures,* October 6, 1993, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Portions of this meeting may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

*Thermal Hydraulic Phenomena,* October 20–21, 1993 (tentative), Bethesda, MD. The Subcommittee will review selected aspects of the NRC–RES-sponsored ROSA–V confirmatory test program being conducted in support of the Westinghouse AP600 passive plant design certification effort. Specific review topics will include: facility design modifications and additions, the test matrix, and instrumentation and controls. Also the Subcommittee will continue its review of the NRC RELAP5/MOD 3 code.

*Advanced Boiling Water Reactors,* October 26–27, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

*Advanced Boiling Water Reactors,* November 16–17, 1993, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design.

*Advanced Boiling Water Reactors,* January 25–26, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on the ABWR issues for consideration by the full Committee.

**ACRS Full Committee Meetings**

*400th ACRS Meeting,* August 5–7, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Remaining Policy Issues for Passiv Plant Designs*—Review and comment on the draft Commission paper on the remaining policy issues related to the passive plant designs. Representatives of the NRC staff will participate.

B. *Proposed Resolution of Generic Safety Issue 57, "Effects of Fire Protection System Actuation on Safety-Related Equipment," and Lessons Learned from the La Salle Fire PRA*—Review and comment on the proposed resolution of Generic Safety Issue 57, and the Lessons Learned from the La Salle Fire PRA. Representatives of the NRC staff will participate.

Representatives of the industry will participate, as appropriate.

C. *Proposed Resolution of Generic Issue 143, "Availability of Chilled Water Systems and Room Cooling"*—Review and comment on the NRC staff's proposed resolution of Generic Issue 143. Representatives of the NRC staff will participate.

D. *Advanced Light Water Reactor Policy Issue on Emergency Planning*—Review and comment on a draft Commission paper related to emergency planning for Advanced Light Water Reactors. Representatives of the NRC staff will participate.

E. *Meeting with Chairman Selin*—Hold discussions with NRC Chairman Selin on items of mutual interest.

F. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

G. *Prioritization of Generic Issues*—Discuss proposed assignments for reviewing the priority rankings proposed by the NRC staff for a group of generic issues.

*H. *ACRS Subcommittee Activities*—Hear reports and hold discussions regarding the status of ACRS subcommittee activities, including reports from the Subcommittees on Thermal Hydraulic Phenomena and Advanced Boiling Water Reactors. Portions of this session may be closed to discuss information deemed proprietary by the Westinghouse Electric Corporation per 5 U.S.C. 552b(c)(4).

*I. *Planning and Procedures Subcommittee Report*—Hear a report of the Planning and Procedures Subcommittee involving matters related to the status of appointment of new members and organizational and personnel matters relating to ACRS staff members. A portion of this session may be closed to public attendance pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

J. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

K. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings as time and availability of information permit.

*401st ACRS Meeting*, September 9–11, 1993, Bethesda, MD. Agenda to be announced.

*402nd ACRS Meeting*, October 7–9, 1993, Bethesda, MD. Agenda to be announced.

*403rd ACRS Meeting*, November 4–6, 1993, Bethesda, MD. Agenda to be announced.

*404th ACRS Meeting*, December 9–11, 1993, Bethesda, MD. Agenda to be announced.

**ACNW Full Committee and Working Group Meetings**

*56th ACNW Meeting*, August 25–26, 1993, Holiday Inn, Bethesda, MD. During this meeting, the Committee plans to consider the following:

*A. The Committee will meet in executive session to discuss a strategy for implementing recent direction from the Commission on the ACNW charter and renewal of appointment for members. Methods for ACNW operation, candidates for appointment to the Committee, and topical areas for ACNW review will form the central focus of this meeting.

*B. *Committee Activities*—Discuss anticipated and proposed Committee activities, future meeting agenda, and organizational and personnel matters.

C. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

This meeting will be closed to the extent it discusses organizational and personnel matters that relate solely to the internal personnel rules and practices of this advisory committee and the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

*57th ACNW Meeting*, September 29–30, 1993, Bethesda, MD. Agenda to be announced.

*ACNW Working Group on Characterization of the Unsaturated " Zone Flow and Transport Properties Fracture vs. Matrix Flow*, October 26, 1993, Las Vegas, NV. The Working Group will examine the relationships between precipitation, recharge, and flux through the unsaturated zone at the proposed Yucca Mountain site, and the adequacy of ongoing field studies to ascertain these relationships. Emphasis will be placed on the modeling of flow in the unsaturated zone, alternative conceptual models of fracture versus matrix flow, and conditions under which fracture flow can be shown to predominate. The Working Group will also focus on the recharge term in hydrogeologic models, alternative conceptual models for how and where regional recharge occurs, and the effect of assumptions about recharge on model results.

*58th ACNW Meeting*, October 27–28, 1993, Las Vegas, NV. Agenda to be announced.

*59th ACNW Meeting*, November 22–23, 1993, Bethesda, MD. Agenda to be announced.

*60th ACNW Meeting*, December 15–16, 1993, Bethesda, MD. Agenda to be announced.

Dated: July 16, 1993.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 93–17341 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–318]**

## Baltimore Gas & Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DRP–69, issued to Baltimore Gas & Electric Company (the licensee), for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 2 located in Calvert County, Maryland.

The proposed amendment would revise Technical Specifications (TS) 3/4.2, "Power Distribution Limits," and 3/4.3, "Instrumentation," to relax the requirements for the number and distribution of operable incore detectors. The incore detectors are required to verify that the core power distribution is consistent with the safety assumptions used in the safety analyses and to protect the current power distribution TS limits. The proposed changes would also apply penalties to the values measured by the incore detectors prior to their comparison with TS limits to assure that the TS limits monitored by the incore detectors will continue to be valid.

Specifically, footnotes will be added to the following TS and will be applicable for only the remainder of the Calvert Cliffs Nuclear Power Plant, Unit 1, Operating Cycle 11, as follows:

TS 3.2.2.1, Total Planar Radial Peaking Factor, Limiting Condition for Operation (LCO), 3.2.3, Total Integrated Radial Peaking Factor LCO; and 4.2.1.4.b.1, Surveillance Requirements for Incore Detector Monitoring System

will have footnotes indicating that when the percentage of operable incore detector locations (strings) fall below 75%, the measurement-calculational uncertainty factor will be increased by 1% prior to being compared to the TS limits.

TS 4.2.1.4.a, Surveillance Requirements for Incore Detector Monitoring System; 4.2.2.1.2.b, Total Planar Radial Peaking Factor; and 4.2.3.2.b, Total Integrated Radial Peaking Factor, will have footnotes indicating that when the percentage of operable incore detector locations (strings) falls below 75% the full core power distribution mapping frequency will be increased to at least once per 15 days of accumulated operation while in Operating Mode 1.

TS 3.3.3.2.a, Monitoring Instrumentation LCO, for monitoring Azimuthal Power Tilt will have a footnote which supersedes the current requirement. The current requirement for two quadrant symmetric incore detector segment groups at each axial location is changed to a total of eight quadrant symmetric incore detector segment groups. The current requirement for at least two azimuthal power tilt values at each detector segment axial elevation is changed to at least one azimuthal power tilt value at each detector segment axial elevation and at least two azimuthal power tilt values at three detector segment axial elevations.

TS 3.3.2.b.1, Monitoring Instrumentation LCO, for recalibration of the Excore Neutron Monitoring Flux Detector System; and 3.3.3.2.C.1, Monitoring Instrumentation, for monitoring the Unrodded Planar Radial Peaking Factor, the Unrodded Integrated Radial Peaking Factor, or the linear heat rate will have footnotes which will change the minimum number of operable detector segments and strings from 75% to 60%.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to not involve a significant hazards consideration, in that operation of the facility in accordance with the proposed amendments:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would relax requirements for the number and distribution of operable incore detectors. The safety function of the incore detectors is to verify that the core power distribution is consistent with the assumptions used in the safety analyses. Sufficient measurements will be required to adequately verify compliance with power distribution Technical Specification limits. Penalties will be applied to the values measured by the incore detectors prior to comparison with the Technical Specifications limits when the number of operable detector strings falls below the current requirement. This will ensure that all current Technical Specification and fuel design limits are protected and the core power distribution assumptions in all analyses remain valid. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new different type of accident from any accident previously evaluated.

The proposed change does not represent a change in the configuration or operation of the plant. The current Technical Specifications limits measured by the incore detector system will still be met. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed changes will continue to protect the current power distribution Technical Specifications limits. When the number of operable incore detector strings falls below the current Technical Specification requirement, a penalty will be added to the measured values before they are compared with the Technical Specification limits. This penalty has been shown by prior analysis to be greater than the increased uncertainty. This penalty ensures that the Technical Specifications limits monitored using the incore detectors will continue to be protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 23, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714

which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Calvert County Library, Prince Frederick, Maryland. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination of the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Robert A. Capra: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to D.A. Brune, Esq., General Counsel, Baltimore Gas and Electric Company, P.O. Box 1475, Baltimore, Maryland 21203, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 16, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 19th day of July 1993.

For the Nuclear Regulatory Commission.

**Daniel G. McDonald,**

*Senior Project Manager, Project Directorate I–1, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17464 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

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## Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

**[Docket No. 50–458]**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company (the licensee) for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would change the Technical Specifications to extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual and to extend the preparation period from 60 days to 90 days. Additionally, the proposed amendment would change the listed reference for acceptable calculation methods contained in Radiological Effluents Bases sections.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change being implemented is an administrative alteration of River Bend Station (RBS) technical specifications (TS) and does not cause a significant increase in the probability or consequences of a previously evaluated accident. This change involves a decrease in the frequency of the effluent release report from twice a year to once per year; additionally, the report preparation time is extended from 60 days to 90 days in accordance with the change in title 10, Code of Federal Regulations § 50.36, effective October 1, 1992. Also, due to acquiring new effluent tracking software, the reference for acceptable methods of calculating liquid and gaseous effluents is being changed from Regulatory Guide 1.109, "Calculation of Annual Doses to Man from Routine Releases of Reactor Effluents for the Purpose of Evaluating Compliance with 10 CFR part 50, appendix I," to NUREG–0133, "Preparation of Radiological Effluent Technical Specifications for Nuclear Power Plants."

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

This change does not create any possible new accidents or variations of accidents previously evaluated. This change is administrative only. This change alters the frequency of and preparation time for the effluent report. Additionally, this change notes that due to new computer software, NUREG–0133 will be referenced as the source of acceptable methods of calculating liquid and gaseous effluents.

3. The proposed change does not involve a significant reduction in the margin of safety.

This change does not present any reduction in any margin of safety because this change is administrative. The administrative section of RBS TS is being changed to adopt the NRC's new annual frequency for effluent reports and concurrently, to extend the preparation time from 60 days to 90 days. Additionally, the reference listed for acceptable methods of calculating liquid and gaseous effluents is being changed from Regulatory Guide 1.109 to NUREG–0133.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 23, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention an on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to these specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be on which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western union at 1–(800) 248–5100 (In Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 2, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 19th day of July 1993.

For the Nuclear Regulatory Commission.

**Edward T. Baker,**

*Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17465 Filed 7–21–93; 8:45 am]

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[Docket No. 50–458]

## Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–47 issued to Gulf States Utilities Company (the licensee) for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would change the Technical Specifications to indicate that for Cycle 5 the impact on the operating limit minimum critical power ratio from a misoriented fuel bundle need not be considered due to extensive core verification.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A River Bend Station (RBS) calculation has been performed to estimate the probability of operation with a misoriented fuel bundle given the current core verification procedures. This calculation estimated the probability to be 7.36E–07 per cycle. In addition, independent verification has been performed by General Electric to show all fuel bundles are properly oriented in the Cycle 5 core. This additional verification reduces the probability lower than 7.36E–07 per

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cycle. Therefore, the probability of operation with a misoriented fuel bundle is insignificant. The probability is well below that for moderate frequency and infrequent events and is even below the probability for limiting faults such as a large LOCA. Therefore, there is no increase in the probability of any previously analyzed accidents.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

All analyses of anticipated operational occurrences required to be performed for reload cores, including a misoriented fuel bundle accident, are identified in GESTAR. The anticipated operational occurrences are analyzed and the results reported in the Cycle 5 Supplemental Reload Licensing Report. With the extensive and independent verification of fuel bundle alignment, no possibility of a previously unanalyzed accident is created.

3. The proposed change does not involve a significant reduction in the margin of safety.

It has been shown that with the extensive RBS core verification as mentioned above, the probability of operation with a misoriented fuel bundle during any cycle is extremely small. Because of the increased awareness and extra care taken during refuel 4, there is no misoriented bundle for operation during Cycle 5. Essentially, the extra attention paid to fuel orientation during refuel 4 has decreased the probability of operating with a misoriented fuel bundle during Cycle 5 to 7.36E–07, which is so small that it can be considered zero. Since there is no misoriented fuel bundle, there is no effect on the margin of safety created by this request.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 23, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to

participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above data. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street NW., Washington, DC 20005, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 2, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 19th day of July 1993.

For the Nuclear Regulatory Commission.

**Edward T. Baker,**

*Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17466 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–461

## Illinois Power Co. & Soyland Power Cooperative, Inc.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 79 to Facility Operating License No. NPF–62, issued to Illinois Power Company, et al. (IP, the licensee) which revised the Technical Specifications for operation of the Clinton Power Station, Unit No. 1, located in DeWitt County, Illinois. The amendment is effective as of the date of issuance and shall be implemented within 30 days.

The amendment modified the Technical Specifications to eliminate contradictory statements, allow adequate time to perform required surveillances without resulting in a violation of Technical Specification 4.0.4, clarify startup surveillance requirements, and establish plant conditions to perform surveillances associated with change of plant operational conditions.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for a Hearing in connection with this action was published in the Federal Register on February 16, 1988 (53 FR 4477). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to this action see (1) the application for amendment dated October 30, 1987, (2) Amendment No. 79, to License No. NPF–62, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room located at the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 15th day of July 1993.

For the Nuclear Regulatory Commission.

**Douglas V. Pickett,**

*Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17467 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–M

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## SECURITIES AND EXCHANGE COMMISSION

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Chicago Stock Exchange, Inc.

July 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Commercial Net Lease Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–10968)

CRI Liquidating Reit, Inc.
Common Stock, $.01 Par Value (File No. 7–10969)

Edisto Resources Corp.
Common Stock, $.01 Par Value (File No. 7–10970)

Kohl's Corporation
Common Stock, $.01 Par Value (File No. 7–10971)

Kuhlman Corporation
Common Stock, $1.00 Par Value (File No. 7–10972)

Navistar International Corporation Holding Company

Common Stock, $.10 Par Value (File No. 7–10973)
Oak Industries, Inc.
Common Stock, $.05 Par Value (File No. 7–10974)
Samuel Goldwyn Company
Common Stock, $.20 Par Value (File No. 7–10975)
U.S. Home Corporation
Common Stock, $.01 Par Value (File No. 7–10976)
Consolidated Tomoka Land Co.
Common Stock, $1.00 Par Value (File No. 7–10977)
Ziegler Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7–10978)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–17417 Filed 7–21–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32640; File No. SR–MSRB–93–05]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Relating to Book-Entry Delivery of Municipal Securities for Delivery vs. Payment or Receipt vs. Payment Customer Transactions in Depository Eligible Securities

July 15, 1993.

On April 2, 1993, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commisson") a proposed rule change (File No. SR–MSRB–93–05) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change requires book-entry delivery of municipal securities for delivery vs. payment or receipt vs. payment ("DVP/RVP") customer transactions in depository eligible securities with very limited exceptions. The Commission published notice of the proposed rule change in the **Federal Register** on May 10, 1993.[2] No comments were received as a result of the **Federal Register** notice.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

### I. Description

The proposed rule change amends MSRB Rule G–15(d)(iii), which requires the use of book-entry systems for most delivery vs. payment or receipt vs. payment ("DVP/RVP") customer transactions in depository eligible securities. The proposed rule change eliminates the exemption in Rule G–15(d)(iii) which previously allowed transactions in which at least one party was not a direct participant in a depository to be processed outside the automated clearance and settlement system. Those transactions will now settle by book-entry, subject to the exemptions described below.

Under the proposed rule change, there will be two exemptions to the requirement of book-entry settlement for depository eligible transactions. One exemption relates to securities which are eligible at some, but not all, depositories. If the securities are ineligible at the exclusive depository or depositories being used by one of the parties to the transaction, the proposed rule change will not require book-entry settlement. The proposed rule change, therefore, will not require that dealers and DVP/RVP customers have access to all depositories just to accommodate the lack of uniformity in eligibility lists at the various depositories. The second exemption relates to physical delivery of an RVP customer transaction in which an issuer or trustee is purchasing securities in order to retire them.[4] The MSRB believes that such an exemption is sometimes needed so that the issuer or trustee can effectively retire securities prior to maturity by purchasing them on the open market.

### II. Written Comments

As noted earlier, the MSRB published for comment the proposed rule change as well as other draft amendments to MSRB Rules G–12(f) and G–15(d) and received sixteen comment letters.[5] Ten commenters generally supported the amendments, noting the proposal would facilitate efforts to reduce systemic risk and enhance settlement efficiencies. One commenter specifically opposed this proposed rule change, stating that certain of its institutional customers

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32253 (April 30, 1993), 58 FR 27399.

[3] In August 1991, the MSRB published the proposed rule change for comment as well as other draft amendments to Rules G–12(f) and G–15(d). Sixteen comment letters were received. Twelve commenters generally supported the August 1991 draft amendments, two were opposed, and two commenters addressed a possible modification without specifically supporting or opposing the draft amendments. One commenter specifically opposed this proposed rule change. The concerns raised by the commenter and the basis for opposition are discussed in Section II, *infra*.

[4] For example, an indenture trustee may request physical settlement on a DVP/RVP transaction because the trustee is purchasing securities prior to making a partial call and does not want to call certificates that it has purchased. Similarly, an issuer may purchase its own non-callable securities to retire them. The issuer may need to destroy the physical certificates and may not wish to make payment until the physical certificates are presented.

[5] See letter from Philip Lanz, Managing Director, Bear, Stearns Securities Corp., to Harold L. Johnson, Deputy General Counsel, MSRB (December 16, 1991); letter from Jan Fenty, President, The Cashier's Association of Wall Street, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from William J. Winter, Vice President, Cashiers Department, A.G. Edwards and Sons, Inc., to Harold J. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Kathleen Graffam, First Chicago Capital Markets, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); letter from Steve Harris, Executive Vice President, Golden Harris Capital Group, Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (October 7, 1991); letter from John J. Lynch, Jr., Executive Vice President, J.F. Hartfield and Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from John F. Lee, President, New York Clearing House, to Harold L. Johnson, Deputy General Counsel, MSRB (December 18, 1991); letter from Harold Durk, Duke McElroy & Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 3, 1991); letter from Lawrence Morillo, Senior Vice President, Pershing, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from James H. Pyle, Managing Partner, Terry L. McCullough, Partner, Richard E. Whalen, Partner, and Benita I. Simon, Partner, Elmer E. Powell and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (November 27, 1991); letter from George Brakatselos, Vice President, Public Securities Association, to Harold L. Johnson, Deputy General Counsel, MSRB (November 19, 1991); letter from Thomas Sargent, Vice President, The Regional Municipal Operations Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 12, 1991); letter from George J. Minnig, Chairman, Regulatory and Clearance Committee, Securities Industry Association, to Harold L. Johnson, Deputy General Counsel, MSRB (December 6, 1991); letter from Jerome Clair, Managing Director, and Robert Mattei, Assistant Manager, Smith Barney, Harris Upham & Co., Inc., to Harold L. Johnson, Deputy General Counsel, MSRB (December 9, 1991); letter from Roger Springate, Jr., Springate and Company, to Harold L. Johnson, Deputy General Counsel, MSRB (December 13, 1991); and letter from Rick Farrell, Assistant Vice President, United Missouri Bank, N.A., to Harold L. Johnson, Deputy General Counsel, MSRB (November 5, 1991).

wish to continue receiving physical delivery of securities certificates on DVP/RVP trades and that the proposed rule change will make clearing more difficult for the smaller institutions and brokerage firms instead of making it more efficient and will put a large added financial burden on smaller firms and institutions.[6] In response, the MSRB noted its belief that the overwhelming majority of institutional customers benefit significantly from the efficiencies inherent in book-entry settlement of municipal securities transactions, and the proposal will facilitate increased automation and compression of the settlement cycle.

## III. Discussion

The Commission believes that the MSRB's proposed rule change is consistent with sections 15B and 17A of the Act.[7] Section 15B, among other things, requires that the MSRB's rules be designed to foster cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[8] Section 17A mandates the creation of a national system of automated clearance and settlement of securities transactions. While municipal securities are defined generally as exempted securities under the Act,[9] municipal securities are specifically included for purposes of section 17A of the Act.[10]

The settlement of institutional customer transactions in municipal securities is accomplished in large part through the book-entry delivery systems of securities depositories registered with the Commission. Those systems have provided substantial efficiencies and cost savings to the municipal securities market by eliminating much of the time consuming and expensive manual processing associated with deliveries of securities certificates versus payment. The book-entry systems also have helped to ensure timely settlements of transactions and to minimize the operational problems associated with high levels of transaction volume. There continues, however, to be some institutional customer transactions that could be cleared and settled in depository systems, but which are settled through the use of physical delivery of securities.

Currently, MSRB Rule G–15(d)(iii) requires the use of book-entry settlement systems for most DVP/RVP customer transactions eligible for settlement in those systems. When this rule was adopted in 1983, the MSRB considered whether this requirement should apply to all eligible DVP/RVP customer transactions. The MSRB received comment suggesting the need for additional time to adjust to the automated clearance and settlement systems. Based on these comments, the MSRB decided to provide an exemption within Rule G–15(d)(iii) which effectively allowed a transaction to be settled outside of a depository if at least one party to the transaction was not a direct participant in a depository. The MSRB, however, also stated its intention that, ultimately, the rules should apply to all DVP/RVP customer transactions in order for the market to obtain the maximum benefits and efficiencies possible from the book-entry systems.[11]

The MSRB believes that based on the movement of the industry toward book-entry settlement systems, it is now time to bring about more universal use of the systems. The proposed rule change, which will not require, with two limited exceptions, that all DVP/RVP customer transactions in depository eligible securities be settled by book-entry delivery, is part of the second phase of the MSRB's overall plan to complete the transition of the municipal securities market to automated techniques of clearance and settlement.[12] The Commission, therefore, believes that the proposal furthers the goals of Section 17A of the Act by reducing the physical movement of securities certificates in connection with the settlement of transactions in municipal securities. In addition, the Commission believes that the proposed rule change is consistent with Section 15B of the Act because it fosters cooperation and coordination with persons engaged in clearing, settling, and processing information with respect to, and facilitating transactions in, municipal securities, removes impediments to and perfects the mechanism of a free and open market in municipal securities, and, in general, protects investors and the public interest. The Commission also believes that the proposed rule change is consistent with the recommendations of the Group of Thirty which has focused attention on automated clearance and settlement,[13] as well as the Bachmann Task Force,[14] and also is consistent with the trend toward increased automation in the U.S. securities markets.

With regard to the comments received by the MSRB as a result of the publication of the draft amendments to Rules G–12(f) and G–15(d), the Commission recognizes that requiring book-entry settlement may impose some additional costs on certain institutional customers. Nevertheless, the Commission agrees with the MSRB that the benefits of the proposal outweigh any inconvenience to institutional customers. Physical delivery of securities certificates is inefficient and costly and poses the potential risk to the industry that securities certificates will be lost or interest payments will be misdirected. The Commission, therefore, agrees with the MSRB that the proposed rule change, by requiring book-entry delivery of municipal securities for DVP/RVP customer transactions in depository eligible securities, will increase the efficiency of book-entry settlement and/or reduce operational costs in the industry. The depository systems provide a quicker and less expensive means for delivering securities certificates against payment and will facilitate the elimination of time consuming exception processing necessary when a transaction is settled outside the depository under one of the exceptions in Rule G–15(d).

The Commission believes that the exemption from the requirement of

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[6] See *supra*, note 5, letter from Elmer E. Powell and Company.

[7] 15 U.S.C. 78o–4 and 78q–1 (1988).

[8] 15 U.S.C. 78o–4(b) (2) (C) (1988).

[9] 15 U.S.C. 78c(a)(12)(A)(ii) (1988).

[10] 15 U.S.C. 78c(a)(12)(B)(ii) (1988).

[11] Securities Exchange Act Release No. 20385 (November 14, 1983), 48 FR 52531.

[12] For further details concerning MSRB's overall plan, see Securities Exchange Act Release No. 31645 (December 23, 1992), 57 FR 62407.

[13] The Group of Thirty is an independent, non-partisan, non-profit organization established in 1978 whose function is to study international economic and financial issues. The Group of Thirty's recommendations are discussed in Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989). The recommendations called for, among other things, mandatory participation by indirect market participants in a trade comparison system that achieves positive affirmation of trade details and a rolling settlement cycle with all transactions settled by three business days after trade date ("T+3"). The proposed rule change should facilitate the move to T+3 settlement by requiring most transactions to be settled by book-entry movement in a securities depository. *See* Securities Act Release No. 6976; Securities Exchange Act Release No. 31904; and Investment Company Act Release No. 19282 (February 23, 1993), 58 FR 11806 (proposing new rule 15c6–1 under the Act that would establish three business days instead of five business days as the standard settlement timeframe for broker-dealer transactions).

[14] The Bachmann Task Force was a panel of financial industry leaders formed to study improvements necessary to the clearance and settlement system. For further details concerning the recommendations of the Bachmann Task Force, see Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets (May 1992).

book-entry settlement for certain transactions in non-uniform depository eligible securities is appropriate at this time and is consistent with a basic tenet of the national clearance and settlement system—one account settlement.[15] Although considerable progress has been made to eliminate disparities among the eligible securities of the three registered securities depositories, differences continue to exist, particularly in regard to bearer securities. Because the Tax Equity and Fiscal Responsibility Act of 1982[16] effectively mandated issuance of securities in registered rather than bearer form, and the overwhelming majority of municipal securities issued in registered form since 1983 are eligible at all securities depositories, the Commission is confident that this exemption will be of declining significance. Nevertheless, the Commission encourages the depositories to continue their efforts to minimize the existence of non-uniform eligible issues.

The Commission also understands the rationale for allowing an exemption for trustees to obtain physical delivery to retire certificates before a call without subjecting the trustee to the lottery that results from the call if book-entry settlement were required but the seller failed to deliver. As the number of outstanding bearer certificates declines, however, the Commission encourages the MSRB to review with the depositories whether facilities can be established in conjunction with book-entry settlement that would assure delivery of physical certificates on a timely basis after settlement.

### IV. *Conclusion*

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with sections 15B and 17A of the Act, and with the rules and regulations thereunder.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (File No. SR–MSRB–93–05) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

[15] One account settlement enables participants to compare, account for, and settle through one entity all trades in securities included in the national clearance and settlement system, regardless of the location of the other party to the trade or the market in which the trade is executed.

[16] Pub. L. 97–248, 96 Stat. 324 (1982).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
*Deputy Secretary.*

[FR Doc. 93–17354 Filed 7–21–93; 8:45 am]
BILLING CODE 8010–01–M

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[Release No. 34–32647; File No. SR–NASD–92–48]

## Self-Regulatory Organizations; Order Approving Proposed Rule Change of the National Association of Securities Dealers, Inc., Relating to Establishment of Requirements for Real-Time Reporting of Members' Over-the-Counter Transactions in Certain Equity Securities

July 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) (1988), on November 24, 1992, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to establish requirements for real-time trade reporting of NASD members' over-the-counter transactions in equity securities that are not currently reportable on a real-time basis.[1] This proposal concerns those securities for which members now submit, on a daily basis, aggregate volume data and price ranges pursuant to Schedule H to the NASD By-Laws. The proposed reporting requirements are patterned after those established for Nasdaq listed securities.

Notice of the proposal appeared in the **Federal Register** on January 13, 1993.[2] The Commission received five comment letters regarding the proposed rule change.[3] This order approves the proposed rule change.

### I. Description of the Proposed Rule Change

Currently, transactions effected by NASD members in securities that are neither included in the National Association of Securities Dealers Automated Quotation system ("Nasdaq") nor traded on any national securities exchange[4] are not required to be reported to the NASD on a "real-time" basis. The NASD By-Laws require only that members report on Schedule H, at the end of each business day, the aggregate volume and price range data for any trades effected in such securities.[5] Moreover, the information submitted to the NASD on the Schedule H reports is not publicly disseminated. Hence, only quotations by market markers in such securities are disseminated to the public. The bid and asked prices in these securities are disseminated either through the NASD's Over-the-Counter Bulletin Board Service ("OTCBB" or "Service") or through the daily publication by the National Quotation Bureau, commonly referred to as the "Pink Sheets."[6]

The rule change will require, beginning in August, 1993, "real-time" reporting of transactions in these securities, and will facilitate the dissemination of price and volume information on those transactions through the OTCBB. Specifically, the rule change will require NASD members to report to the NASD, within 90 seconds after execution, each transaction in an "OTC Equity Security."[7] The term OTC Equity

[1] The NASD submitted two amendments to the proposed rule change. Amendment No. 1 was submitted on December 17, 1992. Amendment No. 2 was submitted on December 23, 1992.

[2] See Securities Exchange Act Release No. 31605 (January 6, 1993), 58 FR 4189.

[3] Letter from Steven J. Nielsen, Assistant Director and Director of Registration, Utah Department of Commerce, Division of Securities, to Jonathan G. Katz, Secretary, SEC (February 3, 1993); Letter from Gary T. O'Neil, Vice-President, Troster Singer, to Jonathan G. Katz, Secretary, SEC (February 8, 1993); Letter from James F. Duffy, Senior Vice-President and General Counsel, Legal and Regulatory Policy Division, American Stock Exchange, to Jonathan G. Katz, Secretary, SEC (February 12, 1993); Letter from John B. Manning, Jr., First Vice President and General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc., to Jonathan G. Katz, Secretary, SEC (March 10, 1993); Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC (March 18, 1993).

[4] These securities are defined by Schedule H to the NASD By-Laws as "Non-Nasdaq securities." The By-Laws state that a Non-Nasdaq security is:

"Any equity security that is neither included in * * * [Nasdaq] nor traded on any national securities exchange. For purposes of * * * [the price and volume reporting requirements] of this Schedule, the term "non-Nasdaq security" shall also mean any Nasdaq security, if transactions in the security are effected by market makers that are not registered Nasdaq market makers pursuant to Schedule D of the NASD By-Laws, and any security listed on an exchange, if transactions are not required to be reported, pursuant to Schedule G of the NASD By-Laws."

NASD By-Laws, Schedule H.

[5] The NASD By-Laws required each member to report on all principal transactions in non-Nasdaq securities:

"(i) the highest price at which it sold and the lowest price at which it purchased each non-Nasdaq security; (ii) the total volume of purchases and sales executed by it in each non-Nasdaq security; and (iii) whether the trades establishing the highest price at which the member sold and the lowest price at which the member purchased the security represented an execution with a customer or with another broker-dealer. The price to be reported for principal sales and purchases from customers shall be inclusive of mark-up or mark-down."

NASD By-Laws, Schedule H.

[6] Quotations are published in the Pink Sheets one day after they are submitted. Moreover, a great majority of such quotes are not firm.

[7] The proposed rule change specifically exempts from the reporting requirement the following types of transactions: (1) transactions which are part of a

Securities refers to the same subset of securities currently defined as "Non-Nasdaq Securities."[8]

NASD members must transmit last-sale reports for transactions in OTC Equity Securities through the NASD's Automated Confirmation Transaction service ("ACT").[9] These reports must contain the number of shares, the price of the transaction,[10] and a symbol indicating whether the transaction is a buy, sell, or cross.[11]

In transactions between two "OTC Market Makers,"[12] only the member representing the sell side must report the transaction. If the transaction is between an OTC Market Maker and a party that is not an OTC Market Maker ("Non-Market Maker"), then only the OTC Market Maker must report the transaction. If both of the members in a transaction are Non-Market Makers, only the member representing the sell side must report the transaction.

The NASD plans to begin disseminating last-sale trade information for transactions in OTC Equity Securities in August of 1993. The NASD will disseminate last-sale information on all domestic OTC Equity Securities, regardless of whether they are quoted in the OTCBB. This last-sale information will be made available through customary vendor channels as well as the NASD's communications network. Last-sale information on the subset of OTC Equity Securities consisting of foreign and ADR issues will not be disseminated publicly; it will be used exclusively for regulatory purposes.[13]

The NASD believes that the proposed reporting requirements will enhance its surveillance capabilities by allowing it to construct audit trails reflecting members' daily trading in these securities and by making possible the use of automated surveillance techniques comparable to those used for the Nasdaq Stock Market. The NASD believes that this will result in consistent trade reporting and audit trail requirements "across all market segments for which the NASD has primary self-regulatory responsibility."

The NASD stated further that the proposed rule change is intended to support its application for designation of the OTCBB as a qualified electronic quotation system ("QEQS") for purposes of the penny stock disclosure rules adopted under section 15(g) of the Act. Moreover, the NASD believes that when the facilities for collecting, processing, and disseminating last-sale information on OTC Equity Securities become operational, the OTCBB will be able to qualify as an "automated quotation system" for purposes of section 17B of the Act.

On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to section 17B(b) of the Act.[14] On December 30, 1992, the Commission granted QEQS status for the Service for purposes of certain penny stock rules.[15]

## II. Comments

Three commentators generally supported the proposed rule change. Two commentators supported real-time reporting requirements and the qualification of the OTCBB as an automated quotation system for penny stocks within the meaning of section 17B of the Act, upon implementation of a last-sale reporting capability.[16] These commentators stated that they believe that the real-time reporting requirements will enhance the regulatory and enforcement efforts of the NASD, SEC, and state securities regulators and foster small business capital formation by attracting broker-dealer interest in small business issues. Similarly, both commentators urged that all penny stock dealers be required to enter quotations reflecting their markets into the OTCBB or some equivalent system that qualifies for Section 17B status.

The Commission believes it is premature to consider mandatory usage of the OTCBB because the NASD and OTCBB market users have limited experience with last-sale reporting in such securities. The Commission expects the NASD will monitor the effectiveness of real-time last-sale reporting in promoting fair and efficient pricing in the penny stock market and in enhancing surveillance efforts. Based on the results, the NASD and the Commission will consider whether additional steps are necessary to accomplish statutory goals.

The New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") urged that dealers should not be permitted to submit quotes in foreign securities exempt from the registration requirements of the Act pursuant to Rule 12g3–2(b) because the OTCBB should be considered an "automated inter-dealer quotation

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primary distribution by an issuer, a registered secondary distribution (other than "shelf distributions"), or of an unregistered secondary distribution; (2) transactions made in reliance on section 4(2) of the Securities Act of 1933; (3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security; and (4) purchases or sales or securities effected upon the exercise of an option pursuant to the terms thereof, or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

[8] The definition of OTC Equity Security makes clear that restricted securities, as defined by Rule 144(a)(3) under the Securities Act of 1933, and any securities designated as PORTAL securities, are not OTC Equity Securities for these purposes.

[9] Data for all transactions in OTC Equity Securities must be submitted through the ACT system, but only trades in securities that are eligible for clearance by the National Securities Clearing Corporation ("NSCC") will be compared and submitted to NSCC as a locked-in trade. Thus, for non-NSCC-eligible securities, the ACT system merely facilitates the collection of information for dissemination and surveillance. See Securities Exchange Act Release No. 28583 (October 26, 1990), 55 FR 46120.

[10] The price at which a transaction is to be reported, is determined by reference to section 2(d) of the rule change.

[11] Transactions in OTC Equity Securities that are executed outside the hours of 9 a.m. and 5:15 p.m. Eastern Time are to be reported to the NASD on a weekly basis.

[12] The term OTC Market Maker is limited to those firms that hold themselves out as market makers in some inter-dealer system, including a system qualified by the Commission under section 17B of the Act. This status attaches on a security-by-security basis. A firm's status as a Non-Market Maker is similarly determined on a security-by security basis.

[13] One commentator expressed concern about timing aspects associated with reporting trades in foreign securities. The commentator noted that because its foreign offices are supported by systems that are different from those used for the U.S. domestic market and are not linked to the domestic systems or the NASD, real-time reporting of transactions in foreign securities will require costly system enhancements. See Letter from John B. Manning, Jr., First Vice President and General Counsel, Merrill Lynch, Pierce, Fenner & Smith Inc., to Jonathan G. Katz, Secretary, SEC (March 10, 1993).

In response, the NASD has determined that it will permit firms to report all foreign securities transactions on a T+1 basis, through computer-to-computer interfaces with the NASD's central processor, if substantially all of the trades in question are executed outside the hours during which the proposed rule change would require real-time reporting for OTC Equity Securities. The trade reports must be submitted daily between 9 and 9:30 a.m. Eastern Time, and will contain the same data elements as those captured for trades reported real-time during normal business hours. The NASD believes this procedure is superior to Form T reporting because it would eliminate hardcopy submission of trade reports and permit the NASD to integrate the reported data into its electronic audit trail file. Letter from Michael J. Kulczak, Associate General Counsel, NASD, to Elizabeth H. MacGregor, Branch Chief, Division of Market Regulation, SEC (May 4, 1993).

[14] Letter from Richard Ketchum, Executive Vice President, NASD, to William H. Heyman, Director, Division of Market Regulation, SEC (November 24, 1992).

[15] Letter from Margaret H. McFarland, Deputy Secretary, SEC, to Richard Ketchum, Executive Vice President, NASD (December 30, 1992).

[16] Letter from Steven J. Nielsen, Assistant Director and Director of Registration, Utah Department of Commerce, Division of Securities, to Jonathan G. Katz, Secretary, SEC (February 3, 1993); Letter from Gary T. O'Neil, Vice-President, Troster Singer, to Jonathan G. Katz, Secretary, SEC (February 8, 1993).

system" under Rule 12g3–2(d).[17] The Commission is deferring consideration of this issue until it considers permanent approval of the OTCBB, which is currently pending with the Commission.[18] As noted above, the current proposal does not provide for public dissemination of last-sale information for foreign securities (which are of specific concern to these commentators), and, as discussed below, furthers specific statutory goals under the Act.

## III. Discussion

*Sections 11A(a)(1), 15A(b)(6), and 17B of the Act*

The Commission believes that approval of this proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder, and, in particular, with the requirements of sections 11A(a)(1), 15A(b)(6) and 17B of the Act. Recognizing the benefits of transparent markets, Congress found, in section 11A(a)(1) of the Act that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure * * * the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities."[19]

The Commission believes that by providing greater transparency, the proposed rule change will bring to the market for securities that are neither listed on a national securities exchange nor quoted on an automated inter-dealer quotation system a number of the benefits envisaged by Congress. Experience with the introduction of real-time trade reporting for Nasdaq/National Market System Securities[20] and Nasdaq securities[21] supports this belief.

Currently, at best, quotations for these securities are available to the investing public—either, through the OTCBB, or on a next day basis, through the "Pink Sheets." The proposed rule change, however, will allow the NASD to provide investors, on a real-time basis, last-sale price and volume information. The availability of this information enhances investor protection by allowing investors to validate, before the fact, dealer and broker quotations, and to assess, after the fact, the quality of the execution they receive.[22] Moreover, the greater transparency this information will provide should increase the integrity of the market and foster investor confidence in that market, thereby encouraging greater participation in that market.

In section 15A(b)(6) of the Act, Congress stated that an association of brokers and dealers, such as the NASD, may not be registered as a national securities association unless the Commission determines that "the rules of the association are designed to prevent fraudulent and manipulative acts and practices, [and] to promote just and equitable principles of trade."[23] The Commission believes that by providing the NASD with real-time reports of transactions in OTC Equity Securities and enabling the construction of audit trails, the proposed rule change significantly will improve the NASD's ability to regulate the market in those securities.

Congress has found that the penny stock market "suffers from a lack of reliable and accurate quotation and last-sale information," that it is in the public interest to "improve significantly" this information, and that "a fully implemented automated quotation system for penny stocks would meet the information needs of investors and market participants and would add visibility and regulatory and surveillance data to that market."[24] Because the proposed rule change will facilitate real-time dissemination of transaction information for securities, many of which are "penny stocks,"[25] the Commission believes the proposed rule change is consistent with the goals expressed by Congress in section 17B of the Act.

## IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with sections 11A(a)(1), 15A(b)(6), and 17B of the Act.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17416 Filed 7–21–93; 8:45 am]

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**[Release No. 34–32636; File No. SR–OCC–92–24]**

## Self-Regulatory Organizations; The Options Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Stock Loan Hedge Program

July 15, 1993.

On October 23, 1992, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change that would permit OCC to administer stock loan and borrow transactions between OCC clearing members. Notice of the proposal was published in the Federal Register on December 15, 1992, to solicit comments from interested persons.[2] On May 13, 1993, OCC filed

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[17] Letter from James F. Duffy, Senior Vice-President and General Counsel, Legal and Regulatory Policy Division, American Stock Exchange, to Jonathan G. Katz, Secretary, SEC (February 12, 1993); Letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., to Jonathan G. Katz, Secretary, SEC (March 18, 1993).

[18] The Commission specifically requested comments on whether such foreign securities should continue to be eligible for quotation on the OTCBB in the notice of proposed rule change to obtain permanent approval of the OTCBB. Securities Exchange Act Release No. 30768 (June 1, 1992), 57 FR 24281.

[19] 15 U.S.C. 78k–1(a)(1) (1988); The Conference Report on the Securities Acts Amendments of 1975 stated that "[c]ommunications systems, particularly those designed to provide automated dissemination of last-sale reports and quotation information with respect to securities, will form the heart [of the National Market System]." Committee on Conference, Conference Report to Accompany S. 249: *Securities Acts Amendments of 1975*, H.Conf. Rep. No. 94–229, 94th Cong., 1st Sess. 93, *reprinted in*, [1975] U.S. Code Cong. & Admin. News 321, 32.

[20] Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 1992.

[21] See Securities Exchange Act Release No. 30569 (April 10, 1992), 57 FR 13396.

[22] The Commission consistently has held that price quotations merely propose transactions and are not always reliable as a basis for determining the prevailing market price. Particularly when dealing with thinly traded securities, in the absence of last-sale reporting, a market maker's quotation is not usually a reliable basis for determining the actual price at which securities will trade. See In re Bison Securities, Inc., Securities Exchange Act Release No. 32034 (March 23, 1993), 53 SEC Docket 2892, 2895. Experience has shown that even where firm quotes exist, a substantial number of price sensitive transactions may take place between, or outside of, the spread. See In re Alstead & Dempsey, Inc., 47 SEC 1034 (1984).

[23] 15 U.S.C. 78o–3(b)(6) (1988).

[24] 15 U.S.C. 78q–2 (1988). Section 17B(b)(1) requires the Commission to "facilitate the wide-spread dissemination of reliable and accurate last-sale and quotation information with respect to penny stocks * * * with a view toward establishing, at the earliest feasible time, one or more automated quotation systems that will collect and disseminate information regarding all penny stocks."

The OTCBB is currently designated as a QBQS for purposes of the penny stock disclosure rules adopted under section 15(g) of the Act. The Commission expects the NASD to apply for designation of the OTCBB as an "automated quotation system" for purposes of section 17B of the Act when the facilities for collecting, processing, and disseminating last-sale information on OTC Equity Securities become operational in August of 1993.

[25] See 15 U.S.C. 78c(a)(51)(A).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31573 (December 7, 1992), 57 FR 59368.

Amendment No. 1, and on June 3, 1993, OCC withdrew Amendment No. 1 and filed a revised Amendment No. 1.[3] No comments were received. This order approves the proposal.

## I. Description

The proposed rule change permits OCC to operate a facility, referred to as the "Stock Loan/Hedge Program,"[4] to administer stock loan and borrow transactions between participating clearing members and to allow certain stock loan and borrow positions resulting from such transactions to constitute hedges against stock option positions overlying the same stocks for purposes of OCC's margin calculation. OCC will have a lien and right of set off against stock loan and borrow positions, and the clearing members' margin requirements will reflect the increase or decrease in risk to OCC associated with stock loan and borrow positions.

Prospective stock lenders and borrowers will identify each other and will agree on the terms of the stock loan without OCC involvement.[5] OCC will have no role in matching lending and borrowing hedge clearing members.[6] After the two clearing members have agreed to the terms of the stock loan, the lending clearing member will transfer the stock[7] by book-entry transfer[8] to OCC's account at a correspondent depository.[9] The transfer instructions will identify the borrowing clearing member and will specify the collateral to be received by the lending clearing member. Upon receiving notice from the correspondent depository of its receipt of the stock, OCC will instruct the depository to redeliver the stock to the borrowing clearing member against payment of the required collateral amount.[10]

Money settlement of stock loans will take place through the correspondent depository's facilities. When a borrowing clearing member pays the required collateral amount to the correspondent depository, the stock loan transaction will become final at the depository (i.e., will constitute "an entry on the books" of the depository). If a borrowing clearing member fails to make money settlement with the correspondent depository for the day on which the stock transfer takes place, the correspondent depository will reverse the transfer.[11]

OCC's rules define "stock loan" as a matched pair of securities contracts for the loan of eligible stock made through the Stock Loan/Hedge Program with one securities contract being between the lending clearing member and OCC as borrower and the second securities contract being between OCC as lender and the borrowing clearing member.[12] OCC's rules provide that OCC will be deemed to have accepted a stock loan and to have become a party to the stock loan at the time that a transfer of the eligible stock that is the subject of a stock loan from OCC to the borrowing clearing member constitutes a final entry on the books of the correspondent depository (i.e., when the borrowing clearing member has completed money settlement with the correspondent depository). OCC's rules further provide that commencing at the time that OCC is deemed to have accepted a stock loan, the role of OCC with respect to the stock loan transaction shall be that of principal with OCC being the borrower to the lending clearing member and the lender to the borrowing clearing member. Thereafter, the rights and obligations of the lending and borrowing clearing members shall be against and to OCC.

OCC will require each participating clearing member to instruct OCC as to which accounts the stock loan and borrow positions are to be carried.[13] Subject to certain conditions, hedge clearing members may maintain stock loan positions in a customers' account, a market maker's (specialist's) account, or a firm account.[14] An instruction from

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[3] The purpose of the amendment was to incorporate changes approved by the Commission in Securities Exchange Act Release Nos. 31682 (December 31, 1992), 58 FR 3318 [File Nos. SR–OCC–91–12 and SR–ICC–92–03] and 31631 (December 22, 1992), 57 FR 62411 [File Nos. SR–OCC–92–21 and SR–ICC–92–04]. The Commission did not publish notice of the amendment because it did not substantially affect the proposed rule change.

[4] A clearing member that is approved to participate in the Stock Loan/Hedge Program is referred to as a "hedge clearing member." A hedge clearing member that lends stock through the Stock Loan/Hedge Program is referred to as a "lending clearing member," and a hedge clearing member that borrows stock is referred to as a "borrowing clearing member." Stocks that are eligible for the program are referred to as "eligible stocks."

[5] The terms of the transactions will include, among other things, the amount of stock to be borrowed, the value of the collateral to be paid by the borrowing clearing member, and the fee to be paid by the borrowing clearing member to the lending clearing member. This fee will be paid by the borrowing clearing member to the lending clearing member outside of the Stock Loan/Hedge Program, and OCC will have no responsibility as to its payment.

[6] OCC states in the filing that if the Stock Loan/Hedge Program is successful, it may be modified so that OCC has a role in the matching process. OCC will file a proposed rule change under section 19(b)(2) of the Act before modifying the program to involve OCC in the matching of lending and borrowing hedge clearing members.

[7] To be an eligible stock, (1) the stock must underlie a stock option contract issued by OCC, (2) the stock must be eligible for deposit at a correspondent depository (see *infra* note 9), and (3) OCC must not have made a determination to terminate all outstanding stock loans relating to the security.

[8] All transfers in the Stock Loan/Hedge Program will be book-entry transfers.

[9] A correspondent depository is a securities depository at which OCC has an account for processing Stock Loan/Hedge Program activity. Initially, Midwest Securities Trust Company ("MSTC") will act as the only correspondent depository, but OCC may establish correspondent relationships with other depositories in the future. OCC will inform the Commission in writing should it decide to establish any additional correspondent relationships.

[10] Regulation T of the Board of Governors of the Federal Reserve System specifies that the value of the collateral for a stock loan cannot be less than 100% of the market value of the stock at the close on the preceding day, and OCC's proposed rules reflect this requirement. [12 CFR 220.16] Initially, OCC will allow only cash to be used as collateral. As OCC develops experience with the Stock Loan/Hedge Program, it may consider allowing some of the other acceptable forms of collateral permitted by Regulation T to be used as collateral in the Stock Loan/Hedge Program. Prior to any such change, OCC will file a proposed rule change under section 19(b)(2) of the Act.

[11] *E.g.*, MSTC Article III, Rule 1, Section 2 ("Right to Reverse Book-Entry Movements").

[12] New Section 1.S. (9) of Article I of OCC's By-Laws. The term "securities contract" is used in the definition of "stock loan," among other reasons, to make clear that the contracts between OCC and a lending clearing member and between OCC and a borrowing clearing member are each a securities contract for purposes of the Bankruptcy Code. (Under 741(7) of the Bankruptcy Code, 11 U.S.C. 741(7), a securities contract includes a contract for the loan of a security.) OCC's ability to make the Stock Loan/Hedge Program available in the manner described in this filing is contingent upon the applicability to stock loans of the special provisions of the Bankruptcy Code that protect the close-out activities of securities clearing agencies from attack by the trustee for a bankrupt clearing member. The proposed definition of the term stock loan is intended to make clear that the Stock Loan/Hedge Program is within the purview of these special provisions.

[13] Hedge clearing members may submit standing instructions stating the account or accounts in which all of the clearing member's stock loan or borrow positions are to be carried.

[14] Stock loan positions for which the loaned stock is held for the account of a customer other than a market-maker or specialist must be carried in the lending clearing member's customers' account. Stock loan positions for which the loaned stock is held for the account of a market-maker or specialist may be carried in the lending clearing member's customers' account or market-maker's (specialist's) account. Because OCC's market-maker's (specialist's) account agreement does not accommodate stock loans, stock loan and borrow positions may not be maintained in a market-maker's (specialist's) account unless the market-maker or specialist has entered into a market-maker's (specialist's) account agreement that authorizes stock loan and borrow positions to be maintained in the account or in the case of a combined market-makers' (specialists') account unless each market-maker (specialist) that is a participant in the account has entered into an account agreement that authorizes stock loan and

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a lending clearing member to OCC designating a customers' account or a market-maker's (specialist's) account as the account in which a stock loan position is to be carried will constitute a representation that the loaned securities to which the stock loan position relates (1) are carried for the account of a customer and that the hypothecation of such loaned stock to OCC does not contravene any provision of Commission Rules 8c–1 and 15c2–1,[15] and (2) are neither fully-paid securities nor excess margin securities within the meaning of Commission Rule 15c3–3.[16]

*Margin Treatment*

Stock loan positions and stock borrow positions will be subject to two types of margin. First, hedge clearing members will be required to pay and will be entitled to receive daily mark-to-market payments. As a result of these payments, the collateral values held by the lending clearing members will be adjusted daily so that the collateral values are always equal to the loaned securities' closing market prices from the preceding trading day. Second, OCC will require lending clearing members and borrowing clearing members to deposit margin (referred to as "additional margin") with OCC to cover OCC's risk that (1) the market will move against a stock loan or borrow position during the day and (2) the clearing member carrying the position will be unable to make the required mark-to-market payment on the next business day.[17]

OCC will compute additional margin with respect to stock loan and borrow positions as follows. Stock loan and borrow positions will be treated as being in the same class group [18] as stock options overlying the same eligible stock. Stock loan and borrow positions in each account that relate to the same eligible stock will be netted to produce a net stock loan or net stock borrow position for the account. Additional margin will be determined on a combined basis on the net stock loan or net stock borrow position along with any stock option positions in the same class group in the account. Additional margin on the remaining stock loan and stock borrow positions in the account will be determined by (1) multiplying the applicable margin interval [19] times the number of shares in the remaining stock loan positions times the closing prices from the prior trading day ("marking price"), (2) multiplying the applicable margin interval times the number of shares in the remaining stock borrow positions times the marking price, and (3) adding the resulting margin requirements for the remaining stock loan and stock borrow positions together. This additional margin requirement will then be added to the additional margin requirement for the combined stock option positions and net stock loan or borrow positions to determine the total additional margin requirement for the class group.[20] OCC will make the first collection of additional margin with respect to a stock loan on the morning of the first business day after the stock loan is initiated.

*Clearing Fund Provisions*

Open stock loan positions of hedge clearing members will be taken into account in calculating their stock clearing fund obligations.[21] OCC's stock clearing fund will be available to cover any losses suffered by OCC as a result of the failure of a hedge clearing member to perform any of its obligations to OCC with respect to stock loans and borrows.

OCC anticipates that borrowing clearing members will use the Stock Loan/Hedge Program in an effort to reduce their margin requirements on reversal positions.[22] OCC also anticipates that lending clearing members will not be hedged (i.e., will have no corresponding option position) with respect to their reversal positions. Given these assumptions, the Stock Loan/Hedge Program should result in a slight reduction to the stock clearing fund in cases where the securities that are the subject of a stock loan or borrow transaction have an equity margin interval of greater than five percent.[23] If the securities being loaned or borrowed through the program have an equity margin interval of less than five percent, the result should be a slight increase to the clearing fund.[24]

*Suspension of Hedge Clearing Members*

If OCC suspends a hedge clearing member, OCC will not accept any new stock loan transactions to which the suspended clearing member is a party after the time of the suspension. After assessing the open stock loan and borrow positions of a suspended clearing member, OCC will (1) close-out the positions by terminating the stock loans and stock borrows, (2) close-out the positions by offsetting the positions against each other, or (3) keep the positions open and establish additional hedges for them.[25] With respect to stock loans that are in the process of being terminated at the time that the clearing member is suspended, OCC will instruct the non-suspended counterparty to buy-in or sell-out the loaned stock for the

borrow positions to be maintained in the account. Stock loan positions for which the loaned stock is held for the account of a non-customer must be maintained in a firm account.

[15] This provision is intended to allow lending clearing members to satisfy the notice and certification requirements of Rules 8c–1 and 15c2–1 (17 CFR 240.8c–1 and 240.15c2–1) as these requirements apply to the Stock Loan/Hedge Program. Rules 8c–1 and 15c2–1, in pertinent part, prohibit the hypothecation and commingling of customer securities without first obtaining the written consent of each customer whose securities are to be hypothecated or commingled.

[16] Rule 15c3–3 (17 CFR 240.15c3–3) requires that a broker-dealer maintain possession or control of all customer full-paid and excess margin securities, so such securities can not be the subject of a stock loan. Nevertheless, customer securities that the broker-dealer clearing member is permitted to lend may be the subject of a stock loan conducted through the Stock Loan/Hedge Program.

[17] The margin required to be deposited with OCC with respect to stock loan and borrow positions is analogous to additional margin on short stock option positions; therefore, it is referred to in OCC's rules and in this release as "additional margin."

[18] A "class group" consists of all put and call options relating to the same underlying interest.

[19] The margin interval is the maximum one-day price move, upwards or downwards, of the underlying security against which OCC chooses to protect. If in an account in which a hedge clearing member is carrying stock loan or stock borrow positions there are no long or short option positions in the same class group as the stock loan or stock borrow positions, OCC will assign a margin interval of five percent to the stock underlying the stock loan or borrow positions. If the clearing member is carrying any long or short options in the same class group in the account, OCC will assign the margin interval for that class group to the stock loan or borrow positions.

[20] OCC also will take into account stock loan and borrow positions in calculating the alternative "minimum additional margin requirement" described in OCC Rule 601(c)(1)(C)(6).

[21] OCC will determine the total number of shares of stock underlying each stock loan position and each stock borrow position and divide each such number by the unit of trading applicable to options contracts overlying the same stock to arrive at "options contract equivalent" numbers that can be used for clearing fund calculation purposes.

[22] A reversal is a trading strategy whereby one holds a short stock position and a short put option and a long call option on the same stock.

[23] While both the lending and borrowing clearing members will increase their average daily gross contract quantity, the lender's daily average equity margin requirement will increase, and the borrower's equity margin requirement will decrease but to a greater extent than the corresponding increase to the lender's margin requirement. Letter from Stuart C. Harvey, Jr., Staff Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (April 6, 1993).

[24] While both the lending and borrowing clearing members will increase their average daily gross contract quantity, the lender's daily average equity margin requirement will increase, and the borrower's equity margin requirements will decrease but to a lesser extent than the corresponding increase to the lender's margin requirement. *Id.*

[25] In general, OCC's proposed rules applicable to the Stock Loan/Hedge Program are designed to make the actions available to OCC with respect to open option positions available with respect to stock loan and borrow positions.

account of OCC unless OCC concludes that the buy-in or sell-out may be deferred because other arrangements adequate for the protection of OCC and the counterparty have been made.

*Termination of Stock Loans*

A stock loan may be terminated by OCC, the borrowing clearing member, or the lending clearing member.[26] A borrowing clearing member will be able to terminate a stock loan by delivering the loaned stock to OCC's account at a correspondent depository with instructions identifying the lending clearing member to which the stock is to be redelivered. Upon receiving notice of the delivery, OCC will instruct the correspondent depository to redeliver the loaned stock to the lending clearing member against payment by the lending clearing member of the current value of the collateral, which will be equal to the preceding trading day's closing value for the stock. A lending clearing member will be required to give notice of termination to OCC five business days in advance of the day on which it wishes the termination to be settled in order to give the borrowing clearing member time to obtain the stock that it will be required to deliver. OCC will notify the borrowing clearing member of the termination on the day that it receives the notice from the lending clearing member. On the scheduled settlement day, the lending clearing member will have the right to buy-in the loaned stock if the borrowing clearing member fails to make delivery. OCC will continue to require the parties to a stock loan to make and receive mark-to-market payments and will continue to require additional margin with respect to both the stock loan position and the stock borrow position until the stock loan is terminated.

## II. Discussion

The Commission believes OCC's proposal is consistent with the Act and particularly with Sections 17A(b)(3) (A) and (F)[27] and with section 17A(a)(2)(A) of the Act.[28] Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible. Section 17A(b)(3)(F) further requires the rules of a clearing agency to be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. Finally, section 17A(a)(2)(A) directs the Commission to use its authority under the Act to facilitate the establishment of link or coordinated facilities for the clearance and settlement of transactions in securities, securities options, and futures. As discussed below, the Commission believes the proposed rule change is consistent with these provisions.

Under the proposal, clearing member exposure to counterparty default in a stock loan transaction should be minimal. Hedge clearing members will be required to pay or will be entitled to receive daily mark-to-market payments. As a result of these payments, the value of the collateral held by the lending clearing member should always be equal to the loaned securities' closing market price from the preceding trading day. Furthermore, because OCC becomes a principal in stock loan and borrow transactions, the proposal centralizes the administration of stock loan and borrow transactions. As principal, OCC will act as the borrower to the lending clearing member and as the lender to the borrowing clearing member, and the rights and obligations of the two clearing members will be against and to OCC.

OCC will continue to employ its monitoring and risk reduction procedures, which were subject to Commission review and were approved by the Commission in previous rule filings, in the Stock Loan/Hedge Program.[29] Applying these procedures, which have performed well in the past, to the Stock Loan/Hedge Program should enable OCC to continue to safeguard securities and funds in its custody and control or for which it is responsible in fulfillment of its statutory obligation and should help improve the efficiency and safety of stock lending transactions. Accordingly, the Commission believes the proposal is a significant step in removing impediments to and perfecting the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

The Commission notes that OCC has included provisions for the buying-in, selling-out, and closing-out of stock loan and borrow positions. OCC's proposed rules relating to open stock loan and borrow positions of a suspended clearing member are designed to make the remedial actions that are currently available to OCC with respect to open options positions also available to OCC with respect to stock loan and borrow positions. The Commission believes it is prudent for OCC to include these measures in its Stock Loan/Hedge Program and that these procedures will help prevent financial loss to OCC and its clearing members in the event of a major participant default.

OCC will first collect additional margin for a stock loan transaction from the lending and the borrowing clearing members on the morning of the first business day after the stock loan is initiated. Therefore, OCC will not have margin on deposit with respect to the stock loan if a lending clearing member or a borrowing clearing member defaults after a stock loan becomes final but before margin is collected on the next business day. OCC believes that its ability to collect margin on an intraday basis and its recourse to the clearing fund deposits of clearing members will be adequate to protect it against this risk.

OCC also has the authority to terminate outstanding stock loans relating to one or more particular eligible stocks upon a determination that circumstances warrant such action.[30] The Commission believes that

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[26] OCC has the authority to terminate the outstanding stock loans relating to one or more particular eligible stocks upon a determination that circumstances warrant such action. OCC anticipates that this authority will rarely, if ever, be needed. However, stock loans, unlike options, will have an indefinite duration, and this authority will allow OCC to terminate the Stock Loan/Hedge Program.

[27] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[28] 15 U.S.C. 78q–1(a)(2) (A) (1993).

[29] Among others, these safeguards include (1) the Theoretical Intermarket Margining System ("TIMS") which employs option price theory to identify and measure market risk and to calculate margin requirements (Securities Exchange Act Release No. 32388 (May 28, 1993), 58 FR 31969 [File No. SR–OCC–93–06]); (2) the Concentration Monitoring System which enables OCC to analyze and address risks resulting from concentrated, undiversified options portfolios (Division, Commission, Market Analysis of October 13 and 16, 1989, at 137–42 (December 1990); (3) the Risk Management System which generally allows OCC to evaluate the risks associated with the entire stock, options, and futures portfolios held by its clearing members (Securities Exchange Act Release No. 30346 (February 6, 1992), 57 FR 5195 [File No. SR–OCC 91–17]); (4) the valued securities program eligibility standards for stock and corporate debt which help to ensure that a clearing members' stocks deposited as margin will have an active, liquid market to permit their sale or pledge in the event of a member default (Securities Exchange Act Release No. 29576 (August 16, 1991), 56 FR 41873 [File No. SR–OCC–88–03]) and (5) the valued securities program concentration ratio which limits the amount of stock of any one issuer that can be held in an account to ten percent of the margin requirement for the account (*id.*).

[30] For example, OCC has represented that with respect to a security that is both the subject of a stock loan through the Stock Loan/Hedge Program and is the subject of a two tiered tender offer, OCC will use its authority under Article XXI, Section 2(c) of its By-Laws to terminate a borrowing clearing member's stock loan positions and to return the securities to the lending clearing

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OCC's ability to terminate a stock loan position if that position exposes OCC and its membership to undue financial risk add safety to OCC's operation of the Stock Loan/Hedge Program and, therefore, is consistent with OCC's obligations under sections 17(b)(3)(A) and (F) of the Act.

The Commission also believes OCC's proposal is consistent with section 17A(a)(2)(A) of the Act. The proposal extends the availability of intermarket clearing facilities by further linking and coordinating the clearance and settlement of securities and securities options.

### III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.[31]

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act,[32] that OCCs' proposed rule change (File No. SR–OCC–92–34) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[33]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17355 Filed 7–21–93; 8:45 am]

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Incorporated

July 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Continental Airlines, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–10966)
Continental Airlines, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–10967)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–17419 Filed 7–21–93; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 16, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Comdisco, Inc.
8.34 Pc. Cum. Pfd Stock (File No. 7–10979)
Magma Copper Company
Cum. Cv. Pfd Stock, $.01 Par Value (File No. 7–10980)
Rhone Poulenc Overseas Ltd.
8 ⅛ Pc. Cum. Guaranteed Pfd Shares Series A, $25 Par Value (File No. 7–10981)
Stone Energy Corporation
Common Stock, $.01 Par Value (File No. 7–10982)
Lasmo Plc
American Depositary Shares Series A (Each Rep. One Cum. Dollar Preference Share) (File No. 7–10983)
Grancare, Inc.
Common Stock, No Par Value (File No. 7–10984)
Grupo Simec S.A. de C.V.
American Depositary Shares (File No. 7–10985)
Espirto Santo Financial Holdings S.A.
American Depositary Shares $10 Par Value (File No. 7–10986)
Aztar Corporation
Common Stock, $.01 Par Value (File No. 7–10987)
Continental Airlines, Inc.
Class A Common Stock, "When Issued", $0.01 Par Value (File No. 7–10988)
Continential Airlines, Inc.
Class B Common Stock, "When Issued", $0.01 Par Value (File No. 7–10989)
Bank of Boston Corporation
Depositary Shares (Each Representing 1/10 of a Share of 7¾ Pc. Cum. Pfd. Stock Series F (File No. 7–10990)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 6, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–17418 Filed 7–21–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 35–25855]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 16, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 9, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified

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member. Letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (July 12, 1993).

[31] 15 U.S.C. 78q–1(b)(3)(A).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 C.F.R. 200.30–3(a)(12).

below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**The Connecticut Light and Power Company et al. (70–8088)**

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, both wholly-owned electric utility subsidiaries of Northeast Utilities, a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder in connection with their proposal to refinance a portion of each company's cost of acquiring, constructing and installing certain pollution control and/or sewage or solid waste disposal facilities.

The declarants propose that the Connecticut Development Authority ("CDA") issue through September 30, 1995 one or more series of pollution control revenue refunding bonds (1) on behalf of CL&P in the aggregate principal amount of not more than $315,516,500 and (2) on behalf of WMECO in the aggregate principal amount of not more than $53,853,500 (collectively, "New Bonds") for the purpose of refunding certain pollution control revenue bonds that were previously issued by the CDA on behalf of the declarants ("Old Bonds").

The New Bonds will be issued, and the proceeds thereof will be loaned to the declarants to cause the refunding of the Old Bonds, pursuant to indentures of trust, loan agreements and promissory notes (collectively, "Bond Documents"). Under the Bond Documents, the declarants will agree to make payments corresponding to the amounts needed to pay the principal, interest, and premium, if any, on the New Bonds as they become due, and will be obligated to pay the fees and charges of the CDA and trustees. The monies receivable from the declarants by the CDA will be pledged and assigned to the trustees as security for the New Bonds.

The New Bonds will mature not later than 30 years from the date of issuance and may bear interest at commercial paper rates, weekly rates, or multiannual rates and may be converted for their remaining term to bear interest at a fixed rate. Such rates will be determined by remarketing agents for each interest rate period (or, if the New Bonds are converted for their remaining term to bear interest at a fixed rate, for such remaining term) at that rate which results in the market value of the New Bonds on the date of such determination being 100 percent of the principal amount thereof, subject to a maximum interest rate of 12% per annum. Each company will pay its remarketing agent(s) an annual fee not to exceed 0.125% of the principal amount of its New Bonds outstanding. Taking into account all the fees, charges and other costs in connection with the proposed transactions, the effective annual interest cost will not exceed the interest rate on the New Bonds by more than one percent.

It is anticipated that the New Bonds will initially bear interest at weekly rates, payable monthly in arrears. While the New Bonds bear interest at weekly rates (and at certain other times as well), each transaction will be structured so that the company's loan payment obligations shall be satisfied by drawings under an irrevocable letter of credit ("Letter of Credit"). Under each Letter of Credit, while the New Bonds bear interest at weekly rates, the applicable paying agent on the New Bonds would be entitled to draw up to (i) an amount equal to the principal amount of the outstanding New Bonds and (ii) an amount equal to approximately 45 days' interest on the New Bonds at the maximum interest rate of 12% per annum.

Each Letter of Credit is expected to be issued by a bank to be determined ("Bank") pursuant to a letter of credit and reimbursement agreement ("Reimbursement Agreement"). Under each Reimbursement Agreement, the company would be obligated to pay an annual letter of credit commission at a rate not to exceed 0.75% per annum of the total amount available to be drawn under the applicable Letter of Credit. Each Reimbursement Agreement would also require the company to pay certain transfer, drawing, cancellation, and other fees, to comply with certain business covenants, and to reimburse the Bank for any amounts drawn under the Letter of Credit, with interest thereon until paid. Each Letter of Credit will expire three to five years after its date of issuance, unless earlier terminated or extended in accordance with its terms. The declarants seek authority to obtain extensions of and replacements for the Letters of Credit and the Reimbursement Agreements (and any previous extensions thereof and replacements therefore) from time to time during the term of the New Bonds, provided that (i) the annual letter of credit commission applicable to any such extension or replacement does not exceed 0.75% per annum of the total amount available to be drawn under the extended or replacement Letter of Credit and (ii) such extension or replacement is otherwise on terms that are substantially similar in all material respects to those applicable to the Letter of Credit and the Reimbursement Agreement (or previous extension thereof or replacement therefore) being extended or replaced.

The Bond Documents will provide that, while the New Bonds bear interest at weekly rates, they are subject to tender for purchase from time to time at the option of the holders, at a price equal to par plus accrued interest. The remarketing agents will be obligated to use their best efforts to remarket such tendered New Bonds upon such optional tender, and the principal portion of the purchase price for such tendered bonds will be paid to tendering holders from remarketing proceeds. To the extent that the remarketing agents are unable to remarket tendered New Bonds, the paying agent for such New Bonds will be required to pay such principal portion to tendering holders from the proceeds of drawings made on the applicable Letter of Credit and such tendered New Bonds not remarketed would be pledged as security for such declarant's obligations to reimburse the Bank for any Letter of Credit drawings made to purchase such New Bonds.

The Reimbursement Agreements will provide that all Letter of Credit drawings (other than drawings to pay the principal portion of the purchase price for unremarketed tendered bonds) are immediately reimbursable to the Bank. Drawings to pay the principal portion of the purchase price for unremarketed tendered New Bonds will be treated as advances or loans bearing interest until paid. Such interest rate will be equal to the higher of the prime rate or the federal funds rate plus 50 basis points. The New Bonds and the loans from the CDA to the declarants will be subject to optional and mandatory redemption provisions, in some cases at a premium.

The New Bonds will be initially marketed and sold pursuant to underwriting arrangements reflected in bond purchase agreements. Each company will pay an underwriting fee not to exceed 0.50% of the principal amount of the New Bonds to be

purchased by the underwriter and will reimburse the underwriter for certain expenses.

All or some of the declarants' payment obligations under the Bond Documents, together with all or some of the declarants' reimbursement obligations under the Reimbursement Agreements, may be secured, equally and ratably, by second mortgages on their interests in the Millstone 1 nuclear electric generating facility located in Waterford, Connecticut.

The declarants request an exemption from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5) thereunder with respect to the proposed transactions. The declarants also request authorization to begin negotiations with potential underwriters. It may do so.

**Northeast Nuclear Energy Company [70-8092]**

Northeast Nuclear Energy Corporation ("NNEC"), 107 Selden Street, Berlin, Connecticut 06037, an electric public-utility subsidiary company of Northeast Utilities ("Northeast Utilities"), a registered holding company, has filed a declaration under sections 6(a), 7, 13 (b) and (f) of the Act and Rules 50(a)(5), 86 through 91, 93 and 94 thereunder.

NNEC operates three nuclear power generating stations, Millstone Units Nos. 1, 2 & 3 (each a "Unit") on the site of the Units on behalf of the owners of the Units. Two affiliates, Connecticut Light & Power ("CL&P") and Western Massachusetts Electric Power Company, own an 81% and a 19% interest, respectively, in Units Nos. 1 and 2. CL&P and WMEC own approximately a 53% and a 12% interest, respectively, in Unit No. 3 and a third affiliate, Public Service Company of New Hampshire ("PSNH"), owns approximately a 3% interest in Unit No. 3 as well. The balance of the ownership interests in Unit No. 3 are held by non-affiliates ("Non-Affiliate Owners"). The Units are operated by NNEC pursuant to the Amended and Restated Millstone Plant Agreement dated as of December 1, 1984 among NNEC, CL&P and WMECO ("Plant Agreement") and the Sharing Agreement—1979 Connecticut Nuclear Unit dated as of September 1, 1973, as amended, among CL&P, WMECO, PSNH and the Non-Affiliate Owners ("Sharing Agreement"). NNEC requests a finding under Rule 88(b) that it is so organized and conducted as to meet the requirements of section 13(b) of the Act with respect to subsidiary service companies.

The costs to be charged by NNEC pursuant to its service contracts will be equal to its actual cost for those services, including a reasonable return on capital. NNEC will keep its accounts, cost accounting procedures, correspondence, memoranda, papers, books and other records in the manner prescribed by Rule 93 and consistent with the uniform system of accounts. Also, NNEC will file reports in the forms and at the times prescribed by Rule 94.

NNEC's costs in operating the Units are allocated among the owners of the Units, either (a) equally to each unit (or equally to Units Nos. 1 and 2 if Unit No. 3 is not involved), (b) on the basis of employees per unit, or (c) on the basis of capacity per unit. The choice of allocation will depend upon which cost control center is responsible for the cost. After costs are allocated to the correct Unit, those costs for each Unit are then billed to the owners of that Unit according to ownership share.

NNEC finances certain of the assets related to the Units in order to avoid having those assets become subject to the liens in the first mortgage indentures of the owners of the Units. In order to satisfy the lenders in these financings, NNEC currently maintains a paid-in capital of approximately $15.4 million. NNEC would not increase this level of paid-in capital without the prior approval of the Commission. CL&P and WMECO (under the Plant Agreement) and PSNH and the Non-Affiliate Owners (indirectly through CL&P and WMECO under the Sharing Agreement) pay a rate of return to NNEC on its equity capital. This rate is set at the weighted average of the most recent rates of return approved for CL&P and WMECO in their most recent retail rate cases.

NNEC also requests authority through July 31, 1995 to issue one or more series of unsecured floating rate notes in an amount not to exceed $30 million ("Commitment") to a bank at any time or from time to time to finance the construction of a new building ("Facility"). The Facility will be located on the site of the Millstone Units and is being built to accommodate certain enhancements in the operation of the Millstone Units agreed to among NU, NNEC and the Nuclear Regulatory Agency.

The Construction Notes would mature on a date no later than the earlier of the completion of construction or ten years following the date of issue. The interest rate on the Construction Notes would equal LIBOR plus a margin not to exceed 125 basis points. In addition, NNEC would incur a commitment fee not to exceed 2% of the unused portion of the Commitment.

Additionally, NNEC seeks authority through July 31, 1995 to issue one or more series of unsecured fixed rate notes at any time or from time to time in an amount not to exceed $30 million to finance the construction of the facility on a long-term basis ("Permanent Notes"). If NNEC issues Construction Notes, the Permanent Notes would be used to refund the Construction Notes and any other short-term borrowing made in connection with the construction of the Facility.

The principal amount of each Permanent Notes would be amortized over the life of such Permanent Note and would be fully amortized no later than thirty years following the date of issue. Each Permanent Note would bear an interest rate equal to the rate for a U.S. Treasury obligation bearing a term equal to the "average life" of such Permanent Note ("Base Rate"), plus a margin not to exceed 175 basis points. For the purpose of this paragraph, the "average life" of a Permanent Note approximates the average period of time during which the original principal amount of such Permanent Note is outstanding. If no U.S. Treasury obligation has such a term, the Base Rate for such Permanent Note would be set at a rate interpolated from the two rates for U.S. Treasury obligations with the next shortest and the next longest terms relative to the average life of such Permanent Note. In no case would the average life of a Permanent Note exceed thirty years. Additionally, NNEC would incur placement and origination fees in connection with the issuance of the Permanent Notes in amounts not to aggregate more than $300,000.

NNEC requests authority to issue the Permanent Notes pursuant to an exception from the competitive bidding requirement of Rule 50 under subsection (a)(5). NNEC further requests authority to begin negotiations with underwriters with respect to the issuance and sale of the Permanent Notes. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-17414 Filed 7-21-93; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35-25855]**

**Filings Under the Public Utility Holding Company Act of 1935 ("Act")**

July 16, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules

promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 9, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Georgia Power Company (70-8129)**

*Notice of Proposal to Amend Charter, or Alternatively, to Waive Charter Provision; Order Authorizing Solicitation of Proxies*

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue NE., Atlanta, Georgia 30308, a public-utility subsidiary company of The Southern Company ("Southern"), a registered holding company, has filed a declaration under sections 6(a)(2), 7(e), and 12(e) of the Act and Rules 62 and 65 thereunder.

Georgia Power's charter currently provides that, without the affirmative vote of a majority of the total number of shares of preferred stock at the time outstanding, Georgia Power shall not issue or assume any securities representing unsecured debt (other than for the purpose of refunding or renewing outstanding unsecured securities resulting in equal or longer maturities or redeeming or otherwise retiring all outstanding shares of preferred stock or of any senior or equally ranking stock) if immediately after such issue or assumption (1) the total outstanding principal amount of all securities representing unsecured debt will thereby exceed 20% of the aggregate of all existing secured debt and the capital stock, premiums thereon, and surplus, as stated on the books, or (2) the total outstanding principal amount of all securities representing unsecured debt of maturities of less than ten years will thereby exceed 10% of such aggregate.

Georgia Power proposes to submit to its preferred stock shareholders and to its sole common stock shareholder, Southern, at a special meeting of such holders to be held on or about September 23, 1993, a proposal to amend Georgia Power's charter as follows. Georgia Power, without the affirmative vote of a majority of the total number of shares of preferred stock at the time outstanding, shall not issue or assume any securities representing unsecured debt (other than for the purpose of refunding or renewing outstanding unsecured securities resulting in equal or longer maturities or redeeming or otherwise retiring all outstanding shares of preferred stock or of any senior or equally ranking stock) if immediately after such issue or assumption the total outstanding principal amount of all securities representing unsecured debt will thereby exceed 20% of the aggregate of all existing secured debt and the capital stock, premiums thereon, and surplus, as stated on the books ("Proposal 1").

Should Proposal 1 fail to receive the necessary 66⅔% vote of the total number of shares of preferred stock outstanding, and 66⅔% vote from Southern as the owner of all outstanding shares of common stock, Georgia Power proposes to seek authority from its preferred shareholders to issue or assume, until July 1, 2003, additional unsecured debt. This unsecured debt will have maturities of less than ten years, and will exceed 10% of capital, surplus, and secured debt, provided that the amount of securities representing unsecured debt having maturities of less than ten years outstanding on January 1, 2004, shall not exceed such 10% limitation, and Georgia Power's total indebtedness represented by unsecured securities shall not exceed 20% of capital, surplus, and secured debt ("Proposal 2"). Proposal 2 requires the affirmative vote of a majority of the total number the shares of preferred stock outstanding.

Georgia Power intends to solicit proxies from its preferred to approve the alternative proposals. Georgia Power has filed its proxy solicitation material and requests that its declaration with respect to the solicitation of proxies for voting by its preferred shareholders to approve the alternative proposals be permitted to become effective forthwith as provided in Rule 62(d).

It appearing to the Commission that Georgia Power's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

*It is ordered*, That the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under Rule 62, and subject to the terms and conditions as prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-17415 Filed 7-21-93; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements filed during the Week Ended July 2, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 49003.
*Date filed:* June 29, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC1 Reso/C 0248 dated May 18, 1993; TC1 Except to/from US/UST r-1 to r-5.
*Proposed Effective Date:* October 1, 1993.

*Docket Number:* 49008.
*Date filed:* July 1, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* Comp Telex Reso 024f—Iceland.
*Proposed Effective Date:* July 1, 1993.

*Docket Number:* 49009.
*Date filed:* July 1, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC2 Reso/C 0369 dated May 21, 1993; Areawide Resos (Acct 3819) R-1 to r-3; TC2 Reso/C 0375 dated May 21, 1993, r-4 to r-9; TC2 Reso/C 0376 dated May 21, 1993, r-10.
*Proposed Effective Date:* October 1, 1993.

*Docket Number:* 49010.
*Date filed:* July 1, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC2 Reso/C 0374 dated May 21, 1993; Europe-Mideast Resos r-1 to r-7.
*Proposed Effective Date:* October 1, 1993.

*Docket Number:* 49011.

*Date filed:* July 1, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC2 Reso/C 0372 dated May 21, 1993; Middle East-Africa Resos r–1 to r–3.
*Proposed Effective Date:* October 1, 1993.

*Docket Number:* 49012.
*Date filed:* July 1, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC2 Reso/C 0371 dated May 21, 1993; Middle East Resos 552 (r–1) & 590 (r–2).
*Proposed Effective Date:* October 1, 1993.

*Docket Number:* 49013.
*Date filed:* July 1, 1993.
*Parties:* Members of the International Air Transport Association.
*Subject:* TC2 Reso/C 0373 dated May 21, 1993; Europe-Africa Resos r–1 to r–9.
*Proposed Effective Date:* October 1, 1993.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 93–17368 Filed 7–21–93; 8:45 am]
BILLING CODE 4910–62–P

## Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended July 2, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49004.
*Date filed:* June 29, 1993.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* July 27, 1993.
*Description:* Application of United Parcel Service Co., pursuant to section 401 of the Act and subpart Q of the Regulations requests that its Certificate of Public Convenience and Necessity for Route 633 be amended to: add authority for UPS to engage in the scheduled foreign air transportation of property and mail between the terminal point Louisville, Kentucky and the terminal point Montreal, Quebec, Canada (to be served through Mirabel Airport); and, delete the authority now contained in that certificate authorizing service between Manchester, New Hampshire and Montreal, Canada (Mirabel). The effect of these amendments would be to enable UPS to substitute Louisville, Kentucky for Manchester, New Hampshire, as the U.S. gateway for its Montreal service.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 93–17367 Filed 7–21–93; 8:45 am]
BILLING CODE 4910–62–P

## Coast Guard

**[CGD 93–008]**

## Response Exercise Workshops; Additional Meeting Date

**AGENCY:** Coast Guard, DOT.
**ACTION:** Notice of meeting.

**SUMMARY:** The Coast Guard is announcing the addition of a second day to the Response Exercise Workshop scheduled for August 5, 1993. The original schedule listed the meeting date as August 5 only. The workshop will be held on August 5 and 6, 1993, at the Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia.

**FOR FURTHER INFORMATION CONTACT:** LCDR Rhae Giacoma, Office of Marine Safety, Security and Environmental Protection (G–MEP–4), (202) 267–2616.

**SUPPLEMENTARY INFORMATION:** In the March 5, 1993 **Federal Register** (58 FR 12624), the Coast Guard announced that it would conduct a series of four workshops covering various topics to solicit comments from the public and to serve as an open forum for the discussion of response exercises for Area Contingency Plans and vessel and facility response plans. The announced schedule of the last workshop has been amended to include an additional day.

The updated public workshop schedule is as follows:

August 5, 1993; 8 a.m. to 6 p.m.; and August 6, 1993; 8 a.m. to 3 p.m.; Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Crystal City, Virginia, (703) 418–6800.

Dated: July 14, 1993.

**Joseph J. Angelo,**
*Acting Chief, Office of Marine Safety, Security and Environmental Protection.*
[FR Doc. 93–17446 Filed 7–21–93; 8:45 am]
BILLING CODE 4910–14–M

## Federal Aviation Administration

**[Summary Notice No. PE–93–31]**

## Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.
**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 10, 1993.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No._____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 8, 1993.

**Joseph A. Conte,**
*Acting Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

*Docket No.:* 21780

*Petitioner:* Civil Air Patrol, Inc.
*Sections of the FAR Affected:* 14 CFR 61.118
*Description of Relief Sought:* To extend the termination date of Exemption No. 4042 to allow the Civil Air Patrol, Inc. (CAP), to continue to be reimbursed for fuel, oil, and maintenance expenses while serving on official CAP missions.

*Docket No.:* 27283
*Petitioner:* Northwest Airlines, Inc.
*Sections of the FAR Affected:* 14 CFR 121.356
*Description of Relief Sought:* To allow Northwest Airlines, Inc., to operate its 6 dc–9–10's until June 30, 1994, without the traffic alert and collision avoidance system installed.

*Docket No.:* 27289
*Petitioner:* Zachariah Ray Bowers
*Sections of the FAR Affected:* 14 CFR 61.31(a)
*Description of Relief Sought:* To allow Mr. Bowers to become eligible for a flight engineer certificate without meeting the minimum age requirement of 21 years.

*Docket No.:* 27321
*Petitioner:* Lynn D. Rudrud
*Sections of the FAR Affected:* 14 CFR 121.383
Description of Relief Sought: To allow Lynn D. Rudrud to continue to serve as a pilot in part 121 air carrier operations after reaching 60 years of age.

*Docket No.:* 27324
*Petitioner:* Guenther H. Koerner
*Sections of the FAR Affected:* 14 CFR 121.383(c)
*Description of Relief Sought:* To allow Mr. Koerner to serve as a pilot in part 121 air carrier operations after reaching his 60th birthday.

*Docket No.:* 27326
*Petitioner:* O.C. Haworth
*Sections of the FAR Affected:* 14 CFR 121.383(c)
*Description of Relief Sought:* To allow Mr. Haworth to serve as a pilot in part 121 air carrier operations after reaching his 60th birthday.

**Dispositions Of Petitions**

*Docket No.:* 22872
*Petitioner:* Air Transport Association of America
*Sections of the FAR Affected:* 14 CFR 61.157(a), Item I(b) of part 61, 121.424(a) and (b), Item I(a) of appendix E of part 121, 121.424(d)(1) and Item I(b) of appendix F of part 121 Description of Relief Sought/ Disposition:
To extend the termination date of Exemption No. 4416, and to amend the exemption to allow the required training to proficiency on preflight visual inspections to be completed prior to the completion of operating experience rather than prior to the first flight of operating experience. Grant, July 1, 1993, Exemption No. 4416F.

*Docket No.:* 23921
*Petitioner:* Flight Safety International
*Sections of the FAR Affected:* 14 CFR 61.55(b)(2), 61.56(b)(1), 61.57(c) and (d), 61.58(c)(1) and (d), 61.63(c)(2) and (d)(2) and (3), 61.67(d)(2), 61.157(d)(1) and (2) and (e)(1) and (2), and appendix A of part 61
*Description of Relief Sought/ Disposition:* To amend Exemption No. 5317 to allow Flight Safety International to employ flight simulator instructors who do not hold an FAA flight instructor certificate. Grant, July 6, 1993, Exemption No. 5317A

*Docket No.:* 24427
*Petitioner:* United States Ultralight Association, Inc.
*Sections of the FAR Affected:* 14 CFR 103.1(a), (e)(1), (e)(2), (e)(3), and (e)(4)
*Description of Relief Sought/ Disposition:* To allow individuals authorized by the United States Ultralight Association to give instruction in powered ultralight vehicles that have a maximum fuel capacity of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed. Grant, July 1, 1993, Exemption No. 4274E

*Docket No.:* 26169
*Petitioner:* Clackamas County Sheriff's Department
*Sections of the FAR Affected:* 14 CFR 61.118(a)
*Description of Relief Sought/ Disposition:* To extend the termination date of Exemption No. 5321, which allows private pilots who perform search and location services for the Clackamas County Sheriff's Department to be reimbursed for their fuel, oil, and maintenance expenses. Grant, June 30, 1993, Exemption No. 5321A

*Docket No.:* 26898
*Petitioner:* Air Transport Association of America
*Sections of the FAR Affected:* 14 CFR 121.343(c)
*Description of Relief Sought/ Disposition:* To amend Exemption No. 5593, to clarify condition Nos. 3 and 7, and to change the dates in condition Nos. 3, 9, and 10. Grant, June 30, 1993, Exemption No. 5593A

*Docket No.:* 27112
*Petitioner:* Mr. Rex D. Bentley
*Sections of the FAR Affected:* 14 CFR 65.91(c)(1)
*Description of Relief Sought/ Disposition:* To allow Mr. Bentley to become eligible for an Inspection Authorization without having held a currently effective Airframe and Powerplant Mechanic certificate for at least three years. Denial, June 30, 1993, Exemption No. 5671

*Docket No.:* 27302
*Petitioner:* Bighorn Airways
*Sections of the FAR Affected:* 14 CFR 135.379(a)
*Description of Relief Sought/ Disposition:* To allow the use of the Casa 212–200 aircraft, for cargo operations only, at a takeoff weight greater than would allow the aircraft to maintain a 2.4 gradient during the second segment climb and a 1.2 percent gradient during the final climb segment. Denial, July 1, 1993, Exemption No. 5670

[FR Doc. 93–17364 Filed 7–21–93; 8:45 am]
BILLING CODE 4910–13–M

## Implementation of 1,000 Foot Vertical Separation Minimum Between Flight Level (FL) 290 and FL 410

**AGENCY:** Federal Aviation Administration (FAA), DOT.
**ACTION:** Notice of public meeting.

**SUMMARY:** The FAA is considering the initiation of rulemaking to support the implementation of a 1,000 foot vertical separation minimum between FL 290 and FL 410 in certain areas or on certain routes. An informal meeting will be held to provide the opportunity to gather facts relevant to the effects of adopting rules for implementation and to provide interested persons an opportunity to present their views. All comments received will be considered prior to any issuance of a Notice of Proposed Rulemaking (NPRM).

**TIME AND DATE:** The public meeting will be held on August 17, 1993, starting at 10 a.m. Written comments are also invited and must be received on or before August 31, 1993.

**PLACE:** The public meeting will be held in the Auditorium of the Federal Aviation Administration, located on the third floor of FOB 10A, 800 Independence Ave., SW., Washington, DC, 20591.

**COMMENTS:** Send or deliver comments in triplicate to: Federal Aviation Administration, Flight Standards Service, Technical Programs Branch, (AFS–407), 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Requests to make a presentation at the meeting or questions regarding the logistics of the meeting should be directed to Mr. Lawrence Buehler, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9677; telefax (202) 267–5075.

Questions concerning the subject matter of the meeting should be directed to Mr. Roy Grimes, Federal Aviation Administration, Technical Programs Division, AFS–407, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3722; telefax (202) 267–5086.

**SUPPLEMENTARY INFORMATION:**

**Participation at the Meeting**

Requests from persons who wish to present oral statements at the public meetings should be received by the FAA no later than August 9, 1993. Such requests should be submitted to FAA, Office of Rulemaking, as listed above in the section titled "**FOR FURTHER INFORMATION CONTACT**" and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

**Background**

The FAA, along with other international authorities, conducted studies of aircraft height-keeping to determine feasibility of implementating reduced vertical separation minima (RVSM). In the early 1980's the International Civil Aviation Organization (ICAO) Review of the General Concept of Separation Panel (RGCSP) encouraged member states to investigate reducing the vertical separation minimum between aircraft operating above FL 290, and member states initiated programs to study the feasibility of reducing the vertical separation.

At the sixth meeting of the RGCSP, the results of the studies were considered. The results confirmed that a 1,000 foot vertical separation minimum was technically feasible without imposing unreasonably demanding technical requirements.

At the seventh meeting of the RGCSP, the panel developed guidance material for the implementation of a 1,000 ft vertical separation minimum between FL 290 and FL 410 inclusive (ICAO Doc. 9574). The material presents guidelines for airspace planners to consider in developing implementation plans and programs. It includes issues to be studied during the implementation steps including the effect on overall system safety and cost/benefit factors. The document also contains guidance on the requirements for airplane height-keeping in terms of altimetry system error and automatic altitude keeping (autopilot) performance. Basic elements of and processes for the airplane and operator approval are suggested.

ICAO North Atlantic Systems Planning Group (NATSPG) is utilizing ICAO Doc. 9574 for guidance in developing plans and programs to implement RVSM in the North Atlantic. NATSPG has developed a methodology for airplane and operator approval based on this document. NATSPG has forecast implementation of operational trials for the North Atlantic airspace to begin in January 1997 with final implementation in January 1998. As the ICAO guidance material for a 1,000 ft vertical separation minimum was developed on a global basis, the FAA believes that the ICAO Doc. 9574 may also be useful in the study of implementation in other airspace such as the Pacific.

The FAA is considering rulemaking to support the implementation of RVSM in certain areas or on certain routes. This process will involve careful consideration of the needs of the various users of the airspace. Because of the complexity of planning for RVSM implementation, the FAA is seeking comments from the public before proposing rulemaking.

The purposes of the meeting include, but are not limited to, gathering information and soliciting views and written comments on RVSM implementation and planning, as well as, airworthiness, maintenance, and operations programs related to flight in RVSM airspace.

**Meeting Procedures**

The following procedures are established to facilitate the meeting:

(a) The meeting will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend or to participate in the meeting.

(b) The meeting will be informal and conducted by representatives of the FAA. Representatives of the FAA will preside over the meeting and present a formal briefing on the elements related to RVSM implementation and any proposals that have been received from the public. All participants will be given an opportunity to make a presentation as time allows.

(c) Any person wishing to make a presentation at the meeting must notify the FAA prior to the meeting and provide an estimate of the time needed for the presentation. This procedure will permit allocation of an appropriate amount of time for each presenter. The FAA may allocate the time available for each presentation to accommodate all speakers. Everyone who has provided advance notice will have the opportunity to address the panel. Time will also be set aside for brief, unscheduled comments. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Any person who wishes to present a position paper to the FAA, pertinent to RVSM implementation, may do so. Persons wishing to distribute pertinent position papers or other handout material to the attendees should present 5 copies of all materials to the panel members. Additional copies of each handout should be available for other attendees.

(e) Materials relating to implementation of RVSM will be accepted at the meeting. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting.

Persons are encouraged to submit written comments on or before August 31, 1993 on RVSM implementation and planning, as well as airworthiness, maintenance, and operations programs related to flight in RVSM airspace.

(f) The meeting will be recorded by a court reporter. Any person who is interested in purchasing a copy of the transcript should contract the court reporter after the meeting.

(g) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

(h) The meeting is designed to solicit public views and more complete information on the possible promulgation of rules to support implementation of RVSM in selected areas or routes. The meeting will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a

statement and to ensure a complete and accurate record. The proposed agenda will be: Opening remarks and discussion of the meeting procedures, a short briefing on RVSM implementation, public presentations, and closing remarks.

Issued in Washington, DC on July 15, 1993.

**William J. White,**

*Acting Director, Flight Standards Service.*

[FR Doc. 93-17366 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-13-M

## Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Johnstown-Cambria County Airport, Johnstown, PA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Johnstown-Cambria County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before August 23, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Mr. L. W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William L. Santoro, Airport Manager of the Johnstown-Cambria County Airport Authority at the following address:

Johnstown-Cambria County Airport Authority, Johnstown-Cambria County Airport, RD #2, Johnstown, Pennsylvania 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Johnstown-Cambria County Airport County Airport Authority under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. L. W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011 (Tel (717) 975-3423). The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Johnstown-Cambria County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 26, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Johnstown-Cambria County Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 31, 1993.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00

*Proposed charge effective date:* October 1, 1993

*Proposed charge expiration date:* May 31, 1998

*Total estimated PFC revenue:* $337,500

*Brief description of proposed projects:*

—Overlay Runway 10-28

—Perimeter Security Fence

—Expand Terminal Building

—Overlay/Rehabilitate Runway 15-33

—Widen Taxiway A

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air Taxi/Commercial Operators filing FAA Form 1800-31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Johnstown-Cambria County Airport Authority.

Issued in Jamaica, New York on July 14, 1993.

**Thomas O. Felix,**

*Manager, Grant-In-Aid Program, Eastern Region.*

[FR Doc. 93-17365 Filed 7-21-93; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

July 16, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex. 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545-0128.
*Form Number:* IRS Form 1120-L.
*Type of Review:* Revision.
*Title:* U.S. Life Insurance Company Income Tax Return.
*Description:* Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents/Recordkeepers:* 2,440.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—85 hours, 51 minutes
Learning about the law or the form—24 hours, 55 minutes
Preparing the form—40 hours, 27 minutes
Copying, assembling, and sending the form to the IRS—3 hours, 45 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting/Recordkeeping Burden:* 378,127 hours
*OMB Number:* 1545-0954
*Form Number:* IRS Form 1120-ND
*Type of Review:* Extension
*Title:* Return for Nuclear Decommissioning Funds and Certain Related Persons
*Description:* A nuclear utility files Form 1120-ND to report the income and taxes of a fund set up by the public utility to provide cash for the dismantling of the nuclear power plant. The IRS uses Form 1120-ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the

nuclear utility must pay taxes on self-dealing.

*Respondents:* Businesses or other for-profit

*Estimated Number of Respondents/Recordkeeper:* 100

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—23 hours, 26 minutes

Learning about the law or the form—3 hours, 12 minutes

Preparing the form—5 hours, 23 minutes

Copying, assembling, and sending the form to the IRS—32 minutes

*Frequency of Response:* Annually

*Estimated Total Reporting/Recordkeeping Burden:* 3,239 hours

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 93–17356 Filed 7–21–93; 8:45 am]

BILLING CODE 4830–01–P

VOL 58 ISS 139 JL 22 1993 UMI

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 139
Thursday, July 22, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**UNITED STATES INTERNATIONAL TRADE COMMISSION**

[USITC SE-93-20]

**TIME AND DATE:** July 27, 1993 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436.

**STATUS:** Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 701-TA-319-332, 334, 336-342, 344, 347-353; and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final) (Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom)—briefing and vote.
5. Outstanding action jackets—
   1. GC-93-068; APO breach in an investigation under Title VII of the Tariff Act of 1930.
   2. GC-93-070; Notice Procedures under the Sunshine Act.
   3. OUII-93-012; Genentech, Inc.'s requests to participate as a party, serve discovery requests, and review discovery obtained from others in Inv. No. 603-TA-11.
6. Any items left over from previous agenda

**CONTACT PERSON FOR MORE INFORMATION:** Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: July 15, 1993

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93-17503 Filed 7-19-93; 4:19 pm]

**BILLING CODE 7020-02-P**

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Part II

# Department of State

**Bureau of Politico-Military Affairs**

**22 CFR Part 120, et al.**
**Amendments to the International Traffic in Arms Regulations; Final Rule**

VOL 58 ISS 139 JL 22 1993 UMI



DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1632]

22 CFR Parts 120, 121, 122, 123, 124, 125, 126, 127, 128, and 130

Amendments to the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the regulations implementing section 38 of the Arms Export Control Act, which governs the import and export of defense articles and services. The rule clarifies existing regulations and reduces the regulatory burden on exporters of defense articles and services. Although this is a final rule public comment is welcome and will be taken into account to the extent possible.

EFFECTIVE DATE: This final rule is effective July 22, 1993.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice may be obtained from James Andrew Lewis, U.S. Department of State, Bureau of Politico-Military Affairs (202–647–4231), Mal Zerden or Allan Suchinsky, U.S. Department of State, Office of Defense Trade Controls (703–875–6644).

SUPPLEMENTARY INFORMATION: The regulations implementing section 38 of the Arms Export Control Act were last revised substantially in November 1984. A proposed rule was published on May 7, 1992 (57 FR 19666), for public comment. This Final Rule clarifies and simplifies the current regulations. Certain sections are consolidated while others are revised in the interests of clarity and consistency. To the extent possible, related sections are cross-referenced. In amending the regulations, public comments and suggestions from industry and other U.S. agencies have been considered and in many cases incorporated into the regulations.

The most significant changes are an increase in the validity period of a license from three to four years and a revision of the policy used by the Department for designating defense articles that takes into account civil application and functional equivalence. Several new exemptions from licensing requirements are also established. These exemptions will cover exports under approved manufacturing or technical assistance agreements; spare parts valued at $500 or less; intra-company transfers of components being sent abroad for assembly; temporary imports for repair and servicing; and items which were previously licensed for temporary export to trade shows.

Other changes include a clarification of the commodity jurisdiction process, which establishes a review period and specifies the appeal process. The definition of public domain is expanded and clarified. An exception allows for the re-export of certain U.S.-origin components to the Governments of NATO countries, and the Governments of Japan and Australia without prior U.S. approval for components which are not significant military equipment or controlled for purposes of the Missile Technology Control Regime and do not require Congressional notification.

**Specific Changes**

The Office of Munitions Control was renamed the Office of Defense Trade Controls on January 8, 1990. All references to the Office of Munitions Control are now referred to as the Office of Defense Trade Controls. For clarification, all references to the Assistant Secretary for Politico-Military Affairs are replaced by Assistant Secretary of State for Politico-Military Affairs. Due to a change in office designation, all references to the Under Secretary of State for Security Assistance, Science and Technology are replaced by Under Secretary of State for International Security Affairs.

There has been extensive renumbering due to the deletion, consolidation and addition of sections in the regulations. Sections in which there are substantive changes are noted below. These section designations refer to the new section numbers.

*Section 120.1 General*

Section 120.1(b) adds reference to retransfer approvals for clarification and lists the Department officials authorized to exercise the authorities of the subchapter. Section 120.1(c) adds a new section which specifies that exemptions in this subchapter do not apply to exporters who have been convicted of violating certain U.S. criminal statutes or are debarred.

*Section 120.3 Policy for Designating and Determining Defense Articles and Services*

The policy on designating defense articles and services in the future has been amended to take into consideration civil application, functional equivalence, and the significance of the military or intelligence applicability of articles and services.

*Section 120.4 Commodity Jurisdiction*

The title is changed from Commodity jurisdiction and redesignated § 120.4 (previously § 120.5). Establishes criteria used by State for determination of export licensing jurisdiction. Establishes a review period and specifies the appeal process, with a fixed review period, for commodity jurisdiction determinations.

*Section 120.5 Relation to Regulations of Other Agencies*

Redesignates section number (previously 120.4). Clarifies the licensing roles and responsibilities of other U.S. Government agencies.

*Section 120.6 Defense Article*

Clarifies the definition to specify the inclusion of components, parts, accessories, attachments and associated equipment. Clarifies the definition of models and mockups.

*Section 120.8 Major Defense Equipment*

This is a new section which defines major defense equipment.

*Section 120.9 Defense Service*

Modifies the definition to be consistent with the revised definition of technical data.

*Section 120.10 Technical Data*

Modifies the definition to include certain types of software. Clarifies the definition by explicitly identifying assembly and reconstruction of defense articles.

*Section 120.11 Public Domain*

Adds methods by which technical data may be considered to be in the public domain and includes a definition of fundamental research.

*Section 120.12 Office of Defense Trade Controls*

Identifies the name and address of the subject office.

*Section 120.16 Foreign Person*

Modifies the definition to fit 8 U.S.C. 1324 (a)(3) and address the term protected individual, consistent with the Immigration and Nationality Act, as amended.

*Section 120.17 Export*

Modifies the definition to include transfers in the United States of defense articles to embassies or other agencies of foreign governments.

*Section 120.18 Import—Temporary*

Changes title from In-transit shipment and clarifies the definition.

*Section 120.19 Reexport or Retransfer*

This is a new section which defines reexport and retransfer as the transfer to an end use or end user or destination not previously defined.

*Section 120.20 License*

Changes wording referring to temporary import to agree with Section 120.18, and specifies that licenses are for items controlled by this subchapter.

*Section 120.22 Technical Assistance Agreement*

Clarifies the services covered under this type of agreement.

*Section 120.23 Distribution Agreement*

Adds a definition of distribution agreement.

*Section 120.28 Listing of Forms Referred to in This Subchapter*

Lists the specific office within each agency from which forms are available.

*Section 120.29 Missile Technology Control Regime*

This is a new section which defines the Missile Technology Control Regime consistent with section 71(a) of the Arms Export Control Act.

*Part 121 The United States Munitions List*

**Federal Register** Notices modifying the U.S. munitions list have recently been published. Under these proposals, technical data is included as a subcategory under each munitions list category.

*Section 121.12 Military Explosives*

Provides a definition of military explosives and more specifically indicates the types of explosives covered under category V.

*Section 121.15 Vessels of War and Special Naval Equipment*

Provides a definition of vessels of war and special naval equipment.

*Section 121.16 Missile Technology Control Regime Annex*

This new section lists the defense articles on the MTCR annex.

*Section 122.4 Notification of Changes in Information Furnished By Registrants*

Provides that mergers and acquisitions of registrants must be notified to the Office of Defense Trade Controls.

*Section 122.5 Maintenance of Records By Registrants*

Clarifies what records are to be maintained during the mandatory period for record maintenance. Changes the maintenance period from seven to five years.

*Section 123.1 Requirement for Export or Temporary Import Licenses*

Enumerates licensing and documentation requirements including those previously specified under § 123.22.

*Section 123.2 Import Jurisdiction*

Clarifies the regulatory authority over temporary and permanent import of defense articles into the U.S.

*Section 123.3 Temporary Import Licenses*

Clarifies the requirements for temporary import licenses and associated exemptions.

*Section 123.4 Temporary Import License Exemptions*

Establishes a licensing exemption for defense articles temporarily imported into the U.S. for servicing and return to the country from which they were imported. Establishes criteria and procedures for use of the exemption.

*Section 123.5 Temporary Export Licenses*

Establishes criteria and procedures for temporary export of defense articles. References the new four year validity period for licenses.

*Section 123.6 Foreign Trade Zones and U.S. Customs Bonded Warehouses*

Clarifies the procedure for handling classified defense articles including technical data.

*Section 123.7 Exports to Warehouses or Distribution Points Outside the United States*

Clarifies that certain exemptions may apply to exports under this subchapter.

*Section 123.9 Country of Ultimate Destination and Approval of Reexports or Retransfers*

Establishes procedures for obtaining approval for the reexport or retransfer or change in end use of a defense article. Provides for an exemption for the reexport of defense articles to the Governments of NATO countries, and the Governments of Japan and Australia for the reexport of articles which are not significant military equipment or controlled for purposes of the Missile Technology Control Regime and which do not require Congressional notification.

*Section 123.10 Non-transfer and Use Assurances*

Modifies the section to move congressional notification. A new section (123.15) is created to address congressional notifications. Clarifies the assurances requirement by explicitly addressing usage assurances.

*Section 123.11 Movements of Vessels and Aircraft Covered By the U.S. Munitions List Outside the United States*

Changes section title.

*Section 123.12 Shipments Between U.S. Possessions*

Clarifies that licensing requirements under this section do not apply to direct shipment of defense articles under this section.

*Section 123.14 Import Certificate/ Delivery Verification Procedure*

Eliminates specific identification of countries subject to this procedure.

*Section 123.15 Congressional Notification for Licenses*

Previously covered by § 123.10(e). Provides additional information to clarify the Department's requirement.

*Section 123.16 Exemptions of General Applicability*

Provides for additional licensing exemptions for the export of unclassified defense articles and procedures for utilizing these exemptions. The exemption for obsolete nonautomatic firearms (§ 123.16(a)) has been moved to § 123.17. This section creates exemptions for: The export of unclassified defense articles in furtherance of approved agreements; spare parts valued at $500 or less; components, tools or test equipment being sent abroad for assembly and return by the same company; and unclassified defense articles being temporarily exported to trade shows when the article has previously been licensed for this purpose.

*Section 123.17 Exports of Firearms and Ammunition*

Moves § 123.16(a) to § 123.17(a).

*Section 123.21 Duration, Renewal and Disposition of Licenses*

Modifies title to add the word duration. Changes the validity period for licenses from three to four years. Clarifies that a license expires when the total value authorized has been shipped.

*Section 123.22 Filing of Export Licenses and Shipper's Export Declarations With District Directors of Customs*

Modifies the title to omit the word and in-transit. Clarifies the procedures for filing of export licenses and Shipper's Export Declarations with

District Directors of Customs. Explains procedures for self-endorsement of licenses when appropriate. Establishes a new procedure for exports of unclassified technical data.

*Section 123.23 Monetary Value of Shipments*

New title. Section incorporates the provisions of previous § 123.25(d) and clarifies the dollar thresholds for Congressional Notification.

*Section 123.24 Shipments by Mail*

Allows self-endorsement of license.

*Section 123.25 Amendments to Licenses*

Creates new section to address the amendment process.

*Section 124.1 Manufacturing License Agreements and Technical Assistance Agreements*

Divides previous § 124.1(b) into two sections, one addressing substantive amendments, the other addressing minor amendments.

*Section 124.7 Information Required in All Manufacturing License Agreements and Technical Assistance Agreements*

New title combining previous titles of §§ 124.7 and 124.8. Consolidates information in § 124.7.

*Section 124.10 Nontransfer and Use Assurances*

Eliminates reference to General Security of Information Agreements and other foreign government security assurances.

*Section 124.11 Congressional Notification for Agreements*

Creates a new section which explains the requirements under the Arms Export Control Act that certain agreements are subject to Congressional notification prior to approval.

*Section 124.12 Required Information in Letters of Transmittal*

Revises the reporting requirement threshold pursuant to section 130 to $500,000 or more. Adds a clause relating to sublicensing arrangements.

*Section 124.13 Procurement by U.S. Persons (Offshore Procurement)*

Allows technical data which discloses details of design or production necessary for bid purposes.

*Section 124.14 Exports to Warehouses or Distribution Points Outside the United States*

Specifies that the exemption under § 123.16(b)(1) may be applicable for the export of unclassified defense articles in furtherance of approved agreements. Corrects misnumbered paragraphs.

*Section 125.1 Exports Subject to This Part*

Clarifies that technical data authorized for export may not be retransferred from the authorized end-user without prior approval.

*Section 125.2 Exports of Unclassified Technical Data*

Clarifies the licensing procedure for export (and return to the U.S.) of unclassified technical data. Specifies the number of copies of technical data required for submission. Incorporates requirements previously contained in § 125.7(b).

*Section 125.4 Exemptions of General Applicability*

Clarifies that if prior approval or prior notification are necessary, those requirements must first be met before any exemption under this section may be used.

*Section 125.6 Exemptions—Certification Requirements*

Title change to include the word Exemptions. Specifies that certifications must be in written form and retained by the exporter for a period of five years. Clarifies the procedure for certification in the absence of Customs or Postal officials.

*Section 125.7 Procedures for the Export of Classified Technical Data and Other Classified Defense Articles*

Title change and specifies that only one copy of data or descriptive literature is required for license renewals.

*Section 125.8 Filing of Licenses for Exports of Unclassified Technical Data*

Clarifies the procedure for self-endorsement of licenses.

*Section 126.1 Prohibited Exports and Sales to Certain Countries*

Revises list of prohibited countries to reflect current policy and country identifications.

*Section 126.4 Shipments by or for United States Government Agencies*

Clarifies that this section also applies to temporary imports and temporary exports and that certain transfers that result in incorporating U.S.-origin defense articles into foreign-owned launches or satellites to be launched overseas are permanent exports requiring the prior approval of the Department.

*Section 126.5 Canadian Exemptions*

Clarifies that a license is not required for the permanent or temporary import from Canada of certain defense articles.

*Section 126.10 Disclosure of Information to the Public*

Reference to the Under Secretary for Security Assistance, Science, and Technology is replaced by Under Secretary of State for International Security Affairs.

*Section 126.13 Required Information*

Advises the provision of a Technology Transfer Control Plan in cases when foreign nationals are employed at or assigned to security cleared facilities.

*Section 127.4 Authority of U.S. Customs Service Officers*

Specifies the authority of the Customs Service Officers.

*Section 127.5 Authority of Defense Investigative Service*

Specifies the authority of the Defense Investigative Service in the case of exports of classified defense articles, including technical data.

*Section 127.10 Past Violations*

Clarifies the authority of the Office of Defense Trade Controls with respect to making exceptions to cases that have been denied and addresses consultation with other offices and agencies.

*Section 127.12 Voluntary Disclosures*

Includes a provision encouraging exporters to voluntarily disclose in writing information regarding possible violations.

*Part 130 Political Contributions, Fees and Commissions*

The reporting requirement threshold is increased from $250,000 to $500,000.

This amendment involves a foreign affairs function of the United States, and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of the Administrative Procedure Act (5 U.S.C. 553 and 554). In addition, this rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1405–0013.

**List of Subjects**

*22 CFR Parts 120 and 125*

Arms and munitions, Classified information, Exports.

*22 CFR Part 121*

Arms and munitions, Exports, U.S. munitions list.

*22 CFR Part 122*

Arms and munitions, Exports, Reporting and recordkeeping requirements.

*22 CFR Parts 123 and 126*

Arms and munitions, Exports.

*22 CFR Part 124*

Arms and munitions, Exports, Technical assistance.

*22 CFR Part 127*

Arms and munitions, Crime, Exports, Penalties, Seizures and forfeitures.

*22 CFR Part 128*

Administrative procedures, Arms and munitions, Exports.

*22 CFR Part 130*

Arms and munitions, Campaign funds, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 22 CFR subchapter M is amended by revising parts 120, 121, 122, 123, 124, 125, 126, 127, 128 and 130 to read as follows:

## SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

## PART 120—PURPOSE AND DEFINITIONS

Sec.

120.1 General authorities and eligibility.
120.2 Designation of defense articles and defense services.
120.3 Policy on designating and determining defense articles and services.
120.4 Commodity jurisdiction.
120.5 Relation to regulations of other agencies.
120.6 Defense article.
120.7 Significant military equipment.
120.8 Major defense equipment.
120.9 Defense service.
120.10 Technical data.
120.11 Public domain.
120.12 Office of Defense Trade Controls.
120.13 United States.
120.14 Person.
120.15 U.S. person.
120.16 Foreign person.
120.17 Export.
120.18 Temporary import.
120.19 Reexport or retransfer.
120.20 License.
120.21 Manufacturing license agreement.
120.22 Technical assistance agreement.
120.23 Distribution agreement.
120.24 District Director of Customs.
120.25 Empowered Official.
120.26 Presiding Official.
120.27 U.S. criminal statutes.
120.28 Listing of forms referred to in this subchapter.
120.29 Missile Technology Control Regime.

**Authority:** Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

### § 120.1 General authorities and eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended (42 FR 4311). This subchapter implements that authority. By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Director of the Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State.

(b) Authorized Officials. All authorities conferred upon the Director of the Office of Defense Trade Controls by this subchapter may be exercised at any time by the Under Secretary of State for International Security Affairs, the Assistant Secretary of State for Politico-Military Affairs, or the Deputy Assistant Secretary of State for Politico-Military Affairs responsible for supervising the Office of Defense Trade Controls unless the Legal Adviser or the Assistant Legal Adviser for Politico-Military Affairs of the Department of State determines that any specific exercise of this authority under this subsection may be inappropriate.

(c) Eligibility. Only U.S. persons (as defined in § 120.15) and foreign governmental entities in the United States may be granted licenses or other approvals (other than retransfer approvals sought pursuant to this subchapter). Foreign persons (as defined in § 120.16) other than governments are not eligible. U.S. persons who have been convicted of violating the criminal statutes enumerated in § 120.27, who have been debarred pursuant to part 127 or 128 of this subchapter, who are the subject of an indictment involving the criminal statutes enumerated in § 120.27, who are ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government, who are subject to Department of State Suspension/Revocation under § 126.7 (a)(1)–(a)(7) of this subchapter, or who are ineligible under § 127.6(c) of this subchapter are generally ineligible. Applications for licenses or other approvals will be considered only if the applicant has registered with the Office of Defense Trade Controls pursuant to part 122 of this subchapter. All applications and requests for approval must be signed by a U.S. person who has been empowered by the registrant to sign such documents.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter or any party to the export (as defined in § 126.7(e) of this subchapter) is generally ineligible as set forth above in paragraph (c) of this section, unless an exception has been granted pursuant to § 126.7(c) of this subchapter.

### § 120.2 Designation of defense articles and defense services.

The Arms Export Control Act (22 U.S.C. 2778(a) and 2794(7)) provides that the President shall designate the articles and services deemed to be defense articles and defense services for purposes of this subchapter. The items so designated constitute the United States Munitions List and are specified in part 121 of this subchapter. Such designations are made by the Department of State with the concurrence of the Department of Defense. For a determination on whether a particular item is included on the U.S. Munitions List *see* § 120.4(a).

### § 120.3 Policy on designating and determining defense articles and services.

An article or service may be designated or determined in the future to be a defense article (see § 120.6) or defense service (see § 120.9) if it:

(a) Is specifically designed, developed, configured, adapted, or modified for a military application, and

(i) Does not have predominant civil applications, and

(ii) Does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications; or

(b) Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary.

The intended use of the article or service after its export (i.e., for a military or civilian purpose) is not relevant in determining whether the article or service is subject to the controls of this subchapter. Any item covered by the U.S. Munitions List must

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be within the categories of the U.S. Munitions List. The scope of the U.S. Munitions List shall be changed only by amendments made pursuant to section 38 of the Arms Export Control Act (22 U.S.C. 2778).

**§ 120.4 Commodity jurisdiction.**

(a) The commodity jurisdiction procedure is used with the U.S. Government if doubt exists as to whether an article or service is covered by the U.S. Munitions List. It may also be used for consideration of a redesignation of an article or service currently covered by the U.S. Munitions List. The Department must submit a report to Congress at least 30 days before any item is removed from the U.S. Munitions List. Upon written request, the Office of Defense Trade Controls shall provide a determination of whether a particular article or service is covered by the U.S. Munitions List. The determination, consistent with §§ 120.2, 120.3, and 120.4, entails consultation among the Departments of State, Defense, Commerce and other U.S. Government agencies and industry in appropriate cases.

(b) Registration with the Office of Defense Trade Controls as defined in part 122 of this subchapter is not required prior to submission of a commodity jurisdiction request. If it is determined that the commodity is a defense article or service covered by the U.S. Munitions List, registration is required for exporters, manufacturers, and furnishers of defense articles and defense services (see part 122 of this subchapter).

(c) Requests shall identify the article or service, and include a history of the product's design, development and use. Brochures, specifications and any other documentation related to the article or service shall be submitted in seven collated sets.

(d)(1) A determination that an article or service does not have predominant civil applications shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:

(i) The number, variety and predominance of civil applications;

(ii) The nature, function and capability of the civil applications; and

(iii) The nature, function and capability of the military applications.

(2) A determination that an article does not have the performance equivalent, defined by form, fit and function, to those used for civil applications shall be made by the Department of State, in accordance with this subchapter, on a case-by-case basis, taking into account:

(i) The nature, function, and capability of the article;

(ii) Whether the components used in the defense article are identical to those components originally developed for civil use.

**Note:** The form of the item is its defined configuration, including the geometrically measured configuration, density, and weight or other visual parameters which uniquely characterize the item, component or assembly. For software, form denotes language, language level and media. The fit of the item is its ability to physically interface or interconnect with or become an integral part of another item. The function of the item is the action or actions it is designed to perform.

(3) A determination that an article has significant military or intelligence applications such that it is necessary to control its export as a defense article shall be made, in accordance with this subchapter, on a case-by-case basis, taking into account: (i) The nature, function, and capability of the article;

(ii) The nature of controls imposed by other nations on such items (including COCOM and other multilateral controls), and

(iii) That items described on the COCOM Industrial List shall not be designated defense articles or defense services unless the failure to control such items on the U.S. Munitions List would jeopardize significant national security or foreign policy interests.

(e) The Office of Defense Trade Controls will provide a preliminary response within 10 working days of receipt of a complete request for commodity jurisdiction. If after 45 days the Office of Defense Trade Controls has not provided a final commodity jurisdiction determination, the applicant may request in writing to the Director, Center for Defense Trade that this determination be given expedited processing.

(f) State, Defense and Commerce will resolve commodity jurisdiction disputes in accordance with established procedures. State shall notify Defense and Commerce of the initiation and conclusion of each case.

(g) A person may appeal a commodity jurisdiction determination by submitting a written request for reconsideration to the Director of the Center for Defense Trade. The Center for Defense Trade will provide a written response of the Director's determination within 30 days of receipt of the appeal. If desired, an appeal of the Director's decision can then be made directly to the Assistant Secretary for Politico-Military Affairs.

**§ 120.5 Relation to regulations of other agencies.**

If an article or service is covered by the U.S. Munitions List, its export is regulated by the Department of State, except as indicated otherwise in this subchapter. For the relationship of this subchapter to regulations of the Department of Commerce, the Department of Energy and the Nuclear Regulatory Commission, see § 123.20 of this subchapter. The Treasury Department controls permanent imports of articles and services covered by the U.S. Munitions Import List from foreign countries by persons subject to U.S. jurisdiction (31 CFR part 505). The Department of Commerce regulates the export of items on the Commerce Control List (CCL) under the Export Administration Regulations (15 CFR parts 768–799).

**§ 120.6 Defense article.**

*Defense article* means any item or technical data designated in § 121.1 of this subchapter. The policy described in § 120.3 is applicable to designations of additional items. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in § 121.1 of this subchapter. It does not include basic marketing information on function or purpose or general system descriptions.

**§ 120.7 Significant military equipment.**

(a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability. Section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note) refers to significant combat equipment on the U.S. Munitions List. The terms significant military equipment and significant combat equipment are equivalent for purposes of that section of the Arms Export Control Act and this subchapter.

(b) Significant military equipment includes:

(1) Items in § 121.1 of this subchapter which are preceded by an asterisk; and

(2) All classified articles enumerated in § 121.1 of this subchapter.

**§ 120.8 Major defense equipment.**

Pursuant to section 47(6) of the Arms Export Control Act (22 U.S.C. 2794(6) note), *major defense equipment* means any item of significant military equipment (as defined in § 120.7) on the U.S. Munitions List having a nonrecurring research and development cost of more than $50,000,000 or a total

production cost of more than $200,000,000.

**§ 120.9 Defense service.**

*Defense service means*:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or

(2) The furnishing to foreign persons of any technical data controlled under this subchapter (see § 120.10), whether in the United States or abroad.

**§ 120.10 Technical data.**

*Technical data* means, for purposes of this subchapter:

(1) Information, other than software as defined in § 120.10(d), which is required for the design development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.

(2) Classified information relating to defense articles and defense services;

(3) Information covered by an invention secrecy order;

(4) Software as defined in § 121.8(f) of this subchapter directly related to defense articles;

(5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

**§ 120.11 Public domain.**

*Public domain* means information which is published and which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores;

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(3) Through second class mailing privileges granted by the U.S. Government;

(4) At libraries open to the public or from which the public can obtain documents;

(5) Through patents available at any patent office;

(6) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;

(7) Through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency (see also § 125.4(b)(13) of this subchapter);

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

**§ 120.12 Office of Defense Trade Controls.**

*Office of Defense Trade Controls*, Bureau of Politico-Military Affairs, Department of State, Washington, D.C. 20522–0602.

**§ 120.13 United States.**

*United States*, when used in the geographical sense, includes the several states, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, any territory or possession of the United States, and any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.

**§ 120.14 Person.**

*Person* means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (§ 120.16) or U.S. person (§ 120.15), then it refers to both.

**§ 120.15 U.S. person.**

*U.S. person* means a person (as defined in § 120.14 of this part) who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in § 120.16 of this part.

**§ 120.16 Foreign person.**

*Foreign person* means any natural person who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g diplomatic missions).

**§ 120.17 Export.**

*Export* means:

(1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or

(2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or

(3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or

(4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or

(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

(6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see § 126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

**§ 120.18 Temporary import.**

*Temporary import* means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense

article that is in transit to another foreign destination. Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination. Permanent imports are regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179).

**§ 120.19 Reexport or retransfer.**

*Reexport or retransfer* means the transfer of defense articles or defense services to an end use, end user or destination not previously authorized.

**§ 120.20 License.**

*License* means a document bearing the word license issued by the Director, Office of Defense Trade Controls or his authorized designee which permits the export or temporary import of a specific defense article or defense service controlled by this subchapter.

**§ 120.21 Manufacturing license agreement.**

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

(a) The export of technical data (as defined in § 120.10) or defense articles or the performance of a defense service; or

(b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See part 124 of this subchapter).

**§ 120.22 Technical assistance agreement.**

An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, § 120.21 is applicable. (See part 124 of this subchapter).

**§ 120.23 Distribution agreement.**

An agreement (e.g., a contract) to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory (see part 124 of this subchapter).

**§ 120.24 District Director of Customs.**

*District Director of Customs* means the District Directors of Customs at Customs Headquarters Ports (other than the port of New York City, New York, where it is the Area Director of Customs); the Regional Commissioners of Customs, the Deputy and Assistant Regional Commissioners of Customs for Customs Region II at the Port of New York, New York; and Port Directors at Customs ports not designated as Headquarters Ports.

**§ 120.25 Empowered official.**

*Empowered Official* means a U.S. person who:

(1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and

(2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and

(3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and

(4) Has the independent authority to:

(i) Enquire into any aspect of a proposed export or temporary import by the applicant, and

(ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and

(iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

**§ 120.26 Presiding official.**

*Presiding official* means a person authorized by the U.S. Government to conduct hearings in administrative proceedings.

**§ 120.27 U.S. criminal statutes.**

For purposes of this subchapter, the phrase *U.S. criminal statutes* means:

(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(2) Section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410);

(3) Sections 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information);

(4) Section 16 of the Trading with the Enemy Act (50 U.S.C. App. 16);

(5) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);

(6) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd–1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd–2);

(7) Chapter 105 of title 18, United States Code (relating to sabotage);

(8) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b));

(9) Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276);

(10) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);

(11) Section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c)); and

(12) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the above statutes).

**§ 120.28 Listing of forms referred to in this subchapter.**

The forms referred to in this subchapter are available from the following government agencies:

(a) Department of State, Bureau of Politico-Military Affairs, Office of Defense Trade Controls, Washington, DC. 20522–0602.

(1) Application/License for permanent export of unclassified defense articles and related technical data (Form DSP–5).

(2) Application for registration (Form DSP–9).

(3) Application/License for temporary import of unclassified defense articles (Form DSP–61).

(4) Application/License for temporary export of unclassified defense articles (Form DSP–73).

(5) Non-transfer and use certificate (Form DSP–83).

(6) Application/License for permanent/temporary export or temporary import of classified defense articles and related classified technical data (Form DSP–85).

(7) Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales program (Form DSP–94).

(b) Department of Commerce, Bureau of Export Administration:

(1) International Import Certificate (Form BXA–645P/ATF–4522/DSP–53).

(2) Shipper's Export Declaration (Form No. 7525–V).

(3) Department of Defense, Defense Security Assistance Agency: Letter of Offer and Acceptance (DD Form 1513).

**§ 120.29 Missile technology control regime.**

(a) For purposes of this subchapter, Missile Technology Control Regime (MTCR) means the policy statement

between the United States, the United Kingdom, the Federal Republic of Germany, France, Italy, Canada, and Japan, announced on April 16, 1987, to restrict sensitive missile-relevant transfers based on the MTCR Annex, and any amendments thereto;

(b) The term *MTCR Annex* means the Guidelines and Equipment and Technology Annex of the MTCR, and any amendments thereto;

(c) List of all items on the MTCR Annex. Section 71(a) of the Arms Export Control Act (22 U.S.C. § 2797) refers to the establishment as part of the U.S. Munitions List of a list of all items on the MTCR Annex, the export of which is not controlled under section 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121.16 of this subchapter.

## PART 121—THE UNITED STATES MUNITIONS LIST

### Enumeration of Articles

Sec.

121.1 General. The United States Munitions List.
121.2 Interpretations of the United States Munitions List and the Missile Technology Control Regime Annex.
121.3 Aircraft and related articles.
121.4 Amphibious vehicles.
121.5 Apparatus and devices under Category IV(c).
121.6 Cartridge and shell casings.
121.7 Chemical agents.
121.8 End-items, components, accessories, attachments, parts, firmware, software and systems.
121.9 Firearms.
121.10 Forgings, castings and machined bodies.
121.11 Military demolition blocks and blasting caps.
121.12 Military explosives.
121.13 Military fuel thickeners.
121.14 Propellants.
121.15 Vessels of war and special naval equipment.
121.16 Missile Technology Control Regime Annex.

**Authority:** Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

### Enumeration of Articles

**§ 121.1 General. The United States munitions list.**

(a) The following articles, services and related technical data are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)). Changes in designations will be published in the **Federal Register**. Information and clarifications on whether specific items are defense articles and services under this subchapter may appear periodically in the Defense Trade News published by the Center for Defense Trade.

(b) Significant military equipment: An asterisk precedes certain defense articles in the following list. The asterisk means that the article is deemed to be "significant military equipment" to the extent specified in § 120.19. The asterisk is placed as a convenience to help identify such articles.

(c) Certain items in the following list are placed in brackets. The brackets mean that the item is (1) scheduled to be moved to the licensing jurisdiction of the Department of Commerce upon establishment of a foreign policy control or (2) in the case of spacecraft and related equipment, the item is under review by an interagency space technical working group. The interagency review will result in a recommendation as to whether an item should be moved to the jurisdiction of the Department of Commerce or to USML category XV which was established for this purpose.

(d) Missile Technology Control Regime Annex (MTCR). Certain defense articles and services are identified in § 121.16 as being on the list of MTCR Annex items on the United States Munitions List. These are articles as specified in § 120.29 of this subchapter and appear on the list at § 121.16.

**Category I—Firearms**

*(a) Nonautomatic, semi-automatic and fully automatic firearms to caliber .50 inclusive, and all components and parts for such firearms. (See § 121.9 and §§ 123.16–123.19 of this subchapter.)

(b) Riflescopes manufactured to military specifications, and specifically designed or modified components therefor; firearm silencers and suppressors, including flash suppressors.

*(c) Insurgency-counterinsurgency type firearms or other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber and all components and parts therefor.

(d) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

**Category II—Artillery Projectors**

*(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

*(b) Military flamethrowers and projectors.

(c) Components, parts, accessories and attachments for the articles in paragraphs (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

(d) Technical data (as defined in 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

**Category III—Ammunition**

*(a) Ammunition for the arms in Categories I and II of this section. (See § 121.6.)

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun shells), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition. (See § 121.6.)

(c) Ammunition belting and linking machines.

*(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

(e) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

**Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines**

*(a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps. (See § 121.11.)

*(b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. (See § 121.5.)

*(d) Missile and space launch vehicle powerplants.

*(e) Military explosive excavating devices.

*(f) Ablative materials fabricated or semi-fabricated from advanced composites (e.g., silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

*(g) Nuc/nuclear warheads for rockets and guided missiles.

(h) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

(i) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

**Category V—Explosives, Propellants, Incendiary Agents, and Their Constituents**

*(a) Military explosives. (See § 121.12.)

*(b) Military fuel thickeners. (See § 121.13.)

(c) Propellants for the articles in Categories III and IV of this section. (See § 121.14.)

(d) Military pyrotechnics, except pyrotechnic materials having dual military and commercial use.

(e) All compounds specifically formulated for the articles in this category.

(f) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

**Category VI—Vessels of War and Special Naval Equipment**

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes. (See § 121.15.)

*(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices, (magnetic, pressure, and acoustic ones) and controls and components therefor.

*(e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.21 of this subchapter)

(f) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

(g) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

**Category VII—Tanks and Military Vehicles**

*(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

*(b) Military tanks, combat engineer vehicles, bridge launching vehicles, half-tracks and gun carriers.

*(c) Self-propelled guns and howitzers.

(d) Military trucks, trailers, hoists, and skids specifically designed, modified, or equipped to mount or carry weapons of Categories I, II and IV or for carrying and handling the articles in paragraph (a) of Categories III and IV.

*(e) Military recovery vehicles.

*(f) Amphibious vehicles. (See § 121.4)

*(g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

(i) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (h) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

**Category VIII—Aircraft, [Spacecraft] and Associated Equipment**

*(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones, and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: Gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training. (See § 121.3.)

*(b) Military aircraft engines, except reciprocating engines, [and spacecraft engines] specifically designed or modified for the aircraft in paragraph (a) of this category.

*(c) Cartridge-actuated devices utilized in emergency escape of personnel and airborne equipment (including but not limited to airborne refueling equipment) specifically designed or modified for use with the aircraft, [spacecraft] and engines of the types in paragraphs (a), (b), [and (h)] of this category.

(d) Launching and recovery equipment for the articles in paragraph (a) [and (i)] of this category, if the equipment is specifically designed or modified for military use [or for use with spacecraft]. Fixed land-based arresting gear is not included in this category.

*(e) Inertial navigation systems, aided or hybrid inertial navigation systems, Inertial Measurement Units (IMUs), and Attitude and Heading Reference Systems (AHRS) specifically designed, modified, or configured for military use and all specifically designed components, parts and accessories. For other inertial reference systems and related components refer to Category XII(d).

*(f) Developmental aircraft and components thereof which have a significant military applicability, excluding such aircraft and components that have been certified by the Federal Aviation Administration and determined through the commodity jurisdiction procedure specified in § 120.4 of this subchapter, to be subject to the export control jurisdiction of the Department of Commerce for purposes of section 17(c) of the Export Administration Act, as amended.

*(g) Ground effect machines (GEMS) specifically designed or modified for military use, including but not limited to surface effect machines and other air cushion vehicles, and all components, parts, and accessories, attachments, and associated equipment specifically designed or modified for use with such machines.

[(h) * Spacecraft, including manned and unmanned, active and passive satellites (except those listed in Category XV).

[(i) Power supplies and energy sources specially designed or modified for spacecraft in paragraph (h).]

(j) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (i) of this category, excluding aircraft tires and propellors used with reciprocating engines.

(k) Technical Data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (j) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

[(l) Non-military aircraft inertial navigation systems, except those systems or components that are standard equipment in civil aircraft, including spare parts and spare units to be used exclusively for the maintenance of inertial navigation equipment incorporated in civil aircraft and that are certified by the Federal Aviation Administration (FAA) as being an integral part of such aircraft.]

[(m) Technical data for the design, development, production or manufacture of

inertial navigation equipment or its related parts, components or subsystems which are standard equipment in civil aircraft and which are certified by the Federal Aviation Administration as being an integral part of such aircraft. FAA certified inertial navigation systems and all other technical data associated with such systems is under the licensing jurisdiction of the Department of Commerce.]

**Category IX—Military Training Equipment**

(a) Military training equipment including but not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, operational flight trainers, air combat training systems, radar trainers, navigation trainers, and simulation devices related to defense articles.

(b) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraph (a) of this category.

(c) Technical Data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) and (b) of this category. (See § 125.4 for exemptions.).

**Category X—Protective Personnel Equipment**

(a) Body armor specifically designed, modified or equipped for military use; articles, including but not limited to clothing, designed, modified or equipped to protect against or reduce detection by radar, infrared (IR) or other sensors; military helmets equipped with communications hardware, optical sights, slewing devices or mechanisms to protect against thermal flash or lasers, excluding standard military helmets.

(b) Partial pressure suits and liquid oxygen converters used in aircraft in Category VIII(a).

(c) Protective apparel and equipment specifically designed or modified for use with the articles in paragraphs (a) through (d) in Category XIV.

(d) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the articles in paragraphs (a), (b), and (c) of this category.

(e) Technical Data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exemptions.)

**Category XI—Military [and Space] Electronics**

(a) Electronic equipment not included in Category XII of the U.S. Munitions List which is specifically designed, modified or configured for military application. This equipment includes but is not limited to:

*(1) Underwater sound equipment to include active and passive detection, identification, tracking, and weapons control equipment.

*(2) Underwater acoustic active and passive countermeasure and counter-countermeasure.

(3) Radar systems, with capabilities such as:

*(i) Search,

*(ii) Acquisition,

*(iii) Tracking,

*(iv) Moving target indication,

*(v) Imaging radar systems,

(vi) Any ground air traffic control radar which is specifically designed or modified for military application.

*(4) Electronic combat equipment, such as:

(i) Active and passive countermeasures,

(ii) Active and passive counter-countermeasures, and

(iii) Radios (including transceivers) specifically designed or modified to interfere with other communication devices or transmissions.

*(5) Command, control and communications systems to include radios (transceivers), navigation, and identification equipment.

(6) Computers specifically designed or developed for military application and any computer specifically modified for use with any defense article in any category of the U.S. Munitions List.

(7) Any experimental or developmental electronic equipment specifically designed or modified for military application or specifically designed or modified for use with a military system.

*(b) Electronic systems or equipment specifically designed, modified, or configured for intelligence, security, or military purposes for use in search, reconnaissance, collection, monitoring, direction-finding, display, analysis and production of information from the electromagnetic spectrum and electronic systems or equipment designed or modified to counteract electronic surveillance or monitoring. A system meeting this definition is controlled under this subchapter even in instances where any individual pieces of equipment constituting the system may be subject to the controls of another U.S. Government agency. Such systems or equipment described above include, but are not limited to, those:

(1) Designed or modified to use cryptographic techniques to generate the spreading code for spread spectrum or hopping code for frequency agility. This does not include fixed code techniques for spread spectrum.

(2) Designed or modified using burst techniques (e.g., time compression techniques) for intelligence, security or military purposes.

(3) Designed or modified for the purpose of information security to suppress the compromising emanations of information-bearing signals. This covers TEMPEST suppression technology and equipment meeting or designed to meet government TEMPEST standards. This definition is not intended to include equipment designed to meet Federal Communications Commission (FCC) commercial electro-magnetic interference standards or equipment designed for health and safety.

[(c) Space electronics:

*(1) Electronic equipment specifically designed or modified for spacecraft and spaceflight, and

(2) Electronic equipment specifically designed or modified for use with non-military communications satellites.

(3) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the equipment in subparagraphs (1) and (2).]

(d) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for use with the equipment in paragraphs (a) and (b) of this category, except for such items as are in normal commercial use.

(e) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

**Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment**

*(a) Fire control systems; gun and missile tracking and guidance systems; gun range, position, height finders, spotting instruments and laying equipment; aiming devices (electronic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, and periscopes for the articles of this section.

*(b) Lasers specifically designed, modified or configured for military application including those used in military communication devices, target designators and range finders, target detection systems, and directed energy weapons.

*(c) Infrared focal plane array detectors specifically designed, modified or configured for military use; image intensification and other night sighting equipment or systems specifically designed, modified, or configured for military use; second generation and above military image intensification tubes (defined below) specifically designed, developed, modified, or configured for military use, and, infrared, visible, and ultraviolet devices specifically designed, developed, modified, or configured for military application.

Note: *Special Definition.* For purposes of this subparagraph, *second and third generation image intensifier tubes* are defined as having:

A peak response within the 0.4 to 1.05 micron wavelength range and incorporating a microchannel plate for electron image amplification having a hole pitch (center-to-center spacing) of less than 25 microns, and having either:

(a) An S–20, S–25 or multialkali photocathode; or

(b) A semiconductor photocathode;

*(d) Inertial platforms and sensors for weapons or weapon systems; guidance, control and stabilization systems except for those systems covered in category VIII; astro-compasses and star trackers and military and [non-military] accelerometers and gyros. For

aircraft inertial reference systems and related components refer to Category VIII.

[(e) Non-military second generation and above image intensification tubes, non-military infrared focal plane arrays, and image intensification tubes identified in paragraph (c) of this section when a part of a commercial system (i.e. those systems originally designed for commercial use). This does not include military systems comprised of non-military specification components.]

(f) Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in paragraphs (a), (b), (c) and (d) of this category, except for such items as are in normal commercial use.

(g) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to manufacture and production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

**Category XIII—Auxiliary Military Equipment**

(a) Cameras (including space cameras) and specialized processing equipment therefor, photointerpretation, stereoscopic plotting, and photogrammetry equipment which are specifically designed or modified for military purposes, and components specifically designed or modified therefor;

(b) Information Security Systems and equipment, cryptographic devices, software, and components specifically designed or modified therefor, including:

(1) Cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components or software with the capability of maintaining secrecy or confidentiality of information or information systems, except cryptographic equipment and software as follows:

(i) Restricted to decryption functions specifically designed to allow the execution of copy protected software, provided the decryption functions are not user-accessible.

(ii) Specially designed, developed or modified for use in machines for banking or money transactions, and restricted to use only in such transactions. Machines for banking or money transactions include automatic teller machines, self-service statement printers, point of sale terminals or equipment for the encryption of interbanking transactions.

(iii) Employing only analog techniques to provide the cryptographic processing that ensures information security in the following applications:

(A) Fixed (defined below) band scrambling not exceeding 8 bands and in which the transpositions change not more frequently than once every second;

(B) Fixed (defined below) band scrambling exceeding 8 bands and in which the transpositions change not more frequently than once every ten seconds;

(C) Fixed (defined below) frequency inversion and in which the transpositions change not more frequently than once every second;

(D) Facsimile equipment;

(E) Restricted audience broadcast equipment;

(F) Civil television equipment.

Note: *Special Definition.* For purposes of this subparagraph, *fixed* means that the coding or compression algorithm cannot accept externally supplied parameters (e.g., cryptographic or key variables) and cannot be modified by the user.

(iv) Personalized smart cards using cryptography restricted for use only in equipment or systems exempted from the controls of the USML.

(v) Limited to access control, such as automatic teller machines, self-service statement printers or point of sale terminals, which protects password or personal identification numbers (PIN) or similar data to prevent unauthorized access to facilities but does not allow for encryption of files or text, except as directly related to the password of PIN protection.

(vi) Limited to data authentication which calculates a Message Authentication Code (MAC) or similar result to ensure no alteration of text has taken place, or to authenticate users, but does not allow for encryption of data, text or other media other than that needed for the authentication.

(vii) Restricted to fixed data compression or coding techniques.

(viii) Limited to receiving for radio broadcast, pay television or similar restricted audience television of the consumer type, without digital encryption and where digital decryption is limited to the video, audio or management functions.

(ix) Software designed or modified to protect against malicious computer damage, (e.g., viruses).

Note: A procedure has been established to facilitate the expeditious transfer to the Commodity Control List of mass market software products with encryption that meet specified criteria regarding encryption for the privacy of data and the associated key management. Requests to transfer commodity jurisdiction of mass market software products designed to meet the specified criteria may be submitted in accordance with the commodity jurisdiction provisions of § 120.4. Questions regarding the specified criteria or the commodity jurisdiction process should be addressed to the Office of Defense Trade Controls. All mass market software products with cryptography that were previously granted transfers of commodity jurisdiction will remain under Department of Commerce control. Mass market software governed by this note is software that is generally available to the public by being sold from stock at retail selling points, without restriction, by means of over the counter transactions, mail order transactions, or telephone call transactions; and designed for installation by the user without further substantial support by the supplier.

(2) Cryptographic (including key management) systems, equipment, assemblies, modules, integrated circuits, components or software which have the capability of generating spreading or hopping codes for spread spectrum systems or equipment.

(3) Cryptanalytic systems, equipment, assemblies, modules, integrated circuits, components or software.

(4) Systems, equipment, assemblies, modules, integrated circuits, components or software providing certified or certifiable multi-level security or user isolation exceeding class B2 of the Trusted Computer System Evaluation Criteria (TCSEC) and software to certify such systems, equipment or software.

(5) Ancillary equipment specifically designed or modified for paragraphs (b) (1), (2), (3), (4) and (5) of this category;

(c) Self-contained diving and underwater breathing apparatus as follows:

(1) Closed and semi-closed circuits (rebreathing) apparatus;

(2) Specially designed components for use in the conversion of open-circuit apparatus to military use; and

(3) Articles exclusively designed for military use with self-contained diving and underwater swimming apparatus.

(d) Carbon/carbon billets and preforms which are reinforced with continuous unidirectional tows, tapes, or woven cloths in three or more dimensional planes (i.e. 3D, 4D, etc.). This is exclusive of carbon/carbon billets and preforms where reinforcement in the third dimension is limited to interlocking of adjacent layers only, and carbon/carbon 3D, 4D, etc. end items which have not been specifically designed or modified for defense articles (e.g., brakes for commercial aircraft or high speed trains). Armor (e.g., organic, ceramic, metallic), and reactive armor which has been specifically designed or modified for defense articles. Structural materials including carbon/carbon and metal matrix composites, plate, forgings, castings, welding consumables and rolled and extruded shapes which have been specifically designed or modified for defense articles.

(e) Concealment and deception equipment, including but not limited to special paints, decoys, and simulators and components, parts and accessories specifically designed or modified therefor.

(f) Energy conversion devices for producing electrical energy from nuclear, thermal, or solar energy, or from chemical reaction which are specifically designed or modified for military application.

(g) Chemiluminescent compounds and solid state devices specifically designed or modified for military application.

(h) Devices embodying particle beam and electromagnetic pulse technology and associated components and subassemblies (e.g., ion beam current injectors, particle accelerators for neutral or charged particles, beam handling and projection equipment, beam steering, fire control, and pointing equipment, test and diagnostic instruments, and targets) which are specifically designed or modified for directed energy weapon applications.

(i) Metal embrittling agents.

*(j) Hardware and equipment, which has been specifically designed or modified for military applications, that is associated with

the measurement or modification of system signatures for detection of defense articles. This includes but is not limited to signature measurement equipment; prediction techniques and codes; signature materials and treatments; and signature control design methodology.

(k) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) related to the defense articles listed in this category. (See § 125.4 of this subchapter for exemptions; see also § 123.21 of this subchapter). Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

**Category XIV—Toxicological Agents and Equipment and Radiological Equipment**

*(a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, tear gases (except tear gas formulations containing 1% or less CN or CS), sternutators and irritant smoke, and nerve gases and incapacitating agents. (See § 121.7.)

*(b) Biological agents.

*(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

*(d) Nuclear radiation detection and measuring devices, manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

(f) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) related to the defense articles enumerated in paragraphs (a) through (e) of this category. (See § 125.4 of this subchapter for exemptions; see also § 123.21 of this subchapter). Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

**Category XV—Spacecraft Systems and Associated Equipment**

*(a) Spacecraft and associated hardware, including ground support equipment, specifically designed or modified for military use.

(b)(1) [Reserved]

(2) Communications satellites (excluding ground stations and their associated equipment and technical data not enumerated elsewhere in § 121.1 of this subchapter; for controls on such ground stations, see the Commerce Control List) with any of the following characteristics:

(i) Anti-jam capability. Antennas and/or antenna systems with ability to respond to incoming interference by adaptively reducing antenna gain in the direction of the interference.

(ii) Antennas:

(A). With aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; or

(B). With sidelobes less than or equal to −35dB; or

(C). Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nm in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).

(iii) Designed, modified or configured for intersatellite data relay links that do not involve a ground relay terminal ("cross-links").

(iv) Spaceborne baseband processing equipment that uses any technique other than frequency translation which can be changed several times a day on a channel by channel basis among previously assigned fixed frequencies.

(v) Employing any of the cryptographic items controlled under Category XIII (b) of this subchapter.

(vi) Employing radiation-hardened devices controlled elsewhere in § 121.1 that are not "embedded in the satellite in such a way as to deny physical access. (Here "embedded" means that the device either cannot feasibly be removed from the satellite or be used for other purposes.)

(vii) Having propulsion systems which permit acceleration of the satellite on-orbit (i.e., after mission orbit injection) at rates greater than 0.1g.

(viii) Having attitude control and determination systems designed to provide spacecraft pointing determination and control better than 0.02 degrees azimuth and elevation.

(ix) Having orbit transfer engines ("kick-motors") which remain permanently with the spacecraft and are capable of being restarted after achievement of mission orbit and providing acceleration greater than 1g. (Orbit transfer engines which are not designed, built, and shipped as an integral part of the satellite are controlled under Category IV of this subchapter.)

(c) Global Positioning System (GPS) receiving equipment specifically designed, modified or configured for military use; or GPS receiving equipment with any of the following characteristics:

(1) Designed for encryption or decryption (e.g., Y-Code) of GPS precise positioning service (PPS) signals;

(2) Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

(3) Specifically designed or modified for use with a null steering antenna or including a null steering antenna designed to reduce or avoid jamming signals;

(4) Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km.

Note: GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specifically designed, modified or configured for military use and therefore covered under this subparagraph.

Any GPS equipment not meeting this definition is subject to the jurisdiction of the Department of Commerce (DOC). Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-Code for civil navigation. It is the policy of the Department of Defense (DOD) that GPS receivers using P-Code without clarification as to whether or not those receivers were designed or modified to use Y-Code will be presumed to be Y-Code capable and covered under this subparagraph. The DOD policy further requires that a notice be attached to all P-Code receivers presented for export. The notice must state the following: "ADVISORY NOTICE: This receiver uses the GPS P-Code signal, which by U.S. policy, may be switched off without notice."

(d) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed, modified or configured for the articles in paragraphs (a) through (c) of this category, as well as for any satellites under the export licensing jurisdiction of the Department of Commerce, except as noted below.

**Explanatory Note**

This language is not intended to preclude a license application of a complete satellite that is under the jurisdiction of the Department of Commerce from including in that license application any directly associated components, parts, accessories, attachments and associated equipment (including ground support equipment) unless such items are specifically identified for control in paragraph (a) or (b) of this category or any other category of § 121.1 of this subchapter. It is understood that spares, replacement parts, ground support and test equipment, payload adapter/interface hardware, etc. are typically provided as part of a satellite launch campaign; however, such items are only exempt from USML licensing when their intended use is directly related to supporting the Commerce-licensed satellite launch campaign. Once the satellite has been successfully launched, it is understood that such items remaining unlaunched will be returned to the United States.

(e) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (d) of this category. (See § 125.4 of this subchapter for exceptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME. In addition, detailed design, development, production or manufacturing data for all spacecraft systems and specifically designed or modified components thereof, regardless of which U.S. Government agency has jurisdiction for export of the hardware. (See § 125.4 of this subchapter for exceptions.) This restriction does not include that level of technical data (including marketing data) necessary and reasonable for a purchaser to have assurance

that a U.S.-built item intended to operate in space has been designed, manufactured and tested in conformance with specified contract requirements (e.g., operational performance, reliability, lifetime, product quality, or delivery expectations) and data necessary to evaluate in-orbit anomalies and to operate and maintain associated ground equipment.

**Category XVI—Nuclear Weapons Design and Test Equipment**

*(a) Any article, material, equipment, or device which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices. (See § 123.21 of this subchapter and Department of Commerce Export Regulations, 15 CFR part 778).

*(b) Any article, material, equipment, or device which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

(c) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (b) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

**Category XVII—Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated**

*(a) All articles, technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) relating thereto which are classified in the interests of national security and which are not otherwise enumerated in the U.S. Munitions List.

**Category XVIII—[Reserved]**

**Category XIX—[Reserved]**

**Category XX—Submersible Vessels, Oceanographic and Associated Equipment**

*(a) Submersible vessels, manned or unmanned, tethered or untethered, designed or modified for military purposes, or powered by nuclear propulsion plants.

*(b) Swimmer delivery vehicles designed or modified for military purposes.

(c) Equipment, components, parts, accessories, and attachments specifically designed or modified for any of the articles in paragraphs (a) and (b) of this category.

(d) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (c) of this category. (See § 125.4 of this subchapter for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.

**Category XXI—Miscellaneous Articles**

(a) Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director of the Office of Defense Trade Controls.

(b) Technical data (as defined in § 120.21 of this subchapter) and defense services (as defined in § 120.8 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) of this category.

**§ 121.2 Interpretations of the U.S. Munitions List and the Missile Technology Control Regime Annex.**

The following interpretations (listed alphabetically) explain and amplify the terms used in § 121.1. These interpretations have the same force as if they were a part of the U.S. Munitions List (USML) category to which they refer. In addition, all the items listed in § 121.16 shall constitute all items on the United States Munitions List which are Missile Technology Control Regime Annex items in accordance with section 71(a) of the Arms Export Control Act.

**§ 121.3 Aircraft and related articles.**

In Category VIII, "aircraft" means aircraft designed, modified, or equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not included so long as they have not been specifically equipped, re-equipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C–45 through C–118 inclusive, C–121 through C–125 inclusive, and C–131, using reciprocating engines only.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.)

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

**§ 121.4 Amphibious vehicles.**

An *amphibious vehicle* in Category VII(f) is an automotive vehicle or chassis which embodies all-wheel drive, is equipped to meet special military requirements, and which has sealed electrical systems or adaptation features for deep water fording.

**§ 121.5 Apparatus and devices under Category IV(c).**

Category IV includes but is not limited to the following: Fuzes and components specifically designed, modified or configured for items listed in that category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance systems equipment and parts, launching racks and projectors, pistols (exploders), ignitors, fuze arming devices, intervalometers, thermal batteries, hardened missile launching facilities, guided missile launchers and specialized handling equipment, including transporters, cranes and lifts designed to handle articles in paragraphs (a) and (b) of this category for preparation and launch from fixed and mobile sites. The equipment in this category includes robots, robot controllers and robot end-effectors specially designed or modified for military applications.

**§ 121.6 Cartridge and shell casings.**

Cartridge and shell casings are included in Category III unless, prior to export, they have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

**§ 121.7 Chemical agents.**

A *chemical agent* in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term "chemical agent" includes, but is not limited to, the following chemical compounds:

(a) Lung irritants:
(1) Diphenylcyanoarsine (DC).
(2) Fluorine (but not fluorene).
(3) Trichloronitro methane (chloropicrin PS).

(b) Vesicants:
(1) B-Chlorovinyldichloroarsine (Lewisite, L).
(2) Bis(dichloroethyl)sulphide (Mustard Gas, HD or H).
(3) Ethyldichloroarsine (ED).
(4) Methyldichloroarsine (MD).

(c) Lachrymators and tear gases:
(1) A-Bromobenzyl cyanide (BBC).
(2) Chloroacetophenone (CN).
(3) Dibromodimethyl ether.
(4) Dichlorodimethyl ether (ClCi).
(5) Ethyldibromoarsine.
(6) Phenylcarbylamine chloride.
(7) Tear gas solutions (CNB and CNS).
(8) Tear gas orthochlorobenzalmalononitrile (CS).

(d) Sternutators and irritant smokes:
(1) Diphenylamine chloroarsine (Adamsite, DM).

(2) Diphenylchloroarsine (BA).
(3) Liquid pepper.
(e) Nerve agents, gases and aerosols. These are toxic compounds which affect the nervous system, such as:
(1) Dimethylaminoethoxycyanophosphine oxide (GA).
(2) Methylisopropoxyfluorophosphine oxide (GB).
(3) Methylpinacolyloxyfluoriphosphine oxide (GD).
(f) Antiplant chemicals, such as: Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

**§ 121.8 End-items, components, accessories, attachments parts, firmware, software and systems.**

(a) An *end-item* is an assembled article ready for its intended use. Only ammunition, fuel or another energy source is required to place it in an operating state.
(b) A *component* is an item which is useful only when used in conjunction with an end-item. A major component includes any assembled element which forms a portion of an end-item without which the end-item is inoperable. (Example: Airframes, tail sections, transmissions, tank treads, hulls, etc.) A minor component includes any assembled element of a major component.
(c) *Accessories* and *attachments* are associated equipment for any component, end-item or system, and which are not necessary for their operation, but which enhance their usefulness or effectiveness. (Examples: Military riflescopes, special paints, etc.)
(d) A *part* is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use. (Examples: Rivets, wire, bolts, etc.)
(e) Firmware and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions and system test diagnostics) specifically designed for equipment or systems covered under any category of the U.S. Munitions List are considered as part of the end-item or component. *Firmware* includes but is not limited to circuits into which software has been programmed.
(f) *Software* includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair. A person who intends to export software only should, unless it is specifically enumerated in § 121.1 (e.g., XIII(b)), apply for a technical data license pursuant to part 125 of this subchapter.
(g) A *system* is a combination of end-items, components, parts, accessories, attachments, firmware or software, specifically designed, modified or adapted to operate together to perform a specialized military function.

**§ 121.9 Firearms.**

(a) Category I includes revolvers, pistols, rifles, carbines, fully automatic rifles, submachine guns, machine pistols and machine guns to caliber .50, inclusive. It includes combat shotguns. It excludes other shotguns with barrels 18" or longer, BB, pellet, and muzzle loading (black powder) firearms.
(b) A *firearm* is a weapon not over .50 caliber which is designed to expel a projectile by the action of an explosive or which may be readily converted to do so.
(c) A *rifle* is a shoulder firearm which can discharge a bullet through a rifled barrel 16 inches or longer.
(d) A *carbine* is a lightweight shoulder firearm with a barrel under 16 inches in length.
(e) A *pistol* is a hand-operated firearm having a chamber integral with or permanently aligned with the bore.
(f) A *revolver* is a hand-operated firearm with a revolving cylinder containing chambers for individual cartridges.
(g) A *submachine gun*, "machine pistol" or "machine gun" is a firearm originally designed to fire, or capable of being fired, fully automatically by a single pull of the trigger.

**§ 121.10 Forgings, castings and machined bodies.**

Articles on the U.S. Munitions List include articles in a partially completed state (such as forgings, castings, extrusions and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions List (including components, accessories, attachments and parts as defined in § 121.8), then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this subchapter, except for such items as are in normal commercial use.

**§ 121.11 Military demolition blocks and blasting caps.**

Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:
(a) Electric squibs.
(b) No. 6 and No. 8 blasting caps, including electric ones.
(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).
(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).
(e) Oil well perforating devices.

**§ 121.12 Military explosives.**

(a) Military Explosives in Category V are military explosives or energetic materials consisting of high explosives, propellants or low explosives, pyrotechnics and high energy solid or liquid fuels, including aircraft fuels specially formulated for military purposes. Military explosives are solid, liquid or gaseous substances or mixtures of substances which, in their application as primary, booster or main charges in warheads, demolition and other military applications, are required to detonate. Military explosives, military propellants and military pyrotechnics in Category V include substances or mixtures containing any of the following:
(1) Spherical aluminium powder of particle size 60 micrometres or less manufactured from material with an aluminum content of 99% or more;
(2) Metal fuels in particle sizes less than 60 micrometres whether spherical, atomized, spheroidal, flaked or ground, consisting of 99% or more of any of the following: Zirconium, boron, magnesium and alloys of these; beryllium; fine iron powder with average particle size of 3 micrometres or less produced by reduction of iron oxide with hydrogen;
(3) Any of the foregoing metals or alloys listed in (a) (1) and (2) of this section, whether or not encapsulated in aluminum, magnesium, zirconium or beryllium;
(4) Perchlorates, chlorates and chromates composited with powdered metal or other high energy fuel components;
(5) Nitroglycerin;
(6) Trinitrophenylmenthylnitramine (TETRYL);
(7) Trinitrotoluene (TNT);
(8) Nitroguanidine (NQ);
(9) With the exception of chlorinetrifluoride, compounds composed of fluorine and one or more of the following: other halogens, oxygen, nitrogen;
(10) Carboranes; decaborane; pentaborane and derivatives;
(11) Cyclotetramethylenetetranitramine (HMX); octahydro-1, 3,5,7-tetranitro-1,3,5,7-tetrazine; 1,3,5,7-tetranitro-

1,3,5,7-tetraza-cyclooctane; (octogen, octogene);
(12) Hexanitrostilbene (HNS);
(13) Diaminotrinitrobenzene (DATB);
(14) Triaminotrinitrobenzene (TATB);
(15) Triaminoguanidinenitrate (TAGN);
(16) Titanium subhydrids of stiochiometry $TiH_{0.65-1.68}$;
(17) Dinitroglycoluril (DNGU, DINGU); tetranitroglycoluril TNGU, SORGUYL);
(18) Tetranitrobenzotriazolobenzotriazole (TACOT);
(19) Diaminohexanitrobiphenyl (DIPAM);
(20) Picrylaminodinitropyridine (PYX);
(21) 3-nitro-1,2,4-triazol-5-one (NTO or ONTA);
(22) Hydrazine in concentrations of 70% or more; hydrazine nitrate; hydrazine perchlorates; unsymmetrical dimethyl hydrazine; monomethyl hydrazine; symmetrical dimethyl hydrazine;
(23) Ammonium perchlorate;
(24) 2-(5-cyanotetrazolato) penta amminecobalt (III) perchlorate (CP);
(25) cis-bis (5-nitrotetrazolato) penta amminecobalt (III) perchlorate (or BNCP);
(26) 7-amino 4,6-dinitrobenzofurazane-1-oxide (ADNBF); amino dinitrobenzofuroxan;
(27) 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide, (CL–14 or diaminodinitrobenzofuroxan);
(28) 2,4,6-trinitro-2,4,6-triaza-cyclohexanone (K–6 or keto-RDX);
(29) 2,4,6,8-tetranitro-2,4,6,8-tetraza-bicyclo (3,3,0)-octanone-3(tetranitrosemiglycoluril, K–55, or keto-bicyclic HMX);
(30) 1,1,3-trinitroazetidine (TNAZ);
(31) 1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin (TNAD);
(32) Hexanitrohexaazaisowurtzitane (CL–20 or HNIW; and clathrates of CL–20);
(33) Polynitrocubane with more than four nitro groups;
(34) Ammonium dinitramide (ADN or SR–12);
(35) Cyclotrimethylentrinitramine (RDX); cyclonite; T4; hexahydro-1,3,5-trinitro-1,3,5-triazine; 1,3,5-trinitro-1,3,5-triaza-cyclohexane; hexogen, hexogene;
(36) Hydroxylammonium nitrate (HAN); hydroxylammonium perchlorate (HAP);
(37) Pentaerythritol Tetranitrate (PETN);
(38) Hydroxy terminated Polybutadiene (HTPB) with a hydroxyl functionality of 2.28, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30 degrees C of less than 47 poise;

(b) "Additives" include the following:
(1) Glycidylazide Polymer (GAP) and its derivatives;
(2) Polycyanodifluoroaminoethyleneoxide (PCDE);
(3) Butanetrioltrinitrate (BTTN);
(4) Bis-2-fluoro-2,2-dinitroethylformal (FEFO);
(5) Catocene, N-butyl-ferrocene and other ferrocene derivatives;
(6) Bis(2, 2-dinitropropyl) formal and acetal;
(7) Energetic monomers, plasticisers and polymers containing nitro, azido, nitrate, nitraza or difluoroamino groups;
(8) 1,2,3–Tris [1,2-bis(difluoroamino)ethoxy) propane; Tris vinoxy propane adduct, (TVOPA);
(9) Bisazidomethyloxetane (BAMO) and its polymers;
(10) Nitratomethylmethyloxetane (NMMO) Azidomethylmethyloxetane (AMMO);
(11) Tetraethylenepentamine-acrylonitrile (TEPAN); cyanoethylated polyamine and its salts;
(12) Tetraethylenepentamineacrylonitrileglycidol (TEPANOL); cyanoethylated polyamine adducted with glycidol and its salts;
(13) Polyfunctional aziridine amides with isophthalic, trimesic (BITA or butylene imine trimesamide isoyanuric), or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring;
(14) Basic copper salicylate; lead salicylate;
(15) Lead beta resorcylate;
(16) Lead stannate, lead maleate, lead citrate;
(17) Tris-1-(2-methyl)aziridinyl phosphine oxide (MAPO) and its derivatives;
(18) Organo-metallic coupling agents, specifically:
(i) Neopentyl (diallyl) oxy, tri [dioctyl] phosphato titanate or titanium IV, 2,2[bis 2-propenolatomethyl, butanolato or tris [dioctyl] phosphato-O], or LICA 12;
(ii) Titanium IV, [(2-propenolato-1)methyl, N-propanolatomethyl] butanolato-1; or tris(dioctyl)pyrophosphato, or KR3538;
(iii) Titanium IV, [(2-propenolato-1)methyl, N-propanolatomethyl] butanolato-1; or tris(dioyctyl) phosphate;
(19) FPF–1 (poly-[2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal]);
(20) FPF–3 (poly-[2,4,4,5,5,6,6-heptafluoro-2- trifluoromethyl-3-oxaheptane-1,7-diolformal]);
(21) Polyglycidylnitrate (PGN);
(22) Lead-copper chelates of beta-resorcylate and/or salicylates;
(23) Triphenyl bismuth (TPB);
(24) bis-2-hydroxyethylglycolamide (BHEGA);
(25) Superfine iron oxide with a specific surface area greater than 250 $m^2/g$ and an average particle size of 0.0003 micrometres or less;
(c) "Precursors" include the following:
(1) 1,2,4-trihydroxybutane (1,2,4-butanetriol);
(2) 1,3,5-trichlorobenzene;
(3) Bischloromethyloxetane (BCMO);
(4) Low (less than 10,000) molecular weight, alcohol-functionalised, poly(ephichlorohydrin); poly(ephichlorhydrindiol); diol and triol;
(5) Propyleneimide, 2-methylaziridine;
(6) 1,3,5,7,-tetraacetyl-1,3,5,7-tetraza-cyclooctane (TAT);
(7) Dinitroazetidine-t-butyl salt;
(8) Hexabenzylhexaazaisowurtzitane (HBIW);
(9) Tetraacetyldi- benzyl- hexaazaiso-wurtzitane (TAIW);
(10) 1,4,5,8-tetraazadecaline.
(d) Stabilisers include the following:
(1) N-Methyl-p-nitroaniline;
(2) Protech.
(e) Any substance or mixture meeting the following performance requirements:
(1) Any explosive with a detonation velocity greater than 8,700 m/s or a detonation pressure greater than 340 kilobars;
(2) Other organic high explosives yielding detonation pressures of 250 kilobars or greater that will remain stable at temperatures of 523 K (250 degrees C) or higher for periods of 5 minutes or longer;
(3) Any other UN Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) greater than 250 seconds for non-metallized, or greater than 270 seconds for aluminized compositions;
(4) Any UN Class 1.3 solid propellant with a theoretical specific impulse greater than 230 seconds for non-halogenized, 250 seconds for non-metallized and 266 seconds for metallized compositions;
(5) Any other explosive, propellant or pyrotechnic that can sustain a steady-state burning rate greater than 38mm (1.5 in) per second under standard conditions of 68.9 bar (1,000 PSI) pressure and 294K (21 degrees C);
(6) Any other gun propellants having a force constant greater than 1,200 kJ/kg;
(7) Elastomer modified cast double based propellants (EMCDB) with extensibility at maximum stress greater than 5% at 233 K or (−40 degrees C).
(f) Liquid oxidizers, as follows:
(1) Enriched nitric acid (inhibited red fuming nitric acid (IRFNA));

(2) Oxyfluoride.

**§ 121.13 Military fuel thickeners.**

Military fuel thickeners in Category V include compounds (e.g., octal) or mixtures of such compounds (e.g., napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a gel-type incendiary material for use in bombs, projectiles, flame throwers, or other defense articles.

**§ 121.14 Propellants.**

Propellants in Category V include, but are not limited to, the following:

(a) Propellant powders, including smokeless shotgun powder.

(b) Hydrazine (including Monomethyl hydrazine and symmetrical dimethyl hydrazine, but excluding hydrazine hydrate).

(c) Unsymmetrical dimethyl hydrazine.

(d) Hydrogen peroxide of over 85 percent concentration.

(e) Nitroguanidine or picrite.

(f) Nitrocellulose with nitrogen content of over 12.20 percent.

(g) Nitrogen tetroxide (nitrogen dioxide, dinitrogen tetroxide).

(h) Other solid propellant compositions, including but not limited to, the following:

(1) Single base (nitrocellulose).

(2) Double base (nitrocellulose, nitroglycerin).

(3) Triple base (nitrocellulose, nitroglycerin, nitroguanidine).

(4) Composite of nitroglycerin, ammonium perchlorate, potassium perchlorate, nitronium perchlorate, guanidine (guanidinium) perchlorate, nitrogen tetroxide, ammonium nitrite or nitrocellulose with plastics, metal fuels, or rubbers added; and compounds composed only of fluorine and halogens, oxygen, or nitrogen.

(5) Special purpose high energy solid military fuels with a chemical base.

(i) Other liquid propellant compositions, including but not limited to, the following:

(1) Monopropellants (hydrazine, hydrazine nitrate, and water).

(2) Bipropellants (hydrazine, fuming nitric acid HNO(3)).

(3) Special purpose chemical base high energy liquid military fuels and oxidizers.

**§ 121.15 Vessels of war and special naval equipment.**

Vessels of war means vessels, waterborne or submersible, designed, modified, or equipped for military purposes, including vessels described as developmental, "demilitarized" or decommissioned. Vessels of war in Category VI, whether developmental, "demilitarized" and/or decommissioned or not, include, but are not limited to, the following:

(a) Combatant vessels.

(1) Warships (including nuclear-powered versions):

(i) Aircraft carriers.

(ii) Battleships.

(iii) Cruisers.

(iv) Destroyers.

(v) Frigates.

(vi) Submarines.

(2) Other Combatants.

(i) Patrol Combatants (e.g., including but not limited to PHM).

(ii) Amphibious Aircraft/Landing Craft Carriers.

(iii) Amphibious Materiel/Landing Craft Carriers.

(iv) Amphibious Command Ships.

(v) Mine Warfare Ships.

(vi) Coast Guard Cutters (i.e. WHEC's and WMEC's).

(b) Auxiliaries.

(1) Combat Logistics Support.

(i) Underway Replenishment Ships.

(ii) Surface Vessel and Submarine Tender/Repair Ships.

(2) Support Ships.

(i) Submarine Rescue Ships.

(ii) Other Auxiliaries (e.g., including but not limited to: AGDS, AGF, AGM, AGOR, AGOS, AGS, AH, AP, ARC, ARL, AVB, AVM, AVT).

(c) Combatant Craft.

(1) Patrol Craft.

(i) Coastal Patrol Combatants.

(ii) River, Roadstead Craft (including swimmer delivery craft).

(iii) Coast Guard Patrol Craft.

(2) Amphibious Warfare Craft.

(i) Landing Craft (e.g., including but not limited to: LCAC, LCM, LCPL, LCU, LWT, SLWT).

(ii) Special Warfare Craft (e.g., including but not limited to: LSSC, MSSC, SDV, SWCL, SWCM).

(3) Mine Warfare Craft.

(i) Mine Countermeasures Craft (e.g., including but not limited to: MCT, MSB).

(d) Support and Service Vessels.

(1) Miscellaneous (e.g., including but not limited to: APL, DSRV, DSV, IX, WIX, NR, YFRT, YHLC, YP, YR, YRB, YRDH, YRDM, YRR, YSD).

**§ 121.16 Missile Technology Control Regime Annex.**

Some of the items on the Missile Technology Control Regime Annex are controlled by both the Department of Commerce on the Commodity Control List and by the Department of State on the United States Munitions List. To the extent an article is on the United States Munitions List, a reference appears in parentheses listing the U.S. Munitions List category in which it appears. The following items constitute all items on the Missile Technology Control Regime Annex which are covered by the U.S. Munitions List:

**Item 1—Category I**

Complete rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets (see § 121.1, Cat. IV(a) and (b)) and unmanned air vehicle systems (including cruise missile systems see § 121.1, Cat. VIII (a), target drones and reconnaisance drones (see § 121.1, Cat. VIII (a)) capable of delivering at least a 500 kg payload to a range of at least 300 km.

**Item 2—Cateogry I**

Complete subsystems usable in the systems in Item 1 as follows:

(a) Individual rocket stages (see § 121.1, Cat. IV(h));

(b) Reentry vehicles (see § 121.1, Cat. IV(g)), and equipment designed or modified therefor, as follows, except as provided in Note (1) below for those designed for non-weapon payloads;

(1) Heat shields and components thereof fabricated of ceramic or ablative materials (see § 121.1, Cat. IV(f));

(2) Heat sinks and components thereof fabricated of light-weight, high heat capacity materials;

(3) Electronic equipment specially designed for reentry vehicles (see § 121.1, Cat. XI(a)(7));

(c) Solid or liquid propellant rocket engines, having a total impulse capacity of 1.1 x 10 N-sec (2.5 x 10 lb-sec) or greater (see § 121.1, Cat. IV, (h)).

(d) "Guidance sets" capable of achieving system accuracy of 3.33 percent or less of the range (e.g., a CEP of 1 j,. or less at a range of 300 km), except as provided in Note (1) below for those designed for missiles with a range under 300 km or manned aircraft (see § 121.1, Cat. XII(d));

(e) Thrust vector control sub-systems, except as provided in Note (1) below for those designed for rocket systems that do not exceed the range/payload capability of Item 1 (see § 121.1, Cat. IV);

(f) Warhead safing, arming, fuzing, and firing mechanisms, except as provided in Note (1) below for those designed for systems other than those in Item 1 (see § 121.1, Cat. IV(h)).

**Notes to Item 2**

(1) The exceptions in (b), (d), (e), and (f) above may be treated as Category II if the subsystem is exported subject to end use statements and quantity limits appropriate for the excepted end use stated above.

(2) CEP (circle of equal probability) is a measure of accuracy, and defined as the radius of the circle centered at the target, at a specific range, in which 50 percent of the payloads impact.

(3) A "guidance set" integrates the process of measuring and computing a vehicle's position and velocity (i.e. navigation) with that of computing and sending commands to the vehicle's flight control systems to correct the trajectory.

(4) Examples of methods of achieving thrust vector control which are covered by (a) include:
(i) Flexible nozzle;
(ii) Fluid or secondary gas injection;
(iii) Movable engine or nozzle;
(iv) Deflection of exhaust gas stream (jet vanes or probes); or
(v) Use of thrust tabs.

**Item 3—Category II**

Propulsion components and equipment useble in the systems in Item 1, as follows:
(a) Lightweight turbojet and turbofan engines (including turbocompound engines) that are small and fuel efficient (see § 121.1, both Cat. IV(h) and VIII(b));
(b) Ramjet/Scramjet/pulse jet/combined cycle engines, including devices to regulate combustion, and specially designed components therefor (see § 121.1, both Cat. IV(h) and Cat. VIII(b));
(c) Rocket motor cases, "interior lining", "insulation" and nozzles therefor (see § 121.1, Cat. IV(h) and Cat. V(c));
(d) Staging mechanisms, separation mechanisms, and interstages therefor (see § 121.1, Cat. IV(c) and (h));
(e) Liquid and slurry propellant (including oxidizers) control systems, and specially designed components therefor, designed or modified to operate in vibration environments of more than 100 g RMS between 20 Hz and,000 Hz (see § 121.1, Cat. IV(c) and (h));
(f) Hybrid rocket motors and specially designed components therefor (see § 121.1, Cat. IV(h)).

**Notes to Item 3**

(1) Item 3(a) engines may be exported as part of a manned aircraft or in quantities appropriate for replacement parts for manned aircraft.
(2) In Item 3(C), "interior lining" suited for the bond interface between the solid propellant and the case or insulating liner is usually a liquid polymer based dispersion of refractory or insulating materials, e.g., carbon filled HTPB or other polymer with added curing agents to be sprayed or screeded over a case interior (see § 121.1, Cat. V(c)).
(3) In Item 3(c), "insulation" intended to be applied to the components of a rocket motor, i.e., the case, nozzle inlets, case closures, includes cured or semi-cured compounded rubber sheet stock containing an insulating or refractory material. It may also be incorporated as stress relief boots or flaps.
(4) The only servo valves and pumps covered in (e) above, are the following:
(i) Servo valves designed for flow rates of 24 liters per minute or greater, at an absolute pressure of 7,000 kPa (1,000 psi) or greater, that have an actuator response time of less than 100 msec;
(ii) Pumps, for liquid propellants, with shaft speeds equal to or greater than 8,000 RPM or with discharge pressures equal to or greater than 7,000 kPa (1,000 psi).
(5) Item 3(e) systems and components may be exports as part of a satellite.

**Item 4—Category II**

Propellants and constituent chemicals for propellants as follows: (see § 121.1, Cat. V(c) and § 121.12 and § 121.14).
(a) Propulsive substances:
(1) Hydrazine with a concentration of more than 70 percent and its derivatives including monomethylhydrazine (MMH) (see § 121.12(a)(22));
(2) Unsymmetric dimethylhydrazine (UDHM) (see § 121.12(a)(22));
(3) Ammonium perchlorate (see § 121.12(a)(23));
(4) Spherical aluminum powder with particle of uniform diameter of less than 500 x 10-m (500 micrometer) and an aluminum content of 97 percent or greater (see § 121.12(a)(1));
(5) Metal fuels in particle sizes less than 500 x 10-m (500 Microns), whether spherical, atomized, spheroidal, flaked or ground, consisting of 97 percent or more of any of the following: zirconium, beryllium, boron, magnesium, zinc, and alloys of these (see § 121.12(a)(2));
(6) Nitro-amines (cyclotetramethylene-tetranitramene (HMX) (see § 121.12(a)(11)), cyclotrimethylene-trinitramine (RDX)) (see 121.12(a)(35));
(7) Perchlorates, chlorates or chromates mixed with powdered metals or other high energy fuel components (see § 121.12(a)(4);
(8) Carboranes, decaboranes, pentaboranes and derivatives thereof (see § 121.12(a)(10);
(9) Liquid oxidizers, as follows:
(i) Nitrogen dioxide/dinitrogen tetroxide (see § 121.14.(g));
(ii) Inhibited Red Fuming Nitric Acid (IRFNA) (see § 121.12(f)(1);
(iii) Compounds composed of flourine and one or more of other halogens, oxygen or nitrogen (see § 121.12(a)(9).
(b) Polymeric substances:
(2) Hydroxy-terminated polybutadiene (HTPB) (see § 121.12(a)(38);
(3) Glycidyl azide polymer (GAP) (see § 121.12(b)(1)).
(c) Other high energy density propellants such as, Boron Slurry, having an energy density of 40 x 10 joules/kg or greater (see § 121.12(a)(3)).
(d) Other propellant additives and agents:
(1) Bonding agents as follows:
(i) tris(1-(2-methyl)aziridinyl phosphine oxide (MAPO) (see § 121.12(b)(17));
(ii) trimesol-1(2-ethyl)aziridine (HX–868, BITA) (see § 121.12(b)(13));
(iii) "Tepanol" (HX–878), reaction product of tetraethylenepentamine, acrylonitrile and glycidol (see § 121.12.(b)(11));
(iv) "Tepan" (HX–879), Reaction product of tet enepentamine and acrylonitrile (see § 121.12(b)(11));
(v) Polyfunctional aziridene amides with isophthalic, trimesic, isocyanuric, or trimethyladipic backbone also having a 2-methyl or 2-ethyl aziridine group (HX–752, HX–872 and HX–877). (see § 121.12(b)(13)).
(2) Curing agents and catalysts as follows:
(i) Triphenyl bismuth (TPB) (see § 121.12(b)(23));
(3) Burning rate modifiers as follows:
(i) Catocene (see § 121.12(b)(5));
(ii) N-butyl-ferrocene (see § 121.12(b)(5));
(iii) Other ferrocene derivatives (see § 121.12(b)).
(4) Nitrate esters and nitrato plasticizers as follows:
(i) 1,2,4-butanetriol trinitrate (BTTN) (see § 121.12(b)(3));
(5) Stabilizers as follows:
(i) N-methyl-p-nitroaniline (see § 121.12(d)(1)).

**Item 5—Category II**

Structural materials useble in the systems in Item 1, as follows:
(a) Composite structures, laminates, and manufactures thereof, including resin impregnated fibre prepregs and metal coated fibre preforms therefor, specially designed for use in the systems in Item 1 and the subsystems in Item 2 made either with organix matrix or metal matrix utilizing fibrous or filamentary reinforcements having a specific tensile strength greater than 7.62 x $10^4$ m (3 x $10^6$ inches) and a specific modules greater than 3.18 x $10^6$ m (1.25 x $10^8$ inches), (see § 121.1, Category IV (f), and Category XIII (d));
(b) Resaturated pyrolized (i.e. carbon-carbon) materials designed for rocket systems, (see § 121.1 Category IV (f));
(c) Fine grain recrystallized bulk graphites (with a bulk density of at least 1.72 g/cc measured at 15 degrees C), pyrolytic, or fibrous reinforced graphites useable for rocket nozzles and reentry vehicle nose tips (see § 121.1, Category IV (f) and Category XIII;
(d) Ceramic composites materials (dielectric constant less than 6 at frequencies from 100 Hz to 10,000 MHz) for use in missile radomes, and bulk machinable silicon-carbide reinforced unfired ceramic useable for nose tips (see § 121.1, Category IV (f));

**Item 6—Category II**

Instrumentation, navigation and direction finding equipment and systems, and associated production and test equipment as follows; and specially designed components and software therefor:
(a) Integrated flight instrument systems, which include gyrostabilizers or automatic pilots and integration software therefor; designed or modified for use in the systems in Item 1 (See § 121.1, Category XII(d));
(b) Gyro-astro compasses and other devices which derive position or orientation by means of automatically tracking celestrial bodies or satellites (see § 121.1, Category XV(d));
(c) Accelerometers with a threshold of 0.05 g or less, or a linearity error within 0.25 percent of full scale output, or both, which are designed for use in inertial navigation systems or in guidance systems of all types (see § 121.1, Category VIII(e) and Category XII (d));
(d) All types of gyros usable in the systems in Item 1, with a rated drift rate stability of less than 0.5 degree (1 sigma or rms) per hour in a 1 q environment (see § 121.1, Category VIII(e) and Category XII(d));
(e) Continuous output accelerometers or gyros of any type, specified to function at acceleration levels greater than 100 g (see § 121.1, Category XII(d));
(f) Inertial or other equipment using accelerometers described by subitems (c) and (e) above, and systems incorporating such equipment, and specially designed integration software therefor (see § 121.1, Category VIII (e) and Category XII(d));

**Notes to Item 9**

(1) Items (a) through (f) may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

(2) In subitem (d):

(i) Drift rate is defined as the time rate of output deviation from the desired output. It consists of random and systematic components and is expressed as an equivalent angular displacement per unit time with respect to inertial space.

(ii) Stability is defined as standard deviation (1 sigma) of the variation of a particular parameter from its calibrated value measured under stable temperature conditions. This can be expressed as a function of time.

**Item 10—Category II**

Flight control systems and "technology" as follows; designed or modified for the systems in Item 1.

(a) Hydraulic, mechanical, electro-optical, or electro-mechanical flight control systems (including fly-by-wire systems), (see § 121.1, Category IV (h));

(b) Attitude control equipment, (see § 121.1, Category IV, (c) and (h));

(c) Design technology for integration of air vehicle fuselage, propulsion system and lifting control surfaces to optimize aerodynamic performance throughout the flight regime of an unmanned air vehicle, (see § 121.1, Category VIII (k));

(d) Design technology for integration of the flight control, guidance, and propulsion data into a flight management system for optimization of rocket system trajectory, (see § 121.1, Category IV (i)).

**Note to Item 10**

Items (a) and (b) may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

**Item 11—Category II**

Avionics equipment, "technology" and components as follows; designed or modified for use in the systems in Item 1, and specially designed software therefor:

(a) Radar and laser radar systems, including altimeters (see § 121.1, Category XI(a)(3));

(b) Passive sensors for determining bearings to specific electromagnetic sources (direction finding equipment) or terrain characteristics (see § 121.1, Category XI(b) and (d));

(c) Global Positioning System (GPS) or similar satellite receivers;

(1) Capable of providing navigation information under the following operational conditions:

(i) At speeds in excess of 515 m/sec (1,000 nautical miles/hours); and

(ii) At altitudes in excess of 18 km (60,000 feet), (see § 121.1, Category XV(d)(2); or

(2) Designed or modified for use with unmanned air vehicles covered by Item 1 (see § 121.1, Category XV(d)(4)).

(d) Electronic assemblies and components specifically designed for military use and operation at temperatures in excess of 125 degrees C, (see § 121.1, Category XI(a)(7)).

(e) Design technology for protection of avionics and electrical subsystems against electromagnetic pulse (EMP) and electromagnetic interference (EMI) hazards from external sources, as follows, (see § 121.1, Category XI (b)).

(1) Design technology for shielding systems;

(2) Design technology for the configuration of hardened electrical circuits and subsystems;

(3) Determination of hardening criteria for the above.

**Notes to Item 11**

(1) Item 11 equipment may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

(2) Examples of equipment included in this Item:

(i) Terrain contour mapping equipment;

(ii) Scene mapping and correlation (both digital and analog) equipment;

(iii) Doppler navigation radar equipment;

(iv) Passive interferometer equipment;

(v) Imaging sensor equipment (both active and passive);

(3) In subitem (a), laser radar systems embody specialized transmission, scanning, receiving and signal processing techniques for utilization of lasers for echo ranging, direction finding and discrimination of targets by location, radial speed and body reflection characteristics.

**Item 12—Category II**

Launch support equipment, facilities and software for the systems in Item 1, as follows:

(a) Apparatus and devices designed or modified for the handling, control, activation and launching of the systems in Item 1, (see § 121.1, Category IV(c));

(b) Vehicles designed or modified for the transport, handling, control, activation and launching of the systems in Item 1, (see § 121.1, Category VII(d));

(c) Telemetering and telecontrol equipment usable for unmanned air vehicles or rocket systems, (see § 121.1, Category XI(a));

(d) Precision tracking systems:

(1) Tracking systems which use a translb nv installed on the rocket system or unmanned air vehicle in conjunction with either surface or airborne references or navigation satellite systems to provide real-time measurements of in-flight position and velocity, (see § 121.1, Category XI(a));

(2) Range instrumention radars including associated optical/infrared trackers and the specially designed software therefor with all of the following capabilities (see § 121.1, Category XI(a)(3)):

(i) angular resolution better than 3 milli-radians (0.5 mils);

(ii) range of 30 km or greater with a range resolution better than 10 meters RMS;

(iii) velocity resolution better than 3 meters per second.

(3) Software which processes post-flight, recorded data, enabling determination of vehicle position throughout its flight path (see § 121.1, Category IV(i)).

**Item 13—Category II**

Analog computers, digital computers, or digital differential analyzers designed or modified for use in the systems in Item 1 (see § 121.1, Category XI (a)(6), having either of the following characteristics:

(a) Rated for continuous operation at temperature from below minus 45 degrees C to above plus 55 degrees C; or

(b) Designed as ruggedized or "radiation hardened".

**Note to Item 13**

Item 13 equipment may be exported as part of a manned aircraft or satellite or in quantities appropriate for replacement parts for manned aircraft.

**Item 14—Category II**

Analog-to-digital converters, usable in the system in Item 1, having either of the following characteristics:

(a) Designed to meet military specifications for ruggedized equipment (see § 121.1, Category XI(d)); or,

(b) Designed or modified for military use (see § 121.1, Category XI(d)); and being one of the following types:

(1) Analog-to-digital converter "microcircuits," which are "radiation hardened" or have all of the following characteristics:

(i) Having a resolution of 8 bits or more;

(ii) Rated for operation in the temperature range from below minus 54 degrees C to above plus 125 degrees C; and

(iii) Hermetically sealed.

(2) Electrical input type analog-to-digital converter printed circuit boards or modules, with all of the following characteristics:

(i) Having a resolution of 8 bits or more;

(ii) Rated for operation in the temperature range from below minus 45 degrees C to above plus 55 degrees C; and

(iii) Incorporated "microcircuits" listed in (1), above.

**Item 16—Category II**

Specially designed software, or specially designed software with related specially designed hybrid (combined analog/digital) computers, for modeling, simulation, or design integration of the systems in Item 1 and Item 2 (see § 121.1, Category IV(i) and Category XI(a)(6)).

**Note to Item 16**

The modelling includes in particular the aerodynamic and thermodynamic analysis of the system.

**Item 17—Category II**

Materials, devices, and specially designed software for reduced observables such as radar reflectivity, ultraviolet/infrared signatures on acoustic signatures (i.e. stealth technology), for applications usable for the systems in Item 1 or Item 2 (see § 121.1, Category XIII (e) and (k)), for example:

(a) Structural material and coatings specially designed for reduced radar reflectivity;

(b) Coatings, including paints, specially designed for reduced or tailored reflectivity or emissivity in the microwave, infrared or ultraviolet spectra, except when specially used for thermal control of satellites.

(c) Specially designed software or databases for analysis of signature reduction.

(d) Specially designed radar cross section measurement systems (see § 121.1, Category XI(a)(3)).

Item 18—Category II

Devices for use in protecting rocket systems and unmanned air vehicles against nuclear effects (e.g. Electromagnetic Pulse (EMP), X-rays, combined blast and thermal effects), and usable for the systems in Item 1, as follows (see § 121.1, Category IV (c) and (b)):

(a) "Radiation Hardened" "microcircuits" and detectors (see § 121.1, Category XI(c)(3) Note: This commodity has been formally proposed for movement to category XV(e)(2) in the near future).

(b) Radomes designed to withstand a combined thermal shock greater than 1000 cal/sq cm accompanied by a peak over pressure of greater than 50 kPa (7 pounds per square inch) (see § 121.1, Category IV(h)).

Note to Item 18(a)

A detector is defined as a mechanical, electrical, optical or chemical device that automatically identifies and records, or registers a stimulus such as an environmental change in pressure or temperature, an electrical or electromagnetic signal or radiation from a radioactive material. The following pages were removed from the final iter for replacement by DTC's updated version section 6(l) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(l)), as amended. In accordance with this provision, the list of MTCR Annex items shall constitute all items on the U.S. Munitions List in § 121.16.

## PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

Sec.

122.1 Registration requirements.
122.2 Submission of registration statement.
122.3 Registration fees.
122.4 Notification of changes in information furnished by registrants.
122.5 Maintenance of records by registrants.

Authority: Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 1977 Comp. p. 79; 22 U.S.C. 2658.

### § 122.1 Registration requirements.

(a) Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Defense Trade Controls. Manufacturers who do not engage in exporting must nevertheless register.

(b) Exemptions. Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.

(c) Purpose. Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges. It is generally a precondition to the issuance of any license or other approval under this subchapter.

### § 122.2 Submission of registration statement.

(a) *General.* The Department of State Form DSP–9 (Registration Statement) and the transmittal letter required by paragraph (b) of this section must be submitted by an intended registrant with a payment by check or money order payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Office of Defense Trade Controls will return to the sender any Registration Statement that is incomplete, or that is not accompanied by the required letter or payment of the proper registration fee.

(b) *Transmittal letter.* A letter of transmittal, signed by an authorized senior officer of the intended registrant, shall accompany each Registration Statement.

(1) The letter shall state whether the intended registrant, chief executive officer, president, vice-presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) The letter shall also declare whether the intended registrant is owned or controlled by foreign persons (as defined in § 120.16 of this subchapter). If the intended registrant is owned or controlled by foreign persons, the letter shall also state whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

(c) *Definition.* For purposes of this section, *ownership* means that more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons. *Control* means that one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities if no U.S. persons control an equal or larger percentage. The standards for control specified in 22 CFR 60.2(c) also provide guidance in determining whether control in fact exists.

### § 122.3 Registration fees.

(a) A person who is required to register may do so for a period up to 5 years upon submission of a completed form DSP–9, transmittal letter, and payment of a fee as follows:

| | |
|---|---|
| 1 year | $250 |
| 2 years | 500 |
| 3 years | 700 |
| 4 years | 850 |
| 5 years | 1,000 |

(b) Lapse in registration. A registrant who fails to renew a registration and, after an intervening period, seeks to register again must pay registration fees for any part of such intervening period during which the registrant engaged in the business of manufacturing or exporting defense articles or defense services.

(c) Refund of fee. Fees paid in advance for future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in the manufacture or export of defense articles and defense services. A request for a refund must be submitted to the Office of Defense Trade Controls prior to the beginning of any year for which a refund is claimed.

### § 122.4 Notification of changes in information furnished by registrants.

(a) A registrant must, within five days of the event, notify the Office of Defense Trade Controls by registered mail if:

(1) Any of the persons referred to in § 122.2(b) are indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter, or become ineligible to contract with, or to receive a license or other approval to export or temporarily import defense articles or defense services from any agency of the U.S. government; or

(2) There is a material change in the information contained in the

Registration Statement, including a change in the senior officers; the establishment, acquisition or divestment of a subsidiary or foreign affiliate; a merger; a change of location; or the dealing in an additional category of defense articles or defense services.

(b) A registrant must notify the Office of Defense Trade Controls by registered mail at least 60 days in advance of any intended sale or transfer to a foreign person of ownership or control of the registrant or any entity thereof. Such notice does not relieve the registrant from obtaining the approval required under this subchapter for the export of defense articles or defense services to a foreign person, including the approval required prior to disclosing technical data. Such notice provides the Office of Defense Trade Controls with the information necessary to determine whether the authority of section 38(g)(6) of the Arms Export Control Act regarding licenses or other approvals for certain sales or transfers of articles or data should be invoked (see §§ 120.10 and 126.1(e) of this subchapter).

(c) The new entity formed when a registrant merges with another company or acquires, or is acquired by, another company or a subsidiary or division of another company shall advise the Office of Defense Trade Controls of the following:

(1) The new firm name and all previous firm names being disclosed;

(2) The registration number that will survive and those that are to be discontinued (if any);

(3) The license numbers of all approvals on which unshipped balances will be shipped under the surviving registration number, since any license not the subject of notification will be considered invalid; and

(4) Amendments to agreements approved by the Office of Defense Trade Controls to change the name of a party to those agreements. The registrant must, within 60 days of this notification, provide to the Office of Defense Trade Controls a signed copy of an amendment to each agreement signed by the new U.S. entity, the former U.S. licensor and the foreign licensee. Any agreements not so amended will be considered invalid.

(d) Prior approval by the Office of Defense Trade Controls is required for any amendment making a substantive change.

### § 122.5 Maintenance of records by registrants.

(a) A person who is required to register must maintain records concerning the manufacture, acquisition and disposition of defense articles; the provision of defense services; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130 of this subchapter. All such records must be maintained for a period of five years from the expiration of the license or other approval. The Director, Office of Defense Trade Controls, may prescribe a longer or shorter period in individual cases.

(b) Records maintained under this section shall be available at all times for inspection and copying by the Director, Office of Defense Trade Controls or a person designated by the Director (the Director of the Diplomatic Security Service or a person designated by the Director of the Diplomatic Security Service or another designee), or the Commissioner of the U.S. Customs Service or a person designated by the Commissioner.

## PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

Sec.


123.1 Requirement for export or temporary import licenses.
123.2 Import jurisdiction.
123.3 Temporary import licenses.
123.4 Temporary import license exemptions.
123.5 Temporary export licenses.
123.6 Foreign trade zones and U.S. Customs bonded warehouses.
123.7 Exports to warehouses or distribution points outside the United States.
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123.9 Country of ultimate destination and approval of reexports or retransfers.
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123.13 Domestic aircraft shipments via a foreign country.
123.14 Import certificate/delivery verification procedure.
123.15 Congressional notification for licenses.
123.16 Exemptions of general applicability.
123.17 Exports of firearms and ammunition.
123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.
123.19 Canadian and Mexican border shipments.
123.20 Nuclear materials.
123.21 Duration, renewal and disposition of licenses.
123.22 Filing of export licenses and Shipper's Export Declarations with District Directors of Customs.
123.23 Monetary value of shipments.
123.24 Shipments by mail.
123.25 Amendments to licenses.
123.26 Recordkeeping requirement for exemptions.


**Authority:** Secs. 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR 1977 Comp. 79; 22 U.S.C. 2658.

### § 123.1 Requirement for export or temporary import licenses.

(a) Any person who intends to export or to import temporarily a defense article must obtain the approval of the Office of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter. Applications for export or temporary import must be made as follows:

(1) Applications for licenses for permanent export must be made on Form DSP–5 (unclassified);

(2) Applications for licenses for temporary export must be made on Form DSP–73 (unclassified);

(3) Applications for licenses for temporary import must be made on Form DSP–61 (unclassified); and

(4) Applications for the export or temporary import of classified defense articles or classified technical data must be made on Form DSP–85.

(b) Applications for Department of State export licenses must be confined to proposed exports of defense articles including technical data.

(c) As a condition to the issuance of a license or other approval, the Office of Defense Trade Controls may require all pertinent documentary information regarding the proposed transaction and proper completion of the application form as follows:

(1) Form DSP–5, DSP–61, DSP–73, and DSP–85 applications must have an entry in each block where space is provided for an entry. All requested information must be provided.

(2) Attachments and supporting technical data or brochures should be submitted in seven collated copies. Two copies of any freight forwarder lists must be submitted. If the request is limited to renewal of a previous license or for the export of spare parts, only two sets of any attachment (including freight forwarder lists) and one copy of the previous license should be submitted.

(3) A certification letter signed by an empowered official must accompany all application submissions (see § 126.13 of this subchapter).

(4) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchase order, letter of intent or other appropriate documentation. In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Department of Defense Form

1513 are required, unless the procedures of § 126.4(c) or § 126.6 of this subchapter are followed.

(5) Form DSP–83, duly executed, must accompany all license applications for the permanent export of significant military equipment, including classified hardware or classified technical data (see §§ 123.10 and 125.3 of this subchapter).

(6) A statement concerning the payment of political contributions, fees and commissions must accompany a permanent export application if the export involves defense articles or defense services valued in an amount of $500,000 or more and is being sold commercially to or for the use of the armed forces of a foreign country or international organization (see part 130 of this subchapter).

(d) Provisions for furnishing the type of defense services described in § 120.9(a) of this subchapter are contained in part 124 of this subchapter. Provisions for the export or temporary import of technical data and classified defense articles are contained in part 125 of this subchapter.

(e) A request for a license for the export of unclassified technical data (DSP–5) related to a classified defense article should specify any classified technical data or material that subsequently will be required for export in the event of a sale.

### § 123.2 Import jurisdiction.

The Department of State regulates the temporary import of defense articles. Permanent imports of defense articles into the United States are regulated by the Department of the Treasury (see 27 CFR parts 47, 178 and 179).

### § 123.3 Temporary import licenses.

(a) A license (DSP–61) issued by the Office of Defense Trade Controls is required for the temporary import and subsequent export of unclassified defense articles, unless exempted from this requirement pursuant to § 123.4. This requirement applies to:

(1) Temporary imports of unclassified defense articles that are to be returned directly to the country from which they were shipped to the United States;

(2) Temporary imports of unclassified defense articles in transit to a third country;

(b) A bond may be required as appropriate (see part 125 of this subchapter for license requirements for technical data and classified defense articles.)

### § 123.4 Temporary import license exemptions.

(a) District Directors of Customs shall permit the temporary import (and subsequent export) without a license, for a period of up to 4 years, of unclassified U.S.-origin defense articles (including any article manufactured abroad pursuant to U.S. Government approval) if the article temporarily imported:

(1) Is serviced (e.g., inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective articles, parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the article), and is subsequently returned to the country from which it was imported. Shipment may be made by the U.S. importer or a foreign government representative of the country from which the goods were imported; or

(2) Is to be enhanced, upgraded or incorporated into another article which has already been authorized by the Office of Defense Trade Controls for permanent export; or

(3) Is imported for the purpose of exhibition, demonstration or marketing in the United States and is subsequently returned to the country from which it was imported; or

(4) Has been rejected for permanent import by the Department of the Treasury and is being returned to the country from which it was shipped; or

(5) Is approved for such import under the U.S. Foreign Military Sales (FMS) program pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513).

**Note:** These Exceptions do not apply to shipments that transit the U.S. to or from Canada (see § 123.19 and § 126.5 of this subchapter for exceptions).

(b) District Directors of Customs shall permit the temporary import (but not the subsequent export) without a license of unclassified defense articles that are to be incorporated into another article, or modified, enhanced, upgraded, altered, improved or serviced in any other manner that changes the basic performance or productivity of the article prior to being returned to the country from which they were shipped or prior to being shipped to a third country. A DSP–5 is required for the reexport of such unclassified defense articles after incorporation into another article, modification, enhancement, upgrading, alteration or improvement.

(c) *Requirements.* To use an exemption under § 123.4 (a) or (b), the following criteria must be met:

(1) The importer must meet the eligibility requirements set forth in § 120.1(b) of this subchapter;

(2) At the time of export, the ultimate consignee named on the Shipper's Export Declaration (SED) must be the same as the foreign consignee or end-user of record named at the time of import; and

(3) As stated in § 126.1 of this subchapter, the temporary import must not be from or on behalf of a proscribed country listed in that section unless an exception has been granted in accordance with § 126.3 of this subchapter.

(d) *Procedures.* To the satisfaction of the District Director of Customs, the importer and exporter must comply with the following procedures:

(1) At the time of temporary import—

(i) File and annotate the applicable U.S. Customs document (e.g., Form CF 3461, 7512, 7501, 7523 or 3311) to read: "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a) (identify subsection)," and

(ii) Include, on the invoice or other appropriate documentation, a complete list and description of the defense article(s) being imported, including quantity and U.S. dollar value; and

(2) At the time of export, file with the District Director of Customs at the port of exit a Shipper's Export Declaration (Department of Commerce Form 7525–V) and include on the SED or as an attachment the following information:

(i) the U.S. Customs entry document number or a copy of the U.S. Customs documentation under which the article was imported;

(ii) the following statement: "22 CFR (identify section) and 22 CFR 120.1(b) applicable."

### § 123.5 Temporary export licenses.

(a) The Office of Defense Trade Controls may issue a license for the temporary export of unclassified defense articles (DSP–73). Such licenses are valid only if (1) the article will be exported for a period of less than 4 years and will be returned to the United States and (2) transfer of title will not occur during the period of temporary export. Accordingly, articles exported pursuant to a temporary export license may not be sold or otherwise permanently transferred to a foreign person while they are overseas under a temporary export license. A renewal of the license or other written approval must be obtained from the Office of Defense Trade Controls if the article is to remain outside the United States beyond the period for which the license is valid.

(b) *Requirements.* Defense articles authorized for temporary export under this section may be shipped only from

a port in the United States where a District Director of Customs is available, or from a U.S. Post Office (see 39 CFR part 20), as appropriate. The license for temporary export must be presented to the District Director of Customs who, upon verification, will endorse the exit column on the reverse side of the license. In some instances of the temporary export of technical data (e.g postal shipments), self-endorsement will be necessary (see § 123.22(d)). The endorsed license for temporary export is to be retained by the licensee. In the case of a military aircraft or vessel exported under its own power, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Upon the return to the United States of defense articles covered by a license for temporary export, the license will be endorsed in the entry column by the District Director of Customs. This procedure shall be followed for all exits and entries made during the period for which the license is valid. The licensee must send the license to the Office of Defense Trade Controls immediately upon expiration or after the final return of the defense articles approved for export, whichever occurs first.

**§ 123.6 Foreign trade zones and U.S. Customs bonded warehouses.**

Foreign trade zones and U.S. Customs bonded warehouses are considered integral parts of the United States for the purpose of this subchapter. An export license is therefore not required for shipment between the United States and a foreign trade zone or a Customs bonded warehouse. In the case of classified defense articles, the provisions of the Department of Defense Industrial Security Manual will apply. An export license is required for all shipments of articles on the U.S. Munitions List from foreign trade zones and U.S. Customs bonded warehouses to foreign countries, regardless of how the articles reached the zone or warehouse.

**§ 123.7 Exports to warehouses or distribution points outside the United States.**

Unless the exemption under § 123.16(b)(1) is used, a license is required to export defense articles to a warehouse or distribution point outside the United States for subsequent resale and will normally be granted only if an agreement has been approved pursuant to § 124.14 of this subchapter.

**§ 123.8 Special controls on vessels, aircraft and satellites covered by the U.S. Munitions List.**

(a) Transferring registration or control to a foreign person of any aircraft, vessel, or satellite on the U.S. Munitions List is an export for purposes of this subchapter and requires a license or written approval from the Office of Defense Trade Controls. This requirement applies whether the aircraft, vessel, or satellite is physically located in the United States or abroad.

(b) The registration in a foreign country of any aircraft, vessel or satellite covered by the U.S. Munitions List which is not registered in the United States but which is located in the United States constitutes an export. A license or written approval from the Office of Defense Trade Controls is therefore required. Such transactions may also require the prior approval of the Maritime Administration, the Federal Aviation Administration or other agencies of the U.S. Government.

**§ 123.9 Country of ultimate destination and approval of reexports or retransfers.**

(a) The country designated as the country of ultimate destination on an application for an export license, or on a Shipper's Export Declaration where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Office of Defense Trade Controls must be obtained before reselling, transferring, transshipping, or disposing of a defense article to any end user, end use or destination other than as stated on the export license, or on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-user and end-use prior to submitting an application to the Office of Defense Trade Controls or claiming an exemption under this subchapter.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, and the invoice whenever defense articles on the U.S. Munitions List are to be exported:

These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State."

(c) A U.S. person or a foreign person requesting approval for the reexport or retransfer, or change in end-use, of a defense article shall submit a written request which shall be subject to all the documentation required for a permanent export license (see § 123.1) and shall contain the following:

(1) The license number under which the defense article was previously authorized for export from the United States;

(2) A precise description, quantity and value of the defense article;

(3) A description of the new end-use; and

(4) Identification of the new end-user.

(d) The written approval of the Office of Defense Trade Controls must be obtained before reselling, transferring, transshipping on a non-continuous voyage, or disposing of a defense article in any country other than the country of ultimate destination, or anyone other than the authorized end-user, as stated on the Shipper's Export Declaration in cases where an exemption is claimed under this subchapter.

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to a government of a NATO country, or the governments of Australia or Japan, are authorized without the prior written approval of the Office of Defense Trade Controls, provided:

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license or an exemption;

(2) The U.S.-origin components are not significant military equipment, the items are not major defense equipment sold under a contract in the amount of $14,000,000 ($14 million) or more; the articles are not defense articles or defense services sold under a contract in the amount of $50,000,000 ($50 million) or more; and are not identified in part 121 of this subchapter as Missile Technology Control Regime (MTCR) items; and

(3) The person reexporting the defense article must provide written notification to the Office of Defense Trade Controls of the retransfer not later than 30 days following the reexport. The notification must state the articles being reexported and the recipient government.

(4) In certain cases, the Director, Office of Defense Trade Controls, may place retransfer restrictions on a license prohibiting use of this exemption.

**§ 123.10 Non-transfer and use assurances.**

(a) A nontransfer and use certificate (Form DSP–83) is required for the export of significant military equipment and classified articles including classified technical data. A license will

not be issued until a completed Form DSP–83 has been received by the Office of Defense Trade Controls. This form is to be executed by the foreign consignee, foreign end-user, and the applicant. The certificate stipulates that, except as specifically authorized by prior written approval of the Department of State, the foreign consignee and foreign end-user will not reexport, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-use or to any other person.

(b) The Office of Defense Trade Controls may also require a DSP–83 for the export of any other defense articles or defense services.

(c) When a DSP–83 is required for an export of any defense article or defense service to a non-governmental foreign end-user, the Office of Defense Trade Controls may require as a condition of issuing the license that the appropriate authority of the government of the country of ultimate destination also execute the certificate.

**§ 123.11 Movements of vessels and aircraft covered by the U.S. Munitions List outside the United States.**

(a) A license issued by the Office of Defense Trade Controls is required whenever a privately-owned aircraft or vessel on the U.S. Munitions List makes a voyage outside the United States.

(b) Exemption. An export license is not required when a vessel or aircraft referred to in paragraph (a) of this section departs from the United States and does not enter the territorial waters or airspace of a foreign country if no defense articles are carried as cargo. Such a vessel or aircraft may not enter the territorial waters or airspace of a foreign country before returning to the United States, or carry as cargo any defense article, without a temporary export license (Form DSP–73) from the Department of State. (See § 123.5.)

**§ 123.12 Shipments between U.S. possessions.**

An export license is not required for the shipment of defense articles between the United States, the Commonwealth of Puerto Rico, and U.S. possessions. A license is required, however, for the export of defense articles from these areas to foreign countries.

**§ 123.13 Domestic aircraft shipments via a foreign country.**

A license is not required for the shipment by air of a defense article from one location in the United States to another location in the United States via a foreign country. The pilot of the aircraft must, however, file a written statement with the District Director of Customs at the port of exit in the United States. The original statement must be filed at the time of exit with the District Director of Customs. A duplicate must be filed at the port of reentry with the District Director of Customs, who will duly endorse it and transmit it to the District Director of Customs at the port of exit. The statement will be as follows:

**Domestic Shipment Via a Foreign Country of Articles on the U.S. Munitions List**

Under penalty according to Federal law, the undersigned certifies and warrants that all the information in this document is true and correct, and that the equipment listed below is being shipped from (U.S. port of exit) via (foreign country) to (U.S. port of entry), which is the final destination in the United States.

*Description of Equipment*

Quantity: _____
Equipment: _____
Value: _____
Signed: _____

Endorsement: Customs Inspector.

Port of Exit _____
Date: _____
Signed: _____

Endorsement: Customs Inspector.

Port of Entry: _____
Date: _____

**§ 123.14 Import certificate/delivery verification procedure.**

(a) The Import Certificate/Delivery Verification Procedure is designed to assure that a commodity imported into the territory of those countries participating in IC/DV procedures will not be diverted, transshipped, or reexported to another destination except in accordance with export control regulations of the importing country.

(b) Exports. The Office of Defense Trade Controls may require the IC/DV procedure on proposed exports of defense articles to non-government entities in those countries participating in IC/DV procedures. In such cases, U.S. exporters must submit both an export license application (the completed Form DSP–5) and the original Import Certificate, which must be provided and authenticated by the government of the importing country. This document verifies that the foreign importer complied with the import regulations of the government of the importing country and that the importer declared the intention not to divert, transship or reexport the material described therein without the prior approval of that government. After delivery of the commodities to the foreign consignee, the Department of State may also require U.S. exporters to furnish Delivery Verification documentation from the government of the importing country. This documentation verifies that the delivery was in accordance with the terms of the approved export license. Both the Import Certificate and the Delivery Verification must be furnished to the U.S. exporter by the foreign importer.

(c) Triangular transactions. When a transaction involves three or more countries that have adopted the IC/DV procedure, the governments of these countries may stamp a triangular symbol on the Import Certificate. This symbol is usually placed on the Import Certificate when the applicant for the Import Certificate (the importer) states either (1) that there is uncertainty whether the items covered by the Import Certificate will be imported into the country issuing the Import Certificate; (2) that he or she knows that the items will not be imported into the country issuing the Import Certificate; or (3) that, if the items are to be imported into the country issuing the Import Certificate, they will subsequently be reexported to another destination. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

**§ 123.15 Congressional notification for licenses.**

All exports of major defense equipment, as defined in § 120.8 of this subchapter, sold under a contract in the amount of $14,000,000 or more, or exports of defense articles and defense services sold under a contract in the amount of $50,000,000 or more, may take place only after the Office of Defense Trade Controls notifies the exporter through issuance of a license or other approval that 30 calendar days have elapsed since receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) and that Congress has not enacted a joint resolution prohibiting the export. Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter (e.g., § 126.5 of this subchapter) under the circumstances described in the first sentence of this subsection must notify the Office of Defense Trade Controls by letter of the intended export and, prior to transmittal to Congress, provide a signed contract and a DSP–83 signed by the applicant, the foreign consignee and end-user.

**§ 123.16 Exemptions of general applicability.**

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Office of Defense Trade Controls.

These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required; MTCR articles; and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including those to and from Canada, require a Shippers Export Declaration (SED). If the defense article is exempt from licensing, the SED must cite the exemption. Refer to § 123.22(c) for Shipper's Export Declaration requirements.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) District Directors of Customs shall permit the export without a license of defense articles being exported in furtherance of an approved manufacturing license agreement, technical assistance agreement or distribution agreement provided that:

(i) The defense articles to be exported support the activity and must be identified by item, quantity and value in the agreement; and

(ii) Any provisos or limitations placed on the authorized agreement are adhered to; and

(iii) The exporter certifies on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing, "22 CFR 123.16(b)(1) and AG [identify agreement number] applicable and

(iv) The total value of all shipments does not exceed the value authorized in the agreement.

(v) In the case of distribution agreements, export must be made directly to the approved foreign distributor.

(2) District Directors of Customs shall permit the export of components or spare parts (for exemptions for firearms and ammunition see § 123.17) without a license when the total value does not exceed $500 in a single transaction and:

(i) The components or spare parts are being exported to support a defense article previously authorized for export; and

(ii) The spare parts or components are not going to a distributor, but to a previously approved end-user of the defense articles; and

(iii) The spare parts or components are not to be used to enhance the capability of the defense article;

(iv) exporters shall not split orders so as not to exceed the dollar value of this exemption;

(v) the exporter may not make more than 24 shipments per calender year to the previously authorized end user;

(vi) The exporter must certify on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing 22 CFR 123.16(b)(2) applicable.

(3) District Directors of Customs shall permit the export without a license, of packing cases specially designed to carry defense articles.

(4) District Directors of Customs shall permit the export without a license, of unclassified models or mock-ups of defense articles, provided that such models or mock-ups are nonoperable and do not reveal any technical data in excess of that which is exempted from the licensing requirements of § 125.4(b) of this subchapter and do not contain components covered by the U.S. Munitions List (see § 120.6(b) of this subchapter). Some models or mockups built to scale or constructed of original materials can reveal technical data. U.S. persons who avail themselves of this exemption must provide a written certification to the District Director of Customs that these conditions are met. This exemption does not imply that the Office of Defense Trade Controls will approve the export of any defense articles for which models or mocks-ups have been exported pursuant to this exemption.

(5) District Directors of Customs shall permit the temporary export without a license of unclassified defense articles to any public exhibition, trade show, air show or related event if that article has previously been licensed for a public exhibition, trade show, air show or related event and the license is still valid. U.S. persons who avail themselves of this exemption must provide a written certification to the District Director of Customs that these conditions are met.

(6) For exemptions for firearms and ammunition for personal use refer to § 123.17.

(7) For exemptions for firearms for personal use of members of the U.S. Armed Forces and civilian employees see § 123.18.

(8) For exports to Canada refer to § 126.5 of this subchapter.

(9) District Directors of Customs shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (see § 122.2(c) of this subchapter) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:

(i) The U.S. person is registered with the Office of Defense Trade Controls and complies with all requirements set forth in part 122 of this subchapter;

(ii) No defense article exported under this exemption may be sold or transferred without the appropriate license or other approval from the Office of Defense Trade Controls.

### § 123.17 Exports of firearms and ammunition.

(a) Except as provided in § 126.1 of this subchapter, District Directors of Customs shall permit the export without a license of components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breach mechanisms when the total value does not exceed $500 wholesale in any transaction.

(b) District Directors of Customs shall permit the export without a license of nonautomatic firearms covered by Category I(a) of § 121.1 of this subchapter if they were manufactured in or before 1898, or are replicas of such firearms.

(c) District Directors of Customs shall permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and not more than 1,000 cartridges therefor, provided that:

(1) A declaration by the U.S. person and an inspection by a customs officer is made;

(2) The firearms and accompanying ammunition must be with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) They must be for that person's exclusive use and not for reexport or other transfer of ownership. The foregoing exemption is not applicable to a crew-member of a vessel or aircraft unless the crew-member declares the firearms to a Customs officer upon each departure from the United States, and declares that it is his or her intention to return the article(s) on each return to the United States. It is also not applicable to the personnel referred to in § 123.18.

(d) District Directors of Customs shall permit a foreign person to export without a license such firearms in Category I(a) of § 121.1 of this subchapter and ammunition therefor as the foreign person brought into the United States under the provisions of 27 CFR 178.115(d). (The latter provision specifically excludes from the definition of importation the bringing into the United States of firearms and ammunition by certain foreign persons for specified purposes).

(e) District Directors of Customs shall permit U.S. persons to export without a

license ammunition for nonautomatic firearms referred to in paragraph (a) of this section if the quantity does not exceed 1,000 cartridges (or rounds) in any shipment. The ammunition must also be for personal use and not for resale or other transfer of ownership. The foregoing exemption is also not applicable to the personnel referred to in § 123.18.

**§ 123.18 Firearms for personal use of members of the U.S. Armed Forces and civilian employees of the U.S. Government.**

The following exemptions apply to members of the U.S. Armed Forces and civilian employees of the U.S. Government who are U.S. persons (both referred to herein as personnel). The exemptions apply only to such personnel if they are assigned abroad for extended duty. These exemptions do not apply to dependents.

(a) *Firearms.* District Directors of Customs shall permit nonautomatic firearms in Category I(a) of § 121.1 of this subchapter and parts therefor to be exported, except by mail, from the United States without a license if:

(1) They are consigned to servicemen's clubs abroad for uniformed members of the U.S. Armed Forces; or,

(2) In the case of a uniformed member of the U.S. Armed Forces or a civilian employee of the Department of Defense, they are for personal use and not for resale or other transfer of ownership, and if the firearms are accompanied by a written authorization from the commanding officer concerned; or

(3) In the case of other U.S. Government employees, they are for personal use and not for resale or other transfer of ownership, and the Chief of the U.S. Diplomatic Mission or his designee in the country of destination has approved in writing to Department of State the import of the specific types and quantities of firearms into that country. The exporter shall provide a copy of this written statement to the District Director of Customs.

(b) *Ammunition.* District Directors of Customs shall permit not more than 1,000 cartridges (or rounds) of ammunition for the firearms referred to in paragraph (a) of this section to be exported (but not mailed) from the United States without a license when the firearms are on the person of the owner or with his baggage or effects, whether accompanied or unaccompanied (but not mailed).

**§ 123.19 Canadian and Mexican border shipments.**

A shipment originating in Canada or Mexico which incidentally transits the United States en route to a delivery point in the same country that originated the shipment is exempt from the requirement for an in transit license.

**§ 123.20 Nuclear materials.**

(a) The provisions of this subchapter do not apply to equipment in Category VI(e) and Category XVI of § 121.1 of this subchapter to the extent such equipment is under the export control of the Department of Energy or the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

(b) A license for the export of any machinery, device, component, equipment, or technical data relating to equipment referred to in Category VI(e) will not be granted unless the proposed export comes within the scope of an existing Agreement for Cooperation for Mutual Defense Purposes concluded pursuant to the Atomic Energy Act of 1954, as amended, with the government of the country to which the article is to be exported. Licenses may be granted in the absence of such an agreement only (1) if the proposed export involves an article which is identical to that in use in an unclassified civilian nuclear power plant, (2) if the proposed export has no relationship to naval nuclear propulsion, and (3) if it is not for use in a naval propulsion plant.

**§ 123.21 Duration, renewal and disposition of licenses.**

(a) A license is valid for four years. The license expires when the total value or quantity authorized has been shipped or when the date of expiration has been reached, whichever occurs first. Defense articles to be shipped thereafter require a new application and license. The new application should refer to the expired license. It should not include references to any defense articles other than those of the unshipped balance of the expired license.

(b) Unused, expired, expended, suspended, or revoked licenses must be returned immediately to the Department of State.

**§ 123.22 Filing of export licenses and Shipper's Export Declarations with District Directors of Customs.**

(a) The exporter must deposit the license with the District Director of Customs at the port of exit before shipment, unless paragraph (d) of this section or § 125.9 applies (for exports by mail, see § 123.24). Licenses for temporary export or temporary import are to be retained by the exporter and presented to the District Director of Customs at the time of import or export for endorsement. If necessary, the export may be made through a port other than the one designated on the license if the exporter complies with the procedures established by the U.S. Customs Service. Every license will be returned to the Office of Defense Trade Controls by the District Director of Customs when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first.

(b) Before shipping any defense article, the exporter must also file a Shipper's Export Declaration with the District Director of Customs at the port of exit (unless otherwise exempt from filing a Shipper's Export Declaration). The District Director of Customs at the port of exit must authenticate the Shipper's Export Declaration, and endorse the license to show the shipments actually made. The District Director of Customs will return a copy of each authenticated Shipper's Export Declaration to the Office of Defense Trade Controls.

(c) Except for the export of unclassified technical data, an exporter must file a Shipper's Export Declaration with District Directors of Customs or Postmasters in those cases in which no export license is required because of an exemption under this subchapter. The exporter must certify that the export is exempt from the licensing requirements of this subchapter by writing 22 CFR (identify section) and 22 CFR 120.1(b) applicable on the Shipper's Export Declaration, and by identifying the section under which an exemption is claimed. A copy of each such declaration must be mailed immediately by the exporter to the Office of Defense Trade Controls.

(d) A Shipper's Export Declaration is not required for exports of unclassified technical data. Exporters shall notify the Office of Defense Trade Controls of the initial export of the data by either returning the license after self endorsement or by sending a letter to the Office of Defense Trade Controls. The letter shall provide the method, date, license number and airway bill number (if applicable) of the shipment. The letter must be signed by an empowered official of the company and provided to the Office of Defense Trade Controls within thirty days of the initial export. Additionally, similar notification must be provided to the Office of Defense Trade Controls for any subsequent exports.

(e) If a license for the export of unclassified defense articles, including technical data, is used but not endorsed by U.S. Customs or a Postmaster for whatever reason (e.g., electronic transmission, unavailability of Customs

officer or Postmaster, etc.), the person exporting the article must self-endorse the license, showing when and how the export took place. Every license shall also be returned by the exporter to the Office of Defense Trade Controls when the total value or quantity authorized has been shipped or when the date of expiration is reached, whichever occurs first.

**§ 123.23 Monetary value of shipments.**

District Directors of Customs shall permit the shipment of defense articles identified on any license when the total value of the export does not exceed the aggregate monetary value (not quantity) stated on the license by more than ten percent, provided that the additional monetary value does not make the total value of the license or other approval for the export of any major defense equipment sold under a contract reach $14,000,000 or more, and provided that the additional monetary value does not make defense articles or defense services sold under a contract reach the amount of $50,000,000 or more.

**§ 123.24 Shipments by mail.**

A Shipper's Export Declaration must be authenticated before an article is actually sent abroad by mail (see § 123.22(d)). The postmaster or exporter will endorse each license to show the shipments made. Every license must be returned by the exporter to the Office of Defense Trade Controls upon completion of the mailings.

**§ 123.25 Amendments to licenses.**

(a) The Office of Defense Trade Controls may approve an amendment to a license for permanent export, temporary export and temporary import of unclassified defense articles. A suggested format is available from the Office of Defense Trade Controls.

(b) The following types of amendments to a license that will be considered: Addition of U.S. freight forwarder or U.S. consignor; change due to an obvious typographical error; change in source of commodity; and change of foreign intermediate consignee if that party is only transporting the equipment and will not process (e.g., integrate, modify) the equipment. For changes in U.S. dollar value see § 123.23.

(c) The following types of amendments to a license will not be approved: Additional quantity, changes in commodity, country of ultimate destination, end-use or end-user, foreign consignee and/or extension of duration. The foreign intermediate consignee may only be amended if that party is acting as freight forwarder and the export does not involve technical data. A new license is required for these changes. Any new license submission must reflect only the unshipped balance of quantity and dollar value.

**§ 123.26 Recordkeeping requirement for exemptions.**

When an exemption is claimed for the export of unclassified technical data, the exporter must maintain a record of each such export. The business record should include the following information: A description of the unclassified technical data, the name of the recipient end-user, the date and time of the export, and the method of transmission.

## PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

Sec.


124.1 Manufacturing license agreements and technical assistance agreements.
124.2 Exemptions for training and military service.
124.3 Exports of technical data in furtherance of an agreement.
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**Authority:** Sec. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2658.

**§ 124.1 Manufacturing license agreements and technical assistance agreements.**

(a) The approval of the Office of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Office of Defense Trade Controls. Such agreements are generally characterized as either Manufacturing license agreements, technical assistance agreements, distribution agreements or off-shore procurement agreements, and may not enter into force without the prior written approval of the Office of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in § 120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to § 125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, The Office of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter. Also, see § 126.8 of this subchapter for the requirements for prior approval of proposals relating to significant military equipment.

(b) *Classified Articles.* Copies of approved agreements involving the release of classified defense articles will be forwarded by the Office of Defense Trade Controls to the Defense Investigative Service of the Department of Defense.

(c) *Amendments.* Changes to the scope of approved agreements, including modifications, upgrades, or extensions must be submitted for approval. The amendments may not enter into force until approved by the Office of Defense Trade Controls.

(d) *Minor Amendments.* Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Office of Defense Trade Controls within thirty days after they are concluded.

**§ 124.2 Exemptions for training and military service.**

(a) Technical assistance agreements are not required for the provision of

training in the basic operation and maintenance of defense articles lawfully exported or authorized for export to the same recipient. This does not include training in intermediate and depot level maintenance.

(b) Services performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of § 120.9 of this subchapter.

**§ 124.3 Exports of technical data in furtherance of an agreement.**

(a) *Unclassified technical data.* District Directors of Customs or postal authorities shall permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Office of Defense Trade Controls and the technical data being exported does not exceed the scope or limitations of the relevant agreement. The U.S. party to the agreement must certify on the Shippers Export Declaration that the export does not exceed the scope of the agreement and any limitations imposed pursuant to this part. The approval of the Office of Defense Trade Controls must be obtained for the export of any unclassified technical data which may exceed the terms of the agreement.

(b) *Classified technical data.* The export of classified information in furtherance of an approved manufacturing license or technical assistance agreement which provides for the transmittal of classified information does not require further approval from the Office of Defense Trade Controls when:

(1) The United States party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitations in the agreement; and

(2) The U.S. party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of classified information and any other requirements of cognizant U.S. departments or agencies.

**§ 124.4 Deposit of signed agreements with the Office of Defense Trade Controls.**

The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Office of Defense Trade Controls not later than 30 days after it enters into force.

**§ 124.5 Proposed agreements that are not concluded.**

The United States party to any proposed manufacturing license agreement or technical assistance agreement must inform the Office of Defense Trade Controls if a decision is made not to conclude the agreement. The information must be provided within 60 days of the date of the decision. These requirements apply only if the approval of the Office of Defense Trade Controls was obtained for the agreement to be concluded (with or without any provisos).

**§ 124.6 Termination of manufacturing license agreements and technical assistance agreements.**

The U. S. party to a manufacturing license or a technical assistance agreement must inform the Office of Defense Trade Controls in writing of the impending termination of the agreement not less than 30 days prior to the expiration date of such agreement.

**§ 124.7 Information required in all manufacturing license agreements and technical assistance agreements.**

The following information must be included in all proposed manufacturing license agreements and technical assistance agreements. The information should be provided in terms which are as precise as possible. If the applicant believes that a clause or that required information is not relevant or necessary, the applicant may request the omission of the clause or information. The transmittal letter accompanying the agreement must state the reasons for any proposed variation in the clauses or required information.

(1) The agreement must describe the defense article to be manufactured and all defense articles to be exported, including any test and support equipment or advanced materials. They should be described by military nomenclature, contract number, National Stock Number, nameplate data, or other specific information. Supporting technical data or brochures should be submitted in seven copies. Only defense articles listed in the agreement will be eligible for export under the exemption in § 123.16(b)(1) of this subchapter.

(2) The agreement must specifically describe the assistance and technical data, including the design and manufacturing know-how involved, to be furnished and any manufacturing rights to be granted;

(3) The agreement must specify its duration; and

(4) The agreement must specifically identify the countries or areas in which manufacturing, production, processing, sale or other form of transfer is to be licensed.

**§ 124.8 Clauses required both in manufacturing license agreements and technical assistance agreements.**

The following statements must be included both in manufacturing license agreements and in technical assistance agreements:

(1) "This agreement shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government."

(2) "This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(5) "The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained."

(6) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

**§ 124.9 Additional clauses required only in manufacturing license agreements.**

(a) Clauses for all manufacturing license agreements. The following clauses must be included only in manufacturing license agreements:

(1) "No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government unless otherwise exempted by the U.S. Government. Sales or other

transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained."

(2) "It is agreed that sales by licensee or its sub-licensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others."

(3) "If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sub-licensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly."

(4) "If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sub-licensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a) (2) and (3) of this section, no other royalties, or fees or other charges may be assessed against U.S. Government funded purchases of such articles. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. See § 126.10(b) of this subchapter.

(6) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

> These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(b) Special clause for agreements relating to significant military equipment. With respect to an agreement for the production of significant military equipment, the following additional provisions must be included in the agreement:

(1) "A completed nontransfer and use certificate (DSP–83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place."

(2) "The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory."

### § 124.10 Nontransfer and use assurances.

A nontransfer and use certificate (Form DSP–83) (see § 123.10 of this subchapter) signed by the applicant and the foreign party to a manufacturing license agreement or technical assistance agreement is required as a condition to the approval of any such agreement which relates to significant military equipment, classified articles or classified technical data. The Office of Defense Trade Controls may in some cases require that this certificate or a comparable undertaking be provided before approving an agreement that does not relate to significant military equipment. The Office of Defense Trade Controls may also require as a condition of approval that an appropriate authority of the foreign party's government also execute the certificate or provide undertakings comparable to those contained in the Form DSP–83 (e.g., in a diplomatic note). Agreements involving classified articles or classified technical data should be accompanied by a nontransfer and use certificate signed by an authorized representative of the foreign government concerned unless the Office of Defense Trade Controls has granted an exception to this requirement.

### § 124.11 Certification to Congress for agreements.

Regardless of dollar value, a Technical Assistance Agreement or a Manufacturing License Agreement for or in a country not a member of NATO that involves the manufacture abroad of any item of significant military equipment (as defined in § 120.7 of this subchapter) shall be certified to Congress by the Department as required by 22 U.S.C. 2776(d). Additionally, any technical assistance agreement or manufacturing license agreement providing for the export of major defense equipment, as defined in § 120.8, sold under a contract in the amount of $14 million or more, or of defense articles or defense services sold under a contract in the amount of $50 million or more, shall be certified to Congress by the Department as required by 22 U.S.C. 2776(c)(1). The Office of Defense Trade Controls will not approve agreements requiring Congressional notification until 30 calendar days have elapsed since receipt by the Congress of the required certification without the Congress having enacted a joint resolution prohibiting the agreement.

### § 124.12 Required information in letters of transmittal.

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The original letter and seven copies of the letter and eight copies of the proposed agreement shall be submitted to the Office of Defense Trade Controls. The explanatory letter shall contain:

(1) A statement giving the applicant's Defense Trade Controls registration number.

(2) A statement identifying the licensee and the scope of the agreement.

(3) A statement identifying the U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government.

(4) A statement giving the military security classification of the equipment or technical data.

(5) A statement identifying any patent application which discloses any of the subject matter of the equipment or technical data covered by an invention

secrecy order issued by the U.S. Patent and Trademark Office.

(6) A statement of the actual or estimated value of the agreement, including the estimated value of all defense articles to be exported in furtherance of the agreement or amendments thereto. If the value is $500,000 or more, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to part 130 of this subchapter.

(7) A statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

(8) The agreement must describe any classified information involved and identify, from Department of Defense form DD254, the address and telephone number of the U.S. Government office that classified the information.

(9) For agreements that may require the export of classified information, the Defense Investigative Service cognizant security offices that have responsibility for the facilities of the U.S. parties to the agreement shall be identified. The facility security clearance codes of the U.S. parties shall also be provided.

(b) The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (the applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "The (applicant) will furnish the Department of State with one copy of the signed agreement (or amendment) within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days."

(4) "If this agreement grants any rights to sub-license, it will be amended to require that all sub-licensing arrangements incorporate all the provisions of the basic agreement that refer to the U.S. Government and the Department of State (i.e., 22 CFR 124.9 and 124.10)."

### § 124.13 Procurement by United States persons in foreign countries (offshore procurement).

Notwithstanding the other provisions in part 124 of this subchapter, the Office of Defense Trade Controls may authorize by means of a license (DSP–5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

(a) The contract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to an agency of the U.S. Government; and

(b) The technical data of U.S.-origin to be used in the foreign manufacture of defense articles does not exceed that required for bid purposes on a build-to-print basis (build-to-print means producing an end-item (i.e., system, subsystem or component) from technical drawings and specifications (which contain no process or know-how information) without the need for additional technical assistance). Release of supporting documentation (e.g., acceptance criteria, object code software for numerically controlled machines) is permissible. Build-to-print does not include the release of any information which discloses design methodology, engineering analysis, detailed process information or manufacturing know-how); and

(c) The contract or purchase order between the person in the United States and the foreign person:

(1) Limits the use of the technical data to the manufacture of the defense articles required by the contract or purchase order only; and

(2) Prohibits the disclosure of the data to any other person except subcontractors within the same country; and

(3) Prohibits the acquisition of any rights in the data by any foreign person; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and

(5) Requires the foreign person, including subcontractors, to destroy or return to the person in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of their terms; and

(6) Requires delivery of the defense articles manufactured abroad only to the person in the United States or to an agency of the U.S. Government; and

(d) The person in the United States provides the Office of Defense Trade Controls with a copy of each contract, purchase order or subcontract for offshore procurement at the time it is accepted. Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the license number or exemption under which the technical data was exported; and

(e) Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to extend beyond the period of validity of the license. If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements pursuant to § 126.4 or § 126.5 of this subchapter, the DSP–5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section. The exemptions under § 125.4 of this subchapter may not be used to establish offshore procurement arrangements.

### § 124.14 Exports to warehouses or distribution points outside the United States.

(a) Agreements (e.g., contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Office of Defense Trade Controls before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end-use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles unless an exemption under § 123.16(b)(1) of this subchapter is applicable.

(b) Required Information. Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Office of Defense Trade Controls for approval. The following information must be included in all such agreements:

(1) A description of the defense articles involved including test and support equipment covered by the U.S. Munitions List. This shall include when applicable the military nomenclature, the Federal stock number, nameplate data, and any control numbers under which the defense articles were developed or procured by the U.S. Government. Only those defense articles specifically listed in the agreement will be eligible for export under the exemption in § 123.16(b)(1) of this subchapter.

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(2) A detailed statement of the terms and conditions under which the defense articles will be exported and distributed;

(3) The duration of the proposed agreement;

(4) Specific identification of the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory or to other eligible entities as specified by the Office of Defense Trade Controls. Consequently, any deviation from this condition must be fully explained and justified. A nontransfer and use certificate (DSP–83) will be required to the same extent required in licensing agreements under § 124.9(b).

(c) Required statements. The following statements must be included in all warehousing and distribution agreements:

(1) "This agreement shall not enter into force, and may not be amended or extended, without the prior written approval of the Department of State of U.S. Government."

(2) "This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations.

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign by reason of the U.S. Government's approval of this agreement."

(5) "No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Defense Trade Controls of the U.S. Department of State."

(6) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 126.10(b) of this subchapter.)

(7) (Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.

(8) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

(9) Additional clause. Unless the articles covered by the agreement are in fact intended to be distributed to private persons or entities (e.g., sporting firearms for commercial resale, cryptographic devices and software for financial and business applications), the following clause must be included in all warehousing and distribution agreements: "Sales or other transfers of the licensed article shall be limited to governments of the countries in the distribution territory and to private entities seeking to procure the licensed article pursuant to a contract with a government within the distribution territory, unless the prior written approval of the U.S. Department of State is obtained."

(d) Special clauses for agreements relating to significant military equipment. With respect to agreements for the warehousing and distribution of significant military equipment, the following additional provisions must be included in the agreement:

(1) A completed nontransfer and use certificate (DSP–83) must be executed by the foreign end-user and submitted to the U.S. Department of State before any transfer may take place.

(2) The prior written approval of the U.S. Department of State must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside the approved distribution territory.

(e) *Transmittal Letters.* Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Office of Defense Trade Controls. The letter shall contain:

(1) A statement giving the applicant's Defense Trade Controls registration number.

(2) A statement identifying the foreign party to the agreement.

(3) A statement identifying the defense articles to be distributed under the agreement.

(4) A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other proposal to the U.S. Government.

(5) A statement that no classified defense articles or classified technical data are involved.

(6) A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(f) Required clauses. The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "(Applicant) will furnish the Department of State with one copy of the signed agreement (or amendment thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to expiration. If a decision is made not to conclude the proposed agreement, (applicant) will so inform the Department within 60 days."

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## PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

Sec.
125.1 Exports subject to this part.
125.2 Exports of unclassified technical data.
125.3 Exports of classified technical data and classified defense articles.
125.4 Exemptions of general applicability.
125.5 Exemptions for plant visits.
125.6 Certification requirements for exemptions.
125.7 Procedures for the export of classified technical data and other classified defense articles.
125.8 Filing of licenses for exports of unclassified technical data.
125.9 Filing of licenses and other authorizations for exports of classified technical data and classified defense articles.

**Authority:** Sections 2 and 38, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658.

### § 125.1 Exports subject to this part.

(a) The controls of this part apply to the export of technical data and the export of classified defense articles. Information which is in the public domain (see § 120.11 of this subchapter and § 125.4(b)(13)) is not subject to the controls of this subchapter.

(b) A license for the export of technical data and the exemptions in § 125.4 may not be used for foreign production purposes or for technical assistance unless the approval of the Office of Defense Trade Controls has been obtained. Such approval is generally provided only pursuant to the procedures specified in part 124 of this subchapter.

(c) Technical data authorized for export may not be reexported, transferred or diverted from the country of ultimate end-use or from the authorized foreign end-user (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Office of Defense Trade Controls.

(d) The controls of this part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Office of Defense Trade Controls to be subject to the controls of this subchapter.

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e) and Category XVI. The export of such data is controlled by the Department of Energy and the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978.

### § 125.2 Exports of unclassified technical data.

(a) A license (DSP–5) is required for the export of unclassified technical data unless the export is exempt from the licensing requirements of this subchapter. In the case of a plant visit, details of the proposed discussions must be transmitted to the Office of Defense Trade Controls for an appraisal of the technical data. Seven copies of the technical data or the details of the discussion must be provided.

(b) Patents. A license issued by the Office of Defense Trade Controls is required for the export of technical data whenever the data exceeds that which is used to support a domestic filing of a patent application or to support a foreign filing of a patent application whenever no domestic application has been filed. Requests for the filing of patent applications in a foreign country, and requests for the filing of amendments, modifications or supplements to such patents, should follow the regulations of the U.S. Patent and Trademark Office in accordance with 37 CFR part 5. The export of technical data to support the filing and processing of patent applications in foreign countries is subject to regulations issued by the U.S. Patent and Trademark Office pursuant to 35 U.S.C. 184.

(c) Disclosures. Unless otherwise expressly exempted in this subchapter, a license is required for the oral, visual or documentary disclosure of technical data by U.S. persons to foreign persons. A license is required regardless of the manner in which the technical data is transmitted (e.g., in person, by telephone, correspondence, electronic means, etc.). A license is required for such disclosures by U.S. persons in connection with visits to foreign diplomatic missions and consular offices.

### § 125.3 Exports of classified technical data and classified defense articles.

(a) A request for authority to export defense articles, including technical data, classified by a foreign government or pursuant to Executive Order 12356, successor orders, or other legal authority must be submitted to the Office of Defense Trade Controls for approval. The application must contain full details of the proposed transaction. It should also list the facility security clearance code of all U.S. parties on the license and include the Defense Investigative Service cognizant security office of the party responsible for packaging the commodity for shipment. A nontransfer and use certificate (Form DSP–83) executed by the applicant, foreign consignee, end-user and an authorized representative of the foreign government involved will be required.

(b) Classified technical data which is approved by the Office of Defense Trade Controls either for export or reexport after a temporary import will be transferred or disclosed only in accordance with the requirements in the Department of Defense Industrial Security Manual. Any other requirements imposed by cognizant U.S. departments and agencies must also be satisfied.

(c) The approval of the Office of Defense Trade Controls must be obtained for the export of technical data by a U.S. person to a foreign person in the U.S. or in a foreign country unless the proposed export is exempt under the provisions of this subchapter.

(d) All communications relating to a patent application covered by an invention secrecy order are to be addressed to the U.S. Patent and Trademark Office (see 37 CFR 5.11).

### § 125.4 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified technical data for which approval is not needed from the Office of Defense Trade Controls. These exemptions, except for paragraph (b)(13) of this section, do not apply to exports to proscribed destinations under § 126.1 of this subchapter or for persons considered generally ineligible under § 120.1(c) of this subchapter. The exemptions are also not applicable for purposes of establishing offshore procurement arrangements. If § 126.8 of this subchapter requirements are applicable, they must be met before an exemption under this section may be used. Transmission of classified information must comply with the requirements of the Department of Defense Industrial Security Manual and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) Technical data, including classified information, to be disclosed pursuant to an official written request or directive from the U.S. Department of Defense;

(2) Technical data, including classified information, in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State under part 124 of

this subchapter and which meet the requirements of § 124.3 of this subchapter;

(3) Technical data, including classified information, in furtherance of a contract between the exporter and an agency of the U.S. Government, if the contract provides for the export of the data and such data does not disclose the details of design, development, production, or manufacture of any defense article;

(4) Copies of technical data, including classified information, previously authorized for export to the same recipient. Revised copies of such technical data are also exempt if they pertain to the identical defense article, and if the revisions are solely editorial and do not add to the content of technology previously exported or authorized for export to the same recipient;

(5) Technical data, including classified information, in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient. Intermediate or depot-level repair and maintenance information may be exported only under a license or agreement approved specifically for that purpose;

(6) Technical data, including classified information, related to firearms not in excess of caliber .50 and ammunition for such weapons, except detailed design, development, production or manufacturing information;

(7) Technical data, including classified information, being returned to the original source of import;

(8) Technical data directly related to classified information which has been previously exported or authorized for export in accordance with this part to the same recipient, and which does not disclose the details of the design, development, production, or manufacture of any defense article;

(9) Technical data, including classified information, sent by a U.S. corporation to a U.S. person employed by that corporation overseas or to a U.S. Government agency. This exemption is subject to the limitations of § 125.1(b) and may be used only if:

(i) The technical data is to be used overseas solely by U.S. persons;

(ii) If the U.S. person overseas is an employee of the U.S. Government or is directly employed by the U.S. corporation and not by a foreign subsidiary; and

(iii) The classified information is sent overseas in accordance with the requirements of the Department of Defense Industrial Security Manual.

(10) Disclosures of unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their bona fide and full time regular employees. This exemption is available only if:

(i) The employee's permanent abode throughout the period of employment is in the United States;

(ii) The employee is not a national of a country to which exports are prohibited pursuant to § 126.1 of this subchapter; and

(iii) The institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the Office of Defense Trade Controls;

(11) Technical data, including classified information, for which the exporter, pursuant to an arrangement with the Department of Defense, Department of Energy or NASA which requires such exports, has been granted an exemption in writing from the licensing provisions of this part by the Office of Defense Trade Controls. Such an exemption will normally be granted only if the arrangement directly implements an international agreement to which the United States is a party and if multiple exports are contemplated. The Office of Defense Trade Controls, in consultation with the relevant U.S. Government agencies, will determine whether the interests of the United States Government are best served by expediting exports under an arrangement through an exemption (see also paragraph (b)(3) of this section for a related exemption);

(12) Technical data which is specifically exempt under part 126 of this subchapter; or

(13) Technical data approved for public release (i.e., unlimited distribution) by the cognizant U.S. Government department or agency or Directorate for Freedom of Information and Security Review. This exemption is applicable to information approved by the cognizant U.S. Government department or agency for public release in any form. It does not require that the information be published in order to qualify for the exemption.

### § 125.5 Exemptions for plant visits.

(a) A license is not required for the oral and visual disclosure of unclassified technical data during the course of a classified plant visit by a foreign person, provided (1) the classified visit has itself been authorized pursuant to a license issued by the Office of Defense Trade Controls; or (2) the classified visit was approved in connection with an actual or potential government-to-government program or project by a U.S. Government agency having classification jurisdiction over the classified defense article or classified technical data involved under Executive Order 12356 or other applicable Executive Order; and (3) the unclassified information to be released is directly related to the classified defense article or technical data for which approval was obtained and does not disclose the details of the design, development, production or manufacture of any other defense articles. In the case of visits involving classified information, the requirements of the Defense Industrial Security Manual (Department of Defense Manual 5220.22M) must be met.

(b) The approval of the Office of Defense Trade Controls is not required for the disclosure of oral and visual classified information to a foreign person during the course of a plant visit approved by the appropriate U.S. Government agency if (1) the requirements of the Defense Industrial Security Manual have been met, (2) the classified information is directly related to that which was approved by the U.S. Government agency, (3) it does not exceed that for which approval was obtained, and (4) it does not disclose the details of the design, development, production or manufacture of any defense articles.

(c) A license is not required for the disclosure to a foreign person of unclassified technical data during the course of a plant visit (either classified or unclassified) approved by the Office of Defense Trade Controls or a cognizant U.S. Government agency provided the technical data does not contain information in excess of that approved for disclosure. This exemption does not apply to technical data which could be used for design, development, production or manufacture of a defense article.

### § 125.6 Certification requirements for exemptions.

(a) To claim an exemption for the export of technical data under the provisions of §§ 125.4 and 125.5, an exporter must certify that the proposed export is covered by a relevant paragraph of that section. For § 125.4, certification consists of marking the package or letter containing the technical data: "22 CFR 125.4 (identify subsection) applicable." This certification must be made in written form and retained in the exporter's files for a period of five years. A Shippers Export Declaration is not required for

exports of unclassified technical data (see § 123.22 (d) of this subchapter.

(b) If a District Director of Customs or Postmaster is unavailable at the time of export, or if the export is via oral, visual, or electronic means, the exporter must also complete a written certification as indicated in paragraph (a) of this section.

**§ 125.7 Procedures for the export of classified technical data and other classified defense articles.**

(a) All applications for the export or temporary import of classified technical data or other classified defense articles must be submitted to the Office of Defense Trade Controls on Form DSP–85.

(b) An application for the export of classified technical data or other classified defense articles must be accompanied by seven copies of the data and a completed Form DSP–83 (see § 123.10 of this subchapter). Only one copy of the data or descriptive literature must be provided if a renewal of the license is requested. All classified materials accompanying an application must be transmitted to the Office of Defense Trade Controls in accordance with the requirements of the Defense Industrial Security Manual (Department of Defense Manual Number 5220.22–M).

**§ 125.8 Filing of licenses for exports of unclassified technical data.**

(a) Licenses for the export of unclassified technical data must be presented to the appropriate District Director of Customs or Postmaster at the time of shipment or mailing. The District Director of Customs or Postmaster will endorse and transmit the licenses to the Office of Defense Trade Controls in accordance with the instructions contained on the reverse side of the license.

(b) If a license for the export of unclassified technical data is used but not endorsed by U.S. Customs or a Postmaster for whatever reason (e.g., electronic transmission, unavailability of Customs officer or Postmaster, etc.), the person exporting the data must self-endorse the license, showing when and how the export took place. Every license must be returned to the Office of Defense Trade Controls when the total value authorized has been shipped or when the date of expiration has been reached, whichever occurs first.

**§ 125.9 Filing of licenses and other authorizations for exports of classified technical data and classified defense articles.**

Licenses and other authorizations for the export of classified technical data or classified defense articles will be forwarded by the Office of Defense Trade Controls to the Defense Investigative Service of the Department of Defense in accordance with the provisions of the Department of Defense Industrial Security Manual. The Office of Defense Trade Controls will forward a copy of the license to the applicant for the applicant's information. The Defense Investigative Service will return the endorsed license to the Office of Defense Trade Controls upon completion of the authorized export or expiration of the license, whichever occurs first.

## PART 126—GENERAL POLICIES AND PROVISIONS

Sec.

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**Authority:** Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, and 2791, and 2797); E.O. 11958, 42 FR 4311, E.O. 11322, 32 FR 119; 22 U.S.C. 2658.

**§ 126.1 Prohibited exports and sales to certain countries.**

(a) It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to: Albania, Armenia, Azerbaijan, Bulgaria, Byelarus, Cambodia, Cuba, Estonia, Georgia, Iran, Iraq, Libya, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, North Korea, Romania, Russia, South Africa, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, Liberia, Somalia, the Sudan, the former Yugoslavia, and Zaire) or for whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the Federal Register. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas.

(b) Shipments. A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

(c) South Africa. South Africa is subject to an arms embargo and thus to the policy specified in paragraph (a) of this section. Exceptions may be made to this policy only if the Assistant Secretary for Politico-Military Affairs determines that:

(1) The item is not covered by United Nations Security Council Resolution 418 of November 4, 1977; and

(2) The item is to be exported solely for commercial purposes and not for use by the armed forces, police, or other security forces of South Africa or for any other similar purpose.

(d) Terrorism. Exports to countries which the Secretary of State has determined to have repeatedly provided support for acts of international terrorism are contrary to the foreign policy of the United States and are thus subject to the policy specified in paragraph (a) of this section and the requirements of section 40 of the Arms Export Control Act (22 U.S.C. 2780) and the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986 (22 U.S.C. 4801, note). The countries in this category are: Cuba, Iran, Iraq, Libya, North Korea and Syria. The same countries are identified pursuant to section 6(j) of the Export Administration Act, as amended (50 U.S.C. App. 2405(j)).

(e) Proposed sales. No sale or transfer and no proposal to sell or transfer any defense articles, defense services or technical data subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Office of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately

inform the Office of Defense Trade Controls.

**§ 126.2 Temporary suspension or modification of this subchapter.**

The Director, Office of Defense Trade Controls, may order the temporary suspension or modification of any or all of the regulations of this subchapter in the interest of the security and foreign policy of the United States.

**§ 126.3 Exceptions.**

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Director, Office of Defense Trade Controls may make an exception to the provisions of this subchapter.

**§ 126.4 Shipments by or for United States Government agencies.**

(a) A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a defense service, by or for any agency of the U.S. Government (1) for official use by such an agency, or (2) for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means. This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are effected by a United States Government agency or when the export is covered by a United States Government Bill of Lading. This exemption, however, does not apply when a U.S. Government agency acts as a transmittal agent on behalf of a private individual or firm, either as a convenience or in satisfaction of security requirements. The approval of the Office of Defense Trade Controls must be obtained before defense articles previously exported pursuant to this exemption are permanently transferred (e.g., property disposal of surplus defense articles overseas) unless (i) the transfer is pursuant to a grant, sale, lease, loan or cooperative project under the Arms Export Control Act or a sale, lease or loan under the Foreign Assistance Act of 1961, as amended, or (ii) the defense articles have been rendered useless for military purposes beyond the possibility of restoration.

*Note: Special definition.* For purposes of this section, defense articles exported abroad for incorporation into a foreign launch vehicle or for use on a foreign launch vehicle or satellite that is to be launched from a foreign country shall be considered a permanent export.

(b) This section does not authorize any department or agency of the U.S. Government to make any export which is otherwise prohibited by virtue of other administrative provisions or by any statute.

(c) A license is not required for the temporary import, or temporary or permanent export, of any classified or unclassified defense articles, including technical data or the performance of a defense service, for end-use by a U.S. Government Agency in a foreign country under the following circumstances:

(1) The export or temporary import is pursuant to a contract with, or written direction by, an agency of the U.S. Government; and

(2) The end-user in the foreign country is a U.S. Government agency or facility, and the defense articles or technical data will not be transferred to any foreign person; and

(3) The urgency of the U.S. Government requirement is such that the appropriate export license or U.S. Government Bill of Lading could not have been obtained in a timely manner.

(d) A Shipper's Export Declaration (SED), required under § 123.22(c) of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate District Director of Customs or Department of Defense transmittal authority. A copy of the SED and the written certification statement shall be provided to the Office of Defense Trade Controls immediately following the export.

**§ 126.5 Canadian exemptions.**

(a) District Directors of Customs and postmasters shall permit the export or temporary import without a license of any unclassified defense article or any unclassified technical data to Canada for end-use in Canada by Canadian citizens or return to the United States, or from Canada for end-use in the United States or return to a Canadian citizen in Canada, with the exception of the articles or related technical data listed in paragraph (b) of this section.

(b) Exceptions. The exemptions of this section do not apply to the following articles and related technical data:

(1) Fully automatic firearms in Category I(a) which are not for end-use by the Federal Government, or a Provincial or Municipal Government of Canada;

(2) Nuclear weapons strategic delivery systems and all components, parts, accessories, attachments specifically designed for such systems and associated equipment;

(3) Nuclear weapon design and test equipment listed in Category XVI;

(4) Naval nuclear propulsion equipment listed in Category VI(e);

(5) Aircraft listed in Category VIII(a);

(6) Submersible and oceanographic vessels and related articles listed in Category XX (a) through (d).

(7) Technical data for use by a foreign national other than a Canadian.

(8) Unclassified technical data directly related to a classified defense article.

(c) Related requirements. The foregoing exemption from obtaining an export license does not exempt an exporter from complying with the requirements set forth in § 123.15 of this subchapter or from filing the Shipper's Export Declaration required by § 123.22 of this subchapter.

(d) Part 124 agreements. The requirements of part 124 of this subchapter must be complied with in the situations contemplated in that part. For example, the exemptions of this section may not be used for the provision of defense services except pursuant to an approved manufacturing license agreement or technical assistance agreement.

**§ 126.6 Foreign-owned military aircraft and naval vessels, and the Foreign Military Sales program.**

(a) A license from the Office of Defense Trade Controls is not required if:

(1)(i) The article or technical data to be exported was sold, leased, or loaned by the Department of Defense to a foreign country or international organization pursuant to the Arms Export Control Act or the Foreign Assistance Act of 1961, as amended, and

(ii) The article or technical data was delivered to representatives of such a country or organization in the United States; and

(iii) The article or technical data is to be exported from the United States on a military aircraft or naval vessel of that government or organization or via the Defense Transportation Service (DTS).

(b) Foreign military aircraft and naval vessels. A license is not required for the entry into the United States of military aircraft or naval vessels of any foreign state if no overhaul, repair, or modification of the aircraft or naval vessel is to be performed. However, Department of State approval for overflight (pursuant to the 49 U.S.C. 1508) and naval visits must be obtained from the Bureau of Politico-Military Affairs, Office of International Security Operations.

(c) Procedures for the Foreign Military Sales Program. (1) District Directors of Customs are authorized to permit the

export and temporary import of classified and unclassified defense articles, defense services and technical data without a license if the articles or technical data were sold, leased or loaned by the U.S. Department of Defense to foreign governments or international organizations under the Foreign Military Sales (FMS) program of the Arms Export Control Act. This procedure may be used only if a proposed export is:

(i) Pursuant to an executed U.S. Department of Defense Letter of Offer and Acceptance (DD Form 1513); and

(ii) Accompanied by a properly executed DSP–94, or in the case of a classified shipment, an approved Letter of Offer and Acceptance; and

(iii) Made by the relevant foreign diplomatic mission of the purchasing country or its authorized freight forwarder, provided that the freight forwarder is registered with the Office of Defense Trade Controls pursuant to part 122 of this subchapter, and, if classified defense articles or technical data are involved, has the requisite U.S. Government security clearance and a transportation plan has been approved as in § 126.6(a)(1), above and the defense articles or technical data are shipped in compliance with the Department of Defense Industrial Security Manual.

(2) Filing and documents.

(i) The original copy of completed Form DSP–94, together with one copy of the corresponding authenticated DD Form 1513 and a Shipper's Export Declaration, must be filed with the District Director of Customs at the port of exit prior to actual shipment. An executed DD Form 1513 is one which has been signed by:

(A) an authorized Department of Defense representative and countersigned by the Comptroller, Defense Security Assistance Agency (DSAA); and

(B) by an authorized representative of the foreign government.

(ii) SED or Outbound Manifest. The Shipper's Export Declaration or, if authorized, the outbound manifest, must be annotated as follows:

This shipment is being exported under the authority of Department of State Form DSP–94. It covers FMS Case (case identification), expiration date _____. 22 CFR 126.6 applicable. The U.S. Government point of contact is _____, telephone number _____.

### § 126.7 Denial, revocation, suspension, or amendment of licenses and other approvals.

(a) *Policy.* Licenses or approvals shall be denied or revoked whenever required by any statute of the United States (see §§ 127.6 and 127.10 of this subchapter). Any application for an export license or other approval under this subchapter may be disapproved, and any license or other approval or exemption granted under this subchapter may be revoked, suspended, or amended without prior notice whenever:

(1) The Department of State deems such action to be in furtherance of world peace, the national security or the foreign policy of the United States, or is otherwise advisable; or

(2) The Department of State believes that 22 U.S.C. 2778, any regulation contained in this subchapter, or the terms of any U.S. Government export authorization (including the terms of a manufacturing license or technical assistance agreement, or export authorization granted pursuant to the Export Administration Act, as amended) has been violated by any party to the export or other person having significant interest in the transaction; or

(3) An applicant is the subject of an indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(4) An applicant or any party to the export or the agreement has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(5) An applicant is ineligible to contract with, or to receive a license or other authorization to import defense articles or defense services from, any agency of the U.S. Government; or

(6) An applicant, any party to the export or agreement, any source or manufacturer of the defense article or defense service or any person who has a significant interest in the transaction has been debarred, suspended, or otherwise is ineligible to receive an export license or other authorization from any agency of the U.S. government (e.g., pursuant to debarment by the Department of Commerce under 15 CFR part 388 or by the Department of State under part 127 or 128 of this subchapter); or

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application or other request for approval under this subchapter or as required in the instructions in the applicable Department of State form; or

(8) An applicant is subject to sanctions under other relevant U.S. laws (e.g., the Missile Technology Controls title of the National Defense Authorization Act for FY 1991 (Pub. L. 101–510); the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (Pub. L. 102–182); or the Iran-Iraq Arms Non-Proliferation Act of 1992 (Pub. L. 102–484)).

(b) *Notification.* The Office of Defense Trade Controls will notify applicants or licensees or other appropriate United States persons of actions taken pursuant to paragraph (a) of this section. The reasons for the action will be stated as specifically as security and foreign policy considerations permit.

(c) *Reconsideration.* If a written request for reconsideration of an adverse decision is made within 30 days after a person has been informed of the decision, the U.S. person will be accorded an opportunity to present additional information. The case will then be reviewed by the Office of Defense Trade Controls.

(d) *Reconsideration of certain applications.* Applications for licenses or other requests for approval denied for repeated failure to provide information or documentation expressly required will normally not be reconsidered during the thirty day period following denial. They will be reconsidered after this period only after a final decision is made on whether the applicant will be subject to an administrative penalty imposed pursuant to this subchapter. Any request for reconsideration shall be accompanied by a letter explaining the steps that have been taken to correct the failure and to ensure compliance with the requirements of this subchapter.

(e) *Special definition.* For purposes of this section, the term *party to the export* means:

(1) The chief executive officer, president, vice-presidents, other senior officers and officials (e.g., comptroller, treasurer, general counsel) and any member of the board of directors of the applicant;

(2) The freight forwarders or designated exporting agent of the applicant; and

(3) Any consignee or end-user of any item to be exported.

### § 126.8 Proposals to foreign persons relating to significant military equipment.

(a) Certain proposals to foreign persons for the sale or manufacture abroad of significant military equipment require either the prior approval of, or prior notification to, the Office of Defense Trade Controls.

(1) Sale of significant military equipment: Prior approval requirement. The approval of the Office of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to purchase significant

military equipment on the U.S. Munitions List whenever all the following conditions are met:

(i) The value of the significant military equipment to be sold is $14,000,000 or more; and

(ii) The equipment is intended for use by the armed forces of any foreign country other than a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan; and

(iii) The sale would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data; and

(iv) The identical significant military equipment has not been previously licensed for permanent export or approved for sale under the Foreign Military Sales Program of the Department of Defense, to any foreign country.

(2) Sale of significant military equipment: Prior notification requirement. The Office Defense Trade Controls must be notified in writing at least thirty days in advance of any proposal or presentation concerning the sale of significant military equipment whenever the conditions specified in paragraphs (a)(1) (i) through (iii) of this section are met and the identical equipment has been previously licensed for permanent export or approved for sale under the FMS Program to any foreign country.

(3) Manufacture abroad of significant military equipment: Prior approval requirement. The approval of the Office of Defense Trade Controls is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value, in any foreign country, whenever:

(i) The equipment is intended for use by the armed forces of any foreign country; and

(ii) The agreement would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data.

(b) *Definition of proposal or presentation.* The terms proposal or presentation (designed to constitute a basis for a decision to purchase and to enter into any agreement) mean the communication of information in sufficient detail that the person communicating that information knows or should know that it would permit an intended purchaser to decide either to acquire the particular equipment in question or to enter into the manufacturing license agreement or technical assistance agreement. For example, a presentation which describes the equipment's performance characteristics, price, and probable availability for delivery would require prior notification or approval, as appropriate, where the conditions specified in paragraph (a) of this section are met. By contrast, the following would not require prior notification or approval: Advertising or other reporting in a publication of general circulation; preliminary discussions to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular item of significant military equipment.

(c) *Satisfaction of requirements.* (1) The requirement of this section for prior approval is met by any of the following:

(i) A written statement from the Office of Defense Trade Controls approving the proposed sale or agreement or approving the making of a proposal or presentation.

(ii) A license issued under § 125.2 or § 125.3 of this subchapter for the export of technical data relating to the proposed sale or agreement to the country concerned.

(iii) A temporary export license issued under § 123.5 of this subchapter relating to the proposed sale or agreement for a demonstration to the armed forces of the country of export.

(iv) With respect to manufacturing license agreements or technical assistance agreements, the application for export licenses pursuant to the two preceding subparagraphs must state that they are related to possible agreements of this kind.

(2) The requirement of this section for prior notification is met by informing the Office of Defense Trade Controls by letter at least 30 days before making the proposal or presentation. The letter must comply with the procedures set forth in paragraph (d) of this section and must identify the relevant license, approval, or FMS case by which the identical equipment had previously been authorized for permanent export or sale. The Office of Defense Trade Controls will provide written acknowledgement of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(d) *Procedures.* Unless a license has been obtained pursuant to § 126.8(c)(1) (ii) or (iii), a request for prior approval to make a proposal or presentation with respect to significant military equipment, or a 30-day prior notification regarding the sale of such equipment, must be made by letter to the Office of Defense Trade Controls. The letter must outline in detail the intended transaction, including usage of the equipment involved and the country (or countries) involved. Seven copies of the letter should be provided as well as seven copies of suitable descriptive information concerning the equipment.

(e) *Statement to accompany licensing requests.* (1) Every application for an export license or other approval to implement a sale or agreement which meets the criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific notification made or approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior notification or approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the criteria specified in paragraph (a) of this section.

(f) *Penalties.* In addition to other remedies and penalties prescribed by law or this subchapter, a failure to satisfy the prior approval or prior notification requirements of this section may be considered to be a reason for disapproval of a license, agreement or sale under the FMS program.

(g) *License for technical data.* Nothing in this section constitutes or is to be construed as an exemption from the licensing requirement for the export of technical data that is embodied in any proposal or presentation made to any foreign persons.

### § 126.9 Advisory opinions.

Any person desiring information as to whether the Office of Defense Trade Controls would be likely to grant a license or other approval for the export of a particular defense article or defense service to a particular country may request an advisory opinion from the Office of Defense Trade Controls. These opinions are not binding on the Department of State and are revocable. A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service.

**§ 126.10 Disclosure of information.**

(a) *Freedom of Information.* Subchapter R of this title contains regulations on the availability to the public of information and records of the Department of State. The provisions of subchapter R apply to such disclosures by the Office of Defense Trade Controls.

(b) *Determinations required by law.* Section 38 of the Arms Export Control Act (22 U.S.C. 2778) provides that certain information required by the Department of State in connection with the licensing process may generally not be disclosed to the public unless certain determinations relating to the national interest are made in accordance with the procedures specified by that provision. Determinations required by section 38(e) shall be made by the Assistant Secretary of State for Politico-Military Affairs.

(c) *Information required under part 130.* Part 130 of this subchapter contains specific provisions on the disclosure of information described in that part.

(d) *National Interest Determinations.* In accordance with section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)), the Secretary of State has determined that the following disclosures are in the national interest of the United States:

(1) Furnishing information to foreign governments for law enforcement or regulatory purposes; and

(2) Furnishing information to foreign governments and other agencies of the U.S. Government in the context of multilateral or bilateral export regimes (e.g., the Missile Technology Control Regime, the Australia Group, and CoCoM).

**§ 126.11 Relations to other provisions of law.**

The provisions in this subchapter are in addition to, and are not in lieu of, any other provisions of law or regulations. The sale of firearms in the United States, for example, remains subject to the provisions of the Gun Control Act of 1968 and regulations administered by the Department of the Treasury. The performance of defense services on behalf of foreign governments by retired military personnel continues to require consent pursuant to Part 3a of this title. Persons who intend to export defense articles or furnish defense services should consequently not assume that satisfying the requirements of this subchapter relieves one of other requirements of law.

**§ 126.12 Continuation in force.**

All determinations, authorizations, licenses, approvals of contracts and agreements and other action issued, authorized, undertaken, or entered into by the Department of State pursuant to section 414 of the Mutual Security Act of 1954, as amended, or under the previous provisions of this subchapter, continue in full force and effect until or unless modified, revoked or superseded by the Department of State.

**§ 126.13 Required information.**

(a) All applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, all requests for other written authorizations, and all 30-day prior notifications of sales of significant military equipment under § 126.8(c) must include a letter signed by a responsible official empowered by the applicant and addressed to the Director, Office of Defense Trade Controls, stating whether:

(1) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976);

(2) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government;

(3) To the best of the applicant's knowledge, any party to the export as defined in § 126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976), or is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from any agency of the U.S. government; and

(4) The natural person signing the application, notification or other request for approval (including the statement required by this subsection) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such a residence) under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a), section 101(a)20, 60 Stat. 163), or is an official of a foreign government entity in the United States.

(b) In addition, all applications for licenses must include, on the application or an addendum sheet, the complete names and addresses of all U.S. consignors and freight forwarders, and all foreign consignees and foreign intermediate consignees involved in the transaction. If there are multiple consignors, consignees or freight forwarders, and all the required information cannot be included on the application form, an addendum sheet and seven copies containing this information must be provided. The addendum sheet must be marked at the top as follows: "Attachment to Department of State License From (insert DSP–5, 61, 73, or 85, as appropriate) for Export of (insert commodity) valued at (insert U.S. dollar amount) to (insert country of ultimate destination)." The Office of Defense Trade Controls will impress one copy of the addendum sheet with the Department of State seal and return it to the applicant with each license. The sealed addendum sheet must remain attached to the license as an integral part thereof. District Directors of Customs and Department of Defense transmittal authorities will permit only those U.S. consignors or freight forwarders listed on the license or sealed addendum sheet to make shipments under the license, and only to those foreign consignees named on the documents. Applicants should list all freight forwarders who may be involved with shipments under the license to ensure that the list is complete and to avoid the need for amendments to the list after the license has been approved. If there are unusual or extraordinary circumstances that preclude the specific identification of all the U.S. consignors and freight forwarders and all foreign consignees, the applicant must provide a letter of explanation with each application.

(c) In cases when foreign nationals are employed at or assigned to security-cleared facilities, provision by the applicant of a Technology Control Plan (available from the Defense Investigative Service) will facilitate processing.

## PART 127—VIOLATIONS AND PENALTIES

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**Authority:** Secs. 2, 38 and 42, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311, 22 U.S.C. 401; 22 U.S.C. 2658.

### § 127.1 Violations.

(a) It is unlawful:

(1) To export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls;

(2) To import or attempt to import any defense article whenever a license is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls;

(3) To conspire to export, import, reexport or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required by this subchapter without first obtaining the required license or written approval from the Office of Defense Trade Controls; or

(4) To violate any of the terms or conditions of licenses or approvals granted pursuant to this subchapter.

(b) Any person who is granted a license or other approval under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferor.

(c) A person with knowledge that another person is then ineligible pursuant to §§ 120.1(c) of this subchapter or 126.7 of this chapter, is then subject to an order of debarment, or interim suspension, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Office of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) for such debarred, suspended, or ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which may involve any defense article or the furnishing of any defense service for which a license or approval is required by this subchapter for export, where such debarred, suspended, or ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(d) No person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

### § 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778 and 22 U.S.C. 2779.

(b) For the purpose of this section, *export or temporary import control documents* include the following:

(1) An application for a permanent export or a temporary import license and supporting documents.
(2) Shipper's Export Declaration.
(3) Invoice.
(4) Declaration of destination.
(5) Delivery verification.
(6) Application for temporary export.
(7) Application for registration.
(8) Purchase order.
(9) Foreign import certificate.
(10) Bill-of-lading.
(11) Airway bill.
(12) Nontransfer and use certificate.
(13) Any other document used in the regulation or control of a defense article, defense service or technical data for which a license or approval is required by this subchapter.

### § 127.3 Penalties for violations.

Any person who willfully:

(a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application or report required by section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2278 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

### § 127.4 Authority of U.S. Customs Service officers.

(a) U.S. Customs Service officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) U.S. Customs Service officers have the authority to investigate, detain or seize any export or attempted export of defense articles or technical data contrary to this subchapter.

(c) Upon the presentation to a Customs Officer of a license or written approval authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs Service.

### § 127.5 Authority of the Defense Investigative Service.

In the case of exports involving classified technical data or defense articles, the Defense Investigative Service may take appropriate action to ensure compliance with the Department of Defense Industrial Security Manual. Upon a request to the Defense Investigative Service regarding the export of any classified defense article or technical data, the Defense

Investigative Service official or a designated government transmittal authority may require the production of other relevant documents and information relating to the proposed export.

**§ 127.4 Seizure and forfeiture in attempts at illegal exports.**

(a) An attempt to export from the United States any defense articles in violation of the provisions of this subchapter constitutes an offense punishable under section 401 of title 22 of the United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a temporary export or temporary import license was issued pursuant to this subchapter or to violate the requirements of § 123.2 of this subchapter also constitutes an offense punishable under section 401 of Title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject to seizure, forfeiture, and disposition as provided in section 401 of title 22 of the United States Code.

**§ 127.7 Debarment.**

(a) In implementing section 38 of the Arms Export Control Act, the Assistant Secretary of State for Politico-Military Affairs may prohibit any person from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by this subchapter for any of the reasons listed below. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State for Politico-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a period of three years.

(b) Grounds. (1) The basis for a statutory debarment, as described in paragraph (c) of this section, is any conviction for violating the Arms Export Control Act (see § 127.3 of this subchapter) or any conspiracy to violate the Arms Export Control Act.

(2) The basis for administrative debarment, described in part 128 of this subchapter, is any violation of 22 U.S.C. 2778 or any rule or regulation issued thereunder when such a violation is of such a character as to provide a reasonable basis for the Office of Defense Trade Controls to believe that the violator cannot be relied upon to comply with the statute or these rules or regulations in the future, and when such violation is established in accordance with part 128 of this subchapter.

(c) Statutory Debarment. Section 38(g)(4) of the Arms Export Control Act prohibits the issuance of licenses to persons who have been convicted of violating the U.S. criminal statutes enumerated in § 120.27 of this subchapter. Discretionary authority to issue licenses is provided, but only if certain statutory requirements are met. It is the policy of the Department of State not to consider applications for licenses or requests for approvals involving any person who has been convicted of violating the Arms Export Control Act or convicted of conspiracy to violate that Act for a three year period following conviction. Such individuals shall be notified in writing that they are debarred pursuant to this policy. A list of persons who have been convicted of such offenses and debarred for this reason shall be published periodically in the **Federal Register**. Debarment in such cases is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. The procedures of part 128 of this subchapter are not applicable in such cases.

(d) Appeals. Any person who is ineligible pursuant to paragraph (c) of this section may appeal to the Under Secretary of State for International Security Affairs for reconsideration of the ineligibility determination. The procedures specified in § 128.13 of this subchapter are applicable in such appeals.

**§ 127.8 Interim suspension.**

(a) The Director of the Office of Defense Trade Controls is authorized to order the interim suspension of any person when the Director believes that grounds for debarment (as defined in § 127.6 of this part) exist and where and to the extent the Director finds that interim suspension is reasonably necessary to protect world peace or the security or foreign policy of the United States. The interim suspension orders prohibit that person from participating directly or indirectly in the export of any defense article or defense service for which a license or approval is required by this subchapter. The suspended person shall be notified in writing as provided in § 127.6(c) of this part (statutory debarment) or § 128.3 of this subchapter (administrative debarment), whichever is appropriate. In both cases, a copy of the interim suspension order will be served upon that person in the same manner as provided in § 128.3 of this subchapter. The interim suspension order may be made immediately effective, without prior notice. The order will state the relevant facts, the grounds for issuance of the order, and describe the nature and duration of the interim suspension. No person may be suspended for a period exceeding 60 days unless proceedings under § 127.6(c) of this part or under part 128 of this subchapter, or criminal proceedings, are initiated before the expiration of that period.

(b) A motion or petition to vacate or modify an interim suspension order may be filed at any time with the Under Secretary of State for International Security Affairs. After a final decision is reached, the Director of the Office of Defense Trade Controls will issue an appropriate order disposing of the motion or petition and will promptly inform the respondent accordingly.

**§ 127.9 Applicability of orders.**

For the purpose of preventing evasion, orders of the Assistant Secretary of State for Politico-Military Affairs, debarring a person under § 127.6 and orders of the Director, Office of Defense Trade Controls, suspending a person under § 127.7 may be made applicable to any other person who may then or thereafter (during the term of the order) be related to the debarred person by affiliation, ownership, control, position of responsibility, or other commercial connection. Appropriate notice and opportunity to respond to charges will be given.

**§ 127.10 Civil penalty.**

(a) The Assistant Secretary of State for Politico-Military Affairs, Department of State, is authorized to impose a civil penalty in an amount not to exceed that authorized by 50 U.S.C. App. 2410(c) for each violation of 22 U.S.C. 2778, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Office of Defense Trade Controls may make:

(1) The payment of a civil penalty under this section or

(2) The completion of any administrative action pursuant to this part 127 or 128 of this subchapter a prior condition for the issuance, restoration, or continuing validity of any export license or other approval.

**§ 127.11 Past violations.**

(a) Pursuant to section 38 of the Arms Export Control Act, licenses or other approvals may not be granted to persons who have been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter or who are ineligible to receive any export licenses from any agency of the U.S. government, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. This presumption is applied by the Office of Defense Trade Controls to all persons convicted or deemed ineligible in this manner since the effective date of the Arms Export Control Act (Pub. L. 94–329; 90 Stat. 729) (June 30, 1976).

(b) Policy. An exception to the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section shall not be considered unless there are extraordinary circumstances surrounding the conviction or ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Bureau of Politico-Military Affairs, that the applicant has taken appropriate steps to mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the Director, Office of Defense Trade Controls, the reasons why the application should be considered. If the Bureau of Politico-Military Affairs concludes that the application and written explanation have sufficient merit, it shall consult with the Office of the Legal Adviser and the Department of the Treasury regarding law enforcement concerns, and may also request the views of other departments, including the Department of Justice. If the Office of Defense Trade Controls does grant the license or other approval, subsequent applications from the same person need not repeat the information previously provided but should instead refer to the favorable decision.

(c) Debarred persons. Persons debarred pursuant to § 127.6(c) (statutory debarment) may not utilize the procedures provided by this section while the debarment is in force. Such persons may utilize only the procedures provided by § 127.7(d) of this part.

**§ 127.12 Voluntary Disclosures.**

(a) *General policy.* The Department strongly encourages the disclosure of information to the Office of Defense Trade Controls by persons, firms or any organization that believe they may have violated any export control provision of the Arms Export Control Act, or any regulations, order, license, or other authorization issued under the Arms Export Control Act. Voluntary self-disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that should be imposed by the Department. Failure to report such violation(s) may result in circumstances detrimental to U.S. national security and foreign policy interests.

(b) *Limitations.* (1) The provisions of this section apply only when information is provided to the Office of Defense Trade Controls for its review in determining whether to take administrative action under part 128 of this subchapter concerning violation(s) of the export control provisions of the Arms Export Control Act and these regulations.

(2) The provisions of this section apply only when information is received by the Office of Defense Trade Controls for review prior to such time that either the Department of State or any other agency, bureau or department of the United States Government obtains knowledge of either the same or substantially similar information from another source and commenced an investigation or inquiry that involves that information, and that is intended to determine whether the Arms Export Control Act or these regulations, or any other license, order or other authorization issued under the Arms Export Control Act has been violated.

(3) It is possible that the activity in question—despite voluntary disclosure—might merit penalties, administrative actions, sanctions, or referrals to the Department of Justice for consideration as to whether criminal prosecution is warranted. In the latter case, the Office of Defense Trade Controls will notify the Department of Justice of the voluntary nature of the disclosure although the Department of Justice is not required to give that fact any weight. The Office of Defense Trade Controls has the sole discretion to consider whether "voluntary disclosure," in context with other relevant information in a particular case, should be a mitigating factor in determining what, if any, administrative action will be imposed. Some of the mitigating factors the Office of Defense Trade Controls may consider are:

(i) Whether the transaction would have been authorized had proper application been made;

(ii) Why the violation(s) occurred;

(iii) The degree of cooperation with the ensuing investigation;

(iv) Whether the person or firm has instituted or improved an internal compliance program to reduce the likelihood of future violation(s);

(v) Whether the person making the disclosure did so with the full knowledge and authorization of the firm's senior management. (If not, then a firm will not be deemed to have made a disclosure as covered in this section.)

(4) The provisions of this section do not, nor should they be relied on, to create, confer, or grant any rights, benefits, privileges, or protection enforceable at law or in equity by any person, business, or entity in any civil, criminal, administrative, or other matter.

(c) *Notification.* (1) Any person or firm wanting to disclose information that constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify the Office of Defense Trade Controls as soon as possible after violation(s) are discovered and then conduct a thorough review of all export-related transactions where violation(s) are suspected.

(2) Notification of violation(s) must be in writing and should include the following information:

(i) A precise description of the nature and extent of the violation(s) (e.g., an unauthorized shipment, doing business with a party denied U.S. export privileges, etc.);

(ii) The exact circumstances surrounding the violation(s) (a thorough explanation of why, when, where, and how the violation(s) occurred);

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violation(s);

(iv) Export license numbers, if applicable;

(v) U.S. Munitions List category and subcategory, product descriptions, quantities, and characteristics of the commodities or technical data involved;

(vi) A description of any corrective actions already undertaken;

(vii) The name and address of the person(s) making the disclosure and a point of contact, if different, should further information be needed.

(3) Factors to be considered include, for example, whether the violation(s) were intentional or inadvertent; the degree to which the person or firm responsible for the violation(s) making the disclosure was familiar with the

laws and regulations; and whether the violator was the subject of prior administrative or criminal action under the AECA. In addition to immediately providing written notification, persons, firms, companies and organizations are strongly urged to conduct a thorough review of all export-related transactions where possible violation(s) are suspected.

(d) *Documentation. (1) The written disclosure should be accompanied by copies of those documents that substantiate it. Where appropriate, the documentation should include, but is not limited to:*

(i) Licensing documents (e.g., license applications, export licenses and end-user statements);

(ii) Shipping documents (e.g., shipper's export declarations, airway bills and bills of leding);

(iii) Any other relevant documents must be retained by the person making the disclosure until the Office of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.

(e) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a firm, corporation or any other organization should be executed by someone with the authority to do so.

(f) *Oral presentations.* It is generally not necessary to augment the written presentation with an oral presentation. However, if the person making the disclosure believes a meeting is desirable, a request for one should be included with the written presentation.

(g) Voluntary disclosures should be sent to:

Compliance Analysis Division, PM/DTC, SA–6, room 200, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, U.S. Department of State, Washington, DC 20522–0502.

## PART 128—ADMINISTRATIVE PROCEDURES

Sec.

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**Authority:** Secs. 2, 38, 40, 42, and 71, Arms Export Control Act. 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311: 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

### § 128.1 Exclusion of functions from the Administrative Procedure Act.

The Arms Export Control Act authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. It authorizes the Secretary of State to make decisions on whether licenses shall be granted, as well as to revoke, suspend or amend licenses whenever the Secretary deems such action to be advisable. The administration of the Arms Export Control Act is a foreign affairs function and is thus encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the Arms Export Control Act, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

### § 128.2 Presiding Official.

The Presiding Official referred to in this part is the Presiding Official of the International Trade Administration of the Department of Commerce, as provided in 15 CFR 388.2. The Presiding Official is authorized to exercise the powers and perform the duties provided for in §§ 127.6, 127.7 of this subchapter and §§ 128.3 through 128.16.

### § 128.3 Institution of administrative proceedings.

(a) *Charging letters.* The Director, Office of Munitions Control, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate debarment proceedings in accordance with § 127.6 of this subchapter or civil penalties in accordance with § 127.9 of this subchapter. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice that if the respondent to answer the charges with 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within 7 days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

(1) If the respondent is a resident of the United States, when it is mailed postage prepaid in a wrapper addressed to the respondent at his or her last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an agreement or understanding between the United States Government and the government of the country wherein the respondent resident permitting this action.

### § 128.4 Default.

(a) *Failure to answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Presiding Official for consideration in a manner as the Presiding Official may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted in duplicate to the Assistant Secretary for Politico-Military Affairs, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The Director will refer the petition to the Presiding Official for consideration and a recommendation. The Presiding Official will consider the application and may order a hearing and require the respondent to submit further evidence

in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

**§ 128.5 Answer and Demand for oral hearing.**

(a) *When to answer.* The respondent is required to answer the charging letter within 30 days after service.

(b) *Contents of answer.* An answer must be responsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as a denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If the respondent does not demand an oral hearing, he or she shall transmit, within 7 days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any such materials are in language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the Office of EAR Administration Proceedings, United States Department of Commerce, room 3810, 14th Street and Constitution Avenue, NW., Washington, DC 20230. A copy shall be simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, DC 20520.

**§ 128.6 Discovery.**

(a) *Discovery by the respondent.* The respondent, through the Presiding Official, may request from the Office of Munitions Control any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Munitions Control any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Munitions Control may supply summaries in place of original documents and may withhold information from discovery if necessary to comply with any statute, executive order or regulation requiring that the information not be disclosed. The respondent may request the Presiding Officer to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Munitions Control.* The Office of Munitions Control or the Presiding Official may request from the respondent admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope, and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Presiding Official may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records, and other documentary or physical evidence determined by the Presiding Official to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) *Enforcement of discovery rights.* If the Office of Munitions Control fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Presiding Official may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Munitions Control or the Presiding Official, on her or his own motion or motion of the Office of Munitions Control, and upon such notice to the respondent as the Presiding Official may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Presiding Official deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Presiding Official shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Presiding Official shall dismiss the charges.

**§ 128.7 Prehearing conference.**

(a) The Presiding Official may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider (1) simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) such other matter as may expedite the disposition of the proceeding. The Presiding Official will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties. The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Presiding Official.

(b) If a conference is impracticable, the Presiding Official may request the parties to correspond with him or her to achieve the purposes of a conference. The Presiding Official shall prepare a summary of action taken as in the case of a conference.

**§ 128.8 Hearings.**

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Presiding Official as provided in § 128.4(a). If any answer is filed, but no oral hearing demanded, the Presiding Official may proceed to consider the case upon the written pleadings and evidence available. The Presiding Official may provide for the making of the record in such manner as the Presiding Official deems appropriate. If respondent answers and demands an oral hearing, the Presiding Official, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) The Presiding Official may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Presiding Official, the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Presiding Official. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

**§ 128.9 Proceedings before and report of Presiding Official.**

(a) The Presiding Official may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Presiding Official, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Presiding Official's recommendations. It shall be transmitted to the Assistant Secretary for Politico-Military Affairs, Department of State.

**§ 128.10 Disposition of proceedings.**

Where the evidence is not sufficient to support the charges, the Director, Office of Munitions Control or the Presiding Official will dismiss the charges. Where the Presiding Official finds that a violation has been committed, the Presiding Official's recommendation shall be advisory only. The Assistant Secretary for Politico-Military Affairs will review the record, consider the report of the Presiding Official, and make an appropriate disposition of the case. The Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.6 of this subchapter, impose a civil penalty as provided in § 127.9 of this subchapter or take such other action as the presiding Official deems appropriate. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Presiding Official's report will be served upon the respondent.

**§ 128.11 Consent agreements.**

(a) The Office of Munitions Control and the respondent may, by agreement, submit to the Presiding Official a proposal for the issuance of a consent order. The Presiding Official will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Presiding Official does not approve the proposal, the Presiding Official will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Presiding Official will report the facts of the case along with recommendations to the Assistant Secretary for Politico-Military Affairs. If the Director does not approve the proposal, the case will proceed as though no consent proposal has been made. If the Director approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for the approval and signature of the Assistant Secretary for Politico-Military Affairs, and no action by the Presiding Official shall be required. Cases which are settled may not be reopened or appealed.

**§ 128.12 Rehearings.**

The Presiding Official may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Presiding Official will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (described in § 128.10).

**§ 128.13 Appeals.**

(a) *Filing of appeals.* An appeal must be in writing, and be addressed to and filed with the Under Secretary of State for Security Assistance, Science and Technology, Department of State, Washington, DC 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

(b) *Grounds and conditions for appeal.* The respondent may appeal from the debarment or from the imposition of a civil penalty (except the imposition of civil penalties pursuant to a consent order pursuant to § 128.11) upon the ground: (1) That the findings of a violation are not supported by any substantial evidence; (2) that a prejudicial error of law was committed: or (3) that the provisions of the order are arbitrary, capricious, or an abuse of discretion. The appeal must specify upon which of these grounds the appeal is based and must indicate from which provisions of the order the appeal is taken. An appeal from an order issued upon default will not be entertained if the respondent has failed to seek relief as provided in § 128.4(b).

(c) *Matters considered on appeal.* An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Presiding Official, the report of the Presiding Official, the order of the Assistant Secretary for Politico-Military Affairs, and any other relevant documents involved in the proceedings before the Presiding Official. The Under Secretary for Security Assistance, Science and Technology may direct a rehearing and reopening before the Presiding Official if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearings.

(d) *Effect of appeals.* The taking of an appeal will not stay the operation of any order.

(e) *Preparation of appeals.*—(1) *General requirements.* An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed or delivered to the Director, Office of Munitions Control, Department of State, Washington, DC 20520.

(2) *Oral presentation.* The Under Secretary for Security Assistance, Science and Technology may grant the appellant an opportunity for oral argument and will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary for Security Assistance, Science and Technology will be final.

**§ 128.14 Confidentiality of proceedings.**

Proceedings under this part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential Reports of the Presiding Official and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

**§ 128.15 Orders containing probationary periods.**

(a) *Revocation of probationary periods.* A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Munitions Control, may apply, without notice to any person to be affected thereby, to the Presiding Official for an order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Presiding Official, who will report thereon and make a recommendation to the Assistant Secretary for Politico-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearing*—(1) *Objections upon notice.* Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Presiding Official.

(2) *Objections to order without notice.* Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Presiding Official. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objections.* Objections filed with the Presiding Official must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Office of Munitions Control. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination.* The application and objections thereto will be referred to the Presiding Official. An oral hearing, if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Presiding Official will report the facts and make a recommendation to the Assistant Secretary for Politico-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Presiding Official's report will be furnished to any person affected thereby.

(c) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

**§ 128.16 Extension of time.**

The Presiding Official, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by this part 128.

**§ 128.17 Availability of orders.**

All charging letters, debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.

## PART 129—[RESERVED]

## PART 130—POLITICAL CONTRIBUTIONS, FEES AND COMMISSIONS

Sec.

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**Authority:** Sec. 39, Arms Export Control Act, 90 Stat. 767 (22 U.S.C. 2779); E.O. 11958, 42 FR 4311, 3 CFR, 1977 Comp. p.79; 22 U.S.C. 2658.

**§ 130.1 Purpose.**

Section 39(a) of the Arms Export Control Act (22 U.S.C. 2779) provides that the Secretary of State shall prescribe regulations with respect to reporting on certain payments relating to sales of defense articles and defense services. The provisions of this part implement that requirement. Definitions which apply to this part are contained in §§ 130.2 through 130.8.

**§ 130.2 Applicant.**

*Applicant* means any person who applies to the Office of Defense Trade Controls for any license or approval required under this subchapter for the export of defense articles or defense services valued in an amount of $500,000 or more which are being sold commercially to or for the use of the armed forces of a foreign country or international organization. This term also includes a person to whom the required license or approval has been given.

**§ 130.3 Armed forces.**

*Armed forces* means the army, navy, marine, air force, or coast guard, as well as the national guard and national police, of a foreign country. This term also includes any military unit or military personnel organized under or assigned to an international organization.

**§ 130.4 Defense articles and defense services.**

*Defense articles and defense services* have the meaning given those terms in paragraphs (3), (4) and (7) of section 47 of the Arms Export Control Act (22 U.S.C. 2794 (3), (4), and (7)). When used with reference to commercial sales, the definitions in §§ 120.6 and 120.9 of this subchapter apply.

**§ 130.5 Fee or commission.**

(a) *Fee or commission* means, except as provided in paragraph (b) of this section, any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is:

(1) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with an applicant, a supplier or a vendor; and

(2) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

(b) The term fee or commission does not include:

(1) A political contribution or a payment excluded by § 130.6 from the definition of political contribution;

(2) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of an applicant, supplier or vendor;

(3) General advertising or promotional expenses not directed to any particular sale or purchaser; or

(4) Payments made, or offered or agreed to be made, solely for the purchase by an applicant, supplier or vendor of specific goods or technical, operational or advisory services, which

payments are not disproportionate in amount with the value of the specific goods or services actually furnished.

**§ 130.6 Political contribution.**

*Political contribution* means any loan, gift, donation or other payment of $1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is:

(a) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed or otherwise designated as an employee or officer thereof; and

(b) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

**§ 130.7 Supplier.**

*Supplier* means any person who enters into a contract with the Department of Defense for the sale of defense articles or defense services valued in an amount of $500,000 or more under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

**§ 130.8 Vendor.**

*Vendor* means any distributor or manufacturer who, directly or indirectly, furnishes to an applicant or supplier defense articles valued in an amount of $500,000 or more which are end-items or major components as defined in § 121.8 of this subchapter. It also means any person who, directly or indirectly, furnishes to an applicant or supplier defense articles or services valued in an amount of $500,000 or more when such articles or services are to be delivered (or incorporated in defense articles or defense services to be delivered) to or for the use of the armed forces of a foreign country or international organization under:

(1) A sale requiring a license or approval from the Office of Defense Trade Controls under this subchapter; or

(2) A sale pursuant to a contract with the Department of Defense under section 22 of the Arms Export Control Act (22 U.S.C. 2762).

**§ 130.9 Obligation to furnish information to the Office of Defense Trade Controls.**

(a)(1) Each applicant must inform the Office of Defense Trade Controls as to whether applicant or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested:

(i) Political contributions in an aggregate amount of $5,000 or more, or

(ii) Fees or commissions in an aggregate amount of $100,000 or more.

If so, applicant must furnish to the Office of Defense Trade Controls the information specified in § 130.10. The furnishing of such information or an explanation satisfactory to the Director of the Office of Defense Trade Controls as to why all the information cannot be furnished at that time is a condition precedent to the granting of the relevant license or approval.

(2) The requirements of this paragraph do not apply in the case of an application with respect to a sale for which all the information specified in § 130.10 which is required by this section to be reported shall already have been furnished.

(b) Each supplier must inform the Office of Defense Trade Controls as to whether the supplier or its vendors have paid, or offered or agreed to pay, in respect of any sale:

(1) Political contributions in an aggregate amount of $5,000 or more, or

(2) Fees or commissions in an aggregate amount of $100,000 or more.

If so, supplier must furnish to the Office of Defense Trade Controls the information specified in § 130.10. The information required to be furnished pursuant to this paragraph must be so furnished no later than 30 days after the contract award to such supplier, or such earlier date as may be specified by the Department of Defense. For purposes of this paragraph, a contract award includes a purchase order, exercise of an option, or other procurement action requiring a supplier to furnish defense articles or defense services to the Department of Defense for the purposes of section 22 of the Arms Export Control Act (22 U.S.C. 2762).

(c) In determining whether an applicant or its vendors, or a supplier or its vendors, as the case may be, have paid, or offered or agreed to pay, political contributions in an aggregate amount of $5,000 or more in respect of any sale so as to require a report under this section, there must be included in the computation of such aggregate amount any political contributions in respect of the sale which are paid by or on behalf of, or at the direction of, any person to whom the applicant, supplier or vendor has paid, or offered or agreed to pay, a fee or commission in respect of the sale. Any such political contributions are deemed for purposes of this part to be political contributions by the applicant, supplier or vendor who paid or offered or agreed to pay the fee or commission.

(d) Any applicant or supplier which has informed the Office of Defense Trade Controls under this section that neither it nor its vendors have paid, or offered or agreed to pay, political contributions or fees or commissions in an aggregate amount requiring the information specified in § 130.10 to be furnished, must subsequently furnish such information within 30 days after learning that it or its vendors had paid, or offered or agreed to pay, political contributions or fees or commissions in respect of a sale in an aggregate amount which, if known to applicant or supplier at the time of its previous communication with the Office of Defense Trade Controls, would have required the furnishing of information under § 130.10 at that time. Any report furnished under this paragraph must, in addition to the information specified in § 130.10, include a detailed statement of the reasons why applicant or supplier did not furnish the information at the time specified in paragraph (a) or paragraph (b) of this section, as applicable.

**§ 130.10 Information to be furnished by applicant or supplier to the Office of Defense Trade Controls.**

(a) Every person required under § 130.9 to furnish information specified in this section in respect to any sale must furnish to the Office of Defense Trade Controls:

(1) The total contract price of the sale to the foreign purchaser;

(2) The name, nationality, address and principal place of business of the applicant or supplier, as the case may be, and, if applicable, the employer and title;

(3) The name, nationality, address and principal place of business, and if applicable, employer and title of each foreign purchaser, including the ultimate end-user involved in the sale;

(4) Except as provided in paragraph (c) of this section, a statement setting forth with respect to such sale:

(i) The amount of each political contribution paid, or offered or agreed to be paid, or the amount of each fee or commission paid, or offered or agreed to be paid;

(ii) The date or dates on which each reported amount was paid, or offered or agreed to be paid;

(iii) The recipient of each such amount paid, or intended recipient if not yet paid;

(iv) The person who paid, or offered or agreed to pay such amount; and

(v) The aggregate amounts of political contributions and of fees or

commission, respectively, which shall have been reported.

(b) In responding to paragraph (a)(4) of this section, the statement must:

(1) With respect to each payment reported, state whether such payment was in cash or in kind. If in kind, it must include a description and valuation thereof. Where precise amounts are not available because a payment has not yet been made, an estimate of the amount offered or agreed to be paid must be provided;

(2) With respect to each recipient, state:

(i) Its name;

(ii) Its nationality;

(iii) Its address and principal place of business;

(iv) Its employer and title; and

(v) Its relationship, if any, to applicant, supplier, or vendor, and to any foreign purchaser or end-user.

(c) In submitting a report required by § 130.9, the detailed information specified in paragraph (a)(4) and (b) of this section need not be included if the payments do not exceed:

(1) $2,500 in the case of political contributions; and

(2) $50,000 in the case of fees or commissions.

In lieu of reporting detailed information with respect to such payments, the aggregate amount thereof must be reported, identified as miscellaneous political contributions or miscellaneous fees or commissions, as the case may be.

(d) Every person required to furnish the information specified in paragraphs (a) and (b) of this section must respond fully to each subdivision of those paragraphs and, where the correct response is none or not applicable," must so state.

**§ 130.11 Supplementary reports.**

(a) Every applicant or supplier who is required under § 130.9 to furnish the information specified in § 130.10 must submit a supplementary report in connection with each sale in respect of which applicant or supplier has previously been required to furnish information if:

(1) Any political contributions aggregating $2,500 or more or fees or commissions aggregating $50,000 or more not previously reported or paid, or offered or agreed to be paid by applicant or supplier or any vendor;

(2) Subsequent developments cause the information initially reported to be no longer accurate or complete (as in the case where a payment actually made is substantially different in amount from a previously reported estimate of an amount offered or agreed to be paid); or

(3) Additional details are requested by the Office of Defense Trade Controls with respect to any miscellaneous payments reported under § 130.10(c).

(b) Supplementary reports must be sent to the Office of Defense Trade Controls within 30 days after the payment, offer or agreement reported therein or, when requested by the Office of Defense Trade Controls, within 30 days after such request, and must include:

(1) Any information specified in § 130.10 required or requested to be reported and which was not previously reported; and

(2) The Defense Trade Control license number, if any, and the Department or Defense contract number, if any, related to the sale.

**§ 130.12 Information to be furnished by vendor to applicant or supplier.**

(a) In order to determine whether it is obliged under § 130.9 to furnish the information specified in § 130.10 with respect to a sale, every applicant or supplier must obtain from each vendor, from or through whom the applicant acquired defense articles or defense services forming the whole or a part of the sale, a full disclosure by the vendor of all political contributions or fees or commission paid, by vendor with respect to such sale. Such disclosure must include responses to all the information pertaining to vendor required to enable applicant or supplier, as the case may be, to comply fully with §§ 130.9 and 130.10. If so required, they must include the information furnished by each vendor in providing the information specified.

(b) Any vendor which has been requested by an applicant or supplier to furnish an initial statement under paragraph (a) of this section must, except as provided in paragraph (c) of this section, furnish such statement in a timely manner and not later than 20 days after receipt of such request.

(c) If the vendor believes that furnishing information to an applicant or supplier in a requested statement would unreasonably risk injury to the vendor's commercial interests, the vendor may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions which have been paid, or offered or agreed to be paid, or offered or agreed to be paid, by the vendor with respect to the sale. Any abbreviated statement furnished to an applicant or supplier under this paragraph must be accompanied by a certification that the requested information has been reported by the vendor directly to the Office of Defense Trade Controls. The vendor must simultaneously report fully to the Office of Defense Trade Controls all information which the vendor would otherwise have been required to report to the applicant or supplier under this section. Each such report must clearly identify the sale with respect to which the reported information pertains.

(d)(1) If upon the 25th day after the date of its request to vendor, an applicant or supplier has not received from the vendor the initial statement required by paragraph (a) of this section, the applicant or supplier must submit to the Office of Defense Trade Controls a signed statement attesting to:

(i) The manner and extent of applicant's or supplier's attempt to obtain from the vendor the initial statement required under paragraph (a) of this section;

(ii) Vendor's failure to comply with this section; and

(iii) The amount of time which has elapsed between the date of applicant's or supplier's request and the date of the signed statement;

(2) The failure of a vendor to comply with this section does not relieve any applicant or supplier otherwise required by § 130.9 to submit a report to the Office of Defense Trade Controls from submitting such a report.

**§ 130.13 Information to be furnished to applicant, supplier or vendor by a recipient of a fee or commission.**

(a) Every applicant or supplier, and each vendor thereof;

(1) In order to determine whether it is obliged under § 130.9 or § 130.12 to furnish information specified in § 130.10 with respect to a sale; and

(2) Prior to furnishing such information, must obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale, a timely statement containing a full disclosure by such a person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf, or at its direction, in respect of such sale. Such disclosure must include responses to all the information required to enable the applicant, supplier or vendor, as the case may be, to comply fully with §§ 130.9, 130.10, and 130.12.

(b) In obtaining information under paragraph (a) of this section, the applicant, supplier or vendor, as the case may be, must also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable the applicant, supplier or vendor, as the case may be,

to comply fully with §§ 130.9, 130.10, 130.11, and 130.12.

(c) The applicant supplier or vendor, as the case may be, must include any political contributions paid, or offered or agreed to be paid, by or on behalf of, or at the direction of, any person to whom it has paid, or offered or agreed to pay a fee or commission in determining whether applicant, supplier or vendor is required by §§ 130.9, 130.11, and 130.12 to furnish information specified in § 130.10.

**§ 130.14 Recordkeeping.**

Each applicant, supplier and vendor must maintain a record of any information it was required to furnish or obtain under this part and all records upon which its reports are based for a period of not less than five years following the date of the report to which they pertain.

**§ 130.15 Confidential business information.**

(a) Any person who is required to furnish information under this part may identify any information furnished hereunder which the person considers to be confidential business information. No person, including any applicant or supplier, shall publish, divulge, disclose, or make known in any manner, any information so identified by a vendor or other person unless authorized by law or regulation.

(b) For purposes of this section, *confidential business information* means commercial or financial information which by law is entitled to protection from disclosure. (See, e.g., 5 U.S.C. 552(b) (3) and (4); 18 U.S.C. 1905; 22 U.S.C. 2778(e); Rule 26(c)(7), Federal Rules of Civil Procedure.)

**§ 130.16 Other reporting requirements.**

The submission of reports under this part does not relieve any person of any requirements to furnish information to any federal, state, or municipal agency, department or other instrumentality as required by law, regulation or contract.

**§ 130.17 Utilization of and access to reports and records.**

(a) All information reported and records maintained under this part will be made available, upon request for utilization by standing committees of the Congress and subcommittees thereof, and by United States Government agencies, in accordance with section 39(d) of the Arms Export Control Act (22 U.S.C. 2779(d)), and reports based upon such information will be submitted to Congress in accordance with sections 36(a)(8) and 36(b)(1) of that Act (22 U.S.C. 2776 (a)(8) and (b)(1)).

(b) All confidential business information provided pursuant to this part shall be protected against disclosure to the extent provided by law.

(c) Nothing in this section shall preclude the furnishing of information to foreign governments for law enforcement or regulatory purposes under international arrangements between the United States and any foreign government.

Dated: July 12, 1993.

**Lynn E. Davis,**

*Under Secretary for International Security Affairs.*

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Part III

# Department of the Interior

**Office of the Secretary**

**43 CFR Part 11**

**Natural Resource Damage Assessments; Proposed Rule**

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090–AA22

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On April 29, 1991, the Department of the Interior (the Department) issues a notice of proposed rulemaking to revise the natural resource damage assessment regulations. The natural resource damage assessment regulations establish procedures for assessing damages for injury to natural resources resulting from a discharge of oil into navigable waters under the Clean Water Act, as amended (CWA), or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The Department has developed two types of assessment procedures: standard procedures for simplified assessments requiring minimal field observation (the type A rule); and site-specific procedures for detailed assessments in individual cases (the type B rule).

The April 29, 1991 proposed rule would revise the type B rule to comply with a court decision that held that: Restoration costs are the preferred measure of natural resource damages; and all reliably calculated lost values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of natural resource trustees in estimating those values. The court also requested clarification of whether the Department intended the natural resource damage assessment regulations to apply to any resources not actually owned by the government.

The comment period was originally set to expire on June 28, 1991, but was extended to July 16, 1991. The Department is now reopening the comment period to accept additional comments.

DATES: Comments will be accepted through September 7, 1993.

ADDRESSES: Comments should be sent to the Office of Environmental Affairs, ATTN: NRDA Rule, room 2340, Department of the Interior, 1849 C Street, NW., Washington DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Cecil Hoffman, David Rosenberger or Mary C. Morton at (202) 208–3301.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

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## I. Background

### *A. Statutory Background*

Section 311(f) of CWA (33 U.S.C. 1251 et seq.) and section 107 of CERCLA (42 U.S.C. 9601 et seq.) authorize natural resource trustees to recover compensatory damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil into navigable waters or a release of a hazardous substance. Federal and State officials may be designated to serve as natural resource trustees under section 107(f) of CERCLA and sections 311(f)(4) and (5) of CWA. Section 107(f) of CERCLA also recognizes the authority of Indian tribes to commence actions as natural resource trustees.

Natural resource damages may be recovered for injuries residual to response actions. All sums recovered for natural resource injuries must be used to restore, replace, or acquire the equivalent of such natural resources. Trustees may also recover the reasonable costs of assessing natural resource damages and any prejudgment interest.

Section 301(c) of CERCLA requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Section 107(f) of CERCLA provides that assessments performed by Federal and State natural resource trustees in accordance with these regulations receive the evidentiary status of a rebuttable presumption. The promulgation of these regulations was delegated to the Department by Executive Order 12580. 52 FR 2923 (January 23, 1987).

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 et seq., was signed into law on August 18, 1990. It authorizes the Under Secretary of Commerce for Oceans and Atmosphere, particularly the National Oceanic and Atmospheric Administration (NOAA), in consultation with the Fish and Wildlife Service among others, to develop natural resource damage assessment rules for discharges of oil in navigable waters. The Department is coordinating its rulemakings with NOAA to ensure, to the maximum extent possible, that parallel processes are established for assessing damages under CERCLA and OPA. Further, section 6001(b) of OPA provides that until NOAA develops its rule, the Department's rules may be used to assess natural resource damages under OPA.

### *B. Regulatory History*

The Department, pursuant to its delegated responsibilities under section 301(c) of CERCLA, has issued various final rules for the assessment of natural resource damages: 51 FR 27674 (August 1, 1986); 52 FR 9042 (March 20, 1987); 53 FR 5166 (February 22, 1988); and 53 FR 9769 (March 25, 1988). These rulemakings are all codified at 43 CFR Part 11.

The natural resource damage assessment rule provides both an administrative process for conducting natural resource damage assessments in addition to substantive, technical procedures for the actual identification of injuries and calculation of damages. Under the rule, each assessment consists of four major phases.

The first phase of an assessment includes the steps that trustee agencies must take before the actual planning or initiation of an assessment. For

example, upon detecting or receiving notification of a discharge or release, trustee agencies must perform a preassessment screen to ascertain whether further assessment actions are warranted.

The second phase involves the preparation of an Assessment Plan. The Assessment Plan, which is subject to public review and comment, is designed to assist the involvement of other interested trustees, potentially responsible parties (PRPs), and the general public and to ensure that assessments are performed at a reasonable cost.

In the third phase, trustee agencies actually begin the assessment. All assessments include the following three steps: Injury Determination; Quantification; and Damage Determination. Currently, under some circumstances, these steps can be performed by a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) in what is known as a "type A" assessment. In "type B" assessments, trustees perform these steps using a range of alternative scientific and economic methodologies and standards provided in the rule. In the Injury Determination step of a type B assessment, trustee agencies determine whether an injury to the resource has occurred. After injury has been confirmed, trustees quantify the resulting reduction in services provided by the resource. Finally, in Damage Determination, trustee officials calculate the monetary compensation to be sought as damages for the injury to the natural resources.

The fourth phase of every natural resource damage assessment, whether the type A or type B rule is followed, consists of post-assessment activities such as: preparation of a Report of Assessment; establishment of an account for damage assessment awards; and development of a Restoration Plan for use of the awards.

*C. Judicial Review*

Section 113 of CERCLA provides that any member of the public may petition the Court of Appeals for the District of Columbia Circuit to review any regulation issued under CERCLA. A number of parties filed such petitions for review of the natural resource damage assessment regulations. The regulations were challenged in two separate, but parallel, cases. In *State of Ohio* v. *United States Department of the Interior*, 880 F.2d 432 (D.C. Cir. 1989) (*Ohio* v. *Interior*), petitioners challenged a total of twelve issues that pertained to the administrative process and the type B rule. In *Colorado* v. *United States Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989) (*Colorado* v. *Interior*), petitioners challenged two issues pertaining to the type A rule.

The court in *Ohio* v. *Interior* unanimously upheld most of the challenged aspects of the administrative process and the type B rule but did remand three issues. The court held that: (1) Restoration costs are the preferred measure of natural resource damages; and (2) all reliably calculated lost values of injured natural resources should also be recoverable, with no specific hierarchy of methodologies required of trustees in estimating those values. Addressing a third issue, the court asked the Department to clarify whether the rule applies to natural resources that are not actually owned by the government.

*D. Implementation of Court Remand*

The Department published an advance notice of proposed rulemaking on September 22, 1989, to announce the Department's intent to revise the type B rule to comply with *Ohio* v. *Interior*. 54 FR 39016. The Department then issued a proposed rule on April 29, 1991, with comments requested by June 28, 1991. 56 FR 19752. On July 2, 1991, the Department extended the comment period to July 16, 1991. 56 FR 30367.

The Department received 53 sets of comments on the proposed rule. One issue that elicited numerous and widely-divergent comments was the continued allowance for the use of the contingent valuation methodology (CVM). CVM is a method of estimating lost values of an injured resource through the use of surveys. Although CVM has been used to estimate both use and nonuse values, it has been most contentious when used to determine nonuse values.

There have been additional developments concerning CVM since the close of the comment period. The Department has been approached by several commenters who claim that they have new information about the reliability of CVM that should be considered in this rulemaking. On April 8, 1992, NOAA announced that it was forming an expert panel, pursuant to its rulemaking authority under OPA, to examine the use of CVM to estimate nonuse values. The panel's report was published in the Federal Register on January 15, 1993. 58 FR 4601.

In order to allow consideration of the most up-to-date information in this rulemaking while also providing all interested parties with a full opportunity to respond to that additional information, the Department has decided to reopen the comment period. The Department requests additional information concerning CVM that is relevant to the calculation of natural resource damages. This includes technical studies that have actually applied CVM to determine natural resource damages; and reviews of CVM that address its reliability for measuring use values, nonuse values, or all compensable values.

Moreover, to ensure that the final rule provides a coherent overall assessment process, the Department will also consider additional comments on any other aspect of the April 29, 1991 proposed rule. In particular, commenters should consider those issues pertaining to the proposed measure of damages; the requirements of the proposed Restoration and Compensation Determination Plan; and the proposed clarification of the scope of resources covered by the regulations. Prior comments need not be re-submitted. Also, this notice contains a discussion of the comments received to date, including summaries of certain revisions to the proposed regulatory language that the Department is considering in light of those comments. The Department solicits comments on this discussion to assist it in developing a final rule.

CERCLA mandates biennial review and revision, as appropriate, of the Department's damage assessment regulations. The Department plans to begin its next biennial update of the type B rule as soon as possible after this rulemaking becomes final and will address other issues related to the administrative process and the type B rule during that review. Also, the Department will revise the type A rule in compliance with *Colorado* v. *Interior* in future rulemakings. In addition to the existing NRDAM/CME, the Department has been developing a model for Great Lakes Environments (NRDAM/GLE). For efficiency, changes to reflect the holding of *Colorado* v. *Interior* are being made first on the work in progress, NRDAM/GLE.

## II. Summary of Proposed Rule

To assist in the development of additional comments, the Department is providing a brief summary of the proposed rule. For more detailed information on the proposed rule, commenters are urged to review the April 29, 1991 notice. 56 FR 19752.

*A. Measure of Damages*

The rule as originally published on August 1, 1986, provided that damages consisted of the lesser of restoration

costs or the diminution in resource values. 51 FR 27674. The court remanded the rule on the ground that CERCLA indicates a preference for using restoration costs as the measure of natural resource damages. CERCLA provides that sums recovered in natural resource damage actions may be used to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. The court used the simple term "restoration" costs as shorthand for the cost of performing any of these actions. In many cases, trustee officials will likely use damage awards to fund some combination of these actions, rather than only one. Therefore, the Department has proposed to revise the rule to allow trustees to recover the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in all cases.

The court recognized the Department's authority to identify circumstances when some factor other than the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources could be used as the measure of damages. However, the Department believes that trustee agencies may always perform some, albeit occasionally minor, form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Even in situations where natural recovery is the preferred action, trustee agencies may nonetheless incur some costs such as the expense of restricting public access or taking other such actions to ensure that natural recovery is not impeded. Therefore, the Department has not proposed any exceptions to the general measure of damages. Moreover, the proposed rule would also allow trustees to recover the value of the services lost to the public from the date of the discharge or release until restoration, rehabilitation, replacement, and/or acquisition of equivalent resources has been completed.

*B. Restoration and Compensation Determination Plan*

To assist trustee agencies in developing claims under the new measure of damages, the Department has proposed to amend the rule to provide for the development of a Restoration and Compensation Determination Plan. This Restoration and Compensation Determination Plan would replace the Restoration Methodology Plan discussed in the original version of the rule. The Restoration and Compensation Determination Plan would be designed to focus the scope of the Damage Determination phase of the assessment. The Restoration and Compensation Determination Plan would be part of the overall Assessment Plan and, thus, subject to public review and comment.

1. Selection of an Alternative for Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

Since damages are based on the costs of restoring, rehabilitating, replacing and/or acquiring equivalent resources, trustee officials need a mechanism for projecting these costs for inclusion in their damage claim. The proposed rule includes a procedure for selecting a method of restoring, rehabilitating, replacing and/or acquiring equivalent resources that can be used in this projection.

Under the proposed rule, trustees would first identify and consider a reasonable number of possible alternatives for restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources. Trustee officials would also estimate those services that are likely to be lost to the public pending completion of each possible alternative being considered. Trustee agencies would then select one of the possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The proposed rule lists ten factors to consider when selecting one of the alternatives. The relative weight of these factors would be left to the discretion of the trustee officials. The trustee officials would document their decisions in the Restoration and Compensation Determination Plan. The cost of implementing the selected alternative provides the basic measure of damages.

2. Calculation of the Costs of Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

Once the trustee agencies select a method of restoring, rehabilitating, replacing, and/or acquiring equivalent resources, they will need to decide how they intend to develop a detailed estimate of the costs of implementing that method. To do this, trustee officials would select among the specific cost estimating methodologies provided in the proposed rule. Trustees would include their rationale for selecting particular cost estimating methodologies in the Restoration and Compensation Determination Plan.

3. Calculation of Compensable Value

Under the proposed rule, the costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources would be the preferred measure of damages; however, these costs would only be part of the total damage claim. Damages would also include the value of the services that the public lost from the date of the release or discharge until completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The Restoration and Compensation Determination Plan would include a description of the methodologies trustees intend to use when valuing these lost services during the Damage Determination phase.

The rule as originally published on August 1, 1986, distinguished between "use values" and "option and existence values." "Option and existence values" are generally considered to be types of nonuse values. Trustees were allowed to recover option and existence values only when no use values could be determined. The proposed rule would eliminate this restriction to allow for the recovery of all reliably calculated values in compliance with *Ohio* v. *Interior*. The proposed rule introduces the term "compensable value," which stands for the combination of all lost public values that could be included in a natural resource damage claim. "Compensable value" encompasses all of the public economic values associated with an injured resource, including use values and nonuse values.

As initially published in 1986, the rule provided a list of methodologies that could be used to calculate lost public values. The rule had ranked these methodologies stating that if trustees determined that the market for the injured resource was "reasonably competitive," then the diminution of the market price attributable to the discharge or release should be used to estimate damages. If a market-price methodology was not available, then the trustee officials were required to use appraisal methodologies. Only when neither market-price nor appraisal methodologies were appropriate for the affected resources being assessed did the original version of the rule allow the trustee to use non-market-based valuation methodologies.

The court ruled that the hierarchy, or ranked order, of valuation methodologies established in the original version of the rule incorrectly established a strong presumption in favor of market-price and appraisal methodologies. The proposed rule would remove the required hierarchy and leave trustees free to select among the methodologies. However, trustees would be required to state the rationale for their choice of any methodology in

the Restoration and Compensation Determination Plan.

*c. Resources Covered by this Rule*

The final issue remanded by the *Ohio* v. *Interior* court concerns the scope of the resources covered by the rule. The rule as originally published incorporated the definition of "natural resources" contained in section 101(16) of CERCLA. This definition encompasses any resource "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by" the United States, any State or local government, any foreign government, or any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe. The court in *Ohio* v. *Interior* noted that, although CERCLA does not authorize recovery of damages for injuries to purely private resources, this statutory definition does appear to extend beyond those resources that are actually owned by the government. Similarly, in its oral argument in *Ohio* v. *Interior*, the Department suggested that the rule could apply to privately-owned resources provided they were subject to a substantial degree of government regulation, management, or other form of control. However, the August 1, 1986 preamble to the final type B rule stated that "section 101(16) of CERCLA clearly indicates that privately-owned natural resources are not to be included in natural resource damage assessments." 54 FR 27696. Therefore, the court asked the Department to clarify whether this rule may be used to assess damages for injuries to any resources that are not owned by the government.

The Department never intended to suggest that the applicability of the rule hinges solely on ownership of a resource by a government entity. The Department intends this rule to be available for assessments of all natural resources covered by CERCLA, which under the plain language of the statute includes more than just resources owned by the government.

*D. Other Significant Revisions of the Rule*

Implementation of the court remand has also necessitated that the Department propose two additional revisions:

(1) A requirement that trustee officials develop a preliminary estimate of damages; and

(2) Clarification of the date of promulgation of the natural resource damage assessment regulations.

1. Preliminary Estimate of Damages

As discussed above, the original measure of damages under the rule was the lesser of restoration costs or diminution in resource values. Under § 11.35 of the rule as originally published, the determination of whether restoration costs or diminution in value would serve as the basis of damages was made in the Economic Methodology Determination. Under the proposed rule, damages would include both the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value. Therefore, the Department has proposed to eliminate the Economic Methodology Determination.

However, the Economic Methodology Determination served a second function that is still relevant under the proposed rule. CERCLA provides that trustees may recover the costs of performing an assessment, but only if those costs are reasonable. Under the definition of "reasonable cost," set forth at § 11.14(ee) of the existing rule, the anticipated cost of the assessment must be expected to be less than the anticipated damage amount. The Economic Methodology Determination helped to ensure that assessments satisfied this aspect of reasonableness. In order to continue assisting trustee agencies in performing assessments at reasonable costs in the absence of the Economic Methodology Determination, the Department has proposed a requirement that trustees prepare a preliminary estimate of damages before they begin the development of an Assessment Plan.

2. Clarification of the Date of Promulgation

Section 113(g)(1)(b) of CERCLA provides that natural resource damage claims other than those involving Federal facilities or sites on the National Priorities List must be commenced by Federal and State trustees:

* * * within 3 years after the later of the following:

(A) The date of the discovery of the loss and its connection with the release in question.

(B) The date on which regulations are promulgated under section 301(c).

Neither the language nor the legislative history of CERCLA defines the date of promulgation of the section 301(c) regulations.

There has been considerable confusion over section 113(g)(1)(B) in the aftermath of *Ohio* v. *Interior* and *Colorado* v. *Interior*. The regulations issued under section 301(c) are designed to calculate a monetary damage figure for injuries to natural resources. *Ohio* v. *Interior* and *Colorado* v. *Interior* remanded the fundamental issue of what should serve as the basis of the damage calculus. Until the court remands are fully implemented, trustees are left without a completed damage calculus consistent with the provisions of CERCLA. Therefore, the Department has proposed to amend the rule to clarify that for the purposes of section 113(g)(1)(B), the "date on which regulations are promulgated" is the date when both the revisions ordered in *Ohio* v. *Interior* and in *Colorado* v. *Interior* become effective as final rules.

## III. Response to Comments

*A. Overview*

The Department received numerous comments on the April 29, 1991 proposed rule. To assist in the development of additional comments, the Department is providing a discussion of the comments received to date. The Department appreciates the time and effort expended by the commenters.

Several commenters raised issues that are outside the scope of the *Ohio* v. *Interior* remand. Due to the focused nature of this particular rulemaking, the Department has not attempted to address these issues beyond reproducing guidance that has been provided in prior **Federal Register** notices. Nevertheless, the Department recognizes that these comments merit additional consideration and plans to revisit them during the upcoming biennial review.

*B. General Comments*

1. Issues Not Addressed by Court Remand

*Comment:* One commenter stated that the Department had proposed changes other than those required by *Ohio* v. *Interior* and had done so without providing any justification. The commenter offered as examples of such changes the modification of the criteria for selection of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the development of the concept of compensable value.

*Response:* The Department does not agree that it has proposed changes beyond those required by *Ohio* v. *Interior*. The preamble to the proposed rule explained how the proposed changes would implement the court decision. As was noted in the April 29, 1991 preamble, the Department could have complied with the court's decision by merely removing the "lesser of" language from the damage formula,

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eliminating the economic valuation hierarchy and deleting the provision restricting recovery of nonuse values to those cases where direct uses cannot be determined. However, the Department has instead sought to implement the court's decision in a manner that is more coherent and provides better guidance to trustees, potentially responsible parties (PRPs) and the public. For example, the Department proposed modifications to the criteria for selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources only to ensure that the rule appropriately reflects the statutory preference for restoration noted by the court. Similarly the notion of compensable value was developed to clarify that all reliably calculated values may be included in the damage claim, as required by the court.

2. Trustee Discretion

*Comment:* A number of commenters addressed the level of discretion that the proposed rule affords trustees. Several commenters thought that the rule delegates too much authority to trustees. These commenters stated that the language and legislative history of section 301(c) of CERCLA, through reference to "protocols," "best available procedures," and "most accurate and efficient procedures," require that the Department develop substantive objective standards. According to these commenters, the proposed rule relies upon subjective standards that will lead to arbitrary and capricious results. These commenters also stated that, without additional guidance, trustee officials with limited expertise would likely pursue inappropriate and excessively expensive assessments and plans for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Moreover, one commenter stated that the absence of objective standards would make it impossible for PRPs to evaluate their potential liability.

On the other hand, many commenters thought that trustee agencies will be in the best position to determine how to proceed at a specific site and praised the flexibility of the proposed rule. One commenter stated that the proposed rule imposed too many restrictions on trustees and would force them to pursue undesirable courses of action that would strain already tight budgets.

*Response:* The Department believes the proposed rule appropriately balances the need for objective procedures against the need for flexibility. In order to comply with the statutory requirement to identify best available procedures for assessing natural resource damages, the Department has proposed a detailed, standardized process that incorporates a specific range of acceptable alternative economic methodologies. However, the type B rule was also intended to have broad application. Natural resource damage cases range from situations involving discrete injury of one resource caused by a small, incidental release of a single substance to incidents involving extensive injuries to multiple resources caused by large, long-term releases of mixtures of substances. In light of the myriad of possible natural resource damage scenarios, a type B rule that mandates a particular course of action at each stage of every assessment would generally be unusable or result in unreasonable assessment costs. Therefore, in certain areas the proposed rule would allow trustee agencies to use their best judgment.

Although trustees do have some discretion, the proposed rule would require them to document their decisions; provide criteria by which most discretionary decisions can be evaluated; and subject the decisionmaking process to review by other affected trustees, any PRPs, and the public. The Department believes that these provisions would offer necessary and adequate protection against arbitrary and capricious decisions and inappropriate or excessively expensive assessments and plans for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

The Department acknowledges that it may be difficult for a PRP to predict precisely how a trustee agency would exercise its discretion in a particular case. However, the Department does not believe that this fact imposes an unfair burden on PRPs.

3. Public and PRP Involvement

*Comment:* Several commenters voiced opinions about the opportunity for PRP and public participation in the assessment process. Some commenters stated that the proposed rule provided an appropriate level of public participation. One commenter thought that the public should be notified at the same time that PRPs are first notified. Another commenter expressed concern that the opportunity for public participation would merely provide PRPs with additional chances to direct the process.

*Response:* The proposed rule would not change the level or timing of PRP or public participation in the natural resource damage assessment process. As was discussed in the August 1, 1986 preamble, while the Department recognizes the importance of participation in the natural resource damage assessment process both by interested members of the public and by PRPs, it does not consider their responsibilities or roles identical. The public has a right to review and comment on decisions at appropriate points in the process, and this right should be protected even if the public does not exercise it in every case. The public's role, however, is not meant to supplant that of authorized officials acting as trustees, who bear a direct obligation to protect the public's interests. On the other hand, PRPs are potential defendants and are ultimately responsible for paying both the assessed damages and the costs of performing the assessment. The Department believes that early participation of PRPs in the assessment process protects those parties' interest in a cost-effective approach and promotes amicable settlement of natural resource damage claims.

*Comment:* A few commenters expressed concern about the Department's statements that any required trustee explanation may be "brief." These commenters stated that neither the PRPs nor the public would have a meaningful opportunity to challenge the rebuttable presumption attached to a damage assessment unless trustee agencies were required to prepare detailed explanations of their decisions.

*Response:* The Department believes that the cost of preparing elaborate explanations and discussions of trustees' rationales for each decision would often be unreasonable. Nevertheless, the scope of the explanations may vary depending on the extent of the damages and the anticipated costs of the assessment.

4. Relationship to OPA

*Comment:* There were two comments concerning the relationship between these rules and OPA. One commenter, citing language in the Conference Report for OPA, stated that the rule should not apply to oil spills. Another commenter encouraged the Department to work closely with NOAA to ensure that any rule developed by NOAA under OPA is consistent with the Department's rule.

*Response:* Section 1006(e) of OPA, which is the subject of the Conference Report language cited by one commenter, does provide that NOAA will develop the regulations governing assessments of natural resource damages caused by oil spills in navigable waters. However, section 6001(b) of OPA provides that any rule in effect under a

law replaced by OPA will continue in effect until superseded. Section 1002 of OPA supersedes section 311(f) of CWA for incidents occurring after August 18, 1990. The Department's rule applies to claims under sections 311(f)(4) and (5) of CWA. Therefore, until NOAA develops its rule, the Department's rule will continue to apply to oil spills in navigable waters. OPA Senate committee report language makes it clear that "[t]he existing Interior Department rules, as amended by the court's decisions, may be used with a rebuttable presumption in the interim." S. Rep. No. 101–94, 101st Cong. 1st Sess. 15 (1990).

The interests of regulatory clarity and efficiency will be best served if the processes for assessing natural resource damages, whether they result from releases of hazardous substances or discharges of oil, are as consistent as possible. Therefore, the Department will continue to coordinate its rulemakings with those of NOAA.

5. Lack of Funding

*Comment:* Two commenters stated that the rule is of little value to trustee agencies given the lack of funding to initiate natural resource damage assessments.

*Response:* The Department recognizes the financial limitations with which trustees are faced. However, section 517 of the Superfund Amendments and Reauthorization Act (SARA) amended the Internal Revenue Code to prohibit expenditures from the Hazardous Substance Superfund to pay for natural resource damage assessments. 26 U.S.C. 9507(c)(1)(A)(ii). In addition, some Federal trustee agencies, including the Department, have sought and received appropriated funds to perform some of their assessments. Also, in some instances, PRPs have made money available to trustee agencies for the conduct of assessments.

6. Selective Use of Portions of the Rule

*Comment:* One commenter stated that, in light of the lack of funding for natural resource damage assessments, trustee officials should be allowed to follow portions of the rule and still receive a rebuttable presumption for those elements of the assessment that conform with the rule. Another commenter stated that the Department should make clear that the rebuttable presumption attaches only if all aspects of the assessment conform with the rule.

*Response:* Under § 11.91(c) of the existing rule, the rebuttable presumption attaches to those assessments that are performed in accordance with the entire rule. Modification of § 11.91(c) is beyond the scope of this rulemaking. However, the Department notes that nothing prevents trustees who are dealing with cooperative PRPs from making selective use of portions of the rule for purposes of working out a settlement.

7. Complexity of the Rule

*Comment:* One commenter thought that the rule was too complicated.

*Response:* The Department admits that this is a comprehensive rule. However, the rule is designed to provide not only an administrative process for conducting assessments but also an entire range of alternative methodologies for calculating full compensation for injuries to the complete scope of natural resources covered by CERCLA. The variety of possible natural resource damage cases is virtually endless, and the type B rule was designed to be available for use in all of those situations. Therefore, the Department believes that some level of intricacy is unavoidable. The Department notes that it has given a number of workshops and seminars on the use of the rule at the request of State trustee officials, other Federal agencies and private parties. The Department welcomes the opportunity to hold additional workshops and seminars.

8. Separate Assessments for Each Injury

*Comment:* One commenter stated that in cases involving multiple injuries, different geographic areas and numerous PRPs, any aggregate damage figure developed under the rule would have to be divided to ensure that each PRP is only held liable for the damages caused by its release or discharge. Therefore, the commenter believed that the rule should require trustees to assess each injury separately.

*Response:* In those cases involving multiple PRPs, if the injuries, the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the compensable values could all be segregated, then trustee agencies could perform separate assessments for each PRP. However, natural resources are generally highly interdependent. Therefore, the selection of methodologies to value or restore, rehabilitate, replace, and/or acquire the equivalent of one injured resource will often affect the selection of methodologies to address other resources. Furthermore, courts have held that CERCLA imposes joint and several liability where there is no clear basis on which to apportion liability. Therefore, if either the injuries, the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources or the compensable values cannot be segregated in a particular case, trustee agencies usually would not perform separate assessments.

*C. Measure of Damages*

*Comment:* There were a number of comments on the use of the cost of restoration, rehabilitation, replacement and/or acquisition of equivalent resources as the general measure of damages. Several commenters supported this measure of damages and thought that the determination whether a different measure of damages would be more appropriate in a particular case was correctly left to the discretion of trustee agencies. One commenter thought that the proposed measure of damages was particularly appropriate in light of the difficulties and controversies surrounding calculation of use values. This commenter went on to state the risk that any damages collected would merely serve as a windfall for the treasury in the absence of a commitment to restoring, rehabilitating, replacing and/or acquiring equivalent resources.

However, many other commenters stated that there should be an explicit exception to this measure of damages when the cost of restoration, rehabilitation, replacement and/or acquisition of equivalent resources is grossly disproportionate to the value of the resource. A number of these commenters disagreed with the Department's statements that no exceptions were needed because some form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will always be performed. To support their positions, these commenters offered hypothetical cases in which long-lived pollutants had contaminated surface water sediments but response actions had eliminated all danger to human health or the environment. According to the commenters, the proposed measure of damages would be inappropriate in these cases, because the costs of restoring the sediments generally would vastly outweigh the potential benefits; there are no known means of rehabilitating the sediments; there is no point in replacing the sediments or acquiring equivalent sediments; and natural recovery is impossible.

Most commenters who thought that there should be exceptions to the measure of damages failed to provide a definition of "grossly disproportionate." However, one commenter stated that the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources should be

considered grossly disproportionate if they are more than three times the value of the resource. Another commenter believed that imposition of any costs that exceeded the value of the resource would be punitive and violate due process. Also, one commenter suggested that the rule should allow for the elimination of the costs of restoration, rehabilitation, replacement and/or acquisition of equivalent resources upon a showing by PRPs that recovery of these costs is inappropriate.

*Response:* The Department continues to believe that the measure of damages included in the proposed rule is appropriate. The Department believes that natural resource damages should always include the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, because trustees will always be able to perform some element or combination of these actions. In the hypothetical case of sediments contaminated by long-lived pollutants, replacement actions may not in fact be pointless if they would return the baseline level of services provided by that resource to other resources or to humans. Moreover, assuming that intensive intervention would be inappropriate, natural recovery may not be impossible, but rather extremely slow. Therefore, trustees may choose to allow natural recovery but would then take certain actions, such as restricting public use of the body of water, to ensure that natural recovery is not impeded. These actions would qualify as actions taken to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources.

The Department agrees that when trustee officials evaluate a particular methodology of restoring, rehabilitating, replacing, and/or acquiring equivalent resources, they should consider the relationship between the costs of implementing that methodology and the compensable value of the resource. However, if the costs of implementing that particular methodology do greatly exceed the compensable value of the resource, trustee agencies need not eliminate restoration, rehabilitation, replacement, and/or acquisition of equivalent resources as a basis for damages but could instead select a different methodology. Moreover, selection of a particular methodology for restoring, rehabilitating, replacing and/or acquiring equivalent resources determines the period and quantity of lost use. As a result, evaluating the relationship between the costs of implementing a particular methodology and the compensable value of a resource becomes more than a simple analysis of strict numeric proportions. Therefore, § 11.83(a)(3) of the proposed rule sets forth criteria to help trustee officials evaluate different methodologies for restoring, rehabilitating, replacing, and/or acquiring equivalent resources. The Department believes that consideration of these criteria would be the most useful means of ensuring that damage figures are compensatory not punitive.

*Comment:* Several commenters stated that the language and legislative history of CERCLA, *Ohio* v. *Interior* and *Commonwealth of Puerto Rico* v. *SS Zoe Colocotroni*, 628 F.2d 652 (1st Cir. 1980), *cert. denied*, 450 U.S. 912 (1981) (*Puerto Rico* v. *SS Zoe Colocotroni*), require inclusion of an exception for grossly disproportionate restoration costs.

*Response:* The Department does not agree that CERCLA, *Ohio* v. *Interior* or *Puerto Rico* v. *SS Zoe Colocotroni* mandate an exclusion from the general measure of damages when the cost of restoring, rehabilitating, replacing, and/or acquiring equivalent resources is grossly disproportionate to the lost value of the injured resources. CERCLA and *Ohio* v. *Interior* grant the Department the discretion to develop exceptions to the general measure of damages but do not require such exceptions. *Puerto Rico* v. *SS Zoe Colocotroni* arose under a Puerto Rican statute, and although the case does contain some dicta concerning CWA, it did not establish any standards for damages under either CWA or CERCLA.

Moreover, *Puerto Rico* v. *SS Zoe Colocotroni* focused on whether damages should be based on the costs of implementing a plan to dig up and replant an oiled mangrove forest instead of relying upon natural recovery. The court rejected the plan as "impractical, inordinately expensive, and unjustifiably dangerous to the healthy mangroves and marine animals still present in the area to be restored." 628 F.2d at 676. The proposed rule would neither require nor authorize trustees to pursue intensive activities to restore or rehabilitate an injured resource if such activities would be impractical, inordinately expensive or unjustifiably dangerous. Under the proposed rule, trustees would evaluate a range of alternatives, including an alternative based on natural recovery, under a set of factors, including technical feasibility, cost-benefit considerations, cost-effectiveness, and potential for additional injury. The proposed rule would allow trustees to rely upon natural recovery when appropriate and base their damage claims on the cost of actions taken to ensure that natural recovery is not impeded.

*Comment:* Some commenters states that failure to include such an exception would lead to double recoveries and inflated, arbitrary assessments.

*Response:* The issue of double recovery arises when PRPs are asked to pay damages for the same injury more than once. The concept of compensable value and the concept of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources relate to two different effects of an injury. Therefore, the Department does not believe that the absence of an explicit exception to the general measure of damages would lead to double recoveries.

Further, the Department does not believe that the absence of exceptions to the measure of damages would result in inflated, arbitrary damage assessments. The costs of restoring, rehabilitating, replacing, and/or acquiring the equivalent of an injured resource might be high in particular cases. However, implementation of some form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in those cases might considerably shorten the recovery period, thus reducing the compensable value and the overall damages. Also, the Restoration and Compensation Determination Plan, which sets forth the basis for calculation of damages, would be made available for public comment, so the trustee officials' judgment would be subject to review.

*Comment:* There were a number of comments about the inclusion of compensable value in the measure of damages. One commenter stated that requiring trustees to calculate compensable value in every case would improperly encroach upon trustees' discretion and could result in unreasonable assessment costs.

*Response:* The Department believes that calculation of compensable value would help ensure that the public is fully compensated for injuries to natural resources. Calculation of compensable value generally would not result in unreasonable assessment costs so long as trustees select appropriate valuation methodologies. Trustee officials would be allowed to use any valuation methodology listed in § 11.83(c) of the proposed rule or any other cost-effective methodology that measures compensable value in accordance with the public's willingness to pay. However, if there is no acceptable methodology for calculating compensable value at a reasonable cost, as defined under § 11.14(ee) of the existing rule, trustee agencies would have the authority to base damages solely on the cost of restoration,

rehabilitation, replacement, and/or acquisition of equivalent resources. The Department is considering revising the language of proposed § 11.83 to make this point explicit.

*Comment:* Other commenters believed that recovery of compensable value was not authorized under CWA. These commenters stated that unlike section 107(a)(C) of CERCLA, which imposes liability for "damages for injury to, destruction of, or loss of natural resources," section 311(f)(4) of CWA merely refers to the "costs of removal," which "include any costs incurred by the Federal Government or any State government in the restoration or replacement of natural resources." Furthermore, these commenters stated that nothing in the legislative history of CWA suggests that lost use values were intended to be recoverable.

*Response:* Under § 11.93(a) of the proposed rule, compensable value would be recovered in order to replace public uses and nonuses of an injured resource that are lost to the public during the recovery period. Thus the Department believes that compensable values would be recoverable under CWA as "costs incurred * * * in the restoration or replacement of natural resources." Further, the Department notes that section 1002(b)(2) of OPA, which amends CWA, explicitly authorizes recovery of damages for loss of use of natural resources.

*Comment:* A couple of commenters asked how to calculate compensable value when full restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is not possible.

*Response:* The Department recognizes that in some cases the time period for complete restoration, rehabilitation, replacement, and/or acquisition of equivalent resources may be considerable. Nevertheless, even in those cases, trustee officials would estimate the length of the recovery period and calculate the value of public uses and nonuses lost during that time.

*Comment:* One commenter stated that the proposed measure of damages should "take cognizance of any benefits resulting from the particular incident (e.g., increased fish harvest resulting from oil discharge with resultant increase in plankton/fish growth rate in Prince William Sound)."

*Response:* The Department believes that the existing rule takes adequate cognizance of any positive effects of a release or discharge in the Quantification phase. Under § 11.70, which would not be affected by the proposed rule, trustee officials quantify an injury by calculating the reduction in the level of services provided by the injured resource to other resources or to humans. If a particular resource were injured but nonetheless provided the same or a greater level of services, then there would be no reduction in service levels to quantify. Further clarification is beyond the scope of this rulemaking.

*Comment:* Another commenter thought that PRPs should not be held liable for damages associated with injuries caused or aggravated by ill-advised cleanup operations.

*Response:* Section 11.15(a)(1)(ii), which would not be affected by the proposed rule, provides that PRPs are liable for any increase in injuries that is reasonably unavoidable as a result of response actions taken or anticipated. As was stated in the August 1, 1986 preamble, liability is limited to those increases that are reasonably unavoidable

> * * * because the Department believes that any response actions undertaken by government agencies should strive to avoid additional injury to natural resources whenever possible. Damages from such "reasonably unavoidable" increases in injury resulting from response actions by governmental agencies are not excluded from damage actions, because they are indirectly due to the discharge or release and thus included under section 301(c) of CERCLA. 51 FR 27698.

*Comment:* A few commenters believed that the rule should incorporate and clarify section 107(f)(1) of CERCLA, which provides that there shall be no recovery for natural resource damages if those damages and the release that caused those damages occurred wholly before December 11, 1980, the date on which CERCLA was enacted.

*Response:* The Department notes that § 11.24(b)(1), which would not be affected by the proposed rule, already incorporates the limitation on damages set forth in section 107(f)(1) of CERCLA. Any further clarification of this limitation is beyond the scope of this rulemaking.

*Comment:* A few commenters stated that the rule should incorporate the ceilings on recovery set forth in section 107(c) of CERCLA.

*Response:* The Department notes that § 11.15(b), which would not be affected by the proposed rule, already incorporates the ceilings on damages set forth in section 107(c) of CERCLA.

### *D. Resources Covered by the Rule*

*Comment:* There were numerous comments on the issue of the resources covered by this rule. Several commenters supported the Department's proposal not to define the scope of trusteeship over privately-owned resources. These commenters stated that the scope of trusteeship is governed by a wide variety of Federal and State laws that are constantly evolving and that trustee agencies are in the best position to interpret.

Several commenters disagreed with the Department and stated that the rule should include some limits on its application to privately-owned property in order to avoid overly-broad claims and additional litigation. A few of these commenters offered specific regulatory language.

Finally, a number of commenters thought that if the Department did not provide a specific regulatory definition of the scope of trusteeship, then the Department should at least clarify that a trustee agency's determination of the scope of its authority is not entitled to a rebuttable presumption.

*Response:* The *Ohio* v. *Interior* court did not require or even request the Department to provide a regulatory definition of the scope of trusteeship over privately-owned resources. The court merely asked for clarification of whether the Department intended its rule to cover any non-government-owned property. The scope of trusteeship is determined by section 101(16) of CERCLA, which defines "natural resources" as:

> [L]and, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States * * *, any State or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

As the court noted, this definition, which is incorporated into § 11.14(z) of the existing rule, extends beyond resources that are actually owned by the government. The Department does not intend to restrict application of the rule to government-owned property but instead intends to allow use of the rule to assess damages for all natural resources covered by CERCLA. The Department believes that no additional action is needed to comply with the court's request.

Not only is development of a regulatory definition of the scope of trusteeship over privately-owned resources not required by *Ohio* v. *Interior*, it is also impractical. Under CERCLA, trustees can only recover damages for injuries to those resources to which they are related through ownership, management, trust or control. These relationships are themselves created by other Federal, State, local and tribal laws. In light of

the diversity of these other Federal, State and tribal laws, the Department believes that the scope of trusteeship under CERCLA must be addressed on a case-by-case basis.

The Department disagrees that lack of a regulatory definition of "public resources" will result in overly-broad claims and additional litigation. The proposed rule would require trustee officials to prepare a statement explaining the basis for their assertions of trusteeship. This statement would be included in the Notice of Intent to Perform an Assessment, which is sent to PRPs, and in the Assessment Plan, which is subject to public review and comment. These opportunities for early input from PRPs and the public would provide both a check on trustees' discretion and a means of resolving disputes over the scope of trusteeship prior to litigation. Other provisions of the rule, such as the requirement that only committed public uses of the resource be included in compensable value, provide additional protection against improper assertions of authority over private property.

Nevertheless, the Department believes there are significant concerns about the propriety and legality of allowing trustee agencies to define the very scope of their own jurisdiction. Therefore, the Department is considering revising the language of the proposed regulation to clarify that a trustee agency's statement of its basis of authority would not be entitled to a rebuttable presumption.

*Comment:* One commenter stated that if the Department chose to defer to the courts and did not define the scope of trusteeship in the rule itself if should not then speculate on the issue in the preamble. However, other commenters did not object to the language of the rule but did ask the Department to provide some additional guidance in the preamble. Several commenters offered examples of the types of privately-owned resources that should or should not be covered by the rule.

*Response:* The multiplicity of Federal, State and tribal laws that give rise to trusteeship not only makes it virtually impossible to develop a regulatory definition, it also creates a risk that any general discussion or list of examples would not be representative of the wide range of resources covered by CERCLA. Therefore, the Department believes it would be inappropriate to offer specific examples of privately-owned resources covered by this rule.

*Comment:* A few commenters had questions about the application of the rule to specific resources. Two commenters raised the issue of whether an Indian tribe has authority to assert claims for damages for injuries to natural resources owned by tribal members but located outside the reservation.

*Response:* The CERCLA definition of "natural resources" is not linked to the location of a resource. Thus, the rule could be used to assess damages to resources owned by tribal members but located outside a reservation provided that the tribal trustee were able to cite authority for such a claim.

*Comment:* Another commenter sought clarification of whether archaeological resources are covered by the rule.

*Response:* The Department acknowledges the confusion that has arisen as a result of multiple uses and meanings of the term "resource" under different statutes. "Archaeological" and other "cultural" resources are not "land, fish, wildlife, biota, air, water, ground water, drinking water supplies, [or] other such resources." Therefore, "archaeological" and "cultural" resources do not constitute "natural" resources under CERCLA.

Nevertheless, although archaeological and cultural resources, as defined in other statutes, are not treated as "natural" resources under CERCLA, the rule does allow trustee agencies to factor the loss of archaeological and other cultural attributes provided by a natural resource into a natural resource damage assessment through consideration of the services provided by that resource. For example, if land constituting a CERCLA-defined natural resource contained archaeological artifacts, then that land might provide a variety of different services including, for example, the service of supporting archaeological research. If an injury to the land caused a reduction in the level of archaeological research that could be performed, trustee officials could recover damages for the lost public use of that service.

### *E. Coordination Among Trustees*

*Comment:* There were several comments concerning coordination among trustees. Some commenters thought that the rule should require trustees to send the Notice of Intent to Perform an Assessment not only to the PRPs but also to any interested trustees. Also, one commenter thought that the rule should require dissemination of the draft Assessment Plan to all other trustees prior to the public review period.

*Response:* The Department urges trustee agencies to work together and § 11.32(a)(1) of the existing rule, which would not be affected by the proposed rule, discusses trustee coordination. Section 11.32 (a)(i) requires notification of all known affected trustees that an Assessment Plan is being developed. The Department believes that this requirement provides trustee officials with adequate notice of an impending assessment and opportunity to ensure that their interests are protected.

*Comment:* Another commenter suggested that the Department revise § 11.32(a)(1)(ii)(B) of the existing rule, which provides that when the natural resources being assessed are located on lands or water subject to the administrative jurisdiction of a Federal agency, a designated official of the Federal agency shall act as the lead authorized official. The commenter stated that there may be cases where a Federal agency is both a trustee and a PRP. The commenter suggested that § 11.32(a)(1)(i)(B) be revised to provide that in those cases a State official should serve as lead authorized official.

*Response:* Revision of the procedures for appointing a lead authorized official area beyond the scope of this rulemaking. However, the Department notes that § 11.32(a)(1)(ii)(B) only designates a lead authorized official in those cases where a consensus among all trustees cannot be reached.

*Comment:* One commenter thought that the Department should add a presumption that Federal trustee agencies will use the rule to assess damages unless all involved trustees agree otherwise. The commenter stated that such a presumption was needed to avoid collateral estoppel problems where one trustee chooses to follow the rule while other trustees do not. The commenter further stated that the need for such a presumption is created by the requirement that trustees prepare statements of the basis of authority.

*Response:* Section 11.10 of the existing rule provides that use of the procedures set forth in the rule is not mandatory. Modifications to this provision are beyond the scope of this rulemaking. Moreover, the Department notes that potential collateral estoppel issues arise whenever trustee agencies with overlapping authority fail to cooperate regardless of the methods used to assess damages or the content of their statements of their basis of authority.

### *F. Preliminary Estimate of Damages*

*Comment:* Most of the commenters who addressed the issue of the preliminary estimate of damages acknowledged that some estimate of damages is needed to determine the proper scope of assessment and to ensure the reasonableness of assessment costs. However, some commenters stated that the preliminary estimate of

damages should not be disclosed in the Assessment Plan or the Report of Assessment. These commenters stated that disclosure of the estimate to PRPs might compromise the ability of trustee officials to settle a case or prepare for litigation. The commenters also believed that disclosure of the preliminary estimate in the Report of Assessment was unnecessary for the purpose of determining whether the assessment costs were reasonable, because the reasonableness of the final costs is measured by the ratio of those costs to the final damage figure not to the preliminary estimate. On the other hand, one commenter stated that trustees should be required to disclose the preliminary estimate as soon as possible to ensure that the public and the PRPs have a meaningful opportunity to comment on the reasonableness of the assessment costs.

*Response:* The Department acknowledges the confusion generated by the proposed rule concerning disclosure of the preliminary estimate. The Department agrees that premature disclosure of the preliminary estimate might adversely affect the ability of trustee officials to settle or litigate a natural resource damage case. Further, the Department notes that PRPs and the general public would still have a meaningful opportunity to comment on the reasonableness of assessment costs even if the preliminary estimate were not disclosed in the draft Assessment Plan. Under § 11.14(ee) of the existing rule, the relationship between anticipated costs and anticipated damages in only one of the aspects of reasonableness. Another factor is whether all aspects of the assessment directly contribute to the calculation of a monetary damage figure. The public and the PRPs need not know the preliminary estimate of damages to comment on whether an assessment satisfies this factor of reasonableness.

Therefore, the Department never intended the preliminary estimate to be included in the Assessment Plan, which is offered for public review and comment. Instead, the preliminary estimate was designed as a predecisional, deliberative, inter- or intra-agency document for the sole use of trustee agencies in scoping the assessment. The Department intends to revise proposed § 11.35 to clarify this point.

Nevertheless, although it does not believe that the preliminary estimate of damages should be publicly disclosed along with the Assessment Plan, the Department does think that the estimate should be included in the Report of Assessment, which is disclosed at the completion of the assessment. Under § 11.14(ee) of the existing rule, reasonableness is determined by the ratio of anticipated assessment costs to anticipated damages not the ratio of final costs to final damages. Therefore, PRPs, the public and the courts will need access to the preliminary estimate to determine the reasonableness of the assessment costs that have been incurred.

*Comment:* A few commenters thought that the Department's proposed procedures for calculating the preliminary estimate were too detailed and cumbersome. These commenters expressed concern that the procedures were unnecessarily time-consuming. On the other hand, one commenter complained about the Department's characterization of the estimate as a "back-of-the-envelope" calculation and requested that the Department clarify that the estimate should be carefully developed based on the best available data.

*Response:* The Department believes that the proposed procedures for calculating the preliminary estimate are appropriate. The preliminary estimate, which may be revised as new information becomes available would serve the important function of ensuring that the assessment is performed at a reasonable cost, thus trustee agencies should exercise appropriate care when calculating a preliminary estimate. Section 11.35(c) lists factors that trustee officials would consider when developing a preliminary estimate. These factors are all related to elements of the final damage figure and are designed to ensure that the preliminary estimate covers the same general scope as the final damage figure.

On the other hand, the Department recognizes that trustee agencies will generally have relatively little information on which to base a preliminary estimate. Thus, the factors listed in proposed § 11.35(c) need only be considered "to the extent possible." Also, the Department recognizes that the preliminary estimate will be very rough and the description of the estimate as a "back-of-the-envelope" calculation was merely intended as an acknowledgement of this fact.

*Comment:* A number of commenters suggested that trustee be allowed to develop a range of preliminary estimates or a qualitative estimate rather than a specific quantitative estimate. These commenters expressed concern that it would generally be too difficult to calculate a quantitative preliminary estimate of damages at an early stage in the assessment process. Commenters also thought the danger that early development of a specific quantitative estimate could generate pressure for the trustees to find damages at least as high as the preliminary estimate regardless of the actual damages.

*Response:* The Department does not believe that a range of preliminary estimates or a qualitative estimate would provide an adequate standard for evaluating whether assessment costs are reasonable as required by CERCLA. The Department realizes that development of a preliminary estimate might be difficult in some cases; however, the estimate is not intended as a precise, final figure. Also, the Department does not believe that development of a quantitative preliminary estimate would generate pressure on trustee officials, provided that the estimate was not disclosed to the public until after the assessment was completed.

*Comment:* Other commenters requested that the Department emphasize the preliminary nature of the estimate and specify that an estimate would not be used against trustees if later-discovered information necessitates an adjustment in the estimate.

*Response:* The Department agrees that trustee officials should have discretion to modify the preliminary estimate as new information becomes available. Section 11.35(e) of the proposed rule would require trustee agencies to review the preliminary estimate after completion of the Injury Determination and Quantification phases and would authorize trustees to revise the estimate as appropriate. Any earlier versions would be included in the Report of Assessment to provide a basis for evaluating the reasonableness of the costs incurred throughout the assessment but could not otherwise be used against the trustee officials.

*Comment:* There were a number of comments concerning the timing of the preparation of the preliminary estimate. Some commenters agreed that trustee officials should be allowed to delay completion of the estimate until after the Injury Determination phase given the difficulties of calculation. Other commenters thought that the estimate should always be completed before completion of the Assessment Plan to ensure that the costs of performing the assessment are reasonable.

*Response:* The Department acknowledges the importance of the preliminary estimate in ensuring that the Assessment Plan is appropriately focused. However, the Department believes that trustees should have discretion to delay completion of the preliminary estimate until the end of the Injury Determination phase if

insufficient data exist upon which to base an estimate. The Department realizes that in some cases the injuries might be so complex or the existing data might be so sparse that any preliminary estimate of damages would be meaningless until the Injury Determination phase had been completed. Further, § 11.32(f) of the existing rule requires the trustees to review the Assessment Plan after completion of the Injury Determination phase. Therefore, the Assessment Plan can be modified as needed once the preliminary estimate is developed.

*Comment:* A few commenters approved of the provisions of the proposed rule that would restrict use of the preliminary estimate to scoping purposes. However, some commenters believed that trustees should also be allowed to use the estimate in settlement negotiations.

*Response:* The Department does not believe that this rule should specifically address the use of the preliminary estimate for settlement negotiations. This rule was developed to create an optional procedure that trustee officials could use to obtain a rebuttable presumption in a judicial or administrative proceeding. Although the Department strongly supports and encourages the use of the rule as a framework for negotiated resolutions of natural resource damage claims, it believes that discussions of settlement procedures are beyond the scope of this rule. Moreover, the Department notes that establishment of specific settlement procedures in this rule could unduly restrict the flexibility of negotiating parties.

*Comment:* Finally, one commenter requested that proposed § 11.35 be revised to specify that releases excluded from liability under CERCLA should not be included in any preliminary estimate.

*Response:* Sections 11.24(b) and (c), which would be affected by the proposed rule, already direct trustee officials to exclude from their assessments any releases or discharges that are exempt from liability under CERCLA or CWA. The Department believes these provisions adequately protect against assessment of exempt releases and discharges.

*G. Reasonable Costs of Assessments*

*Comment:* One commenter thought that the definition of "reasonable cost," set forth at § 11.14(ee) of the existing rule, should not require costs to be less than damages. This commenter suggested that all assessment costs should be considered reasonable so long as the assessment is performed in a prudent and cost-efficient manner.

*Response:* The definition of "reasonable cost," which would not be affected by the proposed rule, was upheld by *Ohio* v. *Interior* after thorough review.

*Comment:* A few commenters asked the Department to specify that reasonable assessment costs include attorneys' fees. Two of these commenters thought that trustees should be able to recover attorneys' fees both for services rendered during an assessment and for services rendered in preparation and litigation of a natural resource damage claim.

*Response:* Section 11.15(a)(3)(ii) of the existing rule specifies different types of expenses that constitute reasonable and necessary costs of an assessment. The only proposed revision to § 11.15(a)(3)(ii) is a substitution of the old terminology of "restoration" with the new terminology of "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources." Additional changes to § 11.15(a)(3)(ii) are beyond the scope of this rulemaking. As noted in the August 1, 1986 preamble, the Department believes that trustee agencies will generally need the assistance of an interdisciplinary team of experts when performing natural resource damage assessments. Therefore, the rule does not restrict recoverable assessment costs to the expenses of particular types of professionals. However, the Department notes that trustees may only recover those costs that are associated with the actual assessment and that satisfy the definition of "reasonable cost" set forth at § 11.14(ee) of the existing rule.

*Comment:* Another commenter stated that the rule should allow trustees to recover the costs of preliminary planning, design or feasibility studies used to determine the costs and benefits of different methodologies for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

*Response:* The definition of "reasonable cost" requires that all phases of an assessment bear a well-defined relationship to each other. In other words, all studies must be directed toward the single goal of developing a damage figure. Under the proposed rule, one of the factors to consider during selection of a methodology for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would be the relationship of expected costs to expected benefits. Therefore, the cost of studies designed to evaluate the costs and benefits of different methodologies could be recovered so long as anticipated assessment costs are less than anticipated damages and the anticipated increment of benefits obtained by using a particular study exceeds the anticipated increment of extra cost associated with that study.

*H. Calculation of Baseline*

*Comment:* There were a variety of comments about the calculation of the baseline. A number of commenters stated that the April 29, 1991 preamble referred to the baseline as the conditions that existed prior to the discharge or release. These commenters complained that this characterization fails to account for situations in which the level of services provided by a resource would have increased but for the release or discharge.

*Response:* The Department agrees that the baseline should reflect changes that would have occurred in the absence of the spill or discharge. Therefore, although the baseline will most often represent conditions occurring prior to the discharge or release, it need not be limited to those conditions. The definition of baseline, which would not be affected by the proposed rule, is set forth at § 11.14(e):

> Baseline means the condition or conditions that would have existed at the assessment area had the discharge of oil or the release of the hazardous substance under investigation not occurred.

The statements in the preamble to the proposed rule characterizing baseline as pre-release conditions were not intended to affect this definition. The Department intends to revise § 11.82(b)(1)(i) of the proposed rule, which describes restoration and rehabilitation actions as actions taken to return a resource to baseline as measured by "the services previously provided" to conform with the definition in § 11.14(e). Further, the Department notes that although the commenters have focused on situations where conditions were improving, the definition of baseline takes into account decreases, as well as increases, in the level of services that would have been provided in the absence of the discharge or release.

*Comment:* Several commenters stated that when calculating the baseline, trustee officials should not be restricted to collecting only those data that can be obtained at a reasonable cost. These commenters stated that scientific accuracy, not cost, should determine the scope of data collection. A few of these commenters thought that placing a cost restriction on the collection of data would put trustee officials at a

disadvantage because PRPs are not subject to such a restriction. One commenter stated that limiting data collection based on cost considerations is contrary to *Ohio* v. *Interior* and the language and legislative history of CERCLA.

*Response:* The requirement that trustees restrict their collection of baseline data to those data that are required in order to perform the assessment at a reasonable cost would not be affected by the proposed rule. The Department believes that this requirement is not only consistent with but also necessitated by the language of CERCLA. Section 107(a)(4)(C) of CERCLA authorizes trustees to recover their assessment costs but only if those costs are reasonable. The requirement concerning collection of baseline data merely incorporates this statutory limitation on recoverable costs. Moreover, this requirement should not put trustees at a disadvantage since assessments performed in accordance with the rule are afforded a rebuttable presumption.

*Comment:* One commenter expressed concern that the proposed rule could be read to require trustees to prove that their assessment costs, including the costs of collecting baseline data, are reasonable.

*Response:* The rule was designed to ensure that the costs of assessments performed in accordance with the rule are reasonable. So long as an assessment complies with the rule, trustees will obtain a rebuttable presumption that the cost of the assessment was reasonable. The language of the proposed rule concerning baseline collection of data was not intended to affect that rebuttable presumption.

*Comment:* One commenter stated that unless the condition of a resource had actually been evaluated before a spill, determination of an accurate baseline may be very difficult. Therefore, this commenter suggested that the Department develop guidelines for the calculation and use of baseline, including criteria for identifying and measuring pre-existing contamination, services lost to the public, resumption of partial services and seasonal use of services.

*Response:* The Department notes that § 11.72 of the existing rule provides significant guidance on the calculation of baseline that would not be affected by the proposed rule.

*Comment:* Another commenter expressed concern that defining baseline in terms of levels of services could unduly limit damages for natural resource injuries. This commenter stated that a spill might kill a number of birds without causing any perceivable reduction in overall services provided by the species. The commenter thought that in such a case the rule could be interpreted to mean that there had been no decrease from baseline and, thus, no damages.

*Response:* The Department notes that "services," as defined in § 11.14(nn) of the existing rule, include functions performed by one resource for another or for humans. Thus, services may include any number of resource-to-resource functions or interactions. For example, in addition to providing birdwatching and hunting opportunities to humans, birds are links in ecological food webs; they disseminate seeds; and they pollinate flowers.

In light of the broad scope of services provided by birds, the Department would anticipate any loss of birds to cause some measurable reduction in the level of services. It may be difficult to discover small population losses and then quantify the resulting reduction in service levels. Furthermore, the costs of assessing such small losses may not always satisfy the definition of "reasonable costs." However, assuming that the trustees can quantify it at a reasonable cost, any reduction in service levels, regardless of the magnitude, may serve as a basis for damages.

*I. Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Services Versus Resources*

*Comment:* There appeared to be considerable confusion among commenters over whether the Department intended restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to be measured in terms of the services provided by a resource, the resource itself or both. Several commenters noted apparent inconsistencies in the rule.

Some commenters stated that the Department should specify that damages are based on the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of both the services provided by a resource and the resource itself. These commenters stated that focusing on services alone would not result in full restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These commenters also stated that the Department's references to restoration of the resource or the services represented an inappropriate attempt to resurrect the "lesser of" concept of damages that was rejected in *Ohio* v. *Interior*.

Other commenters believed that restoration, rehabilitation, replacement, and/or acquisition of the equivalent should be limited to the services provided by the resource. For example, the commenters stated that if an injured rock formation provided services such as shelter and a food source for animals, insects and plants, PRPs should only be liable for the costs of restoring, rehabilitating, replacing, and/or the equivalent of those services, not for the costs of recreating the rock formation itself. Similarly, commenters believed that if an injured stream was used for fishing and nothing else, PRPs should only be liable for the cost of cleaning that stream to the point where fishing opportunities are returned to baseline.

These commenters thought that focusing on services would fully compensate the public because the public values natural resources solely in terms of services. According to these commenters, requiring restoration, rehabilitation, replacement, and/or acquisition of the equivalent of both services and the resource itself would create economic inefficiencies. Also, the commenters stated that any restoration, rehabilitation, replacement, and/or acquisition of the equivalent beyond the point where services are returned to baseline would simply constitute restoration for restoration's sake, which would be inconsistent with CERCLA. Some commenters expressed concern that allowing recovery for restoration, rehabilitation, replacement, and/or acquisition of the equivalent of both services and the physical, chemical or biological condition of a resource would lead to double recovery. Other commenters believed that if Congress had intended damages to be based on restoration of the resource itself, it would not have authorized use of damages for acquisition of substitute resources, which by definition does not entail restoration of the actual resource that was injured. Finally, the commenters stated that references in the April 29, 1991 preamble and proposed rule to restoration of services and/or the resource represented an unexplained departure from the existing rule that was not required by the court remand.

*Response:* The Department did not intend to change the focus of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources in the proposed rule. The Department has always intended "restoration, rehabilitation, replacement, and/or acquisition of the equivalent" to refer to those actions taken to return a resource to baseline. As evidenced by the statutory provision allowing trustees to acquire equivalent natural resources, Congress did not envision that trustees would or could recreate the exact same injured resources. However, the Department

does not believe that Congress intended to allow trustee agencies to simply restore the abstract services provided by a resource, which could conceivably be done through an artificial mechanism. For example, nothing in the language or legislative history of CERCLA suggests that replacement of a spring with a water pipeline would constitute "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources." CERCLA requires that natural resource damages be based on the cost of restoring, rehabilitating, replacing and/or acquiring the equivalent of an actual natural resource.

Apparent inconsistencies in the rule arise because trustee officials need a means of measuring injury in order to determine when restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is complete, and the concept of services provides that means. As was stated in the August 1, 1986 preamble.

> Traditionally humans have valued natural resources in monetary terms on the basis of services provided by the resources. This method logically may be extended to valuing damages to an injured resource on the basis of changes in services. This rule establishes the link between measured adverse changes in the condition of the resource, the injury, and the damages through the measurement of changes in the services provided by the injured resource. 51 FR 27686.

In other words, although it is the natural resource that trustees are restoring, restoration of that resource causes an increase in services, and that increase in services is used to measure the level of restoration.

Further confusion may have been generated by the fact that §§ 11.71(b) and 11.71(f), which would not be affected by the proposed rule, allow trustees to quantify changes in service levels either by direct measurement or by indirect measurement based on changes in the physical, chemical or biological quality of the resource. As was stated in the August 1, 1986 preamble:

> In some cases it may be possible to measure services directly, and provision has been made for such measurement (§ 11.71(f)), but the Department does not believe total reliance can always be placed on direct measurement. 51 FR 27713.

Therefore, in the hypothetical case of the injured rock formation, the PRPs would not be liable for the cost of recreating an identical formation. However, the PRPs would be liable for the cost of some sort of restoration, rehabilitation, replacement, and/or acquisition of an actual natural resource that provides a level of services equivalent to the baseline level of services provided by the rock formation.

Moreover, the Department notes that services include functions provided not only to humans but also to other resources. For example, wildlife may provide both recreational services to humans and food web services to other organisms. Thus, in the hypothetical case of the injured stream, it is unlikely that the only service provided by the resource is the service of supporting fishing.

*J. Other Aspects of the Definition of "Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources"*

*Comment:* There were a number of comments about the term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources." Apparently there was some confusion over the components of this term. One commenter expressed concern that use of "and/or" improperly implied a preference for alternatives that incorporate all four possible components. Another commenter stated that use of "and/or" could be interpreted to allow trustee agencies to recover the costs of acquiring equivalent resources even if they have already obtained the cost of full restoration.

*Response:* As a result of the new emphasis on restoration under the proposed measure of damages, the Department introduced the term "restoration, rehabilitation, replacement and/or acquisition of equivalent resources" to represent the full range of possible "restoration" actions trustee agencies may take. The term was derived from the language of section 107(f) of CERCLA. "And/or" was included in simple recognition of the fact that trustee officials may select one, all, or any combination of the different types of actions as a basis for calculating overall costs. The Department did not intend to express a preference for alternatives that incorporate all the different components of the term. Also, the term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources" does not authorize trustees to obtain both the cost of full restoration and the cost of acquiring equivalent resources in violation of the prohibition on double recovery.

*Comment:* Some commenters thought that the term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources" correctly reflected that each component or combination of components provides an equally appropriate basis for damages. However, other commenters thought that the rule should not grant acquisition of equivalent resources the same status as restoration. These commenters stated that CERCLA and *Ohio* v. *Interior* establish a clear preference for using restoration or replacement costs, as opposed to acquisition costs, as the measure of damages. The commenters stated that section 107(f)(1) of CERCLA first lists three legitimate uses of natural resource damage awards: restoration, replacement or acquisition of equivalent resources. The statute then provides that the measure of damages shall not be limited by restoration and replacement costs. According to the commenters, these statutory provisions indicate, and the court in *Ohio* v. *Interior* recognized, that amounts recovered must be spent first on feasible restoration or replacement actions and any excess funds are then to be spent on acquisition of equivalent resources.

*Response:* The term "restoration, rehabilitation, replacement, and/or acquisition of equivalent resources" was introduced to emphasize that trustee agencies may select among a wide range of methods. The term was not intended to create rigid categories of acceptable trustee actions. The Department does not believe that the rule should establish a preference for restoration as opposed to acquisition of equivalent resources. "Acquisition of equivalent resources" encompasses more than just the purchase of land; it covers the purchase of the full range of different resources. Restoration and rehabilitation actions may often require the acquisition of various biological and geological resources. Therefore, the Department does not think it is appropriate or feasible to draw a distinction between acquisition of equivalent resources and restoration.

Moreover, CERCLA explicitly mentions use of recovered funds for restoration, rehabilitation, replacement or acquisition of equivalent resources. The "shall not be limited by" language quoted by the commenters simply provides that trustees may obtain damages in excess of restoration costs. The statutory language does not require that damages be based on acquisition costs only if restoration is infeasible. Further, the court in *Ohio* v. *Interior* did not establish any preference for restoration as opposed to acquisition of equivalent resources. In fact, the court specifically stated that its use of the term "restoration" was intended as shorthand for restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured resources. 880 F.2d at 441. Therefore, the Department has proposed to include all statutorily-

recognized forms of actions within the range of possible "restoration" measures.

Section 11.82(d)(8) of the proposed rule does indicate that Federal trustees generally should only acquire equivalent land when restoration, rehabilitation or replacement is not possible. However, this provision does not apply to acquisition of resources other than land. Further, as was noted in the August 1, 1986 preamble:

> This restriction was placed in the proposed rule after extensive consultation with other Federal agencies. The purpose of this limitation is to limit the acquisition of private lands for Federal management under CERCLA, by eliminating the possibility of expanding the Federal estate without Congressional approval. 51 FR 27719.

*Comment:* Some commenters expressed concern that the proposed rule required trustee agencies to analyze methodologies for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources on a resource-by-resource basis. One commenter noted that proposed §§ 11.82(b)(1)(i) and 11.82(b)(1)(ii) refer to "an injured resource." The commenter stated that the phrase "an injured resource" should be changed to "injured resources" to encompass those situations where more than one injured resource is involved.

*Response:* The language of the proposed rule was not intended to require trustee officials to examine alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources on a resource-specific basis. Resources are highly interdependent. Therefore, trustee officials will often need to simultaneously evaluate all injured resources when selecting an alternative. To avoid any confusion on this point, the Department intends to revise the language of proposed §§ 11.82(b)(1)(i) and 11.82(b)(1)(ii) to refer to "resources" rather than "resource."

*Comment:* One commenter asked the Department to clarify that PRPs are only liable for the cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of an injured resource to the point where baseline levels of actual and committed uses are returned. This commenter offered an example of contaminated groundwater that was only used for irrigation. According to this commenter, the PRP should not be liable for the cost of restoring, rehabilitating, replacing, and/or acquiring equivalent groundwater to the point were it was potable. Another commenter stated that the concept of committed use should not apply to restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

*Response:* The concept of "committed use" is discussed in § 11.84(b)(2), which would not be affected by the proposed rule. Section 11.84(b)(2) does not address restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Further clarification is beyond the scope of this rulemaking.

*Comment:* A few commenters thought that the Department should provide additional guidance on the goal of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. One commenter stated that the Department should make clear that the primary aim of trustee agencies should be to achieve the best possible overall restoration of resources. Another commenter stated that restoration actions should attain functional equivalency to the original resource and produce a resource that is self-perpetuating and self-repairing.

*Response:* Section 11.82(a) of the proposed rule provides that trustee officials should base their damage claims on the combination of actions that they conclude are most appropriate in light of the factors set forth at § 11.82(d). Furthermore, the required level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would be measured by the baseline. The Department believes that this guidance adequately clarifies the goal of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and that additional efforts to define a goal would unduly restrict trustees' discretion and could generate greater confusion.

For example, the Department is unsure what is meant by "best possible overall restoration" and how a particular action would be judged under this standard. Also, the notion of "functional equivalency" is already captured by the requirement that restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is designed to return the baseline conditions.

*Comment:* Several commenters expressed concern that simply restoring rehabilitating, replacing, and/or acquiring equivalent resources to baseline conditions would not achieve a healthy environment. Some of these commenters thought that the rule should allow trustee officials to take actions that enhance conditions above baseline, so long as PRPs are only charged for the cost of returning the baseline conditions.

*Response:* The natural resource damage assessment regulations are designed to measure the damages for which PRPs are liable. They are not intended as a general method for quantifying and resolving other forms of natural resource degradation. Nothing in the rule prevents trustees from using their own funds to improve conditions beyond baseline. However, when developing a Restoration and Compensation Determination Plan, trustee agencies are restricted to considering only those methodologies that will restore, rehabilitate, replace, and/or acquire equivalent resources to the point that baseline conditions are returned.

*Comment:* A few commenters stated the need for additional guidance on available restoration technology.

*Response:* The Department acknowledges that additional technical information on available restoration methodologies may be helpful to trustee officials and intends to develop such information at a later date.

### *K. Range of Alternatives Considered*

*Comment:* Several commenters agreed with the provision in the proposed rule that would grant trustees the discretion to determine what constitutes a reasonable number of alternatives for restoration, rehabilitation, and/or acquisition of equivalent resources. These commenters thought that such discretion was appropriate in light of the expertise of trustee agencies. However, other commenters stated that the rule should impose standards for the range of alternatives that must be considered.

*Response:* The number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will likely vary greatly depending on the extent and nature of the injuries. For large, complex assessments involving a variety of resources, there may exist a great number of possible alternatives. For smaller assessments, there may only be few possible alternatives. Furthermore, CERCLA authorizes trustee agencies, to use damages for restoration, rehabilitation, replacement and/or acquisition of equivalent resources and does not express a preference for any one of these types of actions. Therefore, the Department believes that trustees should have discretion to determine what constitutes a reasonable range of alternatives on a case-by-case basis.

*Comment:* There were also a few comments on consideration of a no-action alternative. These commenters supported the requirement that trustee

officials consider a no-action alternative. However, one commenter thought that this requirement was not sufficiently explicit in the proposed rule.

*Response:* Section 11.82(c)(2) of the proposed rule would explicitly require trustees to consider a "No Action-Natural Recovery" alternative in recognition of the statutory requirement that the natural resource damage assessment regulations take into consideration the "ability of the ecosystem or resource to recover."

*Comment:* One commenter expressed concern that proposed § 11.82(c)(2) could be interpreted to mean that a no-action alternative need only be considered after a determination that natural recovery would occur within a definite time period.

*Response:* The proposed rule does provide that the natural recovery alternative be based on the "No Action-Natural Recovery" determination made under proposed § 11.73(a)(1). However, proposed § 11.73(a)(1) would require trustee officials to estimate the amount of time needed for natural recovery in all cases. Therefore, natural recovery alternative will always be available for consideration.

*L. Ranking of Selection Factors*

*Comment:* There were numerous comments on the overall set of factors for selection of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. One commenter stated that the proposed rule placed too may restraints upon trustees' selection of an alternative. Several other commenters thought that the proposed rule afforded trustees the appropriate degree of discretion by providing factors for consideration but leaving the question of how to weigh those factors up to the trustee agencies.

However, a number of other commenters thought that the Department had provided trustees with too much discretion over selection of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Some commenters stated that the Department should at a minimum require trustee officials to consider all of the listed factors. A few commenters requested that the Department provide interpretive guidance on use of the selection factors.

Other commenters thought that the Department should rank the factors and suggested a variety of ways of doing so. A number of commenters suggested that the rule divide the factors into categories such a threshold factors, balancing factors and modifying factors. Technical feasibility, cost-benefit considerations and cost-effectiveness were most often proposed as the threshold factors.

*Response:* The Department believes that the factors listed in the proposed rule should be considered in all cases and is considering revising the rule accordingly. Of course, some factors may not be relevant in a particular situation. For example, the factor concerning the results of any actual or planned response action is of little relevance when no response actions are to be taken. In those cases, trustees could satisfy the requirement to consider all factors by simply making, and documenting, a determination that the particular factor was inapplicable.

Although the Department may require trustees to consider all listed factors, it does not intend to mandate compliance with each factor or dictate the relative weight of each factor. In light of the wide range of possible natural resource damage cases, the Department believes that trustee agencies must have flexibility when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Trustee agencies would, however, be required to document their rationale for selecting a particular alternative in the Restoration and Compensation Determination Plan, which is subject to public review and comment. Also, after the damages have been recovered, trustee officials must develop a Restoration Plan detailing how they will actually use those damages. Under the proposed rule, this Restoration Plan would be based on the methodologies selected in the Restoration and Compensation Determination Plan that was developed as part of the Assessment Plan. The Department believes that these two requirements will adequately ensure that trustee officials do not abuse their discretion when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to serve as the basis for damages.

*M. Specific Selection Factors*

1. Technical Feasibility

*Comment:* There were a number of comments about the technical feasibility factor. Several commenters addressed the definition of "technical feasibility." Some commenters supported the portion of the definition that provides that a technology must be "well known." On the other hand, a number of commenters stated that this provision would unduly restrict the use of innovative restoration methodologies. The commenters stated that because the science of restoration is still developing, in many situations there will be no well-known technologies available. Further, these commenters feared that the definition would discourage the development of new technologies.

*Response:* The proposed rule would make no substantive revisions to the definition of "technical feasibility." The proposed rule would merely substitute the term "Restoration and Compensation Determination Plan" for the new obsolete term "Restoration Methodology Plan." The Department believes that the definition is appropriate.

Damages are in large part determined by the methodologies trustees select for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Therefore, when selecting an alternative, trustee agencies should consider whether the methodologies involved are well known or still experimental. The Department acknowledges that the level of technical knowledge may vary. However, technical feasibility is just one factor that trustees must consider and the relative weight of this factor is left to the discretion of the trustees. Further, as more research is performed, more methodologies will become well known. The Department does not believe that this definition will hinder that research, instead the definition merely establishes a standard for determining how familiar a technique must be before it can be considered technically feasible.

*Comment:* One commenter thought that the phrase "an acceptable period of time" was vague and unnecessary. Another commenter stated that the definition should require a "substantial likelihood," rather than "reasonable chance," of success. Also a few commenters thought that a requirement of practicability should be added to the definition.

*Response:* Technical feasibility depends on the particular facts of a given case. Therefore, the Department does not believe that further delineation of the term "an acceptable period of time" is warranted. Further, the Department does not think that substitution of the phrase "substantial likelihood of success" or inclusion of a requirement of practicability would provide any additional meaningful guidance to trustee agencies.

*Comment:* Several commenters thought that technical feasibility should be a mandatory criterion for selection of an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

These commenters stated that the legislative history of CERCLA and *Ohio* v. *Interior* indicate that PRPs are not liable for the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources when such actions are infeasible.

*Response:* The Department acknowledges that a trustee official would be unable to implement an alternative if it were absolutely infeasible. However, the technical feasibility factor focuses on the evaluation of the varying levels of technical feasibility rather than establishing a strict standard for acceptable alternatives. Different methodologies may possess different degrees of feasibility or infeasibility; therefore, the Department believes it would be impractical to dictate how much consideration a trustee official must give to technical feasibility. Moreover, the Department notes that CERCLA and *Ohio* v. *Interior* grant the Department the authority to develop exceptions to the general measure of damages in the case where restoration is infeasible but do not require the Department to do so.

2. Relationship of Expected Costs to Expected Benefits

*Comment:* Some commenters stated that the relationship between costs and benefits should be eliminated from the list of factors to be considered when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These commenters expressed concern that inclusion of this factor would focus all assessments on a weighing of monetary costs and benefits, thus undermining the statutory preference for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. One commenter thought that inclusion of a cost/benefit factor was unnecessary in light of the cost-effectiveness factor.

On the other hand, a number of commenters stated that the cost/benefit factor was not accorded adequate weight. A number of commenters stated that the rule should explicitly require trustees to select the alternative that minimizes the sum of the expected net present value of the restoration, rehabilitation, replacement, and/or acquisition costs plus the expected net present value of lost compensable value.

*Response:* The Department believes that the relationship between costs and benefits is an appropriate factor to consider when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Trustees will use this factor to help select among different alternatives, not to determine whether restoration, rehabilitation, replacement, and/or acquisition of equivalent resources itself is warranted. Trustees should consider the full range of costs and benefits, both in terms of recovery of the resource and effects on the public. Therefore, inclusion of this factor would not undermine the statutory preference for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

Moreover, consideration of the relationship between costs and benefits is not rendered unnecessary by consideration of cost-effectiveness. The cost/benefit factor provides a means of comparing alternatives that pose both different costs and different benefits, whereas the cost-effectiveness factor is designed to evaluate alternatives that provide similar benefits.

As *Ohio* v. *Interior* recognized, cost considerations, although relevant, are not paramount under CERCLA. Therefore, the proposed rule would not require trustees to select the alternative that minimizes the sum of the costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and compensable value. Nevertheless, selection of a particular alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources does determine the level of services lost pending completion of that alternative. Thus, when evaluating a particular alternative, trustees should consider the costs and benefits associated with both the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources and the public use and nonuse of the services provided by those resources.

*Comment:* Some commenters stated that consideration of costs and benefits was acceptable so long as the rule clarified that such consideration was limited to identifying those alternatives that pose grossly disproportionate costs.

*Response:* Consideration of the relationship between costs and benefits is not an attempt solely to define which costs are "grossly disproportionate" to the value of lost services. The determination whether the costs of a particular alternative are grossly disproportionate to lost values should be based on consideration of all listed factors, not just the cost/benefit factor.

3. Cost-Effectiveness

*Comment:* A number of commenters thought that trustees should be required to select a cost-effective alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. These commenters stated that the court in *Ohio* v. *Interior* stated that CERCLA "requires that the assessment of damages and the restoration of injured resources take place as cost-effectively as possible." 880 F. 2d at 456. One commenter thought that allowing trustees to select an alternative that was not cost-effective would violate Executive Order 12291. Some commenters stated that, under the original version of the rule, whenever restoration costs were used as the measure of damages, such costs had to be based on a cost-effective restoration methodology. These commenters stated that the Department had provided no explanation for changing this requirement.

On the other hand, a number of commenters emphasized that cost-effectiveness should not be mandatory. One commenter expressed concern that if cost-effectiveness were mandatory, trustees would always be required to select natural recovery.

*Response:* The Department believes that trustees must still consider cost-effectiveness when selecting an alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. However, under the proposed rule, evaluation of cost-effectiveness would not always be a straightforward exercise. Cost-effectiveness involves a comparison of activities that provide the same or similar levels of benefits. Under the proposed rule, the level of benefits provided by a specific alternative is determined in part by whether and how that alternative satisfies the other listed consideration factors, many of which are not quantifiable. Therefore, the Department does not believe that a strict requirement of cost-effectiveness would be appropriate.

*Comment:* One commenter stated that the definition of "cost-effectiveness" should be changed to refer to the "same" rather than "similar" levels of benefits, in order to ensure full restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

*Response:* Section 11.14(j) provides:

> "Cost-effective" or "cost-effectiveness" means that when two or more activities provide the same or a similar level of benefits, the least costly activity providing that level of benefits will be selected.

As noted in the August 1, 1986 preamble, "In many cases benefits may not be exactly the same, but may be similar in nature; cost-effectiveness should hold in these cases." 51 FR 27695. Revision of this definition is beyond the scope of this rulemaking.

4. Results of Response Actions

*Comment:* A few commenters thought that the rule should explicitly prohibit trustees from selecting any alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources that conflicts with or is duplicative of response actions. These commenters stated that such a prohibition was dictated by the fact that natural resource damages are only recoverable for injuries residual to response actions.

*Response:* Section 11.15(a)(1)(ii) of the existing rule, which would not be affected by the proposed rule, provides that natural resource damages are based on injuries from the onset of the discharge or release through the recovery period, less any mitigation of those injuries by response actions. Similarly § 11.84(c)(2), which would also be unaffected by the proposed rule, states that natural resource damages are "the residual to be determined by incorporating the effects, or anticipated effects, of any response actions." The Department believes that these provisions adequately ensure that natural resource damages are only recovered for residual injuries. Further, the purpose of a response action may differ from that of an action to restore, rehabilitate, replace, and/or acquire equivalent resources. Therefore, addition of a requirement that trustee officials select an alternative that is consistent with the response actions would be inappropriate.

5. Potential for Additional Injury

*Comment:* One commenter thought that when considering the potential for additional injury from the proposed actions, trustees should evaluate not only the long-term impacts on the injured resource but also the short-term impacts on the injured resource and the short- and long-term impacts on the environment. The commenter stated that these impacts would include violations of any applicable environmental standards or criteria.

*Response:* Section 11.82(d)(5) of the proposed rule provides that trustee officials should consider the "[p]otential for additional injury resulting from the proposed actions, including long-term and indirect impacts, to the injured resource or other resources." Reference to "long-term and indirect impacts" was not intended to prohibit consideration of short-term impacts. This factor is designed to address a broad range of possible effects on the injured resource and other resources, which collectively comprise the environment. Violations of environmental standards or criteria would be considered under the factor of consistency with applicable Federal and State laws, set forth in proposed § 11.82(d)(10).

6. Natural Recovery

*Comment:* One commenter suggested that consideration of natural recovery was given too much weight under the proposed rule. This commenter thought that selection of a natural recovery alternative will rarely be appropriate because it will not clean up the environment and will lead to very large compensable values. On the other hand, several commenters stated that the proposed rule appropriately recognized that restoration is often best accomplished by allowing nature to take its course. One commenter suggested that the rule require trustee agencies to select natural recovery when there is no technically feasible alternative or if the costs of all other alternatives are grossly disproportionate to their benefits.

*Response:* The Department does not believe that the proposed rule would place undue emphasis upon natural recovery. In some circumstances, natural recovery, including the minimal management actions necessary to allow natural recovery, may be the most appropriate form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Also, section 301(c)(2) of CERCLA explicitly requires that the natural resource damage assessment regulations take into consideration the ability of the ecosystem or resources to recover. However, whether natural recovery is the most appropriate course of action will depend on the specific facts of the case. Therefore, the proposed rule requires trustees to consider a "No Action, Natural Recovery" alternative but does not dictate when that alternative should be selected.

*Comment:* Another commenter thought that the Department should provide trustees with additional guidance on evaluation of natural recovery, including standards on what constitutes a reasonable time frame for natural recovery.

*Response:* The reasonable time frame for natural recovery will vary from case to case, thus the Department does not think that additional clarification is appropriate or advisable.

7. Ability To Recover

*Comment:* One commenter thought that the Department should clarify its discussion of the ability of a resource to recover. In the April 29, 1991 preamble, the Department stated:

> The trustee should consider the ability of the resource to recover naturally and/or with assistance by various actions. This consideration encompasses whether all important and measurable services of the lost or injured resources are being restored. 56 FR 19787.

The commenter requested that the Department specify whether "measurable" refers to measurement of the injury to the service or measurement of the value of the service. According to this commenter, in the absence of clarification, some trustees may evaluate the time necessary to return the injured resource to baseline while others may consider the time necessary to return the resource to its baseline economic value.

*Response:* For purposes of calculating the recovery period, it is the actual level of services that must be measurable, not the economic value of those services. However, the Department notes that when calculating compensable values, trustee agencies will need to measure the value of the services that the public will lose during the recovery period.

*Comment:* Another commenter thought that this factor should be modified to address situations in which elements other than the release or discharge would render irrelevant any efforts to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resource. The commenter offered the example of a river which not only contains sediment contaminated with a hazardous substance but also receives sewer overflows. Assuming that the fish in the river will not be edible so long as the overflows continue, this commenter stated that any form of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would be pointless and should not serve as a basis for damages.

*Response:* The recovery period is based on the time needed to return baseline conditions, which are the conditions that would have existed had the release or discharge not occurred. Therefore, when evaluating a resource's ability to recover, trustee agencies must take into consideration the conditions that already exist at the assessment area. In the hypothetical case offered by the commenter, the presence of sewer overflows would not render restoration, rehabilitation, replacement, and/or acquisition of equivalent resources pointless; however, it would affect the baseline condition that must be re-established.

8. Federal Land Acquisition

*Comment:* There were a number of comments about the factor regarding Federal land acquisition. There appeared to be considerable confusion over whether this factor was meant to

restrict State and tribal trustees' ability to acquire land. Several commenters asked the Department to clarify that State and tribal trustees, not just Federal trustees, have the authority to acquire land. Other commenters thought that the factor improperly suggested that land was the only resource that trustees could acquire.

Some commenters agreed that Federal land acquisition should be restricted but asked that State and tribal land acquisition also be limited. One of these commenters thought that restrictions on land acquisition were necessary, because a particular tract of land may contain many more resources than those affected by the discharge or release.

*Response:* The restriction on Federal land acquisition has been in the regulations since the August 1, 1986 rulemaking. This provision was solely designed to limit the authority of Federal trustees to select an alternative that involves acquisition of land. The provision places no restrictions on the authority of State and tribal trustees to select alternatives that involve acquisition of land. Further, the provision was not meant to prohibit any Federal, State or tribal trustee from considering acquisition of resources other than land.

As discussed in the August 1, 1986 preamble, this provision was added out of concern over expansion of the Federal estate without Congressional approval. In the absence of similar concerns about State and tribal land acquisition, the Department does not believe that parallel restrictions on State and tribal trustees are warranted. Further, the rule provides that trustees may only consider alternatives that restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources to no more than baseline. Therefore, trustees are already prohibited from acquiring land that does not contain equivalent resources.

*Comment:* Another commenter sought further guidance on the implications of land acquisitions by trustees. The commenter, noting the limited supply of pristine land, asked the Department to clarify the extent of a PRP's liability for restoring acquired land that is itself contaminated. The commenter also requested clarification of whether a PRP would be liable for response costs at a site acquired by a trustee if contamination were discovered after the acquisition. Further, the commenter asked whether a PRP would be charged for the cost of a pre-acquisition environmental survey.

*Response:* The proposed rule would allow trustees to base their damage calculations on any combination of actions that restore, rehabilitate, replace, and/or acquire equivalent resources. Thus a trustee agency may select an alternative that involves acquiring contaminated land that contains equivalent resources and then restoring or rehabilitating those resources to the point where they provide the same baseline level of services as the resources being assessed. In such a case, damages would include both the estimated acquisition costs and the estimated costs of restoring or rehabilitating the acquired resources.

Subject to certain defenses, liability for cleanup costs is governed by section 107(a) of CERCLA, which establishes four categories of potentially responsible parties. One of those categories is the owner or operator of a facility. If a release of a hazardous substance were discovered after a trustee had acquired a piece of land, then the trustee, as an owner, might be liable for resulting response costs. Unless the natural resource damage settlement or judgment provided otherwise, the PRP who had paid the natural resource damages used to acquire the land would only be liable for response costs if it too fell under one of the section 107(a) categories with respect to the acquired site.

Trustee officials who consider acquiring land must determine whether the land contains equivalent resources that provide the same baseline level of services as the injured resources. Therefore, trustee officials will probably need to perform pre-acquisition environmental surveys, including surveys to determine the presence of contamination. The cost of these surveys would be recoverable either as part of the costs of acquiring equivalent resources or as part of the reasonable costs of the assessment.

9. Human Health and Safety

*Comment:* A few commenters thought the rule should prohibit trustees from implementing any alternative that posed a significant risk to human health and safety.

*Response:* As discussed above, the wide range of possible natural resource damage cases dictates that trustee agencies be provided the flexibility to weight each factor as they see fit. Therefore, the Department does not believe that compliance with any factor should be mandated. Further, the Department notes that § 11.17(a), which would not be affected by the proposed rule, already provides that when acting under these regulations, trustees must observe all worker health and safety considerations specified in the National Contingency Plan.

10. Other Laws and Policies

*Comment:* Some commenters stated that proposed § 11.82(c)(10) should be modified to clarify that policies should not be given the same degree of consideration as laws.

*Response:* The Department believes that the proper degree of consideration to be given to policies as opposed to laws should be left to the discretion of the trustee agencies, which are in the best position to evaluate the significance of a particular policy in a specific case. Nonetheless, the Department agrees that consideration of compliance with applicable Federal and State laws should be distinguished from consideration of consistency with relevant Federal and State policies. Therefore, the Department intends to revise the language of the proposed rule to list these two factors separately.

*Comment:* Another commenter expressed concern that proposed § 11.82(c)(10) not be interpreted as stringently as the CERCLA requirement that remedial actions meet all "applicable or relevant and appropriate requirements."

*Response:* Proposed § 11.82(d)(10) is not a requirement that each alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources satisfy all applicable or relevant and appropriate laws and policies. Instead, this provision is a factor for trustees to consider when deciding which method of restoration, rehabilitation, replacement and/or acquisition of equivalent resources is the most appropriate basis for a damage claim. The Department believes the weight to be assigned to the factor should be left to the discretion of the trustees. Nevertheless, the Department notes that the natural resource damage assessment regulations do not absolve trustee agencies from compliance with any applicable laws.

11. Additional Suggested Factors

*Comment:* Several commenters suggested that the Department add a factor of timeliness. These commenters stated that such a factor was consistent with Congressional concern about expeditious cleanup and restoration. One commenter stated that the Department should add a factor of preexisting trends to ensure that trustee officials consider situations in which the level of services provided by a resource would have declined regardless of the discharge or release. Another commenter stated that the Department should include a factor of reasonableness.

*Response:* The list of factors set forth at proposed § 11.82(d) is not exclusive. Trustees may consider any other relevant considerations. However, the Department does not believe that the additional factors proposed by commenters need to be added to proposed § 11.82(d). Consideration of timeliness is implicit in proposed §§ 11.82(d)(6) and 11.82(d)(7), which deal with the natural recovery period for a resource and the resource's ability to recover. Also, trustee agencies already evaluate the effect or pre-existing trends when they calculate baseline. Further, the Department believes that the factors listed in proposed § 11.82(d), when taken as a whole, embody the elements of reasonableness.

*N. Assessment Plan*

*Comment:* There were a few comments about the content of the Assessment Plan. One commenter requested that the Assessment Plan include quality assurance and quality control (QA/QC) procedures. Another commenter correctly noted that proposed § 11.31(c)(4) would require the inclusion of QA/QC procedures but stated that the provision requiring compliance with Environmental Protection Agency (EPA) guidance on QA/QC was too onerous.

A number of commenters expressed concern about the requirement that the Assessment Plan include information on sampling size, design and location and estimated recovery period. Commenters stated that inclusion of such information so early in the process was impractical and unnecessary.

Finally, one commenter stated that the Assessment Plan should include a summary of the nature and extent of contamination to ensure that the approach used to assess damages is commensurate with the potential impact on resources.

*Response:* With the exception of requiring inclusion of a statement of the basis of trusteeship and a Restoration and Compensation Determination Plan, the proposed rule would not affect the content of the Assessment Plan. Additional revisions are beyond the scope of this rulemaking. Moreover, as noted in the August 1, 1986 preamble, the Department believes that EPA's QA/QC procedures provide a well-established standard. Further, the Assessment Plan is designed to ensure that only the reasonable costs of assessment are incurred; therefore, inclusion of information about sampling is necessary. Finally, since a natural resource damage assessment focuses on the actual injuries to resources instead of the level of chemical present, a discussion of the nature and extent of contamination is not needed.

*O. Restoration and Compensation Determination Plan*

*Comment:* A number of commenters offered suggestions about the Restoration and Compensation Determination Plan. Two commenters requested guidance on coordination of the Restoration and Compensation Determination Plan and the Remedial Investigation/Feasibility Study (RI/FS). These commenters expressed concern that the Restoration and Compensation Determination Plan not be duplicative of or as detailed as the RI/FS.

*Response:* The Department agrees that trustee agencies should coordinate their development of the Restoration and Compensation Determination Plan with the development of any RI/FS by EPA and/or the States equivalent. Trustee agencies should work with EPA or the State equivalent to ensure that they are aware of potential natural resource damage issues. Also, the Department encourages trustee officials to make full use of relevant information in any RI/FS that has been prepared.

Nevertheless, although coordination of the Restoration and Compensation Determination Plan and the RI/FS is desirable, trustees should bear in mind that the goal of a natural resource damage assessment differs from that of a response action. Most response actions are designed to clean up on-site hazardous substances until they no longer pose an actual or potential risk to human health, welfare or the environment. The particular level of cleanup is determined by applicable or relevant and appropriate environmental standards and other site-specific standards. Natural resource damage assessments, on the other hand, focus on injured natural resources, regardless of their location, and are designed to re-establish a baseline. Therefore, an RI/FS is neither a model nor a substitute for a Restoration and Compensation Determination Plan. Conflicts between the RI/FS and the Restoration and Compensation Determination Plan may well arise and will have to be dealt with on a case-by-case basis.

Because of the differing objectives of the Restoration and Compensation Determination Plan and the RI/FS it cannot be specified whether one should be more or less detailed than the other. The level of detail required in a Restoration and Compensation Determination Plan will likely vary depending upon the nature and extent of the injuries. The Restoration and Compensation Determination Plan is used to compute damages; therefore, it need not contain the level of detail required to implement a restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. However, proposed § 11.81(a)(2) would require the Restoration and Compensation Determination Plan to provide sufficient detail to allow an evaluation of the various alternative methods of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

*Comment:* There were some comments on the timing of the Restoration and Compensation Determination Plan. A number of commenters stated that the information needed to determine the required level of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources might not be available at the time the Assessment Plan is made available for public review. Two of these commenters sought additional clarification that preparation of the Restoration and Compensation Determination Plan may be delayed so long as it is developed before completion of the Quantification phase. Another commenter suggested that trustees be allowed to delay preparation of the Restoration and Compensation Determination Plan until completion of the Quantification phase.

On the other hand, one commenter expressed concern that allowing preparation of the Restoration and Compensation Determination Plan to be delayed would lead trustee officials to engage in "fishing" expeditions for any conceivably relevant evidence of damages. This commenter also stated that failure to require early preparation of the Restoration and Compensation Determination Plan would allow trustees to delay disclosure of inconsistent technical information until it was too late for PRPs and the public to perform their own studies. The commenter thought that at a minimum the rule should require trustee agencies to use their best efforts to prepare the Restoration and Compensation Determination Plan at the same time as the rest of the Assessment Plan.

*Response:* The Department believes that the provisions of the proposed rule governing the timing of the Restoration and Compensation Determination Plan are necessary to ensure that the cost of assessments is reasonable. The definition of "reasonable cost," which would not be affected by the proposed rule, includes a requirement that the Injury Determination, Quantification and Damage Determination phases of the assessment bear a well-defined relationship to each other. The Assessment Plan, which includes the

Restoration and Compensation Determination Plan, is designed to coordinate the three phases of the assessment. Therefore, the Restoration and Compensation Determination Plan should be prepared as early as possible. In most cases trustees should be able to develop an initial Restoration and Compensation Determination Plan based on estimates of the extent and nature of the injuries and then make revisions as needed. Section 11.32(e)(1) of the rule, which would not be affected by the proposed rule, authorizes trustees to modify any part of the Assessment Plan at any stage of the assessment as new information becomes available.

However, the Department recognizes that selection of alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources depends in part upon the extent and nature of the injuries, which will not be fully known at the outset of an assessment. Therefore, there may be cases where even a preliminary attempt to evaluate alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources would be meaningless unless Injury Determination or Quantification had begun. In these cases, premature preparation of the Restoration and Compensation Determination Plan could temporarily misdirect the Injury Determination and Quantification phases. Therefore, the proposed rule provides that in those cases where existing data are insufficient to develop a Restoration and Compensation Determination Plan at the time that the rest of the Assessment Plan is prepared, the Restoration and Compensation Determination Plan may be developed later. Nevertheless, the Restoration and Compensation Determination Plan must always be developed before completion of the Quantification phase in order to ensure that the Quantification phase is correlated with the Damage Determination phase.

The Department believes that it is unnecessary to add a requirement that trustee officials use their "best efforts" to prepare the Restoration and Compensation Determination Plan along with the rest of the Assessment Plan. Such a requirement is ambiguous and could result in placing an unfair burden of proof upon trustees. Nevertheless, the Department emphasizes that trustee agencies should only delay development of the Restoration and Compensation Determination Plan when existing data are insufficient to develop even a rough estimate of the extent of the injuries. Once they have obtained sufficient data, trustees should complete the Restoration and Compensation Determination Plan.

*Comment:* Another commenter stated that requiring trustees to wait until expiration of the public comment period before implementing the cost estimating and valuation methodologies selected in the Restoration and Compensation Determination Plan would cause an unnecessary delay.

*Response:* Calculation of natural resource damages is largely driven by the cost estimating and valuation methodologies selected in the Restoration and Compensation Determination Plan. The Department believes that the public has a right to review and comment on such a crucial element of the assessment. The opportunity for public review of the Restoration and Compensation Determination Plan provides an important check on the discretion of trustee agencies. Allowing trustees to begin implementation of the selected methodologies before the end of the public comment period could make it less likely that public comments will receive a full and fair review. Therefore, the Department does not believe that the 30-day comment period poses an unreasonable or unnecessary delay.

*P. Scope of Recoverable Costs of Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources*

*Comment:* There were a number of comments about the scope of recoverable costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. A few commenters stated that the rule should specify that recoverable costs include the cost of long-term monitoring, the cost of periodic environmental reviews and the cost of obtaining any necessary permits.

*Response:* The Department agrees that the recoverable costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources include the cost of long-term monitoring, the cost of periodic environmental reviews and the cost of obtaining any necessary permits. The Department does not believe any revisions to the language of the proposed rule are needed to clarify this point.

*Comment:* Several other comments addressed the issue of indirect costs. These commenters stated that the issue of the recoverability of indirect costs was not addressed in *Ohio* v. *Interior* and, thus, is beyond the scope of this rulemaking. The commenters stated that inclusion of indirect costs represented a change in position that the Department had inadequately explained.

*Response:* The Department does not believe that discussion of the recoverability of indirect costs is beyond the scope of this rulemaking. As a result of *Ohio* v. *Interior*, costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources will now be a part of the measure of damages in all natural resource damage cases. Therefore, the Department believes it is appropriate to provide additional guidance on the scope of recoverable costs. Further, inclusion of indirect costs within the measure of damages is merely intended as a clarification of existing provisions not a revision of the regulations.

*Comment:* Some commenters also stated that the issue of the recoverability of indirect costs arises under section 107(a)(4) of CERCLA, which EPA, not the Department, has authority to interpret. Further, these commenters believed that indirect costs are not recoverable in natural resource damage cases as a matter of law. The commenters acknowledged that courts have awarded indirect costs of response actions under CERCLA. However, the commenters stated that those cases relied on the language of section 107(a)(4)(A), which authorizes recovery of "all costs of removal or remedial action."

*Response:* The Department believes it has full authority to clarify the scope of recoverable costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The Department has been delegated the responsibility of developing regulations for the assessment of natural resource damages under section 301(c) of CERCLA. Since those damages include costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, the Department has the duty to develop procedures for calculating such costs. Part of that duty involves clarifying what constitutes a cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Further, inclusion of indirect costs is consistent with the legislative history of CERCLA and *Ohio* v. *Interior*, which emphasize development of a damage figure that will make the public whole. 880 F.2d at 445.

*Comment:* One commenter expressed concern about the Department's statement in the preamble to the proposed rule that costs of policy formulation and reporting costs are recoverable indirect costs. The commenter thought that the language of section 107(a)(4)(C), which refers to

injuries to natural resources "resulting from" a release, requires trustee officials to establish a causal connection between indirect costs and restoration, rehabilitation, replacement, and/or acquisition activities. According to this commenter, costs of policy formulation and reporting costs are not sufficiently causally related to a specific release and, thus, should not be recoverable.

*Response:* The Department agrees that PRPs are only liable for those indirect costs that are connected to a specific release or discharge. However, the Department believes that in some cases certain policy formulation and reporting activities would not take place but for the occurrence of a specific release or discharge. Only in those cases would the costs of policy formulation and reporting be recoverable.

*Comment:* Some commenters thought that in order to prevent potential abuse, the Department should provide additional guidance on how to allocate indirect costs and how to develop an indirect cost rate. Another commenter thought that trustees should be required to document how they calculated indirect costs.

*Response:* The proposed rule contains guidance on calculation of indirect costs. The Department thinks that imposition of mandatory procedures for calculation of indirect costs could unduly hamper trustees' ability to respond to the broad range of natural resource damage cases.

The proposed rule contains a number of provisions that should protect against potential abuses of discretion. Trustee agencies would be required to document their calculation of indirect costs in the Restoration and Compensation and Determination Plan, which is subject to public review and comment. Proposed § 11.83(a)(2)(iv) would require trustees to describe their selection of methodologies, including their methodologies for calculating indirect costs. Also, whenever trustee officials used an indirect cost rate, proposed § 11.83(b)(1)(iii) would require them to document the assumptions from which that rate was derived. This documentation would be subject to public review and comment as part of the Restoration and Compensation Determination Plan.

*Comment:* One commenter stated that the Department should specify that if an indirect cost rate is used, it should be multiplied by direct costs to derive an estimate of total cost.

*Response:* The Department acknowledges that some indirect cost rates are designed to be applied to direct costs but does not think it is appropriate to prohibit trustee officials from using other types of indirect cost rates.

*Comment:* Another commenter thought that trustee agencies should be prohibited from using indirect cost rates unless they already have in place generally accepted accounting practices for accumulating and allocating costs.

*Response:* As was noted in the preamble to the proposed rule, recovery of indirect costs is best accomplished when trustee agencies already have an established indirect cost rate. However, the Department does not believe it is appropriate to prevent trustee agencies without established indirect cost rates from developing such rates. Therefore, the proposed rule would not restrict use of indirect cost rates to those cases where trustee officials already have in place generally accepted accounting practices for accumulating and allocating costs.

*Comment:* Finally, commenters sought clarification of the meaning of the following language in proposed § 11.83(b)(1)(iii):

> When an indirect cost rate is used * * * [s]uch amounts determined in lieu of indirect costs shall be treated as an offset to the total indirect costs of the selected alternative before allocation to the remaining activities. The base upon which such remaining costs are allocated should be adjusted accordingly.

*Response:* The Department acknowledges the confusion generated by the last two sentences of proposed § 11.83(b)(1)(iii) and intends to delete them.

*Q. Cost Estimating Methodologies*

*Comment:* One commenter stated that by listing certain cost estimating methodologies the Department had expressed a preference that improperly restrained the discretion of trustee agencies. This commenter stated that trustees should have maximum flexibility to use any standard and accepted methodology so long as they document their rationale for selecting that methodology. On the other hand, several commenters expressed concern that the proposed rule provided inadequate guidance on selection and use of reliable cost estimating methodologies.

*Response:* The Department believes that proposed § 11.83 would strike an appropriate balance between trustees' need for flexibility when dealing with the wide range of possible natural resource damage scenarios and PRPs' concerns about abuse of discretion. The proposed rule would establish acceptance criteria that would have to be satisfied before any cost estimating methodology could be used. The proposed rule would list six available cost estimating methodologies. This list, which is not intended to be inclusive, merely provides some examples of methodologies that satisfy the acceptance criteria. The proposed rule would allow trustees to use any other standard and accepted methodology that satisfied the acceptance criteria. Further, the proposed rule would require trustee officials to document their selection of methodologies in the Restoration and Compensation Determination Plan, which is subject to public review and comment.

*Comment:* A number of commenters stated that trustees should not be required to use methodologies based on accounting practices. These commenters stated that accounting practices are generally developed to deal with past events and methodologies developed in other disciplines are better suited for estimating future expenses. The commenters suggested that trustees be allowed to use methodologies based on "standard and accepted professional practices" or simply "standard and accepted estimating practices," including engineering practices and public budgeting practices.

*Response:* The Department did not intend to limit trustee agencies to using only accounting practices. The Department intends to revise the language of proposed § 11.83(b)(3) to allow for the use of any standard and accepted estimating practices provided that the trustee officials can document that those practices satisfy the acceptance criteria.

*Comment:* One commenter stated that the rule should explicitly recognize the authority of trustees to use combinations of different cost estimating methodologies.

*Response:* The Department agrees that trustee officials should be allowed to use combinations of different methodologies, so long as they do not double count. The Department intends to revise the language of proposed § 11.83 to make this clear.

*Comment:* Several commenters thought that the proposed rule did not adequately account for the uncertainty involved in estimating costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

*Response:* Section 11.84(d), which governs incorporation of uncertainty into the damage determination, would not be substantively affected by the proposed rule. The proposed rule would merely revise § 11.84(d) to reflect the change in the measure of damages. Development of additional procedures and requirements for consideration of

uncertainty are beyond the scope of this rulemaking.

*Comment:* A few commenters believed that the rule should establish a standard for the acceptable range of variability of cost estimates.

*Response:* As noted in the preamble to the proposed rule, the Department believes that trustee officials should estimate costs as accurately as possible. However, the Department notes that the degree of accuracy possible in a particular case will vary depending on the quantity and quality of available information and the specific dictates of the mandate of reasonable assessment costs. Therefore, the Department does not believe that specification of an acceptable range of variability or establishment of a requirement of verification of cost estimates would be practical.

*R. Compensable Value*

*Comment:* A few commenters sought clarification of the meaning of proposed § 11.84(h), which provides that in assessments where the scope of the analysis is at the State level, only the compensable value to the State should be counted. These commenters expressed concern that this provision could be interpreted to mean that if a State recreational area were frequented by out-of-state visitors, the value of the lost use by those visitors would not be recoverable by the State. The commenters stated that such an interpretation would unfairly exonerate PRPs from compensating the public for the full value of lost use that they had caused.

*Response:* The "scope of analysis" provisions would not be substantively changed by the proposed rule. Virtually identical provisions were incorporated in § 11.84(i) during the August 1, 1986 rulemaking. The proposed rule would merely substitute the term "compensable value" for the term "use value." Further clarification is beyond the scope of this rulemaking.

*Comment:* One commenter thought that compensable value should be based not on the value of lost use and nonuse but on the cost of obtaining resources that will provide the same level of use and nonuse values as will be lost during the recovery period. This commenter stated that such a measure of compensable value was more consistent with the compensatory nature of natural resource damages under CERCLA and the command of CWA that damages be limited to amounts necessary to restore or replace lost resources.

*Response:* The Department agrees that natural resource damages are designed to be compensatory not punitive and believes that basing compensable value on the value of lost public use and nonuse allows for full compensation of the public loss. Also, the Department notes that CWA does not limit damages to amounts necessary to restore or replace lost resources. Instead, section 311(f)(4) of CWA provides that natural resource damages "include" any costs incurred in restoration or replacement.

Nevertheless, proposed § 11.84(f) would provide that when calculating compensable value, trustees should incorporate estimates of the ability of the public to substitute other services for those of the injured resource. This provision would only apply when the potential benefits from an increase in the accuracy of the compensable value calculation are greater than the potential costs of developing the estimate of substitutability.

*Comment:* There were a few comments about the period of time over which compensable values should be calculated. Two commenters noted inconsistencies between the language of the proposed rule and the preamble. Proposed § 11.83(c)(1) provides that compensable value would be calculated from the time of the discharge or release. However, in the April 29, 1991 preamble, the Department stated that "damages include compensation for the lost services from the time of the injury." 56 FR 19762. One commenter stated that the date of the release or discharge should be the only permissible starting point for compensable values because of the difficulties involved in determining the time of inception of injury.

*Response:* The correct starting point for calculation of compensable value, and the starting point that is identified in the proposed rule itself, would be the date of the release or discharge. The statement in the preamble was not intended to establish a different time frame for calculating compensable value. Instead, the preamble language was intended to reflect the requirement of § 11.61(e)(3) of the existing rule that a trustee official must establish that an injury has occurred in order to pursue a claim for damages. The Department notes, however, that calculation of compensable value is subject to § 11.24(b)(1), which would not be affected by the proposed rule. Section 11.24(b)(1) provides that there shall no recovery for natural resource damages if those damages and the release that caused those damages occurred wholly before December 11, 1980, the date on which CERCLA was enacted.

*Comment:* Another commenter stated that damages for compensable value should begin to run from the date that the release or discharge is disclosed and the public begins to react. The commenter stated that there can be no reduction in use until the public is aware of the contamination.

*Response:* The Department does not believe that damages for compensable value should begin to run from the date that the occurrence of a discharge or release is disclosed. There may well be cases in which the public will be unaffected by a release or discharge prior to public disclosure. In those cases, the portion of compensable value for the period prior to disclosure will be zero. However, there may also be situations in which a release or discharge adversely affects a resource and causes a reduction in public use before the adverse effect is linked to the release or discharge.

*Comment:* One commenter stated that reductions in consumer surplus should only be recoverable if they are associated with services directly provided to the public.

*Response:* The provision of the proposed rule authorizing recovery of reductions in consumer surplus is unchanged from the original version of the rule. The Department has always believed that only those reductions in consumer surplus that are associated with services provided to the public are recoverable. The Department does not believe that any revisions to the language of the proposed rule are necessary to make this clear.

*Comment:* One commenter requested clarification of what is meant by the term "economic rent." In particular, this commenter suggested that claims for compensable value related to economic rent should be limited to changes in economic rent accruing to trustees from various uses of the injured resource.

*Response:* The provision of the proposed rule authorizing recovery of reductions in economic rent is unchanged from the original version of the rule. In the August 1, 1986 preamble, the Department described economic rent as:

> * * * the excess of total earnings of a producer of a good or service over the payment required to induce that producer to supply the same quantity currently being supplied, accruing to private individuals engaged in commercial ventures because the government does not charge the producer a price or fee for the private use of the public resource. 51 FR 27691.

Further clarification of this term is beyond the scope of this rulemaking.

*Comment:* There were several comments about the provision of the proposed rule that excludes "secondary economic impacts" from the definition of "compensable value." Commenters

offered different views of what constitutes a "secondary economic impact" and sought additional clarification.

*Response:* The Department believes that introducing the term "secondary economic impacts" into the regulations would create unnecessary confusion. Therefore, the Department intends to revise the proposed rule to eliminate the term. Nevertheless, the Department notes that all recoverable values must be traceable to a loss of services provided to the public.

*Comment:* One commenter stated that PRPs should only be held liable for the value of those reductions in public use of the resource that are proximately caused by the release or discharge.

*Response:* The Department does not believe that addition of a proximate causation requirement to the definition of compensable value is warranted. The Department believes that the regulations establish adequate standards for linking natural resource damages to an occurrence of a release or discharge.

*Comment:* A couple of commenters stated that the Department should have considered the value of lost services to other resources when it developed the definition of "compensable value." These commenters noted that the regulations recognize that a resource can provide services not only to humans but also to other resources. According to these commenters, a full measure of damages would include both the value of services that are lost to the public and the value of services that are lost to other resources pending restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

*Response:* As was stated in the August 1, 1986 preamble, "only when a service has a human recipient can it be classified as a use per se." 51 FR 27719. Therefore, compensable value, which is based on lost use and nonuse, does not explicitly address the loss of services to other resources. Revision of the concept of use is beyond the scope of this rulemaking.

*S. Nonuse Values and CVM*

*Comment:* There were numerous comments about the estimation and recovery of lost nonuse values. The comments were widely divergent but generally fell into two primary schools of thought.

One set of commenters thought that trustee officials should have the discretion to decide on a case-by-case basis when nonuse values should be included in a damage claim. These commenters objected to the statement in the April 29, 1991 preamble that nonuse values "are most significant for irreversible or long-lasting changes to well-known, unique natural resources." 51 FR 10760. The commenters also stated that the Department should not have cited the Grand Canyon as an example of a resource with large potential existence value because of the implication that lesser-known resources do not have significant nonuse values. Several examples were given by these commenters of resources that do not share the Grand Canyon's renown but, nevertheless, could have significant nonuse values (e.g., Puget Sound, tribal resources on lands owned by Native Americans). These commenters stated that nonuse values can exist for any resource. Further, some of these commenters thought that the holding in *Ohio* v. *Interior* mandated the inclusion of nonuse values in natural resource damage assessments.

Those commenters who supported granting trustees full discretion to seek recovery of nonuse values also stated the CVM is a reliable methodology for calculating those values. Some commenters stated that *Ohio* v. *Interior* already upheld CVM as a best available procedure, and thus the rule should not limit recovery of nonuse values. A number of commenters thought that the Department had unfairly singled out CVM since there are reliability problems associated with all of the listed methodologies, not just CVM.

The other set of commenters thought that the rule should place more restrictions on the recovery of nonuse values. These commenters stated that nonuse values cannot be reliably measured and, therefore, recovery of such values should be prohibited or at least restricted. Some commenters suggested that the Department incorporate the statement in the April 29, 1991 preamble concerning irreversible or long-lasting changes to well-known, unique resources into the regulation itself.

These commenters expressed several reasons why nonuser values cannot be reliably measured. First, many commenters stated that attempts to measure "willingness to pay" for nonuse values for specific injuries to natural resources will instead tend to measure willingness to pay for larger environmental issues. For example, when measuring the willingness to pay for nonuse values for injury to a specific section of coastline, these commenters thought that respondents will often state their willingness to pay for clean oceans in general. Thus, according to these commenters, part of what is being measured in broader ideological or "good-cause" values instead of just the value of the specific resources injured. Several studies supporting this concern were cited. Further, many commenters stated that the respondents in a CVM study might feel that the PRP should be reprimanded for the discharge or release, and thus the stated willingness to pay would include punitive as well as compensatory damages.

According to some commenters, CVM respondents are likely to inflate their willingness to pay since they know they will not be expected to provide actual dollars. Other commenters expressed concern that the very process of taking a CVM survey might generate inflated willingness-to-pay estimates by focusing the respondents' attention on an event that was previously unknown to the respondents or that seemed insignificant to respondents prior to the survey.

Some commenters thought that CVM is apt to produce unreliable measurements of nonuse values because it fails to meet commonly accepted reference operating conditions. Although the exact specifications of the reference operating conditions varied from commenter to commenter, two key principles were expressed:

(1) The respondents to a CVM survey must be familiar with the resource in question; and

(2) The respondents must have had (or be allowed to obtain) prior experience in valuing different levels of quality or availability of the resource over the range in question. These commenters stated that nonuse values often pertain to goods that are unfamiliar and with which respondents usually have not had prior valuation experience.

Therefore, the commenters believed that CVM surveys of nonuse values are apt to be unreliable.

Further, a number of commenters noted that because CVM is the only method available for the express purpose of estimating nonuse values, there is no way to cross-check the accuracy of CVM estimates of nonuse values.

*Response:* The original version of the rule provided that nonuse values could only be recovered if no use values could be determined. In the August 1, 1986 preamble, the Department explained this provision as follows:

> The Department notes that § 11.83(b) has been changed to explicitly state that option and existence values may be estimated in lieu of use values only when use values cannot be determined. Ordinarily, option and existence values would be added to use values. However, section 301(c) of CERCLA mentions only use values. Therefore, the primary emphasis in this section is on the estimation of use values. 51 FR 27719.

*Ohio* v. *Interior* held that the Department had "erroneously construed the statute," stating:

> [S]ection 301(c)(2) requires Interior to "take into consideration factors including, *but not limited to* * * * use value." 42 U.S.C. § 9651(c)(2) (emphasis added). The statute's command is expressly not limited to use value; if anything, the language implies that DOI is to include in its regulations other factors in addition to use value. 880 F.2d at 464.

The court went on to say that the Department "is entitled to rank methodologies according to its view of their reliability, but it cannot base its complete exclusion of option and existence values on an incorrect reading of the statute." Id. Therefore, *Ohio* v. *Interior* does not mandate the inclusion of nonuse values in natural resource damage claims. Instead, the decision simply requires that any limitation on recovery of nonuse values be based on considerations of reliability rather than an improper interpretation of statutory language. In light of this requirement, the Department must carefully consider whether nonuse values can be reliably calculated and, if so, under what conditions.

CVM is currently the only method available for the express purpose of estimating all nonuse values. CVM can also be used to calculate use values. *Ohio* v. *Interior* held that the Department's decision to include CVM in the original version of the rule was not improper. Id. at 478. However, the court did not appear to require the Department to allow unlimited use of CVM. Moreover, the court did not address the difference between use of CVM to calculate use values and use of CVM to calculate nonuse values.

The Department has previously considered CVM to be less reliable for quantifying nonuse values than for quantifying use values. As was stated in the August 1, 1986 preamble:

> [M]ore is known about the determination of use values than option and existence values. Option and existence values are less well-defined and more uncertainty surrounds their measurement. 51 FR 27719.

After reviewing the comments on the proposed rule, the Department remains concerned about the reliability of CVM in calculating nonuse values.

The potential for bias in a CVM survey of nonuse values is of concern to the Department. The Department recognizes that there are potential reliability problems associated with any of the valuation methodologies listed in the proposed rule. However, these other techniques do not have the same potential to change the aggregate estimate of lost compensable value to the same degree that CVM does particularly when used to quantify nonuse values. For use values, the population that suffers a loss is limited to those who directly use the resource. The population of direct users is usually a small fraction of the total population. Thus, even if a use value methodology does contain a per-person bias, that bias will only be multiplied by a relatively limited number of users. This serves as a check on the absolute amount of bias contained in the aggregate estimate. On the other hand, if CVM as applied to nonuse values has exactly the same amount of per-person bias, that bias could be multiplied by the entire population. This will introduce more absolute bias into the aggregate estimate of compensable value than would be introduced by the use value methodology.

Furthermore, when use values are being calculated, the results obtained through one methodology can be compared with those obtained by another methodology. For nonuse values, however, there are no alternative techniques available, at this time, against which to check the results of a CVM survey.

Nevertheless, the Department recognizes that nonuse values may be significant in some situations and recovery of nonuse values in these cases is necessary to fully compensate the public. Also, the Department believes that a well-designed CVM survey can satisfy many of the reference operating conditions cited by the commenters and discussed above.

The most compelling argument for the existence of nonuse values seems to be that individuals derive benefits by simply knowing that a particular resource or category of resources exists; by preserving the option of using the resource in the future; and by leaving the resource as a legacy for future generations. There could be certain cases where the death of individual members of a species would cause a significant loss in nonuse values even though species levels return to baseline within a short time. However, in other cases involving temporary injury, individuals are not likely to experience a significant sense of loss because the resource's existence is not threatened. Further, after restoration, rehabilitation, replacement, and/or acquisition of equivalent resources is complete, the resource will still be available for future use and can still be left as a legacy to future generations.

Similarly, if the injury is to a resource with many substitutes, then the substitute resources will greatly mitigate the loss of nonuse values. This is true for use values as well, but in the case of nonuse values the location of the resource is less critical because the services it provides are not being directly used by the public. For example, if the existence of a certain type of habitat is important and a release or discharge only affected one of numerous occurrences of that habitat type, then that habitat type will continue to exist regardless of whether the affect on the particular occurrence of that habitat is permanent or long lasting.

In light of these concerns, the Department requests comments on whether trustee officials should be required to document that there have been long-lasting injuries to natural resources with few substitutes before implementing a CVM study of nonuse values. The Department notes that incorporation of such a requirement in the regulations would not affect the authority of trustee agencies to recover damages for lost nonuse values in cases where injury is not long-lasting or where there are many substitutes. In those cases, trustee officials could still seek recovery of damages for lost nonuse values; their assessment of those particular damages would simply not be afforded a rebuttable presumption.

The Department also requests comments on whether it should provide guidance or establish criteria for how trustees are to design, implement and test the results of specific CVM studies of nonuse values. Commenters should consider issues such as: Whether standards should be imposed on the wording of CVM survey questions; whether focus groups should be required to test the efficacy of the survey instrument; whether certain types of payment vehicles should be used, or avoided, in the survey; whether survey questions should be open- or close-ended; whether surveys should be administered in person, over the phone or by mail; whether certain types of orientation information or follow-up questions should be required; and whether the results of the survey should be tested to ensure consistency with standard economic theory.

In responding to this request, commenters should focus on three separate, but related, issues. The first issue is the types of requirements, if any, that the Department should impose on: The resource being evaluated by the CVM study; the design of the CVM instrument; the performance of the CVM study; and/or the analysis of the results of the CVM study.

The second issue is the level of specificity of any requirements the Department may develop to ensure that

a CVM study of nonuse values provides reliable results. The range of possible levels of specificity runs from strict criteria to broad guidance.

The third issue is the placement of any requirements (from criteria to guidance) concerning CVM studies of nonuse values. If the Department places any requirements in the rule itself, then those requirements would have to be followed in order for any assessment using CVM to gain a rebuttable presumption, in accordance with section 107(f) of CERCLA. If the Department places requirements in the preamble to the rule or in a technical information document, then adherence to those requirements might not be mandatory for a claim based on the use of CVM to gain a rebuttable presumption.

Finally, comments on the circumstances under which any requirements developed by the Department ought to apply to assure that CVM studies are cost-effective and can be performed at a reasonable cost are also requested.

*Comment:* Several commenters thought that the Department's characterization of CVM as the least reliable methodology was inaccurate. These commenters noted that there are no methods for calculating nonuse values that are more reliable than CVM.

*Response:* The Department realizes that since CVM is the only method available for the express purpose of estimating nonuse values, it could be characterized as the most reliable method for estimating such values. However, the reliability ranking in the rule focuses on the reliability of the aggregate estimate of compensable value. CVM, when used to calculate nonuse values, was listed as the least reliable methodology in the proposed rule because calculations of total compensable value will be least reliable when they include estimates of nonuse values derived from CVM surveys.

*Comment:* A few commenters expressed the view that CVM is not the only tool for measuring nonuse values. These commenters cited the purchase of insurance policies as an alternative means of estimating option value and voluntary contributions to organizations as a means of estimating existence value.

*Response:* Proposed § 11.83(c)(3) would allow trustee officials to use any valuation methodology, regardless of whether it is explicitly listed, provided it measures the public's willingness to pay and satisfies the acceptance criteria set forth at proposed § 11.83(a)(3). The Department is currently unaware of any methodology available for the express purpose of estimating nonuse values of specific injured resources, other than CVM, that meets these specifications.

*Comment:* There were a number of comments about the definition of "nonuse value." Some commenters stated that the definition of "nonuse value" as the difference between compensable value and use value was circular. Other commenters suggested that the term "nonuse" be replaced with the term "passive use" or "nonconsumptive use." Another commenter stated that the definition of "nonuse value" should be explicitly linked to a loss of services.

*Response:* The phrase "compensable value" was proposed to provide a convenient term for all recoverable lost public values; it was not designed to effect any substantive change. There are many different categories of nonuse values, such as existence value and bequest value. There has been considerable debate among economists over the precise scope of these different categories. As a practical matter, it will usually not be necessary to categorize particular nonuse values during a natural resource damage assessment. Therefore, although the Department recognizes that the definition is somewhat circular, the Department believes it is appropriate to define "nonuse value" as the difference between compensable value (i.e., total value) and use value.

The Department does not believe that substitution of the term "passive use" or "nonconsumptive use" for "nonuse" would provide greater clarity. Also, the Department notes that "nonuse value" is defined in reference to "compensable value" and "use value," which are already defined in terms of a loss of services to the public. Therefore, the Department does not believe it is necessary to include an explicit reference to services in the definition of "nonuse value."

*Comment:* One commenter expressed concern that if the rule lists option, existence and bequest values separately, trustees will be inclined to perform separate valuations of each category of value. This commenter thought that current economics literature suggests that the different categories of nonuse values are not additive.

*Response:* The Department believes that trustee officials should not perform separate valuations of the different categories of nonuse values. The Department notes that proposed § 11.83(a)(3)(iii) would already provide that when selecting a valuation methodology, trustee officials must ensure that there will be no double counting. Therefore, the Department does not believe that additional revisions to the proposed rule are necessary.

*Comment:* Some commenters stated that trustees should not be allowed to recover for past losses of nonuse values because of the difficulty of quantifying these damages.

*Response:* The Department sees no justification for such an exclusion. Where little time has elapsed since the occurrence of a past lost nonuse, the trustee officials might conclude that CVM respondents' willingness to pay is not likely to have changed significantly. In cases where more time has elapsed, it still would be possible to develop estimates of past lost nonuse values that are as reliable as estimates of current lost nonuse values, provided the study design can take into account the changing tastes and preferences of subjects.

### *T. Other Valuation Methodologies*

*Comment:* A number of commenters stated that by ranking valuation methodologies according to reliability, the proposed rule established a hierarchy in violation of *Ohio* v. *Interior.* Other commenters thought that the ranking was an appropriate exercise of the Department's statutory duty to determine the "best available procedures" for assessing damages. Some commenters went so far as to state that the rules should require trustees to use the most reliable method available.

*Response:* The Department believes that the proposed ranking of the methodologies complies with *Ohio* v. *Interior.* Under the original version of the rule, trustees could only use non-market-based methodologies to value lost public use of services if none of the market-based methodologies were appropriate. Further, trustees could only use CVM to measure nonuse values if no use values could be determined. *Ohio* v. *Interior* held that the mandatory hierarchy violated Congressional intent by establishing a presumption in favor of market-based methodologies. The proposed rule would eliminate the requirement that trustee agencies choose methodologies according to a hierarchy; trustees would be able to use any of the listed methodologies, at any time. Any attempt to mandate use of one listed methodology over another would be a violation of *Ohio* v. *Interior.*

Nevertheless, *Ohio* v. *Interior* also noted that the Department "is entitled to rank methodologies according to its view of their reliability * * *." 880 F.2d at 464. The Department does not believe that all of the listed valuation methodologies are equally reliable. Thus, the Department believes that the

proposed reliability ranking is appropriate. Trustees should generally use the most reliable methodology available. However, the reliability of a methodology in a particular case may depend on the data available. Moreover, when selecting a valuation methodology, trustees must also consider the cost-effectiveness of the methodologies and the need to perform the assessment at a reasonable cost. Therefore, § 11.83(a)(3) of the proposed rule would provide trustees with discretion to select which methodologies they will use provided they include documentation in the Restoration and Compensation Determination Plan that each selected methodology is feasible and reliable; can be performed at a reasonable cost; will avoid double counting; and is cost-effective.

*Comment:* Many commenters indicated that the Department should provide more guidance on the implementation of the valuation methodologies.

*Response:* Although additional guidance would be desirable, development of such guidance is beyond the scope of this rulemaking. The Department is considering issuing technical assistance on the application of each listed methodologies in the future. In the mean time, trustees can consult the Type B Technical Information Document: Techniques to Measure Damages to Natural Resources, which was made available on November 16, 1987 (52 FR 43763) through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (703) 487–4650.

*Comment:* Two commenters raised concerns about the possibility of double counting if a hedonic pricing methodology is used. The commenters requested that the rule specify that the methodology should not be used in conjunction with any other valuation methodology.

*Response:* The hedonic pricing methodology has been included in the rule since the August 1, 1986 rulemaking. Under proposed § 11.83(a)(3)(iii), trustees would have to ensure that there will be no double counting under the selected valuation methodologies. The Department believes that additional guidance on use of the hedonic pricing methodology is beyond the scope of this rulemaking.

*Comment:* There were a few comments about the travel cost methodology. One commenter noted that § 11.83(c)(2)(B) of the proposed rule states, "When regional travel cost models exist, they may be used if appropriate." This commenter stated that this statement incorrectly implied that regional cost models were more appropriate than other models. Another commenter stated that use of the travel costs methodology should not be allowed because the results of a travel cost model can be skewed by the actions of one unusually avid traveler.

*Response:* The reference to regional cost models was intended as an example of the types of models that could be used rather than a preference for that model. The travel cost methodology has been included in the rule since the August 1, 1986 rulemaking. The Department believes that a well-designed travel cost model will not produce biased results. Limitation of the use of the travel cost methodology is beyond the scope of this rulemaking.

*Comment:* A few commenters noted that proposed § 11.83(c)(3) would allow trustee agencies to use valuation methodologies other than those listed so long as they measure the public's willingness to pay in a cost-effective manner. These commenters stated that trustees should also be allowed to use methodologies based on willingness to accept.

*Response:* The Department believes that revision of proposed § 11.83(c)(3) to permit use of methodologies based on willingness to accept is beyond the scope of this rulemaking. The provision in proposed § 11.83(c)(3) concerning willingness to pay was incorporated in § 11.83(d)(7) of the original version of the rule. As was stated in the August 1, 1986 preamble:

> The Department maintains that willingness to pay and willingness to accept are both theoretically valid criteria for estimating damages to nonmarketed natural resources. In addition, the Department continues to maintain that willingness to accept may be the criterion most germane to natural resource damages, since the public has the property right to the injured natural resource. However, the Department also agrees with many of the comments that recognize that the application of the willingness-to-accept criterion can lead to more technical difficulties and uncertainties than the willingness-to-pay criterion. In recognition of these difficulties and of the fact that the authorized official will obtain a rebuttable presumption, the Department, therefore, is modifying the acceptance criteria in § 11.83(d)(7) to include only the willingness-to-pay criterion. 51 FR 27721.

### *U. Use of Damages Collected*

*Comment:* There were a few comments about the handling and use of natural resource damage awards. One commenter believed that the rule should require trustees to hold any collected damages in a separate interest-bearing account.

*Response:* Section 11.92(a) of the existing rule, which would not be affected by the proposed rule, contains considerable guidance on the types of accounts in which awarded funds can be placed. Additional guidance is beyond the scope of this rulemaking.

*Comment:* Two commenters stated that trustee agencies should be required to spend all collected damages on implementation of the alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources selected in the Restoration and Compensation Determination Plan. These commenters thought that without such a requirement trustees would likely select the most expensive alternative for purposes of calculating damages but then implement a less costly method and keep the additional money as a windfall.

*Response:* The Department disagrees that the rule should explicitly require collected damages to be spent on implementation of the exact alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources selected in the Restoration and Compensation Determination Plan. Section 11.93(a) of the proposed rule would provide that upon award of natural resource damages, trustee officials must prepare a Restoration Plan describing how the funds will be used. Under proposed § 11.93(a) states that the Restoration Plan would be based on the Restoration and Compensation Determination Plan. The Restoration Plan is intended to be a detailed description of the implementation of the alternative selected in the Restoration and Compensation Determination Plan. However, the Department recognizes that there may be unforeseeable changes in the condition of the natural resources between the time the Restoration and Compensation Determination Plan is prepared and the time the trustee officials actually collect damages. Also, the amount of damages ultimately collected may differ from the amount of damages claimed. Finally, the actual cost of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured resources may differ from the estimated cost. Therefore, trustees may need to revise the alternative selected in the Restoration and Compensation Determination Plan.

The Department does not believe that absence of a requirement that trustee officials implement the same exact alternative selected in the Restoration and Compensation Determination Plan will create unfair windfalls for trustees. Section 107(f)(1) of CERCLA requires all

funds recovered for natural resource damages to be used for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. Furthermore, the rule provides an opportunity for public review and comment on the Restoration Plan, which should protect against arbitrary revisions of the alternative selected in the Restoration and Compensation Determination Plan.

*Comment:* Another commenter thought that the rule should provide additional standards for the use of funds recovered for compensable value. The commenter believed that the rule should not allow use of compensable value damages to supply services other than those lost. The commenter further stated that such funds should be spent only on site-related improvements. The commenter was particularly concerned about potential inequities when a public PRP passes along damages to local citizens at the same time that those damages are being spent to improve natural resources in other areas. Also, the commenter questioned how money recovered for lost nonuses would be spent.

*Response:* The Department does not believe that additional standards for use of funds awarded for compensable value are needed. The proposed rule would require that use of awards for compensable value be related to the services lost by the public. Section 11.92(e) of the existing rule provides that recovered funds may only be spent in accordance with the restoration Plan. Under proposed § 11.93(a), the Restoration Plan, which is subject to public review and comment, would contain a description of how the damages attributable to compensable value will be used to address the services lost to the public pending completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

In light of the wide array of possible lost uses and nonuses and the possible means of mitigating those lost uses and nonuses, the Department believes it would be impractical to develop additional standards for the use of damage awards. For example, there may be cases where it is impossible to supply the precise uses or nonuses that have been lost. Also, the Department agrees that use of awarded funds should benefit the same public that suffered the loss of services provided by the injured resource. However, the Department disagrees that the rule should specifically require compensable value damages to be spent at the site of the injury, because, for one thing, it may not be possible to supply lost uses on the same site that is being restored, rehabilitated or replaced.

*Comment:* Finally, two commenters stated that any portion of collected damages that is not spent to restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources or to supply lost uses should be returned to the PRPs.

*Response:* The Department does not believe there is any need to require trustees to return to PRPs any portion of collected damages not spent on restoration, rehabilitation, replacement, and/or acquisition of equivalent resources or replacement of lost uses and nonuses. CERCLA requires that all damages collected for injury to natural resources be spent on restoration, rehabilitation, replacement, and/or acquisition of equivalent resources, which includes mitigation of the public loss of services during the recovery period. Therefore, there should never be excess funds after completion of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

### *V. Date of Promulgation*

*Comment:* There were numerous comments on § 11.91(e) of the proposed rule concerning the date of promulgation of the natural resource damage assessment regulations. Several commenters supported proposed § 11.91(e). However, a number of other commenters thought that section 301(c) of CERCLA merely directs the Department to develop technical procedures for assessing natural resource damages. Thus, according to these commenters, the Department has no authority to issue interpretations of purely legal matters, such as the statute of limitations, that arise under unrelated statutory provisions.

*Response:* The Department believes that it has full authority to issue proposed § 11.91(e). Section 301(c) of CERCLA authorizes the Department to "promulgate regulations for the assessment of damages for injury to * * * natural resources." Section 113(g)(1) of CERCLA creates a statute of limitations based on the date that those regulations are "promulgated." After *Ohio* v. *Interior* and *Colorado* v. *Interior* were issued, there was considerable confusion over the statute of limitations. Nothing in the language or legislative history of CERCLA explicitly defines "promulgation." As the agency given authority to develop procedures for assessing natural resource damages, the Department believes it is in the best position to evaluate when regulations establishing full procedures have been promulgated. Therefore, the Department proposed § 11.91(e), not to amend the CERCLA statute of limitations, but merely to clarify an unclear term. Far from being a purely legal issue unrelated to the Department's technical duties, the determination of when the natural resource damage assessment regulations have been promulgated is well within the scope of the Department's expertise and statutory grant of authority.

*Comment:* Several commenters thought that the Department's proposal was consistent with Congressional intent. These commenters noted legislative history indicating that section 113(g)(1) was added to CERCLA out of concern that the absence of final natural resource damage assessment regulations had impaired the ability of trustees to pursue claims. According to these commenters, trustees were just as handicapped after *Ohio* v. *Interior* and *Colorado* v. *Interior* as they were when section 113(g)(1) was passed, because those cases invalidated important elements of the regulations.

However, other commenters stated that proposed § 11.91(e) violated Congressional intent. These commenters noted that section 113(g)(1) of CERCLA was added in 1986 in recognition of the Department's failure to meet an earlier statutory deadline for promulgation of final natural resource damage assessment regulations. According to these commenters, Congress merely intended to provide a temporary grace period for filing natural resource damage claims pending issuance of guidance on how to assess damages.

These commenters point out that the bulk of the rule was upheld in *Ohio* v. *Interior*, thus trustee agencies have had ample guidance on identification and valuation of injuries to natural resources. The commenters also observed that the Department's rule is optional and that trustees' ability to bring suit does not depend on the Department's rule. In fact, some trustee agencies have already brought suit and most of them have opted not to use the Department's rule. Therefore, according to these commenters, Congressional concerns about the ability of trustees to bring claims have already been satisfied.

A few commenters noted that if Congress had intended to link the statute of limitations to every modification of the regulations, it would not have required biennial review of the regulations. Some commenters also stated that under the Department's proposed line of reasoning, if the rule implementing *Ohio* v. *Interior* were challenged and remanded, the limitations period could again be

restarted and the deadline for filing claims could be extended ad infinitum.

Further, some commenters pointed out that if the Department's proposed position were correct and *Ohio* v. *Interior* had upheld the rule in its entirety, then the statute of limitations would have expired shortly thereafter. These commenters stated that Congress could not have intended to base the deadline for filing claims on something as uncertain as the outcome of a court challenge.

*Response:* The Department believes that proposed § 11.91(e) is completely consistent with Congressional intent. The Department acknowledges that *Ohio* v. *Interior* did not overturn the regulations in their entirety. However, the court did remand extremely critical components of the rule, including the measure of damages. Although *Ohio* v. *Interior* held that restoration costs are the preferred measure of damages and that all reliably calculated values should also be recoverable, the court also acknowledged that the Department has considerable authority and discretion to shape the specific scope of the damage calculus. Thus until the Department revises the regulations, no valid damage formula exists. The legislative history of SARA indicates that section 113(g)(1) was added to CERCLA because Congress believed that so long as trustees lacked procedures for assessing natural resource damages they were handicapped in their ability to bring suit. In the absence of a valid damage formula, the very purpose of the natural resource damage assessment rule, namely the derivation of a monetary damage figure, is thwarted.

The Department agrees that use of the natural resource damage assessment regulations is optional. However, the legislative history demonstrates that Congress keyed the limitations period to the date of promulgation of the regulations in order to allow trustees the opportunity to gain the benefit of the rebuttable presumption under section 107(f)(2)(C) of CERCLA. When it passed section 113(g)(1) of CERCLA, Congress determined that even though trustees could bring suit without the regulations, availability of the rebuttable presumption was so essential for successful pursuit of natural resource damage claims that the statute of limitations should be extended until three years after the regulations were promulgated. In the absence of natural resource damage assessment regulations that include a valid measure of damages, trustees are deprived of the full benefit of the rebuttable presumption.

Moreover, the Department is not suggesting that the period for filing claims should restart after every court-ordered or biennial modification to the rule. The Department is merely stating that until a valid measure of damages is in place, a complete regulatory procedure for assessing natural resource damages does not exist. Therefore, the natural resource damage assessment regulations have not been promulgated for statute of limitations purposes until regulations implementing *Ohio* v. *Interior* and *Colorado* v. *Interior* become effective.

Also, the Department believes that proposed § 11.91(e) would not base the date of promulgation on an uncertain event but instead provide greater certainty about the deadline for filing natural resource damage claims.

*Comment:* Some commenters stated that proposed § 11.91(e) was contrary to judicial precedent. Commenters cited case law for the proposition that "promulgation" occurs when a regulation is made public, not when it has cleared judicial hurdles. *United Technologies Corp.* v. *Occupational Safety and Health Administration*, 836 F.2d 52, 54 (2d Cir. 1987) (*UTC* v. *OSHA*); *American Petroleum Inst.* v. *Costle*, 609 F.2d 20, 23–24 (D.C. Cir. 1979) (*API* v. *Costle*). The commenters further noted that *Ohio* v. *Interior* did not void the rule or overturn it in its entirety; instead, the court merely remanded three specific issues. Therefore, natural resource damage assessment regulations have been continuously in effect since the effective date of the original version of the type B rule. According to these commenters, although the Department is required to modify the regulations, it is neither promulgating new regulations nor repromulgating existing regulations. These commenters further stated that *United States* v. *City of Seattle* specifically held that for statute of limitations purposes, the type B rule was promulgated on August 1, 1986, and the type A rule on March 20, 1987. No. C90–395WD, slip. op. at 2 (W.D. Wash. Jan. 28, 1991) (*U.S.* v. *Seattle*).

*Response:* The Department believes that the cases cited by commenters for the proposition that "promulgation" occurs when a regulation is made public are inapposite. *API* v. *Costle* involved the interpretation of a provision of the Clean Air Act that prohibited the inclusion of documents in a rulemaking docket after the date of promulgation. 609 F.2d at 22. Noting that the statutory provision was designed to ensure adequate opportunity for public review and to prevent post hoc rationalizations, the court held that the date of promulgation was the date the final rule was first released to the public as opposed to the date of publication in the **Federal Register**. *Id.* at 23–24.

*UTC* v. *OSHA* involved the statute of limitations period for filing a challenge to an OSHA standard. 836 F.2d at 53. The statute provided that any challenges to a standard issued by OSHA had to be brought within 60 days after the standard was promulgated. *Id.* OSHA regulations defined "the date of issuance" as the time of filing in the Office of the Federal Register but did not define "promulgation." Nevertheless, OSHA argued that the date of promulgation should also be the date of filing with the Office of the Federal Register. The court noted that Congress, by using two different terms, must have intended the date of issuance to differ from the date of promulgation. *Id.* Therefore, the court held that the date of promulgation was the date of publication in the **Federal Register**. *Id.* at 54.

Neither *API* v. *Costle* nor *UTC* v. *OSHA* purport to define "promulgation" for all purposes. In fact, the cases reveal that the definition of "promulgation" can vary, depending on Congressional intent. The cases also do not address the specific question of the effect of a judicial remand on the date of promulgation for statute of limitation purposes. Further, the court in *UTC* v. *OSHA* recognized an agency's authority to determine when its regulations had been promulgated, stating that "[t]he agency is certainly entitled to adopt a definition of 'promulgated', and it may well have the power to equate 'promulgated' with 'issued', if it chooses to." *Id.* at 53. The problem in that case was that the agency had not issued a regulation defining "promulgation."

*U.S.* v. *Seattle* involved a motion to dismiss a natural resource damage case on statute of limitations grounds. The defendant had argued that the statute of limitations began to run on August 1, 1986, the date the type B rule was first published. In an unpublished opinion, the court denied the motion to dismiss and held that the statute of limitations did not begin to run until both type A and type B rules had been promulgated. Slip op. at 1. Because the case had been filed within three years of March 20, 1987, the date the type A rule was first published, the court did not need to reach, and did not address, the issue of the effect of *Ohio* v. *Interior* and *Colorado* v. *Interior* on the date of promulgation.

*Comment:* A few commenters thought that the Department should eliminate the requirement that the revisions to both the type A and type B rules must

become effective before the statute of limitations begins to run. These commenters stated that such a requirement was unnecessary and would cause undue delay in filing claims. One commenter acknowledged that the court in the *U.S.* v. *Seattle* held that the statute of limitations did not begin to run until the promulgation of both the type A and type B rules. However, the court made clear that the type A rule had "direct application" to the coastal and marine environment involved in that case and thus the trustee "would need to consider the type A procedures." *U.S.* v. *Seattle*, slip. op. at 2–3. According to this commenter, there is no justification for tying the statute of limitations to the revision of the type A rule in those cases where the type A rule is inapplicable.

One commenter requested that the Department clarify which models it will include in the type A rule for statute of limitations purposes. Another commenter expressed the view that basing the statute of limitations on promulgation of type A rules other than the NRDAM/CME would be contrary to Congressional intent.

*Response:* The Department agrees with the analysis in the *U.S.* v. *Seattle* that the statute of limitations does not begin to run until both the type B and the type A rules have been promulgated. Section 113(g)(1) of CERCLA ties the statute of limitations to "the date on which regulations are promulgated under section 301(c)." The regulations promulgated under section 301(c) must contain both: (A) standard procedures for simplified assessments, the so-called "type A rule;" and (B) alternative protocols for conducting assessments in individual cases, the so-called "type B rule." Therefore, regardless of whether the type A rule could be used in a particular case, under the language of CERCLA, section 301(c) regulations have not been fully promulgated until both type A and type B rules have been issued. Further, the date of promulgation of the type A rule will be the effective date of revisions to the NRDAM/CME in compliance with *Colorado* v. *Interior*.

*Comment:* Finally, two commenters requested that the Department specify that the statute of limitations for tribal claims, which is set forth at section 126(d) of CERCLA, differs from that for nontribal claims.

*Response:* Section 11.15(e), which would not be affected by the proposed rule, provides that natural resource damage claims must comply with the statute of limitations set forth in section 126(d) of CERCLA, where applicable. Section 126(d) provides that tribal claims must be brought by the later of: (1) The expiration of the applicable period of limitations; or (2) two years after the United States, in its capacity as trustee for the tribe, gives written notice to the tribe that it will not present a claim or commence an action on behalf of the tribe or fails to present a claim or commence an action within the period of limitations.

*W. Impact of the Rule*

*Comment:* Once commenter disagreed with the Department's statement that the rule is not "major" under Executive Order 12291 and, thus, does not require preparation of a Regulatory Impact Analysis. The commenter stated that the rule establishes a new measure of damages which trustee agencies will use to determine liability. According to the commenter, this new measure of damages effectively increases PRPs' liability for natural resource damages and, therefore, will have a direct, substantive effect on PRPs. The commenter also thought that the elimination of the requirement that trustee officials select a cost-effective alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources could, in and of itself, have an effect in excess of $100 million in a single case. Therefore, the proposed rule as a whole is likely to have an annual effect on all PRPs well in excess of $100 million.

*Response:* The proposed rule does not establish the extent of liability for natural resource damages; such liability derives directly from the terms of CERCLA, CWA and OPA as interpreted by the courts. In fact, the proposed rule would not impose any requirements on anyone. Instead, the proposed rule would merely revise optional technical and procedural guidance for use by trustees when assessing natural resource damages.

Therefore, any analysis of the potential economic impact of the proposed rule should focus on the marginal impact of the proposed changes not overall liability. The Department has prepared a Determination of Effects for the proposed rule. That Determination concluded that although more trustee agencies may consider using the natural resource damage assessment regulations once they have been revised, the revisions are not likely to affect the incremental average cost of performing an assessment. As a result, the rule is not likely to result in either: (a) An annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, government agencies or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of domestic enterprises to compete with foreign enterprises. Therefore, this rulemaking is not "major" under Executive Order 12291 and does not require preparation of a Regulatory Impact Analysis.

*Comment:* Similarly, two commenters stated that the Department should perform a regulatory flexibility analysis of the rule under the Regulatory Flexibility Act. These commenters stated that the substantial number of small businesses, including many oil and gas lessees, are potentially subject to liability for natural resource damages and the proposed revisions would have a direct impact on those businesses.

*Response:* In light of the limited impacts on the overall economy, the proposed rule is also not expected to have a significant economic impact upon a substantial number of small entities. Moreover, the chemical and petroleum industries are concerns that are most often involved in natural resource damage cases, and these industries are dominated by large firms. Thus the Department need not prepare an analysis under the Regulatory Flexibility Act.

*X. Miscellaneous Issues*

1. Double Counting

*Comment:* One commenter requested additional clarification on what is meant by "double counting."

*Response:* Section 107(f) of CERCLA, which is incorporated in § 11.15(d) of the existing rule, prohibits double recovery of damages and assessment costs. As noted in the August 1, 1986 preamble, the risk of double recovery most commonly arise when trustees with overlapping authority develop separate damage figures for the same resource; when trustees assert claims for losses that are recoverable by private parties; and when trustees count the value of a particular lost use or nonuse more than once when calculating compensable value. Further clarification is beyond the scope of this rulemaking.

2. Threat of Release

*Comment:* Two commenters stated that the rule should allow recovery for damages caused by the threat of a release. The commenters offered an example of a threatened release to a body of water that deters use of the water for fishing.

*Response:* As noted in the August 1, 1986 preamble, the natural resource damage assessment regulations may not be used to assess damages caused by a

mere threat of a release. Section 301(c) of CERCLA authorizes the Department to develop regulations for assessment of "damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance." Therefore, the rule may only be used when there has been an actual release, as opposed to a threat of a release, and an actual injury to a natural resource, as opposed to a mere reduction in use of a resource. Further clarification is beyond the scope of this rulemaking.

3. Coordination With Remedial Activities

*Comment:* There were a few comments on coordination of natural resource damage assessments with response activities. One commenter stated that the rule should impose a limit on the time allowed to conduct an assessment in order to avoid potential conflicts with EPA settlement negotiations. Another commenter requested additional guidance on coordination of restoration planning and remedial action planning.

*Response:* The August 1, 1986 preamble contains considerable discussion of the relationship between response actions and natural resource damage assessments. 51 FR 27681, 27692–27693. Further clarification of the issue is beyond the scope of this rulemaking.

4. Covenants Not To Sue

*Comment:* One commenter suggested that the rule refer to the trustees' authority to issue a covenant not to sue.

*Response:* In the February 22, 1988 preamble, the Department discussed its decision not to address the provisions of section 122(j) of CERCLA, which deal with the authority to issue covenants not to sue, in the natural damage assessment regulations. 53 FR 5168–5169. The regulations were developed to create an optional procedure that trustee agencies could use to obtain a rebuttable presumption in a judicial or administrative proceeding. The Department strongly supports and encourages negotiated settlement of natural resource damage claims; however, it believes that discussions of settlement procedures, including issuance of covenants not to sue, are beyond the scope of the rule.

5. National Environmental Policy Act

*Comment:* One commenter stated that the Department should specify that the National Environmental Policy Act (NEPA) does not apply to assessments or restorations performed in accordance with this rule.

*Response:* In the August 1, 1986 preamble, the Department described the Restoration Methodology Plan, the predecessor document to the proposed Restoration and Compensation Determination Plan, as follows:

> The Restoration Methodology Plan is designed, in particular, to satisfy the requirements of NEPA without additional analysis at this stage * * * The information in the Restoration Methodology Plan] has been designed to fulfill the same information requirements as NEPA, with equivalent opportunities for public input. Thus if an [Environmental Assessment] or [Environmental Impact Statement] were determined to be necessary for a particular restoration or other activity planned in satisfaction of a particular claim, appropriate and timely information would be available. 51 FR 27691 & 27725.

Further clarification of the applicability of NEPA is beyond the scope of this rulemaking.

6. Restoration Plan

*Comment:* One commenter sought clarification of the requirement of proposed § 11.93(a) that the Restoration Plan be prepared in accordance with the guidance set forth in proposed § 11.81. Specifically, the commenter expressed concern that this requirement would subject the Restoration Plan to a separate comment and review period.

*Response:* Proposed §§ 11.81 and 11.93(a) do subject the Restoration Plan to a separate public review and comment period in compliance with the explicit requirement of section 111(i) of CERCLA.

7. Rebuttable Presumption for State and Tribal Trustees

*Comment:* One commenter stated that the Department should revise its rule to extend the rebuttable presumption to assessments performed by State and tribal trustees.

*Response:* Section 11.91(c) of the rule was revised in 1988 to reflect the SARA amendment to CERCLA granting a rebuttable presumption to natural resource damage assessments performed by State trustees. SARA did not extend the rebuttable presumption to assessments performed by tribal trustees. However, as noted in the preamble to the 1988 rulmaking, assessments performed jointly by Federal trustees and tribal trustees or by State trustees and tribal trustees would qualify for a rebuttable presumption. 53 FR 5166, 5168 (February 22, 1988).

Dated: April 7, 1993.

**Brad Leonard,**

*Acting Assistant Secretary, Policy, Management and Budget.*

[FR Doc. 93–17176 Filed 7–21–93; 8:45 am]

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Part IV

# Department of Defense

**Office of the Secretary**

**32 CFR Part 341, et al.**
**Redesignation of Parts; Organization, Functions, and Authority Delegations; Final Rules**

VOL 58 ISS 139 JL 22 1993 UMI

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Parts 354, 355, 356, 357, 358, 359, 360, 361, 364, 377, 385, 386, 387, 393, 398, and 399

### Redesignation of Parts

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This document assigns administrative redesignations to several parts in title 32 of the Code of Federal Regulations. The intention of this action is to group the parts in the order of their lead part numbers and organizational structure.

**EFFECTIVE DATE:** July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301–1155, telephone (703) 697–4111.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Parts 354, 355, 356, 357, 358, 359, 360, 361, 364, 377, 385, 386, 387, 393, 398, and 399**

Defense Department, Organization and functions (Government agencies).

Accordingly, by the authority of 10 U.S.C. 134, title 32, chapter I, of the Code of Federal Regulations is amended as follows:

**PARTS 364, 385, 386, and 387—[REMOVED]**

1. 32 CFR parts 364, 385, 386, and 387 are removed.

2. 32 CFR parts 354, 355, 356, 357, 358, 359, 360, and 361 are redesignated in the table shown below.

REDESIGNATION TABLE

| Old part number | New part number |
|---|---|
| 354 | 385 |
| 355 | 386 |
| 356 | 364 |
| 357 | 387 |
| 358 | 393 |
| 359 | 398 |
| 360 | 399 |
| 361 | 377 |

3. All internal references within the parts redesignated in the table are revised accordingly.

**PART 377—[AMENDED]**

4. Newly redesignated 377 is amended by revising the narrative for footnote 1 to read "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161." and the narrative for footnotes 2 through 4 to read "See footnote 1 to § 377.4(b)."

**PART 385—[AMENDED]**

5. Newly redesignated part 385 is amended as follows:

a. The narrative for footnote 1 is revised to read: "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

**§ 385.6 [Amended]**

b. Section 385.6(d) is amended by redesignating footnote "1" as footnote "2" and by revising the narrative to read "See footnote 1 to § 385.3."

**§ 385.7 [Amended]**

c. Section 385.7 is amended as follows:

1. Paragraph (m) by redesignating footnote "1" as footnote "3" and by revising the narrative to read "See footnote 1 to § 385.3."

2. Paragraph (p) by redesignating footnote "1" as footnote "4" and by revising the narrative to read "See footnote 1 to § 385.3."

3. Paragraph (q) by redesignating footnote "1" as footnote "5" and by adding the narrative to read "See footnote 1 to § 385.3."

**PART 386—[AMENDED]**

6. Newly redesignated part 386 is amended by revising the narrative for footnotes 2, 4, and 5 to read "See footnote 1 to § 386.1(a)."

**PART 387—[AMENDED]**

**§ 387.5 [Amended]**

7. Newly redesignated § 387.5 is amended as follows:

a. Paragraph (c) is amended by revising "5,000.19" to read "5000.19"

b. The narrative for footnote 1 is revised to read: "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

**PART 393—[AMENDED]**

8. Newly redesignated part 393 is amended as follows:

a. The heading is revised to read "Part 393—Advanced Research Projects Agency (ARPA)"

**§ 393.1 [Amended]**

b. Section 393.1 is amended by revising "Defense Advanced Research Projects Agency (DARPA)" to read "Advanced Research Projects Agency (ARPA)"

**§§ 393.3, 393.4, 393.5, 393.6, and 393.7 [Amended]**

c. Sections 393.3, 393.4 introductory text, 393.4 (a), (b), (c), (d), (g); 393.5 introductory text, 393.5 (b), (c), (g); 393.6(a) introductory text, (a)(2), (b)(1), (b)(2); 393.7 (a), (b), (c), and (d); Appendix to part 393, introductory text, sections 1., 2., 3.a., 3.b., 3.c., 4., 6., 8., 9., 10., 12., and 13 are amended by revising "DARPA" to read "ARPA".

**PART 398—[AMENDED]**

9. Newly redesignated 398 is amended by revising the narrative for footnote 1 to read "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

**PART 399—[AMENDED]**

10. Newly redesignated 399 is amended by revising the narrative for footnote 3 to read "See footnote 1 to § 399.4(f)" and the narrative for footnote 4 to read "See footnote 1 to § 399.4(g)."

Dated: July 13, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17034 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

### Office of the Secretary

### 32 CFR Part 361

### [DoD Directive 5111.9]

### Director of Net Assessment

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This document updates the responsibilities, functions, relationships and authorities of the Director of Net Assessment. The Director of Net Assessment is the principal staff assistant and advisor to the Assistant Secretary of Defense for Policy, the Under Secretary of Defense for Policy, and the Secretary of Defense on net assessment matters.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

SUPPLEMENTARY INFORMATION:

**List of Subjects in 32 CFR Part 361**

Organization and functions (Government agencies).

Accordingly, 32 CFR part 361 is added to read as follows:

## PART 361—DIRECTOR OF NET ASSESSMENT

Sec.

361.1 Purpose.
361.2 Applicability.
361.3 Responsibilities and functions.
361.4 Relationships.
361.5 Authorities.

**Authority:** 10 U.S.C. 113.

### § 361.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part updates the responsibilities, functions, relationships, and authorities, as prescribed herein.

### § 361.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

### § 361.3 Responsibilities and functions.

The Director of Net Assessment is the principal staff assistant and advisor to the Assistant Secretary of Defense for Policy and Plans (ASD(P&P)), the Under Secretary of Defense for Policy (USD(P)), and the Secretary of Defense on net assessment matters. In this capacity, the Director of Net Assessment shall:

(a) Develop and coordinate net assessments of the standing, trends, and future prospects of U.S. military capabilities and military potential in comparison with that of other countries or group of countries so as to identify emerging or future threats or opportunities for the United States. This shall include, as required, net assessments of:

(1) Current and projected U.S. and foreign military capabilities by theater, region, function, or mission; and

(2) Specific current and projected U.S. and foreign capabilities, operational tactics, doctrine, and major categories of weapon systems.

(b) Develop, advise, and consult on the net assessment portion of the Annual Report of the Secretary of Defense to the President and Congress, congressional testimony, and foreign government discussions; and provide guidance for the preparation of net assessments by the Chairman of the Joint Chiefs of Staff.

(c) Provide guidance and staff assistance, and represent the ASD(P&P) and the USD(P) in the development of national net assessments by the National Security Council, and act as the primary OSD focal point for joint efforts with the Intelligence Community to produce net assessments.

(d) Provide support for the improvement and development of net assessments within the Department of Defense, including, but not limited to, the maintenance of a library of historical all-source intelligence and friendly force data.

(e) Provide objective analyses of policy, doctrine, strategy, goals, and objectives as requested or determined necessary.

(f) Coordinate with DoD officials, as necessary, to ensure that Departmental documents, deliberations, and discussions reflect appropriate, up-to-date assessment information.

(g) Perform such other functions as the ASD(P&P), USD(P), or the Secretary of Defense may prescribe.

### § 361.4 Relationships.

In the performance of assigned functions and responsibilities, the Director of Net Assessment shall serve under the authority, direction, and control of the ASD(P&P), and shall:

(a) Report through the ASD(P&P) to the USD(P) and the Secretary of Defense.

(b) Exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(c) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(d) Other OSD officials and heads of DoD Components shall coordinate with the Director of Net Assessment on all matters related to the responsibilities and functions cited in § 361.3.

### § 361.5 Authorities.

The Director of Net Assessment is hereby delegated authority to:

(a) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1,[1] as necessary to carry out assigned functions.

(b) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(c) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-17240 Filed 7-21-93; 8:45 am]

BILLING CODE [illegible]

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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## 32 CFR Part 360

**[DoD Directive 5111.8]**

## Assistant Secretary of Defense for Strategy, Requirements, and Resources

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This document reflects organizational changes by establishing the position of the Assistant Secretary of Defense for Strategy, Requirements, and Resources (ASD(SR&R)). The ASD(SR&R) is the principal staff assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense on national security strategy and defense strategy; and the resources, forces, and contingency plans necessary to implement that strategy.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

**List of Subjects in 32 CFR Part 360**

Organization and functions (Government agencies).

Accordingly, 32 CFR part 360 is added to read as follows:

## PART 360—ASSISTANT SECRETARY OF DEFENSE FOR STRATEGY, REQUIREMENTS, AND RESOURCES (ASD(SR&R))

Sec.

360.1 Purpose.
360.2 Applicability.
360.3 Responsibilities and functions.
360.4 Relationships.
360.5 Authorities.

**Authority:** 10 U.S.C. 113 and 136.

### § 360.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113

and 136, this part establishes the position of ASD(S&R) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

**§ 360.2 Applicability.**

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

**§ 360.3 Responsibilities and functions.**

The Assistant Secretary of Defense for Strategy, Requirements, and Resources is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on national security strategy and defense strategy; and the resources, forces, and contingency plans necessary to implement that strategy. In this capacity, the ASD(SR&R) shall:

(a) Analyze and develop national security strategy and defense strategy. Ensure their integration into the Department's resource allocation, force structure development, weapons system acquisition planning, and budgetary processes.

(b) Lead the development of the Defense Planning Guidance (DPG), in coordination with the Assistant Secretary of Defense for Policy and Plans. Ensure the DPG priorities and objectives are appropriately represented throughout the Planning, Programming, and Budgeting System and the Acquisition Management System.

(c) Develop the Contingency Planning Guidance. Review contingency plans, major force deployments, and military operational plans to advise the USD(P) in meeting the statutory requirement to integrate plans.

(d) Evaluate the capability of forces to accomplish defense strategy. Develop alternative force structures to meet changing requirements and strategy.

(e) Analyze the Military Departments' program and budget submissions to ensure they adequately support the DPG strategy and program guidance. Recommend specific programmatic initiatives where appropriate.

(f) Monitor and provide policy input to the military requirements and the Acquisition Management System in terms of policy and strategy-driven requirements for major program Research, Development, Test, and Evaluation and procurement. Ensure linkage to the DPG strategy and program guidance.

(g) Prepare the strategy section of the Annual Report of the Secretary of Defense to the President and Congress and coordinate USD(P) input to and comments on the document. Provide coordinated strategy input to Secretary and Deputy Secretary of Defense and USD(P) budget testimony to Congress. Serve as the lead office for coordinating DoD input to and comments on the President's National Security Strategy.

(h) Develop planning assumptions for a range of theater conflicts and crises. Conduct force evaluations to help identify the appropriate U.S. military force posture to carry out military strategies. Identify critical tasks needed to carry out these strategies, and assess the capability of current and programmed forces to perform these critical tasks.

(i) Guide the Advance Planning Group within the Crisis Management System for effective crisis management.

(j) Represent the USD(P) and the Secretary of Defense in interagency deliberations and international negotiations dealing with assigned areas of responsibility.

(k) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

**§ 360.4 Relationships.**

(a) In the performance of assigned functions and responsibilities, the ASD(SR&R) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(3) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(SR&R) on all matters related to the responsibilities and functions cited in § 360.3.

**§ 360.5 Authorities.**

The ASD(SR&R) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M [1], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [2], as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17241 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 360.5 (a).

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## 32 CFR Part 359

[DoD Directive 5111.7]

## Assistant Secretary of Defense for Regional Security Affairs

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This document reflects organizational changes by establishing the position of the Assistant Secretary of Defense for Regional Security Affairs (ASD(RSA)) and replaces the position of the Assistant Secretary of Defense for International Security Affairs. The ASD(RSA) is the principal staff assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense on the formulation and coordination of regional security strategy and policy, and political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments, except the states of the former Soviet Union.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 359**

Organization and functions (Government agencies).

Accordingly, 32 CFR part 359 is added to read as follows:

## PART 359—ASSISTANT SECRETARY OF DEFENSE FOR REGIONAL SECURITY AFFAIRS (ASD(RSA))

Sec.
359.1 Purpose.
359.2 Applicability.
359.3 Responsibilities and functions.
359.4 Relationships.
359.5 Authorities.

**Authority:** 10 U.S.C. 113 and 136.

### § 359.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of ASD(RSA) with the responsibilities, functions, relationships, and authorities, as prescribed herein

### § 359.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

### § 359.3 Responsibilities and functions.

The Assistant Secretary of Defense for Regional Security Affairs is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense for the formulation and coordination of regional security strategy and policy, and political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments, except the states of the former Soviet Union. In this capacity, the ASD(RSA) shall:

(a) Develop, coordinate, and oversee the implementation of:

(1) Defense security policy and manage defense and military relations with all foreign countries except the states of the former Soviet Union.

(2) Policy and activities related to the North Atlantic Treaty Organization (NATO) and the member countries of NATO, the countries of Central and Eastern Europe formerly in the Warsaw Pact, and the three Baltic States.

(3) Policy relating to Prisoner of War and/or Missing in Action matters and represent the Department of Defense on such matters in interagency processes.

(b) Develop DoD positions and recommendations, and coordinate policy matters concerning security assistance, Military Assistance Advisory Groups, and other missions pertaining to security assistance.

(c) Develop, negotiate, and monitor defense cooperation agreements such as base rights, access and prepositioning, exchange programs, security assistance, and Status of Forces Agreements with foreign governments in assigned geographic areas of responsibility. Coordinate with the Under Secretary of Defense for Acquisition on those programs which fall within the purview of DoD Directive 5530.3 [1], such as industrial cooperation and coproduction agreements.

(d) Conduct and manage day-to-day bilateral relations with all foreign governments in assigned areas of responsibility.

(e) In coordination with the Under Secretary of Defense for Acquisition, develop industrial cooperation and coproduction arrangements for countries in assigned geographic areas of responsibility.

(f) Negotiate and implement agreements with other nations in assigned geographical areas regarding U.S. military facilities, access and operating rights, status of forces and international political-military matters, international agreements, and legal status of U.S. military personnel, including comparable arrangements governing friendly forces in the United States.

(g) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(h) Represent the USD(P) and the Secretary of Defense in interagency deliberations and international negotiations dealing with assigned areas of responsibility.

(i) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

### § 359.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(RSA) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Exercise authority, direction, and control over the Director, Defense Security Assistance Agency.

(3) Coordinate and exchange information with other OSD officials, heads of the DOD Components, and Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of the DOD Components shall coordinate with the ASD(RSA) on all matters related to the responsibilities and functions cited in § 359.3.

### § 359.5 Authorities.

The ASD(RSA) is hereby delegated authority to:

(a) Issue DOD Instructions, DOD publications, and one-time directive-type memoranda, consistent with DOD 5025.1–M [2], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DOD Directive 8910.1, [3] as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DOD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17242 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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## 32 CFR Part 358

**[DOD Directive 5111.6]**

## Assistant Secretary of Defense for Policy and Plans

**AGENCY:** Office of the Secretary, DOD.

**ACTION:** Final rule.

**SUMMARY:** This part reflects organizational changes by establishing the position of the Assistant Secretary of

[2] See footnote 1 to § 359.3 (a).

[3] See footnote 1 to § 359.3 (a).

Defense for Policy and Plans (ASD(P&P)) as the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on mid- to long-range planning on strategic security matters and emerging national security issues, defense policy priorities, and net assessments; formulates and coordinates security strategy and policy and political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments in Russia, Ukraine, and the other states of the former Soviet Union (not including the Baltic States); and manages the USD(P) research program and Defense Policy Board activities and programs.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 358**

Organization and functions (Government agencies).

Accordingly, 32 CFR part 358 is added to read as follows:

## PART 358—ASSISTANT SECRETARY OF DEFENSE FOR POLICY AND PLANS (ASD(P&P))

Sec.

358.1 Purpose.
358.2 Applicability.
358.3 Responsibilities and functions.
358.4 Relationships.
358.5 Authorities.

**Authority:** 10 U.S.C. 113 and 136.

### § 358.1 Purpose.

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of ASD(P&P) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

### § 358.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

### § 358.3 Responsibilities and functions.

The Assistant Secretary of Defense for Policy and Plans is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on mid- to long-range planning on strategic security matters and emerging national security issues, defense policy priorities, and net assessments. In addition, the ASD(P&P) formulates and coordinates security strategy and policy and political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments in Russia, Ukraine, and the other states of the former Soviet Union (not including the Baltic States). Responsibilities also include managing the USD(P) research program and Defense Policy Board activities and programs. In this capacity, the ASD(P&P) shall:

(a) Analyze from a policy planning perspective—namely, a mid- to long-term perspective that relates key national interests to the critical analytical questions that determine policy options and choices—the full range of defense and foreign policy issues of concern to the USD(P) and the Secretary of Defense. Analyze from a mid- to long-term perspective national security issues and develop plans and policy to address them, with particular emphasis on regional and transnational issues. Assist in the development and management of policy guidance for USD(P) representatives in the interagency process.

(b) Prepare the portions of the Defense Planning Guidance that address the security environment, threat, interests, and policy rationale and objectives, in coordination with the Assistant Secretary of Defense for Strategy, Requirements, and Resources. Also prepare other documents containing similar subject matter, such as the Annual Report of the Secretary of Defense to the President and Congress, and coordinate with cognizant DoD officials to ensure that over-arching defense policy rationale is reflected in the DoD Planning, Programming, and Budgeting System.

(c) Develop, coordinate, and oversee the implementation of a comprehensive strategy toward Russia, Ukraine, and other newly independent states of Eurasia; develop and oversee defense security policy and military relations with the former Soviet republics (other than the Baltic States); develop DoD positions and recommendations, and coordinate policy matters concerning security assistance, defense conversion, and military-to-military contacts pertaining to these states, and oversee DoD activities to that end in coordination with the Assistant Security of Defense for Nuclear Security and Counterprolification. Develop policy and plans intended to help these states consolidate democracy, reform their economic systems, and establish smaller, defensively oriented, democratically accountable armed forces in coordination with the Assistant Secretary of Defense for Democracy and Peacekeeping.

(d) Analyze the unique challenges and problems of the post-Cold War security environment, including such topics as defining responsibility-sharing in addressing global security problems.

(e) Develop and coordinate net assessments of the standing, trends, and future prospects of U.S. military capability and military potential in comparison with that of other countries or groups of countries so as to identify emerging or future threats or opportunities for the United States. Coordinate with cognizant DoD officials to ensure that departmental documents, deliberations, and discussions reflect appropriate, up-to-date assessment information.

(f) Develop policy and monitor activities related to the development of advanced non-nuclear science and defense technology and analyses of the unfolding military-technical revolution. Represent the USD(P) on matters concerning nonnuclear technology policy and future development of technology to meet defense needs.

(g) Develop overall policy and oversee activities relating to policy research for the USD(P) and Secretary of Defense that integrate the needs of all officials in the office of the USD(P). Formulate plans and manage the provisions of external analysis and its integration into defense policy-making.

(h) Provide policy guidance to intelligence tasking, collection, and analysis in areas of responsibility, in conjunction with the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

(i) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(j) Represent the USD(P) and the Secretary of Defense in interagency deliberations, meetings with foreign officials and outside experts, and international negotiations dealing with assigned areas of responsibility.

(k) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

### § 358.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(P&P) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Exercise authority, direction, and control over the Director of Net Assessment.

(3) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of DoD Components shall coordinate with the ASD(P&P) on all matters related to the responsibilities and functions cited in § 358.3.

**§ 358.5 Authorities.**

The ASD(P&P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M[1], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1[2], as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17243 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 358.5 (a).

**32 CFR Part 357**

**[DoD Directive 5111.5]**

## Assistant Secretary of Defense for Nuclear Security and Counterproliferation

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This part reflects organizational changes by establishing the position of the Assistant Secretary of Defense for Nuclear Security and Counterproliferation (ASD(NS&CP)) and replaces the position of the Assistant Secretary of Defense for International Security Policy. The ASD (NS&CP) is the principal staff assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense on reducing and countering nuclear, biological, chemical, and missile threats to the United States and its forces and allies; arms control negotiations, implementation, and verification policy; denuclearization, threat reduction, and nuclear safety, security, and dismantlement in the states of the former Soviet Union; counterproliferation; and policy and strategy for U.S. nuclear weapons, space systems, and selected advanced conventional weapons; and technology transfer.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Clark, Office of Organizational and Management Planning, telephone 703–695–4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 357**

Organization and functions (Government agencies).

Accordingly, title 32 of the Code of Federal Regulations, chapter I, subchapter R, is amended to add part 357 to read as follows:

## PART 357—ASSISTANT SECRETARY OF DEFENSE FOR NUCLEAR SECURITY AND COUNTERPROLIFERATION (ASD(NS&CP))

Sec.

357.1 Purpose.
357.2 Applicability.
357.3 Responsibilities and functions.
357.4 Relationships.
357.5 Authorities.

**Authority:** 10 U.S.C. 113 and 136.

**§ 357.1 Purpose.**

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of ASD(NS&CP) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

**§ 357.2 Applicability.**

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

**§ 357.3 Responsibilities and functions.**

The Assistant Secretary of Defense for Nuclear Security and Counterproliferation is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on reducing and countering nuclear, biological, chemical, and missile threats to the United States and its forces and allies; arms control negotiations, implementation, and verification policy; denuclearization, threat reduction, and nuclear safety, security, and dismantlement in the states of the former Soviet Union; counterproliferation; and policy and strategy for U.S. nuclear weapons, space systems, and selected advanced conventional weapons; and technology transfer. In this capacity, the ASD(NS&CP) shall:

(a) Develop, coordinate, and oversee the implementation of:

(1) Policy related to arms control negotiations, implementation, and verification, including cooperative threat reduction and safety, security, and dismantlement, in the states of the former Soviet Union.

(2) Policy for denuclearization in the states of the former Soviet Union, in coordination with the Assistant Secretary of Defense for Policy and Plans.

(3) Policy related to nuclear forces and strategy.

(4) Policy related to U.S. Government counterproliferation activities.

(5) Policy related to nuclear offensive and defensive forces, including the structure, requirements, and posture of strategic forces, strategic reserve forces, theater nuclear forces, warning systems, and space systems and their employment; surety, reliability, safety, and security of nuclear forces; and strategic and theater missile defense. Provide policy guidance to the Director of the Ballistic Missile Defense Organization.

(6) DoD space policy, and review and evaluate programs, plans, and systems

requirements relating to the use of outer space.

(b) Develop DoD policy positions and recommendations regarding non-proliferation and arms control policy for nuclear, chemical, biological, missile, advanced conventional weapons, and international technology transfers. Additionally, develop DoD policy positions and recommendations regarding arms control and disarmament negotiations, to include multilateral negotiations within these areas.

(c) Provide policy guidance for strategic development of new defense technology through the stage of technology demonstration.

(d) Provide policy guidance to intelligence tasking, collection, and analysis in areas of assigned responsibility, in conjunction with the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. Integrate proliferation intelligence information, proliferation threat assessments, and proliferation-related information received from other sources into the USD(P) policy formulation process.

(e) Manage and provide policy guidance to the Defense Technology Security Administration; and develop, coordinate, and oversee the implementation of DoD policy for international technology transfers.

(f) Promote coordination, cooperation, and joint planning on nuclear armaments and strategy with North Atlantic Treaty Organization (NATO) allies, including responsibilities regarding the NATO Nuclear Planning Group and the High Level Group.

(g) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(h) Represent the USD(P) and the Secretary of Defense in interagency deliberations and international negotiations dealing with assigned areas of responsibility.

(i) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

**§ 357.4 Relationships.**

(a) In the performance of assigned functions and responsibilities, the ASD(NS&CP) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Exercise authority, direction, and control over the Director, Defense Technology Security Administration, established by DoD Directive 5105.51 [1].

(3) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(b) Other OSD officials and heads of the DoD Components shall coordinate with the ASD(NS&CP) on all matters related to the responsibilities and functions cited in § 357.3.

**§ 357.5 Authorities.**

The ASD(NS&CP) is hereby delegated authority to:

(a) Issue DoD instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1-M [2], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [3], as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-17244 Filed 7-21-93; 8:45 am]

BILLING CODE 5000-04-M

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## 32 CFR Part 356

[DoD Directive 5111.4]

## Assistant Secretary of Defense for Democracy and Peacekeeping

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This part reflects organizational changes by establishing the position of the Assistant Secretary of Defense for Democracy and Peacekeeping (ASD(D&P)), as the principal staff assistant and advisor to the Under Secretary of Defense for Policy and the Secretary of Defense on DoD policy and planning for the promotion of democracy and the defense of human rights throughout the world, U.S. participation in international peacekeeping and peace-enforcement activities, DoD provision of humanitarian assistance, refugee affairs, and U.S. international information programs.

**EFFECTIVE DATE:** July 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 356**

Organization and functions (Government agencies).

Accordingly, 32 CFR part 356 is added to read as follows:

## PART 356—ASSISTANT SECRETARY OF DEFENSE FOR DEMOCRACY AND PEACEKEEPING (ASD(D&P))

Sec.

356.1 Purpose.
356.2 Applicability.
356.3 Responsibilities and functions.
356.4 Relationships.
356.5 Authorities.

**Authority:** 10 U.S.C. 113 and 136.

**§ 356.1 Purpose.**

Under the authority vested in the Secretary of Defense by 10 U.S.C. 113 and 136, this part establishes the position of ASD(D&P) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

**§ 356.2 Applicability.**

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

**§ 356.3 Responsibilities and functions.**

(a) The Assistant Secretary of Defense for Democracy and Peacekeeping is the principal staff assistant and advisor to the Under Secretary of Defense for Policy (USD(P)) and the Secretary of Defense on DoD policy and planning for

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 357.4 (a) (2).

[3] See footnote 1 to § 357.4 (a) (2).

the promotion of democracy and the defense of human rights throughout the world, U.S. participation in international peacekeeping and peace-enforcement activities, DoD provision of humanitarian assistance, refugee affairs, and U.S. international information programs. In these capacities, the ASD(D&P) shall:

(1) Develop, coordinate, and oversee the implementation of policy and plans for matters related to:

(i) The promotion of democracy and democratic values, including the appropriate role of the military in constitutional democracies, the protection of democratic processes, and respect for human rights.

(ii) The use of DoD resources to encourage the strengthening and development of democracy and respect for human rights throughout the world.

(iii) The participation of U.S. Armed Forces and other DoD resources in United Nations and other international peacekeeping or peace-enforcement activities, including the development of policy related to creating, identifying, training, exercising, and committing military forces for such purposes.

(iv) The use of DoD resources and Armed Forces to respond to humanitarian situations, including those involving refugees, throughout the world.

(v) DoD participation in international activities supporting U.S. international information programs.

(2) Administer the National Security Education Program to provide scholarships, fellowships, and grants that improve the teaching and learning of subjects in the fields of foreign language, area studies and other international fields, pursuant to Public Law 102–183.

(b) The ASD(D&P) serves as the DoD Coordinator for Drug Enforcement Policy and Support and is the principal staff assistant and advisor to the Under Secretary of Defense (USD(P)) and the Secretary of Defense for drug control policy, requirements, priorities, systems, resources, and programs. In this capacity, the ASD(D&P) shall:

(1) Develop policy, conduct analyses, provide advice, make recommendations, and issue guidance on DoD drug control plans and programs.

(2) Develop systems and standards for the administration and management of approved DoD drug control plans and programs.

(3) Promulgate plans, programs, actions, and taskings pertaining to the drug control program, consistent with the national drug control strategy and DoD drug control policy and objectives.

(4) Review, evaluate, coordinate, and monitor DoD drug control plans and programs to ensure adherence to approved policy and standards.

(5) Promote coordination, cooperation, and mutual understanding concerning DoD drug control activities within the Department of Defense and Congress, and between the Department of Defense and other Federal Agencies, State and local governments, and the civilian community.

(6) Serve on boards, committees, and other groups pertaining to assigned drug control functions, and represent the USD(P) and Secretary of Defense on drug control matters outside the Department.

(7) Serve as the DoD point of contact for the Office of the Director of National Drug Control Policy, and other Federal and State agencies as appropriate.

(8) Participate in, oversee, and monitor planning, programming, and budgeting for the DoD counterdrug mission, in coordination with OSD officials, the Chairman of the Joint Chiefs of Staff, and appropriate DoD Components.

(9) Coordinate and monitor DoD support to civilian drug law enforcement agencies.

(10) Coordinate and monitor interagency efforts to promote the detection and monitoring of the maritime and aerial transit of illegal drugs into the United States.

(11) Coordinate and monitor, in conjunction with the Assistant Secretary of Defense for Reserve Affairs, National Guard support to State drug law enforcement operations and to the Department of Defense, as required.

(12) Coordinate and monitor, in conjunction with the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, DoD intelligence and communications support to the Department of Defense and State drug law enforcement operations.

(c) In so far as the exercise of ASD(D&P) responsibilities and functions defined in paragraphs (a) and (b) of this section, uniquely affect or are conducted in specific geographic regions of the world, the ASD(D&P) shall exercise those responsibilities and functions in cooperation and association with the Assistant Secretary of Defense that is assigned responsibility for overall U.S. defense policy in that region.

(d) Participate in those planning, programming, and budgeting activities that relate to assigned areas of responsibility.

(e) Represent the USD(P) and the Secretary of Defense in interagency deliberations and international negotiations dealing with assigned areas of responsibility.

(f) Perform such other functions as the USD(P) and the Secretary of Defense may prescribe.

### § 356.4 Relationships.

(a) In the performance of assigned functions and responsibilities, the ASD(D&P) shall serve under the authority, direction, and control of the USD(P), and shall:

(1) Report directly to the USD(P).

(2) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and other Federal officials having collateral or related functions.

(c) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and to achieve maximum efficiency and economy.

(d) Other OSD officials and heads of DoD Components shall coordinate with the ASD(D&P) on all matters related to the responsibilities and functions cited in § 356.3.

### § 356.5 Authorities.

The ASD(D&P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M [1], that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified and Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1 [2], as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 356.5(a).

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Dated: July 15, 1993.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-17248 Filed 7-21-93; 8:45 am]

BILLING CODE [illegible]

## 32 CFR Part 355

[DoD Directive 5111.3]

## Principal Deputy Under Secretary of Defense for Policy

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part reflects new organizational changes by establishing the position of the Principal Deputy Under Secretary of Defense for Policy (PSUSD(P)), as the primary assistant to the Under Secretary of Defense for Policy (USD(P)), advises and assists the USD(P) across the full range of responsibilities in providing staff advice and assistance to the Secretary and Deputy Secretary of Defense particularly with regard to strategy formulation, contingency planning, and the integration of DoD plans and policy with overall national security objectives, and by law is empowered to act in his stead.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

### List of Subjects in 32 CFR Part 355

Organization and functions (Government agencies).

Accordingly, 32 CFR part 355 is added to read as follows:

## PART 355—PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR POLICY (PDUSD(P))

Sec.

355.1 Purpose.

355.2 Applicability.

355.3 Responsibilities, functions, relationships, and authorities.

Authority: 10 U.S.C. 134a

### §355.1 Purpose.

Pursuant to 10 U.S.C. 134a and the authority vested in the Secretary of Defense under 10 U.S.C. 113, this part establishes the position of PDUSD(P) with the responsibilities, functions, relationships, and authorities, as prescribed herein.

### §355.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

### §355.3 Responsibilities, functions, relationships, and authorities.

The Principal Deputy Under Secretary of Defense for Policy, as the primary assistant of the Under Secretary of Defense for Policy (USD(P)), advises and assists the USD(P) across the full range of responsibilities in providing staff advice and assistance to the Secretary and Deputy Secretary of Defense particularly with regard to strategy formulation, contingency planning, and the integration of DoD plans and policy with overall national security objectives, and by law is empowered to act in his stead. As such, the PDUSD(P) shall:

(a) Assist the USD(P) in carrying out the responsibilities, functions, relationships, and authorities contained in law and in 32 CFR part 354.

(b) Exercise full power and authority to act for the USD(P) and to exercise the powers of the USD(P) upon any and all matters concerning which the USD(P) is authorized to act pursuant to law and 32 CFR part 354. This all-inclusive authority may not be delegated in toto; however, the PDUSD(P) is authorized to make specific redelegations, as required.

Dated: July 15, 1993.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-17246 Filed 7-21-93; 8:45 am]

BILLING CODE [illegible]

## 32 CFR Parts 341 and 369

[DoD Directive 5105.2]

## Delegation of Authority to Deputy Secretary of Defense

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document provides for the delegation of authority from the Secretary of Defense to the Deputy Secretary of Defense empowering him to exercise the full range of statutory and administrative powers of the Secretary's office. It redesignates the delegation document to another part number for clarity and consistency in the organizational structure.

EFFECTIVE DATE: March 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

SUPPLEMENTARY INFORMATION:

### List of Subjects in 32 CFR Parts 341 and 369

Organization and functions (Government agencies).

Accordingly, title 32, chapter I, subchapter R, of the Code of Federal Regulations is amended by redesignating part 369 as part 341 and revised to read as follows:

## PART 341—DELEGATION OF AUTHORITY TO DEPUTY SECRETARY OF DEFENSE

### §341.1 Purpose.

(a) In accordance with the authorities contained in 10 U.S.C. 113, the Secretary of Defense has delegated Deputy Secretary of Defense William J. Perry full power and authority to act for the Secretary of Defense and to exercise the powers of the Secretary of Defense upon any and all matters concerning which the Secretary of Defense is authorized to act pursuant to law.

(b) The all-inclusive authority delegated herein may not be redelegated in toto; however, the Deputy Secretary is authorized to make specific redelegations, as required.

Authority: 10 U.S.C. 113.

Dated: July 15, 1993.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-17247 Filed 7-21-93; 8:45 am]

BILLING CODE [illegible]

## 32 CFR Part 354

[DoD Directive 5111.1]

## Under Secretary of Defense For Policy

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document updates the responsibilities, functions, relationships and authorities of the Under Secretary of Defense for Policy. This part assigns USD(P) the responsibility to develop, coordinate and oversee the implementation of policy for the promotion of democracy and human rights and drug control policy, including planning, programming, and budgeting for the DoD counter-drug mission. It places certain officials under the authority, direction, and control of the USD(P).

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. D. Clark, Office of Organizational and Management Planning, telephone 703-695-4281.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 354**

Organization and functions (Government agencies).

Accordingly, 32 CFR part 354 is added to read as follows:

## PART 354—UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P))

Sec.
354.1 Purpose.
354.2 Applicability.
354.3 Responsibilities and functions.
354.4 Relationships.
354.5 Authorities.

**Authority:** 10 U.S.C. 134.

### § 354.1 Purpose.

Pursuant to 10 U.S.C. 134 and the authority vested in the Secretary of Defense by 10 U.S.C. 113, this part updates the responsibilities, functions, relationships, and authorities of the USD(P), as prescribed herein.

### § 354.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

### § 354.3 Responsibilities and functions.

The Under Secretary of Defense for Policy (USD(P)) is the principal staff assistant and adviser to the Secretary and Deputy Secretary of Defense for all matters concerning the formulation of national security and defense policy and the integration and oversight of DoD policy and plans to achieve national security objectives. In the exercise of this responsibility, the USD(P) shall:

(a) Represent the Department of Defense, as directed, in matters involving the National Security Council (NSC), Department of State, and other Departments, Agencies, and interagency groups with responsibilities for national security policy.

(b) Serve as a member of the NSC Deputies Committee; serve as a member of the Deputies Committee for Crisis Management; and advise the Secretary of Defense on crisis prevention and management, including contingency planning for major areas of concern.

(c) Develop policy for defense-related international negotiations and represent the Department of Defense in those negotiations unless otherwise directed.

(d) Develop and coordinate DoD policy and positions for international negotiations on arms control implementation and/or compliance issues.

(e) Develop policy on the conduct of alliances and defense relationships with foreign governments, their military establishments, and international organizations; integrate and oversee plans and programs undertaken in conjunction with those alliances and defense relationships.

(f) Develop, coordinate, and oversee the implementation of regional security strategy and policy; political-military policy on issues of DoD interest that relate to foreign governments and their defense establishments, to include arrangements for United States military facilities, access and operation rights, and status of forces; and policy on all matters relating to prisoners of war and missing in action.

(g) Develop, coordinate, and oversee the implementation of policy and plans for defense security assistance.

(h) Develop, coordinate, and oversee the implementation of policy to reduce and counter the threat of the United States, its forces, and allies of weapons of mass destruction and other militarily significant technologies and force capabilities, to include counterproliferation policy, arms control policy, and security policy.

(i) Provide oversight of all DoD activities related to international technology transfer; develop, coordinate, and provide policy direction and overall management for the DoD Technology Security Program and policy related to international technology transfer, to include export controls, dual-use and munitions licensing, arms cooperation programs, and support for enforcement and intelligence systems.

(j) Develop, coordinate, and oversee the implementation of strategy and policy for strategic and theater nuclear offensive forces, strategic defensive forces, and space systems; and review and evaluate plans, programs, and systems requirements for such forces and systems to assure consistency with the strategy and policy.

(k) Assist the Secretary of Defense in development of national security and defense strategy; advise on the resources and forces necessary to implement that strategy, to include serving as the principal advisor for the planning phase of the DoD Planning, Programming, and Budgeting System and for monitoring the degree to which the DoD program and budget underwrite the strategy; and assist the Secretary of Defense in preparing written policy guidance for the preparation and review of operational and contingency plans, including those for nuclear and conventional forces, and in reviewing such plans.

(l) Develop policy guidance, provide overall supervision, and provide oversight of planning, programming, budgeting, and execution of special operations activities, including civil affairs and psychological operations, and of low-intensity conflict activities, including counterterrorism, counterinsurgency, support to insurgency, and contingency operations.

(m) Develop, coordinate, and oversee the implementation of policy for the promotion of democracy and human rights, participation in peacekeeping or peace-enforcement activities, and the provision of humanitarian assistance.

(n) Develop, coordinate, and oversee the implementation of drug control policy, including planning, programming, and budgeting for the DoD counter-drug mission.

(o) Provide mid- and long-range policy planning on strategic security matters and emerging national security issues; develop and oversee the implementation of a comprehensive strategy toward Russia, Ukraine, and other newly independent states of Eurasia; plan and conduct net assessments and policy research activities and programs.

(p) Develop, coordinate, and oversee the implementation of policy for international security countermeasures activities of the Department of Defense; administer for the Department of Defense the National Disclosure Policy, the Foreign Disclosure and Technical Information System, the Foreign Visits System, and the U.S. Visitor International Technology System. As the U.S. Security Authority for North Atlantic Treaty Organization, serve as the primary focal point for staff coordination on these matters both internal and external to the Department of Defense. Develop policy and exercise OSD management oversight for emergency planning and preparedness, crisis management, defense mobilization in emergency situations, military support to civil authorities, civil defense, and continuity of operations and government. Develop policy and coordinate DoD participation in and oversight of special activities, special access programs, sensitive support to non-DoD agencies, and the joint worldwide reconnaissance schedule.

(q) Perform such other functions as the Secretary of Defense may prescribe.

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**§ 354.4 Relationships.**

(a) In the performance of assigned functions and responsibilities, the USD(P) shall:

(1) Report directly to the Secretary and Deputy Secretary of Defense.

(2) Exercise authority, direction, and control over:

(i) The Principal Deputy Under Secretary of Defense for Policy.

(ii) The Assistant Secretary of Defense for Regional Security Affairs.

(iii) The Assistant Secretary of Defense for Nuclear Security and Counterproliferation.

(iv) The Assistant Secretary of Defense for Strategy, Requirements, and Resources.

(v) The Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict.

(vi) The Assistant Secretary of Defense for Democracy and Peacekeeping.

(vii) The Assistant Secretary of Defense for Policy and Plans.

(viii) The Director, Defense Security Assistance Agency, through the Assistant Secretary of Defense for Regional Security Affairs.

(ix) The Director, Defense Technology Security Administration, through the Assistant Secretary of Defense for Nuclear Security and Counterproliferation.

(x) The Director of Net Assessment, through the Assistant Secretary of Defense for Policy and Plans.

(xii) Such other subordinate officials as may be assigned.

(3) Coordinate and exchange information with other OSD officials, heads of the DoD Components, and Federal officials having collateral or related functions.

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, when practicable, to avoid duplication and achieve maximum efficiency and economy.

(b) Other OSD officials and head of the DoD Components shall coordinate with the USD(P) on all matters related to the responsibilities and functions cited in § 354.3.

**§ 354.5 Authorities.**

The USD(P) is hereby delegated authority to:

(a) Issue DoD Instructions, DoD publications, and one-time directive-type memoranda, consistent with DoD 5025.1–M,[1] that implement policy approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments shall be issued through the Secretaries of those Departments. Instructions to Unified or Specified Combatant Commands shall be communicated through the Chairman of the Joint Chiefs of Staff.

(b) Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.1,[2] as necessary to carry out assigned functions.

(c) Communicate directly with the heads of the DoD Components. Communications to the Commanders of Unified and Specified Combatant Commands shall be transmitted through the Chairman of the Joint Chiefs of Staff.

(d) Communicate with other Government officials, representatives of the legislative branch, members of the public, and representatives of foreign governments, as appropriate, in carrying out assigned functions.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17248 Filed 7–21–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 354.5 (a).

federal register

Thursday
July 22, 1993

Part V

# Department of Housing and Urban Development

**Office of Assistant Secretary**

**Funding for HOPE for Elderly; Notice**

VOL 58 ISS 139 JL 22 1993 UMI

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3643; FR 3519-N-01]

### Notice of Funding Availability (NOFA) for the HOPE for Elderly Independence Program for Fiscal Year (FY) 1993

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of Funding Availability for Fiscal Year (FY) 1993.

**SUMMARY:** This notice (NOFA) announces the availability of funding for supportive services and section 8 rental vouchers for a national competition for FY 1993 for the HOPE for Elderly Independence Demonstration Program (Elderly Independence demonstration) to be administered by housing agencies (HAs). HAs must match the HUD supportive services funds with at least 50 percent of the total cost of the supportive services estimated to be necessary by the HA and approved by HUD. The purpose of the Elderly Independence demonstration is to test the effectiveness of providing rental vouchers and supportive services to frail elderly people who are living in the general community and not receiving rental subsidies, and who require this combined assistance to continue living independently and to avoid premature or unnecessary institutionalization. The NOFA contains information concerning the deadline for filing applications; eligibility of applicants; available amounts; selection criteria; and the application and selection process.

**DATES:** The due date for submission of applications in response to this NOFA is September 7, 1993. Application kits containing the application forms (Form HUD 52515, and Standard Forms 424 and 424A) may be obtained from the local HUD Field Office/Indian Program Office. Applications must be physically received in the local HUD Field Office/ Indian Programs Office on the due date by 3 p.m. local time. The local Field Offices are the official place of receipt for all applications. At the time of application submission, or immediately following application submission to the Field Office, the HA must also submit a copy of the application for funding under this NOFA to the following address: Mr. Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Department of Housing and Urban Development, room 4220, 451 Seventh Street, SW., Washington, DC 20410.

The above-stated application deadline is firm as to date and hour when applications must be submitted to the Field Offices. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4220, Washington, DC 20410-8000, telephone number (202) 708-0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. OMB has approved the section 8 information collection requirements under the assigned control number 2577-0123; OMB has approved the supportive services information collection requirements under the assigned control number 2577-0154.

### I. Purpose and Substantive Description

*(A) Authority*

The Elderly Independence demonstration is authorized by section 803 of the National Affordable Housing Act (42 U.S.C. 8012) (NAHA). The HOPE for Elderly Independence Program Guidelines were published in the **Federal Register** on February 4, 1991 (56 FR 4506) (hereafter the "February 4, 1991 Guidelines"). The application submission and processing requirements contained in the February 4, 1991 Guidelines were amended by notice published in the **Federal Register** on May 29, 1992 (57 FR 22816). The regulations governing the rental voucher program are published at 24 CFR part 887.

*(B) Background*

The Elderly Independence demonstration is a five-year demonstration program, the purpose of which is to combine tenant-based rental vouchers with supportive services to assist frail elderly people living in the general community who are not receiving rental subsidies and who currently require this combined assistance to continue living independently and avoid premature or unnecessary institutionalization.

This NOFA announces the availability of funds for the Elderly Independence demonstration supportive services and section 8 rental vouchers. This NOFA invites interested HAs to submit applications for funds for supportive service grants and rental vouchers, provides instructions to HAs governing the submission of supportive service grant and rental voucher applications, and describes procedures for rating, ranking, and approving HA supportive service grant applications. HAs must match the HUD supportive services funds with at least 50 percent of the total cost of the supportive services estimated to be necessary by the HA and approved by HUD.

HAs selected through the national competition for Elderly Independence supportive services grants will be awarded funding for up to 150 section 8 rental vouchers. (The minimum number of rental vouchers for which an HA may apply is 25.) While the statute authorized both rental vouchers and rental certificates, the VA, HUD-Independent Agencies Appropriations Act of 1993 (Pub. L. 102-389, October 6, 1992) (the HUD Appropriations Act for FY 1993) only provides funding for rental vouchers, and for this reason only rental vouchers will be provided for the Elderly Independence demonstration for FY 1993.

The application submission and processing requirements contained in this NOFA are different from those set forth in the February 4, 1991 Guidelines. The application submission and processing requirements were amended on May 29, 1992 (57 FR 22816). This NOFA incorporates the amended application submission and processing requirements.

In order to ensure that applicants submit the required information in the application, HUD encourages all applicants to complete the Initial Screening Checklist provided as Attachment 2 of this NOFA. This checklist specifies the required information which must be submitted in the HA's application.

*(C) Allocation Amounts*

(1) HUD will make available up to $38,288,000 of the budget authority approved in the HUD Appropriations

Act for FY 1993 which will support an estimated 1,500 rental vouchers.

(2) The HUD Appropriations Act for FY 1993 also provided $10,000,000 for supportive services grants, which together with $125,077 in carry-over from FY 1992, provides a total of $10,125,077. This amount will support an approximate $6,750 per person Federal share of the supportive services costs.

These funds are available for a national competition in which the HAs that are selected to receive supportive services grants will also receive funding for section 8 rental vouchers. An annual contributions contract (ACC) for the section 8 funding will be executed by the HA and HUD after HUD approval of the HA's section 8 application and execution by the HA and HUD of the supportive services grant agreement.

(3) Family Self-Sufficiency (FSS) Program. Section 23 of the U.S. Housing Act of 1937, which established the Family Self-Sufficiency (FSS) Program, was amended by section 106 of the Housing and Community Development Act of 1992 and now requires that all public housing agencies (PHAs) receiving additional rental vouchers or certificates in FY 1993 must establish a local FSS program. For IHAs, section 106(j) made participation in the FSS program optional for FY 1993 and all future fiscal years. The program guidelines for the FSS program were published in the **Federal Register** on September 30, 1991 (56 FR 49592). The interim and final rules for the FSS program were published in the **Federal Register** on May 27, 1993 at 58 FR 30858, and 58 FR 30906, respectively. (The FSS final rule simply adopts the FSS interim rule as the FSS final regulations.) Unless specifically excepted by HUD, any rental voucher or rental certificate funding reserved in FY 93 (except funding for renewals or amendments) will be used to establish the minimum size of a PHA's FSS program.

If a PHA received an incentive award for the FSS program in response to the NOFA published on September 30, 1991 (56 FR 49612) and amended on January 3, 1992 (57 FR 312), the number of new units received in FY 93 will be added to the incentive awards received in FY 92 and this number will be the minimum size of the PHA's FSS program.

*(D) HA Eligibility*

Eligible applicants for the Elderly Independence demonstration supportive services grants and Elderly Independence demonstration rental vouchers are housing agencies (HAs). An HA is the entity defined in section 3(b)(6) of the United States Housing Act of 1937 (1937 Act), including Indian Housing Authorities as defined in section 3(b)(11) of the 1937 Act. Since this is a demonstration, only HAs which are currently administering a section 8 program may apply to participate in the Elderly Independence demonstration.

*(E) Program Guidelines*

Except for the additional language provided to the definition of "Activities of Daily Living" in this section I(E), the February 4, 1991 Guidelines, as amended on May 29, 1992, are applicable to the FY 1993 Elderly Independence demonstration.

To clarify the manner in which a person may meet the minimal level performance requirements of the Activities of Daily Living, the following paragraph is added to the definition of Activities of Daily Living set forth in the February 4, 1991 Guidelines at 56 FR 4509–4510 so that the definition reads in its entirety as follows:

"Activities of Daily Living (ADL)" as defined by the Secretary means eating, dressing, bathing, grooming and household management activities as further described below:

—Eating: May need assistance with cooking, preparing or serving food, but must be able to feed self;
—Bathing: May need assistance in getting in and out of the shower or tub, but must be able to wash self;
—Grooming: May need assistance in washing hair, but must be able to take care of personal appearance;
—Dressing: must be able to dress self, but may need occasional assistance;
—Home Management Activities: May need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

Each of the Activities of Daily Living noted above includes a requirement that a person must be able to perform at a specified minimal level (e.g., to satisfy the eating ADL, the person must be able to feed him/herself). The determination of whether a person meets this minimal level of performance must include consideration of those services that will be performed by a person's spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding *him/herself*, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. Should such assistance become unavailable at any time, the Owner is not obligated at any time to provide individualized services beyond those offered to the resident population in general. The Activities of Daily Living analysis is relevant only to determine a person's eligibility to receive supportive services paid for under the Elderly Independence demonstration, and is not a determination of eligibility for occupancy.

**II. Application Process**

*(A) Application Submission Deadline*

HA applications must be received in the HUD Field Office/Indian Programs Office on September 7, 1993, by 3 p.m. local time. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept applications which are sent via facsimile (FAX) transmission.

*(B) Selection Process*

After the Field Office or Indian Programs Office has screened HA supportive services applications and disapproved any applications unacceptable for further processing (see section II(D) of this NOFA, the Field Office or Indian Programs Office will review and rate all approvable applications, utilizing the selection criteria and point assignments listed below. All scored applications and rating sheets in each Field Office will be sent to the Regional Public Housing Director. The Indian Programs Office will send each application and rating sheet to the Regional Public Housing Director that has jurisdiction over the State in which the Indian Housing Authority is located.

In order to ensure that ratings are consistent among the Field Offices within the region, the Regional Office of Public Housing will review and, as necessary, may re-rate these applications, utilizing the same selection criteria and point assignment listed below.

The Regional Office of Public Housing must send the rating sheets from the

Field Office or Indian Programs Office, and from the Regional Office to HUD Headquarters. Headquarters, in consultation with the U.S. Department of Health and Human Services (HHS), will review and may re-rate these applications, utilizing the same selection criteria and point assignment listed in this NOFA. Headquarters will fund the highest rated applications until the remaining supportive services grant funds or rental voucher funds are insufficient to fund the next highest rated application(s). In the event of tie scores, HUD Headquarters, in consultation with HHS, will rank the applications on the basis of selection criterion 2—supportive services capability; and selection criterion 3—quality of the proposed supportive services plan.

When remaining supportive service funds or rental voucher funds are insufficient to fund the next highest scoring application(s) in full, HUD Headquarters may reduce the requested amount to partially fund the final application(s). Each applicant must indicate in their application whether they wish to be considered for a reduced grant and the minimum number of units the applicant is willing to accept. Headquarters will skip over applicants who will not accept a reduced grant if assigning the remaining funding would result in a reduced grant or a grant below the minimum number the applicant is willing to accept. Successful applicants for the supportive services grants will be notified in writing by the HUD Field Offices upon approval of the supportive services grants and applications for section 8 rental vouchers.

*(C) Selection Criteria/Ranking Factors*

(1) General

To provide each HA applicant with a fair and equitable opportunity to receive a supportive services grant and funding for rental vouchers under the Elderly Independence demonstration, HUD, in consultation with HHS, will utilize the objective selection criteria stated in this notice to rate all supportive services applications found acceptable for further processing.

(2) Selection Ranking Factors

Applicants will be rated on the following criteria:

(a) *Selection Criterion 1: HA Section 8 Administrative Capability (25 points)*—(i) Description: Overall HA administrative ability in the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs, as evidenced by factors such as leasing rates and correct administration of housing quality standards (HQS), portability of rental vouchers and rental certificates, compliance with Fair Housing and Equal Opportunity program requirements, assistance payment computation, and rent reasonableness requirements, is either excellent or good. If an HA is not administering a Rental Voucher, Rental Certificate, or Moderate Rehabilitation Program, the HA is not eligible to participate in this demonstration program.

(ii) Rating: 16–25 points. Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as excellent; there are no serious outstanding management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings (unless Office of Inspector General recommendation has been appealed by Field Office, Indian Programs Office or Regional Office); the HA is complying with the portability requirements under the rental voucher and rental certificate programs; not more than 15 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet housing quality standards (HQS) or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under Annual Contributions Contract (ACC) for one year or more was at least 95 percent as of September 30, 1992, unless Field Office/Indian Programs Office documents that September 30, 1992, report was not reflective of HA performance;

1–15 points. Field Office/Indian Programs Office rates overall HA administration of the Rental Voucher, Rental Certificate, and Moderate Rehabilitation Programs as good; any management review, fair housing and equal opportunity monitoring review, or Inspector General audit findings are being satisfactorily addressed; the Field Office is aware of some problems with HA administration of portability (e.g., not responding to billing promptly); not more than 25 percent of the units inspected by the Field Office/Indian Programs Office during the last management review failed to meet HQS or the Field Office is aware of actions taken by the HA to improve its inspection procedures; and the leasing rate for rental vouchers and rental certificates under ACC for one year or more was at least 85 percent as of September 30, 1992, unless the Field Office/Indian Programs Office documents that the September 30, 1992, report is not reflective of HA performance.

0 points. If neither of the above statements apply, assign 0 points.

(b) Selection Criterion 2: Supportive Services Capability (20 points)—(i) Description: Prior experience with delivery of effective supportive services programs by the HA or the HA's proposed subcontractor.

(ii) Rating: 11–20 points. HA or subcontractor currently administers or has past experience administering, an effective supportive service delivery program for frail elderly persons including minorities and women or currently administers an effective supportive service delivery program for other persons in need of such services including minorities and women.

1–10 points. HA or subcontractor has delivered supportive services in the past.

0 points. HA or subcontractor has no experience in the delivery of supportive services.

(c) *Selection Criterion 3: Quality of the proposed supportive services plan (25 points)*—(i) Description: The quality of the proposed supportive services plan and evidence that the proposed supportive services will be provided.

(ii) Ratings: 13–25 points. The HA's supportive services plan includes written commitments from the providers of supportive services necessary to address the needs identified in at least three of the five activities of daily living as defined in February 4, 1991 Guidelines, and revised in section I(E) of this NOFA; the HA has commitments from at least 3 qualified persons (one of which is a qualified medical professional) to serve as the professional assessment committee (PAC) or a commitment from an alternative entity agreeing to perform the functions of the PAC; and the HA's supportive services plan adequately addresses how the HA will match the funds needed to provide the minimum number of services that each frail elderly participant requires.

1–12 points. The HA's supportive services plan includes written commitments from the providers of supportive services necessary to address the needs identified in at least two of the five activities of daily living as defined in February 4, 1991 Guidelines and as revised in section I(E) of this NOFA; and the HA's supportive services plan adequately addresses how the HA will match the funds needed to provide the minimum number of services that each frail elderly participant requires. (PAC members or alternate entity need

not be selected at the time of HA application.)

0 points. The HA's supportive services plan fails to include written commitments from the providers of supportive services necessary to address the needs identified in at least two of the five daily activities of daily living as defined in the February 4, 1991 Guidelines, and as revised in section I(E) of this NOFA; or the HA's supportive services plan does not adequately address how the HA will match the funds needed to provide the minimum number of services that each frail elderly participant requires.

(d) *Selection Criterion 4: Supportive Services Funding (15 points)*—(i) Description: The extent to which the proposed funding for supportive services is or will be available throughout the five year demonstration period.

(ii) Rating: 8–15 points. There are reasonable assurances from supportive service providers that services will be continued during years 2–5 of the demonstration and the HA has a comprehensive plan for obtaining funding for the required 50–55 percent match for years 2–5 of the demonstration.

1–7 points. The HA has a plan to obtain funding for the required 50–55 percent match for years 2–5 of the demonstration.

0 points. There is no evidence of any plans for obtaining the required match after the first year of the demonstration.

(e) *Selection Criterion 5: Need for Frail Elderly Program (5 points)*—(i) Description: The need for a program providing both housing assistance and supportive services for frail elderly persons in the area to be served, as demonstrated by the HA's analysis of the size and characteristics of the population to be served.

(ii) Rating: 3–5 points. The HA has documented that there is a need in the HA jurisdiction for the Elderly Independence demonstration which is not being met through existing programs, and the documentation provides a thorough analysis of the size and characteristics including race, gender and ethnicity of the frail elderly population.

1–2 points. The HA has documented that there is a need in the HA jurisdiction for the Elderly Independence demonstration which is not being met through existing programs, but the documentation only provides a cursory analysis of the frail elderly population including race, gender and ethnicity.

0 points. There is no need for the Elderly Independence demonstration.

(f) *Selection Criterion 6: Involvement of Area Agency/State Agency on Aging (10 points)*—(i) Description: The extent to which the Area Agency/State Agency on Aging is playing an active role in the supportive services program.

(ii) Rating: 6–10 points. The letter from the Area Agency/State Agency on Aging indicates specifically *how* the agency was involved in the development of the proposed supportive services program and the assessment/case management system; indicates that the agency reviewed the application prior to submission to HUD; and indicates that the agency will be very involved in the ongoing operations of the project (if funded).

1–5 points. The letter from the Area Agency/State Agency on Aging indicates only minimal involvement in the development and review of the application and in the project's ongoing operations (if funded).

0 points. The letter only indicates general support for the proposal, without specific involvement by the Area Agency/State Agency on Aging.

*(D) Unacceptable Applications*

(1) Following the 14-day period provided to applicants to cure technical deficiencies in applications (see Section IV of this NOFA), the Field Office will disapprove HA applications that it determines are not acceptable for processing. The Field Office notification of rejection letter must state the basis for the Field Office decision.

Material to cure technical deficiencies which is received after close of business on the fourteenth calendar day after the date of HUD's written notice will not be accepted. If the HA has not cured all technical deficiencies by this deadline, the application will be rejected as incomplete.

Each HA is encouraged to review the initial screening checklist provided as Attachment 2 of this NOFA. The checklist identifies all technical requirements needed for application processing. Each HA is reminded that certain technical requirements listed in the February 4, 1991 Guidelines have been revised and should use the checklist provided in this NOFA to ensure that its application meets the necessary requirements.

An HA application must comply with the requirements of this NOFA (including the Drug-Free Workplace certification, the Anti-Lobbying certification and Disclosure of Lobbying Activities requirements and the Single Audit Act certification). Except for the technical deficiencies listed in Section IV of this NOFA, all application elements must be submitted to HUD by the application submission deadline. All technical deficiencies must be corrected by the end of the 14 calendar day technical deficiency correction period.

(2) Applications that fall into any of the following categories will not be processed:

(a) (i) The Department of Justice has brought a civil rights suit against the applicant HA, and the suit is pending;

(ii) There has been an adjudication of a civil rights violation in a civil action brought against the HA by a private individual, unless the HA is operating in compliance with court order, or implementing a HUD approved resident selection and assignment plan or compliance agreement designed to correct the areas of noncompliance.

(iii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the applicant under the Fair Housing Act, unless the applicant is operating under a conciliation or compliance agreement designed to correct the areas of noncompliance;

(iv) HUD has deferred application processing by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and the HUD Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57).

(b) The HA has serious, unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings for one or more of its Rental Certificate, Rental Voucher, or Moderate Rehabilitation programs.

(c) The leasing rate for Rental Certificates and Rental Vouchers under ACC for at least one year is less than 75 percent.

(d) The HA is involved in litigation and HUD determination that the litigation may seriously impede the ability of the HA to administer an additional increment of Rental Vouchers and the supportive services grant.

(e) The HA does not administer a rental voucher, certificate, or moderate rehabilitation program.

(f) The HA is not in compliance with the Single Audit Act, OMB Circular No. A–128 and HUD's regulations at 24 CFR part 44; or OMB Circular No. A–133, as applicable.

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*(E) Funding Award Process*

In accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's regulation at 24 CFR 12.16, HUD will notify the public by notice published in the Federal Register of all award decisions made by HUD under this competition. HUD and recipients of awards under this NOFA also shall comply with the provisions of section V(D) of this NOFA.

**III. Checklist of Application Submission Requirements**

*(A) General*

Applicants may apply for a maximum of $1,000,000 of the supportive services funds. HAs may apply for up to 150 rental vouchers but must apply for at least 25 rental vouchers. The application must include the number of efficiency and one bedroom rental vouchers the HA intends to apply for, and the estimated average monthly adjusted income for households needing these unit sizes, and HAs must indicate whether they would be willing to accept fewer units. Applications for less than 25 or more than 150 rental vouchers per HA will be rejected as non-responsive.

The HA application should include an explanation of how the application meets, or will meet, application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, a Field Office can only rate and rank an application based on information it has on-hand.

*(B) Forms*

To assist HAs, the following are attached to this notice: Form HUD–52515, Application for Existing Housing [Attachment 1]; Checklist for Technical Requirements [Attachment 2]; Form SF–424, Application for Federal Assistance [Attachment 3]; Standard Form LLL, Disclosure of Lobbying Activities [Attachment 4]; the text for Certification Regarding Lobbying [Attachment 5]; HUD Form 2880, Applicant Disclosure Report [Attachment 6]; the text for the Maintenance of Effort certification [Attachment 7]; SF 424A and instructions for explaining and justifying the supportive services budget [Attachment 8]; the Certification for a Drug-Free Workplace [Attachment 9] and the text for Certification Regarding Compliance with the Single Audit Act [Attachment 10].

*(C) Application Kits*

HAs may obtain an application kit from the local HUD Field Office/Indian Programs Office. The application kit contains the forms and certifications provided at the end of this NOFA and the checklist for technical requirements [Attachment 2]. The application kit contains the identical information that is in the NOFA, however, some HAs may prefer to use the checklist, forms, and certifications in a package separate from the NOFA.

*(D) Certification Regarding Drug-Free Workplace*

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide a drug-free workplace. Thus, each HA must certify (even though it has done so previously) that it will comply with the drug-free workplace requirements in accordance with 24 CFR part 24 subpart F. [Attachment 9, Certificate for Drug-Free Workplace]

*(E) Certification Regarding Lobbying*

Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. HUD's regulations on these restrictions on lobbying are codified at 24 CFR part 87. To assist HAs, the text for the Certification Regarding Lobbying [Attachment 5] and Standard Form LLL, "Disclosure Form to Report Lobbying" [Attachment 4] are attached. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

*(F) Checklist for Technical Requirements*

The checklist [Attachment 2] specifies the required information which must be submitted in the HA's application. It is recommended but not required that the application contain a narrative explaining how the application meets the selection criteria.

*(G) Compliance With the Single Audit Act*

The HA must be in compliance with OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; or OMB Circular No. A–133, in order to be eligible for funding. The certification must include the period covered by the last audit conducted and submitted to HUD in accordance with these requirements, or the period covered by the audit currently under contract. Applicants who are not currently in compliance with the audit requirements will not be eligible for funding. To comply, an HA must submit a certification of its compliance with the Single Audit Act [Attachment 10].

**IV. Corrections to Deficient Applications**

To be eligible for processing, an application must be received by the Field Office no later than the application submission deadline date and time specified at section II(A) of the NOFA. The Field Office will initially screen all applications and notify HAs of technical deficiencies by letter. Field Office notification of HAs must be uniform.

The purpose of this process is to assist an applicant in completing a ratable proposal and not to provide for an applicant to improve substantively its application once it has been submitted. The following is a list of items that may be submitted by an HA during the technical correction period. This list is intended to be a complete list and only these items may be requested or submitted after the application submission deadline date:

Certifications for:

—Drug-Free Work Place

—Lobbying Certification Form

—Disclosure of Lobbying Activities, SF–LLL

—Maintenance of effort, consistent with the stipulations of section X of the February 4, 1991 Guidelines

—The applicant's financial management system for the supportive services grant meets the standards for fund control and accountability found at 24 CFR 85.20 or Attachment F of OMB Circular A–110, as applicable

—HUD Form 2880, Applicant Disclosure

—Compliance with Single Audit Act

All HAs must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency. Information received after close of business on the fourteenth day of the correction period will not be accepted and the application will be rejected on the basis of being incomplete. All HAs are encouraged to review the initial screening checklist provided in Attachment 2 of the notice. The checklist identifies all technical requirements needed for application processing.

## V. Other Matters

*(A) Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD's regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*(B) Federalism Impact*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA does not have substantial, direct effects on the States, on their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government, because this NOFA would not substantially alter the established roles of HUD, the States and local governments, including HAs.

*(C) Impact on the Family*

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this NOFA may have a significant impact on the maintenance and general well-being of some families. This NOFA provides FY 1993 funding for the Elderly Independence demonstration, the purpose of which is to provide decent and sanitary housing, and supportive services for frail elderly individuals. The supportive services provided by this demonstration are expected to prevent or postpone unnecessary or premature institutionalization, and reduce unnecessary stress and financial burden on participants' families. Since the impact on the family is considered beneficial, no further review is necessary.

*(D) Accountability in the Provision of HUD Assistance*

On March 14, 1991 (56 FR 11032), HUD published a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

(1) Documentation and Public Assess

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

*(E) Prohibition Against Lobbying Activities*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the Statute's coverage.

*(F) Prohibition Against Lobbying of HUD Personnel*

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by HUD *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence HUD in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions concerning the rule should be directed to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

*(G) Prohibition Against Advance Information on Funding Decisions*

Section 103 of the Reform Act proscribes the communication of certain

information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance that entails a competition for its distribution. HUD's regulations implementing section 103 are codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions under a competitive funding process are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Dated: July 14, 1993.

**Joseph Shuldiner,**

*Assistant Secretary for Public and Indian Housing.*

BILLING CODE 4210-33-M

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# Application for Existing Housing

Section 8 Housing Assistance Payments Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Attachment 1

Send the original and two copies of this application form and attachments to the local HUD Field Office

OMB Approval No. 2577-0169 (exp.9/30/95)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0169), Washington, D.C. 20503. Do not send the completed form to either of these addresses.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for
How many Certificates? How many Vouchers?

Signature of PHA Officer authorized to sign this application

X

Have you submitted prior applications: No Yes
. . . for Section 8 Certificates? ☐ ☐
. . . for Section 8 Housing Vouchers? ☐ ☐

Title of PHA Officer authorized to sign this application

Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into Contracts)

**A. Primary Area(s)** from which families to be assisted will be drawn.

| Locality (city, town, etc.) | County | Congressional District | Units |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

**B. Proposed Assisted Dwelling Units**

| Housing Program | Number of Dwelling Units by Bedroom Count: Elderly, Handicapped, Disabled — Efficiency | 1-BR | 2-BR | Non-Elderly — 1-BR | 2-BR | 3-BR | 4-BR | 5-BR | 6-BR | Total Dwelling Units |
|---|---|---|---|---|---|---|---|---|---|---|
| Certificates | | | | | | | | | | |
| Housing Vouchers | | | | | | | | | | |

**C. Need for Housing Assistance.** Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

**D. Qualification as a Public Housing Agency.** Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check * the appropriate boxes)

| | Submitted with this application | Previously submitted |
|---|---|---|
| 1. The relevant enabling legislation | | |
| 2. Any rules and regulations adopted or to be adopted by the agency to govern its operations | | |
| 3. A supporting opinion from the Public Housing Agency Counsel | | |

Retain this record for the term of the ACC.
Previous editions are obsolete



form HUD-52515 (7/88)
ref. handbook 7420.5

E. **Financial and Administrative Capability.** Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. **Housing Quality Standards.** Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. **Leasing Schedule.** Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. **Average Monthly Adjusted Income** (Housing Vouchers Only)

| Efficiency | 1-BR | 2-BR | 3-BR | 4-BR | 5-BR | 6+BR |
|---|---|---|---|---|---|---|
| | | | | | | |

I. **Attachments.** The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

| | Submitted with this application | To be submitted | Previously submitted |
|---|---|---|---|
| 1. Equal Opportunity Housing Plan | | | |
| 2. Equal Opportunity Certifications, Form HUD-916 | | | |
| 3. Estimates of Required Annual Contributions, forms HUD-52672 and HUD-52673 | | | |
| 4. Administrative Plan | | | |
| 5. Proposed Schedule of Allowances for Utilities and Other Services, form HUD-52667, with a justification of the amounts proposed | | | |

**HUD Field Office Recommendations**

| Recommendation of Appropriate Reviewing Office | Signature and Title | Date |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |



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Attachment 2

**Checklist for Technical Requirements.**

The following checklist specifies the required information which must be submitted in the joint application.

**Initial Screening Checklist**

| HA Yes | HA No | Field Office Yes | Field Office No | |
|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | 1. The application contains a cover letter stating the total five year requested grant amount and indicates whether the applicant is willing to accept a reduced number and the minimum number of units the applicant is willing to accept. |
| ☐ | ☐ | ☐ | ☐ | 2. The application contains the Form HUD-52515, application for section 8 rental voucher funding. |
| ☐ | ☐ | ☐ | ☐ | 3. The application states the number of frail elderly participants the HA program will support and the number of efficiency and one-bedroom rental vouchers and the estimated monthly adjusted household income (see section H of HUD 52515) by bedroom size. The number requested must be between 25 and 150 rental vouchers per HA. |
| ☐ | ☐ | ☐ | ☐ | 4. The application contains Standard form (SF) 424, Request for Federal Assistance (this is not to be used for intergovernmental review, but for financial tracking purposes). The HA completes all items following the instructions on the reverse of the form, except for items 2,3, and 4. |
| ☐ | ☐ | ☐ | ☐ | 5. The application addresses the HA's past experience, if any, in delivery of supportive services to the frail elderly, and/or other relevant experience in the delivery of supportive services. |

| HA Yes | HA No | Field Office Yes | Field Office No | |
|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | 6. The application contains a description of the size and characteristics of the frail elderly population in the HA's jurisdiction and their housing and supportive services needs. |
| ☐ | ☐ | ☐ | ☐ | 7. The application contains a supportive services plan, including a supportive services budget consistent with Attachment 8. At a minimum, the following information must be included in the supportive services plan (check if included): |
| ☐ | ☐ | ☐ | ☐ | (A) A description of each proposed supportive service; the identity of the proposed services provider; a statement of qualifications of each proposed services provider; and an explanation why the service is needed to keep participants independent; |
| ☐ | ☐ | ☐ | ☐ | (B) A supportive services budget listing the first year cost for each supportive service and administrative costs for the supportive services program; cost estimates for services and administration expenses for years 2-5; and identification of the resources to be used to cover the HA match for the year one costs including the dollar value for in-kind items or donated time (Attachment 8 provides detailed instruction on required format of the supportive services budget); |
| ☐ | ☐ | ☐ | ☐ | (C) A firm commitment from each supportive service provider to make available all listed resources for that provider for the first year of the demonstration (HAs should note that while reasonable assurances of commitment from service providers for years 2-5 is not a technical requirement, applications which contain such assurances will receive higher scores under selection criterion 4); |
| ☐ | ☐ | ☐ | ☐ | (D) A description of the assessment and case management process, including the proposed method of determining whether a person qualifies as a frail elderly person (specifying any additional eligibility requirements proposed by the agency) and the mechanisms for developing housing and supportive services plans for each person and for monitoring that person's progress in meeting that plan; |
| ☐ | ☐ | ☐ | ☐ | (E) Procedures for the transition of participants out of the demonstration that become too frail to continue or well enough to discontinue the services component. |
| ☐ | ☐ | ☐ | ☐ | (F) A plan for coordinating housing assistance and supportive services. |

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| HA Yes | HA No | Field Office Yes | Field Office No | |
|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | (G) A plan for the continuation of supportive services for program participants at the end of the demonstration period; and |
| ☐ | ☐ | ☐ | ☐ | (H) An explanation of the process for setting of participant fees and how the HA will monitor for collections. |
| ☐ | ☐ | ☐ | ☐ | 8. The application contains a letter signed by the director of the HA that: |
| ☐ | ☐ | ☐ | ☐ | (A) Provides evidence to meet the local match requirement each year of the demonstration; |
| ☐ | ☐ | ☐ | ☐ | (B) Indicates the HA will create or has created a professional assessment committee (PAC) that includes at least 1 qualified medical professional and other persons professionally competent to appraise the functional abilities of the frail elderly, or will work with another entity which will assist the HA in identifying and providing only services that each frail elderly person needs to remain living independently. (HAs should note that applications which contain commitments from individuals to serve as the PAC or an alternative entity agreeing to perform the functions of the PAC will receive a higher score under selection criterion 3.); |
| ☐ | ☐ | ☐ | ☐ | (C) Provides assurances that the services listed in the HA application for the five years of the demonstration will be made available; |
| ☐ | ☐ | ☐ | ☐ | (D) States that in cases where participants are certified to pay less than 10% of the supportive service costs, the HA will share the cost of the difference, up to 50% of the shortfall; and |
| ☐ | ☐ | ☐ | ☐ | (E) Certifies that the application has been developed in consultation with the Area Agency on Aging (or the State Unit on Aging if that state is not subdivided) and that the HA will consult with this agency during the demonstration. |
| ☐ | ☐ | ☐ | ☐ | (9) The application contains a description of how the HA will ensure that the service providers are providing supportive services at a reasonable cost, adequate to meet the needs of the persons to be served. |

| HA Yes | HA No | Field Office Yes | Field Office No | |
|---|---|---|---|---|
| ☐ | ☐ | ☐ | ☐ | (10) The application contains a letter from the Area Agency on Aging (or the State Unit on Aging if that state is not subdivided) stating the involvement of the agency in the development of the application and the supportive services plan, and the proposed role that the Area Agency will have during the life of the grant, if funded. The letter shall also state whether the cost of each supportive service is reasonable and consistent with other service programs in that jurisdiction, and identify plans for ongoing agency involvement and for agency review of program operations at regular intervals. |
| ☐ | ☐ | ☐ | ☐ | (11) Certifications for: |
| ☐ | ☐ | ☐ | ☐ | (A) Drug-Free Work Place; |
| ☐ | ☐ | ☐ | ☐ | (B) Lobbying Certification form; |
| ☐ | ☐ | ☐ | ☐ | (C) Prohibition Against Lobbying, SF-LLL, if warranted; |
| ☐ | ☐ | ☐ | ☐ | (D) HUD Form 2880 (Applicant Disclosures) (See Section V(D)(2) of this NOFA.); |
| ☐ | ☐ | ☐ | ☐ | (E) The application meets the requirement that the applicant is in compliance with the Single Audit Act, OMB Circular No. A-128 and HUD's regulations at 24 CFR 44; or OMB Circular No. A-133. To comply, HAs must submit a Single Audit Act Certification (Attachment 10). HAs who are not currently in compliance with the audit requirements will not be eligible for funding. |
| ☐ | ☐ | ☐ | ☐ | (F) Agreement to participate in the HUD evaluation and cooperate with the evaluation team; |
| ☐ | ☐ | ☐ | ☐ | (G) Maintenance of effort, consistent with the stipulations of Section X of the guidelines (note that supportive service providers must also provide this certification); and |
| ☐ | ☐ | ☐ | ☐ | (H) The applicant's financial management system for the supportive services grant meets the standards for fund control and accountability found at 24 CFR 85.20 or Attachment F of OMB Circular A-110, as applicable. |

If the HA exercises the option to limit the geographic area of the Elderly Independence demonstration, the following item is also required in the application submission.

| HA | | Field Office | | |
|---|---|---|---|---|
| Yes | No | Yes | No | |
| ☐ | ☐ | ☐ | ☐ | (12) A justification of the decision to limit the demonstration to a geographic area, stating the limits of the service area of the service providers which it proposes to utilize, cost efficiency and effectiveness of such supportive service delivery, including maps with the relevant boundaries, and racial/ethnic description of the population, and a description of the nature and cost of housing in the specified area. |

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Attachment 3

# Application for Federal Assistance

OMB Approval No. 0348-0043

| 1. Type of Submission: | | 2. Date Submitted | Applicant Identifier |
|---|---|---|---|
| Application: ☐ Construction ☐ Non-Construction | Preapplication: ☐ Construction ☐ Non-Construction | 3. Date Received by State | State Application Identifier |
| | | 4. Date Received by Federal Agency | Federal Identifier |

**5. Applicant Information**

| Legal Name | Organizational Unit: |
|---|---|
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

**6. Employer Identification Number (EIN):**

**7. Type of Applicant:** (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify):

**8. Type of Application:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

**9. Name of Federal Agency:**

**10. Catalog of Federal Domestic Assistance Number:**

Title:

**11. Descriptive Title of Applicant's Project:**

**12. Areas Affected by Project (cities, counties, states, etc.):**

| 13. Proposed Project: | | 14. Congressional Districts of: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

| 15. Estimated Funding: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. Total | $ | .00 |

**16. Is Application Subject to Review by State Executive Order 12372 Process?**

a. Yes. This preapplication/application was made available to the State Executive Order 12372 Process for review on:

Date: _____

b. No. ☐ Program is not covered by E.O. 12372

☐ or Program has not been selected by State for review.

**17. Is the Applicant Delinquent on Any Federal Debt?**

☐ Yes If "Yes," attach an explanation ☐ No

**18.** To the best of my knowledge and belief, all data in this application/preapplication are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

| a. Typed Name of Authorized Representative | b. Title | c. Telephone Number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

**Instructions for the SF-424**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item 1. Self-explanatory.

Item 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

Item 3. State use only (if applicable).

Item 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

Item 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

Item 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

Item 7. Enter the appropriate letter in the space provided.

Item 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
- "New" means a new assistance award.
- "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

Item 9. Name of Federal agency from which assistance is being requested with this application.

Item 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

Item 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item 12. List only the largest political entities affected (e.g., State, counties, cities).

Item 13. Self-explanatory.

Item 14. List the applicant's Congressional District and any District(s) affected by the program or project.

Item 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

Item 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

Item 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

Item 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)



Form SF-424 (4/88)
Prescribed by OMB Circular A-102

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# Disclosure of Lobbying Activities

Attachment 4

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions and public burden disclosure.)

Approved by OMB
0348-0046

**1. Type of Federal Action:**
- ☐ a. contract
- ☐ b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

**2. Status of Federal Action:**
- ☐ a. bid/offer/application
- ☐ b. initial award
- c. post-award

**3. Report Type:**
- ☐ a. initial filing
- ☐ b. material change

For Material Change Only:
year _____ quarter _____

date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee Tier _____, if known:

Congressional District, if known:

**5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:**

Congressional District, if known:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, if applicable: _____

**8. Federal Action Number, if known:**

**9. Award Amount, if known:**
$

**10a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):**

**b. Individuals Performing Services (including address if different from No. 10a.) (last name, first name, MI):**

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

**11. Amount of Payment (check all that apply):**

$_____ ☐ actual ☐ planned

**12. Form of Payment (check all that apply):**
- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  value _____

**13. Type of Payment (check all that apply):**
- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e. deferred
- ☐ f. other; specify:

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in item 11:**

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

**Federal Use Only:**

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Standard Form-LLL

**Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contracted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

**Public Reporting Burden** for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

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**Standard Form-LLL**

Disclosure of Lobbying Activities
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____



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Standard Form-LLL-A

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**Attachment 5—Certification Regarding Lobbying**

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signed by: (Name, Title & Signature of Authorized HA Official)

(Name and Title)

(Signature & Date)

BILLING CODE 4210-33-M

# Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

Attachment 6

OMB Approval No. 2535-0101 (exp. 12/31/94)

**Instructions.** (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

**Part I Applicant/Recipient Information** Indicate whether this is an Initial Report ☐ or an Update Report ☐

| 1. Applicant/Recipient Name, Address, and Phone (include area code) | Social Security Number or Employer ID Number |
|---|---|
| | |

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

| 3. Assistance Requested/Received | 4. HUD Program | 5. Amount Requested/Received $ |
|---|---|---|
| | | |

**Part II. Threshold Determinations – Applicants Only**

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

**Part III. Other Government Assistance Provided/Requested**

| Department/State/Local Agency Name and Address | Program | Type of Assistance | Amount Requested/Provided |
|---|---|---|---|
| | | | |

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

**Part IV. Interested Parties**

| Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first) | Social Security Number or Employee ID Number | Type of Participation in Project/Activity | Financial Interest in Project/Activity ($ and %) |
|---|---|---|---|
| | | | |

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

**Part V. Report on Expected Sources and Uses of Funds**

| Source |
| --- |
| |

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

| Use |
| --- |
| |

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

**Certification**

**Warning:** If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

| Signature | Date |
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**Public reporting burden** for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535-0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

**Privacy Act Statement.** Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

**Note:** This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

**Instructions** (See Note 1 on last page.)

**I. Overview.** Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

**A. Applicant disclosure (Initial) reports: General.** All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

**B. Update reports: General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

**C. Applicant disclosure reports: Specific guidance.** The applicant must complete all parts of this disclosure form if either of the following two circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets neither of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets either of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

**D. Update reports: Specific guidance.** During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

**II. Line-by-Line Instructions.**

**A. Part I. Applicant/Recipient Information.**

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

**B. Part II. Threshold Determinations — Applicants Only**

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

**C. Part III. Other Government Assistance.**

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

**D. Part IV. Interested Parties.**

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; and

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures referred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. **Part V. Report on Sources and Uses of Funds.** This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(II) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee
FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recordingOperating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

**Footnotes:**

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated periodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.



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**Attachment 7—Text for the Maintenance of Effort Certification**

The undersigned certifies that:

1. Those existing supportive services that a frail elderly person is already receiving and which the professional assessment committee (PAC) (or the entity performing the PAC's function) finds to be necessary to maintain the participant's independence will be maintained for the time that individual remains in the Elderly Independence demonstration, unless the PAC or other entity performing the assessment determines that those services are no longer needed.

2. Those services that frail elderly persons are already receiving before participating in the Elderly Independence demonstration will not be considered matching funds.

_____ (signature)

_____ (typed or printed name)

_____ (title, if any)

_____ (date)

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Attachment 8

## BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (4-88)
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**SECTION C - NON-FEDERAL RESOURCES**

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |

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**SECTION C - NON-FEDERAL RESOURCES**

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

**SECTION D - FORECASTED CASH NEEDS**

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Nonfederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT**

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

**SECTION F - OTHER BUDGET INFORMATION**

(Attach additional Sheets if Necessary)

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|

23. Remarks

SF 424A (4-88) Page 2

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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**
**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5 — Show the totals for all columns used.**

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i — Show the totals of Lines 6a to 6h in each column.**

**Line 6j – Show the amount of indirect cost.**

**Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.**

## INSTRUCTIONS FOR THE SF-424A *(continued)*

**Line 7** – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

**Lines 8-11** – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** – Enter the contribution to be made by the applicant.

**Column (c)** – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** – Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** – Enter totals of Columns (b), (c), and (d).

**Line 12** — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** – Enter the amount of cash needed by quarter from the grantor agency during the first year.

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**Line 14** – Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** – Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** – Provide any other explanations or comments deemed necessary.

**Attachment 9—Certification Regarding Drug-Free Workplace Requirements**

(From 24 CFR 24, Appendix C)

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

A. Certification Regarding Drug-Free Workplace Requirements.

Alternate I

(a) The grantee certifies that it will provide a drug-free workplace by:

(i) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The grantee's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(vi) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(i) Taking appropriate personnel action against such an employee, up to and including termination; or

(ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

_____

(Name & Title)

_____

(Signature & Date)

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

**Attachment 10—Certification Regarding Single Audit Act**

The undersigned certifies that, to the best of his or her knowledge, the housing agency is currently in compliance with the audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR Part 44; or OMB Circular No. A–133, as applicable. This certification includes the period [insert dates audit covers] which covers the last audit conducted and submitted to HUD in accordance with these requirements, or the period for audit currently under contract.

Signed by: (Name, Title & Signature of Authorized HA Official)

_____

(Name & Title)

_____

(Signature & Date)

[FR Doc. 93–17350 Filed 7–21–93; 8:45 am]

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Federal Register

Thursday
July 22, 1993

Part VI

# Department of Health and Human Services

**Food and Drug Administration**

**Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs; Notice**

VOL 58 ISS 139 JL 22 1993 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D-0235]

## Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guideline entitled "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs." This guideline provides new guidance on FDA's expectations regarding inclusion of both genders in drug development and revises the section "Women of Childbearing Potential" in the 1977 guideline entitled, "General Considerations for the Clinical Evaluation of Drugs" (HEW Publication No. (FDA) 77-3040).

DATES: Written comments by November 19, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of this notice, which includes the text of the new guideline, and of the other guidelines mentioned in this document, are available from the Center for Drug Evaluation and Research (HFD-8), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: Patrick J. Savino, CDER Executive Secretariat Staff (HFD-8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8012.

SUPPLEMENTARY INFORMATION:

### I. Introduction

In this document, FDA is publishing a new guideline on FDA's expectations regarding inclusion of patients of both genders in drug development, analyses of clinical data by gender, assessment of potential pharmacokinetic differences between genders, and conduct of specific additional studies in women, where indicated. This guideline revises the section of the 1977 guideline, entitled "General Considerations for the Clinical Evaluation of Drugs," that excluded women of childbearing potential from participation in early studies of drugs. For the purpose of this document, the agency will refer to the "General Considerations for the Clinical Evaluation of Drugs" as the "1977 guideline."

Although the new guideline outlines in some detail the specific considerations related to the evaluation of gender differences during evaluation of drug products, the agency views the principles of inclusion of women in product development programs and analysis of subgroup differences as being broader standards which apply equally to the clinical development of biological products and medical devices.

The new guideline reflects good drug development practice implicit in the law and regulations. Certain requirements, such as inclusion of adequate numbers of women and by-gender analyses, have been emphasized in the past. However, as with any new guideline, where sponsors have developed drugs in good faith relying on existing guidelines, they will have an opportunity to satisfy newly appreciated data needs after approval where this is compatible with the public health and the law. This new guideline does not change FDA's commitment to safe development of drugs but gives more flexibility to institutional review boards (IRB's), investigators, and patients in determining how best to ensure safety.

### II. Background

#### *A. Participation of Women in Clinical Studies*

Over the past decade there has been growing concern that the drug development process does not produce adequate information about the effects of drugs in women. This concern arises from a number of sources.

Analyses of published clinical trials in certain therapeutic areas (notably cardiovascular disease) have indicated that there had been little or no participation of women in many of the studies. Certain major studies of the role of aspirin in cardiovascular and cerebrovascular disease, for example, did not include women, and this omission left the scientific community with doubts about whether aspirin was, in fact, effective in women for these indications. Similarly, published studies of anti-anginal drugs often had few or no women in them. It has been suggested that a similar situation might exist for the studies intended to support marketing approval of new drugs.

In addition, FDA notes that there has been little study of the effects of such aspects of female physiology as the menstrual cycle and menopause, or of the effects of drugs widely used in women such as oral contraceptives and systemic progestins and estrogens, on drug action and pharmacokinetics.

Concern has also been expressed that the 1977 policy excluding women of childbearing potential from early drug studies may have led to a more general lack of participation of women in drug development studies, and thus to a paucity of information about the effects of drugs in women. In addition to concerns about whether the policy interfered with development of adequate data on drug therapy in women, the 1977 guideline, seen from the viewpoint of the 1990's, has appeared rigid and paternalistic, leaving virtually no room for the exercise of judgment by responsible female research subjects, physician investigators, and IRB's

Concerns about the adequacy of data on the effects of drugs in women have arisen at a time when FDA, drug developers, and the scientific community have focused increasingly on the need to individualize treatment in the face of the wide variety of demographic, disease-related, and individual patient-related factors that can lead to different responses to drugs in subsets of the population. Optimal use of drugs requires identification of these factors so that appropriate adjustments in dose, concomitant therapy, or monitoring can be made.

Subgroup-specific differences in response can arise because of variation in a drug's pharmacokinetics (i.e., the drug's concentration in plasma or elsewhere as a function of time) or pharmacodynamics (the body's response to a given concentration of the drug).

#### *B. Pharmacokinetic and Pharmacodynamic Differences Among Patients*

Important variations in pharmacokinetics can arise from many factors:

1. A number of demographic characteristics may affect pharmacokinetics: Older people are more likely to have decreased renal function, which may cause drugs excreted by the kidney to accumulate; younger people metabolize theophylline more rapidly; ethnic groups differ in the prevalence of metabolic abnormalities such as slow acetylation and G6PD deficiency; women metabolize certain substances at rates different from men (for example, they metabolize alcohol and ondansetron more slowly).

2. Diseases other than the one being studied may alter the pharmacokinetics of many drugs: Kidney disease may decrease the ability to excrete drugs in

the urine; liver disease can interfere with the metabolism of drugs or with their excretion into the bile.

3. The presence of other drugs may lead to pharmacokinetic interactions: Quinidine and fluoxetine inhibit the metabolism of imipramine and desipramine, as well as that of many other drugs metabolized by cytochrome P450 2D6 (debrisoquin hydroxylase); ketoconazole and erythromycin inhibit the metabolism of terfenadine. In such cases, toxic blood concentrations of the drug whose metabolism is inhibited can occur even while a constant dose of the drug is maintained.

4. In addition, other differences between individual subjects may affect pharmacokinetics. For example, small body size or muscle mass may lead to higher blood concentrations after a given dose.

Documented subgroup pharmacodynamic differences are fewer, but have been observed, including increased sensitivity to beta-blockers in Asians, decreased sensitivity to beta-blockers in the elderly, decreased responsiveness to the blood pressure-lowering effects of adrenocortical extract (ACE) inhibitors and beta-blockers in African-Americans, and increased sensitivity to the central nervous system effects of midazolam in older people.

Despite the many examples of documented pharmacokinetic and pharmacodynamic differences in population subsets, there has often been insufficient attention in the course of drug development to looking for such differences among individuals in responses to drugs, including differences related to gender. In the case of gender, some have suggested the lack of information may have resulted from the exclusion of women from clinical trials. A number of studies have evaluated this possibility.

In 1983 and 1989, FDA examined the relative numbers of individuals from two important demographic groups, women and the elderly, in the data bases of new drug applications (NDA's). FDA found, in general, that the proportions of women and men included in the clinical trials were similar to the respective proportions of women and men who had the diseases for which the drugs were being studied, taking into account the age range of the population studied. The General Accounting Office (GAO) conducted a larger study of drugs approved during the period 1988 through 1991, with generally similar findings. Thus, women typically represent a majority of patients in NDA data bases of drugs used to treat conditions more common (or more commonly treated) in women (e.g., arthritis and depression) and a minority, although usually a sizable one of about 30 percent or more, in conditions that occur predominantly in males in the age ranges usually included in clinical trials (e.g., angina pectoris). Appendix I of the guideline includes additional details of these surveys.

Although women have been included in the later phases of clinical trials, inclusion alone is not sufficient for adequate assessment of potential gender differences. There must be an effort to use the data to discover such differences. An FDA guideline issued in 1988 ("Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications") called for analyses of gender-related differences in response. FDA and GAO examined NDA's to see whether analyses of this kind were being conducted and submitted. Both examinations found that in many cases (about half) the data bases were not being analyzed to determine whether there were gender, age, or race differences in response to drugs.

A further reason for the lack of information about potential gender differences in drug response is the lack of specific studies of pharmacokinetics in women, even where gender-related differences in pharmacokinetics might be expected or important. There are a variety of potential differences of this type, including differences due to menopause or the menstrual cycle, or to concomitant oral contraceptive or estrogen use, as well as differences based on different body fat proportion, and differences in weight or muscle mass.

### *C. FDA Guidance on Individualization of Treatment*

Since 1988, FDA has taken several major steps to encourage development of data that support informed individualization of treatment:

1. The agency's 1988 guideline entitled, "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications," calls for analyses of NDA data to identify variations among population subsets in favorable responses (effectiveness) and unfavorable responses (adverse reactions) to drugs. The population subsets that should be evaluated routinely include demographic subsets, such as different genders, age groups and races, people receiving other drug therapy, and people with concomitant illness.

2. The agency has addressed specifically the need to develop information on a particular demographic subset, the elderly, in the 1989 guideline entitled, "Guideline for the Study of Drugs Likely to be Used in the Elderly."

3. In the **Federal Register** of November 1, 1990 (55 FR 46134), the agency proposed to amend the labeling regulation (21 CFR 201.57) to require a "Geriatric Use" section that would contain available information on experience with the drug in the elderly and describe any needed modifications in the use of the drug in that population. In the **Federal Register** of October 16, 1992 (57 FR 47423), the agency proposed to amend the same regulation to facilitate inclusion of information on the use of drugs in children.

### *D. Changes in the Guideline*

The new guideline discusses FDA's expectations regarding inclusion of patients of both genders in drug development, analyses of clinical data by gender, assessment of potential pharmacokinetic differences between genders, and, where appropriate, assessment of pharmacodynamic differences and the conduct of specific additional studies in women. The policy applies to all drug or disease specific clinical guidelines based on the 1977 guideline, that exclude women of childbearing potential from participation in early studies of drugs.

## III. Revised Policy on Inclusion of Women of Childbearing Potential in Clinical Trials

### *A. The 1977 Guideline—"General Considerations for the Clinical Evaluation of Drugs"*

The 1977 guideline set forth a policy on, among other things, the inclusion of women of childbearing potential in clinical trials. The policy stated that, in general, women of childbearing potential should be excluded from the earliest studies of a new drug, that is, phase 1 and early phase 2 studies. Phase 1 refers to the first introduction of a new drug into humans, who are often, but not always, healthy volunteers, to study the basic tolerability of the drug, its metabolism, and its short-term pharmacokinetics. With the exception of some early studies in life-threatening diseases, phase 1 studies usually do not have therapeutic intent. Phase 2 refers to the initial controlled trials of a drug to study its effectiveness. Before the first such study, there is generally no evidence that the drug is of therapeutic value in humans.

If adequate information on effectiveness and relative safety were amassed during phase 1 and early phase 2, the guideline stated that women of

childbearing potential could be included in subsequent studies of effectiveness, that is, later phase 2 and phase 3 studies, so long as animal teratogenicity and the female part of animal fertility studies had been completed. The policy did not specifically address the manner in which the early human evidence of safety and effectiveness and the results of animal reproduction studies should be used to make decisions about participation of women in later trials, leaving these considerations to the usual risk-benefit assessment made by the patient, physician, and IRB, with subsequent FDA review.

In the 1977 guideline, the term "women of childbearing potential" was defined very strictly, essentially referring to all premenopausal women physiologically capable of becoming pregnant, including women on oral, injectable, or mechanical contraceptives, single women, celibate women, and women whose partners had been sterilized by vasectomy. There was no provision for the use of pregnancy testing to identify women who could participate in studies without a risk of fetal exposure. The 1977 guideline also noted, however, that women of childbearing potential could receive investigational drugs in the earliest phases of testing, even in the absence of adequate reproduction studies in animals, when the drugs were intended for life-saving or life-prolonging treatment.

The effect of the 1977 guideline has been that women generally have not been included in phase 1 nontherapeutic studies or in the earliest controlled effectiveness studies (i.e., early phase 2), except for studies of life-threatening illnesses, such as acquired immune deficiency syndrome (AIDS) and cancer.

*B. Reasons for Revising the 1977 Policy*

The policy set forth in the 1977 guideline has been under discussion for several years within and outside the agency, and there has been increasing sentiment that it should be revised. For example, in October 1992, FDA and the Food and Drug Law Institute cosponsored a meeting on women in clinical trials of FDA-regulated products at which many speakers described the current restrictions as paternalistic and overprotective, denying young women the opportunity available to men and older women to participate in early drug development research.

Although the 1977 guideline has not resulted in a failure to include adequate numbers of women in the later phases of clinical trials, it has restricted the early accumulation of information about response to drugs in women that could be utilized in designing phase 2 and 3 trials, and has perhaps delayed appreciation of gender-related variation in drug effects. The early exclusion also may have perpetuated, in a subtle way, a view of the male as the primary focus of medicine and drug development, with women considered secondarily. There is reason to believe that earlier participation of women in studies would increase the likelihood that gender-specific data might be used to make appropriate adjustments in larger clinical studies (e.g., different doses in women or weight adjusted (milligram per kilogram) dosing instead of fixed doses).

The agency believes that removal of the prohibition on participation of women of childbearing potential in phase 1 and early phase 2 trials is consistent with congressional efforts to prevent unwarranted discrimination against such women. For example, in the employment context, the Pregnancy Discrimination Act, as interpreted by the U.S. Supreme Court in the landmark case of *International Union, United Automobile, Aerospace and Agricultural Implement Workers, UAW* v. *Johnson Controls, Inc.*, 111 S.Ct. 1196 (1991), prohibits the blanket exclusion of pregnant women from jobs they are qualified to perform solely because the working conditions of those jobs pose potential risks to exposed fetuses. The Court emphasized that "decisions about the welfare of future children must be left to the parents who conceive, bear, support, and raise them, rather than to the employers who hire those parents." While the purposes of clinical trials to develop safe and effective drugs are manifestly different from the purposes of private employment, FDA takes serious note of the Court's position on a woman's right to participate in decisions about fetal risk and believes it is appropriate to consider the Court's opinion in developing policy on the inclusion of women in clinical trials.

*C. Current FDA Position on Participation of Women of Childbearing Potential in Early Clinical Studies*

The agency has reconsidered the 1977 guideline and has concluded that it should be revised. This does not reflect a lack of concern for potential fetal exposure or indifference to potential fetal damage, but rather the agency's opinion that (1) exclusion of women from early trials is not medically necessary because the risk of fetal exposure can be minimized by patient behavior and laboratory testing, and (2) initial determinations about whether that risk is adequately addressed are properly left to patients, physicians, local IRB's, and sponsors, with appropriate review and guidance by FDA, as are all other aspects of the safety of proposed investigations.

The agency is, therefore, withdrawing the restriction on the participation of women of childbearing potential in early clinical trials, including clinical pharmacology studies (e.g., dose tolerance, bioavailability, and mechanism of action studies), and early therapeutic studies. It is expected that, in accordance with good medical practice, appropriate precautions against becoming pregnant and exposing a fetus to a potentially dangerous agent during the course of study will be taken by women participating in clinical trials. It is also expected that women will receive adequate counseling about the importance of such precautions, that efforts will be made to be sure that a woman entering a trial is not pregnant at the time the trial begins (i.e., a pregnancy test detecting the beta subunit of the hCG molecule is negative), and that the woman participant is fully informed about the current state of the animal reproduction studies and any other information about the teratogenic potential of the drug. As is the case for all studies carried out under an investigational new drug application (IND), the adequacy of the precautions taken will be considered by FDA in its review of protocols. In situations where enrollment continues over a prolonged period (unlikely for early clinical studies) and significant new information about teratogenicity becomes available, the sponsor has the responsibility to transmit this information quickly to the investigator and to current as well as potential study participants in the informed consent process.

The agency recognizes that this change in FDA's policy will not, by itself, cause drug companies or IRB's to alter restrictions they might impose on the participation of women of childbearing potential. We do not at this time perceive a regulatory basis for requiring routinely that women in general or women of childbearing potential be included in particular trials, such as phase 1 studies. However, as this guideline delineates, careful characterization of drug effects by gender is expected by the agency, and FDA is determined to remove the unnecessary Federal impediment to inclusion of women in the earliest stages of drug development. The agency is confident that the interplay of ethical, social, medical, legal and political forces will allow greater participation of

women in the early stages of clinical trials.

In some cases, there may be a basis for requiring participation of women in early studies. When the disease under study is serious and affects women, and especially when a promising drug for the disease is being developed and made available rapidly under FDA's accelerated approval or early access procedures, a case can be made for requiring that women participate in clinical studies at an early stage. When such a drug becomes available under expanded access mechanisms (for example, treatment IND or parallel track) or is marketed rapidly under subpart E procedures (because an effect on survival or irreversible morbidity has been shown in the earliest controlled trials), it is medically important that a representative sample of the entire population likely to receive the drug has been studied, including representatives of both genders. Under these circumstances, clinical protocols should not place unwarranted restrictions on the participation of women.

The agency advises that this guideline represents its current position on the clinical evaluation of drugs in humans. This guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

## IV. Comments

Interested persons may, on or before November 19, 1993, submit to the Dockets Management Branch (address above) written comments regarding this guideline. Two copies of any comments should be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. These comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted.

The new guideline replaces that portion of the 1977 guideline that dealt with women of childbearing potential. The text of the new guideline on gender differences follows:

## Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs

### *I. Introduction*

The Food and Drug Administration (FDA) advises that this guideline represents its current position on the clinical evaluation of drugs in humans. This guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

The principles of inclusion of women in product development programs and analysis of subgroup differences outlined in this guideline also apply to the clinical development of biological products and medical devices.

### A. Abstract

In general, drugs should be studied prior to approval in subjects representing the full range of patients likely to receive the drug once it is marketed. Although in most cases, drugs behave qualitatively similarly in demographic (age, gender, race) and other (concomitant illness, concomitant drugs) subsets of the population, there are many quantitative differences, for example, in dose-response, maximum size of effect, or in the risk of an adverse effect. Recognition of these differences can allow safer and more effective use of drugs. Rarely, there may be qualitative differences as well. It is very difficult to evaluate subsets of the overall population as thoroughly as the entire population, but sponsors are expected to include a full range of patients in their studies, carry out appropriate analyses to evaluate potential subset differences in the patients they have studied, study possible pharmacokinetic differences in patient subsets, and carry out targeted studies to look for subset pharmacodynamic differences that are especially probable, are suggested by existing data, or that would be particularly important if present. Study protocols are also expected to provide appropriate precautions against exposure of fetuses to potentially dangerous agents. Where animal data suggest possible effects on fertility, such as decreased sperm production, special studies in humans may be needed to evaluate this potential toxicity.

### B. Underlying Observations

The following general observations and conclusions underlie the recommendations set forth in this guideline:

1. Variations in response to drugs, including gender-related differences, can arise from pharmacokinetic differences (that is, differences in the way a drug is absorbed, excreted, metabolized, or distributed) or pharmacodynamic differences (i.e., differences in the pharmacologic or clinical response to a given concentration of the drug in blood or other tissue).

2. Gender-related variations in drug effects may arise from a variety of sources. Some of these are specifically associated with gender, e.g., effects of endogenous and exogenous hormones. Gender-related differences could also arise, however, not because of gender itself, but because the frequency of a particular characteristic (for example, small size, concomitant hepatic disease or concomitant drug treatment, or habits such as smoking or alcohol use) is different in one gender, even if the characteristic could occur in either gender. Proper management of patients of both genders thus requires that physicians know all the factors that can influence the pharmacokinetics of a drug. An approach is needed that will identify, better than is done at present, all such factors. Understanding how various factors may influence pharmacokinetics will greatly enhance our ability to treat people of both genders appropriately.

3. For a number of practical and theoretical reasons, the evaluation of possible gender-related differences in response should focus initially on the evaluation of potential pharmacokinetic differences. Such differences are known to occur and have, at least to date, been documented much more commonly than documented pharmacodynamic differences. Moreover, pharmacokinetic differences are relatively easy to discover. Once reliable assays are developed for a drug and its metabolites (such assays are now almost always available early in the development of the drug), techniques exist for readily assessing gender-related or other subgroup-related pharmacokinetic differences.

Formal pharmacokinetic studies are one means of answering questions about specific subgroups. Another approach is use of a screening procedure, a "pharmacokinetic screen" (see "Guideline for the Study of Drugs Likely To Be Used in the Elderly"). Carried out in phase 2 and 3 study populations, the pharmacokinetic screen can greatly increase the ability to detect pharmacokinetic differences in subpopulations and individuals, even when these differences are not anticipated. By obtaining a small number of blood concentration determinations in most or all phase 2 and 3 patients, it is possible to detect markedly atypical pharmacokinetic behavior in individuals, such as that seen in slow metabolizers of debrisoquin, and pharmacokinetic differences in population subsets, such as patient populations of different gender, age, or race, or patients with particular underlying diseases or

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concomitant therapy. The screen may also detect interactions of two factors, e.g., gender and age. The relative ease with which pharmacokinetic differences among population subsets can be assessed contrasts with the difficulty of developing precise relationships of most clinical responses to drug dose or to the drug concentration in blood, which usually would be necessary when attempting to observe pharmacodynamic differences between two subgroups.

A final reason to emphasize pharmacokinetic evaluation is that it must be carried out to allow relevant assessment of pharmacodynamic differences or relationships. Assessing pharmacodynamic differences between groups or establishing blood concentration-response relationships is possible only when groups are reasonably well matched for blood concentrations. Enough pharmacokinetic data must therefore be available to permit the investigator to administer doses that will produce comparable blood concentrations in the subsets to be compared or, alternatively, to compare subsets that have been titrated to similar blood concentrations.

4. The number of documented gender-related pharmacodynamic differences of clinical consequence is at this time small, and conducting formal pharmacodynamic/effectiveness studies to detect them may be difficult, depending on the clinical endpoint. Such studies are therefore not routinely necessary. The by-gender analyses of clinical trials that include both men and women, however, which are specified in the 1988 guideline entitled "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications" are not difficult to carry out. Particularly if these analyses are accompanied by blood concentration data for each patient, they can detect important pharmacodynamic/effectiveness differences related to gender.

C. Inclusion of Both Genders in Clinical Studies

The patients included in clinical studies should, in general, reflect the population that will receive the drug when it is marketed. For most drugs, therefore, representatives of both genders should be included in clinical trials in numbers adequate to allow detection of clinically significant gender-related differences in drug response. Although it may be reasonable to exclude certain patients at early stages because of characteristics that might make evaluation of therapy more difficult (e.g., patients on concomitant therapy), such exclusions should usually be abandoned as soon as possible in later development so that possible drug-drug and drug-disease interactions can be detected. Thus, for example, there is ordinarily no good reason to exclude women using oral contraceptives or estrogen replacement from trials. Rather, they should be included and differences in responses between them and patients not on such therapy examined. Pharmacokinetic interaction studies (or screening approaches) to look at the interactions resulting from concomitant treatment are also useful.

Ordinarily, patients of both genders should be included in the same trials. This permits direct comparisons of genders within the studies. In some cases, however, it may be appropriate to conduct studies in a single gender, e.g., to evaluate the effects of phases of the menstrual cycle on drug response.

Although clinical or pharmacokinetic data collected during phase 3 may provide evidence of gender-related differences, these data may become available too late to affect the design and dose-selection of the pivotal controlled trials. Inclusion of women in the earliest phases of clinical development, particularly in early pharmacokinetic studies, is, therefore, encouraged so that information on gender differences may be used to refine the design of later trials. Note that the strict limitation on the participation of women of childbearing potential in phase 1 and early phase 2 trials that was imposed by the 1977 guideline entitled, "General Considerations for the Clinical Evaluation of Drugs," has been eliminated.

There is no regulatory or scientific basis for routine exclusion of women from bioequivalence trials. For certain drugs, however, it is possible that changes during the menstrual cycle may lead to increases in intra-subject variability. Such variability could be related to hormonally-mediated differences in metabolism or changes in fluid balance. Sponsors of bioequivalence trials are encouraged to examine available information on the pharmacokinetics and metabolism of the test drugs and related drugs to determine whether there is a basis for concern about variability in pharmacokinetics during the menstrual cycle. Where the available information does raise such concern, measures could be taken to reduce or adjust for variability, e.g., administration of each drug at the same phase of the menstrual cycle, or inclusion of larger numbers of subjects. Sponsors are encouraged to collect data that will contribute to the understanding of the relationship between hormonal variations and pharmacokinetics.

D. Analysis of Effectiveness and Adverse Effects by Gender

FDA's guideline on the clinical and statistical sections of NDA's calls for analyses of effectiveness, adverse effects, dose-response, and, if available, blood concentration-response, to look for the influence of: (1) Demographic features, such as age, gender, and race; and (2) other patient characteristics, such as body size (body weight, lean body mass, fat mass), renal, cardiac, and hepatic status, the presence of concomitant illness, and concomitant use of drugs, including ethanol and nicotine. Analyses to detect the influence of gender should be carried out both for individual studies and in the overall integrated analyses of effectiveness and safety. Such analyses of subsets with particular characteristics can be expected to detect only relatively large gender-related differences, but in general, small differences are not likely to be clinically important. The results of these analyses may suggest the need for more formal dose-response or blood concentration-response studies in men or women or in other patient subsets. Depending on the magnitude of the findings, or their potential importance (e.g., they would be more important for drugs with low therapeutic indices), these additional studies might be carried out before or after marketing.

E. Defining the Pharmacokinetics of the Drug in Both Genders

The factors most commonly having a major influence on pharmacokinetics are renal function, for drugs excreted by the kidney, and hepatic function, for drugs that are metabolized or excreted by the liver; these should be assessed directly as part of the ordinary development of drugs. The pharmacokinetic effects of other subgroup characteristics such as gender can be assessed either by a pharmacokinetic screening approach, described in the 1989 guideline entitled, "Guideline for the Study of Drugs Likely to Be Used in the Elderly," or by formal pharmacokinetic studies in specific gender or age groups.

Using either a specific pharmacokinetic study or a pharmacokinetic screen, the pharmacokinetics of a drug should be defined for both genders. In general, it is prudent to at least carry out pilot studies to look for major pharmacokinetic differences before conducting definitive controlled trials, so that differences that might lead to the

need for different dosing regimens can be detected. Such studies are particularly important for drugs with low therapeutic indices, where the smaller average size of women alone might be sufficient to require modified dosing, and for drugs with nonlinear kinetics, where the somewhat higher milligram per kilogram dose caused by a woman's smaller size could lead to much larger differences in blood concentrations of drug. Gender may interact with other factors, such as age. The potential for such interactions should be explored.

Three pharmacokinetic issues related specifically to women that should be considered during drug development are: (1) The influence of menstrual status on the drug's pharmacokinetics, including both comparisons of premenopausal and postmenopausal patients and examination of within-cycle changes; (2) the influence of concomitant supplementary estrogen treatment or systemic contraceptives (oral contraceptives, long-acting progesterone) on the drug's pharmacokinetics; and (3) the influence of the drug on the pharmacokinetics of oral contraceptives. Which of these influences should be studied in a given case would depend on the drug's excretion, metabolism, and other pharmacokinetic properties, and on the steepness of the dose-response curve.

Hormonal status during the menstrual cycle may affect plasma volume and the volume of distribution (and thus clearance) of drugs. The activity of certain cytochrome P450 enzymes may be influenced by estrogen levels and, in addition, microsomal oxidation by these enzymes may decline in the elderly more in men than women. Oral contraceptives can cause decreased clearance of drugs (e.g., imipramine, diazepam, chlordiazepoxide, phenytoin, caffeine, and cyclosporine), apparently by inhibiting hepatic metabolism. They can also increase clearance by inducing drug metabolism (e.g., of acetaminophen, salicylic acid, morphine, lorazepam, temazepam, oxazepam, and clofibrate). Certain anticonvulsants (carbamazepine, phenytoin) and antibiotics (rifampin) can reduce the effectiveness of oral contraceptives. Many of the potential interactions of gender and gender-related characteristics (e.g., use of oral contraceptives) can be evaluated with the pharmacokinetic screen. In some cases, specific studies will be needed.

F. Gender-Specific Pharmacodynamic Studies

Because documented demographic differences in pharmacodynamics appear to be relatively uncommon, it is not necessary to carry out separate pharmacodynamic/effectiveness studies in each gender routinely. Evidence of such differences should be sought, however, in the data from clinical trials by carrying out the by-gender analyses suggested in the guideline on the clinical and statistical sections of NDA's. These analyses of controlled trials involving both genders are probably more likely to detect differences than studies carried out entirely in one gender. Experience has shown that gender differences can be detected with such approaches.

If the by-gender analyses suggest gender-related differences, or if such differences would be particularly important, e.g., because of a low therapeutic index, additional formal studies to seek such differences between the blood level-response curves of men and women should be conducted. Even in the absence of a particular concern based on the by-gender analyses, if there is a readily measured pharmacodynamic endpoint, such as blood pressure or rate of ventricular premature beats, and if there are good dose-response data for the overall population, it should be feasible to develop dose response data from population subsets (e.g., both genders) in the critical clinical trials.

G. Precautions in Clinical Trials Including Women of Childbearing Potential

Appropriate precautions should be taken in clinical studies to guard against inadvertent exposure of fetuses to potentially toxic agents and to inform subjects and patients of potential risk and the need for precautions. In all cases, the informed consent document and investigator's brochure should include all available information regarding the potential risk of fetal toxicity. If animal reproductive toxicity studies are complete, the results should be presented, with some explanation of their significance in humans. If these studies have not been completed, other pertinent information should be provided, such as a general assessment of fetal toxicity in drugs with related structures or pharmacologic effects. If no relevant information is available, the informed consent should explicitly note the potential for fetal risk.

In general, it is expected that reproductive toxicity studies will be completed before there is large-scale exposure of women of childbearing potential, i.e., usually by the end of phase 2 and before any expanded access program is implemented.

Except in the case of trials intended for the study of drug effects during pregnancy, clinical protocols should also include measures that will minimize the possibility of fetal exposure to the investigational drug. These would ordinarily include providing for the use of a reliable method of contraception (or abstinence) for the duration of drug exposure (which may exceed the length of the study), use of pregnancy testing (beta HCG) to detect unsuspected pregnancy prior to initiation of study treatment, and timing of studies (easier with studies of short duration) to coincide with, or immediately follow, menstruation. Female subjects should be referred to a study physician or other counselor knowledgeable in the selection and use of contraceptive approaches.

H. Potential Effects on Fertility

Where abnormalities of reproductive organs or their function (spermatogenesis or ovulation) have been observed in experimental animals, the decision to include patients of reproductive age in a clinical study should be based on a careful risk-benefit evaluation, taking into account the nature of the abnormalities, the dosage needed to induce them, the consistency of findings in different species, the severity of the illness being treated, the potential importance of the drug, the availability of alternative treatment, and the duration of therapy. Where patients of reproductive potential are included in studies of drugs showing reproductive toxicity in animals, the clinical studies should include appropriate monitoring and/or laboratory studies to allow detection of these effects. Long-term followup will usually be needed to evaluate the effects of such drugs in humans.

**Appendix I**

*I. Surveys of Participation of Women in Clinical Trials in New Drug Applications (NDA's)*

The extent of participation of women in the data bases of NDA's has been examined several times in recent years, by FDA in 1983 and 1989, and by the General Accounting Office (GAO) in 1992. In general, the genders were represented to approximately the extent one would predict from the gender prevalence of the condition treated by the drug in the age group studied. The relative disease prevalence in men and women can vary with age. Consider, for example, the participation of women in studies of anti-anginal drugs. Almost all patients in angina studies, which require vigorous treadmill exercise tests, are under 75 years old and the large

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majority are under 65. Although eventually women develop symptomatic coronary artery disease in their 60's, 70's, and 80's, and become similar to men in the prevalence of this condition, they are much less likely than men to be affected in their 40's, 50's, and early 60's. The overall NDA data base for an anti-anginal drug, made up primarily of people 50 to 65, will therefore include a significantly greater proportion of men than women. Efforts to include more very old patients in trials, i.e., patients in their 70's and 80's, should lead to a greater proportion of women in trials of anti-anginal drugs.

Results of the FDA and GAO surveys are described below. Also included is an analysis of gender distribution in recently approved or submitted NDA's for antidepressant drugs. This analysis was conducted to evaluate the frequently heard claim that this class of drugs is studied predominantly (or even exclusively) in males despite the wide use of antidepressants in women.

### A. The 1983 Survey

Primarily carried out to assess the inclusion of the elderly in NDA's, the 1983 survey looked at the age and gender prevalence of patients included in 11 pending NDA's. The NDA's were chosen because they were readily available and did not need to be retrieved from storage; figures were taken by FDA staff from the pending applications. In one case (ranitidine), the values represent only domestic patients for only one claim, leading to a small number of patients; many more patients (those included in foreign studies, or in studies of other claims) were available for safety evaluation.

Table 1 shows the results of the survey. As expected, the non-steroidal anti-inflammatory drugs (NSAID's) were studied predominantly in women, because arthritis, especially rheumatoid arthritis, is more common in women. This predominance was slightly less prominent in the case of zomepirac, which was studied extensively for pain (gender-neutral), in addition to arthritis. The hypnotic drug (triazolam) and the antibiotics (cefoperazone and netilmycin) were studied in approximately equal proportions of men and women. The patient populations included in the NDA's for verapamil, for angina, and bumetanide, for heart failure, were about two-thirds male, and about two-thirds of the patients were less than 60 years old, an age group in which angina and heart failure are more prevalent in men than in women. In the patients over age 70, representing 10 percent of the bumetanide patients and 7 percent of verapamil patients, the gender distribution was about equal (49 percent women in the verapamil studies and 45 percent women in the bumetanide studies). Studies of ranitidine for duodenal ulcer, a predominantly male disease, included about 75 percent males. Other indications for this drug, such as gastric ulcer, would be expected to have a different gender distribution. The two anti-cancer drugs in this survey were studied principally for exclusively male conditions, cancer of the prostate and testis.

### B. The 1989 Survey

In an effort to avoid possible selection bias, all drugs approved in 1988 were surveyed; this time the sponsors provided the data. FDA asked them to provide data reflecting "the principal data base used for safety review" in the latest safety update and asked that phase 1 subjects/patients be excluded. Sponsors gave either data on all patients or only patients given the test drug; the estimates of gender exposure should not be greatly affected by this difference.

Table 2 shows the results of the 1989 survey for 12 of the 20 drugs approved in 1988. Because sponsors had little control over gender distributions in the small populations available for study, four orphan drugs were omitted from the survey (tiopronin for prevention of cystine stones; ethanolamine oleate for esophageal varices; ifosfamide, third-line therapy for testicular cancer; and mesna, a prophylactic agent for ifosfamide-induced hemorrhagic cystitis). Also omitted were three contrast agents for single dose uses (but these agents are in the 1992 GAO survey), and a topical product (oxiconazole cream) for which gender distribution was not available.

Again, the anti-inflammatory drug (diclofenac) was studied predominantly in women (more than two-thirds of the patients), as was nimodipine, for prevention of vascular spasm after subarachnoid hemorrhage, also a female-predominant condition. Pergolide, an anti-Parkinson's disease drug; astemizole, an antihistamine; and octreotide, a drug for symptoms of carcinoid tumor, were studied in about equal numbers of men and women. The studies of the cardiovascular drugs nicardipine (angina and hypertension) and carteolol (hypertension) included 59 and 67 percent men, respectively, reflecting the male gender predominance of angina, and perhaps hypertension, in the relatively young (two-thirds of the patients were under the age of 60) populations studied. Nizatidine and misoprostol were studied extensively in duodenal ulcer, a predominantly male disease, with about 70 percent of patients being male, although approval of misoprostol was for a different claim. Cefotiam, an intravenous antibiotic, was studied mainly in elderly patients (65 percent over 60; 36 percent over 70); about two-thirds were male, for unclear reasons. The topicals were studied in a predominantly young population (about 90 percent under the age of 60), more often in males. Certain tinea infections (tinea cruris and tinea pedis) are more common in males, accounting for the high proportion (72 percent) of males in studies of naftifine. Why photoplex was studied somewhat more in males (63 percent) is not clear.

### C. The GAO Survey

In 1992, the GAO analyzed the gender, age, and race distribution of all NDA's approved from January 1988 through June 1991. Data were collected by means of a questionnaire sent to the sponsor of each drug. The number of patients receiving the test drug during drug development, domestic studies only, was requested, and patients were broken down by gender, age (<15, 15 to 49, 50 to 64, >65), and race. The age distribution data allow a separate analysis of women of childbearing potential (taken here as women age 15 to 49). Data are available for 53 drugs (of 63 drugs approved during the 3 1/2-year period, 4 drugs intended for single gender use and 6 whose sponsors provided no, or no usable, questionnaire were omitted).

The results of the GAO survey are given in Tables 3A and 3B for phase 2 and 3 patients. The tables show gender distribution overall for the whole data base and for the 15 to 49 age group as well. For anti-inflammatory, anti-infective, central nervous system/anesthetic, topical, antihistamine, and cancer drugs, women constituted 40 percent or more of the patients studied, with occasional exceptions. The most striking exception is mefloquine, where only 11 percent of patients were women. This occurred because the primary studies of mefloquine for treatment of malaria were conducted in Thai military personnel. Women fairly consistently represented less than 40 percent of the patients for anti-ulcer drugs (duodenal ulcer, a male-predominant condition, was a principal disease studied for nizatidine, omeprazole, and misoprostol) but accounted for 55 percent of the patients in studies of dipentum, a drug for ulcerative colitis (ulcerative colitis is more common in women). Women consistently made up less than 40 percent of the populations studied for

cardiovascular disease, including populations used to evaluate agents used to diagnose or evaluate coronary artery disease, except for nimodipine (for spasm after subarachnoid bleed) and adenosine (for supraventricular tachycardia). For drugs to treat ventricular arrhythmias and angina, both commonly the result of coronary disease, the fraction of women ranged from 15 percent (bepridil, for unresponsive angina) to 20 to 30 percent (propafenone, moricizine, and indecainide), reflecting the lower rate of coronary artery disease in younger women and the fact that most patients in studies are under 60 years old. Studies of drugs for hypertension (carteolol, doxazosin, nicardipine, isradipine, ramapril, pinacidil) included 27 to 42 percent women. In some cases, these drugs were being evaluated for other claims, such as angina or heart failure, which are male predominant in the age groups studied. For all of the antihypertensives, there were at least 290 women in the domestic data base, enough to detect significant gender differences in response.

Of interest is the observation that there was no tendency for women to represent a lower percentage of patients in the 15 to 49 age group than in the overall population. There is thus no suggestion in these data that the restriction on participation of women of childbearing potential in early trials carries over to later phase 2 or 3 trials.

D. Antidepressants

By chance, none of the surveys included any antidepressant drugs, a class of drug frequently cited as needing study in women, both because women are frequently given antidepressants and because of suspected interactions of the drugs with the menstrual cycle.

Table 4 shows gender participation for sertraline and paroxetine, the two most recently approved antidepressants, as well as two agents likely to be approved within the next year. Women, as expected based on past experience, represented 58 to 65 percent of the patients.

II. Tables

TABLE 1

| Drug | n | Percent of total | |
|---|---|---|---|
| | | Female | Male |
| Anti-inflammatory: | | | |
| Benoxaprofen (Oraflex) | 3,446 | 64 | 36 |
| Ketoprofen (Orudis) | 1,579 | 68 | 32 |
| Zomepirac (Zomax) | 3,479 | 60 | 40 |
| Cardiovascular: | | | |
| Verapamil (Isoptin) | 1,810 | 36 | 64 |
| Bumetanide (Bumex) | 838 | 27 | 72 |
| Hypnotic: | | | |
| Triazolam (Halcion) | 4,254 | 49 | 51 |
| Antibiotic: | | | |
| Cefoperazone (Cefobid) | 1,958 | 52 | 48 |
| Netilmycin (Netromycin) | 3,376 | 43 | 57 |
| Anti-ulcer: | | | |
| Ranitidine (Zantac) | 193 | 23 | 77 |
| Anti-cancer (prostate, testes): | | | |
| Leuprolide (Lupron) | 387 | 17 | 83 |
| Etoposide (Vepesid) | 259 | 16 | 84 |

TABLE 2

| Drug | n | Percent of total | |
|---|---|---|---|
| | | Female | Male |
| Anti-inflammatory: | | | |
| Diclofenac (Voltaren) | 8,175 | 69 | 31 |
| Cardiovascular/cerebrovascular: | | | |
| Nicardipine (Cardene) | 2,962 | 41 | 59 |
| Carteolol (Cartrol) | 1,536 | 33 | 67 |
| Nimodipine (Nimotop) | 1,301 | 64 | 36 |
| Anti-ulcer: | | | |
| Nizatidine (Axid) | 2,063 | 31 | 69 |
| Misoprostol (Cytotec) | 8,687 | 28 | 72 |
| Antibiotic: | | | |
| Cefotiam (Ceradon) | 844 | 33 | 67 |
| Anti-Parkinson: | | | |
| Pergolide (Permax) | 1,836 | 45 | 55 |
| Antihistamine: | | | |
| Astemizole (Hismanal) | 1,356 | 48 | 52 |
| Anti-carcinoid symptoms: | | | |
| Octreotide (Sandostatin) | 455 | 49 | 51 |
| Topical (tinea, sunscreen): | | | |
| Naftifine (Naftin) | 452 | 28 | 72 |
| Photoplex | 227 | 37 | 63 |

TABLE 3A.— ALL AGES

| Drug | n | Percent of total | |
|---|---|---|---|
| | | Female | Male |
| **Anti-Inflammatory/Analgesic:** | | | |
| Dezocine (Dalgan) | 1,417 | 60 | 40 |
| Diclofenac (Voltaren) | 1,714 | 64 | 36 |
| Etodolac (Lodine) | 5,395 | 65 | 35 |
| Ketorolac (Toradol) | 1,248 | 64 | 36 |
| **Anti-Infectives:** | | | |
| Ofloxacin (Floxin) | 3,585 | 56 | 44 |
| Cefmetazole (Zefazone) | 2,769 | 67 | 33 |
| Cefixime (Suprox) | 1,859 | 60 | 40 |
| Fluconazole (Diflucan) | 983 | 36 | 64 |
| Nafiine (Naftin) | 222 | 38 | 62 |
| Cefpiramide | 1,325 | 39 | 61 |
| Mefloquine (Lariam) | 1,319 | 11 | 89 |
| Oxiconazole (Oxistat) | 886 | 35 | 65 |
| **Central Nervous System/Anesthetic:** | | | |
| Clomipramine (Anafranil) | 3,826 | 54 | 46 |
| Propofol (Diprivan) | 696 | 48 | 52 |
| Clozapine (Clozaril) | 581 | 37 | 63 |
| Estazolam (Prosan) | 1,243 | 50 | 50 |
| Pipecuronium (Arduan) | 580 | 52 | 48 |
| Doxacurium (Nuromax) | 987 | 39 | 61 |
| Pergolide (Permax) | 1,667 | 43 | 57 |
| **Cardiovascular:** | | | |
| Nimodipine (Nimotop) | 343 | 69 | 31 |
| Adenosine (Adenocard) | 109 | 48 | 52 |
| Doxazosin (Cardura) | 898 | 42 | 58 |
| Pinacidil (Pindac) | 1,774 | 36 | 64 |
| Nicardipine (Cardene) | 1,915 | 37 | 63 |
| Benazepril (Lotensin) | 2,130 | 32 | 68 |
| Isradipine (Dynacirc) | 1,842 | 27 | 73 |
| Propafenone (Rhythmol) | 3,326 | 30 | 70 |
| Ramapril (Altace) | 1,723 | 33 | 67 |
| Carteolol (Cartrol) | 1,253 | 28 | 72 |
| Moricizine (Ethmozine) | 1,017 | 21 | 79 |
| Indecainide (Decabid) | 761 | 23 | 77 |
| Bepridil (Vascor) | 884 | 15 | 85 |
| **Cancer:** | | | |
| Octreotide (Sandostatin) | 569 | 38 | 62 |
| Carboplatin (Paraplatin) | 2,214 | 77 | 23 |
| Levamisole (Ergamisol) | 1,038 | 48 | 52 |
| Ondansetron (Zofran) | 939 | 29 | 71 |
| **Diagnostics:** | | | |
| Technescan Mag 3 | 160 | 43 | 57 |
| Ioversol (Optiray) | 1,101 | 45 | 55 |
| Gadopentetate (Magnevist) | 410 | 41 | 59 |
| TC–99M Sestamibi (Cardolyte) | 1,102 | 29 | 71 |
| TC–99M Exametazime (Ceretec) | 202 | 28 | 72 |
| Iotralan (Osmovist) | 545 | 31 | 69 |
| **Topicals:** | | | |
| Photoplex | 371 | 40 | 60 |
| Fluticasone (Cutivate) | 730 | 42 | 58 |
| Halobetasol (Ultravate) | 662 | 46 | 54 |
| Metipranolol (Optipranolol) | 465 | 53 | 47 |
| Cefotaxm (Ceradon) | 715 | 34 | 66 |
| Rev-Eyes | 546 | 47 | 53 |
| **Gastrointestine 1:** | | | |
| Olsalazine (Dipentum) | 98 | 55 | 45 |
| Nizatidine (Axid) | 3,854 | 35 | 65 |
| Misoprostol (Cytotec) | 1,917 | 37 | 63 |
| Omeprazole (Losec) | 2,189 | 26 | 74 |
| **Antihistamine:** | | | |
| Astemizole (Hismanal) | 979 | 41 | 59 |

TABLE 3B.—AGES 15 TO 49

| Drug | n | Percent of total | |
|---|---|---|---|
| | | Female | Male |
| Anti-Inflammatory/Analgesic: | | | |
| Dezocine (Dalgan) | 1,142 | 61 | 39 |
| Diclofenac (Voltaren) | 577 | 55 | 45 |
| Etodolac (Lodine) | 3,155 | 65 | 35 |
| Ketorolac (Toradol) | NA | NA | NA |
| Anti-Infectives: | | | |
| Ofloxacin (Floxin) | 2,890 | 60 | 40 |
| Cefmetazole (Zefazone) | 1,621 | 72 | 28 |
| Cefixime (Suprox) | 879 | 70 | 30 |
| Fluconazole (Diflucan) | 759 | 64 | 36 |
| Naftifine (Naftin) | 151 | 36 | 64 |
| Cefpiramide | 362 | 44 | 56 |
| Mefloquine (Lariam) | 1,189 | 9 | 91 |
| Oxiconazole (Oxistat) | NA | NA | NA |
| Central Nervous System/Anesthetic: | | | |
| Clomipramine (Anafranil) | 3,277 | 55 | 45 |
| Propofol (Diprivan) | 514 | 58 | 42 |
| Clozapine (Clozaril) | 510 | 35 | 65 |
| Estazolam (Prosan) | 784 | 42 | 58 |
| Pipecuronium (Arduan) | 263 | 57 | 43 |
| Doxacurium (Nuromax) | 623 | 37 | 63 |
| Pergolide (Permax) | 357 | 63 | 37 |
| Cardiovascular: | | | |
| Nimodipine (Nimotop) | 195 | 63 | 37 |
| Adenosine (Adenocard) | 62 | 43 | 57 |
| Doxazosin (Cardura) | 62 | 43 | 57 |
| Pinacidil (Pindac) | 682 | 37 | 63 |
| Nicardipine (Cardene) | 596 | 39 | 61 |
| Benazepril (Lotensin) | 602 | 27 | 73 |
| Isradipine (Dynacirc) | 692 | 27 | 73 |
| Propafenone (Rhythmol) | 604 | 46 | 54 |
| Ramapril (Altace) | 622 | 23 | 77 |
| Carteolol (Cartrol) | 410 | 24 | 76 |
| Moricizine (Ethmozine) | 193 | 31 | 69 |
| Indecainide (Decabid) | 94 | 44 | 56 |
| Bepridil (Vascor) | 93 | 13 | 8 |
| Cancer: | | | |
| Octreotide (Sandostatin) | 391 | 34 | 66 |
| Carboplatin (Paraplatin) | 563 | 70 | 30 |
| Levamisole (Ergamisol) | 195 | 50 | 50 |
| Ondansetron (Zofran) | 288 | 19 | 81 |
| Diagnostics: | | | |
| Technescan Mag 3 | 101 | 47 | 53 |
| Ioversol (Optiray) | 370 | 51 | 49 |
| Gadopentetate (Magnevist) | 183 | 29 | 71 |
| TC–99M Sestamibi (Cardolyte) | 402 | 34 | 66 |
| TC–99M Exametazime (Ceretec) | 26 | 50 | 50 |
| Iotralan (Osmovist) | 327 | 34 | 66 |
| Topicals: | | | |
| Photoplex | 296 | 34 | 66 |
| Fluticasone (Cutivate) | 405 | 45 | 55 |
| Halobetasol (Ultravate) | 360 | 45 | 55 |
| Metipranolol (Optipranolol) | 70 | 41 | 59 |
| Cefotiam (Ceradon) | NA | NA | NA |
| Rev-Eyes | 531 | 47 | 53 |
| Gastrointestinal: | | | |
| Olsalazine (Dipentum) | 72 | 60 | 40 |
| Nizatidine (Axid) | 2,302 | 32 | 68 |
| Misoprostol (Cytotec) | 945 | 33 | 67 |
| Omeprazole (Losec) | NA | NA | NA |
| Antihistamine: | | | |
| Astemizole (Hismanal) | NA | NA | NA |

TABLE 4.—ALL AGES

| Drug | Date | n | Percent of total | |
|---|---|---|---|---|
| | | | Female | Male |
| Sertaline (Zoloft) | 1991 | 2,979 | 58 | 42 |

TABLE 4.—ALL AGES—Continued

| Drug | Date | n | Percent of total | |
|---|---|---|---|---|
| | | | Female | Male |
| Paroxetine (Paxil) | 1992 | 4,126 | 65 | 35 |
| Pending No. 1 | NA | 2,161 | 62 | 38 |
| Pending No. 2 | NA | 2,256 | 62 | 38 |

Dated: July 19, 1993.

David A. Kessler,

*Commissioner of Food and Drugs.*

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

**H.R. 589/P.L. 103–51**

To designate the facility of the United States Postal Service located at 20 South Main in Beaver, Utah, as the "Abe Murdock United States Post Office Building". (July 16, 1993; 107 Stat. 270; 1 page)

**H.J. Res. 213/P.L. 103–52**

Designating July 2, 1993 and July 2, 1994 as "National Literacy Day". (July 16, 1993; 107 Stat. 271; 2 pages)

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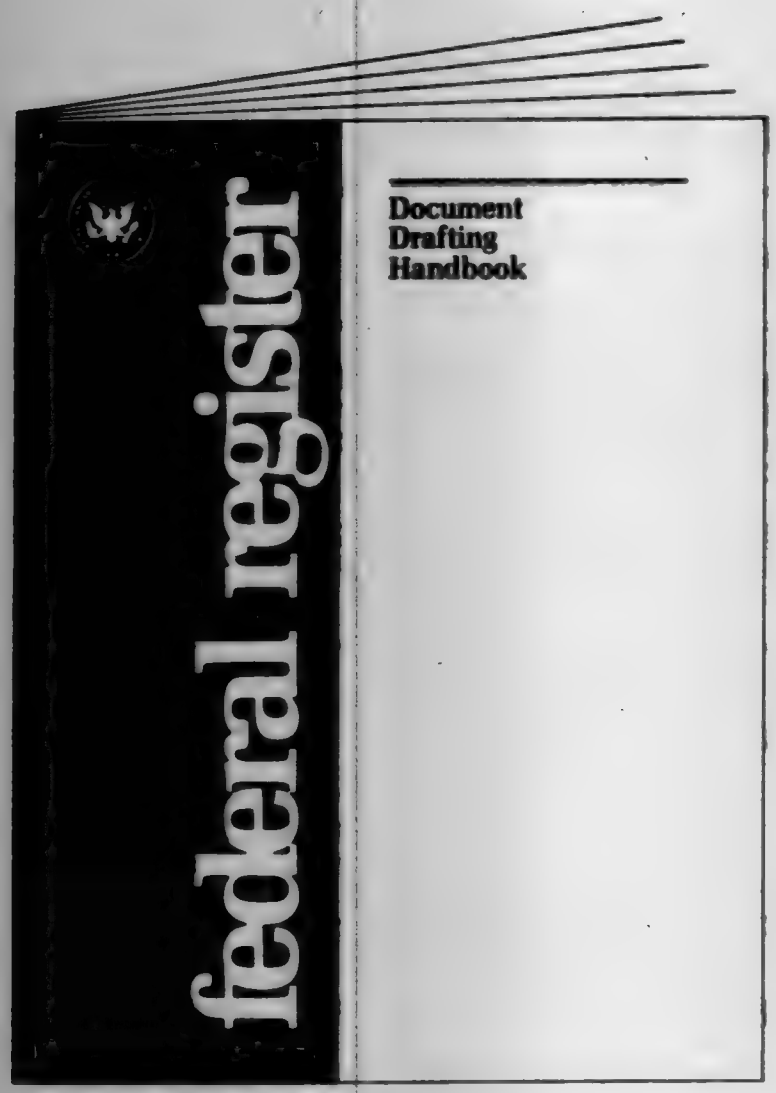


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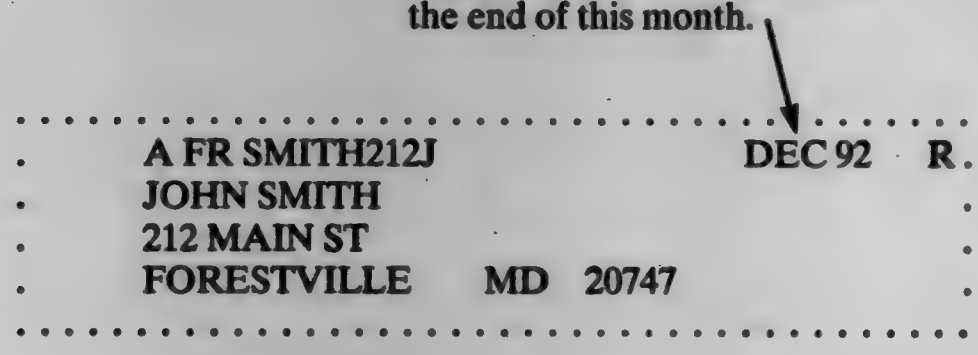

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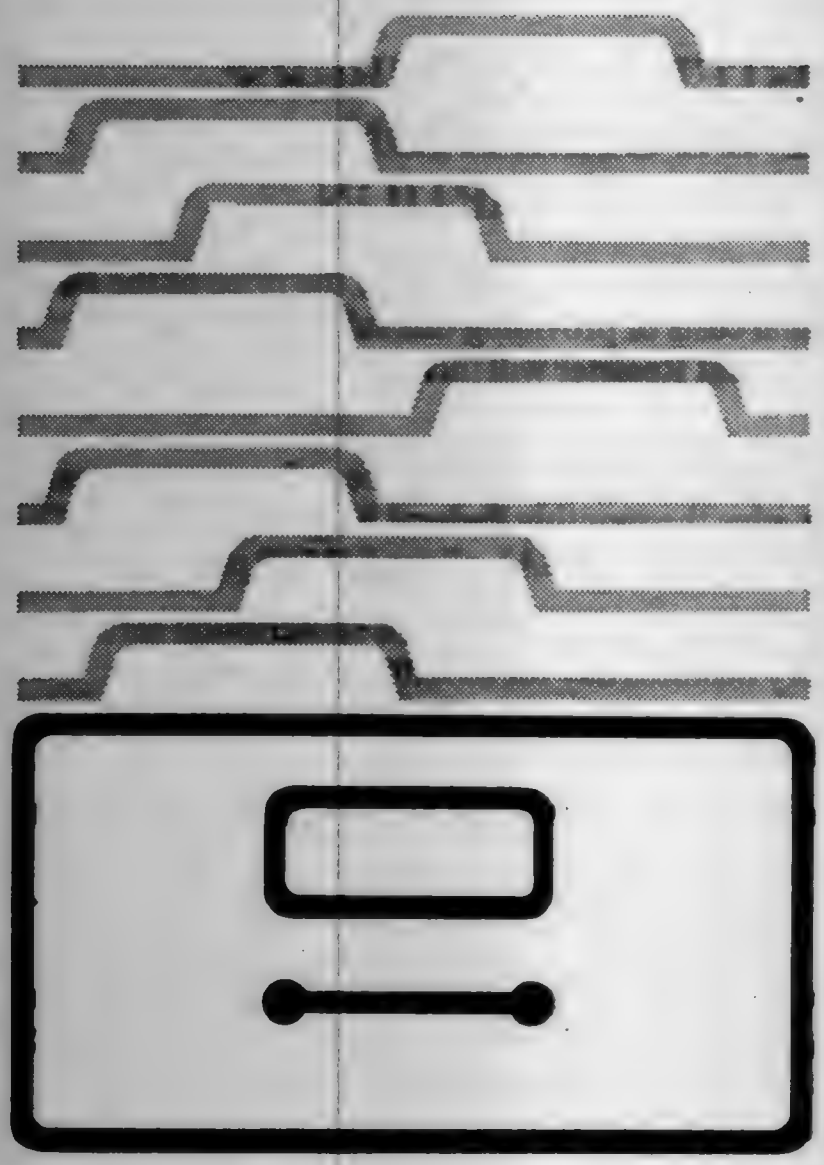

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

**[Docket No. 92–077–2]**

## Pink Bollworm Quarantine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the quarantine and regulations on the pink bollworm to remove restrictions on the interstate movement of okra seed. We have determined that this change is warranted because of the development of new seed-sorting technology, which allows the detection and separation of webbed seed containing the pink bollworm. This action relieves restrictions while continuing to prevent the artificial spread of the pink bollworm.

**EFFECTIVE DATE:** July 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. William G. Grefenstette, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6365.

**SUPPLEMENTARY INFORMATION:**

### Background

The pink bollworm quarantine and regulations (contained in 7 CFR 301.52 *et seq.* and referred to below as the regulations) were established to prevent the artificial spread of the pink bollworm (*Pectinophora gossypiella* Saund.). A dangerous insect harmful to cotton, okra, and certain other plants, the pink bollworm is not widely present or distributed in the United States. The regulations quarantine States of the United States infested with pink bollworm and restrict the interstate movement of regulated articles from quarantined States. Prior to publication of this document, § 301.52(b) of the regulations listed as a regulated article all parts of okra plants, except canned or frozen okra, and except fresh, edible fruits of okra destined for certain States during certain time periods.

On April 19, 1993, we published in the **Federal Register** (58 FR 21113–21114, Docket No. 92–077–1) a proposal to amend the regulations by removing the restrictions on the interstate movement of okra seed by adding it as an exception to the list of regulated articles in § 301.52(b).

We solicited comments concerning our proposal for a 30-day comment period ending May 19, 1993. We received one comment by that date. The comment, from an okra seed producer, was in favor of our proposal as written.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule.

### Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Implementation of this rule in less than 30 days is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Planning for the shipping season for okra seed is in progress. Making this rule effective in less than 30 days will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication in the **Federal Register**.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis regarding the impact of this rule on small entities.

The Secretary of Agriculture is authorized under the Plant Quarantine Act and the Federal Plant Pest Act to promulgate regulations prohibiting or restricting the movement of plant pests or products or other articles into the United States or interstate to prevent the introduction or dissemination of such plant pests. This rule primarily affects domestic okra seed producers.

This rule removes restrictions on the interstate movement of okra seed from regulated areas in Arizona, Arkansas, California, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas. Prior to publication of this rule, all okra seed produced in regulated areas in these States had to be fumigated before being moved interstate. There are 5 to 10 farmers within the regulated areas in these States who produce about 95 percent of all the okra seed in the United States. Of this okra seed, 90 to 95 percent is shipped interstate.

Based upon okra seed production only, all the farmers could be considered small businesses; however, only two or three of those farmers can be considered "small" entities based upon their total farming income. For the majority, okra seed production is only a small part of their total production.

This rule saves okra seed producers both time and money. The savings can include the cost of chemicals (for example, methyl bromide for fumigation), facility maintenance, and USDA inspection and transportation. Most of the farmers maintain fumigation facilities on site. At least one farmer transports seed to a facility for fumigation under APHIS supervision. In either case, removal of the restriction on okra seed results in time savings. Although the exact amount of time is hard to quantify, the affected farmers save the time associated with transporting seed for fumigation or waiting for a USDA representative to oversee the fumigation. Depending upon the availability of a USDA

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representative, a farmer could wait an additional 3 weeks to move the okra seed interstate. The fumigation process itself takes about 3 days, with costs estimated at $200 to $300 per fumigation for time and equipment.

A large okra seed producer (owning 300 acres that produce between 240,000 to 360,000 pounds per year) could save several thousand dollars a year (including $1,000 to $1,500 per year in trucking costs). Actual cost savings will vary depending upon the size of the crop and the number of fumigations needed to cover the entire crop.

In 1991, one fumigation facility in Oklahoma treated 227,400 pounds of okra seed. The estimated direct cost to the Animal and Plant Health Inspection Service (APHIS) and the okra seed producers who used the facility was no more than $10,000. The okra seed producers who have on-site fumigation facilities will likely save a similar amount of money. Therefore, based upon eight producers each saving a maximum of $10,000, the total savings to the okra seed producers could be a maximum of $80,000.

Another consideration is the risk that fumigating with methyl bromide can kill the germinating capabilities of the okra seed if it is not allowed to dry sufficiently. This happens occasionally, causing more than $2,000 in losses per occurrence. The same losses can occur if the fumigation equipment malfunctions, possibly destroying the okra seed crop. There have been instances where the equipment has not functioned properly, and the seed was saved from destruction only by precautionary measures.

Additionally, because the farmers must delay harvesting to allow the seed to dry to a low moisture content before fumigation, some of the crop may be destroyed in the field during the harvesting process. This can amount to a loss of about $30 to $50 per acre, depending upon the yield per acre and the weather. The potential loss to a farmer with 300 acres can average about $9,000 to $15,000 annually. By removing this potential loss and the $10,000 fumigation cost, this rule could result in a maximum possible savings of $25,000 per farmer per year ($200,000 per year for the entire industry).

In summary, removing the restrictions on okra seed will benefit farmers by saving them both time and money. Further, all affected entities, including seed companies, wholesalers, retailers and consumers, will benefit from the decrease in the time it takes to market the crop. Since about 95 percent of all okra seed is produced within the quarantined States, competition from other farmers outside these States is virtually nonexistent. Thus, any adverse effects caused by the removal of the regulation will be insignificant.

Two alternatives to the provisions in this rule were considered. We considered removing restrictions on the interstate movement of only okra seed that is processed using the new technology. We rejected this alternative because nearly all okra seed is processed today using equipment that removes webbed okra seed. The amount of unprocessed okra seed moving interstate from regulated areas to nonregulated areas is insignificant and poses no significant pest risk. We also considered taking no action and continuing the restrictions on the interstate movement of okra seed from the quarantined States of Arizona, Arkansas, California, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas. This alternative was rejected because it would continue an unnecessary economic burden on okra seed producers in the quarantined States. This rule allows the unrestricted interstate movement of okra seed while preventing the dissemination of the pink bollworm.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

**PART 301—DOMESTIC QUARANTINE NOTICES**

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.52, paragraph (b)(10)(i) is amended by removing the word "and"; paragraph (b)(10)(ii) is redesignated as paragraph (b)(10)(iii); and a new paragraph (b)(10)(ii) is added to read as follows:

**§ 301.52 Quarantine; restriction on interstate movement of specified regulated articles.**

* * * * *

(b) * * *

(10) * * *

(ii) Okra seed; and

* * * * *

Done in Washington, DC, this 16th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17558 Filed 7–22–93; 8:45 am]

BILLING CODE 3410-34-P

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**7 CFR Part 301**

**[Docket No. 89–165–2]**

**RIN 0579–AA39**

**Gypsy Moth**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are revising the gypsy moth quarantine and regulations to incorporate substantial changes resulting from a review of the regulations. This final rule changes certain gypsy moth program procedures, regulated areas, regulated articles, and inspection and certification requirements. These changes are necessary to help prevent the artificial spread of gypsy moth.

**EFFECTIVE DATE:** Final rule effective August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry McGovern, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247.

**SUPPLEMENTARY INFORMATION:**

**Background**

The gypsy moth, *Lymantria dispar* (Linnaeus), is a highly destructive pest of forest trees. The gypsy moth

quarantine and regulations (set forth in 7 CFR 301.45 et seq. and referred to below as the regulations) quarantine certain States because of the gypsy moth, establish regulated areas within those States, and restrict the interstate movement from regulated areas of regulated articles and outdoor household articles (OHA's), in order to prevent the artificial spread of gypsy moth.

On December 4, 1992, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule in the **Federal Register** (57 FR 57379–57390, Docket No. 89–165–1, referred to below as the proposed rule) that proposed to revise the gypsy moth regulations by discontinuing the classifications of high-risk and low-risk regulated areas, identifying infested areas with the term "generally infested areas," adding further restrictions on the interstate movement of outdoor household articles, and adding trees without roots (for example, Christmas trees) to the list of regulated articles. We also proposed changing certain inspection and certification requirements, including those applicable to interstate movement of logs and pulpwood.

We solicited comments concerning our proposal for a 60-day comment period ending February 2, 1993. We received 11 comments by that date. They were from producers of regulated articles, Federal and State agencies, and individuals. We carefully considered all of the comments we received. The comments and changes we made based on them are discussed below by topic.

Comments and Responses

*Comment:* APHIS should change the part of the definition of "effectively diminishing" in proposed § 301.45–1 that reads "average number of gypsy moths caught per trap in the second delimiting survey is: (1) Less than 10, and (2) less than the average number of gypsy moths caught per trap in the first survey" to read "average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is: (1) Less than * * *"

*Response:* We agree, and have made the requested change. To make valid comparisons of trapping results, comparable geographical areas and trapping densities are needed.

*Comment:* APHIS should reconsider the requirement in proposed § 301.45–4 that regulated articles moved through generally infested areas must be "in an enclosed vehicle, or completely enclosed by a covering * * *" Is there data to support fear that gypsy moth larvae attach themselves to articles in transit? Covering loads could be an unjustified burden for shippers of logs, pulpwood, etc. Consider requiring instead that vehicles carrying regulated articles through generally infested areas must accomplish a speedy transit with minimal stops.

*Response:* Section 301.45–4 requires that regulated articles moving from a nonregulated area through a generally infested area must be covered only if the movement occurs during the months of April through June. Studies of gypsy moth movement patterns indicate that there is a significant risk that uncovered regulated articles may become infested with gypsy moth during these months. While direct transit without stops through a generally infested area may be nearly as effective in preventing gypsy moth attachment as covering the articles, it is much harder to enforce direct transit than it is to enforce covering of regulated articles. Therefore, we have made no change in response to this comment.

*Comment:* APHIS should change the requirement in proposed § 301.45–5(a)(2) that an inspector issuing a certificate must inspect the article "no more than 5 days prior to the date of movement" to "no more than 5 days prior to the date of movement during the months of April through August (14 days prior to the date of movement from September through March)." This focuses the inspection time restriction on the time of year when larvae may be actively moving. There is no need for a 5-day limit during the rest of the year when gypsy moth is in the egg stage.

*Response:* We agree that this change could reduce the burden of the regulations on some business activities and private individuals without increasing the risk of spreading gypsy moth. We have made the requested change.

*Comment:* APHIS should change proposed § 301.45–5(d), which allows qualified certified applicators (QCA's) to issue certificates for mobile homes and other outdoor household articles, to also allow QCA's to issue limited permits for mobile homes in situations where the QCA is not able to search all possible hiding places of egg masses, e.g., broken insulation on the underside of the mobile home. The limited permit could call for reinspection in the destination State at time of egg hatch.

*Response:* Section 301.45–5(d) allows QCA's to issue certificates for mobile homes after determining that the mobile home: (1) Has been inspected by the QCA and found to be free of any life stage of the gypsy moth; or (2) has been treated by, or treated under the direct supervision of, the QCA to destroy any life stage of the gypsy moth in accordance with methods and procedures prescribed in section III of the Gypsy Moth Program Manual. We believe it is reasonable to limit QCA's to certifying inspections or treatments that they actually performed or supervised. We do not believe the regulations should authorize QCA's to issue limited permits, because limited permits involve a significant level of professional judgment and coordination of activities with State and Federal personnel that is more suitable for inspectors than QCA's. Mobile homes that cannot be completely inspected before movement could be treated as an alternative. In recognition of the risks presented by mobile home movements, APHIS personnel and cooperating State personnel monitor mobile homes that arrive in unregulated areas for signs of gypsy moth, particularly during hatching seasons, to the extent resources allow. No change to the regulations was made in response to this comment.

*Comment:* APHIS should add an exemption from regulation for "local movements"—any regulated articles moved from within a generally infested area to just outside the generally infested area (i.e., moved from a point in a generally infested area within 25 miles of the boundary, to a point no more than 15 miles outside the generally infested area). The boundary is inherently fuzzy due to natural spread, and local movements are a significant burden to people living near the boundary.

*Response:* It is unfortunate but necessarily true that a large part of the burden of regulatory activities falls on persons near the boundaries of generally infested areas. Since the regulations attempt to limit the spread of gypsy moth, the boundary areas are critical enforcement areas. Since most trips are local trips, movements from just inside a boundary to just outside it represent a major opportunity for gypsy moth to extend its range through incremental artificial spread. Therefore, we believe an exemption for "local movements" would significantly hamper the effectiveness of the regulations. No change was made in response to this comment.

*Comment:* Moving companies should not be allowed to issue OHA documents through self-inspection; only the owner of the articles. Proposed § 301.45–5(e) implies that moving companies may issue OHA documents.

*Response:* The intent of the proposed rule was that moving companies would not inspect OHA's or issue OHA documents; they would inform the owners of OHA's of regulatory

requirements and provide them with an OHA form, and the owner (or a QCA) would inspect the articles and issue the OHA document. The language in § 301.45–5(e) of this final rule has been revised to make this arrangement clear.

*Comment:* QCA's should send copies of the OHA document to the APHIS Officer in Charge in the origin State, not to the State Plant Regulatory Official.

*Response:* We agree, and have revised the requirement in § 301.45–8(c) concerning copies of the OHA document accordingly. The APHIS Office in Charge in each State should have primary responsibility for managing paperwork associated with this regulatory program, and for transmitting documents to State officials as necessary.

*Comment:* The familiar term "regulated area" should be used instead of the designation "generally infested area" when referring to areas regulated due to gypsy moth.

*Response:* We avoided using the term "regulated area" due to the need to distinguish areas subject to these regulations from areas subject to Federal programs for other pests, various State programs, and isolated gypsy moth infestations not subject to these regulations, all of which are sometimes called "regulated areas." No change was made in response to this comment.

*Comment:* Exempting "eradication areas" from being classified as generally infested areas is bad policy, since they do present risk. Such areas are so few that the regulatory effort to include them as generally infested areas would be insignificant.

*Response:* The number and location of isolated areas where gypsy moth infestations erupt and are eradicated change frequently. We do not believe the time requirements of the rulemaking process would allow us to keep a current list of such areas in the "generally infested areas" list of the regulations, and we do not believe listing them would significantly reduce risks that are already addressed by an eradication effort. If the risks presented by an isolated infestation develop to the point where the area should be covered by these regulations, the provisions of § 301.45–2(c), "Temporary designation of areas as generally infested areas," allow APHIS to immediately designate the area as a generally infested area, and add the area to the printed regulations later. No change was made in response to this comment.

*Comment:* The definition of general infestation depends on finding one or more egg masses in a 10-minute walk. It should also use trapping catches in the area.

*Response:* We agree that a continuing pattern of trapping catches in an area is a valid indicator that an area may be generally infested. Multiple catches of adult gypsy moths at multiple trapping locations in an area may indicate the presence of a low level infestation even if a walk-through egg mass survey has negative results. We believe that if an area has positive trapping results for 2 or more years, APHIS should consult with the appropriate State regulatory officials to determine whether the area should be listed as generally infested despite negative results from the walk-through egg mass survey. Therefore, we are changing the definition of "general infestation" to include the following: "The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area over a period of 2 or more consecutive years, if the Administrator determines, after consulting with the State plant regulatory official, that gypsy moth is established in the area."

*Comment:* The areas listed as generally infested in the States of Maine and Michigan omit areas that are now infested, and should be updated.

*Response:* We agree, and have added areas to the listings for these two States based on the latest available data on gypsy moth infestations from APHIS and State personnel.

*Comment:* By listing recreational vehicles (RV's) in the definition of outdoor household article but not in the definition of regulated article (§ 310.45–1), the proposed regulation would regulate RV's only when they are being permanently relocated (moved as OHA's). Temporary movements of RV's also present risks, and we would like to see them regulated.

*Response:* Temporary movements of RV's undoubtedly present risks of spreading gypsy moth. However, in determining which risks the regulations will address, APHIS must make judgments that apply limited resources to a wide range of risks in a way that maximizes the effectiveness of the resources expended. Direct regulation of temporary RV movements falls below this threshold in our judgment, because regulating such movements would consume a large amount of resources that can be more effectively expended in other gypsy moth program activities. We do have an information and education program that targets RV owners to make them aware of gypsy moth risks. Through this program we seek to encourage RV owners to take steps to control gypsy moth risks associated with their RV movements. No change was made in response to this comment.

*Comment:* The economic analysis in the regulation underestimates the producer cost impacts for Christmas trees moved interstate. In 1991, approximately 16,760 acres were treated at an average cost of $10 per acre for total treatment costs of approximately $167,600 for Michigan alone. The regulation estimated Christmas tree treatment costs of no more than $60,000 annually.

*Response:* The economic analysis in the proposed rule addressed economic impacts that can be directly tied to the proposed Federal action. Christmas tree movements were not regulated under the gypsy moth regulations in 1991, and the treatments cited in Michigan were not required by APHIS. We believe that the economic analysis provides a reasonably accurate estimate of the economic impacts attributable to the proposed Federal action.

*Comment:* Tying the definition of "effectively diminishing" to less than 10 catches per trap is too stringent, and would exclude many areas where gypsy moth is in fact drastically declining.

*Response:* The definition of "effectively diminishing" is a two-part definition which states that for an area to be effectively diminishing, the average number of catches per trap must be both less than 10, and less than the average number of catches per trap in the previous survey. The commenter did not suggest an alternative standard for determining "effectively diminishing." We believe that the proposed definition, which is linked to both a small number of moths trapped and a decrease in that number over time, is an adequate standard. No change was made in response to this comment.

*Comment:* APHIS must increase public awareness of the gypsy moth regulations, to reach homeowners who move themselves, RV campsites, and other target populations.

*Response:* We agree, and intend to increase our outreach efforts through education and public information programs.

*Comment:* Contrary to the assumption in the regulations, commercial firewood (firewood that would not be regulated because it is not moved as an OHA) is often moved large distances in the Great Lake States, particularly to lake cabins, and such movement presents risks that should be regulated.

*Response:* See the earlier comment regarding regulating temporary movements of RV's, and the need to balance the level of risk against the resources expended to control them. We agree that some commercial movements of firewood present significant risks of spreading gypsy moth, but we have

found that most movements of firewood do not present such risks. No change was made in response to this comment.

*Comment:* The regulation assumes that the high-risk period for infestation is April through June. Some of our scientists have observed moths in Connecticut flying well into August, with caterpillars out from April through June. APHIS should reexamine the gypsy moth life cycle data that regulatory restrictions assume.

*Response:* The regulatory restrictions address the following characteristics of the gypsy moth life cycle. Gypsy moths artificially spread and become established in new areas through the movement of caterpillars and egg masses. Articles moving through a generally infested area present a moderate opportunity for caterpillars, which will develop into male and female adult moths, to attach themselves to the articles. This is because caterpillars are active feeders, constantly moving in search of food sources. During the first instar, the small caterpillars may "balloon" on the wind by spinning weblike fibers which help in their dispersal. Since it is possible that both sexes may alight on an uncovered truck moving regulated articles, movement of unsafeguarded regulated articles through a generally infested area at a time when gypsy moth caterpillars are active presents a significant risk of introducing a reproducing population of gypsy moth in a new area. Caterpillars are active during April through June. That is why the regulations, in § 301.45–4(b), require that regulated articles moved through a generally infested area during this period be enclosed to prevent access by gypsy moth.

There is little risk that egg masses will be deposited on regulated articles moving directly through a generally infested area as required by § 301.45–4(b). Adult female gypsy moths do not fly and are not very mobile. They usually deposit their egg masses on the last host tree they fed upon as a caterpillar or on an adjacent immobile object—not on articles in transit. If such objects are of a type that may later be moved from the generally infested area (e.g., logs at a mill, outdoor furniture, an RV, or other types of regulated or outdoor household articles), there is a risk that the egg masses may be moved to an area where they could establish a new reproducing population of gypsy moth. That is why movements of articles originating in generally infested areas require inspection or treatment and a certificate, permit or OHA document, in accordance with §§ 301.45–4(a) and (c) and 301.45–5.

We agree that the adult gypsy moth may fly well into August in the northeast, but only the male moth flies. Section 301.45–4(b) does not require regulated articles moving through a generally infested area to be enclosed during the months of July through March because caterpillars are not present during these months, and there is no significant risk if some male moths wander into a moving shipment of regulated articles, because male moths alone cannot establish a new reproducing population of gypsy moth.

*Comment:* We believe debarked wood chips do not pose a serious threat of transporting egg masses, moths, or caterpillars, and should not be regulated.

*Response:* We disagree. The process of chipping wood does not necessarily destroy eggs in gypsy moth egg masses that were present on the original trees. In addition, wood chips are often stored uncovered for long periods, both in generally infested areas where they could become infested, and in other areas where gypsy moth could spread from the chips.

*Comment:* The provision in § 301.45–4(c)(2) for moving logs without a certificate is too restrictive and needs reevaluation. Transporters are unlikely to completely inspect every log in a shipment. Also, logs and pulpwood are seldom moved very far outside a generally infested area, and are usually quickly treated in ways that would destroy egg masses (debarking, boiling).

*Response:* The proposed requirement for moving logs and pulpwood without a certificate is that the person moving the article attach a signed statement to the waybill stating that he or she has inspected the article in accordance with the Gypsy Moth Program Manual no more than 5 days prior to the date of movement and has found no life stages of gypsy moth on the article. We believe this is a reasonable and effective approach that does not present an undue burden. If transporters do not conduct the required inspection, they would be subject to enforcement actions. Transporters who do not wish to use this self-inspection option may ship logs and pulpwood under a limited permit issued by an inspector in accordance with § 301.45–4(a)(1). Therefore, no change was made in response to this comment.

*Comment:* Persons moving regulated articles from gypsy moth infested States to California should bear the financial cost of inspection by the State at the destination.

*Response:* We do not have the legal authority to require such financial responsibility.

*Comment:* APHIS should not eliminate the useful distinction between high-risk and low-risk areas.

*Response:* We believe the proposed rule adequately explained why the high-risk and low-risk categories are no longer useful distinctions in the gypsy moth program.

*Comment:* Self-inspection relies on untrained individuals with no vested interest in pest exclusion. Inspections should be done by USDA or State officials.

*Response:* The regulations do not rely solely or primarily on self-inspections. Self-inspection is used chiefly for movements of outdoor household articles, where it is not practical to employ inspectors to approve thousands of movements. Some self-inspection is allowed for commercial movements, e.g., logs and pulpwood. Businesses involved in such movements have a vested interest in their continued ability to do business, and inadequate self-inspection could result in enforcement activity that jeopardizes that ability.

*Comment:* The proposed changes avoid placing financial responsibility for pest exclusion on the movers of household goods.

*Response:* The owners of outdoor household articles, not moving companies, are responsible for ensuring that regulatory requirements are met when the articles are moved interstate. We believe this is the proper location for that responsibility. Owners may meet their obligation by self-inspecting OHA's, or by hiring a QCA to inspect or treat the OHA's. If a QCA is involved, he or she is responsible for inspecting or treating the OHA's in accordance with the regulations. If the QCA does not comply with the regulations, he or she faces penalties that may include loss of QCA certification or civil or criminal penalties.

We are also adding two definitions that were inadvertently omitted from the proposed rule. The first of these defines "APHIS" as the Animal and Plant Health Inspection Service, United States Department of Agriculture. The second definition describes an "eradication program" as a program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from a particular area.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule, with the changes discussed in this document.

**Review of Existing Regulations**

This final rule is part of the scheduled review of Subpart—Gypsy Moth, to meet regulatory review requirements. Executive Order 12291 and Department Regulation 1512–1 require that agencies initiate reviews of currently effective rules to bring about the goal of reduction of regulatory burdens and to minimize impacts on small entities.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amendment to designate all high-risk regulated areas and certain low-risk regulated areas as generally infested areas will result in additional costs for persons moving regulated articles and outdoor household articles interstate from what are now low-risk areas. With certain exceptions, certification, inspection, and treatment (if gypsy moth is found) will be required for articles moving interstate from areas previously designated as low-risk areas. The majority of such movements will be from establishments moving trees or shrubs with roots, such as nurseries. We estimate that approximately 300 such establishments in current low-risk areas (including approximately 250 small entities) move approximately 7,000 shipments of trees and shrubs each year to areas outside the generally infested areas. These establishments would need to be inspected by an inspector, a service provided without charge. If the inspection reveals signs of gypsy moth, the establishment would have to be treated in order to ship regulated articles outside the generally infested area. We estimate that approximately 3 to 5 percent of these establishments will be required to treat the establishment, and that the average area to be treated will be 500 acres. At an average treatment cost of $10 per acre, we anticipate that a total of 9 to 15 establishments will have to treat each year, at an average cost to each of $5,000. While most of these establishments are probably small entities, we do not consider that 9 to 15 establishments out of 300 establishments in the current low-risk areas constitutes a substantial number of small entities.

The reclassification of low-risk areas as generally infested areas means that movements to outside the generally infested area of other regulated articles, such as logs, pulpwood, wood chips, and mobile homes, and outdoor household articles such as firewood and outdoor furniture, will have to comply with the regulations. Most movements of these regulated articles would not be subject to the regulations because the articles are moved to other points within the generally infested area, and we do not expect significant economic impacts in this area.

The designation of trees without roots as regulated articles will primarily affect the Christmas tree industry, since Christmas trees moved interstate from generally infested areas to areas not generally infested would have to be moved under a certificate or permit. We estimate that there are between 100 and 250 Christmas tree producers in the generally infested areas who ship trees to nonregulated areas. Services of an inspector will be available without charge to inspect the premises and issue certificates and permits. However, we estimate that 3 to 5 percent of these premises will be found to contain gypsy moth, and will require treatment in order to ship trees. The average area to be treated is estimated to be 500 acres, and treatment costs average $10 per acre. Therefore, total treatment costs for Christmas tree producers are estimated at approximately $5,000 per year for each of approximately 3 to 12 producers in generally infested areas. While we do not have direct data regarding how many of these establishments are small business entities, the 1987 Census of Agriculture reports that 53 percent of the farms selling forest products have annual sales of less than $50,000.

Using this figure as a basis for identifying small entities, we estimate that 2 to 6 small entities would be affected by the requirements concerning Christmas trees. An added treatment cost of $5,000 per year would be a significant economic impact on a small business entity with annual sales of less than $50,000 per year. However, we do not consider that the 2 to 6 small entities that may incur this cost constitute a substantial number of small entities.

It is expected that, in most cases, Christmas tree growers will meet the requirements for certification by having inspectors determine that the plantations where the trees are grown are free from gypsy moth. This alternative would be less costly than inspecting or treating individual shipments of trees and would minimize the economic impacts of the change to the regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) will require administrative proceedings before parties may file suit in court challenging certain of its provisions. Administrative proceedings are required to challenge the withdrawal of a permit or certificate (see § 301.45–5(f)), the cancellation of a compliance agreement (§ 301.45–6(b)), and the disqualification of a qualified certified applicator (§ 301.45–12(b)).

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0108.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Gypsy moth, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301, is amended as follows:

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Subpart—Gypsy Moth of part 301 is revised to read as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

* * * * *

**Subpart—Gypsy Moth**

Sec.

301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.
301.45–1 Definitions.
301.45–2 Authorization to designate and terminate designation of generally infested areas.
301.45–3 Generally infested areas.
301.45–4 Conditions governing the interstate movement of regulated articles and outdoor household articles from generally infested areas.
301.45–5 Issuance and cancellation of certificates, limited permits, and outdoor household article documents.
301.45–6 Compliance agreement and cancellation thereof.
301.45–7 Assembly and inspection of regulated articles and outdoor household articles.
301.45–8 Attachment and disposition of certificates, limited permits, and outdoor household article documents.
301.45–9 Inspection and disposal of regulated articles and pests.
301.45–10 Movement of live gypsy moths.
301.45–11 Costs and charges.
301.45–12 Disqualification of qualified certified applicator to issue certificates.

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**Subpart—Gypsy Moth**

**§ 301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.**

(a) *Notice of quarantine.* Pursuant to the provisions of sections 8 and 9 of the Plant Quarantine Act of August 20, 1912, as amended, and sections 105 and 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150dd, 150ee), the Secretary of Agriculture hereby quarantines the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, in order to prevent the spread of the gypsy moth, *Lymantria dispar* (Linnaeus), a dangerous insect injurious to forests and shade trees and not theretofore widely prevalent or distributed within or throughout the United States; and establishes regulations governing the interstate movement from generally infested areas of the quarantined States of regulated articles and outdoor household articles defined in § 301.45–1.

(b) *Restrictions on the interstate movement of regulated articles and outdoor household articles.* No common carrier or other person may move interstate from any generally infested area any regulated article or outdoor household article except in accordance with the conditions prescribed in this subpart.

**§ 301.45–1 Definitions.**

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (APHIS).

*Associated equipment.* Articles associated and moved with mobile homes and recreational vehicles, such as, but not limited to, awnings, tents, outdoor furniture, trailer blocks, and trailer skirts.

*Certificate.* A document issued by an inspector, or by a qualified certified applicator or any other person operating in accordance with a compliance agreement, to allow the movement of regulated articles to any destination.

*Compliance agreement.* A written agreement between a person engaged in growing, handling, or moving regulated articles, and APHIS, wherein the former agrees to comply with the requirements of the compliance agreement.

*Effectively diminishing.* An eradication program is considered to be effectively diminishing the gypsy moth population of an area if the results of two successive annual Federal or State delimiting trapping surveys of the area conducted in accordance with Section II, "Survey Procedures—Gypsy Moth," of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is: (1) Less than 10, and (2) less than the average number of gypsy moths caught per trap in the first survey.

*Eradication program.* A program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from a particular area.

*General infestation.* (1) The detection of gypsy moth egg masses through visual inspection by an inspector during a 10-minute walk through the area; however, it does not include the presence of gypsy moth egg masses which are found as a result of hitchhiking on transitory means of conveyance; or

(2) The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area over a period of 2 or more consecutive years, if the Administrator determines, after consulting with the State plant regulatory official, that gypsy moth is established in the area.

*Generally infested area.* Any State, or portion thereof, listed as a generally infested area in § 301.45–3 or temporarily designated as a generally infested area in accordance with § 301.45–2(c).

*Gypsy moth.* The live insect known as the gypsy moth, *Lymantria dispar* (Linnaeus), in any life stage (egg, larva, pupa, adult).

*Inspector.* Any employee of APHIS, a State government, or any other person, authorized by the Administrator in accordance with law to enforce the provisions of the quarantine and regulations in this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document issued by an inspector to allow the interstate movement of regulated articles to a specified destination.

*Mobile home.* Any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

*Move (movement, moved).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means. "Movement" and "moved" shall be construed in accordance with this definition.

*Outdoor household articles.* Articles associated with a household that have been kept outside the home such as awnings, barbecue grills, bicycles, boats, dog houses, firewood, garden tools, hauling trailers, outdoor furniture and toys, recreational vehicles and associated equipment, and tents.

*Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

*Qualified certified applicator.* Any individual (1) certified pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (86 Stat. 983; 7 U.S.C. 136b) as a certified commercial applicator in a category allowing use of the restricted pesticides Spray N Kill (EPA Registration No. 8730–30), Ficam W (EPA Registration No. 45639–1), and acephate (Orthene®); (2) who has attended and completed a workshop approved by the Administrator on the identification and treatment of gypsy

moth life stages on outdoor household articles and mobile homes; and (3) who has entered into a compliance agreement in accordance with § 301.45–6 of this part for the purpose of inspecting, treating, and issuing certificates for the movement of outdoor household articles and mobile homes.[1]

*Recreational vehicles.* Highway vehicles, including pickup truck campers, one-piece motor homes, and travel trailers, designed to serve as temporary places of dwelling.

*Regulated articles.* (1) Trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems, unless they are greenhouse grown throughout the year.

(2) Logs, pulpwood, and wood chips.

(3) Mobile homes and associated equipment.

(4) Any other products, articles, or means of conveyance, of any character whatsoever, when it is determined by an inspector that any life stage of gypsy moth is in proximity to such articles and the articles present a high risk of artificial spread of gypsy moth infestation and the person in possession thereof has been so notified.

*State.* Any State, Territory, or District of the United States including Puerto Rico.

*Treatment manual.* The provisions currently contained in the Gypsy Moth Program Manual[2] and the Plant Protection and Quarantine Treatment Manual.[3]

*Under the direction of.* Monitoring treatments to assure compliance with the requirements in this subpart.

*Under the direct supervision of a qualified certified applicator.* An inspection or treatment is considered to be applied under the direct supervision of a qualified certified applicator if the inspection or treatment is performed by a person acting under the instructions of a qualified certified applicator who is available if and when needed, even though such qualified certified applicator is not physically present at the time and place the inspection or treatment occurred.

**§ 301.45–2 Authorization to designate and terminate designation of generally infested areas.**

(a) Generally infested areas. The Administrator shall list as generally infested areas in § 301.45–3 each State or each portion thereof in which a gypsy moth general infestation has been found by an inspector, or each portion of a State which the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities; Except that, an area shall not be listed as a generally infested area if the Administrator has determined that:

(1) The area is subject to a gypsy moth eradication program conducted by the Federal government or a State government in accordance with the Integrated Pest Management (IPM) alternative of the Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects that was filed with the United States Environmental Protection Agency on March 18, 1985; and

(2) State or Federal delimiting trapping surveys conducted in accordance with Section II, "Survey Procedures—Gypsy Moth" of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap is less than 10 and that the trapping surveys show that the eradication program is effectively diminishing the gypsy moth population of the area.

(b) Less than an entire State will be designated as a generally infested area only if the Administrator has determined that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and,

(2) The designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

(c) Temporary designation of areas as generally infested areas. The Administrator or an inspector may temporarily designate any area in any State as a generally infested area in accordance with the criteria specified in paragraph (a) of this section. An inspector will give written notice of the designation to the owner or person in possession of the area and thereafter, the interstate movement of any regulated article from such areas is subject to the applicable provisions of this subpart. As soon as practicable, each generally infested area will be added to the list in § 301.45–3 or the designation will be terminated by the Administrator or an authorized inspector, and notice thereof shall be given to the owner or person in possession of the areas.

(d) Termination of designation as a generally infested area. The Administrator shall terminate the designation of any area as a generally infested area whenever the Administrator determines that the area no longer requires designation under the criteria specified in paragraph (a) of this section.

**§ 301.45–3 Generally infested areas.**

(a) The areas described below are designated as generally infested areas:

Connecticut

The entire State.

Delaware

The entire State.

District of Columbia

The entire district.

Maine

*Androscoggin County.* The entire county.

*Aroosktook County.* The townships of Bancroft, Benedicta, Crystal, Island Falls, Macwahoc Plantation, Molunkus, North Yarmouth Academy Grant, Reed Plantation, Sherman, Silver Ridge, Upper Molunkus, Weston, and 1 R5 WELS.

*Cumberland County.* The entire county.

*Franklin County.* The townships of Avon, Carthage, Chesterville, Coplin Plantation, Crockertown, Dallas Plantation, Davis, Lang, Farmington, Freeman, Industry, Jay, Jerusalem, Kingfield, Madrid, Mount Abraham, New Sharon, New Vineyard, Perkins, Phillips, Rangeley, Rangeley Plantation, Redington, Salem, Sandy River Plantation, Strong, Temple, Washington, Weld, Wilton, Wyman, 6, D and E.

*Hancock County.* The entire county.

*Kennebec County.* The entire county.

*Knox County.* The entire county.

*Lincoln County.* The entire county.

*Oxford County.* The townships of Adamstown, Albany, Andover, Andover North, Andover West, Batchelders Grant, Bethel, Brownfield, Buckfield, Byron, Canton, Denmark, Dixfield, Fryeburg, Gilead, Grafton, Greenwood, Hanover, Hartford, Hebron, Hiram, Lincoln Plantation, Lovell, Lower Cupsuptic, Magalloway Plantation,

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[1] Names of qualified certified applicators and plant regulatory officials for the States and Territories of the United States are available upon request from the regional offices of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, or from APHIS, PPQ, Domestic and Emergency Operations, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[2] Pamphlets containing such provisions are available upon request to USDA, APHIS, PPQ, Domestic and Emergency Operations, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Relevant portions of the Gypsy Moth Program Manual are published as an appendix to these regulations.

[3] The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

Mason Plantation, Mexico, Milton Plantation, Newry, Norway, Oxford, Paris, Parkerstown, Peru, Porter, Richardsontown, Riley, Roxbury, Rumford, Stoneham, Stow, Sumner, Sweden, Upton, Waterford, Woodstock, C, and C Surplus.

*Penobscot County*. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Carroll Plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew Plantation, E. Millinocket, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Grindstone, Hampden, Hermon, Hersey Town, Holden, Hopkins Academy Grant, Howland, Hudson, Indian Purchase, Kenduskeag, Kingman, LaGrange, Lakeville, Lee, Levant, Lincoln, Long A, Lowell, Mattamiscontis, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Newburgh, Newport, Old Town City, Orono, Orrington, Passadumkeag, Plymouth, Prentiss Plantation, Seboesis Plantation, Soldiertown, Springfield, Stacyville, Stetson, Summit, Veazie, Webster Plantation, Winn, Woodville, AR 7, AR 8, AR 9, 1 ND, 3 R1 NBPP, 1 R6 WELS, 1 R8 WELS, 2 R8 NWP, 2 R9 NWP, 3 R9 NWP, 5 R1 NBPP, and 2 R8 WELS.

*Piscataquis County*. The townships of Abbott, Atkinson, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Guilford, Kingsbury Plantation, Lakeview Plantation, Medford, Milo, Monson, Orneville, Parkman, Sangerville, Sebec, Williamsburg, Willimantic, Willington, 1 R9, 2 R9 WELS, 4 R9 NWP, and 5 R9 NWP.

*Sagadahoc County*. The entire county.

*Somerset County*. The townships of Anson, Athens, Bald Mountain, Bingham, Bowtown, Brighton Plantation, Cambridge, Canaan, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Cornville, Dead River, Detroit, Embden, Fairfield, Harmony, Hartland, Highland Plantation, Lexington Plantation, Madison, Mayfield, Mercer, Moscow, Moxie Gore, New Portland, Norridgewock, Palmyra, Pittsfield, Pleasant Ridge Plantation, Ripley, Skowhegan, Smithfield, Solon, St. Albans, Starks, The Forks Plantation, and West Forks Plantation.

*Waldo County*. The entire county.

*Washington County*. The entire county.

*York County*. The entire county.

Maryland

The entire State

Massachusetts

The entire State.

Michigan

*Alcona County*. The entire county.
*Allegan County*. The entire county.
*Alpena County*. The entire county.
*Antrim County*. The entire county.
*Arenac County*. The entire county.
*Barry County*. The entire county.
*Bay County*. The entire county.
*Benzie County*. The entire county.
*Berrien County*. The entire county.
*Branch County*. The entire county.
*Calhoun County*. The entire county.
*Cass County*. The entire county.
*Charlevoix County*. The entire county.
*Cheboygan County*. The entire county.
*Chippewa County*. The entire county.
*Clare County*. The entire county.
*Clinton County*. The entire county.
*Crawford County*. The entire county.
*Eaton County*. The entire county.
*Emmet County*. The entire county.
*Genesee County*. The entire county.
*Gladwin County*. The entire county.
*Grand Traverse County*. The entire county.
*Gratiot County*. The entire county.
*Hillsdale County*. The entire county.
*Huron County*. The entire county.
*Ingham County*. The entire county.
*Ionia County*. The entire county.
*Iosco County*. The entire county.
*Isabella County*. The entire county.
*Jackson County*. The entire county.
*Kalamazoo County*. The entire county.
*Kalkaska County*. The entire county.
*Kent County*. The entire county.
*Lake County*. The entire county.
*Lapeer County*. The entire county.
*Leelanau County*. The entire county.
*Lenawee County*. The entire county.
*Livingston County*. The entire county.
*Luce County*. The entire county.
*Mackinaw County*. The entire county.
*Macomb County*. The entire county.
*Manistee County*. The entire county.
*Mason County*. The entire county.
*Mecosta County*. The entire county.
*Midland County*. The entire county.
*Missaukee County*. The entire county.
*Monroe County*. The entire county.
*Montcalm County*. The entire county.
*Montmorency County*. The entire county.
*Muskegon County*. The entire county.
*Newaygo County*. The entire county.
*Oakland County*. The entire county.
*Oceana County*. The entire county.
*Ogemaw County*. The entire county.
*Osceola County*. The entire county.
*Oscoda County*. The entire county.
*Otsego County*. The entire county.
*Ottawa County*. The entire county.
*Presque Isle County*. The entire county.
*Roscommon County*. The entire county.
*Saginaw County*. The entire county.
*St. Clair County*. The entire county.
*St. Joseph County*. The entire county
*Sanilac County*. The entire county.
*Shiawassee County*. The entire county.
*Tuscola County*. The entire county.
*Van Buren County*. The entire county
*Washtenaw County*. The entire county.
*Wayne County*. The entire county
*Wexford County*. The entire county

New Hampshire

*The entire State.*

New Jersey

*The entire State.*

New York

*The entire State.*

North Carolina

*Currituck County*. The entire county.

*Dare County*. The area bounded by a line beginning at the intersection of State Road 1208 and Roanoke Sound; then easterly along this road to its junction with State Road 1206; then southerly along this road to its intersection with U.S. Highway Business 158; then easterly along an imaginary line to its intersection with the Atlantic Ocean; then northwesterly along the coastline to its intersection with the Dare-Currituck County line; then westerly along this county line to its intersection with the Currituck Sound; then southeasterly along this sound to the point of beginning.

Ohio

*Ashtabula County*. The entire county.
*Columbiana County*. The entire county.
*Geauga County*. The entire county.
*Lake County*. The entire county.
*Mahoning County*. The entire county.
*Trumbull County*. The entire county.

Pennsylvania

The entire State.

Rhode Island

The entire State.

Vermont

The entire State.

Virginia

*City of Alexandria*. The entire city.
*City of Buena Vista*. The entire city.
*City of Charlottesville*. The entire city
*City of Chesapeake*. The entire city.
*City of Colonial Heights*. The entire city.
*City of Fairfax*. The entire city.
*City of Falls Church*. The entire city.

*City of Franklin*. The entire city.
*City of Fredericksburg*. The entire city.
*City of Hampton*. The entire city.
*City of Harrisonburg*. The entire city.
*City of Hopewell*. The entire city.
*City of Lexington*. The entire city.
*City of Manassas*. The entire city.
*City of Manassas Park*. The entire city.
*City of Newport News*. The entire city.
*City of Norfolk*. The entire city.
*City of Petersburg*. The entire city.
*City of Poquoson*. The entire city.
*City of Portsmouth*. The entire city.
*City of Richmond*. The entire city.
*City of Staunton*. The entire city.
*City of Suffolk*. The entire city.
*City of Virginia Beach*. The entire city.
*City of Waynesboro*. The entire city.
*City of Williamsburg*. The entire city.
*City of Winchester*. The entire city.
*Accomack County*. The entire county.
*Albemarle County*. The entire county.
*Amelia County*. The entire county.
*Amherst County*. The entire county.
*Arlington County*. The entire county.
*Augusta County*. The entire county.
*Buckingham County*. The entire county.
*Caroline County*. The entire county.
*Charles City County*. The entire county.
*Chesterfield County*. The entire county.
*Clarke County*. The entire county.
*Culpeper County*. The entire county.
*Cumberland County*. The entire county.
*Dinwiddie County*. The entire county.
*Essex County*. The entire county.
*Fairfax County*. The entire county.
*Fauquier County*. The entire county.
*Fluvanna County*. The entire county.
*Franklin County*. The entire county.
*Frederick County*. The entire county.
*Gloucester County*. The entire county.
*Goochland County*. The entire county.
*Greene County*. The entire county.
*Hanover County*. The entire county.
*Henrico County*. The entire county.
*Isle of Wight County*. The entire county.
*James City County*. The entire county.
*King and Queen County*. The entire county.
*King George County*. The entire county.
*King William County*. The entire county.
*Lancaster County*. The entire county.
*Loudoun County*. The entire county.
*Louisa County*. The entire county.
*Madison County*. The entire county.
*Mathews County*. The entire county.
*Middlesex County*. The entire county.
*Nelson County*. The entire county.
*New Kent County*. The entire county.
*Northampton County*. The entire county.
*Northumberland County*. The entire county.
*Nottoway County*. The entire county.
*Orange County*. The entire county.
*Page County*. The entire county.
*Powhatan County*. The entire county.
*Prince Edward County*. The entire county.
*Prince George County*. The entire county.
*Prince William County*. The entire county.
*Rappahannock County*. The entire county.
*Richmond County*. The entire county.
*Rockbridge County*. The entire county.
*Rockingham County*. The entire county.
*Shenandoah County*. The entire county.
*Southampton County*. The entire county.
*Spotsylvania County*. The entire county.
*Stafford County*. The entire county.
*Surry County*. The entire county.
*Sussex County*. The entire county.
*Warren County*. The entire county.
*Westmoreland County*. The entire county.
*York County*. The entire county.

West Virginia

*Barbour County*. The entire county.
*Berkeley County*. The entire county.
*Brook County*. The entire county.
*Grant County*. The entire county.
*Hampshire County*. The entire county.
*Hancock County*. The entire county.
*Hardy County*. The entire county.
*Jefferson County*. The entire county.
*Marion County*. The entire county.
*Marshall County*. The entire county.
*Mineral County*. The entire county.
*Monongalia County*. The entire county.
*Morgan County*. The entire county.
*Ohio County*. The entire county.
*Pendleton County*. The entire county.
*Pocahontas County*. The entire county.
*Preston County*. The entire county.
*Randolph County*. The entire county.
*Taylor County*. The entire county.
*Tucker County*. The entire county.
*Wetzel County*. The entire county.

**§ 301.45–4 Conditions governing the interstate movement of regulated articles and outdoor household articles from generally infested areas.**

(a) Regulated articles and outdoor household articles from generally infested areas. (1) A regulated article, except for an article moved in accordance with paragraph (c) of this section, shall not be moved interstate from any generally infested area into or through any area that is not generally infested unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–5 and 301.45–8.[4]

(2) An outdoor household article shall not be moved interstate from any generally infested area into or through any area that is not generally infested unless a certificate or OHA document has been issued and attached to such outdoor household article in accordance with §§ 301.45–5 and 301.45–8.

(b) A regulated article originating outside of any generally infested area may be moved interstate directly through any generally infested area without a certificate or permit if the point of origin of the article is clearly indicated by shipping documents, its identity has been maintained, and it has been safeguarded against infestation while in any generally infested area during the months of April through June. To be safeguarded, the article must be in an enclosed vehicle, or completely enclosed by a covering adequate to prevent access by gypsy moths, such as canvas, plastic, or closely woven cloth.

(c) A regulated article originating in a generally infested area may be moved interstate from a generally infested area without a certificate if it complies with (1) or (2) of this paragraph:

(1) The article is moved by the U.S. Department of Agriculture for experimental or scientific purposes, and:

(i) Is moved pursuant to a permit issued for each article by the Administrator;

(ii) Is moved in accordance with conditions specified on the permit and found by the Administrator to be adequate to prevent the dissemination of the gypsy moth, i.e., conditions of treatment, processing, shipment, and disposal; and

(iii) Is moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

(2) The article is logs, pulpwood, or wood chips, and the person moving the article has attached a signed accurate statement to the waybill or other shipping documents accompanying the article stating that he or she has inspected the article in accordance with the Gypsy Moth Program Manual no more than 5 days prior to the date of

[4] Requirements under all other applicable Federal domestic plant quarantines must also be met.

movement and has found no life stages of gypsy moth on the article.

**§ 301.45–5 Issuance and cancellation of certificates, limited permits, and outdoor household article documents.**

(a) A certificate may be issued by an inspector for the movement of a regulated article or an outdoor household article (OHA) if the inspector determines that it is eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such article and:

(1) It has originated in noninfested premises in a generally infested area and has not been exposed to the gypsy moth while within the generally infested area; or

(2) The inspector inspects the article no more than 5 days prior to the date of movement during the months of April through August (14 days prior to the date of movement from September through March) and finds it to be free of the gypsy moth; or

(3) It has been treated under the direction of an inspector to destroy the gypsy moth in accordance with the treatment manual; or

(4) It has been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby as determined by an inspector.

(b) Limited permits may be issued by an inspector to allow interstate movement of any regulated article under this subpart to specified destinations for specified handling, utilization, processing, or treatment in accordance with the treatment manual, when, upon evaluation of all of the circumstances involved in each case, the Administrator determines that such movement will not result in the spread of the gypsy moth because life stages of the moths will be destroyed by such specified handling, utilization, processing or treatment, or the pest will not survive in areas to which shipped, and the requirements of all other applicable Federal domestic plant quarantines have been met.

(c) Certificates and limited permit forms may be issued by an inspector to any person for use for subsequent shipments of regulated articles provided the person is operating under a compliance agreement. Any person operating under a compliance agreement may reproduce the forms as needed to attach them to regulated articles moved under a compliance agreement. Any person operating under a compliance agreement may execute and issue the certificate forms or reproduction of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement, if the person has treated such regulated articles as specified in the compliance agreement, and if the regulated articles are eligible for certification for movement to any destination under all applicable Federal domestic plant quarantines. Any person operating under a compliance agreement may execute and issue the limited permit forms, or reproductions of such forms, for the interstate movement of regulated articles to specified destinations when an inspector has made the determinations specified in paragraph (b) of this section.

(d) A certificate may be issued by a qualified certified applicator for the interstate movement of any outdoor household article or mobile home if such qualified certified applicator determines the following:

(1) That the article has been inspected by the qualified certified applicator and found to be free of any life stage of the gypsy moth; or

(2) That the article has been treated by, or treated under the direct supervision of, the qualified certified applicator to destroy any life stage of the gypsy moth in accordance with methods and procedures prescribed in section III of the Gypsy Moth Program Manual.

(e) An OHA document may be issued by the owner of an outdoor household article for the interstate movement of the article if such person has inspected the outdoor household article and has found it to be free of any life stage of gypsy moth.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by an inspector if he determines that the holder thereof has not complied with any condition for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or permit has been withdrawn may appeal the decision in writing to the Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or permit was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator. (Approved by the Office of Management and Budget under control number 0579–0108.)

**§ 301.45–6 Compliance agreement and cancellation thereof.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Qualified certified applicators must enter into compliance agreements, in accordance with the definition of qualified certified applicator in § 301.45–1. A compliance agreement shall specify safeguards necessary to prevent spread of the gypsy moth, such as disinfestation practices or application of chemical materials in accordance with the treatment manual. Compliance agreement forms may be obtained from the Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever the inspector finds that such person has failed to comply with the conditions of the agreement. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator. (Approved by the Office of Management and Budget under control number 0579–0108.)

**§ 301.45–7 Assembly and inspection of regulated articles and outdoor household articles.**

Persons (other than those authorized to use certificates or limited permits, or reproductions thereof, under § 301.45–5(c)) who desire to move interstate a regulated article which must be accompanied by a certificate or permit shall, at least 7 days before the desired movement, request an inspector to examine the article prior to movement. Persons who desire to move interstate an outdoor household article accompanied by a certificate issued in accordance with § 301.45–5 shall, at least 14 days before the desired

movement, request an inspector to examine the article prior to movement. Persons who desire to move interstate an outdoor household article or a mobile home accompanied by a certificate issued by a qualified certified applicator in accordance with § 301.45–5(d) shall request a qualified certified applicator to examine the article prior to movement. Such articles shall be assembled at such point and in such manner as the inspector or qualified certified applicator designates to facilitate inspection.

**§ 301.45–8 Attachment and disposition of certificates, limited permits, and outdoor household article documents.**

(a) A certificate, limited permit, or OHA document required for the interstate movement of a regulated article or outdoor household article must at all times during such movement be securely attached to the outside of the container containing the regulated article or outdoor household article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the waybill or other shipping document: Provided, however, That the requirements of this section may be met by attaching the certificate, limited permit, or OHA document to the consignee's copy of the waybill or other shipping document only if the regulated article or outdoor household article is sufficiently described on the certificate, limited permit, OHA document or shipping document to identify such article.

(b) The certificate, limited permit, or OHA document for the movement of a regulated article or outdoor household article shall be furnished by the carrier to the consignee at the destination of the shipment.

(c) Any qualified certified applicator who issues a certificate or OHA document shall at the time of issuance send a copy of the certificate or OHA document to the APHIS officer in charge for the State in which the document is issued.

(Approved by the Office of Management and Budget under control number 0579–0108)

**§ 301.45–9 Inspection and disposal of regulated articles and pests.**

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles, outdoor household articles, and gypsy moths as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd).

**§ 301.45–10 Movement of live gypsy moths.**

Regulations requiring a permit for, and otherwise governing the movement of, live gypsy moths in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter.

**§ 301.45–11 Costs and charges.**

The services of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

**§ 301.45–12 Disqualification of qualified certified applicator to issue certificates.**

(a) Any qualified certified applicator may be disqualified from issuing certificates by the Administrator if he determines that one of the following has occurred:

(1) Such person is not certified by a State and/or Federal Government as a commercial certified applicator under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (86 Stat. 983; 7 U.S.C. 136b) in a category allowing use of the restricted pesticides Spray N Kill (EPA Registration No. 8730–30), Ficam W (EPA Registration No. 45639–1), and acephate (Orthene®); or

(2) Noncompliance with any of the provisions of this subpart; or,

(3) Failure to attend and complete, each time such person is recertified as a certified commercial applicator under FIFRA, a workshop approved by the Administrator on the identification and treatment of life stages of gypsy moth on outdoor household articles and mobile homes.

(b) The disqualification is effective upon oral or written notification, whichever is earlier. The reasons for the disqualification shall be confirmed in writing as promptly as circumstances permit, unless contained in the written notification. Any qualified certified applicator who is disqualified from issuing certificates may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the disqualification. The appeal shall state all of the facts and reasons upon which the person relies to show that the disqualification was a wrongful action. The Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0108)

Done in Washington, DC, this 16th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17555 Filed 7–22–93; 8:45 am]

BILLING CODE 3410–34–P

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## Agricultural Marketing Service

### 7 CFR Part 944

**[Docket No. FV–91–245 FR]**

### Fruits; Import Regulations (Grapefruit); Reinstatement of Grapefruit Import Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule reinstates, with minor revisions, the temporarily suspended minimum grade and size requirements for grapefruit imported into the United States. These requirements were temporarily suspended on March 11, 1991, to provide the United States Trade Representative (USTR) adequate time to review contemplated changes in the import requirements. This action is needed so that imported grapefruit meet the same minimum grade and size requirements as those established for grapefruit under the marketing order covering Florida grapefruit, consistent with section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

**EFFECTIVE DATE:** July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act. Section 8e of the Act provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced

commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under Marketing Order No. 905.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are about 25 importers of grapefruit. Small agricultural service firms, which includes importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

The minimum grade and size requirements specified in § 944.106 (7 CFR 944.106) for imported grapefruit were in effect on a continuous basis for several years prior to their suspension on March 11, 1991 (56 FR 10792, March 14, 1991). These requirements were suspended to provide the USTR adequate time to review contemplated changes in the grapefruit import requirements needed to reflect changes in the minimum grade and size requirements for Florida grapefruit specified in § 905.306 (7 CFR 905.306) under Marketing Order No. 905.

A proposed rule concerning this action was issued on September 24, 1992, and published in the Federal Register on October 5, 1992 (57 FR 45754). That rule provided a 15-day comment period which ended October 20, 1992. A comment was filed by Ray Prewett, Executive Vice President, Texas Citrus Mutual, McAllen, Texas favoring the proposal, indicating that it was very important to the citrus industry in the Rio Grande Valley in Texas that the import standards for grapefruit be put back in place. The commenter pointed out that poor quality imported grapefruit not meeting U.S. grade standards may leave consumers with a bad impression of all grapefruit, and that consumers may confuse such grapefruit with Texas grapefruit in the marketplace.

The language in this final rule has been modified somewhat from that in the proposed rule by relaxing for imported red seedless grapefruit the minimum grade to "Improved No. 2" from "Improved No. 2 External, U.S. No. 1 Internal" through August 22, 1993; and the minimum size requirement to 3$^{5}/_{16}$ inches in diameter from 3$^{9}/_{16}$ inches through November 7, 1993. These modifications reflect a size relaxation made on October 26, 1992 (57 FR 47255, October 15, 1992), and a grade relaxation made on May 31, 1993 (58 FR 31465, June 3, 1993) for domestic shipments of Florida red seedless grapefruit; and must be made so that imported grapefruit meet the same grade and size requirements as Florida grapefruit. Also, the effective date of the import regulation for "Seeded", "Seedless, red", and "Seedless, except red" grapefruit is changed from that proposed in the notice to three days after date of publication in the Federal Register to comply with the requirements of the Act.

Under this final rule, imported seeded grapefruit must grade at least U.S. No. 1 and be at least 3$^{13}/_{16}$ inches in diameter. Imported red seedless grapefruit must grade at least "Improved No. 2" and be at least 3$^{9}/_{16}$ inches in diameter, during the period July 26, 1993, through August 22, 1993, with the minimum grade increasing to "Improved No. 2 External and U.S. No. 1 Internal" for shipments made on and after August 23, 1993, and the minimum size increasing to 3$^{9}/_{16}$ inches in diameter for shipments made on and after November 8, 1993. Imported white seedless grapefruit must grade at least Improved No. 2 External and U.S. No. 1 Internal and be at least 3$^{9}/_{16}$ inches in diameter.

This final rule requires that imported grapefruit be inspected and certified as meeting the minimum grade and size requirements, as hereinafter specified. These requirements are the same as those in effect for domestic shipments of grapefruit grown in Florida under Marketing Order No. 905, and similar to those in effect under § 944.106 just prior to their suspension on March 11, 1991.

The final rule sets forth the minimum grade and size requirements for grapefruit in § 944.106. In addition, the section heading is revised, the term "grapefruit" is defined, and current paragraph (d) in the section is removed since it is not needed. These changes are non-substantive in nature and are made to make the regulation easier to read and understand by persons affected by the requirements.

Further, this final rule increases the quantity of grapefruit which persons may import, exempt from import requirements, to 15 standard packed $^{4}/_{5}$-bushel cartons, so that it is the same quantity as the quantity of Florida grapefruit currently exempted under § 905.141 (7 CFR 905.141). The exemption in the suspended import regulation was 10 standard packed $^{4}/_{5}$-bushel cartons.

During the 1989, 1990, and 1991 seasons, fresh grapefruit were imported into the United States from the Bahamas, the Dominican Republic, Israel, and Mexico. United States imports of grapefruit increased from 105,900 cartons (42.5 pounds per carton) in 1986 to 407,058 cartons in 1991. Imports from the Bahamas, the principal source of grapefruit imports, rose from 49 percent of the total in 1986 to 90 percent of the total in 1991.

The Department's National Agricultural Statistics Service forecast for 1992–93 Florida grapefruit production is 109.5 million cartons (42.5 pounds per carton), 29 percent above 1991–92, and 53 percent above the 1989–90 freeze-reduced crop. According to the Citrus Administrative Committee, which locally administers

Marketing Order No. 905, Florida fresh grapefruit shipments totaled 41.8 million cartons for the 1991–92 season. As indicated by data from the Department's Federal-State Market News Service, Florida shipments accounted for over 85 percent of United States total fresh grapefruit shipments during the years from 1986 through 1991. Imports will likely constitute less than one percent of United States fresh utilization.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this final rule.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule reflects the Department's appraisal of the need to reinstate the suspended grapefruit import requirements to provide equal treatment to both domestic producers, domestic handlers, and importers, and make the specified changes in the grapefruit import regulation, as hereinafter set forth, to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The grapefruit import requirements should be reinstated as soon as possible, so that imported grapefruit meet the same grade and size requirements as are applicable to domestic shipments of Florida grapefruit as required under section 8e of the Act; and (2) the proposed rule provided a 30-day comment period, and the only comment received favored this action.

**List of Subjects in 7 CFR Part 944**

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

**PART 944—FRUITS; IMPORT REGULATIONS**

1. The authority citation for 7 CFR part 944 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. The suspension of § 944.106 is lifted and that section is revised to read as follows:

**§ 944.106 Grapefruit import regulation.**

(a) Pursuant to section 8e (7 U.S.C. § 608e-1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

| Grapefruit classification | Regulation period | Minimum grade | Minimum diameter (inches) |
|---|---|---|---|
| Seeded<br>Seedless, red | On & after[1]<br>08/22/93<br>08/23/93–11/07/93<br>On and after 11/08/93 | U.S. No. 1<br>Improved No. 2<br>Improved No. 2 External<br>U.S. No. 1 Internal<br>Improved No. 2 External<br>U.S. No. 1 Internal | 3 12/16<br>3 5/16<br>3 6/16<br>3 9/16 |
| Seedless, except red | On & after[1] | Improved No. 2 External<br>U.S. No. 1 Internal | 3 9/16 |

[1] July 26, 1993.

(b) The term grapefruit is defined as citrus paradisi, MacFadyen.

(c) Terms and tolerances pertaining to grade and size requirements, which are defined in the United States Standards for Grades of Florida Grapefruit (7 CFR 51.750–51.784), and in Marketing Order No. 905 (7 CFR 905.18), shall be applicable herein.

(d) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of grapefruit imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of grapefruit, is required on all such imports. The inspection and certification services will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards of Fresh Fruits, Vegetables, and Other Products (7 CFR part 51), and in accordance with the regulation designating inspection services and procedure for obtaining inspection and certification (7 CFR 944.400).

(e) The term "importation" means release from custody of the United States Customs Service.

(f) Any person may import up to 15 standard packed cartons (12 bushels) of grapefruit exempt from the requirements specified in this section.

(g) Any grapefruit which fail to meet the import requirements prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such grapefruit borne by the importer.

(h) The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905 (7 CFR part 905).

Dated: July 19, 1993.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–17504 Filed 7–22–93; 8:45 am]

BILLING CODE 3410-02-P

## NATIONAL CREDIT UNION ADMINISTRATION

**12 CFR Part 701**

**Supervisory Committee Audits and Verifications**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY** The NCUA Board is amending its regulations governing supervisory committee audits and verifications. The amendments will: (1) Add a nonstatistical sampling option for independent, licensed, certified public

accountants in the verification of members' accounts consistent with applicable generally accepted auditing standards (GAAS); and (2) change applicable sections of the current regulation to more properly reflect accounting/auditing terms of art without otherwise changing the intent of the regulation. Dropped from consideration in the final amendment were the proposed amendments to require independent annual audits (opinion audits) for federally insured credit unions with assets exceeding $50 million, and to require that the supervisory committee and/or its auditors provide NCUA the option to photocopy working papers supporting the audit.

**EFFECTIVE DATE:** August 23, 1993.

**ADDRESSES:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Karen Kelbly, Accounting Officer, Office of Examination and Insurance, (202) 682–9640, or Michael McKenna, Staff Attorney, Office of General Counsel, (202) 682–9630, at the above address.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

Section 701.12 sets forth supervisory committee's responsibility in meeting the audit and verification requirements of the Federal Credit Union Act. A supervisory committee audit is required at least once every calendar year covering the period since the last audit. The scope of the audit must be that which, at a minimum, tests the federal credit union's assets, liabilities, equity, income, and expenses for existence, proper cut off, valuations, ownership, disclosures and classification, and internal controls (§ 701.12(b)). A written report on the audit must be made to the board of directors and, if requested, NCUA (§ 701.12(c)). Working papers must be maintained and made available to NCUA (§ 701.12(c)). Independence requirements must be met (§ 701.12(d); standards governing verifications—100 percent verification or statistical sampling—are set forth (§ 701.12(e)). Section 741.2 makes these requirements applicable to federally insured state-chartered credit unions.

At the March 25, 1993, Board meeting in Boston, Massachusetts, the NCUA Board issued for public comment a proposed amendment to the current supervisory committee audit and verification requirements. The amendments include a requirement for annual audits (opinion audits) by independent, licensed, certified public accountants for federally insured credit unions with assets greater than $50 million. The NCUA Board believed this was necessary due to the increasing complexity of credit union financial statements. In line with this philosophy, the agency had recently begun collecting quarterly call report data on larger credit unions. The requirement for an opinion audit was expected to go hand in hand with this increased collection of financial data to facilitate the adequate supervision and examination of federal credit unions. The General Accounting Office had recommended such a requirement as a result of their 2-year study of NCUA and the credit union system (*"Credit Unions: Assuring Future Soundness"*).

In addition, the proposal expanded the requirement of the supervisory committee and their compensated auditors to make original working papers available for NCUA review, and to also allow photocopying by any authorized employee of NCUA. Credit unions would also be encouraged to include a clause in their engagement letters with outside auditors assuring the advanced agreement to allow regulators to review and to photocopy original working papers, as needed.

The proposal intended to amend applicable sections of the current regulation to more properly reflect accounting/auditing terms of art without changing the intent of the existing regulation. Certain terms, (e.g., "audit," "review," "generally accepted auditing standards" (GAAS), "generally accepted accounting principles" (GAAP)), have a specific meaning within the accounting profession and the usage of some of these terms in the current regulation is inconsistent and/or confusing in relation to the profession's usage. The Board intended to minimize differences in usage of terminology and alleviate confusion within the credit union industry.

And finally, the proposed suggested the addition of a nonstatistical sampling option consistent with *applicable* generally accepted auditing standards for *independent, licensed, certified public accountants* in the verification of members' accounts. The current regulation permits two approaches to member account verification: 100 percent sampling or statistical sampling. The additional option would be consistent with NCUA efforts to minimize differences between regulatory accounting/auditing practices and GAAP/GAAS.

**Comments**

Two hundred two comment letters were received: one hundred thirty-five from federal credit unions, thirty-seven from federally insured, state-chartered credit unions, two from state regulators, fourteen from league organizations, three from trade groups, and eleven from various other parties. Thirty-one commenters gave their full support of the amendment as written; fifty-three commenters offered mixed support; and one hundred eighteen commenters opposed the amendment. The predominant comments are summarized as follows:

**Section 701.12(b)—Requirement for an "Opinion" Audit**

Currently, § 701.12 has no requirement for an opinion audit by an independent, licensed, certified public accountant. The proposed amendment would require all federally insured credit unions with an asset size of $50 million or greater to have an opinion audit performed by an independent, licensed, certified public accountant. Fifty-nine commenters support the opinion audit requirement. Five of these commenters would lower the limit to $25 million, two would lower it to $10 million and two would lower it to $5 million. Three commenters would require independent opinion audits for all federally insured credit unions.

The commenters supporting the proposal believe the amendment is necessary due to the increasing complexity of credit union financial statements. A number of these commenters also state that most large credit unions already receive opinion audits. Some commenters believe that these audits can be a key factor in discovering inadequate internal controls and accounting records within the credit union. One commenter states that an opinion audit provides assurance that the financial statements are fairly presented in accordance with GAAP. Another commenter states that these audits provide important information to the board of directors and credit union members. One commenter states that the fact that 70.9 percent of credit unions over $50 million in assets already obtain certified public accountant opinion audits negates the argument that credit unions of that size would incur significant additional costs; the large majority of these credit unions are already incurring this expense.

Eleven commenters believe there should be an intermediate asset size threshold above which a supervisory committee audit may be permitted if conducted by an independent, licensed, certified public accountant. Three commenters oppose the idea of an intermediate asset size threshold.

One hundred and forty-one commenters object to the annual audit

requirement. Ninety-three commenters believe the proposed amendments will impose undue costs on credit unions. Seventy-four commenters oppose the proposal since NCUA already has the authority to require a certified audit upon discovery of poor recordkeeping and/or auditing. They believe NCUA can adequately supervise credit unions without these amendments.

Sixty-six commenters believe the amendments are an unnecessary regulatory burden. Forty-nine commenters believe an independent audit does not prevent or discover fraud, with a number of these commenters citing the S&L crisis. Twenty-two commenters believe the proposal would erode the decision-making authority of the credit union board of directors and supervisory committee.

Twenty-six commenters believe the league auditors are better qualified and have a better understanding of credit unions than most certified public accountant firms. Two commenters stated that, given the high quality of service and cost effectiveness of audits performed by credit union leagues and their service corporations, the final amendment should allow for the required audit to be performed by leagues if: (1) The audit is performed under generally accepted auditing standards; and (2) some reasonable compliance standards can be developed.

In light of the fact that 72 percent of all credit unions over $50 million in assets already receive an "opinion" audit by an independent, licensed, certified public accountant, and due to the enforcement provisions of § 701.13 through which the agency can require an "opinion" audit given serious and persistent recordkeeping problems, the Board agrees not to amend § 701.12(b) in this regard at this time.

**Section 701.12(b)—Changes in Terminology**

The proposed amendment would replace the term "audit" in section (b) with "supervisory committee audit." Furthermore, the proposed amendment would replace the terminology "generally accepted auditing procedures and standard" with three alternatives that more clearly describe how the annual supervisory committee audit requirement may be satisfied.

Eight commenters stated that it would clarify terminology to change the term "audit" to "supervisory committee audit." Furthermore, one of these commenters states that paragraph (b)(1)(i)(A) should delete "in accordance with GAAS" and that subparagraph (b)(1)(i)(B) should delete "* * *" in accordance with applicable GAAS that in itself * * *" because all certified public accountants must adhere to GAAS procedures when issuing an opinion. The Board did not delete the references to GAAS in either part because, although the commenter is technically correct in his point, only those thoroughly knowledgeable of the auditing profession and its governing standards would presume this fact; nonprofessionals most likely would not. The Board feels the reference adds to rather than detracts from the regulation.

The American Institute of Certified Public Accountants, commenting on the regulation, suggested other minor terminology changes which were intended to be clarifying without changing the intent of the Board in the current regulation. For the most part, these changes were adopted in the final amendment.

**Section 701.12(c)—Access to, and Photocopying of Original Working Papers**

The proposed amendment requires the supervisory committee and/or its auditors to provide NCUA the option to photocopy working papers supporting the audit. Forty-eight commenters support this proposal. One hundred and forty-four commenters oppose this amendment. A number of these commenters believe this amendment would prove costly to credit unions. They suggest that NCUA work out the issue with the accounting profession rather than placing credit unions in the middle of the dispute. Three commenters stated that the cost of access and photocopying of original work papers should be borne by NCUA. Twenty commenters believe there should be a time limit as to when requested original working papers must be provided for review and photocopying. Ten commenters oppose such a time limit.

A number of commenters stated that, by providing photocopies, the independent auditor may lose control of his/her working papers and they may be used inappropriately without the auditor's knowledge and consent. Furthermore, a few of these commenters believe as auditors prepare working papers for the purpose of expressing an opinion on the financial statements taken as a whole, photocopies of individual working papers provided to regulators may be taken out of context, misinterpreted, or relied upon inappropriately. Therefore, they believe it is essential that the auditor maintain control over the working papers to avoid situations where they may be misused. Furthermore, these commenters believe that providing third parties with the right to photocopy working papers may make a client reluctant to share certain information with their independent auditor if they know the possibility exists that the information could be obtained by third parties.

Some commenters believe that the objections of certain accounting firms to this proposal are so strong that such firms will refuse to perform audits if the requirement becomes effective. They believe the result will be that capable accounting firms, experienced in the independent audit of large financial institutions, will withdraw from this business. This could mean a decline in the quality of independent auditing available to credit unions.

The NCUA Board accepts the strong opposition to this provision of the proposed amendments and will forego adoption at this time. But the Board stands resolute that workpapers must be open to regulatory review, and occasional and reasonable requests for photocopying must be honored. Agency staff will work with the accounting profession and their representatives to reach a practical compromise. Credit unions, through their supervisory committees, will be called upon to assist the regulator in obtaining working paper access. While dropping the language to require photocopying, the Board retained the balance of the language in the proposed amendment and allowed a provision for working paper access at the credit union's offices or within a reasonable proximity.

**Section 701.12(e)—Use of Nonstatistical Sampling**

The proposed amendment would permit an independent, licensed, certified public accountant to use a nonstatistical sample in the verification of member accounts if certain criteria are met. Seven commenters support the proposal to use a nonstatistical sampling option for independent, licensed, certified public accountants in the verification of member accounts. These commenters believe the change will be a benefit to some credit unions.

Eleven commenters oppose the change as proposed because they believe the ability to use nonstatistical sampling should be extended to all certified public accountants performing audit services regardless of whether or not they are affiliated with an independent, licensed, certified public accounting firm (i.e., in public practice), e.g., certified public accountants on staff with professional auditing services. The Board disagrees. There is a presumed level of competence and independence associated with a practicing

independent, licensed, certified public accountant which may not necessarily exist when a certified public accountant is acting in the capacity of an employee to a noncertified public accountant. The Board is seeking to require the recognized standard in nonstatistical sampling as established by the auditing standards-setters. Three of these commenters state the use of nonstatistical sampling methods should be allowed by all audit practitioners engaged to perform an audit regardless of whether or not they are certified public accountants. Again, for the reasons stated above, the Board disagrees. One commenter requests the board extend this method of verification to whatever firm the credit union selects, as well as the supervisory committee itself, as long as it is attested to by an independent, licensed, certified public accountant. To the extent such an approach would meet applicable auditing standards, the Board would accept the same as meeting regulatory requirements.

Another commenter states that since NCUA regulations require that supervisory committee audits be made in accordance with generally accepted auditing procedures and standards, this proposed change is unnecessary. The Board is advised that, under the current regulations, unless this change is made, nonstatistical sampling would not be permitted by independent, licensed, certified public accountants even though their applicable standards permit such sampling methods under certain circumstances.

Three commenters believe that following GAAP and GAAS should be more than enough for a proper audit. The Board accepts this argument and it is for this very reason the Board wants to bring regulatory requirements in line with professional auditing standards by permitting the nonstatistical sampling option with limitations. The commenters misunderstood the Board's intent in proposing this amendment. Another commenter, also against the proposal on verification, states that this type of action would create a standard for independent certified public accountants to adhere to when clearly NCUA has no jurisdiction over certified public accountants. The Board suggested this change to soften the currently more stringent NCUA verification requirements to bring them in line with auditing professional standards which already permit nonstatistical sampling methods, not the reverse as suggested.

The Board has decided to go forward with the amendment to adopt the nonstatistical sampling option in the verification of members' accounts and to limit that option to independent, licensed, certified public accountants.

## Regulatory Procedures

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the amendment will not have a significant economic impact on a substantial number of small credit unions. As to small credit unions, the amendment clarifies without imposing additional burden. Accordingly, the NCUA Board determines and certifies that this amendment does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

### *Paperwork Reduction Act*

The amendment does not change the paperwork requirements.

### *Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of rights and responsibilities among the various levels of government.

## List of Subjects in 12 CFR Part 701

Civil rights, Credit, Credit Unions, Fair housing, Insurance, Mortgages, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 15, 1993.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA amends 12 CFR part 701 as follows:

## PART 701—[AMENDED]

1. The authority citation for part 701 continues to read as follows:

12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798 and Public Law 101–73. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1981 and 12 U.S.C. 3601–3610.

2. Section 701.12 is amended by revising paragraphs (b), (c) and (e).

**§ 701.12 Supervisory committee audits and verifications.**

* * * * *

(b)(1) A "supervisory committee audit" of each Federal credit union shall occur at least once every calendar year and shall cover the period elapsed since the last audit. The supervisory committee audit shall be made using applicable professional auditing procedures, which, at a minimum, should test the Federal credit union's assets, liabilities, equity, income, and expenses for existence, proper cutoff, valuations, ownership, disclosures and classification, and internal controls. The annual supervisory committee audit requirement may be satisfied by one of the following:

(i) An audit performed by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards;

(ii) An "agreed upon procedures engagement" performed by an independent, licensed, certified public accountant in accordance with *applicable* generally accepted auditing standards that, in itself or combined with procedures performed by the supervisory committee, encompasses the scope of a supervisory committee audit; or

(iii) Professional auditing procedures performed by the supervisory committee and/or their designated, qualified representative that encompasses the scope of a supervisory committee audit.

(2) Upon completion, a written report of the supervisory committee audit shall be promptly made available to the board of directors of the Federal credit union and, upon request, the National Credit Union Administration's regional director. It is the responsibility of the supervisory committee to ensure that the completion of the annual supervisory committee audit is timely, that *applicable* generally accepted auditing standards are followed, that an adequate audit of the credit union records is made, and that the written audit report is promptly prepared and reported to the board of directors.

(c) The supervisory committee and/or its independent auditors shall be responsible for the preparation and the maintenance of original working papers used to support each supervisory committee audit. Such original working papers shall be made available at the credit union offices or within a reasonable proximity by the supervisory committee and its independent auditors for review by any authorized employee of NCUA. If the credit union supervisory committee fails to do so, NCUA can reject the supervisory

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committee audit as inadequate in meeting the requirements § 701.12.

* * * * *

(e)(1) The verification of members' accounts shall be made using any of the following methods:

(i) A controlled verification of 100 percent of members' share and loan accounts;

(ii) A sampling method that provides a random selection that is expected to be representative of the population from which the sample was selected, which will allow the auditor to test sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated in relation to the financial statements taken as a whole. When the auditor concludes that evidence provided by confirmations alone is not sufficient, additional procedures should be performed. That sampling procedure must provide each dollar in the population an equal chance of being selected;

(iii) *Independent, licensed, certified public accountants* are provided the additional option of sampling members' accounts using nonstatistical sampling methods consistent with *applicable* generally accepted auditing standards, provided the sampling method provides a selection that allows the auditor to test sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated in relation to the financial statements taken as a whole. When the auditor concludes that evidence provided by confirmations alone is not sufficient, additional procedures should be performed. Independent, licensed, certified public accountants will be responsible for documenting their sampling procedures, and providing evidence to NCUA, if requested, that the method used is consistent with applicable generally accepted auditing standards.

(2) Records of those accounts verified will be maintained and will be retained until the next verification of members' accounts is completed.

[FR Doc. 93–17476 Filed 7–22–93; 8:45 am]
BILLING CODE 7535–01–M

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**12 CFR Part 711**

**Management Official Interlocks**

**AGENCY:** National Credit Union Administration.

**ACTION:** Final amendments.

**SUMMARY:** NCUA is amending its regulation governing management official interlocks to conform the regulation to changes made in the Depository Institution Management Interlocks Act. The changes implement statutorily mandated exceptions to the prohibitions on management interlocks. These exceptions relate to advisory directors, certain types of savings associations and savings and loan holding companies, interlocks involving diversified savings and loan holding companies, and the extension of the grandfather period under the statute. The amendments will affect credit unions only to the extent that credit union officials have interlocking relationships with another type of financial institution.

**EFFECTIVE DATE:** July 23, 1993.

**ADDRESSES:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682–9630.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Part 711 of NCUA's Rules and Regulations implements the provisions of the Depository Institution Management Interlocks Act ("Interlocks Act," 12 U.S.C. 3201 et seq.). The Interlocks Act, in general, prohibits unaffiliated depository institutions (including credit unions) and depository institution holding companies of a certain size and proximity to each other from sharing management officials. The Interlocks Act was amended with the passage of the Management Interlocks Revision Act of 1988 ("Revision Act") and again with the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). As a result of the above enactments, it is necessary to amend NCUA's regulation. Although this regulation does not affect the daily operation of credit unions, the amendments will affect interlocking relationships when an official serves a federally insured credit union and another type of financial institution.

**B. Comments**

The NCUA Board issued proposed amendments to the Management Official Interlocks regulation on February 24, 1993 (see 58 FR 12910, March 8, 1993). Three comment letters were received. Two commenters support the proposed amendments and believe that the amendments will not have a large impact on federally insured credit unions. One commenter questions the necessity of the regulation. NCUA is specifically granted the authority to issue a regulation under the Interlocks Act. In light of the comments and the statutory requirements, the Board has adopted the proposed amendments in final form without modification. Since the amendments provide for exceptions to a number of regulatory prohibitions, they are being made immediately effective upon publication in the **Federal Register** pursuant to the authority of section 553(d)(3) of the Administrative Procedures Act (5 U.S.C. 553).

The final amendments to the regulation (1) revise the definition of the term "management official" in § 711.2(h)(1) to exclude advisory and honorary directors of depository institutions with total assets of less than $100 million; (2) add a new paragraph § 711.2(o) to define the phrase "appropriate Federal depository institutions regulatory agency"; (3) add two new categories of "exempt organizations" to § 711.4(a) setting forth interlocks permitted without NCUA Board approval; (4) revise § 711.4(c) to allow director interlocks between a diversified savings and loan holding company or its nondepository organization subsidiaries and any unaffiliated depository organization with 60 days prior notice to the appropriate federal depository institutions regulatory agency provided that the agency does not disapprove of the interlock; and (5) amend § 711.5 to reflect the extension of the grandfathered interlocking relationship period to November 10, 1993. In addition, the cross reference in the regulation to what had been the definition of the term "diversified savings and loan holding company" as found in the National Housing Act has been changed to refer to section 10 of the Home Owners' Loan Act. This change was necessary as the relevant definition was moved from the National Housing Act and placed into the Home Owners' Loan Act by FIRREA.

*Paperwork Reduction Act*

There has been no change in the paperwork requirements.

*Regulatory Flexibility Analysis*

This regulation does not impact the daily operation of credit unions. The NCUA Board hereby certifies that the final amendments do not have a significant impact on a substantial number of small credit unions. In addition, NCUA is required to amend this regulation to conform to changes in relevant statutes. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

*Executive Order 12612*

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Part 711 already applies to all federally insured credit unions (both federal and state-chartered). The final amendment simply implement statutorily mandated exceptions to the prohibitions on management interlocks. Again, the daily operation of credit unions is unaffected. Therefore, the NCUA Board has determined that the final amendments do not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects in 12 CFR Part 711**

Credit Unions, Management Official Interlocks Act.

By the National Credit Union Administration Board on July 15, 1993.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA amends 12 CFR Part 711 as follows:

## PART 711—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 711 continues to read as follows:

**Authority:** 12 U.S.C. 3201 et seq.

**§§ 711.2 and 711.4 [Amended]**

2. Part 711 is amended in §§ 711.2(l) and 711.4(c) by removing the phrase "section 408(a)(1)(F) of the National Housing Act (12 U.S.C. 1730a(a)(1)(F))" and substituting therefor "section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(F))."

3. Section 711.2 is amended by revising paragraph (h)(1) and adding paragraph (o) to read as follows:

**§ 711.2 Definitions.**

* * * * *

(h) (1) "Management official" means:

(i) an employee or officer with management functions (including a branch manager);

(ii) a director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000);

(iii) a trustee of a business organization under the control of trustees (e.g., a mutual savings bank); or

(iv) any person who has a representative or nominee serving in any such capacity.

* * * * *

(o) "Appropriate federal depository institutions regulatory agency" means, with respect to any depository institution or depository holding company, the agency referred to in section 209 of the Interlocks Act in connection with such institution or company.

4. Section 711.4 is amended by removing the word "or" at the end of paragraph (a)(5), removing the period at the end of paragraph (a)(6) and replacing it with a semicolon; adding new paragraphs (a)(7) and (8); and designating the test of paragraph (c) following the heading as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

**§ 711.4 Permitted interlocking relationships.**

(a) * * *

(7) a depository organization which is closed or is in danger of closing as determined by the appropriate federal depository institutions regulatory agency in accordance with its regulations, and which is acquired by another depository organization for the five-year period beginning on the date of the acquisition; or

(8) any savings association (as defined in section 10(a)(1)(A) of the Home Owners' Loan Act, 12 U.S.C. 1467a(1)(A)), or any savings and loan holding company (as defined in section 10(a)(1)(D) of such Act, 12 U.S.C. 1467a(1)(F)) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of the Home Owners' Loan Act (12 U.S.C. 1467(a)(q)) with respect to the service as a single management official of such savings association or savings and loan holding company or any subsidiary thereof by a single management official of the savings association or savings and loan holding company which purchased the stock, provided that the Director of the Office of Thrift Supervision determines that such dual service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

* * * * *

(c) Diversified savings and loan holding company.

(2) (i) A director of an unaffiliated depository organization may serve as a director of a diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act, 12 U.S.C. 1467a(1)(F)) or any subsidiary of such holding company that is not a depository organization, provided that:

(A) notice of the proposed dual service is given to the appropriate federal depository institution's regulatory agency for such company, and for the unaffiliated depository organization for which the individual will also serve as a management official, not less than 60 days before the dual service begins, and;

(B) neither agency disapproves of the dual service prior to the expiration of the 60-day period.

(ii) The NCUA may disapprove the proposed dual service of a management official at a diversified savings and loan holding company of which the NCUA has been given notice as required by paragraph (c)(2)(i) of this section if NCUA finds that:

(A) the dual service cannot be structured or limited so as to preclude the service from resulting in a monopoly or the substantial lessening of competition in financial services in any part of the United States;

(B) the dual service would lead to substantial conflicts of interest or unsafe and unsound practices; or

(C) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information requested by the NCUA in connection with the notice.

(iii) NCUA may require that any dual service which was not disapproved prior to the expiration of the 60-day notice period be terminated if a change in circumstances occurs which would have provided a basis for disapproval of the dual service during the prior notice period.

**§ 711.5 [Amended]**

5. Section 711.5 is amended by removing "1988" and inserting in lieu thereof "1993."

[FR Doc. 93-17477 Filed 7-22-93; 8:45 am]

BILLING CODE 7535-01-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 92-NM-136-AD; Amendment 39-8629; AD 93-14-05]**

### Airworthiness Directives; British Aerospace Model BAC 1-11-200 and -400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Model BAC 1-11-200 and -400 series airplanes, that currently requires repetitive inspections of spanwise wing flap secondary drive shafts to detect failure or damage, until all spanwise wing flap secondary drive

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shafts have been replaced, repaired, overhauled, or modified. This amendment adds new inspections, expands certain inspection areas, and requires continued repetitive inspections even though a shaft has been replaced, repaired, or overhauled. This amendment is prompted by service reports that indicate what was considered previously to be "improved" wing flap secondary drive shafts can fail from fatigue; therefore, repetitive inspections are necessary to assure continued safe operation of the wing flap system. The actions specified by this AD are intended to prevent unannunciated failure of the wing flap secondary drive shafts.

**DATES:** Effective August 23, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 77-17-10 R2, Amendment 39-4713 (48 FR 40210, September 6, 1983), which is applicable to all Model BAC 1-11-200 and -400 series airplanes, was published in the Federal Register on March 2, 1992 (58 FR 11999). The action proposed to require repetitive inspections of spanwise wing flap secondary drive shafts to detect failure or damage, until all spanwise wing flap secondary drive shafts have been replaced, repaired, overhauled, or modified.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

The following paragraphs of the final rule have been revised to clarify the FAA's intent with regard to the level of visual inspection to be performed:

1. Paragraphs (a), (b)(2), and (c) have been revised to clarify that "detailed visual inspections" are required.

2. Paragraphs (b) and (b)(1) have been revised to clarify that "general visual inspections" are required.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $21,164 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $664,609, or $21,439 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39-4713 (48 FR 40120, September 6, 1983), and by adding a new airworthiness directive (AD), amendment 39-8629, to read as follows:

**93-14-05 British Aerospace:** Amendment 39-8629. Docket 92-NM-138-AD. Supersedes AD 77-17-10 R2, Amendment 39-4713.

*Applicability:* All Model BAC 1-11-200 and -400 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent unannunciated failure of the wing flap secondary drive shafts, accomplish the following:

(a) Within 300 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 900 hours time-in-service prior to the effective date of this AD: Open the left and right spoilers and perform an inspection, visually (detailed visual inspection) and by feel, of the visible wing flap secondary drive shafts to detect failure or damage, in accordance with paragraph 2.4 of British Aerospace BAC One-Eleven Alert Service Bulletin 27-A-PM5341, Issue 4, dated May 6, 1991. Prior to further flight, repair or replace any defective shafts in accordance with paragraphs (c)(2) and (e) of this AD.

(b) Within 1,200 hours time-in-service after the effective date of this AD: Perform a general visual inspection of all wing flap secondary drive shafts to detect failure or damage, in accordance with paragraph 2.1 of British Aerospace BAC One-Eleven Alert Service Bulletin 27-A-PM5341, Issue 3, dated September 28, 1981, or paragraph 2.1.2 of Issue 4, dated May 6, 1991.

(1) Repeat the general visual inspections thereafter at intervals not to exceed 1,200 hours time-in-service.

(2) If any shaft is found that is distorted or chafed, prior to further flight, perform an inspection of that shaft, visually (detailed visual inspection) and by feel, in accordance with paragraph 2.4 of British Aerospace BAC One-Eleven Alert Service Bulletin 27-A-PM5341, Issue 3, dated September 28, 1981, or Issue 4, dated May 6, 1991. Shafts that fail to meet the inspection specifications listed in paragraph 2.4 of the service bulletin must be

replaced, prior to further flight, in accordance with paragraph 2.4.1 of the service bulletin.

(c) For spanwise wing flap secondary drive shafts between wing station 0 and wing rib 14: Prior to the accumulation of 3,600 total hours time-in-service or within the next 1,200 hours time-in-service after the effective date of this AD, whichever occurs later, perform an inspection, visually (detailed visual inspection) and by feel, to detect failure or damage, in accordance with paragraph 2.4 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981, or Issue 4, dated May 6, 1991.

(1) Repeat the inspection thereafter at the times specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD:

(i) For spanwise wing flap secondary drive shafts that have accumulated less than 24,000 total hours time-in-service: At intervals not to exceed 3,600 hours time-in-service or 24 months, whichever occurs earlier.

(ii) For spanwise wing flap secondary drive shafts that have accumulated 24,000 or more hours time-in-service: At intervals not to exceed 2,400 hours time-in-service or 24 months, whichever occurs earlier.

(2) Shafts that fail to meet the specifications listed in paragraph 2.4 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981, or Issue 4, dated May 6, 1991, must be replaced, prior to further flight, in accordance with paragraph 2.4.1 of the service bulletin.

(d) For wing flap secondary drive shafts located between wing station 0 and wing rib 14, listed in Appendix 1 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 4, dated May 6, 1991, on which Modification PM5341/HCA929 is applicable, but has not been accomplished: Prior to the accumulation of 30,000 total hours time-in-service, or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; overhaul and modify the wing flap secondary drive shafts by installing British Aerospace Modification PM5341, in accordance with paragraph 2.3 of British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981, or Issue 4, dated May 6, 1991. At overhaul, the shaft tubing must be replaced with Modification PM5341 improved tubing, but serviceable end fittings may be reused.

(e) Whenever replacing or repairing a flap secondary drive shaft in accordance with paragraph (a), (b) or (c) of this AD, or whenever overhauling a wing flap secondary drive shaft in accordance with paragraph (d) of this AD, inspect the adjacent shaft support bearings for excessive radial play, in accordance with Section 27–52–00 of the BAC 1–11 Maintenance Manual. Prior to further flight, replace any shaft support bearings having radial play in excess of 0.020 inch total indicated reading with a serviceable bearing.

(f) Operators who have not kept records of hours time-in-service on individual wing flap secondary drive shafts shall substitute airplane hours time-in-service in lieu thereof.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections, replacement, overhaul, and modification shall be done in accordance with British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 3, dated September 28, 1981; and British Aerospace BAC One-Eleven Alert Service Bulletin 27–A–PM5341, Issue 4, dated May 6, 1991; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(j) This amendment becomes effective on August 23, 1993.

Issued in Renton, Washington, on July 9, 1993.

**Gary L. Killion,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17510 Filed 7–22–93; 8:45 am]

BILLING CODE 4910–13–P

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## 14 CFR Part 39

**[Docket No. 91–ANE–54; Amendment 39–8623; AD 93–13–10]**

## Airworthiness Directives; General Electric Company CF6–45/–50 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines, that requires a one-time inspection for cracking and minimum thickness of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool, and replacement or remarking if necessary. This amendment is prompted by reports of fatigue cracking of the stage 12 compressor disk. The actions specified by this AD are intended to prevent engine stall, aborted takeoff, or inflight engine shutdown.

**DATES:** Effective September 21, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 21, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; (617) 238–7138, fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines was published in the Federal Register on August 19, 1992 (57 FR 37483). That action proposed to require a one-time inspection for cracking and minimum thickness of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool; and replacement if found cracked or below minimum thickness, or remarking and reduction in life limit if found with a reduced thickness. These actions must be accomplished in accordance with GE CF6–50 Service Bulletin (SB) No. 72–1006, Revision 1, dated November 14, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two comments support the rule as proposed.

One comment recommends that a compliance end date of December 31, 1997, be incorporated in paragraph (a)(1) of the proposed rule. The comment claims that as written, the proposed rule could conceivably allow some very low time utilization engines or spools of the suspect population

(paragraph (a)(1)) to operate past the compliance end date for the non-suspect population (paragraph (a)(2)). Providing an end date ensures that all spools would be inspected by December 31, 1997. The FAA concurs. Paragraph (a)(1) of this AD has been changed accordingly to incorporate the compliance end date of December 31, 1997.

One comment recommends that the shop visit definition in compliance paragraph (e) of the proposed rule be revised by adding the words "involving the separation of any major module." This proposed definition change would allow an operator increased flexibility in scheduling inspections, and perhaps avoid early and unnecessary tear down of the high pressure compressor module. The FAA concurs. Paragraph (e) of this AD has been changed to incorporate the revised shop visit definition.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,000 GE CF6–45/–50 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 90 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $80,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,485,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–13–10 General Electric Company:** Amendment 39–8623. Docket 91–ANE–54.

*Applicability:* General Electric Company (GE) CF6–45/–50 series turbofan engines installed on but not limited to McDonnell Douglas DC–10, Airbus A300, and Boeing 747 series aircraft.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent engine stall, aborted takeoff, or inflight engine shutdown, accomplish the following:

(a) Perform a visual and fluorescent penetrant inspection (FPI) for cracks, and perform a mechanical gauge or ultrasonic thickness measurement of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool in accordance with GE CF6–50 Service Bulletin (SB) No. 72–1006, Revision 1, dated November 14, 1991, as follows:

(1) For those stage 11–13 compressor spools listed in Table 1 of GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991, at the next engine shop visit, within 3,500 cycles in service after the effective date of this AD, or by December 31, 1997, whichever occurs first.

(2) For all other stage 11–13 compressor spools, at the next piece-part exposure, or by December 31, 1997, whichever occurs first.

(b) For stage 11–13 compressor spools that have cracked stage 12 compressor disk web-to-rim transition areas, or that have stage 12 compressor disk web-to-rim transition areas measuring less than 0.070 inches thick, remove from service prior to further flight, and replace with a serviceable stage 11–13 compressor spool.

(c) For stage 11–13 compressor spools that have stage 12 compressor disk web-to-rim transition areas with a minimum thickness greater than or equal to 0.070 inches but less than 0.074 inches, reidentify the stage 11–13 compressor spool with a new part number in accordance with GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991. The reidentified stage 11–13 compressor spool has a life limit of 16,000 cycles since new (CSN).

(d) For stage 11–13 compressor spools that have stage 12 compressor disk web-to-rim transition areas with a minimum thickness of 0.074 or more inches, mark "SB 72–1006" next to the part number and serial number on the forward spacer arm in accordance with GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991. The life limit of this stage 11–13 compressor spool remains at 19,000 CSN.

(e) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of a major module.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspection, and replacement, if necessary, shall be done in accordance with the following service bulletin:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| GE CF6–50 SB No. 72–1006. Total Pages: 30 | 1–30 | 1 | Nov. 14, 1991. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 21, 1993.

Issued in Burlington, Massachusetts, on July 7, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93-17509 Filed 7-22-93; 8:45 am]

BILLING CODE 4910-13-P

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**14 CFR Part 39**

**[Docket No. 92-NM-213-AD; Amendment 39-8627; AD 93-14-03]**

## Airworthiness Directives; Short Brothers Model SD3-30 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3-30 series airplanes, that requires rework of certain life-limited main landing gear (MLG) beam sub-assemblies to achieve a full service life; establishes a life limit on certain other MLG beam sub-assemblies; and requires subsequent replacement of certain life-limited MLG beam sub-assemblies. This amendment is prompted by fatigue testing, which revealed that certain MLG beam sub-assemblies have a specific life limit. The actions specified by this AD are intended to prevent MLG failure, which could damage the airplane or reduce controllability of the airplane during takeoff or landing.

**DATES:** Effective August 23, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3-30 series airplanes was published in the **Federal Register** on March 23, 1993 (58 FR 15450). That action proposed to require rework of certain life-limited main landing gear (MLG) beam sub-assemblies to achieve a full service life; establish a life limit on certain other MLG beam sub-assemblies; and require subsequent replacement of certain life-limited MLG beam sub-assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule. However, the commenter notes that many of the systems on the airplanes addressed in the proposed rule are similar to the systems on Model SD3-60 series airplanes. The commenter requests that the FAA conduct a review to determine if Model SD3-60 series airplanes should have been subject to the proposal.

The FAA is cognizant that certain design similarities exist between Model SD3-30 and SD3-60 series airplanes. The FAA is currently investigating the possibility that certain MLG beam sub-assemblies on Model SD3-60 series airplanes have a specific life limit. The FAA may consider further rulemaking if this unsafe condition is found to be likely to exist or develop on these airplanes.

The applicability of the final rule has been revised to clarify that the AD applies only to Model SD3-30 series airplanes having certain part-numbered MLG assemblies. The notice indicated that the AD would have been applicable to "all" Model SD3-30 series airplanes.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 55 airplanes of U.S. registry will be affected by this AD. Of these airplanes, 49 will be required to accomplish the rework only; 3 will be required to accomplish the replacement only; and 3 will be required to accomplish the replacement and rework.

The FAA estimates that it will take approximately 14 work hours per airplane to accomplish the required rework, and that the average labor rate is $55 per work hour. Rework (performed by the MLG beam sub-assembly manufacturer) will cost approximately $12,402 per airplane. The total cost impact of this AD for the 49 airplanes requiring the rework is estimated to be $645,428, or $13,172 per airplane.

The FAA estimates that it will take approximately 14 work hours per airplane to accomplish the required replacement, and that the average labor rate is $55 per work hour. Parts cost to accomplish the required replacement will cost approximately $70,196 per airplane. The total cost impact of this AD for the 3 airplanes requiring the replacement is estimated to be approximately $212,898, or $70,966 per airplane.

The FAA estimates that it will take approximately 28 work hours per airplane to accomplish the required replacement and rework, and that the average labor rate is $55 per work hour. Parts cost to accomplish the required replacement will cost approximately $70,196 per airplane, and rework (performed by the MLG beam sub-assembly manufacturer) will cost approximately $12,402 per airplane. The total cost impact of this AD for the 3 airplanes requiring the replacement and rework is estimated to be $252,414, or $84,138 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,110,740. This total cost figure assumes that no operator has yet accomplished the requirements of this AD action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-14-03 Short Brothers, PLC: Amendment 39-8627. Docket 92-NM-213-AD.

*Applicability:* Model SD3-30 series airplanes; equipped with Menasco main landing gear (MLG) beam assembly, part number (P/N) 17501, serial numbers MMC-039 through MMC-068, inclusive, MMC-005 through MMC-038, inclusive, and MMC-071 through MMC-188, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent main landing gear failure, which could damage the airplane or reduce controllability of the airplane during takeoff or landing, accomplish the following:

(a) For airplanes equipped with MLG beam sub-assembly P/N 17604-9, -13, -15/16, or -17/18: Prior to the accumulation of 13,500 total landings or within 2,300 landings after the effective date of this AD, whichever occurs later, rework the MLG beam sub-assembly, in accordance with Shorts SD3-30 Service Bulletin SD3-32-90, Revision 2, dated June 20, 1992.

Note: Shorts SD3-30 Service Bulletin SD3-32-90, Revision 2, dated June 29, 1992, references Menasco Service Bulletin 32-65, Revision 2, dated October 13, 1982, for additional service information.

(b) For airplanes equipped with MLG beam sub-assembly P/N 17604-9, -13, or -13A/14A: Prior to the accumulation of 20,000 total landings on the MLG beam sub-assembly or within 2,300 landings after the effective date of this AD, whichever occurs later, and thereafter prior to the accumulation of 20,000 landings, replace the MLG beam sub-assembly with a serviceable unit, in accordance with Shorts SD3-30 Service Bulletin SD3-32-90, Revision 2, dated June 29, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The rework and replacement shall be done in accordance with Shorts SD3-30 Service Bulletin SD3-32-90, Revision 2, dated June 29, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 23, 1993.

Issued in Renton, Washington, on July 9, 1993.

Gary L. Killion,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-17508 Filed 7-22-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-216-AD; Amendment 39-8628; AD 93-14-04]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that requires inspections to detect cracking of the floor beams and the side box-beams between frames 42 and 43, and repair of cracks. It also requires a modification of the pressure floor which, when accomplished, will terminate the inspection requirements. This amendment is prompted by results of a full-scale fatigue test. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage.

DATES: Effective August 23, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes was published in the Federal Register on March 3, 1993 (58 FR 12190). That action proposed to require inspections to detect cracking of the floor beams and the side box-beams between frames 42 and 43, and repair of cracks. It also proposed to require a modification of the pressure floor which, when accomplished, would terminate the inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the rule as proposed.

One commenter, Airbus Industrie, requests that the applicability be revised to include airplanes having manufacturer's serial numbers (MSN) 002 through 004, inclusive; and to delete MSN 108. As proposed, the rule would be applicable to airplanes having MSN's 005 through 008, and 080 through 108. However, Airbus advises that the three airplanes not included in the proposed applicability may also be subject to the addressed unsafe condition. Additionally, the terminating modification has been installed previously on airplane MSN 108. The FAA concurs, and has revised the applicability of the final rule to include these additional airplanes. The three additional airplanes currently are operated by non-U.S. operators under foreign registry; therefore, they are not affected directly by this AD action. However, the FAA considers that the

revision to the applicability of the rule is necessary to ensure that the unsafe condition is addressed in the event that these subject airplanes are imported and placed on the U.S. Register in the future.

The same commenter requests that paragraph (d) of the proposal be revised to clarify the reference to the modification (Modification 21202K1225). The commenter states that the first five characters identify the modification, and that the remaining five characters are for internal Airbus usage. Including the last five characters would create confusion for operators. The FAA concurs. Paragraph (d) of the final rule has been revised to refer to the modification as Modification 21202.

Since issuance of the proposal, Airbus Industrie has issued Service Bulletin A320–53–1023, Revision 1, dated March 23, 1993, which describes procedures for accomplishing Modification 21202. Revision 1 is essentially identical to the original issue, but includes additional illustrations and additional information regarding accessing the working area. In addition, Revision 1 incorporates Service Bulletin Change Notice 0A, dated January 20, 1993. Therefore, the final rule has been revised to include Revision 1 to the service bulletin and the Change Notice as an additional appropriate sources of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 22 airplanes of U.S. registry will be affected by this proposed AD. It will take approximately 24 work hours per airplane to accomplish the inspections, and 54 work hours per airplane to accomplish the modification. The average labor rate is $55 per work hour. Required parts will cost approximately $5,603 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $217,646, or $9,893 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–14–04 Airbus Industrie:** Amendment 39–8628. Docket 92–NM–216–AD.

*Applicability:* Model A320 series airplanes; manufacturer's serial numbers 002 through 008, inclusive, 010 through 078, inclusive, and 080 through 107, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or 6 months after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992:

(1) Conduct an eddy current inspection to detect cracking around the fastener bolt holes at the inboard flange of the floor beam, in the side box-beams, at the two sides of the pressure floor, and at the vertical integral stiffener between frame 42 and frame 43; and

(2) Conduct a detailed visual inspection to detect cracking of the fillet radius of the top outboard flange and the flange corner-radius of the slanted inboard flange of the side box-beam between frame 42 and frame 43.

(b) If no crack is detected during either inspection required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 6,000 landings.

(c) If a crack is detected during the inspections required by paragraph (a) or (b) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(d) Prior to the accumulation of 18,000 total landings, accomplish Modification 21202, in accordance with Airbus Industrie Service Bulletin A320–53–1023, dated September 23, 1992, as amended by Service Bulletin Change Notice 0A, dated January 20, 1993; or Revision 1, dated March 23, 1993. Accomplishment of this modification constitutes terminating action for the inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with Airbus Industrie Service Bulletin A320–53–1024, dated September 23, 1992. The modification shall be done in accordance with Airbus Industrie Service Bulletin A320–53–1023, dated September 23, 1992, which includes Appendix 1, dated September 23, 1992; Service Bulletin Change Notice 0A, dated January 20, 1993, for Airbus Industrie Service Bulletin A320–53–1023, dated September 23, 1992; or Airbus Industrie Service Bulletin A320–53–1023, Revision 1, dated March 23, 1993, which includes Appendix 1, dated September 23, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on August 23, 1993.

Issued in Renton, Washington, on July 9, 1993.

Gary L. Killion,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-17530 Filed 7-22-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 91-ANE-30; Amendment 39-8639; AD 93-14-15]

## Airworthiness Directives; Avco Lycoming Model IO-360-A1B6D and IO-360-A3B6D Engines, as Modified per Aircraft Design, Inc., Supplemental Type Certificate SE4757NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Avco Lycoming IO-360-A1B6D and IO-360-A3B6D engines, modified per Aircraft Design, Inc., Supplemental Type Certificate (STC) SE4757NM. The AD requires a decrease in the engine Manifold Air Pressure (MAP) limit from 38.5 inches Hg to 33.0 inches Hg, and installation of an instrument placard specifying the decreased MAP limitations. This amendment is prompted by test results which revealed that the engine, when operating at 38.5 inches Hg manifold pressure, is producing more horsepower than its maximum certified level. This condition, if not corrected, could result in premature engine failure.

EFFECTIVE DATE: August 23, 1993.

ADDRESSES: This AD may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Forgac, Aerospace Engineer, Modifications Section, Special Certification Branch, ANM-191S, Seattle Aircraft Certification Office; FAA, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone no. (206) 227-2597.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Avco Lycoming IO-360-A1B6D and IO-360-A3B6D engines, modified per Aircraft Design, Inc., Supplemental Type Certificate (STC) SE4757NM, was published in the Federal Register on September 13, 1991 (56 FR 46587). That action proposed to require a decrease in the engine Manifold Air Pressure (MAP) limit from 38.5 inches Hg to 33.0 inches Hg, and installation of an instrument placard specifying the decreased MAP limitations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The engine manufacturer requests that the AD not be issued against the engine, but against the STC holder. The FAA does not concur as the AD must be issued against the basic type-certificated product and made applicable only to those products that incorporate the STC or field approval. To minimize the confusion, and to make clear that the engines affected are only those engines that have been modified by the STC SE4757NM, the preamble subject heading now includes: "* * * as Modified per Aircraft Design, Inc., Supplemental Type Certificate SE4757NM."

STC holder representatives and one other commenter object to the FAA's conclusion that the engine running at 38.5 inches Hg MAP is producing power in excess of the value for which it was certified. In addition, they question the method the FAA used to arrive at this conclusion. The FAA disagrees. For power determination, the FAA used the same method that it used to establish power ratings of the unmodified engine.

Three commenters state that on 30 or so modified aircraft, some of which have accumulated several hundred flight hours since modification, operating the engine at 38.5 inches Hg MAP does not result in excessive engine wear and, therefore, does not create an unsafe condition. The FAA does not agree with this position. The fact that failures have not occurred does not mean that the engine, or the aircraft, meets safety standards required by Federal Aviation Regulations (FAR). During the engine certification process, it was demonstrated that the engine met required safety standards, when operated within the specified limits. In order to extend these limits, compliance to the required safety standards must again be demonstrated.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

The FAA estimates that approximately 30 engines of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of the required placard is estimated to be $20 dollars per aircraft. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93-14-15 Avco Lycoming:** Amendment 39-8639. Docket No. 91-ANE-30.

*Applicability:* Lycoming Model IO-360-A1B6D and IO-360-A3B6D engines, modified per Aircraft Design, Inc., STC

SE4757NM; installed on Mooney M20J, modified per Aircraft Design, Inc., STC SA4758NM.

*Compliance:* Required within 30 days after the effective date of this AD, unless accomplished previously.

To prevent possible premature engine failure, accomplish the following:

(a) Fabricate and install on the instrument panel a placard, in accordance with FAR 23.1541(b), stating "Do Not Operate Engine Above 33.0 IN Hg."

(b) Re-mark the manifold pressure gauge by removing the radial red line at 38.5 Hg and placing the radial red line at 33.0 Hg.

(c) Revise the Limitations and Normal Procedure Sections of the Aircraft Flight Manual Supplement as follows:

(1) Delete "38.5" Hg" as it appears in these sections and insert in lieu thereof "33.0" Hg."

(2) Delete "36.0 Hg" as it appears in Normal Climb Throttle and insert in lieu therof "33.0 Hg."

(d) Attach this AD as a permanent appendix to the Aircraft Flight Manual.

(e) An alternative method of compliance, or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office. The request shall be forwarded through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle Aircraft Certification Office. NOTE: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(f) Special flight permits may be issued, in accordance with FAR 21.197 and 21.199, to ferry the aircraft to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on August 23, 1993.

Issued in Burlington, Massachusetts, on July 15, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17542 Filed 7–22–93; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Oxfendazole Paste

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Syntex Animal Health, Inc. The NADA provides for use of oxfendazole paste as an anthelmintic for cattle.

**EFFECTIVE DATE:** July 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Naba K. Das, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8659.

**SUPPLEMENTARY INFORMATION:** Syntex Animal Health, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed NADA 140–892 which provides for over-the-counter oral use of the drug, containing 185 milligrams of oxfendazole per gram (18.5 percent) of paste, as an anthelmintic for cattle (excluding female dairy cattle of breeding age) for removal and control of lungworms, stomach worms, intestinal worms, and tapeworms. Oxfendazole suspension is currently approved for the same conditions of use in beef cattle and is codified in 21 CFR 520.1630. The NADA is approved as of June 29, 1993, and 21 CFR 520.1629 is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity because new clinical or field investigations (other than bioequivalence or residue studies) were essential to the approval and conducted or sponsored by the applicant. The 3-year period of exclusivity begins June 29, 1993.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1629 is amended by redesignating existing paragraphs (a), (b), (c) heading, (c)(1), (c)(2), and (c)(3) as paragraphs (a)(1), (a)(2), (a)(3) heading, (a)(3)(i), (a)(3)(ii), and (a)(3)(iii), respectively; and by adding new paragraph (b) to read as follows:

**§ 520.1629 Oxfendazole paste.**

* * * * *

(b)(1) *Specifications.* Each gram of paste contains 185 milligrams of oxfendazole (18.5 percent).

(2) *Sponsor.* See No. 000033 in § 510.600(c) of this chapter.

(3) *Related tolerances.* See § 556.495 of this chapter.

(4) *Conditions of use*—(i) *Amount.* 4.5 milligrams per kilogram of body weight (2.05 milligrams per pound).

(ii) *Indications for use.* The drug is used in cattle for the removal and control of the following worms: lungworms (*Dictyocaulus viviparus*—adult, L4); stomach worms: barberpole worms (*Haemonchus contortus* and *H. placei*—adult), small stomach worms (*Trichostrongylus axei*—adult), brown stomach worms (*Ostertagia ostertagi*—adult, L4, inhibited L4); intestinal worms; nodular worms (*Oesophagostomum radiatum*—adult), hookworms (*Bunostomum phlebotomum*—adult), small intestinal worms (*Cooperia punctata, C. oncophora,* and *C. mcmasteri*—adult, L4); and tapeworms (*Moniezia benedeni*—adult).

(iii) *Limitations.* For use in cattle only. Treatment may be repeated in 4 to 6 weeks. Cattle must not be slaughtered until 11 days after treatment. Do not use in female dairy cattle of breeding age. Consult a veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

Dated: July 16, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–17499 Filed 7–22–93; 8:45 am]

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DEPARTMENT OF JUSTICE

28 CFR Ch. I

[AG Order No. 1768–93]

## Statement of Activities Covered by the Foreign Agents Registration Act; Guidance to Senior Officials Signing Pledges Under Executive Order 12834

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule sets forth the Attorney General's current interpretation of the activities, on behalf of a foreign government or foreign political party, that would require a person undertaking such activities as of January 20, 1993, to register under the Foreign Agents Registration Act as an agent for such a foreign government or foreign political party. The rule's definitive statement of these covered activities is intended to provide guidance to senior appointees in executive agencies about the scope of post-employment activities in which they agree not to engage by signing the ethics pledge described in the Executive Order entitled, "Ethics Commitments by Executive Branch Appointees." The "Statement of Covered Activities" set forth in this rule is not intended to be binding on or to be used as guidance by any other parties.

EFFECTIVE DATE: July 23, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph E. Clarkson, Chief, Registration Unit, Internal Security Section, Criminal Division, Department of Justice, room 9300, 1400 New York Avenue, NW., Washington, DC 20530; telephone (202) 514–1231.

SUPPLEMENTARY INFORMATION: Executive Order 12834, entitled "Ethics Commitments by Executive Branch Employees," requires appointees to certain senior posts in executive agencies to sign and contractually commit themselves to a pledge stating that they will not, after leaving United States Government employment, engage in any activity which, if undertaken as of January 20, 1993, would require them to register under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611–621 ("FARA"). Section 1(a), E.O. 12834, 58 FR 5911 (1993).

The Executive Order also directed the Attorney General to issue a "Statement of Covered Activities," to be based on FARA, applicable regulations, published guidelines, and other materials reflecting the Attorney General's current interpretation of what activities would require registration under FARA if undertaken as of January 20, 1993. Section 4(d)(1), E.O. 12834.

The purposes of the "Statement of Covered Activities" are to provide a definitive statement of the activities covered by the FARA provision in the pledge signed by senior appointees, to promote clarity and fairness in the application of that pledge provision, and to provide guidance to senior appointees about the range of activities in which they agree not to engage under that pledge provision. Section 4(d), E.O. 12834.

This rule, setting forth the Attorney General's current interpretation of certain requirements imposed by FARA as of January 20, 1993, is an interpretative rule under 5 U.S.C. 553(b)(A). Accordingly, this final rule is issued without a period for public notice and comment.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. It is not a major rule within the meaning of section 1(b) of E.O. 12291, and does not have Federalism implications warranting the preparation of a Federalism assessment in accordance with section 6 of E.O. 12612.

For the reasons set forth in the preamble, and by the authority vested in me as Attorney General under 22 U.S.C. 620 and section 4(d) of Executive Order 12834, I hereby issue the following "Statement of Covered Activities":

### Statement of Covered Activities

This Statement of Covered Activities is issued in accordance with the direction contained in section 4(d) of Executive Order 12834, 58 FR 5911 (1993), that the Attorney General delineate guidelines to inform senior appointees covered by section 1(a) of that order as to the activities which they agree not to engage in following their separation from Federal service. This statement is provided solely for the benefit of the affected senior appointees so that they will understand the effect of their pledge and is not intended to be binding on or to be used as guidance by any other party.

A person is engaged in covered activities if:

(1) He or she acts:

(a) As an agent, representative, employee, or servant of a foreign government or a foreign political party; or

(b) In any other capacity at the order, request, or under the direction or control of a foreign government or a foreign political party or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or major part by a foreign government or a foreign political party; and directly or through any other person engages in any activity listed below for or in the interests of a foreign government or foreign political party; or

(2) He or she agrees, consents, assumes, or purports to perform directly or indirectly any activity listed below for or in the interests of a foreign government or foreign political party.

Activities: (1) Political activities;

(2) Public relations counseling;

(3) Publicity agent activities;

(4) Information services;

(5) Political consulting;

(6) Solicitation, collection, disbursement, or dispensing of contributions, loans, money, or other things of value, except when the solicitation or collection of funds and contributions within the United States is to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, and such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Neutrality Act (ch. 2, Act of November 4, 1939, 54 Stat. 4, as amended, 22 U.S.C. 441–465) and rules and regulations prescribed thereunder; and

(7) Representation of the interests of such foreign government or foreign political party before any agency or official of the Government of the United States, except when serving as an attorney of record for a disclosed client in a judicial proceeding or a formal agency proceeding, but *ex parte* contacts or representations, unless specifically permitted by agency rule, do not qualify for the exception.

Covered activities do not include private and nonpolitical activities in furtherance of bona fide trade or commerce of a foreign government or of a foreign political party and do not include activities in furtherance of bona fide religious scholastic, academic, or scientific pursuits or of the fine arts.

The term "trade or commerce" includes the exchange, transfer, purchase, or sale of commodities, services, or property of any kind. Activities in furtherance of the bona fide trade or commerce of a foreign principal which is owned or controlled by a foreign government are exempt so long as the activities do not directly promote the public or political interests of the foreign government.

The term "political activities" includes the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert,

induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or foreign political party.

The term "political propaganda" includes any oral, visual, graphic, written, pictorial, or other communication or expression used to further or in conjunction with political activity.

The term "agency" includes every unit in the Executive and Legislative branches of the Government of the United States, including any executive agency within the provisions of 5 U.S.C. 105 and committees of both Houses of Congress.

The term "official" includes members and officers of both Houses of Congress as well as officials in the Executive branch of the Government of the United States, regardless of rank or title, except that the term does not include employees of either branch whose services to the government are rendered in a clerical, secretarial, or ministerial capacity.

The phrase "formulating, adopting or changing" includes any activity which seeks to maintain any existing domestic or foreign policy of the United States as well as any activity which seeks to alter existing policies or establish new policies.

The phrase "domestic or foreign policies of the United States" includes existing and proposed legislation, or legislative action generally; treaties; executive agreements; proclamations and orders; and decisions relating to or affecting departmental or agency policy.

The phrase "political or public interests, policies or relations" of a government of a foreign country or foreign political party includes all matters which on the domestic governmental level would be called a policy matter, in the international context may be called questions concerning a country's foreign relations, and in the context of party politics may be termed matters involving the national interest.

The term "public relations counseling" includes engaging directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal.

The term "publicity agent activities" includes engaging directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise.

The term "information services" includes furnishing, disseminating, or publishing accounts, descriptions, information, economic, social, cultural, or other benefits, advantages, facts, or conditions, of any country other than the United States or of any government of a foreign country or of a foreign political party.

The term "political consulting" includes informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party. It does not include merely providing an assessment of current United States law or proposed United States law, but does include any activity in furtherance of political activity, *e.g.*, providing advice on how to change or preserve current United States law.

The term "foreign government" includes any person or group of persons exercising de facto or de jure sovereign political authority over any country other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such authority is directly or indirectly delegated. Such term also includes any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States.

The term "foreign political party" includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies, or relations of a government of a foreign country or a subdivision thereof.

The term "United States", as used in the preceding two paragraphs, includes the several States, the District of Columbia, the territories, the insular possessions, and all other places now or hereafter subject to the civil or military jurisdiction of the United States.

The term "dissemination" includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate of foreign commerce, or offering or causing to be offered in the United States mails.

Dated: July 21, 1993.

**Janet Reno,**

*Attorney General.*

[FR Doc. 93-17705 Filed 7-21-93; 1:36 pm]

BILLING CODE 4410-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[ID-3-1-5794; FRL-4680-4]**

### Approval and Promulgation of Implementation Plans: Idaho

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the recodification of the State of Idaho's Rules and Regulations for the Control of Air Pollution in Idaho Manual and numerous other non-controversial amendments to the Idaho rules and regulations which were submitted by the Idaho Department of Health and Welfare (IDHW) on June 15, 1990 and September 4, 1992 as revisions to the Idaho state implementation plan (SIP). These revisions implement the revised national ambient air quality standards for particulate matter and improve the clarity, effectiveness, and enforceability of the state's rules and regulations. The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act).

By submitting its entire Rules and Regulations for the Control of Air Pollution in Idaho Manual as a revision to the SIP, Idaho submitted a number of provisions which are unrelated to the purpose of the SIP. As discussed below, EPA is taking no action on those provisions.

**EFFECTIVE DATE:** This action is effective on September 20, 1993 unless notice is received by August 23, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments should be addressed to: Montel Livingston, SIP Manager, Air Program Development Section, Air and Radiation Branch (AT-082), United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, and State of Idaho Department of Health and Welfare

(IDHW), 1410 N. Hilton, Boise, Idaho 83720.

Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of the material submitted to EPA may be examined during normal business hours at the following locations: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Air and Radiation Branch, Environmental Protection Agency, Docket #ID–3–1–5794, 1200 6th Avenue, AT–082, Seattle, Washington, 98101, and State of Idaho Department of Health and Welfare (IDHW), 1410 N. Hilton, Boise, Idaho 83720.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Air and Radiation Branch, AT–082, US Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–4253.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On July 1, 1987 (52 FR 24634) the Environmental Protection Agency (EPA) revised the national ambient air quality standards (NAAQS) for particulate matter. Total suspended particulate matter (TSP) was replaced as the indicator for particulate matter ambient standard by a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$).

To implement the revised NAAQS, EPA also promulgated revisions to 40 CFR parts 51 and 52 on July 1, 1987 (52 FR 24672). These revisions established requirements for preparation, adoption, and submittal of SIPs and set forth criteria for the Administrator's approval and promulgation of implementation plans.

In response to these EPA actions, the Idaho Department of Health and Welfare (IDHW) amended its rules and regulations which dealt with particulate matter and submitted them to EPA on June 15, 1990 as revisions to the Idaho SIP.

New State requirements for the structure and codification of Idaho's rules and regulations resulted in the complete recodification of the Rules and Regulations for the Control of Air Pollution in Idaho Manual on December 31, 1991. On September 4, 1992, IDHW submitted the recodified regulations as a revision to the Idaho SIP. By submitting the entire rules and regulations, Idaho also submitted certain amendments which had not previously been submitted to EPA. Among these amendments were changes to the requirements for open burning, a revised exception to the general opacity standard, and an amended definition of the term "emission."

## II. Discussion

The June 15, 1990 submittal included numerous amendments to the Idaho rules and regulations to implement the revised NAAQS for particulate matter. Specifically, definitions of the terms "particulate matter emissions" (IDAPA 16.01.01003,70), "PM–10" (IDAPA 16.01.01003,73), "PM–10 emissions" (IDAPA 16.01.01003,74), and "total suspended particulates" (IDAPA 16.01.01003,98) were added; the existing definitions of the terms "significant" (IDAPA 16.01.01003,86) and "significant contribution" (IDAPA 16.01.01003,87) were revised; existing provisions of IDAPA 16.01.01012 Procedures and Requirements for Permits to Construct and Operating Permits dealing with particulate matter (IDAPA 16.01.01012,04.a.iii.(h), IDAPA 16.01.01012,04.c, and IDAPA 16.01.01012,12.b.ii) were revised; existing provisions of IDAPA 16.01.01101 Air Quality Standards and Area Classification were revised by adding standards for PM–10 (IDAPA 16.01.01101,01.b) and clarifying the existing standards for total suspended particulates (IDAPA 16.01.01101,01.c), sulfur dioxide (IDAPA 16.01.01101,01.d) and lead (IDAPA 16.01.01101,01.i); existing provisions for baseline dates for prevention of significant deterioration (IDAPA 16.01.01101,03.a) were revised; and the existing prevention of significant deterioration increments for particulate matter (IDAPA 16.01.01101,05.a and IDAPA 16.01.01101,05.c.ii) were clarified. These additions and revisions comply with the EPA general requirements for SIP control strategies (40 CFR part 51) and the specific requirements for prevention of significant deterioration permit programs in 40 CFR 51.166.

The September 14, 1992 submittal included numerous amendments to the Idaho rules and regulations to implement new state requirements for open burning. Specifically, definitions of the terms "agricultural field" (IDAPA 16.01.01003,04), "fire hazard" (IDAPA 16.01.01003,38), "garbage" (IDAPA 16.01.01003,42), "hazardous waste" (IDAPA 16.01.01003,44), "prescribed fire management burning" (IDAPA 16.01.01003,77), "small fire" (IDAPA 16.01.01003,88), "smoke management plan" (IDAPA 16.01.01003,90), "smoke management program" (IDAPA 16.01.01003,91), and "trade wastes" (IDAPA 16.01.01003,99), were added; new requirements for burning material containing polychlorinated biphenyls (IDAPA 16.01.01011,04) were added; and the existing Rules for Control of Open Burning (IDAPA 16.01.01151) and Categories of Allowable Burning (IDAPA 16.01.01153) were revised extensively. These new and revised provisions for open burning comply with EPA's general requirements for SIP control strategies (40 CFR part 51).

The September 14, 1992 submittal included an amendment to the definition of the term "emission" (IDAPA 16.01.01003,29) to implement a change in the state clean air legislation. This amended definition is consistent with EPA requirements in 40 CFR part 51.

The September 14, 1992 submittal also included an amendment to the exception provision for the Idaho visible emissions standard (IDAPA 16.01.01201,03). This amendment expanded the current exception for uncombined water vapor to include nitrogen oxides and/or chlorine gas. Since the Idaho SIP contains no emission limitations for nitrogen oxides or chlorine gas, this amendment is consistent with EPA requirements in 40 CFR 51.212(b).

Finally, the September 14, 1992 submittal included a number of new administrative provisions, specifically new sections IDAPA 16.01.01996 Administrative Provisions, IDAPA 16.01.01997 Confidentiality of Records, IDAPA 16.01.01998 Inclusive Gender and Number, and IDAPA 16.01.01999 Severability. With the exception of the section on confidentiality of records, these provisions comply with EPA requirements.

EPA is taking no action on the following sections which were included in the September 14, 1992 submittal but have not been included in the Idaho SIP in the past. Specifically, EPA is taking no action on IDAPA 16.01.01007 "Variances" which has previously been disapproved; IDAPA 16.01.01853 through 16.01.01856 "Combined Zinc and Lead Smelters" which has previously been disapproved and replaced with an EPA-promulgated regulation (40 CFR 52.676); IDAPA 16.01.0951 through 16.01.01968 "Regulation of Standards of Performance for New Stationary Sources" which implement section 111 of the Act and are not part of a SIP under section 110, and IDAPA 16.01.01997 Confidentiality of Records, which has previously been disapproved

and replaced with an EPA-promulgated regulation (40 CFR 52.674(a)).

### III. Summary of Action

EPA approves amendments to Idaho's Rules and Regulations for the Control of Air Pollution in Idaho Manual as revisions to the Idaho SIP. Specifically, EPA is approving:

(1) The recodification of the regulations (IDAPA 16.01.01000 through 16.01.01999), including associated administrative changes;

(2) Amendments and additions to IDAPA 16.01.01002 "Definitions," IDAPA 16.01.01012 "Procedures and Requirements for Permits to Construct and Operating Permits," and IDAPA 16.01.01101 "Air Quality Standards and Area Classification" to implement the NAAQS for $PM_{10}$;

(3) Amendments and additions to IDAPA 16.01.01002 "Definitions," IDAPA 16.01.01151 "Rules for Control of Open Burning," and IDAPA 16.01.01153 "Categories of Allowable Burning" to implement new requirements for open burning;

(4) An amendment to the definition of "Emission" (IDAPA 16.01.01002,29) to conform with a change to the State's clean air legislation; and

(5) The addition of new sections IDAPA 16.01.01996 "Administrative Provisions," IDAPA 16.01.01998 "Inclusive Gender and Number," and IDAPA 16.01.01999 "Severability."

EPA is taking no action on the following sections:

(1) IDAPA 16.01.01007 "Variances;"

(2) IDAPA 16.01.01853 through 16.01.01856 "Combined Zinc and Lead Smelters;"

(3) IDAPA 16.01.0951 through 16.01.01968 "Regulation of Standards of Performance for New Stationary Sources;" and

(4) IDAPA 16.01.01997 "Confidentiality of Records."

### IV. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing in this action would be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan should be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant impact on a substantial number of small entities (see 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 3 revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 20, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2).)

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: July 8, 1993.

**Gerald A. Emison,**

*Acting Regional Administrator.*

**Note:** Incorporation by reference of the Implementation Plan for the State of Idaho was approved by the Director of the Office of Federal Register on July 1, 1982.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart N—Idaho

2. Section 52.670 is amended by adding paragraphs (c)(26) and (c)(27) to read as follows:

**§ 52.670 Identification of plan.**

* * * * *

(c) * * *

(26) On June 15, 1990, the Administrator of the Idaho Department of Health and Welfare submitted amendments to State of Idaho's Rules and Regulations for the Control of Air Pollution in Idaho Manual as revisions to the Idaho state implementation plan as follows: Idaho Administrative Procedures Act, Section 16.01.01002 Definitions, Section 16.01.01012 Procedures and Requirements for Permits to Construct and Operating Permits, and Section 16.01.01101 Air Quality Standards and Area Classification.

(27) On September 4, 1992, the Administrator of the Idaho Department of Health and Welfare submitted a revised and recodified Rules and Regulations for the Control of Air Pollution in Idaho Manual (Idaho Administrative Procedures Act Sections 16.01.01000 through 16.01.01999) as a revision to the Idaho state implementation plan.

(i) Incorporation by reference.

(A) June 15, 1990 letter from the Administrator of the Idaho Department of Health and Welfare to EPA Region 10 submitting amendments to the Idaho state implementation plan.

(B) September 4, 1992 letter from the Administrator of the Idaho Department of Health and Welfare to EPA Region 10 submitting amendments to the Idaho state implementation plan.

(C) Idaho's Rules and Regulations for the Control of Air Pollution in Idaho Manual (except for sections IDAPA 16.01.01007 Variances, IDAPA 16.01.01853 through 16.01.01856 Combined Zinc and Lead Smelters, IDAPA 16.01.0951 through 16.01.01968 Regulation of Standards of Performance for New Stationary Sources, and IDAPA 16.01.01997 Confidentiality of Records) as adopted by the Board of the Idaho Department of Health and Welfare on July 30, 1992, and effective on August 21, 1992.

3. Section 52.679 is revised to read as follows:

§ 52.670 Contents of Idaho State implementation plan.

Implementation Plan for the Control of Air Pollution in the State of Idaho

Chapter I—Introduction (submitted 1–15–80)
Chapter II—Administration (submitted 1–15–80)
Chapter III—Emissions Inventory (submitted 1–15–80)
Chapter IV—Air Quality Monitoring (submitted 1–15–80, 2–14–80)
Chapter V—Source Surveillance (submitted 1–15–80)
Chapter VI—Emergency Episode Plan (submitted 1–15–80)
Chapter VII—Approval Procedures for New and Modified Facilities (submitted 4–19–85)
Chapter VIII—Non-Attainment Area Plan
VIII-a—Silver Valley Nonattainment Plan (submitted 1–15–80)
VIII-b—Lewiston Nonattainment Plan (submitted 1–15–80, 12–4–80)
VIII-c—Transportation Control Plan for the carbon monoxide of Ada County (submitted 5–24–84, 1–3–85, 3–25–85)
VIII-d—Pocatello TSP Nonattainment Plan (submitted 3–7–80, 2–5–81)
VIII-e—Soda Springs Nonattainment Plan (submitted 1–15–80)
Chapter IX—Reserved
Chapter X—Plan for Maintenance of National Ambient Air Quality Standards for Lead (submitted 2–3–84)
Appendix A—Legal Authority and Other General Administrative Matters (submitted 1–15–80)
Appendix A.2—Section 39–100, Idaho Code (submitted 1–15–80)
Appendix A.3—Title 1, Chapter 1, Rules and Regulations for Control of Air Pollution in Idaho Manual (submitted 1–15–80, 4–19–85, 6–15–90, 8–21–92)
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Baker Industries, 1973 Consent Order (40 CFR 52.670(c)(15)—SO2 Emission Limitation (submitted 7/28/75)
40 CFR Part 52, Subparts A and N

4. Section 52.681 is revised to read as follows:

**§ 52.681 Permits to construct and operating permits.**

(a) Emission limitations and other provisions contained in Permits to Construct or Operating permits, issued by the State of Idaho Department of Health and Welfare in accordance with the federally-approved *Rules and Regulations for the Control of Air Pollution in Idaho Manual* sections 16.01.01002 Definitions, 16.01.01012 Procedures and Requirements for Permits to Construct and Operating Permits, 16.01.01014 Stack Heights and Dispersion Techniques, and 16.01.01101 Ambient Air Quality Standards and Area Classifications, except for Operating Permits authorizing the use of alternative emission limits (bubbles) under sections 16.01.01012,03.a(1) and 16.01.01012,09 or compliance schedule extensions under section 16.01.01012,03.d, shall be the applicable requirements of the federally-approved Idaho SIP (in lieu of any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

(b) Operating Permits authorizing the use of alternative emission limits (bubbles) under sections 16.01.01012,03.a(1) and 16.01.01012,09, including the use of banked emission reduction credits pursuant to section 16.01.01012,10 in a bubble, and operating permits authorizing compliance schedule extensions under section 16.01.01012,03.d, must be submitted to EPA for approval as revisions to the Idaho SIP before they shall become the applicable requirements of the SIP.

5. Section 52.683 is revised to read as follows:

**§ 52.683 Significant deterioration of air quality.**

(a) *The Rules and Regulations for the Control of Air Pollution in Idaho Manual*, specifically, sections 16.01.01002 Definitions, 16.01.01012 Procedures and Requirements for Permits to Construct and Operating Permits, 16.01.01014 Stack Heights and Dispersion Techniques, and 16.01.01101 Ambient Air Quality Standards and Area Classifications, are approved as meeting the requirements of part C of the Clean Air Act for preventing significant deterioration of air quality.

(b) The requirements of sections 160 through 165 of the Clean Air Act are not met for Indian reservations since the plan does not include approvable procedures for preventing significant deterioration of air quality on Indian reservations. Therefore, the provisions of § 52.21 (b) through (w) are hereby incorporated and made part of the applicable plan for Indian reservations in the State of Idaho.

(c) The requirements of section 165 of the Clean Air Act are not met for sources subject to prevention of significant deterioration requirements prior to August 22, 1986, the effective date of EPA's approval of the rules cited in paragraph (a) of this section. Therefore, the provisions of § 52.21(b), (c), (d), and (h) through (w) are hereby incorporated and made part of the applicable plan for sources subject to § 52.21 prior to August 22, 1986.

[FR Doc. 93–17567 Filed 7–22–93; 8:45 am]
BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 90**

**[FCC 93–344]**

## Private Land Mobile Radio Services; Station ID for Wireless Microphones

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has released an *Order* amending its regulations concerning the deletion of station identification requirements for wireless microphones operating pursuant to § 90.265(b) of its Rules. This action eliminates an impractical requirement

and will result in less restrictive wireless microphone operational use.

**EFFECTIVE DATE:** August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order adopted July 1, 1993, and released July 19, 1993.

The full text is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street NW. Washington, DC. The complete text may be purchased from the Commission's copy contractor, ITS Inc., 2100 M Street NW., suite 140, Washington, DC 20037, telephone (202) 857–3800.

**Summary of Order**

The Order amends § 90.425 of the Rules to exempt wireless microphones, operating on frequencies designated in § 90.265(b), from the requirement for station identification.

**Paperwork Reduction Act Statement**

The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements and will not increase burden hours imposed upon the public.

**Regulatory Flexibility Act Certification**

We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because the adopted rule amendments will not have significant economic impact on small business entities as defined by Section 601(3) of the Regulatory Flexibility Act.

**List of Subjects in 47 CFR Part 90**

Private land mobile radio, Radio, Station identification, Wireless microphones.

**Amendatory Text**

Part 90 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read:

**Authority:** Sections 4, 303, 331, 48 Stat., 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.425 is amended by adding paragraph (d)(9) to read as follows:

**§ 90.425 Station identification.**

* * * * *

(d) * * *

(9) It is a wireless microphone station operating in accordance with the provisions of § 90.265(b).

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–17479 Filed 7–22–93; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 380

**[Docket No. 930768–3168]**

### Antarctic Marine Living Resources Convention Act of 1984

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Commerce (Secretary) amends the regulations governing harvesting and reporting of Antarctic living marine resource catches. The regulations implement conservation and management measures promulgated by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR or Commission) and accepted in whole by the Government of the United States to regulate catches in Convention for the Conservation of Antarctic Marine Living Resources (Convention) statistical reporting areas 48 and 58. These measures restrict the use of gear, restrict the directed taking and bycatch of certain species of fish, prohibit the taking of other species, and require realtime and other reporting of the harvest of certain species.

**EFFECTIVE DATE:** July 23, 1993.

**ADDRESSES:** A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

Comments regarding burden estimates or collection of information aspects of this rule should be sent to Robin Tuttle, National Marine Fisheries Service, 1335 East-West Highway, Room 7256, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Act Project 0648–0194.

**FOR FURTHER INFORMATION CONTACT:** Robin Tuttle (NMFS International Organizations and Agreements Division), 301–713–2282.

**SUPPLEMENTARY INFORMATION:**

**Background**

At its annual meeting in Hobart, Tasmania, in 1986, CCAMLR, of which the United States is a member, adopted a conservation measure requiring the Commission at subsequent meetings to adopt limitations on catch, or equivalent measures, binding for species upon which fisheries are permitted in Convention subareas 48.3 (South Georgia), depicted at figure 1 of 50 CFR part 380. The Commission has, in addition, adopted measures that apply to other Convention subareas.

The measures concerning the 1992/93 and 1993/94 fishing seasons adopted by CCAMLR at its annual meeting in 1992 are based upon the advice of the Scientific Committee and take into account research conducted by Commission members and the reports and recommendations of the Scientific Committee's Working Groups on Fish Stock Assessment (WG–FSA); Krill; and CCAMLR Ecosystem Monitoring Program. The 1992/93 fishing season is defined as the period from November 6, 1992, to the end of the Commission meeting in 1993 (November 5, 1993). The combined 1992/93 and 1993/94 fishing season is defined as the period from November 6, 1992, to the end of the Commission meeting in 1994 (likely November 4, 1994). The Commission also agreed that several measures relating to data reporting requirements in subarea 48.3 (previously amended from year to year to apply to a single fishing season) were henceforth to continue in application until revoked by the Commission. The measures were announced and public comments invited (until February 5, 1993) by **Federal Register** notice on January 7, 1993. No comments were received.

*(i) Data Reporting Requirements*

The Commission has, at past annual meetings, adopted detailed, fine-scale reporting requirements applying to single fishing seasons. At this year's annual meeting, the Commission extended the application of certain data reporting measures to have application until revoked by the Commission: Every 5-day catch and effort reporting for certain species; monthly catch and effort reporting for other species; and the reporting of biological data for *E. carlsbergi* taken in subarea 48.3.

In addition, the Commission adopted new reporting requirements for all trawl

fisheries conducted in subarea 48.3. The system requires each Contracting Party at the end of every month to obtain from each of its vessels the data necessary to complete the CCAMLR fine-scale catch and effort form for trawl fisheries (in its latest version). The forms are to be transmitted to the Executive Secretary not later than the end of the following month. The catch of all species, including bycatch, must be reported.

At the end of every month, each Contracting Party must also obtain from each of its vessels representative samples of length composition measurement of the target species and bycatch species from the fishery and must transmit those data to the Executive Secretary not later than the end of the following month.

Failure of a Contracting Party to provide the fine-scale catch and effort data or length composition data for 3 consecutive months results in the closure of the fishery to vessels of that Contracting Party.

The Commission adopted a measure for the every 10-day reporting of catch and effort. This measure applies on a continuing basis to fisheries as designated by other conservation and management measures. For the present, it applies to the exploratory crab fishery in area 48. For purposes of this reporting system, the calendar month is divided into three reporting periods. At the end of each reporting period, each Contracting Party is required to obtain from each of its vessels the total catch and total days/hours fished for that period and to cable, telex, or otherwise transmit the aggregated data to reach the Executive Secretary not later than the end of the next reporting period. The retained catch of all species and bycatch species must be reported.

*(ii) Finfishing in Subareas 48.1 (South Shetland Islands) and 48.2 (South Orkney Islands)*

The Commission continued the 1990/91 and 1991/92 prohibitions on the taking of all species of finfish, other than for scientific research purposes, in subareas 48.1 and 48.2 for the 1992/93 fishing season.

*(iii) Finfishing in Subarea 48.3 (South Georgia)*

The Commission took most of its action with respect to subarea 48.3 and adopted the following measures:

Directed fishing for *Notothenia gibberifrons* (humped rockcod), *Chaenocephalus aceratus* (blackfin icefish), *Pseudochaenichthys georgianus* (South Georgia icefish), *Notothenia squamifrons* (grey rockcod), and *Patagonotothen brevicauda guntheri* (Patagonian rockcod) is prohibited for the 1992/93 and 1993/94 fishing seasons.

The total catch of *Champsocephalus gunnari* (mackerel icefish) in the 1993/93 season is limited to 9,200 tons. The season commences November 6, 1992, but closes if the bycatch of *N. gibberifrons, C. aceratus, P. georgianus, Notothenia rossii* (marbled rockcod), or *N. squamifrons* reach their bycatch limit. If, in the course of the directed fishery for *C. gunnari*, the bycatch of any one haul for any of these species exceeds 5 percent, the fishing vessel is to move to another fishing ground within the subarea. The use of bottom trawls within the fishery is prohibited. The fishery is closed from April 1, 1993, until the end of the Commission meeting in 1993. For purposes of implementing this conservation measure, the 5-day catch and effort reporting system and the monthly effort and biological data reporting system for the 1992/93 season apply.

In any directed fishery in the subarea during the 1992/93 season, the bycatch of *N. gibberifrons* shall not exceed 1,470 tons; the bycatch of *C. aceratus* shall not exceed 2,200 tons; and the bycatch of *P. georgianus, N. rossii,* and *N. squamifrons* shall not exceed 300 tons each.

The total catch of *Electrona carlsbergi* (lanternfish) is limited to an amount not to exceed 245,000 tons. In addition, the total catch of *E. carlsbergi* shall not exceed 53,000 tons in the Shag Rocks region. The directed fishery for *E. carlsbergi* will close if the bycatch limits set for *N. gibberifrons, C. aceratus, P. georgianus, N. rossii,* or *N. squamifrons* is reached for any of these species or if the total catch of *E. carlsbergi* reaches 245,000 tons, whichever comes first. The directed fishery for *E. carlsbergi* in the Shag Rocks region will close if the bycatch limits for any of the bycatch species is reached, or if the total catch of 53,000 tons is reached, whichever comes first. If, in the course of the directed fishery for *E. carlsbergi*, the bycatch of any one haul of the bycatch species exceeds 5 percent, the fishing vessel must move to another fishing ground within the subarea.

Each month, the length composition of a minimum of 500 *E. carlsbergi*, randomly collected from the commercial fishery, will be measured and the information passed to the Executive Secretary of CCAMLR not later than the end of the following month. Every-month reporting of catch and effort is required for the fishery.

The total catch of *Dissostichus eleginoides* (Patagonian toothfish) is limited to 3,350 tons for a fishing season defined as the period from December 6, 1992, to the earlier of the end of the Commission meeting in 1993 or the reaching of the total allowable catch (TAC). Catch and effort data is due on an every-5-day reporting period. The number of Member vessels permitted to fish in the 1992/93 season is limited to the number of Member vessels that fished in the 1991/92 season.

The monthly reporting of representative samples of length composition measurements using forms provided by the Commission is required for *D. eleginoides* during the 1992/93 fishing season. Monthly measurement of a minimum of 500 fish was required in 1990/91. Failure by any Contracting Party, including the United States, to submit length composition data for three consecutive reporting periods results in the closure of the fishery to the vessels of the Contracting Party.

*(iv) Finfishing in Subarea 48.4 (South Sandwich Islands)*

The Commission reviewed an application by Chile, pursuant to a measure adopted at the 1991 meeting of CCAMLR requiring notification of intent to undertake a new fishery, to begin a new fishery for *D. eleginoides* in subarea 48.4 in the 1992/93 fishing season, and adopted a measure endorsing the Chilean proposal. The measure also welcomes the invitation of Chile to host one scientific observer, notes that no other Member has notified the Commission of proposals to establish such a fishery, and agrees that no other fishing will occur for *D. eleginoides* in subarea 48.3 during the 1992/93 fishing season. The fishery is limited to 240 tons. Chile is required to provide full data to the CCAMLR Secretariat for consideration by the WG–FSA and the Scientific Committee.

As a result of the limitation of the fishery to Chilean participants, these regulations prohibit U.S. fishing for *D. eleginoides* in 48.4 during the 1992/93 fishing season.

*(v) Finfishing in Division 58.4.4 (Ob and Lena Banks)*

The Commission set a total catch for *N. squamifrons* in division 58.4.4. (Ob and Lena Banks) for the 2-year period running from November 6, 1992, to the end of the Commission meeting in 1994 (likely November 5, 1994) of 715 tons on Lena Bank and 435 tons on Ob Bank. Five-day catch and effort reporting and monthly effort and biological data reporting apply. Age/frequency and age/length keys for *N. squamifrons* and any other species forming a significant part of the catch must be collected and

reported separately to each annual meeting of the WG–FSA.

*(vi) Fishing for Euphausia superba*

The Commission adopted a measure at its 1991 meeting capping the catch of krill in area 48 at 1.5 million tons in any fishing season. A fishing season for purposes of the precautionary cap begins on July 1 and concludes on June 30 of the following year. The Commission at the 1992 meeting adopted a supplementary measure setting allowable catches (in tons) for the 1992/93 and 1993/94 fishing seasons in subareas 48.1 (420,000), 48.2 (735,000), 48.3 (360,000), 48.4 (75,000), 48.5 (75,000), and 48.6 (300,000). Notwithstanding these subarea limits, the total sum of catches in any fishing season may not exceed 1.5 million tons for the whole of area 48. Catch an effort reporting is required on a monthly basis.

For the first time, the Commission adopted a measure regulating krill fishing outside of area 48. The measure limits the total catch of *E. superba* in division 58.4.2 to 390,000 tons in any fishing season (defined as beginning on July 1 and concluding on June 30 of the following year). Catch and effort reporting is required on a monthly basis.

*(vii) Fishing for Antarctic Crab*

The Commission adopted a measure limiting the exploratory crab fishery in area 48 during the 1992/93 fishing season. The crab fishery is defined as any harvest activity in which the target species is any member of the crab group (Order *Decapoda*, Suborder *Reptantia*). The fishery is closed from November 15, 1992, until May 1, 1993, (the conclusion of a CCAMLR workshop to develop a longterm management plan for crabs.).

Vessels participating in the fishery will be provided with data reporting forms developed by the workshop and are required to use them in reporting on catch taken before August 30, 1993. In addition to data requested by the workshop, vessels are required to report certain other data and information on crabs caught before July 30, 1993.

The crab fishery is limited to one vessel per Commission Member. However, if the Executive Secretary is notified that more than three vessels intend to fish for crabs, no more than 1,600 tons may be taken during the period from the start of the fishery until the end of meeting of the Commission in 1993 (likely November 5, 1993).

Crab fishing is limited to the use of crab pots (traps). The use of all other methods of catching crabs is prohibited. The crab fishery is limited to sexually mature male crabs and all female crabs and undersized males are to be released unharmed. In the case of *Paralomis spinosissima* and *P. formosa*, only males with a minimum carapace width of 102 mm and 90 mm, respectively, may be retained in the catch. Crabs processed at sea are to be frozen as crab sections.

*(viii) Catch Taken During Fishing for Research Purposes*

The Commission adopted one measure and one resolution dealing with catches taken during fishing for research purposes. The measure requires that catches taken during fishing for research purposes by commercial fishing or fishery support vessels, or vessels of a similar catching capacity, will be considered as part of any catch limit. For the purposes of implementing this measure, every 5-day catch and effort reporting is required whenever the catch within any 5-day reporting period exceeds 5 tons (unless more specific regulations apply to the particular species taken).

Pending development by the Scientific Committee of standardized guidelines and formats for plans describing the use of commercial fishing or fishery support vessels or vessels of a similar catching capacity to conduct fishing for research purposes when the estimated catch may exceed 50 tons, the Commission has adopted a resolution calling for Members who plan such activity to submit research plans including named elements. Catch and effort data resulting from the research fishing is to be reported using the haul-by-haul reporting format for research vessels (C4). These regulations anticipate the expansion of this resolution into a measure by the Commission at the 1993 meeting and include its provisions as U.S. requirements.

**Classification**

The Secretary has determined that this rule is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 (the Act) and to give effect to the management measures adopted by CCAMLR and agreed to by the United States.

The Assistant Administrator prepared a framework environmental assessment (EA) for the Act in 1987. NMFS reviewed this rule and determined that the actions that it requires are generally summarized in the framework EA and are thus excluded from further National Environmental Policy Act analysis.

This action is exempt from E.O. 12291 and section 553 of the Administrative Procedure Act because it involves a foreign affairs function of the United States.

Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared. At present, except for research purposes and for an exploratory crab fishery permitted under the harvesting permit sections of the regulations, there are no U.S. vessels subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply. The only other Antarctic marine living resources affected are scientific specimens taken under National Science Foundation permits and by the U.S. Antarctic Marine Living Resources directed research program.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget under OMB Control Number 648–0194, which expires July 31, 1994. The annual reporting burden for this collection of information is estimated to average 7 hours per finfish harvester and 43 hours per crab harvester, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Applicants for a permit to undertake a new fishery will average 8 hours in researching and preparing information in support of the application. Applicants for a permit to import Antarctic resources and to report tonnages will average 3.5 hours in applying and reporting. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Robin Tuttle, NMFS, and to the Office of Information and Regulatory Affairs (see **ADDRESSES**).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This rule does not directly affect the coastal zone of any state with an approved coastal zone management program.

**List of Subjects in 50 CFR Part 380**

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: July 16, 1993.

Gary Matlock,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 380 is amended as follows:

## PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for part 380 continues to read as follows:

**Authority:** 16 U.S.C. 2431 *et seq.*

2. Section 380.20 is revised to read as follows:

### § 380.20 Scientific research.

(a) The management measures in this subpart do not apply to scientific research, unless otherwise indicated.

(b) The following measures apply to any person, organization or institution planning to use commercial fishing or fishery support vessels, or vessels of similar catching capacity to conduct fishing for scientific research purposes, when the estimated catch may exceed 50 tons:

(1) The person, organization or institution must provide the following vessel and research plan details to the Assistant Administrator at least 7 months in advance of the planned starting date for the research:

(i) Name of vessel;

(ii) Name and address of vessel owner;

(iii) Port of registration, registration number and radio call sign;

(iv) Vessel type, size, fish processing and storage capacity;

(v) Gear type, fishing capacity and anticipated catch;

(vi) A statement of the planned research objectives;

(vii) A description of when, where, and what activities are planned, including a fishing plan that includes the number and duration of hauls and the fishing gear to be used; and

(viii) The name(s) of the chief scientist(s) responsible for planning and coordinating the research, and the number of scientists and crew expected to be aboard the vessel(s).

(2) A summary of the results of any research fishing subject to these provisions must be provided to the Assistant Administrator within 150 days of the completion of the research fishing and full report must be provided within 11 months.

(3) Catch and effort data resulting from the research fishing must be reported to the Assistant Administrator using the CCAMLR C4 haul-by-haul reporting format for research vessels.

(c) Catches taken during fishing for scientific research purposes by commercial fishing or fishery support vessels, or vessels of a similar catching capacity, will be considered as part of any catch limit.

(d) The catch reporting procedure identified in § 380.24(a) will apply whenever the catch within any 5-day reporting period exceeds 5 tons, unless more specific reporting requirements apply to the species being fished.

3. Section 380.23 is revised to read as follows:

### § 380.23 Catch restrictions.

(a) The following catch restrictions apply to *E. superba* in statistical area 48 (see Figure 1):

(1) The total catch of *E. superba* shall not exceed 1.5 million tons in any fishing season.

(2) If the total catch of *E. superba* in statistical subareas 48.1, 48.2 and 48.3 in any fishing season during the period from July 1, 1992, through June 30, 1994, exceeds 620,000 tons, then catch limits in the following statistical subareas apply: 420,000 tons in 48.1; 735,000 tons in 48.2; 360,000 tons in 48.3; 75,000 tons in 48.4; 75,000 tons in 48.5; and 300,000 tons in 48.6.

(3) Notwithstanding the subareas limits in paragraph (a)(2) of this section, the total sum of catches in any fishing season in all subareas shall not exceed the precautionary catch limit of 1.5 million tons for the whole of statistical area 48.

(4) For purposes of applying these catch restriction limits, a fishing season begins on July 1 and ends on June 30 of the following year.

(b) The following catch restrictions apply to *E. superba* in statistical division 58.4.2 (see Figure 1):

(1) The total catch of *E. superba* shall not exceed 390,000 tons in any fishing season.

(2) For purposes of applying this limit, a fishing season begins on July 1 and ends on June 30 of the following year.

(c) Directed fishing for *D. eleginoides* in statistical subarea 48.4 during the period from November 6, 1992, through November 5, 1993, is prohibited.

(d) The following directed fishing is prohibited in statistical subarea 48.3:

(1) Directed fishing on *N. rossii* is prohibited in any fishing season.

(2) Directed fishing on *N. gibberifrons, C. aceratus, P. georgianus, N. squamifrons,* and *P. b. guntheri* is prohibited in statistical subarea 48.3 during the period from November 6, 1992, through November 4, 1994.

(e) The following bycatch limitations apply in statistical subarea 48.3 during the period from November 6, 1992, through November 5, 1993:

(1) The bycatch of *N. gibberifrons* shall not exceed 1,470 tons.

(2) The bycatch of *C. aceratus* shall not exceed 2,200 tons.

(3) The bycatch of *N. rossii, N. squamifrons,* and *P. georgianus* shall not exceed 300 tons each.

(4) The bycatch limit on *P. b. guntheri* is 1 percent of all Antarctic fishes onboard a vessel in the subarea.

(f) The following catch restrictions apply to *C. gunnari* in statistical subarea 48.3 during the period from November 6, 1992, through March 31, 1993:

(1) The total catch of *C. gunnari* shall not exceed 9,200 tons.

(2) If, in the course of the directed fishery for *C. gunnari*, the bycatch of any one haul of any of the species named in paragraph (e) of this section exceeds 5 percent, the fishing vessel shall move to another fishing ground within the subarea.

(g) The total catch of *D. eleginoides* in statistical subarea 48.3 during the period from December 6, 1992, through November 5, 1993, shall not exceed 3,350 tons.

(h) The following catch restrictions apply to *E. carlsbergi* in statistical subarea 48.3 during the period from November 6, 1992, through November 5, 1993:

(1) The total catch of *E. carlsbergi* shall not exceed 245,000 tons.

(2) The total catch of *E. carlsbergi* shall not exceed 53,000 tons in the Shag Rocks region, defined as the area bounded by 52°30′ S. latitude, 40° W. longitude; 52°30′ S. latitude, 44° W. longitude; 54°30′ S. latitude, 40° W. longitude; and 54°30′ S. latitude, 44° W. longitude.

(3) If, in the course of the directed fishery for *E. carlsbergi*, the bycatch of any one haul of any of the species named in paragraph (e) of this section exceeds 5 percent, the fishing vessel shall move to another fishing ground within the subarea.

(i) The taking of finfish, other than for scientific research purposes, is prohibited in subareas 48.1 and 48.2 (see Figure 1) during the period from November 6, 1992, through November 5, 1993.

(j) The total catch of *N. squamifrons* in statistical division 58.4.4 (see Figure 1) during the period from November 6, 1992, through November 4, 1994, shall not exceed 715 tons on Lena Bank and 435 tons on Ob Bank.

(k) The following catch restrictions apply to fishing for any Antarctic crab species in the crab group Order *Decapoda*, Suborder *Reptantia*, in statistical area 48 during the period

from May 1, 1993, through November 5, 1993:

(1) Participation in the crab fishery is limited to one U.S. permit holder. Applicants will be considered in order of application and a permit issued to the first applicant whose fishery is approved by the Assistant Administrator consistent with criteria appearing in § 380.4.

(2) The total catch of Antarctic crab shall not exceed 1,600 tons.

(3) The crab fishery in limited to sexually mature male crabs. All female and undersized male crabs must be released unharmed. In the case of *Paralomis spinosissima* and *P. formosa*, males with a minimum carapace width of 120 mm and 90 mm, respectively, may be retained in the catch.

(4) Crab processed at sea must be frozen as crab sections.

4. Section 380.24 is revised to read as follows:

**§ 380.24 Reporting requirements.**

(a) Five-day catch and effort reporting is established for catches in the Convention Area greater than 5 tons taken during fishing for research purposes; for *C. gunnari* in statistical subarea 48.3; for *D. eleginoides* in statistical subarea 48.3; and for *N. squamifrons* in statistical division 58.4.4 as follows:

(1) The calendar month is divided into six reporting periods: Day 1 to day 5 is period A; day 6 to day 10 is period B; day 11 to day 15 is period C; day 16 to day 20 is period D; day 21 to day 25 is period E; and day 26 to the end of the month is period F.

(2) The operator of any vessel fishing in a fishery to which this system applies must, within 1 day of the end of a reporting period, report his or her catch, bycatch, and total days and hours fished to the Assistant Administrator. The report must be made in writing and conveyed by cable, telex, rapidfax, or other appropriately timely method to the address or number specified in the vessel's permit, and must include the vessel name, permit number, month and reporting period, and catch in metric tons (to the nearest tenth of a metric ton). If no restricted species are taken during a reporting period, the operator must submit a report showing no catch.

(b) Ten-day catch and effort reporting is established for fishing for any member of the crab group (Order *Decapoda*, Suborder *Reptantia*) in statistical area 48 as follows:

(1) The calendar month is divided into three reporting periods: Day 1 to day 10 is period A; day 11 to day 20 is period B; and day 21 to the last day of the month is period C.

(2) The operator of any vessel fishing in a fishery to which this system applies, must within 1 day of the end of a reporting period, report his or her catch, bycatch and total days and hours fished to the Assistant Administrator. The report must be made in writing and conveyed by cable, telex, rapidfax, or other appropriately timely method to the number or address specified in the vessel's permit, and must include the vessel's name, permit number, month of reporting, and catch in metric tons (to the nearest tenth of a metric ton). If no restricted species are taken during a reporting period, the operator must submit a report showing no catch.

(c) Monthly statistical reporting is established for *E. superba* in statistical area 48 and in statistical subdivision 58.4.2 and for *E. carlsbergi* in statistical subarea 48.3 as follows:

(1) The reporting period is defined as 1 calendar month.

(2) The operator of any vessel fishing in a fishery to which this system applies must, within 1 week of the end of a reporting period, report his or her total catch and total days and hours fished for that period to the Assistant Administrator. The report must be made in writing and conveyed by cable, telex, rapidfax, or other appropriately timely method to the address or number specified in the vessel's permit, and must include the vessel name, permit number, month to which the report refers, and catch in metric tons (to the nearest tenth of a metric ton).

(d) Monthly effort and biological data reporting for trawl fisheries is established for *C. gunnari* in statistical subarea 48.3 and for *N. squamifrons* in statistical division 58.4.4. as follows:

(1) The reporting period is defined as 1 calendar month.

(2) The operator of any vessel fishing in a trawl fishery to which this system applies, must complete, for all catch and bycatch species, the CCAMLR fine-scale catch and effort data form for trawl fisheries (Form C1, latest version) and, within 1 day of the end of the reporting period, submit the form to the Assistant Administrator. The report must be made in writing and conveyed by cable, telex, rapidfax, or other appropriately timely method to the address or number specified in the vessel's permit and must include the vessel's name, permit number, and the month to which the report applies.

(3) The operator of any vessel fishing in a trawl fishery to which this system applies must submit biological data as follows:

(i) Length composition measurements (total length to the nearest centimeter below) must be taken on a minimum of 5 percent of the target and bycatch species in each haul.

(ii) Measurements should be made of samples taken from a single fishing ground, defined as the area within a fine-scale grid rectangle of 0.5° latitude by 1° longitude.

(iii) In the event that the vessel moves from one fishing ground to another during the course of a month, separate length compositions should be submitted for each fishing ground.

(iv) Measurements must be submitted to the Assistant Administrator on CCAMLR Form B2 (latest Version) within 1 week after the end of the monthly reporting period and conveyed by cable, telex, rapidfax, or other appropriately timely method to the number or address specified in the vessel's permit, and must include the vessel's name, permit number, and month to which the report applies.

(e) Monthly biological data reporting for *E. carlsbergi* taken in statistical subarea 48.3 is established as follows:

(1) The length composition of a minimum of 500 fish, randomly collected by each vessel operating in the fishery, must be measured each month.

(2) Reports of these measurements must be submitted in writing to the Assistant Administrator within 1 week of the end of the reporting period and conveyed by cable, telex, rapidfax, or other appropriately timely method to the number or address specified in the vessel's permit, and must include the vessel's name, permit number, and month of reporting.

(f) Monthly biological data reporting for *D. eleginoides* for fishing in statistical subarea 48.3 during the period from December 6, 1992, through March 31, 1993, is established as follows:

(1) The length composition of a minimum of 5 percent of each haul must be measured each month and reported on CCAMLR Form B2 (latest version).

(2) Forms must be submitted in writing to the Assistant Administrator by cable, telex, rapidfax, or other appropriately timely method to the address or number specified in the vessel's permit, and must include the vessel's name, permit number, and month of reporting within 1 week of the end of the reporting period.

(g) Cumulative reporting for crab fishing (Order *Decapoda*, Suborder *Reptantia*) in statistical area 48 is required as follows:

(1) The following data must be reported to the Assistant Administrator by August 15, 1993, for crabs caught prior to July 30, 1993:

(i) The location, date, depth, fishing effort (number and spacing of pots) and catch (numbers and weight) of commercially sized crabs (reported on as fine a scale as possible, but no coarser than 1° longitude by 0.5° latitude) for each 10-day period; and

(ii) The species, size and sex of representative subsamples of crabs and bycatch caught in traps.

(2) Data requested by the CCAMLR Workshop to Develop the Longterm Management Plan for Crab must be collected on the forms developed by the workshop and submitted to the Assistant Administrator by September 15, 1993, on all catches taken before August 30, 1993.

(3) Crab fishery logbooks provided by the Assistant Administrator must be kept and submitted to the Assistant Administrator as indicated in the instructions to the logbooks:

(i) Commercial Vessel Daily Activity Logbook;

(ii) Commercial Vessel Fishing Effort Logbook; and

(iii) Commercial Vessel CCAMLR Subsample Logbook.

5. Section 380.26 is revised to read as follows:

**§ 380.26 Closures.**

(a) The fishery for *E. superba* in statistical area 48 shall close when the total catch in any fishing season reaches 1.5 million tons.

(b) If the fisheries for *E. superba* in statistical subareas 48.1, 48.2 and 48.3 together reach 620,000 tons, then the fisheries in statistical area 48 in the 1992/93 and the 1993/94 seasons shall close as follows:

(1) The fishery in statistical subarea 48.1 shall close when the total catch reaches 420,000 tons.

(2) The fishery in statistical subarea 48.2 shall close when the total catch reaches 735,000 tons.

(3) The fishery in statistical subarea 48.3 shall close when the total catch reaches 360,000 tons.

(4) The fishery in statistical subarea 48.4 shall close when the total catch reaches 75,000 tons.

(5) The fishery in statistical subarea 48.5 shall close when the total catch reaches 75,000 tons.

(6) The fishery in statistical subarea 48.6 shall close when the total catch reaches 300,000 tons.

(c) The fishery for *E. superba* in statistical division 58.4.2 shall close when the total catch in any fishing season reaches 390,000 tons.

(d) The fishery for *D. eleginoides* in statistical subarea 48.3 during the period from December 6, 1993, through November 5, 1993, shall close when the total catch reaches 3,350 tons.

(e) The fishery by Chile for *D. eleginoides* in statistical subarea 48.4 during the period from November 6, 1992, through November 5, 1993, shall close when the total catch reaches 240 tons.

(f) The fishery for *C. gunnari* in statistical subarea 48.3 is open from November 6, 1992, through March 31, 1993. It shall close the earlier of April 1, 1993; the point when bycatch of any of the species *N. gibberifrons, C. aceratus, N. rossii, N. squamifrons, P. geogrianus,* or *P. b. guntheri* reaches its bycatch limit; or the point when the total catch of *C. gunnari* reaches 9,200 tons. Once closed, the fishery shall remain closed until November 5, 1993.

(g) The directed fishery for *E. carlsbergi* in statistical subarea 48.3 during the period from November 6, 1992, through November 5, 1993, shall close when the bycatch of any of the species *N. gibberifrons, C. aceratus, N. rossii, N. squamifrons, P. georgianus,* or *P. b. guntheri* reaches its bycatch limit or if the total catch of *E. carlsbergi* reaches 245,000 tons, whichever comes first.

(h) The directed fishery for *E. carlsbergi* in the Shag Rocks region of statistical subarea 48.3 during the period from November 6, 1992, through November 5, 1993, shall close when the bycatch of any of the species named in paragraph (g) of this section reaches its bycatch limit or if the total catch of *E. carlsbergi* reaches 53,000 tons, whichever comes first.

(i) The fishery for *N. squamifrons* on Lena Bank in statistical division 58.4.4 shall close when the total catch between November 6, 1992, and November 5, 1994, reaches 715 tons.

(j) The fishery for *N. squamifrons* on Ob Bank in statistical division 58.4.4 shall close when the total catch between November 6, 1992, and November 5, 1994, reaches 435 tons.

(k) The fishery for Antarctic crab species in the crab group Order *Decapoda,* Suborder *Reptantia* in statistical area 48 shall close when the total catch reaches 1,600 tons.

6. Section 380.27 is revised to read as follows:

**§ 380.27 Gear restrictions.**

(a) Longline fishing is prohibited in the Convention Area (see Figure 1).

(b) The use of net monitor cables on harvesting vessels in the Convention Area (see Figure 1) is prohibited beginning July 1, 1994.

(c) The use of bottom trawls in the directed fishery for *C. gunnari* in statistical subarea 48.3 during the period from November 6, 1992, through November 6, 1993, is prohibited.

(d) The use of any gear, except crab pots (traps), in the crab fishery in statistical area 48 during the period from May 1, 1993, through November 5, 1993, is prohibited.

[FR Doc. 93-17576 Filed 7-22-93; 8:45 am]
BILLING CODE 3510-22-M

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**50 CFR Part 672**

**[Docket No. 921107-3068; I.D. 071993C]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of northern rockfish in the Eastern Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the northern rockfish total allowable catch (TAC) in this area has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 19, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Eastern Regulatory Area was established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as 40 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for northern rockfish in the Eastern Regulatory Area has been reached. Therefore, NMFS is requiring that further catches of northern rockfish in the Eastern Regulatory Area be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t., July 19, 1993, through 12 midnight, A.l.t. December 31, 1993.

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–17472 Filed 7–19–93; 2:52 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 672**

**[Docket No. 921107–3068; I.D. 071993B]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 20, 1993, through 12 noon, A.l.t., October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Martin Loefflad, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 63 is 17,257 metric tons (mt), determined in accordance with § 672.20(a)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 third quarterly allowance of pollock TAC in Statistical Area 63 soon will be reached. The Regional Director established a directed fishing allowance of 16,757 mt, and has set aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 63, effective from 12 noon, A.l.t., July 20, 1993, through 12 noon, A.l.t., October 1, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1993.

**Richard H. Schaefer,**

*Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–17473 Filed 7–19–93; 3:14 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 672**

**[Docket No. 921107–3068; I.D. 071993A]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is rescinding the closure to directed fishing for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to fully utilize the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), August 9, 1993, through 12 noon, A.l.t., October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The directed fishery for pollock in Statistical Area 62 was prohibited from 12 noon, A.l.t., July 7, 1993, through 12 noon, A.l.t., October 1, 1993, under § 672.20(c)(2)(ii) (58 FR 37660, July 13, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the third quarterly allowance of the TAC for pollock in Statistical Area 62 has not been reached. Therefore, NMFS is rescinding that closure and is reopening directed fishing for pollock in Statistical Area 62, effective at 12 noon, A.l.t., August 9, 1993, through 12 noon, A.l.t., October 1, 1993. All other closures remain in full force and effect.

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 19, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–17474 Filed 7–22–93; 8:45 am]

BILLING CODE 3510-22-M

VOL 58 ISS 140 JL 23 1993 UMI



# Proposed Rules

Federal Register
Vol. 58, No. 140
Friday, July 23, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 3

[Docket No. 93-076-1]

### Animal Welfare—Standards for Marine Mammals

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** We are considering revising the standards for the humane care and transportation of marine mammals used for exhibition and research purposes, and are soliciting comments regarding appropriate changes or additions to the present standards.

**DATES:** Consideration will be given only to comments received on or before October 6, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-076-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. R. L. Crawford, Assistant Deputy Administrator, Animal Care, Regulatory Enforcement and Animal Care, APHIS, USDA, room 554, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4981.

**SUPPLEMENTARY INFORMATION:**

### Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*, enacted in 1966 and amended in 1970, 1976, 1985, and 1990) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. Regulations established under the Act are contained in 9 CFR parts 1, 2, and 3.

Under the Act, the Department established regulations in 1979 for the humane handling, housing, care, treatment, and transportation of marine mammals used for research or exhibition purposes. These standards were amended in 1984. During the 9 years since the standards were amended, advances have been made, new information has been developed, and new concepts have been implemented with regard to the housing and care of marine mammals.

We therefore consider it appropriate to review the current standards to determine what revisions, if any, are necessary. As part of our review we are requesting comments on appropriate specific standards for the humane handling, care, treatment, and transportation of marine mammals used for research or exhibition purposes. In addition, we invite responses to the following questions:

—Should ambient temperature ranges for air and water be established for each species for both indoor and outdoor facilities? If so, what should these temperature ranges be?

—Should the regulations consider the effect of noise on animals? If so, what level of noise should be allowable?

—Should public contact with marine mammals, including programs such as "Swim-with-the-Dolphins," be allowed? Under what parameters should such contact be allowed?

—Should additional recordkeeping be required in the areas of behavior, food intake, and veterinary care? If so, what recordkeeping should be required?

—Should solitary confinement of marine mammals in captivity be allowed? If so, under what conditions? Should this consideration be applied to polar bears as well?

—Is the currently required coliform test for water quality adequate? What test methods should be allowed? Should pH ranges be established by species? If so, what should these ranges be?

If we determine that the standards for marine mammals should be revised, we will publish the proposed standards for comment in the Federal Register.

**Authority:** 7 U.S.C. 2131-2157; 7 CFR 2.17, 2.51, and 371.2(g).

Done in Washington, DC, this 16th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-17559 Filed 7-22-93; 8:45 am]

BILLING CODE 3410-34-F

### 9 CFR Part 78

[Docket No. 92-044-1]

### Brucellosis; Interstate Movement of Swine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the swine brucellosis regulations by standardizing and simplifying the testing requirements for States seeking validation as swine brucellosis-free, and by extending to 2 years the period during which validated brucellosis-free herds must be tested to maintain brucellosis-free status. We are also proposing to restrict the interstate movement of feral swine because of swine brucellosis. These actions appear necessary to achieve the goal of swine brucellosis eradication in the United States.

**DATES:** Consideration will be given only to comments received on or before September 21, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-044-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are

encouraged to call ahead (202–690–2817) to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Delories Lenard, Senior Staff Veterinarian, Swine Health Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7767.

**SUPPLEMENTARY INFORMATION:**

**Background**

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*. Brucellosis in swine is characterized by abortion, infertility, orchitis, posterior paralysis, and lameness. The brucellosis regulations in 9 CFR part 78 (referred to below as the regulations) prescribe, among other things, conditions for the interstate movement of swine. Their purpose is to control, and ultimately to eradicate, brucellosis in the United States.

Under the regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for swine are based upon the disease status of the animal, or of the herd or State from which the animal originates. Currently, validated brucellosis-free status for a State is based on the State, among other things, having: (1) Completed surveillance, by one of several methods, during the months preceding classification, with no more than 3 percent of the tested herds having been found to have swine brucellosis, and with no diagnosed case of swine brucellosis in the State at the time of its classification; or (2) demonstrated, through a statistical analysis of the combined results of certain tests, that the testing has produced results equivalent to complete herd testing or slaughter surveillance during a 1- or 2-year period, as chosen by the State, with no diagnosed case of swine brucellosis in the 12 months preceding validation.

In recent years, considerable progress has been made toward the eradication of swine brucellosis. The incidence of swine brucellosis has declined to the point that good herd management practices have significantly reduced the risk of the disease reestablishing itself in States and herds that have been validated as free of swine brucellosis. Testing to the extent currently required no longer appears necessary to prevent the interstate spread of swine brucellosis.

We are therefore proposing to change the regulations to standardize and simplify the options regarding testing that are available to States seeking validation as swine brucellosis-free and to extend to 2 years the period during which validated brucellosis-free herds must be tested to maintain brucellosis-free status. We are also proposing to restrict the interstate movement of feral swine. We believe these changes would help us achieve the goal of eradication of brucellosis in domestic swine by the year 2000.

The proposed changes are discussed below.

*Validated Brucellosis-Free State Status*

We propose to reduce to three the number of surveillance options for States seeking validated brucellosis-free State status. The current definition of "Validated brucellosis-free State" in § 78.1 prescribes a range of surveillance options premised on complex time-test-traceback formulas. This diversity of options has created administrative difficulties for the Department in monitoring surveillance programs. We propose to simplify these requirements by eliminating surveillance options premised on 12- or 18-month testing regimens, and by requiring a 2-year qualification period for every State seeking validation. A State could complete required surveillance during the mandatory 2-year period by selecting one of the following options:

1. Subjecting all swine that are six months of age or older and maintained for breeding purposes to an official swine brucellosis test (complete herd testing); or

2. Market swine testing, that is, subjecting 20 percent of the State's swine that are six months of age or older and maintained for breeding purposes to an official swine brucellosis test, and demonstrating successful traceback of at least 80 percent of market swine test (MST) reactors to the herd of origin. All MST reactor herds would be subject to a complete herd test (CHT) within 30 days of the MST laboratory report date, as determined by the designated epidemiologist; or

3. Demonstrating, by a statistical analysis of all official swine brucellosis test results during the 2-year qualification period, a surveillance level equivalent or superior to the alternatives described above.

If, at any point during the 2-year qualification period, a herd were determined to be infected with swine brucellosis, depopulation of that herd would be required. A single such determination would be considered an anomaly, and would not affect the State's eligibility for validation. More than one such determination would signify the continuing presence of the disease within the State, and would therefore disqualify the State from validation as a brucellosis-free State. This proposed provision is more stringent than the currently allowed infection rate (3 percent of all herds in the State) because stakes become higher as the ambitious goal of surpassing disease control with disease eradication becomes attainable. Tolerance of multiple incidences of brucellosis-infected herds would increase the risk of disease perpetuation, jeopardizing eradication efforts.

To maintain validation, a State would be required, on an annual basis, to subject at least 5 percent of its breeding swine to an official test, and to demonstrate traceback to herd of origin of at least 80 percent of all MST reactors. Within 36–40 months of receiving validated brucellosis-free State status, the State would have to demonstrate its continuing ability to meet the criteria for initial brucellosis-free State validation, as discussed above.

For clarity, a definition of "complete herd test" would be added to the regulations to replace the current "herd blood test" provision for swine. "Complete herd test (CHT)" is the term more commonly used by producers today. The substance of the definition would not change. Similarly, a definition of "market swine test (MST) reactor" would be added to clarify that swine that react positively to a screening test, if no follow-up (confirmatory test) is conducted, are considered reactors. For information, a definition of "confirmatory test," providing a list of these tests, would also be added.

*Validated Brucellosis-Free Herd Status*

We are proposing to ease requirements for validated brucellosis-free herd status in validated brucellosis-free States. We would remove the requirement, in the definition of "validated brucellosis-free herd" in current § 78.1 of the regulations, that all sows and boars maintained for breeding purposes be negative to an official test. Routine testing of individual herds no longer appears warranted in validated brucellosis-free States, where the danger of the disease is remote, and where annual testing of 5 percent of breeding swine would be required for the State to maintain its validated brucellosis-free status. We therefore propose to validate as brucellosis-free any swine herd not known to be infected with swine brucellosis, located in a validated brucellosis-free State.

We are also proposing to amend the current regulations to provide a more

flexible testing regimen for a swine herd seeking, or seeking to maintain, validated brucellosis-free herd status in a State that has not been validated as brucellosis-free. The current definition of "validated brucellosis-free herd" in § 78.1 provides that for a swine herd to attain validated brucellosis-free status in any State, all sows and boars maintained for breeding purposes must first test negative to an official test. As we noted above, under this proposal, herds in a validated brucellosis-free State would not have to undergo such testing.

We are proposing a flexible testing regimen for a swine herd seeking validated brucellosis-free status in a State that is not a validated brucellosis-free State. Under the proposed provisions, the herd would qualify by testing negative to a CHT or to an incremental CHT. The incremental CHT could be conducted by testing 25 percent of all breeding swine every 80–105 days or by testing 10 percent of all breeding swine every 25–35 days, until 100 percent of these swine have been tested. If, during the course of the year, unanticipated circumstances (for example, flooding) arise, the Administrator may approve an alternative testing schedule that will achieve the purpose of the regulations. Under this alternative testing schedule, the complete herd would be tested within 365 days, with negative results. No swine could be tested twice in 1 year to comply with that year's test requirements. No further testing would be required once 100 percent of the breeding swine have been tested. After all breeding swine have tested brucellosis-negative, a herd may be validated as brucellosis-free. The herd would retain validated brucellosis-free status for a maximum of 12 months, unless it qualified for continual maintenance of validation, as described in the following paragraph.

The current definition of "validated brucellosis-free herd" provides that validation may be retained either by a negative CHT within 10 to 14 months of the last validation test date, by testing at least 20 percent of the sows and boars maintained for breeding purposes under an MST program during the year, or by testing all sows and boars maintained for breeding purposes at least once during the 1-year validation period under an approved herd plan.

Under this proposed rule, an incremental CHT would replace the MST and approved herd plan options. This change would reduce the administrative difficulties in monitoring individualized testing programs. It would introduce consistency into individual herd test schedules, without sacrificing the flexibility afforded herd owners by the current regulations. The incremental CHT could be conducted in either of the ways described above for obtaining validation, that is, 25 percent of all breeding swine would be tested, with negative results, every 80–105 days, or 10 percent of all breeding swine would be tested, with negative results, every 25–35 days, until 100 percent of these swine have been tested. If, during the course of the year, unanticipated circumstances (for example, flooding) arise, the Administrator may approve an alternative testing schedule that will achieve the purpose of the regulations. Under this alternative testing schedule, the complete herd would be tested within 365 days, with negative results. No breeding swine could be tested twice in 1 year to comply with the 25 percent requirement or the 10 percent requirement. No further testing is required once 100 percent of these swine have been tested.

The definition of "validated brucellosis-free herd" would be revised to include the proposed new provisions.

*Feral Swine*

In the 24 States known to have feral, or free-roaming, swine, these populations are found largely in riverine habitats and coastal swamps.

Brucellosis-infected feral swine are known to exist in at least 10 States, of which at least 3 have validated-free status, based on the incidence in domestic swine. These infected feral populations pose a danger to brucellosis-free swine in those and other States. Therefore, to protect domestic populations and expedite swine-brucellosis eradication in domestic herds throughout the United States, we propose to restrict the interstate movement of feral swine. This action would help confine brucellosis to feral populations. By reducing points of contact between feral and domestic populations, restricted interstate movement would reduce opportunities for disease transmission.

Therefore, we are proposing to introduce the following measures to restrict the interstate movement of feral swine:

1. Feral swine could be moved interstate directly to slaughter, if prevented from physical contact with any domestic swine or other livestock.
2. Feral swine from monitored-negative populations, or found negative to an official test within the 30 days prior to interstate movement, could be moved interstate, other than directly to slaughter (for example, to a hunting preserve or game farm), by permit of the APHIS representative or the State animal health official in the State of origin. A swine population may be classified by the designated epidemiologist as "monitored-negative" if the swine indicate no evidence of infection, and are from a geographically defined area: for example, a forest area, hunting preserve, or swamp.

For clarity, we propose to add definitions of "feral swine" and "monitored negative feral swine population," discussed above, to § 78.1. The definition of "feral swine" would note that previously free-roaming swine could be reclassified as domestic swine upon testing negative to an official swine brucellosis test after at least 60 days' confinement in isolation from other feral swine.

*Miscellaneous*

We propose to remove the redundant provision that States must have the "necessary authorities for classification as a validated brucellosis-free State for swine." This editorial change would have no substantive effect. Additionally, for informational purposes only, we propose to add a definition of "swine brucellosis" (that form of brucellosis caused by *Brucella suis* [*b. suis*] biovar 1 or 3) to § 78.1.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed changes would result in direct benefits for producers through testing requirements either being relaxed or removed entirely, and indirect benefits through more standardized testing procedures. Fewer tests, at an estimated cost of $5 per head, would not only save herd owners money, but would also be less disruptive to normal herd operations. Similarly, savings would be realized by the removal of the requirement for

routine herd testing in validated brucellosis-free States.

The more stringent standard for validated brucellosis-free State status would disqualify any State with more than 1 confirmed herd infection. We expect that this new standard would provide States or producers with an incentive for depopulating the relatively few brucellosis-infected herds of domestic swine that, although sources of disease perpetuation and spread, are currently tolerated in some States. We therefore expect, with this provision, to expedite the eradication of swine brucellosis in domestic herds in all States in the United States. Once eradication has been achieved, as has been shown in 40 States, fewer tests must be conducted. That is, producers immediately benefit, operationally and economically, when fewer tests are required.

More than 90 percent of all domestic swine producers are small businesses. Based on the 1991 marketing year figures, sales of fewer than 4,000 head would place a producer in the "small business" category (gross receipts below $500,000). Of the 238,819 swine producers in the United States identified in the most recent Census of Agriculture, fewer than 24,000, or 10 percent, sell more than 1,000 head per year; precise figures above 1,000 are not available. We would expect large and small producers alike in States applying for validation or already validated as swine brucellosis-free to benefit to a limited extent from relaxed testing requirements. Producers in other States would be unaffected by these proposed changes to the regulations. Feral swine have a capacity for harboring and transmitting swine brucellosis to domestic herds. Feral swine moved interstate (not intended for immediate slaughter) are presumably sold to hunting preserves or at livestock auctions. However, State records indicate minimal interstate movement of feral swine. Few small entities, therefore, are likely to be affected by the proposed feral swine regulations.

We know of no other small entities that might be affected by this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects in 9 CFR Part 78**

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 would be amended as follows:

## PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

**Authority:** 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the term "herd blood test" would be revised by removing paragraph (b), and the following terms would be revised or added, in alphabetical order, as follows:

**§ 78.1 Definitions.**

* * * * *

*Complete herd test (CHT).* An official swine brucellosis test of all swine on a premises that are 6 months of age or older and maintained for breeding purposes.

*Confirmatory test.* A follow-up test to verify any official test results. Confirmatory tests include the standard tube test, the Rivanol test, the complement fixation test (CF), the particle concentration fluorescence immunoassay (PCFIA), the semen plasma test, and the standard plate test.

* * * * *

*Feral swine.* Free-roaming swine. Formerly free-roaming swine could qualify for reclassification as domestic swine upon testing negative to an official swine brucellosis test after a period of at least 60 days' confinement in isolation from other feral swine.

* * * * *

*Market swine test (MST) reactor.* Market swine test swine with a positive reaction to a swine brucellosis confirmatory test or other official test, if no confirmatory test is performed.

* * * * *

*Monitored-negative feral swine population.* Feral swine indicating no evidence of infection (indicators would include positive blood tests or clinical signs, such as abortion) and originating from a specified, geographically isolated area (a forest area, hunting preserve, or swamp, for example) may be classified by the designated epidemiologist as a monitored-negative feral swine population.

* * * * *

*Swine brucellosis.* The communicable disease of swine caused by *Brucella suis (B. suis)* biovar 1 or 3.

* * * * *

*Validated brucellosis-free herd.* (a) A swine herd not known to be infected with swine brucellosis, located in a validated brucellosis-free State; or (b) a swine herd in a State that has not been validated as brucellosis-free, provided the herd meets the conditions for validation, as follows:

(1) Validation: A swine herd may be validated as brucellosis-free if it has been found brucellosis negative after either a complete-herd test (CHT) or an incremental CHT. The incremental CHT may be conducted either by testing 25 percent of all breeding swine every 80–105 days, with negative results; or by testing 10 percent of all breeding swine every 25–35 days, with negative results, until 100 percent of these swine have been tested. The Administrator may approve an alternative testing schedule, under which the complete herd would be tested within 365 days with negative results, in cases where unforeseen circumstances warrant such action. No swine may be tested twice in 1 year to comply with the 25 percent requirement nor to comply with the 10 percent requirement. No further testing is required once 100 percent of the breeding swine have been tested. After all breeding swine have tested brucellosis negative, a herd may be

validated as brucellosis-free. A herd retains validated brucellosis-free status for a maximum of 12 months, except as provided in paragraph (2) of this definition.

(2) Validation may be continuously maintained if: (i) A complete herd test is performed once every 365 days, with negative results; or (ii) every 80–105 days, 25 percent of all breeding swine are tested, with negative results; or (iii) every 25–35 days, 10 percent of all breeding swine are tested, with negative results, until 100 percent of these swine have been tested. The Administrator may approve an alternative testing schedule, under which the complete herd would be tested within 365 days with negative results, in cases where unforeseen circumstances warrant such action. No swine may be tested twice in 1 year to comply with these requirements. No further testing is required once 100 percent of the breeding swine have been tested.

*Validated brucellosis-free State.* A State may apply for validated-free status when:

(a) Any herd found to have swine brucellosis during the 2-year qualification period preceding the application has been depopulated. More than one finding of a swine brucellosis-infected herd during the qualification period disqualifies the State from validation as brucellosis-free; and

(b) During the 2-year qualification period, the State has completed surveillance, annually, as follows:

(1) *Complete herd testing.* Subjecting all swine in the State that are six months of age or older and maintained for breeding purposed to an official swine brucellosis test; or

(2) *Market swine testing.* Subjecting 20 percent of the State's swine six months of age or older and maintained for breeding purposes to an official swine brucellosis test, and demonstrating successful traceback of at least 80 percent of market swine test (MST) reactors to the herd of origin. Blood samples may be collected from MST swine if the swine can be identified to their herd of origin, in accordance with § 71.19(b) of this subchapter. All MST reactor herds are subject to a CHT within 30 days of the MST laboratory report date, as determined by a designated epidemiologist; or

(3) *Statistical analysis.* Demonstrating, by a statistical analysis of all official swine brucellosis test results (including herd validation, MST, change-of-ownership, diagnostic) during the 2-year qualification period, a surveillance level equivalent or superior to CHT and MST testing programs discussed in this paragraph.

(c) To maintain validation, a State must annually survey at least 5 percent of its breeding swine, and demonstrate traceback to herd of origin of at least 80 percent of all MST reactors. A State must demonstrate its continuing ability to meet the criteria set forth in paragraph (c) of this definition within 36–40 months of receiving validated brucellosis-free State status to retain that status.

* * * * *

**§ 78.30 [Amended]**

3. In § 78.30, paragraph (a) would be amended by removing the words "and sows" after "brucellosis exposed swine" and adding, in their place, the words "feral swine, sows,".

4. In § 78.30, a new paragraph (c) would be added, to read as follows:

**§ 78.30 General restrictions.**

* * * * *

(c) (1) Feral swine may be moved interstate directly to slaughter if they do not come into physical contact with any domestic swine or other livestock.

(2) Feral swine from monitored-negative populations may be moved interstate other than directly to slaughter if accompanied by a permit issued by the APHIS representative or the State animal health official in the State of origin.

(3) Feral swine found negative to an official test within the 30 days prior to the interstate movement may be moved interstate other than directly to slaughter if accompanied by a permit issued by the APHIS representative or the State animal health official in the State of origin.

Done in Washington, DC, this 16 day of July, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17556 Filed 7–22–93; 8:45 am]

BILLING CODE 3410-34-P

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**9 CFR Part 113**

**[Docket No. 92–124–1]**

## Viruses, Serums, Toxins, and Analogous Products; Antibody Products

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations by: revising the designation for a group of Standard Requirements from "Blood Origin Products" to "Antibody Products;" revising five of the six existing Standard Requirements of the group; removing the sixth; and adding a new Standard Requirement for products for the treatment of failure of passive transfer. These amendments are necessary to update the standards and to provide for regulation of veterinary biological products which is more consistent with current scientific knowledge and understanding.

**DATES:** Consideration will be given only to comments received on or before September 21, 1993.

**ADDRESSES:** Send the original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–124–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone (301) 436–8245.

**SUPPLEMENTARY INFORMATION:**

### Background

In accordance with the regulations in 9 CFR part 113 (hereinafter referred to as "the regulations"), Standard Requirements are prescribed for the preparation of veterinary biological products. A Standard Requirement consists of specifications, procedures, and test methods which define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product. Where a Standard Requirement for a product does not exist, production procedures and specifications for purity, safety, and potency of an affected product are provided in an Outline of Production filed with the Animal and Plant Health Inspection Service (APHIS). For consistency of review and uniformity of standards, once standards for a given type of product are established, they are codified in the regulations.

In recent years the number of license applications received by APHIS for antibody products has increased substantially. A number of these products are derived from blood. However, increasing numbers have been derived from sources such as colostrum, milk, and eggs. Standard Requirements for many of these products are not

codified in the regulations, and many of them are not adequately addressed by the general requirements for blood origin products in § 113.450. For purposes of a more consistent licensing standard, more appropriate product-indication statements, greater guidance to manufacturers, and more reliable products, we propose to amend the regulations in the following manner.

First, it is proposed that the title "Blood Origin Products" be changed to "Antibody Products." The reason for this is that the revised standards would be applicable to more than just blood origin products. In addition, the proposed rule would revise the Standard Requirements in §§ 113.450, 113.451, 113.452, 113.454, and 113.455, and remove the Standard Requirement in § 113.453. The most significant revisions involve § 113.450. The proposed revisions to § 113.450 would provide definitions for some of the terms used in the regulations pertaining to antibody products, and present the new nomenclature devised for these products. Additionally, the revisions would provide more specific requirements for assessing the health of animals supplying source materials. For example, horses used to supply blood would be required to be tested for specific infectious diseases, including equine infectious anemia and piroplasmosis. Current regulations do not specify the diseases. They would also allow for alternative methods of handling and processing of source materials. Current regulations only allow for the use of one type of treatment (conventional heating) to inactivate contaminants. The revised regulations would allow for the treatment regimen to involve conventional heating or the use of ionizing radiation. Based on available data, the radiation dose specified should prove at least as effective at inactivating contaminants as the specific heat treatment regimens described in the current and revised regulations. The proposal also provides special purity standards for dried antibody products administered orally. Some of these products contain nonpathogenic bacteria deliberately introduced during the production process. Regular purity standards allow for presence of no bacteria. The proposed revisions to § 113.450 would also remove provisions pertaining to minimum globulin content and minimum protein content. These measurements are specified in the current regulations primarily to ensure that the serum from donor animals used to treat cases of failure of passive transfer is not abnormally low with respect to globulin and overall protein content. The proposed changes to the regulations make these measurements partially inapplicable, since antibodies from sources other than serum are allowed. In addition, the measurement specified in the new § 113.449 for products for the treatment of failure of passive transfer (see below) is more related to product efficacy.

The Standard Requirement in § 113.453 would be removed because no applicable licensed product exists for this section and because the potency tests described are obsolete. The proposed revisions to the remaining Standard Requirements (§§ 113.451, 113.452, 113.454, and 113.455) would: (1) Apply the new nomenclature devised for veterinary antibody products; (2) remove the limitation that the source material for a veterinary antibody product be the blood of hyperimmunized animals; restrictions on the nature of the source material associated with the proposed standards would be limited to those involving animals, collection procedures, and handling and processing methods (e.g., milk from a cow with brucellosis and/or that is simply filtered rather than irradiated or conventionally heat treated would not be an acceptable source material); (3) remove references to purity and safety testing, since purity and safety testing of antibody products would be addressed in § 113.450 and need only be referenced in these and subsequent Standard Requirements for the various veterinary antibody product types.

In addition, the proposed rule would establish a new Standard Requirement in § 113.499 for products used in the treatment of a condition of neonatal animals characterized by an abnormally low concentration of circulating maternal immunoglobulin. This condition is commonly referred to as "failure of passive transfer." It should be mentioned that the new Standard Requirement would permit failure of passive transfer (FPT) products to be recommended for use only in neonates of the same species as that which supplies the component material. For example, An FPT product of bovine origin could not be recommended for use in foals. For an FPT product, it is accepted that sufficient antibodies are contained therein to provide the neonate with some degree of protection against infectious disease. In most cases, however, the protective capacity of an FPT product is not as well defined as that for an antibody product intended for protection against a specific infectious disease, even when the product is for use in neonates of the same species. Due to this fact, and because of considerations such as spectrum of antibody, antibody half-life, and antibody functionality, APHIS believes that recommendations for cross-species use of these products should not be allowed. It should also be mentioned that the proposed Standard Requirement for FPT products provides that such products, if for oral administration, be recommended for administration within 24 hours of birth and for parenteral administration be recommended for administration within 120 hours of birth. The 24-hour limit is set with the understanding that the ability of the neonate gut to absorb large molecules such as immunoglobulins is very transient, and is lost or very reduced by 24 hours after birth, particularly if the animal has previously suckled. The 120-hour limit, while somewhat arbitrary, is set with the understanding that a diagnosis of failure of passive transfer is reserved for a very young animal, an animal that has not had sufficient time to mount an effective, active immune response against whatever microbial pathogens exist in its environment.

As noted above, the proposed rule would establish a new, more uniform nomenclature for veterinary antibody products. The term "antibody" would be used to describe a specific antibody product that contains antibodies directed against a nontoxin antigen, and the term "antitoxin" would be used to describe a specific antibody product that contains antibodies directed against toxin. If the antibodies are monoclonal, the term "monoclonal" would be included. For consistency with current naming practices for veterinary vaccines, the name of a virus-specific product would include the name of the disease the virus causes, while the name of a bacterium-specific product would include the scientific name of the bacterium. The true name of a specific antibody product would also indicate the type of animal from which the component antibodies originate. The following are examples of true names for specific antibody products: "Escherichia Coli Monoclonal Antibody, Murine Origin;" "Clostridium Perfringens Type C Antitoxin, Equine Origin;" "Duck Virus Hepatitis Antibody, Duck Origin."

The term "IgG" (immunoglobulin G) would be used to describe a product for the treatment of failure of passive transfer. The true name for such a product would also specify the species of origin of the IgG. The following are examples of true names for products for the treatment of failure of passive transfer: "Equine IgG," "Bovin IgG."

This nomenclature reflects the fact that IgG is the component of an FPT product measured in the efficacy study and in the serial-release potency test in accordance with § 113.499. The rationale for measuring IgG is founded on two main points. First, the condition known as failure of passive transfer has been most often defined in the scientific literature as an abnormally low level of IgG in the serum of a neonate. Second, IgG is the predominant immunoglobulin class in virtually all materials from which the FPT product antibodies would be derived. A product for which claims can be made for both the prevention and/or alleviation of a specific infectious disease and the treatment of failure of passive transfer would be named according to the guidelines for a product used for a specific infectious disease.

**Executive Orders 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if implemented, would have an effect on the economy of less that $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed amendments to the regulations should, in most instances, either have no significant economic impact on the entities noted above or have a positive economic impact. For example, as proposed, manufacturers would not be restricted to pasteurization for the treatment of source materials and would not be restricted to the use of blood from hyperimmunized horses for the manufacture of veterinary antibody products for the prevention and/or alleviation of specific infectious diseases. Where the proposal may have a negative economic impact on manufacturing, such impact should be minimal. The negative impact may arise because the proposed rule would prohibit recommendations for cross-species use of FPT products. However, notification that such a proposal was being considered was given by APHIS over 4 years ago.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted prior to any judicial challenge to the regulations under this rule.

**Paperwork Reduction Act**

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 113**

Animal biologics, Export, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 would be amended as follows:

## PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. The undesignated center heading preceding § 113.450 would be revised to read "Antibody Products."

3. Section 113.450 would be revised to read as follows:

**§ 113.450 General requirements for antibody products.**

Unless otherwise prescribed in a Standard Requirement or in a filed Outline of Production, all antibody products shall meet the applicable requirements of this section.

(a) *Terminology.* The following terms in the regulations and standards concerning antibody products shall mean:

*Antibody.* An immunoglobulin molecule, having a precise glycoprotein structure, produced by certain cells of the B lymphocyte lineage in response to antigenic stimulation, and functioning to specifically bind and influence the antigens that induced its synthesis.

*IgG (Immunoglobulin G).* One of the several recognized classes of structurally related glycoproteins whose representatives include all known antibodies.

*Monoclonal.* Produced by, or derived from, the offspring of a single common progenitor cell.

*Failure of passive transfer.* A condition of neonates characterized by an abnormally low concentration of circulating maternal IgG.

(b) *Nomenclature.* Antibody products shall be named as follows:

(1) *Virus-specific products.* The true name of a virus-specific product shall: include the term "antibody," specify the disease for which the product is intended, and indicate the type of animal that supplied the component antibodies. If the antibodies are monoclonal, the term "monoclonal" shall be used. Example: "Duck Virus Hepatitis Antibody, Duck Origin."

(2) *Bacterium-specific products.* The true name of a bacterium-specific product shall: include the term "antibody" if the component antibodies are directed against a nontoxin antigen or the term "antitoxin" if the component antibodies are directed against toxin, specify the organism against which the product is intended, and indicate the type of animal that supplied the component antibodies. If the antibodies are monoclonal, the term "monoclonal" shall be used. Example: "Escherichia Coli Monoclonal Antibody, Murine Origin."

(3) *Failure of passive transfer products.* The true name of a product for treatment of failure of passive transfer shall: include the term "IgG" and indicate the type of animal that supplied the component IgG. Example: "Bovine IgG."

(4) *Combination products.* The true name of a product for treatment of failure of passive transfer as well as for the prevention and/or alleviation of a specific viral or bacterial disease shall be named according to the nomenclature prescribed above for virus-specific or bacterium-specific products.

(c) *Animals.* All animals used in the production of antibody products shall be healthy. Their health status shall be determined by physical examination by, or under the direct supervision of, a licensed veterinarian and by tests for infectious diseases. Such animals shall be maintained at licensed establishments: *Provided,* That cows maintained at Grade A dairies (or the equivalent) that are not injected with antigens for the purpose of stimulating the production of specific antibodies and that are used only for the purpose of supplying lacteal secretions are exempt from being maintained at a licensed establishment.

(1) No animal shall be used while showing clinical signs of disease. The

presence of minor localized injuries or lesions (contusions, lacerations, burns, etc.) without body temperature elevation and without significant pain and distress shall not be construed as clinical evidence of disease.

(2) Before first use and on a regular basis, all animals used in the manufacture of antibody products shall be individually subjected to applicable tests for infectious diseases. Records of all test results shall be maintained. An animal which tests positive for an infectious disease shall not be used in the manufacture of antibody products. Retests shall be conducted as deemed necessary by the Administrator.

(i) Before first use, horses shall be tested as follows for:

(A) Equine infectious anemia (EIA) at a laboratory approved by APHIS.

(B) Piroplasmosis, dourine, and glanders at the National Veterinary Services Laboratories.

(C) Brucellosis at a laboratory approved by APHIS. Horses with standard agglutination titers of 1:50 or less can be used for production. Horses with standard agglutination titers equal to or greater than 1:100 may be tested by the Rivanol or card tests. Reactors to these supplemental tests shall not be used for production. Nonreactors to the supplemental tests shall be retested after 30 days. If the supplemental tests are negative and the agglutination titer has not increased, the animal may be used for production. Otherwise, the animal is unsatisfactory for this purpose.

(ii) Horses shall be retested annually for EIA and, if housed or pastured with any other species, shall be retested annually for brucellosis.

(iii) Before first use, cattle shall be tested as follows for:

(A) Tuberculosis by an accredited veterinarian: *Provided*, That cattle at Grade A dairies supplying lacteal secretions only need only be tested for tuberculosis in accordance with applicable Milk Ordinances or similar laws or regulations.

(B) Brucellosis at a laboratory approved by APHIS. Cattle with standard agglutination titers of 1:50 or less can be used for production. Cattle with standard agglutination titers equal to or greater than 1:100 may be tested by the Rivanol or card tests. Reactors to these supplemental tests shall not be used for production. Nonreactors to the supplemental tests shall be retested after 30 days. If the supplemental tests are negative and the agglutination titer has not increased, the animal may be used for production; otherwise, the animal is unsatisfactory for this purpose. Cattle at Grade A dairies supplying lacteal secretions only need not be tested individually for brucellosis if a portion of their secretions contribute to the herd milk pool tested as required by the brucellosis ring test. An animal of a herd testing positive by this test shall be used in production.

(iv) Cattle shall be retested annually for both tuberculosis and brucellosis. Cattle at Grade A dairies supplying lacteal secretions only need only be tested for tuberculosis in accordance with applicable Milk Ordinances or similar laws or regulations. Cattle at Grade A dairies supplying lacteal secretions only need not be tested individually for brucellosis if a portion of their secretions contribute to the herd milk pool tested as required by the brucellosis ring test. An animal of a herd testing positive by this test shall not be used in production.

(v) For other species, appropriate tests and the frequency with which they are applied shall be specified in the filed Outline of Production for the product.

(vi) If a positive result is obtained on any prescribed test, the positive animal(s) shall be removed from the herd and the remaining animals retested. Production shall not be renewed until a negative herd test is obtained not less than 28 days following removal of the positive animal(s).

(vii) Negative animals shall be maintained separate and apart from untested or positive animals of any species. Production animals shall not be used for any other purpose, such as testing, work, or recreation.

(d) *Collection procedures.* Blood, lacteal secretions, and egg material shall be collected as described in the filed Outline of Production for the product.

(e) *Ingredient handling and processing.* Blood derivatives (serum, plasma, etc.), lacteal secretions, and egg material used in the production of antibody products shall be subjected to an appropriate procedure for the inactivation of potential contaminating microorganism. The procedure employed shall be specified in the filed Outline of Production for the product.

(1) Blood derivatives of equine origin shall be heated at 58.0–59.0 °C for 60 minutes, and blood derivatives of bovine, porcine, or other origin shall be heated at 58.0–59.0 °C for 30 minutes. In lieu of heat treatment, blood derivatives of any origin may be treated with three megarads of ionizing radiation.

(2) Lacteal secretions shall be heated as described in paragraph (c)(1) of this section, or shall be pasteurized at either 72 °C for 15 seconds or 89 °C for 1 second using appropriate equipment. In lieu of the heat treatment regimens prescribed, lacteal secretions may be treated with three megarads of ionizing radiation.

(3) Egg material shall be heated at 58.0–59.0 °C for 30 minutes or treated with three megarads of ionizing radiation.

(4) Blood derivatives, lacteal secretions, and egg material shall not contain preservatives at the time of treatment, and immediately after treatment shall be cooled to 7 °C or lower.

(5) Licensees shall keep detailed records as to each batch treated and each serial of product prepared for marketing. Recording charts shall bear full information concerning the material treated and tests made of the equipment used for treatment.

(f) *Preservatives.* Liquid antibody products, except those immediately frozen following preparation and maintained in a frozen state, shall contain at least one preservative from the following list, within the range of concentration set forth:

(1) Phenol 0.25 to 0.55 percent, or

(2) Cresol 0.10 to 0.30 percent, and/or

(3) Thimerosal 0.01 to 0.03 percent, or

(4) Other preservative(s) specified in the filed Outline of Production for the product.

(g) *Antigens for hyperimmunization.* If animals are hyperimmunized to generate antibodies for a product for the prevention and/or alleviation of a specific infectious disease, and a USDA-licensed veterinary biological product is not employed for this purpose, the following shall apply:

(1) For each antigen, a Master Seed shall be established.

(i) Bacterial Master Seeds shall be tested for purity and identity as prescribed for live bacterial vaccines in § 113.64.

(ii) Viral Master Seeds shall be tested for purity and identity as prescribed for live virus vaccines in § 113.300.

(2) The maximum allowable passage level of the hyperimmunizing antigen shall be the passage level of the antigen used to generate product shown to be efficacious and shall not exceed 10 passages from the Master Seed.

(h) *Purity tests.* Final container samples of each serial and each subserial shall be tested for viable bacteria and fungi as follows:

(1) Dried products for parenteral administration and liquid products shall be tested as prescribed in § 113.26.

(2) For dried products for oral administration, 10 final container samples shall be reconstituted with sterile water at the volume recommended on the label and tested for the following contaminants:

(i) *Coliforms.* One milliliter of each rehydrated sample shall be pipetted into a 100×15 mm petri dish and 10–15 ml of violet red bile agar at 45–50 °C added. The plate shall be manipulated to coat its entirety with the agar-sample mixture and allowed to stand until the mixture solidifies. The plate shall then be incubated at 35 °C for 24 hours. A positive control plate and a negative control plate shall be prepared at the same time and in the same manner as the plates containing samples of the serial. All plates shall be examined at the end of the incubation period. If growth is observed on the negative control plate, or no growth is observed on the positive control plate, the test shall be considered inconclusive and may be repeated. If growth is observed on any of the 10 plates containing samples of the serial, one retest to rule out faulty technique may be conducted on samples from 20 final containers. If growth is observed on any of the retest plates, or if a retest is not initiated within 21 days of the completion of the original test, the serial or subserial is unsatisfactory.

(ii) *Salmonellae.* One milliliter of each rehydrated sample shall be pipetted into a 100×15 mm petri dish and 10–15 ml of brilliant green agar at 45–50 °C added. The dish shall be manipulated to coat its entirety with the agar-sample mixture and allowed to stand until the mixture solidifies. The plate shall then be incubated at 35 °C for 24 hours. A positive control plate and a negative control plate shall be prepared at the same time and in the same manner as the plates containing samples of the serial. All plates shall be examined at the end of the incubation period. If growth is observed on the negative control plate, or no growth is observed on the positive control plate, the test shall be considered inconclusive and may be repeated. If growth is observed on any of the 10 plates containing samples of the serial, one retest to rule out faulty technique may be conducted on samples from 20 final containers. If growth is observed on any of the retest plates, or if a retest is not initiated within 21 days of the completion of the original test, the serial or subserial is unsatisfactory.

(iii) *Fungi.* One milliliter of each rehydrated sample shall be pipetted into a 100×15 mm petri dish and 10–15 ml of appropriately acidified potato dextrose agar at 45–50 °C added. The plate shall be manipulated to coat its entirety with the agar-sample mixture and allowed to stand until the mixture solidifies. The plate shall then be incubated at 20–25 °C for 5 days. A positive control plate and a negative control plate shall be prepared at the same time and in the same manner as the plates containing samples of the serial. All plates shall be examined at the end of the incubation period. If growth is observed on the negative control plate, or no growth is observed on the positive control plate, the test shall be considered inconclusive and may be repeated. If growth is observed on any of the 10 plates containing samples of the serial, one retest to rule out faulty technique may be conducted on samples from 20 final containers. If growth is observed on any of the retest plates, or if a retest is not initiated within 21 days of the completion of the original test, the serial or subserial is unsatisfactory.

(iv) *Total bacterial count.* One milliliter of each rehydrated sample shall be pipetted into a 100×15 mm petri dish and 10–15 ml of tryptone glucose extract agar at 45–5 °C added. The plate shall be manipulated to coat its entirety with the agar-sample mixture and allowed to stand until the mixture solidifies. The plate shall then be incubated at 35 °C for 48 hours. A positive control plate and a negative control plate shall be prepared at the same time and in the same manner as the plates containing samples of the serial. All plates shall be examined at the end of the incubation period. If growth is observed on the negative control plate, or no growth is observed on the positive control plate, the test shall be considered inconclusive and may be repeated. If the average number of bacterial colonies on the 10 plates containing samples of the serial exceeds that specified in the filed Outline of Production for the product, one retest to rule out faulty technique may be conducted on samples from 20 final containers. If the average number of bacterial colonies on the retest plates exceeds that specified in the filed Outline of Production for the product, or if a retest is not initiated within 21 days of the completion of the original test, the serial or subserial is unsatisfactory.

(i) *Safety tests.* Bulk of final container samples of each serial shall be tested as prescribed in § 113.33(b). Dried product shall be reconstituted as indicated on the label and 0.5 ml injected per mouse.

**§ 113.451 [Amended]**

4. In § 113.451, paragraphs (b) and (c) would be removed, paragraph (d) would be redesignated paragraph (b), and the introductory text to the section would be revised to read as follows:

**113.451 Tetanus Antitoxin.**

Tetanus Antitoxin is a specific antibody product containing antibodies directed against the toxin of *Clostridium tetani*. Each serial shall meet the applicable general requirements provided in § 113.450 and paragraph (a) of this section, and be tested for potency as provided in paragraph (b) of this section. Any serial found unsatisfactory by a prescribed test shall not be released.

* * * * *

5. In § 113.452, the section heading, introductory text of the section, and paragraph (a) would be revised; paragraph (b) would be removed; paragraph (c) would be redesignated as new paragraph (b); and newly redesignated paragraph (b) introductory text, (b)(1), and (b)(3) would be revised to read as follows:

**§ 113.452 Erysipelothrix Rhusiopathiae Antibody.**

Erysipelothrix Rhusiopathiae Antibody is a specific antibody product containing antibodies directed against one or more somatic antigens of *Erysipelothrix rhusiopathiae*. Each serial shall be tested as provided in this section. Any serial found unsatisfactory by a prescribed test shall not be released.

(a) Each serial shall meet the applicable general requirements provided in § 113.450.

(b) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested using the two-stage test provided in this section.

(1) In the first stage, each of 40 Swiss mice, each weighing 16 to 20 grams, shall be injected subcutaneously with 0.1 ml of product (dried product shall be rehydrated according to label directions). Twenty-four hours postinjection, the injected mice and 10 additional mice designated controls shall be challenged subcutaneously with the same culture of *Erysipelothrix rhusiopathiae*.

* * * * *

(3) The mice injected with product shall be observed for 10 days postchallenge and all deaths recorded. The second stage shall be required when 7–10 of the mice injected with product die in the first stage. The second stage shall be conducted in a manner identical to the first stage.

* * * * *

**§ 113.453 [Removed]**

6. Section 113.453 would be removed and reserved.

**§ 113.454 [Amended]**

7. In § 113.454, the introductory text of the section and paragraph (a) would be revised; paragraph (b) would be removed; paragraph (c) would be redesignated as new paragraph (b) and the introductory text of paragraph (b) would be revised to read as follows:

**§ 113.454 Clostridium Perfringens Type C Antitoxin.**

Clostridium Perfringens Type C Antitoxin is a specific antibody product containing antibodies directed against the toxin of *Clostridium perfringens* Type C. Each serial shall be tested as provided in this section. Any serial found unsatisfactory by a prescribed test shall not be released.

(a) Each serial shall meet the applicable general requirements provided in § 113.450.

(b) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested using the toxin-neutralization test for Beta Antitoxin provided in this section. Dried products shall be rehydrated according to label directions.

8. In § 113.455, the introductory text of the section and paragraph (a) would be revised; paragraph (b) would be removed; paragraph (c) would redesignated as new paragraph (b) and the introductory test of paragraph (b) would be revised to read as follows:

**§ 113.455 Clostridium Perfringens Type D Antitoxin.**

Clostridium Perfringens Type D Antitoxin is a specific antibody product containing antibodies directed against the toxin of *Clostridium perfringens* Type D. Each serial shall be tested as provided in this section. Any serial found unsatisfactory by a prescribed test shall not be released.

(a) Each serial shall meet the applicable general requirements provided in § 113.450.

(b) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested using the toxin-neutralization test for Epsilon Antitoxin provided in this section. Dried products shall be rehydrated according to label directions.

* * * * *

**§§ 113.456 through 113.498 [Reserved]**

9. New §§ 113.456 through 113.498 would be added and reserved.

10. Section 113.499 would be added to read as follows:

**§ 113.499 Products for treatment of failure of passive transfer.**

A product for the treatment of failure of passive transfer shall contain a specified minimum quantity of IgG per dose and shall be recommended for use only in neonates of the same species as that of antibody origin. A product for oral administration shall not be recommended for use in animals more than 24 hours of age, while one for parenteral administration shall not be recommended for use in animals more than 120 hours of age. Each serial shall meet the applicable general requirements provided in § 113.450 and be tested for potency as provided in this section. Any serial found unsatisfactory by a prescribed test shall not be released.

(a) *Establishment of an IgG Reference Product.* An IgG Reference Product shall be established as follows:

(1) At least 20 newborn, colostrum-deprived animals of the species for which the product is recommended shall be randomly selected.

(2) Blood samples shall be taken from each animal.

(3) Each animal shall be administered one dose of product by the recommended route and shall be observed for 24 hours.

(i) Any adverse reactions shall be recorded.

(ii) The dosage of product administered to each animal shall be based on the weight of the animal, in accordance with label directions.

(4) After 24 hours, blood samples shall be taken from each animal.

(5) Pretreatment and post treatment serum IgG concentrations shall be concurrently determined for each animal by five replicate tests using a radial immunodiffusion (RID) method acceptable to APHIS and described in the filed Outline of Production for the product.

(6) Using the same method, five replicate tests shall be conducted concurrently on an IgG Species Standard supplied or approved by APHIS.

(7) For an IgG Reference Product to be satisfactory, all animals used to establish the reference must remain free of unfavorable product-related reactions and at least 90 percent of the paired serum samples must reflect an increase in IgG concentration equal to or greater than the IgG concentration of the IgG Species Standard.

(b) *Antibody functionality.* Prior to licensure, the prospective licensee shall perform a neutralization study, or another type of study acceptable to APHIS, to demonstrate functionality of product antibody.

(c) *Potency.* Bulk or final container samples of completed product from each serial shall be tested for IgG content as provided in this paragraph. Samples of the test serial and of an IgG Reference Product established in accordance with paragraph (a) of this section shall be concurrently tested for IgG content by the RID method referred to in paragraph (a)(5) of this section. Five replicate tests shall be conducted on each. If the IgG level per dose of the test serial does not meet or exceed that of the IgG Reference Product, one complete retest (involving five replicate IgG determinations on both the test serial and the IgG Reference Product) to rule out faulty technique may be conducted. If, upon retest, the IgG level per dose of the test serial does not meet or exceed that of the IgG Reference Product, or if a retest is not conducted, the serial is unsatisfactory.

Done in Washington, DC, this 6th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17608 Filed 7–22–93; 8:45 am]

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**Animal and Plant Health Inspection Service**

**9 CFR Part 113**

**[Docket No. 92–132–1]**

## Viruses, Serums, Toxins, and Analogous Products; Revision of Standard Requirements

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Standard Requirements concerning the Dog Safety Tests; Canine Distemper Vaccine, Killed Virus; Canine Hepatitis Vaccine, Killed Virus; Canine Adenovirus Type 2 Vaccine, Killed Virus; Mink Enteritis Vaccine, Killed Virus; Canine Hepatitis Vaccine, Live Virus; Canine Adenovirus Type 2 Vaccine, Live Virus; and Canine Distemper Vaccine, Live Virus. The proposed rule is necessary because new test methods and procedures have been developed that would replace current test requirements and increase the validity of test results. The effect of the proposed amendments would be to allow the use of these new test methods and procedures and to relax some of the restrictions currently in effect. Also, the section containing the Standard Requirement for Canine Distemper Vaccine (Ferret Virulent) would be removed because this vaccine is no longer manufactured.

**DATES:** Consideration will be given only to comments received on or before September 21, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development Staff, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–132–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5863.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 9 CFR part 113, "Standard Requirements", (referred to below as the regulations), consist of test methods, procedures, and criteria established by the Animal and Plant Health Inspection Service for evaluating veterinary biological products for purity, safety, potency, and efficacy. The Agency periodically reviews the Standard Requirements and amends test methods and procedures as required to ensure that they are consistent with the most current scientific knowledge. As a result of its review of the regulation, the Department is issuing this proposed rulemaking to update the Standard Requirements according to current scientific knowledge and to make the regulations more consistent.

We propose to make the following revisions in § 113.40, "Dog Safety Tests," in order to make it consistent with § 113.39, "Cat Safety Tests." The current Standard Requirement for dog safety tests describes tests for two types of final product—vaccines and antiserums. We propose to remove the safety testing requirements for the Master Seed Virus (MSV) for modified live virus vaccine from § 113.306, and place revised safety testing requirements for the MSV for modified live virus vaccine in § 113.40. The proposed test of the MSV would require the use of 10 dogs rather than 2 dogs and provide for a 14-day period of observation. The revised § 113.40 would require safety testing for both the MSV and the final product (vaccine). The observation time for the safety testing of serials for release would be decreased from 21 days to 14 days. These proposed revisions would make the dog safety test consistent with the act safety test in § 113.39. In addition, the safety test for antiserum products, described in current § 113.40(a)(2), would be removed, because no canine antiserum products are currently licensed and no new license applications are anticipated.

In § 113.201, "Canine Distemper Vaccine, Killed Virus," we propose to remove the provision for using infected animal tissue as a source of vaccine virus. Cell cultures are more efficient than animal tissue for production of vaccine virus and can be more accurately tested for the presence of extraneous agents to ensure purity. Since vaccine virus has been adapted to grow in cell culture, propagation in animal tissue has become obsolete, making the provision for it no longer necessary. We also propose to establish in § 113.201 a uniform method of testing the immunogenicity of the Master Seed Virus in a manner consistent with the Master Seed concept for live virus vaccines. A serum neutralization procedure would be used as a potency test for release of each serial of vaccine. If the results of the serological potency test are inconclusive, the animals used in the potency test could be challenged to demonstrate the potency of the serial of vaccine.

We propose that § 113.202, "Canine Hepatitis Vaccine, Killed Virus," be revised to include the Canine Adenovirus Vaccine, Killed Virus. Likewise, we propose that § 113.305, "Canine Hepatitis Vaccine, Live Virus," be revised to include the Canine Adenovirus Vaccine, Live Virus. We are proposing this revision because indications for use and testing procedures are similar for canine hepatitis and canine adenovirus and, therefore, can be included in the same Standard Requirement. We also propose to revise §§ 113.302 and 113.305 of the regulations to include the immunogenicity test procedures for both viruses. When §§ 113.202 and 113.305 were codified in the regulations, an attenuated infectious canine hepatitis virus (ICH), also referred to as canine adenovirus type 1 (CAV–1), was used in live virus vaccine production. Since that time, an attenuated canine adenovirus type 2 (CAV–2) virus has been made available and is widely used in vaccines that protect dogs against both CAV–1 and CAV–2. CAV–2 vaccines do not cause some of the side effects associated with vaccines containing modified live CAV–1 virus. For example, the attenuated CAV–2 virus does not cause corneal opacity (blue eyes). CAV–1 vaccines provide protection against CAV–1 infections, and some CAV–1 vaccines also provide protection against CAV–2 infections. Most manufacturers, however, are now using CAV–2 in their vaccines. Thus, this proposal would allow a vaccine produced with either CAV–1 or CAV–2 to receive a claim for protection against either or both viruses.

In order to increase the accuracy of the potency test for Mink Enteritis Vaccine, we propose to revise § 113.204. Potency tests in which older mink are used often result in "no tests" because less than 80 percent of the controls become sick. This suggests that there is an age susceptibility factor with mink enteritis which makes it difficult to produce clinical signs of enteritis in older mink. Experimental studies over several years at the National Veterinary Services Laboratories have demonstrated that after challenge with virulent virus, unvaccinated mink used as controls may remain asymptomatic but will continue to shed the challenge virus; vaccinated mink will not shed the challenge virus. The proposed revision to § 113.204 would incorporate virus shedding, along with clinical signs, as a parameter to distinguish protected from nonprotected mink in the potency test. We also propose to remove reference to a specific route of challenge. It has been demonstrated that the intraperitoneal and oral routes are both effective in producing enteritis in mink.

We propose the following revisions in § 113.305.

The test in current § 113.305(b)(1) used to detect wild infectious canine hepatitis virus would be removed, because test procedures for detecting this virus would be included in the revision proposed above to § 113.40, "Dog Safety Test." The requirement to use foxes to detect wild infectious canine hepatitis virus would be removed because the inoculation of hepatitis susceptible dogs in the dog safety test is considered to be equally sensitive for this purpose. The requirement in current § 113.305(b)(2) and (b)(3) to test for virulent canine distemper virus would also be removed because in vitro tests required in § 113.55, "Detection of Extraneous Agents in Master Seed Virus," are equally sensitive for detecting extraneous canine distemper viruses. The $TCID_{50}$ used in the canine hepatitis serum neutralization (SN) test in current § 113.305(c)(1) would be changed from "less than 500" to "50 to 300" to be consistent with other regulations that include this test procedure. The

regulation would be revised so that either CAV–1 (ICH) or CAV–2 may be used as the indicator virus in the SN test, and the challenge virus must be "furnished or approved by the Animal and Plant Health Inspection Service (APHIS)." The requirement in current § 113.305(c)(3)(i) to produce clinical signs and isolate virus from the surviving control would be removed because demonstration of clinical signs in 4 to 5 controls is considered evidence of an adequate challenge. An immunogenicity test for CAV–2 would be added. It would be modeled after the test for the feline respiratory viruses except that the number of controls with clinical signs that is necessary for a valid test would be reduced from 8 of 10 to 6 of 10 controls. We propose this reduction because clinical signs caused by CAV–2 are harder to reproduce than those of feline respiratory viruses. The reference to safety tests in current § 113.305(d)(1) would also be removed, since safety tests required in § 113.300, "General Requirements for Live Virus Vaccines," are applicable to this vaccine.

We propose the following revision in § 113.306.

The heading and the introductory text in § 113.306 would be amended by removing the phrase, "Ferret Avirulent." The following proposed changes in § 113.306 would update this section. The sensitivity of the test to screen for wild canine distemper virus would be enhanced by increasing the number of ferrets used in the test from two to five. The virulence of wild type distempter virus is more readily detected in ferrets than in dogs. Therefore, the phrase "wild canine distemper virus" would be changed to "ferret virulent canine distemper virus." The amount of virus used in the SN test would be revised from "less than 500" to "50 to 300" $TCID_{50}$ to be consistent with other standard requirements. In current § 113.306(c)(3), the description of the challenge virus would be changed to remove the strain reference and include the phrase "furnished or approved by the Animal and Plant Health Inspection Service." Other virulent isolates are now available that are equally acceptable. The requirement in current § 113.306(c)(3)(i) to isolate distemper virus from surviving controls would be removed, since virulent virus is difficult to isolate and isolation of virus is not necessary. The reference to the safety tests in current § 113.306(d)(1) would be removed because the safety tests included in the general requirements for live virus vaccine in § 113.300 apply to this vaccine. Procedures for testing a final product of avian tissue origin would be modified to make this requirement consistent with other Standard Requirements regarding propagation of the virus in tissue of avian origin. Vaccines propagated in tissues of avian origin (chicken embryos) are tested in accordance with § 113.37.

We also propose to remove § 113.307, "Canine Distemper Vaccine (Ferret Virulent)" from the Standard Requirements because this vaccine is no longer manufactured.

**Executive Order 12291, Executive Order 12778, and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

This proposed rule, if adopted, would revise the current Standard Requirements for certain vaccines. Sections 113.201 and 113.202 would be amended to revise the potency test performed on each serial of product so that fewer dogs would be used and serology would be used instead of virus challenge. Both of these would decrease the costs of production to the manufacturer. In § 113.204, the potency test in mink would be changed to allow virus isolation instead of clinical signs for evaluation of the serials. This would also decrease the costs. Other changes to the Standard Requirements would generally update the Standard Requirements to reflect current scientific knowledge. We do not expect any increase in cost to the 200 biologics manufacturers affected by this proposed rule. We expect the changes would decrease the costs for the manufacturers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted prior to any judicial challenge to the regulations under this rule.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, subpart V.)

**Paperwork Reduction Act**

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 113**

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 113 would be amended as follows:

## PART 113—STANDARD REQUIREMENTS

1. The authority citation for part 113 would continue to read as follows:

**Authority:** 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 113.40 would be revised to read as follows:

**§ 113.40 Dog Safety Test.**

The safety tests provided in this section shall be conducted when prescribed in a Standard Requirement or in the filed Outline of Production for a biological product recommended for use in dogs.

(a) The dog safety test provided in this paragraph shall be used when the Master Seed Virus is tested for safety.

(1) The test animals shall be determined to be susceptible to the virus under test by a method acceptable to the Animal and Plant Health Inspection Service.

(2) Each of at least 10 susceptible dogs shall be administered a sample of the Master Seed Virus equivalent to the amount of virus to be used in one dog dose of the vaccine, by the method recommended on the label, and the dog shall be observed each day for 14 days.

(3) If unfavorable reactions attributable to the virus occur in any of the dogs during the observation period, the Master Seed Virus is unsatisfactory.

If unfavorable reactions occur which are not attributable to the Master Seed Virus, the test shall be declared inconclusive and may be repeated: *Provided,* That, if the test is not repeated, the Master Seed Virus shall be considered unsatisfactory.

(b) The dog safety test provided in this paragraph shall be used when a serial of vaccine is tested for safety before release.

(1) Each of two healthy dogs shall be administered 10 dogs doses by the method recommended on the label and the dogs shall be observed each day for 14 days.

(2) If unfavorable reactions attributable to the biological product occur during the observation period, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the biological product, the test shall be declared inconclusive and may be repeated. *Provided,* That, if the test is not repeated, the serial shall be considered unsatisfactory.

3. Section 113.201 would be revised to read as follows:

**§ 113.201 Canine Distemper Vaccine, Killed Virus.**

Canine Distemper Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable general requirements prescribed in § 113.200.

(b) The immunogenicity of vaccine prepared from the Master Seed Virus in accordance with the Outline of Production shall be established. Vaccine used for this test shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(1) Twenty-five canine distemper susceptible dogs (20 vaccinates and 5 controls) shall be used as test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine distemper to determine susceptibility. A constant virus-varying serum neutralization test in cell culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(i) The 20 dogs used as vaccinates shall be injected with one dose of vaccine by the method recommended on the label. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) At least 14 days after the last inoculation, the vaccinates and controls shall each be challenged intracerebrally with canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 21 days.

(iii) If at least four of the five controls do not die and the survivors, if any, do not show clinical signs of canine distemper, the test is inconclusive and may be repeated.

(iv) If at least 19 of the 20 vaccinated do not survive without showing clinical signs of canine distemper during the observation period, the Master Seed Virus is unsatisfactory.

(c) *Test requirements for release.* Each serial shall meet the applicable general requirements prescribed in § 113.200 and the special requirements for safety and potency provided in this section.

(1) *Safety test.* The vaccinates used in the potency test in paragraph (c)(2) of this section shall be observed each day during the postvaccination observation period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated: *Provided,* That, if the test is not repeated, the serial is unsatisfactory.

(2) *Potency test—serum neutralization test.* Bulk or final container samples of completed product shall be tested for potency using five susceptible dogs (four vaccinates and one control) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine distemper virus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the four vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) *Serology.* At the end of the post vaccination observation period, a second blood sample shall be obtained from each of the five dogs and the serums shall be individually tested for neutralizing antibody against canine distemper virus in the same manner used to determine susceptibility.

(iv) *Interpretation of the serum neutralization test.* If the control has not remained seronegative at 1:2, the test is inconclusive and may be repeated. If at least three of the four vaccinates in a valid test have not developed titers based upon a final serum dilution of at least 1:50 and the remaining vaccinate has not developed a titer of at least 1:25, the serial is unsatisfactory except as provided in paragraphs (c)(2) (v) and (vi) of this section.

(v) *Virus challenge test.* If the results of a valid SN test are unsatisfactory, the vaccinates and the control may be challenged intracerebrally with a virulent canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and each animal observed each day for an additional 21 days.

(vi) *Interpretation of the virus challenge test.* For a serial to be satisfactory, all vaccinates must remain free of clinical signs of canine distemper while the control must die of canine distemper. If the control does not die of canine distemper, the test is inconclusive and may be repeated except, that if any of the vaccinates show signs or dies of canine distemper, the serial is unsatisfactory.

4. Section 113.202 would be revised to read as follows:

**§ 113.202 Canine Hepatitis and Canine Adenovirus Type 2 Vaccine, Killed Virus.**

Canine Hepatitis and Canine Adenovirus Type 2 Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.200.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity by one or both of the following methods. Vaccine used for these tests shall be at the highest passage from the Master Seed and prepared at the minimum preinactivation titer specified in the Outline of Production.

(1) *Immunogenicity for canine hepatitis.* Twenty-five canine hepatitis susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus

neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) The 20 dogs to be used as vaccinates shall be injected with one dose of vaccine and the remaining five dogs held as controls. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) Not less than 14 days after the last inoculation, each vaccinate and control shall be challenged intravenously with virulent infectious canine hepatitis virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days.

(iii) If at least four of the five controls do not show severe clinical signs of infectious canine hepatitis, the test is inconclusive and may be repeated.

(iv) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of infectious canine hepatitis during the observation period, the Master Seed Virus is unsatisfactory.

(2) *Immunogenicity for canine adenovirus type 2.* Thirty canine adenovirus type 2 susceptible dogs shall be used as test animals (20 vaccinates and 10 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) The 20 dogs to be used as vaccinates shall be injected with one dose of vaccine and the remaining 10 dogs held as controls. If a second dose is recommended, the second dose shall be administered at the time specified on the label.

(ii) Not less than 14 days after the last inoculation, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine adenovirus type 2 furnished or approved by the Animal and Plant Health Inspection service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

(iii) If at least 6 of 10 controls do not show clinical signs of canine adenovirus type 2 infection other than fever, the test is inconclusive and may be repeated.

(iv) If a significant difference in clinical signs in a valid test cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed Virus is unsatisfactory.

(c) *Test requirements for release.* Each serial shall meet the applicable general requirements prescribed in § 113.200, the special requirements for safety provided in this section, and the applicable potency tests provided in this section.

(1) *Safety test.* The vaccinates used in the potency test in paragraph (c)(2) and/or (c)(3) of this section shall be observed each day during the postvaccination observation period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the vaccine, the test is inconclusive and may be repeated: *Provided,* That, if not repeated, the serial is unsatisfactory.

(2) *Potency test for canine hepatitis—serum neutralization test.* Bulk or final container samples of completed product shall be tested for potency using at least five susceptible dogs (four vaccinates and one control) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine adenovirus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) *Serology.* At the end of the postvaccination observation period, a second blood sample shall be obtained from each of the dogs and the serums shall be individually tested for neutralizing antibody against canine adenovirus in the same manner used to determine susceptibility.

(iv) *Interpretation of the serum neutralization test.* If the control(s) has not remained seronegative at 1:2, the test is inconclusive and may be repeated. If at least 75 percent of the vaccinates in a valid test have not developed titers based upon final serum dilution of at least 1:10 and the remaining vaccinate(s) has not developed a titer of at least 1:2, the serial is unsatisfactory except as provided in paragraphs (c)(2) (v) and (vi) of this section.

(v) *Virus challenge test.* If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the control(s) may be challenged intravenously with a virulent canine hepatitis virus furnished or approved by the Animal and Plant Health Inspection Service and each animal observed each day for an additional 14 days.

(vi) *Interpretation of the virus challenge test.* For a serial to be satisfactory, all vaccinates must remain free of clinical signs of canine hepatitis while the control(s) must show severe clinical signs of canine hepatitis. If the control(s) does not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show signs or die of canine hepatitis, the serial is unsatisfactory.

(3) *Potency test for canine adenovirus type 2.* Bulk or final container samples of completed product shall be tested for potency using eight susceptible dogs (five vaccinates and three controls) as the test animals. Blood samples drawn from each dog shall be individually tested for neutralizing antibody against canine adenovirus to determine susceptibility.

(i) A constant virus-varying serum neutralization test in tissue culture using 50 to 300 $TCID_{50}$ of virus shall be used. Dogs shall be considered susceptible if there is no neutralization at a 1:2 final serum dilution.

(ii) *Vaccination.* Each of the five vaccinates shall be injected as recommended on the label. If two doses are recommended, the second dose shall be administered at the time specified on the label. The dogs shall be observed each day for at least 14 days after the last inoculation.

(iii) Not less than 14 days after the last inoculation, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine adenovirus type 2 furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

(iv) If at least two of three controls do not show clinical signs of canine adenovirus type 2 other than fever, the test is inconclusive and may be repeated.

(v) If a significant difference in clinical signs cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service and prescribed in the Outline of Production, the serial is unsatisfactory.

5. Section 113.204 would be amended by revising paragraphs (b) (2) and (3) to read as follows:

§ 113.204 Mink Enteritis Vaccine, Killed Virus.

* * * * *

(b) * * *

(2) *Challenge.* At least 2 weeks after the last inoculation, the five vaccinates and the five controls shall be challenged with virulent mink enteritis virus and observed each day for 12 days. Fecal material shall be collected from each test animal that remains free of enteritic symptoms and tested for the presence of mink enteritis virus isolation and/or fluorescent antibody examination.

(3) *Interpretation.* A serial is satisfactory if at least 80 percent of the vaccinates remain free of enteritic symptoms and do not shed virus in the feces, while at least 80 percent of the controls develop clinical signs of mink enteritis or shed virus in the feces. If at least 80 percent of the vaccinates remain free of enteritic symptoms and do not shed virus in the feces, while at least 80 percent of the controls develop clinical signs of mink enteritis or shed virus in the feces, the test is considered inconclusive and may be repeated: *Provided,* That, if at least 80 percent of the vaccinates do not remain well and free of detectable virus in the feces, the serial is unsatisfactory.

6. Section 113.305 would be revised to read as follows:

§ 113.305 Canine Hepatitis and Canine Adenovirus Type 2 Vaccine.

Canine Hepatitis Vaccine and Canine Adenovirus type 2 Vaccine shall be prepared from virus-bearing cell culture fluids. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used in preparing the production seed virus for vaccine production. All serials shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) The Master Seed Virus shall meet the applicable requirements prescribed in § 113.300 except that the dog safety test prescribed in § 113.40(a) shall be conducted by the intravenous route.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity by one or both of the following methods:

(1) *Immunogenicity for canine hepatitis.* Twenty-five canine hepatitis susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs to be used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining five dogs held as uninjected controls. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(ii) Not less than 14 days postinjection, the vaccinates and the controls shall each be challenged intravenously with virulent infectious canine hepatitis virus furnished or approved by the Animal and Plant health Inspection Service and observed each day for 14 days.

(A) If at least four of the five controls do not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated.

(B) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of infectious canine hepatitis during the observation period, the Master Seed Virus is unsatisfactory.

(iii) The Master Seed Virus shall be retested for immunogenicity for canine hepatitis in 3 years unless use of the lost previously tested is discontinued. Ten susceptible dogs (8 vaccinates and 2 controls) shall be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (b)(1) of this section.

(A) Each vaccinate shall be injected with a predetermined quantity of vaccine virus as provided in paragraph (b)(2) of this section.

(B) At least 14 days postvaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine adenovirus in the same manner used to determine susceptibility.

(C) If the two controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(D) If at least six of the eight vaccinates in a valid test do not develop titers of at least 1:10 based upon final serum dilution, the Master Seed Virus is unsatisfactory except as provided in paragraph (b)(4)(v) of this section.

(E) If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the controls may be challenged as provided in paragraph (b)(3) of this section. A Master Seed is satisfactory if all vaccinates remain free of clinical signs of canine hepatitis, while both controls develop severe clinical signs of canine hepatitis. If both controls do not show severe clinical signs of canine hepatitis, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show such signs, the Master Seed Virus is unsatisfactory.

(2) *Immunogenicity for canine adenovirus Type 2.* Thirty canine adenovirus type 2 susceptible dogs shall be used as test animals (20 vaccinates and 10 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine adenovirus.

(i) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs to be used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining 10 dogs held as uninjected controls. To confirm the dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(ii) Not less than 14 days postinjection, the vaccinates and the controls shall be challenged by exposure to a nebulized aerosol of virulent canine adenovirus type 2 furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 14 days postchallenge. The rectal temperature of each animal shall be taken and the presence of respiratory or other clinical signs of canine adenovirus type 2 noted and recorded each day.

(A) If at least 6 of 10 controls do not show clinical signs of canine adenovirus type 2 infection other than fever, the test is inconclusive and may be repeated.

(B) If a significant difference in clinical signs in a valid test cannot be demonstrated between vaccinates and controls using a scoring system approved by the Animal and Plant Health Inspection Service, the Master Seed Virus is unsatisfactory.

(iii) The Master Seed Virus shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Either 10 vaccinates and 6 controls or 5 vaccinates and 3 controls shall be used in the retest.

(A) If less than 4 of 6 or 2 of 3 of the controls show clinical signs of canine adenovirus type 2 other than fever, the test is inconclusive and may be repeated.

(B) A significant difference in clinical signs shall be demonstrated between vaccinates and controls in a valid test as

prescribed in paragraph (b)(2)(ii)(B) of this section.

(iv) An Outline of Production change shall be made before authorization for use of a new lot of Master Seed Virus shall be granted by the Animal and Plant Health Inspection Service.

(c) *Test requirements for release.* Each serial and subserial shall meet the requirements prescribed in § 113.300 and in this paragraph. Final container samples of completed product shall be tested. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (b)(1)(i) and/or (b)(2)(i) of this section. To be eligible for release, each serial and each subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test(s) prescribed in paragraph (b) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test(s) but not less than $10^{2.5}$ $TCID_{50}$ does. If both immunogenicity tests in paragraph (b) of this section are conducted and a different amount of virus is used in each test, the virus titer requirements shall be based on the higher of the two amounts.

7. Section 113.306 would be revised to read as follows:

**§ 113.306 Canine Distemper Vaccine.**

Canine Distemper Vaccine shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed Virus which has been established as pure, safe, and immunogenic shall be used for preparing the production seed virus for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed Virus.

(a) *Master Seed Virus.* The Master Seed Virus shall meet the applicable requirements prescribed in § 113.300 and the requirements prescribed in this section.

(1) To detect ferret virulent canine distemper virus, each of five canine distemper susceptible ferrets shall be injected with a sample of the Master Seed Virus equivalent to the amount of virus to be used in one dog dose and observed each day for 21 days. If undesirable reactions are observed during the observation period, the lot of Master Seed is unsatisfactory.

(2) Master Seed Virus propagated in tissues or cells of avian origin shall be tested for pathogens by the chicken embryo test prescribed in § 133.37. If found unsatisfactory, the Master Seed Virus shall not be used.

(b) Each lot of Master Seed Virus used for vaccine production shall be tested for immunogenicity. The selected virus dose from the lot of Master Seed Virus shall be established as follows:

(1) Twenty-five canine distemper susceptible dogs shall be used as test animals (20 vaccinates and 5 controls). Blood samples shall be drawn from these animals and individual serum samples tested. The dogs shall be considered susceptible if the results are negative at a 1:2 final serum dilution in a varying serum-constant virus neutralization test using 50 to 300 $TCID_{50}$ of canine distemper virus.

(2) A geometric mean titer of the dried vaccine produced from the highest passage of the Master Seed Virus shall be established before the immunogenicity test is conducted. The 20 dogs used as vaccinates shall be injected with a predetermined quantity of vaccine virus and the remaining five dogs held as uninjected controls. To confirm to dosage calculations, five replicate virus titrations shall be conducted on a sample of the vaccine virus dilution used.

(3) At least 14 days post-injection, the vaccinates and the controls shall each be challenged intracerebrally with virulent canine distemper virus furnished or approved by the Animal and Plant Health Inspection Service and observed each day for 21 days.

(i) If at least four of the five controls do not die and the survivor, if any, does not show clinical signs of canine distemper the test is inconclusive and may be repeated.

(ii) If at least 19 of the 20 vaccinates do not survive without showing clinical signs of canine distemper during the observation period, the Master Seed Virus is unsatisfactory.

(4) The Master Seed Virus shall be retested for immunogenicity in 3 years unless use of the lot previously tested is discontinued. Ten susceptible dogs (8 vaccinates and 2 controls) shall be used in the retest. Susceptibility shall be determined in the manner provided in paragraph (b)(1) of this section.

(i) Each vaccinate shall be injected with a predetermined quantity of vaccine virus as provided in paragraph (b)(2) of this section.

(ii) At least 14 days postvaccination, a second serum sample shall be drawn from each dog and tested for neutralizing antibody to canine distemper virus in the same manner used to determine susceptibility.

(iii) If the two controls have not remained seronegative at 1:2, the test is inconclusive and may be repeated.

(iv) If at least 6 of the 8 vaccinates in a valid test do not develop titers of at least 1:50 based upon final serum dilution, the Master Seed Virus is unsatisfactory, except as provided in paragraph (b)(4)(v) of this section.

(v) If the results of a valid serum neutralization test are unsatisfactory, the vaccinates and the controls may be challenged as provided in paragraph (b)(3) of this section. A Master Seed is satisfactory if all vaccinates remain free of clinical signs of canine distemper, while the two controls die with clinical signs of canine distemper. If the two controls do not die with clinical signs of canine distemper, the test is inconclusive and may be repeated: *Provided,* That, if any of the vaccinates show such signs, the Master Seed Virus is unsatisfactory.

(5) An Outline of Production change shall be made before authorization for use of a new lot of Master Seed Virus shall be granted by the Animal and Plant Health Inspection Service.

(c) *Test requirements for release.* Except for § 113.300(a)(3)(ii), each serial and subserial shall meet the requirements prescribed in § 113.300 and in this paragraph. Final container samples of completed product shall be tested. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) The test for pathogens prescribed in § 113.37 shall be conducted on each serial or one subserial of avian origin vaccine.

(2) *Virus titer requirements.* Final container samples of completed product shall be tested for virus titer using the titration method used in paragraph (b)(2) of this section. To be eligible for release, each serial and subserial shall have a virus titer sufficiently greater than the titer of vaccine virus used in the immunogenicity test prescribed in paragraph (b) of this section to assure that when tested at any time within the expiration period, each serial and subserial shall have a virus titer of $10^{0.7}$ greater than that used in such immunogenicity test but not less than $10^{2.5}$ $TCID_{50}$ per dose.

**§ 113.307 [Removed]**

8. Section 113.307 would be removed.

Done in Washington, DC, this 16th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17560 Filed 7–22–93; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-83-AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes, Excluding Model F27 Mk 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes. This proposal would require the replacement of the brake control valve actuating levers with improved units. This proposal is prompted by reports of levers that fractured during operation of the brake system. The actions specified by the proposed AD are intended to prevent failure of the brake control valve actuating levers, which could lead to loss of the primary brakes, differential braking, and anti-skid.

DATES: Comments must be received by September 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-83-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-83-AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-83-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

## Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 series airplanes. The RLD advises that reports have been received from operators of these airplanes indicating that brake control valve actuating levers have fractured during operation of the brake system. Subsequent investigation revealed that the levers initially cracked due to fatigue, and finally fractured due to overload. If the levers fail, the airplane could be brought to a stop by the use of the alternate braking system; however, this would result in an increased crew workload because no differential braking and no anti-skid would be available when the airplane is operating in the alternate braking mode. Under certain circumstances, this situation could result in the airplane going off the runway.

Fokker has issued Service Bulletin F27/32-161, Revision 1, dated June 14, 1991, that describes procedures for replacing the brake control valve actuating levers with improved units manufactured from stainless steel with high tensile strength. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 91-038, dated May 10, 1991, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the brake control valve actuating levers with improved units. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 55 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $800 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $140,800, or $2,560 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will

not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker: Docket 93-NM-93-AD**

*Applicability:* All Model F27 series airplanes, excluding Model F27 Mark 050 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the brake control valve actuating levers, accomplish the following:

(a) Within 12 months after the effective date of this AD, or prior to the accumulation of 2,000 flight hours after the effective date of this AD, whichever occurs first, replace the brake control valve actuating levers in accordance with Fokker Service Bulletin F27/32-161, Revision 1, dated June 14, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 19, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-17535 Filed 7-22-93; 8:45 am]

BILLING CODE 4910-13-P

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**14 CFR Part 39**

**[Docket No. 93-NM-99-AD]**

## Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes, Excluding Models A300-600 and A310 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes. This proposal would require installation of a protective cover above each generator control unit (GCU) and installation of a drainage circuit. This proposal is prompted by reports indicating that the GCU's are susceptible to damage due to foreign fluid drainage. The actions specified by the proposed AD are intended to prevent liquid from entering the GCU and causing internal short circuiting, which could result in the failure of the GCU and subsequent loss of electrical generation capacity.

**DATES:** Comments must be received by September 20, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-99-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-99-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-99-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300 series airplanes. The DGAC advises that operational experience has shown that leakage paths within these airplanes can permit foreign liquid to drip into the generator control units (GCU). Such liquid contamination can cause short circuiting within the GCU and adversely affect operation of the GCU. This condition, if not corrected, could result in failure of the GCU and subsequent loss of electrical generation capacity.

Airbus Industrie has issued Service Bulletin A300-24-0082, dated March 3, 1993, that describes procedures for installing Modification 10361. This

modification entails the installation of a protective cover over each GCU and installation of a drainage circuit. The protective covers prevent liquid from reaching the GCU's; the drainage circuit routes liquid away from the GCU's. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 93–032–142(B), dated March 17, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of protective covers over each GCU and installation of a drainage circuit. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $350 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $13,125, or $625 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 93–NM–99–AD.

*Applicability:* Model A300 series airplanes, excluding Model A300–600 series airplanes and Model A310 series airplanes; on which Airbus Modification 10361 has not been installed; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent liquid from entering the generator control unit (GCU) and causing internal short circuits, which could result in the failure of the GCU and subsequent loss of electrical generation capacity, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a protective cover over each GCU and install a drainage circuit in accordance with Airbus Industrie Service Bulletin A300–24–0082, dated March 3, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 19, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17545 Filed 7–22–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–ANE–44]**

## Airworthiness Directives; Teledyne Continental Motors (Formerly Bendix) S–20, S–200, S–600, and S–1200 Series Magnetos

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos, that currently requires replacement of certain Bendix ignition coils and rotating magnets that have accumulated 2000 or more hours time in service (TIS). This action would require replacing all Bendix ignition coils and rotating magnets, regardless of total TIS, with improved TCM ignition coils, rotating magnets and marking magnetos to indicate compliance with this AD, except for the S–1200 series magnetos on which the AD would require replacing only the ignition coils as that series magneto already incorporates rotating magnetos with the improved TCM design. This proposal is prompted by recent reports of accidents caused by failures of magnetos incorporating older Bendix components that had been replaced in accordance with the current AD. The actions specified by the proposed AD are intended to prevent magneto failure and subsequent engine failure.

**DATES:** Comments must be received by September 21, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m.,

Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–44." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299.

*Discussion*

On September 27, 1973, the Federal Aviation Administration (FAA) issued AD 73–07–04, Amendment 39–1731 (38 FR 27600, October 5, 1973), applicable to Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–200, S–600, and S–1200 series magnetos, to require replacement of certain Bendix ignition coils and rotating magnets that have accumulated 2000 or more hours time in service (TIS). That action was prompted by reports of accidents caused by magneto failures. That condition, if not corrected, could result in magneto failure and subsequent engine failure.

Since 1985, the FAA has received reports of 92 accidents involving 22 fatalities caused by failures of magnetos incorporating older Bendix ignition coils and rotating magnets in accordance with AD 73–07–04. In addition, the FAA has determined that these magentos had low TIS and therefore, were not required to be replaced.

Therefore, this AD would require replacement of all Bendix ignition coils and rotating magnets, regardless of total TIS. For the S–1200 series magnetos, this AD requires replacing only the ignition coils as the rotating magnetos on that series magneto already incorporates the improved TCM design. Additionally, this AD would require marking magnetos to indicate compliance with this AD.

The FAA has reviewed and approved the technical contents of TCM Service Bulletin (SB) No. 637, dated December 1992, that describes procedures for replacing all Bendix ignition coils and rotating magnets with improved serviceable TCM ignition coils and rotating magnets, and remarking magnetos to indicate compliance with this SB.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 73–07–04 to require replacing all Bendix ignition coils and rotating magnets, regardless of TIS, with improved serviceable TCM ignition coils and rotating magnets at either the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first. For S–1200 series magnetos, the AD would require replacing only the ignition coils as the rotating magnets on that series magneto already incorporates the improved TCM design. Additionally, the proposed AD would require remarking magnetos to indicate compliance with this AD.

There are approximately 20,000 magnetos of the affected design that are installed on aircraft of U.S. registry and that it would take approximately 1 work hour per magneto to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $700 per magneto. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,100,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–1731 (38 FR 27600, October 5, 1973) and by adding a new airworthiness directive to read as follows:

**Teledyne Continental Motors:** Docket No. 93–ANE–44. Supersedes AD 73–07–04, Amendment 39–1731.

*Applicability:* Teledyne Continental Motors (TCM) (formerly Bendix) S–20, S–

200, and S–600 series magnetos with red or black Bendix (not TCM) data plates having serial number 16057 and lower (with and without an A prefix); S–20, S–200, S–600, and S–1200 series magnetos with blue Bendix (not TCM) data plates having serial numbers 901001 and lower; and S–1200 series magnetos with red Bendix (not TCM) data plates having serial number 132843 and lower (with and without an A prefix). These magnetos are installed on but not limited to piston powered aircraft manufactured by Beech, Cessna, Mooney, and Piper.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent magneto failure and subsequent engine failure, accomplish the following:

(a) For TCM (formerly Bendix) S–20, S–200, and S–600 series magnetos, replace all Bendix ignition coils and rotating magnets identified in the Detailed Instructions of TCM Service Bulletin (SB) No. 637, dated December 1992, with appropriate serviceable ignition coils and rotating magnets at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours time in service (TIS) after the effective date of this AD, whichever occurs first.

(b) For TCM (formerly Bendix) S–1200 series magnetos, replace all Bendix ignition coils identified in the Detailed Instructions of TCM SB No. 637, dated December 1992, with appropriate serviceable ignition coils at the next 100 hour inspection, the next annual inspection, the next progressive inspection, or the next 100 hours TIS after the effective date of this AD, whichever occurs first.

**Note:** The rotating magnets on the S–1200 series magnetos already incorporate the improved TCM design.

(c) After compliance with paragraphs (a) or (b) of this AD, as applicable, and prior to further flight, mark the magneto in accordance with the Identification Instructions of TCM SB No. 637, dated December 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 14, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17538 Filed 7–22–93; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 39

**[Docket No. 93–ANE–08]**

## Airworthiness Directives; Teledyne Continental Motors IO–360, TSIO–360, LTSIO–360, IO–520, TSIO–520, and LTSIO–520 Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Teledyne Continental Motors (TCM) IO–520 and TSIO–520 series engines, that currently requires ultrasonic inspection for cracks, and replacement of the crankshaft, if a crack is found. This action would require determining if the crankshafts installed on certain TCM IO–360, TSIO–360, LTSIO–360, IO–520, TSIO–520, and LTSIO–520 series engines were manufactured using the airmelt or vacuum arc remelt (VAR) process, and replacement of all crankshafts manufactured using the airmelt process with serviceable crankshafts manufactured using the VAR process. This proposal is prompted by reports of crankshaft failures due to subsurface fatigue cracks on engines that had been inspected in accordance with the current AD. The actions specified by the proposed AD are intended to prevent crankshaft failure and subsequent engine failure.

**DATES:** Comments must be received by September 21, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–08." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–08, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

On September 16, 1987, the Federal Aviation Administration (FAA) issued AD 87–23–08, Amendment 39–5735 (52 FR 41937, October 30, 1987), to require ultrasonic inspection, and replacement, if a crack is found, in crankshafts installed on certain Teledyne Continental Motors (TCM) IO–520 and TSIO–520 engines. That action was prompted by reports of crankshaft failures due to subsurface cracking. That condition, if not corrected, could result in crankshaft failure and subsequent engine failure.

Since the issuance of that AD, the FAA has received reports of 51 incidents of crankshaft failures due to subsurface fatigue cracks, with 43 failures on TCM IO/TSIO–520 series

engines and 8 failures on TCM IO/TSIO–360 series engines. The FAA's investigation revealed that all these crankshafts were manufactured using the airmelt process. In 1978 TCM began using vacuum arc remelt (VAR) process in the forging of crankshafts for use in a number of its engines. This process is designed to produce a forging with the smallest amount of impurities in the finished product and to provide the greatest reliability and resistance to unusual operating circumstances. Since 1978 the FAA has received only 4 reports of failures of crankshafts manufactured using the VAR process, with 3 failures on TCM IO/TSIO–520 series engines and 1 failure on a TCM TSIO–360 engine.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (SB) No. M92–16, dated September 29, 1992, that describes procedures for determining if crankshafts were manufactured using the airmelt process or VAR process.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would supersede AD 87–23–08 to require determining if the crankshafts installed on certain TCM IO–360, TSIO–360, LTSIO–360, IO–520, TSIO–520, and LTSIO–520 series engines were manufactured using the airmelt or VAR process, and replacing all crankshafts manufactured using the airmelt process with serviceable crankshafts manufactured using the VAR process.

There are approximately 15,500 engines of the affected design that are installed on aircraft of U.S registry. The FAA estimates that it would take approximately 1 hour per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2200 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $34,952,500.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–5735 (52 FR 41937, October 30, 1987) and by adding a new airworthiness directive to read as follows:

**Teledyne Continental Motors:** Docket No. 93–ANE–08. Supersedes AD 87–23–08, Amendment 39–5735.

*Applicability:* Teledyne Continental Motors (TCM) IO–360, TSIO–360, LTSIO–360, IO–520, TSIO–520, and LTSIO–520 series engines built on or prior to December 31, 1980; rebuilt IO–360, TSIO–360, LTSIO–360, IO–520, TSIO–520, and LTSIO–520 series engines with serial numbers lower than those listed in TCM Mandatory Service Bulletin (SB) No. M92–16, dated September 29, 1992; and factory overhauled IO–360, TSIO–360, LTSIO–360, IO–520, TSIO–520, and LTSIO–520 series engines with serial numbers of 901202H and lower. These engines are installed on, but not limited to, Beech Baron and Bonanza series; Bellanca Viking 300; Cessna Models 172XP, 188, A185, A188, 206, T206, 207, T207, TU207, 210, T210, P210, 303, 310, 310, 320, 336, 337, T337, P337, 340, 401, 402, 414, and T41B/C; Colemill Conversion of Commander 500A; Commander 2000; Embraer Model EMB 810; Goodyear Airship Blimp 22; Maule Model M–4; Mooney Models 231 and 252; Navion H; Pierre Robin HR100; Piper Models PA–28–201T, Piper Seneca II and III; Prinair Dehavilland Heron; and Reims Models FR172, F337, FT337.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent crankshaft failure and subsequent engine failure, accomplish the following:

(a) At the next engine overhaul or whenever the crankshaft is removed from the engine, after the effective date of this AD, whichever occurs first, determine if the crankshaft was manufactured using the airmelt or vacuum arc remelt (VAR) process in accordance with the identification procedures described in TCM Mandatory SB No. M92–16, dated September 29, 1992.

(b) If the crankshaft was manufactured using the airmelt process, or if the manufacturing process is unknown, prior to further flight, remove from service and replace with a serviceable crankshaft manufactured using the VAR process.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Atlanta Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 17, 1993.

**Michael H. Borfitz,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17543 Filed 7–22–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 71**

**[Airspace Docket No. 92–AWA–6]**

## Proposed Establishment of Class C Airspace; Asheville Regional Airport; NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish Class C airspace at the Asheville Regional Airport, Asheville, NC. Asheville Regional Airport is a public-use facility with an operating control tower served by a Level III Terminal Radar Approach Control Facility (TRACON) at which a Terminal Radar Service Area (TRSA) is currently in effect. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of term "airport radar service area" and replace it with the designation "Class C airspace." The establishment of this

Class C airspace would require pilots to maintain two-way radio communications with air traffic control (ATC) while in the Class C airspace. Implementation of the Class C airspace would promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

**DATES:** Comments must be received on or before September 21, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–10], Airspace Docket No. 92–AWA–8, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, 3400 Norman Berry Drive, East Point, GA 30344.

**FOR FURTHER INFORMATION CONTACT:** Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWA–8." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**Background**

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, and Model B, the Airport Radar Service Area (ARSA) configuration, was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983, 48 FR 50038) to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining ARSA airspace and establishing air traffic rules for operation within such an area.

Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

A number of problems with the TRSA program were identified by the NAR Task Group. The task group stated that because of the different levels of service offered in terminal areas, such as Asheville Regional Airport, users are not always sure of what restrictions or privileges exist or how to cope with them. According to the NAR Task Group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. The consensus among the user organizations is that within a given standard airspace designation, a terminal radar facility should provide all pilots the same level of service and in the same manner, to the extent feasible.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for proposing to establish ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are being published via the FAA directives system.

The FAA has established ARSA's at 121 locations under a paced implementation plan to replace TRSA's with ARSA's. This is one of a series of notices to implement ARSA's at locations with TRSA's or locations without TRSA's that warrant implementation of an ARSA. Under Airspace Reclassification, ARSA's will become Class C airspace effective September 16, 1993.

This notice proposes to establish Class C airspace at a location which was not identified as a candidate for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). The Asheville

Regional Airport did not meet the numerical ARSA criteria candidacy as set by the NAR Task Group at that time.

The Asheville Regional Airport is a public-use airport with an operating control tower served by a Level III TRACON, at which a TRSA is in effect. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating in the TRSA under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's.

Current symptoms of potential safety problems within the Asheville TRSA, which indicate a need for Class C airspace, include the volume of passenger enplanements and the complexity of aircraft operations at Asheville. Complexity refers to air traffic conditions resulting from a mix of VFR and IFR aircraft that vary widely in speed and maneuverability. As this mix increases, so does the potential for midair collisions. The volume of passenger enplanements at Asheville for calendar year 1990 was 268,683, for calendar year 1991 was 261,740, and for January–September 1992 was 215,068. This volume of passenger enplanements and aircraft operations meets the FAA criteria for establishing Class C airspace to enhance safety.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class C airspace at the Asheville Regional Airport, Asheville, NC. Asheville Regional Airport is a public airport with an operating control tower served by a Level III TRACON, at which a TRSA is in effect.

The FAA published a final rule (50 FR 9252; March 6, 1985) which defines an ARSA, which will become Class C airspace, and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The final rule provides, in part, that all aircraft arriving at any airport in an ARSA or flying through an ARSA, must: (1) Prior to entering the ARSA, establish two-way radio communications with the ATC facility having jurisdiction over the area; and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within an ARSA, or a satellite airport with an operating control tower, two-way radio communications must be established and maintained with the control tower and thereafter as instructed by ATC while operating in the ARSA. For aircraft departing a satellite airport without an operating control tower and within the ARSA, two-way radio communications must be established with the ATC facility having jurisdiction over the area as soon as practicable after takeoff and thereafter maintained while operating within the ARSA (14 CFR 91.130).

Pursuant to Federal Aviation Regulations 91.123 (14 CFR 91.123) all aircraft operating within an ARSA (Class C airspace effective September 16, 1993) are required to comply with all ATC clearances and instructions. However, the rule permits ATC to authorize appropriate deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA (Class C airspace) may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR Task Group recommendation that each ARSA be of the same airspace configuration insofar as is practicable. The standard ARSA (Class C airspace) consists of that airspace within 5 nautical miles of the primary airport, extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions and operating requirements applicable to Class C airspace may be found in § 71.51 of part 71 and §§ 91.1 and 91.130 of part 91 of the Federal Aviation Regulations (14 CFR parts 71, 91) effective September 16, 1993. The coordinates for this airspace docket are based on North American Datum 83. Class C airspace designations are published in paragraph 4000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993. The Class C airspace designation listed in this document would be published subsequently in the Order.

**Regulatory Evaluation Summary**

The Faa has determined that this rulemaking is not "major" as defined by Executive Order 12291, and therefore no Regulatory Impact Analysis is required. Nevertheless, in accordance with Department of Transportation policies and procedures, the FAA has evaluated the anticipated costs and benefits, which are summarized below. for more detailed economic information, see the full regulatory evaluation contained in the docket.

**Costs**

The FAA has determined that establishing the proposed Asheville Class C airspace would impose a one-time administrative cost of $535 (discounted 1992 dollars) on the FAA. For the aviation community (namely, aircraft operators and fixed-based operators), the NPRM would impose only negligible costs. The potential costs of the proposed Class C airspace and discussed below.

1. Potential FAA Administrative Costs (air traffic controller staffing, controller training, and facility equipment costs).

For the proposed Class C airspace (and the Class C airspace program in general), the FAA does not expect to incur any additional costs for ATC staffing, training, or facility equipment. The FAA is confident that it can handle any additional traffic that would participate in radar services at the proposed Class C airspace through more efficient use of personnel at current authorized staffing level. The FAA expects to train its controller force at Asheville in Class C airspace procedures during regularly scheduled briefing sessions routinely held at Asheville. Thus, no additional training costs are expected. Modification of the computer software used to operate radar equipment may be necessary, but this has not been necessary to date. No significant equipment requirements are anticipated.

2. Other potential FAA Administrative Costs (revision of charts, notification of the public, and pilot education).

Establishment of Class C airspace throughout the country has made it necessary, and will continue to make it necessary, to revise sectional charts to remove existing airspace depictions and incorporate the new Class C airspace boundaries. The FAA currently revises these sectional charts every 6 months. Changes of the type required to depict Class C airspace are made routinely during these charting cycles, and can be

considered an ordinary operating cost. Thus, the FAA does not expect to incur any additional charting costs as a result of the proposed Asheville Class C airspace. Pilots would not incur additional costs obtaining current charts depicting Class C airspace because they are already required to use only current charts.

The FAA holds informal public meetings at each proposed Class C airspace location. These meetings provide pilots with the best opportunity to learn both how Class C airspace works and how it would affect their local operations. The costs associated with these public meetings are incurred regardless of whether Class C airspace is ultimately established. If the proposed Class C airspace does become a final rule, any subsequent public information costs would be strictly attributed to the proposal. For instance, the FAA would distribute a Letter to Airmen to all pilots residing within 50 miles of the Asheville Class C airspace site and issue an Advisory Circular that would explain the operation and airspace configuration of the proposed Asheville Class C airspace. The combined Letter to Airmen and prorated Advisory Circular costs would be approximately $535 (discounted). This one time negligible cost would be incurred upon the initial establishment of the proposed Class C airspace.

3. Potential Costs to the Aviation Community (circumnavigation delays, and radio communications).

The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in Stage III services may choose to circumnavigate the Class C airspace without significantly deviating from their regular flight paths. They could also remain clear of the proposed Class C airspace by flying above the ceiling (6,200 feet MSL) or under the outer floor (4,300 feet MSL). The FAA estimates that the proposed rule would have a negligible, if any, cost impact on non-participating aircraft and general aviation (GA) aircraft operations because of the small deviations from current flight paths imposed on these operations.

The FAA recognizes that delays might develop at Asheville following the initial establishment of the proposed Class C airspace. The additional traffic that ATC would be handling due to the mandatory pilot participation requirement may result in minor delays to aircraft operations. However, these delays that might occur would be transitional in nature. The FAA contends that any potential delays would eventually be more than offset by the increased flexibility afforded controllers in handling traffic as a result of Class C airspace separation standards. This has been the experience at the three ARSA's that have been in effect for the longest period of time as well as at more recently established ARSA's. The FAA does not anticipate that establishing Class C airspace at Asheville would result in any problems, and the FAA expects a smooth transition process, which has characterized the majority of ARSA sites established to date.

The FAA assumes that nearly all aircraft operating in the vicinity of the proposed Class C airspace already have two-way radio communications capability and therefore are not expected to incur any additional costs as a result of the proposed Class C airspace.

**Benefits**

The proposed Asheville Class C airspace would generate safety benefits in the form of lowered risks of midair collisions due to increased positive control of airspace around Asheville for several reasons. First, the Asheville Airport is located in a very mountainous area, which tends to force the mixture of all aircraft into and out of the same valleys and tunnels. Second, the terrain and lack of available airspace for flight training causes local flying schools to utilize the same practice areas. Finally, the arrivals and departures all funnel in and out of the valley, which does not allow for random arrival and departure routes.

Based on the increased risk of a midair collision at Asheville, the FAA is proposing to establish Class C airspace at Asheville to prevent safety problems from occurring. Current systems of safety problems within the Asheville TRSA, which indicate a need for Class C airspace, includes the volume of passenger enplanements and the complexity of aircraft operations at Asheville. Complexity refers to air traffic conditions resulting from a mix of VFR and IRF aircraft that vary widely in speed and maneuverability. As this mix increases, so does the potential for midair collisions. The volume of passenger enplanements at Asheville for calendar year 1990 was 268,883, for calendar year 1991 was 261,740, and for January-September 1992 was 215,066. This volume of passenger enplanements and aircraft operations meets the FAA criteria or establishing Class C airspace to enhance safety.

The Class C airspace program has the potential for reducing the risk of a midair collision by reducing the number of near-midair collisions (NMAC). In a study of NMAC data, the FAA's Office of Aviation Safety (ASF) found that approximately 15 percent of reported NMAC's occur in TRSA airspace. This study found that about half of all NMAC's occur in the 1,000 to 5,000 feet altitude range, which is closely comparable to the altitudes where pilot participation would be mandatory in the proposed Class C airspace. This study also found that over 85 percent of NMAC's occur under VFR conditions when visibility is 5 miles or greater. Finally, the study found that the largest number of NMAC reports were associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the Class C airspace and the radar services provided by ATC to VFR as well as IFR pilots would help alleviate such conflicts.

A study conducted by Engineering & Economics Research, Inc., for the National Airspace Review Task Group reviewed NMAC data for Austin and Columbus during the 1978 to 1984 period. This study found that the presence of an ARSA reduced the probability of NMAC occurrence by 38 percent at Austin and 33 percent at Columbus. Another FAA study estimated that the potential for NMAC's could be reduced by about 44 percent. Since near midair and actual midair collisions result from similar casual factors, a reduction in near midair collisions as a result of the ARSA (Class C airspace) program suggests that a reduction in the risk of midair collisions would also happen.

The Office of Aviation Policy, Plans, and Management Analysis study of the ARSA confirmation sites included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based on the experience at Columbus because recorded radar data through Automated Radar Terminal System (ARTS III–A) extraction was available for Columbus. The study focused on conditions of fairly heavy VFR activity in the terminal radar area since the existence of an ARSA affects procedures used to handle VFR traffic there. The analysis examined the intersections of flight paths before and after the ARSA was installed because the replacement of a TRSA with an ARSA might alter the routes of travel, particularly for aircraft that did not previously participate in the TRSA. The flight path analysis focused on the areas immediately around, under, and over the ARSA, and

determined that there was no compression of traffic in this airspace following installation of the ARSA. In the absence of compression, the study concluded that the mandatory participation requirement for all aircraft operating within an ARSA resulted in a 75 percent reduction in midair collision risk.

The circumstances observed at the Columbus test site may not be the same at other TRSA locations and the 75 percent reduction in midair collision risk measured there may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that the ARSA/Class C airspace program would reduce the risk of a midair collision by 50 percent at TRSA locations.

The reduction of midair collision risks by 50 percent would result in the prevention of one midair collision nationally every one to two years. The quantifiable benefits of preventing a midair collision can range from less than $150,000 by preventing a minor non-fatal collision between GA aircraft to $250 million by preventing a midair collision involving a passenger jet airplane. Establishment of the proposed Asheville Class C airspace would contribute to this improvement in aviation safety.

Ordinarily, the benefit of a reduction in the risk of midair collisions from establishing Class C airspace would be attributed entirely to the ARSA/Class C airspace program. However, an indeterminant amount of the benefits have to be credited to the interaction of the proposed Class C airspace (and the ARSA/Class C airspace program in general) with the Mode C Rule, which in turn interacts with the Traffic Alert Collision Avoidance System (TCAS) Rule. That is because the proposed Asheville Class C airspace, as well as other designated airspace actions that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS Rules. The Terminal Control Area (Class B airspace) and ARSA (Class C airspace) programs (including the proposed Asheville Class C airspace), plus the Mode C and TCAS Rules share potential benefits totaling $4.2 billion.

**Comparison of Costs and Benefits**

The FAA has determined that the proposed rule to establish Class C airspace at Asheville would impose a negligible cost of $535 on the agency. When this cost estimate of $535 is added to the total cost of ARSA (Class C airspace) and Terminal Control Area (Class B airspace) programs and the Mode C Rule and TCAS Rule, the costs would still be less than the total potential safety benefits. The proposal would also generate some benefits in the form of enhanced operational efficiency. In addition, the proposal would only impose negligible additional costs to the aviation community. Thus, the FAA believes that the proposed rule would be cost-beneficial.

**International Trade Impact Assessment**

The proposal would only affect U.S. terminal airspace operating procedures at and in the vicinity of Asheville, NC. The proposal would not impose a competitive trade advantage or disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms would not incur a competitive trade advantage or disadvantage in either the sale of United States aviation products or services in foreign countries.

**Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A entitled Regulatory Flexibility Criteria and Guidance, a significant economic impact means annualized net compliance costs to an entity, which when adjusted for inflation, is greater than or equal to the threshold cost level for that entity. A substantial number of small entities means a number that is eleven or more and is more than one-third the number of small entities subject to a proposed or existing rule.

For the purpose of this evaluation, the small entities that would be potentially affected by the proposed rule are fixed-base operators, flight training operations, and other small aviation businesses located at Asheville Airport. The additional airspace restrictions imposed by the proposed Class C airspace should not have an adverse impact on small entities.

**Federalism Implications**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is also certified that this rule does not require preparation of a Regulatory Flexibility Analysis under the RFA.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

**ASO NC C Asheville, NC [New]**

Asheville Regional Airport (lat. 35°26'10" N., long. 82°32'31" W.)

That airspace extending upward from the surface to and including 6,200 feet MSL within 3 miles either side of the extended runway centerline within a 5-mile radius of the Asheville Regional Airport; and that airspace north and south of the airport extending upward from 4,300 feet MSL to and including 6,200 feet MSL within 3 miles either side of the extended runway centerline at points on a 5-mile radius of the airport expanding to within 5 miles either side of the extended runway centerline at points on a 10-mile radius of the airport. This Class C area is effective during the specific days and hours of operation of the Asheville Tower

and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in Washington, DC, on July 8, 1993.

Harold W. Becker,

*Manager, Airspace-Rules and Aeronautical Information Division.*

BILLING CODE 4910-13-M

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# ASHEVILLE, NORTH CAROLINA
## AIRPORT RADAR SERVICE AREA

**ASHEVILLE REGIONAL AIRPORT**

**FIELD ELEVATION - 2165 FEET**

***(Not to be used for navigation)***

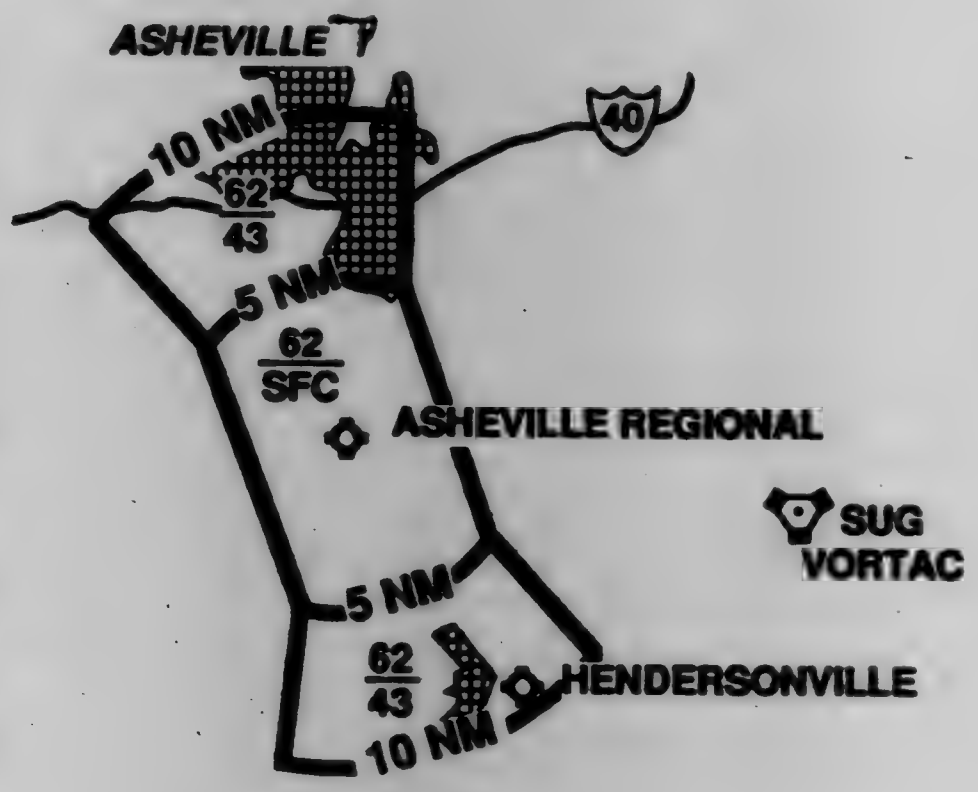


**Prepared by the**
**FEDERAL AVIATION ADMINISTRATION**
**Cartographic Standards Branch**
**ATF-220**

[FR Doc. 93-17362 Filed 7-22-93; 8:45 am]
BILLING CODE [illegible]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 286

[Docket No. 920353-3075]

RIN 0693-AB17

## Establishment of the National Voluntary Conformity Assessment System Evaluation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Proposed rule; request for public comments.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) is hereby proposing to establish the National Voluntary Conformity Assessment System Evaluation (NVCASE) Program. The program will enable the Department of Commerce, acting through NIST, to evaluate and recognize competently conducted conformity assessment activities. The results of NIST evaluations will provide a basis for the U.S. Government to assure foreign governments that qualified conformity assessment bodies are competent to satisfy their regulatory requirements. The program is complementary to those of other Federal agencies and is intended, together with those programs, to provide the basis for U.S. government negotiations with foreign governments to gain their recognition of U.S.-based conformity assessment bodies as providing results acceptable for regulatory purposes.

The program is intended to cover organizations engaged in product sample testing, product certification, and quality system registration and most especially, their accreditors. NIST will offer its evaluations, based on publicly developed requirements, on a fee-for-service basis and will provide those meeting the requirements with a certificate of recognition. NIST will maintain lists of all recognized organizations and, in the case of recognized accreditation bodies, lists of conformity assessment bodies accredited by them.

The establishment of this program reflects the growing importance of conformity assessment activities to international trade. It is primarily intended to assist U.S. manufacturers in meeting foreign technical regulatory requirements on a cost-effective basis. The program is expected to enhance U.S. trade with other nations.

DATES: Comments on this proposed rule must be received by October 6, 1993.

ADDRESSES: Comments should be submitted in writing to Dr. Stanley I. Warshaw, Director, Office of Standards Services, National Institute of Standards and Technology, Administration Building, room A603, Gaithersburg, MD 20899 or by telefax at 301–963–2871.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Donaldson, Chief, Standards Code and Information, or Robert L. Gladhill, Program Manager, by mail at Admin. Bldg., room A629, NIST, Gaithersburg, MD 20899; by telefax at 301–963–2871; or, by telephone at 301–975–4029.

SUPPLEMENTARY INFORMATION: As a consequence of the joint communique issued by former Commerce Secretary Mosbacher and European Community Commission Vice President Bangemann in June 1991, and in response to related private sector testimony at hearings of the Department of Commerce conducted by the International Trade Administration (ITA) in 1989 and the National Institute of Standards and Technology (NIST) in 1990, it has been concluded the U.S. government will respond to requirements by U.S. trading partners for governmental assurance that U.S.-based conformity assessment activities are competently performed in addressing the regulatory requirements of those foreign governments. This can be effectively accomplished by government evaluation of conformity assessment activities carried out in the U.S. and government attestation to the competency of their conduct.

On March 27, 1992, NIST published in the **Federal Register** a request for comments on a proposal to establish a voluntary Conformity Assessment Systems Evaluation (CASE) Program, intended to evaluate the competency of requesting conformity assessment bodies in carrying out specified activities. Noted to be of particular importance were product sample testing, product certification, and quality system registration.

During the public comment period, which closed September 30, 1992, NIST received 173 written responses to the request, ten of which did not bear directly on the proposal. All responses are available for review at the Department of Commerce Records and Inspection Facility, room 6020, Hoover Building, Washington, DC 20230.

Respondents represented a cross-section of interested and affected parties, e.g., individuals, trade associations, standards developers, large corporations, small and mid-size business, consulting firms, testing laboratories, quality system registrars, and other organizations involved or interested in various aspects of conformity assessment.

Responses were categorized by type of organization and whether from a "user" or "operator" with respect to conformity assessment services. Twenty distinct categories were identifed. The aggregate results were examined against the results for each of these categories and the differences were evaluated. Of the 163 responsive comments, 43 were generally supportive of the program, 19 generally opposed it, and 80 supported a limited program that would recognize the evaluations of private sector organizations; 21 comments did not indicate any position on what part of the program should be implemented. Generally comparable results were obtained when the responses for most of the twenty categories were separately analyzed.

Many respondents expressed concern that a program which recognizes the competence evaluations of others and which also offers to perform the same competency evaluations presents a conflict of interest, and that this should be avoided. A number of respondents also expressed the opinion that establishing criteria and operating the program should be a cooperative effort between the government and the private sector. Others expressed conflicting concerns about the timing of the proposal, some saying that it should have come sooner, some considering it to be premature. Comment was also offered that the acronym "CASE" was already in use and should be avoided.

Based on the analysis of the comments, NIST concludes that there is ample support for NIST to undertake a voluntary program to provide (1) recognition of accreditation bodies for evaluating conformity assessment activities related to regulations of foreign governments; and (2) accreditation (of conformity assessment bodies) only when (a) specifically required by law or another federal agency, or (b) it is in the public interest and no accreditation body offers a needed service.

All applicable comments were reviewed and incorporated, as appropriate, into this proposal.

### Request for Comments

The Director of the National Institute of Standards and Technology, requests comments on this proposed rule pertaining to the National Voluntary Conformity Assessment System Evaluation (NVCASE) Program.

Persons interested in commenting on this proposed rule should submit their comments in writing to the above address. All comments received in

response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Reference and Records Inspection Facility, room 6020, Hoover Building, Washington, DC 20230.

**Additional Information**

*Executive Order 12291*

The Director, NIST, has determined that this rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required under Executive Order 12291.

*Executive Order 12612*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

*Executive Order 12372*

This rule does not involve Federal financial assistance, direct Federal development, or the payment of any matching funds from a state or local government. Accordingly, the requirements of Executive Order 12372 are not applicable to this rule.

*Regulatory Flexibility Act*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule does not have a significant economic impact on a substantial number of small entities because program participation is on a voluntary basis. The proposed program addresses the needs of business entities engaging in international trade and furthermore does not affect a substantial number of small business entities. Accordingly, a Regulatory Flexibility Analysis is not required to be prepared under the Regulatory Flexibility Act.

*Paperwork Reduction Act*

This rule contains information collection requirements subject to the Paperwork Reduction Act. Public reporting burden for this collection of information is estimated to average two (2) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Written comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to the Manager, Conformity Assessment, NIST, Admin. A629, Gaithersburg, MD 20899; and to the Office of Management and Budget, Desk Officer, room 3235, New Executive Office Building, Washington, DC 20503.

*National Environmental Policy Act*

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environment Policy Act of 1969.

**List of Subjects in 15 CFR Part 286**

Foreign Trade, Testing, Laboratories, Standards.

Dated: July 16, 1993.

**Arati Prabhakar,**

*Director.*

For reasons set forth in the preamble, 15 CFR chapter II is proposed to be amended by adding subchapter J, part 286, to read as follows:

**Subchapter J—Accreditation and Assessment Programs**

**PART 286—NATIONAL VOLUNTARY CONFORMITY ASSESSMENT SYSTEM EVALUATION (NVCASE) PROGRAM**

Sec.

286.1 Purpose.
286.2 Scope.
286.3 Objective.
286.4 Implementation.
286.5 Program documentation.
286.6 Public consultation.
286.7 Evaluation process.
286.8 Confidentiality of information.
286.9 Maintaining recognized status.
286.10 Appeal.
286.11 Listings.
286.12 Terminations.

**Authority:** 15 U.S.C. 272 et seq.

**National Voluntary Conformity Assessment System Evaluation (NVCASE) Program**

**§ 286.1 Purpose.**

The purpose of this program is to enable U.S. industry to satisfy mandated foreign technical requirements using the results of U.S.-based conformity assessment programs. Under this program, the Department of Commerce, acting through the National Institute of Standards and Technology, evaluates and gives assurance of the capability of U.S.-based conformity assessment bodies, which meet the qualifying requirements of a foreign government, to provide results recognized as acceptable by that government.

**§ 286.2 Scope.**

(a) For purposes of this program, conformity assessment consists of product sample testing, product certification, and quality system registration. Associated activities can be classified by level:

(1) Conformity level: This level encompasses comparing a product, process, service, or system with a standard or specification. As appropriate, the evaluating body can be a testing laboratory, product certifier or certification body, or quality system registrar.

(2) Accreditation level: This level encompasses the evaluation of a testing laboratory, a certification body, or a quality system registrar by an independent body—an accreditation body—based on requirements for the acceptance of these bodies, and the granting of accreditation to those which meet the established requirements.

(3) Recognition level: This level encompasses the evaluation of an accreditation body based on requirements for its acceptance, and the recognition by the evaluating body of the accreditation body which satisfies the established requirements.

(b) Under this program, NIST accepts requests for evaluations of U.S. bodies involved in activities related to conformity assessment. As part of the program, NIST does not perform conformity assessments and therefore does not accept requests for such evaluations.

(c) NIST operation at the accreditation level is conditional: NIST accepts requests for accreditation of conformity assessment bodies only when—

(1) Directed by law;

(2) Requested by another federal agency; or

(3) Requested to respond to a specific industrial or technical need, relative to

a mandatory foreign technical requirement, where:

(i) There is no appropriate accreditation alternative available and

(ii) The absence of any alternative would result in significant public disadvantage.

(d) NIST operation at the recognition level is unconditional: NIST accepts requests for evaluation of bodies that accredit testing laboratories, certification bodies, and quality system registrars.

**§ 286.3 Objective.**

The objective of the program is to identify the activities of requesting U.S.-based conformity assessment bodies that have been evaluated as meeting requirements established for their acceptance by foreign governments. The evaluations may be provided by NIST or by bodies recognized by NIST for this purpose under the scope of this program.

**§ 286.4 Implementation.**

The program is open, on a voluntary basis, for participation by any U.S.-based body involved in the conduct of activities related to conformity assessment that fall within the program's scope. A common procedural approach is followed in responding to a request to participate. All evaluation activities rely on the use of generic program requirements based on standards and guides for the operation and acceptance of activities related to conformity assessment. Specific criteria for use in each evaluation are derived from the program requirements, as appropriate for the mandated foreign technical requirements specific in the request to participate.

**§ 286.5 Program documentation.**

NIST provides and maintains documented generic requirements to be applied in evaluations related to accreditation and recognition within the scope of the program. The documentation, as available, is provided on request to prospective program participants and other interested parties. Generic requirements are based on guides for the acceptance of conformity assessment activities issued by the International Organization for Standardization and the International Electrotechnical Commission. NIST also provides and maintains documented criteria provided in response to requests for evaluations specific to mandated foreign technical requirements. Criteria are derived from the application and interpretation of generic program requirements in relation to specified mandated requirements. Both generic requirements and specific criteria are developed and maintained with input from the public.

**§ 286.6 Public consultation.**

NIST relies on substantial advice and assistance from all parties interested in program requirements and related specific criteria. Input is sought in preparing program documentation from public workshops, industry sectoral committees, and other means in identifying appropriate standards and guides and developing and maintaining generic requirements, based on the standards and guides identified. Similar consultations are sought with respect to each request for evaluation which necessitates the development of criteria, derived from the generic requirements, specific to mandated foreign technical requirements.

**§ 286.7 Evaluation process.**

Each applicant requesting to participate is expected to assume the following responsibilities:

(a) Application. The applicant begins the process by submitting a completed request to be evaluated.

(b) Fee. The applicant submits an initial fee with the application and agrees to submit all subsequent fees as a condition for satisfactory completion of the process.

(c) Quality System. The applicant operates a quality system and submits all relevant documentation with the application.

(d) On-Site Assessment. The applicant cooperates with NIST in the scheduling and conduct of all necessary on-site evaluations.

(e) Final Review. The applicant provides any additional supplementary materials needed by NIST to complete the review and make a decision.

(f) Program Decisions

NIST may take the following action with regard to an applicant:

(1) Certificate. When an applicant fully demonstrates conformity with all program requirements and specific criteria, NIST issues a certificate documenting this finding. Each certificate is accompanied by a document describing the specific scope of the accreditation or recognition.

(2) Denial. When an applicant cannot demonstrate that it meets all program requirements and specific criteria, NIST may deny award of the certificate. An applicant who has failed to complete the evaluation satisfactorily can reapply at a later time.

**§ 286.8 Confidentiality of information.**

All information collected relative to an applicant during an evaluation is maintained as confidential. Information is released only as required under the terms of the Freedom of Information Act or other legal requirement.

**§ 286.9 Maintaining recognized status.**

Each program participant who remains in the program shall continuously meet all program requirements and cooperate with NIST in the conduct of all surveillance and maintenance activities. Participants shall reimburse NIST for expenses incurred for these purposes.

**§ 286.10 Appeal.**

Any applicant or other affected party may appeal to the NIST Director any action taken under the program.

**§ 286.11 Listings.**

(a) NIST maintains current lists of all bodies which have been provided with program certificates.

(b) NIST maintains current lists of all conformity assessment activities accredited by bodies operating programs recognized by NIST.

(c) All lists are available to the public through various appropriate media, e.g., printed directories, electronic bulletin boards, etc.

(d) NIST may delist any body if it determines the action to be in the public interest.

**§ 286.12 Terminations.**

(a) Voluntary Termination. Participants may voluntarily terminate their participation at any time by written notification to NIST.

(b) Involuntary Termination. If a participant does not continue to meet all program requirements, or if NIST determines it to be necessary in the public interest, NIST may withdraw the participant's certificate. A body which has had its status as a certificate holder terminated can reapply at a later time.

[FR Doc. 93-17335 Filed 7-22-93; 8:45 am]

BILLING CODE 3510-13-M

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## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 21**

**RIN 2900-AF30**

### Veterans Benefits; Eligibility for the Montgomery GI Bill—Active Duty

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed regulations.

**SUMMARY:** The National Defense Authorization Act for Fiscal Year 1991 provides additional ways in which an individual may become eligible for the

Montgomery GI Bill—Active Duty. This is done both by creating a new class of eligible veterans and by providing on additional type of discharge which will qualify veterans for the program. These proposed regulations will acquaint the public with the way in which VA will administer these new provisions of law.

**DATES:** Comments must be received on or before August 23, 1993. Comments will be available for public inspection until September 1, 1993. VA intends to make the amendments to the following regulations, like the sections of law they implement, retroactively effective on October 19, 1984: §§ 21.7042(a)(5), 21.7042(b)(6), 21.7042(b)(7), 21.7044(a)(4), 21.7044(b)(7), 21.7044(b)(8) and 21.7072(b)(1). VA intends to make the amendments to the remainder of the regulations, as well as the new sections §§ 21.7045 and 21.7073.1, like the sections of law they implement, retroactively effective on November 5, 1990.

**ADDRESSES:** Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233–2092.

**SUPPLEMENTARY INFORMATION:** Sections 561, 562 and 563 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510) contain provisions that will enable additional individuals to become eligible for the Montgomery GI Bill—Active Duty. This is done both by creating a new class of eligible veterans and by providing an additional type of discharge which will qualify veterans for the program. These proposed regulations are designed to implement these sections of the act.

For the most part the proposed regulations follow the language of the statute. However, the proposal does contain some provisions which are not stated explicitly in Public Law 101–510.

One of these provisions is contained in the proposed § 21.7045(c). The statute requires that a servicemember who is going to be involuntarily discharged may elect to participate in the Montgomery GI Bill—Active Duty. When he or she does so that person's basic pay is supposed to be reduced by $1,200. However, occasionally, through error or other reason there may be no reduction in the basic pay of one of these individuals. This is not addressed in the law. The proposed § 21.7045(c) states failure to make the reduction will not affect the individual's eligibility for this program.

In making this decision the agencies examined 38 U.S.C. 3018A as established by Public Law 101–510. Section 3018A(a) states the criteria which must be met before an individual would be eligible for educational assistance under the Montgomery GI Bill—Active Duty. The $1,200 pay reduction is not stated there. It is located in section 3018A(b). Therefore, the agencies concluded that this is not a required eligibility criterion. Someone whose pay was not reduced due to error could still become eligible for educational assistance.

One of the eligibility criteria is that a veteran affected by this new provision of law must complete the requirements for a high school diploma or 12 semester hours leading to a standard college degree before applying for benefits under the Montgomery GI Bill—Active Duty. Not everyone will be thoroughly familiar with the eligibility criteria before applying, so the possibility exists that someone may apply before completing the educational eligibility criteria.

The agencies do not believe that the purpose of this provision is to bar permanently the person who accidently applies too soon. Rather, the Congress recognized that the educational criteria applicable to other individuals who are eligible for the Montgomery GI Bill—Active Duty (namely that these criteria be met before discharge) could not be applied to those affected by Public Law 101–510. Someone who is involuntarily discharged often would not have enough time to meet these criteria before discharge. Consequently, proposed § 21.7045(d) states that a veteran who applies for benefits before meeting the educational eligibility criteria will be permitted to apply again after those criteria are met.

The Secretary of Defense has made additional contributions for some individuals to the fund established in the Post-Vietnam Era Educational Assistance Program (VEAP). Public Law 101–510 requires that these funds be added to the educational assistance paid to any individuals who were formerly eligible for educational assistance under VEAP, but who elect to receive benefits under the Montgomery GI Bill instead. This increase must be in a manner consistent with the agreement entered into by the Secretary and the individual.

Proposed § 21.7136(e) states how the monthly rate of educational assistance will be determined for these individuals. In essence the money will be distributed equally over all the months of entitlement to benefits the individual has at the time that entitlement is first established. This has the advantage of setting a rate which will not change over time. An individual who knows what his or her monthly rate of educational assistance will be at the start of the program of education will be better able to plan ahead than would be the case if the rate varied from month to month.

The Department of Veterans Affairs has determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA finds that good cause exists for making the amendments to §§ 21.7042(a)(5), 21.7042(b)(6), 21.7042(b)(7), 21.7044(a)(4), 21.7044(b)(7), 21.7044(b)(8) and § 21.7072(b)(1), like the provision of law they implement, retroactively effective on October 19, 1984. VA finds that good cause exists for making the remainder of the amendments as well as the new sections, §§ 21.7045 and 21.7073.1, like the provisions of law they implement, retroactively effective on November 5, 1990. These regulations are intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a

delayed effective date would be contrary to statutory design, would complicate administration of the provision of law, and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for this program is 64.124.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 1, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 21, subpart K is amended as set forth below.

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart K—All Volunteer Force Educational Assistance Program (New GI Bill)

1. The authority citation for part 21, subpart K continues to read as follows:

**Authority:** 38 U.S.C. chapter 30, Pub. L. 98–525; 38 U.S.C. 501.

2. In § 21.7020 paragraph (b)(1)(iii) and its authority citation are added to read as follows:

**§ 21.7020 Definitions.**

* * * * *

(b) *Other definitions.*

(1) * * *

(iii) When referring to individuals who, before November 30, 1989, had never served on active duty (as that term is defined by § 3.6b of this title), the term "active duty" when used in this subpart includes full-time National Guard duty first performed after November 29, 1989, by a member of the Army National Guard of the United States or the Air National Guard of the United States in the servicemember's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing or training the National Guard.

(Authority: 38 U.S.C. 3002(7); Pub. L. 101–510, sec. 583(b)) (Nov. 5, 1990)

* * * * *

3. In § 21.7042 the introductory text is revised and its authority citation is added; paragraph (a)(5)(v) is revised, paragraph (a)(5)(vi) is added and the authority citation for paragraph (a) is revised; paragraph (b)(6)(v) is revised, paragraph (b)(6)(vi) is added and an authority citation for paragraph (b)(6) is added; paragraph (b)(7)(i)(E) is revised, paragraph (b)(7)(i)(F) and an authority citation for paragraph (b)(7)(i) are added and paragraph (f)(1) is revised and an authority citation for paragraph (f)(1) is added to read as follows:

**§ 21.7042. Basic eligibility requirements.**

An individual must meet the requirements of this section, § 21.7044 or § 21.7045 in order to be eligible for basic educational assistance. In determining whether an individual has met the service requirements of this section, VA will exclude any period during which the individual is not entitled to credit for service for the periods of time specified in § 3.15.

(Authority: 38 U.S.C. 3011, 3012, 3018A; Pub. L. 101–510) (Nov. 5, 1990)

* * * * *

(a) *Eligibility based solely on active duty.*

* * * * *

(5) * * *

(v) Involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(b) *Eligibility based on active duty service and service in the Selected Reserve.*

* * * * *

(6) * * *

(v) Involuntarily, for convenience of the Government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(7) * * *

(i) * * *

(E) Involuntarily for the convenience of the Government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

(f) *Restrictions on establishing eligibility.* (1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. ch. 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. ch. 30 unless he or she withdraws the election as provided in paragraph (c) of this section or in § 21.7045(b) of this part.

(Authority: 38 U.S.C. 3018, 3018A; Pub. L. 100–689, Pub. L. 101–510) (Nov. 5, 1990)

* * * * *

4. In § 21.7044 paragraph (a)(4)(ii)(E) is revised, paragraph (a)(4)(ii)(F) is

added and the authority citation for paragraph (a)(4) is revised; paragraph (b)(7)(v) is revised and paragraph (b)(7)(vi) and an authority citation for paragraph (b)(7) are added; paragraph (b)(8)(i)(E) is revised and paragraph (b)(8)(i)(F) and an authority citation for paragraph (b)(8)(i) are added to read as follows:

**§ 21.7044 Persons with 38 U.S.C. chapter 34 eligibility.**

* * * * *

(a) *Eligibility based solely on active duty.* * * *

(4) * * *

(ii) * * *

(E) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or;

(F) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3011; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

(b) *Eligibility based on combined active duty service and service in the Selected Reserve.*

* * * * *

(7) * * *

(v) Involuntarily, for the convenience of the government as a result of a reduction in force as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(vi) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3012; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

(8) * * *

(i) * * *

(E) Is discharged involuntarily for the convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or

(F) Is discharged for a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy; or

(Authority: 38 U.S.C. 3012; Pub. L. 98–525, Pub. L. 99–576, Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

5. Section 21.7045 is added to read as follows:

**§ 21.7045 Eligibility based on involuntary separation.**

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance if he or she meets the requirements of this section.

(a) *Service requirements.* The individual must—

(1) Be on active duty or full-time National Guard duty on September 30, 1990, and

(2) After February 2, 1991, be involuntarily separated, as that term is defined in 10 U.S.C. 1141, with an honorable discharge.

(Authority: 10 U.S.C. 1141, 38 U.S.C. 3018A; Pub. L. 101–510) (Nov. 5, 1990)

(b) *Required election.* (1) If the individual elected not to receive educational assistance under 38 U.S.C. ch. 30, as provided in § 21.7042(f), he or she must irrevocably withdraw that election. The withdrawal must—

(i) Occur before the involuntary separation, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(2) If the individual is a participant in the educational program provided in 38 U.S.C. ch. 32, the individual must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30 rather than under 38 U.S.C. ch. 32. Such an election must—

(i) Occur before the individual is involuntarily separated, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) If the individual is not described in either subparagraph (1) or (2) of this paragraph, he or she must make an irrevocable election to receive educational assistance under 38 U.S.C. ch. 30. This election must—

(i) Occur before the individual is involuntarily separated, and

(ii) Be pursuant to procedures which the Secretary of each military department shall provide in accordance with regulations prescribed by the Secretary of Defense or which the Secretary of Transportation shall provide with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3018A(a); Pub. L. 101–510) (Nov. 5, 1990)

(c) *Reduction in basic pay.* The basic pay of anyone who makes one of the irrevocable elections described in paragraph (b) of this section must be reduced by $1,200. If through error or other reason the basic pay of an individual described in paragraphs (a) and (b) of this section is not reduced by $1,200, the failure to make the reduction will not affect the individual's eligibility for educational assistance under 38 U.S.C. ch. 30.

(Authority: 38 U.S.C. 3018A(b); Pub. L. 101–510) (Nov. 5, 1990)

(d) *Educational requirement.* (1) Before the date on which VA receives the individual's application for benefits, the individual must have completed successfully either—

(i) The requirements of a secondary school diploma (or equivalency certificate), or

(ii) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(2) If a veteran has not met the requirements of paragraph (d)(1) of this section at the time of his or her application for educational assistance, he or she will be permitted to apply at a later date after those requirements are met.

(Authority: 38 U.S.C. 3018A(a); Pub. L. 101–510) (Nov. 5, 1990)

5. In § 21.7072 the introductory text, paragraph (a) and its authority citation, paragraph (b)(1), introductory text, are revised; paragraph (b)(1)(iii)(D) is revised, paragraph (b)(1)(iii)(E) is added and the authority citation for paragraph (b)(1) is revised to read as follows:

**§ 21.7072 Entitlement to basic educational assistance.**

The provisions of this section apply to all veterans and servicemembers except to those to whom § 21.7073 or § 21.7073.1 applies.

(a) *Most individuals are entitled to 36 months of assistance.* Except as provided in paragraphs (b), (c) and (d) and in § 21.7073 and § 21.7073.1, a veteran or servicemember who is eligible for basic educational assistance is entitled to 36 months of basic educational assistance (or the equivalent thereof in part-time educational assistance.

(Authority: 38 U.S.C. 3013; Pub. L. 98–525, Pub. L. 101–510) (Nov. 5, 1990)

(b) *Entitlement: individual discharged for service-connected disability, a medical condition which preexisted service, hardship or involuntarily for the convenience of the government as a result of a reduction in force.* (1) Except as provided in § 21.7073 and § 21.7073.1, when the provisions of this paragraph are met, an eligible individual is entitled to one month of basic educational assistance (or equivalent thereof in part-time basic educational assistance) for each month of the individual's continuous active duty service which the individual serves after June 30, 1985, and, in the case of an individual who had no previous eligibility under 38 U.S.C. ch. 34, is part of the individual's obligated period of active duty. Except as provided in § 21.7073 and § 21.7073.1, VA will apply this subparagraph when the individual—

* * * * *

(iii) * * *

(D) Involuntarily for convenience of the government as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, or;

(E) For a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3013(a); Pub. L. 100–689, Pub. L. 101–510) (Oct. 19, 1984)

* * * * *

7. Sections 21.73 and 21.74 are redesignated as §§ 21.74 and 21.75 and a new § 21.7073 is added to read as follows:

**§ 21.7073 Entitlement for some individuals who establish eligibility before involuntary separation.**

(a) *Individuals to whom this section applies.* The provisions of this section apply to a veteran who establishes eligibility by meeting the provisions of § 21.7045 of this part.

(Authority: 38 U.S.C. 3018A; Pub. L. 101–510) (Nov. 5, 1990)

(b) *Entitlement.* A veteran described in paragraph (a) of this section is entitled to a number of months of basic educational assistance (or equivalent thereof in part-time basic educational assistance) equal to the lesser of—

(1) 36 months, or

(2) The number of months the veteran served on active duty.

(Authority: 38 U.S.C. 3013; Pub. L. 101–510) (Nov. 5, 1990)

8. In § 21.7136 paragraphs (a)(1) and its authority citation are revised, the introductory text of paragraph (c) is revised, and paragraphs (d), (e) and their authority citations are added to read as follows:

**§ 21.7136 Rates of payment of basic educational assistance.**

(a) *Rates.* (1) Except as otherwise provided in this section and § 21.7137, the monthly rate of the basic educational assistance payable to a veteran is the rate stated in these tables. The rates in these tables and the other rates in this paragraph also apply to a veteran who formerly was eligible under 38 U.S.C. ch. 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989. The rates in these tables as well as the other rates listed in this paragraph always apply to a veteran who establishes eligibility under § 21.7045 before an involuntary separation, regardless of the length of the veteran's initial obligated period of active duty or whether or not the veteran was once eligible for educational assistance allowance under 38 U.S.C. ch. 34.

(i) For training which occurred before October 1, 1991, the following table applies.

| Training | Monthly rate |
|---|---|
| Full time | $300. |
| 3/4 time | 225. |
| 1/2 time | 150. |
| Less than 1/2 but more than 1/4 time. | 150 See § 21.7136(d) or (e). |
| 1/4 time | 75 See § 21.7136(d) or (e). |

(ii) For training which occurs after September 30, 1991, the following table applies.

| Training | Monthly rate |
|---|---|
| Full time | $350.00. |
| 3/4 time | 262.50. |
| 1/2 time | 175.00. |
| Less than 1/2 but more than 1/4 time. | 175.00 See § 21.7136(d) or (e). |
| 1/4 time or less | 87.50 See § 21.7136(d) or (e). |

(Authority: 38 U.S.C. 3015; Pub. L. 98–525, Pub. L. 101–510) (Nov. 5, 1990)

* * * * *

(c) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but (except as provided in paragraph (e) of this section)—(Nov. 5, 1990)

* * * * *

(d) *Less than one-half-time training and rates for servicemembers.* The monthly rate for a veteran who is pursuing a course on a less than one-half time basis or the monthly rate for a servicemember who is pursuing a program of education is the lesser of—

(1) The monthly rate stated in either paragraph (a) or (b) of this section (as determined by the veteran's or servicemember's initial obligated period of active duty) plus any additional amounts that may be due under paragraph (c) or (e) of this section, or

(2) The monthly rate of the cost of the course.

(Authority: 38 U.S.C. 3015, 3032; Pub. L. 98–525, Pub. L. 101–510) (Nov. 5, 1990)

(e) *Increase in basic educational assistance rates ("kicker") for those eligible under § 21.7045.* A veteran who formerly was eligible to receive educational assistance under 38 U.S.C. ch. 32, and becomes eligible for educational assistance under 38 U.S.C. ch. 30 as described in § 21.7045(b)(2), may receive an increase in basic educational assistance allowance (kicker). The increase will be determined as follows.

(1) The basis of the increase will be that portion of the amount of money—

(i) Which remains in the VEAP fund after the veteran has been paid all assistance due him or her under 38 U.S.C. ch. 32 and refunded all of his or her contributions to the VEAP fund, and—

(ii) Which represents the Secretary of Defense's additional contributions for the veteran as stated in § 21.5132(b)(3) of this part.

(2) For a student pursuing a program of education by residence training—

(i) VA will determine the monthly rate of the increase by dividing the amount of money described in paragraph (e)(1) of this section by the number of months of entitlement to educational assistance under 38 U.S.C. chapter 30 which the veteran has at the time his eligibility for benefits under 38 U.S.C. chapter 30 is first established;

(ii) VA will use the monthly rate of the increase determined in paragraph (e)(2)(i) of this section if the veteran is pursuing his or her program full time;

(iii) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .75 for a student pursuing his or her program three-quarter time;

(iv) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .5 for a student pursuing his or her program half time; and

(v) VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section by .25 for a student pursuing his or her program less than one-half time.

(3) For a veteran pursuing cooperative training VA will multiply the rate determined by paragraph (e)(2)(i) of this section by .8.

(4) For a veteran pursuing a program of apprenticeship or other on-job training VA will multiply the monthly rate determined by paragraph (e)(2)(i) of this section—

(i) By .75 for a veteran in the first six months of pursuit of training,

(ii) By .55 for a veteran in the second six months of pursuit of training, and

(ii) By .35 for a veteran in the remaining months of pursuit of training.

(Authority: 38 U.S.C. 3015(e); Pub. L. 101–510) (Nov. 5, 1990)

[FR Doc. 93–17455 Filed 7–22–93; 8:45 am]

BILLING CODE 8320-01-U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 93–194, RM–8255]

### Radio Broadcasting Services; Esparto, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed on behalf of Esparto Broadcasting seeking the allotment of FM Channel 250A to Esparto, California, as that locality's first local aural transmission service. Coordinates for this proposal are 38–45–10 and 121–53–30.

**DATES:** Comments must be filed on or before September 9, 1993, and reply comments on or before September 24, 1993.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows; Riley M. Murphy, Esq., Energy Centre, 1100 Poydras, suite 2590, New Orleans, LA 70163–2590.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–194, adopted June 22, 1993, and released July 19, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17486 Filed 7–22–93; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 93–195, RM–8274]

### Radio Broadcasting Services; Los Molinos, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Brett E. Miller, seeking the allotment of Channel 269A to Los Molinos, California, as that community's first local aural transmission service. Coordinates used for this proposal are 40–01–12 and 122–05–42.

**DATES:** Comments must be filed on or before September 9, 1993, and reply comments on or before September 24, 1993.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brett E. Miller, 11608 Blossomwood Ct., Moorpark, CA 93021.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93/195, adopted June 22, 1993, and released July 19, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17482 Filed 7–22–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–196, RM–8275]**

## Radio Broadcasting Services; Point Arena, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Del Mar Trust, seeking the allotment of Channel 272B1 to Point Arena, California, as that community's first local aural transmission service. Coordinates used for this proposal are 38–54–42 and 123–41–24.

**DATES:** Comments must be filed on or before September 9, 1993, and reply comments on or before September 24, 1993.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ashton R. Hardy and Marjorie R. Esman, Esqs., Hardy and Carey, 111 Veterans Boulevard, Metairie, LA 70005.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–196, adopted June 22, 1993, and released July 19, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17485 Filed 7–22–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–200, RM–8254]**

## Radio Broadcasting Services; Micco, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Micco Broadcasting seeking the allotment of Channel 240C3 to Micco, Florida, as that community's first local aural service. Channel 240C3 can be allotted to Micco in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 240C3 at Micco are North Latitude 27–52–49 and West Longitude 80–30–02.

**DATES:** Comments must be filed on or before September 9, 1993, and reply comments on or before September 24, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Riley M. Murphy, 1100 Poydras Street, suite 2590, New Orleans, LA 70163–2590 (Attorney for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–200, adopted June 23, 1993, and released July 19, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17483 Filed 7–22–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–205, RM–8270]**

## Radio Broadcasting Services; Donalsonville, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Seminole-Decatur Radio Company seeking the allotment of Channel 298A to Donalsonville, Georgia, as that community's second local FM service. Channel 298A can be allotted to Donalsonville in compliance with the

Commission's minimum distance separation requirements with a site restriction of 6.3 kilometers (3.9 miles) south of the community. The coordinates for Channel 298A at Donalsonville are North Latitude 30–59–11 and West Longitude 84–52–34.

**DATES:** Comments must be filed on or before September 9, 1993, and reply comments on or before September 24, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerry E. White, Seminole-Decatur Radio Company, Route 3, Box 514, Pelham, Georgia 31779 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–205, adopted June 24, 1993, and released July 19, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17484 Filed 7–22–93; 8:45 am]

BILLING CODE 6712–01–M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AB97**

## Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Southwestern Willow Flycatcher as Endangered With Critical Habitat

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the southwestern willow flycatcher (*Empidonax traillii extimus*) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). The Service finds that the petitioned action is warranted and proposes to list the southwestern willow flycatcher as endangered and to designate its critical habitat. The breeding range of this bird includes southern California, Arizona, New Mexico, extreme southern portions of Nevada and Utah, far western Texas, perhaps southwestern Colorado, and extreme northwestern Mexico. Within this region, the species is restricted to dense riparian (streamside) vegetation. The southwestern willow flycatcher is endangered by extensive loss of habitat, brood parasitism, and lack of adequate protective regulations. This proposal, if made final, would implement Federal protection provided by the Act for the southwestern willow flycatcher. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by October 21, 1993. Public hearing requests must be received by September 7, 1993.

The Act requires the Service to promptly hold one public hearing on the proposed listing regulation should a person file a request for such a hearing by September 7, 1993. Because of anticipated public interest, the Service will hold three public hearings (See "Public Comments Solicited" section of this proposed rule). Dates of the hearings will be announced in the near future.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019 (telephone: 602/379–4720; FAX: 602/379–6629). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Tibbitts, at the above address, or telephone 602–379–4720.

**SUPPLEMENTARY INFORMATION:**

### Background

The southwestern willow flycatcher is a small bird, approximately 15 centimeters (cm) (5.75 inches) in length. It has a grayish-green back and wings, whitish throat, light grey-olive breast, and pale yellowish belly. Two wingbars are visible; the eye ring is faint or absent. The upper mandible is dark, the lower is light. The song is a sneezy "fitz-bew" or "fitzi-bew," the call a repeated "whit."

The southwestern willow flycatcher occurs in riparian habitats along rivers, streams, or other wetlands, where dense growths of willows (*Salix* sp.), *Baccharis*, arrowweed (*Pluchea* sp.) tamarisk (*Tamarix* sp.) or other plants are present, often with a scattered overstory of cottonwood (*Populus* sp.) (Grinnell and Miller 1944, Phillips 1948, Zimmerman 1970, Whitmore 1977, Hubbard 1987, Unitt 1987, Brown and Trosset 1989, Whitfield 1990, Brown 1991). These riparian communities provide nesting and foraging habitat. Throughout the range of *E. t. extimus*, these riparian habitats tend to be rare, widely separated, small and/or linear locales, separated by vast expanses of arid lands. The southwestern willow flycatcher has experienced extensive loss and modification of this habitat and is also endangered by other factors, including brood parasitism by the brown-headed cowbird (*Molothrus ater*) (Unitt 1987).

The southwestern willow flycatcher (Order Passeriformes; Family Tyrannidae) is a subspecies of 1 of the 10 North American species in the genus *Empidonax*. The *Empidonax* flycatchers are renowned as one of the most difficult groups of birds to distinguish by sight, and the taxonomy of the group continues to be revised. The willow flycatcher and alder flycatcher (*E. alnorum*) were once considered a single species, the Traill's flycatcher (*E. traillii*). Some sources (American Ornithologists' Union (AOU) 1983, McCabe 1991) believe *E. traillii* and *E. alnorum*, and all their subspecies, constitute a superspecies, the "*traillii complex*." However, the two species are distinguishable by morphology (Aldrich 1951), song type, habitat use, structure and placement of nests (Aldrich 1953), ecological separation (Barlow and McGillivray 1983), and genetic distinctness (Seutin and Simon 1988).

The breeding range of the alder flycatcher lies generally north of the willow flycatcher and includes inland Alaska, Canada south of the Arctic, and the United States in New England and the northern Midwest.

The southwestern willow flycatcher is one of four subspecies of the willow flycatcher most commonly recognized in North America (Hubbard 1987, Unitt 1987). The breeding range of the widely distributed *E. t. traillii* extends across the northern United States and southern Canada, from New England and Nova Scotia west, through northern Wyoming and Montana, and into British Columbia. *E. t. adastus* breeds from Colorado west of the plains, west through the intermountain/Great Basin states, and into the eastern portions of California, Oregon, and Washington. The breeding range of *E. t. brewsteri* extends from coastal California north from Point Conception, through western Oregon and Washington to Vancouver Island. The breeding range of the southwestern willow flycatcher (*E. t. extimus*) includes southern California, Arizona, New Mexico, extreme southern portions of Nevada and Utah, and western Texas (Hubbard 1987, Unitt 1987). It may also breed in southwestern Colorado, but nesting records are lacking. Records of probable breeding of *E. t. extimus* in Mexico are very few and are restricted to extreme northern Baja California del Norte and Sonora (Unitt 1987, Wilbur 1987). Phillips (1948) suggested that willow flycatchers breeding from northeastern Arizona east to the Rio Grande in New Mexico may be intergrades between *E. t. extimus* and the more northerly subspecies. However, he noted that further examination might extend the known breeding range to the northeast. Subsequent reviews (Hubbard 1987, Unitt 1987) consider northeastern Arizona and all of New Mexico to be within the breeding range of *E. t. extimus*.

The four willow flycatcher subspecies are distinguished primarily by subtle differences in color and morphology. Unitt (1987) noted that "The morphological differences among the races of *E. traillii* are minor, but differ little in magnitude from those distinguishing the species *traillii* from *alnorum*. In *Empidonax*, small differences in morphology may mask large differences in biology."

*E. t. extimus* was described by A.R. Phillips (1948) from a collection by G. Monson from the lower San Pedro River in southeastern Arizona. The taxonomic validity of *E. t. extimus* was critically reviewed by Hubbard (1987) and Unitt (1987). Hubbard (1987) gave a qualified endorsement of the validity of *E. t. extimus*, recommending continued examination of the taxonomy. Unitt (1987) found that *E. t. extimus* was distinguishable from other willow flycatchers by color and morphology (primarily wing formula), but not overall size. The song dialect of *E. t. extimus* may also be distinguishable from other willow flycatchers (M. Sogge, unpubl. data). The AOU did not include subspecies in its most recent Checklist of North American Birds (AOU 1983). However, the subspecies *E. t. extimus* is accepted by most authors (e.g. Aldrich 1951, Behle and Higgins 1959, Phillips *et al.* 1964, Oberholser 1974, Monson and Phillips 1981, Harris *et al.* 1987, Schlorff 1990, Harris 1991). The Service has also recognized *E. t. extimus* (54 FR 554, 56 FR 58804, 57 FR 39664). Section 3(15) of the Act defines the term "species" as "* * * any subspecies of fish or wildlife or plants, and any distinct population segment of any vertebrate species which interbreeds when mature" [50 CFR 424.02(k)]. Based on the above information, the Service has determined that *E. t. extimus* may be listed under the Act.

The southwestern willow flycatcher nests in thickets of trees and shrubs approximately 4–7 meters (m) (13–23 feet) tall, with a high percentage of canopy cover and dense foliage from 0–4 m (13 feet) above ground. The nest site plant community is typically even-aged, structurally homogeneous, and dense (Brown 1988, Whitfield 1990, Sedgewick and Knopf 1992). Historically, *E. t. extimus* nested primarily in willows and *Baccharis*, with a scattered overstory of cottonwood (Grinnell and Miller 1944, Phillips 1948, Whitmore 1977, Unitt 1987). Following modern changes in riparian plant communities in the Southwest, *E. t. extimus* still nests in willows where available, but is also known to nest in thickets dominated by tamarisk and Russian olive (Zimmerman 1970, Hubbard 1987, Brown 1988). Sedgewick and Knopf (1992) found that sites selected as song perches by male willow flycatchers exhibited higher variability in shrub size than did nest sites and often included large central shrubs. Habitats not selected for either nesting or singing were narrower riparian zones, with greater distances between willow patches and individual willow plants. Nesting willow flycatchers of all subspecies generally prefer areas with surface water nearby (Bent 1960, Stafford and Valentine 1985, Harris *et al.* 1987), but *E. t. extimus* invariably nests near surface water (Phillips *et al.* 1964).

Insufficient information is available to define a minimum habitat patch size that is capable of supporting southwestern willow flycatchers. Habitat patches occupied in the Grand Canyon in 1991 and 1992 varied in size from 0.08 to 0.63 hectare (ha) (0.2 to 1.5 acre (ac)) (M. Sogge, unpubl. data). These figures should be considered very general indications of "suitable" patch size. The Grand Canyon flycatchers using patches of this size and type (dominated by tamarisk) have declined from 11 pairs to 2 pairs and 3 single birds in recent years. Throughout its range, the capability of habitat patches to support southwestern willow flycatchers is confused by the rarity of the subspecies, unstable populations, and other parameters.

The nest is a compact cup of fiber, bark, and grass, typically with feathers on the rim, lined with a layer of grass or other fine, silky plant material, and often has plant material dangling from the bottom (Harrison 1979). The nest cup is approximately 4.5 cm (1.75 inches) in diameter and 3.8 cm (1.5 inches) deep. The outer nest dimensions are approximately 7.7 cm (3 inches) wide and 7.7 cm (3 inches) high, excluding dangling material (Unpubl. notes of Herbert Brown, University of Arizona, Tucson). It is constructed in a fork or on a horizontal branch, 1–4.5 m (3.2–15 feet) above ground in a medium-sized bush or small tree, with dense vegetation above and around the nest (Brown 1988, Whitfield 1990).

The nesting cycle is approximately 28 days. Three or four eggs are laid at 1-day intervals, and incubation begins when the clutch is complete (Bent 1960, Walkinshaw 1966). Eggs are incubated by the female approximately 12 days, and the young fledge approximately 13 days after hatching (King 1955, Harrison 1979). Southwestern willow flycatchers typically raise one brood per year. Whitfield (1990) reported the first known production of a second brood. Other observations of eggs being incubated late in the season (Carothers and Johnson 1975) may also represent renesting.

The southwestern willow flycatcher is a late spring breeder. It is present and singing on breeding territories by mid-May, although its presence and status is often confused by the migrating, singing individuals of the northern subspecies, passing through *E. t. extimus* breeding habitat (D. Kreuper, Bureau of Land Management (BLM), unpubl. data). *E. t. extimus* builds nests and lays eggs in late May and early June and fledges young in early July (Willard 1912, Ligon 1961, Brown 1988, Whitfield 1990, Sogge and Tibbitts 1992). Some

variation in these dates has been observed (Carothers and Johnson 1975, Brown 1988) and may be related to altitude, latitude, and renesting.

The southwestern willow flycatcher is an insectivore. It forages within and occasionally above dense riparian vegetation, taking insects on the wing and gleaning them from foliage (Wheelock 1912, Bent 1960). No information is available on specific prey items.

The migration routes and destination of the southwestern willow flycatcher are not well understood. *Empidonax* flycatchers do not often sing during fall migration, so this means of distinguishing species is not available (Blake 1953, Peterson and Chalif 1973). However, willow flycatchers have been reported to sing and defend winter territories in Mexico and Central America (Gorski 1969, McCabe 1991). *E. t. extimus* most likely winters in Mexico, Central America, and perhaps northern South America (Phillips 1948, Peterson 1990). However, the habitats it uses on wintering grounds are unknown. Tropical deforestation may restrict wintering habitat for this and other neotropical migratory birds (Finch 1991).

Breeding bird survey data for 1965 through 1979 combined the willow and alder flycatchers into a "Traill's flycatcher superspecies," because of taxonomic uncertainty during the 15-year reporting period. These data showed fairly stable numbers in central and eastern North America but strong declines in the West, the region including the range of the southwestern willow flycatcher (Robbins *et al.* 1986).

Unitt (1987) reviewed historical and contemporary records of *E. t. extimus* throughout its range, determining that it had "declined precipitously," and that "although the data reveal no trend in the past few years, the population is clearly much smaller now than 50 years ago, and no change in the factors responsible for the decline seem likely." Data are now available which indicate continued declines in most remaining populations of the subspecies (Brown 1991, Whitfield and Laymon, unpubl. data, Sogge and Tibbitts 1992). Population trends in each state are discussed briefly below.

California: All three resident subspecies of the willow flycatcher (*E. t. extimus*, *E. t. brewsteri*, and *E. t. adastus*) were once considered widely distributed and common in California, wherever suitable habitat existed (Wheelock 1912, Willett 1912, Grinnell and Miller 1944). The historic range of *E. t. extimus* in California apparently included all lowland riparian areas of the southern third of the state. Unitt (1984, 1987) concluded that it was once fairly common in the Los Angeles basin, the San Bernardino/Riverside area, and San Diego County. Willett (1912, 1933) considered the bird to be a common breeder in coastal southern California. Nest and egg collections by H. Brown, discussed in Unitt (1987), suggest the bird was a common breeder along the lower Colorado River near Yuma, in 1902.

All three willow flycatcher subspecies breeding in California have declined, with declines most critical in *E. t. extimus* (Gaines 1988, Schlorff 1990). The southwestern willow flycatcher no longer nests along the lower Colorado River (Hunter *et al.* 1987, Rosenberg *et al.* 1991) and remains only in small, disjunct nesting groups elsewhere in southern California (Unitt 1984 and 1987, Schlorff 1990, Service unpubl. data). Only two nesting groups have been stable or increasing in recent years. One is on private land where threats from livestock grazing have been virtually eliminated (Harris *et al.* 1987, Whitfield 1990). However, after remaining stable or increasing for several years, this group on the South Fork of the Kern River experienced numerical declines in 1991 and 1992. An increase in nesting success in 1992 was attributed to shaking (killing) or removing cowbird eggs or nestlings found in flycatcher nests (Whitfield and Laymon, unpubl. data). The other stable nesting group is on Camp Pendleton (U.S. Marine Corps), where threats from cowbird parasitism have been reduced. Approximately eight other nesting groups are known in southern California, all of which consisted of six or fewer nesting pairs in recent years (Unitt 1987, Schlorff 1990, Service, unpubl. data). Using the most recent information for all areas, approximately 70 pairs and 8 single southwestern willow flycatchers are known to exist in California. Where information on population trends since the mid-1980s is available, most areas show declines. Three recent status reviews considered extirpation from California to be possible, even likely, in the foreseeable future (Garrett and Dunn 1981, Harris *et al.* 1986, Schlorff 1990). The State of California classifies the willow flycatcher as endangered (California Department of Fish and Game (CDFG) 1992).

Arizona: Records indicate that the former range of the southwestern willow flycatcher in Arizona included portions of all major river systems (Colorado, Salt, Verde, Gila, Santa Cruz, and San Pedro) and probably major tributaries. Historical records exist from the Colorado River near Lee's Ferry and near the Little Colorado River confluence (Phillips, pers. comm., cited in Unitt 1987), and along the Arizona-California border (Phillips 1948, Unitt 1987), the Santa Cruz River near Tucson (Swarth 1914, Phillips 1948), the Verde River at Camp Verde (Phillips 1948), the Gila River at Fort Thomas (W.C. Hunter, pers. comm., cited in Unitt 1987), the White River at Whiteriver, the upper and lower San Pedro River (Willard 1912, Phillips 1948), and the Little Colorado River headwaters area (Phillips 1948).

The southwestern willow flycatcher has declined throughout Arizona. Extensive loss and modification of riparian habitats have occurred throughout much of the State, and southwestern willow flycatcher habitat is now largely absent or altered (Phillips 1948, Phillips *et al.* 1964). The subspecies no longer nests on the lower Colorado River (Hunter *et al.* 1987, Rosenberg *et al.* 1991) and is known to persist elsewhere in the State only in several small, widely scattered locations. In the Grand Canyon, several groups of nesting birds declined from a combined high of 11 pairs in 1986 (Brown 1988), to two pairs and three single birds in 1992 (Sogge and Tibbitts 1992). Two and four singing birds, respectively, were recorded at two locations on the middle San Pedro River in the mid-1980s (Arizona Game and Fish Department (AGFD) unpubl. data). These sites have not been surveyed since. However, a third site in that area was occupied until 1979, but no *E. t. extimus* have been found in recent years (AGFD and U.S. Bureau of Reclamation (Reclamation), unpubl. data). Historically occupied habitat on the upper San Pedro is now unsuitable and unoccupied (Kreuper and Corman 1988, D. Kreuper unpubl. data). One to four possible breeding birds were seen from 1985 through 1988 in the Little Colorado River headwaters area known to have supported several small nesting groups (T. Corman, unpubl. data). R. Ohmart (unpubl. data) observed four nesting pairs on the Verde River in central Arizona in 1992. Of 13 river reaches in Arizona studied by Hunter *et al.* (1987), nesting willow flycatchers *(extimus)* were extirpated from eight, declining in two, and present in stable numbers in two. Using the most recent information for all areas, approximately 12 pairs and 3 single *E. t. extimus* are known to exist in the State. The estimated total *E. t. extimus* in Arizona in the late 1980's ranged from 24 to 30 nesting pairs (T. Johnson 1989, Unitt 1987). More recent information does not

warrant increasing that estimate. Where information on population trends since the mid-1980s is available, most areas show declines. In early 1993, catastrophic flooding on the Verde, Gila and San Pedro Rivers damaged many sites inhabited since the mid-1980s and much potential habitat. Unitt (1987) concluded that "Probably the steepest decline in the population levels of *extimus* has occurred in Arizona * * * extimus has been extirpated from much of the area from which it was originally described, the riparian woodlands of southern Arizona." The State of Arizona classifies the willow flycatcher as endangered (AGFD 1988).

New Mexico: Bailey (1928) classified breeding willow flycatchers in New Mexico as *E. t. brewsteri*, according to the then current taxonomy of Oberholser (1918). Because of few records at that time, she believed that either the bird was rare or was overlooked by most observers and collectors. More recently, Hubbard (1987) reviewed and summarized the flycatcher's status in New Mexico. He classified breeding birds in the State as *E. t. extimus* and reported breeding locations that were generally confined to the regions west of the Rio Grande River, with records from the Rio Grande, Chama, Zuni, San Francisco, Gila, and possibly lower Penasco drainages (See also Hubbard 1982). However, he provisionally assigned all willow flycatchers nesting in New Mexico to *extimus*, noting records from the Pecos River and Penasco Creek in the southeast and from near Las Vegas in the northeast.

Both Hubbard (1987) and Unitt (1987) believed that the overall range of *E. t. extimus* had not been reduced in New Mexico, but that habitat and numbers had declined. Unitt (1987) believed the majority of all remaining nesting birds may occur in New Mexico. Areas with 19 and 53 singing flycatchers (assumed to be nesting but possibly migrants) were found on the upper Gila River (Montgomery *et al.* 1985, cited in Suckling *et al.* 1992). Recent information on those nesting areas is not available, and Hubbard (1987) noted that data were lacking for trends of most nesting areas. However, where data were available, they indicated loss of the nesting habitat of a group of 15 breeding pairs as a consequence of rising waters of Elephant Butte Reservoir. The willow flycatcher was considered fairly common in this area on the middle Rio Grande in the late 1970's (Hundertmark 1978). Hubbard hypothesized that some of these birds could have moved upstream, to new shoreline habitat created by the impoundment. Between 1987 and 1990, bird surveys along the Rio Grande River State Park in Albuquerque found a single singing willow flycatcher during the breeding season (Hoffman 1990). In 1992, 71 transects along the Rio Grande River were surveyed for breeding birds, not specifically targeting willow flycatcher habitat. A single willow flycatcher was located near Espanola (Leal, Meyer and Thompson, unpubl. data). Hubbard (1987) estimated that the state population may total 100 pairs. However, he found that the "virtually inescapable" conclusion was that "a decrease has occurred in the population of breeding willow flycatchers in New Mexico over historic time," resulting from habitat loss. The State of New Mexico classifies the willow flycatcher as endangered (NMDGF 1988).

Texas: The eastern edge of the southwestern willow flycatcher's range is in western Texas (Unitt 1987). Collections have been made at Fort Hancock on the Rio Grande (Phillips 1948), in the Guadalupe Mountains (Phillips, pers. comm., cited in Unitt 1987), the Davis Mountains (Oberholser 1974), and from unspecified locales in Brewster County (Wolfe 1956). Wauer (1973 and 1985) considered *E. t. extimus* a rare summer resident in Big Bend National Park. Data are lacking on current population levels and trends in Texas. Loss and modification of habitat may have reduced populations on the Rio Grande and Pecos Rivers.

Utah: The north-central limit of breeding southwestern willow flycatchers is in southern Utah. However, because of possible intergradations with *E. t. adastus*, the exact limits are not well defined and a clinal gradation may exist between the two subspecies (Behle 1985, Unitt 1987). Records that are likely to represent *E. t. extimus* are from the Virgin River (Phillips 1948, Whitmore 1975), Kanab Creek, and along the San Juan and Colorado Rivers (Behle *et al.* 1958 cited in Unitt 1987, Behle and Higgins 1959, Behle 1985). Other reports document the subspecies being present along the Virgin, Colorado, San Juan, and perhaps Paria Rivers (BLM, unpubl. data). Although Behle believed *E. t. extimus* was always rare in southern Utah overall (pers. comm. cited in Unitt 1987), he considered it a locally common breeding resident where habitat existed along the Colorado River and its tributaries in southeastern Utah (Behle and Higgins 1959).

Few data are available on population trends in southern Utah. However, loss and modification of habitat is likely to have reduced populations on the Virgin, Colorado, and San Juan Rivers. These losses have been due to suburban expansion and habitat changes along the Virgin River, inundation by Lake Powell on the Colorado and San Juan Rivers, and encroachment of tamarisk throughout the region (Unitt 1987, BLM unpublished data).

Nevada: Unitt (1987) reported only three records for Nevada, all made before 1962. Unitt (1987) and Hubbard (1987) both considered extreme southern Nevada to be within the subspecies' range. However, no recent data are available on population levels or trends. Habitat may remain along the lower Virgin River and at the inflow of the Virgin River into Lake Mead. However, loss and modification of habitat is likely to have reduced populations on the Virgin and Colorado Rivers.

Colorado: It is unclear whether or not the southwestern willow flycatcher breeds in Colorado. Some authors believe the subspecies may range into extreme southwestern Colorado (e.g. Hubbard 1987); others do not (e.g. Unitt 1987). Several specimens taken in late summer have been identified as *E. t. extimus*, but nesting was not confirmed (Bailey and Niedrach 1965). Phillips (1948) cautioned that willow flycatchers in this region displayed considerable individual variation and may represent intergrades between *E. t. extimus* and *E. t. adastus*. No recent data are available on occurrence, population levels, or trends in this area.

Mexico: Six specimens from Baja California and two from Sonora were discussed by Unitt (1987). He and Phillips (pers. comm., cited in Unitt 1987) believed *E. t. extimus* was not common in northwestern Mexico. Wilbur (1987) was skeptical of its presence as a breeder in Baja California. In the more general treatments of field guides, the willow flycatcher is described as breeding in extreme northwestern Mexico, including northern Baja California (Blake 1953, Peterson and Chalif 1973). No recent data are available on current population levels or trends.

Using the most recent censuses and estimates for all areas, the estimated total of all southwestern willow flycatchers is approximately 230 to 500 nesting pairs (Service, unpubl. data). Unitt (1987) believed the total was "well under" 1,000 pairs, more likely 500. The regional estimates on which these total estimates are based generally date from the late 1980's (e. g. Hubbard 1987, T. Johnson 1989). Virtually all nesting groups monitored since that time have continued to decline (Whitfield 1990, Brown 1991, Sogge and Tibbitts 1992, Whitfield and Laymon, unpubl. data).

The Service included the southwestern willow flycatcher in its January 6, 1989, (54 FR 554) Animal Notice of Review as a category 2 candidate species. A category 2 species is one for which listing may be appropriate, but additional biological information is needed. After soliciting and reviewing additional information, the Service elevated *E. t. extimus* to category 1 candidate status on November 21, 1991 (56 FR 58804). A category 1 species is one for which the Service has on file substantial information to support listing, but a proposal to list has not been issued because it is precluded at present by other listing activity.

On January 25, 1992, a coalition of conservation organizations (Suckling *et al.* 1992) petitioned the Service, requesting listing of *E. t. extimus* as an endangered species, under the Endangered Species Act of 1973, as amended (16 U.S.C. et seq.). The petitioners also appealed for emergency listing and designation of critical habitat. On September 1, 1992 (57 FR 39664), the Service published a finding that the petition presented substantial information indicating that listing may be warranted, and requested public comments and biological data on the status of the southwestern willow flycatcher.

Section 4(b)(3) of the Act requires the Secretary of the Interior to reach a final decision on any petition accepted for review within 12 months of its receipt. This proposal constitutes the final finding on the petitioned action.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species owing to one or more of the five factors described in section 4(a)(1). These factors and their application to the southwestern willow flycatcher (*Empidonax traillii extimus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Large scale losses of southwestern wetlands have occurred, particularly the cottonwood-willow riparian habitats of the southwestern willow flycatcher (Phillips *et al.* 1964, Carothers 1977, Rea 1983, Johnson and Haight 1984, Katibah 1984, Johnson *et al.* 1987, Unitt 1987, General Accounting Office (GAO) 1988, Szaro 1989, Dahl 1990, State of Arizona 1990). Changes in the riparian plant community have resulted in the reduction, degradation, and elimination of nesting habitat for the willow flycatcher, curtailing the ranges, distributions, and numbers of the western subspecies, including *E. t. extimus* (Gaines 1974, Serena 1982, Cannon and Knopf 1984, Klebenow and Oakleaf 1984, Taylor 1986, Schlorff 1990).

Dahl (1990) reviewed estimated losses of wetlands between 1780 and the 1980's in the Southwest: California 91 percent; Nevada 52 percent; Utah 30 percent; Arizona 36 percent; New Mexico 33 percent; and Texas 52 percent. As much as 90 percent of lowland riparian habitat has been lost in Arizona (State of Arizona 1990). Franzreb (1987) noted that "(B)ottomland riparian forests are the most highly modified of natural landscapes in California."

Loss and modification of southwestern riparian habitats have occurred owing to urban and agricultural development, water diversion and impoundment, channelization, livestock grazing, and hydrological changes resulting from these and other land uses. Rosenberg *et al.* (1991) noted that "it is the cottonwood-willow plant community that has declined most with modern river management." Loss of the cottonwood-willow riparian forests has had widespread impact on the distribution and abundance of bird species associated with that forest type (Hunter *et al.* 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991).

Overuse by livestock has been a major factor in the degradation and modification of riparian habitats in the western United States. These effects include changes in plant community structure and species composition and relative abundance of species and plant density. These changes are often linked to more widespread changes in watershed hydrology (Rea 1983, GAO 1988). These changes directly affect the habitat characteristics critical to *E. t. extimus*. Livestock grazing in riparian habitats typically results in reduction of plant species diversity and density, especially palatable broadleaf plants like willows and cottonwood saplings, and is one of the most common causes of riparian degradation (Carothers 1977, Rickard and Cushing 1982, Cannon and Knopf 1984, Klebenow and Oakleaf 1984, GAO 1988, Clary and Webster 1989, Schultz and Leininger 1990).

Increases in willow flycatcher numbers (various subspecies) have followed reduction, modification, or removal of cattle grazing. Taylor (1986) found a negative correlation between recent cattle grazing and abundance of numerous riparian birds, including the willow flycatcher. In an area ungrazed since 1940, his bird counts were five to seven times higher than comparable plots where grazing was terminated in 1980. Harris *et al.* (1987) observed southwestern willow flycatchers to increase by 61 percent over a 5-year period after grazing was reduced. Taylor and Littlefield (1986) found higher numbers of willow flycatchers (*E. t. brewsteri*) correlated with minimal or nonexistent livestock grazing. Klebenow and Oakleaf (1984) listed the willow flycatcher among bird species that declined from abundant to absent in riparian habitats degraded in part by overgrazing. R. Schlorff reported willow flycatchers returning to Modoc County, California, several years after removal of livestock grazing (pers. comm. cited in Valentine *et al.* 1988). Knopf *et al.* (1988) found that, during the summer, willow flycatchers (*E. t. adastus*) were present on winter-grazed pastures but were virtually absent from summer-grazed pastures. The Service believes that documentation of livestock impacts on other willow flycatcher subspecies is relevant to *E. t. extimus*, because linear riparian habitats in arid regions are particularly vulnerable to fragmentation and destruction by livestock. As shady, cool, wet areas providing abundant forage, they are disproportionately preferred by livestock over the surrounding xeric uplands (Ames 1977, Valentine *et al.* 1988, A. Johnson 1989). Suckling *et al.* (1992) noted that most of the areas still known to support southwestern willow flycatchers have low or nonexistent levels of livestock grazing.

Another likely factor in the loss and modification of southwestern willow flycatcher habitat is invasion by the exotic tamarisk. Tamarisk (also called saltcedar) was introduced into western North America from the Middle East in the late 1800s, as an ornamental windbreak and erosion-control plant. It has spread rapidly along southwestern watercourses, typically at the expense of native riparian vegetation, and especially in cottonwood/willow communities. Although tamarisk is present in nearly every southwestern riparian community, its degree of dominance varies. It has replaced some communities entirely, but occurs at a low frequency in others.

The spread and persistence of tamarisk has resulted in significant changes in riparian plant communities. In tamarisk monocultures, the most striking change is the loss of community

structure. The multi-layered community of herbaceous understory, small shrubs, middle-layer willows, and overstory deciduous trees is often replaced by one monotonous layer. Plant species diversity has declined in many areas, and relative species abundance shifted in others. Other effects include changes in percent cover, total biomass, fire cycles, thermal regimes, and perhaps insect fauna (Kerpez and Smith 1987, Carothers and Brown 1991, Rosenberg *et al.* 1991).

Disturbance regimes imposed by man (e.g., grazing, water diversion, flood control, woodcutting, and vegetation clearing) have facilitated the spread of tamarisk (Behle and Higgins 1959, Kerpez and Smith 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991). Cattle find tamarisk unpalatable. However, they eat the shoots and seedlings of cottonwood and willow, acting as a selective agent to shift the relative abundance of these species (Kerpez and Smith 1987). Degradation and, in some cases, loss of native riparian vegetation have lowered the water table and resulted in the loss of perennial flows in some streams. With its deep root system and adaptive reproductive strategy, tamarisk thrives or persists where surface flow has been reduced or lost.

Manipulation of perennial rivers and streams has resulted in habitats that tend to allow tamarisk to outcompete native vegetation. Construction of dams created impoundments that destroyed native riparian communities. Dams also eliminated or changed flood regimes, which were essential in maintaining native riparian ecosystems. Changing (usually eliminating) flood regimes provided a competitive edge to tamarisk. In contrast to native phreatophytes, tamarisk does not need floods to establish and is intolerant of submersion when young. Diversion of water caused the lowering of near-surface ground water and reduced the relative success of native species in becoming established. Irrigation water containing high levels of dissolved salts also favors tamarisk, which is more tolerant of high salt levels than most native species (Kerpez and Smith 1987).

The rapid spread of tamarisk has corresponded with the decline of the southwestern willow flycatcher. *E. t. extimus* is generally absent where the exotic tamarisk has replaced native riparian vegetation. However, it is not known whether characteristics of tamarisk stands are inherently unsuitable to *E. t. extimus*, or whether tamarisk invasion and willow flycatcher declines are coincidental. However, changes in bird species diversity, corresponding with invasion by tamarisk, are documented. Conversion to tamarisk typically corresponds with reductions or complete loss of bird species strongly associated with cottonwood-willow habitats. These include the yellow-billed cuckoo (*Coccyzus americanus*), summer tanager (*Piranga rubra*), northern oriole (*Icterus galbula*), and the southwestern willow flycatcher (Hunter *et al.* 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991).

Some authors believe tamarisk may not provide as much thermal protection as native broadleaf species (Hunter *et al.* 1987, Hunter *et al.* 1988). This thermal difference could be important at lower elevations in the Southwest, where extreme high temperatures are common during the bird's midsummer breeding season. Hunter *et al.* (1987) reported the willow flycatcher as one of seven midsummer-breeding builders of open nests that were found in tamarisk at higher elevations but not lower elevations. Nesting *E. t. extimus* have been found in tamarisk at middle elevations [less than 850–1200 m (2700–3500 feet)], on the Colorado River (Brown 1988), the Rio Grande (Hundertmark 1978, Hubbard 1987), and the San Pedro River (Hunter *et al.* 1987). Conversely, *E. t. extimus* is now absent at lower elevations where tamarisk thrives, e.g., the lower Colorado River [approximately 100 m (328 feet)]. Unitt (1987) speculated that at higher elevations and in the eastern portion of its range, some *E. t. extimus* populations may be adapting to tamarisk. It is also possible that tamarisk affects *E. t. extimus* by altering the riparian insect fauna (Carothers and Brown 1991).

Water developments also likely reduced and modified southwestern willow flycatcher habitat. The series of dams along most major southwestern rivers (Colorado, Gila, Salt, Verde, Rio Grande, Kern, San Diegito, and Mojave) have altered riparian habitats downstream of dams through hydrological changes, vegetational changes, and inundated habitats upstream. New habitat is sometimes created along the shoreline of reservoirs, but this habitat (often tamarisk) is often unstable due to fluctuating levels of regulated reservoirs (Grinnell 1914, Phillips *et al.* 1964, Rosenberg *et al.* 1991).

Diversion and channelization of natural watercourses are also likely to have reduced *E. t. extimus* habitat. Diversion results in diminished surface flows, and consequent reductions in riparian vegetation are likely. Channelization often alters stream banks and fluvial dynamics necessary to maintain native riparian vegetation.

Suckling *et al.* (1992) suggested that logging in the upper watersheds of southwestern rivers may constitute another potential threat to the southwestern willow flycatcher. They stated that logging increases the likelihood of damaging floods in southwestern willow flycatcher nesting habitat.

Finally, the willow flycatcher (all subspecies) is listed among neotropical migratory birds which may face loss of wintering habitat owing to tropical deforestation (Finch 1991).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Service is unaware of threats resulting from overutilization.

C. *Disease or predation.* The Service is unaware of any disease which constitutes a significant threat to *E. t. extimus*. Boland *et al.* (1989) found a single case of larval fly parasites in willow flycatcher nestlings in California.

Predation of southwestern willow flycatchers may constitute a significant threat and may be increasing with habitat fragmentation. Where *E. t. extimus* has been extirpated in the lower Colorado River valley, Rosenberg *et al.* (1991) found increases in the great-tailed grackle (*Quiscalus mexicanus*), which preys on the eggs and young of other birds. Whitfield (1990) found predation on *E. t. extimus* nests to be significant. Predation increased with decreasing distance from nests to thicket edges, suggesting that habitat fragmentation may increase the threat of predation.

D. *The inadequacy of existing regulatory mechanisms.* The Migratory Bird Treaty Act (MBTA)(16 U.S.C. 703–712) is the only current Federal protection provided for the southwestern willow flycatcher. The MBTA prohibits "take" of any migratory bird, which is defined as: "* * * to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect * * *." There are no provisions in the MBTA preventing habitat destruction unless direct mortality or destruction of active nests occurs. Under section 7(a) of the Endangered Species Act, any Federal action which may affect a listed species or its habitat is reviewed through consultation with the Service.

The majority of the southwestern willow flycatcher's range lies within California, Arizona, and New Mexico (Phillips 1948, Hubbard 1987, Unitt 1987). All of those States classify the willow flycatcher as endangered (AGFD 1988, NMDGF 1988, CDFG 1992). The willow flycatcher (all subspecies) was

added to the Audubon Blue List of declining, threatened, or vulnerable species in 1980 (Arbib 1979). These State and private designations do not provide regulatory protection of habitat. However, the States of Arizona, California, and New Mexico regulate the capture, handling, transportation and take of the willow flycatcher through game laws, special licenses, and permits for scientific investigation.

E. *Other natural or manmade factors affecting its continued existence.* The riparian habitat of the southwestern willow flycatcher has always been rare and has become more so. Its habitat rarity, and small, isolated populations make the remaining *E. t. extimus* increasingly susceptible to local extirpation through stochastic events such as floods, fire, brood parasitism, predation, depredation, and land development. In early 1993, catastrophic floods in southern California and Arizona damaged or destroyed much of the remaining occupied or potential breeding habitat. Historically, these floods always have destroyed habitat but were also important events in regenerating cottonwood-willow communities. However, with the little southwestern willow flycatcher habitat remaining, widespread events like those of 1993 could destroy virtually all remaining habitat throughout all or a significant portion of the subspecies' range.

The disjunct nature of habitats and small breeding populations also impedes the flow of genetic material between populations and reduces the chance of demographic rescue by migration from adjacent populations. The resulting constraints on the gene pool intensify the external threats to the species.

Brood parasitism by the brown-headed cowbird (*Molothrus ater*) also threatens the southwestern willow flycatcher. Cowbirds lay their eggs in the nests of other, usually smaller, songbirds. The cowbird often removes a number of the hosts' eggs from the nest equal to the number laid by the cowbird. The host species then incubates the cowbird eggs, which hatch after a relatively short incubation (12 days), usually prior to the hosts' own eggs. Thus, the young cowbirds have several advantages over the host's young; they hatch earlier, they are larger, and they are also more aggressive than the host's young. Cowbird nestlings typically outcompete those of the host species for parental care, and the host species' own reproduction is reduced or eliminated (McGeen 1972, Mayfield 1977a, Brittingham and Temple 1983).

The brown-headed cowbird was originally restricted to the Great Plains, where it was strongly associated with American bison (*Bison bison*). As North America was settled, cowbirds became associated with livestock and human agriculture, because of the food sources they provided (Flett and Sanders 1987, Valentine *et al.* 1988). The expansion of agriculture, livestock grazing, and widescale human activities in general caused opening and fragmenting of forest and woodland habitats. Habitat fragmentation is strongly correlated with increased rates of brood parasitism by brown-headed cowbirds (Rothstein *et al.* 1980, Brittingham and Temple 1983, Airola 1986). Some species are likely to have adapted to parasitism over time, particularly prairie nesters in the original range of the cowbird. However, the rapid expansion of the cowbird now brings it into contact with forest and woodland species not adapted to deal with brood parasitism (Hill 1976, Mayfield 1977a).

The brown-headed cowbird was apparently an uncommon bird within the range of *E. t. extimus* until the late 1800's. Since then, the species has greatly expanded in numbers and distribution throughout the region (Laymon 1987). Increases in cowbirds in the San Bernardino Valley between 1918 and 1928 caused "considerable alarm" (Hanna 1928). Although Friedmann *et al.* (1977) reported relatively low rates of parasitism of willow flycatchers in the western United States, this was apparently due to their data (egg sets) being collected prior to the major incursions of cowbirds into Pacific coast riparian habitats (L. Kiff, Western Foundation for Vertebrate Zoology, pers. comm.). Brood parasitism of the willow flycatcher (several subspecies) by brown-headed cowbirds is well documented (Hanna 1928, Rowley 1930, Willett 1933, Hicks 1934, King 1954, Holcomb 1972, Friedmann *et al.* 1977, Garret and Dunn 1981, Harris *et al.* 1987, Brown 1988, 1991, Sedgewick and Knopf 1988, Whitfield 1990, Harris 1991).

The increases in cowbirds in the Southwest and parasitism of *E. t. extimus* and other birds are generally described by the following scenario. The introduction of modern human settlements, livestock grazing, and other agricultural developments resulted in habitat fragmentation. Simultaneously, livestock grazing, and other agricultural developments served as vectors for cowbirds, providing feeding areas in or near host species' nesting habitats (Hanna 1928, Gaines 1974, Mayfield 1977a). Cowbirds may travel almost 7 kilometers (km) (4.2 miles) from feeding sites where livestock congregate, to areas where host species are parasitized (Rothstein *et al.* 1984). These factors increased both the vulnerability of *E. t. extimus* and the likelihood of encounters with cowbirds. Finally, the high edge-to-interior ratio of linear riparian habitats like that of *E. t. extimus* renders birds nesting there particularly vulnerable to parasitism (Airola 1986, Laymon 1987, Harris 1991). Linear riparian habitats are also especially vulnerable to fragmentation by grazing, which further increases both the edge-to-interior ratio, and the threat of parasitism.

The effects of parasitism by brown-headed cowbirds on willow flycatchers include reducing nest success and egg-to-fledging rates, and delaying successful fledging (because of renesting attempts) (Harris 1991). A common response to parasitism is abandonment of the nest (Holcomb 1972). Willow flycatchers may respond to parasitism by ejecting cowbird eggs, by burying them with nesting material and renesting on top of them, or by renesting in another nest (Harris 1991). However, the success of renesting is often reduced because these attempts produce fledglings several weeks later than normal, which may not allow them adequate time to prepare for migration (Harris 1991). Renesting also usually results in smaller clutches, further reducing overall reproductive potential (Holcomb 1974).

McCabe (1991) downplayed the significance of cowbird parasitism as a threat to any species except Kirtland's warbler (*Dendroica kirtlandii*). However, perhaps reflecting his regional perspective, he characterized the high parasitism rates on willow flycatchers reported by Trautman (1940 cited in McCabe 1991) and Sedgwick and Knopf (1988) as aberrant (56 percent and 41 percent, respectively). McCabe considered the high rates the result of the "* * * linear configuration of the habitat * * * (c)owbirds lay eggs in songbird nests closest to cover edge." The vast majority of southwestern willow flycatcher habitat is very linear. McCabe's monograph focussed on the combined "Traill's flycatcher" superspecies, which comprises *E. t. traillii* and *E. alnorum* in marshy habitats in the upper Midwest, where parasitism rates ranged from 3 percent to 19 percent.

Brittingham and Temple (1983) considered "high" parasitism rates (percent of nests parasitized) to be 24 percent, with some as high as 72 percent. Mayfield (1977a) thought a species (or population) might be able to survive a 24 percent parasitism rate, but

that losses much higher than that "would be alarming." Parasitism rates of 72 percent to 83 percent on Kirtland's warbler (Mayfield 1977b) resulted in a precipitous population decline. Where they are known, parasitism rates for *E. t. extimus* are capable of causing similar declines. In California, parasitism rates ranged from 50 percent to 80 percent between 1987 and 1992, when an estimated population size decreased from 44 nesting pairs to 28 (Whitfield 1990, Harris 1991, Whitfield and Laymon, unpubl. data). These parasitism rates were considered minimum measures, because several nests were abandoned each year owing to unknown causes, which could have included parasitism. Brown (1988) reported an average 50 percent parasitism rate in the Grand Canyon between 1982 and 1987. Although his estimated population increased from 2 pairs to 11 during that period, it has since decreased back to 2 nesting pairs (Brown 1991, Sogge and Tibbitts 1992). Harris (1991) believed that the parasitism rates observed on the Kern River in 1987 (68 percent of all nests, 88 percent of all nest territories) were high enough to prevent *E. t. extimus* from recolonizing lowland riparian habitat, even if such habitat were restored.

Rothstein *et al.* (1980), Stafford and Valentine (1985), and Harris (1991) believed parasitism may be correlated with elevation, being more severe at lower elevations. Coupled with greater loss of lowland (desert) riparian habitat, the effects of habitat loss and parasitism are compounded. However, cowbirds now appear to be increasing at higher elevations (Hanka 1985).

In addition to causing habitat degradation and facilitating brood parasitism, livestock grazing in and near riparian areas may also threaten the southwestern willow flycatcher through direct mortality. Livestock in riparian habitats sometimes make physical contact with nests, resulting in destruction of nests and spilling out eggs or nestlings. All known documentations of this threat involve *E. t. brewsteri*, perhaps because virtually all known remaining populations of *E. t. extimus* are in ungrazed habitats (Serena 1982, Harris *et al.* 1987, Whitfield and Laymon, unpubl. data). Livestock grazing likely affects *E. t. extimus* by disrupting nesting behavior or upsetting nests. Valentine *et al.* (1988) studied willow flycatchers in California from 1983 through 1987, when 11 of their 20 recorded nesting attempts failed. They found that "* * * [p]rior to reduction of grazing intensity in 1987, livestock accounted for 36% of the failed nests or 20% of all nesting attempts. In addition, livestock destroyed four successful nests shortly after the young had fledged." Stafford and Valentine (1985) reported that three of eight (37.5 percent) willow flycatcher nests in their study site were probably destroyed by cattle. Flett and Sanders (1987) documented no nest upsets due to livestock, but noted the vulnerability of nests to upset, owing to their placement low in willow clumps (see also Serena 1982).

The southwestern willow flycatcher's preference for, and former abundance in, floodplain areas that are now largely agricultural may indicate a potential threat from pesticides. Where flycatcher populations remain, they are sometimes in proximity to agricultural areas, with the associated pesticides and herbicides. Without appropriate precautions, these agents may potentially affect the southwestern willow flycatcher through direct toxicity or effects on their insect food base. No quantitative data on this potential threat are known at this time.

Recreation that is focused on riparian areas, particularly during warm summer breeding months, may also constitute a threat to *E. t. extimus*. Taylor (1986) found a possible correlation between recreational activities and decreased riparian bird abundance. Blakesley and Reese (1988) reported the willow flycatcher (probably *E. t. adastus*) as one of seven species negatively associated with campgrounds in riparian areas in northern Utah. It is unknown whether these possible effects involve impacts to habitat or disturbance of nesting birds.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the southwestern willow flycatcher as endangered. Threatened status would not be appropriate because the large proportion of historic habitat loss already constitutes extinction throughout a significant portion of the species' range. The rationale for proposing critical habitat is provided in the "Critical Habitat" section of this proposed rule.

**Critical Habitat**

Critical habitat, as defined by Section 3(5)(A) of the Act, means:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for the southwestern willow flycatcher to include riparian areas along streams and rivers in southern California, Arizona, and New Mexico. The following areas are proposed as critical habitat:

1. California, Riverside and San Bernardino counties: Approximately 25 km (16 miles) of the Santa Ana River, from Rio Road downstream to Prado Flood Control Basin Dam.
2. California, San Diego County: Approximately 33 km (20 miles) of the Santa Margarita River, from the unnamed trail at T8S, R3W, Section 34) downstream to northbound Interstate 5.
3. California, San Diego County: Approximately 38 km (24 miles) of the San Luis Rey River, from Mission Road downstream to northbound Interstate 5.
4. California, San Diego County: Approximately 27 km (15 miles) of the San Diegito River, from southbound Interstate 15 downstream to northbound Interstate 5.
5. California, San Diego County: Approximately 8 km (5.5 miles) of the San Diego River, from Carlton Hills Boulevard downstream to the Second San Diego Aqueduct.
6. California, San Diego County: Approximately 5.5 km (3.3 miles) of the Tijuana River, from Larsen Field downstream to the windmill at T19S, R2W, Section 4.
7. California, San Diego County: Approximately 34 km (21 miles) of the South Fork of the Kern River, from the confluence of Canebrake Creek downstream to Isabella Lake Dam, including Isabella Lake.
8. Arizona, Cochise County: Approximately 87 km (54 miles) of the San Pedro River from the Hereford Bridge downstream to eastbound Interstate 10 at Benson.
9. Arizona; Cochise, Pima and Pinal Counties: Approximately 108 km (66 miles) of the San Pedro River from the Gaging Station near Aguaja Canyon downstream to the confluence with the Gila River, including Cook's Lake.

10. Arizona, Yavapai and Gila Counties: Approximately 145 km (90 miles) of the Verde River, from Sob Canyon downstream to Horseshoe Reservoir, including Peck's Lake and Tavasci Marsh.
11. Arizona, Yavapai County: Approximately 40 km (25 miles) of Wet Beaver Creek and Beaver Creek, from the unnamed tributary drainage on the north side of Wet Beaver Creek, just east of Hog Hill, downstream to the confluence of Beaver Creek and the Verde River.
12. Arizona, Yavapai County: Approximately 37 km (23 miles) of West Clear Creek, from the unnamed tributary drainage on the south, at Bull Hole, downstream to the Verde River.
13. Arizona, Coconino County: Approximately 52 km (32 miles) of the Colorado River, from river mile 39 downstream to river mile 71.5. (River mile 0 = Lee's Ferry).
14. Arizona, Apache County: Approximately 48 km (30 miles) of the West, East, and South Forks of the Little Colorado River, and the Little Colorado River, from the diversion ditch at T8N, R28E, Section 16, upstream to Forest Road 113 on the West Fork, upstream to Forest Road 113 on the East Fork, and upstream to Joe Baca Draw on the South Fork.
15. New Mexico, Bernalillo County: Approximately 32 km (20 miles) of the Rio Grande River, from the Alameda Boulevard bridge in northern Albuquerque downstream to southbound Interstate 25.
16. New Mexico, Catron and Grant Counties: Approximately 63 km (39 miles) of the Gila River and the East and West Forks of the Gila River, from El Rincon on the Gila River upstream to Hell's Hole Canyon on the West Fork of the Gila River, and upstream to the confluence of Taylor Creek and Beaver Creek on the East Fork of the Gila River.
17. New Mexico, Grant and Hidalgo Counties: Approximately 90 km (56 miles) of the Gila River, from the confluence of Hidden Pasture Canyon downstream to the confluence of Steeple Rock Canyon.
18. New Mexico, Catron County: Approximately 105 km (65 miles) of the San Francisco River, from the confluence of Trail Canyon downstream to San Francisco Hot Springs.
19. New Mexico, Catron County: Approximately 60 km (37 miles) of the Tularosa River and Apache Creek, from the confluence of the Tularosa and San Francisco Rivers upstream, to the source of the Tularosa River near the continental divide, and upstream on Apache Creek to the confluence with Whiskey Creek.

A total of approximately 1,038 km (643) miles of stream and river are being proposed as critical habitat. The areas described were chosen for critical habitat designation because they contain the remaining known southwestern willow flycatcher nesting sites, and/or formerly supported nesting southwestern willow flycatchers, and/or have the potential to support nesting southwestern willow flycatchers. All areas contain, or with recovery will contain, suitable nesting habitat in a patchy, discontinuous distribution. This distribution is partially the result of natural regeneration patterns of riparian vegetation (e.g. cottonwood-willow). The distribution of these habitat patches is expected to shift over time. Because of this spatial and temporal distribution of habitat patches, it is important that the entirety of the proposed river reaches be designated critical habitat. All areas contain some unoccupied habitat or former (degraded) habitat, needed to recover ecosystem integrity and support larger southwestern willow flycatcher numbers during the species' recovery. A number of separate, protected, healthy populations of southwestern willow flycatchers are needed to protect the species from extinction. Protection of this proposed critical habitat would be essential for the conservation of the species. The southwestern willow flycatcher is already extirpated from a significant portion of its former range.

The Service is required to base critical habitat proposals on the best available scientific information (50 CFR 424.12). In determining what areas to propose as critical habitat, the Service considers those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, the following: (1) Space for individual and population growth; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The Service also considers primary constituent elements of critical habitat, which may include, but are not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types.

The Service is proposing to designate as critical habitat areas which provide, or with rehabilitation will provide, the following physical and biological features and primary constituent elements:

- Space for individual and population growth.
- Food, water (seasonal wetland), air, light, minerals, and other nutritional or physiological requirements.
- Cover, shelter, and roost sites.
- Sites for breeding, reproduction, and rearing of offspring.
- Habitats (vegetation type, feeding sites and nesting grounds) that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For all areas of critical habitat proposed here, these physical and biological features and primary constituent elements are provided or will be provided by thickets of riparian shrubs and small trees and adjacent surface water. Specifically, critical habitat must provide surface water throughout the May through September breeding season. Constituent elements include the riparian ecosystem above the water's surface or within 100 m (328 feet) of the water's edge. Constituent elements include riparian thickets of shrubs and small trees above or within 100 m (328 feet) of surface water, or areas where such vegetation may become established.

Designation of critical habitat is not prudent when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat, or when designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

The Service has determined that designation of critical habitat for the southwestern willow flycatcher is prudent. The Service has no evidence that any taking or similar human activity could be expected to increase in degree as a result of the identification of critical habitat. Although currently rare, the southwestern willow flycatcher is not highly sought out by recreational bird watchers. It is not one of the highly-publicized specialty bird species which draws millions of bird watchers annually to the southwestern United States. The majority of the critical habitat areas proposed are in remote locales, where intentional or accidental take or disturbance by humans are

unlikely. Impacts from recreational bird watching or taking are not currently known to exist and are not likely to be increased as a result of designation of critical habitat.

The southwestern willow flycatcher is a neotropical migratory bird, present in its breeding habitat from May until August or September. It then migrates to wintering grounds in Mexico, Central America, and perhaps northern South America (Gorski 1988, McCabe 1991). Nesting habitat, and especially potentially recoverable nesting habitat, would not be adequately protected by prohibitions of the Act against take of the species; especially during the nonbreeding season when the species is not present. Designation of critical habitat will benefit the southwestern willow flycatcher by conserving and enhancing the components of current and potential nesting habitat.

The southwestern willow flycatcher is endangered by extensive loss of nesting habitat and is now extirpated across much of its former breeding range. The Service may designate as critical habitat areas outside the geographical area presently occupied by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). Such designation of critical habitat is necessary for the southwestern willow flycatcher, in order to allow recovery of the physical and biological features and constituent elements of nesting habitat and to provide space for population growth and ensure the conservation and recovery of the species (50 CFR 424.12(b)).

Critical habitat is not determinable when the information required to perform the required analysis of impacts of the designation is lacking, or the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)). With respect to the southwestern willow flycatcher, sufficient information is available to perform the required analysis of impacts of critical habitat designation. The Service also possesses sufficient information on the biological needs of the species to permit identification of the primary constituent elements of critical habitat.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Such activities may include:

(1) Removing, thinning, or destroying riparian vegetation. Activities which remove, thin, or destroy riparian vegetation, by mechanical, chemical (herbicides or burning), or biological (grazing) means degrade or remove constituent elements for southwestern willow flycatcher that are necessary for sheltering, feeding, and breeding.

(2) Water diversion or impoundment, groundwater pumping, or any other activity which may alter the quantity or quality of surface or subsurface water flow. Activities which alter the quantity or quality of surface or subsurface water flow may affect riparian vegetation, food availability, or the general suitability of the site for nesting.

(3) Overstocking or other mismanagement of livestock. Excessive use of riparian areas and adjacent areas for livestock grazing may affect the volume and composition of riparian vegetation, facilitate brood parasitism by brown-headed cowbirds, and physically disturb nests.

(4) Development of recreational facilities and off-road vehicle operation. Activities which facilitate recreational activities may affect riparian vegetation, reduce space for individual and population growth, and inhibit normal behavior.

Federal actions that may affect a listed species are reviewed through consultation between the funding or authorizing agency and the Service. The purpose of these consultations is to ensure that activities are carried out in a manner that is consistent with the conservation of the species. Federally authorized or funded activities that may be subject to consultation include grazing programs, clearing of riparian habitat, water diversion, and recreational development. Federal agencies that may be required to consult with the Service on one or more of these activities include the Bureau of Land Management, Bureau of Reclamation, USDA Forest Service, and the U.S. Marine Corps.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating any particular area as critical habitat. Section 4(b)(2) authorizes the Service to exclude any area from critical habitat designation if the Service determines the benefits of excluding the area outweigh the benefits of including it, except that the Service may not exclude an area if the Service determines that doing so would result in extinction of the species. Pursuant to 50 CFR 424.19, the Service will consider the economic and other relevant impacts of the proposed designation of critical habitat for the southwestern willow flycatcher in light of all additional relevant information obtained before making a decision on whether to issue a final rule.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. General types of activities and agencies involved that may affect the species were identified in the "Critical Habitat" section of this proposed rule.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is

illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. This species is not in trade, and such permit requests are not expected.

**Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Because of public interest anticipated and already expressed, the Service will hold public hearings in the following locations: San Diego, California; Tucson, Arizona; and Las Cruces, New Mexico. A public hearing will be conducted in each of these cities from 6 p.m. to 9 p.m., on dates yet to be determined. The dates and specific locations for these public hearings will be made public in accordance with 50 CFR § 424.16. The Service may decide to limit oral statements to 3, 5, or 10 minutes, depending on the number of parties who want to give such statements. There are no limits to the length of any written statement presented at the hearings or mailed to the Service. Oral comments presented at the public hearings are given the same weight and consideration as comments presented in written form. If the scheduled public hearings are insufficient to provide all individuals with an opportunity to speak, anyone not accommodated will be asked to submit their comments in writing.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** above).

**Author**

The primary author of this proposed rule is Timothy J. Tibbitts, Arizona Ecological Services Office (see **ADDRESSES** above).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

**Proposed Regulations Promulgation**

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| • | • | • | • | • | | • | • |
| Birds | | | | | | | |
| • | • | • | • | • | | • | • |
| Flycatcher, southwestern willow. | *Empidonax traillii extimus.* | U.S.A. (AZ, CA, CO, NM, UT, TX), Mexico. | Entire | E | | 17.95(b) | NA |
| • | • | • | • | • | | • | • |

3. It is further proposed to amend 50 CFR § 17.95(b) by adding critical habitat of the southwestern willow flycatcher, in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(b) * * *

* * * * * *

**Southwestern Willow Flycatcher (*Empidonax traillii extimus*)**

California: Areas of land and water as follows:

*Riverside and San Bernardino Counties:* Santa Ana River from Rio Road (T2S, R5W, no surveyed section but at 34° 59′ 00″ North, 117° 25′ 15″ West) downstream to Prado Flood Control Basin Dam (T3S, R7W, Section 20). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

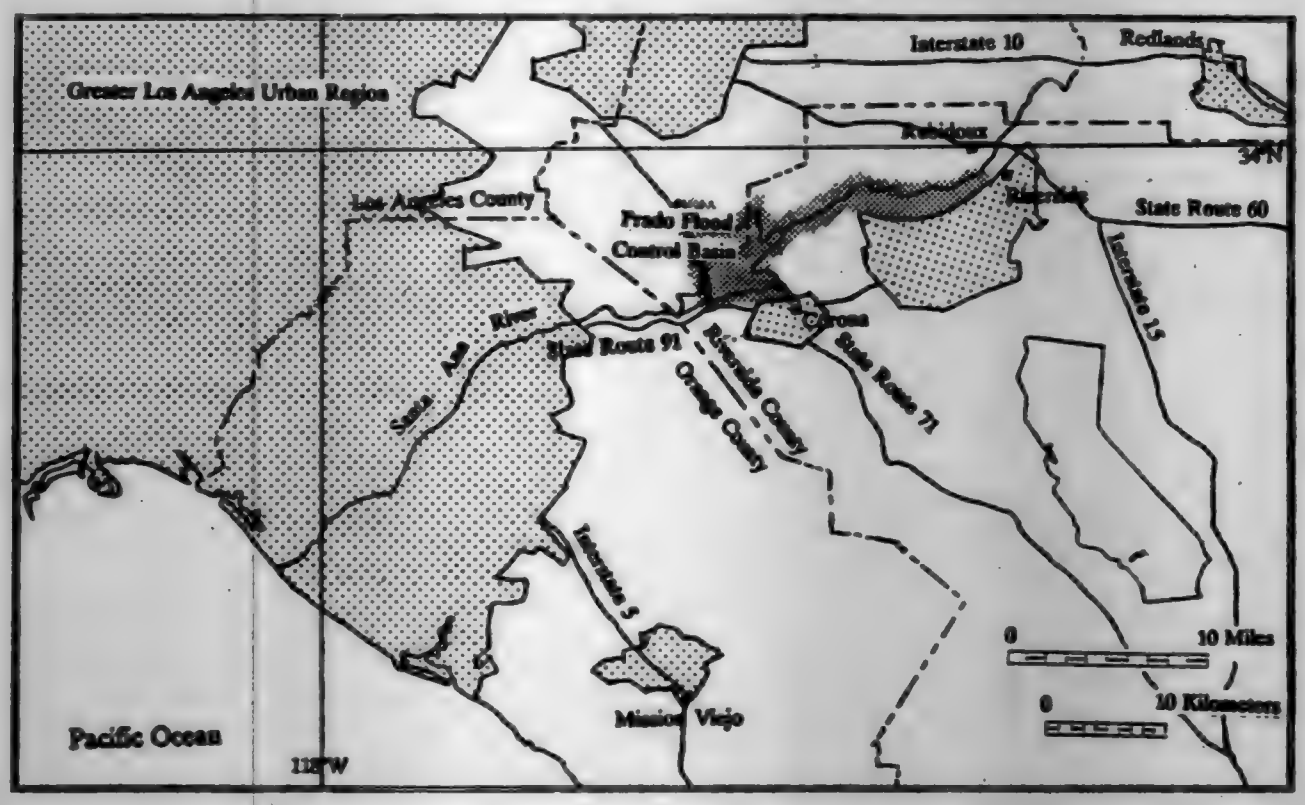


*San Diego County:* Santa Margarita River from the unnamed trail at T8S, R3W, Section 34) downstream to northbound Interstate 5 (T11S, R5W, Section 19). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

*San Diego County:* San Luis Rey River from Mission Road (T9S, R2W, Section 27) downstream to northbound Interstate 5 (T11S, R5W, Section 22). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

*San Diego County:* San Diegito River from southbound Interstate 15 (T13S, R2W, no section surveyed, but at 33° 3′ 45″ North, 117° 4′ 00″ West) downstream to northbound Interstate 5 (T14S, R4W, Section 12). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

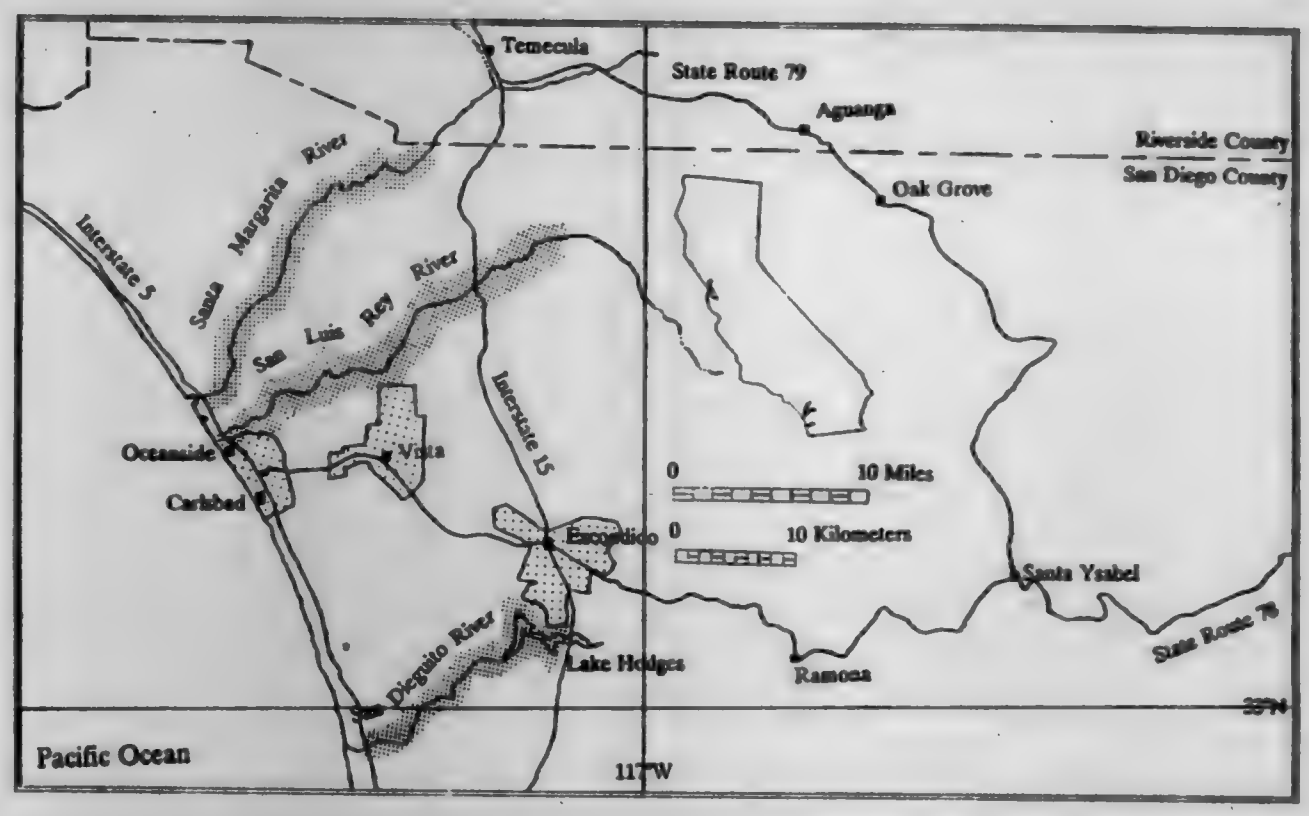


*San Diego County:* San Diego River from Carlton Hills Boulevard (T15S, R1W, no section surveyed, but at 32° 50′ 45″ North, 117° 59′ 30″ West) downstream to the Second San Diego Aqueduct T15S, R2W, no section surveyed, but at 32° 49′ 30″ North, 117° 3′ 45″ West). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

*San Diego County:* Tijuana River from Larsen Field (T19S, R2W, Section 1) downstream to the windmill at T19S, R2W, Section 4. The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

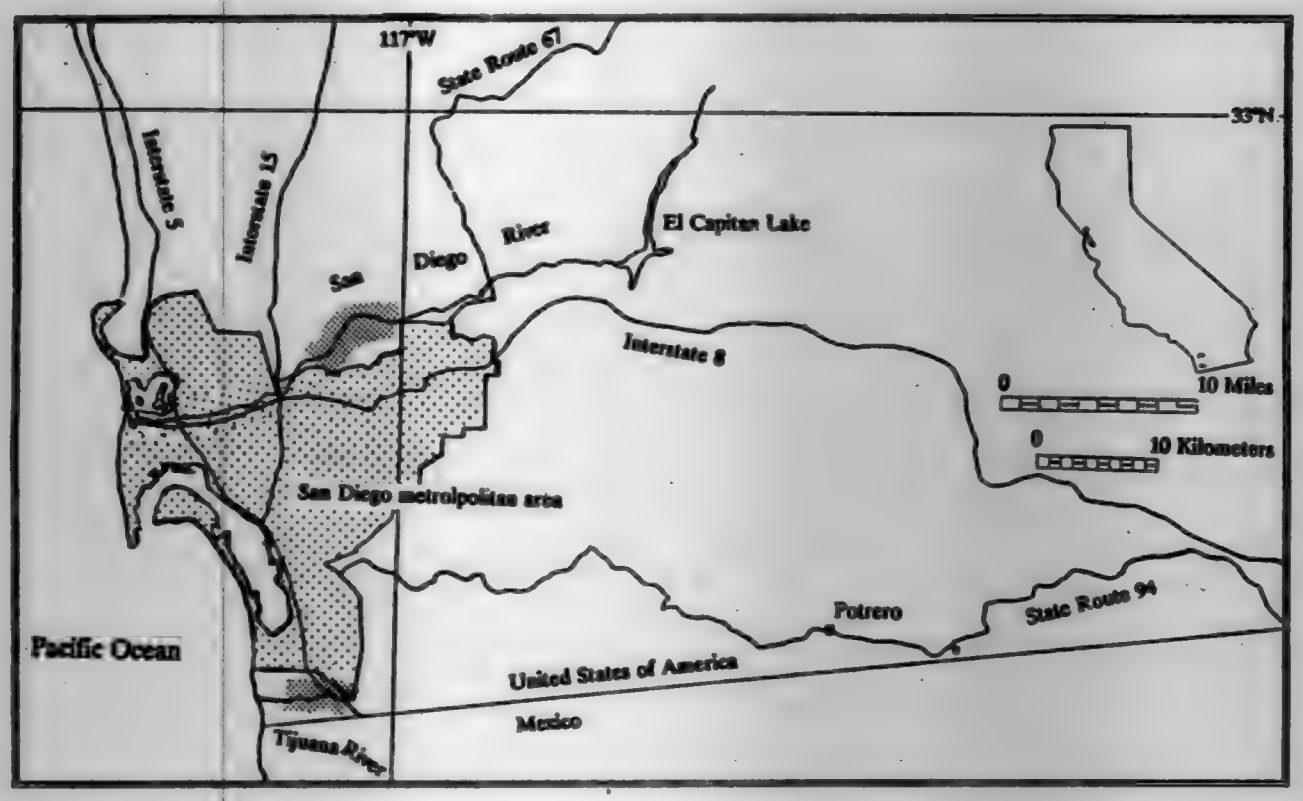


*Kern County:* South Fork of the Kern River from the confluence of Canebrake Creek (T25S, R36E, Section 30) downstream to Isabella Lake Dam (T26S, R33E, Section 19), including Isabella Lake. The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

Arizona: Areas of land and water as follows:

*Conchise County:* San Pedro River from the Hereford Bridge (T23S, R22E, Section 9), downstream to eastbound Interstate 10 bridge at Benson (T17S R20E, Section 11). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

*Cochise, Pima and Pinal Counties:* San Pedro River from the Gaging Station near Aguaja Canyon (T12S, R18E, Section 19), downstream to the confluence with the Gila River (T5S, R15E, Section 23). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

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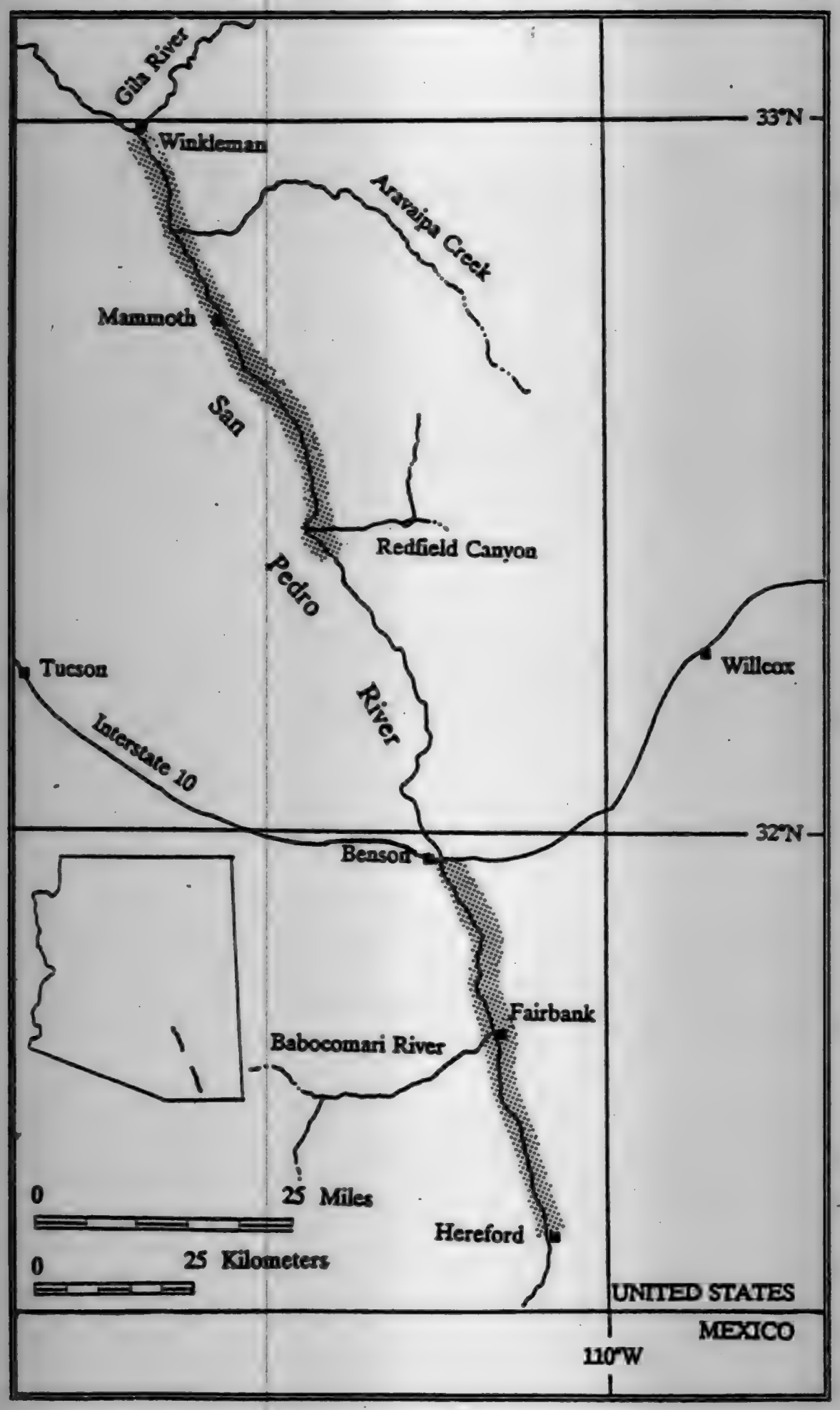


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*Yavapai and Gila Counties:* Verde River from Sob Canyon (T17N, R3E, Section 29) to its inflow into Horseshoe Reservoir (T8N, R6E, Section 15), including Peck's Lake and Tavasci Marsh. The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

*Yavapai County:* Wet Beaver Creek and Beaver Creek from the unnamed tributary drainage on the north side of Wet Beaver Creek, just east of Hog Hill (T15N, R7E, Section 14), downstream to the confluence of Beaver Creek and the Verde River (T14N, R5E, Section 30). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

*Yavapai County:* West Clear Creek from the unnamed tributary drainage on the south, at Bull Hole (T14N, R7E, Section 36), downstream to the Verde River (T13N, R5E, Section 17). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists due to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

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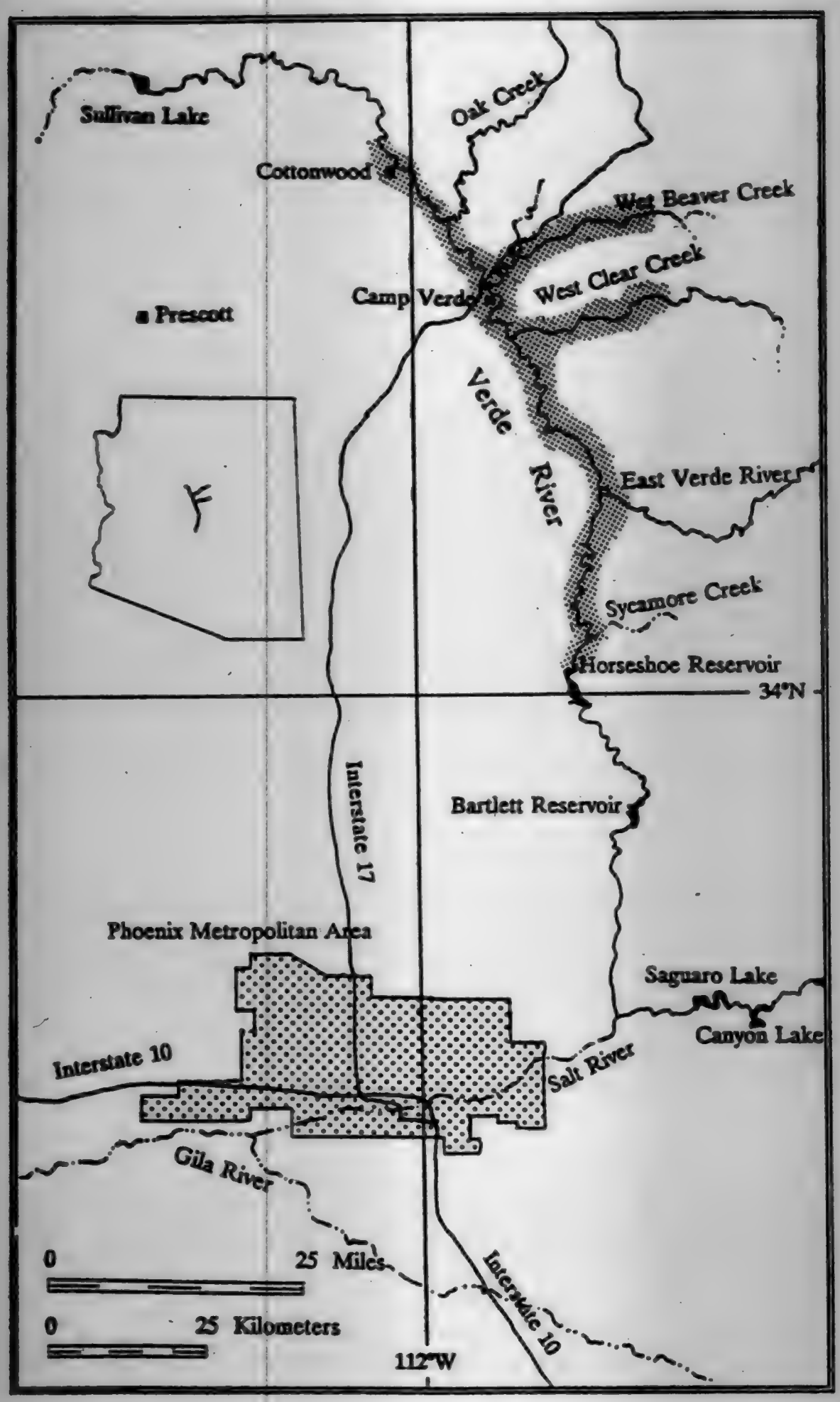


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*Coconino County:* Colorado River from river mile 39 (T35N, R5E, Section 16) downstream to river mile 71.5 (T31N, R5E Section 8). (River mile 0 = Lee's Ferry). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

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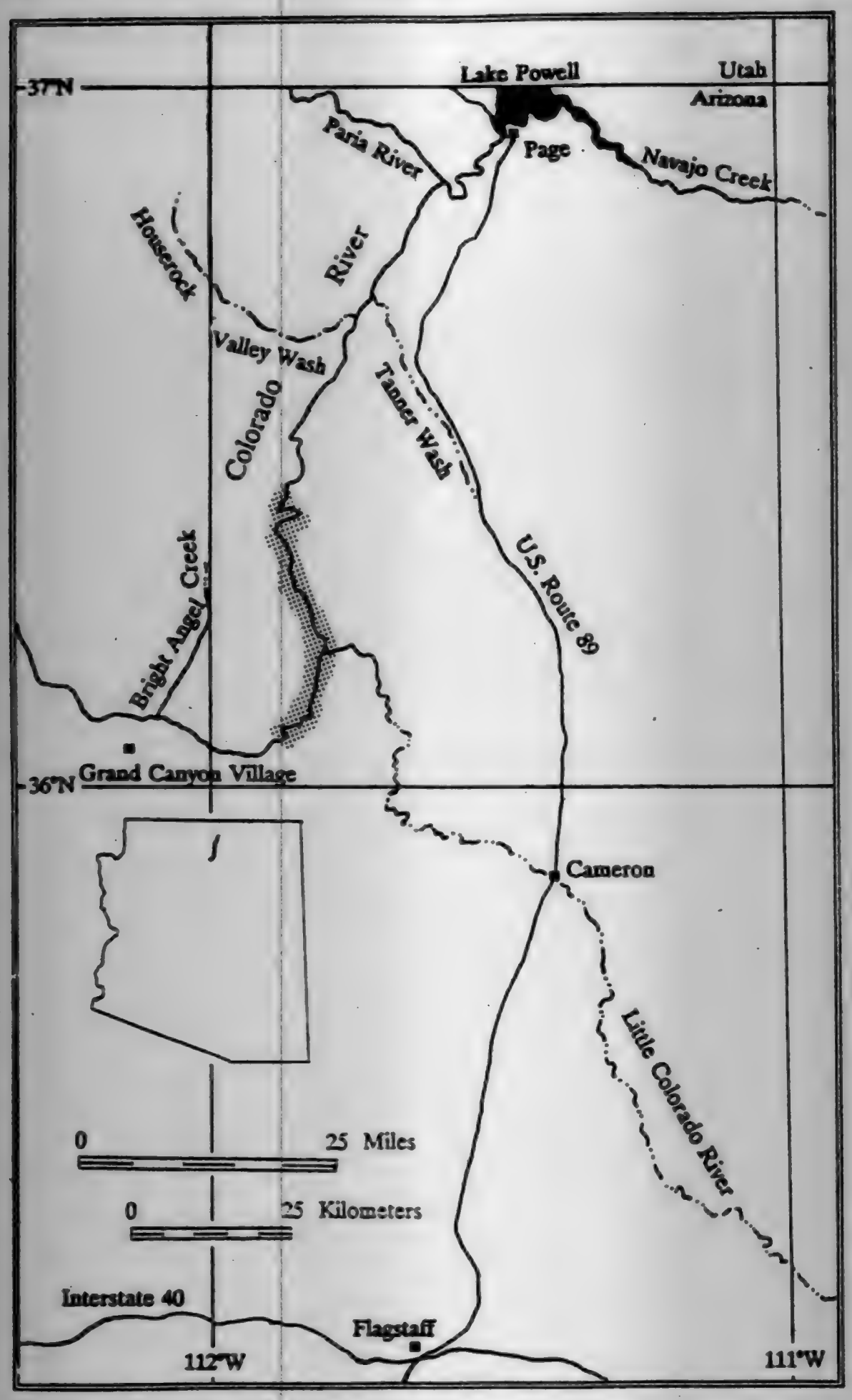


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*Apache County:* Little Colorado River, and the West, East, and South Forks of the Little Colorado River from the diversion ditch at T8N, R28E, Section 16, upstream to Forest Road 113 on the West Fork (T7N, R27E, Section 33), upstream to Forest Road 113 on the East Fork (T6N, R27E, Section 10), and upstream to Joe Baca Draw on the South Fork (T8N, R28E, Section 34). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

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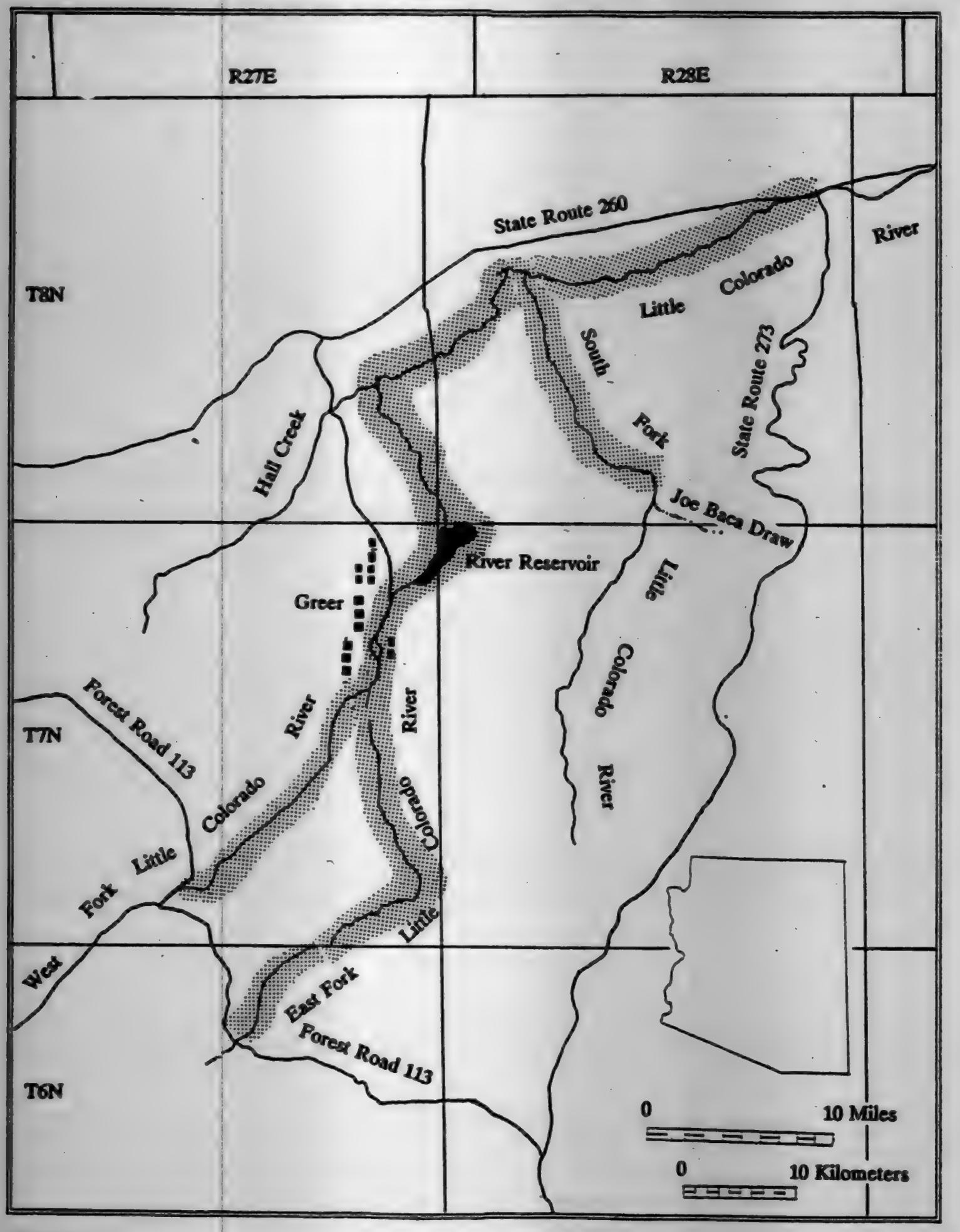


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New Mexico: Areas of land and water as follows:

*Bernalillo County:* Rio Grande River from the Alameda Boulevard bridge in northern Albuquerque (T11N, R3E, Section 8) downstream to southbound Interstate 25 (T8N, R2E, Section 1). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May–September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

BILLING CODE 4310-55-P

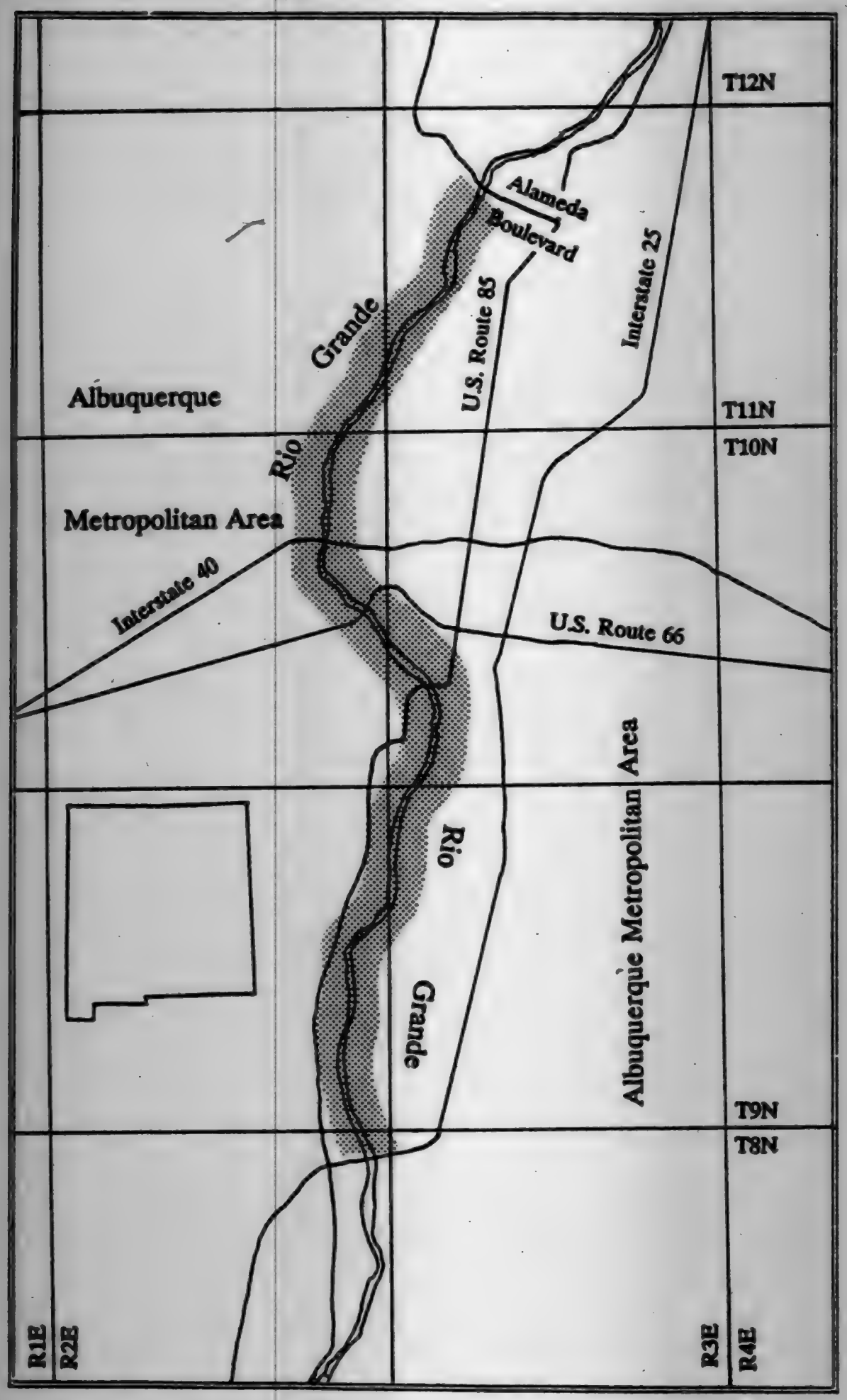


BILLING CODE 4910-60-C

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*Catron and Grant Counties:* Gila River and the East and West Forks of the Gila River from El Rincon Creek on the Gila River (T13S, R14W, Section 36) upstream to Hell's Hole Canyon on the West Fork of the Gila River (T12S, R15W, Section 4), and upstream to the confluence of Taylor Creek and Beaver Creek on the East Fork of the Gila River (T11S, R12W, Section 17). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May–September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

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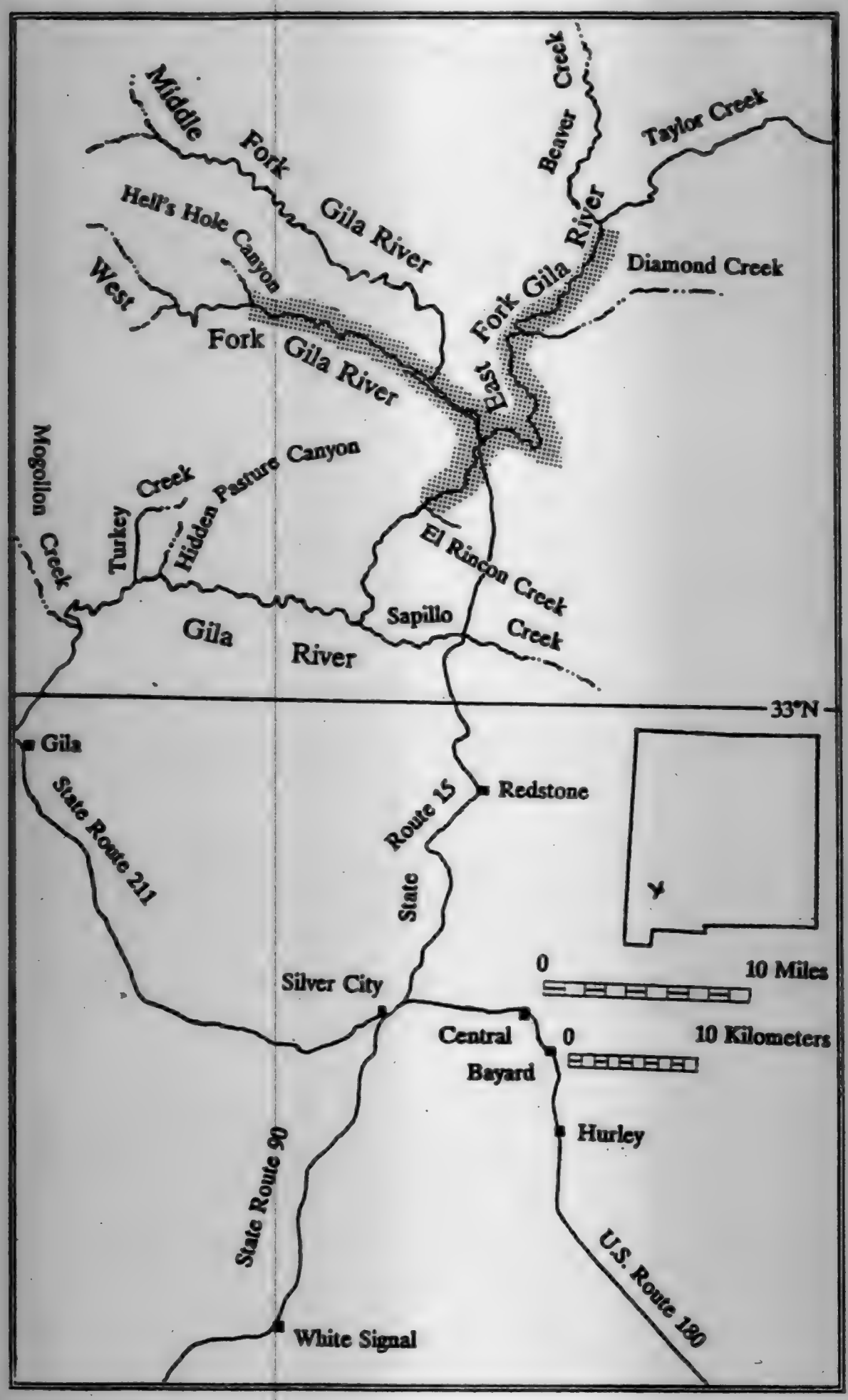


BILLING CODE 4310-55-C

*Grant and Hidalgo Counties:* Gila River from the confluence of Hidden Pasture Canyon (T14S, R16W, Section 14) downstream to the confluence of Steeple Rock Canyon (T18S, R21W, Section 33). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May–September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

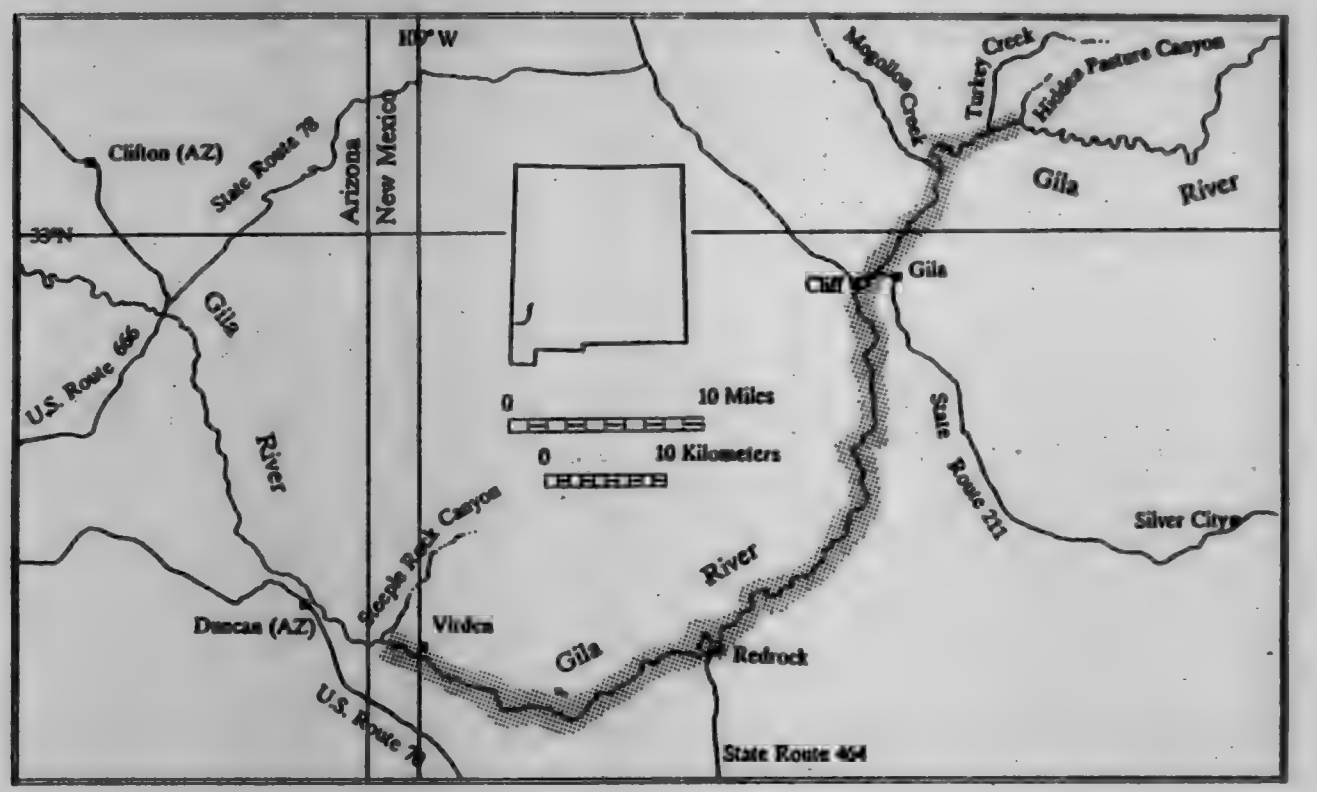


*Catron County:* San Francisco River from the confluence of Trail Canyon (T6S, R20W, Section 4) downstream to San Francisco Hot Springs, near the confluence with Box Canyon (T12S, R20W, Section 23). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

*Catron County:* Tularosa River and Apache Creek from the confluence of the Tularosa and San Francisco Rivers (T7S, R19W, Section 23) upstream, to the source of the Tularosa River near the continental divide (T4S, R15W, Section 33), and upstream on Apache Creek to the confluence with Whiskey Creek (T4S, R18W, Section 25). The boundaries include areas with surface water (main river channel and all associated side channels, backwaters, pools, and marshes) throughout the May-September breeding season, and areas where such surface water no longer exists owing to habitat degradation but may be recovered with habitat rehabilitation. The boundaries also include areas within 100 meters (328 feet) of the edge of surface water described above. This includes areas with thickets of riparian shrubs and trees, and areas where such riparian vegetation does not currently exist but may become established with natural regeneration or habitat rehabilitation.

BILLING CODE 4310-55-P

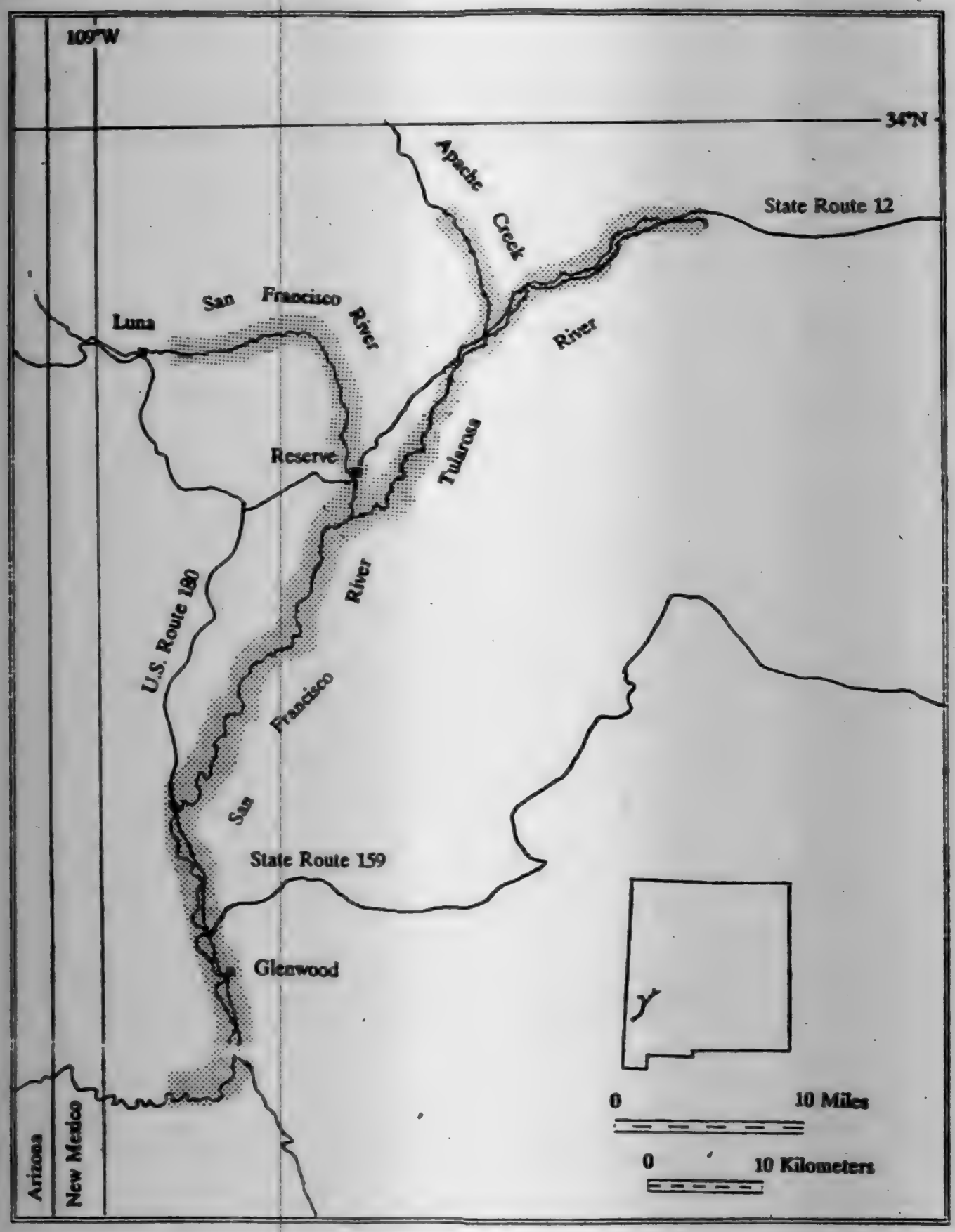


BILLING CODE 4310-55-C

Dated: July 12, 1993.

Richard N. Smith,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93-17449 Filed 7-22-93; 8:45 am]

BILLING CODE 4310-55-P

# Notices

Federal Register
Vol. 58, No. 140
Friday, July 23, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Government Owned Inventions Available for Licensing

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of government owned inventions available for licensing.

**SUMMARY:** The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on these inventions may be obtained by writing to: June Blalock, Technology Licensing Coordinator, USDA, ARS, room 401, Bldg. 005, BARC-West, Beltsville, Maryland 20705; Phone 301–504–5989 or Fax 301–504–5060. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The inventions available for licensing are.

7–334,069, Antibodies to Cytokinins Having a Glycosylated Isoprenoid Side Chain and Immunoassay Methods
7–914,233, Biocontrol of Postharvest Rots in Fruit
7–997,478, Fiber Cleaning
8–031,983, Mucosal Competitive Exclusion Flora
8–038,888, Genetically Engineered Microorganisms Containing A Gene Segment Coding for Lipase from *Rhizopus delemar*
8–047,138, Soil Erodibility Testing
8–051,415, Bioerodable Films Fabricated From Mixtures of Pectin/Starch/Plasticizers
8–054,985, Enhanced Insect Resistance in Nicotiana Plants Genetically Engineered with a Plant Hormone Gene
8–058,081, Spray-Dried Powder Containing Milkfat
8–062,516, A Hive Mounted Device for Utilizing Honeybees (Hymenoptera: Apidae) in the Dissemination of Biocontrol Agents
8–068,038, Use of a Pheromonostatic Peptide to Disrupt Mating of the Corn Earworm, *Helicoverpa zea*
8–068,049, Inhibition of Enzymatic Browning of Raw Fruit and/or Vegetable Juice

M. Ann Whitehead,
*National Patent Coordinator.*

[FR Doc. 93–17554 Filed 7–22–93; 8:45 am]
BILLING CODE 3410–03–M

## Forest Service

### Wolf Salvage and A-Spur Salvage Timber Sales, Klamath National Forest; Exemption

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of exemption from appeal, Wolf Salvage and A-Spur Salvage Timber Sale Decisions, Happy Camp Ranger District, Klamath National Forest.

**SUMMARY:** This Forest Service is exempting from appeal the Wolf Salvage and A-Spur Salvage Timber Sale Decisions on the Happy Camp Ranger District. The environmental document for the Wolf Salvage Timber Sale is being prepared in response to the severe timber mortality caused by drought and related insect infestation. The Wolf Salvage Timber Sale area is located six miles southeast of Happy Camp, California. The environmental document for the A-Spur Salvage analysis area is being prepared in response to timber mortality caused by a wildlife. The A-Spur Salvage Timber Sale area is located 5 miles northeast of Happy Camp, California.

The Happy Camp Ranger District is proposing tractor harvest of 100 thousands board feet (MBF) on approximately 25 acres in the Wolf Salvage, and tractor harvest of 50 MBF on approximately 10 acres in the A-Spur Salvage. Neither proposal involves any new road construction; however, each does require one mile of road reconstruction.

The recent drought caused a high degree of stress within the trees, which reduced their natural defense mechanisms and weakened them to the extent that they are now predisposed to attack by bark beetles and engraver beetles. Trees killed by insect attack deteriorate rapidly. This is particularly true of fir and pine trees in the lower elevations of the analysis areas. Although the winter of 1992–1993 provided ample precipitation to end the drought, much higher than normal levels of tree mortality are present throughout the Klamath National Forest as a result of six consecutive years of below normal precipitation. Insects are also attacking trees killed in the Ben Fire and causing them to deteriorate more rapidly than usual.

Prompt removal of the dead and dying timber minimizes value and volume loss. Salvage sales tend to be costly operations as compared with sales of green timber, due to the relatively low volume per acre harvested. Delays could result in these projects not being implemented at all due to the relatively low value of the dead trees. This would mean a loss of the total combined value of these two sales, estimated at $30,000. In addition, excessive numbers of dead trees produce heavy fuel concentrations, which make wildfire control extremely difficult.

Decisions for the proposed projects are scheduled to be issued in August, 1993. Implementation of these projects will occur in late August or September of 1993, when the timber will be offered for sale. Harvest is expected to begin immediately after award of these sales.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal, decisions relating to the harvest and restoration of lands covered by the Wolf and A-Spur Salvage Timber Sale proposals on the Happy Camp Ranger District, Klamath National Forest. The two environmental documents being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address the issues raised by the public.

**EFFECTIVE DATE:** This decision is effective July 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Questions about this decision should be

addressed to Ed Whitmore, Forest Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2684, or to Barbara Holder, Forest Supervisor, Klamath National Forest, 1312 Fairland Road, Yreka, CA 96097, (916) 842–6131.

**SUPPLEMENTARY INFORMATION:** The Klamath National Forest has an ongoing public involvement program for all proposed timber sales. The public is encouraged to participate in identifying the issues and concerns. Scoping letters have been sent to individuals and groups to get comments and share information on all salvage sale proposals. Field trips will be conducted on these salvage projects. The project files and related maps are available for public review at the Happy Camp Ranger District, P.O. Box 377, Happy Camp, CA 96039–0377.

The Wolf Salvage involves approximately 200 acres, within which approximately 25 acres would be directly affected by harvest operations; timber volumes associated with the Wolf Salvage total approximately 100 MBF. The A-Spur Salvage involves a total area of about 10 acres, with an associated volume of about 50 MBF. The value to the government of the combined volume of 150 MBF of salvage timber is estimated at $30,000. This figure does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply, and construction industries. Siskiyou County will share 25% of the selling value for any timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention, and fuels reduction.

These proposals are not expected to adversely affect any furbearer habitat or any known pairs of northern spotted owls. Biological evaluations along with assessments are being prepared for vertebrate and plant species, and appropriate mitigation measures will be followed in the implementation of these proposals. No Wild or Science Rivers, wetlands, wilderness areas, roadless areas, or threatened or endangered species are within the proposed project area.

Dated: August 16, 1993.

**Dale N. Bosworth,**

*Deputy Regional Forester.*

[FR Doc. 93–17529 Filed 7–22–93; 8:45 am]

BILLING CODE 3410–11–M

## Establishment of Gory Hole Cave Purchase Unit

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of establishment of Gory Hole Cave Purchase Unit.

**SUMMARY:** On June 28, 1993, the Secretary of Agriculture created the Gory Hole Cave Purchase Unit. This purchase unit comprises 20 acres, more or less, within Lawrence County, Indiana. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

**EFFECTIVE DATE:** The effective date of this purchase unit was June 28, 1993.

**ADDRESSES:** A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW, Washington, DC 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Ralph Bauman, Lands staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

Dated: July 13, 1993.

**J. Lamar Beasley,**

*Acting Chief.*

### Establishment of the Gory Hole Cave Purchase Unit Hoosier National Forest, Lawrence County, Indiana

Pursuant to the Secretary of Agriculture's authority under the Act of March 1, 1911, as amended, the Gory Hole Cave Purchase Unit is being established and is described as follows:

T. 4 N., R. 2 W., 2nd Principal Meridian
Section 24: The West Half of the Northwest Quarter of the Northwest Quarter

Containing 20 acres, more or less. The lands are adjacent to the Hoosier National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: June 28, 1993.

**Mike Espy,**

*Secretary of Agriculture.*

[FR Doc. 93–17502 Filed 7–22–93; 8:45 am]

BILLING CODE 3410–11–M

## Establishment of Nekoosa Purchase Unit

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of establishment of Nekoosa Purchase Unit.

**SUMMARY:** On June 28, 1993, the Secretary of Agriculture crated the Nekoosa Purchase Unit. This purchase unit comprises 674 acres, more or less, within Baker and Columbia Counties, Florida. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

**EFFECTIVE DATE:** The effective date of this purchase unit was June 28, 1993.

**ADDRESSES:** A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–1248.

Dated July 13, 1993.

**J. Lamar Beasley,**

*Acting Chief.*

### Establishment of the Nekoosa Purchase Unit Baker and Columbia Counties, Florida

Pursuant to the Secretary of Agriculture's authority under the Act of March 1, 1911, as amended, the Nekoosa Purchase Unit is being established and is described as follows:

A tract of land lying in Township 3 South, Ranges 17 and 18 East, Tallahassee Meridian, Columbia County, Florida, more particularly described as:

T3S,R17E
Section 34: That part lying north of the Seaboard Coast Line Railroad;
Section 35: That part lying north of the Seaboard Coast Line Railroad;
Section 36: That part lying north of U.S. Highway 90;
T3S,R18E
Section 31: That part of the NW¼ and of the SW¼ of the NE¼ lying north of U.S. Highway 90;

Containing 611 acres, more or less.

Also a tract of land lying in Township 3 South, Range 19 East, Tallahassee Meridian, Baker County, Florida, more particularly described as:

T3S,R19E
Section 27: That part of the NW¼ and of the NW¼ of the NE¼ lying north of the Seaboard Coastline Railroad;

Containing 63 acres, more or less.

Containing in the aggregate 674 acres, more or less, and being adjacent to the Osceola National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: June 28, 1993.

**Mike Espy,**

*Secretary of Agriculture.*

[FR Doc. 93–17507 Filed 7–22–93; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Marine Mammals; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Issuance of scientific research permit No. 868.

**SUMMARY:** On June 4, 1993, notice was published in the **Federal Register** (58 FR 31693) that a request for a scientific research permit to take marine mammals had been submitted by Mr. Norihisa Baba, Fur Seal Section, National Research Institution of Far Seas Fisheries, Fisheries Agency of Japan, 5–7–1 Orido, Shimizu, Shizuoka, 424 Japan. This request was to take fur seals (*Callorhinus ursinus*) during 1993–1995 as follows: (1) A maximum of 30 females and 20 males per year during 1993 and 1994 will be captured, flipper tagged with cattle tags and/or marked with hair bleach, and tissue or skin samples from hind flipper digits will be collected; (2) a maximum of 30 pups per year during 1994 and 1995 will be captured, marked with bleach or hair shearing, and tissue samples will be collected from their placenta, navel, or skin of the hind flipper; (3) an annual maximum of 150 adult females, 450 males, and 750 pups may be taken by disturbance during the above activities; and (4) one accidental mortality per year of any age or sex may result.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802 (907/586–7221).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on July 19, 1993, as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and the fur seal regulations (50 CFR part 215), NMFS issued the requested permit for the above activities subject to special conditions set forth therein.

Dated: July 19, 1993.

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–17531 Filed 7–22–93; 8:45 am]

BILLING CODE 3510–22–M

### National Institute of Standards and Technology

### Malcolm Baldrige National Quality Award's Panel of Judges; Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Tuesday, August 10, 1993, through Wednesday, August 11, 1993. The Panel of Judges is composed of nine members prominent in the field of quality management and are appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to review the 1993 Award applications and to select applications to be considered in the site visit stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

**DATES:** The meeting will convene August 10, 1993, at 8 a.m. and adjourn at approximately 4 p.m. On August 11, 1993. The entire meeting will be closed.

**ADDRESSES:** The meeting will be held in Administration Building, at the National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Dr. Curt W. Reimann, Director for Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2036.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 27, 1992, that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: July 16, 1993.

**Arati Prabhakar,**

*Director.*

[FR Doc. 93–17540 Filed 7–22–93; 8:45 am]

BILLING CODE 3510–13–M

### National Technical Information Service

### NTIS Advisory Board; Meeting

**AGENCY:** National Technical Information Service, Technology Administration, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app 2, notice is hereby given that the National Technical Information Service Advisory Board will meet Thursday, September 9, 1993, from 9 a.m. to 3:30 p.m. and on Friday, September 10, 1993, from 9 a.m. to 2 p.m. The NTIS Advisory Board is composed of five members appointed by The Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of this meeting is to review and make recommendations regarding general policies and operations of NTIS. The agenda will include presentations on NTIS modernization, a review of fiscal data, an update on the implementation of the American Technology Preeminence Act of 1991, and a review of the progress with FedWorld™. The NTIS Advisory Board was established by statute (Pub. L. 100–519) on October 14, 1988, and received its charter on September 15, 1989.

**DATES:** The meeting will convene September 9, 1993, at 9 a.m. and will adjourn at 3:30 p.m. on September 10, 1993.

**ADDRESSES:** The meeting will be held in room 1412, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**PUBLIC PARTICIPATION:** The meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Seats will be available for the public and for the media. Seats will be

available on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time before and after the meeting. Copies of the minutes of the meeting will be available within thirty days from the address given below.

**FOR FURTHER INFORMATION CONTACT:** Barbara Hull, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: 703–487–4612; by Fax 703–487–4093.

Dated: July 19, 1993.

**Ronald E. Lawson,**

*Acting Director.*

[FR Doc. 93–17544 Filed 7–22–93; 8:45 am]

BILLING CODE 3810-04-M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and Deletions from Procurement List.

**SUMMARY:** This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

**EFFECTIVE DATE:** August 23, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On April 9, May 14 and 28, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 18377, 28564 and 31016) of proposed additions to and deletions from the Procurement List:

### Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity and services.
3. The action will result in authorizing small entities to furnish the commodity and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to Procurement List:

*Commodity*

Sleeve, Protective, Radioactive
8415–01–204–2668

*Services*

Document Processing, Office of Transportation Audits, 18th & F Streets, NW., Washington, DC.

Food Service Attendant, Marine Corps Air Station, Cherry Point, North Carolina.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

### Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

*Commodities*

Screwdriver, Cross Tip
5120–00–820–2995
5120–00–060–2004
5120–00–224–7370
5120–00–227–7293
5120–00–542–3438
5120–00–224–7375

Screwdriver Set, Cross Tip
5120–00–357–7175
5120–00–580–0334

Screwdriver, Flat Tip
5120–00–287–2504
5120–00–278–1267
5120–00–288–7803
5120–00–278–1270
5120–00–227–7356
5120–00–596–6502
5120–00–062–0613
5120–00–293–3311
5120–00–293–0315
5120–00–227–7377
5120–00–236–2140

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 93–17577 Filed 7–22–93; 8:45 am]

BILLING CODE 6820-33-P

### Procurement List Proposed Additions and Deletion

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletion from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 23, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

### Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List for production by the nonprofit agencies listed:

*Services*

Janitorial/Custodial, U.S. Army Reserve Center and Area Maintenance Support Area 32, Van Nuys, California
Nonprofit Agency: Lincoln Training Center and Rehabilitation Workshop, South El Monte, California

Janitorial/Custodial, Department of Energy, Child Development Center, Germantown, Maryland
Nonprofit Agency: Montgomery County Association Retarded Citizens, Inc., Rockville, Maryland

Janitorial/Custodial, Defense National Stockpile Depot, Binghamton, New York,
Nonprofit Agency: Sheltered Workshop for the Disabled, Inc., Binghamton, New York

Operation of the Postal Service Center, Building C, Room 206, Offutt Air Force Base, Nebraska
Nonprofit Agency: Goodwill Industries, Inc., Omaha, Nebraksa

**Deletion**

It is proposed to delete the following commodity from the Procurement List:

Cake Mix
8920–01–250–6360

**Beverly L. Milkman,**

*Executive Director*

[FR Doc. 93–17578 Filed 7–22–93; 8:45 am]

BILLING CODE 6820–33–P

## Procurement List Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 23, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following commodities to the Procurement List for production by the nonprofit agency listed:

Cap, Combat, Camouflage
8415–01–084–1683
8415–01–084–1684
8415–01–084–1685
8415–01–084–1686
8415–01–084–1687
8415–01–084–1688
8415–01–134–3175
8415–01–134–3176
8415–01–134–3177
8415–01–134–3178
8415–01–134–3179
8415–01–134–3180
(450,000 annually)
Nonprofit Agencies:
Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky
Goodwill Industries of Central Florida, Orlando, Florida

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 93–17579 Filed 7–22–93; 8:45 am]

BILLING CODE 6820–33–P

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Mercantile Exchange Options on French Franc Futures Contracts, Rolling Spot French Franc Futures Contracts and Options on Rolling Spot French Franc Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

**SUMMARY:** The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in options on French franc futures contracts, rolling spot French franc futures contracts, and options on rolling spot French franc futures contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by the Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before August 23, 1993.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME French franc futures option, or the CME rolling spot French franc futures and options on rolling spot French franc futures contracts.

**FOR FURTHER INFORMATION CONTACT:** Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be

obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 19, 1993.

Gerald D. Gay,

*Director.*

[FR Doc. 93–17541 Filed 7–22–93; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** DoD.

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title, Applicable Form, and OMB Control Number:* Police Record Check, DD Form 369, OMB Control No. 0704–0007

*Type of Request:* Revision

*Number of Respondents:* 125,000

*Responses Per Respondent:* 1

*Annual Responses:* 125,000

*Average Burden Per Response:* 27 minutes

*Annual Burden Hours:* 56,250

*Needs and Uses:* In accordance with 10 U.S.C. 504, 505, and 520(a), applicants for enlistment must be screened to identify any discreditable involvement with police or other law enforcement agencies. This information collection is used to identify persons who may be undesirable for military service. The DD Form 369, "Police Record Check;" is forwarded to law enforcement agencies to determine if an applicant has a record.

*Affected Public:* Individuals or households; State or local governments

*Frequency:* On occasion

*Respondent's Obligation:* Required to obtain or retain a benefit

*OMB Desk Officer:* Mr. Edward C. Springer

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: July 19, 1993.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17475 Filed 7–22–93; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF ENERGY

### Revised Notice of Intent to Prepare a Programmatic Environmental Impact Statement for Reconfiguration of the Nuclear Weapons Complex

**AGENCY:** Department of Energy.

**ACTION:** Revised notice of intent (NOI) to prepare a Programmatic Environmental Impact Statement for reconfiguration of the nuclear weapons complex.

**SUMMARY:** Since February 1991, when the Department of Energy (DOE) originally announced its intent to prepare a Programmatic Environmental Impact Statement (PEIS) for reconfiguring the nuclear weapons complex (56 FR 5590), the nuclear weapons stockpile has been significantly reduced. To illustrate the magnitude of the stockpile reductions, the nation is presently in the process of reducing its nuclear weapons stockpile to approximately 25 percent of levels planned as recently as five years ago. These reductions have prompted a fresh look at, and reevaluation by the Department of, its earlier Reconfiguration proposal, to ensure that the effects of the historic events which ended the Cold War are taken into account in determining the appropriate configuration of the nation's future nuclear weapons complex. As a result, and pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the DOE is issuing this revised notice of intent (NOI) to prepare a PEIS for reconfiguring its weapons complex.

Based on the reevaluation, the Department is proposing changes in the scope of the Reconfiguration PEIS, most notably:

(1) Addition of consolidated long-term storage facilities for plutonium and highly enriched uranium which will or may be needed in the future to fulfill national security requirements;

(2) Addition of consolidation of functions involving like materials, including the option of integrating certain research, development and testing (RD&T) functions with the storage and processing functions;

(3) Addition of the Nevada Test Site (NTS) in Nevada and deletion of the Hanford Site in Washington as potential sites for future weapons complex facilities; and

(4) Changes in the no-action alternative as a result of recently announced mission changes at weapon complex sites, including transferring the Rocky Flats Plant to a cleanup mission and placing the K-Reactor at the Savannah River Site in cold standby.

These proposed changes in the PEIS scope reflect the fact that the future nuclear weapons complex can be even smaller and more integrated than previously envisioned in the original NOI. The changes also reflect the increased importance associated with stewardship of existing special nuclear materials that will or may be used in the future to meet national security requirements.

On a related matter, prior to the issuance of the original NOI, the Department had announced the preparation of two programmatic environmental impact statements, one concerning the reconfiguration of the nuclear weapons complex, and the second dealing with alternative strategies and policies for conducting the Department's environmental restoration and waste management program. The Department determined at that time that these two programs were not so connected as to require a single environmental impact statement. While the Department is proceeding with this revised Notice of Intent for the

Reconfiguration Programmatic Environmental Impact Statement, it will also be reviewing this initial determination in light of the changed circumstances described in this Notice.

To ensure that the public's concerns and views are fully considered, DOE is affording the public an opportunity to comment on the proposed scope of the Reconfiguration PEIS, and on whether it should be combined with the PEIS on the environmental restoration and waste management program.

**DATES:** Written comments on the proposed scope of the nuclear weapons complex PEIS are invited from the public. To ensure consideration in preparation of the PEIS, comments must be postmarked by October 29, 1993. Late comments will be considered to the extent practicable.

DOE will hold public scoping meetings beginning in September, 1993 to receive oral comments near all sites proposed to be analyzed in the PEIS. These are: Hanford Site, Idaho Engineering Laboratory, Los Alamos National Laboratory, Lawrence Livermore National Laboratory, Nevada Test Site, Oak Ridge Reservation, Pantex Plant, Rocky Flats Plant, and the Savannah River Site. A meeting will also be held in Washington, DC. DOE will announce the location, date and time for these public meetings in a subsequent **Federal Register** Notice, and in appropriate local media. The announcement of the meetings will be at least 15 days prior to any meetings. The public meetings will provide the public with an opportunity to present formal oral comments and/or written statements, as well as an opportunity to engage in more informal conversations regarding the reconfiguration program with DOE representatives. Additional details regarding the public meetings will be provided in the announcements to be published prior to the meetings. Following this additional scoping period, the Department will issue a revised PEIS Implementation Plan.

**ADDRESSES:** Written comments on the scope of the PEIS, requests for further information on the DOE nuclear weapons complex reconfiguration program, requests for copies of the revised Reconfiguration PEIS Implementation Plan (when available), and requests for copies of the PEIS or PEIS Executive Summary (when available) should be sent to: Howard Canter, Deputy Assistant Secretary, Office of Weapons Complex Reconfiguration, U.S. Department of Energy, P.O. Box 3417, Alexandria, VA 22302, (202) 586–1300.

**FOR FURTHER INFORMATION CONTACT:** For general information on the DOE NEPA review process, please contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or 1–(800)–472–2756.

**SUPPLEMENTARY INFORMATION:**

**Background**

Although the national security picture for the United States has changed dramatically, a safe, secure, reliable, and effective nuclear deterrent is central to the security of the United States, and will remain so for the foreseeable future. Therefore, as long as the nation relies on a nuclear deterrent, it is necessary to maintain a nuclear weapons complex that is fully capable of supporting the nuclear deterrent by performing surveillance, evaluation, and maintenance of both the current and future nuclear weapons stockpile. The complex must also be capable of resuming new warhead production if the President authorizes the Department to replace aging weapons, or in response to changes in the international security environment.

Nonetheless, the significant stockpile reductions—coupled with budget reductions which will not support a large, inefficient nuclear weapons complex—dictate that the future weapons complex will undoubtedly look different in form and scope from the existing nuclear weapons complex. Given these realities, the Department must achieve and maintain a fully capable complex that is even smaller, less diverse, and less expensive to operate than that which was contemplated at the time of the original Notice of Intent.

**DOE Nuclear Weapons Complex**

The DOE nuclear weapons complex is organized into three functional elements: (1) Nuclear Materials Storage, Processing and Component Fabrication; (2) Nonnuclear Manufacturing; and (3) Research, Development and Testing (RD&T). When the original NOI was announced, the complex consisted of 13 major facilities located in 12 states. Due to recently announced mission changes, some functions that were previously performed at particular sites will no longer be performed at those sites. Therefore, the currently functioning nuclear weapons complex is different from that identified in the original NOI. A description of the nuclear weapons capabilities at the sites to be included in the PEIS analysis which support the nuclear and RD&T functional elements of the weapons complex is provided in Table 1. The environmental analysis of the proposed action and alternatives for consolidation of the nonnuclear functional element of the complex is documented in the separate Nonnuclear Consolidation Environmental Assessment (June, 1993). A proposed Finding of No Significant Impact, based upon this environmental assessment, was published in the **Federal Register** for public review and comment on July 8, 1993, (58 FR 36658).

**Table 1.—Current Nuclear Weapons Complex Sites** [1]

*Functional Element: Nuclear Materials Storage, Processing and Component Fabrication Sites*

Pantex Plant (Amarillo, Texas)—Provides support, including surveillance and maintenance, of the enduring nuclear weapons stockpile; dismantles nuclear weapons returned from the stockpile; produces chemical high explosive components; assembles, if required, nuclear weapons; provides interim storage for plutonium pits; conducts research, development and testing (RD&T) of high explosives and high explosive components.

Savannah River Site (Aiken, South Carolina)—Provides support for the enduring nuclear weapons stockpile including tritium processing and recycling operations, and tritium reservoir loading; provides interim storage for plutonium.

Y–12 Plant (Oak Ridge, Tennessee)—Provides support for the enduring nuclear weapons stockpile including stockpile evaluation, and limited fabrication capability for uranium and lithium weapons components; recovers and processes uranium and lithium materials from retired weapons; provides interim storage for uranium and lithium.

Rocky Flats Plant (Golden, Colorado)—Currently in transition from a predominantly nuclear weapons production mission to an environmental restoration, cleanup, and waste management mission; provides interim storage for plutonium.

[1] Sites included in this table are only those that deal predominantly with nuclear materials or nuclear components. Four of the sites listed in the original NOI, i.e. Mound, Pinellas, Kansas City and Sandia National Laboratory, are not included in the table because analyses of functions involving these sites were included in the Nonnuclear Consolidation Environmental Assessment. In addition, the Idaho National Engineering Laboratory is not included because, since the publication of the original NOI, it has ceased the chemical processing of naval reactor spent fuel to recover enriched uranium.

Hanford Site (Richland, Washington)—Provides interim storage for plutonium.

*Functional Element: Weapons Research, Development and Testing Sites*

Lawrence Livermore National Laboratory (Livermore, California)—Conducts research and development of nuclear warheads; designs and tests advanced technology concepts; maintains weapons design program.

Los Alamos National Laboratory (Los Alamos, New Mexico)—Provides research and development of nuclear warheads; designs and tests advanced technology concepts; maintains weapons design program; provides limited fabrication capability for plutonium components; and provides interim storage for plutonium.

Nevada Test Site (Las Vegas, Nevada)—Conducts underground nuclear testing.

**Reconfiguration PEIS History**

On February 11, 1991, the DOE published the original NOI to prepare a PEIS for the Reconfiguration of the Nuclear Weapons Complex (56 FR 5590). DOE proposed to develop a comprehensive strategy to accomplish the goal of creating a smaller, less diverse, less costly nuclear weapons complex. At that time, DOE announced that the Reconfiguration PEIS would analyze the environmental consequences of alternative long-term reconfiguration strategies for the DOE nuclear weapons complex, envisioned to be in place early in the 21st century ("Complex 21"), and weigh these against the consequences of maintaining the existing configuration.

In that NOI, two reconfiguration options were proposed: (1) Relocating the nuclear weapons functions then performed at the Rocky Flats Plant (RFP) (Golden, Colorado) to another site; and (2) co-locating nuclear materials production and manufacturing functions assigned to Y–12 (Oak Ridge, Tennessee) and/or Pantex (Amarillo, Texas) with the relocated RFP functions. DOE envisioned that the reconfigured weapons complex would consist of stand-alone facilities for processing and fabricating plutonium and uranium/lithium components, as well as a facility to conduct weapons assembly/disassembly/high explosives activities. The candidate sites considered for the relocation of these functions under either option were the Hanford Site (Richland, Washington), Idaho National Engineering Laboratory (Idaho Falls, Idaho), Savannah River Site (Aiken, South Carolina), Oak Ridge Reservation (Oak Ridge, Tennessee), and Pantex Site (Amarillo, Texas). Additionally, the PEIS was to include an analysis of alternatives for consolidating nonnuclear manufacturing activities, and consolidating some research, development, and testing (RD&T) functions currently performed at Los Alamos National Laboratory (LANL), Lawrence Livermore National Laboratory (LLNL), and Sandia National Laboratory (SNL).

At the time of that NOI, developing a new source of tritium was of such urgency that decisions concerning the new production reactor (NPR) were believed to be needed in advance of decisions regarding the remainder of the complex. Therefore, the Reconfiguration PEIS was separate from the EIS then being prepared for the NPR program to supply tritium.

Through a public scoping process, which included 15 public scoping meetings from March to August 1991, DOE solicited comments on its reconfiguration proposal. The purpose of the scoping meetings was to receive public comments to assist DOE in preparing an Implementation Plan (IP) describing the scope of the PEIS, including the alternatives to be analyzed, and a schedule for completion. The public comment period ended on September 30, 1991.

On September 27, 1991, President Bush announced an initiative to reduce the Nation's nuclear weapons stockpile. In response to this initiative, the Department announced on November 1, 1991, that it would delay decisions on the new production reactor technology and site and include the environmental analysis for a new tritium production source in the Reconfiguration PEIS. In light of the significantly reduced stockpile, this addition to the Reconfiguration PEIS resulted in the need to evaluate the impacts of "downsized" reactors, reevaluate alternative technologies such as accelerators, and to reevaluate the original reactor siting alternatives. On November 29, 1991, DOE published a notice of opportunity for public comment, incorporating the NPR environmental analysis into the Reconfiguration PEIS (56 FR 60985). This public comment period ended on January 6, 1992.

The September 1991 arms reduction initiative also provided DOE with the opportunity to accelerate the nonnuclear consolidation effort in the weapons complex without impacting national defense or the remainder of the Reconfiguration program. Therefore, in December 1991, the Department announced a proposal to accelerate nonnuclear consolidation, and on January 27, 1992, DOE published a notice of its plans to prepare a separate environmental assessment (EA) for nonnuclear consolidation within the nuclear weapons complex (57 FR 3046). Further reductions in the stockpile and a cessation of production of new weapons for the immediate future were announced by President Bush in his January 28, 1992, State of the Union message.

On February 19, 1992, DOE issued an Implementation Plan (IP) for the Reconfiguration PEIS (DOE/EIS–01611P). In that IP, DOE proposed alternatives for the Reconfiguration PEIS which would have assessed stand-alone production facilities for plutonium and uranium/lithium components, as well as weapons assembly/disassembly activities. While smaller in capacity than originally envisioned when the Reconfiguration NOI was announced, these stand-alone facilities would still have supported a relatively large stockpile.

Since issuing that IP, an arms reduction agreement between the United States and Russia was announced in June 1992, and was signed by Presidents Bush and Yeltsin in January 1993 as the START II Treaty. This agreement caused the most significant reductions to date in the planned future weapons stockpiles of both nations, and has provided DOE with a historic opportunity to consider a much smaller weapons complex than previously envisioned. Therefore, in the latter part of 1992, the Department determined that it was necessary to reevaluate the Reconfiguration program to ensure that only alternatives which reflected requirements of a greatly downsized nuclear weapons stockpile would be assessed in the PEIS.

Specifically, the Department has been reevaluating: (1) The appropriate sizing for the future weapons complex facilities; (2) the capabilities and functions required for the future complex; (3) the siting alternatives for each weapons function to be analyzed in the PEIS; and (4) the technology alternatives for new tritium supply capacity. This examination of program direction has resulted in several important conclusions, and certain departures from the Department's original planning basis. The overall proposed changes in the PEIS scope are described below.

**Major Reconfiguration PEIS Scope Changes**

*1. Long-term Storage for Special Nuclear Materials*

Because a significant number of weapons have been, and will continue

to be, retired from the nation's active nuclear weapons stockpile, the Department proposes to analyze in the PEIS a consolidated long-term storage facility for plutonium and a consolidated facility for highly enriched uranium, to provide safe, secure, and reliable storage for these national assets. A consolidated storage facility for each of these materials would avoid duplicative processing and analytical laboratory capabilities, prevent multiple infrastructure and overhead costs, and preserve the ability to consolidate all functions involving like materials at one site, as described below.

Previously, the stockpile reductions mandated that relatively few weapons would be retired without replacement. Therefore, when the original NOI and IP were prepared, the long-term storage of these materials was not a contemplated mission requirement since disassembled components would be recycled into new weapons. Presently the DOE does not have a consolidated facility to store either plutonium, which is stored at several different sites, or highly enriched uranium, most of which is stored in facilities at Oak Ridge, with small quantities stored at several other sites in the complex. Consolidated storage of plutonium and highly enriched uranium assets would be expected to improve security and accountability associated with these materials, reduce life-cycle storage costs, and eliminate duplicative facilities. There is no proposal to store radioactive wastes at either the plutonium storage facility or the uranium storage facility.

It is the Department's intention that plutonium would be stored in the consolidated long-term storage facility until it is either used in the weapons program or another use or disposition option is proposed and approved in the future. It is expected that the highly enriched uranium (HEU) being returned from retired weapons will eventually be used to provide fuel for reactors requiring HEU, such as those in the nation's nuclear navy.

*2. Consolidation of Functions Involving Like Materials*

Taking full advantage of the opportunity to restructure and downsize the complex means that activities involving like materials must be consolidated to the maximum extent possible. The Department considers it unreasonable to have plutonium component fabrication at one site, and plutonium storage facilities at a second site, particularly at a time when the Department is trying to downsize the complex and operate more efficiently. Similar to the rationale for consolidated storage facilities described above, separating these functions would require duplicative processing and analytical laboratory capability at each site, involve needless transportation of nuclear material between sites, and result in duplicative infrastructures and overhead costs. The same rationale applies to uranium storage, processing and component fabrication, and to tritium processing and production. Therefore, the Department proposes that common to all alternatives analyzed in the PEIS would be co-location of all storage, processing, analytical laboratory and fabrication facilities for either plutonium or uranium at the same site in the future weapons complex. Similarly, the Department proposes that tritium processing and tritium production be co-located at a single site. Lastly, the Department intends to analyze the option of integrating some research, development, and testing (RD&T) activities, which historically have been performed in separate facilities at the national laboratories, into proposed weapons complex storage and processing facilities. This is expected to result in maximum utilization of both personnel and the proposed facilities, while also providing significant long-term cost savings by consolidating facilities which utilize like materials.

*3. Siting Alternatives for Weapons Functions*

Together with the original Notice of Intent, an Invitation for Site Proposals (Invitation) was published (56 FR 5595) which invited parties outside the DOE weapons complex to suggest sites for location of future weapons complex activities. Having received no expressions of interest from outside the DOE weapons complex as a result of the Invitation, a Site Evaluation Panel evaluated five DOE nuclear manufacturing and production sites which met the minimum qualification criteria in the Invitation and recommended in "A Report by the NWCR Site Evaluation Panel," (October, 1991) that all five be considered further as potential sites for future weapons complex functions. The minimum qualification criteria in the Invitation encompassed land, water, and electricity availability as well as the absence of known unacceptable environmental, safety and health impacts associated with siting, constructing, operating and decommissioning the facilities, that could not be mitigated by reasonable measures. Therefore, in the original IP, Hanford, Oak Ridge, Savannah River, Pantex, and Idaho were identified as reasonable alternative sites for the proposed reconfigured Complex 21 facilities. Based upon its reevaluation of the original proposal, DOE proposes to add the Nevada Test Site (NTS) as a potential site for the Complex 21 facilities. NTS is a large, remote site that meets the minimum qualification criteria against which the other sites were evaluated, and it has a significant existing infrastructure that could accommodate one or more weapons complex functions.

Additionally, the Hanford site has been eliminated as a candidate site for the future complex because nuclear weapons production functions at that site have been terminated, and the site is dedicated to environmental restoration and waste management activities. The Department considers it to be unreasonable to terminate all weapons production missions from the site, spend billions of dollars in order to restore it for other uses, and then reintroduce nuclear weapons program construction and operation activities which will prevent other uses of the site for the long term. The continued commitment to focussing activities on environmental restoration/waste management at Hanford is also consistent with the Secretary's recent reaffirmation of the importance of meeting the Department's cleanup goals at the site.

Regarding new tritium production, the NPR EIS was intended to assess Hanford, Savannah River, and Idaho as reasonable sites. New tritium supply would no longer be considered at Hanford, but would be considered at NTS. In addition, given the much smaller capacity required for tritium production requirements than originally contemplated, the Department has concluded that Oak Ridge constitutes a reasonable alternative site for a new tritium production facility. Further, there appears to be no basis for exclusion of Pantex as a candidate site for a new tritium production facility when it is considered a reasonable site for all other Complex 21 nuclear functions. Therefore, the Department proposes to add Oak Ridge and Pantex to the list of candidate sites for such a facility.

*4. No Action Alternative*

Since the publication of the original NOI, there have been changes in the current weapons complex *status quo* that in turn affect the PEIS no-action alternative. Some functions that were previously performed at particular sites are not, or will shortly no longer be, performed in existing facilities at those

sites, and some sites that were previously part of the nuclear weapons complex either have a new mission or a greatly reduced capability. Therefore, if reconfiguration or modification/upgrade of the nuclear weapons complex were not to occur, the complex would be limited in its ability to support the projected future stockpile through the first half of the 21st century, and DOE would not likely be able to meet its Atomic Energy Act responsibilities. More specifically:

(1) The Rocky Flats Plant (RFP) will transition from a production dominated site to an environmental restoration, cleanup, and waste management-dominated site in the near future. The contingency status of the buildings which could be used to manufacture any required new plutonium components will be removed. Therefore, the Department will no longer be capable of manufacturing and fabricating plutonium components at RFP;

(2) The Y–12 plant at Oak Ridge, Tennessee will have reduced capacity and will only be able to provide support for the enduring weapons stockpile and limited component fabrication capability. Y–12 would not maintain the capability to support the projected stockpile requirements.

(3) The K-Reactor at the Savannah River Site will be placed in a cold standby position with no planned provision for restart. This will effectively eliminate the DOE's ability to produce tritium to support the projected stockpile requirements. Future tritium requirements would be supported as long as possible by recycling tritium from weapons returned from the active stockpile. At some point the nuclear deterrent capability of the nation would either be lost or based on weapons which would be significantly different than those in the current stockpile, and which would not meet present mission requirements. Should there be no tritium production capability in the United States, purchase of tritium from foreign sources could be explored, but such purchase possibilities would not constitute an assured supply of tritium for the long term and would thus not represent a reasonable PEIS alternative.

**PEIS Alternative**

The PEIS will assess the environmental impacts of alternative configurations for both the Nuclear Materials Storage, Processing and Component Fabrication element of the nuclear weapons complex and some Research, Development and Testing (RD&T) elements. In order to accelerate the consolidation of nonnuclear facilities and thereby achieve significant cost savings while preserving technical competence which is being lost within the weapons complex, the environmental impacts associated with consolidation of the Nonnuclear Manufacturing element of the weapons complex have been assessed in a separate Environmental Assessment. On May 27, 1993, the Department announced that it intended to finalize the Environmental Assessment and publish a proposed Finding of No Significant Impact (FONSI) for public review and comment. The Environmental Assessment and the proposed FONSI have been approved by the Department and the proposed FONSI was published in the **Federal Register** for public review and comment on July 8, 1993 (58 FR 36658).

*a. Alternatives for the Nuclear Materials Storage, Processing and Component Fabrication Element*

The Nuclear Materials Storage, Processing and Component Fabrication element of the weapons complex encompasses the following functions:

(1) Plutonium (Pu): Pu Storage, Processing and Component Fabrication;

(2) Uranium/Lithium (U/Li): Uranium/Lithium Storage, Processing, and Component Fabrication;

(3) Assembly/Disassembly/High Explosives (A/D/HE); and

(4) Tritium Production/Processing.

For each of these functions, the Reconfiguration PEIS will assess three different types of alternatives: (1) Constructing and operating new facilities at any of five alternative sites; (2) modifying/upgrading existing facilities at existing sites; and (3) the no-action alternative of continuing to operate existing facilities. Each of these alternatives is discussed below:

Alternative #1— Constructing and Operating New Facilities

For each of the four Nuclear Materials Production and Storage functions (Pu, U/Li, A/D/HE, and Tritium), the PEIS will assess the environmental impacts of constructing and operating new facilities (referred to as "modules") at any of five alternative sites:

(1) Idaho National Engineering Laboratory (INEL);

(2) Savannah River Site (SRS);

(3) Oak Ridge Reservation (ORR);

(4) Pantex Site; and

(5) Nevada Test Site (NTS).

Each functional module would contain those facilities necessary to accomplish the particular function. For example, the Pu module would contain facilities capable of storing Pu, processing Pu, and fabricating Pu components. Additionally, both the plutonium and uranium functional modules would be designed to accommodate the option of integrating RD&T activities within the module so that these RD&T facilities could be collocated with other facilities involving like materials at a single site if desired.

The PEIS will bracket the potential environmental impacts that could result from constructing and operating the proposed new modules by analyzing each module individually, and by analyzing the total consolidation of all modules, at each alternative site. Thus, for each site alternative, the PEIS will present both an individual analysis for each module and a bounding case analysis for total consolidation of all four modules. The impacts of combinations of two or three functions could be determined by adding the impacts of the individual modules. Such an approach may introduce a small degree of conservatism to the PEIS analysis, but is not expected to result in any significant change in the results of the analysis. In any case, following the PEIS, more detailed site-specific NEPA documentation would be prepared as required to analyze the synergism of any selected combinations at a site. The PEIS will also assess the environmental impacts associated with removing a particular function from an existing site.

For the tritium production function, the PEIS analysis will contain sufficient information to support the selection of a production technology. Four separate alternative technologies will be assessed in the PEIS: Heavy Water Reactor, Light Water Reactor, Modular High Temperature Gas Reactor technologies, and a linear particle accelerator. The PEIS will also contain enough information to support a decision concerning the location of the tritium production function.

Alternative #2—Modifying/Upgrading Existing Facilities

The PEIS will also evaluate a modification/upgrade-in-place alternative. Under this approach, weapons complex functions would not be moved and DOE would make those modifications and upgrades necessary to ensure compliance with Federal, State, and local environmental, safety, and health (ES&H) laws and regulations and meet future nuclear weapon stockpile requirements. The PEIS will provide information on, and an assessment of, the potential environmental impacts associated with these modifications and upgrades. More specifically, the modification/upgrade-in-place alternative for each of the Nuclear Materials Storage, Processing and

Component Fabrication functions encompasses the following elements:

*Plutonium Processing and Component Fabrication:* Because, as noted above, the Department will no longer be capable of fabricating plutonium components at the Rocky Flats Plant, present research and development facilities at the Los Alamos National Laboratory (LANL) would be used to process and fabricate plutonium components for this alternative to support the projected stockpile requirements through the first half of the 21st century. However, in order to satisfy ES&H and projected stockpile production requirements, existing facilities might require modifications. The potential environmental impacts associated with modifying facilities at LANL, and operating the LANL facilities, would be assessed in the PEIS.

*Plutonium Storage:* Plutonium storage would not be consolidated into a single dedicated Pu storage facility; rather, plutonium storage facilities at RFP, SRS, Pantex, Hanford, and LANL would continue to be utilized to store quantities of plutonium in various forms through the first half of the 21st century. Any upgrades or modifications of these existing facilities required to satisfy ES&H or future storage requirements would be assessed in the PEIS.

*Uranium/Lithium Storage, Processing, and Component Fabrication:* The potential environmental impacts associated with modifying existing U/Li facilities (mainly at Y–12), and operating those facilities through the first half of the 21st century, would be assessed in the PEIS.

*Assembly/Disassembly/High Explosives:* The potential environmental impacts associated with modifying facilities at Pantex, and operating the Pantex facilities through the first half of the 21st century, would be assessed in the PEIS. For high explosives work, the alternatives evaluated in the PEIS will include modification of the facilities at LLNL or LANL.

*Tritium Supply:* There is no modification/upgrade-in-place alternative for tritium supply because it would not be reasonable (either technically or economically) to modify/upgrade the K-Reactor at SRS. Therefore, whether or not reconfiguration occurs, a new tritium production source would be needed in order for the Department to meet future tritium requirements. As noted previously, purchase of tritium from foreign sources does not constitute a reasonable long-term alternative for tritium supply.

*Tritium Processing:* The Replacement Tritium Facility (RTF) and other support facilities at SRS would perform tritium processing as required to support the future stockpile requirements. It is not expected that any modifications of the RTF would be required in order to satisfy ES&H and projected stockpile production requirements; however, other support facilities at SRS might require modifications/upgrades. Therefore, the potential environmental impacts of those modifications, along with the operation of the RTF and those support facilities, would be assessed in the PEIS.

Alternative #3—No-Action (Continued Operation)

Under the no-action alternative, reconfiguration of the nuclear weapons complex would not occur, there would be no upgrades/modifications of existing facilities, and future support of the nuclear weapons stockpile would be provided within the confines of the existing nuclear weapons complex capabilities. Some mission requirements for maintenance of the future weapons stockpile would not be met under the no-action alternative. Therefore, for those mission requirements, the no-action alternative could not be adopted and is not considered to be reasonable. However, the no-action alternative for those mission requirements will be presented in the PEIS to represent a baseline condition against which alternatives that would meet the Department's Atomic Energy Act responsibilities could be compared. This baseline has been affected by the recent developments regarding the Rocky Flats Plant, Y–12 and the K-Reactor which were discussed previously. More specifically, the environmental impacts of utilizing existing facilities will be assessed in the PEIS for the following components of the no-action alternative:

(1) *Plutonium Processing and Component Fabrication:* RFP would no longer be capable of processing and fabricating plutonium components. Existing facilities at LANL and LLNL would provide a limited fabrication capability for future plutonium components. The existing capability at LANL and LLNL would be insufficient to support the projected stockpile requirements.

(2) *Plutonium Storage:* Existing plutonium storage facilities at RFP, SRS, Pantex, Hanford, and LANL would continue to be utilized to store quantities of plutonium in various forms.

(3) *Uranium/Lithium Storage, Processing, and Fabrication:* Existing facilities (mainly at Y–12) would provide uranium/lithium storage, and limited processing, and component fabricating capability. The existing capability would be insufficient to support the projected stockpile requirements.

(4) *Assembly/Disassembly/High Explosives:* Existing facilities at Pantex would develop and fabricate chemical high explosive components, and assemble and disassemble weapons as required to support the projected stockpile requirements.

(5) *Tritium Production:* DOE would have no capability to produce new tritium to support future stockpile requirements. Future tritium requirements would be supported as long as possible by recycling tritium from weapons returned from the active stockpile. Purchase of tritium from foreign sources could also be explored, but as noted previously would not constitute an assured source of tritium for the long-term and is therefore not a reasonable PEIS alternative. As noted previously, in the absence of a reliable source of tritium, the nation's nuclear deterrent capability would eventually either be lost or would be based upon weapons significantly different from those in the current stockpile and which would not meet present mission requirements.

(6) *Tritium Processing:* The RTF and other support facilities at SRS would perform tritium processing operations as required to support the projected stockpile requirements.

In summary, the PEIS will support a decision to build one or more new functional facilities (modules) at any of five alternative sites, modify/upgrade one or more existing facilities, and continue to operate any of the no-action alternative facilities that could comply with ES&H and mission requirements. The PEIS will assess a full range of alternatives: from no-action (continued operations with existing facilities), to complete consolidation of the entire weapons complex functions at any of the five alternative sites. Additionally, a number of alternatives within this full range would be evaluated, thus affording DOE the opportunity to assess varying degrees of consolidation.

*b. Alternatives for the Research, Development, and Testing Element*

The weapons complex also performs research, development, and testing (RD&T) related to nuclear weapons design, manufacture, and performance. Much of this RD&T takes place at the Los Alamos National Laboratory (LANL) and the Lawrence Livermore National Laboratory (LLNL). As previously stated, the PEIS will evaluate integrating certain of these RD&T activities, i.e.,

those dealing with the use of special nuclear materials and depleted uranium in weapons manufacture, into the proposed Complex 21 modules. Therefore, the specific alternatives that will be evaluated in the PEIS for RD&T functions are as follows:

*Plutonium (Pu) RD&T:* Pu RD&T is presently performed at LANL and LLNL. Future Pu RD&T would either be consolidated with the Complex 21 Pu module, consolidated at LANL or remain at the two sites where it is now performed.

*Uranium (U) RD&T:* U RD&T is presently performed at LANL, LLNL, and Y–12. Future U RD&T would either be consolidated with the Complex 21 U/Li module, consolidated at either LLNL or LANL, or remain at the three sites where it is now performed.

**Environmental Issues**

The PEIS will identify and analyze direct, indirect, and cumulative impacts resulting from the reconfiguration alternatives, including potential effects from constructing and operating the proposed facilities (i.e., impacts to air quality, water resources, plants and animals, land use, historic resources, archaeological sites, socioeconomic impacts); impacts associated with generating wastes (including radioactive, hazardous and mixed), transporting radioactive, hazardous or mixed materials; and the potential consequences of both normal and accidental radiological and nonradiological releases on public and worker health and safety. The PEIS will examine other relevant issues identified by DOE or the public through the past and current scoping process.

**Reconfiguration PEIS Decisions**

Following preparation of the final PEIS, DOE will issue a Record of Decision (ROD) to document its decisions on the long-term configuration of the nuclear weapons complex. The ROD will explain how DOE has balanced environmental considerations against other relevant factors, such as economic and technical considerations, and agency statutory mission, in reaching its decision.

**Reconfiguration Plan**

DOE will use the decisions arising from the PEIS to develop a comprehensive reconfiguration plan to guide DOE in implementing the decisions contained in the ROD. The plan will cover such subjects as identifying schedules for transferring responsibilities from one location to another, upgrading facilities in place or bringing new facilities (if any) on-line. If necessary, the PEIS and the reconfiguration plan may be supplemented later, if there is a need to change or augment the programmatic decisions.

**Classified Material**

DOE will review classified material while preparing the PEIS. The amount of classified material contained in the PEIS will be minimized to the extent possible consistent with national security requirements. However, despite the efforts to minimize its use, DOE anticipates that the completed PEIS, and its associated ROD, may include classified material which will not be available for general public review. This material would, however, be considered by DOE in reaching a decision on configuration of the future complex. The ensuing nuclear weapons complex reconfiguration plan would include an unclassified summary document which would be available for public distribution and a classified report which would not be made available to the general public.

**Invitation to Comment**

DOE invites comments on the scope of this PEIS from all interested parties, including affected Federal, State and local agencies and Indian tribes. DOE solicits comments regarding the scope of the PEIS analysis, suggestions on significant environmental issues, alternatives to be included in the PEIS, and other content.

To ensure consideration in preparing the draft PEIS, written comments must be postmarked by October 29, 1993. Late comments will be considered to the extent practicable. Agencies, organizations, and the general public are invited to present oral comments pertinent to preparation of the PEIS at public scoping meetings. DOE will also accept written material at the meetings. In addition, as discussed previously, there will be opportunities for more informal discussions between members of the public and DOE representatives during the scoping process. Written and oral comments will be given equal weight in the scoping process.

DOE will hold public scoping meetings beginning in September 1993 to receive oral comments near all sites proposed to be analyzed in the PEIS. These are: Hanford Site, Idaho Engineering Laboratory, Los Alamos National Laboratory, Lawrence Livermore National Laboratory, Nevada Test Site, Oak Ridge Reservation, Pantex Plant, Rocky Flats Plant, and the Savannah River Site. A meeting will also be held in Washington, DC. The time, date and location for these meetings will be announced by DOE in the **Federal Register** in the near future. Notice of the public meetings will be published in the **Federal Register** at least 15 days prior to the holding of each meeting. The meetings also will be publicized in local media and other means as appropriate. Advance registration to provide oral comments at these meetings will be facilitated using an "800 number" that will be provided in the **Federal Register** notice. On-site registration on the day of the meeting will be accommodated to the extent possible.

DOE will prepare transcripts of the scoping meetings and make these available for public review. Subsequent to the scoping meetings, DOE will issue a revised PEIS Implementation Plan to provide up-dated information on how the PEIS will be prepared in light of the scope changes. DOE will announce the availability of the draft PEIS, when completed, in the **Federal Register**, and will solicit public review and comment on the draft PEIS. Comments on the draft will be considered in preparing the final PEIS.

**Supporting Documents**

The unclassified January, 1991 Reconfiguration Study, the Implementation Plan (February 1992) and Revision (when available), and other unclassified supporting information are available for public review at the DOE public reading rooms listed below.

*California*

U.S. Department of Energy, San Francisco Operations Office, Public Reading room, 1301 Clay Street, room 700N, Oakland, California 94612–5208, (510) 637–1762

*Colorado*

U.S. Department of Energy, Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 12th Avenue, Westminster, Colorado 80030, Attention: Will-ann Lamsens, (303) 469–4435

*Florida*

U.S. Department of Energy, Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, Florida 34640, (813) 587–6715

*Idaho*

U.S. Department of Energy, Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, Idaho 83402, (208) 526–9162

*Missouri*

U.S. Department of Energy, Public Reading Room, Red Bridge Branch, Mid-Continent, Public Library, 11140 Locust Street, Kansas City, Missouri 64137, (816) 942–1780

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Issued in
July, 1993.

**Peter N. Bru**

*Acting Assis
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**AGENCY:** De

*New Mexico-Albuquerque*

U.S. Department of Energy, Public Reading Room, National Atomic Museum, 20358 Wyoming SE., Albuquerque, New Mexico 87185–5400, Attention: Diana Zepeda, (505) 845–6670/4378

*New Mexico-Los Alamos*

U.S. Department of Energy, Community Reading Room, 1450 Central Avenue, suite 101, Los Alamos, New Mexico 87545, (505) 665–2127

*Nevada*

U.S. Department of Energy, Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada 89193, (702) 295–1274

*Ohio*

U.S. Department of Energy, Miamisburg Library, DOE Public Reading Room, 35 South Fifth Street, Miamisburg, Ohio 45342, (513) 866–1071

*South Carolina*

U.S. Department of Energy Reading Room, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801, (803) 641–3320

*Tennessee*

U.S. Department of Energy, Oak Ridge Operations Office, Freedom of Information Officer, 200 Administration Road, room G–209, Oak Ridge, Tennessee 37831, (615) 576–5765

*Texas*

U.S. Department of Energy Reading Room, Lynn Library/Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109, (806) 371–5400

*Washington*

U.S. Department of Energy, Public Reading Room, Washington State University, 100 Sprout Road, Richland, Washington 99352, (509) 376–8583

*District of Columbia*

U.S. Department of Energy, Freedom of Information Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6020

For information on the availability of specific documents and hours of operation, please contact the reading rooms at the telephone numbers provided.

Issued in Washington, DC this 20th day of July, 1993.

**Peter N. Brush,**

*Acting Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 93–17580 Filed 7–22–93; 8:45 am]

BILLING CODE 6450–01–P

## Privacy Act of 1974; Notice to Amend a System of Records

**AGENCY:** Department of Energy (DOE).

**ACTION:** Proposed amendment to a system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DOE is publishing for public comment a revision of an existing system of records, "DOE–19, Accounts Receivable Financial System." The revision establishes new routine uses, increases the number of locations for the system, and updates other information related to the system. The new routine uses permit the disclosure of information maintained in the system of records through computer matching to identify, locate, and collect from the DOE delinquent debtors.

**DATES:** Any interested party may submit written comments about the proposed revisions. Comments must be received on or before August 23, 1993. Unless DOE receives comments that would dictate otherwise, DOE intends to operate the system as proposed starting August 23, 1993.

**ADDRESSES:** Comments should be directed to the following address: U.S. Department of Energy, Denise Diggin, Chief, Freedom of Information and Privacy Acts Branch, AD–621, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Denise Diggin, Chief, Freedom of Information and Privacy Acts Branch, AD–621, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955; Helen Sherman, Director, Office of Financial Policy, CR–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4860; or Abel Lopez, Office of General Counsel, GC–43, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8618.

**SUPPLEMENTARY INFORMATION:** DOE proposes to amend its system of records, "DOE–19, Accounts Receivable Financial System," to establish new routine uses, increase the system locations, and update other information. The new routine uses permit the disclosure of information maintained in the system of records: (1) To the Defense Manpower Data Center of the Department of Defense, the United States Postal Service, and other Federal, State, or local agencies for computer matching to identify individuals who are delinquent in debts owed to DOE. (The computer matching will identify and locate individuals who are receiving Federal salaries or benefit payments. DOE will use the information obtained as a result of the matching to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, by administrative offset, or by salary offset procedures.); (2) to the Internal Revenue Service (IRS) under 26 U.S.C. 6103(m)(2) to obtain the mailing address of a taxpayer to collect or to compromise a claim by DOE against a taxpayer under 31 U.S.C. 3711, 3717, and 3718; and (3) to the IRS to collect the debt by offset against the debtor's tax refunds under the Federal Tax Refund Offset Program. The specific changes to the record system are set forth below followed by the record system published in its entirety as amended.

Issued in Washington, DC, this 19th day of July, 1993.

**Linda G. Sye,**

*Acting Principal Deputy Assistant Secretary for Human Resources and Administration.*

**Amendment**

**DOE 19**

*System Name:*

Accounts Receivable Financial System.

*CHANGES:*

*System Location:*

Delete entry and replace with:

*System location:*

(1) U.S. Department of Energy (Headquarters), 1000 Independence Avenue, SW., Washington, DC 20585.

(2) U.S. Department of Energy, Alaska Power Administration, PO Box 50, Juneau, AK 99802.

(3) U.S. Department of Energy, Albuquerque Operations Office, PO Box 5400, Albuquerque, NM 87115–5400.

(4) U.S. Department of Energy, Bonneville Power Administration, PO Box 3627, Portland, OR 97208.

(5) U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439.

(6) U.S. Department of Energy, Fernald Field Office, PO Box 398705, Cincinnati, OH 45239–8705.

(7) U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402.

(8) U.S. Department of Energy, Morgantown Energy Technology Center, PO Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880.

(9) U.S. Department of Energy, Naval Petroleum Reserves in California, PO Box 11, Tupman, CA 93276.

(10) U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 800 Werner Court, Suite 342, Casper, WY 82601.

(11) U.S. Department of Energy, Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518.
(12) U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, TN 37831.
(13) U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236–0940.
(14) U.S. Department of Energy, Pittsburgh Naval Reactors Office, P.O. Box 109, West Mifflin, PA 15122–0109.
(15) U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.
(16) U.S. Department of Energy, Rocky Flats Office, P.O. Box 928, Golden, CO 80401.
(17) U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.
(18) U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29808.
(19) U.S. Department of Energy, Schenectady Naval Reactors Office, P.O. Box 1069, Schenectady, NY 12301–1069.
(20) U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Elberton, GA 30835.
(21) U.S. Department of Energy, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101.
(22) U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.
(23) U.S. Department of Energy, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401."

* * * * *

*Authority for maintenance of the system:*

Insert "Debt Collection Act of 1982, as amended" after Organization Act. Add "Executive Order 9397" at the end of the list.

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

Add the following routine uses:
"Defense Manpower Data Center, Department of Defense; United States Postal Service; and other Federal, State, or local agencies to identify and locate, through computer matching, individuals indebted to DOE who are receiving Federal salaries or benefit payments. Information from the match will be used to collect the debts by voluntary repayment, by administrative offset, or by salary offset procedures.

Internal Revenue Service: (1) To collect the debt by offset against the debtor's tax refunds under the Federal Tax Refund Offset Program; and (2) to obtain the mailing address of a taxpayer to collect a debt owed to the DOE. Re-disclosure by DOE to a consumer reporting agency is limited to the purpose of obtaining a commercial credit report on the particular taxpayer. Such mailing address information will not be used for any other DOE purpose or disclosed by DOE to another Federal, State, or local agency which seeks to locate the same individual for its own debt collection purpose. Additional routine uses as listed in appendix B of 47 FR 14333, April 2, 1982."

* * * * *

*Retention and disposal:*

Delete entry and replace with:

"The file on each debt is retained until payment is received and the account is audited. The file is then transferred to the local records holding area where the file is retained for 2 years. At the end of 2 years, the file is transferred to the servicing Federal Records Center and retained for 4 years and 3 months."

*System manager(s) and address:*

Delete entry and replace with:

"Headquarters: Office of Chief Financial Officer, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Field Offices: The managers and chief financial officers of the field locations 2 through 23 in System location above are the system managers for their respective portions of this system."

*Notification procedures:*

Delete entry and replace with:

"a. Requests by an individual to determine if a system of records contains information about him or her should be directed to the Chief, Freedom of Information and Privacy Branch, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in the System location above, in accordance with the DOE Privacy Act regulations (10 CFR part 1008, 45 FR 61576, September 16, 1980).

b. Requests should include: Complete name, social security number, the geographic location(s) and organization(s) where requester believes such records may be located, and time period."

* * * * *

DOE–19

SYSTEM NAME:

Accounts Receivable Financial System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) U.S. Department of Energy (Headquarters), 1000 Independence Avenue, SW, Washington, DC 20585.
(2) U.S. Department of Energy, Alaska Power Administration, P.O. Box 50 Juneau, AK 99802.
(3) U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87115–5400.
(4) U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3627, Portland, OR 92708.
(5) U.S. Department of Energy, Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60439.
(6) U.S. Department of Energy, Fernald Field Office, P.O. Box 398705, Cincinnati, OH 45239–8705.
(7) U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, ID 83402.
(8) U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507–0880.
(9) U.S. Department of Energy, Naval Petroleum Reserves in California, P.O. Box 11, Tupman, CA 93276.
(10) U.S. Department of Energy, Naval Petroleum and Oil Shale Reserves, 800 Werner Court, Suite 342, Casper, WY 82601.
(11) U.S. Department of Energy, Nevada Operations Office, P.O. Box 98518, Las Vegas, NV 89193–8518.
(12) U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, TN 37831.
(13) U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236–0940.
(14) U.S. Department of Energy, Pittsburgh Naval Reactors Office, P.O. Box 109, West Mifflin, PA 15122–0109.
(15) U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.
(16) U.S. Department of Energy, Rocky Flats Office, P.O. Box 928, Golden, CO 80401.
(17) U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.
(18) U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29808.
(19) U.S. Department of Energy, Schenectady Naval Reactors Office, P.O.

Box 1069, Schenectady, NY 12301–1069.

(20) U.S. Department of Energy, Southeastern Power Administration, Samuel Elbert Building, Elberton, GA 30835.

(21) U.S. Department of Energy, Southwestern Power Administration, P.O. Box 1619, Tulsa, OK 74101.

(22) U.S. Department of Energy, Strategic Petroleum Reserve, Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

(23) U.S. Department of Energy, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons owing money to DOE.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, taxpayer identification number, and other applicable debtor identifying information; invoice number; basis, amount, and status of the claim; and history of the claim including collection actions taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Department of Energy Organization Act, including authorities incorporated by reference in Title III of the Department of Energy Organization Act; Debt Collection Act of 1982, as amended; 31 U.S.C. 3512; 5 U.S.C. 5701–09; Federal Property Management Regulations 101–107; Treasury Financial Manual; Executive Order 12009 and Executive Order 9397.

PURPOSE(S):

To record and manage the Department's accounts receivable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Other Federal agencies, consumer reporting agencies (only for the purpose of acquiring credit information), and collection agencies to aid in the collection of outstanding debts owed to the Federal Government.

Defense Manpower Data Center, Department of Defense; United States Postal Service; and other Federal, State, or local agencies to identify and locate, through computer matching, individuals indebted to DOE who are receiving Federal salaries or benefit payments. Information from the match will be used to collect the debts by voluntary repayment, by administrative offset, or by salary offset procedures.

Internal Revenue Service: (1) To collect the debt by offset against the debtor's tax refunds under the Federal Tax Refund Offset Program; and (2) to obtain the mailing address of a taxpayer to collect a debt owed to the DOE. Re-disclosure by DOE to a consumer reporting agency is limited to the purpose of obtaining a commercial credit report on the particular taxpayer. Such mailing address information will not be used for any other DOE purpose or disclosed by DOE to another Federal, State, or local agency which seeks to locate the same individual for its own debt collection purpose.

Additional routine uses as listed in appendix B of 47 FR 14333, April 2, 1982.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic tape and disc, and microform.

RETRIEVABILITY:

By name, taxpayer identification number, or invoice number.

SAFEGUARDS:

Access to records is by authorized personnel only.

RETENTION AND DISPOSAL:

The file on each debt is retained until payment is received and the account is audited. The file is then transferred to the local records holding area where the file is retained for two years. At the end of two years, the file is transferred to the servicing Federal Records Center and retained for four years and three months.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Office of Chief Financial Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Field Offices: The managers and chief financial officers of the field locations 2 through 23 in System location above are the system managers for their respective portions of this system.

NOTIFICATION PROCEDURES:

a. Requests by an individual to determine if a system of records contains information about him or her should be directed to the Chief, Freedom of Information and Privacy Branch, Department of Energy (Headquarters), or the Privacy Act Officer at the appropriate address identified in the System location above, in accordance with the DOE Privacy Act regulations (10 CFR part 1008, 45 FR 61576, September 16, 1980).

b. Requests should include: Complete name, social security number, the geographic location(s) and organization(s) where requester believes such records may be located, and time period.

RECORD ACCESS PROCEDURES:

Same as Notification procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

The individual who is the subject of the record; contracting officer, where applicable; and accounting records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–17581 Filed 7–22–93; 8:45 am]

BILLING CODE 6450–01–P

## Office of Civilian Radioactive Waste Management

### Public Involvement Workshop

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of workshop.

SUMMARY: In April 1993 Secretary of Energy Hazel R. O'Leary announced a new program direction for the Office of Civilian Radioactive Waste Management to enhance the participation of external parties in program development and implementation. The Secretary directed that a thorough consultative process be undertaken to devise an acceptable strategy for the long-term management of nuclear waste

The Office of Civilian Radioactive Waste Management is planning to conduct a facilitated workshop at the University of Nevada, Las Vegas, on August 10, 1993, that will involve key program stakeholders and interested members of the public in designing the broad-based consultative process.

DATES: 8 a.m.–9 p.m. on August 10, 1993.

ADDRESSES: The Board Room, Thomas & Mack Center, Tropicana & Swenson Street, University of Nevada, Las Vegas.

FOR FURTHER INFORMATION CONTACT: For further information regarding the workshop, please contact Allen Benson, Acting Director, Office of External Relations, Office of Civilian Radioactive Waste Management at (202) 586–2280. To confirm workshop attendance please contact Patty Reyes, Roy F. Weston, Inc., at (202) 646–6668 by July 28, 1993.

SUPPLEMENTARY INFORMATION: At the workshop, the Office of Civilian Radioactive Waste Management will

seek input from participants on: (1) Initiating a process for broad consultation on specific issues; (2) a draft public involvement policy; and (3) developing associated guidelines that will direct the Office of Civilian Radioactive Waste Management's public involvement program. An independent facilitator will prepare a summary of the discussions for distribution. The focus of the workshop is to develop a collaborative process whereby substantive issues can be comprehensively addressed in future meetings. This workshop is not intended to resolve specific, substantive issues. A block of rooms at a single rate of $69.00 has been reserved at the St. Tropez Hotel, 455 East Harmon Avenue, Las Vegas, Nevada, 89109. Please contact the hotel at (702) 369-5400 by Wednesday, July 28, 1993, for reservations.

Issued in Washington DC, on July 19, 1993.

**Lake H. Barrett,**

*Acting Director, Office of Civilian Radioactive Waste Management.*

[FR Doc. 93-17583 Filed 7-22-93; 8:45 am]

BILLING CODE 6450-01-M

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## Federal Energy Regulatory Commission

**[Docket No. JD93-12754T Oklahoma-47]**

### State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 19, 1993.

Take notice that on July 15, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mississippi Common Source, underlying a portion of Blaine County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 4, 5, 9, and 10 of Township 17 North, Range 13 West, Blaine County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR § 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17516 Filed 7-22-93; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. JD93-12755T Oklahoma-48]**

### State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 19, 1993.

Take notice that on July 15, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Chester Common Source, underlying a portion of Blaine County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Section 4, 5, 9 , and 10 of Township 17 North, Range 13 West, Blaine County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17517 Filed 7-22-93; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. JD93-02860T Wyoming-29]**

### State of Wyoming; NGPA Amended Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 19, 1993.

Take notice that on July 14, 1993, the Wyoming Oil and Gas Conservation Commission (Wyoming) amended its amended notice of determination that was filed in the above-referenced proceedings on April 19, 1993 pursuant to § 271.703(c)(3) of the Commission's regulations. The April 19, 1993 notice reduced the recommended area to that portion of the Lance Formation underlying Townships 28 and 29 North, Range 108 West, all in Sublette County, Wyoming.

The current notice of determination excludes the sands overlying the Jonah sand interval, within the Lance Sand Group.

The notice of determination also contains Wyoming's findings that the referenced portion of the Lance Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17518 Filed 7-22-93; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP93-545-000]**

### Arkla Energy Resources Co.; Request Under Blanket Authorization

July 19, 1993.

Take notice that on July 9, 1993, Arkla Energy Resources Company (Arkla), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93-545-000 a request pursuant to § 157.205 of the Commission's Regulations to operate an existing interconnection with Oklahoma Natural Gas (ONG) to deliver natural gas in Cotton County, Oklahoma under Arkla's blanket certificate issued in Docket No. CP88-820-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Arkla proposes to operate an existing interconnection, consisting of a two-inch tap and a four-inch meter station with a maximum delivery capability of approximately 1,440 MMBtu of natural gas per day, located on Arkla's Line 11-2 in Cotton County, Oklahoma to provide jurisdictional transportation services for ONB. Arkla states that the ONG interconnection was constructed solely to provide service under Section 311 of the Natural Gas Policy Act. The interconnection was completed in December 1992 at a cost of $25,826 which was reimbursed by ONG, it is indicated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17526 Filed 7–22–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ES93–43–000]**

## Citizens Utilities Company; Application

July 19, 1993.

Take notice that on July 14, 1993, Citizens Utilities Company (Citizens) filed an application under section 204 of the Federal Power Act requesting an order authorizing, for two-year period beginning September 1, 1993, the maximum permissible period, the issuance by Citizens of up to:

(a) $1.25 billion principal amount of unsecured promissory notes outstanding at any one time,

(b) $750 million aggregate principal amount of longer term debt securities with a final maturity or maturities of not less that nine months nor more than 50 years, and

(c) 25 million shares of common stock of Citizens (subject to adjustment for stock splits, stock dividends, recapitalizations and similar changes after the date of the application, including an adjustment to 50 million shares of common stock as a result of an announced 2 for 1 stock split) and $300 million liquidation value of preferred stock of Citizens (preferred stock), subject to an overall limitation of $500 million for the aggregate of the proceeds of the issuance of common and preferred stock.

The total amount outstanding at any one time of the securities issued under (a), (b) and (c) would be limited to $1.25 billion. Also, Citizens requests exemption from the competitive bidding regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17520 Filed 7–13–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER93–779–000]**

## Consolidated Edison Company of New York, Inc.; Filing

July 19, 1993.

Take notice that on July 9, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Orange & Rockland Utilities, Inc. (O&R).

Con Edison states that a copy of this filing has been served by mail upon O&R.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17523 Filed 7–22–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER93–780–000]**

## Consolidated Edison Company of New York, Inc.; Filing

July 19, 1993.

Take notice that on July 9, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Orange & Rockland Utilities, Inc. (O&R).

Con Edison states that a copy of this filing has been served by mail upon O&R.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17524 Filed 7–22–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER93–778–000]**

## Consolidated Edison Company of New York, Inc.; Filing

July 19, 1993.

Take notice that on July 9, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Orange & Rockland Utilities, Inc. (O&R).

Con Edison states that a copy of this filing has been served by mail upon O&R.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 29, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17525 Filed 7–22–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–536–000]**

### Florida Gas Transmission Co.; Application

July 19, 1993.

Take notice that on July 6, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–536–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Koch Hydrocarbon Company (Koch) its 50% interest in certain compression facilities and following the abandonment have the Commission deem the facilities exempt from its jurisdiction, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT proposes to convey to Koch, FGT's 50% interest in the Matagorda Island Block 664/665 compression facilities. FGT states that the remaining 50% interest is owned by Southern Natural Gas Company.

It is stated that the proposed abandonment and transfer would not impair any current or future services being provided from the facilities, nor would it disadvantage any FGT customer. It is further stated that the proposed abandonment and transfer would save FGT approximately $30,000 per year in operating and maintenance costs.

FGT avers that the primary function of the facilities, when owned and operated by Koch, would be production and gathering and, therefore, should be exempt from Commission jurisdiction.

FGT states that the proposed abandonment would allow Koch to control the gathering, production, compression and delivery of Koch's gas which would increase production and gathering efficiencies by integrating the facilities with Koch's current operations.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before August 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17521 Filed 7–22–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–551–000]**

### Texas Gas Transmission, Corp.; Request Under Blanket Authorization

July 19, 1993.

Take notice that on July 14, 1993, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–551–000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon by removal two sales taps located in Sullivan County, Indiana under Texas Gas' blanket certificate issued in Docket No. CP82–407–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas proposes to abandon, pursuant to a letter dated June 17, 1993, from Ohio Valley Gas, Inc. (Ohio Valley), the Claude Gordon and Edward Runyon sales tapes by removal, located on Texas Gas' Wilfred 12" line in Sullivan County, Indiana. Texas Gas indicates that Ohio Valley states that these farm taps are no longer needed and may be retired. Texas Gas states that it is notifying the Indiana Public Service Commission of this proposed abandonment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules 918 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17522 Filed 7–22–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–529–000]**

### Transwestern Pipeline Company and Transwestern Pipeline Company, L.P.; Notice of application

July 19, 1993.

Take notice that on June 30, 1993, Transwestern Pipeline Company (Transwestern) and Transwestern Pipeline Company, L.P. (Partnership), referred to jointly as applicants, 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–529–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act, requesting issuance of certificates of public convenience and necessity authorizing Partnership to acquire and operate facilities and to transport gas in interstate commerce, and for an order permitting Transwestern to abandon services and facilities. Applicants state that these authorizations will permit Partnership to own and operate the facilities previously owned and operated by Transwestern as an interstate pipeline and to perform the services that the Commission in various dockets has previously authorized

Transwestern to perform, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This application does not propose any changes to the present facilities or service currently provided by Transwestern.

Any person desiring to be heard or to protest the application should on or before August 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of this matter finds that grant of the abandonment and certificate issuance are required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17519 Filed 7–22–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–547–000]**

## Williston Basin Interstate Pipeline Co.; Request Under Blanket Authorization

July 19, 1993.

Take notice that on July 13, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in docket no. CP93–547–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery tap to Dakota Growers' Pasta Company (Dakota Growers') under Williston Basin's blanket certificate issued in docket no. CP82–487–000, *et al.* pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Williston Basin proposes to construct and operate a delivery tap, meter station and appurtenant facilities, on an existing pipeline right-of-way, in Foster County, North Dakota. Williston Basin states that it would transport up to 300 Mcf of natural gas per day for Dakota Growers' and use the proposed facilities to deliver the gas to Dakota Growers'.

Williston Basin further states that its FERC Gas Tariff does not prohibit the addition of new delivery points and the addition of the new delivery point will have no significant effect on Williston Basin's peak day or annual requirements.

Any person or the Commission's staff may, within 45 days after issuance of the instance notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17527 Filed 7–22–93; 8:45 am]

BILLING CODE 6717–01–M

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–4681–6]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 23, 1993.

**FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT:** Ms. Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Air and Radiation

*Title:* National Emission Standard for Asbestos–Reporting and Recordkeeping Requirements. (EPA ICR No. 0111.07; OMB No. 2060–0101). This request is to extend the expiration date of a currently approved collection without any change in the substance or in the method of collection.

*Abstract:* Under the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Asbestos (40 CFR part 61, subpart M), owners or operators of asbestos milling, manufacturing, fabricating, waste disposal, and waste conversion facilities must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NESHAP requirements. The milling, manufacturing, and fabricating sources are required to maintain records of daily visible emission monitoring and weekly control device inspections, and to report on a quarterly basis if visible emissions are detected. EPA uses the notifications and reports to determine whether control devices are properly installed, operated, and maintained.

Owners or operators of structures undergoing demolition or renovation must notify EPA in advance of the initiation of any demolition or renovation. They must renotify EPA, in advance of the actual start date, if the projected start date changes. A representative of the owner or operator must be trained in the provisions of the standard, and records of this training maintained. All containers of asbestos waste must be labeled with the name of the waste generator and the location where the waste was generated. Records must be maintained for 2 years on the destination, quantity of waste, and date for each waste shipment. Generators of asbestos waste must notify EPA if delivery to the disposal site cannot be confirmed. Owners and operators of asbestos waste disposal sites must

report any discrepancies between the amount of waste designated on a waste shipment record and the amount actually received, as well as instances of improperly contained waste. Disposal sites are required to maintain records for at least 2 years. EPA uses the notifications and records to inspect asbestos removal and related waste handling operations to verify compliance with the standards.

*Burden Statement:* The public reporting burden for this collection of information is estimated to average 0.8 hours per response for reporting, and 20.6 hours per recordkeeper annually. The estimated reporting burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

*Respondents:* Owners and operators of structures undergoing demolition or renovation, and owners and operators of asbestos waste disposal sites.

*Estimated No. of Respondents:* 10,447.

*Estimated No. of Responses Per Respondent:* 42.

*Estimated Total Annual Burden on Respondents:* 572,774 hours.

*Frequency of Collection:* Quarterly and on occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC 20530.

Dated: July 16, 1993.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 93–17569 Filed 7–22–93; 8:45 am]

BILLING CODE 6560–50–F

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[FRL–4682–1]

## Acid Rain Program: Draft Permits and Public Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Draft Permit and Public Comment Period.

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**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year Acid Rain permits to 32 utility plants according to the Acid Rain Program regulations (40 CFR part 72).

**DATES:** Comments on Draft permits must be received no later than 30 days after the date of this notice or the publication date of this notice in local newspapers.

**ADDRESSES:** Administrative Records. The administrative record for each draft permit, except information protected as confidential, may be viewed at the addresses listed in "SUPPLEMENTARY INFORMATION."

*Comments.* Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to the following:

*For plants in New York:* Steve Riva, Chief, Permitting and Toxics Support Section, Air Compliance Branch, EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, room 500, New York, NY 10278.

*For plants in Illinois, Indiana and Wisconsin:* David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

*For plants in Iowa and Missouri:* William A. Spratlin, Director, Air and Toxics Division, EPA Region 7 (ARTX), 726 Minnesota Ave., Kansas City, KS 66101.

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the permit.

*Hearings.* To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

**FOR FURTHER INFORMATION CONTACT:** Contact the following persons for more information about the draft permits:

*For plants in New York,* Gerry DeGaetano at (212) 264–6685. Air and Waste Management Division, EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, Room 500, New York, NY 10278.

*For plants in Illinois,* Cecilia Mijares (312) 886–0968; for plants in Indiana, Patrick Gimino at (312) 353–8651; for plants in Wisconsin, Beth Burns (312) 886–2703; Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

*For plants in Iowa and Missouri,* Jon Knodel at (913) 551–7622. Air and Toxics Division, EPA Region 7 (ARTX), 726 Minnesota Ave., Kansas City, KS 66101.

**SUPPLEMENTARY INFORMATION:**

### Permits

EPA proposes to approve, for 1995 only, substitution plans and reduced utilization plans (and parts of plans) with compensating units that are consistent with the current rules and proposes to defer action on these plans and parts of plans for 1996–99.

EPA recently stated, in a July 16, 1993 **Federal Register** notice, that it is concerned that the existing Acid Rain Program regulations could be read to provide utilities an open-ended ability to use substitution and reduced utilization plans to bring Phase II units into Phase I and create a significant number of excess, new allowances in Phase I. 58 FR 38370 (July 16, 1993). This creation of allowances would threaten achievement of the sulfur dioxide emissions reductions intended to be made under the Act and thus would be contrary to the purposes of the Act. *See id.* As stated in the July 16, 1993 notice, EPA is therefore planning to propose revision of the January 11, 1993 regulations implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization. *Id.* EPA plans to explain these matters in more detail in a notice of proposed rulemaking.

The owners and operators of some affected sources, however, have already submitted to EPA substitution and reduced utilization plans based on their reading of the existing regulations. In order to provide owners and operators an opportunity to adjust their compliance strategies in the event of regulatory revisions, EPA issued on July 16, 1993, and is issuing today, draft permits that approve for 1995 those substitution plans and those reduced utilization plans (and parts of plans) with compensating units that comply with the January 11, 1993 regulations. In the draft permits, EPA defers action on those plans and parts of plans for 1996–1999 pending the potential regulatory revisions.

Further, as explained in the July 16, 1993 notice, the one-year approval is applicable only to those plans that were submitted before July 16, 1993 and that are not revised on or after the date to add units to the plans. *Id.* Where plans are submitted, or revised to add units, on or after that date and before issuance of Phase I permits for the units involved and where EPA issues the permits before the completion of the rulemaking discussed above, EPA intends to defer

action on the plans for 1995–99. Similarly, where plans are submitted or revised on or after July 16, 1993 and after issuance and Phase I permits for the units, EPA also intends to defer action on those plans for 1995–99 until completion of the rulemaking. Plans on which action is deferred will be reviewed and acted on in accordance with the regulations that result from the rulemaking.

EPA proposes to approve draft permits that specify the sulfur dioxide emission allowances and compliance plans for the following utility plants:

**Region 2**

*Albany in New York:* 201 allowances under 40 CFR 72.41 (substitution allowances) in 1995 to unit 1; 161 substitution allowances to unit 3; two conditional substitution plans for 1995 in which Dunkirk units 3 and 4 each designate units 1 and 3 as substitution units; and ten conditional reduced utilization plans that rely on energy conservation and improved unit efficiency measures and sulfur-free generation. The designated representative is Clement E. Nadeau.

*CR Huntley in New York:* 5,460 substitution allowances in 1995 to unit 63; 5,803 substitution allowances in 1995 to unit 64; 5,969 substitution allowances in 1995 to unit 65; 5,916 substitution allowances in 1995 to unit 66; 12,769 substitution allowances in 1995 to unit 67; 11,926 substitution allowances in 1995 to unit 68; two conditional substitution plans for 1995 in which Dunkirk units 3 and 4 each designate units 63, 64, 65, 66, 67 and 68 as substitution units; and 30 conditional reduced utilization plans that rely on energy conservation and improved unit efficiency measures and sulfur-free generation. The designated representative is Clement E. Nadeau.

*Dunkirk in New York:* 12,268 allowances under column A of Table 1 of 40 CFR 73.10 (Table 1 allowances) in 1995–1999 to unit 3; 13,690 Table 1 allowances in 1995–1999 to unit 4; 8,233 substitution allowances in 1995 to unit 1; 9,414 substitution allowances in 1995 to unit 2; eight conditional substitution plans for 1995 in which units 3 and 4 designate units 1 and 2, Albany units 1 and 3, CR Huntley units 63, 64, 65, 66, 67 and 68, Oswego units 3, 4, 5 and 6 as substitution units; and 20 conditional reduced utilization plans that rely on energy conservation and improved unit efficiency measures and sulfur-free generation. The designated representative is Clement E. Nadeau.

*Oswego in New York:* 86 substitution allowances in 1995 to unit 3; 379 substitution allowances in 1995 to unit 4; 14,898 substitution allowances in 1995 to unit 5; 4,578 substitution allowances in 1995 to unit 6; two conditional substitution plans for 1995 in which Dunkirk units 3 and 4 each designate units 3, 4, 5 and 6 as substitution units; and 20 conditional reduced utilization plans that rely on energy conservation and improved unit efficiency measures and sulfur-free generation. The designated representative is Clement E. Nadeau.

**Region 5**

*Hutsonville in Illinois:* 9,845 substitution allowances in 1995 to unit 05; 10,305 substitution allowances in 1995 to unit 06; and a conditional substitution plan for 1995 in which Meredosia designates units 05 and 06 as substitution units. The designated representative is Gilbert W. Moorman.

*Meredosia in Illinois:* 15,227 Table 1 allowances in 1995–1999 to unit 05; 1,245 substitution allowances in 1995 to unit 01; 1,355 substitution allowances in 1995 to unit 02; 1,173 substitution allowances in 1995 to unit 03; 1,078 substitution allowances in 1995 to unit 04; and three conditional substitution plans for 1995 in which unit 05 designates units 01, 02, 03 and 04 as substitution units, unit 05 designates Hutsonville units 05 and 06 as substitution units, and unit 05 designates Newton unit 1 as a substitution unit. The designated representative is Gilbert W. Moorman.

*Newton in Illinois:* 14,879 substitution allowances in 1995 to unit 1; and a conditional substitution plan for 1995 in which Meredosia unit 05 designates unit 1 as a substitution unit. The designated representative is Gilbert W. Moorman.

*Rockport in Indiana:* 21,936 substitution allowances in 1995 to unit MB1; and a conditional substitution plan for 1995 in which Tanners Creek unit U4 designates unit MB1 as a substitution unit. The designated representative is John M. McManus.

*Tanners Creek in Indiana:* 27,209 Table 1 allowances in 1995–1999 to unit U4; a conditional substitution plan for 1995 in which unit U4 designates Rockport unit MB1 as a substitution unit; and a conditional reduced utilization plan that relies on energy conservation. The designated representative is John M. McManus.

*Alma in Wisconsin:* 5,105 substitution allowances in 1995 to unit B4; 8,155 substitution allowances in 1995 to unit B5; and a conditional substitution plan for 1995 in which Genoa unit 1 designates units B4 and B5 as substitution units. The designated representative is John P. Leifer.

*Columbia in Wisconsin:* 19,584 substitution allowances in 1995 to unit 1; 8,339 substitution allowances in 1995 to unit 2; and two conditional substitution plans for 1995 in which Edgewater unit 5 designates units 1 and 2 as substitution units. The designated representative is Norman E. Boys.

*Edgewater in Wisconsin:* 24,099 Table 1 allowances in each year 1995–1999 to unit 4; 5,247 substitution allowances in 1995 to unit 3; 7,263 substitution allowances in 1995 to unit 5; four conditional substitution plans for 1995 in which unit 4 designates units 3 and 5 and Columbia units 1 and 2 as substitution units; and two conditional reduced utilization plans that rely on energy conservation and improved unit efficiency measures. The designated representative is Norman E. Boys.

*Genoa in Wisconsin:* 22,103 Table 1 allowances in each year 1995–1999 to unit 1; and three conditional substitution plans for 1995 in which unit 1 designates Alma units B4 and B5 as substitution units, unit 1 designates J P Madgett unit B1 as a substitution unit, and unit 1 as a substitution unit, and unit 1 designates Stoneman units B1 and B2 as substitution units. The designated representative is John P. Leifer.

*J P Madgett in Wisconsin:* 6,862 substitution allowances in 1995 to unit B1; and a conditional substitution plan for 1995 in which Genoa unit 1 designates unit B1 as a substitution unit. The designated representative is John P. Leifer.

*Nelson Dewey in Wisconsin:* 5,852 Table 1 allowances in each year 1995–1999 to unit 1; 6,504 Table 1 allowances in each year 1995–1999 to unit 2; two conditional substitution plans for 1995 in which units 1 and 2 designate Rock River unit 1 as a substitution unit, and units 1 and 2 designate Rock River unit 2 as a substitution unit; and two conditional reduced utilization plans that rely on energy conservation and improved unit efficiency measures. The designated representative is Norman E. Boys.

*Pulliam in Wisconsin:* 7,312 Table 1 allowances in each year 1995–1999 to unit 8; 516 substitution allowances in 1995 to unit 3; 773 substitution allowances in 1995 to unit 4; 2,254 substitution allowances in 1995 to unit 5; 2,938 substitution allowances in 1995 to unit 6; 7,561 substitution allowances in 1995 to unit 7; and eight conditional substitution plans for 1995 in which unit 8 designates units 3, 4, 5, 6 and 7 and Weston units 1, 2 and 3 as substitution units. The designated representative is Gary T. Van Helvoirt.

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*Rock River in Wisconsin:* 5,896 substitution allowances in 1995 to unit 1; 5,707 substitution allowances in 1995 to unit 2; two conditional substitution plans for 1995 in which Nelson Dewey units 1 and 2 designate unit 1 as a substitution unit, and Nelson Dewey units 1 and 2 designate unit 2 as a substitution unit; and two conditional reduced utilization plans that rely on energy conservation and improved unit efficiency measures. The designated representative is Norman E. Boys.

*Stoneman in Wisconsin:* 1,004 substitution allowances in 1995 to unit B1; 1,273 substitution allowances in 1995 to unit B2; and a conditional substitution plan for 1995 in which Genoa unit 1 designates units B1 and B2 as substitution units. The designated representative is John P. Leifer.

*Weston in Wisconsin:* 2,213 substitution allowances in 1995 to unit 1; 5,317 substitution allowances in 1995 to unit 2; 6,555 substitution allowances in 1995 to unit 3; and three conditional substitution plans for 1995 in which Pulliam unit 8 designates units 1, 2 and 3 as substitution units. The designated representative is Gary T. Van Helvoirt.

**Region 7**

*Burlington in Iowa:* 10,428 Table 1 allowances in each year 1995–1999 to unit 1; the part of twelve conditional reduced utilization plans for 1995 in which unit 1 designates Prairie Creek 3 and Sutherland 3 as compensating units; and the part of those plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Stephen W. Southwick.

*Prairie Creek in Iowa:* 7,965 Table 1 allowances in each year 1995–1999 to unit 4; 2,711 allowances under 40 CFR 72.43 (compensating unit allowances) in 1995 to unit 3; the part of twelve conditional reduced utilization plans for 1995 in which unit 4 designates unit 3 and Sutherland 3 as compensating units; and the part of those plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Stephen W. Southwick.

*Sutherland in Iowa:* 8,898 compensating unit allowances in 1995 to unit 1; the part of sixteen conditional reduced utilization plans for 1995 in which Burlington unit 1 and Prairie Creek unit 4 designate unit 1 as a compensating unit; and the part of those plans for 1995–1999 that rely on energy conservation measures and sulfur-free generation. The designated representative is Stephen W. Southwick.

*Hawthorn in Missouri:* 25,734 allowances in 1995 to unit 5; and a substitution plan for 1995 in which Montrose units 1, 2 and 3 designate unit 5 as a substitution unit. The designated representative is Marcus Jackson.

*James River in Missouri:* 4,722 Table 1 allowances in each year 1995–1999 to unit 5; 3,802 substitution allowances in 1995 to unit 3; 6,828 substitution allowances in 1995 to unit 4; and three conditional substitution plans for 1995 in which unit 5 designates units 3 and 4 and Southwest unit 1 as substitution units. The designated representative is G. Duane Galloway.

*Labadie in Missouri:* 39,055 Table 1 allowances in each year 1995–1999 to unit 1; 36,718 Table 1 allowances in each year 1995–1999 to unit 2; 39,249 Table 1 allowances in each year 1995–1999 to unit 3; and 34,994 Table 1 allowances in each year 1995–1999 to unit 4; and six conditional substitution plans for 1995, one for each substitution unit, in which units 1, 2, 3 and 4 and Sioux units 1 and 2 designate Meramec units 1, 2, 3 and 4 and Rush Island units 1 and 2 as substitution units. The designated representative is Jerrel D. Smith.

*Meramec in Missouri:* 1,816 substitution allowances in 1995 to unit 1; 1,948 substitution allowances in 1995 to unit 2; 4,166 substitution allowances in 1995 to unit 3; 4,507 substitution allowances in 1995 to unit 4; and four conditional substitution plans for 1995 in which Sioux units 1 and 2 and Labadie units 1, 2, 3 and 4 designate units 1, 2, 3 and 4 as substitution units. The designated representative is Jerrel D. Smith.

*Montrose in Missouri:* 7,196 Table 1 allowance in each year 1995–1999 to unit 1; 7,984 Table 1 allowances in each year 1995–1999 to unit 2; 9,824 Table 1 allowances in each year 1995–1999 to unit 3; and a substitution plan for 1995 in which units 1, 2 and 3 designate Hawthorn unit 5 as a substitution unit. The designated representative is Marcus Jackson.

*Rush Island in Missouri:* 26,935 substitution allowances in 1995 to unit 1; 30,146 substitution allowances in 1995 to unit 2; and two conditional substitution plans for 1995 in which Sioux units 1 and 2 and Labadie units 1, 2, 3 and 4 designate units 1 and 2 as substitution units. The designated representative is Jerrel D. Smith.

*Sibley in Missouri:* 15,170 Table 1 allowances in each year 1995–1999 to unit 3; 2,810 substitution allowances in 1995 to unit 1; 3,462 substitution allowances in 1995 to unit 2; and a substitution plan for 1995 in which unit 3 designates units 1 and 2 as substitution units. The designated representative is John C. Browning.

*Sioux in Missouri:* 21,976 Table 1 allowances in each year 1995–1999 to unit 1; 23,067 Table 1 allowances in each year 1995–1999 to unit 2; and six conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 and Labadie units 1, 2, 3 and 4 designate Meramec units 1, 2, 3 and 4 and Rush Island units 1 and 2 as substitution units. The designated representative is Jerrel D. Smith.

*Southwest in Missouri:* 3,922 substitution allowances in 1995 to unit 1; and a conditional substitution plan for 1995 in which James River unit 5 designates unit 1 as a substitution unit. The designated representative is G. Duane Galloway.

*Thomas Hill in Missouri:* 9,980 Table 1 allowances in each year 1995–1999 to unit MB1; 18,880 Table 1 allowances in each year 1995–1999 to unit MB2; 14,011 substitution allowances in 1995 to unit MB3; and a substitution plan for 1995 in which units MB1 and MB2 designate unit MB3 as a substitution unit. The designated representative is Gary L. Fulks.

*Addresses:* The administrative records for each plan may be viewed during normal operating hours at the following locations:

**Region 2**

For plants in New York: EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, Room 505, New York, NY 10278, (212) 264–6685.

**Region 5**

*For plants in Illinois:* (1) EPA Region 5, Ralph H. Metcalfe Federal Bldg., Room 1822, 77 West Jackson Blvd., Chicago, IL 60604, and (2) Illinois Environmental Protection Agency Library, 2200 Churchill Road, Springfield, IL 62706

*For plants in Indiana:* EPA Region 5 (address above).

*For plants in Wisconsin:* (1) EPA Region 5 (address above), and (2) Wisconsin Department of Natural Resources, 101 S. Webster St., 7th Floor, Madison WI 53703.

**Region 7**

*For plants in Iowa:* (1) EPA Region 7 Library, 726 Minnesota Ave., Kansas City, KS, 66101, (913) 551–7358; (2) Iowa Department of Natural Resources, 900 E. Grand, Des Moines, IA 50309, (515) 281–8012; and (3) the additional locations for each plant:

*Burlington:* Burlington Public Library, 501 N. 4th St., Burlington, IA 52601, (319) 753–1647.

*Prairie Creek:* Cedar Rapids Public Library, 500 1st St. SE, Cedar Rapids, IA 52401–2095, (319) 398–5123.

*Sutherland:* Marshalltown Public Library, 36 N. Center St., Marshalltown, IA 50158, (515) 754–5738.

*For plants in Missouri:* (1) EPA Region 7 Library (address above); (2) Missouri Department of Natural Resources, Jefferson State Office Building, Jefferson City, MO 65102, (314) 751–4817; and (3) the locations listed for each plant below:

*Hawthorn and Sibley:* Kansas City Public Library, 311 E. 12th St., Kansas City, MO 64106, (816) 221–9650.

**Identification of Document:** Notice of Public Comment Period and Draft Acid Rain Permit—Page 15

*James River and Southwest:* Sprinfield-Greene County Library, 397 E. Central, Springfield, MO 65801, (417) 869–4621.

*Labadie:* Scenic Regional Library, 308 Hawthorne Dr., Union, MO 63084, (314) 583–3224.

*Meramic:* Saint Louis Public Library, 1301 Olive St., St. Louis, MO 63103, (314) 241–2288.

*Montrose:* Henry County Library, 123 E. Franklin, Clinton, MO 64735–2151, (816) 885–2612.

*Rush Island:* Festus Public Library, 222 N. Mill St., Festus, MO 63028, (314) 937–2017.

*Sioux:* Saint Charles City County Library—Kisker Rd. Branch, 1000 Kisker Rd., St. Charles, MO 63304, (314) 926–7323.

*Thomas Hill:* Little Dixie Regional Library, 111 N. 4th St., Moberly, MO 65270, (816) 263–4426.

Dated: July 20, 1993.

**Brian McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93–17568 Filed 7–22–93; 8:45 am]

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**(ER-FRL–4622–9)**

**Environmental Impact Statements and Regulations; Availability of EPA Comments**

Availability of EPA comments prepared July 5, 1993 through July 9, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

**Draft EISs**

*ERP No. D–AFS–G61033–NM* Rating LO, Sipapu Ski Area Expansion, Master Development Plan Approval and Special Use Permit, Carson National Forest, Camino Real Ranger District, Taos County, NM.

*Summary:* EPA expressed no objections to the preferred alternative.

*ERP No. D–AFS–K61025–CA* Rating LO, Tallac Historic Site Master Plan, Implementation, Lake Tahoe Management Unit, Special Use Permit, El Dorado County, CA.

*Summary:* EPA had no objections to the preferred alternative.

*ERP No. D–FHW–H40147–NB* Rating LO2, Omaha Northwest Connector/ Sorensen Parkway Improvements, Construction between 72nd Street and Blair High Road and south of I–680, Funding and COE Section 404 Permit, City of Omaha, Douglas County, NB.

*Summary:* EPA had no objections to the project, EPA requests up-to-date air modeling, and more information on wetlands mitigation.

*ERP No. D–FHW–L40182–WA* Rating EO1, Twin Bridges Replacement Project, Grosscup Road over the Yakima River, Funding and COE Section 10/404 Permit, Benton County, WA.

*Summary: EPA rated Alternatives 1 and 2,* LO (Lack of Objections) and Alternatives 3A and 3B EO–1 (Environmental Objections-Adequate Information). EPA had environmental objections with alternative 3A based on the potential destruction of 1,500 to 2,000 square feet of excellent salmon spawning habitat and on the destruction of 1.5 acres of riparian habitat, an uncommon and biologically rich vegetation community in the Region. EPA had environmental objections with alternative 3B based on the potential destruction of the 1.5 acres of riparian habitat.

*ERP No. DS–AFS–K61107–CA* Rating EC2, Mount Vida Planning Area Integrated Resource Management Plan, Additional Information concerning Allocation of Marten Habitat, Consideration of an Uneven-Aged Harvest Alternative and A Revised Biological Evaluation, Modoc National Forest, Warder Mountain Ranger District, Modoc County, CA.

*Summary:* EPA expressed environmental concerns with the "light conifer retention" practices in conjunction with even-aged management may not achieve the biological diversity that uneven-aged management might provide. EPA requested more information in the FSEIS on the benefits of uneven-aged management.

Dated: July 20, 1993.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 93–17592 Filed 7–22–93; 8:45 am]

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**[ER–FRL–4622–8]**

**Environmental Impact Statements; Notice of Availability**

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed July 12, 1993 Through July 16, 1993 Pursuant to 40 CFR 1506.9.

*EIS No. 930236,* DRAFT EIS, UAF, IN, Grisson Air Force Base (AFB) Disposal and Reuse, Implementation, Miami and Cass Counties, IN, Due: September 07, 1993, Contact: George Gauger (210) 536–3069.

*EIS No. 930237,* DRAFT EIS, AFS, MT. Smokey-Corridor Timber Sales, Timber Management and Road Construction/Reconstruction, Implementation, Lewis and Clark National Forest, White Sulphur Springs, Meagher County, MT, Due: September 15, 1993, Contact: Craig Cowie (406) 547–3361.

*EIS No. 930238,* FINAL EIS, UAF, AK, Ionospheric Research Facility for the High Frequency Active Auroral Research Program, Construction and Operation, Site Selection, COE Section 404 Permit and NPDES Permit, AK, Due: August 23, 1993, Contact: John Heckscher (617) 377–5121.

*EIS No. 930239,* DRAFT SUPPLEMENT, COE, MS, Mississippi River and Tributaries Flood Control, Updated Information, Upper Yazoo Projects (UYP), Yazoo River Basin, several Counties, MS, Due: August 23, 1993, Contact: Gary Young (601) 631–5906.

*EIS No. 930240,* DRAFT SUPPLEMENT, COE, WY, Jackson Hole Flood Protection/Levee Maintenance Plan, Operation and Maintenance, Updated Information, Improvements to Quarry/ Access Project, Snake and Gro Ventre Rivers, Teton County, WY, Due: September 07, 1993, Contact: Lonnie Mettler (509) 522–6627.

*EIS No. 930241,* DRAFT EIS, BOP, WA, King County Federal Detention Center, Site Selection, Operation and Construction, City of Seattle or the City of SeaTac, King County, WA, Due: September 07, 1993, Contact: Patricia K. Sledge (202) 514–6470.

*EIS No. 930242,* FINAL EIS, AFS, UT, North Slope Timber Sale and Road Construction/Reconstruction,

Implementation, Dixie National Forest, Teasdale Ranger District, Wayne County, UT, Due: August 25, 1993, Contact: Marvin R. Turner (801) 425–3702.

*EIS No. 930243*, FINAL SUPPLEMENT, IBR, NM, Rio Grande-Velarde to Caballo Dam Operation and Maintenance, Updated Information on River Maintenance Program, Rio Grande and Middle Rio Grande Projects, Elephant Butte Reservoir, NM, Due: August 23, 1993, Contact: Marc Rucker (505) 766–1753.

*EIS No. 930244*, FINAL SUPPLEMENT, AFS, AK, Bohemia Mountain Timber Sales, Implementation, Updated Information to Limit Alternatives to those that would not impact Potential Recommendation of Duncan Salt Chuck Creek for Inclusion in the National Wild and Scenic River System and COE Permit Issuance, Tongass National Forest, Stikine Area, AK, Due: August 23, 1993, Contact: Davide E. Helmick (907) 772–3841.

*EIS No. 930245*, DRAFT EIS, AFS, ID, Fuzzy-Bighorn Timber Harvest Project, Implementation, Clearwater National Forest, Pierce Ranger District, Clearwater County, ID, Due: September 07, 1993, Contact: Rick Kusicko (700) 391–2513.

*EIS No. 930246*, DRAFT EIS, AFS, OR, Fox Ecosystem Restoration Projects: Day and Dunning Timber Salvage Sales and Other Projects, Implementation, Malheur National Forest, Long Creek Ranger District, Grant County, OR, Due: September 07, 1993, Contact: John Shoberg (503) 575–2110.

*EIS No. 930247*, FINAL EIS, SFW, IA, Walnut Creek National Wildlife Refuge and Prairie Learning Center Master Plan, Restoration and Reconstruction, Prairie City, Jasper County, IA, Due: August 23, 1993, Contact: Richard M. Birger (515) 994–2415.

Dated: July 20, 1993.

William D. Dickerson,

*Deputy Director, Office of Federal Activities.*

[FR Doc. 93–17591 Filed 7–22–93; 8:45 am]

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[FRL–4682–2]

## Indiana: Partial Program Adequacy Determination of State Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency (Region 5).

**ACTION:** Notice of tentative determination on partial program application of Indiana for partial program adequacy determination, public hearing and public comment period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as final applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal MSWLF Criteria will apply to all permitted and unpermitted MSWLF facilities.

Indiana applied for a partial determination of adequacy under Section 4005 of RCRA. The EPA reviewed Indiana's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised Federal MSWLF Criteria. These portions are described later in this notice. The State plans to revise the remainder of its permit program to assure complete compliance with the revised Federal MSWLF Criteria, and gain full program approval. Indiana's application for partial program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a hearing on any determination to approve a State/Tribal MSWLF permit program, Region 5 has scheduled an opportunity for a public hearing on this tentative determination. Details appear below in the "DATES" section.

**DATES:** All comments on Indiana's application for a partial determination of adequacy must be received by U.S. EPA Region 5 by the close of business on September 15, 1993. A public hearing is scheduled for September 15, 1993, from 1 p.m. to 4 p.m. in Room A of the Conference Center at the Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana 46204. Indiana will participate in the public hearing held by EPA on this subject.

**ADDRESSES:** Copies of Indiana's application for partial adequacy determination are available from 9 a.m. to 4 p.m. during normal working days at the following addresses for inspection and copying: Indiana Department of Environmental Management, 105 South Meridian Street, Indianapolis, Indiana 46206, Attn: Ms. Lynn West; and U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J. All written comments should be sent to the EPA Region 5 Office.

**FOR FURTHER INFORMATION CONTACT:** U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure compliance with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approvals if:

(1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258;

(2) Changes to a limited, narrow part(s) of the State/Tribal program are needed to meet these requirements; and

(3) Provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258. These requirements, if promulgated, will address the potential problems posed by the dual State/Tribe and Federal programs that will come into effect in October 1993 in those States/Tribes that still have only partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State/Tribe's program that has not received EPA approval apply directly to owners/operators. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLFs. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program that have been approved.

As provided in the revised Federal Criteria, EPA's national subtitle D standards will take effect on October 9, 1993. Any portions of the Federal Criteria which are not included in an approved State/Tribal program by October 9, 1993, would apply directly to the owner/operator.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop adequate programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement, as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an adequate program, based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full program approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in the STIR.

## B. State of Indiana

On June 3, 1993, Indiana submitted an application for partial program adequacy determination. EPA has reviewed Indiana's application and has tentatively determined that the State's subtitle D program will ensure compliance with the following portions of the revised Federal Criteria.

1. Location restrictions for airport safety, except the requirement to notify the Federal Aviation Administration found in 40 CFR 258.10(b), floodplains for new units and lateral expansions only, and wetlands (EPA approval is for Indiana requirements that are comparable to 40 CFR 258.10(a), 258.11 (new units and lateral expansions only), and 258.12);

2. Operating criteria for cover materials, disease vector control, air criteria, access restrictions, run-on/run-off control systems, surface water, liquids restrictions, and explosive gas control, except the requirements for quarterly gas monitoring and development of a remediation plan found in 40 CFR 258.23(b)(2) and 258.23(c)(2) and (3) (EPA approval is for Indiana requirements that are comparable to 40 CFR 258.21, 258.22, 258.24, 258.25, 258.26, 258.27, 258.28, and 258.23(a), 258.23(b)(1), 258.23(c)(1));

3. Groundwater monitoring systems, sampling and analysis requirements (EPA approval is for Indiana requirements that are comparable to 40 CFR 258.50, 258.51, and 258.53);

4. Closure requirements, except the final cover requirements found in 40 CFR 258.60 (a) and (b), and the requirement to include an estimate of the maximum inventory of wastes in the closure plan found in 40 CFR 258.60(c)(3)) (EPA approval is for Indiana requirements that are comparable 40 CFR 258.60(c)(1),(2),(4) and 258.60(d)–(i));

5. Post-closure care requirements, except the requirement to include in the post-closure plan a description of planned uses for the site found in 40 CFR 258.61(c) (EPA approval is for Indiana requirements that are comparable to 258.61 (a) and (b), 258.61 (c) (1) and (2), 258.61 (d) and (e)); and

6. Financial assurance requirements and allowable mechanisms for closure and post-closure care (EPA approval is for Indiana requirements that are comparable to 40 CFR 258.71, 258.72, and 258.74).

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations, could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

To ensure compliance with all of the revised Federal Criteria, Indiana needs to revise the following aspects of its permit program.

1. Indiana will revise its regulations to incorporate the Federal location restrictions for airports (notification of FAA only), floodplains for existing MSWLF units, fault areas, seismic impact zones, unstable areas, and closure of existing MSWLF units in 40 CFR 258.10(b), 258.11, 258.13, 258.14, 258.15, and 258.16.

2. Indiana will revise its regulations to incorporate the Federal operating requirements for the exclusion of hazardous waste, quarterly monitoring of explosive gases, implementation of remediation plan for explosive gas control, and recordkeeping in 40 CFR 258.20, 258.23(b)(2), 258.23(c) (2) and (3), and 258.29.

3. Indiana will revise its regulations to incorporate Federal design requirements

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specified in 40 CFR 258.40. Indiana has committed to developing a design requirement that, at a minimum, meets the requirements of 40 CFR 258.40.

4. The Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Indiana requires samples to be filtered and preserved in the field in accordance with standard published procedures. The Agency intends to revisit this issue during a proposed rulemaking. If the proposed rulemaking upholds the ban on field filtering, the State will be required to come into compliance with the provisions in 40 CFR 258.53(b). In the meantime, the State will not be given approval for this requirement.

5. Indiana will revise its regulations to incorporate detection and assessment groundwater monitoring programs and parameters that are consistent with the revised Federal Criteria in 40 CFR 258.54 and 258.55. Indiana may make use of some of the flexibilities offered to approved States in these parts of the Federal Criteria.

6. Indiana will revise its regulations to incorporate the Federal requirements for corrective action, as described in 40 CFR 258.56, 258.57, and 258.58. Indiana may make use of some of the flexibilities offered to approved States.

7. Indiana will revise its regulations to incorporate the Federal Criteria for the final cover (40 CFR 258.60 (a) and (b)), the requirement to estimate the maximum inventory of waste ever on-site in the closure plan (40 CFR 258.60(c)(3)), and the requirement to include a description of planned uses of the MSWLF in the post-closure care plan (40 CFR 258.61(c)(3)).

8. Indiana will revise its regulations to incorporate the Federal Criteria for financial assurance for corrective action (40 CFR 258.73).

Indiana submitted a schedule and a description of the rulemaking process, indicating that it will be able to complete these revisions and amendments by December 1994. To allow the State to begin exercising some of the flexibility allowed in States/Tribes with adequate permit programs, EPA is proposing to approve those portions of the State's program that are ready for action today.

EPA reviewed the State's schedule and believes it is reasonable because of the complexity of Indiana's rulemaking process. The rulemaking process typically takes 18 months to complete. Indiana began the process by publishing an Issue Brief in the Indiana Register on June 1, 1993.

EPA cautions Indiana that it currently plans to propose in the STIR that all partial approvals will expire in October 1995 for States/Tribes that have not received final approval for all provisions of 40 CFR part 258 unless the State/Tribe can demonstrate to the Regional Administrator that it has sufficient cause for not meeting the deadline. If the Regional Administrator believes sufficient cause exists, the expiration date may be extended. The extension and new expiration date would be published in the **Federal Register**. Expiration of a partial approval would mean that the Federal Criteria would apply, and the flexibility provided for approved States/Tribes by the Federal Criteria would no longer be available in the State/Tribe. EPA urges Indiana to work diligently to make all of the necessary revisions to those portions of its permit program that are not being proposed for approval today.

The public may submit written comments on EPA's tentative determination until September 15, 1993. Copies of Indiana's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice. The Agency will hold a public hearing on its tentative decision on September 15, 1993. Comments can be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

EPA will consider all public comments on its tentative determination that are received during the public comment period and the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for Indiana's program. EPA will make a final decision on whether or not to partially approve Indiana's program by October 8, 1993, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal MSWLF Criteria independent of any State/Tribe enforcement program. As EPA explained in the preamble to the final MSWLF Criteria, EPA expects that any owner or operator complying with provisions in a State program approved by the EPA, should be considered to be in compliance with the revised Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Certification Under The Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 14, 1993.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 93-17566 Filed 7-22-93; 8:45 am]

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[ER-FRL-4622-7]

## Notice of Intent/Notice of Preparation To Prepare a Draft Policy Environmental Impact Statement and Program Environmental Impact Report for the Long Term Management Strategy (LTMS) for Dredging and Dredged Material Disposal in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, California

**AGENCIES:** United States Environmental Protection Agency, Region IX, San Francisco, California; California State Water Resource Control Board, Sacramento, California.

**ACTION:** Notice of Intent to Prepare/ Notice of Preparation for a Draft Policy Environmental Impact Statement/ Program Environmental Impact Report.

**SUMMARY:** The U.S. Environmental Protection Agency, Region IX, (USEPA), the U.S. Army Corps of Engineers, San Francisco District (USACE), the California State Water Resources Control Board (SWRCB), the San Francisco Bay and Central Valley Regional Water Quality Control Boards (SFBRWQCB and CVRWQCB, respectively) and the San Francisco Bay Conservation and Development Commission (BCDC), are conducting a Long Term Management Strategy (LTMS) to address the dredging and dredged material disposal needs of Congressionally authorized and federally permitted projects within the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Estuary). The LTMS and the development of the Draft EIS/EIR are driven by the need to develop technically sound, economically prudent, and environmentally acceptable long range solutions to the dredging and disposal needs in the Estuary over the next fifty years. The project for this Policy

Environmental Impact Statement (EIS) and Program Environmental Impact Report (EIR) is defined as the development of new policies for the management of dredging, disposal and beneficial reuse of approximately 400 million cubic yards of sediment from San Francisco Bay projects in an economically and environmentally sound manner over a 50-year period.

Under the National Environmental Policy Act (NEPA), the USEPA will be the lead federal agency in the scoping and preparation of the EIS for the LTMS. Under the California Environmental Quality Act (CEQA), the SWRCB will be the lead agency for the State during the preparation of the EIR.

The EIS/EIR will identify and evaluate an array of dredged material management options and help frame the policy choices for the Estuary's LTMS. Discussions of potential impacts on endangered species, fisheries, birds, marine mammals, water quality, etc. from these options in the ocean, estuarine and terrestrial environments will be examined. Through the NEPA/CEQA process, the LTMS Executive Committee, in cooperation with the LTMS Management Committee, will present existing data and gather additional, necessary information to enable their selection of a preferred dredged material management policy or policies. This EIS/EIR will evaluate, among other issues, the cumulative impacts of dredged material management options that may be referenced in subsequent site specific environmental documents for individual projects. Future individual EIS/EIRs will extend the analyses for the dredging and disposal of a particular project material to specific sites identified through the management policy or policies.

**FOR FURTHER INFORMATION AND TO BE PLACED ON THE MAILING LIST CONTACT:** Ms. Amy Zimpfer, Chief, Wetlands, Oceans and Estuaries Branch, USEPA, 75 Hawthorne Street (W–7–1), San Francisco, California 94105, Telephone: 415–744–1953; Mr. Ed Anton, Chief, Division of Water Rights, SWRCB, P.O. Box 2000, Sacramento, California 95812–2000, Telephone: 916–657–1359.

**SUPPLEMENTARY INFORMATION:** Navigation channel maintenance and improvements are essential to the nation's ability to effectively compete in international import/export markets. The Estuary is a critical thoroughfare for the nation's increasing role in Pacific Rim trade with its numerous ports and intermodal links. In 1980, trade with the Pacific Rim nations (Japan, Korea, Taiwan, Australia and other countries in the Far East) accounted for one-quarter of the Nation's imports and exports; today the share is over one-third and rising. USACE, San Francisco District, currently dredges and disposes of over four million cubic yards of sediment annually to maintain deep- and shallow-draft federal navigation channels in the region (See Figure 1). Three million additional cubic yards of sediment are dredged and disposed of under Department of Army permits. In addition, three new channel improvement projects have been authorized by Congress, requiring the one-time dredging and disposal of over 16 million cubic yards.

The Estuary, comprising the largest coastal embayment on the Pacific Coast of the United States, is a significant habitat for freshwater, anadromous and marine fish and other aquatic and terrestrial species with high resource and economic values to the region. There are concerns about the adverse effects to these resources from dredging and aquatic disposal of dredged sediments. Most of the material dredged within the Estuary is disposed at three in-Bay sites in San Pablo and San Francisco Bays. However, due to capacity limitations and environmental concerns, these disposal sites may not be able to meet the long term regional requirements. Also, there are desires within the region to use dredged material as a resource for a variety of beneficial applications instead of merely disposing of it as a waste.

To address these concerns and desires, a five-phase Long Term Management Strategy (LTMS) for dredging and dredged material disposal was initiated for the region in January 1990. An LTMS consists of five phases: Phase I, Evaluate Existing Management Options; Phase II, Formulate Alternatives; Phase III, Analysis of Alternatives; Phase IV, Implementation; and Phase V, Review and Update. The San Francisco LTMS completed Phase I in July 1990; its results indicated that a broader disposal array was necessary to meet the region's future dredging requirements and that the rest of the LTMS process should be undertaken. Before commencing Phase II, the LTMS Executive Committee adopted four goals to guide future activities. They are to: (1) maintain in an economically and environmentally sound manner those channels necessary for navigation in the San Francisco Bay and estuary, and to eliminate unnecessary dredging activities in the Bay and Estuary; (2) conduct dredged material disposal in the most environmentally sound manner; (3) maximize the use of dredged materials as a resource; and (4) establish a cooperative permitting framework for dredging activities. These goals will frame Phase III analyses and Phase IV actions. The LTMS Phase IV, implementation of the selected strategy, will provide the framework for future management and regulatory decisions regarding dredging and disposal activities. After acceptance of the policy in late 1994, Phase IV activities will commence.

Phase II is nearing completion. The evaluation of dredged material management alternatives (Phase III) will begin in late 1993. The program's implementation (Phase IV) will begin in August 1994. The LTMS process is developing a dredged material management plan through consensus among the many Bay agencies and interest groups concerned about dredging and disposal issues. The EIS/EIR will complement the decision-making process currently underway to reach the implementation phase of the LTMS.

USEPA, USACE, SFBRWQCB/CVRWQCB, BCDC and the State Lands Commission (SLC) collectively have responsibility for regulation of aquatic disposal of dredged material. USACE and USEPA are federal agencies mandated with maintenance of Congressionally authorized navigation channels and protection of environmental resources, respectively. The SWRCB's Executive Director, based on recommendations from the SFBRWQCB and CVRWQCB, issues Section 401 (Clean Water Act) permits for activities in the Estuary's waters and adjacent tributaries within their jurisdictional boundaries. BCDC is the State of California coastal zone agency responsible for protection of San Francisco Bay and a 100-foot band around its shoreline. SLC issues permits for dredging and disposal activities affecting the State's sovereign tidal and submerged lands within San Francisco Bay and the Sacramento-San Joaquin Delta, and, as such, is a Responsible and Trustee Agency under CEQA.

Together they are the key agencies in the LTMS—a regional multi-agency, multi-interest coalition to address dredging and disposal in the Bay. The LTMS Executive Committee consists of the Division Engineer (USACE, South Pacific Division), the LTMS Program Manager (USACE, South Pacific Division), the Regional Administrator (USEPA), Chair of the SFBRWQCB, Chair of the BCDC, and the State Dredging Coordinator (SWRCB). The District Engineer (USACE, San Francisco District), the Director of the Water Management Division (USEPA), the Executive Director of the SWRCB,

the Executive Officer of the SFBRWQCB, and the Executive Director of the BCDC constitute the LTMS Management Committee.

These agencies and the other regional navigation and environmental interests developed a study plan for the LTMS's conduct. They work together to oversee the on-going technical studies under Phase II. At the conclusion of the second phase, the LTMS will analyze the technical findings and develop a regional strategy for management of future activities (Phase III). The regulatory agencies, in coordination, will adopt an implementation plan to fulfill the management policies selected for implementation in Phase IV.

**ALTERNATIVES:** Management policies that will be considered in the Draft EIS/EIR include, but are not limited to, the following:

- *Least Cost-Environmentally Acceptable Alternative.* Under this policy, the preferred disposal alternative is determined using individual project parameters and selected based on the least cost—environmentally acceptable option. This approach is the USACE current policy, and might be considered the "No Action" alternative by some. This policy option would also respond to requests for acknowledgment of market forces in determining disposal options.
- *Beneficial Reuse Alternative.* Under this policy alternative, the establishment and use of dredged sediment as a resource would be the primary thrust for all dredged material relocation activity. Only if a beneficial reuse of the material (such as wetland restoration, levee stabilization, or landfill cover) is shown to be infeasible or unsupportable for a specific project could other disposal options (e.g., dispersive or nondispersive aquatic disposal) be considered.
- *Nontidal or Upland Disposal Alternative.* This policy option holds that disposal of dredged material on land or in nontidal environments is environmentally preferable to aquatic disposal. All projects would utilize upland options unless it was shown that it was infeasible or unsupportable for the project to do so.
- *Dispersive In-Bay Aquatic Disposal Alternative.* Historically, dredged material discharges in the Estuary have been at numerous dispersive disposal sites—possibly as many as twenty-three in the late 1960s. Under this policy, aquatic discharges at historically utilized sites would be the preferred alternative. Only if the dredged material was determined to be unsuitable for dispersive aquatic disposal (i.e., characterized by approved testing protocols) could other disposal alternatives (e.g., aquatic or upland confined disposal) be used.
- *Ocean Disposal Alternative.* Under this policy dredged material determined to be acceptable for ocean disposal would be disposed at an USEPA designated ocean disposal site. Material not acceptable for ocean disposal would be tested for its acceptability in other environments (either in-Bay, nontidal or upland) and, based on these testing results, would be deemed acceptable for discharge by the project sponsor at any suitable site.
- *Directed Option Alternative.* Under this policy alternative, an LTMS decision framework would be used by all the regulatory agencies and would, consistent with established site and project management criteria, direct individual dredging projects to specific disposal options. Some of the decision-making criteria to be considered will probably include sediment volume, sediment quality, technical feasibility, beneficial reuse opportunities and project costs. In such a policy alternative, the element of sponsor choice would be substantially removed, with the trade-off being a directed response to achieve a higher level of regional environmental benefit, though not necessarily at the least cost.

Companion policies may be called for in some or all of the alternatives above. Such policies might include, but are not limited to: overlaying a broad interagency policy utilizing a combination of environmental/economic parameters to create a "win-win" decision-making framework as suggested in the first goal of the LTMS; the equalization of costs of the various options through a subsidy, market incentives or benefit credits; or establishment of appropriate user or tipping fees for disposal site utilization to fund management and monitoring costs.

At this time several significant issues that may influence future dredged material management policies have been identified. These issues should be considered during scoping and may need to be analyzed in the policy EIS/EIR:

(1) management of regional disposal sites;

(2) establishment of user fees to help pay for dredged material disposal site management and monitoring, as well as implementation and review and update activities of the LTMS;

(3) development and operation of multiuser disposal sites in an "upland" setting, with emphasis on the beneficial reuse of dredged material, and to include federal and state support and participation;

(4) government or regional subsidies to equalize costs between aquatic and nontidal disposal options;

(5) cost implications of the nontidal/beneficial reuse option and ocean disposal for both large and small projects;

(6) combining small projects for economies of scale to increase the feasibility of environmentally desirable disposal options;

(7) development and/or refinement of standards for ocean, in-Bay, and upland disposal as appropriate;

(8) development of management practices to reduce the size and elevation of the Alcatraz Disposal Site mound;

(9) identification of sites to handle material deemed unsuitable for unconfined disposal, either in aquatic or nonaquatic environments;

(10) consideration of growth-inducing and cumulative impacts;

(11) need for and evaluation of mitigation measures; and

(12) identification of measures to enhance the mutual sustainability of the regional maritime economy and the Bay's aquatic environment in a long term fashion.

**SCOPING:** USEPA and SWRCB will hold two public scoping meetings on Thursday, July 29, 1993, from 1:30 to 3:30 p.m., and from 7 to 9 p.m. The meetings will be held at the San Francisco Bay Regional Water Quality Control Board offices at 2101 Webster Street, Conference Rooms 4B/4C, in Oakland, California. The public is invited to attend and provide input regarding the scope and content of the NEPA/CEQA document. Written comments on this Notice of Intent/Notice of Preparation should be sent to both of the contact people listed above no later than Friday, August 20, 1993.

The scoping process for the Draft EIS/EIR may be seen as a continuation of the public involvement approach that has been in operation since the initiation of the LTMS study. In January 1990, USACE, USEPA, SFBRWQCB and BCDC convened over thirty agencies and organizations with interests in and concerns about dredged material disposal in San Francisco Bay. Over the past three years, the LTMS study has established several committees and work groups composed of representatives from these interested agencies and organizations. These committees and work groups have met to discuss and develop the technical tasks required to achieve the stated LTMS goals, and will continue to meet

throughout the remainder of the LTMS study.

**ESTIMATED DATE OF DEIS/DEIR RELEASE:** In order to meet the August 1994 timeframe for commencement of Phase IV of the LTMS, the public draft of the EIS/EIR is scheduled to be available in February 1994 and final EIS/EIR available in June 1994.

**RESPONSIBLE OFFICIAL:** John C. Wise, Acting Regional Administrator, USEPA Region 9.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 93–17647 Filed 7–22–93; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 1953]**

### Petition For Reconsideration of Action in Rulemaking Proceeding

July 19, 1993.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this public notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed August 9, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

**Subject:** Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Coos Bay, Oregon) (MM Docket No. 93–18, RM No. 8173)

Number of Petitions Filed: 1

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–17480 Filed 7–22–93; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL TRADE COMMISSION

**[File No. 861 0055]**

### United Real Estate Brokers of Rockland, Ltd.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New York provider of real estate brokerage services from restricting exclusive-agency listings; restricting brokers from soliciting homeowners with current listings for future business; interfering with the cancellation of a listing; and excluding from membership brokers who do not operate a full-time office in Rockland County.

**DATES:** Comments must be received on or before September 23, 1993.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William Street, 13th Fl., New York, NY (212) 264–1200.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Agreement Containing Consent Order to Cease and Desist

In the matter of United Real Estate Brokers of Rockland, Ltd. a Corporation. File No. 8610055.

The Federal Trade Commission has initiated an investigation of certain acts and practices of United Real Estate Brokers of Rockland, Ltd., a corporation and successor by merger with its former wholly-owned subsidiary, Rockland County Multiple Listing Systems, Inc. It now appears that United Real Estate Brokers of Rockland, Ltd., hereinafter sometimes referred to as "proposed respondent" or "Rockland MLS," is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

Rockland MLS, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission agree that:

(1) Proposed respondent Rockland MLS is a New York corporation, with its office and principal place of business located at 255 South Middletown Road, Nanuet, New York 10954.

(2) Proposed respondent admits all the jurisdictional facts set forth in the draft complaint attached hereto.

(3) Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

(4) This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of 60 days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint attached hereto.

(6) This agreement contemplates that, if it is accepted by the Commission, and if this acceptance is not subsequently withdrawn by the Commission pursuant to its Rules, the Commission may, without further notice to proposed respondent, (a) issue its complaint corresponding in form and substance with the attached draft and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as

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stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(7) Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*Definitions*

The following definitions shall apply to this order:

(1) "Multiple listing service" shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "Applicant" shall mean any owner or co-owner of a real estate brokerage firm who is duly licensed as a real estate broker within the State of New York and who has applied on behalf of his or her firm for membership in respondent's multiple listing service.

(3) "Member" shall mean any real estate broker or brokerage firm represented by a broker that is entitled to participate in the multiple listing service offered by Rockland MLS.

(4) "Listing agreement" shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(5) "Listing broker" shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(6) "Selling broker" shall mean any broker, other than the listing broker, who procures the purchaser for a listed property.

(7) "Exclusive agency listing" shall mean any listing under which the property owner agrees to pay the broker and agreed commission if the property is sold through any real estate broker, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the broker.

(8) "Exclusive right to sell listing" shall mean any listing under which a property owner agrees to pay the broker an agreed commission if the property is sold, whether the purchaser is procured by the broker or any other person, including the owner.

(9) "Blue star arrangement" shall mean any listing that is submitted to Rockland MLS in which, pursuant to the property owner's request, all appointments to show the property are made through the listing broker's office.

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*It is ordered* that respondent Rockland MLS, its successors and assigns, and its directors, officers, committees, agents, representatives, and employees, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from adopting or maintaining any rule or policy or taking any other action that has the purpose, capacity, tendency, or effect of:

(A) Restricting or interfering with the acceptance or publication of exclusive agency listings by any means, including:

(1) Preventing or discouraging its member brokers from accepting exclusive agency listings in which property owners are free to advertise in newspapers or any other media the sale of their property;

(2) Preventing or discouraging its member brokers from accepting exclusive agency listings accompanied by a blue star arrangement;

(3) Requiring that the listing broker receive a lesser portion of the commission for exclusive agency listings than for exclusive right to sell listings when another member broker sells the property; or

(4) Adopting or enforcing any policy or practice that treats exclusive agency listings in a less advantageous manner than exclusive right to sell listings with respect to the acceptance and publication of photographs and descriptions of the listed property disseminated to its member brokers;

*Provided*, however, that nothing contained in this subpart shall preclude respondent from (a) prohibiting homeowners with exclusive agency listings from placing their own "for sale" sign on their property or from advertising below the listed price during the term of the listing; (b) requiring designation of the listing as one granting an exclusive agency; (c) charging a reasonable and nondiscriminatory fee based on costs for any service it provides; or (d) imposing terms applicable to all listings accepted for publication by Rockland MLS.

(B) Restricting or interfering with the solicitation of a listing agreement for any property; *Provided*, however, that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by Rockland MLS that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with Rockland MLS by another member used information provided to it by Rockland MLS in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than Rockland MLS.

(C) Restricting or interfering with any member and property owner cancelling a listing before the listing's expiration date; *Provided*, however, that nothing contained in this subpart shall prohibit respondent from: (1) requiring notice of the cancellation, including a copy of the cancellation agreement; and (2) charging a reasonable and nondiscriminatory fee for any service it provides if the property subject to the cancelled listing is sold before the original expiration date of the listing and said fee is not otherwise owed to respondent by another member; and (3) charging a reasonable and nondiscriminatory fee based on costs of any service it provides.

(D) Requiring, urging, recommending, or suggesting that any applicant for membership or member:

(1) Operate an office full-time or engage in real estate brokerage full-time;

(2) Maintain an office in Rockland County;

(3) Be a domiciled resident of the State of New York; or

(4) Pay any additional initiation fees or any other fees based upon the member's or applicant's status as an out-of-state resident;

*Provided*, however, that nothing in this subpart shall prohibit respondent from adopting, maintaining, or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on

respondent's multiple listing service are adequately serviced.

II

*It is further ordered* that respondent Rockland MLS shall:

(A) Within thirty (30) days after this order becomes final, furnish an announcement in the form shown in Appendix A to each member of Rockland MLS.

(B) Within sixty (60) days after this order becomes final, amend its constitution and by-laws, operating procedure, rules, regulations, policies or procedures, and all other of its materials to conform to the provisions of this order and provide each member with a copy of the amended by-laws, rules and regulations, and other amended materials.

(C) For a period of three (3) years after this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of Rockland MLS within thirty (30) days of the new member's admission.

III

*It is further ordered* that respondent Rockland MLS shall:

(A) Within ninety (90) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which Rockland MLS has complied and is complying with this order.

(B) In addition to the report required by Paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at any such other times as the Federal Trade Commission or its staff may by written notice to Rockland MLS require, file a verified written report with the Federal Trade Commission setting forth in detail the manner and form in which Rockland MLS has complied and is complying with this order.

(C) For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which Rockland MLS has complied with this order.

(D) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Rockland MLS, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in Rockland MLS that may affect compliance obligations arising out of this order.

**Appendix A**

[Respondent's Regular Letterhead]

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have been alleged to be unlawful restraints of trade. To avoid litigation, respondent United Real Estate Brokers of Rockland, Ltd., as successor by merger with Rockland County Multiple Listing Systems, Inc. has entered into such a consent agreement. The agreement is not an admission that respondent ("Rockland MLS") or any of its members has violated the law. For your information, Rockland MLS is prohibited from adopting or maintaining any rule or policy or taking any other action that has the purpose, capacity, tendency, or effect of:

(A) Restricting or interfering with the acceptance or publication of exclusive agency listings by any means, including:

(1) Preventing or discouraging its member brokers from accepting exclusive agency listings in which property owners are free to advertise in newspapers or any other media the sale of their property;

(2) Preventing or discouraging its member brokers from accepting exclusive agency listings accompanied by a blue star arrangement;

(3) Requiring that the listing broker receive a lesser portion of the commission for exclusive agency listings than for exclusive right to sell listings when another member broker sells the property; or

(4) Adopting or enforcing any policy or practice that treats exclusive agency listings in a less advantageous manner than exclusive right to sell listings with respect to the acceptance and publication of photographs and descriptions of the listed property disseminated to its member brokers;

*Provided*, however, that nothing contained in this subpart shall preclude respondent from (a) prohibiting homeowners with exclusive agency listings from placing their own "for sale" sign on their property or from advertising below the listed price during the term of the listing; (b) requiring designation of the listing as one granting an exclusive agency; (c) charging a reasonable and nondiscriminatory fee based on costs for any service it provides; or (d) imposing terms applicable to all listings accepted for publication by Rockland MLS.

(B) Restricting or interfering with the solicitation of a listing agreement for any property; *Provided*, however, that nothing contained in this subpart shall prohibit respondent from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by Rockland MLS that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with Rockland MLS by another member used information provided to it by Rockland MLS in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than Rockland MLS.

(C) Restricting or interfering with any member and property owner cancelling a listing before the listing's expiration date; *Provided*, however, that nothing contained in this subpart shall prohibit respondent from: (1) Requiring notice of the cancellation, including a copy of the cancellation agreement; and (2) charging a reasonable and nondiscriminatory fee for any service it provides if the property subject to the cancelled listing is sold before the original expiration date of the listing and said fee is not otherwise owed to respondent by another member; and (3) charging a reasonable and nondiscriminatory fee based on costs of any service it provides.

(D) Requiring, urging, recommending, or suggesting that any applicant for membership or member:

(1) Operate an office full-time or engage in real estate brokerage full-time;

(2) Maintain an office in Rockland County;

(3) Be a domiciled resident of the State of New York; or

(4) Pay any additional initiation fees or any other fees based upon the member's or applicant's status as an out-of-state resident;

*Provided*, however, that nothing in this subpart shall prohibit respondent from adopting, maintaining, or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

**United Real Estate Brokers of Rockland, Ltd. ("Rockland MLS")**

*Analysis of Proposed Consent Order To Aid Public Comment*

The Federal Trade Commission has accepted an agreement to a proposed consent order from United Real Estate Brokers of Rockland, Ltd., also known as the Rockland County Multiple Listing System (hereafter "Rockland MLS"). The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint prepared for issuance by the Commission along with the proposed order alleges that Rockland MLS unreasonably restrained competition among residential real estate brokers in Rockland County, New York, in violation of section 5 of the Federal Trade Commission Act. According to the complaint, Rockland MLS operates a multiple listing service ("MLS"). The complaint further alleges that Rockland MLS's members agree to submit all listings of residential real estate located within Rockland County for publication to the entire membership of the MLS, and to share commissions with those member brokers that successfully locate purchasers for properties listed.

The complaint alleges that Rockland MLS unlawfully restrained its member brokers' acceptance and sale of exclusive agency listings relative to exclusive right to sell listings, and thereby unreasonably inhibited homeowner efforts to compete by selling their property on their own. An "exclusive agency listing" is an agreement whereby the property owner does not pay a commission, or pays a reduced commission, if he or she makes the sale directly, without the assistance of a broker. An "exclusive right to sell listing" is an agreement whereby the property owner agrees to pay the broker a commission regardless of whether the purchaser is located by the broker or any other person, including the owner.

The complaint alleges that Rockland MLS restrained acceptance of exclusive agency listings by: Refusing to publish on the MLS exclusive agency listings that permit any manner of homeowner advertising; refusing to allow property owners to have the listing broker make all appointments to show the property; limiting the listing broker share of the commission to 20% for exclusive agency listings where another member broker sells the property; and publishing exclusive agency listings in its weekly listings book without the description or photograph that normally accompanies exclusive right to sell listings.

The complaint further alleges that Rockland MLS has several other by-laws and practices that unreasonably restrain competition among brokers: (1) Prohibiting any member other than the listing broker from soliciting the listing of any property until after the listing expires; (2) forbidding cancellation of the listing agreement unless the owner agrees to pay the listing broker a commission if the property is sold during the balance of the period of the listing; and (3) requiring member and applicant brokers to operate a full-time real estate brokerage office in Rockland County and be a domiciled resident of the State of New York, and, where this requirement is not enforced, requiring that out-of-state brokers pay an initiation fee that is substantially higher than the fee charged to New York State residents.

The tendency or effect of these practices, as alleged in the complaint, are to injure consumers by, among other things, restraining brokers from competition with respect to the commissions they charge for their real estate brokerage services, unreasonably restraining the entry of new competing brokerage firms, and substantially limiting consumers' abilities to choose among a variety of brokerage firms competing on the basis of price, contract terms, and services.

The Proposed Order

The proposed order would prohibit Rockland MLS from restricting or interfering with the acceptance or publication of exclusive agency listings by any means. The order, however, would allow Rockland MLS to: (a) Prohibit homeowners with exclusive agency listings from placing their own "for sale" sign on their property or from advertising below the listed price during the term of the listing; (b) require designation of the listing as one granting an exclusive agency; (c) charge a reasonable and nondiscriminatory fee based on costs for any service it provides; or (d) impose terms applicable to all listings accepted for publication by Rockland MLS.

The proposed order would also prohibit Rockland MLS from restricting or interfering with any member and property owner cancelling a listing before the listing's expiration date. The order, however, would allow Rockland MLS to require notice of the cancellation and charge specified reasonable and nondiscriminatory fees. In addition, the proposed order would prohibit Rockland MLS from requiring or recommending that any applicant or member operate an office full-time or engage in real estate brokerage full-time, maintain an office in Rockland County, be a domiciled resident of the State of New York, or pay any additional initiation fees or any other fees based upon the member's or applicant's status as an out-of-state resident. The order, however, would allow Rockland MLS to adopt any reasonable policy to assure that its members are actively engaged in real estate brokerage and that they adequately service any listings published on the MLS.

Finally, the order would prohibit Rockland MLS from restricting the solicitation of homeowners with current listings for future business. Rockland MLS would be allowed, however, to adopt reasonable rules to ensure that member brokers do not use proprietary information (information not otherwise available to competitors) as the basis for the solicitation. This provision would mean, for example, that Rockland MLS could prohibit member brokers from using the current compilation of MLS listings as a basis for selectively targeting listed home sellers for solicitation. Under the order, however, member brokers could use public information, such as "for sale" signs or newspaper advertisements of open houses, as the basis for selecting currently listing home sellers to solicit for future relisting.

Public comment is specifically invited on the appropriateness of this order provisions. For example, comments are invited on the potential benefits of removing restrictions on solicitation, based on public information, of current home sellers for future relisting (such as the likely extent of: increased solicitation targeted at listed home sellers; increased information to consumers about brokerage terms and services; and increased competition based on commission rates, listing terms, and services). Comments are also invited on any potential costs of removing such restrictions on solicitation (such as the impact, if any, on: the ability of the MLS to police any ban on members' use of current MLS listing information for solicitation; the level of cooperative sales efforts; and the level of use of "for sale" signs and open houses).

Finally, comments are invited on the merits of a disclosure requirement as an

alternative to the solicitation provision in the currently proposed consent. Such a requirement might order member brokers to disclose to potential sellers (1) all restrictions on solicitation for relistings and (2) the conditions under which consumers with existing listing contracts may initiate contact and contract for a future listing with brokers other than the one holding the existing listing.

The proposed order would require Rockland MLS to inform its members about the consent order; to conform its by-laws and rules to the order; to file compliance reports; to maintain and make available to the Federal Trade Commission staff certain documents; and to give advance notice of any change in Rockland MLS that may affect its compliance obligations.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

**Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part in United Real Estate Brokers of Rockland, Ltd., File 861-0055**

I have voted to publish the proposed consent order for comment. In general, the proposed order is consistent with previous Commission orders in cases involving multiple listing services. I write separately to note my dissent from Paragraphs I.A.3 and I.B of the proposed order.

Paragraph I.A.3 of the proposed order provides that Rockland must cease requiring that the listing broker receive a lesser share of the commission for exclusive agency listings, as defined in the order, than for exclusive right to sell listings, as defined, when another broker makes the sale. On its face, the provision appears to require only that Rockland cease discriminating against exclusive agency listings. What is not apparent from the face of the order is that Paragraph I.A.3 applies to Rockland's multiple listing service rule that fixes the commission split between listing and selling brokers. To the extent that the order applies only to the discriminatory aspect of the split and not to the fact that the split is fixed, the provision may implicitly approve the fixed split, which appears to be inconsistent with Commission precedent.

In Multiple Listing Service Mid County, Inc., 110 F.T.C. 482 (1988), the Commission's complaint alleges that a multiple listing service rule fixing maximum commission splits for listing brokers "deprive[s] consumers of the advantages of competition among * * * [brokers] to list and to sell residential real estate," *id.* at 485, and the order bars the MLS from "[f]ixing * * * any rate, range or amount of any division or split of commission or other fees between" selling and listing brokers. *Id.* at 489. Indeed, in two other multiple listing service cases, Puget Sound [1] and Bellingham-Whatcom,[2] the Commission even prohibited so-called "default" split rules that specified how the commission should be split in the apparently rare situations in which the listing broker failed to specify the split.[3] There is no apparent reason to distinguish between the rule implicitly sanctioned in Rockland and the rule prohibited in Mid County, and Rockland's rule mandating the split for all listings appears more like than the default split rules prohibited in Puget Sound and Bellingham-Whatcom to have anticompetitive effects.

Paragraph I.B of the proposed order requires Rockland to eliminate its restrictions on broker solicitation of listings while a listing agreement with another broker is in effect. This provision of the order is consistent with precedent. As our learning about multiple listing services has increased, however, the efficiency justification for anti-solicitation rules (to prevent brokers from exploiting the efforts of the listing broker) has become more clear and more credible. Because the rule now appears to be justifiable, and in the absence of evidence of anticompetitive effects, I no longer can find reason to believe sufficient to challenge the rule under Section 5 of the Federal Trade Commission Act.

[FR Doc. 93-17563 Filed 7-22-93; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Interagency Committee on Developmental Disabilities; Meeting

**AGENCY:** Administration for Children and Families (ACF), DHHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Interagency Committee on Developmental Disabilities (ICDD) was established in 1984 by section 108(b) of the Developmental Disabilities Assistance and Bill of Rights Act of 1984 (42 U.S.C. 6007(b) to "meet regularly to coordinate and plan activities by Federal departments and agencies for persons with developmental disabilities." In 1990, the Act was amended to provide that the meetings be open to the public and that a notice of the meeting be published in the **Federal Register**. Under section 107(c)(1)(E) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6006(c)(1)(E)), the Secretary must annually report on "the accomplishments of the interagency committee in comparison to the goals and objectives of such committee." The ICDD is chaired by the Assistance Secretary for Special Education and Rehabilitative Services and the Commissioner of the Administration on Developmental Disabilities.

**MISSION AND GOALS:** The mission of the ICDD is to promote the collaboration of appropriate Federal departments and agencies to improve the effectiveness of Federal programs in assisting persons with developmental disabilities to achieve their maximum potential through increased independence, productivity, and integration into the community and in such other ways that assist people with developmental disabilities to attain a more normalized and higher quality of life.

The ICDD has adopted the following goals:

- To exchange information on Federal activities that affect people with developmental disabilities so that each agency is able to utilize this information in managing and directing its programs;
- To identify the needs of people with developmental disabilities and barriers to achieving the goals of the Developmental Disabilities Act and to recommend solutions for meeting these needs and removing these barriers.
- To establish coordinated planning, when appropriate, for activities that are complementary or similar;
- To stimulate joint activities (e.g., joint research, joint development of policies and regulations, joint demonstration or evaluation projects) among the affected Federal agencies.

The ICDD meets regularly on the first Tuesday in December, April and August. The meeting is open to the public.

**DATES:** Tuesday, August 3, 1993, from 9:30 a.m. to 11:30 a.m.

**ADDRESSES:** Auditorium of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** John L. Pride, room 325D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201, (202) 690-6989.

**SUPPLEMENTARY INFORMATION:** At the meeting the ICDD will discuss: (1) Role, responsibilities and composition of ICDD subcommittees; (2) overview of relevant member agency activities.

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[1] Puget Sound Multiple Listing Service, Docket C-3300 (Aug. 2, 1990).

[2] Bellingham-Whatcom County Multiple Listing Service, Docket C-3299 (Aug. 3, 1990).

[3] I dissented from these prohibitions, on the grounds that the rules did not affect the level of commissions, did not mandate the division of commissions and applied only when the listing broker failed to specify a split. See Separate Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part in *Puget Sound* and *Bellingham-Whatcom*.

If a sign language interpreter is needed please notify John Pride at (202) 690–6969 by July 26.

Dated: June 29, 1993.

**Will Wolcsin,**

*Acting Commissioner, Administration on Developmental Disabilities.*

[FR Doc. 93–17553 Filed 7–22–93; 8:45 am]

BILLING CODE 4130–01–M

## Computer Matching Program

In compliance with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988, we are publishing a notice of a computer matching program that ACF will conduct on behalf of itself, the Health Care Financing Administration (HCFA) and Food and Nutrition Service (FNS), utilizing Veterans Affairs pension and compensation information and New York State Department of Social Services (NYSDSS), South Dakota Department of Social Services (SDDSS) and Tennessee Department of Human Services (TDHS) public assistance client records.

**ADDRESSES:** Interested parties may comment on this notice by writing to the Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047 Telephone Number (202) 401–6960.

**DATES:** We filed a report of the subject ACF matching program with the Committee on Government Affairs of the Senate and the Committee on Government Operations of the House of Representatives and the Office of Regulatory Affairs, the Office of Management and Budget (OMB) on July 19, 1993.

Privacy Act of 1974; Computer Matching Programs—Department of Veterans Affairs

**AGENCY:** Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Publication of notice of computer matching to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

**SUPPLEMENTARY INFORMATION:**

### A. General

Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal Benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State and local government records.

The amendments require Federal Agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress and OMB; and

(5) Establish a Data Integrity Board that must approve match agreements.

### B. ACF Computer Match Subject to Public Law 100–503

Below is a brief description followed by a detailed notice of a computer match that ACF will be conducting as of July 30, 1993 or later.

ACF computer match with Department of Veterans Affairs (VA). Purpose: To detect and determine the amount of benefit overpayment to public assistance recipients by verifying client VA pension and compensation circumstances using VA automated data files.

Dated: July 19, 1993.

**Laurence J. Love,**

*Acting Assistant Secretary for Children and Families.*

Notice of Computer Matching Program, New York State Department of Social Services (NYSDSS), South Dakota Department of Social Services (SDDSS) and Tennessee Department of Human Services (TDHS) public assistance client record matching with VA compensation and pension records.

### A. Participating Agencies

ACF, VA, NYSDSS, SDDSS and TDHS.

### B. Purpose of the Matching Program

The purpose of this matching program is to provide SDDSS, TDHS and NYSDSS with data from the VA benefit and compensation file. SDDSS, TDHS and NYSDSS will provide ACF with a file of Medicaid, aid to Families with Dependent Children (AFDC), general assistance and Food Stamp clients. VA will provide ACF with a file of individuals receiving VA compensation and pension benefits. ACF, on behalf of itself, HCFA, and FNS will match the SDDSS, TDHS and NYSDSS files with the VA file and provide SDDSS, TDHS and NYSDSS with VA pension and compensation benefit information. NYSDSS, SDDSS and TDHS will use the VA information to determine the value of using VA information to verify client circumstances and to initiate adverse action when appropriate.

### C. Authority for Conducting the Matching Program

ACF, HCFA, and FNS have an obligation to assist State Public Assistance Agencies in their efforts to verify client circumstances when determining an applicant's eligibility for public assistance benefits. The most cost-effective and efficient way to verify client declarations of income circumstances is by means of a computer match.

### D. Categories of Records and Individuals Covered by the Match

VA will disclose information from the VA Compensation, Pension, and Education and Rehabilitation Records—VA (58 VA 21/22), contained in the Privacy Act Issuances, 1989 compilation, Volume II, Pages 918–922 and as amended in **Federal Register** 56 FR 15667, April 17, 1991.

ACF will match this information with NYSDSS, SDDSS and TDHS Client Eligibility files.

### E. Inclusive Dates of the Match

This computer match will begin no sooner than 30 days from the date HHS publishes a Computer Matching Notice in the **Federal Register** or 30 days from the date copies of the approved agreement and the notice of the matching program are sent to the Congressional committee of jurisdiction under subsections (o)(2)(B) and (r) of the Privacy Act, as amended, or 30 days from the date the approved agreement is sent to the Office of Management and Budget, whichever is later, provided no comments are received which result in a contrary determination. This is a one-time match not subject to renewal.

### F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments to the Director, Office of Information Systems Management, Administration for Children and Families, Aerospace Building, 370

L'Enfant Promenade, SW., Washington, DC 20047.

[FR Doc. 93–17515 Filed 7–22–93; 8:45 am]

BILLING CODE 4160–01–M

## Centers for Disease Control and Prevention

### Advisory Committee for Injury Prevention and Control; Meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

*Name:* Advisory Committee for Injury Prevention and Control (ACIPC).

*Times and Dates:* 9 a.m.–5 p.m., August 9, 1993; 9 a.m.–5 p.m., August 10, 1993.

*Place:* Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

*Status:* Closed 9 a.m.–1:30 p.m., August 9; Open 1:30 p.m.–5 p.m., August 9; Open 9 a.m.–5 p.m., August 10.

*Purpose:* The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

*Matters To Be Discussed:* This meeting will convene in closed session from 9 a.m. to 1:30 p.m. on August 9, 1993. The purpose of this closed session is for the Science and Program Review Work Group to consider injury control research grant applications recommended for further consideration by CDC's Injury Research Grant Review Committee. The full committee will then vote on a funding recommendation. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463. After the closed session, the full committee will discuss the progress in the development of the National Center for Injury Prevention and Control, current violence prevention activities, the Second World Conference on Injury Control, injury control marketing, and current legislation activity. The State and Territorial Injury Prevention Directors Association will also provide an update.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Richard J. Waxweiler, Ph.D., Acting Executive Secretary, ACIPC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop F–41, Atlanta, Georgia 30341–3724, telephone 404/488–4031.

Dated: July 19, 1993.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17533 Filed 7–22–93; 8:45 am]

BILLING CODE 4160–18–M

### National Committee on Vital and Health Statistics Subcommittee on Medical Classification Systems; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

*Name:* NCVHS Subcommittee on Medical Classification Systems.

*Time and Date:* 9 a.m.–5 p.m., September 9, 1993.

*Place:* Hubert H. Humphrey Building, room 503A, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open.

*Purpose:* The subcommittee will review and finalize its report to the NCVHS to recommend a single procedure classification system; discuss major issues and recommendations from the September 8, 1993, NCVHS Executive Subcommittee public meeting concerning revision of the "International Classification of Impairments, Disabilities and Handicaps", World Health Organization, 1980; and discuss issues relating to the implementation of the International Classification of Diseases, Volume 10.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: July 19, 1993.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17532 Filed 7–22–93; 8:45 am]

BILLING CODE 4160–18–M

### National Committee on Vital and Health Statistics; Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee.

*Time and Date:* 9 a.m.–4 p.m., September 8, 1993.

*Place:* Hubert H. Humphrey Building, room 503A, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open.

*Purpose:* To obtain public comments on needed revisions of the "International Classification of Impairments, Disabilities and Handicaps" (ICIDH), published by the World Health Organization (WHO) in 1980. The ICIDH, a manual of classification relating to the consequences of disease, has been used extensively in other countries but has received only limited use in the United States. This meeting provides an opportunity for current users, prospective users, and persons who have not been able to use the ICIDH for some specific reason to have input into the first revision. It is anticipated that a summary of all comments received will be presented at the WHO First Revision Conference to be held in Washington, DC, on December 7–10, 1993.

*Matters to be Discussed:* There will be a brief review of the concepts, structure, and definitions of the ICIDH and the relationship of the ICIDH to the "International Classification of Diseases." To the extent that time permits, public comments will be permitted regarding applications of the ICIDH to national and state level data systems in clinical, research, program, and policy settings; evaluations of strengths and limitations of the ICIDH; and specific suggestions for needed revisions, deletions, and expansions to make the next version more useful for applications in the United States.

In order to be placed on the agenda to make public comments on strengths and limitations of the ICIDH, please submit a written summary of comments, not exceeding five pages, to the technical contact person listed below by August 16, 1993. Other oral comments and germane discussion will be accepted at the discretion of the chairman and as time permits.

Written comments from persons who do not expect to attend the September 8 meeting should be submitted to the technical contact person listed below by August 16, 1993. These comments will

become a part of the official record of the meeting.

Persons with disabilities who require special accommodations are requested to specify their needs in writing to the general information contact person listed below by August 22, 1993.

Background documents on the ICIDH are available from the technical contact person listed below.

Agenda items are subject to change as priorities dictate.

*Contact Persons for Additional Information:* Technical information: Gerry E. Hendershot, Ph.D., Chief, Illness and Disability Statistics Branch, Division of Health Interview Statistics, NCHS, CDC, telephone 301/436–7089, fax 301/436–6668 and General information on logistics and special needs: Ms. Jackie Adler, Conference and Committee Assistant, Program Development Staff, NCHS, CDC, telephone 301/436–7122, fax 301/436–4233. Mailing address: NCHS, CDC, 6525 Belcrest Road, room 1100, Hyattsville, Maryland 20782.

Dated: July 16, 1993.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control and Prevention [CDC].*

[FR Doc. 93–17534 Filed 7–22–93; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

[Docket No. 93N–0230]

## Intent to Conduct a Comprehensive Toxicological Assessment of Chloral Hydrate

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that it intends to conduct a comprehensive toxicological assessment of chloral hydrate. This study will be conducted under an interagency agreement between FDA and the National Institute of Environmental Health Sciences (NIEHS), whereby FDA will conduct comprehensive toxicological assessments on certain chemicals or agents in the National Toxicology Program (NTP). FDA invites interested parties to submit relevant information, including ongoing toxicological studies, current or future trends in use patterns and human exposure levels, and toxicological data.

**DATES:** Written information by August 23, 1993.

**ADDRESSES:** Submit written information to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William T. Allaben, National Center for Toxicological Research (HFT–30), Food and Drug Administration, 3900 NCTR Rd., Jefferson, AR 72079–9502, 501–543–7211.

**SUPPLEMENTARY INFORMATION:** In December 1992, FDA's National Center for Toxicological Research (NCTR) and NIEHS entered into an agreement whereby NCTR would conduct comprehensive toxicological assessments on selected chemicals. These toxicological assessments would be part of the NTP and would be designed to facilitate the interpretation of study results in support of comprehensive human health risk assessments. The program is intended to develop a comprehensive scientific data base that can be utilized to reduce the uncertainty in risk assessment/risk benefit analysis for specific chemicals.

As a member agency in the NTP, FDA has the opportunity to nominate one chemical annually for testing consideration. This nomination process is conducted by FDA's chemical selection working group. With this notice, FDA is announcing its intent to conduct a comprehensive toxicological assessment of chloral hydrate.

Chloral hydrate (2,2,2-Trichloro-1,1-ethanediol; CAS Reg. No. 302–17–0; $C_2H_3Cl_3O_2$) was first synthesized in 1832 and was introduced as a hypnotic drug in 1869. It continues to be used today as a sedative/hypnotic, primarily for children and elderly patients (Ref. 1). It is used as a sedative administered to children in dental procedures (Ref. 2) and in ophthalmoscopic procedures (Ref. 1). Additionally, chloral hydrate is commonly used to sedate neonates to decrease agitation when they are undergoing mechanical ventilation (Ref. 3) or to assure quiescence during imaging procedures (Ref. 4). Dosages in children range up to 60 milligrams (mg) per kilogram, whereas adult dosages range from 250 mg when used as a sedative, to 500 to 1,000 mg when used as a hypnotic.

In veterinary medicine, chloral hydrate is used as a central nervous system depressant, as a sedative, and for general anesthesia in cattle and horses.

In a recent screening study conducted by the Environmental Protection Agency, chloral hydrate was indicated as a possible male mouse liver tumorigen (Ref. 5). It has also been reported to be mutagenic or genotoxic in some prokaryotic and eukaryotic assay systems (Refs. 6 through 13). Other screening studies suggest that one major metabolite of chloral hydrate, trichloroacetic acid, may also be a male mouse tumorigen, and trichloroethylene (TRI) and perchloroethylene, both of which may be metabolized to chloral hydrate in rodents, have been shown to be carcinogenic in mice or rats (Refs. 14 through 17). Additionally, TRI and a major metabolite of chloral hydrate, trichloroethanol, have been reported to be mutagenic or genotoxic in some assay systems (Ref. 18).

While FDA is aware of some studies suggesting that chloral hydrate may be toxic in some animal models, there is no epidemiological evidence to suggest it presents a health risk to humans. Nevertheless, the agency believes there is a need to do a comprehensive toxicological assessment of chloral hydrate. This comprehensive toxicological assessment may include animal metabolite/pharmacokinetic studies for comparison to known (or planned) human pharmacokinetic studies in adults and children; range-finding studies; subchronic and chronic studies in appropriate animal models, including a dose-stop study; toxicokinetic studies; mutagenic evaluation using human cell lines expressing specific cytochrome P-450 isozymes; evaluation for and identification of specific deoxyribonucleic acid adducts; determination of cellular and peroxisome proliferation; modulation by dietary restrictions of activating/detoxifying chloral hydrate metabolic pathways in animal models; and an assessment of neurotoxicity.

### References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Blacow, N. W., editor, *Martindale: The Extra Pharmacopeia*, 26th ed., London, the Pharmaceutical Press, 898–900, 1973.

2. Smith, M. T., "Chloral Hydrate Warning," *Science*, p. 359, October 19, 1990.

3. Gorecki, D. K. J., et al., "Determination of Chloral Hydrate Metabolism in Adult and Neonate Biological Fluids After Single-Dose Administration," *Journal of Chromatography*, 528:333–341, 1990.

4. Neuman, G., L. Kushins, and S. Ferrante, "Sedation for Children Undergoing Magnetic Resonance Imaging and Computerized Tomography," *Anesthesia and Analgesia*, 74:931–932, 1990.

5. Daniel, F.B., et al., "Hepatocarcinogenicity of Chloral Hydrate, 2-Chloroacetaldehyde, and Dichloroacetic Acid in the Male B6C3F1 Mouse," *Fundamental and Applied Toxicology*, 19:159–168, 1992.

6. Dellarco, V., K. Mavournin, and M. Waters, "Aneuploidy Data Review Committee: Summary Compilation of Chemical Data Base and Evaluation of Test Methodology," *Mutation Research*, 167:149–169, 1986.

7. Carere, A., et al., "In Vitro and In Vivo Genotoxic Effects of Trichloroethylene and its Metabolites," *Mutation Research*, 130:247, 1984.

8. Parry, J. M. and S. James, "The Detection of Aneugenic Chemicals Using Yeast Strain D6," *Mutagenesis*, 3:447, 1988.

9. Bronzetti, G., et al., "Genetic and Biochemical Investigation of Chloral Hydrate In Vitro and In Vivo," *Mutation Research*, 141:19–22, 1984.

10. Waskell, L., "A Study of the Mutagenicity of Anesthetics and Their Metabolites," *Mutation Research*, 57:141–153, 1978.

11. Bignami, M., et al., "Mutagenicity of Halogenated Aliphatic Hydrocarbons in *Salmonella typhimurium, Streptomyces coelicolor*, and *Aspergillus nidulans*," *Chemical and Biological Interactions*, 30:9–23, 1980.

12. Nelson, M. A. and R. J. Bull, "Induction of Strand Breaks in DNA by Trichloroethylene and Metabolites in Rat and Mouse Liver In Vivo," *Toxicology and Applied Pharmacology*, 94:45–54, 1988.

13. Russo, A., F. Pacchierotti, and P. Metalli, "Nondisjunction Induced in Mouse Spermatogenesis by Chloral Hydrate, a Metabolite of Trichloroethylene," *Environmental Mutagenesis*, 6:695–703, 1984.

14. "Carcinogenesis Studies of Trichloroethylene (Without Epichlorohydrin) (CAS No. 79–01–6) in F344/N Rats and B6C3F1 Mice (Gavage Studies)," National Toxicology Program Technical Report Series No. 243, NIH Publication No. 90–1799, 1990.

15. National Cancer Institute, "Carcinogenesis Bioassay of Trichloroethylene," CAS No. 97–01–6, D.H.E.W. Publication No. (NIH) 76–802, 1976.

16. Herren-Freund, S. L., et al., "The Carcinogenicity of Trichloroethylene and its Metabolites, Trichloroacetic Acid and Dichloroacetic Acid in Mouse Liver," *Toxicology and Applied Pharmacology*, 90:183–189, 1987.

17. National Cancer Institute, "Bioassay of Tetrachloroethylene for Possible Carcinogenicity," D.H.E.W. Publication No. 77–813, 1977.

18. Crebelli, R. and A. Carere, "Genetic Toxicology of 1,1,2,-Trichloroethylene," *Mutation Research*, 221:11–37, 1989.

FDA invites interested parties to submit relevant information, including ongoing toxicological studies, current or future trends in use patterns and human exposure levels, and toxicological data, to the agency. Interested persons may, on or before August 23, 1993, submit information to the Dockets Management Branch (address above). Two copies of any information are to be submitted, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Received submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 16, 1993.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 93–17498 Filed 7–22–93; 8:45 am]

BILLING CODE 4160–01–F

## Advisory Committees; Notice of Meetings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**MEETINGS:** The following advisory committee meetings are announced:

### Pulmonary-Allergy Drugs Advisory Committee

*Date, time, and place.* August 9, 1993, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before July 26, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will review and discuss data on the product license application (PLA) for Pulmozyme® (dornase alfa) (PLA 93–0251), Genentech, Inc., as a mucolytic agent in patients with cystic fibrosis.

### Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

*Date, time, and place.* August 19, 1993, 11 a.m., and August 20, 1993, 8 a.m., Gaithersburg Marriott Hotel, Washingtonian Center, Grand Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD. Rooms have been reserved at the hotel. Please reference the FDA panel meeting to obtain a reduced group rate.

*Type of meeting and contact person.* Open public hearing, August 19, 1993, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 1 p.m. to 5 p.m.; open public hearing, August 20, 1993, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; Hollace A. Saas, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1036.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 6, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* On August 19, 1993, the committee will discuss a premarket approval application for an electrical muscle stimulator for use in walking. On August 20, 1993, the committee will discuss pedicle screw spinal fixation systems.

### Anesthetic and Life Support Drugs Advisory Committee

*Date, time, and place.* August 23, 1993, 9 a.m., Holiday Inn, Plaza

Ballroom, 8777 Georgia Ave., Silver Spring, MD.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 6, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss reports on the carcinogenicity of 2,6-xylidine (2,6-dimenthylaniline), a metabolite of lidocaine.

**Microbiology Devices panel of the Medical Devices Advisory Committee**

*Date, time and place.* August 23, 1993, 9 a.m., Ramada Inn, Embassy Ballrooms II and III, 8400 Wisconsin Ave., Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 11 a.m, unless public participation does not last that long; open committee discussion, 11 a.m. to 5 p.m.; Sharon L. Hansen, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1096.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 9, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss a premarket approval application for the use of a Southern blot nucleic acid hybridization assay to detect and type human papillomavirus.

**Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Abuse Advisory Committee**

*Date, time, and place.* August 24, 1993, 9 a.m., Holiday Inn, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research, HFD–7, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

*General function of the committees.* The Anesthetic and Life Support Drugs Advisory Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery. The Drug Abuse Advisory Committee advises on the scientific and medical evaluation of information gathered by the Department of Health and Human Services and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 6, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss several issues regarding the safety, abuse liability, recommended precautions and warnings relevant to the use of the new drug application (NDA) for Fentanyl (Oralet® Anesta) (NDA 20,195), a solid transmucosal dosage form of fentanyl intended for use in anesthesia.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office

(HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: July 14, 1993.

**Jane E. Henney,**

*Deputy Commissioner for Operations.*

[FR Doc. 93–17551 Filed 7–22–93; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–93–3522; FR–3348–N–04]

### State and Local Fair Housing Laws: Final Determination Concerning Certification of Substantially Equivalent Agency; State of Texas

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice is a follow-up to the notice published in the **Federal Register** on October 28, 1992 (57 FR 48803), which (1) announced that the Assistant Secretary for Fair Housing and Equal Opportunity had determined that the fair housing law of the State of Texas is substantially equivalent, on its face, to the Fair Housing Act, and (2) solicited public comment on this determination. Today's notice announces that the agency administering the fair housing law for the State of Texas has been certified under 24 CFR part 115 of HUD's regulations, which set forth procedures and requirements for certification of substantially equivalent agencies.

**EFFECTIVE DATE:** January 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., room 5234, Washington, DC 20410, telephone (202) 708–0455 (voice/TDD). (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

**Background**

Under the Fair Housing Act (42 U.S.C. 3600–3619), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to State and local agencies that have "substantially equivalent" fair housing laws, as determined and certified by the Department. The certification standards are codified at 24 CFR part 115.

On October 28, 1992 (57 FR 48803), the Department published a notice announcing that the fair housing law of the State of Texas had been determined by the Assistant Secretary for Fair Housing and Equal Opportunity to be, on its face, substantially equivalent to the Fair Housing Act. The notice advised that the fair housing law of the State of Texas provided, on its face, substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

The October 28, 1992 notice also announced that following a review of performance standards and other materials, the Assistant Secretary for Fair Housing and Equal Opportunity expected to determine that the law in operation provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act, and that the Department intended to execute a written agreement with the agency charged with enforcement of the fair housing law of the State of Texas in accordance with 24 CFR 115.6(c).

The October 28, 1992 notice invited the public to comment, within 30 days from the date of publication of the notice, on (1) the determination that the fair housing law of the State of Texas is, on its face, substantially equivalent to the Fair Housing Act and (2) the proposed determination that the law, in operation, provides rights and remedies substantially equivalent to those available under the Fair Housing Act. The comment period expired on November 27, 1992.

**This Notice**

No comments were received on the October 28, 1992 notice. The Assistant Secretary for Fair Housing and Equal Opportunity has completed the review of performance standards and other materials, as provided in 24 CFR part 115, and has determined that the fair housing law of the State of Texas, in operation, provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act.

On January 15, 1993, the Department entered into a memorandum of understanding with the agency charged with enforcement of the fair housing law of the State of Texas. The purpose of this notice is to announce that this agency has received certification as a substantially equivalent agency under 24 CFR part 115.

Dated: June 15, 1993.

**Leonora L. Guarrais,**

*General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 93–17573 Filed 7–22–93; 8:45 am]

BILLING CODE 4210–28–M

[Docket No. N–93–3640 FR–3348–N–05]

### Certification of Substantially Equivalent Agencies; and Interim Referral Agencies; Annual Notice

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Notice.

**SUMMARY:** As required by 24 CFR 115.6(f), this Notice announces (1) an updated consolidated list of all certified agencies; (2) a list of all agencies whose certification has been withdrawn since publication of the previous notice on January 13, 1992 (57 FR 1277); (3) a list of agencies for which notice of denial of certification has been published, in accordance with 24 CFR 115.7(c) since publication of the January 13, 1992 notice; (4) a list of agencies for which a notice of comment has been published in accordance with 24 CFR 115.6(b), and whose status remains pending; (5) a list of agencies for which notice of proposed withdrawal of certification has been published in accordance with 24 CFR 115.8(c), and whose withdrawal remains pending; and (6) a list of agencies with which an agreement for interim referrals or other utilization of services has been entered into under 24 CFR 115.11 and remains in effect. These announcements are applicable for calendar year 1992.

**FOR FURTHER INFORMATION CONTACT:** Marcella Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., room 5234, Washington, DC 20410–

2000, telephone number (202) 708–0455 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

## I. Background

Under the Fair Housing Act (42 U.S.C. 3600–3620), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The certification standards are codified at 24 CFR part 115.

## II. This Notice

This Notice announces, among other things, the 1992 list of agencies certified under 24 CFR 115.6(f), and the agencies with which the Department has entered into an agreement for interim referrals of complaints in accordance with 24 CFR 115.11.

In accordance with the requirements of 24 CFR 115.6(f), the Department makes the announcements set forth below. These announcements are applicable for the calendar year 1992.

### *Updated Consolidated List of Certified Agencies*

The agencies administering the fair housing laws of the following States and localities were certified under section 810(f) of the Fair Housing Act and 24 CFR 115.6(d) through January 13, 1992.

States (36)

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
West Virginia
Wisconsin

Localities (79)

Anchorage, AK
Phoenix, AZ
New Haven, CT
Washington, DC
Broward County, FL
Clearwater, FL
Dade County (Metropolitan), FL
Escambia County, FL
Gainsville, FL
Hillsborough County, FL
Jacksonville, FL
Orlando, FL
Pensacola, FL
Pinellas County, FL
St. Petersburg, FL
Tallahassee, FL
Tampa, FL
Bloomington, IL
Danville, IL
Elgin, IL
Evanston, IL
Hazel Crest, IL
Park Forest, IL
Springfield, IL
Urbana, IL
Columbus, IN
East Chicago, IN
Fort Wayne, IN
Gary, IN
Hammond, IN
Marion, IN
South Bend, IN
Des Moines, IA
Dubuque, IA
Iowa City, IA
Kansas City, KS
Lawrence, KS
Olathe, KS
Salina, KS
Louisville and Jefferson County, KY
Lexington-Fayette Urban County, KY
Howard County, MD
Montgomery County, MD
Prince George's County, MD
Boston, MA
Cambridge, MA
Minneapolis, MN
St. Paul, MN
Kansas City, MO
St. Louis, MO
Lincoln, NE
Omaha, NE
New York, NY
Rockland County, NY
Asheville, NC
Charlotte, NC
Mecklenburg County, NC
New Hanover County, NC
Raleigh, NC
Winston-Salem, NC
Dayton, OH
Allentown, PA
Harrisburg, PA
Philadelphia, PA
Pittsburgh, PA
Reading, PA
York, PA
Sioux Falls, SD
Knoxville, TN
Fort Worth, TX
Arlington County, VA
King County, WA
Seattle, WA
Tacoma, WA
Beckley, WV
Charleston, WV
Huntington, WV
Beloit, WI
Madison, WI

The agencies administering the fair housing laws of the following States and localities were certified under section 810(f) of the Fair Housing Act and 24 CFR 115.6(d) through September 13, 1992:

States (27)

California
Colorado
Connecticut
Delaware
Hawaii
Illinois
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Montana
New Hampshire
New Jersey
New Mexico
New York
Oklahoma
Pennsylvania
Rhode Island
Tennessee
Virginia
Washington
Wisconsin

Localities (68)

Phoenix, AZ
New Haven, CT
Broward County, FL
Clearwater, FL
Dade County (Metropolitan), FL
Escambia County, FL
Gainesville, FL
Hillsborough County, FL
Jacksonville, FL
Orlando, FL
Pensacola, FL
Pinellas County, FL
St. Petersburg, FL
Tallahassee, FL
Tampa, FL
Elgin, IL
Evanston, IL
Springfield, IL
Columbus, IN
East Chicago, IN
Fort Wayne, IN
Gary, IN
Hammond, IN
Marion, IN
South Bend, IN
Des Monies, IA
Dubuque, IA
Lawrence, KS
Olathe, KS
Salina, KS
Louisville and
Lexington-F
Howard Cou
Montgomery
Prince Georg
Boston, MA
Cambridge,
Mineapolis,
St. Paul, MN
Kansas City,
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Omaha, NE
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Asheville, N
Charlotte, N
Mecklenburg
New Hanove
Raleigh, NC
Winston-Sal
Dayton, OH
Allentown,
Harrisburg,
Philadelphia
Pittsburgh,
Reading, PA
York, PA
Sioux Falls,
Knoxville, T
Fort Worth,
Arlington Co
King County
Seattle, WA
Tacoma, WA
Charleston,
Huntington,
Madison, WI

### *Withdrawal of Certification*

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§ 115.11, unless
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purposes of the
13, 1998 shall,

Salina, KS
Louisville and Jefferson County, KY
Lexington-Fayette Urban County, KY
Howard County, MD
Montgomery County, MD
Prince George's County, MD
Boston, MA
Cambridge, MA
Minneapolis, MN
St. Paul, MN
Kansas City, MO
St. Louis, MO
Lincoln, NE
Omaha, NE
New York, NY
Rockland County, NY
Asheville, NC
Charlotte, NC
Mecklenburg, NC
New Hanover County, NC
Raleigh, NC
Winston-Salem, NC
Dayton, OH
Allentown, PA
Harrisburg, PA
Philadelphia, PA
Pittsburgh, PA
Reading, PA
York, PA
Sioux Falls, SD
Knoxville, TN
Fort Worth, TX
Arlington County, VA
King County, WA
Seattle, WA
Tacoma, WA
Charleston, WV
Huntington, WV
Madison, WI

*Withdrawal of Certification; Denial of Certification; and Pending Requests for Certification*

The Department announces that for calendar year 1992 no certification has been withdrawn since publication of the January 13, 1992 notice; no notice of denial of certification has been published since the January 13, 1992 notice; and no agencies for which a notice of comment was published under 24 CFR 115.6(b) have pending requests for certification.

*Loss of Certification Due to Expiration of Temporary "Grandfathered-In" Period*

The Department notes, however, that as a result of the expiration of the temporary "grandfathered-in period," which ended on January 13, 1992, several agencies lost their certification status or interim certification status.[1]

The Assistant Secretary had the authority to extend this period to September 13, 1992. After September 13, 1992, all agencies were required to be certified or certified on an interim basis on the basis of standards set forth in 24 CFR part 115, as published in the Fair Housing Act final rule on January 23, 1989. Any agency that was not certified or interim certified in accordance with these standards by September 13, 1992 is no longer a "substantially equivalent" agency. Therefore, as of January 14, 1992, the following jurisdictions lost their certification status (13 jurisdictions lost their certification status as a result of denials of requests for an extension by the Assistant Secretary; and three lost their certification status because the agencies did not request an extension and their certification status automatically expired on January 14, 1992):

States (5)

Alaska
Nevada
Oregon
South Dakota
West Virginia

Localities (11)

Anchorage, AK
Washington, DC
Bloomington, IL
Danville, IL
Hazel Crest, IL
Park Forest, IL
Urbana, IL
Iowa City, IA
Kansas City, KS
Beckley, WV
Beloit, WI

On September 14, 1992, the following jurisdictions lost their certification or interim certification status:

States (17)

California
Delaware
Hawaii
Kentucky
Maine
Maryland
Michigan
Minnesota
New Hampshire
New Jersey
New Mexico
New York
Rhode Island
Tennessee
Virginia
Washington
Wisconsin

Localities (55)

Phoenix, AZ
New Haven, CT
Broward County, FL
Clearwater, FL
Dade County (Metropolitan), FL
Escambia County, FL
Gainesville, FL
Hillsborough County, FL
Jacksonville, FL
Pensacola, FL
St. Petersburg, FL
Elgin, IL
Evanston, IL
Columbus, IN
East Chicago, IN
Fort Wayne, IN
Gary, IN
Hammond, IN
Marion, IN
South Bend, IN
Des Moines, IA
Lawrence, KS
Olathe, KS
Louisville and Jefferson County, KY
Lexington-Fayette Urban County, KY
Howard County, MD
Motgomery County, MD
Prince George's County, MD
Boston, MA
Minneapolis, MN
St. Paul, MN
Kansas City, MO
St. Louis, MO
Lincoln, NE
Omaha, NE
New York, NY
Rockland County, NY
Mecklenburg County, NC
New Hanover County, NC
Dayton, OH
Allentown, PA
Harrisburg, PA
Philadelphia, PA
Pittsburgh, PA
Reading, PA
York, PA
Sioux Falls, SD
Knoxville, TN
Fort Worth, TX
Arlington County, VA
Seattle, WA
Tacoma, WA
Charleston, WV
Beloit, WI
Madison, WI

*Interim Certification*

The Department announces that the agencies administering the fair housing laws of the following States and localities entered into an agreement for interim referrals on September 12, 1988. These agencies were therefore considered to have interim certification in accordance with section 810(f)(4) of the Act through January 13, 1992:

States (2)

Georgia
Ohio

Localities (5)

Lee County, FL

[1] Paragraph (d) of 24 CFR 115.6 (Procedures for Certification) provides: "During the period which begins on September 13, 1988 and ends January 13, 1992, each State or locality recognized as substantially equivalent under 24 CFR part 115 (including any State or locality which had entered into an agreement for interim referrals under § 115.11, unless the State or locality is subsequently denied recognition under 24 CFR 115.7) for the purposes of the Fair Housing Act before September 13, 1988 shall, for the purpose of this paragraph, be considered certified under this part with respect to those matters for which the agency was previously recognized. If the Secretary determines in an individual case that a State or locality has not been able to meet the certification requirements within this 40-month period because of exceptional circumstances (such as the infrequency of legislative sessions in that jurisdiction), the Secretary may extend the period of temporary certification to no later than September 13, 1992."

Durham, NC
Greensboro, NC
St. Joseph, MO
Albany, NY

The Department announces that the agencies administering the fair housing laws of the following States and localities entered into an agreement for interim referrals on September 12, 1988. These agencies were therefore considered to have interim certification in accordance with section 810(f)(4) of the Act through September 13, 1992:

States (2)

Georgia
Ohio

Localities (5)

Lee County, FL
Durham, NC
Greensboro, NC
St. Joseph, MO
Albany, NY

In addition, the Department announces that the agencies administering the fair housing laws of the following States and localities entered into an agreement for interim referrals subsequent to September 12, 1988. These agencies were also considered to have interim certification in accordance with section 810(f)(4) of the Act. The agencies and the dates of their agreements are as follows:

States (20)

Arizona—May 4, 1992
Colorado—September 13, 1992
Connecticut—November 25, 1992
Florida—December 12, 1991
Georgia—November 19, 1992
Illinois—September 11, 1992
Indiana—August 9, 1991
Iowa—December 3, 1992
Kansas—September 11, 1992
Massachusetts—September 11, 1992
Missouri—December 3, 1992
Montana—September 24, 1992
Nebraska—April 20, 1992
North Carolina—December 31, 1990
Ohio—November 16, 1992
Oklahoma—October 7, 1992
Pennsylvania—October 19, 1992
South Carolina—December 31, 1990
Texas—October 30, 1990
West Virginia—October 19, 1992

Localities (14)

Orlando, FL—November 19, 1992
Pinellas County, FL—October 29, 1992
Tampa, FL—December 3, 1992
Springfield, IL—October 7, 1992
Salina, KS—October 20, 1992
Cambridge, MA—December 3, 1992
Asheville-Buncombe County, NC—May 18, 1992
Charlotte, NC—August 11, 1992
Greensboro, NC—October 7, 1992
Winston—Salem, NC—August 11, 1992
Shaker Heights, OH—September 24, 1992
Dallas, TX—June 12, 1992
Charleston, WV—September 11, 1992
King County, WA—October 19, 1992

Dated: June 15, 1993.

**Leonora L. Guarrasi,**

*General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 93-17574 Filed 7-22-93; 8:45 am]

BILLING CODE 4210-28-M

## Office of the Assistant Secretary for Community Planning and Development

**[Docket No. N-93-1917; FR-3350-N-41]**

## Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** July 23, 1993.

**ADDRESS:** For further information, contact Mark Johnston, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 16, 1993.

**Jacquie M. Lawing**

*Deputy Assistant Secretary for Economic Development*

[FR Doc. 93-17352 Filed 7-22-93; 8:45am]

BILLING CODE 4210-29-F

## DEPARTMENT OF THE INTERIOR

## Performance Review Board Appointments

**AGENCY:** Department of the Interior.

**ACTION:** Notice of Performance Review Board Appointments.

**SUMMARY:** This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Boards. The publication of these appointments is required by section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95-454, 5 U.S.C. 4314(c)(4).

**DATES:** These appointments are effective upon publication in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Morris A. Simms, Director of Personnel, Office of the Secretary, Department of the Interior, 1849 C Street NW., Washington, DC 20240, Telephone Number: (202) 208-6761.

## SES Performance Review Boards—FY 1993

*Departmental Performance Review Board (DPRB)*

Bonnie R. Cohen, Chair, Assistant Secretary—Policy, Management and Budget (NC)
Thomas C. Collier, Jr., Office of the Secretary (NC)
Jay L. Gerst, U.S. Fish and Wildlife Service (CA)
Lawrence F. Hancock, Bureau of Reclamation (CA)
Lucy R. Querques, Minerals Management Service (CA)

*Office of the Solicitor*

Patricia J. Beneke, Chair (NC)
Anthony R. Conte (CA)
Gina Guy (CA)
John D. Trezise (CA)
David A. Watts (CA)

*Assistant Secretary—Policy, Management and Budget*

Mary Ann Lawler, Chair (CA)
Paul A. Denett (CA)
Gayle F. Gordon (CA)
Willie R. Taylor (CA)
Brooks B. Yeager (NC)

*Assistant Secretary—Land and Minerals Management*

Jean W. Baines, Chair (CA)
Michael P. Dombeck (CA)
Robert W. Faithful (CA)
Denise P. Meridith (CA)
W. Hord Tipton (CA)

*Assistant Secretary—Fish and Wildlife and Parks*

Joseph E. Doddridge, Chair (CA)
Donald J. Barry (NC)
Jerome M. Butler (CA)
Ronald E. Lambertson (CA)
John J. Reynolds (CA)
Marie G. Rust (CA)
Robert G. Stanton (CA)

*Assistant Secretary—Water and Science*

Debra S. Knopman, Chair (NC)

Richard A. Engberg (CA)
James F. Donahue (CA)
John A. Fischer (CA)
Donald R. Glaser (CA)
Bonnie A. McGregor (CA)
J. Neil Stressman (CA)

*Assistant Secretary—Indian Affairs*

Billie D. Ott, Chair (CA)
Carol A. Bacon (CA)
John W. Tippeconnic (CA)
Merritt E. Youngdeer (CA)

Date: July 14, 1993.

Approved for the Executive Resources Board.

**Bonnie R. Cohen,**

*Assistant Secretary, Policy, Management and Budget.*

[FR Doc. 93–17500 Filed 7–22–93; 8:45 am]

BILLING CODE 4310–RG–M

## Bureau of Land Management

[NV–054–4333–04]

### Temporary Closure of Certain Public Lands; Las Vegas District

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Temporary closure.

**SUMMARY:** This temporary closure is issued for the protection of persons, property, and public lands and resources in the Nelson Hills area during an off-highway vehicle race.

The legal location of the closure is T. 24–26 S., R. 63–64 E. The following are exceptions to the closure:

—Highway 95 and Nelson Highway
—Lands north of Nelson Highway and east of Highway 95
—Southern Nevada Off-Road Racing Enthusiasts race entrants, pit crews, course monitors, and race officials.
—Spectators within designated spectator areas

The area will be closed from 6 p.m. on July 25 to 3 a.m. on July 25, 1993. Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Authority for this temporary closure is contained in title 43 CFR, subpart 8364.1. A map of the affected lands is available for inspection at the Las Vegas District office.

**Gary Ryan,**

*Assistant District Manager.*

[FR Doc. 93–17491 Filed 7–22–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–054–93–4339–04]

### Temporary Closure of Certain Public Lands; Las Vegas District

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Temporary closure.

**SUMMARY:** This temporary closure is issued for the protection of persons, property, and public lands and resources in the Nellis Dunes area during an off-highway vehicle race.

The legal location of the closure is T. 19 S., R. 63 E., sections 13–25, and 34–36. Exceptions to the closure include:

—Highway 15 and Las Vegas Blvd.
—Southern Nevada ATV Racing Enthusiasts race entrants, pit crews, course monitors, and race officials.
—Spectators within designated spectator areas.

The area will be closed July 17–18 and July 31–August 1, 1993 between 3 p.m. and 3 a.m. daily. Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Authority for this temporary closure is contained in title 43 CFR, subpart 8364.1. A map of the affected lands is available for inspection at the Las Vegas District office.

**Gary Ryan,**

*Assistant District Manager.*

[FR Doc. 93–17497 Filed 7–22–93; 8:45 am]

BILLING CODE 4310–HC–M

[UT–040–03–4210–05]

### Escalante Management Framework Plan, Garfield County, UT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to do a plan amendment for the Escalante Management Framework Plan (MFP) located in Garfield County, Utah.

**DATES:** The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before August 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** A.J. Martinez, Area Manager, Escalante Resource Area, P.O. Box 225, Escalante, Utah 84726. Existing planning documents and information are available at the above address or telephone (801) 826–4291. Comments on this proposed plan amendment should be sent to the above address.

**SUPPLEMENTARY INFORMATION:** The BLM is proposing to amend the Escalante MFP, which includes public lands in Garfield County, Utah. The proposed amendment would be to make certain public lands available for disposal to Garfield County for the purpose of a collection transfer site as part of Garfield County's sanitary landfill under the authority of the Recreation and Public Purposes Act, as amended (44 Stat. 741; 43 U.S.C. 869, *et seq.*). The public lands being considered for disposal are described as follows:

**Salt Lake Meridian, Utah**

T. 34 S., R. 5 E., sec. 6, W½NW¼;
T. 34 S., R. 4 E., sec. 3, N½NE¼;

Approximately 10 acres of the above 160 acres will be considered for disposal. The existing plans do not identify these lands as suitable for disposal. However, because of resource values, public values, and the objective involved, the public interest may be well served by disposal of these lands. An environmental assessment will be prepared to analyze the impacts of this proposal and alternatives.

**James M. Parker,**

*State Director.*

[FR Doc. 93–17489 Filed 7–22–93; 8:45 am]

BILLING CODE 4310–DQ–M

[UT–020–03–4320–01]

### Salt Lake District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of grazing advisory board meeting.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on August 31, 1993. The meeting will begin at 8:30 a.m. at the Salt Lake District, Bureau of Land Management, office at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to: (1) Review FY 1993 range improvement accomplishments; (2) review proposed range improvement work for the upcoming year (FY 1994), and (3) review the Salt Lake District's FY 1993 Animal Damage Control Plan and Environmental Assessment.

The meeting is open to the public. Interested persons may make oral statements at the meeting between 9 a.m. and 9:30 a.m., or file a written statement for the Board's consideration. Those wishing to make statements to the Board are requested to contact Glade Anderson at (801) 977–4300 by August

20th so that adequate time can be included on the agenda.

Donna H. Zeller,

*Salt Lake District Manager.*

[FR Doc. 93-17490 Filed 7-22-93; 8:45 am]

BILLING CODE 4310-DQ-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-642 (Final)]**

## Ferrosilicon From Egypt; Import Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Institution and scheduling of a final antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-642 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Egypt of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** June 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Fred Fischer (202-205-3179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

**SUPPLEMENTARY INFORMATION:**

### Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of ferrosilicon from Egypt are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on January 12, 1993, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Inc., Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland OH; Silicon Metaltech, Inc., Seattle WA; Oil, Chemical & Atomic Workers Union (local 389); United Autoworkers of America Union (locals 523 and 12646); and United Steelworkers of America Union (locals 2528, 3081, and 5171).

### Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

### Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on August 31, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

### Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 14, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 7, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 9, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

### Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is September 8, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is September 22, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 22, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

Issued: July 16, 1993.

By order of the Commission.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 93-17506 Filed 7-22-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 332-267]

**The Effects of Greater Economic Integration Within the European Community, On the United States, Sixth Followup Report: The Status of Implementation**

**AGENCY:** United States International Trade Commission.

**ACTION:** Deadline for submissions in connection with the sixth followup report.

**SUMMARY:** The Commission has commenced work on the sixth in a series of followup reports in connection with investigation No. 332–267, The Effects of Greater Economic Integration Within the European Community on the United States. The reports were requested under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) by the House Committee on Ways and Means and the Senate Committee on Finance in a letter received on October 13, 1988. Notice of the institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of December 21, 1988 (53 FR 51328), and notice of the procedure to be followed in followup reports was published in the **Federal Register** of September 20, 1989 (54 FR 38751).

The sixth followup report will focus exclusively on the status of member-state implementation of legislation adopted by the European Community in connection with its EC 1992 integration program. The goal is to complete the Commission's wrapup of the Community's progress in attaining its single market objectives by identifying the extent to which the necessary legal steps have been taken to translate EC-level legislation into member-state law. Where problems are evident, the Commission will seek to ascertain their causes.

The Commission anticipates sending the sixth followup report to the Committees on December 17, 1993.

**EFFECTIVE DATE:** July 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** For further information on the investigation contact Ms. Joanne Guth at 202–205–3264.

**Written Submissions**

Interested persons are invited to submit written statements concerning the investigation. Written submissions to be considered by the Commission for the sixth followup report should be received by the close of business on September 17, 1993. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 19, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–17505 Filed 7–22–93; 8:45 am]

BILLING CODE 7020-02-P

## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32319]

**The Alabama Great Southern Railroad Co.; Merger and Control Exemption Chattanooga Terminal and Chattanooga Station Companies**

The Alabama Great Southern Railroad Company (AGS), Chattanooga Terminal Railway Company (Terminal), and Chattanooga Station Company (Station) have filed a notice of exemption for: (1) AGS to acquire control of Terminal and Station through stock ownership on or soon as practicable after July 7, 1993; and (2) Terminal and Station to merger into AGS on or after August 1, 1993.

Terminal and Station are class III rail carriers. Terminal owns approximately 1.4 miles of line and Station owns approximately 2 miles of line and terminal properties in and around Chattanooga TN. AGS is a class III rail carrier operating approximately 498 miles of railroad in the States of Tennessee, Louisiana, Mississippi, Alabama, and Georgia. All three carriers are commonly controlled and operated as part of the Norfolk Southern Railway Company (NSR) rail system.

Norfolk Southern Corporation, a noncarrier holding company, controls through stock ownership NSR, and NSR, in turn, controls through stock ownership AGS and Terminal. NSR also indirectly controls Station through stock ownership by companies within the NSR corporate family, as follows: (1) NSR owns 333 shares; (2) AGS owns 333 shares; and (3) The Cincinnati, New Orleans and Texas Pacific Railway Company (CNO&TP), a wholly owned direct subsidiary of NSR, owns 334 shares.

As part of NSR's corporate restructuring: (1) CNO&TP— will transfer its shares of Station common stock as a dividend to NSR; (2) NSR will then transfer all of its shares of Station common stock (66 percent) and Terminal common stock (100 percent) to AGS; and (3) Terminal and Station then will be merged into AGS and the separate corporate existence of Terminal and Station will cease. AGS, as the surviving corporation, will succeed to ownership of all the assets of Terminal and Station and will be responsible for all the debts and obligations of Terminal and Station.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the NSR's corporate family. The purpose of the transaction is to simplify NSR's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping, and reporting functions.

To ensure that all employees who may be affected by the transaction are given the protection afforded under 49 U.S.C. 10505(g)(2) and 49 U.S.C. 11347, the labor conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern District., 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: J. Gary Lane, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510.

Decided: July 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17561 Filed 7–22–93; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32289]

**Rio Grande Pacific Corp.—Continuance in Control Exemption—Nebraska Central Railroad Co.; Exemption**

Rio Grande Pacific Corporation (Rio Grande), a noncarrier, has filed a notice

of exemption to continue in control of Nebraska Central Railroad Company (Nebraska), upon the latter's becoming a class III rail carrier.

Nebraska, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32290, Nebraska Central Railroad Company—Lease and Operation Exemption—Union Pacific Railroad Company, to acquire by lease and to operate 248.44 miles of rail line owned by Union Pacific Railroad Company (UP) in the State of Nebraska. Nebraska also seeks to acquire incidental trackage rights over approximately 25.32 miles of UP's line in the State of Nebraska. The exemption became effective on June 25, 1993.

Rio Grande also controls a nonconnecting class III rail carrier, Wichita, Tillman & Jackson Railway, which operates approximately 101.6 miles of railroad in the States of Texas and Oklahoma. Rio Grande indicates that: (1) The rail lines to be leased and operated by Nebraska will not connect with any other railroad in Rio Grande's corporate family; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transactions. Pleadings must be filed with the Commission and served on: John D. Heffner, Gerst, Heffner, Carpenter & Precup, Suite 1107, 1700 K Street, NW., Washington, DC 20006.

Decided: July 9, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 93–17502 Filed 7–22–93; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General/Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

### New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

*Volume II*

Iowa
IA930025 (July 23, 1993)
IA930026 (July 23, 1993)
IA930027 (July 23, 1993)
IA930028 (July 23, 1993)
IA930029 (July 23, 1993)

### Modification to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

*Volume I*

Kentucky
KY930001 (Feb. 19, 1993)
KY930002 (Feb. 19, 1993)
KY930003 (Feb. 19, 1993)
KY930004 (Feb. 19, 1993)
KY930006 (Feb. 19, 1993)
KY930007 (Feb. 19, 1993)
KY930029 (Feb. 19, 1993)

KY930032 (Feb. 19, 1993)
KY930035 (Feb. 19, 1993)
Maryland
MD930021 (Feb. 19, 1993)
MD930026 (Feb. 19, 1993)
West Virginia
WV930002 (Feb. 19, 1993)

*Volume II*

Indiana
IN930004 (Feb. 19, 1993)
Louisiana
LA930001 (Feb. 19, 1993)
LA930005 (Feb. 19, 1993)
LA930009 (Feb. 19, 1993)
LA930015 (Feb. 19, 1993)
Missouri
MO930002 (Feb. 19, 1993)
Nebraska
NE930003 (Feb. 19, 1993)
NE930009 (Feb. 19, 1993)
NE930010 (Feb. 19, 1993)
NE930011 (Feb. 19, 1993)
NE930055 (Feb. 19, 1993)
NE930056 (Feb. 19, 1993)
Ohio
OH930001 (Feb. 19, 1993)
OH930002 (Feb. 19, 1993)
OH930003 (Feb. 19, 1993)
OH930012 (Feb. 19, 1993)
OH930028 (Feb. 19, 1993)
OH930029 (Feb. 19, 1993)
OH930034 (Feb. 19, 1993)
Oklahoma
OK930013 (Feb. 19, 1993)
Texas
TX930043 (Feb. 19, 1993)
TX930070 (Feb. 19, 1993)

*Volume III*

Idaho
ID930001 (Feb. 19, 1993)
South Dakota
SD930002 (Feb. 19, 1993)
SD930003 (Feb. 19, 1993)
SD930005 (Feb. 19, 1993)
SD930006 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930002 (Feb. 19, 1993)
WA930003 (Feb. 19, 1993)
WA930007 (Feb. 19, 1993)
WA930008 (Feb. 19, 1993)
WA930011 (Feb. 19, 1993)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 16th day of July 1993.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 93–17287 Filed 7–22–93; 8:45 am]

BILLING CODE 4510–27–M

## Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. U.S. Steel Mining Company, Inc.**

[Docket No. M–93–145–C]

U.S. Steel Mining Company, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Oak Grove Mine (I.D. No. 01–00851) located in Jefferson County, Alabama. The petitioner proposes to use guarded high-voltage cables with flame-resistant jackets to power longwall equipment. In addition, the petitioner proposes to use ground-fault, short-circuit, and over-temperature protection; to require specific safety equipment and training for miners; to implement or maintain a number of safe work practices; and to maintain headgate and tailgate travelways. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**2. RoxCoal Incorporated**

[Docket No. M–93–146–C]

RoxCoal Incorporated, P.O. Box 149, Friedens, Pennsylvania 15541 has filed a petition to modify the application of 30 CFR 75.1719–1 (illumination in working places) to its Diamond T B Mine (I.D. No. 36–08223), its Diamond T C Mine (I.D. No. 36–08214), and its Longview Mine (I.D. No. 36–03248) all located in Somerset County, Pennsylvania. Instead of the illumination required by the standard, the petitioner proposes to ensure that no equipment or pedestrians will travel in front of the mobile roof support (MRS) while it is being setup, to provide the MRS with reflective tape, and to use continuous mining machines to illuminate the MRS area of travel on the pillar line. The petitioner asserts that application of the standard would result in a diminution of safety to the miners.

**3. Kelley Creek Resources, Inc.**

[Docket No. M–93–147–C]

Kelley Creek Resources, Inc., Route 4, Box 662, Whitwell, Tennessee 37397 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (preshift examination) to its Mine No. 78 (I.D. No. 40–02934) located in Sequatchie County, Tennessee. Due to deteriorating roof conditions certain areas of the mine cannot be traveled safely. As an alternative, the petitioner proposes to evaluate the air quantity, methane, and oxygen daily at specific strategic locations. The petitioner asserts that clean up of the affected area would jeopardize the health and safety of miners and that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**4. Little Rock Coal Company**

[Docket No. M–93–148–C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its No. 1 Slope (I.D. No. 36–08320) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**5. Little Rock Coal Company**

[Docket No. M–93–149–C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 1 Slope (I.D. No. 36–08320) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standards to permit alternative methods of construction using wooden materials of moderate size and weight due to the

difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**6. Little Rock Coal Company**

[Docket No. M-93-150-C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its No. 1 Slope (I.D. No. 36-08320) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**7. Little Rock Coal Company**

[Docket No. M-93-151-C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 1 Slope (I.D. No. 36-08320) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**8. Little Rock Coal Company**

[Docket No. M-93-152-C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its No. 1 Slope (I.D. No. 36-08320) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**9. Little Rock Coal Company**

[Docket No. M-93-153-C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1002-1 (location of other electric equipment; requirements for permissibility) to its No. 1 Slope (I.D. No. 36-08320) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**10. Little Rock Coal Company**

[Docket No. M-93-154-C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its No. 1 Slope (I.D. No. 36-08320) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**11. Little Rock Coal Company**

[Docket No. M-93-155-C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its No. 1 Slope (I.D. No. 36-08320) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**12. Little Rock Coal Company**

[Docket No. M-93-156-C]

Little Rock Coal Company, R.D. #2, Box 40, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1202-1(a) to its No. 1 Slope (I.D. No. 36-08320) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**13. Lost Packer Mining Company**

[Docket No. M-93-04-M]

Lost Packer Mining Company, 111 East Lincoln Road #4, Spokane, Washington 99208 has filed a petition to modify the application of 30 CFR 57.9300 (berms and guardrails) to its Lost Packer Mine (I.D. No. 10-01469) located in Custer County, Idaho. The petitioner requests that application of the standard requiring berms on mine roads be modified. The petitioner states that the mine road is used infrequently and that, due to the unavailability of suitable equipment for constructing a berm on the mine road, installation of berms would result in a diminution of safety to the miners. In addition, the petitioner asserts that miners need to stay in practice driving on unbermed roads as access to the mine requires them to travel 27 miles through steep terrain on an elevated, single track, unbermed dirt forest service road.

**14. Material Service Corporation**

[Docket No. M-93-05-M]

Material Service Corporation, 4226 Lawndale Avenue, Lyons, Illinois 60534-1199 has filed a petition to modify the application of 30 CFR 57.11050 (escapeways and refuges) to its Federal Underground Mine (I.D. No. 11-02814) located in Cook County, Illinois. The petitioner operates a surface

limestone operation and uses a glory hole system of extraction. Due to the shallow depth of the adit, the petitioner proposes to install a control room to serve as a refuge chamber within the adit which would be immediately accessible to workers for protection from dust and/or gases in case of an underground emergency. The crusher operator would perform his regular duties from within the chamber structure and the loader operator would work within 100 feet of the chamber. Underground workers would have access to ventilation, water, and outside communication from the chamber. The petitioner asserts that the alternate method would provide at least the same measure of protection as would the mandatory standard.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 23, 1993. Copies of these petitions are available for inspection at that address.

Dated: 14 July 1993.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 93–17572 Filed 7–22–93; 8:45 am]

BILLING CODE 4510–43–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–061]

**NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

**DATES:** August 2, 1993, 9:30 a.m. to 5:30 p.m.; and August 3, 1993, 9 a.m. to 3:10 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, room MIC–5, 300 E Street, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0346.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Developments Since April 1993 Meeting
—New Developments at NASA
—Status of FY 1994 Budget
—SMEX AO Mission Selections
—Status of Ultraviolet/Visible Missions
—Update of the Space Science and Applications Advisory Committee's Task Group on Mission Operations and Data Analysis (MO&DA)
—MO&DA Issues
—Report on the Science Research Strategic Planning Group
—Update on Astrophysics Division Education Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: July 15, 1993.

**Elmer T. Brooks,**

*Deputy Associate Administrator for Management Systems and Facilities (Agency Programs).*

[FR Doc. 93–17488 Filed 7–22–93; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL PARK SERVICE

**Meeting of the National Park System Advisory Board**

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of meeting of National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix, that a meeting of the National Park System Advisory Board will be held on August 11 and 12, 1993 in the CCC Recreation Bulding, Mesa Verde National Park, Colorado. The general busines meeting will start at 8 a.m., Wednesday, August 11, continuing until about 5:30 p.m. The Board will reconvene at 8 a.m. the next morning and conclude its meeting by noon on Thursday, August 12. The meeting will follow orientation tours and briefings in Mesa Verde National Park. The CC Recreation Building may be reached by driving south along the main park road about 4.2 miles beyond the Far View Terrace Cafeteria, then turning right at the "Rec Hall" sign and proceeding an additional 0.3 mile.

After opening remarks by various Departmental and/or National Park Service speakers, the Board's History Areas Commitee will present National Historic Landmark nominations and related topices for consideration on August 11, including "special resource studies" of cultural resource areas being considered for potential addition to the National Park System. Later in the day, the Board's Natural Areas Committee will provide a report on the status of the National Natural Landmark program and make recommendations on a special resource study of an area being considered as a potential partnership park arrangement. The committee will also discuss how the Service's natural science program will interrelate with the new National Biological Survey.

At this writing, consideration is being given to the formation of a new committee of the Board which would report recommendations on the relationship of the newly-forming National Biological Survey to the National Park Service's natural science program, and how the two can work most effectively together. The committee would include many of those involved in formulation of the National Research Council's August, 1992 report on "Science and the National Parks." If the committee is formed, this element of the agenda will be significantly expanded from an information item to one on which the Board makes recommendations; and it will be scheduled immediately after the Natural Areas Committee report. The Board is also scheduled to be briefed on the National Park Service on August 11.

Scheduled for discussion the morning of August 12 are the status of National Park Service planning for the Presidio of San Francisco, the Board's review of urban park issues, and perhaps future Board activities.

The Board will be addressed by officials of the Department of the Interior and the National Park Service at various times, and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Chairman may also permit attendees to address the Board, but may restrict the length of

presentations as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Mr. David L. Jervis, Office of Policy, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-208-4030. More specific information on potential National Historic Landmarks may be obtained from Senior Historian Benjamin Levy (History Division, telephone 202-343-8164) at the same P.O. Box address. Information on special resource studies of areas being considered for potential addition to the National Park System or as partnership park may be obtained from Mr. Warren Brown, Chief, Park Planning and Protection Division (telephone 202-208-4285) at the same P.O. Box address.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 1220, Main Interior building, 1849 C Street, NW., Washington, DC.

**Herbert S. Cables, Jr.,**

*Deputy Director.*

[FR Doc. 93-17584 Filed 7-22-93; 8:45 am]

BILLING CODE 4310-70-M

## NATIONAL SCIENCE FOUNDATION

### Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by August 23, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Office, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503

*Title: Survey of Industrial Research and Development, 1993, 1994, and 1995.*

*Affected Public:* Businesses or other for-profit.

*Respondents/Reporting Burden:* 23,300 respondents; 2.5 hours for long form and 1.5 hours for short form.

*Abstract:* This survey ascertains the amount and direction of R&D expenditures by U.S. industry. Government agencies, corporations, research organizations, etc. use the data to analyze and forecast technological growth, investigate productivity determinants, formulate tax policy, and compare individual company performance with industry averages. All companies with known R&D activity and samples of companies in selected industries which may conduct R&D are included.

Dated: July 19, 1993.

**Herman G. Fleming,**

*Reports Clearance Officer.*

[FR Doc. 93-17514 Filed 7-22-93; 8:45 am]

BILLING CODE 7555-01-M

### Permit Application Received Under the Antarctic Conservation Act of 1978

July 19, 1993.

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, Public Law 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by August 14, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Forhan at the above address or (202) 357-7817.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L.95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

**1. Applicant**

Dr. Diana W. Freckman, College of Natural Resources, Fort Collins, CO 80523.

*Activity For Which Permit Requested*

Enter Site of Special Scientific Interest.

Imports Into USA.

The applicants propose to enter 5 sites of special scientific interest to examine the distribution of trophic structure of nematode communities. Site visits would be limited to several hours with groups of no more than 5 people. Sampling protocols were designed to minimize site disturbance.

*Location*

Ross Island (Cape Royds, Cape Crozier, Caughley Beach, Cape Bird), Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land and the Linnaeus Terrace. Access by helicopter to landing pads designated to each site. Manner of taking: extract portions of soil at McMurdo, send preserved species to USA. Send remaining soil to USA.

*Dates*

12/10/93-02/01/94.

**Guy G. Guthridge,**

*Permit Office, Office of Polar Programs.*

[FR Doc. 93-17528 Filed 7-22-93; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Proposed Generic Letter 86-10, Supplement 1, "Fire Endurance Acceptance Criteria For Fire Barrier Systems Used to Separate Redundant Safe Shutdown Trains Within the Same Fire Area"

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue Generic Letter 86-10, Supplement 1. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to

submit information to the NRC on other technical or administrative matters, or, (3) transmits information to licensees regarding approved changes to rules or regulations, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures. This draft generic letter supplement disseminates to licensees the NRC position on fire endurance test acceptance criteria for fire barrier systems used to separate redundant safe shutdown trains within the same fire area. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter supplement presented under the Supplementary Information heading. This proposed generic letter supplement and supporting documentation were discussed in meeting number 243 of the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR to support their review of the proposed generic letter supplement is available in the Public Document Rooms under accession number 9307160137. This includes a summary of the comments received based on the November 19, 1992, public meeting with the Nuclear Management and Resources Council (NUMARC) at which the NRC staff presented a copy of its proposed position on fire endurance test acceptance criteria to NUMARC. Some meeting attenders asked if they could provide written comments. The NRC staff indicated that major written comments could be submitted, but that any comments received would not be addressed prior to publishing the proposed generic letter in the Federal Register. A summary of the comments received to date is available in the Public Document Rooms under accession number 9307160137. The NRC will consider these comments, as well as any other comments received from interested parties in the final evaluation of the proposed generic letter supplement. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter supplement be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

**DATES:** Comment period expires August 23, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Patrick M. Madden, (301) 504–2854.

**SUPPLEMENTARY INFORMATION:** To: All holders of operating licenses or construction permits for nuclear power reactors.

Subject: Fire endurance test acceptance criteria for fire barrier systems used to separate redundant safe shutdown trains within the same fire area (supplement 1 to generic letter 86–10, "Implementation of Fire Protection Requirements")

**Purpose**

The U.S. Nuclear Regulatory Commission (NRC) is issuing this supplement to Generic Letter (GL) 86–10, "Implementation of Fire Protection Requirements," of April 24, 1986, to disseminate review guidance contained in Enclosure A, "Fire Endurance Test Acceptance Criteria for Fire Barriers Used to Separate Redundant Safe Shutdown Trains Located Within the Same Fire Area". This guidance will be used by the staff for review and evaluation of the adequacy of fire endurance tests and fire barrier systems that may be proposed by licensees or applicants in the future to satisfy NRC fire protection rules and regulations. This guidance refines and clarifies for fire barrier testing acceptance criteria specified by GI 86–10, for application in that specific (future review) context

**Background**

On April 24, 1986, the NRC issued GL 86–10 in order to give the industry additional guidance on implementing NRC fire protection requirements. The guidance in GL 86–10 did not change the requirement to separate one safe shutdown train from its redundant train with either a 1-hour or a 3-hour fire rated barrier. In Enclosure 2 to GL 86–10, the NRC staff responded to industry questions. Questions 3.2.1 of the enclosure provided the staff position on fire endurance test acceptance criteria for fire barrier cable tray wraps. In its response, the staff referenced Chapter 7, "Tests of Nonbearing Walls and Partitions," of National Fire Protection Association (NFPA) Standard 251, Standard Methods of Fire Tests of Building Construction," as being applicable to cable-tray fire wraps.

On July 30, 1991, the NRC established a special review team to identify and evaluate technical issues related to the Thermo-Lag 330–1 fire barrier system. On August 6, 1991, the NRC issued Information Notice (IN) 91–47, "Failure of Thermo-Lag Fire Barrier Material to Pass Fire Endurance Test." This IN gave licensees information on the fire endurance test performed by Gulf States Utilities Company on a Thermo-Lag 330–1 fire barrier installed on a wide aluminum cable tray and the associated fire test failure. On December 6, 1991, the NRC issued IN 91–79, "Deficiencies in the Procedures for Installing Thermo-Lag Fire Barrier Material," which gave information on deficiencies in procedures that the Thermo-Lag vendor (Thermal Science, Incorporated) provided for constructing Thermo-Lag 330–1 fire barriers. In response to concerns about the indeterminate qualifications of Thermo-Lag 330–1 fire barriers, on June 23, 1992, the NRC issued IN 92–46.

"Thermo-Lag Fire Barrier Material Special Review Team Findings, Current Fire Endurance Tests, and Ampacity Calculations Errors." The staff found the following problems with Thermo-Lag 330–1 fire barriers: incomplete or indeterminate fire test results, questionable amplicity derating test results and a wide range of documented ampacity derating factors, some barrier installations that were not constructed in accordance with vendor-recommended installation procedures, incomplete installation procedures, and as-built fire barrier configurations that may not have been qualified by valid fire endurance tests or evaluated in accordance with the guidance that the staff issued in GL 86–10.

After reviewing INs 91–47 and 91–79, Texas Utilities (TU) Electric instituted a fire endurance test program to qualify its Thermo-Lag electrical raceway fire barrier systems for its Comanche Peak Steam Electric Station. Under this program, TU Electric performed its initial fire barrier test series during the weeks of June 15 and 22, and August 19, 1992. Notwithstanding the fire test acceptance criteria guidance specified in GL 86–10, TU Electric followed the guidance of American Nuclear Insurers (ANI) as described in ANI Information Bulletin No. 5 (79), "ANI/MAERP Standard Fire Endurance Test Method to Qualify a Protective Envelope for Class 1E Electrical Circuits," July 1979.

As result of NRC interaction with TU Electric regarding its fire tests, the NRC

concluded that there was uncertainty on the part of licensees as to whether or not the ANI test method established a level of fire barrier performance equivalent to that established by the GL 86–10 acceptance criteria. In addition, the NRC staff recognized that the 1-hour and 3-hour raceway fire barrier systems are unique and that additional guidance on the proper implementation of the GL 86–10 acceptance criteria would be useful.

**Areas of Concern**

The experiences with Thermo-Lag fire barrier systems at TU Electric recounted above raised the following general concerns:

(1) The fire endurance test acceptance criteria used by other fire barrier vendors, applicants, and licensees may not meet the acceptance criteria of GL 86–10, and may not fully demonstrate the fire barrier performance intended.

(2) Certain past cable functionality testing (i.e., circuit integrity monitoring may not fully demonstrate the intended capability of protected circuits to function during and after a postulated fire.

**Fire Endurance Capability**

*NRC Qualification Requirements and Guidance for Fire Barriers*

Section 50.48 of 10 CFR requires that each operating nuclear power plant have a fire protection plan that satisfies GDC 3. GDC 3 requires that structures, systems, and components important to safety be designed and located to minimize, in a manner consistent with other safety requirements, the probability and effects of fires. Fire protection features required to satisfy GDC 3 include features to ensure that one train of those systems necessary to achieve and maintain shutdown conditions be maintained free of fire damage. One means of complying with this requirement is to separate one safe shutdown train from its redundant train with fire-rated barriers. The level of fire resistance required of the barriers, 1-hour or 3-hours, depends on the other fire protection features in the fire area.

The NRC issued guidance on acceptable methods of satisfying the regulatory requirements of GDC 3 in Branch Technical Position (BTP) Auxiliary and Power Conversion Systems Branch (APCSB) 9.5–1, Guidelines for Fire Protection for Nuclear Power Plants;" appendix A to BTP APCSB 9.5–1; BTP Chemical Engineering Branch (CMEB) 9.5–1, "Fire Protection for Nuclear Power Plants;" and GL 86–10. In the BPTs and in GL 86–10, the staff stated that the fire resistance ratings of fire barriers should be established in accordance with NFPA Standard 251, "Standard Methods of Fire Tests of Building Construction and Materials," by subjecting a test specimen that represents the materials, workmanship, method of assembly, dimensions, and configuration for which a fire rating is desired to a "standard fire exposure." [1]

Some licensees have used the acceptance criteria of ANI Information Bulletin No. 5 (79), to evaluate the performance of their fire barrier systems. The ANI test methodology requires the cables within the fire barrier test specimen be monitored for circuit integrity while the test specimen is subjected to a test fire that follows the standard time-temperature curve of the American Society of Testing and Materials (ASTM) Standard E119, "Standard Methods of Fire Tests of Building Construction and Materials," and to a hose stream test. Under this criterion, the fire barrier system is evaluated by monitoring the capability of the cables inside the fire barrier to pass a low voltage circuit integrity test. During the fire and hose stream tests, if cable circuit integrity is maintained, the tests are considered successful. The ANI test methodology does not specify the following GL 86–10 acceptance criteria:

(1) The fire barrier design has withstood the fire endurance test without the passage of flame or the ignition of cotton waste on the unexposed side for a period of the equivalent to the fire-resistance rating required of the barrier.

(2) Analysis of temperature levels recorded on the unexposed side of the fire barrier demonstrates that the maximum temperature rise does not exceed 139 °C [250 °F] above ambient temperature.

(3) The fire barrier remains intact and does not allow water to be projected beyond the unexposed surface during the hose stream test.

Enclosure 1, "Interpretations of Appendix R," to GL 86–10, provided additional guidance with respect to the term "free of fire damage" as used in Appendix R. Interpretation 3, "Fire Damage," stated: "In promulgating Appendix R, the Commission has provided methods acceptable for assuring that necessary structures, systems, and components are free from fire damage (see Section III.G.2 a, b, and c), that is, the structure, system or component under consideration is capable of performing its intended function during and after the postulated fire, as needed."

The review guidance provided in Enclosure A (1) clarifies the applicability of the test acceptance criteria stated in GL 86–10 to raceway fire barrier systems, (2) specifies a set of fire endurance test acceptance criteria which are acceptable for demonstrating that fire barrier systems can serve the required fire-resistive function and maintain the protected safe shutdown train free of fire damage, (3) specifies acceptable options for hose stream testing, and (4) specifies acceptable criteria for functionality testing of cables when a deviation would be necessary, such as if the fire barrier temperature rise criteria are exceeded and the cable sustains visible damage. The test methods and acceptance criteria specified are acceptable for determining the adequacy of fire barrier systems proposed by licensees or applicants in the future to satisfy NRC fire protection rules and regulation. Applicants or licensees may propose alternative test methods and acceptance criteria to demonstrate an equivalent level of protection; the staff will review such proposals on a case-by-case basis. Enclosure B is a comparison of this review guidance against the GL 86–10 acceptance criteria.

*Fire Endurance and Functionality Tests—Evaluation and Application of Test Results*

The fire endurance qualification test is successful if the following conditions are satisfied (see Enclosure C, "Fire Barrier Testing Acceptance Criteria/Logic Diagram"):

(1) The internal temperature of the fire barrier system, as measured on the exterior surface of the raceway or component, did not rise more than 139 °C [250 °F] above its initial temperature; [2] or

(2) The thermal limits specified under (1), above, were exceeded [3] and a visual inspection of the protected component or cables revealed no signs of degraded conditions [4] from the thermal effects of the fire exposure; and

[1] American Society for Testing and Materials (ASTM) Standard E119 was adopted by NFPA as NFPA Standard 251.

[2] The 163 °C [325 °F] temperature condition specified in GL 86–10 was established by allowing the internal temperature to rise 139 °C [250 °F] above ambient laboratory air temperature which was assumed to be 24 °C [75 °F] during the fire test

[3] When the temperature criterion is exceeded, component operability at the temperature conditions experienced by the component during the fire test must be assessed. That is, the fire endurance test results that are judged acceptable on the basis of a visual inspection of certain components may not be applied to other components without a specific evaluation.

[4] Examples of thermal degradation of cable jacket and insulation materials are: Swollen, split,

(3) The fire barrier system remained intact during the fire exposure and hose stream tests without developing any openings through which the protected component, raceway, or cables are visible.

For raceway fire barrier systems, the staff adopted the hose stream testing methodology specified in NUREG–0800, "Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants," Section 9.5.1, "Guidelines for Fire Protection for Nuclear Power Plants," Revision 2, July 1981, Position 5.a. This SRP position established the acceptability of using the fog Nozzle method for hose stream testing of fire barrier penetration seals. The fog nozzle hose stream method is an acceptable option for tests of the entire raceway fire barrier system under the new staff position.

The review guidance provided in Enclosure A clarifies that, if cables show signs of thermal degradation during the fire test, the licensee can submit to the staff for review a deviation based on a demonstration of the functionality of the thermally degraded cables and provides specific guidance for demonstrating cable functionality, including subjecting the cables to megger and high-potential tests. The results of these tests can be used to determine the insulation-resistance characteristics of the thermally damaged cable and to determine if the cable insulation would have been sufficient to maintain circuit functionality during and after the fire exposure.

**Implementation**

This section describes how the NRC plans to use the review guidance contained in Enclosure A. After this supplement to GL 86–10 is issued, except in those cases in which an applicant or licensee has proposed an acceptable alternative fire endurance test method and acceptance criteria that demonstrate an equivalent level of fire protection, the NRC will use the methods and the criteria specified in the enclosed review guidance to (1) evaluate fire endurance testing programs proposed by licensees or applicants in the future for demonstrating compliance with pertinent NRC fire protection rules and regulations and (2) review the adequacy of the fire barrier systems proposed in the future by applicants or licensees.

**Actions Requested**

None.

**Reporting Requirements**

None.

**Backfit Discussion**

The guidance transmitted by this generic letter supplement will be used by the staff for review and evaluation of the adequacy of fire barrier systems and fire endurance tests that may be proposed in the future to satisfy NRC fire protection rules and regulations. This guidance refines and clarifies the guidance specified in Generic Letter 86–10 for application in that future review context; specifically it (1) clarifies the applicability of the test acceptance criteria stated in GL 86–10 to raceway fire barrier systems, (2) specifies a set of fire endurance test acceptance criteria which are acceptable for demonstrating that fire barrier systems can serve the required fire-resistive function and maintain the protected safe shutdown train free of fire damage, (3) contains acceptable options for hose stream testing, and (4) specifies acceptable criteria for functionality testing of cables when a deviation would be necessary, such as if the fire barrier temperature rise criteria are exceeded and the cable sustains visible damage.

No generic or plant-specific backfitting is intended or approved at this time in connection with issuance of this review guidance. The staff may consider the need for further generic action in that regard, if the industry guidance currently under development for addressing the pertinent fire protection issues, is substantively inconsistent with this staff review guidance; but such action would be separately justified in accordance with the criteria of 10 CFR 50.109 and existing NRC backfit procedures. Similarly, if plant-specific backfits are proposed by the NRC staff consistent with this review guidance, the proposed backfits would be justified on a case basis in accordance with the criteria of 10 CFR 50.109 and existing NRC backfit procedures.

If you have any questions about this matter, please contact the contact listed below or the appropriate Office of Nuclear Reactor Regulation project manager.

Enclosures:

1. NRC Staff Position on Fire Endurance Test Acceptance Criteria for Fire Barrier Systems Used To Separate Redundant Safe Shutdown Trains Within the Same Fire Area with Attachment

**Enclosure 1 to Proposed Generic Letter 86–10, Supplement 1—Fire Endurance Test Acceptance Criteria For Fire Barrier Systems Used To Separate Redundant Safe Shutdown Trains Within the Same Fire Area**

*I. Background*

In 1975, the Browns Ferry Nuclear power plant experienced a serious electrical cable tray fire. This fire had a significant impact on operator response to the event from a safety perspective. The fire caused spurious instrumentation indications and affected the control of several safety systems. As a result of this fire, the NRC issued the following fire protection guidelines and regulations concerning fire protection programs at nuclear power plants:

May 1, 1976
Branch Technical Position (APCSB) 9.5–1, "Fire Protection Program."
February 24, 1977
Appendix A to Branch Technical Position APCSB 9.5–1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976."
February 19, 1981
10 CFR 50.48, "Fire Protection."
February 19, 1981
Appendix R to 10 CFR 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1979."
July 1981
NUREG–0800, Standard Review Plan (SRP), 9.5.1, "Fire Protection for Nuclear Power Plants."

In addition to the above fire protection guidance and regulations, the NRC, in an effort to clarify its fire protection requirements to the industry, issued Generic Letter (GL) 81–12, "Fire Protection Rule (45 FR 76602, November 19, 1980)," February 20, 1981; GL 83–33, "NRC Position on Certain Requirements of appendix R to 10 CFR part 50," October 19, 1983; and GL 86–10, "Implementation of Fire Protection Requirements," April 24, 1986. GL 86–10, which took precedence over previous staff guidance, provided staff interpretations to appendix R and answers to industry questions relating to the implementation of appendix R. The NRC, in an effort to give the licensees more flexibility to make changes to their plant specific fire protection program, issued GL 88–12, "Removal of Fire Protection Requirements From Technical Specifications." Through the implementation and the adoption of a standard license condition, a licensee can make changes which do not adversely affect plant ability to achieve

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cracked, blistered, melted, or discolored jacket; exposed shield; exposed, degraded, or discolored conductor insulation; and exposed copper conductor.

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and maintain post-fire safe shutdown to their fire protection program in accordance with 10 CFR 50.59.

The aforementioned NRC documents provided the industry with NRC staff guidance concerning fire barriers separating plant fire areas, including the fire resistance (endurance) ratings for these barriers and the qualification testing that established their fire resistance ratings. In addition, these documents provided guidance on combustibility of structural materials and the testing required to demonstrate low flame spread properties.

The following sections of this document provide the objective for providing safe shutdown related fire barriers in nuclear power plants, definition of fire protection terms related to fire barriers, and the NRC fire endurance testing acceptance criteria for fire barriers used to separate safe shutdown functions within the same fire area.

*II. Objective of Fire Barriers Used to Separate Safe Shutdown Functions Within the Same Fire Area*

Fire rated barriers are used in nuclear power plants to provide fire area separation between redundant safety related components and safe shutdown functions. They provide fire resistance protection, as required by Appendix R,[1] to one safe shutdown train in those fire areas which contain both trains. The objective of the safe shutdown related appendix R fire barrier is to ensure that a safe shutdown train is conservatively protected from fire-related thermal damage. The necessity for these fire barriers has been verified by multiple probabilistic risk assessments (PRAs). These PRAs indicate, even with these fire barriers installed, fires provide a major contribution to core melt probabilities.

It is position of the NRC that fire endurance ratings of building construction and materials are demonstrated by testing fire barrier assemblies in accordance with the provisions of the applicable sections of NFPA 251, "Standard Methods of Fire Tests of Building Construction and Materials," and ASTM–119, "Fire Test of Building Construction and Materials." Assemblies which pass specified acceptance criteria (e.g., standard time-temperature fire endurance exposure, unexposed side temperature rise, and hose stream impingement) are considered to have a specific fire resistance rating.

[1] For advanced reactor designs, redundant safe shutdown functions are required to be located in separate 3-hour fire areas.

Enclosure 1 to GL 86–10, Interpretations of appendix R, provided additional guidance with respect to the term "free from fire damage." Interpretation 3, "Fire Damage," states, "In promulgating appendix R, the Commission has provided methods acceptable for assuring that necessary structures, systems, and components are free from fire damage (see Section III.G.2a, b, and c), that is, the structure, system or component under consideration is capable of performing its intended function during and after the postulated fire, as needed."

GL 86–10, Response 3.2.1, also stated that, "The resulting 325 °F cold side temperature criterion is used for cable tray wraps because they perform a fire barrier function to preserve the cables free from fire damage. It is clear that cable that *begins to degrade* at 450 °F is free fire damage at 325 °F." (Emphasis added.) In addition, the staff's response stated that, "for newly identified conduit and cable trays requiring such wrapping new materials which meet the 325 °F criterion should be used, or justification should be provided for the use of materials which does not meet the 325 °F criterion. This may be based on an analysis demonstrating that the maximum recorded temperature is *sufficiently below* the cable insulation ignition temperature." (Emphasis added.)

The basic premise of the NRC fire resistance criteria is that fire barriers which do not exceed 163 °C [325 °F] cold side temperature and pass the hose stream test provide adequate assurance that the shutdown capability is protected without further analyses. If the temperature criteria is exceeded, sufficient additional information is needed to perform an engineering evaluation to demonstrate that the shutdown capability is protected.

*III. Definitions*

In order to support the understanding of the technical terms used throughout this document, the following definitions are provided.

*Combustible Material*—Material that does not meet the definition of noncombustible.

*Fire Barrier*—Those components of construction (walls, floors and their supports), including beams, joists, columns, penetration seals or closures, fire doors, and fire dampers that are rated by approving laboratories in hours of resistance to fire and are used to prevent the spread of fire.

*Raceway Fire Barrier*—Non-load bearing partition type envelope system installed around electrical components and cabling that are rated by approving laboratories in hours of resistance to fire and are used to maintain safe shutdown functions free from fire damage.

*Fire Resistance Rating*—The time that materials of a test assembly have withstood a standard ASTM E–119 fire exposure and have successfully met the established test acceptance criteria (Fire Barrier Testing Acceptance Criteria refer to Sections IV, V and VI).

*Noncombustible Materials*—(a) Material which in the form in which it is used and under the conditions anticipated, will not ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat; (b) Material having a structural base of noncombustible material, with a surfacing not over ⅛-inches thick that has a flame spread rating of not higher than 50 when measured using ASTM E–84 Test "Surface Burning Characteristics of Building Materials."

Note—There is an exception to this definition as defined by BTP appendix A, Position D. 1. d. This position allows the use of combustible interior finishes when listed by a nationally recognized testing laboratory, such as Factory Mutual or Underwriters Laboratories, Inc. for a flame spread, smoke and fuel contribution of 25 or less in its use configuration.]

*IV. Fire Endurance Testing Acceptance Criteria for Fire Barrier Walls, Floors, and Ceilings Used to Separate Safe Shutdown Functions Within the Same Fire Area*

To demonstrate the adequacy of fire barrier walls, floors, ceilings, and enclosures, barrier designs should be verified by fire endurance testing. NRC fire protection guidance refers to the guidance of NFPA 251 and ASTM E–119 as acceptable test methods for demonstrating fire endurance performance.

The following are the fire endurance testing acceptance criteria for the subject fire barriers:

The fire barrier design has withstood the fire endurance test without the passage of flame or the ignition of cotton waste on the unexposed side for a period of time equivalent to the fire resistance rating required of the barrier;

The temperature levels recorded on the unexposed side of the fire barrier are analyzed and demonstrable that the maximum temperature does not exceed 139 °C [250 °F] above ambient; and

The fire barrier remains intact and does not allow projection of water beyond the unexposed surface during the hose stream test. (For acceptable hose stream test methods and time of application—See Section VII.)

If the above criteria are met for fire barrier walls, floors, and ceilings

separating safe shutdown functions within the same fire area, the barrier is considered to be acceptable.

NRC fire protection guidance also ensures that door and ventilation openings and penetrations are properly protected. The guidance requires that these openings be protected with fire doors and fire dampers which have been fire tested and listed by a nationally recognized testing laboratory (e.g., Underwriters Laboratories or Factory Mutual). In addition, the construction and installation techniques for door and ventilation openings and other penetrations through these fire barriers should be appropriately qualified by fire resistive testing.

The guidance of NFPA 251 and ASTM E–119 should be consulted with regard to construction, materials, workmanship, and details such as dimensions of parts, and the size of the specimen(s) to be tested. In addition, NFPA 251 and ASTM E–119 should be consulted with regard to the placement of thermocouples on the specimen.

*V. Electrical Raceway and Component Fire Barrier Systems for Separating Safe Shutdown Functions Within the Same Fire Area*

The NRC provided guidance in appendix A to Branch Technical Position 9.5–1, Position D.3.(d), for cable tray fire barriers. This fire protection guidance states that the design of fire barriers for horizontal and vertical cable trays should, as a minimum, meet the requirements of ASTM E–119, "Fire Test of Building Construction and Materials," including hose stream test. On November 19, 1980, the NRC issued appendix R to 10 CFR part 50. The technical basis for Section III.M, "Fire Barrier Penetration Seal Qualification," states that "Fire barriers are 'rated' for fire resistance by being exposed to a 'standard test fire.' This standard test fire is defined by the American Society of Testing and Materials in ASTM E–119." In addition, this technical basis stated that "If specific plant conditions preclude the installation of a 3-hour fire barrier to separate the redundant trains, a 1-hour fire barrier and automatic fire suppression and detection system for each redundant train will be considered the equivalent of a 3-hour barrier."

In 1984 appendix R workshops held with industry, and later in GL 86–10, the staff provided guidance related to fire barrier designs for raceways. In Enclosure 2, Question and Answers, to this GL, Question 3.2.1., "Acceptance Criteria," the staff provided guidance on the cold side temperature for fire barrier cable tray wraps. In response to this question the staff stated that the acceptance criteria contained in chapter 7 of NFPA 251, "Standard Methods of Fire Tests of Building Construction and Materials," pertaining to nonbearing fire barriers was applicable to cable tray fire barrier wraps. Chapter 5 of NFPA 251 explains the conduct of the fire test.

The following is the NFPA 251 acceptance criteria:

—The wall or partition shall have withstood the fire endurance test without the passage of flame or gases hot enough to ignite cotton waste, for a period equal to that for which classification is desired;

—The wall or partition shall have withstood the fire and hose stream test as specified in Chapter 5, without passage of flame, or gases hot enough to ignite cotton waste, or of the hose stream. The assembly shall be considered to have failed the hose stream test if an opening develops and permits projection of water from the stream beyond the unexposed surface during the hose stream test; and

—Transmission of heat through the wall or partition during the fire endurance test shall not have been such as to raise the temperature on its unexposed surface more than 139 °C [250 °F] above its initial temperature.

The staff considers the fire endurance qualification test to be successful if the following conditions are met:

—The internal temperature of the fire barrier system, as measured on the exterior surface of the raceway or component, did not exceed 139 °C [250 °F] above its initial temperature[6]; or

(Staff Guidance: NFPA 251/ASTM–E119 allows this temperature to be determined by averaging thermocouple temperature readings. For the purposes of this criterion, thermocouple averaging can be used provided similar series of thermocouples (e.g., cable tray side rail) are averaged together to determine temperature performance of the raceway fire barrier system. In addition, the conditions of acceptance are also placed on the temperatures measured by a single thermocouple. Under the conditions of acceptance, if any single thermocouple exceeds 30 percent of the maximum allowable temperature rise (i.e., 139 °C + 42 °C = 181 °K [250 °F + 75 °F = 325 °F] the test is considered to have exceeded the criteria temperature limit.)

—Where the above thermal limits are exceeded, a visual inspection of the cables[7] is required. Cables when inspected shall not show signs of degraded conditions[8] resulting from the thermal affects of the fire exposure; and

(Staff Guidance: For those cases where signs of thermal degradation to the cables is present, it is considered that the fire barrier did not perform its intended fire resistive function. For those barriers which are not capable of performing their intended function, a deviation based on demonstrating that the functionality of thermally degraded cables was maintained and that these cables would have adequately performed their intended function during and after a postulated fire exposure may be granted. Attachment 1 to this proposed position provides a suggested methodology for demonstrating the functionality of safe shutdown cabling during and after a fire test exposure.)

—The raceway fire barrier system shall have remained intact during the fire exposure and water hose stream test without developing any openings through which the electrical conductor or raceway is visible. Section VII identifies acceptable hose stream test methods and the time of application.

The test specimen shall be representative of the construction for which the fire rating is desired, as to materials, workmanship, and details such as dimensions of parts, and shall be built under representative conditions. Raceway fire barrier systems being subjected to qualification fire endurance testing should be representative of the end use. For example, if it is intended to install a cable tray fire barrier system in the plant without protecting the cable tray supports, then the test program should duplicate these filed conditions. In addition, the fire testing program should encompass the raceway sizes and the various configurations for those fire barrier systems installed in the plant. It should be noted that several test specimens will be required in order to

[6] The 163 °C [325 °F] temperature condition was established by allowing the internal temperature on the raceway to rise 139 °C (250 °F) above ambient laboratory air temperature, assumed to be 24 °C (75 °F), during the fire test.

[7] For components, when the temperature criteria is exceeded, an assessment of component operability at the temperature conditions which would be experienced by the component during the fire test is required that is, raceway fire endurance tests which are judged acceptable on the basis of a visual inspection of certain components may not be applied to other components without a specific evaluation.

[8] Examples of thermal cable degradation are: Jacket swelling, splitting, cracking, blistered, melted, or discoloration; shield exposed; conductor insulation exposed, degraded, or discolored; bare copper conductor exposed.

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qualify various sizes of horizontal and vertical runs of cable trays and conduits, junction boxes and pull boxes, etc. The raceway design used for testing should be constructed with materials and configurations representative of in plant conditions (e.g., mass associated with typical steel conduit, steel cable trays).

Measuring cable temperatures is not considered a reliable means for determining excessive temperature conditions which may occur at any point along the length of the cable during the fire test. In lieu of measuring the unexposed surface temperature of the fire barrier test specimen, methods which will adequately measure the surface temperature of the raceway (e.g., exterior of the conduit, side rails of cable trays, bottom and top of cable tray surfaces, junction box external surfaces) can be considered as equivalent if the raceway components used to construct the fire test specimen represent plant specific components and configurations. The metal surfaces of the raceway, under fire test conditions, exhibit good thermal conductivity properties. Temperatures measured on these surfaces provide a conservative indication of the actual temperature rise within the fire barrier system.

ANI criteria for testing fire barriers recommends the cable temperatures be monitored by thermocouples. Industry considers this the proper location for determining the temperature rise within the raceway fire barrier system. Since cable jackets have a low thermal conductivity, the actual local temperatures of the cable jackets, indications of barrier failure, and internal fire barrier temperature rise conditions during the fire exposure are masked. Monitoring cable temperatures can give indications of low internal fire barrier temperature conditions during the fire endurance test. Using this temperature monitoring approach, cable damage can occur without indication of excessive temperatures on the cables. This linked with no loss of circuit integrity would give indications of a successful test. The staff considers monitoring the cable temperature as the primary means of determining barrier performance to be nonconservative. As discussed above, temperatures monitored on the exterior surface of the raceway provide a more representative indication of fire barrier performance.

The following are acceptable placements of thermocouples on raceway fire barrier enclosure:

Condits—measure the temperature of the conduit by placing the thermocouples every 6-inches on the conduit surface underneath the fire barrier material.

Cable Tray—measure temperature rise of cable tray by placing the thermocouples on the exterior surface of the tray side rails underneath the fire barrier material. In addition to placing thermocouples on the side rails, thermocouples shall be attached to two 14 gage bare copper conductors. The first copper conductor will be installed on the bottom of the cable tray rungs along the entire length of the cable tray run.

The second conductor shall be installed along the outer top surface of the cables closest to the top and towards the center of the fire barrier. The bare copper wire is more responsive, than cable jackets, to temperature rise within the fire barrier enclosure. The temperature changes measured along the bare copper conductors provide indication of joint failure or material burn through conditions. Thermocouples shall be placed every 6-inches along the cable tray side rails and along the bare copper conductors.

In addition, thermocouples shall be placed every 12-inches on the surface of the outer cables nearest to the raceway and on the surface of the cables nearest to the underside of the top of the fire barrier.

Temperature conditions on the raceway during the fire test will be determined by averaging the temperatures measured by the thermocouples. In determining the raceway temperature conditions, the thermocouples measuring similar fire barrier areas of performance shall be averaged together and the basis of acceptance will be based on these individual averages. The following method of averaging shall be followed:

*Conduits*—The thermocouples applied to the outside metal surface of the conduit will be averaged together.

*Cable Trays*—The thermocouples on each cable tray side rail shall be averaged separately. For example, thermocouples placed on one side rail will be averaged separately from the other side rail. In addition, the temperature conditions measured by thermocouples on the bare copper conductors shall be averaged separately.

*Cables*—The thermocouples used to measure individual cable temperatures will be used for engineering purposes and shall not be used for evaluating the performance of the fire barrier system.

For each thermocouple group, the averages shall not exceed 139 °C [250 °F] above the initial temperature at the onset of the fire endurance test. In addition, the temperature of each individual thermocouple will be evaluated. Individual thermocouple conditions shall not exceed the 139 °C [250 °F] temperature rise by more than 30 percent.

*VI. Hose Stream Testing*

NFPA 251 and ASTM E-119 allow some flexibility in hose stream testing. The standards allow the hose stream test to be performed on a duplicate test specimen subjected to a fire endurance test for a period equal to one-half of that indicated as the fire resistance rating, but not for more than 1 hour (e.g., 30 minutes fire exposure to qualify a 1-hour fire rated barrier).

For safe shutdown related fire barrier systems, the staff finds the hose stream application specified by the NFPA 251 acceptable. NFPA 251 requires the stream of water to be delivered through a 6.4 cm [2½-inch] hose discharging through a standard 2.9 cm [1⅛-inch] playpipe nozzle onto the test specimen after the fire exposure test. The stream is applied with the nozzle orifice positioned 6.1 meters [20 feet] away from the center of the test specimen at a pressure of 207 kPa [30 psi gauge]. The application of the stream is to all exposed parts of the specimen for a minimum duration of 1 minute for a 1-hour barrier and 2½ minutes for a 3-hour barrier.

As an alternate, the application of the hose stream test on the test specimen can be performed immediately after the completion of the full fire endurance test period. If this method is used to satisfy the hose stream testing criteria, the following hose stream applications are considered acceptable:

—The stream applied at random to all exposed surfaces of the test specimen through a 6.4 cm [2½-inch] national standard playpipe with a 2.9 cm [1⅛-inch] orifice at a pressure of 207 kPa [30 psi] at a distance of 6.1 meters [20 feet] from the specimen (duration of the hose stream application—1 minute for a 1-hour barrier and 2½ minutes for a 3-hour barrier); or

—The stream applied at random to all exposed surfaces of the test specimen through a 8.3 cm [1½-inch] fog nozzle set at a discharge angle of 30 degrees with a nozzle pressure of 571 kPa [75 psi] and a minimum discharge of 284 1pm [75 gpm] with the tip of the nozzle at a maximum of 1.5 meters [5 feet] from the test specimen (duration of the hose stream application—5 minutes for both 1-hour and 3-hour barriers); or

—The stream applied at random to all exposed surfaces of the test specimen through 8.3 cm [1½-inch] fog nozzle set at a discharge angle of 15 degrees with a nozzle pressure of 517 kPa [75 psi] and a minimum discharge of 284 1pm [75 gpm] with the tip of the

nozzle at a maximum of 3 meters [10 feet] from the test specimen (duration of the hose stream application—5 minutes for both 1-hour and 3-hour barriers).

*VII. Fire Barrier Combustibility*

NRC fire protection guidelines and requirements establish the need for each nuclear power plant to perform a plant-specific fire hazard analysis. The fire hazard analysis shall consider the potential for in-situ and transient fire hazards and combustibles. With respect to building materials (e.g., cable insulation and jackets, plastics, thermal insulation, fire barrier materials), the combustibility, ease of ignition, and flame spread over the surface of a material shall be considered by the fire hazards analysis. One method of determining combustibility is by subjecting a sample of the fire barrier material to a small scale vertical tube furnace as described by ASTM E-136. The flashover ignition temperature, as determined by ASTM-D1929, and the flame spread characteristics, as determined by ASTM E-84, of the fire barrier material shall be evaluated. The potential heat release of the material shall also be determined and factored into the fire hazards analysis. The heat release of the material can be determined by testing to the provisions of ASTM D-3286 or NFPA 259.

Fire barrier materials used as radiant energy heat shields inside containment and used to achieve a combustible free zone are required to be noncombustible as defined in Section III.

*VIII. References*

Nuclear Regulatory Commission

1. May 1, 1976: Branch Technical Position (APCSB) 9.5-1, "Fire Protection Program."

2. February 24, 1977: Appendix A to the Branch Technical Position APCSB 9.5-1, "Guidelines for Fire Protection for Nuclear Power Plants Docketed Prior to July 1, 1976."

3. February 19, 1981: 10 CFR 50.48, "Fire protection."

4. February 19, 1981: Appendix R to 10 CFR 50, "Fire Protection for Nuclear Power Plants."

5. February 20, 1981: "Staff Position—Safe Shutdown Capability," (Generic Letter 81-12).

6. July 1918: NUREG—0800, Standard Review Plan (SRP), 9.5.1, "Fire Protection for Nuclear Power Plants."

7. October 19, 1983: "NRC Positions on Certain Requirements of Appendix R to 10 CFR part 50," (Generic Letter 83-83).

8. April 24, 1986: "Implementation of Fire Protection Requirements," (Generic Letter 86-10).

American Society for Testing and Materials (ASTM)

1. ASTM E-84 Test "Surface Burning Characteristics of Building Materials."

2. ASTM E-119, "Fire Test of Building Construction and Materials."

3. ASTM E-136, "Behavior of Materials in a Vertical Tube Furnace at 750 °C."

4. ASTM D-1929, "Test Method for Ignition Properties of Plastics."

5. ASTM D-3286, "Test Method for Gross Calorific Value of Solid Fuel by the Isothermal-Jacket Bomb Calorimeter."

*American Nuclear Insurers (ANI)*

1. July 1979, ANI Information Bulletin No. 5 (79) test criteria for "Fire Endurance Protective Envelope Systems for Class 1E Electrical Circuits."

*National Fire Protection Association (NFPA)*

1. NFPA 251, "Standard Methods of Fire Tests of Building Construction and Materials."

2. NFPA 259, "Standard Test Method for Potential Heat of Building Materials."

**Attachment 1 to Enclosure 1 to Generic Letter 86–10, Supplement 1 Acceptable Methods for Demonstrating Functionality of Cables Protected by Raceway Fire Barrier Systems During and After Fire Endurance Test Exposure**

*a. Introduction*

The NRC considers fire barrier systems that meet the acceptance criteria adequate under NRC fire protection regulations. The licensee, where the criteria are not met, can submit an engineering analysis to the staff that clearly demonstrates the functionality of the protected cables. This engineering analysis should consider the cable insulation type, actual voltage and current conditions, cable function, and thermal affects on the cable and its ability to function. This evaluation shall also consider cable operating temperatures within the fire barrier at the onset of the fire exposure.

*b. Cable Circuit Integrity Testing*

ANI Criteria

In 1981, American Nuclear Insurers (ANI) developed a fire endurance test criteria for raceway fire barrier systems. This criteria, "Fire Endurance Protective Envelope Systems for Class 1E Electrical Circuits," specifies a circuit integrity test. The intent of this test was to identify the onset of fire damage to the cables within the raceway fire barrier test specimen during the fire endurance test period. The circuit integrity test voltage is 8 to 10 volts DC; therefore the loss of circuit integrity under these voltage conditions may only occur as a result of a dead short or open circuit.

During actual fire testing conditions of raceway fire barrier systems thermal damage to the cables has resulted. This thermal damage has led to cable jacket and insulation degradation without the loss of circuit integrity as monitored using ANI criteria. Since cable voltages used for ANI circuit integrity testing do not replicate cable operating voltages, loss of cable insulation conditions can exist during the fire test without a dead short occurring. It is expected that if the cables were at rated power and current a fault would propagate. Therefore, the use of ANI circuit integrity monitoring during the fire endurance test is not considered a valid method for demonstrating that the protected shutdown circuits are capable of performing their required function during and after the test fire exposure.

*c. Cable Insulation Testing*

The two principal materials used as cable insulation and cable jackets by the nuclear industry are thermoplastics and thermosetting polymeric materials. A thermoplastic material can be softened and resoftened by heating and reheating. Conversely, thermosetting cable insulation materials cure by chemical reaction and do not soften when heated. Under excessive heating thermosetting insulation becomes stiff and brittle. Electrical faults may be caused by softening and flowing of thermoplastic insulating materials at temperatures as low as 149 °C [300 °F]. Thermosetting electrical conductor insulation materials usually retain their electrical properties under short-term exposures to temperatures as high as 260 °C [500 °F]. Insulation resistance (Megger) testing provides an indication of the condition of the cable insulation resistance, whereas the high potential (Hi-Pot) test provides assurance that the cable has sufficient dielectric strength to withstand the applied rated voltage. A cable insulation failure usually results from two breakdown modes: one failure mode is excessive dielectric loss which is due to low insulation resistance, and the other failure mode is overpotential stress which is due to loss of dielectric strength of the insulation material.

If megger tests are not performed at frequent intervals during the fire exposure, indications of insulation damage may go undetected. Insulation,

when removed from elevated temperatures will reset. Megger testing of insulated cables after the fire endurance test and after the cable has sufficiently cooled may not detect degradation in the insulation resistance. Therefore, wet or dry megger of cables after a fire exposure does not provide reasonable assurance that the cables would have functioned as intended during the fire exposure.

To provide reasonable assurance that the cables would have functioned during and after the fire exposure, megger tests need to be performed before the fire test, at multiple time intervals during the fire exposure (i.e., every 20 minutes during the 1-hour fire test and every hour during the 3-hour fire test) for instrumentation cables only, and after the fire endurance test to assess the cable insulation resistance levels. This testing will assure that the cables will maintain sufficient insulation resistance levels necessary for proper operation of instruments.

The megger tests (pre-fire, during the fire [if performed], and immediately after the fire test conditions) should be done conductor-to-conductor for multi-conductor and conductor-to-ground for all cables. The minimum acceptable insulation resistance (IR) value, using the test voltage values as shown in the table below, is determined by using the following expression:

$$IR(\text{Mega - ohms}) \geq \frac{\{[(1\ \text{Mega - ohm per KV}) + 1] * 1000(\text{ft})\}}{\text{Length (ft)}}$$

Additionally, in determining the insulation resistance levels required for nuclear instrumentation cables, an assessment of the minimum insulation resistance value (e.g., one mega-ohm) and its potential impact on the functionality of these cables shall be evaluated.

In addition, an AC or DC high potential (Hi-Pot) test for power cables greater than 1000 volts shall be performed after the post-fire megger tests to assess the dielectric strength. This test provides assurance that the cable will withstand the applied voltage during and after a fire. The high potential test shall be performed for a 5 minute duration at 60 percent of either 80 volts/mil ac or 240 volts/mil dc (e.g., 125 mil conductor insulation thickness × 240 volts dc × 0.6 = 18,000 volts dc).

The table below summarizes the megger and Hi-Pot test voltages which, when applied to power, control and instrumentation cables, would constitute an acceptable cable functionality test.

| Type | Operating voltages | Megger test voltage | High potential test voltage |
|---|---|---|---|
| Power | ≥1000 vac | 2500 vdc | 60% × 80 V/mil (ac). 60% × 240 V/mil (dc). |
| Power | <1000 vac | 1500 vdc[1] | None. |
| Instrument and control | ≤250 vdc | 500 vdc | None. |
| | ≤120 vac | | |

[1] A megger test voltage of 1000 vdc will be acceptable provided a Hi-Pot test is performed after the megger test for power cables rated at less than 1000 vac.

*d. Cable Thermal Exposure Threshold*

The following is an acceptable analysis method for evaluating the cable functionality.

This analysis is based on determining whether a specific insulation material will maintain the electrical integrity and operability of protected cables within a raceway fire barrier system during and after an external fire exposure. In order to determine cable functionality, it is necessary to consider the operating cable temperatures within the fire barrier system at the onset of the fire exposure and the thermal exposure threshold (TET) temperature of the cable. For example, if the TET of a specific thermoplastic cable insulation (Brand X) is 149 °C [300 °F] and the normal operating temperature within the fire barrier system is 66 °C [150 °F], then the maximum temperature rise within the fire barrier system shall not exceed 83 °C [150 °F] during exposure to an external fire of a duration equal to the required fire resistance rating of the barrier. For this example the TET limit for Brand X cable is 83 °C [150 °F] above the cable operating temperatures within the fire barrier system at the onset of the external fire exposure. The cable TET limits in conjunction with a post test visual cable inspection and the Hi-Pot test described above should readily demonstrate the functionality of the cable circuit during and after a fire.

The cable normal operating temperature can be determined by loading cable specimens installed within a thermal barrier system is the test configuration with rated voltage and current. The TET temperature limits for most cable insulation may be obtained from the manufacturer's published data which is given as the short-circuit rating limit. With the known TET and normal operating temperature for each thermal barrier system configuration, the maximum temperature rise limit within a fire barrier system may then be determined.

Dated at Rockville, Maryland, this 16th day of July, 1993.

For the Nuclear Regulatory Commission.

**Gail H. Marcus,**

*Chief, Generic Communications Branch, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17586 Filed 7–22–93; 8:45 am]

BILLING CODE 7590–01–M

## Use of Experience Data for ALWR Seismic Qualification

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** Nuclear Regulatory Commission staff and consultants will hold their third public meeting with staff and contractors of the Advanced Reactor Corporation and other industry representatives to discuss methodology

and criteria for seismic qualification of safety related equipment in Advanced Light Water Reactors (ALWRs) by use of experience data.

**DATES:** September 30, 1 p.m. to 6:30 p.m. October 1, 8 a.m. to 12 Noon.

**ADDRESSES:** Electric Power Research Institute, Building 3, room 3–254, 3412 Hillview Avenue, Palo Alto, California 94303.

**FOR FURTHER INFORMATION CONTACT:** John A. O'Brien, Structural and Seismic Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3894.

**SUPPLEMENTARY INFORMATION:** The use of experience data as a method of seismic qualification has been proposed by the Electric Power Research Institute (EPRI) in the Utility Requirements Documents for both passive and evolutionary ALWRs. This approach is treated in IEEE Std 344–87 and, according to Regulatory Guide 1.100, will be evaluated by the NRC staff on a case-by-case basis.

The purpose of this meeting is to exchange information relating to the viability of the experience approach to specific equipment categories and the conditions which must be met in each case. No specific agenda is being proposed.

Dated at Rockville, Maryland this 16th day of July 1993, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

*Director, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 93–17587 Filed 7–22–93; 8:45 am]

BILLING CODE 7590–01–M

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[Docket Nos. 50–369 and 50–370]

## Duke Power Co.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17 issued to Duke Power Company for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would revise the boron concentration limits within the refueling Water Storage Tank and within the Cold Leg Accumulators in order to support the safe operation of McGuire Unit 2 Cycle 9 and subsequent cycles.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has listed the amendment changes into three categories. The first category identifies changes to the TS numbering scheme and adds a designation to the top and bottom of each TS page that is only applicable to Unit 1 or Unit 2. The second category relates to changes to the Cold Leg Accumulator (CLA) and the Refueling Water Storage Tank (RWST) boron concentration limits. The changes are: An increase in the maximum boron concentration limit for the Unit 1 CLA; an increase in the maximum and the minimum boron concentration limits for Unit 2 CLA; an increase in the minimum boron concentration limit for the Unit 2 RWST while in modes 5 and 6; an increase in the maximum boron concentration limit for the Unit 1 RWST while in modes 1 through 4; and an increase in the maximum and minimum boron concentration limits for Unit 2 RWST while in modes 1 through 4. The third category proposes changes to the boron concentration limits during refueling operations which are as follows: an increases in the minimum boron concentration limit for the Unit 2 refueling canal; and an increase in the minimum boron concentration limit for Units 2 spent fuel pool water. The Bases pages are also revised to reflect the above changes. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(Amendment would not) involve a significant increase in the probability or consequences of an accident previously evaluated.

*Category 1*

The changes within this category are administrative in nature and only involve how the TS are structured. These particular changes are not considered to be initiators of any previously evaluated accident. As such, the probability of accidents previously evaluated would not change as a result of the proposed changes within this category. The proposed changes do not contribute in any way to the outcome of an accident that has been previously evaluated, nor do they play a role in the mitigation of any previously evaluated accident because the changes associated with this category only concern how the TSs are structured. Accordingly, the consequences of previously evaluated accidents is not altered by the proposed changes from this category.

*Category 2*

The proposed amendments provided by this category primarily involve changes to the boron concentration limits for the RWST and the CLA for a particular unit. The changes to the boron concentration limits of the RSWT and the CLA are necessary to support the safe operation of McGuire Unit 2 Cycle 9. The minimum boron concentration limits ensure the reactor will remain subcritical during a LOCA (loss of coolant accident) and the limits are determined by the NRC approved methodology described in the Duke Power Topical Report DPC-NF-2010A.

For modes 5 and 6, the minimum RWST boron concentration limits ensure that negative reactivity control is available when the plant is [in] a cold shutdown condition. The requirements are based on ensuring that a 1% delta K/k shutdown margin is maintained at all times during the cycle. The required boron concentration limits are determined by the NRC approved methodology discussed in DPC-NF-2010A.

The maximum RWST and CLA boron concentration limits are necessary to provide adequate operating margin, given the increase in the minimum boron concentration limits. In addition, the maximum boron concentration limits ensure that boron precipitation is precluded following a LOCA. The methods and assumptions utilized to perform the boron precipitation analysis is described in a Westinghouse letter CLC-NS-309 dated April 1, 1975 and is consistent with previous reload submittal approved by the NRC for McGuire.

The revision to the minimum allowable value for post-LOCA containment sump pH is necessary due to the proposed increases in the RWST and CLA boron concentration limits. The higher boric acid content could result in a post-LOCA mixed containment sump pH of less than 8.5. As a result the pH band specified within the Bases of the McGuire Tss is revised to be greater than or equal to 7.5 and less than or equal to 10.5 and is consistent with the NRC criteria for sump pH after a LOCA, contained in Branch Technical position MTEB 6–1.

In summary, all proposed changes associated with the category are a result of analysis that have been performed by analytical methods and techniques that have been accepted by the NRC and whose results are clearly within all NRC within all NRC acceptance criteria. Accordingly, the proposed changes associated with this category do not significantly increase the probability or consequences of any previously evaluated accidents.

*Category 3*

The proposed changes provided by this category primarily involve changes to the boron concentration limits in the Unit 2 refueling canal and the Unit 2 spent fuel pool water. These changes are intended to be consistent with the proposed change to the RWST minimum boron concentration limit. During refueling, the water in the refueling canal and the spent fuel pool can be mixed during fuel transfer. Raising the refueling canal and spent fuel pool minimum boron concentration limits to the RWST minimum boron concentration requirement will prevent the RWST boron concentration from getting out of specification upon post refueling refill. As such, the proposed change would provide additional shutdown margin during refueling operations. Further, the minimum boron concentration limit in these two areas are not considered to be initiators of any accidents that have been previously analyzed.

Therefore, the proposed changes from this category will not increase the probability of a previously evaluated accident or increase the consequences of the accident.

(Amendment would not) create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

*Category 1*

As discussed above, the changes associated with this category are administrative in nature and only affect how the TSs are structured. Systems, structures or components at McGuire are not affected or changed in any way. Procedures and how the plant is operated and maintained will not be changed. Accordingly, a new or different kind of accident from any accident previously evaluated would not be created.

*Category 2*

The proposed changes associated with this category are a result of analysis that have been performed by analytical methods and techniques that have been reviewed and approved by the NRC and the results [from] the analysis are clearly within all NRC acceptance criteria. The changes proposed ensured the safe operation of McGuire 2 Cycle 9 during normal operational situations as well as in response to design base events. The changes also ensure that stress corrosion cracking will not occur for an extended period following a LOCA and iodine retention in the containment sump water is not adversely impacted. Accordingly, the proposed changes of this category will not result in a new or different kind of accident.

*Catetory 3*

The proposed changes of this category provide additional shutdown margin beyond what [normally] would be required during refueling operations. The increase in the minimum boron concentration within the refueling canal and the spent fuel pool does not result in any additional canal and the spent fuel pool does not result in any additional operational concerns nor adversely impact any systems, structures or components at McGuire. Accordingly, the proposed changes associated with this category will not create any new or different kinds of accidents than those that have been previously evaluated.

([A]mendment would not) involve a significant reduction in a margin of safety.

*Category 1*

The changes associated with this category only effect how the TSs will be structured and are considering to be administrative in nature. No margin of safety are affected in any way by the proposed changes associated with this category. Accordingly, the proposed changes do not involve a reduction in a margin of safety.

*Category 2*

The analytical methods and techniques utilized to determine the proposed changes associated with this category have been reviewed and approved by the NRC. The results of the analyses that were performed confirm that the proposed changes are well within all NRC acceptance criteria. The proposed TS changes ensure that McGuire 2 Cycle 9 will operate safely and that the consequences of design base events for all modes of operation are within NRC approved acceptance criteria for McGuire. Accordingly, the proposed changes associated with this category will not involve a significant reduction in a margin of safety.

*Category 3*

The proposed changes associated with this category provide an additional shutdown margin beyond what would normally be required. As such, a margin of safety would be enhanced by the changes of this category. Accordingly, there would be no reduction in a margin of safety as a result of the proposed changes associated with this category.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 23, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence an cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 13, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 19th day of July 1993.

**David B. Matthews,**

*Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17586 Filed 7–22–93; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–315 and 50–316]**

**Indiana Michigan Power Co., (Donald C. Cook Nuclear Plant Units 1 and 2); Exemption**

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.D.2(b)(ii) of Appendix J of 10 CFR part 50 requires, in part, that a full pressure air lock leakage test be performed whenever air locks are opened during periods when containment integrity is not required by the plant's Technical Specifications.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated December 21, 1992, the licensee requested an Exemption from the requirement of 10 CFR part 50, appendix J, III.D.2(b)(ii) identified in section II above, and substitution of an air lock door seal leakage test (Paragraph III.D.2(b)(iii) of appendix J, 10 CFR part 50) for the full pressure air lock test otherwise required by Paragraph III.D.2(b)(ii) when the air lock is opened while the reactor is in cold shutdown (Mode 5) or refueling (Mode 6), if no maintenance has been performed on the air lock that could affect its sealing

capability. The exemption would also allow the door seal leakage rates test of III.D.2(b)(iii) to be used when the maintenance affecting the air locks sealing capability was performed only on the door gaskets. That is, door seal testing will be done after each opening, after maintenance which could affect the air lock door gaskets, and prior to establishing containment integrity. If maintenance that could affect sealing capability has been performed on an air lock, other than the door gaskets, a full pressure air lock test must still be performed.

If an air lock is opened during Modes 5 and 6, Paragraph III.D.2(b)(ii) of Appendix J requires that an overall air lock leakage test at not less than the calculated peak containment pressure from a design-basis LOCA (Pa) be conducted before plant heatup and startup (i.e., entering Mode 4). The existing air lock doors are so designed that a full-pressure (i.e., Pa=47.0 psig) test of an entire air lock can only be performed after strongbacks (structural bracing) have been installed on the inner door. Strongbacks are needed because the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. Installing strongbacks, performing the test, and removing strongbacks requires at least 8 hours per air lock (there are two air locks) during which access through the air lock is prohibited.

If the periodic 6-month test of paragraph III.D.2(b)(i) of Appendix J and the test required by paragraph III.D.2(b)(iii) of Appendix J are current, no maintenance (other than to door gaskets) has been performed on the air lock that could affect its sealing capability, and the air lock is properly sealed, there is no reason to expect the air lock to leak excessively just because it has been opened in Mode 5 and Mode 6.

Accordingly, the Commission concludes that the licensee's proposed approach of substituting the seal leakage test of paragraph III.D.2(b)(iii) for the pressure test of paragraph III.D.2(b)(iii) of Appendix J is acceptable following door gasket maintenance and/or prior to entering Mode 4. Furthermore, the licensee has committed to meet the requirements of paragraph III.D.2(b)(ii) of Appendix J whenever other maintenance that could affect sealing capability has been performed on the air lock.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. The purpose of paragraph III.D.2(b)(ii) is to ensure that air locks are properly sealed when containment integrity is required. The proposed alternative test method is sufficient to achieve this underlying purpose in that it provides adequate assurance of continued leak tight integrity of the air lock. Consequently, the special circumstances described by 10 CFR 50.12(a)(2) (ii) and (iii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation. Compliance would result in undue hardship that would be significantly in excess of that contemplated when the regulation was adopted in that plant startup would be delayed while an overall air lock leakage test was performed at full pressure. The effort and delay required is not warranted by the resulting safety benefit.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in Section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2) (ii) and (iii) are present justifying the exemption.

Therefore, the Commission hereby grants the exemption as described in Section III above from 10 CFR part 50, appendix J, III.D.2(b)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (58 FR 35984).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 16th day of July.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Acting Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17589 Filed 7–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8903]

## Homestake Mining Co.; Finding of No Significant Impact Regarding Reclamation in Place of the Tailings From the Homestake Mining Company's Grants Mill, Cibola County, NM

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of a finding of no significant impact.

1. Proposed Action

The administrative action is issuance of an amendment to the Homestake Mining Company license to implement the approved reclamation plan for the Grants Mill in Cibola County, New Mexico.

2. Reasons for Finding of No Significant Impact

An environmental assessment was prepared by the staff of the U.S. Nuclear Regulatory Commission's Uranium Recovery Field Office. The environmental assessment evaluated alternatives for reclamation of the tailings at the Grants Mill. The assessment included an evaluation of the licensee's environmental report dated April 1982, and supplements dated December 8, 1992, and January 11 and March 16, 1993.

The licensee's preferred alternative for tailings reclamation is disposal in place in accordance with a design which meets all the technical criteria of 10 CFR part 40, appendix A. A memorandum for Docket File No. 40–8903, which recommended conditional approval of a proposed plan for reclamation of the tailings in place, was prepared by the staff on may 28, 1992. A Notice of Intent to amend the license to incorporate the conditional approval of the plan was published in the Federal Register on June 9, 1992, allowing a 30-day comment period. No comments were received during the comment period; however, the staff postponed issuance of the amendment until the conditional issues were resolved. A final design is documented in a Memorandum for Docket File No. 40–8903 dated July 14, 1993.

The staff has occurred with the licensee's conclusion that reclamation in place was the preferred alternative following a review of the environmental report and supplements. Based on these reviews and the lack of any comments during the 30-day comment period, the staff proposes to amend the license upon publication of this Finding of No Significant Impact to incorporate a plan

for reclamation of the disposal area in place.

The Environmental Assessment providing the basis for the finding of no significant impact was completed on May 12, 1993. This document is available for public inspection and copying at the Commission's Uranium Recovery Field Office, 730 Simms Street, Lakewood, Colorado, and at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Denver, Colorado, this 14th day of July 1993.

**Edward F. Hawkins,**

*Deputy Director, Uranium Recovery Field Office.*

[FR Doc. 93–17590 Filed 7–22–93; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–32645; File No. SR–DTC–92–12]**

## Self-Regulatory Organizations; the Depository Trust Co.; Order Approving a Proposed Rule Change Relating to Mandatory Use of the Automated Tender Offer Program

July 16, 1993.

On August 7, 1992, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. ST–DTC–92–12) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change mandates the use of DTC's Automated Tender Offer Program ("ATOP"). Notice of the proposal was published on November 20, 1992, in the **Federal Register** to solicit comments on the proposed rule change.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

### I. Description of the Proposal

DTC has proposed a rule change mandating ATOP, including the modified version of ATOP called ATOP II (hereinafter both ATOP and ATOP II are collectively referred to as ATOP), as the only method of processing tender and exchange offers through DTC.[3] Prior to the development of ATOP, participants could accept an offer by submitting hardcopy (i.e., paper) acceptance documentation to DTC. DTC implemented ATOP in 1989 in order to automate the manner in which offers are processed,[4] and since that time DTC has been processing offers both through ATOP and through the older service using hardcopy acceptance documents. DTC now intends to discontinue the older service and have ATOP as the only means of processing offers at DTC.[5]

To accept an offer through ATOP, participants send electronic instructions to DTC through DTC's communication system.[6] A principal feature of ATOP is the elimination of hardcopy letters of transmittal[7] signed by the participants. In place of the signed letters of transmittal, DTC receives electronic instructions from participants, and transmits electronic messages containing those instructions to tender or exchange agents. The electronic instructions received by DTC and transmitted to the agent include a single character by which the Participant acknowledges its receipt of and agreement to be bound by the offeror's letter of transmittal. ATOP does not change current practices regarding the preparation and distribution of offering materials including letters of transmittal.

DTC implemented ATOP II in 1991 in order to make the benefits of ATOP available to agents that do not handle a large volume of offers and that do not have PTS terminals and printers available for ATOP.[8] Under ATOP II, participants send electronic instructions to DTC just as they do in the full version of ATOP. Then, in place of relaying those instructions to the agent by use of electronic messages, DTC generates messages to the agent on a printer at DTC and delivers the messages to the agent at the end of the day by courier service. During the day, the ATOP II agent can access information about the offer, such as which DTC participants have tendered securities, through a personal computer.

### II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[9] Sections 17A(b)(3)(A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and promote the prompt and accurate clearance and settlement of securities transactions. ATOP alleviates problems such as the risk of loss, delays during shipment, and the expense and labor involved in the physical handling of documents arising from the use of hardcopy documents in offers. In addition, ATOP provides agents and offerors with an improved ability to control the processing of offer by making a variety of information available to the agent and to the offeror while an offer is open. Therefore, DTC's mandating the use of ATOP should facilitate the prompt and accurate clearance and settlement of securities transactions in accordance with its statutory obligations.

ATOP, including ATOP II, has become the predominant method of processing offers at DTC. During 1991 and the first six months of 1992: (i) 57% of the offers processed at DTC were ATOP offers and 43% were offers using the older service, (ii) 71% of the acceptances of offers by participants were acceptances submitted in ATOP offers and 29% were acceptances submitted in offers using the older service; (iii) 83% of the cash paid in tender offers through DTC was paid in ATOP offers and only 17% was paid in offers using the older service; and (iv) 78% of the market value of all securities surrendered in exchange offers at DTC was surrendered in ATOP offers and only 22% was surrendered in offers using the older service.

It is DTC's belief that there is no substantive operation by offerors and agents to the proposed mandatory use of ATOP. Of the few small offers processed by DTC since the inception of ATOP that not made us of the system, DTC states that in a majority of these offers unfamiliarity with ATOP was the reason

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[1] 15 U.S.C. 78s (b)(1) (1988).

[2] Securities Exchange Act Release No. 31465 (November 16, 1992), 57 FR 45879 (File No. SR–DTC–92–12).

[3] For a description of ATOP, refer to Securities Exchange Act Release Nos. 27139 (August 14, 1989), 54 FR 34841 [File No. SR–DTC–88–10] (order approving the ATOP program); 29168 (May 7, 1991), 56 FR 22742 (File No. SR–DTC–91–04) (order granting accelerated approval on a temporary basis to modifications of ATOP); and 30678 (May 7, 1992), 57 FR 20341 (File No. SR–DTC–91–11) (order approving modifications of ATOP).

[4] Securities Exchange Act Release No. 27139, *supra* note 3.

[5] DTC will retain for some time a limited capability to process offers through the older service in case an offer has unusual features which prevent DTC from processing the offer through ATOP. In such a situation, DTC will process the offer through the older service if DTC determines that the interests of DTC's participants will be served best by making DTC's facilities available for the offer. At this time, DTC does not anticipate any such unusual features.

[6] DTC's communication system is called the Participant Terminal System ("PTS"). A PTS terminal and printer are required to participate in the full version of ATOP.

[7] The letter of transmittal is the basic instrument for effecting transfer of tendered securities. It is the document by which a securityholder of the subject company's securities: Accepts the bidder's invitation to tender or offer to purchase; offers to sell the subject company's shares to the bidder; appoints the depositary as the agent to receive and hold tendered securities; and guarantees to deliver the subject company's securities to or actually deposits the subject company's securities with the depositary.

[8] Securities Exchange Act Release No. 29168, *supra* note 3.

[9] 15 U.S.C. 78q-1(b)(3)(A) and (F) (1988).

the officers and agents used the old service. The cost to an agent to utilize ATOP is minimal. Only when ATOP is mandated and becomes the exclusive method of processing offers at DTC will the full benefits of the automation of tender and exchange offers be realized by DTC, its participants, and tender and exchange agents.

As previously stated, DTC will retain for some time its capability to process offers through the older hardcopy service in case an offer contains unusual features which prevent DTC from processing the offer through ATOP. Therefore, no individual or entity should be disenfranchised from acting as a tender or an exchange agency by the mandating of ATOP.[10]

In sections 17A(a) (1) (B) and (C) of the Act, Congress set forth its findings that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors and that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.[11] ATOP provides DTC's participants with a more efficient, less costly, and more secure service in the processing of tender and exchange offers at DTC.[12] DTC's proposal, therefore, is consistent with the purposes of section 17A of the Act.

Furthermore, because the proposed rule change is an extension of DTC's existing ATOP program, which has been reviewed and approved by the Commission,[13] the proposal is consistent with the safekeeping requirements of sections 17A(b)(3)(A) and (F).[14] Those Section require that a clearing agency be organized and its rules be designed to assure the safeguarding of securities and funds in DTC's custody or for which it is responsible.

## III. Conclusion

The Commission finds that the proposal is consistent with the requirements of the Act and particularly with section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DTC–92–12) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17570 Filed 7–22–93; 8:45 am]

BILLING CODE 8010–01–M

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[Release No. 34–32950; File No. SR–NYSE–93–29]

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval To Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Location on the Floor of Transactions in Bonds

July 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend NYSE Rule 79A.60 to clarify that the NYSE can determine on a case-by-case basis whether to trade a security on the stock floor or on the bond floor. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

The proposed rule change would amend the NYSE's current requirement that transactions in bonds must take place on the bond floor. The purpose of the rule change is to provide greater flexibility on where new types of securities may be traded.

NYSE Rule 79A.60 was originally intended to ensure that trades in bonds took place at specified locations on the bond floor to facilitate trade and quotation reporting. However, this rule also could be interpreted to limit the trading of fixed income products to the bond floor, although in certain circumstances, according to the Exchange, trading on the stock floor may be more appropriate. For example, a number of recent hybrid products are technically denominated as "notes" or "note units" but have a return linked to a particular stock index. Thus, the NYSE believes these instruments may more appropriately be traded on the stock floor.

In addition, the NYSE represents that it has been presented with listing applications for eight perpetual life "preference securities" or other types of securities that are issued under indentures and pay interest, but have unique characteristics that may make them economically similar to equity products. The NYSE believes that these types of products may also be more suited for trading on the stock floor.

The proposed rule change will clarify that the Exchange has the ability to conduct a case-by-case review on where to trade an individual security. The Exchange will decide to trade a security on either the bond floor or the stock floor based on its determination of what is more appropriate for each security.

The Exchange expects that securities traded on the stock floor will be subject to the trading rules and surveillance

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[10] To assist agents in their use of the ATOP program, DTC currently assigns one representative of its Reorganization Section to each offer, maintains a transfer agent liaison group, and provides participant service representatives for agents who are DTC members. Telephone conversation between Carl Uriet, Deputy General Counsel, DTC, and Jeffrey T. Brown, Staff Attorney, Division of Market Regulation, Commission (July 7, 1992).

[11] 15 U.S.C. 78q–1(a) (1)(B) and (C) (1988).

[12] Because of the inefficiencies and risks associated with processing securities tendered in physical form, the Commission adopted rule 17Ad–14 of the Act (17 CFR 240.17Ad–14). Rule 17Ad–14 requires transfer agents acting as tender agents on behalf of bidders to establish and maintain special accounts with all qualified securities depositories holding the subject company's securities. Rule 17Ad–14 requires that these accounts be maintained, among other purposes, for receiving securities being tendered to the bidder by book-entry delivery pursuant to transmittal letters and other documentation. The Commission believes that ATOP's procedures satisfy the "pursuant to transmittal letter and other documentation" requirement.

[13] *Supra* note 3.

[14] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

procedures applicable to equity products. Similarly, securities traded on the bond floor will be subject to fixed income trading rules and surveillance procedures. If however, the characteristics of a new product require that exceptions be made regarding the application of trading rules or surveillance procedures, the Exchange will consult with the Commission staff before trading begins, and will grant such exceptions only with Commission staff concurrence.

The decision as whether other equity or fixed income rules will apply will need to be made on a case-by-case basis. For example, margin requirements are governed not only by the Exchange, but also by other regulatory authorities, such as the Commission and Board of Governors of the Federal Reserve System. The Exchange will have to analyze each new product to determine the appropriate application of the margin rules, consulting with other regulatory authorities where necessary.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of section 6(b)(5) thereunder.[3] Specifically, the Commission finds that the proposal will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market by giving discretion to the Exchange to assign fixed income products that have characteristics of both debt and equity to the trading floor which is most appropriate for the trading of those securities.

The Commission recognizes that certain hybrid securities which are designated as bonds may have characteristics which make them economically similar to equity products. The Commission believes that by providing the NYSE with the discretion to assign such products to the equity floor for trading will be beneficial to public investors, because hybrid products will be able to be traded in the environment most suited to them as indicated by the characteristics of the products rather than the name that attaches to them.

The Commission further notes that since fixed income products which are traded on the stock floor will be subject to the trading rules and surveillance procedures applicable to equity products, the discretion allowed to the Exchange by the proposed change does not unnecessarily increase regulatory concerns. The Commission further notes that in those cases where the Exchange believes the characteristics of a new product require exceptions to the application of the equity trading rules, surveillance procedures, and margin, or other requirements, the Exchange has agreed to consult with the Commission before trading those products, and the NYSE will not grant such exceptions unless the staff of the Commission concurs with the recommendations of the NYSE. Accordingly, the Commission believes that any regulatory concerns in altering the rules applicable to a particular product will be adequately addressed by the Commission and the NYSE, before any exception is granted.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that by accelerating approval of the proposal, the Exchange, where appropriate, will be able to assign fixed income type products currently being traded on the bond floor to the equity floor, thus creating greater efficiency in the markets for those securities. Accordingly, the Commission believes that it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–29 and should be submitted by August 13, 1993.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act[4] that the proposed rule change (SR–NYSE–93–29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17501 Filed 7–22–93; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5) (1982).

[4] 15 U.S.C. 78s(b)(2) (1988).

[5] 17 CFR 200.30–3(a)(12) (1992).

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**[Release No. 34–32846; International Series Release No. 564; File Nos. SR–OCC–93–07 and SR–ICC–93–04]**

**Self-Regulatory Organizations; The Options Clearing Corp. and The Intermarket Clearing Corp.; Filing of Proposed Rule Changes Relating to the Restructuring of Cross-Margining Program**

July 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 24, 1993, The Options Clearing Corporation ("OCC") and The

[1] 15 U.S.C. 78s(b)(1) (1988).

Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by OCC and ICC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes**

The proposed rule changes will restructure the cross-margining program between OCC and ICC so that it parallels the cross-margining programs between OCC and other commodity clearing organizations.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes**

In its filing with the Commission, OCC and ICC included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. OCC and ICC have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

The purpose of the proposed rule changes is to restructure the current OCC/ICC cross-margining program in order to facilitate wider participation in the program. The restructured program will parallel the cross-margining programs between OCC and other commodity clearing organizations. OCC and ICC have entered into a Cross-Margining Agreement ("OCC/ICC Agreement") with respect to the restructured program.

The OCC/ICC Agreement is based on the Cross-Margining Agreement among OCC, ICC, and the Chicago Mercantile Exchange ("CME") ("OCC/ICC/CME Agreement").[2] The OCC/ICC Agreement accommodates the restructured cross-margining program between OCC and ICC which will operate in basically the same way as the existing OCC/CME cross-margining program.[3] the OCC/ICC Agreement is substantially similar to the OCC/ICC/CME Agreement except for the following differences.

Because neither OCC nor ICC conduct settlements on Good Friday, that day will not be included in the definition of the term "business day."[4] The term "carrying clearing organization" is deleted from the OCC/ICC Agreement because the OCC/ICC Agreement only provides for a bilateral cross-margining program between OCC and ICC. Conforming changes are made to other terms defined in the OCC/ICC Agreement.

OCC and ICC have determined that it is unnecessary to provide that certain oral agreements must be made over a recorded telephone line and confirmed in writing.[5] Accordingly, all references (most notably found in Sections 5, 6, 7, and 14 of the OCC/ICC/CME Agreement) relating to the use of recorded telephone lines to make oral agreements and to confirming such agreements in writing are deleted from the OCC/ICC Agreement.

As is the case in their current program, OCC and ICC will not impose "super margins" with respect to cross-margin accounts in their restructured program. As the clearing organizations have stated in the past, neither believes that super margins are essential to a cross-margining program, and therefore, all references to super margins are deleted from Section 5 of the OCC/ICC Agreement. The operation of a cross-margining program that does not require super margins is not novel. Indeed, the Commission recently approved another cross-margining program that did not impose super margins.[6]

In the OCC/ICC Agreement, ICC does not appoint OCC as its agent for receiving and responding to and approving or disapproving settlement instructions for purposes of Section 7, "Daily Settlement Procedures."[7] Settlement times and procedures in Section 7 reflect those of OCC and ICC. All provisions that concern the effect of certain actions taken by a clearing organization that is not a carrying clearing organization with respect to cross-margin accounts are deleted from Section 7 as well. Paragraph (i) of Section 7 is modified to provide that settlements with respect to non-proprietary cross-margin accounts will be paid once a clearing member has completed its settlement obligations with respect to all other accounts with the clearing organizations. This revision conforms the terms of paragraph (i) to the practice in the OCC/CME program.

The liquidation procedures described in Section 8 of the OCC/ICC Agreement are revised to accommodate a cross-margining program between two clearing organizations. OCC and ICC will each retain (bear) 50% of any surplus (shortfall) on the liquidation of the cross-margin accounts of the defaulting clearing member. OCC and ICC have determined that it is unnecessary to provide in the OCC/ICC Agreement that each will adhere to its respective rules regarding assessments against the clearing fund deposits of other clearing members in the event of a default of a cross-margining clearing member or its affiliated clearing member. OCC and ICC also have determined that it is unnecessary to provide for an annual evaluation of the above-described surplus (loss) sharing formulas. Accordingly, the provisions for sharing any surplus (shortfall) parallel those that are in effect in the existing OCC/CME cross-margining program.

The indemnification procedures described in Section 10 and the termination procedures described in Section 12 of the OCC/ICC Agreement are revised to accommodate only a bilateral cross-margining program. Section 12 also is revised to eliminate the provision that prohibits termination without cause of the cross-margining program until one year after the effective date because the clearing organizations believe that such a provision in unnecessary.

OCC and ICC additionally have determined that it is unnecessary to advise one another of the total size of and aggregate contributions to their respective clearing funds and that it is unnecessary to advise one another whether a cross-margin clearing bank is experiencing operational difficulties. They currently do not exchange such information. Accordingly, those provisions are deleted from Section 14, "Information Sharing," of the OCC/ICC Agreement. The clearing organizations

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[2] Securities Exchange Act Release No. 32534 (June 28, 1993), 58 FR 36234 (File Nos. SR–OCC–92–28 and SR–ICC–92–05) (order approving the OCC/ICC/CME cross-margining program). The OCC/ICC/CME Agreement provides for the establishment of a trilateral and two bilateral cross-margining programs.

[3] For a description of the OCC/CME cross-margining program, refer to Securities Exchange Act Release Nos. 27290 (September 26, 1989), 54 FR 41195 (File No. SR–OCC–89–01) (order approving OCC/CME proprietary cross-margining) and 29991 (November 26, 1991), 56 FR 61458 (File No. SR–OCC–90–1) (order approving OCC/CME non-proprietary, market professional cross-margining).

[4] No settlements are conducted on Good Friday in the current OCC/ICC cross-margining program, and therefore, it is not a business day for purposes of the current OCC/ICC program.

[5] Such requirements are not a part of the current OCC/ICC cross-margining program.

[6] Securities Exchange Release Act No. 31414 (November 6, 1992), 57 FR 53943 (File No. SR–OCC–92–22) (order approving proprietary cross-margining program between OCC and the Comex Clearing Association, Inc.).

[7] ICC, however, will appoint OCC as its agent for such purpose in a letter agreement between the parties.

will no longer appoint arbitrators under the revised arbitration procedures described in Section 16 of this Agreement.

The list of contracts eligible for cross-margining are set forth in Exhibit A to the OCC/ICC Agreement and is tailored for the program between OCC and ICC. Eligible contracts for OCC will include put and call options on broad-based stock indices and on foreign currencies. Eligible contracts for ICC will include futures contracts on the New York Stock Exchange Composite Index, put and call options on the New York Stock Exchange Composite Index futures, and foreign currency futures. Other stylistic or nonsubstantive changes are made to the OCC/ICC Agreement.

The forms of account agreements and subordination agreements are substantially identical to those that are used in the cross-margining arrangement among OCC, ICC, and CME except that the account agreements and subordination agreements for the OCC/ICC cross-margining program accommodate only a bilateral cross-margining program.

The proposed changes to OCC's and ICC's Rules eliminate specific references to the OCC/ICC cross-margining program as currently structured. Accordingly, the provisions of Section 23 of Article VI of OCC's By-Laws, which describes the current structure, is deleted and Section number 23 is reserved for future use. Similarly, the provisions of ICC Rule 513, which describes the current structure, is deleted, and Rule number 513 is reserved for future use. Conforming amendments also are made to other OCC and ICC rules and to the ICC Margin Resolution. Thus, under the revisions to OCC's By-Laws and Rules approved in File No. SR–OCC 92–28,[8] ICC will be considered a "carrying commodity clearing organization," and the cross-margining arrangement between OCC and ICC will be governed by the terms of Section 24 of Article VI of OCC's By-Laws and the appropriate provisions of OCC's Rules. Under the revisions to ICC's Rules approved in File No. SR–ICC–92–05,[9] OCC would be considered a "carrying clearing organization," and the cross-margining arrangement between OCC and ICC would be governed by ICC's Rules 514 through 520.

The proposed rule changes are consistent with the purpose and requirements of section 17A of the Act because they restructure the OCC/ICC cross-margining program in order to facilitate wider participation in the program and thereby enhance the safety of the clearing system while providing lower clearing margin costs to participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

OCC and ICC do not believe that the proposed rule changes will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File Nos. SR–OCC–93–07 and SR–ICC–93–04 and should be submitted by August 13, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17571 Filed 7–22–93; 8:45 am]

BILLING CODE 8010–01–M

[8] *Supra* note 2.

[9] *Supra* note 2.

## DEPARTMENT OF TRANSPORTATION

**Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 9, 1993**

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming applications, or motions to modify scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49018
*Date filed:* July 8, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 5, 1993
*Description:* Application of Capitol Air Express, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the regulations, to authorize CAE to engage in scheduled interstate and overseas air transportation of persons, property, and mail.

*Docket Number:* 45723
*Date filed:* July 9, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 6, 1993
*Description:* Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment of its Foreign Air Carrier Permit, to permit TAESA to engage in the scheduled air transportation of persons, property and mail (1) between the coterminal points Zacatecas, Tijuana and Leon, Mexico, on the one hand, and the terminal point Oakland, CA, on the other hand; and (2) between the terminal point Monterrey, Mexico on

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the one hand and the terminal point Las Vegas, NV on the other hand.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 93–17536 Filed 7–22–93; 8:45 am]

BILLING CODE 4910-62-P

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## Aviation Proceedings; Agreements Filed During the Week Ended July 9, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 49015
*Date filed:* July 6, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC12 Reso/P 1509 dated June 29, 1993, Mid Atlantic-Europe Expedited Resos, r-1- 002y r-5- 071o r-6- 072dd
*Proposed Effective Date:* August 1, 1993

*Docket Number:* 49016
*Date filed:* July 6, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC2 Reso/C 0377 dated May 21, 1993, Europe-Israel Cargo Resos r-1 to r-7
*Proposed Effective Date:* October 1, 1993

*Docket Number:* 49017
*Date filed:* July 6, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* COMP Reso/C 0554 dated May 21, 1993, Composite Cargo Resos r-1 to r-11
*Proposed Effective Date:* October 1, 1993

*Docket Number:* 49019
*Date filed:* July 8, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC2 Mail Vote 640 - Within Africa fares Amendment to Mail Vote
*Proposed Effective Date:* July 15, 1993

*Docket Number:* 49020
*Date filed:* July 8, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC1 Telex Mail Vote 637 - TC1 Cargo Rates, (except to/from US/UST), Amendment to Mail Vote
*Proposed Effective Date:* October 1, 1993

*Docket Number:* 49021
*Date filed:* July 8, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC1 Telex Mail Vote 638 - US/UST Cargo Rates, R–1- 551 r-2- 590, Amendment to Mail Vote
*Proposed Effective Date:* October 1, 1993

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 93–17537 Filed 7–22–93; 8:45 am]

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ITEMS TO

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 140
Friday, July 23, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:05 a.m. on Tuesday, July 20, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation concerning an administrative enforcement proceeding.
Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: July 20, 1993.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 93–17675 Filed 7–21–93; 4:37 pm]

BILLING CODE 6714-01-M

## FEDERAL ELECTION COMMISSION

**DATE AND TIME:** Tuesday, July 27, 1993 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, July 29, at 10:00 a.m.

**PLACE:** 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

**STATUS:** This Meeting Will be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.
Advisory Opinion 1993–09: Mr. Eric E. Doster on behalf of the Michigan Republican State Committee.
Convention Regulations: Notice of Proposed Rulemaking.
Ethics: Draft Directive—Confidential and Public Financial Disclosure Reports.
Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

**Delores Hardy,**

*Administrative Assistant.*

[FR Doc. 93–17597 Filed 7–20–93; 3:34 pm]

BILLING CODE 6715-01-M

## FEDERAL HOUSING FINANCE BOARD

**TIME AND DATE:** 9 a.m., Wednesday, July 28, 1993.

**PLACE:** Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

**PORTIONS OPEN TO THE PUBLIC:** The Board will consider the following:

1. FHLBank System Reports
   A. Monthly Financial Report
   B. Monthly Membership Report
   C. Second Quarter 1993 CIP Report
   D. Quarterly Office of Finance Report
2. Office of Finance Debt Issuance Authority
3. Final Membership Regulation
4. Resolution that the Interim Final Rule on Advances Supersedes all Terms and Conditions Contained in Previous Finance Board Resolutions Authorizing FHLBank Nonmember Mortgagee Advances Programs
5. Resolution Permitting the FHLBank of Cincinnati to Lend to the Tennessee State Housing Finance Agency as a Nonmember Mortgagee
6. Standby Letter of Credit Policy Revision
7. Rescission of Resolution 91–590.2 Temporary Requirement for Finance Board Approval of Term Property and Employment Contracts
8. System 2000: Update on Actions Taken by FHLBank Boards Regarding the Finance Board's Endorsed "System 2000"

**PORTIONS CLOSED TO THE PUBLIC:** The Board will consider the following:

1. Approval of the June Board Minutes
2. 1993 Examination Progress Report
   A. Quarterly reporting cycle and Finance Board approval of changes to the 1993 Strategic Plan.
   B. Briefing on the development of an Examination Manual for the System.
3. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(2), (6), and (9)(B) of title 5 of the United States Code.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

**Philip L. Conover,**

*Managing Director.*

[FR Doc. 93–17593 Filed 7–20–93; 2:11 pm]

BILLING CODE 6725-01-M

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 10:00 a.m., Wednesday, July 28, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 20, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–0000 Filed 00–00–93; 8:45 am]

BILLING CODE 6210-01-P

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, July 29, 1993.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.

2. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Requests by Credit Unions for NCUSIF Share Insurance. Closed pursuant to exemption (8).

4. Administrative Action under Part 709 of NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).

5. NCUA's Budget FY 94 and FY 95. Closed pursuant to exemptions (2) and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

*Secretary of the Board.*

[FR Doc. 93–17702 Filed 7–21–93; 2:12 pm]

BILLING CODE 7535–01–M

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federal register

Friday
July 23, 1993

Part II

# Department of Education

**Federal Interagency Coordinating Council for Children With Disabilities; Meeting**

VOL 58 ISS 140 JL 23 1993 UMI

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Meeting of the Federal Interagency Coordinating Council for Children With Disabilities

**AGENCY:** Department of Education.

**ACTION:** Notice of a public meeting.

**SUMMARY:** This notice announces a public meeting of the Federal Interagency Coordinating Council for Children with Disabilities and the proposed agenda for that meeting. This notice also describes the purpose of the Council. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act Amendments of 1991 (20 U.S.C. 1484a(c)). This document is intended to notify the general public.

**DATE, TIME AND LOCATION:** Tuesday, August 3, 1993, from 1:30 p.m. to 4:15 p.m., in the Ballroom of the Hyatt Regency-Crystal City, 2799 Jefferson-Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Connie Garner, U.S. Department of Education, 400 Maryland Avenue SW., room 4613, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–8124. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–8170.

**SUPPLEMENTARY INFORMATION:** The Federal Interagency Coordinating Council (FICC) was established by section 685(a) of the Individuals with Disabilities Education Act Amendments of 1991 (20 U.S.C. 1484a) to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

This meeting of the FICC will be convened as part of the "Partnerships for Progress" national conference. The "Partnerships for Progress" conference brings together parents, as well as administrators and providers who are responsible for implementing cross-agency programs serving infants, toddlers and preschoolers with disabilities.

At this meeting the FICC plans to: (1) Discuss the congressional intent underlying the purpose and functions of the Council; and (2) hear major reauthorization concerns regarding the upcoming reauthorization of and possible amendments to the Individuals with Disabilities Education Act from the conference participants.

The meeting of the FICC is open to the public. Written public comment will be accepted at the conclusion of the meeting. These comments will be included in the summary minutes of the meeting. The meeting will be physically accessible with meeting materials provided in both braille and large print. Interpreters for persons who are hearing impaired will be available. Individuals with disabilities who plan to attend and need other reasonable accommodations should contact the contact person named above in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 400 Maryland Avenue SW., room 4613, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Dated: July 19, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93–17511 Filed 7–22–93; 8:45 am]

BILLING CODE 4000–01–U

federal register

Friday
July 23, 1993

Part III

# Office of Personnel Management

5 CFR Parts 630 and 890
Family and Medical Leave; Interim Rule

VOL 58 ISS 140 JL 23 1993 UMI

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Parts 630 and 890**

**RIN 3206–AF 51**

**Family and Medical Leave**

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations on family and medical leave to implement Title II of the Family and Medical Leave Act of 1993 (Pub. L. 103–3, February 5, 1993). Public Law 103–3 will become effective on August 5, 1993. The interim regulations provide certain Federal employees a total of 12 administrative workweeks of unpaid leave during any 12-month period for: (a) The birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of the employee's spouse, son, daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. The employee may continue health benefits while he or she is on leave and is entitled to be returned to the same position or to an equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

**DATES:** Interim regulations are effective on August 5, 1993. Comments must be received on or before October 21, 1993.

**ADDRESSES:** Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** For information on the Family and Medical Leave Act of 1993, contact Jo Ann Perrini, (202) 606–1413. For information on the Federal Employees Health Benefits Program, contact Abby L. Block, (202) 606–0191.

**SUPPLEMENTARY INFORMATION:** The Family and Medical Leave Act of 1993 (also called "FMLA" or "the Act"), Public Law 103–3, was enacted on February 5, 1993, and will become effective on August 5, 1993. Title II of the Act provides certain Federal employees with entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs. The purpose of these regulations is to implement the requirements set forth in sections 6381 through 6387 of title 5, United States Code, as added by Title II of the FMLA.

Title I of the FMLA covers non-Federal employees and certain Federal employees not covered by Title II. The Secretary of Labor has issued interim regulations implementing Title I of the FMLA at 29 CFR part 825 (58 FR 31794, June 4, 1993). Title II of the FMLA covers most Federal employees covered by the annual and sick leave system established under chapter 63 of title 5, United States Code, plus certain employees covered by different Federal leave systems. OPM's regulations set forth below implement Title II of the Act and are, to the extent appropriate, consistent with the interim regulations issued by the Department of Labor (DOL). Title III of the FMLA establishes a Commission on Leave. Title IV contains miscellaneous provisions, including rules governing the effect of the Act on more generous leave policies, other laws, and existing employment benefits. Title V provides entitlement to family and medical leave for certain employees of the United States Senate and the U.S. House of Representatives.

**Background**

The House Committee Report for Title I and Title II of the Family and Medical Leave Act of 1993 (Rept. 103–8, 103d Cong., 1st Sess., Parts 1 and 2, February 2, 1993) (hereinafter referred to as the "congressional report" or "legislative history") provides additional information on the intent of Congress in enacting the FMLA. The FMLA is intended to allow employees to balance their work and family life by taking reasonable amounts of leave for medical reasons, for the birth or adoption/foster care of a child, and for the care of a child, spouse, or parent who has a serious health condition. The Act is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote the national interest in preserving family integrity. Congress intended that the Act accomplish these purposes in a manner that accommodates the legitimate interests of employers, and in a manner that minimizes the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women. As stated in DOL's interim regulations implementing Title I of the Act, accommodating employee leave needs will work best and produce the greatest payback in the long term when done in a spirit of cooperation, openness, and in recognition of the fact that both the employer and employee will benefit. By treating employees fairly and equitably, with concern and understanding of the stressful situations they face, and with a minimum of unnecessary requirements, employers will find employees to be more loyal, dedicated, and productive, and a greater asset to their organization.

The congressional report (Part 2) states that the law should not create a burden for the Federal Government as an employer, but will result in significant benefits to the Government through enhanced worker morale, productivity, and retention of quality employees. Congress recognizes that many Federal agencies already provide employees needed time off for medical problems or family needs. The Act simply establishes a clear Federal policy and ensures that all employees are treated fairly and equitably. In addition, in light of the intent of this legislation to assist employees, the committee sees no inconsistency in OPM issuing regulations different from those issued by the Secretary of Labor "where the effect of OPM's regulations is to better enable Federal employees to benefit from the leave provided by this legislation."

**Employees Covered**

Sections 6381 through 6387 of title 5, United States Code, provide entitlement to unpaid family and medical leave to any individual who (1) meets the definition of "employee" in section 6301(2) of title 5, United States Code; (2) is employed as a physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs appointed under section 7401(1) of title 38, United States Code; (3) is a "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code; or (4) is an employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds; *and* (5) has completed 12 months of service as an employee, as defined in (1), (2), (3), or (4) above. Section 6381(1)(A) of title 5, United States Code, specifically *excludes* temporary or intermittent employees and individuals employed by the government of the District of Columbia.

The interim regulations set forth below under 5 CFR part 630, subpart L, are applicable only to those individuals who meet the definition of "employee" in 5 U.S.C. 6301(2), excluding temporary or intermittent employees and individuals employed by the government of the District of Columbia.

Service that is *not* creditable for meeting the 12 months of service requirement under section 6381(1)(B) of title 5, United States Code, includes service under a temporary appointment or as an intermittent employee, service as an employee of the government of the District of Columbia, and military service (other than military duty performed while in a civilian position). In addition, service in a position covered by Title I or Title V of the FMLA is not creditable for meeting the 12 months of service requirement. Up to 6 months of leave without pay is creditable for meeting the 12 months of service requirement.

Sections 6381 through 6387 of title 5, United States Code, also cover physicians, dentists, and nurses in the Veterans Health Administration of the Department of Veterans Affairs appointed under section 7401(1) of title 38, United States Code; "teachers" or individuals holding "teaching positions," as defined in section 901 of title 20, United States Code; and employees identified in section 2105(c) of title 5, United States Code, who are paid from nonappropriated funds. However, OPM does not have responsibility for administration of the leave systems for these Federal employees. Therefore, under the authority of section 1104(a)(2) of title 5, United States Code, OPM has delegated responsibility for issuing regulations to implement section 6381 through 6387 of title 5, United States Code, to (1) the Secretary of Veterans Affairs for physicians, dentists, and nurses in the Veterans Health Administration appointed under section 7401(1) of title 38, United States Code; (2) the Secretary of Defense for "teachers" or individuals holding "teaching position," as defined in section 901 of title 20, United States Code, and certain employees identified in section 2105(c) of title 5, United States Code, who are paid from nonappropriated funds; and (3) the Secretary of Transportation for employees in the U.S. Coast Guard identified in section 2105(c) of title 5, United States Code, who are paid from nonappropriated funds. The regulations prescribed by the Secretary of Veterans Affairs, the Secretary of Defense, and the Secretary of Transportation must, to the extent appropriate, be consistent with the regulations issued by OPM implementing Title II of the FMLA at 5 CFR part 630, subpart L, and the regulations issued by the Secretary of Labor implementing Title I of the FMLA at 29 CFR part 825.

**Effective Date**

The Family and Medical Leave Act of 1993 will become effective on August 5, 1993. An employee on leave for one of the purposes defined in the Act when the Act becomes effective is entitled to invoke his or her entitlement to 12 administrative workweeks of family and medical leave beginning on or after August 5, 1993. No leave taken prior to August 5, 1993, may be counted against this entitlement. If an employee is on leave on August 5, 1993, as a result of a birth or placement for adoption or foster care that occurred prior to August 5, 1993, the 12-month period begins on the date of the birth or placement, and the entitlement to 12 workweeks of leave begins on or after August 5, 1993. For example, if the birth or placement occurred on May 23, 1993, the 12-month period begins on that date and expires 12 months later on May 22, 1994, and the employee's entitlement to 12 administrative workweeks of leave begins on or after August 5, 1993. This may entitle an employee who has already taken leave prior to August 5, 1993, for a birth or placement to additional leave. However, this circumstance will exist only in the initial implementation and transition period.

**Entitlement to Leave**

Under 5 U.S.C. 6382(a)(1), an employee is *entitled* to a total of 12 administrative workweeks of unpaid leave during any 12 month period for one or more of the following reasons:

(1) The birth of a son or daughter of the employee and the care of such son or daughter;

(2) The placement of a son or daughter with the employee for adoption or foster care;

(3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

(4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. Under 5 U.S.C. 6382, a father and a mother are *each* entitled to 12 administrative workweeks of unpaid leave for a birth, adoption, or foster care or for the care of a son or daughter with a serious health condition.

An employee must invoke his or her entitlement to leave under the FMLA. An agency may not require an employee to invoke entitlement to leave under the FMLA. An employee who meets the criteria for leave and has complied with the requirements and obligations under the FMLA may not be denied family and medical leave. An agency must confirm that an employee is invoking his or her entitlement to FMLA leave before the agency may subtract any hours of leave from the employee's entitlement to 12 administrative workweeks of leave. This requirement is intended to foster communication between employees and supervisors. To clarify and protect the rights of both agencies and employees, supervisors may wish to ascertain in advance whether any unpaid leave is being requested under the FMLA.

An employee may elect to substitute paid time off—i.e., annual leave, sick leave, compensatory time off, or credit hours under a flexible work schedule—for leave without pay under the FMLA, consistent with applicable laws and regulations. An agency may not deny an employee's right to substitute paid time off, or require an employee to substitute paid time off, for leave without pay under the FMLA. In addition, an employee may not retroactively substitute paid time off for leave without pay under the FMLA.

Leave without pay under the FMLA is in addition to annual leave, sick leave, advanced annual or sick leave, other leave without pay, leave made available to an employee under the voluntary leave transfer and leave bank programs, and compensatory time off or credit hours available to an employee. However, an employee must obtain approval and/or meet statutory requirements to take additional leave or other periods of paid time off.

**Serious Health Condition**

The FMLA defines a "serious health condition" as "an illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice or residential medical care facility; or (B) continuing treatment by a health care provider."

The congressional report (parts 1 and 2) explains that the term "serious health condition" is intended to cover various types of physical and mental conditions or illnesses that require an employee to be absent from work on a recurring basis or for more than a few days. Likewise, with respect to a spouse, child, or parent, the term "serious health condition" is intended to cover conditions or illnesses that make the spouse, child, or parent unable to participate in school or in his or her regular daily activities. Further, the term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. It is expected that such conditions will fall within the scope of an agency's normal sick leave policy.

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Examples of serious health conditions cited in the legislative history include, but are not limited to, heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, miscarriages, complications or illnesses related to pregnancy (such as severe morning sickness), the need for prenatal care, childbirth, and recovery from childbirth. All of these conditions meet the general test that either the underlying health condition or the treatment for it requires absences on a recurring basis or for more than a few days for treatment or recovery. They also involve either inpatient care or continuing treatment and/or supervision by a health care provider, and frequently involve both.

The regulations require that to be considered a "serious health condition," the condition must require an absence from work, school, or other regular daily activities of more than 3 calendar days. In addition, a "serious health condition" must require continuing treatment by, or under the supervision of, a health care provider. This provision is similar to a statutory provision under the Federal Employees' Compensation Act (FECA), which generally provides for a 3-day waiting period before compensation is paid to an employee for a temporary disability after a period of "continuation of pay." (*See* 5 U.S.C. 8117.)

The FMLA also contemplates that employees would be entitled to leave in some cases because of doctor visits or therapy—i.e., that the absence requiring leave need not be due to a condition that is incapacitating at that point in time. The legislative history explains that absences to receive treatment for early stage cancer, to receive physical therapy after a hospital stay or because of severe arthritis, or for prenatal care are covered by the Act. Therefore, the regulations provide that a "serious health condition" includes treatment for a serious chronic health condition that, if left untreated, would likely result in an absence from work, school, or regular daily activities of more than 3 calendar days.

For any condition other than one that requires inpatient care, the regulations provide that the employee or the employee's spouse, son, daughter, or parent must be receiving continuing treatment by a health care provider. Continuing treatment means that the patient must be treated: (1) Two or more times by the health care provider or by another health care provider under the orders of, or on referral by, the primary health care provider, or (2) on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider—e.g., a course of medication or therapy—to resolve the health condition. The regulations encompass medical conditions where the patient is under the continuing supervision of the health care provider, but may not be receiving active treatment, such as individuals suffering from Alzheimer's disease or late-stage cancer or who have suffered a severe stroke. In addition, leave may be taken to care for a spouse or parent of any age who is unable to care for his or her own basic hygienic or nutritional needs or safety—e.g., a spouse or parent whose daily living activities are impaired by Alzheimer's disease, stroke, clinical depression, recovery from major surgery, the final stages of a terminal illness, or other similar conditions.

Conditions or medical procedures that would not normally be covered by the Act include minor illnesses that last only a few days and surgical procedures that typically do not involve hospitalization and require only a brief recovery period. Complications arising out of such procedures that develop into serious health conditions are covered. Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) that are not medically necessary would not be covered, unless overnight inpatient hospital care is required. Restorative dental surgery after an accident or removal of cancerous growths would be included if the other conditions of the regulations are met—e.g., the condition requires an absence of more than 3 days. Treatments for allergies and stress may be included if the conditions of the regulations are met. Routine physical examinations are excluded.

Treatment of substance abuse may also be included, such as when a stay in an inpatient treatment facility is required. On the other hand, absence because of the employee's use of the substance, without treatment, does not qualify for leave under the FMLA. Also, note that inclusion of substance abuse as a "serious health condition" does not prevent an agency from taking disciplinary action against an employee who is unable to perform the essential functions of the employee's position, provided the agency complies with the Rehabilitation Act of 1973 (29 U.S.C. 701) and the agency does not take action against the employee because the employee has exercised his or her right to take leave under the FMLA for treatment of that condition.

**Health Care Provider**

The congressional report (Part 1) states that "we have had * * * a well-established principle of religious tolerance for those who seek and obtain treatment for a serious medical condition through prayer alone." Further, the congressional report (Part 2) states that "in some circumstances, a medical doctor will be the most expensive alternative among other qualified health care providers. It is, therefore, in the interest of both Federal employees and the taxpayers for the Director of OPM to exercise the discretionary authority granted by the legislation to designate other appropriate health care providers." Further, the congressional report notes that, "if administered too narrowly, the requirement that an employee or family member be receiving continuing treatment from a health care provider in order for the employee to qualify for medical leave or leave to care for a family member with a serious health condition could have the effect of denying any leave to practicing Christian Scientists on the basis of their religious beliefs. The committee, therefore, strongly urges that, for the purposes of this legislation, the Director designate Christian Science practitioners as health care providers in appropriate circumstances."

Consistent with the Act and the intent of the legislative history, the regulations include a broad definition of "health care provider" to include a Doctor of Medicine, a Doctor of Osteopathy, or a physician serving on active duty in the uniformed services; a health care practitioner certified by a national organization and licensed by the State; or a Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

**Unable to Perform Functions of the Position**

The regulations provide that an employee is entitled to leave under the FMLA if he or she has a serious health condition that prevents the employee from performing the essential functions of his or her position. The legislative history states that it is not necessary that an employee literally be so physically or mentally incapacitated that he or she is unable to work in order to meet the requirement of being unable to perform the functions of his or her position. An employee who must be away from work to receive medical treatment or for continuing medical supervision meets this requirement. For example, an

employee undergoing kidney dialysis must be away from work to receive dialysis treatment, an arthritic employee may need periodic physical therapy, a cancer patient may require chemotherapy treatments, an individual who has suffered a serious accident may require periodic physical therapy under medical supervision, and an employee recovering from major heart surgery may be required to report periodically to a physician for examination or monitoring.

**Intermittent Leave or Leave on a Reduced Leave Schedule**

An employee must obtain approval from his or her employing agency to take leave on an intermittent basis or under a reduced leave schedule for the birth of a child or for placement for adoption or foster care. An employee may choose to take leave on an intermittent basis or under a reduced leave schedule when medically necessary to care for his or her spouse, son, daughter, or parent with a serious health condition or for the employee's own serious health condition. An employee's intermittent leave or reduced leave schedule necessary to care for a spouse, son, daughter, or parent includes not only a situation where the individual's health condition itself is intermittent, but also where an employee is only needed intermittently because care is also provided by a third party. The employee must consult with the agency and make a reasonable effort to schedule treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. In addition, the agency may place the employee temporarily in an available alternative position for which the employee is qualified, which has equivalent pay and benefits, and which can better accommodate recurring periods of leave.

OPM encourages the agency and the employee to work together in developing a schedule for treatment that meets both the employee's family or medical needs and the agency's need to manage work. The anticipated duration of the intermittent leave or leave under a reduced leave schedule must be clearly understood by both the employee and the agency. The employee must be informed of any major changes in duties and responsibilities that may result from reassignment to an alternative position. The congressional report (Part 1) states that the committee anticipates that a reduced leave schedule will often be perceived as desirable by employers who would prefer to retain a trained and experienced employee part-time for the weeks the employee is on leave rather than hire a full-time temporary replacement.

**Notice of Leave**

When the need for leave is foreseeable, an employee must provide notice to the agency of his or her intent to take leave not less than 30 days before the date leave is to commence. If a birth, placement for adoption or foster care, or medical treatment must begin within less than 30 days, the employee must provide such notice as is practicable. The congressional report (Part 2) states that the committee recognizes there will be events beyond the control of the employee that require an employee to begin family or medical leave before the employee is able to provide the full 30 days notice. The notice requirement is intentionally qualified (i.e., to provide such notice as is practicable) in order that employees in such circumstances are not denied leave. In such circumstances, the employee remains responsible, however, for providing the agency as much notice as is practicable, given the individual situation. Employees are encouraged to give the agency as much notice as is possible so that the agency has ample opportunity to plan the work during the employee's absence.

An agency may wish to waive the 30-day notice requirement under the FMLA and impose its own usual and customary policy for notification of leave. However, the agency's policy may not be more stringent than the requirements under the FMLA.

An employee's notice of his or her intention to take leave may be provided in person, in writing, or by telephone, FAX, telegraph, or other electronic means. Of course, in emergency situations, notice from an employee's spouse, domestic partner, family member, or other responsible party would suffice until the employee is able to contact the agency to provide additional information.

OPM is considering revising the SF–71, Application for Leave, to allow its use to obtain an employee's notice of his or her intent to take leave under the FMLA. In the meantime, agencies may wish to use the current SF–71 (or the agency's equivalent form) and add remarks to (1) identify the leave as "FMLA leave" for either family leave (for a birth, adoption or foster care, or the care of a spouse, son, daughter, or parent with a serious health condition) or medical leave (for the employee's serious health condition), and (2) document the beginning and ending dates of the employee's "12 month period" of FMLA leave entitlement. OPM invites comments on agencies' experience in using a written form to obtain an employee's notification of his or her intent to take FMLA leave.

**Medical Certification**

Under 5 U.S.C. 6383, an agency may require that leave to care for a spouse, son, daughter, or parent of the employee or for the employee's own serious health condition be supported by certification issued by the health care provider and provided to the agency in a timely manner. The medical certification must include the information required by the interim regulations.

The medical certification supporting the need for leave to care for an employee's spouse, son, daughter, or parent must include a statement that the employee is "needed to care for" the individual. The legislative history makes clear that this provision is to be broadly construed to accommodate leave to provide psychological comfort, as well as physical care, to a seriously ill spouse, child, or parent or to arrange "third party" care for such family member (e.g., care by a visiting nurse or in a nursing home, placement in a special school, etc.). The medical certification must include a statement that the patient requires assistance for basic medical, hygiene, nutritional, safety, or transportation needs or that the employee's presence would be beneficial or desirable for the care of the individual. The employee is required to indicate on the form the care he or she will provide and an estimate of the time period during which care will be provided.

The medical certification supporting the need for leave for the employee's serious health condition must include a statement that the employee is unable to perform the essential functions of his or her position. An agency may provide a statement of the essential functions of the employee's position (such as a copy of the employee's position description and/or performance standards) to assist the health care provider in making this determination.

The Act allows the agency to require medical certification from a second health care provider if the agency doubts the validity of the original medical certification. If the second opinion differs from the original certification, the agency may require certification from a third health care provider. The employee selects the health care provider to provide the original medical certification, the agency selects the second health care provider, and the agency and the employee must agree jointly on the health care provider that will provide

the third opinion. The third opinion is final and binding on the employee and the agency. OPM strongly encourages the agency and the employee to attempt in good faith to reach agreement on the third health care provider. For example, an employee who refuses to agree to see a particular health care provider in the specialty in question may be failing to act in good faith. On the other hand, an agency that refuses to agree to any health care provider on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

The Department of Labor has provided a medical certification form in Appendix B to its regulations implementing Title I of the FMLA at 29 CFR part 825. The use of this medical certification form is optional. OPM plans to transmit a copy of DOL's medical certification form to the agencies for their review. Agencies may wish to use DOL's medical certification form or develop their own form for obtaining medical certification from a health care provider. Agencies must comply with any recordkeeping requirements of the Privacy Act if they choose to develop a medical certification form. Agencies also are to protect an employee's confidentiality by ensuring that disclosure of the medical certification is made in accordance with the disclosure provisions of the Privacy Act at 5 U.S.C. 552a(b). OPM invites comments on whether it is necessary for OPM to develop a medical certification form. If necessary, OPM will publish the medical certification form either in its final regulations implementing Title II of the FMLA or in guidance in the Federal Personnel Manual (FPM).

The regulations allow that if an employee is unable to provide the requested medical certification before leave is to begin, the agency must grant leave on a provisional basis (i.e., "provisional leave") pending final written medical certification. OPM's regulations providing provisional leave are consistent with the congressional report (Part 2), which states, "[T]he committee recognizes, however, that an employee may not be able to provide certification at the same time that it is necessary to begin leave. The committee also recognizes that, in circumstances where an agency questions the initial certification, there is likely to be a time lapse before the employee is able to see a second or third health care provider. It is the committee's intent that, to the extent that an employee is unable to provide certification at the time it is necessary to begin leave or if the agency questions the validity of the initial certification provided by the employee, an agency should, nevertheless, grant provisional leave pending final certification. If, ultimately, the employee is unable to provide the required certification, the leave granted provisionally should be charged to the employee's appropriate paid leave account. In addition, appropriate disciplinary action should be taken against an employee who knowingly provides false certification of the need for leave." (See 5 CFR part 752, Adverse Actions.)

The regulations state that to remain entitled to leave under the FMLA, the employee or his or her spouse, son, daughter, or parent, as appropriate, must comply with any requirement from an agency to submit to examination (though not treatment) by a health care provider (other than the individual's health care provider) to obtain a second or third medical certification. If the individual refuses to submit to such examination and the employee fails to provide a completed medical certification to the agency, the employee may be denied leave under the FMLA.

The regulations allow an agency to require an employee on leave to obtain medical recertification, not more often than every 30 calendar days, on the continuing need for leave. It is reasonable to require recertification less frequently when the health care provider has certified that a course of treatment will last a specified period of time—e.g., 6 weeks.

**Protection of Employment and Benefits**

An employee who takes family and medical leave is entitled, upon return from the leave, to be returned to the same position or to an "equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment." The legislative history provides very strong language on what "equivalent" means. The congressional report (Part 1) states, "First, the standard of 'equivalence'—not merely 'comparability' or 'similarity'—necessarily requires a correspondence to the duties and other terms, conditions and privileges of an employee's previous position. Second, the standard encompasses all 'terms and conditions' of employment, not just those specified." The congressional report (Part 2) states that "it is the committee's intent that, whenever possible, an employee should be returned to the same position. In the exceptional case where doing so would impose extreme hardship on the agency, it is the committee's intent that the employee be placed in a position that offers equivalent responsibilities as well as equivalent benefits, pay status, and other terms and conditions of employment."

An employee returning from family and medical leave should be treated the same as employees returning from leave without pay are currently treated, except where different entitlements and limitations are provided under the FMLA. For example, since an employee returning from FMLA leave is entitled to be returned to the same position or to an "equivalent position," an employee in a position subject to the Performance Management and Recognition System (PMRS) prior to FMLA leave must be returned to an equivalent PMRS position. An employee in a position covered by special salary rates under 5 U.S.C. 5305 prior to FMLA leave must be returned to an equivalent position providing equivalent special salary rates. In addition, an employee on leave without pay under the FMLA will be subject to the requirements under 5 CFR 531.406(b) to extend a waiting period for a within-grade increase for any time in excess of that allowed under that section. An employee's entitlement to be restored to an equivalent position does not extend to intangible or unmeasurable aspects, such as the perceived loss of potential or future promotion opportunities or the increased possibility of being subject to a future reduction in force.

If an employee's position was eliminated due to a reduction in force, the fact that the employee was on family or medical leave does not protect the employee from displacement. If an employee was hired only for a defined period or specific project, such as seasonal work, the agency is not required to return the employee if the period of employment has expired and the agency would not otherwise have continued to employ the employee. If, for reasons independent of the FMLA, an employee was reassigned to another position while he or she was on FMLA leave, the employee would be entitled to be returned to the position to which he or she was reassigned or an equivalent position.

The Act allows an agency to establish a uniformly applied practice or policy that requires each employee who takes leave under the FMLA for his or her serious health condition to obtain medical certification to return to work. The interim regulations allow agencies to require such medical certification to return to work only for employees in positions that have specific medical standards, physical requirements, or are covered by a medical evaluation program, as provided under 5 CFR part

339. The required medical certification is limited to documentation necessary to establish that the employee meets the specific physical qualifications and/or medical standards for his or her position—i.e., an agency may not require medical certification for conditions that are not directly related to the specific medical qualifications for the employee's position. If the employee refuses to provide the medical certification, appropriate disciplinary or adverse action may be taken.

If an employee is not fully recovered when he or she returns to work, the employee may request additional leave, including advanced annual or sick leave, donated annual leave from the Voluntary Leave Transfer Program or Voluntary Leave Bank Program, and additional leave without pay. In addition, the employee may request a reassignment or demotion to a different position, work schedule, or type of appointment that better suites the employee's personal needs. If the employee has exhausted all leave and reassignment or demotion to another position is not a viable alternative, the agency may take further action under 5 CFR part 752 (Adverse Actions) based on the employee's inability to perform the duties of the position. As provided in 5 CFR 752.404(c)(3), an agency may provide information concerning disability retirement to an employee who is eligible. The agency must be aware of the affirmative obligations established in 29 CFR 1613.704, which require reasonable accommodation of a qualified employee who is handicapped.

**Federal Employees Health Benefits Program**

Under the Federal Employees Health Benefits (FEHB) law, coverage continues for up to 365 days in a nonpay status. OPM regulations provide that the employee may pay the employee share of the premiums on a current basis or may incur a debt and pay his or her share upon return to a pay and duty status. The FMLA provides that employees who are granted leave under the Act must pay their share of the health benefits premium on a current basis; however, the Act also provides that an employer must comply with any employment benefits program that provides greater family and medical leave rights than established under the Act. Therefore, for employees who are granted leave under the FMLA that does not exceed the 365 days of continued coverage provided under FEHB law and regulations, the existing FEHB regulations will apply. That is, these employees may choose to incur a debt and pay their contributions when they return to pay and duty status, just as they could before the FMLA was enacted. However, employees whose leave without pay granted under the FMLA exceeds the 365 days of continued coverage allowed under FEHB law and regulations are subject to the requirement to pay their share of the premiums on a current basis. The interim regulations, therefore, provide that employees granted leave without pay under the FMLA in excess of the 365 days of continued coverage under the FEHB law and regulations must pay their share of the premiums directly to the employing office on a current basis.

Employees whose coverage is terminated for nonpayment under these interim regulations are not penalized when they return to duty for their failure to make payments. They may reenroll upon their return to pay and duty status in the same way as employees whose coverage terminates because of the expiration of the period of continued coverage allowed during nonpay status.

**Greater Leave Entitlements**

The FMLA provides that an agency must continue to comply with any employment policy or collective bargaining agreement that provides greater family or medical leave entitlements to employees than those established under the FMLA. Conversely, the entitlements established under the FMLA may not be diminished by any collective bargaining agreement or any employment benefit program or plan. Nothing in the FMLA prevents an agency from amending existing leave and employee benefit programs, provided they comply with the Act. However, agencies may adopt or retain leave policies more generous than those provided in the FMLA, except that such policies may not provide entitlement to paid time off greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

The FMLA provides a basic statutory entitlement to 12 administrative workweeks of unpaid leave. The Act does not mandate a limit on the amount of leave without pay that can be provided to an employee for the purposes cited in the Act. Nothing in the Act would prevent an agency from providing greater leave entitlements—e.g., providing 12 administrative workweeks of unpaid leave to employees who are not entitled to FMLA leave because their Federal service cannot be counted as creditable in meeting the 12 months of service requirement, granting more than 12 administrative workweeks of leave without pay, or allowing care for additional "family members" (as this term is defined in 5 CFR 630.902). Such policies should be non-discriminatory and made known to all affected employees.

**Relationship to Current FPM Guidance**

OPM has previously issued guidance to Federal agencies on leave without pay (LWOP) and leave for parental and family responsibilities. (See Federal Personnel Manual (FPM) chapter 630, subchapters 12 and 13.) This guidance encourages Federal agencies to develop policies that are compassionate and flexible for the employee, but indicates that in exercising this discretion, agencies should not establish policies that will adversely affect mission accomplishment. Nothing in the FMLA suggests that this FPM guidance requires substantial modification. Indeed, as indicated above, agencies may adopt or retain leave policies more generous than those provided in the FMLA. Since the FMLA establishes certain minimum entitlements for covered employees, however, it is important that each agency review its policy on LWOP and leave for parental and family responsibilities to ensure that it complies with the minimum requirements of the FMLA and the interim regulations set forth below.

**Interaction with Other Laws**

Nothing in the FMLA modifies or affects any Federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability. An agency must, therefore, comply with whichever statute provides the greater rights to the employee. If an agency violates both the FMLA and a discrimination law, an employee may be able to recover under either or both statutes. This is an important issue when merging the requirements of both the FMLA and the Rehabilitation Act of 1973 (29 U.S.C. 701). The following example demonstrates how the two laws would interact:

If, because of an illness or injury, a full-time employee cannot perform the essential functions of his or her position, the FMLA entitles an employee to take leave either on an intermittent or continuous basis and to retain the full-time position of record. This entitlement continues until the 12 workweeks of leave are exhausted. At the end of the FMLA entitlement, an employee is entitled to be returned to his or her same position or placed in an equivalent position with pay and benefits equivalent to those held by the

employee when leave commenced—i.e., those of a full-time position. If the employee is unable to perform the essential duties of the previous position, the Rehabilitation Act may, depending on the nature of the employee's disability, require an agency to attempt accommodation. If, for example the effort to accommodate results in the employee being placed in a part-time position, the employee would be entitled only to those benefits provided to part-time employees.

If the employee decides not to exercise his or her right to leave under the FMLA, the agency may still, depending on the nature of the employee's disability, be required to offer accommodation. In any case, an agency may not require an employee to accept an offer of accommodation under the Rehabilitation Act in lieu of exercising his or her entitlement to leave under the FMLA.

**Recordkeeping and Reporting Requirements**

The regulations require agencies to maintain records on an employee's use of FMLA leave and to provide such records and reports to OPM upon request. OPM believes this information is necessary to evaluate the effectiveness of the program and may be requested by interested parties, such as the Congress, the new Commission on Leave (as established under Title III of the FMLA), the General Accounting Office, and others on the use of this entitlement. The regulations require agencies to maintain information on: (1) The employee's rate of basic pay, as defined in 5 CFR 550.103(j); (2) the occupational series of the employee's position; (3) the number of hours of FMLA leave taken; and (4) whether the leave was family leave (for a birth or adoption/foster care or the care of a spouse, son, daughter, or parent) or medical leave (for the employee's serious health condition). The employee's rate of basic pay may be obtained from the SF–50, Notification of Personnel Action, blocks 12C or 20C, Adjusted Basic Pay. When an employee transfers to a different agency, the losing agency must provide the gaining agency with information on the employee's use of leave under the FMLA. OPM is considering revising the SF–1150, Record of Leave Data, to record information on an employee's use of leave under the FMLA when the employee transfers to a different agency. OPM invites comments from the agencies on the need to revise the SF–1150 based on their experience in administering this new entitlement to unpaid leave. Agencies may wish to maintain additional information on an employee's use of FMLA leave, such as the dates FMLA leave was taken, in the event of litigation or employee grievances.

**Miscellaneous**

If an employee believes an agency has not fully complied with the rights and requirements provided under sections 6381 through 6387 of title 5, United States Code, and the regulations set forth below, the employee may file a grievance under an agency's administrative grievance procedures or negotiated grievance procedures.

Agencies are reminded that 5 U.S.C. 6385 specifically provides that an employee shall not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with the exercise of any rights which such other employee may have under the FMLA.

An agency may not extend the notification and medical certification requirements under the FMLA to other periods of leave—e.g., annual leave, sick leave, and leave without pay. Current agency policies for granting annual leave, sick leave, and leave without pay continue to apply when an employee requests those types of leave.

When an employee requests leave under the FMLA, the agency must provide information on the employee's rights and obligations under the FMLA. In addition, OPM encourages agencies to provide information on additional programs, such as the voluntary leave transfer and leave bank programs, flexible and compressed work schedules, flexiplace, or any other agency program that will assist the employee in balancing his or her need to take family or medical leave and his or her responsibilities at work.

**Waiver of Notice of Proposed Rulemaking**

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. A proposed rule would be impracticable and contrary to the public interest, since the entitlements provided in the FMLA must be effective on August 5, 1993.

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

**List of Subjects**

*5 CFR Part 630*

Government employees.

*5 CFR Part 890*

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.
**James B. King,**
*Director.*

Accordingly, OPM is amending parts 630 and 890 of title 5 of the Code of Federal Regulations as follows:

## PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 is revised to read as follows:

**Authority:** 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and subpart F also issued under E.O. 11228; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100–566; subpart J also issued under 5 U.S.C. 6362 and Pub. L. 100–568; subpart K also issued under Pub. L. 102–25; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3.

2. Subpart L is added to read as follows:

## PART 630—ABSENCE AND LEAVE

### Subpart L—Family and Medical Leave

Sec.

630.1201 Purpose, applicability, and administration.
630.1202 Definitions.
630.1203 Leave entitlement.
630.1204 Intermittent leave or reduced leave schedule.
630.1205 Substitution of paid leave.
630.1206 Notice of leave.
630.1207 Medical certification.
630.1208 Protection of employment and benefits.
630.1209 Health benefits.
630.1210 Greater leave entitlements.
630.1211 Records and reports.

### Subpart L—Family and Medical Leave

**§ 630.1201 Purpose, applicability, and administration.**

(a) *Purpose.* This subpart provides regulations to implement sections 6381 through 6387 of title 5, United States Codo. This subpart must be read together with those sections of law. Sections 6381 through 6387 of title 5, United States Code, provide a standard approach to providing family and medical leave to Federal employees by

prescribing an entitlement to a total of 12 administrative workweeks of unpaid leave during any 12-month period for certain family and medical needs, as specified in § 630.1203(a) of this part.

(b) *Applicability.* (1) Except as otherwise provided in this paragraph, this subpart applies to any employee who—

(i) Is defined as an "employee" under 5 U.S.C. 6301(2), excluding employees covered under paragraph (b)(2) of this section; and

(ii) Has completed at least 12 months of service (not required to be 12 recent or consecutive months) as—

(A) An employee, as defined under 5 U.S.C. 6301(2), excluding any service as an employee under paragraph (b)(2) of this section;

(B) A physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs who is appointed under section 7401(1) of title 38, United States Code;

(C) A "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code; or

(D) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds.

(2) This subpart does not apply to—

(i) An individual employed by the government of the District of Columbia;

(ii) An employee serving under a temporary appointment with a time limitation of 1 year or less;

(iii) An intermittent employee, as defined in 5 CFR 340.401(c); or

(iv) Any employee covered by Title I or Title V of the Family and Medical Leave Act of 1993 (Pub. L. 103–3, February 5, 1993). The Department of Labor has issued regulations implementing Title I at 29 CFR part 825.

(3) For the purpose of applying sections 6381 through 6387 of title 5, United States Code—

(i) A physician, dentist, or nurse in the Veterans Health Administration of the Department of Veterans Affairs appointed under section 7401(1) of title 38, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

(ii) A "teacher" or an individual holding a "teaching position," as defined in section 901 of title 20, United States Code, shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense; and

(iii) An employee identified in section 2105(c) of title 5, United States Code, who is paid from nonappropriated funds shall be governed by the terms and conditions of regulations prescribed by the Secretary of Defense or the Secretary of Transportation, as appropriate.

(4) The regulations prescribed by the Secretary of Veterans Affairs, Secretary of Defense, or Secretary of Transportation under paragraph (b)(3) of this section shall, to the extent appropriate, be consistent with the regulations prescribed in this subpart and the regulations prescribed by the Secretary of Labor to carry out Title I of the Family and Medical Leave Act of 1993 at 29 CFR part 825.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

### § 630.1202 Definitions.

In this subpart:

*Accrued leave* has the meaning given that term in § 630.201(b)(1) of this part.

*Accumulated leave* has the meaning given that term in § 630.201(b)(2) of this part.

*Administrative workweek* has the meaning given that term in § 610.102(a) of this chapter.

*Adoption* refers to a legal process in which an individual becomes the legal parent of another's child. The source of an adopted child—e.g., whether from a licensed placement agency or otherwise—is not a factor in determining eligibility for leave under this subpart.

*Continuing treatment by a health care provider* means one or more of the following situations where an employee or an employee's spouse, son, daughter, or parent—

(1) Is treated two or more times for an illness or injury by a health care provider;

(2) Is treated two or more times for an illness or injury by a health care provider under the orders of, or on referral by, the individual's health care provider *or* is treated for the illness or injury on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider—e.g., a course of medication or therapy—to resolve the health condition; or

(3) Is under the continuing supervision of the health care provider, but may not necessarily be actively treated by the health care provider, due to a serious long-term or chronic condition or disability which cannot be cured—e.g., Alzheimer's disease, severe stroke, or terminal stages of a disease.

*Employee* means an individual to whom this subpart applies.

*Essential functions* means the fundamental job duties of the employee's position, as defined in 29 CFR 1630.2.

*Family and medical leave* means an employee's entitlement to 12 administrative workweeks of unpaid leave for certain family and medical needs, as prescribed under sections 6381 through 6387 of title 5, United States Code.

*Foster care* means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family to take the child.

*Health care provider* means—

(1) A licensed Doctor of Medicine or Doctor of Osteopathy or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this subpart;

(2) A person providing health services who is not a medical doctor, but who is certified by a national organization *and* licensed by a State to provide the service in question; or

(3) A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts.

*In loco parentis* refers to the situation of an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

*Intermittent leave* or *leave taken intermittently* means leave taken in separate blocks of time rather than for one continuous period of time, and may include leave periods of less than 1 hour to several weeks.

*Leave without pay* means an absence from duty in a nonpay status. Leave without pay may be taken only for those hours of duty comprising an employee's basic workweek.

*Parent* means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. This term does not include parents "in law."

*Reduced leave schedule* means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced are counted as leave for the purpose of this subpart.

*Regularly scheduled* has the meaning given that term in § 610.102(g) of this chapter.

*Regularly scheduled administrative workweek* has the meaning given that term in § 610.102(b) of this chapter.

*Serious health condition* means an illness, injury, impairment, or physical or mental condition that involves—

(1) Any period of incapacity or treatment in connection with or consequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;

(2) Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than 3 calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or

(3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than 3 calendar days; or for prenatal care.

*Son or daughter* means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing *in loco parentis* who is—

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "ADLs." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office. A mental or physical disability refers to a "disability," as defined in 29 CFR 1630.2(g).

*Spouse* means a husband or wife, as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized.

*Tour of duty* has the meaning given that term in § 610.102(h) of this chapter.

**§ 630.1203 Leave entitlement.**

(a) An employee shall be entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

(1) The birth of a son or daughter of the employee and the care of such son or daughter;

(2) The placement of a son or daughter with the employee for adoption or foster care;

(3) The care of a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition; or

(4) A serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

(b) An employee shall take only the amount of family and medical leave that is necessary to manage the circumstance that prompted the need for leave under paragraph (a) of this section.

(c) Except as provided in paragraph (d)(2) of this section, the 12-month period referred to in paragraph (a) of this section begins on the date an employee first takes leave for a family or medical need specified in that paragraph and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(d) The entitlement to a total of 12 administrative workweeks of leave under paragraphs (a) (1) and (2) of this section—

(1) May begin prior to or on the actual date of birth or placement for adoption or foster care; and

(2) Shall expire 12 months after the date of birth or placement. Leave for a birth or placement must be concluded within 12 months after the date of birth or placement.

(e) Leave under paragraph (a) of this section is available to full-time and part-time employees. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences shall be used as the basis for this calculation.

(f) If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

(g) When an employee requests leave under paragraph (a) of this section, the agency must provide guidance concerning an employee's rights and obligations under this subpart.

(h) An agency may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to leave under paragraph (a) of this section. An employee's notice of his or her intent to take leave under § 630.1206 of this part may suffice as the employee's confirmation.

**§ 630.1204 Intermittent leave or reduced leave schedule.**

(a) Leave under § 630.1203(a) (1) or (2) of this part shall not be taken intermittently or on a reduced leave schedule unless the employee and the agency agree to do so.

(b) Leave under § 630.1203(a) (3) or (4) of this part may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1206 and 630.1207(b)(6) of this part.

(c) If an employee takes leave under § 630.1203(a) (3) or (4) of this part intermittently or on a reduced leave schedule that is foreseeable based on planned medical treatment or recovery from a serious health condition, the agency may place the employee temporarily in an available alternative position for which the employee is qualified and that can better accommodate recurring periods of leave. Upon returning from leave, the employee shall be entitled to be returned to his or her permanent position or an equivalent position, as provided in § 630.1208(a) of this part.

(d) For the purpose of applying paragraph (c) of this section, an alternative position must be in the same commuting area and must provide—

(1) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; any applicable locality-based comparability payment under 5 U.S.C. 5304; or any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law;

(2) The same type of appointment, work schedule, status, and tenure; and

(3) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual).

(e) The agency shall determine the available alternative position that has equivalent pay and benefits consistent with Federal laws, including the Rehabilitation Act of 1973 (29 U.S.C. 701) and the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e).

(f) The number of hours of leave taken intermittently or on a reduced leave schedule shall be subtracted, on an hour-for-hour basis, from the total amount of leave available to the employee under § 630.1203 (e) and (f) of this part.

**§ 630.1206 Substitution of paid leave.**

(a) Except as provided in paragraph (b) of this section, leave taken under § 630.1203(a) of this part shall be leave without pay.

(b) An employee *may elect* to substitute the following paid time off for any or all of the period of leave taken under § 630.1203(a) of this part—

(1) Accrued or accumulated annual or sick leave under subchapter I of chapter 63 of title 5, United States Code, consistent with current law and regulations governing the granting and use of annual or sick leave;

(2) Advanced annual or sick leave approved under the same terms and conditions that apply to any other agency employee who requests advanced annual or sick leave;

(3) Leave made available to an employee under the Voluntary Leave Transfer Program or the Voluntary Leave Bank Program consistent with subparts I and J of part 630 of this chapter;

(4) Compensatory time off; and

(5) Credit hours accrued under a flexible work schedule.

(c) An agency may *not* deny an employee's right to substitute paid time off under paragraph (b) of this section for any or all of the period of leave taken § 630.1203(a) of this part.

(d) An agency may *not* require an employee to substitute paid time off under paragraph (b) of this section for any or all of the period of leave taken under § 630.1203(a) of this part.

(e) An employee shall notify the agency of his or her intent to substitute paid time off under paragraph (b) of this section for the period of leave to be taken under § 630.1203(a) of this part prior to the date such paid time off commences.

**§ 630.1208 Notice of leave.**

(a) If leave taken under § 630.1203(a) of this part is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment, the employee shall provide notice to the agency of his or her intention to take leave not less than 30 days before the date the leave is to begin. If the date of birth or placement or planned medical treatment requires leave to begin within 30 days, the employee shall provide such notice as is practicable.

(b) If leave taken under § 630.1203(a) (3) or (4) of this part is foreseeable based on planned medical treatment, the employee shall consult with the agency and make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider. The agency may, for justifiable cause, request that an employee reschedule medical treatment, subject to the approval of the health care provider.

(c) If the need for leave is not foreseeable—e.g., a medical emergency or the unexpected availability of a child for adoption or foster care, and the employee cannot provide 30 days' notice of his or her need for leave, the employee shall provide notice within a reasonable period of time appropriate to the circumstances involved. If necessary, notice may be given by an employee's personal representative (e.g., a family member or other responsible party). If the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the leave may not be delayed or denied.

(d) If the need for leave is foreseeable, and the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the agency may delay the taking of leave under § 630.1203(a) of this part until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.

(e) An agency may waive the notice requirements under paragraph (a) of this section and instead impose the agency's usual and customary policies or procedures for providing notification of leave. The agency's policies or procedures for providing notification of leave must not be more stringent than the requirements in this section. However, an agency may not deny an employee's entitlement to leave under § 630.1203(a) of this part if the employee fails to follow such agency policies or procedures.

**§ 630.1207 Medical certification.**

(a) An agency may require that a request for leave under § 630.1203(a) (3) or (4) of this part be supported by written medical certification issued by the health care provider of the employee or the health care provider of the spouse, son, daughter, or parent of the employee, as appropriate. An employee shall provide the written medical certification to the agency in a timely manner.

(b) The written medical certification shall include—

(1) The date the serious health condition commenced;

(2) The probable duration of the serious health condition;

(3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;

(4) For the purpose of leave taken under § 630.1203(a)(3) of this part—

(i) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

(ii) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent;

(5) For the purpose of leave taken under § 630.1203(a)(4) of this part, a statement that the employee is unable to perform the essential functions of his or her position, based on written information provided by the agency on the essential functions of the employee's position or, if not provided, discussion with the employee about the essential functions of his or her position; and

(6) In the case of certification for intermittent leave or leave on a reduced leave schedule under § 630.1203(a) (3) or (4) of this part for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment.

(c) The agency shall not require any personal or confidential information in the written medical certification other than that required by paragraph (b) of this section.

(d) If the agency doubts the validity of the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a second health care provider designated or approved by the agency concerning the information certified under paragraph (b) of this section. Any

health care provider designated or approved by the agency shall not be employed by the agency or be under the administrative oversight of the agency on a regular basis unless the agency is located in an area where access to health care is extremely limited—e.g., a rural area or an overseas location where no more than one or two health care providers practice in the relevant specialty, or the only health care providers available are employed by the agency.

(e) If the opinion of the second health care provider differs from the original certification provided under paragraph (a) of this section, the agency may require, at the agency's expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information certified under paragraph (b) of this section. The opinion of the third health care provider shall be binding on the agency and the employee.

(f) To remain entitled to family and medical leave under § 630.1203(a) (3) or (4) of this part, an employee or the employee's spouse, son, daughter, or parent must comply with any requirement from an agency that he or she submit to examination (though not treatment) to obtain a second or third medical certification from a health care provider other than the individual's health care provider.

(g) If the employee is unable to provide the requested medical certification before leave begins, or if the agency questions the validity of the original certification provided by the employee and the medical treatment requires the leave to begin, the agency shall grant provisional leave pending final written medical certification.

(h) If, after the leave has commenced, the employee fails to provide the requested medical certification, the agency may—

(1) Charge the employee as absent without leave (AWOL); or

(2) Allow the employee to request that the provisional leave be charged as leave without pay or charged to the employee's annual and/or sick leave account, as appropriate.

(i) While an employee is on family and medical leave, the agency may require, at the agency's expense, subsequent medical recertification from the health care provider on a periodic basis, not more often than every 30 calendar days. An agency may require subsequent medical recertification more frequently than every 30 calendar days if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification.

(j) To ensure the security and confidentiality of any written medical certification under §§ 630.1207 or 630.1208(h) of this part, the medical certification shall be subject to the provisions for safeguarding information about individuals under subpart A or part 293 of this chapter.

### § 630.1208 Protection of employment and benefits.

(a) Any employee who takes leave under § 630.1203(a) of this part shall be entitled, upon return to the agency, to be returned to—

(1) The same position held by the employee when the leave commenced; or

(2) An equivalent position with equivalent benefits, pay, status, and other terms and conditions of employment.

(b) For the purpose of applying paragraph (a)(2) of this section, an equivalent position must be in the same commuting area and must carry or provide at a minimum—

(1) The same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority;

(2) An equivalent grade or pay level, including any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; any applicable locality-based comparability payment under 5 U.S.C. 5304; or any applicable special salary rate under 5 U.S.C. 5305 or similar provision of law;

(3) The same type of appointment, work schedule, status, and tenure;

(4) The same employment benefits made available to the employee in his or her previous position (e.g., life insurance, health benefits, retirement coverage, and leave accrual);

(5) The same or equivalent opportunity for a within-grade increase, merit pay increase, performance award, incentive award, or other similar discretionary and non-discretionary payments consistent with applicable laws and regulations;

(6) The same or equivalent opportunity for premium pay consistent with applicable law and regulations under 5 CFR part 550, subpart A, or 5 CFR part 551, subpart E; and

(7) The same or equivalent opportunity for training or education benefits consistent with applicable laws and regulations, including any training that an employee may be required to complete to qualify for his or her previous position.

(c) As a result of taking leave under § 630.1203(a) of this part, an employee shall not suffer the loss of any employment benefit accrued prior to the date on which the leave commenced.

(d) Except as otherwise provided by or under law, a restored employee shall not be entitled to—

(1) The accrual of any employment benefits during any period of leave; or

(2) Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(e) For the purpose of applying paragraph (d) of this section, the same entitlements and limitations in law and regulations that apply to the position, pay, benefits, status, and other terms and conditions of employment of an employee in a leave without pay status shall apply to any employee taking leave without pay under this part, except where different entitlements and limitations are specifically provided in this subpart.

(f) An employee is not entitled to be returned to the same or equivalent position under paragraph (a) of this section if the employee would not otherwise have been employed in that position at the time the employee returns from leave.

(g) An agency may not return an employee to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

(h) As a condition to returning an employee who takes leave under § 630.1203(a)(4) of this part, an agency may establish a uniformly applied practice or policy that requires an employee to obtain written medical certification from the health care provider of the employee that the employee is able to perform the essential functions of his or her position. An agency's policy or practice to require written medical certification attesting to an employee's recovery from a serious health condition shall apply only to those employees in positions that have specific medical standards, physical requirements, or who are covered by a medical evaluation program, as provided under 5 CFR part 339. Consistent with 5 CFR 339.301, the written medical certification shall be limited to documentation necessary to prove that the employee meets the

specific physical qualifications and/or medical standards for his or her position.

(i) If an agency requires an employee to obtain written medical certification under paragraph (h) of this section before he or she returns to work, the agency shall notify each employee of this requirement before leave commences and pay the expenses for obtaining the written medical certification. An employee's refusal to provide written medical certification under paragraph (h) of this section is grounds for appropriate disciplinary or adverse action, as provided in 5 CFR 339.102(c).

(j) An agency may require an employee to report periodically to the agency on his or her status and intention to return to work. An agency's policy requiring such reports must take into account all of the relevant facts and circumstances of the employee's situation.

**§ 630.1209 Health benefits.**

An employee enrolled in a health benefits plan under the Federal Employees Health Benefits Program (established under chapter 89 of title 5, United States Code) who is placed in a leave without pay status as a result of entitlement to leave under § 630.1203(a) of this part may continue his or her health benefits enrollment while in the leave without pay status and arrange to pay the appropriate employee contributions into the Employees Health Benefits Fund (established under section 8909 of title 5, United States Code). The employee shall make such contributions consistent with 5 CFR 890.502.

**§ 630.1210 Greater leave entitlements.**

(a) An agency shall comply with any collective bargaining agreement or any agency employment benefit program or plan that provides greater family or medical leave entitlements to employees than those provided under this subpart.

(b) The entitlements established for employees under this subpart may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

(c) An agency may adopt leave policies more generous that those provided in this subpart, except that such policies may not provide entitlement to paid time off greater than that otherwise authorized by law or provide sick leave in any situation in which sick leave would not normally be allowed by law or regulation.

(d) The entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart do not modify or affect any Federal law prohibiting discrimination. If the entitlements under sections 6381 through 6387 of title 5, United States Code, and this subpart conflict with any Federal law prohibiting discrimination, an agency must comply with whichever statute provides greater entitlements to employees.

**§ 630.1211 Records and reports.**

(a) So that OPM can evaluate the use of family and medical leave by Federal employees and provide the Congress and others with information about the use of this entitlement, each agency shall maintain records on employees who take leave under this subpart and submit to OPM such records and reports as OPM may require.

(b) At a minimum, each agency shall maintain the following information concerning each employee who takes leave under this subpart:

(1) The employee's rate of basic pay, as defined in 5 CFR 550.103(j);

(2) The occupational series for the employee's position;

(3) The number of hours of leave taken under § 630.1203(a) of this part; and

(4) Whether leave was taken—

(i) Under § 630.1203(a) (1), (2) or (3) of this part; or

(ii) Under § 630.1203(a)(4) of this part.

(c) When an employee transfers to a different agency, the losing agency shall provide the gaining agency with information on leave taken under § 630.1203(a) of this part by the employee during the 12 months prior to the date of transfer. The losing agency shall provide the following information:

(1) The beginning and ending dates of the employee's 12-month period, as determined under § 630.1203(c) of this part; and

(2) The number of hours of leave taken under § 630.1203(a) of the part during the employee's 12-month period, as determined under § 630.1203(c) of this part.

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

3. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

4. In § 890.502, paragraph (h) is added to read as follows:

**§ 890.502 Employee withholdings and contributions.**

* * * * *

(h) *Direct payment of premiums during periods in nonpay status in excess of 365 days.* (1) An employee who is granted leave without pay under subpart L of part 630 of this chapter which exceeds the 365 days of continued coverage under § 890.303(e) must pay the employee contributions directly to the employing office on a current basis.

(2) Payment must be made after the pay period in which the employee is covered in accordance with a schedule established by the employing office. If the employing office does not receive the payment by the date due, it must notify the employee by certified mail, return receipt requested, that continuation of coverage depends upon payment being made within 15 days (45 days for employees residing overseas) after receipt of the notice, or, if the employing office does not receive certification of the receipt of the notice, 60 days after the date of the notice (90 days for enrollees residing overseas).

(3) If the enrollee was prevented by circumstances beyond his or her control from making payment within the timeframe specified in paragraph (h)(2) of this section, he or she may request reinstatement of the coverage by writing to the employing office. The request must be filed within 30 calendar days from the date of termination and must be accompanied by verification that the enrollee was prevented by circumstances beyond his or her control from paying within the time limit.

(4) The employing office determines whether the individual is eligible for reinstatement of coverage. If the determination is affirmative, coverage is reinstated retroactively to the date of termination. If the determination is negative, the individual may request a review of the decision from OPM under the provisions of § 890.104 of this part.

(5) An employee whose coverage is terminated under this paragraph may register to enroll upon his or her return to duty in a pay status in a position in which the employee is eligible for coverage under this part.

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Part IV

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 93**

**Operation of Jet Aircraft in Commuter Slots at O'Hare International Airport; Final Rule**

VOL 58 ISS 140 JL 23 1993 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 26788; Amdt. No. 93-63]

RIN 2120-AE78

# Operation of Jet Aircraft in Commuter Slots at O'Hare International Airport

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action amends the regulations pertaining to the definition and allocation of commuter operator slots (i.e., allocated instrument flight rules takeoff and landing reservations) at O'Hare International Airport (O'Hare). It permits an air carrier to use larger aircraft in up to 50 percent of its commuter slot holdings at O'Hare, expands the category of aircraft that may be used in those slots, removes the restriction on the maximum number of larger aircraft operations in commuter slots per half hour or consecutive half hour periods, and makes permanent the use of the larger aircraft in commuter slots at O'Hare by eliminating the provision that limits the use of larger aircraft to a temporary 2-year trial period. This rule does not increase the number of operations at O'Hare nor direct the enhancement or reduction of air transport services to smaller communities.

EFFECTIVE DATE: August 25, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

## Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment or docket number.

## Background

The High Density Traffic Airport Rule ("High Density Rule" or HDR), 14 CFR part 93, subpart K, was promulgated in 1969 to reduce delays at five congested airports: JFK International, LaGuardia, O'Hare International, Washington National, and Newark International (33 FR 17896, December 3, 1968). The regulation limits the number of Instrument Flight Rules (IFR) operations at each airport, by hour or half hour (by half hour at O'Hare) during certain hours of the day (from 6:45 a.m. to 9:15 p.m. at O'Hare). It provides for the allocation to carriers of operational authority, or a "slot," for each IFR landing or takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970's.

On August 19, 1991, the Department of Transportation (Department) published Amendment No. 93-62 which, among other changes, revised the definition of "commuter" aircraft in the High Density Rule to include turboprop or reciprocating aircraft having less than 75 passenger seats or turbojet aircraft having less than 56 seats (56 FR 41200). In that same amendment, the FAA changed the slot rules, effective for a 2-year period beginning September 20, 1991, to allow carriers at O'Hare to use up to 25 percent of their commuter slots for operations with aircraft having a maximum certificated seating capacity of no more than 110 passengers.

On January 5, 1993, the Department published a Notice of Proposed Rulemaking (NPRM), proposing to eliminate the temporary 2-year trial period provision in Amendment No. 93-62, permit an air carrier to use larger aircraft in up to 50 percent of its commuter slot holdings at O'Hare, expand the category of aircraft that may be used in those slots, and remove the restriction on the maximum number of larger aircraft operations in commuter slots per half hour or consecutive half hour periods (58 FR 280). The NPRM was published in response to a petition submitted by American Airlines (AAL) on February 18, 1992, seeking rulemaking to: (1) Suspend the 30- and 60-minute slot restrictions at O'Hare; (2) eliminate the category of commuter slots at O'Hare or increase from 25 percent to 45 percent the number of commuter slots for which larger aircraft may be used under Amendment 93-62; (3) impose slot restrictions at Midway Airport or establish a Chicago area slot system incorporating O'Hare and Midway; (4) permit AAL to revise its selection of commuter slot times for operations with larger aircraft under Amendment No. 93-62; and (5) make Amendment No. 93-62 permanent. The FAA published a summary of the petition on March 31, 1992 (57 FR 10836), and received 200 comments, predominantly in support of AAL's petition. Those comments were discussed in the NPRM.

## Comments on NPRM

Although greater in number than those responding to AAL's petition, the comments received in response to the NPRM were drawn along similar lines. Again, supporting commenters include government officials, community leaders, business owners or managers, and other residents of regions that have received Fokker 100 (F-100) jet service by AAL since the promulgation of Amendment No. 93-62, or that anticipate such service.

Comments in support came predominantly from the communities of Fargo, ND; Sioux Falls, SD; Nashville and Memphis, TN; and Raleigh-Durham, NC. The government leaders who submitted comments in favor of the proposed rule include 30 members of Congress, 3 governors, 6 state legislators, and 8 mayors. Over two thousand letters also came from AAL employees. Other supporting comments came from Chicago and Rockford, IL; Tulsa, OK; Dallas, TX; San Jose, CA; Cedar Rapids, IA; Muskegon, MI; and Albany and Rochester, NY.

United Air Lines (UAL) wrote in favor of the proposal, subject to certain reservations, as did the Transport Workers Union, which represents 35,000 employees at AAL, and the Regional Airline Association (RAA). Southwest Airlines also wrote in support, but limited its comments to the proposal concerning the establishment of a regional slot system incorporating Midway Airport. Fokker Aircraft USA submitted comments as well, favoring the proposal and recommending its expansion to the other High Density Traffic Airports (Kennedy, LaGuardia, and Washington National).

Similar to the comments submitted on AAL's petition, opponents of the proposed rule include government officials, community leaders, business owners or managers, and other residents of regions that have suffered or fear a reduction or elimination of air service. These communities include Mattoon, Bloomington, and Champaign-Urbana, IL; Terre Haute, IN; Lansing, MI; Toledo, OH; and Oshkosh and Appleton, WI. Various airport authorities and operators in the upper Midwest opposed the proposal, joined by the state transportation or aviation agencies of Michigan and Wisconsin, 3 members of Congress, and 4 mayors or city boards.

Also opposing the proposal are Trans World Airlines (TWA); Air Wisconsin employees; pilots of AAL's commuter subsidiary, Simmons Airlines; and the Suburban O'Hare Commission.

The supporting and opposing comments agree on three points: (1) Air service is critical to a region's economic growth; (2) government restrictions should not interfere with air carriers' determinations of the routes they serve; and (3) the proposed rule would enhance AAL's competitive position.

**Discussion of Comments**

*A. Comments in Favor of the Proposal*

Many supporting comments pointed to the increased passenger capacity at O'Hare that the proposed rule would effect. If an aircraft holding 110 seats is used in a slot that is currently restricted to 74 seats, there would be a gain in capacity of 36 seats. Assuming no impact on air traffic from this change, the commenters believe that any increase in passenger seats per slot would represent a more efficient use of O'Hare's operational capacity. The agency agrees that increased passenger capacity would likely benefit the Chicago market as well as the markets being served by the added capacity.

Most supporters of the proposal spoke in general terms about an anticipated benefit to the entire Midwest. A few commenters provided specific information on the effect of the temporary rule. The Municipal Airport Authority of Fargo, ND, served by two daily round trip Fokker 100 operations to O'Hare since May 1, 1992, cited a 20 percent increase in local boardings over the previous year. The Fargo Chamber of Commerce said that a major carrier is now being solicited to provide additional routes.

Commenters from Muskegon, MI, said that their commuter flights were almost always full, and that most local travelers drove an hour to board aircraft departing from Grand Rapids, MI. The frequency of service to Muskegon was reduced by one round trip daily to Chicago, but larger turboprops have been substituted, making Muskegon more competitive with Grand Rapids. Muskegon's enplanements have increased 19 percent, according to the Muskegon County Airport.

Greater Rochester International Airport, NY, sees a similar benefit for it if the proposed rule is adopted. Its acting director commented that the aircraft mix at the airport had become more commuter oriented, placing it at a competitive disadvantage compared to other cities.

The agency cannot predict that the airports of Muskegon, Rochester, Fargo, or any other community will enjoy or continue to enjoy increased passenger enplanements as a result of the rule adopted. Carriers remain free to choose the routes they wish to operate; slots do not affect their origins or destinations. Even without the issuance of this rule, carriers have been free to serve these markets using their air carrier or commuter slots.

A commenter from Raleigh, NC, asserted that the use of larger aircraft would reduce congestion and eliminate the need for a third runway at O'Hare. The final rule allowing the use of certain turbojet aircraft in commuter slots will not reduce the level of airport operations since the rule provides for a substitution of equipment in a slot and not a reduction in service. Therefore, any decisions on additional runways at O'Hare, or the potential operational benefits that might occur from a new runway at O'Hare, are not likely to be affected by this rule.

One commenter suggested dropping the proposed seat limit and applying a flight-leg maximum mileage instead. Limiting the size of the aircraft available for use under this amendment acts as a de facto perimeter rule. A maximum mileage would need to include the most distant destinations within the range of commuter turboprops and, consequently, would not effect a substantial gain in addition to the seat and weight limits. Because any perimeter rule would contain the markets where commuters currently operate, total operations at air traffic facilities would remain the same.

UAL supports the proposed rule if the FAA monitors the use of commuter slots with larger aircraft for potential degradation of service to small communities, a new runway is promptly built at O'Hare, outstanding petitions are consolidated to overhaul the High Density Rule, and the use of 737–500 aircraft will be included within the seat limit and weight restrictions as proposed.

In response to UAL's position and as stated in the NPRM, the Department will continue to monitor any effect on service to smaller communities as a result of allowing the use of larger aircraft in commuter slots at O'Hare. The rule is not tied to future runway construction at O'Hare, since that capacity enhancement is not required to accommodate the limited scope of this rule. The other slot rule petitions will be addressed on their own merits. The bases for the seat limit and weight restrictions have not changed, and, therefore, they are being adopted as proposed.

Most of the North Dakota and South Dakota commenters asserted that, as further justification for the proposed rule, their states were beyond turboprop range from O'Hare. However, many of the commuter aircraft used at O'Hare are capable of operating to their cities. Fargo and Sioux Falls are, respectively, 572 and 477 miles from O'Hare. This distance is well within the certificated ranges of the ATR 42, the ATR 72, the DASH 8, the Fokker F27, and the Saab 340B. No rule change is required to allow carriers to serve these cities with aircraft already within their fleets.

Fokker and the RAA suggested adopting similar rules applicable to commuter slot usage at the other HDR airports. The RAA suggested eliminating the HDR altogether. Those comments are beyond the scope of the proposal and will be considered in future rulemakings. Currently pending is a petition by Business Express to extend the use of larger aircraft in commuter slots to LaGuardia and Washington National Airports. As part of that rulemaking action, the potential use of commuter slots with larger aircraft at other HDR airports will be addressed.

AAL asserted that adopting the proposed rule would allow it to hire an additional 1100 employees in the Chicago area alone, potentially infusing the local economy with over $120 million and creating jobs for graduates of its Maintenance Academy at Midway Airport. Similar figures are repeated by state and Federal government leaders from the Chicago area. The FAA received no comments disputing these figures and has no basis to confirm or deny their accuracy. The rule adopted does not compel this result, however; the choice remains that of the holders of commuter slots at O'Hare whether to use larger aircraft in those slots.

One commenter asserted that the proposed amendment would benefit the airlines and the communities they serve with no cost to the taxpayers. This statement is not necessarily true. Opponents of the proposal have argued that the proposal could lead to diminished service to small communities, triggering the need to subsidize service to those communities under the Essential Air Service program. If government funding had to be provided to replace lost service, to the extent the loss can be attributed to the change in the commuter slot restrictions, that would represent a cost to the taxpayers resulting from this rule.

AAL questioned the proposed 75-day advance request requirement and argued that no approval should be necessary to substitute a jet aircraft operating at the same time at which a commuter turbprop was being flown. The FAA is not persuaded that a carrier is overly burdened by a requirement to submit a request 75 days in advance. Because of the other planning, such as aircraft and

crew rotation schedules, marketing plans, and station staffing a carrier must undertake in effecting a schedule or equipment change, this advance request requirement will inure to the requester's benefit by reducing the risk that the FAA's response will come too late to give a carrier sufficient preparation time or to permit any adjustment if the schedule cannot be granted as requested.

*B. Comments Opposing the Proposal*

The greatest concern of commenters opposing the proposed rule was the loss or reduction of air service to smaller communities. One commenter believed that increasing the use of commuter slots with larger jets will make those slots more valuable, compelling carriers to use them for higher profit margin routes and making service to smaller communities economically unjustified. Commenters from Toledo, OH, and Champaign, IL, said they were losing service by Air Wisconsin because UAL, which owns Air Wisconsin, was taking the commenter slots for operations with larger aircraft to other markets. Commenters from southern Illinois asserted that 1 jet operation was replacing several commuter operations, thereby removing schedule flexibility which, in turn, risks reduced demand that could then lead to total suspension of service, rather than reinstatement of smaller commuter aircraft service.

Some commenters provided figures that they believe stem from allowing the use of larger aircraft in 25 percent of the commuter slots. The Toledo airport authority, according to a fixed-base operator, has suffered a direct loss of $165,000 plus lost jobs, lost income for the associated fixed-base operators, and lost passenger spending at the airport because of Air Wisconsin's suspension of service there. Of the passengers using Outagamie County Airport, in Appleton, WI, 61 percent used the O'Hare gateway; Appleton's connections via other hubs are inadequate and involve higher fares due to off-line transfers, according to the Outagamie County Executive.

The director of the Hulman Regional Airport Authority, in Terre Haute, IN, predicted three results if the proposed rule is adopted: (1) Negative economic impacts on small to medium sized communities; (2) negative financial and operational impacts on the airports serving small to medium sized communities; and (3) a greater burden on taxpayers, who must make up for the airports' lost operating revenues if they are to remain open. He asserted that access to Midway is not an equivalent substitute because it lacks O'Hare's connecting flights. Loss of service to a community means reduction of passenger enplanements, which would, if the number drops below 10,000 annually, endanger FAA entitlement funds and may require Essential Air Service designation, thereby precluding the assessment of Passenger Facility Charges, he further said.

The Michigan Department of Transportation pointed out that, once service is lost, it is very difficult to regain. The Director of the Institute of Aviation at the University of Illinois listed Champaign-Urbana, Lansing, South Bend, and State College (PA) as four of the top five producing markets for United Express' commuter operations and feared that the inclusion of larger aircraft in commuter slots might jeopardize their service, which is vital to research programs at the universities in those communities.

AAL asserted that it would continue to use turboprops in many commuter slots, even without the commuter restrictions, because of its capital investment in turboprop aircraft and corresponding facilities that support turboprop operations at smaller communities' airports, and its need for a combination of service to sustain a successful hub operation.

Notwithstanding AAL's assertion, the FAA is preserving 50 percent of the commuter slots for use strictly by commuter aircraft, as proposed. Increasing the percentage of commuter slots that could be used with larger aircraft is consistent with FAA's objective to reduce regulatory requirements. The selection of a 50 percent limit is intended to achieve a fair balance among competing interests and operational practicalities at O'Hare. No comments criticizing this limit suggested a more appropriate level other than allowing the temporary 25 percent limit to expire and reapplying the commuter slot restrictions to all commuter slots.

Many opposing commenters said that the seat number and aircraft weight restrictions would not deter the use of long-range aircraft in commuter slots. They pointed out that the Fokker 100 and Boeing 737–500 aircraft have sufficient ranges to serve virtually any destination in the continental United States from O'Hare. The FAA recognizes that these two aircraft, among others, meet the restrictions and yet have distant market capability. The intent, however, is to prevent the proliferation of, not totally preclude, the use of long-haul aircraft. The Fokker 100, Boeing 737–500, and other aircraft meeting the restrictions are more likely to serve smaller community markets than DC–10's, B767's, and certain Airbus aircraft. The weight limit, in combination with the seat limit, will prevent the use of one of these large, long-haul aircraft in, for example, a combination passenger/cargo version that would meet the seat limit but would not be economical to use in a short-haul market.

Many of the commenters opposing the proposed rule criticized it as benefiting only one carrier, AAL. One commenter called it an exemption for AAL, and suggested that it be applied to all the High Density Airports. TWA asserted that the proposed rule would weaken its St. Louis hub and compromise its ability to compete with AAL's O'Hare hub operation. Comments coming from Tulsa, Dallas, Raleigh-Durham, and thousands of AAL employees make it obvious that this proposed rule is likely to enhance AAL's competitive and financial position.

It is not the purpose of the FAA to improve the commercial position of only one carrier. To the extent one member of a regulated industry has positioned itself to benefit from the relaxation of governmental restrictions, the relaxation itself should not be viewed as a conscious effort by the government to confer a benefit on that single entity. The purpose of this rule is to enhance the use of limited resources at O'Hare. That enhancement will benefit the traveling public and the markets that receive a part of that enhanced capacity.

Several alternative methods were recommended to prevent reduction of service to small communities or to increase the use of O'Hare's capacity without relieving the commuter slot restrictions. These recommendations included: (1) Reallocating capacity reserved for non-scheduled aircraft; (2) adding slots for commuter use based on technology and Air Traffic Control (ATC) improvements at O'Hare; (3) repealing the High Density Rule and letting physical capacity and actual demand regulate access, using alternative traffic management controls; (4) approve use of commuter slots with larger aircraft only if access for small and medium sized communities is protected; (5) allow increased usage only after trial periods and subsequent evaluation of the impact; (6) treat slots as assets of the community, not the airline; and (7) accommodate expansion of domestic service during off-peak hours.

The FAA is reviewing the historical data related to use of the capacity reserved for non-scheduled operations. This rulemaking is proceeding independently of that review, since additional capacity is not needed for the amendment. If the FAA's review

indicates that additional capacity can be made available for scheduled operations, the FAA will determine how that capacity should best be allocated in accordance with the specific findings of that review.

Fifty percent of the commuter slots are being preserved for use exclusively by commuter aircraft. The Department will also be monitoring service to small and medium sized communities. Access for these communities is thereby protected to some extent.

Trial periods and subsequent evaluation would entail cumbersome proceedings that would deprive air carriers of a predictable environment in which to plan routes and schedules. The past 2 years' experience with Amendment No. 93–62 indicates that this rule change will cause little impact in the O'Hare operational environment.

Slots can be treated already as assets of the community. The Buy-Sell Rule promulgated in 1985 did not dictate that only air carriers could acquire and hold slots. A significant number of slots are held today by non-carriers. Nothing in the rule prohibits communities from acquiring slots to enhance service to their regions' airports.

Accomodating expansion of services during off-peak hours can be accomplished without this amendment. Off-peak hours (i.e., times outside of the slot control period) fall in a narrow range. These hours are off-peak, by definition, because of reduced demand for air service at those times. This rule allows for incremental enhancement of capacity at times when demand is greatest, benefiting the air carriers and the traveling public, without a detrimental impact on O'Hare's operational environment.

The Suburban O'Hare Commission (SOC) asserted that a 5 percent or even a 1 percent increase in the Day Night Average Sound Level (DNL) 65 decibel (dB) contour at O'Hare was unacceptable to the residents of communities surrounding O'Hare. The environmental evaluation discussed in the NPRM represents a worst case scenario, however, assuming the substitution of the noisiest aircraft meeting the seat and weight limits with and, alternatively, without a Stage 3 restriction. But the aircraft most likely to be substituted under the rule adopted are Fokker 100's operated by AAL and Boeing 737–500's operated by UAL. These aircraft are likely to take the place of the larger turboprops, such as the ATR 42, DASH 8, ATR 72 and F27, which have take-off Effective Perceived Noise Decibel (EPNdB) levels of 83.1, 84.3, 86.5, and 87.5, respectively. The Fokker 100 and 737–500 have take-off noise levels of EPNdB 81.8 and 83.6 (the take-off weight limit precludes the heavier 737–500 versions), respectively, or up to 6 percent quieter than the turboprops. The most realistic impact of the rule adopted is, therefore, a quieter operating environment around O'Hare.

The SOC also suggested that an Environmental Impact Statement (EIS) should be prepared. The need to prepare an EIS is determined pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321). Because the promulgation of this rule is consistent with existing national environmental policies and objectives as set forth in section 101(a) of NEPA and will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA, the preparation of an EIS is not required. Instead, the FAA has performed an Environmental Analysis using a computer model, as discussed under the Environmental Review section, *infra*.

Also as part of its comments, SOC perceived an inconsistency in the FAA's proposal concerning the 30- and 60-minute limitations. AAL sought in its petition the elimination of the ceiling on the number of slots that could be operated within 30- and 60-minute periods at O'Hare. AAL's request pertained to the broad slot restrictions per half hour or hour set forth in 14 CFR 93.123(a), which encompass more than just those commuter slots in which larger aircraft could be used. The FAA declined to relieve the broad restrictions, but proposed to drop the restriction on the number of commuter slots that could be used with larger aircraft per 30- and 60-minute period set forth in 14 CFR 93.221 (e)(3) and (e)(5) and 14 CFR part 93, appendix B. The FAA is now adopting the proposed amendment.

## The Rule

By this action, the FAA is amending part 93 of the Federal Aviation Regulations (14 CFR), subpart S, to permit, in up to 50 percent of each carrier's commuter slot holdings at O'Hare International Airport, the operation of aircraft (1) having an actual seating configuration of 110 or fewer passengers, and (2) having a maximum certificated takeoff weight of less than 126,000 pounds. The cap will limit potential effects on airport operations and preserve at least 50 percent of existing commuter slots for operation with smaller aircraft that might include service to small communities. No matter which carriers hold or operate commuter slots, no more than 50 percent of any carrier's commuter slot base or of the total number of commuter slots at O'Hare can be used for larger aircraft. The FAA is also removing the limits on the number of large aircraft in commuter slot operations per half hour and consecutive half hour periods set forth in 14 CFR 93.221 (e)(3) and (e)(5) and 14 CFR part 93, appendix B, and allowing the continued use of larger aircraft in commuter slots by removing the trial period provision of 14 CFR 93.221(e)(8).

The FAA is modifying the 110-seat restriction promulgated under Amendment No. 93–62. That amendment limits the aircraft size to 110 maximum passenger seats according to the aircraft series' type certificate. This modification will allow the use of any aircraft having an actual seating configuration of 110 or fewer passengers as reflected in the most recent type certification (original, amended, or supplemental) for the operator's airplane, in up to 50 percent of a carrier's commuter slot holdings at O'Hare.

The NPRM solicited comments on whether using the most recent certificate for the aircraft might compel an operator to undergo the process of amending or supplementing a type certificate just to enable it to use the aircraft in commuter slots pursuant to this rule. No comments were received on this point. The FAA concludes, therefore, that using the most recent aircraft certification to determine compliance with the 110 seat limit is appropriate and will not impose an unwarranted burden on any carrier.

The FAA recognizes that even wide-body aircraft might be configured to hold 110 or fewer seats. To ensure that the larger aircraft used in the commuter slots will be comparable in size, the FAA is also adopting a maximum takeoff weight limit of 126,000 pounds, as proposed. This limitation will make the aircraft being used in commuter slots more likely to fit into the short- and medium-haul categories. The weight limit will also preclude heavy jets that would require greater in-flight separation and contribute to air traffic congestion and delays. The adoption of this additional restriction is consistent with the FAA's statements in the preamble to Amendment No. 93–62 that it would consider expanding the rule to include slightly larger aircraft in future rule changes. (56 FR at 41201.)

In the NPRM, the FAA solicited comments about including a Stage 3 restriction. Only two comments expressed support for this noise restriction. Because few, if any, aircraft not meeting the Stage 3 requirement are

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likely to be used in commuter slots under this amendment, the FAA finds that a Stage 3 restriction would have little, if any, effect. Therefore, the rule adopted contains no Stage 3 restriction. Regulation of noise will continue pursuant to 14 CFR part 36. The FAA, however, will monitor the type of larger aircraft used in the commuter slots to determine whether there is an increase in the use of non-Stage 3 aircraft due to the implementation of this rule. The FAA may determine that further rulemaking is necessary to ensure that the composition of aircraft in the O'Hare environment is not drastically altered to allow a higher concentration of non-Stage 3 aircraft in the operating environment.

Experience to date under Amendment No. 93–62 does not indicate any direct adverse impact on air traffic delays or congestion. No further operating restrictions appear necessary due to the retention of two requirements that have helped avoid exacerbating congestion at O'Hare. The first requirement is that carriers wishing to use larger aircraft in commuter slots must submit their proposed schedules to ATC for its approval. ATC's review of these requests has included an analysis of all scheduled operations during the specific 5-minute period within which each operation is proposed. ATC will retain the authority to approve or deny a request and will exercise it as necessary. Consequently, up to 50 percent of the commuter slots can be used with larger aircraft without any regard to the 30- and 60-minute restrictions contained in 14 CFR part 93, appendix B, and additional delays should not result. Therefore, the rule adopted eliminates the hourly and half-hourly restrictions found in 14 CFR part 93, appendix B.

The rule as adopted incorporates the proposed 75-day advance request provision. The FAA anticipates a substantial increase in requests to use larger aircraft in commuter slots because of the adoption of this rule. This increase will add to the workload of ATC in analyzing each requested operation's impact on air traffic movement and would require more time to process the requests. Because the carriers have informed the FAA that they need as much notice as possible to schedule aircraft and crews, the FAA will amend the notice provision of 14 CFR 93.221(e)(4) to require that a carrier submit its request to ATC 75 days in advance of the planned operation of a larger aircraft in a commuter slot, enlarging by 15 days the current advance notice requirement. ATC retains the authority to disapprove a request based on actual conditions at the time of the request or anticipated at the planned start date. ATC's approval, conditional approval, or disapproval will continue to be issued more than 45 calendar days before the planned start date stated in the notice to allow requesting carriers time to make operational and marketing preparations. ATC approval for a specific operation will be valid for 30 days after the planned start date, and will then expire if the operation has not commenced.

The second requirement is that an arrival gate be available without any planned waiting time. This amendment does not change the current requirement that any carrier intending to operate commuter slots with larger aircraft have sufficient gates available for those operations, to prevent ramp and taxiway congestion which could result from additional jet operations. This requirement appears to have helped avoid any adverse impact on ground congestion that might have resulted from Amendment No. 93–62. If an aircraft arrives without having a gate available, the ground controller typically must direct the aircraft to a holding area located away from the gate area and then clear the aircraft back into the gate area when a gate becomes available. Depending on the area used, this process may involve directing the aircraft across active runways and taxiways, further increasing controller workload and impeding other operations. Additionally, holding areas at O'Hare are limited and will be further limited during the winter season when certain holding areas are designated for use as secondary deicing facilities.

The advance notice and certification of gate availability requirements contained in Amendment No. 93–62 have helped prevent the bunching of additional operations at peak periods. These requirements provide the foundation for increasing to 50 percent the number of commuter slots for which larger aircraft could be used. Therefore, the rule adopted retains the requirement that gates be available to service these operations and that a carrier obtain ATC approval for its operation prior to the start of such operation.

Experience in implementing and working with Amendment No. 93–62 continues to indicate that the agency can remove the trial basis provision the amendment contained. The use of commuter slots as proposed herein should not exacerbate delays because ATC will retain its authority under the notice provisions of existing 14 CFR 93.223(e)(5); that authority permits ATC to ensure that the scheduling of additional arrivals and departures with larger aircraft will be distributed to avoid bunching of operations with resulting congestion and delays. If further experience indicates a need for adjustment, however, the rule can be amended to resolve any unforeseen circumstance that may arise.

Removing the expiration date of 14 CFR 93.221(e)(8) will subject any future changes to notice and comment procedures. This provides some stability upon which the airlines can rely in developing their long-term schedules to maximize the use of O'Hare's capacity.

As proposed, the rule adopted adds to the notice provision the requirement to provide the series, type, and actual seating configuration of the aircraft to be used in the commuter slots. This information is needed to ensure that the seat and weight limits are being met.

The Department is concerned about the potential effect of the rule modification on service to small communities. The majority of support for the petition came from representatives or residents of small and mid-size cities for which AAL has promised to continue or add jet service. Contrary to the belief of many of those commenters, no current government regulation prevents AAL or any other carriers from providing jet service to their communities, and this rule will not require any carrier to fly to their cities, much less dictate the type of equipment to be used.

The Department seeks to promote access by all communities to the air transportation system. It ensures that Essential Air Service is provided to eligible points and supports the availability of air service to other small communities. To balance the interests of maximum economic use of a limited resource, on the one hand, and the Department's interest in preserving service to smaller markets in the Chicago region, on the other, the FAA is increasing the number of commuter slots that can be operated with larger aircraft only to 50 percent of the commuter slots held by each carrier at O'Hare, rather than eliminating the commuter slot restrictions entirely. Limiting seating to 110 passengers and maximum takeoff weight to 126,000 pounds will inhibit the use of commuter slots with long-haul aircraft designed for higher demand markets. The Department will continue to monitor the use of commuter slots at O'Hare, using the Essential Air Service program when necessary.

The NPRM solicited comments on slot withdrawals for international operations under 14 CFR 93.217, if commuter slots were going to be used for operations with larger aircraft that might serve

foreign markets. Commenters opposing the proposed rule saw international withdrawals of commuter slots as potentially reduced slots available to serve smaller communities. AAL, UAL, and other supporters of the proposed rule also opposed incorporating commuter slots into O'Hare's international withdrawal regime. Although the proposal was not to subject all commuter slots to withdrawal for international operations, the FAA will not alter the international slot provisions to include any commuter slots.

**Environmental Review**

The FAA has conducted three analyses of the potential environmental impact of this rule amendment using the Area Equivalent Method (AEM) computer model. The first analysis factored in the use of larger aircraft in 50 percent of the commuter slots without any Stage 3 restriction. As a worst possible case scenario, it assumed that all of the affected slots would be used with B737–200's or DC–9–30's; these are Stage 2 aircraft that generate the most noise among the aircraft that the rule will allow to operate in commuter slots. The analysis indicated a worst scenario increase of 6 percent in the Day Night Average Sound Level (DNL) 65 dB contour.

The second analysis included Stage 3 aircraft only. Applying a Stage 3 restriction brought the DNL 65 dB contour increase down to less than 1 percent.

The third analysis was performed assuming that Fokker 100's would be substituted in 108 slots for commuter turboprops holding 50 to 74 seats, and B737–500's would similarly be substituted in another 108 slots. This distribution resulted in a DNL 65 dB contour increase of less than 0.5 percent.

The FAA has therefore determined that this amendment, even without the Stage 3 requirement, is consistent with existing national environmental policies and objectives as set forth in section 101(a) of the National Environmental Policy Act (NEPA) and would not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA. As mentioned previously, however, the FAA will monitor the type of larger aircraft used in the commuter slots to determine whether there is an increase in the use of non-Stage 3 aircraft due to the implementation of this rule. The FAA may determine that further rulemaking on this subject is necessary to ensure that the composition of aircraft in the O'Hare environment is not drastically altered to allow a higher concentration of non-Stage 3 aircraft in the operating environment at the airport.

**Regulatory Evaluation**

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this amendment is not "major" as defined in the Executive Order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this amendment without identifying alternatives.

*Costs*

This amendment is voluntary and will not impose any additional costs on part 121 or part 135 air carriers. This rule will allow them to use some of their commuter slots (up to 50 percent) at O'Hare Airport for operations with larger aircraft. The decision whether to use the larger aircraft rests, however, strictly with the operators, not the FAA. An increase from 108 to a maximum of 217 operations per day using larger aircraft will be permitted in commuter slots under this amendment.

The amendment will not significantly alter the operating environment at O'Hare for scheduled part 121 or part 135 air carriers. It is not expected that ground operations and departure and arrival procedures will be significantly affected.

This regulation will have no effect on the safety of either air or ground operations. ATC will retain the ability to disapprove proposed arrival or departure schedules of additional larger airplane operations at O'Hare. ATC procedures will continue to maintain a high level of safety and efficiency.

Many of the opposing comments claimed that the rule would inflict significant economic losses on communities that lose part or all of their air transportation services. It is the decision of the air service provider, however, and not the rule, that will determine any changes in service. The rule removes, in part, a restriction that perpetuates economic inefficiencies in the use of limited resources, O'Hare's capacity, by air carriers. If increasing economic efficiency leads indirectly, i.e., as a result of an air carrier's marketing determination, to a shifting of services to a different market, that shift would likely be economically positive. At worst, one community's loss of service would be offset by another community's gain, in which case the net economic impact is neutral.

*Benefits*

This amendment will reduce some of the current restrictions on the use of commuter slots at O'Hare and will permit air carriers holding commuter slots additional flexibility in the use of these slots. To the extent jet aircraft are substituted for commuter turboprops, the rule will benefit passengers flying in those aircraft to and from Chicago.

The amendment could save time for the traveling public. For most commuter flights, which are short-range, turbojets would not provide any significant time savings. Passengers on long commuter flights, however, would save time. The FAA estimates that about 20 minutes could be saved on a long commuter flight by using turbojet airplanes instead of turboprop airplanes. The FAA estimates that approximately 50 passengers would be on each turbojet commuter flight. The estimated passenger time saved is, therefore, 16.7 passenger-hours per commuter flight. The FAA estimates that the value of passenger time is $41 per hour for 1992. Allowing turbojet airplanes to be used on long commuter flights would save $680 in passenger time for each long commuter trip. This regulation will allow an additional 109 commuter slots to be used in this way. Assuming half of the slots will be used for long commuter flights with turbojet equipment, this amendment will save about $37,000 per day in passenger time.

One commenter criticized this same analysis that was calculated for the NPRM. The basis for the criticism was that some communities had experienced reduced frequency of flights through schedule consolidations under Amendment No. 93–62. The reduced schedule flexibility could cause passengers additional waiting time, for example, between connecting flights at O'Hare, thereby negating any time savings gained through shorter flying times. The FAA acknowledges that such a result is possible, but the airlines may

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change their schedules and reduce the number of flights serving a given community whether this rule is promulgated or not. This rule neither adds to nor detracts from their ability to adjust their schedules at will. The issue raised is immaterial to the regulatory relief provided air carriers through this rule. The rule will enable faster and enhanced service to more passengers, and the FAA upholds its conclusion, therefore, that the rule is beneficial.

**Comparison on Benefits and Costs**

The FAA finds that there will be no significant costs directly attributable to this regulation. However, there are some measurable benefits. As a result, the FAA has determined that the amendment will be cost-beneficial.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines for determining if a proposed or existing rule has any significant economic impact on a substantial number of small entities.

The FAA defines a small entity as an operator who owns, but does not necessarily operate, nine or fewer airplanes. A substantial number of small entities is one-third of the small entities provided 11 or more small entities are substantially impacted. The FAA defines a significant economic impact as $4,600 per year for unscheduled operators, $60,200 per year for scheduled operators, and $115,500 per year for scheduled operators with aircraft containing no less than 60 passenger seats.

No small entity owning or operating nine or fewer airplanes holds commuter slots at O'Hare. Thus, the FAA determines that this amendment will have no significant economic impact on a substantial number of small entities.

Commenters have mentioned that their local economies or businesses will be helped or hurt, depending on the commuter's location, by the rule. As stated previously, the rule has no direct impact on communities outside of the Chicago region. Secondary effects stemming from air carriers' decisions are beyond the scope of this determination and could not, as a practical matter, be meaningfully quantified.

**International Trade Impact Assessment**

The rule amendment will only affect domestic operations at Chicago O'Hare Airport. Thus, it will not provide either an advantage or disadvantage to foreign air carriers providing service to and from the United States, nor will it provide either a trade advantage or disadvantage to United States air carriers providing foreign service.

**Paperwork Reduction Act**

This rule amendment does not substantially change the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget has approved the information collection provision of subpart S through August 31, 1995. OMB Approval Number 2120–0524 has been assigned to subpart S.

**Federalism Implications**

The amendment set forth herein will not have substantial direct effects on the states, on the relationship between the national government and that of any state, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have federalism implications warranting a Federalism Assessment.

**Conclusion**

For the above reasons, the FAA has determined that this rule (1) is not a "major rule" under Executive Order 12291; and (2) is a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Further, I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 14 CFR Part 93**

Air traffic control, Airports, Navigation (air), Reporting and recordkeeping requirements.

**The Rule Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA amends part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

## PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

**Authority:** 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 *et seq.*; 49 U.S.C. 106(g).

2. Paragraphs (e)(1) and (e)(2) of § 93.221 are revised to read as follows:

**§ 93.221 Transfer of slots.**

* * * * *

(e) * * *

(1) Air carrier aircraft that may be operated under this paragraph are limited to aircraft:

(i) Having an actual seating configuration of 110 or fewer passengers; and

(ii) Having a maximum certificated takeoff weight of less than 126,000 pounds.

(2) No more than 50 percent of the total number of commuter slots held by a slot holder at O'Hare International Airport may be used with aircraft described in paragraph (e)(1) of this section.

* * * * *

3. Paragraphs (e)(3), (e)(5), and (e)(8) of § 93.221 are removed.

4. Section 93.221(e)(4) is redesignated as § 93.221(e)(3) and amended as follows:

In the first sentence, remove the number "60" and add in its place the number "75", and in the second sentence, after the words "aircraft type" add ", aircraft series, actual aircraft seating configuration".

5. Paragraphs (e)(6) and (e)(7) of § 93.221 are redesignated as paragraphs (e)(4) and (e)(5), respectively.

**Appendix B to Part 93—[Removed]**

6. Appendix B to part 93 is removed.

Issued in Washington, DC, on July 20, 1993.

**Joseph N. Del Balzo,**

*Acting Administrator.*

[FR Doc. 93–17539 Filed 7–20–93; 11:42 am]

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July 23, 1993

Part V

# Department of Education

**34 CFR Parts 600 and 668**
**Institutional Eligibility Under the Higher Education Act; Student Assistance General Provisions; Rule**

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DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN: 1840–AB39

**Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions**

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends Subpart A of the Institutional Eligibility Under The Higher Education Act of 1965, As Amended regulations and subpart A of the Student Assistance General Provisions regulations. The Secretary amends the former regulations to make a technical, clarifying change in the definition of the term "clock hour." The Secretary amends the latter regulations to eliminate a serious abuse of the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). This latter amendment establishes a regulatory formula to determine whether an educational program qualifies in credit hours as an eligible program under § 668.8(a)(2)(iii), (iv), and (v), and the amount of title IV, HEA program assistance that a student who is enrolled in that eligible program may receive. For these purposes, the formula requires that a semester, trimester, or quarter hour contain a specific minimum number of clock hours of instruction.

These final regulations apply only to calculations made for Title IV, HEA program purposes. They do not interfere with the supervision or control over the curriculum, program of instruction, or administration of an educational institution.

EFFECTIVE DATE: These regulations take effect either September 7, 1993 or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

Following the effective date, §§ 668.8(c) and (d) and 668.9 shall apply on and after January 1, 1994. However, with regard to any new educational program in which the first day of instruction occurs on or after the effective date, these sections shall apply on and after the effective date.

FOR FURTHER INFORMATION CONTACT: Greg Allen, U.S. Department of Education, 400 Maryland Avenue, SW., room 4318, Regional Office Building 3, Washington, DC 20202. Telephone: (202) 708–7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On October 1, 1990, the Secretary published a notice of proposed rulemaking in the **Federal Register** (55 FR 40148) proposing amendments to § 668.8 and the addition of § 668.9 of the Student Assistance General Provisions regulations. The NPRM included a discussion of the major issues involved in the proposed changes. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues may be found:

Description of Proposed Changes (page 40148)—an explanation of the basis for the proposed regulatory formula.

Background on Clock Hour to Credit Hour Conversion Abuses (page 40148)—institutions that convert from clock hours to credit hours and the use of credit hours in undergraduate vocational programs without regard to the number of clock hours offered in those programs.

Results of These Abuses (pages 40148–40149)—circumvention of minimum program length requirements and increases in the amounts of Title IV, HEA program assistance without corresponding increases in the amount of educational instruction provided.

Limited Scope of the Proposed Regulations (page 40149)—no effect on transferability of academic credit.

Institutions Affected by Proposed Regulations (page 40149).

Expected Impact of Proposed Regulations on a Currently Eligible Program (page 40149).

Proposed Effective Date for Implementation (page 40149)—Phase-in of implementation for students enrolled in programs that measure academic progress in credit hours in a cross-over payment period.

The Secretary is making significant changes in the provisions proposed in the NPRM, and is also further clarifying the definition of the term "clock hour" in 34 CFR part 600.

**Section 668.8 Eligible Program**

The Secretary amends § 668.8 by adding a new paragraph (c) and a new paragraph (d). Under those paragraphs, if an institution offers an undergraduate vocational educational program in credit hours, the institution must use the formula contained in paragraph (d) to determine if that program satisfies the requirements of an eligible program set forth in § 668.8(a)(2) (iii), (iv), or (v), and the number of credit hours in that program for title IV, HEA program purposes, with the following exceptions.

An institution need not use the formula in paragraph (d) to measure the number of credit hours in any undergraduate vocational educational program that is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary. In addition, an institution need not use that formula to measure the number of credit hours in any undergraduate vocational educational program if each course within that program is fully acceptable for credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study.

The proposed regulatory formula required that each semester, trimester, or quarter credit hour in an undergraduate vocational program had to include a minimum number of clock hours of instruction for the purpose of determining whether that program qualified as an eligible program under the title IV, HEA programs, and the amount of assistance a student enrolled in that program could receive under those programs. In the NPRM, the formula required that each semester or trimester hour include at least 37.5 clock hours of instruction, and each quarter hour include at least 25 clock hours of instruction. The Secretary based the formula upon the definition of the term "academic year" that had been in use under the title IV, HEA programs for almost 20 years. Under this long-standing, commonly accepted definition, the Secretary had defined an academic year as at least 24 semester or trimester hours, 36 quarter hours, or 900 clock hours of instruction. Thus, 37.5 clock hours was obtained by dividing 900 clock hours by 24, and 25 clock hours was obtained by dividing 900 clock hours by 36.

In proposing this formula, the Secretary recognized that the formula did not take into account the number of hours of outside preparation that a student must undergo for each hour of classroom instruction. The Secretary did not include outside preparation hours as part of the formula because of the difficulty of independently determining whether the number of outside hours an institution might claim was accurate

when the institution applied to the Department of Education (ED) for eligibility for a program. However, the Secretary realized that a consequence of the failure to include any hours of outside preparation may have been to require too many classroom hours for each credit hour for certain programs.

During the comment period, many commenters objected to the formula because they believed that it required too many clock hours for each credit hour. In addition, many commenters objected to applying this formula to undergraduate vocational programs that lead to degrees requiring at least two years of study because they contended that the abuses that gave rise to the proposed rules did not apply to that type of program.

The Secretary believes that the points made by these commenters were well taken, and accordingly, in the final regulations, has made several significant modifications to the proposed regulations and the proposed formula. First, the Secretary has decided to exclude from the coverage of the formula undergraduate vocational programs that lead to a degree that requires at least two academic years of study. Moreover, the Secretary is also excluding from the coverage of the formula any undergraduate vocational program if all the courses in that program are fully acceptable for credit towards a degree that requires at least two academic years of study. This latter exclusion would apply even though the program itself is not fully acceptable toward the degree.

An example of the first type of program that is not covered by the regulatory formula is a two-academic-year program the successful completion of which results in an associate degree. The following is an example of the second type of program.

Junior College A offers a certificate program in computer repair and also offers an associate degree program in computer operation. As part of the certificate program, a student is required to take four courses in various aspects of computer repairs. All the courses in the computer repair certificate program are fully acceptable toward the associate degree program in computer operation. However, a student in the associate degree program may take no more than two of the four computer repair courses for the associate degree program, although the student may take any two of those four courses. Thus, although Junior College A's computer certificate program is not fully acceptable toward its associate degree program in computer operation, because the certificate program requires four instead of two computer repair courses, the certificate program is nevertheless excluded from the regulatory formula, because each individual course in the certificate program is acceptable for full credit toward that degree program.

The last significant modification the Secretary has made is in the formula itself. The Secretary has reduced the classroom hours required for each quarter credit hour or semester credit hour by approximately 20 percent. Thus, under the revised formula, each quarter hour must have 20 rather than 25 classroom hours of instruction, and each semester hour must have 30 rather than 37.5 classroom hours. Further, based upon the Secretary's recognition that vocational educational programs require some measure of outside preparation, the Secretary will presume that each program that must be measured under the formula provides outside preparation at least equal to the hours represented by the difference between the proposed formula and the final formula, and institutions will not have to document that outside preparation.

An institution may challenge a determination of program ineligibility under 34 CFR 600.41.

**Section 668.9 Relationship Between Clock Hours and Semester, Trimester, or Quarter Hours in Calculating Awards**

The Secretary is also adding a new § 668.9. In this new section, the Secretary requires an institution that offers a program described in § 668.8(c) to use the formula contained in § 668.8(d) to calculate the amount of title IV, HEA program assistance that an affected student is eligible to receive. However, the application of this formula does not prevent an institution from using its own credit-hour measurements of that program for its own purposes.

**Clarification of Existing Rgulatory Provisions**

The Secretary is revising the definition of the terms "clock hour" in 34 CFR 600.2 and "eligible program" in 34 CFR 668.8 to eliminate perceived ambiguities in those definitions, notwithstanding the fact that the Secretary believes that the current definitions are not ambiguous.

To demonstrate the number of clock hours in an educational program, certain institutions have aggregated the number of minutes of instruction provided in that program, and have divided those minutes by 50. This practice is inconsistent with the Secretary's long-standing interpretation under the current definition of the term "clock hour." Under that interpretation, if an institution seeks to determine the number of clock hours in an educational program by aggregating the number of minutes in that program, it has to divide those minutes by 60 rather than 50.

The revised definition of a clock hour requires that each clock hour of instruction takes place in a discrete 60-minute period. The Secretary believes that this revision, as well as this discussion, should eliminate any further contentions regarding the proper calculation of clock hours.

With regard to the definition of the term "eligible program," that definition left out the obvious requirement that the eligible program be offered by an eligible institution.

**Analysis of Comments and Changes**

In response to the Secretary's invitation in the NPRM, approximately 5,000 parties submitted comments on the proposed regulations. An analysis of the comments and changes in the regulations since publication of the NPRM is published as an appendix to the final regulations. Included in this analysis are comments received during public negotiated rulemaking sessions.

These regulations were not subject to the negotiated rulemaking process mandated for changes made to parts B, G, and H of title IV of the HEA by the Higher Education Amendments of 1992, Public Law 102–325. Nevertheless, the Secretary invited further public comment on the proposed regulations during the public negotiating sessions, held during the weeks of January 4 and February 1, 1993, in order to obtain additional advice from the higher education community in the development of these final regulations.

During these sessions, several negotiators suggested changes that the Secretary adopted in the final regulations, and most of the negotiators supported these regulations, as revised.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

**Paperwork Reduction Act of 1980**

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on

whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 600*

Administrative practice and procedure, Colleges and universities, Education, Reporting and recordkeeping requirements.

*34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; and 84.069 State Student Incentive Grant Program. Catalog of Federal Domestic Assistance Numbers for the Federal Direct Loan Demonstration Program, National Early Intervention Scholarship and Partnership Program, and Presidential Access Scholarship Program have not been assigned.)

Dated: June 3, 1993.

**Richard W. Riley,**

*Secretary of Education.*

The Secretary amends parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

## PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

**Authority:** 20 U.S.C. 1085, 1088, 1094, and 1141, unless otherwise noted.

2. In § 600.2, the definition of "clock hour" is amended to read as follows:

**§ 600.2 Definitions.**

* * * * *

*Clock hour:* A period of time consisting of—

(a) A 50-minute to 60-minute class, lecture, or recitation in a 60-minute period;

(b) A 50-minute to 60-minute faculty-supervised laboratory, shop training, or internship in a 60-minute period; or

(c) Sixty minutes of preparation in a program of study by correspondence.

* * * * *

## PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

3. The authority citation for part 668 continues to read as follows:

**Authority:** 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

4. Section 668.8 is amended by revising the introductory text in paragraph (a), by revising paragraph (a)(2)(i), and by adding new paragraphs (c) and (d), to read as follows:

**§ 668.8 Eligible program.**

(a) *General.* An eligible program is a program of education or training that is offered by an eligible institution and that—

* * * * *

(2)(i) Leads to an associate, bachelor's, professional, or graduate degree;

* * * * *

(c) If an institution offers an undergraduate educational program in credit hours, the institution must use the formula contained in paragraph (d) of this section to determine whether that program satisfies the requirements contained in paragraphs (a)(2)(iii), (iv), or (v) of this section, and the number of credit hours in that educational program for purposes of the Title IV, HEA programs, unless—

(1) The program is at least two academic years in length and provides an associate degree, a bachelor's degree, a professional degree, or an equivalent degree as determined by the Secretary; or

(2) Each course within the program is acceptable for full credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree as determined by the Secretary, provided that the institution's degree requires at least two academic years of study.

(d) For the purpose of determining whether a program described in paragraph (c) of this section satisfies the requirements contained in paragraphs (a)(2)(iii), (iv), or (v) of this section, and the number of credit hours in that educational program with regard to the Title IV, HEA programs—

(1) A semester hour must include at least 30 clock hours of instruction;

(2) A trimester hour must include at least 30 clock hours of instruction; and

(3) A quarter hour must include at least 20 clock hours of instruction.

* * * * *

5. A new § 668.9 is added to subpart A, to read as follows:

**§ 668.9 Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.**

In determining the amount of title IV, HEA program assistance that a student who is enrolled in a program described in § 668.8(c) is eligible to receive, the institution shall apply the formula contained in § 668.8(d) to determine the number of semester, trimester, or quarter hours in that program, if the institution measures academic progress in that program in semester, trimester, or quarter hours.

(Authority: 20 U.S.C. 1082, 1085, 1088, 1091, 1141)

**Appendix**

**Analysis of Comments and Changes**

(Note: This appendix will not be codified in the Code of Federal Regulations.)

Major issues are grouped according to subject. Technical and other minor changes, and suggested changes the Secretary is not legally authorized to make, are not addressed.

*Comments Relating to Institutions and Programs Covered by the Regulatory Formula*

*Comments:* Many commenters believed that the NPRM was too sweeping in its approach to the problems identified, and affected too broad a scope of institutions and educational programs. Many of these commenters also believed that the proposed regulations would have an adverse impact on institutions and educational programs that have not engaged in the type of abuses of the title IV, HEA programs described by the Secretary in the NPRM.

Many commenters writing on behalf of community colleges strongly believed that proprietary institutions were primarily responsible for the abuse that the proposed regulations were attempting to eliminate, and it was unfair to apply the proposed formula to degree-granting, public institutions with academic calendars made up of standard terms. These commenters objected to the application of the proposed formula to the undergraduate vocational training programs offered at community colleges, because the programs are already subject to stricter State and accrediting agency controls than are programs at proprietary institutions.

Many commenters writing on behalf of proprietary institutions believed that community colleges and other public institutions would be less affected by the regulations, and that the proposed regulations would disproportionately affect programs at proprietary institutions. These commenters provided examples of educational programs offered by proprietary institutions that would be affected by the regulations, such as two-year programs leading to an associate degree, and argued that similar programs at community colleges would not be affected. While many of these commenters acknowledged that some proprietary institutions have engaged in the type of abuse identified in the NPRM, they believed these actions were not sufficiently widespread to warrant such a strong response from the Secretary. Some commenters believed that the proposed regulatory formula in § 668.8(c) should not apply to programs offered at proprietary institutions that lead to a degree or are two-year programs that are acceptable for full credit toward a baccalaureate degree at an eligible institution.

*Discussion:* The Secretary believes that the abuse described in the NPRM exists across all sectors of the higher education community that provide undergraduate vocational training. However, based upon public comment and further review, the Secretary agrees with commenters that the abuse does not arise in all types of vocational programs, but is concentrated in short-term vocational programs that do not lead to associate or higher degrees, or are not fully acceptable toward such degrees.

*Changes:* A change has been made. Proposed § 668.8(c) has been revised so that the regulatory formula in proposed § 668.8(d) will not apply to undergraduate vocational educational programs of at least two academic years in length that provide an associate, bachelor's, professional, or equivalent degree as determined by the Secretary. (The Secretary understands that there may be some institutions that offer two-year or longer vocational programs that lead to a degree, but are precluded by State law from granting an "associate," "bachelor's," or "professional" degree for those programs. The Secretary generally considers such a degree to be a degree equivalent to an associate, bachelor's, or professional degree).

In addition, the regulatory formula in § 668.8(d) will not apply to an institution's undergraduate vocational educational programs if each course within those programs is fully acceptable for credit toward that institution's associate degree, bachelor's degree, professional degree, or equivalent degree, as determined by the Secretary, provided that degree requires at least two academic years of study. In addition, students enrolled in the above-described undergraduate vocational educational programs will not have their title IV, HEA program awards calculated in accordance with the formula contained in § 668.8(d).

*Comments:* A number of commenters argued that the Secretary should rely on accrediting agencies to curb this abuse, and that the Secretary should use the accrediting agency recognition process as a means to require accrediting agencies to address this problem.

*Discussion:* The Secretary disagrees with the commenters, because it is the experience of the Secretary that several of the accrediting agencies are part of the problem giving rise to these regulations rather than part of the solution. A review of Department records disclosed that between 1983 and 1990, 415 institutions converted their programs from clock hours to credit hours, with 84 percent of those conversions occurring in proprietary institutions. In addition, during that period, 284 new proprietary institutions of higher education using credit hours rather than clock hours were designated by ED as eligible institutions. For each conversion, an accrediting agency approved the institution's conversion and the number of converted credit hours; for each new institution, an accrediting agency for that institution approved the number of credit hours in that institution's vocational programs.

Many accrediting agencies that accredit vocational programs have established conversion formulas that allow one semester or trimester hour for 15 clock hours of lecture or classroom instruction, 30 clock hours of laboratory work, or 45 hours of externship work. However, these conversion formulas do not require any hours of preparation outside the classroom, laboratory, and externship when determining the work needed for a semester, trimester, or quarter hour. As a result, the use of these formulas produces the very abuse that these regulations have been developed to prevent, excessive credit hours for the number of hours of education provided by an institution.

For example, an academic year, in part, is defined to be 24 semester hours or 900 clock hours, while an eligible program, in part, is defined to be 16 semester hours or 600 clock hours. However, under these formulas, only 360 clock hours of classroom instruction are needed to qualify for one academic year of 24 semester hours (360 divided by 15 = 24), and only 240 clock hours of classroom instruction are needed to qualify as an eligible program (240 divided by 15 = 16). If a student takes 24 clock hours a week, the minimal requirement in clock hours for a full-time student, it would take that student only 10 weeks, or 2½ months, to complete an eligible program and only 15 weeks, or less than four months, to complete a one-academic-year program.

*Changes:* None.

*Issues Relating to the Proposed Formula*

*Comments:* Many commenters believed that the relationship between clock hours and credit hours proposed in the NPRM was unreasonable and arbitrary. Many commenters noted that the formula did not take outside preparation into account in determining credit hours and that absence resulted in too many classroom hours for each credit hour. Several commenters suggested that the proposed formula be modified to reduce the number of classroom hours for each credit hour in recognition of outside preparation for those hours.

*Discussion:* In proposing this formula in the NPRM, the Secretary did not include outside preparation hours as part of the formula because of the difficulty of independently determining whether the number of outside hours an institution might claim was accurate when the institution applied to ED for eligibility for a program. The Secretary believed that such a failure would not have a significant impact on most programs covered by the formula, but the Secretary understood that it would have an unfair impact for certain programs. However, the Secretary agrees with the commenters who suggested that the formula should be revised to take outside preparation into account, yet not require the institution to document that preparation.

Following the suggestions of the commenters, the Secretary has reduced the classroom hours required for each quarter credit hour or semester credit hour by approximately 20 percent. Thus, under the revised formula, each quarter hour must have 20 rather than 25 classroom hours of instruction, and each semester hour must have 30 rather than 37.5 classroom hours. Further, based upon the Secretary's recognition that vocational educational programs require some measure of outside preparation, the Secretary will presume that each program that must be measured under the formula provides outside preparation at least equal to the hours represented by the difference between the proposed formula and the final formula, and institutions will not

have to document that outside preparation.

*Changes:* The Secretary has revised § 668.8(d) by requiring that each quarter hour must have 20 rather than 25 classroom hours of instruction, and each semester hour must have 30 rather than 37.5 classroom hours.

*Comments:* Many commenters pointed to the standard of 15 clock hours per semester hour and 10 clock hours per quarter hour as an acceptable norm for the number of clock hours required for a semester or quarter hour. Several commenters pointed to differences between the proposed regulations and the credit-hour standards recognized by the Department of Veterans Affairs (VA) for its educational assistance programs and the Social Security Administration (SSA) for its survivors' benefits program. A number of commenters objected to the Secretary's proposal because it does not distinguish between modes of instruction, i.e., lecture or theory, laboratory, and shop or practicum.

*Discussion:* As noted in the discussion relating to accrediting agencies, the Secretary believes that the ratio of 15 clock (lecture) hours for one semester hour and 10 clock (lecture) hours for one quarter hours produces an excessive number of credit hours because those ratios do not take into account outside preparation.

Under the standard unit of measuring credit in higher education, the Carnegie Unit of Credit, one credit hour generally consists of one hour of classroom work and two hours of outside preparation a week over the course of an academic term. For example, one semester hour requires one hour of classroom work and two hours of outside preparation a week during a semester. If a semester lasted 15 weeks, one semester hour would require approximately 45 hours of work. If a formula converts clock hours into semester hours by using a 15/1 formula, that formula takes into account only one/third of the hours of work required for a semester hour.

With regard to commenters' mention of a different treatment of the relationship between clock hours and credit hours in survivors' benefits programs administered by the SSA, that agency currently administers no benefit program that involves survivors enrolled in postsecondary education. Moreover, when that agency did have such a program, it did not establish a relationship between clock hours and credit hours. It merely developed a definition of a full-time student. See 20 CFR 404.369.

With regard to the VA's treatment of this subject, it is far from clear after reading the relevant statutes and regulations governing the VA education benefit programs, 20 U.S.C. 1788 and 38 CFR 21.4270, that the VA's treatment of the clock-hour/credit-hour relationship is at odds with the approach adopted in these final regulations.

With regard to the failure to recognize modes of instruction, the Secretary believes that the modified final regulations eliminate any need to distinguish between those modes.

*Changes:* None.

*Other Comments*

*Comments:* Most commenters acknowledged that the abuse that the Secretary described in the NPRM, a purported increase in the quantity of education provided in vocational programs created solely by the conversion of the measurement of those programs from clock hours to credit hours, is a serious problem. However, there was no general consensus among the commenters as to the best way to address the problem. In addition, many commenters disagreed with the Secretary's proposed solution.

*Discussion:* The Secretary appreciates that the commenters understand that the abuse described in the NPRM is a serious problem and is disappointed in the lack of consensus among the commenters with regard to the best solution to the problem. However, the Secretary believes that the absence of a consensus does not justify inaction in the face of this problem.

*Changes:* None.

*Comments:* Several commenters noted that amendments to the statutory definitions in the HEA of the terms "eligible program" and "academic year" by the Higher Education Amendments of 1992, Public Law 102–325, negated any need for these regulations. In those new statutory definitions, there is now a requirement that an eligible program be at least 15 weeks (or in some cases 10 weeks) and that an academic year consists of at least 30 weeks of instructional time.

*Discussion:* The Secretary agrees that those statutory changes help in reducing the abuse of claiming an excessive number of credit hours for a program. However, the Secretary believes that these changes do not alleviate the need for these regulations since the statutory changes address a different mode of creating excessive credit hours for programs, i.e., compressing those programs into short periods of time. The statutory change does not address the creation of excessive credit hours for undergraduate vocational programs by the measurement of those programs in credit hours. Therefore, the Secretary believes that this regulation is still needed to prevent this abuse.

*Changes:* None.

*Comments:* Many commenters perceived the proposed regulations as an intrusion into the academic affairs of postsecondary educational institutions. Some commenters believed that the proposed regulations violate sections 103 of the Department of Education Organization Act and 432 of the General Education Provisions Act, which prohibit the Secretary and other officials of ED from exercising any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution.

*Discussion:* The Secretary does not agree with the commenters. As the Secretary stated in the preamble to the NPRM, these regulatory provisions "are not intended to and do not interfere with the supervision or control over the curriculum, program of instruction or administration of an educational institution." 55 FR 40148. Nor do they intrude into the academic affairs of postsecondary educational institutions. These provisions apply only to calculations made for title IV, HEA program purposes, i.e., whether a program qualifies as an eligible program under § 668.8, and the amount of title IV, HEA program assistance that a student enrolled in an eligible program may receive.

*Changes:* None.

*Comments:* Many commenters felt that the proposed regulations were discriminatory against students in vocational, trade, and technical programs.

*Discussion:* The Secretary does not agree with the commenters. These regulations are designed to prevent institutional abuses of the title IV, HEA programs. The abuses involve vocational programs. To the extent that the regulations curb or prevent further abuse, the regulations do not discriminate against students enrolled in vocational programs. The regulations simply ensure that these students are enrolled in eligible programs for title IV, HEA program purposes, and further ensure that the students receive the aid for which they are eligible, if the programs in which they enroll are eligible programs.

*Changes:* None.

*Comments:* Some commenters complained about the administrative burden that the regulations would impose on institutions having some eligible programs that are affected by the regulations and some that are not. Many commenters argued that the proposed regulations would require an institution

to create two systems for determining a student's eligibility for, and amount of, title IV, HEA program assistance. One system would govern its students enrolled in vocational educational programs covered by the regulatory formula, while the other would govern its students enrolled in educational programs that were not covered by the formula.

*Discussion:* The Secretary understands that an institution may have to use two systems for determining its students' eligibility for, and amount of, title IV, HEA program assistance. The Secretary believes that the revision to § 668.8(c) that excludes various classes of undergraduate vocational programs from the regulatory formula will limit, and in many cases remove, the need for institutions to use two systems. However, an institution currently makes distinctions with regard to its students *vis-a- vis* the title IV, HEA programs. For example, distinctions are based upon the type of program in which the student is enrolled, a student's enrollment status, and whether the student is a regular student. In any event, the small administrative burden that some institutions may face does not justify inaction given the seriousness of the problem.

*Changes:* None.

*Comments:* Some commenters argued that the regulations should distinguish between eligible programs that are primarily "academic" in nature and those that are strictly "vocational."

*Discussion:* The regulations distinguish between eligible programs that are academic in nature and those that are vocational. The final regulations apply only to educational programs that qualify as part of an eligible institution under the HEA because the programs are vocational, i.e., they prepare students for gainful employment in a recognized occupation. See § 668.8(a)(2)(iii), (iv), or (v).

*Changes:* None.

*Comments:* Several commenters predicted that institutions would add extra clock hours of instruction to existing educational programs in order to qualify students for more title IV, HEA program assistance. Many predicted that the added clock hours would be in the form of shop or externship credit.

*Discussion:* If institutions affected by these regulations add meaningful additional training to their educational programs, students in those programs should be eligible for title IV, HEA program assistance that reflects that additional training. However, the Secretary strongly cautions institutions from adding additional clock hours with no educational value, such as study halls, in order to qualify students for title IV, HEA program assistance, or additional assistance. If an institution adds clock hours of the latter type, it will be liable for any title IV, HEA program funds it receives as a result of that addition, and may be terminated from participation in the title IV, HEA programs.

*Changes:* None.

*Comments:* A number of commenters predicted that the loss or reduction of eligibility of Federal Pell Grant Program assistance to students enrolled in undergraduate, short-term, vocational training programs affected by these regulations will result in a greater student dependency on Federal Stafford loans, and will increase the default risk these students pose. Many commenters believed such a consequence would be counterproductive to the Secretary's initiative to reduce defaults in the Federal Stafford Loan and Federal SLS programs.

*Discussion:* The Secretary disagrees. As the Secretary previously stated, students should receive the title IV, HEA program assistance for which they qualify. Moreover, as a result of changes made to the HEA by the Higher Education Amendments of 1992, Public Law 102–325, the definition of an eligible program is the same for the Federal Pell Grant Program and the Federal Stafford Loan and Federal SLS Programs. Therefore, if a program is not an eligible program for the Federal Pell Grant Program, it is not an eligible program for the Federal Stafford and Federal SLS Programs. As a result, these regulations will not substantially increase the number of borrowers in those programs.

*Changes:* None.

*Comments:* Many commenters argued that the proposed regulations will have a negative impact on students from low-income, disadvantaged backgrounds who enroll in the undergraduate vocational training programs affected by these regulations. Many of these commenters believed that the proposed regulations will discourage many of these students from pursuing postsecondary education.

*Discussion:* The Secretary disagrees. These regulations will protect low-income, disadvantaged students and all other students from being victimized by unscrupulous schools that claim to offer a quantity of education that is greater than the quantity of education they actually provide. Furthermore, commenters provided no evidence that these regulations would discourage students from pursuing postsecondary education.

*Changes:* None.

*Comments:* Some commenters believed that the proposed regulations would discourage students from attending short-term training programs.

*Discussion:* The Secretary disagrees. These commenters have provided no evidence to substantiate these claims, and the Secretary has no reason to believe that this will occur.

*Changes:* None.

*Comments:* A number of commenters believed that the proposed regulations would have a serious economic impact on many postsecondary institutions. Many commenters writing on behalf of proprietary institutions believed that the proposed regulations would force many proprietary schools to close. Several commenters objected to the Regulatory Flexibility Act certification in the NPRM on the grounds that the regulations would have a significant impact on a substantial number of small entities.

*Discussion:* If these regulations have any negative economic impact, that impact will fall almost exclusively on those institutions that have exaggerated the educational quantity of their educational programs. There is no evidence that suggests that these regulations will force schools to close. Only those small entities that perpetuate clock-hour-to-credit-hour conversion abuses would be impacted by these regulations and not the entire sector of small institutions that are classified as small businesses or organizations under provisions in the Regulatory Flexibility Act.

*Changes:* None.

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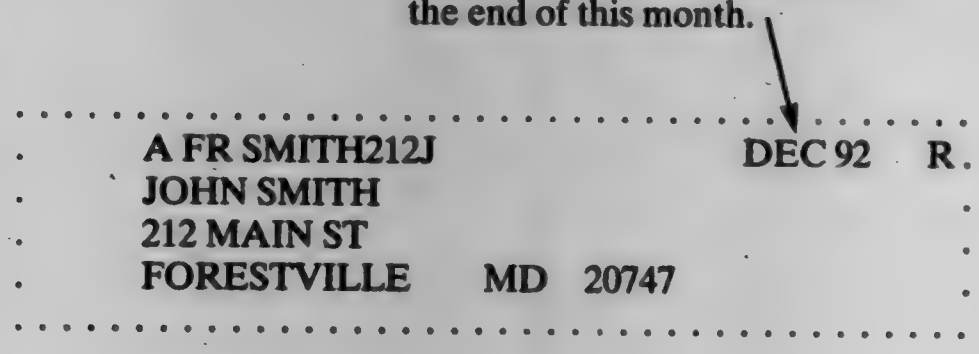

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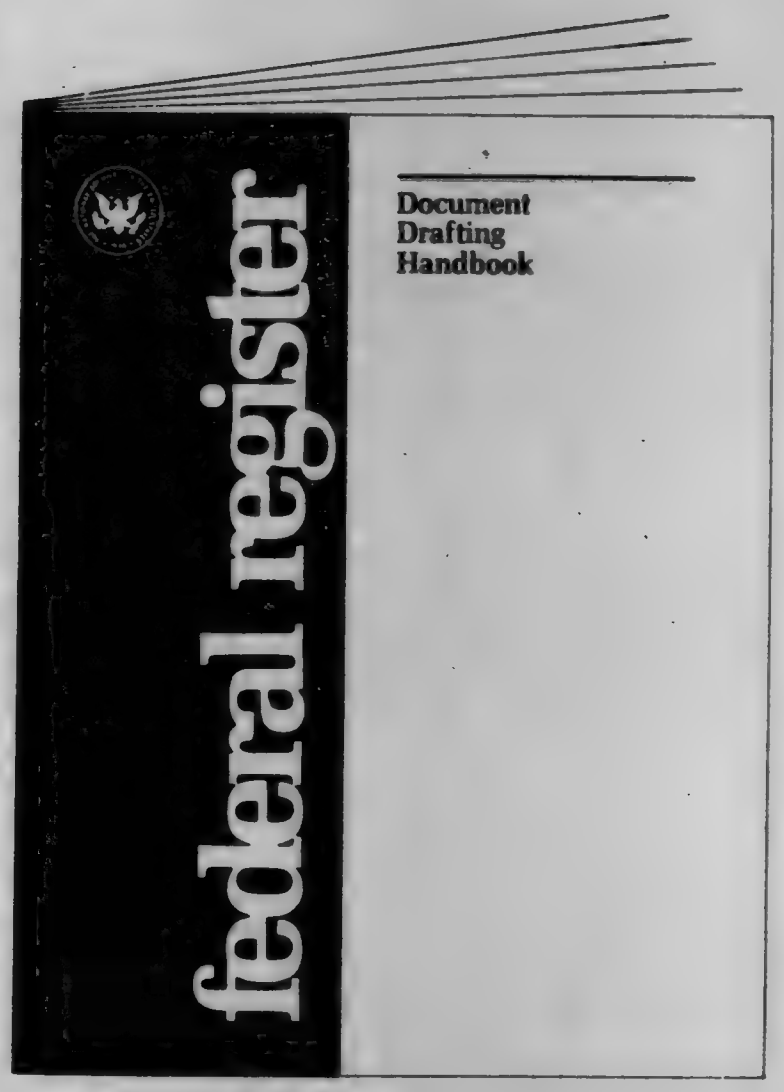


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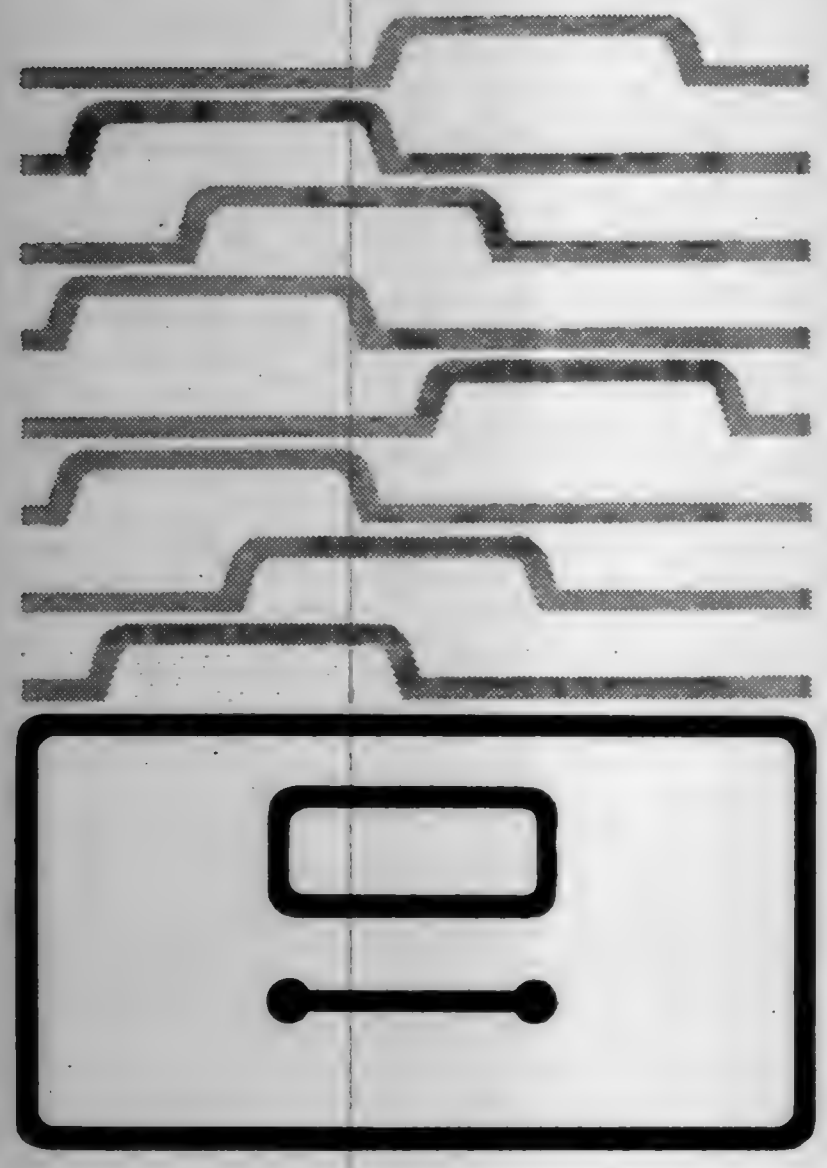

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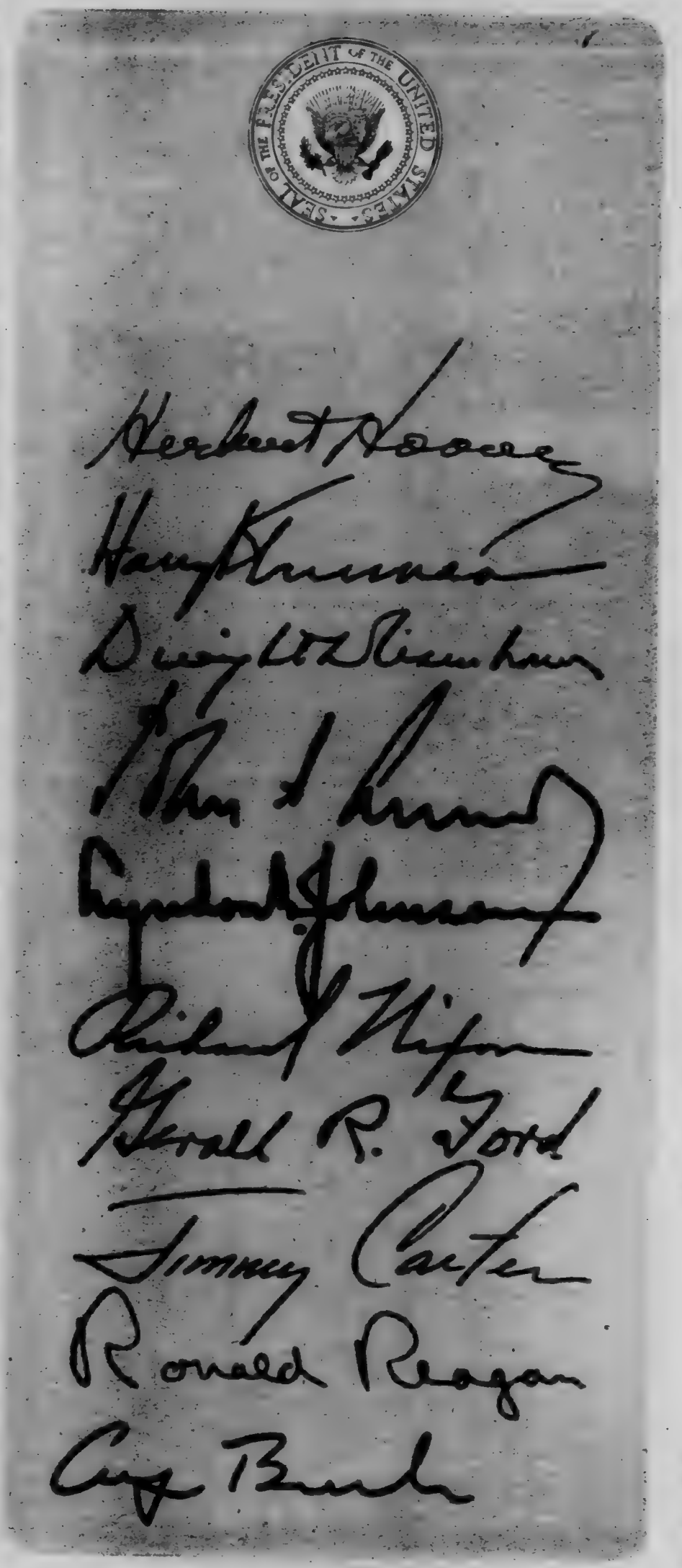


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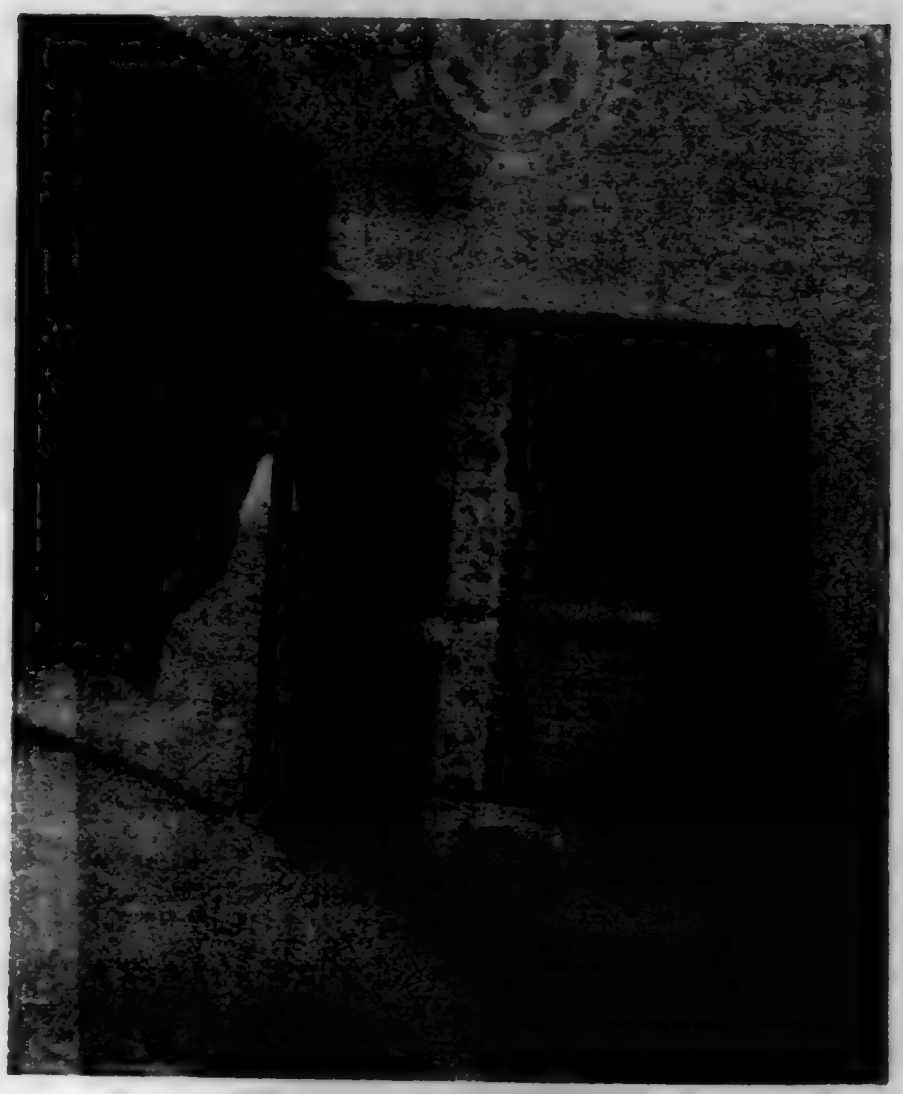

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# Rules and Regulations

Federal Register
Vol. 58, No. 141
Monday, July 26, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL DEPOSIT INSURANCE CORPORATION

**5 CFR Chapter XXII**

**12 CFR Part 336**

**RIN 3064–AA07, 3209–AA00 and 3209–AA16**

## Supplemental Requirements for Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Employees of the Federal Deposit Insurance Corporation

**AGENCY:** The Federal Deposit Insurance Corporation, (FDIC).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Federal Deposit Insurance Corporation (the Corporation), with the concurrence of the Office of Government Ethics (OGE), is issuing interim financial disclosure requirements for officers and employees of the Corporation. This interim rule revokes the Corporation's current financial disclosure regulations and promulgates substantially similar regulations, which are designed to supplement the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture requirements issued by OGE.

**DATES:** This interim rule is effective July 26, 1993. Comments are invited and must be received on or before September 24, 1993.

**ADDRESSES:** Send comments to Hoyle L. Robinson, Executive Secretary, Attention: Room F–400, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–402, 1776 F Street, NW., Washington, DC between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838.] Comments will be available for inspection in the FDIC Reading Room, room 7118, 550 17th Street, NW., Washington, DC on business days between 9 am and 4:30 pm.

**FOR FURTHER INFORMATION CONTACT:** Katherine A. Corigliano, Assistant Executive Secretary (Ethics), (202) 898–7272, or Richard M. Handy, Ethics Program Manager, (202) 898–7271, Office of the Executive Secretary, 1776 F Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On April 7, 1992, OGE published, for codification at 5 CFR part 2634, an interim rule pertaining to Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, which revised the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended). See 57 FR 11800–11830 (April 7, 1992), as corrected at 57 FR 21854–21855 (May 22, 1992) and 57 FR 62605 (December 31, 1992). Pursuant to 5 CFR 2634.103, executive agencies are authorized to publish supplemental regulations as necessary to address special or unique agency circumstances, subject to OGE concurrence. This interim rule is necessary to supplement, for the Corporation, the financial disclosure requirements issued by OGE because it implements statutory restrictions which, though not generally applicable to employees of the executive branch, are expressly applicable to certain holdings and financial interests of Corporation officers and employees. In addition to implementing statutory restrictions, the interim rule addresses reporting relating to potential conflicts of interest unique to the Corporation's role as an insurer of Federal depository institutions and as primary and secondary regulator of member institutions of the Bank Insurance Fund and the Savings Association Insurance Fund. Also accomplished by the interim rule is the added designation of FDIC Form 2410/05 to the new SF 450, Confidential Financial Disclosure Report for purposes of meeting the operational needs of the Corporation's Employee Ethics Program.

The interim rule continues the Corporation's Employee Ethics Program requirements for disclosure:

(1) By all employees of interests in securities of Corporation insured depository institutions;

(2) By covered employees of indebtedness; and

(3) By covered employees of credit card obligations in insured state nonmember banks. The interim rule provides for the discontinuation of a requirement that covered employees file a report of employment upon resignation from the Corporation to accept employment in the private sector.

Unique Corporation specific circumstances exist in the provisions of 12 U.S.C. 1812(e)(2)(B), which prohibits any member of the Corporation's Board of Directors from holding stock in any insured depository institution or depository institution holding company as well as from holding a position as an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank. Although not driven by statute, the Corporation's Board of Directors, because of the Corporation's role as insurer and primary and secondary regulator of depository institutions, has historically made applicable to all employees a prohibition against the acquisition, during the terms of their employment, of securities of depository institutions insured by the Corporation and a requirement for recusal from matters affecting an institution, the securities of which an employee acquired prior to his or her Corporation employment or, in certain instances, the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Enforcement of the aforementioned prohibitions is accomplished by a requirement for the completion by all the Corporation's new entrants of FDIC Form 2410/07, "Interest in Securities of FDIC Insured Depository Institutions." This requirement will be continued under this interim rule.

In addition, sections 212 and 213 of title 18 of the United States Code prohibit the offer of certain loans and gratuities to, and the acceptance of certain loans and gratuities by, examiners of federally insured depository institutions, including those employed by the Corporation. The Corporation's Board of Directors has historically required that certain

employees recuse themselves from participation in any matter involving an insured depository institution from which they have extensions of credit and prohibited certain employees from borrowing from certain classes of creditors. Enforcement of these restrictions and prohibitions is accomplished by requiring appointive directors, officers, certain senior employees, all bank examiners, and other designated employees to file FDIC Form 2410/06, "Confidential Report of Indebtedness" and designated employees of the Division of Supervision to file FDIC Form 2410/10, "Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions for Retention-Notice of Disqualification."

Pursuant to 12 U.S.C. 1819(a), the Corporation has independent statutory authority to issue regulations to implement the prohibitions set forth in section 2 of the Federal Deposit Insurance Act and 18 U.S.C. 212 and 213. Nevertheless, the Corporation has determined, because of the obvious relationship of these prohibitions to regulations implemented by OGE, to include the collection of disclosure forms necessary to enforce the prohibitions in supplemental regulations issued under 5 CFR part 3202, an approach with which OGE agrees. The Corporation is also hereby revoking its old reporting requirements contained in 12 CFR 336.24–336.28. Until issuance of a separate supplemental standards regulation, the Corporation is temporarily retaining, in 12 CFR part 336, its existing standards of conduct regulations (with an updated authority citation), which for the most part have been superseded by OGE's Standards of Ethical Conduct for executive branch employees, as codified at 5 CFR part 2635.

In addition to the aforementioned reporting requirements, the Corporation has in the past required that employees resigning from the Corporation to accept employment in the private sector complete a "Confidential Report Of Employment Upon Resignation," FDIC Form 2410/08. The report required the disclosure of information concerning an employee's prospective employer, the nature of its business or activities, the position to be occupied by the employee, the dates of negotiation for the employment, and the employee's official involvement, if any, with the prospective employer. The purpose of the report was to ensure employee compliance with criminal conflict of interest provisions governing the negotiation of employment (18 U.S.C. 208) and post-employment activities (18 U.S.C. 207). However, the Corporation has learned from experience that enforcement of the reporting requirement is difficult and that the information obtained has little value. Since the burden of this particular information collection has outweighed its benefits, the interim rule, by its revocation of 12 CFR 336.26, discontinues the requirement for filing a confidential report of employment upon resignation.

## II. Analysis of Regulation

*Section 3202.101 General Provisions*

Section 3202.101 sets forth general information regarding the purpose of this supplemental Corporation regulation, identifies with whom the reports required by this part must be filed, and provides notice of the retention schedule for the reports collected and their lack of availability to the general public.

*Section 3202.102 Confidential Financial Disclosure Reports (SF 450, FDIC Form 2410/05)*

Section 3202.102 adds the designation of FDIC Form 2410/05 to the SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, to accommodate the Corporation's need for a three-part document.

*Section 3202.103 Confidential Report of Interest in FDIC-Insured Depository Institution Securities (FDIC Form 2410/07)*

Section 3202.103 imposes upon all Corporation employees a requirement to file a report of any direct or indirect interest in the securities of depository institutions insured by the Corporation. In addition, this section identifies the circumstances which give rise to the filing requirement, briefly describes the type of information which is required to be disclosed, and requires a certification that the employee has read and understands the rules governing ownership.

*Section 3202.104 Confidential Report of Indebtedness (FDIC Form 2410/06)*

Section 3202.104 identifies those Corporation employees who are required to file a confidential report of indebtedness, specifies when the report must be filed, and briefly describes the type of information which must be disclosed.

*Section 3202.105 Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention—Notice of Disqualification (FDIC Form 2410/10)*

Section 3202.105 identifies the employees who must meet the filing requirement, the circumstances which give rise to the reporting requirement, the time period within which the reporting requirement must be met, and a brief description of the information which must be disclosed.

## III. Matters of Regulatory Procedure

*Administrative Procedure Act*

The Board of Directors has found good cause pursuant to 5 U.S.C. 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules and repeal. The reason for this determination is that it is important to a smooth transition from the Corporation's prior disclosure rules to the new executive branch-wide financial disclosure regulations that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to the Corporation's organization, procedure and practice.

Nonetheless, this is an interim rulemaking, with provision for a 60 day public comment period. The Federal Deposit Insurance Corporation will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

*Regulatory Flexibility Act*

The Board of Directors has concluded that the interim rule will not impose a significant economic hardship on small institutions. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

*Paperwork Reduction Act*

The Board of Directors has determined that this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects**

*5 CFR Part 3202*

Administrative practice and procedure, Conflict of interests, Financial disclosure, Privacy, Reporting and recordkeeping requirements.

*12 CFR Part 336*

Conflict of interests.

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 12, chapter III, part 336, of the Code of Federal Regulations, as follows:

**TITLE 5—[AMENDED]**

1. A new chapter XXII consisting of Part 3202 is added to title 5 of the Code of Federal Regulations to read as follows:

**5 CFR CHAPTER XXII—FEDERAL DEPOSIT INSURANCE CORPORATION**

**PART 3202—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE FEDERAL DEPOSIT INSURANCE CORPORATION**

Sec.

3202.101 General Provisions.
3202.102 Confidential Financial Disclosure Reports (SF 450, FDIC Form 2410/05).
3202.103 Confidential Report of Interest in FDIC Insured Depository Institution Securities (FDIC Form 2410/07).
3202.104 Confidential Report of Indebtedness (FDIC Form 2410/06).
3202.105 Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention—Notice of Disqualification (FDIC Form 2410/10).

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 12 U.S.C. 1819(a); 28 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103.

**§ 3202.101 General provisions.**

(a) *Purpose.* This part establishes for officers and employees of the Federal Deposit Insurance Corporation (the Corporation) financial disclosure requirements in addition to the public and confidential financial disclosure reports required pursuant to 5 CFR part 2634, subparts B and I. This part also provides for the added designation of FDIC Form 2410/05 to the SF 450, Confidential Financial Disclosure Report.

(b) *Filing requirements.* The reporting individual shall file the financial disclosure and other reports required under 5 CFR part 2634 and §§ 3202.102–3202.105 with his or her assigned Deputy Ethics Counselor.

(c) *Custody and denial of public access.*

(1) Any report filed with the Corporation under §§ 3202.102–3202.105 shall be retained by the Corporation for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation. See also FDIC Employee Financial Disclosure Statements Privacy Act system of records (1 FDIC Law, Regulations, and Related Acts (FDIC) 2209); see also the OGE/GOVT–2 Privacy Act system of records, for the reports filed under § 3202.102.

(2) The reports filed pursuant to §§ 3202.102–3202.105 are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the FDIC Employee Financial Disclosure Statements Privacy Act system of records.

**§ 3202.102 Confidential Financial Disclosure Reports (SF 450, FDIC Form 2410/05).**

The SF 450, Executive Branch Personnel Confidential Financial Disclosure Report, will also carry FDIC Form Number 2410/05. The structure and operations of the Corporation's Employee Ethics Program dictate that the form be printed in three parts, consisting of an original and two self copies.

**§ 3202.103 Confidential Report of Interest in FDIC Insured Depository Institution Securities (FDIC Form 2410/07).**

(a) *Who must file/when.* All FDIC employees shall file an FDIC Form 2410/07 (Report of Interest in FDIC Insured Depository Institution Securities) within 30 days of the date of entrance on duty. Thereafter, an updated FDIC Form 2410/07 shall be filed only if:

(1) An interest in an FDIC insured depository institution is acquired subsequent to the commencement of employment through a change in marital status or by gift, inheritance, or other personal circumstances beyond an employee's control, in which case an employee shall file FDIC Form 2410/07 within 30 days of acquiring the interest; or

(2) A previously acquired interest in a non-FDIC insured entity becomes an interest in an FDIC insured depository institution as the result of merger, acquisition, or other change in corporate ownership, or change in insurance status, in which case an employee shall file FDIC Form 2410/07 within 30 days of the entity's conversion to an FDIC insured status; or

(3) An employee divests himself or herself of a previously reported interest in FDIC decision or an FDIC insured depository institution, in which case an employee shall file FDIC Form 2410/07 as soon as possible after divestiture to facilitate the removal of any related disqualifications.

(b) *Report contents.* Each report filed pursuant to this section shall include:

(1) In part I:

(i) A brief description of any direct or indirect interest in the securities of an FDIC insured depository institution or affiliate, including a depository institution holding company, and the date and manner of acquisition or divestiture; and

(ii) A brief description of any direct or indirect continuing financial interest through a pension or retirement plan, trust or other arrangement, including arrangements resulting from any current or prior employment or business association, with any FDIC insured depository institution, affiliate, or depository institution holding company; and

(2) In part II, a certification acknowledging that the employee has read and understands the statements and instructions contained therein.

**§ 3202.104 Confidential Report of Indebtedness (FDIC Form 2410/06).**

(a) *Who must file/when.* Within 30 days of entrance on duty and annually thereafter, a confidential report of indebtedness must be filed:

(1) As a supplement to the Public Financial Disclosure Report (SF 278), by:

(i) Members of the Board of Directors, except the Comptroller of the Currency and the Director of the Office of Thrift Supervision;

(ii) Any assistant or deputy to the Board of Directors or to an individual board member or any assistant to assistant or deputies to the Board of Directors or to individual Board members except persons employed by the Office of the Comptroller of the Currency or the Office of Thrift Supervision; and

(iii) Division and office heads and persons immediately subordinate thereto;

(2) As a supplement to the Executive Branch Personnel Confidential Financial Disclosure Report (SF 450, FDIC Form 2410/05), by:

(i) Persons employed by the Division of Supervision as bank examiners in job

series 570; compliance examiners in job series 301; and

(ii) All other employees of the Division of Supervision and the Division of Resolutions at or above the grade 13.

(b) *Report contents.* Each confidential report of indebtedness filed pursuant to this section shall include:

(1) In part I, information on any indebtedness of the employee, his or her spouse, and/or dependent child, which is evidenced by a credit card issued by an FDIC insured depository institution, including the type of card, the year of receipt, the name and location of the issuer, and the total line of credit, regardless of the amount outstanding; and

(2) In part II, information on other indebtedness of the employee, his or her spouse, and/or dependent child, at any time during the reporting period and regardless of amount, to a federally insured financial institution, or any subsidiary or affiliate thereof, including mortgages and other consumer debt not reported in part I. With respect to each creditor, an employee shall disclose the type of liability, the name and location of the creditor, the year the debt was incurred, the term of the loan, and either the original or outstanding balance.

**§ 3202.105 Confidential Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention—Notice of Disqualification (FDIC Form 2410/10).**

(a) *Who must file/when.* Within 30 days of acquiring a credit card obligation to an insured state nonmember bank headquartered outside of the employee's region of employment, a "Statement of Credit Card Obligation in Insured State Nonmember Bank and Acknowledgement of Conditions of Retention-Notice of Disqualification," FDIC Form 2410/10, must be filed by:

(1) The Executive Director of the Divisions of Supervision and Resolutions;

(2) The Director of Supervision;

(3) The holder of any position immediately subordinate to the Director of Supervision;

(4) An Assistant Director, Regional Director, Deputy Regional Director, or an Assistant Regional Director; and

(5) An examiner, assistant examiner, compliance examiner, or other covered employee of the Division of Supervision at or above a grade 13 level.

(b) *Report contents.* Each statement filed pursuant to this section shall disclose the name of any Corporation insured state nonmember depository institution outside of the employee's region of assignment from which he or she has received a credit card and shall include certification that the credit cards listed were obtained only under such terms and conditions as are available to the general public, that the line of credit does not exceed $10,000, and that the employee is aware of and understands the requirement for self-disqualification from participation in matters affecting the creditors identified.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of November, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

Approved: July 14, 1993.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

**12 CFR CHAPTER III—[AMENDED]**

**PART 336—EMPLOYEE RESPONSIBILITIES AND CONDUCT**

1. The authority citation for part 336 is revised to read as follows:

**Authority:** 5 U.S.C. 7301; 12 U.S.C. 1819(a); sec. 502(a), E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306, as modified; 5 CFR 2635.403(a), 2635.803, 2637.101(a).

2. Part 336 is amended by removing and reserving subpart D, §§ 336.24–336.28.

By Order of the Board of Directors.

Dated at Washington, DC this 24th day of November, 1992.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 93–17612 Filed 7–23–93; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**10 CFR Parts 30, 40, 70, and 72**

**RIN 3150–AD98**

**Decommissioning Recordkeeping and License Termination: Documentation Additions**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to require holders of a specific license for possession of certain byproduct material, source material, special nuclear material, or for independent storage of spent nuclear fuel and high-level radioactive waste to prepare and maintain additional documentation that identifies all restricted areas where licensed materials and equipment were stored or used, all areas outside of restricted areas where documentation is required under current decommissioning regulations for unusual occurrences or spills, all areas outside of restricted areas where waste has been buried, and all areas outside of restricted areas containing material such that if the license were terminated, the licensee would be required to decontaminate the area or seek special approval for disposal. The final rule also requires licensees to submit specific information at the time of final decommissioning on decontaminated equipment that had been involved in the licensed activity that will remain onsite at the time of license termination. The information required by these amendments will provide greater assurance that decontamination and decommissioning of licensee facilities have been carried out in accordance with the Commission's regulations.

**EFFECTIVE DATE:** October 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dr. Carl Feldman, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3883.

**SUPPLEMENTARY INFORMATION:**

**Background**

NRC licensees subject to the requirements of 10 CFR Parts 30, 40, 70, and 72 who wish to terminate their licenses must decontaminate all contaminated facilities and sites according to NRC requirements before the NRC can authorize the termination of the license. Therefore, the licensee's application for license termination, and other records on decommissioning available from the licensee, must contain sufficient information on the residual radioactivity levels in the licensee's facilities and sites to allow the NRC staff to make a determination on whether the licensee's facilities and sites can be released for unrestricted use.

A General Accounting Office (GAO) report, "NRC Decommissioning Procedures and Criteria Need to Be Strengthened" (GAO/RCED–89–119, May 26, 1989), indicated incomplete recordkeeping as a potential problem. The issue was also discussed by the NRC at the hearing before the Energy and Environment Subcommittee of the House Committee on Interior and

Insular Affairs, chaired by Congressman Mike Synar of Oklahoma (Synar Subcommittee) on August 3, 1989. Both the GAO report and the Synar Subcommittee were concerned that, because of poor or insufficient knowledge as to the location within a licensee's site where licensee activities were conducted, the NRC could terminate a license and release facilities and sites for unrestricted use which may remain partially contaminated at levels which would be unacceptable. Currently, NRC's rules on decommissioning recordkeeping (10 CFR 30.35(g), 40.36(f), 70.25(g), and 72.30(d)) specifically require licensees to keep certain records important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the Commission. These records include drawings of structures and equipment in restricted areas where radioactive materials were used or stored, documentation identifying the location of inaccessible residual contamination, and detailed descriptions of unusual occurrences or spills of radioactive materials that can affect decommissioning. In addition, NRC's rules (10 CFR 20.2108) require licensees to maintain records on the location and radionuclide content of waste burial areas until license termination. However, these rules are not sufficiently explicit to ensure that all relevant areas of possible contamination will be identified at the actual time of decommissioning. For example, the licensee is not specifically required to list (1) all areas designated and formerly designated as restricted areas; (2) all areas outside of restricted areas that require documentation under the current decommissioning rules; (3) all areas outside of restricted areas where radioactive waste has been buried and require documentation under the current rules; (4) all areas outside of restricted areas which contain radioactive material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval of disposal (e.g. tailings piles); and (5) the location and description of equipment to remain onsite after license termination that was considered to be radioactively contaminated when final decommissioning was initiated. Yet the NRC will need to know of the existence and location of these areas and equipment in order to perform its confirmatory survey.

On October 7, 1991 (56 FR 50524), the NRC published a notice of proposed rulemaking in the **Federal Register**. The purpose of this proposed rulemaking was to clarify and make more explicit the recordkeeping and documentation requirements specified in the recently enacted decommissioning amendments (June 27, 1988, 53 FR 24018). The proposed rule would have required licensees to maintain in a single document and certify for completeness and accuracy, a list of the following:

(1) All onsite areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(2) All onsite areas, other than restricted areas, where radioactive materials in quantities greater than amounts listed in Appendix C to §§ 20.1001–20.2401 of 10 CFR part 20 are or have been used, possessed or stored;

(3) All onsite areas, other than restricted areas, where spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site have occurred that required reporting pursuant to § 30.50 (b)(1) or (b)(4), including areas where subsequent cleanup procedures have removed the contamination; and

(4) All known locations and radionuclide contents of previous and current burial areas within the site.

Areas that contained byproduct material having half-lives of 10 days or less, or depleted uranium used only for shielding or as penetrators in unused munitions, or sealed sources authorized to be used at "temporary job sites" outside of the licensee's permanent facility and site boundary as specified in the license would not have had to be listed.

The proposed rule also would have required licensees who are required to submit a decommissioning plan, to submit this list as part of their plan. Finally, the proposed rule would have required that the above list include the location and description of all equipment, involved in the licensed operation, that is to remain onsite after license termination.

The comment period on the proposed rule expired December 23, 1991. Public comments were received on the proposed rule and are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC.

The NRC received nine comment letters in response to the proposed rule. The commenters consist of a broad institutional licensee, a medical licensee, State agencies, a Federal Government laboratory, several material licensees, and a nuclear power utility. In a number of cases, letters from different commenters addressed similar issues. The NRC has identified and responded to 12 separate issues that include all of the significant points raised by the commenters. The comments and NRC responses are presented below.

**Summary and Analysis of Public Comments**

1. *Comment.* The listing requirement under the expiration and termination of license which states that "Upon approval of the decommissioning plan by the Commission, the licensee shall * * * include a list of the location and description of all equipment involved in licensed operations that is to remain onsite at the time of license termination" is too broad. For example, as one commenter argued, under the proposed requirement, even a typewriter can be considered as a piece of "equipment involved in licensed operations" because the typewriter was used to generate reports concerning the licensed activities. Another commenter stated that "old" equipment decontaminated and returned to inventory for others to use should not be tracked until the termination of the license.

*Response.* The supplementary information to the proposed rule stated that, "* * * equipment to be left onsite at the time of license termination are appropriate for listing since these may be potential sources of exposure." It is not the intent of the Commission that licensees should list and track equipment such as a typewriter which never was contaminated or "old" equipment decontaminated to unrestricted area release levels and returned to inventory until the time of license termination; existing requirements in §§ 20.401 and 20.2103 require records of surveys made to confirm that equipment is suitable for unrestricted before it is removed from the site. Rather, the intention of this recordkeeping requirement is to ensure that any (contaminated) equipment that was decontaminated during decommissioning and is to be left onsite after license termination is identified. This would assist the NRC in performing a confirmatory survey. Therefore, the rule has been modified to clarify that contaminated equipment that has been or will be sent offsite to authorized radioactive waste disposal sites or decontaminated and released from the site to some other location and use need not be listed. A licensee is not required to identify this equipment prior to conducting the decontamination

and decommissioning operations. Specifically, §§ 30.36(c)(3), 40.42(c)(3), 70.38(c)(3), and 72.54(e)(2) will now read as follows:

"* * * and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated."

2. *Comment.* Extend the exemption to all sealed sources on or offsite provided there has been no damage to or leakage from the sources. Commenters supported NRC's assessment that the risk of "contamination" from any sealed source "authorized to operate at temporary job sites" is minimal under normal use conditions. One commenter questioned the impact of the proposed rule on the uses of brachytherapy sources. Another commenter suggested that all sealed sources on or off the site should be exempted from the proposed rule provided there has been no damage or leakage from the sources.

*Response.* The NRC agrees that areas containing only sealed sources, both on or off the site, need not be listed provided the sealed sources have not leaked, or no contamination remains after any leak. Sections 30.35(g)(3) and 70.25(g)(3) have been amended to reflect this decision.

3. *Comment.* Will the proposed requirements be retroactive?

*Response.* The NRC does not intend for the requirements to be retroactive. However, the list should be as complete as possible and licensees should go back into the history of their licensed operation as far as possible to develop their initial list. After the initial list is generated, it would need to be updated at least every 2 years. Therefore, §§ 30.35(g)(3), 40.36(f), 70.25(g)(3), and 72.30(d)(3) have been amended to reflect this position.

4. *Comment.* Aside from exempting radioactive materials that possess half-lives of 10 days or less, an exemption should also be given for those radioactive materials that through time of possession have also decayed to very low levels.

*Response.* In principle it seems reasonable to exempt radioactive materials with half-lives greater than 10 days if during their time of possession they have decayed to very low levels. However, in practice this would be difficult to implement because the NRC would need to define, at that time, what NRC considers to be "very low levels." In addition, most licensees cannot predict the exact time of their license termination. However, the NRC agrees that the 10-day half-life is too restrictive. Moreover, materials with less than 65-day half-lives are already authorized by the Commission for decay-in-storage, for example, under 10 CFR 35.92. Therefore, a 65-day half-life appears to be a more reasonable and consistent limit. The rule has been modified accordingly. It is important to note that the purpose of this recordkeeping rule is to prevent contaminated areas and equipment from being overlooked at the time of license termination, because of inadequate recordkeeping. Any large amount of licensed material, no matter how short the half-life, should be properly controlled, surveyed, inventoried, and documented at all times. At the time of license termination, if the licensee possesses a sufficient amount of short half-life materials to affect decommissioning, the Commission would expect that the licensee would be able to identify the areas where these materials are used and/or stored.

5. *Comment.* The proposed rule is unduly burdensome and will not ensure that the stated aim is met. Therefore, the proposed rule should be withdrawn and problems that have been identified should be solved by existing methods, such as during routine inspections, under the current requirements, such as decommissioning regulations (10 CFR part 30.35) and 10 CFR part 20, subpart M, and through real time inspection and enforcement programs. At some large research institutions, the burdens created by the proposed regulation would be very significant because activities with small amounts of radioactive materials are conducted in numerous rooms and buildings.

*Response.* The Commission has carefully considered the comments received and reviewed the impact of the proposed rule. The discussed changes have been made to minimize the recordkeeping burden without diminishing the effectiveness of the rule. In addition, aside from the required list of previous and current restricted areas designated in the proposed rule, the final rule requires only the list of areas outside of restricted areas that require documentation (records) in the existing rule under §§ 30.35(g)(1), 40.36(f)(1), 70.25(g)(1), and 72.25(g)(1) for spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. Further, these records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas. The NRC regards remaining contamination as anything above the NRC's most current residual radioactivity criteria for allowing release for unrestricted use; see 57 FR 13382, April 16, 1992, for case specific guidance on this issue.

Rulemaking activities for specifying residual radioactivity limits for site cleanup are presently underway. As a result of these changes, only those areas and equipment that need to be surveyed by the NRC prior to license termination are now required to be listed. One comment from a large research institution noted that licensed activities and work locations changed on a frequent basis, and over time, rooms were renumbered or even disappeared. Although this rule only requires a list of previously restricted areas, it is prudent for all licensees to retain records of general historical information to support decisions by the licensee and the Commission on what decommissioning actions are necessary to release a facility for unrestricted use. Detailed records required by the regulations and other general information is often needed to determine how closely various areas must be surveyed to verify that they are suitable for unrestricted use. This information also may be needed to respond to allegations that certain decommissioning actions may not have been adequate to protect public health and safety. Therefore, in addition to the specific records required by this rule, all licensees are encouraged to maintain records of general information that will allow them to produce an accurate historical account of all licensed activities conducted during the life of the facility.

As a practical matter, the current regulations do not provide the assurance that all areas that need to be surveyed will be identified. This rule provides that assurance. As now modified, this rule applies to those areas of actual or potential contamination, whether restricted areas or areas outside of restricted areas, that the licensee would be expected to identify.

6. *Comment.* The requirement to list, in a single document, is redundant and too restrictive. Listing should allow reference to other records.

Commenters stated that licensees already have the required information under existing NRC regulations and license conditions. Although not in a specific listing, the information can be obtained from the licensee's existing records. Commenters also stated that the proposed requirement for a single document is too restrictive and that the current NRC decommissioning recordkeeping requirement (e.g., 10 CFR 70.25(g)) already requires licensees to keep decommissioning records "in an identified location." Certain documents

kept by the licensee at various locations for decommissioning purposes (e.g., as-built drawings submitted with original license application, results of wipe tests, etc.) need not be duplicated by the licensee at the central location but only referenced to their locations from a central location. These commenters further stated that to require that records be maintained in a single document will impose an unnecessary burden on licensees who must create a new document containing information found in other documents.

*Response.* Although the required information may be redundant because the information contained in the "single document" may exist in other licensee records, this information may not be in a form either readily available for inspection, or more important, to facilitate a confirmatory survey prior to license termination. In addition, information needed in the "single document" can be lost over a period of time because there is consequently no specific requirement for the licensee to create or maintain such a record until the end of the license. This was one of the points made at the hearing before the Energy and Environment Subcommittee of the House Committee on Interior and Insular Affairs, chaired by Congressman Mike Synar of Oklahoma (held on August 3, 1989). Thus, to assure that the needed information both exists and is available, the NRC is requiring the subject list and that it be a single document. Guidance explicitly specifying the level of detail expected in the list is being developed and included in a Regulatory Guide on material facilities decommissioning recordkeeping requirements.

7. *Comment.* The proposed 10 CFR 30.35(g)(3)(i) which requires a listing of "all onsite areas designated or formerly designated as restricted areas" should include an indication of the type of material used in each of these areas.

*Response.* The Commission does not believe that it is necessary to include this information in the list required by this rule. The documentation requirements currently contained at 10 CFR 30.35(g)(1) and corresponding sections under 10 CFR parts 40, 70, and 72, already require the information for situations the NRC considers appropriate, including spills and unusual occurrences.

8. *Comment.* The proposed requirement under 10 CFR 30.35(g)(3)(ii) is inconsistent because licensees are required to list all onsite areas, other than restricted areas, for radioactive materials in quantities greater than a certain threshold amount (i.e., new part 20 appendix C values), yet this same amount for certain materials (e.g., I–125) can be exempt under 10 CFR 30.71, Schedule B. Therefore, to reduce the size of the "single document" and to be consistent with current requirements, it was proposed that the threshold amount be increased 10 (or 100) times.

*Response.* Upon consideration of this comment, the NRC has concluded that only areas outside of the licensee's restricted areas that actually have been contaminated by these materials in a way that affects decommissioning need be listed. Any areas contaminated above the NRC unrestricted area release criteria outside of the licensee's restricted areas and covered under 10 CFR 30.35(g)(1) and corresponding sections of 10 CFR parts 40, 70, and 72 would require inclusion in the list as discussed earlier under Comment 5.

The NRC notes that the small quantities of material listed in 10 CFR 30.71, Schedule B, can only be distributed for certain uses by a licensee holding a distribution license pursuant to 10 CFR 32.18. Persons possessing such material are exempt from the regulations pursuant to 10 CFR 30.18. Distribution licenses under 10 CFR 32.18 authorize distribution of exempt materials in approved chemical/physical forms for specified purposes only. Manufacturers of byproduct materials are strictly prohibited under 10 CFR 30.18, from distributing radioactive materials to the general public, no matter how small the quantity, without the NRC approving the intended application of the material on a case-by-case basis.

9. *Comment.* The proposed requirements under 10 CFR 30.35(g)(3)(iii) are inconsistent with other regulatory requirements because licensees would be required to keep records of all incidents requiring reports as specified in 10 CFR 30.50(b) (1) or (4), and yet under current 10 CFR 30.35(g)(1), records of spills or other unusual occurrences in restricted areas may be "limited to instances when contamination remains after any cleanup procedures * * *."

*Response.* The NRC agrees that there was an inconsistency between the proposed requirements and current regulations under 10 CFR 30.35(g)(1). The intent of the proposed §§ 30.35(g)(3)(iii) was to ensure that at the time of actual decommissioning, all areas (i.e., restricted areas as well as unrestricted areas) that may still have contamination resulting from spills or other unusual occurrences are identified. The NRC agrees with the commenter that the current requirement under 10 CFR 30.35(g)(1) is sufficient to handle this concern because it covers all onsite areas. Therefore, proposed §§ 30.35(g)(3)(iii) has been deleted from the final rule, as have proposed §§ 40.36(f)(3)(iii) and 70.25(g)(3)(iii).

10. *Comment.* Listing of buried waste should include offsite as well as onsite specification if such waste has not been disposed of in a licensed disposal facility.

*Response.* The Commission agrees with this comment. However, 10 CFR 20.2108, "Records of Waste Disposal," already requires that these records be kept "until the Commission terminates each pertinent license requiring the record." Therefore, the proposed requirement to list "all known locations and radionuclide contents of previous and current burial areas within the site" is modified in the final rule to list all areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108, since the purpose of this rule is to consolidate all necessary information in one list.

However, the Commission is concerned that there may be areas outside of the licensee's restricted area containing radioactive materials which have radioactive concentrations greater than levels authorized by the Commission for unrestricted release, which are not considered to be spills or unusual occurrences, and which are currently not documented under 10 CFR 20.2108 because the licensee either does not consider these materials currently to be waste, or plans to dispose of these materials before the license is terminated. The Commission is concerned that these areas, if forgotten at the time of license termination, may become de facto areas of onsite disposal of radioactive waste. Onsite disposal would have to be authorized by the NRC per licensee application under 10 CFR 20.2002, subpart K and documented. Therefore, to clarify the original intent of this proposed requirement, §§ 30.35(g)(3)(iii), 40.36(f)(3)(iii), and 70.25(g)(3)(iii) of the proposed rule have been changed to include in the list:

"All areas outside of restricted areas which contain material so that, if the license expired the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002."

See the response to Comment 5 for NRC case specific guidance concerning residual radioactivity limits for site cleanup. The NRC does not believe that similar requirements are necessary for part 72 licensees, because these licensees are not likely to have conduct of operations which would result in

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contaminated areas arising from situations other than unusual occurrences or spills, which are already covered.

11. *Comment.* Proposed requirements under 10 CFR part 72 should allow independent spent fuel storage facilities that had previously held a part 50 license to use their part 50 records (i.e., 50.75(g)) to satisfy the listing requirements.

*Response.* Current part 50 licensees will have to apply to the NRC for a separate license if they wish to establish an independent spent fuel storage installation (ISFSI) under 10 CFR part 72. Whether the part 72 licensee was formerly a part 50 licensee is immaterial to the NRC in determining whether the applicant should get a part 72 license. The recordkeeping requirement for a part 72 license (72.18(d)) is similar to that for a part 50 license (50.75(g)); nevertheless, for the reasons explained in response to Comment 6, this does not allow for an exemption from the provisions of the listing requirement. Therefore, regardless of whether the part 72 licensees is also a holder of a part 50 license, the part 72 licensee should still provide the required listing.

12. *Comment.* A discussion needs to be included about the degree of compatibility this rule will require with respect to the Agreement States.

*Response.* The NRC agrees. In this case, the Commission believes that there is no reason for strict compatibility, and that while the Agreement States should have requirements similar to those being adopted in this final rule, they should be permitted flexibility to apply more stringent requirements if the States deem them appropriate. Therefore, the Commission proposed a Division 2 matter of compatibility and provided the Agreement States an opportunity to comment. The Agreement States generally agreed that such a level of compatibility was reasonable.

**Summary of Final Rule Provisions**

A. The final rule contains new requirements applicable to the licensed possession and use of source, byproduct, and special nuclear materials, and independent storage of spent nuclear fuel and high-level radioactive waste during ongoing facility operations.

*Sections 30.35(g)(3), 40.36(f)(3), and 70.25(g)(3).* Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after cleanup of any leak) or byproduct materials having only half-lives of less than 65 days, or depleted uranium used only for shielding or as penetrators in unused munitions, licensees will be required to establish and maintain a list, contained in a single document. This list must be updated every 2 years, and include the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 30.35(g)(1) [or 40.36(f)(1) or 70.25 (g)(1).];

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002.

*Section 72.30(d):* A list contained in a single document. The list must be updated every 2 years and include the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 72.30(d)(1).

B. For those licensees who are required to submit a decommissioning plan, new requirements are applicable at the plan submittal and license termination stage.

*Sections 30.36(c)(2)(iii)(D), 40.42(c)(2)(ii)(D), 70.38(c)(2)(iii)(D), and 72.54(b)(4).* The information required in section A (the list of areas) above and any other information not required by section A that is considered necessary to support the adequacy of the decommissioning plan for approval.

*Sections 30.36(c)(3), 40.42(c)(3), 70.38(c)(3), and 72.56(e)(2).* "* * * and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated."

*Environmental Impact—Categorical Exclusion*

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(3) (ii) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

*Paperwork Reduction Act Statement*

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers 3150–0017, 3150–0020, 3150–0009, and 3150–0132.

Public reporting burden for this collection of information is estimated to average 5 hours per licensee response, including the time required reviewing instructions, searching existing data sources, gathering and maintaining the data needed and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0017, 3150–0020, 3150–0009, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

*Regulatory Analysis*

The Commission has prepared a final regulatory analysis for this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requested public comments on the draft regulatory analysis, but no comments were received. However, because of comments on the proposed rule amendments, significant changes were made to the final rule amendments which considerably lessen the impact on licensees. Therefore, the draft regulatory analysis was changed to reflect the modified final rule and its subsequent reduced regulatory impact. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

*Regulatory Flexibility Certification*

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant impact upon a substantial number of small entities. The final rule, contrary to the proposed rule, will only affect a small number of small entities because licensees will not be required to list either sealed sources that do not leak or unsealed licensed materials with half-lives of less than 65 days. Even for affected small entity licensees, the added requirements would require only a small effort not exceeding approximately 5 hours to compile the information and create the required list which essentially documents

information the licensee already has or will have. In fact, licensee costs may be reduced to the extent that these requirements allow the license to be terminated more expeditiously.

*Backfit Analysis*

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1), and therefore, that a backfit analysis is not required.

**List of Subjects**

*10 CFR Part 30*

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 40*

Criminal penalty, Government contracts, Hazardous material—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, and Uranium.

*10 CFR Part 70*

Criminal penalty, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 72*

Manpower training program, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 30, 40, 70, and 72.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 30.8 is amended by revising paragraph (b) to read as follows:

**§ 30.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.19, 30.20, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, and Appendix A.

* * * * *

3. Section 30.35 is amended by redesignating paragraph (g)(3) as paragraph (g)(4) and adding a new paragraph (g)(3) to read as follows:

**§ 30.35 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(g) * * *

(3) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or byproduct materials having only half-lives of less than 65 days, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 30.35(g)(1).

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR 20.302 or 20.2002.

* * * * *

4. Section 30.36 is amended by redesignating paragraph (c)(2)(iii)(D) as (c)(2)(iii)(E), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

**§ 30.36 Expiration and termination of licenses.**

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 30.35(g)(3) and any other information required by § 30.35(g) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

* * * * *

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

5. The authority citation for part 40 continues to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604. 92 Stat. 3033, as amended, 3039, sec. 234, 83, Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

6. Section 40.8 is amended by revising paragraph (b) to read as follows:

**§ 40.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.42, 40.43, 40.44, 40.60, 40.61, 40.64, 40.65, and Appendix A.

* * * * *

7. Section 40.36 is amended by redesignating paragraph (f)(3) as paragraph (f)(4) and adding a new paragraph (f)(3) to read as follows:

§ 40.36 Financial assurance and recordkeeping for decommissioning.

* * * * *

(f) * * *

(3) Except for areas containing depleted uranium used only for shielding or as penetrators in unused munitions, a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 40.36(f)(1);

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material so that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR Part 20.302 or 20.2002.

* * * * *

8. Section 40.42 is amended by redesignating paragraph (c)(2)(iii)(D) as paragraph (c)(2)(iii)(E), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

§ 40.42 Expiration and termination of licenses.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 40.36(f)(3) and any other information required by § 40.36(f) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

* * * * *

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

9. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20(a)(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C.10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 2152). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

10. Section 70.8 is amended by revising paragraph (b) to read as follows:

§ 70.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 70.19, 70.20a, 70.20b, 70.21, 70.22, 70.24, 70.25, 70.32, 70.33, 70.34, 70.38, 70.39, 70.42, 70.50, 70.51, 70.52, 70.53, 70.57, 70.58, 70.59, and 70.60.

* * * * *

11. Section 70.25 is amended by redesignating paragraph (g)(3) as paragraph (g)(4) and adding a new paragraph (g)(3) to read as follows:

§ 70.25 Financial assurance and recordkeeping for decommissioning.

* * * * *

(g) * * *

(3) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after cleanup of any leak), a list contained in a single document and updated every 2 years, of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003;

(ii) All areas outside of restricted areas that require documentation under § 70.25(g)(1);

(iii) All areas outside of restricted areas where current and previous wastes have been buried as documented under 10 CFR 20.2108; and

(iv) All areas outside of restricted areas which contain material so that, if the license expired, the licensee would be required to either decontaminate the area to unrestricted release levels or apply for approval for disposal under 10 CFR part 20.302 or 20.2002.

* * * * *

12. Section 70.38 is amended by redesignating paragraphs (c)(2)(iii)(D) and (c)(2)(iii)(E) as paragraphs (c)(2)(iii)(E) and (F), adding a new paragraph (c)(2)(iii)(D), and revising paragraph (c)(3) to read as follows:

§ 70.38 Expiration and termination of licenses.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(D) The information required in § 70.25(g)(3) and any other information required by § 70.25(g) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(3) Upon approval of the decommissioning plan by the Commission, the licensee shall complete decommissioning in accordance with the approved plan. As a final step in decommissioning, the licensee shall again submit the information required in paragraph (c)(1)(v) of this section, shall certify the disposition of accumulated wastes from decommissioning, and shall include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

* * * * *

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for Part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274 Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102 Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15),

2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and 218(a) 98 Stat. 2252 (42 U.S.C. 10198).

14. Section 72.30 is amended by revising the section heading, redesignating paragraph (d)(3) as paragraph (d)(4) and adding a new paragraph (d)(3) to read as follows:

**§ 72.30 Financial assurance and recordkeeping for decommissioning.**

* * * * *

(d) * * *

(3) A list contained in a single document and updated no less than every 2 years of the following:

(i) All areas designated and formerly designated as restricted areas as defined under 10 CFR 20.3(a)(14) or 20.1003; and

(ii) All areas outside of restricted areas that require documentation under § 72.30(d)(1).

* * * * *

15. Section 72.54 is amended by redesignating paragraph (b)(4) as paragraph (b)(6), adding a new paragraph (b)(4) and revising paragraph (e)(2) to read as follows:

**§ 72.54 Application for termination of license.**

* * * * *

(b) * * *

(4) The information required in § 72.30(d)(3) and any other information required by § 72.30(d) that is considered necessary to support the adequacy of the decommissioning plan for approval;

* * * * *

(e) * * *

(2) The terminal radiation survey and associated documentation demonstrates that the ISFSI and site are suitable for release for unrestricted use and the licensee include a list containing the location and description of all equipment to remain onsite after license termination that was contaminated when final decommissioning was initiated.

Dated at Rockville, Maryland, this 12th day of July 1993.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

[FR Doc 93–17585 Filed 7–21–93; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF ENERGY

## 10 CFR Part 810

## Assistance to Foreign Atomic Energy Activities

**AGENCY:** Office of Arms Control and Nonproliferation, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending its regulations concerning unclassified assistance to foreign atomic energy activities. These amendments will: Establish a general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors in the list of countries; add a definition of "operational safety" as this concept relates to existing civilian nuclear power plants; update the list of countries requiring specific authorization for assistance in the production of special nuclear material by deleting certain countries and adding others; require specific authorization for assistance relating to certain research and test reactors; require that any materials, equipment, or technology transferred under certain general authorizations not be retransferred to a country without prior U.S. Government consent; and make certain technical changes, such as updating addressees to whom reports and requests under these regulations should be submitted.

**EFFECTIVE DATE:** These amendments are effective on July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Zander Hollander, Export Control Specialist, Export Control Operations Division, Office of Export Control and International Safeguards, IS–40, U.S. Department of Energy, 1000 Independence Ave. SE, Washington, DC 20585. Telephone (202) 586–2125.

**SUPPLEMENTARY INFORMATION:**

### 1. Background

10 CFR part 810 implements section 57 b. (2) of the Atomic Energy Act of 1954, as amended by section 302 of the Nuclear Non-Proliferation Act of 1978 (NNPA) (42 U.S.C. 2077 (b) (2)). This section requires that U.S. persons who engage directly or indirectly in the production of special nuclear material outside the United States be authorized to do so by the Secretary of Energy. According to the part 810 regulations, assistance by U.S. persons to nuclear power reactor-related activities outside the United States is generally authorized for countries not listed in § 810.8(a), which sets forth the circumstances in which specific authorization is required. A main purpose of this revision is to establish a new general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors in countries listed in § 810.8(a), thus eliminating the need for specific authorization by the Secretary of Energy for that assistance. In this regard, the new general authorization can be viewed as building on to the long-standing, and still retained, authority in § 810.7(b), which generally authorizes assistance to prevent or correct a current or imminent radiological emergency posing a significant danger to public health and safety. However, unlike for other general authorizations, applicants must obtain the written permission of the Department of Energy in order to use the new general authorization. Accordingly, the new general authorization can be viewed as a hybrid authorization in that it will not be automatic, as for example a general authorization under § 810.7(a), but does not involve the time-consuming process required for specific authorizations. DOE will review applications to confirm that proposed activities meet the criteria for use of the authorization and are consistent with the objectives of U.S. national security, national disclosure, and nuclear nonproliferation policy. In addition, DOE will provide each application received to the Departments of State (DOS), Commerce, and Defense, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, along with notice of DOE's proposal to allow or disallow use of the new general authorization. It is anticipated that in most cases, with DOS concurrence, permission or denial will be given within 30 days. If it appears that review is required beyond the 30-day period, DOE will notify the applicant within the 30-day period not to proceed until DOE informs the applicant otherwise.

The intent of the new general authorization is to:

- Expedite safety-related assistance to civilian nuclear power plants, particularly in the former Soviet Union, and support the U.S. Government's efforts to improve the operational safety of nuclear power reactors worldwide.
- Enable U.S. firms to compete more effectively against foreign competitors for safety-related nuclear business.
- Eliminate unnecessary paperwork and time-consuming bureaucratic delays.

Over the past several years, DOE has received numerous requests from U.S. firms to provide safety-related assistance to foreign nuclear power plants and has granted those requests after careful executive branch review.

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DOE has now reached the conclusion that for this type of assistance a more expedited procedure would better serve the goal of enhancing safety while not compromising the equally important goal of strict adherence to the nonproliferation policy of the United States.

To assist applicants in determining whether the assistance they propose to furnish is likely to qualify for the "fast track" treatment afforded by the new general authorization, a definition of "operational safety" has been added to § 810.3 "Definitions."

The authorization also may apply to "continuing programs" of safety enhancement, in which a U.S. supplier undertakes a variety of informational and assistance activities intended to upgrade and maintain safety over a long period; this would obviate the need for specific authorization of each or several of the activities periodically.

In § 810.8(a), the list of countries requiring specific authorization even for nuclear power-reactor related activities has been modified to reflect the vast changes in the world since the list was last published in 1986. Deleted from the list are countries that no longer exist, some countries that have become party to the Nuclear Non-Proliferation Treaty (NPT) and completed full-scope safeguards agreements with the International Atomic Energy Agency (IAEA), and East European countries that had been listed solely for national security reasons that vanished with the disintegration of the Warsaw Pact. Added to the list are the republics of the former Soviet Union. Section 810.8 is also amended to require specific authorization for assistance relating to certain research or test reactors. An additional reporting requirement is added to § 810.13.

**2. Regulatory Changes**

The following changes are made to Part 810:

A. Section 810.3 *Definitions.* A definition of "operational safety" is added.

B. Section 810.4 *Communications.* A new addressee for communications is given.

C. Section 810.5 *Interpretations.* The title of the office providing advice is changed.

D. Section 810.7 *Generally authorized activities.* A new general authorization for assistance that would enhance the operational safety of existing civilian nuclear power reactors is added.

E. Section 810.8 *Grant of specific authorization.* The list of countries in § 810.8(a) is revised, with some countries deleted and others added. Section 810.8 is also amended by adding requirements for specific authorization for assistance relating to research and test reactors greater than 5 Megawatts Thermal and training in related activities.

F. Section 810.10 *Grant of specific authorization.* The addressee for proposals to provide assistance is changed.

G. Section 810.13 *Reports.* Reporting requirements include a vendor assurance that the vendor's agreement with a recipient requires the vendor to obtain DOE approval before consenting to retransfer materials, equipment, and technology transferred under certain general authorizations to a country listed in § 810.8. Also, the addressee for reports is changed.

H. Section 810.16 *Effective date and savings clause.* The savings clause states that the revision will not affect previously granted specific authorizations or generally authorized activities for which the contracts, purchase orders, or licensing arrangements are already in effect on the date of publication of the final rule; also, that persons engaging in activities generally authorized under the present regulations but requiring specific authorization under the revision must request such specific authorization within 90 days but may continue their activities until DOE acts on the request; also, that specific authorizations previously granted for assistance to the Soviet Union remain valid for the newly independent former republics of the Soviet Union.

**3. Statutory Requirements**

Pursuant to section 57 b. of the Atomic Energy Act, with the concurrence of the Department of State and after consultations with the Departments of Defense and Commerce, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission, the Secretary of Energy has determined that to authorize this revision of 10 CFR part 810 will not be inimical to the interests of the United States.

**4. Procedural Matters**

*A. Regulatory Review*

Pursuant to the January 22, 1993, memorandum on the subject of regulatory review from the Director of the Office of Management and Budget (58 FR 6074, January 25, 1993), DOE submitted this notice to the Director for appropriate review. The Director has completed his review. Separately, DOE has determined that there is no need for a regulatory impact analysis because the rule is not a major rule as that term is defined in section 1(b) of Executive Order 12291."

*B. Review under the Regulatory Flexibility Act*

The rule was reviewed under the Regulatory Flexibility Act, Pub. L. 96–354 (42 U.S.C. 601–612) which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities, i.e., small businesses and small government jurisdictions. This action amends regulations in a manner to expedite the current process of providing approval for U.S. persons to conduct certain activities in other countries; thus it would impose no economic burden upon small entities subject to those regulations. DOE accordingly certifies that there will not be a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

*C. Review under the National Environmental Policy Act*

The rule was reviewed under the National Environmental Policy Act of 1969, Public Law 91–190 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–08), and the Department of Energy environmental regulations (10 CFR part 1021) and was determined not to constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no environmental impact statement is required.

*D. Review under Executive Order 12612*

Executive Order 12612 requires that regulations be reviewed for any substantial direct effects on States, on the relationship between the national Government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policymakers in promulgating or implementing the regulation. The rule will not have a substantial direct effect on the traditional rights and prerogatives of States in relationship to the Federal Government. Preparation of a Federalism assessment is therefore unnecessary.

*E. Review under Executive Order 12778*

Section 2 of Executive Order 12778 instructs each agency subject to

Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: Specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rulemaking meets the requirements of sections 2(a) and (b) of Executive Order 12778.

*F. Paperwork Reduction Act*

The information collections in this rule are exempt from review by the Office of Management and Budget and from public comment for reasons of national security as provided for in Executive Orders 12035 and 12333 issued under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**5. Review of Comments**

DOE published a proposed rule version of these amendments in the **Federal Register** on March 11, 1993 (58 FR 13427) and a correction to the proposed rule on March 23, 1993 (58 FR 15441). Written comments were received from four parties. These comments have been made available for public inspection in the DOE Reading Room during consideration of this final rule. As a result, the following changes in the proposed rule were either made or considered and rejected:

*A. Section 810.3 Definitions*

One comment suggested the word "public" in the newly added definition of "operational safety" might be confusing because the Atomic Energy Act's reference to "public health and safety" has been interpreted in Nuclear Regulatory Commission licensing to mean the health and safety of the U.S. "public," while here the reference is also to the foreign "public." Accordingly, it was proposed to replace the word "public" with "off-site population" in the definition, as well as in § 810.7(b) and in the new general authorization in § 810.7. To preclude the possibility of confusion resulting from the use of "public," DOE has adopted this proposal.

Another comment found the definition "extraordinarily broad." DOE agrees that it is broad, reflecting DOE experience that many kinds of appropriate assistance can contribute to the safe operation of a nuclear power reactor. DOE has been careful, however, to frame a definition that excludes an even wider variety of nuclear assistance—for example, safety-related assistance to enrichment or reprocessing facilities or assistance in designing or manufacturing reactors—for which this general authorization would not be available. Even then, the assistance could be provided to a recipient on the § 810.8 list of countries if a specific authorization were granted after review under these regulations.

*B. Section 810.7 Generally Authorized Activities*

One comment contended that the new safety-related general authorization would justify the provision of "virtually any kind of nuclear assistance in any country with a civilian nuclear power program," including countries "known or suspected to be developing nuclear weapons." In response, DOE would underscore the point made in the preamble to the proposed rule—that is, "DOE will review applications to confirm that proposed activities meet the criteria for use of the authorization and are consistent with the objectives of U.S. national security, national disclosure, and nuclear nonproliferation policy." This review will assess not only the safety-related nature of the proposed assistance and but also whether U.S. policy objectives are served. Thus, just as assistance under specific authorization is governed by the nonproliferation and safeguards status of the recipient country and is denied to countries "known or suspected to be developing nuclear weapons," so would assistance under the new general authorization.

The same comment expressed disbelief that "an exception to the specific authorization requirement is warranted" even for safety-related assistance to the former Soviet Union because "current part 810 specific authorization procedures are not onerous." However, at minimum, the comment held, the new general authorization should at least be limited to the republics of the former Soviet Union "which have implemented effective safeguards and made a commitment to long-term nuclear cooperation with the United States."

As to the onerousness of the specific authorization procedures, DOE experience has shown that processing routine cases under these procedures normally takes about three months, at best. However, since the "fast track" of the new general authorization will be reserved for safety-related assistance that poses little or no proliferation concern and going to countries that pose little or no proliferation concern, DOE believes it should be available for countries on the § 810.8(a) list other than the republics of the former Soviet Union, for example, Argentina or South Africa. Even so, DOE has deliberately chosen not to make this type of general authorization automatic—that is, available for the taking—as is the case for authorizations under §§ 810.7(a) and (g), for example, and in fact has chosen to make its approval more formal than for use of any other type of general authorization. This is because DOE believes the technical significance of the proposed safety-related assistance and its consistency with U.S. policy objectives cannot be left to the judgment of the applicant but must be assessed by DOE and the other agencies.

Further, the comment raised the concern that "the mere designation by the recipient country of a reactor as 'civil' should not automatically entitle it to operational safety assistance" and argued that the authorization should be limited to "operating" reactors rather than "existing" reactors to "avoid the risk of authorizing assistance to help complete reactors now under construction in countries of proliferation risk."

DOE agrees wholeheartedly that calling a reactor "civil" does not necessarily make it so. Accordingly, it has been the longstanding policy of DOE and the other agencies involved in reviews under these regulations to ascertain the true use of any reactor proposed to receive U.S. assistance. DOE has chosen to adopt "existing" rather than "operating" as a qualification on the term "reactor" because the former would enable improvement of safety features of a reactor prior to start-up, as well as assistance to safe start-up of a reactor that was shut down for maintenance or fuel reloading.

Another comment said DOE should have to give written permission for each case of transfer of assistance or at least have to grant permission at intervals (e.g. annually) to prevent granting of a "one-time permission to transfer a wide range of different technology over an indefinite period of time." DOE believes "one-time permission" for a series of transfers may be appropriate in some cases—for example, allowing associations of power reactor operators to exchange safety-related information regularly over time. However, DOE

foresees requiring periodic renewals of such applications to use the new general authorization.

A comment urged that the concurrence/consultation roles of the other agencies be addressed in the final regulations and a mechanism provided for dealing with disapproval by other agencies. As the preamble to the Proposed Rule indicated, the interagency procedures for use of the new general authorization will be approximately the same as for specific authorization: DOE will refer each proposal it believes qualifies for the safety-related general authorization to the Department of State for its concurrence and to the Departments of Defense and Commerce, the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for their views. Since DOE intends to use the new general authorization only for safety-related assistance that poses no proliferation concern, it believes five working days should be ample for the interagency review. To keep interagency paperwork to a minimum, the Department of State has agreed to furnish a generic concurrence in advance and to inform DOE in writing when it does not wish this concurrence to apply.

As for providing a mechanism for dealing with agency disapproval of use of the new general authorization, current procedures as they apply to specific authorizations do not have such a mechanism. The law requires DOE to obtain DOS concurrence and to consult the other agencies. DOE and DOS fully consider the views of certain other agencies in reaching their conclusions and see no need for a formal conflict resolution process when the current consultation procedures work well.

One comment suggested that 20 days be allowed for interagency review of cases involving suspected nuclear proliferant countries. DOE has no intention of hurrying review of proposed assistance to nuclear proliferant countries—whether under specific authorization or the new general authorization. In the rare case that U.S. Government nonproliferation policy would not preclude assistance to such countries, it would certainly require that agencies have ample time to deliberate. In any event, no change in the regulations is needed to provide DOE and the other agencies the time necessary to assess fully each request.

Two comments suggested that to avoid possible misinterpretation, the new general authorization should state explicitly that it is intended to be used only for assistance to countries listed in § 810.8(a). DOE has made this change.

*C. Section 810.8 Activities Requiring Specific Authorization*

One comment urged that in addition to the many countries being deleted from the § 810.8(a) list, DOE should consider the early removal of Argentina and Brazil in recognition of the great progress these countries have made toward joining the international nuclear nonproliferation regime. DOE is well aware of recent developments in Argentina and Brazil and notes that Argentina, in particular, is making rapid progress toward fulfilling its commitments to put into force both the Treaty of Tlatelolco and a full-scope safeguards agreement with the IAEA. DOE believes that countries clearly renouncing nuclear weapons should be considered for removal from the § 810.8(a) list in a timely manner and pledges to do so.

One comment expressed concern over the reference to "prototype" reactors in proposed new section 8(c)(5). It noted that "prototype" could be misconstrued as including first models of new power reactors, although the intent is to require specific authorization for assistance to the kinds of reactors that have figured in the clandestine programs of would-be proliferants. Since requiring specific authorization for assistance to all "research" and "test" reactors greater than 5 Megawatts Thermal capacity would include the "prototypes" of such reactors, DOE has deleted the reference to "prototype" reactors in the subsection.

*Section 810.13 Reports*

DOE accepted two comments that the new reporting requirement on generally authorized assistance should make clear that it is the U.S. vendor's responsibility to have a retransfer consent agreement with the foreign recipient and to obtain DOE approval before consenting to a retransfer to a country listed in § 810.8(a). It also accepted a comment that DOE's approval should be necessary for subsequent retransfers to countries listed in § 810.8(a). The requirement has been modified to clarify DOE's original intent on this matter and consonant with the comments received.

**List of Subjects in 10 CFR Part 810**

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, July 20, 1993.

**Anthony Czajkowski,**

*Acting Director, Office of Arms Control and Nonproliferation, Office of Intelligence and National Security.*

For the reasons set out in the preamble, part 810 of title 10 of the Code of Federal Regulations is amended as set forth below:

## PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

1. Section 810.3 is amended by adding in alphabetical order the definition for the term "Operational safety" to read as follows:

**§ 810.3 Definitions.**

* * * * *

*Operational safety* means the capability of a reactor to be operated in a manner that prevents uncontrolled or inadvertent criticality, prevents or mitigates uncontrolled release of radioactivity to the environment, monitors and limits staff exposure to radiation and radioactivity, and protects off-site population from exposure to radiation or radioactivity. Operational safety may be enhanced by providing expert advice, equipment, instrumentation, technology, software, services, analyses, procedures, training, or other assistance that improves the capability of the reactor to be operated in such a manner.

* * * * *

2. Section 810.4 is amended by designating the first paragraph as (a) and revising it and by designating the second paragraph as (b) to read as follows:

**§ 810.4 Communications.**

(a) All communications concerning these regulations should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Director, Export Control Operations Division, IS–40, Office of Export Control and International Safeguards. Telephone (202) 586–2112.

* * * * *

**§ 810.5 [Amended]**

3. Section 810.5 is amended by removing the phrase "Division of Politico-Military Security Affairs (PMSA)" in the first sentence and adding in its place "Director, Export Control Operations Division (AN–30)". Section 810.5 is further amended by removing the acronym "PMSA" in the second sentence and adding in its place "the Director, Export Control Operations Division".

* * * * *

4. Section 810.7 is amended by removing the phrase "public health and safety" in paragraph (b) and adding in its place the phrase "the health and safety of the off-site population."

Section 810.7 is amended further by redesignating paragraphs (c) through (g) as (d) through (h) and adding a new paragraph (c) to read as follows:

**§ 810.7 Generally authorized activities.**

* * * * *

(c) Furnishing information or assistance, including through continuing programs, to enhance the operational safety of an existing civilian nuclear power plant in a country listed in § 810.8(a) or to prevent, reduce, or correct a danger to the health and safety of the off-site population posed by a civilian nuclear power plant in such a country; provided the Department of Energy is notified in advance by certified mail, return receipt requested, and approves the use of the authorization in writing; the Department will notify the applicant of the status of the request within 30 days from the date of receipt of the notification.

* * * * *

5. Section 810.8 is amended by revising paragraphs (a) and (c)(5) and adding a new paragraph (c)(6). These revisions read as follows:

**§ 810.8 Activities requiring specific authorization.**

(a) Engaging directly or indirectly in the production of special nuclear material in any of the countries listed below:

Afghanistan
Albania
Algeria
Andorra
Angola
Argentina
Armenia
Azerbaijan
Bahrain
Belarus
Brazil
Burma (Myanmar)
Cambodia
Chile
China, People's Republic of
Comoros
Cuba
Djibouti
Georgia
Guyana
India
Iran
Iraq
Israel
Kazakhstan
Korea, People's Democratic Republic of
Kuwait
Kyrgyzstan
Laos
Libya
Mauritania
Moldova
Monaco
Mongolian People's Democratic Republic
Mozambique
Niger
Oman
Pakistan
Qatar
Russia
Saudi Arabia
South Africa
Syria
Tajikistan
Turkmenistan
Ukraine
United Arab Emirates
Uzbekistan
Vanuatu
Vietnam
Zambia
Zimbabwe

Countries may be removed from or added to this list by amendments published in the **Federal Register**.

* * * * *

(c) * * *

(5) Designing, constructing, fabricating, operating, or maintaining research or test reactors capable of continuous operation above 5 Megawatts Thermal.

(6) Training in the activities of paragraphs (c) (1) through (5) of this section.

**§ 810.10 Grant of specific authorization.**

6. Section 810.10(a) is amended by removing the phrase "Director, Division of Politico-Military Security Affairs (DP–332), Office of International Security Affairs" and adding in its place "Director, Export Control Operations Division, IS–40, Office of Export Control and International Safeguards".

7. Section 810.13 is amended by revising the introductory text of paragraph (d), adding a new paragraph (d)(4), and revising paragraphs (f) and (g). These revisions read as follows:

**§ 810.13 Reports.**

* * * * *

(d) Any person, within 30 days after beginning any generally authorized activity under §§ 810.7(b), (c), or (h), shall provide to the Department of Energy:

* * * * *

(4) An assurance that the U.S. vendor has an agreement with the recipient ensuring that any subsequent transfer of materials, equipment, or technology transferred under general authorization to a country listed in § 810.8(a) will only take place if the vendor obtains DOE approval.

* * * * *

(f) Persons engaging in activities generally authorized under section § 810.7(a), (d), (e), (f), and (g) are not subject to reporting requirements under this section.

(g) All reports should be sent to: U.S. Department of Energy, Washington, DC 20585. Attention: Director, Export Control Operations Division, IS–40, Office of Export Control and International Safeguards.

8. Section 810.16 is revised to read as follows.

**§ 810.16 Effective date and savings clause.**

These regulations are effective on July 26, 1993. Except for actions that may be taken by DOE pursuant to section 810.11, this revision does not affect the validity or terms of any specific authorizations granted under the previous regulations or generally authorized activities under the previous regulations for which the contracts, purchase orders, or licensing arrangements are already in effect on July 26, 1993. Persons engaging in activities that were generally authorized under the previous regulations but that require specific authorization under the revised regulations must request specific authorization within 90 days but may continue their activities until DOE acts on the request. Specific authorizations previously granted for assistance to the Soviet Union remain valid for the newly independent former republics of the Soviet Union.

[FR Doc. 93–17717 Filed 7–23–93; 8:45 am]
BILLING CODE 6450-01-P

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 207, 220, 221 and 224

### Regulations G, T, U and X; Securities Credit Transactions; List of Marginable OTC Stocks; List of Foreign Margin Stocks

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; determination of applicability of regulations.

**SUMMARY:** The List of Marginable OTC Stocks (OTC List) is composed of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) is composed of foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List

and a deletion from the previous Foreign List. Both Lists were published on April 27, 1993 (58 FR 25543) and effective on May 10, 1993.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

**SUPPLEMENTARY INFORMATION:** Listed below are additions to or deletions from the OTC List. This supersedes the last OTC List which was effective May 10, 1993. Additions and deletions to the OTC List were last published on April 27, 1993 (58 FR 25543). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below is one deletion from the Foreign List. There are no new additions to the Board's Foreign List, which was last published April 27, 1993 (58 FR 25543) and effective May 10, 1993. Stocks on the Foreign List are eligible for margin treatment at broker-dealers pursuant to a 1990 amendment to Regulation T (12 CFR part 220). The Foreign List includes those securities that meet the criteria in Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

**Public Comment and Deferred Effective Date**

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

**List of Subjects**

*12 CFR Part 207*

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 220*

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 221*

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

*12 CFR Part 224*

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List, and one deletion from the Foreign List.

**Deletions From the List of Marginable OTC Stocks**

***Stocks Removed For Failing Continued Listing Requirements***

American Integrity Corporation
$.01 par common
American Rice, Inc.
$1.00 par common
Aspen Imaging International, Inc.
No par common
Auto-Trol Technology
$.01 par common
BHA Group, Inc.
Class B,
$.01 par common
Bioplasty, Inc.
$.01 par common
Blue Ridge Real Estate Company, Big Boulder Corporation
Paired certificates
Boston Digital Corporation
$.10 par common
Cardinal Distribution, Inc.
7¼% convertible subordinated debentures
Community Financial Corp.
$.01 par common
Erly Industries, Inc.
$1.00 par common
F & C International, Inc.
No par common
Fonic Inc.
Warrants (expire 05–20–93)
Great American Communications Company
$.01 par common
Horizon Resources Corporation
$.01 par common
In-Store Advertising, Inc.
$.01 par common
Independent Bankgroup, Inc.
$1.00 par common
Intellicorp, Inc.
$.001 par common
Kentucky Central Life Insurance Company
Class A, non-voting, $1.00 par common
Masstor Systems Corporation
$.001 par common
Metallurgical Industries Inc.
Class A, $.10 par common
National Medical Waste, Inc.
$.01 par common
Nationwide Cellular Service Inc.
Warrants (expire 06–01–93)
Norsk Data A.S.
American Depositary Receipts for Class B, non-voting shares
Optek Technology, Inc.
$.01 par common
Scios Nova Inc.
Class C, warrants (expire 06–30–93)
Spectrum Information Technologies, Inc.
Class A, warrants (expire 06–11–93)
Sungard Data Systems Inc.
8¼% convertible subordinated

debentures
TSL Holdings, Inc.
$.01 par common
Vest, H.D., Inc.
Warrants (expire 05–21–93)

*Stocks Removed For Listing On A National Securities Exchange Or Being Involved In An Acquisition*

Bank of East Tennessee
$2.00 par common
Brand Companies, Inc., The
$.10 par common
Cardinal Financial Group, Inc.
$.10 par common
CB & T Financial Corporation
$1.00 par common
CFS Financial Corporation
$1.00 par common
Colorado National Bankshares, Inc.
No par common
Financial Federal Corporation
$.50 par common
First Community Bancorp Inc.
$1.00 par common
Goldtex, Inc.
$.10 par common
Grancare Inc.
No par common
Gull Laboratories, Inc.
$.001 par common
Hall-Mark Electronics Corporation
$.01 par common
Home Federal Savings Bank (Colorado)
$1.00 par common
Horizon Financial Services, Inc.
$1.00 par common
Jimbo's Jumbos, Incorporation
$.001 par common
Key Centurion Bancshares, Inc.
$3.00 par common
Manitowoc Company, Inc.
$.01 par common
Midsouth Corporation
$.20 par common
Multibank Financial Corporation
$6.25 par common
Northeast Bancorp, Inc.
$5.00 par common
Nucorp, Inc.
$.05 par common
Pulitzer Publishing Company
$.01 par common
Qual-Med, Inc.
$.01 par common
Ranch Industries, Inc.
$1.00 par common
Regency Cruises Inc.
$.001 par common
Republic Capital Group, Inc.
$.10 par common
Security Tag Systems, Inc.
$.001 par common
Society for Savings Bancorp Inc.
$1.00 par common
Southern California Water Company
$5.00 par common
Southwestern Electric Service Co.
$1.00 par common
Sundowner Offshore Services, Inc.
$.01 par common
Western Financial Corporation
$1.00 par common

**Additions To The List of Marginable OTC Stocks**

3DO Company, The
$.01 par common
Abraxas Petroleum Corporation
$.01 par common
Absolute Entertainment, Inc.
No par common
ABT Building Products Corporation
$.01 par common
ACS Enterprises, Inc.
$.05 par common
Action Performance Companies, Inc.
$.01 par common
Warrants (expire 04–27–98)
AER Energy Resources, Inc.
No par common
AGCO Corporation
Depositary Shares
Alcide Corporation
$.01 par common
Aldila, Inc.
$.01 par common
Alpha 1 Biomedicals, Inc.
Warrants (expire 02–28–97)
American National Petroleum Company
$.01 par common
American Safety Razor Company
$.01 par common
American Savings Bank of Florida
$.01 par common
Amerihost Properties, Inc.
$.005 par common
Amtran, Inc.
No par common
Auspex Systems, Inc.
$.001 par common
Bancfirst Ohio Corp.
$10.00 par common
Banco de Galicia y Buenos Aires S.A.
American Depositary Shares
Bankunited Financial Corporation (Florida)
Series 1993, $.01 par non-cumulative convertible preferred
Barrett Business Services, Inc.
$.01 par common
Base Ten Systems, Inc.
Class B, $1.00 par common
Bell Microproducts Inc.
$.01 par common
Black Hawk Gaming & Development Co., Inc.
$.001 par common
Class A, warrants (expire 12–31–94)
Class B, warrants (expire 06–30–96)
Blyth Holdings, Inc.
$.01 par common
Broadband Technologies, Inc.
$.01 par common
California Culinary Academy, Inc.
No par common
Cambridge Technology Partners (Massachusetts), Inc.
$.01 par common
Care Enterprises, Inc.
$.01 par common
Catalyst Semiconductor, Inc.
No par common
CDW Computer Centers, Inc.
$.01 par common
Celestial Seasonings, Inc.
$.01 par common
Charter Bancshares, Inc. (Texas)
$1.00 par common
Chattahoochee Bancorp, Inc. (Georgia)
$1.00 par common
Citizens Bancshares, Inc. (Ohio)
No par common
Citizens Federal Bank, a Federal Savings Bank (Florida)
8¾ Series A, noncumulative preferred
Clayton Williams Energy, Inc.
$.10 par common
Coastal Financial Corporation (South Carolina)
$.01 par common
Commercial Bank of New York
$5.00 par common
Communication Intelligence Corporation
$.01 par common
Concurrent Computer Corporation
$.01 par common
CPI Aerostructures, Inc.
$.001 par common
Warrants (expire 09–16–95)
CTL Credit, Inc.
$.01 par common
Cypros Pharmaceutical Corporation
No par common
Cyrk, Inc.
$.01 par common
D.I.Y. Home Warehouse, Inc.
No par common
Daig Corporation
$.01 par common
Delta and Pine Land Company
$.10 par common
Discovery Zone, Inc.
$.01 par common
Donnkenny, Inc.
$.01 par common
Dovatron International, Inc.
$.01 par common
Drug Emporium, Inc.
7.75% convertible debentures (due 2014)
Eagle Holdings, Inc.
No par common
ECCS, Inc.
$.01 par common
Edunetics Ltd.
Ordinary Shares, NIS .06 par value
Electroglas, Inc.
$.01 par common
Electronic Retailing Systems International, Inc.
$.01 par common
Equinox Systems, Inc.
$.01 par common
Erox Corporation

No par common
Evergreen Media Corporation
Class A, no par common
Excalibur Holding Corporation
$.00001 par common
F&M Bancorporation, Inc. (Wisconsin)
$.01 par common
FAR East National Bank (California)
$1.25 par common
FFBS Bancorp, Inc. (Mississippi)
$.01 par common
FFY Financial Corp. (Ohio)
$.01 par common
Fidelity New York F.S.B.
$.01 par common
FLIR Systems, Inc.
$.01 par common
Fourth Shift Corporation
$.01 par common
Frozen Food Express Industries, Inc.
$1.50 par common
Future Healthcare, Inc.
No par common
GAB Bancorp (Indiana)
$10.00 par common
General Communication, Inc.
Class A, no par common
Genzyme Transgenics Corporation
$.01 par common
George Mason Bankshares, Inc.
(Virginia)
$1.66 par common
Geotek Industries
$.01 par common
Gold Reserve Corporation
No par common
Gotham Apparel Corporation
$.001 par common
Ground Round Restaurants, Inc.
$.1667 par common
Growth Financial Corp. (New Jersey)
$1.00 par common
Hallmark Healthcare Corporation
Class A, $.01 par common
Hamilton Financial Services
Corporation
$.01 par common
Harmony Holdings, Inc.
$.01 par common
Harry's Farmers Market, Inc.
Class A, $.01 par common
Healthdyne Technologies, Inc.
$.01 par common
HEI Inc.
$.05 par common
Hollywood Casino Corporation
$.01 par common
Horizon Bancorp, Inc. (West Virginia)
$1.00 par common
Huntco Inc.
Class A, $.01 par common
Hyde Athletic Industries, Inc.
Class B, $.33⅓ par common
Image Business Systems Corporation
$.01 par common
Independence Bancorp, Inc. (New
Jersey)
$1.667 par common
Industrial Scientific Corporation
$.10 par common
Information Resource Engineering, Inc.
$.01 par common
Interlinq Software Corporation
$.01 par common
International Imaging Materials, Inc.
$.01 par common
International Tourist Entertainment
Corp.
$.001 par common
IRG Technologies, Inc.
$.01 par common
IVF America, Inc.
$.01 par common
Series A, $1.00 par cumulative
convertible preferred
Jabil Circuit, Inc.
$.01 par common
Jackson County Federal Bank, a Federal
Savings Bank (Oregon)
$1.00 par common
Kent Financial Services, Inc.
$.10 par common
Laser Vision Centers, Inc.
$.01 par common
Laurel Savings Association
(Pennsylvania)
$1.00 par common
LCI International, Inc.
$.01 par common
LF Bancorp, Inc. (Mississippi)
$.01 par common
Lottery Enterprises, Inc.
$.01 par common
Lunn Industries, Inc.
$.01 par common
Magnetic Technologies Corporation
$.15 par common
Mariner Health Group, Inc.
$.01 par common
Martin Color-Fi, Inc.
No par common
MBLA Financial Corporation (Missouri)
$.01 par common
Medical Care America, Inc.
7% convertible debentures (due 2015)
Megahertz Corporation
$.004 par common
Megatest Corporation
$.001 par common
Metatec Corporation
Class A, $.01 par common
Metro Financial Corporation (Georgia)
$1.00 par common
MFS Communications Company, Inc.
$.01 par common
Microcarb Inc.
$.01 par common
Mississippi Valley Bancshares, Inc.
(Missouri)
$1.00 par common
National Convenience Stores, Inc.
Warrants (expire 03–09–98)
National Home Centers, Inc.
$.01 par common
Northern Springs Co., Inc.
Class A, $.01 par common
Northstar Health Services, Inc.
$.01 par common
Northwestern Steel and Wire Company
$.01 par common
Norwood Promotional Products, Inc.
No par common
O'Reilly Automotive, Inc.
$.01 par common
Old America Stores, Inc.
$.01 par common
Opti, Inc.
No par common
Pacific International Services
Corporation
No par common
Papa John's International, Inc.
$.01 par common
Paul Harris Stores, Inc.
$.01 par common
People's Bank (Connecticut)
8.5% Series A, No par convertible
preferred
People's Choice TV Corp.
$.01 par common
Petroleum Geo-Services A/S
American Depositary Receipts
Phycor, Inc.
6.5% convertible subordinated
debentures (due 2003)
Pinnacle Micro, Inc.
$.001 par common
Pittencrieff Communications, Inc.
$.01 par common
Primadonna Resorts, Inc.
$.01 par common
Projectavision, Inc.
$.0001 par common
Quad Systems Corporation
$.03 par common
Quality Products, Inc.
$.00001 par common
Random Access, Inc.
$.0001 par common
RE Capital Corporation
$.10 par common
Regal Cinemas, Inc.
No par common
Regional Acceptance Corporation
No par common
Reliable Life Insurance Company, The
Class A, $1.00 par common
Reno Air, Inc.
$.01 par common
Resource Mortgage Group, Inc. (South
Carolina)
$.01 par common
Rexall Sundown, Inc.
$.01 par common
Rhodes, Inc.
$.01 par common
Robert Mondavi Corporation, The
Class A, No par common
Rochester Community Savings Bank,
The
Series B, $1.00 par non-cumulative
convertible preferred
Safety 1st, Inc.
$.01 par common
Sanmina Corp.
$.01 par common
Santa Cruz Operation, Inc., The

No par common
Satcon Technology Corporation
$.01 par common
Seaman Furniture Company, Inc.
$.01 par common
Shiloh Industries, Inc.
$.01 par common
Signal Technology Corporation
$.01 par common
Silver King Communications, Inc.
$.01 par common
Sodak Gaming, Inc.
$.01 par common
Spectrum Signal Processing Inc.
No par common
St. Francis Capital Corporation
$.01 par common
Stanley Furniture Company, Inc.
$.02 par common
State Financial Services Corporation
Class A, $.10 par common
Station Casinos, Inc.
$.01 par common
Stolt Comex Seaway S.A.
$2.00 par common
Summit Bancshares, Inc. (Texas)
$2.50 par common
Suncoast Savings & Loan Assoc. FSA
Series A, $5.00 par non-cumulative convertible preferred
Sundance Homes, Inc.
$.01 par common
Sunglass Hut International, Inc.
$.01 par common
Supreme International Corporation
$.01 par common
Swisher International, Inc.
$.01 par common
Warrants (expire 04-21-96)
T R Financial Corp.
$.01 par common
Telor Ophthalmic Pharmaceuticals, Inc.
$.001 par common
Therapeutic Discovery Corporation/Alza Corporation
Units (expire 12-31-99)
Titan Holdings, Inc.
$.01 par common
Titan Wheel International, Inc.
No par common
Touchstone Applied Science Associates, Inc.
$.0001 par common
Trico Bancshares (California)
No par common
United Mobile Homes, Inc.
$.10 par common
Valley Bancorp, Inc. (Pennsylvania)
$5.00 par common
West Coast Bancorp, Inc. (Florida)
$1.00 par common
Wind River Systems, Inc.
$.01 par common
Zaring Homes, Inc.
No par common

*Deletion from the List of Foreign Margin Stocks*

Joshin Denki Company, Ltd.
¥50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), July 20, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93-17665 Filed 7-23-93; 8:45 am]

BILLING CODE 6210-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 33

**[Docket No. 93-ANE-20; Special Conditions No. SC-93-01-NE]**

## Special Conditions; Light Helicopter Turbine Engine Company Model CTS800 Turboshaft Engine

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Light Helicopter Turbine Engine Company (LHTEC) Model CTS800 turboshaft engine. This engine has novel or unique engine ratings that are not defined by the applicable airworthiness regulations. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

**EFFECTIVE DATE:** August 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Chung Hsieh, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5229; telephone (617) 238-7116; fax (617) 238-7199.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 11, 1989, the Light Helicopter Turbine Engine Company (LHTEC), petitioned the FAA for an exemption to FAR Section 33.7, Engine Ratings and Operating Limitations, for type certification of Model CTS800 turboshaft engine. The Model CTS800 engine is rated at 30-second One-Engine-Inoperative (OEI), 2-Minute OEI, 2½-Minute OEI, Continuous OEI, Takeoff, and Maximum continuous ratings.

The applicable airworthiness requirements do not contain 30-Second OEI and 2-Minute OEI rating definitions, and do not contain adequate or appropriate safety standards for the type certification of these new and unusual engine ratings.

### Type Certification Basis

Under the provisions of § 21.17(a) of the FAR, LHTEC must show that the Model CTS800 turboshaft engine meets the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21 and part 33, effective February 1, 1965, as amended through Amendment 33-14.

The Administrator finds that the applicable airworthiness regulations in Part 33, as amended, do not contain adequate or appropriate safety standards for the LHTEC Model CTS800 turboshaft engine because of the new and unique engine ratings. Therefore, the Administrator prescribes special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

### Novel or Unusual Design Features

The LHTEC Model CTS800 turboshaft engine has new and unique engine ratings.

### Discussion of Comments

Interested person have been afforded the opportunity to participate in the making of these special conditions.

No comments were received on the special conditions as proposed.

After careful review of the available data, the FAA determined that air safety and the public interest require the adoption of the special conditions as proposed.

### Conclusion

This action affects only certain novel or unusual design features on one model engine. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

### List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citations for these special conditions is as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421, 1423; and 49 U.S.C. 106(g).

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**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Light Helicopter Turbine Engine Company (LHTEC) Model CTS800 turboshaft engine:

1. In addition to the requirements of § 33.7, the following ratings are defined as:

(a) Rated 30-Second One-Engine-Inoperative (OEI) Power: The brake horsepower developed statistically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use, no greater than 30 seconds each at rotor shaft rotation speed and gas temperature established for this rating by part 33 or this special condition.

(b) Rated 2-Minute OEI Power: The brake horsepower, developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation, after failure of one engine in multi-engine rotorcraft, limited to three periods of use, of up to two minutes each, at rotor shaft rotation speed and gas temperature established for this rating by Part 33 or this special condition.

2. In addition to the requirements of § 33.4, the mandatory inspection and maintenance actions required, following the use of the 30-Second or 2-Minute OEI rating, must be included in the Airworthiness Limitations Section of the appropriate engine manuals.

3. In addition to the requirements of § 33.27, the following tests must be conducted for the most critically stressed rotor component of each turbine and compressor, including integral drum rotors, and centrifugal compressors. For a 30-Second and 2-Minute OEI conditions, test for a period of two and one-half minutes.

(a) At its maximum operating temperature, except as provided in § 33.27(c)(2)(iv); and

(b) At the highest speed determined, in accordance with § 33.27(c)(2)(i) through (vi).

(c) This test may be performed using a separate test vehicle if desired.

(d) Following the test based on the 30-Second OEI rating, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted, provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

4. In addition to the requirements of § 33.29, the engine must provide for a means:

(a) To indicate when the engine is at either 30-Second or 2-Minute OEI-rated power level; and

(b) To determine the elapsed time of operation at 2-Minute OEI and 30-Second OEI-rated power levels.

5. In addition to the requirements of § 33.67, the engine must provide for a means for automatic availability of the 30-second OEI power; and engine test runs must be performed to demonstrate automatic switching to a 30-Second OEI rating condition.

6. In addition to the requirements of § 33.85, tests performed at the 30-Second and 2-Minute OEI ratings, during the applicable endurance test prescribed in § 33.87, may be used to show compliance with the requirements of § 33.85.

7. In addition to the requirements of § 33.87, an engine test must be conducted four times, using the following test sequence, for a total of not less than 120 minutes:

(a) Takeoff power—three minutes at rated takeoff power.

(b) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(c) 2-Minute OEI power—two minutes at rated 2-Minute OEI power.

(d) 30-Minute OEI, Continuous OEI, or Maximum continuous power—five minutes at rated 30-Minute OEI power, or rated Continuous OEI power, or rated Maximum continuous power, whichever is greatest, except that during the first test sequence this period shall be 65 minutes.

(e) Minimum flight power—one minute at minimum flight power.

(f) 30-Second OEI power—thirty seconds at rated 30-Second OEI power.

(g) 2-Minute OEI power—two minutes at rated 2-Minute OEI power.

(h) Idle power—one minute at Idle power.

8. In addition to the requirements of § 33.88, the following must be performed:

(a) For engines that do not provide a means for temperature limiting; conduct a test for a period of five minutes at the maximum permissible power-on RPM, with the gas temperature at least 75 degrees Fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(b) For engines that provide a means for temperature limiting; conduct a test for a period of four minutes at the maximum permissible power-on RPM, with the gas temperature at least 35 degrees Fahrenheit higher than the 30-Second OEI rating operating temperature limit.

(c) A separate test vehicle may be used for each test.

(d) Following the test, rotor assembly growth and distress beyond serviceable limits for an overtemperature condition is permitted, provided the structural integrity of the rotor assembly is maintained, as shown by a procedure that is acceptable to the Administrator.

9. In addition to the requirements of § 33.93, this special condition requires that the engine be completely disassembled after completing the additional testing of § 33.87. The engine may exhibit deterioration in excess of that permitted in § 33.93(b), and may include some engine parts and components that may be unsuitable for further use.

It must be shown by procedures approved by the Administrator that the structural integrity of the engine, including mounts, cases, bearing supports, shafts and rotors, is maintained.

Issued in Burlington, Massachusetts, on July 15, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17732 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

[Docket No. 93–ANE–11; Amendment 39–8538; AD 93–14–14]

## Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines. This action requires initial and repetitive inspections of certain front compressor fan hubs and shotpeening the forward and aft rim to web radius. This amendment is prompted by reports of two front compressor fan hub fractures that resulted in release of fan blades and portions of the hub outer rim. The actions specified in this AD are intended to prevent fracture of the compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft.

**DATES:** Effective August 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 24, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–11, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** The Federal Aviation Administration (FAA) has received reports of two front compressor fan hub fractures on Pratt &

Whitney (PW) JT8D series turbofan engines. The front compressor fan hubs, Part Number (P/N) 817401, fractured releasing fan blades and portions of the hub outer rim. Both failures were uncontained and caused extensive damage to the aircraft. Subsequent to the hub failures, an inspection program identified four additional front compressor fan hubs that contained cracks in the forward rim to web radius area. Metallurgical examination, material testing, and investigation into the cause of the failures indicate that cracks can initiate in the forward or rear rim to web radius on hubs that have a polished surface and can propagate to fracture in high cycle fatigue due to high vibratory stresses.

The investigation has identified two sources of high vibratory stress that are capable of causing a crack to propagate to fracture once it has initiated. The FAA has determined that the probability of experiencing these stresses is highest for engines operating in the No. 2 position of Boeing 727 aircraft. Both hub failures occurred on engines operating in the No. 2 position on Boeing 727 aircraft. Therefore, the FAA will address this population in a more aggressive manner than engines installed in other aircraft, and in either the No. 1 or No. 3 positions on Boeing 727 aircraft. Also, the FAA will allow engines to be repositioned in locations other than the No. 2 position in Boeing 727 aircraft and will establish inspection intervals that are consistent with the installed vibratory environment.

The investigation has identified that cracks can initiate due to a reduction in fatigue strength incurred on the disk in the rim to web radius area. This reduction is attributed to a surface polishing operation performed during manufacture. This AD identifies the fan hubs by part and serial number that have had the surface polishing operation performed. The FAA has determined that cracks can initiate on certain front compressor fan hubs, and once initiated, can propagate to fracture in high cycle fatigue due to high vibratory stresses. This condition, if not corrected, can result in a fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. 6104, Revision 2, dated June 18, 1993, that describes procedures for initial and repetitive inspections for cracks in the forward and aft rim to web radius, and removal from service, if necessary, of front compressor fan hubs. In addition, the ASB describes procedures for shotpeening the forward and aft rim to web radius area of hubs that pass the inspections. The shotpeening operation provides improved fatigue strength of the material which will reduce the probability of crack initiation due to the surface polishing operation performed during manufacture.

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT8D series turbofan engines of the same type design, this AD is being issued to prevent fractures and uncontained failures of certain front compressor fan hubs. This AD requires initial and repetitive inspections for cracks, and removal from service, if necessary, of certain front compressor fan hubs. Front compressor fan hubs installed on engines in the No. 2 position on Boeing 727 aircraft must be inspected according to a more aggressive schedule than other installations. In addition, this AD requires shotpeening the forward and aft rim to web radius area of hubs that pass the inspections. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–11." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93-14-14 Pratt & Whitney:** Amendment 39-8638. Docket No. 93-ANE-11.

*Applicability:* Pratt & Whitney (PW) Model JT8D-9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines containing front compressor fan hub Part Number (P/N) 817401 with the following serial numbers: J78892 through J80538, K32019 through K34018, L32197 through L34133, or M05722 through M07296; and all serial numbers of fan hubs P/N 594301, 640601, 743301, 749801, 750101, 791801, and 806001. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC-9 series aircraft.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fracture of the front compressor fan hub, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For front compressor fan hubs installed in engines in the No. 2 position on Boeing 727 aircraft on the effective date of this AD, or thereafter, inspect and shotpeen the front compressor fan hub in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP-764) of PW Alert Service Bulletin (ASB) No. 6104, Revision 2, dated June 18, 1993, as follows:

(1) Initially inspect the front compressor fan hub as follows:

| Total part cycles (TPC) on the effective date of this AD | Initial inspection interval |
|---|---|
| Over 18,001 TPC. | Inspect at the next shop visit, or within 300 cycles in service (CIS) after the effective date of this AD, whichever occurs first. |
| 16,501 to 18,000 TPC. | Inspect at the next shop visit, or within 500 CIS after the effective date of this AD, whichever occurs first. |
| 15,001 to 16,500 TPC. | Inspect at the next shop visit, or within 750 CIS after the effective date of this AD, whichever occurs first. |
| 13,501 to 15,000 TPC. | Inspect at the next shop visit, or within 1,000 CIS after the effective date of this AD, whichever occurs first. |
| 10,501 to 13,500 TPC. | Inspect at the next shop visit, or within 1,500 CIS after the effective date of this AD, whichever occurs first. |
| Less than 10,501 TPC. | Inspect at the next shop visit after accumulating 10,500 TPC, but not to exceed 12,000 TPC. |

(2) Engines may be removed from the No. 2 position on Boeing 727 aircraft and reinstalled in any position other than the No. 2 position on Boeing aircraft prior to reaching the initial inspection interval specified in paragraph (a)(1) of this AD. Inspect and shotpeen front compressor fan hubs on repositioned engines in accordance with paragraph (b) of this AD.

(3) Remove front compressor fan hubs from service if cracks are found during the inspection process and replace with a serviceable hub.

(4) Shotpeen the front compressor fan hubs that pass the inspections required by paragraph (a)(1) of this AD, in accordance with Appendix B of PW ASB No. 6104, Revision 2, dated June 18, 1993, prior to returning the hub to service.

(5) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are reinstalled in the No. 2 position of Boeing 727 aircraft, in accordance with appendix A, appendix B, and Attachment 1 (NDIP-764), as applicable, of PW ASB No. 6104, Revision 2, dated June 18, 1993, as follows:

(i) For hubs that were last inspected and shotpeened with greater than 12,000 TPC upon inspection, inspect and shotpeen at the first shop visit after 2,500 CIS since last inspection, but prior to the accumulation of 8,000 CIS since last inspection.

(ii) For hubs that were last inspected and shotpeened with less than or equal to 12,000 TPC upon inspection, inspect and shotpeen at the first shop visit after 2,500 CIS since last inspection, or prior to accumulating 12,000 TPC, whichever occurs later, but not to exceed 8,000 CIS since last inspection.

(6) Engines may be removed from the No. 2 position on Boeing 727 aircraft and reinstalled in any position other than the No. 2 position on Boeing 727 aircraft prior to reaching the repetitive inspection interval specified in paragraph (a)(5) of this AD. Inspect and shotpeen front compressor fan hubs on repositioned engines in accordance with paragraph (b)(4) of this AD.

(b) For front compressor fan hubs installed in engines that are installed in any position other than the No. 2 position on Boeing 727 aircraft on the effective date of this AD, or thereafter, inspect and shotpeen the front compressor fan hubs in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP-764) of PW ASB No. 6104, Revision 2, dated June 18, 1993, as follows:

(1) Initially inspect the front compressor fan hub at the next shop visit that occurs after 12,000 TPC.

(2) Remove front compressor fan hubs from service if cracks are found during the inspection process and replace with a serviceable hub.

(3) Shotpeen the front compressor fan hubs that pass the inspection requirements specified in paragraph (b)(1) of this AD, in accordance with Appendix B of PW ASB No. 6104, Revision 2, dated June 18, 1993, prior to returning the hub to service.

(4) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are not reinstalled in the No. 2 position on Boeing 727 aircraft, in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP-764) of PW ASB No. 6104, Revision 2, dated June 18, 1993, when the front compressor fan hub is accessible at the detail level in the shop, or within 2,500 CIS since last inspection, whichever occurs later.

(5) Thereafter, inspect, shotpeen, and remove from service, if necessary, front compressor fan hubs that are reinstalled in the No. 2 position of Boeing 727 aircraft after the effective date of this AD in accordance with paragraph (a)(5) of this AD.

(c) Inspect and shotpeen front compressor fan hubs that were inspected and shotpeened prior to the effective date of this AD in accordance with Appendix A, Appendix B, and Attachment 1 (NDIP-764) of PW ASB No. 6104, dated December 21, 1992, or PW ASB No. 6104, Revision 1, dated May 21, 1993, in accordance with paragraph (a)(5) or (b)(4) of this AD, as applicable.

(d) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails separation of pairs of mating engine flanges or the removal of a disk, hub, or spool.

(e) For the purpose of this AD, accessibility of a front compressor fan hub at the detail level in the shop is defined as engine maintenance that entails separation of the front compressor and removal of the fan blades.

(f) Report the front compressor fan hub part number, total time, and total cycles in service for each hub that passes the inspections defined in this AD, within 60 days after the inspection, to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts, 01803-5299; fax (617) 238-7140; Telex 949301 FAANE BURL. For any hub that is found cracked, submit the information requested in paragraph B of Part 4, of the Accomplishment Instructions of PW ASB No. 6104, Revision 2, dated June 18, 1993, within 60 days after the inspection to the Manager, Engine Certification Office, at the address identified above. The reporting requirements of this AD terminate one year after the effective date of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and have been assigned OMB Control Number 2120-0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections and shotpeening shall be done in accordance with the following PW ASB:

| ASB No. | Pages | Revision | Date |
|---|---|---|---|
| PW ASB No. 6104 | 1 | 2 | June 18, 1993. |
| | 2 and 3 | 1 | May 21, 1993 |
| | 4 | 2 | June 18, 1993 |
| | 5 and 6 | 1 | May 21, 1993 |
| | 7 | 2 | June 18, 1993 |
| | 8 thru 13 | 1 | May 21, 1993 |
| with Attachment No. NDIP–764 | 1–13 | Original | Dec. 8, 1992. |

Total pages: 26.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on August 10, 1993.

Issued in Burlington, Massachusetts, on July 15, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17649 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–ANE–33; Amendment 39–8604; AD 93–10–51]**

## Airworthiness Directives; Pratt & Whitney Canada Auxiliary Power Unit Model PW901A

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T93–10–51 that was sent previously to all known U.S. owners and operators of Pratt & Whitney Canada (P&WC) auxiliary power unit (APU) Model PW901A, Part No. 3910001, installed on but not limited to Boeing Model 747–400 aircraft by individual telegrams. This AD requires the removal of the APU oil strainer element allowing failure of the scavenge gear pump in the event of internal gearbox failure, and inspection of gearbox chip detectors at regular intervals. This amendment is prompted by two reports of incidents involving smoke entering the aircraft passenger cabin after gear failure in the P&WC Model PW901A APU. The actions specified by this AD are intended to prevent APU gear failure, which can result in smoke contamination of aircraft passenger cabins.

**DATES:** Effective August 10, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T93–10–51, issued May 20, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 10, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 24, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–33, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A122. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Minniti, Aerospace Engineer, Propulsion Branch, ANE–174, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–7421; fax (516) 791–9024.

**SUPPLEMENTARY INFORMATION:** On May 20, 1993, the Federal Aviation Administration (FAA) issued telegraphic AD T93–10–51, applicable to Pratt & Whitney Canada (P&WC) auxiliary power unit (APU) Model PW901A, Part No. 3910001, installed on but not limited to Boeing Model 747–400 aircraft, which requires the removal of the APU oil strainer element allowing failure of the scavenge gear pump in the event of internal gearbox failure, and inspection of gearbox chip detectors at regular intervals. That action was prompted by two reports of incidents involving smoke entering the aircraft passenger cabin after gear failure in the P&WC Model PW901A APU. The failures occurred in the compressor load gearbox (LGB) cooling fan idler gear and the fan drive gear shaft. Investigation reveals that debris chips from the failed gears blocked the APU LGB oil scavenge pump strainer and allowed the LGB to flood with oil. The oil then entered the load compressor air system, and contaminated the cabin air. This condition, if not corrected, can result in APU gear failure, which can result in smoke contamination of aircraft passenger cabins.

Pratt & Whitney Canada has issued Alert Service Bulletin (ASB) No. A16159R1, dated May 12, 1993, specifying the procedures for removal of the oil strainer element from the load gearbox. This procedure would allow the APU to shut down automatically due to low oil pressure if gear failures occur, preventing LGB flooding. Transport Canada, which is the airworthiness authority of Canada, classified this ASB as mandatory and issued Canadian emergency AD CF–93–09, dated May 13, 1993, in order to assure the airworthiness of these APU's in Canada.

This APU is manufactured in Canada and is installed in type certificated aircraft for operation in the United

States. The APU is FAA approved under the provisions of § 21.617 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued telegraphic AD T93–10–51 to prevent smoke contamination of aircraft passenger cabins. The AD requires the removal of the APU load gearbox scavenge pump oil strainer element, and inspect, at specified intervals, the APU LGB and accessory gearbox magnetic chip detectors. These actions are required to be accomplished in accordance with P&WC ASB No. A16159R1, dated May 12, 1993, and the appropriate aircraft maintenance manual.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on May 20, 1993, to all known U.S. owners and operators of P&WC APU Model PW901A, Part No. 3910001, installed on but not limited to Boeing Model 747–400 aircraft. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–33." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–10–51 Pratt & Whitney Canada: Amendment 39–8604. Docket 93–ANE–33.**

*Applicability:* Pratt & Whitney Canada (P&WC) auxiliary power unit (APU) Model PW901A, Part No. 3910001, installed on but not limited to Boeing Model 747–400 aircraft.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent APU gear failure, which can result in smoke contamination of aircraft passenger cabins, accomplish the following:

(a) Within 10 APU hours, or 5 days after the effective date of this airworthiness directive (AD), whichever occurs first, in accordance with P&WC Alert Service Bulletin No. A16159R1, dated May 12, 1993:

(1) Disassemble the APU load gearbox and remove the scavenge pump oil strainer element, Part No. (P/N) 3107647–01; and

(2) Reassemble APU load gearbox, reinstalling the existing chip detector, P/N 3910098–01, and adapter, P/N 3910242–01.

(b) Within 10 APU operating hours, or 5 days after the effective date of this AD, whichever occurs first:

(1) Inspect the APU load gearbox and accessory gear box magnetic chip detectors in accordance with the appropriate aircraft maintenance manual; and

(2) Thereafter, inspect the chip detectors at intervals not to exceed 150 APU operating hours since the last inspection.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The removal and inspections shall be done in accordance with the following alert service bulletin:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| PWC No. A18159R1. Total pages: 4. | 1–4 | 1 | May 12, 1993. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A1. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective August 10, 1993, to all persons except those persons to whom it was made immediately effective by telegraphic AD T93–10–51, issued May 20, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on July 15, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17648 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 73

**[Airspace Docket No. 93–AWP–12]**

## Consolidation of Restricted Areas R–2509 and R–2524; California

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action consolidates Restricted Areas R–2509 Superior Valley, CA, and R–2524 Trona, CA, under the designation R–2524. The consolidated restricted area does not encompass any additional special use airspace beyond that which was previously encompassed in R–2509 and R–2524. Further, there are no changes to the altitudes, times of designation, or activities conducted within the consolidated Restricted Area R–2524.

**EFFECTIVE DATE:** 0901 u.t.c., September 16, 1993.

**FOR FURTHER INFORMATION CONTACT:** Diane Bodenhamer, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3178.

**SUPPLEMENTARY INFORMATION:**

### The Rule

This amendment to part 73 of the Federal Aviation Regulations consolidates Restricted Areas R–2509 Superior Valley, CA, and R–2524 Trona, CA, under the designation R–2524 Trona, CA. The consolidated restricted area does not encompass any additional special use airspace beyond that which was previously encompassed in R–2509 and R–2524. There are no changes to altitudes, times of designation, or activities conducted within the consolidated Restricted Area R–2524. This action has been initiated by the Department of the Navy and is being taken as a result of the closure of George AFB, CA, the current using agency for R–2509. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. The coordinates for this airspace docket are based on North American Datum 83. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

This action does not alter the overall dimensions of restricted airspace, nor is the mission conducted within the airspace changed. It consolidates two existing areas into one. Accordingly, this action will have no effect on current air traffic procedures or on routing or altitude of civil aircraft operations in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

### List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### § 73.25 [Amended]

2. Section 73.25 is amended as follows:

**R–2509 Superior Valley, CA [Removed]**

**R–2524 Trona, CA [Amended]**

By removing the present boundaries and substituting the following:

Boundaries. Beginning at lat. 35°47'46"N., long. 116°55'23"W.; to lat. 35°15'56"N., long. 116°55'23"W.; to lat. 35°15'56"N., long. 117°26'03"W.; to lat. 35°36'00"N., long. 117°26'03"W.; to lat. 35°36'00"N., long. 117°16'55"W.; to lat. 35°47'46"N., long. 117°16'55"W.; to the point of beginning.

Issued in Washington, DC, on July 16, 1993.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93–17741 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 73

**[Airspace Docket No. 93–AWP–6]**

## Amendment to Restricted Area R–2517; California

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the title of Restricted Area R–2517, "Naval Missile Facility, Point Arguello, CA," to "Vandenberg AFB, CA." This action also removed the present controlling agency designation, because this area is not joint use airspace, and changes the using agency for R–2517. These are administrative changes initiated by the U.S. Air Force to accurately describe R–2517. There are no changes to the boundaries, altitudes, times of designation, or activities conducted within R–2517.

**EFFECTIVE DATE:** 0901 u.t.c., September 16, 1993.

**FOR FURTHER INFORMATION CONTACT:** Diane Bodenhamer, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3178.

SUPPLEMENTARY INFORMATION:

**The Rule**

This amendment to part 73 of the Federal Aviation Regulations changes the title of R–2517 from "Naval Missile Facility Point Arguello, CA," to "Vandenberg AFB, CA." This action also removes the present controlling agency designation, because this area is not joint use airspace, and changes the using agency from "Western Space and Missile Center (MSMC)/SE, Vandenberg AFB, CA," to "U.S. Air Force, Commander, 30th Space Wing (30 SPW/CC), Vandenberg AFB, CA." These administrative changes were initiated by the U.S. Air Force to reflect its reorganization. Because this action is a minor technical amendment in which the public is not particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This action is an administrative change and does not affect the boundaries, altitudes, times of use, or activities of the restricted area. Accordingly, this action will have no effect on current air traffic procedures or routing of civil aircraft operations in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

**List of Subjects in 14 CFR Part 73**

Airspace, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 73.25 [Amended]**

2. § 73.25 is amended as follows:

R–2517 Naval Missile Facility Point Arguello, CA [Amended]

By removing the title "Naval Missile Facility Point Arguello, CA" and inserting in its place "Vandenberg AFB, CA;" by removing the controlling agency; and by removing the using agency, "Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA," and inserting in its place "U.S. Air Force, Commander, 30th Space Wing (30 SPW/CC), Vandenberg AFB, CA."

Issued in Washington, DC, on July 16, 1993.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93–17735 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 73**

**[Airspace Docket No. 92–AEA–10]**

## Proposed Subdivision of Restricted Areas R–6608A, R–6608B, and Establishment of Restricted Area R–6608C; VA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action subdivides the common boundaries of Restricted Areas R–6608A and B and establishes R–6608C. This action will facilitate the effectual use of airspace near Washington Dulles Tower.

**EFFECTIVE DATE:** 0901 u.t.c., September 16, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lee Powell, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9327.

SUPPLEMENTARY INFORMATION:

**History**

On April 9, 1993, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to subdivide the internal boundaries of Restricted Areas R–6608A and B and to establish R–6608C in the vicinity of Quantico, VA (58 FR 18351). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 73.66 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993. The coordinates for this airspace docket are based on North American Datum 83.

**The Rule**

This amendment to part 73 of the Federal Aviation Regulations subdivides the internal boundaries of Restricted Area R–6608A and B and establishes R–6608C in the vicinity of Quantico, VA. This modification resulted from negotiations between the FAA and the U.S. Marine Corps in Quantico, VA. These changes are completely contained within existing restricted airspace. No additional restricted airspace is created by this action. Also, this action decreases the burden on the public by releasing more airspace to the public when Restricted Area R–6608C is not in use, thereby enhancing the flow of air traffic in the area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This action does not alter the dimensions of restricted airspace, nor is the mission conducted within the airspace changed. It divides two existing areas into three and will facilitate operations at Dulles International Airport. Accordingly, this action reduces coordination requirements without increasing flight activity within the area. There will be no significant impact on the environment as a result of this action.

**List of Subjects in 14 CFR Part 73**

Aviation safety, Restricted areas.

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 73.66 [Amended]**

2. § 73.66 is amended as follows:

**R–6608A Quantico, VA [Amended]**

Boundaries. Beginning at lat. 38°35′10″N., long. 77°34′06″W.; to lat. 38°37′00″N., long. 77°34′06″W.; to lat. 38°37′50″N., long. 77°32′19″W.; to lat. 38°37′17″N., long. 77°27′44″W.; to lat. 38°35′35″N., long. 77°27′44″W.; to the point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. 0500 to 2400 local time daily; other times by NOTAM 24 hours in advance.

Controlling agency. FAA, Dulles ATCT.

Using agency. U.S. Marine Corps, Commanding General, Marine Corps Development and Education Command, Quantico, VA.

**R–6608B Quantico, VA [Amended]**

Boundaries. Beginning at lat. 38°35′10″N., long. 77°34′06″W.; to lat. 38°35′35″N., long. 77°27′44″W.; to lat. 38°29′31″N., long. 77°27′44″W.; to lat. 38°29′00″N., long. 77°28′44″W.; to lat. 38°31′20″N., long. 77°34′06″W.; to the point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. 0500 to 2400 local time daily; other times by NOTAM 24 hours in advance.

Controlling agency. FAA, Dulles ATCT.

Using agency. U.S. Marine Corps, Commanding General, Marine Corps Development and Education Command, Quantico, VA.

**R–6608C Quantico, VA [New]**

Boundaries. Beginning at lat. 38°37′17″N., long. 77°27′44″W.; to lat. 38°37′00″N., long. 77°25′33″W.; to lat. 38°34′00″N., long. 77°23′59″W.; to lat. 38°31′15″N., long. 77°24′19″W.; to lat. 38°29′31″N., long. 77°27′44″W.; to the point of beginning.

Designated altitudes. Surface to 10,000 feet MSL.

Time of designation. 0500 to 2400 local time daily; other times by NOTAM 24 hours in advance.

Controlling agency. FAA, Dulles ATCT.

Using agency. U.S. Marine Corps, Commanding General, Marine Corps Development and Education Command, Quantico, VA.

Issued in Washington, DC, on July 16, 1993.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93–17736 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 73**

**[Airspace Docket No. 93–ANE–27]**

## Name Change of Controlling Agencies for Restricted Areas

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the name of the controlling agencies for R–4101, R–4102A, R–4102B, R–4105A, R–4105B and R–5202, in Massachusetts and New York. These changes are necessary to reflect the name changes in the air traffic control (ATC) facilities. There are no changes to the boundaries, altitudes, times of designation, or activities conducted within the affected restricted areas.

**EFFECTIVE DATE:** 0901 u.t.c., September 16, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lee Powell, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9327.

**SUPPLEMENTARY INFORMATION:**

**The Rule**

This amendment to part 73 of the Federal Aviation Regulations changes the name of the controlling agencies for R–4102A and R–4102B, from "FAA, Boston Control Tower" to "FAA, Boston Approach Control"; R–4101, R–4105A and R–4105B, from "FAA, Otis Approach Control" to "FAA, Cape Approach Control"; and R–5202, from "FAA, Quonset RATCF" to "FAA, Providence Approach Control". Because this amendment only changes the names of the controlling agencies, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. Sections 73.41 and 73.52 of part 73 of the Federal Aviation Regulations were republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is an administrative change, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This action is an administrative change and does not affect the boundaries, altitudes, times of use, or activities of the restricted areas. Accordingly, this action will have no effect on current air traffic procedures or routing of civil aircraft operations in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

**List of Subjects in 14 CFR Part 73**

Airspace, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 73.41 [Amended]**

2. In each designation listed below remove the words "FAA Otis Approach Control" for the controlling agency and insert, in their place, the words, "FAA, Cape Approach Control":

(a) R–4101 Camp Edwards, MA
(b) R–4105A No Man's Land Island, MA
(c) R–4105B No Man's Land Island, MA

3. In addition to the amendment set forth above, in each designation listed below remove the words "FAA, Boston Control Tower" for the controlling agency and insert, in their place, the words "FAA, Boston Approach Control":

(a) R–4102A Fort Devens, MA
(b) R–4102B Fort Devens, MA

**§ 73.52 [Amended]**

4. The designation for "R–5202 Gardiner's Island, NY" in § 73.52 is amended by removing the words "FAA,

Quonset RATCF" for the controlling agency and inserting, in their place, "FAA, Providence Approach Control".

Issued in Washington, DC, on July 15, 1993.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93-17737 Filed 7-23-93; 8:45 am]

BILLING CODE 4910-13-M

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**DEPARTMENT OF COMMERCE**

**15 CFR Part 19**

[Docket No. 930489-3089]

RIN 0690-AA20

## Referral of Debts to the Internal Revenue Service for Tax Refund Offset

**AGENCY:** Department of Commerce (DOC).

**ACTION:** Interim rule with request of comments.

**SUMMARY:** The Department of Commerce, as a participant in the Federal Tax Refund Offset Program, issues regulations to govern the referral of delinquent debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing money to the DOC. These regulations are authorized by the Deficit Reduction Act of 1984 (the Act).

Section 2653 of the Act allows the DOC to collect debts by means of offset from the income tax refunds of persons owing money to the DOC provided certain conditions are met. This rule adds regulations to establish procedures to be followed by DOC in requesting the IRS to offset tax refunds due to taxpayers who have past-due legally enforceable debt obligations to the DOC.

**DATES:** Interim rule is effective on July 26, 1993. Written comments must be received on or before September 24, 1993.

**ADDRESSES:** Send comments to: U.S. Department of Commerce, Office of Financial Management, room 6827, 14th & Constitution Ave. NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Mallet, (202) 482-4593.

**SUPPLEMENTARY INFORMATION:** This interim rule provides procedures for the DOC to refer past-due legally enforceable debts to the IRS for offset against the income tax refunds of persons owing debts to the DOC. This rule is authorized by section 2653 of the Deficit Reduction Act of 1984 (31 U.S.C. 3720A). The purpose of the Act is to improve the ability of the Government to collect money owed it while adding certain notice requirements and other protections applicable to the Government's relationship to the debtor. This rule implements section 2653 of the Act which directs any Federal agency that is owed a past-due legally enforceable debt by a named person to notify the Secretary of the Treasury in accordance with the regulations issued by the Department of the Treasury at 26 CFR 301.6402-6. Before an Agency may give such notice, however, it must first: (1) Notify the debtor that the agency proposes to refer the debt for a tax refund deduction; (2) give the debtor sixty (60) days from the date of notification to present evidence that all or part of the debt is not past due or legally enforceable; (3) consider any evidence presented by the debtor and determine whether any amount of such debt is past-due and legally enforceable; and (4) satisfy such other conditions as the Secretary of the Treasury may prescribe to ensure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt. This rule, in accordance with IRS regulations, provides that before the DOC refers a debt to the Department of the Treasury (through IRS), a notice of intention (Notice of Intent) will be sent to the debtor. This Notice of Intent will inform the debtor of the amount of the debt and that, unless the debt is repaid within sixty (60) days from the date of the DOC's Notice of Intent, the DOC intends to collect the debt by requesting the IRS to offset any tax refund payable to the debtor. In addition, the Notice of Intent will state thatthe debtor has a right, during such period, to present evidence that all or part of the debt is not past-due or legally enforceable. This rule also establishes procedures for the debtor who intends to present such evidence.

### Executive Order 12291

This rule has been reviewed in accordance with Executive Order 12291. The rule is not classified as a major rule because it does not have the gross effects on the economy, States, or the public which are required to classify the rule as "major" and to warrant preparation of a formal regulatory impact analysis.

### Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for direct effects on States, on the relationship between the national Government and the States, or on the distribution of power among various levels of Government. If there are sufficient substantial direct effects, then E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

This regulation applies to private persons and does not affect any traditional State function. There are, therefore, no substantial direct effects requiring evaluation or assessment under E.O. 12612.

### Public Comments

Pursuant to the agreement between the IRS, the Financial Management Service, and the DOC regarding the DOC's participation in the Tax Refund Offset Program for 1994, the DOC is required to have promulgated regulations regarding referral of debts to the IRS for tax refund offset prior to the DOC's participation in the program. The DOC is issuing interim final regulations to take effect today in order to fulfill that requirement. The advance notice, opportunity for prior public comment, and thirty (30) day delayed effectiveness requirements of 5 U.S.C. 553 do not apply to this interim final rule, or are unnecessary because it is primarily procedural and, to the extent it is not, it merely restates existing provisions of statutory law. Moreover, issuance of immediately effective interim final regulations does not prejudice the due process rights of debtors and is essential in order to participate in the 1994 program. Written comments are solicited for sixty (60) days after publication of this document. A final document discussing any comments received and revisions required will be published in the **Federal Register** as soon as possible.

### Regulatory Flexibility Act

For the reasons explained above, no statute requires prior notice and opportunity for public comment for this interim rule. Therefore, the Regulatory Flexibility Act does not apply.

### Paperwork Reduction Act

This rule does not contain information collection requirements subject to the Paperwork Reduction Act.

### National Environmental Policy Act

Promulgation of this rule does not represent a major Federal action with significant environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required.

### Other Matters

These procedures are being codified in the Department's regulations for general information and are pursuant to

statutory requirements regarding publication of rules of procedure in the Federal Register, 5 U.S.C. 553(a)(1)(C). However, the procedures described in the rule will be utilized before the rule becomes effective with respect to persons who are provided actual notice of the procedures through the notices required under the regulations. See 5 U.S.C. 552(a)(1).

**List of Subjects in 15 CFR Part 19**

Administrative practice and procedure, Claims.

In consideration of the foregoing, the Department of Commerce hereby amends title 15 of the Code of Federal Regulations by adding a new part 19 as set forth below.

## PART 19—REFERRAL OF DEBTS TO THE IRS FOR TAX REFUND OFFSET

Sec.

19.1 Purpose.
19.2 Applicability and scope.
19.3 Administrative charges.
19.4 Notice requirement before offset.
19.5 Review within the Department.
19.6 Departmental determination.
19.7 Stay of offset.

**Authority:** 31 U.S.C. 3720A; Public Law 98–369; 98 Stat. 1153.

### § 19.1 Purpose.

This part establishes procedures for the Department of Commerce (DOC) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to the DOC. It specifies the agency procedures and the rights of the debtor applicable to claims for payment of debts owed to the DOC.

### § 19.2 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Department against amounts payable to or on behalf of the debtor by or on behalf of the Department;

(4) With respect to which, the DOC has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, the DOC has considered evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by the DOC to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(6) With respect to which, the DOC has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any overpayment of taxes;

(7) Is at least $25.00;

(8) With respect to which, all other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations codified at 26 CFR 301.6402–6 relating to the eligibility of a debt for tax refund offset have been satisfied.

### § 19.3 Administrative charges.

In accordance with 4 CFR part 102, all administrative charges incurred in connection with the referral of a debt to the IRS shall be assessed on the debt and thus increase the amount of the offset.

### § 19.4 Notice requirement before offset.

A request for a reduction of an IRS tax refund will be made only after the DOC makes a determination that an amount is owed and past-due and provides the debtor with sixty (60) days written notice. The DOC's notice of intention to collect by IRS tax refund offset (Notice of Intent) will include:

(A) The amount of the debt;

(b) A statement that unless the debt is repaid within sixty (60) days from the date of the DOC's Notice of Intent, DOC intends to collect the debt by requesting that the IRS reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt plus accumulated interest and other charges;

(c) A statement that the debtor has the right to present evidence that all or part of the debt is not pase-due or legally enforceable;

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

### § 19.5 Review within the Department.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the sixty (60) day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within sixty (60) days will result in an automatic referral of the debt to the IRS without further action by the DOC.

(c) *Review of the evidence.* DOC will consider all available evidence related to the debt. Within 30 days of the debtor's complete and timely response, if feasible, DOC will notify the debtor whether DOC has sustained, amended, or canceled its determination that the debt is past-due and legally enforceable.

### § 19.6 Departmental determination.

(a) Following review of the evidence, DOC will issue a written decision which will include the supporting rationale for the decision.

(b) If DOC either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If DOC cancels its original determination, the debt will not be referred to the IRS.

### § 19.7 Stay of offset.

If the debtor timely notifies the DOC that he or she is exercising the right described in § 19.5(a) and timely submits evidence in accordance with § 19.5(b), any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends the DOC's original determination.

Issued in Washington, DC, on July 15, 1993.

**Clyde G. McShan, II,**

*Deputy Chief Financial Officer.*

[FR Doc. 93–17757 Filed 7–23–93; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 93-57]

## Vessel Repair Applications for Relief from Duty

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to increase the monetary jurisdictional authority of the three Customs Regional Vessel Repair Liquidation Units to decide whether to approve or disapprove certain applications for relief from the assessment of duties under the vessel repair statute. The increased authority is effective only in cases in which specifically applicable Customs Headquarters precedent exists. The effect of the amendment will be to expedite the disposition of routine cases and ensure earlier collection of vessel repair duties.

EFFECTIVE DATE: August 25, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Office of Trade Operations, 202-927-0300 (operational matters), or Larry L. Burton, 202-482-6940 (legal matters).

SUPPLEMENTARY INFORMATION:

### Background

Section 1466 of title 19 of the United States Code provides that a duty of 50 per cent ad valorem shall be assessed upon the value of repairs accomplished outside of the United States on certain American-flag vessels. The statute itself as well as numerous judicial and administrative interpretations provide exceptions to the assessment of duty under specific circumstances.

The statutory mandate is implemented under § 4.14 of the Customs Regulations (19 CFR 4.14), which provides the necessary working guidelines for Customs as well as vessel operators. Among the matters set forth in section 4.14 are the procedures for seeking administrative refund or remission of assessed duty. Necessary evidence is gathered in one of three Vessel Repair Liquidation Units; the units are located in the New York Customs Region (New York, New York), the South Central Customs Region (New Orleans, Louisiana), and the Pacific Customs Region (San Francisco). Each of these locations is presently empowered to consider and decide initial requests for duty refund or remission (Application for Relief) when there exists clear Customs Headquarters precedent regarding the matter under consideration and when the decision will result in a refund or remission of less than $2,500 in duty (19 CFR 4.14(c)(2)).

Section 4.14 was significantly revised in 1980 by publication in the Federal Register of Treasury Decision 80-237 (45 FR 46560), September 30, 1980. The Customs field jurisdictional amount was first made a part of the Customs Regulations with that publication. At that time, the limit for field determination was set at $2,500 because to set it at a higher suggested limit would "preclude a central review of major issues" by Customs Headquarters.

Over the intervening years, the cost of foreign shipyard operations which give rise to "major issues" has been significantly inflated. In consideration of this factor, together with the development of necessary Customs expertise outside of Headquarters, Customs proposed in a document published in the Federal Register (57 FR 40627) on September 4, 1992, that it was appropriate that the jurisdictional limitation for determinations in the Regional Vessel Repair Liquidation Units be increased to $50,000 in cases in which there exists clear Customs Headquarters precedent.

### Discussion of Comments

Three comments were received in response to the published proposal. Two of the comments expressed general support for the proposal but raised certain concerns. The third comment suggested that monetary limitations not be determinative for purposes of forwarding vessel repair cases to Customs Headquarters for review. A discussion of the comments follows.

The first commenter suggests that there be no monetary limitation at all placed upon jurisdictional determinations concerning the disposition of Applications for Relief from the assessment of vessel repair duties.

As indicated earlier, increase in the field jurisdiction from $2,500 to a new limit of $50,000 was proposed to take into account modern commercial realities as well as development of expertise outside of Headquarters. The new amount would represent a twenty-fold increase in field unit monetary authority. While Customs believes this increase is justified, it still believes a monetary limit is necessary to permit a central review of duty issues that exceed $50,000.

The second commenter appreciates the attempt to expedite the processing of entries by retaining more of them for processing outside of Customs Headquarters, but questions the readiness of the three regional liquidation units to handle the increased delegation. It is urged that while increasing field authority, Headquarters should institute a quality assurance mechanism to ensure proper field disposition of Applications for Relief.

It should be remembered that the increase in field jurisdiction is intended to go only to the consideration of Applications for Relief, the first of three administrative relief vehicles available to vessel operators. Mechanisms are already built into the process in the form of Petitions for Review and Protests. These are utilized by vessel operators who may wish to appeal an adverse determination rendered on an Application for Relief. No change in the regulation as proposed is required.

The third and final commenter supports the increase in field authority, but is concerned that it may not receive sufficient information regarding decisions by the field as to why a particular item for which relief is sought is considered dutiable. Further, it is suggested that a time limit be placed on the Customs processing of Applications for Relief.

It is our experience that the field units are most responsive to inquiries from vessel operators regarding the justification for a particular determination. Customs Headquarters has not heard complaints from vessel operators about any lack of cooperation or the withholding of needed information by field units. We believe that the field units do a creditable job in supplying any necessary information to vessel operators. Finally, we believe that the imposition of any time limits as suggested would be unworkable since long delays often occur in the submission of vital information by the vessel operators themselves. We believe that there are not any intentional delays on the part of any party to the process, and are convinced that Customs is processing applications as soon as possible given constraints imposed by workloads and staffing levels. No changes are required in the regulations as proposed.

### Conclusion

After careful consideration of the comments received and further review of the matter, it has been determined that the amendment as proposed should be adopted without change.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Drafting Information**

The principal author of this document was Larry L. Burton, Carrier Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**List of Subjects in 19 CFR Part 4**

Customs duties and inspection, Reporting and recordkeeping requirements, Vessels.

**Amendment to the Regulations**

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, and the specific authority citation for § 4.14 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

* * * * *

Section 4.14 also issued under 19 U.S.C. 1466, 1498;

* * * * *

**§ 4.14 [Amended]**

2. Section 4.14 (c) (2) is amended by removing both references to "$2,500" where they appear in the paragraph, and inserting in their places references to "$50,000."

**George J. Weise,**

*Commissioner of Customs.*

Approved: July 1, 1993.

**Ronald K. Noble,**

*Assistant Secretary of the Treasury.*

[FR Doc. 93–17689 Filed 7–23–93; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 175

**[Docket No. 91F–0413]**

## Indirect Food Additives; Adhesives and Components of Coatings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1-hexene as a monomer for polymer resins intended for use as adhesives for articles or components of articles contacting food. This action responds to a food additive petition filed by Eastman Chemical Co.

**DATES:** Effective July 26, 1993; written objections and requests for a hearing by August 25, 1993.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of November 29, 1991 (56 FR 61022), FDA announced that a food additive petition (FAP 1B4292) had been filed by Eastman Chemical Co., P.O. Box 511, Kingsport, TN 37662, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of 1-hexene as a monomer for polymer resins used as adhesives for articles or components of articles contacting food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of 1-hexene is safe and that § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before August 25, 1993 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 175**

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 is revised to read as follows:

**Authority:** Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding a new entry under the heading "Substances" and the subheading "Polymers: Homopolymers and copolymers of the following monomers:" to read as follows:

§ 175.105 Adhesives.

* * * * * * *

(c) * * *

(5) * * *

| Substances | Limitations |
|---|---|
| * * * * * * | |
| Polymers: Homopolymers and copolymers of the following monomers: | |
| * * * * * * | |
| 1-Hexene (CAS Reg. No. 592-41-6). | |
| * * * * * * | |

Dated: July 13, 1993.

Janice F. Oliver,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 93-17663 Filed 7-23-93; 8:45 am]

BILLING CODE 4160-01-F

## PEACE CORPS

## 22 CFR Part 308

## Compliance With Privacy Act of 1974: New System of Records—Exemption; Office of Inspector General Investigative Files and Records

**AGENCY:** Peace Corps of the United States.

**ACTION:** Final rule.

**SUMMARY:** On June 1, 1993, the Peace Corps published for notice and comment a proposed rule to exempt a system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a, to the extent that the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records to be exempted contains the investigative files and records of the Office of Inspector General of the Peace Corps (OIG). (See 58 FR 31181.) The Peace Corps did not receive any comments on the proposed rule. Therefore, the Peace Corps has exempted this system of records from certain provisions of the Privacy Act.

**EFFECTIVE DATE:** July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Margaret Aira, Legal Counsel, Office of Inspector General, Room 5300, 1990 K Street NW., Washington, DC 20526. Telephone: (202) 606-3320. TDD (202) 606-1313 for party relay message. Copies of this notice may be obtained in an alternate format upon request.

**SUPPLEMENTARY INFORMATION:** On June 1, 1993, the Peace Corps published a notice proposing to establish a new system of records under the Privacy Act of 1974 and to exempt this system of records from certain provisions of the Privacy Act (58 FR 31223). The system, entitled the Office of Inspector General Investigative Files and Records, contains material pertaining to the enforcement of criminal laws and compiled for law enforcement purposes. The Director of the Peace Corps has now exempted this new system of records from specified provisions of the Privacy Act.

Section (j)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from any part of section 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), if the system of records is maintained by "the agency or component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws" and includes: "(A) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (B) information compiled for the purpose of criminal investigation, including reports of informants and investigators and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision." Section 552a(k)(2) of the Privacy Act also provides that the head of an agency may promulgate rules to exempt any system of records within the agency from sections 552a(c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f) of the Act, if the system of records is "investigatory material compiled for law enforcement purposes."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Account for disclosures; permit individuals access to their records; permit individuals to request amendment to their records; maintain only necessary or relevant information in its system of records; publish certain information in the **Federal Register**, and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

The Office of Inspector General Investigative Files and Records contain information of the type described in the above mentioned exemptions to the Privacy Act. The Inspector General Act of 1978, as amended (5 U.S.C. App. 3), authorizes the Inspector General of the Peace Corps to conduct investigations to detect fraud and abuse in the programs and operations of the Peace Corps and to assist in the prosecution of participants in such fraud or abuse. The Peace Corps Office of Inspector General maintains information in this system of records pursuant to its law enforcement and criminal investigation functions. Exemptions under sections 552(j)(2) and (k)(2) are necessary to maintain the integrity and confidentiality of the investigative files and to protect individuals from harm. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine the effectiveness of the Inspector General's investigations. Knowledge of such investigations also could enable suspects to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to intimidation of, or harm to, informants, witnesses,

investigative personnel and their families. The imposition of certain restrictions on the manner in which information is collected, verified, or retained could significantly impede the effectiveness of the investigations of the Office of Inspector General and could preclude the apprehension and successful prosecution or discipline of persons engaged in fraud or other illegal activity.

For these reasons, the Peace Corps has exempted the system of records containing the Office of Inspector General Investigative Files and Records from certain provisions of the Privacy Act. Section 308.14 of the Peace Corps regulations (22 CFR part 308) previously was promulgated to exempt various records from certain requirements of the Privacy Act. In connection with the establishment of the system of records containing the investigative files of the Office of Inspector General, the Peace Corps is amending § 308.14 by revising the introductory paragraph and adding a new paragraph (d).

**Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Director of the Peace Corps certifies that this rule will not have a significant impact on a substantial number of small entities.

**Executive Order 12291**

The Peace Corps has determined that this rule is not a "major rule" under Executive Order No. 12291 since it will not have an annual effect on the economy of $100 million or more.

**Paperwork Reduction Act of 1980**

This rule has been examined under the Paperwork Reduction Act of 1980 and has been found to contain no information collection requirements.

**Energy and Environment Considerations**

This rule does not significantly affect either the quality of the human environment or the conservation of energy resources.

**Executive Order 12778**

This rule has been reviewed under the principles set forth in section 2 of Executive Order 12778 (56 FR 55195) on Civil Justice Reform. The Peace Corps has determined that this rule meets the applicable standards of section 2 of Executive Order 12778.

**List of Subjects in 22 CFR part 308**

Privacy Act, report and recordkeeping requirements.

Accordingly, the Peace Corps hereby amends 22 CFR ch. III, part 308 as follows:

## PART 308—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation of part 308 continues to read as follows:

**Authority:** 5 U.S.C. 552a.

2. Section 308.14 is amended by revising the introductory paragraph and adding a new paragraph (d) to read as follows:

**§ 308.14 Specific exemptions.**

Records or portions of records in certain record systems specified in paragraphs (a) through (c) of this section shall be exempt from disclosure: *Provided, however,* That no such exemption shall apply to the provisions of § 308.12(a) (maintaining records with accuracy, completeness, etc. as reasonably necessary for agency purposes); § 308.12(b) (collecting information directly from the individual to whom it pertains); § 308.12(c) (informing individuals asked to supply information of the purposes for which it is collected and whether it is mandatory); § 308.12(g) (notifying the subjects of records disclosed under compulsory court process); § 308.16(d)(3) (informing prior recipient of corrected or disputed records); § 308.16(g) (civil remedies). With the above exceptions the following material shall be exempt from disclosure to the extent indicated:

* * * * *

(d) Records in the Office of Inspector General Investigative Files and Records system of records are exempt from certain provisions to the extent provided hereinafter.

(1) To the extent that the system of records pertains to the enforcement of criminal laws, the Office of Inspector General Investigative Files and Records system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following sections: (b) relating to conditions of disclosure; (c)(1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4)(A) through (F) relating to publishing a system notice setting the name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e)(6), (7), (9), (10), and (11) relating to dissemination and maintenance of records and (i) relating to criminal penalties. This system of records is also exempt from the provisions of § 308.11 through § 308.17 to the extent that the provisions of these sections conflict with this paragraph.

(i) Authority: 5 U.S.C. 552a(j)(2).

(ii) Reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigations, investigators, and witnesses.

(C) To protect the identity of Federal employees who furnish a complaint or information to OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(D) To protect the confidentiality of non-Federal employee sources of information.

(E) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources.

(2) To the extent that there may exist within this system of records investigative files compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, the OIG Investigative Files and Records system of records is exempt from the following sections of the Privacy Act: (c)(3) relating to access to the disclosure accounting; (d) relating to access to records; (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment, and information as to the categories of sources or records; and (f) relating to developing agency rules for gaining access and making corrections. *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is also exempt from the provisions of § 308.11 through § 308.17 to the extent that the provisions

of those sections conflict with this paragraph.

(i) Authority: 5 U.S.C. 552a(k)(2)

(ii) Reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with Section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(F) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement systems.

(H) To prevent disclosure of law enforcement techniques and procedures.

(I) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

Dated: July 14, 1993.

**John P. Hogan,**

*Acting Director, Peace Corps of the United States.*

[FR Doc. 93–17263 Filed 7–23–93; 8:45 am]

BILLING CODE 6051–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Parts 812, 905, 912, and 960

[Docket No. R–93–1596; FR–3029–F–02]

RIN 2501–AB63

### Occupancy by Single Persons

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule eliminates the restrictions on the admission to public and assisted housing of any single person who is not 62 years old or older, disabled, handicapped, displaced, or the remaining member of a tenant family, in accordance with section 573(a) of the National Affordable Housing Act of 1990.

**EFFECTIVE DATE:** August 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Issues related to part 812 (as it relates to section 8 certificates, vouchers, and Mod Rehab), parts 905, 912 and 960: Casimir Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, room 4228, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 708–0444. A telecommunications device for deaf persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

Issues related to part 812 (as it relates to the other section 8 programs): James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, 451 Seventh Street SW., Washington, DC 20410, Telephone (202) 708–3944. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

### Background

This rule amends 24 CFR parts 812, 905, 912, and 960 to implement section 573(a) of the National Affordable Housing Act of 1990, approved November 28, 1990, Public Law 101–625 (NAHA). Section 573(a) of NAHA amended clause (D) of section 3(b)(3) of the U.S. Housing Act of 1937 to include in the definition of "families" any "other single person" who is not 62 years old or older, disabled, handicapped, displaced, or the remaining member of a tenant family. (Section 621 of the Housing and Community Development Act of 1992 (approved October 28, 1992, Pub. L. 102–550) further revised section 3(b)(3) of the U.S. Housing Act of 1937. However, this rule does not address those changes. The Department will in the future issue regulations implementing section 621.)

Before the NAHA amendment, in general the number of single persons eligible for housing assisted under the Act who were not 62 years old or older, disabled, handicapped, displaced, or the remaining member of a tenant family was limited to 15 percent of the units within the area under the jurisdiction of a public housing agency. (Section 3(b)(3) allowed the Secretary to increase this limitation to 30 percent under limited circumstances.) Section 573(a) of NAHA eliminated any percentage limitation on the number of single persons, which means that HUD approval is no longer necessary to house single persons.

The NAHA amendment also added a new restriction on the admission of any single person to housing units assisted under the Act. Section 573(a)(1) provides that in no event may any single person under clause (D) be provided a housing unit assisted under this Act of two bedrooms or more.

Today's rule only eliminates the 15% limitation on the admission of single persons. (The Department's regulations never implemented the 30% limitation.) The Department published a proposed rule on April 10, 1992 (57 FR 12686) which, among other things, would eliminate the 15% limitation on the admission of single persons, and add a restriction on unit size for single persons. The Department will publish a final rule in the future addressing the restriction on unit size for single persons, and other pertinent issues.

In the proposed rule, the Department stated that no corresponding change would be made to 24 CFR part 905, which regulates Indian housing (including the Mutual Help Homeownership Opportunity Program). The reason for excluding Indian Housing was that the U.S. Congress did not expressly make section 573 of NAHA applicable to Indian Housing Authorities (IHAs), as required under section 201(b)(2) of the Indian Housing Act of 1988. However, section 103(b) of the Housing and Community Development Act of 1992, expressly makes section 573 of NAHA applicable to IHAs. Accordingly, this final rule is being made applicable to IHAs.

### Other Matters

*A. Economic Impact*

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

*B. Environmental Impact*

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This final rule is not a significant change from the proposed rule. Accordingly, the initial finding of no significant impact remains applicable, and is available for public

inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

*C. Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule merely makes a statutorily required change in a definition that will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

*D. Family Impact*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule will not have a potentially significant negative impact on family formation, maintenance, and general well-being, and thus, is not subject to review under the Order. The rule serves to implement a statutorily required change by including any single person in the definition of "family" under the United States Housing Act of 1937. Although it is anticipated that single persons will benefit from this change to the extent that it results in an alleviation of homelessness among these individuals, family housing will, in general, not be affected because the statute does not permit any single person to be provided with larger, family-sized units of two or more bedrooms. There could be a slight negative impact on nonelderly families consisting of two individuals who would be in competition for one-bedroom units with an increased number of newly eligible single persons. However, this potential impact should be offset by the anticipated beneficial impact in alleviating homelessness among single persons.

*E. Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is only an implementation of a statutory requirement that adjusts the way the term "family" is defined.

This final rule was listed as Item No. 1403 in the Department's Semiannual Agenda of Regulations published on April 26, 1933 (58 FR 14382, 24401) under Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 812*

Low and moderate income housing, Reporting and recordkeeping requirements.

*24 CFR Part 905*

Aged, Grant programs—Indians, Grant programs—housing and community development, Handicapped, Indians, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 912*

Public housing, Reporting and recordkeeping requirements.

*24 CFR Part 960*

Aged, Grant programs—housing and community development, Handicapped, Public housing.

For the reasons set out in the preamble, parts 812, 905, 912 and 960 of title 24 of the Code of Federal Regulations are amended as set forth below:

## PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSON

1. The authority citation for part 812 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a; 42 U.S.C. 3601–3619; 42 U.S.C. 3535(d).

2. Section 812.1(a)(2) is revised to read as follows:

**§ 812.1 Purpose and applicability.**

(a) * * *

(2) Prescribes criteria and procedures for occupancy by any Single Person not otherwise eligible by reason of qualification as an Elderly Family or as a Displaced Person or as a Disabled or Handicapped Person or as the remaining member of a tenant family.

* * * * *

3. Section 812.3 is revised to read as follows:

**§ 812.3 Admission of single persons—priority to elderly and displaced persons.**

A PHA or private owner shall extend preference to Elderly Families (including Disabled Persons and Handicapped Persons) and Displaced Persons over Single Persons.

4. Section 812.4 is revised to read as follows:

**§ 812.4 Effect of contract provisions.**

Notwithstanding the provisions of any contract or agreement pursuant to the Act, defining terms otherwise than as defined in § 812.2, PHAs or private owners are authorized to house Single Persons.

## PART 905—INDIAN HOUSING PROGRAMS

5. The authority citation for part 905 continues to read as follows:

**Authority:** 42 U.S.C. 1437aa–1437ee; 25 U.S.C. 450e(b); 42 U.S.C. 3535(d).

6. Section 905.301 is amended by revising paragraphs (d) and (e)(4) to read as follows:

**§ 905.301 Admission policies.**

* * * * *

(d) *Admission of single persons—priority to elderly and displaced persons.* An IHA shall extend preference to Elderly Families (including Disabled Persons and Handicapped Persons) and Displaced Persons over Single Persons.

(e) * * *

(4) If an IHA elects the discretionary preference in paragraph (e)(2) of this section, the IHA must follow its policies and procedures for applying the Federal preferences contained in § 905.305 when selecting applicants for admission from among near elderly families. Near elderly families that do not qualify for Federal preference and that are given preference for admission under this section over other non-elderly families that qualify for such a Federal preference are not subject to the 10 percent limitation on admission of families without a Federal preference over families with such a Federal preference that may initially receive assistance in any one-year period, as set out in § 905.305(b)(2)(ii). If a near elderly applicant is a single person, the near elderly single person may be given a preference for admission over other single persons to projects for the elderly.

* * * * *

## PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY ANY SINGLE PERSON

7. The authority citation for part 912 is revised to read as follows:

**Authority:** 42 U.S.C. 1437a; 42 U.S.C. 3601–3619; 42 U.S.C. 3535(d).

8. Section 912.1(a)(2)) is revised to read as follows:

§ 912.1 Purpose and applicability.

(a) * * *

(2) Prescribes criteria and procedures for occupancy by any Single Person not otherwise eligible by reason of qualification as an Elderly Family or as a Displaced Person or as a Disabled or Handicapped Person or as the remaining member of a tenant family.

* * * * * *

9. Section 912.3 is revised to read as follows:

§ 912.3 Admission of single persons—priority to elderly and displaced persons.

A PHA shall extend preference to Elderly Families (including Disabled Persons and Handicapped Persons) and Displaced Persons over Single Persons.

10. Section 912.4 is revised to read as follows:

§ 912.4 Effect of contract provisions.

Notwithstanding the provisions of any contract or agreement pursuant to the Act, defining terms otherwise than as defined in § 912.1, PHAs or private owners are authorized to house Single Persons.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

11. The authority citation for part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d and 1437n; 42 U.S.C. 3535(d).

12. In § 960.409, paragraph (e) is revised to read as follows:

§ 960.409 Other preferences; single person occupancy.

* * * * * *

(e) If a Near Elderly applicant is a Single Person, as that term is defined in § 912.2 of this chapter, the Near Elderly Single Person may be given a preference for admission over other Single Persons to projects for the elderly.

Dated: May 24, 1993.

Henry G. Cisneros,

*Secretary.*

[FR Doc. 93-17575 Filed 7-23-93; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154 and 155

[CGD 93-027]

RIN 2115-AE20

## Marking of Transfer Hoses for Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising its transfer hose marking regulations for hazardous materials. The current regulations, which require each hose to be marked with a list of each product transferred through the hose, are impractical. This rulemaking allows an alternative for hose marking that is more effective and easier to maintain.

EFFECTIVE DATE: August 25, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Marine Environmental Protection Division (G-MEP), at (202) 267-6714.

SUPPLEMENTARY INFORMATION:

### Drafting Information

The principal persons involved in drafting this document are Lieutenant Jonathan C. Burton, Project Manager, Marine Environmental Protection Division, and Ms. Helen Boutrous, Project Counsel, Office of Chief Counsel.

### Regulatory History

On February 18, 1993, the Coast Guard published a notice of proposed rulemaking entitled "Marking of Transfer Hoses for Hazardous Materials" in the **Federal Register** (58 FR 8918). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

### Background and Purpose

The regulations pertaining to the transfer of products between vessels and facilities capable of transferring oil or hazardous materials in bulk to or from a vessel with a capacity of 250 barrels or more were previously contained in two different parts of title 33 of the Code of Federal Regulations. Facilities dealing with the transfer of bulk oil were covered by 33 CFR part 154, while those dealing with the transfer of hazardous materials were covered by 33 CFR part 126 (Handling of Explosives or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities). Realizing that this often confusing, and desiring to address hazardous materials in greater detail, the Coast Guard combined the provisions into part 154 (Facilities Transferring Oil or Hazardous Material in Bulk). Since 1990, when this effort was completed, a number of suggestions for improving the combined regulations have been provided by Coast Guard personnel and industry advisory groups.

One issue that was raised concerns the marking of transfer hoses. For hoses used to transfer oil products, the current regulations provide alternative marking options: a hose must be marked with the name of each oil product for which the hose may be used, or, the hose may be marked with the words "oil service," with no additional information regarding the oil products transferred (33 CFR 154.500(e)). However, for hoses used to transfer hazardous materials, the hose must bear the name of each hazardous material product for which the hose is used. No other option is available to facilities or vessels. While it is common at facilities for a given hose to be designated for a single product, this is not always the case for vessels, especially barges. Often, the same transfer hose is used for the transfer of numerous hazardous material products.

At its meeting in November 1990, the Towing Safety Advisory Committee (TSAC) brought this hose marking issue to the attention of the Coast Guard. The Committee noted that in cases where one transfer hose is used for numerous compatible products, marking the name of each product on the hose is difficult, given the size constraints. Also, the inability to use the same hose to transfer additional compatible products without this time-consuming marking, as well as the difficulty of maintaining extensive markings on the hose exterior, make the current hose marking requirements for hazardous materials unduly burdensome and impractical.

TSAC proposed that the hazardous materials transfer hoses be marked with the pollution categories published by the International Maritime Organization (IMO). This would provide a less cumbersome means for marking and maintaining hazardous materials transfer hoses while, according to TSAC, ensuring the compatibility of products for which a given transfer hose may be used.

The Coast Guard agrees that, for a hose that is used to transfer numerous compatible cargoes, some alternative to placing the name of each product on the hose should be available. However, the Coast Guard has determined that marking these hoses with IMO pollution categories does not necessarily ensure compatibility of cargoes. There are instances where chemically incompatible cargoes are included within the same IMO pollution category.

As an alternative to the approach suggested by TSAC, the Coast Guard is modifying the rule to allow for hoses to be marked with a unique identifying symbol (a letter, number, or other symbol) to indicate the types of materials which may be transferred through that hose. A list found in the facility's operations manual or vessel's transfer procedure documents must contain the hose symbols and the compatible cargoes which may be transferred through a hose bearing a given symbol. It is the Coast Guard's position that this is a reasonable alternative to the current hose marking requirements, and that it will effectively address the concerns of TSAC. This alternative is consistent with the marking alternative in § 154.500(f), which allows for the date of manufacture and the date of the last pressure or other hose test required by § 156.170 to be recorded elsewhere at the facility, with the hose marked to identify it with that information.

By allowing vessels and facilities to mark hoses used to transfer hazardous materials with symbols and a reference to a list contained in either the facility's operations manual or the vessel's transfer procedures documents to determine the products represented by the symbols, hose marking and maintenance will be simplified. Also, ongoing changes will be easier to implement. Further, this alternative will be less time consuming and less costly than the current requirement.

**Discussion of Comments and Changes**

Two comments, representing two different industry groups, were in support of the regulations as proposed. Two other comments suggested using the compatibility tables and numbers found in 46 CFR part 150 to provide a standardized marking method.

The compatibility categories of part 150 are intended to be used for the storage of cargo. Materials in the same compatibility category, however, are not necessarily compatible with the same types of hose construction. For example, while gasoline and carbon disulfide are compatible according to the tables, gasoline can be transferred through a neoprene hose while carbon disulfide can be transferred through a stainless steel hose only. The fact that materials are considered compatible for the purposes of cargo storage, does not necessarily ensure compatibility for hose transfers. Therefore, the Coast Guard has determined that use of the compatibility tables of part 150 is not appropriate for the marking of transfer hoses. While the Coast Guard may develop a specific hose compatibility chart that could be utilized for the purpose of marking transfer hoses in the future, the Coast Guard has determined that the alternative method of marking transfer hoses adopted by this final rule provides a safe and effective method of putting those individuals transferring hazardous materials on notice as to the materials that may be transferred safely in a particular hose.

**Regulatory Evaluation**

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This rule allows the marking of a transfer hose with a warning that the potential user of the hose should consult the hose compatibility list to determine which products may be transferred through the hose, rather than requiring that the name of each product be marked on the hose. Currently, facilities and vessels that use oil and hazardous material transfer hoses spend $2,039,850 annually to comply with all testing, reporting and recordkeeping requirements. No change to the manner in which transfer operations are conducted is anticipated. There are no additional costs associated with testing, recording or recordkeeping required by this rule and, therefore, there is no anticipated increase in the annual cost to industry. It is anticipated that there will be some cost savings for the facilities or vessels that use hazardous material transfer hoses.

**Small Entities**

Few small entities are involved in the transport of bulk hazardous materials and oil products. These regulations are expected to have a positive economic impact on any small entities involved. The new marking alternative is more efficient than marking hoses with product names. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains collection of information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section number is § 154.500 and the corresponding OMB approval number is OMB Control Number 2115–0096.

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule provides an alternative procedure for marking hazardous materials transfer hoses. The regulations apply, unless otherwise exempted, to vessels operating under the authority of the United States, wherever located, and to all vessels operating in the navigable waters of the United States or while at a port or terminal under the jurisdiction of the United States. The regulations also apply to each facility that is capable of transferring oil or hazardous material, in bulk, to or from a vessel with a capacity of 250 barrels or more. Vessels and many facilities operate in the national marketplace and excessive variation in requirements would be economically burdensome and potentially unsafe. Therefore, the Coast Guard intends to preempt State and local regulations to the extent that they are in conflict with the requirements of this rule.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.1 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule merely provides an alternative procedure for the making of hazardous materials transfer hoses. This rule allows the marking of transfer hoses with a warning that the potential user of the hose should consult the hose compatibility list to determine which products may be transferred through the hose, rather than requiring that the name of each product be marked on the hose. This rule is, therefore, administrative in nature and clearly will have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**."

**List of Subjects**

*33 CFR Part 154*

Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

*33 CFR Part 155*

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 154 and 155 as follows:

## PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

1. The authority citation for part 154 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. In § 154.310, paragraph (a)(22) is added to read as follows:

**§ 154.310 Operations manual: Contents.**

(a) * * *

(22) Statements explaining that each hazardous materials transfer hose is marked with either the name of each product which may be transferred through the hose or with letters, numbers or other symbols representing all such products and the location in the operations manual where a chart or list of the symbols used and a list of the compatible products which may be transferred through the hose can be found for consultation before each transfer.

* * * * *

3. In § 154.500, paragraphs (e) and (f) are revised to read as follows:

**§ 154.500 Hose assemblies.**

* * * * *

(e) Each hose must be marked with one of the following:

(1) The name of each product for which the hose may be used; or

(2) For oil products, the words "OIL SERVICE"; or

(3) For hazardous materials, the words "HAZMAT SERVICE—SEE LIST" followed immediately by a letter, number or other symbol that corresponds to a list or chart contained in the facility's operations manual or the vessel's transfer procedure documents which identifies the products that may be transferred through a hose bearing that symbol.

(f) Each hose also must be marked with the following, except that the information required by paragraphs (f)(2) and (3) of this section need not be marked on the hose if it is recorded in the hose records of the vessel or facility, and the hose is marked to identify it with that information:

(1) Maximum allowable working pressure;

(2) Date of manufacture; and

(3) Date of the latest test required by § 156.170.

* * * * *

## PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

4. The authority citation for part 155 continues to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

5. In § 155.750 paragraph (a)(11) is added to read as follows:

**§ 155.750 Contents of transfer procedures.**

(a) * * *

(11) Statements explaining that each hazardous materials transfer hose is marked with either the name of each product which may be transferred through the hose or with letters, numbers or other symbols representing all such products and the location in the transfer procedures where a chart or list of the symbols used and a list of the compatible products which may be transferred through the hose can be found for consultation before each transfer.

* * * * *

Dated: May 28, 1993.

**R.C. North,**

*Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 93–17723 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

## COTP Los Angeles/Long Beach, CA Regulation 93–05; Safety Zone Regulations: Los Angeles/Long Beach Harbor, California

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone at the Commodore Schuyler Heim Bridge (Heim Bridge) between Terminal Island and Wilmington, California to protect divers, workers and equipment installing underwater cable at the bridge. The zone encompasses the water areas within 100 feet both upstream and downstream of the bridge inside Cerritos Channel in Los Angeles/Long Beach Harbor. Vessels are prohibited from entering the safety zone without permission of the Coast Guard Captain of the Port.

**EFFECTIVE DATES:** The Safety Zone is in effect from 6 a.m. to 6 p.m. daily from August 9, 1993 to August 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) Kelly Johnson, Marine Safety Office Los Angeles/Long Beach at (310) 980–4455.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and a good cause exists for making it effective less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to divers and workmen or damage to equipment.

**Drafting Information**

The drafters of this regulation are Susan Worden, Bridge Administrator, Eleventh Coast Guard District, and LCDR Craig Jucknies, project attorney, Eleventh District Coast Guard Legal Office.

**Discussion of the Regulation**

The circumstance requiring this regulation is the use of divers to entrench a submarine cable under Cerritos Channel in Los Angeles/Long Beach Harbor. The California Department of Transportation is replacing an underwater control cable at the Heim Bridge in Long Beach, California. There will be a series of diving operations to survey, mark and entrench the cable. There also will be underwater work at the piers to bring the cable into the bridge. The underwater work will be done during the period from August 9, 1993 through August 13, 1993. A safety zone is needed to protect divers and workers from injury.

The cable replacement project also will prevent the bridge from operating during the period from August 2, 1993 through August 20, 1993. Under a separate drawbridge operating regulation the Coast Guard is establishing a temporary drawbridge regulation to authorize the bridge to remain in the closed to navigation position during that period.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation**

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T1105 is added to read as follows:

**§ 165.T1105 Safety Zone: Helm Bridge, Cerritos Channel Long Beach, California.**

(a) *Location.* The following area is established as a temporary safety zone: The water area of Cerritos Channel between Terminal Island and Wilmington within 100 feet east of the Ford Bridge and 100 feet west of the Commodore Schuyler Helm Bridge.

(b) *Effective date.* This safety zone is effective daily between 6 a.m. and 6 p.m. from August 9, 1993 through August 13, 1993.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: July 9, 1993.

**J.B. Morris,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach, California.*

[FR Doc. 93–17722 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**RIN 2115–AA97**

## Copt St. Louis Regulation 93–27; Safety Zone Regulations; Upper Mississippi River Basin

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Osage River. These regulations are needed to control vessel traffic in the regulated area to prevent further wake damage to levees and property along the river. The regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

**EFFECTIVE DATES:** This regulation is effective on July 14, 1993 and will terminate on August 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** LTJG Paul Barragan, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of these regulations are LTJG Paul Barragan, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent rainfall in the Upper Mississippi drainage area has caused unanticipated flood conditions on the Osage River leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period since the flood conditions are presenting immediate hazards.

### Background and Purpose

The Upper Mississippi River and its tributaries have been suffering from high water conditions for 105 days. This has contributed to unusually wet conditions along the river with the resultant softening of the earth levees which protect the adjacent lowlands. Although the water levels in the river had fallen below flood stage during late June 1993, the levees had not had the opportunity to dry out before the recent rainfall over the midwest pushed the rivers back above the flood stage. As a result, the waters of the Osage River have overflowed its banks and some levees in the area have failed. The Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if they are subjected to the wake damage from passing vessels.

The present flood conditions also present a hazard to navigation in that the area's rivers are filled with a mass of trees and other debris which have been washed from the river banks and the inundated lowlands, once visible obstructions to navigation are now submerged, river currents are not following normal patterns, and insufficient clearances exist for vessels to pass under certain bridges. Taken as a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic.

Given expected rainfall patterns, the rivers are not expected to crest until on or after July 15, 1993. The Army Corps of Engineers anticipates that the Mississippi River will crest at 45 feet—this is 15 feet above flood stage and may establish a record for flood waters in the area—and that it may take another four weeks for the waters to recede to normal levels.

### Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor river conditions and will terminate the safety zones for specific areas as river conditions allow.

### Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occurring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

### Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T0254 is added, to read as follows:

**§ 165.T0254 Safety Zone: Upper Mississippi River Basin.**

(a) *Location.* The Osage River between mile 0 and mile 20 is established as a safety zone.

(b) *Effective Dates.* This section becomes effective on July 14, 1993 and will terminate on August 15, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zone without authority of the Captain of the Port apply.

(d) The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by these safety zones by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: July 14, 1993.

**Scott P. Cooper,**

*Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.*

[FR Doc. 93–17721 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 4**

**Total Disability Ratings for Compensation**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the regulations of the Department of Veterans Affairs (VA) that govern the assignment of total disability ratings for compensation based upon individual unemployability. This correction is required in order to delete an erroneously duplicated sentence from the regulation. No substantive change to the content of 38 CFR Part 4 is being made by this correcting amendment.

**EFFECTIVE DATE:** This correcting amendment is effective July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** The regulations that appear at 38 CFR 4.16(a) establish the criteria for the assignment of total disability ratings for compensation benefits based upon individual unemployability. Due to VA error, the third sentence of § 4.16(a) is printed twice. This document corrects that error.

**List of Subjects in 38 CFR Part 4**

Handicapped, Pensions, Veterans.

For the reasons set out in the preamble, 38 CFR part 4, subpart A, is amended as set forth below:

## PART 4—SCHEDULE FOR RATING DISABILITIES

### Subpart A—General Policy in Rating

1. The authority citation for part 4 continues to read as follows:

**Authority:** 72 Stat. 1125; 38 U.S.C. 1155, unless otherwise noted.

**§ 4.16 [Corrected]**

2. In § 4.16(a), remove the words "It is provided further that the existence or degree of nonservice-connected disabilities or previous unemployability status will be disregarded when the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable." the second time that they appear.

Approved July 19, 1993.

**B. Michael Berger,**

*Director, Records Management Service.*

[FR Doc. 93–17677 Filed 7–23–93; 8:45 am]

BILLING CODE 8320–01–U

## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 101–41**

**[FPMR Temp. Reg. G–57]**

**Use of Cash for Official Travel**

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** This regulation amends the Federal Property Management Regulations (FPMR) to grant agency heads or their designated representatives authority to approve all cash purchases of transportation services exceeding $100. Currently, agency heads or their designated representatives may authorize the use of cash exceeding $100 only for the purchase of emergency transportation services. This revision will eliminate the requirement for agencies to request a written exemption from the General Services Administration (GSA) for cash purchases of nonemergency transportation services exceeding the $100 limit.

**DATES:** Effective date: July 26, 1993.

Expiration date: July 31, 1994.

Comments due on or before: December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** John W. Sandfort, Deputy Director, Regulations and Program Development Division, Office of Transportation Audits (202–219–3164).

**SUPPLEMENTARY INFORMATION:** The General Service Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), GSA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis has been prepared.

The reporting forms required by this regulation are not subject to the provisions of Public Law 96–511, the Paperwork Reduction Act of 1980, and Subpart 201–45.6 of this title.

**List of Subjects in 41 CFR Part 101–41**

Accounting, Air carriers, Claims, Maritime carriers, Passenger services, Railroads, Transportation.

Accordingly, under the authority of 31 U.S.C. 3726 and 40 U.S.C. 486(c), in 41 CFR chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter G to read as follows:

**Federal Property Management Regulations Temporary Regulation G–57**

To: Heads of Federal agencies

Subject: Use of cash for official travel

1. *Purpose.* This regulations grants agency heads or their designated representatives the authority to approve all cash purchases of passenger transportation services costing more than $100.

2. *Effective date.* This regulation is effective on July 26, 1993.

3. *Expiration date.* This regulation expires on July 31, 1994, unless sooner superseded or canceled.

4. *Applicability.* This regulation applies to all Government agencies that are subject to the audit authority of GSA under 31 U.S.C. 3726.

5. *Background.* FPMR Amendment G–43, July 6, 1977, transmitted Part 101–41 to establish the policy and procedures governing the documentation and audit of payments for domestic and foreign freight and passenger transportation services furnished for the account of the United States. Section 101–41.203 pertains to the procurement of passenger transportation services. The Government transportation request (GTR), Government contractor-issued charge card, and Government travel system (GTS) account are the preferred means for procuring such services; however, agencies have the option of requiring travelers to use cash where the passenger transportation services cost more than $10 but do not exceed $100 for each authorized trip. Agencies also have the authority to approve emergency cash payments exceeding the $100 limit but must request a written exemption from GSA for nonemergency cash payments exceeding the limit. This revision will allow agency heads to: (1) specify which device (GTR, Government contractor-issued charge card, GTS account or combination thereof) travelers will use to procure transportation services; and (2) approve all cash purchases of passenger transportation services without obtaining an exemption from GSA.

6. *Agency comments.* Comments concerning this regulation should be submitted to the General Services Administration, Policy, Procedures and Liaison Branch (FWPA), Washington, DC 20405, no later than December 31, 1993, for consideration and possible incorporation in a permanent rule.

7. *Revised policy.*

a. Section 101–41.203–1 is amended by revising paragraph (a) to read as follows:

**§ 101.41.203–1 Procurement from carriers.**

(a) All passenger transportation services should be procured with a GTR, GSA contractor-issued charge card, or Government travel system account unless otherwise provided herein. Agency heads or their designees may specify which of these Government-provided methods of payment, or combination thereof, travelers will use to procure official passenger transportation services. Such services, regardless of the procurement method specified by the agency, must be procured directly from either a carrier or a travel agent. Travel agencies may be used only as prescribed by GSA's Federal Travel Regulation (FTR), 41 CFR chapters 301 through 304 or applicable regulations of the Department of Defense (DOD).

* * * * *

b. Section 101–41.203–2 is revised to read as follows:

**§ 101–41.203–2 Use of cash.**

(a) Cash shall be used to procure all passenger transportation services costing $10 or less, exclusive of Federal transportation tax, and to pay air excess baggage charges of $15 or less for each leg of a trip (see § 101–41.203–6), unless special circumstances justify the use of a GTR or Government excess baggage authorization/ticket. Agencies have the option of requiring travelers to use either cash or GTR's, Government travel system (GTS) accounts, or contractor-issued Government employee charge cards to procure transportation services costing more than $10, but do not exceed $100, exclusive of Federal transportation tax, for each trip authorized on an official travel authorization. In making any such determination, agencies should consider the availability of airline city-pair contract fares available only through the use of GTR's, GTS accounts, or contractor-issued Government employee charge cards. Only GTR's, GTS accounts, or contractor-issued Government employee charge cards should be used to procure passenger transportation services costing more than $100, excluding Federal transportation tax, unless otherwise exempted in this subpart.

(1) Any approval of the use of cash in excess of $100 should be obtained prior to travel. In the absence of advance written authorization or approval, passenger transportation services shall be purchased in accordance with policies and procedures prescribed in applicable Government travel regulations. It is a traveler's responsibility to be aware that the use of a GTR, contractor-issued charge card, or GTS account may be required to obtain certain discount fares and to comply with the mandatory provisions of the Federal Travel Regulation (FTR) governing the use of contract airline service between designated city-pairs. Cash shall not be used to circumvent the regulations governing airline city-pair contracts.

(2) If requiring the use of personal funds to purchase the services set forth in paragraph (a) of this section would impose a financial hardship on a traveler, the agency should authorize an advance of funds in accordance with provisions of the FTR (41 CFR 301–10.3).

(3) Use of a credit card, other than the GSA contractor-issued Government employee charge card, and all travelers checks shall be considered the equivalent of cash and subject to the $100 limitation provided in paragraph (a) of this section.

(4) Passenger transportation services procured in accordance with the group or charter provisions of the FTR (41 CFR 301–3.4(2)) are not subject to the provisions of this subpart.

(b) Cash purchases of transportation services in excess of $100 in nonemergency circumstances shall be discouraged and each agency shall establish procedures to encourage Federal travelers to use a Government charge card, GTS account, or GTR instead of cash to purchase passenger transportation services. Agencies shall monitor and control cash purchases of transportation services in a manner that will ensure such purchases are kept to a minimum.

(1) In those limited instances where a Federal traveler has failed to use a GTR, GTS account, or contractor-issued Government employee charge card, heads of agencies, or their designated representatives, may authorize travelers to exceed the $100 limitation when procuring passenger transportation services. Each agency shall establish guidelines for approval of cash purchases in excess of $100 with consideration given to whether the purchase resulted directly from: (i) emergency circumstances (where the use of a GTR, GTS account, or contractor-issued Government employee charge card was not possible); or (ii) agency failure to advise new employees or invited or infrequent travelers of the proper procedures for purchasing transportation services. Should a Federal employee make repeated cash purchases without just cause or deliberately attempt to circumvent use of GSA contract air or rail service for personal convenience or some other reason not consistent with sound travel management practices, the agency may send all documents related to the travel to the Comptroller General, General Accounting Office, Claims Section, Washington, DC 20548, for a decision on the traveler's right to reimbursement as provided in 31 U.S.C. 3702.

(2) Delegation of authority for authorizing and approving the use of cash in excess of $100 for the procurement of transportation services shall be held to as high an administrative level as practicable to ensure adequate consideration and review of the circumstances. These delegations of authority shall be made in writing and copies retained to permit monitoring of the system. These records of delegations of authority shall be available for examination by GSA auditors.

(3) To justify the use of cash in excess of $100 instead of a Government-provided method of payment when procuring passenger transportation services, both the agency head, or the designated representative, and the traveler shall certify on the travel voucher the reasons for such use.

(4) After a traveler has been reimbursed for a cash purchase, copies of travel authorizations, ticket coupons, and any ticket refund applications, or SF's 1170, Redemption of Unused Tickets, shall be forwarded for audit to the General Services Administration, Transportation Audit Division (FWA), Attention: Code E, Washington, DC 20405.

(5) Travel vouchers shall be maintained in the agency to be available for site audit by GSA auditors. General Records Schedule 9, Travel and Transportation Records (see 36 CFR Chapter XXII, § 1228.22), provides instructions for the disposal of travel vouchers.

(c) Suspected travel management errors and/or misroutings which result in higher travel costs to the Government will be reported by GSA (FWP) to the appropriate military or civilian agency travel manager for appropriate action.

(d) Travelers using cash to purchase individual passenger transportation services shall procure such services directly from carriers or from travel agents under GSA or

DOD contract (see § 101–41.203–1), and shall account for those expenses on their travel vouchers, furnishing passenger coupons or other evidence as appropriate in support thereof. Moreover, travelers shall assign to the Government the right to recover any excess payments involving carriers' use of improper rates. That assignment must be preprinted or otherwise annotated on the travel voucher and shall be initialed by the traveler.

(e) Travelers using cash to procure passenger transportation services shall be made aware by their employing agencies of the provisions of § 101.41.209–4 concerning a carrier's liability for liquidated damages because of failure to provide confirmed reserved space. Also, travelers using cash shall adhere to the regulations of the General Accounting Office (4 CFR 52.2) regarding the use of U.S.-flag vessels and air carriers (see § 101–41.203–1(b)).

8. *Effect on other directives.* This regulation supersedes the provisions of § 101–41.203–2.

Dated: May 18, 1993.

**Dennis J. Fischer,**

*Acting Administrator.*

[FR Doc. 93–17618 Filed 7–23–93; 8:45 am]

BILLING CODE 6820–24–M

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**41 CFR Part 101–44**

**[FPMR Amendment H–187]**

## Donation of Federal Surplus Personal Property to Providers of Assistance to Homeless Individuals

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This regulation relaxes the current use requirement placed on donations of personal property to nonprofit providers of assistance to homeless individuals. It removes the requirement for donated property to be used exclusively for the program operated to assist homeless individuals and allows such property to be used primarily for the donee's program for assistance to the homeless.

**EFFECTIVE DATE:** July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lester D. Gray, Jr., Director, Property Management Division (703–305–7240).

**SUPPLEMENTARY INFORMATION:** The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has been all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**Regulatory Flexibility Act**

The final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

**List of Subjects in 41 CFR Part 101–44**

Government property management, Surplus Government property.

For the reasons set forth in the preamble, 41 CFR part 101–44 is amended as follows:

### PART 101–44—DONATION OF PERSONAL PROPERTY

1. The authority citation for part 101–44 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

### Subpart 101–44.2—Donations to Public Agencies and Eligible Nonprofit Tax-Exempt Activities

2. Section 101–44.207 is amended by revising paragraph (a)(18.1) to read as follows:

**§ 101–44.207 Eligibility.**

* * * * *

(a) * * *

(18.1) *Provider of assistance to homeless individuals* means a public agency or a nonprofit, tax-exempt institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals, as defined in paragraph (a)(12.1) of this section. Property acquired through the donation program by such institutions or organizations must be used primarily for the program(s) operated to assist homeless individuals.

* * * * *

Dated: May 25, 1993.

**Dennis J. Fischer,**

*Acting Administrator of General Services.*

[FR Doc. 93–17616 Filed 7–23–93; 8:45 am]

BILLING CODE 6820–24–M

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**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 64**

**[Docket No. FEMA–7578]**

## List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the third column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638–7418.

**FOR FURTHER INFORMATION CONTACT:** James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or

construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Federal Insurance Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

**Regulatory Impact Analysis**

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| **New Eligibles—Emergency Program** | | | |
| Nebraska: Custer County, unincorporated areas | 310426 | June 3, 1993 | Mar. 14, 1978. |
| Michigan: | | | |
| Ingalliston, township of Menominee County | 260660 | June 9, 1993 | Do. |
| Lake, township of Menominee County | 260906 | .....do | Do. |
| Mellen, township of Menominee County | 260692 | .....do | Do. |
| Ray, township of Macomb County | 260910 | .....do | Do. |
| Roseville, City of Macomb County | 260909 | .....do | Do. |
| Illinois: Godfrey, village of Madison County | 171031 | June 18, 1993 | Do. |
| Missouri: Camden County, unincorporated areas | 290769 | .....do | Apr. 19, 1983. |
| Nebraska: Howard County, unincorporated areas | 310446 | June 21, 1993 | Do. |
| Indiana: Lawrence County, unincorporated areas | 180441 | June 24, 1993 | Sept. 29, 1978. |
| New Mexico: San Miguel County, unincorporated areas. | 350132 | June 28, 1993 | Aug. 16, 1977. |
| Texas: Presidio, city of Presidio County | 481651 | .....do | Do. |
| Oklahoma: Wayne, town of McClain County | 400450 | June 30, 1993 | Do. |
| **New Eligibles—Regular Program** | | | |
| Vermont: Hartland, town of Windsor County | 500149 | June 3, 1993 | June 15, 1988. |
| Iowa: Fredonia, city of Louisa County | 190308 | June 4, 1993 | Feb. 6, 1991. |
| California: Murrieta, city of Riverside County[1] | 060751 | June 9, 1993 | Do. |
| Nebraska: Hamilton County, unincorporated areas | 310441 | June 21, 1993 | Dec. 2, 1992. |
| Michigan: | | | |
| Cedarville, township of Menominee County | 260659 | June 24, 1993 | Nov. 4, 1992. |
| Northern Mariana Islands, Commonwealth of | 750001 | June 28, 1993 | May 15, 1991. |
| South Carolina: Awendaw, town of Charleston County[2]. | 450262 | .....do | Do. |
| **Reinstatements—Regular Program** | | | |
| New York: | | | |
| Brushton, village of Franklin County | 361480 | May 23, 1984, Emerg.; Feb. 19, 1986, Reg.; Nov. 4, 1992, Susp.; June 10, 1993, Rein. | Feb. 19, 1986. |
| Niles, town of Cayuga County | 360119 | July 21, 1975, Emerg.; Feb. 6, 1984, Reg.; Nov. 4, 1992, Susp.; June 10, 1993, Rein. | Feb. 6, 1984. |
| Sempronius, town of Cayuga County | 360123 | Jan. 7, 1976, Emerg.; Nov. 4, 1983, Reg.; Nov. 4, 1992, Susp.; June 10, 1993, Rein. | Nov. 4, 1983. |
| Illinois: Junction, village of Gallatin County | 170245 | May 1, 1975, Emerg.; Jan. 5, 1984, Reg.; Dec. 15, 1992, Susp.; June 21, 1993, Rein. | Jan. 5, 1984. |
| **Regular Program Conversions** | | | |
| **Region I** | | | |
| Maine: | | | |
| Abington, town of Plymouth County | 250259 | June 2, 1993, suspension withdrawn | June 2, 1993. |
| Middlefield, town of Hampshire County | 250166 | .....do | Do. |
| North Andover, town of Essex County | 250098 | .....do | Do. |

| State and location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date |
|---|---|---|---|
| Pepperell, town of Middlesex County | 250210 | ....do | Do. |
| **Region II** | | | |
| New York: | | | |
| Bainbridge, village of Chenango County | 360158 | ....do | Do. |
| Champion, town of Jefferson County | 360328 | ....do | Do. |
| **Region I** | | | |
| New Hampshire: Hampstead, town of Rockingham County. | 330211 | June 16, 1993, suspension withdrawn | June 16, 1993. |
| **Region II** | | | |
| New York: Milton, town of Saratoga County | 360722 | ....do | Do. |
| **Region II** | | | |
| Pennsylvania: | | | |
| Greenwood, township of Crawford County | 422390 | ....do | Sept. 10, 1984. |
| Horsham, township of Montgomery County | 420700 | ....do | June 17, 1991. |
| **Region IV** | | | |
| Florida Charlotte County, unincorporated areas | 120061 | ....do | June 16, 1993. |
| Mississippi: Rankin County, unincorporated areas | 280142 | ....do | Do. |
| **Region V** | | | |
| Michigan: Fraser, township of Bay County | 260657 | ....do | Do. |
| **Region VI** | | | |
| Texas: | | | |
| Austin, city of Travis and Williamson Counties | 480624 | ....do | Do. |
| Hays County, unincorporated areas | 480321 | ....do | Do. |
| Manor, city of Travis County | 481027 | ....do | Do. |
| Travis County, unincorporated areas | 481026 | ....do | Do. |
| **Region VII** | | | |
| Missouri: St. Charles County, unincorporated areas | 290315 | ....do | Dec. 15, 1992. |
| **Region IX** | | | |
| Arizona: | | | |
| St. Johns, city of Apache County | 040010 | ....do | June 16, 1993. |

[1] The City of Murrieta has adopted by reference Riverside County's FIRM dated September 30, 1988 (Panel 0225B) and all subsequent amendments and/or revisions.

[2] The Town of Awendaw has adopted Charleston County's (#455413) Flood Insurance Study and Flood Insurance Rate Map (FIRM) dated November 4, 1992, for flood insurance purposes.

Code for reading fourth column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension; Rein.-Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 16, 1993.

**Francis V. Reilly,**

*Deputy Administrator, Federal Insurance Administration.*

[FR Doc. 93–17546 Filed 7–23–93; 8:45 am]

BILLING CODE 6718–21–P

**44 CFR Part 64**

**[Docket No. FEMA–7580]**

## Suspension of Community Eligibility

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** James Ross MacKay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–2717.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain

management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

**Regulatory Impact Analysis**

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Regular Program Conversions** | | | | |
| **Region II** | | | | |
| New York: | | | | |
| Gates, town of Monroe County ..... | 360416 | July 30, 1974, Emerg; Aug. 2, 1993, Reg; Aug. 2, 1993, Susp. | Aug. 2, 1993 ..... | Aug. 2, 1993. |
| Middleton, town of Delaware County ... | 360209 | July 30, 1976, Emerg; May 15, 1985, Reg; Aug. 2, 1993, Susp. | Aug. 2, 1993 ..... | Do. |
| Watertown, City of Jefferson County ... | 360354 | July 23, 1975, Emerg; June 5, 1985, Reg; Aug. 2, 1993, Susp. | Aug. 2, 1993 ..... | Do. |
| Watertown, town of Jefferson County .. | 360355 | July 7, 1975, Emerg; Oct. 15, 1985, Reg; Aug. 2, 1993, Susp. | Aug. 2, 1993 ..... | Do. |
| **Region III** | | | | |
| West Virginia: | | | | |
| Jefferson County unincorporated areas | 540065 | Dec. 15, 1975, Emerg; Oct. 15, 1980, Reg; Aug. 2, 1993, Susp. | Aug. 2, 1993 ..... | Do. |
| **Region V** | | | | |
| Minnesota: | | | | |
| Chisago County unincorporated areas . | 270682 | Sept. 4, 1975, Emerg; Apr. 18, 1983, Reg; Aug. 2, 1993, Susp. | Aug. 2, 1993 ..... | Do. |

| State and location | Community No. | Effective date of authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region VI** | | | | |
| Oklahoma: | | | | |
| Lindsay, city of Garvin County | 360209 | July 30, 1976 Emerg; May 15, 1985, Reg; Aug. 2, 1993, Susp. | Aug. 2, 1993 | Do. |
| **Regular Program Conversions** | | | | |
| **Region I** | | | | |
| Connecticut: | | | | |
| Berlin, town of Hartford County | 090022 | Jan. 14, 1975, Emerg; July 16, 1980, Reg; Aug. 16, 1993, Susp. | May 3, 1993 | Aug. 16, 1993. |
| Maine: | | | | |
| Glenburn, town of Penobscot County | 230106 | July 15, 1975, Emerg; Aug. 5, 1991, Reg; Aug. 16, 1993, Susp. | Aug. 16, 1993 | Do. |
| Guilford, town of Piscataquis County | 230117 | July 17, 1975, Emerg; July 16, 1979, Reg; Aug. 16, 1993, Susp. | Aug. 16, 1993 | Do. |
| **Region III** | | | | |
| Pennsylvania: | | | | |
| Washington, township of Westmoreland County. | 422196 | Jan. 3, 1977 Emerg; Apr. 16, 1982, Reg; Aug. 16, 1993, Susp. | Aug. 16, 1993 | Do. |
| Buckingham, township of Wayne County. | 422159 | May 12, 1975, Emerg; Aug. 19, 1985, Reg; Aug. 16, 1993, Susp. | Aug. 16, 1993 | Do. |
| **Region V** | | | | |
| Wisconsin: | | | | |
| Eau Claire County, unincorporated areas. | 555552 | May 28, 1971, Emerg; Jan. 12, 1973, Reg; Aug. 16, 1993, Susp. | Aug. 16, 1993 | Do. |

Code for reading fourth column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: July 16, 1993.

**Francis V. Reilly,**

*Deputy Administrator, Federal Insurance Administration.*

[FR Doc. 93-17547 Filed 7-23-93; 8:45 am]

BILLING CODE 6718-21-P

**44 CFR Part 64**

**[Docket No. FEMA-7579]**

## Suspension of Community Eligibility

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** As shown in the fifth column of the tables below.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** James Ross Mackay, Acting Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management requirements. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, 44 CFR 60.7 gives communities six months to revise their floodplain management regulations to comply with any revised NFIP regulation or be subject to suspension from participation in the NFIP.

The communities listed in this document no longer meet the statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the fifth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed

in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirement, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

**Regulatory Impact Analysis**

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

**PART 64—[AMENDED]**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

| State | Community name | County | Community No. | Effective date |
|---|---|---|---|---|
| *Regular Program Conversions* | | | | |
| **Region I** | | | | |
| Vermont | Jericho, Town of | Chittenden | 500037 | Aug. 2, 1993. |
| **Region III** | | | | |
| Pennsylvania | Bethlehem, Township of | Northampton | 420980 | Do. |
| Do | Dauphin, Borough of | Dauphin | 420375 | Do. |
| Do | Delaware, Township of | Northumberland | 421010 | Do. |
| Do | Harrison, Township of | Potter | 421978 | Do. |
| Do | Swatara, Township of | Dauphin | 420398 | Do. |
| Do | Wayne, Township of | Mifflin | 421240 | Do. |
| **Region V** | | | | |
| Indiana | Brook, Town of | Newton | 180180 | Aug. 16, 1993. |
| Do | Hamlet, Town of | Starke | 160241 | Do. |
| Do | Hamilton, Town of | Steuben | 160080 | Do. |
| Do | Remington, Town of | Jasper | 180101 | Do. |
| Do | Princeton, City of | Gibson | 180073 | Do. |

(Catalog of Federal Domestic Assistance No 83.100, "Flood Insurance.")

Issued: July 16, 1993.

**Francis V. Reilly,**

*Deputy Administrator, Federal Insurance Administration.*

[FR Doc. 93–17548 Filed 7–23–93; 8:45 am]

BILLING CODE 6718–21–P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[CC Docket No. 90–571; FCC 93–357]**

**Telecommunications Relay Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Third Report and Order (Third R&O) amends the Commission's rules regarding telecommunications relay services (TRS) to establish a shared-funding, TRS interstate cost recovery plan. This action is pursuant to requirements of the Americans with Disabilities Act of 1990 (ADA) which, among other things, amended Title II of the Communications Act of 1934 by adding section 225, and will have the effect of implementing an effective cost recovery program interstate TRS costs.

**EFFECTIVE DATES:** July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Linda Dubroof, Domestic Facilities Division, Common Carrier Bureau, (202) 634–1808, or James Lande, Industry Analysis Division, Common Carrier Bureau, (202) 632–1371.

**SUPPLEMENTARY INFORMATION:** This summarizes the Commission's Third R&O adopted July 15, 1993, and released July 20, 1993, in the matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Third Report and Order (CC Docket 90–571, FCC 93–357). The Commission finds good cause for making the rule amendments effective on less than 30 days notice because Title IV of the ADA requires TRS implementation by July 26, 1993. The Third R&O and supporting file are available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center,

room 239, 1919 M St., NW., Washington, DC, or copies may be purchased from the Commission's duplicating contractor, ITS, 2100 M St., NW., suite 140, Washington, DC 20037, phone (202) 857–3800. The Third Report and Order will be published in the FCC Record.

**OMB Review**

The following collections of information contained in the final rules have been submitted to the Office of Management and Budget (OMB) for approval. Expedited review and approval of the information collections by August 3, 1993, has been requested.

*Title:* Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

*OMB Control No.:* 3060–0536.

*FCC Form No.:* FCC Form 431.

*Action:* Revision.

*Respondents:* Businesses and other for profit, including small businesses.

*Frequency of Response:* On occasion and annually.

*Estimated Annual Burden:* 5,000 responses; 9.266 hours per response; 46,330 hours total.

Public burden for the collection of information is estimated as above. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Records and Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0536), Washington, DC 20503.

*Needs and Uses:* The Third Report and Order adopts the rules and requirements that implement the shared-funding program for recovery of interstate TRS costs. The information will be used to administer the program. Respondents are all interstate service providers who must contribute to the TRS Fund and TRS providers seeking payment from the TRS Fund.

**Analysis of Proceeding**

This summarizes the Commission's Third R&O in the matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990 (ADA), (CC Docket 90–571, FCC 93–357, adopted July 15, 1993, and released July 20, 1993). In the Report and Order and Request for Further Comments, released July 26, 1991, 6 FCC Rcd 4657 (1991), (56 FR 36729, August 1, 1991), the Commission adopted rules to implement the ADA. The rules require each common carrier providing telephone voice transmission services to provide TRS not later than July 26, 1993, throughout the area in which it offers services. Carriers may provide services individually, through designees, through a competitively selected vendor, or in concert with other carriers. The Commission also fashioned a comprehensive set of rules which set forth terminology and definitions of TRS, prescribe operational, technical, and functional minimum standards of all TRS providers, and delineate the state certification process. Specifically, the Commission's rules require that TRS shall be capable of handling any type of call normally provided by common carriers. The burden of proving the infeasibility of handling any type of call is on the carriers. With regard to confidentiality, the Commission's rules require that, consistent with the obligations of common carrier operators, TRS communications assistants (CAs) are prohibited from disclosing the content of any relayed conversation regardless of content. Furthermore, the Commission, noting that the record was not adequate to determine a specific cost recovery mechanism, sought further comments containing specific proposals on interstate cost recovery.

In an Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking, 8 FCC Rcd 1802 (1992), (58 FR 12175, March 3, 1993) (TRS II), released February 25, 1993, the Commission proposed rules tasking the National Exchange Carrier Associations, Inc. (NECA) with the responsibility for administering the shared-funding plan, but the Commission invited other proposals. Under the proposed rules, the Administrator's performance would be reviewed after an initial two year period.

In this Third R&O adopted July 15, 1993, the Commission adopts rules implementing the TRS Fund, a shared-funding mechanism to recover interstate TRS costs. The Commission, in this Third R&O determines that the TRS Fund will be administered for two years, on an interim basis, by NECA. NECA will be required to report administrative costs to the Commission on an annual basis and must establish a non-paid, voluntary, advisory committee to monitor the funding mechanism. The Commission will review the TRS Fund administrator's performance, and will entertain proposals by other parties interested in functioning as future administrator of the TRS Fund.

The Third R&O also clarifies the Commission's proposed rule defining "interstate" service and sets forth a method of calculating contributions to, and payments from, the TRS Fund. The Commission affirms that contributions shall be based on relative share of gross interstate revenues, and that interstate carriers services contributors shall include, but are not limited to: resale, cellular, access (including federal subscriber line charges), personal communications services (PCS), packet-switched, WATS, video, telex, mobile radio, 800, 900, operator, message telephone (MTS), private dedicated, international, satellite, and intraLATA service providers.

Initial contributions to the TRS Fund are due September 26, 1993. Contributors will calculate their contribution to the TRS Fund as the product of their subject revenues for the prior calendar year and contribution factor determined by the Commission. The minimum yearly contribution is $100. Appendix D of the Third R&O "TRS Fund Worksheet" outlines procedures for contributors to make their contributions to the TRS Fund Administrator.

Payments from the TRS Fund to TRS providers will be based on the average rate of interstate TRS minutes of use. TRS providers in compliance with the minimum standards set forth in the rules shall be eligible for TRS Fund payments. State contracted TRS providers selected by the state may submit data to the administrator and the administrator may make payments directly to those contracting parties.

The Commission found that imposition of Part 36 jurisdictional separations requirements on TRS providers who are not common carriers presents unnecessary administrative burdens. Therefore, the Commission directed the administrator to fashion a form that would establish adequate account definitions and procedures reasonably tailored to meet the needs of TRS. Further, the Commission found that existing accounting and separations rules should be adequate to deal with the provision of interstate TRS by subject service providers.

**Final Regulatory Flexibility Analysis**

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, the Commission's final analysis in this Third R&O is as follows:

*I. Need and Purpose of This Action*

This Third R&O further amends part 64 of the Commission's rules to require

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that each common carrier engaged in interstate and/or intrastate telephone voice transmission services shall, no later than July 26, 1993, provide telecommunications relay services throughout the area in which it offers service. The rule amendments are required by the Americans with Disabilities Act of 1990, which, *inter alia*, added section 225 to the Communications Act of 1934, as amended, 47 U.S.C. 225. The rules are intended to ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to individuals in the United States

II. *Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis*

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

III. *Significant Alternatives Considered*

The Order on Reconsideration, Second Report and Order and Further Notice of Proposed Rulemaking in this proceeding offered several proposals and requested comments as well as the views of commenters on other possibilities. The Commission has considered all comments, and has adopted most of its proposals in addition to some alternatives recommended by commenters. The Commission vehicles considers its Third R&O to be the most reasonable course of action under the mandate of Section 225 of the Communications Act of 1934, as amended.

The Secretary shall send a copy of this Third R&O including the certification to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(A) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

**Ordering Clauses**

1. Accordingly, It is Ordered, That, pursuant to Sections 1, 4(i), 4(j), 201–205, 225 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 154(j), 201–205, 225 and 403, Part 64 of the Commission's Rules and Regulations Is Amended as set forth below, effective July 26, 1993.[1]

2. It is Further Ordered, That the *TRS Fund Worksheet*, July 1993 is hereby adopted, and the worksheet will be published in the **Federal Register**.

3. It is Further Ordered, That, pursuant to the requirements of Section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Secretary shall cause a summary of this Third Report and Order to be published in the **Federal Register** which shall include a statement describing how members of the public may obtain such copies. The Secretary shall also provide a copy of this Third Report and Order to each state utility commission and to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 64**

Communications, Common carriers, Handicapped, Individuals with hearing and speech disabilities, Telecommunications relay services.

Federal Communications Commission
**William F. Caton,**
*Acting Secretary.*

**Amended Rules**

Part 64 of chapter I of Title 47 of the Code of Federal Regulations, is amended as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

**Authority:** Section 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 225, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 225 unless otherwise noted.

2. Section 64.604(c)(4)(iii) is added to read as follows:

**§ 64.604 Mandatory minimum standards.**

(c) * * *

(4) * * *

(iii) Telecommunications Relay Services Fund. Effective July 26, 1993, an Interstate Cost Recovery Plan, hereinafter referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(A) Contributions. Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of its relative share of gross interstate revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) Contribution computations. Contributors' contribution to the TRS fund shall be the product of their subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to total interstate revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years contributions. Each subject carrier must contribute at least $100 per year. Service providers whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Contributions shall be calculated and filed in accordance with a "TRS Fund Worksheet," which shall be published in the Federal Register. The worksheet sets forth information that must be provided by the contributor, the formula for computing the contribution, the manner of payment, and due dates for payments. The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of Section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions.

(C) Data collection from TRS Providers. TRS providers shall provide the administrator with true and adequate data necessary to determine TRS fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with Part 32 of the Communications Act, and other

[1] We find good cause for making the rule amendments effective on less than 30 days' notice because Title IV of the ADA requires TRS implementation by July 26, 1993.

historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.

(D) The TRS Fund will be subject to a yearly audit performed by an independent certified accounting firm or the Commission, or both.

(E) Payments to TRS Providers. TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(4)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with Parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator.

(F) TRS providers eligible for receiving payments from the TRS Fund are:

(*1*) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.605; or

(*2*) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or

(*3*) Interstate common carriers offering TRS pursuant to § 64.604.

(G) Any eligible TRS provider as defined in paragraph (c)(4)(iii) (F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) Administrator reporting, monitoring, and filing requirements. The administrator shall perform all filing and reporting functions required under paragraphs (c)(4)(iii) (A) through (J), of this section. Beginning in 1994, TRS payment formulas and revenue requirements shall be filed with the Commission on October 1 of each year, to be effective for a one-year period beginning the following January 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM), and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually (in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of advisory committee deliberations.

(I) Information filed with the administrator. The administrator shall keep all data obtained from contributors and TRS providers confidential, shall not use such data except for purposes of administering the TRS Fund, and shall not disclose such data in company-specific form unless directed to do so by the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers.

(J) The administrator's performance and this plan shall be reviewed by the Commission after two years.

(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

* * * * *

**Appendix**

**Note:** This appendix will not appear in the Code of Federal Regulations.

CALCULATION OF THE TRS FUND CONTRIBUTION FACTOR

| | Reportable revenue (millions) | Percent interstate | Interstate revenue (millions) |
|---|---|---|---|
| Total Toll Revenue [1] | $71,803 | 55 | $39,492 |
| Interstate Access [2] | 23,254 | 100 | 23,254 |
| Cellular [3] | 5,131 | 14 | 716 |
| Total Subject Revenue | | | 63,464 |
| First Year Fund Requirement | | | 30 |
| Contribution Rate [4] | | | 0.00047 |

[1] 1991 Total toll service revenues from the "Long Distance Market", March 26, 1993, plus 3.5% annual growth. The 55% allocation is based on the ratio of interstate dial equipment minutes to total toll dial equipment minutes are reported in the "Monitoring Report", CC Docket No. 87-339, May 1993.

[2] From the 1991/1992 Statistics of Communications Common Carriers.
[3] 1990 Cellular and other radio telephone revenues reported in the "Annual Survey of Communications Services: 1990", by the U.S. Department of Commerce, plus 20% annual growth. The 14% allocation is based on the ratio of interstate dial equipment minutes to total dial equipment minutes
[4] Carriers with interstate revenues of less than $212 thousand will pay $100. Carriers with interstate revenues exceeding $2539 thousand can pay monthly.

**TRS Fund Worksheet**

Subject to OMB approval
Expires
Estimated Average
Burden Hours Per
Response: 2 hours.

**Instructions for Completing the Worksheet for Calculating and Filing Carrier Contributions to fund Interstate Telecommunications Relay Service (TRS)—July 1993; Notice to Individuals**

Section 64.604(c)(4)(iii) of the Commission's Rules requires all carriers providing interstate service to complete this worksheet and to contribute funding for Interstate Telecommunications Relay Service (TRS). The collection of information and fees stems from the Commission's authority under the Communications Act of 1934, Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply sections 201, 211, 218, 219, 220, 225 48 Stat. 1073, 1077, as amended; 47 U.S.C. 201, 211, 218, 219, 220, 225. The data in the report will be used to ensure that carriers properly fund interstate TRS. Selected information provided in the worksheet will be made available to the public in a manner consistent with the Commission's Rules. All carriers providing interstate telecommunications service must file this worksheet.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93.579, December 31, 1974, 5 U.S.C. 552(a)(e)(3), and the Paperwork Reduction Act of 1980. P.L. 96–511, Section 3504(c)(3).

Public reporting burden for this collection of information is estimated to average 2 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection and information, including suggestions for reducing the reporting burden to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction project (3060), Washington, DC 20503.

*I. Information*

On July 15, 1993, the Commission adopted rules that require all providers of interstate telecommunications services to contribute to the provision of TRS based on their proportionate share of gross interstate revenues. Section 64.604(c)(4)(iii) directs carriers to calculate and file their contribution in accordance with TRS Fund Worksheet.

Contributions shall be calculated and filed in accordance with a "TRS Fund Worksheet", which will be prepared and published in the Federal Register. The worksheet sets forth information that must be provided by the contributor, the formula for computing the contribution, the manner of payment, and due dates for payments.

*II. Filing Requirements and General Instructions*

*A. Who must file*

All common carriers providing interstate telecommunications services within the United States must file this worksheet. For this purpose, the United States is defined as the conterminous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

For the purpose of calculating TRS contributions, interstate telecommunications service includes, but is not limited to the interstate portion of the following types of services: cellular telephone and paging, mobile radio, operator services, persons' communications service (PCS), access (including Subscriber Line Charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, international, intraLATA, and resale services. Carriers that provide only intrastate service need not file. Note, however, that all local exchange carriers provide interstate access services, and must file.

Entities may not file summary reports for more than one carrier. Each legal entity that provides interstate telecommunications service must file separately. All affiliates or subsidiaries should identify the ultimate controlling parent or entity in Block 1, Line (1-b)—Holding Company.

*B. When and Where to File*

The 1993 TRS contribution period will fund interstate TRS provided between July 26, 1993 and April 30, 1994. Monthly contributions for the 1993 TRS contribution period must be received by the 26th of each month for September 1993 through March 1994. A revised TRS Worksheet will be released for the 1994 TRS contribution period. The revised TRS Worksheet will have instructions for payments due April 26, 1994 through March 26, 1995.

The legal name of the carrier should be shown on all checks exactly as it appears on the completed TRS Fund Worksheet. Do not mail the TRS worksheet or TRS contribution checks to the FCC. Payments must be received by the FCC TRS Fund Administrator—the National Exchange Carrier Association (NECA)—no later than the dates indicated below. The filing schedule is as follows:

| Mailing address | Worksheet due September 26, 1993 | Payments due September 26, 1993 through March 26, 1993* |
|---|---|---|
| NECA TRS, P.O. Box 360090, Pittsburgh, PA., 15251–6090 ... NECA, FCC TRS Fund Administration, 100 South Jefferson Rd., Whippany, NJ., 07981. Telephone: 201–884–8000 | ..... Completed Worksheet ..... | Clerk**. Photocopy of check**. |

* Carriers whose total 1993 TRS contribution is less than $1200 must pay the total amount to the FCC TRS Fund Administrator no later than September 26, 1993. Carriers whose total 1993 TRS contribution is $1200 or greater may elect to make seven equal monthly payments with the first payment due to the FCC TRS Fund Administrator no later than September 26, 1993.
** Carriers are encouraged to contact the FCC TRS Fund Administrator to make arrangements for Electronic Funds Transfer.

*C. Rounding of Numbers*

All information provided in the worksheet, except the signature, should be neatly printed in ink or typed. Reported revenues in block 2, column (b) may be rounded to the nearest thousand dollars. Regardless of rounding, all dollar amounts must be reported in whole dollars. For example, $2,271,881.93 could be reported as $2,271,882 or as $2,272,000, but could not be reported as $2272 thousand or $2.272 million.

Percentages reported in block 2, column (c) should be rounded to the nearest whole percent. For example, if the ratio of interstate to total revenue was .4269155, then the figure 43% should be reported. Percentages between 0% and 1% should be reported as 1%.

Interstate revenues are calculated as total revenues in column (b) times the percentage shown in column (c). Calculated interstate revenues should be rounded to the nearest whole dollar and entered in column (e). Similarly, the total contribution (block 3, line (18)) and amounts enclosed with the filing (block 3, line (19)) should be rounded to the nearest whole dollar.

*D. Compliance*

Carriers failing to file the TRS Worksheet in a timely fashion are subject to the fines prescribed in Section 219(b) of the Communications Act of 1934 (the Act). Carriers filing false information are subject to fines or imprisonment as specified in Section 220(e) of the Act. Carriers failing to contribute in a timely fashion are subject to fines prescribed in Section 503(b) of the Act. In addition, Section 64.604(c)(4) of the Commission's Rules authorizes the FCC Fund Administrator to bill a carrier for reasonable costs, including legal fees, that are caused by improper filing of the worksheet or overdue TRS contributions.

*III. Specific Instructions*

*A. Block 1: Carrier Identification*

Block 1 of the TRS Fund Worksheet requires identification information, including: the legal name of the carrier; the holding company or controlling entity, if any, the principal name under which the company conducts carrier activities; and, the complete mailing address of the corporate headquarters. In addition, Block 1 requests a telephone number that can be used for customer inquiries. Information provided in Block 1 will be published by the Common Carrier Bureau in the "Long Distance Carrier Locator".

*B. Block 2: Carrier revenue for calendar year 1992.—1. Column (b)*

Provide gross revenues for all telecommunications services. Gross revenues consist of total revenues billed to customers with no allowances for uncollectibles. For international service, gross revenues consist of gross revenues billed by U.S. carriers with no allowances for settlement payments. Gross revenues should also include any surcharges on communications services that are billed to the customer and either retained by the carrier or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded as revenue, but which are instead remitted to government bodies.

Report carrier revenues using the categories shown in column (a) of Block 2. Carriers required to use the Uniform System of Accounts (USOA) prescribed in Part 32 of the Commission's rules should base their response on their USOA account data. Other carriers should divide gross revenues based on the following descriptions.

Line (5)—Local exchange service—should include the basic local service revenues of local exchange carriers except for local private line revenue, access revenues, and revenues from providing mobile or cellular services to the public. Line (5) should include Account 5001—basic area revenue; Account 5002—Optional extended area revenue; Account 5003—Cellular mobile revenue (revenue to the local exchange carrier for messages between a cellular customer and another station within the mobile service area); Account 5050—Customer premises revenue; Account 5060—Other local exchange revenue; and, Account 5069—Other local exchange revenue settlements. Line (5) should also include amounts in Account 5004—Other mobile services revenue—that were derived from connecting with mobile service carriers.

Line (6)—Local private line service—should include revenues from providing local services that involve dedicated circuits, private switching arrangements and/or predefined transmission paths. Line (6) should include amounts recorded in Account 5040—Local private line revenue.

Line (7)—Mobile radio, cellular, and paging—should include revenues from the provision of mobile radio, cellular, and paging services to the public. Line (7) should also include amounts in Account 5004—Other mobile services revenue—that were derived from providing service directly to the public.

Line (8)—Alternative access, PCS & other—should include all other local service revenues, including revenues for competitive access providers, personal communications services (PCS), etc. Line (8) should include Account 5200—Miscellaneous revenue.

Long distance revenues include intrastate, interstate, and international long distance services. Divide long distance revenues between access service, operator service, other switched service, long distance private line services, and all other long distance services.

Line (9)—Interstate access—should include revenues in Account 5081—End User revenue; Account 5082—Switched access revenue; and, Account 5083—special access revenue. Only local exchange carriers should be reporting data in line (9).

Line (10)—Intrastate access—should include revenues in Account 5084—State access revenue. Only local exchange carriers should be reporting data in line (10).

Line (11)—Operator service—should include all credit card calls, person to person calls, and calls with alternative billing arrangements such as third number billing and collect calls. Operator service revenues should include all toll traffic from coin, accommodation and prison telephones.

Line (12)—Non-operator switched toll service—should include amounts from Account 5100—Long distance message revenue—except for amounts reported in Line (11). Line 12 includes WATS, 800, 900, "WATS like" and similar service.

Line (13)—Long distance private line service—should include revenue from dedicated circuits, private switching arrangements, and/or predefined transmission paths, extending beyond the basic service area. Line (13) should include Account 5120—Long distance private network revenue.

Line (14)—All other long distance—should include all other revenues from providing long distance communications services. Line (14) should include Account 5160—Other long distance revenue.

Total the figures in column (b) for Line (5) through Line (14) and enter this amount in Line (15b). This should represent the total communications revenues for the company.

*2. Column (c) and Column (d)*

For each entry in Line (5) through Line (14), estimate the percentage of revenues in column (b) that are for interstate and/or international service, and enter this percentage in Column (c). Interstate revenues include all revenues received for calls that do not originate and terminate in the same state. For example, if a cellular carrier collects a fixed amount of revenue per minute of traffic, and 10% of minutes are interstate, then interstate revenues would include 10% of the per minute revenues.

Wherever possible, carriers should calculate the percentage of total revenues that are interstate by using information from their books of accounts and other internal data reporting systems. Carriers who cannot calculate a percentage by using information from their books of accounts and other internal data reporting systems, may elect to rely on a special study to estimate the percentages. Place a check mark in Column (d) if the percentage shown in column (c) was based on a special study.

*3. Column (e)*

Multiply the gross revenues reported in column (b) by the interstate percentages reported in column (c), putting the results in column (e). The sum of the figures in column (e), lines (5) through (14), should be entered in line (15e).

*C. Block 3: Calculation of Contribution*

Use block 3 in the worksheet to calculate the TRS contribution for the period July 1993 through April 1994. Total interstate revenues from line (15e) should be copied to line (16). This amount must be multiplied by the Contribution Rate shown in line (17), with the result entered in line (18). The contribution rate is 0.00047 for the 1993 filing year.

If the result of the calculation is less than $100, then the total contribution for the period July 1993 through March 1994 is $100. If the total contribution is less than $1,200, then the carrier should remit the total contribution with the worksheet. If the total liability is equal to or greater than $1,200, then the carrier may elect to make 7 equal monthly payments. The monthly contribution should be calculated as the amount in line (18) divided by 7.0, rounded to the nearest whole dollar. Enter the amount of the September 26, 1993 fund contribution in line (19). If the carrier elects to make monthly contributions, the six additional monthly contributions must be received by the 26th of succeeding months, October 1993 through March 1994.

Section II–B above provides directions for mailing the completed TRS Fund Worksheet and checks for amounts due to the FCC Funding Administrator. Carriers who check the box in line (19) will receive monthly payment reminders. These reminders will be mailed to the address shown in line (3). Failure to receive a reminder notice will not justify late payment.

The seven payment schedule specified above is adopted for transition purposes. On April 26, 1994, carriers will file a worksheet using data for calender 1993. Carriers whose contributions are $1,200 or greater will be allowed to make 12 equal payments to fund TRS for May 1994 through April 1995.

*D. Block 4: Certification*

An officer of the fund contributor must examine the data provided in the TRS Fund Worksheet and certify that the information provided therein is accurate. In addition, the fund contributor should provide the name of a contact person who can provide clarifications, if necessary, and who could serve as the first point of contact in the event that either the FCC or the FCC Fund Administrator should choose to audit information provided by the company.

BILLING CODE 6712-01-M

## Annual TRS Fund Worksheet

Subject to OMB Approval Expires
(Please read instructions before completing) Estimated Average Burden Hours Per Response: 2 hours

### Block 1: Carrier Identification

| | |
|---|---|
| 1a Legal Name of Carrier | |
| 1b Holding Company | |
| 2 Principal Name for Carrier Activities | |
| 3 Complete Mailing Address of Carrier Corporate Headquarters | |
| 4 Telephone # for Customer Inquiries | ( ) - |

### Block 2: Carrier revenue for calendar year 1992

| (a) | Gross Revenues (b) | % Interstate (c) | Special study (d) | Interstate Revenues (e) = (b) x (c) |
|---|---|---|---|---|
| Local Services | | | | |
| 5 Local exchange service | $ | % | | $ |
| 6 Local private line service | $ | % | | $ |
| 7 Mobile radio, cellular, and paging | $ | % | | $ |
| 8 Alternative access PCS & other | $ | % | | $ |
| Long Distance | | | | |
| 9 Interstate access | $ | 100 % | | $ |
| 10 Intrastate access | $ | 0 % | | $ 0 |
| 11 Operator service | $ | % | | $ |
| 12 Non-operator switched toll service | $ | % | | $ |
| 13 Long distance private line service | $ | % | | $ |
| 14 All other long distance | $ | % | | $ |
| 15 Total lines 5 through 14 | $ | | | $ |

### Block 3: Calculation of Contribution

| | |
|---|---|
| 16 Interstate Revenues from Line 15e | $ |
| 17 Contribution Rate: | x 0.00047 |
| 18 Total CONTRIBUTION for July 1993 through March 1994: line 16 x line 17 [if line 16 is greater than $0 then the minimum contribution is $100] | $ |
| 19 Contribution to be paid this month: [Enter the amount from line 18 if it is less than $1200. Otherwise, the contributor may divide line 18 by 7.0 to calculate equal monthly contributions.] Check here for monthly billing reminders ----------> ☐ | $ |

### Block 4: CERTIFICATION

I certify that I am an officer of the carrier named above, that I have examined the foregoing report and that to the best of my knowledge, information and belief, all statements of fact contained in this worksheet are true and that said worksheet is an accurate statement of the affairs of the above named carrier for the period January 1, 1992 through December 31, 1992.

| | |
|---|---|
| 20 Printed Name of Officer | |
| 21 Position with carrier | |
| 22 Signature | |
| 23 Date | |
| 24 Contact Person | |
| 25 Telephone Number of Contact Person | ( ) - |

Mail checks to: NECA TRS P.O. Box 360090 Pittsburgh, PA 15251-6090 For additional information call NECA 202-884-8000
Mail worksheet and photocopy of checks to: NECA - FCC TRS Fund Administration 100 South Jefferson Rd. Whippany, NJ 07981

Persons making willful false statements in the worksheet can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220 (e).

FCC 431
July 1993

[FR Doc. 93-17785 Filed 7-23-93; 8:45 am]
BILLING CODE 6712-01-C

## DEPARTMENT OF ENERGY

**48 CFR Parts 913, 922, 952, and 970**

**Acquisition Regulation; Contractor Employee Protection Program and Nuclear Hot Cell Services; Correction**

**AGENCY:** Department of Energy (DOE).

**ACTION:** Correction of final regulations.

**SUMMARY:** This document contains corrections to the final rules which were published on December 4, 1992, (57 FR 57638) and February 18, 1993, (58 FR 8909). The regulations involve the Contractor Employee Protection Program and provisions involving contracts for nuclear hot cell services.

**EFFECTIVE DATES:** January 4, 1993, for the Contractor Employee Protection Program and March 22, 1993, for the nuclear hot cell services contract provisions.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Langston, Office of Procurement, Assistance and Progfam Management, (PR–121), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8247.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations that are the subject of these corrections established the Contractor Employee Protection Program and added provisions involving contracts for nuclear hot cell services. The corrections revise an erroneous cross reference, remove "§" symbols which are not used in title 48, revise the effective date of contract clauses, and correct paragraph designations.

### Correction of Publication

1. The regulation published December 4, 1992, at 57 FR 57638, is corrected as follows:

**922.7101 [Corrected]**

On page 57639, third column, the reference in the second sentence of 922.7101 to "970.2274(b)" is changed to "970.2274(c)" and the two section symbols "§" in 922.7101 are removed.

**913.507, 952.222–70, 970.2274–2, and 970.5204–59 [Correction]**

Remove the section symbols "§" where they appear in:

—Page 57639, second column, section 913.507, second sentence;

—Page 57639, third column, section 952.222–70, both occurrences;

—Page 57640, second column, section 970.2274–2; and,

—Page 57640, third column, section 970.5704–59, three occurrences.

**970.5204–59 [Corrected]**

The date beside the clause title on page 57640, third column, is changed from "(December, 1992)" to "(JAN 1993)".

2. The regulation published February 18, 1993, at 58 FR 8909, is corrected as follows:

**952.225–70 [Corrected]**

On page 8911, first column, the date beside the clause title is changed from "(February, 1993)" to "(MAR 1993)" and in the third column at paragraph (b) of the clause a "(1)" is added before the word "consider" and a "(2)" is added before the word "add"; "(1)" is changed to "(i)" before the first use of the words "one or more"; and "(2)" is changed to "(ii)" before the second use of the words "one or more" in the first sentence.

Issued in Washington, DC on July 19, 1993.

**Berton J. Roth,**

*Acting Director, Office of Procurement, Assistance and Program Management.*

[FR Doc. 93–17582 Filed 7–23–93; 8:45 am]

BILLING CODE 6450–01–M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1145**

**[Ex Parte No. 394 (Sub-No. 10) Ex Parte No. 394 (Sub-No. 11)]**

**Railroad Rates on Recyclables—Exemptions; Cost Ratio for Recyclables—1993 Determination**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission amends its regulations to clarify that the prior partial exemption from regulation for certain nonferrous recyclable commodities is not limited to tariff filing and participation in annual compliance proceedings. Also, the regulations are amended to include additional recyclables in the list of commodity groups that qualify, under the procedures set forth in the Commission's regulations, for partial exemption from regulation.

**EFFECTIVE DATE:** July 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Schmitz, (202) 927–5720; W. C. Walston, (202) 927–6221; or David T. Groves, (202) 927–6395. [TDD for hearing impaired: (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** In Railroad Rates on Recyclables—Exemptions, 9 I.C.C.2d 593 (1993), procedures for partially exempting certain nonferrous recyclables from regulation were adopted. The decision specifically stated (*id.* at 603, emphasis in original) that certain recyclable commodities "are exempt[ed] from all regulatory requirements *except* the prohibition against raising above-the-cap rates." According to some commentors, however, the regulations adopted did not clearly delineate the scope of the exemption. The Commission amends Part 1145 of its regulations to state clearly that the commodities at issue are exempt from all regulation except maximum rate regulation.

Part 1145 is amended as set forth below, to reflect the fact that in Cost Ratio for Recyclables—1993 Determination, 9 I.C.C.2d *753* (July 23, 1993), five recyclable commodity groups were found to recover revenues less than the variable cost of the transportation, thus qualifying for partial exemption. The five commodity groups, which will be added to the list of partially exempted commodity groups shown in Part 1145 are those covered by Standard Transportation Commodity Code (STCC) recyclables STCC 22941, Textile Waste Processed; STCC 40221, Textile Waste, Scrap; STCC 42111 Shipping Containers (non-revenue); STCC 42112 Shipping Devices (non-revenue); and STCC 42311 Shipping Containers (returned empty).

Additional information is contained in the Commission's decisions. To obtain copies of the full decisions, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423, Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services (202) 927–5721.]

### Environmental and Energy Considerations

These actions will not significantly affect either the quality of the human environment or conservation of energy resources.

### Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our actions in these decisions will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. The decision in Ex Parte No. 394 (Sub-No. 10) simply clarifies the scope of the partial exemption issued earlier. The decision in Ex Parte No. 394 (Sub-No. 11) is largely a ministerial application of established cost formulas, and, as such, the economic impact, if any, of the

exercise on small entities will be minimal.

**List of Subjects in 49 CFR Part 1145**

Administrative practice and procedure, Freight, Railroads.

Decided: July 14, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, Walden.

Sidney L. Strickland, Jr.,

*Secretary.*

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1145 of the Code of Federal Regulations is amended as set forth below.

## PART 1145—RAILROAD RATES ON RECYCLABLE COMMODITIES

1. The authority citation for part 1145 continues to read as follows:

**Authority:** 49 U.S.C. 10321, 10505, 10731, and 10707a; 5 U.S.C. 553.

2. § 1145.9 is revised to read as follows:

**§ 1145.9 Exemptions.**

Unless otherwise ordered in a revocation proceeding, commodity groups whose revenues, both in the aggregate and for any carriers reporting individually, have been found in an annual compliance proceeding under these regulations to be below the variable costs of providing the service for all territories will be exempted from regulation, except that they will continue to be subject to the statutory provision prohibiting railroads from increasing individual rates that are already above the cap. Recyclable commodity groups will not be exempted if any individual movements of a commodity in the group have been shown by a shipper to exceed the statutory rate cap. Commodity groups currently qualifying for the partial exemption are Standard Transportation Commodity Code (STCC) 20511, Bakery Products; STCC 22941, Textile Waste Processed; STCC 22994, Packing or Wiping Cloths or Rags (Processed Textile Matter); STCC 30311, Reclaimed Rubber; STCC 40221, Textile Waste, Scrap; STCC 40281, Rubber or Plastic Scrap or Waste; STCC 41115, Articles, Used, Returned for Repair or Reconditioning; STCC 42111 Shipping Containers (non-revenue); STCC 42112 Shipping Devices (non-revenue); and STCC 42311 Shipping Containers (returned empty).

[FR Doc. 93-17667 Filed 7-23-93; 8:45 am]
BILLING CODE 7035-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 625

[Docket No. 930497-3097; I.D. No. 071593A]

### Summer Flounder Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule, extension of effective dates.

**SUMMARY:** An emergency interim rule is in effect through August 5, 1993, which revises the percentage of the summer flounder commercial quota allocated to the states and makes additional quota available to commercial vessels landing summer flounder in the State of Connecticut. The Secretary of Commerce (Secretary) extends the emergency interim rule for an additional 90 days from August 6 through November 3, 1993, because conditions warranting the emergency still exist.

**EFFECTIVE DATE:** The interim regulations amending part 625 published on May 7, 1993 (58 FR 27214) are extended from August 6 through November 3, 1993.

**ADDRESSES:** Copies of documents supporting this action may be obtained from: Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799.

**FOR FURTHER INFORMATION CONTACT:** Hannah Goodale, Fishery Policy Analyst, 508-281-9101.

**SUPPLEMENTARY INFORMATION:** Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule (58 FR 27214, May 7, 1993) that revised the percentages of 1993 commercial quota allocated to the states and made additional quota available to commercial vessels landing in the State of Connecticut. The emergency rule was effective from May 4 through August 5, 1993. With the agreement of the Mid-Atlantic Fishery Management Council, the Secretary extends the emergency interim rule for another 90 days under section 305(c)(3)(B) of the Magnuson Act because conditions warranting the emergency still exist. The emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why it was impossible to follow the procedures of that order.

**Authority:** 16 U.S.C. 1801 *et seq.*

**List of Subjects in 50 CFR Part 625**

Fisheries, Reporting and recordkeeping requirements.

Dated: July 21, 1993.

Nancy Foster,

*Acting Assistant Administrator for Fisheries.*

[FR Doc. 93-17696 Filed 7-23-93; 8:45 am]
BILLING CODE 3510-22-M

### 50 CFR Parts 672 and 675

[Docket No. 930232-3166; I.D. 120492C]

RIN 0648-AD39

### Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** NMFS is implementing regulatory amendments applicable to the groundfish fisheries off Alaska. The amendments will revise the existing definition of a pelagic trawl, implement a performance standard for trawls, and define a non-pelagic trawl. These measures are necessary to address management concerns in the groundfish fisheries. They are intended to promote the goals and objectives of the fishery management plans with respect to groundfish management off Alaska. A technical amendment also is implemented to correct an error in 50 CFR part 675.

**EFFECTIVE DATE:** August 19, 1993.

**ADDRESSES:** Individual copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Berg, Chief, Fisheries Management Division, 907-586-7229.

**SUPPLEMENTARY INFORMATION:**

**Background**

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands management areas (BSAI) is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for

the Groundfish Fishery of the BSAI. These FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

At times, amendments to regulations at 50 CFR parts 672 and 675 are necessary for conservation and management of the groundfish fisheries. This rule implements amendments to regulations as follows: (1) The existing definition of a pelagic trawl in §§ 672.2 and 675.2 is revised; (2) § 672.7 is revised to prohibit having on board 20 or more crabs caught with trawl gear when directed fishing for groundfish with trawl gear is prohibited; (3) § 675.7 is revised to prohibit having on board 20 or more crabs caught with trawl gear when directed fishing for pollock with nonpelagic trawl gear is prohibited; and (4) §§ 672.2 and 675.2 are amended by adding a definition of a nonpelagic trawl.

A proposed rule was published in the **Federal Register** on April 1, 1993 (58 FR 17196), that provided a description of, and basis for, these amendments to regulations. The proposed rule also contained amendments to directed fishing standards at §§ 672.20(g) and 675.20(h)(1). NMFS has determined that those amendments will not clearly resolve fisheries management problems as intended and will propose a revised regulatory amendment at a later date.

A complete discussion of the measures being implemented in this action is contained in the preamble to the proposed rule. Public comment on the proposed rule was invited through April 30, 1993. Four letters of comments were received during the comment period. They are summarized and responded to below. Additional information also is available in the EA/RIR/FRFA.

Upon reviewing the reasons for, and the comments on, these regulatory changes, the Secretary has determined that this rule is necessary for fisheries conservation and management, and has approved it.

## Changes in the Final Rule From the Proposed Rule

Proposed paragraphs 672.7(k) and 675.7(m) are redesignated as paragraphs 672.7(m) and 675.7(n) to accommodate new paragraphs recently implemented by final regulations.

Redesignated paragraphs 672.7(m) and 675.7(n) are changed to stipulate that only those crabs that are larger than 1.5 inches (38 millimeters) across the widest dimension will be considered for purposes of the trawl performance standard of 20 or more of any crab species.

In addition, paragraph 675.7(n) is changed to read, "Have on board at any particular time 20 or more crab * * *" rather than the proposed text, which read, "Catch 20 or more crab * * *". This change will make paragraph 675.7(n) consistent with the text in paragraph 672.7(m), as was intended by NMFS.

Proposed amendments to directed fishing standards at §§ 672.20(g) and 675.20(h)(1) are not being finalized in this action for the reason stated above.

The term net-sonde device is changed to net-sounder device in this final rule and also in existing regulatory text in §§ 672.24(d)(3) and 672.24(d)(4) to reflect vernacular used by the fishing industry.

## Technical Amendment

Section 675.5(c)(2)(i) changes "Gulf of Alaska" to "Bering Sea and Aleutian Islands." Reference to the GOA is an error.

## Response to Comments

*Comment 1:* The proposed definition of pelagic trawl should be adopted.

*Response:* NMFS agrees with the commenter.

*Comment 2:* The prohibition against the use of floats should not be implemented, because no evidence exists that having floats on a trawl will cause any detrimental effect on bycatch of flatfish or crabs. Most larger factory ships catch fish with traditional "high lift" nets or by collapsing midwater nets on the seabed during the day. At night they use large, fragile midwater nets.

*Response:* The prohibition against the use of floats has been discussed at length among industry representatives who participated in the development of the revised pelagic trawl definition. Representatives who say that floats should be allowed assert that when bottom doors are used with pelagic trawls, floats are needed to keep the mouth of the trawl open. Representatives who say that floats should not be allowed assert that certain vessel operators want to use floats to deploy midwater trawls in a manner similar to bottom trawls. If so, the use of floats tends to encourage fishing practices that the Council recommended be prohibited. Because the Secretary, in consultation with the Council, seeks to revise the definition of a pelagic trawl in a manner that will resolve past problems associated with a faulty pelagic trawl definition, he has determined that prohibiting the use of floats as proposed is a superior conservation and management measure with respect to accomplishing the goals and objectives of the Council. Therefore, the Secretary implements the revised definition including the prohibition against the use of floats.

*Comment 3:* While the proposed definition of a pelagic trawl is acceptable, the performance standard for the number of crab should be frameworked in the final rule to reflect changes in abundance of crab stocks.

*Response:* The fact that populations of crab increase or decrease in abundance is not relevant, because crabs should not be caught while using a pelagic trawl if it is deployed in a manner consistent with the Council's and agency's intent.

*Comment 4:* The proposed crab performance standard at 50 CFR 672.7(m), which reads, "have on board, at any particular time," is different from that at 50 CFR 675.2(n), which reads "catch * * * at any particular time." The latter standard of 20 crabs or more per tow is preferred.

*Response:* NMFS intended "have on board, at any particular time" in each regulation, and has adjusted the final rule at 50 CFR 675.7(n) accordingly. NMFS considered a performance standard on the basis of a tow, but instead has adopted the concept of the presence of crab at any particular time, as proposed. NMFS did so to avoid situations where vessel operators might avoid being in violation of the performance standard by contending that excessive numbers of crab resulted from more than one tow. NMFS recognizes that vessel operators must return any catch of any Tanner crab or king crab species, or parts thereof, to the sea immediately with a minimum of injury regardless of its condition. The crab performance standards applies to all crab species, some of which are not required by existing regulations to be immediately returned to the sea. NMFS is particularly concerned that enforcement officers would not be able to determine if numbers of crabs on board a vessel resulted from one tow or more than one tow. Therefore, NMFS has determined that the number of crab on board at any particular time is superior for purposes of fisheries conservation and management.

*Comment 5:* The term net-sounder rather than net-sonde should be used wherever it occurs in regulations.

*Response:* NMFS agrees and has revised this final rule and also existing regulatory text in §§ 672.24(d)(3) and 672.24(d)(4).

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*Comment 6:* Enforcement officers must be able to measure mesh sizes and calculate buoyancy of kites or floats to make this definition effective.

*Response:* Enforcement officers are trained to measure the mesh sizes that are used to describe a pelagic trawl. These officers will be able to ascertain the buoyancy of a float used to support a net sounder by determining whether a float will buoy a weight heavier than that allowed in regulations.

*Comment 7:* NMFS and U.S. Coast Guard enforcement of the pelagic trawl performance standard should be applied using discretion and common sense to account for many variables associated with gear performance that are simply unpredictable.

*Response:* Enforcement will be based on the text of the regulations.

*Comment 8:* A minimum carapace size of 1.5 inches for crab should be implemented to account for small-sized crab that are regurgitated by fish in a trawl catch, making the crab appear as if they had been caught in the trawl.

*Response:* NMFS concurs that implementation of a minimum carapace size of crab is necessary to differentiate those crab that likely occurred in a trawl catch after being regurgitated by trawl-caught fish and has implemented a minimum carapace size in the final size.

*Comment 9:* Only those crab that are brought up in the codend should be used for the performance standard. Crab that become tangled in the wings of a trawl and consequently are brought on board a vessel should not be counted against the performance standard.

*Response:* NMFS and U.S. Coast Guard enforcement officers, upon boarding a vessel, may not have the means to determine whether crab on board came from the cod end or from the trawl wings. Enforcement officers will assume that any crab observed on board were caught incidentally with groundfish catches. Nonetheless, NMFS recognizes that crab brought on board a vessel after becoming tangled in the trawl wings is an issue that might require further resolution through regulations if subsequent information indicates that it is a problem.

## Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

NMFS prepared an EA for this final rule and the Assistant Administrator concluded that no significant impact on the human environment will result from its implementation. A copy of the EA is available (see ADDRESSES).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR prepared by NMFS. A copy of the EA/RIR/FRFA may be obtained (see ADDRESSES).

NMFS prepared a final regulatory flexibility analysis, which concludes that this rule will have a significant economic impact on a substantial number of small entities. A summary of this determination was published at 58 FR 17196 (April 1, 1993), and a copy of this analysis is available (see ADDRESSES).

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0213. The burden to groundfish processors to comply with weekly production reports is 15 minutes per report.

NMFS determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination was submitted for review by the responsible State agency under Section 307 of the Coastal Zone Management Act. Consistency is automatically inferred because the appropriate State agency did not reply within the statutory time period.

The Regional Director determined that fishing activities conducted under this rule will not affect endangered and threatened species under the endangered Species Act (ESA). Specifically, the Regional Director determined that fishing activities conducted under this action would not affect Steller sea lions in a way that was not already considered in the informal section 7 consultation on the final 1993 initial groundfish specifications that was concluded on January 27, 1993. The Regional Director also determined that fishing activities conducted under this action would not affect listed, proposed, and candidate seabirds under the ESA in a way that was not already considered in the informal section 7 consultation for the final 1993 initial groundfish specifications dated February 1, 1993, and clarified on February 12, 1993. Finally, the Regional Director determined that fishing activities conducted under this action would not affect listed species of Pacific salmon in a way that was not already considered in the informal section 7 consultation on the final 1993 initial ground specifications that was concluded on April 21, 1993. NMFS has determined that no further consultation pursuant to section 7 of the ESA is required for adoption of this final rule.

The Regional Director determined that fishing activities conducted under this rule will have no adverse impact on marine mammals.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 12612.

## List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: July 20, 1993.

**Nancy Foster,**

*Acting Assistant Administrator for Fisheries.*

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 672.2, definitions of *fishing circle, nonpelagic trawl, stretched mesh size,* and *wing tip* are added in alphabetical order, the title *net-sonde device* is revised to read *net-sounder device,* and the definition of *pelagic trawl* is revised to read as follows:

**§ 672.2 Definitions.**

* * * * *

*Fishing circle* means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

* * * * *

*Nonpelagic trawl* means a trawl other than a pelagic trawl.

* * * * *

*Pelagic trawl* means a trawl that:

(1) Has no discs, bobbins, or rollers;

(2) Has no chafe protection gear attached to the foot rope or fishing line;

(3) Except for the small mesh allowed under paragraph (9) of this definition:

(i) Has no mesh tied to the fishing line, head rope, and breast lines with less than 20 inches (50.8 cm) between knots, and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, head rope, and breast lines and extending past the fishing circle for a distance equal to or

greater than one-half the vessel's length overall; or

(ii) Has no parallel lines spaced closer than 64 inches (162.6 cm), from all points on the fishing line, head rope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm), extending aft for a distance equal to or greater than one-half the vessel's length overall;

(4) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (3) of this definition for a distance equal to or greater than one-half the vessel's length overall;

(5) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (3) and (4) of this definition;

(6) Has no flotation other than floats capable of providing up to 200 pounds (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(7) Has no more than one fishing line and one foot rope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle;

(8) Has no metallic component except for connectors (e.g., hammerlocks or swivels) of net-sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(9) May have small mesh within 32 feet (9.8 m) of the center of the head rope as needed for attaching instrumentation (e.g., net-sounder device); and

(10) May have weights on the wing tips.

* * * * *

*Stretched mesh size* means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

* * * * *

*Wing tip* means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

3. In § 672.7, paragraph (m) is added to read as follows:

**§ 672.7 Prohibitions.**

* * * * *

(m) Have on board, at any particular time, 20 or more crab of any species that have a width of more than 1.5 inches (38 millimeters) at the widest dimension, and that are caught with trawl gear when directed fishing for groundfish with trawl gear, except for pollock by vessels using pelagic trawl gear, is prohibited under § 672.20(f)(1).

4. In § 672.24, paragraphs (d)(1) introductory text and (d)(2) introductory text are revised and (d)(3) and (d)(4) are added to read as follows:

**§ 672.24 Gear limitations.**

* * * * *

(d) * * *

(1) No person may trawl in waters of the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Type I Areas) from a vessel having a nonpelagic trawl either attached or on board:

* * * * *

(2) From February 15 to June 15, no person may trawl in the EEZ within the following areas in the vicinity of Kodiak Island (see Figure 2, Type II Areas) from a vessel having a nonpelagic trawl either attached or on board:

* * * * *

(3) Each person trawling in any area limited to pelagic trawling under paragraphs (d)(1) and (d)(2) of this section must maintain, in working order, on that trawl a properly functioning, recording net-sounder device, and must retain all net-sounder recordings aboard the fishing vessel during the fishing year.

(4) No person trawling in any area limited to pelagic trawling under paragraphs (d)(1) and (d)(2) of this section may allow the footrope of that trawl to be in contact with the seabed for more than 10 percent of the period of any tow, as indicated by the net-sounder device.

* * * * *

5. Figures 2 and 3 are removed from part 672 and Figure 4 is redesignated as Figure 2.

## PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

6. The authority citation for part 675 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

7. In § 675.2, definitions of *fishing circle, nonpelagic trawl, stretched mesh size,* and *wing tip* are added in alphabetical order, and the definition of *pelagic trawl* is revised to read as follows:

**§ 675.2 Definitions.**

* * * * *

*Fishing circle* means the circumference of a trawl intersecting the center point on a fishing line, and that is perpendicular to the long axis of a trawl.

* * * * *

*Nonpelagic trawl* means a trawl other than a pelagic trawl.

* * * * *

*Pelagic trawl* means a pelagic trawl as defined in § 672.2 of this chapter.

* * * * *

*Stretched mesh size* means the distance between opposite knots of a four-sided mesh when opposite knots are pulled tautly to remove slack.

* * * * *

*Wing tip* means the point where adjacent breast lines intersect or where a breast line intersects with the fishing line.

8. In § 675.5, paragraph (c)(2)(i) is revised to read as follows:

**§ 675.5 Recordkeeping and reporting.**

* * * * *

(c) * * *

(2) * * *

(i) Requirements for processor vessels. The operator of a processor vessel that conducts fishing activity in, or receives groundfish from, any reporting area in the Bering Sea and Aleutian Islands management area at any time during the fishing year must submit weekly production reports. Weekly production reports are required for a processor vessel for any week during the period beginning with the date specified in the check-in notice and ending after all groundfish harvested from and fish products prepared with any groundfish harvested from any Bering Sea and Aleutian Islands reporting area are offloaded. Weekly production reports are required during this period even if no groundfish is harvested or received or processed during a particular week, and these weekly production reports should specify zero amounts harvested, received, or produced.

9. In § 675.7, paragraph (n) is added to read as follows:

**§ 675.7 Prohibitions.**

* * * * *

(n) Have on board at any particular time 20 or more crab of any species which have a width of more than 1.5 inches (38 millimeters) at the widest dimension, caught with trawl gear when directed fishing for pollock with nonpelagic trawl gear is prohibited under § 675.21(c) or § 675.24(c)(2).

10. Figures 4 and 5 are removed from part 675.

[FR Doc. 93–17607 Filed 7–20–93; 5:05 pm]
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# Proposed Rules

Federal Register
Vol. 58, No. 141
Monday, July 26, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FARM CREDIT ADMINISTRATION

**12 CFR Part 611**

**RIN 3052–AB22**

## Organization; Reorganization Authorities for System Institutions

**AGENCY:** Farm Credit Administration.

**ACTION:** Resolicitation of comments.

**SUMMARY:** On March 19, 1993, the Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), published for public comment proposed amendments to the regulations governing the procedure by which certain Farm Credit System (Farm Credit or System) institutions may terminate their Farm Credit status. The public comment period closed on April 19, 1993. After reviewing the proposal in light of the written comments, the Board has determined that additional comment is needed on several issues. The FCA solicits additional comments on the exit fee calculation and on other provisions of the proposed regulations.

**DATES:** Comments must be received by August 25, 1993.

**ADDRESSES:** Comments should be submitted in writing, in triplicate, to Patricia W. DiMuzio, Division Director, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Regulation Development Division, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

Robert S. Child, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** On March 19, 1993, the FCA proposed for public comment amendments to the regulations governing the procedure by which certain System institutions may terminate their Farm Credit status (58 FR 15099). The amendments would expand the application of the existing regulations to all System associations, add provisions that would apply to the termination of one or more associations whose assets and direct loan from the affiliated Farm Credit Bank (FCB) constitute a significant proportion of the assets and direct loans in the district, and make technical and conforming revisions. The FCA also proposed for public comment regulations governing the procedure by which FCBs and banks for cooperatives (BCs) may terminate their Farm Credit status. These proposed regulations would implement provisions of several statutory amendments to the Farm Credit Act of 1971 (1971 Act). The Agricultural Credit Act of 1987 (1987 Act), Public Law 100–233, enacted on January 6, 1988, amended the 1971 Act by establishing a procedure under which a Farm Credit institution may terminate its Farm Credit status by becoming chartered as a financial institution under other Federal or State authority. The Food, Agriculture, Conservation and Trade Act Amendments of 1991 (1991 Act), Public Law 102–237, enacted on December 13, 1991, amended the 1971 Act by extending the length of the FCA's review period for the approval of disclosure information relating to terminations and other corporate restructuring. The Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act), Public Law 102–552, enacted on October 28, 1992, further amended the 1971 Act by adding clarifying provisions for repayments of assistance relating to debt obligations issued by the Farm Credit System Financial Assistance Corporation (FAC). The 1971 Act, as amended, imposes certain conditions on an institution seeking to terminate its status as a Farm Credit institution; authorizes the FCA to impose by regulation such other conditions as the FCA considers appropriate; and requires the FCA to promulgate regulations providing for the repayment of certain System assistance.

The FCA received comments from the Farm Credit Council (FCC) on behalf of its member System institutions, from two FCBs, and from the American Institute of Certified Public Accountants. The FCC's comments included, among other things, a request that the FCA repropose the regulations, and that the supplementary information to such reproposal include a sample exit fee calculation for FCBs and associations terminating alone or together with other institutions in their district. The FCC's stated reasons for reproposing the regulations were the multiplicity of issues raised, the numerous assumptions that had to be made in the development of the FCC's comments, and the apparent lack of urgency in having final regulations in place.

The FCA has carefully considered the request for reproposing the regulations. Some of the comments made by the commenters are simple differences of opinion with the FCA regarding certain proposed provisions. Other comments indicate that there are areas where clarification of language in the proposed regulations would enable the commenters to better understand the FCA's proposals; however, the comments do not indicate misunderstandings so critical as to justify a reproposal of the regulations. Indeed, the numerous assumptions expressed by the FCC in its comments indicate that its interpretation of the intent of the proposed regulations is for the most part accurate. Therefore, the FCA discusses below those significant portions of the proposed regulations that need clarification, and the FCA resolicits comments on these portions.

In addition, the FCA provides examples of how exit fees would be calculated for an association terminating alone, an FCB terminating without any affiliated associations, and an association and an FCB terminating together.

### A. Discussion of Comments

*1. Section 611.1205(d)*

The term "viability" is defined as "the ability to sustain or commence profitable operations exclusive of non-recurring items." A commenter suggested that the definition be revised to provide a more objective standard. The purpose of the viability analysis required in proposed § 611.1275 is to determine whether the institutions remaining in the district of a terminating Large Association could

remain competitive and continue to be profitable after the Large Association terminates. Since the financial projections made in the viability analysis will be a judgment based on the best available information, the FCA does not believe there is a need for a more objective or precise standard set forth in the regulations. If an institution is projected not to be viable due to the termination of a Large Association, the FCA will not automatically reject the application to terminate, but will consider all available information in reaching its decision.

*2. Sections 611.1220(e) and 611.1235(a)(1)*

Paragraph (e) of § 611.1220 would contain provisions regarding notification to stockholders of the results of the stockholder vote on the proposed termination. A commenter requested clarification of the terms "final vote" and "results of the stockholder vote" in that paragraph, and the term "final results of the stockholder vote" in paragraph (a)(1) of § 611.1235. The vote referred to in each case is the stockholder vote on the proposed termination, not the reconsideration vote.

*3. Section 611.1225*

Section 611.1225 would set forth requirements for the information statement to be sent to stockholders. A commenter noted that the regulation does not specify how long before the stockholder meeting the stockholders must receive this information. Since institution bylaws may differ on this point, the information would be provided in accordance with the notification requirements for a stockholder meeting in the terminating institution's bylaws.

*4. Section 611.1230(e)*

Paragraph (e) of § 611.1230 would provide that the plan of termination must include evidence of the agreement and plan for satisfaction of "outstanding debts." A commenter requested clarification that the "outstanding debts" include the payments to the FAC addressed in § 611.1250. It was the FCA's intention that the plan of termination include evidence of the terminating institution's plan for satisfaction of FAC payments.

*5. Section 611.1240*

Paragraph (a)(3) of § 611.1240 would define the components of "total capital," for purposes of computing the exit fee, as all capital stock, surplus and undivided profits. A commenter asked whether allocated surplus, revolving funds certificates or other written evidences of patronage allocations are included within the definition. The term "total capital" is meant to include all equities, including those cited by the commenter.

Paragraph (e) of this section would provide that, in order to ensure that the exit fee is calculated on a fair and reasonable basis, the FCA may require adjustments to the financial statement of the terminating institution. A commenter requested clarification of the use of the term "value" in reference to the terminating institution's assets and liabilities. As used in this paragraph, "value" is intended to be a fair and reasonable value after adjustments by the FCA.

The commenter also asked for clarification of the phrase "no less stringent than" generally accepted accounting principles (GAAP) in the same sentence. The FCA has re-examined the use of this phrase in the context of the regulation and believes that the phrase "fair and reasonable" would better describe the original intent.

Paragraph (g) of this section, which was not proposed to be changed from existing regulations, would provide that where GAAP requires the recordation on the balance sheet of a liability that will be offset by an unrecorded asset, the transaction recording the liability would be reversed. The intent of such an adjustment was to recognize the potential impact of any tax benefits that may materialize as a result of an institution's termination from the System and to factor such benefits into the calculation of the exit fee. Because such benefits may not have met the criteria for recordation as an asset in the institution's submitted financial statements, the FCA concluded that such adjustments were required in order for the exit fee to be computed on a fair and reasonable basis. The FCA is considering eliminating this provision in the final regulation because these same adjustments would be made under a fair and reasonableness standard, and certain accounting changes make the occurrence of these circumstances unlikely and, therefore, obviate the need for this section.

*6. Section 611.1250*

Paragraph (a) of this section would state that a terminating institution must provide for payment, or assumption by the successor institution, of all outstanding debt obligations. A commenter asked whether this paragraph is intended to include payment to the FAC addressed in paragraph (e) of this section. This paragraph is intended to include all obligations, including those obligations more specifically described in paragraphs (b) through (e) of this section.

Paragraph (e)(2) of this section would provide that present value estimates required to be made by the FAC would be based on the retail loan volume of the institution as of the quarter end preceding the submission of the termination application. A commenter indicated that the measurement of the retail loan volume at a specific point in time is inappropriate and that the measurement should instead be based on average accruing loan volumes since the debt was incurred. It was the FCA's intention to permit an averaging of loan volumes over a period of time, rather than a measurement at a specific point, but not to permit the inclusion in such averaging of any time periods after the quarter end preceding the submission of the termination application, on the ground that changes in the loan volume that may be due to the termination process should not affect the present value estimate. The commenter also asserted that the regulation ignored the statute's "forward-looking concept" with respect to the present value estimates. This issue is discussed below in connection with the estimates required by proposed § 611.1350(f).

*7. Section 611.1255(d)*

Paragraph (d) of this section would provide that the amount to be paid to a terminating association in the retirement of equities owned in its affiliated FCB must be equal to the par value of the stock and allocated equities owned by the terminating association, less any impairment, "at the date the request for retirement is made by the terminating association." A commenter stated that an association should not be able to unilaterally consider itself a terminating institution and thereby request retirement of its FCB stock and equities in anticipation of an impairment of the bank's stock. The FCA has re-examined this provision and believes that it should be revised to provide that the value of the stock will be fixed on the computation date, since the value of the stock will affect the amount of the exit fee. The FCA seeks comment on this approach.

*8. Section 611.1270*

This section pertains to the continuation of borrower rights by the successor institution and would provide that a terminating institution may not require a waiver of applicable borrower rights provisions as a condition of becoming an equityholder in the

successor institution. A commenter asserted that the section was different from the existing regulation, which seemed to apply only to successor institutions that became other financing institutions (OFIs), and was inconsistent with § 611.1210(d)(1), which requires a terminating institution to disclose to a prospective borrower whether the borrower will continue to have statutory or regulatory borrower rights after the institution terminates. Proposed § 611.1270, which differs from the existing regulation only in the order of the sentences, would provide that, with respect to successor institutions that became OFIs, the successor institution may not require a waiver of borrower rights applicable under the 1971 Act and FCA regulations to OFIs, nor may it require a waiver of any contractual borrower rights, as a condition of becoming an equityholder in the successor institution. With respect to successor institutions that are not OFIs, the institution may not require a waiver of any contractual borrower rights as a condition of receiving an equity interest in the successor institution in exchange for its equity interest in the terminating institution; however, the rights granted by the 1971 Act and FCA regulations would no longer apply. The FCA does not see any inconsistency between this section and § 611.1210(d)(1), which requires disclosure of whether the successor institution will continue to give borrowers the rights granted to Farm Credit borrowers by the 1971 Act or regulations, either because the successor institution will be an OFI, or because such rights will be expressly incorporated into the loan contract, or because the institution freely chooses to give those rights to its borrowers.

*9. Section 611.1350*

Section 611.1350 sets forth requirements for the repayment of obligations by FCBs or BCs, or the assumption of such obligations by the successor institution. A commenter noted that references to Systemwide bonds, Systemwide obligations and consolidated obligations are somewhat confusing. The references to Systemwide bonds were intended to include all debt securities issued on a Systemwide basis, pursuant to section 4.2(d) of the 1971 Act. The FCA intends to clarify this in the final regulations, and also to make clarifications with respect to liability on consolidated obligations. In addition, a commenter noted that individual bank obligations are not addressed in the proposed regulations. It is correct that repayment of a terminating bank's individual obligations are not provided for, although paragraph (e) of this section requires the terminating bank to make an undertaking with respect to interest on individual obligations issued by other FCBs and BCs. The FCA believes that individual bank obligations issued pursuant to section 4.2(b) of the 1971 Act should be required to be repaid or otherwise satisfied by a terminating bank, since other banks operating under the same title are liable for the interest on the obligations. The FCA seeks comment on this issue.

Paragraph (a) of this section would provide that a terminating bank must provide for the payment of all "outstanding System debt obligations, or the assumption of such liability by the successor institution." A commenter asked for clarification of what the term "outstanding System debt obligations" includes. The FCA intended to refer to all obligations of the bank in this provision.

Paragraph (b) of this section gives a terminating bank three options with regard to how a terminating bank may satisfy its primary liability on consolidated and Systemwide obligations. A commenter asked who has approval authority over which of the options (or combination thereof) is chosen by the terminating bank, and suggested that the remaining FCBs and BCs, as well as the FCA, be given approval authority. The FCA, as a part of the approval process, will have approval authority over the terminating bank's proposed treatment of primary liability on consolidated and Systemwide obligations. The FCA is aware of the importance to remaining banks of how the terminating bank satisfies its primary liability and would likely seek the views of remaining banks on this issue. The commenter further suggested that the regulation contain a fourth option, permitting "any other method acceptable to [the] FCA and the remaining System banks, taking into account the market implications of the method selected." The FCA is considering adding such an option, without the requirement that the method must be acceptable to the remaining banks, and solicits comments on this approach from interested parties.

With respect to the option set forth in paragraph (b)(2) of this section, a commenter questioned the meaning of cancellation of obligations, since most Systemwide debt securities have no provision for cancellation. The commenter is correct that the obligations would not, strictly speaking, be canceled. Rather, the Federal Reserve Bank of New York or another Federal Reserve Bank would, when instructed by the Federal Farm Credit Banks Funding Corporation of the purchase by a terminating bank of obligations on which the bank is primarily liable, retire the amount of the purchase which would reduce the total amount of the issue outstanding by the amount of the terminating bank's purchase.

Paragraph (d) of this section sets forth the requirements for an agreement to establish the terminating bank's proportionate share of any subsequent joint and several liability calls, in the event that the terminating bank and the remaining FCBs and BCs are unable to reach agreement among themselves. A commenter requested clarification of the terms "liability computation date" and "computation date" in the second sentence in paragraph (d)(1) of this section. The "liability computation date" is the date described in the first sentence in this paragraph, and the "computation date" is the computation date for the exit fee, as specified in § 611.1240(c) (incorporated by reference into subpart Q by § 611.1340(a)(2)). A commenter asked who would make the determinations in paragraphs (d) (2) and (3). The FCA would make these determinations, which are factual, not discretionary. The commenter also asked for confirmation that the obligations that are the subject of the agreement in this paragraph do not include the obligations on which the terminating bank is primarily liable. This is correct.

Paragraph (f) of this section implements recent statutory amendments requiring a terminating bank to pay certain amounts to the FAC related to the repayment of obligations issued by the FAC. In the proposed regulation, a distinction is made in the bases for present value estimates between the payments that are based on the average accruing retail loan volumes for a 15-year period and payments that are based on accruing retail loan volumes for a 1-year period. For the estimation of future payments based on a 1-year period, the regulation would require the estimate to be based on the retail loan volume for the preceding year; for the estimation of future payments based on a 15-year period, the regulation would require the estimate to be based on the average loan volume during the time period from the year obligations were issued to the year prior to the computation date for the exit fee computation. While no one commented on the distinctions made in the regulation, one commenter did assert that the "notion of forward-looking information contained in the Farm Credit Act is not captured in the proposed regulations * * *." This comment is apparently a reference to

the requirement that estimates of future payments based on a 15-year period be based on the average loan volumes during the years subsequent to the issuance of the FAC obligations, rather than based on more recent information. It was the FCA's intention to require the FAC to take into consideration loan volumes of the past years but not to require that the average of all those years be used to project future loan volumes for the years remaining before the FAC obligations mature. The FCA invites comments on this point. Furthermore, the FCA is considering eliminating the references in paragraph (f) to the time periods on which the estimates are to be based, thereby giving the FAC more flexibility to make an appropriate determination. The FCA also invites comments on this approach.

A commenter asked the FCA to propose a definition of "appropriate discount rate." The FCA did not define this term in the proposed regulations because it does not want to limit the flexibility of the FAC to determine what would be appropriate under the facts and circumstances that may exist when a bank proposes to terminate its Farm Credit status.

*B. Examples of Exit Fee Computations*

Set forth below are sample exit fees for an association terminating alone, an FCB and an OFI terminating together, and the same association, FCB and OFI terminating together. Adjustments of the assets and capital presented are based on the assumptions that the balance sheets were not adjusted for the expected termination; no liability to the FAC for future payments has been recorded by the institution; and the item described as "Present value of FAC payments" is the estimated present value of future assessments as calculated by the FAC.

Example 1. *Association terminating alone.*

| | |
|---|---|
| Average daily balance (ADB) of association total assets | $357,990 |
| Less: Present value of FAC payments tax liability due to anticipated stock retirement | (3,703) |
| | (7,592) |
| Adjusted ADB | 346,695 |
| Six percent of the adjusted ADB of total assets | (20,802) |
| ADB of total capital | 47,203 |
| Less: Present value of FAC payments tax liability due to anticipated stock retirement | (3,703) |
| | (7,592) |
| Subtotal | 35,908 |
| Less: Six percent of adjusted ADB of total assets | (20,802) |
| Exit fee | 15,106 |

Example 2. *FCB terminating with an OFI.*

This example is an exit fee for an FCB terminating along with an OFI. The FCA has not provided an exit fee calculation for a FCB terminating alone, because the FCB would have no capital after distribution of allocated and unallocated equities to the remaining associations and OFIs. In the example below, the OFI has stock of $11,084 invested in the FCB and its portion of FCB unallocated surplus is $2,275 for a total of $13,359.

The FCA notes that the supplementary information published with the proposed regulations stated that only those specific assets and capital of affiliated associations remaining in the System that are expected to be paid out or distributed to such associations by the terminating bank are to be deducted from the assets and capital of the terminating bank before the bank's exit fee is computed. However, the language of proposed § 611.1340 may be misinterpreted to require that all of the assets and capital of the associations remaining in the System be deducted from the assets and capital of the terminating FCB. In the example below, assets and capital remaining in the System or that will be paid out to the associations remaining in the System are deducted from the FCB.

| | |
|---|---|
| ADB of total assets | $3,794,653 |
| Less: ADB of direct loans to associations remaining | (3,217,673) |
| Present value of FAC payments | (68,220) |
| Assets equal to investments in FCB held by associations remaining | (210,594) |
| Assets equal to associations' proportionate share of unallocated equities | (43,228) |
| Adjusted ADB of total assets | 254,938 |
| ADB of total capital | 335,401 |
| Less: Present value of FAC payments | (68,220) |
| Stock and allocated equities held by associations | (210,594) |
| Associations' proportionate share of unallocated equities | (43,228) |
| Remaining capital | 13,359 |
| Less: Six percent of adjusted ADB of total assets | (15,296) |
| Exit fee for FCB | 0 |

Example 3. *FCB and OFI terminating with an affiliated association.*

| | |
|---|---|
| FCB calculation: | |
| ADB of total assets | 3,794,653 |
| Less: ADB of direct loan to associations remaining | (2,926,901) |
| Assets equal to equities in FCB held by associations remaining | (228,575) |
| Present value of FAC payments | (68,220) |
| Total Adjusted Assets of FCB | 570,957 |
| Combined assets of FCB and association: | |
| ADB of total association assets | 357,990 |
| Total adjusted assets of the FCB | 570,957 |
| Less: Elimination of direct note of terminating association from FCB | (290,772) |
| Elimination of investment in FCB stock of terminating association | (22,877) |
| Total adjusted combined assets | 615,298 |
| FCB capital calculation: | |
| ADB of total capital | 335,401 |
| Payment from terminating association for FCB's payment to FAC | 3,703 |
| Less: Present value of FAC payments | (68,220) |
| Stock and allocated equities held by associations remaining | (191,614) |
| Proportionate share of unallocated equities of associations remaining | (36,961) |
| Total adjusted capital of FCB | 42,309 |
| Combined capital calculation: | |
| ADB of total association capital less FAC payments | 43,500 |
| Adjusted capital of FCB | 42,309 |
| Elimination of FCB stock held by terminating association | (22,877) |
| Total combined capital | 62,932 |
| Exit fee for -FCB (excess over fee charged for association): | |
| Total combined capital | 62,932 |
| Less: Six percent of total adjusted combined assets (retained by terminating institutions) | (36,918) |
| Excess capital over 6 percent (combined exit fee) | 26,014 |
| Less: Association exit fee | (22,243) |
| Exit fee of the FCB | 3,772 |

In the above example, the exit fee for the association terminating alone is $15,106, but its fee is $22,243 when it terminates together with its affiliated FCB. The difference is due to the assumption that, when the association terminates alone, the tax liability associated with the retirement of its investment in the FCB is realized and

included in the exit fee computation. The association figures used in Example 3 are the same as those in Example 1 except that the estimated tax liability of $7,592 is not deducted from assets or capital of the association. However, it is possible that a tax liability may accrue once the value of the investment in the terminating bank is established. Most such investments result from patronage distributions not previously included in the taxable income of the terminating association. The basis for non-inclusion of such patronage distributions is derived from an Internal Revenue Service Ruling 71-366, 1971-2 C.B. 79, in which the IRS took the position, in part, that such investments did not have a market value and, therefore, did not generate taxable income.

Dated: July 16, 1993.

Curtis M. Anderson,

*Secretary, Farm Credit Administration Board.*

[FR Doc. 93-17639 Filed 7-23-93; 8:45 am]

BILLING CODE 6705-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 93-NM-64-AD]

### Airworthiness Directives; Boeing Model 747-400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), applicable to all Boeing Model 747-400 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to impose an operational limitation that requires the right very high frequency (VHF) radio communication system be operational for dispatch. That action was prompted by the discovery of a single point failure within the audio management unit (AMU) that will disable the transmission functions of both the left and center VHF radios. The actions specified by that AD are intended to prevent loss of all VHF radio voice communication transmission capability. This action would provide an optional terminating action for certain airplanes, which, if accomplished, would eliminate the need for the required AFM limitation; and would limit the applicability of the rule.

**DATES:** Comments must be received by September 20, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-64-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Matt Wade, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2751; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-64-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-64-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

On December 3, 1991, the FAA issued AD 91-26-05, Amendment 39-8116 (56 FR 65181, December 16, 1991), applicable to all Boeing Model 747-400 series airplanes, to require revising the FAA-approved Airplane Flight Manual (AFM) to impose an operational limitation that requires the right very high frequency (VHF) radio communication system be operational for dispatch. That action was prompted by the discovery of a single point failure within the audio management unit (AMU) that will disable the transmission functions of both the left and center VHF radios. Currently, two radios are required for airplane dispatch; these radios must be designed and installed so that failure of one radio will not preclude operation of the other. The requirements of that AD are intended to prevent loss of all VHF radio voice communication transmission capability.

Since the issuance of that AD, the manufacturer has designed a modification of the AMU that will prevent loss of all VHF radio voice communication transmission capability. The FAA has reviewed and approved Boeing Service Bulletin 747-23-2321, dated May 20, 1993, that describes procedures for replacement of the currently-installed AMU with a modified AMU. The existing AMU was designed with left and right VHF separation. However, the left and center VHF transmit buffer circuits share an integrated circuit chip and power supply. A single failure in this circuitry will disable the transmit function of both the left and center VHF transceivers. The modified AMU has been revised to provide separation between the left and center VHF transmit circuits in order to prevent a single failure from disabling both the left and center VHF transmit functions. Implementation of this modification will positively address the unsafe condition identified as loss of all VHF radio voice communication transmission capability.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 91-26-05 to continue to require the addition of a limitation in

the FAA-approved AFM requiring that the right VHF radio communication system be operational for dispatch. Additionally, the proposed AD would provide for replacement of the currently-installed AMU with a modified AMU, as optional terminating action for the requirements of this AD for certain airplanes. If accomplished, such replacement would eliminate the need for the required AFM limitation. The replacement of the AMU would be required to be accomplished in accordance with the service bulletin described previously.

This proposal would also limit the applicability of the rule to exclude airplanes having production numbers RT681 and RT682. These airplanes are not susceptible to the unsafe condition, since they were equipped with the modified AMU during production.

There are approximately 235 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,540, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, the number of work hours required to accomplish it would be approximately 1 per airplane, and the cost of required parts would be approximately $313 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–8116 (56 FR 65181, December 16, 1991), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 93–NM–64–AD. Revises AD 91–26–05, Amendment 39–8116.

*Applicability:* All Model 747–400 series airplanes, excluding production numbers RT681 and RT682; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

**Note 1:** Paragraph (a) of this AD restates the requirements of AD 91–26–05, Amendment 39–8116, paragraph (a). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–26–05 have been accomplished previously, paragraph (a) of this AD does not require insertion of that Airplane Flight Manual (AFM) limitation to be repeated.

To prevent loss of all very high frequency (VHF) radio voice communication transmission capability, accomplish the following:

(a) Within 14 days after December 30, 1991 (the effective date of AD 91–26–05, amendment 39–8116): Add the following statement to the Limitations Section of the FAA-approved AFM. This may be accomplished by placing a copy of this AD in the AFM.

*"ELECTRONIC SYSTEMS—VHF RADIO VOICE COMMUNICATIONS*

Right VHF radio (VHF R) communication system must be operational for dispatch."

(b) Replacement of the currently-installed audio management unit (AMU) of the VHF radio communication system having Boeing part numbers S220U000–101, –102, or –104, (Hughes-Avicom part numbers 1167014–140, –141, or –142), with a modified AMU having Boeing part number S220U000–105 (Hughes part number 1167014–143), in accordance with Boeing Service Bulletin 747–23–2321, dated May 20, 1993, constitutes terminating action for the requirements of this AD. Following accomplishment of this replacement, the AFM limitation required by paragraph (a) of this AD may be removed.

(c) As of the effective date of this AD, no AMU having Boeing part numbers S220U000–101, –102, or –104 (Hughes-Avicom part numbers 1167014–140, –141, or –142), shall be installed on any airplane, unless the requirements of paragraph (a) of this AD have been accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 20, 1993.

**Suzanne E. Stevens,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17651 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–NM–74–AD]**

## Airworthiness Directives; Corporate Jets, Limited (formerly British Aerospace), Model BAe 125–800A Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Corporate Jets, Limited, Model BAe 125–800A series airplanes. This proposal would require replacement of the existing forward cabin door retainer catch assembly located in the upper luggage bay shelf with a new, improved forward cabin door retainer catch assembly. This proposal is prompted by reports which indicate that, under certain conditions, the forward cabin door could be forced to the closed position and held closed. The actions

specified by the proposed AD are intended to prevent the forward cabin interior door from closing during takeoff and landing, which could impede or hinder the ability of passengers and crew to exit through the main entrance door during an emergency evacuation.

**DATES:** Comments must be received by September 20, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–74–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–74–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Corporate Jets, Limited, Model BAe 125–800A series airplanes. The CAA advises that there have been reports which indicate that, under certain conditions, the forward cabin door could be forced to the closed position and held closed. During taxi maneuvers and flight in turbulent air, the crockery drawer located on the right-hand side of the cabin vestibule may spring open. The existing door retainer catch located on the upper luggage bay shelf may not effectively hold the door open against the force exerted by the crockery drawer. With the crockery drawer open, it is not possible to open the forward cabin interior door. This condition, if not corrected, could result in the forward cabin interior door closing during takeoff and landing, which could impede or hinder the ability of passengers and crew to exit through the main entrance door during an emergency evacuation.

Corporate Jets, Limited, has issued Service Bulletin SB.25–60–25A440A, dated August 19, 1992, that describes procedures for accomplishment of Modification No. 25A440A, which entails replacement of the existing forward cabin door retainer catch assembly located in the upper luggage bay shelf with a new, improved forward cabin door retainer catch assembly. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the existing forward cabin door retainer catch assembly located in the upper luggage bay shelf with a new, improved forward cabin door retainer catch assembly. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 5 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $550, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Corporate Jets, Limited (Formerly British Aerospace):** Docket 93–NM–74–AD.

*Applicability:* Model BAe 125–800A series airplanes, as listed in Corporate Jets, Limited, Service Bulletin SB.25–68–25A440A, dated August 19, 1992; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the forward cabin door from closing during takeoff and landing, which could impede or hinder the ability of passengers and crew to exit through the main entrance door during an emergency evacuation, accomplish the following:

(a) Within 180 days after the effective date of this AD, replace the existing forward cabin door retainer catch assembly located in the upper luggage bay shelf with a new, improved forward cabin door retainer catch assembly, Modification No. 25A440A, in accordance with Corporate Jets, Limited, Service Bulletin SB.25–68–25A440A, dated August 19, 1992.

(b) As of the effective date of this AD, no person shall install a catch assembly having part number 25–8DP1686 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 20, 1993.

**Suzanne E. Stevens,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17652 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–P

**14 CFR Part 39**

**[Docket No. 92–NM–154–AD]**

## Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that would have required replacement of the bypass valve assemblies in the hydraulic systems 1 and 2 return filters. That proposal was prompted by a report that a loose bypass valve seal of the hydraulic system return filter assembly became jammed and caused increased pressure in the return system, resulting in insufficient clearance in the brake unit and subsequent overheated brakes and blown tires. This action revises the proposed rule by expanding the applicability of the existing rule to include an additional airplane and by adding additional requirements for that airplane. The actions specified by this proposed AD are intended to prevent the occurrence of overheated brakes and blown tires, which would lead to loss of braking performance and may cause the loss of directional control of the airplane while it is on the ground.

**DATES:** Comments must be received by September 3, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–154–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 25, 1992 (57 FR 55483). That NPRM would have required replacement of the bypass valve assemblies in the hydraulic systems 1 and 2 return filters. That NPRM was prompted by a report that a loose bypass valve seal of the hydraulic system return filter assembly became jammed in the outlet of the filter unit. This blocked the return flow to the hydraulic reservoir, causing increased pressure in the return system during the selection of sub-systems. Consequently, there was insufficient running clearance in the brake unit, resulting in

overheated brakes and blown tires. That condition, if not corrected, could result in the occurrence of overheated brakes and blown tires, which would lead to loss of braking performance and may cause the loss of directional control of the airplane while it is on the ground.

Since issuance of that NPRM, Fokker has issued Revision 2 to Service Bulletin SBF100–29–021, dated December 22, 1992. This revision of the service bulletin adds an airplane to its effectivity listing. For that airplane, Revision 2 describes procedures for removal of the currently installed bypass valve assembly in the hydraulic system 1 return filter and installation of an improved assembly. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, classified this revised service bulletin as mandatory.

The FAA has determined that one additional airplane is subject to a loose seal in the hydraulic system 1 return filter, which could result in overheated brakes and blown tires, and subsequent loss of braking performance and may cause the loss of directional control of the airplane while it is on the ground. Therefore, this proposed AD has been revised to require not only the previously proposed replacement of the bypass valve assemblies in the hydraulic systems 1 and 2 return filters on all other affected airplanes, but also the removal of the currently installed bypass valve assembly in the hydraulic system 1 return filter on the one additional airplane and installation of an improved assembly. These actions would be required to be accomplished in accordance with the revised service bulletin described previously.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

For clarification purposes, the wording of this supplemental NPRM that describes procedures for "replacement" of the bypass valve assemblies in the hydraulic systems 1 and 2 return filters has been revised to refer to "removal" of the currently installed bypass valve assemblies in the hydraulic systems 1 and 2 return filters and "installation" of improved assemblies.

The economic analysis paragraph, below, has been revised to include an additional airplane of U.S. registry that would be affected by this proposed AD.

The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the parts manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,200, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 92–NM–154–AD.

*Applicability:* Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11363, inclusive, and 11406; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the occurrence of overheated brakes and blown tires, which would lead to loss of braking performance and may cause the loss of directional control of the airplane while it is on the ground, accomplish the following:

(a) For the airplane having serial number 11406: Within 7 months after the effective date of this AD, remove the hydraulic system 1 return filter, having part number QA05775; and install an improved system 1 return filter, having part number QA07236; in accordance with Fokker Service Bulletin SBF100–29–021, Revision 2, dated December 22, 1992.

(b) For the airplanes having serial number 11244 through 11363, inclusive: Within 7 months after the effective date of this AD, remove the hydraulic systems 1 and 2 return filters, having part numbers QA05775 and QA05777, respectively; and install improved systems 1 and 2 return filters, having part numbers QA07236 and QA07237, respectively; in accordance with Fokker Service Bulletin SBF100–29–021, Revision 1, dated July 3, 1992; or Revision 2, dated December 22, 1992.

(c) As of the effective date of this AD, no person shall install hydraulic systems 1 and 2 return filters, part numbers QA05775 and QA05777, respectively, on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 20, 1993.

Suzanne E. Stevens,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17853 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 93-AGL-7]

**Proposed Control Zone and Transition Area Modifications, Dickinson Municipal Airport, Dickinson, ND**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the control zone and transition are at Dickinson Municipal Airport, Dickinson, ND, to accommodate establishment of ILS runway 32, and Nondirectional Beacon (NDB) runway 32 Standard Instrument Approach Procedures (SIAP). The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before August 23, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 93-ALG-7, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AGL-7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone and transition area at Dickinson Municipal Airport, Dickinson, ND, to accommodate establishment of ILS runway 32, and NDB runway 32 SIAP. The radius of the control zone remains the same with the addition of a 7-mile extension to the southeast. The radius of the transition area remains the same with the addition of a 14-mile extension to the southeast.

The development of this procedure requires that the FAA alter the designated airspace to ensure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in § 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. Transition areas are published in § 71.181 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Control Zone and transition area listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones, Incorporation by reference, Transition areas.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 17.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

*Section 71.171 Designation*

* * * * *

AGL ND CZ Dickinson, ND [Revised]

Dickinson Municipal Airport, ND

(lat. 46°47'48" N, long 102°48'00" W)

Within a 4.4-mile radius of Dickinson Municipal Airport; and within 1.4 miles each side of the 150 bearing from the airport extending from the 4.4-mile radius to 7 miles southeast of the airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport Facility Directory.

* * * * *

*Section 71.181 Designation*

* * * * *

**AGL ND TA Dickinson ND [Revised]**

Dickinson Municipal Airport, ND
(lat. 46°47'48" N, long 102°48'00" W)
Dickinson VORTAC (lat. 46°51'36" N, long 102°46'25" W)

That airspace upward from 700 feet above the surface within an 8.3-mile radius of the Dickinson Municipal Airport and within 4 miles each side of the 150° bearing from the airport extending from the 8.3-mile radius to 14 miles southeast of the airport, and that airspace extending upward from 1,200 feet above the surface within a 25.2-mile radius of the Dickinson VORTAC extending clockwise from the Dickinson VORTAC 214 radial to the Dickinson VORTAC 093° radial, excluding that airspace within the Dickinson Municipal Airport, ND, Control Zone.

* * * * *

Issued in Des Plains, Illinois on June 23, 1993.

**John P. Cuprisin,**

*Manager, Air Traffic Division.*

[FR Doc. 93-17734 Filed 7-23-93; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 93-ANE-19]**

## Proposed Airspace Update for the New England Region

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would update certain control zones and transition areas in the New England Region. This action is prompted by a review of control zones and transition areas in the New England region for conformity with the requirements of the United States Standard for Terminal Instrument Procedures (TERPS). This action is necessary in order to keep the control zones and transition areas in the New England region operationally current.

**DATES:** Comments must be received on or before August 24, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 93-ANE-19, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299.

The docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Charles M. Taylor, Airspace Specialist, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299; Telephone: (617) 238-7532; Facsimile: (617) 272-0395.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under "**ADDRESSES**". Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANE-19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, ANE-7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to update certain control zones and transition areas in the New England Region. This action is prompted by a review of control zones and transition areas in the New England region for conformity with the requirements of the United States Standard for Terminal Instrument Procedures (TERPS). That review of control zones and transition areas in the New England region revealed the need to expand the radius of some areas to account for rising terrain in the vicinity of the airport serving those areas, add and delete departure and arrival extensions to conform areas to new updates in IFR approach and departure procedures, decrease the radius of some areas due to published visual departure procedures, make minor editorial changes, and delete one transition area.

The review of the control zones and transition areas in the New England region revealed a need to increase the radius of following areas to account for rising terrain in the vicinity of the airport.

*Control Zones*

Bridgeport, CT
Danbury, CT
Groton, CT
Hartford, CT
New Haven, CT
Houlton, ME
Presque Isle, ME
Bedford, MA
Beverly, MA
Lawrence, MA
Norwood, MA
Westfield, MA
Concord, NH
Lebanon, NH
Nashua, NH
North Kingston, RI

*Transition Areas*

Bridgeport, CT
Chester, CT
Danbury, CT
Danielson, CT

Groton, CT
Hartford, CT
Madison, CT
Meriden, CT
New Haven, CT
Oxford, CT
Willimantic, CT
Windsor Locks, CT
Auburn, ME
Bangor, ME
Belfast, ME
Biddeford, ME
Brunswick, ME
Frenchville; ME
Fryeburg, ME
Greenville, ME
Houlton, ME
Lincoln, ME
Machias, ME
Millinocket, ME
Norridgewock, ME
Old Town, ME
Pittsfield, ME
Portland, ME
Presque Isle, ME
Princeton, ME
Rockland, ME
Sanford, ME
Waterville, ME
Boston, MA
Great Barrington, MA
Hopedale, MA
Mansfield, MA
Northampton, MA
Southbridge, MA
Taunton, MA
Westfield, MA
Concord, NH
Keene, NH
Manchester, NH
Nashua, NH
Westerly, RI
Burlington, VT
Lyndonville, VT

In addition, updates to IFR departure and approach procedures at some airports may require additions or allow deletions from the controlled airspace intended to contain aircraft departing from or arriving at those airports under IFR. New or updated IFR approach and departure procedures may require redefinition of the affected control zones or transition areas based on navigation facilities such as non-directional beacon (NDB), very high frequency omni-directional range (VOR), distance measuring equipment (DME), tactical air navigation (TACAN), combination VOR and TACAN facilities (VORTAC), area navigation (RNAV), and instrument landing system (ILS) and associated its associated equipment, outer marker (OM), locator outer marker (LOM), or middle marker (MM). The following control zones and transition areas in the New England Region require updating for this reason in addition to, and in some cases on conjunction with, increases in the area radius due to rising terrain in the vicinity of the associated airports:

| Control zone | Reason for update |
|---|---|
| Windsor Locks, CT | Add extension due to revision of VOR or TACAN Runway (RWY) 15 approach. |
| Brunswick, ME | Change references to Brunswick Navy VORTAC or Brunswick Navy TACAN in anticipation of the decommissioning of the Brunswick Navy VORTAC. |
| Presque Isle, ME | Revise description of southeast extension for ILS RWY 1 approach, delete description for northwest extension due to increased radius. |
| Lebanon, NH | Increase radius due to published departure procedure. |
| Manchester, NH | Shorten northwest extension due to revision of VOR/DME RWY 17 approach. |
| Nashua, NH | Increase width of extension for VOR–A approach. |
| Portsmouth, NH | Delete extensions due to revision of approach procedures. |
| Beverly, MA | Redefine control zone extension using the Topefield NDB. |
| Lawrence, MA | Delete extensions due to updates for the VOR RWY 23 approach. |
| Westfield, MA | Redefine and increase northeast extension and add southern extension due to published departure procedure and amendment to NDB RWY 20 approach. |
| Burlington, VT | Delete southeast extension as it is no longer required because of the published departure procedure, and add northwest extension for HI–TACAN RWY 15 approach. |
| North Kingston, RI | Increase radius for ILS RWY 16, VOR/DME RNAV RWY 34, and VOR–A approaches, and delete separate definition for extension because it lies entirely within the increased radius. |
| Providence, RI | Redefine control zone extensions to allow for North Kingston, RI Control Zone. |
| Montpelier, VT | Add departure extension for RWY 23 for the published departure procedure, and add arrival extension for ILS Approach RWY 17. |

| Transition area | Reason for update |
|---|---|
| Meriden, CT | Redefine extension due to updates for the VOR RWY 36 approach. |
| New Haven, CT | Increase radius due to updates for the ILS RWY 2, VOR RWY 2 and VOR–A approaches. |
| Windsor Locks, CT | Delete separate definitions for extensions that lie entirely within the increased radius, and add extension for revision to instrument approaches. |
| Auburn, ME | Redefine extensions due to amendment of ILS and NDB RWY 4 approaches. |
| Brunswick, ME | Change references to the Brunswick Navy VORTAC to the Brunswick Navy TACAN due to the anticipated decommissioning of the Brunswick Navy VORTAC, and add eastern extension for VOR/DME RWY 25 approach to Wiscasset Airport. |
| Fryeburg, ME | Increase radius and add northwest extension due to published departure procedure. |
| Greenville, ME | Add northwest extension due to published departure procedure. |
| Lincoln, ME | Redefine north extension to contain NDB RWY 17 approach. |
| Norridgewock, ME | Add north extension for VOR/DME RWY 3 approach. |
| Presque Isle, ME | Redefine the southeast extension for ILS RWY 1. |
| Rangeley, ME | Increase extension due to update to NDB–A approach. |
| Sanford, ME | Add southwest extension and redefine northeast extension due to ILS RWY 7 approach. |
| Fall River, MA | Delete the northeast extension due to updates for the NDB RWY 24 approach. |
| Falmouth, MA | Updates description due to anticipated decommissioning of Hyannis VORTAC and cancellation of VOR–A Approach at Chatham Airport. |
| Marshfield, MA | Delete extension due to amendment of NDB RWY 6 approach. |
| Palmer, MA | Updates extension due to amendment of NDB RWY 4 approach. |
| Pittsfield, MA | Reduce radius due to published departure procedure. |
| Provincetown, MA | Add northeast extension and increase size of southwest extension due to updates for ILS RWY 7, NDB RWY 25, and NDB–A approaches. |

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| Transition area | Reason for update |
|---|---|
| Taunton, MA | Delete extension due to cancellation of VOR–A approach. |
| Laconia, NH | Reduce radius, and add extension, due to published departure procedure. |
| Portsmouth, NH | Increase transition area to the north and south to contain procedure for Tyco Heliport, Hampton Heliport, and Skyhaven Airport. |
| Whitefield, NH | Reduce radius due to published departure procedure. |
| Block Island, RI | Redefine extensions due to updates for the VOR RWY 28, NDB RWY 10, and VOR/DME RWY 10 approaches. |
| Newport, RI | Add extensions due to updates for the VOR RWY 16 and LOC RWY 22 approaches. |
| North Kingstown, RI | Redefine extensions due to updates for the ILS RWY 16, VOR/DME RNAV RWY 34, and VOR–A approaches. |
| Pawtucket, RI | Redefine extensions due to updates for the VOR–B approach. |
| Providence, RI | Redefine extensions due to updates for the ILS RWY 5R and VOR/DME RWY 34 approaches |
| Bennington, VT | Reduce radius to encompass only the arrival procedure due to published visual departure procedure. |
| Morrisville, VT | Reduce radius due to published visual departure procedure. |
| Springfield, VT | Reduce radius due to published visual departure procedure. |

The FAA also proposes changes to the descriptions of the following control zones and transition areas.

| Control zone | Reason for update |
|---|---|
| Augusta, ME | Revise description to specify lower vertical limit and unlimited upper vertical limit. |
| Bangor, ME | Delete control zone due to establishment of Bangor Airport Radar Service Area. |
| Montpelier, VT | Delete exclusion for Carrier Skypark Airport. |

| Transition area | Reason for update |
|---|---|
| Fitchburg, MA | Delete area because it lies completely within the Keene, NH, Boston, MA and Fort Devens, MA transition areas. |
| Springfield/Chicopee, MA | Add exclusion for Westfield, MA control zone. |
| Provincetown, MA | Change latitude and longitude coordinates for Racepoint NDB (RZP) due to relocation of the NDB. |
| Berlin, NH | Revise description of extension to run from the 8.2 mile radius. |
| Burlington, VT | Revise description of procedure turn area in terms of bearing and distance. |
| Montpelier, VT | Delete exclusion for Montpelier, VT control zone. |

These actions are necessary to keep control zones and transition areas in the New England region operationally current. The coordinates for this airspace docket are based on North American Datum (NAD) 83. Control zones and transition areas are published in FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. Control zones appear in Section 71.171, and transition areas, Section 71.181. The control zones and transition listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small business entities under the criteria of the Regulator Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, Control zones, Incorporation by reference, Transition areas.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

*Section 71.171 Control Zones*

* * * * *

**ANE CT CZ Bridgeport, CT [Revised]**

Bridgeport, Igor I. Sikorsky Memorial Airport, CT
(lat. 41°09'48" N, long. 73°07'34" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5–mile radius of the Igor I. Sikorsky Memorial Airport from the Sikorsky Airport 360° bearing clockwise to the Sikorsky Airport 260° bearing and within a 6.5-mile radius from the Sikorsky Airport 260° bearing clockwise to the Sikorsky Airport 360° bearing. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**ANE CT CZ Danbury, CT [Revised]**

Danbury Municipal Airport, CT
(lat. 41°22'17" N, long. 73°28'56" W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 6.5-mile radius of Danbury Municipal Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**ANE CT CZ Groton, CT [Revised]**

Groton-New London Airport, CT
(lat. 41°19'46" N, long. 72°02'42" W)

Fisher's Island, Elizabeth Field, NY
(lat. 41°15'07" N, long. 72°01'54" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of the Groton-New London Airport; that airspace within a 1-mile radius of the Fisher's Island, Elizabeth Field. This control zone is effective during specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**ANE CT CZ Hartford, CT [Revised]**

Hartford-Brtainard Airport, Hartford, CT
(lat. 41°44'10" N, long. 72°39'00" W)
Rentschler Airport, East Hartford, Ct
(lat. 41°45'15" N, long. 72°37'28" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of the Hartford-Brainard Airport, and within a 6.9-mile radius of the Rentschler Airport from the Rentschler Airport 055° bearing clockwise to the Rentschler Airport 170° bearing clockwise to the Rentschler Airport 055° bearing; excluding that airspace within the Windsor Locks, CT Airport Radar Service Area. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**ANE CT CZ New Haven, CT [Revised]**

New Haven, Tweed-New Haven Airport, CT
(lat. 41°15'49" N, long. 72°53'12" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5-mile radius of the Tweed-New Haven Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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**ANE CT CZ Windsor Locks, CT [Revised]**

Windsor Locks, Bradley International, CT
(lat. 41°56'20" N, long. 72°40'59" W)
Bradley VORTAC
(lat. 41°56'27" N, long. 72°41'19" W)
Simsbury Airport, CT
(lat. 41°55'00" N, long. 72°46'38" W)
Skylark Airpark, CT
(lat. 41°55'45" N, long. 72°34'28" W)
Bancroft Airport, CT
(lat. 41°42'00" N, long. 72°36'58" W)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bradley International Airport; and within 2.2 miles on each side of the Bradley VORTAC 314° radial extending from the 5-mile radius to 6.4 miles northwest of the Bradley VORTAC, and within 2.2 miles on each side of the Bradley VORTAC 218° radial extending from the 5-mile radius to 5.0 miles southwest of the Bradley VORTAC; excluding that airspace within a 1-mile radius of Simsbury Airport, and that airspace within a 1-mile radius of Skylark Airpark, and that airspace within a 1-mile radius of Bancroft Airport.

**ANE ME CZ Augusta, ME [Revised]**

Augusta State Airport, ME
(lat. 44°19'14" N, long. 69°47'50" W)
Dunns LOM
(lat. 44°24'39" N, long. 69°51'39" W)
Augusta VORTAC
(lat. 44°19'12" N, long. 69°47'48" W)

That airspace extending upward from the surface within a 4.1-mile radius of Augusta State Airport, and within 3.5 miles on each side of the Augusta State Airport 333° bearing extending from the 4.1-mile radius to 10 miles northwest of the Dunns LOM, and within 2.5 miles on each side of the Augusta State Airport 158° bearing extending from the 4.1-mile radius to 7 miles southeast of the Augusta VORTAC.

**ANE ME CZ Bangor, ME [Revised]**

Bangor International Airport, ME
(lat. 44°48'27" N, long. 58°49'41" W)
Bangor VORTAC
(lat. 44°50'30" N, long. 58°42'26" W)
Lucky Landing Marina And Sea Plane Base
(lat. 44°54'25" N, long. 58°48'18" W)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bangor International Airport, and within 1.5 miles on each side of the Bangor VORTAC 135° radial extending from the 5-mile radius to 9.4 miles southeast of the Bangor VORTAC, and within 3.1 miles on each side of the Bangor VORTAC 318° radial extending from the 5-mile radius to 7.2 miles northwest of the Bangor VORTAC; excluding that airspace within a 1.5-mile radius of the Lucky Landing Marina and Sea Plane Base.

**ANE ME CZ Brunswick, ME [Revised]**

Brunswick NAS, ME
(lat. 43°43'32" N, long. 59°56'19" W)
Brunswick Navy TACAN
(lat. 43°54'09" N, long. 69°56'43" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.3-mile radius of Brunswick NAS, and within 1.8 miles on each side of the Brunswick Navy TACAN 166° radial extending from the 4.3-mile radius to 7 miles southeast of the Brunswick Navy TACAN and within 1.8 miles on each side of the Brunswick Navy TACAN 015° radial extending from the 4.3-miles radius to 8.6 miles northeast of the Brunswick Navy TACAN.

**ANE ME CZ Houlton, ME [Revised]**

Houlton International Airport, ME
(lat. 46°07'25" N, long. 67°47'32" W)

That airspace extending upward from the surface within a 6.5-mile radius of Houlton International Airport excluding the airspace outside of the United States.

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**ANE ME CZ Presque, Isle, ME [Revised]**

Northern Maine Regional Airport at Presque Isle, ME
(lat. 46°41'20" N, long. 68°02'41" W)
EXCAL LOM
(lat. 46°36'37" N, long. 68°01'08" W)
Rogers Airport
(lat. 46°37'30" N, long. 67°56'10" W)

That airspace extending upward from the surface within a 6.8-mile radius of Northern Maine Regional Airport at Presque Isle, and within 2.5 miles on each side of the Northern Maine Regional Airport at Presque Isle 165° bearing extending from the 6.8-mile radius to 8.2 miles southeast of the EXCAL LOM; excluding that airspace within a 1-mile radius of the Rogers Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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**ANE ME CZ Bedford, MA [Revised]**

Bedford, Laurence G. Hanscom Field, MA
(lat. 42°28'12" N, long. 71°17'20" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.2-mile radius of Laurence G. Hanscom Field, excluding that airspace within the Boston, MA Terminal Control Area. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**ANE ME CZ Beverly, MA [Revised]**

Bevery Municipal Airport, MA
(lat. 42°35'03" N, long. 70°55'01" W)
Topsfield NDB
(lat. 42°37'10" N, long. 70°57'25" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius or Beverly Municipal Airport; and that airspace extending upward from the surface within 3.2 miles on each side of the Topsfield NDB 317° bearing, extending from the 4.5-mile radius to 7 miles northwest of the Topsfield NDB; excluding that airspace within the Boston, MA Terminal Control Area, and that airspace within the Lawrence, MA Control Zone during the specific dates and times it is effective. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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**ANE MA CZ Lawrence, MA [Revised]**

Lawrence Municipal Airport, MA
(lat. 42°43'02" N, long 71°07'24" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5-mile radius of the Lawrence Municipal Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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**ANE MA CZ Norwood, MA [Revised]**

Norwood Memorial Airport, MA
(lat. 42°11'27" N, long. 71°10'23" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 6-mile radius of the Norwood Memorial Airport, excluding that airspace of

the Boston, MA Terminal Control Area. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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**ANE MA CZ Westfield, MA [Revised]**

Westfield, Barnes Municipal Airport, MA
(lat. 42°09'28" N, long. 72°42'56" W)

That airspace extending from the surface to an including 2,800 feet MSL within at 4.3-mile radius of Barnes Municipal Airport from the Barnes Municipal Airport 341° bearing clockwise to the Barnes Municipal Airport 288° bearing, and within 7.5 mile radius from the Barnes Municipal Airport 288° bearing clockwise to the Barnes Municipal Airport 341° bearing, and within 1.8 miles on each side of the Barnes Municipal Airport 009° bearing extending from, the 4.3-mile radius to 4.9 miles north of the Barnes Municipal Airport, and within 2.5 miles on each side of the Barnes Municipal Airport 175° bearing extending from the 4.3-mile radius to 5.8 miles south of the Barnes Municipal Airport; excluding that airspace within the Springfield/Chicopee, MA Control Zone during the dates and times it is effective, and that airspace within the Windsor Locks, CT Airport Radar Service Area. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be published in the Airport/Facility Directory.

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**ANE NH CZ Concord, NH [Revised]**

Concord Municipal Airport, NH
(lat. 43°12'12" N, long. 71°30'07+6' W)
Concord VOTAC
(lat 43°13'11" N, long. 71°34'32" W)

That airspace extending upward from the surface within a 7.7-mile radius of Concord Municipal Airport, and within 2.4 miles on each side of the Concord VORTAC 300° radial extending from the 7.7-mile radius to 7 miles northwest of the Concord VORTAC.

**ANE NH CZ Lebanon, NH [Revised]**

Lebanon Municipal Airport, NH
(lat. 43°37'35" N, long. 72°18'15" W)
BURGR OM
(lat. 43°43'57" N, long. 72°20'00" W)
Hanover NDB
(lat. 43°42'08" N, 72°10'39" W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 6.7-mile radius of Lebanon Municipal Airport; and that airspace extending upward from the surface within 1.3 miles on each side of the BURGR OM 352° bearing extending from the 6.7-mile radius to 8 miles north of the BURGR OM, and within 2.4 miles on each side of the Hanover NDB 051° bearing extending from the 6.7-mile radius to 7 miles northeast of Hanover NDB.

**ANE NH CZ Manchester, NH [Revised]**

Manchester Airport, NH
(lat. 42°56'00" N, long. 71°26'16" W)
Manchester VORTAC
(lat. 42°52'07" N, long. 71°22'10" W)

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Manchester Airport, and within 1.1 miles on each side of the Manchester VORTAC 325° radial extending from the 5-mile radius to 5.8 miles northwest of the Manchester Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**ANE NH CZ Nashua, NH [Revised]**

Nashua, Boire Field, NH
(lat. 42°46'54" N, long. 71°30'53" W)
CHERN NDB
(lat. 42°49'24" N, long. 71°36'08" W)
Manchester VORTAC
(lat. 42°52'06" N, long. 71°22'10" W)
Lawrence VOR/DME
(lat. 42°44'25" N, long. 71°05'41" W)
Pepperell Airport
(lat. 42°41'45" N, long. 71°33'03" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 6-mile radius of Boire Field, and that airspace extending upward from the surface within 1.1 miles on each side of the Manchester VORTAC 231° radial extending from the 6-mile radius to 1.3 miles southwest of the Manchester VORTAC, and within 3.7 miles on each side of the Lawrence VOR/DME 277° radial extending from the 6-mile radius to 6.9 miles east of Boire Field, and within 2.6 miles on each side of the CHERN NDB 303° bearing extending from the 6-mile radius to 7 miles northwest of the CHERN NDB; excluding that airspace within a 2-mile radius of Pepperell Airport, and that airspace within the Manchester NH Airport Radar Service Area, and that airspace within the Manchester, NH Control Zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**ANE NH CZ Portsmouth, NH [Revised]**

Portsmouth, Pease International Tradeport, NH
(lat. 43°04'40" N, long. 70°49'24" W)
Eliot, Littlebrook Air Park, ME
(lat. 43°08'35" N, long. 70°46'20" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of the Pease International Tradeport, excluding that airspace within a 1.5-mile radius of the Littlebrook Air Park.

**ANE RI CZ North Kingston, RI [Revised]**

North Kingston, Quonset State Airport, RI
(lat. 41°35'48" N, long. 71°24'43" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Quonset State Airport; excluding that airspace within the Providence, RI Airport Radar Service Area. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

**ANE RI CZ Providence, RI [Revised]**

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43'30" N, long. 71°25'40" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of Providence, Theodore Francis Green State Airport, and within 3.3 miles on each side of the Providence VORTAC 132° radial extending from the 5-mile radius to 8.4 miles southeast of the Providence VORTAC, and within 3.8 miles on each side of the Theodore Francis Green State Airport 211° bearing extending from the 5-mile radius to 15 miles southwest of the Theodore Francis Green State Airport; excluding that airspace within the North Kingston, RI Control Zone during the specific dates and times it is effective.

**ANE VT CZ Burlington, VT [Revised]**

Burlington International Airport, VT
(lat. 44°28'17" N, long. 73°09'10" W)
Burlington VORTAC
(lat. 44°23'50" N, long. 73°10'57" W)

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Burlington International Airport, and that airspace extending upward from the surface within 2.4 miles on each side of the Burlington VORTAC 201° radial extending from the 5-mile radius to 7 miles southwest of the Burlington VORTAC, and that airspace extending upward from the surface within 1.8 miles on each side of the Burlington International Airport 302° bearing extending from the 5-mile radius to 5.4 miles northwest of the Burlington International Airport excluding that airspace within a 1-mile radius of the Bostwick Farm Airport.

**ANE VT CZ Montpelier, VT [Revised]**

Barre-Montpelier, Edward F. Knapp State Airport, VT
(lat. 44°12'12" N, long. 72°33'44" W)
Mount Mansfield, VT NDB
(lat. 44°23'12" N, long. 72°41'37" W)

That airspace extending upward from the surface within a 4.1-mile radius of Edward F. Knapp State Airport, and within 2.8 miles on each side of the Edward F. Knapp State Airport 159° bearing extending from the 4.1-mile radius to 13.7 miles southeast of the airport, and within 1.8-miles on each side of the Edward F. Knapp State Airport 212° bearing extending from the 4.1-mile radius to 7.0 miles southwest of the Edward F. Knapp State Airport, and within 1 mile on each side of the Mount Mansfield NDB 152° bearing extending from the 4.1-mile radius to the 6.6 miles southeast of the Mount Mansfield NDB.

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*Section 71.181 Transition Areas*

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**ANE CT TA Bridgeport, CT [Revised]**

Bridgeport, Igor I. Sikorsky Memorial Airport, CT

(lat. 41°09'48" N, long. 73°07'34" W)
Stratford, Sikorsky Heliport, CT
(lat. 41°14'57" N, long. 73°05'48" W)
Bridgeport VOR
(lat. 41°09'39" N, long. 73°07'28" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius for the Igor I. Sikorsky Memorial Airport from the Sikorsky Airport 245° bearing clockwise to the Sikorsky Airport 070° bearing, and within a 6.5-mile radius from the Sikorsky Airport 070° bearing clockwise to the Sikorsky Airport 245° bearing, and within 4 miles on each side of the Bridgeport VOR 041° radial extending from the 10-mile radius to 14.8 miles northeast of Bridgeport VOR, and within a 8.5-mile radius of the Sikorsky Heliport; excluding the airspace within the Bridgeport, CT, Stratford, CT, and New Haven, CT, Control Zones during the specific dates and times they are effective.

**ANE CT TA Chester, CT [Revised]**

Chester Airport, CT
(lat. 41°23'02" N, long. 72°30'21" W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Chester Airport, and within 4 miles west and 5.4 miles east of the Chester Airport 339° bearing extending from the 9.3-mile radius to 17.3 miles northwest of Chester Airport; excluding that airspace within the Hartford, CT Control Zone during the specific dates and times it is effective.

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**ANE CT TA Danbury, CT [Revised]**

Danbury Municipal Airport, CT
(lat. 41°22'17" N, long 73°28'56" W)
Carmel VORTAC
(lat. 41°16'48" N, long. 73°34'53" W)

That airspace extending upward from 700 feet above the surface within a 11.5-mile radius of Danbury Municipal Airport from the Danbury Airport 320° bearing clockwise to the Danbury Airport 010° bearing, and within a 9-mile radius from the Danbury Airport 010° bearing clockwise to the Danbury Airport 320° bearing, and within 3 miles on each side of the Carmel VORTAC 218° radial extending from the 9-mile radius to 10 miles southwest of the Carmel VORTAC; excluding that airspace within the White Plains, NY, Control Zone, and that airspace within the White Plains, NY, and Poughkeepsie, NY, Transition Areas, and that airspace within the Danbury Municipal Airport, CT Control Zone during the specific dates and times it is effective.

**ANE CT TA Danielson, CT [Revised]**

Danielson Airport, CT
(lat. 41°49'11" N, long. 71°54'03" W)

That airspace extending upward from 700 feet above the surface within a 8.1-mile radius of Danielson Airport.

**ANE CT TA Groton, CT [Revised]**

Groton-New London Airport, CT
(lat. 41°19'48" N, long. 72°02'42" W)
Groton VOR
(lat. 41°19'49" N, long. 72°03'07" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Groton-New London Airport, and within 1.3 miles on each side of the Groton VOR 048° radial extending from the 7.5-mile radius to 15.6 miles northeast of the GROTON VOR; excluding that airspace within the Groton, CT Control Zone during the specific dates and times it is effective, and that airspace within the Westerly, RI Transition Area.

**ANE CT TA Hartford, CT [Revised]**

Hartford-Brainard, Airport, CT
(lat. 41°44'10" N, long. 72°39'00" W)
East Hartford, Rentschler Airport, CT
(lat. 41°45'15" N, long. 72°37'28" W)

That airspace extending upward from 700 feet above the surface within a 11.5-mile radius of Hartford-Brainard Airport, and within a 11.9-mile radius of the Rentschler Airport; excluding that airspace within the Windsor Locks, CT Airport Radar Service Area, and that airspace within the Windsor Locks, CT, and Chester, CT, Transition Areas, and that airspace within the Hartford, CT Control Zone during the specific dates and times it is effective.

**ANE CT TA Madison, CT [Revised]**

Madison, Griswold Airport, CT
(lat. 41°16'16" N, long. 72°32'59" W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Griswold Airport from the Griswold Airport 260° bearing clockwise to the Griswold Airport 090° bearing, and within a 6.2-mile radius from the Griswold Airport 090° bearing clockwise to the 260° bearing; excluding that airspace within the Chester, CT Transition Area.

**ANE CT TA Meriden, CT [Revised]**

Meriden Markham Municipal Airport, CT
(lat. 41°30'31" N, long. 72°49'46" W)
Madison VOR/DME
(lat. 41°18'50" N, long. 72°41'32" W)

That airspace extending upward from 700 feet above the surface within a 10.8-mile radius of Meriden Markham Municipal Airport, and within 4 miles on each side of the Madison VOR/DME 332° radial extending from the 10.8-mile radius to 0.6 miles northwest of the Madison VOR/DME; excluding that airspace within the New Haven, CT Control Zone during the specific dates and times it is effective, and that airspace within the Bridgeport, CT, Madison, CT, Chester, CT, and Hartford, CT, Transition Areas.

**ANE CT TA New Haven, CT [Revised]**

New Haven, Tweed-New Haven Airport, CT
(lat. 41°15'49" N, long. 72°53'12" W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Tweed-New Haven Airport; excluding that airspace within the Bridgeport, CT, Meriden, CT, Chester, CT, and Madison, CT, Transition Areas, and that airspace within the New Haven, CT, Bridgeport, CT, Sikorsky, CT, Control Zones during the specific dates and times they are effective.

**ANE CT TA Oxford, CT [Revised]**

Waterbury-Oxford Airport, CT
(lat. 41°28'46" N, long. 73°08'07" W)
Waterbury NDB
(lat. 41°31'45" N, long. 73°08'38" W)

That airspace extending upward from 700 feet above the surface within a 8-mile radius of Waterbury-Oxford Airport; and within 3.8 miles on each side of the Waterbury NDB 354° bearing extending from the 8-mile radius to 9.4 miles northwest of the Waterbury NDB; excluding that airspace within the Meriden, CT, New Haven, CT, and Bridgeport, CT, Transition Areas.

**ANE CT TA Willimantic, CT [Revised]**

Willimantic, Windham Airport, CT
(lat. 41°44'38" N, long. 72°10'49" W)
Norwich VORTAC
(lat. 41°33'23" N, long. 71°59'56" W)

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Windham Airport, and within 3.7 miles on each side of the Norwich VORTAC 323° radial extending from the 10.5-mile radius to 12.9 miles southeast of the Windham Airport, and within 3.9 miles south and 5.2 miles north of the Windham Airport 074° bearing extending from the 10.5-mile radius to 15.7 miles east of Windham Airport; excluding that airspace within the Danielson, CT, and Hartford, CT, Transition Areas.

**ANE CT TA Windsor Locks, CT [Revised]**

Windsor Locks, Bradley International Airport, CT
(lat. 41°56'20" N, long. 72°40'59" W)
Bradley VORTAC
(lat. 41°56'27" N, long. 72°41'19" W)

That airspace extending upward from 700 feet above the surface within a 10.9-mile radius of Bradley International Airport, and within 3.1 miles on each side of the Bradley Airport 044° bearing extending from the 10.9-mile radius to 11.7 miles northeast of the Bradley Airport; excluding that airspace within the Hartford, CT, Westfield, MA, and Springfield/Chicopee, MA, Control Zones, during the specific dates and times they are effective, and that airspace within the Windsor Locks, CT Airport Radar Service Area.

**ANE ME TA Auburn, ME [Revised]**

Auburn/Lewiston Municipal Airport, ME
(lat. 44°02'54" N, long. 70°17'00" W)
LEWIE LOM
(lat. 43°57'50" N, long. 70°20'08" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Auburn/Lewiston Municipal Airport, and within 3.9 miles on each side of the LEWIE LOM 203° bearing extending from the 7.5-mile radius to 8.2 miles southwest of the LEWIE LOM.

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**ANE ME TA Bangor, ME [Revised]**

Bangor International Airport, ME
(lat. 44°48'27" N, long. 68°49'41" W)
Bangor VORTAC
(lat. 44°50'30" N, long. 68°52'26" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Bangor International Airport, and that airspace within 6.5 miles south and 4 miles north of the Bangor International Airport 136° bearing extending from the 10-mile radius to 16.7 miles southeast of the Bangor

International Airport, and that airspace within 3.7 miles on each side of the Bangor VORTAC 318° radial extending from the 10-mile radius to 8.8 miles northwest of the Bangor VORTAC; excluding that airspace within the Bangor, ME Control Zone.

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**ANE ME TA Belfast, ME [Revised]**

Belfast Municipal Airport, ME
(lat. 44°24'35" N, long. 69°00'44" W)
Belfast NDB
(lat. 44°24'40" N, long. 69°00'38" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Belfast Municipal Airport from the Belfast Airport 050° bearing clockwise to the Belfast Airport 180° bearing, and that airspace within 9.4-mile radius from the Belfast Airport 180° bearing clockwise to the Belfast Airport 050° bearing, and that airspace within 3 miles on each side of the Belfast NDB 306° bearing extending from the 9.4-mile radius to 15.4 miles northwest of the Belfast NDB.

**ANE ME TA Biddeford, ME [Revised]**

Biddeford Municipal Airport, ME
(lat. 43°27'51" N, long. 70°28'21" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Biddeford Municipal Airport, excluding that airspace within the Kennebunkport, ME Transition Area.

**ANE ME TA Brunswick, ME [Revised]**

Brunswick NAS, ME
(lat. 43°53'32" N, long. 69°56'19" W)
Brunswick Navy TACAN
(lat. 43°54'09" N, long. 69°56'43" W)
Wiscasset Airport, ME
(lat. 43°57'40" N, long. 69°42'48" W)
Wiscasset NDB
(lat. 43°58'57" N, long. 69°38'25" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Brunswick NAS, and within 1.8 miles on each side of the Brunswick Navy TACAN 166° radial extending from the 7.8-mile radius to 10.4 miles south of the Brunswick Navy TACAN, and within a 8.4-mile radius of Wiscasset Airport, and within 4 miles south and 6 miles north of the Navy Brunswick TACAN 070° radial extending from the 8.4-mile radius to 25.5 miles east of the Navy Brunswick TACAN.

**ANE ME TA Frenchville, ME [Revised]**

Frenchville, Northern Aroostook Regional Airport, ME
(lat. 47°17'06" N, long. 68°18'46" W)
Frenchville NDB
(lat. 47°16'05" N, long. 68°15'24" W)

That airspace extending upward from 700 feet above the surface within a 8.9-mile radius of Northern Aroostook Regional Airport, and that airspace within 4.0 miles on each side of the Frenchville NDB 113° bearing extending from the 8.9-mile radius to 9.8 miles southeast of Frenchville NDB; excluding that airspace outside of the United States.

**ANE ME TA Fryeburg, ME [Revised]**

Fryeburg, Eastern Slopes Regional Airport, ME
(lat. 43°59'26" N, long. 70°56'48" W)
Sebago NDB
(lat. 43°54'16" N, long. 70°46'36" W)

That airspace extending upward from 700 feet above the surface within a 2.3-mile radius of Eastern Slopes Regional Airport from the Eastern Slopes Airport 126° bearing clockwise to the Eastern Slopes Airport 323° bearing, and that airspace within a 10.3-mile radius of Eastern Slopes Regional Airport from the Eastern Slopes Airport 323° bearing clockwise to the Eastern Slopes Regional Airport 126° bearing, and that airspace within 2 miles on each side of the Sebago NDB 308° bearing extending from 2.3-mile radius to the Sebago NDB.

**ANE ME TA Greenville, ME [Revised]**

Greenville Municipal Airport, ME
(lat. 45°27'45" N, long. 69°33'02" W)
Squaw NDB
(lat. 45°31'16" N, long. 69°40'28" W)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Greenville Municipal Airport from the Greenville Airport 345° bearing clockwise to the Greenville Airport 315° bearing, and within a 11.5-mile radius of Greenville Municipal Airport from the Greenville Airport 315° bearing clockwise to the Greenville Airport 345° bearing, and within 3 miles on each side of the Squaw NDB 305° bearing extending from the 9.4-mile radius to 9.7 miles northwest of the Squaw NDB.

**ANE ME TA Houlton, ME [Revised]**

Houlton International Airport, ME
(lat. 46°07'25" N, long. 67°47'32" W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Houlton International Airport excluding that airspace outside of the United States.

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**ANE ME TA Lincoln, ME [Revised]**

Lincoln Regional Airport, ME
(lat. 45°21'44" N, long. 68°32'05" W)
Lincoln NDB
(lat. 45°21'23" W, long. 68°32'13" W)

That airspace extending upward from 700 feet above the surface within a 10.3-mile radius of Lincoln Regional Airport, and within 4 miles west and 8 miles east of the Lincoln NDB 342° bearing extending from 10.3-mile radius to 16 miles northwest of the Lincoln NDB.

**ANE ME TA Machias, ME [Revised]**

Machias Valley Airport, ME
(lat. 44°42'11" N, long. 67°28'41" W)
Machias NDB
(lat. 44°42'16" N, long. 67°28'42" W)

That airspace extending upward from 700 feet above the surfac ewithin a 8.3-mile radius of Machias Valley Airport.

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**ANE ME TA Millinocket, ME [Revised]**

Millinocket Muncipal Airport, ME
(lat. 45°38'52" N, long. 68°41'08" W)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of Millinocket Municipal Airport, excluding that airspace within the Lincoln, ME Transition Area.

**ANE ME TA Norridgewock, ME [Revised]**

Norridgewock, Central Maine Airport of Norridgewock, ME
(lat. 44°42'56" N, long. 69°51'59" W)
Augusta VORTAC
(lat. 44°19'12" N, long. 69°47'47" W)

That airspace extending upward from 700 feet above the surface within a 12.5-mile radius of Central Maine Airport from the Central Maine Airport 190° bearing clockwise to the Central Maine Airport 340° bearing, and within a 10-mile radius of the Central Maine Airport from the Central Maine Airport 340° bearing clockwise to the Central Maine Airport 190° bearing, and within 4 miles west and 5 miles east of the Augusta VORTAC 353° radial extending from the 10-mile radius to the Augusta VORTAC; excluding that airspace within the Augusta, ME Transition Area.

**ANE ME TA Old Town, ME [Revised]**

Old Town, Dewitt Field, Old Town Municipal Airport, ME
(lat. 44°57'10" N, long. 68°40'25" W)
Bangor VORTAC
(lat. 44°50'30" N, long. 68°52'26" W)
Old Town NDB
(lat. 45°00'24" N, long. 68°38'00" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Dewitt Field, Old Town Municipal Airport, and within 2.8 miles on each side of the Old Town NDB 029° bearing extending from the 7-mile radius to 9 miles northeast of the Old Town NDB, and within 4 miles on each side of the Bangor VORTAC 050° radial extending from the 7-mile radius to 25 miles northeast of the Bangor VORTAC; excluding that airspace within the Bangor, ME Airport Radar Service Area, and that airspace within the Bangor, ME Transition Area.

**ANE ME TA Pittsfield, ME [Revised]**

Pittsfield Municipal Airport, ME
(lat. 44°46'06" N, long. 69°22'28" W)
Burnham NDB
(lat. 44°41'50" N, long. 69°21'28" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Pittsfield Municipal Airport, and within 2.9 miles on each side of the Burnham NDB 170° bearing extending from the 7.5-mile radius to 9.2 miles south of the NDB; excluding that airspace within the Belfast, ME Transition Area.

**ANE ME TA Portland, ME [Revised]**

Portland International Jetport, ME
(lat. 43°38'46" N, long. 70°18'31" W)
ORHAM LOM
(lat. 43°39'09" N, long. 70°26'28" W)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of the Portland International Jetport, and within 3 miles on each side of the ORHAM LOM 275° bearing extending from the 8.7-mile radius to 10 miles west of the ORHAM LOM; excluding that airspace within the Portland, ME Airport Radar Service Area, and that airspace within the Biddeford, ME Transition Area.

**ANE ME TA Presque Isle, ME [Revised]**

Northern Maine Regional Airport at Presque Isle, ME

(lat. 46°41'20" N, long. 68°02'41" W)
Presque Isle VORTAC
(lat. 46°46'27" N, long. 68°05'40" W)
EXCAL LOM
(lat. 46°36'37" N, long. 68°01'06" W)
Caribou Municipal Airport, ME
(lat. 46°52'17" N, long. 68°01'04" W)
Loring Air Force Base
(lat. 46°57'01" N, long. 67°53'06" W)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Northern Maine Regional Airport at Presque Isle, and within 3 miles on each side of the EXCAL LOM 165° bearing extending from the 11-mile radius to 9.2 miles south of the EXCAL LOM, and within 4 miles east and 8 miles west of the Presque Isle VORTAC 340° radial extending from the 11-mile radius to 16 miles northwest of the VORTAC, and within a 8.5-mile radius of Caribou Municipal Airport, and within an 8.5-mile radius of Loring Air Force Base; excluding that airspace outside of the United States, and that airspace within the Limestone, ME, Control Zone.

**ANE ME TA Princeton, ME [Revised]**

Princeton Municipal Airport, ME
(lat. 45°12'02" N, long. 67°33'52" W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Princeton Municipal Airport, excluding that airspace outside the United States.

**ANE ME TA Rangeley, ME**

Rangely Municipal Airport, ME
(lat. 44°59'30" N, long. 70°39'49" W)
Rangeley NDB
(lat. 44°56'04" N, long. 70°45'04" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Rangeley Municipal Airport, and within 4 miles southeast and 8 miles northwest of the Rangeley NDB 227° bearing extending from Rangeley NDB to 16 miles southwest of NDB; excluding that airspace within the Berlin, NH, Transition Area.

**ANE ME TA Rockland, ME [Revised]**

Rockland, Knox County Regional Airport, ME
(lat. 44°03'37" N, long. 69°05'59" W)
Sprucehead NDB
(lat. 43°59'52" N, long. 69°07'03" W)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of Knox County Regional Airport, and within 4 miles east and 5.5 miles west of the Sprucehead NDB 194° bearing extending from the 8.4-mile radius to 10 miles south of Sprucehead NDB.

**ANE ME TA Sanford, ME [Revised]**

Sanford Municipal, ME
(lat. 43°23'38" N, long. 70°42'29" W)
Kennebunk VORTAC
(lat. 43°25'33" N, long. 70°36'49" W)
SANFD LOM
(lat. 43°20'04" N, long. 70°50'04" W)

That airspace extending upward from 700 feet above the surface within 10.7 miles of Sanford Municipal Airport from the Sanford Airport 253° bearing clockwise to the Sanford Airport 073° bearing, and within 6.7 miles of the Sanford Municipal Airport from the Sanford Airport 073° bearing clockwise to the Sanford Airport 253° bearing, and within 4 miles north and 5 miles south of the SANFD LOM 238° bearing extending from the 6.7-mile radius to 10 miles southwest of the SANFD LOM, and within 4 miles north and 5 miles south of the Kennebunk VORTAC 064° radial extending from 6.7-mile radius to 9 miles northeast of the Kennebunk VORTAC; excluding that airspace within the Portsmouth, ME, Kennebunkport, ME, and Biddeford, ME, Transition Areas.

**ANE ME TA Waterville, ME [Revised]**

Waterville Robert LaFleur Airport, ME
(lat. 44°32'00" N, long. 69°40'32" W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Waterville Robert LaFleur Airport; excluding that airspace within the Norridgewock, ME, and Augusta, ME, Transition Areas.

**ANE ME TA Boston, MA [Revised]**

Boston, General Edward Lawrence Logan International Airport
(lat. 42°21'51" N, long. 71°00'18" W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 42°30'00" N, long. 70°47'58" W and running to lat. 42°43'00" N, long. 70°39'28" W, then to lat. 42°55'00" N, long. 70°57'58" W, then to lat. 42°56'00" N, long. 71°15'28" W, then to lat. 42°42'00" N, long. 71°17'58" W, then to lat. 42°32'00" N, long. 71°40'58" W, then to lat. 42°21'00" N, long. 71°41'58" W, then to lat. 42°20'00" N, long. 71°24'28" W, then to lat. 42°05'00" N, long. 71°22'30" W, then to lat. 42°04'00" N, long. 71°11'58" W, then to lat. 41°56'00" N, long. 71°06'58" W, then to lat. 41°59'00" N, long. 70°56'28" W, then to lat. 42°12'00" N, long. 70°36'28" W, then to the point of beginning; excluding that airspace within the Boston, MA Terminal Control Area, and that airspace within the South Wymouth, MA, Norwood, MA, Bedford, MA, Beverly, MA, Lawrence, MA, Control Zones, during the specific dates and times they are effective.

**ANE MA TA Fall River, MA [Revised]**

Fall River Municipal, MA
(lat. 41°45'18" N, long. 71°06'36" W)
Fall River NDB (FLR)
(lat. 41°45'20" N, long. 71°06'44" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Fall River Municipal Airport; excluding that airspace within the New Bedford, MA Control Zone during the dates and times it is effective, and that airspace within the New Bedford, MA, Providence, RI, and North Kingstown, RI, Transition Areas.

**ANE MA TA Falmouth, MA [Revised]**

Falmouth, Otis ANGB, MA
(lat. 41°39'40" N, long. 70°31'17" W)
Barnstable Municipal Airport-Boardman/Polando Field
(lat. 41°40'09" N, long. 70°16'49" W)
Chatham Municipal Airport
(lat. 41°41'18" N, long. 69°59'22" W)
Martha's Vineyard Municipal Airport
(lat. 41°23'335" N, long. 70°36'52" W)
Martha's Vineyard VOR/DME
(lat. 41°23'46" N, long. 70°36'46" W)
BOGEY LOM
(lat. 41°42'58"W, long. 70°12'11" W)

That airspace extending upward from 700 feet above the surface within a 12.2-mile radius of Otis ANGB, and within a 6.7-mile radius of Barnstable Municipal Airport, and within 3 miles on each side of the BOGEY LOM 050° bearing extending from the 6.7-miles radius to 10 miles northeast of the BOGEY LOM, and within a 6.3-miles radius of the Chatham Municipal Airport, and within a 6.5-mile radius of Martha's Vineyard Municipal Airport, and within 5.1 miles on each side of the 052° radial of the Martha's Vineyard VOR/DME extending from the 6.5-mile radius to 14 miles northeast of Martha's Vineyard VOR/DME; excluding that airspace within the Hyannis, MA, and Martha's Vineyard, MA, Control Zones during the specific dates and times they are effective, and that airspace within the Falmouth, MA Control Zone.

**ANE MA TA Fitchburg, MA [Removed]**

**ANE MA TA Fort Devens, MA [Revised]**

Fort Devens, Moore AAF, MA
(lat. 42°34'12" N, long. 71°36'10" W)
Dickinson NDB
(lat. 42°38'46" N, long. 71°43'37" W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Fort Devens, Moore AAF, and within 3 miles on each side of 310° bearing from the Dickinson NDB extending from the 7.6-mile radius to 10 miles northwest of the Dickinson NDB; excluding that airspace within the Keene, NH, Nashua, NH, Manchester, NH, and Boston, MA, Transition Areas.

**ANE MA TA Great Barrington, MA [Revised]**

Great Barrington Airport, MA
(lat. 42°11'03" N, long. 73°24'11" W)

That airspace extending upward from 700 feet above the surface within a 12.8-mile radius of Great Barrington Airport, excluding that airspace within the Hudson, NY Transition Area.

**ANE MA TA Hopedale, MA [Revised]**

Hopedale Industrial Park Airport, MA
(lat. 42°06'23" N, long. 71°30'36" W)
Putnam VOR/DME
(lat. 41°57'20" N, long. 71°50'39" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Hopedale Industrial Park Airport, and within 4 miles on each side of the Putnam VOR/DME 059° radial extending from the 7.3-miles radius to the Putnam VOR/DME; excluding that airspace within the Boston, MA, Danielson, CT, Pawtucket, RI, Providence, RI, and North Kingstown, RI, Transition Areas.

**ANE MA TA Mansfield, MA [Revised]**

Mansfield Municipal Airport, MA
(lat. 42°00'00" N, long. 71°11'48" W)

That airspace extending upward from 700 feet above the surface within a 8.3-mile radius of Mansfield Municipal Airport; excluding that airspace within Norwood, MA Control Zone during the specific dates and times it is effective, and that airspace within the Boston, MA, Hopedale, MA, Fall River, MA, North Kingstown, RI, Providence, RI, and Pawtucket, RI, Transition Areas.

**ANE MA TA Marshfield, MA [Revised]**

Marshfield Airport, MA
(lat. 42°05'53" N, long. 70°40'20" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Marshfield Airport, excluding that airspace within the Boston, MA Transition Area.

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**ANE MA TA Northampton, MA [Revised]**

Northampton Airport, MA
(lat. 42°19'41" N, long. 72°36'41" W)

That airspace extending upward from 700 feet above the surface within a 13.3-mile radius of Northampton Airport; excluding that airspace within the Springfield/Chicopee, MA, and Westfield, MA, Control Zones during the specific dates and times it is effective, and that airspace within the Springfield/Chicopee, MA, Keene, NH, and Windsor Locks, CT, Transition Areas.

**ANE MA TA Palmer, MA [Revised]**

Palmer, Metropolitan Airport, MA
(lat. 42°13'24" N, long. 72°18'41" W)
Palmer NDB
(lat. 42°13'26" N, long. 72°18'45" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Metropolitan Airport, and within 3.9 miles on each side of the Palmer NDB 201° bearing extending from the 6.3-mile radius to 13.3 miles southwest of the Palmer NDB; excluding that airspace within the Springfield/Chicopee, MA Control Zone during the specific dates and times it is effective, and that airspace within the Springfield/Chicopee, MA, Northampton, MA and Windsor Locks, CT, Transition Areas.

**ANE MA TA Pittsfield, MA [Revised]**

Pittsfield Municipal Airport, MA
(lat. 42°25'36" N, long. 73°17'34" W)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Pittsfield Municipal Airport, and within 4 miles on each side of the Pittsfield Municipal Airport 065° bearing extending from the 4-mile radius to 16.2 miles northeast of the Pittsfield Municipal Airport; excluding that airspace within the Great Barrington, MA Transition Area.

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**ANE MA TA Provincetown, MA [Revised]**

Provincetown Municipal Airport, MA
Racepoint NDB

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Provincetown Municipal Airport, and within 8 miles north and 4 miles south of the Racepoint NDB 051° bearing extending from the Racepoint NDB to 16 miles northeast of the Racepoint NDB, and within 8 miles north and 4 miles south of the Racepoint NDB 257° bearing extending from the Racepoint NDB TO 16 miles southwest of the Racepoint NDB; excluding that airspace within the Marshfield, MA, and Boston, MA, transition areas.

**ANE MA TA Southbridge, MA [Revised]**

Southbridge Municipal Airport, MA
(lat. 42°06'03" N, long. 72°02'18" W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Southbridge Municipal Airport, excluding that airspace within the Worcester, MA Transition Area.

**ANE MA TA Springfield/Chicopee, MA [Revised]**

Springfield/Chicopee, Westover AFB, MA
(lat. 42°11'52" N, long. 72°31'48" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Westover AFB; excluding that airspace within the Westfield, MA Transition Area, and that airspace within the Springfield/Chicopee, MA, and Westfield, MA, Control Zones during the specific dates and times they are effective.

**ANE MA TA Taunton, MA [Revised]**

Taunton Municipal Airport, MA
(lat. 41°52'28" N, long. 71°01'01" W)
Taunton, NDB
(lat. 41°52'35" N, long. 71°01'01" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Taunton Municipal Airport; excluding that airspace within the Boston, MA, Fall River, MA, New Bedford, MA, and Mansfield, MA, Transition Areas.

**ANE MA TA Westfield, MA [Revised]**

Westfield, Barnes Municipal Airport, MA
(lat. 42°09'28" N, long. 72°42'56" W)

That airspace extending upward from 700 feet above the surface within a 12.8-mile radius of Barnes Municipal Airport; excluding that airspace within the Windsor Locks, CT Airport Radar Service Area, and that airspace within the Northampton, MA, Palmer, MA, and Windsor Locks, CT, Transition Areas, and that airspace within the Springfield, MA, and Westfield, MA, Control Zones during the specific dates and times they are effective.

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**ANE NH TA Berlin, NH [Revised]**

Berlin Municipal Airport, NH
(lat. 44°35'30" N, long. 71°10'32" W)
Berlin VOR/DME
(lat. 44°38'00" N, long. 71°11'10" W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Berlin Municipal Airport, and within 4 miles west and 8 miles east of the Berlin VOR/DME 355° radial extending from the 8.2-mile radius to 16 miles north of the Berlin VOR/DME.

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**ANE NH TA Concord, NH [Revised]**

Concord Municipal Airport, NH
(lat. 43°12'12" N, long. 71°30'07" W)
EPSOM NDB
(lat. 43°07'07" N, long. 71°27'09" W)
Concord VORTAC
(lat. 43°13'11" N, long. 71°34'31" W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Concord Municipal Airport, and within 4 miles on each side of the EPSOM NDB 156° bearing extending from the 12-mile radius to 9.6 miles south of the EPSOM NDB, and within 8 miles south and 15 miles north of the Concord VORTAC 300° radial extending from the 12-mile radius to 20 miles northwest of the Concord VORTAC; excluding that airspace within the Manchester, NH Airport Radar Service Area.

**ANE NH TA Keene, NH [Revised]**

Keene, Dillant Hopkins Airport, NH
(lat. 42°53'53" N, long. 72°16'14" W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 43°01'00" N, long. 72°13'00" W, and running to lat. 42°53'00" N, long. 71°55'00" W, then to lat. 42°38'00" N, long. 71°41'00" W, then to lat. 42°26'00" N, long. 71°42'00" W, then to lat. 42°26'00" N, long. 71°53'00" W, then to lat. 42°24'00" N, long. 72°00'00" W, then to lat. 42°28'00" N, long. 72°15'00" W, then to lat. 42°28'00" N, long. 72°40'00" W, then to lat. 42°39'00" N, long. 72°48'00" W, then to lat. 42°46'00" N, long. 72°43'00" W, then to lat. 42°52'00" N, long. 72°28'00" W, then to lat. 43°05'00" N, long. 72°34'30" W, then to lat. 43°10'00" N, long. 72°19'00" W, then to the point of beginning

**ANE NH TA Laconia, NH [Revised]**

Laconia Municipal Airport, NH
(lat. 43°34'22" N, long. 71°25'06" W)
Belknap NDB
(lat. 43°32'12" N, long. 71°32'13" W)

That airspace extending upward from 700 feet above the surface within a 2.8-mile radius of the Laconia Municipal Airport, and within 2.8 miles on each side of the Belknap NDB 249° bearing extending from the 2.8-mile radius to 8.8 miles southwest of the Belknap NDB, and within 2.8 miles on each side of the Laconia Municipal Airport 041° bearing extending from the 2.8-mile radius to 6.5 miles northeast of the Laconia Municipal Airport.

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**ANE NH TA Manchester, NH [Revised]**

Manchester Airport, NH
(lat. 42°56'00" N, long. 71°26'16" W)
Manchester VORTAC
(lat. 42°52'06" N, long. 71°22'10" W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of the Manchester Airport; excluding that airspace within the Manchester, NH Airport Radar Service Area, and that airspace within the Nashau, NH, and Lawrence, MA, Control Zones during the specific dates and times they are effective, and that airspace within the Boston, MA, and Keene, NH, Concord, NH, Portsmouth, NH, Nashua, NH, Newburyport, MA, Transition Areas.

**ANE NH TA Nashua, NH [Revised]**

Nashua, Boire Field, NH
(lat. 42°46'54" N, long. 71°30'53" W)
CHERN NDB
(lat. 42°49'24" N, long. 71°36'08" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Boire Field, and within that area bounded by a line beginning at lat. 42°53'22" N, long. 71°31'52" W and running to lat. 43°02'25" N, long. 71°13'28" W, then to lat. 42°55'15" N, long. 71°06'58" W, then to lat. 42°38'30" N,

long. 71°21'48" W, then to lat. 42°40'48" N, long. 71°27'50" W, and within 4 miles on each side of the CHERN NDB 303° bearing extending from the 7-mile radius to 10 miles northwest of the CHERN NDB; excluding that airspace within the Nashua, NH Control Zone during the specific dates and times it is effective, and that airspace within the Portsmouth, NH, Fort Devens, MA, and Boston, MA, Transition Areas, and that airspace within the Manchester, NH Airport Radar Service Area.

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**ANE NH TA Portsmouth, NH [Revised]**

Portsmouth, Pease International Tradeport, NH
(lat. 43°04'40" N, long. 70°49'24" W)

That airspace extending upward from 700 feet above the surface within that area bounded by a line beginning at lat. 43°25'00" N, long. 71°13'00" W and running to lat. 43°27'00" N, long. 70°56'00" W, then to lat. 43°25'00" N, long. 70°48'00" W, then to lat. 43°14'00" N, long. 70°36'00" W, then to lat. 43°00'00" N, long. 70°36'00" W, then to lat. 42°54'00" N, long. 70°52'00" W), then to lat. 42°49'00" N, long. 71°09'00" W, then to lat. 42°53'00" N, long. 71°12'00" W, then to lat. 43°03'00" N, long. 71°05'00" W), then to the point of beginning; excluding that airspace within the Portsmouth, NH Control Zone, and that airspace within the Newburyport, MA, and Boston, MA, Transition Areas.

**ANE NH TA Whitefield, NH [Revised]**

Whitefield, Mt. Washington Regional Airport, NH
(lat. 44°22'03" N, long. 71°32'40" W)
Mahn NDB
(lat. 44°21'44" N, long. 71°41'10" W)

That airspace extended upward from 700 feet above the surface within a 2.9-mile radius of Mt. Washington Regional Airport, and within 2.9 miles on each side of the MAHN NDB 267° bearing extending from 2.9-mile radius to 9.5 miles east of the MAHN NDB; excluding that airspace within the Lyndonville, VT Transition Area.

**ANE RI TA Block Island, RI [Revised]**

Block Island State Airport, RI
(lat. 41°10'05" N, long. 71°34'40" W)
Sandy Point VOR/DME
(lat. 41°10'03" N, long. 71°34'34" W)
Block Island NDB
(lat. 41°09'59" N, long. 71°34'47" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Block Island State Airport, and within 4 miles north to 8 miles south of the Block Island NDB 271° bearing extending from the 6.3-mile radius to 16 miles west of the Block Island NDB, and within 4 miles south to 8 miles north of the Sandy Point VOR/DME 080° radial extending from the 6.3-mile radius to 16 miles east of the Sandy Point VOR/DME.

**ANE RI TA Newport, RI [Revised]**

Newport State, RI
(lat. 41°31'56" N, long. 71°16'53" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Newport State Airport, and within 2.2 miles on each side of the Providence VORTAC 150° radial extending from the 6.3-mile radius to 5.6 miles southeast of the Providence VORTAC, and within 4 miles northwest to 6 miles southeast of Newport State Airport 025° bearing extending from the 6.3-mile radius to 16.2 miles northeast of the Newport State Airport; excluding that airspace within the North Kingstown, RI, and New Bedford, MA, Control Zones during the specific dates and times they are effective, and that airspace within the Providence, RI Control Zone, and that airspace within the New Bedford, MA, and Fall River, MA, Transition Areas.

**ANE RI TA North Kingstown, RI [Revised]**

North Kingstown, Quonset State Airport, RI
(lat. 41°35'48" N, long. 71°24'43" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Quonset State Airport, and within 6.5 miles east to 4.5 miles west of the Quonset State Airport 145° bearing extending from the 9.3-mile radius to 16.3 miles southeast of the Quonset State Airport, and within 5 miles east to 8 miles west of the Providence VORTAC 355° radial extending from the 9.3-mile radius to 14.5 miles north of the Providence VORTAC; excluding that airspace within the North Kingstown, RI Control Zone during the dates and times it is effective, and that airspace within the Providence, RI Airport Radar Service Area, and that airspace within the Newport, RI, and New Bedford, MA, Transition Areas.

**ANE RI TA Pawtucket, RI [Revised]**

Pawtucket, North Central State, RI
(lat. 41°55'14" N, long. 71°29'29" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)
Putnam VOR/DME
(lat. 41°57'20" N, long. 71°50'39" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of North Central State Airport, and within 2 miles on each side of the North Central State Airport 032° bearing extending from the 6.6-mile radius to 13.4 miles northeast of the North Central State Airport, and within 4.5 miles east and 6.5 miles west of the North Central State Airport 212° bearing extending from 6.6-mile radius to 16 miles southwest of the North Central State Airport, and within 3.6 miles on each side of the Putnam VOR/DME 097° radial extending from the 6.6-mile radius to 6.8 miles east of the Putnam VOR/DME, and within 3.8 miles on each side of the Providence VORTAC 347° radial extending from the 6.6-mile radius to 0.8 miles north of the Providence VORTAC; excluding that airspace within the Providence, RI Airport Radar Service Area, and that airspace within the North Kingstown, RI, Danielson, CT, and Boston, MA Transition Areas.

**ANE RI TA Providence, RI [Revised]**

Providence, Theodore Francis Green State Airport, RI
(lat. 41°43'30" N, long. 71°25'40" W)
Providence VORTAC
(lat. 41°43'28" N, long. 71°25'47" W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Theodore Francis Green State Airport, and within 4 miles northwest to 4.5 miles southeast of the Providence VORTAC 211° radial extending from the 6.6-mile radius to 16.7 miles southwest of the Providence VORTAC, and within 4 miles on each side of the VORTAC 330° radial extending from the 6.6-mile radius to 15.4 miles northwest of the Providence VORTAC, and within 2.9 miles on each side of the Providence VORTAC 132° radial extending from the 6.6-mile radius to 9.6 miles southeast of the Providence VORTAC; excluding that airspace within the North Kingstown, RI Control Zone during the dates and times it is effective, and that airspace within the Providence, RI Airport Radar Service Area, and that airspace within the North Kingstown, RI, Pawtucket, RI, Newport, RI, and Fall River, MA, Transition Areas.

* * * * *

**ANE RI TA Westerly, RI [Revised]**

Westerly State Airport, RI
(lat. 41°20'58" N, long. 71°48'12" W)
Westerly NDB
(lat. 41°20'40" N, long. 71°48'52" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Westerly State Airport, and within 2.9 miles on each side of the Westerly NDB 222° bearing extending from the 6.5-mile radius to 9.4 miles southwest of Westerly NDB; excluding that airspace within the Block Island, RI Transition Area, and that airspace within the Groton, CT Control Zone during the specific dates and times it is effective.

**ANE VT TA Bennington, VT [Revised]**

Bennington, William H. Morse State Airport, VT
(lat. 42°53'29" N, long. 73°14'47" W)
Cambridge VOR
(lat. 42°59'40" N, long. 73°20'38" W)

That airspace extending upward from 700 feet above the surface within a 2-mile radius of William H. Morse State Airport, and within 1.3 miles on each side of the Cambridge VOR 145° radial extending from the 2-mile radius to 1.4 miles southeast of Cambridge VOR.

**ANE VT TA Burlington, VT [Revised]**

Burlington International Airport, VT
(lat. 44°28'17" N, long. 73°09'10" W)
Burlington VORTAC
(lat. 44°23'49" N, long. 73°10'57" W)
HERRO NDB
(lat. 44°31'50" N, long. 73°14'58" W)

That airspace extending upward from 700 feet above the surface within a 10.8-mile radius of Burlington International Airport, and within 3 miles on each side of the Burlington VORTAC 201° radial extending from the 10.8-mile radius to 9.6 miles southwest of the Burlington VORTAC, and within 4 miles southwest and 8 miles northeast of the HERRO NDB 311° bearing extending from the 10.8-mile radius to 16 miles northwest of the HERRO NDB;

excluding that airspace within the Burlington, VT Airport Radar Service Area, and that airspace within the Plattsburgh, NY Control Zone.

* * * * *

**ANE VT TA Lyndonville, VT [Revised]**

Lyndonville, Caledonia County Airport, VT
(lat. 44°34'09" N, long. 72°01'04" W)

That airspace extending upward from 700 feet above the surface within a 12.3-mile radius of Caledonia County Airport.

**ANE VT TA Montpelier, VT [Revised]**

Barre-Montpelier, Edward F. Knapp State Airport, VT
(lat. 44°12'12" N, long. 72°33'44" W)
Montpelier VOR/DME
(lat. 44°05'06" N, long. 72°26'57" W)
Williams NDB
(lat. 44°07'14" N, long. 72°31'06" W)
Mt. Mansfield NDB
(lat. 44°23'12" N, long. 72°41'36" W)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Edward F. Knapp State Airport, and within 3 miles on each side of the Montpelier VOR/DME 144° radial extending from the 8-mile radius to 10 miles southeast of the Montpelier VOR/DME, and within 2.8 miles on each side of the Williams NDB 159° bearing extending from the 8-mile radius to 9.3 miles southeast of the Williams NDB, and within 3 miles on each side of the Mt. Mansfield NDB 332° bearing extending from the 8-mile radius to 9.8 miles northwest of the Mt. Mansfield NDB.

**ANE VT TA Morrisville, VT [Revised]**

Morrisville-Stowe State Airport, VT
(lat. 44°32'04" N, long. 72°36'50" W)
Morrisville-Stowe NDB
(lat. 44°34'43" N, long. 72°35'14" W)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Morrisville-Stow Airport, and within 2.9 miles on each side of the Morrisville-Stow NDB 034° bearing extending from 3.5-mile radius to 9.2 miles northeast of the Morrisville-Stow NDB.

* * * * *

**ANE VT TA Springfield, VT [Revised[**

Springfield, Hartness State Airport, VT
(lat. 43°20'37" N, long. 72°31'02" W)
Springfield NDB
(lat. 43°16'12" N, long. 72°35'11" W)

That airspace extending upward from 700 feet above the surface within a 3.0-mile radius of Hartness State Airport, and within 2.8 miles on each side of the Springfield NDB 217° bearing from 3.0-mile radius to 9 miles southwest of the Springfield NDB.

* * * * *

Issued in Burlington, Massachusetts, on July 6, 1993.

**John J. Boyce,**

*Acting Manager, Air Traffic Division, New England Region.*

[FR Doc. 93-17733 Filed 7-23-93; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 1**

**[Docket No. 930520-3120]**

**RIN 0651-AA56**

## Patent Interference Practice—Separate Patentability of Claims

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office (PTO) proposes to amend its rules of practice in patent interference cases. *In re Van Geuns* interpreted patent interference rules in a manner different from the manner in which the rules are interpreted by the Commissioner. The Federal Circuit held that the rules authorize a party to argue the separate patentability of claims that the PTO designates as corresponding to a single count. Under PTO rules, however, every claim designated to correspond to a court shall be directed to a single inventive concept. PTO proposes to amend the interference rules to specifically overcome the Federal Circuit's interpretation of the rules in *Van Geuns*. PTO proposes to specify that unless a party files a preliminary motion to contest the designation of a claim as corresponding to a count, the party shall be deemed to have conceded that all claims designated as corresponding to a count are unpatentable if any claim designated as corresponding to the count is held to be unpatentable and, may not argue to an examiner-in-chief or the board the separate patentability of claims designated to correspond to the count. PTO also proposes to specify that when an examiner-in-chief in an interference becomes aware of a reason why a claim corresponding to a count may not be patentable, the examiner-in-chief may enter an order notifying the parties of the reason and set a time within which each party may present its views, which may include a preliminary motion. The rules would further specify that an opponent may file an opposition to any preliminary motion and that the party would file a reply to an opposition.

These rules will apply prospectively except when an examiner-in-chief notifies a party in an interference to the contrary. If a party is notified, the party will be given an opportunity to respond regarding the patentability of a count in the interference.

**DATES:** Comments must be submitted on or before September 24, 1993.

**ADDRESSES:** Address comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Fred E. McKelvey, Solicitor. Written comments will be available for public inspection in Suite 918, on the 9th floor of Crystal Park II; located at 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Fred E. McKelvey by telephone at (703) 305-9035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

**SUPPLEMENTARY INFORMATION:** The Patent and Trademark Office (PTO) conducts interference proceedings to determine who, as between two or more applicants for patent or one or more applicants and one or more patentees, is the first inventor of a patentable invention.

A primary examiner determines in the first instance whether the claims in an application interfere with the claims in another application or a patent. When the examiner is of the view that an interference exists, the Board of Patent Appeals and Interferences (Board) is notified. 37 CFR 1.609. An examiner-in-chief, i.e., a member of the Board, is assigned to each interference. The interference is declared by the examiner-in-chief. 37 CFR 1.610(a).

Each separately patentable invention involved in the interference is defined by a count. The count is a vehicle for contesting priority of invention (i.e., who made the invention defined by the count first) and determining the evidence relevant to the issue of priority. *Squires* v. *Corbett*, 560 F.2d 424, 433, 194 USPQ 513, 519 (CCPA 1977); *Case* v. *CPC Int'l, Inc.*, 730 F.2d 745, 749, 221 USPQ 196, 200 (Fed. Cir.), *cert. denied*, 469 U.S. 872 (1984); *In re Van Geuns*, 988 F.2d at 1184, 26 USPQ2d at 1058-59 (Fed. Cir. 1993).

Each claim of any application or patent to be involved in the interference is designated to correspond to the count or not to correspond to the count. A preliminary determination is made by the PTO as to which claims should be designated to correspond to the count. The claims that are initially determined to define the same patentable invention as the count are designated to correspond to the count. All other claims are designated as not corresponding to the count. The designation of claims as corresponding or not corresponding provides a starting point in an interference. Under PTO practice, there is a presumption that the designation of a claim as corresponding or not corresponding to a count is correct.

The rules authorize a party to file a preliminary motion to redefine an interference by designating a claim as corresponding or not corresponding to a count. 37 CFR 1.633(c) (3) and (4). Prior to *Van Geuns*, the PTO had interpreted the rules to require a preliminary motion to designate a claim as not corresponding to a count as a condition to being able to argue to an examiner-in-chief or the Board that the claim is separately patentable from the other claims designated to correspond to the count. See *Brooks* v. *Street*, 18 USPQ2d 1374, 1378 (Bd. Pat. App. & Int. 1990); *Flehmig* v. *Giesa* 13 USPQ2d 1052, 1054 (Bd. Pat. App. & Int. 1989); *Kwon* v. *Perkins*, 6 USPQ2d 1747, 1751 (Bd. Pat. App. & Int. 1988), *aff'd on other grounds*, 886 F.2d 325, 12 USPQ2d 1308 (Fed. Cir. 1989); see also *Lamont* v. *Berguer*, 7 USPQ2d 1580, 1582 (Bd. Pat. App. & Int. 1988). In *Van Geuns*, however, the Federal Circuit interpreted the rules differently, stating:

> [T]he position of the Commissioner that claims designated as corresponding to a count stand or fall with the patentability of the subject matter of the count is overbroad.

988 F.2d at 1185, 26 USPQ2d at 1060. The Federal Circuit further stated:

> [W]e conclude that a party to an interference, who has failed to timely contest the designation of claims corresponding to a count, has not conceded that the claims corresponding to a count are anticipated or made obvious [i.e., are unpatentable] by the prior art when the subject matter of the count is determined to be unpatentable for obviousness. The PTO must determine, based on the actual prior art reference or references, whether claims not [designated as] corresponding exactly to the count are unpatentable.

Id. at _____, 26 USPQ2d at 1060. The Federal Circuit still further stated:

> The interference rules do not specify whether a party may argue the patentability of claims separately to the EIC [examiner-in-chief] and the board.

Id. at _____, 26 USPQ2d at 1060.

The changes proposed to the interference rules are designed to overcome the Federal Circuit's statement.

Subsection (f) of 37 CFR 1.601, as proposed to be amended, would clarify that claims are designated to correspond to a count. The designation constitutes a rebuttable presumption that, with respect to patentability, the claims stand or fall with the count.

Subsection (f) would also eliminate the "but which defines the same patentable invention as the count" language, thereby eliminating the definition of "same patentable invention" in 37 CFR 1.601(n) from the designation of claims that correspond substantially to a count. The purpose of the proposed changes is to overcome the Federal Circuit's *Van Geuns'* statement that "[i]f a party does not timely contest the designation of claims, there is in effect a concession that all of the designated claims would be anticipated or made obvious if the count were actually prior art." Id. at _____, 26 USPQ2d at 1060.

Finally, the definition of a "phantom count" would be revised to clarify that it is unpatentable to the parties under 35 U.S.C. 112.

Subsection (k) of 37 CFR 1.633, as proposed to be amended, would provide that a party who fails to contest, by way of a timely filed preliminary motion under 37 CFR § 1.633, the designation of a claim as corresponding to a count may not subsequently argue to an examiner-in-chief or the Board the separate patentability of claims designated to correspond to a count.

The first sentence of § 1.641, as proposed to be amended, would be redesignated subsection (a) and would clarify that the Examiner-in-chief would notify the parties by order of the unpatentability of claims designated as corresponding to a count. The word "corresponding" would be changed to "designated to correspond" to conform with the proposed revision to subsection 1.601(f). Proposed subsection (a) would also indicate that responses to the order may include argument and any preliminary motion permitted under § 1.633(c), (d), or (h), as well as any supporting evidence.

A new subsection (b) would be added to § 1.641 that would specify that the opposition and reply practice under § 1.638 applies to a preliminary motion filed in response to the Examiner-in-Chief's order under subsection (a) of this section.

Finally, the last sentence of the current § 1.641 would be redesignated as subsection (c) and would include a reference to the preliminary motions under § 1.633 permitted under the revision to subsection (a) of this section.

These rules will apply prospectively except when an examiner-in-chief notifies a party in an interference to the contrary. If a party is notified, the party will be given an opportunity to respond regarding the patentability of a count in the interference.

### Other Considerations

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that these proposed rule changes will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of these proposed changes would be to clarify the procedure for arguing the patentability of claims corresponding to a count in patent interferences and thereby eliminate any confusion, delay, or redundancy that might result from misinterpretation of the current rules.

The Office has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions. There will be no significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., since no recordkeeping or reporting requirements within the coverage of the Act are placed upon the public.

### List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents.

For the reasons set out in the preamble, it is proposed to amend 37 CFR part 1 wherein removals are indicated by brackets ([ ]) and additions by arrows (↓ ↑) as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

> Authority: 35 U.S.C. 6, unless otherwise noted.)

2. Section 1.601 is proposed to be amended by revising paragraph (f) to read as follows:

**§ 1.601 Scope of rules, definitions.**

* * * * *

(f) A "count" defines the interfering subject matter between:

(1) Two or more applications or

(2) One or more applications and one or more patents.

When there is more than one count, each count shall define a separate patentable invention. Any claim of an application or patent [which] ◆ that is designated to ◆ correspond[s] to a count is a claim involved in the interference within the meaning of 35 U.S.C. 135(a). A claim of a patent or application ◆ that ◆ [which] is identical to a count is said to "correspond exactly" to the count. A claim of a patent or application ◆ that ◆ [which] is not identical to a count [, but which defines the same patentable invention as the count,] is said to "correspond substantially " to the count. When a count is broader in scope than all claims ◆ that ◆ [which] correspond to the count, the count is a "phantom count." A phantom count is not patentable to any party under 35 U.S.C. 112.

* * * * *

3. Section 1.633 is proposed to be amended by adding a new paragraph (k) to read as follows:

**§ 1.633 Preliminary motions.**

* * * * *

(k) A party who fails to contest, by way of a timely filed preliminary motion under § 1.633(c), the designation of a claim as corresponding or not corresponding to a count may not subsequently argue to an Examiner-in-Chief or the Board the separate patentability or the lack of separate patentability of claims designated to correspond to the count.

4. Section 1.641 is proposed to be revised to read as follows:

**§ 1.641 Unpatentability discovered by examiner-in-chief.**

◆ (a) ◆ During the pendency of an interference, if the examiner-in-chief becomes aware of a reason why a claim ◆ designated to correspond ◆ [corresponding] to a count may not be patentable, the examiner-in-chief may [notify] ◆ enter an order notifying ◆ the parties of the reason and set a time within which each party may present its views, ◆ which may include argument and any appropriate preliminary motion under § 1.633(c), (d), or (h), including any supporting evidence ◆.

◆ (b) If a party timely files a preliminary motion in response to the order of the examiner-in-chief, any opponent may file an opposition pursuant to § 1.638(a). If an opponent files an opposition, the party may file a reply pursuant to § 1.638(b). ◆

◆ (c) ◆ After considering any timely filed views, ◆ including any timely filed preliminary motions under § 1.633, ◆ the examiner-in-chief shall decide how the interference shall proceed.

Dated: July 16, 1993.

**Michael K. Kirk,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 93–17513 Filed 7–23–93; 8:45 am]

BILLING CODE 3510–16–M

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 1

**RIN: 2900–AE28**

### Confidentiality of Certain Medical Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed regulations.

**SUMMARY:** The Department of Veterans Affairs (VA) proposes to amend its regulations to implement specific provisions of the Veterans Omnibus Health Care Act of 1976 and the Veterans' Benefits and Services Act of 1988 concerning the confidentiality of certain medical records. These proposed regulations protect the confidentiality of VA records pertaining to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus (HIV), and sickle cell anemia treatment, rehabilitation, education, training, evaluation and research information.

**DATES:** Comments must be received on or before August 25, 1993. Comments will be available for public inspection until September 7, 1993.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections regarding these proposed regulations to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until September 7, 1993. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address contained in the Paperwork Reduction section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Harold Ramsey, Program Specialist, Medical Administration Service (161B4), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535–7657.

**SUPPLEMENTARY INFORMATION:** VA is mandated by the Veterans Omnibus Health Care Act of 1976 and the Veterans' Benefits and Services Act of 1988 to publish its own regulations relative to the confidentiality of medical records relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, and sickle cell anemia. VA, generally, has been following the Department of Health and Human Services' regulations on drug and alcohol abuse which were published in the **Federal Register**, July 1, 1975. The Department of Health and Human Services (HHS) regulations (42 CFR 2.1–2.67) were promulgated with the enactment of legislation specific to alcohol and drug abuse programs and confidentiality of records. The proposed regulations take into consideration the existing HHS regulations in implementing the confidentiality section of the Veterans Omnibus Health Care Act of 1976. Editorial and substantive changes were made to the HHS regulations which were published in the **Federal Register**, June 9, 1987. For convenience in comparing specific sections of the existing HHS regulations with these proposed VA regulations a cross index has been prepared which is set forth below.

The historical development of the regulations follow. Public Law 93–282, "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974," provided that the then Administrator of Veterans Affairs, through the then Chief Medical Director, consistent with responsibilities under title 38, United States Code, prescribe regulations applicable to the confidentiality of medical records maintained in connection with the provision of hospital care, nursing home care, domiciliary care and medical services under title 38 to patients suffering from alcohol abuse, alcoholism, and drug abuse. In prescribing and implementing these regulations, the Secretary of Veterans Affairs is to consult with the Secretary of HHS in order to achieve the maximum possible coordination of the regulations.

Congress, recognizing that the particular problems of confidentiality of records in the VA health care system would best be handled by placing applicable provisions in Title 38, United States Code, added a new section 4132, now section 7332, to title 38, United

States Code, with the enactment of Public Law 94–581, Veterans Omnibus Health Care Act of 1976. The intent of this legislation was to ensure confidentiality of certain medical records by establishing sanctions for unauthorized disclosure of information, while at the same time, meeting the legitimate needs for disclosure under certain conditions. As part of this legislation, Congress imposed upon VA requirements similar to those of Public Law 93–282 noted above (38 U.S.C. 7334, formerly 4134).

Section 111 of Public Law 94–581 replaced for VA purposes, the provisions of sections 122(a) and 303 of Public Law 93–282 (21 U.S.C. 1175, for drug records; 42 U.S.C. 4582, for alcohol records) as the statutory base for confidentiality of drug and alcohol abuse records for those patients treated by VA medical facilities. Additionally, it replaced section 109 of Public Law 93–82 (38 U.S.C. 1753(b), formerly 653(b)) which provided for confidentiality of sickle cell anemia records and required VA to promulgate regulations. Public Law 94–581, Veterans Omnibus Health Care Act of 1976, addressed all three subjects—drug abuse, alcoholism and sickle cell anemia records—in its confidentiality mandate. Section 121 of Public Law 100–322 provided for the confidentiality of records relating to infection with the HIV. Accordingly, drug and alcohol abuse, infection with the HIV, and sickle cell anemia records are included in these proposed regulations.

VA has followed regulations on the confidentiality of patients' records related to drug and alcohol abuse as prescribed in 1975 by the Secretary of HHS. However, certain provisions of the HHS regulations are inconsistent with VA requirements. These proposed regulations address those inconsistencies, some of which follow. The concept of "program" as used in the HHS regulations does not have applicability to VA because, in VA, provision of medical care and treatment for the aforementioned conditions is considered to be an integral part of VA's medical and benefits functions rather than a separate program isolated from other Department functions.

The HHS regulations leave the determination to destroy patient records to officials of an individual drug or alcohol abuse program. VA has a Departmentwide policy regarding record retention.

The drafting of these proposed regulations has necessarily involved minor clarifying and editorial changes in the HHS regulations to more specifically use VA terminology and already established requirements. Further, changes have addressed inconsistencies between the HHS and VA applicable confidentiality statutes as well. For example, whereas the HHS regulations do not qualify the conditions under which disclosure of information from the records of deceased patients may be made, 38 U.S.C. 7332 generally only allows this disclosure with consent of the patient's next-of-kin or personal representative when the purpose has been determined by the Under Secretary for Health or designee to be necessary to obtain VA or other survivorship benefits.

The HHS regulations as well as 38 U.S.C. 7332 allow for disclosure by an appropriate court order after the court determines the need for disclosure and imposes appropriate safeguards against unauthorized disclosure. These proposed regulations clarify the court order process and restrict mandatory disclosure to a Federal court. A VA facility in these regulations, as part of the Federal government, is not bound by an order from a State court, but may, in its discretion, honor a State court order. However, it is contemplated that VA will cooperate with State courts to the fullest extent appropriate.

The HHS regulations as revised in 1987 cover only alcohol and drug abuse information that is obtained by a specialized program or specific provider whose primary function is the provision of alcohol or drug abuse diagnosis, treatment, or referral for treatment. The 1987 regulations do not cover alcohol and drug abuse information obtained by health care facilities which provide alcohol and drug abuse care only as an incident to the provision of general medical care. The proposed regulations have been drafted to include all records which are maintained in connection with the performance of any VA program or activity (including education, training, evaluation, treatment, rehabilitation or research) relating to drug abuse, alcoholism, infection with the HIV, or sickle cell anemia in order to provide greater confidentiality for patients who are provided care for these conditions.

Finally, these regulations are not intended to direct the manner in which substantive functions, such as research, treatment, and evaluation should be carried out, but rather to define the minimum requirements for the protection of confidentiality of patient records which must be satisfied in connection with the conduct of those functions in order to carry out the purposes of the authorizing legislation.

A copy of the draft regulations were reviewed by HHS staff and comments were provided for consideration concerning five proposed changes. It was suggested in the first comment that the definition of "patient" proposed at § 1.460(h) be revised to track the HHS definition at 42 CFR 2.11 and that a sentence be added to clarify the definition. The definition was revised based on these comments. In the second comment it was suggested that the Public Health Service research confidentiality protection that is mentioned at 42 CFR 2.21 of the HHS regulations be incorporated into § 1.468(a) and applied to VA records. The addition was made to the proposed regulations.

The third comment concerned the proposed § 1.475(c) which requires that when VA is presented with an insufficient written consent for information protected by 38 U.S.C. 7332 in the process of obtaining a legally sufficient consent, VA must correspond only with the patient whose records are involved. It was suggested that VA consider permitting its facilities to notify an inquiring party of the application of 38 U.S.C. 7332 and these regulations to patient records on alcohol and drug abuse, HIV, and sickle cell anemia as is provided for in 42 CFR 2.13(c)(2) for drug and alcohol records. It was further suggested that such notification should not affirmatively state that VA confidentiality laws apply to the records of an identified patient. This suggestion was not accepted, however, due to the statutory amendment to section 7332 which prohibits the disclosure to any person or entity other than the patient or subject concerned of the fact that a special written consent is required in order for such records to be disclosed.

It was suggested in the fourth comment that provisions be added to the proposed regulations to permit the disclosure of records protected by 38 U.S.C. 7332 in making child abuse and neglect reports under State law. VA cooperates in submitting child abuse and neglect reports to States but the reports do not include section 7332-type information. However, where there is a medical emergency which necessitates the disclosure of this type of information, the information may be disclosed. In the absence of a medical emergency where disclosure is indicated, a court order would authorize disclosure. Public Law 99–401, August 27, 1986, Title I, section 106, 100 Stat. 907, which amended 42 U.S.C. 290dd-3(e) and 290ee–3(e) to authorize reporting of child abuse information did not amend 38 U.S.C. 7332. In view of these additional provisions for

disclosure of the § 7332 information, the suggestion was not accepted.

The last comment concerned the requirement in § 1.486(a) that the disclosure of HIV information under State public health reporting laws must be consistent with 38 U.S.C. 5701, formerly 3301, and 7332, i.e., that such State laws must require such disclosure and provide for a penalty or fine to be assessed against those individuals who are subject to the jurisdiction of the public health authority but fail to comply with the reporting requirements. There was concern that this requirement would lead to the underreporting to public health authorities of individuals who are infected with the HIV. However, this concern was resolved when it was determined that with the exception of one State statute all other State statutes meet the HIV infection reporting requirements of Title 38.

**Cross Index**

VA Regulations governing release of information from VA records containing information related to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia.

**Department of Health and Human Services regulations, 42 CFR part 2, as Revised June 9, 1987, and Department of Veterans Affairs regulations, 38 CFR 1.460 to 1.496.**

*Subpart A—Introduction*

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2.2
2.3—Supplemented by an unnumbered abbreviated, prefatory statement
2.4—1.463
2.5—Eliminated

*Subpart B—General Provisions*

2.11—1.460
2.12—1.461
2.13—1.462
2.14—1.464
2.15—1.465
2.16—1.466
2.17—1.461
2.18—1.467
2.19—Eliminated
2.20—Eliminated
2.21—1.468
2.22—Eliminated
2.23—1.469

*Subpart C—Disclosures With Patient's Consent*

2.31—1.475
2.32—1.476
2.33—1.477
2.34—1.478
2.35—1.479

*Subpart D—Disclosures Without Patient Consent*

2.51—1.485
2.52—1.486
2.53—1.489

*Subpart E—Court Orders Authorizing Disclosures and Use*

2.61—1.490
2.62—1.491
2.63—Eliminated
2.64—1.492
2.65—1.493
2.66—1.494
2.67—1.495

These proposed regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulations. They will not have an annual effect on the economy of $100 million or more; will result in no significant increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. They will have no adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export market.

These proposed regulations will impose no regulatory, paperwork or administrative burdens on small entities since the change concerns the protection of patient medical information regarding drug or alcohol abuse, infection with the HIV and sickle cell anemia. For this reason, the Secretary certifies that these provisions are administrative and will not have a significant economic impact on small entities as defined in 5 U.S.C. 600–612, The Regulatory Flexibility Act.

**The Paperwork Reduction Act**

Section 1.475 of this proposed regulation contains an information collection requirement requiring approval by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act. The Department of Veterans Affairs estimates that it will take an average of five minutes per respondent to provide the required information and there will be approximately 20,640 such requests made per year. As required by section 3504(h) of the Paperwork Reduction Act, VA is submitting a request that OMB approve the information collection requirement at § 1.475. Individuals desiring to submit comments for consideration by OMB on this proposed information collection should send them to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Joseph F. Lackey.

**List of Subjects in 38 CFR Part 1**

Administrative procedures, Privacy Act, Recordkeeping.

Approved: March 22, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as follows:

**PART 1—GENERAL**

1. New center headings and Sections 1.460 through 1.499 are added as follows:

**Release of Information From Department of Veterans Affairs (VA) Records Relating to Drug Abuse, Alcoholism or Alcohol Abuse, Infection With the Human Immunodeficiency Virus (HIV), or Sickle Cell Anemia.**

Sec.
1.460 Definitions.
1.461 Applicability.
1.462 Confidentiality restrictions.
1.463 Criminal penalty for violations.
1.464 Minor patients.
1.465 Incompetent and deceased patients.
1.466 Security for records.
1.467 Restrictions on the use of identification cards and public signs.
1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.
1.469 Patient access and restrictions on use.
1.470–1.474 [Reserved]

**Disclosures with Patient's Consent**

1.475 Form of written consent.
1.476 Prohibition on redisclosure.
1.477 Disclosures permitted with written consent.
1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the human immunodeficiency virus.
1.479 Disclosures to elements of the criminal justice system which have referred patients.
1.480–1.484 [Reserved]

**Disclosures Without Patient Consent**

1.485 Medical emergencies.
1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.
1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.
1.488 Research activities.
1.489 Audit and evaluation activities.

**Court Orders Authorizing Disclosures and Use**

1.490 Legal effect of order.
1.491 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.
1.492 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

Sec.
1.493 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.
1.494 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.
1.495 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.
1.496–1.499 [Reserved]

**Release of Information From Department of Veterans Affairs Records Relating to Drug Abuse, Alcoholism or Alcohol Abuse, Infection With the Human Immunodeficiency Virus (HIV), or Sickle Cell Anemia.**

**Note:** Sections 1.460 through 1.499 of this part concern the confidentiality of information relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in VA records and are applicable in combination with other regulations pertaining to the release of information from VA records. Sections 1.500 through 1.527, Title 38, Code of Federal Regulations, implement the provisions of 38 U.S.C. 5701 and 5702. Sections 1.550 through 1.559 implement the provisions of 5 U.S.C. 552 (The Freedom of Information Act). Sections 1.575 through 1.584 implement the provisions of 5 U.S.C. 552a (The Privacy Act of 1974).

**Authority:** The provisions of §§ 1.460 through 1.499 of this part pertain to any program or activity, including education, treatment, rehabilitation or research, which relates to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia. The statutory authority for the drug abuse provisions and alcoholism or alcohol abuse provisions of §§ 1.460 through 1.499 is sec. 111 of Pub. L. 94–581, the Veterans Omnibus Health Care Act of 1976 (38 U.S.C. 7331 through 7334), the authority for the human immunodeficiency virus provisions is sec. 121 of Pub. L. 100–322, the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 7332); the authority for the sickle cell anemia provisions is sec. 109 of Pub. L. 93–82, the Veterans Health Care Expansion Act of 1973 (38 U.S.C. 1751–1754, formerly 651–654).

**§ 1.460 Definitions.**

For purposes of §§ 1.460 through 1.499 of this part, the following definitions apply:

(a) *Alcohol abuse.* The term "alcohol abuse" means the use of an alcoholic beverage which impairs the physical, mental, emotional, or social well-being of the user.

(b) *Contractor.* The term "contractor" means a person who provides services to VA such as data processing, dosage preparation, laboratory analyses or medical or other professional services. Each contractor shall be required to enter into a written agreement subjecting such contractor to the provisions of §§ 1.460 through 1.499 of this part; 38 U.S.C. 5701 and 7332; and 5 U.S.C. 552a and 38 CFR 1.576(g).

(c) *Diagnosis.* The term "diagnosis" means any reference to an individual's alcohol or drug abuse or to a condition which is identified as having been caused by that abuse or any reference to sickle cell anemia or infection with the human immunodeficiency virus which is made for the purpose of treatment or referral for treatment. A diagnosis prepared for the purpose of treatment or referral for treatment but which is not so used is covered by §§ 1.460 through 1.499 of this part. These regulations do not apply to a diagnosis of drug overdose or alcohol intoxication which clearly shows that the individual involved is not an alcohol or drug abuser (e.g., involuntary ingestion of alcohol or drugs or reaction to a prescribed dosage of one or more drugs).

(d) *Disclose or disclosure.* The term "disclose" or "disclosure" means a communication of patient identifying information, the affirmative verification of another person's communication of patient identifying information, or the communication of any information from the record of a patient who has been identified.

(e) *Drug abuse.* The term "drug abuse" means the use of a psychoactive substance for other than medicinal purposes which impairs the physical, mental, emotional, or social well-being of the user.

(f) *Infection with the human immunodeficiency virus (HIV).* The term "infection with the human immunodeficiency virus (HIV)" means the presence of laboratory evidence for human immunodeficiency virus infection. For the purposes of §§ 1.460 through 1.499 of this part, the term includes the testing of an individual for the presence of the virus or antibodies to the virus and information related to such testing (including tests with negative results).

(g) *Informant.* The term "informant" means an individual who is a patient or employee or who becomes a patient or employee at the request of a law enforcement agency or official and who at the request of a law enforcement agency or official observes one or more patients or employees for the purpose of reporting the information obtained to the law enforcement agency or official.

(h) *Patient.* The term "patient" means any individual or subject who has applied for or been given a diagnosis or treatment for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia and includes any individual who, after arrest on a criminal charge, is interviewed and/or tested in connection with drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia in order to determine that individual's eligibility to participate in a treatment or rehabilitation program. The term patient includes an individual who has been diagnosed or treated for alcoholism, drug abuse, HIV infection, or sickle cell anemia for purposes of participation in a VA program or activity relating to those four conditions, including a program or activity consisting of treatment, rehabilitation, education, training, evaluation, or research. The term "patient" for the purpose of infection with the human immunodeficiency virus or sickle cell anemia, includes one tested for the disease.

(i) *Patient identifying information.* The term "patient identifying information" means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a treatment program, if that number does not consist of, or contain numbers (such as social security, or driver's license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the treatment program.

(j) *Person.* The term "person" means an individual, partnership, corporation, Federal, State or local government agency, or any other legal entity.

(k) *Records.* The term "records" means any information received, obtained or maintained, whether recorded or not, by an employee or contractor of VA, for the purpose of seeking or performing VA program or activity functions relating to drug abuse, alcoholism, tests for or infection with the human immunodeficiency virus, or sickle cell anemia regarding an identifiable patient. A program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia includes evaluation, treatment, education, training, rehabilitation, research, or referral for one of these conditions. Sections 1.460 through 1.499 of this part apply to a primary or other diagnosis, or other information which identifies, or could reasonably be expected to identify, a patient as having a drug or alcohol abuse condition.

infection with the human immunodeficiency virus, or sickle cell anemia (e.g., alcoholic psychosis, drug dependence), but only if such diagnosis or information is received, obtained or maintained for the purpose of seeking or performing one of the above program or activity functions. Sections 1.460 through 1.499 of this part do not apply if such diagnosis or other information is not received, obtained or maintained for the purpose of seeking or performing a function or activity relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia for the patient in question. Whenever such diagnosis or other information, not originally received or obtained for the purpose of obtaining or providing one of the above program or activity functions, is subsequently used in connection with such program or activity functions, those original entries become a "record" and §§ 1.460 through 1.499 of this part thereafter apply to those entries.

Segregability: These regulations do not apply to records or information contained therein, the disclosure of which (the circumstances surrounding the disclosure having been considered) could not reasonably be expected to disclose the fact that a patient has been connected with a VA program or activity function relating to drug abuse, alcoholism, infection with the human immunodeficiency virus, or sickle cell anemia.

(1) The following are examples of instances whereby records or information related to alcoholism or drug abuse are covered by the provisions of §§ 1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification. The patient is offered treatment in a VA alcohol rehabilitation program which he declines.

(ii) A patient who is diagnosed as a drug abuser applies for and is provided VA drug rehabilitation treatment.

(iii) While undergoing treatment for an unrelated medical condition, a patient discusses with the physician his use and abuse of alcohol. The physician offers VA alcohol rehabilitation treatment which is declined by the patient.

(2) The following are examples of instances whereby records or information related to alcoholism or drug abuse are not covered by the provisions of §§ 1.460 through 1.499 of this part:

(i) A patient with alcoholic delirium tremens is admitted for detoxification, treated and released with no counseling or treatment for the underlying condition of alcoholism.

(ii) While undergoing treatment for an unrelated medical condition, a patient informs the physician of a history of drug abuse fifteen years earlier with no ingestion of drugs since. The history and diagnosis of drug abuse is documented in the hospital summary and no treatment is sought by the patient or offered or provided by VA during the current period of treatment.

(iii) While undergoing treatment for injuries sustained in an accident, a patient's medical record is documented to support the judgment of the physician to prescribe certain alternate medications in order to avoid possible drug interactions in view of the patient's enrollment and treatment in a non-VA methadone maintenance program. The patient states that continued treatment and follow-up will be obtained from private physicians and VA treatment for the drug abuse is not sought by the patient nor provided or offered by the staff.

(l) *Third party payer.* The term "third party payer" means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his or her family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

(m) *Treatment.* The term "treatment" means the management and care of a patient for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia, or a condition which is identified as having been caused by one or more of these conditions, in order to reduce or eliminate the adverse effects upon the patient. The term includes testing for the human immunodeficiency virus or sickle cell anemia.

(n) *Undercover agent.* The term "undercover agent" means an officer of any Federal, State, or local law enforcement agency who becomes a patient or employee for the purpose of investigating a suspected violation of law or who pursues that purpose after becoming a patient or becoming employed for other purposes.

(Authority: 38 U.S.C. 7334)

**§ 1.461 Applicability.**

(a) *General.*—(1) *Restrictions on disclosure.* The restrictions on disclosure in these regulations apply to any information whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser, an individual tested for or infected with the human immunodeficiency virus (HIV), hereafter referred to as HIV, or an individual with sickle cell anemia, either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

(ii) Is provided or obtained for the purpose of treating alcohol or drug abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation and research program or activity purposes.

(2) *Restriction on use.* The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any information, whether or not recorded, which is maintained for the purpose of treating drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation, and research program or activity purposes.

(b) *Period covered as affecting applicability.* The provisions of §§ 1.460 through 1.499 of this part apply to records of identity, diagnosis, prognosis, or treatment pertaining to any given individual maintained over any period of time which, irrespective of when it begins, does not end before March 21, 1972, in the case of diagnosis or treatment for drug abuse; or before May 14, 1974, in the case of diagnosis or treatment for alcoholism or alcohol abuse; or before September 1, 1973, in the case of testing, diagnosis or treatment of sickle cell anemia; or before May 20, 1988, in the case of testing, diagnosis or treatment for an infection with the HIV.

(c) *Exceptions.*— (1) *Department of Veterans Affairs and Armed Forces.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information between or among those components of VA who have a need for the information in connection with their duties in the provision of health care, adjudication of benefits, or in carrying out administrative responsibilities related to those functions, including personnel of the Office of the Inspector General who are conducting audits or evaluations, or between such components and the Armed Forces, of records pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice. Similarly, the restrictions on disclosure in § 1.460 through 1.499 of this part do not apply

to communications of information to the Department of Justice or U.S. Attorneys who are providing support in litigation or possible litigation involving VA.

(2) *Contractor.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications between VA and a contractor of information needed by the contractor to provide his or her services.

(3) *Crimes on VA premises or against VA personnel.* The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part do not apply to communications from VA personnel to law enforcement officers which—

(i) Are directly related to a patient's commission of a crime on the premises of the facility or against personnel of VA or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address to the extent authorized by 38 U.S.C. 5701(f)(2), and that individual's last known whereabouts.

(4) *Undercover agents and informants.* (i) Except as specifically authorized by a court order granted under § 1.495 of this part, VA may not knowingly employ, or admit as a patient, any undercover agent or informant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program.

(ii) No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient unless authorized pursuant to the provisions of § 1.493 of this part.

(iii) The enrollment of an undercover agent or informant in a treatment unit shall not be deemed a violation of this section if the enrollment is solely for the purpose of enabling the individual to obtain treatment for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(d) *Applicability to recipients of information.*—(1) *Restriction on use of information.* In the absence of a proper § 1.493 court order, the restriction on the use of any information subject to §§ 1.460 through 1.499 of this part to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any person who obtains that information from VA, regardless of the status of the person obtaining the information or of whether the information was obtained in accordance with §§ 1.460 through 1.499 of this part. This restriction on use bars, among other things, the introduction of that information as evidence in a criminal proceeding and any other use of the information to investigate or prosecute a patient with respect to a suspected crime. Information obtained by undercover agents or informants (see paragraph (c) of this section) or through patient access (see § 1.469 of this part) is subject to the restriction on use.

(2) *Restrictions on disclosures—third-party payers and others.* The restrictions on disclosure in §§ 1.460 through 1.499 of this part apply to third-party payers and persons who, pursuant to a consent, receive patient records directly from VA and who are notified of the restrictions on redisclosure of the records in accordance with § 1.476 of this part.

(Authority: 38 U.S.C. 7332(e) and 7334)

### § 1.462 Confidentiality restrictions.

(a) *General.* The patient records to which §§ 1.460 through 1.499 of this part apply may be disclosed or used only as permitted by these regulations and may not otherwise be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority. Any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.

(b) *Unconditional compliance required.* The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part apply whether the person seeking the information already has it, has other means of obtaining it, is a law enforcement or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by §§ 1.460 through 1.499 of this part. These provisions do not prohibit VA from acting accordingly when there is no disclosure of information.

(c) *Acknowledging the presence of patients: responding to requests.* (1) The presence of an identified patient in a VA facility for the treatment or other VA program activity relating to drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia may be acknowledged only if the patient's written consent is obtained in accordance with § 1.475 of this part or if an authorizing court order is entered in accordance with §§ 1.490 through 1.499 of this part. Acknowledgement of the presence of an identified patient in a facility is permitted if the acknowledgement does not reveal that the patient is being treated for or is otherwise involved in a VA program or activity concerning drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia.

(2) Any answer to a request for a disclosure of patient records which is not permissible under §§ 1.460 through 1.499 of this part must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia. These regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

(Authority: 38 U.S.C. 7334)

### § 1.463 Criminal penalty for violations.

Under 38 U.S.C. 7332(g), any person who violates any provision of this statute or §§ 1.460 through 1.499 of this part shall be fined not more than $5,000 in the case of a first offense, and not more than $20,000 for a subsequent offense.

(Authority: 38 U.S.C. 7332(g))

### § 1.464 Minor patients.

(a) *Definition of minor.* As used in §§ 1.460 through 1.499 of this part the term "minor" means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.

(b) *State law not requiring parental consent to treatment.* If a minor patient acting alone has the legal capacity under the applicable State law to apply for and obtain treatment for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. Sections 1.460 through 1.499 of this part do not prohibit a VA facility from refusing to provide nonemergent treatment to an otherwise ineligible minor patient until the minor patient consents to the disclosure necessary to obtain reimbursement for services from a third party payer.

(c) *State law requiring parental consent to treatment.* (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain treatment for drug abuse,

alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, any written consent for disclosure authorized under § 1.475 of this part must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.

(2) Where State law requires parental consent to treatment, the fact of a minor's application for treatment may be communicated to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf only if:

(i) The minor has given written consent to the disclosure in accordance with § 1.475 of this part; or

(ii) The minor lacks the capacity to make a rational choice regarding such consent as judged by the appropriate VA facility director under paragraph (d) of this section.

(d) *Minor applicant for service lacks capacity for rational choice.* Facts relevant to reducing a threat to the life or physical well being of the applicant or any other individual may be disclosed to the parent, guardian, or other person authorized under State law to act in the minor's behalf if the appropriate VA facility director judges that:

(1) A minor applicant for services lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure under § 1.475 of this part to his or her parent, guardian, or other person authorized under State law to act in the minor's behalf, and

(2) The applicant's situation poses a substantial threat to the life or physical well-being of the applicant or any other individual which may be reduced by communicating relevant facts to the minor's parent, guardian, or other person authorized under State law to act in the minor's behalf.

(Authority: 38 U.S.C. 7334)

**§ 1.465 Incompetent and deceased patients.**

(a) *Incompetent patients other than minors.* In the case of a patient who has been adjudicated as lacking the capacity, for any reason other than insufficient age, to manage his or her own affairs, any consent which is required under §§ 1.460 through 1.499 of this part may be given by a court appointed legal guardian.

(b) *Deceased patients.*—(1) *Vital statistics.* Sec. 1.460 through 1.499 of this part do not restrict the disclosure of patient identifying information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death.

(2) *Consent by personal representative.* Any other disclosure of information identifying a deceased patient as being treated for drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia is subject to §§ 1.460 through 1.499 of this part. If a written consent to the disclosure is required, the Under Secretary for Health or designee may, upon the prior written request of the next of kin, executor/executrix, administrator/administratrix, or other personal representative of such deceased patient, disclose the contents of such records, only if the Under Secretary for Health or designee determines such disclosure is necessary to obtain survivorship benefits for the deceased patient's survivor. This would include not only VA benefits, but also payments by the Social Security Administration, Worker's Compensation Boards or Commissions, or other Federal, State, or local government agencies, or nongovernment entities, such as life insurance companies. Information related to sickle cell anemia may be released to a blood relative of a deceased veteran for medical follow-up or family planning purposes.

(Authority: 38 U.S.C. 7332(b)(3))

**§ 1.466 Security for records.**

(a) Written records which are subject to §§ 1.460 through 1.499 of this part must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use. Access to information stored in computers will be limited to authorized VA employees who have a need for the information in performing their duties. These security precautions shall be consistent with the Privacy Act of 1974 (5 U.S.C. 552a).

(b) Each VA facility shall adopt in writing procedures related to the access to and use of records which are subject to §§ 1.460 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

**§ 1.467 Restrictions on the use of identification cards and public signs.**

(a) No facility may require any patient to carry on their person while away from the facility premises any card or other object which would identify the patient as a participant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program. A facility may require patients to use or carry cards or other identification objects on the premises of a facility. Patients may not be required to wear clothing or colored identification bracelets or display objects openly to all facility staff or others which would identify them as being treated for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(b) Treatment locations should not be identified by signs that would identify individuals entering or exiting these locations as patients enrolled in a drug or alcohol abuse, HIV infection, or sickle cell anemia program or activity.

(Authority: 38 U.S.C. 7334)

**§ 1.468 Relationship to Federal statutes protecting research subjects against compulsory disclosure of their identity.**

(a) *Research privilege description.* There may be concurrent coverage of patient identifying information by the provisions of §§ 1.460 through 1.499 of this part and by administrative action taken under sec. 303(a) of the Public Health Service Act (42 U.S.C. 241(d) and the implementing regulations at 42 CFR part 2a); or sec. 502(c) of the Controlled Substances Act (21 U.S.C. 872(c) and the implementing regulations at 21 CFR 1316.21). These "research privilege" statutes confer on the Secretary of Health and Human Services and on the Attorney General, respectively, the power to authorize researchers conducting certain types of research to withhold from all persons not connected with the research the names and other identifying information concerning individuals who are the subjects of the research.

(b) *Effect of concurrent coverage.* Sections 1.460 through 1.499 of this part restrict the disclosure and use of information about patients, while administrative action taken under the research privilege statutes and implementing regulations protects a person engaged in applicable research from being compelled to disclose any identifying characteristics of the individuals who are the subjects of that research. The issuance under §§ 1.490 through 1.499 of this part of a court order authorizing a disclosure of information about a patient does not affect an exercise of authority under these research privilege statutes. However, the research privilege granted under 21 CFR 291.505(g) to treatment programs using methadone for maintenance treatment does not protect from compulsory disclosure any information which is permitted to be disclosed under those regulations. Thus, if a court order entered in accordance with §§ 1.490 through 1.499 of this part authorizes a VA facility to disclose certain information about its patients, the facility may not invoke the research privilege under 21 CFR 291.505(g) as a defense to a subpoena for that information.

(Authority: 38 U.S.C. 7334)

**§ 1.469 Patient access and restrictions on use.**

(a) *Patient access not prohibited.* Sections 1.460 through 1.499 of this part do not prohibit a facility from giving a patient access to his or her own records, including the opportunity to inspect and copy any records that VA maintains about the patient, subject to the provisions of the Privacy Act (5 U.S.C. 552a(d)(1)) and 38 CFR 1.577. If the patient is accompanied, giving access to the patient and the accompanying person will require a written consent by the patient which is provided in accordance with § 1.475 of this part.

(b) *Restrictions on use of information.* Information obtained by patient access to patient record is subject to the restriction on use of this information to initiate or substantiate any criminal charges against the patient or to conduct any criminal investigation of the patient as provided for under § 1.461(d)(1) of this part.

(Authority: 38 U.S.C. 7334)

**§§ 1.470–1.474 [Reserved]**

**Disclosures With Patient's Consent**

**§ 1.475 Form of written consent.**

(a) *Required elements.* A written consent to a disclosure under §§ 1.460 through 1.499 of this part must include:

(1) The name of the facility permitted to make the disclosure (such a designation does not preclude the release of records from other VA health care facilities unless a restriction is stated on the consent).

(2) The name or title of the individual or the name of the organization to which disclosure is to be made.

(3) The name of the patient.

(4) The purpose of the disclosure.

(5) How much and what kind of information is to be disclosed.

(6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under § 1.464 of this part; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under § 1.465 of this part in lieu of the patient.

(7) The date on which the consent is signed.

(8) A statement that the consent is subject to revocation at any time except to the extent that the facility which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer.

(9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is given.

(b) *Expired, deficient, or false consent.* A disclosure may not be made on the basis of a consent which:

(1) Has expired;

(2) On its face substantially fails to conform to any of the requirements set forth in paragraph (a) of this section;

(3) Is known to have been revoked; or

(4) Is known, or through a reasonable effort could be known, by responsible personnel of VA to be materially false.

(c) *Notification of deficient consent.* Other than the patient, no person or entity may be advised that a special consent is required in order to disclose information relating to an individual participating in a drug abuse, alcoholism or alcohol abuse, HIV, or sickle cell anemia program or activity. Where a person or entity presents VA with an insufficient written consent for information protected by 38 U.S.C. 7332, VA must, in the process of obtaining a legally sufficient consent, correspond only with the patient whose records are involved, or the legal guardian of an incompetent patient or next of kin of a deceased patient, and not with any other person.

(d) It is not necessary to use any particular form to establish a consent referred to in paragraph (a) of this section, however, VA Form 10–5345, titled Request for and Consent to Release of Medical Records Protected by 38 U.S.C. 7332, may be used for such purpose.

(Authority: 38 U.S.C. 7332(a)(2) and (b)(1))

**§ 1.476 Prohibition on redisclosure.**

Each disclosure under §§ 1.460 through 1.499 of this part made with the patient's written consent must be accompanied by a written statement similar to the following: This information has been disclosed to you from records protected by Federal confidentiality rules (38 CFR part 1). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 38 CFR part 1. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient or patient with sickle cell anemia or HIV infection.

(Authority: 38 U.S.C. 7334)

**§ 1.477 Disclosures permitted with written consent.**

If a patient consents to a disclosure of his or her records under § 1.475 of this part, a facility may disclose those records in accordance with that consent to any individual or organization named in the consent, except that disclosures to central registries and in connection with criminal justice referrals must meet the requirements of §§ 1.478 and 1.479 of this part, respectively.

(Authority: 38 U.S.C. 7332(b)(1))

**§ 1.478 Disclosures to prevent multiple enrollments in detoxification and maintenance treatment programs; not applicable to records relating to sickle cell anemia or infection with the HIV.**

(a) *Definitions.* For purposes of this section:

(1) *Central registry* means an organization which obtains from two or more member programs patient identifying information about individuals applying for maintenance treatment or detoxification treatment for the purpose of avoiding an individual's concurrent enrollment in more than one program.

(2) *Detoxification treatment* means the dispensing of a narcotic drug in decreasing doses to an individual in order to reduce or eliminate adverse physiological or psychological effects incident to withdrawal from the sustained use of a narcotic drug.

(3) *Maintenance treatment* means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(4) *Member program* means a non-VA detoxification treatment or maintenance treatment program which reports patient identifying information to a central registry and which is in the same State as that central registry or is not more than 125 miles from any border of the State in which the central registry is located.

(b) *Restrictions on disclosure.* VA may disclose patient records to a central registry which is located in the same State or is not more than 125 miles from any border of the State or to any non-VA detoxification or maintenance treatment program not more than 200 miles away for the purpose of preventing the multiple enrollment of a patient only if:

(1) The disclosure is made when:

(i) The patient is accepted for treatment;

(ii) The type or dosage of the drug is changed; or

(iii) The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:
(i) Patient identifying information;
(ii) Type and dosage of the drug; and
(iii) Relevant dates.
(3) The disclosure is made with the patient's written consent meeting the requirements of § 1.475 of this part, except that:
(i) The consent must list the name and address of each central registry and each known non-VA detoxification or maintenance treatment program to which a disclosure will be made; and
(ii) The consent may authorize a disclosure to any non-VA detoxification or maintenance treatment program established within 200 miles after the consent is given without naming any such program.
(c) *Use of information limited to prevention of multiple enrollments.* A central registry and any non-VA detoxification or maintenance treatment program to which information is disclosed to prevent multiple enrollments may not redisclose or use patient identifying information for any purpose other than the prevention of multiple enrollments unless authorized by a court order under §§ 1.490 through 1.499 of this part.

(Authority: 38 U.S.C. 7334)

**§ 1.479 Disclosures to elements of the criminal justice system which have referred patients.**

(a) VA may disclose information about a patient from records covered by §§ 1.460 through 1.499 of this part to those persons within the criminal justice system which have made participation in a VA treatment program a condition of the disposition of any criminal proceedings against the patient or of the patient's parole or other release from custody if:
(1) The disclosure is made only to those individuals within the criminal justice system who have a need for the information in connection with their duty to monitor the patient's progress (e.g., a prosecuting attorney who is withholding charges against the patient, a court granting pretrial or posttrial release, probation or parole officers responsible for supervision of the patient); and
(2) The patient has signed a written consent as a condition of admission to the treatment program meeting the requirements of § 1.475 of this part (except paragraph (a)(8) which is inconsistent with the revocation provisions of paragraph (c) of this section) and the requirements of paragraphs (b) and (c) of this section.
(b) *Duration of consent.* The written consent must state the period during which it remains in effect. This period must be reasonable, taking into account:
(1) The anticipated length of the treatment recognizing that revocation of consent may not generally be effected while treatment is ongoing;
(2) The type of criminal proceeding involved, the need for the information in connection with the final disposition of that proceeding, and when the final disposition will occur; and
(3) Such other factors as the facility, the patient, and the person(s) who will receive the disclosure consider pertinent.
(c) *Revocation of consent.* The written consent must state that it is revocable upon the passage of a specified amount of time or the occurrence of a specified, ascertainable event. The time or occurrence upon which consent becomes revocable may be no earlier than the individual's completion of the treatment program and no later than the final disposition of the conditional release or other action in connection with which consent was given.
(d) *Restrictions on redisclosure and use.* A person who receives patient information under this section may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given, including parole.

(Authority: 38 U.S.C. 7334)

**§§ 1.480–1.484 [Reserved]**

**Disclosures Without Patient Consent**

**§ 1.485 Medical emergencies.**

(a) *General rule.* Under the procedures required by paragraph (c) of this section, patient identifying information from records covered by §§ 1.460 through 1.499 of this part may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.
(b) *Special rule.* Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.
(c) *Procedures.* Immediately following disclosure, any VA employee making an oral disclosure under authority of this section shall make an accounting of the disclosure in accordance with the Privacy Act (5 U.S.C. 552a(c) and 38 CFR 1.576(c)) and document the disclosure in the patient's records setting forth in writing:
(1) The name and address of the medical personnel to whom disclosure was made and their affiliation with any health care facility;
(2) The name of the individual making the disclosure;
(3) The date and time of the disclosure;
(4) The nature of the emergency (or error, if the report was to FDA);
(5) The information disclosed; and
(6) The authority for making the disclosure (§ 1.485 of this part).

(Authority: 38 U.S.C. 7332(b)(2)(A))

**§ 1.486 Disclosure of information related to infection with the human immunodeficiency virus to public health authorities.**

(a) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the HIV, information may be disclosed to a Federal, State, or local public health authority, charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law. In the case of a State law, such law must, in order for VA to be able to release patient name and address information in accordance with 38 U.S.C. 5701(f)(2), provide for a penalty or fine or other sanction to be assessed against those individuals who are subject to the jurisdiction of the public health authority but fail to comply with the reporting requirements.
(b) A person to whom a record is disclosed under this section may not redisclose or use such record for a purpose other than that for which the disclosure was made.

(Authority: 38 U.S.C. 7332(b)(2)(C))

**§ 1.487 Disclosure of information related to infection with the human immunodeficiency virus to the spouse or sexual partner of the patient.**

(a) Subject to paragraph (b) of this section, a physician or a professional counselor may disclose information or records indicating that a patient is infected with the HIV if the disclosure is made to the spouse of the patient, or to an individual whom the patient has, during the process of professional counselling or of testing to determine

whether the patient is infected with such virus, identified as being a sexual partner of such patient.

(b) A disclosure under this section may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient to provide the information to the spouse or sexual partner, reasonably believes that the patient will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(c) A disclosure under this section may be made by a physician or counselor other than the physician or counselor referred to in paragraph (b) of this section if such physician or counselor is unavailable by reason of extended absence or termination of employment to make the disclosure.

(Authority: 38 U.S.C. 7332(b))

**§ 1.488 Research activities.**

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500–1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575–1.584 and the following paragraphs, patient medical record information covered by §§ 1.460 through 1.499 of this part may be disclosed for the purpose of conducting scientific research.

(a) Information in individually identifiable form may be disclosed from records covered by §§ 1.460 through 1.499 of this part for the purpose of conducting scientific research if the Under Secretary for Health or designee makes a determination that the recipient of the patient identifying information:

(1) Is qualified to conduct the research;

(2) Has a research protocol under which the information:

(i) Will be maintained in accordance with the security requirements of § 1.466 of this part (or more stringent requirements); and

(ii) Will not be redisclosed except as permitted under paragraph (b) of this section, and;

(3) Has furnished a written statement that the research protocol has been reviewed by an independent group of three or more individuals who found that the rights of patients would be adequately protected and that the potential benefits of the research outweigh any potential risks to patient confidentiality posed by the disclosure of records.

(b) A person conducting research may disclose information obtained under paragraph (a) of this section only back to VA and may not identify any individual patient in any report of that research or otherwise disclose patient identities.

(Authority: 38 U.S.C. 7332(b)(2)(B))

**§ 1.489 Audit and evaluation activities.**

Subject to the provisions of 38 U.S.C. 5701, 38 CFR 1.500–1.527, the Privacy Act (5 U.S.C. 552a), 38 CFR 1.575–1.584, and the following paragraphs, patient medical records covered by §§ 1.460 through 1.499 of this part may be disclosed outside VA for the purposes of conducting audit and evaluation activities.

(a) *Records not copied.* If patient records covered by §§ 1.460 through 1.499 of this part are not copied, patient identifying information may be disclosed in the course of a review of records on VA facility premises to any person who agrees in writing to comply with the limitations on redisclosure and use in paragraph (d) of this section and:

(1) Where audit or evaluation functions are performed by a State or Federal governmental agency on behalf of VA; or

(2) Who is determined by the VA facility director to be qualified to conduct the audit or evaluation activities.

(b) *Copying of records.* Records containing patient identifying information may be copied by any person who:

(1) Agrees in writing to:

(i) Maintain the patient identifying information in accordance with the security requirements provided in § 1.466 of this part (or more stringent requirements);

(ii) Destroy all the patient identifying information upon completion of the audit or evaluation; and

(iii) Comply with the limitations on disclosure and use in paragraph (d) of this section; and

(2) Who is determined by the VA medical facility Director to be qualified to conduct the audit or evaluation activities.

(c) *Congressional oversight.* Records subject to §§ 1.460 through 1.499 of this part shall be released to congressional committees or subcommittees for program oversight and evaluation if such records pertain to any matter within the jurisdiction of such committee or subcommittee.

(d) *Limitation on disclosure and use.* Records containing patient identifying information disclosed under this section may be disclosed only back to VA and used only to carry out an audit or evaluation purpose, or, to investigate or prosecute criminal or other activities as authorized by a court order entered under § 1.494 of this part.

(Authority: 38 U.S.C. 7332(b)(2)(B))

## Court Orders Authorizing Disclosures and Use

**§ 1.490 Legal effect of order.**

The records to which §§ 1.460 through 1.499 of this part apply may be disclosed if authorized by an appropriate order of a court of competent jurisdiction (either Federal or State) granted after application showing good cause therefore. In assessing good cause the court is statutorily required to weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, is required by statute to impose appropriate safeguards against unauthorized disclosure. An order of a court of competent jurisdiction, Federal or State, to produce records subject to §§ 1.460 through 1.499 of this part will not be sufficient unless the order reflects that the court has complied with the requirements of 38 U.S.C. 7332(b)(2)(D). Such an order from a Federal court compels disclosure. However, such an order from a State court only acts to authorize the Secretary to exercise discretion pursuant to 38 U.S.C. 5701(b)(5) and 38 CFR 1.511 to disclose such records. It does not compel disclosure.

(Authority: 38 U.S.C. 7332(b)(2)(D))

**§ 1.491 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.**

A court order under §§ 1.460 through 1.499 of this part may not authorize qualified personnel, who have received patient identifying information from VA without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under § 1.494 of this part may authorize disclosure and use of records to investigate or prosecute VA personnel.

(Authority: 38 U.S.C. 7334)

**§ 1.492 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.**

(a) *Application.* An order authorizing the disclosure of patient records covered by §§ 1.460 through 1.499 of this part for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as

part of a pending civil action in which it appears that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given a written consent (meeting the requirements of § 1.475 of this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrunity.

(b) *Notice.* The patient and VA facility from whom disclosure is sought must be given:

(1) Adequate notice in a manner which will not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on whether the statutory and regulatory criteria for the issuance of the court order are met.

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or VA, unless the patient requests an open hearing in a manner which meets the written consent requirements of § 1.475 of this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(Authority: 38 U.S.C. 7334)

**§ 1.493 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.**

(a) *Application.* An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally investigate or prosecute a patient may be applied for by VA or by any person conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under § 1.494 of this part is sought with an order under this section, VA must be given:

(1) Adequate notice (in a manner which will not disclose patient identifying information to third parties) of an application by a person performing a law enforcement function;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order; and

(3) An opportunity to be represented by counsel.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or VA. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of VA to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a person performing a law enforcement function, VA has been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crime or suspected crime specified in the applications; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment on only that public interest and need found by the court.

(Authority: 38 U.S.C. 7332(c))

**§ 1.494 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute VA or employees of VA.**

(a) *Application.* (1) An order authorizing the disclosure or use of patient records covered by §§ 1.460 through 1.499 of this part to criminally or administratively investigate or prosecute VA (or employees or agents of VA) may be applied for by an administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over VA activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against VA (or agents or employees of VA) in which it appears that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has given a written consent (meeting the requirements of § 1.475 of this part) to that disclosure.

(b) *Notice not required.* An application under this section may, in

the discretion of the court, be granted without notice. Although no express notice is required to VA or to any patient whose records are to be disclosed, upon implementation of an order so granted VA or the patient must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order.

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, § 1.492(d) and (e) of this part.

(d) *Limitations on disclosure and use of patient identifying information.* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient, or be used as the basis for an application for an order under § 1.493 of this part.

(Authority: 38 U.S.C. 7334)

**§ 1.495 Orders authorizing the use of undercover agents and informants to criminally investigate employees or agents of VA.**

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a VA drug or alcohol abuse, HIV infection, or sickle cell anemia treatment program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the VA treatment program are engaged in criminal misconduct.

(b) *Notice.* The VA facility director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order), unless the application asserts a belief that:

(1) The VA facility director is involved in the criminal activities to be investigated by the undercover agent or informant; or

(2) The VA facility director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find:

(1) There is reason to believe that an employee or agent of a VA treatment program is engaged in criminal activity;

(2) Other ways of obtaining evidence of this criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the VA treatment program outweigh the potential injury to patients of the program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a VA treatment program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to criminally investigate or prosecute employees or agents of the VA treatment program; and

(4) Include any other measures which are appropriate to limit any potential disruption of the program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed under this section may be used to criminally investigate or prosecute any patient or as the basis for an application for an order under § 1.493 of this part.

(Authority: 38 U.S.C. 7334)

**§ 1.496–1.499 [Reserved]**

**§ 1.513 [Amended]**

2. In § 1.513(b)(2) remove the words "Post Office Department" and add in their place, the words "U.S. Postal Service".

**§ 1.513a [Removed]**

3. Section 1.513a is removed.

[FR Doc. 93–17679 Filed 7–23–93; 8:45 am]
BILLING CODE 8320-01-U

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA–37–2–5758; FRL–4681–5]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Sacramento Metropolitan Air Quality Management District (SMAQMD) on December 17, 1991. The California Air Resources Board submitted these revisions to EPA on June 19, 1992. The revisions concern SMAQMD's Rule 448, Gasoline Transfer into Stationary Storage Containers and Rule 449, Gasoline Transfer into Vehicle Fuel Tanks. Both rules control volatile organic compound (VOC) emissions from gasoline loading operations. The intended effect of proposing limited approval and limited disapproval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated the revisions to Rules 448 and 449 and is proposing a limited approval under provisions of the CAA regarding EPA actions on SIP submittals and general rulemaking authority because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under the CAA provisions cited above because the rules do not meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

**DATES:** Comments must be received on or before August 25, 1993.

**ADDRESSES:** Comments may be mailed to: Esther J. Hill, Rulemaking Section I (A–5–4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

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California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District, 8411 "K" Street, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: William Davis, Rulemaking Section 1 (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

## Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included Sacramento County. 43 FR 8964; 40 CFR 81.305. Because Sacramento County was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. Sacramento County did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that SMAQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. sections 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Sacramento County is classified as a serious nonattainment area;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On June 22, 1991, EPA, Region 9, notified the State of California that EPA had not received by the May 15, 1991 deadline all required VOC rule corrections under section 182(a)(2)(A) of the CAA. The finding letter identified six districts in California, including SMAQMD, that had failed to submit required rule corrections. The official finding notice was published in the **Federal Register** on October 22, 1991 (56 FR 54554). Five rules were listed for SMAQMD, including Rule 448. As a result, SMAQMD had 18 months to submit the five rules to EPA before a sanction would be imposed.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on June 19, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for Rule 448, Gasoline Transfer into Stationary Storage Containers, and Rule 449, Transfer of Gasoline into Vehicle Fuel Tanks. These submitted rules were found to be complete on August 27, 1992, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V,[3] and are being proposed for limited approval and limited disapproval. The State's complete submittal of Rule 448 satisfies the deficiency for which the finding of nonsubmittal, dated October 22, 1991, was made and stopped the sanctions clock. However, the Federal implementation plan (FIP) clock will not stop until EPA approves the rule.

Rules 448 and 449 control the emission of volatile organic compounds (VOCs) contained in gasoline vapors displaced from storage tanks and vehicle fuel tanks during loading operations. VOCs contribute to the production of ground level ozone and smog. SMAQMD's Rules 448 and 449 were originally adopted as part of SMAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and have been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for SMAQMD's Rules 448 and 449.

## EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTGs applicable to Rule 448, Gasoline Transfer into Stationary Containers, are entitled "Control of Volatile Organic Emissions from Bulk Gasoline Plants", CTG EPA–450/2–77–035, and "Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems", CTG EPA–450/2–78–051. There was no CTG available for guidance when Rule 449, Transfer of Gasoline into Vehicle Fuel Tanks, was developed and adopted by the District.[4] Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SMAQMD's Rule 448, Gasoline Transfer into Stationary Storage Containers, includes the following revisions to the current SIP rule:

1. Four exemptions have been deleted.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SMAQMD retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the amended Act, revised the criteria on August 26, 1991 (56 FR 42216).

[4] Guidance is currently available in a document entitled "Technical Guidance–Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities", Volumes I and II, EPA–450/3–91–022a and –022b. Any variance from this guidance was not considered a deficiency in acting on Rule 448.

2. A provision allowing the Control Officer to approve alternate emission control equipment has been deleted.

3. A provision prohibiting purging of gasoline vapors into the atmosphere has been added.

4. Provisions for special vapor control equipment have been added.

5. A provision for petitioning for continued exemption has been deleted.

6. A compliance schedule for facilities once exempted from the rule has been included.

7. Test methods for establishing compliance have been added.

SMAQMD's Rule 449, Transfer of Gasoline into Vehicle Fuel Tanks, includes the following revisions from the current SIP rule:

1. A number of term definitions have been added.

2. A provision applying the standards of the rule to intermediate fueler trucks has been added.

3. Provisions for maintenance procedures and details of equipment defects and the tagging of defective equipment to prevent it from being used have been added.

4. Provisions for the posting of operating instructions have been added.

5. Compliance schedules for equipment which were once exempted from the rule, such as intermediate fueler trucks, have been added.

6. Test methods for determining compliance with the rule have been added.

EPA has evaluated SMAQMD's submitted Rules 448 and 449 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the deletion of a number of exemptions in submitted Rules 448 and 449 should lead to more emission reductions.

Although the SMAQMD's Rules 448 and 449 strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. Both rules allow the Control Officer to use "equivalent" test methods for determining compliance. This is considered to be a deficiency because the alternate methods may give inaccurate results.[3] A detailed discussion of each rule deficiency can be found in the Technical Support Documents for Rules 448 and 449, which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and Part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of SMAQMD's submitted Rules 448 and 449 under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA's final notice of this disapproval becomes effective. Moreover, the final disapproval triggers the FIP requirement under section 110(c). The FIP clock for Rule 448 began on October 22, 1991, when EPA made the finding of failure to submit and the clock has not been halted by EPA's action today. It should be noted that the rules covered by this NPR have been adopted by the SMAQMD and are currently in effect in the District. EPA's limited disapproval action in this NPR does not prevent SMAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**Regulatory Process**

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

Limited approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410 (a) (2).

EPA's limited disapproval of the State request under sections 110 and 301 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Federal limited disapproval of the state submittal does not affect its enforceability. Moreover, EPA's limited disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this limited disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR

[3] A relaxation of the SIP was determined for Rule 449 because an exemption was added which was not present in the SIP rule. However, Rule 449 insures greater reduction of emissions and the relaxation is allowed (section 193 of the Act).

2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: July 8, 1993.

**Nora L. McGee,**

*Acting Regional Administrator.*

[FR Doc. 93–17714 Filed 7–23–93; 8:45 am]

BILLING CODE 6560-50-F

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101–25

### Selecting Office Copying Machines

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Proposed rule.

**SUMMARY:** This notice invites written comments on a proposed amendment to the Federal Property Management Regulations (FPMR) that differentiates between "office copying machines" and "high-speed copiers", and directs all prospective customers of office copying machines to select the most appropriate and economical procurement method through the use of life-cycle cost (LCC) techniques.

**DATES:** Comments are due in writing on or before August 25, 1993.

**ADDRESSES:** Comments should be addressed to Nicholas Economou, FSS Acquisition Management Center (FCO), Crystal Mall Building #4, room 716, Washington, DC 20406.

**FOR FURTHER INFORMATION CONTACT:** Carl Carter, Engineering and Commodity Management Division (703–305–7540).

**SUPPLEMENTARY INFORMATION:**

**A. Executive Order 12291**

The General Services Administration (GSA) has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or other significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule. In addition, GSA has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits. Finally, GSA has chosen the alternative approach involving the least net cost to society.

**B. Regulatory Flexibility Act**

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C.

**C. Paperwork Reduction Act**

This proposed rule does not contain information collection requirements that require approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501).

**List of Subjects in 41 CFR Part 101–25**

Government property management.

Accordingly, 41 CFR part 101–25 is proposed to be amended as set forth below:

## PART 101–25—GENERAL

1. The authority citation for part 101–25 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

### Subpart 101–25.5—Guidelines for Making Purchase or Lease Determinations

2. Section 101–25.504 is revised to read as follows:

**§ 101–25.504 Office copying machines.**

For purposes of this section, the term "copying machine(s)" shall include all equipment which produces copies of images from "hard" or printed originals, at a single location, whether or not the individual machine has any additional capabilities. The term "office copying machine(s)" shall include all models of copying machines that produce 69 or fewer 8½" x 11" copies per minute in their most productive modes. "High-speed copiers" or "duplicators" which produce in excess 69 copies per minute are generally considered to be equipment for use in copy centers or printing plants and are not covered by this section. Customers requiring high-output equipment of this type must conform to the mandates of the Joint Committee on Printing. Inquiries in this area should be addressed to: The Honorable Charlie Rose; Chairman; Joint Committee on Printing; Congress of the United States; Washington, DC 20510–6066. Certain high-speed printing applications are subject to the Brooks Act and GSA's Federal Information Resources Management Regulations (FIRMR) and are considered to be Federal Information Processing (FIP) resources. These applications include printing systems that are designed for use in conjunction with or controlled by a computer system. Such applications are not covered by this section.

(a) Determining the most appropriate and economical type of office copying machine(s) for a given application is the responsibility of the central printing management organization (CPMO) or its designee within the ordering agency. The CPMO or its designee must accurately determine the true copying needs of the using activity in terms of copy volume per month, equipment features, and equipment options that further the mission of the activity and provide the most economical copier service overall. Underestimating or overestimating the copying capabilities required may lead to obtaining office copying machines that do not satisfy the needs of the activity, and may result in higher than necessary copier costs. The selection process should also include an evaluation of the benefits and drawbacks of placements of copiers within the work unit.

(b) All prospective customers of office copying machines must consider all available procurement options, i.e., purchase, rental, lease to purchase, single-vendor contracts, and cost-per-copy (CPC). These options are available under either the terms and conditions of applicable Federal Supply Schedule contracts or a customized buying program of the Federal Supply Service. Each of these options can prove to be cost effective depending on the circumstances and the true copying needs of the using activity. Prior to acquisition of office copying machines, the ordering activity must determine the various costs of acquiring such equipment through each of the procurement options described below. Determining these costs must be based on the best available information and estimates, including any factors peculiar to office copying machines. Once these costs have been determined, life-cycle costing (LCC) techniques shall be used to determine the most cost-effective procurement option for the particular situation.The most cost-effective option shall be used in making the procurement, except in situations where the most cost-effective option will fail to meet the needs of the agency.

(1) LCC for the purchase of office copying machines shall include, as a minimum, up-front cost of the equipment; costs of consumable

supplies such as toner, developer, etc. for the expected useful life of the equipment; costs of repair and maintenance service for the expected useful life of the equipment; and installation, removal, and disposal costs.

(2) LCC for the rental of office copying machines shall include, as a minimum, monthly rental charges for the expected period of usage (both basic rent and excess copy or "click" charges if applicable); costs of consumable supplies, if separate from monthly rental charges; costs of repair and maintenance services if separate from monthly rental charges; installation and removal charges, if any; and, if there is reason to expect that the equipment will be utilized for a period less than the rental term, termination charges. When renewing a rental agreement, a review of currently available copier equipment should be conducted to determine whether new equipment could provide lower cost and/or more productive service. Excessive maintenance calls or the necessity to frequently send special copying jobs outside may indicate that the current rental equipment is no longer adequate to meet the copying demands of the activity. Either equipment upgrades or utilization of a centralized copying/duplicating facility may be proper responses to situations of this type.

(3) LCC for the lease to purchase of office copying machines shall include, as a minimum, the total of lease payments which will result in ownership of the equipment passing to the Government; costs of consumable supplies; cost of repair and maintenance services; and installation, removal, and disposal costs.

(4) Prices and services provided through single-vendor contracts may vary widely, depending upon the numbers and proximities of placements, and whether the contract is for purchase, rental, or lease to purchase. Again, it is mandatory that appropriate LCC techniques be utilized in order to properly evaluate the worth of such proposed contracts.

(5) Under the cost-per-copy (CPC) program, the contractor provides the office copying machines in varying capabilities to suit particular site requirements, all consumable supplies except for paper, and all maintenance and repair services. The customer pays a contract price for each copy produced during the billing period. The CPC program provides excellent service, lowers the basic costs for electrostatic copying services, and eliminates most administrative costs in providing copier service to qualified Government activities. To determine if CPC is suitable, potential customers must calculate a "maximum allowable" cost target, beyond which CPC would not be cost-effective. This target will be equal to the lowest overall cost available through purchase, rental, or lease to purchase. To the extent possible, all applicable costs must be considered, including those of administering the reprographics program. In addition, the potential customer must require a sufficient number of office copying machines within a reasonable geographical area to allow for the economies of scale in the CPC program. Experience indicates that approximately 40 machines within a radius of several miles constitute the minimum for a successful CPC program. Customers who judge that the CPC program may provide service improvements and/or cost savings in their reprographics programs should contact the Director, Office and Scientific Equipment Commodity Center, Federal Supply Service. Federal Supply Service will review their circumstances and advise the customer as to whether CPC is a suitable, cost-effective method to satisfy their requirements.

(i) The CPC program should always be considered by customers with singular or collective large-scale requirements. Quantity acquisitions will generally improve both the prices and service for copier customers and should be strongly considered whenever circumstances warrant. Individual customers with large copier requirements in a relatively compact geographical area should always consider meeting most or all of their needs through a single, large-scale procurement when feasible; procurements which exceed the maximum order limitation (MOL) of Federal Supply Schedules can generally be expected to yield noticeably better pricing than single unit or small quantity purchases, rentals, or leases. Whenever the requirements of an ordering office exceed the applicable schedule MOL(s), the procedures in FAR 8.404–1(c) must be followed. Customers with smaller requirements at a given site should consider a collective effort with other agencies or activities such as the Cooperative Administrative Support Unit (CASU) programs.

(ii) The CPC program can provide the customer a chance to design and specify those elements of service that are important or critical to his/her activity. Office copying machines are powered mechanical devices that require competent, readily available service. They regularly require adjustments, cleaning, parts replacement, etc. in order to perform at optimum efficiency. Therefore, the ordering activity must consider the availability of capable service with acceptable response time. The lack of such service can invalidate cost-savings and obstruct agency missions through excessive down time. This consideration is important for those activities having remote locations that are not serviced by a wide variety of branch offices or dealerships.

(c) The Automated Product Listing Service (APLS) Users Manual contains the information and instructions needed by ordering activities to effectively and efficiently utilize LCC techniques in determining the relative costs of purchase, rental, and lease to purchase options. The manual can be obtained by contacting General Services Administration, Federal Supply Service, Office and Scientific Equipment Commodity Center, Engineering and Commodity Management Division (FCGC), Washington, DC 20406. The APLS Users Manual also contains information and instructions regarding the use of a computer based price and features service, called APLS, that can compute life-cycle costs. APLS also features copiers available on FSS Schedule 36 IV arrayed in LCC sequence at standard monthly volumes. All potential customers for copiers are encouraged to use this computer based service.

Dated: June 11, 1993.

**Nicholas M. Economou,**

*Director, FSS Acquisition Management Center (FCO).*

[FR Doc. 93–17615 Filed 7–23–93; 8:45 am]

BILLING CODE 6820–34–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1, 2, 88, 90 and 94

[PR Docket No. 92–235; DA 93–600]

### Revision of Regulations on the Private Land Mobile Radio Services; Modification of Policies

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed Rule; Order Extending Reply Comment Period.

**SUMMARY:** The Chief, Land Mobile and Microwave Division, Private Radio Bureau, has adopted an Order extending the time period in which to file reply comments to the Notice of Proposed Rule Making, in this proceeding. That document (57 FR 54034, November 16, 1992) proposed major policy changes for the private land mobile radio services, particularly for the bands below 512

MHz. The new date for reply comments is July 30, 1993. This action will provide commenters additional time to review the very large volume of comments submitted to date.

**DATES:** Reply comments must be filed on or before July 30, 1993.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Doron Fertig, Policy and Planning Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632–6497.

**SUPPLEMENTARY INFORMATION:**

**Order Extending Reply Comment Period**

Adopted: June 30, 1993
Released: July 2, 1993
*Reply Comment date:* July 30, 1993

In the matter of Replacement of part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92–235.

By the Chief, Land Mobile & Microwave Division, Private Radio Bureau

1. On November 6, 1992, the Commission released a Notice of Proposed Rule Making, 7 FCC Rcd 8105 (1992) 57 FR 54034, November 16, 1992, (Notice), in this proceeding. The specified deadlines for comments and reply comments were February 26, 1993 and April 14, 1993, respectively. On February 8, 1993, the Chief, Private Radio Bureau, extended the comment and reply comment deadlines to May 28, 1993 and July 14, 1993, respectively, in response to requests from the Public Safety Communications Council, the Land Mobile Communications Council (LMCC), and PowerSpectrum, Inc. (8 FCC Rcd 1501 (1993)). On June 29, 1993, LMMC submitted a Motion for Extension of Time to extend the reply comment period to July 30, 1993.

2. LMCC based its request on the number and complexity of the comments filed in response to the Notice and on the need for additional time to review and analyze the voluminous record in this proceeding. We believe the public interest would be served by providing adequate time for interested parties to read and respond to comments filed in response to the Notice so that the Commission has at its disposal the fullest possible record on which to make decisions on all the issues involved in this proceeding.

3. Accordingly, IT IS ORDERED, based on the authority granted in Section 0.331 of the Commission's Rules and Regulations, 47 CFR 0.331, that the petition of LMCC IS GRANTED, and, that the deadline for filing reply comments in the subject Notice of Proposed Rule Making is extended to July 30, 1993.

Federal Communications Commission.

**Richard J. Shiben,**

*Chief, Land Mobile & Microwave Division, Private Radio Bureau.*

[FR Doc. 93–17119 Filed 7–23–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–203, RM–8245]**

**Radio Broadcasting Services; Islesboro, ME**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Islesboro Broadcasting Company proposing the allotment of Channel 288B1 to Islesboro, Maine, as that community's first FM broadcast service. Canadian concurrence will be requested for this allotment at coordinates 44–09–31 and 68–53–03. There is a site restriction 16.7 kilometers (10.4 miles) south of the community. The proposal for Islesboro must conform with the technical requirements of § 73.1030(c)(1)–(5) of the Rules regarding protection to the Commission's monitoring station at Belfast, Maine.

**DATES:** Comments must be filed on or before September 9, 1993, and reply comments on or before September 24, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., Esquire, 13809 Black Meadow Road, Spotsylvania, Virginia 22553.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–203, adopted June 25, 1993, and released July 20, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17604 Filed 7–23–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 87**

**[PR Docket No. 93–199; FCC 93–331]**

**Implementing Technical Requirements Applicable to Instrument Landing System Receivers and VHF Omnirange Radio Receivers Adopted by the International Civil Aviation Organization**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has adopted a Notice of Proposed Rule Making (NPRM) that proposes to implement new technical specifications for all Instrument Landing Systems (ILS) and VHF Onmirange Radio (VOR) receivers on board U.S. aircraft. This action is necessary in order to meet U.S. obligations under the U.S. International Civil Aviation Organization (ICAO) Convention. The proposed technical standards would increase the safety of flight.

**DATES:** Comments must be submitted on or before September 27, 1993. Reply Comments must be submitted on or before October 27, 1993.

**ADDRESSES:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Marc S. Martin, (202) 632–7175, Private Radio Bureau.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's NPRM,

FCC 93-331, adopted June 24, 1993; and released July 14, 1993. The full text of this Notice if available for inspection and copying during normal business hours in the FCC Reference Center, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, room 246, Washington, DC 20554, telephone (202) 857-3800.

**Summary of NPRM**

1. This NPRM proposes to implement the standards and recommendations contained in Annex 10 to the ICAO Convention for all airborne Instrument Landing System (ILS) and VHF Omnirange Radio (VOR) receivers used on U.S. aircraft. The proposed technical standards would improve the immunity of ILS and VOR receivers to interference and thereby improve the safety of the public using air transportation. ICAO is the international organization charged with overseeing and ensuring the safety and efficiency of international flight. In 1985, the ICAO promulgated new technical standards for airborne ILS and VOR receivers. These standards would provide ILS and VOR receivers with greater immunity to interference in the presence of VHF FM broadcast signals. The ICAO ILS and VOR receiver standards are contained in the proposed Rules. The NPRM proposes that the standards apply to all newly installed ILS and VOR receivers after January 1, 1995, and to all ILS and VOR receivers after January 1, 1998, on aircraft on international flights or those flying domestically under Instrument Flight Rules. It further proposes that all U.S. aircraft comply by January 1, 2005.

2. In order to ensure that ILS and VOR receivers meet the new standards, the Commission has proposed that all ILS and VOR receivers manufactured in or imported into the United States meet the ICAO standards by January 1, 1994. In accordance with the Commission's Rules, notification is proposed as the appropriate method for applying for equipment authorization. Notification is a type of equipment authorization issued by the Commission whereby the applicant makes measurements to determine that the equipment complies with the appropriate technical standards and reports that such measurements have been made and demonstrate the necessary compliance. Submittal of a sample unit or representative data demonstrating compliance is not required unless specifically requested by the FCC. The procedures for application for equipment authorization are contained in Subpart J of Part 2 of the Commission's Rules. The Commission has proposed to use the test procedures defined by RTCA's (and association of aeronautical organizations of the United States from both government and industry) Minimum Operational Performance Standards for ILS and VOR receivers as the basis for applications for equipment authorization.

3. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals contained in this NPRM. We request written public comment on the IRFA, which follows. Comments must have a separate and distinct heading designating them as responses to the IFRA and must be filed by the comment deadlines provided above. The Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96-354, 94 stat. 1164, 5 U.S.C. 601-612 (1981).

*A. Reason for Action*

(i). This rule making proceeding is initiated to obtain comment regarding the adoption of International Civil Aviation Organization (ICAO) technical standards for instrument landing system (ILS) and VHF Omnirange Radio (VOR) receivers on board U.S. aircraft.

*B. Objectives*

(ii). The Commission seeks to implement ICAO technical standards as required by the Convention on International Civil Aviation, to which the United States is signatory. In implementing the ICAO standards for all U.S. aircraft, whether flying internationally or only domestically, the Commission seeks to achieve the objectives of ICAO in mandating the standards and to maximize the safety of aviation generally.

*C. Legal Basis*

(iii). The NPRM is authorized under Sections 1, 2(a), 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 303(r).

*D. Reporting, Recordkeeping and Other Compliance Requirements*

(iv). None for small business entities.

*E. Federal Rules Which Overlap, Duplicate or Conflict With These Rules*

(v). None.

*F. Description, Potential Impact, and Number of Small Entities Involved*

(vi). The rule changes proposed in this proceeding could affect small, general aviation businesses by requiring them to replace current ILS and VOR receivers with ILS and VOR receivers meeting the ICAO standards. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

*G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives*

(vii). The NPRM currently proposes an extended compliance period for small entities which fly only domestically, to minimize the impact of the proposed rule changes on such entities. The Commission believes that this is a reasonable compromise between allowing no extension of the compliance period, which would place a heavier economic burden on small entities, and allowing a longer extended compliance period, which would have a detrimental effect on the safety of the public engaged in flight. The NPRM solicits comments on alternatives.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

**List of Subjects in 47 CFR Part 87**

Aviation safety, Radio.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93-17137 Filed 7-23-93; 8:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1035**

**[Ex Parte No. 485]**

**Bills of Lading**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Proposed rule; extension of comment due date.

**SUMMARY:** By notice served June 29, 1993 (58 FR 34775, June 29, 1993), the Commission requested comments on its

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proposed revision of regulations pertaining to railroad and motor carrier uniform bills of lading. The Commission also sought comments on a proposal to further amend these rules submitted jointly by National Grain and Feed Association (NGFA), the Association of American Railroad (AAR), and the National Industrial Transportation League (NITL). By letter filed July 7, 1993, NGFA, AAR and NITL jointly request an extension to August 30, 1993 to file comments. These parties state additional time is needed due to the large number of constituents each represents and difficulties seeking a consensus regarding the proposals due to unavailability of key personnel. The extension request is reasonable and will be granted.

**DATES:** Comments must be received by August 30, 1993.

**ADDRESSES:** Send an original and 10 copies of comments referring to Ex Parte No. 495 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927–5660 or Andrew J. Nosacek, (202) 927–5318. [TDD for the hearing impaired: (202) 927–5721].

Decided: July 19, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Walden dissented with a separate expression.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17666 Filed 7–23–93; 8:45 am]

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DEPART

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AGENCY:
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ACTION: N

SUMMARY
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# Notices

Federal Register
Vol. 58, No. 141
Monday, July 26, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 93-069-1]

### Availability of Environmental Assessments and Findings of No Significant Impact

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that six environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

**ADDRESSES:** Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690-2817 to facilitate entry into the reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

| Permit No. | Permittee | Date issued | Organisms | Field test location |
|---|---|---|---|---|
| 93-117-01, renewal of permit 90-065-06, issued on 05-15-90. | University of Kentucky. | 06-15-93 | Tobacco plants genetically engineered to express resistance to tobacco vein mottling virus. | Kentucky. |
| 93-063-01 | Miles Incorporated. | 06-17-93 | Tobacco plants genetically engineered to express stilbene phytoalexin synthase genes for resistance to the fungus *Botrytis cinerea*. | Florida, Kansas. |
| 93-105-04 | Michigan State University. | 06-17-93 | Melon plants genetically engineered to express resistance to zucchini yellow mosaic virus. | Michigan. |
| 93-105-06, renewal of permit 92-076-02, issued on 06-18-92. | New York State Agricultural Experiment Station. | 06-17-93 | Squash plants genetically engineered to express resistance to cucumber mosaic virus. | New York. |

| Permit No. | Permittee | Date issued | Organisms | Field test location |
|---|---|---|---|---|
| 93-105-07, renewal of permit 92-076-02, issued on 06-18-92. | New York State Agricultural Experiment Station. | 06-18-93 | Melon plants genetically engineered to express resistance to cucumber mosaic virus. | New York. |
| 93-039-02 | University of Wisconsin at Madison. | 06-22-93 | Spruce and poplar trees genetically engineered to express a deltaendotoxin from *Bacillus thuringiensis* subsp. *kurstaki* strain HD1 for resistance to lepidopteran insects. | Wisconsin. |

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 20th day of July 1993.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 93-17707 Filed 7-23-93; 8:45 am]

BILLING CODE 3410-34-P

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[Docket No. 92-195-1]

## Environmental Impact Statement for the Importation of Logs, Lumber, and Other Unmanufactured Wood Articles

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement (EIS) in connection with regulations we are considering proposing regarding the importation of certain types of unmanufactured wood articles. This notice identifies the environmental issues that we intend to analyze in the EIS and requests public comment on those and other issues.

**DATES:** Consideration will be given only to comments received on or before August 25, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Mr. Jack Edmundson, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 543, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-195-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack Edmundson, Environmental Analysis and Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 543, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8963.

**SUPPLEMENTARY INFORMATION:** The Animal and Plant Health Inspection Service (APHIS) is considering regulating the importation of certain types of unmanufactured wood articles, such as logs, lumber, wood chips, and bark. Under the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331, et. seq.), we are required to prepare an environmental impact statement (EIS) for the regulations under consideration. This notice will serve to inform the public of our intent to prepare an EIS, describe the proposed scope of the EIS, and solicit public comment on the potential environmental issues.

Until recently, the quantity and variety of unmanufactured wood articles imported into the United States were very limited. Consequently, no regulations were developed to specifically address the importation of unmanufactured wood articles. APHIS has dealt with such imports by inspecting shipments of unmanufactured wood articles at ports of first arrival in the United States and ordering further action, if warranted, as a condition of entry. In addition, APHIS has prohibited the entry of logs from the Soviet Far East and Siberia because a detailed pest risk assessment found dangerous plant pests could occur in such logs and may be entered with them.

There is currently an intense commercial interest in developing a long-term industry in the Pacific Northwest for importing and processing logs from foreign countries. There is also the potential for increased imports of logs and other unmanufactured wood articles into other areas of the United States.

In light of this, representatives of domestic timber industries, State governments, academia, and environmental organizations requested that APHIS establish conditions for importing unmanufactured wood articles that are adequate to prevent the introduction into the United States of plant pests and pathogens. As a result, an advance notice of proposed rulemaking was published in the **Federal Register** on September 22, 1992 (57 FR 43628-43631, Docket No. 91-074-2) to inform the public that APHIS is considering regulating the importation of certain types of unmanufactured wood articles, such as logs, lumber, wood chips, and bark.

APHIS will attempt to accomplish the following objectives in the regulations currently under consideration:

- Identify the types of articles to be regulated (unmanufactured wood articles);
- Impose requirements on the importation and entry of regulated articles that would minimize plant pest risks;
- Establish universal importation requirements under which any regulated article could be imported and entered from anywhere if the requirements were met;
- Establish a procedure for evaluating whether to allow unmanufactured wood articles to be imported and entered under conditions other than those specified in the regulations.

The regulations currently under consideration would require some combination of de-barking, heat treatment, fumigation, pesticide and fungicide use, inspection, and permitting and certification, depending upon the type of unmanufactured wood article to be imported and its origin.

As part of the rulemaking process, APHIS will examine four alternatives:

- Take no action (i.e., do not establish regulations);
- Establish regulations based on the objectives described above;
- Prohibit the importation of untreated or raw wood, except as packing material and except untreated raw wood from Canada and the border states of Mexico;
- Prohibit the importation of all unmanufactured wood articles except for articles from Canada and the border states of Mexico. This alternative will be considered, but may be too speculative and unsuited to meaningful analysis. Comment on this issue would be very helpful and is particularly solicited.

Many of the issues that will be developed in the EIS were identified in comments submitted in response to the advance notice of proposed rulemaking mentioned above. The issues include:

- Human safety as it relates to the use of pesticides and wood preservatives. The use of chemicals will be addressed by discussing the human health implications of the use or non-use of Environmental Protection Agency-registered chemicals.
- The potential impact of the alternatives under consideration on forests in the United States. This issue includes the potential for changes in logging pressure on U.S. forests and the potential risk of plant pest introduction.
- The cumulative impact of the use of methyl bromide as a fumigant. The regulations being considered could result in methyl bromide fumigation of unmanufactured wood articles, both in foreign countries and at U.S. ports.
- Several commenters requested that we evaluate the potential for the regulations under consideration to increase demand for tropical and Siberian unmanufactured wood articles and thus result in secondary impacts on the global environment. Although this issue may be too speculative to evaluate meaningfully, information regarding this issue would be very helpful and is solicited.

Potential "extraterritorial" impacts that may fall within the purview of Executive Order 12114 will be discussed in the EIS. No separate document will be necessary to comply with Executive Order 12114.

Comments regarding the proposed scope of the EIS are welcome and will be fully considered. When the draft EIS is completed, a notice announcing its availability and an invitation to comment on it, along with a notice of any public hearings, will be published in the **Federal Register**.

Done in Washington, DC, this 20th day of July 1993.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 93–17706 Filed 7–23–93; 8:45 am]

BILLING CODE 3410–34–P

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**[Docket No. 93–090–1]**

## Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

**ADDRESSES:** Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organism | Field test location |
|---|---|---|---|---|
| 93–175–01, renewal of permit 91–205–01, issued on 10–22–91. | Calgene, Incorporated ..... | 06–24–93 | Rapeseed plants genetically engineered to express oil modification genes. | California. |

Done in Washington, DC, this 20th day of July 1993.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 93–17708 Filed 7–23–93; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of Application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the application and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration,

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202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 93–00001."

**Summary of the Application**

*Applicant:* CALCAST, Inc., 1011 St. Andrews Dr., Suite I, El Dorado Hills, CA 95762. *Application No.:* 93–00001. *Contact:* Jerry Simonelli, Counsel. *Telephone:* (202) 223–0055.

*Date Deemed Submitted:* July 19 1993

MEMBERS IN ADDITION TO APPLICANT

| Company | City | State |
|---|---|---|
| A" Brass Foundry, Inc | Los Angeles | California. |
| Aacco Foundry, Inc | Carson | Do. |
| American Brass & Iron | Oakland | Do. |
| Beckett Bronze Co., Inc | Muncl | Indiana. |
| Bell Foundry Company | South Gate | California. |
| CASTCO (Cast Aluminum & Brass Corp.) | San Leandro | Do. |
| Commercial Casting Co | Fontana | Do. |
| EXCAL, Inc | Mills | Wyoming. |
| Fresno Valves & Castings, Inc | Selma | California. |
| Gregg Industries | El Monte | Do. |
| Kearney's Manufacturing | Fresno | Do. |
| Lodi Iron Works, Inc | Lodi | Do. |
| Los Angeles Brass Products | Huntington Park | Do. |
| Macauley Foundry | Berkeley | Do. |
| Martin Brass Foundry | Torrance | Do. |
| Micro Metals, Inc | Richmond | Do. |
| Modern Pattern & Foundry Company | Los Angeles | Do. |
| Montclair Bronze, Inc | Montclair | Do. |
| Pacific Steel Casting Co | Berkeley | Do. |
| Production Pattern & Foundry Company | San Leandro | Do. |
| Valley Brass, Inc | El Monte | Do. |

CALCAST, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

**Export Trade**

*1. Products and Services*

All products that can be cast from stainless steel, carbon steel, grey iron, ni-hard iron, (nickel-based), brass, bronze, copper, aluminum, titanium and any alloyed combination of those materials, as well as design services related to Products and related manufacturing processes.

*2. Export Trade Facilitation Services (As They Relate to the Export of Products and Services)*

Consulting; international market research; marketing and trade promotion; trade show participation; legal assistance; services related to compliance with customs requirements; trade documentation and freight forwarding; communication and processing of export orders and sales leads; foreign exchange; financing; and liaison with U.S. foreign government agencies, trade associations, and banking institutions.

**Export Markets**

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

**Export Trade Activities and Methods of Operation**

Calcast, Inc. and/or its Members may:

1. Discuss and reach agreements relating to foreign customer specifications and engineering requirements. Calcast, Inc. may obtain foreign customer specifications and engineering requirements and then its Board members may review and discuss them.

2. Engage in joint bidding, joint negotiating with foreign buyers, joint processing of foreign orders and other joint selling arrangements for their products and allocate export sales resulting from such arrangements.

3. Establish export prices, quantities, and other terms and conditions of sale for sales of their products in foreign markets.

4. Share product information for export only, including but not limited to information concerning type of materials used, type of goods produced, and capacity information, in order to determine which Members can bid on each export job.

5. Label goods produced by any member with a label identifying the

goods as exported by or through Calcast, Inc.

6. Refuse to quote for, or to market or sell to certain foreign customers. Members may retain foreign customers to whom the Members already had export sales during the one (1) year period prior to commencement of Calcast, Inc. operations without any competition from Calcast, Inc. This refusal to compete is limited, however, to those product lines already in use, as defined by pattern(s) or mold(s). Additionally, Members may agree that Calcast, Inc. shall be their exclusive agent for all customers generated by or through Calcast, Inc. and that the Members shall not compete with Calcast, Inc. by attempting to sell to or selling to any customer of Calcast, Inc. without Calcast, Inc.'s involvement in the sale for a defined noncompetition period.

7. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing or expanding export markets.

8. Refuse to solicit non-member suppliers to export their products through Calcast, Inc.'s certified activities. Calcast, Inc. and/or its Members may solicit and negotiate with non-member suppliers to sell their products through Calcast, Inc.'s certified activities; provided, however, that Calcast, Inc. and/or its Members shall make such solicitations or offers to non-members on a transaction by transaction basis only and then only when the Members are unable or not reasonably able to supply, at a price competitive under the circumstances, the requisite product or services; and provided further that Calcast, Inc. and/or its Members may exchange only such information with such non-member suppliers as is reasonably required by such transaction.

9. Jointly finance Calcast, Inc. costs and costs of any sales agents. Foreign customers may make payments to Calcast, Inc. as agent for the Member(s). Calcast, Inc. may then retain a commission from the sale, remit payment due to any sales agents, and then remit payment due to the Member(s).

10. Share foreign market information and engage in joint market research concerning export markets. Exchange and discuss market information in regard to opportunities for sales in export markets, selling strategies in export markets, pricing in export markets, projected demand in export markets, customary terms of sale in export markets, types of products available from competitors for sale in particular export markets, and how to fulfill the technical product requirements of specific export customers or particular export markets.

11. Exchange and discuss price, quality, quantity, source and delivery dates of products available from Members for export on a transaction by transaction basis only as necessary.

12. Exchange and discuss information about terms, conditions, and specifications of particular contracts for sale in export markets to be considered and/or bid on by Calcast, Inc.

13. Exchange and discuss information about joint bidding or selling agreements for export markets and allocations of sales resulting from such arrangements among the Members.

14. Exchange and discuss information about expenses specific to and within export markets, including but not limited to insurance, transportation, port storage, commissions, documentation requirements, customs, duties, and taxes.

15. Exchange and discuss information about United States and foreign legislation and regulations affecting sales in export markets.

16. Exchange and discuss information about Calcast, Inc. or Members' export operations, including but not limited to sales and distribution networks and prior export sales by Members (including export price information).

17. Discuss and agree on engineering and other technical product and service requirements of specific export customers or export markets as well as how to fulfill such requirements.

18. Meet to engage in the conduct described in paragraphs 1–17 above.

Dated: July 20, 1993.

**Jude Kearney,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 93–17749 Filed 7–23–93; 8:45 am]

BILLING CODE 3510-DR-M

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**[A–427–801; et al.]**

## Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order

In the matter of A–27–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–549–801, A–412–801; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom.

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative reviews and revocation in part of an antidumping duty order.

**SUMMARY:** On April 27, 1993, the Department of Commerce published the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof, from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof, as described in more detail below. The reviews cover 41 manufacturers/exporters and the period May 1, 1991 through April 30, 1992.

Based on our analysis of the comments received, we have made changes, including corrections of certain inadvertent programming and clerical errors, in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms for each class or kind of merchandise are listed below in the section "Final Results of Review."

The Department also is revoking the antidumping duty order on cylindrical roller bearings and parts thereof from the United Kingdom with respect to Cooper Roller Bearings Co. Ltd.

**EFFECTIVE DATE:** July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** The appropriate case analyst, for the various respondent firms listed below, at the Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

*France*

Joanna Schlesinger (Dassault Industries, SNR Roulements S.A., Valeo S.A.), Michael Diminich (SKF France), Joseph Fargo (SNECMA), Anna Snider (SNFA), Carlo Cavagna (Turbomeca), or Richard Rimlinger.

*Germany*

Carlo Cavagna (Fichtel & Sachs AG), Michael Diminich (FAG Kugelfischer George Schaefer KGaA), Amy Beargie (INA Walzlager Schaeffler KG), J. David Dirstine (SKF GmbH, George Mueller Nurnberg AG), David Levy (NTN Kugellagerfabrik (Deutschland) GmbH), or Richard Rimlinger.

*Italy*

Carlo Cavagna (Meter S.p.a.), Michael Diminich (SKF Industrie S.p.A.), Joseph Fargo (SNECMA), Anna Snider (FAG Italia S.p.A.), or Richard Rimlinger.

*Japan*

Jacqueline Arrowsmith (Showa Pillow Block Mfg. Ltd., Takeshita Seiko Co., Nachi-Fujikoshi Corp.), Kris Campbell (Izumoto Seiko Co. Ltd., Tottori Yamakai Bearing Seisakusho Ltd.), David Levy (NTN Corp., NSK Ltd.), Joseph Hanley (Koyo Seiko Co. Ltd., Asahi Seiko Co. Ltd., Inoue Jikuuke Kogyo Co.), Philip Marchal (Nippon Pillow Block Sales Co., Nakai Bearing Co. Ltd., Honda Motor Co. Ltd., Osaka Pump Co. Ltd., Fujino Iron Works Co. Ltd., Nankai Seiko Bearing Co. Ltd.), or Michael Rill.

*Romania*

Michael Diminich (Tehnoimportexport) or Richard Rimlinger.

*Singapore*

David Levy (NMB Singapore Ltd. and Pelmec Industries (Pte.) Ltd.) or Michael Rill.

*Sweden*

Joseph Fargo, Michael Diminich (SKF Sverige), or Richard Rimlinger.

*Thailand*

David Levy (NMB Thai Ltd. and Pelmec Thai Ltd.) or Michael Rill.

*United Kingdom*

Amy Beargie (The Barden Corporation (U.K.) Ltd.), Anne Snider (FAG (U.K.) Ltd.), Carlo Cavagna (RHP Bearings), Joanna Schlesinger (Cooper Bearings Ltd., Societe Nouvelle de Roulements), or Richard Rimlinger.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 27, 1993, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom (58 FR 25606–25631). We gave interested parties an opportunity to comment on our preliminary results.

At the request of certain interested parties, we held a public hearing on general issues pertaining to all nine countries on May 24, 1993, and hearings on case-specific issues as follows: Thailand on May 25, 1993; Italy on May 26, 1993; Germany on May 27, 1993; Japan on May 28, 1993; and the United Kingdom on May 28, 1993.

In accordance with § 353.25(a) of the Department's regulations (19 CFR 353.25(a)), the Department is revoking the antidumping duty order on cylindrical roller bearings and parts thereof (CRBs) from the United Kingdom with respect to Cooper Roller Bearings Co. Ltd. (Cooper). Cooper submitted a request, in accordance with 19 CFR 353.25(b), for revocation of the order with respect to that company. Cooper has demonstrated three consecutive years of sales at not less than foreign market value and has submitted the required certifications. Furthermore, it is not likely that Cooper will sell the subject merchandise at less than foreign market value in the future. Therefore, the Department is revoking the order on cylindrical roller bearings and parts thereof from the United Kingdom with respect to Cooper.

**Issues Appendix**

All issues raised in the case and rebuttal briefs by parties to the 18 concurrent administrative reviews of AFBs are addressed in the "Issues Appendix," which is appended to this notice of final results.

**Scope of Reviews**

The products covered by these reviews are antifriction bearings (other than tapered roller bearings), and parts thereof, and constitute the following "classes or kinds" of merchandise: ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). For a detailed description of the products covered under these classes or kinds of merchandise, including a compilation of all pertinent scope determinations, see the "Scope Appendix," which is appended to this notice of final results.

**Best Information Available**

In accordance with section 776(c) of the Tariff Act of 1930, as amended (the Tariff Act), we have determined that the use of the best information available (BIA) is appropriate for a number of firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our application of BIA, see the "Best Information Available" section in the Issues Appendix.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made the following changes in these final results:

- Where applicable, certain programming and clerical errors in our preliminary results have been corrected. Any alleged programming or clerical errors pertaining to the calculation and treatment of charges and adjustments, cost of production (COP) and constructed value (CV) with which we do not agree are discussed in the relevant sections of the Issues Appendix.
- We have revised our test to determine whether home market (HM) sales to related parties were made at arm's length. The test used for these final results takes into account levels of trade and circumstances of sale.
- We revised our methodology for making adjustments for taxes paid on home market sales that are rebated, or not collected, on U.S. sales. Under the new methodology, we added the full amount paid in the home market to foreign market value (FMV) and added the same amount to United States price (USP).
- We have changed our basis for determining "All Others" rates to conform to recent rulings by the Court of International Trade (CIT). For these reviews, the "All Others" rates have been based on those from the less-than-fair-value investigations.
- We modified our treatment of certain charges and adjustments. See the Issues Appendix for discussions of these changes.

**Analysis of Comments Received**

See the Issues Appendix attached to this notice.

**Final Results of Reviews**

We determine the following percentage margins to exist for the period May 1, 1991 through April 30, 1992:

| Company | BBs | CRBs | SPBs |
|---|---|---|---|
| **France** | | | |
| Descault | 0.05 | 0.00 | 0.00 |
| SKF | 2.08 | (1) | 0.00 |
| SNFA | 66.42 | 18.37 | (2) |
| SNR | 4.47 | 12.29 | (2) |
| SNECMA | 0.52 | 2.05 | (2) |
| Turbomeca | 0.00 | 0.49 | (1) |
| Valeo | 66.42 | 18.37 | (2) |

| Company | BBs | CRBs | SPBs |
|---|---|---|---|
| All Others [3] | 85.13 | 17.31 | 39.00 |
| **Germany** | | | |
| FAG | 11.81 | 17.62 | 2.56 |
| Fichtel & Sachs | 6.79 | [2] | [2] |
| GMN | 0.07 | [2] | [2] |
| INA | 22.74 | 13.47 | [2] |
| NTN | 0.22 | [1] | [1] |
| SKF | 14.81 | 7.17 | 5.37 |
| All Others [3] | 68.89 | 55.65 | 114.52 |
| **Italy** | | | |
| FAG | 5.95 | 25.88 | ..... |
| Meter | 1.27 | [1] | ..... |
| SKF | 4.46 | 0.00 | ..... |
| SNECMA | 0.00 | 1.16 | ..... |
| All Others [3] | 155.57 | 212.45 | ..... |
| **Japan** | | | |
| Asahi | 0.50 | [2] | [2] |
| Fujino | 1.58 | [2] | [2] |
| Honda | 0.24 | 0.63 | 0.52 |
| IJK | 0.64 | 0.00 | [2] |
| Izumoto | 3.64 | [2] | [2] |
| Koyo | 7.55 | 2.26 | 0.00 |
| Nachi | 5.02 | 2.30 | [2] |
| Nakai | 6.17 | [2] | [2] |
| Nankai Seiko | 13.11 | [2] | [2] |
| NPB | 7.42 | [2] | [2] |
| NTN | 2.60 | 1.05 | 6.80 |
| Osaka Pump | 1.04 | [2] | [2] |
| Showa | 14.76 | [2] | [2] |
| Takeshita | 5.00 | [2] | [2] |
| Tottori | 0.60 | [2] | [2] |
| All Others [3] | 45.83 | 25.80 | 84.33 |
| **Romania** | | | |
| TIE | (1) | ..... | ..... |
| All Others [3] | 39.61 | ..... | ..... |
| **Singapore** | | | |
| NMB/Pelmec | 8.14 | ..... | ..... |
| All Others [3] | 25.08 | ..... | ..... |
| **Sweden** | | | |
| SKF | 7.79 | 5.35 | ..... |
| All Others [3] | 180.00 | 13.69 | ..... |
| **Thailand** | | | |
| NMB/Pelmec | 0.18 | ..... | ..... |
| All Others [3] | 0.00 | ..... | ..... |
| **United Kingdom** | | | |
| Barden/FAG | 5.90 | 0.00 | ..... |
| Cooper | [2] | 0.00 | ..... |
| SNR | [2] | 12.24 | ..... |
| All Others [3] | 54.27 | 43.36 | ..... |

[1] No U.S. sales during the review period.
[2] No review requested.
[3] Applies to firms not having individual rates, i.e., firms not covered in this or previous segments of the relevant proceeding.

**Cash Deposit Requirements**

To calculate the cash deposit rate for each respondent (i.e., each exporter or manufacturer included in these reviews), we divided the total dumping margins for each respondent by the total net USP value for that respondent's sales for each relevant class or kind during the review period under each order.

In order to derive a single deposit rate for each class or kind of merchandise for each respondent, we weight-averaged the purchase price (PP) and exporter's sales price (ESP) deposit rates (using the U.S. value of PP sales and ESP sales, respectively, as the weighting factors). To accomplish this, where we sampled ESP sales, we first calculated an expanded dumping margin for all ESP sales during the review period by multiplying the sample ESP margins by the ratio of total weeks in the review period to sample weeks. We then calculated a total net USP value for all ESP sales during the review period by

multiplying the sample ESP total net value by the same ratio. We then divided the expanded dumping margins for both PP and ESP sales by the expanded USP value for both PP and ESP sales to obtain the deposit rate.

We will direct Customs to collect the resulting percentage deposit rate against the entered Customs value of each of the respondent's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Entries of parts incorporated into finished bearings before sales to an unrelated customer in the United States will receive the respondent's deposit rate for the appropriate class or kind of merchandise.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of antifriction bearings (other than tapered roller bearings) and parts thereof, entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise. The cash deposit rate for all other manufacturers or exporters will be the "All Others" rate shown for the relevant class or kind and country. In accordance with the CIT's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79 (May 25, 1993), and *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–83 (May 25, 1993), these rates are the "All Others" rates from the relevant less-than-fair-value investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Assessment Rates**

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and other simplification methods prevent entry-by-entry assessments, we will calculate wherever possible an exporter/importer-specific assessment rate for each class or kind of antifriction bearings.

*1. Purchase Price Sales*

With respect to purchase price sales for these final results, we divided the total dumping margins (calculated as the difference between foreign market value and U.S. price) for each importer by the total number of units sold to that importer. We will direct Customs to assess the resulting unit dollar amount against each unit of merchandise in each of that importer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer under each order for the review period will be almost exactly equal to the total dumping margins.

*2. Exporter's Sales Price Sales*

For ESP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margin against the entered Customs values on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of sales during the period of review (POR) is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties that would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

In the case of companies that did not report entered value of sales, we calculated a proxy for entered value of sales, based on the price information available and appropriate adjustments (e.g., insurance, freight, U.S. brokerage and handling, U.S. profit, and any other items, as appropriate, on a company-specific basis).

For calculation of the ESP assessment rate, entries for which liquidation was suspended, but for which antidumping duties never became due through operation of the "Roller Chain" rule, are included in the assessment rate denominator to avoid over-collecting. (The "Roller Chain" rule excludes from the collection of antidumping duties bearings that were imported by a related party and further processed, and that comprise less than one percent of the finished product sold to the first unrelated customer in the United States. See the section on Assessment, Deposit Rates and Reimbursement in the Issues Appendix.)

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR. 353.22 (1990).

On July 7, 1993, Barbara R. Stafford, then Acting Assistant Secretary for Import Administration, signed a final results notice on antifriction bearings for the 1991–92 review period, and we issued copies of the signed notice to all interested parties. On July 15, 1993, the Court of International Trade issued a temporary restraining order prohibiting the Department from publishing final results with respect to NSK and RHP for the 1991–92 review period. Therefore, we have amended the final notice by removing the final dumping margins that we calculated for NSK and RHP. To the extent that issues discussed in this notice affect NSK and RHP, the issues and our conclusions have no effect until the Court permits the Department to publish the final results with respect to these two companies for the 1991–92 review period.

Dated: July 16, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

**Scope Appendix**

Scope of the Orders
- Description of the Merchandise
- Scope Determinations

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**Scope of the Orders**

*A. Description of the Merchandise*

The products covered by these orders, antifriction bearings (other than tapered roller bearings), mounted or unmounted, and parts thereof (AFBs), constitute the following classes or kinds of merchandise:

1. Ball Bearings and Parts Thereof: These products include all AFBs that employ balls as the roller element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule (HTS) subheadings: 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.10, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

2. Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof: These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: Antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.70, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.99.50.

3. Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof: These products include all spherical plain bearings that employ a spherically shaped sliding element, and include spherical plain rod ends.

Imports of these products are classified under the following HTS subheadings: 8483.30.40, 8483.30.80, 8483.90.20, 8483.90.30, 8485.90.00, 8708.99.50.

The HTS item numbers are provided for convenience and Customs purposes. They are not determinative of the products subject to the orders. The written description remains dispositive.

Size or precision grade of a bearing does not influence whether the bearing is covered by the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of these orders. For unfinished parts, such parts are included if (1) they have been heat treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation.

The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

*B. Scope Determinations*

Since the antidumping duty orders on AFBs went into effect, the Department has issued numerous clarifications of the scope of the orders. The following is a compilation of the scope rulings the Department has made.

Scope rulings made in the Final Determinations of Sales at Less than Fair Value; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany (AFBs Investigation of SLTFV), 54 FR 19006, 19019 (May 3, 1989):

Products covered:
- Rod end bearings and parts thereof
- AFBs used in aviation applications
- Aerospace engine bearings
- Split cylindrical roller bearings
- Wheel hub units
- Slewing rings and slewing bearings
- Wave generator bearings
- Bearings (including mounted or housed units, and flanged or enhanced bearings) ultimately utilized in textile machinery

Products excluded:
- Plain bearings other than spherical plain bearings
- Airframe components unrelated to the reduction of friction
- Linear motion devices
- Split pillow block housings
- Nuts, bolts, and sleeves that are not integral parts of a bearing or attached to a bearing under review
- Thermoplastic bearings
- Stainless steel hollow balls
- Textile machinery components that are substantially advanced in function(s) or value
- Wheel hub units imported as part of front and rear axle assemblies; wheel hub units that include tapered roller bearings; and clutch release bearings that are already assembled as parts of transmissions

Scope rulings completed between April 1, 1990 and June 30, 1990. See Scope Rulings, 55 FR 42750 (October 23, 1990):

Products excluded:
- Antifriction bearings, including integral shaft ball bearings, used in textile machinery and imported with attachments and augmentations sufficient to advance their function beyond load-bearing/friction-reducing capability

Scope rulings completed between July 1, 1990 and September 30, 1990. See Scope Rulings, 55 FR 43020 (October 25, 1990):

Products covered:
- Rod ends
- Clutch release bearings
- Ball bearings used in the manufacture of helicopters
- Ball bearings used in the manufacture of disk drives

Scope rulings completed between April 1, 1991 and June 30, 1991. See Notice of Scope Rulings, 56 FR 36774 (August 1, 1991):

Products excluded:
- Textile machinery components including false twist spindles, belt guide rollers, separator rollers, damping units, rotor units, and tension pulleys

Scope rulings published in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof; Final Results of Antidumping Administrative Review (AFBs I), 56 FR 31692, 31696 (July 11, 1991):

Products covered:
- Load rollers and thrust rollers, also called mast guide bearings
- Conveyor system trolley wheels and chain wheels

Scope rulings completed between July 1, 1991 and September 30, 1991. See Scope Rulings, 58 FR 57320 (November 8, 1991):

Products covered:

- Snap rings and wire races
- Bearings imported as spare parts
- Custom-made specialty bearings

Products excluded:

- Certain rotor assembly textile machinery components
- Linear motion bearings

Scope rulings completed between October 1, 1991 and December 31, 1991. See Notice of Scope Rulings, 57 FR 4597 (February 6, 1992):

Products covered:

- Chain sheaves (forklift truck mast components)
- Loose boss rollers used in textile drafting machinery, also called top rollers
- Certain engine main shaft pilot bearings and engine crank shaft bearings

Scope rulings completed between January 1, 1992 and March 31, 1992. See Scope Rulings, 57 FR 19602 (May 7, 1992):

Products covered:

- Ceramic bearings
- Roller turn rollers
- Clutch release systems that contain rolling elements

Products excluded:

- Clutch release systems that do not contain rolling elements
- Chrome steel balls for use as check valves in hydraulic valve systems

Scope rulings completed between April 1, 1992 and June 30, 1992. See Scope Rulings, 57 FR 32973 (July 24, 1992):

Products excluded:

- Finished, semiground stainless steel balls
- Stainless steel balls for non-bearing use (in an optical polishing process)

Scope rulings completed between July 1, 1992 and September 30, 1992. See Scope Rulings, 57 FR 57420 (December 4, 1992).

Products covered:

- Certain flexible roller bearings whose component rollers have a length-to-diameter ratio of less than 4:1
- Model 15BM2110 bearings

Products excluded:

- Certain textile machinery components

Scope rulings completed between October 1, 1992 and December 31, 1992. See Scope Rulings, 58 FR 11209 (February 24, 1993).

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Products excluded:

- Certain cartridge assemblies comprised of a machine shaft, a machined housing, and two standard bearings

Scope rulings completed between January 1, 1993 and March 31, 1993. See Scope Rulings, 58 FR 27542 (May 10, 1993).

Products covered:

- Certain cylindrical bearings with a length-to-diameter ratio of less than 4:1

Scope rulings completed after March 31, 1993.

Products covered:

- Certain series of INA bearings

Products excluded:

- SAR series of ball bearings
- Certain eccentric locking collars that are part of housed bearing units

*Company Abbreviations*

Asahi—Asahi Seiko Company
Barden—The Barden Corporation (U.K.) Ltd.; The Barden Corporation
Cooper—Cooper Bearings Ltd.; Cooper Roller Bearings Co. Ltd.
Dassault—Dassault Industries
Emerson—Emerson Power Transmission Corp.
FAG-Germany—FAG Kugelfischer Georg Schaefer KGaA
FAG-Italy—FAG Italia S.p.A.; FAG Bearings Corp.
FAG-UK—FAG (UK) Ltd.
Federal-Mogul—Federal-Mogul Corporation
Fichtel & Sachs—Fichtel & Sachs AG; Sachs Automotive Products Co.
Fujino—Fujino Ironworks Co., Ltd.
GMN—Georg Muller Nurnberg AG; Georg Muller of America
Honda—Honda Motor Co., Ltd.; American Honda Motor Co., Inc.
IJK—Inoue Jikuuke Kogyo Co., Ltd.
INA—INA Walzlager Schaeffler KG; INA Bearing Company, Inc.
Izumoto—Izumoto Seiko Co., Ltd.
Koyo—Koyo Seiko Co. Ltd.
Meter—Meter S.p.A.
Nachi—Nachi-Fujikoshi Corp.; Nachi America, Inc.; Nachi Technology Inc.
Nakai—Nakai Bearing Company, Ltd.
Nankai—Nankai Seiko Co., Ltd.
NMB/Pelmec—NMB Singapore Ltd.; Pelmec Industries (Pte.) Ltd.; NMB Thai, Ltd.; Pelmec Thai, Ltd.
NPBS—Nippon Pillow Block Manufacturing Co., Ltd.; Nippon Pillow Block Sales Co., Ltd.; FYH Bearing Units USA, Inc.
NSK—Nippon Seiko K.K.; NSK Corporation
NSK-Europe—NSK Bearings Europe, Ltd.
NTN-Germany—NTN Kugellagerfabrik (Deutschland) GmbH
NTN—NTN Corporation; NTN Bearing Corporation of America; American NTN Bearing Manufacturing Corporation
NWG—Neuweg Fertigung GmbH
Osaka Pump—Osaka Pump Co., Ltd.
Peer Int'l—Peer International, Ltd.
RHP—RHP Bearings; RHP Bearings Inc.
Showa—Showa Pillow Block Manufacturing Company
SKF-France—SKF Compagnie d'Applications Mecaniques, S.A. (Clamart); ADR; SARMA
SKF-Germany—SKF GmbH; SKF Service GmbH; Steyr Walzlager
SKF-Italy—SKF Industrie; RIV-SKF Officina de Villar Perosa; SKF Cuscinetti Speciali; SKF Cuscinetti; RFT
SKF-Sweden—AB SKF; SKF Mekanprodukter AB; SKF Sverige
SKF-UK—SKF (UK) Limited; SKF Industries; AMPEP Inc.
SKF Group—SKF-France, SKF-Germany, SKF-Italy, SKF-Sweden, SKF-UK, SKF USA Inc.
SNECMA—Societe Nationale d'Etude et de Construction de Moteurs d'Aviation
SNFA—SNFA Bearings, Ltd.
SNR—SNR Roulements; SNR Bearings USA, Inc.
Takeshita—Takeshita Seiko Company
TIE—Tehnoimportexport
Torrington—The Torrington Company
Tottori (KYK)—Tottori Yamakai Bearing Seisakusho, Ltd.
Turbomeca—Turbomeca
Valeo—Valeo S.A.

*1. Annual POR Averaging*

*Comment:* Izumoto argues that insufficient home market matches were found for its U.S. sales because the Department averaged home market prices on a monthly, not POR, basis. This is due to the Department's establishment of an arbitrary Pearson correlation coefficient threshold of 0.05 that measures whether prices vary significantly over time. Izumoto notes that it passed the Department's "test" regarding price stability in that over ninety percent of its POR weighted-average prices did not vary by more than ten percent from their monthly-weighted average prices. Therefore, in lieu of resorting to constructed value, the Department should relax the correlation coefficient threshold and recognize home market sales outside the 90/60 day window as contemporaneous to Izumoto's U.S. sales.

Similarly, SNR contests the Department's decision not to use annual averages of its home market sales of U.K.-origin bearings, in light of its use of POR averages of its home market sales of French-origin bearings. SNR explains that its sales of U.K.-origin bearings are more than ninety percent stable throughout the POR whether measured by quantity or value. In

addition, the Pearson correlation coefficient for U.K.-origin bearings deviates only slightly from that for the French-origin bearings because only one or two U.K. models exhibit some direct price/time correlation. SNR argues that the Department should consider that U.K.- and French-origin CRBs are sold in the same market, through the same channels of trade, and to the same types of customers, and conclude that as a class of bearings, sales of CRBs do not show a significant correlation between price and time. The Department should, therefore, give little weight to the results of the Pearson test for bearings of U.K. origin and exercise its discretion to use annual average, instead of POR average, FMVs.

Showa disputes the Department's decision to use monthly rather than POR average FMVs as well. Showa explains that it reviewed its third country sales database and found no variance between sales prices of the same model over time. Therefore, POR weighted-average prices should be as representative as monthly weighted-average prices. Showa requests that the Department use POR, rather than monthly, weighted-average third country prices for comparison with U.S. sales in the margin analysis.

Department's Position: In deciding whether to calculate POR weighted-averaged FMVs for Izumoto and SNR, we performed the tests on home market sales databases as outlined in our preliminary results to determine whether: (1) There was a minimal variance between monthly and POR weighted-average prices; and (2) there was any significant correlation between fluctuations in price and time for these two companies. While we found that the POR weighted-average FMVs for more than 90 percent of Izumoto's and SNR's sales were within plus or minus ten percent of their monthly weighted-average prices, our second test revealed significant correlations between price and time. Where home market prices have a tendency to rise or fall over time, we consider POR weighted-average prices to be unrepresentative of monthly weighted-average prices. Although Izumoto claims that we chose an arbitrary coefficient threshold, Izumoto has not explained why our threshold is unreasonable and has not provided any other information regarding a more appropriate threshold.

Section 773(a)(1) of the Tariff Act requires that foreign market value "shall be the price, *at the time such merchandise is first sold* in the United States" (emphasis added). The Department had traditionally satisfied this timing requirement by comparing U.S. prices to foreign market prices established in the same *month* as the U.S. sale or a single month not more than three months before or two months after the month of the U.S. sale. To depart further in time from same-month prices (or reasonably contemporaneous monthly prices) requires strong assurance that the difference in time would not affect foreign market value. Because we are satisfied that the correlation level selected gives assurance that no significant price trends over the POR exist, we have not changed our test for the final results. Therefore, we have continued to use monthly weighted-average FMVs for Izumoto's home market sales and for SNR's sales of U.K.-origin bearings.

With respect to Showa, we examined the company's third country sales data and found, as Showa noted in its case brief, that there was no variance in prices of individual models over time. Therefore, we used POR weighted-average third country prices as the basis for Showa's FMVs in these final results.

*2. Assessment*

*Comment 1:* Torrington maintains that the Department should conclude that antidumping duty reimbursement has taken place between a foreign firm and its related U.S. importer in instances where (1) the average transfer price is less than the cost of production plus profit calculated on a weighted-average basis, and (2) the Department has preliminarily determined that dumping margins exist. Torrington contends that, in accordance with 19 CFR 353.26(a), the Department should adjust USP downward to account for the potential reimbursement of antidumping duties that allegedly occurs between the parent and subsidiary through the manipulation of transfer prices.

Torrington argues that modern multinational corporations can move funds internationally through the management of transfer prices. In Torrington's view, "transfer price must be judged by objective criteria, and that the most appropriate of these is cost plus profit." Torrington maintains that the Department should therefore assume that related parties have internationally transferred funds for purposes that probably include the minimizing of tariffs and taxes.

Torrington holds that its argument on reimbursement was rejected by the Department in the last AFB reviews on the basis of contradictory rationales. Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews (AFBs II), 57 FR 28360, 28317 (June 24, 1992). Torrington contends that, on the one hand, the Department concluded that the reimbursement regulation does not apply in "exporter's sales price" situations because the antidumping law is not concerned with intra-company transfers but, on the other hand, the Department held that Torrington did not demonstrate a link between transfer prices and actual payments of antidumping duties. Torrington argues that, based on the latter reasoning, if reimbursement can be established in ESP situations through appropriate links, the regulation applies. In any case, Torrington argues that both of the Department's rationales lack merit. It is Torrington's view that the reimbursement rule has always applied to both PP and ESP situations. Also, Torrington argues that money is fungible and that it should not be necessary to show any link between transfer prices and payment of dumping duties. Alternatively, Torrington argues that the Department "should consider low transfer prices as prima facie evidence establishing a presumption of reimbursement and the Department should require importers to come forth with evidence convincingly establishing a contrary conclusion."

Respondents counter with several different arguments. First, many respondents assert that reimbursement is not taking place. The SKF Group and GMN state that their U.S. subsidiaries have not been, nor will be, reimbursed for any dumping duties owed through the manipulation of transfer prices or otherwise. Furthermore, FAG-Italy argues that the analysis program used to calculate the ratio of transfer price to COP presented by Torrington to support its arguments is unreliable. It asserts that there are innumerable variables, any one of which can seriously affect the ultimate figure, apparently unaccounted for in the calculation. Thus, FAG-Italy argues that Torrington's statistical analysis for deriving the ratio of transfer price to cost of production is unreliable and should be disregarded.

In addition, several respondents observe that the test suggested by Torrington does not appear anywhere in the antidumping law. According to INA, the statute does not provide for a test to determine whether or not export transfer prices between related parties are at less than cost of production plus profit. The SKF Group and FAG assert that a transfer of goods between a foreign producer and its U.S. affiliate is not an ESP transaction and, therefore, is not subject to the statute's provisions concerning reimbursement and not relevant to the calculation of USP,

which is based on the sales price to the first unrelated U.S. customer.

Respondents also argue that transfer price manipulation, even if it did occur, does not mean that reimbursement is taking place. For example, INA states that any transfer prices that fail to meet Torrington's test do not constitute payment or reimbursement of antidumping duties. Koyo argues that Torrington fails to provide any logical connection between the practice of intra-corporate transfers of funds and the reimbursement of antidumping duties. Koyo reasons that any indirect financing or payment from a parent company to its U.S. affiliate is not evidence of reimbursement of duties, but rather a routine business practice that may fulfill any of a myriad of corporate objectives. GMN contends that under Torrington's proposal any transfer of value of any type from the parent to the U.S. subsidiary would constitute a reimbursement of dumping duties. GMN adds that the fungibility of money makes it entirely impossible to use intra-company flows of value (whether money or some other form, such as assists, etc.) as an indicator of reimbursement of dumping duties. GMN argues that this is the precise reason that the reimbursement provision of the regulations is not implicated when goods are transferred between related parties at less than cost. Koyo maintains that any such transfer is, in any event, internal and not relevant to the antidumping law. Moreover, the SKF Group, FAG, GMN, and Koyo argue that the reimbursement provision in the statute does not apply to transactions between related parties because the statute treats related companies as a single entity.

The SKF Group reasons that because the Department treats a foreign producer and its U.S. subsidiary as a single entity for all purposes in calculating weighted-average margins, it cannot treat the two companies as separate entities for purposes of the duty payment. The SKF Group argues that, although 19 CFR 353.26(a)(1) does require that, in calculating U.S. price, the Department "will deduct the amount of any antidumping duty which the producer or reseller: (i) Paid directly on behalf of the importer; or (ii) reimbursed to the importer," it does not apply to related parties because according to section 771(13), in transactions involving a foreign producer and its related U.S. affiliate, both entities are defined as the "exporter." Since in this situation the exporter and importer are the same entity, a reimbursement could not take place. FAG and Koyo also contend that a parent company and its affiliates, including any U.S. subsidiary, are always considered to be a consolidated entity for dumping purposes.

Finally, FAG argues that U.S. subsidiaries cannot have been reimbursed already for duties paid because a dumping duty exists as a matter of law only after U.S. Customs liquidates the entry and the amount of the dumping duty on that entry is known. FAG states that because the liquidation of entries for the ESP sales reported by FAG and the other principal respondents has been suspended since November, 1988, no dumping duties have been assessed. Accordingly, FAG asserts that no antidumping duties have actually been paid yet and, therefore, no reimbursements for antidumping duties can exist.

*Department's Position:* As stated in AFBs II, 57 FR at 28371, the antidumping statute and regulations make no distinction in the calculation of USP between costs incurred by a foreign parent company and those incurred by its U.S. subsidiary. Therefore, the Department does not make adjustments to U.S. price based upon intracompany transfers of any kind. Indeed, the Department has a long-standing practice of denying adjustments for intra-company payments on the grounds that, because affiliated companies are a single entity for the purposes of antidumping law, payments from a parent company to its subsidiary are not expenses to the consolidated corporation as a whole. See Final Determination of Sales at Less Than Fair Value; Mechanical Transfer Presses from Japan, 55 FR 335 (January 4, 1990); Final Determination of Sales at Less Than Fair Value; Industrial Phosphoric Acid From Belgium, 52 FR 25436 (July 7, 1987).

We agree with SKF that because we treat a foreign producer and its U.S. subsidiary as a single entity for all purposes in calculating weighted-average margins, we cannot treat the two companies as separate entities for purposes of the duty payment. The governing statute and regulations do not contemplate applying the reimbursement provision to related parties in an ESP situation.

*Comment 2:* Federal-Mogul argues that the actual antidumping duties paid at the time of liquidation constitute additional costs, charges and expenses incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States and, to the extent such duties are included in USP, must be deducted. Federal-Mogul states that this deduction extends to situations in which assessed antidumping duties are reimbursed by the foreign producer or reseller to an unrelated importer or are paid by an importer that is related to the foreign producer. Therefore, Federal-Mogul concludes that in ESP situations, where antidumping duties are paid and absorbed by the related importer, a deduction must be made for these antidumping duties under section 772(d)(2)(A) of the Tariff Act.

Federal-Mogul also finds justification for removing antidumping duties from ESP under the Department's reimbursement regulation (19 CFR 353.26(a)). Federal-Mogul asserts that antidumping payments by a related importer are actually payments by the foreign producer under section 771(13) of the Tariff Act. Therefore, absent evidence to the contrary, reimbursement is always occurring under the ESP framework, and antidumping duties should be removed from ESP as a matter of course.

FAG and RHP argue that since it is virtually impossible to link entries with ESP sales, it is equally impossible to determine either the fact or the extent to which the foreign producer or its related importer are not including the antidumping duties in the price to the first unrelated U.S. buyer. FAG also maintains that, since liquidation of its entries have been suspended since November of 1988 to date, the only payments made so far have been of estimated dumping duties, and such payments cannot affect the USP calculation. Finally, FAG contends that the reimbursement regulation under 19 CFR 353.26 does not apply to ESP sales since this provision is directed solely at importers, and FAG's unrelated U.S. customers are not importers and have no liability for payment of dumping duties.

RHP states that for purposes of this issue, a foreign parent and a U.S. sales subsidiary should be treated as an integrated entity. However, RHP does not agree that the reimbursement regulation is automatically triggered by this relationship and cites AFBs II, 57 FR 28360.

NSK argues that the antidumping statute does not allow the Department to adjust USP to compensate for the alleged reimbursement of antidumping duties. In addition, NSK states that the Department's November 1985 "Study of Antidumping Adjustments Methodology and Recommendations for Statutory Change" confirms that the Department has no legal basis for deducting estimated antidumping duties from ESP.

Koyo states that the "estimated antidumping duty expenses are not expenses related to sales of the merchandise in the ordinary sense of

the term", and thus they reject Federal-Mogul's argument.

*Department's Position:* We disagree with Federal-Mogul. The Department's consistent practice has been not to deduct from ESP antidumping duties or antidumping duty-related expenses. Antidumping duties are intended to offset the effect of discriminatory pricing between two markets. To make an additional deduction from ESP for the same antidumping duties that correct this price discrimination results in double-counting. See Final Results of Antidumping Administrative Review; Television Receivers, Monochrome and Color, from Japan, 54 FR 13917 (April 6, 1989); Final Results of Antidumping Administrative Review; Television Receivers, Monochrome and Color, from Japan, 54 FR 26225 (June 27, 1990); Final Results of Antidumping Administrative Review; Color Television Receivers from the Republic of Korea, 55 FR 35916 (September 4, 1990), at Comment 4; Fresh Cut Flowers from Colombia, 55 FR 20491 (May 17, 1990), at Comment 62. Thus, we have not deducted these expenses from ESP in this case.

*Comment 3:* The FAG Group (Barden, FAG-UK, FAG-Italy, and FAG-Germany) argue that the Department's assessment rate methodology is flawed. They state that the Department acted contrary to law in basing the FAG Group's assessment rate on the entered values of reviewed sales rather than upon the actual review period entered values as submitted by the respondents on the record. They argue that the best information on the record of the value of subject merchandise actually imported by the FAG Group is the actual entered values for the POR and that this is what should be used in calculating the assessment rate. According to respondents, the current methodology used by the Department can lead to an overcollection of dumping duties, above and beyond the actual amount due.

Both Torrington and Federal-Mogul argue that the Department's current assessment methodology is reasonable and valid. They cite *GMN Georg Muller Nurnberg, AG* v. *United States*, 17 CIT_____, Slip Op. 93–54 (April 20, 1993) in which the Court upheld the Department's method, finding it reasonable, supported by substantial evidence, and otherwise in accordance with law.

*Department's Position:* Section 751 of the Tariff Act requires that the Department calculate the amount by which the foreign market value exceeds the U.S. price and assess antidumping duties on the basis of that amount. However, there is nothing in the statute that dictates how the actual assessment rate is to be determined from that amount.

In accordance with section 751, we calculated the amount of the difference between FMV and USP (the dumping margin) for all reported U.S. sales. For PP sales we have calculated assessment rates based on the total of these differences such that each importer is only liable for the duties related to its entries. In ESP cases, the Department generally cannot tie sales to entries and therefore cannot link the amount of antidumping duties determined for any specific sale to the specific entry or entries of that same merchandise. In addition, determination of antidumping duties for every entry based on the sale of that merchandise is impossible where dumping margins have been based on sampling, even if sales could be tied to entries. Therefore, in order to achieve a fair assessment of antidumping duties on all entries during the POR, we have expressed the difference between FMV and USP as a percentage of the entered value of the examined sales for each exporter/importer (ad valorem rates). We will direct the U.S. Customs Service to assess antidumping duties by applying that percentage to the entered value of each of that importer's entries of subject merchandise under the relevant order during the review period.

This approach is equivalent to dividing the aggregate dumping margins, i.e., the difference between statutory FMV and statutory USP for all sales reviewed, by the aggregate USP value of those sales and adjusting the result by the average difference between USP and entered value for those sales and thus, is consistent with the statute.

While we are aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties that would have been determined if we had reviewed those sales of merchandise actually entered during the POR.

While it may also be reasonable, at least with regard to non-sampled ESP sales, to attempt to collect the total antidumping duties by using entries as a vehicle for the collection of duties, the Department has determined that it would be necessary to obtain the entered value of unliquidated entries during the review period in order to employ this alternative method. Such information was not available to the Department for these final results.

*Comment 4:* With respect to its parts and bearings that are further processed in the United States, NSK argues that the imported parts and bearings are insignificant in relation to the total cost of the final product and that the Department should "drop its Section E calculation from the final results of the administrative review and base the dumping margin of imported parts used in U.S. finished bearings on the margin for imported finished bearings of the same class or kind."

Torrington argues that the Department should continue to analyze whether imported parts subject to further manufacture are being dumped in the United States, and thus should reject NSK's claim.

*Department's Position:* We agree with Torrington. As explained in previous reviews (see AFBs II, 57 FR 28360) pursuant to the "Roller Chain" rule the Department disregards dumping duties only on those bearings that were imported by a related party and further processed, and that comprise less than one percent of the value of the finished product sold to the first unrelated customer in the United States. In fact, NSK's data indicate that bearings sold to its related party in the U.S. comprise more than 1% of the value of the finished good produced by the related party. Thus, the Department has rejected NSK's claim that NSK's imported parts and bearings should not be subject to further manufacturing analysis.

*Comment 5:* Torrington argues that the Department should not accept the methodology employed by Koyo to determine whether sales of scope merchandise to related parties constitute greater than one percent of the resale value of the finished product. Torrington notes that Koyo used estimated resale prices and weighted-average entered values for which it supplied no supporting documentation. Torrington asserts that the use of weighted-average entered values skewed the "Roller Chain" analysis, and therefore should be rejected by the Department. Accordingly, Torrington argues that the claimed "Roller Chain" sales should not be excluded and the Department should apply the BIA margin of 73.55 percent to these sales.

Koyo argues that it was necessary to use estimated resale prices due to the fact that the companies to which Koyo sells its subject merchandise do not consider themselves related to Koyo and will not divulge their pricing information. Koyo asserts that Torrington has not supported its assertion that the estimated resale prices are unreliable. Koyo further argues that the use of a weighted-average entered

value was necessary and appropriate because Koyo sold several different bearing products, each of which had a different entered value, and all of which were functionally equivalent to domestically supplied bearing products in the production of finished products. According to Koyo, there is no way to determine which scope products were used in the production of which further manufactured units both because its U.S. affiliates refused to provide Koyo with any information and because both foreign and domestically supplied bearing products are fungible and untraceable.

*Department's Position:* We disagree with Torrington. In this case, the products under review are fungible merchandise, and are often untraceable in the production process. Therefore, we realize that it is occasionally necessary to use estimates based on weighted averages. Koyo's use of weighted averages provided a reasonable measure of whether the imported scope merchandise was an insignificant percentage of the value of the finished product. Furthermore, since the imported merchandise could not be reliably linked to the specific finished products, Koyo's average experience is a reasonable indication of the significance of the imported merchandise in the finished product. Finally, there is no evidence on the record to indicate that the estimated resale prices submitted by Koyo are unreliable and should be rejected in favor of BIA.

The Department has thus determined that Koyo reported relevant information as to its "Roller Chain" claim, and that the methods it used in the reporting were reasonable. This decision is consistent with *Allied-Signal Aerospace Company et al., v. United States et al.*, Slip Op. 93–1049 (June 22, 1993), where the Court of Appeals held that the Department cannot resort to BIA "by ignoring alternative and simplified reporting methods to generate relevant information."

*Comment 6:* Torrington contends that assessment rates and cash deposit rates should both be calculated in the same manner, with total PUDD (potential uncollected deposit duties) divided by total customs entered value. The Department's policy of calculating the cash deposit rate as a percentage of statutory USP rather than as a percentage of entered value has the likely effect of systematically understating estimated duties on future entries of imported bearings sold in ESP transactions.

SKF, RHP, FAG, Koyo, INA, and GMN disagree with Torrington. Respondents argue that it has been the Department's consistent practice to use USP as the denominator in calculating the cash deposit rate and to apply this rate to the entered value of future imports of the subject merchandise. *See Color Television Receivers from Taiwan*, 51 FR 46,895 (date, 1986), affirmed *Zenith Electronics Corp. v. United States*, 770 F. Supp. 648, 654–55 (CIT 1991). The Department's methodology in this regard is statutorily prescribed under section 736(c)(3) of the Tariff Act. Moreover, the Court has repeatedly upheld the Department's methodology as reasonable and in accordance with the antidumping statute. *See Torrington Co. v. NTN Bearing Corp. of America*, No. 91–08–00569, 1993 WL 99975, at 4–5 (CIT, March 29, 1993).

Respondents contend that Torrington's argument fails to adequately take into account that, under any method of calculating cash deposit rates, cash deposits are unlikely to equal the amount by which FMV exceeds USP. By their very nature, cash deposits are merely estimates of future dumping liability. If actual duty levels exceed the cash deposits, the Department will instruct the Customs Service to collect the difference with interest.

Respondents assert that Torrington has failed to demonstrate that its methodology would result in a more accurate estimation of the duty. Torrington assumes, without any basis in fact, that the future USP will be the same as the current USP and that the future USP will always be greater than entered value. Fluctuations in pricing and expenses, however, can and do occur even in a single review period.

NTN and Emerson argue that the Department should calculate importer-specific cash deposit rates, as well as importer-specific assessment rates. Torrington does not disagree, provided that the calculation of importer-specific cash deposit rates is practical.

*Department's Position:* We disagree with Torrington, NTN and Emerson. First, as we stated in the final results of the first administrative reviews of AFBs, at 56 FR 31670, we do not accept the argument that the assessment rate must be calculated in exactly the same manner as the deposit rate. Section 751 of the statute merely requires that both the deposit rate and the assessment rate be derived from the same FMV/USP differential.

Furthermore, under any method of calculating cash deposit rates, there would be no certainty that the cash deposit rate would cause an amount to be collected that is equal to the amount by which foreign market value exceeds U.S. price. As we have stated on numerous occasions, duty deposits are merely estimates of future dumping liability. See AFBs II, 57 FR 28377, Comment 4. If the amount of the deposits is less than the amount ultimately assessed, the Department will instruct the U.S. Customs Service to collect the difference with interest, as provided for under sections 737 and 778 of the Tariff Act and 19 CFR 353.24.

*Comment 7:* NTN argues that the Department should instruct Customs to refund cash deposits on merchandise that was subsequently re-exported from the United States. Torrington does not disagree, but expresses concern about the Department's ability to trace re-exported merchandise to the original customs entries.

*Department's Position:* We disagree with NTN. Because NTN has failed to demonstrate that any of its sales are re-exported by its related U.S. subsidiary, we have not excluded any of NTN's imports from our analysis and will therefore not order Customs to refund cash deposits made by NTN on that merchandise.

*Comment 8:* Torrington argues that the Department should revise the entered values that NMB/Pelmec-Singapore reported for two bearing models. According to Torrington, NMB/Pelmec reported artificially high entered values for these two models because it did not deduct the value of U.S.-made rubber seals from the total value of the imported bearing, despite the fact that it deducted the value of such seals from the value used to compute U.S. import duties. Torrington is concerned that these artificially high entered values could understate the amount of antidumping duties collected if used to allocate the calculated duties. As a result, Torrington requests that the Department use as entered value of these bearings the actual customs value, net of the value of U.S.-made seals, that NMB/Pelmec used elsewhere in its response.

NMB/Pelmec responds that it submitted in its questionnaire responses documents demonstrating that the value on which it paid cash deposits of estimated antidumping duties included the value of the U.S.-made rubber seals. As a result, NMB/Pelmec argues that it would be inappropriate to reduce the entered value of the bearings in question.

*Department's Position:* We agree with NMB/Pelmec. Our review of the Customs entry documentation submitted by NMB/Pelmec for the bearing models in question reveals that while Customs did not assess regular import duties on U.S.-made rubber seals, it collected cash deposits of estimated antidumping duties on the

total entered value of the bearings in question, including the U.S.-made rubber seals. Therefore, we have not revised the entered values that NMB/Pelmec reported for these two models for these final results.

*3. Best Information Available*

Section 776(c) of the Tariff Act requires the Department to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation * * *."

In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information. 19 CFR 353.37(b). Thus, the Department may determine, on a case-by-case basis, what constitutes BIA. For the purposes of these final results of review, we applied the following two tiers of BIA in situations where we were unable to use a company's response for purposes of determining that company's dumping margin (the two tiers apply only to total BIA, i.e., BIA applied to all sales of a company or to certain groups of sales of a company):

1. When a company refused to cooperate with the Department or otherwise significantly impeded these proceedings, we used as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperated with our requests for information and, substantially cooperated in verification, but failed to provide the information requested in a timely manner or in the form required or was unable to substantiate it, we used as BIA the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

Listed below is a company-by-company summary of our two-tier use of total BIA applied in these final results of review. Total BIA was applied where we were unable to use a company's response for purposes of determining that company's dumping margin for all sales, or for certain groups of sales. We also applied partial BIA to certain firms. Our use of partial BIA is also described below.

A. First-Tier BIA

(i) *SNFA-France*: SNFA did not respond to our questionnaire. Therefore, we applied the first-tier BIA to each class or kind of merchandise.

(ii) *Valeo-France*: Valeo did not respond to our questionnaire. Therefore, we applied the first-tier BIA to each class or kind of merchandise.

B. Second-Tier BIA

We did not apply second-tier BIA to all sales for any firms under review. However, we did apply second-tier BIA to certain of sales for some firms, as explained below.

C. Partial BIA

In certain situations, we found it necessary to use partial BIA. Partial BIA was applied in cases where we were unable to use some portion of a response in calculating a dumping margin. In some cases, partial BIA was based on the second-tier method described above. The following is a general description of the Department's methodology for those situations.

In cases where a firm was deemed cooperative but failed to supply certain FMV information (e.g., corresponding home market sales within the contemporaneous period or constructed value data for a few U.S. sales), we applied the BIA rate for cooperative firms (see above) to the particular U.S. transactions affected.

Where any deductions to home market prices or CV, such as freight or differences in merchandise, were not reported or reported incorrectly, we have assigned a value of zero. For comparisons of similar merchandise, if adjustment information for differences in merchandise was missing from the U.S. sales listing, we used the above hierarchy to determine the BIA rates to use as the margins for these particular transactions. If other U.S. adjustment information such as freight charges was missing, we used other transactional information in the response for these expenses. Where respondents did not establish that expenses were either indirect in the U.S. market or direct in the home market, we generally treated them as direct in the U.S. market and indirect in the home market.

We received the following comments concerning BIA issues:

*Comment 1:* Fichtel and Sachs objects to the Department's use of BIA for sales that did not have identical contemporaneous home market matches. Fichtel and Sachs argues that because it has cooperated fully in this review and because the number of unmatched sales is very small, the use of 68.89 percent (the "all others" rate from the investigation) is punitive and excessive. Fichtel and Sachs contends that in cases where an insignificant amount of matching data is unreported, the Department's policy is to use BIA based on the higher of (a) the LTFV rate for the firm (or the "all others" rate), or (b) the weighted-average margin for that firm in the current review. AFB's I 56 FR 31692, 31705 (July 11, 1991).

Although the 68.89 percent "all others" rate from the LTFV investigation is the BIA rate under this methodology, Fichtel and Sachs argues that 68.89 percent is unfair because Fichtel and Sachs is being treated as severely as any firm with significant unreported matching data. Fichtel and Sachs notes that the Department's use of BIA is discretionary and argues that the Department should use a less punitive BIA rate for the unmatched sales. As a BIA rate, Fichtel and Sachs suggests using either the highest company rate in the current review, the "all others" rate from the second administrative review, or, as the final alternative, Fichtel and Sachs' highest transaction margin in the current review.

*Department's Position:* We disagree with Fichtel and Sachs. We have followed the policy outlined above in using the second-tier BIA rate for Fichtel and Sachs' unmatched sales. In comparison with the BIA rate that Fichtel and Sachs would get under the first-tier 132.25 percent, the highest rate found in the investigation of BBs from Germany, the second-tier BIA rate of 68.89 percent used for Fichtel and Sachs' unmatched sales is not unduly severe and is reasonable.

*Comment 2:* Koyo and Izumoto argue that, while the Department defines the use of the highest previous rate for a respondent as a non-punitive BIA, the BIA rates of 73.55 percent applied to Koyo's "Roller Chain" sales and 45.83 percent applied to Izumoto's unmatched sales are in fact punitive and should not be used for the final results. *Koyo cites Holmes Prods. Corp.* v. *United States*, 795 F.Supp. 1205 (CIT 1992) to support its assertion that a punitive BIA rate should not be applied in cases where a company affiliated with a cooperative respondent refuses to cooperate. Koyo also argues that the approach used in Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, 58 FR 15481, 15482–83 (March 23, 1993), in which the Department

used neutral information rather than BIA because "margins had been calculated on the overwhelming majority of the respondent's U.S. sales transactions," is equally appropriate in this situation. Koyo proposes that the Department apply the weighted-average margin calculated for Koyo's normal ESP sales.

Finally, Koyo argues that, if the Department continues to apply BIA for the final results, it should limit BIA to only that portion of the further manufactured sales that exceeded the one percent threshold. According to Koyo, the Department inappropriately applied BIA to all sales made to the related company rather than just to those sales that exceeded one percent of the finished product. Koyo requests that the Department correct this error for the final results.

Torrington argues that the use of 73.55 percent as the BIA rate is consistent with the Department's BIA policy as stated in *AFB's I* 56 FR 31692, 31705 (July 11,1991). Torrington alleges that Koyo errs in characterizing the highest BIA rate used by the Department as punitive, noting that the highest BIA rate would be 106.61 percent. Torrington also argues that the Department should apply the BIA rate to all sales made by Koyo to the related company regardless of Koyo's assertions that some sales constituted less than one percent of the further manufactured product at the time of sale to an unrelated party.

*Department's Position:* While Koyo has substantially cooperated with our requests for information, it has not provided the further manufacturing information necessary to analyze sales of subject merchandise that comprised over one percent of the finished product into which they were incorporated. Izumoto did not provide constructed value data or cost of manufacturing data (which could be used in creating a constructed value) for the observations where the BIA rate was used. Therefore, consistent with the Department's BIA policy as outlined above, we applied the second-tier BIA rate to those sales for which no information has been provided. Unlike the circumstances surrounding Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, 58 FR 15481 (March 23, 1993), in which the Department used neutral information rather than BIA because the respondent did not have the opportunity to submit the missing data, Koyo was notified of its obligation to submit the missing further manufacturing information in the original questionnaire.

With respect to Torrington's argument that we should apply the BIA rate to all sales made by Koyo, we believe that it is reasonable for the Department to accept Koyo's estimates in determining which merchandise constituted less than one percent of the finished product sold to an unrelated party (See Comment 5 under Assessment). However, based on this information, certain merchandise exceeded the one percent threshold, and Koyo failed to provide the information required for further manufacturing analysis. Therefore for the final results, we applied the second-tier BIA rate of 73.55 percent to those sales of models where the value of the bearings exceeded one percent of the value of the finished product.

*Comment 3:* NMB/Pelmec argues that the Department should not apply BIA to certain U.S. sales made by the firm to related parties who incorporated the bearings into merchandise outside the scope of these reviews. NMB/Pelmec asserts that the statutory language governing the calculation of ESP refers only to U.S. sales of subject merchandise to unrelated parties. In this case, the merchandise sold to the first unrelated party falls outside the scope of the order. Therefore, NMB/Pelmec concludes that the Department does not have the authority to calculate dumping margins on U.S. sales of bearings to related parties who incorporate the bearings into non-subject merchandise.

NMB/Pelmec further asserts that even if its U.S. sales to related parties are subject to this review, the Department is not required to arrive at ESP by deducting further processing costs from the sale price of the non-subject merchandise. According to NMB/Pelmec, the statutory provisions requiring the deduction of additional costs incurred for further processing apply only when the subject merchandise maintains its identity after the further processing. NMB/Pelmec argues, however, that this provision does not apply in this case because it is inaccurate to describe the merchandise in question, fan motors, as further processed bearings. On this basis, NMB/Pelmec asserts that the Department has the discretion to resort to alternative methods of calculating dumping margins for U.S. sales to related parties who incorporate subject merchandise into non-subject merchandise. As a result, NMB/Pelmec concludes that because it made sales of bearings to related parties in the United States at arm's-length prices, the Department should forego the use of BIA and calculate dumping margins on U.S. sales prices to related parties.

Torrington supports the Department's use of BIA to calculate the dumping margins on these sales because NMB/Pelmec failed to report data on selling prices of the finished products and the associated further manufacturing expenses that the Department required for the calculation of dumping margins on the subject merchandise contained in the finished products. However, Torrington notes that the Department failed to apply BIA to the correct sales value total for this review, and, therefore, requests that the Department revise its computer program accordingly for the final results.

*Department's Position:* We agree with Torrington. Contrary to NMB/Pelmec's interpretation of the statute, the Department must calculate dumping margins for any merchandise subject to an antidumping duty order that enters the United States, regardless of whether that merchandise is first sold to an unrelated party in the form in which it enters the United States or as part of a product that is outside the scope of an antidumping duty order. We note, however, that when subject merchandise comprises an insignificant portion (i.e. less than one percent) of the value of the finished product, the subject merchandise is not subject to antidumping duties. In this case, the bearings that NMB/Pelmec sold to a related party for incorporation into fan motors comprise more than one percent of the value of those fan motors. Therefore, the bearings in question are subject to antidumping duties.

We also disagree with NMB/Pelmec's argument that we are not required to deduct further manufacturing expenses from the value of the finished product because the finished product is not the same product as the imported components. The statute does not require that the subject merchandise retain its identity as a finished product in order for it to be considered "further processed" within the meaning of the statute. Therefore, the statutory directive that we calculate ESP by deducting from the price of the non-subject merchandise the increased value associated with a process of further manufacturing or assembly in the United States applies in this instance. Given the requirements of the statute, we cannot base ESP on NMB/Pelmec's sales prices to related parties, even if those prices were equal to or higher than NMB/Pelmec's prices to unrelated parties.

Although NMB/Pelmec substantially cooperated with our requests for information during the course of this review, it failed to provide the data that we required to calculate dumping

margins for U.S. sales of bearings to related parties in those instances in which the bearings comprised more than one percent of the value of the finished products manufactured by the related parties. In the absence of this information, we applied second-tier BIA to NMB/Pelmec's U.S. sales to related parties, in a manner consistent with the BIA policy outlined above.

We agree with Torrington that we failed to apply BIA to the proper sales value total in the preliminary results of this review. For these final results, we have corrected this error, and have applied BIA to the subject U.S. sales to related parties that occurred during the selected sample weeks.

*Comment 4:* NSK argues that the Department should not resort to BIA to calculate the dumping margins on U.S. sales of bearings to a related party for incorporation into merchandise outside the scope of these reviews. According to NSK, it attempted to obtain from the related party the information required to calculate dumping margins on these sales. NSK states, however, that the unrelated co-owner of the related party prohibited the related party from providing the requested information to NSK. As a result, NSK argues that the Department should calculate the dumping margins on U.S. sales to the related party by applying the weighted-average margin calculated for all other sales rather than an adverse BIA rate.

*Department's Position:* We disagree with NSK. Although NSK has substantially cooperated with our requests for information in this review, it failed to provide the data that we required to calculate dumping margins for sales of subject merchandise that comprised over one percent of the value of the finished product into which it was incorporated. Therefore, consistent with the Department's BIA policy as outlined above, we applied the second-tier BIA to those sales for which NSK failed to supply data on further manufacturing costs.

*Comment 5:* NTN argues that the Department erroneously applied BIA to certain U.S. sales. According to NTN, there should not be any U.S. sales without FMV information because NTN provided FMV data for each model sold in the United States. NTN also notes that the Department appears to have applied BIA twice to certain transactions.

Torrington responds that NTN failed to identify any specific error in the Department's calculations. Torrington agrees, however, that the Department should not apply BIA twice to the same sales.

*Department's Position:* We agree with NTN. An examination of the computer program with which we calculated NTN's preliminary dumping margin revealed certain errors that resulted in the erroneous application of BIA to certain of NTN's U.S. sales. We have corrected these errors for the final results.

*4. Circumstance-of-Sale Adjustments*

*Comment 1:* Torrington argues that NTN should not have allocated a range of expenses based on its transfer price to the United States because the use of transfer price allows NTN substantial control over the amount of the price adjustment. NTN responds that Torrington's argument is unfounded because NTN calculates absolute expense amounts that remain constant regardless of how they are allocated over U.S. sales. Thus, if transfer prices are reduced, the amount of the price adjustments would remain the same because the price adjustment factors would rise.

*Department's Position:* Although we agree that there is the potential for the misallocation of expenses if transfer prices are unreasonable, our examination of information on the record gives us no reason to believe that NTN's transfer prices are misstated. To test this, we randomly compared transfer prices for several products with the corresponding COPs of these products and found that transfer prices either equalled or exceeded the COPs. For this reason, and because Torrington provided no evidence that NTN's transfer prices are unreasonable, we have accepted NTN's allocation methodology.

A. Advertising and Promotional Expenses

*Comment 2:* Torrington alleges that Nachi has failed to show that all of its reported U.S. advertising expenses were indirect in nature. Torrington cites *Timken Co.* v. *United States*, 673 F. Supp. 495, 513 (CIT 1987), where the Court found that the Department places the burden on respondents to demonstrate "the indirectness of United States expenses and the directness of home market expenses." Therefore, Torrington argues that the Department should treat Nachi's U.S. advertising costs as direct selling expenses.

Nachi maintains that it has met its burden of proof because it included in its questionnaire response certain magazine advertisements as samples of its indirect advertising in the United States. Nachi states that these samples are general advertisements aimed at promoting the Nachi brand name rather than specific bearings.

*Department's Position:* For advertising to be treated as a direct expense, it must be incurred on products under review and assumed on behalf of the respondent's customer; that is, it must be shown to be directed toward the customer's customer. See AFBs I, 56 FR at 31725. The examples of U.S. advertising submitted by Nachi are not specific to bearings but instead are general in nature, as Nachi suggests. Therefore, we are satisfied that Nachi's U.S. advertising expenses are indirect.

*Comment 3:* Federal-Mogul urges the Department to reclassify RHP's U.S. indirect advertising expenses as direct expenses because the sample advertisements provided by RHP in its section B response are clear examples of direct advertising. Federal-Mogul contends that the sample advertisements are product-specific and are directed to end-users.

RHP argues that the sample advertisements included in its section B response are not directed to ultimate customers or end-users, but to original purchasers (i.e., distributors or original equipment manufacturers (OEMs)), because these advertisements appeared in trade publications not typically read by ultimate customers and because the advertisements are general in nature. RHP asserts that Federal-Mogul's contention that the advertisements are product-specific is not relevant because the advertisements are not directed to end-users. Finally, RHP claims that even if, arguendo, the advertisements were directed to end-users, they would be considered indirect expenses because they are primarily used to promote the RHP name and not particular products.

*Department's Position:* We have treated RHP's U.S. advertising expenses as indirect because the sample advertisements submitted by RHP appeared in trade publications and were designed to promote the RHP name. Therefore, they are neither incurred on behalf of RHP's customers nor product-specific.

*Comment 4:* Federal-Mogul asserts that NSK has misclassified certain of its U.S. advertising expenses as indirect selling expenses. Federal-Mogul argues that a portion of NSK's U.S. advertising expenses are properly classified as direct selling expenses directed toward NSK's customer's customer, because of the fact that NSK's U.S. distributors resell to original equipment manufacturers. As a result, Federal-Mogul argues that the Department should treat NSK's U.S. advertising expenses as direct selling expenses for the final results.

In addition, according to Federal-Mogul, NSK has diluted its per-unit advertising expense for sales to OEMs by allocating advertising expenses over U.S. sales to both OEMs and distributors, despite the fact that NSK describes its advertising as being designed to promote sales to original equipment manufacturers only. Accordingly, Federal-Mogul asserts that these expenses should be allocated to OEM sales only.

NSK rebuts Federal-Mogul's argument by stating that it does not sell to OEMs through distributors in the United States. Rather, all of NSK's U.S. sales to original equipment manufacturers are made directly to such customers. For these reasons, NSK contends that its U.S. advertising expenses are not directed at its customer's customer, and, therefore, are properly treated as indirect selling expenses.

*Department's Position:* We agree with NSK. In its response to the Department's supplemental questionnaire, NSK explicitly stated that in the United States, OEMs purchased NSK bearings directly from NSK only, and did not purchase NSK bearings through distributors. Therefore, any expenses that NSK incurred for advertising directed toward U.S. OEMs does not meet our criterion for treatment as a direct selling expense. Furthermore, because indirect selling expenses are, by definition, not related to specific sales, we have not limited the allocation of NSK's indirect advertising expenses to its sales to U.S. OEMs for these final results.

B. Technical Services and Warranty Expenses

*Comment 5:* Torrington argues that the Department should treat INA's, RHP's, and SKF-France's technical services as direct expenses in the U.S. market. Torrington claims that the Department's practice is to separate technical service expenses into direct and indirect portions. Torrington bases its claim on the Department's treatment of RHP's technical services in AFBs II, 57 FR at 28408, and on Final Determination of Sales At Less Than Fair Value; Certain Internal-Combustion Industrial Forklift Trucks From Japan, 53 FR 12552, 12563 (1988). Torrington further states that when respondents fail to separate technical service expenses into direct and indirect portions, the Department treats the entire expense as direct in the U.S. market and indirect in the home market.

INA responds that it does not keep records that would allow it to tie particular technical services to particular sales. However, INA argues that, unlike in the last review, the Department did not ask INA to separate technical service expenses into direct and indirect portions. INA further contends that in the present review, the Department has recognized the difficulty of compiling such data, as made clear in its questionnaire: "[w]e will consider as direct selling expenses those services that you can directly relate to sales of the subject merchandise". Moreover, INA states that it has demonstrated that its technical services are provided by salaried staff, who also perform sales activities, and therefore the technical services are properly treated as indirect selling expenses.

SKF-France asserts that the Department correctly treated SARMA's (an affiliate of SKF-France) reported U.S. technical expenses as indirect and that the expenses were reported exactly in the manner they were incurred. SKF maintains that SARMA's account structure, which the Department reviewed at verification, does not recognize a domestic export split. SKF further contends that SARMA's technical expenses are the same in both the home and the U.S. markets and that any artificial segregation would be impossible and unreasonable. SKF argues that the Department resorts to BIA only when a respondent fails to report claimed adjustments in the manner in which they were incurred. Therefore, SKF concludes that the Department should continue to treat SARMA's U.S. technical service expenses as indirect.

RHP argues that its technical service expenses were incorrectly treated as direct expenses in the United States based on the Department's practice of treating technical services as direct selling expenses when they are directly related to specific sales. RHP argues that the technical services provided in the United States are exactly the same and allocated in the same way as the services provided in the home market, which the Department treated as indirect expenses. Furthermore, RHP asserts that it does not maintain any records that allow technical services to be tied directly to particular products, customers, or markets. Thus, RHP contends that the Department's treatment of its U.S. technical services as direct expenses is an inappropriate use of BIA because RHP could not have provided this type of information under any circumstances. RHP further argues that the Department never requested a segregation of the expenses into fixed and variable costs. Finally, RHP states that the Department accepted RHP's technical service expenses as indirect expenses in both markets in both the investigation and the first review.

*Department's Position:* We agree with Torrington. In the questionnaire, we requested that respondents separate technical service expenses into direct and indirect portions, stating that direct selling expenses were those services that could be directly related to sales of the subject merchandise. Because there is an incentive for respondents to report selling expenses as indirect in the United States and direct in the home market, there is a burden on respondents to demonstrate "the indirectness of United States expenses and the directness of home market expenses." AFBs II, 57 FR at 28408. When respondents fail to report technical service expenses in direct and indirect portions, it is our practice to treat the expenses as direct in the United States and as indirect in the home market.

INA merely states in its supplemental questionnaire response that its U.S. technical service expenses are provided by salaried staff. INA did not segregate technical service expenses into direct and indirect portions, nor has INA shown that these expenses are all indirect in nature. INA has also failed to segregate its home market technical service expenses. Therefore, as best information available, we considered the entire U.S. technical service expense as direct and the entire home market expense as indirect.

RHP also did not separate its technical service expenses into direct and indirect portions. RHP was further aware of the Department's requirements because the Department specifically addressed the issue of RHP's technical services in the last review and found that RHP should have separated its expenses into direct and indirect portions. See AFBs II, 57 FR at 28408. Therefore, we considered RHP's technical service expenses as direct in the United States and as indirect in the home market.

Because SARMA did not separate U.S. direct technical service expenses but included them in its reported export selling expense pool, we have applied SKF-USA's direct technical service expense rate as BIA for SARMA's direct technical service expense.

*Comment 6:* Torrington argues that the Department should treat FAG-Italy's home market technical services and warranties as indirect expenses. Torrington maintains that respondents have a burden to establish that they are entitled to a circumstance-of-sale adjustment for expenses directly related to home market sales of scope merchandise. Torrington contends that

FAG-Italy has merely allocated total variable warranty expenses over total sales of all products in the home market without tying the expenses to particular sales or even particular products.

FAG-Italy responds that its methodology aggregates only variable warranty and technical service expenses that were incurred upon scope merchandise, and divides these costs by sales of scope merchandise. FAG-Italy further argues that the Department accepted its methodology in the first two reviews and rejected petitioner's arguments.

*Department's Position*: In the first and second administrative reviews, we held that although we preferred reporting on a transaction-specific basis, we would accept reasonably allocated technical service and warranty expenses. As we found in the first and second reviews, FAG-Italy's reported technical service and warranty expenses have been reasonably quantified and allocated, and we are satisfied that they are properly treated as direct selling expenses. There is no evidence to suggest that, if sales of non-scope merchandise were included in FAG-Italy's allocation pool, expenses incurred with respect to them would not be similar to those incurred upon scope bearings. See AFBs I, 56 FR at 31723 and AFBs II, 57 FR at 28408.

*Comment 7*: Federal-Mogul argues that Nachi uses an unacceptable reporting methodology for U.S. direct warranty expenses, because Nachi's response included only the transit cost for replacement bearings and not the additional cost of manufacturing replacements. Federal-Mogul points out that Nachi's response stated that "returned bearings can usually be resold" but notes that Nachi should have reported the cost of replacing bearings that could not be resold. Therefore, the Department should revise Nachi's direct warranty expense claim to include the additional expense of manufacturing replacement bearings for the defective bearings.

Nachi contends that Federal-Mogul ignored the full context of the response. Nachi states that its explanation that "returned bearings can usually be resold" is a general statement pertaining to all of its bearings. Nachi explains that all of the bearings covered by this administrative review were returned to inventory and will be resold; most of these bearings have already been resold, and the remaining bearings will be resold in the near future. Nachi's only expense is the transit cost for replacement bearings. Therefore, we accepted Nachi's U.S. direct warranty expenses as reported.

*Comment 8*: Torrington argues that the Department should reclassify Koyo's home market warranty expenses as indirect selling expenses because they were allocated over both scope and non-scope merchandise. Koyo responds that the Department has verified and accepted its warranty expense methodology in previous reviews of both AFBs and tapered roller bearings. Koyo contends that it would be unreasonable for the Department to change its requirements at this late date in the current review.

*Department's Position*: As we found in previous reviews in which Koyo used the same allocation methodology, Koyo's warranty expenses have been reasonably allocated, and we have accepted them as direct selling expenses. Since the non-scope merchandise and the scope merchandise both involve bearings, we have no reason to believe that the warranty expense differs between the two.

*Comment 9*: Torrington alleges that Koyo's allocation of technical service expenses over all U.S. sales is inappropriate. Torrington argues that, ordinarily, technical service expenses are not incurred in the aftermarket.

Koyo notes that it has explained in its response that it provides essentially the same technical services for its aftermarket customers as its OEM customers. Koyo believes that its response is sufficient and that it would be inappropriate for the Department to reallocate technical service expenses based on Torrington's comments.

*Department's Position*: Because Koyo provides the same technical services to all customers that request them, including aftermarket customers, and because Koyo separated its direct and indirect expenses, we are satisfied that Koyo's allocation methodology is reasonable. See AFBs II, 57 FR at 28408.

*Comment 10*: Federal-Mogul argues that the Department should revise Meter's allocation of U.S. direct warranty expenses by allocating the expenses identifiable to one customer's purchases only over that customer's purchases, and by allocating the remainder of the warranty costs over all remaining U.S. sales.

Meter states that it calculated an allocation factor by dividing total U.S. warranty expenses incurred by total U.S. sales value. Meter maintains that its methodology is in accordance with Department practice and reasonable because at the time of sale Meter does not know which sales are more likely to lead to a warranty expense. Meter adds that the Department verified Meter's methodology and found it acceptable in the second review.

*Department's Position*: We agree with Meter. Because Meter cannot identify warranty expenses for each specific customer, we find its method of dividing total U.S. warranty expenses by total U.S. sales value to be reasonable.

*Comment 11*: Federal-Mogul argues that the Department should reject NSK's and NTN's claims that they do not incur any direct warranty expenses in the United States. According to Federal-Mogul, NSK and NTN occasionally replace defective merchandise for their U.S. customers, and they incur other costs related to returns of non-defective merchandise. As a result, Federal-Mogul requests that the Department use BIA to determine NSK's and NTN's direct warranty expenses in the United States.

NSK replies that it has never reported a direct warranty expense in any segment of this case, and that the Department has accepted NSK's claims regarding the absence of such expenses in each instance. In the absence of any evidence to the contrary from Federal-Mogul, NSK concludes that the use of BIA to determine NSK's direct warranty expenses is unwarranted in this case.

NTN replies that it replaces only a very small quantity of defective merchandise, and that the Department verified that the costs associated with the replacement of defective merchandise in the United States are minuscule. Given the fact that the record contains verified information regarding the cost of defective merchandise, and the insignificant costs involved, NTN concludes that the use of BIA to determine its direct warranty expenses is unwarranted in this case.

*Department's Position*: We agree with NSK and NTN. There is no evidence in the record to suggest that NSK incurred any direct warranty expenses in the United States. Regarding NTN, we found during verification that NTN received claims from one customer for a minuscule amount of defective merchandise, and that NTN had credited the customer's account accordingly. We found no evidence that NTN incurred any variable, sale-specific expenses in conjunction with this defective merchandise. As a result, we made no deduction from USA for direct warranty expenses with respect to NSK and NTN.

C. Inventory Carrying Costs

*Comment 12:* Torrington and Federal-Mogul argue that the Department has not been consistent in its treatment of inventory carrying costs and that the

Department should only make an adjustment for inventory carrying costs to USA and not to FMV. Torrington cites *The Torrington Company* v. *United States (Torrington)*, Slip Op. 93–44 at 3233, in which the Court affirmed the Department's practice of deducting inventory carrying cost on the basis of the adjustment to foreign market value in order to afford an "apples to apples" comparison as long as the Department is consistent in making its measurement in regards to FMV and ESP sales. Torrington argues that the Department has failed to be consistent in this case. Torrington further argues in its country-specific briefs that the Department should make no deduction from FMV for this imputed general expense.

*Department's Position:* We disagree with Torrington. The Court has upheld the Department's methodology in calculating inventory carrying cost in both the U.S. and the home market. In *Torrington*, the Court found that "the ITA's adjustment to FMV for imputed inventory carrying cost pursuant to 19 C.F.R. 353.56(b)(2) was a reasonable exercise of the ITA's discretion in implementing the antidumping duty statute and is affirmed." *Id.* In addition, as was stated in the original investigation and the first two administrative reviews of this proceeding, in order for comparisons to be fair, it is necessary to make inventory carrying cost adjustments to both FMV and USP. See AFB LTFV Investigation, 54 FR 19050 (May 3, 1989); AFBs I, 58 FR at 31727; AFBs II, 57 FR 28360. That the foreign seller chooses to sell from inventory in the home market is no different from the seller's decision to undertake ESP transactions in the United States. The Department imputes ICC because the actual financial cost, for the time between shipment from the parent and payment by the related importer, is not recorded in the financial records of either party.

*Comment 13:* Torrington submits that the Department should return to its use of the "date of shipment" rather than the date of production as the starting point for calculation of inventory carrying cost. It argues that this would allow the Department to be consistent in its calculation, would reduce the Department's administrative burden, and would be consistent with the Court's recent holding in *Torrington*.

FAG Italy, FAG U.K., and RHP argue that the Department should continue its current practice of calculating inventory carrying cost from the date of production. SKF has no objection to the Department's use of date of shipment so long as the same methodology for calculating inventory carrying cost is used in both markets.

*Department's Position:* We disagree with Torrington. We calculate inventory carrying costs from the date of production because the date of production is when the item becomes a part of the company's inventory, not the date of shipment. Merchandise destined for the U.S. and merchandise destined for the home market are not necessarily held in inventory from the date of production to the date of shipment for equal lengths of time. Therefore, in general, an accurate accounting of inventory carrying costs in each market requires beginning at the date which production is completed.

*Comment 14:* Federal-Mogul and Torrington argue that the Department should base U.S. inventory carrying costs on the actual costs of the merchandise rather than on transfer prices and should use uniform interest rates. They argue that transfer prices are "inherently suspect" and can lead to manipulation of the inventory carrying cost adjustment. In addition, Federal-Mogul argues that "with respect to merchandise sold in the home market, the Department applies the producer's interest rate, for the production-to-sale period, against the sale price of the merchandise to an unrelated purchaser. In the home market, the Department generally accepts the respondents' application of the producer's interest rate, for a period determined solely by the respondent, and then the application of the U.S. entity's interest rate for a period similarly determined by the respondent, against the U.S. entity's price to an unrelated purchaser."

RHP, FAG, Koyo, SKF and GMN argue that these alleged "distortions" do not apply to their calculations of inventory carrying costs. They state that inventory carrying costs were calculated from the date of production to the date of shipment to the first unrelated party, as requested by the Department. Thus, they state that no change in the Department's current methodology need occur. Furthermore, GMN argues that if the Department wishes to change the inventory carrying cost basis, then, rather than turning to selling price in the United States as urged by Federal-Mogul, the Department should utilize the cost of manufacturing (COM) for goods exported to the United States as the basis for the inventory carrying cost adjustment on the U.S. side.

*Department's Position:* Inventory carrying cost measures the imputed cost incurred by the firm for storing AFBs in inventory. The transfer price reflects the cost of the merchandise as it is entered into inventory and therefore is an accurate basis upon which to calculate the cost to the subsidiary of holding inventory prior to the sale to an unrelated U.S. customer. See Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review 53 FR 40026 (October 19, 1988).

We cannot calculate actual cost for inventory carrying costs since these costs are not found in the books of the respondents. Thus, we must look at what the financing cost would have been. The Department's practice in calculating inventory carrying costs for ESP sales is to calculate the cost in two segments—one during which the merchandise is held by the foreign manufacturer and the other when the merchandise is in transit or held by the U.S. affiliate. Because the seller incurs the opportunity cost of holding inventory in both markets, and because we adjust for that cost in the U.S. market, we must also adjust for the same cost in the home market. In calculating such an expense, we must use the appropriate interest rate (i.e., the home market interest rate on the home market side and the U.S. interest rate for the U.S. side).

*Comment 15:* NSK contends that if the Department determines to disallow as a direct selling expense that portion of NSK's home market credit expense that NSK incurred on its sales to related parties, the Department should then reclassify this portion of the claim as an inventory carrying cost and deduct it from foreign market value as an indirect selling expense.

Torrington rejects NSK's claim on the grounds that NSK did not claim a HM inventory carrying cost in its questionnaire response. Torrington further argues that the interest expense that NSK incurs on its sales to related distributors is not an inventory carrying cost, because inventory carrying costs are computed on the basis of the period between production and shipment to the customer. Therefore, Torrington concludes that the Department should not deduct NSK's related party financing expenses from foreign market value.

*Department's Position:* We agree with Torrington. NSK's claim that the expenses in question should be treated as inventory carrying costs is untimely because NSK did not claim an adjustment to FMV for inventory carrying costs in any previous submission. Furthermore, the credit period for NSK's sales to related sales companies bears no discernible relationship to the amount of time that merchandise remains in inventory prior to sale. In the absence of any evidence

demonstrating that this credit period reflects time in inventory, we reject NSK's request that we treat NSK's credit to related sales companies as an inventory carrying cost. As a result, we have not deducted from FMV any of NSK's expenses for credit extended to related parties. *Comment 16:* Torrington argues that NTN overstated its home market inventory carrying costs. According to Torrington, NTN included in its inventory value the value of raw materials and work in process, despite the fact that Department precedent clearly establishes that inventory carrying cost relate to finished goods only. Therefore, Torrington requests that the Department re-evaluate NTN's claimed HM inventory carrying costs.

NTN responds that because it is both a manufacturing and sales organization, there is no logic in segregating inventory costs associated with manufacturing from those associated with selling finished goods. NTN further argues that because the Department has accepted NTN's method of calculating its inventory carrying cost in all previous segments of this case, the Department should reject Torrington's argument.

*Department's Position:* We agree with Torrington. Inventory carrying cost are designed to measure the cost to a company of holding merchandise that could be sold to generate revenue. Because raw materials and work in process are, by definition, not yet salable merchandise, the Department bases inventory carrying cost on the value of finished goods only. Therefore, we have recalculated NTN's claimed HM inventory carrying cost to eliminate that portion related to raw materials and work in process. Although we accepted its reported inventory carrying costs in previous reviews, this issue is currently being litigated in *AFBs II. See The Torrington Company* v. *United States* (Court No. 92–07–00483).

D. Post-Sale Warehousing

*Comment 17*: Torrington argues that the Department should treat Nachi's alleged post-sale warehousing expense as an indirect expense for the final results, because this expense consisted of amounts paid to third party contractors to store bearings in close proximity to a customer before the sale was made. For this reason, the expense is actually a pre-sale warehousing expense and is therefore indirect. To support this argument, Torrington points to Nachi's response, which states that quantities were not fixed until the date of shipment. Torrington further contends that there is nothing on the record to show that "Nachi was contractually required to maintain a particular inventory level, or that the merchandise was identified for sale to a specific customer at the time it was shipped to the warehouse."

Nachi responds by noting that in the two previous administrative reviews the Department accepted its post-sale warehousing expenses as direct selling expenses and that its practices have not changed. Nachi further contends that its response shows that its post-sale warehousing expenses are customer- and product-specific and, therefore, meet the criteria that the Department applied in the first and second reviews.

*Department's Position*: We verified that Nachi's claimed post-sale warehousing expenses we in fact incurred after the sale and that these expenses were directly related to the HM sales to which they apply. Torrington did not provide any new information requiring a reevaluation of this expense for the final results. Therefore, we have continued to make a direct circumstance-of-sale adjustment for Nachi's post-sale warehousing expenses. See AFBs I, 56 FR 31692, and AFBs II, 57 FR at 28415.

E. Delayed Payment of Home Market Selling Expenses

*Comment 18*: Torrington and Federal-Mogul both state that the Department has failed to account for the savings that the respondents realize by paying their HM selling expenses on a delayed-payment basis. They state that the true cost to respondent with regards to discounts, rebates, and circumstance-of-sale adjustments, is the amount that the respondent pays out minus any savings realized by paying the amount after the obligation was incurred.

SKF, FAG, GMN, INA, Koyo, and RHP argue that it would be an administrative burden for the Department to make adjustments for delayed payments. Respondents argue that the overall effect of such an adjustment would be minimal since such an adjustment would have to be made on both the HM side and the U.S. side. In addition, these adjustments are only imputed adjustments, not actual adjustments, and thus would not be reflected in the books of the respondents.

*Department's Position*: We disagree with Torrington and Federal-Mogul. There is no statutory or regulatory requirement for the Department to adjust circumstance of sale claims downward to account for savings due to delayed payment of these expenses.

The statute grants the Department broad authority in determining what constitutes differences in circumstances of sale. Section 773 of the Tariff Act. However, Congress expressed concern that the administering authority not make excessive allowances for differences in circumstances of sale:

> * * * if [circumstance of sale] adjustments are improperly made, the result may be an unjustifiable reduction in or elimination of the dumping margin. Therefore, the Committee intends that adjustments should be permitted if they are reasonably identifiable, quantifiable, and directly related to the sales under consideration and if there is clear and reasonable evidence of their existence and amount.

H.R. Rep. No. 96–317, 96th Cong., 1st Sess. 76 (1979).

In accordance with Congress' intent, the Department's regulations limit the types of differences the Department will allow and offer guidance regarding the methods by which the Department will calculate those differences.

19 CFR 353.56(a)(1) states that the Secretary will make "a reasonable allowance" for any difference in circumstances of the sales compared if the Secretary is satisfied that the "amount of any price differential is wholly or partly due to such difference." Section 353.56(a)(2) states:

> Differences in circumstances of sale for which the Secretary will make reasonable allowances normally are those involving differences in commissions, credit terms, guarantees, warranties, technical assistance, and servicing. The Secretary also will make reasonable allowances for differences in selling costs (such as advertising) incurred by the producer or reseller *but normally only to the extent that such costs are assumed by the producer or reseller on behalf of the purchaser from that producer or reseller.* (emphasis added)

Thus, allowances will only be made if the price differential is "wholly or partly due" to differences in circumstances of sale; if they relate to circumstances that bear a "direct relationship" to the sales compared; and, with respect to selling expenses, only to the extent that such expenses are "* * * assumed by the producer * * * on behalf of the purchaser."

The concept of the assumption of costs by the seller on behalf of the buyer extends to measurement as well. As an initial matter, we should note that the goal of the statute is to account for differences in prices that are attributable to differences in circumstances of sale. Section 773(a)(4)(B). To measure the difference in prices owing to differences in circumstances of sale (including selling expenses), § 353.56(c) of the regulations states:

> In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the producer or reseller but, if appropriate, may also consider the

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effect of such difference on the market value of the merchandise. (emphasis added)

This section provides for using differences in cost as a means of measuring differences in prices due to different circumstances because the Department normally cannot directly measure the differences in prices due to different circumstances of sale. Although the provision in the regulations for considering the effect of such differences on the market value of the merchandise would be the most accurate adjustment, such a measure normally cannot be reliably determined because it would require a complex series of econometric and regression analyses, often based on questionable assumptions. Therefore, the difference in cost is merely "a reasonable allowance" for the price differences owing to differences in circumstances of sale.

To determine the difference in costs, the Department normally relies on a company's financial records. This is a reasonable way to account for differences in selling expenses as long as the company quantifies the actual expense, provides adequate documentation, and the company's quantification accurately reflects the expense to the seller. See, e.g., Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review, 53 FR 4050 (1988).

The Department does not resort to imputing costs except in the limited circumstance where such costs are not recorded in a company's financial records and the costs are related to the conditions and responsibilities conferred by the terms of sale between the buyer and seller, either explicitly or implicitly. In general, the Department adjusts for certain opportunity costs only insofar as they affect the terms of sale between the seller and buyer and only insofar as the costs are not otherwise recorded in the producer's financial records.

For example, credit is part of the terms of sale between the seller and buyer but its cost is not always recorded in a company's financial records. However, because credit terms unquestionably affect the price negotiated between the buyer and seller, the Department must find a way to account for such differences. The only way to account for them is to impute them.

The Department cannot ignore differences in prices owing to differences in credit terms because such differences constitute an assumption of costs by the seller on behalf of the U.S. buyer. For example, if a producer sells widgets to two buyers at the same price, but offers one buyer one month of credit and the other six months of credit, the effective price to the latter buyer is unquestionably lower than the price to the former buyer. The additional cost of the second sale to the producer is approximately equal to the savings realized by the second buyer resulting from the five-month payment delay. If the second buyer had to pay sooner, that buyer's costs would have increased. Therefore, the extension of more favorable credit terms constitutes an assumption of costs by the seller on behalf of the buyer. The Department is thus justified in making this type of delayed payment COS adjustment in this instance.

This approach is in stark contrast to any potential delay of payment between the seller and its suppliers (such as a subcontractor) insofar as the seller assumes no costs that otherwise would have been borne by the buyer. An allowance for delayed payment of selling expenses would involve imputing expenses incurred not between the buyer and seller, but between the seller and its supplier. Such an allowance is inappropriate because it is not related to the positions and responsibilities of the seller and buyer conferred by the terms of sale, and it cannot reasonably be expected to affect the price negotiated between the seller and buyer. For these reasons, this type of allowance does not qualify as a cost "* * * assumed by the producer * * * on behalf of the purchaser * * *," in accordance with 19 CFR 353.56(a)(2). Therefore, the Department would not be justified in making such a delayed payment COS adjustment.

F. Commissions

*Comment 19:* Torrington asserts that the Department should deny Koyo's HM commission adjustment for commissions paid to purchasing agents acting on behalf of Koyo's customers because such payments do not affect the HM price obtained by Koyo. Torrington further asserts that since Koyo cannot identify specific sales on which it paid commissions, the commissions are not directly related to sales of in-scope products and should be considered indirect selling expenses. As such, Torrington asserts that Koyo's commissions should not be subject to the Department's commission offset.

Koyo argues that Torrington provides no support for its assertion that payments to purchasing agents are not an appropriate adjustment to FMV. Koyo further argues that since its HM commissions are neither granted nor recorded on a product- or transaction-specific basis, it cannot be expected to report them on either basis. Koyo asserts that it reported its commission expenses in precisely the manner subsequently endorsed by the CIT in *The Torrington Company* v. *United States*, Slip Op. 93–44 at 39 (March 29, 1993). Furthermore, Koyo notes that the difference between the commission expense factors reported and those provided for in Koyo's contracts is insignificant. Finally, Koyo argues that the Department verified commissions for this review and found no discrepancies.

*Department's Position:* We disagree with Torrington. Since Koyo pays commissions to purchasing agents that act on behalf of its customers, Koyo's HM sales qualify for the commission adjustment submitted. Additionally, although Koyo did not submit its commission expenses on a transaction-specific basis, the record indicates that the customer-specific commission expense factors accurately represent the commission rates agreed to in Koyo's contracts. Therefore, consistent with the two previous reviews of these orders, we have accepted Koyo's commissions as direct selling expenses and performed the commission offset accordingly. See AFBs II, 57 FR at 28407, and AFBs I, 56 FR at 31719.

*Comment 20:* Federal-Mogul contends that the Department improperly classified Fichtel and Sachs' U.S. commissions to related parties as indirect selling expenses, amounting to a double-counting of U.S. commission in the offset to FMV. Federal-Mogul argues that, as a result of this classification of related party commissions, FMV is reduced by both HM commissions and by an offset up to the amount of U.S. commissions plus U.S. indirect selling expenses. Federal-Mogul suggests that the Department classify all commissions in the U.S. market as direct expenses.

*Department's Position:* We agree with Federal-Mogul. We improperly increased the offset cap by the amount of U.S. commissions to related parties. For these final results we have classified all U.S. commission expenses as direct selling expenses.

*Comment 21:* Torrington contests the Department's inclusion of NTN's U.S. commissions in the calculation of the ESP cap for deductions of HM indirect selling expenses from foreign market value. According to Torrington, commissions are to be offset by indirect selling expenses only in those instances in which a respondent pays commissions in one market but not in the other. In this instance, however, Torrington states that because NTN

included commissions as an element of HM indirect selling expenses in lieu of reporting sale-specific commissions, the Department is unable to determine whether NTN incurred commission expenses on individual HM sales. As a result, Torrington argues that NTN did not satisfy the regulatory requirement for offsetting U.S. commissions with HM indirect selling expenses, and, therefore, the Department should not include U.S. commissions in the calculation of the ESP cap for these final results.

*Department's Position:* We agree with Torrington. Pursuant to 19 CFR 353.56(b), the Department will offset commissions in one market with indirect selling expenses incurred in the other market only if a respondent did not incur commission expenses in the other market. Because NTN reported HM commissions as indirect selling expenses, we have no way of knowing whether NTN paid commissions on any of the individual HM sales subject to this review. In the absence of any such evidence, we have no basis for determining that NTN has satisfied the necessary conditions for receiving an offset to its U.S. commissions. Therefore, we have removed U.S. commissions from the amount used to calculate the ESP cap for these final results.

*Comment 22:* Federal-Mogul argues that the Department erred in its treatment of NSK's HM commissions. Federal-Mogul states that although NSK reported two types of commissions in the HM, the Department understated NSK's foreign market value by not adding to it an offset for HM commissions in those instances in which NSK did not pay commissions on its purchase price sales. Federal-Mogul requests that the Department calculate an offset to NSK's HM commissions for the final results.

NSK responds that the Department's error is harmless, because of the relative amounts of the HM commissions and the U.S. indirect selling expenses that the Department would use to create the commission offset. NSK agrees, however, with Federal-Mogul's suggestion that the Department correct its treatment of commissions for the final results.

*Department's Position:* We disagree with Federal-Mogul. Although NSK classified its payments to distributors for delivery on behalf of NSK as commissions, we do not consider such expenses to be commissions because NSK performed all the selling functions for the sales in question. Further, we have treated NSK's expenses for stock transfers by distributors as indirect selling expenses. Because we have not treated NSK's reported HM delivery and stock transfer expenses as commissions, we have not performed a commission offset to FMV in purchase price comparisons for these final results.

G. Credit

*Comment 23:* Torrington asserts that the HM verification of Koyo demonstrated significant discrepancies between the reported date of payment, which is based on customer-specific average accounts receivable turnover rates, and the actual date of payment. Torrington argues that the Department should reject Koyo's HM credit expenses for the final results and either use the lowest charge for any customer or decline to make any credit adjustment to FMV.

Koyo argues that the differences between the reported average date of payment and the actual date of payment is to be expected and should not be construed to indicate that there is misreporting on its part. Koyo argues that, since the actual date of payment fell both before and after the reported average date of payment for different transactions, there is no pattern to the differences that would result in the artificial reduction of FMV.

*Department's Position:* We disagree with Torrington. Koyo submitted to the Department the customer-specific average terms of payment for all of its HM customers. Although the Department maintains a strong preference for credit expenses that are based on the actual number of days outstanding, we recognize the tremendous number of transactions involved and have accepted Koyo's credit methodology as a reasonable alternative to the Department's standard requirements. Furthermore, since Koyo's reported date of payment is based on the customer-specific average days outstanding, the reported date of payment will, in most cases, vary from the actual date of payment. At verification we found no evidence to indicate that such a variance results in a systematic overstatement of Koyo's HM credit expenses. Therefore, we will continue to accept Koyo's methodology for these final results. See AFBs II, 57 FR at 28406, and AFBs I, 56 FR at 31724.

*Comment 24:* Torrington argues that the Department should reject NPBS' U.S. credit calculations. Torrington asserts that NPBS calculated the average payment period for PP sales based on a sample of invoices. Torrington asserts that this is unacceptable since NPBS did not demonstrate that sampling was necessary or representative. Torrington also asserts that for ESP sales NPBS failed to support its calculation of U.S. credit expenses. Torrington argues that the Department should use the highest reported credit expense as BIA.

NPBS and Emerson, an unrelated importer, claim that Torrington is mistaken, and note that the payment period for all PP sales was based on all PP invoices during the review period. Additionally, NPBS argues that the credit terms for all ESP sales were based on the actual shipment and payment dates on a transaction-specific basis. According to NPBS, the explanation for the determination of these dates can be found in the original and supplemental responses.

*Department's Position:* We disagree with Torrington. NPBS did not calculate the average payment period for PP sales based on a sample of invoices. Rather, it used the actual PP invoices as the basis for its payment period for all PP sales. In addition, NPBS properly calculated its ESP credit terms by using the actual shipment and payment dates on a transaction-specific basis. Therefore, we have accepted NPBS' U.S. credit expenses for these final results.

*Comment 25:* Torrington asserts that NPBS' HM credit expense methodology must be rejected for these final results. Torrington argues that NPBS' use of the nominal credit period stated on the invoice, rather than the actual period that elapsed between shipment and payment, to determine HM credit expenses is unacceptable. Torrington further argues that NPBS' use of the invoice date as the shipment date is unacceptable since NPBS occasionally creates an invoice immediately upon receipt of the order, thus overstating the credit expenses. Torrington contends the Department should decline to make any adjustment to FMV for credit expenses.

NPBS and Emerson note that most customers pay by promissory note and that the terms of sale establish the date on which the promissory notes mature. NPBS and Emerson argue that, since the Department confirmed at verification that maturity dates corresponded to the terms of sale, the nominal terms of payment are an appropriate measure of the true credit experience of the company. NPBS also notes that in instances where a customer does not pay by promissory note, NPBS used the terms of sale to establish the credit period since payment is generally received in accordance with these terms.

*Department's Position:* We disagree with Torrington. While we generally require that credit expenses be based on the actual payment period, in this case

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we confirmed at verification that the nominal credit period accurately reflects the actual payment period. In addition, we also verified that the invoice date reflects the shipment date. Therefore, we have accepted NPBS' submitted HM credit expenses for these final results.

*Comment 26:* Federal-Mogul argues that since Meter does not maintain an inventory of finished products, the period from date of completion of production to date of shipment should be included in the credit period used to calculate U.S. credit expenses. Since Meter did not do this, Federal-Mogul argues that the Department should recalculate the U.S. sales credit expense using the highest reported per unit credit expense as BIA.

Meter argues that, consistent with past AFB reviews and Department policy, it properly calculated its U.S. credit expense by using the period from the date of shipment to the date of payment.

*Department's Position:* We disagree with Federal-Mogul. It is our practice to calculate direct credit expenses from date of shipment to date of payment. Meter has provided sufficient information regarding the calculation of credit expense. Therefore, we find no reason to adjust Meter's reported credit expense.

*Comment 27:* Torrington contests the Department's decision to deduct as a direct selling expense NSK's HM credit expense. According to Torrington, NSK's reporting of HM credit expenses on a customer-specific basis not only fails to link this expense to the specific sales under review, but also distorts the adjustment by including credit expenses incurred for sales of non-subject merchandise. Moreover, Torrington argues that, as noted by the Department, NSK overstated its HM credit expenses for certain sales by including credit that NSK extended to its related sales companies. As a result, Torrington concludes that the Department should deny in its entirety NSK's claimed HM credit expense.

NSK responds that, although its monthly billing system does not permit it to report transaction-specific credit expenses, it has reported its credit expenses on a customer-specific basis, in accordance with the requirements of the Department's questionnaire. Therefore, NSK concludes that the Department should treat its reported HM credit expenses as direct selling expenses for the final results.

*Department's Position:* We agree in part with NSK. At verification, we confirmed the accuracy of the customer-specific information that NSK used to calculate its HM credit expenses. Because NSK complied with our requirements in reporting customer-specific credit expenses, we have generally treated NSK's reported HM credit expenses as direct selling expenses for these final results. Since the same terms of credit are used regardless of whether the merchandise is scope or non-scope merchandise, including credit expenses incurred for sales of non-scope merchandise in the calculation of credit expense for scope merchandise achieves the same result as adjusting the total credit expense by the ratio of scope to non-scope merchandise.

We note, however, that NSK overstated its credit expenses for certain HM sales that it made through related sales companies. Specifically, NSK included in the credit expenses for these sales not only the credit extended by the sales company to the first unrelated HM customer, but also NSK's credit to its related sales company. Because the credit extended to the related sales company is not generated on the sale to the first unrelated party, we do not consider such credit to constitute a direct selling expense. As a result, we have reduced NSK's claimed credit expenses by the amount attributable to NSK's sales to the related companies.

*Comment 28:* Torrington argues that the Department should revise its calculation of NSK's credit expenses on purchase price sales. According to Torrington, the Department discovered discrepancies in NSK's reported payment dates for purchase price sales. As a result, Torrington argues that the Department should either use NSK's highest reported credit expense on purchase price sales as BIA, or adjust NSK's reported credit period on purchase price sales for the discrepancies found at verification.

In reply, NSK states that the discrepancies are the result of the method that it used to record payment for purchase price sales. According to NSK, it used this recording method for all purchase price sales to the customer in question. Further, NSK states that the Department found no consistent pattern of early or late recording of payment dates. As a result, NSK states that any payment date discrepancies that the Department found during verification have no discernible impact on the Department's analysis and, therefore, the Department should not modify NSK's reported credit expenses for purchase price sales.

*Department's Position:* We agree with NSK. Although we found minor discrepancies between NSK's reported payment dates and the actual dates on which NSK received payment from its customers, we did not find that these discrepancies resulted in either a systematic over- or under-reporting of the credit period for purchase price sales. Therefore, we have used the information provided in NSK's questionnaire responses to calculate credit expenses for purchase price sales for these final results.

H. Indirect Selling Expenses

*Comment 29:* Torrington contends that FAG-Italy and FAG-U.K. overstated their HM indirect selling expenses by including indirect selling expenses incurred by FAG-Germany. Torrington argues that it is apparent from the response that all selling expenses incurred by FAG-Italy and FAG-U.K. are incurred entirely in Italy and the U.K. respectively. Furthermore, Torrington argues, FAG did not detail or describe any expenses incurred by FAG-Germany on behalf of FAG-Italy or FAG-U.K. Torrington contends that as a result of allocating indirect selling expenses incurred by FAG-Germany to FAG-Italy and FAG-U.K., indirect selling expenses incurred by FAG-Germany for U.S. sales are understated.

FAG-Italy and FAG-U.K. contend that their HM indirect selling expenses properly include certain costs that are incurred in Germany by FAG-Germany. FAG argues that under its marketing structure, FAG-Germany incurs indirect selling expenses on behalf of its entire worldwide operations, including FAG-Italy and FAG-U.K. FAG contends that its indirect selling expense methodology has been approved and verified by the Department in each of the past two reviews and therefore should be accepted for these final results.

*Department's Position:* We disagree with Torrington. In this review we verified FAG-Germany's HM indirect selling expenses and determined that the allocation methodology reasonably captured indirect selling expenses incurred on subject merchandise sold in Italy and the U.K. Therefore, we have used the indirect selling expense data as reported for these final results.

*Comment 30:* SKF-France argues that the Department incorrectly disallowed the "first level" of indirect selling expenses, which include the indirect selling expenses of the SKF companies incurred on home market sales between SKF and SOS, a related distributor. In addition, SKF argues that the Department erred by reducing the selling expenses of all non-SOS HM sales by the ratio of related party sales to total sales. SKF contends that, according to 19 CFR 353.56(b)(2), a reasonable deduction from foreign market value is made for all expenses

incurred in selling such or similar merchandise up to the amount of the expenses incurred in selling the merchandise, and that no distinction is made between related and unrelated parties.

SKF further contends that it has been the Department's practice to allow adjustments for indirect selling expenses on sales to related parties and to adjust for indirect selling expenses incurred before the sale to the first unrelated party on ESP sales. See Final Results of Antidumping Duty Administrative Review; Brass Sheet and Strip From Sweden, 57 FR 2706, 2707 (1992). If the Department makes an adjustment on ESP sales for indirect selling expenses incurred on sales to related companies, then in order to achieve an apples-to-apples comparison, SKF contends that indirect selling expenses incurred on sales to related companies in the HM must also be allowed.

SKF argues that the Department has compounded this problem by reducing the non-SOS indirect selling expense totals. SKF argues that whether or not the Department accepts the SKF French manufacturing companies' indirect selling expenses on SOS sales, the ratio of all indirect selling expenses that these companies incurred to all their HM sales is a reasonable calculation of the adjustment factor.

Torrington argues that the Department was correct in disallowing SOS's first level of selling expenses because SKF's allocation methodology makes no distinction between expenses to unrelated buyers and those incurred on transfers to SOS. Torrington claims that SKF's methodology is defective because it assumes that indirect selling expenses are incurred equally on a per unit basis for related and unrelated sales. Torrington claims that the Department properly reduced the SKF manufacturing companies' indirect selling expenses by the ratio of unrelated sales to total sales.

*Department's Position:* We disallowed SOS's first-level selling expenses, which include the indirect selling expenses of the SKF manufacturing companies incurred on sales made between SKF and SOS, because they are expenses between related parties that we consider to be inter-related company transfers. See AFBs I, 56 FR 31692 and AFBs II, 57 FR at 28411.

Because the SKF-France companies included sales to SOS in their calculation of indirect selling expenses, we have reduced the HM selling expense totals by class or kind on the basis of the ratio of related party sales to total sales as reported in the Section A HM response.

*Comment 31:* Torrington argues that NPBS failed to demonstrate the reliability of its methodology for the allocation of selling expenses to U.S. sales. According to Torrington, the Department should reject these reported expenses and apply the highest expenses reported by any Japanese respondent as the best information available.

NPBS explains that selling expenses were allocated to the U.S. market based on the amount of time export division personnel spent on U.S. activities relative to total export activities.

*Department's Position:* We agree with Torrington. NPBS' reported methodology inappropriately allocates export selling expenses and indirect selling expenses based on an estimate of the amount of time that export division personnel spent on sales to the United States relative to total export activities. Instead we have relied on a more reasonable and reliable allocation methodology by which the total amount of export selling expenses are allocated by the ratio of the total value of U.S. sales over the value of total export sales.

*Comment 32:* Torrington contends that NPBS has not demonstrated how certain HM indirect selling expenses relate to sales, much less sales of such or similar merchandise. Torrington argues that, for the final results, the Department should reject NPBS' HM indirect selling expenses or, at a minimum, exclude those expenses that are clearly corporate in nature.

NPBS argues that it attributed the proper amount of indirect expenses to the merchandise under review. NPBS notes that its indirect selling expense rate was properly calculated by dividing total indirect selling expenses applicable to all sales by the total sales revenue.

*Department's Position:* We disagree with Torrington. We verified that NPBS' indirect selling expenses are associated with sales of such or similar merchandise.

*Comment 33:* Torrington asserts that NTN failed to include in its reported U.S. indirect selling expenses exchange charges and export commissions incurred in Japan. According to Torrington, the Department's verification findings provide no basis for the belief that the expenses in question did not pertain to U.S. sales. Therefore, Torrington requests that the Department include these expenses in its calculation of NTN's U.S. indirect selling expenses for the final results.

NTN responds that export commissions include certain charges that are already included in NTN's reported movement charges, and that exchange charges pertain to transactions between NTN and its U.S. subsidiary. As a result, NTN asserts that the Department should not include these expenses as part of U.S. indirect selling expenses.

*Department's Position:* We agree with Torrington. At verification, we found that exchange charges include not only adjustments for exchange rate fluctuations, but also bank charges and commissions associated with foreign sales. Further, we have no evidence that export commissions comprise either payments to related parties or expenses that NTN has already reported elsewhere in its response. Therefore, we find no basis for excluding these expenses from NTN's reported export selling expenses, and have included them in our calculation of ESP for these final results.

*Comment 34:* Torrington argues that several of NTN's downward adjustments to U.S. indirect selling expenses are unsupported. Specifically, Torrington objects to NTN's use of imputed interest expenses on antidumping duty cash deposits on both tapered roller bearings and antifriction bearings to reduce the aggregate amount of U.S. indirect selling expenses, and NTN's exclusion from U.S. indirect selling expenses of certain expenses incurred for a liaison facility that appear to be directly related to the sales subject to this review. Accordingly, Torrington requests that the Department deny NTN's claimed adjustments to its U.S. indirect selling expenses.

NTN rejects Torrington's arguments on the grounds that the Department verified the data on NTN's U.S. indirect selling expenses, and found no discrepancies. NTN further argues that the Department accepted certain of the adjustments in question in the previous administrative reviews. Therefore, NTN concludes that the Department should accept NTN's reported adjustments to U.S. indirect selling expenses.

*Department's Position:* We agree with NTN. We do not consider cash deposits of estimated antidumping duties to be direct selling expenses. Therefore, we also do not consider interest paid on such deposits to constitute a direct selling expense. Accordingly, we have accepted, in principle, NTN's offset to interest expenses for interest paid on cash deposits. We also accept NTN's downward adjustment to total U.S. indirect selling expenses for expenses that are related to its liaison facility, because these expenses are attributable to purchase price sales.

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In its questionnaire response, NTN based its calculation of its U.S. indirect selling expenses on the pool of common expenses, applicable to all products, incurred by its U.S. subsidiary. For this reason, NTN adjusted interest expenses using amounts pertaining to non-subject merchandise. Given the method that NTN used to prepare its response, we find that this adjustment is appropriate. At verification, we confirmed the accuracy and completeness of NTN's U.S. indirect selling expense data, and of the data on which NTN based the adjustments to these expenses. As a result, we have allowed NTN's reported adjustments to its U.S. indirect selling expenses for these final results.

*Comment 35:* Torrington argues that NTN's allocation of U.S. and HM indirect selling expenses according to levels of trade is unnecessary and inconsistent with Department practice. According to Torrington, NTN has allocated its HM and U.S. indirect selling expenses using methods that bear no relationship to the manner in which the expenses are incurred. Torrington notes that the respective allocation methods result in an excessive allocation of indirect selling expenses to OEM sales in the HM, and an under-allocation of such expenses to OEM sales in the United States. Torrington also notes that allocation of indirect selling expenses is inappropriate because such expenses, by definition, apply to all sales. Therefore, Torrington requests that the Department reallocate NTN's HM and U.S. indirect selling expenses according to total sales value, without regard to differences in level of trade.

NTN responds that the alleged discrepancies that Torrington found between the results of NTN's method of allocating HM indirect selling expenses and those of Torrington's proposed method are inaccurate, because Torrington distorted NTN's allocation method. According to NTN, its allocation method, when properly applied, yields results that are similar to those obtained when allocating HM indirect selling expenses according to sales value. NTN further argues that the Department has previously verified NTN's indirect selling expense data and allocation methods, and has accepted them without question in other cases. Therefore, NTN concludes that the Department should not reallocate NTN's U.S. or HM indirect selling expenses for these final results.

*Department's Position:* We agree with Torrington. The methods that NTN used to allocate its indirect selling expenses do not bear any relationship to the manner in which NTN incurs the expenses in question, thereby leading to distorted allocations. Further, we find NTN's allocations according to levels of trade misplaced, because NTN has made no attempt to demonstrate that its indirect selling expenses vary across levels of trade. Therefore, we have allocated NTN's HM and U.S. indirect selling expenses over respective total sales values, without regard for levels of trade, for these final results.

*I. Miscellaneous Charges*

*Comment 36:* Federal-Mogul argues that the inspection fee placed on bearings exported from Japan by the Japan Bearing Inspection Institute (JBII) should be classified as a movement expense rather than as an indirect or direct selling expense. Federal-Mogul alleges that NSK appropriately reported the export inspection fee as a separate movement expense while Nachi, NPBS and NSK reported the fee as a direct selling expense and NTN reported the inspection fee as an indirect selling expense.

*Department's Position:* We disagree with Federal-Mogul. The JBII does not provide movement services to manufacturers/exporters of AFBs. Rather, the inspection fee represents a cost incurred by AFB manufacturers/exporters to ensure the quality of the products being produced by the Japanese bearing industry. Therefore, we view this mandatory inspection fee on all bearings exported as a direct selling expense and have made a circumstance-of-sale adjustment for this expense for these final results.

*Comment 37:* Torrington argues that the Department erroneously treated NSK's payments to distributors for delivery on behalf of NSK as direct selling expenses. According to Torrington, NSK cannot link these payments to specific sales of subject merchandise because it calculates the amounts paid for all products delivered on behalf of NSK. Therefore, Torrington concludes that the Department should treat this expense as an indirect selling expense for the final results.

NSK responds that it reported expenses incurred for delivery by distributors on behalf of NSK on a distributor-specific basis, and that the payments are calculated based on a fixed percentage of the value of all merchandise delivered. Because this expense is distributor-specific and is paid as a fixed percentage of all merchandise, NSK maintains that the Department properly considered this expense to be a direct selling expense.

*Department's Position:* We agree with NSK. At verification we learned that NSK incurs this expense pursuant to contracts with its distributors, and that the contracts stipulate that NSK calculates its payments to individual distributors as a fixed percentage of all merchandise delivered by the distributor. NSK reported this expense on a distributor-specific basis. Because NSK incurs this expense as a fixed percentage of all merchandise delivered by individual distributors, we are satisfied that NSK's distributor-specific reporting of this expense adequately reflects its delivery expenses on sales of subject merchandise. This is because such a methodology achieves the same result as adjusting the total delivery expense by the ratio of scope to non-scope merchandise. As a result, we have treated this expense as a direct selling expense for these final results.

*5. Cost of Production and Constructed Value*

A. Cost Test Methodology

*Comment 1:* Torrington argues that the Department's test to determine whether sales below cost have been made over an extended period of time should not be applied to respondents that have a history of selling below cost in previous segments of this proceeding. Torrington contends that certain respondents have already demonstrated below-cost sales over an extended period of time by habitually selling at below-cost prices in the HM in previous reviews and/or the original investigation. Specifically, Torrington identifies SKF, FAG, INA, GMN, NTN, NSK, NPB, Nachi, Koyo, NMB, RHP, and SARMA as respondents that have made sales below cost in previous reviews and/or the original investigation of at least one class or kind of merchandise. According to Torrington there is no reason for the Department to apply the three-month test to these companies. Rather, the Department should immediately disregard their below-cost sales if they are substantial, i.e., if the Department's ten percent test is met.

FAG, SKF, RHP, INA, GMN, and Koyo respond that Torrington's position is incorrect and should be rejected by the Department. FAG, GMN, INA, SKF and Koyo argue that the extended period of time test is required by the statute and has been specifically upheld by the courts (see, *Toho Titanium Co.* v. *United States*, 11 CIT 100, 657 F. Supp. 1280 (1987)). FAG, GMN and SKF also argue that the decisions in each review must be based on substantial evidence on the record, with the record in each review being separate from the records in previous reviews. Therefore, findings from a previous review period, or the

original investigation, cannot be substantial evidence during the current review period. FAG, GMN, and SKF note that the adoption of Torrington's proposal would conflict with the remedial nature of the dumping law by failing to account for corrective measures that exporters might take with regard to the extended-period rule. SKF also argues that Torrington confuses the notion of "reasonable grounds to believe or suspect" sales below cost, which is required to initiate a sales-below-cost investigation, with the findings necessary to justify rejection of HM sales and resort to constructed value.

*Department's Position:* We disagree with Torrington. Section 773(b)(1) of the Tariff Act is designed to ensure that below-cost sales are not disregarded if these sales occurred over a short period of time or resulted from normal business practices, such as selling obsolete or end-of-year merchandise at below-cost prices. Below-cost sales in at least three months out of the review period is a reasonable indication that sales below COP are not random, accidental, or sporadic.

Section 773(b)(1) does not direct that, once below-cost sales are found over an extended period of time in one segment of the proceeding, the Department should presume for the other segments of the proceeding that below cost sales are being made over an extended period of time. Since pricing practices may change, what occurred earlier may not be relevant in the current period. Calculations of antidumping duties for a specific review period must be based on the pricing activities that occur during that review period. It follows that each element of the Department's below-cost test must also be based on pricing activities from the period being reviewed. Therefore, we disagree with Torrington's argument that since a respondent sold below cost for an extended period of time in a past review/investigation, the Department should automatically assume that any below-cost sales in the current POR are also made over an extended period of time.

We agree with respondents that relying on prior periods to satisfy the extended period of time test for this and all future reviews would not account for corrective measures that exporters might take regarding their HM pricing practices.

B. Research and Development

*Comment 2:* Torrington claims that the Department should treat INA's research and development (R&D) costs as a COM expense and not as an indirect selling expense. Torrington argues that, since respondent is unable to separate product-specific, product-line, and general R&D, all R&D should be treated as a fabrication cost. See AFBs II, 57 FR at 28416 and Final Determination of Sales At Less Than Fair Value; Erasable Programmable Read Only Memories (EPROMS) From Japan, 51 FR 39680, 39682 (1986). Petitioner further argues that R&D is not a selling expense but either a fabrication cost or a G&A expense depending on whether the R&D expenditures are product-specific or general in nature. Torrington claims that INA should be capable of identifying specific R&D expenditures and reporting them accordingly. Torrington concludes that the Department should apply a BIA rate with respect to INA's R&D expense.

INA responds that the Department's questionnaire instructs respondents to classify R&D costs as indirect selling expenses for purposes of calculating U.S. price and FMV, and as G&A for purposes of calculating CV. INA further notes that based on the verification in the second review, the Department reclassified INA's R&D costs from indirect selling expenses to general administrative expenses.

*Department's Position:* Since INA's R&D expenditures were general in nature, we do not consider these expenses to be part of the COM for specific products. Therefore, for the purposes of CV, we treated these expenses as general administrative expenses.

*Comment 3:* Torrington claims that the Department should reject FAG–Italy's reported R&D amounts because they were calculated on a product-line, rather than a product-specific, basis. Torrington also argues that the reported general R&D costs should have been classified as part of COM rather than as an element of G&A in the calculation of COP and CV.

In rebuttal, FAG–Italy maintains that the record is clear that product-line R&D ratios could not be calculated on a product-specific basis and that general R&D costs were properly included as an element of G&A expense.

*Department's Position:* We disagree with Torrington. In our supplemental questionnaire to Section D, we asked FAG–Italy whether it could allocate R&D expenses on a product-specific basis. FAG–Italy stated that it could not, as its cost accounting system did not track R&D activities on a product-specific or class or kind basis. In lieu of a product-specific allocation, it allocated R&D expenses over all roller bearing products in proportion to their cost of goods sold. Because this product-line methodology is reasonable and consistent with FAG–Italy's normal accounting system, we have no basis for rejecting FAG–Italy's product-line reporting of R&D expenses.

We disagree also with Torrington's suggestion that it was improper to include general R&D expenses as an element of G&A when calculating COP and CV. We note that, in our questionnaire, we specifically instructed respondents to allocate R&D that was not related to a specific product or product line to all products of the company and to include it in G&A. Therefore, it would be inappropriate to reallocate general R&D expenses to COM, as suggested by Torrington.

*Comment 4:* Torrington argues that RHP's general R&D costs should be reclassified as fabrication costs because it is highly unlikely that RHP incurs only general R&D costs, as all products incur specific R&D costs. Torrington further argues that NSK–Europe's 1991 annual report shows that product-specific R&D costs are incurred in the European Research Center ("ERC"). Torrington asserts that RHP has not clearly shown that none of the ERC's projects affected, or was related to, sales during the POR. Therefore, Torrington asks that RHP's R&D costs be attributed to cost of manufacture.

RHP responds that Torrington's allegations are unsupported by the record. According to RHP, NSK–Europe's annual report shows only that the ERC was expected to do general bearing research that would benefit the aerospace industry and that the ERC's efforts would be to the general benefit of the companies participating in its operation. Finally, RHP argues that the ERC did not begin operating until the end of February 1992, only two months before the end of the POR, and therefore had no effect on RHP's sales during the POR.

*Department's Position:* We agree with RHP. Nothing on the record indicates that RHP's R&D expenses should be reclassified, and we are satisfied that the ERC's activities did not have an impact on sales during the POR. Therefore, we accepted RHP's R&D as a general expense for this review.

C. Profit for Constructed Value

*Comment 5:* Torrington maintains that the statutory provisions that apply to foreign market value are applicable regardless of whether HM price, third country price, or constructed value is the basis for foreign market value. As such, the statute requires that sales below cost must be disregarded in the determination of constructed value. Torrington states that by including below-cost sales in its calculation of the profit amount of constructed value, the

Department is not disregarding those sales, but using them to determine foreign market value. Torrington contends that if such sales were properly "disregarded," constructed value profit would be calculated based only on sales above cost.

Torrington argues that, while the original intent of Congress in the below-cost provisions of the statute was to prevent foreign producers from lowering their HM prices to disguise dumping, the Department's methodology, which includes the below-cost sales in the calculation of profit for constructed value, provides "an obvious incentive to minimize constructed value" by using below-cost sales in the profit calculations, with respondents often obtaining the statutory minimum profit of eight percent.

Torrington contends that the expression "ordinary course of trade" as defined in 19 U.S.C. 1677(15) "parallels 19 U.S.C. 1677(b) (quoted *supra*), which indicates that below-cost sales are not to be considered 'normal' sales (i.e., sales in the 'normal course of trade')." Since "sales outside the 'normal course of trade' are sales outside the 'ordinary course of trade,'" Torrington argues that "below-cost sales must be disregarded in calculating 'constructed value' profit, when made in substantial quantities over an extended period of time." Torrington further points out that the United States has taken this position in the framework of the General Agreement on Tariffs and Trade (GATT). Also the domestic statutes of the European Community, Canada, and Australia also reflect this understanding.

Respondents maintain that it would be incorrect for the Department to disregard below-cost sales in the calculation of constructed value because:

(1) This position is not supported by a proper reading of the statute;

(2) The international agreements and foreign legal determinations referred to by Torrington do not support its argument and are not relevant to the administration of the U.S. antidumping law; and

(3) This position would impose an immense logistical burden on both the respondents and the Department.

*Department's Position:* We disagree with Torrington's contention that the calculation of profit should be based only on sales that are priced above the cost of production. Section 773(e)(1)(B) of the Tariff Act specifically imposes a variety of requirements on the calculation of profit in determining constructed value. Namely, the profit should be equal to that usually reflected in sales: (1) Of the same general class or kind of merchandise; (2) made by producers in the country of exportation; (3) in the usual commercial quantities; and (4) in the ordinary course of trade. Thus, the statute does not explicitly provide that below-cost sales be disregarded in the calculation of profit. The detailed nature of this sub-section suggests that any requirement concerning the exclusion of below-cost sales in the calculation of profit for constructed value would be explicitly included in this provision. Accordingly, it would be inappropriate for the Department to read such a requirement into the statute.

It would be similarly inappropriate to hold that sales below cost are automatically outside the ordinary course of trade. When CV is used as the basis for FMV, the Department is required to calculate profit based on sales of merchandise that are, *inter alia*, made in the ordinary course of trade. Contrary to Torrington's assertions, however, in the definition of "ordinary course of trade," section 771(15) of the Tariff Act does not exclude or even mention sales below-cost:

> The term 'ordinary course of trade' means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of an investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind.

Thus, although the Department is required to calculate profit for constructed value based on sales in the ordinary course of trade, this requirement does not necessitate the exclusion of below-cost sales in this calculation.

Finally, section 773(b) of the Tariff Act, which requires the Department to disregard certain sales below the cost of production in the calculation of FMV, suggests that below-cost sales *per se* are not outside the ordinary course of trade. Not only are sales below the cost of production not defined as outside the ordinary course of trade, but an interpretation that "outside the ordinary course of trade" automatically includes below-cost sales would make the below-cost provision, wherein sales below-cost may be disregarded only if certain conditions are satisfied, entirely unnecessary. Thus, there is no theory with respect to "ordinary course of trade" that is both consistent with the various references to "ordinary course of trade" in the statute and that requires the Department to base the calculation of profit only on sales above the cost of production. Torrington's references to the legislative history of the Trade Act in support of its position to the contrary are unpersuasive, and references to GATT as well as to Canadian, Australian, and E.C. law cannot be considered in light of the clarity of our statutory framework on this issue. Consequently, we have continued our normal practice of using the greater of the rate of profit provided in the response or the statutory eight percent minimum.

*Comment 6:* Torrington contends that, if the Department does not calculate profit for CV based only on sales above the cost of production, it should use a profit rate based on all reported HM sales rather than the statutory minimum of eight percent reported by certain companies.

*Department's Position:* We disagree with petitioner that reported sales in this case would be the appropriate foundation for a profit rate in our calculation of constructed value. Section 773(e)(1)(B) of the Tariff Act directs us to use profit equal to that usually reflected in sales of the same general class or kind of merchandise. However, we requested that all respondents report only sales of such or similar merchandise, and NSK, FAG–Italy, FAG–UK, and INA–Germany reported only those sales. We do not believe that the profit on the sales of such or similar merchandise can be presumed to be representative of the profit for the general class or kind of merchandise. Instead of calculating profit only on such or similar merchandise, we calculated profit based on the class or kind. Because the profit we calculated for NSK, FAG–Italy, FAG–UK, and INA–Germany was less than eight percent, we have used the statutory minimum of eight percent.

*Comment 7:* RHP–UK claims that due to a clerical error it reported in its questionnaire response profit levels for certain transactions that greatly exceeded the eight percent statutory minimum. RHP–UK contends that a review of the record indicates that these profit rates are "clearly erroneous," and that the actual profit rates are below the eight percent minimum.

Torrington argues that RHP failed to provide any demonstration that its profit on HM sales was less than the eight-percent statutory minimum. Torrington claims that evidence of record suggests that RHP may have understated its average profit. Federal-Mogul argues that the existence of an error must be so obvious from the evidence of record that failure to correct it constitutes an abuse of discretion. Federal-Mogul contends that RHP's alleged error is not at all obvious on this record and therefore should not be corrected.

*Department's Position:* We agree with Federal-Mogul and Torrington. The record does not establish that RHP's profit is "clearly erroneous," and RHP did not attempt to correct its data in a timely manner. Therefore, we have not changed RHP's reported profit levels.

*Comment 8:* Torrington argues that while NMB/Pelmec calculated separate profits for NMB-made models and Pelmec-made models, the Department should use instead the average profit earned by NMB/Pelmec on unrelated-party sales to calculate CV. Citing to 19 U.S.C. 1677b(e)(1), Torrington contends that the statute contemplates a single average profit based on respondent's earnings on the "same general class or kind" of merchandise.

NMB/Pelmec argues that the statute does not require that the same average profit value be applied to all models under review. In NMB/Pelmec's view, there is no statutory authority requiring the use of a single average profit for all CV models. NMB/Pelmec maintains that the statute merely prohibits the use of a profit value derived from products not of the "same class or kind as the U.S. models under consideration." Citing Color Television Receivers from Taiwan; Final Determination of Sales at Less than Fair Value, 49 FR 7628 (March 1, 1984), NMB/Pelmec states that the Department requires an exact measurement of a company's CV for each model under consideration. NMB/Pelmec argues that the Department does not apply a single average cost of manufacturing to each CV model. The manufacturing costs used for CV are model-specific. Therefore, profits that are obtained by subtracting costs from revenue should also be model-specific.

NMB/Pelmec further states that the language of 19 U.S.C. 1677b(e)(1)(B) regarding "sales of merchandise of the same general class or kind as the merchandise under consideration" should not be interpreted to require a single general expense and profit value for all models, especially since NMB/Pelmec keeps its books in a manner that provides greater specificity than the class or kind level.

*Department's Position:* We disagree with NMB/Pelmec's assertion that 19 U.S.C. 1677b(e)(1)(B) permits the calculation of profit for CV on a model-specific basis. Our interpretation of the words "same general class or kind" is much broader and, in the case of NMB/Pelmec, covers all subject ball bearings. The fact that NMB/Pelmec's accounting records allow it to provide greater specificity than the general class or kind level is irrelevant.

While we agree that Torrington's suggestion that profit could be calculated on the same general class or kind, we disagree that only profit on unrelated party sales should be used. For reasons similar to those for which we include below-cost sales in the profit calculation, we have included NMB/Pelmec's Thai sales to related parties in the profit calculation. (See Comment 4 in Section B: Profit for Constructed Value.)

D. Related Party Inputs

*Comment 9:* Torrington argues that in accordance with 19 U.S.C. 1677b(e)(3), transfer prices for certain parts and balls submitted by NMB/Pelmec-Thailand and NMB/Pelmec-Singapore for use in the calculation of constructed value should be rejected. Torrington asserts that the Department should use the cost of manufacturing those parts and balls to determine constructed value for all bearings incorporating the balls and parts in question. Torrington also argues that NMB/Pelmec's demonstration of arm's-length prices for machinery, equipment, and tooling and dies purchased from related parties is inadequate. Torrington contends that NMB/Pelmec's demonstration of overall profitability by its related supplier does not prove that the equipment sold to NMB/Pelmec was at arm's length. Torrington argues that the Department should reject the transfer prices and instead use the highest price found for equipment purchases from unrelated parties as BIA for these final results.

NMB/Pelmec responds that its transfer prices reflect market prices. NMB/Pelmec contends that, even though certain prices were below cost, its questionnaire response clearly demonstrates that the transfer price of parts purchased from related parties as a whole exceeded their total cost of production. NMB/Pelmec notes that the Department has accepted its transfer prices for components during the original fair value investigation and each subsequent review. According to NMB/Pelmec these prices were extensively reviewed and confirmed at multiple on-site verifications. NMB/Pelmec further states that the Department has also investigated and confirmed in previous reviews that the price of equipment purchased from related parties was above cost. In each case, and in the present review, NMB/Pelmec claims that it provided data to the Department indicating that its related party recovered all costs and earned a profit. NMB/Pelmec claims that Torrington's argument on overall profitability does not apply to this case since the profit realized was made on the particular products sold.

*Department's Position:* We agree in part with NMB/Pelmec Thai and NMB/Pelmec Singapore. Regarding machinery, equipment, tooling, and dies purchased from related parties, we find that the information in the record is sufficient to conclude that the transfer prices reported by respondents were in excess of the cost of production. Specifically, NMB/Pelmec Thai and NMB/Pelmec Singapore provided financial statements from related suppliers that pertained specifically to the equipment at issue. Further, the suppliers at issue sold only to respondents and other members of the Minebea Group, which is the parent company of respondents. Therefore, we conclude that it is reasonable for us to rely on the financial statements that respondents provided as the basis for our conclusion that NMB/Pelmec Thai and NMB/Pelmec Singapore purchased equipment from related suppliers at prices that were not below COP. As NMB could not provide information concerning arm's-length prices for these inputs, we used the transfer prices in our calculation of CV.

We were also able to use the information respondents provided to analyze whether the transfer prices paid for bearing parts were above cost. For each type of part purchased, we compared transfer prices to the cost of the part. When we found that transfer prices were not above cost, we made upward adjustments to transfer prices so that they reflected actual costs. For CV, the respondents also showed, where possible, that the transfer prices were arm's-length prices. Where parts purchased from related parties were not also purchased from unrelated parties, we used the higher of the transfer price or the cost of production of the input. Because we were able to use respondents' data to revise our calculations, we conclude that the application of BIA is not warranted in this instance.

*Comment 10:* Torrington asserts that NSK failed to establish that either transfer prices paid to related suppliers for components, or prices paid to related subcontractors for processing, were at arm's length. Torrington claims that, according to 19 U.S.C. 1677b(e)(3), if NSK could not provide prices paid for identical or comparable material or labor inputs from unrelated suppliers, NSK should have supplied cost information. Torrington argues that because NSK failed to report cost data, the Department must resort to BIA for these final results.

NSK responds that, contrary to Torrington's assertion, the Department is not required by law to reject material

transfer prices and subcontractor processing costs reported by NSK. According to NSK, section 773(e)(2) of the Tariff Act indicates that the Department may disregard any transactions between related parties for purposes of calculating constructed value, but it does not have to reject them. 19 U.S.C. 1677b(e)(2); 19 CFR 353.50(c).

NSK notes that verifications conducted in the Tapered Roller Bearings proceedings found that NSK's transactions with its related affiliates occurred at arm's length. NSK further argues that Japanese law prohibits a parent company from setting unreasonably low prices with its related subcontractor/ suppliers. NSK notes that it submitted to the Department selected pages of the results of investigations that confirm that NSK adheres to this Japanese law. NSK also notes that the evidence on the record demonstrates that NSK's related suppliers were profitable during the period of review. Noting that it cannot compare the components purchased from both related and unrelated parties because it seldom purchases identical components from both related and unrelated suppliers, NSK claims that it has responded to the Department's transfer price question to the best of its abilities.

NSK contends that since there are no reasonable grounds for the Department to believe that the transfer price reported is less than the cost of production, NSK is not required to report such cost data. According to NSK, section 773(e)(3) of the Tariff Act provides that the Department may determine the value of a major input utilizing BIA only if it "has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the costs of production of such input." 19 U.S.C. 1677b(e)(3). Since Torrington failed to make such an allegation and the Department never initiated such an investigation, NSK argues that it cannot be held at fault if it did not report cost information for related subcontractors.

Torrington, arguing that NSK's compliance with Japanese law is irrelevant, claims that the standard set by Japanese law is not sufficiently similar to the U.S. standard to support any Department determination of arm's-length prices.

*Department's Position:* We agree with Torrington. Despite our requests in the initial and supplemental questionnaires, NSK failed to provide either purchase prices from unrelated parties that we could have used to determine whether the transfer prices that NSK paid to related parties for inputs were at arm's length or cost of production data to demonstrate that the transfer prices were not less than COP. Further, the standard established by Japanese law is not sufficiently similar to that established in section 773(e)(2) of the Tariff Act for us to rely on NSK's compliance with that law as evidence that transfer prices paid by NSK are arm's-length prices. Therefore, we determine that NSK's CV data do not provide a reliable basis for FMV. As a result, we have used second tier BIA to determine the dumping margins for those U.S. sales for which CV would have been used as FMV.

*Comment 11:* Torrington asserts that the Department should correct several discrepancies in material costs that were noted on two pages of NPBS' verification report.

NPBS states that the discrepancies in materials costs that were noted at verification were very small in both number and magnitude, underscoring the high degree of accuracy of NPBS' response.

*Department's Position:* For these final results we have adjusted NPBS' submitted materials cost to account for all discrepancies noted at verification.

*Comment 12:* Torrington alleges that NPBS' explanation of how it calculated its total costs of materials purchased from unrelated suppliers is practically incomprehensible. Torrington argues that in the absence of supplemental findings at verification, the Department should reject this segment of the response in favor of BIA.

NPBS and Emerson respond that the verification report is highly favorable and note only a few exceedingly small discrepancies regarding the cost of materials purchased from unrelated suppliers.

*Department's Position:* We disagree with Torrington. Since we confirmed at verification that NPBS accurately reported its material costs, with the exception of minor discrepancies that we have corrected, we have accepted this information for these final results.

*Comment 13:* Torrington asserts that NPBS failed to establish that the average transfer prices paid to related suppliers were arm's length. Consequently, Torrington argues, if NPBS was unable to isolate prices paid for identical or comparable material inputs from unrelated suppliers, NPBS should have supplied cost information. Because NPBS failed to report cost of production data for related-party components, the Department should resort to BIA for these final results.

NPBS responds that the verification report clearly states that "The housing costs from the unrelated supplier is [sic] substantially less than the charges to NPB[S] for the purchase of identical housings from the related supplier". EPT responds that to the extent that any changes are made to NPBS' submission, they should be limited to those described in the verification report.

*Department's Position:* We disagree with Torrington. While we determined there were discrepancies in the reported costs of suppliers (see Comment 12 above), we verified that NPBS' purchases from related suppliers were at arm's length and therefore accepted them for these final results.

*Comment 14:* Torrington claims that since NPBS knew it was likely that the Department would request information on the total quantity of parts purchased from unrelated suppliers, it was incumbent upon NPBS to retain this information in its records. Torrington notes that NPBS has not explained why its daily production reports would not include such information. Torrington requests that, because the verification report reveals that the reported data for base grindings by related parties reduced subcontracting costs; the Department should adjust NPBS' subcontractor costs in the manner suggested in the verification report.

NPBS responds that the cost of finished or semifinished parts was established by reference to vendor invoices, as noted in the verification report. NPBS states that it believes that its reported prices for base grindings charged by related parties are fair and accurate. Emerson notes that NPBS' material costs were successfully verified by the Department.

*Department's Position:* We agree with Torrington in part. Since the reported data for base grindings by related parties reduced subcontracting costs, we have made the appropriate adjustments for these final results. However, we confirmed at verification the reliability of NPBS' cost of finished and semifinished parts and are therefore accepting this information for these final results.

*Comment 15:* Torrington contends that section 773(e)(2) of the Tariff Act instructs the Department to disregard transfer prices for calculating constructed value if they do not "fairly reflect the amount usually reflected in the sales in the market * * *" i.e., in arm's-length transactions. Torrington claims that the statute specifically states that where related-party transactions are the source of any portion of the CV calculation, and no other transactions are available, the determination of the value of that portion of the CV calculation "shall be based on the evidence available" of an unrelated

party price. 19 U.S.C. 1677b(e)(2). Torrington contends that while the foregoing is the general rule, there is a special rule for "major input(s)" in 1677b(e)(3) that provides that if the Department has grounds to believe that the transfer price of such an input is less than cost of production, the agency "may determine the value of the major input on the basis of the best evidence available regarding such cost of production if such costs are greater than the amount that would be determined (under the general rule)."

Torrington contends that these provisions, taken together, require respondents to supply, in all related-party input situations (i) transfer prices, (ii) prices of sales to unrelated buyers, and (iii) in the case of major inputs, relevant costs of production as well. Torrington argues that it is simply inadequate for any respondent unilaterally to select which of this data it will submit.

Torrington argues that in the case of FAG-Italy, which obtained components from FAG-Germany for further manufacturing in Italy, and SKF, which purchased inputs from Ovako, COP was inappropriately submitted without additional information documenting transfer prices for major inputs or an arm's-length price to an unrelated buyer. Torrington argues that since COP data does not include profit, the reported costs might therefore be substantially less than either transfer or arm's-length prices. Torrington asserts that the Department should base the value of all major inputs on the best information available of what an unrelated party would charge for such inputs. 19 U.S.C. 1677b(e)(2). At the least, Torrington argues, the Department should use the cost of production plus profit. While Torrington recognizes that the questionnaire did not require this information, Torrington argues that the Department should require that the respondents immediately make the appropriate showings or the Department must resort to BIA for FAG and SKF's material costs.

In addition, because SKF failed to support its claim that the reported COP reflected full production costs, as requested in the Department's deficiency letter, and failed to provide a full breakdown of Ovako's costs, the Department should still resort to BIA for SKF's material costs for CV and COP.

SKF contends that, because Ovako became a wholly-owned subsidiary of AB SKF during the third period of review, SKF has properly reported the input cost of steel purchased from Ovako and used in bearing manufacture. SKF further argues that because cost was relied upon and transfer prices were not reported and are not relevant, a comparison of transfer price to COP is unwarranted.

FAG notes that in the LTFV investigation of this proceeding the Department reiterated its consistent policy of using actual costs rather than transfer prices for COP in cases where there is more than a fifty percent direct or indirect ownership between the companies. The Department also found that credible market prices for bearing components could generally not be found. Consequently, there were no arm's-length prices to compare to transfer prices. Thus, for CV purposes, the Department used the cost of the components as representative of their value. FAG also notes that the Department disagreed with Federal-Mogul on this same issue in the previous review. FAG finally notes that its response was consistent with the guidelines found in the original questionnaire.

*Department's Position:* We disagree with Torrington in part. The constructed value related party provision contained in section 773(e)(2) is not directly applicable to cost of production calculations, because, by its terms, it only refers to constructed value calculations. Therefore, the Department bases its cost of production calculations on generally accepted accounting principles (GAAP). According to these principles, when one company is at least 50 percent owned by another company, the costs are based on the consolidated financial information of the two companies. Final Determination of Sales at Less than Fair Value, Certain Granite Products From Italy, 53 FR 27193 (July 19, 1988). When this degree of ownership exists, the transactions of these companies are consolidated and the costs of the products sold to third parties are recorded at the actual costs without intercompany profit/loss that might be included in the transfer prices between the companies. AFBS Investigation of SLTFV, 54 FR 18992. For transactions between parties with a lower ownership percentage, the transfer price could be used to develop the cost of production. Final Determination of Sales at Less than Fair Value, Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7661, 7670 (February 25, 1991).

When calculating constructed value, section 773(e)(2) of the Tariff Act authorizes the Department to disregard inputs from all related suppliers when the value of those inputs does not fairly reflect the market value (arm's-length price) of those inputs and base the value of the input on the best evidence available. In instances where the Department has reason to believe that the value of a major input is less than the cost of production, section 773(e)(3) authorizes the Department to determine the value of the major input on the basis of the best evidence available regarding such cost of production, if such costs are greater than the market value.

In accordance with the Department's policy, our questionnaire requires that, for purposes of calculating COP, respondents submit the actual COP of all inputs purchased from suppliers with a relationship of 50 percent or greater.

In accordance with the statute, our questionnaire requires that, for purposes of calculating CV, all respondents submit to the Department the actual transfer price of all inputs purchased from all related suppliers. In addition, the questionnaire requires that respondents demonstrate that the price of such inputs are at arm's length by submitting comparisons of identical or similar inputs purchased from unrelated suppliers. If comparisons to identical or similar merchandise are not available, the questionnaire then requires respondents to provide the cost of production of the inputs supplied by related parties.

Because SKF and FAG have greater than a fifty percent relationship to the suppliers of the inputs in question, these respondents properly submitted the actual COP of the inputs for the purposes of calculating COP. However, since the statute requires, and the questionnaire requests, that the value of inputs obtained from related parties for the calculation of CV be based on arm's-length prices, FAG and SKF were responsible for submitting the actual transfer price of the inputs and demonstrating the arm's-length nature of that price. Because SKF and FAG failed to do either, we have increased their material inputs by eight percent, the statutory minimum profit prescribed in section 773, as BIA for an arm's-length transfer price.

*Comment 16:* Referring to 19 U.S.C. 1677b(e)(2), Torrington argues that the loose balls purchased by RHP from related party NSK-AKS should be tested for reliability against prices charged in arm's-length transactions in the United Kingdom. Torrington notes that RHP has provided the transfer prices for NSK-AKS loose balls, but that RHP has not reported cost of production or supplied prices charged to unrelated third parties for these inputs. Torrington contends that RHP has not demonstrated on the record that the sales of loose balls were made at arm's length. Therefore, Torrington argues that the Department

should determine the value of the loose balls based on an unrelated party price in the United Kingdom or based on BIA.

RHP responds that it has provided the acquisition costs for the loose balls and stated that the purchases were at arm's length. In addition, RHP states that it has provided the prices charged for loose balls by an unrelated entity in a foreign country, and that it has shown that these prices were lower than the prices charged by NSK-AKS. RHP asserts that at verification the Department examined the pricing structure between related and unrelated parties and concluded that the prices charged by NSK were within the range of prices charged by unrelated suppliers. In conclusion, RHP argues that there is no statutory requirement forcing the Department to use BIA on RHP's purchases of loose balls from NSK-AKS.

*Department's Position:* Because we found at verification that the NSK-AKS prices are greater than the prices charged for the same loose balls by RHP's principal unrelated supplier, we have used the reported transfer prices for determining the value of NSK-AKS's loose balls.

E. Inventory Write-off

*Comment 17:* Torrington argues that Koyo's practice of writing off damaged or obsolete finished goods and charging the expense to non-operating expense is inconsistent with Departmental precedent. Torrington states that, in Certain All-Terrain Vehicles from Japan, 54 FR 4864, 4866 (January 31, 1989), the Department ruled that "the value of obsolete inventory * * * should be allocated over the period during which obsolescence is assumed to have occurred".

With respect to NSK, Torrington also argues that, while NSK's practice of writing off obsolete inventory every six months may be in accordance with Japanese GAAP, it is inconsistent with Departmental precedent regarding cost of production. See, e.g., AFBs LTFV Investigation, 54 FR at 19706 (1989), Final Determination of Sales at LTFV; Certain All-Terrain Vehicles from Japan, 54 FR 4864, 4866 (January 31, 1989). Torrington asserts that NSK's costs have not been included in the cost of manufacturing. For the final results Torrington requests that the Department reallocate these expenses in accordance with its well-established practice.

Koyo claims that, in the current review as well as past AFB reviews, the Department has accepted its write-down cost for damaged or obsolete finished goods as a general expense in its COP calculation. Koyo argues that although the Department used a specific methodology to address the specific facts of the *Certain All-Terrain Vehicles* case, that determination does not prevent the Department from treating these costs in the manner that it has adopted in the AFB reviews.

NSK argues that its accounting adjustment has no bearing on the cost of producing the merchandise and its resulting effect should not be included in the cost of production calculation. NSK notes that, should the Department agree with Torrington, it should still decline to make an adjustment to NSK's reported COP on the grounds that this expense is *de minimis*. 19 CFR 353.59(a).

*Department's Position:* We view losses on the sale or disposal of fixed assets and write-downs/write-offs of inventory as a normal cost of production. We consider any income or credits generated by these transactions as an offset against the expense to arrive at the actual cost incurred by the company. AFBs Investigation of SLTFV, 54 FR at 19076. Therefore, we have accepted Koyo's and NSK's inventory write-off expenses in the calculation of COP.

F. Depreciation

*Comment 18:* Torrington argues that the Department has a consistent practice of including depreciation on idled assets in the COP (e.g., AFBs Investigation of SLTFV, 54 FR at 19074; Television Receivers, Monochrome and Color, from Japan, 56 FR 5392, 5394 (February 11, 1991) and should therefore adjust NTN's and NSK's reported COP for depreciation on idle equipment. Torrington argues that, because NSK's reported depreciation expenses are based on its financial statements, there is reason to believe that these expenses do not include depreciation on idle assets because Japanese accounting practice, unlike Departmental practice, allows companies to halt depreciation expenses on idle equipment. Therefore, the Department should use the highest reported depreciation costs of another respondent as BIA for NSK's COP calculation. With respect to NTN, Torrington notes that it submitted a factor to adjust NTN's CV based on the information included in NTN's supplemental section D response. Torrington asserts that the Department should make this modification for these final results.

NTN responds that there is no basis for including a fictitious value for idled equipment in calculating COP and CV. NTN states that in accordance with Japanese GAAP this expense is not recorded on its books. NTN further states that it is unaware of any accounting theory or system that requires that such an expense be recorded. It is illogical, according to NTN, to include in the calculation of COP depreciation expenses for equipment that is not even in use.

NSK responds that, since the Department chose not to ask whether NSK halted depreciation for idle assets in either the original or supplemental questionnaires, NSK cannot be held at fault if it did not report this information. NSK contends that since it complied fully with the Department's request for information about depreciation, the Department may not properly apply BIA for these final results.

*Department's Position:* We include in the fully absorbed factory overhead the depreciation of equipment not in use or temporarily idle. While Japan's accounting methodology does provide that depreciation for idle equipment may be stopped, we do not accept this accounting method because idle fixed assets are a cost to the company. AFBs Investigation of SLTFV, 54 FR at 19706. Based on the information in NTN's supplemental response, we have calculated depreciation expenses on NTN's idle assets and included them in the calculation of NTN's COP/CV for these final results. Regarding NSK, there is no evidence on the record that NSK incurred depreciation expenses on idle assets. Therefore, BIA is unwarranted for these final results.

G. Interest Expense Offset

*Comment 19:* Torrington argues that NTN's reported interest expense as a component of general expense was reported net of "short-term interest received" and "income from sale of negotiable securities." Torrington maintains that interest expense should not be offset by interest income unless the Department has determined that the income is from compensating balances or investments from working capital. Any offset should be from interest income earned from the operations of the company as opposed to investment activities of the company. Since NTN failed to tie interest income to manufacturing or production activities, the Department should recalculate COP and CV without regard to interest income.

*Department's Position:* We agree with petitioner. Since NTN did not differentiate between interest income derived from investment activity as opposed to bearing manufacturing operations in its calculation of net interest expense, we have disallowed an

offset to interest expense in the calculation of COP and CV.

H. Packing

*Comment 19:* NSK argues that the Department failed to adjust properly for the difference between export and domestic packing in those instances in which the Department based foreign market value on constructed value. Specifically, NSK states that although the Department added U.S. packing expenses to constructed value, it failed to deduct the HM packing expenses that NSK had included in its reported constructed value. Therefore, NSK requests that the Department deduct HM packing expenses from constructed value for the final results.

Torrington responds that the Department must assure itself that NSK's reported constructed value includes HM packing costs before deducting such costs from constructed value.

*Department's Position:* We have reviewed NSK's constructed value data and have determined that NSK included HM packing costs in the total manufacturing costs on which we based constructed value. We note, however, that this issue is moot because we have determined that NSK's constructed value data does not form a reliable basis for FMV, and, therefore, have used BIA to determine dumping margins for U.S. sales that would have been compared to constructed value. See Response to comment 10, above.

*Comment 21:* NTN argues that the Department overstated the cost of production that it used in its preliminary analysis. Specifically, NTN states that the Department added HM packing expenses to the cost of production, despite the fact that NTN's reported manufacturing costs already included packing costs. Accordingly, NTN requests that the Department not add HM packing costs to the cost of production for the final results.

Torrington responds that NTN's reporting of separate packing costs in its response to the Department's cost of production/constructed value questionnaire suggests that such costs are not already included in NTN's reported manufacturing costs. In the absence of any evidence suggesting that NTN included packing costs in its reported manufacturing costs, Torrington concludes that the Department should add packing costs to the cost of production for the final results.

*Department's Position:* We have reviewed NTN's cost of production data and have determined that NTN included HM packing costs in the total manufacturing costs on which we based our calculation of cost of production. Therefore, we have not added HM packing costs to the cost of production for these final results.

*Comment 22:* Torrington requests that the Department use in its constructed value calculations the customer-specific packing expenses that NTN reported in its questionnaire responses.

*Department's Position:* We agree with Torrington and have used the customer-specific packing expenses reported by NTN in our calculations.

I. Other Issues

*Comment 23:* Torrington contends that because a substantial number of gaps appear in NPBS' section D response, the Department should reconsider its reliance on NPBS' cost data. Torrington asserts that as a result of using actual costs in its cost accounting methodology, and maintaining these costs on a company-wide basis without the use of cost centers and/or a standard budgeted costing method, NPBS does not describe how it accounts for such costs as supplies expenses, overhead, and cost of production data for a selected model. Torrington claims that NPBS was unquestionably on notice that: (1) An accurate cost accounting method is required; and (2) reported costs must be tied to NPBS' internal books and records.

NPBS argues that production costs can be accounted for and described without the use of budgeted costs, standard costs, and multiple cost centers. Further, NPBS believes that it adequately described its method of reporting model-specific costs of production for the COP and CV responses.

*Department's Position:* Verification showed that, although there were minor discrepancies, NPBS' COP response generally provided an accurate reflection of the costs incurred by NPBS to produce the subject merchandise. Therefore, although we have made minor modifications, we have accepted NPBS' reported COP data for these final results.

*Comment 23:* Citing Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, 55 FR 20491, 20495 (May 17, 1990), Torrington asserts that imputed owners' salaries are properly included in CV or cost calculations. Petitioner contends that INA refused to provide information regarding imputed owners' salaries as required by the Department's deficiency letter and, therefore, the Department should resort generally to BIA and not allow INA to benefit from a refusal to cooperate.

INA responds that, although it did point out that imputed salaries are not properly included in CV or COP calculations, it did provide the requested information in its response to the Department's supplemental cost questionnaire.

*Department's Position:* We agree with Torrington that imputed owners' salaries are properly included in CV and COP calculations. See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Review, 55 FR 20491, 20495 (May 17, 1990). However, we disagree with petitioner's assertion that INA refused to provide such information. Respondent reported total imputed owners' salaries in its response to the Department's supplemental cost questionnaire. Accordingly, we have adjusted INA's reported CV and COP to account for imputed owners' salaries.

*Comment 24:* Federal-Mogul argues that SNR France improperly classified imputed inventory carrying cost as direct selling expenses for the calculation of CV. Federal-Mogul contends that inventory carrying cost should have been classified as indirect selling expenses and argues that, for the final results, the Department should deny SNR's entire direct selling expense adjustment to CV.

SNR responds that, while it agrees that inventory carrying cost should not be classified as direct expenses, the Department should simply reclassify these expenses as indirect selling expenses for the final results rather than follow Federal-Mogul's suggestion and deny the entire direct selling expense adjustment to CV.

*Department's Position:* We agree with SNR. Since the inappropriate classification of inventory carrying cost can easily be corrected using information already on the record, we have reclassified inventory carrying cost as indirect selling expenses for these final results.

*Comment 25:* Federal Mogul argues that the Department failed to account for the fact that the COP submitted by SNR does not include packing material and labor, and inland freight and insurance. Federal-Mogul contends that, in order for the cost test to have any validity, the Department should deduct freight and packing from the HM price before conducting the cost test for the final results.

SNR responds that the Department's questionnaire clearly states that neither packing nor transportation costs are to be reported as a part of COP. SNR also notes that neither 19 U.S.C. 1677b(b)

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nor 19 CFR 353.51(c) makes any mention of packing or transportation costs in the definition of COP. As a result, SNR argues that no adjustment to its submitted COP is appropriate. In addition, SNR argues that any adjustments to the HM price for comparison to COP should be limited to price adjustments.

*Department's Position:* We agree with Federal-Mogul that in order for the cost test to be valid, all costs and expenses included in the HM price should also be included in the COP to which it is being compared. Since INA did not include packing and freight expenses in the COP reported to the Department, these expenses should not remain in the HM price for the purposes of conducting the cost test. Therefore, for these final results, we will deduct from the HM price all packing and transportation expenses.

*Comment 26:* INA claims that the Department erroneously failed to deduct HM direct and indirect selling expenses in its calculation of the preliminary results where CV was used as the basis for FMV. Respondent also claims that the Department failed to deduct HM direct selling expenses where the constructed value of further manufactured sales was used as the basis for FMV.

*Department's Position:* We agree with INA that, in calculating the preliminary results, we failed to deduct HM direct and indirect selling expenses where CV was used as the basis for FMV. Thus, we have revised the margin calculation program for the final results in accordance with the above findings. However, we disagree with INA that we failed to deduct HM direct selling expenses where constructed value of further manufactured sales was used as the basis for FMV.

*Comment 27:* Torrington argues that the Department should reject SKF's method of calculating general expenses for purposes of constructed value since it yields inappropriate results. Because SKF's calculation goes beyond home market sales in the calculation of general expenses by dividing average HM expenses over the average COM of U.S. sales and then applying that percentage to the COM of each U.S. model, the method does not meet the statutory requirement that the expenses be equal to "that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation" (19 U.S.C. 1677b(e)). Torrington argues that since SKF's method results in the same models having significantly different selling expenses in COP and CV, the selling expenses should be calculated exclusively on the basis of HM data. Torrington further argues that selling expenses should be calculated exclusively on the basis of HM data and that SKF's methodology adjusts the data through a calculation that takes into account the COM of models sold in the United States.

Torrington also argues that SKF's methodology is contrary to the law as it adjusts HM expenses when an adjustment is not appropriate. Torrington contends that the appropriate method for adjusting selling expenses is by way of "circumstance of sale" adjustments pursuant to 19 C.F.R. 353.56. However, SKF has not demonstrated that a "circumstance of sale" adjustment should be made.

Torrington proposes that the Department either calculate appropriate per unit amounts, based exclusively on home market data, and add these amounts to U.S. COM or express HM selling expenses as a percentage of HM COM, and then apply the resulting ratios to U.S. COM. If this is not possible, then the Department should resort to BIA.

SKF argues that it is applying the "Minivans methodology" to calculate selling expenses for purposes of CV. (See Final Determination of Sales at Less Than Fair Value: New Minivans from Japan, 57 FR 21937 (May 26, 1992)) (Minivans). SKF argues that the statute does not preclude reference to U.S. merchandise, but simply requires that the reported general expenses be in an "amount equal" to that usually reflected in HM sales. SKF uses the HM expense amount and, following Minivans, then distributes this amount to merchandise sold in the United States. SKF claims that the latter application is necessary since the CV calculation is in fact a constructed value for the models sold in the United States. SKF agrees with the petitioner that there will be differences in selling expenses depending upon whether COM for products sold in the HM or COM for products sold in the United States are used as the denominator in the calculation and argues that this further supports use of the Minivans calculation methodology for selling expenses. Also SKF argues that it has not "adjusted" the reported selling expenses, but calculated a weighted average per unit HM expense amount and carried that amount throughout its calculation.

*Department's Position:* We agree with Torrington that the methodology used by SKF yields inappropriate results. We have reconsidered the approach taken in Minivans. In Minivans, we calculated a HM weighted-average per unit amount of general expenses. This per unit amount was divided by the average U.S COM to develop a ratio which was then applied to each U.S. COM. In this case, we calculated the ratio of general expenses to the COM in the HM and applied this same ratio to the COM of U.S. sales. With great variations in quantity and product mix between the two markets, this approach is more accurate than that used in Minivans.

The general expenses incurred in the HM have no meaningful relationship to the merchandise that was sold in the United States since they were incurred for HM sales. There is no reason to apply the general expenses incurred for one "average" HM product to an "average" U.S. product that may be substantially different in cost or value. To do so would result in different general expense ratios being attributed to identical merchandise depending on whether it is sold in the HM or sold in the United States. That is, the general expenses in the constructed value of a given model would be different from the general expenses actually attributable to HM sales of that same model.

Therefore, we have revised SKF's general expenses for CV by calculating the ratios of HM general expenses to the COM in the HM and applying that ratio to the COM of each U.S. product.

*Comment 28:* Torrington argues that the Department should not accept NPBS' reported labor costs or any other expense derived from a time and motion study that was audited by the Japanese Bearing Inspection Institute. NPBS contends that the accuracy of the fabrication cost data developed by the report is the significant factor, not that it was audited by the Japanese Bearing Inspection Institute.

*Department's Position:* We agree with respondent. We verified this data and did not find discrepancies.

*Comment 29:* Izumoto acknowledges that it inadvertently failed to supply constructed value for all models sold in the United States during the POR. However, Izumoto contends that it has provided all necessary information to allow the Department to calculate constructed value for observations where no HM match is found. Izumoto requests that the Department use the COME field in the Section B submission for cost of manufacturing, plus (1) the percent reported for all models in the GENTOT field for general expenses and (2) the statutory eight-percent profit (since Izumoto did not make a profit during the POR). In the alternative, Izumoto recommends using the constructed value that was reported for models that are approximately equal in

cost to those models for which constructed value was not reported.

Izumoto also objects to the use of BIA on two observations concerning models that were purchased, not produced, by Izumoto. Izumoto states that it provided the acquisition cost of these models in its Section B response, and that the Department should use this cost, plus SG&A and profit as the basis for FMV.

*Department's Position:* We agree with Izumoto and have determined constructed value using the COME, GENTOT, and PROFIT fields for the relevant observations. Accordingly, we do not reach Izumoto's alternative suggestion of using the constructed value of similar models. We resorted to BIA for those models that were manufactured by Izumoto, but for which no cost of manufacturing was reported. Concerning the two observations involving models not produced by Izumoto, we used acquisition cost as a substitute for cost of manufacturing.

*Comment 30:* Federal-Mogul argues that the Department failed to account for all costs and expenses in its investigation of possible HM sales below the cost of production for NSK. According to Federal-Mogul, the Department did not deduct movement, packing, and commission expenses from the adjusted price that it compared to the cost of production, despite the fact that it is unclear whether NSK's reported cost of production includes these expenses. In order to ensure that the adjusted price and cost of production contain the same elements, Federal-Mogul requests that the Department either confirm that NSK's reported cost of production includes movement, packing, and commission expenses, or deduct these elements from the adjusted price compared to cost of production for the final results.

In response, NSK confirms that its reported cost of production includes packing, movement, and commission expenses. Therefore, NSK asserts that the Department does not need to recalculate the adjusted price that it used in its investigation of possible below-cost sales for these final results.

*Department's Position:* We have reviewed NSK's cost of production data and have determined that NSK included packing, movement, and commission expenses in its reported cost of production. Therefore, we have not deducted these expenses from the adjusted price that we compared to the cost of production for these final results.

*Comment 31:* Torrington argues that in many instances, NTN's constructed value data is incorrect, because the constructed value is significantly lower than the reported U.S. selling price. Although Torrington could not identify the source of this apparent discrepancy, it urges the Department to identify and correct the error that created these seemingly anomalous results.

*Department's Position:* We agree with Torrington. We found in the computer program used for the preliminary results certain clerical errors that distorted our CV calculations. We have corrected these errors for the final results.

*Comment 32:* Barden states that it made a computational error in the calculation of the per unit cost of a particular component, resulting in significantly higher CVs for three reported bearings. Citing *Koyo Seiko* v. *U.S.*, 746 F. Supp. 1108 (CIT 1990), Barden argues that the Department should correct computer input errors caused by respondent in the interest of promoting fundamental accuracy, and avoiding litigation. In its case brief, Barden provided a chart that compares the components of COP and CV as submitted in this review with the components of COP and CV from the second review. Respondent also provided a comparison of the affected bearings' cost totals and component cost totals with its price totals to OEMs. Barden claims that this error is clearly "ministerial" as defined by 19 CFR 353.28. Barden argues that, similar to an error committed by RHP in the second review of AFBs, the error committed by Barden is an obvious clerical error readily apparent from the information on the record.

Torrington submits that the revelation of calculation errors calls Barden's entire response into question and that the Department should resort to BIA, at least with respect to Barden's costs. Petitioner argues that the Department should not revise Barden's costs in accordance with the new information submitted in respondent's case brief because Barden has gone to great lengths to demonstrate the existence of the error that disproves that such error is obvious on its face.

*Department's Position:* We disagree with Torrington that the Department should resort to BIA for Barden's costs. A supposed clerical error limited to three models does not indicate a wholly inaccurate response such that resort to BIA is warranted. However, we agree with Torrington that Barden's alleged error should not be revised. The respondent's reference to the "ministerial error" section of the regulations is irrelevant since this section refers only to errors made by the Department in its margin calculations. Our standard regarding the correction of respondents' clerical errors for the final results was enunciated in AFBs I, 56 FR at 31741, where we stated that a correction is warranted where the Department is "able to assess from information already on the record that an error has been made and that the new information is accurate." The "new information" referred to in AFBs I is not new factual information, but information clarifying data already on the record. In this case, there is no pre-existing information on the record that indicates that respondent made a clerical error. Therefore, we have not made the changes requested by Barden.

*6. Discounts, Rebates, and Price Adjustments*

As a general matter, the Department only accepts claims for discounts, rebates and price adjustments as direct adjustments to price if actual amounts are reported for each transaction. Thus, discounts, rebates, or price adjustments based on allocations are not allowable as direct adjustments to price. Allocated price adjustments have the effect of distorting individual prices by diluting the discounts or rebates received on some sales, inflating them on other sales, and attributing them to still other sales that did not actually receive any at all. Thus, they have the effect of partially averaging prices. Just as we do not normally allow respondents to report average prices, we do not allow average direct additions or subtractions to price. (Even though we usually average FMVs on a monthly basis, we require individual prices to be reported for each sale.)

Therefore, we have made direct adjustments for reported home market discounts, rebates, and price adjustments if (a) they were calculated on a transaction-specific basis and were not based on allocations, or (b) they were granted as a fixed and constant percentage of sales on all transactions for which they are reported. If these adjustments were not fixed and constant but were allocated on a customer-specific or a product-specific basis, we treated them as indirect selling expenses. We did not accept discount or rebate amounts based on allocations unless the allocations calculate the actual amounts for each individual sale. This is consistent with the policy we established in the second review. See AFBs II, 57 FR at 28400.

For U.S. price, we deducted all U.S. discounts, rebates, or price adjustments if actual amounts were reported on a transaction-specific basis. If these expenses were not reported on a transaction-specific basis, we used BIA for the adjustment and treated the adjustment as a direct deduction from USP.

*Comment 1:* Torrington argues that the Department should reject RHP's projected 1992 home market rebates because the Department's practice is to reject estimated rebates that have not yet been incurred. Torrington notes that in the supplemental questionnaire, the Department asked RHP to report actual rebates paid, but that RHP did not do so. RHP responds that it had no choice but to report projected rebates at the time of its questionnaire response because the rebates had not yet been paid at the time of submission; however, RHP has reported actual rebates paid in its latest computer tape.

*Department's Position:* At the time RHP submitted its questionnaire response, actual rebate data was not yet available. It was available by the time of verification. Therefore, we verified actual rebate data, and RHP reported actual rebates paid in the corrected computer tape submitted after verification. We have used this actual rebate data in our calculations. In general, we prefer actual data to projected data, but projected data can be acceptable if actual data is not yet available and the projected data is reasonably calculated.

*Comment 2:* FAG alleges that the Department's sales verification report mischaracterized FAG-Germany's early payment discounts by stating: "FAG calculated customer-specific factors for early payment discounts that allocated discounts over sales for which they were not granted." See FAG Kugelfischer Georg Schäfer KGaA Sales Verification Report, at 3 (April 27, 1992). FAG maintains that there is nothing on the record to support such a statement.

*Department's Position:* During verification, the Department found that:

> FAG offers discounts to certain customers for the early payment of invoices * * *. FAG explained that early payment discounts are negotiated with customers individually; however, FAG was unable to tie early payment discounts to specific invoice lines, or even to individual invoices, because FAG's accounting system doesn't keep a record of exactly which transactions were affected by early payment discounts * * *. Therefore, FAG calculated customer-specific early payment discount factors by dividing total early payment discounts actually granted to a customer by total sales to that customer.
>
> FAG Kugelfischer Georg Schäfer KGaA Sales Verification Report, at 3 (April 27, 1992).

Regardless of whether early payment discounts were paid on all transactions, because FAG reported early payment discounts based on customer-specific allocations and not based on actual discounts granted on each transaction, we have treated those discounts as indirect selling expenses, in accordance with our policy on discounts and rebates explained above.

*Comment 3:* Torrington argues that the Department should not accept SKF-Italy's, SKF-Sweden's and SKF-Germany's "billing adjustment 2" as a direct expense. These adjustments are not identifiable to specific sales, and SKF had ample opportunity to comply with the Department's reporting requirements.

The SKF companies claim that billing adjustment 2 represents billing adjustments issued on a specific invoice that may contain multiple products. Therefore, it is not possible to attribute the adjustment on any basis other than the invoice value. SKF further claims that the Department verified SKF's billing adjustment 2 methodology in Germany and Italy and, because the billing adjustments are directly related to sales, the Department should have treated them as direct deductions to price. SKF argues that a respondent need not attribute each adjustment claimed to a particular sale in order to qualify for an adjustment to price. *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1580 (Fed. Cir. 1983), cert. denied, 465 U.S. 1022 (1984). SKF contends that it is unreasonable for the Department to require product-specific reporting of billing adjustment 2 if SKF's accounting records make it impossible to report. SKF's invoice-specific reporting is consistent with the manner in which it actually issues the credit and debit memos, and the allocation methodology does not distort the analysis. Therefore, SKF argues that the Department should accept the allocation of billing adjustments 2 as reported.

*Department's Position:* SKF's billing adjustments 2 are corrections in price due to billing errors, and we generally allow such corrections as direct adjustments to price. However, because SKF cannot attribute the adjustments to particular sales, SKF has allocated the adjustments over the entire invoice value, which may contain multiple sales. Because they are not reported on a transaction-specific basis and are allocated over groups of sales on a customer-specific basis, we have treated them as indirect selling expenses.

*Comment 4:* Torrington argues that the Department should not accept SKF-Germany's and SKF-France's home market cash discounts or SKF-Sweden's third country cash discounts because they are not reported on a transaction-specific basis. In addition, Torrington notes that SKF-France's home market cash discounts are not reported on a customer-specific basis. Torrington asserts that the Department should be consistent with the agency practice articulated in the prior administrative review and disallow the cash discount or, in the alternative, treat SKF-Germany's and SKF-Sweden's cash discounts as indirect expenses.

The SKF companies argue that the Department has accepted reasonable allocations of direct price adjustments if limitations of their normal business records prevent a more specific allocation of cash discounts. In these cases, the SKF accounting systems did not allow for these cash discounts to be reported on a transaction-specific basis. Arguing that allocations have been accepted in the past, SKF refers to AFBs II, 57 FR 28360, where allocated NMB billing adjustments were treated as direct expenses and allocated SNR-France rebates were treated as indirect expenses. SKF-France contends that the Department should treat its home market cash discounts as direct expenses or, alternatively, treat SKF-France's home market discounts as indirect expenses.

*Department's Position:* We have disallowed SKF-France's cash discounts because they were not reported on a transaction-, customer-, or product-specific basis. We have treated SKF-Germany's and SKF-Sweden's cash discounts as indirect selling expenses because they were allocated on a customer-specific basis and actual amounts were not reported on a transaction-specific basis.

*Comment 5:* Torrington argues that, because CRS has not reported cash discounts on its U.S. sales on a sales-specific basis, the Department should follow past practice and use as BIA the highest discount rate offered by SKF-USA in their terms of sales for all CRS sales.

SKF argues that the Department should accept the cash discounts as reported by CRS and not resort to BIA. SKF contends that, because CRS's records do not permit SKF to associate cash discounts with individual transactions and because all of CRS's customers are eligible for the same percentage cash discount, allocating total discounts paid on all sales eligible to receive a discount is a reasonable and accurate allocation methodology.

*Department's Position:* Because the cash discount was not paid on all CRS sales in the United States, SKF's allocation has not captured the actual amount of discount granted on each sale for which SKF reported a discount. As a result, SKF has diluted the discount percentage on the sales that actually

received the discount. Therefore, as BIA, we have applied the highest cash discount rate offered by CRS on all CRS sales.

*Comment 6:* Torrington argues that the Department should be consistent with the prior review and disallow two SKF-Italy companies' home market cash discount claims because these discounts are not reported on a transaction-specific basis or even a customer-specific basis.

SKF-Italy argues that the Department should treat the home market cash discounts, which are actually underpayments from customers, as direct adjustments to price. SKF's accounting system did not allow for these cash discounts to be reported on a sale- or customer-specific basis. SKF-Italy claims that, just because it is impossible to tie a price adjustment to specific sales or specific customers, the adjustment does not lose its "direct" character. SKF-Italy cites the treatment of NMB price adjustments in AFBs II, 57 FR 28360.

*Department's Position:* We agree with Torrington. Because this adjustment was not reported on a transaction-specific or on a customer- or product-specific basis, we have disallowed it. *See* the discussion of our price adjustment methodology above.

*Comment 7:* Torrington claims that FAG-Germany and FAG-Italy have apparently not reported all U.S. rebates paid or credited on 1992 sales. If this data is not reported, the Department should use, as BIA, the highest U.S. rebate amount paid during the POR. In addition, Torrington claims that the Department should reject FAG's projected 1992 home market rebates because they are based on the assumption that 1992 rebates will be the same as 1991 rebates. Torrington contends that a downturn in sales and an operating loss in the first half of 1992 cast doubt on the validity of the assumption that customers invariably met 1992 rebate goals. Furthermore, Torrington claims that FAG had ample time to submit actual 1992 rebate information and, because FAG failed to do so, the Department should reject the submitted information, as was done in Final Determination of Sales at Less Than Fair Value; Certain Iron Construction Castings from Canada, 55 FR 460 (1990).

FAG-Germany and FAG-Italy argue that they estimated with reasonable precision the actual home market and U.S. rebate amounts paid in 1992. As an example, FAG claims that when a customer's rebate percentage changed from 1991 to 1992, the reported 1992 rebate reflected the change. Furthermore, when eligibility was discontinued for 1992, no rebate was reported for 1992 sales. With respect to rebates not reported, FAG-Germany claims that on rare occasions, FAG and a customer may come to an agreement that past sales merit some type of rebate or compensation, which FAG refers to as "speculative" eligibility. FAG states that any compensation will ordinarily be in the form of reduced net prices on future sales. FAG argues that home market rebates are reasonably projected in the same manner as U.S. rebates.

*Department's Position:* We agree with FAG. We find that FAG's 1992 U.S. and home market rebates have been reasonably projected. See Comment 1, above. Furthermore, actual rebate data was not yet available. Therefore, consistent with AFBs II, 57 FR 28360, we have accepted FAG's rebates as reported.

*Comment 8:* Torrington argues that the Department should reject the home market rebates claimed by NPBS because they were not fixed at the time of sale and because they were calculated on the basis of monthly sales totals, which may include non-covered merchandise.

Emerson and NPBS contend that Torrington's allegations regarding NPBS's home market rebates are incorrect. Emerson and NPBS claim that the Department reviewed NPBS's rebate plan in detail at verification, where NPBS demonstrated that the terms and conditions of the rebate program were known by all customers throughout the POR.

*Department's Position:* We agree with Emerson and NPBS. Home market rebates are acceptable as a direct expense if they were granted as a fixed and constant percentage of sales price on all transactions for which they are reported. As established at verification, the non-OEM rebates were known at the time of sale. Therefore, we have treated them as a direct expense. OEM rebates were set to zero in the final results as a result of information gathered at verification.

*Comment 9:* Torrington argues that Nachi's allocation for home market Rebates 3, 5, 6, and 7 includes out-of-scope merchandise. Because the CIT held in *The Torrington Company* v. *United States (Torrington)*, 818 F. Supp. 1563 (CIT 1993) that the Department should not adjust foreign market value for expenses that may relate, even in part, to out-of-scope merchandise, Torrington contends that the Department should disallow these rebates for these final results. Torrington also maintains that because Nachi did not explain how Rebate 4 was calculated, this rebate should be denied.

Nachi argues, citing its questionnaire response, that its rebates were reported on a customer-specific basis for eligible merchandise only. Nachi notes that the Department verified Nachi's rebate calculations and found no discrepancies at verification.

*Department's Position:* We disagree with Torrington that Nachi's calculations for Rebates 3, 5, 6, and 7 include out-of-scope merchandise. However, we reclassified these rebates as indirect selling expenses because they were based on customer-specific allocations, not actual expenses, and were not granted as fixed and constant percentages.

We also disagree with Torrington with respect to Rebate 4. Nachi's questionnaire response explains how Rebate 4 was calculated, and we verified the accuracy of the information. Rebate 4 was calculated on an actual, transaction-specific basis and, therefore, we accepted it as a direct adjustment to FMV.

*Comment 10:* Torrington and Federal-Mogul argue that the Department should not allow NSK's early payment discount as a direct adjustment to home market price. According to Torrington and Federal-Mogul, NSK's reporting of early payment discounts on a customer-specific basis not only fails to link the discounts to specific sales, but also raises the possibility that the claimed discounts include those granted on merchandise outside the scope of these reviews. Therefore, Torrington and Federal-Mogul assert that the Department should, at a minimum, treat NSK's early payment discounts as indirect selling expenses.

NSK replies that it cannot link specific early payment discounts to specific transactions because it grants the discounts based on its customers' payments of monthly invoices. NSK also argues that it excluded discounts paid on non-subject merchandise in calculating its early payment discounts, in accordance with the requirements set forth by the CIT in Torrington, 818 F. Supp. 1563. Specifically, NSK states that it determined the amount of a customer's early payment discounts attributable to subject merchandise using a customer-specific ratio of sales of subject merchandise to total sales. As a result, NSK requests that the Department continue to treat its early payment discounts as direct adjustments to price.

*Department's Position:* We only accept home market discounts as direct adjustments to price if actual discounts are reported for each sale, as explained

above. Therefore, we have treated NSK's home market early payment discounts as indirect selling expenses.

*Comment 11:* Torrington argues that the Department should consider NSK's home market post-sale price adjustments and lump-sum rebates to be indirect selling expenses rather than direct adjustments to price because such adjustments and rebates are not reported on a sale-specific basis.

NSK contends that it reported its post-sale price adjustments on a customer- and product-specific basis and, therefore, the Department should treat these adjustments as direct deductions to FMV.

*Department's Position:* Because NSK's lump-sum rebates and post-sale price adjustments are reported on a product- and customer-specific basis, but not on a transaction specific basis, we have treated them as an indirect expense.

*Comment 12:* Torrington argues that Koyo's reported home market post-sale price adjustments should not be accepted for the final results, or at a minimum should be treated as indirect selling expenses. Torrington claims that Koyo's methodology for reporting these adjustments substantially deviates from the questionnaire instructions. Torrington notes that rather than reporting invoice and product-specific price adjustments, Koyo calculated a customer-specific post-sale price adjustment factor that included non-scope merchandise. Torrington cites *The Torrington Company* v. *United States*, Slip Op. 93–44 at 39 (CIT March 29, 1993) in support of its argument that respondents must exclude all non-scope merchandise from its calculations of post-sale price adjustments and rebates. Torrington also notes that many of Koyo's post-sale price adjustments represent a significant proportion of unit prices. Torrington argues that the magnitude of these adjustments is anomalous compared with post-sale price adjustments on other Koyo sales during the period and should be rejected absent further explanation. Torrington also contends that a number of discrepancies discovered at verification illustrate the potential for manipulation of the dumping margins. Torrington asserts that the verification team discovered that Koyo (1) failed to report post-sale price adjustments, which resulted in higher unit prices and (2) selectively reported a non-sample month sale in which a post-sale price adjustment was entered in the sample month. Finally, Torrington argues that post-sale price adjustments granted to customers on a case-by-case basis should be reported as rebates, not as billing adjustments.

Koyo notes that the CIT decision cited by Torrington proposes an alternative reporting methodology whereby billing adjustments on scope merchandise can be calculated by identifying the ratio of scope sales to total sales and applying that ratio to total billing adjustments. Koyo asserts that since the CIT decision was not issued until March 29, 1993, the Department should either reopen the record to allow respondents to submit the ratios of scope to total sales, or refuse to accede to the CIT decision and continue to apply the methodology used in previous reviews. In either case, Koyo argues that the Department should reject Torrington's argument that the adjustment should be denied. Koyo also argues that post-sale price adjustments granted to customers on a case-by-case basis should not be reported as rebates since these price adjustments are not based on any pre-arranged agreement with its customers. Koyo argues that exceptionally large post-sale price adjustments are the exception rather than the rule, and account for less than one percent of Koyo's reported home market sales. Finally, Koyo argues that the verification did not identify any manipulation of the home market database; rather it illustrated one of the difficulties in reporting a sampled database, and confirmed the accuracy of the post-sale price adjustment reporting methodology.

*Department's Position:* We agree with Torrington in part. Koyo reported home market post-sale price adjustments based on customer-specific allocations and not based on the actual price adjustments made for each transaction. Therefore, we have treated Koyo's post-sale price adjustments as indirect selling expenses, in accordance with our policy explained above.

*Comment 13:* Torrington argues that, because the reporting methodology employed by Koyo to calculate its home market rebate adjustment includes rebates granted for both subject and non-subject merchandise, the Department should deny the rebate adjustment or at a minimum classify it as an indirect selling expense. Torrington cites *The Torrington Company* v. *United States*, Slip Op. 93–44 at 39 (March 29, 1993) in support of its argument.

Koyo notes that the CIT decision cited by Torrington proposes an alternative reporting methodology whereby rebates on scope merchandise can be calculated by identifying the ratio of scope sales to total sales and applying that ratio to total rebates. Koyo asserts that since the CIT decision was not issued until March 29, 1993, the Department should either reopen the record to allow respondents to submit the ratios of scope to total sales, or refuse to accede to the CIT decision and continue to apply the methodology used in previous reviews. In either case, Koyo argues that the Department should reject Torrington's argument that the adjustment should be denied.

*Department's Position:* Koyo granted rebates as a fixed and constant percentage of home market price on all sales to specific customers. Because we have actual rebate information on the subject merchandise, the issue of whether rebates were also granted on non-scope merchandise is irrelevant. Therefore, we have accepted Koyo's rebates as a direct adjustment to home market price, in accordance with our policy on discounts and rebates explained above.

*Comment 14:* Torrington argues that Koyo should be required to report its adjustments to U.S. price on a transaction-specific basis. Torrington asserts that the Department should disregard Koyo's claim that, due to its bookkeeping practices, it is unable to report transaction-specific information. According to Torrington, Koyo has had enough time since the first review to adjust its bookkeeping practices in accordance with the reporting requirements of this proceeding. Torrington argues that the Department should assume as BIA that Koyo's customers received the highest discounts offered. In addition, Torrington argues that the Department should disallow the adjustments for credit that increase U.S. price. Torrington asserts that this adjustment is inappropriate due to the fact that it may relate to a sale in a previous period, or to the sale of merchandise outside the scope of the review.

Koyo argues that the Department has accepted Koyo's reporting methodology in past reviews, and has not been put on notice by the Department that a different accounting system should be adopted. Therefore, the Department should continue to accept Koyo's reporting methodology. Koyo also notes that the Department has accepted in the past review credit balances that increase U.S. price.

*Department's Position:* We agree with Torrington in part. We required U.S. discounts to be reported on an actual, transaction-specific basis, as explained above, because any allocation of discounts would dilute the discounts actually received on particular sales. Therefore, as BIA for early payment discounts (Discount 1), we have applied the highest early payment discount rate offered by Koyo on all of Koyo's U.S. sales receiving this discount. As BIA for

Koyo's sales and freight allowance discount (Discount 2), we have applied to all U.S. sales receiving this discount the highest customer-specific discount factor reported by Koyo. However, we have accepted Koyo's billing adjustments because Koyo reported them on an invoice- and product-specific basis. We have also accepted Koyo's U.S. rebates because they were incurred as a fixed percentage of sales price on all sales for which they were reported, and were reported on a customer-specific basis.

*7. Families, Model Match, Difmer*

*Comment 1:* Torrington contends that the Department's determination of the parameters of such or similar merchandise under section 771(16) of the Tariff Act is impermissibly narrow. Specifically, Torrington maintains that the limitation of such or similar merchandise to bearings that belong to the same bearing family is improper because of the Department's requirement that bearings must share certain physical characteristics (e.g., precision grades) in order to be considered members of the same family.

Torrington notes that the statute prefers sales over CV as the basis for FMV and argues that the Department did not accord this preference sufficient weight because it immediately resorted to constructed value for observations for which no model or family match could be made. Torrington states that the statutory preference for price-based comparisons is justified because: (1) Costs are more susceptible to manipulation than prices, and (2) price comparisons are more directly relevant to the issue of international price discrimination, which is the primary concern of the antidumping duty law.

Torrington cites section 771(16)(C) in support of its contention that a product that is not a member of the same bearing family as the subject merchandise should still be considered similar and, therefore, used as the basis of comparison before resorting to constructed value if it: (1) Is within the same general class or kind; (2) is like the subject merchandise in the purposes for which used; and (3) may reasonably be compared to the subject merchandise.

Torrington argues that the Department has construed the phrase "such or similar" broadly in past investigations and administrative reviews to allow comparison of merchandise with substantially different physical dimensions. Torrington cites Tapered Roller Bearings from Japan; Final Determination of Sales at Less Than Fair Value, 52 FR 30700, 30702–03 (1987), *aff'd, NTN Bearing Corp. of America* v. *United States*, 14 CIT 623, 632–34, 747 F. Supp. 728, 735–737 (1990), as particularly relevant to the current AFB reviews. Torrington recommends that the Department use either the single deviation methodology or the sum of the deviations methodology, both of which have been employed in the Japanese tapered roller bearing (TRB) reviews, to determine the most similar merchandise in the current AFB reviews. Under these methodologies, different-sized bearings could be considered similar and therefore used to make price-to-price comparisons.

Torrington suggests that this approach is in accordance with the catalogs of certain respondents, wherein bearings of slightly different physical dimensions are grouped together. Torrington states that the use of this approach would not result in the comparison of models with large cost variances, since a 20-percent difference in merchandise (difmer) cap would still be used in these reviews. The difmer cap prohibits the use of potentially similar merchandise as FMV when the difference in merchandise (measured as the difference in variable manufacturing costs) between the U.S. model and the potentially similar merchandise exceeds 20-percent of the total manufacturing costs of the U.S. model.

Torrington also argues that because the family approach has been used in past reviews, respondents have had time to structure their prices to take advantage of this approach and undermine the purpose of the antidumping duty orders.

For these reasons, Torrington argues that the limitation of "similar merchandise" to bearing families is an abuse of the discretion granted to the Department by the statute. Torrington has submitted sample SAS programs, which Torrington states employ a TRB-style methodology with respect to the models produced by certain respondents and which result in more price-to-price comparisons than the AFB methodology. See, e.g., Torrington Pub. Pre-Prelim. Deter. Cmnts. on FAG at Pub. Exh. 3 (March 22, 1993).

Federal-Mogul supports Torrington's argument that the Department's definition of "similar merchandise" in these reviews is unduly narrow, and further notes that the fact that domestic producers approved of the "family" approach in previous reviews should not prevent the modification of this approach if it has proven to be ineffective. Federal-Mogul states that this approach is particularly flawed with respect to matching subject merchandise produced by Meter. Federal-Mogul contends that certain merchandise sold by Meter in the United States is identical to merchandise sold in Italy except for slight differences in bearing width. Yet, according to the Department's family approach, these bearings cannot be compared.

Several respondents agree that there is a statutory preference for price-to-price as opposed to price-to-CV comparisons, but state that the statute vests the Department with the authority to determine whether the home market merchandise and subject merchandise may reasonably be compared. Koyo contends that the statutory preference for price-to-price comparisons does not mean that all possible sales comparisons are preferred to the use of constructed value as a matter of law. Koyo maintains that the Department's model match methodology for the current AFB reviews, in particular the family concept on which the methodology is based, is a reasonable exercise of the Department's discretion because it considers the commercial realities of the AFB market, in particular the extensive variety of models in the market and the fact that families of similar bearings do exist. GMN argues that the statutory preference for price-based comparisons is not absolute, as demonstrated by cases where the Department has resorted directly to CV when sales are below cost.

Koyo further argues that the Department's definition of family is sufficiently broad by noting that although all bearings classified in the same family share certain characteristics (e.g., precision grade), they do not have to be identical across the board to be within the same family, and may have differences such as raw materials composition and the presence or absence of shields and seals.

In response to Torrington's statement that the Department should use the TRB model match methodology, SKF and Koyo note that the TRB reviews involve far fewer models than the AFB reviews and suggest that the TRB models differ from AFB models in certain fundamental physical characteristics and in the manner in which those characteristics vary from one model to another. SKF further states that a different model match approach for AFBs is justified because the technical criteria examined by the Department for tapered roller bearings (e.g., the "Y factor") are not the same as those for AFBs. SKF argues that Torrington's identification of products that would allegedly qualify as similar using the Department's TRB methodology, but not the AFB methodology, is incomplete because Torrington does not analyze

how many of these products would pass the 20-percent difmer test used in the preliminary margin calculations for AFBs. SKF further notes that Torrington did not employ a below cost of production test in its identification of observations where the Department resorted to constructed value in the model match, and states that SKF's catalog does not provide support for the TRB approach suggested by Torrington. GMN states that scope determinations made by the Department, particularly with respect to needle and cylindrical roller bearings, demonstrate that information contained in company catalogs is not dispositive to determinations made by the Department.

Several respondents contend that the model match issue is well settled and that all parties have already had sufficient opportunity to air their views on this issue. Respondents state that the issues regarding the model match methodology have been heard on several previous occasions and that the Department has refused to accept the methodology proposed by Torrington; accordingly, the Department should not change its methodology absent compelling circumstances. SKF argues that Torrington explicitly assented to the Department's family matching methodology during the Department's solicitation of pre-review comments prior to the first reviews.

*Department's Position:* Consistent with the final results of the first reviews (AFBs I, 56 FR at 31714–15) and second reviews (AFBs II, 57 FR at 28364–66), we determine to use the family approach in the current reviews as an appropriate method of determining such or similar merchandise. Pursuant to sections 773(a)(1) and 771(16) of the Tariff Act, our model match methodology first attempts to match a bearing sold in the United States with identical bearings sold in the home market. If we fail to find an identical bearing, we then attempt to match a bearing sold in the United States with "similar" bearings, i.e., bearings within the same "family," sold in the home market. If we fail to find a similar match, we will match a bearing sold in the United States with its constructed value pursuant to section 773(a)(2) of the Tariff Act. Therefore, our resort to constructed value as FMV when identical or similar merchandise is not available for comparison purposes is consistent with the statute.

As both petitioners and respondents recognize, the Department has the authority to determine what merchandise qualifies as such or similar for the purposes of the statute. *United Engineering & Forging* v. *United States*, 779 F. Supp. 1375, 1380–82 (CIT 1991); *NTN Bearing Corp.* v. *United States* (*NTN Bearing*), 747 F. Supp. 726, 735–36 (CIT 1990); *Kerr-McGee Chem. Corp.* v. *United States*, 741 F. Supp. 947, 951–52 (CIT 1990); *Monsanto Co.* v. *United States*, 698 F. Supp. 275, 277–278 (CIT 1988); *Timken Co.* v. *United States* (*Timken I*), 630 F. Supp. 1327, 1338 (CIT 1986). Moreover, the Department has a statutory responsibility to determine what merchandise produced in the home market is the most similar to models sold in the United States. *NTN Bearing*, 747 F. Supp. at 735–36; *Timken I*, 630 F. Supp. at 1337–38. Accordingly, the statute requires a methodology that identifies matches of reasonably similar merchandise and prevents matches of dissimilar models.

In the context of the current AFB reviews, the family model match approach constitutes an appropriate use of discretion. Contrary to petitioner's claim that the family approach limits similar bearings to nearly identical merchandise, distinctly different bearings may be classified within the same family. For example, bearings classified in the same family may have the same physical dimensions, but their material composition might differ substantially. For this reason, we have applied the 20-percent difmer test. The selection of certain criteria to define similar merchandise, to the exclusion of other considerations, is an appropriate exercise of administrative discretion. *Timken I*, 630 F. Supp. at 1338; *United Engineering & Forging*, 779 F. Supp. at 1381; *NTN Bearing*, 747 F. Supp. at 736.

Given the above facts, petitioners' argument—that all possible sales comparisons are necessarily preferred to the use of constructed value as a matter of law—is flawed. Section 773(a)(2) of the Tariff Act specifically provides that when neither identical merchandise nor similar merchandise is available for comparison, the Department may resort to constructed value as FMV. The goal in establishing a model match methodology is not simply to set up a method that yields the greatest number of matches between U.S. and home market models; the goal, rather, is to set up a method that identifies matches of reasonably "similar" merchandise, but that distinguishes and prevents matches of dissimilar models. The statute clearly permits the use of constructed value where the Department determines that models in the two markets cannot be considered "similar" merchandise whose comparison is acceptable under the antidumping statute.

Petitioner's argument that we should apply the model match methodology developed in *TRBs from Japan* in these AFBs reviews is also unconvincing. A model matching methodology is developed for particular products on a case-by-case basis. Therefore, the methodology used in another proceeding or review is not necessarily the proper one for the subject merchandise in these reviews. The family approach used in the current reviews was specifically designed to take into account the salient characteristics of the AFB market, particularly the large number of individual bearing models that are offered for sale and the fact that many models may be traced to a core family because they share the following eight characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outside diameter, inside diameter, and width/height.

The SAS programs submitted by Torrington in support of its contention that a TRB-style approach, according to Torrington, would result in more price-to-price comparisons do not indicate that our family approach is unreasonable. We are not persuaded that Torrington's method would in fact result in more price-to-price comparisons because Torrington's method ignores the fact that home market sales may be an inadequate basis for comparison for reasons other than the lack of a family match; for instance, home market sales are disqualified if they fail either the cost test or the 20-percent difmer test. Furthermore, as explained above, the goal in selecting a model match methodology is not to find the greatest number of matches per se, but to find the greatest number of matches of reasonably similar merchandise.

When the family approach was developed, all parties, including Torrington, agreed that it was reasonable not to conduct any ranging of the criteria that would allow bearings with differences in the above eight characteristics to be considered members of the same family. The concern was that ranging the criteria would force comparisons of models with greatly varying costs. Given the fact that the AFB market is comprised of literally thousands of different bearing models, it is appropriate for the Department to require that bearings share these eight characteristics in order to effect our statutory mandate to determine when a reasonable comparison can be made. For these reasons we disagree with Federal-Mogul's contention that the family approach is particularly flawed with

respect to matching subject merchandise produced by Meter.

The history of the AFB proceedings to date demonstrates that all parties, including Torrington, have had numerous occasions to air their views on this issue. We solicited comments from interested parties in devising the family approach for the first AFB reviews, at which time Torrington stated that this proposition was basically unobjectionable. The specific characteristics of the AFB market—thousands of models sold, many of which are grouped around the same family—are as true of the current reviews as they were when Torrington voiced its approval of the family approach. The parties have had several other opportunities to comment on this issue and the Department has carefully weighed the considerations raised in determining that the family approach represents a reasonable model match methodology with respect to the AFB market.

This methodology was developed in the interest of maintaining a stable and predictable approach to the antidumping duty margin calculations for the subject merchandise. Torrington has not provided substantive evidence to support its assertion that the fact that the family approach was used in past reviews will allow respondents to restructure their prices to take advantage of its use in subsequent reviews. Although we will continue to consider the appropriateness of our matching criteria, we will alter the criteria we have consistently applied only when compelling reasons exist. See Final Determination of Sales at Less Than Fair Value; Certain Residential Door Locks and Parts Thereof from Taiwan, 54 FR 53153, 53157 (Dec. 27, 1989).

*Comment 2:* Federal-Mogul and Koyo contend that the Department's practice of using constructed value as the FMV for each model that is sold below the cost of production in over 90 percent of home market sales of that model over an extended period of time, without first attempting to use the price of a "similar" model as FMV, is contrary to the statutory preference for price-based FMVs over CV-based FMVs. Federal-Mogul states that under section 773(a) of the Tariff Act, CV may not be used unless FMV cannot be based upon the prices of sales of such or similar merchandise. Federal-Mogul suggests that the use of CV in this instance, before exhausting all possible family matches (similar merchandise), is due to a programming error.

INA states that this issue is not a programming error but is instead a policy decision that was commented upon by interested parties and decided during the second reviews.

*Department's Position:* We disagree with Federal-Mogul's and Koyo's contention that the statute and regulations express a preference for price-to-price comparisons such that, in the event that a "matched" home market model forms an inadequate FMV because of extensive below-cost sales, the Department should calculate FMV based on the prices of the next most similar merchandise before resorting to CV.

We first note that this issue arises only in situations where *all* home market sales of a model are disregarded due to the below-cost test. Under our current methodology, we disregard all home market sales of a model from our analysis and immediately resort to CV if more than 90 percent of the sales of that model were made below cost over an extended period of time, and are not at prices that permit recovery of all costs within a reasonable period of time in the normal course of trade. See section 773(b) of the Tariff Act. If between 10 and 90 percent of the sales meet these requirements, we disregard only the specific below-cost sales from our analysis and use the remaining above-cost sales as a basis of determining FMV for that model. If over 90 percent of the sales were at prices above cost, we do not disregard any below-cost sales.

Section 773(a) of the Tariff Act expresses a preference for using the price of such or similar merchandise as the FMV before resorting to CV. However, section 773(b) directs the Department to immediately resort to CV if no sales of the merchandise that is the basis of the price-based comparison are adequate as FMV under the cost test:

> Whenever sales are disregarded by virtue of having been made at less than the cost of production and the remaining sales, made at not less than the cost of production, are determined to be inadequate as a basis for the determination of foreign market value under subsection (a) of this section, the administering authority shall employ the constructed value of the merchandise to determine its foreign market value.

Section 773(b).

Accordingly, since the statute explicitly provides for the use of constructed value as FMV when there are no sales of a given model that form an adequate basis for comparison (*i.e.*, when over 90 percent of home market sales of the model were sold below cost over an extended period of time, and are not at prices that permit recovery of all costs within a reasonable period of time in the normal course of trade), we have followed the statutory mandate of resorting to constructed value in this situation. See Final Determination of Sales at Less Than Fair Value: Ferrosilicon from Venezuela, 58 FR 27522, 27534 (May 10, 1993); Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 57 FR 42942, 42947–48 (September 17, 1992); and AFBs II, 57 FR at 28373. Contrary to Federal-Mogul's and Koyo's contentions, therefore, the statute does not require the exhaustion of all possible family matches (similar merchandise) before resorting to CV.

This practice does not conflict with other provisions in the statute. In order to determine FMV under section 773(a), the Department must first select the most similar merchandise. Section 771(16) of the Tariff Act defines such or similar merchandise and provides a hierarchy of preferences for determining which merchandise sold in the foreign market is most similar to the merchandise sold in the United States. Section 771(16) also expresses a preference for the use of identical over similar merchandise, stating categorically that such or similar merchandise is the merchandise that falls into the first hierarchical category in which comparisons can be made. Although we conduct the below-cost test before attempting to match U.S. and home market merchandise, models that were sold below-cost in over 90 percent of home market sales are not disregarded on below-cost grounds until after the most similar model match is found under section 771(16).

Section 771(16) requires us to descend through successive levels of the hierarchy until sales of such or similar merchandise are found. However, it does not condition the determination of such or similar merchandise on any basis other than the similarity of the merchandise. In particular, section 771(16) directs the Department only to "the first of the following categories * * *" and not to the next category when the first match is below cost. If this were not the case, the cost test would inappropriately become part of the basis for determining what constitutes such or similar merchandise, which is clearly not the purpose of the cost test. Therefore, because section 771(16) specifies that the determination of such or similar merchandise depends solely on the similarity of the merchandise and not on whether the most similar model is sold above cost, our resort to CV, after finding the most similar model and then determining that it is sold below cost in over 90 percent of home market sales, does not conflict with this provision.

Accordingly, we followed our current practice and based FMV on CV when below-cost sales eliminate a comparison with the most similar home market model.

*Comment 3:* Koyo, NMB Pelmec, and NTN argue that the Department should use the variable cost of manufacturing (VCOM) of U.S. models, rather than the total cost of manufacturing, as the denominator for the 20-difmer test. Koyo argues that since the numerator of the formula is the absolute difference between the VCOM of the home market and the U.S. model, the denominator should consist of the VCOM of the U.S. model, not the total COM. NMB argues that only variable manufacturing costs should be considered in calculating the difmer, since 19 CFR 353.57 limits the difmer adjustment to differences in the physical characteristics of the merchandise. NTN argues that the use of total COM in the denominator is an arbitrary shift in policy that fails to represent the goal of the family match methodology, which is to use the family as the FMV only when the costs of the family are reasonably close to the costs of the U.S. model.

Koyo also argues that the Department should not compare the variable manufacturing costs of the U.S. model to the weighted-average variable manufacturing costs of the bearing family. Instead, the Department should conduct the difmer test on each home market model that comprises the bearing family in order to ensure that no home market models that are dissimilar to U.S. models in terms of commercial value are treated as similar merchandise for purposes of the model match.

Torrington disagrees with respondents concerning the proper denominator for the difmer test, stating that a recent ITA policy bulletin supports the use of total manufacturing costs as the denominator, and that neither the statute nor the regulations limit the difmer test to variable manufacturing costs.

*Department's Position:* We disagree with respondents. The total COM is an appropriate point of reference for the 20-percent difmer test. We are measuring the physical differences in merchandise, for which we make an adjustment pursuant to 19 CFR 353.57. Since differences in VCOM are primarily attributable to physical differences in merchandise, it is appropriate to use VCOM in the numerator.

The purpose of choosing the total COM as the point of reference is to provide a stable benchmark against which the absolute size of the physical difference in merchandise can be compared in order to determine if the difference is so large that the two products being compared cannot be considered similar for the purposes of the model match. We are not using the price of the U.S. model as this benchmark because the price of the model may be distorted if the model is sold at less than foreign market value in the United States. Total COM is preferable to VCOM as a point of reference because it more closely approximates the value of the model.

We also reject Koyo's proposal that we conduct a difmer test on each home market model that comprises the bearing family. The difmer test is only necessary when "similar" merchandise is used in determining FMV. In these reviews, we define similar merchandise as the bearing family to which the relevant model sold in the United States belongs. Since it is the weighted-average price of the bearing family that is being used as FMV in the case of "similar" matches, and not the price of any of the individual bearings that comprise the bearing family, the appropriate difmer test is a comparison of the VCOM of the model sold in the U.S. with the weighted-average VCOM of the bearing family.

*Comment 4:* Torrington and Koyo allege that the computer program the Department used to calculate Koyo's preliminary results contains a clerical error that results in the failure to make any family matches.

*Department's Position:* We agree that for the preliminary results we committed a clerical error that resulted in the failure to use any families as FMVs for Koyo's preliminary results. We have corrected this error for the final results.

*Comment 5:* Federal-Mogul and SNR-France assert that the Department committed a clerical error regarding SNR's preliminary results, which resulted in the use of models that failed the cost test (greater than 90 percent of sales below cost) in determining FMVs.

*Department's Position:* We agree that for the preliminary results we committed a clerical error that resulted in the use of models that failed the cost test in determining FMVs. We have corrected this error for the final results.

*8. Further Manufacturing*

*Comment 1:* NSK contends that the Tariff Act only authorizes a further manufacturing analysis where a process of manufacturing or assembly is performed on the imported merchandise in the United States. See 19 U.S.C. at 1677a(e)(3). NSK claims that many of the parts imported by NSK are applied to a completed bearing and are not subject to a process of further manufacturing or assembly.

Torrington, also citing 19 U.S.C. at 1677a(e)(3), argues that the Department should continue to apply its further manufacturing analysis to NSK's imported parts.

*Department's Position:* We agree with petitioner. Because the addition of a part to an otherwise finished bearing constitutes a process of assembly, we have adjusted ESP sales by the amount of value added according to 19 U.S.C. at 1677a(e)(3).

*Comment 2:* NSK argues that the Department erroneously included in U.S. further manufacturing costs those costs that NSK incurred for repacking finished products in the United States. According to NSK, its reported further manufacturing costs already include packing costs. Therefore, for the final results, NSK requests that the Department eliminate the adjustment to further manufacturing costs for U.S. repacking expenses.

Torrington responds that the Department should reject NSK's argument because there is no evidence in the record that NSK's reported further manufacturing costs contain packing costs. Torrington concludes that the Department should continue to add U.S. repacking to NSK's further manufacturing costs for the final results.

*Department's Position:* We agree with Torrington. The Department's further manufacturing questionnaire informs respondents that they should not report packing expenses because the Department will rely on the packing expense data reported in respondents' U.S. sales response. Although NSK claims that packing expenses incurred in the United States for further manufactured products are reported in its further manufacturing calculations, we are unable to confirm that this is the case. Because we instructed NSK to rely on previously reported packing data for purposes of our further manufacturing calculations, and because we cannot confirm NSK's claim that packing expenses are already included in further manufacturing costs, we have not made an adjustment to the further manufacturing that NSK reported in its U.S. sales response in our further manufacturing calculations for these final results.

*9. Level of Trade*

*Comment 1:* NTN-Japan argues that the Department has no basis for its decision not to recognize aftermarket customers as constituting a distinct level of trade. According to NTN, the Department's decision was based on a flawed analysis because it focused only

on differences between weighted-average selling prices. NTN asserts that the Department should have taken into account such other factors as differences in the frequency and volume of sales, terms of sale, and terms of payment, which together demonstrate the existence of more than two levels of trade. NTN further asserts that the Department failed to articulate any standard by which it determined that the calculated difference between average aftermarket and distributor prices was insufficient to warrant consideration of sales to aftermarket customers as being made at a distinct level of trade. As a result of these flaws in the Department's analysis, NTN argues that the Department should accept the three levels of trade reported by NTN.

Torrington responds that NTN's level-of-trade classifications are not supported by substantial evidence and are inconsistent with the requirements of the Department's questionnaire. Based on these objections, Torrington states that the Department reasonably determined that the difference between average aftermarket and distributor prices was insufficient to warrant consideration of aftermarket customers as comprising a separate level of trade. Torrington adds, however, that the Department's comparison of weighted-average prices is not particularly meaningful because it does not provide any corroboration for NTN's identification of the level of trade of its customers.

*Department's Position:* We agree with NTN. We initially base our level-of-trade classifications on the function of the class of customer reported by respondents. Those classifications may be rebutted by such other factors as differences in prices and selling expenses that discredit a respondent's distinctions. See Import Administration Policy Bulletin 92/1, July 29, 1992. Because our preliminary level of trade analysis did not focus on the function of the customer category, we concur with NTN that we improperly combined distributor and aftermarket sales. Further, we note that Torrington failed to provide any evidence to rebut NTN's claim that aftermarket sales constituted a distinct level of trade. Because we have no information to suggest that NTN's aftermarket customers perform the same function as either original equipment manufacturers or distributors, or that the prices and selling expenses for sales to aftermarket customers do not differ from those to other customer categories, we conclude that NTN's sales to aftermarket customers constitute a distinct level of trade. Therefore, we have compared aftermarket sales in the United States first to aftermarket sales of such or similar merchandise in the home market.

*Comment 2:* NSK argues that the Department failed to include certain transactions in its level-of-trade analysis of home market sales. According to NSK, although the Department correctly conducted its level-of-trade analysis on the basis of the end use of the merchandise, the Department did not use in its analysis all the aftermarket codes reported by NSK. As a result, NSK asserts that the Department not only excluded home market sales to original equipment manufacturers for aftermarket use from its level-of-trade analysis, it incorrectly included all home market sales to original equipment manufacturers in the same level of trade as in its calculation of the preliminary dumping margins. To correct this error, NSK advises the Department to include the additional aftermarket codes in the computer program used to conduct the level-of-trade analysis, and to revise the level-of-trade designation of certain home market sales to original equipment manufacturers in the computer program used to calculate NSK's dumping margins.

Torrington responds that the Department's examination of end use in conducting its level of trade analysis represents a significant departure from Departmental practice. Torrington argues that the Department previously has rejected NSK's classification of home market levels of trade on the basis of end use, and that the end use of an "aftermarket" bearing sold to an original equipment manufacturer is presumably the same as the end use of other bearings purchased by that customer. Torrington further argues that comparisons of weighted-average prices are not useful in determining levels of trade. As a result, Torrington opposes NSK's arguments, and requests that the Department return to its practice of determining levels of trade on the basis of customer category.

*Department's Position:* We agree with Torrington. As stated in our response to Comment 1 above, we focus on the customer's function in the chain of distribution in classifying sales according to level of trade. We do not consider the end use of products sold by the respondent's customer to be particularly meaningful in determining levels of trade. NSK has not presented any evidence that original equipment manufacturers perform different functions or that distributors perform different functions depending upon the end use of the bearings they purchase, or that NSK's selling expenses differ according to the end use of the products by the customer. Therefore, for these final results, we have based our level-of-trade classifications not on NSK's aftermarket codes, but on the customer categories reported by NSK.

*Comment 3:* NTN argues that the Department should compare U.S. and home market sales at the same level of trade. According to NTN, comparing sales across different levels of trade distorts the calculation of dumping margins because prices differ significantly for each level of trade. NTN further argues that if the Department decides to compare sales across levels of trade for the final results, then the Department should alleviate the distortions caused by such comparisons by making a level-of-trade adjustment based on differences in prices or, alternatively, differences in indirect selling expenses for each level of trade, as set forth by NTN in its questionnaire responses.

In opposing NTN's arguments, Torrington states that the CIT has consistently upheld the Department's comparison of sales across levels of trade. Torrington and Federal-Mogul oppose NTN's claim for a level-of-trade adjustment. According to Federal-Mogul, NTN failed to demonstrate that any differences in selling prices are due to differences in the level of trade. Further, Torrington and Federal-Mogul challenge the methods that NTN used in its attempts to quantify a level-of-trade adjustment. Specifically, Federal-Mogul contends that, in the absence of any evidence that price differentials are due to differences in levels of trade, quantification of a level-of-trade adjustment on the basis of differences in selling prices is inappropriate. Moreover, Torrington and Federal-Mogul reject NTN's use of indirect selling expenses as the basis for a level-of-trade adjustment, because NTN's method of allocating these expenses to different levels of trade is unreasonable, unreliable and because such expenses, which do not vary for individual sales, do not reflect differences in levels of trade. As a result, Torrington and Federal-Mogul conclude that the Department should not make a level-of-trade adjustment for the final results.

*Department's Position:* We agree with Torrington and Federal-Mogul. The Department is required by 19 CFR 353.58 to compare merchandise at different levels of trade if sales at the same commercial level of trade do not permit an adequate comparison. Import Administration Policy Bulletin 92/1, July 29, 1992. Accordingly, when we

were unable to compare NTN's U.S. sales to home market sales of such or similar merchandise at the same level of trade, we attempted to find sales of such or similar merchandise at the next most similar level of trade.

We also reject NTN's argument that we must make an adjustment for differences in levels of trade if we compare sales at different levels of trade. In order for the Department to make a level-of-trade adjustment, respondents must quantify any price differentials that are directly attributable to differences in levels of trade. Although NTN contends that the Department can make a level of trade adjustment on the basis of price differences, NTN has failed to demonstrate what portion, if any, of those price differences is attributable to differences in levels of trade. NTN's request for a level-of-trade adjustment using indirect selling expenses is similarly flawed, because NTN's allocation of a common pool of fixed expenses to different levels of trade using relative sales value demonstrates that these expenses do not vary according to levels of trade. Because NTN has failed to quantify adequately a level-of-trade adjustment, we have not adjusted FMV for differences in levels of trade.

*Comment 4:* Torrington argues that the Department should use BIA in determining the appropriate level-of-trade comparison for INA's home market sales to government customers. According to Torrington, INA failed to respond to the Department's request for additional information regarding such sales. Therefore, Torrington concludes that the Department should presume, as BIA, that INA's home market sales to government customers should be compared with U.S. sales to original equipment manufacturers.

INA responds that it provided a narrative explanation of the nature of its home market sales to government customers. INA also states that it did not have any basis for determining whether such sales should be compared to U.S. sales to original equipment manufacturers or distributors, and, therefore, deferred to the Department's judgment in selecting the appropriate level-of-trade comparison. Although INA did not recommend a level-of-trade comparison for the home market sales in question, INA argues that it provided the information required for Torrington to make reasoned arguments and for the Department to determine the appropriate level-of-trade comparisons. Thus, INA contends that the Department should not apply BIA, but should determine level of trade comparisons based on the criteria that it deems to be appropriate.

*Department's Position:* In the absence of any evidence to the contrary, we determine that government customers in the home market function as end users rather than as distributors. Because original equipment manufacturers also function as end users, we have compared INA's home market sales to government customers with U.S. sales to original equipment manufacturers.

*10. Packing and Movement*

*Comment 1:* Torrington contends that adjustments to foreign market value for both pre- and post-sale movement charges are contrary to the purpose of the antidumping statute. Torrington argues that the statute mandates that the Department make adjustments based on differences in circumstance of sale that are directly related to the sales in question. FMV can be adjusted for indirect selling expenses to the extent that these expenses do not exceed the amount of the ESP cap. Torrington states that the pre-sale movement charges claimed by respondents in this review were not directly related to the sale of bearings in the home market and that, "by their very nature, home market pre-sale expenses for movement from factory (or distribution center) cannot be directly linked to sales of the merchandise under investigation, as the statute requires." Moreover, while the statute and regulations require that ESP be reduced by the amount of expenses incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, there is no parallel provision on the FMV side. Torrington cites *Silver Reed America, Inc.* v. *United States* (Silver Reed), 581 F.Supp. 1290, 23 (CIT 1984), for support of its claim that the expenses incurred in two markets were distinct. Torrington concludes by noting that in the previous review, the Department stated that the adjustment for pre-sale inland freight was necessary to ensure an "apples-to-apples" comparison. While this may be true, Torrington asserts that "similar" expenses must be deducted from both sides of the equation, because there is no basis for performing such an adjustment if the amounts claimed in the two markets are not similar.

FAG, GMN, Koyo, Nachi, NSK, SKF, and RHP contend that the Department's practice of deducting pre-sale inland freight in the home market, regardless of whether pre-sale inland freight was incurred for the U.S. market, confirms established practice, has recently been upheld by the CIT in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States (Ad Hoc Committee)*, 787 F. Supp. 208, 211–213 (CIT 1992), and is consistent with the language and purpose of the antidumping law. Koyo argues that the antidumping law does not preclude pre-sale freight adjustments in the calculation of FMV. In fact, according to Koyo, the circumstance-of-sale provision clearly authorizes the Department to adjust the home market for pre-sale inland freight. Respondents note that the CIT in *Ad Hoc Committee* supported the Department's methodology of deducting pre-sale inland freight in order to effect a fair comparison of the ex-factory prices in the United States and the home market.

*Department's Position:* We agree with respondents. In keeping with the Department's practice in previous reviews, we have determined that pre-sale inland freight should be treated as a movement expense and deducted from foreign market value in order to achieve a fair comparison of the U.S. and home market ex-factory prices. See Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Mexico, 55 FR 29244, (July 18, 1990) and AFBs I, 56 FR at 31692. Because we do not treat pre-sale and post-sale movement expenses differently in calculating an ex-factory U.S. price, we must treat these expenses in a similar manner in the home market to ensure an accurate and meaningful price-to-price comparison. See *Ad Hoc Committee* at 213. Because merchandise in each market may be handled differently and thus incur different freight expenses, the deduction of pre-sale inland freight in either the home market or the U.S. market is not contingent on whether pre-sale inland freight occurred in the other market.

*Comment 2:* IJK alleges that the Department double-counted packing expenses when calculating constructed value. IJK states that it included home market packing expenses in the reported general and administrative expenses that the Department used to calculate constructed value. However, for the preliminary results, the Department added U.S. packing to the constructed value without deducting home market packing expenses.

*Department's Position:* We agree. For these final results we removed home market packing expenses included in the calculation of constructed value before adding U.S. packing expenses. We also made any necessary adjustments to profit.

*Comment 3:* Federal-Mogul argues that NPBS incorrectly reported as indirect selling expenses certain expenses associated with repacking its

merchandise by its affiliates in the United States. Accordingly, NPBS has understated total U.S. packing expenses and overstated the cap on ESP offset adjustments to FMV. Federal-Mogul also notes that the Department rejected similar treatment of U.S. repacking expenses by NSK in the second administrative review of AFBs.

*Department's Position:* We agree with Federal-Mogul. For the final results we have estimated NPBS' U.S. repacking expenses on the basis of NPBS' reported indirect selling expenses. Accordingly, we have reduced NPBS' claimed indirect selling expenses by the amount of U.S. repacking expenses.

*Comment 4:* Federal-Mogul argues that NPBS incorrectly reported freight-out as an indirect selling expense, as opposed to an individual movement expense. Federal-Mogul asserts that the Department, after isolating the amount of freight-out, must deduct it from United States price.

Department's Position: We agree with Federal-Mogul. For the final results we have isolated NPBS' freight-out expense and treated it as a movement expense. Accordingly, we have reduced NPBS' claimed indirect selling expense by the amount of freight-out.

*Comment 5:* Federal-Mogul argues that the Department erroneously treated NSK's air freight expenses for U.S. sales as direct selling expenses. According to Federal-Mogul, such expenses are clearly related to the movement of the merchandise and, therefore, should be deducted from USP in all instances. Federal-Mogul notes, however, that the Department's treatment of these expenses as direct selling expenses precludes the appropriate deductions from USP in certain instances. Because NSK's air freight charges are movement expenses, Federal-Mogul requests that the Department revise its computer program to deduct these charges from USP for all U.S. sales.

*Department's Position:* We agree with Federal-Mogul and have revised our calculations accordingly for these final results.

*Comment 6:* Federal-Mogul argues that NSK failed to report freight expenses for certain U.S. sales. According to Federal-Mogul, NSK did not report freight charges for U.S. sales whose terms of sale NSK identified as "other." Federal-Mogul states that NSK's failure to report such charges for these sales is inaccurate because the terms of sale encompassed by the "other" category may include arrangements in which NSK bore the cost of shipping the merchandise to the customer. Accordingly, Federal-Mogul urges the Department to use as BIA the highest reported U.S. freight expense for any U.S. sale to represent freight charges for U.S. sales whose terms of sale NSK reported as "other."

NSK responds that in preparing its questionnaire response, it allocated all of its expenses for shipping merchandise to U.S. customers. In doing so, it chose to allocate the expenses to sales whose terms of sale were either "prepaid" or "ship with," because NSK always bears the freight costs for sales made pursuant to these terms. Although NSK acknowledges that there may have been instances in which it bore freight costs for sales made pursuant to "other" terms of sales, it argues that this would be the case only on rare occasions in which NSK sales personnel delivered merchandise in the course of routine sales calls. In these instances, any expenses incurred for delivery would already be captured in NSK's indirect selling expenses. Thus, NSK argues that the Department should neither resort to BIA nor reallocate NSK's reported U.S. freight expenses for these final results.

*Department's Position:* We agree with NSK. For the overwhelming majority of its sales, NSK paid for transportation of merchandise to the customer. Because NSK does not routinely deliver merchandise to customers when terms of sale are reported as "other," and because NSK accounts for expenses incurred in those instances when it does, we have not revised NSK's reported expenses for U.S. freight out to customers for these final results.

*Comment 7:* Federal-Mogul argues that the Department should reallocate certain of NSK's home market inland freight expenses. According to Federal-Mogul, the Department found at verification that certain expenses NSK claimed to be incurred exclusively for home market sales actually pertained to all NSK sales. The Department failed in its preliminary calculations, however, to reallocate these expenses pursuant to its verification findings. Based on the verification findings, Federal-Mogul requests that the Department reallocate the home market freight expenses in question for these final results.

NSK responds that the Department properly declined to reallocate the expenses in question because they comprised a de minimis portion of NSK's total freight expenses. Because the Department frequently declines to make adjustments that have insignificant effects on its calculations, NSK asserts that the Department should not reallocate the expenses in question for these final results.

*Department's Position:* We agree with NSK. Although we found at verification that NSK failed to allocate certain inland freight charges to export sales, the expenses in question are minuscule and would have a de minimis effect on our calculations. Therefore, we have not reallocated the expenses in question.

*Comment 8:* INA claims that the Department failed to eliminate warehouse-to-unrelated-customer inland freight for U.S. sales to OEMs. INA states that it reallocated the subject freight expense to distributors only, in accordance with the Department's instruction. INA argues that since the revised factor allocates the total amount of warehouse-to-unrelated-customer inland freight expense to distributor sales only, the failure to eliminate the original warehouse-to-unrelated-customer inland freight expense with respect to OEM sales results in double-counting of the expense.

Torrington argues that, unless all sales to OEMs were ex-warehouse, freight for each sale must be reported and made the subject of appropriate adjustments. Petitioner states that the exclusive allocation of the aggregate freight expense to sales to distributors results in the overstatement of dumping to distributors while dumping to OEMs is understated.

*Department's Position:* Because the record indicates that INA did not incur warehouse-to-unrelated-customer inland freight on sales to OEMs, we agree with INA that such expense should be eliminated from the calculation of U.S. price for sales to OEMs. Accordingly, for purposes of calculating the final results, we have set warehouse-to-unrelated-customer inland freight equal to zero for sales to OEMs.

*Comment 9:* Torrington asserts that the Department should not deduct inland freight from home market unit price in calculating foreign market value for the final results. Petitioner claims that INA disregarded the Department's instruction to reallocate domestic inland freight using the elements which reflect the manner in which the expense was incurred. Accordingly, Torrington argues that such an adjustment should be substituted for the reported inland freight amount. Petitioner cites Final Determination of Sales at Less Than Fair Value; Certain Small Business Telephone Systems and Subassemblies Thereof from Korea, 54 FR 53141 (December 27, 1989) to support its contention.

INA argues that it did not disregard the Department's instructions to reallocate domestic inland freight, but that sales value provided the only consistent and verifiable basis available for allocating domestic inland freight expense. Respondent further notes that

the Department found this methodology to be acceptable in prior reviews, in the AFB investigation, and in other cases, such as Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan, 56 FR 41508, 41512 (August 21, 1991).

*Department's Position:* While we prefer allocations of freight costs based on volume, weight, distance, or a combination of these, to allocations based on sales value, we can accept such allocations if they constitute a reasonable alternative methodology. We note that INA did not disregard our instructions, but was unable to provide the preferred domestic inland freight allocation. From the evidence on the record, we have no basis to conclude that this is an unreasonable allocation methodology. Torrington does not provide evidence showing that this allocation methodology is distortive. See AFBs I, 56 FR at 31715.

*Comment 10:* Federal-Mogul contends that INA's repacking costs should be deducted from USP. INA disagrees and states that the correct adjustment is the addition of U.S. repacking costs to home market price and the deduction of home market packing from home market price. INA cites Koyo Seiko Co., Ltd. v. United States, 810 F.Supp. 1287, 1291–2 (CIT 1993) to support its argument.

*Department's Position:* We agree with Federal-Mogul that INA's repacking costs should be deducted from U.S. price. Contrary to respondent's assertion, such a deduction is in accordance with Department practice. *Comment 2* of the U.S. Price Methodology section *infra* explains why this is in keeping with our policy. In the preliminary results, we correctly deducted home market packing expenses from the home market price and added U.S. packing expenses incurred in the home market to home market price. However, we erroneously failed to deduct the repacking costs from U.S. price. Accordingly, we have corrected this error for the calculation of the final results.

*Comment 11:* Citing the Department's analysis memorandum for INA's preliminary results, Federal-Mogul contends that the Department employed the incorrect factor in calculating U.S. inland freight from port to warehouse. INA disagrees and states that the analysis memo rather than the margin program is in error.

*Department's Position:* We agree with INA that we misstated the factor for the calculation of U.S. inland freight from port to warehouse only in our analysis memorandum for INA's preliminary results. Therefore, the margin program requires no revision.

*Comment 12:* Torrington argues that the Department should not deduct from FMV certain movement expenses that NMB/Pelmec Thai reported for its "route B" sales in the home market. According to Torrington, NMB/Pelmec must incur "extraordinary expenses" for these sales because the merchandise is exported to Singapore and then re-exported to Thailand. Because NMB/Pelmec makes "route B" sales under "extraordinary circumstances" in order to avoid the Thai government's quantity restriction on domestic sales, Torrington asserts that the Department should not deduct from FMV any movement expenses that NMB/Pelmec Thai incurs after the merchandise leaves Thailand.

*Department's Position:* We disagree with Torrington. As we stated in our response to Torrington's comment regarding the classification of "route B" sales, we believe that NMB/Pelmec Thai makes these sales in the normal course of its business. In determining whether to accept movement charges, we do not analyze whether they are incurred as a result of "extraordinary circumstances"; we accept or disallow movement expenses based on whether they were incurred and the reasonableness of the information reported to us. Because we have determined that NMB/Pelmec Thai incurs these expenses for movement of the merchandise sold through this "route B," we have deducted all reported movement expenses from NMB/Pelmec Thai's "route B" sales for these final results.

*Comment 13:* SNECMA-France and SNECMA-Italy argue that the Department should not deduct U.S. Customs duties from USP because SNECMA did not incur expenses for U.S. Customs duties during the POR. Customs duties were paid by SNECMA's unrelated importer of record.

*Department's Position:* We agree. For these final results, the Department recalculated adjusted USP without deducting U.S. Customs duties.

*11. Related Parties*

*Comment 1:* NTN contests the basis for the Department's preliminary decision to disregard NTN's home market sales to related parties. According to NTN, the Department excluded related party sales from its analysis without having first articulated any standard for determining whether sales prices to related parties were comparable to sales prices to unrelated parties. NTN argues that the Department should take into account the manner in which related parties conducted their business transactions, the level of trade at which NTN made sales to related parties, payment terms, and sales quantities in determining whether to exclude related party transactions from its analysis.

Torrington and Federal-Mogul reject NTN's argument that the Department should examine factors other than price on the grounds that the Department's regulations identify price as the only factor to be used in determining the comparability of sales prices to related and unrelated parties. Torrington and Federal-Mogul further argue that the Department's regulations place the burden upon respondents to establish the comparability of sales prices to related and unrelated parties. Because NTN made no attempt to demonstrate such comparability, Torrington and Federal-Mogul conclude that the Department should continue to disregard home market sales to related parties.

*Department's Position:* We agree with NTN. We acknowledge that differences in level of trade, and the terms of sale or terms of payment may affect the comparability of sales prices to related and unrelated parties. Therefore, we have revised our arm's-length test to account for different levels of trade and have accounted for differences in terms of sale and circumstances of sale by deducting movement charges and direct selling expenses from the prices used in our arm's-length test. However, we did not have any information that would allow us to specifically account for differences in sales quantities in our arm's-length test, except to the extent that different levels of trade reflect any differences in sales quantities.

We disagree with Torrington's and Federal-Mogul's arguments that the regulations preclude the Department from considering factors other than prices in assessing the validity of prices to related parties. Although 19 CFR 353.45 does not mention such factors as level of trade and terms of sale, the regulation clearly is intended to prevent comparisons to below-market prices resulting from the relationship between the buyer and seller. If factors other than customer relationship, such as level of trade or terms of sale, account for the price differences, then our arm's-length test would achieve a skewed result if we did not account for these other factors.

Finally, although we agree with Torrington and Federal-Mogul that respondents have the responsibility to demonstrate that sales prices to related parties are comparable to sales prices to unrelated parties, it has been our longstanding practice to conduct an arm's-length test independently to determine whether prices to related parties in foreign markets are equal to or

higher than prices to unrelated parties in those markets.

Although we revised our arm's-length test to account for certain factors highlighted by NTN, we found nonetheless that NTN's prices to related parties were, for the vast majority of home market sales, lower than those to unrelated parties. Therefore, we have excluded NTN's home market sales to related parties from our analysis for these final results.

*Comment 2:* SNR-France contests the basis for the Department's preliminary decision to disregard SNR's home market sales to related parties. Specifically, SNR argues that the Department has not demonstrated that price differentials are the result of customer relationships, and that the Department should take into account the possibility that differences in sales quantities may create price differentials. According to SNR, its sales to related parties typically involve much larger quantities than its sales to unrelated parties. In support of its argument, SNR asserts that a computer analysis similar to that used by the Department in its price stability analysis indicates the existence of a correlation between sales prices and quantities, and the absence of any correlation between sales prices and customer relationship. Therefore, SNR concludes that the Department should not disregard SNR's home market sales to related parties for the final results.

Federal-Mogul rejects SNR's argument on the grounds that SNR made no attempt to establish the comparability of sales prices to related and unrelated parties, despite the fact that the Department's regulations place this burden upon respondents. Federal-Mogul also argues that SNR has not attempted to demonstrate that sales prices are not affected by SNR's relationship to its customers, and that SNR's analysis of price comparability ignores such other determining factors as payment terms and discounts that may vary because of the nature of SNR's relationship with its customers. As a result, Federal-Mogul concludes that the Department should not use in its final analysis SNR's home market sales to related parties.

*Department's Position:* We agree in part with SNR. We have revised our price comparability analysis to account for factors other than customer relationship that may affect the results of the analysis. As we stated in our response to the previous comment, we have revised our arm's-length test to account for differences in levels of trade, terms of payment, and circumstances of sale. Moreover, by conducting our arm's-length test according to levels of trade, we have accounted for quantity differences to the extent that, as SNR notes in its case brief, its sales quantities vary according to levels of trade. Based on our revised arm's-length test, we determine that, on average, SNR's sales prices to related parties are lower than its prices to unrelated parties. Therefore, we have excluded SNR's sales to related parties in the home market from our final analysis.

*Comment 3:* Torrington notes that the Department excluded Koyo's home market sales to related parties from its preliminary analysis because the Department's arm's-length test indicated that Koyo's prices to related parties were lower than its prices to unrelated parties. Torrington requests that the Department use the same approach to Koyo's related party sales for these final results.

*Department's Position:* While we have conducted an arm's-length test of Koyo's home market sales to related parties, we have revised our arm's-length test, as discussed above. Based on the results of this test, we have continued to exclude BB sales to related parties from our analysis of Koyo's home market sales to related parties for these final results, but not CRB sales to related parties.

*Comment 4:* RHP and NSK-Europe argue that the Department should not have collapsed the two companies and imposed BIA on RHP's sales of NSK-Europe products in the United States. RHP and NSK-Europe assert that the Department does not collapse related entities "except in certain relatively unusual situations, where the type and degree of relationship is so significant that [the Department] find[s] there is a strong possibility of price manipulation." AFB LTFV Investigation, 54 FR 19089. In addition, RHP and NSK-Europe state that the Department does not collapse related entities with separate manufacturing facilities, sales operations, and pricing policies. Final Determination of Sales at Less Than Fair Value; Hot Rolled Carbon Steel Plate and Sheet from Brazil, 49 FR 3102, 3104 (January 25, 1984); Cellular Mobile Telephones and Subassemblies from Japan, 55 FR 29394, 29396 (July 19, 1990).

Citing the Department's verification report, RHP and NSK-Europe contend that RHP purchased product from NSK-Europe solely through arm's-length transactions and that the two companies have maintained a competitive, arm's-length relationship since before the two companies became affiliated. Furthermore, RHP and NSK-Europe argue that they are separately run entities with independent facilities, operations, and pricing structures and that they do not share significant marketing information or strategies. NSK-Europe states that the two companies exercise no controlling ownership interest in each other. It also argues that the fact that RHP and NSK-Europe combined their automotive product sales process in a limited way should not affect the Department's analysis because each company invoiced their customers directly and independently. NSK-Europe also contends that Torrington's argument that RHP and NSK-Europe have rationalized their production operations is irrelevant because the alleged rationalization occurred years before the two companies became related.

With regard to NSK-Japan, the parent of both RHP and NSK-Europe, RHP asserts that it has no directors in common with NSK-Japan and does not share bank accounts, manufacturing, distribution, or sales facilities with NSK-Japan. In sum, RHP claims to have remained autonomous under NSK-Japan's ownership. NSK-Europe contends that a parent's percentage ownership of a subsidiary does not, in and of itself, determine whether the Department should collapse related entities. NSK-Europe further contends that NSK-Japan exercises no control over NSK-Europe's or RHP's sales and marketing practices vis-a-vis each other, and only minimal operational control over production decisions. Moreover, NSK-Europe argues that despite the fact that NSK-Europe and RHP share board members with NSK-Japan, NSK-Japan does not direct the day-to-day operations of either company. NSK-Europe cites Final Determination of Sales at Less Than Fair Value; Coated Groundwood Paper from Finland, 56 FR 56363, 56369 (November 4, 1991), as an example of a case where the Department did not collapse related companies that shared board members.

Finally, RHP and NSK-Europe argue that their participation in the European Research Center ("ERC") is not relevant because the ERC is a separate corporate entity and because the ERC became operational only two months before the end of the POR. Furthermore, during those two months, the ERC had no effect on the manufacturing or sales operations of the two companies. RHP concludes that its relationship with NSK-Europe is not so unusual a situation that it would require the collapsing of the two companies. Therefore, RHP believes that BIA should not be imposed on RHP sales of merchandise produced by NSK-Europe.

Torrington and Federal-Mogul argue that the Department properly collapsed

RHP and NSK-Europe. Torrington refers to Final Determination of Sales at Less Than Fair Value; Certain Granite Products from Italy, 53 FR 27189 (July 19, 1988) and to Final Determination of Sales at Less Than Fair Value; Gray Portland Cement and Clinker from Mexico, 55 FR 29246–47 (July 18, 1990) as examples where the Department collapsed related companies when the companies' relationships were intertwined, they conducted transactions between them, and they shared certain facilities. Torrington argues that the facts in this case are comparable, as demonstrated by NSK-Japan's annual reports and by the Department's verification reports. Torrington asserts that there is extensive collaboration among all members of the NSK-group and quotes from NSK-Japan's 1991 Annual Report, at 8: "[NSK has established a] tripartite global sales, marketing, and manufacturing structure—Japan, including Asia and Oceania, the Americas and Europe. Each base is linked to Japan by an information network system to facilitate production, marketing, and technical cooperation"; "[NSK-Europe] and UPI [the RHP holding company] * * * are proceeding to build a new relationship to multiply production results in the United Kingdom" (Id. at 12); and "NSK-implemented marketing activities in cooperation with UPI, which joined the NSK-Group in 1990" (Id. at 16).

As additional evidence of NSK-Japan's degree of control over both RHP and NSK-Europe, Torrington notes NSK-Japan's recent decision to integrate all the sales activities of NSK-Europe and RHP in Europe. Furthermore, Torrington argues that NSK-Japan, UPI, RHP, and NSK-Europe share many board members who serve important managerial functions. Torrington cites several such board members and directors. Torrington asserts that in cases where the board members in common are involved in management or marketing functions, it is likely that there is common access to pertinent sales, marketing, and manufacturing information. Therefore, the companies should be collapsed. Torrington also argues that NSK-Europe and RHP have rationalized their production operations, as RHP no longer manufactures any of the product it purchases from NSK-Europe. Torrington states that this means that the two companies have consolidated supply and/or production operations, and should be collapsed for this reason also.

Torrington and Federal-Mogul contend that the verification reports fully support the decision to collapse. Torrington quotes the Department's findings, several of which contain business proprietary information, to argue that RHP and NSK-Europe are intertwined. In the Department's public versions of the verification reports, Torrington cites the findings that RHP has come under pressure from NSK-Japan not to reveal the nature of their corporate relationship in certain circumstances, that NSK-Japan was able to create new sales divisions and a research center by combining elements of RHP and NSK-Europe by executive decision, and that NSK-Japan influences and approves the amount of NSK-Europe's yearly retained earnings and long-term planning. Finally, Torrington argues that the very fact that NSK-Europe filed a prehearing brief solely to request relief for RHP belies its contention that the companies are separate, and shows that they have common interests. Torrington argues that NSK-Europe was fully warned that failure to provide appropriate sales and cost information would result in the use of BIA, and that the Department should not now reward NSK-Europe's conduct. Federal-Mogul cites Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from France, 52 FR 812, 814 (January 9, 1987) as an example of a case where the Department resorted to BIA where a respondent's affiliate failed to provide sales information.

*Department's Position:* We agree with Torrington and Federal-Mogul. In AFBs II, 57 FR at 28393, we stated that "the Department's usual practice is to collapse related parties if the nature of their relationship allows the possibility of price and cost manipulation." In the recent Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Corrosion-Resistant Carbon Steel Flat Products from Japan (Carbon Steel from Japan), issued on June 21, 1993 and to be published shortly, the Department provided additional guidance with respect to the collapsing of related parties. In Carbon Steel from Japan, the Department stated that in addition to the degree of voting control one company may have over another and the extent of their financial relationship, "the Department uses other factors in determining whether to collapse related enterprises, which include whether: (1) The companies are closely intertwined; (2) the companies have transactions with each other; (3) the companies have similar production equipment, so that it would not be necessary to retool facilities in order to change either entity's manufacturing priorities; and (4) the entities are capable of manipulating prices or affecting production decisions, through their sales and production efforts." In Carbon Steel, the Department also stated that it "need not show all of these factors exist in order to collapse related entities, but only that the companies are sufficiently related to create the possibility of price manipulation."

Because RHP and NSK-Europe have a sister relationship rather than a parent-subsidiary relationship, we examined the relationship of the parent corporation (NSK-Japan) *vis-a-vis* its subsidiaries in assessing the capability of manipulating prices and affecting production decisions. RHP and NSK-Europe are wholly owned by the same parent. We consider this degree of ownership to be a strong indicator of NSK-Japan's potential to control NSK-Europe's and RHP's production and pricing decisions. Furthermore, the financial information of the two respondents is consolidated in NSK-Japan's financial statement. Such consolidation constitutes additional evidence that the companies are closely intertwined and have a financial relationship. See Carbon Steel from Japan.

We found evidence at verification and in NSK-Japan's 1991 Annual Report of other forms of control by NSK-Japan and of a relationship between RHP and NSK-Europe that is becoming increasingly intertwined. The Annual Report suggests that there is extensive collaboration and rationalization of research, marketing, and production between all members of the NSK group, including RHP. RHP has stopped manufacturing any of the merchandise supplied to it by NSK-Europe. During the POR, RHP and NSK-Europe made use of the same sales agents for automotive products and of the same research facility, the ERC. NSK-Japan created the ERC by transferring assets and personnel to it from both RHP and NSK-Europe. Although NSK-Japan's decision to integrate all the sales activities of NSK-Europe and RHP in Europe occurred outside the POR, it is indicative of the amount of control exercised by the parent company.

The record shows that NSK-Japan, UPI, RHP, and NSK-Europe share many board members and directors who serve important managerial functions. The sharing of board members by related companies, particularly members with management responsibilities, is evidence that the companies are closely intertwined. It also indicates the capability of NSK-Japan to manipulate prices or affect production decisions regarding the two respondents.

Furthermore, at verification, we found additional (business proprietary) evidence that NSK-Europe and RHP were intertwined.

All of the above factors demonstrate that NSK-Europe and RHP have a significant financial relationship, are closely intertwined, and that their parent company, NSK-Japan, is capable of price and cost manipulation. Thus, sufficient evidence exists for the collapsing of NSK-Europe and RHP for the purposes of calculating dumping margins in the final results of review.

Because we determined to collapse RHP and NSK-Europe in the last review, as in this review, we required all sales and pertinent cost information to be filed for RHP and NSK Europe. Except for a Section A response, no information was reported for NSK-Europe. However, RHP did provide sufficient product and summary sales information to allow us to determine by computer analysis which margins were potentially altered by the absence of NSK-Europe's home market sales and cost data. In addition, we verified NSK-Europe's Section A response and information pertinent to the relationship between the two companies. Because we are treating RHP and NSK-Europe as one entity, and because the lack of information from NSK-Europe only affects a limited number of U.S. sales, we have applied a BIA rate only to those affected U.S. sales. The BIA rate is the highest rate ever calculated for ball bearings from the U.K. (61.14 percent).

*Comment 5:* Barden and FAG-UK, two related respondents, contend that the Department's decision to consolidate or "collapse" them is an unwarranted and unreasonable departure from long-standing administrative precedent. They contend that the decision to treat them as a single entity is inconsistent with the decision to grant them separate treatment published in *AFBs II*, 57 FR at 28393, and the more recent decision in a letter dated September 24, 1992 to allow separate reporting for the third review of AFBs. Respondents argue that the Department requires the calculation of separate antidumping margins where it determines that the related respondents are distinct entities such that there is no substantial danger of price and cost manipulation between the two companies. They cite Residential Door Locks and Parts Thereof From Taiwan; Final Determination of Sales at Less Than Fair Value, 54 FR 53153, 53161 (December 27, 1989), Certain Iron Construction Castings From Canada; Final Results of Administrative Review, 55 FR 460 (January 5, 1990), and the AFB LTFV Investigation, 54 FR 18992 as support for this position. They also contend that evidence on the record, which has remained uncontroverted and unchanged since the second review of AFBs, supports their contention that each is a distinct entity such that there is no substantial danger of price and cost manipulation between the two companies.

Respondents state that there are only two bases upon which the collapsing of the two companies for purposes of the Department's dumping analysis could be justified: (1) Where FAG-UK exercised domination over the policies and operations of Barden, or vice versa; or (2) Where a third company exercised domination over the policies and operations of both Barden and FAG-UK. Barden and FAG-UK claim that the situation described in (1) has never existed, and there is nothing in the record to suggest such a relationship between them. Respondents further assert that a third company, namely FAG-Germany (their parent corporation), has never dominated the policies and operations of both respondents.

Respondents note that the only "new" information appearing on the record, and the only conceivable basis on which the Department could have predicated its reversal of policy, are statements made by the Department in the context of the FAG-Germany sales verification report regarding the supposed control FAG-Germany has over its subsidiaries, including FAG-UK and Barden. Respondents challenge the accuracy of several statements on this topic contained in the verification report and urge the Department to reconsider its position in light of the clarifications and corrections argued by each in their respective briefs.

In rebuttal, Torrington argues that the Department's general practice is to collapse related companies "if the nature of their relationship allows the possibility of price and cost manipulation." AFBs II, 57 FR at 28393. Citing various statements appearing in FAG-Germany's 1991 Annual Report and FAG-UK's questionnaire response, petitioner claims that the record indicates common control of FAG-UK and Barden by FAG-Germany. Among these facts are that FAG-UK and Barden share board members with each other and with FAG-Germany, their parent corporation.

Regarding respondents' challenge of statements made in the Department's FAG-Germany verification report, petitioner argues that it is too late to correct the Department's basic impressions by way of post-verification submission of facts. Torrington further claims that the fact that Barden and FAG-UK have access to FAG-Germany's proprietary verification report strongly demonstrates the close relationship between all the FAG Group companies and illustrates the potential for mutual price and cost manipulation. Accordingly, petitioner asserts that the Department should collapse FAG-UK and Barden for the final results.

*Department's Position:* We agree with Torrington that Barden and FAG-UK should be collapsed for purposes of this review. In accordance with the standard set forth in *Comment 4* above, we considered various factors in determining whether to collapse Barden and FAG-UK.

Because Barden and FAG-UK have a sister relationship rather than a parent-subsidiary relationship, we examined the relationship of the parent corporation (FAG-Germany) *vis-a-vis* its subsidiaries in assessing the capability of manipulating prices and costs, and affecting production decisions. FAG-UK and Barden are wholly owned by the same parent. We consider this degree of ownership to be a strong indicator of FAG-Germany's potential to control FAG-UK's and Barden's production and pricing decisions. Furthermore, the financial information of the two respondents is consolidated in FAG-Germany's financial statement. Such consolidation constitutes additional evidence that the companies are closely intertwined and have a financial relationship. See Carbon Steel from Japan, supra.

The record shows that Barden and FAG-UK share board members with each other and with FAG-Germany who serve important managerial functions. See FAG's 1991 Annual Report at 6 and 78. The sharing of board members by two related companies, particularly members with management responsibilities, is evidence that the companies are closely intertwined. It also indicates the capability of FAG-Germany to manipulate prices or affect production decisions regarding the two respondents.

We note that FAG-UK stated in its supplemental response to Section A of the questionnaire that "at times FAG-Germany may direct certain marketing and sales strategies for its European affiliates or make upper-level administrative and management decisions which pertain directly or indirectly to FAG-UK (to this end, FAG-UK's board of directors consists of FAG-UK as well as FAG-Germany personnel)." FAG-UK Supplemental Response to Sections A, B and C, p. 2, November 23, 1992. In addition, FAG-UK explains in its Section A response

that the "FAG Bearings Group is composed of an integrated network of full-line producers, exporters and importers, using a worldwide rationalized production system." FAG-UK Section A Response, p. 1, September 18, 1992. In its 1990 Annual Report, FAG KGS describes its acquisition of The Barden Corporation as one that "will produce synergies in development and distribution." FAG KGS Annual Report at 10, Exhibit A–13 of FAG-UK's Section A Response. These statements illustrate FAG-Germany's potential, if not actual, influence over the sales and production activities of its subsidiaries and support the September 18 decision to collapse FAG UK and Barden UK.

We did not collapse the respondents in the second review because FAG KGS had not acquired Barden UK until seven months into the 1990–91 review period. The consolidation, though, was fully in place for this current review. Therefore, it was during the current POR that the extent of FAG-UK's and Barden's relationship became relevant. We recognize that, when respondents were filing questionnaire responses for the third review, we allowed separate reporting by FAG-UK and Barden. We did so because the two companies indicated that their record-keeping systems were separate and not easily merged for purposes of responding to the questionnaire. However, our decision to allow separate reporting does not preclude our collapsing the two companies in calculating dumping margins.

After fully considering the information on the record in this review, including FAG KGS's percentage ownership in its U.K. subsidiaries and the fact that the parent and sister companies share common board members, we determine that a strong possibility of prices and costs or production manipulation exists between the related companies. Therefore, we are continuing to collapse FAG-UK and Barden for purposes of calculating dumping margins in the final results of review.

*12. Samples, Prototypes and Sales Outside the Ordinary Course of Trade*

*Comment 1:* Based upon the standard established in Certain Welded Carbon Steel Standard Pipes and Tubes From India; Final Results of Antidumping Duty Administrative Reviews (Indian Pipes and Tubes), 56 FR 64753 (December 12, 1991), Cellular Mobile Telephones and Subassemblies from Japan; Final Results of Antidumping Duty Administrative Review (Cellular Mobile Telephones), 57 FR 7728 (March 4, 1992), and *Murata Mfg. Co., Ltd.* v. *United States (Murata)*, Slip Op. 93–53 (CIT April 20, 1993), Federal-Mogul and Torrington claim that the relevant submissions by respondents contain insufficient evidence supporting their individual claims that their alleged home market sample and prototype sales are made outside the ordinary course of trade. This standard, according to the two parties, requires a respondent to demonstrate that samples or prototypes are not only sold in small quantities at high prices, but that the high prices are a function of the small quantities sold. Citing *Nachi-Fujikoshi Corp.* v. *United States (Nachi)*, 798 F. Supp. 718, 718 (CIT 1992), Federal-Mogul states that the respondent has the burden of proving that sales are outside the ordinary course of trade.

With regard to Koyo's sample and prototype sales, Torrington specifically argues that an analysis of Koyo's sample sales reveals that there are numerous examples of the same bearing model sold as a sample sale after that model has been sold to the same customer as a sale in the ordinary course of trade. Torrington also notes that the verification report indicates that while a prototype and a sample sale were selected for examination, Koyo was only able to provide supporting documentation for the prototype sale.

Citing AFBs II, 57 FR 28360, Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, From Japan; Final Results of Administrative Review, 56 FR 41508 (August 21, 1991), and Large Power Transformers From Japan; Final Results of Administrative Review, 51 FR 21197 (June 11, 1986), FAG-Germany and FAG-Italy argue that the Department has long held that certain sales involving substantially smaller quantities and significantly higher prices are not within the ordinary course of trade for purposes of establishing FMV. According to FAG-Germany, in AFBs II, 57 FR at 28390, the Department excluded home market sample sales from FMV where pricing details were provided for some of these sales, demonstrating that such samples were typically sold at significantly higher prices than comparable non-sample bearings. FAG-Germany states that in this review it similarly provided a listing of all sample merchandise sold in the home market during the eight sample months that compares the net resale price of the sample sale with the weight-averaged net resale price of all bearings falling within that sample's family during the eight sample months. Respondent submits that this evidence demonstrates that sample sales are almost always sold at premium prices, considerably above the average prices for identical or similar non-sample sales.

FAG-Germany also argues that petitioner's reliance on *Cellular Mobile Telephones* is misplaced. According to respondent, the Department's standard enunciated in *Cellular Mobile Telephones* applies to requests under 19 CFR 353.35 for relief on sales not sold in the usual commercial quantities, as opposed to the "ordinary course of trade" language contained in 19 U.S.C. 1677b(a)(1)(A).

FAG-Italy and the SKF Group companies argue that they reported sample and prototype sales pursuant to the Department's instructions and, therefore, the Department has the information necessary to analyze such transactions and to conclude that they are outside the ordinary course of trade.

Citing Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, 57 FR 4960 (February 11, 1992), NTN contends that the Department should exclude its sample sales from the HM database prior to calculating FMV. Respondent asserts that, at verification, the Department confirmed that NTN's reported sample sales were recorded as such in company records. NTN also argues that home market sales identified as not in the ordinary course of trade should be similarly excluded from the home market database. Respondent claims that the data and analysis it provided (which was verified) regarding such sales parallels the "extensive data and price history" provided by an exporter in the second review of AFBs that resulted in the exclusion of sales identified as not in the ordinary course of trade.

Torrington rebuts NTN's argument by noting that the mere designation of sales as samples in a respondent's records is not controlling. Petitioner also argues that NTN has not established that "small quantity" sales are outside the ordinary course of trade within the meaning of 19 U.S.C. 1677b(a)(1)(A).

NSK maintains that the evidence it has submitted regarding prototype sales is sufficient to demonstrate that such sales were made outside the ordinary course of trade and, therefore, should be excluded from the calculation of FMV.

*Department's Position:* 19 U.S.C. 1677b(a)(1)(A) and 19 CFR 353.46(a) provide for the exclusion from the calculation of FMV sales made outside the ordinary course of trade. In accordance with Department practice, respondents bear the burden of proving that foreign market sales were made outside the ordinary course of trade. See Murata, Slip Op. 93–53 at 6, and *Nachi*, 798 F. Supp. at 718. In these reviews,

various respondents requested that the Department designate certain foreign market sales as being outside the ordinary course of trade because the sales involved sample and prototype merchandise. The fact that a respondent has identified merchandise as being a sample or prototype, however, is insufficient to render the sales of such merchandise outside the ordinary course of trade. Therefore, we have examined whether to exclude sales of such bearings from our FMV calculations on the basis of the extent to which respondents have satisfied their burden of proof by providing specific evidence that such sales fall outside the ordinary course of trade. Our standards for evaluating this evidence are set forth below.

For the purposes of this review, we have applied the standard set forth in *Murata*, in which the CIT quoted with approval the statement in *Indian Pipes and Tubes*, 56 FR at 64755, that the Department does not rely on one factor taken in isolation but rather considers all the circumstances particular to the sales in question in determining whether they are outside the ordinary course of trade. In *Murata*, the CIT noted that, in other cases, the Department had determined that sales were outside the ordinary course of trade not only due to the presence of smaller quantities and higher prices, but also because the Department found, for example, that prices for sample sales were determined separately from standard price lists, that customers purchased products for trial or evaluation purposes, or that sales were cancelled prior to invoicing. *Murata*, Slip Op. 93–53 at 9.

Given the above guidance, we believe that the arguments advanced by Torrington, Federal-Mogul, and various respondents are overly narrow in their emphasis on smaller quantities and higher prices as being dispositive of sales made outside the ordinary course of trade. Specifically, respondent FAG-Italy is incorrect to say that the Department in other cases automatically has determined that sales involving substantially smaller quantities and significantly higher prices are outside the ordinary course of trade. In *Murata*, the CIT upheld the Department's determination that evidence of sales generally made in smaller quantities and at higher prices is insufficient to establish that sales were not made in the ordinary course of trade. *Murata*, Slip. Op. 93–53 at 8. Because evidence of smaller quantities and higher prices is insufficient to render sales outside the ordinary course of trade, Torrington's and Federal-Mogul's argument that higher prices must be a function of smaller quantities, as set forth in *Cellular Mobile Telephones*, is not dispositive. Moreover, we agree with FAG-Germany that this argument is misplaced, because it applies to the "usual commercial quantities" clause of the statute rather than to the "ordinary course of trade" clause.

Therefore, pursuant to the standard set forth in *Murata*, we have examined not only sales quantities and prices, but also the overall circumstances under which respondents made sales alleged to be outside the ordinary course of trade. In those instances in which respondents have failed to meet their burden of proof by providing insufficient evidence that sales of sample or prototype bearings fall outside the ordinary course of trade, we have included such sales in our calculations of FMV. We address the evidence provided by each respondent below.

Because Koyo was unable to provide any evidence (such as that suggested in *Murata, supra*) substantiating that a sale selected for verification was indeed a sample sale, we included all HM sales identified as samples in the calculation of FMV. However, we excluded prototype sales from the calculation of FMV because Koyo provided ample evidence regarding its prototype sales and was able to substantiate sales identified as such at verification.

We disagree with FAG-Germany that the evidence it presented in this review is comparable to the evidence provided by another respondent in *AFBs II*, 57 FR at 28394. In the second review of AFBs, the Department found that "NSK has provided ample information documenting the nature of its prototype and sample sales and has provided extensive data and price history information regarding some of its prototypes and samples." *Id*. The same cannot be said here with respect to FAG-Germany. Although respondent provided price comparison data for all of its sample and prototype sales, this data merely proves that such sales were made in smaller quantities at higher prices. Respondent has provided no information regarding the circumstances surrounding the sales alleged to be outside the ordinary course of trade. Therefore, FAG-Germany's data provides insufficient evidence in and of itself for proving that sample sales were made outside the ordinary course of trade.

We agree with Torrington that the record contains insufficient evidence supporting FAG-Italy's and the SKF Group companies' claims that home market sales identified as sample and prototype sales were made outside the ordinary course of trade. Since the claimant bears the burden of proving that such sales were made outside the ordinary course of trade, simply referring to the data contained in respondents' respective home market sales listing is insufficient evidence. The most an analysis of such data could prove is that such sales were made in smaller quantities at higher prices.

We agree with Torrington that NTN's sample sales should be included in the calculation of FMV. As stated above, the fact that respondent identified sales as sample and prototype sales does not necessarily render such sales outside the ordinary course of trade. Thus, the verification of the designation of certain sales as samples merely proves that respondent identified sales recorded as samples in its own records. Such evidence does not indicate that such sales were made outside the ordinary course of trade for purposes of calculating FMV in these reviews. Accordingly, we have included NTN's sample sales in the calculation of FMV.

We also disagree with NTN's claim that sales of products with a sporadic sales history fall outside the ordinary course of trade. Infrequent sales of small quantities of certain models is insufficient evidence to establish that sales were made outside the ordinary course of trade. Thus, because NTN failed to satisfy its burden of proof in accordance with the standard set forth above, we have not excluded sales identified by NTN as outside the ordinary course of trade from the calculation of FMV.

NSK provided detailed information on certain prototype models including quantities involved, the frequency of transactions, customer information, design specifications, applications, and dates of sale. Furthermore, at verification, we reviewed supporting documentation of a prototype sale. As established above, the Department does not rely on one factor taken in isolation but rather considers all the circumstances particular to the sales in question in determining whether HM sales were made in the ordinary course of trade. Furthermore, we do not require information on every specific bearing in order to establish the accuracy of a particular claim. *AFBs II*, 57 FR at 28394. Accordingly, based on the detailed and broad-ranging data supplied by respondent, we have excluded NSK's prototypes from the calculation of FMV.

*Comment 2*: The SKF Group and NSK contend that it is inappropriate for the Department to include sample or zero value sales in the calculation of U.S.

price. Citing *Ipsco Inc.* v. *United States* (*Ipsco*), 714 F. Supp. 1211, 1217 (CIT 1989) (*reversed on other grounds*, 965 F.2d 1056 (Fed. Cir. 1992)), respondents assert that the Department's policy is to exclude from the margin calculation: (1) U.S. sales that are not representative of the seller's behavior; and (2) sales that are so small that they would have an insignificant effect on the margin. NSK asserts that its prototype and sample sales are not representative of its normal U.S. sales. SKF claims that the subject sample and zero value sales are isolated incidents, as evidenced by its U.S. sales files. Additionally, NSK claims that its zero price samples should be excluded from the U.S. sales database because providing these samples does not constitute a "sale" pursuant to 19 U.S.C. 1673. Citing Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review, 56 FR 23054, 26059 (June 6, 1991) and Tapered Roller Bearings, And Parts Thereof, Finished and Unfinished, From Japan; Final Results of Antidumping Duty Administrative Review, 57 FR 4960, 4070 (February 11, 1992), respondent contends that the Department has defined "sale" to exclude any zero price sample in which the cost of the sample is accounted for as an indirect selling expense. Because the cost of samples is accounted for in its G&A expenses, NSK claims that to include zero price samples in NSK's U.S. database results in a double-counting of the cost of zero price samples.

Torrington and Federal-Mogul argue that there is no statutory or regulatory basis for excluding any U.S. sales from review, since the statutory and regulatory language directing the Department to consider only sales in the ordinary course of trade appears only in the definition of FMV. Citing *AFBs II*, 57 FR 28360, Final Results of Antidumping Duty Administrative Review; Color Television Receivers From the Republic of Korea, 56 FR 12701 (March 27, 1991), and Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review, 55 FR 31414 (August 2, 1990), petitioner asserts that, as a matter of agency practice, the Department has consistently recognized its obligation to analyze all U.S. sales within the period of review. Petitioner also notes that all imports of merchandise subject to an antidumping duty order are subject to the imposition of antidumping duties, following administrative review. 19 U.S.C. 1673; 19 U.S.C. 1675(a)(2). Petitioner distinguishes *Ipsco* from this case by noting that that decision regards an investigation, where the Department routinely excludes certain classes of sales. Regarding NSK's argument that its sample sales are accounted for in its G&A expenses, petitioner refers to *AFBs II*, 57 FR 28360, claiming that NSK failed to demonstrate in this review that it maintains exclusive ownership of the zero-priced samples after exportation.

*Department's Position*: We agree with Torrington and Federal-Mogul. As set forth in *AFBs II*, 57 FR at 28395, other than for sampling, there is neither a statutory nor a regulatory basis for excluding any U.S. sales from review. The statute and the regulations require the Department to analyze all U.S. sales within the POR. Final Results of Antidumping Administrative Review; Color Television Receivers From the Republic of Korea, 56 FR 12709 (March 27, 1991). We agree with Torrington that *Ipsco* is inapplicable to this case in that it concerns a less-than-fair-value investigation in which the Department has the discretion to eliminate unusual U.S. sales, as opposed to an administrative review in which 19 U.S.C. 1675(a)(2)(A) requires analysis of "each U.S. entry" except in cases where the agency utilizes "averages or generally recognized sampling techniques" pursuant to 19 U.S.C. 1677f–1.

Regarding NSK's argument that its sample sales are accounted for in its G&A expenses, we restate our position as set forth in *AFBs II*, 57 FR at 28395. Goods entered for consumption are subject to an antidumping order whenever ownership transfers from the exporter of the goods to an unrelated U.S. purchaser. *Id.* Sample sales, however, fall outside the scope of the review when the respondent can demonstrate that no transfer of ownership has occurred between the exporter and the unrelated U.S. purchaser. *Id.* Nothing on the record in this review demonstrates that NSK maintains exclusive ownership of the subject merchandise after exportation to the United States. Accordingly, we have included all zero price and sample sales for the final margin calculation.

*13. Taxes, Duties, and Drawback*

*Comment 1*: FAG, GMN, Koyo, Nachi, NSK, RHP, and SNR contend that the Department's value added tax (VAT) methodology is improper because the VAT rate was applied to different net price bases, thus generating, in some instances, dumping margins where no pre-tax margin would otherwise exist. Respondents propose that the Department calculate an actual or absolute VAT amount for each HM sale and apply this amount to USP as a last step after all other adjustments have been made. This methodology, unlike that employed by the Department in the preliminary results, serves to cap the addition to USP at the amount of the absolute HM tax, and therefore avoids the multiplier effect whereby pre-tax dumping margins are inflated. Furthermore, the Courts have upheld this alternate methodology, expressing a clear preference for an amount-driven, rather than a rate-driven, adjustment to USP. *See Zenith Electronics Corp.* v. *United States* (*Zenith*), Appeals No. 92–1043, 1044, 1045, 1046 (Fed. Cir. March 19, 1993); *Federal-Mogul* v. *United States* (*Federal-Mogul*), 813 F.Supp 856 (CIT 1993). Respondents also point out that the Department recently employed this precise methodology in *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review* (*Mexican Cement*) 58 FR 25803 (April 28, 1993).

GMN argues that, if the Department determines not to add an absolute amount based on the home market tax amount to both FMV and USP, the Department should apply the tax rate to gross unit price minus price adjustments on both sides, with a cap on the amount of VAT added to USP. GMN argues that this methodology is consistent with both *Zenith and Federal-Mogul*, and would ensure compliance with the statutory mandate limiting the U.S. adjustment "to the extent that such taxes are added to or included in the price of such or similar merchandise sold in the country of exportation."

NSK and SKF also argue that the Department need not make any adjustment for taxes forgiven because the consumption tax is not included in FMV.

Torrington maintains that the Department must add the full amount of VAT to both USP and FMV, and that the amounts must be calculated separately on the basis of the prices of the respective sales involved. Torrington contends that, under section 772(d)(1)(C) of the Tariff Act, the Department can only calculate the tax forgiven on the exported merchandise by using the prices of the exported merchandise in some form as the appropriate tax base. Torrington also argues that Congress, notwithstanding its awareness of the issue, has declined to adopt legislation changing the law to achieve the result of tax neutrality, *i.e.*, by which pre-tax dumping margins are neither inflated nor deflated by the Department's tax methodology. Torrington therefore argues that

although tax neutrality has been achieved with regard to situations in which there is no pre-tax dumping margin, the Department should not seek to achieve tax neutrality in situations in which pre-tax dumping margins do exist.

Citing *Zenith*, Federal-Mogul argues that the Department must adjust for taxes forgiven or not collected by reason of exportation. Federal-Mogul argues that the Department was correct in attempting to calculate an amount for forgiven tax using a United States tax base, but that the addition to USP should have been capped at the amount of the forgiven taxes "but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." See section 772(d)(1)(C) of the Tariff Act. Federal-Mogul also asserts that the Department should not adopt the methodology set forth in *Mexican Cement* because in that case the Department erred in adding to USP the amount of home market taxes, as opposed to the amount of taxes forgiven on the exported merchandise. Federal-Mogul asserts that, when fashioning the tax adjustment clause, Congress did not intend to obtain tax neutrality.

*Department's Position:* We disagree with Torrington and Federal-Mogul. On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision in *Zenith Electronics Corp. v. United States*, Appeals 92–1043, –1044, –1045, –1046 (Fed. Cir. March 19, 1993), ruled that section 772(d)(1)(C) of the Tariff Act provides for an addition to USP to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Tariff Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to the USP the absolute amount of tax on the comparison merchandise sold in the country of exportation. By adding the amount of HM tax to USP, absolute dumping margins are not inflated or deflated by differences in taxes included in FMV and those added to USP.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated USPs net of taxes. This change would result in weighted-average dumping margin rates that are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and we will begin the rule-making process as soon as possible.

As is evident from the preceding description, in implementing the Court's ruling, the Department intends to make every effort to ensure that price comparisons remain undistorted. The Court clearly did not intend for tax adjustments to result in skewed comparisons, and we disagree with Torrington and Federal-Mogul's claims that Congress did not intend that our comparisons be tax-neutral. Fair comparisons are a primary statutory objective, as is consistency with U.S. international obligations. In this regard, we note that Article 2.6 of the GATT Antidumping Code, in requiring fair price comparisons, calls for allowance to be made for "differences in taxation, and for the other differences affecting price comparability."

Finally, we disagree with NSK's and SKF's argument that, because, according to them, "the consumption tax is not included in FMV," the Department should make no adjustment to USP. Respondents base their claim on the mistaken notion that, because consumption taxes are listed separately on their HM invoices, and because the actual "price" on the invoice does not include consumption taxes, the Department has not included the taxes in FMV. On the contrary, whether or not consumption taxes are listed separately on HM invoices, the fact remains that the HM consumer pays the tax. Therefore, we have appropriately included the tax in the calculation of FMV and made a corresponding adjustment to USP.

*Comment 2:* Torrington, Federal-Mogul, NMB/Pelmec, Koyo, and SKF argue that the Department's United States tax base is incorrect.

*Department's Position:* Because we are not using a United States tax base for calculation of the VAT tax "forgiven or otherwise not collected by reason of exportation of the merchandise" for the final results (see Comment 1 above), any issues concerning the appropriate United States tax base are moot.

*Comment 3:* NMB/Pelmec argues that the Department improperly accounted for VAT imposed on sales in Thailand but not collected on export sales. According to NMB/Pelmec, the Department failed to add a hypothetical VAT to USP, despite its statement to the contrary in the preliminary analysis memorandum and its addition of the VAT to FMV. NMB/Pelmec asserts that the Department must add an amount for VAT to USP if it adds such taxes to FMV, and requests that the Department modify its computer program accordingly for the final results.

Torrington responds that NMB/Pelmec's contention that the Department failed to add hypothetical VAT to USP is unfounded. According to Torrington, the computer program that the Department used in its preliminary analysis clearly accounts for the hypothetical VAT to be added to USP.

*Department's Position:* We agree with Torrington. Based on an examination of the computer program that we used to calculate the preliminary dumping margin, we confirm that we did in fact calculate a hypothetical VAT on U.S. sales and add this tax to USP. Although we have revised our method of determining the uncollected VAT on U.S. sales (*see Comment 1* above), we have continued to add an amount for VAT to USP in these final results.

*14. U.S. Price Methodology*

*Comment 1:* Torrington argues that the Department erred in not deducting resale profit from U.S. price in ESP situations. Torrington contends that the 1979 GATT Antidumping Code (the Code) was implemented as part of U.S. law by the Trade Agreements Act of 1979, and requires the Department to deduct profit earned by the exporter's U.S. subsidiary in ESP transactions.

Torrington notes that Article 2.6 of the Code states that in ESP situations, an "allowance for costs, including duties and taxes, incurred between importation and resale, and *for profits accruing* should * * * be made" in determining U.S. price (*emphasis added*). Torrington argues that, while the section of the statute concerning ESP transactions, section 772(e), is "silent" with respect to deducting resale profit, Congress intended that all of the rules of the Code would be applied to the extent that they are not in conflict with prevailing U.S. law. Because the U.S. statute is silent regarding resale profit, Torrington asserts that there is no conflict between the international agreement and U.S. law in requiring the deduction of resale profit in ESP transactions. Therefore, the Department's practice should conform to the Code, and resale profit should be deducted from U.S. price in ESP situations.

SKF, NTN, Koyo, GMN, RHP, INA, FAG and NSK disagree, arguing that the adjustment for resale profit in ESP situations has no basis in either the statute or the Department's regulations, and is not mandated by the Code. They note also that it is the Department's

longstanding practice not to deduct resale profits on ESP sales and that this practice has been upheld by the CIT in recent decisions. These decisions include *Timken Co.* v. *United States* (*Timken I*), 630 F. Supp. 1327, 1342 (CIT 1986), *Timken Co.* v. *United States* (*Timken II*), 673 F. Supp. 495, 518–21 (CIT 1987), and *Timken Co.* v. *United States* (*Timken III*), 14 CIT 753, 758 (CIT 1990).

*Department's Position:* We agree with respondents. The statute at section 772 (d) and (e) does not include resale profits among the detailed list of adjustments that the Department is to make to U.S. price in ESP situations. Thus, there is no provision under U.S. law under which we can make the adjustment that Torrington requests.

While Torrington asserts that the omission of resale profit from the list of adjustments suggests that the statute is "silent" with respect to resale profit, we note that the CIT has observed that the literal language of the statute "clearly does not call for the deduction of profits" in ESP situations. *Timken I*, 630 F. Supp. at 1343. Therefore, as NSK argues in its rebuttal brief, "the statute is not truly silent on this issue and by omission of the term 'profit,' has definitively spoken."

Though the Code contains a provision for deducting resale profit in such situations, this provision is merely prescriptive. We note that in *Timken III*, the CIT concluded that "whatever guidance the ITA gleans from the Code is clearly hortatory rather than mandatory." *Timken III*, 14 CIT at 758. In addition, Congress did not intend that the Code's requirement for the deduction of resale profits from ESP transactions be incorporated into U.S. antidumping law, or presumably it would have expressly provided for such deductions as it did for other adjustments. Therefore, we do not interpret the statute or the Code to require a deduction for resale profits in ESP situations.

*Comment 2:* NSK, FAG, SKF, GMN, SNR, INA, RHP and NTN argue that the Department should not deduct U.S. direct selling expenses from U.S. price in ESP situations, but should add such expenses to the FMV that is compared to ESP. Respondents argue that this treatment of direct selling expenses is mandated by section 773(a)(4) of the Tariff Act and is consistent with numerous decisions of the CIT, among them *NTN Bearing Corp.* v. *United States*, Slip. Op. 93–56 at 4 (CIT 1993) (*NTN Bearing Corp.*).

Torrington disagrees with respondents, but argues that if the Department should decide to add U.S. direct selling expenses to foreign market value, it should also modify its calculation of the duty deposit rate for ESP sales. Torrington argues that the change in U.S. price methodology that respondents suggest will lead to an undercollection of cash deposits. Torrington explains that under the current practice, the cash deposit rate is based on the total potential uncollected dumping duties (PUDD) divided by total U.S. price. However, if the agency eliminates the deduction of U.S. direct selling expenses, the denominator in the formula, total U.S. price, will increase. The division of PUDD by this larger number will lead to a lower cash deposit rate, which Torrington argues will result in an undercollection of cash deposits. Therefore, in lieu of dividing PUDD by total U.S. price, Torrington suggests that the Department divide by total entered value to calculate the duty deposit rate.

*Department's Position:* We disagree with respondents. Section 772(e)(2) of the Tariff Act requires the Department to deduct from ESP all expenses incurred in the United States, including direct selling expenses. In contrast, for purchase price transactions, adjustments for differences in circumstances of sale, including direct selling expenses, are made to the foreign market value, and no deduction of direct selling expenses is made from the purchase price. Section 773(a)(4). This difference in treatment of ESP and PP transactions is necessary for several reasons. One is to avoid a systematic distortion in the amount of duties assessed, which would result if the value on which dumping margins were calculated were consistently different than the entered value upon which U.S. Customs will apply the margin. Entered value is most commonly based on the price to the United States between the exporter and the importer. Purchase price will approximate the customs entered value without deducting any expenses because direct selling expenses are incurred in the exporting country and included in the price *to* the United States. In contrast, the basis of the exporter's sales price is the resale price *in* the United States, which can approximate entered value and be equivalent to purchase price only after all expenses incurred in the United States (including direct selling expenses) are deducted from ESP. This is not to say that either ESP or PP is necessarily the same as entered value, or that they should be the same. The Department is merely recognizing that dumping margins will ultimately be assessed on entered value and that the amount of duty collected should not be affected by whether USP is based on PP or ESP.

Another reason for the different treatment of direct selling expenses in ESP and PP transactions is that USP must be calculated in such a way that there is no bias introduced just because there is a related importer intervening between the foreign producer and the first unrelated purchaser in the United States. Whether using ESP or PP, we must calculate USP based on the price to the first unrelated U.S. buyer, just as we must calculate FMV based on the price to the first unrelated home market buyer. In order to eliminate the effect of the relationship between the exporter and the importer, direct selling expenses must be deducted from ESP.

While the CIT has decided our ESP practice is not proper in several cases, including *NTN Bearing Corp.*, we respectfully disagree, and will continue our practice of deducting U.S. direct selling expenses from ESP until the issue is decided by the Court of Appeals for the Federal Circuit.

*Comment 3:* Koyo argues that the Department's failure to average U.S. prices in the same manner that it averaged foreign market values was an abuse of discretion and contrary to law. Koyo notes that 19 U.S.C. 1677b(f) authorizes the Department to use averaging techniques to establish both USP and FMV when such averaging techniques yield fair and representative results. Koyo contends that the comparison of actual U.S. prices with an annually averaged FMV generates inherently unrepresentative margin calculations because the comparison is not made on an "apples-to-apples" basis. Koyo notes that the Department used weighted-average U.S. prices in Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico, 55 FR 12696, 12697 (April 5, 1990). Koyo requests that the Department use its annual average methodology for U.S. prices as well as foreign market values in order to achieve representative results as required by the antidumping law.

Torrington and Federal-Mogul disagree, stating that comparing actual U.S. prices with a weighted-average FMV is reasonable and in accordance with agency precedent and the law. Torrington's reasoning is that to average U.S. price would allow exporters "to continue dumping at targeted accounts or during particular periods, so long as customers could be found who paid prices above fair value." Torrington also maintains that the Department generally only averages U.S. prices in the case of perishable products or other

merchandise characterized by price volatility. Torrington notes that AFBs are not perishable; therefore, Koyo's citation to the *Fresh Cut Flowers from Mexico* case, a precedent with respect to perishable goods, is inapposite.

*Department's Position:* We disagree with Koyo's assertion that we must average U.S. prices on the same basis as FMV to ensure an "apples-to-apples" comparison. Contrary to Koyo's argument, our comparison of individual U.S. prices with weighted-average FMVs is reasonable and in accord with the statute and regulations. We generally do not average U.S. prices because the statute, at 19 U.S.C. 1675(a)(2)(B), directs us to determine a price for "each entry" of merchandise into the United States. In contrast, where home market sales prices vary, and there is no "preponderant" price for more than 80 percent of the merchandise, we calculate an FMV based on the weighted-average of those prices. 19 CFR 353.44. We do this because the use of weighted-average FMVs, whether monthly or annual, is more appropriate than the use of a single home market transaction, especially when there can be many comparable home market transactions at varying prices. In fact, in the early years of the Department's experience in administering the unfair trade laws, we did compare individual U.S. sales with a single home market sale. Respondents objected on the basis that the practice allowed the Department too much discretion to use high-priced home market sales at the expense of low-priced sales as the basis for FMV.

In addition, as stated in the *AFBs II*, 57 FR at 28369, averaging U.S. prices is unacceptable because it would allow a foreign producer to mask dumping margins by offsetting dumped prices with prices above FMV. For example, a foreign producer could sell half its merchandise in the United States at less than FMV, and the other half at more than FMV, and arrive at a zero dumping margin while still dumping.

Except in limited instances where we have conducted reviews of seasonal merchandise with very significant price fluctuations due to perishability (see, e.g., Final Results of Administrative Review; Certain Fresh Cut Flowers from Mexico, 55 FR 12696, 12697 (April 5, 1990)), we have not averaged U.S. prices. See Final Results of Antidumping Administrative Review; Pressure Sensitive Plastic Tape from Italy, 54 FR 13091 (March 30, 1989). Since the merchandise under review is not a perishable product, and our tests of home market sales revealed that there are no significant price fluctuations, there is no reason to change our current methodology.

*15. Miscellaneous Issues*

A. Verification

*Comment 1:* Torrington argues that for the SKF companies under review, the Department should have verified the cost of production and constructed value responses submitted by these firms. Torrington notes that SKF purchased steel from Ovako Steel (Ovako), its related subsidiary, for its production of bearings under review. Torrington states that Ovako's cost data had not been verified in the two immediately preceding reviews, and that Torrington's timely request for verification had shown "good cause" pursuant to section 776(b)(3)(B) of the Tariff Act. Torrington argues that "SKF has provided no details or documentation to support its assertions of Ovako's costs. Therefore, the data cannot be relied upon without thorough verification."

SKF argues that the Department acted appropriately within its discretion to forego verification of SKF's cost information and that of Ovako. SKF further argues that Ovako's cost was extensively verified in the original LTFV investigation, and that SKF-France and SKF-Germany were verified in each of the three subsequent administrative reviews. Finally, SKF argues that since the Department has repeatedly verified the accuracy and veracity of the SKF submissions, this history alone constitutes good cause to support the Department's decision not to verify the cost responses of SKF facilities in the current review.

*Department's Position:* We decided that cost verifications for SKF were not warranted. With respect to the cost of steel, SKF was required to provide not just Ovako's cost of production, but the transfer prices and market values of the steel inputs as well. Since SKF failed to provide this essential information, and we have accordingly resorted to BIA (see Comment 15 in the Cost of Production and Constructed Value Section, *supra*), the question of verifying this particular data is moot. In addition, since we had already verified other substantial data provided by SKF in these reviews, we decided to forego verification of Ovako's provided steel costs.

*Comment 2:* Torrington criticizes the Department for its failure to conduct cost verifications of FAG-Italy and RHP even though Torrington had submitted requests for verification. Torrington argues that its request to verify FAG-Italy's costs was based on good cause that FAG-Italy changed its cost accounting systems solely for antidumping reporting and that certain costs as well as profit were inaccurately reported in FAG-Italy's response.

Torrington argues that RHP's cost response is inadequate for various reasons, including a lack of "sufficient precision" in identifying certain product costs and allocations. Torrington maintains that, while the Department verified FAG's and RHP's sales data during the previous administrative review, it has never verified their reported cost data during an administrative review. Finally, Torrington argues that the Department should either conduct a cost verification prior to issuing the final results of the review or reject FAG's cost response and apply best information available.

FAG-Italy argues that its cost accounting system is not deficient and has not been manipulated for the antidumping reviews. On the contrary, FAG-Italy asserts that its cost accounting system is essentially the same as that used to prepare the response which was verified in the original fair value investigation. FAG-Italy contends that its product costing methodology, which follows the framework used in the LTFV response, was established for official use by the company in 1991 after the LTFV investigation corroborated the usefulness of such a system. RHP maintains that it was prepared for a cost verification and was confident that there were no irregularities in its data.

*Department's Position:* With respect to administrative reviews, the Department is required to verify information under section 776(b) of the Tariff Act if the Secretary decides that good cause for verification exists, or if a request for verification is received from an interested party no later than 120 days after publication of notice of initiation and the Department has not conducted a verification during either of the two immediately preceding administrative reviews.

With respect to this review, we determined that there was not good cause for verifying FAG-Italy's and RHP's responses. Among our considerations was our analysis of the data submitted by FAG-Italy and RHP in the context of the review under consideration.

*Comment 3:* FAG-Germany requests that the Department correct and/or modify portions of the sales verification report, dated April 27, 1993, because there are incorrect or misleading statements in that report.

Torrington argues that FAG has failed to demonstrate that the Department's

verification report regarding FAG's sales information is substantially incorrect or misleading; therefore the Department should not alter its findings.

Department's Position: FAG-Germany has not demonstrated that portions of the sales verification report are incorrect or misleading; therefore, we have not amended the report.

B. Database Problems

*Comment 4:* RHP argues that the Department should disregard as a clerical error the reporting of certain internal stock transfer shipments in RHP's response. RHP explains that it included by mistake a group of zero-price U.S. transactions in its U.S. database that were internal stock transfers and not sales or samples. RHP states that whenever it transferred stock in its Ohio warehouse, it recorded two zero-price transactions, the first with a negative quantity reported, and the second with a positive quantity. According to RHP, these transactions were inadvertently not deleted from the computer tape submitted to the Department.

RHP contends that the administrative record clearly shows that a clerical error occurred. RHP asserts that in Appendix C of the section B response, it reported a list of all vendors to which samples (i.e., zero-price transactions) were provided during the period of review, and states that if those vendor numbers are compared with the vendor numbers for the zero-price transactions, it becomes clear that all but seven of the transactions in question are stock transfers and not sales or samples. RHP has submitted an affidavit of the President of RHP Bearings, Inc., explaining how the error occurred. RHP notes that the Department's practice is to correct obvious clerical errors that can be identified from the administrative record.

Torrington and Federal-Mogul argue that the Department should not correct RHP's data. Torrington contends that RHP's correction is untimely and that the affidavit of the President of RHP Bearings, Inc., was submitted after the deadline for submitting new information. Federal-Mogul states that RHP's allegation of a clerical error is not clear from the existing record. Federal-Mogul argues that the fact that Appendix C does not include all the vendor codes associated with the zero-price transactions only raises the possibility that Appendix C was incomplete. Finally, Torrington asserts that the revelation of this and other errors, in addition to the errors found by the Department at verification, calls into question RHP's entire response.

*Department's Position:* We agree with Torrington and Federal-Mogul. The Department's general practice is only to correct clerical errors if the existence of the errors and the accuracy of the correction can be determined from the existing administrative record. The alleged error is not evident from the record, and the factual information submitted by RHP is untimely. Therefore, we included the alleged stock transfers in our analysis.

*Comment 5:* INA asserts that the Department should base FMV on CV information provided by respondent rather than use the BIA rate applied in the preliminary results for eleven particular models further manufactured in the United States. Respondent states that it inadvertently failed to include a component digit in its reported value added code (VALADDE) for the eleven models. Because the program instructed the computer to treat a transaction with a VALADDE code of zero (no component digit) as a non-further manufactured sale, the computer did not look to the appropriate database for FMV. However, INA notes that it clearly identified further manufactured sales in the U.S. database by its "USA" designation for country of origin code (CTRORGE). Thus, according to INA, the error in its reported VALADDE codes resulted in the absence of CV matches only because of the particular way in which the Department's program was written. Accordingly, INA claims that the Department should either insert the correct VALADDE codes for the eleven models or revise the program so that further manufactured sales are identified by CTRORGE.

*Department's Position:* We agree with INA that FMV for these eleven particular models should be based on CV rather than BIA. It is clear from the record that the VALADDE codes for these eleven models were incorrect. Accordingly, we have revised the program so that further manufactured sales reflect the correct VALADDE codes.

*Comment 6:* Koyo requests that an alleged clerical error that it committed regarding U.S. commissions be corrected for the final results. Koyo included a commission expense adjustment for all U.S. OEM sales even though some U.S. territories are covered by Koyo's home market sales force and therefore do not incur commission expenses. Koyo argues that because this error is readily apparent from previous submissions, the Department should make the correction for the final results.

Torrington argues that Koyo has not demonstrated that the error is apparent or obvious based on the pre-existing record and, therefore, the Department should not correct the error for the final results.

*Department's Position:* Since we were able to determine from information already on the record that Koyo committed a clerical error regarding its U.S. commission expenses, we corrected this error for these final results.

*Comment 7:* Izumoto contends that no family matches were made because the VCOMH data submitted by Izumoto was overstated by a factor of 100 due to a decimal place error, thereby ensuring that no potential family match would pass the 20 percent difmer test. Izumoto requests that the Department correct this error.

*Department's Position:* We agree with Izumoto and have corrected this error for the final results. We have compared the listings in the VCOME and VCOMH fields for models that were sold in both markets and have determined that the data in the VCOMH field submitted by Izumoto was overstated by a factor of 100.

*Comment 8:* Izumoto requests that the Department correct an error involving one observation. Izumoto states that it inadvertently reported a dollar amount in the yen field for unit price (UNITPREY) in its section B submission for this observation.

*Department's Position:* We agree with Izumoto and have corrected this error for the final results.

*Comment 9:* KYK requests that the Department correct a typographical error in its constructed value dataset. KYK states that it inadvertently input the wrong nomenclature for one model, which resulted in a 45.83 percent BIA rate applied to that model. KYK further states that it did not sell this model in the United States during the POR, which demonstrates that the entry of this model in the CV dataset was strictly a clerical error.

*Department's Position:* We agree that the one observation that received a BIA rate for KYK's preliminary margin calculation was due to a typographical error, and we have confirmed that the model number originally shown was not sold in the United States during the POR. Accordingly, we have corrected this error for the final results.

*Comment 10:* Honda asserts that the Department should accept its revised computer tape, which corrects clerical errors. Honda claims that it learned of the clerical errors for the first time in the analysis memorandum released with the preliminary results. Honda argues that the Department should accept these corrections because (1) the Department has done so in the past in other cases; (2) the revised data may be confirmed in

most cases by reference to data previously submitted on the administrative record; (3) acceptance of the revisions would not deprive the Department of the opportunity to verify the data in question; and (4) Honda was not given an opportunity to correct the clerical errors prior to the issuance of the preliminary results.

*Department's Position:* We agree with Honda in part. Honda submitted a revised computer tape correcting alleged clerical errors after the preliminary results. We can only use this new data if: (1) We can determine that the original information was erroneous, and (2) we can determine, based on information previously on the record, that the revised data is correct.

Honda's reported data fell into thirteen periods over the POR. Honda's prices for home market sales remained constant for the first eleven of these periods. For the last two periods, however, Honda's prices changed. Any home market price that is missing from the first eleven months is clerical in nature because we could confirm the accurate price by referencing one of the other eleven periods. For missing home market data in the first eleven months, we therefore determined that the errors were clerical and that the revised data is acceptable.

We are not accepting Honda's revised data for home market sales in the last two periods of the POR, which corresponds to the month of April 1993. The revised data cannot be confirmed by reference to the data already submitted on the computer tapes used for the preliminary results. Honda claims that the revised data may be confirmed in most cases by reference to its price lists. Honda, however, has made no attempt to indicate where in their voluminous price lists the correct data may be found. We cannot therefore be certain that the revised home market data for the month of April 1993 constitutes accurate information.

Finally, we have rejected any revised U.S. sales data because we cannot confirm that the existance of any omissions or errors could be determined from the pre-existing administrative record. Therefore we relied on information submitted before the preliminary results.

*Comment 11:* Torrington contends that the Department, in making its product comparisons, failed to take into account the nomenclature used by NPBS. Torrington states that the inability of the Department to calculate margins for some of NPBS's sales may result from this model match problem.

Emerson argues that Torrington's claim regarding problems in NPBS's submitted product nomenclature is groundless. Emerson states that NPBS clearly set out its product nomenclature and that NPBS specifically included a separate field to indicate the home market model representing such or similar merchandise.

NPBS states that it has provided information that clearly establishes a consistent product nomenclature for U.S. and home market merchandise.

*Department's Position:* We agree with NPBS and Emerson. We verified NPBS's product nomenclature and found no discrepancies.

C. Price and Quantity

*Comment 12:* INA asserts that the Department should establish a threshold for determining whether home market and U.S. sales quantities are comparable, should compare only comparable quantities, and should use CV as FMV where there are not home market sales in comparable quantities to the U.S. sale. Respondent submits that the statute and regulations do not sanction comparisons of radically different quantities without any adjustment for differences in quantity and that, since the conditions for granting quantity adjustments are not met, the sales should not be compared. INA proposes a test whereby the Department should use home market transactions for price comparisons only in cases where the home market transaction quantity exceeds 10 percent of the quantity in the U.S. transaction. Otherwise, the Department should use CV. *Citing Murata Mfg. Co., Ltd.* v. *United States*, Slip Op. 93–53, at 11 (April 20, 1993), Torrington argues that the regulations and statute contemplate comparisons of sales involving different quantities and provide for adjustments to FMV when differences in quantity do in fact affect price. Petitioner further argues that the claimant bears the burden of proving to the Department's satisfaction that price differentials are due to quantities. Torrington references *Brass Sheet and Strip from the Netherlands*, 53 FR 23431, 23433 (June 22, 1988) to support its claim that the proof offered by INA is deficient in that it fails to establish a correlation between price and quantity.

Federal-Mogul argues that INA acknowledges that it has not and cannot make any showing that quantity differentials have any demonstrable effect upon prices, which is the only way a quantity adjustment can be justified under the regulations. Federal-Mogul claims that although INA seems to suggest that the statutory requirement that FMV be based upon sales in the usual commercial quantities and in the ordinary course of trade proscribes comparisons between U.S. prices and average FMVs based upon both large and small quantity sales, INA does not argue that any of its home market sales are outside the ordinary course of trade, nor does it maintain that the quantities involved are other than commercial.

*Department's Position:* The statute and the regulations provide that the Department will make an adjustment for any difference in quantities if it is established to the satisfaction of the Department that the amount of any price differential is wholly or partially due to the difference in quantities. 19 U.S.C. 1677b(4)(A) and 19 CFR 353.55. With regard to this adjustment, the regulations require the requesting party to "quantify" the adjustment by showing that any price differential is due to the difference in quantities sold in the home market and the United States. 19 C.F.R. 353.35(a). For example, in *Brass Sheet and Strip From the Netherlands*, 53 FR 23431, 23433 (June 22, 1988), we stated, "To be eligible for a quantity-based adjustment, the respondent must demonstrate a clear and direct correlation between price difference and quantities sold or costs incurred." In a court case involving Swedish steel, the CIT affirmed the Department's practice of requiring the requesting party to quantify the adjustment. *Sandvik* v. *United States*, 679 F. Supp. 12 (CIT 1989) ("The Department properly exercised its discretion in determining that plaintiffs do not qualify for a quantity discount adjustment since the record reflects that there is a lack of correlation between the price and quantity.") See also *NSK* v. *United States* Slip Op. 93–110 (June 17, 1993). Absent any information on the record properly quantifying an adjustment attributable to differences in quantity, we cannot make a quantity adjustment, and we cannot adopt a *per se* rule to account for quantity differences, such as the ten-percent test proposed by INA.

With regard to INA's suggestion that the Department use CV to match sales of differing quantities, section 773(a) of the Tariff Act, administrative practice, and judicial precedent require us to exhaust all sales of such or similar merchandise before resorting to constructed value for price comparisons. The fact that a home market sale may be of a different quantity than a U.S. sale does not outweigh the importance of relying on actual sale price rather than constructed value.

D. Accuracy of the Home Market Database

*Comment 13:* Torrington argues that the Department should place the burden on Koyo, as the party with access to the necessary information, to establish that sales to affiliates of its U.S. purchasers are in fact home market sales and are not destined for another market. Torrington notes that a "tiny portion" of sales handled by Koyo's Distributor Sales Division was treated as "export ex Japan." Therefore, Torrington argues that, for the final results, the Department should eliminate from the database sales handled by Koyo's Distributor Sales Division.

Koyo maintains that it properly reported its sales in this review, and that Torrington provides no evidence to the contrary. Koyo notes that the "tiny portion" of sales made by the Distributor Sales Division which were treated as "export ex Japan" were already excluded from the home market sales database. Koyo asserts that since this is clearly stated in its November 19, 1992 supplemental response, there is no reason to exclude any sales handled by the Distributor Sales Division for the final results.

*Department's Position:* We agree with Torrington that the burden is on respondent to report properly its home market sales. However, review of Koyo's questionnaire responses, and verification of its reported home market sales, gave no indication that Koyo inappropriately reported export sales as home market sales. Therefore, we have not excluded any of Koyo's home market sales from our final analysis.

*Comment 14:* Torrington argues that, due to the Department's findings at verification that Koyo neglected to report CRB sales by a consolidated related party, the Department should apply a BIA rate of 73.55 percent to these sales. Additionally, Torrington alleges that Koyo's response does not demonstrate that it accurately and completely compiled and reported its sales of CRBs. Torrington notes that Koyo disagreed with the Department's determination to include CRBs with length-to-diameter ratios of between three and four to one, and argues that absent record evidence that Koyo's sales listing is complete, the Department should apply the highest CRB margin calculated for any transaction as the BIA rate.

Koyo argues that the Department should reject Torrington's argument that a BIA rate should be applied to Koyo's CRB sales. Koyo notes that the unreported home market CRB sales with length-to-diameter ratios of greater than three to one made by its related party were of models that were only similar to those models sold in the United States. Koyo argues that because all sales of CRBs sold in the United States with length-to-diameter ratios of between three and four to one matched identical merchandise sold in the home market, there was no effect on Koyo's margin calculation resulting from the omission of these sales. Koyo stresses that its failure to report all CRB sales was the result of an oversight and had nothing to do with Koyo's longstanding position that these CRB models should be considered non-scope merchandise. Finally, Koyo notes that the Department found no other errors in the completeness of its sales database.

*Department's Position:* We disagree with Torrington's argument that BIA should be applied to Koyo's CRB sales. Verification of Koyo's home market questionnaire response revealed that, except for a small amount of CRBs sold by a consolidated related party, Koyo reported all sales of CRBs in the home market. While respondents are responsible for reporting all sales requested by the Department, we recognize that the amount of unreported sales does not constitute a significant omission in Koyo's home market database. Furthermore, despite the fact that the unreported CRB models have been placed on the record, Torrington has not presented evidence to indicate that Koyo's claim that the unreported sales would not be used in our margin calculations is inaccurate.

*Comment 15:* Torrington argues that the Department should exclude sales to several of Nachi's home market customers, who requested JBI inspections for their purchases, from the home market listing because there is no assurance that these sales were not exported. Torrington bases this allegation on the fact that Nachi had knowledge that one sale to one customer was destined for export. Nachi contends that there was no way for it to know for certain whether bearings (including JBI-inspected bearings) sold to customers would be exported. However, Nachi noted one sale to a single customer that it knew would be exported.

*Department's Position:* We agree with Torrington that when the seller has knowledge that a sale is going to be exported, it is not considered a home market sale, and therefore, should not be included in the home market sales listing. For the final results, we have excluded all sales to the single customer to whom Nachi sold merchandise that Nachi knew would be exported. We retained sales to the other customers that requested JBI inspections, because there was no evidence to suggest that Nachi was aware that these sales were destined for export.

*Comment 16:* Torrington argues that NMB/Pelmec Thai's "route B" and bonded warehouse sales are third country sales. Specifically, Torrington states that merchandise sold through "route B" is exempt from home market taxes, receives export subsidies, is physically exported from Thailand, and is sold to the first unrelated party outside of Thailand. Similarly, Torrington alleges that because bonded warehouses in Thailand are typically used for exportation, the Department must presume that merchandise sold through bonded warehouses is not destined for consumption in Thailand. Torrington notes that NMB/Pelmec Thai has not distinguished the sales at issue in this review from those that the Department treated as third country sales in the less-than-fair-value investigation.

Alternatively, Torrington argues that the sales in question are not within the ordinary course of trade. According to Torrington, NMB/Pelmec Thai makes "route B" sales and bonded warehouse sales to avoid limitations on domestic sales imposed by the Thai government. Because NMB/Pelmec makes these sales under unusual conditions, and does not have to pay certain taxes, Torrington concludes that the Department should exclude these sales from its analysis for these final results.

In rebuttal, NMB/Pelmec Thai states that, in accordance with Department precedent, it reported "route B" and bonded warehouse sales to unrelated parties as home market sales. According to NMB/Pelmec Thai, the "route B" sales examined during the investigation were sales in which the first unrelated party was located in Singapore, while those at issue in this review were sales in which the first unrelated party was located in Thailand. NMB/Pelmec Thai further states that although the material inputs used to produce the bearings sold through "route B" and bonded warehouses are exempt from certain import duties, the "route B" and bonded warehouse sales themselves are made in the normal course of business, are in accordance with Thai law, and are subject to regular taxes and import duties. Because the sales in question are within the ordinary course of NMB/Pelmec Thai's business, and because the Department has accepted such sales as home market sales in prior reviews, NMB/Pelmec urges the Department to reject Torrington's claim.

*Department's Position:* We agree with NMB/Pelmec Thai. In previous reviews, we have accepted bonded warehouse

sales to unrelated parties and "route B" sales in which the first unrelated purchaser is located in Thailand as home market sales. NMB/Pelmec Thai has reported its bonded warehouse and "route B" sales in the same manner as in previous reviews, and Torrington has provided no evidence to distinguish the sales at issue in this review from those that we accepted as home market sales in previous reviews. As a result, we have treated NMB/Pelmec Thai's bonded warehouse and "route B" sales as home market sales for these final results. See AFBs II 57 FR at 28422.

*Comment 17:* Torrington maintains that NMB/Pelmec Thai's U.S. dollar-denominated home market sales and sales to Thai affiliates of U.S. companies are not home market sales. According to Torrington, the circumstances surrounding these sales suggest that the merchandise sold may not be destined for consumption in Thailand. Under these circumstances, Torrington asserts that NMB/Pelmec Thai has failed to satisfy its burden of proof that the merchandise was destined for consumption in Thailand. Therefore, Torrington requests that, for the final results, the Department eliminate U.S. dollar-denominated sales from NMB/Pelmec's home market sales database, and treat sales to Thai affiliates of U.S. companies as U.S. sales.

NMB/Pelmec Thai responds that the Department excludes such sales as those at issue only when the Department determines that the manufacturer had reason to know or was informed in advance of the ultimate destination of the merchandise. NMB/Pelmec Thai explains that it determined that U.S. dollar-denominated sales and sales to Thai affiliates of U.S. companies consisted of merchandise destined for consumption in Thailand if there was nothing in the purchase order or other sales documentation suggesting that the merchandise would be re-exported. In the absence of such evidence, NMB/Pelmec Thai concludes that the sales at issue are properly classified as home market sales.

*Department's Position:* We agree with NMB/Pelmec. We would find sales such as those at issue here not to be home market sales only if the manufacturer was informed in advance, or had reason to know, of the ultimate destination of the merchandise, such as a result of special markings, market-specific specifications, or shipping instructions. In this review, there is no evidence in the record to suggest that NMB/Pelmec Thai had reason to know that U.S. dollar-denominated sales or sales to Thai affiliates of U.S. companies consisted of merchandise destined for the United States. Therefore, we have treated such sales as home market sales for these final results. See AFBs II, 57 FR at 28423.

*Comment 18:* Torrington argues that the Department should reconsider using NSK's home market sales database. Citing the Department's verification report, Torrington argues that the Department found deficiencies in one-third of the sales examined. Torrington asserts that the frequency of the discrepancies in the small sample database used for verification is significant, and that the Department should, at the very least, ensure that it deletes all negative entries and other anomalies from NSK's home market sales database.

NSK responds that the Department found that the transactions in question were not sales. The Department deliberately preselected from the home market sales database certain anomalous observations for verification. NSK notes that the Department was able to trace all relevant data for the remaining sales examined at verification, and was satisfied that NSK had accurately and completely reported its home market sales. Therefore, NSK urges the Department to reject Torrington's request to reconsider the use of NSK's home market sales database.

*Department's Position:* We agree with NSK. At verification, we received from NSK sufficient explanations regarding the apparent anomalous sales that we had selected for verification. For example, some of the transactions involved returned merchandise or cancelled sales. Further, NSK correctly states that we were able to verify the accuracy and completeness of its home market sales database. Because we were able to reconcile NSK's accounting records to its audited financial statements, and were able to determine that there were no systematic flaws in NSK's reporting of home market sales, we conclude that it is appropriate to base our analysis on NSK's home market sales database. We note, however, that we have excluded physical returns of merchandise from our analysis, as requested by Torrington.

E. Sampling Factor

*Comment 19:* Various parties argue that the margin program incorrectly multiplies the calculated total of sample sales by a factor of 8.69. Because the actual number of sampled days is 40, not 42, and because 1992 is a leap year, the correct factor is 9.15. For purposes of calculating the final results, therefore, the Department should apply the factor of 9.15 to all sampled ESP sales.

*Department's Position:* We agree. For the final determination, we have changed the weighing factor from 8.69 to 9.15.

F. Date of Sale

*Comment 20:* Torrington argues that NPBS has not reported date of sale accurately. While the terms of sale are set when an order is received by telephone, NPBS has reported as the date of sale the shipment date, which is also the invoice date. Torrington contends that it is unreasonable to assume that NPBS (1) does not record the price and quantity terms when taking orders over the telephone, and (2) does not require some action, such as the issuance of a production order, within a set number of days of the telephone order date. Torrington asserts that NPBS ignored the Department's instructions with regard to reporting date of sale. Torrington argues that even if NPBS did not record the accurate date of sale for its own records, NPBS nonetheless should have known that the Department would require such information and therefore should have recorded it.

Emerson contests Torrington's assertion that NPBS should maintain its date regarding date of sale in the manner which Torrington deems appropriate. Emerson argues that NPBS established during verification that the date of sale was the invoice date, and that the Department verified the accuracy of NPBS's data.

NPBS asserts that it fully complied with the Department's instructions in reporting date of sale. NPBS argues that in using the invoice date as the date of sale, NPBS is able to verify the accuracy of its sales date by tracing this date into its accounting records. NPBS concludes that the notes referred to by Torrington are insufficient for documenting date of sale because they are not an accounting record and are not kept by NPBS. The notes merely refer to specific prices and quantities taken over the telephone.

*Department's Position:* We disagree with Torrington. NPBS's date of sale methodology provides an accurate, reasonable, verifiable, and consistent method for determining date of sale. Furthermore, we cannot require that NPBS keep its records in a manner suited to the needs of an antidumping response. Rather we must examine submitted data and determine whether it is reasonable in light of a company's standard record-keeping and the alternatives available to it. In this case, we determined at verification that NPBS's date of sale (invoice date) is accurate because price and quantity are set on that date.

*Comment 21:* Nachi argues that the Department made an error in using the shipment date instead of the sale date as the date of sale for U.S. sales in the preliminary results and that the Department should correct this error for these final results.

*Department's Position:* We agree with Nachi and have corrected this error for the final results.

G. FTZ Sales

*Comment 22:* Torrington suggests that the Department reconsider whether FAG made any U.S. sales of Italian- or German-origin bearings from foreign trade zones (FTZs) during the POR. Torrington notes that FAG Interamericana, a German corporation operating in the Miami Foreign Trade Zone and wholly owned by FAG Germany, sells bearings to FAG–US to "fill [its] emergency supply needs," and speculates that, therefore, Italian- and German-origin bearings may have entered the United States through the FTZ during the POR. Torrington requests that the Department conduct a verification to determine whether or not such sales have occurred. Absent verification, Torrington argues that the Department should determine that FAG-Italy's and FAG-Germany's U.S. sales responses are deficient and apply BIA.

FAG explains in rebuttal that "it is possible that FAG Interamericana sold FAG-Italy [and FAG-Germany] bearings during the POR—but not to unrelated customers in the U.S." FAG cites its November 20, 1992 and November 24, 1992 supplemental responses to the Department's questionnaire in which it states, "With the exception of those rare instances when FAG Interamericana may sell to FAG–US, a related company, to fill the latter's emergency supply needs, FAG Interamericana neither sells in the United States nor imports bearings into the Customs territory of the United States * * * FAG Interamericana made no sales during the POR of scope product to unrelated customers in the United States."

*Department's Response:* We agree with FAG. Because FAG Interamericana made sales only to FAG–US and not to unrelated customers, any subsequent sale by FAG–US of Italian- or German-origin bearings would have been reported in FAG-Italy's and FAG-Germany's U.S. sales databases and captured by our analysis. Thus, Torrington's speculation is insufficient grounds for resorting to BIA. Therefore, we have no basis for concluding that the FAG responses are deficient with regard to the reporting of FTZ sales.

*Comment 23:* Torrington contends that the Department should reject NMB/Pelmec Thai's and NMB/Pelmec Singapore's claims that merchandise imported into U.S. foreign trade zones was re-exported to third countries. According to Torrington, respondents provided no evidence to support their claim that most merchandise entering FTZs did not enter U.S. customs territory prior to re-exportation. Torrington further asserts that respondents failed to prove that certain merchandise that did enter U.S. customs territory through FTZs was actually re-exported. As a result, Torrington concludes that the Department should assume that all bearings that NMB/Pelmec Thai and NMB/Pelmec Singapore entered into U.S. FTZs were consumed in the United States and should be assigned a BIA rate for these final results.

NMB/Pelmec Thai and NMB/Pelmec Singapore respond to Torrington's arguments by citing a ruling by the CIT, *Torrington* v. *United States* Slip. Op. 93–44, (March 29, 1993), that a sale of merchandise in the United States, rather than merely entry into U.S. customs territory, is required before the merchandise can be subject to the assessment of antidumping duties. Respondents assert that they provided information demonstrating that they re-exported most merchandise entered into U.S. FTZs without entering the merchandise into U.S. customs territory. Respondents further assert that they re-exported the small quantity of other merchandise that actually entered U.S. customs territory through FTZs. Therefore, NMB/Pelmec Thai and NMB/Pelmec Singapore conclude that the application of BIA to merchandise entered into U.S. FTZs is unwarranted.

*Department's Position:* We agree with respondents. NMB/Pelmec Thai and NMB/Pelmec Singapore provided evidence indicating that certain merchandise imported into U.S. FTZs was re-exported without entering the customs territory of the United States. Also, since those bearings that entered the customs territory of the United States were also re-exported prior to sale to an unrelated customer, and because Torrington provided no evidence to the contrary, we conclude that the merchandise at issue was not sold to unrelated parties in the United States. Moreover, respondents' reporting of these sales is consistent with the manner in which they reported such sales in previous reviews, in which we determined that the merchandise was not consumed in the United States. See *AFBs II*, 57 FR at 28424. Therefore, we determine that merchandise that respondents imported into U.S. FTZs is not subject to these reviews, and, therefore, that the application of BIA to these sales is unwarranted.

H. Home Market Viability

*Comment 24:* Torrington argues that the Department should not determine home market viability for NMB/Pelmec Thai and NMB/Pelmec Singapore on the basis of the quantities of bearings sold in the home and third country markets. According to Torrington, quantity is an inappropriate measure of viability, because bearings may vary considerably by size. Torrington also notes that NMB/Pelmec Thai supports the use of weight to determine home market viability. Given the inherent unreliability of quantity as a measure of home market viability Torrington argues that the Department should determine that NMB/Pelmec Thai's and NMB/Pelmec Singapore's home markets are not viable, and resort to BIA to calculate the dumping margins for these firms.

NMB/Pelmec Thai and NMB/Pelmec Singapore respond that the Department has rejected Torrington's arguments regarding the use of weight to determine home market viability in the previous administrative reviews of these orders. Respondents further argue that, pursuant to the Department's instructions regarding data on home market viability, they did not provide data on the weight of bearings sold because they were able to determine that the home market was viable on the basis of sales quantities. Therefore, NMB/Pelmec Thai and NMB/Pelmec Singapore argue that the Department should accept the reported home market viability data.

*Department's Position:* We agree with NMB/Pelmec Thai and NMB/Pelmec Singapore. Torrington has provided no evidence that weight is a better indicator of commercial activity in a particular market than sales quantity. Further, NMB/Pelmec Thai and NMB/Pelmec Singapore did not report data on bearing weight because, in accordance with the instructions contained in our original and supplemental questionnaires, they were able to determine that the home market was viable on the basis of sales quantities. Because NMB/Pelmec Thai and NMB/Pelmec Singapore complied fully with our instructions, and because we find no basis for believing that bearing weight provides a better indication of market activity than sales quantity, we have accepted the viability data that respondents reported in these reviews.

*Comment 25:* Torrington argues that the Department should reject NMB/Pelmec Thai's and NMB/Pelmec Singapore's home market viability calculations because they are based on

incomplete data. According to Torrington, NMB/Pelmec Thai and NMB/Pelmec Singapore unilaterally excluded sales of parts to related parties in both their home and third country markets based on the erroneous premise that reporting such sales of parts would result in "double-counting" because these parts are used by related parties in the production of finished bearings. Torrington rejects respondents' assertion on the grounds that the quantity of parts sold to related parties far exceeds the amount of parts required to produce the quantity of bearings sold by respondent during the review period. Torrington further argues that sales of parts to related parties in third countries would not be double-counted because the finished bearings produced would not appear in the viability calculation for either Thailand or Singapore. Because NMB/Pelmec Thai and NMB/Pelmec Singapore declined to report the required data, Torrington requests that the Department resort to BIA in determining the dumping margins for these firms.

NMB/Pelmec Thai and NMB/Pelmec Singapore respond that the quantity of parts sold to related parties will not correspond exactly to production quantities because the related parties in question purchased parts for inventory. Respondents further argue that double-counting will occur if the Department includes in its viability analysis for one country sales of parts to related parties in third countries, and then includes finished bearings produced with those parts in the viability analysis for the third country. Accordingly, NMB/Pelmec Thai and NMB/Pelmec Singapore conclude that the Department should not include sales of parts to related parties in its analysis.

*Department's Position:* We agree in part with NMB/Pelmec Thai and NMB/Pelmec Singapore. Respondents provided data on sales of parts to related parties in both the home and third country markets in response to our supplemental questionnaires. Respondents correctly argue that double-counting would occur if, when dealing with consolidated entities as we are in this instance, we included in our viability calculations both home market sales of parts to related parties and finished bearings sold by those parties in the home market. We also agree with respondents' assertion that the number of parts purchased by manufacturers will not necessarily correspond exactly with the number of parts required to produce the reported quantity of bearings sold because manufacturers may purchase parts for inventory. We disagree, however, with respondents' reasoning regarding sales of parts to related parties in third countries. Absent evidence to the contrary, we believe that the country of origin of the parts in question differs from the country of origin of the finished bearings produced from those parts. Thus, the parts and the bearings produced from them cannot be considered to be the same merchandise, and, therefore, cannot be double-counted if considered separately in separate antidumping cases. Based on these conclusions, we excluded home market sales of parts to related parties, and included third country sales of parts to related parties, in our viability analyses for Thailand and Singapore. In both cases, we determined that the home market was viable, and, therefore, did not find the use of BIA to be warranted for these final results.

I. Correction of Preliminary Results

*Comment 26:* NSK claims that it is unable to comment adequately on the preliminary results because the computer program used to calculate the preliminary dumping margins contains significant clerical errors. NSK is also concerned that certain other errors may not be revealed until the errors at issue are corrected. Therefore, NSK requests that the Department either re-calculate NSK's preliminary dumping margins, or issue draft computer programs in advance of the final results. Torrington concurs with NSK's request.

*Department's Position:* We agree with NSK and Torrington that the computer program used to calculate the preliminary dumping margin contains clerical errors. We believe, however, that the preliminary computer program provides an adequate basis for the parties to comment on the manner in which we calculated USP, home market price, COP, and CV. In this context, we note that both Torrington and NSK were able to submit numerous comments on our treatment of various expenses, and on our calculations of COP and CV. Moreover, the reissuance of the preliminary results, or the issuance of a draft program in advance of the final results, would hinder our ability to complete these reviews in a timely manner. Because the computer program used for the preliminary analysis provides an adequate basis for comment, and because we must complete these reviews in a timely manner, we have not reissued our preliminary results, or issued a draft computer program for these final results.

J. Cylindrical Roller Bearing Scope Ruling

*Comment 27:* NTN and FAG argue that the Department improperly included roller bearings with a roller length to diameter ratio between 3:1 and 4:1 in their cylindrical roller bearing margin calculations. Both parties argue that the Department's scope determination on this matter, made in response to a scope ruling request submitted by FAG concerning certain crankshaft and engine main shaft pilot bearings, was made on December 23, 1991, which is eight months into the third review period. Furthermore, both parties argue that the Department did not formally notify respondents that the rationale underlying FAG's specific scope request was to be applied universally to distinguish between needle roller bearings and cylindrical roller bearings. Respondents conclude that there is a clear inequity involved in applying this ruling retroactively.

Torrington argues that respondents had reason to be aware that roller bearings with ratios less than 4:1 might be encompassed by the outstanding orders and that they assumed the risk when they failed to monitor the prices of the merchandise in question.

*Department's Position:* The scope ruling described above was not a change in the scope of the merchandise covered by the orders in question, but a clarification of what merchandise was already covered by the existing order. We included a list of scope rulings in our questionnaire. Respondents have a responsibility to keep abreast of all scope rulings that are made on specific products, and they should be aware that common principles may apply universally.

K. Importer of Record

*Comment 28:* Nachi contends that the Department erred in the preliminary results by assuming that the importer and the customer are the same for all of Nachi's purchase price sales. Nachi states that in reality, its U.S. affiliates are the importers of record. Nachi concludes that, as a result, the Department needlessly calculated separate preliminary assessment rates.

Torrington challenges Nachi's assertion that it is the importer for all of its purchase price sales, on the grounds that the merchandise is shipped directly to the U.S. customer.

*Department's Position:* We agree with respondent. Nachi's response indicates that, despite the fact that the merchandise is shipped directly to Nachi's U.S. customers, Nachi is the importer of record for all of its purchase price sales.

Because there is no evidence on record to suggest that Nachi is not the importer of record for its purchase price sales, we have changed the final results to reflect this correction.

L. Pre-Final Reviews

*Comment 29:* A number of respondents have requested that the Department follow the procedure used in the first AFB reviews and release computer programs and printouts prior to issuance of the final results for these reviews. This would permit interested parties to comment on any clerical or programming errors and would promote accurate final results and reduce the potential for unnecessary litigation.

*Department's Position:* Based on our overall evaluation of the quality of our computer runs, the nature of the comments received after the preliminary results, and the nominal changes between the preliminary and final results, we believe the extraordinary procedure of a pre-final release of the computer program and printouts is unnecessary for these reviews. Also, we must complete these reviews in a timely manner, and we are concerned that a pre-final disclosure may jeopardize our ability to do so.

[FR Doc. 93-17461 Filed 7-23-93; 8:45 am]
BILLING CODE 3510-DS-P

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[A-559-806]

## Certain Portable Electric Typewriters From Singapore; Suspension of Investigation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce has decided to suspend the antidumping investigation involving certain portable electric typewriters from Singapore. The basis for the suspension is an agreement by the Singaporean producers/exporters, which account for substantially all of the known imports of these products from Singapore, to revise their prices to eliminate sales of this merchandise to the United States at less than fair value.

**EFFECTIVE DATE:** July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Steven Presing or Cherie Rusnak, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3793.

**SUPPLEMENTARY INFORMATION:**

### Case History

Since the publication of our notice announcing the resumption of this proceeding (57 FR 60796, December 22, 1992), the following events have occurred:

On December 30, 1992, the United States Court of International Trade ("CIT") in Slip. Op. 92-232 denied Smith Corona's Application for a Stay Pending Appeal. On January 8, 1993, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise, within the meaning of section 733(e) of the Act. On January 12, and January 26, 1993, respondent and petitioner, respectively, filed submissions regarding whether the petition in this proceeding was filed "on behalf of" the relevant U.S. industry.

Regarding petitioner's allegation of critical circumstances, the Department found no history of dumping of the subject merchandise and no reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. Therefore, the Department did not consider whether imports had been massive and determined that critical circumstances did not exist with respect to imports of the subject merchandise from Singapore.

The Department also determined that the petitioner is a U.S. producer representing a substantial share of the industry's output and, therefore, that the petition was filed on behalf of the U.S. industry. In its preliminary determination, the Department also determined that PETs from Singapore were being, or were likely to be, sold in the United States at less than fair value. The estimated margin was 16.02 percent (see 58 FR 7534, February 8, 1993).

### Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (see 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

### Period of Investigation

The POI is November 1, 1990, through April 30, 1991.

### Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. We have determined that the agreement will eliminate sales of this merchandise to the United States at less than fair value, that the agreement can be monitored effectively, and that the agreement is in the public interest. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met. The terms and conditions of the agreement, signed June 22, 1993, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, effective July 26, 1993, the suspension of liquidation of all entries entered or withdrawn from warehouse, for consumption of PETs from Singapore as directed in our notice of "Antidumping Preliminary Determination of Sales at Less than Fair Value, Certain Portable Electric Typewriters from Singapore" is hereby terminated. Any cash deposits on entries of PETs from Singapore pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

The Department intends to conduct an administrative review within twelve months of the anniversary date of the publication of this suspension agreement as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice. This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: June 25, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

**Note: Suspension of Liquidation and Refund of Security**

Pursuant to the orders of the Court of International Trade entered on June 25, 1993 and July 12, 1993, the Department will not, until permitted to do so by the Court, instruct Customs to: (a) liquidate entries of portable electric typewriters from Singapore which are or have been the subject of administrative proceedings resulting in *Preliminary Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters from Singapore*, 58 FR 7534 (Feb. 8, 1993); or (b) refund any cash deposit or release any bond or other security collected pursuant to 19 U.S.C. 1673b(d)(2).

Dated: July 20, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

**Annex 1: Suspension Agreement—Certain Portable Electric Typewriters from Singapore**

Under section 734 of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) ("the Act"), and 19 CFR 353.18, the U.S. Department of Commerce ("the Department") and the signatory producers/exporters of portable electric typewriters from Singapore enter into this suspension agreement ("the Agreement"). On the basis of this suspension agreement, the Department shall suspend its antidumping investigation initiated on May 14, 1992, (56 FR 22150) with respect to portable electric typewriters from Singapore, subject to the terms and provisions set out below.

*A. Product Coverage*

The merchandise subject to this Agreement is the following merchandise of Singaporean origin:

(1) Certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software, if any.

PETs which meet all of the following criteria are excluded from the scope of this Agreement: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of this Agreement.

(2) The PETs subject to this Agreement are classifiable under subheadings 8469.10.00 and 8469.29.00 of the Harmonized Tariff Schedule of the United States (HTSUS) (Note that personal word processors are also provided for under subheading 8469.10.00).

*B. U.S. Import Coverage*

The signatory producers/exporters collectively are the producers and exporters in Singapore which, during the antidumping investigation on the merchandise subject to this Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the regulations. The Department may at any time during the period of this Agreement require additional producers/exporters in Singapore to sign this Agreement in order to ensure that not less than substantially all imports into the United States are covered by this Agreement.

In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of this Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: Volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's purchase price.

*C. Basis of the Agreement*

On and after the effective date of this Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the foreign market value of this merchandise exceeds the United States price of its merchandise subject to this Agreement. For this purpose, the Department will determine the foreign market value in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For all sales occurring between the effective date of this Agreement and September 30, 1993, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to unrelated purchasers in the United States at prices that are less than its foreign market value, as determined by the Department based on cost information for the period July 1, 1992, through March 31, 1993, and provided to parties not later than June 22, 1993.

(2) For all sales occurring on or after October 1, 1993, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to any unrelated purchaser in the United States at prices that are less than its foreign market value of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of this Agreement and provided to parties not later than September 20, December 20, March 20, and June 20 of each year. This foreign market value shall apply to sales occurring during the calendar quarter beginning on the first day of the month following the date the Department provides the foreign market value, as stated in this paragraph.

*D. Monitoring*

Each signatory producer/exporter will supply to the Department all information that the Department decides is necessary to ensure that the producer/exporter is in full compliance with the terms of this Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than October 31, 1993, and shall contain the specified sales information covering the period June 22, 1993 to September 30, 1993. Subsequent reports of sales data shall be submitted to the Department not later than January 31, April 30, July 31, and October 31 of each year and each report shall contain the specified sales information for the quarter ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than quarterly basis.

(2) Cost Information

The Department will require Smith Corona Corporation and Smith Corona (PTE) Ltd., (the respondent in the original investigation) to report their actual cost of production and profit data on a quarterly basis, in the prescribed format and using the prescribed method of data compilation. Each such producer/exporter also must report anticipated increases in production costs and may report anticipated decreases in production costs in the quarter in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data shall be submitted to the Department not later than July 31, 1993 and shall contain the specified cost data covering the period April 1, 1993, through June 30, 1993. Each subsequent report shall be submitted to the Department not later than October 31, January 31, April 30, and July 31, of each year and each report shall contain specified information for the quarter ending one month prior to the due date.

(3) Special Adjustment of Foreign Market Value

If the Department determines that the foreign market value it determined for a previous quarter was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust foreign market value in a subsequent period or periods, unless the Department determines that Section F of this Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semi-annually, or more frequently, as the Department deems necessary.

(5) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate foreign market value and/or U.S. price based on best information available, as it determines appropriate, unless the Department determines that section F applies.

*E. Disclosure and Comment*

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during each quarter as well as the results of its calculations of foreign market value.

(2) Not later than September 1, December 1, March 1, and June 1 of each year, the Department will disclose to each producer/exporter the results and the methodology of the Department's calculations of its foreign market value. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with paragraph E(1).

(3) Not later than seven days after the date of disclosure under paragraph E(2), the parties to the proceeding may submit written comments to the Department, not to exceed 10 pages. After reviewing these submissions, the Department will provide to each producer/exporter its foreign market value as provided in paragraph C(2). In addition, the Department may provide such information to domestic interested parties as specified in paragraph E(1).

*F. Violations of the Agreement*

If the Department determines that this Agreement is being or has been violated or no longer meets the requirements of section 734 (b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(i) of the Act and the regulations.

*G. Other Provision*

In entering into this Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to this Agreement have been made at less than fair value.

*H. Termination*

The Department will not consider requests for termination of this suspended investigation prior to July, 1998. Termination will be conducted in accordance with section 353.25 of the Department's regulations.

Any producer/exporter may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(i)(1) of the Act.

*I. Definitions*

For purposes of this Agreement, the following definitions apply:

1. U.S. Price—means the price at which merchandise is sold by the producer or exporter to the first unrelated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unrelated purchaser, as determined by the Department under section 772 of the Act.

2. Foreign Market Value—means the constructed value of the merchandise, as determined by the Department under section 773(e) of the Act and the corresponding sections of the Department's regulations, as determined by the Department.

3. Producer/Exporter—means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the related person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(13) of the Act.

4. Date of Sale—means the date on which the essential terms of the contract, including price, are agreed and determinable, normally the date of confirmation of sale.

The effective date of this Agreement is June 22, 1993.

*For Singaporean Producers/Exporters*

Smith Corona Corporation and Smith Corona (PTE) Ltd.

Terence P. Stewart, Esq.
Stewart and Stewart,

For U.S. Department of Commerce

Date: _____

Joseph A. Spetrini,
*Acting Assistant Secretary for Import Administration.*

Date: _____

[FR Doc. 93-17786 Filed 7-22-93; 9:46 am]
BILLING CODE 3510-DS-P

[A-588-015]

## Television Receivers, Monochrome and Color, From Japan; Amended Final Results of Antidumping Duty Administration Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Amended final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is announcing its amended final results of review, pursuant to remand, of the antidumping finding on television receivers, monochrome and color, from Japan. The remand covers one Japanese manufacturer of the merchandise, Toshiba Corporation, and the periods September 28, 1983, through March 31, 1984, and April 1, 1984, through February 28, 1985.

EFFECTIVE DATE: July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Heaney or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-5255.

SUPPLEMENTARY INFORMATION:

### Background

On August 6, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 37339) its final results of antidumping duty administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597; March 10, 1971). We determined the dumping margin for Toshiba Corporation (Toshiba) for the periods from September 28, 1983, through February 28, 1986, to range from 0.06 percent to 39.88 percent.

Toshiba challenged the Department's final results of review at the Court of International Trade (CIT) with respect to the periods September 28, 1983, through March 31, 1984, and April 1, 1984, through February 28, 1985. On September 25, 1992, the CIT issued an order remanding the final results of review to the Department for recalculation of the dumping margin (*Toshiba Corp.* v. *United States*, Court No. 91-09-00649). On October 26, 1992, the Department submitted its redetermination to the CIT. The CIT subsequently affirmed that redermination on December 7, 1992.

### Amended Final Results of Review

As a result of our recalculation of Toshiba's margins pursuant to court

remand, we determine Toshiba's margin to be 0.01 percent for the period September 28, 1983, through March 31, 1984, and to be 0.02 percent for the period April 1, 1994, through February 28, 1995.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above.

This review and notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and § 353.22 of the Department's regulations (19 CFR 353.22).

Dated: July 14, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–17756 Filed 7–23–93; 8:45 am]

BILLING CODE 3510–DS–M

## International Trade Administration

[C–549–401]

### Certain Apparel From Thailand; Notice of Proposed Amended Conversion

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Certain apparel from Thailand: Notice of proposed amendment to the existing conversion of the scope of the order from the Tariff Schedules of the United States Annotated to the Harmonized Tariff Schedule.

**SUMMARY:** On January 1, 1989, the United States fully converted to the international harmonized system of tariff classification. On January 11, 1989, the Department of Commerce (the Department) published the Conversion to Use of the Harmonized Tariff Schedule of Classifications for Antidumping and Countervailing Duty Proceedings (54 FR 993; January 11, 1989) (1989 Conversion) for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989. The Department now proposes to amend the 1989 Conversion governing the countervailing duty orders on apparel from Thailand. Interested parties are invited to comment on this proposed amended conversion.

**EFFECTIVE DATE:** July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sarah Givens or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2786.

### Background

In 1985, the Department issued a countervailing duty order on Certain Apparel from Thailand (C–549–401) (50 FR 9818; March 12, 1985). The scope of this order was originally defined solely in terms of the Tariff Schedules of the United States Annotated (TSUSA) item numbers; no narrative product description was provided. On January 1, 1989, the United States fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS). Section 1211 of the Omnibus Trade and Competitiveness Act of 1988 directed the Department to "take whatever actions are necessary to conform, to the fullest extent practicable, with the tariff classification system of the Harmonized Tariff Schedule [for] all * * * orders * * *" in effect at the time of the implementation of the HTS.

Accordingly, on January 11, 1989, after reviewing comments received from the public, the Department published the 1989 Conversion for all antidumping and countervailing duty orders in effect or investigations in progress as of January 1, 1989 (54 FR 993). The notice also included the conversion of the scope of the referenced apparel order from TSUSA to HTS item numbers. The 1989 Conversion was based on a one-to-one correspondence of the TSUSA and HTS item numbers. In the notice, the Department stated that the conversion could be amended, as warranted, at any time during the applicable proceeding as a result of the submission of comments or new factual information.

As a result of comments submitted to the Department by the importing public and advice received from the U.S. Customs Service, the Department determined that the 1989 Conversion did not accurately reflect the scope of the Certain Apparel from Thailand order and, therefore, that the order should be amended. On September 15, 1992, the Department published a proposed amendment to the 1989 Conversion and invited interested parties to comment on it (57 FR 42545). The Department did not receive any comments with respect to the amendment to the Certain Apparel from Thailand order.

The Department published on January 13, 1993 the amended 1989 Conversion (Amended 1989 Conversion) (58 FR 4151). On March 10, 1993, the Customs Service began liquidating without regard to countervailing duties all unliquidated entries of the subject merchandise not covered in the Amended 1989 Conversion that were exported on or after January 1, 1989. Customs also began liquidating at the appropriate rate all unliquidated entries of the subject merchandise covered in the Amended 1989 Conversion that were exported on or after January 1, 1989.

Thereafter, the Department discovered that the Amended 1989 Conversion was based on an inaccurate HTS list. On April 23, 1993, after being notified by the Department of the error, Customs stopped liquidation and resumed suspending liquidation according to the 1989 Conversion.

To rectify the error in the 1989 Amended Conversion, the Department, with the assistance of the U.S. Customs Service and the U.S. International Trade Commission, has once again compared the TSUSA-defined scope and the HTS-defined scope provided by the 1989 Conversion, and identified those HTS numbers that more reasonably correspond with the TSUSA-defined scope of the Certain Apparel from Thailand countervailing duty order. A new proposed amended conversion is found in the attached appendix.

### Request for Public Comments

We invite interested parties to submit comments on the proposed amended conversion within 30 days of the publication of this notice. All comments must be in writing (10 copies), addressed to the attention of the Director, Office of Countervailing Compliance, International Trade Administration, IA Central Record Unit, room B–099, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: July 9, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

**Appendix: Proposed Amended HTS List for Certain Apparel From Thailand (C–549–401)**

| | | | |
|---|---|---|---|
| 4202.1240 | 4202.1260 | 4202.1280 | 4202.2245 |
| 4202.2260 | 4202.2270 | 4202.2280 | 4202.3240 |
| 4202.3295 | 4202.9215 | 4202.9220 | 4202.9230 |
| 4202.9260 | 4202.9290 | 6101.2000 | 6101.3020 |
| 6102.1000 | 6102.3010 | 6102.3020 | 6103.1920* |
| 6103.2200* | 6103.2300* | 6103.2910* | |
| 6103.4210 | 6103.4315 | 6103.4910 | 6104.1200* |
| 6104.1320 | 6104.1915 | 6104.2100* | 6104.2200* |
| 6104.2300* | 6104.2910* | 6104.3100 | 6104.3310 |
| 6104.3320 | 6104.3910 | 6104.4200 | 6104.4320 |
| 6104.4420 | 6104.5100 | 6104.5200 | 6104.5310 |
| 6104.5320 | 6104.5910 | 6104.6220 | 6104.6320 |
| 6104.6920 | 6105.1000 | 6105.2020 | 6106.1000 |
| 6106.2020 | 6109.1000 | 6109.9010 | 6110.2020 |
| 6110.3030 | 6111.3010 | 6111.3020 | 6111.3030 |
| 6111.3040 | 6111.3050 | 6111.9010 | 6111.9020 |
| 6111.9030 | 6111.9040 | 6111.9050 | 6112.1200 |
| 6112.1910 | 6112.2010 | 6114.2000 | 6114.3010 |
| 6114.3030 | 6201.1220 | 6201.1340 | 6201.9220 |
| 6202.1220 | 6202.1340 | 6202.9220 | 6202.9345 |

| | | | |
|---|---|---|---|
| 6202.9350 | 6203.1910* | 6203.2230* | |
| 6203.2300* | 6203.2920* | 6203.4240 | 6203.4340 |
| 6203.4920 | 6204.1200* | 6204.2230* | |
| 6204.2300* | 6204.2920* | 6204.3220 | 6204.3350 |
| 6204.3930 | 6204.4220 | 6204.4340 | 6204.4440 |
| 6204.5220† | 6204.5330 | 6204.5930 | 6204.6240 |
| 6204.6335 | 6204.6925 | 6305.3020 | 6305.3030 |
| 6305.4030 | 6308.2200 | 6308.9200 | 6309.2010 |
| 6309.2020 | 6309.2030 | 6309.2050 | 6210.3010 |
| 6210.5010 | 6212.1010 | 6212.1020 | |

*Coverage limited to garments that would be covered by this order if separately entered.

†Coverage excludes garments of denim or of pile fabrics.

[FR Doc. 93-17752 Filed 7-23-93; 8:45 am]

BILLING CODE 3510-DS-P

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(C-791-801)

## Notice of Postponement of Preliminary Countervailing Duty Determinations: Certain Carbon Steel Flat Products from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Kristin M. Heim, Office of Countervailing Investigations, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3798.

POSTPONEMENT: On July 9, 1993, Armco Steel Company, L.P., *et al.* petitioners in the investigations, requested that the Department postpone the preliminary determinations in accordance with 19 CFR 355.15(c). Accordingly, pursuant to section 703(c)(1)(A) of the Tariff Act of 1930, as amended, ("the Act") and 19 CFR 355.15(c), we are postponing the date of the preliminary determinations until no later than September 3, 1993.

This notice is published pursuant to section 703(c)(2) of the Act and 19 CFR 355.15(e).

Dated: July 16, 1993.

Joseph A. Spetrini,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93-17753 Filed 7-23-93; 8:45 am]

BILLING CODE 3510-DS-P

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## Iowa State University et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

*Docket Number:* 93-009. *Applicant:* Iowa State University, Ames, IA 50011. *Instrument:* ICP Mass Spectrometer. *Manufacturer:* Turner Scientific, United Kingdom. *Intended Use:* See notice at 58 FR 17862, April 6, 1993. *Reasons:* The foreign instrument provides: (1) Detection sensitivity to 1 pptr, (2) linear dynamic mass range at ± 5% over 10 orders of magnitude, and (3) isotope ratio measurements within ± 2% from lithium to uranium.

*Docket Number:* 93-011. *Applicant:* North Carolina State University, Raleigh, NC 27695-7212. *Instrument:* Sonic Telemetry Transmitters and Receivers, Models V3-6L and VR-20. *Manufacturer:* VEMCO, Canada. *Intended Use:* See notice at 58 FR 17862, April 6, 1993. *Reasons:* The foreign instrument provides: (1) Recorded identification of individuals by serial number, sound pulse rate and frequency to minimize false positives and (2) a built-in memory.

*Docket Number:* 93-013. *Applicant:* University of Colorado Health Sciences Center, Denver, CO 80262. *Instrument:* UV Flashlamp, Model XF-10. *Manufacturer:* Hi Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 17862, April 6, 1993. *Reasons:* The foreign instrument provides: (1) Minimum electromagnetic interference, (2) spot focused quartz optics and (3) 10 to 340J adjustable stored energy.

*Docket Number:* 93-014. *Applicant:* U.S. Department of Agriculture, Beckley, WV 25802-0867. *Instrument:* Comair Root Length Scanner. *Manufacturer:* Hawker de Havilland Ltd., Australia. *Intended Use:* See notice at 58 FR 17862, April 6, 1993. *Reasons:* The foreign instrument provides: (1) Root length measurements to 100 m, (2) 0.1 to 2.0 mm diameters and (3) accuracy of ± 5% for 15 to 60 m samples.

*Docket Number:* 93-021. *Applicant:* Colorado State University, Fort Collins, CO 80523. *Instrument:* Trisector Double Focusing Geometry Mass Spectrometer, Model Autospec-5000. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 58 FR 17863, April 6, 1993. *Reasons:* The foreign instrument provides: (1) Resolution to 60 000, (2) scan rate to 5 per second and (3) HPLC interface.

*Docket Number:* 93-023. *Applicant:* Virginia Commonwealth University, Richmond, VA 23298. *Instrument:* ACTA Rotating Wear Testing Machine. *Manufacturer:* Academic Center for Dentistry, The Netherlands. *Intended Use:* See notice at 58 FR 17863, April 6, 1993. *Reasons:* The foreign instrument provides accurate simulation of conditions of clinical wear, with adjustment for slip, force and frequency.

The National Institutes of Health advises in its memoranda dated May 25, 1993, that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

*Director, Statutory Import Programs Staff.*

[FR Doc. 93-17744 Filed 7-23-93; 8:45 am]

BILLING CODE 3510-DS-P

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## Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 93-070. *Applicant:* Iowa State University, Purchasing Department, 2nd Floor General Services Building, Ames, IA 50011. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of newly designed commodities, ingredients, and products ultimately intended to be foods for human

consumption. The instrument will function as analytical support equipment in interdisciplinary research conducted to understand and evaluate the linkages of food production, processing, distribution and design of new foods to consumer demands, food selection and consumption for nutritional assurance and health maintenance. The instrument will also be used for educational purposes in food science courses. *Application Received by Commissioner of Customs:* June 21, 1993.

*Docket Number:* 93–071. *Applicant:* Georgia Institute of Technology, 225 North Avenue, NW, Atlanta, GA 30332. *Instrument:* EM31 Conductivity Meter and Model DL720 Digital Data Acquisition System. *Manufacturer:* Geonics Ltd., Canada. *Intended Use:* The instrument will be used for studies of the effectiveness of a range of test methods used in hazardous waste site assessment. In particular, this device is used to study electromagnetic conductivity in soil and ground water and thereby assist in identifying the presence of contaminants. In addition, the instrument will be used in two courses that focus on techniques for assessment of subsurface contamination. *Application Received by Commissioner of Customs:* June 22, 1993.

*Docket Number:* 93–072. *Applicant:* Horn Point Environmental Laboratory, P.O. Box 775, 2020 Horn Point Road, Cambridge, MD 21613. *Instrument:* OM 780 Model 781 Oxygen Meter, MC 100 Microcell and SI 130 1302 Oxygen Electrode. *Manufacturer:* Strathkelvin Instruments, United Kingdom. *Intended Use:* The instrument will be used for sampling of small mesocosms that will have small volumes of water in a research program to examine the scaling effects of human and natural perturbations on living ecosystems. *Application Received by Commissioner of Customs:* June 22, 1993.

*Docket Number:* 93–073. *Applicant:* Rutgers University, Fiber Optic Material Research Program, Brett & Bowser Road, Piscataway, NJ 08854. *Instrument:* Excimer Laser System, Model AQX–150. *Manufacturer:* MPB Technologies, Canada. *Intended Use:* The instrument will be used to explore scientific and technological questions in the research topic of photosensitive glasses and fiber Bragg grating formation. *Application Received by Commissioner of Customs:* June 22, 1993.

*Docket Number:* 93–074. *Applicant:* The College of William and Mary, Virginia Institute of Marine Science, Route 1208, P.O. Box 1346, Gloucester Point, VA 23062. *Instrument:* Electronic Fish Measuring Board, Model FMB IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instrument will be used to obtain size measurements of fish and crustaceans during studies of various fish and crustaceans native to the Chesapeake Bay and Mid-Atlantic Bight. *Application Received by Commissioner of Customs:* June 24, 1993.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 93–17745 Filed 7–23–93; 8:45 am]

BILLING CODE 3510-DS-F

## University of Minnesota; Decision on Application for Duty-Free Entry of an Electron Microscope

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 93–027. *Applicant:* University of Minnesota, St. Paul, MN 55108. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* Philips Electronic Instruments, The Netherlands. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Order Date:* February 16, 1993.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* This foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to this purpose, which was being manufactured in the United States either at the time of order of this instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 93–17746 Filed 7–23–93; 8:45 am]

BILLING CODE 3510-DS-F

## Massachusetts Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 93–020. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* 'Canterbury' Cryostopped-flow Sample Handling Unit and Anaerobic Kit, Models SHU-41 and OPT.417. *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 17863, April 6, 1993.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated May 25, 1993 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the previously imported instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 93–17754 Filed 7–23–93; 8:45 am]

BILLING CODE 3510-DS-F

## Woods Hole Oceanographic Institution et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

*Docket Number:* 93–028. *Applicant:* Woods Hole Oceanographic Institution, Woods Hole, MA 02543. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Reasons:* The

foreign instrument provides three Faraday collectors capable of measuring three sets of masses without adjustment and a guaranteed internal precision of 0.01 per mil for 10 ber μl samples of $CO_2$.

*Docket Number:* 93-039. *Applicant:* Princeton University, Princeton, NJ 08544. *Instrument:* Isotope Ratio Mass Spectrometer, Model OPTIMA. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* See notice at 58 FR 27287, May 7, 1993. *Reasons:* The foreign instrument provides precisions of ± 0.03 per mil for carbon and ± 0.06 per mil for oxygen on samples of hydroxyapatite as small as 0.5 mg using a carbonate autosampler with dual trapping.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 93-17755 Filed 7-23-93; 8:45 am]

BILLING CODE 3510-DS-F

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## National Institute of Standards and Technology

[Docket No. 930521-3121]

RIN 0693-AB18

## Proposed Revision of Federal Information Processing Standard (FIPS) 173, Spatial Data Transfer Standard (SDTS)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** This proposed revision to Federal Information Processing Standard (FIPS) 173, Spatial Data Transfer Standard (SDTS), adds a Topological Vector Profile (TVP). The TVP is a limited subset of SDTS specifications for the transfer of vector data. FIPS 173 currently consists of three parts and provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, and data transfer encoding. The purpose of this standard is to promote and facilitate the transfer of digital spatial data between dissimilar computer systems. This proposed revision will supersede FIPS PUB 173 in its entirety.

SDTS supports the transfer of vector data with geometry and topology, raster data, graphic representation modules, and geometry-only vector data. The SDTS Topological Vector Profile supports only geographic vector data with geometry and topology.

A SDTS application profile, not requiring the full functionality of SDTS, defines requirements for a specific type of data and/or application. A SDTS profile simplifies the implementation of SDTS while maximizing the probability of successful data interchanges between dissimilar computer systems.

Prior to the submission of this proposed revision to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of federal organizations, vendors, the public, and State and local governments. The purpose of this notice is to solicit such views.

The proposed revision contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. The specifications section, in four parts, provides specifications for: Part 1—Logical Specifications, Part 2—Spatial Features, Part 3—ISO 8211 Encoding, Part 4—Topological Vector Profile (TVP). Part 4, Topological Vector Profile (TVP) which will be added to the SDTS by this revision includes two changes and several clarifications to Part 1 of SDTS.

Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of Part 4, Topological Vector Profile from: Spatial Data Transfer Standard Task Force, U.S. Geological Survey, National Mapping Division, 526 National Center, Reston, VA 22092. Copies of FIPS 173 Spatial Data Transfer Standard (SDTS) which includes Parts 1, 2, and 3 are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161.

**DATES:** Comments on this proposed revision must be received on or before October 25, 1993.

**ADDRESSES:** Written comments concerning the proposed revision should be sent to: Director, Computer Systems Laboratory, ATTN: Revision of FIPS 173, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Henry Tom, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3271.

Dated: July 20, 1993.

**Arati Prabhakar,**

*Director.*

**Proposed Federal Information Processing Standards Publication 173-1,**

**[Date]**

***Announcing the Standard for Spatial Data Transfer Standard (SDTS)***

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

1. Name of Standard. Spatial Data Transfer Standard (SDTS) (FIPS PUB 173-1).

2. Category of Standard. Software Standard, Information Interchange.

3. Explanation. This standard provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, data transfer encoding, and topological vector profile. The purpose of the standard is to promote and facilitate the transfer of digital spatial data between dissimilar computer systems.

Work on a national spatial data transfer standard was initiated by the National Committee for Digital Cartographic Data Standards, American Congress on Surveying and Mapping in 1982 to develop a comprehensive set of data exchange standards for the profession. In 1985, the Standards Working Group of the Federal Interagency Coordinating Committee on Digital Cartography also began work on spatial data exchange standards. During 1987, the results of these parallel efforts were merged by the Digital Cartographic Data Standards Task Force into the proposed Digital Cartographic Data Standard, published as a special issue of the American Cartographer in January 1988.

Subsequent testing, modification, and refining of the specifications were done by the Spatial Data Transfer Standard Technical Review Board. These efforts resulted in the approval and issuance of the Spatial Data Transfer Standard (SDTS) as Federal Information Processing Standard (FIPS) Publication 173 consisting of three parts: Part 1—Logical Specifications, Part 2—Spatial Features, Part 3—ISO 8211 Encoding. This revised standard supersedes FIPS 173 its entirety and adds Part 4, the Topological Vector Profile (TVP). The TVP is a limited subset of SDTS specifications for the transfer of vector data, it includes two changes and several clarifications to Part 1 of SDTS.

SDTS supports the transfer of vector data with geometry and topology, raster data,

graphic representation modules, and geometry-only vector data. The SDTS Topological Vector Profile supports only geographic vector data with geometry and topology.

An SDTS application profile, not requiring the full functionality of SDTS, defines requirements for a specific type of data and/or application. A SDTS profile simplifies the implementation of SDTS while maximizing the probability of successful data interchange between dissimilar computer systems.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Interior, United States Geological Survey (USGS), National Mapping Division.

6. Related Documents. A list of references is contained in section 1.3 and Annex F of Part 1 of the specifications.

7. Objectives. The objectives of the SDTS are to:

—Provide a common mechanism for transferring digital spatial information between dissimilar computer systems, while preserving information meaning, and minimizing the need for information external to this standard;

—Provide for the purpose of transfer, a set of clearly specified spatial objects and relationships to represent real world spatial entities, and to specify the ancillary information necessary to accomplish the transfer;

—Provide a transfer model that will facilitate the conversion of user-defined to standardized set of objects, relationships, and information.

9. Applicability.

a. This standard is intended for use in the acquisition and development of government applications and programs involving the transfer of digital spatial data between dissimilar computer systems.

b. The use of the FIPS SDTS applies when the transfer of digital spatial data occurs or is likely to occur within and/or outside of the Federal government.

c. The use of the FIPS SDTS does not apply to the transfer of digital geocoded data files which are not intended to represent spatial entities as digital geographic or cartographic features.

d. FIPS SDTS is not intended to facilitate product distribution of spatial data in a form designed for direct access by application software specific to a particular data structure, class of computer platform, or distribution media.

e. Nonstandard features should be used only when the needed operation or function cannot be reasonably implemented with standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the interchange of digital spatial data and future conversions more difficult and costly.

f. Use of this standard or a FIPS approved SDTS application profile, such as the SDTS TVP, is required for Federal Government implementations of this standard. FIPS SDTS implementations not requiring full functionality are designated as application profiles. Application profiles, requiring all three parts of the FIPS SDTS, are limited subsets designed for use with a specific type of data and/or application. The SDTS Topological Vector Profile (TVP) is an application profile.

9. Specifications. The FIPS SDTS, in four parts, provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, data transfer encoding, and Topological Vector Profile.

Specifications of this FIPS have the following characteristics:

(a) Ability to transfer vector, raster, grid and attribute data and other ancillary information;

(b) Common set of terminology and definitions for spatial features;

(c) Internal description of the data types, formats, and data structures such that the information items can be readily identified and processed in the recipient system; and

(d) Media independence and extendibility to encompass new spatial information as needed.

10. Implementation. The implementation of this standard involves three areas of consideration: Acquisition of FIPS SDTS implementations, validation, and interpretations of the standard.

10.1 Acquisition of FIPS SDTS Implementations. This revised standard becomes effective six (6) month after the publication in the Federal Register announcing approval by the Secretary of Commerce. Federal applications requiring the transfer of digital spatial data, are encouraged to start using FIPS SDTS.

A transition period provides time for industry to produce implementations conforming to the standard. The transition period for FIPS 173, SDTS began on February 15, 1993 and continues for twelve (12) months thereafter. Because FIPS 173–1 specifies the limited subset of FIPS 173, the transition period for FIPS 173–1 will coincide with that originally established for FIPS 173. Use of FIPS 173–1 is mandatory for Federal agencies by February 15, 1994.

10.2 Validation. Conformance to FIPS SDTS is applicable whether implementations are developed internally, acquired as part of an automated data processing (ADP) procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

Conformance criteria, based on application profiles, will be used for validating the conformance of FIPS SDTS implementations. Validations of implementations for conformance to FIPS SDTS, conformance criteria, policy, and procedures are under the authority of the FIPS program.

10.3 Interpretation of FIPS SDTS. Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS SDTS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2490.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agencies may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Requests for waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by government-wide savings.

Agency heads may approve requests for waivers only by a written decision which explains the basis upon which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: Director, Computer Systems Laboratory, ATTN: FIPS Waiver Decisions, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and Committee on Government Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver request applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment of such notice.

A copy of the waiver request, any supporting documents, and the document approving the waiver request and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552 (b), shall be part of the procurement documentation and retained by the agency.

[FR Doc. 93–17751 Filed 7–23–93; 8:45 am]
BILLING CODE 3510–CN–M

## Government Owned Inventions Available for Licensing

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of Government owned inventions available for licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government, as represented by the Department of Commerce, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on

these inventions may be obtained by writing to: Mary Beth Pignone, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, room B256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. for the relevant invention as indicated below.

SUPPLEMENTAL INFORMATION: The invention available for licensing is:

*Title:* Method of Fabricating Articles.

*Description:* A method for cutting ceramic articles by using a new cutting fluid of boric acid in distilled water. The use of boric acid can reduce cutting forces by 20–50%, depending upon the cutting material. This new cutting fluid may also be used on steel and steel alloys. Overall, the use of this cutting fluid may lead to a major reduction in the total fabrication costs of the ceramic article.

Dated: July 20, 1993.

**Arati Prabhakar,**

*Director.*

[FR Doc. 93–17750 Filed 7–23–93; 8:45 am]

BILLING CODE 3510-13-M

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## National Oceanic and Atmospheric Administration

**[I.D. 072093A]**

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 31 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the Council (see ADDRESSES).

**DATES:** Comments on the FMP amendment should be submitted on or before September 20, 1993.

**ADDRESSES:** Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska, 99802 (Attn: Lori Gravel), or delivered to the Federal Building Annex, Suite 6, 9109 Mendenhall Mall Road, Juneau, Alaska.

Copies of Amendment 31 and the environmental assessment (EA) prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

**FOR FURTHER INFORMATION CONTACT:** Jessica A. Gharrett, NMFS, Alaska Region, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining whether to approve the plan or amendment.

The FMP currently manages Atka mackerel, *Pleurogrammus monopterygius*, as a component of the "other species" category of groundfish. Amendment 31 to the FMP would remove Atka mackerel from that category and establish the species as a separate target groundfish category in the Gulf of Alaska (GOA). Establishment of a new target category for Atka mackerel in the GOA would: (1) Allow biologically-based management of Atka mackerel stocks; (2) prevent preemption of remaining "other species" by fishing activities for Atka mackerel; (3) potentially increase harvest amounts of Atka mackerel in the Western Regulatory Area; and, (4) potentially increase the total allowable catch (TAC) for the "other species" category, currently specified as 5 percent of the cumulative target species TACs.

In the GOA, the "other species" category is currently comprised of Atka mackerel, sculpins, skates, squid, smelts, sharks, eulachon, capelin, and octopus. Target operations have developed the Atka mackerel in recent years. The remaining species components of the "other species" category typically are encountered as bycatch in groundfish target fisheries, and are frequently discarded. The TAC for "other species" has, until 1993, been a Gulf-wide TAC equal to 5 percent of the sum of TACs specified for all target species.

Atka mackerel occurs almost exclusively in the Western Regulatory Area. Since 1990, a target fishery for Atka mackerel had developed in this area. Target operations for Atka mackerel in 1992 resulted in the "other species" TAC being harvested early in the year. As a result, retention of "other species" was prohibited by May 1992 (57 FR 21215, May 19, 1992). To prevent a similar situation in 1993, the "other species" TAC was apportioned by management area. However, a target fishery for Atka mackerel in the Western Regulatory Area again caused a closure of directed fishing for "other species" in that area in April 1993 (58 FR 17806, April 6, 1993).

During 1992, the Council recommended initiation of an FMP amendment to establish Atka mackerel as a separate target species category in the GOA. A draft analysis was prepared under guidance of the National Environmental Policy Act (NEPA) for 1969 and NOAA policy. Two alternatives were considered in the EA: the status quo, under which Atka mackerel would remain in the "other species" category, and Alternative 2, which establishes a separate target species category for Atka mackerel. At its June 1993 meeting, the Council considered information presented in the EA and recommendations of its advisory committees on the amendment proposal. The Council then approved Amendment 31 that would establish Atka mackerel as a separate target species category in the GOA. This amendment is intended to be effective for the 1994 fishing year, if approved by the Secretary after review and consideration of public comments.

Under Amendment 31, management of GOA Atka mackerel would be biologically-based and more responsive to conservation needs of Atka mackerel stocks, predators, and other aspects of the environment. Atka mackerel catches would not preempt fishing for, or retention of, the "other species" category. Furthermore, the amount of Atka mackerel available for harvest potentially could increase from the 1993 level (3,053 metric tons), based on the 1993 "other species" TAC specified for the Western Regulatory Area of the GOA, and the amount of "other species" would increase because the TAC for "other species" is calculated as 5 percent of the sum of TACs specified for target species.

This change is necessary to improve conservation and management of Atka mackerel and of remaining "other species" groundfish resources. The change is intended to further the goals and objectives of the FMP. No regulatory changes are necessary to implement this FMP amendment because target groundfish and "other species" are specified annually under existing regulations at § 672.20(a)(2).

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 20, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93-17606 Filed 7-20-93; 5:05 pm]

BILLING CODE 3510-22-M

## Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Amendment of scientific research permit No. 797 (P77#57).

**SUMMARY:** Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking importing, and exporting of endangered fish and wildlife (50 CFR part 222), and the conditions hereinafter set out, Scientific Research Permit No. 797, issued to the National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, Washington 98115, is amended to authorize, for the purpose of scientific research, the import of marine mammal specimen materials collected in a legal manner on land or in the waters of the country of origin, and to export marine mammal specimen material for purposes of analysis by individuals or laboratories in foreign countries. The specimens may be re-imported for further analyses or archival by the National Marine Mammal Laboratory.

**ADDRESSES:** Documents pertaining to this permit and amendment are available for review, by appointment, in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910, (301/713-2289);

Director, Alaska Region, NMFS, NOAA, 9109 Mendenhall Mall Road, suite 6, Juneau, AK 99802, (907/586-7221);

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115, (206/526-6150);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213, (310/980-4015);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702, (813/893-3141); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930, (508/281-9200).

Dated: July 20, 1993.

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93-17655 Filed 7-23-93; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

**Government-Owned Invention; Availability for Licensing**

The invention described in U.S. Patent 4,277,344 and entitled "Interfacially Synthesized Reverse Osmosis Membrane" is intended to be available for licensing in the U.S. and, possibly, in certain foreign countries to achieve broad commercialization and use of results of federally funded research and development. Prospective licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 207-209.

The invention relates to a method of making and using a sheet-like composite reverse osmosis membrane for removing solute from solute-containing water in a single pass. The sheet-like composite material comprises a microporous support layer and, supported thereon, a crosslinked, water permeable, interfacially polymerized, ultrathin polyamide desalinizing layer.

A copy of Patent 4,277,344 and licensing information may be obtained by writing to: Douglas J. Campion, Acting Director, Office of Federal Patent Licensing, National Technical Information Service (NTIS), U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151, or by telephoning (703) 487-4732.

Nothing contained in this notice shall be construed as authority to practice the invention covered by the patent, as a waiver of the government's rights in or to enforce the patent, as a waiver of royalties due for past use of the patent, or as dedication of the patent for public use. To date, no licenses have been granted by the government under the patent and any unauthorized use of the patent will be pursued.

Applications for patent licenses to practice the invention embodied in Patent 4,277,344 should be sent to Douglas J. Campion at the address above and should be received within 30 days of publication of this notice to ensure consideration for a license.

**Douglas J. Campion,**

*Acting Director, Office of Federal Patent Licensing.*

[FR Doc. 93-17656 Filed 7-23-93; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

**Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China**

July 19, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** July 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 482-3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 218, 340, 352 and 615 are being increased by application of swing, reducing the limit for Category 607 to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 19, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 20, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels not in a group | |
| 218 | 10,873,718 square meters. |
| 340 | 821,086 dozen of which not more than 402,228 dozen shall be in Category 340–Z [2]. |
| 352 | 1,821,256 dozen. |
| 607 | 1,611,118 kilograms. |
| 615 | 23,024,710 square meters. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–17758 Filed 7–23–93; 8:45 am]

BILLING CODE 3510–DR–F

## Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

July 20, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** July 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryover and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53473, published on November 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 20, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 27, 1993, you are directed to amend the directive dated November 4, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 237 | 1,075,027 dozen. |
| 239 | 9,667,101 kilograms. |
| 331/631 | 3,900,550 dozen pairs. |
| 333/334 | 233,198 dozen of which not more than 29,371 dozen shall be in Category 333. |
| 335 | 151,788 dozen. |
| 336 | 583,973 dozen. |
| 338/339 | 1,669,598 dozen. |
| 340/640 | 847,520 dozen of which not more than 466,135 dozen shall be in Categories 340–Y/640–Y [2]. |
| 341/641 | 765,978 dozen. |
| 342/642 | 417,462 dozen. |
| 345 | 142,278 dozen. |
| 347/348 | 1,588,742 dozen. |
| 350 | 114,214 dozen. |
| 351/651 | 455,345 dozen. |
| 352/652 | 1,725,026 dozen. |
| 359–C/659–C [3] | 666,000 kilograms. |
| 361 | 1,496,635 numbers. |
| 369–S [4] | 339,249 kilograms. |
| 431 | 178,511 dozen pairs. |
| 433 | 3,386 dozen. |
| 443 | 41,169 numbers. |
| 445/446 | 29,030 dozen. |
| 447 | 8,581 dozen. |
| 611 | 4,491,522 square meters. |
| 633 | 30,785 dozen. |
| 634 | 333,760 dozen. |
| 635 | 318,009 dozen. |
| 636 | 1,392,702 dozen. |
| 638/639 | 1,715,132 dozen. |
| 643 | 735,327 numbers. |
| 645/646 | 628,107 dozen. |
| 647/648 | 944,911 dozen. |
| 649 | 6,110,382 dozen. |
| 650 | 78,774 dozen. |
| 659–H [5] | 1,176,701 kilograms. |
| 847 | 786,745 dozen. |

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group II 200–229, 300–326, 330, 332, 349, 353, 354, 359–O [6], 360, 362, 363, 369–O [7], 400–414, 432, 434–442, 444, 448, 459, 464–469, 600–607, 613–629, 630, 632, 644, 653, 654, 659–O [8], 665, 666, 669–O [9], 670–O [10], 631–646 and 850–859, as a group. | 96,547,210 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C)

[7] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S).

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H).

[9] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–17759 Filed 7–23–93; 8:45 am]

BILLING CODE 3510–DR–F

## Extension of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Qatar

July 21, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs extending a limit.

**EFFECTIVE DATE:** July 28, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 347/348 for an additional twelve-month period, beginning on July 28, 1993 and extending through July 27, 1994.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54222, published on November 17, 1992.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 21, 1993.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 28, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Qatar and exported during the twelve-month period beginning on July 28, 1993 and extending through July 27, 1994, in excess of 345,815 dozen.

Imports charged to this category limit for the period July 28, 1992 through July 27, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–17747 Filed 7–23–93; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Proposed Additions to the Procurement List Correction

In the document appearing on page 38364 in the second column of FR Doc. 93–16947 in the issue of July 16, 1993 the service listed as Janitorial/Custodial, U.S. Soldier's and Airmen's Home, 3700 North Capitol Street, NW., Washington DC should read Janitorial/ Custodial and Warewashing, U.S. Soldier's and Airmen's Home, 3700 North Capitol Street, NW., Washington, DC.

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 93–17599 Filed 7–23–93; 8:45 am]

BILLING CODE 6820–33–F

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## COMMODITY FUTURES TRADING COMMISSION

### Chicago Mercantile Exchange Proposed Major Market Index Futures and Futures Option Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

**SUMMARY:** The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in Major Market Index futures and futures option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before August 10, 1993.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Major Market Index futures and futures option contracts.

**FOR FURTHER INFORMATION CONTACT:** Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the Exchange in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on July 21, 1993.

**Gerald D. Gay,**

*Director.*

[FR Doc. 93–17781 Filed 7–23–93; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Environmental Assessment; RAPTOR/TALON Program

**AGENCY:** Ballistic Missile Defense Organization (BMDO), DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has prepared a Finding of No Significant Impact based on assessment of the potential environmental consequences of conducing the BMDO RAPTOR/TALON Program. The proposed action of the BMDO RAPTOR/TALON Program is to design, develop, and demonstrate technologies related to the Responsive Aircraft Program for Theater Operations (RAPTOR), an unmanned aerial vehicle capable of sustained, high altitude, long-term flight, and the Theater Applications—Launch on Notice (TALON), a miniaturized kinetic kill interceptor to be deployed on the RAPTOR.

**BACKGOUND:** Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and the U.S. Department of Defense (DOD) Directive 6050.1 (Environmental Effects in the United States of DOD Actions), the Ballistic Missile Organization (BMDO) has conducted an assessment of the potential environmental consequences of the design, development, and subsequent demonstration of the RAPTOR/TALON and related activities. The BMDO is proposing efforts under a technology program to design, develop, and demonstrate the platforms and interceptors capable of meeting a hostile theater ballistic missile threat.

Activities within the BMDO RAPTOR/TALON Program would occur successively. Each generation of launch platforms and interceptor would reflect technological advances as they are achieved during the program's progress. Major program activities would occur at several California locations: Lawrence Livermore National Laboratory (LLNL), Simi Valley, Mojave, the former George Air Force Base (AFB), Edwards AFB, and Norton AFB (slated for closure March 31, 1994). Activities would also occur at the Nevada Test Site and White Sands Missile Range, New Mexico. There would also be test flights of the RAPTOR platform in global commons areas.

The prime RAPTOR Solar Electric Test Platform (SETP) candidate would be a refurbished modular span-loaded wing first developed by the Government for other purposes in the early 1980s. It would be refurbished for testing by AeroVironment, Inc., Simi Valley, California. Materials used in the unmanned "wing" and future versions are lightweights such as balsa and composite materials. A second candidate RAPTOR platform would be a fixed-wing unmanned aerial vehicle. Scaled Composites, Inc. of Mojave, California, would manufacture the airframe. This platform would be powered by a turbocharged gasoline engine. It would be constructed primarily of composite materials. A significant portion of the RAPTOR/TALON program would be a technology research effort to design, develop, and demonstrate an efficient solar-powered energy supply. To do so would require major advances in fuel cell technology.

The TALON would be a high endoatmospheric or exoatmospheric kinetic kill interceptor designed to operate from the RAPTOR platform. The TALON would attain a typical speed of nearly 1.5 miles per second and have a range of approximately 60 miles. The TALON would make use of a miniature pumped-propulsion system developed at LLNL, Livermore, California. The system would use hydrazine or hydrazine and nitrogen tetroxide for propellants.

Ground testing of RAPTOR would be at contractor facilities at Simi Valley or Mojave Airport, California. Initial aerial testing of the SETP would likely occur at the former George AFB, California, or at Norton AFB, another location near the Simi Valley facility. The fixed-wing aircraft would likely be tested at Edwards AFB, California. White Sands Missile Range would also be considered for RAPTOR flight testing. The RAPTOR

proof of concept would likely require sustained flight over many thousands of times. This would require the capability to maintain flight 24 hours per day.

The TALON interceptor would require design, component, and subsystem testing. The TALON would be designed to operate from the RAPTOR platform. Design testing would occur at LLNL. The Talon propulsion components would be tested at LLNL. Tether testing of the divert thrusters would be accomplished at the Department of Energy's Nevada Test Site. Flight testing of TALON would occur at White Sands Missile Range. Initial tests would likely involve launch from a conventional high-performance aircraft, launches to a "point-in-space," and eventually launches against an air-breathing target. Integrated testing of RAPTOR and TALON would occur at White Sands Missile Range.

Transportation of either RAPTOR or TALON components would require standard commercial tractor-trailer assemblies. Fuel not transported for the systems would be obtained locally for testing.

A no-action alternative was considered. The alternative of not conducting RAPTOR/TALON technological research and development was rejected since ramifications of the no-action alternative would be that during military operations, potentially optimal area defense might not be achieved. Breakthroughs in continuing research in sensor and area interceptor technologies might be delayed to the detriment of the overall Ballistic Missile Initiative.

**FINDINGS:** The potential for significant impacts was determined through an analysis of the activities that would be conducted at the proposed locations. The potential impacts of the proposed action were assessed against the following environmental considerations: biological resources; cultural resources; air quality; noise; meteorology; airspace use; and safety. The methodical approach consisted of identifying potential environmental issues and determining their significance.

The design, development, and demonstration of the RAPTOR/TALON, system and its components would be conducted in or at existing facilities that are routinely used for such activities. No significant impacts will occur as a result of using these facilities.

The RAPTOR/TALON Program would not cause any significant impacts on environmental resources or the human environment at LLNL. The LLNL's function within the BMDO RAPTOR/TALON Program is primarily administrative, with minor component assembly and testing. These activities are well within the existing capacity and present practices of LLNL. No construction, additional concerns for air and water quality, or additional hazardous waste issues are anticipated.

The BMDO RAPTOR/TALON Program would not cause any significant impacts on environmental resources or the human environment at AeroVironment, Inc. Program activities would not result in increased generation of air or water discharges or hazardous waste. All program activities would be consistent with ongoing operations that are in compliance with applicable Federal, State, and local laws and regulations. Nor would the RAPTOR/TALON Program cause any significant impacts on environmental resources or the human environment at Scaled Composites, Inc. Program activities are a small percentage of the facility's activities and would not result in increased generation of air or water discharges or hazardous waste. All program activities would be consistent with ongoing operations that are in compliance with applicable Federal, State, and local laws and regulations.

Ground testing of the TALON at the DOE Nevada Test Site would occur at a facility designed for such testing. Noise and air emissions from the testing would be within the design characteristics of the facility.

The BMDO RAPTOR/TALON Program would cause no significant impacts on transportation and would pose no special requirements.

The BMDO RAPTOR/TALON Program flight testing would not cause any significant impacts to environmental resources or the human environment. Candidate locations for flight testing of the SETP include the former George AFB, Edwards AFB, Norton AFB, and Mojave Airport. Testing of the fixed-wing RAPTOR would occur at Edwards AFB. Testing of the integrated RAPTOR and TALON would occur at White Sands Missile Range. Evaluation of potential impacts at those locations revealed none of significance.

Potential cumulative impacts of the BMDO RAPTOR/TALON Program were evaluated. Flight preparation, operations, and recovery of RAPTOR platforms would occur within areas normally used for aviation activity. This program would not create a measurable increase in those activities, nor is it expected to create a situation where an environmental resource would reach a threshold of concern. The TALON interceptor activities would not increase the stress level on any environmental resource. The BMDO RAPTOR/TALON Program would not result in any accumulation of noise, common resources, or infrastructure impacts.

Portions of the proposed action could occur outside the United States. Four areas of concern warranted analysis for potential environmental impacts in the global commons: air quality, aviation safety, public safety, and conservation. Activities in the global commons would cause no impacts of any significance to the areas evaluated.

Overall, no significant impact will result from conducting the RAPTOR/TALON Program. Therefore, no environmental impact statement will be prepared for the proposed action.

**FOR FURTHER INFORMATION CONTACT:** Mr. Crate J. Spears, BMDO Environmental Coordinator, BMDO/GST, The Pentagon, room 1E180, Washington, DC 20301–7100, (703) 693–1745.

Dated: July 20, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17595 Filed 7–23–93; 8:45 am]

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## Environmental Assessment; BMDO Balloon Program

**AGENCY:** Ballistic Missile Defense Organization (BMDO), DOD.

**ACTION:** Notice.

**SUMMARY:** Department of Defense has prepared a Finding of No Significant Impact based on assessment of the potential environmental consequences of conducting the BMDO Balloon Program. The proposed action of the BMDO Balloon Program is to develop, launch, test, and operate the High Altitude Balloon Experiment (HABE) and the Kestrel Balloon Experiment and to conduct a data collection program.

**BACKGROUND:** Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) for implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and the U.S. Department of Defense (DOD) Directive 6050.1 (Environmental Effects in the United States of DOD Actions), the Ballistic Missile Defense Organization (BMDO) has conducted an assessment of the potential environmental consequences of the development and subsequent operation of the High Altitude Balloon Experiment (HABE), the Kestrel Balloon Experiment, and their related activities.

The BMDO is proposing to launch and operate the HABE and Kestrel high

altitude balloon platforms to gather information related to the following objectives: Demonstrate the capability to acquire, track, and intercept targets having various trajectories at varying altitudes; measure the target and background radiometric observables of rocket motors in their boost phase; and collect data on the phenomenology of rocket booster signatures. These objectives will be accomplished through the use of passive and active electrooptical and laser sensors and other instrumentation that will be launched on large volume, high altitude balloons to observe target-of-opportunity missile launches from several locations.

Fabrication, assembly, and testing of instruments contained in the HABE experiment payload will be conducted at Phillips Laboratory at Kirtland Air Force Base (AFB), New Mexico. Integration and initial testing of the acquisition and tracking system will be conducted at Kirtland AFB. Initial flight testing of the balloon system will occur at White Sands Missile Range, New Mexico, or on Kirtland AFB. Initial high altitude testing of the acquisition and tracking system will occur in the vicinity of White Sands Missile Range. The proposed activities will be conducted in existing facilities and will be within the scope of activities normally conducted at those facilities.

Fabrication, assembly, and testing of instruments contained in the Kestrel experiment payload will be conducted at Lawrence Livermore National Laboratory (LLNL) at Livermore, California. Integration and initial testing of the acquisition and tracking system will be conducted at LLNL. Initial flight testing of the balloon system will be offshore in the vicinity of Vandenberg AFB, California. The proposed activities will be conducted in existing facilities and will be within the scope of activities routinely conducted at those facilities.

The HABE and Kestrel systems are designed to be launched from either a tractor-trailer assembly or from a ship. Both the HABE and Kestrel systems are designed to be recovered from either land or water.

Follow-on testing and data collection would be conducted on target-of-opportunity launches from Vandenberg AFB; Cape Canaveral Air Force Station (AFS), Florida; and White Sands Missile Range.

Alternatives considered include no action and alternate platform programs. The no action alternative was rejected since it would mean that no research and development, demonstration, or testing could be done with the HABE or Kestrel systems. Data gathering activities necessary to develop technologies supporting directed-energy weapons could be slowed, or decisions on the Ballistic Missile Defense Organization would have to be made on less reliable or possibly unverified information. The alternate platform programs were eliminated due to their prohibitive costs. Two alternate programs, Starlab and Altair, were considered for development of similar acquisition, tracking, and pointing, and data gathering activities for boost-phase targets. Starlab, originally designed for launch aboard the National Aeronautics and Space Administration's space shuttle, was canceled when its projected costs approached $1 billion. The Altair space-based sensing and tracking program was also abandoned because of its cost. Both programs are not considered viable alternatives because of their excessive costs.

FINDINGS: The potential for significant impacts was determined through an analysis of the activities that would be conducted at the proposed locations. The potential impacts of the proposed action were assessed against the following environmental considerations: Biological resources; air quality; noise; historical and cultural resources; airspace; public safety; meteorology; transportation; toxic and hazardous materials and waste; and solid waste (balloon remnants). The methodical approach consisted of identifying potential environmental issues and determining their significance.

The balloon program prelaunch, launch, flight, and recovery activities would be conducted at and in the vicinity of Vandenberg AFB, Cape Canaveral AFS, and White Sands Missile Range. No significant impacts are expected to occur as a result of these activities.

Land launch of the HABE or Kestrel balloon systems in the vicinity of White Sands Missile Range, Vandenberg AFB, or Cape Canaveral AFS will be conducted from a specially constructed launch platform built on a standard flatbed trailer. Accompanying support and command-and-control vehicles would be adapted to standard tractor-trailer configurations. Helium for the balloons would be transported in compressed gas cylinders on a standard commercial trailer built for that purpose. Balloon inflation is routine. Sea launch of the Kestrel or HABE balloon systems would be done from a special launch tower placed on the stern of a ship. Support equipment and command-and-control stations would also be located on the ship. Helium would be stored on the ship's deck in standard, commercial tanks.

Targets of opportunity would be launched for other research or operational missions. The HABE and Kestrel sensors would acquire information about the rocket boost phase of the missile launch, and the acquisition and target system would attempt to acquire and illuminate the boost rocket. The launch of these targets of opportunity would be environmentally assessed independently of the BMDO Balloon Program. Recovery of the balloons and the payload could be on land or water for either the HABE system or the Kestrel system. The descent of the payload and balloon could be controlled with reasonable accuracy and would not be initiated until a projected clear area was available for landing. No significant impacts are expected to result from the launch, flight, operation, or recovery of the HABE or Kestrel systems.

Potential cumulative impacts of the BMDO Balloon Program were evaluated. Since the balloon operations would take place 50 to 200 miles from the target missile's launch point and trajectory, there would be no accumulation of noise, common resources, or infrastructure impacts. Balloon operations are foreseen to have no potential environmental impacts on prior, present, or future actions by other agencies or people.

Overall, no significant impact is expected to result from conducting the BMDO Balloon Program. Therefore, no environmental impact statement will be prepared for the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Crate J. Spears, BMDO Environmental Coordinator, BMDO/GST, The Pentagon, room 1E180, Washington, DC 20301–7100, (703) 693–1745).

Dated: July 20, 1993.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17596 Filed 7–23–93; 8:45 am]

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## DEPARTMENT OF ENERGY

### Transmittal of Monitored Retrievable Storage Facility Annotated Outline for the Preparation of a License Application, Revision 2, to the Nuclear Regulatory Commission

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy transmitted the Monitored Retrievable

Storage Facility Annotated Outline for the Preparation of a License Application, Revision 2, dated June 30, 1993, to the U.S. Nuclear Regulatory Commission on July 15, 1993. The annotated outline process is the basis for developing a license application, if any, before the U.S. Nuclear Regulatory Commission for the Monitored Retrievable Storage Facility program. The annotated outline process is iterative, with revisions to be developed in consultation with the U.S. Nuclear Regulatory Commission.

**FOR FURTHER INFORMATION CONTACT:** For further information and to obtain a copy of the annotated outline, contact Priscilla Bunton, RW–331, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8365.

Issued in Washington, DC on July 20, 1993.

**Lake H. Barrett,**

*Acting Director, Office of Civilian Radioactive Waste Management.*

[FR Doc. 93–17719 Filed 7–23–93; 8:45 am]

BILLING CODE 6450–01–M

## Bonneville Power Administration

### Intent To Prepare an Environmental Impact Statement and Notice of Floodplain and Wetlands Involvement for the Eastern Washington Main Grid Support Project

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Notice of intent to prepare and consider an environmental impact statement (EIS) and notice of floodplain and wetlands involvement.

**SUMMARY:** BPA is proposing to construct a new 500-kilovolt (kV) transmission line from Bell Substation north of Spokane, Washington, to the Grand Coulee Dam 500-kV Switchyard in Douglas County, Washington. BPA would use its existing corridor by removing or modifying one or more of its existing lines to make room for the 500-kV line.

The new line, together with remaining lines, would increase the capacity of the transmission system to move electricity into and through the Spokane/Lewiston area to meet foreseeable regional needs. The new line would also improve electrical service to local customers in eastern Washington, northern Idaho, and western Montana by improving system reliability.

The EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality NEPA regulations (40 CFR parts 1500–1508), and DOE's NEPA regulations (10 CFR part 1021). Because the existing Bell-Grand Coulee right-of-way (ROW) crosses numerous wetlands and the 100-year floodplain of various creeks and rivers located in Spokane, Lincoln, and Grant Counties, Washington, in accordance with 10 CFR part 1022, BPA will prepare a floodplain and wetlands assessment as part of the EIS and will avoid or minimize potential harm to or within the affected floodplain and wetlands.

**DATES:** Interested and affected persons including landowners, concerned citizens, special interest groups, local governments, and community groups are invited to help BPA identify alternatives, environmental resources, and issues to be addressed in the draft EIS. A letter, Fact Sheet and a brief questionnaire will be sent to interested parties on a project mailing list at the beginning of scoping. This information will explain the project, and how to get additional information. Two BPA-sponsored scoping meetings will be held the week of September 12, 1993, at the following locations: September 14, 1993, 6–9 p.m., Whitworth College, Lindeman Conference Center, room 4, Spokane, Washington; September 15, 1993, 7–9 p.m., Bureau of Reclamation, Project Office, Large Conference Room, Grand Coulee, Washington. Meetings are planned to be open house style where project material will be available for study. BPA staff will answer questions and accept verbal and written comments. BPA also will announce the time and place of scoping meetings in local newspapers and in a second letter sent to interested parties. Written comments may be sent to the Public Involvement Manager at the address below. Scoping ends September 26, 1993.

BPA plans to file and distribute a Draft EIS for public review by fall 1994. BPA will hold meetings in local communities near the transmission corridor to give the public an opportunity to review and comment on the draft EIS.

**ADDRESSES:** BPA invites comments and suggestions on the proposed scope of the draft EIS. Send comment letters, requests to be placed on the project mailing list, and requests for further information to the Public Involvement Manager—ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Taves, Environmental Coordinator for Engineering—EFBG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, (503) 230–4995, fax number (503) 230–3984, or call BPA's Public Involvement Office at (503) 230–3478 in Portland; toll-free (800) 622–4519 outside of Portland and within the western states region. Project information may also be obtained from:

Mr. Paul Eichin, Area Engineer, Bonneville Power Administration, Upper Columbia Area Office, room 561, U.S. Court House, 920 W. Riverside Avenue, Spokane, Washington 99201 (509) 353–2567.

**FOR FURTHER INFORMATION ON THE DOE NEPA PROCESS CONTACT:** Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585 202–586–4600 or 800–472–2756.

**SUPPLEMENTARY INFORMATION:** Some transmission facilities move electricity west from generating resources in Montana and Idaho into the Spokane/Lewiston area and across eastern Washington. They serve local customers and carry electricity further west to major load centers like Portland and Seattle. These facilities include BPA's 115-, 230-, and 500-kV transmission lines and interconnected utilities 115-kV and 230-kV transmission lines. Over the last few years, these facilities have been stressed due to complex transmission system operating needs.

In 1992, BPA and Washington Water Power (WWP) began to make short-term improvements on the system to help relieve transmission bottlenecks in the area. They realized that a long-term solution was needed. These improvements will be completed in late 1994 or early 1995, and will increase the capacity of the system to at least 2800 megawatts (MW), allowing BPA and WWP to operate the system more reliably for present loads.

BPA and other utilities estimate that the system will need to carry out 1600 MW more than it is carrying now by the end of the decade. Building a new 500-kV transmission line would increase the existing capacity of the system to at least 3900 MW, providing a higher capacity transmission path that can accommodate BPA transmission needs including existing and future power transmission obligations to other utilities. A new line would also relieve loading on the lower voltage 230- and 115-kV systems and allow these lines to better serve local loads.

**Alternatives**

BPA has identified three alternatives to consider. (1) No Action (the consequences of continuing to operate under present conditions). (2) BPA would construct a single-circuit 500-kV transmission line from Bell Substation in Spokane, Washington, west to Grand Coulee Dam 500-kV Switchyard, in Douglas County, Washington. A 500-kV substation (series compensation) would be included in the design. This type of substation has electrical devices that can increase the loading on a transmission line and reduce it on other lines. The substation would be located along the corridor. (3) BPA would construct a double-circuit, 500-kV transmission line between the same points.

The new 500-kV transmission line would be placed as much as possible on the existing ROW. The existing ROW from Bell Substation to Grand Coulee Dam is 122 meters (400 feet) wide in most places and has three 230-kV lines and two 115-kV wood pole lines within its boundaries. Constructing a new single- or double-circuit 500-kV line would change the 115-kV facilities along the corridor and at Bell and Grand Coulee Substations.

**Environmental Issues:**

PBA has identified and will discuss these potential environmental issues in the draft EIS: (1) Effects on fish and wildlife including threatened and endangered species; (2) socio-economic effects of removing property from the local tax base; (3) effects of construction and placement of structures in floodplains and wetlands; (4) acquisition of additional ROW; (5) concern over visual effects, noise, and other interference produced by transmission lines in populated areas; (6) impacts on range and agricultural resources due to construction and placement of structures; (7) concern about human exposure to electric and magnetic fields created by high-voltage transmission lines; (8) impacts to cultural resources on Federal, state, and private lands; (9) impacts to recreational resources; (10) conflicting land use; (11) impact to property values; and (12) energy conservation. Other issues identified through the scoping process will also be examined in the draft EIS.

**Floodplain and Wetlands**

In Spokane County, BPA's ROW heads west from Bell Substation and crosses the 100-year floodplain of a tributary of the Little Spokane River called Country Homes Drainage in section 18, Township 26 North, Range 43 East. As its name implies, this tributary functions as a drainage canal for the residential area of suburban Spokane called Country Homes Estates. West of the City of Spokane, within Riverside State Park, the ROW crosses the floodplain of the Spokane River in section 17, Township 26 North, Range 42 East. Also within the park, the ROW crosses the floodplain of two tributaries: Deep Creek in section 18, Township 26 North, Range 42 East; and Coulee Creek in sections 13 and 18, Township 26 North, Range 41 and 42 East, respectively. In Lincoln County, the 100-year floodplain of Stock and Hawk Creeks is crossed in sections 21 and 19, respectively, Township 26 North, Range 36 East. Closer to Grand Coulee, the ROW crosses the 100-year floodplain of Sherman Creek in section 25, Township 27 North, Range 33 East.

Small riparian and seasonal wetlands also occur within the 100-year floodplain of the Columbia and Spokane Rivers and their associated tributaries mentioned above. Additional isolated pockets of seasonally moist areas occur in section 20, Township 26 North, Range 40 East; sections 26 and 27 in Township 26 North, Range 38 East; sections 20, 21, 28, and 29 in township 26 North, Range 36 East; sections 20 and 21 in Township 26 North, Range 35 East; section 4 in Township 26 North, Range 34 East; section 30 in Township 28 North, Range 31 East; and sections 3, 10, 14, 23, and 24 in Township 28 North, Range 30 East. The ROW also crosses many seasonally flooded drainages and small creeks along the route.

All proposed facilities would be located as much as possible within existing ROW, with transmission line structures positioned to minimize impact on floodplains and wetlands.

In accordance with DOE regulations for compliance with floodplain and wetland environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain and wetlands assessments for this proposed DOE action. The assessment and a floodplain statement of findings will be included in the environmental impact statement being prepared for the proposed project in accordance with the National Environmental Policy Act. Maps and further information are available from Mr. John Taves, Environmental Coordinator for Engineering, at the address shown above.

Issued in Portland, Oregon on July 16, 1993.

**John S. Roberts,**

*Deputy Administrator.*

[FR Doc. 93–17718 Filed 7–23–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER93–777–000, et al.]**

## Commonwealth Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Commonwealth Edison Co.**

[Docket No. ER93–777–000]

July 15, 1993.

Take notice that on July 8, 1993, Commonwealth Edison Company (Edison) tendered for filing its Transmission Service Tariff TS–1. Under the Tariff, Edison offers to make available Firm and Non-Firm transmission services limited to the receipt of power and energy from one adjacent Control Area and the transmission of such power and energy to another adjacent Control Area for the account of certain wholesalers of electric power or energy.

Copies of this filing were served upon the Illinois Commerce Commission and the electric utility companies operating outside of Edison's control area to which Edison is directly connected.

*Comment date:* July 29, 1993, in accordance with Standard Paragraph E end of this notice.

**2. Arizona Public Service Co.**

[Docket No. ER93–775–000]

July 15, 1993.

Take notice that on July 8, 1993, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Supply Agreement between Arizona Public Service Company (APS or Company) and Arizona Power Authority (APA) (APS–FPC Rate Schedule No. 59) and revised Exhibit B to the Wholesale Power Agreement between APS and Citizens Utilities Company (Citizens) (APS–FERC Rate Schedule No. 149) (collectively Exhibits and Agreements). The Exhibits list Contract Demands applicable under the Agreements.

No change to the rate and revenue levels currently on file with the Commission for the 12 months immediately after the proposed effective date is proposed herein.

No new facilities or modifications to existing facilities are required as a result of this revision.

A copy of this filing has been served on the Arizona Corporation Commission and also APA and Citizens (with copies of their respective Exhibits B only).

*Comment date:* July 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

**3. Connecticut Light and Power Co.**

[Docket No. EL93–55–000]

July 15, 1993.

Take notice that on July 12, 1993, Connecticut Light and Power Company, Western Massachusetts Electric Company and Holyoke Water Power Company, electric utilities and operating subsidiaries of Northeast Utilities (NU), tendered for filing pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207), a petition for issuance of a declaratory order concerning the constitutionality of section 16–243e of the Connecticut General Statutes (C.G.S. § 16–243e).

*Comment date:* August 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

**Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)**

Docket No. ER93–551–000]

July 15, 1993.

Take notice that on July 6, 1993, Northern States Power (NSP) tendered for filing an Amendment to its initial filing in Docket No. ER93–551–000. The Amendment provides a response to the Deficiency Letter dated June 4, 1993.

NSP again requests that the proposed rate schedule be accepted for filing effective June 1, 1993 to coincide with the terms of Amendment No. 6 to the Interconnection Agreement named above, and requests waiver of the Commission's notice requirements in order for the rate to be accepted for filing on the date requested.

*Comment date:* July 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

**5. Wisconsin Electric Power Co.**

[Docket No. ER93–356–000]

July 15, 1993

Take notice that on July 6, 1993, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing revised cost support for its existing transmission rates in response to the Director of Application's deficiency letter dated June 3, 1993.

Wisconsin Electric requests an effective date of February 4, 1993, coincident with its filing of the four transmission service agreements that are the subject of this proceeding.

Copies of the filing have been served on The Wisconsin Public Power Inc. SYSTEM, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

*Comment date:* July 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

**6. Kansas Gas and Electric Co.**

[Docket No. ER93–653–000]

July 15, 1993.

Take notice that on July 9, 1993, Kansas Gas and Electric Company (KG&E) tendered for filing an amendment to its May 18, 1993 filing in this docket concerning a change to its Federal Energy Regulatory Commission Electric Rate Schedule No. 182. KG&E states that the amendment is to reflect a change in the pricing provisions of Service Schedule SPP. The change is proposed to become effective June 1, 1993.

Copies of the filing were served upon the City of Girard, Kansas and the Kansas Corporation Commission.

*Comment date:* July 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

**7. Wisconsin Electric Power Co.**

[Docket No. ER93–649–000]

July 15, 1993.

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on July 9, 1993 tendered for filing an amendment of its initial submittal in this docket. The amendment contains revised service schedules for Limited Term Power, Emergency Energy, Short Term Power, Maintenance Energy, General Purpose Energy, and Negotiated Capacity.

Wisconsin Electric renews its requested effective date of July 16, 1993, sixty days after its original tender date.

*Comment date:* July 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

**8. Florida Power Corp.**

[Docket No. ER93–776–000]

July 15, 1993.

Take notice that on July 8, 1993, Florida Power Corporation filed a Supplemental Contract between it and the Southeastern Power Administration (SEPA). The Supplemental Contract provides for regulating service and opportunity sales by the Company to SEPA. It supplements a contract between Florida Power and SEPA dated July 19, 1957 for the sale, purchase, wheeling and firming of power from the Jim Woodruff reservoir project by providing for (a) regulating service by the Company for the second-to-second regulation for the output of the Jim Woodruff project; and (b) opportunity energy sales by Florida Power to SEPA for periods of not less than two hours nor more than seven days. SEPA has requested that these services begin on July 21, 1993. Florida Power therefore requests waiver of the 60-day notice requirement in order to enable the services to begin on that date.

*Comment date:* July 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

**9. Wholesale Power Services, Inc.**

[Docket No. EL93–52–000]

July 15, 1993.

Take notice that on July 6, 1993, Wholesale Power Services, Inc. (WPS) filed a petition requesting an order declaring that The International Power Exchange (IPEX) satisfies the criteria established in *Entergy Services, Inc.*, 58 FERC ¶ 61,234 (1992) and subsequent cases for an electronic bulletin board that provides information on transmission capacity availability and price and the status of requests for transmission service.

*Comment date:* August 2, 1993, in accordance with Standard Paragraph E end of this notice.

**10. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)**

[Docket No. EL93–12–000]

July 15, 1993.

Take notice that on July 9, 1993 Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) tendered for filing an amendment to its original filing filed in this docket on January 5, 1993.

*Comment Date:* July 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

**11. Midwest Power Systems Inc.**

[Docket No. ER93–785–000]

July 16, 1993.

Take notice that on July 12, 1993, Midwest Power Systems Inc. (MPSI) tendered for filing a request for rate schedule cancellation. Subsequent to the merger of Iowa Power Inc. (IP) and Iowa Public Service Company (IPS), approved by the Commission in Docket No. EC92–5–000, all rate schedules were redesignated under MPSI.

Upon further review, MPSI determined that four duplicate service agreements that are with a common party were designated with different rate schedule numbers. MPSI is

requesting the cancellation of the following MPSI rate schedule numbers to eliminate this duplication:

| | Rate schedule | Other party |
|---|---|---|
| 1. MPSI | No. 36 | Mid-Continent Area Power Pool. |
| 2. MPSI | No. 41 | Iowa-Illinois Gas & Electric. |
| 3. MPSI | No. 44 | Interstate Power. |
| 4. MPSI | No. 46 | Iowa Electric Light & Power. |

Notice of the proposed cancellation has been served upon the Iowa Utilities Board, Iowa-Illinois Gas & Electric Company, Iowa Electric Light & Power Company, Iowa Southern Utilities, Interstate Power Company and Mid-Continent Area Power Pool.

*Comment date:* July 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

**12. Washington Water Power Co.**

[Docket No. ER93-774-000]

July 16, 1993.

Take notice that on July 8, 1993, the Washington Water Power Company (Washington) tendered for filing its annual rate adjustments for the purchase and sale of firm capacity and energy between Washington and Puget Sound Power & Light Company.

*Comment date:* July 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

**13. Rayburn Electric Cooperative, Inc.**

[Docket No. ER93-527-000]

July 16, 1993.

Take notice that on July 29, 1993, Rayburn Electric Cooperative, Inc. tendered for filing an amendment to its March 31, 1993 filing in this docket.

*Comment date:* July 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

**14. Iowa Electric Light and Power Co.**

[Docket No. ER93-638-000]

July 16, 1993.

Take notice that Iowa Electric Light and Power Company (Iowa Electric), on July 8, 1993, tendered for filing an Amendment to its May 10, 1993 filing in the above docket. The Amendment includes changes in the proposed fuel adjustment clause for resale electric service to comply with the Commission's regulations.

Copies of this filing have been sent to the Iowa State Utilities Board and to Iowa Electric's jurisdictional customers.

*Comment date:* July 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

**15. Southwestern Public Service Co.**

[Docket No. ER93-53-000]

July 16, 1993.

Take notice that on July 9, 1993, Southwestern Public Service Company (Southwestern) tendered for filing two proposed supplements to its rate schedule for service to Cap Rock Electric Cooperative, Inc. (Cap Rock).

The first proposed supplement provides for the assignment by Cap Rock to Southwestern of Cap Rock's rights and obligations under its lease agreement with John Hancock Mutual Life Insurance Company. Southwestern has agreed to grant to Cap Rock the right to use the facilities and pay a dedicated facilities charge based on the lease payments. The second supplement relates to the lease by Cap Rock of certain land properties to Southwestern and the sub-lease of these properties back to Cap Rock. Both of these supplements assist Cap Rock with procuring future financing for the construction of additional facilities on Cap Rock's system.

*Comment date:* August 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

**16. Northeast Utilities Service Co.**

[Docket No. ER93-769-000]

July 16, 1993.

Take notice that on July 6, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing a revised filing that responds to the Commission's May 14, 1993 order regarding an agreement, dated January 1, 1984, providing for the joint use of certain transmission and distribution facilities, by and among The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Power and Electric Company and Holyoke Water Power Company. NUSCO requests that the agreement be made effective in accordance with its term.

NUSCO states that copies of the filing have been mailed to each utility affected thereby.

*Comment date:* July 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

**17. Cambridge Electric Light Co. and Commonwealth Electric Co.**

[Docket No. ER93-773-000]

July 16, 1993.

Take notice that on July 7, 1993, Cambridge Electric Light Company (Cambridge) and Commonwealth Electric Company (Commonwealth) (together COM/Electric) tendered for filing, pursuant to § 35.12 of the Commission's Regulations, as an initial rate schedule an exchange agreement among Cambridge, Commonwealth, New England Power Company (NEP) and Altresco Pittsfield, L.P. (Altresco) (the Exchange Agreement) governing the exchange of capacity and energy between NEP and COM/Electric. This capacity and related energy represents the minimum load of Altresco's 160 MW electric cogeneration facility in Pittsfield, Massachusetts (the Altresco Unit). The Altresco Unit has been designated a qualifying facility under 18 CFR 292.207.

Cambridge, Commonwealth and NEP each have agreements with Altresco for the net electric capacity and related energy to be produce by the Altresco Unit. The COM/Electric agreements provide that the Altresco Unit will be fully dispatchable. The Exchange Agreement provides Altresco with an acceptable substitute for its obligation to achieve full dispatchability thereby avoiding substantial investment in boiler plant to satisfy its steam host while at the same time assuring that COM/Electric and NEP maintain their capability obligations pursuant to the New England Power Pool Agreement.

The parties to the Exchange Agreement concur in this filing and have requested that the Commission waive its notice requirements pursuant to § 35.11 of its regulations for good cause shown and to permit the tendered agreement to become effective as proposed on September 1, 1993.

A copy of this filing has been served upon NEP, Altresco and upon the Massachusetts Department of Public Utilities.

*Comment date:* July 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

**18. Delano Energy Company, Inc.**

[Docket No. ER93-781-000]

July 16, 1993.

Take notice that on July 9, 1993, Delano Energy Company, Inc. submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Southern California Edison Company.

*Comment date:* July 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93–17621 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 1971–041 Idaho]**

## Idaho Power Co. and Hells Canyon Project; Availability of Environmental Assessment

July 20, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed the application for amendment of license to relocate the existing Pine Creek-Hells Canyon 69–KV transmission line outside of the Hells Canyon Park. The transmission line is approximately 22 miles long, extending from the Oxbow Powerplant to the Hells Canyon Dam. This relocation will involve approximately ½ mile of line. Idaho Power Company proposes to relocate the line at each end of the park where it crosses over the reservoir and at the boat ramp located at the park, to provide for boater safety. The project is located at the Hells Canyon Reservoir on the Snake River in Baker County and Adams County, Idaho. The staff of OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that relocating the transmission line would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17625 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–12841T Oklahoma–51]**

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 20, 1993.

Take notice that on July 16, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Morrow-Springer Formation, underlying a portion of Blaine and Dewey Counties, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as follows:

*Township 15 North, Range 13 West*

(Blaine County)

Section 5: W/2
Section 8: W/2
Section 6: All
Section 17–18: All

*Township 16 North, Range 13 West*

(Blaine County)

Section 31: All

*Township 16 North, Range 14 West*

Section 36: All

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17626 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–12841T Oklahoma–50]**

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

July 20, 1993.

Take notice that on July 16, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Hunton and Viola Formations, underlying a portion of Garvin County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as the N/2 of Section 12, Township 4 North, Range 4 West, Garvin County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR §§ 275.203 and 275.204, within 20 days after the date this is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17627 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–12843T Oklahoma–49]**

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 20, 1993.

Take notice that on July 16, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Sycamore Formation, underlying a portion o McClain County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as the E/2 of Section 30, Township 5 North, Range 4 West, McClain County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the

requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17628 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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[Project No. 11187–002 Washington]

## Cowlitz Basin 6 Limited Partnership; Surrender of Preliminary Permit

July 20, 1993.

Take notice that Cowlitz Basin 6 Limited Partnership, Permittee for the Williame Creek Project No. 11187, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11187 was issued June 30, 1992, and would have expired May 31, 1995. The project would have been located in Gifford Pinchot National Forest, on Williame Creek, in Lewis County, Washington.

The Permittee filed the request on June 10, 1993, and the preliminary permit for Project No. 11187 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17629 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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[Project No. 11189–002 Washington]

## Cowlitz Basin 8 Limited Partnership, Surrender of Preliminary Permit

July 20, 1993.

Take notice that Cowlitz Basin 8 Limited Partnership, Permittee for the Yellow Jacket Creek Project No. 11189, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11189 was issued June 30, 1992, and would have expired May 31, 1995. The project would have been located in Gifford Pinchot National Forest, on Yellow Jacket Creek, in Lewis County, Washington.

The Permittee filed the request on June 10, 1993, and the preliminary permit for Project No. 11189 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17630 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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[Project No. 11190–002 Washington]

## Cowlitz Basin 9 Limited Partnership; Surrender of Preliminary Permit

July 20, 1993.

Take notice that Cowlitz Basin 9 Limited Partnership, Permittee for the Greenhorn Creek Project No. 11190, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11190 was issued June 30, 1992, and would have expired May 31, 1995. The project would have been located in Gifford Pinchot National Forest, on Greenhorn Creek, in Lewis County, Washington.

The Permittee filed the request on June 10, 1993, and the preliminary permit for Project No. 11190 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17631 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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## Lewis Basin 6 Limited Partnership; Surrender of Preliminary Permit

July 20, 1993.

Take notice that Lewis Basin 6 Limited Partnership, Permittee for the Tillicum Creek Project No. 11258, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11258 was issued June 29, 1992, and would have expired May 31, 1995. The project would have been located in Gifford Pinchot National Forest, on Tillicum Creek, in Skamania County, Washington.

The Permittee filed the request on June 10, 1993, and the preliminary permit for Project No. 11258 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17632 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. ER93–656–000]

## Arizona Public Service Co; Filing

July 20, 1993.

Take notice that on June 22, 1993, Arizona Public Service Company (APS) tendered for filing supplemental information in APS original filing in this Docket.

Copies of this filing have been served upon Yuma Cogeneration Associates and the Arizona Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17633 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93-786-000]

## Boston Edison Co.; Filing

July 20, 1993.

Take notice that on July 13, 1993, Boston Edison Company (Edison) tendered for filing a Transmission Agreement with Altresco, Pittsfield L.P. (Altresco). The transmission Agreement specifies the amount and duration of transmission service required by Altresco to deliver its power to Cambridge Electric Light Company in Cambridge, Massachusetts.

Edison requests waiver of the Commission's notice requirements to permit the Transmission Agreement to become effective as of the commencement date of the transaction to which it relates, September 1, 1993.

Edison states that it has served the filing on Cambridge Electric Light Company and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 4, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17634 Filed 7-23-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CP93-559-000]

## Colorado Interstate Gas Co.; Request Under Blanket Authorization

July 20, 1993.

Take notice that on July 16, 1993, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93-559-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate facilities for the delivery of natural gas to Public Service Company of Colorado (PSCC), a local distribution company, under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to construct and operate the Little Horse and Corral Gulch delivery facilities in Rio Blanco County, Colorado, for the delivery of up to 25,000 Mcf of gas per day to PSCC. It is stated that the facilities would be used for gas being transported by CIG and for use by PSSC in its system supply. It is explained that the facilities would be bi-directional and could be used for either receipt or delivery. The cost of installing the facilities is estimated at $639,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17622 Filed 7-23-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. ER93-313-000]

## Niagara Mohawk Power Corp.; Filing

July 20, 1993.

Take notice that on June 23, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an amendment to its Power Sales Tariff which provides for sales of system capacity and/or energy resource capacity and/or energy. The proposed Tariff requests interested purchasers to enter into a Service Agreement with Niagara Mohawk before transactions may commence under this Tariff.

Niagara Mohawk requests that its Tariffs be accepted for filing and allowed to become effective in accordance with its terms as specified. Information filed in support of the Tariff includes cost support for Niagara Mohawk's tariff ceiling rates and pricing terms that allow for the capacity and energy changes to be pro-rated for the duration of each sale. A copy of this filing has been served upon the New York State Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17635 Filed 7-23-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CP93-542-000]

## Northern Natural Gas Co.; Application

July 20, 1993.

Take notice that on July 8, 1993, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP93-542-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas service between Northern and K N Energy, Inc. (K N), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to abandon the sale and transportation service provided under the sale, exchange and transportation agreement (agreement) between K N and Northern dated June 5, 1974, as amended, under Northern's Rate Schedule X-48. Northern states that K N receives the volumes of natural gas from the Brown-Federal No. 1 in Fremont County, Wyoming (Brown-Federal No. 1) purchased by Northern. Under the terms of the agreement, K N had the option to purchase 25 percent of the natural gas received from Northern, it is stated. Northern states that K N redelivered the balance of the natural gas received from Northern, by exchange, at an existing point of interconnect between K N and Northern in Seward County, Kansas.

Northern states that it has terminated its purchase obligation for Brown-Federal No. 1 and pursuant to an

agreement dated June 24, 1993, Northern and K N have agreed to the termination of the agreement effective May 31, 1993. Northern states that K N has filed in Docket No. CP93–280–000 to abandon its corresponding authorization.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requriements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17624 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. ER93–794–000]

## Northeast Utilities Service Co.; Filing

July 20, 1993.

Take notice that on July 16, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement to provide non-firm transmission service to Consolidated Edison Company of New York, Inc. (Con Ed) under the NU System Companies' Transmission Service Tariff No. 2.

NUSCO states that a copy of this information has been mailed to Con Ed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 4, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

*Secretary.*

[FR Doc. 93–17636 Filed 7–23–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP93–557–000]

## Williams Natural Gas Co.; Request Under Blanket Authorization

July 20, 1993.

Take notice that on July 15, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–557–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by reclaim 19 miles of the Caney-Cambridge 12-inch lateral pipeline in Chautauqua County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG states that it originally received authorization in Docket No. CP91–1016–000 to abandon the 12-inch line in place; however, several landowners have hit the line while working in their fields and have requested that WNG reclaim the line. Since the line is very shallow and in an effort to assist the landowners, WNG now proposes to reclaim the 19 miles of abandoned 12-inch lateral pipeline.

WNG states that the only cost associated with the reclaim of the 12-inch lateral will be supervision on the part of WNG, estimated to be $23,270. WNG also states that all other costs associated with the line were taken off the books in Docket No. CP91–1016–000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17623 Filed –23–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TX93–3–000]

## Wisconsin Electric Power Co.; Filing

July 16, 1993.

Take notice that Wisconsin Electric Company (Wisconsin Electric) on June 6, 1993, tendered for filing a petition for an order directing for an order directing Upper Peninsula Power Company to provide firm transmission service to Wisconsin Electric's isolated Greenstone service area.

Wisconsin Electric requests an effective date of sixty days after filing.

Copies of the filing have been served on Upper Peninsula Power Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 93-17627 Filed 7-23-93; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4682-5]

### Acid Rain Program: Notice of Final Permit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final permit.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 14 utility plants: Colbert and E C Gaston in Alabama, Bowen, Hammond and Yates in Georgia, E W Brown, Ghent, Green River, Paradise and Shawnee in Kentucky, and Allen, Cumberland, Gallatin and Johnsonville in Tennessee.

**FOR FURTHER INFORMATION CONTACT:** Brian Beals at (404) 347-5014. Air, Pesticides and Toxics Management Division, EPA Region 4, 345 Courtland Ave. NE., Atlanta, GA 30365.

Dated: July 19, 1993.

Brian McLean,

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93-17715 Filed 7-23-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4682-7]

### Public Water System Supervision Program Revision for the State of Ohio

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Public notice is hereby given in accordance with the provisions of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300g-2, and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Ohio is revising its Public Water System Supervision (PWSS) primacy program. The Ohio Environmental Protection Agency (OEPA) has adopted drinking water regulations for the treatment of total coliform bacteria (TC) that correspond to the NPDWR for TC promulgated by the United States Environmental Protection Agency (U.S. EPA) on June 29, 1989, (54 FR 27544). The U.S. EPA has completed its review of Ohio's primacy revision.

The U.S. EPA has determined that the current version of Ohio's primacy revision substantially meets the requirements of the Federal rule. However, there are some minor deficiencies which must be corrected before the U.S. EPA can grant approval. The changes needed to correct these minor deficiencies are written into a Memorandum of Agreement (MOA) between the U.S. EPA and Ohio (which is available at the State and U.S. EPA offices listed at the end of this notice). Ohio has agreed to incorporate these changes into its final regulations, which are scheduled to become effective no later than November 30, 1993. Upon notification that Ohio's revised regulations have become effective, the U.S. EPA will grant formal approval of Ohio's primacy revision without further solicitation of public input.

All interested parties are invited to submit written comments on this proposed determination, and request a public hearing on or before August 25, 1993. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time, following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action.

Please submit all comments and requests for a public hearing to William Spaulding (WD-17J), U. S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

If requests which indicate sufficient interest and/or significance are received by the end of the Notice period, a public hearing will be held. Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the Federal Register and in newspapers of general circulation in the State of Ohio. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Ohio. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, these determinations shall become effective on August 25, 1993.

Please bring this Notice to the attention of any persons known by you to have an interest in these determinations.

All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Ohio Environmental Protection Agency, Division of Drinking and Ground Waters, P.O. Box 1049, 1800 WaterMark Drive, Columbus, Ohio 43266-0149.
- U.S. Environmental Protection Agency, Region 5, Safe Drinking Water Branch (WD-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** William D. Spaulding, Region 5, Drinking Water Section, at the Chicago address given above, telephone 312/886-9262.

**Authority:** Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Signed this 15 day of July, 1993.

Valdas V. Adamkus,

*Regional Administrator, U.S. EPA, Region 5.*

[FR Doc. 93-17709 Filed 7-23-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4682-6]

### Colorado; Adequacy Determination of the State's Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency (Region 8).

**ACTION:** Notice of tentative determination on application of the State of Colorado for full program

adequacy determination, public comment period and public hearing.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

The State of Colorado applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Colorado's MSWLF application and made a tentative determination that all portions of Colorado's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Colorado's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "FOR FURTHER INFORMATION CONTACT" section below.

**DATES:** All comments on Colorado's application for a determination of adequacy must be received by the close of business on September 13, 1993. The public hearing is tentatively scheduled for 10 a.m. to 12 noon, September 13, 1993, at the U.S. EPA Region 8 Conference Center, 999 18th Street, Second Floor, Denver, Colorado, 80202–2466. Should a hearing be held, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing by close of business on September 13, 1993. The hearing may adjourn earlier than 12 noon if all of the speakers deliver their comments before that hour. Colorado will participate in the public hearing held by EPA on this subject.

**ADDRESSES:** Copies of Colorado's application for adequacy determination are available from 8 a.m. to 4 p.m. at the following addresses for inspection and copying: Colorado Department of Health, Hazardous Materials and Waste Management Division, Information Services Center, 4300 Cherry Creek Drive South, Denver, Colorado, 80222–1530, telephone (303) 692–3312; and U.S. EPA Region 8 Library, 999 18th Street, suite 215, Denver, Colorado, 80202–2466, telephone (303) 293–1444. Written comments should be sent to Ms. Judith Wong, Mail Code 8HWM-WM, U.S. EPA Region 8, 999 18th Street, suite 500, Denver, Colorado, 80202–2466.

**FOR FURTHER INFORMATION CONTACT:** Judith Wong, Mail Code 8HWM–WM, Waste Management Branch, U.S. EPA Region 8, 999 18th Street, Denver, Colorado, 80202–2466, telephone (303) 293–1667.

**SUPPLEMENTARY INFORMATION:**

## A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

## B. State of Colorado

On May 24, 1993, the State of Colorado submitted an application for adequacy determination. EPA reviewed Colorado's application and tentatively determined that all portions of the Colorado's Subtitle D program will ensure compliance with the revised Federal Criteria.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/

Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact within 30 days of the publication of this notice, the Region will hold a hearing on September 13, 1993, at the U.S. EPA Region 8 Conference Center, 999 18th Street, Second Floor, Denver, Colorado, 80202–2466.

Colorado has not asserted jurisdiction within the exterior boundaries of Indian reservations in its application for adequacy determination. Accordingly, this approval does not extend to lands within Indian reservations in Colorado. Until EPA approves a State or Tribal MSWLF permitting program in Colorado for any part of "Indian Country," as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for State of Colorado's program. EPA will make a final decision on whether or not to approve Colorado's program by October 9, 1993, and will give notice of it in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

**Compliance With Executive Order 12291**

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 16, 1993.

**Jack W. McGraw,**

*Acting Regional Administrator.*

[FR Doc. 93–17712 Filed 7–23–93; 8:45 am]

BILLING CODE 6560-60-P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

July 19, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

*OMB Number:* 3060–0126
*Title:* Section 73.1820, Station Log
*Action:* Extension of a currently approved collection
*Respondents:* Non-profit institutions, businesses or other for-profit (including small businesses)
*Frequency of Response:* Recordkeeping requirement
*Estimated Annual Burden:* 13,350 recordkeepers; 0.93 hours average burden per recordkeeper; 12,416 hours total annual burden
*Needs and Uses:* Section 73.1820 requires that each licensee of an AM, FM or TV broadcasts station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustment to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Broadcast System (EBS) for commercial stations. The data is used by FCC staff to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC rules with the station authorization, and is taking reasonable measures to preclude interference to other stations. It is also used to verify that the EBS is operating properly.

*OMB Number:* 3060–0055
*Title:* Application for Cable Television Relay Service Station Authorization
*Form Number:* FCC Form 327
*Action:* Revision of a currently approved collection
*Respondents:* Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)
*Frequency of Response:* On occasion reporting requirement
*Estimated Annual Burden:* 14,000 responses; 3.166 hours average burden per response; 4,432 hours total annual burden per response
*Needs and Uses:* FCC Form 327 is used by Cable Television owners or operators, cooperative enterprises owned by Cable TV owners or operators and MMDS operators (wireless cable TV operators) when applying for Cable TV Relay Service (CARS) Station, Modification of License, Reinstatement, Amendment, Transfer of Control, Assignment of License, and Renewal of License. The form is being revised to include information regarding fees. In addition, a question was revised to advise MMDS applicants of the need to submit a copy of their MMDS license and/or their MMDS/ITFS lease agreements. The data is used by FCC staff to determine whether the applicant meets basic statutory requirements and is qualified to become or continue as a Commission licensee.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–17805 Filed 7–23–93; 8:45 am]

BILLING CODE 6712-01-M

**Public Information Collection Requirement Submitted to Office of Management and Budget for Review**

July 20, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

*Please note:* The Commission has requested expedited review of this item by August 3, 1993, under the provisions of 5 CFR 1320.18.

*OMB Number:* 3060–0536.

*Title:* Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

*Form Number:* FCC Form 431.

*Action:* Revision of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Frequency of Response:* Annually and on occasion reporting requirement.

*Estimated Annual Burden:* 5,000 responses; 9.266 hours average burden per response; 46,330 hours total annual burden.

*Needs and Uses:* The rules and requirements contained in the Third Report and Order, CC Docket No. 90–571, implement the shared-funding program for recovery of interstate TRS costs. All interstate service providers must contribute to the TRS fund. The collections of information set forth in the final rules are essential to the implementation of certain provisions of the Americans with Disebilibities Act of 1990, (ADA). The attached Third Report and Order amends the Commission rules to provide that interstate telecommunications relay services costs shall be recovered utilizing a shared-funding mechanism pursuant to the rules and requirements contained in Appendix B. Brief descriptions of the information collections are provided. The National Exchange Carrier Association, Inc. (NECA) will serve as interim administer of the TRS Fund. NECA's performance and the TRS Fund plan will be reviewed after two years. The administrator will be subject to a yearly audit by an independent certified accounting form and by the Commission. Pursuant to § 64.604(c)(iii)(h), the TRS Fund administrator must report annually to the Commission its administrative costs associated with the administration of TRS Fund and file a cost allocation manual. TRS formulas and revenue requirements must be filed with the Commission on October 1 each year. The administrator must establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users, interstate service providers, state representatives, and TRS providers which will meet at reasonable intervals in order to monitor TRS cost recovery matters. The annual report to the Commission must include a discussion of advisory committee deliberations. Information submitted in response to the attached rules and requirements will be used to administer the TRS Fund. Information will be used to calculate a national average rate to recover the total interstate TRS revenue requirements and to determine the appropriate payment due to TRS providers participating in the shared-funding plan.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–17801 Filed 7–23–93; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–997–DR]**

**Illinois; Amendment to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Illinois dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993.

Boone, Lake, McHenry, Stephenson, and Winnebago for Public Assistance. (Already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance).

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–17685 Filed 7–23–93; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA–997–DR]**

**Illinois; Amendment to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 17, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Illinois, dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Alexander, Jackson, Randolph, and Union Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–17724 Filed 7–23–93; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA–997–DR]**

**Illinois; Amendment to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 15, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Illinois, dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Adams, Calhoun, Carroll, Jersey, Jo Daviess, Hancock, Henderson, Henry, Madison, Monroe, Mercer, Pike, Rock Island, St. Clair, Whiteside for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–17725 Filed 7–23–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

## Minnesota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

**EFFECTIVE DATE:** July 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Minnesota, dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

The counties of Big Stone, Clay, Stevens, Swift and Traverse for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–17686 Filed 7–23–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

## Missouri; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

The counties of Atchison, Carroll, Cole, Holt, Jefferson, Lincoln, Marion, Pike, Ralls, Ray, St. Charles, Ste. Genevieve, and St. Louis and St. Louis City for Public Assistance. (Already designated for Individual Assistance.)

The city of Jefferson City for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–17688 Filed 7–23–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

## Wisconsin; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), dated July 2, 1993, and related determinations.

**EFFECTIVE DATE:** July 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Wisconsin dated July 2, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993:

The counties of Buffalo, Crawford, Dane, Dunn, Grant, Green, Iowa, La Crosse, Lafayette, Pierce, Price, Rusk, Sauk, St. Croix, Vernon, and Waupaca for Public Assistance. (Already designated for Individual Assistance).

The counties of Dodge, Jefferson, Kneosha, Milwaukee, and Racine for individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–17687 Filed 7–23–93; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; Greece/USA Rate Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202–011423.

*Title:* Greece/USA Rate Agreement.

*Parties:*

Farrell Lines, Inc.
"Italia" de Navigazione, S.p.A.
P&O Containers Limited
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

*Synopsis:* The proposed Agreement would permit the parties to discuss and agree upon rules, rates, charges and other transportation matters pertaining to the movement of cargo from ports and points in Greece, Macedonia, Montenegro, Serbia, Bosnia-Herecegovina, Bulgaria, and Albania to ports and points in the United States.

*Agreement No.:* 224–200791.

*Title:* The Port Authority of New York & New Jersey/United Arab Agencies, Inc. Container Incentive Agreement.

*Parties:*
The Port Authority of New York & New Jersey ("Port")
United Arab Agencies, Inc. ("UAAI")
*Synopsis:* The Agreement provides for the Port to pay UAAI a container incentive of $20.00 for each import container and $40.00 for each export container moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: July 20, 1993.

By order of the Federal Maritime Commission.

Joseph C. Polking,
*Secretary.*

[FR Doc. 93-17600 Filed 7-23-93; 8:45 am]
BILLING CODE 6730-01-M

## Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Eagle Freight Services, Inc., 534 Eccles Avenue, So. San Francisco, CA 94080, Officers: Raymond W. Wilson, President/Director Arthur F. Mesa, Vice Pres./CEO/Dir./Stockh. Craig R. Patterson, V. Pres./Dir./Stockh.

Transmar, Inc., 18181/2 Broadway Street, New Orleans, LA 70118, Officers: Elda Mariella Ruiz Castro, CEO/Director, Daniel Castrol, President/Director

Fivestar Express (U.S.A.) Inc., 1044 N. Dodsworth Ave., Covina, CA 91724, Officer: Jyh Yeong Hsieh, President/Director

US International Forwarders, 9445 Concourse Dr., #354, Houston, TX 77036, Tobias G. Ogu, Sole Proprietor

Canor Air Freight Forwarders, Inc., 7080 NW 50th Street, Miami, FL 33166, Officers: Blancalicia Doyle, President, Zamira Isabel Pereira, Vice President

Meyer Shipping Corp., 5610 18th Avenue, Brooklyn, NY 11204, officer: Israel Meyer, President

Clover International, Inc., 15431 Vantage Parkway West, Ste. 200, Houston, TX 77032, Officers: Luis Angel Ricon, Pres./Treas./Secr., Ana H. Pena, Asst. Secretary

Luma International Forwarding, Inc., 334 North Royal Poinciana Blvd., Miami, FL 33166, Officers: Luz Carvajal, President/V. President Matilda Morales, Secretary

Venymex Shipping Company, 1314 Texas Avenue, Ste. 1506, Houston, TX 77002, Officers: Hector Garza, Pres./Treas./Dir./Stockh. Yolanda Garaza, V. Pres./Sec./Dir./Stockh.

By the Federal Maritime Commission.
Dated: July 21, 1993.

Joseph C. Polking,
*Secretary.*

[FR Doc. 93-17691 Filed 7-23-93; 8:45 am]
BILLING CODE 6730-01-M

## Performance Review Board

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** William J. Herron, Jr., Director of Personnel, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

William D. Hathaway,
*Chairman.*

The members of the Performance Review Board are:

1. Ming Chen Hsu, Commissioner
2. Francis J. Ivancie, Commissioner
3. Norman D. Kline, Chief Administrative Law Judge
4. Frederick M. Dolan, Jr., Administrative Law Judge
5. Charles E. Morgan, Administrative Law Judge
6. Robert D. Bourgoin, General Counsel
7. Joseph C. Polking, Secretary
8. Edward P. Walsh, Managing Director
9. Bruce A. Dombrowski, Deputy Managing Director
10. John Robert Ewers, Deputy Managing Director
11. Seymour Glanzer, Director, Bureau of Hearing Counsel
12. Norman W. Littlejohn, Director, Bureau of Administration
13. Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis
14. Wm. Jarrel Smith, Jr., Director, Bureau of Investigations
15. Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing

[FR Doc. 93-17601 Filed 7-23-93; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

## Bluestem Financial Corp., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 1993.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Bluestem Financial Corp.*, Fairbury, Illinois; to engage *de novo* through its subsidiary, Bluestem Financial Services, Inc., Fairbury, Illinois, in investment or financial advice and consumer financial counseling pursuant to § 225.25(b)(4)(iii), (b)(4)(iv), (b)(4)(v) and (b)(20) of the Board's Regulation Y.

**B. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400

South Akard Street, Dallas, Texas 75222:

*1. First Texas Bancorp, Inc.*, Georgetown, Texas; to engage *de novo* through its subsidiary, First Texas Development Corporation, Georgetown, Texas, in making and/or servicing loans for itself or for others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, July 20, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–17670 Filed 7–23–93; 8:45 am]

BILLING CODE 6210–01–F

## CCB Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 19, 1993.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. CCB Financial Corporation*, Durham, North Carolina; to acquire 100 percent of the voting shares of Shelby Savings Bank, SSB, Shelby, North Carolina.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. AmSouth Bancorporation*, Birmingham, Alabama; to merge with Orange Banking Corporation, Orlando, Florida, and thereby indirectly acquire Orange Bank, Orlando, Florida.

**C. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Bank of Montreal*, Montreal, Canada; Bankmont Financial Corp., New York, New York; and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 22.6 percent of the voting shares of City Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire City Bank and Trust Company.

*2. Quick Bancorp, Inc.*, McClelland, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples National Bank, Council Bluffs, Iowa.

Board of Governors of the Federal Reserve System, July 20, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–17671 Filed 7–23–93; 8:45 am]

BILLING CODE 6210–01–F

## Crestar Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 9, 1993.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Crestar Financial Corporation*, Richmond, Virginia; to acquire Internet, Inc., Reston, Virginia, and thereby engage in providing electronic network and switching services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 20, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–17672 Filed 7–23–93; 8:45 am]

BILLING CODE 6210–01–F

## Robert Timothy Monnig, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 16, 1993.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Robert Timothy Monnig and Carol Ann Monnig*, to acquire an additional 1.9 percent for a total of 12.9 percent; Thomas Henry Monnig and Natalie Ann Monnig, to acquire an additional 1.9 percent for a total of 8.6 percent; and

John Joseph Monnig and Jennifer Ann Monnig to acquire an additional 1.9 percent for a total of 9.5 percent of the voting shares of Bancshares of Glasgow, Glasgow, Missouri, and thereby indirectly acquire Tri-County Trust Company, Glasgow, Missouri. All acquiring parties are from Glasgow, Missouri.

**B. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Benjamin Namatinia*, Portland, Oregon; to acquire 10 percent of the voting shares of Cowlitz Bancorporation, Longview, Washington, and thereby indirectly acquire The Cowlitz Bank, Longview, Washington.

Board of Governors of the Federal Reserve System, July 20, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17673 Filed 7-23-93; 8:45 am]

BILLING CODE 6210-01-F

## GENERAL SERVICES ADMINISTRATION

### Information Resources Management Service

### Federal Telecommunications Standards

**ACTION:** Notice of adoption of standard.

**SUMMARY:** The purpose of this notice is to announce the adoption of a Federal Telecommunications Standard (FED-STD). FED-STD 1049, "Telecommunications: HF Radio Automatic Operation in Stressed Environments, Section 1: Linking Protection" is approved and will be published.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert T. Adair, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, telephone (303) 497-3723.

**SUPPLEMENTARY INFORMATION:**

1. The general Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of GSA designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for NCS interoperability and the non-computer communication interface.

2. On March 13, 1992, a notice was published in the **Federal Register** (57 FR 50) that a proposed Federal Telecommunications Standard 1049 entitled "Telecommunications: HF Radio Automatic Operation in Stressed Environments, Section 1: Linking Protection" was being proposed for Federal use.

3. The justification package as approved by the Deputy Assistant Secretary of Defense (Defense-wide C3), Office of the Assistant Secretary of Defense was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305-2010.

4. A copy of the standard is provided as an attachment to this notice. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Federal Supply Service Bureau (FSSB), Specifications Section, suite 6100, 490 East L'Enfant Plaza SW., Washington, DC 20407; telephone (202) 755-0325.

Dated: May 14, 1993.

**G. Martin Wagner,**

*Acting Commissioner.*

FED-STD 1049

**Federal Standard Telecommunications: HF Radio Automatic Operation in Stressed Environments, Section 1: Linking Protection**

1. *Scope.* The terms and accompanying definitions contained in this standard are drawn from authoritative non-Government sources such as the International Telecommunication Union, the International Organization for Standardization, the Telecommunications Industry Association, and the American National Standards Institute, as well as from numerous authoritative U.S. Government publications. The Federal Telecommunications Standards Committee (FTSC) HF Radio Standards Development Working Group (SDWG) developed a family of High Frequency Automatic Link Establishment (ALE) specifications that defines the necessary technical parameters for automatic link establishment for HF radio connections. Federal Standard 1049/1 is one of the family of standards to be used in conjunction with the interoperability criteria for HF radio automatic operation.

1.1. Applicability. All federal departments and agencies shall use Federal Standard 1049/1 as the authoritative source of definitions for terms used in the preparation of all telecommunications documentation. The use of this standard by all Federal departments and agencies is mandatory.

1.2. Purpose. The purpose of this standard is to improve the Federal acquisition process by providing Federal departments and agencies a comprehensive, authoritative source of definitions of terms and link protection parameters, and to prevent the establishment of unauthorized HF radio links or the unauthorized manipulation of legitimate HF radio automatic link establishment.

2. *Requirements and Applicable Documents.* The HF radio terms and definitions constitute this standard, and are to be applied to the design and procurement of ALE automated radio equipment requiring operations in stressed environments. There are a family of Federal Telecommunications Standards and proposed HF radio automatic link establishment standards that may be applicable to implementation of this standard and these are listed in the standard.

3. *Use.* All Federal departments and agencies shall use this standard in the design and procurement of ASLE automated radio equipment. Only after determining that a requirement is not included in this document may other sources be used.

4. *Effective Date.* The use of this approved standard by U.S. government departments and agencies is mandatory, effective 180 days following the publication date of this standard.

5. *Changes.* When a Federal department or agency considers that this standard does not provide for its essential needs, a statement citing inadequacies shall be sent in duplicate to the General Services Administration (KMR), Washington, DC 20405, in accordance with the provisions of the Federal Information Resources Management Regulation, Subpart 201-20.3. The General Services Administration will determine the appropriate action to be taken and will notify the agency.

Federal departments and agencies are encouraged to submit updates and corrections to this standard, which will be considered for the next revision of this standard. The General Services Administration has delegated the compilation of suggested changes to the National Communications System whose address is given below: Office of the Manager, National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

[FR Doc. 93-17650 Filed 7-23-93; 8:45 am]

BILLING CODE 6820-25-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### CDC Advisory Committee on the Prevention of HIV Infection, Subcommittee on Developing Partnerships for HIV Prevention; Request for Comments

**AGENCY:** Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

**ACTION:** Request for comments.

**SUMMARY:** A subcommittee to the CDC Advisory Committee on the Prevention

of HIV Infection (CDC ACPHI) has been established to conduct a review and evaluation of CDC's HIV prevention partnerships. The Subcommittee on Developing Partnerships for HIV Prevention has enlisted the assistance of a number of experts in identifying the areas to be addressed in the review process.

During public meetings held in May, June, and July 1993, the subcommittee and consultants reviewed the type, extent, and quality of partnerships between CDC and nongovernmental organizations in planning and implementing comprehensive HIV prevention programs.

In order to assure the broadest possible input into this process, the CDC ACPHI requests comments from interested parties on the following questions:

(1) What can CDC do to promote and/or enhance HIV prevention partnerships among CDC, targeted populations, NGOs, and state and local health departments?

(2) What are the effective characteristics of these partnerships? (How are roles differentiated?)

(3) What should CDC do to best assess and meet the diverse technical assistance needs of NGOs, and state and local health departments?

(4) What should CDC do to further integrate HIV/STD/TB/Substance Abuse prevention activities?

**DATES:** Please provide written comments by August 25, 1993.

**ADDRESSES:** Comments should be addressed to: Chair, CDC Advisory Committee on the Prevention of HIV Infection, c/o Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333.

**FOR FURTHER INFORMATION CONTACT:** Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: July 19, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17658 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–18–P

## CDC Advisory Committee on the Prevention of HIV Infection, Subcommittee on Improving Public Understanding of the HIV Epidemic; Request for Comments

**AGENCY:** Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

**ACTION:** Request for comments.

**SUMMARY:** A subcommittee to the CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI) has been established to conduct a review and evaluation of CDC's HIV public information activities. The Subcommittee on Improving Public Understanding of the HIV Epidemic has enlisted the assistance of a number of experts in identifying the areas to be addressed in the review process.

During public meetings held in May and June 1993, the subcommittee examined four issues that are central to the success of CDC's public information activities: Vision, intended audiences, systems, and evaluation.

In order to assure the broadest possible input into this review process, the CDC ACPHI requests comments from interested parties on the following questions:

(1) What role can communications play in the public's understanding of HIV?

(2) What groups need to be reached through communications?

(3) What infrastructure is needed to coordinate the activities of CDC, its grantees, and the larger community?

(4) How will success be measured?

**DATES:** Please provide written comments by August 25, 1993.

**ADDRESSES:** Comments should be addressed to: Chair, CDC Advisory Committee on the Prevention of HIV Infection, c/o Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333.

**FOR FURTHER INFORMATION CONTACT:** Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: July 19, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17661 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–18–P

## CDC Advisory Committee on the Prevention of HIV Infection, Subcommittee on Monitoring the HIV/AIDS Epidemic; Request for Comments

**AGENCY:** Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

**ACTION:** Request for comments.

**SUMMARY:** A subcommittee to the CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI) has been established to conduct a review and evaluation of CDC's HIV surveillance activities. The Subcommittee on Monitoring the HIV/AIDS Epidemic has enlisted the assistance of a number of experts in identifying the areas to be addressed in the review process.

During meetings in April, July, and September 1993, the subcommittee is examining CDC efforts to assess (1) sexual and drug-use behavior associated with HIV transmission, (2) occupational exposures associated with HIV transmission, and (3) HIV infection and associated morbidity and mortality.

In order to assure the broadest possible input into this review process, the CDC ACPHI requests comments from interested parties on these surveillance elements. In considering these monitoring activities, the following questions should be addressed:

(1) What are the critical information needs of public health agencies that can be met through surveillance systems, in order to:

a. Assess the HIV epidemic, including sexual and drug-use behaviors associated with HIV transmission, occupational exposures to HIV, and HIV infections and resulting diseases,

b. Target programs to improve services for at-risk and infected populations,

c. Link at-risk and infected persons to ongoing services,

d. Evaluate the effectiveness of prevention programs (including prevention of new infections and prevention of complications in infected persons)?

(2) How do information needs differ for local, state, and national agencies? What is the most effective way for surveillance systems to meet these multiple needs, protect the confidentiality of at-risk or infected individuals, and promote the delivery of preventive health services?

**DATES:** Please provide written comments by August 25, 1993.

**ADDRESSES:** Comments should be addressed to: Chair, CDC Advisory Committee on the Prevention of HIV

Infection, c/o Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: July 19, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17662 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–18–P

## CDC Advisory Committee on the Prevention of HIV Infection, Subcommittee on Preventing Risk Behaviors Among School Students; Request for Comments

**AGENCY:** Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

**ACTION:** Request for comments.

**SUMMARY:** A subcommittee to the CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI) has been established to conduct a review and evaluation of CDC's HIV prevention programs directed toward school students. The Subcommittee on Preventing Risk Behaviors Among School Students has enlisted the assistance of a number of experts in identifying the areas to be addressed in the review process.

During meetings in June, July, and September 1993, the subcommittee is examining CDC efforts to reduce behaviors among the school-aged population that place them at risk of HIV infection.

In order to assure the broadest possible input into this review process, the CDC ACPHI requests comments from interested parties on the following questions:

1. What are the best ways for CDC to maintain a particular focus on HIV prevention among young people while promoting comprehensive school-based and community-based prevention strategies?

2. What future strategies could CDC employ to forge stronger linkages between the fields of health and education at the state and local levels in both policy and practice?

3. Many Federal programs aim to prevent HIV infection and other important health problems among young people. What more, if anything, should CDC do to better coordinate these efforts within CDC as well as with other Federal agencies?

4. Are CDC resources to prevent risk behaviors among school-aged youth: (a) Appropriately allocated among the various strategies being employed, (b) appropriately allocated based on geographic and demographic data, and (c) appropriately allocated for college-aged youth and youth in high-risk situations?

5. Schools are not the only institutions that influence adolescent behaviors. What more, if anything, should CDC do to reach out to various audiences such as families, non-governmental agencies, community-based organizations that serve youth, universities, philanthropies, the media, and the general public to improve HIV prevention and other health promotion strategies aimed at young people?

6. Are CDC efforts to follow up, evaluate, and use evaluation data to improve its strategies to prevent HIV infection and other important health risks among young people appropriate?

7. Are CDC strategies to prevent HIV infection and other important health risks among young people appropriate with respect to public health research, state of the art practices, Federal policy, and diverse societal expectations?

**DATES:** Please provide written comments by August 25, 1993.

**ADDRESSES:** Comments should be addressed to: Chair, CDC Advisory Committee on the Prevention of HIV Infection, c/o Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: July 19, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17659 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–18–P

## CDC Advisory Committee on the Prevention of HIV Infection, Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification); Request for Comments

**AGENCY:** Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

**ACTION:** Request for comments.

**SUMMARY:** A subcommittee to the CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI) has been established to conduct a review and evaluation of CDC's HIV counseling, testing, referral and partner notification (CTRPN) programs. The Subcommittee on Promoting Knowledge of Serostatus (Counseling, Testing, Referral, Partner Notification) has enlisted the assistance of a number of experts in identifying the areas to be addressed in the review process.

During meetings in May, June, July, and September 1993, the subcommittee is reviewing and evaluating CDC's HIV antibody counseling, testing, referral and partner notification programs to determine how well these programs provide persons at risk a convenient opportunity to:

(a) Learn their HIV serostatus.

(b) Receive HIV prevention counseling.

(c) Obtain referrals for additional prevention and other services.

(d) Assist sex and needle-sharing partners in receiving prevention services and referrals.

In order to assure the broadest possible input into this process, the CDC ACPHI requests comments from interested parties on the following questions:

(1) What should be the ideal goals for the CDC HIV CTRPN program as well as each component (counseling, testing, referral, and partner notification). What should be the relative emphasis of each component?

(2) How should progress be measured?

(3) How well does the current program meet the ideal goals?

(4) How should the program be changed to meet the ideal goals?

(5) What should be the relative investment and priority of CTRPN in relationship to other HIV prevention programs and activities?

(6) What information and data do CDC, health departments, and service providers need to continually improve the program?

(7) What are the impediments to improving the program and achieving the ideal goals?

**DATES:** Please provide written comments by August 25, 1993.

**ADDRESSES:** Comments should be addressed to: Chair, CDC Advisory Committee on the Prevention of HIV Infection, c/o Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Connie Granoff, Committee Assistant,

Office of the Associate Director for HIV/AIDS, CDC, 1600 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone (404) 639–2918.

Dated: July 19, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17660 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–18–P

## Food and Drug Administration

**[Docket No. 92N–0456]**

## Juan Manuel Rodriguez; Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Deputy Commissioner for Operations of the Food and Drug Administration (FDA) is issuing a final order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)) permanently debarring Mr. Juan Manuel Rodriguez, 200–26 45th Dr., Bayside, NY 11362, from providing services in any capacity to a person that has an approved or pending drug product application. The Deputy Commissioner bases this order on a finding that Mr. Rodriguez was convicted of a felony under Federal law for conduct relating to the development and approval, including the process for development and approval, of a drug product; and relating to the regulation of a drug product under the act. Mr. Rodriguez has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

**EFFECTIVE DATE:** July 26, 1993.

**ADDRESSES:** Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Megan L. Foster, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8041.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On July 24, 1992, the United States District Court for the District of Maryland entered judgment against Mr. Juan Manuel Rodriguez for one count of obstruction of an agency proceeding, a Federal felony offense under 18 U.S.C. 1505. The basis for this conviction was Mr. Rodriguez' act of fabricating a log book in order to match fabricated records. This log book was then furnished to FDA during an inspection of the pharmaceutical firm which had previously employed Mr. Rodriguez.

Following this conviction, on April 7, 1993, FDA served Mr. Rodriguez a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application and offered him an opportunity for a hearing on the proposal. FDA based the proposal on its finding that Mr. Rodriguez' conduct leading to his conviction under 18 U.S.C. 1505 related to the development, approval, and the regulation of a drug product. Mr. Rodriguez did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

### II. Findings and Order

Therefore, as Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to me (21 CFR 5.20), I find that Mr. Juan Manuel Rodriguez has been convicted of a felony under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Juan Manuel Rodriguez is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective July 26, 1993 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Rodriguez in any capacity during his period of debarment will be subject to civil money penalties. If Mr. Rodriguez during his period of debarment provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application from Mr. Rodriguez during his period of debarment.

Any application by Mr. Rodriguez for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 92N–0456 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 13, 1993.

**Jane E. Henney,**

*Deputy Commissioner for Operations.*

[FR Doc. 93–17645 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–01–F

**[Docket No. 93N–0263]**

## Forest Pharmaceuticals, Inc., Et Al.; Withdrawal of Approval of 24 Abbreviated New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 24 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**EFFECTIVE DATE:** August 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lola E. Batson, Center for Drug Evaluation and Research (HFD–360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8038.

**SUPPLEMENTARY INFORMATION:** The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

| ANDA No. | Drug | Applicant |
|---|---|---|
| 83-754 | Phendimetrazine tartrate tablets,, 35 milligrams (mg) | Forest Pharmaceuticals, Inc., 150 East 58th St., New York, NY 10155– 0015. |
| 83-889 | Methamphetamine hydrochloride tablets, 10 mg | Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960. |
| 83-889 | Tripelennamine hydrochloride Tablets, USP, 50 mg | Heather Drug Co., c/o Lachman Consultant Services, Inc., 100 Stewart Ave., Westbury, NY 11590. |
| 84-867 | Methyltestosterone capsules, USP, 10 mg | Do. |
| 85-355 | Dextroamphetamine sulfate, USP, 15 mg | Lemmon Co. |
| 85-012 | Sulfamethizole Tablets, 1.0 mg | Forest Pharmaceuticals, Inc. |
| 86-359 | Methamphetamine hydrochloride tablets, 5 mg | Lemmon. |
| 86-885 | Phenobarbital, 16.2 mg; Hyoscyamine sulfate, 0.1037 mg; Scopolamine hydrobromide, 0.0065 mg; and Atropine sulfate, 0.0194 mg tablets. | Forest Pharmaceuticals, Inc. |
| 87-809 | Acetaminophen and hydrocodone bitartrate tablets, 500 mg/5 mg | Do. |
| 87-890 | Triamcinolone acetonide cream, USP, 0.025% | Pharmaderm, Division of Altana Inc., 60 Baylis Rd., Melville, NY 11747. |
| 87-891 | Triamcinolone acetonide cream, USP, 0.1% | Do. |
| 87-892 | Triamcinolone acetonide cream, USP, 0.5% | Do. |
| 88-047 | Fluocinolone acetonide solution, USP, 0.01% | Do. |
| 88-322 | Thioridazine hydrochloride tablets, USP, 50 mg | Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977. |
| 88-336 | Thioridazine hydrochloride tablets, USP, 25 mg | Do. |
| 88-351 | Thioridazine hydrochloride tablets, USP, 10 mg | Do. |
| 88-352 | Thioridazine hydrochloride tablets, USP, 15 mg | Do. |
| 88-460 | Thioridazine hydrochloride tablets, USP, 100 mg | Do. |
| 88-644 | Dicyclomine hydrochloride capsules, USP, 10 mg | Lemmon. |
| 88-690 | Triamcinolone acetonide ointment, USP, 0.1% | Pharmaderm. |
| 88-692 | Triamcinolone acetonide ointment, USP, 0.025% | Do. |
| 88-845 | Hydrocortisone cream, USP, 1% | Do. |
| 89-377 | Nitroglycerin transdermal system, 0.4 mg per hour | Paco Pharmaceutical Services, 1200 Paco Way, Lakewood, NJ 08701. |
| 89-558 | Chlordiazepoxide capsules, 25 mg | Pioneer Pharmaceuticals, Inc., 209 40th St., Irvington, NJ 07111 |

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective August 25, 1993.

Dated: July 13, 1993.

**Carl C. Peck,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 93–17643 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–01–F

## Health Care Financing Administration

**[OPHC–028–N]**

## Health Maintenance Organizations: Qualification Determinations and Compliance Actions During the Period January 1, 1993 Through March 31, 1993

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the names, addresses, service areas or modified service areas, and dates of qualification or expansion of entities determined to be Federally qualified health maintenance organizations (FQHMOs) during the period January 1, 1993, through March 31, 1993. Additionally, this notice sets forth compliance actions taken by the Office of Prepaid Health Care Operations and Oversight for the period January 1, 1993, through March 31, 1993. This notice is being published in accordance with our regulations set forth at 42 CFR 417.144 and 417.163, which require publication in the **Federal Register** of certain determinations relating to FQHMOs.

**FOR FURTHER INFORMATION CONTACT:** Christine Boesz, (202) 619–0840.

**SUPPLEMENTARY INFORMATION:**

### A. Qualification Determinations

As part of our evaluation and determination of whether an entity qualifies as a Federally qualified health maintenance organization (FQHMO), our regulations set forth at 42 CFR 417.144(e) promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication in the **Federal Register** of the names, addresses, and description of the service areas of new FQHMOs. We interpret this requirement as applying to revisions of service areas of currently approved FQHMOs as well. Our last notice containing this information was published in the **Federal Register** on June 2, 1993 (58 FR 31407).

There are three categories of FQHMOs: operational, transitionally qualified, and pre-operational. Definitions of these terms are set forth at 42 CFR 417.141.

The Office of Prepaid Health Care Operations and Oversight has determined that the following entities are operational FQHMOs under section 1310(d) of the Act (42 U.S.C. 300e–9(d)) or have expanded their previously qualified service areas:

*Expansions and Addition of Service Area Regional Components by Existing FQHMOs*

a. *Prudential Health Care Plan of Illinois* (PruCare) Illinois) (Group Model, requirements are set forth at section 1310(b)(1) of the Act), 56 North Livingston Avenue, Roseland, New Jersey 07068. PruCare Illinois' Federally qualified service area has been expanded to include Cook, Dupage, and Lake Counties and the following zip codes in portions of Kane, McHenry, and Will Counties:

| Kane County | |
|---|---|
| 60110 | 60175. |
| 60118 | 60177. |
| 60120 | 60505 through 60507. |

| | |
|---|---|
| 60121 | 60510. |
| 60123 | 60539. |
| 60134 | 60542. |
| 60174. | |

The following cities are included:

| | |
|---|---|
| Aurora | Geneva. |
| Barrington Hills | Mooseheart. |
| Batavia | North Aurora. |
| Carpentersville | Saint Charles. |
| Dundee | Sleepy Hollow. |
| East Dundee | South Elgin. |
| Elgin | West DunDee |

McHenry County

| | |
|---|---|
| 60012 through 60014 | 60097. |
| 60021 | 60098. |
| 60050 | 60102. |
| 60051 | 60142. |
| 60072. | |

The following cities are included:

| | |
|---|---|
| Algonquin | Lake In The Hills. |
| Cary | McHenry. |
| Crystal Lake | Oakwood Hills. |
| Fox River Grove | Ringwood. |
| Huntley | Wonder Lake. |
| | Woodstock. |

Will County

| | |
|---|---|
| 60401 | 60440 through 60442. |
| 60417 | 60448. |
| 60421 | 60449. |
| 60423 | 60451. |
| 60431 through 60436 | 60468. |

Date of qualification for service area expansion: March 5, 1993.

b. *PacifiCare of Texas, Inc (PcTx)* (Group Model, see section 1310(b)(1) of the Act for requirements; Direct Contract Model, requirements are set forth at section 1310(b)(2)(B) of the Act; and Individual Practice Association Model, see definition and requirements set forth respectively at sections 1302(5) and 1310(b)(2)(A) of the Act), 8200 IH–10, suite 1000, San Antonio, Texas 78230–3878. PcTx's approved Federally qualified expansion beyond the current Bexar County includes Fort Bend, Harris, Kendell, Wharton, and Wilson Counties in their entirety and the following portions of Atascosa, Colorado, Comal, Gonzales, Guadalupe, Lavaca, Medina, and Montgomery Counties, Texas:

Atascosa County

| | |
|---|---|
| 78026 | Jourdanton. |
| 78050 | Leming. |
| 78952 | Lytle. |
| 78064 | Pleasanton. |
| 78065 | Poteet. |

Colorado County

| | |
|---|---|
| 78935 | Alleyton. |
| 77412 | Altair. |
| 78934 | Columbus. |
| 77434 | Eagle Lake. |
| 77442 | Garwood. |
| 77460 | Nada. |
| 78951 | Oakland. |
| 77470 | Rock Island. |
| 77475 | Sheridan. |
| 78962 | Weimar. |

Comal County

| | |
|---|---|
| 78163 | Bulverde. |
| 78623 | Fischer. |
| 78070 | Spring Branch. |

Gonzales County

| | |
|---|---|
| 78603 Bebe | 78685 Ottine. |
| 78604 Belmont | 78159 Smiley. |
| 78614 Cost | 78677 Wrightsboro. |
| 78629 Gonzales | 78959 Waelder. |
| 78122 Leesville | |
| 78140 Nixon. | |

Guadalupe County

| | |
|---|---|
| 78108 Cibolo | 78124 Marion. |
| 78123 McQueeny | 78155 New Berlin. |
| 78154 | Schertz. |

Lavaca County

| | |
|---|---|
| 77964 Moravia | 77975 Moulton. |

Medina County

| | |
|---|---|
| 78009 Castroville | 78056 Mico. |
| 78016 Devine | 78059 Natalia. |
| 78851 Hondo | 78066 Riomedina. |
| 78039 La Coste | 78886 Yancey. |

Montgomery County

| | |
|---|---|
| 77337 Hufsmith | 77380 Spring. |
| 77355 Magnolia | 77381 Spring. |
| 77362 Pinehurst | 77385 Spring. |
| 77386 | Spring. |

Date of qualification of service area expansion: March 5, 1993.

*B. Compliance Actions*

The Office of Prepaid Health Care Operations and Oversight gives notice of the following compliance actions affecting FQHMOs for the period January 1, 1993, through March 31, 1993:

1. Notices of Revocation

The Office of Prepaid Health Care Operations and Oversight considers voluntary relinquishment of participation to be a compliance action and sends a notice of revocation to the FQHMO. Notices were sent during the first quarter of calendar year 1993 to the following organizations:

| Organization | Date issued | Reason |
|---|---|---|
| CIGNA Healthplan of Kansas, Missouri, Wichita, Kansas. | 1/28/93 | Voluntary relinquishment (merger). |
| United Health Care of Georgia, Inc., Atlanta, Georgia. | 3/25/93 | Voluntary relinquishment. |

2. Notice of Reestablished Compliance

| Organization | Date reestablished |
|---|---|
| Companion HealthCare Columbia, South Carolina | 2/4/93 |
| Kaiser Foundation Health Plan of Massachusetts, Inc. Oakland, California | 2/9/93 |
| Kaiser Foundation Health Plan, Inc. Northern California, Oakland, California | 2/9/93 |
| Comprecare Health Care Services, Aurora, Colorado | 3/3/93 |
| Group Health Association, Inc., Washington, D.C. | 3/25/93 |

*C. Availability of Additional Information*

A cumulative list of FQHMOs and additional information may be obtained by writing to the following address: Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, Room 4406 Cohen Building, 330 Independence Avenue SW., Washington, DC 20201.

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except for Federal holidays. Interested persons should contact Margie Sharif for an appointment, telephone (202) 619–0845.

**Authority:** (42 U.S.C. 300e) Title XIII of the Public Health Service.

Dated: July 16, 1993.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 93–17642 Filed 7–23–93; 8:45 am]

BILLING CODE 4120–01–P

VOL 58 ISS 141 JL 26 1993 UMI

**Health Resources and Services Administration**

**[PH-3578]**

## Program Announcement and Grant Orientation; Conferences for the Health Careers Opportunity Program

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1994 Health Careers Opportunity Program (HCOP) grants are now being accepted under the authority of section 740 (previously section 787) of the Public Health Service Act, as amended by Public Law 102–408, dated October 13, 1992.

Section 740 authorizes the Secretary to make grants to and enter into contracts with schools of allopathic medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic and podiatric medicine and public and nonprofit private schools which offer graduate programs in clinical psychology and other public or private nonprofit health or educational entities to carry out programs which assist individuals from disadvantaged backgrounds to enter and graduate from such schools. The assistance authorized by the section may be used to: Identify, recruit, and select individuals from disadvantaged backgrounds for education and training in a health profession; facilitate the entry and retention of such individuals in health and allied health professions schools; providing for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; and to provide counseling and advice on financial aid to assist such individuals to complete successfully their education at such schools.

The Administration's FY 1994 budget request for this program is $30.1 million. Of this amount, $18.5 million will be used to continue support to 102 multi-year projects funded in previous years. It is estimated that $11.6 million will be available to fund 58 competing projects averaging $199,000 each.

The statute requires that, of the amounts appropriated for any fiscal year, 20 percent must be obligated for stipends to disadvantaged individuals of exceptional financial need who are students at schools of allopathic medicine, osteopathic medicine, or dentistry, 10 percent must be obligated to community-based programs and 70 percent must be obligated for grants or contracts to institutions of higher education. Not more than five percent of such funds may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

The legislative authority for this program expires in FY 1993. This program announcement is subject to the extension of this authority and the appropriation of funds. Applicants are advised that this application announcement is a contingency action being taken to assure that should the authority be extended and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for an even distribution of funds throughout the fiscal year.

### Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1993, HRSA reviewed 248 applications for HCOP Grants. Of those applications, 86 percent were approved and 14 percent were not recommended for further consideration. Seventy-four projects; or 35 percent of the approved applications, were funded. In FY 1992, HRSA reviewed 155 applications for HCOP Grants. Of those applications, 83 percent were approved and 17 percent were not recommended for further consideration. Twenty-seven projects; or 21 percent of the approved applications, were funded.

To receive support, applicants must meet the requirements of the program regulations which are located at 42 CFR part 57, subpart S. The period of Federal support will not exceed 3 years.

### National Health Objectives For The Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Health Careers Opportunity Program is related to the priority area of Educational and Community-Based programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

### Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between its U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

### Review Criteria

The review of applications will take into consideration the following criteria:

(a) The degree to which the proposed project adequately provides for the requirements in the program regulations;

(b) The number and types of individuals who can be expected to benefit from the project;

(c) The administrative and management ability of the applicant to carry out the proposed project in a cost effective manner;

(d) The adequacy of the staff and faculty;

(e) The soundness of the budget; and

(f) The potential of the project to continue without further support under this program.

In addition, the following factor will be applied in determining the funding of applications:

Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.

The following funding priorities will be used in the distribution of grant awards in FY 1994.

### Statutory Funding Priority

Public Law 102–408 requires the Secretary to give priority in funding to the following schools:

1. A school which previously received an HCOP grant and increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987 (for which the applicant must supply data) by the end of 3 years from the date of the award of the HCOP grant; and

2. A school which had not previously received an HCOP grant that increased its first-year enrollment of individuals from disadvantaged backgrounds by at least 20 percent over that enrollment in the base year 1987, (for which the applicant must supply data) over any period of time (3 consecutive years).

### Established Funding Priority

The following funding priority was established in fiscal year 1990 after public comment at 55 FR 11264, dated

March 27, 1990, and is being continued in FY 1994, with the exception that wording related to alternative means of documenting enrollment in terms of increases and retention rates for disadvantaged students has been deleted. Progress in these areas is considered as a part of the merit review process for this program and applicants will be informed of relevant benchmarks in application materials.

A funding priority will be given to HCOP applications from health professions schools and from allied health training centers for baccalaureate or higher level programs in physical therapy, physician assisting, respiratory therapy, medical technology or occupational therapy that have a disadvantaged student enrollment of 35 percent or more.

It is not required that applicants request consideration for a funding factor. Applicants which do not request consideration of funding factors will be reviewed and given full consideration for funding.

In addition, consideration will be given by the Secretary to an equitable geographic distribution of projects, and the assurance that a combination of all funded projects represents a reasonable proportion of the health professions specified in the legislation.

The applicant must indicate on the upper right-hand corner of the face page of the application the funding priority for which the applicant wishes consideration. However, the final determination of the category of funding priority will be based on a staff assessment of the contents of the proposal. An applicant may only be given credit for one funding priority.

**Definitions**

As used in this notice:

"Community-based Program" means a program with organizational headquarters located in and which primarily serves: a Metropolitan Statistical Area, as designated by the Office of Management and Budget; a Bureau of Economic Analysis, U.S. Department of Commerce designated nonmetropolitan economic area or a county; or Indian tribe(s) as defined in 42 CFR 36.102(c), i.e., an Indian tribe, band, nation, rancheria, Pueblo, colony or community, including an Alaska Native Village or regional or village corporation.

"Health professions schools" means schools of allopathic medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, chiropractic, or graduate programs in clinical psychology and health administration, as defined in section 799(1)(A) and (1)(B) of the Public Health Service Act and as accredited in section 799(1)(E) of the Act.

"Individual from a disadvantaged background" means an individual who: (a) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills and abilities required to enroll in and graduate from a health professions school or from a program providing education or training in an allied health profession or; (b) comes from a family with an annual income below a level based on low-income thresholds according to family size, published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index and adjusted by the Secretary for use in all health professions programs, 42 CFR 57.1804(b)(2).

The following income figures determine what constitutes a low-income family for purposes of these Health Careers Opportunity Program grants for fiscal year 1994:

| Size of parents' family [1] | Income level [2] |
|---|---|
| 1 | $9,419 |
| 2 | 12,202 |
| 3 | 14,523 |
| 4 | 18,598 |
| 5 | 21,830 |
| 6 or more | 24,648 |

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1993, rounded to nearest $100.

"Training Center for allied health professions" means a junior college, or college, or university which:

(a) Provides educational programs leading to an associate, baccalaureate, or higher degree needed to practice as one of the following:

**Master's Degree**

Biostatistician
Nutritionist
Social Worker
Speech Pathologist/Audiologist

**Bachelor's Degree**

Biomedical Engineer
Blood Bank Technologist
Community Health Educator
Corrective Therapist
Cytogenetic Counselor
Dental Hygienist
Dietitian
Health Physicist
Health Services Administrator
Medical Illustrator
Medical Records Administrator
Medical Technologist
Microbiology Technologist
Occupational Therapist
Physical Therapist
Primary Care Physician Assistant
Recreational Therapist
Rehabilitation Counselor
Sanitarian (Environmental Health)

**Associate Degree**

Clinical Dietetic Technician
Cytotechnologist
Dental Assistant
Dental Hygienist
Dental Laboratory Technician
EKG/EEG Technologist
Medical Assistant
Medical Laboratory Technician
Medical Records Technician
Occupational Therapy Assistant
Ophthalmic Medical Assistant
Ophthalmic Technologist
Optometric Technician
Orthopedic Technologist
Physical Therapy Assistant
Radiologic Technologist
Respiratory Therapy Technologist
Sanitarian Technician
Surgical Technologist

(b) Provides training for not less than a total of 20 persons in the substantive health portion, including clinical experience as required for employment, in three or more of the disciplines listed in paragraph (a) of this definition and has a minimum of six full-time students in that portion of each curriculum by October 15 of the fiscal year of application.

(c) Has a teaching hospital as part of the grantee institution or is affiliated with a teaching hospital by means of a formal written agreement. The term "teaching hospital" includes other settings which provide clinical or other health services if they fulfill the requirement for clinical experience specified in an allied health curriculum.

**Additional Information**

Requests for grant application materials and questions regarding grants policy and business management issues should be directed to: Ms. Diane Murray, Grants Management Specialist (D18), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857, FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Office at the above address.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The application deadline date is November 5, 1993. Applications will be

considered to be "on time" if they are either:

(1) *Received* on or before the deadline date, or

(2) *Sent* on or before the deadline and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

**Grant Orientation Conferences**

Grant applications and program information for the Health Careers Opportunity Program will also be provided through three program technical assistance conferences.

The three conferences scheduled in September 1993, will be held as follows:

September 9–10, 1993, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852, (301) 468–1100, (800) 638–5963.

September 13–14, 1993, U.S. Grant Hotel, 326 Broadway, San Diego, California 92101, (619) 232–3121, (800) 237–5029.

September 16–17, 1993 Stouffer Nashville Hotel, 611 Commerce Street, Nashville, Tennessee 37203–7307, (615) 255–8400.

Attendees must make their own lodging arrangements. Expenses incurred by the attendees will not be supported by the Federal Government.

Agenda items will include: Application Preparation and Grants Management Policies and Procedures. Special attention will be given to the development of the three page grant proposal summary, which is prepared by the applicant and is critical to the objective review process.

Participation in the technical assistance meetings does not assure approval and funding of prospective applications.

To obtain specific information regarding the conferences and programmatic aspects of this grant program, direct inquiries to: Mario A. Manecci, M.P.H., Chief, Health Careers Opportunity Program, Program Coordination Branch, Division of Disadvanteged Assistance, Bureau of Health Professions, HRSA, Parklawn Building, room 8A–09, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–4493, FAX: (301) 443–5242.

This program is listed at 93.822 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: June 2, 1993.

**William A. Robinson,**

*Acting Administrator.*

[FR Doc. 93–17552 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–15–P

## Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1993:

Name: National Advisory Committee on Rural Health.

Date and Time: September 20–22, 1993; 8:30 a.m.

Place: The Hotel Washington, 15th and Pennsylvania Avenue, NW., Washington, DC 20004–1006, (202) 638–5900.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: Plenary session on Monday, September 20, will be devoted to the theme: "Building Foundations for Health Care Reform in Rural Areas." The theme will include discussions and presentations on general infrastructure development, network development, and implications for states. Monday afternoon, the Executive Committee will visit the Secretary of Health and Human Services, Donna E. Shalala, Ph.D., in her office to discuss the Committee and its rural health agenda.

The Health Care Financing Work Group will study recommendations regarding Medicare waivers for alternative delivery systems, graduate medical education and anti-trust during its sessions on Monday afternoon and all day Tuesday. The Education and Health Services Work Group will address substance abuse and mental health services, and health professions education during the same time period.

The meeting will end on Wednesday, September 22, with reports from the two Work Groups. The entire meeting is open to the public with the exception of the meeting with the Secretary.

Anyone requiring information regarding the subject Council should contact Jeffery Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Dated: July 20, 1993.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 93–17603 Filed 7–23–93; 8:45 am]

BILLING CODE 4160–15–P

## Indian Health Service

### Adolescent Health Centers for American Indians/Alaska Natives; Grant Application Announcement

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice of final funding emphases for competitive grant Applications for the Indian Health Service (IHS) Adolescent Health Centers for American Indians/Alaska Natives Program.

**SUMMARY:** The IHS announces the final funding emphases for fiscal year (FY) 1993 IHS Adolescent Health Centers for American Indians/Alaska Natives Program authorized by section 216 of the Indian Health care Improvement Act as amended by the Indian Health Amendments of 1992, Public Law 102–573. There will be only one funding cycle during FY 1993. Grants shall be administered in accordance with applicable Office of Management and Budget (OMB) Circulars and HHS policies. This program is described at 93.228 in the Catalog of Federal Domestic Assistance. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

**General Program Purpose**

To establish innovative school related and community based adolescent health centers, capable of providing health promotion and disease prevention services to adolescents. Under this program, funding cannot be used to provide services described in section 209(m) of the Indian Health Care Improvement Act as amended by Public Law 102–573.

**Funding Emphases**

Proposed funding emphases were published in the **Federal Register** on May 24, 1993, (58 FR 29831) for public comment. No comments were received during the 30-day comment period. Therefore, as proposed, the following funding emphases will be retained as listed below.

1. Tribes or tribal organizations which have previously received grants to fund

IHS Adolescent Health Centers may not reapply.

2. To provide geographic equity, applicants from within the following IHS Areas will be given priority: Aberdeen IHS, Alaska Native Health Service, Billings IHS, California IHS, Navajo IHS, and Office of Health Program Research & Development.

**Review Process**

Applications meeting eligibility requirements that are complete and conform to the published program announcement in the **Federal Register** of May 24, 1993 (58 FR 29831) will be reviewed in accordance with the IHS objective review procedures. The objective review process is a nationwide competition for limited funding within the guidelines delineated under Eligible Applicants in the **Federal Register** of May 24, 1993 (58 FR 29831). In addition, assuming there are an adequate number of applications, not more than one grant will be awarded within each IHS Area. Priority will be given to qualified applicants within IHS Areas not previously having grant recipients under this grant program.

**FOR FURTHER INFORMATION CONTACT:** For Adolescent Health Centers for American Indians/Alaska Natives Grant program information contact Richard Kotomori, M.D., Chief, Special Initiatives Branch, Office of Health Programs, Indian Health Service, Parklawn Building, Room 6A–54, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4646. For grant application information, contact Mrs. Kay Carpentier, Grants Management Officer, Grants Management Branch, Indian Health Service, Twinbrook Metro Plaza, Suite 300, 12300 Twinbrook Parkway, Rockville, MD 20852, (301) 443–5204. (The telephone numbers are not toll-free).

Dated: July 19, 1993.

**Michel E. Lincoln,**

*Acting Director.*

[FR Doc. 93–17602 Filed 7–23–93; 8:45 am]

BILLING CODE 4160-16-M

## National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. (and in foreign markets) in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/070,151, filed June 1, 1993, and entitled "Antibacterial Compound and Related Methods"—This invention is an antibacterial peptide constructed of 11 amino acids and a method for its use, capable of killing a broad spectrum of bacteria strains, representing gram positive and negative genera in a variety of contexts. The invention provides for a purified compound produced from a hybridoma cell line, F2IIE D4–D6, comprising an amino acid sequence with antibacterial activity. The patent application covers a method of killing bacteria by direct administration of the compound, for example, subcutaneous injection or topical spraying. The compound and method claims in this patent are of great significance for topical treatments of sexually transmitted diseases as well as in vivo bactericidal activity against bacterial organisms, such as found in milk producing mammals, without the side effects of antibiotics. The compound can also be used as a disinfectant on non-living environmental surfaces.

The compound has been found to be active against such bacterial groups as *Neisseria gonorrhoea, Gardnerella vaginalis, Mobiluncus species* (spp), *Moraxella bovis, Staphylococcus aureaus* and *Streptococcus equi* as well as many others. The compound has been active both *in vivo* and *in vitro*.

The invention claimed in this patent application is available for either exclusive or non-exclusive licensing. The Centers for Disease Control and Prevention (CDC) is considering entering into a Cooperative Research and Development Agreement(s) (CRADA) with companies to enhance commercial development of the invention. Companies interested in CRADA opportunities should contact Greg Jones of CDC at 1600 Clifton Road, NE., Mailstop C19, Atlanta, Georgia 30333; Telephone (404) 639–2434, Fax (404) 639–1525.

**ADDRESSES:** Licensing information and copies of this U.S. patent application my be obtained by writing to Mark D. Hankins at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496–7735; fax 301/402–0220). A signed Confidential Disclosure Agreement will be required to receive a copy of the patent application.

Dated: July 16, 1993.

**Reid G. Adler,**

*Director, Office of Technology Transfer.*

[FR Doc. 93–17701 Filed 7–23–93; 8:45 am]

BILLING CODE 4140-01-M

## National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on September 20, 1993. The meeting will take place from 8:30 a.m. to 4:30 p.m. in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 3:30 p.m. to discuss the Board's activities and to present special reports. Attendance by the public will be limited to the space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public from 3:30 p.m. until adjournment. The closed portion of the meeting will be for the discussion and approval of individuals to serve on scientific panels to update the language and language impairments and the balance and balance disorders sections of the Research Plan. These discussions could reveal personal information concerning these individuals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the Board's meeting and a roster of members may be obtained from Ms. Monica Davies, Executive Director, National Deafness and Other Communication Disorders Advisory Board, Building 31, room 3C08, National Institutes of Health, Bethesda, Maryland 20892, 301–402–1129, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Director in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173, Biological Research Related to Deafness and Communication Disorders.)

Dated: July 19, 1993.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 93-17700 Filed 7-23-93; 8:45 am]

BILLING CODE 4140-01-M

**National Heart, Lung, and Blood Institute; Meeting**

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Panel:* NHLBI SEP on Non-Immune Defense Against Tuberculosis in the Lung.

*Dates of Meeting:* August 2-3, 1993.

*Time of Meeting:* 7:30 p.m.

*Place of Meeting:* Marriott Suites, Bethesda, Maryland.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* Dr. Jon Ranhand, 5333 Westbard Avenue, room 554, Bethesda, Maryland 20892, (301) 594-7439.

*Name of Panel:* NHLBI SEP on RFA for Collaborative Projects on Minority Health (Blood)

*Dates of Meeting:* August 2-3, 1993.

*Time of Meeting:* 8:00 p.m.

*Place of Meeting:* Hyatt Regency, Bethesda, Maryland.

*Agenda:* To review and evaluate grant applications.

*Contact Person:* Dr. Matthew C. Starr, 5333 Westbard Avenue, room 553, Bethesda, Maryland 20892, (301) 594-7448.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: July 19, 1993.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 93-17698 Filed 7-23-93; 8:45 am]

BILLING CODE 4140-01-M

**Division of Research Grants; Meeting**

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-594-7265, will furnish summaries of the meeting and roster of panel members.

**Meeting To Review Individual Grant Applications**

*Scientific Review Administrator:* Dr. Joseph Kimm (301) 594-7257.

*Date of Meeting:* August 3, 1993.

*Place of Meeting:* Baltimore, MD.

*Time of Meeting:* 3 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 19, 1993.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 93-17699 Filed 7-23-93; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-055-93-4350-02]

**Amendment to the Caliente Management Framework Plan (MFP)**

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** The BLM Las Vegas District proposes to amendment the Caliente MFP to allow for the establishment of Rio Grande wild turkey (*Meleagris gallopavo*) populations on the resource area in the following areas: Clover Mountains, Meadow Valley Wash, Delamar Mountains, Highland Range and Clover Creek. The number of transplants and number of turkeys to be transplanted would be based upon monitoring studies that indicate the success of the initial transplants. The following is a legal description of the transplant areas:

**Mount Diablo Meridian**

Clover Mountains—T. 6 and 7 S., R. 70 and 71 E.
Meadow Valley Wash—T. 4, 5, 6 and 7 S., R. 66 and 67 E.
Delamar Mountains—T. 4, 5, 6 and 7 S., R. 64, 65 and 66 E.
Highland Range—T 1 N. and 1 S., R 66 E.
Clover Creek—T. 3, 4 and 5 S., R 67 and 68 E.

**DATES:** Comments may be submitted on or before August 25, 1993.

**ADDRESSES:** Interested parties may submit comments on the proposed amendment to the Caliente MFP to Curtis G. Tucker, Caliente Area Manager, P.O. Box 237, Caliente, NV 89008.

**FOR FURTHER INFORMATION CONTACT:** Kyle Teel, Caliente Wildlife Biologist, P.O. Box 237, Caliente, NV 89008. Telephone: 702-726-8100.

**SUPPLEMENTARY INFORMATION:** The areas described above have been field inspected by biologists from the BLM and Nevada Department of Wildlife and were determined to be suitable for wild turkeys. The Rio Grande subspecies of wild turkeys was chosen to be transplanted into these areas because they are adapted to drier climates.

This plan amendment is authorized by Title 43 CFR subpart 1610.5-5.

Dated: July 19, 1993.

**Ben F. Collins,**

*District Manager, Las Vegas District.*

[FR Doc. 93-17640 Filed 7-23-93; 8:45 am]

BILLING CODE 4310-HC-M

[UT-040-03-4820-01]

**Cedar City District Grazing Advisory Board; Meeting**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of a meeting of the Cedar City District Grazing Advisory Board.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92-463 of a meeting of the Cedar City District Grazing Advisory Board. Items to be discussed will include Kanab/Escalante Resource Management Plan, animal damage control environmental assessment, changes in grazing regulations and noxious weeds. A field trip will be held at Three Mile Creek and part of the Grand Staircase.

**DATES:** August 19, 1993. The meeting will begin at 9 a.m. at the park on the north end of town in Panguitch, Utah.

**FOR FURTHER INFORMATION CONTACT:** District Manager Gordon R. Staker, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720. Telephone: 801–586–2401.

**SUPPLEMENTARY INFORMATION:** Advisory Council Meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Anyone wishing to make a statement notify the District Manager by Friday, August 13, 1993. A time limit may be established by the District Manager. Persons attending the field trip will need a vehicle and a lunch.

Dated: July 14, 1993.

**Gordon R. Staker,**

*District Manager.*

[FR Doc. 93–17613 Filed 7–23–93; 8:45 am]

BILLING CODE 4310–DQ–M

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[NV–930–4210–05; N–34971 and N–34972]

## Termination of Desert Land Classification; Nevada

July 12, 1993.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action terminates desert land classification N–34971/N–34972 dated December 19, 1983, and provides for opening the land to the operation of the public land laws, including location under the mining laws.

**EFFECTIVE DATE:** Termination of the classification is effective on July 26, 1993. The lands will be open to entry on August 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, BLM Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, 702–785–6526.

**SUPPLEMENTARY INFORMATION:** Desert land classification N–34971/N–34972 was made pursuant to section 7 of the Taylor Grazing Act (43 U.S.C. 321, et seq.) in response to two applications. When entry to the land was allowed, the land became segregated from all other forms of appropriation under the public land laws, including location under the mining laws. Neither of the entries proved up for patent and by letter dated June 25, 1993, the desert land entries were relinquished. Pursuant to section 7 of the Taylor Grazing Act (43 U.S.C. 321, et seq.), desert land classification N–34971/N–34972 is hereby terminated in its entirety. The following described lands are affected by this action:

**Mount Diablo Meridian, Nevada**

T. 15 N., R. 44 E.,
Sec. 1, W½ of lot 8, W½SW¼;
Sec. 2, lot 7, E½ of lot 8, E½SW¼, SE¼;
Sec. 11, N½NE¼, NE¼NW¼;
Sec. 12, NW¼NW¼.

The area described aggregates 640 acres in Lander County.

At 10 a.m. on August 25, 1993, the lands will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 25, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on August 25, 1993, the lands will be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

**Billy R. Templeton,**

*State Director, Nevada.*

[FR Doc. 93–17641 Filed 7–23–93; 8:45 am]

BILLING CODE 4310–HC–M

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[ID–040–4210–05, IDI–30043, IDI–30044, IDI–30045]

## Sale of Public Land, Lemhi County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** Lemhi County has made application to purchase three parcels of public land under the authority of section 3 of the Act of June 14, 1926, as amended by the Recreation and Public Purposes Amendment Act (R&PP) of 1988. Two of the parcels will be used for solid waste transfer sites and one parcel for a municipal solid waste disposal site (landfill). Parcel IDI–30045 has been leased to Lemhi County for a transfer site under R&PP since 1986. These parcels will be sold to Lemhi County using the Special Pricing Program.

The following described parcels are proposed as suitable for sale as solid waste transfer sites:

**Boise Meridian, Idaho**

Parcel #IDI–30043

T. 16N., R.26E.,
Section 31: E½NE¼NW¼NE¼ containing five (5) acres

Parcel #IDI–30045

T. 23N., R22E.,
Section 18: a portion of Lot 10 containing two (2) acres more or less

The following parcel is proposed for sale as a municipal solid waste landfill:

**Boise Meridian, Idaho**

Parcel #IDI–30044

T. 21N., R22E.,
Section 26: W½NW¼ and
Section 27: NE¼ containing 240 acres

The above described public land is not required for any Federal purpose. The sale of these parcels to Lemhi County is consistent with the Lemhi Resource Management Plan (1988). This sale has been discussed with Lemhi County and various agencies within the State of Idaho who have indicated the suitability of these sites for their proposed uses. The sale is consistent with State and local government programs, plans and applicable regulations.

Mineral estates will be transferred out of public ownership with the surface estate. The patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Amendment Act of 1988 and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. A reservation thereon for a road for public access to be constructed by the authority of the United States pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

The patent of Parcel IDI–30043 will also be issued subject to the following existing right-of-way grants and reservations:

1. Those rights for a buried telephone line (IDI–20158) and an overhead telephone line (IDI–20151) which have been granted to Century Telephone of Idaho under the Act of October 21, 1976.

The patent of Parcel IDI–30045 will also be issued subject to the following existing right-of-way grants and reservations:

1. Those rights for a powerline (IDI–21150) which have been granted to

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Idaho Power Company under the Act of October 21, 1976.

2. Those rights for a buried telephone line (IDI–20158) which have been granted to Century Telephone of Idaho under the Act of October 21, 1976.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Salmon District, Box 430 (Hwy 93 South), Salmon, Idaho.

Publication of this Notice in the **Federal Register** will segregate the public lands described herein from any other public land law, including locations under the mining laws. This segregation will terminate upon issuance of a patent or 18 months from date of this Notice, whichever occurs first.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the district Manager, Salmon District, P.O. Box 430, Salmon, Idaho 83467. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for sale until after the classification becomes effective.

Dated: July 7, 1993.

**Roy S. Jackson,**

*District Manager.*

[FR Doc. 93–17683 Filed 7–23–93; 8:45 am]

BILLING CODE 4310–GG–M

## Bureau of Reclamation

### Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of proposed contractual actions pending through September 1993. This notice is one of a variety of means being used to inform the public about proposed contractual actions for water service and repayment. Additional Bureau of Reclamation (Reclamation) announcements of individual repayment and water service contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. These public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

**ADDRESSES:** The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

**FOR FURTHER INFORMATION CONTACT:** Dick L. Porter, Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C St. NW., Washington, DC 20240; telephone 202–208–3014.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, April 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during July, August, or September of 1993. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate Reclamation officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

### Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(Pub. L.) Public Law
(R&B) Rehabilitation and Betterment
(SRPA) Small Reclamation Projects Act

(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706–1234, telephone 208–378–5342.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 19,201 acre-feet of stored water in Cascade Reservoir.

2. Irrigation, M&I, and Miscellaneous Water Users; Columbia Basin, Crooked River, Minidoka, Rathdrum Prairie, Rogue River Basin, and Umatilla Projects; Idaho, Montana, Oregon, and Washington: Temporary or interim repayment and water service contracts for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

3. Rogue River Basin Water Users, Rogue River Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum for the term of the contract.

4. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $1.75 per acre-foot or $50 minimum per annum for the term of the contract.

5. American Falls Reservoir District Number 2, Burgess Canal Company, Clark and Edwards Canal and Irrigation Company, Craig-Mattson Canal Company, Danskin Ditch Company, Enterprise Canal Company, Ltd., Farmers Friend Irrigation Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Long Island Irrigation Company, Parks and Lewisville Irrigation Company, Ltd., Parson Ditch Company, Peoples Canal and Irrigation Company, Poplar ID, Rigby Canal and Irrigating Company, Rudy Irrigation Canal Company, Ltd., Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat ID, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract; 2,200 acre-feet (1,350 gallons per minute) annually for the term of the contract.

7. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for the term of the contract.

8. Willow Creek Water Users, Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

9. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

10. Hermiston ID, Umatilla Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Cold Springs Dam.

11. Ochoco ID and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Arthur R. Bowman and Ochoco Dams.

12. The Dalles ID, The Dalles Project, Oregon: SRPA loan repayment contract; proposed loan obligation of approximately $2,000,000.

13. Oroville-Tonasket ID, Chief Joseph Dam Project, Washington: SRPA loan repayment contract; $861,500 proposed loan obligation.

14. State of Idaho, Payette Division of the Boise Project, Idaho: Proposed repayment contracts with the State of Idaho for the sale of uncontracted space in Cascade and Deadwood Reservoirs.

15. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet; $1.75 per acre-foot for the term of the contract.

16. P.P.R.T. Water System, Inc., Idaho: Amendatory contract to defer the 1992 construction installment of a contract for a loan to construct facilities authorized pursuant to the Emergency Drought Act of 1977.

17. Douglas County, Milltown Hill Project, Oregon: SRPA loan repayment contract; proposed loan obligation of approximately $24.5 million and grant of approximately $5.8 million.

18. Mitigation, Inc., Palisades/Ririe Projects, Idaho: Contract for storage space in Palisades and Ririe Reservoirs (18,980 and 80,500 acre-feet, respectively) pursuant to section 5(a) of the Fort Hall Indian Water Rights Act of 1990.

19. U.S. Fish and Wildlife Service, Boise Project, Idaho: Irrigation water service contract for the use of approximately 200 acre-feet of storage space annually in Anderson Ranch Reservoir. Water to be used on crops for wildlife mitigation purposes.

20. City of Madras, Deschutes Project, Oregon: Renewal or replacement of municipal water service contract for approximately 125 acre-feet annually from the project water supply.

21. Willamette Basin water users, Willamette Basin Project, Oregon: Add language to water service contract to provide for periodic reviews, with adjustments if necessary to mitigate for impacts to natural resources.

22. Vale ID, Vale Project, Oregon: Repayment contract for emergency drought loan for construction of water saving measures, including the replacement of open ditches with buried pipe, utilizing funds appropriated by Pub. L. 102–27.

23. Willamette Basin water users, Willamette Basin Project, Oregon: Two water service contracts for the exchange of up to 225 acre-feet of water for diversion above project reservoirs.

24. Hermiston ID, Stanfield ID, West Extension ID, Westland ID; Umatilla Project, Oregon: Irrigation water service contracts for lands outside existing district boundaries for 1993, with possible renewal for one additional year.

25. Lewiston Orchards ID, Lewiston Orchards Project, Idaho: Repayment contract for reimbursable cost of dam safety repairs to reservoir "A."

26. Yakima Board of Control, Yakima Project, Washington: Repayment contract for reimbursable cost of dam safety repairs to Bumping Lake Dam.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. Tuolumne Utility District (formerly Tuolumne Regional WD), CVP, California: Water service contract for up to 9,000 acre-feet from New Melones Reservoir.

2. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually.

Note: Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the Regional Director at the address shown above.

3. Delta-Mendota Canal Contractors, CVP, California: Amend water service contracts to include the provision of the Act of July 2, 1956 (70 Stat. 483) and/or the Act of June 21, 1963 (77 Stat. 68) and to update standard articles and other provisions to meet current laws and policies.

4. Friant Division Contractors, CVP, California: Renewal of existing long-

term water service contracts with contractors on the Friant-Kern and Madera Canals or diverters from Millerton Reservoir; most contracts expire 1993–1997, two contracts expire later; water quantities in existing contracts range from 1,200 to 175,440 acre-feet. These contract actions will be accomplished through 3-year interim contracts with subsequent 2-year interim contracts until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

5. Contra Costa WD, CVP, California: Amendatory water service contract to add the operation of the Los Vaqueros Project, including an additional point of delivery; the amendment will also conform the contract to current Reclamation policies, including the water ratesetting policy, and Pub. L. 102–575.

6. Redwood Valley County WD, SRPA, California: District is considering restructuring the repayment schedule pursuant to Pub. L. 100–516 or prepaying the loan at a discounted rate pursuant to Pub. L. 102–575.

7. Madera ID, Hidden Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1994. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

8. Chowchilla WD, Buchanan Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1994. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

9. Truckee Carson ID, Newlands Project, Nevada: New repayment contract for the unpaid construction cost repayment obligation from the original contract which was terminated on August 17, 1983, by the U.S. District Court in Nevada.

10. San Luis WD, CVP, California: Amendatory water service contract to provide that the District pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

11. Delta Mendota Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with contractors on the Delta-Mendota Canal whose contracts expire in 1994–2003; water quantities in existing contracts range from 70 to 50,000 acre-feet. These contract actions will be accomplished through 3-year interim contracts with subsequent 2-year interim contracts until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

12. City of Redding, CVP, California: Amendment to Contract No. 14–06–200–5272A to add a point of diversion at the turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area.

13. U.S. Department of Veteran Affairs, CVP, California: Long-term contract, which will conform to Pub. L. 102–575, for M&I water purposes in support of the new San Joaquin Valley National Cemetery near Santa Nella, California.

14. Century Ranch Water Company, Inc., CVP, California: Long-term exchange contract for M&I, less than 100 acre-feet; Stony Creek Watershed above Black Butte Dam.

15. State of California, Department of Forestry, CVP, California: Water right exchange agreement, less than 100 acre-feet, above Black Butte Dam.

16. San Luis WD, CVP, California: Amendment to Contract No. 14–06–200–7773A to include assigned lands and allocated share of CVP water supply to San Luis WD from Romero WD and comply with Pub. L. 102–575.

17. Romero WD, CVP, California: Amendment to Contract No. 14–06–200–7758 to assign lands and allocated share of CVP water supply to San Luis WD and comply with Pub. L. 102–575.

18. IDs and similar water user entities, CVP, California: Amendatory water service contracts; to change the definition of "year" to conform to the standard CVP water year of March 1 through the end of February.

19. Sacramento River water rights settlement contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

20. Sierra Pacific Power Company, Pyramid Lake Tribe, Washoe County Water Conservation District; Washoe and Truckee-Storage Projects; Nevada and California: Interim storage contract, authorized under Pub. L. 101–618, and the provision of the Warren Act as supplemented by the Reclamation States Emergency Drought Act to convey and/or store non-project water in Stampede Reservoir and in Boca Reservoir.

21. Naval Air Station and Truckee Carson ID, Newlands Project, Nevada: Amend water service Agreement No. 14–06–400–1024 for the use of project water on Naval Air Station land.

22. Del Puerto WD, CVP, California: Amend water service Contract No. 14–06–200–922 to include M&I use.

23. El Dorado County Water Agency, San Juan Suburban WD, and Sacramento County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan Suburban WD, and 22,000 acre-feet for Sacramento County Water Agency.

24. Non-Federal entity, CVP, California: Cost-sharing agreement with a yet to be determined non-Federal entity for the Folsom Dam and Reservoir reoperation.

25. Central Coast Water Authority, Cachuma Project, California: Long-term Warren Act contract for use of Cachuma Project facilities when excess capacity exists. A total of 13,750 acre-feet of water per year from the California State Water Project will be made available under a Warren Act contract to users along the South Coast of California.

26. Pershing County Water Conservation District, Humboldt Project, Nevada: Safety of Dams repayment contract for modification of Rye Patch Dam; reimbursable obligation of the District approximately $1,050,000.

27. California Department of Fish and Game, CVP, California: Renewal of existing long-term agreement for furnishing water for fish hatchery purposes.

28. Widren WD, CVP, California: Amend water service Contract No. 14–06–200–8018 to include M&I use, conform to Pub. L. 102–575 and assign water supply to the city of Tracy.

29. Corning Canal, Tehama-Colusa Canal, and Cross Valley Canal; CVP; California: Renewal of existing long-term water service contracts with contractors on the Canals, whose contracts expire in 1995; water quantities in existing contracts range from 400 to 62,200 acre-feet. These contract actions will be accomplished through 3-year interim contracts with subsequent 2-year interim contracts until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

30. Bella Vista WD, CVP, California: Renewal of existing long-term water service contract which expires December 31, 1994; water quantity in existing contract is 24,000 acre-feet. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

31. Clear Creek Community Service District, CVP, California: Renewal of existing long-term water service contract which expires December 31, 1994; water quantity in existing contract is 15,300 acre-feet. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

32. Gateway WD, CVP, California: Combine by assignment twelve Delta-Mendota Canal water service contracts into 1-entity to be renamed Gateway WD for administrative and operation purposes.

33. U.S. Fish and Wildlife Service, California Department of Fish and Game, Grassland WD; CVP; California: Water service contracts to provide Level II water supplies for refuges within the CVP pursuant to Pub. L. 102–575; exchange agreements and wheeling contracts to deliver some of the increased refuge water supplies; quantity to be contracted for is approximately 416,000 acre-feet.

34. Monterey County Resources Agency, Castroville Irrigation Water Supply Project, SRPA, California: Loan repayment contract in the amount of $32,600,000 to construct an irrigation distribution system to reduce sea water intrusion in the ground water aquifers.

35. Monterey Regional Water Pollution Control Agency, Water Reclamation Facility for Crop Irrigation Project, SRPA, California: Loan repayment contract in the amount of $20,544,400 to reduce sea water intrusion in the ground water aquifers.

36. San Juan Suburban WD, CVP, California: Renewal of existing long-term water service contract which expires February 28, 1995; water quantity in existing contract is 11,200 acre-feet. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

37. Shasta Dam Area Public Utility District, CVP California: Amendment of existing temporary contract to extend contract term and to comply with terms and conditions of Pub. L. 102–575.

38. Santa Barbara County Water Agency, Cachuma Project, California: Amend water service contract to renew or convert as authorized by the Act of July 2, 1956 (70 Stat. 483) and/or the Act of June 21, 1963 (77 Stat. 68) and to update standard articles and other provisions to meet current laws and policies.

39. State of California, CVP, California: Cost sharing agreement with State of California pursuant to CVP Improvement Act (Pub. L. 102–575). The cost sharing agreement with the State will provide for the general principles and administration of cost sharing and implementation of specific restoration actions identified in Pub. L. 102–575.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply reallocated in 1992 for irrigation entities and up to 640,000 acre-feet per year allocated in 1983 for M&I use.

2. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

3. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Stephen Sturgas, Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 15,557 acre-feet per year total.

4. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,607 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land. This contract action reflects an increase in a prior contract recommendation in the amount of 6,292 acre-feet per year.

5. Armon Curtis, Arlin Dulin, Jacy Rayner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts; purpose is to amend their contracts to exempt them from the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

7. Imperial ID, Lower Colorado Water Supply Project, California: Contract providing for O&M of the project well field.

8. Lower Colorado Water Supply Project, California: Waters service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

9. County of San Bernardino, San Sevaine Creek Water Project, SRPA, California: Repayment contract for a $28.6 million loan.

10. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

11. Bullhead City, Consolidated Water Co., Lake Havasu City, Havasu Water Co., Quartzsite, McAllister Subdivision, city of Parker, Marble Canyon, and Arizona State Land Department, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 15,146 acre-feet per year as recommended by the Arizona Department of Water Resources.

12. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment present perfected right of 500 acre-feet of diversions annually, and the National Park Service's Federal Establishment perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

13. Imperial ID and/or The Metropolitan WD of Sourthern California, BCP, California: Construction and funding contract to conserve water along a portion of the All-American Canal in accordance with Title II of the All-American Canal Lining Act, dated January 25, 1988.

14. Coachella Valley WS and/or The Metropolitan WD of Southern California, BCP, California: Construction and funding contract to conserve water along a portion of the Coachella Branch of the All-American Canal in accordance with Title II of the All-American Canal Lining Act, dated January 25, 1988.

15. Elsinore Valley Municipal WD, Temescal Valley Project, SRPA, California: Repayment contract for a $22.3 million loan.

16. Mohave Valley ID, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service areas, diversion points, and RRA exemption.

17. Miscellaneous present perfected rights entitlement holders, BCP, Arizona and California: Contracts for entitlements of Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the BCP. Miscellaneous present perfected rights holders are listed in the *Arizona* v. *California* settlement.

18. Federal Establishment present perfected rights entitlement holders: individual contracts for administration of Colorado River water entitlements of the Colorado River, Fort Mojave, Quechan, Chemehuevi, and Cocopah Indian Tribes.

19. Yuma County Water Users' Association, Yuma Project, Arizona: Contract to enable the Association to administer non-irrigation water within its service area.

20. City of Yuma, BCP, Arizona: Amendment to Contract No. 14–067–W–106 for additional points of diversion.

21. City of Yuma, BCP, Arizona: Amendment to Contract 14–06–W–105 for an additional point of diversion to provide water delivery to Yuma Cogeneration Associates for use at a Cogeneration Plant.

22. Imperial ID and The Metropolitan WD of Southern California, BCP, California: Temporary contract to store approximately 200,000 acre-feet of water that is expected to be saved over a 2-year period under a test water savings program that involves land fallowing and a modified irrigation plan for alfalfa.

23. Crystal Beach Water Conservation District, BCP, Arizona: Contract for delivery of 132 acre-feet per year of Colorado River water for domestic use, as recommended by the Arizona Department of Water Resources.

24. Southern Nevada Water Authority, BCP, Nevada: Assignment of a portion of the Colorado River Commission's entitlement to the Southern Nevada Water Authority. Revision of water delivery contracts concerning points of diversion and delivery with the cities of Henderson and Boulder City, Big Bend WD, and the Colorado River Commission regarding the Robert B. Griffith Water Project.

25. HoHoKam ID; Central Arizona Water Conservation District; and the cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe; CAP; Arizona: Principles of agreement, agreement, and support arrangements to provide the cities with Cliff Dam replacement water and provide for the repayment of HoHoKam ID Federal indebtedness.

26. Gila River Farms, SRPA, Arizona: Amendatory contract to reschedule May 1, 1991, payment over the remaining repayment period.

27. Bureau of Land Management, BCP, Arizona: Contract for 1,176 acre-feet per year, for agricultural use, of Arizona's Colorado River water that is not used by higher priority Arizona entitlement holders.

28. Curtis Family Trust et al., BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for agricultural water.

29. Fort McDowell Indian Community, CAP, Arizona: Water service contract for 13,933 acre-feet per year under the Fort McDowell Indian Community Water Rights Settlement Act of 1990.

30. Town of Payson, CAP, Arizona: Assignment of Payson's CAP water entitlement of 4,995 acre-feet per year to the city of Scottsdale.

31. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement for agricultural use.

32. Section 10 Backwater, BCP, Arizona: Contract for 250 acre-feet per year of unused Arizona entitlement for environmental use until a permanent water supply can be obtained.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone 801–524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation of M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

4. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

5. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use.

6. Vermejo Conservancy District, Vermejo Project, New Mexico: Amend contract pursuant to Pub. L. 96–550 to relieve the district of the requirement to make annual payments until the Secretary of the Interior determines that further payments are feasible; the current obligation exceeds $2 million.

7. San Juan Pueblo, San Juan-Chama Project, New Mexico: Repayment contract for up to 2,000 acre-feet of project water for irrigation purposes.

8. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the city to 3,000 acres; extend terms of water rights assignments; and allow assignments outside city limits under authority of the Public Service Board.

9. Mancos Water Conservancy District, Mancos Project, Colorado: Amendatory contract to remove contract restrictions that prevent the Mancos Water Conservancy District from developing hydropower on the Mancos Project.

10. The National Park Service, Bureau of Land Management, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for between 180,000 to 740,000 acre-feet of project water to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

11. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Water service contract for 500 acre-feet for 1 year for municipal and domestic use.

12. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

13. Collbran Conservancy District, Collbran Project, Colorado: Amendatory contract defining priority of use of project water.

14. U.S. Fish and Wildlife Service, North Fork Water Conservancy District, Paonia Project, Colorado: Contract for releases to support endangered fish in the Gunnison and Colorado Rivers; water available for releases will come from reserve capacity held by Reclamation as a sediment pool, estimated to be 1,800 acre-feet annually; contract will define the terms and conditions associated with delivery of this water.

15. Rio Grande Water Conservation District, Closed Basin Division, San Luis Valley Project, Colorado: Water service contract for furnishing priority 4 water to third parties; contract will allow District to market priority water, when available, for agricultural, municipal and/or industrial use.

16. Bridger Valley Water Conservancy District, Lyman Project, Wyoming: Repayment contract under safety of dams program for the repair of Meeks Cabin Dam.

17. State of Wyoming, Seedskadee Project, Wyoming: Approval of a water service contract between the State and Exxon for 300 acre-feet.

18. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–657–6413.

1. Individual irrigators, M&I, and miscellaneous water users; Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas: Temporary (interim) water service contracts for the conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5-years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation, municipal, and industrial purposes; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

4. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Repayment contracts; second round contract negotiations for municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir.

5. Cedar Bluff ID No. 6, Cedar Bluff Unit, P–SMBP, Kansas: In accordance with Section 901 of Pub. L. 102–575, 106 Stat. 4600, terminate the Cedar Bluff Irrigation District's repayment contract and transfer use of the District's portion of the reservoir storage capacity to the State of Kansas for fish, wildlife, recreation, and other purposes.

6. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

7. Corn Creek ID, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

8. East Bench ID, East Bench Unit, P–SMBP, Montana: D&MC contract for $300,000 for minor construction work for up to a 10-year period.

9. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

10. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs of the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

11. Chinook Water Users Association, Milk River Project, Montana: SRPA contract for loan of up to $6,000,000 for improvements to the Association's water conveyance system.

12. Midvale ID, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

13. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Contingent upon passage of authorizing legislation, negotiate amendatory contract to increase irrigable acreage within the project.

14. Palmetto Ben Project, Texas: Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the Board's remaining repayment obligation and interest in the Palmetto Bend Project to the Authority.

15. Canadian River Municipal Water Authority, Canadian River Project, Texas: Amendatory contract to reflect credit for project lands transferred to the National Park Service under Pub. L. 101–628 for the Lake Meredith National Recreation Area.

16. Lakeview ID, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir.

17. Hidalgo County ID No. 6, Texas: SRPA contract for a 20-year loan for up to $5,712,900 to rehabilitate the District's irrigation facilities.

18. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

19. Thirty Mile Canal Company, Nebraska: SRPA contract for a loan of $2,264,000 to reline the main canal, replace open laterals with buried pipe, and replace bridges.

20. City of Estes Park, Colorado-Big Thompson Project, Colorado: Modification of water service contract to change point of diversion and other administrative revisions.

21. Belle Fourche ID, Belle Fourche Unit, P–SMBP, South Dakota: Amendment to D&MC contract to extend work through 1995 and provide an additional $1 million to complete the work.

22. North Platte Project and Glendo Unit, P–SMBP, Wyoming and Nebraska contractors: Repayment contracts under safety of dams program for the modification of Pathfinder, Guernsey, and Glendo Dams.

23. State of Colorado, Armel Unit, P–SMBP, Colorado: Repayment contract under safety of dams program for the modification of Bonny Dam.

24. Ainsworth ID, Bostwick ID, Frenchman-Cambridge ID, Frenchman Valley ID, Kansas-Bostwick ID, Kirwin ID, Loup Basin Reclamation District, Webster, ID; P–SMBP; Kansas and Nebraska: Renewal of existing water service and repayment contracts for irrigation water supplies.

25. Mountain Park Master Conservancy District, Mountain Park Project, Oklahoma: In accordance with Section 3102 of Pub. L. 102–575, 106 Stat. 4600, amend the District's contract to reflect a discounted prepayment of the city of Frederick's obligation for the reimbursable costs of its M&I water supply.

26. Northern Cheyenne Indian Reservation, Montana: In accordance with Section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act of 1992, the U.S. and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtrail Unit, Lower Bighorn Division, P–SMBP, in Montana. The Tribe will pay the U.S. both capital and O&M costs associated with each acre-foot of water the Tribe sells from this storage for M&I purposes.

27. Canadian River Municipal Water Authority, Canadian River Project, Texas: Contract for the United States to pay up to 33 percent of the costs of the salinity control project. These costs are to be used for the design and construction management of the project facilities.

28. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a non-profit corporation

for the planning and construction of a rural water supply system.

Dated: July 19, 1993.

Stephen V. Magnuson,

*Acting Assistant Commissioner, Program, Budget and Liaison.*

[FR Doc. 93–17716 Filed 7–23–93; 8:45 am]

BILLING CODE 4310–09–M

## Anadromous Fish Passage Improvements at Savage Rapids Dam, Grants Pass Division, Rogue River Basin Project, Oregon

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare a draft environmental impact statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare a draft environmental impact statement (EIS) on implementation of alternative fish passage and protective measures at the Grants Pass Irrigation District Savage Rapids Dam (Dam) in southwest Oregon. The purpose of the action is to permanently resolve anadromous fish passage problems at the Dam. The proposed action has potential to increase the total number of fish migrating upstream by approximately 22 percent. In addition to biological values, the improvements would increase the number of adult fish available for harvest.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Christensen; Chief, Environmental and Biological Compliance Branch; Bureau of Reclamation (Code: PN–151), 1150 North Curtis Road, Boise ID 83706–1234; telephone (208) 378–5035.

**SUPPLEMENTARY INFORMATION:**

### Background

Savage Rapids Dam was constructed in 1921 by the Grants Pass Irrigation District (GPID). Public Law 82–470 (July 1952) directed Reclamation to aid GPID by making emergency improvements to the dam. Public Law 84–641 (July 1957) authorized funding for construction of a fish screen at the intake to the turbines and pumps on the north side of the Dam. Public Law 92–199 (December 1971) directed Reclamation to conduct a feasibility investigation of the Grants Pass Division of the Rogue River Basin Project. Public Law 93–493 (October 1974) authorized funding for construction of interim fish passage measures at the Dam. The joint final EIS on these measures was published by Reclamation and the then Bureau of Sport Fisheries and Wildlife in 1976. Three major measures were subsequently implemented. These were: construction of bulkhead gates in front of the turbine/pump bays (to allow dewatering without the need to drain the reservoir); modifications to the south fish ladder; and installation of new fish screens at the entrance to the turbine/pump bays (to replace those installed by Reclamation under Public Law 84–641). Replacement of the north fish ladder was not accomplished as planned because the replacement cost was significantly greater than the funds provided by Congress. Further work on the passage problem was deferred while a pending license application for power development was being reviewed by Federal Energy Regulatory Commission (FERC). It was anticipated that a successful license applicant would have been required to include and fund fish passage facilities as a condition of its license. The FERC application was later invalidated through State legislative action preventing further power development on the Rogue River.

### Current Activities

The present study began in 1988 with a scoping process that involved representatives of the Oregon Water Resources Department, the Oregon Department of Fish and Wildlife, Josephine County (County), the city of Grants Pass, GPID, the Soil Conservation Service, the National Marine Fisheries Service, the Fish and Wildlife Service, WaterWatch of Oregon, the Northwest Steelheaders, the Rogue Valley Flyfishers, the Isaac Walton League, and interested individuals as well as a consultant working for both the County and GPID. Subsequent to that initial scoping, in 1990 GPID was issued a temporary supplemental water right permit from the Oregon Water Resources Department. The permit allows GPID to continue to divert at its historic rate of 180 cubic feet per second ($ft^3/s$) rather than the certificated rate of 97 ($ft^3/s$. The strict stipulations of this permit require GPID to report to the Oregon Water Resources Commission by March 1994 on how GPID water diversions will be reduced to a rate commensurate with the currently irrigated acreage and on how the fish passage problems at the Dam will be corrected. This permit requires significant public involvement in the study through an oversight committee (Committee). Regular meetings of the Committee, which are open to the public, review progress towards meeting the terms of the permit. In addition, several public meetings have been held to educate the public about various aspects of the study and the alternatives being considered and to seek scoping input. GPID's board meetings, which are open to the public, also serve as a venue for collection of public input. Several major articles have appeared in the local newspaper regarding GPID's circumstances, reasons for increased water costs, and alternatives facing GPID. This ongoing activity has provided and will continue to provide considerable opportunities for addressing the alternatives and related environmental issues. Additional public meetings will be scheduled to encourage public and agency involvement in the study and environmental analysis. Because of the extensive public involvement associated with GPID's ongoing activities, no formal scoping meetings are planned in connection with preparation of the draft EIS.

### Alternative Measures

Three major alternatives are being considered. These are (1) no action; (2) replacement of the existing fish ladders and screens along with improvements to the dam and river channel; and (3) removal of the dam in conjunction with construction of a pumping plant or plants to supply water to GPID's distribution system.

### Potential Federal Action

Reclamation proposes seeking Federal authorization and funding for implementation of the preferred alternative once it is selected. A draft EIS is expected to be completed and available for review and comment during fiscal year 1994.

Anyone interested in more information concerning the study or who has suggestions as to significant environmental issues should contact Mr. Christensen as provided above.

Dated: July 20, 1993.

D. W. Webber,

*Acting Deputy Commissioner.*

[FR Doc. 93–17657 Filed 7–23–93; 8:45 am]

BILLING CODE 4310–09–M

## Fish and Wildlife Service

### Availability of a Draft Environmental Assessment

In the matter of: Issuance of a section 10(a) Permit to Allow Incidental Take of the Coastal California Gnatcatcher (Polioptila californica californica) Present on the Coyote Hills East Project Site. In Accordance with the Implementation Agreement Incorporating the Habitat Conservation Plan to Mitigate Impacts On the Coastal California Gnatcatcher (*Polioptila californica californica*) and Cactis Wren (*Campylorhynchus brunneicapillus*) Present

on the Coyote Hills East Project Site, City of Fullerton, Orange County, California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes to issue a Permit under section 10(a)(1)(B) of the Endangered Species Act (Act) to allow incidental take of the coastal California gnatcatcher during otherwise lawful activities on the Coyote Hills East site. This action includes execution of the Implementation Agreement (Agreement) incorporating the Habitat Conservation Plan (HCP) to mitigate impacts on the coastal California gnatcatcher (*Polioptila californica californica*) and cactus wren (*Campylorhynchus brunneicapillus*) present on the Coyote Hills East Site, City of Fullerton, Orange County, California. The Agreement would ensure full implementation of the HCP and would establish a framework for issuance of a Permit under section 10(a)(1)(B) in the event of a Federal listing of the cactus wren. Issuance of a Permit for the cactus wren would be subject to unforeseen circumstances and public review under the Act and National Environmental Policy Act (NEPA).

The Service announces the availability of the Draft Environmental Assessment (DEA) for the issuance of the Permit, the HCP, and the Agreement. This notice is provided pursuant to Section 10(c) of the Act and NEPA regulations. (40 CFR 1506.6(b)).

**DATES:** Written comments on the DEA, HCP, and Agreement should be received on or before August 25, 1993.

**ADDRESSES:** Persons who wish to review the DEA, HCP, and Agreement may obtain a copy by writing the Carlsbad Field Office. Documents will be made available by written request for public inspection, by appointment, during normal business hours at the Carlsbad Field Office. Written data or comments concerning the document should be submitted to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Please reference Permit No. PRT–768184 in your comments.

**FOR FURTHER INFORMATION CONTACT:** Mr. Loren Hays at the Carlsbad Field Office (telephone number 619–431–9440).

**SUPPLEMENTARY INFORMATION:**

## Background

Unocal Land and Development Company proposes to complete grading and construction of the Coyote Hills East development project located within the city of Fullerton, Orange County, California. The site covers 391 acres and currently contains a 110-acre patch of coastal sage scrub vegetation. During 1991, 1992, and 1993, approximately 10 pairs of gnatcatchers and 6 pairs of cactus wren were recorded using the on-site coastal sage scrub.

The site is isolated from other natural areas by urban development. The nearest natural open space to the site containing coastal sage scrub habitat occurs approximately 3 miles west of the site in the West Coyote Hills. The relative isolation of the Coyote Hills East site and the stability of the on-site population of California gnatcatchers makes the Coyote Hills East a suitable conservation planning area. The biological effects of the proposed project, both beneficial and adverse, would not influence the population dynamics of regionally important gnatcatcher population located south and west of the site in the San Joaquin Hills and east of the site in the foothills of the Santa Ana Mountains.

Implementation of the project would transform the project site into a golf-course residential community containing a total of 883 dwelling units, an 18 hole golf course, parks, and natural open space. Grading associated with the project would remove 45.48 acres of coastal sage scrub from the project site. Over the course of site grading, the habitat comprising the home ranges of some gnatcatcher and cactus wren pairs would be completely or partially removed. Grading for the proposed project would be completed in five phases over a 20-month period. Each phase of grading would be accompanied by coastal sage scrub revegetation. During the entire 20 months of site grading, the total amount of coastal sage scrub (existing plus revegetated) will be greater than the current (pre-grading) extent of habitat. Following site development, there will be a net gain of 15.19 acres of coastal sage scrub.

The HCP and Agreement detail the project actions that would result in take of California gnatcatchers and cactus wren and specific actions that will be incorporated as project actions to mitigate such takings. Mitigation measures include a coastal sage scrub revegetation program, a brown-headed cowbird trapping program, habitat buffers, habitat fencing, and full funding for long-term conservation commitments.

This DEA considers the environmental effects of four alternatives, including the proposed action and the no action alternative. Based on the comparative analysis of the adverse and beneficial impacts associated with the four alternatives, it is concluded that the proposed action is the preferred and environmentally superior alternative. The no action alternative would result in no loss of habitat; however, conservation measures included in the HCP would not be implemented, and the current risks of extinction effecting the California gnatcatcher and cactus wren populations would persist, as would the development pressures on this in-fill property.

The implementation of the HCP and issuance of the Permit would allow for development that is compatible with the conservation of the on-site California gnatcatchers and cactus wrens, and long-term management of these populations. The proposed action would (1) reduce impacts to coastal sage scrub habitat, the California gnatcatcher, and the cactus wren; (2) result in the implementation of the conservation programs within the HCP; and (3) meet the fiscal needs of the project applicant. Other alternatives are likely to result in the demise of these populations. As a result, all alternatives to the proposed action were rejected.

The HCP is consistent with regional conservation planning efforts and continued development of the Natural Communities Conservation Plan (NCCP) in north Orange County. The HCP establishes conservation measures, monitoring programs, and long-term maintenance plans based on 4 years of ecological studies on the site. Further, the HCP provides a mechanism for guaranteed funding of conservation programs in perpetuity. These combined attributes are the foundation for the regional conservation plans to be incorporated into the Orange County NCCP.

Dated: July 19, 1993.

**Marvin L. Plenert,**

*Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.*

[FR Doc. 93–17654 Filed 7–23–93; 8:45 am]

BILLING CODE 4310–55–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–653 (Preliminary)]**

### Sebacic Acid From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a preliminary antidumping investigation.

VOL 58 ISS 141 JL 26 1993 UMI

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–653 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of sebacic acid,[1] provided for in subheading 2917.13.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 2, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

**Background**

This investigation is being instituted in response to a petition filed on July 19, 1993, by Union Camp Corporation, Wayne, New Jersey.

**Participation in the investigation and public service list.**

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Conference**

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 9, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Doug Corkran (202–205–3177) not later than August 4, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

**Written submissions**

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 12, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: July 21, 1993.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 93–17697 Filed 7–23–93; 8:45 am]

BILLING CODE 7020–02–P

[1] Sebacic acid is an acyclic dicarboxylic acid with a carbon chain link of 10 which is derived from castor oil.

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[Investigation No. 337–TA–350]

## Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives

In the matter of certain sputtered carbon coated computer disks and products containing same, including disk drives; notice of decision to review an initial determination granting motions for partial summary determination on the issue of jurisdiction; request for written submissions.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination (ID) (Order No. 50) issued on July 2, 1993 ("the July 2 ID"), by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the motions for partial summary determination on the issue of jurisdiction filed by respondents Komag, Inc. ("Komag") and Digital Equipment Corp. ("Digital").

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon-coated computer disks ("sputtered disks") and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464 ("the '464 patent").

In its motion for partial summary determination, Komag asserted that the Commission does not have jurisdiction under section 337 with respect to its sputtered disk manufacturing activities

in the United States. Digital, a manufacturer of disk drives, similarly argued that the Commission does not have section 337 jurisdiction with respect to those disk drives that it assembles containing U.S.-manufactured sputtered disks. Both Komag and Digital asserted that the jurisdictional issues raised by their motions were identical to those in six previous motions for summary determination or partial summary determinations filed by other respondents to the investigation which the ALJ granted in an ID issued on May 28, 1993 ("the May 28 ID"). In that ID, the ALJ concluded that the Commission does not have section 337 jurisdiction over domestically-manufactured articles. Complainant Harry E. Aine opposed the Komag and Digital motions.

In the July 2 ID, the ALJ grants the Komag and Digital partial summary determination motions on the basis of the May 28 ID. On June 30, 1993, the Commission issued a notice indicating that it would review the May 28 ID.

Having reviewed the record in this investigation, including the ID, the Commission has determined on its own motion to review the July 2 ID. Review of the July 2 ID will be consolidated with review of the May 28 ID. Consequently, the issues under review, form of written submissions, and filing deadlines for written submissions with respect to the July 2 ID will be the same as those specified in the June 30, 1993 notice for the May 28 ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. section 1337, and Commission interim rules 210.55 and 210.56, 19 CFR section 210.55, 210.56.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Dated: July 21, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–17695 Filed 7–23–93; 8:45 am]

BILLING CODE 7020-02-P

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32223]**

### The Dubois County Railroad Corp., Trackage Rights Exemption, Norfolk Southern Railway Co.; Notice of Exemption

Norfolk Southern Railway Company (NS) has agreed to grant local and overhead trackage rights to The Dubois County Railroad Corporation (DCRC) (formerly The Southern Indiana and Ohio River Railway Company) over 16.38 miles of rail line operated by Indiana Hi-Rail Corporation. The trackage rights extend from the connection with NS at Huntingburg, IN (milepost 46.92 EB) to the connection with DCRC at Dubois, IN (milepost 63.3 EB). The trackage rights were to become effective on July 14, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Carl M. Miller, Miller, Harper & Rorick, P.O. Box 332, New Haven, IN 46774.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: July 16, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17668 Filed 7–23–93; 8:45 am]

BILLING CODE 7035-01-M

**[Finance Docket No. 32297**

### Grand Rapids Eastern Railroad, Inc.—Purchase, Lease and Operation Exemption—Rail Lines of Central Michigan Railroad Co.

Grand Rapids Eastern Railroad, Inc. (GRE), a noncarrier,[1] has filed a notice of exemption to purchase, lease and operate approximately 39.0 miles of rail line owned by Central Michigan Railroad company (CM). GRE is acquiring approximately 37.5 miles of main rail line between milepost 159.5 in Grand Rapids, MI and milepost 122.0 in Ionia, MI. GRE also will lease from CM approximately 1.5 miles of branch line in Grand Rapids, which branch connects the main line at milepost 158.2 to the facilities of Grand Rapids Press. The transaction became effective on July 9, 1993.

Any comments must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 17th St., NW, Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is to void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 19, 1993.

By the Commission, David M. Konschnik, Director Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17669 Filed 7–23–93; 8:45 am]

BILLING CODE 7035-01-M

[1] GRE is a wholly-owned subsidiary of RailTex, Inc., a noncarrier holding company that currently controls 11 class III railroads, including the Mid-Michigan Railroad Company (MMR). The lines to be acquired by GRE connect with those of MMR and, as such, RailTex will not be able to invoke the continuance in control class exemption at 49 CFR 1180.2(d)(2) to retain control of GRE after it became a carrier.

To avoid an unlawful control violation, GRE states that its stock was placed in an independent voting trust pursuant to 49 CFR part 1013.1 *et seq.*, prior to its completion of the acquisition. RailTex will be filing a petition for exemption under 49 U.S.C. 10505 and 11343, seeking approval to dissolve the voting trust and to assume control of GRE.

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

**Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection**

(1) Refugee/Asylee Relative Petition.

(2) I–730. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or Households. This form will be used to file petition on behalf of the applicant's spouse and/or child who has never had refugee or asylee status.

(5) 2,500 annual responses at .083 hours per response.

(6) 207 annual burden hours.

(7) Not applicable under 3504(h).

(1) Application for Registration, Application for Registration (Renewal).

(2) DEA Form 363, DEA Form 363a.

(3) DEA 363 on occasion, DEA 363a annually.

(4) State or local governments, businesses or other for-profit, non-profit institutions.

(5) 900 annual responses at .5 hours per response.

(6) 450 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: July 20, 1993.

**Lewis Arnold,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 93–17684 Filed 7–23–93; 8:45 am]

BILLING CODE 4410–18–M

## Immigration and Naturalization Service

[INS No. 1396–92]

RIN 1115–AD36

**Form I–589, Request for Asylum in the United States**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice provides information on the submission of INS Form I–589, Request for Asylum in the United States, revised 8/1/91. This notice advises the public that prior versions of the form will no longer be accepted after August 25, 1993. The form must be submitted to the Immigration and Naturalization Service when an individual is applying for asylum in the United States.

**FOR FURTHER INFORMATION CONTACT:** Christine Davidson, Senior Policy Analyst, Office of International Affairs, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Attn: ULLICO, Third Floor; Telephone (202) 633–4389.

**EFFECTIVE DATE:** August 25, 1993.

Dated: July 9, 1993.

**Chris Sale,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 93–17692 Filed 7–23–93; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting**

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans 401(k) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m./Noon, Thursday, August 19, 1993, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Defined Contribution Plans—401(k) for employee benefit plans covered by ERISA.

The purpose of the August 19 meeting is to take testimony regarding the implication of the growth in Defined Contribution Plans, including 401(k) Plans. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before August 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 16, 1993.

Signed at Washington, DC, this 20th day of July, 1993.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 93–17693 Filed 7–23–93; 8:45 am]

BILLING CODE 4510–29–M

**Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting**

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Friday, August 20, 1993, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Eightieth meeting of the Secretary's ERISA Advisory Council which will begin at 12:30 p.m./4 p.m., is to hear reports on the status of the three work group efforts and conduct any other business that may come before the Council. The Council has established three work groups i.e., Economically Targeted Investments, Prohibited Transactions and Defined Contribution Plans—401(k). The Council will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before

August 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 16, 1993.

Signed at Washington, DC, this 20th day of July, 1993.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 93–17694 Filed 7–23–93; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL COUNCIL ON THE HUMANITIES

### Meeting

July 19, 1993.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on August 12–13, 1993.

The purpose of the meeting is to advise the Acting Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on August 12–13, 1993, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on August 12, 1993, will be as follows:

8:30–9 a.m.: Coffee for Council Members—Room 527 (Open to the Public)

**Committee Meetings**

(Open to the Public)

Policy Discussion

9–10 a.m., Education Programs—Room M–14, Fellowship Programs—Room 315, Public Programs—Room 415, Research Programs/Preservation and Access—Room M–07, State Programs and Office of Outreach—Room 507

10 a.m. until Adjourned: (Closed to the Public) Discussion of specific grant applications before the Council

The morning session on August 13, 1993, will convene at 9 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members will be served from 8:30–9 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Budget Report
E. Legislative Report
F. Committee Reports on Policy and General Matters Overview
1. Education Programs
2. Fellowships Programs
3. Public Programs
4. Research Programs
5. Preservation and Access
6. State Programs and Office of Outreach.

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

**David C. Fisher,**

*Advisory Committee Management Officer.*

[FR Doc. 93–17611 Filed 7–23–93; 8:45 am]

BILLING CODE 7536–01–M

## PEACE CORPS

### Compliance With Privacy Act of 1974; System of Records

**AGENCY:** Peace Corps of the United States.

**ACTION:** Notice of establishment of new system of records.

**SUMMARY:** On June 1, 1993, the Peace Corps published a notice of a proposed new system of records, the Office of Inspector General (OIG) Investigative Files and Records. The new system of records facilitates the OIG's ability to collect, maintain, use and disclose information in support of the OIG's investigative activities relating to Peace Corps programs and operations. The Peace Corps is adopting that proposal in this notice.

**EFFECTIVE DATE:** This notice is effective August 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Rush, Jr., Acting Inspector General, Office of Inspector General, or Margaret E. Aira, Legal Counsel, Office of Inspector General, Room 5300, 1990 K Street NW., Washington, DC 20526. Telephone: (202) 606–3320. TDD (202) 606–1313 for party relay message. Copies of this notice may be obtained in an alternate format upon request.

**SUPPLEMENTARY INFORMATION:** As required by 5 U.S.C. 552a(e)(4), on June 1, 1993, the Peace Corps published a notice of a proposed new system of records consisting of the Office of Inspector General (OIG) Investigative Files and Records (58 FR 31223). The system of records being established enables the PC OIG to carry out its statutory responsibilities under the Inspector General Act Amendments of 1988 (Pub. L. 100–504).

In a separate notice, the Peace Corps published a notice of proposed rulemaking to amend 22 CFR part 308 to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (j)(2) and (k)(2) of section (58 FR 31181). A notice of final rulemaking adopting that rule is published in the rules and regulations section of today's **Federal Register**.

No comments have been received from the public or the Office of Management and Budget on the proposed establishment of this system of records. Accordingly, the Peace Corps adopts the proposal to establish the following system of records:

**System Number: PC–19**

**SYSTEM NAME:**

Office of Inspector General Investigative Files and Records.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Office of Inspector General, Peace Corps, 1990 K Street, NW., Room 5300, Washington, DC 20526.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Subjects of investigations or complaints, including (but not necessarily limited to) current and former PC employees (including foreign service nationals), trainees, and Volunteers; current and former experts, consultants, contractors and their employees; other parties doing business with the PC; and other individuals whose acts or omissions relate to alleged violations of any law or regulation which affects the integrity of operations or facilities of the PC.

(B) Witnesses, complainants, confidential or nonconfidential informants, suspects, or parties who have been identified by the OIG or by other agencies, and members of the general public as within the authorized functions of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence related to investigations: Letters, memoranda and other documents describing or related to complaints of alleged criminal or administrative misconduct; information provided by subjects, witnesses, and governmental investigatory or law enforcement organizations; reports of investigation, including related affidavits, statements from witnesses, memoranda of interviews, transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; working pages of the staff, investigators' notes, and other documents and records relating to the investigation; information about criminal, civil, or administrative referrals; and opening reports, progress reports, and closing reports with recommendations for corrective action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) and 5 U.S.C. 301.

PURPOSE(S):

Pursuant to the Inspector General Act of 1978, as amended, the system is maintained for the purposes of (1) Conducting and documenting investigations by the OIG or other investigative agencies regarding PC programs and operations, both domestic and foreign, and reporting the results of investigations to other Federal agencies, other public authorities or professional organizations which have the authority to bring criminal or civil prosecutions, to take administrative actions, or to impose other disciplinary sanctions; (2) documenting the outcome of OIG investigations; (3) maintaining a record of the activities which were the subject of investigations; (4) reporting investigative findings to other PC offices for their use in operating and evaluating their programs or operations, and in the imposition of civil or administrative sanctions; (5) coordinating relationships with other Federal, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG; and (6) acting as a repository and source for information necessary to fulfill the reporting requirements of the Inspector General Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record in the system of records may be disclosed, as a routine use, to other agencies, offices, establishments, and authorities, whether federal, state, local, foreign, or self-regulatory (including, but not limited to, organizations such as professional associations or licensing boards), authorized or with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in combination with other records or information:

(a) Indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, or

(b) Indicates a violation or potential violation of a professional, licensing, or similar regulation, rule or order, or otherwise reflects on the qualifications or fitness of an individual who is licensed or seeking to be licensed.

2. A record from the system of records may be disclosed, as a routine use, to any source, private or governmental, to the extent necessary to secure from such source information relevant to, and sought in furtherance of, a legitimate OIG investigation, inspection or audit.

3. A record from the system of records may be disclosed, as a routine use, to a Federal, State, local or foreign agency maintaining civil, criminal or other relevant enforcement information, or other pertinent records, if necessary to obtain information relevant to a PC decision concerning the assignment, hiring or retention of an individual, the issuance of a security clearance, or the letting of a contract.

4. A record from the system of records may be disclosed, as a routine use, to other agencies, offices or establishments of the executive, legislative, or judicial branches of the federal or state government:

(a) Where such agency, office, or establishment has an interest in the individual for employment purposes, including a security clearance or determination as to access to classified information, and needs to evaluate the individual's qualifications, suitability, or loyalty to the United States Government or

(b) Where an agency, office or establishment conducts an investigation of the individual for purposes of granting a security clearance, or making a determination of qualifications, suitability, or loyalty to the United States Government or access to classified information or restricted areas, or

(c) Where the records or information in those records are relevant and necessary to a decision with regard to the hiring or retention of an employee or disciplinary or other administrative action concerning the employee, or

(d) Where disclosure is requested in connection with the award of a contract or other determination relating to a government procurement, or the issuance of a license, grant or other benefit by the requesting agency, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter, including but not limited to, disclosure to any Federal agency responsible for considering suspension or debarment action where such record would be germane to a determination of the propriety or necessity of such action, or disclosure to the United States General Accounting Office, the General Services Administration Board of Contract Appeals, or any other Federal contract board of appeals in cases relating to an agency procurement.

5. A record from the system of records may be disclosed, as a routine use, to the Department of Justice to the extent necessary for obtaining its advise on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG, including advice concerning the accessibility of a record or information under the Privacy Act or Freedom of Information Act.

6. A record from the system of records may be disclosed, as a routine use, to a Congressional Office as described in General Routine Use number 7.

7. A record from the system of records may be disclosed, as a routine use, to the Office of Special Counsel where relevant and necessary to carry out its functions and relevant and necessary to

carry out OIG operations to detect and prevent fraud, waste, and abuse.

8. In the event of litigation, a record from the system of records may be disclosed, as a routine use, to the Department of Justice, other counsel or representative for the PC, a court, adjudicative body (including but not limited to the Merit Systems Protection Board and Equal Employment Opportunity Commission), individual or entity designated by the OIG or PC to resolve disputes, and/or a potential witness where disclosure is relevant and necessary to the litigation and is compatible with the purpose for which the records were collected. Such a disclosure may be made in the event that one of the parties listed below is involved in the litigation, or has an interest in such litigation: (i) PC, or any component of the Agency; (ii) Any employee of PC in his or her official capacity; (iii) Any employee of PC in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (iv) the United States, where PC determines that the litigation is likely to affect the Agency or any of its components.

9. A record from the system of records may be disclosed, as a routine use, to the Office of Management and Budget for the purpose of obtaining its advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation.

10. A record from the system of records may be disclosed, as a routine use, to debt collection contractors for the purpose of collecting delinquent debts as authorized by the Debt Collection Act of 1982, 31 U.S.C. 3718.

11. A record from the system of records may be disclosed, as a routine use, to independent auditors or other private firms with which the OIG has contracted to carry out an independent audit or investigation, or to analyze, collage, aggregate or otherwise refine data collection in the system of records, subject to the requirement that such contractors shall maintain Privacy Act safeguards with respect to such records.

12. A record from the system of records may be disclosed, as a routine use, to the U.S. Ambassador or his or her designee in host countries where the Peace Corps serves as described in General Routine Use number 9.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The files consist of paper records maintained in folders and an automated data base maintained on computer diskettes. The folders and diskettes are stored in locked metal file cabinets. The file cabinets are located in secured offices in the Office of the Inspector General.

**RETRIEVABILITY:**

The records are retrieved by the name of the subject of the investigation. The records are retrieved by manual or computer search of alphabetical indices or cross-indices. Indices list names and known addresses of individuals, companies, and organizations.

**SAFEGUARDS:**

The records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked file cabinets in locked offices at all other times.

**RETENTION AND DISPOSAL:**

Files containing information or allegations, which are of an investigative nature but do not relate to a specific investigation, are retained for a period of 5 years and then destroyed. All other investigative files are placed in inactive files when the case is closed. Closed case files are retained for 10 years and then destroyed, unless the record is deemed to have historical significance.

**SYSTEM MANAGER AND ADDRESS:**

Inspector General, Office of Inspector General, Peace Corps, 1990 K Street, NW., Room 5300, Washington, DC 20526.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the System Manager at the above address, furnishing his or her name, address, and social security number.

**RECORD ACCESS PROCEDURES:**

See Notification Procedures above.

**CONTESTING RECORD PROCEDURES:**

See Notification Procedures above.

**RECORD SOURCE CATEGORIES:**

Peace Corps and other Federal, State and local government records; interviews of witnesses; documents and other material furnished by nongovernmental sources. Sources may include confidential sources

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Pursuant to, and limited by, 5 U.S.C. 552a(j)(2), this system of records is exempt from all the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through(F), (e)(6), (7), (9), (10), and (11), and (i), insofar as the system contains information pertaining to criminal law enforcement investigations. This system of records is also exempt from the provisions of 22 CFR 308.11 through 308.17 to the extent that the provisions of these sections conflict with this paragraph.

Pursuant to, and limited by, 5 U.S.C. 552a(k)(2), this system of records is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) insofar as it contains investigatory materials compiled for law enforcement purposes. This system of records is also exempt from the provisions 22 CFR 308.11 through 308.17 to the extent that the provisions of these section conflict with this paragraph.

Dated: July 14, 1993.

**John P. Hogan,**

*Acting Director, Peace Corps of the United States.*

[FR Doc. 93-17261 Filed 7-23-93; 8:45 am]

BILLING CODE [illegible]

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-32849; File No. SR-CSE-93-02]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc. Relating to an Amendment to CSE Rule 11.9(a)(8) Defining "Professional Agency Orders" To Include Futures Commission Merchants and Members of Contract Markets

July 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 24, 1993, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE hereby proposed to amend Exchange Rule 11.9(a)(8) which describes "professional agency orders" in that the proposed change relates to the agreement between the CSE and The Chicago Board of Trade ("CBOT") allowing joint members to access the

CSE's National Securities Trading System ("NSTS") via the CBOT's Board of Trade Work Station ("BOTWS").

The text of the proposed rule change is available at the Office of the Secretary, CSE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The CSE is modifying the definition of professional agency orders to include orders entered for the account of futures commission merchants and members of a contract market. The inclusion coincides with the agreement reached between the CSE and CBOT whereby joint members will be able to include their CSE NSTS order entry screen on their CBOT BOTWS work station computer. The CSE entered into the agreement for the purpose of reducing the burden on joint members that multiple terminals and telecommunication linkages would impose if the member was required to maintain separate NSTS and BOTWS terminals. The agreement provides joint members with the flexibility to choose to include the NSTS system used by the CSE within the CBOT's BOTWS system, and thus save desk space and associated costs that would be present if two separate terminals were required. The CSE believes that the agreement will provide members with an efficient computerized telecommunications linkage to the markets where they are members.

The inclusion of the NSTS trading screen on the BOTWS terminal will allow joint CBOT/CSE members to enter stock orders via NSTS directly from the floor of the CBOT if that is where the member locates their BOTWS terminal. While such member can enter stock orders from the CBOT floor via phone or other telecommunication network already in place, the NSTS screen will give the CSE member more direct access for his or her stock orders. The CBOT has represented that no BOTWS terminals will be allowed within a trading pit and that their locations are in member firm booths around the trading floor. Additionally, a CBOT member that makes markets in futures on a stock index will not be allowed to make markets in stocks that comprise that index on CSE NSTS terminals located on the floor of the CBOT. The CSE believes that by limiting the terminal locations and accessibility and implementing the surveillance procedures for joint members that have been reached under a separate agreement, any concerns regarding potential side-by-side trading will be addressed.

2. Statutory Basis

The proposed rule change is consistent with Sections 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that the proposed rule change removes impediments to and perfects the mechanism of a free and open market while not discriminating between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-93-02 and should be submitted by August 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-17609 Filed 7-23-93; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-32644; File No. SR-GSCC-93-06]**

## Self-Regulatory Organizations; Government Securities Clearing Corp; Filing of Proposed Rule Change Relating To Disciplining of Members

July 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 25, 1993, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. On July 6, 1993, GSCC filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Amendment No. 1 amended certain sections of the proposed rule change to require that the hearing panel be composed of a majority of non-management directors; to clarify that under Rule 37, Section 6 the initial hearing will not affect a member's right to appeal the panel's determination pursuant to that section; and to revise Rule 45, Section 3 to require that a member's request for a hearing be made within ten business days after receiving notice from GSCC of a proposed sanction. Letter from Jeffrey Ingber, General Counsel, GSCC to Christine Pihlle, Attorney, Commission (July 6, 1993).

comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change would modify GSCC Rules 1 (Definitions), 37 (Hearing Procedures), 45 (Notices), and 48 (Disciplinary Proceedings), to revise GSCC's procedures for disciplining members.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.*

(a) GSCC, as a registered clearing agency, is expected to have disciplinary rules that allow it to enforce compliance by its members with this rules, and to promote good conduct by members generally. These rules must incorporate basic "due process" features, such as providing the affected member with notification of the disciplinary action to be taken against it and a procedure pursuant to which it can contest the action.

Currently, GSCC has in place specific rules governing the circumstances pursuant to which it may take certain disciplinary actions against a member, such as increasing a member's margin requirements, ceasing to act for a member, terminating a member's membership in either or both of the comparison and netting systems, and/or liquidating a member's positions. Also, subject to Commission approval of a pending filing,[3] GSCC will have in place rules governing the specific consequences of a failure of a member to maintain an applicable membership standard.

GSCC also has in place a general disciplinary rule,[4] which was adopted prior to the commencement of GSCC's comparison and netting services. In GSCC's view, this rule is overly broad and provides insufficient guidance to management and to members as to the process to be followed by GSCC in disciplining members for rules violations and other improper conduct.

GSCC is proposing a more detailed disciplinary procedure that will allow it to better fulfill its responsibilities as a self-regulatory organization. Its basic features are as follows:

1. Initial Procedure

- There would continue to be a general rule governing disciplinary action to address violations of GSCC's rules and other actions that constitute an abuse or misuse of GSCC's processes and services or otherwise reflect "conduct detrimental to GSCC's operations."
- The Membership and Standards Committee (of GSCC's Board of Directors ("Board")) ("Committee"), which would meet monthly (as necessary), would act as a disciplinary committee to address such violations and detrimental conduct.[5]
- Management would be responsible for presenting rules violations and actions that, in their opinion, constitute detrimental conduct, to the Committee, for the Committee's determination as to what, if any, disciplinary action is appropriate.

2. Major Offenses

- Rules violations or incidents of detrimental conduct would be classified as either major or minor in nature.
- Major offenses generally would involve either misconduct involving the funds or securities obligations of a member or deliberate acts of fraud or misconduct by a member.
- A member committing a major offense would be subject to one or more of a number of disciplinary actions, including termination of its membership in either or both of the comparison and netting systems, having GSCC cease to act for it, the imposition of a higher minimum Clearing Fund requirement, and/or a fine of up to $5,000. Disciplinary actions involving ceasing to act or termination of membership in the comparison or netting system would continue to require Board approval.
- The maximum fine amount of $5,000 would be defined so as to exclude any amounts sought by GSCC to directly recompense it for costs and expenses incurred as the result of a member's misconduct. The member must pay all fines within 90 days from notice of imposition of the fine.
- In addition, after a determination has been made by the Committee that a major offense has been committed, a letter automatically would be sent to senior management of the member requiring that a written explanation be provided to GSCC as to why the offense occurred and the actions taken and/or to be taken to ensure that it will not reoccur. If appropriate under the circumstances, representatives of senior management of the member may be required to appear in person before the Committee to provide such explanation.

3. Minor Offenses

- Repeated offenses of a minor nature by a member may cause the member to be deemed to have committed a major offense.
- A member committing a minor offense is subject to a fine or other disciplinary action, not to include GSCC ceasing to act for it or termination of membership.
- While a minor offense may not result in the imposition of a fine or other disciplinary action, for each such offense, GSCC automatically will send a letter to the management of the member that commits the offense informing it of its commission of the offense.

4. Hearing Procedure

- If the Committee (with the Board's approval in certain cases) determines that any type of disciplinary action should be taken against a member, GSCC would be obligated to notify the member of such. In this notification, GSCC would state the reasons for the disciplinary action, and would inform the member of its right to a hearing to contest the action. After receiving this notice, a member would have ten business days to file a written request for a hearing.[6]
- Hearings on disciplinary actions that, under GSCC's rules, require approval by the Board,[7] would be before a panel of five directors selected by the Board.[8] Hearings on all other disciplinary actions would be before a panel of three Committee members selected by the Committee. Both panels must be composed of a majority of

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[3] See Securities Exchange Act Release No. 32208 April 26, 1993), 58 FR 26367 (notice of filing of roposed rule change relating to GSCC membership tandards).

[4] GSCC Rule 48, Section 1.

[5] Currently, GSCC management performs this function.

[6] The current rules require that a written request for hearing be filed within seven business days from receipt of notice. GSCC Rule 48, Section 3.

[7] The imposition of any disciplinary action involving ceasing to act or termination of membership in either or both of the comparison system or the netting system requires Board approval

[8] Currently, all hearings are before a panel of the Board consisting of one to five directors, depending upon the sanction imposed.

directors who are not also GSCC officers.

• A member would be able to appear before the panel in person (with its counsel, if it so chooses) to contest the planned disciplinary action. Alternatively, in lieu of a personal appearance, the member could submit to the panel documentary evidence in support of its claim that the planned disciplinary action is inappropriate.

• GSCC would inform the member of the panel's determination, as well as the member's right to appeal further to the full Board.*

• If the panel's decision is adverse to the member, the sanction is effective immediately.

5. Appeal of a Panel's Determination

• The Board would be presented with the record of the panel hearing at its next regularly scheduled meeting. Its determination ordinarily would be made based upon a review of that record. A member would not have the right to appear in person before the Board to contest the determination of the panel; however, the Board could permit such a personal appearance in its discretion.

• Any appeal of the Board decision would have to be made to the Commission.

(b) GSCC believes the proposed rules changes will enhance and bring more clarity to GSCC's procedures for disciplining its members for actions constituting rules violations or other misconduct, in a manner consistent with due process considerations. Thus, GSCC believes that the proposed rules changes are consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others*

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments it receives on this matter.

*Currently, a member does not have a right of appeal within GSCC, but the Board has the discretion to reverse the decision of the Board panel. This discretion would be eliminated under the proposed rule change in favor of a more formal appeal process.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Pubic Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–93–06 and should be submitted by August 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17610 Filed 7–23–93; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2660]

**Wisconsin (and Contiguous Counties in Minnesota); Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on July 2, 1993, I find that the Counties of Calumet, Clark, Columbia, Dunn, Eau Claire, Fond Du Lac, Green Lake, Jackson, Marquette, Outagamie, Portage, Sauk, Trempealeau, Waupaca, Waushara, Winnebago, and Wood in the State of Wisconsin constitute a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 1, 1993, and for loans for economic injury until the close of business on April 4, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308; or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Adams, Barron, Brown, Buffalo, Chippewa, Dane, Dodge, Iowa, Juneau, La Crosse, Manitowoc, Marathon, Monroe, Pepin, Pierce, Polk, Richland, Shawano, Sheboygan, St. Croix, Taylor, Vernon, and Washington in Wisconsin, and Winona County in Minnesota may be filed until the specified date at the above location.

The interest rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.625 |
| *For Economic Injury:* | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 266006 and for economic injury the numbers are 792900 for Wisconsin and 793000 for Minnesota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 7, 1993.

Bernard Kulik,

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93-17680 Filed 7-23-93; 8:45 am]

BILLING CODE 8025-01-M

[Applicant No. 09000081]

## Pacific Mezzanine Fund, L.P.; Application to Operate as a Small Business Investment Company Licensee

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.4 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Pacific Mezzanine Fund, L.P. (PMF), for a license to operate as a limited partnership small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The initial investors in the Applicant, and their percent of ownership are as follows:

| Name and address | Ownership (Percent) |
|---|---|
| General Partner: Pacific Private Capital G.P., 68 Kearny Street, Suite 1850, San Francisco, Calif. 94108 | 1.0 |
| Limited Partners: BBU Mezzanine Fund II, 68 Kearny Street, Suite 1850, San Francisco, Calif. 94108 | 49.5 |
| Bernardo Quintana Isaac, New Atlas Holdings, Ltd., 6 Church Street, Jersey, Channel Islands | 15.0 |

PMF will be managed by Pacific Private Capital G.P. The General Partners of Pacific Private Capital G.P. are:

| Name and address | Percent ownership and manager |
|---|---|
| Nathan W. Bell, 10 Camelford Court, Moraga, Calif. 94556 | 50 |
| David C. Woodward, 115 10th Avenue, San Francisco, Calif. 94118 | 50 |

The Applicant, PMF, a California Limited Partnership will begin operations with $10,026,010 paid-in capital and paid-in surplus. PMF will conduct its activities primarily in the Western States but will consider investments in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

A copy of this Notice shall be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistant program No. 59.011, Small Business Investment Companies)

Dated: July 19, 1993.

Wayne S. Foren,

*Associate Administrator for Investment.*

[FR Doc. 93-17681 Filed 7-23-93; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

### Bureau of Administration

[Public Notice 1834]

### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** Department of State.

**ACTION:** The Department of State has resubmitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

**SUMMARY:** Sections 207 and 208 of the Comprehensive Anti-Apartheid Act of 1986 (CAAA) (Pub. L. 99-440) and 22 CFR parts 60-65, require certain United States nationals operating businesses in South Africa to adhere to certain fair labor principles and register with the Department of State. Section 207(b) of the CAAA provides that no United States Government department or agency may intercede with any foreign government of foreign national regarding the export marketing activities of any United States national employing more than 25 persons in South Africa that is not implementing the fair labor principles specified in CAAA. The form submitted for review enables United States nationals to meet the registration requirements of the CAAA and implementing regulations. The following summarizes the information collection proposal submitted to OMB:

*Type of request:* Reinstatement.
*Originating office:* Bureau of African Affairs.
*Title of information collection:* South Africa and Fair Labor Standards Application for Registration.
*Form No.* DSP-95.
*Frequency:* On occasion.
*Respondents:* U.S. individuals and firms operating in South Africa.
Estimated number of representatives: 20.
*Average hours per response:* 1 hour.
*Total estimated burden hours:* 220.

Existing rule containing this collection of information was codified in 22 CFR parts 60-65.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Steven H. Semenuk (202) 395-7340.

Dated: July 13, 1993.

Patrick F. Kennedy,

*Assistant Secretary for Administration.*

[FR Doc. 93-17614 Filed 7-23-93; 8:45 am]

BILLING CODE 4710-24-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Wrangler Aviation, Inc.

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Order to show cause in the matter of the cancellation of the operating authority issued to Wrangler Aviation, Inc. for failure to meet the citizenship requirement of section 101(16) of the Federal Aviation Act, Docket 49038, Order 93-7-26.

**SUMMARY:** The Department tentatively finds pursuant to section 401(r) of the Federal Aviation Act, that Wrangler Aviation, Inc. fails to meet the U.S. citizenship requirements of section 101(16) of the Act. We tentatively propose to cancel Wrangler's authority unless it restructures itself to meet those requirements within 120 days from the date of an order finalizing our tentative findings and conclusions set forth herein.

**DATES:** Objections are due August 16, 1993. Answers to objections are due August 31, 1993.

**ADDRESSES:** All documents in this proceeding, with appropriate filing

copies, should be filed in Docket 49038, addressed to the OST Docket Section, Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol Szekely, Air Carrier Fitness Division, room 6401, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 366-9721.

Dated: July 20, 1993.

Patrick V. Murphy

*Acting Assistant Secretary for Policy and International Affairs.*

[FR Doc. 93-17619 Filed 7-23-93; 8:45 am]

BILLING CODE 4910-62-P

## Coast Guard

[CGD 93-048]

## Chemical Transportation Advisory Committee (CTAC) and CTAC Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: A. The Chemical Transportation Advisory Committee will hold a meeting on Thursday, August 26, 1993 in room 2415, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593. The meeting is scheduled to begin at 8 a.m. and end at 12 Noon.

B. The Subcommittee on the Revision of the Regulations for Barges Carrying Bulk Liquid Hazardous Materials Cargoes, title 46 Code of Federal Regulations (CFR) part 151, of the Chemical Transportation Advisory Committee will meet on Wednesday, August 25, 1993 in room 1103 at 9:30 a.m. at Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: Commander K. J. Eldridge or Mr. F. K. Thompson, U.S. Coast Guard Headquarters (G-MTH-1), 2100 Second Street SW., Washington, DC 20593, (202) 267-1217.

SUPPLEMENTARY INFORMATION: The agenda of the Committee meeting will be as follows:

1. Opening remarks.

Chairman's remarks and general interest topics.

3. Introduction of new Chairman and swearing-in of new members.

4. New chairman's remarks.

5. Presentation of awards.

6. Issue briefs: Tank Filling Limits, update on SIGTTO Guidelines; Applicability of OPA-90 to Chemical Tankships; Fire fighting foam.

7. Subcommittee reports: 46 CFR Part 151 revision; final report.

8. New tasks and initiatives: Benzene and other chemicals; Fire fighting capabilities of marine facilities; Chemical Compatibility Table.

9. International activities update.

10. Other business: The Human Factor in Chemical Tanker Safety; The Coast Guard's "Model Company".

Attendance at the above meetings is open to the public. Members of the public may present oral statements at the meetings. Persons wishing to present oral statements should notify the Executive Director of CTAC no later than the day before the meetings. Any member of the public may present a written statement to the Committee at any time.

Persons planning to attend the Committee meeting should note that the meeting will open at an earlier hour, 8 a.m., than it has in the past.

Dated: July 13, 1993.

Joseph J. Angelo,

*Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 93-17720 Filed 7-23-93; 8:45 am]

BILLING CODE 4910-14-M

## Federal Aviation Administration

## Approval of Noise Compatibility Program Detroit Metropolitan Wayne County Airport, Detroit, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Wayne County, Michigan, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On December 16, 1992, the FAA determined that the noise exposure maps submitted by Wayne Country under part 150 were in compliance with applicable requirements. On April 30, 1993, the Assistant Administrator for Airports approved the Detroit Metropolitan Wayne County Airport noise compatibility program.

A total of fifteen (15) measures were included in the Wayne County recommended program. Of the fifteen (15) measures, six (6) are listed as "Noise Abatement Plan Measures," three (3) are listed as "Program Management Measures," and six (6) are listed as "Land Use Management Plan." The FAA has approved fourteen (14) of the fifteen (15) measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Detroit Metropolitan Wayne County Airport noise compatibility program is April 30, 1993.

FOR FURTHER INFORMATION CONTACT: Ernest Gubry, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 313-487-7280. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Detroit Metropolitan Wayne County Airport, effective April 30, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program , not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign

commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

Wayne County submitted to the FAA on December 14, 1992, noise exposure maps, descriptions, and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (part 150) Study at Detroit Metropolitan Wayne County Airport from 1986 through 1992. Detroit Metropolitan Wayne County Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on December 16, 1992. Notice of this determination was published in the **Federal Register** on December 29, 1992.

The Detroit Metropolitan Wayne County Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1997. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 16, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program proposed by the airport sponsor contained fifteen (15) measures for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. Fourteen (14) of the fifteen (15) measures were approved by the Assistant Administrator for Airports effective April 30, 1993.

Six (6) of the fifteen (15) measures submitted are listed as "Noise Abatement Plan Measures." Five (5) of these six (6) measures were approved which deal with preferential runway use, equitable dispersal of departure flight tracks, establishment of ground run-up procedures, additional study of extending Runway 3C and constructing a hush house, and construction of earth berms. The one measure that was not approved was the proposed restrictions on flight training. Three (3) of the fifteen (15) measures submitted are listed as "Program Management Measures" which were all approved. These three (3) measures include installation of a permanent noise monitoring system, establishment of a noise complaint office, and preparation of updated noise exposure maps. Six (6) of the fifteen (15) measures submitted are listed as "Land Use Management Plan" which were all approved. These six (6) measures include sound insulation of schools; acquisition, sound insulation, purchase assurances, and avigation easements of residential property; encourage the local jurisdictions to implement building codes, compatible use zoning, noise overlay districts, subdivision regulations, and real property noise notices; and preparation of a land use implementation and development plan. These fifteen (15) determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on April 30, 1993. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Wayne County Department of Public Services, Division of Airports, Detroit Metropolitan Wayne County Airport, L.C. Smith Terminal, Mezzanine, Detroit, Michigan 48242.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, June 28, 1993.

**Dean C. Nitz,**

*Manager, Detroit Airports District Office, Great Lakes Region.*

[FR Doc. 93–17739 Filed 7–23–93; 8:45 am]

BILLING CODE 4910-13-M

## Noise Exposure Map Notice, Capital City Airport, Lansing, Michigan

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Noise.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Capital Region Airport Authority for Capital City Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's determination on the noise exposure maps is June 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ernest Gubry, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–650.5, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487–7280.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for the Capital City Airport are in compliance with applicable requirements of part 150, effective June 29, 1993.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed

in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Capital Region Airport Authority for Capital City Airport. The specific maps under consideration are the noise exposure maps: Figure 12–1, "1989 Contours With Existing Off-Airport Land Use," and Figure 12–2, "1996 Contours With Existing Off-Airport Land Use," on pages 12–6 and 12–10, respectively, of the submission. The FAA has determined that these maps for Capital City Airport are in compliance with applicable requirements. This determination is effective on June 29, 1993. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, room 269, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Capital Region Airport Authority, Capital City Airport, Lansing, Michigan 48906.

Questions may be directed to the individual named above under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Belleville, Michigan, on June 29, 1993.

**Dean C. Nitz,**

*Manager, Detroit Airports District Office, Great Lakes Region.*

[FR Doc. 93–17738 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## Approval of Noise Compatibility Program; Chicago Midway Airport; Chicago, IL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Chicago under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On March 22, 1991, the FAA determined that the noise exposure maps submitted by the City of Chicago under part 150 were in compliance with applicable requirements. However, upon request of the FAA, the 1995 Forecast Noise Exposure Map was updated to include the commissioning of general aviation runway 14/32 (now called Runway 13R/31L) and the construction of a 345 foot extension to Runway 22L. This revised noise exposure map was accepted by the FAA on December 16, 1992. On June 3, 1993, the Assistant Administrator for Airports approved the Chicago Midway Airport noise compatibility program along with the revised Noise Exposure Map.

A total of sixteen (16) measures were included in Chicago Midway Airport's recommended program. Of these, seven are listed as Noise Abatement Plan Measures, four were Land Use Management Measures, and five are listed as Program Management Measures. The FAA has approved fifteen (15) of these measures in their entirety. One measure was approved in part, and certain measures had some minor provisions included with their approval.

**EFFECTIVE DATE:** The effective date of the FAA's approval of Chicago Midway Airport's noise compatibility program is June 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. Mork, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI–ADO–630.5, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694–7522. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its approval to the noise compatibility program for Chicago Midway Airport, effective June 3, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in

part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Chicago Airports District Office in Des Plaines, Illinois.

The City of Chicago submitted to the FAA on December 4, 1990, noise exposure maps, descriptions and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (part 150) Study at Chicago Midway Airport from September 1, 1988, through December 16, 1992. The Chicago Midway Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on March 22, 1991. However, upon request of the FAA, the 1995 Noise Exposure Forecast Map was updated to include the commissioning of General Aviation Runway 14/32 (now called Runway 13R/31L) and the construction of a 345 foot extension to Runway 22L. This revised noise exposure map was accepted by the FAA on December 16, 1992. Notice of this action was published in the **Federal Register** on December 29, 1992.

The Chicago Midway Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2003. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on December 16, 1992, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The program proposed by the City of Chicago contained sixteen (16) measures for noise mitigation on and off Chicago Midway Airport. The FAA completed its review and determined the procedural and substantive requirements of the Act and FAR part 150 have been satisfied, and the FAA has accepted the revised five-year noise exposure map. The overall program, therefore, was approved by the Assistant Administrator for Airports effective June 3, 1993.

Of the sixteen measures originally submitted, seven were listed as Noise Abatement Plan Measures and all of these measures were approved: (#1) Preferential Runway Use at Night; (#2) Preferential Departure Flight Tracks at Night; (#3) Installation of a Hush House; (#4) Restrictions on Ground Run-Up Locations; (#5) Installation of Noise/Blast Walls; (#14) Continuation of Voluntary Curfew (approved as a voluntary measure only); and (#16) Coordination with Airport Users to Encourage Voluntary Conversion to Stage 3 Aircraft (approved as voluntary measure only). Three of the four Land Use Management Measures were approved in their entirety: (#9) Compatible Land Use Zoning; (#10) Building Code Modification; and (#11) School Sound Insulation Program (prior to FAA funding, a detailed architectural and acoustical survey and onsite noise monitoring will be required at each facility); while one measure was approved in part (#12) Continuation of Voluntary Acquisition Program (Properties that are undeveloped or commercially developed are compatible uses and thus are not eligible for acquisition under part 150, though they may be purchased for other airport purposes utilizing AIP funds. All five of the Program Management Measures were approved: (#6) Permanent Noise Monitoring; (#7) Noise Complaint System; (#8) Community Participation Program; (#13) Prepare Update Noise Exposure Maps; and (#15) Develop Statement of Noise Abatement Philosophy.

The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to FAA are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 615, Washington, DC 20591

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, room 261, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, Great Lakes Region, 2300 East Devon Avenue, room 260, Des Plaines, Illinois 60018

Division of Aeronautics, Illinois Department of Transportation, Capital Airport, Springfield, Illinois 62706

Department of Aviation, City of Chicago, 20 North Clark Street, suite 300 Chicago, Illinois 60602

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, June 30, 1993.

**Louis H. Yates**

*Manager, Chicago Airports District Office Great Lakes Region.*

[FR Doc. 93–17740 Filed 7–23–93; 8:45 am]

BILLING CODE [illegible]

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**[Summary Notice No. PE–93–32]**

## Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemptions (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation

Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 16, 1993.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 16, 1993.

Donald P. Byrne,

*Assistant Chief Counsel for Regulations.*

*Docket No.:* 26152
*Petitioner:* Sierra Academy of Aeronautics
*Sections of the FAR Affected:* 14 CFR 141 Appendix F, (C)(III)(a)
*Description of Relief Sought:* To amend Exemption No. 5245A to allow Sierra Academy of Aeronautics to develop, as an option, a commercial pilot helicopter training program, using helicopters exclusively, with 100 hours of dual instruction and 50 hours of related solo training, with no other changes to the regulations.

*Docket No.:* 27233
*Petitioner:* Mr. John Fleurent
*Sections of the FAR Affected:* 14 CFR 121.383(c)
*Description of Relief Sought:* To allow petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

*Docket No.:* 27327
*Petitioner:* Midway Aviation
*Sections of the FAR Affected:* 14 CFR 135.143
*Description of Relief Sought:* To allow Midway Aviation to continue to operate using the Mode C transponder rather than installing the Model S transponder.

**Dispositions of Petitions**

*Docket No.:* 22690
*Petitioner:* Boeing Commercial Airplanes
*Sections of the FAR Affected:* 14 CFR 61.57 (c) and (d)
*Description of Relief Sought:* To permit Boeing and pilots employed as aircrews for Boeing to meet the recency of experience requirements of 61.57 (c) and (d) for all types of Boeing aircraft by meeting the requirement for takeoff and landing recency experience in any type of Boeing airplane of in Level B, C, or D simulators, subject to certain conditions and limitations. Grant, July 1, 1993, Exemption No. 4779D

*Docket No.:* 23921
*Petitioner:* Flight Safety International
*Sections of the FAR Affected:* 14 CFR 61.55 (b) (2); 61.56 (b) (1); 61.57 (c) and (d); 61.58 (c) (1) and (d); 61.63 (c) (2), (d) (2) and (3); 61.67 (d)(2); 61.157 (d) (1) and (2) (e) (1) and (2); and Appendix A of part 61.
*Description of Relief Sought/ Disposition:* To amend Exemption No. 5317A to permit Flight Safety International to employ flight simulator instructors who do not hold an FAA flight instructor certificate. Grant, July 8, 1993, Exemption No. 5317B

*Docket No.:* 25974
*Petitioner:* Air Transport Association
*Sections of the FAR Affected:* 14 CFR 91.203 and 47.49
*Description of Relief Sought/ Disposition:* To extend Exemption No. 5318B to allow air carriers who are members of the Air Transport Association to temporarily operate their U.S.-registered aircraft following incidental loss or mutilation of the certificate of air worthiness or registration, or both. Grant, July 7, 1993, Exemption No. 5318C

*Docket No.:* 27213
*Petitioner:* Flight Services Group, Inc.
*Sections of the FAR Affected:* 14 CFR 135.165(a) (1) and (6); 135.165(B) (6) and (7)
*Description of Relief Sought/ Disposition:* To permit Flight Services Group to operate its turbojet aircraft in extended over water operations equipped with one high frequency communications system (HF). Grant, July 9, 1993, Exemption No. 5674

*Docket No.:* 27222
*Petitioner:* Executive Flightways, Inc.
*Sections of the FAR Affected:* 14 CFR 135.165(b) (6) and (7)
*Description of Relief Sought/ Disposition:* To permit Executive Flightways, Inc. to operate turbine-powered aircraft equipped with one high frequency communication system (HF). Grant, July 9, 1993, Exemption No. 5675

*Docket No.:* 27265
*Petitioner:* Mr. Robert L. Vogel, Jr.
*Sections of the FAR Affected:* 14 CFR 45.29
*Description of Relief Sought/Dispositon:* To allow Volusia County Department of Public Safety aircraft to display 3-inch registration numbers. Denial, July 13, 1993, Exemption No. 5677

[FR Doc. 93–17726 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the executive committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

**DATES:** The meeting will be held on August 11, 1993, at 9 a.m. Arrange for oral presentations by August 4, 1993.

**ADDRESSES:** The meeting will be held at the Air Transport Association of America, 1301 Pennsylvania Avenue NW., 11th floor, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Miss Jean Casciano, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9683; fax number (202) 267 5075.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the executive committee to be held on August 11, 1993, at the Air Transport Association of America, 1301 Pennsylvania Avenue NW., Washington, DC. The agenda will include:.

- An update on the status of changes to the Federal Advisory Committee Act (FACA).
- A briefing on Federal Aviation Administration/Joint Airworthiness Authorities harmonization.

• Discussion and approval of the proposed working group procedures.
• Follow-up on open action items.
• Status reports on issues.
• Other business.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by August 4, 1993, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on July 19, 1993.

Chris A. Christie,

*Executive Director Aviation Rulemaking Advisory Committee.*

[FR Doc. 93–17728 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## Aviation Rulemaking Advisory Committee Meeting on General Aviation Operations Issues; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

**DATES:** The meeting will be held on August 17, 1993, at 10 a.m.

**ADDRESSES:** The meeting will be held at FAA Headquarters, 800 Independence Avenue SW., Washington, DC, in room 302.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Myres, Assistant Executive Director for General Aviation Operations, Flight Standards Service (AFS–850), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–8150; FAX: (202) 267–5230.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation operations issues to be held on August 17, 1993, at the FAA Headquarters, 800 Independence Avenue SW., Washington, DC, in room 302. The agenda for this meeting will include progress reports from the IFR Fuel Reserve and Operations Over the High Seas Working Groups. In addition, the group will discuss whether it would like to accept a new task assignment (to review part 103 of the Federal Aviation Regulations and make a recommendation to the FAA concerning whether new or revised standards are appropriate).

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on July 20, 1993.

Ron Myres,

*Assistant Executive Director for General Aviation Operations, Aviation Rulemaking Advisory Committee.*

[FR Doc. 93–17729 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues; Meeting

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

**DATES:** The meeting will be held on August 18, 1993 at 8 a.m. Arrange for oral presentations by August 11, 1993.

**ADDRESSES:** The meeting will be held at Boeing Company, 1016 Building, 535 Garden Avenue North, Conference Room 12C4, first floor, Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathy Ball, Aircraft Certification Service (AIR-1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on August 18, 1993, at Boeing Company, 1016 Building, 535 Garden Avenue North, Conference Room 12C4, first floor, Renton, Washington. The agenda for the meeting will include:

• Opening Remarks.
• Review of Action Items.
• Reports of working groups.
• Discussion of harmonization and working group schedules.
• Status of harmonization activities and organization of working groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by August 11, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on July 20, 1993.

William J. Sullivan,

*Assistant Executive Director for Transport Airplane and Engine Issues, Aviation Rulemaking Advisory Committee.*

[FR Doc. 93–17730 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## Federal Aviation Administration/ General Aviation Community Forum

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration and general aviation community to discuss issues of concern to the general aviation community.

**TIME AND DATE:**

Date: September 8–10, 1993, beginning at 8:00 a.m.

Place: Airport Embassy Suites, 7640 NW. Tiffany Springs Boulevard, Kansas City, Missouri 64153.

FOR FURTHER INFORMATION CONTACT: Mr. John Colomy, Manager, Standards Office, ACE–110, 601 East 12th Street, Kansas City, Missouri 64106.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:.

- Opening Remarks
- Review of Issues
- Working Groups
- Report Out

Attendance is open to the interested public, but will be limited to the space available. The public may present written statements for the forum to consider at any time by providing them to the Manager, Standards Office, ACE–110, at the above address or by bringing them to the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT"

Issued in Kansas City, Missouri on July 13, 1993.

John R. Colomy,

*Manager, Standards Office.*

[FR Doc. 93–17742 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chico Municipal Airport, Chico, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 25, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009,

or

San Francisco Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas J. Lando, City Manager of the city of Chico at the following address: City of Chico, P.O. Box 3420, Chico, CA 95927.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Chico under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Rodriguez, Supervisor, Planning and Programming Section, Airports District Office, 831 Mitten Road, room 210, Burlingame, CA 94010–1303, Telephone: (415) 876–2805.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 13, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Chico was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 14, 1993.

The following is a brief overview of the application.

*Level of proposed PFC:* $3.00

*Proposed charge effective date:* December 1, 1993

*Proposed charge expiration date:* May 15, 1997

*Total estimated PFC revenue:* $137,043.00

*Brief description of the proposed projects:* Modify terminal building to create a sterile area for enplaning passengers and construction of a regulated baggage claim area for authorized access only.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* None

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA Regional Airports office located at : Federal Aviation Administration, Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Chico.

Issued in Hawthorne, CA, on July 15, 1993

Herman C. Bliss,

*Manager, Airports Division, Western-Pacific Region.*

[FR Doc. 93–17727 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Gulfport-Biloxi Regional Airport, Gulfport, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Gulfport-Biloxi Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 25, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi 39208–2306.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce A. Frallic, A.A.E., Executive Director, of the Gulfport-Biloxi Regional Airport Authority at the following address: Gulfport-Biloxi Regional Airport Authority, P.O. Box 2127, Gulfport, Mississippi 39505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Gulfport-Biloxi Regional Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Principal Engineer, FAA Airports District Office, 120 North Hangar Drive, suite B, Jackson, Mississippi 39208–2306, telephone number 601–965–4628. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Gulfport-Biloxi Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget

Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 14, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Gulfport-Biloxi Regional Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 5, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: December 1, 1993

Proposed charge expiration date: December 1, 1995

Total estimated PFC revenue: $607,817

Brief description of proposed project(s):

1—Install runway/taxiway guidance signs.

2—ADA terminal improvements.

3—Install airside terminal elevator.

4—West general aviation access road, fencing and taxiway "F" rehabilitation.

5—Acquire land, relocation assistance, and obstruction removal in approach to runway 17 and 31.

6—Update Terminal Area Study.

7—Overlay, light, and mark west taxiway "F".

8—West ramp: repair joints, slabs, and install lighting.

9—Acquire land in approach to runway 17 and 13.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the office of the Gulfport-Biloxi Regional Airport Authority located in the terminal building at the Gulfport-Biloxi Regional Airport.

Issued in Atlanta, Georgia, on July 19, 1993.

**Stephen A. Brill,**

*Manager, Airports Division, Southern Region.*

[FR Doc. 93–17731 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

### Environmental Impact Statement: Kern County, CA

**AGENCY:** Federal Highway Administration, DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a Tier I Environmental Impact Statement will be prepared for a proposed highway project in Kern County, California.

**FOR FURTHER INFORMATION CONTACT:** Leonard E. Brown, Chief, District Operations—C, Federal Highway Administration, U.S. Bank Plaza, suite 400, 980 Ninth Street, Sacramento, California 95814–2724, Telephone 916–551–1307.

**SUPPLEMENTARY INFORMATION:**

The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare a Tier I Environmental Impact Statement (EIS) on a proposal to construct a four lane freeway beginning on State Route 58, five miles northwest of Mojave, crossing State Route 14 (SR 14) to the northeast of Mojave and reconnecting with State route 58 five miles east of Mojave. Construction of a new interchange with SR 14 is also included in this project. Depending upon the alternative, this new freeway construction would be approximately seven to nine miles in length, and is located within unincorporated Kern County. Three build alternatives and the No Build Alternative will be analyzed in the EIR/EIS. The proposed typical cross section for the project is approximately 420 feet, which includes a four lane freeway, 100 foot median and frontage roads on either side of the freeway.

It is the purpose of the proposed project to relieve existing and projected traffic congestion and queuing, and improve safety on State Routes 58 and 14 Sierra Highway (State Routes 58/14 through Mojave). Caltrans and local agencies have identified the need for proposed improvements due to existing traffic volumes, projected traffic increases in the future due to general growth within the State and projected growth within Kern County.

A Tier I EIR/EIS does not have the detail of a construction level (Tier II) document. The scope and level of analysis of the critical issues will be detailed to the degree necessary to satisfy Caltrans and FHWA requirements for route adoption, and to give authorization for protection of right-of-way for a preferred alignment.

Public workshops and a scoping meeting will be held in Mojave during summer, 1993. Affected agencies and interested parties will be notified of the dates and locations of the scoping meeting/workshops through a separate public notification process.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. The views of agencies that may have knowledge about historic resources potentially affected by the proposal or interest in the effects of the proposal on historic properties are specially solicited. Comments or questions concerning this proposed action and the EIR should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: June 18, 1993.

**Leonard E. Brown,**

*Chief, District Operations—C, Sacramento, California.*

[FR Doc. 93–17638 Filed 7–23–93; 8:45 am]

BILLING CODE 4910–22–M

## National Highway Traffic Safety Administration

### Petition for Exemption from the Vehicle Theft Prevention Standard; Saab

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This notice grants the petition by Saab Cars USA, Inc. (Saab) for an exemption from the parts marking requirements of the vehicle theft prevention standard for a high theft car line whose nameplate is confidential. This petition is granted because the agency has determined that the antitheft device to be placed on the car line as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with parts marking requirements.

**DATES:** The exemption granted by this notice is effective beginning with the 1994 model year.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

**SUPPLEMENTARY INFORMATION:** On March 26, 1993, the agency received a letter dated March 25, 1993 from Saab Cars

USA, Inc. (Saab) requesting an exemption from the theft prevention standard for a car line beginning from the 1994 model year. The nameplate of the car line is confidential. The letter was submitted pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, and requested an exemption from parts marking based on the installation of a theft deterrent device as standard equipment for the car line. Saab provided supplemental information in two additional letters, one dated April 6, 1993, and the other dated May 7, 1993.

Together, the three letters submitted by Saab constitute a complete petition, as required by 49 CFR 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated April 8, 1993 to Saab, the agency granted the petitioner's request for confidential treatment of certain information, including the nameplate of the car line.

In its petition, Saab provided a detailed description of the identity, design, and location of the components of the antitheft device for the car line, and an electrical schematic of the antitheft device. Saab stated that its antitheft device incorporates an audio and visual alarm function, and an engine starter interrupt function.

Saab stated that the antitheft device is automatically activated by the normal locking of the vehicle door. In order to arm the device, the key must be removed from the ignition switch; all of the doors, the trunk lid, the hood lid, and the storage compartments must be closed; and the driver's door must be locked with the ignition key. Locking any door with the key ensures that all doors, the hood, and the trunk are locked.

The blinking of an alarm system indicator light on the dashboard indicates that the device is armed. The driver's side door cannot be locked and the alarm is not activated if the hood, any of the doors, or the trunk is not closed properly. In order to activate the alarm, the vehicle part that is ajar must be properly closed, and the driver's side door must be locked with the key. The device monitors the vehicle's doors, hood, trunk, ignition switch, and radio.

If the device is armed and unauthorized entry is subsequently attempted, the antitheft device will be triggered, causing the alarm horn to sound and the vehicle's turn signal indicator to actuate. Any subsequent attempt to enter any of the vehicle's monitored areas will again cause the horn to blare and the turn signal indicator to flash.

Additionally, the antitheft device will activate the starter-interrupt relay, preventing the starting of the engine by means of the ignition switch for a period of time. Saab stated that to prevent defeat of the antitheft device, all system components have been placed in inaccessible locations. Saab described further measures to prevent unauthorized operation of its car line, describing measures taken to strengthen the doors and locks of the car line, and noting special design features of the key and key lock. In addition, Saab described special measures to deter theft of the radio in the Saab car line.

Saab addressed the reliability and durability of its antitheft device by providing a description of the tests that were conducted on the device. Among these tests were tests for: Electrical strength; electromagnetic compatibility; radiated interference susceptibility; mechanical vibration; mechanical shock; ambient temperature extremes; corrosion resistance; and durability life cycles. With its petition, Saab included a statement that the antitheft device was tested according to Saab's standard, and passed all the performance requirements of the tests.

In discussing why it believes the antitheft device will be effective in reducing and deterring motor vehicle theft, Saab compared its antitheft devices with similar antitheft devices, primarily manufactured by other manufacturers, that have been previously granted exemptions from this agency. Saab stated that the theft rates of these comparable lines decreased when the antitheft device was made standard equipment, and have remained, for the most part, below the 3.2712 median theft rate. Among others, Saab cited the experiences of the: Mazda RX–7, which went from a theft rate of 5.83 (all figures provided are for thefts per thousand vehicle) in 1987 to a theft rate of 5.64 in 1988; the Nissan Maxima, which went from a theft rate of 3.80 in 1983/84 to a theft rate of 1.99 in 1985; the Nissan 300ZX, which went from a theft rate of 7.71 in 1986 to a theft rate of 5.97 in 1987; the Toyota Cressida, which went from a theft rate of 4.70 in 1985 to a theft rate of 4.26 in 1986; and the Toyota Supra, which went from a theft rate of 10.38 in 1985 to a theft rate of 2.78 in 1986. The agency concurs with Saab that these antitheft devices manufactured by other manufacturers are comparable to the device planned by Saab for its car line.

NHTSA believes that there is substantial evidence indicating that the antitheft device to be installed as standard equipment in the Saab car line that is the subject of this notice, will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information Saab submitted with its petition and on other available information. The agency believes that the device will provide all of the types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that Saab has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Saab provided on its device. This information included a description of reliability and functional tests conducted by Saab for the antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the Saab car line that is the subject of this notice, in whole, from the requirements of 49 CFR part 541.

If Saab decides not to use the exemption for any of the car lines that are the subject of this notice, it should formally notify the agency. If such a decision is made, each respective car line must be fully marked according to the requirements under 49 CFR 541.5 and § 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more probative data upon which comparison may be made.

NHTSA notes that if Saab wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an

antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

Date: July 20, 1993.

**Howard M. Smolkin,**

*Executive Director.*

[FR Doc. 93–17620 Filed 7–23–93; 8:45 am]

BILLING CODE [illegible]

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[Docket No. 93–09; Notice 2]

## Determination That Nonconforming 1990 Honda VFR 750 Motorcycles Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration ("NHTSA"), DOT.

**ACTION:** Notice of determination by NHTSA that nonconforming 1990 Honda VFR 750 motorcycles are eligible for importation.

**SUMMARY:** This notice announces the determination by NHTSA that 1990 Honda VFR 750 motorcycles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1990 Honda VFR 750 motorcycle), and they are capable of being readily modified to conform to the standards.

**DATE:** The determination is effective as of the date of its publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act ("the Act"), 15 U.S.C. § 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. ("J.K.") of Kingsville, Maryland (Registered Importer No. R–90–006) petitioned NHTSA to determine whether 1990 Honda VFR 750 motorcycles are eligible for importation into the United States. NHTSA published notice of the petition on March 3, 1993 (58 FR 12301) to afford an opportunity for public comment.

As stated in that notice, J.K. claimed in its petition that the 1990 Honda VFR 750 motorcycle that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to the 1990 Honda VFR 750 motorcycle that was manufactured for importation and sale in the United States and that was certified by its manufacturer, Honda Motor Co., Ltd., as complying with all such standards. JK claimed that the two models are identical with respect to compliance with Standards Nos. 106 Brake Hoses, 108 Lamps, Reflective Devices and Associated Equipment, 111 Rearview Mirrors, 116 Brake Fluid, 119 New Pneumatic Tires for Vehicles other than Passenger Cars, 120 Tire Selection and Rims for Motor Vehicles other than Passenger Cars, 122 Motorcycle Brake Systems, 123 Motorcycles Controls and Displays, and 205 Glazing Materials. J.K. also contended that the non-U.S. certified 1990 Honda VFR 750 is capable of being readily modified to meet Standard No. 115 Vehicle Identification Number, by adding a permanent VIN plate to the motorcycle dash.

One comment was received in response to the notice of the petition, from Honda Motor Co., Ltd. ("Honda"), the vehicle's original manufacturer. Honda stated that the non-U.S. certified version of the 1990 Honda VFR 750 was intended for the Japanese market, and as originally manufactured, does not comply with Federal motor vehicle safety standards. Specifically, Honda asserted that the following items must be replaced for the vehicle to comply with Standard No. 108: The headlight, turn signal lights, brake light, stop light, reflex reflectors, control switches, and electrical wiring. Additionally, Honda asserted that the speedometer/odometer on the non-U.S. certified 1990 Honda VFR 750 is calibrated in kilometers and must be replaced with one calibrated in miles per hour to comply with Standard No. 123. Honda further noted that, as acknowledged by J.K., the vehicle's Vehicle Identification Number ("VIN") does not comply with Standard No. 115. Additionally, Honda claimed that the vehicle requires a safety certification label to comply with U.S. standards. Honda stated that the parts necessary to bring the vehicle into compliance with Federal motor vehicle safety standards are available from authorized Honda motorcycle dealers, with the exception of compliance labels, which are available only on the company's own assembly lines.

NHTSA invited J.K. to respond to Honda's comments. In its response, J.K. asserted that the non-U.S. certified 1990 Honda VFR 750 in its shop conforms to Standard Nos. 108 and 123 in all respects, including DOT markings on parts where such are required. J.K. submitted photographs with its response to verify this claim. These appear to support J.K.'s claim that the only modification necessary to bring the motorcycle in its possession into compliance with all applicable Federal motor vehicle safety standards is the addition of a Registered Importer's certification label. NHTSA notes in this regard that the VIN assigned by the original manufacturer to an imported vehicle need not be changed for the vehicle to comply with Federal safety standards.

In view of the conflicts in the statements that it received from Honda and J.K., NHTSA has concluded that the

motorcycle used by J.K. in the preparation of its petition is one that must have been modified after the date of its original manufacture to comply with applicable Federal motor vehicle safety standards. As Honda did not refute J.K.'s argument that the non-U.S. certified 1990 Honda VFR 750 was either manufactured in conformance with, or is capable of being readily modified to conform to, all applicable Federal motor vehicle safety standards, NHTSA has determined to grant the petition.

**Vehicle Eligibility Number for Subject Vehicles**

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #34 is the vehicle eligibility number assigned to vehicles admissible under this determination.

**Final Determination**

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1990 Honda VFR 750 motorcycle not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1990 Honda VFR 750 motorcycle originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

**Authority:** 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 20, 1993.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 93–17743 Filed 7–23–93; 8:45 am]

BILLING CODE 4910-59-M

## Research and Special Programs Administration

### Availability of the Federal Radionavigation Plan

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Availability for comment.

**SUMMARY:** The 1992 edition of the Federal Radionavigation Plan has been published and is available for comment.

**DATES:** Comments must be received by January 28, 1994.

**ADDRESSES:** Comments should be forwarded to Chairman, DOT Navigation Working Group, U.S. Department of Transportation (DRT–20), room 9402, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Heywood Shirer, Department of Transportation (DRT–20), 400 7th Street SW., Washington, DC 20590, (202) 366–4355.

**SUPPLEMENTARY INFORMATION:** A copy of the Federal Radionavigation Plan is available for inspection in the RSPA Dockets Unit. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Office hours are 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Telephone (202) 366–5046.

The 1992 Federal Radionavigation Plan is available from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

Stock Number: PB93–165702
Paper Copy: $37.50
Microfiche: $17.50

Issued in Washington, DC, on July 8, 1993.

**Rose A. McMurray,**

*Acting Administrator, Research and Special Programs Administration.*

[FR Doc. 93–17703 Filed 7–23–93; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 93–58]**

### Delegation Order Relating to Handling of Appeals Filed by Customs Brokers for Denial of License

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of delegation order.

**SUMMARY:** This document provides notice that the Commissioner of Customs has delegated the authority to the Director of the Office of Trade Operations to issue decisions both on the initial denial of applications for Customs broker licenses, including notification of a failing Customs broker examination score, and any subsequent appeal to Customs of such denial.

**EFFECTIVE DATE:** The delegation is effective as of June 18, 1993.

**FOR FURTHER INFORMATION CONTACT:** Richard Coleman, Office of Trade Operations, 202–927–0563.

**SUPPLEMENTARY INFORMATION:**

On June 18, 1993, the Commissioner of Customs approved the following delegation of authority:

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), as amended, and by section 641 of the Tariff Act of 1930 (19 U.S.C. 1641), I hereby delegate to the Director, Office of Trade Operations, the authority given to the Commissioner of Customs in the Customs Regulations, § 111.13(e), to notify applicants and the district director of the denial of a license because of failure to pass the Customs broker examination, and in §§ sections 111.16 and 111.17, consistent with the authority delegated in section 111.13(e), to give notice of denial for any reason to an applicant and to the director of the district in which the application was filed and to review the appeals of Customs denials of applications for a Customs broker's license.

This delegation is effective as of June 18, 1993.

Dated: July 19, 1993.

**Michael H. Lane,**

*Acting Commissioner of Customs.*

[FR Doc. 93–17690 Filed 7–23–93; 8:45 am]

BILLING CODE 4820-02-P

## DEPARTMENT OF VETERANS AFFAIRS

### Information Collection Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to

VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before August 25, 1993.

Dated: July 19, 1993.

By direction of the Secretary.

**B. Michael Berger,**

*Director, Records Management Service.*

**Extension**

1. Water-Plumbing Systems Inspection Report (Manufactured Home), VA Form 26–8731a
2. The form is completed by inspectors and serves as an inspection report on the water and plumbing systems of used manufactured home units proposed as security for guaranteed loans. The information is used to determine acceptability of the units for VA guaranteed financing.
3. Individuals or households—Businesses or other for-profit—Small businesses or organizations
4. 400 hours
5. 2 hours
6. On occasion
7. 200 respondents

**Reinstatement**

1. Disabled Veterans Application for Vocational Rehabilitation, VA Form 28–1900
2. The form is used by service-connected disabled veterans and service persons awaiting discharge for disability to apply for vocational rehabilitation benefits. The information is used by VA to determine eligibility for and entitlement to these benefits.
3. Individuals or households
4. 7,500 hours
5. 15 minutes
6. On occasion
7. 30,000 respondents

[FR Doc. 93–17676 Filed 7–23–93; 8:45 am]

BILLING CODE 8320-01-M

## Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C., 3121, will be held on September 26, 27, and 28, 1993 in Boston, Massachusetts. The committee will meet from 10 a.m. to 3 p.m. on September 26, from 9 a.m. to 4 p.m. on September 27, and from 9 a.m. to 12 noon on September 28, 1993. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public to the seating capacity of the meeting room. Due to changes in the location of the meeting area each day, it will be necessary for those wishing to attend to contact Theresa Boyd at (202) 233–6493 prior to September 22, 1993. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days of the meeting. Oral statements will be heard at 2 p.m. on September 26, 1993.

Dated: July 15, 1993.

By direction of the Secretary:

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 93–17678 Filed 7–23–93; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 141
Monday, July 26, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, August 2, 1993, and at 8:30 a.m. on Tuesday, August 3, 1993, in Washington, D.C.

By telephone vote on July 16 and 19, 1993, a majority of the members contacted and voting, the Board of Governors voted to close to public observation its meeting scheduled for August 2, which will involve consideration of the Postal Rate Commission's Opinion and Recommended Decision in Docket No MC93–2, Definition of Pre-Barcoded Mail.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) and (10) of Title 5, United States Code, and section 7.3(c) and (j) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States Code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; and section 7.3(c) and (j) of Title 39, Code of Federal Regulations.

The August 3 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

**Agenda**

*Monday Session*

*August 2—1:00 p.m. (Closed)*

1. Consideration of the Postal Rate Commission's Opinion and Recommended Decision in Docket No. MC93–2, Definition of Pre-Barcoded Mail.

*Tuesday Session*

*August 3—8:30 a.m. (Open)*

1. Minutes of the Previous Meeting, July 12–13, 1993.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon.)
3. Quarterly Report on Service Performance. (Ann McK. Robinson, Vice President, Consumer Advocate.)
4. Quarterly Report on Financial Performance. (M. Richard Porras, Controller.)
5. Tentative Agenda for the August 30–31, 1993, meeting in Indianapolis, Indiana.

**David F. Harris,**

*Secretary.*

[FR Doc. 93–17888 Filed 7–22–93; 2:05 pm]

BILLING CODE 7710–12–M

federal register

Monday
July 26, 1993

Part II

# Department of Health and Human Services

**Public Health Service**

**Compiled List of Clinical Laboratory Test Systems, Assays, and Examinations Categorized by Complexity; Notice**

VOL 58 ISS 141 JL 26 1993 UMI

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**Compiled List of Clinical Laboratory Test Systems, Assays, and Examinations Categorized by Complexity**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** Regulations codified at 42 CFR 493.17, implementing the Clinical Laboratory Improvement Amendments of 1988, require the Secretary to provide for the categorization of specific clinical laboratory test systems, assays, and examinations by level of complexity. The criteria for such categorization are also set forth in those regulations.

This Notice announces the compiled list of specific clinical laboratory test systems, assays, and examinations categorized by complexity. This list includes the compilation of a series of four partial test lists that were previously published in the **Federal Register** as part of the on-going process of test categorization. These partial lists were published on February 28, 1992 (57 FR 7245); July 8, 1992 (57 FR 30362); August 28, 1992 (57 FR 39211); and September 2, 1992 (57 FR 40258). The list in this Notice also includes approximately 2000 additional test systems, assays, and examinations that were identified through the comment period as test systems or analytes that were missing from any previously published list. A separate list containing only the previously unpublished categorizations is also included in this Notice, because these previously unpublished categorizations are subject to a 30-day comment period. A list of waived test systems, assays, and examinations, which is an update of the list published on August 28, 1992, is also included in this Notice. All responses to public comments received on the partial lists are included in this Notice. Additionally, all changes to previously published categorizations made in response to comments, as well as any editorial or grammatical corrections to previously published test system or analyte entries, are reflected on the compiled list.

Any clinical laboratory test system, assay, or examination not classified under 42 CFR 493.15, published February 28, 1992 (57 FR 7002), or under the amendments to 42 CFR 493 published January 19, 1993 (58 FR 5215) (also known as HSQ–202–FC), as waived or not categorized in this compilation as moderate complexity, will be considered high complexity until categorized otherwise as provided under 42 CFR 493.17.

This Notice also addresses the process for submitting applications to categorize other laboratory test systems, assays, and examinations as well as the process for requesting a recategorization. Additionally, the process for requesting that additions or deletions be made to the list of waived tests, published in 42 CFR 493.15(c), is also addressed in this Notice.

Notices will be published periodically in the **Federal Register** to announce additional test systems, assays, or examinations that have been categorized or recategorized since the preceding publication.

**DATES:** *Effective date:* This list is effective on July 26, 1993. *Comment date:* Written comments on the list of previously unpublished categorizations will be considered if they are received at the address indicated below, no later than 5 p.m. on August 25, 1993.

**ADDRESSES:** Comments on the previously unpublished categorizations—only—should be addressed to Public Health Service, Attention: CLIA Federal Register Notice, 1600 Clifton Road NE (MS MLR5), Atlanta, GA 30333.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Ridderhof, (404) 639–1701.

**SUPPLEMENTARY INFORMATION:** The Centers for Disease Control and Prevention (CDC) has categorized approximately 12,000 test systems, assays, and examinations for complexity, using the criteria for test categorization codified at 42 CFR 493.17 (published in the **Federal Register** on February 28, 1992 (57 FR 7002).

CDC received approximately 435 letters commenting on the 10,000 previously published categorizations. Based on these comments, about one percent have required recategorization. Most of the recategorizations occurred as a result of the change in the approach to scoring tests within the area of microbiology. This change occurred in response to comments and is addressed in detail in this Notice under the section "Comments on Microbiology tests—overview of changes made to Microbiology."

Excluding the area of microbiology that warranted a change in the approach to scoring, comment letters addressed approximately 40 different test systems, assays, or examinations. After careful review of these recategorization requests, CDC determined that 18 of the 40 warranted changes in scores, resulting in 16 recategorizations from high complexity to moderate complexity, and 2 recategorizations from moderate complexity to high complexity. Each of these recategorizations is discussed in detail under the section "Corrections to previous publications of test categorization" contained in this Notice Sixteen additional recategorizations from high to moderate complexity for HDL procedures occurred as a result of recommendation from the Clinical Laboratory Improvement Advisory Committee (CLIAC). A discussion of the HDL recategorizations is found under the comment and response section for General Chemistry contained in this Notice.

The relatively small number of comments that were received on the thousands of test categorizations is testimony to the merit and credibility of the test categorization process. It also confirms that CDC was successful in completing the monumental task of accurately categorizing thousands of laboratory procedures.

**Basis for Categorization**

The first step in the categorization process was to determine which test systems, assays, or examinations were to be waived using the criteria set forth in 42 CFR 493.15. Then, as described in 42 CFR 493.17, seven criteria were used to categorize non-waived laboratory test systems, assays, or examinations as moderate or high complexity. The CDC developed a scoring system that was based on categorization approaches suggested in comments to the proposed regulations and based on categorization systems currently in use by state regulatory agencies. Under the CDC approach, one of three possible scores (1, 2 or 3) was assigned to each of the seven criteria. A score of "1" represented minimal requirements, while a score of "3" represented maximum or specialized requirements. Limiting selection to only three possible scores minimizes the difficulties of making subjective decisions about scoring for each criteria.

The CDC scoring scheme was tested against a list of general categories of laboratory procedures. This list of general procedures was compiled from comments indicating specific procedures that should be categorized as either moderate or high complexity. When subjected to the CDC scoring scheme, many procedures on this general list received scores that clearly defined them as either moderate or high complexity while other procedures received total scores that placed them in a grey area between moderate and high complexity.

A list of general procedures that clearly scored as moderate or high complexity and a list of those that were in the grey area was presented at a meeting of consultants in June of 1991. Each of the consultants reviewed the list and gave advice on whether the procedures in the grey area should be moderate or high complexity. CDC utilized this information to further refine the grey area into a defined cutoff score of 12/13 between moderate and high complexity.

CDC staff then expanded the general list into a more specific list that defined tests by the name of the instrument, kit, or procedure and applied the scoring scheme with the 12/13 cutoff. In September of 1991, at another meeting of consultants, CDC presented the categorization of approximately 2000 specific tests. Each of the consultants was asked to review these proposed categorizations and to apply the scoring scheme to any tests with which they were familiar. Information from this scoring exercise was used by CDC to further refine the scoring scheme.

At the present time, CDC has categorized approximately 12,000 tests. A review of total scores within the scheme shows a distribution that is bimodal with the 12/13 cutoff equidistant between the two modal values. Each modal has an underlying normal distribution of scores that shows central tendency and somewhat even distribution in the tails. This bimodal distribution with two underlying normal distributions supports the concept of a scoring system whose main purpose was to define two separate conditions, moderate complexity and high complexity, with a distinct cutoff between the two.

**Overview of Test Categorization Process**

Each test system, assay, or examination not classified as waived was assigned a unique identifier. A Center for Disease Control and Prevention (CDC) staff person, knowledgeable in the laboratory area for which the test was designed, was designated as the initial scorer. Using information available from a variety of sources, including manufacturer's instructions, and from his or her own knowledge and experience, the scorer assigned a numerical value to each of the seven criteria—a score of "1" representing the least complex and a score of "3" the most complex. If sufficient information was not available to score the test procedure, the manufacturer or other source was contacted to obtain the necessary information. If there was not a member of the CDC staff with sufficient background or expertise to grade the test, an outside consultant assisted in assigning scores to the test procedure.

The initial scorer prepared a short written narrative (justification) explaining his or her logic for the assignment of scores to each criteria. The internal scores within a total grade were then evaluated against each other for consistency. For example, assigning a high score to a test for the criterion "Characteristics of Operational Steps" but a low score for the criterion "Training and Experience" would be considered inconsistent. Scores were also compared with scores for procedures of comparable complexity and/or similar methodology to be certain that all tests were graded fairly, and without bias. If a scorer felt there were significant differences between the test system, assay, or examination he or she was grading and others of similar methodology, then the specific aspects of the test procedure that made it different were addressed in the written justification.

Once the initial scorer had scored the test system, assay or examination and completed a draft justification for each score, another CDC staff member, who had experience in the laboratory area targeted by the test, reviewed the information used to grade the test, the assigned grading scores, and the written justifications for each score. The scores were reviewed for consistency of the numeric values assigned as well as consistency of the overall rating. The written justification was reviewed for technical accuracy, consistency, and clarity.

Finally, test scores and justifications were reviewed by an outside expert or a member of CDC staff who was a recognized expert in the specialty area covered by the procedure. The expert either verified the technical accuracy of the scoring and justification or returned it for further review and suggested that staff obtain additional information, or, if appropriate, advised that an outside consultant be called to help in categorization. If the grades and justification for a test categorization passed this level of review, the scores were considered valid and the test system, assay, or examination was added to the test categorization database.

Once a test system's grades and justification were deemed valid, two members of the CDC staff who were not involved in the original scoring or review, independently reviewed the written justification for consistency and clarity. Any editing at this point was from the perspective of whether or not a knowledgeable person reviewing the justification sometime in the future would understand the basis for the score determination. Once a justification passed this level of review, it was considered final and complete.

**General Guidelines for Assigning Scores**

Although not specific to any one procedure or all encompassing for every laboratory method, the following general guidelines were used by CDC staff to achieve consistency in scoring both within specialty areas and across disciplines.

*Knowledge*

Knowledge was defined as theoretical background information that the analyst must possess prior to performing the test. This knowledge generally could not be acquired by previous experience with similar procedures or by merely reading technical information supplied by the manufacturer. The grading for this criterion took into account not only the knowledge required for the analytic portion of the procedure (the actual performance of the test) but also the knowledge required for any preanalytic or postanalytic portions that were considered to be specific components of the total procedure.

A score of "1" for this criterion meant that the scientific knowledge needed to perform the test was minimal. The analyst could usually perform the test by reading material supplied by the manufacturer. A score of "1" assumed the analyst had knowledge of basic laboratory safety precautions such as the importance of wearing gloves and some basic laboratory analytic techniques such as the proper use of a centrifuge.

A score of "2" for this criterion meant that some basic laboratory related scientific knowledge was required prior to performing the test. The knowledge required may have been broad laboratory concepts or principles that an analyst would build on while being trained to perform the specific procedure under consideration. This knowledge could have been acquired through previous on-the-job instruction or through formal academic instruction.

A score of "3" for this criterion meant that specialized scientific knowledge was required to perform the procedure. This knowledge was considered extensive and usually required academic study. It may have included knowledge of the clinical uses of a test. Examples include: the diagnostic aspects of hemolytic disease of the newborn to accurately interpret the results of the Indicator Cell Rosette test; understanding the physical

characteristics of antigen-antibody diffusion through gels to perform immunoelectrophoresis; and knowledge of the microscopic characteristics of all known medically significant pathogens to be able to adequately identify the microbial source of an infection.

*Training and Experience*

Training referred to those instructions specific to a procedure and the acquisition, through practice and repetition, of the specific technical skills necessary for the accurate execution of a procedure. Experience referred to the broad range of skills previously acquired by the analyst while performing similar laboratory testing.

A score of "1" for this criterion meant that minimal training and experience were required to perform the test. The analyst could be self-taught by following manufacturer's directions and did not need practice in the procedure prior to performing the test. Materials or instruments were of such simple construction that they required only limited, "one-time" instruction on their use to properly report test results.

A score of "2" meant that some training or experience were required. The training would be directed toward the specific test procedure under consideration and usually required repetition or practice to achieve proficiency in performing the test. Some procedures required experience in the operation of similar equipment or in a general laboratory technique required to perform the procedure such as the use of a microscope.

A score of "3" for this criterion meant that a high level of training and experience were required. This training usually required an extended time period, close supervision, and extensive practice. If a high level of experience was required, it was usually very specialized and directed toward specific techniques critical to the performance of the procedure such as experience in inoculating, monitoring, or harvesting viruses.

*Reagents or Materials Preparation*

This criterion referred to the level of complexity associated with the preparation of reagents or other materials.

A score of "1" for this criterion meant that reagents and materials were usually prepackaged or required minimal handling such as simple dilutions or rehydrations.

A score of "2" meant that some preparation or handling was required, such as, specific storage requirements for reagents; reagents that required reconstitution immediately before use; or reagents that required precise pipetting for reconstitution.

A score of "3" meant that reagents or materials were either extremely labile, required special handling (e.g., radioactive materials) or preparation, or required precise gravimetric or volumetric measurements. A high score was also given when the analyst was required to calculate the needed concentration of a reagent or when the reagent had special disposal or decontamination requirements.

*Characteristics of Operational Steps*

This criterion referred to the number of steps in the procedure and the degree of technical skill required to perform those steps. Each procedure was evaluated for the complexity of steps not only in the analytic portion of the procedure but also in the preanalytic or postanalytic portions that were considered part of the complete procedure.

A score of "1" was given if the steps were automatically executed or were not extensive and easily performed.

A score of "2" was given if the steps were not fully automatic and required some monitoring, timing, or simple calculations. Examples of procedures receiving a score of "2" include those requiring limited pretreatment of samples before analysis, or requiring simple calculations after analysis to arrive at a final result.

A score of "3" was given if the steps were extensive or complex, required manual manipulation, required close monitoring and control, or required extensive calculations. Many procedures receiving a high score for this criterion required the analyst to plot standard curves, perform complicated calculations, or perform multiple volumetric or gravimetric measurements.

*Calibration, Quality Control or Proficiency Testing Materials*

This criterion referred solely to the characteristics of the materials used for calibration, quality control, or proficiency testing. It did not refer to the difficulty of performing procedures using these materials since this was covered under "Characteristics of Operational Steps."

A score of "1" was given if calibration materials, when applicable to the procedure, were stable, well defined, and readily available. A score of "1" was also given if quality control materials were available and when proficiency testing materials were available or had the potential of being made available.

A score of "2" was given if quality control materials did not validate the entire analytic process, were vastly different from the specimen matrix, or had to be supplied by the laboratory as previously assayed patient samples. A score of "2" was also given if proficiency testing materials were in a format other than that of the clinical specimens. An example of this situation would be the use of photographic slides for cell identification which requires the analyst to interpret cell morphology in an environment that is not the same as the actual testing environment.

A score of "3" was given if materials were so labile that control or proficiency testing materials had no potential of being made available or could not duplicate any part of the sample matrix. This score was usually given to tests that could not be controlled by measuring analytical specimens but relied on good laboratory practice alone to ensure quality results. An example of the above would be bleeding time tests.

*Troubleshooting and Maintenance*

This criterion referred to the extent or the difficulty of the troubleshooting and maintenance procedures required for proper operation of equipment or instruments. Procedural troubleshooting, in which the analyst must use judgment to determine the cause of an incorrect or incomplete test result, was included under "Interpretation and Judgment."

A score of "1" for instrument troubleshooting was given when the troubleshooting was automatic or self-correcting and required minimal judgment. A score of "1" for maintenance was given when equipment maintenance was seldom needed or provided by the manufacturer.

A score of "2" was given if troubleshooting or maintenance required some judgment, technical skill, decision-making, or intervention by the analyst. Most of the instruments receiving this score had daily, weekly, or monthly maintenance that was fully described by the manufacturer. These types of instruments often also required the analyst to follow a flow chart to perform troubleshooting procedures. Many of the instruments given a score of "2" were large volume or multi-analyte instruments that required the analyst to interpret "error" messages or follow sequential instructions to resolve problems.

A score of "3" was given if troubleshooting was not automatic and required a high level of decision-making and extensive direct intervention to resolve problems. A score of "3" was

given if instrument maintenance required special knowledge, skills, or abilities. Most of the procedures receiving this high score did not have clearly defined troubleshooting or maintenance guides outlined by the manufacturer.

*Interpretation and Judgment*

This criterion referred to the level of interpretive or judgment decisions that an analyst must make during all phases of the procedure which included preanalytic and postanalytic decisions as well as decisions made during the analytic process.

A score of "1" was given if the analyst was only required to follow simple directions outlined in detail by the manufacturer to perform the test. If an instrument was part of the procedure, all results and interpretations were automatically performed and the instrument gave a direct read-out of results.

A score of "2" was given if the analyst was required to make some interpretation and judgment before releasing results such as checking for logical consistency with other analytes or making limited judgment decisions on the causes of incorrect results.

A score of "3" was given if judgment or interpretation was required throughout the testing process or if the resolution of problems required extensive interpretation or judgment. Some examples of procedures that would receive a higher score would be those that required judgment to determine the acceptability of some phase of the analytic process before proceeding to a final analysis or those that required an analyst to interpret assay data in light of other parameters, such as gestational status, before reporting a final result.

Another section of the general guidelines for assigning scores was a process for verifying that scores were logical and consistent. During the scoring process and throughout the review process, scores for six of the seven criteria were continually evaluated against each other. (One of the seven criteria, "Calibration, Quality Control and Proficiency Testing Materials", was not part of this verification process because the score for this criterion was a "stand alone" score. Since this criterion referred only to the availability or stability of materials, the score was specific for an analyte or a method. Therefore, a high or low score assigned to this criterion did not affect the scores assigned to any other criteria.) Three of the six criteria, "Knowledge", "Training and Experience", and "Interpretation and Judgment", referred to the skills or background that an analyst must possess to perform the test. The remaining three criteria, "Reagents and Materials Preparation", "Characteristics of Operational Steps", and "Troubleshooting and Maintenance", referred to specific attributes of a test procedure that are present regardless of the skills or background of the analyst. A high score in one of the criteria relating to test attributes would usually necessitate a high score in one of the criteria related to the analyst since the analyst usually needed high level skills to perform complex procedures. In fact, a high score within any criterion that could not be justified by a corresponding high score in one or more related criteria was flagged as inconsistent and the scoring was returned for further review and evaluation.

**Publication of Partial Lists of Tests by Complexity**

While the process of test categorization was occurring, the Public Health Service (PHS) published four partial lists of test categorizations. These partial lists were released to the public with an open comment period included so that PHS could receive comments on the published categorizations before they became final. This process of publication with comment enabled PHS to have public involvement in the completion of the list to help ensure that it would be as accurate and complete as possible.

**List of Waived Tests**

During the test categorization process, PHS received requests from a number of sources to publish a list of waived tests by manufacturers. A list of waived tests was published in the **Federal Register** on August 28, 1992 (57 FR 39211). That list, with some additions, is republished in this Notice. It is important to note that, although extensive efforts were made to include all products that meet the criteria for waiver, the list should not be considered inclusive.

**Release of Final Scores**

Many requests were received to release the final scores assigned to the categorized test systems, assays, and examinations. Scores for specific test systems and analytes may be requested by writing to Dr. John Ridderhof, Public Health Service, 1600 Clifton Road N.E. (Mail Stop MLR5), Atlanta, GA 30333.

**Future Requests for Recategorizations or Waiver**

Following publication of this comprehensive list, the Public Health Service will consider, once in any 12 month period, a request for recategorization that is based on new information as provided under 42 CFR 493.17(c)(3). Manufacturers seeking recategorization of an instrument, kit, or test system should direct their request to the Food and Drug Administration (FDA). FDA will announce in the **Federal Register** the date that it will begin accepting recategorization requests. Requests for recategorization of tests not subject to FDA approval or methods developed in house should be sent to the Centers for Disease Control and Prevention (CDC). The requests will be reviewed and the requestor will be notified of the decision in writing, by FDA or CDC as appropriate.

With respect to requests for waiver, manufacturers seeking waiver of instruments, kits, or test systems should direct their request to FDA. Requests for a waiver of tests not subject to FDA approval should be sent to CDC. FDA and CDC will review all such requests based on the criteria for waiver in 42 CFR 493.15(b) and will consult with each other before making a decision. Proposed additions or deletions to the list of waived procedures, as published in 42 CFR 493.15(c), will also be referred to the Clinical Laboratory Improvement Advisory Committee (CLIAC) for its review and recommendations. All requests for waiver will receive a written response that addresses the decision of all reviewing agencies.

A notice, with a 30 day public comment period, containing the resolution of all recategorization and waiver requests, granted or denied, will be periodically published in the **Federal Register**.

**Responses to Comments on the Four Partial Lists**

The comments from the 435 test categorization comment letters and the department's responses to them are presented in the following sections. The comments are grouped by subject matter within two main areas: a category of general comments for those that crossed disciplines, and a category that includes clinical laboratory specialty areas for comments specific to a discipline of laboratory practice.

**General Comments**

The comments addressed in this Notice are only those that were relevant to the four partial lists of tests as published in the Notices described earlier.

Many manufacturers and consumers of products sent comments requesting that specific products be recategorized.

In all instances, the scores assigned to these products during the categorization process were reevaluated. If there was a change in scores that resulted in a recategorization, the recategorization, along with the rationale for the change, is published as part of this Notice. If a product was determined to be categorized correctly, it has been included on this compilation list with no change to its original published complexity and a response to the comment explaining the rationale for not changing the categorization is included in this Notice. Other more specific general comments are as follows:

*Comment:* Many commenters criticized the fact that "risk of harm" was not one of the explicit criteria used to grade a test for complexity. A few commenters felt that the usefulness of the test or the performance characteristics of the test should also be considered when grading for complexity.

*Response:* Following a notice and comment period, the complexity model described in the May 21, 1990 NPRM was reevaluated. It was concluded that the overall categorization process described in the NPRM, including application of the "risk of harm" criterion, was flawed because it was too subjective and it focused on the substance being measured (analyte) rather than the methodology for measurement. A revised categorization process was published in the February 28, 1992 Final Rule. The Final Rule established an objective scoring system to place tests into either the "moderate complexity" or "high complexity" category.

The commenters to the Final Rule are incorrect in their criticism that the categorization scheme does not take likelihood of an erroneous result into account when distinguishing between moderate and high complexity tests. As explained in the preamble to the Final Rule, the scoring system measures test complexity by weighing seven factors: knowledge needed to perform the test, training and experience required, complexity of reagent and materials preparation, characteristics of operational steps, availability of calibration, quality control, and proficiency testing materials, troubleshooting and equipment maintenance, and degree of interpretation and judgement. In addition, the new model scores each test system, assay, and examination individually for each criteria. This scoring system contrasts with the scheme set forth in the NPRM which placed analytes such as "red blood cell counts" into categories without distinguishing between the many different systems that can be used to perform such tests. Although "likelihood of erroneous result" is not one of the specific criteria considered, the scoring system, by measuring test complexity, implicitly distinguishes between tests based on risk of error because the more complex a test is, the more likely it is that the test will produce an erroneous result. Thus, under the current scheme, the most complex tests fall into the "high complexity" category. Laboratories performing these tests must meet the most stringent personnel requirements. Tests that are less complex fall into the "moderate complexity" category. Laboratorians that perform moderate complexity tests need only meet intermediate personnel requirements.

As noted in the preamble to the February 28, 1992 Final Rule, "risk of harm to the patient if a test is performed incorrectly" was also deleted as an explicit criterion for categorizing non-waived tests. This factor was dropped, in part, in response to comments to the NPRM complaining that the "risk of harm" standard rendered the categorization process too subjective.

It is agreed that the "risk of harm" standard is unworkable because the consequences to the patient of an erroneous test result will vary tremendously depending on such factors as the patient's medical condition, the purpose for which a test is being conducted, and the treatment prescribed by a physician due to the test result. For example, the harm to the patient caused by an erroneous lymphocyte count will vary depending on the actual medical condition of the patient. If a serious medical condition such as leukemia goes undetected for a long period of time due to the erroneous result, then the harm to the patient may be quite serious. If however, the patient has a viral upper respiratory infection, a disease for which there is very little treatment, the consequences to the patient will be far less serious. The risk of harm will also vary depending on how a physician reacts to an erroneous test result. If an inaccurate test report leads a physician to order additional tests, then the patient will suffer no tangible harm. Incorrect test results that lead a physician to prescribe more intensive treatments, however, may have more serious consequences for the patient.

Thus, in order for the categorization process to truly reflect the risk of harm to the patient if a test is performed incorrectly, each test would have to be separately categorized based on why the test was being prescribed, the type of condition that was being tested, and the condition of the patient. Adding this layer of complexity to what was already an intricate system would have been an impossible task. Even if a classification scheme incorporating risk of harm could have been developed, the application of that scheme would have been unworkable. Under such a scheme, clinicians and laboratory directors would required to ascertain the context of each tests before determining which laboratory personnel could perform it. Introducing this type of subjectivity into the process would frustrate our goal of developing manageable regulations that would contribute to improved performance of the nations's clinical laboratories.

Consequently, in accordance with 42 U.S.C. 263a (f) (1) (C), the Secretary has determined that it would not be "appropriate" to consider the risk of harm to the patient when categorizing tests for the purpose of establishing personnel qualifications. As discussed above, the Secretary determined that the risk of harm criterion as applied in the NPRM was unworkable and fundamentally flawed because it did not take into account the context in which tests were to be performed. Indeed, the Secretary concluded that due to the wide variety of contexts in which tests are conducted, consideration of "risk of harm" would be virtually impossible. Moreover, the Secretary realized that even if a list based on harm to the patient could have been created, it would have been unmanageable and very difficult for the regulated laboratories to apply in everyday practice.

The analytical performance characteristics of a test such as its inherent inaccuracy or imprecision, although important, are not directly related to the difficulty of performing the test and therefore were not part of the criteria for grading tests by complexity.

*Comment:* Many commenters were critical of the scoring system. Some felt that the preanalytic and postanalytic components of a test had been ignored. Others felt the system was flawed because it was based on a horizontal summation instead of a weighted summation. These commenters felt a high score in one criteria should automatically make a procedure high complexity.

*Response:* We agree with the commenters that this is a critical issue and regret that it was not clearly understood that these factors were considered under the CDC grading system. Preanalytic factors such as

knowledge of specimen collection, transportation, and handling were evaluated under the criterion "Knowledge." Other preanalytic factors such as proper specimen preparation or manipulation prior to testing were evaluated under the criteria "Training/Experience" and "Characteristics of Operational Steps." Postanalytic factors such as performing calculations, interpreting results in the context of the patient information, discerning agglutination patterns, and recognizing technical problems within the procedure were evaluated under the criterion "Interpretation and Judgment." Thus, four of the seven criteria used to categorize a test included critical pre and postanalytic factors. Additionally, the process of verifying consistency in scoring by evaluating test characteristics for one criterion against test characteristics for related criteria gave consideration to high scores without the necessity of weighting the scoring process. No test system, assay, or examination which was assigned a score of "3" for any criterion, other than "the availability of QC and PT materials," received a total score low enough to place it in the moderate complexity category.

*Comment:* Some commenters rescored test systems, assays, and examinations using the seven criteria and received a much lower score by assigning a score of "0" to one or more criteria.

*Response:* As stated previously, the scores assigned were either 1, 2, or 3. A score of "0" was not a choice. In practice, this means that the lowest possible score a test system, assay, or examination could receive is "7".

*Comment:* A few commenters requested that all reagents designed for use on specific automated instruments be identified and graded for complexity.

*Response:* Only complete test systems, assays, or examinations were graded for complexity. Complete test systems, assays, or examinations include reagents, instruments, and all other components critical to the performance of the test. Reagents alone do not constitute a complete test system. If one manufacturer's reagents were cleared by the FDA to be used on another manufacturer's instrument, the assumption was made that the complexity of the test assay, as defined by the analyte and the instrument, would not change.

*Comment:* A few manufacturers requested product name changes or deletions of instruments and/or kits because of company acquisitions, new contracts or products being removed from the market.

*Response:* Existing instruments and/or products that have been acquired by another company and have undergone a name change, will not be deleted from the test categorization database. The acquired instruments or products will be added to the database as separate entries and scored for complexity under the new company's tradename. Likewise, instruments and/or products that are no longer available will not be deleted from the database. Such instruments or products may still be in use. The process of retaining historical listings for test systems and analytes in the database ensures that products will be categorized under all possible recognized names.

*Comment:* One commenter stated that categorizing certain instruments/readers for urine qualitative dipstick and erythrocyte sediment rate (ESR) as either moderate or high while the manual method for ESR and urine qualitative dipstick chemistries was waived, was not logical. The commenter also stated that this classification would discourage the purchase of instruments and impede the development of new automated methods.

*Response:* Adding an instrument to a procedure for any analyte changes the test procedure and can either increase or decrease its complexity. Since automated procedures for these analytes were not included in the list of waived tests, these automated methods were categorized as moderate or high complexity using the seven criteria for categorization of test systems.

*Comment:* Commenters asked for clarification of the complexity of analytes not listed in the Federal Register that are parameters of other analytes that are listed. For example, the reportable parameters in Blood Gases with pH such as pCO2 and pO2 are not listed as separate analytes. Does this make these unlisted parameters high complexity by default?

*Response:* Unlisted parameters which are part of a listed analyte are not high complexity by default. As addressed in the second partial test list published on July 8, 1992, Blood Gas with pH is considered one analyte. Specific components of blood gas analyses, such as pCO2 and pO2 are not considered "stand alone" analytes but rather parameters of the analyte, "blood gas with pH." Other analytes that are composites of unlisted parameters are Carboxyhemoglobin and Oxyhemoglobin/Oxygen Saturation which both depend on the measurement of methemoglobin and hemoglobin to arrive at a final result. Methemoglobin and hemoglobin will not be listed as separate analytes for instruments or assays that measure carboxyhemoglobin or oxyhemoglobin. Likewise, the calculated hematologic parameters, MCV, MCHC and MCH will not be listed as "stand alone" analytes.

*Comment:* A number of commenters thought that the process of test categorization would determine if a procedure should be waived. Numerous requests were submitted for specific products to be waived. Most of the requesters felt the specific products mentioned were simple procedures that met the criteria for a waived test. The following is a list of the test systems, assays, and examinations that commenters requested to be waived:

All color change urine and serum pregnancy tests that use monoclonal antibodies
All procedures for Total Immunoglobulins IgE
All procedures for Allergen Specific IgE
Urine microscopic examination
KOH Preparations
Pinworm preparations
Trichomonas preparations—vaginal wet mounts
Wet preps for bacteria, fungi, or parasites
Simple, direct microscopic examinations of urine, or vaginal secretions done by physician in office
Simple microscopic tests done by physician in office which include vaginal saline wet mount, post coital tests for sperm count and inspection of mucous, and exam of urinary sediment.
Tzanck smears
Darkfield examination
Gram stain
CLOtest for *Helicobacter pylori*
Fungal cultures
Activated clotting time
HemoCue for hemoglobin
HemoCue for glucose
Biosite Triage Panel of Drugs of Abuse
Syntex Acculevel screen for therapeutic drugs
Cholestech L.D.X. for HDL and total cholesterol
ChemTrak Accumeter for total cholesterol
Corning Biotrack 512
Du Pont Coumatrak

*Response:* The process of grading for complexity by the seven criteria, as mentioned previously, was not the process used to determine procedures to be waived. The test categorization process determined whether non-waived procedures should be classified as moderate or high complexity. The rationale for waiving or not waiving the specific systems that commenters requested for waiver is presented below for each test system:

*All Color Change Urine and Serum Pregnancy Tests That Use Monoclonal Antibodies*

The list of waived procedures as described in 42 CFR 493.15 specifically states that the pregnancy tests that meet

the criteria for waiver are color comparison tests performed on urine. Many color change pregnancy tests designed for urine testing have been cleared by the FDA for home use. Although many of the urine color change pregnancy tests can also be performed on serum, no serum pregnancy test has been waived nor has the FDA cleared any of these tests for home use.

*All Procedures for Allergen Specific and Total IgE*

There are many different types of test procedures for allergen specific and total IgE and these procedures include both moderate and high complexity tests. An example of a moderate complexity test would be a "test strip" procedure that has strict timing and/or temperature control requirements and requires some interpretive skill to discern a positive or negative result or to identify procedural errors. A more complex procedure would be one containing non-automated spectrophotometric measurement, critical timing, or extensive washing of the solid phase matrix which would require a significant amount of operator intervention. All of these procedures require some level of judgment and interpretation on the part of the analyst to arrive at a final result. None of the tests for allergen specific or total IgE meet the criteria for waiver.

*Physician Performed Microscopy*

These tests do not meet the criteria for waiver and, for the most part, are categorized as moderate complexity. The tests mentioned in comment letters were all microscopic evaluation procedures that require a high level of interpretive skills. For example, the KOH preparation requires skill to identify specific cellular/fungal elements in clinical specimens and to distinguish them from debris and other artifacts. This procedure also requires training in the proper manipulation of the microscope. All of these characteristics were considered in categorizing these procedures as tests of moderate complexity. We do not feel that these tests fit the criteria for waived tests. However, a new subcategory of testing called "Physician-Performed Microscopy" has been established as described in HSQ–202–FC and published in the Federal Register on January 19, 1993 (58 FR 5215). Physicians performing the specific tests included in this subcategory are not subject to routine inspections. The following tests are included in the subcategory, "Physician Performed Microscopy":

KOH preparations
Pinworm preparations
Urine sediment examinations
Wet mounts of vaginal, cervical or skin specimens
Post-coital qualitative exams of vaginal or cervical mucous
Fern test

Note: At the May 1993 CLIAC meeting, a request was made that stained nasal smears for the presence of granulocytes be added to the list of tests in this category. Following the committee's recommendation, CDC is evaluating this test for possible inclusion in the physician-performed microscopy category.

*Tzanck Test*

The Tzanck test is used for a preliminary diagnosis of Herpes zoster, simplex or varicella. A smear is made from cellular material taken from the base of a vesicular eruption, and the smear is stained with Wright's or Giemsa stain. Experience in the use of the light microscope is required to perform the test. The analyst must have knowledge of normal epithelial cells and the changes that occur in these cells when they are infiltrated by an infectious agent. Interpretive skill is required to identify the large nucleated cells that are indicative of this type of infection. Judgment is required to determine if confirmatory testing is required. This test does not meet the criteria for waiver nor does it meet the criteria for the subcategory "Physician-Performed Microscopy."

*Darkfield Examination*

The darkfield examination is used primarily for the detection of *Treponema pallidum*. The analyst must have training and experience in the use of the darkfield microscope and in the proper collection and handling of the sample. Judgment is required to detect the presence of the organism and distinguish it from tissue debris. Interpretive skill is required to recognize the characteristic motility pattern of *Treponema pallidum*. The darkfield examination does not meet the criteria for waiver.

*Gram Stain*

The analyst must be trained in the use of the light microscope and the gram stain technique. Correct timing of stains and recognition of under/over decolorization is important. The analyst must have a basic knowledge of leukocytes and intracellular gram negative diplococci for the examination of endocervical and urogenital specimens. For all other sources, the analyst must have a comprehensive knowledge of all possible organisms that could contribute to the inflammatory state and any normal flora or cellular material that might be present in the specimen. Extensive training is required for the analyst to recognize and enumerate the type of cellular material and identify the microscopic characteristics of normal flora and pathogenic bacteria for each site/source. The gram stain does not meet the criteria for waiver.

*CLOtest by Delta West*

The CLOtest is performed on a tissue sample removed during endoscopy for the purpose of identifying the presence of *Helicobacter pylori*. Prior to testing, the analyst must examine the testing wells for any color change that would indicate possible reagent deterioration and use professional judgment to determine whether or not the wells are acceptable for use. The gel in the testing wells must be warmed prior to use. Judgment and interpretation are required to recognize a color change in the gel that is specific for the organism and to interpret results in required time frames. The analyst must be able to recognize a false positive color change caused by other organisms. The CLOtest does not meet the criteria for waiver.

*Fungal Cultures*

Fungal cultures require that the analyst be trained to properly collect and transport specimens, and to select the appropriate media for optimal growth of the suspected yeast or mold. Training and experience are also necessary to perform microscopic evaluations and conduct the appropriate biochemical analyses. Extensive knowledge, experience, and interpretation are required to identify and select fungi for subculture, to correctly interpret biochemical testing results and to provide final identification of the isolated fungi. Fungal cultures do not meet the criteria for waiver.

*Activated Clotting Time*

Results of the Activated Clotting Time are very technique dependent. Careful technique is required to properly collect and handle blood samples and avoid contamination with tissue fluid or other extraneous clotting factors. In most procedures, thorough and careful mixing of blood and reagent is essential. A few others require vigorous resuspension of activator prior to addition of the sample. Some procedures require precise timing. To optimize precision, all technique variables should be held constant from test to test. Although many instruments give a direct readout, the analyst is usually advised to visually verify the

instrument's result by inspecting the clot for the presence of an incomplete clot or other indications of the need for repeat or additional testing. The analyst must also be able to recognize an instrument malfunction such as a variation in temperature. Tests for activated clotting time do not meet the criteria for waiver.

*Hemocue for Glucose:* This procedure for glucose has not been cleared for home use and therefore is not waived.

*Hemocue for Hemoglobin:* In accordance with the recommendation of CLIAC, a new waived category, "Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout", was published in HSQ–202–FC in the **Federal Register** on January 19, 1993 (58 FR 5215). The HemoCue for hemoglobin fits this new category and has been added to the list of waived procedures as reflected in this compilation.

*Biosite Triage Panel of Drugs of Abuse*

This test is a visual immunoassay test performed on urine. Training is required to perform all steps in the procedure. The test requires the addition of an exact amount (140 ul) of specimen to the reaction cup, incubation of the reaction for a specific timed interval, manual quantitative transfer of the reaction mixture to a detection area followed by a second timed reaction interval. The final phase in the procedure includes addition of a wash solution that must react for a specific period of time but that time must not be allowed to exceed the 10 minute limit for reading of results. Judgment is required to interpret positive results and compare them with a "test valid/test invalid" bar. Factors such as technical or procedural errors, as well as additional substances in the urine sample, may interfere with the test and cause erroneous results. This test does not meet the criteria for waiver.

*Syntex Acculevel Screen for Therapeutic Drugs*

This test is a quantitative immunochromatographic test which is performed on whole blood. Training is required to collect an exact 12ul volume of specimen for analysis and to quantitatively add the sample to reagents. After a timed (15–20 min.) interval, the test cassette must be moved from the first reagent tube to a second reagent tube. After a second timed incubation, the test cassette is removed from the second reagent and must be read within 1 minute. The height of the chromatographic color bar on the test cassette must be compared to a result table, which is lot specific for the kit, and converted to ug/ml or umol/L. Judgment is required to recognize the endpoint when color change is complete and to correctly convert the color comparison chart to a quantitative result. This procedure does not meet the criteria for waiver.

*Cholestech L.D.X. for HDL and Total Cholesterol*

The Cholestech L.D.X. measures HDL, total cholesterol and triglycerides on whole blood, plasma or serum. The analyst must add a specific quantitative amount of sample to the sample well. As noted by the manufacturer, the procedure includes a critical time limit for the addition of the sample to the well. Training is required for the analyst to correctly interact with and maintain the instrument. Interpretation and judgment are required to evaluate patient results and determine the need for repeat testing or possible interfering substances. The manufacturer of the Cholestech L.D.X. has recently submitted new information on this test system. The request for waiver, based on this new information, is currently under review.

*ChemTrak Accumeter for Total Cholesterol*

The ChemTrak Accumeter was recently cleared for home use by the Food and Drug Administration. Subsequent to the FDA clearance, the manufacturer petitioned CLIAC for waiver status. At its May 1993 meeting, CLIAC recommended that this system be considered for waiver. The ChemTrak Accumeter is currently being reevaluated for possible inclusion on the list of waived tests.

*Ciba Corning Biotrack 512/Du Pont Coumatrak*

The Ciba Corning Biotrack 512 and the Du Pont Coumatrak are similar instruments designed to measure Activated Partial Thromboplastin Time (APTT) and/or Prothrombin Time (PT). An essential component of these systems is a test cartridge that has specific storage requirements. The analyst must be trained in the proper collection of a blood sample free of tissue fluid which is essential for accurate test results. Training is also required in the proper placement of the blood sample on the test cartridge, the performance of procedural steps, the detection of procedural errors during analysis and the proper storage of the instrument and test cartridges. Judgment is required to determine the need for repeat or more comprehensive testing. These test systems do not meet the criteria for waiver.

**Specialty Area Comments**

Comments on Microbiology Tests

*Overiew of changes made to Microbiology:* During the open comment period for the list of test systems, assays, and examinations published as a Notice in the **Federal Register** on February 28, 1992, comments were received suggesting that certain areas of microbiology should be recategorized as high complexity. Comments specifically targeted the degree of interpretation and judgment required to identify organisms grown on culture media. In response to these comments, this area of microbiology was reevaluated and revised to recognize that the isolation, identification, and susceptibility determination of organisms transferred from culture media constitute a total process which should be categorized as a single test. Identifications and/or susceptibility determinations of organisms transferred from culture require significant knowledge, training, and interpretation for the selection and performance of the individual test components which may include staining for microscopic evaluation, subculturing, and conducting miscellaneous biochemical analyses. Taking these factors into consideration when scoring procedures, those microbiology test systems, assays, and examinations involving identification and/or susceptibility determinations of organisms transferred from culture media have scored in the high complexity category. Conversely, many microbiology test systems, assays, and examinations that do not require the transfer of organisms (e.g., colony counts) and only provide preliminary results have been categorized as moderate complexity. We have also graded for complexity those test systems, assays, and examinations that, when used for identification, will, in most instances, identify an organism without additional biochemical and/or physiological tests.

Most of these changes were published in the **Federal Register** on September 2, 1992. Subsequently, it was decided to request input on this issue from the Clinical Laboratory Improvement Advisory Committee (CLIAC). Consequently, on October 2, 1992, the published proposed changes in the area of microbiology were rescinded to allow for additional consideration. The CLIAC, at its first meeting on October 28 and 29, 1992, endorsed the changes proposed in this area of microbiology.

All the microbiology changes that resulted from the reevaluation and that were proposed to CLIAC and approved by them, have been incorporated in this compilation and are described below.

As discussed in previous pages, the following analyte/test systems entries published on February 28, 1992 as moderate complexity have been recategorized from moderate to high complexity when rescored:

*Aerobic &/or Anaerobic Organisms-Unlimited Sources*

All Manual KB Disc Diffus Antimicrobial Susceptibility Tests
Vitek Systems VITEK (including culture)

*Campylobacter*

Becton Dickinson BBL Campylide Test (including culture)
Meridian Diagnostics Meritec-Campy (JCL) (including culture)

*Escherichia Coli*

Bio-Medical ANI *E. coli* 0157 Test (including culture)
Pro-Lab Diagnostics *E. coli* 0157 Latex Test (including culture)
Unipath *E. coli* 0157 Latex Kit (including culture)

*Haemophilus Influenzae, Type a, c-f*

Karobio Phadebact Haemophilus (including culture)

*Haemophilus influenzae, type b*

Karobio Phadebact Haemophilus (including culture)

*Neisseria Gonorrhoeae*

Adams Scientific Identicult—*Neisseria* (including culture)
Karobio Phadebact Monoclonal Gonococcus (including culture)
Meridian Diagnostics Meritec-GC (including culture)
New Horizons Gonogen (including culture)
New Horizons Gonogen II (including culture)

*Salmonella*

Bio-Medical ANI *Salmonella* Test (Including Culture)

*Staphylococcus*

Adams Scientific SeroStat II *Staphylococcus* (including culture)
Advanced Medical Technologies Rapi-Staph (including culture)
Baxter MicroScan StaphyLatex (including culture)
Becton Dickinson BBL Staphyloslide (including culture)
Bio-Medical ANI *S. aureus* Test (including culture)
Carr-Scarborough Accu-Staph (including culture)
Difco Bacto Staph Latex Test (including culture)
Immuno-Mycologics LA-Staph (including culture)
Innovative Diagnostic Systems IDS Staphylochrome (inc. culture)
Medical Diagnostics Technologies Staph Latex (including culture)
NCS Staphslide (including culture)
Regional Media Lab Hemastaph (including culture)
Vitek Systems RAPIDEC Staph (including culture)
Wellcome Staphaurex (including culture)

*Streptococcus, Group A*

Abbott TestPack Strep A (including culture)
Adams Scientific SeroStat *Streptococcus* (including culture)
Antibodies Inc. Detect-A-Strep (including culture)
Becton Dickinson BBL Strep Grouping (including culture)
Diagnostic Products PathoDx LA Strep Group (including culture)
Karobio Phadebact *Streptococcus* (including culture)
Kodak SureCell (including culture)
Medical Technology Corp. Optitec Strep A (including culture)
Medix Biotech Sure-Strep A (including culture)
Unipath Oxoid Streptococcal Grouping Kit (including culture)
V-Tech V-Trend Strep A (including culture)
Wellcome Reveal Colour Strep A (from culture)
Wellcome Streptex (including culture)

*Streptococcus, Group B*

Adams Scientific SeroStat *Streptococcus* (including culture)
Becton Dickinson BBL Strep Grouping (including culture)
Diagnostic Products PathoDx LA Strep Group (including culture)
Karobio Phadebact *Streptococcus* (including culture)
Meridian Diagnostics Meritec-Strep (including culture)
Unipath Oxoid Streptococcal Grouping Kit (including culture)
Wellcome Streptex (including culture)

*Streptococcus, Group C*

Adams Scientific SeroStat *Streptococcus* (including culture)
Diagnostic Products PathoDx LA Strep Group (including culture)
Karobio Phadebact *Streptococcus* (including culture)
Meridian Diagnostics Meritec-Strep (including culture)
Unipath Oxoid Streptococcal Grouping Kit (including culture)
Wellcome Streptex (including culture)

*Streptococcus, Group D*

Bio-Medical ANI Strep Test (including culture)
Diagnostic Products Corp. PathoDx Strep D (including culture)
Karobio Phadebact *Streptococcus* (including culture)
Unipath Oxoid Streptococcal Grouping Kit (including culture)
Wellcome Streptex (including culture)

*Streptococcus, Group F*

Adams Scientific SeroStat *Streptococcus* (including culture)
Diagnostic Products PathoDx LA Strep Group (including culture)
Karobio Phadebact *Streptococcus* (including culture)
Meridian Diagnostics Meritec-Strep (including culture)
Unipath Oxoid Streptococcal Grouping Kit (including culture)
Wellcome Streptex (including culture)

*Streptococcus, Group G*

Adams Scientific SeroStat *Streptococcus* (including culture)
Diagnostic Products PathoDx LA Strep Group (including culture)
Karobio Phadebact *Streptococcus* (including culture)
Meridian Diagnostics Meritec-Strep (including culture)
Unipath Oxoid Streptococcal Grouping Kit (including culture)
Wellcome Streptex (including culture)

*Yeast, C. Albicans Only*

Analytab API 20C Yeast Identification Kits (including cult.)
Analytab Yeast Ident (including culture)
Carr-Scarborough *C. albicans* Disc Screening Kit (inc. cult.)
Medical Wire Equip. MicroRing YT (including culture)

The following test system entries have been deleted from the moderate complexity test list because these test systems require identification from culture and, as reflected in the compilation included in this Notice, are high complexity regardless of the source:

Analytab API 20 *Streptococcus*
Analytab API Laboratories Rapid E
Analytab API Laboratories Rapid NFT
Analytab API Laboratories Rapid Strep
Analytab API Quad Ferm +
Analytab API Staphase III
Analytab API ZYM Microorganism Differentiation
Baxter *Haemophilus/Neisseria* Identif—Panel
Becton Dickinson Minitek Kits
Innovative Diagnostic Systems IDS Rapid SS/U System
Innovative Diagnostic Systems Modified IDS Rapid NH System
Innovative Diagnostic Systems Rap NF Plus System
Innovative Diagnostic Systems Rapid NF System
Micro Media Systems Bacterial ID Panels/Gram Neg/Gram Pos
Roche Enterotube II

The following test system entries in the area of microbiology as published on February 28, 1992 have been deleted from the list of test systems, assays, and examinations categorized by complexity. These test system entries are not complete test systems and therefore will not be individually graded for complexity. Since all of these entries are used for identification of organisms from culture, they represent components of a total test process that is high complexity:

Adams Scientific B. Cat Confirm
Adams Scientific Identicult—AE
Adams Scientific Identicult—BL

Adams Scientific Mug-Indole Disc
Adams Scientific Rapid-Hippurate
Adams Scientific Stat-Urease
American Biomedical Prod. B. Fragtex
Anaerobe Systems Bile Differential Disk
Anaerobe Systems Colistin 10 mcg. Differential Disk
Anaerobe Systems Kanamycin 1000 mcg Differential Disk
Anaerobe Systems Vancomycin 5 mcg Differential Disk
Analytab API Germ Tube
Analytab API StaphTrac
Baxter Coagulase Plasma
Baxter MicroScan Rapid Yeast Identification Panel
Becton Dickinson Cefinase Discs
Calbiochem Padac Differentiation Discs
Calbiochem-Behring Anti-Dnase B
Carr Microbiologicals Beta Lactamase Reagent Disc
Carr Microbiologicals CSM Chromogenic B-Lactamase Disc
Carr Microbiologicals Hipp Microtube
Carr Microbiologicals Onpx-Indol Microtube
Carr Microbiologicals PYR Broth
Carr Microbiologicals PYR Discs
Carr Microbiologicals Pgua-Indol Microtube
Carr Microbiologicals Phos Microtubes
Carr Microbiologicals Pro Discs
Carr Microbiologicals Pyrr Microtubes
Carr-Scarborough ALN Differentiation Discs
Carr-Scarborough Acridine Orange Stain
Carr-Scarborough Rapid Glutamic Acid Decarboxy Microtube
Diagnostic Products Corp. PathoDx PYR Kit
Difco Differentiation Discs ALA
Difco Differentiation Discs Colistin 10 mcg
Difco Differentiation Discs Erythromycin 60 mcg
Difco Differentiation Discs Hippurate
Difco Differentiation Discs Kanamycin 1000 mcg
Difco Differentiation Discs Nitrate
Difco Differentiation Discs Penicillin G 2 units
Difco Differentiation Discs Rifampin 15 mcg
Difco Differentiation Discs SPS
Difco Differentiation Discs Spectinomycin
Difco Differentiation Discs Vancomycin 5 mcg
Difco DrySlide Beta-Lactamase
Difco DrySlide Oxidase
Difco Spot Test 10% Na Deoxycholate
Difco Spot Test Acridine Orange Stain
E-Y Laboratories Oxidase Swabzyme
E-Y Laboratories Strep-A-Chek PYR
Innovative Diagnostic Systems Beta Discs
Innovative Diagnostic Systems Oxichrome Reagent
Innovative Diagnostic Systems Porphyrin Reagent
Key Connecticut Diagnostics Visi-Strep
Meridian Indol Spot Test Kit
Micro Media Systems M. Cat. Butyrate Disc
Micro-Bio-Logics KWIK–LAC
Micro-Bio-Logics Lyfo-KWIK OMI Kit
Micro-Bio-Logics Neisseria-KWIK Plus
Microbiological Specialties Beta-ase Tubes
Microbiological Specialties Enzyme-ase I Tubes
Microbiological Specialties Galactosid-ase Tubes
Microtech Medical Systems Quadra-titer ID
Pro-Lab Hippurate Test
Pro-Lab Rosco D'Ala Rapid Test
Pro-Lab Rosco Pyrr
Remel ALA Disc
Remel Acridine Orange Stain
Remel Beta Lysin Disc
Remel Beta-Lactam Disc
Remel Bile Disc
Remel CEPH Lactam Disc
Remel Catarrhalis Test Strip
Remel Coagulase Plasma
Remel Colistin Disc
Remel Hemastaph
Remel Kanamycin Disc
Remel *Legionella* ID Disc
Remel Lysostaphin Test Kit
Remel Microdase
Remel Nitrate Swab-Rapid Test
Remel Novobiocin Disc
Remel PYR Disc
Remel PYR/Esculin Disc
Remel Porphyrin (ALA) Disc
Remel Pyridoxal Disc
Remel SPS Disc
Remel Urea-PDA Discs
Unipath Oxoid Bile Esculin Discs
Unipath Oxoid ONPG Discs
Unipath Oxoid Oxidase ID Sticks
Unipath Oxoid SPS Discs
Unipath Oxoid V Factor Discs
Unipath Oxoid X & V Factor Discs
Unipath Oxoid X Factor Discs

The following test system entries have been deleted from the list because they are procedures that are part of an automated system. A complete testing process involving an instrument includes both the automated procedure and individual identification procedures which are taken into account when the instrument is graded for complexity. The following entries, therefore, do not represent complete test systems:

*Aerobic &/or Anaerobic Organisms-unlimited Sources*

Baxter MicroScan Gram Neg Panels
Baxter MicroScan Gram Pos Panels
Vitek Systems VITEK AMS ANA Card
Vitek Systems VITEK Anaerobe ID Card
Vitek Systems VITEK/ANI Anaerobes
Vitek Systems VITEK/*Bacillus* Biochem. Card
Vitek Systems VITEK/EPS Enteric path. Card

The following analyte/test system entries have been removed from the test list for moderate complexity because the test systems do not include a procedure for reporting a positive result without a titer. Therefore, the following test system entries, as published on February 28, 1992, do not describe complete test procedures:

*Yeast, Cryptococcus Only*

Baxter MYCO-Immune Cryptococcal LA (dir Ag) (non-titration)
Meridian Cryptococcal LA System (dir Ag) (non-titration)

While reevaluating the area of microbiology as published on February 28, 1992, and in response to comments received, we determined that the categorization of all gram stains as moderate complexity should be revised and clarified. We determined that a gram stain on a urethral specimen requires less knowledge, training, and interpretation than a gram stain from other sources because the analyst is not required to recognize multiple organisms, there is less background material, and the enumeration of multiple cell types is not usually required. Comments, from local and state health departments and others, on this gram stain recategorization as published on September 2, 1992, strongly suggested that CDC look again at the complexity of gram stains focusing this time on gram stains from cervical smears. Commenters felt that gram stains from cervical smears are similar to gram stains from urethral smears and thus are not as complex as gram stains from other sources. Although we saw a difference in the interpretation and judgment required for the gram stains from these two sources, we concluded that the difference was not sufficient to place the gram stain from cervical smears into high complexity. When this issue was presented to the CLIAC, they agreed with the recategorization of cervical gram stains to moderate complexity. Therefore, gram stains from urethral sources and from endocervical smears have been categorized as moderate complexity while gram stains from all other sources are categorized as high complexity.

In response to comments, we reevaluated approximately 280 antigen detection systems in the area of microbiology and recategorized 16 systems from moderate to high complexity based on the amount of interpretation, judgment, knowledge, and training required for these procedures. Supplemental information on these tests was received from laboratory professionals with experience performing the procedures and was verified through product inserts submitted by manufacturers. Based on this information, the 16 procedures were determined either to be technically complex with multiple steps that included extensive sample and reagent preparation, precise temperature control and exact timing requirements, or to require a high level of interpretation and judgment. Additionally, the complexity of the tests required a higher level of training and experience to perform the procedure than was originally indicated. As a result of this reevaluation, the following complex antigen detection systems have been recategorized from moderate to high complexity:

*Adenovirus*

Analytab API Adenovirus Test Kit-EIA (dir Ag/visual)
Analytab API Adenovirus Type 40/41 EIA (dir Ag/visual)
Cambridge Biotech Adenoclone-EIA (direct Ag/visual)
Cambridge Biotech Adenoclone 40/41 (direct Ag/visual)

*Chlamydia*

Analytab API IDEIA (direct antigen/visual)

*Herpes Simplex*

Fairleigh Dickinson ELISA for HSV (dir Ag/visual)

*Intestinal Parasites*

Alexon ProSpecT Giardia Microtiter (dir Ag/visual)

*Respiratory Syncytial Virus*

Sanofi/Kallestad Pathfinder RSV (direct antigen/visual)

*Rotavirus*

Abbott Rotazyme II Diag. Kit (direct Ag/visual)
Analytab API Rotavirus Test Kit (direct Ag/visual)
Cambridge Biotech Rotaclone (direct antigen/visual)
Isolab RotaVirus EIA (direct antigen/visual)
Sanofi/Kallestad Pathfinder Rotavirus (direct Ag/visual)

*Yeast, Cryptococcus Only*

Baxter MYCO-Immune Cryptococcal Ag Latex Agg (dir Ag)
Meridian Cryptococcal Antigen Latex Agg. System (dir Ag)
Meridian Premier Cryptococcal Ag. Test (dir Ag/visual)

The following are other specific comments received on microbiology issues:

*Comment:* Many laboratory professionals recommended that all cultures and/or susceptibility determinations be placed in the high complexity category regardless of the source of the specimen. Many other commenters requested that cultures from specific sources or for specific organisms be placed in moderate complexity. One commenter recommended that moderately complex culture procedures be limited to the isolation and presumptive identification of aerobic organisms.

*Response:* Each test system was individually graded for complexity; categorization of the procedure defined as "culture" was not determined by analyte or specimen source. Some microbiology procedures (e.g., those using selective media) that require minimal technical skill and interpretation were placed in the moderate complexity category. Other culture and sensitivity procedures that require extensive knowledge, training, and interpretation for the selection and performance of the individual test components received scores that placed them in the high complexity category.

*Comment:* Some commenters requested that sensitivity testing be placed in the moderate complexity category because placing it in high complexity will limit its use in a physician's office and interfere with patient treatment and increase costs.

*Response:* All microbiology procedures involving susceptibility testing of organisms have been placed in the high complexity category because sensitivity is only a part of a total process which also involves culture, isolation and identification. These procedures require extensive knowledge, training, experience, and judgment to determine the presence of a pathogen; prepare a standard inoculum of a pure isolate; evaluate susceptibility results for each antibiotic; and solve problems (e.g., errors due to mixed cultures). It should be noted that the fact that a test procedure is categorized as high complexity does not necessarily exclude it from use in a physician's office laboratory. The physician's office laboratory can continue to perform these procedures provided it complies with CLIA regulations for laboratories performing high complexity testing.

*Comment:* Some commenters recommended that urine cultures and colony count kits be kept in the moderate complexity category. The commenters felt that placing urine cultures in high complexity would impede practice in a physician's office. Other commenters felt that all culture identifications should be high complexity. A laboratory professional organization recommended that, in addition to categorizing urine cultures as high, colony counts should also be categorized as high complexity.

*Response:* In general, urine cultures have been categorized as high complexity while urine colony counts have been categorized as moderate complexity. Urine cultures require extensive knowledge, training, and interpretation for the selection and performance of the individual test components which may include staining for microscopic evaluation, subculturing, and conducting the appropriate biochemical analyses. On the other hand, urine colony counts alone, without identification of organisms do not require this level of knowledge, training, or interpretation. Some kits for urine culture and colony counts have been categorized as moderate complexity for colony counts only, while the culture has been categorized as high complexity. It is true that many of these culture kits provide a preliminary identification without the need to transfer organisms. However, these identifications require the interpretation of several differential media to distinguish multiple organisms and therefore require a high level of knowledge, training, and interpretation.

*Comment:* A few commenters recommended that primary culture inoculation be kept in the moderate complexity category with the provision that the cultures be referred to a laboratory certified to perform high complexity testing. One commenter recommended that primary culture inoculation be a waived test while another commenter felt that primary culture inoculation should not be considered a test at all.

*Response:* In reevaluating the Microbiology specialty area it was determined that primary culture inoculation was not a complete test, but part of the test defined as culture. Therefore, it was not graded for complexity nor was it waived. A laboratory can continue to perform primary inoculation without regulatory requirements if the culture is then subsequently read only by a laboratory certified to perform the test defined as culture. It is important to note that if the culture is read even to the point of providing a result of "No growth", it is considered an identification from culture and, therefore, the laboratory must be certified to perform the entire culture procedure.

*Comment:* One commenter recommended that fungal cultures be placed in the waived category because they are simple and easily performed tests which pose no reasonable risk to the patient if performed incorrectly.

*Response:* Cultures are not simple procedures. They require extensive knowledge, training, and interpretation for the selection and performance of the individual test components which may include microscopic evaluation, subculturing, and conducting the appropriate biochemical and/or physiological analyses.

*Comment:* One commenter recommended that the tests for the presence or absence of Dermatophytes be placed in the high complexity category.

*Response:* Each test system was individually graded for complexity. Some methodologies for determining the presence or absence of Dermatophytes utilizing selective media were placed in the moderate complexity category. These systems require significantly less knowledge, training/experience, and interpretation/judgment than routine fungal cultures. They do

not require transfer of organisms (e.g., for isolation); they contain selective media to inhibit other organisms; and the interpretation of test results is based only on discerning a definitive color change.

*Comment:* One organization recommended that the testing systems for the presence or absence of Dermatophytes be recategorized as high complexity tests because this media will support the growth of Biosafety Level 3 pathogens, in particular *Histoplasma capsulatum*, *Blastomyces dermatitidis*, and *Coccidioides immitis*.

*Response:* Utilizing consultants with expertise in the area of mycology, it was determined that the test systems for the presence or absence of Dermatophytes will remain in the moderate complexity category. While it is true that more mycotic infections will be seen with an increasing population of immunocompromised patients, the attending physician, being aware of the patient's clinical picture, is best able to discern the need of screening for dermatophytes versus performing a routine fungal culture. Routine fungal cultures for *Histoplasma capsulatum*, *Blastomyces dermatitidis*, and *Coccidioides immitis* are high complexity tests.

*Comment:* A few commenters recommended that cultures for the presence or absence of *Trichomonas vaginalis* be placed in the high complexity category.

*Response:* Several of these systems were placed in the moderate complexity category because they require no selection of organisms and minimal interpretation of results (e.g., results based on media color changes or turbidity).

*Comment:* A few commenters recommended that culturing for *Neisseria gonorrhoeae* or Group A *Streptococcus* be reclassified from the high to the moderate complexity category.

*Response:* Cultures performed on selective media were reevaluated with the help of professionals with expertise in this area. As a result, some systems for the isolation and preliminary identification of *Neisseria gonorrhoeae* and Group A *Streptococcus* from specific body sites have been placed in the moderate complexity category. The knowledge, training, interpretation, and judgment required for recovery of an organism from a culture performed on selective media is significantly less than from a culture that may require the analyst to distinguish multiple organisms and determine the presence of pathogens, normal flora, and/or contamination.

*Comment:* One commenter stated that grading some bacterial direct antigen tests that required transfer to broth as moderate complexity tests was inconsistent with the statement that cultures are high complexity tests.

*Response:* Each individual test was scored for complexity and some tests requiring transfer to broth were categorized as moderate complexity. These tests were usually kits that required that the sample swab be placed directly into broth and incubated; the antigen test was then performed directly from the broth. The procedure is not the same as a routine culture which may include the interpretation and selection of colonies before subculturing or conducting the appropriate biochemical analyses.

*Comment:* Some commenters requested that gram stains from culture be placed in the moderate complexity category.

*Response:* Gram stains from culture are not individually graded tests but are part of the test defined as culture. The only gram stains that have been categorized as "stand alone" procedures are those performed on direct specimens.

*Comment:* A few commenters recommended that the direct acid-fast smear be categorized as a high complexity test.

*Response:* The acid-fast smear from a concentrated specimen was graded as a high complexity test. However, the *direct* acid-fast smear was graded as a moderate complexity test. The training required to place the specimen on a slide, stain the slide, and recognize the organism is not as extensive as the procedure that requires concentration of the specimen prior to testing.

*Comment:* A number of commenters recommended that the darkfield examination for *Treponema pallidum* be placed in the high complexity category.

*Response:* The darkfield examination for *Treponema pallidum* was scored as a moderate complexity test. Although the darkfield microscope requires somewhat more manipulation than the brightfield-light microscope, the analyst could be taught to operate the darkfield microscope without extensive training. Additionally, the identification of a single organism, *Treponema pallidum*, does not require the extensive training, interpretation, and judgment needed to distinguish multiple organisms.

*Comment:* Some commenters requested that microscopic examinations such as the gram stain, darkfield examination, pinworm preparations, potassium hydroxide preparation (KOH), Tzanck smear, and the wet preparations for bacteria, parasites, or fungi be placed in the waived category because they employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible or pose no reasonable risk of harm to the patient if the test is performed incorrectly. A few commenters recommended that any microscopic examinations performed in a physician's office should be placed in the waived category so as not to impede the practice of medicine in a physician's office. One commenter requested that some microscopic examinations be placed in the waived category because of the limited quality control or proficiency testing materials available. A number of other commenters recommended that all microscopic examinations including, but not limited to, the KOH preparation, pinworm preparation, and wet preparations be placed in the high complexity category due to the level of training required of the analyst.

*Response:* The test categorization process placed most of these procedures in the moderate complexity category. The microscopic evaluations of KOH preparations, pinworm preparations and wet mounts do require a moderate degree of interpretation and judgment and some basic knowledge to recognize specific organisms, parasites, fungi, or cellular elements. Darkfield examinations require experience and training in the use of a specific type of microscope and the ability to distinguish specific patterns of motility specific for the organisms under investigation. The Tzanck smear and the gram stain require the use of stains to classify the morphological characteristics of organisms or cellular elements, and a commensurate level of knowledge and training is required to recognize these stained characteristics and to properly identify the organism or distinguish and enumerate the cell types present. Although it was concluded that these tests did not meet the criteria for waiver, it was recognized that some of these procedures are uniquely different from other types of laboratory testing. For that reason, and in response to comments, a new subcategory of testing called "Physician-Performed Microscopy" that is not subject to routine, biennial inspections has been established. This new subcategory is described in HSQ–202–FC which was published in the **Federal Register** on January 19, 1993 (58 FR 5215). The following six procedures are included in this new category: (1) Wet mounts including preparations of vaginal, cervical or skin specimens; (2) all potassium hydroxide (KOH)

preparations; (3) pinworm examinations; (4) fern test; (5) post-coital direct qualitative examinations of vaginal or cervical mucous; (6) urine sediment examinations.

*Comment:* A few manufacturers requested that their instruments or panels used in identification and susceptibility testing be placed in the moderate complexity category. One manufacturer stated that its system obviates the need to do any microscopic analysis or subculturing since all biochemical analyses for identification and susceptibility are done by the instrument.

*Response:* These instruments and panels are considered to be part of the entire test defined as culture. Although the system itself may perform all the biochemical analyses for identification and susceptibility testing, the analyst must possess extensive knowledge, training/experience, and interpretation/judgment to determine the presence of a pathogen for testing; ensure that a pure isolate is obtained; perform microscopic examinations to determine the appropriate panel/card to be used for identification and/or susceptibility testing; and troubleshoot problems (e.g., errors due to mixed cultures).

*Comment:* One organization recommended that all procedures involving the identification of intestinal parasites be graded as high complexity tests.

*Response:* While most procedures for the identification of intestinal parasites were graded as high complexity, some procedures (e.g., some visual direct antigens and examination of a wet mount for the presence or absence of a parasite) were graded as moderate complexity tests. Those visual direct antigen tests categorized as moderate complexity tests require significantly less knowledge, training/experience, and interpretation/judgment than those categorized as high complexity tests. The examination of wet mount preparations for only the presence or absence of parasites requires less interpretation and judgment than that which is needed to detect and identify the various stages of blood, tissue, and intestinal parasites.

*Comment:* One laboratory professional organization recommended that all direct antigen testing performed in the area of Microbiology be placed in the high complexity category.

*Response:* When evaluated using the seven criteria for complexity, some of the direct antigen tests, particularly those performed on direct specimens, scored as moderate complexity. These procedures contain a few easily performed steps and require less knowledge, training/experience, and interpretation/judgment than those procedures that scored as high complexity.

*Comment:* One manufacturer stated that a microbiology test kit that was categorized as moderate complexity for direct antigen detection from a direct specimen should also be moderate complexity when performed from culture.

*Response:* Many test systems scored as moderate complexity tests when performed from a direct specimen and as high complexity tests when performed from culture. Performing a culture increases the complexity of the procedure and requires extensive knowledge, training/experience, and interpretation/judgment. When a culture is necessary for the appropriate execution of a procedure, then the culture becomes a part of the total testing process for that test system, assay, or examination and, therefore, that procedure scored as a high complexity test.

*Comment:* A manufacturer requested that the CLOtest for *Helicobacter pylori* be placed in the waived category.

*Response:* The CLOtest does not meet the criteria established for a waived procedure. Because this test requires the analyst to obtain a tissue sample, incubate the tissue in an agar gel, examine the gel at timed intervals, and discern the degree of color change in the gel in comparison to positive reactions caused by other bacterial organisms, the CLOtest scored as a moderate complexity test.

### Comments on Immunology Tests

*Comment:* A commenter requested that automated nephelometric analyzers performing immunoglobulins be categorized as high complexity because of the prozone effect.

*Response:* The possibility of prozone effect, common on earlier automated nephelometers, was considered when grading automated nephelometric test systems. While some instruments do require direct intervention by the analyst to resolve problems created by the prozone effect and were, therefore, categorized as high complexity, most test systems were categorized as moderate complexity because they are completely automated and require no operator intervention.

*Comment:* A few manufacturers of semi-automated immunoassay instruments that were categorized as high complexity requested that these instruments be recategorized as moderate complexity and placed in the "manual or semi-automated procedures with limited steps and limited sample or reagent preparation" category.

*Response:* Many of the semi-automated immunoassay instruments consist of three main components which operate independently of each other. The three components are a sample preparation module, which usually includes an automated pipetting mechanism; a sample processing module that might include automated addition of reagents and some automation of washing steps; and a result processing module that usually reads and calculates the results. The analyst is often required to physically transfer sample trays from the sample preparation module to a sample processor and then onto other test processing modules. The analyst is also often required to set incubation temperatures or adhere to strict timing requirements for semi-automated steps. In summary, it was concluded that a significant amount of operator intervention is necessary to complete the entire testing process for these systems; therefore, most received total scores that placed them into the high complexity category.

*Comment:* A few commenters requested the analyte "febrile agglutinins" be listed by defining each agglutinin as an individual analyte.

*Response:* While the analyte "febrile agglutinins" consists of several different agglutinin tests, all procedures are identical and the phrase "febrile agglutinins" can be considered to encompass all or any one of the agglutinins. Additionally, "febrile agglutinins" is a recognized laboratory term defining a battery or profile of several different tests.

*Comments:* Several commenters requested that the IgE and Allergen-Specific IgE procedures that were categorized as high complexity be categorized as moderate complexity.

*Response:* The total and allergen specific IgE procedures are immunoassays that utilize various methodologies such as fluorescence, spectrophotometry, chemiluminescence, and radioimmunoassay. Many of these procedures are difficult to perform and not easily controlled. Some of the procedures produce results that are difficult to reproduce and are thus prone to error. Many procedures contain reagents that require special handling, such as radioisotopes, or utilize reagents that are light sensitive or labile and have to be used within a very limited amount of time. Many of the procedures include critical washing steps, and often require the construction of a standard curve. When each IgE test system, assay, and examination was evaluated, the systems

categorized as high complexity generally were those that contain more manual steps, require more knowledge and training, and have more reagent preparation and handling requirements. Those categorized as moderate complexity generally were simple kit procedures requiring limited analytical skills.

Comments on Immunohematology Tests

*Comment:* A commenter requested that the direct Coombs test be recategorized from moderate to high complexity.

*Response:* The direct antiglobulin test (direct Coombs test) is categorized as moderate complexity because the test requires only limited specific knowledge and training. The procedural steps are easily performed, and the reagents are stable and ready to use. Some, but not extensive, judgment and interpretation are required to arrive at a final result.

*Comment:* Several commenters requested that ABO Group and ABO Group confirmation tests be categorized as high complexity.

*Response:* Like the direct Coombs test, the ABO Group and ABO Group Confirmation tests require specific, but limited, knowledge and training. The few procedural steps are easily performed, and the reagents are stable and require no preparation. The judgment and decision making skills required to interpret the results are not extensive. Since test categorization was based on the complexity of the procedure, these tests scored as moderate complexity.

*Comment:* A commenter requested that the analyte, "unexpected antibody identification," be recategorized from high complexity to moderate complexity.

*Response:* Unexpected red blood cell antibody identification was categorized as high complexity because the procedure requires substantial knowledge of antigen-antibody reactions, blood group antigens, the causes and serological reactivity of blood group alloantibodies and autoantibodies, and a general knowledge of statistical probability values. This knowledge is required to select appropriate reagents, test cells, and test procedures; perform the test procedure(s); and interpret results. Operational steps are subject to variations based on the type of RBC antibody to be identified (i.e. alloantibody, autoantibody), the temperatures and test phases at which antibody activity occurs, and/or the presence of multiple antibodies. Test procedures include, at a minimum, testing the serum sample with one or more RBC antibody identification panels and RBC antigen typing. A high level of interpretive skill and judgment is required to evaluate test results and determine the antibody(ies) present in the sample.

Comments on Hematology Tests

*Comment:* Many commenters felt that any manual white blood cell differential should be in high complexity.

*Response:* Manual white blood cell differentials were categorized according to the complexity of identifying the cellular elements present. Performing a manual differential of moderate complexity requires that the analyst have a general knowledge of cellular elements in normal peripheral blood. It also requires the analyst to identify common atypical or immature blood cells such as atypical lymphs, bands, and polychromatophilic erythrocytes and to evaluate common red blood cell morphology that can be correlated specifically with the RBC indices. A differential of moderate complexity further requires the analyst to recognize the presence of uncommon atypical or immature cells (e.g., precursor cells such as myelocytes, large or abnormal platelets or extensive abnormal RBC morphology) and to refer them to someone qualified to make the final interpretation and identification. The analyst performing the differential has a general responsibility to follow good and accepted practice to ensure quality in laboratory testing by inspecting red blood cell morphology, performing platelet and white blood cell estimates, and correlating these with the parameters of the complete blood count. Performing a high complexity differential requires a comprehensive knowledge of normal and abnormal/immature production in all cell lines. The analyst performing a high complexity differential is expected to possess extensive knowledge and experience and use a high level of judgment and interpretive skills to identify all distinctive morphological characteristics, both abnormal and immature, in all cell lines. Some examples of these uncommon atypical or immature cells are the blast cells, prolymphocytes, plasma cells, red blood cells with Howell-Jolly bodies, or other distinguishable inclusion bodies.

*Comment:* One laboratory professional organization stated that prothrombin time, activated partial thromboplastin time, and thrombin time should be high complexity tests, regardless of the methodology employed, because of the risk to the patient caused by an incorrect result.

*Response:* Performing a manual prothrombin time, activated partial thromboplastin time, or thrombin time are high complexity tests because these procedures contain multiple steps that include precise pipetting and timing. Additionally, the visual recognition of the end point or formation of a thrombin clot requires a high level of judgment and interpretation. The automation or semi-automation of these processes have, in general, been categorized as moderate complexity. These automated procedures do require some training and experience but it is not extensive. Since the operational steps are automated, they are not as complex as performing the tests manually. Some interpretation and judgment are required to determine the final result but this skill is not highly specialized and, for the most part, can be obtained through training.

*Comment:* Two commenters requested that the activated clotting time be waived at least for monitoring anticoagulant therapy in chronic renal dialysis facilities.

*Response:* An Activated Clotting Time (ACT) can be performed by many different methods. The complexity of the ACT tests was determined by applying the seven criteria to each test system, assay or examination. To perform most Activated Clotting Time (ACT) procedures, the analyst must be trained in sample preparation as well as in specific timing and temperature requirements. The analyst must also have knowledge of the role of heparin in relationship to hemostasis. Judgment is required to recognize the endpoint if the ACT is performed manually; or to recognize and resolve technical problems if the ACT is automated or semi-automated. In general, the automated procedures for ACT scored as moderate complexity tests while the manual tilt-tube ACT procedures scored as high complexity. Consideration of the testing site and/or the specific use of the test are different concepts than those utilized in the scoring process for test categorization by complexity.

*Comment:* One laboratory professional organization stated that the bleeding time test should be reclassified as high complexity due to the knowledge required prior to testing and the training and experience required for proper test performance. The commenter also stated that clinicians often use the bleeding time beyond its intended use and an incorrect result, along with inappropriate usage of the result, could result in grave clinical misinterpretation.

*Response:* We do agree that the bleeding time test is technique-dependent but we feel that the

performance of the test, although it requires thorough training, does not require extensive training. In addition, the analyst is not expected to possess a high level of experience or knowledge prior to performing the test. It is true that timing for the test must be exact, but operational steps are few. The analyst must use a moderate level of judgment to recognize the test endpoint or technical problems that may have occurred, and, as applicable, be able to correlate results with information on the patient's condition and/or medication. However, the judgment required is not extensive or specialized. Attempting to advise physicians in the correct use of the bleeding time test is beyond the scope of the test categorization process and the overall CLIA '88 regulation.

*Comment:* One laboratory professional organization stated that none of the rapid solubility tests should be considered as "stand-alone" tests for the presence of sickle hemoglobin since all of these tests must be followed by confirmatory tests to diagnose sickle cell disease. For this reason, the commenter felt that sickle cell screens were not complete test systems and should be removed from the list. The commenter suggested that the logic for this change is similar to that used in reevaluating the area of microbiology.

*Response:* The rapid solubility tests for Hemoglobin S are FDA approved and commercially available as screening tests for Hemoglobin S. These test systems, assays, and examinations cannot be compared to those procedures in microbiology which require multiple tests to generate a single reportable result (e.g., the biochemical testing results used in bacterial identification). The individual microbiology tests are not "stand alone" procedures but, in fact, require a combination of multiple tests to produce a final reportable result. This process is quite different from using the Hemoglobin S kits which, although considered screening kits, do not require additional tests to produce a reportable result. The distinction between screening and confirmatory tests and the appropriate use of tests is beyond the scope of test categorization.

*Comment:* One commenter also felt the categorization process was internally inconsistent since it categorized some procedures for Hemoglobin A2 as moderate complexity and other procedures as high complexity.

*Response:* Hemoglobin A2, as is the case with all analytes, was not graded for complexity by analyte but rather by the complexity of the test system, assay, or examination used to measure Hemoglobin A2. The possibility existed, and indeed occurred frequently, that one test system used to measure an analyte was classified as moderate complexity, and another completely separate test system used to measure the same analyte (in the example stated: Hemoglobin A2) was classified as high complexity. This variation in the classification of tests by complexity level is the natural result of evaluating each test system, assay, or examination individually by correctly applying the seven grading criteria to determine its complexity. The approach is not internally inconsistent.

*Comments:* A number of commenters stated that large hematology analyzers that perform complete blood counts, with or without differentials, should be high complexity. They felt that any analyzer that employs multiple principles or measures multiple analytes should be high complexity. They stated, in particular, that any automated system with a differential should be high complexity because the analyst must be able to interpret possible abnormalities. They also felt that any instrument that presents the analyst with a scattergram should be high complexity.

*Response:* Using the seven criteria established for categorization, automated hematology analyzers with or without differentials, in general, scored as moderate complexity. Although the large automated instruments used in hematology apply multiple principles in their operation, the instruments do not require extensive analyst intervention or highly specialized knowledge for operation. We do agree that some judgment is required to correlate results with other parameters and to recognize and resolve technical problems, but the level of skill required for this correlation is not highly specialized. Instruments that present the analyst with histograms or scattergrams are usually supplying additional information, and the interpretation of these histograms is not required to arrive at a final result since the instrument provides a direct readout for all analytes.

*Comment:* One commenter stated that the nasal smear for eosinophils and the fecal smear for leukocytes should be high complexity because performance of the tests requires training in anatomic pathology to recognize tumor cells and evaluate organisms. The commenter also felt that the decisions on the adequacy of the smear were analogous to evaluating a cervicovaginal PAP smear. This commenter also felt that we were inconsistent in scoring because the manual eosinophil count, which he said was virtually the same procedure as the nasal smear for eosinophils, is categorized as high complexity while the nasal smear is moderate complexity.

*Response:* The evaluation of nasal smears for eosinophils and fecal smears for leukocytes have been categorized as moderate complexity. Although the performance of these tests requires some knowledge of the morphology of stained eosinophils or leukocytes, that knowledge is limited and an analyst can be trained to recognize the morphologic characteristics of these cells. Additional training, although not extensive, is required in the use of the microscope and in the staining procedure. The operational steps in the procedures are few and not complex. There is minimal reagent preparation and equipment maintenance. While judgment is required to determine the acceptability of the stained smear, a comparison cannot be made with the evaluation of the cervicovaginal PAP smear. It is agreed that a moderate level of interpretive skill is required to identify the stained eosinophils or leukocytes in the smear and distinguish them from other elements or debris but, again, this is not extensive. Standard laboratory practice dictates that a nasal smear for eosinophils should be evaluated by the analyst for eosinophils *only* and, in general, produces a qualitative or semi-quantitative result. The same principle applies to the fecal smear for leukocytes. Physicians, who are qualified, may evaluate the smear for other purposes but this analysis is beyond the scope of the basic screen for eosinophils or leukocytes in a smear.

An evaluation of a nasal smear for eosinophils is not comparable to the manual eosinophil count. The nasal smear for eosinophils is an evaluation of stained cells and the analyst is expected to produce a limited semi-quantitative result such as the percentage of eosinophils per total white cells. The manual eosinophil count is a quantitative test in which the analyst produces an absolute count of the number of eosinophils per specified quantity of blood. The analyst must manually pipette the blood sample and diluent, load the counting chamber, and count the cells in defined areas of a counting chamber grid. Calculations are usually required to arrive at the final result. Therefore, while the nasal smear for eosinophils scored as a moderate complexity test, the manual eosinophil count scored as a high complexity test.

*Comment:* Some commenters stated that manual cell counts should be moderate, especially white blood cell counts, and expressed concern over the cost of replacing manual cell counts with an instrument.

*Response:* A manual cell count requires knowledge of the microscopic cellular characteristics of the cells being enumerated. The analyst must be trained to use a hemocytometer and light or phase microscope, dilute the specimen with unopettes or Thoma pipettes, recognize a specific cell type microscopically and calculate the quantitative cell count results. Judgment is required to distinguish cells from artifacts, or from other cellular elements. The analyst must recognize and resolve technical problems such as overfilling the chamber or drying of the sample on the hemocytometer. Interpretive skill is required to determine when a special dilution of the specimen is needed and to correlate the results of the count with the number and type of cells on the stained peripheral blood smear. All of these issues, when considered and scored for complexity, resulted in a high complexity categorization for manual cell counts.

*Comment:* Some commenters from laboratory professional organizations felt that all components of a complete blood count should be categorized as high complexity whether performed manually or with automated or semi-automated equipment.

*Response:* The categorization of a group of analytes, such as those included in a complete blood count, as either high or moderate complexity without regard for the methodology or the complexity of the procedure would be inconsistent with categorizing tests by complexity. Every test system, assay, or examination for each analyte was evaluated and scored for complexity. Some methods for performing assays on analytes included in a complete blood count scored as moderate complexity while other methods scored as high complexity.

*Comment:* We received a number of comments related to urine microscopic exams. Some commenters felt that microscopic exams of urine, when performed by a physician in his office, should be waived. Other commenters felt that microscopic analysis of urinary sediment should be high complexity because of the knowledge required to perform the test and the interpretation and judgment required to identify cellular elements.

*Response:* Performing microscopic examination of urinary sediment requires basic knowledge of the formed elements found in urine. The procedure also requires training or experience to prepare specimens, to identify and enumerate particulate elements, and to properly use the microscope. However, the level of knowledge or training and experience required is not highly specialized. The procedure contains limited operational steps; troubleshooting and maintenance are minimal, and reagent/material preparation is minimal. Judgment is required to identify urine elements and correlate the findings with the physical characteristics of the urine and to identify and resolve technical problems; however, this does not require a high level of judgment. For these reasons, the microscopic evaluation of urine sediments was categorized as moderate complexity. With regard to the comments that urine microscopic exams when performed by physicians should be waived, it was concluded that the level of complexity involved in this procedure is beyond that for a waived test. However, it was recognized that tests performed by a physician on his/her own patients immediate to the point of care is a type of laboratory testing that is distinctly different from other types of testing. A separate subcategory of laboratory testing called "Physician-Performed Microscopy" has been established and is described in HSQ–202–FC and published in the Federal Register on January 19, 1993 (58 FR 5215). Urine microscopic examination is included in this subcategory.

*Comment:* One commenter disagreed with the categorization of an automated system for evaluating urinary sediment microscopic elements as moderate complexity. The commenter felt that the addition of an automated instrument to the evaluation of urine sediment should make the procedure high complexity.

*Response:* Although the addition of an instrument to the evaluation of a urine sediment changes the procedure, it would not necessarily place the procedure in the high complexity category. All instruments were evaluated for complexity based on the unique characteristics of their procedural and operational steps. In this instance, it was concluded that the training required to operate the instrument is not extensive and does not require specialized knowledge. Reagent preparation and troubleshooting and maintenance are minimal. A certain level of judgment and interpretive skill is needed to recognize and resolve technical problems and edit the instrument's urine particulate classifications. However, these skills are not highly complex or extensive. When the instrument was scored and all criteria characteristics were considered, including the basic knowledge and judgment required for any urinary sediment evaluation, this automated procedure for the identification of squamous cells, white blood cells, and red blood cells scored as moderate complexity.

*Comment:* A few commenters stated that all semen analyses, including semen analysis for the presence or absence of sperm, should be high complexity. Other commenters stated that qualitative post-coital sperm analyses, including the inspection of cervical mucus, that are performed by a physician in his office should be waived.

*Response:* Semen analyses were categorized according to the complexity of the test systems, assays or examinations being performed. A qualitative semen analysis for the presence or absence of sperm and/or motility requires knowledge of the microscopic characteristics of sperm, judgment to determine specimen acceptability, and interpretive skills to distinguish sperm from debris and to determine the degree of motility. However, the level of knowledge and judgment needed for this qualitative presence or absence determination is not highly specialized. Training is required to use the microscope, but operational steps are few and troubleshooting is minimal. On the other hand, manual quantitative counts and sperm morphology evaluation, together or separately, are highly complex tests. This high complexity semen analysis requires specialized knowledge of the microscopic characteristics of sperm including morphology, maturation, and motility. The procedure requires extensive training and experience and a high level of interpretive skill. Additionally, we have included the moderately complex qualitative post coital direct examination of vaginal or cervical mucus as one of the tests in the newly created subcategory, "Physician-Performed Microscopy," as defined in HSQ–202–FC (58 FR 5215).

Comments on Chemistry Tests

*Comment:* A few commenters requested clarification on which pregnancy test procedures are waived.

*Response:* Only urine pregnancy tests that utilize visual color comparison to determine results are waived tests. All serum and whole blood pregnancy tests, and urine pregnancy tests by methods other than visual color comparison are non-waived procedures.

*Comment:* One commenter stated that there is no scientific reason to differentiate between the non-waived visual HCG procedures and the other visually interpreted qualitative urine HCG procedures.

*Response:* Most of the non-waived qualitative urine pregnancy test

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procedures that determine results by visual comparison (interpretation) are slide card agglutination tests or precipitation tests. These procedures usually require the analyst to observe a slide card or tube for the presence or absence of agglutination. The ability to distinguish a weak pattern of agglutination from the absence of agglutination is essential for reliable test results and it was concluded that some training and interpretation or judgment are required for the analyst to properly perform these tests.

*Comment:* A commenter felt that the color comparison serum pregnancy test should be reclassified from moderate complexity to waived because it is an extension of a physical examination as performed by a physician.

*Response:* Serum color comparison pregnancy tests have been classified, in general, as moderate complexity tests. Where and by whom a test is performed does not impact on the complexity of the procedure.

*Comment:* A number of commenters objected to specific HDL procedures being classified as high complexity. The commenters felt that these procedures should be reclassified to moderate complexity because they are part of a lipid panel and that HDL should be the same complexity as the other components of the lipid panel. Some commenters objected to the placement of a few HDL procedures, that did not include the phase for precipitation of VLDL and LDL, in the moderate complexity category while other procedures that did include this pretreatment phase were placed in the high complexity category. Commenters felt that this pretreatment phase was not sufficiently complicated to warrant placing the procedure in high complexity. On the other hand, a combined comment from a few laboratory professional organizations stated that the HDL procedure had been correctly placed in high complexity based on the sample pretreatment procedure.

*Response:* During the categorization process, CDC scored most HDL procedures as high complexity. CDC felt that the HDL sample pretreatment phase, performed to remove VLDL and LDL prior to analysis, did make the analytic procedure for this analyte different than the analytic procedure for other analytes. The removal of VLDL and LDL from the sample is a critical phase in the procedure and involves additional steps that require proper training, experience, and judgment to distinguish a supernatant that is acceptable for testing. The accuracy of the test result depends primarily on the complete removal of VLDL and LDL from the sample. A cloudy supernatant, indicating incomplete removal of VLDL and LDL, frequently occurs and the first decision an analyst might make, and the one often recommended by a manufacturer, is to simply repeat the precipitation procedure. Quite often, however, the decision-making process must continue beyond this first phase. If a cloudy precipitant remains after repeating the sample preparation phase, the analyst may be required to double the amount of precipitating reagent added to the original sample or to use ultracentrifugation techniques to arrive at an acceptable supernatant. The "bottom line" decision that must be made by the analyst is not to continue the assay on a cloudy precipitant. When the complexity of this pretreatment phase was added to the complexity of the underlying procedure for the instrument, the total score usually placed the procedure in the high complexity category. Because the sample pretreatment step is so crucial to the HDL procedure, higher scores seemed appropriate for the criterions "Training and Experience", "Characteristics of Operational Steps", and "Interpretation and Judgment".

Due to the substantive comments received from the public, regarding HDL complexity categorization, this issue was presented to the Clinical Laboratory Improvement Advisory Committee (CLIAC), for advice and recommendation. CLIAC did not have a consensus opinion on the correct categorization for these tests, therefore, this issue was reviewed by the CLIAC subcommittee on test categorization. Upon review, the subcommittee felt that the scores for two criteria, "Training and Experience" and "Interpretation and Judgment", were too high for some of the automated HDL procedures. Therefore, it was recommended by the subcommittee, and accepted by the full CLIAC, that CDC reevaluate automated HDL procedures and adjust the assigned score in those criteria from "3" to "2" for certain HDL procedures. As a result of these score adjustments, the following procedures have been recategorized from high complexity to moderate complexity: Ames Seralyzer III, Bio-Chem Laboratory Systems ATAC 6000, Du Pont Analyst, EM Diagnostic Systems Easy Plus (automated sample pretreatment), EM Diagnostic System Easy ST (automated sample pretreatment), Electronucleonics Gem-Profiler, Electronucleonics Gemini, Electronucleonics Gemstar, Electronucleonics Gemstar II, Kodak Ektachem 250, Kodak Ektachem 400, Kodak Ektachem 500, Kodak Ektachem 700, Kodak Ektachem 700 P, Kodak Ektachem 700 XR, and the Kodak Ektachem DT 60.

*Comment:* A few commenters objected to specific Iron Binding Capacity (IBC) procedures being classified as high complexity. The commenters felt that these procedures should be reclassified to moderate complexity.

*Response:* The IBC procedure that is categorized as high includes a sample preparation process in which all iron binding sites on transferrin in the sample are saturated with iron. This process is followed by the removal of excess iron by adsorption. The supernatant, left behind after the adsorption of excess iron, is then assayed for iron and is termed the iron binding capacity. This sample pretreatment increases the complexity of the procedural steps and requires training and judgment to determine the requirements for complete saturation, and to correctly interpret the results of the IBC in relation to previous iron results. This sample pretreatment step must be performed manually by the analyst and is a critical part of the IBC procedure. When all of these issue were considered in the scoring process, most IBC procedures scored as high complexity.

*Comment:* Many commenters felt that multi-channel chemistry analyzers should be reclassified from moderate to high complexity.

*Response:* In general, the analytic processes of most multi-channel and multi-analyte chemistry analyzers are fully automated and require no operator intervention. The extent of pre-analytic and post-analytic intervention is usually restricted to limited reagent preparation, interaction with computerized components to initiate the analytic process, and limited interpretation of results. Troubleshooting and maintenance generally require a moderate level of technical skill and decision-making as the analyst often follows the manufacturer's flow charts and procedures. The level of complexity for all seven criteria was thoroughly evaluated for every instrument, and many fully automated chemistry analyzers, whether multi-channel or multi-analyte, were graded as moderate complexity.

*Comment:* A laboratory professional organization questioned why RIA procedures are high complexity while EIA procedures are moderate complexity. They felt both procedures require the same amount of analytical skill and judgment.

*Response:* Since each test system, assay, or examination was evaluated independently for its complexity, some EIA procedures were graded as moderate complexity while others were graded as high complexity. For example, a solid phase EIA agglutination procedure does not require the same level of training or interpretation as an EIA procedure by microwell chamber method. All RIA test systems, assays, or examinations were also individually evaluated for complexity, but they did not have as much variety in procedures as did the EIA test systems, assays, and examinations. Also, the proper handling and disposal of the radioactive materials that are part of the RIA procedures require additional training and adds to the complexity of the procedure.

*Comment:* A physician, who is currently using a manual EIA procedure for Prostatic Specific Antigen (PSA), felt that manual EIA procedures for PSA should be reclassified from high to moderate complexity. He stated that his staff was able to perform these procedures without problems and a high complexity categorization would limit his practice.

*Response:* The manual EIA tests for PSA are complex manual procedures with multiple steps in the analytic process. The procedures require extensive analyst training for proper performance and coordination of these steps, which include exact pipetting, timed incubation and efficient bead washing. Extensive judgment and interpretive skill are required to evaluate results, resolve technical problems and determine the need for repeat testing.

Laboratories in physician's offices can continue to perform these procedures provided they comply with CLIA regulations for laboratories performing high complexity tests.

**Corrections to Previous Publications of Test Categorizations**

The following corrections to the list of test systems, assays and examinations published in the **Federal Register** on February 28, July 8, August 28, and September 2, 1992 were made based on supplemental information provided by the commenters during the comment period, new information submitted by manufacturers or as a result of correction of data entry errors.

*Recategorizations*

Technicon H1 and H6000

The Technicon H1 and H6000 for hemoglobin, hematocrit, white blood cell count, red blood cell count, platelet count and white blood cell differential was recategorized from high to moderate complexity. This change in complexity is a result of information supplied by the manufacturer of the Technicon H1 and H6000 indicating that, for normal operation, the analyst is not required to interpret a histogram to arrive at a final test result. The instruments have a direct read-out systems for all analytes.

Direct Antiglobulin Tube Tests

Direct Antiglobulin tube tests in immunohematology were recategorized from high to moderate complexity. This recategorization was due to the correction of a data entry error and not due to a decision to recategorize based on supplemental information.

Wampole Streptonase B and Immuno-Mycologics YA-Crypto

Wampole Streptonase B and Immuno-Mycologics YA-Crypto have been recategorized from high to moderate complexity. After reevaluation, it was determined that while some training and experience are required in pipetting a small volume to accurately perform these test procedures, the procedural steps are not complicated, and the judgment and interpretation required to determine the results and resolve technical problems is not extensive. Therefore, these test systems were rescored and, as a result, were recategorized as moderate complexity tests.

All Manual Isohemagglutinin Titrations, Untreated Serum and Dade Lectin-H - RBC, Qualitative

All Manual Isohemagglutinin Titrations, untreated serum and Dade Lectin-H - RBC, qualitative have been recategorized from high to moderate complexity. After consultation with laboratory professionals and reevaluation of the test procedures, it was determined that the level of skill required to perform these procedures is not as specialized or technically complex as was originally determined. After rescoring, these procedures were recategorized as moderate complexity tests.

Diagnostica Stago ST4 for Fibrinogen

Diagnostica Stago ST4 for fibrinogen has been recategorized from high to moderate complexity. This change in complexity is due to the correction of a data entry error. It is not based on a decision to recategorize the test procedure.

All Manual Reticulocyte Count Test Systems and Procedures

All Manual Reticulocyte Count Test Systems and Procedures have been recategorized from high to moderate complexity. While the procedure for the manual reticulocyte count requires microscopic examination to distinguish and enumerate the stained reticulocyte, it was determined upon reevaluation that the level of knowledge, judgement, and interpretation is no more extensive than that needed to perform a "normal" differential. Therefore, for consistency in the test categorization process, the scores for these criterion were adjusted, which resulted in an overall lowering of the total score and subsequent recategorization from high to moderate complexity.

Seradyn Glycotrak for Glycosylated Hemoglobin

Seradyn Glycotrak for Glycosylated Hemoglobin has been recategorized from high to moderate complexity. This test system was originally graded as a high complexity procedure because it was perceived as requiring extensive knowledge, training and experience to perform a series of complex steps. However, after the review of new information submitted to the CDC by Seradyn, and reevaluation of the procedure by laboratory professionals, it was determined that while knowledge, training, and experience are required, they are not as extensive as first considered, and that the steps and complexity of the procedure itself are limited in scope. After rescoring, this test system was recategorized as moderate complexity.

Ciba Corning 170 and the Ciba Corning 178 Analyzers

The Ciba Corning 170 and the Ciba Corning 178 analyzers for blood gas with pH have been recategorized from high to moderate complexity. This change in complexity is the result of information supplied by the manufacturer of the Ciba Corning analyzers indicating that, when using these models, the analyst is not required to manually flush lines, calibrate parameters or introduce the sample in a manner that is any more complex than routine sample introduction into any blood gas instrument.

Sysmex R–1000

The Sysmex R–1000, an automated instrument for reticulocyte counts has been recategorized from high to moderate complexity. Information supplied by the manufacturer indicated that, for normal operation, the analyst is not required to interpret a histogram to arrive at a final result. The instrument has a direct read-out for total reticulocyte count.

Becton Dickinson BBL-Tube Test, the Difco Bacto-Tube Test and the Gamma Biologicals Tube Test for febrile agglutinins:

The Becton Dickinson BBL-Tube Test, the Difco Bacto-Tube Test and the Gamma Biologicals Tube Test for febrile agglutinins have all been recategorized from high to moderate complexity. After consultation with laboratory professionals and reevaluation of information from manufacturers, it was determined that the level of skill required to perform these procedures was not as specialized nor were the procedures as complex as originally determined.

The Gen-Probe Pace2 test System for *Neisseria Gonorrhoeae*

The Gen-Probe Pace2 test system for *Neisseria gonorrhoeae* in bacteriology has been recategorized from moderate to high complexity. Supplemental information on this test system was received from laboratory professionals with experience performing the procedure and was verified through product inserts submitted by the manufacturer. Based on this information, the procedure was determined to be technically complex with multiple steps that include extensive sample and reagent preparation, precise temperature control and exact timing requirements. Additionally, the complexity of the test requires a higher level of training and experience to perform the procedure than was originally indicated.

The Vitek Systems Vides for Respiratory Syncytial Virus and Chlamydia

The Vitek Systems Vidas for respiratory syncytial virus and Chlamydia has been recategorized from moderate to high complexity. Supplemental information on this test system was received from laboratory professionals with experience performing the procedure and was verified through product inserts submitted by the manufacturer. Based on this information, the procedure for preparation of the sample before placing on the Vidas instrument was determined to be technically complex with multiple steps that included volumetric addition of reagents, precise temperature control, exact timing requirements and mechanical vortexing. The complexity of the procedure for sample preparation also requires a higher level of training and experience than was originally indicated.

Deletions

Based on supplemental information supplied by manufacturers, the following test system/analyte entries have been deleted from the list. The original entries were in error as the analytes listed below are not available on the test systems indicated:

*Test System:* Du Pont ACA
*Analyte:* Cyclosporin
*Test System:* Du Pont ACA IV
*Analyte:* Cyclosporin, Sodium, Potassium
*Test System:* Du Pont ACA V
*Analyte:* Cyclosporin
*Test System:* Bio-Chem Laboratory Systems ATAC 6000
*Analyte:* Fructosamine, Lactate Dehydrogenase Heart Fraction (LDH–1), Phenobarbital, Salicylate
*Test System:* Mallinckrodt Gem 6 Plus
*Analyte:* Sodium
*Test System:* Abbott IMX
*Analyte:* Testosterone
*Test System:* Beckman Synchron CX 3
*Analyte:* Bilirubin, Direct, Bilirubin, Total, Creatine Kinase, Protein, Total
*Test System:* Becton Dickinson QBC II
*Analyte:* Hemoglobin
*Test System:* Abbott TDX Flx
*Analyte:* HDL Cholesterol

The following test system/analyte entries have been deleted because they are not FDA approved for the test system indicated or are available for research purposes only:

*Test System:* Labsystems *Bordetella pertussis* IgG EIA Kit
*Analyte: Bordetella pertussis* Antibodies
*Test System:* Labsystems CMV IgG EIA Kit
*Analyte:* Cytomegalovirus Antibodies
*Test System:* Labsystems CMV IgM EIA Kit
*Analyte:* Cytomegalovirus Antibodies
*Test System:* Labsystems Rubella IgM EIA Kit
*Analyte:* Rubella Antibodies
*Test System:* Labsystems Tetanus Toxoid EIA Test Kit
*Analyte:* Tetanus toxoid Antibodies
*Test System:* Labsystems Toxoplasma gondii IgG EIA Kit
*Analyte:* Toxoplasma gondii Antibodies
*Test System:* Kent Radial Immunodiffusion Test
*Analyte:* Complement C2
*Test System:* Sorin Biomedica ETI-HA-IgMK
*Analyte:* Hepatitis A Virus Antibodies
*Test System:* Incstar Fluoro-Kit
*Analyte:* Anti-Brush Border Antibodies, Anti-Canalicular Antibodies, Anti-Reticulin Antibodies, Anti-Ribosomal Antibodies
*Test System:* Sysmex CA–5000
*Analyte:* Prothrombin Time (PT), Activated Partial Thromboplastin Time (APTT)
*Test System:* Abbott IMX
*Analyte:* Folate (Folic Acid), Hepatitis B Surface Antigen (HBsAg), Glycosylated Hemoglobin (Hgb A1C), Hepatitis B Core Antibody
*Test System:* Bio-Chem Laboratory Systems ATAC 6000
*Analyte:* Carcinoembryonic Antigen (CEA), Prostatic Acid Phosphatase (PAP), Prostatic Specific Antigen (PSA)
*Test System:* Diamedix T-Uptake Microassay
*Analyte:* Triiodothyronine Uptake (T3U) (TU)
*Test System:* Diamedix Thyroxine (T4) Microassay
*Analyte:* Thyroxine (T4)
*Test System:* Biolog MicroStation System
*Analyte:* Aerobic & Anaerobic Organism-unlimited sources
*Test System:* Diagnostic Products Corp. PathoDx Strep B
*Analyte:* Streptoccous, group B
*Test System:* Instrumentation Laboratory IL Monarch Plus
*Analyte:* Alpha-1–Antitrypsin

The following test system with its associated analytes has been deleted because it is not FDA approved for market in the United States:

*Test System:* Du Pont ACA SX
*Analyte:* Antithrombin III (ATIII), Fibrin Split Products (Fibrin Degradation), Fibrinogen, Heparin, Plasminogen

The following analyte/test systems have been deleted because the analyte as listed is not reported as a "stand alone" analyte for that system:

*Analyte:* pH
*Test System:* AVL 987–S, Beckman LABLYTE 820, Ciba Corning 634, Coulter FLEXLYTE

Note: On the above systems, the relevant analyte is ionized calcium and the pH is measured for purposes of calculation only.

*Analyte:* Heparin
*Test System:* International Technidyne Factor VI, International Technidyne Hemochron 400, International Technidyne Hemochron 401, International Technidyne Hemochron 600, International Technidyne Hemochron 601

Note: On the above systems, the relevant analytes are heparin dose response (HDR) and heparin/protamine titration (HPT).

The following analyte/test systems have been deleted because these procedures do not meet the applicability provisions of the CLIA law:

*Analyte:* Eye Cornea Integrity
*Test System:* Slit Lamp Biomicroscopy Specular Microscopy

The following test system/analytes were incorrectly listed as moderate complexity. They have been deleted from the test list and placed in the waived category:

*Test System:* Kodak SureCell hCG
*Analyte:* HCG, Urine, Qualitative
*Test System:* NMS Pharmaceuticals COT Ovulation Test
*Analyte:* Luteinizing Hormone (LH)

The following are corrections to manufacturer's names and products:

*From:* Sequoia Turner Clearview HCG
*To:* Wampole Clearview HCG
*From:* LEO Diagnostics Hemocue
*To:* HemoCue Hemoglobin System
*From:* Medical Technology Corp. d-Chem
*To:* Photest Diagnostics d-Chem (and) Access Medical Systems d-Chem

*From:* Ciba Corning Flame Photometer
*To:* Ciba Corning 480 (and) Ciba Corning 654
*From:* Advanced Instruments Osmometer
*To:* Advanced Instruments Wide Range Osmometer 3W2
*From:* Wescor Vapor Pressure Osmometer
*To:* Wescor 5500 Vapor Pressure Osmometer (and) Wescor 5500XR Vapor Pressure Osmometer
*From:* 3M * * *
*To:* BioWhittaker 3M * * *
*From:* Whittaker Bioproducts * * *
*To:* BioWhittaker * * *
*From:* Virotech ELISA Antibody Test
*To:* Bio-Medical Virotech ELISA Antibody Test
*From:* Diamedix Microassay Test Set
*To:* Diamedix * * * (specific kit name)
*From:* Dupont * * *
*To:* Du Pont * * *
*From:* General Biometrics ImmunoDot Preconception Screening Panel
*To:* General Biometrics ImmunoDot TORCH Test
*From:* Incstar Clin-ELISA Test System
*To:* Incstar Clin-ELISA * * * (specific kit name)
*From:* Medix Biotech EIA Test Kit
*To:* Medix Biotech Visual hCG-M Pregnancy Test
*From:* Olympus PK1700 Automated Pretransfusion Blood Test System
*To:* Olympus PK7100 Automated Pretransfusion Blood Test System
*From:* Ramco EIA Test Kit
*To:* Ramco Spectro Ferritin
*From:* Sanofi/Kallestad QH 300
*To:* Sanofi/Kallestad QM 300
*From:* Seradyn Manual Urea (BUN) Procedure (and) Seradyn Manual Glucose Procedure (and) Seradyn Manual Uric Acid Procedure
*To:* Seradyn Manual (spectrophoto/colorimetric) Determination
*From:* Sigma EIA Test Kit
*To:* Sigma SIA * * * (specific kit name)
*From:* Syva Emit Qst Acetaminophen Assay
*To:* Syva Qstat/Qst System

For the purpose of clarification, the qualifiers attached to the following test systems have been changed:

*From:* Haemoscope Thromboelastograph (qualitative procedure)
*To:* Haemoscope Thromboelastograph (visual result)
*From:* Haemoscope Thromboelastograph (quantitative procedure)
*To:* Haemoscope Thromboelastograph (calculated result)
*From:* Logos elvi 816 BI Clot (qualitative procedure)
*To:* Logos elvi 816 BI Clot (visual result)
*From:* Logos elvi 816 BI Clot (quantitative procedure)
*To:* Logos elvi 816 BI Clot (calculated result)
*From:* Sienco SONOCLOT Coagulation Analyzer (qualitative procedure)
*To:* Sienco SONOCLOT Coagulation Analyzer (visual result)
*From:* Sienco SONOCLOT Coagulation Analyzer (quantitative procedure)
*To:* Sienco SONOCLOT Coagulation Analyzer (calculated result)
*From:* Sienco SONOCLOT II Surgical Analyzer (qualitative procedure)
*To:* Sienco SONOCLOT II Surgical Analyzer (visual result)
*From:* Sienco SONOCLOT II Surgical Analyzer (quantitative procedure)
*To:* Sienco SONOCLOT II Surgical Analyzer (calculated result)

Additional minor editorial and spelling corrections have been made to the compiled test list included with this Notice.

Dated: July 15, 1993.

**Philip R. Lee,**

*Assistant Secretary for Health.*

## List of Test Systems, Assays and Examinations Categorized by Complexity

The test categorization scoring scheme was based on an assessment of the complexity of the operation of the test procedure and not on an evaluation of data documenting the procedure's performance over time. Therefore, the categorization of a test system, assay or examination as moderate or high complexity should not be interpreted as an indication of the acceptability or unacceptability of the accuracy, precision or overall performance of the procedure.

## List of Previously Unpublished Categorizations

This list of previously unpublished categorizations is subject to a 30 day comment period. These test systems, assays and examinations are also included in the compiled list at the end of this Notice.

Complexity: Moderate

Speciality/Subspeciality: Bacteriology

**Analyte: Aerobic Organisms From Urine Specimens Only**

*Test System, Assay, Examination*

Solar Biologicals SOLAR-CULT (colony count only)
Troy Biologicals Bacti-Bio General Plate (colony count only)

**Analyte: Aerobic/Anaerobic Organisms—Endocervical**

*Test System, Assay, Examination*

All Gram Stain Procedures—Endocervical only

**Analyte: Gardnerella Vaginalis**

*Test System, Assay, Examination*

MicroProbe Affirm VP Microbial Identification Test Kit

**Analyte: Helicobacter Pyleri**

*Test System, Assay, Examination*

Delta West CLO test

**Analyte: N. Gonorrhoeae (From Urogenital or Rectal Only)**

*Test System, Assay, Examination*

All Presumpt. ID Using Select. Media, Oxidase, & Gm Stain

**Analyte: Neisseria Meningitidis, Group A**

*Test System, Assay, Examination*

Becton Dickinson N. Meningitidis Test (direct antigen)

**Analyte: Neisseria Meningitidis, Group C**

*Test System, Assay, Examination*

Becton Dickinson N. Meningitidis Test (direct antigen)

**Analyte: Neisseria Meningitidis, Group W135**

*Test System, Assay, Examination*

Becton Dickinson N. Meningitidis Test (direct antigen)

**Analyte: Neisseria Meningitidis, Group Y**

*Test System, Assay, Examination*

Becton Dickinson N. Meningitidis Test (direct antigen)

**Analyte: Streptococcus, Group A**

*Test System, Assay, Examination*

Abbott TestPack Plus Strep A (direct antigen/visual)

**Analyte: Streptococcus, Group A (From Throat Only)**

*Test System, Assay, Examination*

All Presumpt. ID w/Selective Media, Hemolysis & Bacitracin

**Analyte: Streptococcus, Group B**

*Test System, Assay, Examination*

Pacific Biotech Cards O.S. Strep B (direct antigen/visual)

Speciality/Subspeciality: General Chemistry

**Analyte: 5'Nucleotidase**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Ciba Corning 550 Express
Coulter Dacos
EM Diagnostic Systems EPOS
Electronucleonics Gemini
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Acetoacetate**

*Test System, Assay, Examination*

Roche Cobas FARA II

**Analyte: Acetylcholine/Choline**

*Test System, Assay, Examination*

Olympus Reply/AU560

**Analyte: Acid Phosphatase**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Ciba Corning 550 Express
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Technicon AXON
Technicon RA 2000
Technicon RA XT

**Analyte: Alanine Aminotransferase (ALT) (SGPT)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560

**Analyte: Albumin**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560

**Analyte: Aldolase**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Roche Cobas FARA II

**Analyte: Alkaline Phosphatase (ALP)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Alpha-2-HS-Glycoprotein**

*Test System, Assay, Examination*

Roche Cobas FARA II

**Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas FARA II
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Ammonia, Plasma/Serum**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 5
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 570 Alliance
Coulter Decos
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Technicon AXON
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Amylase**

*Test System, Assay, Examination*

Abbott Spectrum
Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Angiotensin Converting Enzyme (ACE)**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott Spectrum EPX
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Ciba Corning 550 Express
EM Diagnostic Systems EPOS
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Apolipoprotein A1**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott Spectrum EPX
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 2000/2100
BioAutoMed ASCA
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Coulter Decos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5000
Olympus AU 5121
Olympus AU 5131
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Apolipoprotein B**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott Spectrum EPX
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Beckman Synchron CX 7
Bio-Chem Laboratory Systems ATAC 2000/2100
BioAutoMed ASCA
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Coulter Decos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5000
Olympus AU 5121
Olympus AU 5131
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Aspartate Aminotransferase (AST) (SGOT)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio

**Analyte: Beta-Hydroxybutyrate**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP

Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Technicon RA 2000
Technicon RA XT

**Analyte: Bilirubin, Direct**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Bilirubin, Neonatal**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911
Roche Cobas FARA II

**Analyte: Bilirubin, Total**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Blood Gases with pH**

*Test System, Assay, Examination*

Radiometer ABL 50

**Analyte: C-Reactive Protein (CRP)**

*Test System Assay, Examination*

Roche Cobas Bio

**Analyte: Calcium, Ionized**

*Test System, Assay, Examination*

Ciba Corning 288

**Analyte: Calcium, Total**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Carbon Dioxide, Total (CO2)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Technicon Assist

**Analyte: Carboxyhemoglobin**

*Test System, Assay, Examination*

Instrumentation Laboratory IL 282

**Analyte: Cerebrospinal Fluid Protein (CSF)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911

**Analyte: Chloride**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Ciba Corning 288
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Technicon Assist

**Analyte: Cholesterol**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Chematics CHEMCARD Cholesterol Test (wheel)
Chematics CHEMCARD Cholesterol Test (window)
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Cholinesterase**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
BioAutoMed ASCA
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 911
Coulter Dacos
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Electronucleonics Gemstar
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Cholylglycine (Bile Acids)**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Ciba Corning 550 Express
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Cortisol**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Serono Diagnostics SR 1

**Analyte: Creatine Kinase (CK)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Creatine Kinase MB Fraction (CKMB)**

*Test System, Assay, Examination*

Abbott Spectrum
Baxter Stratus IIntellect
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 911
Du Pont ACA III with aca plus Immunoassay System
Du Pont ACA IV with aca plus Immunoassay System
Du Pont ACA V with aca plus Immunoassay System
Electronucleonics Gemini
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5000
Olympus AU 5131
Olympus Demand
Olympus Reply
Olympus Reply/AU560
PB Diagnostics Systems OPUS
Roche Cobas Bio
Technicon AXON
Technicon Assist

**Analyte: Creatinine**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Estradiol**

*Test System, Assay, Examination*

Serono Diagnostics SR 1

**Analyte: Ferritin**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Roche Cobas Mira
Roche Cobas Mira S
Serono Diagnostics SR 1

**Analyte: Folate (Folic acid)**

*Test System, Assay, Examination*

Baxter Stratus
Baxter Stratus II
Baxter Stratus IIntellect

**Analyte: Follicle Stimulating Hormone (FSH)**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Serono Diagnostics SR 1

**Analyte: Fructosamine**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Technicon RA 1000
Technicon RA XT

**Analyte: Gamma Glutamyl Transferase (GGT)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Gastric Occult Blood With pH**

*Test System, Assay, Examination*

SmithKline Gastrocult

**Analyte: Glucose**

*Test System, Assay, Examination*

APBC Glucose Analyzer
Ames Glucometer ENCORE QA Blood Glucose Meter
Ames Glucometer QA Blood Glucose Meter
Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Glucose-6-Phosphate Dehydrogenase (G-6-PDH)**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2000/2100
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Ciba Corning 550 Express
EM Diagnostic Systems EPOS
Electronucleonics Gemini
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Glycosylated Hemoglobin (Hgb A1C)**

*Test System, Assay, Examination*

Ciba Corning Model 765 Glycomat
Drew Scientific Glycomat Haemoglobin Analyzer

**Analyte: HCG, Serum, Qualitative**

*Test System, Assay, Examination*

Chembio HCG-STAT-PAK
Hybritech ICON II HCG (urine/serum)
Medix Biotech HCG Visual Pregnancy (5/5) Test Kit
Syntron Bioresearch Microcheck HCG
Syntron Bioresearch Quikpac Pregnancy Test
Wampole One-Step HCG

**Analyte: HCG, Serum, Quantitative**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Du Pont ACA III with aca plus Immunoassay System
Du Pont ACA IV with aca plus Immunoassay System
Du Pont ACA V with aca plus Immunoassay System
Serono Diagnostics SR 1

**Analyte: HCG, Urine, Qualitative (Non-waived Procedures)**

*Test System, Assay, Examination*

Bio-Rad Quantimune
Medix Biotech HCG Visual Pregnancy (5/5) Test Kit
Medix Biotech Visual hCG-M Pregnancy Test
Pacific Biotech Beta Quik Stat
Syntron Bioresearch Microcheck HCG
Wampole UCG-BETA SLIDE MONOCLONAL II
Wampole UCG-BETA Stat
Wampole UCG-SLIDE TEST

**Analyte: HCG, Urine, Quantitative**

*Test System, Assay, Examination*

Wampole UCG-BETA Stat

**Analyte: HCG, Whole Blood, Qualitative**

*Test System, Assay, Examination*

Pacific Biotech Beta Quik Stat

**Analyte: Iron**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Ciba Corning 570 Alliance
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Technicon Assist

**Analyte: Iron Binding Capacity, Unsat. (UIBC) No Pretreat**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911
Technicon Chem 1
Technicon Chem 1 Plus

**Analyte: Isocitric Dehydrogenase**

*Test System, Assay, Examination*

Abbott VP
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira

**Analyte: Lactate Dehydrogenase (LDH)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**ANALYTE: Lactate Dehydrogenase Heart Fraction (LDH-1)**

*Test System, Assay, Examination*

Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2000/2100
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911
Ciba Corning 550 Express
Coulter Dacos
Electronucleonics Gemini
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5000
Olympus AU 5131
Olympus Demand
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Lactic Acid (Lactate)**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Bio-Chem Laboratory Systems ATAC 2000/2100
BioAutoMed ASCA
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911
Ciba Corning 550 Express
Ciba Corning 570 Alliance
Coulter Dacos
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Technicon AXON
Technicon Assist
Technicon RA 1000

Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Lipase**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Baxter Paramax
Beckman Synchron CX 4
Beckman Synchron CX 5
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911
Ciba Corning 570 Alliance
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus AU 5131
Olympus Reply
Olympus Reply/AU560
Technicon AXON
Technicon Assist
Technicon DAX 24
Technicon DAX 48
Technicon DAX 72
Technicon DAX 96

**Analyte: Lithium**

*Test System, Assay, Examination*

Medica EasyLyte Lithium

**Analyte Luteinizing Hormone (LH)**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Serono Diagnostics SR 1

**Analyte: Magnesium**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Microalbumin**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA II
Roche Cobas Mira
Technicon RA 1000

**Analyte: Microprotein, CSF**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2000/ 2100
BioAutoMed ASCA
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Instrumentation Laboratory Multistat III
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus AU 5131
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Technicon AXON
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Microprotein, Urine**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2000/ 2100
BioAutoMed ASCA
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Instrumentation Laboratory Multistat III
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus AU 5131
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Technicon AXON
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Myoglobin**

*Test System, Assay, Examination*

Baxter Stratus
Baxter Stratus II
Baxter Stratus IIntellect

**Analyte: Oxyhemoglobin/Oxygen Saturation**

*Test System, Assay, Examination*
*Instrumentation Laboratory IL 362*

Waters Instruments Oxicom 2100

**Analyte: Phosphorus**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Potassium**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Ciba Corning 288
Instrumentation Laboratory IL Monarch 2000
Liston ECS 2000
Medica EasyLyte Lithium
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Progesterone**

*Test System, Assay, Examination*

Serono Diagnostics SR 1

**Analyte: Prolactin**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Serono Diagnostics SR 1

**Analyte: Prostatic Acid Phosphatase (PAP)**

*Test System, Assay, Examination*

Baxter Stratus
Baxter Stratus II

**Analyte: Protein, Total**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Pyruvate**

*Test System, Assay, Examination*

Roche Cobas Bio
Roche Cobas FARA

**Analyte: Sodium**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Ciba Corning 288
Instrumentation Laboratory IL Monarch 2000

Liston ECS 2000
Medica EasyLyte Lithium
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Sorbital Dehydrogenase (SDH)**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Coulter Dacos
Electronucleonics Gemstar
Electronucleonics Gemstar II
Olympus Reply
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Testosterone**

*Test System, Assay, Examination*

Serono Diagnostics SR 1

**Analyte: Thyroid Stimulating Hormone (TSH)**

*Test System, Assay, Examination*

Becton Dickinson IQ Immunochemical System
Du Pont ACA III with aca plus Immunoassay System
Du Pont ACA IV with aca plus Immunoassay System
Du Pont ACA V with aca plus Immunoassay System
Roche Cobas FARA II
Serono Diagnostics SR 1
Syva Vista Immunoassay System

**Analyte: Thyroid Stimulating Hormone—high sens. (TSH–HS)**

*Test System, Assay, Examination:*

Baxter Stratus IIntellect

**Analyte: Thyroxine (T4)**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Boehringer Mannheim Hitachi 737
Du Pont Dimension ES
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Serono Diagnostics SR 1
Syva Vista Immunoassay System
Technicon AXON
Technicon DAX 24
Technicon DAX 48
Technicon DAX 72
Technicon DAX 96
Wako Diagnostics 30R

**Analyte: Thyroxine, Free (FT4)**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Serono Diagnostics SR 1
Syva Vista Immunoassay System
bioMerieux Vitek Vidas

**Analyte: Total Solids (Protein)**

*Test System, Assay, Examination*

American Optical TS Meter
Reichert TS Meter

**Analyte: Triglyceride**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Triiodothyronine (T3)**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Olympus AU 5131
Serono Diagnostics SR 1
Syva Vista Immunoassay System

**Analyte: Triiodothyronine Uptake (T3U) (TU)**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Serono Diagnostics SR 1
Syva Vista Immunoassay System
Technicon AXON
Wako Diagnostics 30R

**Analyte: Urea (BUN)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Uric Acid**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560

**Analyte: Vitamin B12**

*Test System, Assay, Examination*

Baxter Stratus
Baxter Stratus II
Baxter Stratus IIntellect

SPECIALITY/SUBSPECIALITY: General Immunology

**Analyte: Alpha-1-Antitrypsin**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Roche Cobas FARA II
Roche Cobas Mira
Technicon RA 1000

**Analyte: Alpha-2-Macroglobulin**

*Test System, Assay, Examination*

Roche Cobas FARA II

**Analyte: Anti-DNP Antibodies**

*Test System, Assay, Examination*

Sterling Diagnostics Test Kit

**Analyte: Anti-Streptolysin O (ASO)**

*Test System, Assay, Examination*

Instrumentation Laboratory IL Monarch 2000
Sterling Diagnostics Test Kit

**Analyte: Beta-2 Microglobulin**

*Test System, Assay, Examination*

Du Pont ACA II
Du Pont ACA III
Du Pont ACA IV

**Analyte: C-Reactive Protein (CRP)**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Ciba Corning 550 Express
Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas FARA II
Sterling Diagnostics Test Kit

**Analyte: Ceruloplasmin**

*Test System, Assay, Examination*

Roche Cobas FARA II

**Analyte: Complement C3**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Ciba Corning 550 Express
Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira

**Analyte: Complement C4**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Ciba Corning 550 Express

Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira

**Analyte: Haptoglobin**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Abbott VP
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Roche Cobas FARA II
Roche Cobas Mira
Technicon RA 1000

**Analyte: Hepatitis A Virus Antibody**

*Test System, Assay, Examination*

Syva MicroTrak XL

**Analyte: Hepatitis Be Antibody**

*Test System, Assay, Examination*

Syva MicroTrak XL

**Analyte: Hepatitis Be Antigen**

*Test System, Assay, Examination*

Syva MicroTrak XL

**Analyte: Immunoglobulins IgA**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Abbott VP
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 911
Ciba Corning 550 Express
Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira

**Analyte: Immunoglobulins IgE**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Quidel Total IgE Test (QRA reader)

**Analyte: Immunoglobulins IgG**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Abbott VP
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 911
Ciba Corning 550 Express
Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira

**Analyte: Immunoglobulins IgM**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Abbott VP
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 911
Ciba Corning 550 Express
Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira

**Analyte: Infectious Mononucleosis Antibodies (Mono)**

*Test System, Assay, Examination*

Sterling Diagnostics Test Kit

**Analyte: Kappa Light Chains**

*Test System, Assay, Examination*

Roche Cobas FARA II

**Analyte: Lambda Light Chains**

*Test System, Assay, Examination*

Roche Cobas FARA II

**Analyte: Prealbumin**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Beckman Synchron CX 4
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA II
Roche Cobas Mira
Technicon RA 1000

**Analyte: Prostatic Specific Antigen (PSA)**

*Test System, Assay, Examination*

Baxter Stratus
Baxter Stratus II

**Analyte: Rheumatoid Factor (RF)**

*Test System, Assay, Examination*

Instrumentation Laboratory IL Monarch 2000
Sterling Diagnostics Test Kit

**Analyte: Rubella Antibodies**

*Test System, Assay, Examination*

General Biometrics ImmunoDot TORCH Test
Serono Diagnostics SR 1

**Analyte: Toxoplasma Gondii Antibodies**

*Test System, Assay, Examination*

Serono Diagnostics SR 1

**Analyte: Transferrin**

*Test System, Assay, Examination*

Abbott Spectrum EPX
Abbott VP
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Ciba Corning 550 Express
Coulter Dacos
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Roche Cobas Mira

SPECIALITY/SUBSPECIALITY: Hematology

**Analyte: Activated Clotting Time (ACT)**

*Test System, Assay, Examination*

Sienco SONOCLOT II Surgical Analyzer (direct readout)

**Analyte: Activated Partial Thromboplastin Time (APTT)**

*Test System, Assay, Examination*

Boehringer Mannheim Unimeter CU–500
Instrumentation Laboratory IL ACL 300 Plus
LAbor CoaData 3000
Medical Laboratory MLA Electra 600
Medical Laboratory MLA Electra 650
Sienco Dual Sample Aggregation Meter (DP–247)

**Analyte: Bleeding Time**

*Test System, Assay, Examination:*

Duke Bleeding Time

**Analyte: Body Fluid Microscopic Elements**

*Test System, Assay, Examination:*

Fern Test

**Analyte: Fibrinogen**

*Test System, Assay, Examination:*

Abbott Spectrum EPX
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Coulter Optichem 100
Coulter Optichem 120

Coulter Optichem 180
Electronucleonics Gem-Profiler
Instrumentation Laboratory IL ACL 300 Plus
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
International Technidyne Factor VI
Labor CoaData 3000
Roche Cobas Bio
Roche Cobas FARA II
Technicon RA 1000

**Analyte: Hematocrit**

*Test System, Assay, Examination*

Baker JTB 500A
Baker JTB 700A
Becton Dickinson QBC HemaScan
Bio-Dynamics CellTrak 5
Instrumentation Laboratory IL Cellect 7
Instrumentation Laboratory IL Cellect 8
Instrumentation Laboratory IL Cellect 8E
Mallinckrodt Gem 6 Plus
Mallinckrodt Gem Premier
Roche Cobas Argos5 Diff
Serono Baker Series 150
Serono Baker Series 170
Serono Baker Series 5000
Serono Baker Series 7000
Serono Diagnostics 8000
Serono Diagnostics 9000
Serono Diagnostics 9000 Ax
Serono Diagnostics 9000 Plus
Serono Diagnostics 9000 Rx
Sysmex CC–800 with PDA–410
Sysmex K–1000 with PDA upgrade

**Analyte: Hemoglobin**

*Test System, Assay, Examination*

Abbott VP
Baker JTB 500A
Baker JTB 700A
Beckman Synchron CX 4
Beckman Synchron CX 5
Becton Dickinson QBC HemaScan
Bio-Dynamics CellTrak 3
Bio-Dynamics CellTrak 5
Boehringer Mannheim Hitachi 736
Electronucleonics Gemstar
Instrumentation Laboratory IL Cellect 7
Instrumentation Laboratory IL Cellect 8
Instrumentation Laboratory IL Cellect 8E
Roche Cobas Argos5 Diff
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Serono Baker Series 130
Serono Baker Series 150
Serono Baker Series 170
Serono Baker Series 5000
Serono Baker Series 7000
Serono Baker System 7500
Serono Diagnostics 8000
Serono Diagnostics 9000
Serono Diagnostics 9000 Ax
Serono Diagnostics 9000 Plus
Serono Diagnostics 9000 Rx
Stanbio Hemoglobin Analyzer
Sysmex CC–800 with PDA–410
Sysmex K–1000 with PDA upgrade
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Hemoglobin A2**

*Test System, Assay, Examination*

Ciba Corning Model 765 Glycomat
Drew Scientific Glycomat Haemoglobin Analyzer

**Analyte: Hemoglobin Fractions**

*Test System, Assay, Examination*

Ciba Corning Model 765 Glycomat
Drew Scientific Glycomat Haemoglobin Analyzer

**Analyte: Hemoglobin S**

*Test System, Assay, Examination*

Ortho Sickledex
Sterling Diagnostics Sickle Cell Uni-test

**Analyte: Platelet Count**

*Test System, Assay, Examination*

Instrumentation Laboratory IL Cellect 8
Instrumentation Laboratory IL Cellect 8E
Roche Cobas Argos5 Diff
Roche Cobas Helios
Serono Baker MK–4/HC
Serono Baker Series 810 Platelet Analyzer
Serono Diagnostics 8000
Serono Diagnostics 9000
Serono Diagnostics 9000 Ax
Serono Diagnostics 9000 Plus
Serono Diagnostics 9000 Rx
Sysmex CC–800 with PDA–410
Sysmex K–1000 with PDA upgrade

**Analyte: Prothrombin Time (PT)**

*Test System, Assay, Examination*

Instrumentation Laboratory IL ACL 300 Plus
Labor CoaData 3000
Medical Laboratory MLA Electra 600
Medical Laboratory MLA Electra 650
Sienco Dual Sample Aggregation Meter (DP–247)

**Analyte: Red Blood Cell Count (Erythrocyte Count) (RBC)**

*Test System, Assay, Examination*

Baker JTB 500A
Baker JTB 700A
Bio-Dynamics CellTrak 2
Bio-Dynamics CellTrak 3
Bio-Dynamics CellTrak 5
Instrumentation Laboratory IL Cellect 7
Instrumentation Laboratory IL Cellect 8
Instrumentation Laboratory IL Cellect 8E
Roche Cobas Argos5 Diff
Serono Baker Series 130
Serono Baker Series 150
Serono Baker Series 170
Serono Baker Series 5000
Serono Baker Series 7000
Serono Baker System 7500
Serono Diagnostics 8000
Serono Diagnostics 9000
Serono Diagnostics 9000 Ax
Serono Diagnostics 9000 Plus
Serono Diagnostics 9000 Rx
Sysmex CC–800 with PDA–410
Sysmex K–1000 with PDA upgrade
Sysmex R–1000

**Analyte: Thrombin Time**

*Test System, Assay, Examination*

Instrumentation Laboratory IL ACL 300 Plus
Instrumentation Laboratory IL ACL 810
Labor CoaData 3000
Medical Laboratories MLA Electra 650
Medical Laboratories MLA Electra 700

**Analyte: White Blood Cell Count (Leukocyte Count) (WBC)**

*Test System, Assay, Examination*

Baker JTB 500A
Baker JTB 700A
Becton Dickinson QBC HemaScan
Bio-Dynamics CellTrak 2
Bio-Dynamics CellTrak 3
Bio-Dynamics CellTrak 5
Instrumentation Laboratory IL Cellect 7
Instrumentation Laboratory IL Cellect 8
Instrumentation Laboratory IL Cellect 8E
Roche Cobas Argos5 Diff
Serono Baker Series 130
Serono Baker Series 150
Serono Baker Series 170
Serono Baker Series 5000
Serono Baker Series 7000
Serono Baker System 7500
Serono Diagnostics 8000
Serono Diagnostics 9000
Serono Diagnostics 9000 Ax
Serono Diagnostics 9000 Plus
Serono Diagnostics 9000 Rx
Sysmex CC–800 with PDA–410
Sysmex K–1000 with PDA upgrade

**Analyte: White Blood Cell Differential (WBC Diff)**

*Test System, Assay, Examination*

Serono Diagnostics 8000
Serono Diagnostics 9000
Serono Diagnostics 9000 Ax
Serono Diagnostics 9000 Plus
Sysmex CC–800 with PDA–410
Sysmex E–2500
Sysmex E–5000
Sysmex F–800
Sysmex K–1000 with PDA upgrade
Sysmex M–2000
Sysmex NE–8000

**Analyte: Whole Blood Clotting Time**

*Test System, Assay, Examination*

Haemoscope Computerized Thromboelastograph
Lee-White Clotting Time

SPECIALITY/SUBSPECIALITY: Mycology

**Analyte: Dermatophytes**

*Test System, Assay, Examination*

Acuderm Inc. Acu-DTM
Difco Bacto - DTM Medium
Remel DTM

**Analyte: Yeast, Candida only**

*Test System, Assay, Examination:*

Centocor Diagnostics Vagitest (direct Ag/visual)

SPECIALITY/SUBSPECIALITY: Parasitology

**Analyte: Trichomonas**

*Test System, Assay, Examination:*

Biomed Diagnostics InPouch TV (direct wet mount)
Biomed Diagnostics InPouch TV (using selective media)
Centocor Diagnostics Vagitest (direct Ag/visual)

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MicroProbe Affirm VP Microbial Identification Test Kit

SPECIALITY/SUBSPECIALITY: Toxicology / TDM

**Analyte: Acetaminophen**

*Test System, Assay, Examination*

Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560

**Analyte: Amikacin**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Boehringer Mannheim Hitachi 704
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Amphetamines**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Barbiturates**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA
Technicon RA 500
Wako Diagnostics 30R

**Analyte: Benzodiazepines**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Drug Screening Systems microLINE Screens
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Caffeine**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Instrumentation Laboratory IL Monarch Plus
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Cannabinoids (THC)**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Drug Screening Systems microLINE Screens
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Carbamazepine**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 911
Ciba Corning 550 Express
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Chloramphenicol**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704
Roche Cobas Bio
Roche Cobas Bio FP

**Analyte: Cocaine Metabolites**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Drug Screening Systems microLINE Screens
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA
Technicon RA 500
Wako Diagnostics 30R

**Analyte: Digitoxin**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Du Pont ACA II
Du Pont ACA III

**Analyte: Digoxin**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Boehringer Mannheim Hitachi 911
Du Pont ACA II
Du Pont ACA III
Olympus Reply/AU560
Roche Cobas Bio
Serono Diagnostics SR 1

**Analyte: Disopyramide**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Drugs of Abuse**

*Test System, Assay, Examination*

Environmental Diagnostics EZ–SCREEN

**Analyte: Ethanol (Alcohol)**

*Test System, Assay, Examination*

Abbott Spectrum
Abbott VP
Boehringer Mannheim Hitachi 736

Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911
Ciba Corning 550 Express
Coulter Dacos
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas Mira Plus
Technicon Assist
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Ethosuximide**

*Test System, Assay, Examination*

Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Gentamicin**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4 CE
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio
Wako Diagnostics 30R

**Analyte: Isonicotinic Acid**

*Test System, Assay, Examination*

DynaGen MYCODYN URITEC Test Strips

**Analyte: Lidocaine**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Methadone**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Methamphetamines**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Drug Screening Systems microLINE Screens
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Instrumentation Laboratory IL Monarch Plus
Olympus AU 5000
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Methaqualone**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Methotrexate**

*Test System, Assay, Examination*

Roche Cobas Bio
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S

**Analyte: N-Acetylprocainamide (NAPA)**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Ciba Corning 550 Express
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Netilmycin**

*Test System, Assay, Examination*

Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Opiates**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Drug Screening Systems microLINE Screens
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP

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Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 500
Wako Diagnostics 30R

**Analyte: Phencyclidine (PCP)**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Drug Screening Systems microLINE Screens
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA
Technicon RA 500
Wako Diagnostics 30R

**Analyte: Phenobarbital**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4 CE
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio
Wako Diagnostics 30R

**Analyte: Phenytoin**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4 CE
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio
Wako Diagnostics 30R

**Analyte: Primidone**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Procainamide**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Cibe Corning 550 Express
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Propoxyphene**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas Bio FP
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT
Wako Diagnostics 30R

**Analyte: Quinidine**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Salicylates**

*Test System, Assay, Examination*

Abbott VP
Bio-Chem Laboratory Systems ATAC 2000/7100
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 737
Boehringer Mannheim Hitachi 747
Boehringer Mannheim Hitachi 911
EM Diagnostic Systems EPOS
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560

**Analyte: Theophylline**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Beckman Synchron CX 4 CE
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 911
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio
Sanofi Pasteur Access Immunoassay System
Wako Diagnostics 30R

**Analyte: Tobramycin**

*Test System, Assay, Examination*

Baxter Stratus IIntellect
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Olympus Reply/AU560
Roche Cobas Bio

**Analyte: Tricyclic Antidepressants**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Instrumentation Laboratory IL Monarch Plus
Roche Cobas Bio FP
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Valproic Acid**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Roche Cobas Bio FP
Technicon RA 1000
Technicon RA 500
Technicon RA XT

**Analyte: Vancomycin**

*Test System, Assay, Examination*

Beckman Synchron CX 4
Beckman Synchron CX 4 CE
Beckman Synchron CX 5
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira Plus
Roche Cobas Mira S

Technicon RA 1000
Technicon RA 500
Technicon RA XT

SPECIALITY/SUBSPECIALITY: Urinalysis

**Analyte: Urine Qualitative Dipstick Chemistries**

*Test System, Assay, Examination*

Boehringer Mannheim Chemstrip Urine Analyzer

SPECIALITY/SUBSPECIALITY: Virology

**Analyte: Herpetic Inclusion Bodies for Herpes**

*Test System, Assay, Examination*

Tzanck Smears

COMPLEXITY: HIGH

SPECIALITY/SUBSPECIALITY: Bacteriology

**Analyte: Aerobic &/or Anaerobic Organisms-unlimited sources**

*Test System, Assay, Examination*

Becton Dickinson BBL Minitek Enterobact. III Set (inc cult)
Becton Dickinson BBL Minitek Gram Positive Set (inc. cult)
Becton Dickinson BBL Minitek Neisseria Set (inc. culture)
Unipath Oxoid Toxin Detect. Kit BCET-RPLA (inc cult./filt.)
Unipath Oxoid Toxin Detect. Kit SET-RPLA (inc cult./filt.)

**Analyte: Chlamydia**

*Test System, Assay, Examination*

Cibe Corning Magic Lite Chlamydia (including cell culture)
Ortho Chlamydia Antigen ELISA Test (inc cell cult/spectro)
Sanofi/Kallestad Pathfinder Chlamydia EIA Detection Kit
Syva MicroTrak II Chlamydia EIA (Direct Ag/Spectrophoto)
Syva MicroTrak XL

**Analyte: Clostridium difficile**

*Test System, Assay, Examination*

BioWhittaker TOX-A Test (direct antigen/spectro)
BioWhittaker TOX-A Test (direct antigen/visual)

**Analyte: Haemophilus influenzae, type a, c-f**

*Test System, Assay, Examination*

Difco Becto H. influenzae Set (including culture)

**Analyte: Haemophilus influenzae, type b**

*Test System, Assay, Examination*

Difco Becto H. influenzae Set (including culture)

**Analyte: Legionella**

*Test System, Assay, Examination*

Medical Diag. Technologies Legionella (including culture)

**Analyte: Neisseria gonorrhoeae**

*Test System, Assay, Examination*

Gen-Probe Pace2 (direct antigen)
Gen-Probe Pace2 (including culture)

**Analyte: Neisseria meningitidis (non-specific)**

*Test System, Assay, Examination*

Difco Becto Neisseria Meningitidis Set (including culture)

**Analyte: Neisseria meningitidis, group A**

*Test System, Assay, Examination*

Difco Becto Neisseria Meningitidis Set (including culture)

**Analyte: Neisseria meningitidis, group B**

*Test System, Assay, Examination*

Difco Becto Neisseria Meningitidis Set (including culture)

**Analyte: Neisseria meningitidis, group C**

*Test System, Assay, Examination*

Difco Becto Neisseria Meningitidis Set (including culture)

**Analyte: Neisseria meningitidis, group W135**

*Test System, Assay, Examination*

Difco Becto Neisseria Meningitidis Set (including culture)

**Analyte: Staphylococcus**

*Test System, Assay, Examination*

Unipath Oxoid Staphylase Test (including culture)
Vitek Systems Slidex Staph-Kit (including culture)

**Analyte: Streptococcus, group A**

*Test System, Assay, Examination*

Abbott TestPack Plus Strep A (including culture)

SPECIALITY/SUBSPECIALITY: General Chemistry

**Analyte: 17 Ketosteroid**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: 5'Nucleotidase**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Electronucleonics FLEXIGEM
Sigma Diagnostics Test Kit

**Analyte: Acid Phosphatase**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Instrumentation Laboratory Multistat III
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Adrenocorticotropic Hormone (ACTH)**

*Test System, Assay, Examination*

Incstar ACTH
Incstar PEG-ACTH

**Analyte: Alanine Aminotransferase (ALT) (SGPT)**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Manual Spectrophotometric Test Procedure
Genetic Systems Alanine Aminotransferase (ALT/GPT)
Randox Laboratories Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Albumin**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
The Binding Site Human Albumin NL RID

**Analyte: Aldolase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Alkaline Phosphatase (ALP)**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Manual Spectrophotometric Test Procedure
Randox Laboratories Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Test Kit

**Analyte: Alkaline Phosphatase Isoenzymes**

*Test System, Assay, Examination*

Beckman Paragon ISOPAL Isoenzyme Electrophoresis Kit

**Analyte: Alpha-Fetoprotein—Amniotic Fluid**

*Test System, Assay, Examination*

Abbott AFP (EIA)
Abbott COMMANDER System
Abbott IMX
Amersham Amerlex
Clinical Assays GammaDab
Hybritech Tandem-E
Kallestad AFP/Ob Radioimmunoassay

**Analyte: Alpha-Fetoprotein—Maternal Serum**

*Test System, Assay, Examination*

Kallestad AFP/Ob Radioimmunoassay

**Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Manual Spectrophotometric Test Procedure
Sigma Diagnostics Test Kit
Sterling Diagnostics Test Kit

**Analyte: Ammonia, Plasma/Serum**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Sigma Diagnostics Test Kit

**Analyte: Amylase**

*Test System, Assay, Examination*

Beckman Manual Spectrophotometric Test Procedure
Sigma Diagnostics Test Kit

Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Androstenedione**

*Test System, Assay, Examination*

Clinical Assays GammaCoat

**Analyte: Angiotensin Converting Enzyme (ACE)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Instrumentation Laboratory Multistat III
Sigma Diagnostics Test Kit

**Analyte: Apolipoprotein A1**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Electronucleonics FLEXIGEM
Instrumentation Laboratory Multistat III
Sigma Diagnostics Test Kit

**Analyte: Apolipoprotein B**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Electronucleonics FLEXIGEM
Sigma Diagnostics Test Kit

**Analyte: Aspartate Aminotransferase (AST) (SGOT)**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
Randox Laboratories Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Beta-Glucuronidase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Beta-Hydroxybutyrate**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Electronucleonics FLEXIGEM
Instrumentation Laboratory Multistat III
Sigma Diagnostics Test Kit

**Analyte: Bilirubin, Direct**

*Test System, Assay, Examination*

Ames Optimate
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Bilirubin, Total**

*Test System, Assay, Examination*

Ames Optimate
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Blood Lead**

*Test System, Assay, Examination*

ese Model 3010A Trace Metals Analyzer
ese Model 3010B Lead Analyzer

**Analyte: C-Peptide**

*Test System, Assay, Examination*

Incstar C-Peptide

**Analyte: Calcitonin**

*Test System, Assay, Examination*

Incstar Calcitonin II

**Analyte: Calcium, Total**

*Test System, Assay, Examination*

Ames Optimate
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Carbon Dioxide, Total ($CO_2$)**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Synermed Test Kit

**Analyte: Chloride**

*Test System, Assay, Examination*

Ames Optimate
Buchler Digital Chloridometer
King Diagnostics Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Chloride, Sweat (Cystic Fibrosis Sweat Test)**

*Test System, Assay, Examination*

Scandipharm CF Indicator (9800)

**Analyte: Cholesterol**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Cholinesterase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Cholyglycine (Bile Acids)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Sigma Diagnostics Test Kit

**Analyte: Cortisol**

*Test System, Assay, Examination*

Serono Baker Serozyme
Serono Diagnostics Serozyme

**Analyte: Creatine Kinase (CK)**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Creatine Kinase Isoenzymes (CK Isoenzymes)**

*Test System, Assay, Examination*

Beckman Paragon CK Isoenzyme Electrophoresis Kit

**Analyte: Creatine Kinase MB Fraction (CKMB)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Sigma Diagnostics Test Kit

**Analyte: Creatine Kinase MM Fraction (CKMM)**

*Test System, Assay, Examination*

Beckman Paragon CK–MM Isoforms Electrophoresis Kit

**Analyte: Creatinine**

*Test System, Assay, Examination*

Ames Optimate
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Cyclic AMP**

*Test System, Assay, Examination*

Incstar Camp

**Analyte: Erythropoietin**

*Test System, Assay, Examination*

Incstar EPO-Trac
R&D Systems Clinigen Erythopoietin EIA

**Analyte: Estradiol**

*Test System, Assay, Examination*

Serono Diagnostics Serozyme

**Analyte: Fatty Acids, Non-Esterified**

*Test System, Assay, Examination*

Sterling Diagnostics Analyzer 2000

**Analyte: Ferritin**

*Test System, Assay, Examination*

Clinical Assays GammaCoat
Clinical Assays GammaDab
Serono Diagnostics Serozyme

**Analyte: Foam Stability Index**

*Test System, Assay, Examination*

Beckman Lumadex—FSI

**Analyte: Follicle Stimulating Hormone (FSH)**

*Test System, Assay, Examination*

Clinical Assays GammaDab
ICN Immunochem FSH–MW Elisa
Serono Diagnostics Serozyme

**Analyte: Galactose-1-Phosphate Uridyl Transferase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Gamma Glutamyl Transferase (GGT)**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
Medical Analysis Systems RefLab Test Kit
Randox Laboratories Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Gastrin**

*Test System, Assay, Examination*

Clinical Assays GammaDab

**Analyte: Glucose**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
King Diagnostics Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Glucose-6-Phosphate Dehydrogenase (G-6-PDH)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Electronucleonics Flexigem
Sigma Diagnostics Test Kit

**Analyte: Glutathione Reductase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Glycerylated Hemoglobin (Hgb A1C)**

*Test System, Assay, Examination*

Beckman Paragon Distrac HbA1C Glycohemoglobin Electro Kit
Sigma Diagnostics Glycated Hemoglobin Kit
Sigma Diagnostics Glycohemoglobin Kit
Sterling Diagnostics Test Kit

**Analyte: HCG, Serum, Quantitative**

*Test System, Assay, Examination*

Serono Diagnostics Serozyme

**Analyte: HCG, Urine, Qualitative (non-waived procedures)**

*Test System, Assay, Examination*

Serono Baker Serozyme
Serono Diagnostics Serozyme

**Analyte: HDL Cholesterol**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Beckman Manual Spectrophotometric Test Procedure
Boehringer Mannheim Hitachi 911
Coulter Dacos
EM Diagnostic Systems Easy Plus (manual pretreatment)
EM Diagnostic Systems Easy ST (manual pretreatment)
EM Diagnostic Systems EPOS
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 2000
Olympus AU 5131
Olympus Reply/AU560
Roche Cobas Bio
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Synermed Test Kit

**Analyte: Human Growth Hormone (GH)**

*Test System, Assay, Examination*

Incstar hGH
Kallestad Quantitope HGH RIA Kit

**Analyte: Insulin-like Growth Factor-1 (IGF-1)**

*Test System, Assay, Examination*

Incstar IGF-I (Somatomedin C)

**Analyte: Iron**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Kenlor Industries Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Iron Binding Capacity (Post Saturation/Separation)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Boehringer Mannheim Hitachi 911
Ciba Corning 550 Express
Coulter Dacos
Instrumentation Laboratory IL Genesis 21
Instrumentation Laboratory IL Monarch 2000
Kenlor Industries Test Kit
Olympus AU 5000
Olympus AU 5021
Olympus AU 5031
Olympus AU 5061
Olympus AU 5121
Olympus AU 5131
Olympus Reply
Olympus Reply/AU560
Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Sigma Diagnostics Test Kit
Technicon DAX 24
Technicon DAX 48
Technicon DAX 72
Technicon DAX 96
Technicon RA 2000
Technicon RA XT

**Analyte: Isocitric Dehydrogenase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Lactate Dehydrogenase (LDH)**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Lactate Dehydrogenase Heart Fraction (LDH-1)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Sigma Diagnostics Test Kit

**Analyte: Lactate Dehydrogenase Isoenzymes**

*Test System, Assay, Examination*

Beckman Paragon LD Isoenzyme Electrophoresis Kit

**Analyte: Lactic Acid (Lactate)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Electronucleonics Flexigem
Sigma Diagnostics Test Kit

**Analyte: Leucine Aminopeptidase (LAP)**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Lipase**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Electronucleonics Flexigem
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Lipoprotein Fractions**

*Test System, Assay, Examination*

Beckman Paragon Lipoprotein Electrophoresis Kit

**Analyte: Lutsinizing Hormone (LH)**

*Test System, Assay, Examination*

Clinical Assays GammaDab
Serono Diagnostics Serozyme

**Analyte: Magnesium**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Microprotein, CSF**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 200
Kenlor Industries Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Microprotein, Urine**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 200
Kenlor Industries Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Myoglobin**

*Test System, Assay, Examination*

ImmunoDiagnosticCenter Myoglobin Elisa Test Kit

**Analyte: Oxalate**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Spectrum
Abbott VP
Beckman Synchron CX 4
Beckman Synchron CX 5
Bio-Chem Laboratory Systems ATAC 2000/2100
BioAutoMed ASCA
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Ciba Corning 550 Express
Coulter Dacos
EM Diagnostic Systems EPOS
Electronucleonics Flexigem
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Electronucleonics Gemstar
Electronucleonics Gemstar II
Instrumentation Laboratory IL Monarch 1000
Instrumentation Laboratory IL Monarch 2000
Instrumentation Laboratory Multistat III
Olympus Reply
Olympus Reply/AU560

Roche Cobas Bio
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Sigma Diagnostics Test Kit
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

**Analyte: Parathyroid Hormone—C-Terminal**

*Test System, Assay, Examination*

Incstar C-terminal PTH

**Analyte: Parathyroid Hormone—Intact**

*Test System, Assay, Examination*

Incstar N-tact PTH IRMA

**Analyte: Parathyroid Hormone—Mid-molecule (PTH-M)**

*Test System, Assay, Examination*

Incstar PTH-MM II

**Analyte: Phosphohexose Isomerase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Phospholipids**

*Test System, Assay, Examination*

Sterling Diagnostics Analyzer 2000

**Analyte: Phosphorus**

*Test System, Assay, Examination*

Ames Optimate
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Potassium**

*Test System, Assay, Examination*

Boehringer Mannheim LyteTek Flame Photometer
Sterling Diagnostics Test Kit

**Analyte: Progesterone**

*Test System, Assay, Examination*

Serono Diagnostics Serozyme

**Analyte: Prolactin**

*Test System, Assay, Examination*

Clinical Assays GammaDab
ICN Immunochem PRL-MW Elisa
Serono Diagnostics Serozyme

**Analyte: Prostatic Acid Phosphatase (PAP)**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Protein, Total**

*Test System, Assay, Examination*

Ames Optimate
Kenlor Industries Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000

**Analyte: Pyruvate**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Pyruvate Kinase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit

**Analyte: Renin**

*Test System, Assay, Examination*

Clinical Assays GammaCoat

**Analyte: Sodium**

*Test System, Assay, Examination*

Boehringer Mannheim LyteTek Flame Photometer
Sterling Diagnostics Test Kit

**Analyte: Sorbital Dehydrogenase (SDH)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Instrumentation Laboratory Multistat III
Sigma Diagnostics Test Kit

**Analyte: Testosterone**

*Test System, Assay, Examination*

Clinical Assays GammaCoat
Serono Baker Serozyme
Serono Diagnostics Serozyme

**Analyte: Thyroid Stimulating Hormone (TSH)**

*Test System, Assay, Examination*

Pointe Scientific 180 Chemistry Analyzer
Serono Diagnostics Serozyme
Wallac Oy Delfia hTSH Ultra Kit

**Analyte: Thyroxine (T4)**

*Test System, Assay, Examination*

Pointe Scientific 180 Chemistry Analyzer
Serono Diagnostics Serozyme

**Analyte: Thyroxine Binding Globulin (TBG)**

*Test System, Assay, Examination*

Clinical Assays GammaDab

**Analyte: Thyroxine, Free (FT4)**

*Test System, Assay, Examination*

Serono Diagnostics Serozyme

**Analyte: Triglyceride**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Triiodothyronine (T3)**

*Test System, Assay, Examination*

Serono Baker Serozyme
Serono Diagnostics Serozyme

**Analyte: Triiodothyronine Uptake (T3U) (TU)**

*Test System, Assay, Examination*

Pointe Scientific 180 Chemistry Analyzer
Serono Diagnostics Serozyme

**Analyte: Triiodothyronine, Free (FT3)**

*Test System, Assay, Examination*

Clinical Assays GammaCoat
Kodak Amerlex MAB
Kodak Amerlite MAB
Serono Diagnostics Serozyme

**Analyte: Urea (BUN)**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
King Diagnostics Test Kit
Sigma Diagnostics Test Kit
Sterling Diagnostics Analyzer 2000
Sterling Diagnostics Test Kit

**Analyte: Uric Acid**

*Test System, Assay, Examination*

Ames Optimate
Beckman Manual Spectrophotometric Test Procedure
Sigma Diagnostics Test Kit
Sterling Diagnostics Test Kit

**Analyte: Zinc**

*Test System, Assay, Examination*

esa Model 3010A Trace Metals Analyzer

Speciality/Subspeciality: General Immunology

**Analyte: Allergen Specific IgE**

*Test System, Assay, Examination*

Kallestad Allercost EAST
Kallestad Allercost RAST
Kallestad Allercost Rapid EAST

**Analyte: Alpha-1-Acid Glycoprotein (Orosomucoid)**

*Test System, Assay, Examination*

Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Alpha-1-Antitrypsin**

*Test System, Assay, Examination*

Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Alpha-1 Antitrypsin RID

**Analyte: Alpha-2-Macroglobulin**

*Test System, Assay, Examination*

Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Alpha-2 Macroglobulin RID

**Analyte: Anti-DNA Antibodies**

*Test System, Assay, Examination*

elias usa Synelisa dsDNA Antibodies

**Analyte: Anti-Jo-1**

*Test System, Assay, Examination*

Diamedix Anti-Jo-1 Microassay

**Analyte: Anti-Nuclear Antibodies (ANA)**

*Test System, Assay, Examination*

Sanofi/Kallestad ANA Microplate EIA

**Analyte: Anti-RNP (Ribonucleoprotein)**

*Test System, Assay, Examination*

Kallestad Sm/RNP ENA

**Analyte: Anti-SS-A/Ro**

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*Test System, Assay, Examination*
Kallestad SSA/SSB ENA

**Analyte: Anti-SS-B/La**

*Test System, Assay, Examination*
Kallestad SSA/SSB ENA

**Analyte: Anti-Sm (Smith)**

*Test System, Assay, Examination*
Kallestad Sm/RNP ENA

**Analyte: Anti-Thyroglobulin Antibodies**

*Test System, Assay, Examination*
Murex Thymune-T
Wellcome Thymune-T

**Analyte: Anti-Thyroid Microsomal Antibodies (AMA)**

*Test System, Assay, Examination*
Murex Thymune-M
Wellcome Thymune-M

**Analyte: Beta-2 Microglobulin**

*Test System, Assay, Examination*
The Binding Site Human Beta-2 Microglobulin EL RID

**Analyte: C-Reactive Protein (CRP)**

*Test System, Assay, Examination*
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Instrumentation Laboratory Multistat III
The Binding Site C-Reactive Protein (Turbidimetric)
The Binding Site Human C-Reactive Protein EL RID

**Analyte: Cerebrospinal Fluid Protein Fractions**

*Test System, Assay, Examination*
Beckman Paragon HRE Electrophoresis Kit
Beckman Paragon Immunoelectrophoresis (IEP) Kit
Beckman Paragon Immunofixation Electrophoresis (IFE) Kit
Beckman Paragon SPE Electrophoresis Kit
Beckman Paragon SPE-II Electrophoresis Kit

**Analyte: Ceruloplasmin**

*Test System, Assay, Examination*
Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Caeruloplasmin RID

**Analyte: Chlamydia Trachomatis Antibodies**

*Test System, Assay, Examination*
Serono Baker Serozyme
Serono Diagnostics Serozyme

**Analyte: Complement C1 Inhibitor**

*Test System, Assay, Examination*
The Binding Site Human C1 Inactivator RID

**Analyte: Complement C1q**

*Test System, Assay, Examination*
The Binding Site Human Complement C1q NL RID

**Analyte: Complement C3**

*Test System, Assay, Examination*
Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Complement C3 & C4 RID

**Analyte: Complement C4**

*Test System, Assay, Examination*
Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Complement C3 & C4 RID

**Analyte: Complement, Total**

*Test System, Assay, Examination*
Sigma Diagnostics Test Kit

**Analyte: Cytomegalovirus Antibodies**

*Test System, Assay, Examination*
Diamedix CMV IgM Microassay
General Biometrics Cytomegalovirus IgG IFA Test
General Biometrics Cytomegalovirus IgM IFA Test
Serono Baker Serozyme
Serono Diagnostics Serozyme
Sigma SIA CMV IgG
Zeus CMV IgM IFA Test System

**Analyte: Entamoeba Histolytica Antibodies**

*Test System, Assay, Examination*
LMD Laboratories Amebiasis-Microtiter ELISA (visual)

**Analyte: Epstein-Barr Virus Antibodies**

*Test System, Assay, Examination*
Amico Amizyme EB-VCA Virus Antigen IgM Test (visual)
Zeus EBV-NA (ACIF) Ab Test System

**Analyte: Globulin, Total**

*Test System, Assay, Examination*
Sigma Diagnostics Test Kit

**Analyte: HIV Antibodies**

*Test System, Assay, Examination*
Organon Teknika Vironostika HIV-1 Microelisa System

**Analyte: Haptoglobin**

*Test System, Assay, Examination*
Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Haptoglobin RID

**Analyte: Hepatitis A Virus Antibody**

*Test System, Assay, Examination*
Sorin Biomedica ETI AB-HAVK

**Analyte: Herpes Simplex I and/or II Antibodies**

*Test System, Assay, Examination*
General Biometrics Herpes simplex Virus IgG IFA Test
General Biometrics Herpes simplex Virus IgM IFA Test

**Analyte: Histoplasma Antibodies**

*Test System, Assay, Examination*
Meridian Diagnostics Premier Histoplasma EIA

**Analyte: Immunoglobulins IgA**

*Test System, Assay, Examination*
Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Immunoglobulin G,A,M Polyclonal RID

**Analyte: Immunoglobulins IgD**

*Test System, Assay, Examination*
The Binding Site Human Immunoglobulin D RID

**Analyte: Immunoglobulins IgE**

*Test System, Assay, Examination*
Kallestad Allercoat EAST
Kallestad Allercoat RAST
Sanofi/Kallestad Total IgE Microplate
Serono Baker Serozyme
Serono Diagnostics Serozyme

**Analyte: Immunoglobulins IgG**

*Test System, Assay, Examination*
Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Immunoglobulin G,A,M Polyclonal RID

**Analyte: Immunoglobulins IgG Subclasses**

*Test System, Assay, Examination*
The Binding Site BINDAZYME Human IgG Subclasses EIA
The Binding Site Human IgG Subclasses Monoclonal RID
The Binding Site Human IgG Subclasses Single Dilution RID

**Analyte: Immunoglobulins IgM**

*Test System, Assay, Examination*
Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Immunoglobulin G,A,M Polyclonal RID

**Analyte: Kappa Light Chains**

*Test System, Assay, Examination*
Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Lambda Light Chains**

*Test System, Assay, Examination*
Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Prealbumin**

*Test System, Assay, Examination*
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Instrumentation Laboratory Multistat III
The Binding Site Human Prealbumin RID

**Analyte: Properdin Factor B**

*Test System, Assay, Examination*

Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Protein Fractions**

*Test System, Assay, Examination*

Beckman Paragon HRE Electrophoresis Kit
Beckman Paragon Immunoelectrophoresis (IEP) Kit
Beckman Paragon Immunofixation Electrophoresis (IFE) Kit
Beckman Paragon SPE Electrophoresis Kit
Beckman Paragon SPE-II Electrophoresis Kit

**Analyte: Rheumatoid Factor (RF)**

*Test System, Assay, Examination*

Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Rubella Antibodies**

*Test System, Assay, Examination*

Sigma SIA Rubella IgM
Zeus Rubella IgM ELISA Test System

**Analyte: Taenia Solium Antibodies (Cysticercosis)**

*Test System, Assay, Examination*

LMD Laboratories Cysticercosis Microtiter ELISA (visual)

**Analyte: Toxoplasma Gondii Antibodies**

*Test System, Assay, Examination*

Diamedix Toxoplasma IgM Microassay
General Biometrics Toxoplasmosis IgG IFA Test
General Biometrics Toxoplasmosis IgM IFA Test
LMD Laboratories Toxoplasma IgG Microtiter ELISA (visual)
Sigma SIA Toxoplasma IgG

**Analyte: Transferrin**

*Test System, Assay, Examination*

Beckman Auto ICS
Beckman ICS
Beckman ICS II
The Binding Site Human Transferrin RID

**Analyte: Treponema Pallidum Antibodies (includes Reagin)**

*Test System, Assay, Examination*

ADI Visuwell Reagin (spectrophotometric)

**Analyte: Trichinella Antibodies**

*Test System, Assay, Examination*

LMD Laboratories Trichinella Microtiter ELISA (visual)

Speciality/Subspeciality: Hematology

**Analyte: Activated Clotting Time (ACT)**

*Test System, Assay, Examination*

All Manual Tilt-Tube Coagulation Procedures

**Analyte: Alpha-2-Antiplasmin**

*Test System, Assay, Examination*

Instrumentation Laboratory IL ACL 300 Plus
Instrumentation Laboratory IL ACL 810

**Analyte: Antiplasmin**

*Test System, Assay, Examination*

American Bioproducts STACHROM Antiplasmin Test Kit
Ortho Koagulab CTS

**Analyte: Antithrombin III (ATIII)**

*Test System, Assay, Examination*

American Diagnostica Actichrome Antithrombin III
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Instrumentation Laboratory IL ACL 100
Instrumentation Laboratory IL ACL 300 Plus
Instrumentation Laboratory IL ACL 810
LAbor CoaData 3000
Ortho Koagulab CTS
The Binding Site Human Antithrombin III RID

**Analyte: Cerebrospinal Fluid Microscopic Elements**

*Test System, Assay, Examination*

All Manual Cerebrospinal Fluid Cell Count Procedures

**Analyte: Coagulation Factors**

*Test System, Assay, Examination*

All Manual Tilt-Tube Coagulation Procedures
Instrumentation Laboratory IL ACL 300 Plus
Instrumentation Laboratory IL ACL 810
LAbor CoaData 3000

**Analyte: Fibrin Split Products (Fibrin Degradation)**

*Test System, Assay, Examination*

American Diagnostica Dimertest StripWell EIA Kit
Sigma Fibrin/Fibrinogen Degradation Products

**Analyte: Hemoglobin**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Data Medical Associates Hemoglobin Determination
Sigma Diagnostics Plasma Hemoglobin
Sigma Diagnostics Test Kit
Sigma Diagnostics Total Hemoglobin
Sterling Diagnostics Analyzer 2000

**Analyte: Hemoglobin Fractions**

*Test System, Assay, Examination*

Beckman Paragon Acid Hemoglobin (Acid Hb) Electropho. Kit
Beckman Paragon Hemoglobin (Hb) Electrophoresis Kit

**Analyte: Heparin**

*Test System, Assay, Examination*

Instrumentation Laboratory IL ACL 300 Plus

**Analyte: Plasminogen**

*Test System, Assay, Examination*

American Diagnostica Actichrome PLG
Instrumentation Laboratory IL ACL 300 Plus
Instrumentation Laboratory IL ACL 810
Ortho Koagulab CTS

**Analyte: Plasminogen Activator Inhibitor (PAI)**

*Test System, Assay, Examination*

American Diagnostica Spectrolyse/Fibrin

**Analyte: Platelet Count**

*Test System, Assay, Examination*

Coulter Thrombocounter C

**Analyte: Protamine Rate Titration (PRT)**

*Test System, Assay, Examination*

International Technidyne Hemochron 400
International Technidyne Hemochron 401
International Technidyne Hemochron 800
International Technidyne Hemochron 801

**Analyte: Protein C**

*Test System, Assay, Examination*

American Diagnostica Rellplate C
Biopool Protein C EID Kit
Instrumentation Laboratory IL ACL 300 Plus
LAbor CoaData 3000
Ortho Koagulab CTS

**Analyte: Protein S**

*Test System, Assay, Examination*

American Diagnostica Rellplate S

**Analyte: Red Blood Cell Count (Erythrocyte Count) (RBC)**

*Test System, Assay, Examination*

Coulter A
Coulter B
Coulter Counter Model A
Coulter D
Coulter F

**Analyte: Semen**

*Test System, Assay, Examination*

Sperm Penetration Assay

**Analyte: Tissue Plasminogen Activator (t-PA)**

*Test System, Assay, Examination*

American Diagnostica Spectrolyse/Fibrin

**Analyte: White Blood Cell Count (Leukocyte Count) (WBC)**

*Test System, Assay, Examination*

Coulter A
Coulter B
Coulter Counter Model A
Coulter D
Coulter F

**Analyte: von Willebrand Factor**

*Test System, Assay, Examination*

Biopool vWF EID Kit

SPECIALITY/SUBSPECIALITY: Immunohematology

**Analyte: Fetal RBCs—Maternal Blood (Fetal-Maternal Bleed)**

*Test System, Assay, Examination*

Sure-Tech Fetal Hemoglobin Kit

Speciality/Subspeciality: Parasitology

**Analyte: Malarial Parasite**

*Test System, Assay, Examination*

All Permanent Stain Preparations

SPECIALITY/SUBSPECIALITY: Toxicology / TDM

**Analyte: Acetaminophen**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Amikacin**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Amphetamines**

*Test System, Assay, Examination*

Ames OPTIMATE
Finnigan MAT Witness System

**Analyte: Barbiturates**

*Test System, Assay, Examination*

Ames OPTIMATE
Finnigan MAT Witness System

**Analyte: Benzodiazepines**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Cannabinoids (THC)**

*Test System, Assay, Examination*

Ames OPTIMATE
Finnigan MAT Witness System

**Analyte: Carbamazepine**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Chloramphenicol**

*Test System, Assay, Examination*

Syva Emit Test Kit

**Analyte: Cocaine Metabolites**

*Test System, Assay, Examinationn*

Ames OPTIMATE

**Analyte: Cyclosporine**

*Test System, Assay, Examination*

Incstar CYCLO-Trac SP

**Analyte: Digitoxin**

*Test System, Assay, Examination*

Clinical Assays GammaCoat

**Analyte: Digoxin**

*Test System, Assay, Examination*

Pointe Scientific 180 Chemistry Analyzer

**Analyte: Disopyramide**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Ethanol (Alcohol)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 200
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Electronucleonics FLEXIGEM
Sigma Diagnostics Test Kit

**Analyte: Ethosuximide**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Gentamicin**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Kanamycin**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Methadone**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Methamphetamines**

*Test System, Assay, Examination*

Finnigan MAT Witness System
Sigma SIA Methamphetamine/Amphetamine

**Analyte: Methaqualone**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: N-Acetylprocainamide (NAPA)**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Netilmycin**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Opiates**

*Test System, Assay, Examination*

Ames OPTIMATE
Finnigan MAT Witness System

**Analyte: Phencyclidine (PCP)**

*Test System, Assay, Examination*

Ames OPTIMATE
Finnigan MAT Witness System
STC Diagnostics PCP EIA Plate Kit

**Analyte: Phenobarbital**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Clinical Assays GammaCoat

**Analyte: Phenytoin**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Primidone**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Procainamide**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Propoxyphene**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Quinidine**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II

**Analyte: Salicylates**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Sigma Diagnostics Test Kit

**Analyte: Sisomicin**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Theophylline**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Pointe Scientific 180 Chemistry Analyzer

**Analyte: Tobramycin**

*Test System, Assay, Examination*

Ames OPTIMATE
Beckman Auto ICS
Beckman ICS
Beckman ICS II
Clinical Assays GammaCoat

**Analyte: Tricyclic Antidepressants**

*Test System, Assay, Examination*

Ames OPTIMATE

**Analyte: Valproic Acid**

*Test System, Assay, Examination*

Ames OPTIMATE

SPECIALITY/SUBSPECIALITY: Virology

**Analyte: Cytomegalovirus**

*Test System, Assay, Examination*

Baxter Bartels Direct CMV Kit (including cell culture)
Incstar CMV-vue

**Analyte: Herpes simplex**

*Test System, Assay, Examination*

Diagnostic Products Corp. PDx Herpes Typing (inc cell cult)

**Analyte: Respiratory syncytial virus**

*Test System, Assay, Examination*

Baxter Bartels RSV (FA) Test Kit (including cell culture)

**Analyte: Respiratory viruses (Influenza A&B, parainfluenza)**

*Test System, Assay, Examination*

Baxter Bartels Viral Respiratory Kit (including cell cult)

Compiled list of categorizations of laboratory test systems, assays and examinations by complexity as provided for in 42 CFR 493.17.

Note: Please note that in the following list, code numbers are attached to each analyte and test system. The four digit code preceding each analyte and the five digit code following each test system are unique identifiers developed by CDC to facilitate the data management process.

COMPLEXITY: Moderate

SPECIALITY/SUBSPECIALITY: Bacteriology

**Analyte: (0412) Aerobic &/or Anaerobic Organisms—unlimited sources**

*Test System, Assay, Examination*

All Direct Wet Mount Preparations(04108)
Becton Dickinson BACTEC 9240(07210)
Becton Dickinson BACTEC NR–660(07208)
Becton Dickinson BACTEC NR–730(07209)
Becton Dickinson BACTEC NR–860(07207)
Organon Teknika BacT/Alert(46095)
Vitek Systems Bac-T-Screen 2000 (bacteriuria)(67039)
Vitek Systems Bac-T-Screen 402A (bacteriuria)(67049)
Vitek Systems Bac-T-Screen 500 (bacteriuria)(67050)

**Analyte: (0468) Aerobic Organisms from urine specimens only**

*Test System, Assay, Examination*

Adams Scientific Selecticult-U (colony count only)(04248)
Analytab Uriscreen (bacteriuria)(04218)
BioClinical Systems Bullseye Urine Plate (colony count only)(07266)
BioClinical Systems Urine Screen (colony count only)(07259)
Culture Kits, Inc. Uri-Kit (colony count only)(10100)
Culture Kits, Inc. Uri-Three (colony count only)(10161)
Future Medical Tech. Intl. Qualture (colony count only)(19011)
Medical Technology Corp. Uricult (colony count only)(40053)
Meridian Diagnostics FiltreCheck UTI (bacteriuria)(40094)
Miles Diagnostic Labs MicroStix-3 ID (bacteriuria)(40115)
Miles Diagnostic Labs MicroStix-3 ID (colony count only)(40087)
SmithKline Isocult Cult. Test-Bacteriuria (colony ct only)(58141)
Solar Biologicals SOLAR-CULT (colony count only)(58228)
Troy Biologicals Bacti-Bio General Plate(colony count only)(61066)
Troy Biologicals Bacti-Star II Urine Sys.(colony cnt. only)(61035)
Troy Biologicals Bacti-Star Urine Plate (colony count only)(61023)
Troy Biologicals Bacti-Urine Plate (colony count only)(61022)
Troy Biologicals Uri-Check Plus (colony count only)(61024)
Troy Biologicals Uricheck (colony count only)(61034)
UTI-tect Bacteriuria Diag. Test System (colony count only)(64017)
Unipath Oxoid Dip-Slide (colony count only)(64018)
Ventrex Uriscreen (bacteriuria)(67012)
Wampole Bacturcult (colony count only)(70091)

**Analyte: (0482) Aerobic/Anaerobic Organisms—Endocervical**

*Test System, Assay, Examination*

All Gram Stain Procedures—Endocervical only(04421)

**Analyte: (0477) Aerobic/Anaerobic Organisms—Urethral**

*Test System, Assay, Examination*

All Gram Stain Procedures—Urethral Only(04111)

**Analyte: (1016) Chlamydia**

*Test System, Assay, Examination*

Kodak SureCell (direct antigen/visual)(34020)
Seradyn Vivid Chlamydia (direct antigen/visual)(58046)
Unipath Clearview Rapid Assay (direct antigen/visual)(64001)

**Analyte: (1022) Clostridium difficile**

*Test System, Assay, Examination*

Becton Dickinson Culturette CDT (direct antigen/visual)(07068)
Meridian Diagnostics Meritec-C. difficile (dir Ag/visual)(40066)
Vitek Systems Vidas (direct antigen)(67038)

**Analyte: (2510) Haemophilus influenzae, type b**

*Test System, Assay, Examination*

Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual) (07095)
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis) (07096)
Karobio Phadebact CSF (direct antigen/visual) (34004)
Vitek Systems SLIDEX Meningite-Kit 5 (dir antigen/visual) (67033)
Wampole Bactigen Meningitis Panel (direct antigen/visual) (70008)
Wellcome Wellcogen Bacterial Ag Kit (direct antigen/visual) (70097)

**Analyte: (2512) Helicobacter pylori**

*Test System, Assay, Examination*

Delta West CLOtest (13252)

**Analyte: (4317) N. gonorrhoeae (from urogenital or rectal only)**

*Test System, Assay, Examination*

All Presumpt. ID Using Select. Media, Oxidase, & Gm Stain (04438)

**Analyte: (4302) Neisseria gonorrhoeae**

*Test System, Assay, Examination*

Adams Scientific Selecticult-GC (non-confirmatory) (04250)
BioClinical Systems Gonopen Screen (07265)
Culture Kits, Inc. Goni-Kit (non-confirmatory) (10098)
Medical Technol.Corp.Biocult GC Cult.Paddles (non-confirm.) (40043)
SmithKline Isocult Combination Culture Test (58099)
SmithKline Isocult Diagnostic Culturing System (58200)
Troy Biologicals Bacti Gono Screen I (non-confirmatory) (61020)
Troy Biologicals Bacti Gono Screen II (non-confirmatory) (61021)

**Analyte: (4303) Neisseria meningitidis (non-specific)**

*Test System, Assay, Examination*

Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual) (07095)

**Analyte: (4304) Neisseria meningitidis, group A**

*Test System, Assay, Examination*

Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual) (07095)
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis) (07096)
Becton Dickinson N. Meningitidis Test (direct antigen) (07356)
Karobio Phadebact CSF (direct antigen/visual) (34004)
Vitek Systems SLIDEX Meningite-Kit 5 (dir antigen/visual) (67033)
Wampole Bactigen Meningitis Panel (direct antigen/visual) (70008)

**Analyte: (4306) Neisseria meningitidis, group B**

*Test System, Assay, Examination*

Karobio Phadebact CSF (direct antigen/visual) (34004)
Wampole Bactigen Meningitis Panel (direct antigen/visual) (70008)

**Analyte: (4307) Neisseria meningitidis, group B and E. coli K1**

*Test System, Assay, Examination*

Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual) (07095)
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis) (07096)
Vitek Systems SLIDEX Meningite-Kit 5 (dir antigen/visual) (67033)
Wellcome Wellcogen Bacterial Ag Kit (direct antigen/visual) (70097)

**Analyte: (4308) Neisseria meningitidis, group C**

*Test System, Assay, Examination*

Becton Dickinson N. Meningitidis Test (direct antigen) (07356)
Karobio Phadebact CSF (direct antigen/visual) (34004)
Vitek Systems SLIDEX Meningite-Kit 5 (dir antigen/visual) (67033)
Wampole Bactigen Meningitis Panel (direct antigen/visual) (70008)

**Analyte: (4309) Neisseria meningitidis, group C and W135**

*Test System, Assay, Examination*

Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual) (07095)

**Analyte: (4311) Neisseria meningitidis, group W135**

*Test System, Assay, Examination*

Becton Dickinson N. Meningitidis Test (direct antigen) (07356)
Karobio Phadebact CSF (direct antigen/visual) (34004)
Wampole Bactigen Meningitis Panel (direct antigen/visual) (70008)
Wellcome Wellcogen Bact Ag Kit (Grp A,C,Y,W135) (d Ag/vis) (70033)

**Analyte: (4212) Neisseria meningitidis, group Y**

*Test System, Assay, Examination*

Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual) (07095)
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis) (07096)
Becton Dickinson N. Meningitidis Test (direct antigen) (07356)
Karobio Phadebact CSF (direct antigen/visual) (34004)
Wampole Bactigen Meningitis Panel (direct antigen/visual) (70008)

**Analyte: (5802) Salmonella**

*Test System, Assay, Examination*

Ampcor Dipstick Salmonella (including broth culture) (04164)

**Analyte: (5807) Staphylococcus**

*Test System, Assay, Examination*

Culture Kits, Inc. Staph-Kit (10143)
SmithKline Isocult Diagnostic Culturing System (58200)

**Analyte: (5808) Streptococcus pneumoniae**

*Test System, Assay, Examination*

Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual) (07095)
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis) (07096)
Karobio Phadebact CSF (direct antigen/visual) (34004)
Vitek Systems SLIDEX Meningite-Kit 5 (dir antigen/visual) (67033)
Wampole Bactigen Meningitis Panel (direct antigen/visual) (70008)
Wellcome Wellcogen Bacterial Ag Kit (direct antigen/visual) (70097)

**Analyte: (5810) Streptococcus, group A**

*Test System, Assay, Examination*

Abbott TestPack Plus Strep A (direct antigen/visual) (04482)
Abbott TestPack Strep A (direct antigen/visual) (04078)
Access Medical Systems ImmunoCLONE (direct Ag/visual) (04311)
Adams Scientific Selecticult-Strep (hemolysis only) (04249)
Antibodies Inc. Detect-A-Strep (direct antigen/visual) (04223)
Baxter MicroScan Cards (direct antigen/visual) (07043)
Baxter MicroScan Cards Q.S. (direct antigen/visual) (07206)
Becton Dickinson Culturette Group A Strep (dir Ag/visual) (07089)
Becton Dickinson Directigen 1–2–3 Group A Strep (dirAg/vis) (07091)
Becton Dickinson Directigen Group A Strep (dir Ag/visual) (07093)
Becton Dickinson QTest Strep (direct antigen/visual) (07103)
Binax Equate Strep A (direct antigen/visual) (07127)
BioClinical Systems Strep Screen Kit (hemolysis only) (07264)
BioStar Strep A OIA (direct antigen/visual) (07248)
Ciba Corning Biotrack Strep A (direct antigen/visual) (10167)
Culture Kits, Inc. Strep-Kit (hemolysis/bacitracin) (10099)
Diagnostic Products Corp. PathoDx Strep A (dir Ag/visual) (13038)
Disease Detection International ImmunoCLONE (dir Ag/visual) (13123)
Hybritech Concise Strep A (direct antigen/visual) (25017)
Hybritech Icon Strep A (direct antigen/visual) (25020)
Karobio Phadirect Strep A Test (direct antigen/visual) (34009)
Kodak SureCell (direct antigen/visual) (34020)
Loeco Diagnostics Preview Strep A (direct antigen/visual) (37010)
Medical Technology Corp. OPTITEC Strep A (dir Ag/visual) (40047)
Medical Technology Corp. Respiracult-Strep (hemolysis only) (40049)
Medical Technology Corp. Respiralex (dir Ag/visual) (40051)
Medix Biotech Sure-Strep A (direct antigen/visual) (40056)
Meridian Diagnostics Immunocard (direct antigen/visual)(40063)
New Horizons Smart (direct antigen/visual)(43005)
New Horizons Streptogen (direct antigen/visual)(43006)
Pacific Biotech Cards O.S. Strep A (direct antigen/visual)(49003)
Pacific Biotech Cards Strep A (direct antigen/visual)(49004)
Quidel Group A Strep Test (direct antigen/visual)(52010)
SmithKline Isocult Diag. Culturing System (hemolysis only)(58094)
Troy Biologicals Bacti Strep Screen (hemolysis/bacitracin)(61025)
Unipath Clearview Strep A (direct antigen/visual)(64002)
V-Tech Target Strep A (direct antigen/visual)(67006)
V-Tech V-Trend Strep A (direct antigen/visual)(67010)
Ventrex Ventrescreen (direct antigen/visual)(67014)
Wampole Bactigen Group A Strep (direct antigen/visual)(70003)
Wellcome Reveal Colour Strep A (direct antigen/visual)(70024)

**Analyte: (5828) Streptococcus, group A (from throat only)**

*Test System, Assay, Examination*

All Presumpt. ID w/Selective Media, Hemolysis & Bacitracin(04439)

**Analyte: (5611) Streptococcus, group B**

*Test System, Assay, Examination*

Becton Dickinson Directigen Group B Strep (dir Ag/visual)(07094)
Becton Dickinson Drtgen Meningitis Combo Kit (dirAg/visual)(07095)
Becton Dickinson Drtgen Meningitis Individ.Kit (dirAg/vis)(07096)
Binax Equate Strep B (direct antigen/visual)(07129)
Hybritech Icon Strep B (direct antigen/visual)(25021)
Karobio Phadebact CSF (direct antigen/visual)(34004)
Pacific Biotech Cards O.S. Strep B (direct antigen/visual)(49081)
Quidel Group B Strep Test (direct antigen/visual)(52011)
Wampole Bactigen Group B Strep (direct antigen/visual)(70004)
Wampole Bactigen Group B Strep-CS (direct antigen/visual)(70006)
Wampole Bactigen Group B Strep-CS (including broth culture)(70005)
Wellcome Wellcogen Bacterial Ag Kit (direct antigen/visual)(70097)

**Analyte: (6127) Treponema pallidum**

*Test System, Assay, Examination*

All Darkfield Examinations(04265)

SPECIALITY/SUBSPECIALITY: General Chemistry

**Analyte: (0105) 5'Nucleotidase**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0101) 5-Hydroxyindolacetic Acid, Urine (5–HIAA)**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (0480) Acetoacetate**

*Test System, Assay, Examination*

Roche Cobas FARA II(55041)

**Analyte: (0476) Acetylcholine/choline**

*Test System, Assay, Examination*

Olympus Reply/AU560(46129)

**Analyte: (0407) Acid Phosphatase**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Bio-Chem Laboratory Systems ATAC 2000/ 2100(07188)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0404) Alanine Aminotransferase (ALT) (SGPT)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS–X(07069)
Beckman Synchron AS–Xe(07172)
Beckman Synchron AS–Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/ 2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (0414) Albumin**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)

Behring Turbitimer(07274)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Decos(10106)
Coulter Decos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sanofi/Kallestad QM 300(58169)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon DPA–1(61041)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (0415) Aldolase**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Roche Cobas FARA II(55041)

**Analyte: (0416) Alkaline Phosphatase (ALP)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Decos(10106)
Coulter Decos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
S Uni-Fast System Analyzer(58193)
S Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (0464) Alpha-2-HS-Glycoprotein**

*Test System, Assay, Examination*

Roche Cobas FARA II(55041)

**Analyte: (0424) Alpha-Fetoprotein—Tumor Marker**

*Test System, Assay, Examination*

TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)

**Analyte: (0419) Alpha-Hydroxybutyrate Dehydrogenase (HBDH)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)

Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0427)Ammonia, Plasma/Serum**

*Test System, Assay, Examination:*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 570 Alliance(10039)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
RocheCobas Bio(55100)
RocheCobas FARA(55040)
RocheCobas FARA II(55041)
RocheCobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0429)Amylase**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte:(0481)Angiotensin Converting Enzyme (ACE)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott VP(04082)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)

Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Ciba Corning 550 Express(10038)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus Reply(46089)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0462)Apolipoprotein A1**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott VP(04082)
Baxter Paramax(07048)
Baxter Paramax 720(07186)
Baxter Paramax 720 ZX(07049)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring Turbitimer(07274)
Bio-Chem Laboratory Systems ATAC 2000/ 2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Isolab API Apolipoprotein Analyzer(28192)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Sanofi/Kallestad QM 300(58169)
Technicon Assist(61002)
Technicon DPA–1(61041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0457) Apolipoprotein B**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott VP(04082)
Baxter Paramax(07048)
Baxter Paramax 720(07188)
Baxter Paramax 720 ZX(07049)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring Turbitimer(07274)
Bio-Chem Laboratory Systems ATAC 2000/ 2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Isolab API Apolipoprotein Analyzer(28192)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Sanofi/Kallestad QM 300(58169)
Technicon Assist(61002)
Technicon DPA–1(61041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0405) Aspartate Aminotransferase (AST) (SGOT)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/ 2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)

Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (0722) Beta-Hydroxybutyrate**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0704) Bilirubin, Direct**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 5000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (0705) Bilirubin, Neonatal**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
Advanced Instruments Bilirubin STAT Analyzer(04095)
Baxter Paramax(07048)
Baxter Paramax 720(07186)
Baxter Paramax 720 ZX(07049)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Cambridge Instruments Unistat Bilirubinometer(10183)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Roche Cobas FARA II(55041)
Wako Bilirubin Tester(70120)

**Analyte: (0706) Bilirubin, Total**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)

Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 730 ZX(07049)
Beckman Astra 8(07064)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07065)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QCA Analyzer(07181)
Bio-Chem Laboratory Systems ATAC 2000/2100(07185)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Biodynamics Unimeter 250(07254)
Boehringer Mannheim Biodynamics Unimeter 300(07252)
Boehringer Mannheim Biodynamics Unimeter 330(07253)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Decos(10106)
Coulter Decos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28062)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28063)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 600(46110)
Olympus Demand(46002)
Olympus Reply(46003)
Olympus Reply/AU500(46123)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55006)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Axon(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (0708) Blood Gases with pH**

*Test System, Assay, Examination*

AVL 940(04010)
AVL 945(04011)
AVL 947(04304)
AVL 990(04019)
AVL 995(04020)
AVL 995 Hb(04021)
Ciba Corning 170(10033)
Ciba Corning 178(10034)
Ciba Corning 238 pH/Blood Gas Analyzer(10164)
Ciba Corning 278(10035)
Ciba Corning 280(10036)
Ciba Corning 288(10037)
Instrumentation Laboratory BG3(28154)
Instrumentation Laboratory BGElectrolytes(28063)
Instrumentation Laboratory IL 1301(28064)
Instrumentation Laboratory IL 1302(28065)
Instrumentation Laboratory IL 1303(28066)
Instrumentation Laboratory IL 1304(28067)
Instrumentation Laboratory IL 1306(28068)
Instrumentation Laboratory IL 1310(28193)
Instrumentation Laboratory IL 1312(28069)
Instrumentation Laboratory IL 813(28072)
Mallinckrodt GEM-STAT(40125)
Mallinckrodt Gem 6 Plus(40002)
Mallinckrodt Gem Premier(40003)
Nova Stat Profile 1(43029)
Nova Stat Profile 2(43030)
Nova Stat Profile 3(43031)
Nova Stat Profile 4(43032)
Nova Stat Profile 5(43033)
PPG Industries StatPal Blood Gas Analysis System(49015)
Radiometer ABL 1(55049)
Radiometer ABL 2(55001)
Radiometer ABL 2 RA(55050)
Radiometer ABL 3(55002)
Radiometer ABL 3 M(55051)
Radiometer ABL 30(55003)
Radiometer ABL 300(55004)
Radiometer ABL 330(55005)
Radiometer ABL 4(55008)
Radiometer ABL 50(55104)
Radiometer ABL 500(55052)
Radiometer ABL 505(55053)
Radiometer ABL 510(55054)
Radiometer ABL 520(55055)

**Analyte: (0721) Blood pH (no blood gases)**

*Test System, Assay, Examination*

Corometrics 220 pH System(10175)

**Analyte: (1001) C-Reactive Protein (CRP)**

*Test System, Assay, Examination*

Roche Cobas Bio(55100)

**Analyte: (1004) Calcium, Ionized**

*Test System, Assay, Examination*

AMDEV Lytening 6 Instant ISE(04347)
AMDEV Lytening 6R Instant ISE(04349)
AVL 9140(04305)
AVL 984-S(04014)
AVL 987-S(04016)
Baxter Lytening Systems 32(07306)
Beckman LABLYTE 620(07067)
Ciba Corning 288(10037)
Ciba Corning 634(10042)
Coulter FLEXLYTE 3(10071)
Coulter FLEXLYTE 6(10072)
Instrumentation Laboratory BGElectrolytes(28063)
Mallinckrodt GEM-STAT(40125)
Mallinckrodt Gem 6 Plus(40002)
Mallinckrodt Gem Premier(40003)
Nova 2(43016)
Nova 6(43020)
Nova 7(43021)
Nova 8(43022)
Nova Nucleus(43028)
Nova Stat Profile 1(43029)
Nova Stat Profile 4(43032)
Nova Stat Profile 5(43033)
Nova Stat Profile 6(43034)
Nova Stat Profile 8(43036)
Pointe Scientific Ionetics Model 330(49062)
Radiometer ABL 505(55053)
Radiometer ICA1 Ionized Calcium Analyzer(55083)
Radiometer ICA2 Ionized Calcium Analyzer(55082)

**Analyte: (1005) Calcium, Total**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)

Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman E2A(07060)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 3(07070)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Beckman Synchron EL-ISE(07074)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express (10038)
Ciba Corning 570 Alliance (10039)
Ciba Corning 580 Alliance (10040)
Coulter Dacos (10106)
Coulter Dacos XL (10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA (13082)
Du Pont ACA II (13172)
Du Pont ACA III (13173)
Du Pont ACA IV (13083)
Du Pont ACA V (13084)
Du Pont Analyst (13085)
Du Pont Dimension (13086)
Du Pont Dimension AR (13087)
Du Pont Dimension ES (13215)
EM Diagnostic Systems EASY PLUS (16016)
EM Diagnostic Systems EASY ST (16017)
EM Diagnostic Systems EPOS (16015)
Electronucleonics Gem-Profiler (16004)
Electronucleonics Gemini (16005)
Electronucleonics Gemstar (16006)
Electronucleonics Gemstar II (16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix (28084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module (34017)
Nova 10(43011)
Nova 7(43021)
Nova 9(43023)
Nova Nucleus (43028)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Precision Systems Calcette (49000)
Roche Cobas Bio (55100)
Roche Cobas FARA (55040)
Roche Cobas FARA II (55041)
Roche Cobas Mira (55044)
Roche Cobas Mira Plus (55096)
Roche Cobas Mira S (55045)
Roche Cobas Ready (55046)
Sclavo Uni-Fast System Analyzer (58193)
Sclavo Uni-Fast2 System Analyzer (58194)
Technicon AXON (61001)
Technicon Assist (61002)
Technicon Chem 1 (61003)
Technicon DAX 24 (61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (1003) Carbon Dioxide, Total (CO2)**

*Test System, Assay, Examination*

AVL 986–S(04017)
Abbott Spectrum (04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II (04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 4(07053)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Chloride/CO2 Analyzer(07171)
Beckman E4A(07061)
Beckman Synchron AS–X(07069)
Beckman Synchron AS–Xe(07172)
Beckman Synchron AS–Xi(07173)
Beckman Synchron CX 3(07070)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Beckman Synchron EL–ISE(07074)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Ciba Corning 664 FAST 4(10045)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix(28084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DTE Module(34018)
Nova 12(43013)
Nova 12 (with CRT)(43049)
Nova 3(43017)
Nova 4(43018)
Nova 4 (with CRT)(43046)
Nova Nucleus(43028)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)

Technicon DAX 96(61007)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (1012) Carboxyhemoglobin**

*Test System, Assay, Examination*

AVL 912(04009)
Ciba Corning 2500 CO-oximeter(10162)
Ciba Corning 270 CO-oximeter(10163)
Instrumentation Laboratory IL 282(28189)
Instrumentation Laboratory IL 482(28151)
Radiometer ABL 520(55055)
Radiometer OSM 2(55058)
Radiometer OSM 3(55059)

**Analyte: (1014) Cerebrospinal Fluid Protein (CSF)**

*Test System, Assay, Examination*

Baxter Paramax(07048)
Baxter Paramax 720(07166)
Baxter Paramax 720 ZX(07049)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Olympus AU 800(46110)

**Analyte: (1018) Chloride**

*Test System, Assay, Examination*

AMDEV Lytening 5 Instant ISE(04346)
AVL 9130(04237)
AVL 983–S(04013)
AVL 986–S(04017)
Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter CLiNaK ISE Module(07185)
Baxter Lytening Systems 30(07305)
Baxter Paramax(07048)
Baxter Paramax 720(07166)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Chloride/CO2 Analyzer(07171)
Beckman E4A(07061)
Beckman LABLYTE 810(07056)
Beckman Synchron AS–X(07069)
Beckman Synchron AS–Xe(07172)
Beckman Synchron AS–Xi(07173)
Beckman Synchron CX 3(07070)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Beckman Synchron EL–ISE(07074)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
Bio-Chem Laboratory Systems ATAC ISE(07190)
Bio-Chem Laboratory Systems ATAC ISE Plus(07191)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 288(10037)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Ciba Corning 644(10043)
Ciba Corning 664 FAST 4(10045)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter FLEXLYTE 3(10071)
Coulter FLEXLYTE 6(10072)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
I-STAT i-STAT Portable Clinical Analyzer(28186)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix(28084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DTE Module(34018)
Medica EasyLyte Plus Ion Selective Analyzer(40033)
Nova 10(43011)
Nova 12(43013)
Nova 12(with CRT)(43049)
Nova 13(43014)
Nova 13(with CRT)(43050)
Nova 14(43015)
Nova 14(with CRT)(43051)
Nova 3(43017)
Nova 4(43018)
Nova 4(with CRT)(43046)
Nova 5(43019)
Nova 5(with CRT)(43047)
Nova Nucleus(43028)
Nova Stat Profile 4(43032)
Nova Stat Profile 5(43033)
Nova Stat Profile 6(43034)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Radiometer ABL 505(55053)
Radiometer CMT10 Chloride Titrator(55081)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (1020) Cholesterol**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QCA Analyzer(07181)

Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim ProAct System(07196)
Boehringer Mannheim Reflotron(07167)
Boehringer Mannheim Reflotron Plus(07168)
Chematics CHEMCARD Cholesterol Test (wheel)(10204)
Chematics CHEMCARD Cholesterol Test (window)(10203)
ChemTrak Accumeter(10165)
Cholestech L.D.X. Lipid Analyzer(10170)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Cirrus Diagnostics CRP (Cardiac Risk Profiler)(10160)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 160(10080)
DataChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension RS(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Enzymatics Q.E.D. Total Cholesterol Test(16014)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Medical Technology Corp. QuikRead(40113)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 600(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (1031) Cholinesterase**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira Plus(55096)
Technicon Assist(61002)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1033) Cholylglycine (Bile Acids)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Ciba Corning 550 Express(10038)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas Mira Plus(55096)
Technicon Assist(61002)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1032) Cortisol**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Boehringer Mannheim ES 300(07180)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
EM Diagnostic Systems EPOS(16015)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1033) Cortisol, Urine**

*Test System, Assay, Examination*

Abbott TDX FLx(04072)

**Analyte: (1034) Creatine Kinase (CK)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)

American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (1002) Creatine Kinase MB Fraction (CKMB)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Abbott Spectrum(04067)
Abbott VP(04082)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning ACS 180(10046)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA III with aca plus Immunoessay System(13253)
Du Pont ACA IV(13083)
Du Pont ACA IV with aca plus Immunoessay System(13254)
Du Pont ACA V(13084)
Du Pont ACA V with aca plus Immunoessay System(13255)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Hybritech ICON QSR CKMB(25018)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 5000(46001)
Olympus AU 5131(46088)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
TOSOH A1A-1200(61040)
TOSOH A1A-600(61039)
Technicon AXON (61001)
Technicon Assist(61002)
V-Tech Target CK-MB(67067)

**Analyte: (1035) Creatinine**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 4(07053)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Creatinine Analyzer(Original Model)(07058)
Beckman Creatinine Analyzer 2(07059)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)

Beckman Synchron CX 3(07070)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QCA Analyzer(07181)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron(07167)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 160(10080)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL 919(28185)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix(28084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Kodak Ektachem DT SC Module(34017)
Nova Nucleus(43028)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46120)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012) Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (1605) Estradiol**

*Test System, Assay, Examination*

Abbott IMX(04056)
Boehringer Mannheim ES 300(07160)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)

**Analyte: (1606) Estriol—Total**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Roche Cobas Mira Plus(55096)

**Analyte: (1607) Estriol—Unconjugated**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (1802) Ferritin**

*Test System, Assay, Examination*

Abbott IMX(04056)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Becton Dickinson Affinity(07075)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim ES 300(07160)
Ciba Corning ACS 180(10046)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)
Technicon Immuno 1 System(61042)

**Analyte: (1807) Folate (Folic Acid)**

*Test System, Assay, Examination*

Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Ciba Corning ACS 180(10046)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)

**Analyte: (1808) Follicle Stimulating Hormone (FSH)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Abbott IMX Select(04229)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Becton Dickinson Affinity(07075)
Boehringer Mannheim ES 300(07160)
Ciba Corning ACS 180(10046)
Cirrus Diagnostics Immulite(10159)
PB Diagnostics Systems OPUS(49001)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)
Technicon Immuno 1 System(61042)

**Analyte: (1814) Fructosamine**

*Test System, Assay, Examination*

Abbott Spectrum(04087)
Abbott VP(04082)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA XT(61013)

**Analyte: (2201) Gamma Glutamyl Transferase (GGT)**

*Test System, Assay, Examination*

Abbott Spectrum(04087)
Abbott Spectrum EPX(04088)
Abbott Spectrum Series II(04089)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)

BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Decoe(10106)
Coulter Decos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61006)
Technicon DAX 72(61008)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (2211) Gastric Occult Blood With pH**

*Test System, Assay, Examination*

SmithKline Gastroccult(58217)

**Analyte: (2203) Glucose**

*Test System, Assay, Examination*

APEC Glucose Analyzer(04370)
Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Glucometer ENCORE QA Blood Glucose Meter(04423)
Ames Glucometer QA Blood Glucose Meter(04422)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07046)
Baxter Paramax 720 ZX(07049)
Beckman Astra 4(07053)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Glucose Analyzer (Original Model)(07063)
Beckman Glucose Analyzer 2(07064)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 3(07070)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Beckman System One(07175)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QCA Analyzer(07181)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Biodynamics Unimeter 300(07252)
Boehringer Mannheim Biodynamics Unimeter 330K(07253)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron(07167)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Decoe(10106)
Coulter Decos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
HemoCue B-Glucose System(25112)
I-STAT I-STAT Portable Clinical Analyzer(28186)
Instrumentation Laboratory IL 919(28185)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix(28084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
MediSense Satellite G(40119)
Nova 12(43013)
Nova 12 (with CRT)(43049)
Nova 14(43015)
Nova 14 (with CRT)(43051)
Nova Nucleus(43028)
Nova Stat Profile 5(43033)
Nova Stat Profile 6(43034)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)

Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)
Yellow Springs YSI Model 1500(76002)
Yellow Springs YSI Model 2300(76004)

**Analyte: (2208) Glucose-6-Phosphate Dehydrogenase (G-6-PDH)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Bio-Chem Laboratory Systems ATAC 2000/2100(07168)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Ciba Corning 550 Express(10038)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (2304) Glycosylated Hemoglobin (Hgb A1C)**

*Test System, Assay, Examination*

Abbott Vision(04083)
Ames DCA 2000 Analyzer(04303)
Bio-Rad Diamat Analyzer(07276)
Chembio Auto-Glyco-Sep/A1C jr(10176)
Ciba Corning Model 765 Glycomat(10210)
DataChem DC-100(13213)
Drew Scientific Glycomat Haemoglobin Analyzer(13260)
Helena Laboratories ColumnMate(25114)
Seradyn Glycotrak(58159)

**Analyte: (2501) HCG, Serum, Qualitative**

*Test System, Assay, Examination*

Abbott TestPack HCG-combo(04074)
Access Medical Systems ImmunoCLONE (direct Ag/visual)(04311)
Ampcor QuikDIP Pregnancy(04295)
Becton Dickinson Directigen 1-2-3 hCG(07269)
Becton Dickinson QTest Pregnancy Combo(07270)
Bio-Rad Quantimune(07141)
Biomerica Nimbus(07152)
Chembio HCG-STAT-PAK(10190)
Disease Detection International ImmunoCard hCG Test(13211)
Hybritech ICON II HCG (urine/serum)(25127)
Hybritech Tandem ICON II (urine/serum)(25019)
Kodak SureCell hCG—Urine/Serum(34038)
Leeco Diagnostics Preview Serum/Urine-hCG(37030)
Medical Technology Corp. OPTITEC HCG(40116)
Medix Biotech HCG Visual Pregnancy (5/5) Test Kit(40133)
Medix Biotech Visual hCG-M Pregnancy Test(40132)
Meridian Diagnostics Immunocard Test(40064)
Pacific Biotech Beta Quik Stat(49051)
Pacific Biotech Cards HCG-Serum/Urine(49052)
Syntron Bioresearch Microcheck HCG(58219)
Syntron Bioresearch Quikpac Pregnancy Test(58218)
V-Tech Target HCG(67066)
Wampole One-Step HCG(70074)

**Analyte: (2502) HCG, Serum, Quantitative**

*Test System, Assay, Examination*

Abbott IMX(04056)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Becton Dickinson Affinity(07075)
BioAutoMed ASCA(07192)
Boehringer Mannheim ES 300(07160)
Ciba Corning ACS 180(10046)
Cirrus Diagnostics Immulite(10159)
Du Pont ACA III with aca plus Immunoassay System(13253)
Du Pont ACA IV with aca plus Immunoassay System(13254)
Du Pont ACA V with aca plus Immunoassay System(13255)
PB Diagnostics Systems OPUS(49001)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
TOSOH A1A-1200(61040)
TOSOH A1A-600(61039)
Technicon Immuno 1 System(61042)

**Analyte: (2503) HCG, Urine, Qualitative (Non-Waived Procedures)**

*Test System, Assay, Examination*

Ampcor Monoclonal Pregnancy beta-HCG Liquid Card Test(04298)
Ampcor Quik-Dot Pregnancy beta-HCG Dry Card Test(04296)
Bio-Rad Quantimune(07141)
Biomerica Nimbus(07152)
Carter Products ANSWER Pregnancy Test(10174)
Medix Biotech HCG Visual Pregnancy (5/5) Test Kit(40133)
Medix Biotech Visual hCG-M Pregnancy Test(40132)
NCS Pregnancy Latex Slide Test(43052)
Organon Teknika Pregnosticon Dri-Dot(46119)
Pacific Biotech Beta Quik Stat(49051)
Roche Pregnosis(55048)
Stanbio Fertitell Pregnancy Slide Test(58166)
Stanbio Fertiter Pregnancy Slide Test(58120)
Stanbio QuickTell(58121)
Syntron Bioresearch Microcheck HCG(58219)
Wampole UCG-BETA SLIDE MONOCLONAL II(70132)
Wampole UCG-BETA Stat(70131)
Wampole UCG-SLIDE TEST(70133)

**Analyte: (2534) HCG, Urine, Quantitative**

*Test System, Assay, Examination*

Wampole UCG-BETA Stat(70131)

**Analyte: (2543) HCG, Whole Blood, Qualitative**

*Test System, Assay, Examination*

Bio-Rad Quantimune(07141)
Pacific Biotech Beta Quik Stat(49051)

**Analyte: (2550) HDL Cholesterol**

*Test System, Assay, Examination*

Abbott Vision, Whole Blood HDL Procedure(04243)
Ames Seralyzer III(04155)
Bio-Chem Laboratory Systems ATAC 5000(07189)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Cholestech L.D.X. Lipid Analyzer(10170)
Cirrus Diagnostics CRP (Cardiac Risk Profiler)(10160)
Du Pont Analyst(13085)
EM Diagnostic Systems EASY PLUS (auto. sample pretreatment)(16022)
EM Diagnostic Systems EASY ST (auto. sample pretreatment)(16025)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Medical Technology Corp. QuikRead(40113)

**Analyte: (2567) Human Growth Hormone (GH)**

*Test System, Assay, Examination*

TOSOH A1A-1200(61040)
TOSOH A1A-600(61039)

**Analyte: (2812) Insulin**

*Test System, Assay, Examination*

Abbott IMX(04056)
Boehringer Mannheim ES 300(07160)
TOSOH A1A-1200(61040)
TOSOH A1A-600(61039)

**Analyte: (2814) Iron**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)

American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55006)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (2823) Iron Binding Capacity, Unsat. (UIBC) No Pretreat.**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)

**Analyte: (2839) Isocitric Dehydrogenase**

*Test System, Assay, Examination*

Abbott VP(04082)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)

**Analyte: (3403) Ketone, Blood**

*Test System, Assay, Examination*

Ames ACETEST(04381)
GDS Diagnostics Stat-Site Meter(22126)

**Analyte: (3701) Lactate Dehydrogenase (LDH)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55006)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)

Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (3702) Lactate Dehydrogenase Heart Fraction (LDH-1)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus AU 5000(46001)
Olympus AU 5131(46088)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon Assist(61002)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (3703) Lactate Dehydrogenase Liver Fraction (LLDH)**

*Test System, Assay, Examination*

Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)

**Analyte: (3704) Lactic Acid (Lactate)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Nova Stat Profile 7(43035)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Yellow Springs YSI Model 1500 Sport(76003)
Yellow Springs YSI Model 2300(76004)
Yellow Springs YSI Model 2372(76005)

**Analyte: (3709) Leucine Aminopeptidase (LAP)**

*Test System, Assay, Examination*

Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Boehringer Mannheim Hitachi 705(07162)
Instrumentation Laboratory IL Monarch Plus(28083)

**Analyte: (3711) Lipase**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
Baxter Paramax(07048)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)

**Analyte: (3712) Lithium**

*Test System, Assay, Examination*

AMDEV Lytening 2 Instant ISE(04348)
AMDEV Lytening 2z Instant ISE(04345)
AVL 985-S(04015)
AVL 985-S1(04016)
Abbott TDX FLx(04072)
Amdev ISE Analyzer(04136)
Baxter CLiNaK ISE Module(07185)
Baxter Lytening Systems 31(07304)
Baxter Paramax(07048)
Baxter Paramax 720(07186)

Baxter Paramax 720 ZX(07049)
Beckman LABLYTE 830(07068)
Beckman Synchron EL-ISE(07074)
Ciba Corning 480(10173)
Ciba Corning 654(10044)
Coulter FLEXLYTE 3(10071)
Coulter FLEXLYTE 6(10072)
Du Pont Na, K, Li Analyzer(13090)
Instrumentation Laboratory IL 943(28190)
Medica EasyLyte Lithium(40130)
Nova 11(43012)
Nova 11 (with CRT)(43048)
Nova 13(43014)
Nova 13 (with CRT)(43050)
Nova 4(43018)
Nova 4 (with CRT)(43046)
Nova Nucleus(43028)

**Analyte: (3713) Luteinizing Hormone (LH)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Abbott IMX Select(04229)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus Intellect(07376)
Becton Dickinson Affinity(07075)
Boehringer Mannheim ES 300(07160)
Ciba Corning ACS 180(10046)
Cirrus Didgnostics Immulite(10159)
PB Diagnostics Systems OPUS(49001)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)
Technicon Immuno 1 System(61042)

**Analyte: (4002) Magnesium**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 8000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Decos(10106)
Coulter Decos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 160(10060)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Nova 6(43020)
Nova Nucleus(43028)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (4018) Magnesium, Ionized**

*Test System, Assay, Examination*

Nova Stat Profile 8(43036)

**Analyte: (4019) Microalbumin**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04068)
Abbott VP(04082)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 160(10060)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Technicon RA 1000(61010)

**Analyte: (4028) Microprotein, CSF**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory Multistat III(28183)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (4037) Microprotein, Urine**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)

Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28062)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory Multistat III(28183)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (4023) Myoglobin**

*Test System, Assay, Examination*

Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
PB Diagnostics Systems OPUS(49001)

**Analyte: (4002) Osmolality, Serum**

*Test System, Assay, Examination*

Advanced Instruments 3M0 Micro-Osmometer(04315)
Advanced Instruments Cryomatic 3C2 Osmometer(04314)
Advanced Instruments DigiMatic 3D2 Osmometer(04097)
Advanced Instruments Wide Range Osmometer 3W2(04330)
Fiske 2400 Osmometer(19008)
Precision Systems Cryette WR(49053)
Precision Systems Micro uOsmette(49059)
Precision Systems Multi-Osmette(49054)
Precision Systems Osmette(49058)
Precision Systems Osmette A(49056)
Precision Systems Osmette II(49055)
Precision Systems Osmette S(49057)
Wescor 5500 Vapor Pressure Osmometer(70037)
Wescor 5500XR Vapor Pressure Osmometer(70094)
Wescor Colloid Osmometer Model 4100(70096)
Wescor Colloid Osmometer Model 4400(70095)
Wescor Colloid Osmometer Model 4420(70036)

**Analyte: (4003) Osmolality, Urine**

*Test System, Assay, Examination*

Advanced Instruments 3M0 Micro-Osmometer(04315)
Advanced Instruments Cryomatic 3C2 Osmometer(04314)
Advanced Instruments DigiMatic 3D2 Osmometer(04097)
Advanced Instruments Wide Range Osmometer 3W2(04330)
Fiske 2400 Osmometer(19008)
Precision Systems Cryette WR(49053)
Precision Systems Micro uOsmette(49059)
Precision Systems Multi-Osmette(49054)
Precision Systems Osmette(49058)
Precision Systems Osmette A(49056)
Precision Systems Osmette II(49055)
Precision Systems Osmette S(49057)
Wescor 5500 Vapor Pressure Osmometer(70037)
Wescor 5500XR Vapor Pressure Osmometer(70094)
Wescor Colloid Osmometer Model 4100(70096)
Wescor Colloid Osmometer Model 4400(70095)
Wescor Colloid Osmometer Model 4420(70036)

**Analyte: (4004) Oxyhemoglobin/Oxygen Saturation**

*Test System, Assay, Examination*

AVL 912(04009)
AVL 995 Hb(04021)
Ciba Corning 2500 CO-oximeter(10162)
Ciba Corning 270 CO-oximeter(10163)
Instrumentation Laboratory IL 282(28189)
Instrumentation Laboratory IL 382(28212)
Instrumentation Laboratory IL 482(28151)
Radiometer ABL 520(55055)
Radiometer OSM 2(55058)
Radiometer OSM 3(55059)
Waters Instruments Oxicom 2000(70121)
Waters Instruments Oxicom 2100(70130)
Waters Instruments Oxicom 3000(70075)

**Analyte: (4005) Phosphatidylglycerol (PG)—Amniotic Fluid**

*Test System, Assay, Examination*

Irvine Scientific AmnioStat—FLM(28065)

**Analyte: (4006) Phospheres**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xa(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 8000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DateChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28062)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)

Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: [4816] Potassium**

*Test System, Assay, Examination*

AMDEV Lytening 1 Instant ISE(04344)
AMDEV Lytening 2 Instant ISE(04348)
AMDEV Lytening 2z Instant ISE(04345)
AMDEV Lytening 5 Instant ISE(04346)
AMDEV Lytening 6 Instant ISE(04347)
AMDEV Lytening 6R Instant ISE(04349)
AVL 9120(04236)
AVL 9130(04237)
AVL 9140(04305)
AVL 982–S(04012)
AVL 983–S(04013)
AVL 984–S(04014)
AVL 985–S(04015)
AVL 986–S(04017)
AVL 987–S(04018)
Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
Amdev ISE Analyzer(04136)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baker Ana-Lyte +1(07021)
Baker Ana-Lyte +2(07022)
Baxter CLiNaK ISE Module(07185)
Baxter Lytening Systems 20(07303)
Baxter Lytening Systems 30(07305)
Baxter Lytening Systems 31(07304)
Baxter Lytening Systems 32(07306)
Baxter Paramax(07048)
Baxter Paramax 720(07186)
Baxter Paramax 720 ZX(07049)
Beckman Astra 4(07053)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman E2A(07060)
Beckman E4A(07061)
Beckman LABLYTE 800(07065)
Beckman LABLYTE 810(07066)
Beckman LABLYTE 820(07067)
Beckman LABLYTE 830(07068)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 3(07070)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Beckman Synchron EL-ISE(07074)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC ISE(07190)
Bio-Chem Laboratory Systems ATAC ISE Plus(07191)
Boehringer Mannheim Biodynamics Unimeter 250(07254)
Boehringer Mannheim Biodynamics Unimeter 300(07252)
Boehringer Mannheim Biodynamics Unimeter 330K(07253)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 288(10037)
Ciba Corning 480(10173)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Ciba Corning 614(10041)
Ciba Corning 644(10043)
Ciba Corning 654(10044)
Ciba Corning 664 FAST 4(10045)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter FLEXLYTE 3(10071)
Coulter FLEXLYTE 6(10072)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
Du Pont Na, K, Li Analyzer(13090)
EM Diagnostic Systems EASY ST(16017)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Electronucleonics Starlyte II(16009)
I-STAT i-STAT Portable Clinical Analyzer(28186)
Instrumentation Laboratory BGElectrolytes(28063)
Instrumentation Laboratory IL 501(28070)
Instrumentation Laboratory IL 502(28071)
Instrumentation Laboratory IL 943(28190)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix(28084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DTE Module(34018)
Liston ECS 2000(37036) Mallinckrodt GEM-STAT(40125)
Mallinckrodt Gem 6 Plus(40002)
Mallinckrodt Gem Premier(40003)
MedTest Systems Medisensor 2001(40120)
Medica EasyLyte Ion Selective Analyzer(40032)
Medica EasyLyte Lithium(40130)
Medica EasyLyte Plus Ion Selective Analyzer(40033)
Nova 1(43010)
Nova 1 (with CRT)(43045)
Nova 10(43011)
Nova 11(43012)
Nova 11 (with CRT)(43048)
Nova 12(43013)
Nova 12 (with CRT)(43049)
Nova 13(43014)
Nova 13 (with CRT)(43050)
Nova 14(43015)
Nova 14 (with CRT)(43051)
Nova 4(43016)
Nova 4 (with CRT)(43046)
Nova 5(43019)
Nova 5 (with CRT)(43047)
Nova 6(43020)
Nova 9(43023)
Nova Nucleus(43028)
Nova Stat Profile 1(43029)
Nova Stat Profile 2(43030)
Nova Stat Profile 4(43032)
Nova Stat Profile 5(43033)
Nova Stat Profile 6(43034)
Nova Stat Profile 8(43036)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Orion Model 1020 Na/K Analyzer(46120)
Pointe Scientific Ionetics Electrolyte Analyzer II(49063)
Pointe Scientific Ionetics Model 310(49061)
Radiometer ABL 4(55006)
Radiometer ABL 505(55053)
Radiometer KNA 1(55056)
Radiometer KNA 2(55057)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Seragen Quick-Lyte K/Na(58192)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (4914) Progesterone**

*Test System, Assay, Examination*

Abbott IMX(04056)
Becton Dickinson Affinity(07075)
Boehringer Mannheim ES 300(07160)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)

**Analyte: (4918) Prolactin**

*Test System, Assay, Examination*

Abbott IMX(04056)
Abbott IMX Select(04229)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Becton Dickinson Affinity(07075)
Boehringer Mannheim ES 300(07160)
Ciba Corning ACS 180(10046)
PB Diagnostics Systems OPUS(49001)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)
Technicon Immuno 1 System(61042)

**Analyte: (4919) Prostatic Acid Phosphatase (PAP)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Baxter Stratus(07050)
Baxter Stratus II(07051)
BioAutoMed ASCA(07192)
Instrumentation Laboratory IL Monarch Plus(28083)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)

**Analyte: (4921) Protein, Total**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 8000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Decos(10106)
Coulter Decos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix(28084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Nova Nucleus(43028)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Reichert TS Meter(55071)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (4923) Pseudocholinesterase**

*Test System, Assay, Examination*

Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)

**Analyte: (4941) Pyruvate**

*Test System, Assay, Examination*

Roche Cobas Bio(55100)
Roche Cobas FARA(55040)

**Analyte: (5507) Retinol binding protein**

*Test System, Assay, Examination*

Behring Nephelometer(07273)
Behring Nephelometer 100(07272)

**Analyte: (5805) Sodium**

*Test System, Assay, Examination*

AMDEV Lytening 1 Instant ISE(04344)
AMDEV Lytening 2 Instant ISE(04348)
AMDEV Lytening 2z Instant ISE(04345)
AMDEV Lytening 5 Instant ISE(04346)
AMDEV Lytening 6 Instant ISE(04347)
AMDEV Lytening 6R Instant ISE(04349)
AVL 9120(04236)
AVL 9130(04237)
AVL 9140(04305)
AVL 982–S(04012)
AVL 983–S(04013)
AVL 984–S(04014)
AVL 985–S(04015)
AVL 986–S(04017)
AVL 987–S(04018)
Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott VP(04082)
Amdev ISE Analyzer(04136)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Baker Ana-Lyte +1(07021)
Baker Ana-Lyte +2(07022)
Baxter CLiNaK ISE Module(07185)
Baxter Lytening Systems 20(07303)
Baxter Lytening Systems 30(07305)
Baxter Lytening Systems 31(07304)
Baxter Lytening Systems 32(07306)
Baxter Paramax(07048)
Baxter Paramax 720(07186)
Baxter Paramax 720 ZX(07049)
Beckman Astra 4(07053)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman E2A(07060)
Beckman E4A(07061)
Beckman LABLYTE 500(07065)
Beckman LABLYTE 510(07066)

Beckman LABLYTE 630(07057)
Beckman LABLYTE 830(07058)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xs(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 3(07070)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Beckman Synchron EL-ISE(07074)
Bio-Chem Laboratory Systems ATAC ISE(07190)
Bio-Chem Laboratory Systems ATAC ISE Plus(07191)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 288(10037)
Ciba Corning 480(10173)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Ciba Corning 614(10041)
Ciba Corning 644(10043)
Ciba Corning 654(10044)
Ciba Corning 664 FAST 4(10045)
Coulter Decos(10106)
Coulter Decos XL(10107)
Coulter FLEXLYTE 3(10071)
Coulter FLEXLYTE 6(10072)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
Du Pont Na, K, Li Analyzer(13090)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Electronucleonics Starlyte II(16009)
I-STAT i-STAT Portable Clinical Analyzer(28186)
Instrumentation Laboratory BGElectrolytes(28063)
Instrumentation Laboratory IL 501(28070)
Instrumentation Laboratory IL 502(28071)
Instrumentation Laboratory IL 943(28190)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28062)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix(28094)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DTE Module(34018)
Liston ECS 2000(37036)
Mallinckrodt GEM-STAT(40125)
Mallinckrodt Gem Premier(40003)
MedTest Systems Mediasensor 2001(40120)
Medica EasyLyte Ion Selective Analyzer(40032)
Medica EasyLyte Lithium(40130)
Medica EasyLyte Plus Ion Selective Analyzer(40033)
Nova 1(43010)
Nova 1 (with CRT)(43045)
Nova 10(43011)
Nova 11(43012)
Nova 11 (with CRT)(43048)
Nova 12(43013)
Nova 12 (with CRT)(43049)
Nova 13(43014)
Nova 13 (with CRT)(43050)
Nova 14(43015)
Nova 14 (with CRT)(43051)
Nova 4(43018)
Nova 4 (with CRT)(43046)
Nova 5(43019)
Nova 5 (with CRT)(43047)
Nova 6(43020)
Nova 9(43023)
Nova Nucleus(43028)
Nova Stat Profile 1(43029)
Nova Stat Profile 2(43030)
Nova Stat Profile 4(43032)
Nova Stat Profile 5(43033)
Nova Stat Profile 6(43034)
Nova Stat Profile 8(43036)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Orion Model 1020 Na/K Analyzer(46120)
Pointe Scientific Ionetics Electrolyte Analyzer II(49063)
Pointe Scientific Ionetics Model 310(49061)
Radiometer ABL 505(55053)
Radiometer KNA 1(55056)
Radiometer KNA 2(55057)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Serugen Quick-Lyte K/Na(58192)
Technicon AXON(61001)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (5833) Sorbital Dehydrogenase (SDH)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott VP(04082)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Decos(10106)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Olympus Reply(46089)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Technicon Assist(61002)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (6102) Testosterone**

*Test System, Assay, Examination*

Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)

**Analyte: (6106) Thyroid Stimulating Hormone (TSH)**

*Test System, Assay, Examination*

Baxter Stratus(07050)
Becton Dickinson IQ Immunochemical System(07429)
BioAutoMed ASCA(07192)
Ciba Corning ACS 180(10046)
Du Pont ACA III with aca plus Immunoassay System(13253)
Du Pont ACA IV with aca plus Immunoassay System(13254)
Du Pont ACA V with aca plus Immunoassay System(13255)
PB Diagnostics Systems OPUS(49001)
Roche Cobas FARA II(55041)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
Syva Vista Immunoassay System(58221)
TOSOH A1A-1200(61040)
TOSOH A1A-600(61038)

**Analyte: (6108) Thyroid Stimulating Hormone—High Sens. (TSH-HS)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus Intellect(07376)
Becton Dickinson Affinity(07075)
Bio-Chem Laboratory Systems ATAC 6000(07189)
Boehringer Mannheim ES 300(07160)
Cirrus Diagnostics Immulite(10159)
Technicon Immuno 1 System(61042)

**Analyte: (6109) Thyroxine (T4)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott Vision(04083)
Access Medical Systems dChem(04309)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus Intellect(07376)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson Affinity(07075)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)

Boehringer Mannheim ES 300(07160)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
Ciba Corning ACS 180(10046)
Cirrus Diagnostics Immulite(10159)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Photest Diagnostics dChem(49050)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
Syva Vista Immunoassay System(58221)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)
Technicon AXON(61001)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (6110) Thyroxine Binding Globulin (TBG)**

*Test System, Assay, Examination*

Boehringer Mannheim ES 300(07160)

**Analyte: (6111) Thyroxine, Free (FT4)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Becton Dickinson Affinity(07075)
Boehringer Mannheim ES 300(07160)
Ciba Corning ACS 180(10046)
Serono Diagnostics SR 1(58250)
Syva Vista Immunoassay System(58221)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)
Technicon Immuno 1 System(61042)
BioMerieux Vitek Vidas(07434)

**Analyte: (6131) Total Solids (Protein)**

*Test System, Assay, Examination*

American Optical TS Meter(04285)
Reichert TS Meter(55071)

**Analyte: (6114) Transferrin**

*Test System, Assay, Examination*

Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (6118) Triglyceride**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QCA Analyzer(07181)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 5000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Cholestech L.D.X. Lipid Analyzer(10170)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Cirrus Diagnostics CRP (Cardiac Risk Profiler)(10160)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Medical Technology Corp. QuikRead(40113)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (6118) Triiodothyronine (T3)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Bio-Chem Laboratory Systems ATAC 6000(07189)
Boehringer Mannheim ES 300(07160)
Ciba Corning ACS 180(10046)
Cirrus Diagnostics Immulite(10159)
Olympus AU 5131(46088)
PB Diagnostics Systems OPUS(49001)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
Syva Vista Immunoassay System(58221)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)
Technicon Immuno 1 System(61042)

**Analyte: (6120) Triiodothyronine Uptake (T3U) (TU)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Abbott TDX(04071)
Access Medical Systems dChem(04309)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson Affinity(07075)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim ES 300(07160)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning ACS 180(10046)
Cirrus Diagnostics Immulite(10159)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Photest Diagnostics dChem(49050)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
Syva Vista Immunoassay System(58221)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)
Technicon AXON(61001)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (6121) Triiodothyronine, Free (FT3)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Ciba Corning ACS 180(10046)

**Analyte: (6403) Urea (BUN)**

*Test System, Assay, Examination*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Azostix(04307)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 4(07053)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman BUN Analyzer (Original Model)(07056)
Beckman BUN Analyzer 2(07057)
Beckman Synchron AS–X(07069)
Beckman Synchron AS–Xe(07172)
Beckman Synchron AS–Xi(07173)
Beckman Synchron CX 3(07070)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Beckman System One(07175)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QCA Analyzer(07181)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Biodynamics Unimeter 250(07254)
Boehringer Mannheim Biodynamics Unimeter 300(07252)
Boehringer Mannheim Biodynamics Unimeter 330K(07253)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron(07167)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC–100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
I-STAT I-STAT Portable Clinical Analyzer(28186)
Instrumentation Laboratory IL 919(28185)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Phoenix(28084)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Nova 12(43013)
Nova 12 (with CRT)(43049)
Nova 14(43015)
Nova 14 (with CRT)(43051)
Nova Nucleus(43028)
Olympus AU 5000(46001)
Olympus AU 5021(46084)

Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (6404) Uric Acid**

*Test System, Assay, Examination:*

Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Abbott Vision(04083)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor Diagnostics Perspective(04142)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Astra 8(07054)
Beckman Astra 8e(07170)
Beckman Astra Ideal(07055)
Beckman Synchron AS-X(07069)
Beckman Synchron AS-Xe(07172)
Beckman Synchron AS-Xi(07173)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QCA Analyzer(07181)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Boehringer Mannheim Reflotron(07167)
Boehringer Mannheim Reflotron Plus(07168)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Dacos XL(10107)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC-100(13213)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 P(34024)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT 60(34016)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 20R(70001)
Wako Diagnostics 30R(70002)

**Analyte: (6707) Vitamin B12**

*Test System, Assay, Examination*

Abbott IMX(04056)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Becton Dickinson Affinity(07075)
Ciba Corning ACS 180(10046)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)

**Analyte: (7801) Zinc Protoporphyrin**

*Test System, Assay, Examination*

AVIV Hematofluorometer(04008)
Helena Laboratories ProtoFluor-Z Hematofluorometer(25059)
Helena Laboratories Protofluor(25004)

Speciality/Subspeciality: General Immunology

**Analyte: (0417) Allergen specific IgE**

*Test System, Assay, Examination*

Abbott Matrix Aero Plus(04306) In Vitro Technologies Central Allergy Screen(28147)
In Vitro Technologies Northeast Allergy Screen(28150)
In Vitro Technologies Southeast Allergy Screen(28149)
In Vitro Technologies Southwest Allergy Screen(28148)
In Vitro Technologies Western Allergy Screen(28146)
Quidel Allergen Screen(52002)
Quidel Food Allergen Screen(52006)

**Analyte: (0470) Alpha-1 Microglobin**

*Test System, Assay, Examination*

Behring Nephelometer(07273)
Behring Nephelometer 100(07272)

**Analyte: (0420) Alpha-1-Acid Glycoprotein (Orosomucoid)**

*Test System, Assay, Examination*

Beckman Array(07187)
Beckman Array 360(07052)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Sanofi/Kallestad QM 300(58169)
Technicon DPA-1(61041)

**Analyte: (0421) Alpha-1-Antitrypsin**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04068)
Beckman Array(07187)
Beckman Array 360(07052)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)

Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Roche Cobas Bio(55100)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Sanofi/Kallestad QM 300(58169)
Technicon DPA-1(61041)
Technicon RA 1000(61010)

**Analyte: (0422) Alpha-2-Macroglobulin**

*Test System, Assay, Examination*

Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Roche Cobas FARA II(55041)
Sanofi/Kallestad QM 300(58169)
Technicon DPA-1(61041)

**Analyte: (0424) Alpha-Fetoprotein—Tumor Marker**

*Test System, Assay, Examination*

Abbott IMX(04056)
BioAutoMed ASCA(07192)
Boehringer Mannheim ES 300(07160)

**Analyte: (0428) Aminoglycosides**

*Test System, Assay, Examination*

Abbott TDX(04071)

**Analyte: (0435) Anti-DNA Antibodies**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Autoimmunity Screening Panel(22042)
Stanbio s-LE Quicktest(58068)

**Analyte: (0438) Anti-DNP Antibodies**

*Test System, Assay, Examination*

Ampcor SLE Test(04167)
Diagnostic Technology ANA Check(13042)
Fisher Diagnostic SLE Latex Test Kit(19006)
Hycor Serascan SLE(25028)
NCS SLE - Slide Latex Test(43041)
Sterling Diagnostics Test Kit(58230)
V-Tech V-Trend Kit LE(67045)

**Analyte: (0441) Anti-Nuclear Antibodies (ANA)**

*Test System, Assay, Examination*

Baxter ImmunoSCAN SLE Test(07235)
BioWhittaker RheumaStrip(07346)
General Biometrics ImmunoDot Autoimmunity Screening Panel(22042)

**Analyte: (0443) Anti-RNP (Ribonucleoprotein)**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Autoimmunity Screening Panel(22042)

**Analyte: (0446) Anti-SS-A/Ro**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Autoimmunity Screening Panel(22042)

**Analyte: (0447) Anti-SS-B/La**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Autoimmunity Screening Panel(22042)

**Analyte: (0450) Anti-Sm (Smith)**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Autoimmunity Screening Panel(22042)

**Analyte: (0452) Anti-Streptolysin O (ASO)**

*Test System, Assay, Examination*

Ampcor ASO Card Test(04292)
Ampcor Quik-Dot(04165)
Baxter ImmunoSCAN ASO Test(07236)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring RapiTex(07120)
Behring Turbitimer(07274)
Biokit Rheumagen ASO(07147)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Diagnostic Technology ASO Check(13043)
Fisher Diagnostic LAtest ASO(19002)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
NCS ASO Slide Test(43038)
Roche Cobas FARA(55040)
Roche Cobas Mira(55044)
Sanofi/Kallestad QM 300(58169)
Seradyn Color Slide(58039)
Stanbio ASO Quicktest(58118)
Sterling Diagnostics Test Kit(58230)
Technicon RA 1000(61010)
Technicon RA XT(61013)
V-Tech Target ASO(67063)
V-Tech V-Trend ASO Plus(67007)
Wampole Streptozyme(70016)

**Analyte: (0453) Anti-Thyroglobulin Antibodies**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Thyroid Autoimmunity Panel(22047)

**Analyte: (0455) Anti-Thyroid Microsomal Antibodies (AMA)**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Thyroid Autoimmunity Panel(22047)

**Analyte: (0703) Beta-2 Microglobulin**

*Test System, Assay, Examination*

Abbott IMX(04056)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
TOSOH A1A-1200(61040)
TOSOH A1A-600(61039)

**Analyte: (1001) C-Reactive Protein (CRP)**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04068)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott Vision(04083)
Ampcor CRP Card Test(04291)
Ampcor Quik-Dot(04165)
Amtec CRP(04184)
Baxter ImmunoSCAN (Latex)(07038)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson BBL CRP Precipitin Test(07240)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring RapiTex(07120)
Behring Turbitimer(07274)
Biokit Rheumagen CRP(07148)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Diagnostic Technology CRP Check(13044)
Difco Bacto CRP Capillary Tube Test(13160)
Difco Bacto CRP Slide Test Set(13054)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13066)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Fisher Diagnostic LAtest CRP(19003)
Gamma C-Reactive Protein Latex Test(22112)
Hycor Serascan CRP(25025)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
NCS CRP Slide Test(43043)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Sanofi/Kallestad QM 300(58169)
Sclavo CRP Latex Test(58031)
Seradyn Color Slide(58039)
Stanbio CRP Quicktest(58065)
Sterling Diagnostics Test Kit(58230)
Technicon DPA-1(61041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
V-Tech Target CRP(67002)
V-Tech V-Trend Kit CRP(67046)
Wampole Immunex CRP(70009)

**Analyte: (1013) Carcinoembryonic Antigen (CEA)**

*Test System, Assay, Examination*

Abbott IMX(04056)

**Analyte: (1015) Ceruloplasmin**

*Test System, Assay, Examination*

Beckman Array(07187)

Beckman Array 360(07052)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Roche Cobas FARA II(55041)
Sanofi/Kallestad QM 300(58169)
Technicon DPA–1(61041)

**Analyte: (1024) Coccidioides Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics LA-Cocci Antibody System(28031)
Meridian Diagnostics Coccidioides Latex Agglutination(40061)

**Analyte: (1029) Complement C3**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04066)
Abbott VP(04082)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring Turbitimer(07274)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Sanofi/Kallestad QM 300(58169)
Technicon DPA–1(61041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1030) Complement C4**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04066)
Abbott VP(04082)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring Turbitimer(07274)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Sanofi/Kallestad QM 300(58169)
Technicon DPA–1(61041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1048) Cryptococcus Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics YA-Crypto Ab Tube Agglutination Test(28152)

**Analyte: (1039) Cytomegalovirus Antibodies**

*Test System, Assay, Examination*

Abbott IMX(04056)
Becton Dickinson CMV Scan(07085)
Disease Detection International SeroCard CMV IgG Test(13077)
General Biometrics ImmunoDot Infectious Mono Syndrome Panel(22043)
General Biometrics ImmunoDot T.E.C.H. Test(22111)
General Biometrics ImmunoDot TORCH Test(22045)
Meridian Diagnostics Immunocard Test(40064)
PB Diagnostics Systems OPUS(49001)
V-Tech Target CMV(67001)

**Analyte: (1311) DNase-B Antibodies**

*Test System, Assay, Examination*

Wampole Streptonase-B(70092)

**Analyte: (1603) Epstein-Barr Virus Antibodies**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Infectious Mono Syndrome Panel(22043)
General Biometrics ImmunoDot T.E.C.H. Test(22111)

**Analyte: (1901) Febrile Agglutinins**

*Test System, Assay, Examination*

Becton Dickinson BBL - Slide Test(07076)
Becton Dickinson BBL - Tube Test(07077)
Difco Bacto-Slide Test(13058)
Difco Bacto-Tube Test(13059)
Gamma Biologicals Slide Test(22011)
Gamma Biologicals Tube Test(22012)
Roach Laboratories - Slide Test(55085)
Roach Laboratories - Tube Test(55084)

**Analyte: (1912) Fungus Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics LA-Sporo Antibody System(28033)

**Analyte: (2506) HIV Antibodies**

*Test System, Assay, Examination*

Cambridge Biotech Recombigen HIV–1 LA Test(10168)
Murex SUDS HIV–1 Test(40114)

**Analyte: (2511) Haptoglobin**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04066)
Abbott VP(04082)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring RapiTex(07120)
Behring Turbitimer(07274)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio(55100)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Sanofi/Kallestad QM 300(58169)
Technicon DPA–1(61041)
Technicon RA 1000(61010)

**Analyte: (2513) Helicobacter Pylori Antibodies**

*Test System, Assay, Examination*

Quidel H. pylori Test (Quick Vue)(52007)
Wellcome Pyloriset(70086)

**Analyte: (2517) Hemopexin**

*Test, System, Assay, Examination*

Behring Nephelometer(07273)

**Analyte: (2518) Hepatitis A Virus Antibody**

*Test, System, Assay, Examination*

Abbott IMX(04056)
Syva MicroTrak XL(58263)

**Analyte: (2525) Hepatitis Be Antibody**

*Test, System, Assay, Examination*

Syva MicroTrak XL(58263)

**Analyte: (2526) Hepatitis Be Antigen**

*Test, System, Assay, Examination*

Syva MicroTrak XL(58263)

**Analyte: (2530) Herpes simplex I and/or II Antibodies**

*Test, System, Assay, Examination*

Disease Detection International SeroCard HSV IgG Test(13078)
General Biometrics ImmunoDot T.E.C.H. Test(22111)
General Biometrics ImmunoDot TORCH Test(22045)
Meridian Diagnostics Immunocard Test(40064)

**Analyte: (2531) Histoplasma Antibodies**

*Test, System, Assay, Examination*

Immuno-Mycologics LA-Histo Antibody System(28032)

**Analyte: (2803) Immunoglobulins IgA**

*Test, System, Assay, Examination*

Abbott Spectrum EPX(04068)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring Turbitimer(07274)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Sanofi/Kallestad QM 300(58169)
Technicon DPA–1(61041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (2805) Immunoglobulins IgE**

*Test, System, Assay, Examination*

Abbott IMX(04056)
Abbott Matrix Aero Plus(04306)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Behring Nephelometer 100(07272)
Bio-Chem Laboratory Systems ATAC 8000(07189)
Biomerica CAST Color Allergy Screening Test(07232)
Boehringer Mannheim ES 300(07160)
Ciba Corning ACS 180(10046)
In Vitro Technologies Central Allergy Screen(28147)
In Vitro Technologies Northeast Allergy Screen(28150)
In Vitro Technologies Southeast Allergy Screen(28149)
In Vitro Technologies Southwest Allergy Screen(28148)
In Vitro Technologies Western Allergy Screen(28146)
MAST Total IgE Test(40109)
Quidel Total IgE Test (QRA reader)(52020)
Quidel Total IgE Test (visual)(52009)
TOSOH A1A–1200(61040)
TOSOH A1A–600(61039)

**Analyte: (2806) Immunoglobulins IgG**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04068)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring Turbitimer(07274)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Sanofi/Kallestad QM 300(58169)
Technicon DPA–1(61041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (2808) Immunoglobulins IgM**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04068)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring Turbitimer(07274)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Sanofi/Kallestad QM 300(58169)
Technicon DPA–1(61041)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (2809) Infectious Mononucleosis Antibodies (Mono)**

*Test System, Assay, Examination*

Ampcor IM Card Test(04289)
Ampcor Quik-Dot(04165)
Baxter ImmunoSCAN (Latex)(07038)
Baxter ImmunoSCAN (RBC)(07039)
Baxter MicroScan Cards O.S. Mono(07237)
Biokit Monogen(07146)
Diagnostic Technology Infectious Mononucleosis Check(13050)
Gamma Slide Test for Infectious Mononucleosis(22113)
General Biometrics ImmunoDot Infectious Mono Syndrome Panel(22043)
Gull Laboratories Mono-Lex Test(22090)
Hybritech Concise Mono Test(25016)
Hycor Serascan Infectious Mononucleosis Test(25026)
Leeco Diagnostics Preview Mono(37009)
Medical Technology Corp. Mono-Lisa(40044)
Medical Technology Corp. OPTITEC Mono(40045)
NCS Infectious Mononucleosis Test(43039)
Organon NML Monosticon(46009)
Organon Teknika Monosticon Dri-Dot(46101)
Ortho Monolert(46077)
Ortho Monospot(46078)
Pacific Biotech Cards Mono(49002)
Pacific Biotech Cards O.S. Mono(49016)
Sclavo Infectious Mononucleosis Screening(58032)
Seradyn Color Slide II(58040)
Stanbio IM Quicktest(58117)
Sterling Diagnostics Test Kit(58230)
Unipath Oxoid Infectious Mononucleosis Test(64008)
V-Tech Target Mono(67003)
V-Tech V-Trend Kit IM(67006)
Ventrex Ventrescreen Mono(67013)
Wampole Mono-Diff(70010)
Wampole Mono-Latex(70011)
Wampole Mono-Plus(70084)

Wampole Mono-Sure(70012)
Wampole Mono-Test(70013)
Wampole Mono-Test (FTB)(70065)

**Analyte: (3402) Kappa Light Chains**

*Test System, Assay, Examination*

Beckman Array(07187)
Beckman Array 360(07052)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Roche Cobas FARA II(55041)
Sanofi/Kallestad QM 300(58169)

**Analyte: (3705) Lambda Light Chains**

*Test System, Assay, Examination*

Beckman Array(07187)
Beckman Array 360(07052)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Roche Cobas FARA II(55041)
Sanofi/Kallestad QM 300(58169)

**Analyte: (3714) Lyme Disease Antibodies [Borrelia Burgdorferi Abs]**

*Test System, Assay, Examination*

General Biometrics ImmunoDot Borrelia w/ Recombinant Protein(22110)
General Biometrics ImmunoDot Lyme Test(22044)
Quidel Lyme Disease Test(52008)
Vitek Systems Vidas (antibodies)(67062)

**Analyte: (4016) Mycoplasma Pneumonia Antibodies**

*Test System, Assay, Examination*

Medical Diag. Technologies Mycoplasma pneumonia IgG Ab Test(40034)
Meridian Diagnostics Meristar-MP(40065)

**Analyte: (4023) Myoglobin**

*Test System, Assay, Examination*

Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring Turbitimer(07274)

**Analyte: (4911) Prealbumin**

*Test System, Assay, Examination*

Abbott Spectrum EPX(04068)
Beckman Array(07187)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Sanofi/Kallestad QM 300(58169)
Technicon RA 1000(61010)

**Analyte: (4916) Properdin Factor B**

*Test System, Assay, Examination*

Beckman Array(07187)
Beckman Array 360(07052)
Technicon DPA–1(61041)

**Analyte: (4919) Prostatic Specific Antigen (PSA)**

*Test System, Assay, Examination*

Abbott IMX(04056)
Baxter Stratus(07050)
Baxter Stratus II(07051)

**Analyte: (5508) Rheumatoid Factor (RF)**

*Test System, Assay, Examination*

Ampcor Quik-Dot(04165)
Ampcor RF Card Test(04290)
Amisc RF(04186)
Baxter ImmunoSCAN (Latex)(07038)
Baxter ImmunoSCAN (RBC)(07039)
Beckman Array(07187)
Beckman Array 360(07052)
Becton Dickinson Macro-vue RF(07099)
Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Behring RapiTex(07120)
Behring Turbitimer(07274)
Biokit Rheumagen RF(07149)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Diagnostic Technology RA Check(13051)
Difco Becto RF Test(13055)
Fisher Diagnostic LAtest RF(19004)
Gamma RF-Latex Test(22114)
General Biometrics ImmunoDot Autoimmunity Screening Panel(22042)
Hycor Serascan RA test(25027)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Isolab Rapid-RF(28196)
NCS RA Latex Test(43040)
Organon Rheumanosticon Dri-Dot(46016)
Roche Cobas FARA(55040)
Roche Cobas Mira(55044)
Sanofi/Kallestad QM 300(58169)
Sclavo Reuma Test(58034)
Seradyn Seratest RF Latex Test(58045)
Stanbio RA Factor Quicktest(58067)
Sterling Diagnostics Test Kit(58230)
Technicon DPA–1(61041)
Technicon RA 1000(61010)
Technicon RA XT(61013)
V-Tech Target RF(67064)
V-Tech V-Trend Kit RF(67048)
V-Tech V-Trend Kit Red Cell RF(67047)
Wampole Rheumatex(70014)
Wampole Rheumaton(70015)

**Analyte: (5513) Rickettsia Conorii Ab (Mediterranean Spotted Fvr)**

*Test System, Assay, Examination*

INDX Latex - Rickettsia conorii (MSF) Kit(28121)

**Analyte: (5512) Rickettsia Rickettsii Ab (Rocky Mt. Spotted Fever)**

*Test System, Assay, Examination*

INDX DIP-S-TICKS Rocky Mt. Spotted Fever (RMSF) Test(28120)
INDX Latex - Rickettsia rickettsii (RMSF) Kit(28122)

**Analyte: (5514) Rickettsia Typhi Ab (Typhus Antibodies)**

*Test System, Assay, Examination*

INDX Latex - Rickettsia typhi Kit(28123)

**Analyte: (5516) Rubella Antibodies**

*Test System, Assay, Examination*

Abbott IMX(04056)
Baxter ImmunoSCAN Rubella Latex Test(07234)
Becton Dickinson Rubascan(07105)
Biokit Rubagen(07150)
Disease Detection International SeroCard Rubella IgG Test(13079)
General Biometrics ImmunoDot Quantitative Rubella(22046)
General Biometrics ImmunoDot TORCH Test(22045)
Meridian Diagnostics Immunocard Test(40064)
Murex SUD5 Rubella(40088)
PB Diagnostics Systems OPUS(49001)
Seradyn Seratest Rubella(58181)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1 (58250)
V-Tech Target Rubella (67005)
Vitek Systems Vidas (antibodies) (67062)
Wampole Virogen Rubella Micro Latex Test (70020)
Wampole Virogen Rubella Slide Test (70021)
Wellcome Rubalex (70067)

**Analyte: (5821) Sporothrix Schenckii Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics Exo-Antigen Test Kit (28026)

**Analyte: (6113) Toxoplasma Gondii Antibodies**

*Test System, Assay, Examination*

Abbott IMX (04056)
Bio-Medical BIOCARD Toxo Ab (07137)
Disease Detection International SeroCard Toxoplasma IgG (13080)
General Biometrics ImmunoDot Infectious Mono Syndrome Panel (22043)
General Biometrics ImmunoDot T.E.C.H. Test (22111)
General Biometrics ImmunoDot TORCH Test (22045)
Meridian Diagnostics Immunocard Test (40064)
Murex SUDS Toxo (40089)
PB Diagnostics Systems OPUS (49001)
Serono Baker SR 1 (58090)
Serono Diagnostics SR 1 (58250)
Vitek Systems Vidas (antibodies) (67062)

**Analyte: (6114) Transferrin**

*Test System, Assay, Examination*

Abbott Spectrum EPX (04068)
Abbott TDX (04071)
Abbott TDX FLx (04072)
Abbott VP (04082)
Beckman Array (07187)
Beckman Array 360 (07052)
Beckman Synchron CX 4 (07071)
Beckman Synchron CX 4 CE (07174)
Beckman Synchron CX 5 (07072)
Beckman Synchron CX 7 (07073)
Behring Nephelometer (07273)
Behring Nephelometer 100 (07272)
Behring Turbitimer (07274)

Boehringer Mannheim Hitachi 704 (07161)
Boehringer Mannheim Hitachi 705 (07162)
Boehringer Mannheim Hitachi 717 (07163)
Ciba Corning 550 Express (10038)
Coulter Discs (10106)
Coulter Opticbem 100 (10115)
Coulter Opticbem 120 (10079)
Coulter Opticbem 180 (10080)
EM Diagnostic Systems EPOS (16015)
Instrumentation Laboratory IL Monarch 1000 (28082)
Instrumentation Laboratory IL Monarch 2000 (28231)
Instrumentation Laboratory IL Monarch Plus (28083)
Roche Cobas Bio (55100)
Roche Cobas Mira (55044)
Roche Cobas Mira Plus (55096)
Sanofi/Kallested QM 300 (58169)
Technicon DPA–1 (61041)

**Analyte: (6113) Treponema Pallidum Antibodies (Includes Reagin)**

*Test System, Assay, Examination*

Ampcor RPR (04166)
Ampcor TRUST RPR (04168)
Baxter ImmunoSCAN RPR Card Test (07233)
Becton Dickinson Macro-vue RPR (07100)
Biokit RPR (07299)
Difco Becto USR (13162)
Fisher Diagnostic Reagin Screen Test (19005)
Gemma Biologicals RPR/USR Antigen (22115)
NCS RPR CARD TEST—manual (43037)
New Horizons TRUST assay (43007)
Ramel RPR CARD Test Kit (55066)
Seradyn Color Slide (58039)
Seradyn Color Slide—TRUST (58180)
Stanbio Syphilis (RPR) Quicktest (58116)
V-Tech V-Trend RPR Raindrop Card Test (67044)

**Analyte: (6128) Trichinella Antibodies**

*Test System, Assay, Examination*

Difco Latex Flocculation Test—Trichinosis (13158)

**Analyte: (6704) Varicella-Zoster Virus Antibodies**

*Test System, Assay, Examination*

Becton Dickinson VZV Scan (07111)

**SPECIALITY/SUBSPECIALITY: Hematology**

**Analyte: (0401) Activated Clotting Time (ACT)**

*Test System, Assay, Examination*

HemoTec Automated Coagulation Timer (25030)
HemoTec Hepcon/HMS (25034)
HemoTec Hepcon/System A–10 (25033)
HemoTec Hepcon/System B–10 (25035)
HemoTec Hepcon/System Four (25032)
International Technidyne Factor VI (28093)
International Technidyne Hemochron 400 (28094)
International Technidyne Hemochron 401 (28095)
International Technidyne Hemochron 800 (28096)
International Technidyne Hemochron 801 (28097)
Quest Medical ACTester/ACTest AACT System (52013)
Sienco SONOCLOT II Surgical Analyzer (direct readout) (58258)

**Analyte: (0408) Activated Partial Thromboplastin Time (APTT)**

*Test System, Assay, Examination*

American Scientific Fibrometer (04145)
Becton Dickinson BBL Fibrometer (07080)
Bio/Data MCA 110 (07281)
Bio/Data MCA 210 (07282)
Boehringer Mannheim Unimeter CA–600 (07216)
Boehringer Mannheim Unimeter CU–500 (07215)
Ciba Corning Biotrack 512 (10047)
DataChem DC–100 (13213)
Diagnostica Stago ST4 (13218)
General Diagnostics Coag-A-Mate (22056)
General Diagnostics Coag-A-Mate 150 (22139)
General Diagnostics Coag-A-Mate 2001 (22138)
General Diagnostics Coag-A-Mate Dual Channel (22137)
General Diagnostics Coag-A-Mate X2 (22057)
General Diagnostics Coag-A-Mate XC (22058)
Helena Laboratories Cascade 480 (25002)
Helena Laboratories Dataclot (25003)
HemoTec Automated Coagulation Timer (25030)
Instrumentation Laboratory IL ACL 100 (28073)
Instrumentation Laboratory IL ACL 1000 (28074)
Instrumentation Laboratory IL ACL 200 (28075)
Instrumentation Laboratory IL ACL 2000 (28076)
Instrumentation Laboratory IL ACL 300 (28077)
Instrumentation Laboratory IL ACL 300 Plus (28197)
Instrumentation Laboratory IL ACL 3000 (28078)
Instrumentation Laboratory IL ACL 3000 Plus (28079)
Instrumentation Laboratory IL ACL 810 (28080)
International Technidyne Factor VI (28093)
International Technidyne Hemochron 400 (28094)
International Technidyne Hemochron 401 (28095)
International Technidyne Hemochron 800 (28096)
International Technidyne Hemochron 801 (28097)
LAbor COA Data 2000 (37034)
LAbor COA Screener (37033)
LAbor COA System (37035)
LAbor CoaData 3000 (37066)
Lancer Coagulyzer Jr. III (37025)
Logos elvi 818 Digiclot (37013)
Logos elvi 819 Multi Clot (37014)
Logos elvi 820 Digiclot II (37015)
Medical Laboratory MLA Electra 1000 C (40037)
Medical Laboratory MLA Electra 600 (40149)
Medical Laboratory MLA Electra 650 (40150)
Medical Laboratory MLA Electra 700 (40038)
Medical Laboratory MLA Electra 750 (40039)
Medical Laboratory MLA Electra 800 (40040)
Medical Laboratory MLA Electra 900 (40041)
Medical Laboratory MLA Electra 900 C (40042)
Organon Teknika Coag-A-Mate Data-Mate (46018)
Organon Teknika Coag-A-Mate RA4 (46019)
Organon Teknika Coag-A-Mate X–2 (46020)
Organon Teknika Coag-A-Mate XC (46021)
Organon Teknika Coag-A-Mate XC Plus (46022)
Organon Teknika Coag-A-Mate XM (46023)
Ortho KoaguLab M (46111)
Ortho Koagulab 16S (46074)
Ortho Koagulab 32–S (46123)
Ortho Koagulab 40–A (46076)
Ortho Koagulab 60–S (46122)
Sherwood Medical Coagulizer Jr. (58140)
Sienco Dual Sample Aggregation Meter (DP–247)(58119)
Sigma AccuStasis 1000 (58049)
Sigma AccuStasis 2000 (58050)
TECO Coatron F2 (61065)
TECO Coatron II (61047)
TECO Coatron Jr (61048)

**Analyte: (0456) Antithrombin III (ATIII)**

*Test System, Assay, Examination*

Beckman Array (07187)
Beckman Array 360 (07052)
Behring Nephelometer (07273)
Behring Nephelometer 100 (07272)
Du Pont ACA (13082)
Du Pont ACA II (13172)
Du Pont ACA III (13173)
Du Pont ACA IV (13083)
Du Pont ACA V (13084)

**Analyte: (0714) Bleeding Time**

*Test System, Assay, Examination*

Duke Bleeding Time (13251)
International Technidyne Surgicutt Bleeding Time Test (28176)
Ivy/Template Bleeding Time (28116)
Simplate Bleeding Time (58128)

**Analyte: (0716) Body Fluid Microscopic Elements**

*Test System, Assay, Examination*

Fern Test (19014)
IRIS The Yellow IRIS model 250 (Squamous/WBC/RBC cnt. only) (28117)
IRIS The Yellow IRIS model 450 (Squamous/WBC/RBC cnt. only) (28118)

**Analyte: (1616) Eosinophils**

*Test System, Assay, Examination*

All Nasal Smears for Eosinophils (04354)

**Analyte: (1613) Erythrocyte Sedimentation Rate (Non-Waived Procedure)**

*Test System, Assay, Examination*

Hi Chem-Vega Ves-Matic ESR System (25054)

**Analyte: (1904) Fibrin Split Products (Fibrin Degradation)**

*Test System, Assay, Examination*

American Diagnostica Dimertest Latex Kit (FDP) (04138)
Biopool Minutex D-dimer (07238)
Diagnostica Stago D-Di (13136)
Diagnostica Stago F.S. Test (13137)
Diagnostica Stago Spli-Prest (13138)
Du Pont ACA (13082)
Du Pont ACA II (13172)
Du Pont ACA III (13173)
Du Pont ACA IV (13083)
Du Pont ACA V (13084)
International Technidyne Bed Red D-dimer (28092)
Organon Teknika Fibrinosticon (46090)

**Analyte: (1905) Fibrinogen**

*Test System, Assay, Examination*

Abbott Spectrum EPX (04068)
Abbott VP (04082)
Beckman Synchron CX 4 (07071)
Beckman Synchron CX 5 (07072)
Beckman Synchron CX 7 (07073)
Becton Dickinson BBL Fibrometer (07080)
Becton Dickinson QBC AutoRead (07104)
Becton Dickinson QBC Reference (07180)
Behring Nephelometer (07273)
Behring Nephelometer 100 (07272)
Bio/Data MCA 110 (07281)
Bio/Data MCA 210 (07282)
Boehringer Mannheim Hitachi 704 (07161)
Boehringer Mannheim Hitachi 717 (07163)
Ciba Corning 550 Express (10038)
Coulter Optichem 100 (10115)
Coulter Optichem 120 (10079)
Coulter Optichem 180 (10080)
Diagnostica Stago ST4 (13218)
Du Pont ACA (13082)
Du Pont ACA II (13172)
Du Pont ACA III (13173)
Du Pont ACA IV (13083)
Du Pont ACA V (13084)
Electronucleonics Gem-Profiler (16004)
General Diagnostics Coag-A-Mate X2 (22057)
General Diagnostics Coag-A-Mate XC(22058)
Helena Laboratories Cascade 480(25002)
Instrumentation Laboratory IL ACL 100(28073)
Instrumentation Laboratory IL ACL 1000(28074)
Instrumentation Laboratory IL ACL 200(28075)
Instrumentation Laboratory IL ACL 2000(28076)
Instrumentation Laboratory IL ACL 300(28077)
Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
Instrumentation Laboratory IL ACL 810(28080)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
International Technidyne Factor VI(28093)
LAbor COA Data 2000(37034)
LAbor COA Screener(37033)
LAbor COA System(37035)
LAbor CoaData 3000(37066)
Logos elvi 819 Multi Clot(37014)
Logos elvi 820 Digiclot II(37015)
Medical Laboratory MLA Electra 1000 C(40037)
Medical Laboratory MLA Electra 700(40038)
Medical Laboratory MLA Electra 750(40039)
Medical Laboratory MLA Electra 800(40040)
Medical Laboratory MLA Electra 900(40041)
Medical Laboratory MLA Electra 900 C(40042)
Organon Teknika Coag-A-Mate RA4(46019)
Organon Teknika Coag-A-Mate XC(46021)
Organon Teknika Coag-A-Mate XC Plus(46022)
Organon Teknika Coag-A-Mate XM(46023)
Ortho Koagulab 16S(46074)
Ortho Koagulab 32–S(46123)
Ortho Koagulab 40–A(46076)
Ortho Koagulab 60–S(46122)
Roche Cobas Bio(55100)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Sigma AccuStasis 1000(58049)
Sigma AccuStasis 2000(58050)
TECO Coatron F2(61065)
TECO Coatron II(61047)
TECO Coatron Jr(61048)
Technicon RA 1000(61010)

**Analyte: (2514) Hematocrit**

*Test System, Assay, Examination*

Abbott Cell-Dyn 1400(04225)
Abbott Cell-Dyn 1500(04226)
Abbott Cell-Dyn 1600(04227)
Abbott Cell-Dyn 1600 CS(04238)
Abbott Cell-Dyn 2000 CS(04239)
Abbott Cell-Dyn 2000 SL(04240)
Abbott Cell-Dyn 300(04228)
Abbott Cell-Dyn 3000 CS(04241)
Abbott Cell-Dyn 3000 SL(04242)
Abbott Cell-Dyn 3300 CS(04273)
Abbott Cell-Dyn 3300 SL(04272)
Abbott Cell-Dyn 3500 CS(04327)
Abbott Cell-Dyn 3500 SL(04287)
Abbott Cell-Dyn 400(04230)
Abbott Cell-Dyn 500(04231)
Abbott Cell-Dyn 610(04232)
Abbott Cell-Dyn 700(04233)
Abbott Cell-Dyn 800(04234)
Abbott Cell-Dyn 900(04235)
Baker 8000(07019)
Baker 9000(07020)
Baker 9000 Ax(07182)
Baker 9000 Plus(07183)
Baker 9000 Rx(07184)
Baker JTB 500A(07421)
Baker JTB 700A(07422)
Becton Dickinson QBC(07176)
Becton Dickinson QBC AutoRead(07104)
Becton Dickinson QBC HemaScan(07428)
Becton Dickinson QBC II(07177)
Becton Dickinson QBC II Plus(07178)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QBC Reference(07180)
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter(07242)
Bio-Dynamics CellTrak 5(07437)
Clay Adams HA–5(10102)
Coulter 530(10066)
Coulter 560(10067)
Coulter 770(10068)
Coulter CBC4(10069)
Coulter CBC5(10070)
Coulter JR(10181)
Coulter JS(10073)
Coulter JT(10074)
Coulter JT2(10075)
Coulter JT3(10076)
Coulter M430(10077)
Coulter MAXM(10078)
Coulter MD16(10177)
Coulter S(10116)
Coulter S Plus(10081)
Coulter S Plus II(10082)
Coulter S Plus III(10083)
Coulter S Plus IV(10084)
Coulter S Plus IVW/DIF(10085)
Coulter S Plus Jr.(10086)
Coulter S Plus V(10087)
Coulter S Plus VI/STKR(10088)
Coulter S SR(10118)
Coulter S550(10089)
Coulter S560(10119)
Coulter S7120(10120)
Coulter S770(10121)
Coulter S790(10122)
Coulter S880(10090)
Coulter ST(10091)
Coulter STKR(10092)
Coulter STKS(10093)
Coulter T540(10094)
Coulter T660(10095)
Coulter T890(10096)
Coulter ZB16(10127)
Coulter ZF5(10129)
Danam Datacell-18(13093)
Danam Datacell-18/AS–30(13094)
Danam HC–1020(13096)
Danam HC–510(13098)
Danam HC–510/HD11(13099)
Danam HC–720(13100)
Danam HC–820/HD11(13101)
Danam HC–820/HD21(13102)
Danam SA–1000(13103)
Danam Vector 5(13104)
Danam Vector 6(13105)
Danam Vector 6 Plus(13106)
Danam Vector 8(13107)
Danam Vector 8 Plus(13108)
Electronucleonics Cellstar(16003)
I-STAT i-STAT Portable Clinical Analyzer(28186)
Infolab I–1100(28129)
Infolab I–1800(28130)
Infolab I–500(28090)
Infolab I–900(28091)
Instrumentation Laboratory IL Collect 7(28228)
Instrumentation Laboratory IL Collect 8(28229)
Instrumentation Laboratory IL Collect 8E(28230)
Mallinckrodt GEM-STAT(40125)
Mallinckrodt Gem 6 Plus(40002)
Mallinckrodt Gem Premier(40003)
MedTest Systems Mediasensor 2001(40120)
Nova 1(43010)
Nova 1 (with CRT)(43045)
Nova 11(43012)
Nova 11 (with CRT)(43048)
Nova 13(43014)
Nova 13 (with CRT)(43050)
Nova 14(43015)
Nova 14 (with CRT)(43051)
Nova 5(43019)
Nova 5 (with CRT)(43047)
Nova Celltrak 11(43024)
Nova Celltrak 12(43025)
Nova Celltrak 2(43026)
Nova Celltrak 2/6(43027)
Nova Stat Profile 1(43029)
Nova Stat Profile 2(43030)
Nova Stat Profile 4(43032)
Nova Stat Profile 5(43033)
Nova Stat Profile 6(43034)
Nova Stat Profile 8(43036)
Ortho ELT 15(46059)
Ortho ELT 1500(46060)
Ortho ELT 8(46061)
Ortho ELT 8/DS(46062)
Ortho ELT 8/WS(46063)
Ortho ELT 800/WS(46065)
Roche Cobas Argos(55039)
Roche Cobas Argos5 Diff(55093)
Roche Cobas HELIOS 5 DIFF(55069)
Roche Cobas Helios(55094)
Roche Cobas Minos ST(55060)
Roche Cobas Minos STE(55042)
Roche Cobas Minos STEL(55061)
Roche Cobas Minos STX(55043)

Sequoia Turner 1600(58035)
Sequoia Turner 700(58036)
Sequoia Turner 900(58037)
Seradyn Seragen Quick Count(58088)
Seradyn Seragen Quick Count Plus II(58172)
Serono Baker Series 150(58234)
Serono Baker Series 170(58235)
Serono Baker Series 5000(58236)
Serono Baker Series 7000(58237)
Serono Diagnostics 8000(58245)
Serono Diagnostics 9000(58246)
Serono Diagnostics 9000 Ax(58247)
Serono Diagnostics 9000 Plus(58248)
Serono Diagnostics 9000 Rx(58249)
Sysmex CC–108(58111)
Sysmex CC–120(58206)
Sysmex CC–130(58071)
Sysmex CC–150(58072)
Sysmex CC–170(58110)
Sysmex CC–180(58073)
Sysmex CC–700(58074)
Sysmex CC–720(58075)
Sysmex CC–780(58076)
Sysmex CC–800(58109)
Sysmex CC–800 with PDA–410(58278)
Sysmex E–2500(58077)
Sysmex E–5000(58078)
Sysmex F–500(58206)
Sysmex F–800(58202)
Sysmex K–1000(58079)
Sysmex K–1000 with PDA upgrade(58277)
Sysmex M–2000(58207)
Sysmex NE–1500(58204)
Sysmex NE–8500(58203)
Sysmex NE–8000(58080)
Technicon H 6000(61008)
Technicon H.1(61009)
Technicon H.1 Jr(61052)
Technicon H.1E System(61043)
Technicon H.2 System(61038)
Wampole STAT-CRIT(70083)

**Analyte: (2515) Hemoglobin**

*Test System, Assay, Examination*

Abbott Cell-Dyn 1400(04225)
Abbott Cell-Dyn 1500(04226)
Abbott Cell-Dyn 1600(04227)
Abbott Cell-Dyn 1600 CS(04238)
Abbott Cell-Dyn 2000 CS(04239)
Abbott Cell-Dyn 2000 SL(04240)
Abbott Cell-Dyn 300(04228)
Abbott Cell-Dyn 3000 CS(04241)
Abbott Cell-Dyn 3000 SL(04242)
Abbott Cell-Dyn 3300 CS(04273)
Abbott Cell-Dyn 3300 SL(04272)
Abbott Cell-Dyn 3500 CS(04337)
Abbott Cell-Dyn 3500 SL(04287)
Abbott Cell-Dyn 400(04230)
Abbott Cell-Dyn 500(04231)
Abbott Cell-Dyn 610(04232)
Abbott Cell-Dyn 700(04233)
Abbott Cell-Dyn 800(04234)
Abbott Cell-Dyn 900(04235)
Abbott VP(04082)
Abbott Vision(04083)
Ames Clinistat(04150)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
BMS Hemoglobinometer 10–101(07212)
BMS Hemoglobinometer 10–101D(07213)
Baker 8000(07019)
Baker 9000(07020)
Baker 9000 Ax(07182)
Baker 9000 Plus(07183)
Baker 9000 Rx(07184)
Baker JTB 500A(07421)
Baker JTB 700A(07422)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Becton Dickinson QBC(07175)
Becton Dickinson QBC AutoRead(07104)
Becton Dickinson QBC HemaScan(07428)
Becton Dickinson QBC II Plus(07176)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QBC Reference(07180)
Becton Dickinson QCA Analyzer(07181)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Dynamics CellTrak 3(07436)
Bio-Dynamics CellTrak 5(07437)
BioAutoMed ASCA(07192)
Boehringer Mannheim Biodynamics Unimeter 300(07252)
Boehringer Mannheim Biodynamics Unimeter 330K(07253)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Reflotron I System(07197)
Boehringer Mannheim Reflotron Plus(07168)
Cambridge Instruments Hb-Meter Hemoglobinometer(10140)
Clay Adams HA–3(10101)
Clay Adams HA–5(10102)
Coulter 530(10066)
Coulter 560(10067)
Coulter 770(10068)
Coulter CBC4(10069)
Coulter CBC5(10070)
Coulter Hemo-W(10111)
Coulter Hemoglobinometer(10112)
Coulter Hemoglobinometer W(10142)
Coulter JR(10181)
Coulter JS(10073)
Coulter JT(10074)
Coulter JT2(10075)
Coulter JT3(10076)
Coulter M2(10114)
Coulter M430(10077)
Coulter MAXM(10078)
Coulter MD16(10177)
Coulter S(10116)
Coulter S Plus(10081)
Coulter S Plus II(10082)
Coulter S Plus III(10083)
Coulter S Plus IV(10084)
Coulter S Plus IVW/DIF(10085)
Coulter S Plus Jr.(10086)
Coulter S Plus V(10087)
Coulter S Plus VI/STKR(10088)
Coulter S SR(10118)
Coulter S550(10089)
Coulter S560(10119)
Coulter S7120(10120)
Coulter S770(10121)
Coulter S790(10122)
Coulter S880(10090)
Coulter ST(10091)
Coulter STKR(10092)
Coulter STKS(10093)
Coulter T540(10094)
Coulter T660(10095)
Coulter T890(10096)
Coulter ZBI6(10127)
Coulter ZF5(10129)
Danam Datacell–18(13093)
Danam Datacell–18/AS–30(13094)
Danam HC–1020(13096)
Danam HC–310(13097)
Danam HC–510(13098)
Danam HC–510/HD11(13099)
Danam HC–720(13100)
Danam HC–820/HD11(13101)
Danam HC–820/HD21(13102)
Danam SA–1000(13103)
Danam Vector 5(13104)
Danam Vector 6(13105)
Danam Vector 6 Plus(13106)
Danam Vector 8(13107)
Danam Vector 8 Plus(13108)
DateChem DC–100(13213)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
Electronucleonics Cellstar(16003)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Infolab I–1100(28129)
Infolab I–1800(28130)
Infolab I–500(28090)
Infolab I–900(28091)
Instrumentation Laboratory IL Collect 7(28228)
Instrumentation Laboratory IL Collect 8(28229)
Instrumentation Laboratory IL Collect 8E(28230)
Isolab Hb-Direct(28118)
Kodak Ektachem DT 60(34018)
Nova Celltrak 11(43024)
Nova Celltrak 12(43025)
Nova Celltrak 2(43026)
Nova Celltrak 2/6(43027)
Ortho ELT 15(46059)
Ortho ELT 1500(46060)
Ortho ELT 8(46061)
Ortho ELT 8/DS(46062)
Ortho ELT 8/WS(46063)
Ortho ELT 800/WS(46065)
Roche Cobas Argos(55039)
Roche Cobas Argos5 Diff(55093)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas HELIOS 5 DIFF(55089)
Roche Cobas Helios(55094)
Roche Cobas Minos ST(55050)
Roche Cobas Minos STE(55042)
Roche Cobas Minos STEL(55051)
Roche Cobas Minos STX(55043)
Roche Cobas Mira(55044)
Sequoia Turner 1600(58035)
Sequoia Turner 700(58036)
Sequoia Turner 900(58037)
Seradyn Seragen Quick Count(58088)
Seradyn Seragen Quick Count Plus II(58172)
Serono Baker Series 150(58233)
Serono Baker Series 150(58234)
Serono Baker Series 170(58235)
Serono Baker Series 5000(58236)
Serono Baker Series 7000(58237)
Serono Baker System 7500(58239)
Serono Diagnostics 8000(58245)
Serono Diagnostics 9000(58246)
Serono Diagnostics 9000 Ax(58247)
Serono Diagnostics 9000 Plus(58248)
Serono Diagnostics 9000 Rx(58249)
Stanbio Hemoglobin Analyzer(58209)
Sysmex CC–108(58111)
Sysmex CC–120(58206)
Sysmex CC–130(58071)
Sysmex CC–150(58072)
Sysmex CC–170(58110)
Sysmex CC–180(58073)
Sysmex CC–700(58074)
Sysmex CC–720(58075)
Sysmex CC–780(58076)
Sysmex CC–800(58109)
Sysmex CC–800 with PDA–410(58278)
Sysmex E–2500(58077)

Sysmex E–5000(58078)
Sysmex F–300(58205)
Sysmex F–500(58206)
Sysmex F–800(58202)
Sysmex Hemoglobinometer HB–100(58130)
Sysmex Hemoglobinometer HB–110(58131)
Sysmex K–1000(58079)
Sysmex K–1000 with PDA upgrade(58277)
Sysmex M–2000(58207)
Sysmex NE–1500(58204)
Sysmex NE–5500(58203)
Sysmex NE–8000(58080)
Technicon H 6000(61008)
Technicon H.1(61009)
Technicon H.1 Jr(61052)
Technicon H.1E System(61043)
Technicon H.2 System(61038)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wampole STAT-CRIT(70063)

**Analyte: (2535) Hemoglobin A2**

*Test System, Assay, Examination*

Ciba Corning Model 765 Glycomat(10210)
Drew Scientific Glycomat Haemoglobin Analyzer(13260)
Helena Laboratories ColumnMate(25114)

**Analyte: (2544) Hemoglobin Fractions**

*Test System, Assay, Examination:*

Ciba Corning Model 765 Glycomat(10210)
Drew Scientific Glycomat Haemoglobin Analyzer(13260)

**Analyte: (2536) Hemoglobin S**

*Test System, Assay, Examination*

Ampcor Quik-Dot(04165)
Ampcor Sickle Cell - HbS Screening Kit(04297)
Chembio Sickle-STAT(10145)
Helena Laboratories ColumnMate(25114)
Key Scientific Sickle-Screen Test Kit(34030)
Organon Teknika Sicklequik(46102)
Ortho Sickledex(46131)
Sterling Diagnostics Sickle Cell Uni-test(58227)

**Analyte: (2518) Heparin**

*Test System, Assay, Examination*

Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)

**Analyte: (2539) Heparin Dose Response (HDR)**

*Test System, Assay, Examination*

HemoTec Hepcon/HMS(25034)
HemoTec Hepcon/System A–10(25033)
HemoTec Hepcon/System B–10(25035)
HemoTec Hepcon/System Four(25032)

**Analyte: (2538) Heparin/Protamine Titration (HPT)**

*Test System, Assay, Examination*

HemoTec Hepcon/HMS(25034)
HemoTec Hepcon/System A–10(25033)
HemoTec Hepcon/System B–10(25035)
HemoTec Hepcon/System Four(25032)

**Analyte: (3723) Leukocytes, Fecal Smear**

*Test System, Assay, Examination*

All Fecal Smears for Leukocytes(04324)

**Analyte: (4907) Plasminogen**

*Test System, Assay, Examination*

Behring Nephelometer(07273)
Behring Nephelometer 100(07272)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)

**Analyte: (4906) Platelet Count**

*Test System, Assay, Examination*

Abbott Cell-Dyn 1400(04225)
Abbott Cell-Dyn 1500(04226)
Abbott Cell-Dyn 1600(04227)
Abbott Cell-Dyn 1600 CS(04238)
Abbott Cell-Dyn 2000 CS(04239)
Abbott Cell-Dyn 2000 SL(04240)
Abbott Cell-Dyn 300(04228)
Abbott Cell-Dyn 3000 CS(04241)
Abbott Cell-Dyn 3000 SL(04242)
Abbott Cell-Dyn 3300 CS(04273)
Abbott Cell-Dyn 3300 SL(04272)
Abbott Cell-Dyn 3500 CS(04327)
Abbott Cell-Dyn 3500 SL(04287)
Abbott Cell-Dyn 400(04230)
Abbott Cell-Dyn 500(04231)
Abbott Cell-Dyn 610(04232)
Abbott Cell-Dyn 700(04233)
Abbott Cell-Dyn 800(04234)
Abbott Cell-Dyn 900(04235)
Baker 8000(07019)
Baker 9000(07020)
Baker 9000 Ax(07182)
Baker 9000 Plus(07183)
Baker 9000 Rx(07184)
Becton Dickinson QBC(07176)
Becton Dickinson QBC AutoRead(07104)
Becton Dickinson QBC II(07177)
Becton Dickinson QBC II Plus(07178)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QBC Reference(07180)
Coulter JS(10073)
Coulter JT(10074)
Coulter JT2(10075)
Coulter JT3(10076)
Coulter MAXM(10078)
Coulter MD16(10177)
Coulter S Plus(10081)
Coulter S Plus II(10082)
Coulter S Plus III(10083)
Coulter S Plus IV(10084)
Coulter S Plus IVW/DIF(10085)
Coulter S Plus Jr.(10086)
Coulter S Plus V(10087)
Coulter S Plus VI/STKR(10088)
Coulter S880(10090)
Coulter ST(10091)
Coulter STKR(10092)
Coulter STK5(10093)
Coulter T540(10094)
Coulter T660(10095)
Coulter T890(10096)
Coulter ZBI(10126)
Coulter ZBI6(10127)
Coulter ZF(10128)
Coulter ZF5(10129)
Coulter ZM(10130)
Danam Datacell–18(13093)
Danam Datacell–18/AS–30(13094)
Danam HC–1020(13096)
Danam HC–820/HD11(13101)
Danam HC–820/HD21(13102)
Danam SA–1000(13103)
Danam Vector 6(13105)
Danam Vector 6 Plus(13106)
Danam Vector 8(13107)
Danam Vector 8 Plus(13108)
Electronucleonics Cellstar(16003)
Infolab I–1100(28129)
Infolab I–1800(28130)
Infolab I–900(28091)
Instrumentation Laboratory IL Collect 8(28229)
Instrumentation Laboratory IL Collect 8E(28230)
Nova Celltrak 11(43024)
Nova Celltrak 12(43025)
Ortho ELT 15(46059)
Ortho ELT 1500(46060)
Ortho ELT 8(46061)
Ortho ELT 8/DS(46062)
Ortho ELT 8/WS(46063)
Ortho ELT 800/WS(46065)
Roche Cobas Argos(55039)
Roche Cobas Argos5 Diff(55093)
Roche Cobas HELIOS 5 DIFF(55089)
Roche Cobas Helios(55094)
Roche Cobas Minos ST(55060)
Roche Cobas Minos STE(55042)
Roche Cobas Minos STEL(55061)
Roche Cobas Minos STX(55043)
Sequoia Turner 1600(58035)
Sequoia Turner 900(58037)
Serono Baker MK–4/HC(58232)
Serono Baker Series 810 Platelet Analyzer(58238)
Serono Diagnostics 8000(58245)
Serono Diagnostics 9000(58246)
Serono Diagnostics 9000 Ax(58247)
Serono Diagnostics 9000 Plus(58248)
Serono Diagnostics 9000 Rx(58249)
Sysmex CC–130(58071)
Sysmex CC–150(58072)
Sysmex CC–180(58073)
Sysmex CC–700(58074)
Sysmex CC–720(58075)
Sysmex CC–780(58076)
Sysmex CC–800(58109)
Sysmex CC–800 with PDA–410(58276)
Sysmex E–2500(58077)
Sysmex E–5000(58078)
Sysmex F–800(58202)
Sysmex K–1000(58079)
Sysmex K–1000 with PDA upgrade(58277)
Sysmex M–2000(58207)
Sysmex NE–1500(58204)
Sysmex NE–5500(58203)
Sysmex NE–8000(58080)
Sysmex PL–100(58114)
Sysmex PL–110(58113)
Technicon H 6000(61008)
Technicon H.1(61009)
Technicon H.1 Jr(61052)
Technicon H.1E System(61043)
Technicon H.2 System(61038)

**Analyte: (4821) Prothrombin Time (PT)**

*Test System, Assay, Examination*

Abbott Vision(04083)
American Scientific Fibrometer(04145)
Becton Dickinson BBL Fibrometer(07080)
Bio/Data MCA 110(07281)
Bio/Data MCA 210(07282)
Boehringer Mannheim Unimeter CA–600(07216)
Boehringer Mannheim Unimeter CU–500(07215)

Ciba Corning Biotrack 512(10047)
DataChem DC–100(13213)
Diagnostica Stago ST4(13218)
Du Pont Coumatrak(13151)
EM Diagnostic Systems EASY ST(16017)
General Diagnostics Coag-A-Mate(22056)
General Diagnostics Coag-A-Mate 150(22139)
General Diagnostics Coag-A-Mate 2001(22138)
General Diagnostics Coag-A-Mate Dual Channel(22137)
General Diagnostics Coag-A-Mate X2(22057)
General Diagnostics Coag-A-Mate XC(22058)
Helena Laboratories Cascade 480(25002)
Helena Laboratories Dataclot(25003)
HemoTec Automated Coagulation Timer(25030)
Instrumentation Laboratory IL ACL 100(28073)
Instrumentation Laboratory IL ACL 1000(28074)
Instrumentation Laboratory IL ACL 200(28075)
Instrumentation Laboratory IL ACL 2000(28076)
Instrumentation Laboratory IL ACL 300(28077)
Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
Instrumentation Laboratory IL ACL 810(28080)
International Technidyne Factor VI(28093)
International Technidyne Hemochron 400(28094)
International Technidyne Hemochron 401(28095)
International Technidyne Hemochron 800(28096)
International Technidyne Hemochron 801(28097)
LAbor COA Data 2000(37034)
LAbor COA Screener(37033)
LAbor COA System(37035)
LAbor CoaData 3000(37066)
Lancer Coagulyzer Jr. III(37025)
Logos elvi 818 Digiclot(37013)
Logos elvi 819 Multi Clot(37014)
Logos elvi 820 Digiclot II(37015)
Medical Laboratory MLA Electra 1000 C(40037)
Medical Laboratory MLA Electra 600(40149)
Medical Laboratory MLA Electra 650(40150)
Medical Laboratory MLA Electra 700(40038)
Medical Laboratory MLA Electra 750(40039)
Medical Laboratory MLA Electra 800(40040)
Medical Laboratory MLA Electra 900(40041)
Medical Laboratory MLA Electra 900 C(40042)
Organon Teknika Coag-A-Mate Data-Mate(46018)
Organon Teknika Coag-A-Mate RA4(46019)
Organon Teknika Coag-A-Mate X–2(46020)
Organon Teknika Coag-A-Mate XC(46021)
Organon Teknika Coag-A-Mate XC Plus(46022)
Organon Teknika Coag-A-Mate XM(46023)
Ortho KoaguLab M(46111)
Ortho Koagulab 16S(46074)
Ortho Koagulab 32–S(46123)
Ortho Koagulab 40–A(46076)
Ortho Koagulab 80–S(46122)
Sclavo Uni-Fast System Analyzer(58193)
Sherwood Medical Coagulizer Jr.(58140)
Sienco Dual Sample Aggregation Meter (DP–247)(58119)
Sigma AccuStasis 1000(58049)
Sigma AccuStasis 2000(58050)
TECO Coatron F2(61065)
TECO Coatron II(61047)
TECO Coatron Jr(61048)

**Analyte: (5302) Red Blood Cell Count (Erythrocyte Count) (RBC)**

*Test System, Assay, Examination*

Abbott Cell-Dyn 1400(04225)
Abbott Cell-Dyn 1500(04226)
Abbott Cell-Dyn 1600(04227)
Abbott Cell-Dyn 1600 CS(04238)
Abbott Cell-Dyn 2000 CS(04239)
Abbott Cell-Dyn 2000 SL(04240)
Abbott Cell-Dyn 300(04228)
Abbott Cell-Dyn 3000 CS(04241)
Abbott Cell-Dyn 3000 SL(04242)
Abbott Cell-Dyn 3300 CS(04273)
Abbott Cell-Dyn 3300 SL(04272)
Abbott Cell-Dyn 3500 CS(04327)
Abbott Cell-Dyn 3500 SL(04287)
Abbott Cell-Dyn 400(04230)
Abbott Cell-Dyn 500(04231)
Abbott Cell-Dyn 610(04232)
Abbott Cell-Dyn 700(04233)
Abbott Cell-Dyn 800(04234)
Abbott Cell-Dyn 900(04235)
Baker 8000(07019)
Baker 9000(07020)
Baker 9000 Ax(07182)
Baker 9000 Plus(07183)
Baker 9000 Rx(07184)
Baker JTB 500A(07421)
Baker JTB 700A(07422)
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter(07242)
Bio-Dynamics CellTrak 2(07435)
Bio-Dynamics CellTrak 3(07436)
Bio-Dynamics CellTrak 5(07437)
Clay Adams HA–3(10101)
Clay Adams HA–5(10102)
Coulter 530(10066)
Coulter 560(10067)
Coulter 770(10068)
Coulter CBC4(10069)
Coulter CBC5(10070)
Coulter JR(10181)
Coulter JS(10073)
Coulter JT(10074)
Coulter JT2(10075)
Coulter JT3(10076)
Coulter M430(10077)
Coulter MAXM(10078)
Coulter MD16(10177)
Coulter S(10116)
Coulter S Plus(10081)
Coulter S Plus II(10082)
Coulter S Plus III(10083)
Coulter S Plus IV(10084)
Coulter S Plus IVW/DIF(10085)
Coulter S Plus Jr.(10086)
Coulter S Plus V(10087)
Coulter S Plus VI/STKR(10088)
Coulter S SR(10118)
Coulter S550(10089)
Coulter S560(10119)
Coulter S7120(10120)
Coulter S770(10121)
Coulter S790(10122)
Coulter S880(10090)
Coulter ST(10091)
Coulter STKR(10092)
Coulter STKS(10093)
Coulter T540(10094)
Coulter T660(10095)
Coulter T890(10096)
Coulter ZBI(10126)
Coulter ZBI6(10127)
Coulter ZF(10128)
Coulter ZF5(10129)
Coulter ZM(10130)
Danam Datacell–18(13093)
Danam Datacell–18/AS–30(13094)
Danam HC–1020(13096)
Danam HC–310(13097)
Danam HC–510(13098)
Danam HC–510/HD11(13099)
Danam HC–720(13100)
Danam HC–820/HD11(13101)
Danam HC–820/HD21(13102)
Danam SA–1000(13103)
Danam Vector 5(13104)
Danam Vector 6(13105)
Danam Vector 6 Plus(13106)
Danam Vector 8(13107)
Danam Vector 8 Plus(13108)
Electronucleonics Cellstar(16003)
Infolab I–1100(28129)
Infolab I–1800(28130)
Infolab I–500(28090)
Infolab I–900(28091)
Instrumentation Laboratory IL Cellect 7(28228)
Instrumentation Laboratory IL Cellect 8(28229)
Instrumentation Laboratory IL Cellect 8E(28230)
Nova Celltrak 11(43024)
Nova Celltrak 12(43025)
Nova Celltrak 2(43026)
Nova Celltrak 2/6(43027)
Ortho ELT 15(46059)
Ortho ELT 1500(46060)
Ortho ELT 8(46061)
Ortho ELT 8/DS(46062)
Ortho ELT 8/WS(46063)
Ortho ELT 800/WS(46065)
Roche Cobas Argos(55039)
Roche Cobas Argos 5 Diff(55093)
Roche Cobas HELIOS 5 DIFF(55069)
Roche Cobas Helios(55094)
Roche Cobas Minos ST(55060)
Roche Cobas Minos STE(55042)
Roche Cobas Minos STEL(55061)
Roche Cobas Minos STX(55043)
Sequoia Turner 1600(58035)
Sequoia Turner 700(58036)
Sequoia Turner 900(58037)
Seradyn Seragen Quick Count(58089)
Seradyn Seragen Quick Count Plus II(58172)
Serono Baker Series 130(58233)
Serono Baker Series 150(58234)
Serono Baker Series 170(58235)
Serono Baker Series 5000(58236)
Serono Baker Series 7000(58237)
Serono Baker System 7500(58239)
Serono Diagnostics 8000(58245)
Serono Diagnostics 9000(58246)
Serono Diagnostics 9000 Ax(58247)
Serono Diagnostics 9000 Plus(58248)
Serono Diagnostics 9000 Rx(58249)
Sysmex CC–100(58111)
Sysmex CC–110(58112)
Sysmex CC–120(58208)
Sysmex CC–130(58071)
Sysmex CC–150(58072)
Sysmex CC–170(58110)
Sysmex CC–180(58073)

Sysmex CC–700(58074)
Sysmex CC–720(58075)
Sysmex CC–780(58076)
Sysmex CC–800(58109)
Sysmex CC–800 with PDA–410(58278)
Sysmex E–2500(58077)
Sysmex E–5000(58078)
Sysmex F–300(58205)
Sysmex F–500(58206)
Sysmex F–800(58202)
Sysmex K–1000(58079)
Sysmex K–1000 with PDA upgrade(58277)
Sysmex M–2000(58207)
Sysmex NE–1500(58204)
Sysmex NE–5500(58203)
Sysmex NE–8000(58080)
Sysmex PL–110(58113)
Sysmex R–1000(58081)
Sysmex R–3000(58129)
Technicon H 6000(61008)
Technicon H.1(61009)
Technicon H.1 Jr(61052)
Technicon H.1E System(61043)
Technicon H.2 System(61038)

**Analyte: (5506) Reticulocyte Count**

*Test System, Assay, Examination*

All Manual Reticulocyte Count Test Systems and Procedures(04125)
Sysmex R–1000(58081)
Sysmex R–3000(58129)

**Analyte: (5822) Semen**

*Test System, Assay, Examination*

All Manual Semen Analyses (presence or absence only)(04356)
Hamilton-Thorn HTM-IVOS (count and motility only)(25113)

**Analyte: (6105) Thrombin Time**

*Test System, Assay, Examination*

Bio/Data MCA 210(07282)
Diagnostica Stago ST4(13218)
General Diagnostics Coag-A-Mate X2(22057)
Helena Laboratories Cascade 480(25002)
Instrumentation Laboratory IL ACL 100(28073)
Instrumentation Laboratory IL ACL 1000(28074)
Instrumentation Laboratory IL ACL 200(28075)
Instrumentation Laboratory IL ACL 2000(28076)
Instrumentation Laboratory IL ACL 300(28077)
Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
Instrumentation Laboratory IL ACL 810(28080)
International Technidyne Factor VI(28093)
International Technidyne Hemochron 400(28094)
International Technidyne Hemochron 401(28095)
International Technidyne Hemochron 800(28096)
International Technidyne Hemochron 801(28097)
LAbor COA Data 2000(37034)
LAbor COA Screener(37033)
LAbor CoaData 3000(37066)
Logos elvi 818 Digiclot(37013)
Logos elvi 819 Multi Clot(37014)
Logos elvi 820 Digiclot II(37015)
Medical Laboratory MLA Electra 1000 C(40037)
Medical Laboratory MLA Electra 650(40150)
Medical Laboratory MLA Electra 700(40038)
Medical Laboratory MLA Electra 750(40039)
Medical Laboratory MLA Electra 900(40041)
Medical Laboratory MLA Electra 900 C(40042)
Organon Teknika Coag-A-Mate RA4(46019)
Organon Teknika Coag-A-Mate XC(46021)
Organon Teknika Coag-A-Mate XC Plus(46022)
Organon Teknika Coag-A-Mate XM(46023)
Ortho Koagulab 16S(46074)
Ortho Koagulab 32–S(46123)
Ortho Koagulab 60–S(46122)
Sigma AccuStasis 1000(58049)
Sigma AccuStasis 2000(58050)
TECO Coatron F2(61065)
TECO Coatron II(61047)
TECO Coatron Jr(61048)

**Analyte: (7002) White Blood Cell Count (Leukocyte Count) (WBC)**

*Test System, Assay, Examination*

Abbott Cell-Dyn 1400(04225)
Abbott Cell-Dyn 1500(04226)
Abbott Cell-Dyn 1600(04227)
Abbott Cell-Dyn 1600 CS(04238)
Abbott Cell-Dyn 2000 CS(04239)
Abbott Cell-Dyn 2000 SL(04240)
Abbott Cell-Dyn 300(04228)
Abbott Cell-Dyn 3000 CS(04241)
Abbott Cell-Dyn 3000 SL(04242)
Abbott Cell-Dyn 3300 CS(04273)
Abbott Cell-Dyn 3300 SL(04272)
Abbott Cell-Dyn 3500 CS(04327)
Abbott Cell-Dyn 3500 SL(04287)
Abbott Cell-Dyn 400(04230)
Abbott Cell-Dyn 500(04231)
Abbott Cell-Dyn 610(04232)
Abbott Cell-Dyn 700(04233)
Abbott Cell-Dyn 800(04234)
Abbott Cell-Dyn 900(04235)
Baker 8000(07019)
Baker 9000(07020)
Baker 9000 Ax(07182)
Baker 9000 Plus(07183)
Baker 9000 Rx(07184)
Baker JTB 500A(07421)
Baker JTB 700A(07422)
Becton Dickinson QBC(07176)
Becton Dickinson QBC AutoRead(07104)
Becton Dickinson QBC HemaScan(07428)
Becton Dickinson QBC II(07177)
Becton Dickinson QBC II Plus(07178)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QBC Reference(07180)
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter(07242)
Bio-Dynamics CellTrak 2(07435)
Bio-Dynamics CellTrak 3(07436)
Bio-Dynamics CellTrak 5(07437)
Clay Adams HA–3(10101)
Clay Adams HA–5(10102)
Coulter 530(10066)
Coulter 560(10067)
Coulter 770(10068)
Coulter CBC4(10069)
Coulter CBC5(10070)
Coulter Hemo-W(10111)
Coulter JR(10181)
Coulter JS(10073)
Coulter JT(10074)
Coulter JT2(10075)
Coulter JT3(10076)
Coulter M430(10077)
Coulter MAXM(10078)
Coulter MD18(10177)
Coulter S(10116)
Coulter S Plus(10081)
Coulter S Plus II(10082)
Coulter S Plus III(10083)
Coulter S Plus IV(10084)
Coulter S Plus IVW/DIF(10085)
Coulter S Plus Jr.(10086)
Coulter S Plus V(10087)
Coulter S Plus VI/STKR(10088)
Coulter S SR(10118)
Coulter S550(10089)
Coulter S560(10119)
Coulter S7120(10120)
Coulter S770(10121)
Coulter S790(10122)
Coulter S880(10090)
Coulter ST(10091)
Coulter STKR(10092)
Coulter STKS(10093)
Coulter T540(10094)
Coulter T660(10095)
Coulter T890(10096)
Coulter ZBI(10126)
Coulter ZBI6(10127)
Coulter ZF(10128)
Coulter ZF5(10129)
Coulter ZM(10130)
Danam Datacell-18(13093)
Danam Datacell-18/AS–30(13094)
Danam HC–1020(13096)
Danam HC–310(13097)
Danam HC–510(13098)
Danam HC–510/HD11(13099)
Danam HC–720(13100)
Danam HC–820/HD11(13101)
Danam HC–820/HD21(13102)
Danam SA–1000(13103)
Danam Vector 5(13104)
Danam Vector 6(13105)
Danam Vector 6 Plus(13106)
Danam Vector 8(13107)
Danam Vector 8 Plus(13108)
Electronucleonics Cellstar(16003)
Infolab I–1100(28129)
Infolab I–1800(28130)
Infolab I–500(28090)
Infolab I–900(28091)
Instrumentation Laboratory IL Collect 7(28228)
Instrumentation Laboratory IL Collect 8(28229)
Instrumentation Laboratory IL Collect 8E(28230)
Nova Celltrak 11(43024)
Nova Celltrak 12(43025)
Nova Celltrak 2(43026)
Nova Celltrak 2/6(43027)
Ortho ELT 15(46059)
Ortho ELT 1500(46060)
Ortho ELT 8(46061)
Ortho ELT 8/DS(46062)
Ortho ELT 8/WS(46063)
Ortho ELT 800(46064)
Ortho ELT 800/WS(46065)
Roche Cobas Argos(55039)
Roche Cobas Argos5 Diff(55093)
Roche Cobas HELIOS 5 DIFF(55069)
Roche Cobas Helios(55094)
Roche Cobas Minos ST(55060)
Roche Cobas Minos STE(55042)

Roche Cobas Minos STEL(55061)
Roche Cobas Minos STX(55043)
Sequoia Turner 1600(58035)
Sequoia Turner 700(58036)
Sequoia Turner 900(58037)
Serodyn Seragen Quick Count(58089)
Serodyn Seragen Quick Count Plus II(58172)
Serono Baker Series 130(58233)
Serono Baker Series 150(58234)
Serono Baker Series 170(58235)
Serono Baker Series 5000(58236)
Serono Baker Series 7000(58237)
Serono Baker System 7500(58239)
Serono Diagnostics 8000(58245)
Serono Diagnostics 9000(58245)
Serono Diagnostics 9000 Ax(58247)
Serono Diagnostics 9000 Plus(58248)
Serono Diagnostics 9000 Rx(58249)
Sysmex CC–108(58111)
Sysmex CC–110(58112)
Sysmex CC–120(58206)
Sysmex CC–130(58071)
Sysmex CC–150(58072)
Sysmex CC–170(58110)
Sysmex CC–180(58073)
Sysmex CC–700(58074)
Sysmex CC–720(58075)
Sysmex CC–780(58076)
Sysmex CC–800(58109)
Sysmex CC–800 with PDA–410(58276)
Sysmex E–2500(58077)
Sysmex E–5000(58078)
Sysmex F–300(58205)
Sysmex F–500(58208)
Sysmex F–900(58202)
Sysmex K–1000(58079)
Sysmex K–1000 with PDA upgrade(58277)
Sysmex M–2000(58207)
Sysmex NE–1500(58204)
Sysmex NE–5500(58203)
Sysmex NE–8000(58080)
Sysmex PL–110(58113)
Technicon H 6000(61008)
Technicon H.1(61009)
Technicon H.1 Jr(61052)
Technicon H.1E System(61043)
Technicon H.2 System(61038)

**Analyte: (7001) White Blood Cell Differential (WBC Diff)**

*Test System, Assay, Examination*

Abbott Cell-Dyn 1400(04225)
Abbott Cell-Dyn 1500(04226)
Abbott Cell-Dyn 1600(04227)
Abbott Cell-Dyn 1600 CS(04238)
Abbott Cell-Dyn 2000 CS(04239)
Abbott Cell-Dyn 2000 SL(04240)
Abbott Cell-Dyn 3000 CS(04241)
Abbott Cell-Dyn 3000 SL(04242)
Abbott Cell-Dyn 3300 CS(04273)
Abbott Cell-Dyn 3300 SL(04272)
Abbott Cell-Dyn 3500 CS(04327)
Abbott Cell-Dyn 3500 SL(04287)
Abbott Cell-Dyn 610(04232)
All Manual WBC Diff Procedures-No interpret. atypical cells(04126)
Baker 9000(07020)
Baker 9000 Ax(07182)
Baker 9000 Plus(07183)
Baker 9000 Rx(07184)
Becton Dickinson QBC(07176)
Becton Dickinson QBC AutoRead(07104)
Becton Dickinson QBC II(07177)
Becton Dickinson QBC II Plus(07178)
Becton Dickinson QBC Plus(07179)
Becton Dickinson QBC Reference(07180)
Coulter JS(10073)
Coulter JT(10074)
Coulter JT2(10075)
Coulter JT3(10076)
Coulter MAXM(10078)
Coulter MD16(10177)
Coulter S Plus IVW/DIF(10085)
Coulter S Plus VI/STKR(10086)
Coulter ST(10091)
Coulter STKR(10092)
Coulter STKS(10093)
Coulter T540(10094)
Coulter T660(10095)
Coulter T890(10096)
Coulter VCS(10125)
Danam Datscell-18(13093)
Danam Datscell-18/AS–30(13094)
Danam HC–1020(13096)
Danam Vector 8 Plus(13108)
Infolab I–1100(28129)
Infolab I–1800(28130)
Nova Celltrak 12(43025)
Roche Cobas Argos(55039)
Roche Cobas Argos5 Diff(55093)
Roche Cobas HELIOS 5 DIFF(55069)
Roche Cobas Helios(55094)
Roche Cobas Minos STEL(55061)
Roche Cobas Minos STX(55043)
Serono Diagnostics 8000(58245)
Serono Diagnostics 9000(58246)
Serono Diagnostics 9000 Ax(58247)
Serono Diagnostics 9000 Plus(58248)
Sysmex CC–800 with PDA–410(58276)
Sysmex E–2500(58077)
Sysmex E–5000(58078)
Sysmex F–800(58202)
Sysmex K–1000 with PDA upgrade(58277)
Sysmex M–2000(58207)
Sysmex NE–1500(58204)
Sysmex NE–5500(58203)
Sysmex NE–8000(58080)
Technicon H 6000(61008)
Technicon H.1(61009)
Technicon H.2 System(61038)

**Analyte: (7003) Whole Blood Clotting Time**

*Test System, Assay, Examination*

Haemoscope Computerized Thromboelastograph(25128)
Haemoscope Thromboelastograph (visual result)(25037)
Lee-White Clotting Time(37059)
Logos elvi 816 Bi Clot (visual result)(37020)
Sienco SONOCLOT Coagulation Analyzer (visual result)(58124)
Sienco SONOCLOT II Surgical Analyzer (visual result)(58125)

Speciality/Subspeciality: Immunohematology

**Analyte: (0402) ABO Group—RBC**

*Test System, Assay, Examination*

Amtec Anti-A, Anti-B, Anti-A,B (slide, tube)(04169)
Amtec Anti-A1 Lectin (slide, tube)(04170)
Amtec CM-Tec Anti-A, Anti-B, Anti-A,B (microwell)(04179)
Amtec CM-Tec Anti-A, Anti-B, Anti-A,B (tube)(04180)
BCA Anti-A, Anti-B, Anti-A,B (microplate)(07001)
BCA Anti-A, Anti-B, Anti-A,B (slide, tube)(07002)
BCA Anti-A1 Lectin (slide, tube)(07003)
Dade Anti-A, Anti-B, Anti-A,B (microplate)(13001)
Dade Anti-A, Anti-B, Anti-A,B (slide, tube)(13002)
Dade Mono-Type Anti-A, Anti-B, Anti-A+B (microplate)(13015)
Dade Mono-Type Anti-A, Anti-B, Anti-A+B (slide, tube)(13016)
Gamma Anti-A, Anti-B, Anti-A,B (slide, tube)(22001)
Gamma Anti-A1 Lectin (slide, tube)(22002)
Gamma Omni-Series II Anti-A, Anti-B, Anti-A,B (microwell)(22020)
Gamma Omni-Series II Anti-A, Anti-B, Anti-A,B (tube)(22021)
Gamma's Gamma-clone Anti-A, Anti-B, Anti-A+B (microwell)(22033)
Gamma's Gamma-clone Anti-A, Anti-B, Anti-A+B (slide, tube)(22034)
Immucor Anti-A, Anti-B, Anti-A,B (microplate)(28002)
Immucor Anti-A, Anti-B, Anti-A,B (slide, tube)(28003)
Immucor Anti-A, Anti-B, Anti-A,B - murine (microplate)(28004)
Immucor Anti-A, Anti-B, Anti-A,B - murine (slide, tube)(28005)
Immucor Anti-A1 (slide, tube)(28006)
Ortho Anti-A1 Lectin (slide, tube)(46038)
Ortho BioClone Anti-A, Anti-B, Anti-A+B (microplate)(46043)
Ortho BioClone Anti-A, Anti-B, Anti-A+B (slide, tube)(46044)

**Analyte: (0403) ABO Group Confirmation—Serum, Plasma**

*Test System, Assay, Examination*

Amtec Serum Grouping Cells(04188)
BCA Confirmcells and Versa Cells(07014)
Dade Reverse-Cyte (microplate)(13020)
Dade Reverse-Cyte (tube)(13021)
Gamma Reverse Group (microwell)(22027)
Gamma Reverse Group (tube)(22028)
Immucor Referencells(28023)
Ortho Affirmagen—with or without Ortho A2 Cells(46037)

**Analyte: (1301) D (Rho) Type**

*Test System, Assay, Examination*

Amtec Anti-D (slide, rapid tube)(04171)
Amtec CM-Tec Anti-D (microwell)(04181)
Amtec CM-Tec Anti-D (slide, saline tube)(04182)
BCA Anti-D (saline tube)(07004)
BCA Anti-D (slide, rapid tube)(07005)
BCA UltraSera Anti-D (microplate)(07016)
BCA UltraSera Anti-D (slide, tube)(07017)
Dade Anti-D (microplate)(13003)
Dade Anti-D (slide, rapid tube)(13004)
Dade Chemically Modified Anti-D (microplate)(13009)
Dade Chemically Modified Anti-D (slide, tube)(13010)
Gamma Anti-D (saline tube)(22003)
Gamma Anti-D (slide, modified tube)(22004)
Gamma RST/Omni-Series II Anti-D (microwell)(22024)
Gamma RST/Omni-Series II Anti-D (slide, saline tube)(22025)
Gamma's Gamma-clone Anti-D (microwell)(22035)
Gamma's Gamma-clone Anti-D (slide, tube)(22036)
Immucor Anti-D (microplate)(28007)
Immucor Anti-D (saline tube)(28008)
Immucor Anti-D (slide, tube)(28009)
Immucor Anti-D Chem-D (microplate)(28011)

Immucor Anti-D Chem-D (slide, tube)(28012)
Ortho Anti-D (slide, modified tube)(46039)
Ortho BioClone Anti-D (microplate)(46045)
Ortho BioClone Anti-D (slide, rapid tube)(46046)

**Analyte: (1308) Du (Weak D RBC Antigen)**

*Test System, Assay, Examination*

Amtec Anti-D—Du (rapid tube)(04172)
Amtec CM-Tec Anti-D—Du (saline tube)(04183)
BCA Anti-D—Du (rapid tube)(07006)
BCA UltraSera Anti-D—Du (tube)(07018)
Dade Anti-D—Du (rapid tube)(13005)
Dade Chemically Modified Anti-D—Du (tube)(13011)
Gamma Anti-D—Du (modified tube)(22005)
Gamma RST/Omni-Series II Anti-D—Du (saline tube)(22026)
Gamma's Gamma-clone Anti-D—Du (tube)(22037)
Immucor Anti-D—Du (tube)(28010)
Immucor Anti-D Chem-D—Du (tube)(28013)
Ortho Anti-D—Du (modified tube)(46040)
Ortho BioClone Anti-D—Du (rapid tube)(46047)

**Analyte: (2816) Isohemagglutinins**

*Test System, Assay, Examination*

All Manual Isohemagglt. Tube Titrations, untreated serum(04279)

**Analyte:(5501)RBC Antigen Type Other Than A or B**

*Test System, Assay, Examination*

American Red Cross Bld Group Reagents—Indirect Antiglobulin(04281)
American Red Cross Blood Grouping Reagents—direct Ag(04284)
Amtec Anti-H Lectin—RBC(04173)
Amtec Anti-N Lectin(04175)
Amtec Blood Grouping Reagents (microwell) direct Ag type(04176)
Amtec Blood Grouping Reagents (slide, tube) direct Ag type(04177)
Amtec Blood Grouping Reagents—Indirect Antiglobulin Test(04178)
BCA Anti-H Lectin—RBC(07007)
BCA Anti-N Lectin(07010)
BCA Blood Grouping Reagents (slide, tube)—direct Ag type(07012)
BCA Blood Grouping Reagents—Indirect Antiglobulin Test(07013)
Dade Blood Grouping Reagent Chemically Modified (slide, tube)(13006)
Dade Blood Grouping Reagents (slide, tube)—direct Ag type(13007)
Dade Blood Grouping Reagents—Indirect Antiglobulin Test(13008)
Dade Lectin-H—RBC, qualitative(13012)
Dade Lectin-H—RBC, quantitative(13114)
Gamma Anti-H Lectin—RBC(22006)
Gamma Anti-N Lectin(22009)
Gamma Blood Grouping Reagents (slide, tube)—direct Ag type(22013)
Gamma Blood Grouping Reagents—Indirect Antiglobulin Test(22014)
Gamma RST-Series Blood Grouping Reagents (slide, tube)(22023)
Gamma's Gamma ID-series Blood Grouping Reagents(22032)
Gamma's Gamma-clone Blood Grouping Reagents (microwell)(22038)
Gamma's Gamma-clone Blood Grouping Reagents (tube)(22039)
Immucor Anti-N Lectin(28014)
Immucor Blood Grouping Reagents (microplate)—dir. Ag type(28015)
Immucor Blood Grouping Reagents (slide, tube)—dir. Ag type(28016)
Immucor Blood Grouping Reagents—Indirect Antiglobulin(28017)
Ortho BioClone Blood Grouping Reagents—direct Ag type(46048)
Ortho Blood Grouping Reagents (slide, tube)—dir. Ag type(46049)
Ortho Blood Grouping Reagents—Indirect Antiglobulin Test(46050)

**Analyte: (8401) Unexpected RBC Antibody—Detection—RBC**

*Test System, Assay, Examination*

All Manual Immunohematology Direct Antiglobulin Tube Tests(04116)

**Analyte: (8412) Unexpected RBC Antibody—Detection-Serum, Plasma**

*Test System, Assay, Examination*

Amtec Screening Cells—SAL/ALB/LISS/PEG/IAT(04187)
BCA Bio-Cells—SAL/ALB/LISS/PEG/IAT(07011)
BCA Spectrogen—SAL/ALB/LISS/PEG/IAT(07015)
Dade Search-Cyte—SAL/ALB/LISS/PEG/IAT(13022)
Dade Search-Cyte Plus—SAL/ALB/LISS/PEG/IAT(13023)
Dade Search-Cyte TCS—SAL/ALB/LISS/PEG/IAT(13024)
Gamma Duet—SAL/ALB/LISS/PEG/IAT(22015)
Gamma Pool—SAL/ALB/LISS/PEG/IAT(22022)
Gamma Trio—SAL/ALB/LISS/PEG/IAT(22030)
Gamma r-set—SAL/ALB/LISS/PEG/IAT(22031)
Immucor Hemantigen—SAL/ALB/LISS/PEG/IAT(28020)
Immucor Panoscreen—SAL/ALB/LISS/PEG/IAT(28021)
Ortho Pooled Screening Cells—SAL/ALB/LISS/PEG/IAT(46079)
Ortho Selectogen—SAL/ALB/LISS/PEG/IAT(46081)
Ortho Surgiscreen—SAL/ALB/LISS/PEG/IAT(46082)

SPECIALITY/SUBSPECIALITY: Mycobacteriology

**Analyte: (4024) Mycobacteria**

*Test System, Assay, Examination*

All Direct Acid-Fast Smear Test Systems and Procedures(04100)

SPECIALITY/SUBSPECIALITY: Mycology

**Analyte: (1302) Dermatophytes**

*Test System, Assay, Examination*

Acuderm inc. Acu-DTM(04427)
Adams Scientific Selecticult-DTM(04251)
Becton Dickinson BBL Dermatophyte Test Medium(07079)
Culture Kits, Inc. Derm-Kit(10135)
Difco Bacto—DTM Medium(13221)
Hardy Diagnostics Dermatophyte Test Medium(25001)
Incstar Dermatophyte Test Medium(28041)
Orion Diagnostica Oricult-DTM (conventional method)(46115)
Remel DTM(55105)

**Analyte: (1900) Fungi**

*Test System, Assay, Examination*

Becton Dickinson BACTEC NR-660(07207)

**Analyte: (1910) Fungi—Fungal Elements Only**

*Test System, Assay, Examination*

All KOH Preparations (bright-field light microscope)(04119)
All Wet Mount Preparations for Fungi(04313)

**Analyte: (7803) Yeast, Candida only**

*Test System, Assay, Examination*

Becton Dickinson Directigen 1-2-3 Disseminated Candidiasis(07090)
Bio-Medical BIOCARD Candida (direct antigen/visual)(07205)
Centocor Diagnostics Vagitest (direct Ag/visual)(10202)
Culture Kits, Inc. Candi-Kit(10097)
Difco Candida Latex Test (direct antigen/visual)(13120)
Leeco Diagnostics Super Duo (direct antigen/visual)(37017)
Medical Technology Corp. CandidaSure (direct Ag/visual)(40091)
Miles Diagnostic Labs MicroStix-Candida(40104)
SmithKline Isocult Combination Culture Test(58099)
SmithKline Isocult Diagnostic Culturing System(58200)

SPECIALITY/SUBSPECIALITY: Parasitology

**Analyte: (1602) Enterobius Vermicularis**

*Test System, Assay, Examination*

All Pinworm Preparations(04129)

**Analyte: (2813) Intestinal Parasites**

*Test System, Assay, Examination*

Alexon ProSpecT Giardia Rapid Assay (direct antigen/visual)(04364)
All Wet Mount Preparations—Presence/Absence of Parasites(04261)

**Analyte: (6116) Trichomonas**

*Test System, Assay, Examination*

All Direct Wet Mount Preparations(04108)
Biomed Diagnostics InPouch TV (direct wet mount)(07430)
Biomed Diagnostics InPouch TV (using selective media)(07431)
Centocor Diagnostics Vagitest (direct Ag/visual)(10202)
Leeco Diagnostics Super Duo (direct antigen/visual)(37017)
MicroProbe Affirm VP Microbial Identification Test Kit(40135)
SmithKline Isocult Combination Culture Test(58099)
SmithKline Isocult Diagnostic Culturing System(58200)

SPECIALITY/SUBSPECIALITY: Toxicology/TDM

**Analyte: (0406) Acetaminophen**

*Test System, Assay, Examination*

Abbott ADX(04022)

Abbott Spectrum(04067)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Paramax(07048)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon AXON(61001)
Technicon RA 1000(61010)
Technicon RA 500(61012)

**Analyte: (0425) Amikacin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Boehringer Mannheim Hitachi 704(07161)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (0433) Amphetamines**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Biosite Triage Panel for Drugs of Abuse(07195)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Immunotech Microzyme EIA Visual Procedure(28182)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Abuscreen ONTRAK(55099)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (0701) Barbiturates**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Biosite Triage Panel for Drugs of Abuse(07195)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Abuscreen ONTRAK(55099)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (0702) Benzodiazepines**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Biosite Triage Panel for Drugs of Abuse(07195)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)

Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107) Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Abuscreen ONTRAK(55099)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (1058) Caffeine**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704(07161)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1049) Cancer Antigen 125 (CA 125)**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 717(07163)

**Analyte: (1009) Cannabinoids (THC)**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Biosite Triage Panel for Drugs of Abuse(07195)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Opticbem 100(10115)
Coulter Opticbem 120(10079)
Coulter Opticbem 180(10080)
Drug Screening Systems microLINE Screens(13259)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Immunotech Microzyme EIA Visual Procedure(28182)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Abuscreen ONTRAK(55099)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (1010) Carbamazepine**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning Biotrack 516(10048)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syntex Medical Diagnostics AccuLevel(58132)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (1011) Carbamazepine, Free**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (1063) Chloramphenicol**

*Test System, Assay, Examination*

Boehringer Mannheim Hitachi 704(07161)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)

**Analyte: (1023) Cocaine Metabolites**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Biosite Triage Panel for Drugs of Abuse(07195)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Opticbem 100(10115)
Coulter Opticbem 120(10079)
Coulter Opticbem 180(10080)
Drug Screening Systems microLINE Screens(13259)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Immunotech Microzyme EIA Visual Procedure(28182)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Abuscreen ONTRAK(55099)

Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61038)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (1042) Cotinine**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (1037) Cyclosporine**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (1303) Digitoxin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1304) Digoxin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Ames Clinimate—TDA(04149)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Becton Dickinson Affinity(07075)
Bio-Chem Laboratory Systems ATAC 5000(07109)
BioAutoMed ASCA(07192)
Boehringer Mannheim ES 300(07160)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning ACS 180(10046)
Cirrus Diagnostics Immulite(10159)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Serono Baker SR 1(58090)
Serono Diagnostics SR 1(58250)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1305) Disopyramide**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Boehringer Mannheim Hitachi 704(07161)
EM Diagnostic Systems EPOS(16015)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1307) Drugs of Abuse**

*Test System, Assay, Examination*

Environmental Diagnostics EZ-SCREEN(16018)

**Analyte: (1608) Ethanol (Alcohol)**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott Spectrum(04067)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Enzymatics Q.E.D. A150 Saliva Alcohol Test(16013)
Enzymatics Q.E.D. A350 Saliva Alcohol Test(16012)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 600(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche ON-SITE Alcohol Test(55097)
Syva Emit ETS Plus(58115)
TOXI-LAB Alcohol Procedure(61064)
TOXI-LAB ON-SITE Alcohol(61050)
Technicon Assist(61002)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1608) Ethosuximide**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
BioAutoMed ASCA(07192)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA II(55041)

Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (1906) Flecainide**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (2202) Gentamicin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 911(07377)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (2819) Isonicotinic Acid**

*Test System, Assay, Examination*

Difco Bacto INH Test Strips(13214)
DynaGen MYCODYN URITBC Test Strips(13284)

**Analyte: (3401) Kanamycin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (3710) Lidocaine**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
BioAutoMed ASCA(07192)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (4003) Methadone**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (4004) Methamphetamine**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Ciba Corning 550 Express(10038)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Drug Screening Systems microLINE Screens(13259)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (4005) Methaqualone**

*Test System, Assay, Examination*

Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)

Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (4006) Methotrexate**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Roche Cobas Bio(55100)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)

**Analyte: (4020) Morphine**

*Test System, Assay, Examination*

Roche Abuscreen ONTRAK(55099)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)

**Analyte: (4301) N-Acetylprocainamide (NAPA)**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (4313) Netilmycin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (4601) Opiates**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Biosite Triage Panel for Drugs of Abuse(07195)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Drug Screening Systems microLINE Screens(13259)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Immunotech Microzyme EIA Visual Procedure(28182)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
V-Tech Target Opiates-R (Reader)(67055)
V-Tech Target Opiates-V (Visual)(67054)
Wako Diagnostics 30R(70002)

**Analyte: (4901) Phencyclidine (PCP)**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Biosite Triage Panel for Drugs of Abuse(07195)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
Drug Screening Systems microLINE Screens(13259)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Immunotech Microzyme EIA Visual Procedure(28182)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Abuscreen ONTRAK(55099)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (4902) Phenobarbital**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Stratus(07050)
Baxter Stratus II(07051)

Baxter Stratus IIntellect(07376)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syntex Medical Diagnostics AccuLevel(58132)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (4903) Phenytoin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott Vision(04083)
Ames Clinimate—TDA(04149)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning Biotrack 518(10048)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syntex Medical Diagnostics AccuLevel(58132)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (4904) Phenytoin, Free**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (4912) Primidone**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus IIntellect(07376)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (4913) Procainamide**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 717(07163)
Ciba Corning 550 Express(10038)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (4917) Propoxyphene**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)

Olympus AU 5000(46001)
Olympus AU 5021(46064)
Olympus AU 5031(46065)
Olympus AU 5061(46066)
Olympus AU 5131(46068)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas PARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon Chem 1(61003)
Technicon Chem 1 Plus(61036)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (5303) Quinidine**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Array 360(07052)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (5801) Salicylates**

*Test System, Assay, Examination*

Abbott ADX(04022)
Abbott Spectrum(04067)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Sclavo Uni-Fast System Analyzer(58193)
Sclavo Uni-Fast2 System Analyzer(58194)
Technicon AXON(61001)
Technicon RA 1000(61010)
Technicon RA 500(61012)

**Analyte: (5816) Streptomycin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (6106) Theophylline**

*Test System, Assay, Examination*

Abbott IMX(04056)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott Vision(04083)
Access Medical Systems dChem(04309)
Ames Clinimate—TDA(04149)
Ames Seralyzer(04154)
Ames Seralyzer III(04155)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 5000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning Biotrack 516(10048)
Coulter Dacos(10106)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Analyst(13085)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS(16016)
EM Diagnostic Systems EASY ST(16017)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Kodak Ektachem 250(34037)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Kodak Ektachem DT SC Module(34017)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Photest Diagnostics dChem(49050)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Sanofi Pasteur Access Immunoassay System(58257)
Syntex Medical Diagnostics AccuLevel(58132)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Diagnostics 30R(70002)

**Analyte: (6112) Tobramycin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Baxter Stratus(07050)
Baxter Stratus II(07051)
Baxter Stratus IIntellect(07376)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)

Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Olympus AU 800(46110)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon Immuno 1 System(61042)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Analyte: (6117) Tricyclic Antidepressants
Test System, Assay, Examination
Abbott ADX(04022)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio FP(55101)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Syva Emit ETS Plus(58115)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (6701) Valproic Acid**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Array 360(07052)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
BioAutoMed ASCA(07192)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
EM Diagnostic Systems EPOS(16015)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
PB Diagnostics Systems OPUS(49001)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (6702) Valproic Acid, Free**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)

**Analyte: (6703) Vancomycin**

*Test System, Assay, Examination*

Abbott TDX(04071)
Abbott TDX FLx(04072)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Roche Cobas Bio(55100)
Roche Cobas Bio FP(55101)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Technicon RA 1000(61010)
Technicon RA 500(61012)
Technicon RA XT(61013)

SPECIALITY/SUBSPECIALITY: Urinalysis

**Analyte: (6125) Total Solids (Specific Gravity)**

*Test System, Assay, Examination*

All Manual Specific Gravities by Urinometers(04283)
American Optical TS Meter(04285)
Behring Rapimat II Digital Refractometer(07122)
Biovation Model 380 Digital Urinometer(07251)
Reichert TS Meter(55071)

**Analyte: (6408) Urinary Protein, Qualitative**

*Test System, Assay, Examination*

All Manual Acid Precipitation Urine Protein Screening Tests(04286)
Sclavo Albumin Screen(58098)

**Analyte: (6405) Urinary Sediment Microscopic Elements**

*Test System, Assay, Examination*

All Manual Microscopic Analysis of Urinary Sediment(04133)
IRIS The Yellow IRIS model 250 (Squamous/WBC/RBC cnt. only)(28117)
IRIS The Yellow IRIS model 450 (Squamous/WBC/RBC cnt. only)(28118)

**Analyte: (6406) Urine Qualitative Dipstick Chemistries**

*Test System, Assay, Examination*

Ames Clini-tek Reflectance Photometer(04351)
Ames Clinitek 10(04280)
Ames Clinitek 100(04151)
Ames Clinitek 200(04282)
Ames Clinitek 200 Plus(04152)
Ames Clinitek Auto 2000(04350)
Behring Rapimat II(07121)
Behring Rapimat II T(07123)
Boehringer Mannheim Chemstrip Urine Analyzer(07380)
IRIS The Yellow IRIS model 250 (Squamous/WBC/RBC cnt. only)(28117)
IRIS The Yellow IRIS model 450 (Squamous/WBC/RBC cnt. only)(28118)

SPECIALITY/SUBSPECIALITY: Virology

**Analyte: (2529) Herpes Simplex**

*Test System, Assay, Examination*

Kodak SureCell (direct antigen/visual)(34020)
Vitek Systems Vidas (direct antigen)(67038)
Wampole Virogen Herpes LA Slide Test (dir Ag/visual)(70018)

**Analyte: (2549) Herpetic Inclusion Bodies for Herpes**

*Test System, Assay, Examination*

Tzanck Smears(61092)

**Analyte: (5503) Respiratory Syncytial Virus**

*Test System, Assay, Examination*

Abbott TestPack RSV (EIA) (direct antigen/visual)(04076)
Becton Dickinson Directigen RSV (EIA) (dir Ag/visual)(07097)

**Analyte: (5505) Respiratory Viruses (Influenza A&B, Parainfluenza)**

*Test System, Assay, Examination*

Becton Dickinson Directigen Flu A (direct antigen/visual)(07092)
Becton Dickinson QTest Influenza A (direct antigen/visual)(07202)

**Analyte: (5509) Rotavirus**

*Test System, Assay, Examination*

Bio-Medical ANI Biocard Rotovirus (direct antigen/visual)(07130)
Isolab RotaStat LA Slide Test (direct Ag/visual)(28108)
Medical Technology Corp. Rotalex (direct antigen/visual)(40052)
Meridian Diag. Meritec Rotavirus Latex (dir Ag/visual)(40059)

V-Tech Target Rotavirus (direct antigen/visual)(67004)
Vitek Systems SLIDEX Rota-kit 2 (direct antigen/visual)(67034)
Wampole Virogen Rotatest (direct antigen/visual)(70019)
Wellcome Rotavirus Latex Test (direct antigen/visual)(70025)

COMPLEXITY: HIGH

SPECIALITY/SUBSPECIALITY: Bacteriology

**Analyte: (0412) Aerobic &/or Anaerobic Organisms—Unlimited Sources**

*Test System, Assay, Examination*

Abbott MS–2/Advantage (including culture)(04057)
Abbott Quantum II System (including culture)(04059)
All Manual Nucleic Acid Analytis Test Systems & Procedures(04365)
All Organism ID & Antimicro. Suscept. Testing from Culture(04372)
Analytab API 20 Streptococcus (including culture)(04193)
Analytab API 20–A (including culture)(04194)
Analytab API ALADIN (including culture)(04256)
Analytab API An-Ident (including culture)(04196)
Analytab API Quad Ferm + (including culture)(04201)
Analytab API Rapid E (including culture)(04198)
Analytab API Rapid NFT (including culture)(04199)
Analytab API Rapid Strep (including culture)(04200)
Analytab API UniScept System (including culture)(04205)
Analytab API ZYM Microorganism Differentiation (inc. cult.)(04207)
Analytab Staph-Ident (including culture)(04217)
Baxter AutoSCAN Walk/Away (including culture)(07023)
Baxter Haemophilus/Neisseria Identif-Panel (including cult)(07037)
Baxter MicroScan AutoSCAN 4 (including culture)(07042)
Becton Dickinson BBL Minitek Enterobact. III Set (inc cult)(07360)
Becton Dickinson BBL Minitek Gram Positive Set (inc. cult)(07361)
Becton Dickinson BBL Minitek Neisseria Set (inc. culture)(07362)
Becton Dickinson Sceptor System (including culture)(07203)
BioClinical Systems Bullseye OB/GYN Plate (incl. culture)(07267)
BioClinical Systems UniSystem Bio-General (incl. culture)(07268)
Innovative Diag. Systems IDS Rapid SS/U (including culture)(28053)
Innovative Diag. Systems IDS Rapid STR (including culture)(28054)
Innovative Diag. Systems Modified IDS Rapid NH (inc. cult.)(28056)
Innovative Diag. Systems Rap ANA II (including culture)(28059)
Innovative Diag. Systems Rap NF Plus (including culture)(28060)
Innovative Diag. Systems Rapid NF (including culture)(28061)
Micro Media Sys. Bacterial ID Panels/G.Neg/G.Pos (inc. cult)(40073)
Organon Autobac Series II (including culture)(46004)
Pasco MIC/ID Data Management System (including culture)(49017)
Pro-Lab Neisseria/Branhamella Diff. Test (including culture)(49012)
Radiometer Sensititre (including culture)(55009)
Remel Haemophilus ID Test Kit (including culture)(55025)
Roche Enterotube II (including culture)(55047)
Troy Biologicals Bacti-Bio General Plate (incl. culture)(61029)
Troy Biologicals Bacti-Star II Vaginal Plate (incl culture)(61031)
Troy Biologicals Bacti-Star Vaginal Plate (incl. culture)(61032)
Troy Biologicals Bacti-Vaginal Plate (including culture)(61033)
Unipath Oxoid Toxin Detect. Kit BCET-RPLA (inc cult./filt.)(64020)
Unipath Oxoid Toxin Detect. Kit PET-RPLA (inc cult/filtrate)(64005)
Unipath Oxoid Toxin Detect. Kit SET-RPLA (inc cult./filt.)(64021)
Unipath Oxoid Toxin Detect. Kit TST-RPLA (inc culture)(64006)
Unipath Oxoid Toxin Detect. Kit VET-RPLA (inc culture)(64007)
Vitek Systems Rapid E System (including culture)(67032)
Vitek Systems VITEK (including culture)(67035)

**Analyte: (0413) Aerobic Organisms From Throat Specimens Only**

*Test System, Assay, Examination*

Troy Biologicals Bacti Strep Screen Plus (incl. culture)(61026)
Troy Biologicals Bacti-Star II Throat Plate (incl. culture)(61027)
Troy Biologicals Bacti-Star Throat Plate (incl. culture)(61028)
Troy Biologicals Bacti-Throat Plate (including culture)(61030)

**Analyte: (0478) Aerobic/Anaerobic Organ.—Other than Ureth/Endocerv**

*Test System, Assay, Examination*

All Gram Stain Procedures—Other than Urethral/Endocerv.(04299)

**Analyte: (0715) Bordetella Pertussis/Parapertussis**

*Test System, Assay, Examination*

Difco FA Bordetella Pertussis/Parapertussis (direct Ag.)(13168)
Difco FA Bordetella Pertussis/Parapertussis (inc. culture)(13115)

**Analyte: (1006) Campylobacter**

*Test System, Assay, Examination*

Becton Dickinson BBL Campyslide Test (including culture)(07078)
Gen-Probe AccuProbe (including culture)(22040)
Meridian Diagnostics Meritec-Campy(JCL) (including culture)(40067)

**Analyte: (1016) Chlamydia**

*Test System, Assay, Examination*

ADI Visuwell Chlamydia (direct antigen/spectrophotometric)(04002)
ADI Visuwell Chlamydia (direct antigen/visual)(04258)
Abbott COMMANDER System(04334)
Abbott Chlamydiazyme (EIA) (direct antigen/spectrophoto)(04044)
Abbott Chlamydiazyme (with blocking reagent)(04280)
All Organism Identification from Cell Culture(04331)
Analytab API IDEIA (direct antigen/spectrophotometric)(04300)
Analytab API IDEIA (direct antigen/visual)(04213)
Analytab API IMAGEN Chlamydia (direct antigen)(04214)
Baxter Bartels Chlamydia (EIA) (direct antigen/spectro)(07026)
Baxter Bartels Chlamydiae FA Monoclonal (inc. cell culture)(07027)
Baxter Bartels Chlamydiae Immunoperoxidase (inc. cell cult)(07028)
Cellabs Diagnostics Chlamydia-Cel TWAR IFA (direct antigen)(10028)
Ciba Corning Magic Lite Chlamydia (dir antigen)(10056)
Ciba Corning Magic Lite Chlamydia (including cell culture)(10184)
Ciba Corning Magic Lite Chlamydia (with blocking reagent)(10179)
Diagnostic Prod.Crp. PDx Chlamydia Cult.Conf.(inc cell cul)(13125)
Diagnostic Products PathoDx Chlamydia trachomatis (dir. Ag)(13035)
Diagnostic Technology Chlamydia-Check Sys. (inc cell cult)(13219)
Diagnostic Technology Chlamydia-Check System (direct Ag)(13167)
Difco Chlamydia Direct Detection System (direct antigen)(13060)
Gen-Probe Pace2 (direct antigen)(22041)
Incstar Chlamydia Direct Test System (direct antigen)(28039)
Ortho Chlamydia (DFA) (direct antigen)(46052)
Ortho Chlamydia Antigen ELISA Test (dir Ag/spectrophoto)(46053)
Ortho Chlamydia Antigen ELISA Test (inc. cell cult/spectro)(46125)
Ortho Cultureset Chlamydia ID Kit (FA) (inc. cell culture)(46054)
Ortho Cultureset Chlamydia ID Kit (PAP) (inc. cell culture)(46055)
Sanofi/Kallestad Pathfinder (FA) (direct antigen)(58002)
Sanofi/Kallestad Pathfinder Chlamydia EIA Detection Kit(58220)
Sanofi/Kallestad Pathfnd. Chlamydia Microplate (dirAg/spec)(58003)
Scimedx Chlamydia Test Kit (direct antigen)(58018)
Sigma SIA Chlamydia (dir Ag/spectrophotometric)(58093)
Syva MicroTrak Chlamydia EIA (direct antigen/spectrophoto)(58084)
Syva MicroTrak Culture Confirmation IF Test (inc cell cult)(58085)
Syva MicroTrak Direct Specimen IF System (direct antigen)(58086)
Syva MicroTrak II Chlamydia EIA (Direct Ag/Spectrophoto)(58262)
Syva MicroTrak XL (58263)
Vitek Systems Vidas (direct antigen)(67038)
Wellcome Chlamyset (direct antigen)(70022)

**Analyte: (1022) Clostridium Difficile**

*Test System, Assay, Examination*

Advanced Clinical Diag. CDT Toxi Test (direct antigen)(04094)
Analytab C. difficile A+B ELISA Test Kit (direct antigen)(04333)
Baxter Bartels C. difficile Toxin A (EIA) (direct antigen)(07024)
Baxter Bartels Cytotoxicity Assay for C. difficile (dir Ag)(07029)
BioWhittaker TOX-A Test (direct antigen/spectro)(07432)
BioWhittaker TOX-A Test (direct antigen/visual)(07433)
Cambridge Biotech Cytoclone A & B (EIA) (direct antigen)(10007)
Meridian Premier C. difficile Toxin A (dir Ag/spectrophoto)(40092)
Meridian Premier C. difficile Toxin A (dir Ag/visual)(40093)

**Analyte: (1612) Enterococcus**

*Test System, Assay, Examination*

Gen-Probe AccuProbe (including culture)(22040)

**Analyte: (1604) Escherichia Coli**

*Test System, Assay, Examination*

Becton Dickinson BBL Escherichia coli (including culture)(07201)
Bio-Medical ANI E. coli 0157 Test (including culture)(07131)
Difco Bacto E. coli H H7 (including culture)(13116)
Difco Bacto E. coli O 0157 (including culture)(13117)
Difco Bacto E. coli O (including culture)(13126)
Difco Bacto E. coli OK (including culture)(13127)
Pro-Lab Diagnostics E. coli 0157 LA Test (including culture)(49010)
Roech Laboratories E. coli OK (including culture)(55092)
Unipath Oxoid E. coli 0157 Latex Kit (including culture)(64003)

**Analyte: (2212) Gardnerella Vaginalis**

*Test System, Assay, Examination*

MicroProbe Affirm VP Microbial Identification Test Kit(40135)

**Analyte: (2542) Haemophilus Influenzae**

*Test System, Assay, Examination*

Gen-Probe AccuProbe (including culture)(22040)

**Analyte: (2509) Haemophilus Influenzae, Type A, C-F**

*Test System, Assay, Examination*

Difco Bacto H. influenzae Set (including culture)(13222)
Difco FA H. influenzae Types A-F (direct antigen)(13156)
Karobio Phadebact Haemophilus (including culture)(34005)

**Analyte: (2510) Haemophilus Influenzae, Type B**

*Test System, Assay, Examination*

Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)(07260)
Becton Dickinson Dir. Meningitis Indiv. Kit (bld cult supern)(07261)
Difco Bacto H. influenzae Set (including culture)(13222)
Difco FA H. influenzae Types A-F (direct antigen)(13156)
Karobio Phadebact Haemophilus (including culture)(34005)
Wampole Bactigen Meningitis Panel (bld culture supernatant)(70080)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)(70082)

**Analyte: (3708) Legionella**

*Test System, Assay, Examination*

Binax Equate Legionella Urinary Antigen Kit (RIA)(07125)
Gen-Probe Legionella Rapid Diag. System (direct antigen)(22102)
Gen-Probe Legionella Rapid Diag. System (including culture)(22126)
Genetic Systems Legionella IFA Test Kit (direct antigen)(22065)
MarDx Legionella DFA (direct antigen)(40098)
MarDx Legionella DFA (including culture)(40128)
Medical Diag. Technologies Legionella (direct antigen)(40035)
Medical Diag. Technologies Legionella (including culture)(40129)
Meridian Diagnostics MERIFLUOR Legionella (direct antigen)(40096)
Meridian Diagnostics MERIFLUOR Legionella (incl. culture)(40127)
Organon Teknika Legionella DFA Kit I (direct antigen)(46099)
Organon Teknika Legionella DFA Kit I (including culture)(46124)
Pro-Lab Legionella Latex Ag (including culture)(49031)
Remel Legionella Poly-ID Test Kit (direct antigen)(55064)
Remel Legionella Poly-ID Test Kit (including culture)(55103)
Scimedx Legionella Test Kit/DFA (direct antigen)(58024)
Zeus Legionella DFA (direct antigen)(79012)

**Analyte: (3719) Listeria Monocytogenes**

*Test System, Assay, Examination*

Gen-Probe AccuProbe (including culture)(22040)

**Analyte: (4022) Mycoplasma Pneumonia**

*Test System, Assay, Examination*

Gen-Probe M. pneumoniae Rapid Diag. System (direct antigen)(22103)
Gen-Probe M. pneumoniae Rapid Diag. System (inc. culture)(22127)

**Analyte: (4302) Neisseria Gonorrhoeae**

*Test System, Assay, Examination*

Abbott Gonozyme (direct antigen/spectrophotometric)(04045)
Adams Scientific Identicult - Neisseria (including culture)(04088)
Baxter Bartels N. gonorrhoeae DF (including culture)(07033)
Difco FA N. gonorrhoeae (including culture)(13158)
Gen-Probe AccuProbe (including culture)(22040)
Gen-Probe Pace2 (direct antigen)(22041)
Gen-Probe Pace2 (including culture)(22144)
Incstar N. gonorrhoeae Fluoro-Kit (including culture)(28048)
Karobio Phadebact Monoclonal Gonococcus (including culture)(34006)
Meridian Diagnostics Meritec-GC (including culture)(40068)
New Horizons Gonogen (including culture)(43003)
New Horizons Gonogen II (including culture)(43004)
Syva MicroTrak N. gonorrhoeae Cult. Confirm. (incl. culture)(58097)

**Analyte: (4314) Neisseria Meningitidis**

*Test System, Assay, Examination:*

Difco FA Meningococcus Poly (direct antigen)(13155)

**Analyte: (4303) Neisseria Meningitidis (non-specific)**

*Test System, Assay, Examination*

Difco Bacto Neisseria Meningitidis Set (including culture)(13223)

**Analyte: (4304) Neisseria Meningitidis, Group A**

*Test System, Assay, Examination*

Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)(07260)
Becton Dickinson N. Meningitidis Test (bld cult. supernate)(07262)
Difco Bacto Neisseria Meningitidis Set (including culture)(13223)
Wampole Bactigen Meningitis Panel (bld culture supernatant)(70080)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)(70082)

**Analyte: (4306) Neisseria Meningitidis, Group B**

*Test System, Assay, Examination*

Difco Bacto Neisseria Meningitidis Set (including culture)(13223)
Wampole Bactigen Meningitis Panel (bld culture supernatant)(70080)

**Analyte: (4307) Neisseria Meningitidis, Group B and E. Coli K1**

*Test System, Assay, Examination*

Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)(07260)
Becton Dickinson Dir. Meningitis Indiv. Kit (bld cult supern)(07261)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)(70082)
Wellcome Wellcogen Bacterial Ag Kit (including culture)(70088)

**Analyte: (4308) Neisseria Meningitidis, Group C**

*Test System, Assay, Examination*

Becton Dickinson Dir. Meningitis Combo Kit (bld cult supern)(07260)
Becton Dickinson N. Meningitidis Test (bld cult. supernate)(07262)
Difco Bacto Neisseria Meningitidis Set (including culture)(13223)
Wampole Bactigen Meningitis Panel (bld culture supernatant)(70080)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)(70082)

**Analyte: (4311) Neisseria Meningitidis, Group W135**

*Test System, Assay, Examination*

Becton Dickinson Dir. Meningitis Combo Kit(bld cult supern)(07260)
Becton Dickinson N. Meningitidis Test (bld cult. supernate)(07262)
Difco Becto Neisseria Meningitidis Set (including culture)(13223)
Wampole Bactigen Meningitis Panel (bld culture supernatant)(70080)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)(70082)

**Analyte: (4312) Neisseria Meningitidis, Group Y**

*Test System, Assay, Examination*

Becton Dickinson Dir. Meningitis Combo Kit(bld cult supern)(07260)
Becton Dickinson N. Meningitidis Test (bld cult. supernate)(07262)
Wampole Bactigen Meningitis Panel (bld culture supernatant)(70080)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)(70082)

**Analyte: (5802) Salmonella**

*Test System, Assay, Examination*

Analytab API Serimm Sure Salmonella (including culture)(04203)
Becton Dickinson BBL Salmonella Grouping (incl. culture)(07200)
Bio-Medical ANI Salmonella Test (including culture)(07132)
Difco Becto Salmonella H (including culture)(13212)
Difco Becto Salmonella O (including culture)(13118)
Difco FA Salmonella Panvalent (including culture broth)(13153)
Difco FA Salmonella Poly (including culture broth)(13154)
Roech Laboratories Salmonella Flagellar (H) (inc. culture)(55090)
Roech Laboratories Salmonella Somatic & Vi (inc. culture)(55091)
Wampole Bactigen Salmonella-Shigella (including culture)(70081)
Wellcome Wellcolex Colour Salmonella (including culture)(70034)

**Analyte: (5804) Shigella**

*Test System, Assay, Examination*

Becton Dickinson BBL Shigella Grouping (including culture)(07283)
Difco Becto Shigella (including culture)(13174)
Roech Laboratories Shigella Grouping & Typing (inc. cult.)(55086)
Wampole Bactigen Salmonella-Shigella (including culture)(70081)
Wellcome Wellcolex Colour Shigella (including culture)(70035)

**Analyte: (5807) Staphylococcus**

*Test System, Assay, Examination*

Adams Scientific SeroStat II Staphylococcus (inc. culture)(04091)
Advanced Medical Technologies Rapi-Staph(including culture)(04098)
Analytab API Staphase III (including culture)(04205)
Baxter MicroScan StaphyLatex (including culture)(07047)
Becton Dickinson BBL Staphyloslide (including culture)(07082)
Bio-Medical ANI Staph aureus Test (including culture)(07133)
Carr-Scarborough Accu-Staph (including culture)(10023)
Difco Becto Staph Latex Test (including culture)(13056)
Gen-Probe AccuProbe (including culture)(22040)
Immuno-Mycologics LA-Staph (including culture)(28034)
Innovative Diag. Systems IDS Staphylochrome (inc. culture)(28055)
Medical Diag. Technologies Staph Latex (including culture)(40036)
NCS Staphslide (including culture)(43001)
Regional Media Lab Hemastaph (including culture)(55015)
Unipath Oxoid Staphylase Test (including culture)(64019)
Vitek Systems RAPIDEC Staph (including culture)(67031)
Vitek Systems Slidex Staph-Kit (including culture)(67077)
Wellcome Staphaurex (including culture)(70026)

**Analyte: (5808) Streptococcus Pneumoniae**

*Test System, Assay, Examination*

Becton Dickinson BBL Pneumoslide (including culture)(07081)
Becton Dickinson Dir. Meningitis Combo Kit(bld cult supern)(07260)
Becton Dickinson Dir. Meningitis Indiv.Kit(bld cult supern)(07261)
Difco FA Pneumococcus Poly (direct antigen)(13161)
Gen-Probe AccuProbe (including culture)(22040)
Karobio Phadebact Pneumococcus (including culture)(34007)
Wampole Bactigen Meningitis Panel (bld culture supernatant)(70080)

**Analyte: (5810) Streptococcus, Group A**

*Test System, Assay, Examination*

Abbott TestPack Plus Strep A (including culture)(04483)
Abbott TestPack Strep A (including culture)(04077)
Adams Scientific SeroStat Streptococcus (including culture)(04092)
Antibodies Inc. Detect-A-Strep (including culture)(04222)
Becton Dickinson BBL Strep Grouping (including culture)(07083)
Becton Dickinson Culturette GrpA Strep (including culture)(07257)
Diagnostic Products PathoDx LA Strep Grp (inc. culture)(13025)
Difco Bacto Strep Grouping Kit (including culture)(13119)
Difco FA Streptococcus Groups (including culture)(13157)
Gen-Probe AccuProbe (including culture)(22040)
Incstar Group A Streptococcus Fluoro-Kit(including culture)(28043)
Karobio Phadebact Streptococcus (including culture)(34008)
Kodak SureCell (including culture)(34039)
Leeco Diagnostics Preview Strep A (including culture)(37016)
Medical Technology Corp. OPTITEC Strep A(including culture)(40046)
Medix Biotech Sure-Strep A (including culture)(40055)
Meridian Diagnostics Meritec-Strep (including culture)(40069)
Meridian Diagnostics Meritec-Strep Group A (incl. culture)(40108)
NCS StrepSlide (including culture)(43042)
Unipath Oxoid Streptococcal Grouping Kit(including culture)(64012)
V-Tech V-Trend Strep A (including culture)(67009)
Vitek Systems Slidex Strepto A (including culture)(67052)
Vitek Systems Slidex Strepto-Kit (including culture)(67053)
Wellcome Reveal Colour Strep A (including culture)(70023)
Wellcome Streptex (including culture)(70027)

**Analyte: (5811) Streptococcus, Group B**

*Test System, Assay, Examination*

Adams Scientific SeroStat Streptococcus (including culture)(04092)
Becton Dickinson BBL Strep Grouping (including culture)(07083)
Becton Dickinson Dir. Meningitis Combo Kit(bld cult supern)(07260)
Becton Dickinson Dir. Meningitis Indiv.Kit(bld cult supern)(07261)
Diagnostic Products PathoDx LA Strep Grp (inc. culture)(13025)
Difco Bacto Strep Grouping Kit (including culture)(13119)
Difco FA Streptococcus Groups (including culture)(13157)
Gen-Probe AccuProbe (including culture)(22040)
Hybritech Icon Strep B (including culture)(25051)
Karobio Phadebact Streptococcus (including culture)(34008)
Meridian Diagnostics Meritec-Strep (including culture)(40069)
Meridian Diagnostics Meritec-Strep Group B (incl. culture)(40107)
NCS StrepSlide (including culture)(43042)
Unipath Oxoid Streptococcal Grouping Kit(including culture)(64012)
Vitek Systems Slidex Strepto B (including culture)(67051)
Vitek Systems Slidex Strepto-Kit (including culture)(67053)
Wampole Bactigen Group B Strep (blood culture supernatant)(70078)
Wellcome Streptex (including culture)(70027)
Wellcome Wellcogen Bacterial Ag Kit (bld culture supernate)(70082)

**Analyte: (5812) Streptococcus, Group C**

*Test System, Assay, Examination*

Adams Scientific SeroStat Streptococcus (including culture)(04092)
Becton Dickinson BBL Strep Grouping (including culture)(07083)
Diagnostic Products PathoDx LA Strep Grp (inc. culture)(13025)
Difco Bacto Strep Grouping Kit (including culture)(13119)
Difco FA Streptococcus Groups (including culture)(13157)
Karobio Phadebact Streptococcus (including culture)(34008)
Meridian Diagnostics Meritec-Strep (including culture)(40069)
NCS StrepSlide (including culture)(43042)

Unipath Oxoid Streptococcal Grouping Kit(including culture)(64012)
Vitek Systems Slidex Strepto-Kit (including culture)(67053)
Wellcome Streptex (including culture)(70027)

**Analyte: (5813) Streptococcus, Group D**

*Test System, Assay, Examination*

Bio-Medical ANI Strep Test (including culture)(07134)
Diagnostic Products Corp. PathoDx Strep D (inc. culture)(13040)
Difco Bacto Strep Grouping Kit (including culture)(13119)
Difco FA Streptococcus Groups (including culture)(13157)
Karobio Phadebact Streptococcus (including culture)(34008)
NCS StrepSlide (including culture)(43042)
Unipath Oxoid Streptococcal Grouping Kit (including culture)(64012)
Vitek Systems Slidex Strepto-Kit (including culture)(67053)
Wellcome Streptex (including culture)(70027)

**Analyte: (5814) Streptococcus, Group F**

*Test System, Assay, Examination*

Adams Scientific SeroStat Streptococcus (including culture)(04092)
Becton Dickinson BBL Strep Grouping (including culture)(07083)
Diagnostic Products PathoDx LA Strep Grp (inc. culture)(13025)
Difco Bacto Strep Grouping Kit (including culture)(13119)
Difco FA Streptococcus Groups (including culture)(13157)
Karobio Phadebact Streptococcus (including culture)(34008)
Meridian Diagnostics Meritec-Strep (including culture)(40069)
NCS StrepSlide (including culture)(43042)
Unipath Oxoid Streptococcal Grouping Kit (including culture)(64012)
Vitek Systems Slidex Strepto-Kit (including culture)(67053)
Wellcome Streptex (including culture)(70027)

**Analyte: (5815) Streptococcus, Group G**

*Test System, Assay, Examination*

Adams Scientific SeroStat Streptococcus (including culture)(04092)
Becton Dickinson BBL Strep Grouping (including culture)(07083)
Diagnostic Products PathoDx LA Strep Grp (inc. culture)(13025)
Difco Bacto Strep Grouping Kit (including culture)(13119)
Difco FA Streptococcus Groups (including culture)(13157)
Karobio Phadebact Streptococcus (including culture)(34008)
Meridian Diagnostics Meritec-Strep (including culture)(40069)
NCS StrepSlide (including culture)(43042)
Unipath Oxoid Streptococcal Grouping Kit (including culture)(64012)
Vitek Systems Slidex Strepto-Kit (including culture)(67053)
Wellcome Streptex (including culture)(70027)

**Analyte: (7605) Yersinia Enterocolitica**

*Test System, Assay, Examination*

Bio-Medical ANI Yersinia Test (including culture)(07204)

SPECIALITY/SUBSPECIALITY: General Chemistry

**Analyte: (0104) 1,25–Dihydroxyvitamin D (1,25–(OH)2D)**

*Test System, Assay, Examination*

Nichols Institute 1,25–Dihydroxyvitamin D Assay Kit(43053)

**Analyte: (0106) 17 Ketosteroid**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (0102) 17 OH Progesterone**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Systems 17alpha-OH Progesterone RIA Kit(13185)

**Analyte: (0103) 17 OH Progesterone, Neonatal**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)

**Analyte: (0105) 5'Nucleotidase**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Sigma Diagnostics Test Kit(58051)

**Analyte: (0407) Acid Phosphatase**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58220)
TRACE Scientific Test Kit(61044)

**Analyte: (0472) Adenosine Monophosphate, Cyclic (cAMP)**

*Test System, Assay, Examination*

Du Pont RIANEN RIA Kit(13091)

**Analyte: (0458) Adrenocorticotropic Hormone (ACTH)**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Systems ACTH RIA Kit(13189)
Incstar ACTH(28202)
Incstar PEG-ACTH(28203)
Nichols Institute Allegro (RIA)(43008)
Nichols Institute RIA Kit(43044)

**Analyte: (0404) Alanine Aminotransferase (ALT) (SGPT)**

*Test System, Assay, Examination:*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Genetic Systems Alanine Aminotransferase (ALT/GPT)(22145)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Randox Laboratories Test Kit(55106)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58220)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)

**Analyte: (0414) Albumin**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
DMA Test Kit(12216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Helena Laboratories Low Level Quiplate System for RID(25055) Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems Test Kit(40123)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)

Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
The Binding Site Human Albumin NL RID(61077)
Wako Autokit(70102)

**Analyte: (0471) Albumin, Glycated**

*Test System, Assay, Examination*

Isolab Glyc-Affin GA(28188)

**Analyte: (0415) Aldolase**

*Test System, Assay, Examination*

Behring Stat-Pack Aldolase Test(07226)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Sigma Diagnostics Test Kit(58051)

**Analyte: (0433) Aldosterone**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)

**Analyte: (0416) Alkaline Phosphatase (ALP)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Randox Laboratories Test Kit(55106)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)

**Analyte: (0408) Alkaline Phosphatase Isoenzymes**

*Test System, Assay, Examination*

Beckman Paragon ISOPAL Isoenzyme Electrophoresis Kit(07367)
Helena Laboratories Alk. Phosphatase Isoenzyme Procedure(25062)
Helena Laboratories Titan Gel Alkaline Phosphatase (HR)(25089)
Isolab Resolve-ALP(28158)

**Analyte: (0434) Alpha-Fetoprotein—Amniotic Fluid**

*Test System, Assay, Examination*

Abbott AFP (EIA)(04023)
Abbott COMMANDER System(04334)
Abbott IMX(04056)
Amersham Amerlex(04146)
Clinical Assays GammaDab(10061)
Hybritech Tandem-E(25022)
Kallestad AFP/Ob Radioimmunoassay(34045)

**Analyte: (0423) Alpha-Fetoprotein—Maternal Serum**

*Test System, Assay, Examination*

Abbott AFP (EIA)(04023)
Abbott COMMANDER System(04334)
Abbott IMX(04056)
Amersham Amerlex(04146)
Clinical Assays GammaDab(10061)
Hybritech Tandem-E(25022)
Kallestad AFP/Ob Radioimmunoassay(34045)

**Analyte: (0419) Alpha-Hydroxybutyrate Dehydrogenase (HBDH)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Medical Analysis Systems Test Kit(40123)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
Sterling Diagnostics Test Kit(58230)

**Analyte: (0427) Ammonia, Plasma/Serum**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
Wako Ammonia Test Kit(70100)

**Analyte: (0429) Amylase**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
Beckman Manual Spectrophotometric Test Procedure(07378)
Behring Pantrak Amylase Test(07228)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)

**Analyte: (0466) Androstanediol Glucuronide (3 alpha-diol G)**

*Test System, Assay, Examination*

Diagnostic Systems Androstanediol Glucuronide RIA Kit(13186)

**Analyte: (0460) Androstenedione**

*Test System, Assay, Examination*

Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Systems Active Androsteindione RIA Kit(13204)
Diagnostic Systems Androsteindione RIA Kit(13193)

**Analyte: (0481) Angiotensin Converting Enzyme (ACE)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Instrumentation Laboratory Multistat III(28183)
Sigma Diagnostics Test Kit(58051)

**Analyte: (0479) Angiotensin I**

*Test System, Assay, Examination*

Du Pont RIANEN RIA Kit(13091)

**Analyte: (0462) Apolipoprotein A1**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Isolab Immunoturbidimetric Assay(28191)
Medical Analysis Systems RefLab Test Kit(40124)
Reagents Applications RAICHEM SPIA Test Kit(55074)
Sigma Diagnostics Test Kit(58051)

**Analyte: (0457) Apolipoprotein B**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Behring M-partigen Kit(07118)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Isolab Immunoturbidimetric Assay(28191)
Medical Analysis Systems RefLab Test Kit(40124)

Reagents Applications RAICHEM SPIA Test Kit(55074)
Sigma Diagnostics Test Kit(58051)

**Analyte: (0403) Aspartate Aminotransferase (AST) (SGOT)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Randox Laboratories Test Kit(55106)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)

**Analyte: (0723) Beta-Glucuronidase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (0722) Beta-Hydroxybutyrate**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Electronucleonics FLEXIGEM(16010)
GDS Diagnostics Enzymatic Test Kit(22140)
Instrumentation Laboratory Multistat III(28183)
Sigma Diagnostics Test Kit(58051)

**Analyte: (0704) Bilirubin, Direct**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40123)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)

**Analyte: (0705) Bilirubin, Neonatal**

*Test System, Assay, Examination*

Seradyn Quick-Chem II(58187)

**Analyte: (0706) Bilirubin, Total**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seradyn Quick-Chem II(58187)
Seragen Quick-Chem(58186)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)

**Analyte: (0708) Blood Gases with pH**

*Test System, Assay, Examination*

Ciba Corning 158(10031)
Ciba Corning 168(10032)

**Analyte: (0709) Blood Lead**

*Test System, Assay, Examination*

All Anodic Stripping Voltametry Procedures(04102)
All Atomic Absorption Test Systems(04104)
esa Model 3010A Trace Metals Analyzer(16020)
esa Model 3010B Lead Analyzer(16021)

**Analyte: (1040) C-Peptide**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Systems C-Peptide RIA Kit(13187)
Incstar C-Peptide(28204)

**Analyte: (1051) C1-Esterase Inhibitor (C1INH)**

*Test System, Assay, Examination*

Nyegaard Nycotest C1-Esterase Inhibitor(43054)

**Analyte: (1041) Calcitonin**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Solid Phase(13112)
Diagnostic Systems Calcitonin RIA Kit(13184)
Diagnostic Systems Ultra-Sensitive Calcitonin RIA Kit(13199)
Incstar Calcitonin II(28211)
Nichols Institute RIA Kit(43044)

**Analyte: (1005) Calcium, Total**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory IL 504(28157)
Instrumentation Laboratory IL 508(28158)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seradyn Quick-Chem II(58187)
Seragen Quick-Chem(58186)
Sherwood Medical Rapid Stat Diagnostic Kit(58165)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Calcium C Test Kit(70108)

**Analyte: (1003) Carbon Dioxide, Total ($CO_2$)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory IL 506(28158)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Medical Analysis Systems Test Kit(40123)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Synermed Test Kit(58260)
TRACE Scientific Test Kit(61044)
Technicon SMA 6/60(61015)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)

**Analyte: (1008) Catecholamines, Plasma**

*Test System, Assay, Examination*

Bio-Rad HPLC(07279)
Bioanalytical Systems BAS 200A(07300)
Bioanalytical Systems BAS 480(07301)
Bioanalytical Systems BAS 481(07302)
Bioanalytical Systems BAS 482(07307)

**Analyte: (1035) Catecholamines, Urine**

*Test System, Assay, Examination*

Bio-Rad HPLC(07279)

**Analyte: (1014) Cerebrospinal Fluid Protein (CSF)**

*Test System, Assay, Examination*

Bio-Rad Test Kit(07278)
DMA Test Kit(13216)
Stanbio Test Kit(58157)

**Analyte: (1018) Chloride**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
Ames OPTIMATE(04275)
Buchler Digital Chloridometer(07312)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory IL 506(28158)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
King Diagnostics Test Kit(34051)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Technicon SMA 6/60(61015)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)

**Analyte: (1019) Chloride, Sweat (Cystic Fibrosis Sweat Test)**

*Test System, Assay, Examination*

Advanced Instruments Cystic Fibrosis Analyzer(04096)
Orion Model 417 Skin Chloride System(46121)
Scandipharm CF Indicator (9800)(58240)
Wescor 3100 Sweat, Chek Sweat Conductivity Analyzer(70104)

**Analyte: (1020) Cholesterol**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seradyn Quick-Chem II(58187)
Seragen Quick-Chem(58186)
Seragen StatEase(58185)
Sherwood Medical Auto/Stat Kit(58164)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit Cholesterol COD-MEHA Method(70113)
Wako Cholesterol CII Assay Kit(70106)

**Analyte: (1021) Cholinesterase**

*Test System, Assay, Examination*

Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)

**Analyte: (1053) Cholylglycine (Bile Acids)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Immunotech ENDAB EIA Kit(28172)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Sigma Diagnostics Test Kit(58051)

**Analyte: (1032) Cortisol**

*Test System, Assay, Examination*

Amersham Amerlex(04146)
Amersham Amerlite(04148)
Becton Dickinson Corti-Cote(07087)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Rad Quantimune(07141)
Biomerica EIA Test Kit(07275)
Ciba Corning Magic (MGC)(10051)
Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Diagnostic Systems Active Cortisol EIA Kit(13175)
Diagnostic Systems Active Cortisol RIA Kit(13176)
Diagnostic Systems Cortisol RIA Kit(13183)
Immunotech ENDAB EIA Kit(28172)
Kallestad Quanticoat(34031)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)
Organon NML IRMA Test Kit(46007)
Sanofi/Kallestad Quanticoat(58010)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (1033) Cortisol, Urine**

*Test System, Assay, Examination*

Diagnostic Systems Active Cortisol EIA Kit(13175)
Diagnostic Systems Active Cortisol RIA Kit(13176)

**Analyte: (1034) Creatine Kinase (CK)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)

Seradyn CK-UV Determination(58161)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)

**Analyte: (1047) Creatine Kinase BB Fraction (CKBB)**

*Test System, Assay, Examination*

Biomerica RIA Test Kit(07256)
Diagnostic Systems CK-B Protein RIA Kit(13182)
International Immunoassay Labs ABURIA-CK RIA Kit(28164)

**Analyte: (1052) Creatine Kinase Isoenzymes (CK Isoenzymes)**

*Test System, Assay, Examination*

Beckman Paragon CK Isoenzyme Electrophoresis Kit(07363)
Helena Laboratories CK Isoforms Procedure(25088)
Helena Laboratories CPK Isoenzyme Electrophoresis(25084)
Helena Laboratories CPK-US Isoenzyme Electrophoresis(25070)
Helena Laboratories REP CK Isoenzyme Procedure(25101)
Helena Laboratories REP CK Stat Isoenzyme Procedure(25102)
Helena Laboratories REP CK/LD Isoenzyme Combo Method(25100)
Helena Laboratories Titan Gel CK Isoenzyme Procedure(25093)
Helena Laboratories Titan Gel Iso-Dot CK (Black)(25090)
Helena Laboratories Titan Gel-PC CK Isoenzyme Procedure(25094)

**Analyte: (1002) Creatine Kinase MB Fraction (CKMB)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Ciba Corning Magic Lite(10055)
DMA Test Kit(13216)
Diagnostic Systems CK-B Protein RIA Kit(13182)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Instrumentation Laboratory Multistat III(28163)
Instrumentation Laboratory Multistat III Plus(28184)
International Immunoassay Labs ABURIA-CK RIA Kit(28164)
International Immunoassay Labs CARDIA-CK(28171)
International Immunoassay Labs EMBRIA-CK IRMA Kit(28165)
International Immunoassay Labs IMACK-MB Test Kit(28168)
International Immunoassay Labs IMpres-MB(28162)
International Immunoassay Labs IMpres-MB-X(28163)
International Immunoassay Labs MicroMI-MB Test Kit(28169)
International Immunoassay Labs QuiCK-MB IRMA Kit(28167)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn CK-MB Immuno UV Determination(58160)
Sigma Diagnostics Test Kit(58051)

**Analyte: (1054) Creatine Kinase MM Fraction (CKMM)**

*Test System, Assay, Examination*

Beckman Paragon CK-MM Isoforms Electrophoresis Kit(07364)
International Immunoassay Labs CheCK-MM(28170)
International Immunoassay Labs ISOFOR-MM(28161)

**Analyte: (1035) Creatinine**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Boehringer Mannheim Biodynamics Unimeter 250(07254)
Boehringer Mannheim Biodynamics Unimeter 300(07252)
Boehringer Mannheim Biodynamics Unimeter 330K(07253)
DMA Test Kit(13216)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory IL 504(28157)
Instrumentation Laboratory IL 508(28158)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMA 6/60(61015)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)

**Analyte: (1043) Cyclic AMP**

*Test System, Assay, Examination*

Diagnostic Products Corp. Liquid Phase(13110)
Incstar cAMP(28210)

**Analyte: (1309) Dehydroepiandrosterone (DHEA)**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)

**Analyte: (1310) Dehydroepiandrosterone Sulfate (DHEA–SO4)**

*Test System, Assay, Examination*

Biomerica RIA Test Kit(07256)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Systems Active DHEA-Sulfate EIA Kit(13177)
Diagnostic Systems Active DHEA-Sulfate RIA Kit(13202)
Diagnostic Systems DHEA-Sulfate RIA Kit(13191)

**Analyte: (1611) Erythropoietin**

*Test System, Assay, Examination*

Diagnostic Systems Erythropoietin (EPO) RIA Kit(13190)
Incstar EPO-Trac(28201)
R & D Systems Clinigen Erythopoietin EIA(55111)
Ramco EPORIA Test Kit(55069)

**Analyte: (1605) Estradiol**

*Test System, Assay, Examination*

Amersham Amerlite(04148)
Bio-Rad Quantimune(07141)
Biomerica RIA Test Kit(07256)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Diagnostic Systems Estradiol RIA Kit(13192)
Leeco Diagnostics RIA Test Kit(37029)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (1606) Estriol—Total**

*Test System, Assay, Examination*

Amersham Amerlex(04146)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Rad Quantimune II(07142)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Systems Total Estriol RIA Kit(13195)

**Analyte: (1607) Estriol—Unconjugated**

*Test System, Assay, Examination*

Amersham Amerlex(04146)
Biomerica RIA Test Kit(07256)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Systems Ultra-Sens. Unconjugated Estriol RIA Kit(13198)
Immunotech ENDAB EIA Kit(28172)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)

**Analyte: (1819) Fatty Acids, Non-Esterified**

*Test System, Assay, Examination*

Sterling Diagnostics Analyzer 2000(58229)
Wako NEFA C Test Kit(70117)

**Analyte: (1902) Ferritin**

*Test System, Assay, Examination*

Amersham Amerlex(04146)
Amersham Amerlite(04148)
Becton Dickinson MAb Solid Phase Component System(07247)
Becton Dickinson Monoclonal Solid Phase Coated Tube(07102)
Bio-Rad Quantimune(07141)
Ciba Corning Magic (MGC)(10051)
Ciba Corning Magic Lite(10055)
Clinical Assays GammaCoat(10060)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Diagnostic Systems Active Ferritin IEMA Kit(13179)
Diagnostic Systems Active Ferritin IRMA Kit(13180)
Du Pont RIANEN RIA Kit(13091)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)
Leeco Diagnostics RIA Test Kit(37029)
Medix Biotech EIA Test Kit(40117)
Nichols Institute Allegro (RIA)(43008)
Ramco FER-IRON II Microtiter Assay Kit(55087)
Ramco RIA Test Kit(55010)
Ramco Spectro Ferritin(55068)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (1822) Foam Stability Index**

*Test System, Assay, Examination*

Beckman Lumadex—FSI(07379)

**Analyte: (1907) Folate (Folic Acid)**

*Test System, Assay, Examination*

Becton Dickinson SimulTRAC(07106)
Becton Dickinson SimulTRAC S(07107)
Becton Dickinson SimulTRAC SNB(07108)
Bio-Rad Quantaphase(07354)
Ciba Corning Magic (MGC)(10051)
Ciba Corning Magic Boil(10054)
Ciba Corning Magic Lite(10055)
Ciba Corning Magic/NB (no boil)(10057)
Clinical Assays NO-Boil(10062)
Clinical Assays Solid Phase(10063)
Diagnostic Products Corp. Charcoal Boil(13028)
Diagnostic Products Corp. Dualcount Charcoal(13032)
Diagnostic Products Corp. Dualcount No Boil(13033)
Diagnostic Products Corp. Dualcount Solid Phase Boil(13034)
Diagnostic Products Corp. Solid Phase/N Boil(13041)
Micromedic Combostat II(40083)

**Analyte: (1908) Follicle Stimulating Hormone (FSH)**

*Test System, Assay, Examination*

Amersham Amerlite(04148)
Becton Dickinson SimulTRAC(07106)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
ICN IMMUNOCHEM FSH-MW Elisa(28213)
Immunotech EZ-TUBE EIA Kit(28174)
Leeco Diagnostics RIA Test Kit(37029)
Medix Biotech EIA Test Kit(40117)
Nichols Institute Allegro (RIA)(43008)
Organon NML IRMA Test Kit(46007)
Serono Baker Seroryme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (1914) Fructosamine**

*Test System, Assay, Examination*

Isolab Glyco-PROBE GSP(28181)
Reagents Applications RAICHEM Test Kit(55075)

**Analyte: (2215) Galactose-1-Phosphate Uridyl Transferase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (2201) Gamma Glutamyl Transferase (GGT)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Randox Laboratories Test Kit(55106)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)

**Analyte: (2205) Gastrin**

*Test System, Assay, Examination*

Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Double Antibody(13031)

**Analyte: (2206) Glucagon**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)

**Analyte: (2203) Glucose**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory IL 504(28157)
Instrumentation Laboratory IL 506(28158)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
King Diagnostics Test Kit(34051)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Sclavo Fast Glucose(58170)
Sclavo Manual Glucose Test Kit(58033)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seradyn Quick-Chem II(58187)
Seragen Quick-Chem(58186)
Seragen StatEase(58185)
Sherwood Medical Auto/Stat Kit(58184)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Manual Glucose Test Kit(58060)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMA 6/60(61015)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Glucose C Test Kit(70111)

**Analyte: (2208) Glucose-6-Phosphate Dehydrogenase (G–6–PDH)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Behring Stat-Pack G–6–PDH Test(07225)
Electronucleonics FLEXIGEM(16010)
Sigma Diagnostics Test Kit(58051)

**Analyte: (2210) Glucose-6-Phosphate Dehydrogenase Fractions**

*Test System, Assay, Examination*

Helena Laboratories G–6–PD Electrophoresis(25072)

**Analyte: (2213) Glutathione Reductase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (2204) Glycosylated Hemoglobin (Hgb A1C)**

*System, Assay, Examination*

Beckman Paragon Diatrac HbA1C Glycohemoglobin Electro. Kit(07371)
Binax Equate Glycohemoglobin(07124)
Bio-Rad Column Test(07277)
Chembio Glyco-Sep/A1c Jr(10172)
Chembio Glyco-Stat/A1/6(10171)
Helena Laboratories GLYCO-Hb Quik Column Chromatography(25086)
Helena Laboratories GLYCO-Tek Affinity Column Method(25079)
Helena Laboratories Heme Spec Plus(25116)
Helena Laboratories REP Glyco(25077)
Helena Laboratories Titan Gel-PC GLYCO-Heme System(25078)
Isolab Glyc-Affin GHb(28119)
Isolab Quik-Sep Fast Hemoglobin Test System(28179)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Sigma Diagnostics Glycated Hemoglobin Kit(58224)
Sigma Diagnostics Glycohemoglobin Kit(58223)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Test Kit(58230)

**Analyte: (2501) HCG, Serum, Qualitative**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Leeco Diagnostics Concept-7–Beta-hCG(37026)
Leeco Diagnostics Concept-7–Beta-hCG IRMA(37027)
Nichols Institute Allegro (RIA)(43008)
Organon NML IRMA Test Kit(46007)

**Analyte: (2502) HCG, Serum, Quantitative**

*Test System, Assay, Examination*

Abbott Beta-HCG 15/15(04034)
Amersham Amerlex-M(04147)
Amersham Amerlite(04148)
Becton Dickinson MAb Solid Phase Component System(07247)
Becton Dickinson Solid Phase Coated Tube(07110)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Rad CoTube(07138)
Ciba Corning Magic Lite(10055)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Diamedix Serum HCG Microassay(13226)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)
Leeco Diagnostics Concept-7-Beta-hCG(37026)
Leeco Diagnostics Concept-7-Beta-hCG IRMA(37027)
Medix Biotech EIA Test Kit(40117)
Nichols Institute Allegro (RIA)(43008)
Organon NML IRMA Test Kit(46007)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)
Serono HCG MAIA Clone(58047)

**Analyte: (2503) HCG, Urine, Qualitative (Non-Waived Procedures)**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)
Leeco Diagnostics Concept-7-Beta-hCG(37026)
Leeco Diagnostics Concept-7-Beta-hCG IRMA(37027)
Organon NML IRMA Test Kit(46007)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (2550) HDL Cholesterol**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott VP(04082)
Abbott Vision, Non Whole Blood HDL Procedure(04451)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames Clinistat(04150)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Manual Spectrophotometric Test Procedure(07378)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Ciba Corning 570 Alliance(10039)
Ciba Corning 580 Alliance(10040)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
DMA Test Kit(13216)
DataChem DC–100(13213)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EASY PLUS (manual pretreatment)(16023)
EM Diagnostic Systems EASY ST (manual pretreatment)(16024)
EM Diagnostic Systems EPOS(16015)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems Test Kit(40123)
Meditech Diagnostic System Test Kit(40118)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Reference Diagnostics Magnetic HDL Cholesterol(55095)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Roche Cobas Mira S(55045)
Roche Cobas Ready(55046)
Seradyn HDL Cholesterol Determination(58163)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seradyn Quick-Chem II(58187)
Seragen Quick-Chem(58186)
Seragen StatEase(58185)
Sherwood Medical Rapid Stat Diagnostic Kit(58165)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58220)
Synermed Test Kit(58260)
TRACE HDL Singles(61049)
Technicon AXON(61001)
Technicon Assist(61002)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 100(61037)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

Wako HDL Cholesterol Test Kit(70103)

**Analyte: (2811) Haptoglobin**

*Test System, Assay, Examination*

Reagents Applications RAICHEM SPIA Test Kit(55074)

**Analyte: (2845) Homovanillic Acid (HVA)**

*Test System, Assay, Examination*

Bio-Rad HPLC(07279)

**Analyte: (2547) Human Growth Hormone (GH)**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)
Hybritech Tandem-R(25023)
Incstar bGH(28205)
Kallestad Quantitope HGH RIA Kit(34040)
Medix Biotech EIA Test Kit(40117)
Nichols Institute Allegro (RIA)(43006)

**Analyte: (2533) Human Placental Lactogen (hPL)**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)

**Analyte: (2812) Insulin**

*Test System, Assay, Examination*

Ciba Corning Magic (MGC)(10051)
Corning Medical IMMO PHASE RIA(10166)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Systems Insulin RIA Kit(13197)
Incstar Insulin(28045)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)
Pharmacia Insulin Test(49009)

**Analyte: (2818) Insulin-like Growth Factor-1 (IGF-1)**

*Test System, Assay, Examination*

Diagnostic Systems Active Insulin-Like Growth Factor-1(13181)
Incstar IGF-I (Somatomedin C)(28206)
Nichols Institute RIA Kit(43044)

**Analyte: (2814) Iron**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kenlor Industries Test Kit(34050)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Fe B Test Kit(70099)
Wako FeC Test Kit(70118)

**Analyte: (2815) Iron Binding Capacity (post saturation/separation)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Spectrum(04067)
Abbott Spectrum EPX(04068)
Abbott Spectrum Series II(04069)
Abbott Spectrum Series II CCX(04070)
Abbott TDX(04071)
Abbott TDX FLx(04072)
Abbott VP(04082)
American Monitor Diagnostics Excel(04139)
American Monitor Diagnostics ISP 1000(04140)
American Monitor Diagnostics ISP 2000(04141)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Baxter Paramax(07048)
Baxter Paramax 720 ZX(07049)
Beckman Synchron CX 4(07071)
Beckman Synchron CX 4 CE(07174)
Beckman Synchron CX 5(07072)
Beckman Synchron CX 7(07073)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Chem Laboratory Systems ATAC 6000(07189)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Boehringer Mannheim Hitachi 737(07165)
Boehringer Mannheim Hitachi 747(07166)
Boehringer Mannheim Hitachi 911(07377)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
Coulter Optichem 100(10115)
Coulter Optichem 120(10079)
Coulter Optichem 180(10080)
DataChem DC-100(13213)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Du Pont ACA(13082)
Du Pont ACA II(13172)
Du Pont ACA III(13173)
Du Pont ACA IV(13083)
Du Pont ACA V(13084)
Du Pont Dimension(13086)
Du Pont Dimension AR(13087)
Du Pont Dimension ES(13215)
EM Diagnostic Systems EPOS(16015)
Electronucleonics FLEXIGEM(16010)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Genesis 21(28160)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory IL Monarch Plus(28083)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kenlor Industries Test Kit(34050)
Kodak Ektachem 250(34037)
Kodak Ektachem 400(34012)
Kodak Ektachem 500(34013)
Kodak Ektachem 700(34014)
Kodak Ektachem 700 XR(34015)
Olympus AU 5000(46001)
Olympus AU 5021(46084)
Olympus AU 5031(46085)
Olympus AU 5061(46086)
Olympus AU 5121(46087)
Olympus AU 5131(46088)
Olympus AU 5211(46106)
Olympus AU 5221(46107)
Olympus AU 5223(46108)
Olympus AU 5231(46109)
Olympus AU 800(46110)
Olympus Demand(46002)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Roche Cobas Mira Plus(55096)
Sigma Diagnostics Test Kit(58051)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Technicon Chem 1(61003)
Technicon DAX 24(61004)
Technicon DAX 48(61005)
Technicon DAX 72(61006)
Technicon DAX 96(61007)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)
Wako Fe B Test Kit(70099)

**Analyte: (2823) Iron Binding Capacity, Unsat. (UIBC) no pretreat**

*Test System, Assay, Examination*

Wako UIBC Test Kit(70119)

**Analyte: (2820) Isocitric Dehydrogenase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (3701) Lactate Dehydrogenase (LDH)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Medical Analysis Systems Test Kit(40123)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn LDH-UV Determination(58162)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)

SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)
Wako Lactate Dehydrogenase CII Test Kit(70114)

**Analyte: (3702) Lactate Dehydrogenase Heart Fraction (LDH-1)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
DMA Test Kit(13216)
Seradyn LD-1 Separation Set(58158)
Sigma Diagnostics Test Kit(58051)

**Analyte: (3721) Lactate Dehydrogenase Isoenzymes**

*Test System, Assay, Examination*

Beckman Paragon LD Isoenzyme Electrophoresis Kit(07365)
Helena Laboratories LDH Isoenzyme Electrophoresis(25083)
Helena Laboratories REP CK/LD Isoenzyme Combo Method(25100)
Helena Laboratories REP LD Isoenzyme Procedure(25085)
Helena Laboratories REP LD Stat Isoenzyme Procedure(25086)
Helena Laboratories Titan Gel Iso-Dot LD Flur (Black)(25092)
Helena Laboratories Titan Gel Iso-Dot LD Flur (Clear)(25091)
Helena Laboratories Titan Gel LD Isoenzyme Procedure(25095)
Helena Laboratories Titan Gel-PC LD Isoenzyme Procedure(25106)

**Analyte: (3703) Lactate Dehydrogenase Liver Fraction (LLDH)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 50(04267)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (3704) Lactic Acid (Lactate)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Behring Stat-Pack Lactate Test(07227)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Sigma Diagnostics Test Kit(58051)

**Analyte: (3722) Lecithin/Sphingomyelin (L/S) Ratio**

*Test System, Assay, Examination*

Helena Laboratories Fetal-Tek 200 Method L/S Ratio(25110)
Helena Laboratories L/S Ratio(25109)

**Analyte: (3709) Leucine Aminopeptidase (LAP)**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (3711) Lipase**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems Test Kit(40123)
Pointe Scientific 180 Chemistry Analyzer(49064)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Sterling Diagnostics Analyzer 2000(58229)
Wako Autokit(70102)

**Analyte: (3720) Lipoprotein Fractions**

*Test System, Assay, Examination*

Beckman Paragon Lipoprotein Electrophoresis Kit(07366)
Helena Laboratories HDL Cholesterol Electrophoresis(25071)
Helena Laboratories Lipoprotein Electrophoresis Procedure(25098)
Helena Laboratories REP HDL Electrophoresis(25087)
Helena Laboratories REP Lipo Electrophoresis Procedure(25105)
Helena Laboratories REP Ultra HDL, VLDL/LDL Choles. System(25104)
Helena Laboratories Titan Gel HDL Electrophoresis System(25096)
Helena Laboratories Titan Gel Lipoprotein Electropho. Sys.(25106)
Isolab LDL—Direct(28178)
Isolab LDL—Direct Plus(28177)

**Analyte: (3712) Lithium**

*Test System, Assay, Examination*

Beckman Flame Photometer(07062)
Instrumentation Laboratory AA Spectro(28062)
Instrumentation Laboratory IL Flame Photometer/Elect(28081)
Perkin Elmer Atomic Absorption Spectrophotometer(49006)
Radiometer Flame Photometer(55007)

**Analyte: (3713) Luteinizing Hormone (LH)**

*Test System, Assay, Examination*

Amersham Amerlite(04148)
Becton Dickinson SimulTRAC(07106)
Ciba Corning Magic Lite(10055)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Immunotech EZ-TUBE EIA Kit(28174)
Leeco Diagnostics RIA Test Kit(37029)
Medix Biotech EIA Test Kit(40117)
Nichols Institute Allegro (RIA)(43008)
Organon NML IRMA Test Kit(46007)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (4002) Magnesium**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Sherwood Medical Rapid Stat Diagnostic Kit(58165)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Wako Magnesium B Test Kit(70107)

**Analyte: (4019) Microalbumin**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Wako Micro-Albumin (urine) Turbidimetric Test Kit(70105)

**Analyte: (4026) Microprotein, CSF**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 200(04036)
Kenlor Industries Test Kit(34050)
Sigma Diagnostics Test Kit(58051)
Sterling Diagnostics Analyzer 2000(58229)

**Analyte: (4027) Microprotein, Urine**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 200(04036)
Kenlor Industries Test Kit(34050)
Sigma Diagnostics Test Kit(58051)
Sterling Diagnostics Analyzer 2000(58229)

**Analyte: (4023) Myoglobin**

*Test System, Assay, Examination*

Biomerica RIA Test Kit(07256)
ImmunoDiagnosticCentor Myoglobin ELISA Test Kit(28232)

**Analyte: (4005) Oxalate**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Spectrum(04067)
Abbott VP(04082)
Beckman Synchron CX 4(07071)

Beckman Synchron CX 5(07072)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioAutoMed ASCA(07192)
Boehringer Mannheim Hitachi 704(07161)
Boehringer Mannheim Hitachi 705(07162)
Boehringer Mannheim Hitachi 717(07163)
Boehringer Mannheim Hitachi 736(07164)
Ciba Corning 550 Express(10038)
Coulter Dacos(10106)
EM Diagnostic Systems EPOS(16015)
Electronucleonics FLEXIGEM(16010)
Electronucleonics Gem-Profiler(16004)
Electronucleonics Gemini(16005)
Electronucleonics Gemstar(16006)
Electronucleonics Gemstar II(16007)
Instrumentation Laboratory IL Monarch 1000(28082)
Instrumentation Laboratory IL Monarch 2000(28231)
Instrumentation Laboratory Multistat III(28183)
Olympus Reply(46089)
Olympus Reply/AU560(46129)
Roche Cobas Bio(55100)
Roche Cobas FARA(55040)
Roche Cobas FARA II(55041)
Roche Cobas Mira(55044)
Sigma Diagnostics Test Kit(58051)
Technicon RA 1000(61010)
Technicon RA 2000(61011)
Technicon RA 500(61012)
Technicon RA XT(61013)

**Analyte: (4834) Parathyroid Hormone—C-Terminal**

*Test System, Assay, Examination*

Diagnostic Systems C-Parathyroid Hormone RIA Kit(13188)
Incstar C-terminal PTH(28200)

**Analyte: (4824) Parathyroid Hormone—Intact**

*Test System, Assay, Examination*

Ciba Corning Magic Lite(10055)
Diagnostic Systems Active Intact Parathyroid Hormone(13178)
Incstar N-tact PTH IRMA(28208)
Nichols Institute Allegro (RIA)(43008)
Ramco RIA Test Kit(55010)

**Analyte: (4823) Parathyroid Hormone—Mid-molecule (PTH-M)**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Systems Mid-Molecule Parathyroid Hormone RIA Kit(13196)
Incstar PTH-MM II(28207)
Nichols Institute RIA Kit(43044)

**Analyte: (4842) Phenylalanine**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (4905) Phosphatidylglycerol (PG)—Amniotic Fluid**

*Test System, Assay, Examination*

Isolab PG-Numeric(28194)

**Analyte: (4843) Phosphohexose Isomerase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (4837) Phospholipids**

*Test System, Assay, Examination*

Sterling Diagnostics Analyzer 2000(58229)
Wako Phospholipids Test Kit(70116)

**Analyte: (4906) Phosphorus**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seragen Quick-Chem(58186)
Sherwood Medical Auto/Stat Kit(58164)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)

**Analyte: (4838) Porphobilinogen**

*Test System, Assay, Examination*

Whale Scientific Porphyrins and Porphobilinogen(70098)

**Analyte: (4938) Porphyrins**

*Test System, Assay, Examination*

Whale Scientific Porphyrins and Porphobilinogen(70098)

**Analyte: (4910) Potassium**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
Beckman Flame Photometer(07062)
Boehringer Mannheim LyteTek Flame Photometer(07423)
Instrumentation Laboratory IL 508(28158)
Instrumentation Laboratory IL Flame Photometer/Elect(28081)
Mallinckrodt Serometer 370(40126)
Pointe Scientific 180 Chemistry Analyzer(49064)
Radiometer Flame Photometer(55007)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Test Kit(58230)
Technicon SMA 6/60(61015)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)

**Analyte: (4914) Progesterone**

*Test System, Assay, Examination*

Amersham Amerlite(04148)
Bio-Rad CoTube(07138)
Biomerica RIA Test Kit(07256)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Milenia(13111)
Diagnostic Systems Active Progesterone RIA Kit(13201)
Diagnostic Systems Progesterone RIA Kit(13200)
Leeco Diagnostics RIA Test Kit(37029)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (4915) Prolactin**

*Test System, Assay, Examination*

Amersham Amerlite(04148)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)
ICN IMMUNOCHEM PRL-MW Elisa(28214)
Immunotech EZ-TUBE EIA Kit(28174)
Leeco Diagnostics RIA Test Kit(37029)
Medix Biotech EIA Test Kit(40117)
Nichols Institute Allegro (RIA)(43008)
Organon NML IRMA Test Kit(46007)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (4918) Prostatic Acid Phosphatase (PAP)**

*Test System, Assay, Examination*

Abbott PAP EIA(04058)
Biomerica RIA Test Kit(07256)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Milenia(13111)
Du Pont RIANEN RIA Kit(13091)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)
Leeco Diagnostics RIA Test Kit(37029)
Sigma Diagnostics Test Kit(58051)
Yang Laboratories RIA(76001)

**Analyte: (4921) Protein, Total**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)

Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
Ames OPTIMATE(04275)
Bio-Rad Test Kit(07278)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory IL 504(28157)
Instrumentation Laboratory IL 508(28158)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kenlor Industries Test Kit(34050)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems Test Kit(40123)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seragen StatEase(58185)
Sherwood Medical Rapid Stat Diagnostic Kit(58165)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)
Wako Micro TP Test Kit(70110)

**Analyte: (4941) Pyruvate**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Sigma Diagnostics Test Kit(58051)

**Analyte: (4944) Pyruvate kinase**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (5515) Renin**

*Test System, Assay, Examination*

Clinical Assays GammaCoat(10060)

**Analyte: (5507) Retinol Binding Protein**

*Test System, Assay, Examination*

Behring LC-partigen Kit(07117)

**Analyte: (5820) Seretonin**

*Test System, Assay, Examination*

Immunotech Urinary Serotonin Enzyme Immunoassay(28153)

**Analyte: (5819) Sex Hormone Binding Globulin**

*Test System, Assay, Examination*

Diagnostic Systems Sex Hormone Binding Globulin RIA Kit(13205)
Ventrex Coated Tube (RIA)(67011)

**Analyte: (5805) Sodium**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
Beckman Flame Photometer(07062)
Boehringer Mannheim LyteTek Flame Photometer(07423)
Instrumentation Laboratory IL 508(28158)
Instrumentation Laboratory IL Flame Photometer/Elect(28081)
Radiometer Flame Photometer(55007)
Stanbio Test Kit(58157)
Sterling Diagnostics Test Kit(58230)
Technicon SMA 6/60(61015)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)

**Analyte: (5823) Sorbital Dehydrogenase (SDH)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Instrumentation Laboratory Multistat III(28183)
Sigma Diagnostics Test Kit(58051)

**Analyte: (6102) Testosterone**

*Test System, Assay, Examination*

Bio-Rad CoTube(07138)
Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Systems Active Testosterone RIA Kit(13203)
Diagnostic Systems Testosterone RIA Kit(13194)
Leeco Diagnostics RIA Test Kit(37029)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (6122) Testosterone, Free**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)

**Analyte: (6124) Thyroglobulin**

*Test System, Assay, Examination*

Diagnostic Products Corp. Double Antibody(13031)

**Analyte: (6106) Thyroid Stimulating Hormone (TSH)**

*Test System, Assay, Examination*

Abbott RIA Bead(04061)
Amersham Amerlite(04148)
Becton Dickinson MAb Solid Phase Component System(07247)
Becton Dickinson SimulTRAC(07106)
Becton Dickinson Solid Phase(07109)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Rad CoTube(07138)
Bio-Rad Echoclonal(07139)
Ciba Corning MAB (monoclonal)(10050)
Ciba Corning Magic (MGC)(10051)
Ciba Corning Magic Lite(10055)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Diamedix TSH Microassay(13229)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)
Immunotech EZ-BEAD EIA Kit(28173)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Leeco Diagnostics IRMA Test Kit(37028)
Leeco Diagnostics RIA Test Kit(37029)
Medix Biotech EIA Test Kit(40117)
Nichols Institute Allegro (RIA)(43006)
Organon NML IRMA Test Kit(46007)
Organon NML L.E.S.(46008)
Pointe Scientific 180 Chemistry Analyzer(49064)
Sanofi/Kallestad Quanticlone(58009)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)
Serono Maiaclone(58048)
Sigma SIA Thyroid Stimulating Hormone(58108)
Ventrex Coated Tube (RIA)(67011)
Wallac Oy DELFIA hTSH Ultra Kit(70128)

**Analyte: (6107) Thyroid Stimulating Hormone (TSH) (Neonatal)**

*Test System, Assay, Examination*

Becton Dickinson Neonatal TSH Immunoradiometric Assay(07223)
Biomerica RIA Test Kit(07256)
Diagnostic Products Corp. Double Antibody(13031)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)

**Analyte: (6108) Thyroid Stimulating Hormone—high sens. (TSH-HS)**

*Test System, Assay, Examination*

Clinical Assays GammaCoat(10060)
Hybritech Photon ERA Automated Immunoassay Analyzer(25052)
Hybritech Photon Immunoassay Analyzer(25053)
Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)
Medix Biotech EIA Test Kit(40117)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)
Nichols Institute Allegro (RIA)(43006)
Sanofi/Kallestad Quanticlone(58009)

**Analyte: (6109) Thyroxine (T4)**

*Test System, Assay, Examination*

Amersham Amerlite(04148)
Becton Dickinson Monoclonal Solid Phase Coated Tube(07102)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Rad Quanta-Count(07271) Bio-Rad Quantimune II(07142)
Biomerica EIA Test Kit(07275)
Ciba Corning Magic (MGC)(10051)
Ciba Corning Magic Lite(10055)
Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Milenia(13111)
Immunotech ENDAB EIA Kit(28172)
Immunotech EZ-BEAD EIA Kit(28173)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Instrumentation Laboratory Multistat III(28183)

Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Quanticoat(34031)
Medix Biotech EIA Test Kit(40117)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)
Organon NML Tetra Tab(46012)
Organon NML Tetra Tube(46013)
Pointe Scientific 180 Chemistry Analyzer(49064)
Sanofi/Kallestad Quanticoat(58010)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)
Stanbio Premiere(58210)
Syva Emit Test Kit(58062)
Ventrex Coated Tube (RIA)(67011)

**Analyte: (6123) Thyroxine (T4), Neonatal**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)
Sanofi/Kallestad Quanticoat(58010)

**Analyte: (6110) Thyroxine Binding Globulin (TBG)**

*Test System, Assay, Examination*

Clinical Assays GammaDab(10061)
Nichols Institute RIA Kit(43044)

**Analyte: (6111) Thyroxine, Free (FT4)**

*Test System, Assay, Examination*

Amersham Amerlex-M(04147)
Amersham Amerlite(04148)
Becton Dickinson MAb Solid Phase Component System(07247)
Becton Dickinson SimulTRAC(07106)
Becton Dickinson Solid Phase Coated Tube(07110)
Bio-Rad CoTube(07138)
Bio-Rad Quantimune(07141)
Ciba Corning Magic (MGC)(10051)
Ciba Corning Magic Lite(10055)
Clinical Assays Direct FT4(10059)
Clinical Assays Two Step(10064)
Diagnostic Products Corp. Coat-A-Count(13030)
Immunotech Microzyme EIA (spectrophotometric)(28175)
International Immunoassay Labs SPIRIA-FT4 RIA Kit(28166)
Nichols Institute Free T4 by Equilibrium Dialysis(43056)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (6118) Triglyceride**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seradyn Quick-Chem II(58187)
Seragen Quick-Chem(58186)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Triglyceride G Test Kit(70109)

**Analyte: (6119) Triiodothyronine (T3)**

*Test System, Assay, Examination*

Abbott RIA Bead(04061)
Amersham Amerlex-M(04147)
Amersham Amerlite(04148)
Becton Dickinson Solid Phase(07109)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Rad Quantimune II(07142)
Biomerica EIA Test Kit(07275)
Ciba Corning Magic (MGC)(10051)
Ciba Corning Magic Lite(10055)
Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Double Antibody(13031)
Immunotech ENDAB EIA Kit(28172)
Immunotech EZ-BEAD EIA Kit(28173)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Kallestad Quanticoat(34031)
Leeco Diagnostics RIA Test Kit(37029)
Medix Biotech EIA Test Kit(40117)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)
Organon NML IRMA Test Kit(46007)
Sanofi/Kallestad Quanticoat(58010)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)
Stanbio Premiere(58210)

**Analyte: (6120) Triiodothyronine Uptake (T3U) (TU)**

*Test System, Assay, Examination*

Abbott-Triobead 125(04081)
Amersham Amerlite(04148)
Becton Dickinson Solid Phase(07109)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Ciba Corning Magic (MGC) (25–35 normal range)(10052)
Ciba Corning Magic (MGC) (35–45 normal range)(10053)
Ciba Corning Magic Lite(10055)
Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Immunotech EZ-BEAD EIA Kit(28173)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Kallestad Quanticoat(34031)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)
Organon NML Tri Tab(46014)
Organon NML Tri Tube T3U(46015)
Pointe Scientific 180 Chemistry Analyzer(49064)
Sanofi/Kallestad Quanticoat(58010)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (6121) Triiodothyronine, Free (FT3)**

*Test System, Assay, Examination*

Amersham Amerlex-M(04147)
Amersham Amerlite(04148)
Bio-Rad Quantimune(07141)
Ciba Corning Magic (MGC)(10051)
Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Kodak Amerlex MAB(34049)
Kodak Amerlite MAB(34048)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)

**Analyte: (6129) Trypsin**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (6403) Urea (BUN)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory IL 504(28157)
Instrumentation Laboratory IL 508(28158)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
King Diagnostics Test Kit(34051)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seradyn Quick-Chem II(58187)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Analyzer 2000(58229)
Sterling Diagnostics Test Kit(58230)
TRACE Scientific Test Kit(61044)
Technicon SMA 12/60(61014)
Technicon SMA 6/60(61015)

Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)
Wako Urea Nitrogen Test Kit(70115)

**Analyte: (6404) Uric Acid**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 50(04267)
American Monitor KDA(04143)
American Monitor Parallel(04144)
Ames OPTIMATE(04275)
Beckman Manual Spectrophotometric Test Procedure(07378)
DMA Test Kit(13216)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Mallinckrodt Serometer 370(40126)
Medical Analysis Systems RefLab Test Kit(40124)
Meditech Diagnostic System Test Kit(40118)
Nycomed Nycotest(43055)
Pointe Scientific 180 Chemistry Analyzer(49064)
Reagents Applications RAICHEM Test Kit(55075)
Seradyn Manual (spectrophoto/colorimetric) Determination(58042)
Seradyn Quick-Chem II(58187)
Seragen StatEase(58185)
Sigma Diagnostics Test Kit(58051)
SmithKline ESKALAB-CCS(58195)
Stanbio Premiere(58210)
Stanbio Test Kit(58157)
Sterling Diagnostics Test Kit(58230)
Technicon SMA 12/60(61014)
Technicon SMAC(61016)
Technicon SMAC 2(61045)
Technicon SMAC 3(61046)
Wako Autokit(70102)

**Analyte: (6407) Urinary Calculi**

*Test System, Assay, Examination*

Oxford Qualitative Stone Analysis Set(46114)

**Analyte: (6409) Urokinase**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (6707) Vitamin B12**

*Test System, Assay, Examination*

Becton Dickinson SimulTRAC(07106)
Becton Dickinson SimulTRAC S(07107)
Becton Dickinson SimulTRAC SNB(07108)
Bio-Rad Quantaphase(07354)
Ciba Corning Magic (MGC)(10051)
Ciba Corning Magic Boil(10054)
Ciba Corning Magic Lite(10055)
Ciba Corning Magic/NB (no boil)(10057)
Clinical Assays NO-Boil(10062)
Clinical Assays Solid Phase(10063)
Diagnostic Products Corp. Charcoal Boil(13026)
Diagnostic Products Corp. Dualcount Charcoal(13032)
Diagnostic Products Corp. Dualcount No Boil(13033)
Diagnostic Products Corp. Dualcount Solid Phase Boil(13034)
Diagnostic Products Corp. Solid Phase/N Boil(13041)
Micromedic Combostat II(40083)

**Analyte: (7903) Zinc**

*Test System, Assay, Examination*

Wako Zn Test Kit(70101)
esa Model 3010A Trace Metals Analyzer(16020)

SPECIALITY/SUBSPECIALITY: General Immunology

**Analyte: (0411) Adenovirus Antibodies**

*Test System, Assay, Examination*

Bio-Medical Virotech ELISA Antibody Test(07313)

**Analyte: (0417) Allergen Specific IgE**

*Test System, Assay, Examination*

ALerCHEK FlipSCREEN II Visual Allergy Test(04004)
ALerCHEK FlipSCREEN quantitative Allergy Tests(04006)
BioWhittaker 3M Allergen Specific IgE FAST-Plus Test(07314)
BioWhittaker 3M IgE FASTSCREEN Test(07316)
Ciba Corning Magic Lite(10055)
Dexall Biomedical AllergEns ActiTip System(13208)
Diagnostic Products Corp. AlaSTAT Allergen Specific IgE(13026)
Diagnostic Products Corp. AlaTOP Allergy Screen(13206)
Diagnostic Products Corp. Milenia AlaSTAT(13169)
In Vitro Technologies IVT RAST Tracer Unit(28125)
Kallestad Allercoat EAST(34042)
Kallestad Allercoat RAST(34043)
Kallestad Allercoat Rapid EAST(34041)
MAST CLA Allergy Systems (chemiluminescence)(40112)
Pharmacia CAP System RAST FEIA(49047)
Pharmacia CAP System RAST RIA(49048)
Pharmacia Phadebas RAST(49043)
Pharmacia Phadebas RAST Penicilloyl G/ Penicilloyl V(49042)
Pharmacia Phadezym RAST(49041)
Pharmacia Phadiatop EIA(49044)
Pharmacia Phadiatop RIA(49045)
Ventrex Specific IgE EIA(67056)
Ventrex Specific IgE RAST Isotope Unit(67057)
Ventrex TURBO-RAST Specific IgE Isotope Unit(67059)

**Analyte: (0418) Allergen Specific IgG**

*Test System, Assay, Examination*

BioWhittaker 3M Allergen Specific IgG4 FAST Test(07315)
Pharmacia IgG RAST EIA(49038)
Pharmacia IgG RAST RIA(49037)

**Analyte: (0420) Alpha-1-Acid Glycoprotein (orosomucoid)**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Hycor Accuplate(25024)
Kent Radial Immunodiffusion Test(34010)
Reagents Applications RAICHEM Test Kit(55075)

**Analyte: (0421) Alpha-1-Antitrypsin**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Helena Laboratories Quiplate System for RID(25005)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
The Binding Site Human Alpha-1 Antitrypsin RID(61079)

**Analyte: (0422) Alpha-2-Macroglobulin**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Kent Radial Immunodiffusion Test(34010)
The Binding Site Human Alpha-2 Macroglobulin RID(61078)

**Analyte: (0424) Alpha-Fetoprotein—Tumor Marker**

*Test System, Assay, Examination*

Abbott AFP (EIA)(04023)
Abbott COMMANDER System(04334)
Amersham Amerlex(04146)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Double Antibody(13031)
Hybritech Tandem-E(25022)

**Analyte: (0430) Anti-Adrenal Antibodies**

*Test System, Assay, Examination*

Scimedx Anti-adrenal Test System(58015)

**Analyte: (0433) Anti-Cardiac Muscle Antibodies**

*Test System, Assay, Examination*

Scimedx CMA Test System(58017)

**Analyte: (0434) Anti-Cardiolipin Antibodies**

*Test System, Assay, Examination*

Apotex Cardiolipin ELISA(04335)
BioHyTech EIA Kit(07145)
Biopool Imulyse ACA(07244)
General Biometrics ImmunoWELL Cardiolipin Ab (IgG) Test(22119)
General Biometrics ImmunoWELL Cardiolipin Ab (IgM) Test(22118)
Immuno Concepts Anti-cardiolipin Ab Semi-quant. Test System(28143)
Reads Medical Products Anti-cardiolipin Semi-quant. Test(55013)
Sanofi/Kallestad Anti-cardiolipin Kit (EIA)(58001)
Sigma SIA Anti-Cardiolipin(58178)
TheraTest Laboratories EL-ACA Test(61017)

**Analyte: (0435) Anti-DNA Antibodies**

*Test System, Assay, Examination*

Antibodies Inc. CrithiDNA Test Kit(04221)
Apotex dsDNA ELISA(04321)

Behring AFT System II(07113)
BioHyTech EIA Kit(07145)
BioWhittaker FIAX System(07328)
BioWhittaker RheumELISA Kit(07345)
BioWhittaker RheumElisa Plus Microwell Assay(07239)
BioWhittaker dsDNA STAT(07353)
Diagnostic Products Corp. Solid Phase(13112)
Diamedix Anti-daDNA Microassay(13235)
Du Pont RIANIN Anti-dsDNA RIA Kit(13217)
General Biometrics ImmunoWELL dsDNA Ab Test(22124)
Hemagen DNA(25011)
Immuno Concepts Colorzyme nDNA Test System(28132)
Immuno Concepts Fluorescent nDNA Ab Test System(28138)
Incstar nDNA Fluoro-Kit(28050)
MarDx Anti-nDNA Antibody Test System(40007)
MeDiCa A-nDNA-A Test Kit(40023)
MeDiCa ANA/A-nDNA-A Test Kit(40026)
MeDiCa Multiple Antibody Test Kit(40031)
Reseads Medical Products Anti-ds DNA Semi-quantitative Test(55014)
Sanofi/Kallestad Quantifluor Kit(58011)
Scimedx nDNA Test System(58030)
Sigma SIA Anti-DNA(58211)
TheraTest Laboratories EL-ANA Profiles Test(61018)
Virgo Anti-nDNA IFA Test(67017)
Zeus Anti-DNA Test System(79002)
elias use Syneliss dsDNA Antibodies(16019)

**Analyte: (0436) Anti-DNP Antibodies**

*Test System, Assay, Examination*

BioHyTech EIA Kit(07145)
Diamedix Anti-DNP Microassay(13236)
Sigma SIA Anti-DNP(58212)

**Analyte: (0437) Anti-Histone Antibodies**

*Test System, Assay, Examination*

Apotex Histone ELISA(04329)
BioHyTech EIA Kit(07145)

**Analyte: (0438) Anti-Jo-1**

*Test System, Assay, Examination*

Apotex Jo-1 ELISA(04362)
Diamedix Anti-Jo-1 Microassay(13230)
Hemagen ENA(25012)

**Analyte: (0439) Anti-Mitochondrial Antibodies (AMTA)**

*Test System, Assay, Examination*

Apotex Mitochondral ELISA(04317)
Behring AFT System I(07112)
Incstar Fluoro-Kit(28042)
MarDx Autoimmune IFA Screening Test System(40008)
MarDx Mitochondrial Antibodies Test System(40016)
MeDiCa AMA Test Kit(40024)
MeDiCa Multiple Antibody Test Kit(40031)
Sanofi/Kallestad Quantifluor Kit(58011)
Scimedx Auto Screen Test System(58016)
Scimedx MA Test System(58028)
Virgo AMA IFA Test(67015)
Zeus Autoantibody Screen (AAS) Test System(79032)
Zeus MA Test System(79018)

**Analyte: (0440) Anti-Neutrophil Cytoplasm Antibodies**

*Test System, Assay, Examination*

Scimedx Anti-Neutrophil Cytoplasm Antibodies IFA Test(58014)

**Analyte: (0441) Anti-Nuclear Antibodies (ANA)**

*Test System, Assay, Examination*

Amico ANA Test System(04157)
Antibodies Inc. Antinuclear Antibody (ANA) Test Kit (FA)(04220)
Behring AFT System HEp(07243)
Behring AFT System I(07112)
BioHyTech EIA Kit(07145)
BioWhittaker FIAX System(07328)
Bion ANA Test Kit(07153)
Clinical Sciences ANAFLUOR(10065)
Hemagen ANA System (FA)(25010)
INOVA Diagnostics NOVALite ANA (IFA)(28001)
Immuno Concepts Colorzyme ANA Test System(28131)
Immuno Concepts Fluorescent ANA Test System(28024)
Incstar ANA Colorimetric Kit(28035)
Incstar ANAFAST Kit(28036)
Incstar ANAFLUOR Kit(28037)
Incstar ANAZYME Kit(28038)
Incstar Fluoro-Kit(28042)
Incstar RL Fluoro-Kit ANA Fluorescent Test(28049)
MarDx ANA Test System(40004)
MarDx Autoimmune IFA Screening Test System(40008)
MeDiCa ANA Test Kit(40025)
MeDiCa ANA/A-nDNA-A Test Kit(40026)
MeDiCa Multiple Antibody Test Kit(40031)
Ortho Fluoroset ANA(46069)
Quidel ANA IFA kit(52001)
Sanofi/Kallestad ANA Microplate EIA(58256)
Sanofi/Kallestad Quantifluor Kit(58011)
Scimedx ANA Test System(58012)
Scimedx Auto Screen Test System(58016)
Virgo ANA IFA Test(67016)
Zeus ANA HEp-2 Cell Culture IFA Test System(79033)
Zeus ANA Test(79001)
Zeus Autoantibody Screen (AAS) Test System(79032)

**Analyte: (0442) Anti-Parietal Cell Antibodies**

*Test System, Assay, Examination*

Incstar Fluoro-Kit(28042)
MarDx Autoimmune IFA Screening Test System(40008)
MarDx Parietal Cell Antibody Test System(40017)
MeDiCa APCA Test Kit(40027)
MeDiCa Multiple Antibody Test Kit(40031)
Sanofi/Kallestad Quantifluor Kit(58011)
Scimedx Auto Screen Test System(58016)
Scimedx PCA Test System(58027)
Zeus Autoantibody Screen (AAS) Test System(79032)

**Analyte: (0443) Anti-RNP (Ribonucleoprotein)**

*Test System, Assay, Examination*

Apotex ENA Profile ELISA(04316)
Apotex SM/RNP ELISA(04310)
Behring ENA I Test(07114)
BioHyTech EIA Kit(07145)
BioWhittaker RheumELISA Kit(07345)
BioWhittaker RheumElisa Plus Microwell Assay(07239)
Diamedix Anti-RNP Microassay(13237)
General Biometrics ImmunoWELL RNP/Sm Ab Test(22117)
Hemagen ENA(25012)
Immuno Concepts Sm/RNP Ab Test System(28126)
Kallestad Sm/RNP ENA(34047)
Reseads Medical Products Anti-ENA (Sm/RNP complex) Qual Test(55011)
Scimedx ENA Detect I Test System(58019)
Scimedx ENA Detect II Test System(58020)
Scimedx ENA Detect III Test System(58021)
Shield Diagnostics DIASTAT ENA Profile Kit(58135)
TheraTest Laboratories EL-ANA Profiles Test(61018)
Zeus Poly-ENA Assay(79022)

**Analyte: (0444) Anti-Reticulin Antibodies**

*Test System, Assay, Examination*

Scimedx Auto Screen Test System(58016)

**Analyte: (0446) Anti-SS-A/Ro**

*Test System, Assay, Examination*

Apotex ENA Profile ELISA(04316)
Apotex SS-A ELISA(04318)
BioWhittaker RheumELISA Kit(07345)
BioWhittaker RheumElisa Plus Microwell Assay(07239)
Diamedix Anti-SSA Microassay(13238)
General Biometrics ImmunoWELL SS-A (Ro) Antibody Test(22050)
Hemagen ENA(25012)
Immuno Concepts SS-A/SS-B Autoantibody Test System(28144)
Kallestad SSA/SSB ENA(34046)
Scimedx ENA Detect III Test System(58021)
Shield Diagnostics DIASTAT ENA Profile Kit(58135)
TheraTest Laboratories EL-ANA Profiles Test(61018)
Zeus Poly-ENA Assay(79022)

**Analyte: (0447) Anti-SS-B/La**

*Test System, Assay, Examination*

Apotex ENA Profile ELISA(04316)
Apotex SS-B ELISA(04319)
BioWhittaker RheumELISA Kit(07345)
BioWhittaker RheumElisa Plus Microwell Assay(07239)
Diamedix Anti-SSB Microassay(13239)
General Biometrics ImmunoWELL SS-B (La) Antibody Test(22051)
Hemagen ENA(25012)
Immuno Concepts SS-A/SS-B Autoantibody Test System(28144)
Kallestad SSA/SSB ENA(34046)
Scimedx ENA Detect II Test System(58020)
Scimedx ENA Detect III Test System(58021)
Shield Diagnostics DIASTAT ENA Profile Kit(58135)
TheraTest Laboratories EL-ANA Profiles Test(61018)
Zeus Poly-ENA Assay(79022)

**Analyte: (0448) Anti-Scl-70**

*Test System, Assay, Examination*

Apotex Scl-70 ELISA(04323)
Diamedix Anti-Scl-70 Microassay(13240)
Hemagen ENA(25012)

**Analyte: (0449) Anti-Skin Antibodies**

*Test System, Assay, Examination*

MarDx Anti-Skin Antibody Test System(40005)

MeDiCa ASA Test Kit(40028)
Scimedx ASA Test System(58013)
Zeus Anti-Skin Antibody Test System(79003)

**Analyte: (0450) Anti-Sm (Smith)**

*Test System, Assay, Examination*

Apotex ENA Profile ELISA(04316)
Apotex SM ELISA(04320)
Apotex SM/RNP ELISA(04310)
BioHyTech EIA Kit(07145)
BioWhittaker RheumELISA Kit(07345)
BioWhittaker RheumElisa Plus Microwell Assay(07239)
Diamedix Anti-Sm Microassay(13241)
General Biometrics ImmunoWELL RNP/Sm Ab Test(22117)
General Biometrics ImmunoWELL Sm Antibody Test(22052)
Hemagen ENA(25012)
Immuno Concepts Sm/RNP Ab Test System(28126)
Kallestad Sm/RNP ENA(34047)
Reeads Medical Products Anti-ENA (Sm/RNP complex) Qual Test(55011)
Reeads Medical Products Anti-Sm Qualitative Test(55012)
Scimedx ENA Detect I Test System(58019)
Scimedx ENA Detect II Test System(58020)
Scimedx ENA Detect III Test System(58021)
Shield Diagnostics DIASTAT ENA Profile Kit(58135)
TheraTest Laboratories EL-ANA Profiles Test(61018)
Zeus Poly-ENA Assay(79022)

**Analyte: (0451) Anti-Smooth Muscle Antibodies (ASMA)**

*Test System, Assay, Examination*

Behring AFT System I(07112)
Incstar Fluoro-Kit(28042)
MarDx Autoimmune IFA Screening Test System(40008)
MarDx Smooth Muscle Antibody Test System(40018)
MeDiCa ASMA Test Kit(40029)
MeDiCa Multiple Antibody Test Kit(40031)
Sanofi/Kallestad Quantifluor Kit(58011)
Scimedx SMA Test System(58028)
Zeus Autoantibody Screen (AAS) Test System(79032)
Zeus SMA Test System(79024)

**Analyte: (0453) Anti-Thyroglobulin Antibodies**

*Test System, Assay, Examination*

Amos Sera-tek(04153)
General Biometrics ImmunoWELL Thyroglobulin Ab Test(22122)
Kronus Kalibre-R Thyroglobulin Antibody RIA Kit(34023)
Murex Thymune-T(40158)
Wellcome Thymune-T(70138)

**Analyte: (0454) Anti-Thyroid Antibodies**

*Test System, Assay, Examination*

Incstar MT Fluoro-Kit(28046)
MarDx Anti-Thyroid Antibody Test System(40006)
MeDiCa ATA Test Kit(40030)
Sanofi/Kallestad Quantifluor Kit(58011)
Scimedx TA Test System(58029)
Zeus TA Test System(79025)

**Analyte: (0455) Anti-Thyroid Microsomal Antibodies (AMA)**

*Test System, Assay, Examination*

Amos Sera-tek(04153)
General Biometrics ImmunoWELL Microsomal(Recomb.TPO)Ab Test(22049)
General Biometrics ImmunoWELL Microsome (TPO) Ab Test(22123)
Kronus Kalibre TPO Antibody RIA Kit(34021)
Murex Thymune-M(40157)
Wellcome Thymune-M(70137)

**Analyte: (0465) Aspergillus Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics Aspergillus Antigens and Control Sera(28124)

**Analyte: (0703) Beta-2 Microglobulin**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Milenia(13111)
Diagnostic Systems Beta2–Microglobin (IEMA)(13165)
Diagnostic Systems Beta2–Microglobin (RIA)(13164)
Serex Beta-2 Microglobulin EIA Kit(58153)
The Binding Site Human Beta-2 Microglobulin EL RID(61074)

**Analyte: (1001) C-Reactive Protein (CRP)**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
BioWhittaker FIAX System(07328)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Kent Radial Immunodiffusion Test(34010)
Reagents Applications RAICHEM SPIA Test Kit(55074)
The Binding Site C-Reactive Protein (Turbidimetric)(61091)
The Binding Site Human C-Reactive Protein EL RID(61075)
Wako Autokit(70102)

**Analyte: (1049) Cancer Antigen 125 (CA 125)**

*Test System, Assay, Examination*

Abbott CA 125 RIA(04276)

**Analyte: (1008) Candida Albicans Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics Candi-Sphere EIA (CEIA)(28025)
Immuno-Mycologics ID-Candida Antibody System(28027)
Meridian Diagnostics Candida Immunodiffusion System(40060)

**Analyte: (1013) Carcinoembryonic Antigen (CEA)**

*Test System, Assay, Examination*

Abbott CEA-EIA Monoclonal(04037)
Abbott CEA-EIA One-Step(04038)
Abbott COMMANDER System(04334)
Abbott RIA Monoclonal(04062)
Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)
Roche CEA-Roche EIA(55102)

**Analyte: (1057) Cerebrospinal Fluid Protein Fractions**

*Test System, Assay, Examination*

Beckman Paragon HRE Electrophoresis Kit(07370)
Beckman Paragon Immunoelectrophoresis (IEP) Kit(07374)
Beckman Paragon Immunofixation Electrophoresis (IFE) Kit(07375)
Beckman Paragon SPE Electrophoresis Kit(07369)
Beckman Paragon SPE-II Electrophoresis Kit(07368)
Isolab Resolve-CSF(28187)

**Analyte: (1015) Ceruloplasmin**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kent Radial Immunodiffusion Test(34010)
The Binding Site Human Caeruloplasmin RID(61081)

**Analyte: (1017) Chlamydia Trachomatis Antibodies**

*Test System, Assay, Examination*

Amico Amizyme Chlamydia trachomatis Antibody Test(04159)
BioWhittaker CHLAMYDELISA II(07319)
BioWhittaker CHLAMYDIA STAT(07320)
Incstar Fluoro-Kit(28042)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)
Virgo Chlamydia trachomatis IFA Test(67018)

**Analyte: (1024) Coccidioides Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics ID-Cocci Antibody System(28028)
Meridian Diagnostics Coccidioides Immunodiffusion System(40101)
Meridian Diagnostics Premier Coccidioides EIA(40121)

**Analyte: (1027) Complement C1**

*Test System, Assay, Examination*

Kent Radial Immunodiffusion Test(34010)

**Analyte: (1026) Complement C1 Inhibitor**

*Test System, Assay, Examination*

Kent Radial Immunodiffusion Test(34010)
Quidel C1–Inhibitor EIA(52003)
The Binding Site Human C1 Inactivator RID(61050)

**Analyte: (1064) Complement C1q**

*Test System, Assay, Examination*

The Binding Site Human Complement C1q NL RID(61073)

**Analyte: (1029) Complement C3**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)

BioWhittaker FIAX System(07328)
Helena Laboratories Quiplate System for RID(25005)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
Reagents Applications RAICHEM SPIA Test Kit(55074)
The Binding Site Human Complement C3 & C4 RID(61072)

**Analyte: (1030) Complement C4**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioWhittaker FIAX System(07328)
Helena Laboratories Quiplate System for RID(25005)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
Reagents Applications RAICHEM SPIA Test Kit(55074)
The Binding Site Human Complement C3 & C4 RID(61072)

**Analyte: (1031) Complement C5**

*Test System, Assay, Examination*

Kent Radial Immunodiffusion Test(34010)

**Analyte: (1046) Complement, Total**

*Test System, Assay, Examination*

Kallestad Quantiplate RID(34003)
Sigma Diagnostics Test Kit(58051)

**Analyte: (1038) Cytomegalovirus Antibodies**

*Test System, Assay, Examination*

Abbott CMV Total Ab (EIA)(04039)
Abbott COMMANDER System(04334)
Amico Amizyme CMV Ab Test(04158)
Analytab ACCU-LYZA CMV IgG ELISA Test System(04341)
Analytab ACCU-LYZA CMV IgM ELISA Test System(04340)
Baxter Bartels PRIMA Cytomegalovirus IgG EIA(07295)
Baxter Bartels PRIMA Cytomegalovirus IgM EIA(07297)
Bio-Medical Virotech ELISA Antibody Test(07313)
BioWhittaker CMV CAP-M(07321)
BioWhittaker CMV STAT(07322)
BioWhittaker CMV STAT M(07323)
BioWhittaker CYTOMEGELISA II(07324)
BioWhittaker FIAX System(07328)
Bion CMV-G Antibody Test System(07154)
Diamedix CMV IgG Microassay(13224)
Diamedix CMV IgM Microassay(13225)
General Biometrics Cytomegalovirus IgG IFA Test(22150)
General Biometrics Cytomegalovirus IgM IFA Test(22151)
Gull Laboratories CMV IFA Antibodies Test(22073)
Gull Laboratories CMV IgG ELISA(22074)
Gull Laboratories CMV IgM ELISA(22075)
Gull Laboratories CMV IgM IFA Test(22076)
Immucor Capture CMV(28018)
Immuno Concepts CMV IgG Ab Test System(28137)
Immuno Concepts CMV IgM Ab Test System(28141)
Incstar Clin-ELISA Cytomegalovirus IgG(28219)
Incstar Clin-ELISA Cytomegalovirus IgM(28220)
Incstar Fluoro-Kit(28042)
Olympus PK7100 Automated Pretransfusion Blood Test System(46003)
Pharmacia CMV IgG ELISA(49019)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)
Sigma SIA CMV IgG(58214)
Sigma SIA CMV IgM(58213)
Syva MicroTrak CMV-M EIA(58147)
Syva MicroTrak CMV-TA EIA(58148)
Virgo Cytomegalovirus IFA Test(67019)
Zeus CMV IgG ELISA Test System(79005)
Zeus CMV IgG IFA Test System(79004)
Zeus CMV IgM ELISA Test System(79029)
Zeus CMV IgM IFA Test System(79037)

**Analyte: (1601) Entamoeba Histolytica Antibodies**

*Test System, Assay, Examination*

LMD Laboratories Amebiasis Microtiter ELISA (spectrophoto)(37024)
LMD Laboratories Amebiasis Microtiter ELISA (visual)(37052)
Sigma SIA Amebiasis(58191)

**Analyte: (1903) Epstein-Barr Virus Antibodies**

*Test System, Assay, Examination*

Amico Amizyme EB-VCA Virus Antigen IgM Test (spectrophoto)(04294)
Amico Amizyme EB-VCA Virus Antigen IgM Test (visual)(04367)
Amico Amizyme EBV Ab Test(04160)
Baxter Bartels PRIMA Epstein Barr Virus IgG EIA(07285)
Baxter Bartels PRIMA Epstein Barr Virus IgM EIA(07284)
BioWhittaker EB VCA STAT(07325)
BioWhittaker EB VCA STAT M(07326)
BioWhittaker EBNA STAT(07327)
BioWhittaker FIAX System(07328)
Bion EBV-G (VCA) Antibody Test System(07155)
Bion EBV-M (VCA) Antibody Test System(07156)
Diagnostic Technology EBNA Check(13045)
Diagnostic Technology EBV Check(13046)
Diagnostic Technology EBV/EA Check(13047)
Diagnostic Technology EBV/IgM Check(13048)
Granbio Inc. EBNA Anti-complement IFA(22067)
Granbio Inc. Epstein-Barr EA IgG IFA(22068)
Granbio Inc. Epstein-Barr VCA IgG EIA(22069)
Granbio Inc. Epstein-Barr VCA IgG IFA(22070)
Granbio Inc. Epstein-Barr VCA IgM EIA(22071)
Granbio Inc. Epstein-Barr VCA IgM IFA(22072)
Gull Laboratories EBV IFA Antibodies Test(22077)
Gull Laboratories EBV IgG ELISA(22078)
Gull Laboratories EBV IgM ELISA(22079)
Gull Laboratories EBV IgM IFA Test(22080)
Gull Laboratories EBV-EA Test(22081)
Gull Laboratories EBV-NA Test(22082)
Hillcrest Biologicals EBNA Ab IFA Test(25040)
Hillcrest Biologicals EBV Early Antigen IFA Test(25041)
Hillcrest Biologicals EBV VCA(IgG) IFA Test(25043)
Hillcrest Biologicals EBV VCA(IgM) IFA Test(25042)
Immuno Concepts Colorzyme EA Ab Test System(28133)
Immuno Concepts Colorzyme EBNA Ab Test System(28134)
Immuno Concepts Colorzyme EBV-VCA IgG Ab Test System(28136)
Immuno Concepts Colorzyme EBV-VCA IgM Ab Test System(28135)
Immuno Concepts EBNA Ab Test System(28145)
Immuno Concepts EBV-EA Ab Test System(28139)
Immuno Concepts EBV-VCA IgG Ab Test System(28142)
Immuno Concepts EBV-VCA IgM Ab Test System(28140)
Incstar Clin-ELISA Epstein-Barr EBNA IgG(28225)
Incstar Clin-ELISA Epstein-Barr EBNA IgM(28226)
Incstar Clin-ELISA Epstein-Barr VCA IgG(28223)
Incstar Clin-ELISA Epstein-Barr VCA IgM(28224)
Organon Teknika EB-VCA IFA Kit II(46024)
Organon Teknika EBNA ACIF Kit(46025)
Organon Teknika EBV-EA IFA Kit(46026)
Organon Teknika EBV-M Kit(46027)
Ortho EBNA IgG Antibody ELISA(46058)
Ortho Epstein-Barr Virus VCA-IgG Antibody ELISA(46066)
Ortho Epstein-Barr Virus VCA-IgM Antibody ELISA(46067)
Pharmacia Epstein Barr Virus Viral Capsid Antigen IgG ELISA(49021)
Pharmacia Epstein Barr Virus Viral Capsid Antigen IgM ELISA(49022)
Sigma SIA Epstein-Barr EBNA IgM/IgG(58173)
Sigma SIA Epstein-Barr VCA IgG(58175)
Sigma SIA Epstein-Barr VCA IgM(58174)
Virgo Epstein-Barr Virus—VCA Antibody IFA Test(67020)
Zeus EBV-EA Test System(79006)
Zeus EBV-NA (ACIF) Ab Test System(79035)
Zeus EBV-VCA IFA Test System(79030)
Zeus EBV-VCA IgM Antibody IFA Test System(79031)

**Analyte: (1912) Fungus Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics ID-Fungal Antibody System(28029)
Meridian Diagnostics Fungal Immunodiffusion System(40062)

**Analyte: (2214) Globulin, Total**

*Test System, Assay, Examination*

Sigma Diagnostics Test Kit(58051)

**Analyte: (2506) HIV Antibodies**

*Test System, Assay, Examination*

Abbott COMMANDER System(04334)
Abbott HIVAB HIV-1 EIA(04053)
Abbott HIVAB HIV-1/HIV-2 (rDNA) EIA(04274)
Bio-Rad Novapathe HIV-1 Immunoblot(07140)
Cambridge Biotech HIV-1 WB(10008)
Cambridge Biotech Recombigen (env. & gag) HIV-1 EIA(10010)
Cellular Products Retro-Tek HIV-1 ELISA(10029)
Du Pont HIV-1 ELISA(13088)
Electronucleonics HIV-1 IgG EIA(16008)
Genetic Systems HIV-1/HIV-2 EIA(22062)
Genetic Systems HIV-2 EIA(22063)
Genetic Systems LAV EIA(22064)
Organon Teknika Bio-EnzaBead HIV(46017)
Organon Teknika Epiblot HIV(46028)
Organon Teknika Vironostika HIV-1 Microelisa System(46036)
Ortho Diagnostics HIV-1 ELISA(46057)
Syva MicroTrak HIV-1 (env. & gag) EIA(58087)
United Biomedical HIV-1 EIA(64016)

**Analyte: (2507) HIV Antigen**

*Test System, Assay, Examination*

Abbott HIVAG-1(04054)

**Analyte: (2508) HTLV Antibodies**

*Test System, Assay, Examination*

Abbott COMMANDER System(04334)
Abbott HTLV-1 EIA(04055)
Cambridge Biotech HTLV-1 ELISA(10146)
Cellular Products Retro-Tek HTLV-1 ELISA(10030)
Du Pont HTLV-1 ELISA(13089)
Organon Teknika Vironstika HTLV-1 Microelisa Assay(46113)

**Analyte: (2511) Haptoglobin**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
BioWhittaker FIAX System(07328)
Helena Laboratories Haptoglobin(25081)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
The Binding Site Human Haptoglobin RID(61082)

**Analyte: (2513) Helicobacter Pylori Antibodies**

*Test System, Assay, Examination*

BioWhittaker FIAX System(07328)
BioWhittaker PYLORI STAT(07340)
Biomerica GAP-IgG ELISA(07245)
Hycor PYLORAGEN H. pylori Test Kit(25049)
Meridian Premier Helicobacter pylori HM-CAP(40105)
Quidel Helicobacter pylori Microwell EIA Test(52012)

**Analyte: (2519) Hepatitis A Virus Antibody**

*Test System, Assay, Examination*

ADI Heprofile Anti-HAV IgM EIA(04001)
Abbott COMMANDER System(04334)
Abbott HAVAB EIA(04046)
Abbott HAVAB RIA(04047)
Abbott HAVAB-M EIA(04048)
Abbott HAVAB-M RIA(04049)
Organon Teknika Hepanostika Anti-HAV IgM Microelisa System(46030)
Organon Teknika Hepanostika Anti-HAV Microelisa Total Ab.(46031)
Sorin Biomedica AB-HAVK(58055)
Sorin Biomedica ETI AB-HAVK(58252)
Sorin Biomedica HA-IgMK (IRMA)(58063)
Syva MicroTrak II Total Anti-HAV EIA(58142)
Syva MicroTrak Total Anti-HAV EIA(58155)

**Analyte: (2521) Hepatitis B Core Antibody**

*Test System, Assay, Examination*

Abbott COMMANDER System(04334)
Abbott CORAB(04040)
Abbott CORAB-M(04041)
Abbott CORZYME(04042)
Abbott CORZYME-M (r-DNA)(04369)
Genetic Systems Anti-HBc EIA(22059)
Organon Teknika Hepanostika ANTICORE Microelisa System(46029)
Ortho HBc ELISA(46070)
Sorin Biomedica AB-COREK, AB-COREK J(58054)
Sorin Biomedica CORE-IgMK (IRMA)(58057)
Sorin Biomedica ETI-AB-COREK (EIA)(58060)
Syva MicroTrak IgM Anti-HBcore EIA(58156)

**Analyte: (2523) Hepatitis B Surface Antibody**

*Test System, Assay, Examination*

ADI Heprofile Anti-HBs(04269)
Abbott AUSAB (EIA)(04024)
Abbott AUSAB (RIA)(04025)
Abbott AUSAB Quantitation Panel(04026)
Abbott COMMANDER System(04334)
Organon Teknika Microplate Anti-HBs EIA(46034)
Sorin Biomedica AB-AUK-3 (RIA)(58053)

**Analyte: (2524) Hepatitis B Surface Antigen (HBsAg)**

*Test System, Assay, Examination*

ADI Heprofile HBsAg(04270)
ADI Heprofile HBsAg Specificity Test Kit(04266)
Abbott AUSCELL (RPHA)(04027)
Abbott AUSCELL Confirmatory Test (RPHA)(04028)
Abbott AUSRIA (RIA)(04029)
Abbott AUSZYME Confirmatory Test(04031)
Abbott AUSZYME MONOCLONAL (EIA)(04030)
Abbott COMMANDER System(04334)
Genetic Systems HBsAg Confirmatory Test(22060)
Genetic Systems HBsAg EIA(22061)
Organon NML ELISA HBsAg Confirmatory Test(46005)
Organon NML ELISA HBsAg Screening Test(46006)
Organon NML RIA HBsAg Confirmatory Test(46010)
Organon NML RIA HBsAg Screening Test(46011)
Ortho Antibody to HBsAg ELISA Confirmatory Test(46041)
Ortho Antibody to HBsAg ELISA Test System II(46042)
Pharmacia Hepatitis B Surface Antigen Confirmatory Test(49007)
Pharmacia Hepatitis B Surface Antigen-AntiHBs ELISA(49008)
Sorin Biomedica AUK-3, AUK 3J (RIA)(58056)
Sorin Biomedica Confirmatory Test(58058)

**Analyte: (2525) Hepatitis Be Antibody**

*Test System, Assay, Examination*

Abbott COMMANDER System(04334)
Abbott HBe (rDNA) EIA(04050)
Abbott HBe RIA(04051)
Organon Teknika Hepanostika HBeAg/Anti-HBe Microelisa(46032)
Sorin Biomedica EBK (RIA)(58059)
Sorin Biomedica ETI-EBK (EIA)(58061)
Syva MicroTrak HBeAg/Anti-HBe EIA(58154)
Syva MicroTrak II Anti-HBe EIA(58144)

**Analyte: (2526) Hepatitis Be Antigen**

*Test System, Assay, Examination*

Abbott COMMANDER System(04334)
Abbott HBe (rDNA) EIA(04050)
Abbott HBe RIA(04051)
Organon Teknika Hepanostika HBeAg/Anti-HBe Microelisa(46032)
Sorin Biomedica EBK (RIA)(58059)
Sorin Biomedica ETI-EBK (EIA)(58061)
Syva MicroTrak HBeAg/Anti-HBe EIA(58154)
Syva MicroTrak II HBeAg EIA(58143)

**Analyte: (2527) Hepatitis C Virus Antibody**

*Test System, Assay, Examination*

Abbott COMMANDER System(04334)
Abbott HCV-EIA(04052)
Ortho HCV ELISA(46071)

**Analyte: (2528) Hepatitis Delta Antibody**

*Test System, Assay, Examination*

Abbott Anti-delta-EIA(04032)
Abbott Anti-delta-RIA(04033)

**Analyte: (2530) Herpes Simplex I and/or II Antibodies**

*Test System, Assay, Examination*

Amico Amizyme HSV Ab Test(04161)
Analytab ACCU-LYZA HSV-1 and HSV-2 ELISA Test System(04343)
Baxter Bartels PRIMA HSV 1 IgG EIA(07288)
Baxter Bartels PRIMA HSV 1 IgM EIA(07289)
Baxter Bartels PRIMA HSV 2 IgG EIA(07287)
Baxter Bartels PRIMA HSV 2 IgM EIA(07286)
BioWhittaker FIAX System(07328)
BioWhittaker HERPELISA II(07329)
BioWhittaker HERPES 1&2 STAT(07330)
BioWhittaker HERPES STAT(07331)
Bion HSV1-G or HSV2-G Test System(07157)
Diagnostic Technology HSV Check(13049)
Diamedix Herpes 1 & 2 Microassay(13242)
General Biometrics Herpes simplex Virus IgG IFA Test(22146)
General Biometrics Herpes simplex Virus IgM IFA Test(22147)
Gull Laboratories HSV IgG IFA Test(22083)
Gull Laboratories HSV IgM IFA Test(22084)
Gull Laboratories HSV-1 IgG ELISA(22085)
Gull Laboratories HSV-1 IgM ELISA(22086)
Gull Laboratories HSV-2 IgG ELISA(22087)
Gull Laboratories HSV-2 IgM ELISA(22088)
Incstar Clin-ELISA Herpes simplex Type-1 IgG(28221)

Incstar Clin-ELISA Herpes simplex Type-2 IgG(28222)
Incstar Fluoro-Kit(28042)
Ortho Herpes simplex virus Antibodies Fluoroset(46073)
Pharmacia Herpes simplex Virus, Type 1 IgG ELISA(49024)
Pharmacia Herpes simplex Virus, Type 2 IgG ELISA(49023)
Sigma SIA Herpes 1 and Herpes 2(58196)
Virgo Herpes Simplex Virus Type 1 Antibody IFA Test(67022)
Virgo Herpes Simplex Virus Type 2 Antibody IFA Test(67023)
Zeus HSV Antibody Test System(79009)
Zeus HSV–1 and HSV–2 IgG ELISA Test Systems(79010)

**Analyte: (2541) Histamine**

*Test System, Assay, Examination*

Biomerica RIA Test Kit(07256)

**Analyte: (2531) Histoplasma Antibodies**

*Test System, Assay, Examination*

Immuno-Mycologics ID-Histo Antibody System(28030)
Meridian Diagnostics Premier Histoplasma EIA(40134)

**Analyte: (2301) Immune Complexes (CIC)**

*Test System, Assay, Examination*

Diamedix Circulating Immune Complexes(13243)
Quidel CIC-C1q EIA(52004)
Quidel CIC-Raji Cell Replacement EIA(52005)
Sigma SIA Immune Complexes(58197)

**Analyte: (2302) Immunoglobulins—Monoclonal/Polyclonal**

*Test System, Assay, Examination*

Helena Laboratories Titan Gel ImmunoFix(25008)
Helena Laboratories Titan Gel ImmunoFix Plus(25060)
Helena Laboratories Titan Gel Immunoelectrophoresis(25009)
Helena Laboratories Titan IV Immunoelectrophoresis(25061)
Kallestad Immunoelectrophoresis System(34002)

**Analyte: (2303) Immunoglobulins IgA**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Behring S-partigen Kit(07246)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioWhittaker FIAX System(07328)
Helena Laboratories Low Level Quiplate System for RID(25055)
Helena Laboratories Quiplate System for RID(25005)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate Low Level Immunoglobulin Test Kit(34036)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
Reagents Applications RAICHEM SPIA Test Kit(55074)
The Binding Site Human Immunoglobulin G,A,M Polyclonal RID(61067)

**Analyte: (2304) Immunoglobulins IgD**

*Test System, Assay, Examination*

Helena Laboratories Quiplate System for RID(25005)
Hycor Accuplate(25024)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
The Binding Site Human Immunoglobulin D RID(61076)

**Analyte: (2305) Immunoglobulins IgE**

*Test System, Assay, Examination*

ALerCHEK FlipSCREEN Total IgE(04005)
BioWhittaker 3M Total IgE II FAST Test(07318)
BioWhittaker FIAX System(07328)
Ciba Corning Magic Lite(10055)
Dexall Biomedical AllergE ActiTip System(13207)
Diagnostic Products Corp. AlaSTAT Total IgE(13027)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Milenia(13111)
Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)
Immunotech EZ-BEAD EIA Kit(28173)
Kallestad Allercoat EAST(34042)
Kallestad Allercoat RAST(34043)
Kallestad QuantiCLONE(34032)
Kallestad Quantizyme IgE(34033)
Leeco Diagnostics IgE Quant(37008)
MAST CLA Allergy Systems (chemiluminescence)(40112)
Medix Biotech IgE Enzyme Immunoassay Test(40102)
Nichols Institute Allegro IgE(43009)
Pharmacia CAP System IgE FEIA(49046)
Pharmacia CAP System IgE RIA(49049)
Pharmacia IgE EIA(49032)
Pharmacia IgE EIA Ultra(49035)
Pharmacia IgE RIA(49033)
Pharmacia IgE RIA Ultra(49036)
Pharmacia IgE RIACT(49034)
Pharmacia Phadebas IgE PRIST(49040)
Pharmacia Phadezym IgE PRIST(49039)
Sanofi/Kallestad Total IgE Microplate(58231)
Serono Baker Serozyme(58091)
Serono Diagnostics Serozyme(58251)
Ventrex PD IgE RIA(67060)
Ventrex Total IgE EIA Extended Range(67058)
Ventrex Total IgE RIA Extended Range(67061)

**Analyte: (2306) Immunoglobulins IgG**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioWhittaker FIAX System(07328)
Helena Laboratories Low Level Quiplate System for RID(25055)
Helena Laboratories Quiplate RID Mid-Level IgG(25056)
Helena Laboratories Quiplate System for RID(25005)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate Low Level Immunoglobulin Test Kit(34036)
Kallestad Endoplate RID(34001)
Kallestad Endoplate Ultra Low Level IgG Test Kit(34034)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
Reagents Applications RAICHEM SPIA Test Kit(55074)
The Binding Site Human Immunoglobulin G,A,M Polyclonal RID(61067)

**Analyte: (2307) Immunoglobulins IgG Subclasses**

*Test System, Assay, Examination*

Janssen Biochemica IgG subclasses ELISA Kit(31001)
The Binding Site BINDAZYME Human IgG Subclasses EIA(61064)
The Binding Site Human IgG Subclasses Monoclonal RID(61070)
The Binding Site Human IgG Subclasses Single Dilution RID(61071)

**Analyte: (2308) Immunoglobulins IgM**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Behring S-partigen Kit(07246)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioWhittaker FIAX System(07328)
Helena Laboratories Low Level Quiplate System for RID(25055)
Helena Laboratories Quiplate System for RID(25005)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate Low Level IgM Test Kit(34035)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
Reagents Applications RAICHEM SPIA Test Kit(55074)
The Binding Site Human Immunoglobulin G,A,M Polyclonal RID(61067)

**Analyte: (2810) Influenza A Antibodies**

*Test System, Assay, Examination*

Bio-Medical Virotech ELISA Antibody Test(07313)

**Analyte: (2811) Influenza B Antibodies**

*Test System, Assay, Examination*

Bio-Medical Virotech ELISA Antibody Test(07313)

**Analyte: (2817) Intrinsic Factor Blocking Antibody (IFbAb)**

*Test System, Assay, Examination*

Diagnostic Products Corp. Solid Phase(13112)

**Analyte: (3402) Kappa Light Chains**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Helena Laboratories Titan IV Double Diffusion(25039)

**Analyte: (3703) Lambda Light Chains**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Helena Laboratories Titan IV Double Diffusion(25039)

**Analyte: (3707) Legionella Antibodies**

*Test System, Assay, Examination*

MarDx Legionella IFA Test System(40010)
Organon Teknika Legionella IFA Kit I(46033)
Scimedx Lyme Detect Test System(58025)
Zeus Legionella IFA Antibody Test System(79013)

**Analyte: (3718) Leptospira Antibodies**

*Test System, Assay, Examination*

Hillcrest Biologicals Leptospirosis IHA(25047)

**Analyte: (3714) Lyme Disease Antibodies (Borrelia Burgdorferi Abs)**

*Test System, Assay, Examination*

Analytab API Lyme ELISA Test Kit(04328)
Baxter Bartels PRIMA Lyme Disease EIA(07298)
BioWhittaker 3M IgG/IgM FASTLYME Test(07317)
BioWhittaker FIAX System(07328)
BioWhittaker LYME STAT(07332)
BioWhittaker LYME STAT M(07333)
Cambridge Biotech Human Lyme EIA(10009)
Diamedix Lyme Disease Microassay(13244)
Diamedix Lyme IgM Microassay(13170)
General Biometrics ImmunoWELL Borrelia (Lyme) Test(22048)
General Biometrics ImmunoWELL Recombinant P39 (Lyme) Test(22054)
Gull Laboratories Lyme IgM ELISA(22089)
Hillcrest Biologicals Lyme Disease ELISA(25050)
Hillcrest Biologicals Lyme Disease IFA (IgG) Test(25044)
MarDx Lyme Disease EIA (IgM & IgG)(40011)
MarDx Lyme Disease EIA IgG(40012)
MarDx Lyme Disease EIA IgM(40013)
MarDx Lyme Disease IgG IFA Test System(40014)
MarDx Lyme Disease IgM IFA Test System(40015)
Sanofi Pasteur Platelia Lyme(58137)
Scimedx Lyme Detect Test System(58025)
Sigma SIA Lyme Disease(58100)
Zeus Lyme Disease IFA Antibody Test System(79014)
Zeus Lyme ELISA Combo Test System(79015)
Zeus Lyme IgG ELISA Test System(79016)
Zeus Lyme IgM ELISA Test System(79017)

**Analyte: (3717) Lysozyme**

*Test System, Assay, Examination*

Kallestad Quantiplate RID(34003)

**Analyte: (4007) Mumps Antibodies**

*Test System, Assay, Examination*

BioWhittaker FIAX System(07328)
BioWhittaker MUMPSTAT(07337)
Pharmacia Mumps IgG ELISA(49020)
Virgo Mumps Antibody IFA Test(67025)

**Analyte: (4018) Mycoplasma Pneumonia Antibodies**

*Test System, Assay, Examination*

BioWhittaker FIAX System(07328)
BioWhittaker MYCOPLASMA STAT(07338)
BioWhittaker MYCOPLASMELISA II(07339)
Incstar IgM-MP Reverse ELISA Kit(28044)
Incstar Mp Test IgM/IgG MA Reverse ELISA Kit(28047)
Seradyn Color Vue - Mycoplasma pneumonia(58041)
Zeus MP IgG IFA Test System(79019)
Zeus MP IgM IFA Test System(79020)

**Analyte: (4911) Prealbumin**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring M-partigen Kit(07118)
Instrumentation Laboratory Multistat III(28183)
Kent Radial Immunodiffusion Test(34010)
The Binding Site Human Prealbumin RID(61083)

**Analyte: (4916) Properdin Factor B**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Kent Radial Immunodiffusion Test(34010)

**Analyte: (4919) Prostatic Specific Antigen (PSA)**

*Test System, Assay, Examination*

Hybritech Tandem-E(25022)
Hybritech Tandem-R(25023)

**Analyte: (4920) Protein Fractions**

*Test System, Assay, Examination*

Beckman Paragon HRE Electrophoresis Kit(07370)
Beckman Paragon Immunoelectrophoresis (IEP) Kit(07374)
Beckman Paragon Immunofixation Electrophoresis (IFE) Kit(07375)
Beckman Paragon SPE Electrophoresis Kit(07369)
Beckman Paragon SPE-II Electrophoresis Kit(07360)
Helena Lab. Titan Gel Multi-Slot SP Electrophoresis System(25063)
Helena Laboratories REP SPE(25117)
Helena Laboratories REP SPE Hi Res-15 Procedure(25068)
Helena Laboratories REP SPE Plus(25066)
Helena Laboratories REP SPE Plus (Ponceau S)(25069)
Helena Laboratories REP SPE Template (Ponceau S) Proced.(25064)
Helena Laboratories REP SPE Template Procedure(25067)
Helena Laboratories Super Z Serum Protein Kit(25006)
Helena Laboratories Titan Gel High Resolution Protein Kit(25007)
Helena Laboratories Titan Gel Serum Protein System(25062)

**Analyte: (5504) Respiratory Syncytial Virus Antibodies**

*Test System, Assay, Examination*

Gull Laboratories RSV Antibodies IFA Test(22091)
Virgo RSV Antibody IFA Test(67026)

**Analyte: (5508) Rheumatoid Factor (RF)**

*Test System, Assay, Examination*

ALerCHEK RF Assay(04007)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
BioWhittaker FIAX System(07328)
Diamedix RF Microassay(13245)
Hemagen RF(25013)
Sigma SIA Rheumatoid Factor(58216)

**Analyte: (5512) Rickettsia Rickettsii Ab (Rocky Mt. Spotted Fever)**

*Test System, Assay, Examination*

Hillcrest Biologicals Rickettsia IFA (IgG) Test(25045)
Hillcrest Biologicals Rickettsia IFA (IgM) Test(25046)

**Analyte: (5514) Rickettsia Typhi Ab (Typhus Antibodies)**

*Test System, Assay, Examination*

Hillcrest Biologicals Rickettsia IFA (IgG) Test(25045)
Hillcrest Biologicals Rickettsia IFA (IgM) Test(25046)

**Analyte: (5510) Rubella Antibodies**

*Test System, Assay, Examination*

Abbott Rubazyme(04065)
Abbott Rubazyme-M(04066)
Analytab ACCU-LYZA Rubella IgG ELISA Test System(04337)
Analytab ACCU-LYZA Rubella IgM ELISA Test System(04339)
Baxter Bartels PRIMA Rubella IgG EIA(07295)
Baxter Bartels PRIMA Rubella IgM EIA(07294)
BioWhittaker FIAX System(07328)
BioWhittaker RUBECAP-M(07341)
BioWhittaker RUBELISA II(07342)
BioWhittaker RUBESTAT(07343)
BioWhittaker RUBESTAT M(07344)
Diamedix Rubella IgG Microassay(13227)
Gull Laboratories Rubella IgG ELISA(22092)
Gull Laboratories Rubella IgM ELISA(22093)
Incstar Clin-ELISA Rubella IgG(28217)
Pharmacia Rubella IgG ELISA(49025)
Sanofi Pasteur Platelia Rubella IgG(58136)
Sigma SIA Rubella IgG(58101)
Sigma SIA Rubella IgM(58102)
Syva MicroTrak Rubella-G EIA(58149)
Syva MicroTrak Rubella-M EIA(58150)
Virgo Rubella Antibody IFA Test(67027)
Zeus Rubella IgG ELISA Test System(79023)
Zeus Rubella IgM ELISA Test System(79036)

**Analyte: (5511) Rubeola Antibodies (Measles)**

*Test System, Assay, Examination*

Baxter Bartels PRIMA Rubeola IgG EIA(07291)
Baxter Bartels PRIMA Rubeola IgM EIA(07290)
Bio-Medical Virotech ELISA Antibody Test(07313)
BioWhittaker FIAX System(07328)
BioWhittaker MEASELESTAT(07334)
BioWhittaker MEASELESTAT M(07335)
BioWhittaker MEASELISA II(07336)
Bion Measles-G Antibody Test System(07158)
Bion Measles-M Antibody Test System(07159)
Diamedix Measels IgG Microassay(13246)
Gull Laboratories Rubeola IFA Antibodies Test(22094)
Gull Laboratories Rubeola IgG ELISA(22095)
Gull Laboratories Rubeola IgM ELISA(22096)
Incstar Clin-ELISA Rubeola IgG(28218)
Pharmacia Measles IgG ELISA(49026)
Pharmacia Measles IgM ELISA(49027)
Sigma SIA Measles IgG(58176)
Sigma SIA Measles IgM(58177)
Virgo Measles Antibody IFA Test(67024)
Zeus Measles Test System(79021)

**Analyte: (5803) Schistosoma Antibodies**

*Test System, Assay, Examination*

Amico Amixyme Schistosoma species Ab Test System(04162)

**Analyte: (5818) Staphylococcus Aureus Antibodies**

*Test System, Assay, Examination*

Meridian Diagnostics Endo-Staph(40106)

**Analyte: (6101) TSH Receptor Antibody**

*Test System, Assay, Examination*

Kronus Kalibre-R TSH Receptor (TRAb) Kit(34022)

**Analyte: (6128) Taenia Solium Antibodies (Cysticercosis)**

*Test System, Assay, Examination*

LMD Laboratories Cysticercosis Microtiter ELISA (spectro)(37022)
LMD Laboratories Cysticercosis Microtiter ELISA (visual)(37049)

**Analyte: (6113) Toxoplasma Gondii Antibodies**

*Test System, Assay, Examination*

Abbott Toxo-G EIA Kit(04079)
Abbott Toxo-M EIA Kit(04080)
Amico Amixyme Toxoplasma gondii Ab Test System(04163)
Analytab ACCU-LYZA Toxo IgG ELISA Test System(04336)
Analytab ACCU-LYZA Toxo IgM ELISA Test System(04342)
Baxter Bartels PRIMA Toxoplasma IgG EIA(07292)
Baxter Bartels PRIMA Toxoplasma IgM EIA(07293)
BioWhittaker FIAX System(07328)
BioWhittaker TOXOCAP-M(07347)
BioWhittaker TOXOELISA II(07348)
BioWhittaker TOXOSTAT(07349)
BioWhittaker TOXOSTAT M(07350)
Diagnostic Technology Toxo/IgM Check(13052)
Diamedix Toxoplasma IgG Microassay(13232)
Diamedix Toxoplasma IgM Microassay(13233)
General Biometrics Toxoplasmosis IgG IFA Test(22149)
General Biometrics Toxoplasmosis IgM IFA Test(22148)
Gull Laboratories Toxo IFA Antibodies Test(22097)
Gull Laboratories Toxo IgG ELISA(22098)
Gull Laboratories Toxo IgM ELISA(22099)
Gull Laboratories Toxo IgM IFA Test(22100)
Incstar Clin-ELISA Toxoplasma gondii IgG(28215)
Incstar Clin-ELISA Toxoplasma gondii IgM(28216)
Incstar Fluoro-Kit(28042)
LMD Laboratories Toxoplasma IgG Microtiter ELISA (spectro)(37021)
LMD Laboratories Toxoplasma IgG Microtiter ELISA (visual)(37051)
Organon Teknika Toxo IFA Kit I(46035)
Pharmacia Toxoplasma gondii IgG ELISA(49028)
Sanofi Pasteur Platelia Toxo IgG(58138)
Sanofi Pasteur Platelia Toxo IgM(58139)
Sigma SIA Toxoplasma IgG(58179)
Sigma SIA Toxoplasma IgM(58198)
Syva MicroTrak Toxo-G EIA(58146)
Syva MicroTrak Toxo-M EIA(58145)
Virgo Toxoplasma gondii Antibody IFA Test(67028)
Wampole TPM-TEST(70089)
Zeus IFA Toxoplasma Test System(79011)
Zeus TOXO IgG ELISA Test System(79026)
Zeus TOXO IgM ELISA Test System(79027)

**Analyte: (6114) Transferrin**

*Test System, Assay, Examination*

Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
BioWhittaker FIAX System(07328)
Helena Laboratories Quiplate System for RID(25005)
Hycor Accuplate(25024)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kallestad Endoplate RID(34001)
Kallestad Quantiplate RID(34003)
Kent Radial Immunodiffusion Test(34010)
Reagents Applications RAICHEM SPIA Test Kit(55074)
The Binding Site Human Transferrin RID(61069)

**Analyte: (6115) Treponema Pallidum Antibodies (Includes Reagin)**

*Test System, Assay, Examination*

ADI Visuwell Reagin (spectrophotometric)(04366)
ADI Visuwell Reagin (visual)(04003)
Ames Sera-tek(04153)
Becton Dickinson BBL Reagents for Syphilis Serol. (FTA-ABS)(07250)
Becton Dickinson BBL Syphilis Serology Reagents (VDRL)(07249)
Diagnostic Chemicals Syphilis-G Test Kit(13166)
Diagnostic Chemicals Syphilis-M Test Kit(13171)
Difco Becto FTA-ABS(13163)
Difco Becto VDRL(13057)
Fisher Diagnostic VDRL(19007)
Gamma Biologicals VDRL(22116)
Incstar Fluoro-Kit(28042)
MarDx FTA-ABS Test System(40009)
Olympus PK7100 Automated Pretransfusion Blood Test System(46003)
Roech Laboratories FTA-ABS(55073)
Scimedx FTA-ABS Test System(58022)
Virgo FTA-ABS IFA Test(67021)
Zeus FTA-ABS Double Stain Test System(79034)
Zeus FTA-ABS Test System(79007)

**Analyte: (6126) Trichinella Antibodies**

*Test System, Assay, Examination*

LMD Laboratories Trichinella Microtiter ELISA (spectro)(37023)
LMD Laboratories Trichinella Microtiter ELISA (visual)(37050)

**Analyte: (6129) Trypsin**

*Test System, Assay, Examination*

Sorin Biomedica Trypsik(58134)

**Analyte: (6704) Varicella-Zoster Virus Antibodies**

*Test System, Assay, Examination*

BioWhittaker FIAX System(07328)
BioWhittaker VARICELISA II(07351)
BioWhittaker VARICELLA STAT(07352)
Diamedix VZV Microassay(13247)
Gull Laboratories VZV IgG IFA Test(22101)
Gull Laboratories VZV IgM IFA Test(22125)
Incstar Clin-ELISA Varicella zoster IgG(28227)
Pharmacia Varicella-Zoster Virus IgG ELISA(49030)
Pharmacia Varicella-Zoster Virus IgM ELISA(49029)
Sigma SIA VZV IgG(58199)
Virgo Varicella-zoster Antibody IFA Test(67029)
Zeus VZ IgG IFA Test System(79028)

Speciality/Subspeciality: Hematology

**Analyte: (0461) Activated Clotting Time (ACT)**

*Test System, Assay, Examination*

All Manual Tilt-Tube Coagulation Procedures(04424)

**Analyte: (0408) Activated Partial Thromboplastin Time (APTT)**

*Test System, Assay, Examination*

All Manual Tilt-Tube Coagulation Procedures(04424)

**Analyte: (0463) Alpha-2-Antiplasmin**

*Test System, Assay, Examination*

Diagnostica Stago STACHROM Antiplasmin(13209)
Helena Laboratories Chromogenic Systems Analyzer 1200(25111)
Instrumentation Laboratory IL ACL 200(28075)
Instrumentation Laboratory IL ACL 2000(28076)
Instrumentation Laboratory IL ACL 300(28077)

Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
Instrumentation Laboratory IL ACL 810(28080)
Medical Laboratory MLA Electra 1000 C(40037)
Medical Laboratory MLA Electra 900 C(40042)
Organon Teknika Chromostrate Alpha-2-Antiplasmin Assay(46094)

**Analyte: (0483) Antiplasmin**

*Test System, Assay, Examination*

American Bioproducts STACHROM Antiplasmin Test Kit(04428)
Ortho Koagulab CTS(46128)

**Analyte: (0456) Antithrombin III (ATIII)**

*Test System, Assay, Examination*

American Diagnostica Actichrome Antithrombin III(04358)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Behring Nor-partigen Kit(07119)
Bio/Data PAP–4C(07193)
Diagnostica Stago LIATEST AT III(13152)
Helena Laboratories Chromogenic Systems Analyzer 1200(25111)
Helena Laboratories Quiplate System for RID(25005)
Instrumentation Laboratory IL ACL 100(28073)
Instrumentation Laboratory IL ACL 200(28075)
Instrumentation Laboratory IL ACL 2000(28076)
Instrumentation Laboratory IL ACL 300(28077)
Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
Instrumentation Laboratory IL ACL 810(28080)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Kent Radial Immunodiffusion Test(34010)
LAbor COA Data 2000(37034)
LAbor COA Screener(37033)
LAbor COA System(37035)
LAbor CoaData 3000(37066)
Medical Laboratory MLA Electra 1000 C(40037)
Medical Laboratory MLA Electra 900 C(40042)
Organon Teknika Chromostrate Antithrombin III Assay(46093)
Ortho Koagulab CTS(46128)
Sigma AccuStasis 1000(58049)
Sigma AccuStasis 2000(58050)
The Binding Site Human Antithrombin III RID(61068)

**Analyte: (0713) Beta-Thromboglobulin**

*Test System, Assay, Examination*

Diagnostica Stago ASSERACHROM B-TG(13128)

**Analyte: (0718) Body Fluid Microscopic Elements**

*Test System, Assay, Examination*

All Body Fluid Elements Microscopic ID Procedures(04130)

**Analyte: (1061) Cerebrospinal Fluid Microscopic Elements**

*Test System, Assay, Examination*

All Manual Cerebrospinal Fluid Cell Count Procedures(04363)

**Analyte: (1044) Coagulation Factors**

*Test System, Assay, Examination*

All Manual Tilt-Tube Coagulation Procedures(04424)
American Scientific Fibrometer(04145)
Becton Dickinson BBL Fibrometer(07080)
Bio/Data PAP–4C(07193)
Biopool Spectrolyse Factor VIII:C(07217)
Diagnostica Stago ST4(13218)
Diagnostica Stago Stachrom VIII:C(13146)
General Diagnostics Coag-A-Mate 2001(22138)
General Diagnostics Coag-A-Mate Dual Channel(22137)
General Diagnostics Coag-A-Mate X2(22057)
Helena Laboratories Cascade 480(25002)
Helena Laboratories Chromogenic Systems Analyzer 1200(25111)
Instrumentation Laboratory IL ACL 100(28073)
Instrumentation Laboratory IL ACL 1000(28074)
Instrumentation Laboratory IL ACL 200(28075)
Instrumentation Laboratory IL ACL 2000(28076)
Instrumentation Laboratory IL ACL 300(28077)
Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
Instrumentation Laboratory IL ACL 810(28080)
LAbor COA Data 2000(37034)
LAbor COA Screener(37033)
LAbor COA System(37035)
LAbor CoaData 3000(37066)
Lancer Coagulyzer Jr. III(37025)
Logos elvi 818 Digiclot(37013)
Logos elvi 819 Multi Clot(37014)
Logos elvi 820 Digiclot II(37015)
Medical Laboratory MLA Electra 1000 C(40037)
Medical Laboratory MLA Electra 750(40039)
Medical Laboratory MLA Electra 800(40040)
Medical Laboratory MLA Electra 800 (with data management)(40122)
Medical Laboratory MLA Electra 900(40041)
Medical Laboratory MLA Electra 900 C(40042)
Organon Teknika Coag-A-Mate RA4(46019)
Organon Teknika Coag-A-Mate XC(46021)
Organon Teknika Coag-A-Mate XC Plus(46022)
Organon Teknika Coag-A-Mate XM(46023)
Ortho KoaguLab M(46111)
Ortho Koagulab 16S(46074)
Ortho Koagulab 32–S(46123)
Ortho Koagulab 40–A(46076)
Ortho Koagulab 60–S(46122)
Sherwood Medical Coagulizer Jr.(58140)
Sigma AccuStasis 1000(58049)
Sigma AccuStasis 2000(58050)
TECO Coatron F2(61065)
TECO Coatron II(61047)
TECO Coatron Jr(61048)

**Analyte: (1616) Eosinophils**

*Test System, Assay, Examination*

All Manual Eosinophil Count Procedures(04353)

**Analyte: (1917) Factor IX Antigen**

*Test System, Assay, Examination*

Diagnostica Stago ASSERACHROM IX:Ag(13134)
Diagnostica Stago Assera-Plate IX:Ag(13142)

**Analyte: (1915) Factor VIII Related Antigen**

*Test System, Assay, Examination*

Helena Laboratories Factor VIII Related Antigen Rocket Sys.(25031)
International Immunoassay Labs EIA-F8 Kit(28155)

**Analyte: (1920) Factor X**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (1904) Fibrin Split Products (Fibrin Degradation)**

*Test System, Assay, Examination*

American Diagnostica Dimertest StripWell EIA Kit(04425)
Diagnostica Stago ASSERACHROM D-Di(13135)
Organon Teknika Fibrinostika FbDP Microelisa System(46112)
Sigma Fibrin/Fibrinogen Degradation Products(58222)

**Analyte: (1905) Fibrinogen**

*Test System, Assay, Examination*

Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Organon Teknika Fibriquik(46118)

**Analyte: (1916) Fibrinopeptide A**

*Test System, Assay, Examination*

Diagnostica Stago ASSERACHROM FPA(13132)

**Analyte: (1921) Fibronectin**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (2515) Hemoglobin**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Data Medical Associates Hemoglobin Determination(13250)

Electronucleonics FLEXIGEM(16010)
Mallinckrodt Serometer 370(40126)
Pointe Scientific 180 Chemistry Analyzer(49064)
Seradyn Hemoglobin Determination(58171)
Seradyn Quick-Chem II(58187)
Seragen Quick-Chem(58186)
Seragen StatEase(58185)
Sigma Diagnostics Plasma Hemoglobin(58226)
Sigma Diagnostics Test Kit(58051)
Sigma Diagnostics Total Hemoglobin(58225)
SmithKline ESKALAB-CCS(58195)
Stanbio Premier(58210)
Sterling Diagnostics Analyzer 2000(58229)

**Analyte: (2548) Hemoglobin A2**

*Test System, Assay, Examination*

Helena Laboratories Heme Spec Plus(25116)

**Analyte: (2535) Hemoglobin A2**

*Test System, Assay, Examination*

Helena Laboratories Beta-Thal HbA2 Quik Column(25057)
Helena Laboratories Heme Spec Plus(25116)
Helena Laboratories Sickle-Thal Quik Column(25058)
Isolab Quik-Sep Hemoglobin A2 Test System(28180)

**Analyte: (2537) Hemoglobin Barts**

*Test System, Assay, Examination*

Isolab Quik-Sep Alpha-Thal Screen(28101)

**Analyte: (2516) Hemoglobin F**

*Test System, Assay, Examination*

Helena Laboratories Quiplate System for RID(25005)
Isolab Quik-Sep Hemoglobin F Assay(28102)
Isolab Quik-Sep Sickle-Cell F Test(28103)

**Analyte: (2544) Hemoglobin Fractions**

*Test System, Assay, Examination*

Beckman Paragon Acid Hemoglobin (Acid Hb) Electropho. Kit(07372)
Beckman Paragon Hemoglobin (Hb) Electrophoresis Kit(07373)
Helena Laboratories Hemoglobin Electrophoresis(25075)
Helena Laboratories REP Hemoglobin-30 IEF Procedure(25074)
Helena Laboratories Titan III Hgb ID Electrophoresis(25076)
Helena Laboratories Titan IV Citrate Hgb Electrophoresis(25073)
Isolab Resolve-Hb(28195)

**Analyte: (2536) Hemoglobin S**

*Test System, Assay, Examination*

Helena Laboratories Heme Spec Plus(25116)
Isolab HemoCard Hb A and S(28111)
Isolab HemoCard Hemoglobin S Assay(28100)

**Analyte: (2518) Heparin**

*Test System, Assay, Examination*

Bio/Data PAP–4C(07193)
Diagnostica Stago ST4(13218)
Diagnostica Stago Stachrom Heparin(13144)
Helena Laboratories Chromogenic Systems Analyzer 1200(25111)
Instrumentation Laboratory IL ACL 200(28075)
Instrumentation Laboratory IL ACL 2000(28076)
Instrumentation Laboratory IL ACL 300(28077)
Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
LAbor COA System(37035)
Medical Laboratory MLA Electra 900 C(40042)
Organon Teknika Chromostrate Heparin Anti-Xa Assay(46091)

**Analyte: (3716) Leukocyte Aggregation**

*Test System, Assay, Examination*

Bio/Data PAP–4(07194)
Bio/Data PAP–4C(07193)

**Analyte: (4021) Malarial Parasite**

*Test System, Assay, Examination*

Becton Dickinson QBC Blood Parasite Detection Method(07214)

**Analyte: (4940) Plasmin**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (4907) Plasminogen**

*Test System, Assay, Examination*

American Diagnostica Actichrome PLG(04357)
Bio/Data PAP–4C(07193)
Diagnostica Stago Stachrom PLG(13143)
Helena Laboratories Chromogenic Systems Analyzer 1200(25111)
Helena Laboratories Quiplate System for RID(25005)
Instrumentation Laboratory IL ACL 200(28075)
Instrumentation Laboratory IL ACL 2000(28076)
Instrumentation Laboratory IL ACL 300(28077)
Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
Instrumentation Laboratory IL ACL 810(28080)
Medical Laboratory MLA Electra 1000 C(40037)
Medical Laboratory MLA Electra 900 C(40042)
Organon Teknika Chromostrate Plasminogen Assay(46092)
Ortho Koegulab CTS(46128)

**Analyte: (4936) Plasminogen Activator Inhibitor (PAI)**

*Test System, Assay, Examination*

American Diagnostica Spectrolyse/ Fibrin(04361)
Helena Laboratories Chromogenic Systems Analyzer 1200(25111)

**Analyte: (4928) Platelet Aggregation**

*Test System, Assay, Examination*

Bio/Data PAP–4(07194)
Bio/Data PAP–4C(07193)
Chrono-log Aggregometer 400VS(10147)
Chrono-log Aggregometer 430VS(10149)
Chrono-log Aggregometer 440VS(10150)
Chrono-log Aggregometer 460VS(10148)
Chrono-log Aggregometer 470VS(10151)
Chrono-log Aggregometer 500Ca(10152)
Chrono-log Aggregometer 500VS(10154)
Chrono-log Aggregometer 530VS(10155)
Chrono-log Aggregometer 540VS(10156)
Chrono-log Aggregometer 560Ca(10153)
Chrono-log Aggregometer 560VS(10157)
Chrono-log Aggregometer 570VS(10158)
Chrono-log P.I.C.A.(10144)
Helena Laboratories PACKS–4(25029)
Logos elvi 840 Aggregometer(37012)
Sienco Dual Sample Aggregation Meter (DP–247)(58119)

**Analyte: (4908) Platelet Count**

*Test System, Assay, Examination*

All Manual Platelet Count Test Systems and Procedures(04124)
Coulter Thrombocounter-C(10182)

**Analyte: (4931) Platelet Factor IV**

*Test System, Assay, Examination*

Diagnostica Stago ASSERACHROM PF4(13130)

**Analyte: (4935) Prekallikrein**

*Test System, Assay, Examination*

Helena Laboratories Chromogenic Systems Analyzer 1200(25111)

**Analyte: (4945) Protamine Rate Titration (PRT)**

*Test System, Assay, Examination*

International Technidyne Hemochron 400(28094)
International Technidyne Hemochron 401(28095)
International Technidyne Hemochron 800(28096)
International Technidyne Hemochron 801(28097)

**Analyte: (4929) Protein C**

*Test System, Assay, Examination*

American Diagnostica Rellplate C(04359)
Bio/Data PAP–4C(07193)
Biopool Protein C EID Kit(07219)
Biopool Spectrolyse Protein C(07218)
Diagnostica Stago ASSERACHROM Protein C(13129)
Diagnostica Stago Assera-Plate Protein C(13141)
Diagnostica Stago ST4(13218)
Diagnostica Stago Stachrom Protein C(13145)
Helena Laboratories Chromogenic Systems Analyzer 1200(25111)
Instrumentation Laboratory IL ACL 100(28073)
Instrumentation Laboratory IL ACL 1000(28074)
Instrumentation Laboratory IL ACL 200(28075)

Instrumentation Laboratory IL ACL 3000(28076)
Instrumentation Laboratory IL ACL 300(28077)
Instrumentation Laboratory IL ACL 300 Plus(28197)
Instrumentation Laboratory IL ACL 3000(28078)
Instrumentation Laboratory IL ACL 3000 Plus(28079)
LAbor COA Data 2000(37034)
LAbor COA Screener(37033)
LAbor COA System(37035)
LAbor CoaData 3000(37066)
Medical Laboratory MLA Electra 1000 C(40037)
Medical Laboratory MLA Electra 900(40041)
Medical Laboratory MLA Electra 900 C(40042)
Ortho Koagulab 32–S(46123)
Ortho Koagulab CTS(46128)
Ramco Spectro C(55068)
Sigma AccuStasis 2000(58050)

**Analyte: (4930) Protein S**

*Test System, Assay, Examination*

American Diagnostica Rellplate S(04360)
Biopool Protein S EID Kit(07220)
Diagnostica Stago ASSERACHROM Protein S(13131)
Diagnostica Stago Assera-Plate Protein S(13139)
Diagnostica Stago LIATEST Protein S(13150)
Diagnostica Stago ST4(13218)
Helena Laboratories Protein S Antigen Rocket EID(25045)
LAbor COA Screener(37033)

**Analyte: (4933) Prothrombin Fragment 1.2 (F1.2)**

*Test System, Assay, Examination*

Organon Teknika Thrombonostika(46103)

**Analyte: (4922) Prothrombin Time (PT)**

*Test System, Assay, Examination*

All Manual Tilt-Tube Coagulation Procedures(04424)

**Analyte: (5502) Red Blood Cell Count (Erythrocyte Count) (RBC)**

*Test System, Assay, Examination*

All Manual Red Blood Cell Count Procedures(04301)
Coulter A(10103)
Coulter B(10185)
Coulter Counter Model A(10180)
Coulter D(10186)
Coulter D2(10104)
Coulter F(10108)
Coulter FN(10109)

**Analyte: (5822) Semen**

*Test System, Assay, Examination*

All Manual Semen Analyses (count and morphology)(04355)
Hamilton-Thorn HTM-IVOS (morphology)(25115)
Sperm Penetration Assay(28275)

**Analyte: (6105) Thrombin Time**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (6130) Tissue Plasminogen Activator (t-PA)**

*Test System, Assay, Examination*

American Diagnostica Spectrolyse/ Fibrin(04361)
Helena Laboratories Chromogenic Systems Analyzer 1200(25111)

**Analyte: (7002) White Blood Cell Count (Leukocyte Count) (WBC)**

*Test System, Assay, Examination*

All Manual White Blood Cell Count Procedures(04302)
Coulter A(10103)
Coulter B(10185)
Coulter Counter Model A(10180)
Coulter D(10186)
Coulter D2(10104)
Coulter F(10108)
Coulter FN(10109)

**Analyte: (7001) White Blood Cell Differential (WBC Diff)**

*Test System, Assay, Examination*

All Manual WBC Diff Procedures-with interpret. atyp. cells(04127)

**Analyte: (7003) Whole Blood Clotting Time**

*Test System, Assay, Examination*

Haemoscope Thromboelastograph (calculated result)(25129)
Logos elvi 816 Bi Clot (calculated result)(37058)
Sienco SONOCLOT Coagulation Analyzer (calculated result)(58253)
Sienco SONOCLOT II Surgical Analyzer (calculated result)(58254)

**Analyte: (6708) von Willebrand Factor**

*Test System, Assay, Examination*

Bio/Data PAP–4(07194)
Bio/Data PAP–4C(07193)
Biopool vWF EID Kit(07221)
Diagnostica Stago ASSERACHROM vWF(13133)
Diagnostica Stago Assera-Plate vWF(13140)
General Diagnostics von Willebrand Factor Assay(22109)
Ramco Spectro vWF(55067)

**Analyte: (6711) von Willebrand Factor (Ristocetin Cofactor)**

*Test System, Assay, Examination*

Helena Laboratories PACKS–4(25029)

**Analyte: (6709) von Willebrand Multimers**

*Test System, Assay, Examination*

Ramco vWF Multimer Immunoblot(55072)

SPECIALITY/SUBSPECIALITY: Immunohematology

**Analyte: (0401) ABH Secretor Status—Saliva**

*Test System, Assay, Examination*

Amtec Anti-H Lectin—Saliva, qualitative(04174)
BCA Anti-H Lectin—Saliva, qualitative(07008)
BCA Anti-H Lectin—Saliva, quantitative(07009)
Dade Lectin-H—Saliva, qualitative(13013)
Dade Lectin-H—Saliva, quantitative(13014)
Gamma Anti-H Lectin—Saliva, qualitative(22007)
Gamma Anti-H Lectin—Saliva, quantitative(22008)

**Analyte: (0402) ABO group—RBC**

*Test System, Assay, Examination*

All Immunohem. Absorption/Elution Procedures-Ag confirma.(04115)
Dynatech MicroBank System(13113)
Gamma STS–M Automated Blood Grouping Instrument(22029)
IBG Inverness Blood Grouping System(28087)
Olympus PK7100 Automated Pretransfusion Blood Test System(46003)

**Analyte: (0403) ABO Group Confirmation—Serum, Plasma**

*Test System, Assay, Examination*

Dynatech MicroBank System(13113)
Gamma STS–M Automated Blood Grouping Instrument(22029)
IBG Inverness Blood Grouping System(28087)
Olympus PK7100 Automated Pretransfusion Blood Test System(46003)

**Analyte: (1301) D(Rho) Type**

*Test System, Assay, Examination*

All Immunohem. Absorption/Elution Procedures-Ag confirma.(04115)
Dynatech MicroBank System(13113)
Gamma STS–M Automated Blood Grouping Instrument(22029)
IBG Inverness Blood Grouping System(28087)
Olympus PK7100 Automated retransfusion Blood Test System(46003)

**Analyte: (1306) Donor/Recipient Compatibility**

*Test System, Assay, Examination*

All Immunohem. Donor/Recipient Compatibility Procedures(04112)

**Analyte: (1308) Du (Weak D RBC antigen)**

*Test System, Assay, Examination*

Gamma STS–M Automated Blood Grouping Instrument(22029)
Olympus PK7100 Automated Pretransfusion Blood Test System(46003)

**Analyte: (1903) Fetal RBCs—Maternal Blood (fetal-maternal bleed)**

*Test System, Assay, Examination*

Du procedures with microscopic exam for mixed field agglut.(13081)
Gamma Fetal Bleed Screening Test(22016)
Indicator Cell Rosette Test—screen for fetal RBC's(28051)
Modified Kleihauer-Betke Acid Elution Stain Procedure(40103)
Ortho FETALSCREEN(46068)
Sigma Diagnostics Fetal Hemoglobin Kit(58125)
Simmler, Inc. Fetal Cell Stain Kit(58127)
Sure-Tech Fetal Hemoglobin Kit(58261)

**Analyte: (2816) Isohemagglutinins**

*Test System, Assay, Examination*

All Isohemagglt. Tube Titrations, Serum Pretreatment-Thiol(04113)
Dade Neutr-AB Reagent—screen(13017)
Dade Neutr-AB Reagent—titration(13018)

**Analyte: (4027) Platelet Antibody—detection**

*Test System, Assay, Examination*

Immucor Capture-P(28128)
Immucor Capture-P Ready-Screen(28088)
Immucor MCP (Modified Capture-P)(28089)

**Analyte: (5501) RBC Antigen Type Other Than A or B**

*Test System, Assay, Examination*

All Immunohem. Absorption/Elution Procedures-Ag confirm.(04115)
Gamma Arachis hypogea Lectin(22010)
Gamma Lectin System(22019)

**Analyte: (5412) Unexpected RBC Antibody—Detection-Serum, Plasma**

*Test System, Assay, Examination*

All RBC antibody detection 1 Stage Enzyme Procedures(04131)
All RBC antibody detection 2 Stage Enzyme Procedures(04132)
Amtec Ficin Treated Screening Cells 1,2,3(04185)
Dade Rap-I.D. Polycation Potentiator System(13019)
Gamma Ficin-Dust System(22017)
Gamma Ficin-Pool(22018)
Immucor Capture-R Ready-Screen(28019)
Immucor Panoscreen I and II, Ficin-Treated(28022)

**Analyte: (5402) Unexpected RBC Antibody—Identification**

*Test System, Assay, Examination*

All Immunohem. Unexpected RBC Antibody ID Procedures(04114)

SPECIALTY/SUBSPECIALTY

Mycobacteriology

**Analyte: (4024) Mycobacteria**

*Test System, Assay, Examination*

All Acid-Fast Concentrated Smear Test Systems & Procedures(04101)
All Manual Antimycobacterial Susceptibility Procedures(04103)
All Manual Nucleic Acid Analysis T.Sys. & Proced.(isotopic)(04123)
All Organism Identification from Culture(04371)
Becton Dickinson BACTEC TB System (NAP Differentiat. Test)(07084)
Becton Dickinson BACTEC TB System (Susceptibility Test)(07222)
Gen-Probe AccuProbe—M. avium complex (including culture)(22128)
Gen-Probe AccuProbe—M. avium specific (including culture)(22129)
Gen-Probe AccuProbe—M. gordonae (including culture)(22130)
Gen-Probe AccuProbe—M. intracellulare specific (inc cult)(22131)
Gen-Probe AccuProbe—M. kansasii (including culture)(22127)
Gen-Probe AccuProbe—M. tuberculosis complex (inc culture)(22132)
Syngene Snap Culture ID Diagnostic Kit/M. avium complex(58069)
Syngene Snap Culture ID Diagnostic Kit/M. tuberculosis cplx(58152)

SPECIALTY/SUBSPECIALTY

Mycology

**Analyte: (0707) Blastomyces Dermatitidis**

*Test System, Assay, Examination:*

Gen-Probe AccuProbe—B. dermatitidis (including culture)(22133)
Immuno-Mycologics Exo-Antigen Test Kit (including culture)(28198)

**Analyte: (1025) Coccidioides Immitis**

*Test System, Assay, Examination*

Gen-Probe AccuProbe—C. immitis (including culture)(22134)
Immuno-Mycologics Exo-Antigen Test Kit (including culture)(28198)

**Analyte: (1302) Dermatophytes**

*Test System, Assay, Examination*

Orion Diagnostica Oricult-DTM (microculture method)(46096)

**Analyte: (1909) Fungi**

*Test System, Assay, Examination*

All Fungal Identification from Culture(04322)

**Analyte: (2532) Histoplasma Capsulatum**

*Test System, Assay, Examination*

Gen-Probe AccuProbe - H. capsulatum (including culture)(22135)
Immuno-Mycologics Exo-Antigen Test Kit (including culture)(28198)

**Analyte: (7601) Yeast**

*Test System, Assay, Examination*

Abbott Quantum II System (including culture)(04059)
All India Ink Preparations(04266)
Analytab API 20C Yeast Identification Kit (including cult.)(04195)
Analytab Yeast Ident (including culture)(04219)
Baxter AutoSCAN Walk/Away (including culture)(07023)
Baxter MicroScan AutoSCAN 4 (including culture)(07042)
Carr-Scarborough C. albicans Disc Screening Kit(inc. cult.)(10025)
Medical Wire Equip. MicroRing YT (including culture)(40054)
Vitek Systems VITEK (including culture)(67035)

**Analyte: (7603) Yeast, Candida Only**

*Test System, Assay, Examination*

Immuno-Mycologics LA-Candida (direct antigen)(28104)
Ramco CAND-TEC Candida Detection System (direct antigen)(55070)

**Analyte: (7604) Yeast, Cryptococcus Only**

*Test System, Assay, Examination*

Baxter MYCO-Immune Cryptococal LA (direct antigen)(07040)
Gen-Probe AccuProbe - Cryptococcus (including culture)(22136)
Immuno-Mycologics Latex-Crypto (direct antigen)(28106)
Meridian Cryptococcal LA System (direct antigen)(40057)
Meridian Premier Cryptococcal Ag (dir Ag/spectrophoto)(40072)
Meridian Premier Cryptococcal Ag (dir Ag/visual)(40071)
Wampole Crypto-LA Test (direct antigen)(70076)

SPECIALTY/SUBSPECIALTY:

Parasitology

**Analyte: (0710) Blood, Tissue & Intestinal Parasites**

*Test System, Assay, Examination*

All Permanent Stain Preparations(04264)

**Analyte: (2813) Intestinal Parasites**

*Test System, Assay, Examination*

Alexon ProSpecT Cryptosporidium Microtiter (dir Ag/spectro)(04326)
Alexon ProSpecT Cryptosporidium Microtiter (dir Ag/visual)(04325)
Alexon ProSpecT Giardia Microtiter (dir Ag/spectrophoto)(04257)
Alexon ProSpecT Giardia Microtiter (dir antigen/visual)(04099)
Alexon ProSpecT/Giardia (tube) (dir Ag/visual)(04338)
All Concentrated Preparations(04263)
All Wet Mount Preparations - Identification of Parasites(04262)
Antibodies Inc. Giard EIA (direct antigen/visual)(04224)
LMD Laboratories Cryptosporidium Ag Detect. Microtiter(vis)(37018)
LMD Laboratories G. lamblia Ag Detect. Microtiter (spectro)(37032)
LMD Laboratories G. lamblia Ag Detect. Microtiter (visual)(37019)
Meridian Diagnostics MERIFLUOR Cryptosporidium(40100)
Meridian Diagnostics MERIFLUOR Cryptosporidium/Giardia(40095)
Meridian Diagnostics MERIFLUOR Giardia(40099)
Seradyn Color Vue - Cryptosporidium (dir Ag/spectrophoto)(58184)
Seradyn Color Vue - Cryptosporidium (direct Ag/visual)(58101)
Seradyn Color Vue - Giardia (dir Ag/spectrophoto)(58183)
Seradyn Color Vue - Giardia (direct Ag/visual)(58100)
Trend Scientific Giardia lamblia Direct Detection System(61019)

**Analyte: (4021) Malarial Parasite**

*Test System, Assay, Examination*

All Permanent Stain Preparations(04264)

**Analyte: (4926) Pneumocystis**

*Test System, Assay, Examination*

Genetic Systems Pneumocystis carinii IFA Test Kit(22066)
Meridian Diagnostics MERIFLUOR Pneumocystis(40097)

**Analyte: (6116) Trichomonas**

*Test System, Assay, Examination*

Scimedx Trichomonas Test System(58092)

Specialty/Subspeciality

Toxicology/TDM

**Analyte: (0406) Acetaminophen**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Diagnostic Chemicals Ltd. Assay Kit(13210)
GDS Diagnostics Enzymatic Test Kit(22140)
Sherwood Medical Rapid Stat Diagnostic Kit(58165)
Stanbio Test Kit(58157)
Syva Emit Test Kit(58082)
Syva Qstat/Qst System(58190)

**Analyte: (0476) Acetylcholine/Choline**

*Test System, Assay, Examination*

Bioanalytical Systems BAS 200A(07300)
Bioanalytical Systems BAS 480(07301)
Bioanalytical Systems BAS 481(07302)
Bioanalytical Systems BAS 482(07307)

**Analyte: (0425) Amikacin**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Diagnostic Products Corp. Coat-A-Count(13030)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (0428) Amphetamines**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Finnigan MAT Witness System(19013)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Roche Abuscreen RIA(55098)
Sigma SIA Methamphetamine/Amphetamine(58103)
Syva Emit st Drug Detection System(58188)
Syva Qstat/Qst System(58190)

**Analyte: (0701) Barbiturates**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Diagnostic Products Corp. Coat-A-Count(13030)
Finnigan MAT Witness System(19013)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Roche Abuscreen RIA(55098)
Syva Emit st Drug Detection System(58188)
Syva Qstat/Qst System(58190)

**Analyte: (0702) Benzodiazepines**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Bio-Rad HPLC(07279)
Diagnostic Products Corp. Coat-A-Count IRMA(13109)
Diagnostic Products Corp. Double Antibody(13031)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Roche Abuscreen RIA(55098)
Syva Emit st Drug Detection System(58188)
Syva Qstat/Qst System(58190)

**Analyte: (1009) Cannabinoids (THC)**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Diagnostic Products Corp. Double Antibody(13031)
Diagnostic Products Corp. Milenia(13111)
Finnigan MAT Witness System(19013)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Roche Abuscreen RIA(55098)
Sigma SIA THC(58104)
Syva Emit st Drug Detection System(58188)
TOXI-LAB Cannabinoid (THC) Screen(61059)
TOXI-LAB Cannabinoid (THC) Screen THC-PLUS(61060)
TOXI-LAB THC II(61061)
TOXI-LAB THC II-PLUS(61062)

**Analyte: (1010) Carbamazepine**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)
Syva Qstat/Qst System(58190)

**Analyte: (1011) Carbamazepine, Free**

*Test System, Assay, Examination*

Syva Emit Test Kit(58082)

**Analyte: (1063) Chloramphenicol**

*Test System, Assay, Examination*

Syva Emit Test Kit(58082)

**Analyte: (1023) Cocaine Metabolites**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Milenia(13111)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Serex CoMA Cocaine Metabolite Assay(58182)
Sigma SIA Cocaine Metabolites(58105)
Syva Emit st Drug Detection System(58188)
Syva Qstat/Qst System(58190)

**Analyte: (1037) Cyclosporine**

*Test System, Assay, Examination*

Bio-Rad HPLC(07279)
Incstar CYCLO-Trac SP(28199)

**Analyte: (1303) Digitoxin**

*Test System, Assay, Examination*

Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Immunotech ENDAB EIA Kit(28172)

**Analyte: (1304) Digoxin**

*Test System, Assay, Examination*

Abbott RIA Bead(04061)
Amersham Amerlite(04148)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Bio-Rad Quantimune(07141)
Cibe Corning Magic (MGC)(10051)
Clinical Assays CammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Immunotech ENDAB EIA Kit(28172)
Immunotech EZ-BEAD EIA Kit(28173)
Kallestad Quanticoat(34031)
Micromedic Systems CONCEPT 4(40085)
Micromedic Systems Concept 4 Plus(40111)
Organon NML Digi-Tab RIA(46100)
Pointe Scientific 180 Chemistry Analyzer(49064)
Sanofi/Kallestad Quanticoat(58010)
Syva Emit Test Kit(58082)
Ventrex Coated Tube (RIA)(67011)

**Analyte: (1305) Disopyramide**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (1307) Drugs of Abuse**

*Test System, Assay, Examination*

Bio-Rad REMEDi Drug Profiling System(07280)
Bioanalytical Systems BAS 200A(07300)
Bioanalytical Systems BAS 480(07301)
Bioanalytical Systems BAS 481(07302)
Bioanalytical Systems BAS 482(07307)
TOXI-LAB A Drug Detection System(61055)
TOXI-LAB B Drug Detection System(61057)
TOXI-LAB Drug Detection System A-PLUS(61056)
TOXI-LAB Drug Detection System B-PLUS(61058)
TOXI-LAB Special Procedure(61053)
TOXI-LAB Validation Procedure(61054)

**Analyte: (1600) Ethanol (Alcohol)**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 200(04036)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Diagnostic Chemicals Ltd. Assay Kit(13210)
Electronucleonics FLEXIGEM(16010)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Reagents Applications RAICHEM Test Kit(55075)
Sigma Diagnostics Test Kit(58051)
Syva Emit st Drug Detection System(58188)

**Analyte: (1600) Ethosuximide**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)
Syva Qstat/Qst System(58190)

**Analyte: (1615) Ethylene Glycol**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)

**Analyte: (1913) Fentanyl**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)

**Analyte: (2302) Gentamicin**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count(13030)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (3401) Kanamycin**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)

**Analyte: (3710) Lidocaine**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (3715) Lysergic Acid Diethylamide (LSD)**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)
Roche Abuscreen RIA(55098)

**Analyte: (4023) Metanephrines, Urine**

*Test System, Assay, Examination*

Bio-Rad HPLC(07279)

**Analyte: (4003) Methadone**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Diagnostic Products Corp. Coat-A-Count(13030)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit st Drug Detection System(58188)
Syva Qstat/Qst System(58190)

**Analyte: (4004) Methamphetamines**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Milenia(13111)
Finnigan MAT Witness System(19013)
Roche Abuscreen RIA(55098)
Sigma SIA Methamphetamine/Amphetamine(58103)

**Analyte: (4005) Methaqualone**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Roche Abuscreen RIA(55098)
Syva Emit st Drug Detection System(58188)

**Analyte: (4006) Methotrexate**

*Test System, Assay, Examination*

Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (4020) Morphine**

*Test System, Assay, Examination*

Diagnostic Products Corp. Coat-A-Count(13030)
Roche Abuscreen RIA(55098)

**Analyte: (4301) N-Acetylprocainamide (NAPA)**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (4313) Netilmycin**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)

**Analyte: (4601) Opiates**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Milenia(13111)
Finnigan MAT Witness System(19013)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Sigma SIA Opiate(58106)
Syva Emit st Drug Detection System(58188)
Syva Qstat/Qst System(58190)
TOXI-LAB Opiate Procedure(61063)

**Analyte: (4901) Phencyclidine (PCP)**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Diagnostic Products Corp. Coat-A-Count(13030)
Diagnostic Products Corp. Milenia(13111)
Finnigan MAT Witness System(19013)
Immunotech Microzyme EIA (spectrophotometric)(28175)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Roche Abuscreen RIA(55098)
STC Diagnostics PCP EIA Plate Kit(58259)
Sigma SIA Phencyclidine(58107)
Syva Emit st Drug Detection System(58188)
Syva Qstat/Qst System(58190)

**Analyte: (4902) Phenobarbital**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Clinical Assays GammaCoat(10060)
Immunotech ENDAB EIA Kit(28172)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)
Syva Qstat/Qst System(58190)

**Analyte: (4903) Phenytoin**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Clinical Assays GammaCoat(10060)
Immunotech EZ-BEAD EIA Kit(28173)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)
Syva Qstat/Qst System(58190)

**Analyte: (4904) Phenytoin, Free**

*Test System, Assay, Examination*

Syva Emit Test Kit(58082)

**Analyte: (4912) Primidone**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)
Syva Qstat/Qst System(58190)

**Analyte: (4913) Procainamide**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (4917) Propoxyphene**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)

**Analyte: (5302) Quinidine**

*Test System, Assay, Examination:*

Ames OPTIMATE(04275)
Ames TDA(04156)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (5801) Salicylates**

*Test System, Assay, Examination*

Abbott Bichromatic ABA 100(04035)
Abbott Bichromatic ABA 200(04036)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Diagnostic Chemicals Ltd. Assay Kit(13210)
GDS Diagnostics Enzymatic Test Kit(22140)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Sherwood Medical Rapid Stat Diagnostic Kit(58165)
Sigma Diagnostics Test Kit(58051)
Stanbio Test Kit(58157)

**Analyte: (5824) Sisomicin**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)

**Analyte: (6104) Theophylline**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Bio-Chem Laboratory Systems ATAC 2000/2100(07188)
Clinical Assays GammaDab(10061)
Diagnostic Products Corp. Coat-A-Count(13030)
GDS Diagnostics Enzymatic Test Kit(22140)
Immunotech EZ-BEAD EIA Kit(28173)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Pointe Scientific 180 Chemistry Analyzer(49064)
Stanbio Premiere(58210)
Syva Emit Test Kit(58082)

**Analyte: (6112) Tobramycin**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Beckman Auto ICS(07383)
Beckman ICS(07381)
Beckman ICS II(07382)
Clinical Assays GammaCoat(10060)
Diagnostic Products Corp. Coat-A-Count(13030)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (6117) Tricyclic Antidepressants**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Bio-Rad HPLC(07279)
Syva Emit st Drug Detection System(58188)

**Analyte: (6701) Valproic Acid**

*Test System, Assay, Examination*

Ames OPTIMATE(04275)
Ames TDA(04156)
Instrumentation Laboratory Multistat III(28183)
Instrumentation Laboratory Multistat III Plus(28184)
Syva Emit Test Kit(58082)

**Analyte: (6710) Vanillylmandelic Acid (VMA)**

*Test System, Assay, Examination*

Bio-Rad HPLC(07279)

**SPECIALITY/SUBSPECIALITY: Virology**

**Analyte: (0410) Adenovirus**

*Test System, Assay, Examination*

Analytab API Adenovirus EIA (including cell culture/visual)(04208)
Analytab API Adenovirus Test Kit (IFA) (inc. cell culture)(04210)
Analytab API Adenovirus Test Kit(inc. cell culture/spectro)(04352)
Analytab API Adenovirus Test Kit-EIA (dir Ag/spectrophoto)(04255)
Analytab API Adenovirus Test Kit-EIA (dir Ag/visual)(04209)
Analytab API Adenovirus Type 40/41 EIA (dir Ag/spectropho)(04212)
Analytab API Adenovirus Type 40/41 EIA (dir Ag/visual)(04211)
Cambridge Biotech Adenoclone (IFA) (including cell culture)(10005)
Cambridge Biotech Adenoclone-EIA (direct Ag/spectrophoto)(10136)
Cambridge Biotech Adenoclone-EIA (direct antigen/visual)(10004)
Cambridge Biotech Adenoclone-EIA (inc. cell cult./spectro)(10178)
Cambridge Biotech Adenoclone-EIA (inc. cell culture/visual)(10003)
Cambridge Biotech Adenoclone-type 40/41 (dir Ag/spectropho)(10138)
Cambridge Biotech Adenoclone-type 40/41 (dir.Ag/visual)(10006)
Gull Laboratories Adenovirus Test (including cell culture)(22104)

**Analyte: (1038) Cytomegalovirus**

*Test System, Assay, Examination*

Baxter Bartels CMV Immed. Early Ag IFA (inc. cell culture)(07025)
Baxter Bartels Direct CMV Kit (direct antigen)(07355)
Baxter Bartels Direct CMV Kit (including cell culture)(07357)
Gull Laboratories CMV-EA Test (including cell culture)(22105)
Incstar CMV-vue(28200)
Ortho CMV Identification Reagent (including cell culture)(46051)
Syva MicroTrak CMV Culture ID Kit (including cell culture)(58083)

**Analyte: (2529) Herpes Simplex**

*Test System, Assay, Examination*

Baxter Bartels HSV FA Monoclonal (including cell culture)(07031)
Baxter Bartels HSV FA-ID & Diff. HSV I/II(inc cell culture)(07032)
Baxter Bartels HSV Immunoperoxidase Test (inc cell culture)(07198)
Diagnostic Products Corp. PDx Herpes Typing (inc cell cult)(13220)
Diagnostic Products Corp. PathoDx Herpes Typing (direct Ag)(13036)
Du Pont HERPCHEK HSV Antigen Test (dir Ag/spectrophoto)(13124)
Fairleigh Dickinson ELISA for HSV (dir Ag/spectrophoto)(19010)
Fairleigh Dickinson ELISA for HSV (dir Ag/visual)(19001)
Fairleigh Dickinson ELISA for HSV (inc. cell cult./spectro)(19012)
Fairleigh Dickinson ELISA for HSV (inc. cell culture/visual)(19009)
Kodak SureCell (including cell culture)(34019)
Ortho Cultureset HSV Isolation and ID System (dir antigen)(46056)
Ortho HSV 1 & 2 Dichromatic Typing (including cell culture)(46072)
Ortho HSV Antigen ELISA Test (dir Ag/spectrophotometric)(46104)
Ortho HSV Antigen ELISA Test (incl. cell culture/spectro)(46105)
Sanofi/Kallestad Pathfinder H. simplex 1&2 (direct antigen)(58004)
Syva MicroTrak HSV Culture Ident. Test (incl cell culture)(58095)
Syva MicroTrak HSV–1/2 Culture ID/Typing (inc cell culture)(58088)
Syva MicroTrak HSV–1/HSV–2 Direct Spec ID/Typ Test (dir Ag)(58096)
Vitek Systems Vidas (including cell culture)(67040)
Wampole Virogen Herpes LA Test (including cell culture)(70017)

**Analyte: (2540) Human Papillomavirus [HPV]**

*Test System, Assay, Examination*

Digene ViraPap (direct antigen)(13121)
Digene ViraType (direct antigen)(13122)

**Analyte: (5503) Respiratory Syncytial Virus**

*Test System, Assay, Examination*

Analytab API IMAGEN RSV (direct antigen)(04216)
Baxter Bartels RSV (FA) Test Kit (direct antigen)(07034)
Baxter Bartels RSV (FA) Test Kit (including cell culture)(07358)
Gull Laboratories RSV-MAb Test (direct antigen)(22128)
Gull Laboratories RSV-MAb Test (including cell culture)(22108)
Ortho RSV (IFA) (direct antigen)(46060)
Ortho RSV Antigen ELISA Test (dir. Ag/spectrophometric)(46098)
Sanofi/Kallestad Pathfinder RSV (dir Ag/spectrophotometric)(58006)
Sanofi/Kallestad Pathfinder RSV (direct antigen/visual)(58005)
Vitek RSV Direct IF (direct antigen)(67043)
Vitek Systems Vidas (direct antigen)(67038)

**Analyte: (5505) Respiratory Viruses (Influenza A&B, parainfluenza)**

*Test System, Assay, Examination*

Analytab API IMAGEN Influenza Virus A&B (direct antigen)(04215)
Baxter Bartels Viral Respiratory Kit (direct antigen)(07035)

Baxter Bartels Viral Respiratory Kit (including cell cult)(07359)
Gull Laboratories Influenza A Test (including cell culture)(22106)
Gull Laboratories Influenza B Test (including cell culture)(22107)

**Analyte: (5506) Rotavirus**

*Test System, Assay, Examination*

Abbott Rotazyme II Diag. Kit (dir Ag/spectrophotometric)(04063)
Abbott Rotazyme II Diag. Kit (dir Ag/visual)(04064)
Analytab API Rotavirus (dir Ag/spectrophotometric)(04259)
Analytab API Rotavirus Test Kit (dir. Ag/visual)(04202)
Cambridge Biotech Rotaclone (direct Ag/spectrophotometric)(10139)
Cambridge Biotech Rotaclone (direct antigen/visual)(10011)
Isolab RotaVirus EIA (direct antigen/spectrophotometric)(28109)
Isolab RotaVirus EIA (direct antigen/visual)(28086)
Sanofi/Kallestad Pathfinder Rotavirus (dir Ag/spectrophoto)(58007)
Sanofi/Kallestad Pathfinder Rotavirus (dir Ag/visual)(58008)

**Analyte: (6706) Varicella-Zoster Viruses**

*Test System, Assay, Examination*

Ortho Varicella-Zoster Virus ID by DFA (direct antigen)(46063)

**Analyte: (6708) Viruses**

*Test System, Assay, Examination*

All Manual Nucleic Acid Analysis Test Systems & Procedures(04365)
All Viral Cell Culture Identification(04134)

List of Waived Procedures

**Note:** The following is a list of the waived procedures by manufacturer and product name. Although extensive efforts were made to include all products that meet the criteria for waiver, the list should not be considered inclusive.

**Analyte: (9161) Erythrocyte Sedimentation Rate, Nonautomated Waived**

*Test System, Assay, Examination*

All Nonautomated ESR Procedures(04380)

**Analyte: (9191) Fecal Occult Blood**

*Test System, Assay, Examination*

Abco Test for Fecal Occult Blood(04373)
Ames Hema-Chek(04399)
Ames Hematest(04400)
Biomerica EZ Detect Stool Blood Test(07394)
CIDA ColoCheck(10188)
Cambridge Diagnostic CAMCO GUAIAC-TABS(10189)
Cambridge Diagnostic CAMCO PAK GUAIAC(10190)
Gamma FE-Cult Plus(22152)
Helena Laboratories ColoCARE(25118)
Helena Laboratories ColoScreen(25119)
LMI Medical DigiWipe II System(37037)
LMI Medical HemaWipe System(37038)
Labsystems FECATWIN(37039)
Labsystems FECATWIN SENSATIVE(37040)
Leeco Diagnostics Preview OBT(37054)
Propper Seracult(49073)
Propper Seracult Plus(49074)
SmithKline Hemoccult(58241)
SmithKline Hemoccult SENSA(58242)

**Analyte: (8221) Glucose Monitoring Devices (FDA Cleared/Home Use)**

*Test System, Assay, Examination*

Ames Dextrostix Blood Glucose Reagent Strips(04388)
Ames Glucofilm Blood Glucose Test Strips(04389)
Ames Glucometer 3 Blood Glucose Meter(04390)
Ames Glucometer Blood Glucose Meter(04391)
Ames Glucometer GX Blood Glucose Meter(04392)
Ames Glucometer II Blood Glucose Meter(04393)
Ames Glucometer M Blood Glucose Meter(04394)
Ames Glucometer M+ Blood Glucose Meter(04395)
Ames Glucostix Blood Glucose Reagent Strips(04396)
Boehringer Mannheim Accu-Chek EASY(07424)
Boehringer Mannheim Accu-Chek II(07397)
Boehringer Mannheim Accu-Chek II Freedom(07398)
Boehringer Mannheim Accu-Chek III(07399)
Boehringer Mannheim Accu-Chek IIm(07400)
Boehringer Mannheim Accu-Chek bG Monitor(07401)
Boehringer Mannheim Chemstrip bG(07413)
Boehringer Mannheim EASY Test Strips(07425)
Boehringer Mannheim Tracer II(07416)
Boehringer Mannheim Tracer bG Monitor(07417)
Boehringer Mannheim Tracer bG Test Strips(07418)
British American SUPREME bG Monitor(07419)
British American SUPREME bG Test Strips(07420)
CaroMed GLUCOSE 3 Test Strip(10212)
CaroMed Glucose V Visual Glucose Test System(10211)
Cascade Medical CheckMate Blood Glucose Monitor(10197)
Cascade Medical CheckMate Blood Glucose Test Strips(10198)
Home Diagnostics DIASCAN Blood Glucose Reagent Strips(25120)
Home Diagnostics DIASCAN Blood Glucose Self Monitor(25121)
Home Diagnostics DIASCAN-S Blood Glucose Monitor(25122)
Home Diagnostics ULTRA Blood Glucose Monitor(25123)
Home Diagnostics ULTRA Blood Glucose Reagent Strips(25124)
Lifescan GLUCOSCAN 2000(37041)
Lifescan GLUCOSCAN 3000(37042)
Lifescan GLUCOSCAN Test Strips(37043)
Lifescan GLUCOSCAN Test Strips (modified)(37044)
Lifescan ONE TOUCH BASIC Blood Glucose Meter(37060)
Lifescan ONE TOUCH Blood Glucose Meter(37045)
Lifescan ONE TOUCH Blood Glucose Test Strips(37046)
Lifescan ONE TOUCH II Blood Glucose Meter(37047)
Lifescan ONE TOUCH II Hospital Blood Glucose Meter(37048)
MediSense Companion 2 Sensor(40136)
MediSense ExacTech Blood Glucose Test Strips(40137)
MediSense ExacTech Companion Blood Glucose Sensor(40138)
MediSense ExacTech Pen Blood Glucose Sensor(40139)
MediSense Pen 2 Sensor(40140)
MediSense Pen 2/Companion 2 Sensor Electrodes(40141)
Polymer Technology FIRST CHOICE Glucose Test Strips(49072)

**Analyte: (9251) Hemoglobin by Copper Sulfate, Nonautomated**

*Test System, Assay, Examination*

All Nonautomated Hgb by Copper Sulfate(04419)

**Analyte: (2554) Hgb, Single Analyte Inst. w/ Self-Cont . . .**

*Test System, Assay, Examination*

HemoCue Hemoglobin System(25014)

**Analyte: (9461) Ovulation Test (LH) by Visual Color Comparison**

*Test System, Assay, Examination*

Becton Dickinson QTest Stick Ovulation Test(07389)
BioGenex OvuGen Ovulation Prediction Test(07392)
Biomerica COT Color Ovulation Test(07393)
Biomerica Fortel Home Ovulation Test(07396)
Carter Products ANSWER Ovulation Test(10191)
Carter Products FIRST RESPONSE Ovulation Predictor Test(10195)
Monoclonal Antibodies OvuKIT Self-Test(40145)
Monoclonal Antibodies OvuQUICK Self-Test(40146)
NMS Pharmaceuticals COT Color Ovulation Test(43057)
NMS Pharmaceuticals Fortel Home Ovulation Test(43058)
Quidel Conceive 1–Step Ovulation Predictor(52014)
Quidel OvuKIT Self-Test for Ovulation Prediction(52015)
Quidel OvuQUICK Self-Test for Ovulation Prediction(52016)
Vanguard Biomedical HomeClinic Ovulation Prediction(67071)
Whitehall Labs CLEARPLAN Easy Ovulation Predictor(70128)

**Analyte: (9581) Spun Microhematocrit**

*Test System, Assay, Examination*

All Spun Microhematocrit Procedures(04420)

**Analyte: (9641) Urine Dipstick or Tablet Analytes, Nonautomated**

*Test System, Assay, Examination*

Abco ABCO 2 Urine Chemistry Strip(04465)
Abco ABCO 3 Urine Chemistry Strip(04466)
Abco ABCO 5 Urine Chemistry Strip(04467)
Abco ABCO 8 Urine Chemistry Strip(04464)
Abco ABCO Glu-Keto Urine Chemistry Strip(04468)
Ames ACETEST(04381)
Ames ALBUSTIX(04382)

Ames BILI-LABSTIX(04383)
Ames CLINISTIX(04384)
Ames CLINITEST(04385)
Ames COMBISTIX(04386)
Ames DIASTIX(04387)
Ames HEMA-COMBISTIX(04397)
Ames HEMASTIX(04398)
Ames ICTOTEST(04401)
Ames KETO-DIASTIX(04402)
Ames KETOSTIX(04403)
Ames LABSTIX(04404)
Ames MICRO-BUMINTEST(04405)
Ames MULTISTIX(04406)
Ames MULTISTIX 10 SG(04407)
Ames MULTISTIX 2(04408)
Ames MULTISTIX 7(04409)
Ames MULTISTIX 8 SG(04410)
Ames MULTISTIX 9(04413)
Ames MULTISTIX 9 SG(04411)
Ames MULTISTIX SG(04412)
Ames N-MULTISTIX(04414)
Ames N-MULTISTIX SG(04415)
Ames URISTIX(04416)
Ames URISTIX 4(04417)
Ames UROBILISTIX(04418)
Behring Rapignost Total Screen L(07391)
Bio-Gen 2(07456)
Bio-Gen 3(07455)
Bio-Gen 4(07454)
Bio-Gen 5(07453)
Bio-Gen 6(07452)
Bio-Gen 7(07451)
Bio-Gen 8(07450)
Bio-Glu Ketone(07457)
Bio-Glucose(07459)
Bio-Ketone(07458)
Biomerica EZ Detect Urine Blood Test(07395)
Boehringer Mannheim Chemstrip 10 UA(07402)
Boehringer Mannheim Chemstrip 10 with SG(07403)
Boehringer Mannheim Chemstrip 2 GP(07404)
Boehringer Mannheim Chemstrip 2 LN(07405)
Boehringer Mannheim Chemstrip 4 The OB(07406)
Boehringer Mannheim Chemstrip 6(07407)
Boehringer Mannheim Chemstrip 7(07408)
Boehringer Mannheim Chemstrip 8(07409)
Boehringer Mannheim Chemstrip 9(07410)
Boehringer Mannheim Chemstrip K(07411)
Boehringer Mannheim Chemstrip Micral(07412)
Boehringer Mannheim Chemstrip uG(07414)
Boehringer Mannheim Chemstrip uGK(07415)
Wako Pretest 5A(70122)
Wako Pretest 6A(70123)
Wako Pretest 8A(70124)

**Analyte: (9842) Urine HCG by Visual Color Comparison Tests**

*Test System, Assay, Examination*

Abbott TestPack PLUS hCG COMBO(04375)
Abbott TestPack PLUS hCG-URINE(04376)
Access Medical Systems ImmunoCLONE hCG Test(04377)
Advanced Care Products ADVANCE Pregnancy Test(04378)
Advanced Care Products FACT PLUS Pregnancy Test(04379)
Ampcor QuikDIP Pregnancy(04295)
Becton Dickinson Directigen 1–2–3 hCG(07269)
Becton Dickinson Precise hCG(07386)
Becton Dickinson QTest Pregnancy(07387)
Becton Dickinson QTest Pregnancy Combo(07270)
Becton Dickinson QTest Stick Pregnancy Test(07390)
Carter Products ANSWER PLUS Pregnancy Test(10192)
Carter Products ANSWER QUICK & SIMPLE Pregnancy Test(10193)
Carter Products FIRST RESPONSE 1–Step Pregnancy Test(10194)
Carter Products FIRST RESPONSE Pregnancy Test(10196)
Chembio HCG-STAT-PAK(10199)
Disease Detection International ImmunoCard hCG One Step(13249)
Disease Detection International ImmunoCard hCG Test(13211)
Hybritech Concise HCG-Urine Test(25125)
Hybritech ICON II HCG (urine)(25126)
Hybritech ICON II HCG (urine/serum)(25127)
Hybritech Tandem ICON II (urine/serum)(25019)
Hybritech Tandem ICON II HCG (urine)(25132)
Kodak SureCell hCG-Urine/Serum(34038)
Kodak SureCell hCG-Urine(34044)
Leeco Diagnostics BioSign hCG-One Step Pregnancy Test(37061)
Leeco Diagnostics ImmunoCard hCG(37053)
Leeco Diagnostics Preview Pregnancy Test(37055)
Leeco Diagnostics Preview Serum/Urine-hCG(37030)
Leeco Diagnostics Preview Urine hCG(37056)
Leeco Diagnostics Right Day Pregnancy Test(37057)
Mainline Technology Confirm hCG One-Step Pregnancy Test(40152)
Medical Technology Corp. OPTITEC HCG(40116)
Medical Technology Corp. OPTITEC UniStep HCG(40143)
Meridian Diagnostics ImmunoCard hCG(40144)
Monoclonal Antibodies RAMP Urine hCG Assay(40147)
Organon Teknika HCG-nostick(46126)
Organon Teknika Pregnospia II(46127)
Pacific Biotech Cards Early Pregnancy Test(49067)
Pacific Biotech Cards HCG-Serum/Urine(49052)
Pacific Biotech Cards HCG-URINE(49060)
Pacific Biotech Cards O.S. HCG-Urine(49066)
Pacific Biotech PERFECT ONE STEP Early Pregnancy Test(49070)
Parke-Davis E.P.T. Early Pregnancy Test(49071)
Princeton BioMeditech BioSign hCG One Step Pregnancy Test(49080)
Quidel RAMP Urine hCG Assay(52017)
Syntron Bioresearch Be Sure One Step Pregnancy Test(58243)
Syntron Bioresearch Quikpac Pregnancy Test(58218)
Syntron Bioresearch hCG QuikStrip Pregnancy Test(58244)
V-Tech Target HCG(67066)
V-Tech Target HCG ONE STEP(67069)
Vanguard Biomedical HomeClinic One-Step Pregnancy(67070)
Vanguard Biomedical HomeClinic Pregnancy Test(67072)
Vanguard Biomedical ProClinic One-Step Urine HCG Test(67073)
Vanguard Biomedical ProClinic Urine HCG Pregnancy(67074)
Wampole Clearview hCG(70125)
Wampole One-Step HCG(70074)
Whitehall Labs CLEARBLUE Easy Pregnancy Test(70126)

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Part III

# Department of Justice

28 CFR Part 77

Communications With Represented Persons; Proposed Rule

DEPARTMENT OF JUSTICE

28 CFR Part 77

[AG Order No. 1765–93]

## Communications With Represented Persons

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is reissuing for an additional 30-day period for comments a proposed rule governing the circumstances under which its attorneys may communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings. The rule generally permits such communications if they are made during the course of a federal law enforcement investigation, and generally prohibits such communications (subject to exceptions) if they are made after formal criminal or civil proceedings have been instituted. The rule is essentially derived from existing attorney ethical rules promulgated by the states, from federal case law interpreting such state rules, and from federal case law interpreting the scope of the Sixth Amendment right to counsel. The purpose of the proposed rule is to impose a comprehensive, clear, and uniform set of regulations on the conduct of government attorneys before and during criminal and civil enforcement proceedings, in order to ensure appropriate conduct and to eliminate uncertainty and confusion arising from the variety of interpretations of state and local federal court rules.

The Department of Justice is reopening the comment period to ensure that all interested parties have a chance to comment. The Department of Justice is reopening the period for comments in light of the complex and important nature of the rule to the criminal and civil justice systems and the licenses and livelihoods of its attorneys.

DATES: Comments must be received on or before August 25, 1993.

ADDRESSES: Written comments should be submitted to: the Office of the Associate Attorney General, United States Department of Justice, 10th St. and Constitution Ave. NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: F. Mark Terison, Senior Attorney, Legal Counsel, Executive Office for United States Attorneys, United States Department of Justice, (202) 514–5204. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

### I. Rulemaking History

On November 20, 1992, the Department of Justice published for comment a proposed rule to provide a comprehensive, clear, and uniform set of guidelines governing the circumstances under which Department of Justice attorneys may communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings. See 57 FR 54737 (Nov. 20, 1992). The proposed rule was issued under the authority of the Attorney General to prescribe regulations for the government of the Department of Justice, the conduct of its employees, and the performance of its business, pursuant to 5 U.S.C. 301; to direct officers of the Department of Justice to secure evidence and conduct litigation, pursuant to 28 U.S.C. 516; to direct officers of the Department to conduct grand jury proceedings and other civil and criminal legal proceedings, pursuant to 28 U.S.C. 515(a); to supervise litigation and to direct Department officers in the discharge of their duties, pursuant to 28 U.S.C. 519; and otherwise to direct Department officers to detect and prosecute crimes, to prosecute offenses against the United States, to prosecute civil actions, suits, and proceedings in which the United States is concerned, and to perform such other functions as may be provided by law, pursuant to 28 U.S.C. 509, 510, 533, and 547.

The notice of proposed rulemaking provided a 30-day comment period and invited comments by agencies and the public. Timely comments were received from 20 sources.

The Department of Justice is reopening the comment period to ensure that all interested parties have a chance to comment. The Department of Justice is reopening the period for comments in light of the complex and important nature of the rule to the criminal and civil justice systems and the licenses and livelihoods of its attorneys. No decisions have been made on whether to adopt the rule or on the draft response to comments set out in the Supplementary Information. The draft response to comments in the Supplementary Information was prepared by attorneys within the Department of Justice who have been working on this issue. The Department of Justice welcomes comments on these draft responses in the Supplementary Information in addition to comments on the draft regulation.

The publication of this proposed rule is accompanied by the issuance of companion provisions in the United States Attorneys' Manual setting forth internal Department of Justice policies and procedures relating to the application of the rules, and by the publication of an interpretive commentary intended to assist Department of Justice attorneys in understanding and interpreting the rule. Copies of the United States Attorneys' Manual provisions and the commentary may be obtained by contacting the Office of Policy and Management Analysis, Criminal Division, room 2216, Department of Justice, 10th St. and Constitution Ave. NW., Washington, DC 20530.

### II. Summary of Comments Received on Prior Issuance of the Proposed Rule

Of the 20 sets of comments timely submitted, eleven were from organizations, including bar associations, public defender offices, and a state bar disciplinary board; four were from corporations; three were from individuals, including one group of individuals; and two were from Department of Justice components. Many commented on several different sections of the rule, and most made general comments regarding its purpose and structure.

The Department of Justice has considered each comment submitted by each commenter. Those determined to be significant are discussed below, either in the "general comments" section or in the context of the particular subparts or sections to which they pertain. Many of the comments are summarized or paraphrased for purposes of discussion. Comments which could be properly addressed either in the "general comments" section or in connection with a specific section (for example, a comment regarding the relationship of the rule to state and local regulations) are largely addressed in the "general comments" section. Comments directed solely to the proposed sections of the United States Attorneys' Manual or the proposed commentary are addressed only where they have a significant bearing on the text of the rule.

The following discussion uses the terms "DR 7–104" (referring to DR 7–104(A)(1) of the American Bar Association Code of Professional Responsibility) and "Rule 4.2" (referring to its successor, Model Rule 4.2 of the ABA Model Rules of Professional Conduct) interchangeably unless the context indicates otherwise.

*A. General Comments*

1. The Timing of the Rule

Six organizations, one corporation, and three individuals commented that the 30-day period for public comment should be extended to permit further analysis and debate regarding the rule. Four of these comments also stated that the intervening holiday period had effectively shortened the comment period. Five of the commenters specifically stated that a reason to extend the comment period was to permit the new Attorney General to review the proposal.

The general issues underlying the adoption of the rule (for example, the issue of whether the conduct of Department of Justice attorneys should be regulated by the states, rather than the federal government) have been the subject of extensive commentary within the legal community since at least the time of the first opinion in *United States* v. *Hammad*, 846 F.2d 854 (2d Cir. 1988), and the subsequent promulgation of the so-called "Thornburgh memorandum" in June 1989. Extensive public debate regarding those general issues has taken place at a variety of bar association meetings and conferences and in a number of legal journals.

In July 1992, the Department shared copies of the draft rule and the accompanying portions of the United States Attorneys' Manual and commentary with representatives of the American Bar Association Section on Criminal Justice and the National Association of Criminal Defense Lawyers for the purpose of soliciting their comments and reactions to the proposal. That process, while informal, resulted in significant changes and clarifications to the proposal, most notably the adoption of several significant restrictions on investigatory communications prior to the attachment of the right to counsel.

The Department's position regarding the application of DR 7–104 to Department of Justice attorneys was first formalized by the Office of Legal Counsel in the Carter Administration, and has remained essentially consistent since that time despite intervening changes in government. See "Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations," 4B Op. Off. Legal Counsel 576, 601–02 (1980) (DR 7–104 does not apply to federal criminal investigation; the only restraints on federal law enforcement activities are those established by the Constitution and existing statutes; authorized federal investigative practices are exempt from DR 7–104 by its own terms; state bar associations may not, consistent with the Supremacy Clause, impose sanctions on a government attorney who has acted pursuant to his or her federal law enforcement responsibilities).

However, the Department of Justice is reopening the comment period to ensure that all interested parties have a chance to comment. The Department of Justice received a number of comments after the deadline for submission of comments that deserve attention. The Department of Justice will treat those comments as being filed within the period for comment announced by this second notice of proposed rulemaking. The Department of Justice believes that the comments received in the past, and the responses set out below, refine the issues presented by these regulations. Accordingly, the Department of Justice requests comments on any other issues raised, or refinements of the issues set out below.

2. The Need for the Rule

Two organizations specifically commented or suggested that there was no genuine problem regarding the application to federal prosecutors of state and local ethical rules regarding communications with represented persons, and thus no need for the rule or any other corrective measures. One such organization stated that there was no need to adopt a "bright line" rule in order to clarify a prosecutor's obligations, because the existing ethical standards are "perfectly bright and clear." The other organization stated that concerns regarding lack of nationwide uniformity and an uncertain environment were caused by attempts by government attorneys to "exempt" or "excuse" themselves from local rules that are applicable to all other attorneys. Both organizations also stated that any chilling effect on government attorneys caused by uncertainty was a positive benefit, in that it would promote conservative practices on the part of government attorneys.

The Department of Justice respectfully disagrees with the foregoing comments, for the reasons set forth in the Background section of the notice of proposed rulemaking, 57 FR 54737, 54738–54741 (Nov. 20, 1992). The requirements of state and local ethical rules vary widely from jurisdiction to jurisdiction, and are frequently inconsistent or unclear. Furthermore, the fact that the controversy regarding the scope of the rule and the resulting uncertainty have had a chilling effect on government attorneys does not benefit the administration of justice if attorneys are thereby deterred from undertaking appropriate and legal communications in furtherance of legitimate criminal or civil law enforcement investigations and prosecutions.

At least three organizations and one corporation commented or suggested that Department of Justice attorneys are, or should be, subject to precisely the same ethical rules as all other attorneys, and that therefore the rule is unnecessary. One other organization commented, however, that the Department of Justice has "legitimate concerns about the application of Rule 4.2 to all aspects of law enforcement activities."

The former comments suggest a sharp departure from current federal case law. As described in more detail below, the approach adopted in these rules conforms closely to federal case law interpreting the application and scope of DR 7–104 and the Sixth Amendment That case law essentially permits communications with represented persons during the investigative stage of a proceeding, and prohibits such communications, subject to several well-defined exceptions, once formal proceedings have commenced.

The existing case law is based upon a clear recognition that Department of Justice attorneys perform distinctly different functions than attorneys engaged in the private practice of law, and that the rules governing communications with represented persons should be interpreted accordingly. A requirement that Department of Justice attorneys follow exactly identical rules as private attorneys would therefore impose substantial restrictions that do not presently exist and that do not appear to be necessary or desirable.

3. The Impact and Scope of the Rule

One organization, one corporation, and one individual commented that the regulation represents an "extreme position" or a "radical departure" from current law and past Department of Justice practices, and therefore should not be adopted. These comments seriously misunderstand the nature of the rule. The text of the rule is derived largely from existing case law and ethical rules, as set forth at great length in the draft commentary accompanying the proposed rule. Indeed, one of the principal functions of the rule is to codify existing case law and to provide for uniformity where the case law is inconsistent. Furthermore, the rule does not represent a departure from past Department of Justice practices and policies. As stated above, it has long been the policy of the Department of Justice that DR 7–104 does not prohibit legitimate law enforcement

communications with represented persons. See "Ethical Restraints of the ABA Code of Professional Responsibility on Federal Criminal Investigations," 4B Op. Off. Legal Counsel 576, 601–02 (1980). Finally, it should also be noted that the Department of Justice is simultaneously adopting restrictions and procedures, both in the rule and in the United States Attorneys' Manual, that do not presently exist or are observed only on an ad hoc basis.

4. The Relationship of the Rule to State and Local Ethical Rules

a. *The "Exemption" of Department of Justice Attorneys from State and Local Ethical Rules.* Ten organizations, two corporations, and two individuals commented that the Department of Justice should not be permitted to "exempt" its attorneys from the ethical rules applicable to all other attorneys or to "ignore" such rules. This comment was formulated in a variety of different ways, with the following as illustrative examples: the rule would allow government attorneys to "disregard" state ethical rules; the rule is an attempt by the Department to "unilaterally exempt" its attorneys from ethical rules; the rule is an attempt to "abrogate" ethical rules or to "authoriz[e] violations" of such rules; the rule would "promote violations" of DR 7–104; the rule "is a directive for Department of Justice lawyers to violate the spirit and the letter of long-standing ethical norms"; the rule "ignores the minimal ethical standard" applicable in all states; the rule "conflict[s] with" state ethical rules; and the rule is an "attempt to approve a suspension" of state ethical rules.

These comments reflect an apparent misunderstanding of the structure and purpose of the rule and of the clear text of both Rule 4.2 and DR 7–104. The rule is specifically intended to fit within the structure of both Rule 4.2 and DR 7–104, as well as analogous state and local district court rules. Both Rule 4.2 and DR 7–104 provide that communications that are "authorized by law" are exempted from the general prohibition of the rule. These rules, as substantive regulations duly promulgated by the Attorney General pursuant to statutory authority, have the force and effect of law. Accordingly, and as set forth in section 77.16, communications with represented persons that are undertaken pursuant to these rules should be considered "authorized by law" within the meaning of Rule 4.2 or DR 7–104. In nearly all jurisdictions, therefore, communications pursuant to these rules will be appropriate under existing ethical rules.

It is only in jurisdictions that have repealed the "authorized by law" exception, or that have narrowed it through judicial or other interpretation, that a conflict between the provisions of these rules and the provisions of state or local federal district court ethical rules may arise. In the event of such a conflict, Department of Justice attorneys will be required to observe these rules rather than defer to state or local regulation. To state that such a requirement provides an "exemption" from state or local ethical rules is another way of stating that the ultimate power to regulate the conduct of Department of Justice attorneys should reside with the states or the federal district courts. Those arguments are addressed at length below.

One organization commented that the rule "acknowledges no restriction on communications with represented persons other than those restrictions imposed by the Constitution, statutes, executive orders, or the regulations themselves." This comment apparently misconceives the structure and purpose of the rule. First, and as described above, communications pursuant to the rule are intended to constitute communications that are "authorized by law" within the meaning of DR 7–104 and related state and local ethical rules. The rule is thus intended to harmonize, not conflict, with existing ethical rules. Second, the rules themselves contain numerous restrictions on communications with represented persons. Third, the rules will be accompanied by companion provisions in the United States Attorney's Manual setting forth additional restrictions in the form of Department of Justice policies and procedures.

b. *The "Authorized by Law" Exception to DR 7–104.* One organization and one corporation commented that these rules would not constitute "law" within the meaning of the phrase "authorized by law" in DR 7–104 and Rule 4.2. The organization stated, without further explanation, that regulations promulgated by the Department of Justice "are certainly not what the drafters of the [ABA] Rule had in mind as 'law'." The corporation stated that the "authorized by law" exception was applicable only in "limited" circumstances, such as where a statute expressly permits *ex parte* contacts. One other organization commented that the rule "would not have the force of law."

There appears to be no reason to give such a narrow interpretation to the phrase "authorized by law" in Rule 4.2 and DR 7–104. Neither Rule 4.2 nor DR 7–104 use the phrase "authorized by statute" or any other narrowly-defined term, but rather the broader term "authorized by law"; the more restrictive interpretation thus would ignore the plain language of the ABA rules. Furthermore, the courts have upheld a variety of communications in the course of legitimate law enforcement investigations as "authorized by law" under that exception, whether or not the communication was specifically authorized by statute. See *United States* v. *Schwimmer*, 882 F.2d 22, 28 (2d Cir. 1989), *cert. denied*, 493 U.S. 1071 (1990) (communication pursuant to grand jury subpoena is "authorized by law" under DR 7–104); *United States* v. *Moody*, 762 F. Supp. 1491, 1499 (N.D. Ga. 1991) (communication pursuant to court-ordered electronic surveillance is "authorized by law"); *United States* v. *Chestman*, 704 F. Supp. 451, 454 (S.D.N.Y. 1989) (pre-indictment communication is "authorized by law" in absence of egregious prosecutorial misconduct), *rev'd on other grounds*, 903 F.2d 75 (2d Cir. 1990), *aff'd in part* 947 F.2d 551 (2d Cir. 1991) (en banc); *Weinstein* v. *Rosenbloom*, 59 Ill.2d 475, 483, 322 N.E.2d 20, 25 (1974) (communication made pursuant to validly adopted rule of state agency is "authorized by law"); *compare United States* v. *Hammad*, 858 F.2d at 839 (under DR 7–104, " a prosecutor is 'authorized by law' to employ legitimate investigative techniques in conducting or supervising criminal investigations, and the use of informants to gather evidence against a suspect will frequently fall within the ambit of such authorization").

These rules, as substantive regulations duly promulgated by the Attorney General pursuant to statutory authority, have the force and effect of law. See, *e.g.*, *Chrysler Corp* v. *Brown*, 441 U.S. 281, 295 (1979). Accordingly, communications with represented persons that are undertaken pursuant to these rules should be considered "authorized by law" within the meaning of Rule 4.2 or DR 7–104.

One organization commented that the rule is an attempt by the Department of Justice " to impose a binding federal interpretation on state law" which raises important questions of "comity and federalism." This comment misconstrues the intent of the rule. The rule does attempt to create state law or bind state courts in their interpretation of state law. Rather, the rule seeks to create federal law that harmonizes with state law and therefore avoids unnecessary federal-state conflicts.

One organization commented that the Department of Justice appears to presume that any conduct by a prosecutor which is not unconstitutional is "authorized by law" and therefore ethical. It is sufficient to note that these rules do not adopt that approach, without addressing the substantive merits of that argument as an appropriate interpretation of DR 7–104.

c. *Inconsistencies in State and Local Ethical Rules.* One individual commented that the rule addresses the problem of inconsistencies among state and local ethical rules by "hold[ing] DOJ attorneys to the lowest common denominator of ethical standards in the country." The individual further stated that Department of Justice "should set the highest standard for ethical conduct" rather than "fall to the lowest."

This comment appears to equate restrictive rules on communications with represented persons with "high" ethical standards and liberal rules on such communications with "low" ethical standards. That analysis is not helpful in determining which communications should be permitted and which should not, because it would simply require that the Department follow the most restrictive rule possible, without regard to whether such a position had any substantive merit.

The Department of Justice has generally elected to follow established case law interpreting state and local ethical rules or the Sixth Amendment in the formulation of these rules. Where the case law or the ethical rules are inconsistent, the Department has sought to adopt positions that are reasonable, fair, and consistent with federal law.

5. Whether the Department of Justice Is the Appropriate Authority To Create Standards of Conduct

Three organizations commented that rules governing communications with represented persons should not be promulgated by the Department of Justice. One such organization that "the power to promulgate and enforce * * * ethical rules must reside separately and be exercised independently from the governmental authorities and lawyers to be regulated by those rules." The other organization stated that it questioned the "tacit premise" of the rule that "the Department of Justice is the proper arbiter of the ethical standards to be imposed upon its employees."

These comments misconceive the constitutional and statutory framework in which these rules have been developed. Rules governing the conduct of Department of Justice attorneys, or any other officials of the Executive Branch, may only be promulgated pursuant to constitutional or statutory authority. The Department of Justice possesses appropriate authority pursuant to 5 U.S.C. 301 and 28 U.S.C. 516, 515(a), 519, 509, 510, 533, and 547. Such authority is, however, lacking with respect to bar associations, the states, or the federal district courts, as set forth below.

a. *Bar Association Ethical Rules.* One organization commented that the appropriate way to resolve the problem is for the Department of Justice to seek a "compromise" which "respects the importance and continued vitality" of the ABA rules, apparently through modification of the ABA Model Rules of Professional Conduct. While the Department of Justice acknowledges the good faith and sincere intentions of those within the ABA who desire such a resolution, the Department must respectfully decline to adopt that approach. First, the Department does not believe that rulemaking authority in this sensitive and difficult area may be properly delegated outside the federal government. Furthermore, even a fully successful compromise would result at most in a modification of the ABA rule. There would remain the task of attempting to modify the attorney ethical rules in the fifty states, the District of Columbia, and the ninety-four federal district courts. Such an approach would have little prospect of either a rapid or uniform solution to the problem, and therefore does not appear to be a practical alternative under the circumstances.

b. *State Ethical Rules.* Two organizations specifically commented that the proper authorities for promulgating and interpreting rules of attorney discipline for Department of Justice attorneys were the states. One such organization stated that the proposed rules "constitute a usurpation of power reserved to the states, the power to regulate the practice of law." The other organization stated that attorney licensing and discipline is "a traditional state function," and that an "attempt to establish a federal exemption from these [state] standards through an agency regulation" raises important questions of "comity and federalism."

The essential thrust of these comments is that Department of Justice attorneys should be directly regulated by the states with respect to communications with represented persons. The Department of Justice fully respect the important role played by state bar disciplinary authorities in promulgating and enforcing rules of attorney ethics. Such direct regulation of federal officials by state authorities, however, poses serious concerns under the Supremacy Clause of the United States Constitution.

It is a "seminal principle of our law," deriving from the Supremacy Clause, that unless Congress expressly and affirmatively states to the contrary, "the activities of the Federal Government are free from regulation by any state," and federal officers in the performance of their duties are immune from state control. *Hancock* v. *Train*, 426 U.S. 167, 178–79 (1976). *See Bank of the United States* v. *Halstead*, 23 U.S. (10 Wheat.) 51, 63 (1825) ("An officer of the United States cannot, in the discharge of his duty, be governed and controlled by state laws, any further than such laws have been adopted and sanctioned by the legislative authority of the United States."); *North Dakota* v. *United States*, 495 U.S. 423, 434 (1990) (state law may "run afoul of the Supremacy Clause" if it purports to "regulate the Government directly"); *Tennessee* v. *Davis*, 100 U.S. 257, 263 (1880) (federal officers acting within the scope of their authority may not "be arrested and brought to trial in a State court, for an alleged offense against the law of the State"); *In re Neagle*, 135 U.S. 1 (1890); *Ohio* v. *Thomas*, 173 U.S. 276, 283–84 (1899); *Mayo* v. *United States*, 319 U.S. 441, 447–48 (1943); *Leslie Miller, Inc.* v. *Arkansas*, 352 U.S. 187, 190 (1956) (per curiam); *Public Utilities Comm'n of California* v. *United States*, 355 U.S. 534, 544 (1958); *Clifton* v. *Cox*, 549 F.2d 722, 730 (9th Cir. 1977) (where "a federal officer does no more than is necessary and proper in the performance of his duty, the state should not be allowed to review the exercise of federal authority. One of the basic tenets in the application of the Supremacy Clause is that the states have no power to determine the extent of federal authority. To rule otherwise would allow a state to punish the exercise of federal authority under the guise of questioning the right of federal officials at."); *United States* v. *Town of Windsor*, 765 F.2d 16, 18 (2d Cir. 1985); *United States* v. *City of Philadelphia*, 798 F.2d 81 (3d Cir. 1986).

The foregoing principles have been applied by the Fourth Circuit in considering the application of state attorney ethics rules of Department of Justice attorneys. In *Kolibash* v. *Committee on Legal Ethics of W.Va. Bar*, 872 F.2d 571, 575 (4th Cir. 1989), the court observed that "[r]egulation of the legal profession admittedly implicates significant state interests, but the federal interest in protecting federal officials in the performance of their federal duties

is paramount." The court also noted that state attorney disciplinary proceedings "could be used to interfere with the duties of federal officials, including the President of the United States, the Secretary of State, and the Attorney General of the United States, all of whom may be lawyers. Federal prosecutors too may be targets of retaliatory state proceedings * * *." *Id.*

For these reasons, the Department of Justice respectfully states that direct state regulation of federal officials regarding the circumstances under which they may communicate with represented persons is inappropriate, and that the power to regulate such conduct must remain with the federal government, at lease in the absence of a clear congressional directive to the contrary.

Several commenters directed the attention of the Department to the recent opinion of the United States District Court for the District of New Mexico, *Matter of Doe*, 801 F. Supp. 478 (D.N.M. 1992), wherein the court states, among other things, that federal prosecutors are subject to regulation and punishment by state bar disciplinary authorities. The Department of Justice respectfully submits that the opinion is wrongly decided and filed an action in the United States District Court for the District of Columbia to enjoin the Chief Disciplinary Counsel of the Disciplinary Board of the Supreme Court of New Mexico from proceeding with its disciplinary action against John Doe, an Assistant United States Attorney for the District of Columbia. The District Court dismissed the government's complaint for want of personal jurisdiction over the defendant, and noted, in dicta, that the New Mexico proceeding against Doe was not barred by the Supremacy Clause because (1) the government had not demonstrated that Doe's contact with the defendant was "necessary and proper" to the AUSA's duties as a federal prosecutor, and (2) there was no "federal law" that could preempt state law. *United States* v. *Ferrara*, Civil Action No. 92–2869 (D.D.C.) (May 28, 1993). The Department of Justice is considering whether to appeal this decision.

In addition to the Supremacy Clause concerns, it should also be noted that regulation of Department of Justice attorneys by the states would almost certainly perpetuate the current difficulties regarding inconsistent and unclear interpretations of the ethical rules in the various jurisdictions.

One organization commented that the congressional requirement that Department of Justice lawyers be members of the bar of at least one state or the District of Columbia mandates that Department lawyers adhere to the ethical standards imposed by those licensing jurisdictions. The requirement that Department of Justice attorneys be members of the bar of one or more states or territories is set forth in a 1979 appropriation act, which has been carried forward in various additional appropriation acts over the past several years. Department of Justice Appropriation Act, Fiscal Year 1980, Public Law 96–132, 3(a), 93 Stat. 1040, 1044 (Nov. 30, 1979), as carried forward by, *e.g.*, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, Fiscal Year 1993, Public Law 102–395, tit. I, section 102(a), 106 Stat. 1828, 1838 (Oct. 6, 1992). That requirement clearly does not, however, constitute the "express" and "affirmative" command of Congress required under the Supremacy Clause to permit direct state regulation of federal officials. See *Hancock* v. *Train*, 426 U.S. 167, 178–79 (1976); *but see, United States* v. *Ferrara*, Civil Action No. 92–2869 (D.D.C.) (May 28, 1993).

c. *Local Federal District Court Ethical Rules.* One organization and one individual specifically commented that the proper authorities for promulgating and interpreting rules of attorney discipline for Department of Justice attorneys were the federal courts. The organization commented that "[j]udges traditionally have control, through disciplinary proceedings, over the conduct of attorneys practicing before them," and that by "attempting to get its own standard for its lawyers, the Department invites a conflict between executive and judicial power." The individual stated that the proposed rule "is probably an unconstitutional encroachment upon the supervisory powers of federal district courts, each of which has adopted its own rules of conduct and incorporated by local rule the rules of conduct of the state bar where the district is located." The individual further stated that "it is readily apparent that an Article III court operating pursuant to its inherent supervisory powers, as well as a delegated rulemaking power, carries constitutional rulemaking authority that is at least co-equal to, if not superior to, that of the Justice Department concerning the conduct of lawyers and their agents appearing before them."

As an initial matter, it is by no means certain that local federal district court rules will conflict with the present rule. A number of federal district courts have adopted local rules that adopt or incorporate ABA or state disciplinary rules in their entirety, including a version of DR 7–104 or Rule 4.2. By incorporating state bar rules, virtually all such local rules have thereby incorporated the "authorized by law" exception. Accordingly, communications pursuant to these rules will not violate any local district court rule which incorporates the ABA rule or a state analogue of that rule. If, however, a district court adopts a local rule that incorporates a state rule (such as Florida Rule of Professional Conduct 4–4.2) not containing the "authorized by law" exception, or if the court narrowly interprets that exception, a potential conflict may exist with these rules. See N.D. Fla. Local Rule 4(G)(1) (incorporating "the Code of Professional Responsibility of the American Bar Association as modified and adopted by the Supreme Court of Florida to govern the professional behavior of the members of The Florida Bar"); M.D. Fla. Local Rule 2.04(c) (same, except substituting "Model Rules of Professional Conduct" for "Code of Professional Responsibility"); compare S.D. Fla. Local Rule 16(c) (incorporating the "current Canons of Professional Ethics of the American Bar Association"). Whether an actual conflict exists would depend, of course, on the particular circumstances of an individual case, including the manner in which the district court interprets or applies its local rule.

If such a conflict arises, the question then becomes whether such a rule—adopted by a federal district court to govern the out-of-court conduct of Department of Justice officials—is a valid exercise of judicial authority. The power to adopt such a rule must be derived from one of two sources: the local rulemaking power specifically granted to the courts pursuant to 28 U.S.C. 2071, Fed. R. Crim. P. 57, and Fed. R. Civ. P. 83, or the court's inherent supervisory powers.

The local rulemaking authority of the federal district courts is narrowly limited. As the Notes of the Advisory Committee on Criminal Rules to Fed. R. Crim. P. 57 make clear, that authority is limited to prescribing local practices as to "matters of detail." Accordingly, to the extent that a local federal district court rule seeks to prohibit otherwise-legal conduct of Department of Justice attorneys in the exercise of their out-of-court investigatory duties, that rule would almost certainly exceed the local rulemaking authority of the court. *Baylson* v. *Disciplinary Board*, 975 F.2d 102, 108–09 (3d Cir. 1992), *cert. denied* 61 U.S.L.W. 3651 (U.S. No. 92–1021, March 22, 1993); *United States* v. *Klubock*, 832 F.2d 649, 658–660 & n.25 (1st Cir. 1987) (Campbell, J., dissenting),

832 F.2d 664, 668–69 (1st Cir. 1987) (Campbell, J., dissenting en banc); see Johnson, "The Impact of Disciplinary Rule 7–104 on Law Enforcement Contact with Represented Persons," 40 U. Kan. L. Rev. 63, 152–54 (1992); see also Cramton & Udell, "State Ethics Rules and Federal Prosecutors: The Controversies over the Anti-Contact and Subpoena Rules," 53 U. Pitt. L. Rev. 291, 316 (1992) (criticizing lack of uniformity of local district court rules adopting ethical rules and noting that "the substantive and procedural rights of persons subject to federal law should not vary by state or by judicial district").

The ability of district courts to adopt similar restrictions through the exercise of the supervisory power is likewise narrowly circumscribed. The courts have no general supervisory power over federal prosecutors. See, *e.g., United States* v. *Russell*, 411 U.S. 423, 435 (1973) (federal judiciary does not have a "'chancellor's foot' veto over law enforcement practices of which it does not approve"); *United States* v. *Hasting*, 461 U.S. 499 (1983); *Baylson* v. *Disciplinary Board*, 975 F.2d 102, 109–11 (3d Cir. 1992), *cert. denied* 61 U.S.L.W. 3651 (U.S. No. 92–1021, March 22, 1993); *United States* v. *Simpson*, 927 F.2d 1088 (9th Cir. 1991); Johnson, *supra*, 40 U. Kan. L. Rev. at 154–60. In particular, the supervisory power may not be used as a means of prescribing standards of prosecutorial conduct for out-of-court activities that do not violate clear constitutional or statutory norms. See *United States* v. *Williams*, 112 S. Ct. 1735, 1742 (1992) (supervisory power may not be used "as a means of prescribing standards of prosecutorial conduct before the grand jury in the first instance"). Accordingly, it appears clear that a local federal district court could not prescribe, pursuant to its supervisory power, standards for prosecutorial communications with represented persons for communications that do not violate the Sixth Amendment or other federal law.

At least two other constitutional or legal issues raise serious impediments to local rulemaking by the federal district courts with regard to the out-of-court conduct of Department of Justice officials. First, because prosecutors are not only lawyers (and therefore "officers of the court"), but also officers of the Executive Branch performing executive duties, judicial regulation by local district court rules of their out-of-court functions raises serious separation of powers concerns. See Moore, "Intra-Professional Warfare between Prosecutors and Defense Attorneys: A Plea for an End to Current Hostilities," 53 U. Pitt. L. Rev. 515, 524 (1992) ("Unlike many government lawyers * * * prosecutors often perform tasks which are primarily executive in nature") (footnote omitted); Johnson, *supra*, 40 U. Kan. L. Rev. at 162–68 (arguing that application of DR 7–104 to investigative communications by prosecutors violates separation of powers); see also *In re Grand Jury Proceedings*, 613 F.2d 501, 504–05 (5th Cir. 1980) (judiciary may not intrude into executive branch decisions concerning the prosecution of cases). Second, and in any event, conflicting local rules must give way to the command of Congress empowering the Attorney General to promulgate regulations governing the "conduct" of Department of Justice attorneys under relevant statutory authority. See *Michaelson* v. *United States*, 266 U.S. 42, 65–66 (1924) (Congress can legislate and overrule court practice even in areas indisputably involving the courts' "inherent power").

Finally, there remains the practical difficulty that the ninety-four different federal district courts will almost certainly not adopt consistent and clear interpretations of DR 7–104. See generally *Rand* v. *Monsanto Co.*, 926 F.2d 596, 600–03 (7th Cir. 1991) (noting great variety of approaches taken by federal district courts to adopting ethical rules, and criticizing resulting "balkanization of litigation").

Accordingly, and for the foregoing reasons, the Department of Justice respectfully submits that the regulation of Department of Justice officials regarding communications with represented persons is not an appropriate subject for local federal district court rulemaking.

6. Department of Justice Rulemaking Power

One organization commented that it was "doubtful" whether Congress "could alter the sources of ethical standards and the enforcement mechanism governing the conduct of DOJ lawyers" because of the "paramount interests of the judicial branch in the conduct of members of the legal profession." The organization further stated that "[i]n any event, Congress has not chosen to do so." Another organization commented that "the Department lacks the power to issue a regulation which purports to establish ethical standards for Department of Justice employees". Another organization commented that the Department of Justice does not have "the power to legislate or to promulgate rules of evidence."

These comments misconceive both the congressional authority to enact legislation governing the judicial branch and the scope of existing federal status. First it is well-established that Congress can legislate and overrule court practices even in areas indisputably involving the courts' "inherent power." See *Michaelson* v. *United States*, 266 U.S. 42, 65–66(1924). It is thus clear that Congress has the power to prescribe standards of conduct for attorneys in federal court, notwithstanding the traditional involvement of the courts in attorney licensing and discipline. It is also well-established that Congress has the power to prescribe standards of conduct for Executive Branch employees. See *Ex Parte Curtis*, 106 U.S. 371, 372 (1882).

Second, Congress has by statute empowered the Attorney General to promulgate regulations such as these. The Attorney General is granted certain specific statutory powers under federal law, including the power (through intermediary officials) to conduct grand jury proceedings or any other kind of civil or criminal legal proceeding; to conduct litigation, and to "secur[e] evidence" therefor; to detect and prosecute crimes; and to prosecute "civil actions, suits, and proceedings in which the United States is concerned." 28 U.S.C. 515(a), 516, 533, 547; see 28 U.S.C. 509, 510. The Attorney General is also authorized to "supervise all litigation" to which the United States is a party and to direct United States Attorneys and other subordinate attorneys in the "discharge of their respective duties." 28 U.S.C. 519. Furthermore, as the head of an Executive Department, the Attorney General has the authority to prescribe regulations for the "government" of the Department of Justice, "the conduct of its employees," and "the distribution and performance of its business." 5 U.S.C. 301.

The Attorney General is thus authorized, among other things, to prescribe regulations governing the "conduct" of Department of Justice attorneys in the course of "securing evidence" and discharging their duties. Traditionally, the issue of whether attorneys may "secure evidence" through communications with represented persons, where not prohibited by the Constitution, has been treated as one of attorney "conduct," not as a matter of criminal or civil procedure or substantive law. By treating the issue as a matter of attorney conduct under 5 U.S.C. 301, these rules follow that traditional approach. The promulgation of these rules is thus directly authorized by federal statute.

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7. The Preemptive Effect of the Rule

At lease two organizations commented regarding the legal authority of the Department of Justice to preempt state regulation of federal officials through attorney ethical rules. One organization stated that none of the statutes cited in the "Purpose and Authority" section of the proposed rule "confers the power to preempt or displace" state ethical rules, or to "override the power of state and federal judges to enforce ethical standards in their respective courts." The other organization similarly stated that the Department of Justice does not have the power to "supplant" state and local court rules governing attorney ethics under existing federal statutes, and that "[w]hen the state law to be preempted by federal law concerns matters traditionally within the realm of the states, the federal law must demonstrate a clear and manifest purpose to preempt the state law on that subject."

These comments reflect an apparent misunderstanding of the limits of the authority of the states to impose direct regulation on federal officials, as well as principles of federal preemption. First, and as set forth above,, the states may not directly regulate or punish federal officials for acts undertaken in their official capacities, or otherwise substantially interfere with the lawful functions of federal officials. Conflicting state rules regarding communications with represented persons thus may not be enforced against Department of Justice officials. Moreover, to the extent that the issue may be considered one of federal preemption of state laws, it is clear that conflicting state rules must yield to the federal rule. While a "clear and manifest purpose" on the part of Congress to preempt state law is required where Congress legislates in "a field which the States have traditionally occupied," *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), the regulation of the conduct of federal officials in the performance of their duties is not a matter "traditionally occupied" by the states. Furthermore, and in any event, such congressional purpose to preempt may be evidenced where "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the subject." *Rice*, 331 U.S. at 230; *Fidelity Federal Sav. & Loan Ass'n* v. *De La Cuesta*, 458 U.S. 141, 153 (1982); see *Hines* v. *Davidowitz*, 312 U.S. 52 (1941). The dominant federal interest in regulating the conduct of federal officials in the performance of their official duties is readily apparent. Finally, "[e]ven where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent it actually conflicts with federal law." *Hillsborough County* v. *Automated Medical Laboratories, Inc.*, 471 U.S. 707, 713 (1985). Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142–43 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines* v. *Davidowitz*, 312 U.S. at 67. See *Baylson* v. *Disciplinary Board*, 975 F.2d 102, 111–12 (3d Cir. 1992) (state ethical rules regarding grand jury subpoenas to attorneys may not be enforced against federal prosecutors under Supremacy Clause because of conflict with federal law), *cert. denied* 61 U.S.L.W. 3651 (U.S. No. 92–1021, March 22, 1993). Accordingly, and for the foregoing reasons, the enforcement of conflicting state ethical rules must yield to the federal rule under the Supremacy Clause of the Constitution.

8. Relationship of Rule to Other Ethical Rules

One organization commented that the rule does not "acknowledge the importance of the [ABA] Rules of Professional Conduct except as they apply to defense attorneys in multiple representation situations." This comment misconceives the purpose of the rule. As stated in the Background section of the notice of proposed rulemaking, 57 FR 54737, 54741 (Nov. 20, 1992), these rules are not intended to address the general question of the application of state rules of professional conduct to Department of Justice attorneys, but only the relatively narrow issue of communications with represented persons.

Two organizations commented that the rule would set a precedent that the Department of Justice might employ in areas other than the issue of communications with represented persons. One such organization stated that "there would be no impediment to establishing an entirely separate set of ethical standards for Department of Justice lawyers which would supplant state bar requirements." The Department of Justice respectfully submits that the potential effect of the rule as a precedent is entirely speculative, and therefore not an appropriate basis to withdraw the rule. The argument concerning the potential supplanting of state bar ethical requirements is in essence a restatement of the argument that the Department of Justice should not promulgate regulations regarding attorney conduct that may conflict with state requirements, addressed above.

Three organizations commented that the approach taken by the Department of Justice might be employed by other federal agencies to "exempt" their attorneys from ethical rules or "to permit conduct by their lawyers which is inconsistent with ethical rules." These comments raise collateral issues. The question of whether another agency has the authority to issue regulations governing the conduct of its attorneys in a particular area is entirely dependent on that agency's particular statutory authority, and need not be addressed at this time.

9. Lack of Participation of Outsiders in Drafting Rule

One individual commented that the proposed rule should not have been drafted "apparently without input from judges, private lawyers, academics and others" from outside the Department of Justice who "traditionally play a role in shaping rules of professional conduct." This comment fails to appreciate the purpose of the public notice and comment period. The Department of Justice did, in fact, informally consult with representatives of the organized bar during the drafting process, as noted above. Furthermore, Department attorneys consulted a wide variety of articles, papers, and other materials from the academic and judicial communities and the private bar in the course of preparing the proposal. The degree of prepublication consultation was unusually broad, not sparse as the comment suggests. Moreover, the rule is again proposed for further comments in order to ensure the broadest range of views and comments from interested persons.

*B. Comments Relating to Particular Sections*

1. Section 77.1: Purpose and Authority

Comments relating to this section are addressed in the General Comments section above.

2. Section 77.2: Definitions

One Department of Justice component commented that the definitions in the rule should provide "greater distinction, perhaps in the way of illustrative examples, between covered and non-covered civil activities, especially for those Department attorneys whose practice is generally conducted in forums other than federal district court," such as administrative tribunals. In response to this comment, a sentence

has been added to § 77.2(f) to make clear that the phrase "action or proceeding" includes any action or proceeding "before any court or other tribunal."

3. Section 77.3: Represented Person

One organization commented that "[w]ith only rare exceptions, in-house counsel represent the corporation concerning all subject matters," and that the rule "attempts to narrow representation in a way that does not recognize the realties of in-house practice."

This comment appears to misconstrue the definition of "represented person" contained in § 77.3. Under ordinary circumstances, the representation of a corporation by in-house counsel would readily fall within the three-part test set forth in the rule. In order to clarify the matter, however, the Department will revise the commentary to make clear that a corporation represented by in-house counsel may qualify as a "represented person" for purposes of the rules.

4. Section 77.4: Constitutional and Other Limitations

The Department of Justice received no specific comments regarding this section.

5. Section 77.5: Criminal Enforcement—General Rule—Investigative Stage

a. *Restrictions on Investigatory Communications.* Three organizations and two corporations commented that the rule should impose significant restrictions on investigatory communications prior to the attachment of the Sixth Amendment right to counsel. One of the organizations and two of the corporations stated that such contacts should be prohibited during the pre-indictment stage, because of the importance of the protection that an attorney can provide during that time. One organization stated that "the pre-presentment, pre-indictment stage" in criminal matters was the time "when most, if not all, prosecutorial discretion is exercised," and that "[c]orporate counsel must be informed if the Department of Justice desires to speak to current or former employees" at that stage. Another corporation stated that neither DR 7–104 nor Model Rule 4.2 "draw any distinction in the application of the rule to the investigative versus the prosecutorial stage of a matter,"and cited the Hammad case as an example of the "reluctance" of some courts "to draw such distinctions." Another corporation stated that the Comment to Rule 4.2 states that the rule is intended to apply to "any person, whether or not a party to a formal proceeding," and further stated that "an adversarial relationship between a government attorney and a person under investigation exists before the commencement of a formal proceeding" and that therefore the rule does not adequately protect the person or the attorney-client relationship. One individual, however, stated that "[o]n balance, direct communications with represented clients can fairly be justified in the investigative stage of a criminal case."

The suggestion that the rule impose a blanket prohibition against communications with represented persons prior to indictment clearly sweeps too broadly. Such a rule would prohibit, for example, many routine undercover operations and many routine instances of police questioning that are currently permitted under existing law.

By not imposing such restrictions on investigative communications, and generally permitting communications occurring prior to the attachment of the right to counsel in the course of law enforcement investigations, the rule follows well-established case law. Every federal court to consider the issue, save one, has concluded that investigatory, non-custodial communications with represented persons prior to the attachment of the right to counsel do not violate DR 7–104. See *United States* v. *Ryans*, 903 F.2d 731, 739 (10th Cir.) ("We are not convinced that the language of the rule calls for its application to the investigative phase of law enforcement"), *cert. denied*, 111 S. Ct. 152 (1990); *United States* v. *Sutton*, 801 F.2d 1346, 1365–66 (D.C. Cir. 1986) (DR 7–104 "was never meant to apply to [pre-indictment, non-custodial] situations such as this one"); *United States* v. *Dobbs*, 711 F.2d 84, 86 (8th Cir. 1983) (DR 7–104 "does not require government investigatory agencies to refrain from any contact with a criminal suspect because he or she previously had retained counsel"); *United States* v. *Fitterer*, 710 F.2d 1328, 1333 (8th Cir.) (DR 7–104 does not prohibit prosecutors from using undercover informants to communicate with represented persons prior to indictment), *cert. denied*, 464 U.S. 852 (1983); *United States* v. *Jamil*, 707 F.2d 638 (2d Cir. 1983) (prosecutor's use of undercover information in pre-indictment, non-custodial setting to communicate with represented person does not violate DR 7–104; *United States* v. *Vasquez*, 675 F.2d 16, 17 (2d Cir. 1982) (DR 7–104 was not intended to prohibit use of undercover informants prior to indictment); *United States* v. *Kenny*, 645 F.2d 1323, 1339 (9th Cir.) ("the government's use of such investigative techniques at this stage of a criminal matter does not implicate the sorts of ethical problems addressed by the Code"), *cert. denied*, 452 U.S. 920 (1981); *United States* v. *Weiss*, 599 F.2d 730, 739 (5th Cir. 1979) (DR 7–104 does not prohibit prosecutors from engaging in investigatory communications); *United States* v. *Lemonakis*, 485 F.2d 941, 953–55 (D.C. Cir. 1973) (DR 7–104 does not apply prior to indictment, and use of undercover informant did not violate rule in any event), *cert. denied*, 415 U.S. 989 (1974); *United States* v. *Infelise*, 773 F. Supp. 93, 95 (N.D. Ill. 1991) (DR 7–104 "does not apply to non-custodial, investigative processes that occur before the initiation of criminal proceedings"); *United States* v. *Buda*, 718 F. Supp. 1094, 1098 (W.D.N.Y. 1989); *United States* v. *Chestman*, 704 F. Supp. 451, 454 (S.D.N.Y. 1989), *rev'd on other grounds*, 903 F.2d 75 (2d Cir. 1990), *aff'd in part*, 947 F.2d 551 (2d Cir. 1991) (en banc); *United States* v. *Galanis*, 685 F. Supp. 901, 903–04 (S.D.N.Y. 1988); *United States* v. *Guerrerio*, 675 F. Supp. 1430, 1438 (S.D.N.Y. 1987). But see *United States* v. *Hammad*, 858 F.2d 834, 840 (2d Cir. 1988) (pre-indictment communications may be improper if accompanied by "misconduct" on the part of the government); see also Comment to ABA Model Rule 4.2 (notwithstanding use of the term "party," the rule does not require that a person be "a party to a formal legal proceeding").

The Department of Justice nevertheless acknowledges that some restrictions on overt communications during the investigative stage may be appropriate. Accordingly, the Department is issuing companion provisions in the United States Attorneys' Manual which set forth certain policies with regard to overt investigatory communications that will have a restrictive effect in many instances. The specific provisions of the Manual are discussed more fully below.

One individual commented that the various restrictions on investigatory communications set forth in the United States Attorneys' Manual, while "meaningful," should be included in the text of the rule itself. The individual stated that "[i]t is unclear whether prosecutorial conduct at odds with the restrictions contained in the U.S. Attorneys' Manual could be the basis of a sanction in the context of judicial proceedings."

The Department of Justice has carefully considered this suggestion, and has determined that the restrictions are more properly placed within the

U.S. Attorney's Manual as internal Department policies.

First, these restrictions, while representing sound policy choices, are not required by, or derived from, existing case law. Because they have not been created against an extensive backdrop of judicial decisionmaking and experience, but are entirely new, there is a significant possibility that the Department may inadvertently overregulate (or, indeed, underregulate) the conduct of its attorneys with regard to these restrictions. The enhanced flexibility of internal policy making processes over formal rulemaking will permit more rapid responses to inadvertent errors in the restrictions. The Department of Justice accordingly believes that the restrictions should remain internal policy of the Department, or at a minimum should remain so until substantial experience with their application has been gained.

Second, the purpose of the restrictions on certain investigatory communications is not limited solely to protection of the attorney-client relationship, but also to promote good faith negotiations of agreements and settlements, to enhance professional courtesy between attorneys, and to promote public confidence in the fairness and professionalism of Department attorneys. The restrictions thus serve somewhat different goals, and are not necessarily an integral part of the overall rules.

Third, one of the primary advantages to placing these restrictions in the rules, rather than in the Manual, would appear to be to make the restrictions easier to locate, and therefore to provide greater assurance that Department attorneys will comply with the restrictions. While the Department agrees that it would be beneficial from the standpoint of convenience and efficiency to place all relevant rules, restrictions, and policies in a single set of comprehensive rules, the same may be said of virtually any Department policies. Such considerations do not normally outweigh factors such as whether the subject matter is an appropriate one for formal rulemaking.

Fourth, the United States Attorneys' Manual contains a great number of significant Department of Justice policies, many of which impose substantial restrictions on Department attorneys. There is no evidence that such policies are routinely overlooked by Department attorneys; on the contrary, the failure to follow such policies is very rare, and provides no reason to conclude that the restrictions will not be effective.

The Department does not believe that the Manual will be used as the basis for judicial sanctions, such as the suppression of evidence, in a pending matter. Both the rule itself, in § 77.15, and the United States Attorneys' Manual, in section 1–1.100, specifically state that they are not intended to confer rights on third parties, or otherwise to have extra-disciplinary consequences. In this respect, both the rule and the Manual follow the approach of the ABA rules. See ABA Code of Professional Responsibility, Preliminary Statement; ABA Model Rules of Professional Conduct, Scope; see generally Johnson, "The Impact of Disciplinary Rule 7–104 on Law Enforcement Contact with Represented Persons," 40 U. Kan. L. Rev. 63, 168–71 (1992).

b. *Overt Communications.* One organization commented that the rule does not pay sufficient heed to "the significant legal differences between undercover and overt contacts." The organization stated that overt contacts are particularly inimical to the attorney-client relationship; "in an overt contact, a prosecutor or agent is not carrying on the charade of a criminal conversation, but rather seeking to engage the represented person in a non-criminal discussion about precisely the subject matter on which that person has engaged counsel for advice." The organization further stated that "[m]any courts that have tolerated pre-indictment undercover contacts have nonetheless criticized government attorneys for authorizing overt contacts prior to indictment without the prior consent of counsel," citing, among other sources, several federal appellate opinions.

The Department of Justice agrees with the comment to the extent that it observes that certain types of overt communications in the investigative stage may have an unduly harmful effect on the attorney-client relationship. In order to minimize direct contact between government attorneys and represented persons, the United States Attorneys' Manual provides that government attorneys in criminal matters, as a general rule, should personally engage in such communications only after careful consideration of whether the communication is more appropriately handled by law enforcement agents. USAM 9–13.221. In addition, the Manual addresses five categories of overt government-initiated communications: (1) Communications intended to discourage attorney consultation; (2) communications intended to elicit lawful defense strategy or legal arguments of counsel; (3) communications for the purpose of negotiating or concluding a plea agreement or settlement; (4) certain communications occurring during ongoing good faith negotiations with counsel, discussed more fully below; and (5) communications after providing counsel with assurances that such communications would not be attempted. The Manual prohibits certain types of communications falling within these categories, and states that certain others should be avoided in the absence of compelling law enforcement reasons. USAM 9–13.222–26.

The Department of Justice disagrees, however, with the organization's analysis of the cases cited. Two of the cases involved communications with represented persons after the attachment of the Sixth Amendment right to counsel, rather than communications during the investigative phase. See *United States* v. *Thomas*, 474 F.2d 110, 112 (10th Cir. 1973) (communication with defendant after appointment of counsel and preliminary hearing); *Coughlan* v. *United States*, 391 F.2d 371, 372 (9th Cir.) (communication with defendant after appointment of counsel and arraignment), *cert. denied*, 393 U.S. 870 (1968). Significantly, both of those cases predate the Supreme Court's decision in *Michigan* v. *Jackson*, 475 U.S. 625, 636 (1986), which held that if the government initiates an interrogation after a defendant's assertion of his right to counsel, at an arraignment or similar proceeding, any waiver of the defendant's right to counsel for police-initiated interrogation with respect to the pending matter is presumed invalid. Thus, the case cited, which held that such practices violate attorney ethical rules, appear to have been superseded entirely by *Michigan* v. *Jackson*, which held that such practices violate the Sixth Amendment. Furthermore, and in any event, the practices complained of in the cases cited in the comment are prohibited by the rule.

The other two cases involved custodial interrogation of an arrestee after the appointment of counsel at an initial appearance before the magistrate See *Wilson* v. *United States*, 398 F.2d 331, 333 (5th Cir. 1968), *cert. denied*, 393 U.S. 1064 (1969); *United States* v. *Four Star*, 428 F.2d 1406, 1407 (9th Cir.), *cert. denied*, 400 U.S. 947 (1970). In keeping with well-established constitutional law, these rules do not generally prohibit custodian interrogations, prior to the attachment of the right to counsel, of persons who are represented by counsel. See *e.g.*, *Moran* v. *Burbine*, 475 U.S. 412, 428–32 (1986) (custodial interrogation of represented

person prior to arraignment or formal charging does not violate Sixth Amendment; attachment of the right to counsel should not depend on "the fortuity of whether the suspect or his family happens to have retained counsel prior to interrogation"); see generally *United States* v. *Rondon*, 614 F. Supp. 667, 670–75 (S.D.N.Y. 1985). The commentary, however, will provide that government attorneys are expected to be particularly scrupulous as to the rights of defendants in custody, and to be cognizant of judicial criticisms of certain practices relating to custodial interrogations. In addition, government attorneys will be required to observe the requirement in the United States Attorneys' Manual that they personally engage in such communications "only after careful consideration of whether the communication would be more appropriately handled by law enforcement agents." USAM 9–13.221.

One organization commented that pre-indictment communications should be prohibited where a lawyer for a party or witness not under indictment is in regular contact with the government about potential criminal litigation, ongoing civil litigation, or appearances before a grand jury.

This comment calls for more comprehensive restrictions than appear to be appropriate under the circumstances. Such a prohibition would apply, for example, to undercover communications, and would require that an undercover operation be immediately terminated once the person's lawyer begins communicating with a government attorney about potential criminal proceedings. Nevertheless, the Department of Justice believes that some restrictions to protect ongoing good faith negotiations are appropriate. Accordingly, section 9–13.225 of the United States Attorneys' Manual will provide that during the investigative stage, and absent compelling law enforcement reasons, attorneys for the government should avoid initiating overt, non-custodial communications with a represented person outside the presence of counsel if (a) the attorney for the government and counsel for the represented person are engaged in ongoing good faith negotiations regarding anticipated criminal or civil charges arising out of past criminal activity or civil violations by the represented person, and (b) the communication with the represented person is intended to elicit incriminating information regarding the past criminal activity or civil violations under negotiation, or otherwise to affect the course of the negotiations. This provision is intended largely to facilitate good faith plea or settlement negotiations and is grounded on notions of professional courtesy as well as protection of the attorney-client relationship. The negotiations must, of course, involve ongoing, good faith attempts between the parties to resolve anticipated charges, not mere unilateral proposals or suggestions. The restriction no longer applies once negotiations have proved unsuccessful or are otherwise concluded. Undercover communications are not affected by the provision.

c. *The Timing of Formal Charges.* One organization, one corporation, and one individual commented that the government may manipulate the timing of bringing formal charges in order to communicate with represented persons. The corporation stated that "the applicability of a disciplinary rule should not be conditioned on a tactical decision entirely within the control of the government attorney."

These comments appear to overstate considerably the realistic potential for prosecutorial abuse. Under current law, the Sixth Amendment right to counsel does not attach until the initiation of adversary judicial proceedings, such as the filing of an indictment. After the right has attached and has been asserted, law enforcement officers may no longer initiate communications with represented persons for the purpose of discussing the pending criminal charges. See *Massiah* v. *United States*, 377 U.S. 201, 206 (1964). If the prosecutor has the capacity to "manipulate" the charging process in order to communicate with represented persons regarding uncharged crimes, that capacity presently exists under the Sixth Amendment. There appears to be no evidence, however, of systematic prosecutorial abuse of the charging process under the Sixth Amendment, and accordingly there is no reason to suspect that prosecutorial practices under the rule will be substantially different. Appropriate language will, however, be added to the commentary to warn against misuse of the charging power. It should also be noted that the time of arrest, or the time when a person becomes a target of a grand jury investigation, is no more or less susceptible of prosecutorial "manipulation" than the time of formal charging, and thus the selection of either one as the triggering event would not provide significant additional protection against abusive practices.

6. Section 77.6: Criminal Enforcement; General Rule; Prosecutive Stage

One individual commented that the dividing line between the investigative and prosecutive stages of a criminal proceeding should not be the point at which the Sixth Amendment right to counsel attaches, but rather the time of arrest or the point at which defendant becomes a target of a criminal investigation. The individual stated that "[a]t those points, when there is a substantial certainty that the defendant will face criminal charges, the interests protected by DR 7–104(A)(1) are implicated virtually to the same extent as they are post-indictment, and the government's investigative interests are not substantially stronger."

The Department of Justice believes that the attachment of the Sixth Amendment right to counsel is an appropriate dividing line between the investigatory and prosecutive stages. That dividing line is well-established in Sixth Amendment jurisprudence, and has not proved to be unduly burdensome or unworkable. Extension of the dividing line back to the time of arrest potentially could have a dramatic effect on current law enforcement practices; among other things, such a rule might substantially limit routine post-arrest questioning by law enforcement officers. Extension of the line even farther back, to the point when a defendant becomes a target of an investigation, would preclude many currently routine undercover and overt communications. Furthermore, the precise time at which a person becomes a "target" of a grand jury investigation is often not readily ascertainable, and indeed may be almost impossible to ascertain.

7. Section 77.7 Criminal Enforcement; Exceptions; Prosecutive Stage

a. *Relationship of Exceptions to Sixth Amendment.* Two organizations, one corporation, and one individual commented that the scope of the rule should not be coextensive with the protections of the Sixth Amendment. The individual stated that 77.7 in particular is objectionable because it would permit post-indictment communications with represented defendants "in virtually every situation in which the Sixth Amendment would permit them." The two organizations and the corporation stated that whether a communication violates the Sixth Amendment should not serve as the determining factor in establishing appropriate rules of conduct for attorneys, because ethical standards serve different purposes or "higher" goals than constitutional provisions.

Only one of the foregoing comments provided any specific examples of post-indictment communications that would be appropriate under the Sixth

Amendment but that should be nevertheless prohibited under these rules; the individual suggested that it may be appropriate to impose limitations on communications regarding uncharged past crimes. Furthermore, none of the comments articulated any reason why restrictions on communications with represented persons in the prosecutive stage should not be coextensive with the Sixth Amendment restrictions, except to note generally that the restrictions in DR 7–104 and the Sixth Amendment are intended to serve differing purposes.

Section 77.7 is, as the comments indicate, derived principally from Sixth Amendment case law. Unlike constitutional jurisprudence in other areas, that case law does not simply set broad constitutional minimums, but provides a fairly detailed set of procedural rules that are now reasonably well-established and familiar to law enforcement. Furthermore, the Sixth Amendment jurisprudence over the past several decades demonstrates a careful effort to balance the competing interests of protection of the right to counsel and promotion of effective law enforcement. Accordingly, the Department believes that it is appropriate for the regulation to follow the Sixth Amendment case law regarding communications in the prosecutive stage. The Department has, in addition, imposed certain policies and procedures in the United States Attorneys' Manual to provide additional safeguards beyond those required by the Sixth Amendment.

One organization commented that the rules should not be coextensive with the Fifth Amendment protections regarding custodial interrogation. The Department of Justice acknowledges that the rule does not specifically address custodial interrogation, except to require in Section 77.4 that all communications comply with constitutional requirements, including the Fifth Amendment. The comment did not, however, suggest particular restrictions that are not mandated by the Constitution but which nevertheless appeared to be appropriate, nor did it articulate a reason why further restrictions would be desirable.

One individual commented that the exceptions in § 77.7 "virtually swallow up the general rule [in § 77.6] forbidding *ex parte* contacts after indictment." That comment considerably overstates the scope of the exceptions in § 77.7, which are derived directly from existing case law under the Sixth Amendment. In fact, §§ 77.6 and 77.7, like the Sixth Amendment cases on which they are based, impose substantial restrictions, such as the almost complete prohibition on communications with represented persons concerning pending criminal matters.

b. *Section 77.7(d):* Investigation of New or Additional Crimes. One individual commented that the exception set forth in § 77.7(d) for communications involving new or additional criminal activity is too broad, because in the course of interrogation regarding additional crimes the prosecutor or agents "are likely to create the erroneous impression" that it is in defendant's best interests to cooperate with the government, which in turn may lead the defendant to make incriminating statements regarding the charged crime and may undermine the attorney-client relationship.

As set forth above, §§ 77.7(d) is derived from established case law interpreting the Sixth Amendment right to counsel. Among other things, the Sixth Amendment renders inadmissible in the prosecution's case in chief statements "deliberately elicited" from the accused without an express waiver of the right to counsel. *Michigan* v. *Harvey*, 494 U.S. 344, 348 (1990); *Maine* v. *Moulton*, 474 U.S. 159, 176 (1985); *United States* v. *Henry*, 447 U.S. 264, 274 (1980); *Brewer* v. *Williams*, 430 U.S. 387, 399 (1977); *Massiah* v. *United States*, 377 U.S. 201, 206 (1964). The restriction applies whether the elicitation is undercover or overt, and regardless of who initiates the communication leading to the elicitation. *Brewer* v. *Williams*, 430 U.S. at 400; *United States* v. *Henry*, 447 U.S. at 273; *Maine* v. *Moulton*, 474 U.S. at 174. The prohibition against deliberate elicitation of incriminating statements does not, however, prevent the use of statements that are volunteered by the defendant, or that are made freely to cooperating witnesses without elicitation. *Kuhlmann* v. *Wilson*, 477 U.S. 436, 459 (1986).

The Sixth Amendment prohibition against "deliberate elicitation" of incriminating information is incorporated into § 77.6(a) of the rule. The Department of Justice does not believe that additional restrictions are necessary or appropriate, in light of the relatively clear line of demarcation in the case law between permissible and impermissible elicitation. If a prosecutor oversteps the boundary, and deliberately elicits such information, the prosecutor risks both suppression of the evidence and personal discipline by the Department, which are ample deterrents to deliberate violations.

One organization and one individual commented that the government may have an incentive to manipulate the timing of bringing formal charges in order to communicate with represented persons under the "new or additional crimes" section. The individual stated that the rule would "encourage prosecutors to manipulate the grand jury process precisely for the purpose of exploiting the misimpressions created when the defendant is contacted without his lawyer being present." The individual provides an example of a prosecutor who might otherwise have asked the grand jury to indict the defendant on three bank robbery charges who indicts only on a single charge in order to contact the defendant to discuss the uncharged robberies. The individual states that the prosecutor would do so in order "to take advantage of the defendant's almost inevitable misimpression that he will receive lenient treatment with respect to the pending charges by cooperating with the law enforcement authorities in defense counsel's absence."

The Department of Justice believes that this comment overstates the potential for prosecutorial abuse, for essentially the reasons set forth above in the section captioned "The Timing of Formal Charges." Furthermore, and as stated above, a prosecutor who deliberately elicits incriminating information from a represented person regarding pending criminal charges risks both suppression of the evidence and personal discipline within the Department.

One organization commented that the rule would permit actual or potential conflicts of interest on the part of defense counsel to be created and remain undisclosed for substantial periods of time. The organization provided an example from a currently pending matter of a situation where allegedly an attorney represented two defendants who were indicted on unrelated charges, one of whom began cooperating with the government against the other without the attorney's knowledge. The organization stated that because the cooperating defendant was providing information to the government regarding new or additional criminal activity, or alternatively would not be considered represented with regard to the cooperation, the rule would permit the attorney to continue representing both defendants without knowledge of the conflict of interest. The organization further stated that such an arrangement would have a substantially detrimental impact on the rights of both defendants.

The Department of Justice believes that the potential for the creation of conflicts of interest does not provide a reason to prohibit communications with

represented persons regarding new or additional activity. Such a rule would essentially require the government to forego entirely receiving potentially significant evidence (for example, testimony regarding a planned murder) from a person who is willing to cooperate, solely on the basis that such cooperation may involve the person's attorney in a conflict of interest. While significant issues may be presented in such a situation, such as the manner and timing of the disclosure of the conflict of interest to the parties and the court, such issues are well beyond the scope of this rule.

c. *Section 77.7(e): Initiation of Overt Communication by Represented Person—Overt Communications.* One individual commented that section 77.7(e) does not require prosecutors "to engage in the customary practice of obtaining a ruling from a judicial officer that waiver is knowing and voluntary"; absent such a requirement, "there is a substantial danger that law enforcement authorities will engage in overreaching conduct by, for example, encouraging the defendant to 'initiate' communications and then inducing an ill-advised waiver of counsel."

Section 77(e) permits, under certain limited circumstances, a government attorney to engage in substantive discussions with a represented person after the person has knowingly, intelligently, and voluntarily waived the presence of counsel. The rule itself does not prescribe specific procedures for ensuring that such a waiver meets those standards; rather, those procedures are set forth at considerable length in the United States Attorneys' Manual. Among other things, the Manual requires that the government attorney must seek the intervention of a judicial officer when possible. USAM 9–13.257. In addition, the Manual sets forth various procedures to create an appropriate record for later review (*e.g.*, 9–13.252, requiring presence of witnesses at meetings; 9–13.257, requiring a record of any proceedings before a judicial officer; and 9–13.258, requiring that any waiver be in writing).

In accordance with *Michigan* v. *Jackson*, 475 U.S. 625, 636 (1986), the rules do not permit attorneys for the government to initiate communications with a represented defendant outside the presence of counsel after the attachment and assertion of the Sixth Amendment right to counsel in order to discuss the pending criminal matter, regardless of whether a waiver is obtained. Such communications are prohibited either pursuant to § 77.5, as prohibited post-indictment communications, not excepted, or pursuant to § 77.8, as a deliberate elicitation of incriminating information concerning pending criminal charges. That prohibition plainly extends to communications initiated by the government with a represented person after the attachment of the Sixth Amendment right to counsel for the purpose of inducing the represented person to "initiate" a communication with the government.

8. Section 77.8: Criminal Enforcement; Restrictions; Prosecutive Stage

One organization commented that "[t]he suggestion that undercover informants should participate in meetings between individuals and their attorneys in order to maintain their false identities" constituted a "wholesale invasion of the attorney-client relationship."

This comment runs counter to well-established case law regarding the attendance of undercover informants at defense meetings. The Sixth Amendment right to counsel does not completely prohibit undercover agents or cooperating witnesses from meeting with criminal defendants and their attorneys during the prosecution stage, even if strategy for the upcoming trial is discussed. *Weatherford* v. *Bursey*, 429 U.S. 545, 554–59 (1977); see *Hoffa* v. *United States*, 385 U.S. 293, 304–09 (1966). A strict prohibition against such meetings "would provide the defense with a quick and easy alarm system to detect the presence of any informants, simply by inviting all known associates of defendants to a supposed defense strategy meeting." *United States* v. *Mastroianni*, 749 F.2d 900, 906 (1st Cir. 1984).

Attendance at such meetings, however, plainly creates the potential for serious intrusion into the attorney-client relationship and impairment of the right of the defendant to a fair trial. Accordingly, § 77.8(b) provides that undercover agents or cooperating witnesses may participate in such meetings, but only when requested to do so by the defense and when reasonably necessary to protect their safety or life or the confidentiality of an undercover operation. See *Weatherford* v. *Bursey*, 429 U.S. at 557 (informant went to meeting "not to spy, but because he was asked and because the State was interested in retaining his undercover services on other matters and it was therefore necessary to avoid raising the suspicion that he was in fact the informant whose existence [the defendant and his counsel] already suspected"); *United States* v. *Ginsberg*, 758 F.2d 823, 833 (2d Cir. 1985) ("the need to maintain the confidentiality of an informant's identity is a legitimate law enforcement objective" for attendance at defense strategy meeting); *United States* v. *Mastroianni*, 749 F.2d at 906 ("preservation of an informant's cover and safety is a permissible rationale for an informant's attendance at a defense meeting").

The impetus for the agent or informant to attend such a meeting must come from the defense, meaning a defendant, defense counsel, a member of the defendant's family, or some other person identified with the defense camp. A deliberate attempt to intrude upon such a meeting to obtain information regarding defense strategy or trial preparation is prohibited.

Although attendance at defense meetings may be permitted under some circumstances, the Sixth Amendment requires that information obtained at such meetings regarding defense strategy or trial preparation should not be employed in the prosecution of the pending charges to the prejudice of the defendant, or used in any other way to the substantial detriment of the defendant (*e.g.*, as an aggravating factor at sentencing). See *Weatherford* v. *Bursey*, 429 U.S. at 558 ("unless [the informant] communicated the substance of the [attorney-client] conversations and thereby created at least a realistic possibility of injury to [the defendant] or benefit to the State, there can be no Sixth Amendment violation"); *United States* v. *Ginsberg*, 758 F.2d at 833; *United States* v. *King*, 753 F.2d 1, 2 (1st Cir. 1985).

As a safeguard, this rule provides that such information should not be communicated to the attorneys for the government or law enforcement agents who are participating in the trial of the pending criminal charges. Furthermore, the United States Attorneys' Manual requires that any tape recordings or other information or evidence obtained from such meetings be screened by persons who are not participating in the prosecution, and that any physical evidence be handled in a confidential and secure manner. USAM 9–13.260.

The commentary notes that government attorneys should be aware of, and give serious consideration to, the extreme sensitivity of permitting agent and informant attendance at defense meetings; that agents and informants should be instructed to attempt to avoid participating in such meetings, and to minimize their participation where attendance is required, if it is possible to do so without arousing suspicion; that agents or witnesses who attend defense meetings should also be instructed to avoid taking any active role whatsoever in the shaping of

defense strategy or trial preparation; and that agents and informants should be instructed to avoid imparting defense strategy or trial preparation information even to the law enforcement officials performing the "screening" function under USAM 9–13.260, if reasonably feasible to do so.

9. Section 77.9: Civil Enforcement; General Rule; Investigative Stage

One organization commented that the "extension of the rule to cover contacts in civil cases is a novel concept that is not supported in the Commentary by any judicial authority." The organization further stated that "[w]hile there is a societal interest in the civil enforcement of the law, this is certainly a lesser interest than exists in criminal law enforcement," and that the rule does not strike "the right balance between the Department's enforcement interest and the attorney-client interest in the civil context."

The Department of Justice respectfully disagrees that civil law enforcement is necessarily less significant, or implicates lesser interests, than criminal law enforcement. See, *e.g., United States* v. *Sells Engineering, Inc.*, 463 U.S. 418, 471–72 (1983) (Burger, C.J., dissenting) ("Many civil actions seek precisely the same object [as criminal prosecutions] * * * and are of at least equal importance in promoting the public welfare.").

Furthermore, in recognition of the special role played by government lawyers, courts addressing the application of DR 7–104 to Department of Justice attorneys engaged in civil law enforcement have generally applied the same principles that have been applied to prosecutors, and permitted investigatory communications with represented persons. See *United States* v. *Western Electric Co.*, 1990–1 Trade Cas. (CCH) ¶ 68,939 (D.D.C. 1990) and 1990–2 Trade Cas. (CCH) ¶ 69,148 (D.D.C. 1990) (Department of Justice attorneys are "authorized by law" to conduct ex parte interviews of current and former employees of company under investigation; in any event, former employees are not a "party" within the meaning of the rule); *In re U.S. Department of Justice Antitrust Investigation*, CIDs Nos. 9683, Misc. File No. 3–92–9, Report and Recommendation (D. Minn. 1992) (same); *United States* v. *Teeven*, Civil No. 90–503 LON, Slip Op. (D. Del. 1990) (in civil investigation under the False Claims Act, ex parte interviews of the employees of the company under investigation are "authorized by law" within the meaning of the rule); *Hyatt* v. *Northrop Corp.*, CV 87–6892KN, Slip Op. (C.D. Cal. 1989) (ex parte interviews of employees of defendant permissible because employees are not "parties").

Accordingly, and as set forth in the Background section of the notice of proposed rulemaking, 57 FR 54737, 54740 (Nov. 20, 1992), the Department of Justice has concluded that communications by government attorneys in the course of civil law enforcement investigations and proceedings should be treated essentially the same as communications in the course of criminal enforcement. That conclusion is based on the strong similarity between criminal and civil law enforcement, the public interest in thorough law enforcement investigations, and several practical considerations, such as the fact that criminal and civil investigations often cannot be neatly separated.

Two organizations and one corporation commented or suggested that the rule should restrict communications during the investigative stage of a civil law enforcement matter. One organization stated that the stage prior to filing a complaint in a civil matter is "when most, if not all, prosecutorial discretion is exercised," and that "[c]orporate counsel must be informed if the Department of Justice desires to speak to current or former employees" at that stage. The other organization stated that investigatory communications should be prohibited where "lawyers for parties or witnesses not under indictment are in regular contact with the government" concerning "ongoing civil litigation."

The Department of Justice believes that the suggested restrictions on communications during the investigatory stage of a civil law enforcement matter should not be adopted, for essentially the same reasons set forth above with regard to proposed restrictions on communications during the investigatory stage of a criminal matter. The Department is, however, imposing restrictions in the United States Attorneys' Manual regarding certain types of investigatory communications, as set forth above.

10. Section 77.10: Civil Enforcement; General Rule; Litigative Stage

11. Section 77.11: Civil Enforcement; Exceptions; Litigative Stage

12. Section 77.12: Other Civil Matters

Comments relating to these sections are set forth in the preceding section regarding communications in the investigative stage of a civil law enforcement matter.

13. Section 77.13: Organizations and Employees

a. *Current Employees—The Controlling Individual Test.* Four corporations and one organization commented or suggested that the use of the "controlling individual" test was inappropriate, or that the definition of "controlling individual" was too narrow to provide sufficient protections for corporate defendants. This comment was formulated in a variety of different ways, with the following as illustrative examples: the definition of "controlling individual" represents an "intolerable narrowing of protections of critical importance to the corporation"; the definition is "far too narrow" and that "[f]or all practical purposes, a corporation would have *no* protection against traditionally forbidden communications with its employees after commencement of formal proceedings, whether civil or criminal"; and the "narrow definition" of excepted employees "effectively deprives corporate entities of the protections intended under [DR 7–104]."

One corporation stated that it employed "tens of thousands of individuals with varying levels of legal and business sophistication," that these individuals both possess information that would benefit the corporation's legal adversaries and that could bind the corporation as admissions, and that these employees "frequently require legal counsel in understanding the legal context in which their employer is operating or in which questioning will occur." Another corporation similarly stated that the proposed rule would deprive both employees and corporations who may be subject to civil or criminal sanctions of the advice of counsel.

One corporation stated that the "controlling individual" standard set forth in the rule "appears to provide organizations even less protection than the apparently less restrictive 'control group' test which has been rejected by most courts and bar associations as too restrictive." The corporation further stated that the "control group" test, which prohibits ex parte communications only with "those top management persons having responsibility for making final decisions or those with advisory roles such that final decisions are not made without reliance on their advice and opinions," presumably applies to more persons than the "controlling individual" test set forth in the rule, although even that test "has been attacked as nullifying the benefits of DR 7–104 to corporations." The corporation stated that the version

of the "alter ego" test set forth in the comment to ABA Model Rule 4.2 "provides the best guidance as to which persons within an organization are protected from ex parte communications," and that accordingly the Department of Justice should adopt that test.

Another corporation also suggested that the test set forth in the comment to ABA Model Rule 4.2 was the appropriate test to adopt.

One corporation stated that the rule "would permit a Department lawyer to contact a corporate division president to discuss his or her work while [the] head of a different division [was] under investigation or subject to an enforcement proceeding," as the former person would not fit within the definition of "controlling individual." The corporation further stated that the rule would appear to provide that "a Department lawyer can even send another person to contact the executive, without disclosing the purpose of the communication, to overcome any reluctance the executive might have to discuss company business with an outsider," and that this "amounts to denial of representation to that company, given the prospect that the employee may be gulled into making statements that will be claimed to be 'admissions' on behalf of the corporate defendant." The corporation stated that a definition of "controlling individual" that was "more consonant with the ABA rules, and much more reflective of the realities of how corporations conduct their work and protective of their right to counsel," would be to include "anyone who exercises or had exercised substantial discretion or control over the activities being investigated or litigated." The corporation further suggested that "a useful model might be found in the concept of 'substantial authority personnel' " set forth in Application Note 3(c) to Section 8A1.2 of the Sentencing Guidelines.

One corporation also commented generally that "[t]here is no evidence cited in the proposed rule preamble which suggests that government investigations have been impeded by the existing Professional Code in any significant manner justifying the radical undermining of the Code's obligations during government investigations included in the proposed rule." The corporation further stated that "[i]n the context of enhanced compliance programs" brought about by the Federal Sentencing Guidelines, "the Department's proposed rule suggests an unwarranted distrust of legitimate corporate enterprises in assisting rather than impeding the investigation of alleged violations."

These comments significantly overstate both the impact and the novelty of the rule, which directly incorporates the standard in effect in the District of Columbia. As a threshold matter, it should be clear that counsel for an organization should not enjoy complete control over the access of government investigators to employees of the organization. See *United States* v. *Western Electric Co.*, 1990–2 Trade Cas. (CCH) ¶ 69,148 (D.D.C. 1990) (a corporation "has no right to decide for its employees whether its interests are in conflict with theirs when the Department [of Justice] seeks their testimony in the course of an investigation of law violations"); *Wright by Wright* v. *Group Health Hospital*, 103 Wash.2d 192, 200, 691 P.2d 564,569 (1984) ("It is not the purpose of the rule to protect a corporate party from the revelation of prejudicial facts"). Such a rule would effectively preclude law enforcement investigations of corporations, or indeed of wholly criminal organizations. See *In re Criminal Investigation No. 13*, Md. App. 609, 616–17, 573 A.2d 51, 55 (1990).

There are very few reported criminal cases addressing the issue of the propriety of communications with organizational employees. In the civil context, the question of whether such communications are permissible has generated great confusion and a variety of different court and bar association opinions, often within the same jurisdiction. See generally Comment, "Ex Parte Communications with Corporate Parties: The Scope of the Limitations on Attorney Communications with One of Adverse Interest," 82 Nw. U.L. Rev. 1274 (1988) ("Comment"). With respect to current employees, courts have articulated at least four different tests to determine when communications are permissible, none of which has gained universal acceptance. *Id.*

These varying tests have been devised almost exclusively in the context of private civil litigation, and are based in part upon assumptions and considerations that are not directly adaptable to federal law enforcement. For example, the "alter ego" test, suggested by one commenter, permits communications with employees of organizations only if the employee does not have the power to bind the organization with respect to the matter underlying the representation. See, *e.g.*, *Niesig* v. *Team I*, 76 N.Y.2d 363, 374–76 & n.5, 559 N.Y.S.2d 493, 498, 558 N.E.2d 1030 (1990). The practical effect of the "alter ego" rule in most instances is to permit communications with low-level employees, but not with managerial employees.

Such distinctions, however, are not generally useful in federal law enforcement proceedings. Under federal law, criminal liability may be imputed to a corporation for the acts or omissions of any employee, no matter how menial. See, *e.g.*, *Standard Oil of Texas* v. *United States*, 307 F.2d 120, 127 (5th Cir. 1962) ("the corporation may be criminally bound by the acts of subordinate, even menial employees"); *United States* v. *Basic Construction Co.*, 711 F.2d 570, 572 (4th Cir.) (corporation criminally bound by acts "perpetrated by two relatively minor officials"), *cert. denied*, 464 U.S. 956 (1983); *United States* v. *Bank of New England, N.A.*, 821 F.2d 844, 855–57 (1st Cir. 1987) (acts of bank tellers), *cert. denied*, 484 U.S. 943 (1988); *United States* v. *T.I.M.E.–D.C., Inc.*, 381 F. Supp. 730, 738 (W.D. Va. 1974) (acts of truck drivers and dispatchers); *see also St. Johnsbury Trucking Co.* v. *United States*, 220 F.2d 393 (1st Cir. 1955) (acts of shipping clerk). In the civil context, low-level agents who act with apparent authority may bind the corporation for purposes of civil liability. See *American Society of Mechanical Engineers, Inc.* v. *Hydrolevel Corp.*, 456 U.S. 556, 565–68 (1982). Furthermore, the statements of any employee are binding as admissions against the organization in either a criminal or civil proceeding. Fed. R. Evid. 801(d)(2)(D). Accordingly, a federal standard that prohibited communications with employees whose statements could be attributed to the organization for purposes of imposing criminal or civil liability would simply have the effect of prohibiting all such communications.

These rules adopt a version of the "control group" test, in which communications with employees who are not within the control group of the corporation are not considered communications with the organization. See, *e.g.*, District of Columbia Rule of Professional Conduct 4.2, Comment 3; *Fair Automotive Repair, Inc.* v. *Car-X Service Systems, Inc.*, 128 Ill. App. 3d 763, 771, 471 N.E.2d 554, 560–61 (1984). Section 77.13(b) provides that a communication with a current employee shall be considered a communication with the organization only if the employee is a "controlling individual," as defined, and the controlling individual is not represented by separate counsel with respect to the subject matter of the communication.

The definition of "controlling individual" in the rule is derived from District of Columbia Rule of

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Professional Conduct 4.2, Comment 3, which states that the rule "does not prohibit a lawyer from communicating with employees of an organization who have the authority to bind the organization with respect to the matters underlying the representation if they do not also have the authority to make binding decisions concerning the representation itself."

There is no evidence to suggest that the District of Columbia standard—which grants private attorneys the same ability to communicate with corporate employees that § 77.13(c) permits to government attorneys—has produced unfair or unjust results for corporations or corporate employees. Because section 77.13(c) is derived directly from that standard, the Department believes that the experience under the new section will prove to be similar. In order to bring § 77.13(c) more closely in line with the District of Columbia standard, the text of the section has been slightly modified.

The Department has carefully considered the suggestion that the definition of "controlling individual" be reformulated to follow the definition of "substantial authority personnel" set forth in Application Note 3(c) to section 8A1.2 of the Sentencing Guidelines. Under the Guidelines, "substantial authority personnel" means "individuals who within the scope of their authority exercise a substantial measure of discretion in acting on behalf of an organization." The Department believes that this definition is unduly broad for purposes of the rule governing communications with represented persons.

The comment that the rule may deprive corporate employees of the advice of counsel appears to be misplaced. Absent multiple representation, counsel for the corporation does not represent individual employees, and nothing in the rule is designed or intended to deter employees from obtaining their own counsel.

In order to prevent a government attorney from misleading an employee as to the nature of the communication, as suggested in one of the comments, Section 9–13.280 of the United States Attorneys' Manual requires that when a government attorney communicates overtly with a current employee of a corporation during the prosecutive or litigative stage pursuant to this section, the attorney must disclose to the employee his or her identity, the general purpose of the communication, and the fact that the United States has instituted criminal charges or civil law enforcement proceedings against the organization. See District of Columbia Rule of Professional Conduct 4.2, Comment 3.

b. *Former Employees.* One organization and one corporation commented regarding the treatment of former employees of organizations in the rule. The organization stated that "[f]ormer employees are included in the restriction of Model Rule 4.2 *if* their action or omission may be imputed to the corporation *or if* their statement may constitute an admission on the part of the corporation," and stated that the rule "steps back from this position to the detriment of all corporate parties." The corporation stated that the rule should restrict communications with former employees of a represented organization.

These comments erroneously suggest that the Department of Justice take a more restrictive approach than is currently required by the ABA or virtually any federal jurisdiction. In fact, the ABA Standing Committee on Ethics and Professional Responsibility has determined that the prohibition on communications with represented parties in Model Rule 4.2 (the successor to DR 7–104) does not extend to former employees of an opposing corporate party. Formal Opinion 91–359 (March 22, 1991) ("While the Committee recognizes that persuasive policy arguments can be and have been made for extending the ambit of Model Rule 4.2 to cover some former corporate employees, the fact remains that the text of the Rule does not do so and the comment gives no basis for concluding that such coverage was intended"). See *United States* v. *Western Electric Co.*, 1990–2 Trade Cas. (CCH) ¶ 69,148 (D.D.C. 1990) (the claim that former employees were represented by corporate counsel was a "bald attempt by the company to shield itself and its management from investigation of possible wrongdoing"); *Hanntz* v. *Shiley, Inc.*, 766 F. Supp 258 (D.N.J. 1991) (collecting cases); *Shearson Lehman Bros., Inc.* v. *Wasatch Bank*, 139 F.R.D. 412, 418 (D. Utah 1991); *Action Air Freight, Inc.* v. *Pilot Air Freight Corp.*, 769 F. Supp. 899, 903–04 (E.D. Pa. 1991); *Sherrod* v. *Furniture Center*, 769 F. Supp. 1021, 1022 (W.D. Tenn. 1991); *Dubois* v. *Gradco Systems, Inc.*, 136 F.R.D. 341, 345–46 (D. Conn. 1991); *Curley* v. *Cumberland Farms, Inc.*, 134 F.R.D. 77, 82–83 (D.N.J. 1991); *Polycast Technology Corp.* v. *Uniroyal, Inc.*, 129 F.R.D. 621, 628 (Mag., S.D.N.Y. 1990); *Amarin Plastics, Inc.* v. *Maryland Cup Corp.*, 116 F.R.D. 36, 40–41 (D. Mass. 1987); *Porter* v. *Arco Metals Co.*, 642 F. Supp. 1116, 1118 (D. Mont. 1986); *Wright by Wright* v. *Group Health Hospital*, 103 Wash.2d 192, 201, 691 P.2d 564, 569 (1984).

These rules adopt an approach similar to that of the ABA Standing Committee. Communications with former employees are generally permitted under the rules, regardless of whether the communication occurs before or after indictment of, or the filing of formal civil proceedings against, the organization that formerly employed them.

c. *Multiple Representation.* One corporation commented that "[r]epresentation by counsel can include representation of a corporate employee by counsel representing the corporation," and that "the government attorney's belief that there is a conflict of interest should not excuse ex parte contacts." The corporation further stated that joint representation of employer and employee "is permissible, absent actual conflict," and that it is "for a court to decide whether a conflict renders joint representation unethical," not the government.

This comment misconceives the intent of the rules with regard to multiple representation. These rules are not intended to affect the ethical rules governing multiple representation of corporate employees, or the procedural mechanisms by which apparent conflicts of interest arising out of multiple representation are examined by the court. See Fed. R. Crim. P. 44(c). Government attorneys confronted with multiple representation issues will be required to follow established procedures for resolving them, including, where appropriate, motions to disqualify counsel.

d. *Impact on Compliance Programs.* One corporation commented that its in-house attorneys are engaged actively in promoting compliance with federal laws and regulations, that these "compliance efforts hinge in part on the development of a relationship of confidence and trust between corporate employees and the corporation's attorneys, and that the rule "could well undermine this relationship and partially undermine, as well, effective compliance programs" pursuant to the Sentencing Guidelines.

The Department of Justice believes that this comment misstates the impact of the proposed rule. There does not appear to be a clear connection between the effectiveness of corporate compliance programs and the ability of government investigators to communicate with corporate employees. Furthermore, it does not appear that an appropriate way to enhance or fortify such compliance programs is to require that employees may not communicate

with the government except in the presence of counsel for the corporation.

14. Section 77.14: Parallel Investigations and Proceedings

The Department of Justice received no specific comments regarding this section.

15. Section 77.15: Enforcement of Rules

One individual commented that the rule should contain a provision for exclusion of inappropriately obtained information, and that the rule should define the rights of suspects or the accused rather than merely defining the rights of the prosecutors.

Traditionally, matters relating to communications with represented persons have been treated as matters of attorney discipline, without granting substantive rights to defendants or any other persons. See, *e.g.*, ABA Code of Professional Responsibility, Preliminary Statement; ABA Model Rules of Professional Conduct, Scope; see *generally* Johnson, "The Impact of Disciplinary Rule 7–104 on Law Enforcement Contact with Represented Persons," 40 U. Kan. L. Rev. 63, 168–71 (1992). These rules adopt a similar scheme, by providing that potential violations should be investigated by the Department's Office of Professional Responsibility and addressed where appropriate as matters of attorney discipline. See 28 CFR 0.39 (establishing and defining duties of OPR). Threats of censure, discipline, and loss of employment are more than adequate deterrents against violations of the rules, and exclusion of relevant evidence (or dismissal of indictments or complaints) obtained in violation of these rules would confer an enormous windfall upon a criminal or civil defendant with little, if any, additional deterrent effect. Of course, where the communication with a represented person rises to the level of a constitutional violation, such as the Sixth Amendment right to counsel, the courts retain the power to fashion appropriate remedies, including the exclusion of evidence or dismissal of charges where appropriate. See *Massiah* v. *United States*, 377 U.S. 201 (1964).

One organization commented that the Department of Justice "has shown itself to be incapable of policing itself," and that "[t]he most flagrant and egregious prosecutorial misconduct rarely results in disciplinary proceedings, or punishment." The Department of Justice respectfully submits that this comment is inaccurate and unwarranted, and not an appropriate basis to require the imposition of an exclusionary rule.

16. Section 77.16: Relationship to State and Local Regulation

Comments relating to this section are addressed in the General Comments section above.

## III. Certifications

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291. In light of the Attorney General's longstanding policy of regulating the conduct of Department of Justice employees, this rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612.

## List of Subjects in 28 CFR Part 77

Government employees, Investigations, Law enforcement, Lawyers.

Accordingly, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by adding a new part 77 to read as follows:

## PART 77—COMMUNICATIONS WITH REPRESENTED PERSONS

Sec.

77.1 Purpose and authority.
77.2 Definitions.
77.3 Represented person.
77.4 Constitutional and other limitations.
77.5 Criminal enforcement; general rule; investigative stage.
77.6 Criminal enforcement; general rule; prosecutive stage.
77.7 Criminal enforcement; exceptions; prosecutive stage.
77.8 Criminal enforcement; restrictions; prosecutive stage.
77.9 Civil enforcement; general rule; investigative stage.
77.10 Civil enforcement; general rule; litigative stage.
77.11 Civil enforcement; exceptions; litigative stage.
77.12 Other civil matters.
77.13 Organizations and employees.
77.14 Parallel investigations and proceedings.
77.15 Enforcement of rules.
77.16 Relationship to state and local regulation.

**Authority:** 5 U.S.C. 301; 28 U.S.C. 509, 510, 515(a), 516, 519, 533, 547.

### § 77.1 Purpose and authority.

The purpose of this part is to provide a comprehensive, clear, and uniform set of rules governing the circumstances under which Department of Justice attorneys may communicate with persons known to be represented by counsel in the course of law enforcement investigations and proceedings. This part is issued under the authority of the Attorney General to prescribe regulations for the government of the Department of Justice, the conduct of its employees, and the performance of its business, pursuant to 5 U.S.C. 301; to direct officers of the Department of Justice to secure evidence and conduct litigation, pursuant to 28 U.S.C. 516; to direct officers of the Department to conduct grant jury proceedings and other civil and criminal legal proceedings, pursuant to 28 U.S.C. 515(a); to supervise litigation and to direct Department officers in the discharge of their duties, pursuant to 28 U.S.C. 519; and otherwise to direct Department officers to detect and prosecute crimes, to prosecute offenses against the United States, to prosecute civil actions, suits, and proceedings in which the United States is concerned, and to perform such other functions as may be provided by law, pursuant to 28 U.S.C. 509, 510, 533, and 547.

### § 77.2 Definitions.

As used in this part, the following terms shall have the following meanings, unless the context indicates otherwise:

(a) *Attorney for the government* means the Attorney General; the Deputy Attorney General; the Associate Attorney General; the Solicitor General; the Assistant Attorneys General for, and any attorney employed in, the Antitrust Division, Civil Division, Civil Rights Division, Criminal Division, Environment and Natural Resources Division, or Tax Division; any United States Attorney; any Assistant United States Attorney; any Special Assistant to the Attorney General or Special Attorney duly appointed pursuant to 28 U.S.C. 515; any Special Assistant United States Attorney duly appointed pursuant to 28 U.S.C. 543 who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States; or any other attorney employed by the Department of Justice who is authorized to conduct criminal or civil law enforcement investigations or proceedings on behalf of the United States.

(b) *Person* means any individual or organization.

(c) *Organization* means any corporation, partnership, association, joint-stock company, union, trust, pension fund, unincorporated organization, state or local government or political subdivision thereof, or non-profit organization.

(d) *Employee* means any employee, officer, director, partner, member, or trustee.

(e) *Cooperating witness* means any person, other than a law enforcement agent, who is acting as an agent for the government in an undercover or confidential capacity.

(f) *Civil law enforcement proceeding* means: (1) A civil action or proceeding before any court or other tribunal brought by the United States under its police or regulatory powers to enforce its laws, including, but not limited to, civil actions or proceedings brought to enforce the laws relating to:

(i) Antitrust;

(ii) Banking and financial institution regulation;

(iii) Bribery, kickbacks, and corruption;

(iv) Civil rights;

(v) Consumer protection;

(vi) Environment and natural resource protection;

(vii) False claims against the United States;

(viii) Food, drugs, and cosmetics regulation;

(ix) Forfeiture of property;

(x) Fraud;

(xi) Internal revenue;

(xii) Occupational safety and health; or

(xiii) Securities regulation.

(2) The term "civil law enforcement proceeding" shall not include proceedings related to the enforcement of an administrative subpoena or summons or a civil investigative demand. An action or proceeding shall be considered "brought by the United States" if it involves a claim asserted by the Department of Justice on behalf of the United States, whether the claim is asserted by complaint, counterclaim, cross-claim, or otherwise.

(g) *Civil law enforcement investigation* means an investigation of possible civil violations of or claims under federal law that may form the basis for a civil law enforcement proceeding.

**§ 77.3 Represented person.**

(a) A person shall be considered a "represented person" within the meaning of this part only if all three of the following circumstances exist:

(1) The person has retained counsel, or accepted counsel by appointment;

(2) The representation concerns the subject matter in question; and

(3) The attorney for the government knows that the person is represented by counsel concerning the subject matter.

(b) Nothing in this part is intended to or shall be construed to permit any purported legal representation undertaken for the purpose of facilitating the commission or concealment of a crime or fraud.

**§ 77.4 Constitutional and other limitations.**

Notwithstanding any other provision of this part, any communication that is prohibited by the Sixth Amendment right to counsel or by any other provision of the United States Constitution or by any federal statute or Federal Rule of Criminal or Civil Procedure shall be likewise prohibited by this part.

**§ 77.5 Criminal enforcement; general rule; investigative stage.**

An attorney for the government may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation if:

(a) The communication—(1) Is made in the course of an investigation, whether undercover or overt, of possible criminal activity; and

(2) Occurs prior to the attachment of the Sixth Amendment right to counsel with respect to charges against the represented person arising out of the criminal activity that is the subject of the investigation; or

(b) The communication is otherwise permitted by law.

**§ 77.6 Criminal enforcement; general rule; prosecutive stage.**

An attorney for the government may not communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the attachment of the Sixth Amendment right to counsel of the represented person, except as provide herein or as otherwise permitted by law.

**§ 77.7 Criminal enforcement; exceptions; prosecutive stage.**

An attorney for the government may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the attachment of the Sixth Amendment right to counsel of the represented person if one or more of the following circumstances exist:

(a) *Consent.* Counsel for the represented person has been given prior notice of the communication and consents to the communication.

(b) *Determination if representation exists.* The purpose of the communication is to determine if the person is in fact represented by counsel; provided, however, that further communication is permitted only if the person indicates that he or she is not represented or the communication is otherwise permitted under this part.

(c) *Discovery or judicial or administrative process.* The communication is made pursuant to discovery procedures or judicial or administrative process, including but not limited to the service of a grand jury or trial subpoena.

(d) *Investigation of new or additional crimes.* The communication is made in the course of an investigation, whether undercover or overt, of new or additional criminal activity as to which the Sixth Amendment right to counsel has not attached; provided, however, that the restrictions set forth in § 77.8 are observed. Such new or additional criminal activity may include, but is not limited to:

(1) New or additional criminal activity that is separate from the criminal activity that is the subject of pending criminal charges;

(2) New or additional criminal activity that is intended to impede or evade the administration of justice as to pending criminal charges, such as obstruction of justice, subornation of perjury, jury tampering, murder, assault or intimidation of witnesses, bail jumping, or unlawful flight to avoid prosecution; and

(3) New or additional criminal activity that represents a continuation after indictment of criminal activity that is the subject of pending criminal charges, such as the continuation of a conspiracy or a scheme to defraud after indictment.

(e) *Initiation of communication by represented person; overt communications.* The represented person initiates the communication directly with the attorney for the government, or indirectly through a person known to the represented person to be a law enforcement agent; provided, however, that prior to engaging in substantive discussions concerning the subject matter of charges as to which the Sixth Amendment right to counsel has attached, either of the following circumstances must have occurred:

(1) The represented person has knowingly, intelligently, and voluntarily waived the presence of counsel; or

(2) The represented person has obtained substitute counsel, and substitute counsel has consented to the communication or the communication is otherwise permitted under this part.

(f) *Initiation of communication by represented person; undercover communications.* The represented person initiates the communication with an undercover law enforcement agent or a cooperating witness; provided, however, that the restrictions set forth in § 77.9 are observed.

(g) *Imminent threat to safety or life.* The attorney for the government reasonably believes that there is an imminent threat to the safety or life of any person; the purpose of the communication is to obtain information to protect against the risk of serious injury or death; and the communication is reasonably necessary to protect against such risk.

**§ 77.8 Criminal enforcement; restrictions; prosecutive stage.**

When an attorney for the government communicates, or causes a law enforcement agent or cooperating witness to communicate, with a represented person after the attachment of the Sixth Amendment right to counsel pursuant to one or both of the exceptions set forth in §§ 77.7(d) or (f), the following restrictions must be observed:

(a) *Deliberate elicitation.* An attorney for the government, law enforcement agent, or cooperating witness may not deliberately elicit incriminating information from the represented person concerning the pending criminal charges.

(b) *Attorney-client meetings.* An undercover law enforcement agent or cooperating witness may not attend or participate in attorney-client meetings or communications concerning the lawful defense of the pending criminal charges, except when requested to do so by the defendant, defense counsel, or another person affiliated or associated with the defense, and when reasonably necessary to protect the safety of the agent or witness or the confidentiality of an undercover operation. If the agent or witness attends or participates in such meetings, any information regarding lawful defense strategy or trial preparation imparted to the agent or witness shall not be communicated to attorneys for the government or to law enforcement agents who are participating in the prosecution of the pending criminal charges, or used in any other way to the substantial detriment of the defendant.

**§ 77.9 Civil enforcement; general rule; investigative stage.**

An attorney for the government may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation if:

(a) The communication—(1) Is made in the course of a civil law enforcement investigation, whether undercover or overt; and

(2) Occurs prior to the time the United States commences a civil law enforcement proceeding against the represented person arising out of the violations that are the subject of the investigation; or

(b) The communication is otherwise permitted by law.

**§ 77.10 Civil enforcement; general rule; litigative stage.**

An attorney for the government may not communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the commencement of a civil law enforcement proceeding by the United States against the represented person, except as provided herein or as otherwise permitted by law.

**§ 77.11 Civil enforcement; exceptions; litigative stage.**

An attorney for the government may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the commencement of a civil law enforcement proceeding by the United States against the represented person if one or more of the following circumstances exist:

(a) *Consent.* Counsel for the represented person has been given prior notice of the communication and consents to the communication.

(b) *Determination if representation exists.* The purpose of the communication is to determine if the person is in fact represented by counsel; provided, however, that further communication is permitted only if the person indicates that he or she is not represented or the communication is otherwise permitted under this part.

(c) *Discovery or judicial or administrative process.* The communication is made pursuant to discovery procedures or judicial or administrative process, including but not limited to the service of a summons and complaint, a notice of deposition, a deposition or trial subpoena, or an administrative summons or subpoena.

(d) *Investigation of new or additional civil violations.* The communication is made in the course of a civil law enforcement investigation of new or additional violations of federal law as to which the United States has not commenced a civil law enforcement proceeding; provided, however, that the attorney for the government may not deliberately elicit, or cause to be elicited, admissions from the represented person concerning the pending civil law enforcement proceeding during the communication.

(e) *Initiation of communication by represented person; overt communications.* The represented person initiates the communication directly with the attorney for the government, or indirectly through a person known to the represented person to be law enforcement agent; provided, however, that prior to engaging in substantive discussions concerning the subject matter of a pending civil law enforcement proceeding, either of the following circumstances must have occurred:

(1) The represented person has knowingly, intelligently, and voluntarily waived the presence of counsel; or

(2) The represented person has obtained substitute counsel, and substitute counsel has consented to the communication or the communication is otherwise permitted under these rules.

(f) *Initiation of communication by represented person; undercover communications.* The represented person initiates the communication with a cooperating witness; provided, however, that the cooperating witness may not deliberately elicit admissions from the represented person concerning the pending civil law enforcement proceeding.

(g) *Imminent threat to safety or life.* The attorney for the government reasonably believes that there is an imminent threat to the safety or life of any person; the purpose of the communication is to obtain information to protect against the risk of serious injury or death; and the communication is reasonably necessary to protect against such risk.

**§ 77.12 Other civil matters.**

Nothing in this part is intended or shall be construed to limit the right or ability of attorneys for the government, when conducting civil investigations or proceedings not involving civil law enforcement, to communicate with represented persons when otherwise permitted by law.

**§ 77.13 Organizations and employees.**

This section applies when the communication involves a former or current employee of an organization, and the subject matter of the communication relates to the business or affairs of the organization.

(a) *Communications with former employees; organizational representation.* A communication with a former employee of an organization which is represented by counsel shall not be considered to be a communication with the organization for purposes of this part.

(b) *Communications with current employees; organizational representation.* (1) A communication with a current employee of an organization which is represented by counsel shall be considered to be a communication with the organization for purposes of these rules only if:

(i) The employee is a controlling individual, as defined in § 77.13(c); and

(ii) Such controlling individual is not represented by separate counsel with respect to the subject matter of the communication.

(2) Nothing in this section is intended or shall be construed to prohibit communications with a current employee of an organization that are otherwise permitted under this part.

(c) *Definition; controlling individual.* For purposes of this part, a "controlling individual" is a current employee who has the authority to make binding decisions concerning the representation of the organization by counsel.

(d) *Communications with former or current employees; individual representation.* A communication with a former or current employee of an organization who is individually represented by counsel may occur only to the extent otherwise permitted by this part.

(e) *Initiation of communication by unrepresented controlling individual.* Notwithstanding any other provision of this part, an attorney for the government may communicate with a controlling individual who is not individually represented as to the subject matter of the communication when the controlling individual initiates the communication.

(f) *Multiple representation.* Nothing in this section is intended or shall be construed to affect the requirements of Rule 44(c) of the Federal Rules of Criminal Procedure (28 U.S.C. Appendix), or to permit the multiple representation of an organization and any of its employees, or the multiple representation of more than one such employee, if such representation is prohibited by any applicable law or rule of attorney ethics.

**§ 77.14 Parallel investigations and proceedings.**

(a) *Criminal enforcement communications during pending civil law enforcement proceedings.* An attorney for the government who is participating in a criminal investigation or proceeding may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the commencement of a civil law enforcement proceeding by the United States against the represented person if the communication is permitted under §§ 77.5 or 77.7.

(b) *Civil law enforcement communications during pending criminal enforcement proceedings.* An attorney for the government is participating in a civil law enforcement investigation or proceeding may communicate, or cause another to communicate, with a represented person concerning the subject matter of the representation after the attachment of the Sixth Amendment right to counsel of the represented person if the communication is permitted under §§ 77.9 or 77.11 and:

(1) The communication does not involve the subject matter of the pending criminal charges; or

(2) The communication involves the subject matter of the pending criminal charges, and one or more of the following circumstances exist:

(i) Counsel for the represented person in the pending criminal proceeding has been given prior notice of the communication and consents to the communication;

(ii) The communication is made pursuant to discovery procedures or judicial or administrative process; or

(iii) An attorney for the government who is participating in the prosecution of the pending criminal proceeding takes part in, directs, supervises, or approves the communication, and the communication is permitted in the criminal proceeding under § 77.7.

**§ 77.15 Enforcement of rules.**

Allegations of violations of this part shall be investigated by the Office of Professional Responsibility of the Department of Justice, and shall be addressed where appropriate as matters of attorney discipline by the Department. This part is not intended to and do not create substantive rights on behalf of criminal or civil defendants, targets or subjects of investigations, witnesses, counsel for represented persons, or any other person other than an attorney for the government, and shall not be a basis for dismissing criminal or civil charges or proceedings against represented persons or for excluding relevant evidence in any proceeding in any court of the United States.

**§ 77.16 Relationship to state and local regulation.**

Communications with represented persons pursuant to this part are intended to constitute communications that are "authorized by law" within the meaning of Rule 4.2 of the American Bar Association Model Rules of Professional Conduct, DR 7–104(A)(1) of the ABA Code of Professional Responsibility, and analogous state and local federal court rules. (Copies of the ABA Model Rule are available through Order Fulfillment Office, American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611.) This part is further intended to govern the conduct of attorneys for the government in the discharge of their duties to the extent that state and local laws or rules are inconsistent with this part.

Dated: July 14, 1993.

**Janet Reno,**

*Attorney General.*

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Part IV

# Office of Management and Budget

**Cost Principles for Educational Institutions; Final revision of Circular A–21; Notice**

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## OFFICE OF MANAGEMENT AND BUDGET

### Cost Principles for Educational Institutions

**AGENCY:** Office of Management and Budget.

**ACTION:** Final revisions to Circular A–21.

**SUMMARY:** This revision implements the Office of Management and Budget's (OMB's) previously stated intention to revise Circular A–21, "Cost Principles for Educational Institutions."

**DATES:** The revisions to the Circular shall be implemented for the establishment of indirect cost rates for all fiscal years beginning on or after January 1, 1994. Earlier implementation is encouraged.

**FOR FURTHER INFORMATION CONTACT:** Jack Sheehan, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget (telephone: 202–395–3993).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A notice was published in the **Federal Register** on December 9, 1992 (57 FR 58394) requesting comments on proposed revisions to OMB Circular A–21, "Cost Principles for Educational Institutions."

Interested parties were invited to submit comments. Over 150 comments were received from Federal agencies, universities, professional organizations and others. All comments were considered in developing this final revision.

The following section presents a summary of the major comments, grouped by subject, and a response to each comment, including a description of changes made as a result of the comment. Other changes have been made to increase clarity and readability.

**B. Comments and Responses**

*University Research*

*Comment:* Many commenters suggested replacing "or" with "and" in the phrase "budgeted or accounted" for clarification.

*Response:* The phrase has been modified as recommended.

*Comment:* Several commenters objected to the inclusion of university research in the definition of organized research.

*Response:* The proposed redefinition has not been changed. University supported research is normally performed in the same environment and benefits from the same support activities as does sponsored research and therefore should be included as a part of organized research.

*Depreciation and Use Allowances*

*Comment:* A number of commenters objected to the proposed allocation methods to be used in allocating expenses for jointly used space given the proposed elimination of the predominant use concept.

*Response:* The proposed language has been modified to allow more discrete costing of jointly used space, and the predominant use concept has been eliminated.

*Departmental Administration Expenses*

*Comments:* Numerous commenters objected to the proposal based on the perception that it required that clerical and administrative staff be charged indirectly in all cases. The commenters particularly objected to charging these expenses indirectly on major projects.

*Response:* The proposal was amended to permit direct charging of these expenses in certain circumstances.

*The Distribution Basis*

*Comment:* A number of commenters objected to the proposed definition of modified total direct costs because the proposed list of exclusions did not allow for exceptions.

*Response:* The proposed language has been clarified and expanded to allow for exceptions where a significant inequity would result.

*Predetermined Rates*

*Comment:* A number of commenters requested clarification on when the use of provisional rates or fixed rates and carry-forward provisions would be appropriate.

*Response:* The proposed language was revised to clarify the issue.

*Comment:* Several commenters requested clarification regarding the proposed language concerning the definition and use of provisional indirect cost rates.

*Response:* The proposed language has been expanded to more clearly depict provisional and final rates and the associated administrative processes.

*Fringe Benefits*

*Comments:* A number of commenters perceived that the proposed language would require the development of multiple fringe benefit rates.

*Response:* The Circular has always required the development of separate fringe benefit rates where benefits for varying classes of employees vary significantly.

*Comment:* Institutions that are currently charging tuition remission through an employee fringe benefit rate commented that inequities might arise during the conversion period to direct charging of tuition remission.

*Response:* For those institutions which currently charge tuition remission through the fringe benefit rate, the cognizant agencies are permitted to adjust the distribution base to preclude inequities during the conversion period to direct charging of tuition remission.

*Insurance and Indemnification*

*Comment:* Several commenters objected to charging these costs directly and to the manner proposed for the assignment of these costs.

*Response:* OMB believes these costs should be directly charged. The proposed procedure for assigning these costs has been changed to allow for a more accurate assignment of these costs based on the individual circumstances.

*Tuition Remission*

*Comment:* A number of comments received concerning the proposed phase-in period for the direct charging of tuition remission.

*Response:* With respect to institutions that currently are authorized to finance tuition remission for graduate research assistants through the institution-wide fringe-benefit pool, that authorization will expire on September 30, 1997. Effective with the date of issuance of this revision of Circular A–21, all proposals that include budget periods beginning after September 30, 1997, and that request funds for tuition expenses for research assistants for one or more of the budget periods beginning after September 30, 1997, must treat the proposed tuition expenses for those budget periods as a direct cost in accordance with Section J.41.b of Circular A–21. In such cases, appropriate adjustments will be taken into account when establishing applicable indirect cost and fringe benefit rates for periods covering the fiscal years involved.

*Other Items*

Finalization of proposals to revise *Equipment and other capital expenditures* and *Sabbatical leave costs* have been deferred pending further study and data analysis.

**C. Additional Information**

*Adoption of the Cost Accounting Standards Board's Rules*

The Cost Accounting Standards Board (CASB) has published three **Federal Register** (FR) Notices requesting public comments from interested parties concerning the proposed application of

the Board's rules, regulations and Standards to educational institutions, i.e., a Staff Discussion Paper on October 8, 1991 (56 FR 50737), an Advance Notice of Proposed Rulemaking on June 2, 1992 (57 FR 23189), and a Notice of Proposed Rulemaking on December 21, 1992 (57 FR 60503).

The CASB is now preparing a final rule to apply certain Cost Accounting Standards (CAS) to educational institutions receiving negotiated contract awards in excess of $500,000. In addition, the Board's final rule will require major recipients of Federal research funds to formally disclose their cost accounting practices. The filing of required Disclosure Statements will be phased-in during a special transition period.

OMB is aware that a number of commenters recommended that a single rule be established to implement the Board's requirements. Such commenters believed that two sets of rules, i.e., Circular A–21 and CAS rules, may result in potential conflicts and thereby unnecessarily increase administrative costs. The Board under its independent rulemaking authority has concluded that the Board's rules must be promulgated independently.

However, in developing the unique CAS provisions for application to educational institutions, the Board proceeded with the understanding that its rules would be incorporated in the Circular. The Board's objective was to establish provisions that would, once incorporated in Circular A–21, result in greater consistency and uniformity in the cost accounting practices followed by educational institutions under all Federal awards.

Consistent with the Board's stated expectations, OMB plans, in the near future, to extend the CASB's regulations and Standards applicable to educational institutions to all awards (contracts and grants) made to institutions that are major recipients of Federal research funds.

**John B. Arthur,**

*Assistant Director for Administration.*

Circular No. A–21, Revised Transmittal Memorandum No. 5

To the Heads of Executive Departments and Establishments: *Subject:* Cost Principles for Educational Institutions.

This transmittal memorandum revises OMB Circular No. A–21, "Cost Principles for Educational Institutions." This revision further clarifies and standardizes the Circular's principles for determining costs applicable to grants, contracts, and other agreements with educational institutions.

The revisions to the Circular shall be implemented with the establishment of indirect cost rates for all fiscal years beginning on or after January 1, 1994. Earlier implementation is encouraged.

**Leon E. Panetta,**

*Director.*

The following are revisions to Sections B, C, D, F, G, H, and J of the Attachment to Circular A–21:

1. Section B.1.b.(2) *University Research* is revised to read as follows:

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, shall be combined with sponsored research under the function of organized research.

2. A new subsection d. is added to Section C.4. *Allocable costs* to read as follows:

d. *Allocation and documentation standard.* (1) *Cost principles.* The recipient institution is responsible for ensuring that costs charged to a sponsored agreement are allowable, allocable, and reasonable under these cost principles.

(2) *Internal controls.* The institution's financial management system shall ensure that no one person has complete control over all aspects of a financial transaction.

(3) *Direct cost allocation principles.* If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost should be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding subsection C.4.b., the costs may be allocated or transferred to benefitted projects on any reasonable basis, consistent with d.(1) and (2).

(4) *Documentation.* Federal requirements for documentation are specified in this Circular, Circular A–110, and specific agency policies on cost transfers. If the institution authorizes the principal investigator or other individual to have primary responsibility, given the requirements of d.(2), for the management of sponsored agreement funds, then the institution's documentation requirements for the actions of those individuals (e.g., signature or initials of the principal investigator or designee or use of a password) will normally be considered sufficient.

3. Section D.1. *Direct costs—General* is revised to read as follows:

1. *General.* Direct costs are those costs that can be identified specifically with a particular sponsored project, an instructional activity, or any other institutional activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect costs. Where an institution treats a particular type of cost as a direct cost of sponsored agreements, all costs incurred for the same purpose in like circumstances shall be treated as direct costs of all activities of the institution.

4. A new Section F.1. *Definition of Facilities and Administration* is added to read as follows:

1. *Definition of Facilities and Administration.* Indirect costs are classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances, interest on debt associated with certain buildings, equipment and capital improvements, operations and maintenance expenses, and library expenses. "Administration" is defined as general administration and general expenses; departmental administration; sponsored projects administration; student administration and services; and all other types of expenditures not listed specifically under one of the subcategories of Facilities (including cross allocations from other pools).

5. Previously numbered Section F.1. *Depreciation and use allowances* is renumbered F.2. and revised to read as follows:

2. *Depreciation and use allowances.* a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J.12.

b. In the absence of the alternatives provided for in Section E.2.d., the expenses included in this category shall be allocated in the following manner:

(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation or use allowances on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefiting functions on the basis of:

(a) the employee FTEs or salaries and wages of those individual functions benefiting from the use of that space; or

(b) institution-wide employee FTEs or salaries and wages applicable to the benefiting Major Functions (see B.1) of the institution.

(4) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction function of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to

the salaries and wages of all employees applicable to those functions.

6. Previously numbered Section F.2. *Operation and maintenance expenses* is renumbered F.4. and revised to read as follows:

4. *Operation and maintenance expenses.* a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

b. In the absence of the alternatives provided for in Section E.2.d., the expenses included in this category shall be allocated in the same manner as described in Section F.2.b. for depreciation and use allowances.

7. A new Section F.3. *Interest* is added to read as follows:

3. *Interest.* Interest on debt associated with certain buildings, equipment and capital improvements, as defined in Section J.22.e., shall be classified as an expenditure under the category Facilities. These costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital improvements to which the interest relates.

8. Previously numbered Section F.3. *General administration and general expenses* is renumbered F.5. and revised to read as follows:

5. *General administration and general expenses.* a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expense of a general character which do not relate solely to any major function of the institution, i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of general administration and general expenses include: those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel, and, the operations of the central administrative management information systems. General administration and general expenses shall not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See Section F.6., Departmental administration expenses.)

b. In the absence of the alternatives provided for in Section E.2.d., the expenses included in this category shall be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same cost elements as those in Section G.2. When an activity included in this indirect cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

9. Previously numbered Section F.4. *Departmental administration expenses* is renumbered F.6. and previously numbered subsection b. is renumbered c. and a new subsection b. is added to read as follows:

6. *Departmental administration expenses.*

b. In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs shall be treated as direct cost wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefiting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly budgets for administrative or clerical services and individuals involved can be specifically identified with the project or activity. Items such as office supplies, postage, local telephone costs, and memberships shall normally be treated as indirect costs.

c. In the absence of the alternatives provided for in Section E.2.d., the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in (1) shall be allocated to the appropriate functions of the department on the modified total cost basis.

10. Section G.2. *The distribution basis* is revised to read as follows:

2. *The distribution basis.* Indirect costs shall be distributed to applicable sponsored agreements and other benefiting activities within each Major Function (see B.1) on the basis of modified total direct costs, consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first $25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care and tuition remission, rental costs, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of $25,000 shall be excluded from modified total direct costs. Other items may only be excluded where necessary to avoid a serious inequity in the distribution of indirect costs. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the modified total direct costs identified with such pool.

11. Section number G.4. *Predetermined fixed rates for indirect costs* is revised to read as follows:

4. *Predetermined rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

12. A new Section G.6. *Provisional and final rates for indirect costs* is added to read as follows:

6. *Provisional and final rates for indirect costs.* Where the cognizant agency determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate shall be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institutions fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual

allowable costs incurred for the period involved.

13. Previously numbered Section G.6. *Limitation on reimbursement of administrative costs* is renumbered G.7. and G.7.a. is revised to read as follows:

7. *Limitation on reimbursement of administrative costs.* a. Notwithstanding the provisions of G.1.a., the administrative costs charged to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, shall be limited to 26% of modified total direct costs (as defined in Section G.2.) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation and/or use allowances, interest costs, operation and maintenance expenses, and fringe benefits costs as provided by Sections F.5., F.6., F.7., and F.9.) and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section F.

14. A new Section G.8. is added to read as follows:

8. *Alternative method for administrative costs.* a. Notwithstanding the provisions of Section G.1.a., an institution may elect to claim a fixed allowance for the "Administration" portion of indirect costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section F.1., whichever is less, provided that no accounting or cost allocation changes with the effects described in Section G.7.d have occurred. Under this alternative, no cost proposal need be prepared for the "Administration" portion of the indirect cost rate nor is further identification or documentation of these costs required (but see subsection c.). Where a negotiated indirect cost agreement includes this alternative, an institution shall make no further charges for the expenditure categories described in Sections F.5., F.6., F.7. and F.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of Section G.8.a. may continue to exercise it at the same rate without further identification or documentation of costs, provided that no accounting or cost allocation changes with the effects described in Section G.7.d. have occurred.

c. If an institution elects to accept a threshold rate, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect cost rate, the institution must reconcile its indirect cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in B.1., as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect cost proposals to financial statements and allocating facilities costs.

15. Previously numbered section G.7. *Individual Rate Components* is renumbered G.9.

16. Section H.1. *Simplified method for small institutions* is revised as follows:

1. *General.* a. Where the total direct cost of work covered by this Circular at an institution does not exceed $10 million in a fiscal year, the use of the simplified procedure described in subsection 2., may be used in determining allowable indirect costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable to all sponsored agreements.

17. Section J.8.f.(4) *Fringe benefits* is revised to read as follows:

f. *Fringe benefits.*

(4) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of institution-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the institution demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees. Fringe benefits shall be treated in the same manner as the salaries and wages of the employees receiving the benefits. The benefits related to salaries and wages treated as direct costs shall also be treated as direct costs; the benefits related to salaries and wages treated as indirect costs shall be treated as indirect costs.

18. A new subsection g. is added to Section J.21. *Insurance and indemnification* to read as follows:

g. Medical liability (malpractice) insurance is an allowable cost of research programs only to the extent that the research involves human subjects. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

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# Department of Energy

**Bonneville Power Administration**

**Record of Decision on Water Management Actions in the Columbia River System; Notice**

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## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Record of Decision on Water Management Actions in the Columbia River System To Be Taken by the Bonneville Power Administration in 1993 for the Benefit of Snake River Salmon

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Record of Decision on the Final Supplemental Environment Impact Statement (SEIS), Interim Columbia and Snake Rivers Flow Improvement Measures for Salmon.

**SUMMARY:** This Record of Decision (ROD), including the attached appendices, documents the decision of the Bonneville Power Administration (BPA) with respect to the operation of certain dams and reservoirs in the Columbia-Snake River system during 1993 and future years while a long-term plan of action is developed. This decision is the result of the evaluation and analysis within the entire administrative record, including the "Final Columbia and Snake Rivers Flow Improvement Measures for Salmon Supplemental Environmental Impact Statement" (SEIS), as issued on March 5, 1993; the Biological Assessment on "1993 Operations of the Federal Columbia River Power System dated February 1993; and the National Marine Fisheries Service (NMFS) Biological Opinion on "1993 Operation of the Federal Columbia River Power System," dated May 26, 1993. BPA's decision is designed to (1) implement the selected action described in Part VI of this ROD and (2) carefully consider the conservation measures in the Biological Opinion.[1]

The technical appendices support this ROD and provide constructive suggestions to both NMFS and the NMFS Recovery Team, which is charged with crafting a comprehensive recovery plan for these species. The Recovery Team's draft recommendations and report are anticipated to be released for public comment later this year. The suggestions concern (1) the NMFS no jeopardy standard; (2) empirical population data; (3) flow augmentation; (4) biological modeling; (5) salmon survival and recovery, and (6) nonflow measures. NMFS is designated pursuant to the Endangered Species Act (ESA) and its implementing regulations as the Federal agency responsible for overseeing activities associated with listings of anadromous fish as threatened or endangered under the ESA. NMFS has previously declared the Snake River sockeye salmon (*Oncorhynchus nerka*) endangered effective December 20, 1991 (56 FR 58619). NMFS has also found the Snake River spring/summer and fall chinook salmon (*Oncorhynchus tshawytscha*) to be a threatened species effective May 22, 1992 (57 FR 14653). For these listed species, NMFS has also proposed a critical habitat designation (57 FR 57051). BPA submitted comments with biological and economic information to NMFS during this designation process.

BPA takes this action pursuant to and consistent with its responsibilities under its enabling statutes, including the Bonneville Project Act of 1937, 16 U.S.C. 832, and the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (the Northwest Power Act), 16 U.S.C. 839 *et seq.* The ESA requires BPA to insure that its actions are not likely to "jeopardize the continued existence of the listed species or result in the destruction or adverse modification of the critical habitat." 16 U.S.C. 1536 (a)(2). In order to carry out this responsibility, BPA consulted with NMFS, and used the best scientific and commercial data available. BPA's enabling statutes also direct it to provide "an adequate, efficient, and reliable power supply" and to "protect, mitigate, and enhance" anadromous fish and wildlife to the extent affected by Federal hydroelectric projects of the Columbia River and its tributaries. 16 U.S.C. 839 *et seq.*

In reaching its decision, BPA has undertaken an extensive environmental evaluation in compliance with the National Environmental Policy Act (NEPA). Initially, BPA engaged in public information meetings to define the issues to be addressed in the SEIS and the relationship of the SEIS to other concurrent and ongoing processes. BPA prepared the draft SEIS and circulated it to approximately 2,200 individuals in October 1992. Various governmental entities and members of the public were provided a 45-day comment period. Contemporaneously, the cooperating agencies held nine public hearings throughout the region. The Final SEIS was filed with the Environmental Protection Agency on March 5, 1993, and distributed in full or in summary to approximately 2,500 individuals. Subsequently, a 30-day comment period was provided.

**FOR FURTHER INFORMATION CONTACT:** Roy B. Fox, Manager, Coordination and Review, Office of Power Sales, PG, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208; Telephone 503–230–4261. For a copy of the appendices and additional copies of the Record of Decision on Water Management Actions in the Columbia River River System, call 800–622–4520 or 230–3478 (Portland).

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[1] BPA's water and power management responsibilities are set forth in Appendix G to this record of decision

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## II. Background

This is the third consultation process under section 7 of the Endangered Species Act between NMFS and BPA on the operation of the hydrosystem. Previous consultations are summarized below. This "background" section summarizes the river system which is the subject of the SEIS and NMFS Biological Opinion, and describes the various roles of the several Federal, State, and Tribal parties who have authority and responsibility for various facets of river management, planning or other uses.

### *A. Habitat of the Listed Species: Columbia and Snake Rivers*

The habitat of the threatened and endangered species which are the subject of this record includes the Columbia and Snake Rivers, as well as portions of the Pacific Ocean adjacent to the west coasts of Oregon, Washington, and British Columbia. The Columbia River is the fourth largest river in North America. It originates in British Columbia, Canada, travels south through central Washington, then west through the Columbia River gorge until it empties into the Pacific Ocean, 1200 miles from its source. The Snake River, a tributary of the Columbia, originates in Wyoming, travels through Idaho, and joins the Columbia in southeast Washington. The Columbia River is 1214 miles long; the Snake River stretches 1,038 miles. Together, they and other tributaries comprise the Columbia River Basin drainage, an area covering 39,500 square miles.

While once free flowing, the Columbia and Snake have since the mid-1930's been multipurpose rivers. In their natural state, significant flooding occurred and little transportation of commercial goods was possible. For these reasons, and to meet other purposes such as irrigated agriculture, recreation, and the production of power, Congress authorized over a period of approximately 25 years the construction of 30 dams to regulate water flow and produce electric power. Congress was fully aware that the construction of the dams could have an adverse affect on anadromous fish. It provided for fish passage facilities consistent with the best science available at that time, and under the Mitchell Act and individual dam authorization appropriated funds for the construction of a series of hatcheries to artificially propagate large numbers of salmon.

The dams achieved their purpose. Floods were controlled, power production electrified the Pacific Northwest and brought industry and jobs to the region, agriculture benefited from irrigation, and recreational opportunities were enhanced. The Snake River dams were instrumental in achieving a long sought goal by the State of Idaho and its congressional delegation: they enabled the construction of the Port of Lewiston, Idaho which allowed farmers to send their grain to market by water rather than by railroad, at considerable financial savings.

Anadromous fish were, as expected, adversely impacted although the number of returning salmon continue to vary widely from year to year. Scientific studies show that "down years" occur in streams both with dams and without dams. Dams have significantly restricted the habitat of anadromous fish and caused passage problems for both juveniles and adults which have contributed to the decline of the listed species. BPA has spent in excess of $1 billion dollars of ratepayer money to correct these problems, and in cooperation with State and Federal agencies, including NMFS, is seeking to implement measures to enhance anadromous fish populations.

The dams created reservoirs which store water that on average produces 18,500 megawatts of electricity annually. This electricity is marketed at wholesale by BPA. A discussion of BPA's roles and responsibilities is contained in Appendix G. The storage capacity of the reservoirs, however, is limited. Over one-third of the Columbia River storage capacity is located in British Columbia. BPA has limited ability to call on this storage. Reservoir storage limitations are an important issue because, as discussed below, NMFS relies heavily on measures to increase flow which presuppose the ability to attain a certain level of water at predetermined points at specified times.

The dams which are the subject of the SEIS and the Biological Opinion include, on the Snake River and its tributaries, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, Hungry Horse, Libby, and Albeni Falls. Columbia River dams are the Grand Coulee, McNary, John Day, the Dalles, and the Bonneville Projects.

Other Columbia River dams, not owned by the Federal Government and therefore not the subject of the SEIS or the Biological Opinion, include Priest Rapids, Wanapum, Rocky Reach, Rock Island, and Wells. These facilities are licensed to public utility districts in the State of Washington and their operation is coordinated with the Federal dams through a contract known as the Pacific Northwest Coordination Agreement (PNCA).

Other Snake River dams, not owned by the Federal Government, include the Hells Canyon Complex of projects licensed to the Idaho Power Company (IPC). These projects will be the subject of relicensing by the Federal Energy Regulatory Commission in the next several years. The Brownlee Project is especially critical because BPA must have the approval of Idaho Power to store and shape water from the upper Snake River to benefit the listed species [2]

### *B. A River "Run By Committees": Key Players*

Professor Don Bevan of the University of Washington, the Chairman of the NMFS Recovery Team, describes the Columbia River system as one which is "run by committees." This description

[2] To date, the IPC has cooperated in such storing and shaping although the costs for services have been borne primarily by BPA ratepayers.

is appropriate. While BPA is responsible for marketing electric power from these hydroelectric projects, providing nearly one-half of all electricity consumed in the Pacific Northwest, responsibility or regulatory authority for river operations, planning, or other uses is divided among a number of Federal and State agencies and Indian Tribes, and a key interstate compact entity, the Northwest Power Planning Council (NPPC) and the NMFS Recovery Team. A brief description of the roles and responsibilities of these entities is essential to understand the enormous complexity of the problem facing NMFS and the action agencies as they seek to fulfill their statutory responsibilities and also act in such a way as not to jeopardize the listed species or their habitat.

The Bonneville Power Administration, the U.S. Army Corps of Engineers (Corps), and the U.S. Bureau of Reclamation (BOR) are the three Federal action agencies who, together, manage, operate, and regulate the Federal hydroelectric projects on the Columbia and Snake Rivers. The Corps and Bureau constructed the facilities and operate them on a daily basis; BPA markets the electricity produced by the Projects and through the revenues generated by the sale of this power repays the Treasury of the United States for the portion of project costs allocated to commercial power.[3]

There are also, as previously noted, numerous non-Federal facilities which are licensed to both public and private licensees by the Federal Energy Regulatory Commission (FERC). Project licensees are required by law to mitigate for impacts to fisheries affected by project development. Licenses issued by FERC include site-specific mitigation provisions. Licenses may be amended, generally during relicensing.[4]

Fisheries responsibility is divided, at the Federal level, between the United States Fish and Wildlife Service (USFWS), which addresses nonanadromous species and the National Marine Fisheries Service (NMFS), which addresses anadromous species. NMFS faces the challenge of overseeing both the continued commercial harvest and the protection of the listed species which are the subject of the Biological Opinion. State fisheries agencies include those of the States of Washington, Oregon, Idaho, and Montana.

Treaty Tribes, entitled to harvest fish for ceremonial and subsistence purposes, interact with NMFS and the State agencies through the Columbia River Fisheries Management Plan, which is administered by the United States District Court for the District of Oregon through that court's ongoing jurisdiction. The Plan administers fisheries harvest and was constructed in the wake of a judicial decision, *U.S.* v. *Oregon*, which granted the Tribes the right to take significant numbers of anadromous fish pursuant to their Treaties with the United States. Tribal Compact members include the Confederated Tribes of the Umatilla Nation, the Yakima Indian Nation, the Confederated Tribes of the Warm Springs, and the Nez Perce Tribe.

BPA funds and oversees implementation of the NPPC Fish and Wildlife Program, described below, and repays the cost of fish hatcheries, passage facilities, and other improvements at individual Projects as part of its overall responsibility to pay all project hydropower costs.

The NPPC is an interstate compact entity. The Council was created pursuant to section 4(h) of the Northwest Power Act of 1980. 16 U.S.C. 839 4(h). The Council is compromised of eight members. Two members are appointed by each of the Governors of Washington, Oregon, Idaho, and Montana. The Council guides the BPA and is responsible for preparing a Fish and Wildlife Program to "protect, mitigate, and enhance" fish and wildlife affected by Federal projects in the Columbia River Basin.

Importantly, while the Council oversees the Fish and Wildlife Program through section 4(h) of the Northwest Power Act, it has no statutory role with respect to guiding NMFS. Congress did, however, recognize the dilemma of a "river run by committees." It directed that, "The Administrator and such Federal agencies (Corps and Bureau) shall consult with the Secretary of the Interior, the Administrator of the National Marine Fisheries Service, and the State fish and wildlife agencies, appropriate Indian Tribes and affected project operators * * * who) * * * shall to the greatest extent practicable, coordinate their actions." 16 U.S.C. 839b(h)(II)(B).

The Congress had hoped, and anticipated, that the passage of the Northwest Power Act and the Council's Fish and Wildlife Program would avoid the need for NMFS to take action under the ESA. The Council's Program has had some significant successes. Salmon restoration in the Yakima Basin is enhanced. Steelhead and mid Columbia chinook levels are also substantially higher. Upriver steelhead runs have increased dramatically, from an average run of 124,000 fish in the later half of the 1970's to an average of 363,000 fish in the later half of the 1980's. Upriver bright fall chinook runs increased from an average of 88,000 in the early 1980's to an average run of 299,000 in the late 1980s. The upriver spring chinook runs increased from an average run of 58,000 in the early 1980s to an average run of 97,000 in the late 1980s. Other runs, however, such as the listed Snake River sockeye and chinook, decreased.

In anticipation of the NMFS listings, the NPPC undertook a process in 1991 to amend its Fish and Wildlife Program, focusing on a salmon rebuilding program. Three phases of the four-phase effort are relevant to anadromous fish and present recommendations on different aspects of salmon survival, including production, habitat improvement, harvest, and fish passage improvements through the FCRPS. BPA and the other action agencies continue to coordinate closely with the NPPC in the development and implementation of these amendments.

One key Council concept is "the Water Budget." The Water Budget concept sets aside volumes of water in reservoirs to be used solely for juvenile fish spring migration. The Water Budget is intended to replicate the "spring freshet" which juvenile salmon relied on prior to the construction of the dams for help in their journey to the sea. NMFS also relies upon additional amounts of water to help fish but, as shown below, NMFS approach potentially varies importantly from the NPPC by recommending that BPA and the action agencies take measures expected to result in flow at certain levels at certain river check points.[5]

The NPPC Program will serve as a valuable aid to the NMFS' Recovery Team (Team). The Team is the final key "Committee" which will influence recovery of the listed Columbia River Basin species. Team members are drawn from the public and private sectors. They are preparing a Recovery Plan. The Plan is expected to identify specific actions to be undertaken in order to

[3] The total plant investment in FCRPS projects exceeds $12 billion. BPA 1992 Annual Report.

[4] The IPC appears to take the position that a settlement agreement between IPC and the Department of Commerce fully mitigates for all impacts caused by its Hells Canyon complex.

[5] If NMFS viewed these flow levels as fixed irrespective of natural water conditions, then the distinction between "water volume" (Water Budget) and "flow" is critical to understanding the differences of opinion in salmon recovery. Providing fixed flow potentially presents significant physical problems in a river system with limited storage capability, especially in a drought situation such as the PNW is currently experiencing. There is also, as noted in section V.C.3 of this ROD and Technical Appendix C to this decision document, limited scientific support for a positive relationship between flow and fish survival.

conserve and recover the sockeye and chinook which are the subject of this decision document. BPA looks forward to the release of the draft Plan within the next few months.

### III. Prior Consultations With the National Marine Fisheries Service

BPA, the Corps, and Bureau have jointly consulted with NMFS twice before this current 1993 hydro operations consultation.

*A. 1992 Hydro Operations Consultation*

The first FCRPS consultation occurred considerably in advance of the 1992 spring juvenile salmon migration season. In anticipation of this consultation, the action agencies began an environmental review process. The process was designed to (1) evaluate the environmental effects of new short-term river management actions under NEPA; and (2) provide the biological assessment of proposed actions required of action agencies both under NEPA and the ESA. The process culminated in the Columbia River Salmon Flow Measures Options Analysis/Environmental Impact Statement (1992 OA/EIS).

Biological assessments were submitted to NMFS in February 1992. Consultation took place over the next 2 months. During consultation, NMFS and the action agencies exchanged information and analyses regarding the proposed operation. These exchanges and analyses examined possible operations including operating the four lower Snake River projects near minimum operating pool; operating the John Day pool at a lower elevation unless irrigation impacts occurred; and augmenting river flows during fish migration periods with additional releases from upstream storage reservoirs. On April 10, 1992, NMFS issued its biological opinion. The opinion found that the proposed 1992 hydro operations were not likely to jeopardize the continued existence of the listed Snake River species. BPA, the Corps, and Bureau then implemented the proposed action consistent with the 1992 OA/EIS and the NMFS opinion.

*B. Fall/Winter Hydro Operations Consultation*

Because the 1992 hydro operations biological opinion did not explicitly address flow and spill actions after the fall of 1992, and in response to continuing regional drought conditions, the action agencies requested to consult with NMFS on hydro operations during the fall of 1992 and winter of 1993. BPA prepared and submitted to NMFS a "Drought Response Management Plan" covering fall/winter reservoir management and other actions to assure the availability of stored water for later flow augmentation. NMFS issued a biological opinion that the proposed fall/winter hydro operations were not likely to jeopardize the continued existence of the listed Snake River species. BPA, the COE, and BOR implemented the proposed action consistent with the NMFS opinion.

### IV. 1993 FCRPS Operations: NEPA Analysis and Evaluation

*A. Introduction*

This chapter (1) explains the NEPA process in the context of both interim and long-term decisionmaking; (2) discusses the range of alternatives considered in the SEIS upon which this record relies; and (3) responds to some of the concerns raised by commenters subsequent to the issuance of the Final SEIS in March 1993.

*B. The Columbia River System Operation Review (SOR)*

The SEIS analyzes alternative means to operate the FCRPS during 1993 and future years and the environmental impacts of such alternatives. However, from a longer term perspective, more work is being conducted. Identifying the need to undertake a comprehensive, long-term study to coordinate the operation of the federal projects, BPA, the COE and BOR began a process in 1990 called the Columbia River System Operation Review (SOR). The SOR is a programmatic EIS which examines the coordinated operation and management of the FCRPS and the delivery of federal power to utilities and industries in the Pacific Northwest. It will be used to establish guidelines for river system operations which will account for impacts on all river users, including anadromous fish, power, recreation, resident fish, irrigation, and navigation. In addition to the BPA, COE, and the BOR, NMFS, the U.S. Fish and Wildlife Service (USFWS), National Park Service and U.S. Forest Service are cooperating agencies. The SOR also will evaluate environmental impacts associated with alternative coordination agreements and agreements allocating Federal and non-Federal responsibilities for returning Canada's share of Columbia River Treaty benefits. The SOR is scheduled for completion in late 1994 or early 1995.

*C. The SEIS Considered the Full Range of Alternatives as Required by NEPA*

This section describes the alternatives evaluated by BPA, the Corps and Bureau to operate the FCRPS in 1993 and future years so as not to jeopardize the continued existence of the listed Snake River salmon. The alternatives are further described in Chapter 3 of the SEIS, in Appendix J of the SEIS, and in an exchange of letters between NMFS and the action agencies. These alternatives are primarily flow-related actions at the eight run-of-river Corps projects in the lower Snake and Columbia Rivers. The Corps and Bureau storage projects in the upper Columbia River Basin as well as storage projects operated by BC Hydro in Canada are also involved.

Generally, the SEIS evaluates in detail four action alternatives that incorporate a combination of reservoir operation at lower pool elevations and flow augmentation measures involving multiple projects. The effects of these four alternative are measured and compared with the No-Action Alternative. The following is a brief description of the evaluated alternatives:

Alternative 1: No Action

Under this alternative, the projects would be operated as they were from about 1985 to 1990. All four lower Snake River reservoirs and all four lower Columbia River reservoirs would operate in the upper portion of the normal operating range. Storage reservoirs would be operated according to their normal rule curves. Existing flow augmentation provisions known as the Water Budget would continue.

Alternative 2: 1992 Operations

This alternative includes actions actually planned for the 1992 operating year. These actions were based on the OA/EIS; the BPA, Corps, and Bureau Records of Decision; and NMFS' Biological Opinion for 1992 operations. Alternative 2 does not include the March drawdown test at Lower Granite and Little Goose pools. The flow augmentation elements of Alternative 2 include additional water from Dworshak, Brownlee, the upper Snake River, and Grand Coulee, Arrow and/or Libby on the Columbia River. In addition, any water gained from transferring flood control space from either Dworshak or Brownlee to Grand Coulee would be used for flow augmentation. The four lower Snake River projects would be operated near minimum irrigation pool during spring and summer. During fall and winter, the storage projects would be operated in a manner which would provide the volumes of water for flow augmentation the following spring and summer described for this alternative, and the lower Snake River and lower Columbia River projects would operate within the normal operating range.

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Alternative 3: 1992 Operations With Libby/Hungry Horse Sensitivity

A basic condition of the 1992 operations was that Libby and Hungry Horse projects would not be operated differently to compensate for river flow changes elsewhere in the system. This alternative includes the same actions as Alternative 2 and adds a "sensitivity test" that models whether there would be any indirect effects on Libby or Hungry Horse operations from flow improvement measures taken elsewhere in the system. This alternative was included in response to a request from the State of Montana.

Alternative 4: Modified 1992 Operations

This includes those actions in Alternative 2, plus enhancement of summer flow augmentation from Dworshak. The primary differences between Alternative 4 and Alternative 2 are two features of planned flow augmentation from Dworshak. One feature is that the September release in Alternative 2 could be shifted to July and/or August to benefit summer juvenile migrants, and/or adult salmon, when determined to be biologically prudent. The other, criterion for flood control transfer from Dworshak to Grand Coulee, would change in order to increase the number of years in which space for flood control could be transferred, filled and subsequently released for salmon.

Alternative 4 was identified as the preferred alternative in the final SEIS and is the basis for the Administrator's selected action as further detailed in Part VI.

Alternative 5: Modified 1992 Operations With Upper Snake Sensitivity

Alternative 5 includes actions in Alternative 2, plus improvements to salmon flows from Dworshak as in Alternative 4, but minus the flow transfer water from the upper Snake. This alternative was analyzed as a sensitivity model to show the difference if no water is available from the upper Snake River. Purchase of uncontracted water from the upper Snake River Basin was an objective of the 1992 operating plan. This objective was only partially met because of low flows in 1992 and the consequent scarcity of water available for purchase.

*D. Comments on the Final SEIS*

A number of comments were received by BPA on the final SEIS for 1993 operations. While the comments raised issues that were previously addressed by the cooperating agencies in the SEIS, BPA has reiterated its response to the more substantive comments as follows:

1. The 1993 EIS Examines a Wide Range of Flow Augmentation Alternatives

The Public Power Council (PPC) and the Pacific Northwest Generating Cooperative (PNGC) believe that the action agencies only considered the range of flow augmentation levels presented in the 1993 SEIS and therefore criticize the agencies for considering a narrow range of alternatives. PPC/PNGC at 4–5. The adequacy of the range of alternatives considered by the action agencies is identified in the 1993 SEIS as a common issue. The agencies responded to this issue at pages H–6 to H–7 of the SEIS.

As explained in the document, BPA believes that the feasible flow improvement measures were limited by the structural configuration of the system and the total amount of storage available. Accordingly, the SEIS evaluates in detail four alternatives that incorporate a combination of reservoir operations at lower pool elevations and flow augmentation measures involving multiple projects. See SEIS at 3–2. Additionally, as a supplement to the 1992 Flow Options EIS, the 1993 SEIS incorporates by reference the wide range of alternatives evaluated in 1992. See SEIS Response S6–2 at H–32.

The 1992 Flow Options EIS considered 11 flow augmentation alternatives in Options A–J, plus the NPPC Plan. See 1992 Flow Options EIS, section 3.2.3, at 3–7 to 3–10; see also, SEIS Response A15–15 at H–70. Accordingly, the range of alternatives considered in the 1993 SEIS is adequate.

2. The Scope of the 1993 SEIS is Adequate to Address Flow Augmentation Alternatives

The PPC and the PNGC believe that the scope of the 1993 SEIS is too narrow because it does not incorporate "[r]educed harvest levels, improved habitat management, and improved hatchery practices. PPC/PNGC at 7. The action agencies respond to this comment at pages H–7 to H–8 of the SEIS. As the agencies stated in the SEIS, the "function of this SEIS is to evaluate the impacts of several alternatives to the operation of certain dams and reservoirs in the Columbia-Snake River system during 1993 and future years." SEIS at 1–1. The 1993 SEIS considers only flow augmentation measures because these are the types of measures that can be implemented in this interim operational stage. Measures requiring major structural modifications at existing projects were not evaluated because they could not be completed in time to benefit 1993 salmon migration.

Further, because harvest, habitat and hatchery are not involved in the operation of FCRPS dams and reservoirs to augment flows for migrating salmon, these issues are being analyzed and evaluated in other biological assessments and opinions outside the SEIS process evaluating flow augmentation. See SEIS Responses A23–2 at H–80; A23–12 at H–81. The scope of the 1993 SEIS is appropriate to address flow augmentation alternatives.

3. A Relationship Between Flow and Survival Exists Sufficient To Support a Proposed Action Reflecting Consideration of Flow Augmentation Alternatives

Several commenters stated that a relationship between flow and juvenile salmon survival lacks scientific integrity. PPC/PNGC at 22; DSI at 2. They argue that the assumption made in the SEIS that flows aid in juvenile salmon migration is not based on credible scientific information. Despite research spanning three decades funded by BPA and the COE, the region still lacks information on the flow/survival relationship. This is due in large part to the use in earlier studies of what are now considered inadequate methodologies. However, as noted in the response to commenters on this issue in the SEIS, "the cumulative weight of the research does not demonstrate that absolutely no relationship exists." SEIS Response 5 at H–10.

Qualitatively, most, if not all, biologists agree that flows are important for fish survival. Quantitatively, we have only limited data of questionable accuracy for yearling chinook, and no direct flow-survival data for subyearling chinook, to predict what the incremental benefit to survival is for an incremental increase in flows. Until recently developed statistical tools and tagging techniques are applied during migration seasons, and this flow/survival relationship is established, the best scientific, albeit inconclusive, evidence available justifies the use of flow augmentation measures during this interim operation of the FCRPS. See SEIS Responses S7–18 at H–37; A15– 12 at H–69; A19–2 at H–75 to H–76; A25–23 at H–86. (See Appendix C)

V. BPA and Action Agencies: Biological Assessment, Consultation and Consideration of NMFS Biological Opinion

On February 17, 1993, BPA, the Corps, and Bureau commenced formal ESA consultation with NMFS by submitting to NMFS the Biological Assessment—"1993 Operation of the

Federal Columbia River Power System" (FCRPS BA). From that time until NMFS issued the Biological Opinion on 1993 Operation of the Federal Columbia River Power System (FCRPS B.O.) on May 26, 1993, the action agencies and NMFS formally consulted on the effect of proposed 1993 hydro operations on the listed Snake River salmon species.

This chapter describes:

- The biological analyses and conclusions contained in the FCRPS Biological Assessment;
- The consultation process on the FCRPS Biological Assessment; and
- BPA's consideration of the FCRPS B.O.

BPA's primary concern with the FCRPS B.O. is NMFS' interpretation of biological data to support the use of measures to result in flow levels to benefit juvenile salmon survival. This and other important points responses are summarized in the body of this decision document, and are addressed in more detail in appendices A–H.

*A. FCRPS Biological Assessment Analysis and Conclusions.*

1. Analytical Framework

*a. Scope of analysis.* The scope of the FCRPS BA is similar to that in the 1992 FCRPS consultation. As in 1992, the action agencies chose a broad scope to analyze how 1993 hydro operations, within the larger, more comprehensive context of life-stage survival of anadromous species, would affect survival. The scope is broad both as to the actions analyzed and the full species life-cycle considered.

BPA reaffirms its belief that the key to avoiding jeopardy and achieving recovery of Snake River sockeye and chinook salmon, especially in the near term, is increased survival of adults returning to spawn. For a technical discussion of this approach to salmon survival and recovery, see Appendix D. Spawning escapement depends upon actions taken by various entities at all stages of the salmon's life-cycle. Consequently, the extent to which a proposed action affects a listed species, in part, depends upon how previous actions have affected it.

BPA recognizes that successful juvenile and adult passage through the FCRPS projects along the migration route is critical to the species' survival and recovery. But the full salmon life-cycle requires habitat conducive to hatching and rearing of smolts prior to migration, minimal interference by hatchery-bred salmon, reduced predation and a harvest-restricted ocean and in-river environment. Therefore, this FCRPS BA analyzes how 1993 hydro operations, when combined with other effects at various salmon life stages, affect survival of the listed Snake River species and weak anadromous stocks. FCRPS BA at 1. Treating the proposed designation of critical habitat as though it were final, the BA also encompasses an analysis of impacts on critical habitat. FCRPS BA at 28.

*b. Analytical tools used.* Although definitive information about the Snake River listed species is incomplete, and scientific opinion is not uniform, the action agencies have used two approaches that consider all available information in order to analyze 1993 hydro operations.

First, empirical data analysis is used to reflect the current status of the populations and project the expected adult salmon population levels in 1993 (See Appendices B and E, and the FCRPS BA at 27). Second, biological modeling analysis is used to provide projections of the effects of 1993 proposed actions on juvenile survival in 1993 and future years, and the effects these actions will have on spawning escapement trends. FCRPS BA at 27. The modeling analysis also reflects other non-operational mitigation actions that are planned for implementation in 1993 and future years.[6] *Id*

Our analyses regarding the listed Snake River sockeye salmon were limited. At the time the FCRPS BA was prepared and submitted, no Snake River sockeye salmon juveniles belonging to the ESA evolutionarily significant unit (ESU) were expected to outmigrate from Redfish Lake and enter the FCRPS in 1993. FCRPS BA at 29.

The BA noted, however, that in November 1992, a resident form of sockeye salmon was observed spawning in Redfish Lake. FCRPS BA at 30. These "residual" sockeye salmon may have produced offspring in 1991 or 1992 that could enter the hydrosystem in the spring of 1993. The BA concluded that the 1993 FCRPS measures intended to benefit the listed Snake River chinook species may also benefit the residual sockeye progeny. *Id.* On March 19, 1993, NMFS notified Federal agencies that after reviewing the growing scientific evidence on residual sockeye, it considered the resident form to be part of the ESU protected by the ESA. See FCRPS B.O. at 12. There is a possibility that protected residual sockeye may enter the FCRPS in 1993. BPA believes that the FCRPS BA conclusion that 1993 operational measures may benefit these sockeye addresses this concern. In 1993, BPA will continue to fund trapping and PIT-tagging of outmigrants from Redfish Lake to monitor run size and timing, and to estimate travel time in the FCRPS. FCRPS BA at 30.

2. Empirical Data Analysis

As the FCRPS BA states, there are uncertainties in evaluating data sets, and caution should be used in estimating the number of adults that successfully spawn. FCRPS BA at 31. For example, there are unexplained losses that occur after the adults pass Lower Granite, the last FCRPS project before the spawning ground, and inaccurate dam counts may confound and lend uncertainty to the analysis. *Id.* Empirical data on adult passage counts and redd index counts were evaluated to estimate the 1993 spring/summer chinook salmon run. Based primarily on the redd count data, the BA concluded that the near-term prognosis for 1993 spring/summer chinook adults was generally stable to slightly decreasing escapement trend compared to 1989–1992. *Id.* at 32. Analysis of adult passage counts, redd index counts and jack counts suggest continued low adult fall chinook salmon population levels in the near term. *Id.* at 36. This conclusion was based on the then fishery management forecast of the 1993 run, current harvest management escapement goals, a decreasing adult run estimate based on jack and juvenile counts, and low redd counts. *Id.* (See Appendix B and E for further discussion of empirical data.) These conclusions are consistent with projections derived from modeling analyses, which show a generally stable to slightly declining escapement trends for spring/summer chinook and declining escapement trends for fall chinook under baseline conditions. *Id.* at 54, 56, 65–67.

3. Biological Modeling Analysis

A quantitative, comprehensive evaluation of the many factors that combine to affect juvenile salmon survival through the FCRPS projects and the long-term population trends for the listed species requires analytical tools such as computer models. The models utilize currently available scientific information. The FCRPS BA uses two such computer models to evaluate the biological effect of proposed hydro operations and nonflow measures on the listed Snake River chinook salmon. FCRPS BA at 37. The juvenile passage

[6] Analytic techniques and parameter values to be used in the modeling were discussed among BPA, Corps, Northwest Power Planning Council and state and Tribal fishery personnel during August, September, and October of 1992. Additional parameter values were submitted by NMFS. The results of these discussions and agreements were incorporated in the models and presented in the FCRPS BA analysis.

survival model known as the Columbia River Salmon Passage Model (CRiSP.0) analyzes juvenile passage conditions. The results of CRiSP.0 are used in the spawning escapement trend model known as the Stochastic Life Cycle Model (SLCM). SLCM projects the expected spawning escapement trend of each population over the next 40 years. Sensitivity analyses were also performed. FCRPS BA at 57.

These models are important to estimate the future population of anadromous fish. The temporal and spatial distribution of both the population (in any given year multiple brood years are distributed throughout the species' range) and actions affecting that population (the effect of mitigation actions will continue over the years) requires the type of life-cycle modeling used in the FCRPS BA. *Id.* at 38. But models and existing data cannot completely account for the substantial level of uncertainty and variability inherent in biological systems. The uncertainty in the biological data and professional judgments used in the analysis requires a strong monitoring and evaluation program to follow closely the dynamics of the population to provide for corrections in the models and the management actions which are taken. *Id.*

*a. Juvenile Passage survival model results.* The development of the CRiSP.0 model is described in the FCRPS BA at 39. The results of the model are presented in the FCRPS BA at 50–51 and Appendix C. For juvenile Snake River spring/summer chinook migrants, the CRiSP.0 model results estimate that 1993 proposed flow actions provide a relative increase in the 10th percentile, median, and 90th percentile survivals of 5.2, 3.5, and 1.1 percent for the springs, and 3.8, 3.9, and 1.1 percent for the summers. In addition, relative to 1990 baseline conditions, the proposed flow and non-flow actions were projected to increase the estimated percentile survivals by 14.3, 6.5, and 2.4 percent for the springs, and 13.4, 8.3, and 3.1 percent for the summers. By 1998, the relative increases are even higher. FCRPS BA at 53. In general, the CRiSP.0 model results show that Snake River fall chinook salmon juvenile survival is relatively insensitive to the SEIS flow measures. *Id.* at 55. Survival improvements are projected for fall chinook with the addition of nonflow measures such as increased transportation, squawfish management, and bypass system additions and improvements. *Id.* Relative to 1990 baseline conditions, the 1993 proposed flow and nonflow actions were projected to increase the 10th percentile, median, and 90th percentile survivals by 50.8, 28.7, and 20.1 percent respectively. These increases were even higher for 1998. *Id.*

*b. Spawning escapement trend model results.* The development of the SLCM is described in the FCRPS BA at 39–49. The SLCM is calibrated and initialized using adult harvest and return data from past years. FCRPS BA at 40. The SLCM incorporates uncertainty through stochastic processes. In addition, the SLCM trend analyses assume three separate levels of effectiveness for certain mitigation measures having substantial levels of uncertainty. *Id.* The results of the model are presented in the FCRPS BA at 51–52.

The Snake River spring/summer chinook salmon SLCM results show that if all levels of effectiveness are considered, then the projected median escapement levels increase over time relative to 1990 baseline conditions. FCRPS BA at 53. The probabilities of escapement projections falling below 1000 spawners for springs and 500 spawners for summers increase over time under baseline conditions but stabilize or decrease with time under the proposed actions of each of the effectiveness levels. *Id.* If all levels of effectiveness are considered, the projected median escapement levels for Snake River fall chinook increase over time relative to 1990 baseline conditions. *Id.* at 56. The probability of escapement projections falling below 250 spawners increases with time under baseline conditions and decreases with time under the proposed actions for each of the effectiveness levels. *Id.*

4. Conclusions

*a. Snake River sockeye salmon.* The action agencies conclude in the FCRPS BA that the combination of the captive rearing program and improved migration conditions are expected to increase the number and productivity of Snake River sockeye salmon. Thus, the 1993 proposed hydro operation is not likely to jeopardize the continued existence of the sockeye or result in the destruction or adverse modification of its critical habitat. FCRPS BA at 74.

*b. Snake River spring/summer chinook salmon.* The action agencies conclude in the FCRPS BA that although near-term escapement trends will be generally stable or slightly decreasing, the long-term population projections for Snake River spring/summer chinook salmon are positive under the proposed actions. Life-cycle modeling projections indicate that improvements in juvenile passage survival, in combination with other life stage improvements stemming from habitat, harvest, and adult migration measures should lead to reversal of the near-term population decline and increased future populations levels. Thus, the 1993 proposed hydro operation is not likely to jeopardize the continued existence of the spring/summer chinook or result in the destruction or adverse modification of its critical habitat. FCRPS BA at 75.

*c. Snake River fall chinook salmon* The action agencies state in the FCRPS BA that it is important to consider information which suggests possible continued low population levels for Snake River fall chinook in the near-term. FCRPS BA at 77. Recent population declines, together with low jack counts and low numbers of redds in 1992, warrant concern that adult returns may not improve over the next few years. But long-term population projections are positive. Life- cycle modeling projections indicate that improvements in juvenile passage survival and adult escapement, in combination with other life stage improvements stemming from habitat, harvest, and adult migration measures should lead to reversal of the current population decline and increased future populations levels.

NMFS expects each sector affecting the listed species to contribute to improved survival, and the proposed hydro operation has been evaluated in the context of the foreseeable actions by these other sectors. FCRPS BA at 76. Thus, the agencies conclude that the 1993 proposed hydro operation is not likely to jeopardize the continued existence of the fall chinook or result in the destruction or adverse modification of its critical habitat. *Id.* at 77. However, the agencies recommend implementation of measures emphasizing benefits to returning adults in order to provide prompt, near-term benefits to fall chinook spawning escapement. *Id.* As stated above, BPA believes that increased survival of adults returning to spawn is critical to survival and recovery of the Snake River listed salmon species. See Appendix D.

*B. NEPA and Consultation Process With NMFS*

BPA entered discussions with NMFS on '93 operation of the FCRPS shortly after the conclusion of consultation on '92 operations. During the summer of 1992 BPA, Corps, and Bureau reached an agreement with NMFS on a two part consultation. First, the operation during the 1992/1993 fall and winter period would be addressed. While this consultation was in progress, the action agencies would prepare a supplemental EIS and biological assessment. This

second consultation would address spring 1993 and beyond operations.

Consultations were initiated and the fall and winter operations were described in letters from each of the action agencies and resulted in a Biological Opinion on Operation of the FCRPS through January and April 1993 (February 24, 1993). This opinion concluded that the proposed operation would not jeopardize the continued existence of the listed Snake River salmon species.

A notice of intent to prepare the SEIS was filed by the Corps on June 9, 1992. The BPA and Bureau were identified as cooperating agencies. Public meetings were held at the following times and places:

July 6, 1992: Portland, Oregon
July 7, 1992: Umatilla, Oregon
July 8, 1992: Pasco, Washington
July 9, 1992: Coulee Dam, Washington
July 14, 1992: Boise, Idaho
July 15, 1992: Lewiston, Idaho
July 16, 1992: Kalispell, Montana

The draft SEIS was issued on October 23, 1992. A 45 day comment period was held with public meetings at the following times and places:

November 4, 1992: Libby, Montana
November 5, 1992: Kalispell, Montana
November 9, 1992: Orofino, Idaho
November 10, 1992: Lewiston, Idaho
November 12, 1992: Boise, Idaho
November 16, 1992: Portland, Oregon
November 17, 1992: Hermiston, Oregon
November 18, 1992: Pasco, Washington
November 19, 1992: Grand Coulee, Washington

The final SEIS was prepared and made available to the public with the notice of availability published in the **Federal Register** on March 5, 1993. During the 30-day comment period, on the SEIS, the cooperating agencies received written comments from approximately 39 Federal, State, and local agencies, organizations, Native American Tribes, and individuals. BPA has considered these comments. The comments are substantive but not new issues. The issues were encompassed by the 1992 OA/EIS and the SEIS.

On February 17, 1993 BPA, Corps, and Bureau requested of NMFS formal consultation and submitted a biological assessment of the 1993 operation of the FCRPS (Appendix J, SEIS). Prior to submitting the biological assessment numerous meetings were held among the four agencies to discuss the proposed operations and the analysis.

During the consultation process, the staff and management of NMFS and the operating agencies had almost daily conversations either in person or by telephone. The participants extensively discussed and exchanged information on operation of the FCRPS, impacts of the FCRPS upon the listed species, and ways to reduce the impacts.[7]

Formal consultation concluded with issuance of NMFS' FCRPS B.O. on May 26, 1993. Although formal consultation has ended, the NMFS and the action agencies continue to communicate as 1993 operation of the FCRPS progresses.

*C. Consideration of NMFS' Biological Opinion and Additional Analysis During Consultation*

On May 26, 1993, NMFS issued a biological opinion on proposed operations of the Federal Columbia River Power System (FCRPS). The action proposed by BPA, COE, and BoR include flow and nonflow related measures. For a description of these measures, see Part VI of this ROD. See also Part II of the FCRPS Biological Opinion.

To determine whether the proposed action avoided jeopardy to Snake River sockeye, NMFS considers the human-induced mortality of even one adult fish, or an equivalent impact, to be a matter of grave concern. FCRPS B.O. at 14–15. Applying this standard to the proposed action, NMFS concludes that FCRPS improvements for 1993 will reduce mortality, and that the captive rearing program represents a dramatic increase in survival of juveniles over what would be expected in the absence of captive rearing. FCRPS B.O. at 64. Considering these improvements, NMFS concludes that the proposed 1993 operation of the FCRPS is not expected to reduce appreciably the likelihood of survival of the species and therefore is not likely to jeopardize the continued existence of Snake River sockeye salmon. FCRPS B.O. at 65.

To determine whether the proposed action avoided jeopardy to Snake River spring/summer chinook and fall chinook, NMFS used the standard described in its March 16, 1993, memorandum entitled "The Section 7 Consultation Process: Analyzing Actions that May Affect Endangered or Threatened Snake River Salmon". See FCRPS B.O. at 16. Applying this standard to FCRPS operations, NMFS concludes that proposed operation of the FCRPS is not likely to jeopardize the continued existence of Snake River sockeye, spring/summer chinook, or fall chinook salmon. FCRPS B.O. at 64–66. NMFS concludes that there is a reasonable certainty that the populations of spring/summer and fall chinook will stabilize in four life cycles and that the proposed action results in a meaningful decrease in mortality relative to the 1986–90 base period. FCRPS B.O. at 65–66.

BPA's analysis also shows significant reductions in mortality and projects a reversal of population declines for the listed species. BPA has conducted extensive analyses of impacts of the FCRPS upon the listed anadromous species. These analyses include those in the SEIS, the FCRPS Biological Assessment (see parts IV, V, and V.A. of this ROD) and consideration of the FCRPS Biological Opinion.

These analyses also include additional studies conducted during consultation with NMFS and additional review of empirical data and modeling. The empirical data analysis makes possible estimates of adult chinook salmon population levels in the near term and reflects the status of populations as affected by conditions in the last few years prior to their ESA listings and before improvements by the operating agencies and others take effect. The biological modeling analysis provides projections of the effects of the operating agencies' proposed action on juvenile survival in 1993 and future years, and the effects of the proposed action on spawning escapement trends.

There is consistency between empirical projections and baseline model projections (without additional actions). CRiSP and SLCM allow various measures to be analyzed and evaluated. Empirical data analysis provides additional information for identifying potential short-term difficulties with achieving a long-term uptrend, such as a risk of population declines below a critically low point from which an uptrend would be difficult to achieve.

The following summarizes BPA's review of empirical and modeling information during consultation and in consideration of NMFS' B.O. BPA also identifies ways in which its analyses differ from that of NMFS and considers how to more rigorously ensure against likely jeopardy over the near term.

1. Review of Empirical Data

Historical trends, in-season monitoring, and near-term empirical forecasts of run size of the listed salmon species help to monitor the biological status of the populations and evaluate progress towards rebuilding the species. Historical trends for all the listed species have been downward.

[7] The ESA consultation is a dynamic and iterative process. At one point during the consultation, NMFS considered issuing a "jeopardy" biological opinion. NMFS ultimately rejected this option, because of improved forecasts of spring and summer flow, and the operating agencies' agreement to modify their proposed action with additional measures, and to establish an inseason management process described in the incidental take statement.

Several indicators are relevant to near-term empirical forecasts of the run size of returning spring/summer and fall chinook. They are: counts of returning adults past Lower Granite Dam, redd counts, jack counts, and juvenile migration counts. The counts and count indices contain uncertainties, and near-term projections based upon empirical data primarily reflect conditions before some listings of Snake River sockeye and chinook took place and before some post-listing improvements take effect. However, the empirical data provide an additional tool for monitoring the health of the populations of these species, and in subsequent years the empirical data should reflect post-listing improvements in conditions. These indicators are important information to consider when assessing the near term health of the species.

The empirical data indicate that, for Snake River spring/summer chinook, the near-term estimate is for generally stable to slightly decreasing escapement trends compared to 1989–1992 in the near term. FCRPS B.A. at 32. For fall chinook, the near-term estimate is for continued low adult Snake River fall chinook salmon population levels in the near term. FCRPS B.A. at 36. A summary of this data appears in section V.A.2. of this ROD and pp. 31–36 of the FCRPS B.A. For a more detailed review please see Appendix B of this ROD, which is entitled, "Review of Empirical Data".

2. Review of Biological Modeling

Computer models were used during consultations with NMFS to project the biological effects of proposed river operations and other nonflow measures on the listed Snake River chinook salmon. The application of fishery models was essential to a comprehensive and quantitative evaluation of the many factors that combine to change juvenile fish passage survival and the long-term population trends of the ESA salmon stocks. The model analysis and supporting documentation provide a record of the data, assumptions, and scientific reasoning applied in the assessment of alternatives and were an important communication tool for consultation with NMFS. The juvenile passage survival projections from the CRISP model were used by NMFS as the basis for evaluating the proposed 1993 river operations relative to 1986–1990 levels of survival (first part of NMFS no-jeopardy standard). The adult population trend projections from the SLCM model were used by NMFS as the basis for evaluating the combined effects of the River fall chinook in the near-term. FCRPS BA at 77. Recent population declines, together with low jack counts and low numbers of redds in 1992, warrant concern that adult returns may not improve over the next few years. But long-term population projections are positive. Life-cycle modeling projections indicate that improvements in juvenile passage survival and adult escapement, in combination with other life stage improvements stemming from habitat, harvest, and adult migration measures should lead to reversal of the current population decline and increased future populations levels.

*a. Analyses Requested by NMFS.* Several modeling runs were performed at the request of NMFS during formal consultation. These analyses included changes in model parameters requested by NMFS, evaluation of alternative river operations, and updates reflecting new projections for 1993 water conditions. Additional life cycle analyses subsequent to the BA were also performed to further examine the effect of the past 3 years of poor water conditions on chinook population trends. (See Appendix D.) The analyses considered alternative system operations that were within the flexibility of operating constraints analyzed in the 1993 SEIS.

(1) Analysis Using NMFS Model Parameters. Projected changes in juvenile fish survival (CRiSP) and adult population trends (SLCM) using model parameters and changes in future conditions provided by NMFS on January 19, 1993, were provided to NMFS on February 2, 1993.

The projections of changes in juvenile fish survival for the 1993 operating year using NMFS model values showed very similar results to BPA's analysis in the BA. In general, these results showed substantial increases in juvenile survival for 1993 and later years. The median value of projected juvenile survival for 1993 increased relative to the baseline conditions by 5, 7, and 23 percent for spring, summer, and fall chinook respectively.

The projections of chinook adult population trends using NMFS model values were very similar to BPA's projections in the BA. The projections showed improving population trends and substantial decreases in the probability of declining run sizes for all three stocks. The probability of the population falling below specified bench marks at the end of the 40 year simulations (assuming all levels of uncertainty in mitigation effectiveness) decreased from 31, 21, and 75 percent to less than 1, 1, and 1 percent for spring, summer, and fall chinook respectively.

(2) Early Projections Reflecting 1993 Water Conditions. Estimates of juvenile fish survival for early projections of 1993 water conditions (provided as a high and low range) and for NMFS suggested flow targets were provided to NMFS in March. These analyses continued to use the model values provided by NMFS. The average juvenile survival for actual water conditions observed in a base period of 1986 through 1990 were also provided for comparison at the request of NMFS.

The projected range of flow levels (both high and low) in combination with other nonflow measures showed substantial survival improvements for both spring, summer and fall chinook. The projected juvenile survival levels for 1993 compared to the 1986 through 1990 survival levels showed 24, 34, and 63 percent increases under low runoff conditions and 30, 40, and 81 percent increases under high runoff conditions for spring, summer, and fall chinook respectively.

(3) Updated Water Projections and Alternative Operations. Additional juvenile survival analyses were provided to NMFS in April and May based on updated water projections. Some of these projections included alternative operations that were under consideration including a shift of 1 MAF from the spring flow augmentation period into July. These analyses continued to use model values requested by NMFS.

The baseline survival increased in the final set of model runs due to an error correction in the baseline flow data for the two months of April and August. This correction also increased the post-Bonneville transportation survival which is based on inriver survival during certain baseline years. While this data correction increased the absolute survival levels, it had only minimal effect on the relative changes in juvenile survival being used by NMFS as evaluation criteria during consultation.

The analyses performed during April and early May of updated water condition projections showed substantial changes both up and down in the projected juvenile survival improvements for 1993 relative to the average survival modeled for the 1986–90 baseline period. These survival changes were the result of changes in projected water conditions based on changes in the weather as opposed to changes in proposed river management actions. The effect of changes in the weather on the evaluation of river management actions raised significant concerns about the appropriateness of

using the survival in 1986–1990 as a baseline for comparisons instead of the 1986–1990 management actions with the current year's water conditions (which was used in 1992 consultations).

The final analyses provided to NMFS dated May 10 showed substantial improvements in juvenile survival for 1993 conditions relative to the average survival in 1986–1990. This analysis showed relative increases in juvenile survival of 18, 20, and 71 percent for spring, summer, and fall chinook respectively.

*b. Evaluation of additional analyses conducted during consultation.* The additional analysis conducted during consultation with NMFS supported BPA's analysis of spring, summer, and fall chinook juvenile passage survival and adult spawning escapement trends provided in the BA for 1993 River Operations. Both sets of analyses showed substantial improvements in juvenile survival for all three chinook species. In addition, life-cycle model projections indicate that the improvements in juvenile survival, in combination with other life stage improvements should lead to reversal of the near-term population decline and increased future population levels.

*c. Issues regarding NMFS application of models.* NMFS' application of biological models and development of supporting documentation provide a valuable record of the science applied in the Biological Opinion. The model analyses provide estimates of the effects of future actions on the survival of listed species critical to evaluation of alternatives. BPA fully supports the continued use and development of modeling tools and supporting biological data and collection of biological survival data (see discussion in Appendix D, about Conservation Measure G). Uncertainty in model projections should be reduced through future survival studies and increased monitoring and evaluation of salmon enhancement measures.

BPA has some concerns with NMFS' application of model results in their analysis, which we believe could be improved. These concerns include problems with the base period survival levels used in the analysis, assumptions on the effects certain actions may have on life stage survivals, and the use of changes in mortality instead of changes in survival as a criterion. In addition, NMFS makes some incorrect interpretations in the evaluation of model output from CRiSP and SLCM and in the comparison of different models used in the analyses. These issues are discussed in detail in Appendix D, "Issues Regarding NMFS' Application of Models."

3. Use of Flow to Benefit Fish

In NMFS' Incidental Take Statement, flow is the primary mechanism for improving the survival rate of the listed species during their downstream migration through the Snake and Columbia Rivers. FCRPS B.O. at pp. 91–92. NMFS prefers streamflows that meet or exceed:

*Snake River*

- 85 kcfs at Lower Granite from April 30 through June 20;
- 50 kcfs at Lower Granite from June 21 through July 31;

*Columbia River*

- 200 kcfs at McNary Dam from April 20 through June 30;
- 160 kcfs of McNary Dam from July 1 through July 31.

These figures represent a substantial increase in flow levels over 1992. The increased flow levels for summer periods are particularly difficult to achieve at a time when the Columbia River system is experiencing one of the worst droughts in recorded history. They also jeopardize attempts to help returning fall adults, which studies show to be at significant risk.

NMFS' biological justification for *spring* flows—Those from mid-April through late June—is based on (1) increasing the migration rate and (2) flow/survival data from the 1970s. NMFS states that slow migration increases exposure to predators and water quality problems, such as high dissolved gas levels; may cause juveniles to lose the urge to migrate; and increases the chances of juveniles entering the Columbia estuary during less favorable environmental conditions than would be the case with a faster migration. NMFS then cites Petrosky's (1991) work relating Marsh Creek chinook adult returns to flow condition during juvenile outmigration. Flow/survival relationships described by Sims and Ossiander (1981) form the basis for NMFS' recommended flow levels.

NMFS' biological justification for *summer* flows—those from late June through July—is based solely on purported benefits of increasing the migration rate, since there are *no data* on the relationship between flow and survival of subyearling smolts. NMFS cites the work of Berggren and Filardo (1991) as showing that decreased travel time of subyearling chinook was related to increased flows, provided smoltification was considered. NMFS hypothesizes that decreased travel time leads to higher survival because "faster movement of smolts should place them in the reservoirs earlier in the season, when water temperatures are low * * *" (NMFS, 1993a). Since predation rate is positively related to temperature (Vigg and Burley 1991) and fish guidance efficiency is inversely related to temperature (e.g., Kcrma et al. 1985), NMFS concludes that decreased travel time is beneficial. NMFS prioritizes use of summer flow augmentation for downstream migrant juvenile fish over upstream migrant adult fish.

This section of the ROD explains the important distinction between minimum flow levels and water volumes; discusses information on the effect of flow on smolt survival; offers suggestions for improving flow management; and describes impacts to the FCRPS of implementing the B.O. The points raised are discussed in detail, along with comments on other flow proposals, in Appendix C.

*a. Water volume versus flow level concepts.* A "flow level" concept potentially differs dramatically from a "water volume" concept. A flow level concept potentially requires that flow levels at predetermined locations meet or exceed a minimum level during a specified period of time regardless of the volume of water available to meet those flows. BPA does not support implementation of flow levels.

Use of flow levels raises two major concerns: (1) Biological Assessment analyses show that the proposed 1993 FCRPS operations, which include water volumes set aside for juvenile fish flow augmentation, avoided jeopardy to the continued existence of listed Snake River stocks according to NMFS' own standards; and (2) available data, although inconclusive, suggest that the proposed flow levels will not improve measurably juvenile or adult migration survival of listed Snake River stocks beyond that achieved by the water volumes provided by the proposed action.

BPA supports actions proposed in the BA for 1993 and subsequent years, including the Water Budget/volume concept for juvenile fish flow augmentation. See section VI. of this ROD and Appendix C. This action will provide continued improvement in FCRPS operation, resulting in improved juvenile and adult migration survival for all Snake and Columbia River salmonids.

*b. Effect of Flow on Smolt Survival*

Analysis of NMFS' Biological Basis for Spring Flows

- Once yearling have initiated directed migration, they appear to migrate faster with increased flows in the Snake River. However,

the relationship between travel time and smolt survival is uncertain.

• Existing flow/survival data on spring yearling outmigrants, such as Sims and Ossiander (1981), may provide general indicators of the effects of flow on survival in the Snake River. However, BPA has serious concerns about the level of uncertainty in the flow/survival and travel time/survival relationships that have been developed from these data. The original studies had substantial problems in study designs, sampling errors, and changing environmental conditions between study years. The development of reservoir specific survival relationships relies on a large number of outdated assumptions on dam passage survival during the years of the studies. In addition, these data and relationships were not corrected for fish collected and transported during the study years.

At most, these "best available" data should only be used to estimate relative changes in survival, and the uncertainty in the data should be recognized in any quantitative analyses supporting water management decisions for downstream migrant fish. Other factors in addition to river flows need to be considered in evaluating fish survival.

• Adult return data are important, but cannot be used to assess the benefits of water velocity for smolt survival.

Analysis of NMFS' Biological Justification for Summer Flows

• No flow/survival data exist for subyearling fish in the Snake and Columbia rivers. In lieu of survival data, fish managers have used travel time as a surrogate.

• We disagree with NMFS that flow is a good predictor of subyearling chinook travel time. In fact, research by NMFS in the John Day pool refutes this contention (Sims and Miller 1982; Miller and Sims 1983 and 1984.)

• Smolt development and temperature probably play a more influential role in determining subyearling migration behavior than flow. Only when these two variables are included can the migratory behavior of subyearlings be described.

• Exposure to predators in-river is probably decreased as travel time decreases, although benefits to survival have not been empirically quantified.

• The biological window for entry to the estuary is probably quite large, although this topic should be investigated.

• Priority should be given to studying the efficacy of augmenting flows in summer for temperature control to benefit adults.

*Multiple Environmental Factors Affect Smolt Survival, Not Just Flow*

It is a mistake to focus almost exclusively on flow to protect listed species because other environmental and physical factors, both riverine and marine, affect smolt survival. Water temperature, degree of smoltification, gas supersaturation, and bypass outfall location are all known to have significant impacts. And, these variables are interrelated. For example, travel time is related to level of smoltification which is related to temperature and photoperiod. Smolt survival is affected by a complex suite of variables; flow is not the only one.

Because multiple environmental factors affect smolt survival, a more holistic, ecosystem approach is necessary to improve fish survival. Especially important may be other biotic factors such as predators and competitors. Information related to the mainstem Lower Snake and Columbia Rivers as an ecosystem are critical.

Statistically Valid Information on Smolt Survival Is Essential

After three decades of research, the region still lacks necessary information on flow/survival relationships. We are optimistic, however, that recently developed statistical tools and tagging techniques will provide increasingly reliable estimates of smolt survival. Survival data will allow us to measure the benefits of actions, such as flow augmentation, designed to improve fish survival in-river. Progress toward rebuilding salmon stocks is dependent on being able to identify the magnitude, location, and mechanisms affecting smolt survival. Such data are critical for making major water management decisions to protect and enhance salmon and steelhead populations on a sound scientific basis.

c. Improved flow management to benefit fish. BPA supports the following measures to improve flow management so that the limited flow resources can be used as effectively as possible to benefit fish:

• Pulse flows, especially in the Snake River. Because of limited storage capability, particularly in the Snake River, flow augmentation cannot be provided for the entire wild juvenile fish migration period that spans several months. Given this situation, an alternative water use strategy, called pulsing, was proposed by BPA biologists in 1990. BPA suggested that flows be "pulsed" as a method of moving juvenile fish downstream to transportation collector dams more effectively. Flow augmentation releases would be made for several days and then rescinded for several days. This on-and-off pattern would be repeated throughout the flow augmentation period. Pulsing flow augmentation releases would provide increased flow levels for wild stocks throughout a greater proportion of their migration period.

• Augment flows when stocks that respond are present. Flows may not need to be augmented for wild summer chinook juveniles, the earliest migrants in the Snake River system. These fish readily move downstream even in very low flow conditions (Achord 1992 and Mathews et al. 1990 and 1992). The limited water supply may be better used for spring chinook in early to mid May. Flow augmentation should be targeted at the stocks most likely to respond to augmentation.

• Obtain Real-time monitoring Data. To allocate more efficiently the limited water supply, we need to use real-time monitoring data from the natal streams and monitoring stations along the river as juvenile fish migrate to the ocean. Data suggest that real-time monitoring could help to allocate more efficiently available flows (e.g., Rondorf and Miller 1993).

d. Physical constraints of reservoir storage. NMFS recommendations are difficult to meet, given the physical constraints of the Columbia River. The Columbia River system has limited reservoir storage capacity. Total Columbia River storage is 55.3 MAF. Of this total, Snake River storage capacity is only approximately 11 MAF. Only 2 MAF is available from Dworshak Reservoir, and 1 MAF is available from Brownlee Dam, which is controlled by a private entity, the Idaho Power Company. The remaining 8 MAF of storage capacity in the Snake River is divided among 26 reservoirs in the Snake River above Brownlee Dam.

These limitations and weather vagaries render it challenging to provide the flows that NMFS estimates in 1993. To do so, the Dworshak, Hungry Horse, and Libby Reservoirs may have to be drawn far below normal water levels. Recreation, irrigation, and other uses will also be adversely affected. Action agencies are faced, at the Libby Reservoir, with the difficult challenge of managing reservoir operations for juvenile salmon migration while also providing outflows of water believed by the USFWS to be needed for white sturgeon, a candidate ESA species which resides in the Kootenai River below Libby Dam.

As difficult as it is to provide NMFS flow levels contained in the Incidental Take statement, it could be physically impossible to provide the flow levels that NMFS recommends for future consideration as a conservation measure without literally draining the storage reservoirs. (NMFS Biological Opinion, Section VIII.B.6. at p. 70)

The practical effects on a multi-purpose river system are obvious: resident fish and wildlife, irrigation, recreation, transportation, and power use must be curtailed or severely restricted so that reservoirs can be drafted to provide flow for migrating listed species.[6]

[6] Power users are particularly at risk; if winter storms do not refill the reservoirs, BPA will be unable to call on hydro power to meet Northwest electric needs. The hydro system comprises 94.6% of BPA total electric capacity. The economic costs of operational measures are expected to cost BPA ratepayers. For additional information, see Appendix C.

*e. Impacts to FCRPS of Implementing Flow Levels in BO.*

Discussion of Additional July Measures Added to the Biological Opinion by Letter. During the consultation process, NMFS identified several measures that they expected could minimize incidental take of the Snake River juvenile fall chinook in July. The action agencies agreed to pursue implementation of the measures, and BPA has assessed their effect. The additional excess energy produced by these measures is estimated to be about 2500 average megawatts. The net cost of the group of measures to the federal system is expected to range from $10–15 million if BPA succeeds in signing contracts with other utilities to exchange about 1100 average megawatts in July.

Effects on FCRPS of implementing the flow levels in Measure 1 of the incidental take statement. In their Biological Opinion on 1993 operations of the hydrosystem, NMFS recommends flow levels in the lower Snake and Columbia Rivers. They described the flow levels in Section VI as: 85 kcfs in the Snake River between April 10 and June 20; 50 kcfs in the Snake River between June 21 and July 31; 200 kcfs in the lower Columbia River between April 20 and June 30; and 160 cfs in the lower Columbia River between July 1 and July 31. Further, they recommended these flow levels on a biweekly average basis.

Recent water projections indicate that natural streamflows may result in flows lower than the flow levels described above. If so, the additional costs could be $50–60 million. Consequently, as described in Measure 1.a(1) of the incidental take statement (FCRPS B.O. at 91), the operating agencies and NMFS are engaged in an inseason management process to determine how to shape available water augmentation volumes based on real time information regarding the timing of juvenile salmon migration.

BPA also analyzed the effects on FCRPS of implementing flow levels, which were greater than the ones in the 1993 Plan, described by NMFS in the Conservation Recommendations section of the 1993 B.O. To summarize, the increased annual net cost would average 83 million dollars with single year impacts ranging from $0–430 million. In addition, these increased flow levels would produce severe impacts to the ecology of storage reservoirs and economies of the communities that depend on them. The FCRPS does not have the storage capacity to allow operators to meet NMFS Conservation recommendations much of the time. See Appendix C.

*f. Summary.* In conclusion, BPA believes that the biological basis for NMFS' flow recommendations is weak and, even if it was not, there are severe physical constraints on storage capacity of FCRPS that may preclude the operating agencies from meeting the targets in some years. BPA agrees that adequate quality and quantity of flow is important for fish survival. The key questions are: how much flow is required and when is it needed? We encourage the region to strive to obtain definitive scientific data to answer these questions.

4. Review of Non-Flow Measures

*a. Introduction.* There are other measures, besides flow, that are important to rebuilding the Snake River stocks. BPA supports such actions as: spill, transportation, peak efficiency, predator control, juvenile and adult bypass improvements. These measures, which are described briefly below, are discussed in detail in Appendix E.

*b. Spill.* Spill is an interim strategy to improve juvenile fish migration conditions at dams. Available information, however, indicates when spill levels are too high, both juvenile and adult fish passage conditions may be compromised by adverse hydraulic conditions and/or excessive gas supersaturation. Therefore, it is imperative to consider potential negative effects of spill when spill levels are established. In some cases, spill levels necessary to achieve 70/50 or 80/70 percent FPE standards result in detrimental conditions to fish. These detrimental effects may diminish the anticipated benefit of spill to project passage survival, and in some cases, could result in overall decreases in fish survival.

Since 1989, spill for fish passage has been based on the 1989 Fish Spill Memorandum of Agreement (MOA) and consultation with NMFS. In addition, the operating agencies provided spill for fish passage at Bonneville Dam beginning in 1992. In 1993, BPA will manage water to meet the following spill provisions:

TABLE 1.—1993 SPILL FOR FISH PASSAGE

| Project | Spring | | | Summer | | |
|---|---|---|---|---|---|---|
| | Dates | Hours | Amount | Dates | Hours | Amount |
| Bonneville [1] | 4/15–6/14 | 24 h/d | 50% | 6/15–8/31 | 24 h/d | 40% |
| The Dalles [2] | 5/1–6/6 | 24 h/d | 10 | 6/7–8/23 | 24 h/d | 5 |
| John Day [3] | 5/1–5/6 | 0 | 0 | 6/7–8/23 | 2000–0600 | 20 |
| Ice Harbor [4] | 4/15–5/31 | 1800–0600 | 60 | 6/1–6/23 | 1800–0600 | 30 |

[1] Based on the Corps' 1993 Fish Passage Plan.
[2] Based on the 1989 Fish Spill Memorandum of Agreement; spill typically occurs from 2000—0400.
[3] Based on the 1989 Fish Spill Memorandum of Agreement.
[4] Based on consultation with National Marine Fisheries and the 1993 Biological Opinion on Operation of the FCRPS.

Note: Planned fish spill is not provided at McNary, Lower Monumental, Little Goose, or Lower Granite Dams. Actual spill may be modified following consultation with NMFS if of gas bubble disease or excessive total dissolved gas levels are observed.

*c. Transportation.* BPA supports a full transportation program consistent with 1993 planned operations as described in the 1993 FCRPS Biological Assessment.

*d. Peak efficiency.* BPA will make load requests consistent with "Bonneville Power Administration's System Load Shaping Guidelines to Enable Operating Turbines at Peak Efficiency". The Guidelines enable operating turbines within 1 percent of peak efficiency under most conditions during the fish migration but allow turbine operations outside peak efficiency under some specified conditions.

*e. Predator control.* BPA will continue to fund the fishery agencies and Tribes to implement the Squawfish Management Program in 1993 as follows:

(1) *Sport-reward fishery.* This fishery ranges from the mainstem Columbia and Snake Rivers up to Hell's Canyon on the

Snake River and Priest Rapids Dam on the Mid-Columbia.

(2) Dam Angling. This fishery occurs at the eight Federal mainstem dams.

(3) Responsible utilization of harvested squawfish.

(4) Research on predator-prey dynamics.

(5) Evaluation of the effectiveness of the program.

(6) Development of prey protection aimed at reducing predator-prey encounters and predator feeding efficiency.

*f. Juvenile and adult passage improvements.* To improve the juvenile and adult passage systems during 1993, BPA supports the Corps in the following work:

(1) At Bonneville Dam, because of the poor performance of the juvenile bypass facilities for subyearling chinook in terms of both fish guidance efficiency and fish survival, the Corps plans to remove all submersible traveling screens from both powerhouses during the summer migration season as an interim action to improve passage survival. Researchers will also evaluate fish guidance efficiency of new bypass improvements at the second powerhouse and determine fish passage survival through the first powerhouse bypass.

(2) At the Dalles Dam, evaluate fish guidance efficiency of prototype extended-length screens.

(3) At McNary Dam, continue testing prototype extended-length screens for the juvenile bypass facility.

(4) At Ice Harbor Dam, approximately 2,000 cfs will be discharged through the ice and trash sluiceway for 24 hours per day during the juvenile passage season. New traveling screens will be installed in all turbine units and fish will exit gatewells through new 14-inch orifices. This will be an interim operation until a new juvenile fish bypass facility is completed in 1996 (see Corps' Biological Assessment on Interim Operations of Ice Harbor, October 1992).

(5) At Lower Monumental Dam, conduct tests on juvenile fish passage through the outfall pipe and holding and loading facilities.

(6) At Little Goose Dam, evaluate fish guidance efficiency of prototype extended-length screens.

(7) Corps' Fish Passage Plan.

(8) Corps' Project Improvements for Endangered Species Program.

5. Standard for Avoidance of Jeopardy

NMFS' standard for avoidance of jeopardy calls for reductions in human-induced mortality by each action agency. In addition, overall reductions in human-induced mortality by action agencies and others must be sufficient to provide reasonable certainty of a reversal of population declines.

BPA supports this concept. The region must achieve a reversal of population declines, and each actor must contribute to this reversal by reducing mortality (or increasing survival) resulting from its actions. However, BPA has concerns with potential misapplication of this concept. Brief descriptions of three concerns follow.

First, BPA believes that NMFS underestimates the increases in survival (and reductions in human-induced mortality) achieved by the operating agencies. This underestimation potentially leads the operating agencies to undertake more measures than necessary to avoid jeopardy.

Second, NMFS tends to focus on projections of flow levels, which will vary with natural conditions. This emphasis raises a concern that NMFS might misapply the no-jeopardy concept by ignoring the fact that actual flows will sometimes be above and sometimes below earlier projections and instead construe prior projections of flows as conditions for avoiding jeopardy.

Third, NMFS' application of the standard allows for continued population declines over the short term before stabilization occurs. Given the low populations of the listed species, continued declines expose the species to continued demographic risks of extinction. Consequently, BPA favors consideration of a more rigorous application of the standard that averts short-term declines. One example for consideration is annual increases in a rolling three-year median escapement. Such a standard places more emphasis upon measures with near term benefits upon the listed species, such as reduced harvest and improved passage conditions for returning adults.

For a more complete consideration of these concerns, see Appendix A of this ROD, which is entitled, "Review of NMFS No- Jeopardy Standard."

6. Fishery Management

Improvements in fishery management are critical to improvements in spawning escapement and survival of the listed species. Current management regimes could achieve dramatic increases in escapement over the short term. In Appendix E, entitled *Review of Fishery Management*, identifies changes in fishery management that could achieve these increases.

7. Critical Habitat

Federal agencies have a responsibility to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat of listed species. 16 U.S.C. 1536(a)(2). Recently NMFS proposed designations of critical habitat for Snake River sockeye, spring/summer chinook, and fall chinook. 57 FR 57051 (Dec. 2, 1992). To assist decisionmaking, the action agencies have treated the proposed designation of critical habitat as though it were final and included the ocean, watersheds, and water from the Upper Snake River. BPA actions affect the river system habitat of listed species.

The regulatory definition of the destruction or adverse modification of critical habitat is similar to that for jeopardy. 50 C.F.R. 402.02. Consequently, BPA's review of impacts on the listed species encompasses analysis of impacts on critical habitat. The operating agencies have engaged in extensive consultation with NMFS to consider whether the proposed action jeopardizes the continued existence of the species or results in the destruction or adverse modification of their critical habitat.

Critical habitat interacts with population demographics to determine the reproductive potential and future population trajectory of a listed salmon species. In its comments to NMFS, BPA (1993a) documented its rationale for adding areas to NMFS' proposed designation of critical habitat.

NMFS proposed for designation as critical habitat the lower reaches of the mainstem Clearwater River. 57 FR 57051 (Dec. 2, 1992). In addition, BPA (1993a) recommended to NMFS that additional areas of the Clearwater River system should be included as critical habitat for fall chinook. This essential habitat includes the upstream areas of the mainstem Clearwater that are accessible to and utilized by fall chinook spawners, and the water quantity and quality attributes from the inaccessible areas of the Northfork Clearwater River above Dworshak Dam (BPA 1993a, pages 12–16). Natural production in the essential spawning and rearing habitats is needed for the fall chinook populations to stabilize in the near term, and eventually recover. The lower Clearwater River has extensive spawning and rearing habitat available for fall chinook which is currently not being seeded due to low spawners escapement (Arnsberg et al. 1992). Cramer and Neeley (1993) estimated that the run size of fall chinook salmon to the Snake River would be 40 times higher (about 200,000 vs. 5,000 adults) if habitat in the Clearwater Basin were seeded.

Both quantity and quality issues are important to the critical habitat of

spring/summer chinook since available spawning and rearing habitat is not currently seeded due to low escapement (IDFG 1992), and the habitat essential for the survival and recovery of the species is substantially degraded (Chapman and Witty 1993). The critical spawning and rearing habitat for Snake River spring/summer chinook is much more extensive than for fall chinook: It includes the entire Grande Ronde, Imnaha, Salmon, and Tucannon subbasins, and Asotin, Granite, and Sheep creeks. 57 FR 57051 (Dec. 2, 1992). In its comments to NMFS, BPA (1993a) documented the rationale for including the accessible portions of the Clearwater Basin for spring/summer chinook spawning and rearing critical habitat.

Chapman and Witty (1993) analyzed the effects of various factors causing degradation of essential spawning, rearing, and migratory habitat for Snake River spring/summer chinook salmon, and recommended mitigative actions to improve survival and promote recovery. Enhancement actions proposed by Chapman and Witty (1993) include elements relating to: (a) enhancement and monitoring of: Instream flows, water quality, and temperatures; (b) use of flow augmentation based on the results of reach flow-survival research; (c) implementation of land and water management policy in accordance with federal regulations (e.g., Forest Practices Act (USFS guidelines and Best Management Practices), Dredge and Placer Mining Act, Surface Mining Act, Stream Channel Protection Act, and Clean Water Act); (d) hatchery reform and evaluation ; and (e) research to address critical uncertainties (also see Whitney et al. 1993b).

## VI. Administrator's Decision

Based upon the administrative record, including the 1993 SEIS, the FCRPS BA, the FCRPS B.O. and this ROD, BPA has decided to implement the proposed action for reservoir regulation and project operations for 1993 and future years. The selected action is a modification of the Preferred Alternative identified in the SEIS, however, the environmental impacts of the selected action are substantially the same as those analyzed within the accompanying NEPA documentation, particularly within Alternative 4 of the SEIS. Additionally, BPA has further evaluated impacts associated with the selected action, as noted in Appendix C. The selected action is the environmentally preferred alternative because it provides optimal benefits for fish and wildlife. In selecting this action, BPA has adopted all practical means to avoid or minimize environmental harm.

### *Proposed FCRPS Operations for 1993 and Future Years*

The proposed actions are grouped into several categories: flow-related actions, spill-related actions, and non-flow measures. Although the action agencies coordinate their activities in the operation and management of the FCRPS, discrete agency actions are identified for purposes of determining statutory and contractual responsibility.

#### 1. Flow-Related Actions

Flow-related actions are reservoir operations, flow augmentation, and flood control transfers. Under reservoir operations, the Corps will operate the four lower Snake River projects (Ice Harbor, Lower Monumental, Little Goose, and Lower Granite) near minimum operating pool from April 1 to July 31. The Corps will operate the three lower Columbia River reservoirs (Bonneville, McNary, and the Dalles) in the normal operating range, and the John Day reservoir will be lowered to minimum irrigation pool from May 1 to August 31, unless higher pool levels are required to avoid impacts to irrigation intake facilities on the reservoir.

Flow augmentation actions involve releases of water in addition to minimum operating flows. BPA proposes to augment lower Columbia River flows from May 1 to June 30 by increasing the 3.45 Million Acre Feet (MAF) Water Budget releases with additional flow augmentation of up to 3.0 MAF with releases from Arrow reservoir and from the BOR-operated Grand Coulee reservoir. However, BPA and BOR will retain the ability to shift up to 1.0 MAF from the 3.0 MAF spring augmentation to the summer period of July 1 to July 30. The additional storage will be obtained if required through power purchase and exchange activities, with associated storage carried out by BPA. Brownlee operation will reflect historical releases plus 110 thousand acre feet (KAF) Water Budget releases in May.

In addition, BPA expects to enter into an agreement to arrange firm releases of NTSA water from BCH in the July period to increase summer flows in the lower Columbia River up to 10 kcfs. To increase these flows an additional 4 cubic feet per second (kcfs), BOR has agreed to provide an additional 3 feet of draft at Grand Coulee in July.[9]

[9] Water is "drafted" from a reservoir when it is released from a storage reservoir. Grand Coulee is a storage reservoir. Other projects, like the 4 lower Snake River projects are "run of the river" projects meaning that they have no storage capability.

At Dworshak reservoir on the north fork of the Clearwater River in Idaho, the Corps will provide supplemental releases of 1,000 MAF from April 10 to June 20, plus minimum flows of 1.2 kcfs if the runoff forecast is 16 MAF or less.[10] If the runoff forecast is greater than 16 MAF, 924 KAF will be available for flow augmentation, subject to refill and resulting flows at Lower Granite Dam. *Id.* The Corpsas also agreed to retain flexibility to shift a portion of the spring flow augmentation water to the June 21 to July 31 period to aid juvenile fall chinook. *Id.* From June 21 to September 30, the Corps will provide 470 KAF, above 1.2 kcfs minimum discharge, which includes an additional release of up to 200 KAF above 1.2 kcfs in July and/or August to benefit summer juvenile migrants and/or adult migrants. *Id.*

To ensure a high probability of being on flood control rule curve by April 1994, the Corps will maintain 1.2 kcfs discharge from October through April, unless higher discharges are required for flood control or for short-term power emergencies.[11] On December 15, the Corps will seek to be at the 1,558 foot elevation in the reservoir, which is the winter flood draft maximum elevation. This Dworshak operation will allow more flexibility by providing more water that can be shaped on a short-term basis.

For the April 15 to June 15 period, the Bureau and BPA will arrange for the release of up to 190 KAF from Bureau projects and upper Snake River water banks, respectively. The availability of water for rental is dependent upon water surplus to irrigation demands. The Bureau has also agreed to retain the flexibility to shift a portion of the spring Snake River augmentation water to the June 21 to July 31 summer period. BPA and Bureau will arrange with Idaho Power Company (IPC) for the release of up to 137 KAF of storage from Brownlee reservoir in July. This release is dependent upon refill of the 137 KAF amount in Brownlee reservoir in August from uncontracted storage with Bureau projects and surplus irrigation water made available for flow augmentation from Idaho water banks. IPC has also agreed to release up to 100 KAF from Brownlee reservoir during the

[10] Dworshak is a project with a significant reservoir. Historically, the Dworshak reservoir has been maintained at a higher pool elvation than will be possible under the NMFS Biological Opinion. The higher elevation allowed recreational opportunities. Now Dworshak is being drawndown significantly to support increased Snake River flows, to the detriment of recreation.

[11] Flood control rule curve is a curve, or family of curves, indicating reservoir drawdown required to control floods.

September 1–30 period for temperature control. Likewise during this period, BPA and BOR will arrange for the release of 100 KAF from the upper Snake River basin for temperature control. This release may be dependent upon the availability of surplus irrigation water in the upper Snake River Basin.

Flow augmentation can be enhanced by flood control transfers, which involve shifting system flood control storage capacity from one reservoir to another. If the April forecast predicts runoff to Dworshak of 3.0 MAF or less between April 15 and 30, the COE will shift Dworshak system flood control requirements to the BOR Grand Coulee reservoir. If necessary, Brownlee system flood control requirements will also be transferred to Grand Coulee.

To replace or mitigate the lost hydroelectric generation caused by any of these flow-related actions, BPA will purchase or exchange amounts of power equivalent to the amounts that would have been generated if the additional water stored for flow augmentation or the amounts spilled had been available for power production.

2. Spill-Related Actions

Spill is the passage of water over a project spillway without going through the turbines to produce electricity. Spill can be forced, when there is no storage capability and flows exceed turbine capacity. The spill actions which are the subject of this record of decision, however, are planned. They will spill water to aid the migration of downstream juveniles. Juvenile survival is known to be increased when fish are spilled over a dam which does not have adequate fish bypass facilities. However, spill also increases nitrogen supersaturation in water, which can adversely affect fish.

Pursuant to a Spill Agreement previously executed by BPA fish agencies and Tribes, and the April 1992 Biological Opinion, BPA will request, and the Corps will implement, spill at The Dalles, John Day, and Ice Harbor dams.[12] Spill at Bonneville dam will be in accordance with the Corps' 1993 Fish Passage Plan (FPP). Fish agencies and Tribes will make spill requests through the Fish Passage Center, a BPA funded entity. The COE will continue to operate the Dissolved Gas Monitoring Program. The program provides automated measurements of dissolved gas concentrations from 23 stations along the river system. In 1993, spill for fish passage will not be provided at the Lower Granite, Little Goose, Lower Monumental, and McNary projects. Spill is not needed at these facilities because juvenile salmon are being collected and transported by barge from these facilities.[13]

3. Non-Flow Measures

In addition to flow- and spill-related actions proposed by the FCRPS agencies, BPA, the Corps and Bureau undertake other measures within their respective statutory authorities to improve conditions for weak anadromous stocks, especially the listed species. A full description of these measures for 1993 is contained in Appendix A of the Biological Assessment. (SEIS Appendix J). Some of these measures were implemented before the Snake River salmon listings occurred, and some have been undertaken in response to the listings. For example, the Corps will continue or undertake (1) the Project Improvements for Endangered Species Program; (2) the operation and maintenance of various juvenile and adult fish passage facilities, such as fish bypasses, spillways, sluiceways, and fish ladders; (3) the Fish Transportation Program; (4) coordinated fish hatchery releases; (5) and various research and monitoring efforts. For details of these non-low project operations, see the 1993 FPP.

In 1993, BPA will continue funding numerous measures to protect, mitigate, and enhance weak and listed stocks. Because squawfish are the primary predator of juvenile salmon in the hydrosystem, BPA will continue to fund a multi-faceted program to reduce squawfish predation, including removal fisheries, harvest technology research, prey protection measures, and basic biological research. BPA will also continue enhanced law enforcement of illegal fisheries. A multi-jurisdiction police force now operates at full capacity and will do so again in 1993.

BPA will also continue to fund the Smolt Monitoring/Water Budget Management Program. Mainstem passage Passive Integrated Transponder (PIT) tag data will again be used for making real time decisions related to this program. PIT tags enable the investigation of the relationships among flows, spill, travel time, smolt condition, smolt survival, and adult production. Time series PIT tag data are used to evaluate the effectiveness of the Water Budget and related actions. In 1993, a pilot study will utilize PIT tag technology and new analytical approaches to estimate smolt survival and travel time in the Lower Snake River. If successful, research will continue in 1994, 1995 and 1996, the findings may be applied toward determining survival estimates for wild chinook salmon migrants.

FCRPS water and power management and transmission system operations by BPA will be subject to these proposed actions, unless emergency conditions or changed conditions warrant modified operations. In the event that either of the latter circumstances should occur, BPA and other action agencies will reinitiate consultation with NMFS, and other action agencies.

*B. The Proposed Action Complies With the ESA and Is Consistent With the FCRPS BO*

Considering all of this information and factors, as well as the professional judgment of its scientists, BPA believes that the action proposed by the operating agencies increases the survival (and reduces the mortality) of Snake River sockeye, spring/summer chinook, and fall chinook. BPA's analyses during consultation with NMFS substantiates the results expressed in the FCRPS BA. For Snake River sockeye, the increase in survival (or reduction in mortality) resulting from proposed operations, combined with the benefits of the captive broodstock program, show that FCRPS operations are not likely to reduce appreciably the likelihood of survival. For Snake River spring/summer chinook and fall chinook, the proposed operations significantly improve survival (or reduce mortality) relative to the 1986–1990 base period, and combined effects analysis shows a reasonable certainty that populations of these fish will stabilize and increase in the long term.

By reducing mortality relative to a 1986–1990 base period, and because analyses of combined effects shows a reversal of population declines in the long term, the selected action satisfies NMFS' standard for avoiding jeopardy. Given historically low population levels, BPA encourages efforts to avert continued declines in population levels over the near term. Because the selected action includes measures to benefit returning adults, the proposed action would also satisfy a more rigorous

[12] The spill agreement was executed in 1989 and provides that a specific amount of water be passed over the spillways of certain Corps dams to improve juvenile fish passage. The agreement is effective for 10 years or until permanent fish passage facilities, such as screens, can be installed at the dams. BPA ratepayers will repay the cost of the screens as a part of project costs.

[13] Fish transportation is an important part of the fish recovery plan. It is the subject of a seperate biological opinion dated April 14, 1993. Studies show that juvenile survival increases when fish are transported. See NMSF Biological Opinion of May 26, 1993 on FCRPS Operations at page 37.

standard that averted the short-term continued population declines.

In addition, BPA's analysis shows the selection action is not likely to result in the destruction or adverse modification of critical habitat of the listed species.

BPA continues to believe that there is no conclusive biological data to support the flow levels advocated by NMFS in the FCRPS B.O. at 4. See Section V.C.3.c and Appendix C of this ROD. As stated in this ROD, the flow/survival relationship has not been biologically established sufficient to justify the flow levels recommended by NMFS. *Id.* at Section V.C.3. However, BPA concludes that the measures the action agencies are undertaking in the course of 1993 hydro operations will be sufficient to reach the result desired by NMFS to use flow augmentation to aid salmon migration and survival.

BPA believes that the long-term, comprehensive recovery plan being developed by the NMFS Salmon Recovery Team will provide the means to guide future federal actions in all sectors to bring about survival and recovery of the Snake River listed salmon species and to protect the region's weak anadromous stocks. BPA looks to the recovery plan and the NPPC Fish and Wildlife Program to enable BPA to undertake cost-effective salmon recovery measures that will achieve recovery under the ESA while meeting BPA's water and power management responsibilities under the Northwest Power Act.

The proposed action has also been fully evaluated for its effect on the listed Snake River salmon species bald eagles, peregrine falkans, grizzly bears, and grey wolves under the ESA in the FCRPS BA. The U.S. Fish and Wildlife Service in its B.O. June 11, 1993, concurred that the proposed operation would not likely adversely affect the grey wolf, grizzly bear, and peregrine falcon, and would not likely jeopardize the continued existence of the bald eagle. BPA concurs with this conclusion.

Issued in Portland, Oregon, on July 2, 1993.

**Randall W. Hardy,**

*Administrator.*

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Part VI

# Federal Emergency Management Agency

**United States Fire Administration**

**Changes to the Hotel and Motel Fire Safety Act National Master List; Notice**

VOL 58 ISS 141 JL 26 1993 UMI

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### United States Fire Administration

### Changes to the Hotel and Motel Fire Safety Act National Master List

**AGENCY:** United States Fire Administration, FEMA.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

**EFFECTIVE DATE:** August 25, 1993.

**ADDRESSES:** Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see Supplemental Information below.

**FOR FURTHER INFORMATION CONTACT:** Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

**SUPPLEMENTARY INFORMATION:** Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes five times previously.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: July 21, 1993.

**Spence W. Perry,**

*Acting General Counsel.*

### HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 07/19/93 UPDATE

| Property name | PO box/RT No., street address | City, state/zip | Telephone |
|---|---|---|---|
| **Additions** | | | |
| Arizona: | | | |
| Point Hilton Resort at Squaw Peak | 7677 N. 16th St | Phoenix, AZ 85020 | (602) 997–2626 |
| California: | | | |
| Holiday Inn Anaheim Center | 1221 S. Harbor Blvd | Anaheim, CA 92805 | (714) 758–0900 |
| Carlyle Inn | 1119 S. Robertson Blvd | Los Angeles, CA 90035 | (310) 275–4445 |
| Marina International Hotel | 4200 Admiralty Way | Marina Del Rey, CA 90292 | (310) 301–2000 |
| Howard Johnson Lodge | 4545 Waring Rd | San Diego, CA 92120 | (619) 286–7000 |
| Hotel Griffon | 155 Stuart St | San Francisco, CA 94105 | (415) 495–2100 |
| Hotel Sainte Claire | 302 S. Market St | San Jose, CA 95113 | (408) 295–2000 |
| Colorado: | | | |
| Radisson Inn Colorado Springs North | 8110 N. Academy Blvd | Colorado Springs, CO 80920 | (719) 598–5770 |
| The Alkar Gardens Resort | 1123 Verde Dr | Colorado Springs, CO 80910 | (719) 475–2564 |
| Holiday Inn | 51359 Hwy. 6 and 24 | Glenwood Springs, CO 81601. | (303) 945–6551 |
| Holiday Inn Trinidad | I–25 and Exit 11 | Trinidad, CO | (719) 846–4491 |
| Illinois: | | | |
| Carlyle L N Restaurant & Motel | Rt. 127 N | Carlyle, IL 62231 | (618) 594–2474 |
| Hudson Hotel | 5522 S. Indiana | Chicago, IL | (312) 363–8422 |
| Effingham Motel | 702 E. Fayette | Effingham, IL 62401 | (217) 342–3991 |
| Sycamore Motor Lodge | 271 E. Dearborn | Havana, IL 62644 | (309) 543–4454 |
| Lincoln Country Inn | 1750 5th | Lincoln, IL 62656. | |
| Presidential Inn | 3922 S. Harlem Ave | Lyons, IL 60534 | (708) 447–2890 |
| Motel 6 | 2359 69th Ave. Airport Rd | Moline, IL 61265 | (309) 764–6711 |
| Ramada Inn QCA | 2620 Airport Rd | Moline, IL 61265 | (309) 797–1211 |
| Country Host Motel | Monee-Manhattan Rd. at I–57. | Monee, IL 60449 | (708) 534–2150 |
| Courtyard by Marriott Naperville | 1155 E. Diehl Rd | Naperville, IL 60563 | (708) 505–0550 |

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 07/19/93 UPDATE—Continued

| Property name | PO box/RT No., street address | City, state/zip | Telephone |
|---|---|---|---|
| Holiday Inn Naperville | 1801 N. Naper Blvd | Naperville, IL 60563 | (708) 505–4900 |
| Comfort Inn | 3240 Vandever Ave | Pekin, IL 61554 | (309) 353–4047 |
| Red Roof Inn South Holland #057 | 17301 S. Halsted | South Holland, IL 60473 | (708) 331–1621 |
| Drury Inn | 3180 S. Dirksen Pkwy | Springfield, IL 62703 | (217) 529–3900 |
| Best Western Springfield East | 3090 Stevenson Dr | Springfield, IL 62703 | (217) 529–6611 |
| Holiday Inn Willowbrook | 7800 S. Kingery Rd | Willowbrook, IL 60521 | (708) 325–6400 |
| Maryland: | | | |
| Red Roof Inn #181 Oxon Hill | 6170 Oxon Hill Rd | Oxon Hill, Md 20745 | (301) 567–8030 |
| Pikesville Hilton Inn | 1726 Reisterstown Rd | Pikesville, Md 21208 | (410) 653–1100 |
| Red Roof Inn #209 | 111 W. Timonium Rd | Timonium, MD 21093 | (410) 666–0360 |
| Michigan: | | | |
| Super 8 Motel Grand Rapids | 727 44th St SW | Wyoming, MI 49509 | (616) 530–8588 |
| Budgetel Inn #741 | 2035 Service Dr | Jackson, MI 49201 | (517) 789–6000 |
| Super 8 Motel | 600 Orleans Blvd | Coldwater, MI 49036 | (517) 278–8833 |
| The Ritz Carlton Hotel | 300 Town Venter Dr | Dearborn, MI 48126 | (313) 441–2000 |
| Days Inn | 1500 S. Beacon Blvd | Grand Haven, MI 49417 | (616) 842–1999 |
| Holiday Inn Crowne Plaza | 5700 28th St. SE | Grand Rapids, MI 49546 | (616) 957–1770 |
| Days Inn Lansing South | 6501 Pennsylvania | Lansing, MI 48911 | (517) 393–1650 |
| Holiday Inn Taylor | 20777 Eureka Rd | Taylor, MI 48180 | (313) 283–2200 |
| Minnesota: | | | |
| Red Roof Inn | 12920 Aldrich Ave. S | Burnsville, MN 55337 | (612) 890–1420 |
| Missouri: | | | |
| Red Roof Inn | 3470 Hollenberg Dr | Bridgeton, MO 63044 | (314) 291–3350 |
| Holiday Inn Airport West | 3551 Pennridge | Bridgeton, MO 63044 | (314) 291–5100 |
| Embassy Suites KC International Airport | 7640 NW Tiffany Springs Pkwy. | Kansas City, MO 64153 | (816) 891–7788 |
| Marriott Residence Inn | 2975 Main | Kansas City, MO 64108 | (816) 561–3000 |
| Embassy Suites Country Club Plaza | 220 W. 43rd St | Kansas City, M0 64111 | (816) 756–1720 |
| Lee's Summit Comfort Inn | 607 SE Oldham Pkwy | Lee's Summit, MO 64063 | (816) 524–8181 |
| Econo Lodge | 2611 N. Glenstone | Springfield, MO 65802 | (417) 864–3565 |
| Residence Inn | 1550 E. Raynell | Springfield, MO 65804 | (417) 883–7300 |
| Drury Inn St. Louis Airport | 10490 Natural Bridge Rd | St. Louis, MO 63134 | (314) 423–7700 |
| Holiday Inn South County Cntway | 6921 S. Lindbergh | St. Louis, MO 63125 | (314) 469–0968 |
| Holiday Inn St. Louis Convention Center | 811 N. 19th St | St. Louis, MO 63101 | (314) 421–4000 |
| Nevada: | | | |
| Harrah's Las Vegas Casino Hotel | 3475 Las Vegas Blvd. S | Las Vegas, NV 89109 | (702) 369–5000 |
| Oregon: | | | |
| Regency Inn | 50 Lowe Rd | Ashland, OR 97520 | (503) 482–4700 |
| Peppertree Motel | 10720 SW Allen | Beavorton, OR 97005 | (503) 641–7477 |
| Best Western Olympic Inn | 2627 S. 6th St | Klamath Falls, OR 97603 | (503) 882–9665 |
| Texas: | | | |
| Kiva Inn | 5403 S. 1st | Abilene, TX 79605 | (915) 695–2150 |
| Courtyard by Marriott | 5660 N. IH–35 | Austin, TX 78751 | (512) 458–2340 |
| Embassy Suites | 4337 S. Padre Island Dr | Corpus Chisti, TX 78411 | (512) 853–7899 |
| Embassy Suites Hotel | 2727 Stemmons Frwy | Dallas, TX 75207 | (214) 630–5332 |
| Radisson Hotel Resort | 2211 N. I–35 | Denton, TX 76205 | (817) 565–8499 |
| Utah: | | | |
| Cedar City Holiday Inn | 1575 W. 200 N | Cedar City, UT 84720 | (801) 586–8868 |
| West Winds Rodeway Inn | 525 E. Main St | Green River, UT 84525 | (801) 564–3421 |
| Comfort Suites | 800 S. Main | Moab, UT 84532 | (801) 259–5252 |
| Radisson Suite Hotel | 2510 Washington Blvd | Ogden, UT 84401 | (801) 627–1900 |
| Comfort Inn | 830 N. Main St | Payson, UT 84651 | (801) 465–4961 |
| Comfort Inn University | 1555 N. Canyon Rd | Provo, UT 84604 | (801) 374–6020 |
| Holiday Inn Provo | 1460 S. University Ave | Provo, UT 84646 | (801) 374–9750 |
| Best Western Executive Inn | 280 W. 7200 S | Salt Lake City, UT 84088 | (801) 566–4141 |
| Holiday Inn Airport | 1659 W. North Temple | Salt Lake City, UT 84116 | (801) 533–9000 |
| Quality Inn South | 4465 Century Dr. | Salt Lake City, UT 84123 | (801) 268–2533 |
| Holiday Inn Resort Hotel | 850 S. Bluff | St. George, UT 74770 | (801) 628–4235 |
| Vermont: | | | |
| Lilac Inn | 53 Park St. | Brandon, VT | |
| Chalet Salzburg | Killington Rd | Killington, VT | |
| Slovakia Inn | 1 Main St | Montgomery Center, VT | |
| The Inn at Montpelier | 147 Main St | Montpelier, VT | |
| Sunset Motel Unit 88 | Rt. 15 | Morrisville, VT | |
| Sunset Motel Unit 89 | Rt. 15 | Morrisville, VT | |
| Econo Lodge Office | 1960 Shelburne Rd | Shelburne, VT | |
| Swiss Host Motel Office Building | 1272 Williston Rd | South Burlington, VT | (802) 862–5734 |
| Holiday Inn | 1068 Williston Rd | South Burlington, VA | |
| Aimes Motel | Jct. Rt. 2 & 18 St | Johnsbury, VT | |
| Washington: | | | |
| Red Lion Inn Spokane | N. 1100 Sullivan Rd | Veradale, WA 99037 | (509) 924–9000 |

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST 07/19/93 UPDATE—Continued

| Property name | PO box/RT No., street address | City, state/zip | Telephone |
|---|---|---|---|
| **Corrections/Changes** | | | |
| Colorado: | | | |
| Fairfield Inn Denver | 1560 S. Colorado Blvd | Denver, CO 80222 | (303) 691-2223 |
| Maryland: | | | |
| Gaithersburg Hilton Hotel | 620 Perry Pkwy | Gaithersburg, MD 20877 | (301) 977-8900 |
| Missouri: | | | |
| Hampton Inn | 11212 N. Newark Cir | Kansas City, MO 64153 | (816) 464-5454 |
| Regal Riverfront Hotel St. Louis | 200 S. Fourth St | St. Louis, MO 63102 | (314) 241-9500 |
| Stouffer Concourse | 9801 Natural Bridge | St. Louis, MO 63134 | (314) 429-1100 |
| Vermont: | | | |
| Greenleaf Inn | Depot St | Chester, VT 05143 | (802) 875-3171 |
| Plaza Hotel | PO Box 690 RR. 1 | Morrisville, VT 05661 | |
| Sugar House Motor Inn | Rt. 7 | New Haven, VT 05472 | (802) 388-2770 |
| Carriage House Inn | Rt. 105 | North Troy, VT 05859 | |
| Econo Lodge Spruce Building | 1961 Shelburne Road | Shelburne, VT | (802) 985-3377 |
| Pal O Mar Motel | 2 Linhale Dr | Springfield, VT | |
| Maple Center Motel | 20 Hastings St | St. Johnsbury, VT 05819 | (802) 748-2393 |
| Alpenrose Motel | 2619 Mountain Rd. | Stowe, VT 05672 | (802) 253-7277 |
| Lifline Lodge Berg House | Stratton Mountain Rd. | Stratton Mountain, VT 05360 | |
| Inn at Weston | Rt. 100 | Weston, VT 05161 | |
| Pine Crest Motel | Rt. 5, 457 N. Hartland Rd | White River Junction, VT 05001. | |
| Canterbury House B & B | 43 Pleasant St | Woodstock, VT 05091 | (802) 457-3843 |
| **Deletions** | | | |
| Iowa: | | | |
| Ft. Dodge Holiday Inn | PO Box 1338, 2001 US Hwy. 169 S. | Fort Dodge, IA 50501 | (515) 955-3621 |
| Kentucky: | | | |
| Drawbridge Estate | Royal Dr. & Buttermilk Pike | Ft. Mitchell, KY 41017 | (606) 341-2800 |
| Minnesota: | | | |
| Holiday Inn Winona | 956 Mankato Ave | Winona, MN 55987 | (507) 454-4390 |

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Part VII

# Department of State

**Bureau of Consular Affairs**

**22 CFR Part 41**

**Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Temporary Visitors; Proposed Rule**

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1840]

**Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended; Temporary Visitors**

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This rule proposes to amend the regulations on visas for temporary visitors by incorporating into regulations many of the principles of B visa (B–1, visitor for business and B–2, visitor for pleasure) status currently set forth in the interpretive notes of Volume 9 of the Foreign Affairs Manual (FAM) and, as appropriate, those notes in the Operating Instructions (OIs) of the Immigration and Naturalization Service. Although the Department and the INS are not publishing proposed rules on this matter simultaneously, the two agencies have indeed consulted on these proposed regulations. The INS will also be publishing separate proposed rules on this nonimmigrant visa classification. These regulations reflect changes in the interpretation of the B visa classification resulting from the enactment of the Immigration Act of 1990 ("IMMACT 90"), and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 ("MATINA").

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990 (Pub. L. 101–649, Nov. 29, 1990) with subsequent modification by MATINA (Pub. L. 102–232, Dec. 12, 1991) amended certain existing nonimmigrant visa classifications in the Immigration and Nationality Act of 1952, as amended ("INA"), and added several new ones. IMMACT 90 and Matina did not directly amend the INA's B visa classification (INA 101(a)(15)(B)), but certain changes to the H–1B visa classification (INA 101(a)(15)(H)(i)(b)) and creation of the new O, P, and R classifications by IMMACT 90 affect the interpretation of the B visa classification currently set forth in the FAM.

DATES: Written comments must be received in duplicate on or before September 24, 1993.

ADDRESSES: Interested persons are invited to submit comments in duplicate to: Chief, Division of Legislation and Regulations, Visa Office, Department of State, Washington, DC 20522–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, (202) 663–1204.

**INA 101(a)(15)(B)**

The Department proposes to promulgate regulations to provide standards to administer to the most frequently used nonimmigrant visa classification, the B visa. The INA defines, in section 101(a)(15), the types of aliens who can be admitted as nonimmigrants in a number of identified classifications. Included among them is:

(B) An alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

**Changes.**

*General*

Neither IMMACT 1990 nor MATINA amended the language of section 101(a)(15)(B) of the INA. IMMACT 1990, however, made significant amendments to section 101(a)(15)(H)(i)(b) of the INA and created new classifications O, P, and R. Each of these changes has an impact on the B visa classification.

*"R" Visa Classification*

Section 209 of the IMMACT 1990 created a new nonimmigrant visa classification for ministers of religion and other religious workers. To the extent that this new classification includes religious activities that have been listed in the interpretive notes in the FAM under the B visa classification, these activities have not been included in this proposed regulation. Because Congress has enacted a specific nonimmigrant visa classification to address such religious activities, they should no longer fall within the purview of the B visa. However, there are a number of bona fide voluntary service programs that may or may not be related to religious organizations and that have activities that do not fit within the new "R" classification. Under the proposed regulation aliens involved in such programs will continue to be eligible for B visa classification.

*"O" and "P" Visa Classifications*

In contrast to the "R" provision, the nonimmigrant classifications "O" and "P" for athletes and entertainers found in section 207 of the IMMACT 1990 are not really "new"; they are lateral shifts of the athletes and entertainers previously classifiable under H–1. As with the H–1 classification, the O and P provisions presuppose a traditional employment relationship, or even an underlying contractual arrangement with an employer or agent in the United States, and require certain notable ability in their calling. Therefore, although all FAM notes relating to activities of professional athletes and entertainers had to be reconsidered in light of the O and P classifications, not all of the current FAM notes relating to professional athletes and entertainers have had to be dropped from this proposed rule as a result.

For example, by definition, not all professional athletes meet the statutory criteria for the O or P classification. Moreover, not all sports activities involve relationships between the athletes and the petitioners as contemplated by the O and P classifications. International sports events involving individual competitors, such as golf and tennis tournaments, etc., do not (at least in the United States) entail contractual agreements. More importantly, they rely upon participation not only by stars who could meet the level of ability standards under O and P but also by young would-be stars-in-the-making who do not yet have such stature. There is no evidence that the Congress intended to bar participation in U.S. competitions by such aliens. Moreover, such a bar could severely impact negatively upon not-yet-established American athletes who participate in similar events abroad. This rule, therefore, continues to provide B–1 classification for those athletes whose only "earnings" would be whatever they might win.

*"H–1B" Visa Classification*

Section 205 of IMMACT 90 amended the H–1B classification in these respects: (1) It imposed a numerical limitation on this classification for the first time; (2) it modified the standards from "distinguished merit and ability" to "speciality occupation"; and (3) it instituted a labor condition attestation requirement. These amendments have a direct impact on the Department's longstanding interpretation of the B–1 visa, which provided for the issuance of a B–1 visa in lieu of an H–1 visa if, among other conditions, the visa applicant, who must be H–1 qualified, is coming to perform H–1 services for which the alien will receive no salary or other remuneration from a U.S. source other than an expense allowance or other reimbursement for expenses incidental to the alien's temporary stay.

As a consequence of the amendments made by section 205, which clearly express Congress' intent to limit availability of the H–1B visa classification, the Department proposes to cease providing for the issuance of a B–1 visa in lieu of an H–1 visa.

*Other Activities*

With respect to other "visitors for business", it has been asserted that the Visa Office has, over the years, tended to use the B classification as a catch-all for aliens who do not fit in any other nonimmigrant classification but whose admissibility as nonimmigrants seemed within the general intent of Congress in distinguishing between immigrants and nonimmigrants. This argument has merit. As stated in the Summary, FAM notes have long set forth various criteria entitling an alien to B–1 or B–2 status. It is noteworthy, that the Senate Report (No. 1515) accompanying the 1952 Act cited a number of them and still current B–1 interpretations of that nature, including "an alien domestic servant accompanying his American or alien employer who is proceeding to the U.S. on a temporary visit * * *", etc., without any expressed disagreement as to their propriety. Consequently, such activities are included in the proposed regulation.

**Analysis**

To better understand the general principles of the visitor for business visa classification, it is useful if not necessary to look at the historical development of the two nonimmigrant classes, INA 101(a)(15)(B) and (H).

Aliens had, of course, been coming to the United States to buy or to sell products for many years before the imposition of numerical limits on immigrants (and the consequent necessity of distinguishing nonimmigrants from immigrants) in the early 1920's. The First Quota Act of 1921 did not directly identify nonimmigrants as such; rather, it exempted from the quota provisions various classes of aliens entering for temporary purposes who later became known as nonimmigrants, including visitors for business or pleasure. The Immigration Act of 1924 defined immigrants (as does the INA) as all aliens other than those in classes similar to those in the 1921 legislation, including, in section 3(2), the predecessor to INA 101(a)(15)(B), visitors for business and pleasure.

Over the years, administrative and judicial decisions interpreted the term "visitor for business" to mean essentially activities of a commercial nature, and to exclude any use of the classification for activities that might be construed as "local labor for hire." "The history of this legislation (the 1924 Act) points clearly to the conclusion that one of its great purposes was to protect American labor against the influx of foreign labor." (*Karnuth et al.* v. *United States ex rel. Albro.* 279 U.S. 231 (1929.)

Logic carried to its extreme might well hold that any business activity should be deemed to involve skilled or unskilled labor to some degree. A key factor in many early decisions (albeit not always so explicated) seemed to be whether such "labor" was for an employer in the United States in a capacity that should generally be deemed open to competition by United States workers. For example, in *Matter of Hira.* 11 I. & N. Dec. 824 (BIA 1965, 1966, A.G. 1966), it was found acceptable for a foreign tailor, employed on a regular salary basis by a tailoring firm abroad, to be in the United States in B–1 status to take orders and measure customers for clothes to be made in Hong Kong, whereas in the *Matter of M,* 2 I. & N. Dec 240 (BIA 1945), it was held not to be within the purview of the 3(2) business visitor provision for a Canadian to work in the U.S. under contract as a dancer. The Department believes that a key distinction is that it was reasonable for the foreign tailoring firm to prefer measurements taken by an employee accustomed to its tailoring practices but that the U.S. employer of the dancer could and should have sought an American or immigrant dancer. In *Hira* the alien's primary purpose for coming to the United States was to take orders for the sale of suits (the taking of measurements was incidental to that purpose), whereas in *Matter of M* the alien's primary purpose was to dance professionally, which constitutes in engaging in local labor for hire.

The category of visitor for business was carried over into the INA as section 101(a)(15)(B), as noted above. Senate Report No. 1515 (supra p. 525, cites *Karnuth et al* v. *United States & rel. Albra,* 279 U.S. 231, 1929) noted, "The term 'business' as used in the [predecessor] section includes not only intercourse of a commercial character but any other legitimate activity of a temporary nature classified within the ordinary meaning of the word 'business' but not classifiable as pleasure or labor." In addition to those carry-overs, however, the INA added a class (section 101(a)(15)(H)) designed to meet the needs of employers in the United States for temporary foreign workers. The H classification was subdivided between "aliens of distinguished merit and ability" (H–1), other skilled or unskilled aliens to perform work for which workers were not available in the U.S. labor market (H–2), and industrial trainees (H–3). In short, by retaining the B classification and adding the H classification for the benefit of U.S. employers, Congress in the INA retained the distinctions among alien workers, that had been developed in judicial and administrative decisions. Although all three H sub-categories required a petition approved by the INS to establish eligibility for the classification, a labor market test was required only for the H–2s.

In light of the absence of a labor market test for H–1 and H–3 aliens, the Department and the INS adopted as one of the benchmarks for B–1 classification "aliens otherwise classifiable as H–1 or H–3", provided the alien was to receive no remuneration other than for incidental expenses from a United States source. This "B–1 in lieu of H–1" characterization was apparently a careless use of language which has led to misinterpretation and occasional misuse over the years. By definition, an alien "classifiable as H–1 or H–3" would be one sought by an employer in the U.S. The intent of the Department's Note and INS' Operating Instruction, however, was clearly related to the characteristics of the aliens, i.e., the "distinguised merit and ability" and "training" elements, not to the source or location of employment, as manifested by the proviso as to the source of income.

The shorthand "otherwise classifiable as an H–1" language is clearly not only inaccurate but now inappropriate in light of IMMACT 90's imposition of a numerical limit on H–1Bs, the successor classification of the original H–1. The concept, however, of issuing visas in the B–1 classification to and admitting aliens who are not employed by an organization in the United States but rather are working for and drawing their income from a foreign firm, is still perfectly valid under straightforward B–1 visa standards, regardless of the fact that the aliens may also be of "distinguished merit and ability". The issue thus becomes one of clarifying permissible B–1 activities in an age in which "business" has become global and business practices have significantly changed from those of the 1920's.

It must be recognized, moreover, that commerce, and the related term "trade" in particular, have taken on an ever-expanding meaning in recent times. For example, several years ago the Visa Office and the INS incorporated various service activities (e.g., international banking, communications, etc.) in the

FAM Notes and OI's defining "trade" in connection with the treaty trader visa classification under section 101(a)(15)(E) of the INA. Congress subsequently codified these changes in INA 101(a)(15)(E). This proposed rule thus provides for B–1 classification in some cases for aliens who are not necessarily engaged in activities directly affecting the exchange of goods from one country to another, provided such aliens cannot be deemed to be "engaged in local employment for hire."

It is also worth reiterating in this connection the quotation above from Senate Report No. 1515:

> The term "business" as used in the section includes not only intercourse of a commercial character *but any other legitimate activity of a temporary nature classified within the ordinary meaning of the word "business" but not classifiable as pleasure or labor.*" (Emphasis supplied.)

Bearing in mind the intent of Congress to protect U.S. workers from undue or unfair competition, the perimeters drawn around acceptable B–1 activities in this proposed rule encompass the concepts of "business" as defined in Report No. 1515 above and of "labor for hire" as being circumstances in is which it is realistic to believe that a U.S. worker might have been hired had the alien not been admitted.

In Matter of Hira (cited above), affirmed by the Attorney General, the Board of Immigration Appeals found that a B–1 visa was appropriate given the following facts:

1. The alien's activity must involve intercourse of a commercial character;
2. The alien must have a clear intent to continue a foreign residence and not to abandon any exisiting domicile;
3. The alien's salary must come from abroad;
4. The principal place of business and the actual place of eventual accural of profits, at least predominantly, must remain in a foreign country, and;
5. The alien's stay in the United States must be temporary, although the business activity itself need not be, and indeed may long continue.

These are salient criteria and they underlie the proposed rule. It must be recognized, however, that there may be variations of these themes. For example, with respect to the first test, Senate Report 1515 propounded a broader view of a business visitor's activities than mere "intercourse of a commercial character" (page 525), and in *Matter of Neill* (15 I. & N. Dec. 331, May 16, 1975) the BIA held that "an alien need not be considered a 'businessman' to qualify as a business visitor, if the function he performs is a necessary incident to international trade or commerce." (page 333)

In light of the multiplicity of fact patterns in today's business world, the Department believes that it is not appropriate or possible to develop a definitive definition of "business" rather, to further the congressional two-fold intent not to impede international commerce and to protect the U.S. work force from unfair competition, a certain amount of judgment and common sense will have to be exercised on a case-by-case basis.

For example, the proposed rule still contains the requirement that the alien receive no salary or other remuneration (other than for incidental expenses) from a U.S. source. The rule, also, however, continues to include the gist of the current FAM Note according B–1 classification to an alien member of the Board of Directors of an American firm coming to attend a meeting of the Board. How can these be squared with each other when it is clear that such members are, in effect, employees of the firm and payment is routine for attendance at Board meetings? The answer lies in the concept "in which it is realistic to believe that a U.S. worker might have been hired had the alien not been admitted." If a U.S. firm has significant international activities and determines that the selection of one or more Board members from a country in which it carries on those activities would be in its corporate interest, it is highly unlikely that the non-admission of such foreign Board member(s) would prompt the election of additional U.S. Board members.

A useful contrast is provided by the two "Bricklayer" cases. A former FAM Note said, in effect, that if a U.S. company purchased equipment or similar products under a contract that called for follow-on installation, service, etc., employees of the seller foreign firm coming to perform the installation, service, or maintenance within the first year could be properly classified B–1. Everyone is familiar with "service" provisions in purchase contracts in daily life. One buys a refrigerator, washer-dryer, or whatever and gets a service warranty. If the product malfunctions, the person who comes to repair or service it is not one's employee but that of the seller. The FAM Note was predicated on analogous reasoning.

The arrangments in the "Bricklayer" cases differed in most particulars but they had two crucial elements in common. They called for "installation" and, in both cases, the foreign firms sent employees who engaged in actual construction activities that might have been performed by U.S. construction crews. Ultimately, it was agreed that, although it would be appropriate to admit one or more of the foreign firm's employees in B–1 status for the purpose of supervising the construction or for training U.S. workers, B–1 was not a permissible classification for actual construction workers. The Notes were promptly changed to accord with that decision. The proposed rule thus continues to contain a prohibition on the latter activity in B–1 status but permits that classification for supervisory and training personnel.

It is clear that other abuses of the B–1 classification have existed, perhaps due to imprecision in current FAM Notes and OIs, and must be eradicated. For example, a number of parties, ranging from individual citizens to labor and professional organizations to Members of Congress, have recently raised concerns about the use of persons hired by foreign firms solely for the purpose of fulfilling a contract to supply workers to an American firm. These "job shops" are reportedly becoming increasingly common in the computer industry in particular.

Theoretically the persons sent by the "job shops" meet most of the *Hira* criteria, e.g., an employer abroad who pays the salary, alien who maintains a residence abroad, etc. In fact, however, their functions in the U.S. are not "necessary incidents to international trade or commerce" inasmuch as the foreign firms are essentially employment agencies. Moreover, although (again in theory) their salaries were paid by the foreign firm, in practice the contracts have called for the U.S. firms using their services to pay the foreign firm a designated flat rate of dollars per hour for a designated number of hours of work. In practice, under the guise of a contract calling for "installation, service, maintenance, or repair," the job shops are providing personnel to perform software/hardware engineering, computer programming, and systems analysis on site.

A further consideration of *Neill*, cited above, is instructive in regard to this practice. Neill was a professional engineer and a principal in a firm that consulted on engineering problems and, at the time of the case, did 30% of its business in the United States. On his regular business trips to the United States, purportedly to solicit business, the majority of his time was spent consulting with clients and obtaining information from them—in short, rendering engineering services in the United States. The BIA said, *inter alia*,

Congress has sought to protect American workers from job competition of an undesirable nature * * *. This protection clearly extends to members of the profession * * *. The applicant appears to be in the process of extending his professional engineering practice to the United States. Although we would hesitate to call the applicant's services "ordinary labor for hire", he is regularly performing personal services in the United States independent of any other commercial activity. This he may attempt to do as an immigrant or via the nonimmigrant provisions of section 101(a)(15)(H) or of section 101(a)(15)(L) * * *. The applicant, however, may not establish a regular and continuing professional engineering practice in the United States as a temporary visitor for business.

To counter abuse such as described regarding job shops, the Department believes that the *Hira* criteria should be expanded to include the following with respect to according B–1 classification to aliens entering pursuant to purchases from abroad under contracts which include provisions for follow-on installation, service, maintenance or repair:

1. The purchase contract must involve a physical product, i.e., be for machinery or other forms of equipment, not for activities of a service nature;

2. The foreign firm that the alien is representing must be regularly engaged in business of a commercial nature;

3. There can be no direct correlation between the payment from the U.S. firm to the foreign firm for the contracted purchase (and potential service) and the salary(ies) of the alien(s) who may later install, service, or provide maintenance;

4. The foreign company must control all aspects of the B–1s activities, including (but not limited to) the alien's day-to-day activities and the location(s) in the U.S. where the alien will be performing the activities.

These tests, *Hira* and the Department's "after sales service" Notes, will provide sufficient guidance for most cases. If necessary, however when analyzing the employer-employee relationship and the question of who really controls the visa applicant employee, appropriate guidance can be gleaned from *Matter of Pozzoli*, 14 I&N Dec. 569, 1974, which relies on principles drawn from the Fair Labor Standards Act of 1938 in setting standards for immigration purposes, and from other relevant decisions.

*Examples*

The following examples illustrate how the Department would expect to apply the proposed regulations in light of these guidelines:

1. *Fact Pattern:* An international accounting firm with a business entity in the United States and a business entity overseas has international clients. In order to provide professional services, the business must be knowledgeable in the domestic law of various countries and of accounting procedures in many countries.

A. *Additional Facts:* The U.S.-based entity is preparing accounting papers for an international client. The project requires more workers than are currently available in the U.S. entity. Thus, the firm sends a foreign-based employee who is resident abroad, who intends to return abroad, and who draws his salary from the foreign-based entity to work on the project in the U.S. The project is supervised by the U.S. entity. The alien's work situation is controlled by the U.S.-based entity.

*Analysis:* The employee is not entitled to a B–1 visa, as he is engaged in local employment for hire. He is performing domestic service, as he is working for the U.S. entity.

B. *Alternate Additional Facts:* The U.S. entity has a contract with a foreign-based business. The foreign-based office of the accounting firm is preparing necessary documents on behalf of the U.S.-based entity. A foreign-based employee is coming to the U.S. to advise, consult, and educate the U.S.-based entity on the relevant foreign accounting principles and procedures of that project.

*Analysis:* The alien is employed abroad, accrual of profits of his activities are controlled by his employer abroad. The nature of his activities, conferring with business associates, is a classic B-1 activity. B–1 visa classification is appropriate.

2. *Fact Pattern:* A U.S.-based law firm performs legal services for business entities engaged in international commercial activities. The law firm needs to provide advice on foreign law to a client.

A. *Additional Facts:* The law firm engages a foreign-based law firm to provide legal advice to be used for their client. A foreign-based lawyer comes to the U.S. law firm to provide the necessary interpretation and engage in the necessary research of foreign law for the U.S. law firm. This research and analysis is done on the site of the U.S. entity with the resources available there.

*Analysis:* This constitutes a performance of domestic services. Although the foreign lawyer brings in skills and knowledge generally unavailable in the United States, he is performing service on site over which he is being supervised by the U.S.-based law firm. As direction and control over the alien's activities are given by the U.S. firm, the alien is working for the U.S. firm and is, thus, engaged in local labor for hire. The B–1 visa is inappropriate.

8. *Alternate Facts:* The U.S. law firm contracts with" a foreign-based law firm which prepares the necessary legal work abroad. The foreign lawyer comes to the U.S. to advise the U.S. law firm regarding the project.

*Analysis:* The alien is not engaged in local employment for hire. The foreign lawyer is presenting and explaining the foreign work product to the U.S. customer. B–1 is the appropriate classification.

3. *Fact Pattern:* A U.S.-based entity contracts with a foreign based entity to develop a computer software package that the U.S. entity plans to use for expansion into oversees markets.

A. *Additional Facts:* The foreign-based programming outfit sends several computer programmers to the U.S. entity's site to prepare the software package. The U.S. entity provides the equipment, pays some of the per diem expenses of the foreign programmers, and oversees the production.

*Analysis:* These programmers are not entitled to B–1 visa classification. They are working for the U.S. entity in producing the contracted product. The U.S. entity is controlling/supervising the aliens' work. Thus they are engaging in local labor for hire.

B. *Alternate Additional Facts:* The foreign-based programmers visit the U.S. entity's work site in the U.S. to obtain the necessary information to develop the program. They return to their foreign-based work place and prepare the software.

*Analysis:* They are entitled to B–1 visa classification. None of their work product is produced in the U.S. Information gathering is a necessary activity to perform the contracted task. It, at least in this case, does not involve local labor for hire.

**Visitors for Pleasure**

The FAM Notes pertaining to B–2's have similarly been incorporated into the proposed rule. They are not described herein, however, inasmuch as it has not been necessary to change them in response to legislative enactments.

**Proposed Rule**

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposed rule imposes no reporting or record keeping requirements on the public requiring the approval of the

Office of Management and Budget under the Paperwork Reduction Act requirements.

This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. The Department believes the retroactive application of the B–1 visa rules does not arise within the context of this proposed regulation. At the time of promulgation of the final rule, the Department will explore with the INS any aspect of retroactive applicability of the final rule and will seek to establish any appropriate measures.

**List of Subjects in 22 CFR Part 41**

Aliens, Nonimmigrants, Temporary visitors.

In view of the legislative changes made to the INA by IMMACT 90 and MATINA, part 41 to title 22, Code of Federal Regulations, would be amended as follows.

**PART 41—[AMENDED]**

1. The authority citation for part 41 is revised to read:

**Authority:** 8 U.S.C. 1104; 8 U.S.C. 1101(a)(15).

2. Section 41.31 to part 41 would be revised to read as follows:

**§ 41.31 Temporary visitors for business or pleasure.**

(a) *General classification.* An alien is classifiable as a nonimmigrant visitor for business (B–1) or pleasure (B–2) if the consular officer is satisfied that the alien qualifies under the provisions of INA 101(a)(15)(B), and that:

(1) The alien intends to leave the United States at the end of the temporary stay, and if applicable, has paid any such bond as shall be required by the consular officer to be posted with the Attorney General to ensure the alien's departure;

(2) The alien has permission to enter a foreign country at the end of the temporary stay; and

(3) Adequate financial arrangements have been made to enable the alien to carry out the purpose of the visit to, and departure from, the United States.

(b) *Classification as a visitor for business.* An alien is classifiable as a nonimmigrant visitor for business if the consular officer is satisfied that the alien qualifies under paragraph (a) of this section, and that:

(1) The alien's principal place of business and the actual place of eventual accrual of profits, at least predominantly, are in a foreign country; and

(2) Although the business activities need not be temporary, the alien's various entries into the United States made in the course of such business will be individually of a plainly temporary nature.

(c) *Business.* The term "business", as used in INA 101(a)(15)(B), refers to legitimate activities of a commercial or professional nature or other legitimate activities of a temporary nature falling within the ordinary meaning of the word "business." It does not include local employment or labor for hire.

(d) *Local employment or labor for hire.* Local employment or labor for hire generally includes engaging in any employment activity that is domestic in nature in a position which is generally filled on a competitive basis within the U.S. domestic labor market. Local employment or labor for hire includes building or construction work, whether on-site or in plant, but does not ordinarily include the supervision or training of others engaged in building or construction work.

(e) *Principal place of business and the actual place of eventual accrual of profits.* The principal place of a person's business and the actual place of eventual accrual of profits is ordinarily the location in which and from which the alien conducts his/her main business activities and from which the alien draws his/her salary.

(f) *Activities of a commercial nature.* Activities of a commercial nature include:

(1) Engaging in commercial transactions (i.e., buying or selling) that do not involve gainful employment with an employer in the United States;

(2) Negotiating contracts;

(3) Consulting with business associates, including attending meetings of the Board of Directors of a U.S. corporation;

(g) *Activities of a professional nature.* Activities of a professional nature include:

(1) Engaging in litigation, including consultation or research but not practicing before a State Bar;

(2) Participating in scientific, educational, professional or business conventions, conferences, or seminars;

(3) Undertaking independent research;

(4) Engaging in activities that would be classifiable under H–3 except that there is no U.S. employer involved, and the alien is:

(i) A foreign medical school student who is coming to take an "elective clerkship" (practical experience and instruction in the various disciplines of the practice of medicine under the supervision and direction of faculty physicians) at a U.S. medical school's hospital, without remuneration from the hospital, as an approved part of the foreign medical school education; or

(ii) Undertaking training at the behest of a foreign employer by whom the alien is already employed abroad and from whom the alien will continue to receive his or her salary while in training in the United States.

(h) *Other examples of legitimate business activities.* An alien qualified under paragraph (a) of this section may be issued a B–1 visa to engage in activities such as the following:

(1) A commercial or industrial worker may install, service, or repair commercial or industrial equipment or machinery, or software products purchased from a company outside the United States, or train U.S. workers to perform such services, provided:

(i) That a contract of sale with the foreign seller has specifically required the seller to provide such services or training;

(ii) The alien possesses knowledge essential to the seller's contractual obligation to perform the services or training;

(iii) The purchase contract is principally for the purchase of a physical product, i.e., machinery or other forms of equipment and is not principally a contract for activities of a service nature;

(iv) The foreign firm that the alien is representing is regularly engaged in business of a commercial nature;

(v) There is no direct correlation between the payment from the U.S. firm to the foreign firm for the contracted purchase (and potential service) and the salary of the alien;

(vi) The alien will receive no remuneration from a U.S. source; and

(vii) The foreign company controls all employment-related aspects of the alien's day-to-day activities and the location(s) in the U.S. where the alien performs the activities.

This provision does not include an alien seeking to enter to perform building or construction work, whether on-site or in-plant, but an alien may be classified as a B–1 for the purpose of supervision or training of U.S. workers engaged in building or construction work in pursuance of such a contract.

(2) A professional athlete, such as a golfer or tennis player, who has no contractual arrangement with a U.S. sponsor may participate in a tournament or other similar sports activity, provided he or she receives no salary or payment other then prize money for such participation.

(3) An alien athlete or team member may perform if he or she meets all of the following criteria:

(i) The alien athlete seeks to enter the United States as a member of a foreign-based team in order to compete against another sports team;

(ii) The foreign sports team and the alien athlete have their principal place of business or activity in a foreign country;

(iii) The income of the foreign based team and the salary of its players are principally accrued in a foreign country; and

(iv) The foreign based sports team is a member of an international sports league or the sporting activities involved have an international dimension.

(4) An amateur teams sports player in response to an invitation from a professional team may participate in brief try-outs during the course of the regular professional season or playoff. Among other conditions the teams may provide only for such expenses such as round-trip fare, hotel room, meals, and other try-out transportation costs.

(5) Officials of international sports leagues or associations may officiate at international competitions provided that:

(i) The officials are coming temporarily to the United States on league/association business for short periods of time to render services to their foreign employer;

(ii) The officials are paid by their foreign employer and will receive only incidental expenses while in the United States;

(iii) The profits from the officials' services accrue outside the United States;

(iv) The officials' principal place of business is outside the United States; and

(v) The officials are not displacing any U.S. workers or engaging in skilled or unskilled labor in the United States.

(6) A professional entertainer may come to the United States to perform provided that:

(i) He or she will perform only in a cultural program sponsored by the sending country: Will perform before a nonpaying audience; and will have all expenses, including per diem, paid by the entertainer's government; or

(ii) He or she will perform in a competition for which there is no remuneration other than a prize (monetary or otherwise) and expenses.

(7) An alien entertainer may audition his or her act or take part in try-outs solely for the purpose of negotiating an employment contract with the prospective employer. An alien who has been invited by a prospective employer in the United States solely for an interview, try-out, or audition may receive incidental expenses while in the United States. The alien, however, may not perform temporary services for a United States employer on a trial basis.

(8) An alien may work as a crewman of a private yacht, regardless of the nationality of the private yacht, which will be sailing out of a foreign home port and cruising in U.S. waters for more than twenty-nine days;

(9) An alien may perform his or her responsibilities as a "coasting officer";

(10) An alien may investigate opportunities which might qualify the alien for status as an E–2 investor, provided, however, that such alien may not perform productive labor or actively participate in the management of a business while in B–1 visa status.

(11) An alien may perform services pursuant to the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) as specified in 33 CFR part 141 (Coast Guard's regulations).

(12) A personal or domestic servant may accompany or follow to join his or her U.S. citizen employer who has a permanent home or is stationed in a foreign country and who is visiting the United States temporarily, provided the employer-employee relationship existed prior to the commencement of the employer's visit to the United States.

(13) A personal or domestic servant may accompany or follow to join his or her U.S. citizen employer to perform personal or domestic services, provided that the servant can establish, through personnel records and statements from the U.S. citizen's employer, that:

(i) The U.S. citizen employer is subject to frequent international transfers lasting two years or more as a condition of employment, and that the citizen is returning to the United States as a result of such a transfer;

(ii) The U.S. citizen employer's is current assignment in the United States, if any, will be for not more than four years;

(iii) The U.S. citizen employer has employed the servant abroad for at least six months prior to admission into the United States;

(iv) The servant will reside in the U.S. citizen employer's household and will be provided a private room and board without cost to the servant;

(v) The servant will work only for the U.S. citizen employer; and

(vi) The U.S. citizen employer and servant have signed a contract (a copy of which must be made available to the consular officer) that guarantees that the servant will receive at least the prevailing wage for domestics in the area of employment; that all other benefits normally given to U.S. workers in the area of employment will be granted to the servant; that round-trip airfare will be provided to the servant; that the servant will not be required to give more that two weeks notice of intent to leave the employment; and that the U.S. citizen employer will give at least two weeks notice of intent to terminate the employment; and

(vii) There is a good faith intent on the part of each party that the alien will depart the United States in the event of the termination of the employment or the citizen's reassignment abroad.

(14) A personal or domestic servant may accompany or follow to join his or her foreign employer who seeks admission to, or is already in, the United States in B, E, F, H, I, J, L, M, O, P, and R nonimmigrant status to perform personal or domestic services, provided;

(i) The servant can show that he or she has a residence abroad that he or she does not intend to abandon (whether or not the employer is in a nonimmigrant status which does not require such a showing); and

(ii) The servant has been employed abroad by the employer as a personal or domestic household employee for at least one year prior to the date of the employer's admission to the United States; or,

(iii) An employer-employee relationship has existed prior to the time of application; the employer can demonstrate that he or she has regularly employed (either year-round or seasonally) a personal or domestic servant over a period of three years immediately preceding the time of application and the employee can demonstrate at least one year's prior experience as a personal or domestic servant;

(15) An employee of a foreign airline engaged in international transporation of passengers and freight, who is not otherwise entitled to classification under INA 101(a)(15) (E) or (L), may perform employment responsibilities with the airline in an executive, supervisory, or highly technical capacity;

(16) An alien may temporarily perform services for his or her foreign employer as a jockey, sulkey driver, trainer, or groom. The alien may not work in the United States for any other foreign or United States employer after entry in B–1 status for this purpose;

(17) An alien may open or be employed in a new branch, subsidiary, or affiliate of a foreign employer in a capacity that, will qualify the employee for an L–1 status upon proof of the acquisition of physical premises;

(18) An employee of a foreign airline may come to the United States to pick

up an aircraft if the employee is not transiting the United States and is not admissible as a crewman;

(19) An alien may observe the conduct of business or other professional or vocational activity provided the alien pays for his or her own expenses and does not engage in employment;

(20) An alien may, pursuant to invitation, participate in any program furnishing technical information and assistance under section 635(f) of the Foreign Assistance Act of 1961, 75 Stat. 424;

(21) An alien may, pursuant to invitation, participate in the training of Peace Corps volunteers or may come to the United States under contract pursuant to sections 9 and 20(a)(4) of the Peace Corps Act (75 Stat. 612), unless the alien qualifies for "A" visa classification;

(22) An alien who is not an employee of a foreign government may participate in the United Nations Institute for Training and Research (UNITAT) internship program;

(23) An alien may come to the United States as an employee of a foreign exhibitor at an international fair or exposition if he or she does not qualify for "A" visa classification as a foreign government representative.

(24) An alien may participate in a voluntary service program benefiting U.S. local communities, provided that no salary or remuneration will be paid the alien from a U.S. source, other than an allowance or other reinbursement for expenses incidental to the volunteers' stay in the United States. For these purposes, a "voluntary service program" is an organized project conducted by a recognized nonprofit charitable organization to provide assistance to the poor or the needy or to further a charitable cause. The program may not, however, involve the selling of articles and/or the solicitation and acceptance of donations.

(i) *Classification as a visitor for pleasure.* An alien is classifiable as a nonimmigrant visitor for pleasure if the consular officer is satisfied that the alien qualifies under paragraph (a) of this section and is entering the United States temporarily to engage in activities for pleasure which do not involve skilled or unskilled labor for pay in the United States, nor full time academic or vocational schooling, nor information media activities.

(j) *Legitimate activities of pleasure.* The term "pleasure", as used in INA 101(a)(15)(B), refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature. Legitimate activities of pleasure include:

(1) Coming to the United States primarily for tourism, even if, also, incidentally engaging in a short course of study;

(2) Engaging as an amateur in an amateur entertainment or athletic activity, even if the incidental expenses associated with the visit are reimbursed.

(3) Accompanying a principal alien who is a:

(i) Dependent of an alien member of any branch of the U.S. Armed Forces temporarily assigned for duty in the United States;

(ii) Dependent of a crewman classified under INA 101(a)(15)(D);

(iii) Dependent of a U.S. citizen or resident alien coming temporarily to the United States;

(iv) Dependent of a nonimmigrant principal alien who is not entitled to derivative status of that principal alien;

(4) Coming to marry with the intent to return to a residence abroad soon after the marriage;

(5) Coming to the United States to meet the alien's fiance(e)'s family; to become engaged; to make arrangements for a wedding; or to renew a relationship with the prospective spouse.

(6) Coming, as a spouse married by proxy to an alien in the United States in a nonimmigrant status, to the United States to join the spouse. (Upon arrival in the United States the joining spouse must apply to the INS for permission to change to the appropriate derivative status after consummation of the marriage.)

(7) Seeking to enter the United States to take advantage of such benefits under INA 329 to which the alien is entitled irrespective of the foreign residence abroad requirement of INA (101)(a)(15)(B).

(8) Accompanying the spouse or parent on the service member's assignment to the United States as an alien dependent of an alien member of the U.S. Armed Forces who qualifies for naturalization under INA 328.

(9) Attending a school which is a vocational or recreational in character, if the purpose of attendance is recreational or avocational.

(10) Seeking to enter the United States in emergent circumstances, when the alien is otherwise entitled to lawful permanent resident status;

(k) *Authority to Issue Combined B–1/B–2 Visas and Fee to be Collected.* (1) Consular officers may issue combined B–1/B–2 visas to qualified applicants who are frequent or periodic visitors and whose principal purpose for visiting the United States at various times falls within the B–1 or B–2 visa classification.

(2) When the fee prescribed in the appropriate schedule is not the same for each classification, the higher of the two fees shall be collected.

Dated: July 21, 1993.

**Mary A. Ryan,**

*Assistant Secretary, Consular Affairs.*

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| 3 (1992 Compilation and Parts 100 and 101) | (869-019-00002-0) | 17.00 | [1] Jan. 1, 1993 |
| 4 | (869-019-00003-8) | 5.50 | Jan. 1, 1993 |
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

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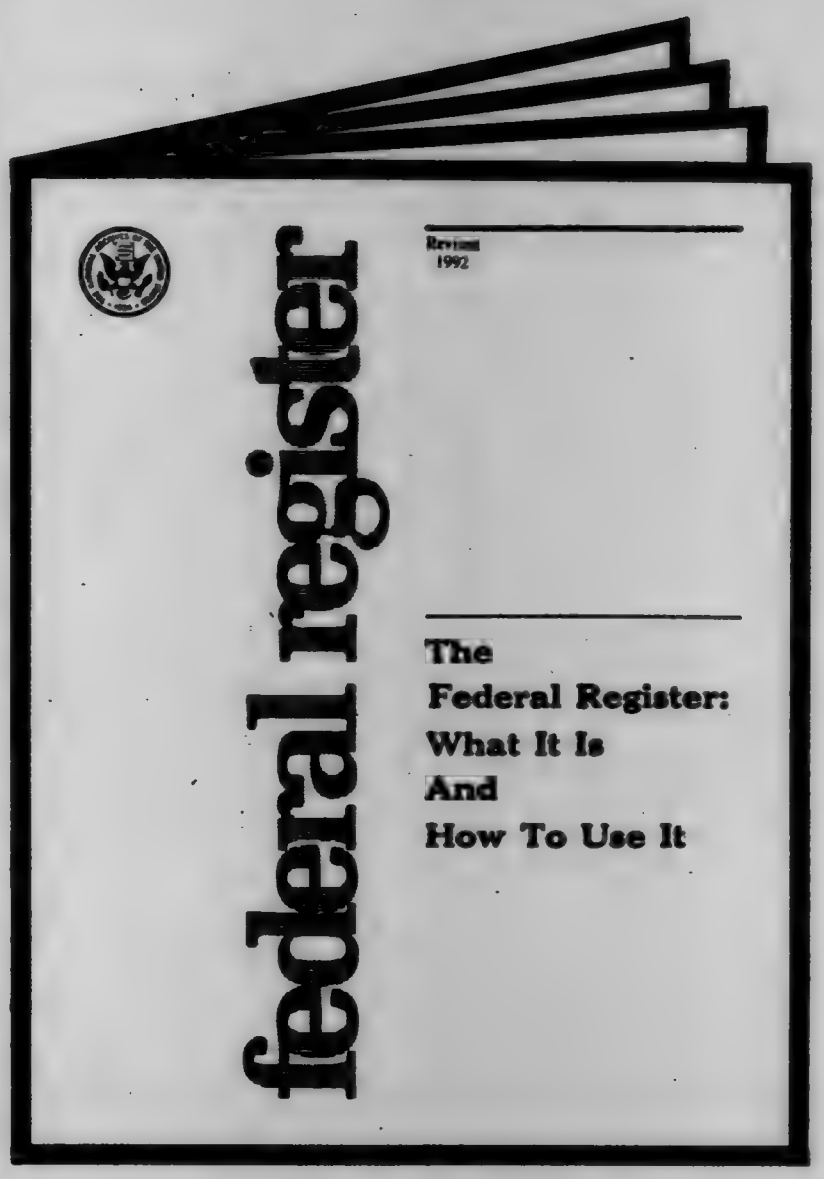


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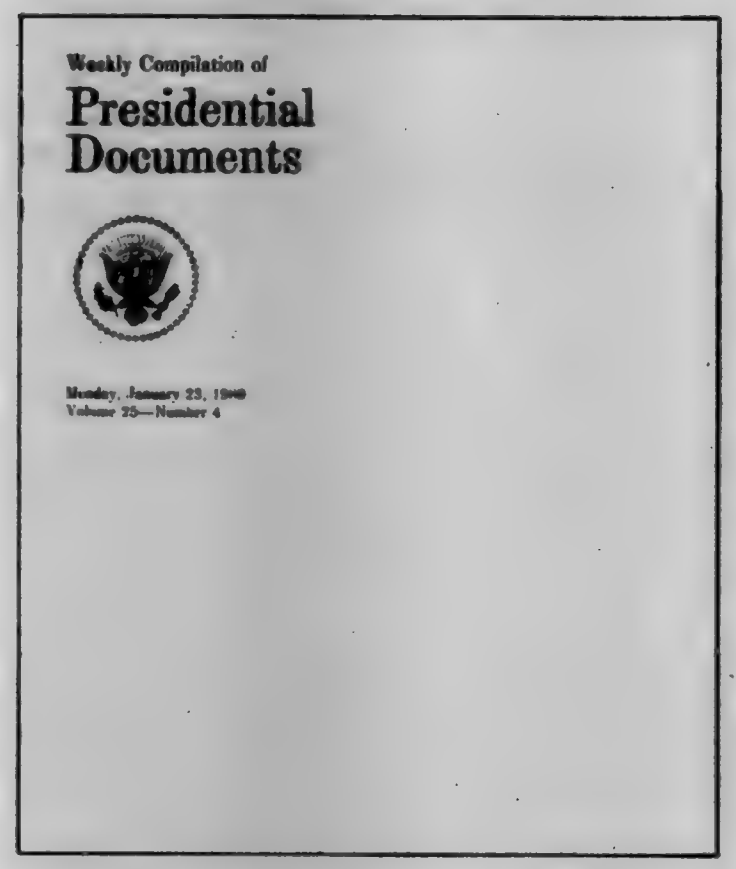


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# Presidential Documents

Title 3—

The President

**Proclamation 6581 of July 22, 1993**

## National Veterans Golden Age Games Week, 1993

**By the President of the United States of America**

**A Proclamation**

Today, as many veterans reach their senior years, they are discovering the benefits of physical fitness and recreational activity. In Department of Veterans Affairs (VA) medical facilities, recreation has become an established part of the rehabilitation process. VA experience and research show that sports and competitive involvement can be enriching because of their physical benefits and because of their role in enhancing social, emotional, and psychological well-being.

Recognizing the need to establish meaningful activities for a rapidly growing number of aging veterans, the VA established the National Veterans Golden Age Games in 1983. Since then, numerous veterans have boosted their health and aided their rehabilitation through participation in this showcase program. These competitors remind us of the value of continued physical activity throughout a person's life and the physical goals and fulfillment we can achieve, regardless of age. These games demonstrate that age is no barrier to living life to its fullest.

The 7th National Veterans Golden Age Games, being held at Mountain Home VA Medical Center in Johnson City, Tennessee, offers a multi-event program of recreational competition for veterans, aged 55 and over, who are currently receiving VA medical care. Veterans whose military service covers the span of American history from World War I to Vietnam will participate.

The Congress, by House Joint Resolution 190, has designated July 17, 1993, through July 23, 1993, as "National Veterans Golden Age Games Week" and has authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim July 17 through July 23, 1993, as National Veterans Golden Age Games Week. I urge all Americans to observe the week by remembering our hospitalized older veterans as they struggle to overcome infirmity and disability and to renew their own commitment to personal well-being through healthy recreational activity.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 319**

**[Docket No. 92–111–3]**

## Hass Avocados From Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of fruits and vegetables to allow Hass avocados from Mexico to be imported into the State of Alaska, subject to certain conditions. This action is warranted because the climatic conditions in Alaska ensure that pests of avocados do not present a threat to agriculture in that State. This action relieves some restrictions on the importation into the United States of avocados from Mexico without presenting a significant risk of introducing injurious insects into the United States.

**EFFECTIVE DATE:** July 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Victor Harabin, Head, Permit Unit, Port Operations, PPQ, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8645.

**SUPPLEMENTARY INFORMATION:**

### Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations), prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Prior to the effective date of this final rule, the regulations in § 319.56 did not provide for the importation of avocados from Mexico. Certain species of fruit flies (*Anastrepha ludens, A. serpentina,* and *A. striata*) and certain species of seed weevils are known to attack avocados in Mexico. These pests would present a significant pest risk to many U.S. crops, particularly in the southeastern and western United States.

Sanidad Vegetal, the plant protection branch of the Mexican Ministry of Agriculture and Water Resources, requested that we consider allowing the importation of Hass avocados from Mexico into any destination in the United States. In a document published in the **Federal Register** on October 19, 1992 (57 FR 47573–47576, Docket No. 92–111–1), we proposed to amend the regulations to allow Hass avocados from Mexico to be imported into the State of Alaska only, subject to certain conditions. We proposed that the avocados be allowed only into Alaska because, as stated above, pests that attack avocados in Mexico could threaten crops in the southeastern and western United States. However, none of the pests that attack avocados in Mexico could become established in Alaska because the pests could not survive that State's cold winters. We added further conditions to the proposal to address the slight risk that some Mexican Hass avocados might eventually move from Alaska to other States.

We solicited comments on the proposed rule for a 30-day period ending on November 16, 1992. In a document published in the **Federal Register** on November 25, 1992 (57 FR 55473, Docket No. 92–111–2), in response to a request, we reopened and extended the comment period for an additional 30 days, ending the comment period on December 16, 1992. We received 312 comments by the closing date. The commenters included State departments of agriculture, fruit growers associations, agricultural marketing and trade associations, a university professor of botany, fruit growers and shippers, and several congresspersons. A small number of commenters expressed support for the proposed rule. The remaining commenters either opposed the proposed rule or had specific concerns regarding the provisions of the proposal. Most of the commenters shared the same or similar concerns, and we address them below.

### Discussion of Comments

*Comment:* Even though this proposal allows avocados from Mexico into Alaska only, some of the avocados will eventually end up in the lower 48 States—either by being rerouted en route to Alaska or by being brought from Alaska to the lower 48 States.

*Response:* This was the greatest concern commenters had regarding the proposed rule. They seemed to feel the proposed rule is basically sound, but that in practice, some shippers will not comply with all the rule's provisions. Almost all the commenters cited as their primary example an interim rule concerning Unshu oranges from Japan, which we published in the **Federal Register** on September 3, 1985 (50 FR 35533, Docket No. 85–354). Unshu oranges from Japan may carry citrus canker. Prior to this interim rule, Unshu oranges were allowed to be imported without further restriction into the State of Alaska. The interim rule added restrictions because inspection found that Unshu oranges were being moved from Alaska to other places in the United States.

While it is certainly true that the illegal movement did occur, it should be explained that there were factors connected with the importation of Unshu oranges that gave shippers great incentive to violate the regulations by shipping their fruit to the lower 48 States. These incentives would not be applicable to the importation of Hass avocados from Mexico. Specifically:

(1) Unshu oranges are not grown in the United States. Fresh Unshu oranges are imported for sale in the United States exclusively from Japan, and are not readily available in all markets because of strict restrictions on their importation. Unshu oranges are an expensive specialty fruit, often given as a gift during winter holidays. The demand for these oranges may not have been met by the heavily restricted (and therefore, expensive) imports into the lower 48 States. For these reasons, there was a definite market for Unshu oranges transshipped illegally from Alaska to other parts of the United States.

In contrast, avocados grown in the United States are readily available in U.S. markets and are relatively inexpensive, especially in the western and southeastern States where they are

grown. Furthermore, the particular variety in question, the Hass avocado, is the same variety grown in almost all California avocado orchards (approximately 86 percent of U.S. avocados are grown in California).

(2) According to the regulations in 7 CFR 319.28, "Subpart—Citrus Fruit," Unshu oranges are permitted to enter only certain States, and only if they pass strict preclearance inspections in Japan. To be precleared, the oranges, among other things, must be given a USDA-prescribed surface sterilization, and must be wrapped in specially stamped tissue paper and specially stamped boxes, both of which specify the States into which the Unshu oranges may be imported and from which they are prohibited removal under a Federal plant quarantine. The oranges must also be accompanied by a certificate from the Japanese Plant Protection Service certifying that the fruit is apparently free of citrus canker. Previously, Unshu oranges imported into Alaska were permitted to enter Alaska without meeting any of the preclearance requirements. There is extra cost and effort involved in preparing the oranges to meet the preclearance requirements. Therefore, it benefitted shippers economically to import the Unshu oranges into Alaska, bypassing the preclearance, and then ship them illegally to the lower 48 States.

This would not be the case with Hass avocados from Mexico. Moving the avocados from Alaska to the lower 48 States would not benefit shippers economically, as that practice did for shippers of Unshu oranges. One commenter stated that, after being shipped to Alaska, "(the avocados) could possibly be repackaged or relabeled and shipped into any other State including California or possibly Florida." The likelihood of this happening is minimal because such relabeling and reshipping would significantly increase the shippers' packaging and shipping costs, offsetting any price advantage over California growers; and, since the U.S. demand for Hass avocados is already being met by California and Florida growers, there is no real incentive for shippers to violate the regulations in this way.

For these reasons, we do not believe that our experience with the Unshu orange regulations supports the commenters' argument that Mexican Hass avocados will be moved from Alaska into the lower 48 States.

There are other reasons, as well, why we believe that shippers will not divert the avocados from their destination of Alaska. The regulations require that the avocados be moved through the United States under Customs bond. The value of the bond is normally equal to the value of the shipment. According to current procedure, if a shipper is found in violation of the regulations, the entire bond must be forfeited. In addition, the shipper may be subject to civil penalties, which could involve considerable fines. Finally, under the regulations in § 319.56–5(b), an import permit may be revoked and future permits may be denied if the quarantine is violated. These provisions provide further incentive for compliance with the regulations.

In regard to comments that Mexican avocados will be diverted en route to Alaska, these same avocados have been moving through the United States to Canada for the past 30 years without incident. This is the best assurance the Animal and Plant Health Inspection Service (APHIS) has that Hass avocados from Mexico will not end up in the lower 48 States. As stated in the proposed rule, the regulations in 7 CFR 352.29 allow avocados from Mexico to be moved through the United States to destinations outside the United States. The regulations in 7 CFR 352.29 require that the avocados be moved: (1) Only through certain ports in the United States, which are staffed by APHIS inspectors; (2) only through that corridor of the United States specified in the regulations, which does not include the western and southeastern regions of the United States; and (3) only by air or in a refrigerated truck, refrigerated rail car, or refrigerated containers on a truck or railcar. The containers or the truck or railcar must also be sealed with serially numbered seals by APHIS inspectors at the port of arrival.

We have adopted these provisions for the importation of Hass avocados into Alaska because these provisions have proven to be adequate safeguards in preventing avocados moving from Mexico to Canada from being diverted en route. The inspection staffs at Canadian ports of entry are sometimes small, particularly in more remote areas on the western U.S./Canadian border. However, APHIS has closely monitored these ports over the past 30 years, sometimes conducting unannounced inspections, and has found no violations of the regulations concerning avocados from Mexico.

In addition, it is standard operating procedure for APHIS inspectors at the U.S./Mexican border to notify personnel at the port of arrival on the U.S./Canadian border that a shipment of avocados from Mexico is en route, and of the estimated date of arrival in Canada for the shipment. The same operating procedure will be followed for Hass avocados moving to Alaska, with APHIS staff on the U.S./Mexican border notifying staff at the port of arrival in Alaska of the scheduled arrival in Alaska for each shipment of Hass avocados. Communication between the ports will allow APHIS to know if Mexican avocados are being diverted en route to Alaska, in which case we will consider terminating the program immediately.

APHIS has also considered the suggestion by some commenters that Mexican avocados may be moved inadvertently from Alaska to the lower 48 States by tourists or business travellers who would carry them in their pocket or handbag. It is our belief that this is not likely to occur. Avocados are not generally eaten in travel, like an apple or banana, because they usually require some preparation, such as for use in a salad or dip. Also, avocados are expected to be more expensive in Alaska than in California or other southwestern States, so a business traveller would not likely buy his or her avocados in Alaska if he or she is returning to one of those States.

*Comment:* Reliance on Sanidad Vegetal's avocado export program inspection is not an adequate precaution against pests being carried by the fruit.

*Response:* As stated in the proposed rule, we expect that the Sanidad Vegetal program will minimize the risk that Hass avocados infested with seed weevils and other pests would be exported to the United States. The Sanidad Vegetal avocado export program is not intended to be a preclearance program. Its inclusion in the rule is only one of several safeguards in the proposal. The basis for APHIS' assessment that the rule will pose no significant threat to U.S. agriculture is the fact that the fruit is moving only to the State of Alaska and that the pests of concern cannot survive there because of Alaska's climate. The shipping requirements and restrictions have already been discussed. In addition, under this rule, the avocados are subject to APHIS inspection at the U.S./Mexican border, at any stops in the United States en route to Alaska, and at the port of arrival in Alaska. If any pests are found on the fruit during these inspections, entry or further movement of the fruit will be denied. Some commenters expressed concern that APHIS does not have enough inspectors to adequately monitor movement of the avocados from Mexico to Alaska. Especially since this is a new program, we want to assure all concerned that APHIS will give priority to strict monitoring of avocado shipments to

ensure that shippers of these avocados do not violate the conditions of the regulations.

*Comment:* Sharwil avocados from Hawaii were found to be infested with Trifly larvae, even after being inspected and approved for shipment to the mainland by APHIS inspectors. If a USDA program regulating interstate movement of avocados between our own States did not work, how can we expect this program to be successful?

*Response:* Although not considered to be the preferred host of Trifly (three species of fruit flies in Hawaii that attack fruit, and that are collectively referred to as Trifly), Sharwil avocados are known to become infested with Trifly. Trifly is not present in the continental United States, and could seriously threaten U.S. agriculture. Originally, the Sharwil avocado program (7 CFR 318.13) only allowed the movement of untreated Sharwil avocados from Hawaii to the State of Alaska. As with this rule, shipment into the State of Alaska was considered to carry no significant risk because the pests of concern could not survive that State's cold winters. The program proved successful, in that the importation of avocados into Alaska did not result in Trifly occurring anywhere in the United States.

In a document published in the **Federal Register** on September 4, 1990 (55 FR 38975–38980, Docket No. 89–121), the regulations in § 318.13 were amended to allow the movement of untreated Sharwil avocados from Hawaii to any destination in the United States. Research performed by the Agricultural Research Service (ARS) from 1985–1987 indicated that unblemished avocados on the tree are not subject to infestation by fruit flies. Repeated inspection of avocados moving from Hawaii to Alaska supported ARS' conclusions, as the Sharwil avocados shipped to Alaska were not infested with Trifly. Therefore, it was thought that shipping the avocados to other States would not pose any significant risk of spreading Trifly to the mainland.

However, on February 25, 1992, fruit fly larvae were discovered in an unblemished Sharwil avocado picked by an APHIS inspector from a tree in an orchard that shipped Sharwil avocados to the mainland United States. Soon after, a significant fruit fly infestation was discovered in the Kona area of Hawaii. This infestation affected some Sharwil avocados that could have been shipped to the mainland. For these reasons, the program to allow untreated Sharwil avocados from Hawaii into the United States was suspended by APHIS on February 26, 1992, and was removed completely in an interim rule published in the **Federal Register** on July 15, 1992 (57 FR 31306–31307, Docket No. 92–081–1).

The situation presented risk to U.S. agriculture only because, at the time the infestation was discovered, APHIS was allowing Sharwil avocados to move untreated to the mainland. It would not have presented any significant risk had the fruit been moving only to the State of Alaska, as was previously the case, and as will be the case with Hass avocados from Mexico. During the time that Sharwil avocados were moved only to the State of Alaska, we had no evidence of any infestations of Trifly. However, even if an infestation had been present in Hawaii, Trifly would not have become established in Alaska because of Alaska's freezing winters. Again, the basis for our proposal to allow Hass avocados into Alaska is that climatic conditions in Alaska would not allow for the establishment of pests of avocado in the United States. Because Hass avocados will not be imported into the lower 48 States and will not move through the southeastern and western States, our experience with the Sharwil avocado does not affect our decision to allow Hass avocados from Mexico into Alaska.

*Comment:* Since Alaska does not experience freezing temperatures all the time, pests of avocado could survive there during certain months of the year.

*Response:* A few commenters were concerned that any pests which may be carried by the avocados could become established during Alaska's warmer summer months. Our experience with fruit fly infestations as far south as the Rio Grande valley of Texas show that, at the first sign of frost, the infestation is completely eliminated. Alaska has a subarctic climate, with freezing temperatures throughout most of the year. Since fruit flies can take up to a year to establish themselves, even in more conducive climates, the short summer in Alaska is not enough time to allow an infestation to develop.

For example, for over 30 years APHIS has allowed large quantities of mangoes from Mexico, which are prohibited entry into the United States, to be transhipped through the United States to Canada. Unlike avocados, mangoes are a preferred host of the Mexican fruit fly, and it is certain that Mexican mangoes imported into Canada carry these flies. Canada, however, has never reported an infestation of fruit flies. Further, Canada produces apples and pears that are permitted unrestricted entry into the United States; but APHIS has never found fruit flies on any Canadian produce shipped to the United States. This indicates to us that the climate in Canada, similar to that in Alaska, does not allow fruit flies to become established.

In addition to fruit flies, avocados can also be infested with seed weevils. However, like the fruit flies that attack avocados, seed weevils exist only in tropical or subtropical climates, and would not survive in colder temperatures. Additionally, seed weevils attack only avocados, and since no avocados are grown in Alaska, the pests would have no hosts there.

*Comment:* The packing requirements are not adequate.

*Response:* One commenter specifically was concerned about the sealed containers, saying that the seals could rupture or be broken. However, APHIS inspectors will be looking to see if any ruptures or breaks are present and will reject any container that is not properly sealed.

Another commenter felt that our allowance that the fruit may be covered with a tarpaulin, as opposed to moving in an enclosed vehicle, while in transit through Mexico is not an adequate precaution against fruit flies. As a result of discussions with representatives of the Mexican government and experience with other Mexican commodities, it is our understanding that nearly all the avocados would be moving through Mexico in enclosed refrigerated trucks, in order to keep the fruit fresh during transit. However, if some of the fruit does move in an open vehicle under tarpaulin cover, our experience indicates that it would still be adequately protected from fruit flies.

*Comment:* There is no sense in risking infestation of U.S. fruit industries for the token benefit to Mexico's avocado industry in light of the relatively small amount of avocados that they will be shipping to Alaska.

*Response:* As discussed, we do not believe that allowing Mexico to import Hass avocados into Alaska presents a significant risk of infesting U.S. fruit.

*Comment:* APHIS should require the establishment of pest-free zones in Mexico and the development of more extensive preclearance programs in Mexico before going ahead with this rule.

*Response:* Decisions to establish pest-free zones and preclearance programs are decisions that must be made by the government of Mexico. If the Mexican government should decide to establish pest-free zones, APHIS will give as much assistance as possible. If the Mexican government should decide to establish preclearance programs, APHIS would work with the Mexican

government to implement those programs. However, without these programs in Mexico, it is still the agency's belief that the importation of Hass avocados into the State of Alaska under the stated conditions will not present a significant threat to agriculture in the United States.

**Miscellaneous**

We have made a minor editorial change. The section designation of this provision has been changed from the proposed "§ 319.56–2x" to "§ 319.56–2bb" because of final rules on fruits and vegetables for which treatment is required (§ 319.56–2x), cantaloupe from Ecuador (§ 319.56–2y), cherimoyas from Chile (§ 319.56–2z), and honeydew melons from Brazil (§ 319.56–2aa) that were published in the interim.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change. Effective Date

This is a substantive rule that relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication in the Federal Register.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 601 *et seq.*, we have prepared a Final Regulatory Flexibility Analysis, as follows, for this final rule.

Mexico is the largest producer of avocados in the world, accounting for about 45 percent of worldwide avocado production. Approximately 77 percent of Mexican avocados are produced in the State of Michoacan, with the Hass variety accounting for 95 percent of Michoacan's avocado production. Because of large domestic demand, exports of Mexican avocados remain small, accounting for only about 3 percent of production.

In the United States, over 99 percent of avocados come from California and Florida, with California accounting for approximately 66 percent of production. In recent years, Hawaii has produced a small amount, as well. In Florida and Hawaii, varieties of avocado other than Hass are predominant, while in California the Hass variety accounts for approximately 85 percent of the total production.

This rule allows the importation into the United States of Hass avocados from Mexico, subject to certain conditions. This rule will mainly affect avocado growers in California, who supply almost all of Alaska's current domestic purchases of Hass avocados. According to the most current information available to us, there were 7,300 avocado growers in California in 1990. Of these, approximately 6,730 are considered to be small entities. We do not have information on whether any small entities growing avocados in California depend extensively or primarily on sales to Alaska for their income. In the proposed rule, we invited comments on this subject, and received no comments. In 1990, California produced approximately 125,000 tons of avocados. The total annual demand for avocados in Alaska is approximately 375 tons; thus, total sales in Alaska consume less than one-half of one percent of California's total available avocado supply.

This rule change will benefit small United States specialized transport companies and brokerage houses, since the current Interstate Commerce Commission regulations forbid Mexican carriers from hauling this product beyond the U.S./Mexico border. At present, the cost of transporting a truck load (40,000 lb) of avocados from Michoacan to the U.S. border at El Paso is $1,200. This includes the margin for truckers and brokerage houses. The total revenue will depend upon the volume of export from Michoacan to Alaska.

We considered alternatives to this rule, such as requiring the avocados to be treated before they may enter the United States, in order to minimize the impact on small entities. We rejected requiring treatment, as there is currently no approved treatment for seed weevils that can be used on avocados. We also considered taking no action and continuing the prohibition on the importation of avocados from Mexico We rejected this alternative because it would retain an unnecessary restriction, as it appears that this rule will allow the importation of Hass avocados from Mexico while preventing the introduction of injurious insects into the United States.

This rule change will encourage transactions between Mexico and the United States, without increasing the risk of disease to U.S. agriculture. Economic theory indicates that the potential increase in transactions will likely stabilize prices and stimulate economic growth in both countries. Facilitating export opportunities for the Mexican avocado industry may provide incentives for Mexico's continued efforts to eradicate seed weevils and other related plant pests and diseases in Mexico. Consumers in Alaska will be affected in a positive manner by the increased competition and expanded choice that will be induced by this rule. For the United States, employment and investment could be affected in a positive manner by this rule.

**Executive Order 12778**

This rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This rule allows Hass avocados to be imported into the United States from the Mexican State of Michoacan. State and local laws and regulations regarding Hass avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court to challenge the provisions of the rule or to challenge the application of these provisions.

**Paperwork Reduction Act**

This document contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 319**

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

## PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In Subpart—Fruits and Vegetables, a new § 319.56–2bb is added to read as follows:

**§ 319.56–2bb Administrative instructions governing movement of Hass avocados from Mexico to Alaska.**

Hass avocados may be imported from Mexico into the United States for distribution in Alaska only under a permit issued in accordance with § 319.56–4, and only under the following conditions:

(a) *Commercial shipments.* The avocados may be imported in commercial shipments only.

(b) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan by a participant in the avocado export program administered by Sanidad Vegetal. Upon request, Sanidad Vegetal will provide APHIS with a list of all participants. Under the supervision of Sanidad Vegetal personnel:

(1) The avocados must have been inspected during growing, harvesting, and packing and must have been found free from seed weevils and other pests;

(2) The avocados must have been sealed in boxes after inspection at the packing house with a seal that will be broken when the box is opened; and

(3) The avocados must be packed in an enclosed container or vehicle or under a tarpaulin cover while in transit through Mexico to prevent exposure of the fruit to fruit flies.

(c) *Certification.* All shipments of avocados must be accompanied by a document issued by Sanidad Vegetal certifying that the conditions specified in paragraph (b) of this section have been met.

(d) *Marking requirements.* The boxes of avocados must be clearly marked with the statement "Distribution limited to the State of Alaska."

(e) *Ports.* The avocados may enter the United States only at the following ports: Galveston or Houston, Texas; the border ports at Nogales, Arizona; Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas; any port in Alaska; or other ports within that area of the United States specified in paragraph (f) of this section.

(f) *Shipping areas.* Except as explained below for avocados that enter the United States at Nogales, Arizona, avocados moved by truck or rail car may transit only that area of the United States bounded on the west and south by a line extending from El Paso, Texas, to Salt Lake City, Utah, to Portland, Oregon, and due west from Portland; and on the east and south by a line extending from Brownsville, Texas, to Galveston, Texas, to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville. All cities on these boundary lines are included in this area. If the avocados are moved by air, the aircraft may not land outside this area. Avocados that enter the United States at Nogales, Arizona, must be moved to El Paso, Texas, by the route specified on the permit, and then must remain within the shipping area described above.

(g) *Shipping requirements.* The avocados must be moved through the United States either by air or in a refrigerated truck or refrigerated rail car or in refrigerated containers on a truck or rail car. If the avocados are moved in refrigerated containers on a truck or rail car, an inspector must seal the containers with a serially numbered seal at the port of first arrival in the United States. If the avocados are moved in a refrigerated truck or a refrigerated rail car, an inspector must seal the truck or rail car with a serially numbered seal at the port of first arrival in the United States. If the avocados are transferred to another vehicle or container in the United States, an inspector must be present to supervise the transfer and must apply a new serially numbered seal. The avocados must be moved through the United States under Customs bond.

(h) *Inspection.* The avocados are subject to inspection by the Animal and Plant Health Inspection Service at the U.S./Mexico border, at any stops in the United States en route to Alaska, and at the port of arrival in Alaska.

Done in Washington, DC, this 21st day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17858 Filed 7–26–93; 8:45 am]

BILLING CODE 3410–34–P

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## Agricultural Marketing Service

## 7 CFR Part 1030

**[DA–93–11]**

## Milk in the Chicago Regional Marketing Area; Suspension of Certain Provisions of the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rules.

**SUMMARY:** This action suspends certain provisions of the Chicago Regional Federal milk marketing order for the months of August 1993 through January 1994. The action suspends the shipping standard that applies to each plant in a unit of pool supply plants. Currently, each plant in a unit of supply plants must ship during certain months at least three percent of its receipts of milk or 47,000 pounds, whichever is less, to plants that distribute fluid milk products. The suspension was requested by Central Milk Producers Cooperative, (CMPC), a federation of cooperatives that represents producers who supply milk for the market. This action is necessary to prevent uneconomical and inefficient movements of milk.

**EFFECTIVE DATE:** August 1, 1993, through January 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of proposed suspension: Issued June 4, 1993; published June 10, 1993 (58 FR 32464).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the "Act"), provides that administrative proceedings must be

exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Act and of the order regulating the handling of milk in the Chicago Regional marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 10, 1993 (58 FR 32464) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded the opportunity to file written data, views or arguments thereon. No comments opposing this action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the period of August 1, 1993, through January 31, 1994, the following provisions of the order do not tend to effectuate the declared policy of the Act: In § 1030.7, paragraph (b)(6)(v).

**Statement of Consideration**

This action suspends certain provisions of the order during the months of August 1993 through January 1994. The suspension eliminates the shipping standard that applies to each plant in a unit of pool supply plants during each of these months.

The order defines a unit of supply plants as two or more plants located basically in the marketing area and from which Grade A milk is shipped to qualified plants. The order provides that for pooling purposes, a unit of supply plants must ship a specified percentage of total receipts to other plants and that each plant within a unit must ship in each of five months during the period of August through January at least three percent of the plant's receipts of milk or 47,000 pounds, whichever is less, to plants that distribute fluid milk products. This action suspends the shipping standard for individual plants during the months of August 1993 through January 1994.

The action was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of producers who supply the market. Kerry Ingredients and Farmers Union Milk Marketing Cooperative filed comments supporting the proposed suspension.

In their comments supporting the suspension, Kerry Ingredients requested that the suspension be expanded to include pool plants that are not included in a unit of supply plants. Farmers Union requested that the suspension be extended to decrease the touch base provisions from once a month during the months of August through January to once during this qualifying season. The touch base provisions require that to be eligible for diversion, a dairy farmer's milk must be physically received at a pool plant.

The requests to expand the suspension action go well beyond the intent of the proposed suspension. The pooling standards of the order are intended to reflect the extent to which shipments of milk from supply plants are necessary to furnish sufficient supplies of milk to distributing plants. The proposed action would not reduce supply plant shipping standards but would provide flexibility to market suppliers to ship milk from the most advantageously located areas. Removal of the shipping standards to individual plants that are not in a unit would essentially be the same as the removal of shipping standards for supply plants. As a result, plants could continue to be pooled under the order without having any association with the market. Thus, there would be no assurance that sufficient supplies of milk would be made available to distributing plants. Likewise, removal of the touch base provisions for each of the months during the suspension period would reduce the effectiveness of the order to assure that the milk of individual producers would continue to be eligible for use at distributing plants. Both of these requested extensions go beyond the considerations requested in the proposed action and cannot be implemented on the basis of this proceeding.

Current supply and demand projections indicate that there are substantial fluid milk supplies from close-in sources available for the fluid market and it appears that this supply will continue. Based on these projections, it is impractical and unnecessary to require qualifying shipments from distant unit plants, while forcing the milk from nearby unit plants to be moved to other areas for manufacturing merely for pooling purposes. This double hauling of milk will put a financial burden on handlers who operate pool units. Thus, this action is necessary to prevent uneconomical and inefficient movements of milk.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and,

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning the suspension. Two comments in support of this action were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1030**

Milk marketing orders.

Title 7, Part 1030 is amended as follows:

## PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority citation for 7 CFR part 1030 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1030.7 [Temporarily suspended in Part]**

2. In § 1030.7 paragraph (b)(6)(v) is hereby suspended for the period of August 1, 1993, through January 31, 1994.

Dated: July 21, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–17857 Filed 7–26–93; 8:45 am]

BILLING CODE 3410-02-P

Farmers Home Administration

Rural Development Administration

7 CFR Part 1980

RIN 0575–AB34

## Business and Industrial Loan Program

AGENCY: Farmers Home Administration and Rural Development Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) and Rural Development Administration (RDA) are revising the guaranteed Business and Industry (B&I) loan program regulations to change the requirement for the submission of feasibility studies. This action will reduce the burden to some borrowers by making an exception to the requirement of feasibility studies for some borrowers while ensuring that feasibility studies are required when they are needed most. The intended effect is to require feasibility studies for business start-ups and allow exceptions for established businesses with financial history.

EFFECTIVE DATE: August 26, 1993.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, room 6327, 14th & Independence Avenue SW., Washington, DC 20250, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Intergovernmental Review

The program impacted by this action is listed in the Catalog of Federal Domestic Assistance under number 10.422, Business and Industrial Loans, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983). FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J.

### Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

### Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

### Background

The current regulation for the FmHA B&I guaranteed loan program requires feasibility studies in connection with applications but includes authority to waive the requirement for loans of $2 million or less. The regulation is being revised to provide authority to make an exception to the requirement for a feasibility study based not on the size of the loan, but rather based on the history of the business. FmHA/RDA may make an exception to the requirement for feasibility studies for existing businesses when the financial history and current condition is sufficient to protect the lender and FmHA. New businesses, even if the loan amount is small, will not be eligible for an exception.

### Comments

This action was published in the Federal Register as a proposed rule on November 2, 1992, (57 FR 49428) with a 30 day comment period. Four comment letters were received, one from a recent B&I loan recipient, one from the credit and finance manager of an Indian tribe, and two from B&I chiefs of FmHA field offices. Both letters from outside FmHA were highly supportive of the proposal. Both letters from FmHA employees proposed retaining the authority to except feasibility study requirements for start-up businesses applying for loans of $2,000,000 or less. FmHA/RDA believes that when a borrower has no operating history upon which projections may be based, an independent feasibility study is needed to ensure adequate projections and analysis. No substantive change is made from the proposed rule. Minor editorial changes of an administrative nature have been made in the language.

### List of Subjects in 7 CFR Part 1980

Loan programs—Business and industry—Rural development assistance, Rural areas.

Accordingly, part 1980 of chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

## PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23 and 2.70.

### Subpart E—Business and Industrial Loan Program

#### § 1980.441 [Amended]

2. Section 1980.441 is amended by removing the *Administrative* paragraph.

3. Section 1980.442 is amended by revising the introductory text and adding an *Administrative* paragraph at the end of the section to read as follows:

#### § 1980.442 Feasibility studies.

A feasibility study by a recognized independent consultant will be required for all loans, except as provided in this paragraph. The cost of the study will be borne by the borrower and may be paid from funds included in the loan. The loan approval official may make an exception to the requirement of a feasibility study for loans to existing businesses when the financial history of the business, the current financial condition of the business, and guarantees or other collateral offered for the loan are sufficient to protect the interest of the lenders and FmHA. FmHA will thoroughly document the justification for the exception to the feasibility study for such businesses. An acceptable feasibility study should include but not be limited to:

* * * * *

*Administrative*

FmHA loan approval officials will be selective in approving borrowers for new business ventures involved in unproven products, services, or markets. Should such businesses be considered, additional equity will usually be required.

Dated: June 24, 1993.

Bob J. Nash,

*Under Secretary, Small Community and Rural Development.*

[FR Doc. 93–17790 Filed 7–26–93; 8:45 am]

BILLING CODE 3410–07–M

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Parts 700, 701 and 722

## Definitions; Organization and Operation of Federal Credit Unions; and Appraisals

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final Amendments.

**SUMMARY:** The NCUA Board is issuing final amendments to reduce regulatory burden. The amendments: (1) Extend the maturity date of certain investments not considered risk assets from 3 to 5 years; (2) increase the dollar value from $25,000 to $50,000 for determining when loans are subject to the business loan regulation; (3) make the recordkeeping requirements for business loans consistent with the definition of member business loans; and (4) raise the de minimus amount for an appraisal performed by a state-certified or -licensed appraiser from $50,000 to $100,000. NCUA believes these changes will decrease paperwork requirements and regulatory burden without any effect on safety and soundness.

**EFFECTIVE DATE:** July 27, 1993.

**ADDRESSES:** National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** D. Michael Riley, Director, Office of Examination and Insurance, at the above address or telephone: (202) 682–9640, or Michael J. McKenna, Office of General Counsel, at the above address or telephone: (202) 682–9630.

**SUPPLEMENTARY INFORMATION:**

### A. Background

NCUA continually reviews its regulations to improve efficiency and reduce burdens on credit unions. NCUA's goal is to strike a proper balance between safety and soundness concerns and credit unions' need to compete in the marketplace. On April 19, 1993, the NCUA Board issued proposed amendments (*see* 58 F.R. 21953, 4/26/93) to Sections 700.1(i), 701.21(h) and 722.3 of NCUA's Regulations to reduce regulatory burden. The amendments: (1) Extend the maturity date of certain investments not considered risk assets from 3 to 5 years; (2) increase the dollar value from $25,000 to $50,000 for determining when loans are subject to the business loan regulation; (3) make the recordkeeping requirements for business loans consistent with the definition of member business loans; and (4) raise the de minimus amount for an appraisal performed by a state-certified or -licensed appraiser from $50,000 to $100,000.

### B. Comments

One hundred and twenty-nine comment letters were received. Seventy-seven comments were received from federal credit unions, forty-one from state-chartered credit unions, five from state credit union leagues, three from national trade associations, two from state agencies, and one from a federal agency. The commenters expressed overwhelming approval of the proposed amendments. Eighty commenters support the proposed amendments in their entirety. Most of these commenters believe the amendments will not have an effect on safety and soundness and will greatly reduce paperwork requirements. Furthermore, many commenters believe these changes will allow credit unions to meet member needs and stay competitive in the marketplace. Eight commenters believe these changes will increase lending by credit unions. Four commenters completely disapprove of the proposed amendments.

#### *Section 700.1(i)—Risk Assets*

Section 116(a) of the Federal Credit Union Act (12 U.S.C. 1762(a) (the "Act") requires that federal credit unions set aside a certain percentage of gross income at the end of each accounting period as a Regular Reserve. Pursuant to section 116(a) of the Act, the amount of reserve transfer is determined by the size and age of the credit union and the credit union's ratio of reserves to risk assets. Section 700.1(i) of NCUA's Regulations (definition of risk assets) lists which assets are exempt from the reserve requirements. Section 741.9 of NCUA's Regulations states that federally insured state-chartered credit unions must comply with the statutory reserve requirements.

Currently, NCUA's Regulations require that certain assets with maturities in excess of 3 years be treated as risk assets for reserving purposes. The proposed amendment would extend the 3 year maturity requirement to 5 years. One hundred and seven commenters approve of this amendment. Most of these commenters believe there is no significant difference in interest rate risk between assets with maturities of three years and assets with maturities of five years. One commenter states the amendment makes sense, particularly now with rates depressed, credit union share deposits on the rise, and depositors maintaining balances for longer periods of time in the credit union. Another commenter states that the removal of 3 to 5 year investments from the risk asset category will allow credit unions to take advantage of the sharp yield curve.

One commenter requests NCUA consider further modifications to the risk assets definition as it applies to investments. He believes that the definition should apply to effective maturity. The Board Recognizes that with regard to many investments, "maturity" is dynamic, a function of prepayment activity, i.e., for some investment instruments, if underlying mortgages prepay faster or slower than originally anticipated, maturity shortens or lengthens as compared to initial expectations. It is the Board's intent that "maturity" be defined as that which is consistent with generally accepted accounting principles and investment industry practice as regards a specific investment given the particular circumstances at the date of required reserve transfer. Another commenter suggests that assets with more than 5 years remaining to maturity be considered as risk assets based on a percentage of the credit union's book value. NCUA does not believe that this approach is a practical or sound basis for reserving against risk associated with long-term assets.

Four commenters oppose this amendment. One commenter believes this change will add significant risk to the insurance fund. Two commenters state that long-term assets contain greater interest rate risk, and thus the amendment could generate losses and impact the safety and soundness of the insurance fund in an increasing interest rate environment. Although NCUA recognizes that there is a slight increase in interest rate risk between assets with maturities of 3 years versus those of 5 years, NCUA does not believe this difference is of such magnitude that it will pose an undue risk of loss to the NCUSIF. Furthermore, the additional risk is acceptable given the strong capital positions of credit unions and thus should not affect the safety and soundness of the NCUSIF. One commenter believes NCUA should move toward full implementation of a risk-based capital requirement as currently required by corporate credit unions as well as banks and thrifts. In the near

future NCUA will commence an in-depth review and analysis of the entire risk reserving structure and capital accretion methods for natural person credit unions. For now, the Board has adopted the amendment without modification.

Although NCUA did not request comment on other aspects of the definition of risk assets, a number of commenters suggested other parts of the definition that could be modified to reduce regulatory burden. Twenty commenters support exempting all students loans from reserve requirements. Most of these commenters believe that, since student loans are insured, there is little risk associated with them provided administrative requirements are fulfilled. Three commenters object to such an exemption for student loans. One commenter requests that Federal Home Loan Bank Stock not be defined as a risk asset. NCUA continues to study exempting these types of assets and will revisit the issue at some time in the future.

*Section 701.21(h)—Member Business Loans*

As proposed, the member business loan rule would be changed in two ways—first, by raising the exclusion threshold for defining business loans to $50,000, and second, by requiring the reporting of only those loans meeting that threshold.

One hundred and five commenters support the $50,000 threshold. Most of these commenters believe this is a more acceptable limit in today's marketplace. On commenter states that the new cap will be a stimulus for credit union business.

Four commenters object to raising the dollar limit. These commenters believe this change will affect safety and soundness. NCUA disagrees; in today's market, a $25,000 increase in the threshold will not significantly affect safety and soundness. Two commenters state that credit unions do not have the expertise to make business loans. Although many credit unions do not have experience in business lending and therefore do not engage in such, section 701.21(h)(2)(i)(F) of NCUA's Regulations requires that credit unions that do engage in business lending have personnel involved in making and administering business loans with a minimum of two years' direct experience with this type of lending. The NCUA Board is adopting this amendment without modification.

Ninety-five commenters approve of the change requiring the reporting of only those loans meeting the $50,000 threshold instead of all business purpose loans. The commenters believe this change will reduce regulatory burden and paperwork requirements. One commenter encourages NCUA to exempt all business loans currently on the books between $25,000 and $50,000 from being classified as such if this proposal is finalized. This commenter believes that requiring a credit union to maintain and report on two sets of books, one set for the time prior to the regulatory relief proposal, and one set of books for the time period following finalization of the proposal, would increase the burden on credit unions, not decrease the burden. NCUA agrees. Therefore, all loans under $50,000, regardless of purpose or date granted, will not have to be reported as business loans. The NCUA Board is adopting this amendment without modification.

Although NCUA did not request comment on other aspects of the business loan regulation, a number of commenters suggested other areas in this regulation that could be changed to reduce regulatory burden. One commenter suggests a second 1–4 family home be excluded from the business loan definition. NCUA declines to add this exemption since loans secured by other than the primary residences are considered a greater risk. Although twenty-four commenters support raising the loans to one borrower limit on member business loans from $75,000 to $100,000 (the regulation currently limits loans to one borrower to $75,000 or 15% of credit union reserves, whichever is greater), the Board has heard no clear or compelling reasons why such an increase should be considered, especially since waivers from the loans to one borrower limitation may be obtained through the regional director serving the area where the credit union is located. One commenter supports the change but requested a separate rule for agricultural lending. At this time, the Board is convinced that agricultural and other types of business lending share common characteristics and behavioral patterns and accordingly fall into the same general category. A separate rule is not contemplated at this time.

*Part 722—Appraisals*

NCUA proposed to require appraisals only for those real estate-related financial transactions in which the transaction value exceeds $100,000. Eighty-six commenters agree with this proposed increase. Most of these commenter believe the change will make credit unions more competitive without raising safety and soundness concerns. One commenter states that current appraisal requirements impose excessive costs without promoting the safety and soundness of the credit union.

Three commenters suggest increasing the dollar threshold even further. The other federal financial institution regulatory agencies have proposed amendments to their appraisal regulation that would, among other things, increase the transaction value to $250,000 (see 58 FR 31878, 6/4/93). NCUA will review this proposal and ascertain whether such a change would be feasible without sacrificing safety and soundness.

Two commenters suggest eliminating the valuation requirement for real estate loans under the $100,000 threshold. NCUA believes eliminating the valuation requirement while raising the transaction value would adversely affect the safety and soundness of credit unions. A valuation is necessary to ensure that the credit union is adequately protected throughout the life of the loan.

Twelve commenters object to this amendment. Six commenters believe the proposal increases safety and soundness concerns. NCUA disagrees. Since the establishment of the $50,000 threshold level in 1990, NCUA has not found any evidence indicating that there has been a significant increase in the defaults on real estate-related loans of $50,000 or less because the services of an appraiser have not been required. NCUA does not believe the proposed increase would represent a qualitative change in the types of loans falling below the threshold level. Even though more 1-to-4 family residential loans would fall below the threshold level, NCUA does not believe these loans would pose a significantly greater risk to credit unions than similar loans below the current threshold. Furthermore, NCUA does not believe that a $100,000 threshold level would exclude from the appraisal requirement a significant number of real estate development and commercial loans that have caused major credit losses in the past, especially in light of the restrictions on such loans contained in the member business loan rule. Finally, the requirement of a valuation for any real estate-related loan less than $100,000 will continue to provide protection in the assessment of collateral for credit unions and the National Credit Union Insurance Fund, as well as mitigate any potential risk associated with an increase in the threshold.

Three commenters believe that the proposed change may affect the salability of real estate loans on the secondary market. Of course, if a credit union is selling loans on the secondary

market or contemplating doing so in the future, the credit union must meet secondary market appraisal requirements. The amendment only gives a credit union the option to forego the appraisal when the transaction is less than $100,000 and not deemed necessary by the credit union. Another commenter states the proposal circumvents the intent of the original regulation. NCUA disagrees. Congress confirmed and clarified the authority of the financial institution regulatory agencies to set threshold levels below which the services of state-certified or -licensed appraisers are not required in connection with federally related transactions if the threshold does not represent a threat to the safety and soundness of financial institutions. See Section 954 of the Housing and Community Development Act of 1992, 106 Stat. 3894. Accordingly, the NCUA Board is adopting this amendment without modification.

*Miscellaneous*

Although NCUA did not request comment on other regulations, a number of commenters suggested other areas that could be changed to reduce regulatory burden. One commenter recommends reducing the quarterly reporting requirements (the "call report") to a semiannual report for those credit unions that are not considered a financial risk. Although this approach has been considered, NCUA believes the current requirement provides a more accurate and reliable indicator of financial trends in large credit unions. One commenter believes the limit on the percentage of fixed asset purchases should be deleted. The NCUA Board has heard no clear or compelling reason why the fixed asset limit should be eliminated. Once commenter believes that the current prohibition on incentives to loan officers in § 701.21(c)(8) of NCUA's Regulations should be eliminated. NCUA is currently reviewing this section to determine if the prohibition should be modified. One commenter stated that all regional offices should immediately inform examiners that character loans are appropriate to qualified credit union members. Examiners have already been informed that character loans may be appropriate in some instances. Two commenters suggest that other areas where regulatory burden could be eased would be in HMDA reporting and RESPA. Another commenter recommends reviewing IRS requirements and Regulation Z requirements. NCUA does not promulgate any of these regulations and therefore cannot change the requirements.

NCUA also is making a purely technical amendment to Section 701.21(c)(5), which notes the 10% loan limit to members. The current regulation states that the loan limit to credit union members is 10% of the "total unimpaired shares and surplus. Section 107(5)(A)(x) of the Federal Credit Union Act imposes the limitation of 10% of the "total unimpaired capital and surplus." This amendment simply repeats the statutory language and replaces the term "shares" with the term "capital."

Since the amendments result in a decrease in regulatory requirements, they are being made immediately effective upon publication in the **Federal Register** pursuant to the authority of Section 553(d)(3) of the Administrative Procedures Act (5 U.S.C. 553).

**Paperwork Reduction Act**

The final amendments will reduce paperwork requirements. The paperwork requirements were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act. A notice will be published in the **Federal Register** once approval is received from OMB.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final amendments reduce regulatory burden and are less restrictive then current requirements. The NCUA Board expects the changes to benefit credit unions by reducing paperwork and reporting requirements. Overall, the NCUA Board expects the changes to benefit members and federally insured credit unions regardless of size by reducing costs without substantially increasing the risk of loss for federally insured credit unions. In addition, most small credit unions do not offer business and real estate loans. Accordingly, the Board determines and certifies that the final amendments do not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

**Executive Order 12612**

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The current member business loan regulation, appraisal regulation, and the definition of risk assets apply to all federally insured credit unions, including state-chartered federally insured credit unions. The final amendments will reduce regulatory requirements for all federally insured credit unions. The NCUA Board has determined that the final amendments would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects**

*12 CFR Part 700*

Credit unions, Reserve requirements, Risk assets.

*12 CFR Part 701*

Civil rights, Conflicts of interests, Credit, Credit unions, Fair housing, Insurance, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, Surety bonds.

*12 CFR Part 722*

Appraisals, Credit unions, State-certified and State-licensed appraisers.

By the National Credit Union Administration Board on July 15, 1993.

**Becky Baker,**

*Secretary of the Board.*

Accordingly, NCUA is amending 12 parts 700, 701 and 722 as follows:

## PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1757(6) and 1766.

2. Section 700.1 is amended by revising paragraphs (i)(2) through (6), (i)(15) and (i)(16) introductory text and by amending (i)(7) introductory text as follows:

**§ 700.1 Definitions.**

* * * * *

(i) * * *

(2) Deposits and/or shares in federally or state-insured banks, savings and loan associations, and credit unions that have a remaining maturity of 5 years or less.

(3) Assets that have a remaining maturity of 5 years or less and are insured by, fully guaranteed as to principal and interest by, or due from the U.S. Government, its agencies, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association. Collateralized mortgage obligations that

are comprised of government guaranteed mortgage loans shall be included in this asset category.

(4) Loans to other credit unions that have a remaining maturity of 5 years or less.

(5) Student loans insured under the provisions of title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs that have a remaining maturity of 5 years or less.

(6) Loans that have a remaining maturity of 5 years or less and are fully insured or guaranteed by the Federal or a state government or any agency of either.

(7) Shares or deposits in a corporate credit union that have a remaining maturity of 5 years or less, other than Membership Capital Share Deposit accounts as defined in Part 704. * * *

* * * * *

(15) Assets included in numbered items 2, 3, 4, 5, 6, and 7 with maturities greater than 5 years are exempt from risk assets if the asset is being carried on the credit union's records at the lower of cost or market, or are being marked to market value monthly.

(16) Assets included in numbered items 2, 3, 4, 5, 6, and 7, with remaining maturities greater than 5 years are exempt from risk assets provided they meet the following criteria, irrespective of whether or not the asset is being carried on the credit union's records at the lower of cost or market, or are being marked to market value monthly: * * *

* * * * *

## PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

3. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

### § 701.21 [Amended]

4. Section 701.21(c)(5) is amended by removing "shares" and inserting in lieu thereof "capital."

5. Section 701.21 is amended by revising paragraphs (h)(1)(i)(C) and (h)(5) to read as follows:

### § 701.21 Loans to members and lines of credit to members.

* * * * *

(h) * * *
(1) * * *
(i) * * *

(C) A loan meeting the general definition of member business loans under this paragraph (h)(1)(i), and, made to a borrower or an associated member (as defined in paragraph (h)(1)(iii) of this section), which when added to other such loans to the borrower or associated member, is less than $50,000.

* * * * *

(5) *Recordkeeping.* All loans, lines of credit, or letters of credit, that meet the definition of Section 701.21(h)(1)(i), shall be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the National Credit Union Administration.

* * * * *

## PART 722—APPRAISALS

6. The authority citation for part 722 continues to read as follows:

**Authority:** 12 U.S.C. 1766, 1789 and Pub. L. No. 101–73.

7. Section 722.3 is amended by revising paragraphs (a)(1) and (d) as follows:

### § 722.3 Appraisals not required; transactions requiring a State-certified or -licensed appraiser.

(a) *Appraisals not required.* An appraisal performed by a state-certified or -licensed appraiser is not required for any real estate-related financial transaction in which:

(1) The transaction value is $100,000 or less;

* * * * *

(d) *Valuation requirement.* Secured transactions exempted from appraisal requirement pursuant to paragraph (a)(1) of this section (transactions of $100,000 or less) and not otherwise exempted from this regulation shall be supported by a written estimate of market value, as defined in this regulation, performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

[FR Doc. 93–17478 Filed 7–26–93; 8:45 am]
BILLING CODE 7535–01–M

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## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## 31 CFR Part 580

## Haitian Transactions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule; amendment.

**SUMMARY:** This rule amends the Haitian Transactions Regulations to add an Appendix to the end thereof containing the names of persons whom the Director of the Office of Foreign Assets Control has determined are included within the definition of the "*de facto* regime in Haiti." Property of these persons that is located in the United States or within the possession or control of U.S. persons is blocked, and most transactions with these persons are prohibited.

**EFFECTIVE DATE:** July 22, 1993.

**ADDRESSES:** Copies of this list are available upon request at the following location: Office of Foreign Assets Control, U.S. Department of the Treasury, Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220 (tel.: 202/622–2520).

**FOR FURTHER INFORMATION CONTACT:** J. Robert McBrien, Chief, International Programs Division (tel.: 202/622–2420), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

**SUPPLEMENTARY INFORMATION:** The Haitian Transactions Regulations, 31 CFR part 580 (the "Regulations"), were issued by the Treasury Department to implement Executive Order Nos. 12775 (56 FR 50641, October 7, 1991) and 12779 (56 FR 55975, October 30, 1991), in which the President declared a national emergency with respect to Haiti, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), and ordering specific measures against the *de facto* regime in Haiti.

This rule adds an appendix to part 580 to establish a list of persons whom the Director of the Office of Foreign Assets Control has determined pursuant to § 580.303(a) of the Regulations to be included within the definition of the "*de facto* regime in Haiti." Section 580.303 of the Regulations defines the term "*de facto* regime in Haiti" as follows:

(a) The term *de facto regime in Haiti* includes:

(1) Those who seized power illegally from the democratically elected government of President Jean-Bertrand Aristide on September 30, 1991, and any agencies, instrumentalities or entities purporting to act on behalf of the *de facto regime in Haiti* or under the asserted authority thereof, or any extraconstitutional successor thereto;

(2) Any partnership, association, corporation, or other organization substantially owned or controlled by the foregoing;

(3) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such

person is, or has been, since 12:23 p.m., e.d.t., October 4, 1991, acting or purporting to act directly or indirectly on behalf of any of the foregoing; or

(4) Any other person or organization determined by the Director of the Office of Foreign Assets Control to be included within this section. Such determinations shall be published from time to time in the Federal Register, but shall be binding prior to such publication upon any person receiving actual notice thereof.

(b) A partnership, association, corporation, or other organization shall not be deemed to fall within the definition of the *de facto regime in Haiti* solely by reason of being located in, organized under the laws of, or having its principal place of business in, Haiti.

Transfers or payments to the persons included in the appendix constitute transfers to the *de facto* regime within the meaning of § 580.202 of the Regulations, and are prohibited unless made into blocked accounts as authorized by the Regulations. Property and interests in property of the persons included in the appendix constitute property and interests in property of the Government of Haiti within the meaning of § 580.201 of the Regulations, and are blocked.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

**List of Subjects in 31 CFR Part 580**

Blocking of assets, Haiti, Specially designated nationals, Transfers of assets.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as set forth below:

## PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 is revised to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; E.O. 12775, 56 FR 50641, 3 CFR, 1991 Comp., p. 349; E.O. 12779, 56 FR 55975, 3 CFR, 1991 Comp., p. 367; E.O. 12853, 58 FR 35843, July 2, 1993.

2. Part 580 is amended to add at the end thereof Appendix A to read as follows:

### Appendix A to Part 580—Blocked Persons of the De Facto Regime in Haiti

**Note:** The information listed below is the most complete information now available to the Office of Foreign Assets Control. Listed persons meet the definition of "*de facto* regime in Haiti" whether located within Haiti or outside. The absence of any particular person from the appendix is not to be construed as evidence that the person is not a part of, or owned or controlled by, or acting or purporting to act directly or indirectly on behalf of, the *de facto* regime in Haiti.

I. BLOCKED INDIVIDUALS OF THE DE FACTO REGIME IN HAITI:

| Name | DOB | Title | Address |
|---|---|---|---|
| Atouriste, Antoine, Colonel. | 03 Jul 51 | Director (Directeur), Center of Central Information (C.I.C.C.) [anti-narcotics]. | |
| Augustin, Henry Robert (Henri-Robert), Colonel. | 21 Jun 51 | Military Attache (Attaché Militaire), Venezuela | |
| Becker, Jacques (a.k.a. Baker, Jacques). | 01 Mar 40 | Minister (Ministre) of Agriculture, Natural Resources and Rural Development (Ministère de l'Agriculture, des Ressources Naturelles et du Développement Rural, a.k.a. Marndr). | Damien, Port-au-Prince, Haïti. |
| Bernault, Emmanuel | | Deputy Director (Directeur Adjoint), National Water Service (Service National d'Eau Potable, a.k.a. SNEP). | Delmas 45—Delmas Road, Port-au-Prince, Haïti. |
| Bazin, Marc L. | 06 Mar 32 | Former *de facto* Prime Minister | |
| Beaubrun, Mondesir, Colonel. | 10 May 49 | Commander of the Southern Military Department (Commandant, Département Militaire du Sud). | |
| Bélizaire, Diderot | | Deputy Minister (Député Ministre) of Foreign Affairs and Worship. | Boulevard Harry Truman, Cité de l'Exposition, Port-au- Prince, Haïti. |
| Benjamin, Dumas | | Deputy Governor General (Gouverneur Adjoint), Central Bank, a.k.a Bank of the Republic of Haiti (Banque de la République d'Haïti, a.k.a. BRH). | Angle rue du Magasin de l'État et rue des Miracles, BP 1570, Port-au-Prince, Haïti. |
| Benoît, François | 02 May 36 | Minister (Ministre) of Foreign Affairs and Worship | Boulevard Harry Truman, Cité de l'Exposition, Port-au-Prince, Haïti. |
| Blamby, Philippe, Brigadier General. | 21 Sep 52 | Chief of the General Staff (Chef d'État-Majeur Général) of the Haitian Armed Forces, FADH (Force Armée d'Haïti). | |
| Blanc, Paul Ludovic | | Deputy Director (Directeur Adjoint), National Insurance, a.k.a. Old Age Insurance (Office National d'Assurance Vieillesse, a.k.a. ONA). | Champ de Mars, Port-au-Prince, Haïti. |
| Boncard, Arnoux | 21 Jan 35 | Director (Directeur), Government Industrial Park, a.k.a. National Office for Industrial Parks, National Industrial Park Company (Société Nationale des Parcs Industriels, a.k.a. SONAPI). | 122 East 40th Street, Brooklyn, New York 11203, USA; Industrial Park, P.O. Box 2345, Port-au-Prince, Haïti. |
| Brandt, Clifford | 20 Apr 19 | President and Director General, Banque de l'Union Haïtienne, S.A. (a.k.a. BUH). | Angle rues du Quai et Bonne Foi, P.O. Box 275, Port-au-Prince, Haïti. |
| Brutus, André | 08 Aug 43 | Minister (Ministre) of Social Affairs | Rue de la Révolution, Port-au-Prince, Haïti; rue de Centre No. 134, Port-au-Prince, Haïti. |
| Calixté, André | 13 Jul 40 | Minister (Ministre) of Information and Coordination | 300 route de Delmas, Port-au-Prince, Haïti. |
| Carre, Max | | Minister (Ministre) of Education, Youth and Sports, a.k.a. MENJS. | Boulevard Harry Truman, Cité de l'Exposition, Port-au-Prince, Haïti |
| Carvenard, Philippe, Colonel. | 14 May 49 | Military Attache (Attaché Militaire), Santo Domingo, Dominican Republic. | |

I. BLOCKED INDIVIDUALS OF THE DE FACTO REGIME IN HAITI:—Continued

| Name | DOB | Title | Address |
|---|---|---|---|
| Cedras, Raoul, Lieutenant General. | 09 Jul 49 | Chief of Staff (Commandant en Chef) of the Haitian Armed Forces, FAD'H (Force Armée d'Haïti). | |
| Cine, Jean Robert | | Deputy Director General (Directeur Adjoint), Cement Company (La Ciment d'Haïti, SA, a.k.a. CDH). | Office Cité de l'Exposition, Port-au-Prince, Haiti; Fond Mombin, Port-au-Prince, Haiti. |
| Claude, Bonivert | 02 Feb 45 | Governor General (Gouverneur Général), Central Bank, a.k.a. Bank of the Republic of Haiti (Banque de la République d'Haïti, a.k.a. BRH). | Angle rue du Magasin de l'État et rue des Miracles, BP 1570, Port-au-Prince, Haiti. |
| Delaunay, Joseph Gracian, Colonel. | 21 Jan 49 | Military Attache (Attaché Militaire), Rome | |
| Delsoin, Jean Robert | | Deputy Minister (Député Ministre) of Commerce and Industry. | Port-au-Prince, Haiti. |
| Démosthène, Paul | | Deputy Minister (Député Ministre) of Planning and External Cooperation (Planification et Coopération Externelle). | Port-au-Prince, Haiti. |
| Dauby, Frantz, Colonel. | 19 Jan 48 | Chief of Staff for Logistics, G–4 of the Haitian Armed Forces, FAD'H (Force Armés d'Haïti). | |
| Dupervel, Jean-Claude, Major General. | 19 Feb 47 | Assistant Commander in Chief (Assistant Commandant en Chef) of the Haitian Armed Forces, FAD'H (Force Armée d'Haïti). | |
| Dutreuil, Jean-Marie | 30 May 50 | Deputy Director (Directeur Adjoint), Office for Permanent Maintenance of Road Network (Service d'Entretien Permanent du Réseau Routier National, a.k.a. SEPRRN). | Boite Vertallis No. 1, Port-au-Prince, Haiti; Varreux—National Road, 10 Varreux Road, Port-au-Prince, Haiti. |
| Elysee (a.k.a. Elyzee, a.k.a. Elizee), Yonel "Son Son". | 19 Jul 51 | | Delmas 95, Route Jacquet No. 15, Port-au-Prince, Haiti; 1761 S.W. 83rd Terrace, Miramar, Florida 33025, USA; 8558 S.W. 114th Place, Miami, Florida 33173–4244, USA; 8999 S.W. 123rd Court, Miami, Florida 33186, USA; P.O. Box 570743, Miami, Florida 33257, USA; Yonell Import-Export, Route Nationale No. 1, Rue Duvier, P.O. Box 914, Port-au-Prince, Haiti. |
| Fils, Georges Henry | | Deputy Minister (Député Ministre) of Economy and Finance, a.k.a. MEF. | Palais des Ministères, Port-au-Prince, Haiti. |
| Florestant, Joseph Lemoine, Colonel. | 16 Nov 49 | Military Attache (Attaché Militaire), Washington, DC | |
| Florival, Jean | 01 Feb 30 | Deputy Minister (Député Ministre) of Foreign Affairs and Worship. | Boulevard Harry Truman, Cité de l'Exposition, Port-au-Prince, Haiti. |
| Fort, Wiener (a.k.a. Fort, Weiner). | 15 Oct 41 | Minister (Ministre) of Economy and Finance, a.k.a. MEF | Palais des Ministères, Port-au-Prince, Haiti. |
| François, Guy | 04 Apr 53 | Deputy Minister (Député Ministre) of Interior and National Defense (Intérieur et Défense Nationale). | Palais des Ministères, Port-au-Prince, Haiti. |
| François, Joseph Michel, Lieutenant Colonel. | 08 May 57 | Commander of the Military Department of the Metropolitan Zone (Commandant, Département Militaire de la Zone Métropolitaine, a.k.a. COMET). | |
| Gabriel, Jean-Robert, Colonel. | 11 Aug 58 | Secretary of the General Staff (Secrétaire Etats-Majors Général) of the Haitian Armed Forces, FAD'H (Force Armé d'Haïti). | |
| Goby, Jean Brunel, Colonel. | 23 Sep 51 | Officer of the Bureau of the Inspector General Service (Bureau Inspecteur Général, Grand Quartier Général, a.k.a. G.Q.G.). | |
| Groshomme, Belony, Colonel. | 12 Feb 48 | Commander of the Military Department—Artibonite Region (Commandant, Département Militaire de l'Artibonite). | |
| Jose, Jean-Eugene, Colonel. | 10 Jun 52 | Officer of the Bureau of the Inspector General Service (Bureau Inspecteur Général, Grand Quartier Général, a.k.a. G.Q.G.). | |
| Joseph, Frantz | 13 Oct 54 | Director (Directeur), Office for Permanent Maintenance of Road Network (Service d'Entretien Permanent du Réseau Routier National, a.k.a. SEPRRN). | Rue Nazon No. 21, Port-au-Prince, Haiti; 10 N.E. 64th Street, Miami, Florida 33138, USA; Varreux—National Road, 10 Varreux Road, Port-au-Prince, Haiti. |
| Jumelle, Michele Cesar. | | Deputy Minister (Député Ministre) of Justice | Boulevard Harry Truman, Cité de l'Exposition, Port-au-Prince, Haiti. |
| Lafontant, Victorian (a.k.a. Lafontant, Victoriano). | | Director (Directeur), National Water Service (Service National d'Eau Potable, a.k.a. SNEP). | Delmas 45—Delmas Road, Port-au-Prince, Haiti. |
| Laguerre, Pierre André. | | Director General (Directeur Général), Airport, a.k.a. National Port Authority (Autorité Portuaire Nationale, a.k.a. APN). | La Saline Boulevard, P.O. Box 616, Port-au-Prince, Haiti; P.O. Box 1792, Port-au-Prince, Haiti. |
| Laine, Saidel | | Minister (Ministre) of Commerce and Industry | Port-au-Prince, Haiti. |

L BLOCKED INDIVIDUALS OF THE DE FACTO REGIME IN HAITI:—Continued

| Name | DOB | Title | Address |
|---|---|---|---|
| Lamur, Margareth Lydia. | ..... | Director (Directeur), National Insurance, a.k.a. Old Age Insurance (Office National d'Assurance Vieillesse, a.k.a. ONA). | Champ de Mars, Port-au-Prince, Haïti. |
| Lanoelière, Fresnel | ..... | Deputy Minister (Député Ministre) of Public Health (Santé Publique). | Palais des Ministères, Port-au-Prince, Haïti. |
| Lassegue, Jeakel, Colonel. | 19 Feb 54 | Chief of the Senior Headquarters (High Command) (Chef du Premier Bureau, Grand Quartier Général, a.k.a. G.Q.G.). | |
| Lissade, Pierre | ..... | Director General (Directeur Général), Telephone Company (Télécommunications d'Haïti, SAM, a.k.a. TELECO). | J.J. Dessalines Boulevard, P.O. Box 614, Port-au-Prince, Haïti. |
| Louis, Michel, Colonel | 29 Sep 49 | Chief of the Office of Military Attaches (Chef du Bureau des Attachés Militaires). | |
| Louis, Edy (Eddy), Colonel. | 21 Jun 51 | Military Attache (Attaché Militaire), Paris | |
| Marc-Charles, Henry Robert, Colonel. | 05 Jan 52 | Officer Assigned to the General Staff (Officiel de Service de l'État Major). | |
| Mathurin, Ginette Perodin. | 30 Oct 53 | Director (Directeur), Ministry of Health Unit for Potable Water, a.k.a. Community Health and Drinking Water Posts (Programme de Santé de l'Eau Potable, a.k.a. Postes Communautaires d'Hygiène et d'Eau Potable, POCHEP). | Montagne Noir, Impasse Monsieur Lafontant, Haïti; Petite Place Cazeau, P.O. Box 2580, Port-au-Prince, Haïti. |
| Mayard, Henry (Henri) Max, Brigadier General. | 07 Feb 47 | Inspector General (Inspecteur Général) of the Haitian Armed Forces, FAD'H (Force Armée d'Haïti). | |
| McNally, Marie Line | 06 Mar 61 | Deputy Director (Directeur Adjoint), Accident/Insurance Office, a.k.a. Workers' Compensation, Sickness and Maternity Insurance Agency (Office d'Assurance Maladie/Accident, a.k.a. Office d'Assurance Accidents du Travail, Maladie et Maternité, a.k.a. OFATMA). | Chancerelles—Cité Militaire, P.O. Box 1012, Port-au-Prince, Haïti. |
| Merzier, Roland | ..... | Vice President, National Credit Bank (Banque Nationale de Crédit, a.k.a. BNC). | Angle rue du Quai et rue des Miracles, BP 1320, Port-au-Prince, Haïti. |
| Michel, Ciriel | 05 Oct 46 | Director General (Directeur Général), Cement Company (Le Ciment d'Haïti, SA, a.k.a. CDH). | Teina Village, P.O. Box 575–1, Port-au-Prince, Haïti; 7376 S.W. 113th Circle Place, Miami, FL 33173, USA; Office Cité de l'Exposition, Port-au-Prince, Haïti; Fond Mombin, Port-au-Prince, Haïti. |
| Ney-Pierre, Arnold | 25 Sep 29 | Director (Directeur), Accident/Insurance Office, a.k.a. Workers' Compensation, Sickness and Maternity Insurance Agency (Office d'Assurance Maladie/Accident, (a.k.a. Office d'Assurance Accidents du Travail, Maladie et Maternité, a.k.a. OFATMA)). | Avenue Nord Alexis 36, Port-au-Prince, Haïti; Chancerelles—Cité Militaire, P.O. Box 1012, Port-au-Prince, Haïti. |
| Nicolas, Carl Michel, General (retired). | 08 May 37 | Minister (Ministre) of Interior and National Defense (Intérieur et Défense Nationale). | Palais des Ministères, Port-au-Prince, Haïti |
| Norvilus, Appolon Louis. | 06 May 42 | Deputy Director (Directeur Adjoint), Ministry of Health Unit for Potable Water, a.k.a. Community Health and Drinking Water Posts (Programme de Santé de l'Eau Potable, a.k.a. Postes Communautaires d'Hygiène et d'Eau Potable, a.k.a. POCHEP). | Canapé Vert, Rue Jean Baptisite No. 47, Haïti; 107 Taunton Street, Hyde Park, Massachusetts 02126, USA; Petite Place Cazeau, P.O. Box 2580, Port-au-Prince, Haïti. |
| Paul, Max | 17 May 45 | Director General (Directeur Général), National Port Authority, a.k.a. Airport (Autorité Portuaire Nationale, a.k.a. APN). | Bourdon, Impasse Iginac No. 7, Haïti; 1019 Lenox Road, Brooklyn, New York 11212, USA; La Saline Boulevard, P.O. Box 616, Port-au-Prince, Haïti; P.O. Box 1792, Port-au-Prince, Haïti. |
| Pericles, Jacquelin | ..... | Deputy Director General (Directeur Adjoint), Customs (Administration Générale des Douanes). | 151 Route de Delmas, Port-au-Prince, Haïti. |
| Pierre-Antoine, Joseph, Colonel. | 19 Mar 51 | Chief Secretary of the Senior Headquarters (Chef Secrétaire Juridique du Grand Quartier Général, a.k.a. G.Q.G.). | |
| Pierre-Louis, Jean Carmelo (a.k.a. Pierre-Louis, Jean Carmelot). | ..... | Minister (Ministre) of Public Works, Transport and Communications (a.k.a. MTPTC). | Palais des Ministères, BP 2002, Port-au-Prince, Haïti. |
| Pierre Louis, Jean Herve (a.k.a. Pierre Louis, Claude A.J. Herve). | 12 Feb 58 | Director General (Directeur Général), Water Company, a.k.a. Metropolitan Water Concern (Centrale Autonome Métropolitaine d'Eau Potable, a.k.a. CAMEP). | Christ-Roi, Rue Mgr. Testard No. 6, Port-au-Prince, Haïti; 890 S.W. 122th Place, Miami, Florida 33184, USA; Paul VI Avenue 104, Port-au-Prince, Haïti. |
| Poteson, Bernadin, Colonel. | 15 Feb 48 | Commander (Commandant), 27th Company, Fire Department (27ème Compagnie, Corps Pompier). | |

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I. BLOCKED INDIVIDUALS OF THE DE FACTO REGIME IN HAITI:—Continued

| Name | DOB | Title | Address |
|---|---|---|---|
| Prosper, Amil | 31 Jan 30 | Director General (Directeur Général), Customs (Administration Générale des Douanes). | 17 Rue Louverture, Port-au-Prince, Haïti; 740 N.W. 129th Terrace, Miami, Florida 33167, USA; 161 Route de Delmas, Port-au-Prince, Haïti. |
| Prud'Homme, Ernst, Colonel. | 22 Sep 54 | Adjutant General (Adjudant-Général) of the Haitian Armed Forces, FAD'H (Force Armée d'Haïti). | |
| Quaio, Reginald | 17 Oct 53 | Deputy Director General (Directeur Adjoint), Telephone Company (Télécommunications d'Haïti, SAM, a.k.a. TELECO). | J.J. Dessalines Boulevard, P.O. Box 814, Port-au-Prince, Haïti; Delmas 75 Angle Rue Catalpa et Mimoss, Port-au- Prince, Haïti; 7925 S.W. 153 Place, Miami, Florida 33193, USA. |
| Rene, Marie-Alix, Colonel. | 28 Jul 51 | Military Attache (Attaché Militaire), Mexico | |
| Rigaud, Max | 28 Jul 21 | Director General (Directeur Général), Flour Company (La Minoterie d'Haïti, a.k.a. MDH). | Lafiteau, P.O. Box 404, Port-au-Prince, Haïti. |
| Roméus, Wilhem | | Deputy Minister (Député Ministre) of Information and Coordination. | 300 route de Delmas, Port-au-Prince, Haïti. |
| Romulus, Dumarsais, Colonel. | 18 Aug 48 | Chief of Staff for Operations, G–3 of the Haitian Armed Forces, FAD'H (Force Armée d'Haïti). | |
| Romulus, Martial P., Colonel. | 26 Feb 49 | Assistant Military Bureau Chief | |
| Roumain, Claude | | Deputy Minister (Député Ministre) of Education, Youth and Sports, a.k.a. MENJS. | Boulevard Harry Truman, Cité de l'Exposition, Port-au-Prince, Haïti. |
| Sainvil, Ramus, Colonel. | 15 Sep 52 | Director (Directeur), Military Academy (Académie Militaire) | |
| Senatus, Moise | | Minister (Ministre) of Justice | Boulevard Harry Truman, Cité de l'Exposition, Port-au-Prince, Haïti |
| St. Dic, Axel | 31 Jan 49 | Director General (Directeur Général), Electricity Company (Électricité d'Haïti, a.k.a. EDH). | Rue Dante Destouches, Port-au-Prince, Haïti; Boulevard Harry Truman, P.O. Box 1753, Port-au-Prince, Haïti; rue Calcis No. 14, Canapé Vert, Port-au- Prince, Haïti. |
| St. Firmin, Jean | 10 Jul 34 | President, National Credit Bank (Banque Nationale de Crédit, a.k.a. BNC). | 126 Impasse H. Samsour, Delmas 105, Port-au-Prince, Haïti; 44 Underwood Place, N.W., Washington, D.C. 20012, USA; Angle rue du Quai et rue des Miracles, BP 1320, Port-au-Prince, Haïti. |
| Sylvain, Diderot Lyonel (Lionel), Colonel. | 10 Jun 50 | Chief of Public Information Service (Chef de Service Renseignement Général) of the Haitian Armed Forces, FAD'H (Force Armée d'Haïti). | |
| Thimothee, Maud | | Deputy Minister (Député Ministre) of Social Affairs | Rue de la Révolution, Port-au-Prince, Haïti. |
| Ulysse, Robert | | Deputy Minister (Député Ministre) of Agriculture, Natural Resources and Rural Development (Ministère de l'Agriculture, des Ressources Naturelles et du Développement Rural, a.k.a. MARNDR). | Damien, Port-au-Prince, Haïti. |
| Valmond, Hébart, Colonel. | 17 May 49 | Chief of Staff for Intelligence, G–2 of the Haitian Armed Forces, FAD'H (Force Armée d'Haïti). | |
| Victor, Jean André | 10 Sep 41 | Minister (Ministre) of Planning and External Cooperation (Planification et Coopération Externe). | Port-au-Prince, Haïti. |
| Volcy, Etzer | | Deputy Minister (Député Ministre) of Public Works, Transport and Communications (a.k.a. MTPTC). | Palais des Ministères, BP 2002, Port-au-Prince, Haïti. |
| Westerbandt, Adrian (a.k.a. Westerband, Adrien). | 02 Dec 24 | Minister (Ministre) of Public Health (Santé Publique) | Palais des Ministères, Port-au-Prince, Haïti. |

**II. Blocked Entities of the De Facto Regime in Haiti**

27th Company, Fire Department
(a.k.a. 27ème Compagnie, Corps Pompier)
Haïti.

Accident/Insurance Office
(a.k.a. Office d'Assurance Maladie/ Accident)
(a.k.a. Ofatma)
(a.k.a. Workers' Compensation, Sickness and Maternity Insurance Agency)
(a.k.a. Office d'Assurance Accidents dU Travail, Maladie et Maternité)
Chancerelles—Cité Militaire, P.O. Box 1012, Port-au-Prince, Haïti.

Bank of the Republic of Haiti
(a.k.a. Central Bank of Haiti)
(a.k.a. Banque de la Republique d'Haïti)
(a.k.a. BRH)
(a.k.a. Banque Nationale de la République d'Haïti) Angle rue du Magasin de l'État et rue des Miracles, BP 1570, Port-au-Prince, Haïti.

Banque de l'Union Haïtienne, S.A.
(a.k.a. BUH)
Angle rues Du Quai et Bonne Foi,
Boite Postale 275,
Port-au-Prince, Haïti

Banque Populaire Haïtienne
(a.k.a. BPH)
Angle rues Eden et Quai,
P.O. Box 1322,
Port-au-Prince, Haïti

Bureau of the Inspector General Service
(a.k.a. Bureau Inspecteur Générale, Grand Quartier Générale (G.Q.G.)), Haïti.

Cement Company
(a.k.a. le Ciment d'Haïti, SA)
(a.k.a. CDH)

Office Cité de l'Exposition, Port-au-Prince, Haïti; Fond Mombin, Port-au-Prince, Haïti.
Electricity Company
(a.k.a. Electricité d'Haïti)
(a.k.a. Electricity of Haiti)
(a.k.a. EDH)
Rue Dante Destouches, Port-au-Prince, Haïti; Boulevard Harry Truman, P.O. Box 1753, Port-au-Prince, Haïti.
Flour Company
(a.k.a. la Minoterie d'Haïti)
(a.k.a MDH)
Lafitteau, P.O. Box 404, Port-au-Prince, Haïti.
Haitian Armed Forces
(a.k.a. Fad'h)
(a.k.a. Force Armée d'Haïti)
Haïti.
Metropolitan Water Concern
(a.k.a. Water Company)
(a.k.a. Centrale Autonome Métropolitaine d'Eau Potable)
(a.k.a. CAMEP)
Paul VI Avenue 104, Port-au-Prince, Haïti.
Military Department—Artibonite Region
(a.k.a. Département Militaire de l'Artibonite)
Haïti.
Military Department of the Metropolitan Zone
(a.k.a. Département Militaire de la Zone Métropolitaine)
(a.k.a. Comet)
Haïti.
Ministry of Agriculture, Natural Resources and Rural Development
(a.k.a. Ministère de l'Agriculture, des Ressources Naturelles et du Développement Rural)
(a.k.a. MARNDR)
Damien, Port-au-Prince, Haïti.
Ministry of Commerce and Industry
Rue Legitime, Champ de Mars, Port-au-Prince, Haïti.
Ministry of Economy and Finance
(a.k.a. MEF)
Palais des Ministères,
Port-au-Prince, Haïti.
Ministry of Education, Youth and Sports
(a.k.a. MENJS)
Boulevard Harry Truman, Cité de l'Exposition,
Port-au-Prince, Haïti.
Ministry of Foreign Affairs and Worship
Boulevard Harry Truman, Cité de l'Exposition,
Port-au-Prince, Haïti.
Ministry of Health Unit for Potable Water
(a.k.a. Community Health and Drinking Water Posts)
(a.k.a. Programme de Santé de l'Eau Potable)
(a.k.a. Postes Communautaires d'Hygiène et d'Eau Potable)
(a.k.a. POCHEP)
Petite Place Cazeau, P.O. Box 2580, Port-au-Prince, Haïti.
Ministry of Information and Coordination
300 route de Delmas,
Port-au-Prince, Haïti.
Ministry of Interior and National Defense
(a.k.a. Ministère de l'Intérieur et Défense Nationale)
Palais des Ministères,
Port-au-Prince, Haïti.
Ministry of Justice
Boulevard Harry Truman, Cité de l'Exposition
Port-au-Prince, Haïti.
Ministry of Planning and External Cooperation
(a.k.a. Ministère de la Planification et Coopération Externelle)
Palais des Ministères, Rue Monseigneur Guilloux,
Port-au-Prince, Haïti.
Ministry of Public Health
(a.k.a. Santé Publique)
(a.k.a. Ministry of Public Health and Population)
(a.k.a. Ministère de la Santé Publique et de la Population)
(a.k.a. Ministry of Public Health and Housing)
Palais des Ministères,
Port-au-Prince, Haïti.
Ministry of Public Works, Transport and Communications
(a.k.a. Ministère des Travaux Publics, Transport et Communications)
(a.k.a. MTPTC)
Palais des Ministères, BP 2002, Port-au-Prince, Haïti.
Ministry of Social Affairs
Rue de la Révolution,
Port-au-Prince, Haïti.
National Credit Bank
(a.k.a. Banque Nationale de Crédit)
(a.k.a. BNC)
Angle rue du Quai et rue des Miracles, BP 1320,
Port-au-Prince, Haïti.
National Insurance
(a.k.a. Old Age Insurance)
(a.k.a. Office National d'Assurance Vieillesse)
(a.k.a. ONA)
Champ de Mars,
Port-au-Prince, Haïti.
National Office for Industrial Parks
(a.k.a. National Industrial Park Company)
(a.k.a. Government Industrial Park)
(a.k.a. Société Nationale des Parcs Industriels)
(a.k.a. SONAPI)
Industrial Park, P.O. Box 2345,
Port-au-0Prince, Haïti.
National Port Authority
(a.k.a. Autorité Portuaire Nationale)
(a.k.a. Port Authority)
(a.k.a. Airport)
(a.k.a. APN)
La Saline Boulevard, P.O. Box 616,
Port-au-Prince, Haïti;
P.O. Box 1792,
Port-au-Prince, Haïti.
National Water Service
(a.k.a. Service National d'eau Potable)
(a.k.a. SNEP)
Delmas 45—Delmas Road,
Port-au-Prince, Haïti.
Office for Permanent Maintenance of Road Network
(a.k.a. Service d'Entretien Permanent du Réseau Routier National)
(a.k.a. Service d'Entretien du Réseau Routier National)
(a.k.a. SEPRRN)
(a.k.a. Office of Road Maintenance)
Varreux—National Road, 10 Varreux Road,
Port-au-Prince, Haïti.
Office of Customs
(a.k.a. Administration Générale des Douanes)
161 Route de Delmas,
Port-au-Prince, Haïti.
Office of Military Attaches
(a.k.a. Bureau des Attachés Militaires)
Haïti.
Telephone Company
(a.k.a. Télécommunications d'Haïti, Sam)
(a.k.a. Teleco)
J.J. Dessalines Boulevard, P.O. Box 814,
Port-au-Prince, Haïti.

Dated: July 6, 1993.

**R. Richard Newcomb,**

*Director, Office of Foreign Assets Control.*

Approved: July 9, 1993.

**Ronald K. Noble,**

*Assistant Secretary (Enforcement).*

[FR Doc. 93–17813 Filed 7–22–93; 11:06 am]

BILLING CODE 4810–36–W

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 9 and 82

[FRL–4682–4]

### Protection of Stratospheric Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; section 114 information request.

**SUMMARY:** Pursuant to section 114 of the Clean Air Act (the Act), EPA is requiring that companies that produced, imported, exported, transformed or destroyed the following controlled substances in the specified time periods report to EPA within 45 days. These chemicals and the years for which data is to be provided are: methyl bromide in the year 1991; hydrochlorofluorocarbons in 1989, 1992; hydrobromofluorocarbons in 1989 and 1991; and specified chlorofluorocarbons in the first six months of the calendar year 1989. Companies are to submit information on the amounts they produced, imported, exported, transformed, or destroyed during the time period specified.

EPA requires this information in order to promulgate production and consumption restrictions under sections 604 and 606 of the Clean Air Act, as amended. Also, the Agency may use the information collected in connection with its monitoring and reporting obligations under section 603(d) of the Clean Air Act as amended. Further, the Agency may use this information to satisfy the United States reporting obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer.

**DATES:** This action is effective July 27, 1993. The information requested in this

document must be submitted by September 10, 1993.

**ADDRESSES:** The information requested in this notice should be submitted to: Peter Voigt, U.S. EPA, 6205J, Stratospheric Protection Division, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Peter Voigt, 6205J, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. EPA, 401 M St., SW., Washington, D.C. 20460, (202) 233–9185.

**SUPPLEMENTARY INFORMATION:**

## I. Background—Statutory Requirements

EPA is requesting information through this notice in connection with regulations recently proposed for the accelerated phaseout of ozone depleting chemicals and for the listing of methyl bromide and hydrobromofluorocarbons (HBFCs) as class I ozone depleting chemicals. See 58 FR 15015 (March 18, 1993). Section 614 of the Clean Air Act provides that in the case of conflict between any provision of title VI and any provision of the Montreal Protocol, the more stringent provision shall govern. Therefore, the proposed regulations are generally consistent with recent agreements of the Parties to the Montreal Protocol to add several new substances to the list of controlled substances and to extend reporting requirements to these substances.[1] Information collected in connection with the Agency's regulations actions under the Clean Air Act may thus be useful to satisfy the United States' reporting obligations under the Montreal Protocol. This information will also be useful in connection with the Agency's obligation under section 603(d) of the Clean Air Act to monitor production, use and consumption of ozone-depleting substances, and to report domestic production, use and consumption to Congress.

### *a. Accelerated Phaseout of Previously Listed Substances*

As explained in the March 18 notice, EPA proposed to accelerate the phaseout dates for CFCs and for certain HCFCs.

EPA believes that its proposed phaseout schedule for HCFCs, along with other measures being taken under title VI, will achieve compliance with the phaseout schedule for HCFCs under the agreement of the Parties to the Montreal Protocol. Previously, HCFCs had been included under the Protocol as "transitional substances" and had not been subject to controls. The Parties agreed in Copenhagen to add HCFCs to the list of controlled substances and to adopt a phaseout schedule for them. The Parties agreed to a baseline consumption level for HCFCs equal to the sum of 3.1 percent of the calculated level of CFCs consumed in 1989 and the calculated level of HCFCs consumed in that same year. (The "calculated level" of HCFCs consumed is equal to the quantity produced multiplied by the HCFCs' ozone depletion potential.) Under the Protocol agreement, the permitted levels of HCFC consumption are then reduced over time. In its March 18 proposal, EPA also requested comment on the use of an allocation or auction system to implement the HCFC cap approach agreed to under the Protocol.

Information regarding CFCs and HCFCs being collected through this notice is pertinent to the establishment of a baseline to implement, under the Clean Air Act, the cap approach that the Parties agreed to under the Protocol. It is also pertinent to ensuring that the acceleration of phaseout dates for certain HCFCs, complies with the requirements of the cap agreed to under the Protocol. (As noted, since section 614 of the Clean Air Act provides that the more stringent provision of the Montreal Protocol and the Clean Air Act shall govern in the case of conflicts, the accelerated phaseout approach adopted under the section 606 will have to be at least as stringent as the approach agreed to under the Protocol.)

Thus, to calculate the baseline level of HCFCs for the United States, EPA is requesting that any company that produced, imported, exported, transformed, or destroyed HCFCs in 1989 provide data regarding those activities to EPA. The Agency is also requesting the same data for HCFCs for the most recent calendar year, 1992. The Agency believes the information for 1992 is also pertinent to determining the best approach for the phaseout of HCFCs. In addition, in order to establish the United States' baseline for HCFC regulations, EPA must have data on 1989 CFC consumption. EPA currently has data on CFC consumption only for the six month period from July 1, 1989 to December 31, 1989. This time period was covered as part of the initial control period for CFC regulation under the Montreal Protocol and domestic implementing regulations which extended from July 1, 1989 to June 31, 1990. Since EPA regulations restricting production or consumption did not cover the first six months of 1989, EPA has not required reporting of data for that period. EPA is therefore now requesting data on CFC production and consumption for the period from January 1, 1989 to June 31, 1989.

### *b. New Listings*

As explained in the March 18 notice, EPA is proposing to add methyl bromide and HBFCs to the list of class I substances under section 602(a) of the Clean Air Act. As explained in the listing proposal, under title VI of the Clean Air Act, a newly listed class I substance is automatically subject to the § 604(a) phaseout schedule unless:

(1) The Administrator accelerates that schedule pursuant to section 606; or

(2) The Administrator determines that the section 604(a) schedule is unattainable and extends that schedule pursuant to section 602(d).

For reasons explained in the listing proposal, the Agency proposed that the section 604(a) schedule is unattainable for methyl bromide under section 602(d). EPA therefore proposed freezing production and consumption of methyl bromide at 1991 baseline levels beginning on January 1, 1994 until January 1, 2000, when production and consumption would be eliminated. For HBFCs, EPA proposed to freeze production and consumption at 1991 baseline levels beginning on January 1, 1994 until January 1, 1996, when production and consumption would be eliminated.

Section 607 of the Clean Air Act specifies that the Administrator shall promulgate regulations providing for production and consumption allowances of class I substances. To implement a production and consumption freeze and phaseout, EPA proposed in the March 18 notice the same regulatory scheme it has used in the past for CFCs, halons, methyl chloroform, and other controlled substances. Baseline production and consumption allowances would be established and allocated to those companies engaged in such activities in the 1991 baseline year. For purposes of establishing these baseline production and consumption allowances in a follow-up rulemaking, and pursuant to § 114 of the Clean Air Act, the Agency is requiring through this notice that persons report to the Agency the amount of any production, imports, exports, transformations or destruction of methyl bromide or any HBFCs in 1991.

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[1] As explained in the March 18 Federal Register notice, these agreements were reached at the Fourth Meeting of the Parties held in Copenhagen, Denmark in November 1992. They will enter into force as amendments to the Montreal Protocol by January 1, 1994, provided that twenty Parties have ratified them. If twenty Parties have not ratified the amendments by that date, then the amendments are to enter into force ninety days after the twentieth instrument of ratification is deposited by a Party.

In addition, as addressed in the March 18 proposal, concerns have been raised in particular about the limited availability of substitutes for methyl bromide for use in quarantine and pre-shipment fumigation applications. Under the Montreal Protocol Parties' agreement to list and phase out methyl bromide, production is defined to exclude quarantine and pre-shipment uses. To assist in evaluating the significance of this concern in connection with the phaseout schedule, EPA is requesting that persons report information regarding the amount of their 1991 production, imports, exports, transformation, and destruction of methyl bromide that was used for quarantine and pre-shipment purposes.

*c. Other Uses for the Information Collected*

As noted above, the Agency believes collection of this information will be useful to satisfy its obligations under section 603(d) of the Clean Air Act. That subsection provides that "[T]he Administrator shall monitor and, not less often than every 3 years following enactment of the Clean Air Act Amendments of 1990, submit a report to Congress on the production, use and consumption of class I and class II substances. Such report shall include data on domestic production, use and consumption, and an estimate of worldwide production, use and consumption of such substances. . . ."

Finally, Article 7 of the Montreal Protocol includes annual reporting obligations for HCFCs. The Parties to the Montreal Protocol also agreed in Copenhagen to extend the data reporting requirements under Article 7 of the Protocol to methyl bromide and HBFCs. EPA may also use the information collected here to satisfy the United States' reporting obligations under the Protocol.

## II. Statutory Authority

Section 114(a) of the Act authorizes the Administrator or a delegated authority, in order to carry out any provisions of the Act, to require any person who the Administrator believes may have information necessary for such purposes to provide such information. Only two firms are believed to produce methyl bromide and only one firm is believed to produce HBFCs in the United States. Fewer than twenty firms or individuals are likely to have been importers or exporters of methyl bromide in 1991 and there are believed to be no importers and one exporter of HBFCs in 1991 in the United States.

EPA has elected to require submission of this information by rule to ensure that all producers, importers and exporters receive notice that this information is being collected. If the Agency instead sent an administrative order by letter to firms believed to be involved in these activities, it might not reach the entire universe of involved parties.

This rule is being published as a final action without first seeking public comment for several reasons. First, the rule is very limited in scope and simply requires that information on past specified activities be reported. Second, the information requested is straightforward and clearly delineated. Third, the resources involved in reporting this information should be minimal since very few firms manufacture the newly listed chemicals and the information requested is data routinely maintained by such firms. Fourth, this information is not available through existing channels. Fifth, EPA requires this information in a timely manner in connection with the proceedings to accelerate the phaseout of ozone-depleting substances to list methyl bromide and HBFCs, and to issue production and consumption allowances for these chemicals. For these reasons, EPA finds that notice and public comment on this rule are impracticable, unnecessary and contrary to the public interest within the meaning of 5 U.S.C. 553(b)(B).

## III. Request for Information

The Agency today is requesting production, import, export, and transformation information for methyl bromide, HBFCs, HCFCs, and CFCs for the specified periods. EPA believes it is important to issue production and consumption limits at the same time as the final rule is promulgated adding substances to the list of class I substances and accelerating the phaseout of other ozone depleting substances.

As the Agency has described in past **Federal Register** notices, regulations implementing production limits of § 604 are self-effectuating, but regulations implementing those limits are essential to affording producers of the affected chemicals needed flexibility to change their production mix or levels. See 58 FR 49548 and 57 FR 33754. In addition, the consumption limits of § 604 are not self-effectuating and thus require implementing regulations. EPA therefore believes it important to issue production and consumption allowances at the same time as the new substances are finally listed and the phaseout schedule for the other substances is finally accelerated. As the production and consumption limits apply on an annual basis and thus take effect not more than one year following listing or acceleration, the reduction requirements take effect not more than one year following listing or acceleration. The Agency proposed that the listing and acceleration will take effect January 1, 1994. The Agency therefore is seeking this information now in order that it may propose production and consumption allowances, take and consider comments on the proposal, and thereafter promulgate such allowances by the appropriate time.

*A. Affected Companies and Years Covered*

Only companies or persons that produced, imported, exported, destroyed, and transformed CFC–11, 12, 113, 114, 115 (class I, group I) in the first six months of 1989, methyl bromide (proposed class I, group VI) in 1991, HBFCs (proposed class I, group VII) in 1989 and 1991, and HCFCs (class II) in 1989 and 1992 (within three months of the end of the calendar year) are required to submit the information required in section III.D. ( EPA has through rulemaking divided ozone depleting chemicals into class I and class II chemicals. Class I is further divided into Groups I–VII. See section III.B for the complete list of chemicals covered by this request).

*B. Controlled Substances Covered by the Request*

*The request covers the following chemicals:*

(1) Class I, group I
- $CFCl_3$-Trichlorofluoromethane (CFC-11)
- $CCl_2$-Dichlorodifluoromethane (CFC-12)
- $CCl_2$-$CClF_2$-Trichlorotrifluoroethane (CFC-113)
- $CF_2Cl$-$CClF_2$-Dichlorotetrafluoroethane (CFC-114)
- $CClF_2$-$CF_3$-(Mono) Chloropentafluoroethane (CFC-115)

(2) Proposed class I, group VI
- $CH_3Br$ Methyl Bromide

(3) Class II, HCFCS

| | |
|---|---|
| $CHFCl_2$ | (HCFC-21) |
| $CHF_2Cl$ | (HCFC-22) |
| $CH_2FCl$ | (HCFC-31) |
| $C_2HFCl_4$ | (HCFC-121) |
| $C_2HF_2Cl_3$ | (HCFC-122) |
| $C_2HF_3Cl_2$ | (HCFC-123) |
| $CHCl_2CF_3$ | (HCFC-123) |
| $C_2HF_4Cl$ | (HCFC-124) |
| $CHFClCF_3$ | (HCFC-124) |
| $C_2H_2FCl_3$ | (HCFC-131) |
| $C_2H_2F_2Cl_2$ | (HCFC-132) |
| $C_2H_2F_3Cl$ | (HCFC-133) |
| $C_2H_3FCl_2$ | (HCFC-141) |
| $CH_3CFCl_2$ | (HCFC-141b) |
| $C_2H_3F_2Cl$ | (HCFC-142) |
| $CH_3CF_2Cl$ | (HCFC-142b) |
| $C_2H_4FCl$ | (HCFC-151) |
| $C_3HFCl_6$ | |
| $C_3HF_2Cl_5$ | |
| $C_3HF_3Cl_4$ | |
| $C_3HF_4Cl_3$ | |
| $C_3HF_5Cl_2$ | |
| $CF_3CF_2CHC$ | |
| $CF_2ClCF_2C$ | |
| $C_3HF_6Cl$ | |
| $C_3H_2FCl_5$ | |
| $C_3H_2F_2Cl_4$ | |
| $C_3H_2F_3Cl_3$ | |
| $C_3H_2F_4Cl_2$ | |
| $C_3H_2F_5Cl$ | |
| $C_3H_3FCl_4$ | |
| $C_3H_3F_2Cl_3$ | |
| $C_3H_3F_3Cl_2$ | |
| $C_3H_3F_4Cl$ | |
| $C_3H_4FCl_3$ | |
| $C_3H_4F_2Cl_2$ | |
| $C_3H_4F_3Cl$ | |
| $C_3H_5FCl_2$ | |
| $C_3H_5F_2Cl$ | |
| $C_3H_6FCl$ | |

(4) Proposed
- $CHFBr_2$
- $CHF_2Br$
- $CH_2FBr$
- $C_2HFBr_4$
- $C_2HF_2Br_3$
- $C_2HF_4Br$
- $C_2H_2FBr_3$
- $C_2H_2F_2Br_2$
- $C_2H_2F_3Br$
- $C_2H_3FBr_2$
- $C_2H_3F_2Br$
- $C_2H_4FBr$
- $C_3HFBr_6C_3H$
- $C_3HF_3Br_4$
- $C_3HF_4Br_3$
- $C_3HF_5Br_2$
- $C_3HF_6Br$
- $C_3H_2FBr_3$
- $C_3H_2F_2Br_4$
- $C_3H_2F_3Br_3$
- $C_3H_2F_4Br_2$
- $C_3H_2F_4Br_2$
- $C_3H_2F_5Br$
- $C_3H_3FBr_4$
- $C_3H_3FBr_4$
- $C_3H_3F_2Br_3$
- $C_3H_3F_3Br_2$
- $C_3H_3F_4Br$
- $C_3H_4FBr_3$
- $C_3H_4F_2Br_2$
- $C_3H_4F_3Br$
- $C_3H_5FBr_2$
- $C_3H_5F_2Br$
- $C_3H_6FBr$

*C. Definition*

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$C_3HFCl_6$ (HCFC-221)
$C_3HF_2Cl_5$ (HCFC-222)
$C_3HF_3Cl_4$ (HCFC-223)
$C_3HF_4Cl_3$ (HCFC-224)
$C_3HF_5Cl_2$ (HCFC-225)
$CF_3CF_2CHCl_2$ (HCFC-225ca)
$CF_2ClCF_2CHClF$ (HCFC-225cb)
$C_3HF_6Cl$ (HCFC-226)
$C_3H_2FCl_5$ (HCFC-231)
$C_3H_2F_2Cl_4$ (HCFC-232)
$C_3H_2F_3Cl_3$ (HCFC-233)
$C_3H_2F_4Cl_2$ (HCFC-234)
$C_3H_2F_5Cl$ (HCFC-235)
$C_3H_3FCl_4$ (HCFC-241)
$C_3H_3F_2Cl_3$ (HCFC-242)
$C_3H_3F_3Cl_2$ (HCFC-243)
$C_3H_3F_4Cl$ (HCFC-244)
$C_3H_4FCl_3$ (HCFC-251)
$C_3H_4F_2Cl_2$ (HCFC-252)
$C_3H_4F_3Cl$ (HCFC-253)
$C_3H_5FCL_2$ (HCFC-261)
$C_3H_5F_2Cl$ (HCFC-262)
$C_3H_6FCl$ (HCFC-271)

(4) Proposed class I, group VII, HBFCs

$CHFBr_2$
$CHF_2Br$ (HBFC-22B1)
$CH_2FBr$
$C_2HFBr_4$
$C_2HF_2Br_3$
$C_2HF_4Br$
$C_2H_2FBr_3$
$C_2H_3F_2Br_2$
$C_2H_2F_3Br$
$C_2H_3FBr_2$
$C_2H_3F_2Br$
$C_2H_4FBr$
$C_3HFBr_6C_3HF_2Br_5$
$C_3HF_3Br_4$
$C_3HF_4Br_3$
$C_3HF_3Br_2$
$C_3HF_4Br$
$C_3H_2FBr_3$
$C_3H_2F_2Br_4$
$C_3H_2F_3Br_3$
$C_3H_2F_4Br_2$
$C_3H_2F_4Br_2$
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$C_3H_3F_2Br_3$
$C_3H_3F_3Br_2$
$C_3H_3F_4Br$
$C_3H_4FBr_3$
$C_3H_4F_2Br_2$
$C_3H_4F_3Br$
$C_3H_5FBr_2$
$C_3H_5F_2Br$
$C_3H_6FBr$

*C. Definitions*

The definitions used in this request are either those provided in regulations (57 FR 33754) or are those proposed (58 FR 15014). In order to clarify this request, the Agency intends to use the following definitions to calculate company specific allowances as well as national levels of production and consumption.

As used in this request for information, the term:

1. *Controlled Substance,* defined in 58 FR 15014, means any substance listed in part III C. of this notice, whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a substance listed above which is not part of a use system containing the substance is a controlled substance. If a substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment to realize its intended use, the substance or mixture is a controlled substance. The inadvertent or coincidental creation of insignificant quantities of a substance listed above during a chemical manufacturing process, resulting from unreacted feedstock or from the controlled substance's use as a process agent present in a chemical substance being manufactured as a trace impurity is not deemed a controlled substance.

2. *Production,* defined in 58 FR 15014, means the manufacture of a substance from any raw material or feedstock chemical, but does not include:

(1) The manufacture of a controlled substance that is subsequently transformed;

(2) The reuse or recycling of a controlled substance, or

(3) Amounts that are destroyed by the approved technologies.

*Production* includes spilled or vented controlled substances equal to or in excess of one hundred pounds per event.

3. *Destruction,* defined at 58 FR 15014, means the expiration of a controlled substance that does not result in a commercially useful end- product using one or more of the following controlled processes:

(1) Liquid injection incineration,
(2) Reactor cracking,
(3) Gaseous/fume oxidation,
(4) Rotary kiln incinerators,
(5) Cement kilns.

4. *Export,* means the transport of virgin controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use. The data submission should separate used and recycled controlled substances from virgin substances.

5. *Exporter,* defined at 57 FR 33754, means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

6. *Import,* defined at 57 FR 33754, means to land on, or bring into, or introduce into, or attempt to land on, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exceptions:

(1) Off-loading used or excess controlled substances or controlled products from a ship during servicing,

(2) Bringing controlled substances into the U. S. from Mexico where the controlled substance had been admitted into Mexico in bond and was of U.S. origin.

7. *Importer,* means the first United States owner of the imported controlled substances who is a supplier to a member of the domestic industry that uses the controlled substances. Generally the "importer of record" on the U.S. Customs document is in fact the importer under this definition. However, there are cases where the importer of record is a customs broker or agent acting on behalf of the first U.S. owner. This definition is used for the allocation of baseline allowances. However, the Agency has proposed a definition of importer that will apply during the operation of the program. The first U.S. owner only applies to the allocation of baseline allowances.

8. *Transform,* defined at 57 FR 33754, means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

9. *Quarantine or pre-shipment use,* means the use of methyl bromide as a fumigant prior to or during the shipment of goods or commodities.

*D. Data Required*

EPA is requiring that each affected company provide data on the quantity of each of the controlled substances that it produced, imported, exported, destroyed, or transformed as defined under III. B.

Producers who manufactured one or more of the substances listed in section III. B. from raw material or feedstock are required to submit:

- Name, address and telephone number of a company contact;
- The amount (in kilograms) of each listed substance it produced in the United States or its territories and the location of its production, as well as documentation of its production.
- Production reports on volume produced. Monthly plant records may be submitted.

Companies that produced and then transformed one or more of the substances listed in III. B. as feedstock chemicals are required to submit, in addition to their production report:

- The amount (in kilograms) of each listed substance used and entirely consumed as a chemical intermediary in the production of another chemical. Documentation supporting

the submission of production and transformation levels could include production statements used for other reporting purposes or similar information.

Companies that purchased and then transformed one or more of the substances listed in III. B. as feedstock chemicals are required to submit:

- Name, address and telephone number of company a contact;
- The amount (in kilograms) of each listed substance it transformed as a chemical intermediary in the production of another chemical;
- Copies of invoices or receipts documenting the purchase of the listed substance by the reporting company; and
- Description of the commercial use of the resulting chemical;
- Name of the company that produced the feedstock chemical.

Importers of controlled substances listed in section III. B. are required to submit:

- Name, address and telephone number of a company contact;
- The amount (in kilograms) of each of the listed substances which it imported into the United States or its territories, and for each shipment the Entry Number, Employer Identification Number (EIN) or importer number, the designated "importer of record" on the U.S. Customs Entry Summary Form, commodity code, the date of entry and the country in which it was produced; and
- Copies of the Entry Summary Form for each shipment (if these are unavailable, other official papers documenting the import may be substituted).

Exporters, including producers, of controlled substances listed in section III. B. are required to submit:

- Name, address and telephone number of a contact;
- The amount (in kilograms) of each of the listed substances which in 1989 it exported from the United States or its territories, and for each shipment, the producer of the chemical, the date and port of exit, the EIN, the commodity code, and the country of final destination; and
- Copies of the invoices documenting the purchase of the chemical from the producer, and the shipper's export declaration, invoices or bills of lading for each shipment documenting the exported volume and date of the listed substance.

Companies who destroyed the controlled substances listed under III B, 2, and 3 of this notice are required to submit:

- Name, address, and telephone number of a contact;
- The amount (in kilograms) of each of the listed substance it destroyed in the United States;
- description of the destruction technology employed;
- The name of the source of the controlled substance.

Companies that produced, imported, exported, destroyed, or transformed methyl bromide:

- The amount of the compound that was sold or used as a fumigant for quarantine or preshipment purposes.

## IV. Confidentiality of Information Submitted

Companies responding to section 114 information requests may assert a claim of business confidentiality for any of the information the company submits. As explained in detail below, however, the Clean Air Act without exception compels the public disclosure of certain data when it establishes a regulatory limit, such as a baseline for a newly listed substance under Title VI of the Act, such as methyl bromide and HBFCs. Since such baselines are a reflection of companies' production and consumption and since the baselines for individual companies will be published in the Federal Register, it is likely that information that may otherwise be considered confidential will be released. Congress specified that allowances be based on companies' individual production and consumption levels. Therefore, upon promulgation of a final rule listing these substances, the Agency believes that this information clearly is not entitled to treatment as confidential business information (CBI). See 40 CFR 2.208(d).

It is less clear whether the Act compels disclosure of this information prior to the final listing rule. However, even prior to promulgation of the final listing of methyl bromide and HBFCs, the Agency may propose production and consumption allowances in order that the allowances may be effective at the time the rule adding these substances to the list is promulgated. Pursuant to 40 CFR 2.301(g), EPA is hereby notifying companies submitting data pursuant to this request that the Agency is considering making each company's allowances available to the public as "relevant to a proceeding under the Act." Specifically, the Agency is considering making this information available in connection with the proceeding to list methyl bromide and HBFCs as class I substances and to assign production and consumption allowances for these chemicals.

### *A. Compulsory Disclosure for Newly Listed Substances (Methyl Bromide and HBFCs)*

The Agency has previously taken the position that a CBI claim is inapplicable to information received pursuant to a statute which mandates—without exception—that such information be available to the public. See Marine Protection Research and Sanctuaries Act of 1972 (MPRSA) section 104(f), 33 U.S.C. § 1414(f)[1]; 40 CFR 2.309(d) ("Pursuant to section 104(f), ... no information to which this section applies is eligible for confidential treatment."); 41 FR 36902 (Sept. 1, 1976), as amended at 43 FR 4005 (Sept. 8, 1978). The preamble to the proposed EPA rules for handling of CBI explained that the MPRSA "affirmatively requires that information be made available to the public notwithstanding any confidentiality claim," and that the MPRSA public availability would override an entitlement to confidential treatment under another statute. (40 FR 21987, 21991, (May 20, 1975)) It is pointless to treat information as CBI or to undertake regulatory procedures to disclose CBI where the statute directly requires that specific information be disclosed. As explained below, the Clean Air Act compels the Agency to disclose specific information related to the establishment of limits on ozone depleting substances such as methyl bromide and HBFCs. Therefore, the Agency need not follow the part 2, subpart B procedures governing disclosure of CBI "relevant to a proceeding" under section 114(c) of the Act.

The relevant provisions of titles III and VI of the Clean Air Act leave the Agency no choice but to disclose company and chemical specific production and consumption allowances for a newly listed substance. Sections 604 and 607 together require that EPA issue company and chemical specific allowances for production and consumption of newly listed substances. Section 604—subject to accelaration under section 606 or extension under section 602(d)—imposes production and consumption limits on each company based on the company's baseline year production and consumption of newly listed substances. A company is limited to a specific percentage of its baseline year production and consumption of a particular chemical. Section 607 requires EPA to "promulgate rules . . . providing for the issuance of allowances" for the production and consumption of listed substances. Under this provision, EPA is to issue specific allowances in accordance with production and consumption limits. Particularly where allowances are

[1] Section 104(f) of the MPRSA provides, in relevant part: Information received by the Administrator [of EPA] or the Secretary [of the Army], as the case may be, as part of any application or in connection with any permit granted under this subchapter shall be available to the public as a matter of public record, at every stage of the proceeding.

issued for a single newly listed substance such as methyl bromide, disclosure of a company's allowances based on 1991 production and consumption levels would disclose what might ordinarily be considered CBI.

Congress drafted sections 604 and 607 against the regulatory backdrop of EPA's regulations implementing the Montreal protocol under existing Clean Air Act authority (formerly section 151(b)). The Agency implemented the Protocol production and consumption limits through rulemaking establishing company specific allowances. See 53 FR 30566 (1988)(implementing Montreal Protocol and allotting production and consumption allowances to producers and importers). The adoption of sections 604 and 607 in the 1990 Amendments indicates that Congress intended to continue the Agency's company specific approach. Section 604 requires that production and consumption limits apply on a company specific basis. Section 607 requires that allowances be based on these company specific limits. The Agency's current regulations under section 607 comport with this approach. See 56 FR 9516 (March 6, 1991)(temporary final rule implementing 1991 production and consumption limits under section 604); 56 FR 49548)(Sept, 30, 1991)(Regulation to implement 1992 and later production and consumption limits under section 604); 57 FR 33754)(July 30, 1992). Title VI calls for issuance of company and chemical specific allowances for listed substances.

Further, under section 307(d)(1), the public participation and disclosure provisions apply to "promulgation or revision of regulations under Title VI." Therefore, the allowances in this case must be published for public comment in order to be legally binding and enforceable. In addition, under section 307(d)(3), the Agency is obligated to include the factual basis for the allowances in the docket for the rulemaking and to include a summary of the factual data in the statement of basis and purpose for the proposed and final rule.

The Act's citizen suit provision further confirms that Congress intended Title VI production and consumption limits to be disclosed to the public. Section 304 authorizes "any person" to commence a civil action alleging a violation of an emission standard or limitation under the Act. Section 304(f) defines "emission standard or limitation under this Act" to include inter alia, "a schedule or time table of compliance, emission limitation, standard of performance or emission standard," and thus includes Title VI production and consumption limits. Public disclosure of company specific and chemical specific production and consumption limits is necessary for citizens to challenge violations of these limits.

Because the title VI and section 307(d) schemes provide no exceptions to compulsory disclosure, once methyl bromide and HBFCs are listed, production and consumption allowances cannot be treated as CBI.

*B. Disclosure Pursuant to 40 CFR 2.301(g)*

It is not clear that the Act compels disclosure of production and consumption allowances before the newly listed chemicals are finally added to the phaseout listings. Nevertheless, the Agency believes it may be appropriate to propose production and consumption allowances prior to finalizing the listing in order that the allowances may be applicable at the time that the final listing is promulgated. The Agency believes the allowances may be disclosed in such a proposal.

Section 114(c) of the Clean Air Act specifies that information obtained pursuant to section 114(a) is ordinarily to be available to the public. However, that subsection provides that the Administrator is to treat such information as CBI upon a showing that the information is entitled to trade secret protection. Finally, that subsection specifies that even CBI may be disclosed "when relevant in any proceeding under this Act."

EPA regulations governing disclosure of CBI under section 114 of the Act define "proceeding" to include "any rulemaking . . . conducted by EPA under the Act. . . ." 40 CFR 2.301(a)(4). EPA's preliminary conclusion is that section 114(c) authorizes disclosure of production and consumption allowances for the newly listed substances for each company, even if CBI is thereby disclosed. As discussed above, these allowances are not only relevant but central to the rulemaking, including a proposal, to establish production and consumption limits for methyl bromide, HCFCs and HBFCs.

EPA believes it is appropriate to notify submitters here of procedures that will be followed under independent regulations to address CBI concerns in connection with information submitted. Pursuant to 40 CFR 2.301(g)(2), submitters have an opportunity to comment on EPA's consideration of whether to release CBI information. Comments should be sent to Peter Voigt, U.S. EPA, 6205J, Stratospheric Protection Division, 401 M St., SW., Washington DC 20460. Comments must be mailed within 45 days of the publication of this notice. After consideration of any timely comments received, the Office of General Counsel will make a final determination regarding the relevance of the allowances to the rulemaking on the newly listed substances before the final listing, and the Office of Atmospheric Programs will determine whether publication of the allocations at this time is in the public interest. If EPA decides to publish the allowances before the final listing of these substances, the Agency will notify the affected companies at least five days before the allowances are published. If a company fails to assert a claim of confidentiality when submitting information to the Agency, the data may be made available to the public even before a final listing without further notice to the company.

*C. Analytical Support to the Agency*

The Agency will arrange for analytical support under a contract with a private organization. This organization will be designated the Authorized Representatives of the Administrator of the U.S. Environmental Protection Agency for the purpose of assisting EPA in the development and implementation of national regulations for the protection of stratospheric ozone.

The Authorized Representatives, may have access to any information received by the Stratospheric Protection Division within the Office of Atmospheric Programs for use in reviewing the need for possible control of any substance, practice, process or activity which may reasonably be anticipated to affect stratospheric ozone. In general, this information will pertain to the feasibility and costs of achieving controls and baseline data for production, imports, and exports. Some of this information may be claimed as confidential business information. Access to such information is necessary in order that the designated contractor may carry out work required by the contract. Please call Peter Voigt, (202) 233–9185, or ICF Inc., (202) 862–1100, contract number 68 D 30021, to obtain information on the designated contractor.

Authorized Representatives of the Administrator are subject to the provisions of 42 U.S.C. 7414(c) representing confidential business information as implemented by 40 CFR 2.301(h).

### V. Additional Information

*Paperwork Reduction Act*

As required by section 35.04 of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA has submitted an information collection request to the Office of Management and Budget for review. The recordkeeping and reporting requirements contained in this rulemaking were approved by the Office of Management and Budget under control number 2060–0170.

The public reporting burden for this one-time collection of information is estimated to average 8 hours per response. This estimate includes the time needed to review the existing data sources, gather the data needed and review the collection of information. The maximum estimated number of respondents is 45, placing the estimated total burden on respondents at 360 hours.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M St., SW., Washington, DC 20460; and to Paperwork Reduction Project, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

### List of Subjects

*40 CFR Part 9*

Reporting and recordkeeping requirements.

*40 CFR Part 82*

Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Ozone layer, Reporting and recordkeeping requirements, Stratospheric ozone.

Dated: July 15, 1993.

Robert D. Brenner,

*Acting Assistant Administrator, Office of Air and Radiation.*

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

### PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 58 FR 21243, 3CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *

| 40 CFR citation | OMB control No. |
|---|---|
| * * * * * | |
| Protection of Stratospheric Ozone: | |
| 82.21 | 2060–0170 |
| * * * * * | |

### PART 82—PROTECTION OF STRATOSPHERIC OZONE

3. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7671—7671q.

4. Section 82.21 is added to read as follows:

**§ 82.21 Baseline data collection for newly listed chemicals.**

(a) This section applies only to any individual or legal entity who engaged in any of the following activities in their respective years involving any of the controlled substances specified in § 82.3(i).

(1) Individuals or entities that produced, imported, exported, destroyed, or transformed CFC–11, 12, 113, 114, 115 (class I, group I) in the first six months of 1989;

(2) Individuals or entities that produced, imported, exported, destroyed, or transformed methyl bromide (proposed class I, group VI) in 1991;

(3) Individuals or entities that produced, imported, exported, destroyed, or transformed HBFCs (proposed class I, group VII) in 1989 and 1991; and

(4) Individuals or entities that produced, imported, exported, destroyed, or transformed HCFCs (class II) in 1989, and 1992 (within three months of the end of the calendar year) are required to submit the information required in § 82.21 (d).

(b) As used in this request in this section the term:

(1) *Controlled Substance* means any substance listed in § 82.21 (c), whether existing alone or in a mixture, but excluding any such substance or mixture that is in a manufactured product other than a container used for the transportation or storage of the substance or mixture. Any amount of a substance listed above which is not part of a use system containing the substance is a controlled substance. If a substance or mixture must first be transferred from a bulk container to another container, vessel, or piece of equipment to realize its intended use, the substance or mixture is a controlled substance. The inadvertent or coincidental creation of insignificant quantities of a substance listed above during a chemical manufacturing process, resulting from unreacted feedstock or from the controlled substance's use as a process agent present in a chemical substance being manufactured as a trace impurity is not deemed a controlled substance.

(2) *Production* means the manufacture of a substance from any raw material or feedstock chemical, but does not include:

(i) The manufacture of a controlled substance that is subsequently transformed;

(ii) The reuse or recycling of a controlled substance; or

(iii) Amounts that are destroyed by the approved technologies.

*Production* includes spilled or vented controlled substances equal to or in excess of one hundred pounds per event.

(3) *Destruction* means the expiration of a controlled substance that does not result in a commercially useful end-product using one or more of the following controlled processes:

(i) Liquid injection incineration;

(ii) Reactor cracking;

(iii) Gaseous/fume oxidation;

(iv) Rotary kiln incinerators; and

(v) Cement kilns.

(4) *Export* means the transport of virgin controlled substances from inside the United States or its territories to persons outside the United States or its territories, excluding United States military bases and ships for on-board use.

(5) *Exporter* means the person who contracts to sell controlled substances for export or transfers controlled substances to his affiliate in another country.

(6) *Import* means to land on, or bring into, or introduce into, or attempt to land on, or introduce into any place subject to the jurisdiction of the United States whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States, with the following exceptions:

(i) Off-loading used or excess controlled substances or controlled products from a ship during servicing; and

(ii) Bringing controlled substances into the U. S. from Mexico where the

controlled substance had been admitted into Mexico in bond and was of U.S. origin.

(7) *Importer* means the first United States owner of the imported controlled substances who is a supplier to a member of the domestic industry that uses the controlled substances.

(8) *Transform* means to use and entirely consume (except for trace quantities) a controlled substance in the manufacture of other chemicals for commercial purposes.

(9) *Quarantine or pre-shipment* use means the use of methyl bromide as a fumigant prior to or during the shipment of goods or commodities.

(c) This section applies to the following controlled substances:

(1) Class I, group I
$CFCl_3$-Trichlorofluoromethane (CFC-11)
$CCl_2$-Dichlorodifluoromethane (CFC-12)
$CCl_2$-$CClF_2$-Trichlorotrifluoroethane (CFC-113)
$CF_2Cl$-$CClf_2$-Dichlorotetrafluoroethane (CFC-114)
$CClF_2$-$CF_3$-(Mono) Chloropentafluoroethane (CFC-115)
(2) Proposed class I, group VI
$CH_3Br$ Methyl Bromide
(3) Class II, HCFCS

| | |
|---|---|
| $CHFCl_2$ | (HCFC-21) |
| $CHF_2Cl$ | (HCFC-22) |
| $CH_2FCl$ | (HCFC-31) |
| $C_2HFCl_4$ | (HCFC-121) |
| $C_2HF_2Cl_3$ | (HCFC-122) |
| $C_2HF_3Cl_2$ | (HCFC-123) |
| $CHCl_2CF_3$ | (HCFC-123) |
| $C_2HF_4Cl$ | (HCFC-124) |
| $CHFClCF_3$ | (HCFC-124) |
| $C_2H_2FCl_3$ | (HCFC-131) |
| $C_2H_2F_2Cl_2$ | (HCFC-132) |
| $C_2H_2F_3Cl$ | (HCFC-133) |
| $C_2H_3FCl_2$ | (HCFC-141) |
| $CH_3CFCl_2$ | (HCFC-141b) |
| $C_2H_3F_2Cl$ | (HCFC-142) |
| $CH_3CF_2Cl$ | (HCFC-142b) |
| $C_2H_4FCl$ | (HCFC-151) |
| $C_3HFCl_6$ | (HCFC-221) |
| $C_3HF_2Cl_5$ | (HCFC-222) |
| $C_3HF_3Cl_4$ | (HCFC-223) |
| $C_3HF_4Cl_3$ | (HCFC-224) |
| $C_3HF_5Cl_2$ | (HCFC-225) |
| $CF_3CF_2CHCl_2$ | (HCFC-225ca) |
| $CF_2ClCF_2CHClF$ | (HCFC-225cb) |
| $C_3HF_6Cl$ | (HCFC-226) |
| $C_3H_2FCl_5$ | (HCFC-231) |
| $C_3H_2F2Cl_4$ | (HCFC-232) |
| $C_3H_2F_3Cl_3$ | (HCFC-233) |
| $C_3H_2F_4Cl_2$ | (HCFC-234) |
| $C_3H_2F_5Cl$ | (HCFC-235) |
| $C_3H_3FCl_4$ | (HCFC-241) |
| $C_3H_3F_2Cl_3$ | (HCFC-242) |
| $C_3H_3F_3Cl_2$ | (HCFC-243) |
| $C_3H_3F_4Cl$ | (HCFC-244) |
| $C_3H_4FCl_3$ | (HCFC-251) |
| $C_3H_4F_2Cl_2$ | (HCFC-252) |
| $C_3H_4F_3Cl$ | (HCFC-253) |
| $C_3H_5FCl_2$ | (HCFC-261) |
| $C_3H_5F_2Cl$ | (HCFC-262) |
| $C_3H_6FCl$ | (HCFC-271) |

(4) Proposed class I, group VII, HBFCs
$CHFBr_2$
$CHF_2Br$ (HBFC-22B1)
$CH_2FBr$
$C_2HFBr_4$
$C_2HF_2Br_3$
$C_2HF_4Br$
$C_2H_2FBr_3$
$C_2H_2F_2Br_2$
$C_2H_2F_3Br$
$C_2H_3FBr_2$
$C_2H_3F_2Br$
$C_2H_4FBr$
$C_3HFBr_6$-$C_3HF_3Br_5$
$C_3HF_3Br_4$
$C_3HF_4Br_3$
$C_3HF_5Br_2$
$C_3HF_6Br$
$C_3H_2FBr_5$
$C_3H_2F_2Br_4$
$C_3H_2F_3Br_3$
$C_3H_2F_4Br_2$
$C_3H_2F_4Br_2$
$C_3H_2F_5Br$
$C_3H_3FBr_4$
$C_3H_3FBr_4$
$C_3H_3F_2Br_3$
$C_3H_3F_3Br_2$
$C_3H_3F_4Br$
$C_3H_4FBr_3$
$C_3H_4F_2Br_2$
$C_3H_4F_3Br$
$C_3H_5FBr_2$
$C_3H_5F_2Br$
$C_3H_6FBr$

(d) Individuals and legal entities meeting the conditions set forth in § 82.21(a) must submit the following information:

(1) Producers, as defined in § 82.21(a) who manufactured one or more of the substances listed in § 82.21(c) from raw material or feedstock are required to submit:

(i) Name, address and telephone number of a company contact;

(ii) The amount (in kilograms) of each listed substance it produced in the United States or its territories and the location of its production; and

(iii) Copies of plant production reports on volume produced, if available.

(2) Individuals or legal entities that transformed, as defined in § 82.21(b), controlled substances listed in § 82.21(c) are required to submit:

(i) Name, address and telephone number of a company contact;

(ii) The amount (in kilograms) of each listed substance in § 82.21(c) used and entirely consumed as a chemical intermediary;

(iii) Copies of plant production reports on volume produced, if available;

(iv) Copies of invoices or receipts documenting the purchase of the listed substance by the reporting company, if the reporting company is not the producer, if available;

(v) Description of the commercial use of the resulting chemical; and

(vi) Name of the company that produced the feedstock chemical.

(3) Importers are required to submit:

(i) Name, address and telephone number of a company contact;

(ii) The amount (in kilograms) of each of the listed substances which it imported into the United States or its territories, and for each shipment the Entry Number, Employer Identification Number (EIN) or importer number, the designated "importer of record" on the U.S. Customs Entry Summary Form, commodity code, its date of entry and the exporting country; and

(iii) Copies of the Entry Summary Form for each shipment (if these are unavailable, other official or business papers documenting the import may be substituted).

(4) Exporters are required to submit:

(i) Name, address and telephone number of a contact;

(ii) The amount (in kilograms) of each of the listed substances which in 1989 it exported from the United States or its territories, and for each shipment, the producer of the chemical, the date and port of exit, the EIN, the commodity code, and the country of final destination; and

(iii) Copies of the invoices documenting the purchase of the chemical from the producer, if applicable, and the shipper's export declaration, invoices or bills of lading for each shipment documenting the exported volume and date of the listed substance.

(5) Individuals and legal entities who destroyed, as defined in § 82.21(a), the controlled substances listed in § 82.21(c) must submit:

(i) Name, address, and telephone number of a company contact;

(ii) The amount (in kilograms) of each of the listed substance it destroyed in the United States;

(iii) The description of the destruction technology employed; and

(iv) The name of the source of the controlled substance.

(6) Individuals that produced, imported, exported, destroyed, or transformed methyl bromide, as defined in § 82.21(b) must report the amount of the compound that was sold or used as a fumigant for quarantine or preshipment purposes.

(e) Information required by this section must be submitted to EPA by September 10, 1993. Reports should be addressed to Peter Voigt, 6205J, Stratospheric Protection Division, Office of Air and Radiation, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

(f) Failure to submit this information by this date shall be a violation of section 114 of the Clean Air Act and may invalidate future claims for

allocation rights to produce or import chemicals produced or imported controlled substances listed in § 82.21(c).

[FR Doc. 93-17713 Filed 7-26-93; 8:45 am]
BILLING CODE 6560-50-P

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40 CFR Part 52

[WA-6-1-5519; FRL-4679-2]

## Approval and Promulgation of State Implementation Plans; Washington

AGENCY: Environmental Protection Agency.
ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) proposes approval of the state implementation plan (SIP) submitted by the State of Washington Department of Ecology (Ecology) for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$). Implementation plan submittals were made by Ecology on February 17, 1989 and November 15, 1991 to satisfy certain federal Clean Air Act requirements for an approvable moderate $PM_{10}$ nonattainment area SIP for Thurston County, Washington. This action to approve this plan has the effect of making requirements adopted by the Ecology federally enforceable by EPA.

EFFECTIVE DATE: September 27, 1993.
ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air Programs Branch (AT-082), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Environmental Protection Agency, Air Programs Branch, Docket # WA-6-1-5519, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101; Washington Department of Ecology, 4450 Third Avenue, SE., Lacey, Washington 98504.

FOR FURTHER INFORMATION CONTACT: George Lauderdale, Environmental Protection Agency, Air Programs Branch (AT-082), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-6511.

SUPPLEMENTARY INFORMATION

### I. Background

The Thurston County, Washington area was designated nonattainment for $PM_{10}$ and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991). The air quality planning requirements for moderate $PM_{10}$ nonattainment areas are set out in subparts 1 and 4 of part D, title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, including those state submittals containing moderate $PM_{10}$ nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992); see also 57 FR 18070 (April 28, 1992).

On March 12, 1993, EPA announced its proposed approval of the moderate nonattainment area $PM_{10}$ SIP for Thurston County, Washington (58 FR 13575-13579). In that rulemaking action, EPA described its interpretations of title 1 and its rationale for proposing to approve the Thurston County $PM_{10}$ SIP taking into consideration the specific factual issues presented.

Those states containing initial moderate $PM_{10}$ nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of $PM_{10}$ also apply to major stationary sources of $PM_{10}$ precursors except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Additional provisions are due at a later date. States with initial moderate $PM_{10}$ nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of $PM_{10}$ by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993, which become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the $PM_{10}$ NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-13544).

### II. Response To Comments

EPA received only one comment on its March 12, 1993, (58 FR 13575-13579) Federal Register proposal to approve the Thurston County moderate nonattainment area $PM_{10}$ SIP as a revision. An April 12, 1993, letter from Ecology pointed out that the EPA incorrectly proposed to approve a Washington State regulation on open burning (Chapter 173-425 WAC) which bans all outdoor burning in all $PM_{10}$ or CO nonattainment areas. Ecology noted that the regulation has not been submitted to EPA as a SIP revision. After further review, EPA has determined that Ecology is correct, and that on January 15, 1993 (58 FR 4579), EPA adopted the October 18, 1990, version of Chapter 173-425 WAC. The 1990 version is the most recently submitted and does not include the open burning ban in nonattainment areas. EPA will continue to include the October 18, 1990 version in the Washington State Implementation Plan. The regulation is not relied on to attain or maintain the $PM_{10}$ standards, therefore not including an outdoor burning ban in the Thurston County SIP revision will not impact the approvability of the revision.

### III. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review and processing of SIP submittals (see 57 FR 13565-13566). In this action, EPA is approving revisions to the Washington State Implementation Plan for the Thurston County $PM_{10}$ nonattainment area. SIP revisions were submitted to

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[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM-10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in this action and supporting information.

EPA on February 17, 1989 and November 15, 1991. EPA incorrectly referenced two letters from the Washington Department of Ecology as SIP revisions in the March 16, 1993 proposal. Letters dated December 26, 1989 and April 3, 1992 were actually additional discussion of previous SIP submittals. Since these letters were informational in nature, the SIP revisions were not altered and public review of the information was not necessary. EPA has determined that taken together the two SIP submittals (February 17, 1989 and November 15, 1991) meet all of the applicable requirements of the Act due November 15, 1991 and November 15, 1993. Among other things, the Washington Department of Ecology has demonstrated the Thurston County moderate $PM_{10}$ nonattainment area will attain the $PM_{10}$ NAAQS December 31, 1994.

EPA is approving the Thurston County, Washington nonattainment area contingency measure submitted by Ecology on November 15, 1991. In that submittal Ecology requested a conditional approval for the contingency measure. The regulation was subsequently adopted (January 3, 1992) and therefore EPA considers the contingency measure fully approved and part of the SIP.

## IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2))

## List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: June 29, 1993.

**Jim McCormick,**

*Acting Regional Administrator.*

**Note:** Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of the Federal Register on July 1, 1982.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(41) to read as follows:

**§ 52.2470 Identification of plan.**

* * * * *

(c) * * *

(41) On February 17, 1989 and November 15, 1991, the State of Washington Department of Ecology submitted $PM_{10}$ nonattainment area state implementation plan revisions for Thurston County, Washington.

(i) Incorporation by reference.

(A) February 17, 1989 letter from Washington Department of Ecology to EPA Region 10 submitting the $PM_{10}$ nonattainment area state implementation plan for Thurston County, Washington.

(B) The $PM_{10}$ nonattainment area state implementation plan for Thurston County, Washington, as adopted by the Washington Department of Ecology on February 8, 1989.

(C) November 15, 1991 letter from Washington Department of Ecology to EPA Region 10 submitting revisions to the $PM_{10}$ nonattainment area state implementation plan for Thurston County, Washington.

(D) Revision to the $PM_{10}$ nonattainment area state implementation plan for Thurston County, Washington, as adopted by the Washington Department of Ecology on November 14, 1991.

[FR Doc. 93–17777 Filed 7–26–93; 8:45 am]

BILLING CODE 6560–50–F

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## 40 CFR Part 52

**[Region II Docket No. 117 NY 5–1–5810; FRL–4678–8]**

## Approval and Promulgation of Implementation Plans; Revision to the State of New York Implementation Plan for Ozone

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the approval of a request by the State of New York to revise its State Implementation Plan (SIP) for ozone. This revision was prepared by the New York State Department of Environmental Conservation to correct deficiencies in New York's SIP pursuant to a SIP call issued in 1988 and pursuant to section 182(a)(2)(A) of the

Clean Air Act. The revision incorporates into New York's SIP new Part 236, "Synthetic Organic Chemical Manufacturing Facility Component Leaks" and amended Part 200 "General Provisions" of Title 6 of the New York Code of Rules and Regulations. These regulations will result in additional reductions of emissions of volatile organic compounds.

**EFFECTIVE DATE:** This action will be effective August 26, 1993.

**ADDRESSES:** Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1034A, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** Mr. William S. Baker, Chief Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1034A, New York, New York 10278, (212) 264–2517.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 14, 1992, the Environmental Protection Agency (EPA) published in the **Federal Register** (57 FR 59022) a Notice of Proposed Rulemaking concerning revisions to the New York State Implementation Plan (SIP) for ozone. These revisions added requirements to control volatile organic compound (VOC) emissions resulting from component leaks at synthetic organic chemical manufacturing industry facilities. The revision incorporates into New York's ozone SIP new part 236, "Synthetic Organic Chemical Manufacturing Facility Component Leaks" and amended Part 200 "General Provisions", of Title 6 of the New York Code of Rules and Regulations which corrects a deficiency EPA identified with respect to the definition of volatile organic compounds.

**Conclusion**

The revisions and the rationale for EPA's proposed approval were explained in the notice of proposed rulemaking and will not be restated here since EPA's final action does not differ from the proposed action. No public comments were received on the proposed action. Therefore, EPA is approving New York's request to revise its SIP for ozone.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Today's action makes final the action proposed on December 14, 1992. As noted elsewhere in this notice, EPA received no adverse public comment on the proposed action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years (54 FR at 2222). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary wavier until such time as it rules on EPA's request.

Under section 307(b)(l) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 28, 1993.

**William J. Muszynski, P.E.,**

*Acting Regional Administrator.*

Title 40, chapter I, part 52, Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart HH—New York**

2. Section 52.1670 is amended by adding new paragraph (c)(84) to read as follows:

**§ 52.1670 Identification of plan.**

* * * * *

(c) * * *

* * * * *

(84) A revision to the New York State Implementation Plan (SIP) for attainment and maintenance of the ozone standard dated January 8, 1992, submitted by the New York State Department of Environmental Conservation.

(i) Incorporation by reference.

(A) Amendments to part 200 of title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "General Provisions" adopted on December 3, 1991 and effective January 16, 1992.

(B) New part 236 of title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, entitled "Synthetic Organic Chemical Manufacturing Facility Component Leaks" adopted on December 16, 1991 and effective January 16, 1992.

(ii) Additional material.

(A) January 8, 1992 letter from Thomas Allen, to Conrad Simon, EPA, requesting EPA approval of the amendments to parts 200 and 236.

3. Section 52.1679 is amended by revising the entry for Part 200 and adding a new entry for part 236 to the table in numerical order to read as follows:

**§ 52.1679 EPA—approved New York State regulations.**

| New York state regulation | State effective date | Latest EPA approved date | Comments |
|---|---|---|---|
| Part 200, General Provisions ... | 1/16/92 | [*Insert date and citation of this notice*]. | Redesignation of nonattainment areas to attainment areas (200.1(ll)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. |
| • • | | • • | • • • |
| Part 236, Synthetic Organic Chemical Manufacturing Facility Component Leaks. | 1/16/92 | [*Insert date and citation of this notice*]. | Variances adopted by the State pursuant to Part 236.6(e)(3) become applicable only if approved by EPA as a SIP revision. |

[FR Doc. 93–17779 Filed 7–26–93; 8:45 am]
BILLING CODE 6560–50–P

## 40 CFR Part 52

[WA8–1–5478; FRL–4674–1]

## Approval and Promulgation of State Implementation Plans; Washington

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** Environmental Protection Agency (EPA) is approving the State of Washington Implementation Plan revisions submitted for Kent, Washington, on November 5, 1990 as revised by addenda submitted on December 27, 1990 and November 15, 1991 by the State of Washington Department of Ecology (WDOE). The purpose of the revisions is to bring about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ($PM_{10}$). The implementation plan was submitted by WDOE to satisfy certain federal Clean Air Act requirements for an approvable moderate $PM_{10}$ nonattainment area SIP for Kent, Washington. This action to approve this plan has the effect of making requirements adopted by the Washington Department of Ecology federally enforceable by EPA.

**EFFECTIVE DATE:** September 27, 1993.

**ADDRESSES:** Written comments should by addressed to: Montel Livingston, SIP Manager, United States Environmental Protection Agency, Air Programs Branch (AT–082), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: United States Environmental Protection Agency, Air Programs Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and State of Washington Department of Ecology, 4450 Third Ave. SE, Lacey, Washington 98504.

**FOR FURTHER INFORMATION CONTACT:** George Lauderdale, Air Programs Branch (AT–082), US Environmental Protection Agency, Region 10, Seattle, Washington 98101, (206) 553–6511.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Kent, Washington area was designated nonattainment for $PM_{10}$ and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990.[1] See 56 FR 56694 (November 6, 1991). The air quality planning requirements for moderate $PM_{10}$ nonattainment areas are set out in subparts 1 and 4 of Part D, Title I of the Act.[2] EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate $PM_{10}$ nonattainment area SIP requirements. See generally 57 FR 13498 (April 16, 1992); see also 57 FR 18070 (April 28, 1992).

On March 16, 1993, EPA announced its proposed approval of the moderate nonattainment area $PM_{10}$ SIP for Kent, Washington (58 FR 14194–14198). In that rulemaking action, EPA described its interpretations of Title 1 and its rationale for proposing to approve the Kent $PM_{10}$ SIP taking into consideration the specific factual issues presented.

Those states containing initial moderate $PM_{10}$ nonattainment areas (those areas designated nonattainment under section 107(d)(4)(B)) were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of $PM_{10}$ also apply to major stationary sources of $PM_{10}$ precursors except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Additional provisions are due at a later date. States with initial moderate $PM_{10}$ nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of $PM_{10}$ by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15, 1993, which become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the $PM_{10}$ NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543–13544).

### II. Response To Comments

EPA received no comments on its March 16, 1993, (58 FR 14194–14198) **Federal Register** proposal to approve the Kent moderate nonattainment area $PM_{10}$ SIP as a revision.

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[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

[2] Subpart 1 contains provisions applicable to nonattainment areas generally and subpart 4 contains provisions specifically applicable to PM–10 nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. EPA has attempted to clarify the relationship among these provisions in the "General Preamble" and, as appropriate, in today's notice and supporting information.

### III. Today's Action

Section 110(k) of the Act sets out provisions governing EPA's review and processing of SIP submittals (see 57 FR 13565–13566). In this action, EPA is approving the State of Washington Implementation Plan revisions submitted for Kent, Washington on November 5, 1990 as revised by addenda submitted on December 27, 1990 and November 15, 1991 by the WDOE. EPA has determined that the plan meets all of the applicable requirements of the Act. Among other things, the Washington Department of Ecology has demonstrated the Kent moderate $PM_{10}$ nonattainment area will attain the $PM_{10}$ NAAQS by December 31, 1994.

### IV. Administrative Review

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may by filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)) (See 42 U.S.C. 7607 (b)(2)).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 22, 1993.

**Gerald A. Emison,**

*Regional Administrator.*

Note: Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of the Federal Register on July 1, 1982.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(40) to read as follows:

**§ 52.2470 Identification of plan.**

* * * * *

(c) * * *

(40) On November 15, 1991, EPA received the Washington Department of Ecology submission for a $PM_{10}$ nonattainment area state implementation plan for Kent, Washington.

(i) Incorporation by reference.

(A) November 5, 1990 letter from Washington Department of Ecology to EPA Region 10 submitting the $PM_{10}$ nonattainment area state implementation plan for Kent, Washington.

(B) The $PM_{10}$ nonattainment area state implementation plan for Kent, Washington as adopted by the Washington Department of Ecology on November 3, 1990 and effective on November 3, 1991.

(C) December 27, 1990 letter from Washington Department of Ecology to EPA Region 10 submitting an addendum to the $PM_{10}$ nonattainment area state implementation plan for Kent, Washington.

(D) $PM_{10}$ SIP addendum, dated June 5, 1990, to the $PM_{10}$ Kent, Washington state implementation plan.

(E) November 15, 1991 letter from Washington Department of Ecology to EPA Region 10 submitting a supplement to the $PM_{10}$ nonattainment area state implementation plan for Kent, Washington.

(F) $PM_{10}$ SIP supplement, dated November 1991, to the $PM_{10}$ Kent, Washington state implementation plan.

* * * * *

[FR Doc. 93–17778 Filed 7–26–93; 8:45 am]

BILLING CODE 6560–50–P

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### 40 CFR Part 52

**[MD8–2–5577; MD14–2–5580; MD6–2–5576; MD9–1–5579; A–1–FRL–4678–2]**

## Approval and Promulgation of Air Quality Implementation Plans; Maryland; Prevention of Significant Deterioration: Nitrogen Dioxide Increments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving four State Implementation Plan (SIP) revisions submitted by the State of Maryland which amend Code of Maryland Administrative Regulations (COMAR) 26.11.01.01, 26.11.02.10 (C)(9), and 26.11.06.14. The intended effect of this action is to approve a series of four amendments to Maryland's Prevention of Significant Deterioration (PSD) program. These revisions make these regulations consistent with the currently effective version of 40 CFR 52.21, including establishing the maximum increases in ambient nitrogen dioxide concentration allowed in an area above the baseline concentrations. This action is being taken in accordance with section 110 of the Clean Air Act (CAA), and in satisfaction of the October 17, 1988 promulgation of the $NO_2$ increment regulations requiring that

existing state PSD programs be modified to include the new nitrogen dioxide ($NO_2$) increment provisions.

**EFFECTIVE DATE:** This action will become effective September 27, 1993 unless notice is received on or before August 26, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

**ADDRESSES:** Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Donahue, (215) 597-9781.

**SUPPLEMENTARY INFORMATION:** From 1980 to 1988, EPA promulgated amendments to the regulations for the prevention of significant deterioration of air quality from emissions of sulfur dioxide, nitrogen oxides, and particulate matter, measured as total suspended particulates. These regulations establish the maximum increases, or increments, in ambient concentrations of these criteria pollutants.

### Summary of SIP Revision

On December 30, 1987, March 8, 1989, March 28, 1991, and April 3, 1992, the State of Maryland submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions consist of changes to Maryland's Prevention of Significant Deterioration (PSD) Program. They were submitted in the following sequence:

| COMAR sections affected | Date submitted | Description of revision |
|---|---|---|
| COMAR 10.18.01 O–1, 10.18.02.03 H(3)(i), and 10.18.06.14. | December 30, 1987. | Updates reference to 40 CFR 52.21 from 1980 to 1986, as amended through 51 FR 32179, September 9, 1986. |
| COMAR 26.11.01.01, 26.11.02.02 H(3)(i), and 26.11.06.14. | March 8, 1989 ..... | Updates reference to 40 CFR 52.21 from 1986 to 1987 in recodified regulations. |
| COMAR 26.11.01.01, 26.11.02.10 (C)(9), and 26.11.06.14. | March 28, 1991 ... | Updates reference to 40 CFR 52.21 from 1987 to 1989. |
| COMAR 26.11.01.01 and 26.11.06.14. ... | April 3, 1992 ..... | Updates reference to 40 CFR 52.21 from 1989 to 1990. |

In 1992, EPA promulgated two revisions to 40 CFR 52.21. On February 3, 1992 EPA amended the definition of VOC at § 52.21(b)(30) (57 FR 3946), and on July 21, 1992 EPA adopted an New Source Review (NSR) exclusion for utility pollution control projects and amended § 52.21(b)(2), (21), and (31)–(38) (57 FR 32314–32339). Although these rulemakings do not affect the approvability of this SIP revision, Maryland must modify the three affected sections of the Code of Maryland Administrative Regulations (COMAR) to reflect these changes to § 52.21.

In order to satisfy federal rulemaking procedures, it is necessary to approve all four separate SIP revision submittals. The version of COMAR 26.11.02.10 (C)(9) being incorporated by reference at 40 CFR 52.1070 (c)(94) is the latest version of that regulation . The versions of COMAR 26.11.01.01 and 26.11.06.14 being incorporated at 40 CFR 52.1070 (c)(95) are the latest versions of these regulations.

### EPA Evaluation

EPA evaluated Maryland's SIP revision and concluded the following: (1) Updating the regulations provides protection of the PSD increment for $NO_2$; and (2) all of the applicable requirements of 40 CFR parts 51 and 52 are met. A more detailed evaluation is provided in a Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this notice.

EPA is approving these SIP revisions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on September 27, 1993.

### Final Action

EPA is approving as revisions to the Maryland SIP successive changes to the Code of Maryland Administrative Regulations (COMAR) which were submitted on December 30, 1987, March 8, 1989, March 28, 1991, and April 3, 1992. Each submitted revision updates the preceding reference to 40 CFR 52.21. These actions make Maryland's SIP regulations, COMAR 26.11.01.01, 26.11.02.10 (C)(9) and 26.11.06.14, consistent with the currently effective version of 40 CFR 52.21.

The Agency has reviewed this request for revision of the federally-approved state implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is

already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

This action to amend Maryland's Prevention of Significant Deterioration Program has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve revisions to Maryland's PSD regulations must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 30, 1993.

**W. T. Wisniewski,**

*Acting Regional Administrator, Region III.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

**Subpart V—Maryland**

2. Section 52.1070 is amended by adding paragraphs (c)(93), (c)(94), (c)(95), and (c)(96) to read as follows:

**§ 52.1070 Identification of plan.**

* * * * *

(c) * * *

(93) Revisions to the State Implementation Plan submitted by the Maryland Department of the Environment on December 30, 1987.

(i) Incorporation by reference.

(A) Letter from the Maryland Department of Environment dated December 15, 1987, submitting revisions to the Maryland State Implementation Plan.

(B) Amendments to regulations 10.18.01 O–1, 10.18.02.03 H(3)(i), and 10.18.06.14 under the Code of Maryland Administrative Regulations (COMAR) revising Maryland's prevention of significant deterioration program to incorporate changes to 40 CFR 52.21 made between 1980 and 1986. The amendments to COMAR 10.18.01 O–1, 10.18.02.03 H(3)(i), and 10.18.06.14 were effective on January 5, 1988 in the State of Maryland.

(ii) Additional materials.

(A) None.

(94) Revisions to the State Implementation Plan submitted by the Maryland Department of the Environment on March 8, 1989.

(i) Incorporation by reference.

(A) Letter from the Maryland Department of Environment dated March 1, 1989, submitting revisions to the Maryland State Implementation Plan.

(B) Amendments to regulations 26.11.01.01, 26.11.02.10 (C)(9), and 26.11.06.14 (proposed as 10.18.01 O–1, 10.18.02.03 H(3)(i), and 10.18.06.14) under the Code of Maryland Administrative Regulations (COMAR) revising Maryland's prevention of significant deterioration program to incorporate changes to 40 CFR 52.21 made between 1986 and 1987, thereby establishing the increment for $NO_2$ and requiring sources to conduct an $NO_2$ increment consumption analysis. The amendments to COMAR 26.11.01.01, 26.11.02.10 (C)(9), and 26.11.06.14 were effective on March 21, 1989 in the State of Maryland.

(ii) Additional materials.

(A) None.

(95) Revisions to the State Implementation Plan submitted by the Maryland Department of the Environment on March 28, 1991.

(i) Incorporation by reference.

(A) Letter from the Maryland Department of Environment dated March 21, 1991 submitting revision to the Maryland State Implementation Plan.

(B) Amendments to regulations 26.11.01.01 and 26.11.06.14 under the Code of Maryland Administrative Regulations (COMAR) revising Maryland's prevention of significant deterioration program to incorporate changes to 40 CFR 52.21 made between 1987 and 1989. The amendments to COMAR 26.11.01.01, and 26.11.06.14 were effective on March 31, 1991 in the State of Maryland. The amendments to 26.11.02.10 (C)(9) were effective on May 6, 1991 in the State of Maryland.

(ii) Additional materials.

(A) None.

(96) Revisions to the State Implementation Plan submitted by the Maryland Department of the Environment on April 3, 1992.

(i) Incorporation by reference.

(A) Letter from the Maryland Department of Environment dated March 27, 1992 submitting revisions to the Maryland State Implementation Plan.

(B) Amendments to regulations 26.11.01.01 and 26.11.06.14 under the Code of Maryland Administrative Regulations (COMAR) revising Maryland's prevention of significant deterioration program to incorporate changes to 40 CFR 52.21 made between 1989 and 1990. The amendments to COMAR 26.11.01.01 and 26.11.06.14 were effective on February 17, 1992 in the State of Maryland.

(ii) Additional materials.

(A) Remainder of April 3, 1992 State submittal.

[FR Doc. 93–17775 Filed 7–26–93; 8:45 am]

BILLING CODE 6560-50-F

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**40 CFR Part 52**

[Region II Docket No. 120, NY4–3–5839; FRL–4677–6]

**Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan for Ozone**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, partially approving and partially disapproving a request by New York to revise its State Implementation Plan (SIP) as it relates

to the control of volatile organic compounds. Under the Clean Air Act as amended in 1990, EPA is approving Part 234—"Graphic Arts," and partially approving and partially disapproving Part 228—"Surface Coating Processes." New York was required to make corrections to these regulations pursuant to a SIP call issued in 1988 and pursuant to section 182(a)(2)(A) of the Act.

This rule includes a finding that the State has met two of four commitments made in its 1982 ozone SIP for the New York City metropolitan area. These commitments include the adoption of regulations for automobile refinishing and reasonably available control technology for small sources.

**EFFECTIVE DATE:** This rule will be effective August 26, 1993.

**ADDRESSES:** Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1034A, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034, New York, New York 10278, (212) 264–2517.

**SUPPLEMENTARY INFORMATION:** On November 4, 1992, the Environmental Protection Agency (EPA) published in the **Federal Register** (57 FR 52606) a Notice of Proposed Rulemaking (NPR) concerning revisions to the New York State Implementation Plan (SIP) for ozone. The State requested the SIP be revised to incorporate revised regulations contained in Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 228—"Surface Coating Processes," effective September 15, 1988, and Part 234—"Graphic Arts," effective September 15, 1988.

These revised regulations correct some deficiencies in New York's SIP which had been identified by EPA and were required to be corrected under the provisions of section 182 of the Clean Air Act. The regulations also contain new provisions controlling automobile refinishing and small VOC emission sources. These measures were committed to in New York's 1982 ozone and carbon monoxide SIP for the New York City Metropolitan Area (NYCMA) comprised of New York City, Nassau, Suffolk, Westchester and Rockland counties.

The reader is referred to the NPR for further detail on EPA's review and findings. One commentor, the Can Manufacturers Institute, submitted comments on EPA's action.

**Response to Public Comments**

*Comment*: The commentor states that the Control Technique Guideline (CTG) published by EPA for can coating operations and EPA guidance allows daily weighted averaging as a compliance method. The commentor also stated that this method of compliance should not be considered a bubble under EPA's emission trading policy, and can coaters should be allowed to use daily weighted averaging or alternate emission control plans to facilitate compliance with local regulations.

*EPA Response*: The states are guided in developing their regulations by the CTGs and EPA guidance. The states must also take into consideration the severity of local air pollution problems, their experiences in implementing existing volatile organic compound (VOC) regulations and their ability to develop a successful attainment plan. The NYCMA is classified as a severe ozone nonattainment area. New York's VOC regulations cover the existing CTGs and include additional provisions to cover most stationary VOC sources.

While EPA still permits the use of its emission trading policy and bubbles, it is the state which must decide whether to allow such provisions and in what context. However, the state may adopt more stringent requirements than recommended or required by EPA or the Act. See section 116 of the Clean Air Act. New York still permits alternate requirements or a lesser degree of control in those situations where a source submits satisfactory technical and/or economic evidence to support its position that it has applied RACT to its operation. Therefore, in this action, EPA has not taken a position on whether bubbles should be allowed or not, but is just approving New York's submittal as meeting RACT.

*Comment*: The commentor requests that New York retain the traditional method, i.e. material balance, for determining capture efficiency.

*EPA Response*: New York made revisions to Part 228 to clarify that when add-on controls are used to comply with an emission limitation, the source must take capture efficiency into consideration. EPA previously identified a deficiency in New York's test methods as they relate to testing for capture efficiency, but has given New York, as well as other states with a similar problem, additional time to correct this problem. This was necessary in order for EPA to complete its study of alternative test methods which could be used to demonstrate compliance with capture efficiency requirements. New York will make changes to its capture efficiency test methods once EPA's study is complete. At that time, New York will be addressing what methods are acceptable and will be taking public comment on its position. Therefore, this comment is premature and does not relate to the revisions which EPA is acting on in this notice.

**Final Action**

The revisions and the rationale for EPA's action were explained in EPA's November 4, 1992 NPR and will not be restated here since EPA's final action does not differ from that proposed in the NPR.

EPA is partially approving and disapproving Part 228 as part of the New York SIP. EPA is disapproving:

—The exemption for high performance aluminum architectural coatings contained in Section 228.7(a)(2)(v), and

—The emission limit for clear coats under metal furniture coating lines contained in Section 228.8 Table 1.

Sources who would have made use of these emission limits must continue to comply with the SIP approved emission limits (See 49 FR 3439, January 26, 1984) for either miscellaneous metal parts and products or metal furniture as appropriate.

It should be noted that Section 228.3(e) permits the New York State Department of Environmental Conservation (NYSDEC) Commissioner to accept a lesser degree of control (alternative requirements) upon submission of satisfactory technical and/or economic evidence that the source has applied RACT. Section 228.5(c) permits the Commissioner to accept alternative analytical methods for determining compliance with surface coating emission limits when approved test methods are not applicable. EPA is approving these provisions based on NYSDEC's agreement that, for purposes of being federally enforceable, it will submit these variances to EPA for approval. EPA views these provisions as giving the Commissioner the authority to permit alternative requirements once they have been submitted and approved by EPA as SIP revisions. EPA will not

recognize any variance or alternate requirement until it is submitted to EPA by the State for approval as a source specific SIP revision. Approval of a variance request will be based on a case-by-case review and will involve the effect of the proposed variance on air quality and on the ability of a facility to comply with the existing regulation.

EPA is approving Part 234 as part of the New York SIP. It should be noted that Section 234.3(d) permits the Commissioner to accept a lesser degree of control (alternative requirements) upon submission of satisfactory technical and/or economic evidence that the source has applied RACT. As discussed with respect to Part 228, EPA is approving this provision with the same limitations.

**SIP Deficiencies**

Today's action also addresses some of the deficiencies identified in a May 26, 1988 letter to Governor Cuomo and a January 30, 1991 letter to the NYSDEC Commissioner finding the SIP substantially inadequate to attain the ozone and carbon monoxide standards. Twelve deficiencies were identified. The changes to Parts 228 and 234 provide corrections for seven of the deficiencies. The deficiencies corrected are those relating to recordkeeping, bubbles, seasonal shutdowns, equivalency calculations and the method of calculating applicability for graphic arts sources. Part 228 includes some of these changes and, as discussed earlier, is being partially approved since all deficiencies within it have not been corrected. All deficiencies in Part 234 have been corrected. Overall, these corrections strengthen the SIP and would remove these particular deficiencies as a cause for SIP inadequacy.

EPA also finds that the State has fulfilled its commitment in the SIP to adopt regulations for two control measures: automobile refinishing (contained in Part 228) and RACT for small sources (contained in Parts 228 and 234).

**Conclusion**

Although New York's submittals preceded the date of enactment of the 1990 Amendments to the Clean Air Act, EPA has evaluated these revisions for consistency with its provisions, EPA regulations and EPA policy and has found that they address and correct many of the "RACT Fix-up" deficiencies previously identified by EPA in its 1988 SIP Call letters. These changes have resulted in clearer, more enforceable regulations that strengthen the SIP.

EPA is partially approving Part 228, because the regulation is composed of separable parts that meet all of the applicable requirements of the Act. It still contains deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the Clean Air Act. These are as follows:

—The exemption for high performance aluminum architectural coatings contained in Section 228.7(a)(2)(v), and

—The emission limit for clear coats under metal furniture coating lines contained in Section 228.8 Table 1.

Because of these deficiencies, Part 228 is not fully approvable pursuant to section 182(a)(2)(A) of the Act, which requires states to correct their RACT regulations so that they are consistent with section 172 of the pre-amended Act as interpreted in EPA's pre-amendment guidance.

Because of the above deficiencies, EPA cannot grant full approval of Part 228 under section 110(k)(3) and part D of the Act. At the same time, EPA is also giving a partial disapproval to Part 228 because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the Act and, as such, the regulation does not meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) begins with the effective date of this final notice of disapproval. Moreover, this final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c). Nevertheless, it should be noted that NYSDEC has already revised Part 228 to correct the identified problems. On March 8, 1993 NYSDEC submitted a SIP revision containing Part 228. EPA will be proposing action on this submittal in the near future.

Nothing in this rule should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This rule has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary wavier until such time as it rules on EPA's request.

Under section 307(b)(l) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

Dated: June 28, 1993.

**William J. Muszynski,**

*Acting Regional Administrator.*

Title 40, chapter I, part 52, Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Subpart HH—New York**

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 52.1670 is amended by adding new paragraph (c)(85) to read as follows:

**§ 52.1670 Identification of plan.**

* * * * *

(c) * * *

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(85) Revisions to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds from surface coating and graphic arts sources, dated October

14, 1988, December 5, 1988, and May 2, 1989 submitted by the New York State Department of Environmental Conservation (NYSDEC).

(i) Incorporation by reference.

(A) Amendments to Title 6 of the New York Code of Rules and Regulations (NYCRR) Part 228 "Surface Coating Processes," effective September 15, 1988, and Part 234 "Graphic Arts," effective September 15, 1988

(ii) Additional material.

(A) May 2, 1989 letter from Thomas C. Jorling, NYSDEC, to Conrad Simon, EPA, requesting EPA substitute controls in Parts 228 and 234 for controls committed to be included in Part 212, Processes & Exhaust and/or Ventilation Systems.

3. Section 52.1679 is amended by adding the entries, for Parts 228 and 234, to the table in numerical order to read as follows:

**§ 52.1679 EPA-approved New York State regulations.**

| New York State regulation | State effective date | Latest EPA approval date | Comments |
|---|---|---|---|
| • • | • • | • • | • • • |
| Part 228, Surface Coating Processes: 228.1, Applicability and Compliance. | 8/23/79 | 11/10/80, 45 FR 74472 ..... | Group I CTG sources are subject to final compliance dates as they appear in Section 228.1, effective 8/23/79. |
| 228.1–228.10 ..... | 9/15/88 | [Insert date and citation of this notice]. | Variances adopted by the State pursuant to Section 228.3(e) become applicable only if approved by EPA as SIP revisions.<br>A test method authorized or approved under Section 228.5(c) shall be effective only on EPA approval.<br>EPA has disapproved exemption 228.7(a)(2)(v) and clear coat emission limit for metal furniture coating lines in 228.8 table 1. |
| • • | • • | • • | • • • |
| Part 234, Graphic Arts ..... | 9/15/88 | [Insert date and citation of this notice]. | Variances adopted by the State pursuant to Section 234.3(d) become applicable only if approved by EPA as SIP revisions. |
| • • | • • | • • | • • • |

[FR Doc. 93–17780 Filed 7–26–93; 8:45 am]

BILLING CODE 6560–50–F

## 40 CFR Part 52

[DE7–1–5583; A–1–FRL–4665–9]

## Approval and Promulgation of Air Quality Implementation Plans; Delaware Prevention of Significant Deterioration—Nitrogen Dioxide Increments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware Department of Natural Resources and Environmental Control (DNREC). This revision amends Delaware's Prevention of Significant Deterioration (PSD) regulation by establishing the maximum increase in ambient nitrogen dioxide concentrations allowed in an area above the baseline concentration (the increment), decreasing the permit exemption limit for certain gaseous fuel-fired combustion units, and updating the references to federal air quality modeling procedures to be consistent with EPA's current Guideline on Air Quality Models.

The intended effect of this action is to approve the revisions Delaware has made to its SIP requirements to be consistent with current federal requirements. This action is being taken in accordance with section 110 of the Clean Air Act.

**EFFECTIVE DATE:** This action will become effective September 27, 1993, unless notice is received on or before August 26, 1993, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Donahue, (215) 597–9781.

**SUPPLEMENTARY INFORMATION:** On March 9, 1990, the State of Delaware submitted formal revisions to its State Implementation Plan (SIP). Only the revisions to Regulation XXV and Regulation II are the subject of this rulemaking notice. The other portions of the March 9, 1990 submittal, including amendments to Regulations I, XVII, XXIV, and XXVI, are the subjects of a separate rulemaking notice.

The revisions to Regulation XXV (Requirements for Preconstruction Review) are, specifically: Section 1.9 (N) 1, 2, 3, 4 (i) (ii), Definitions; Section 3.1, Ambient Air Increments; and Section 3.9, Air Quality Models. The revision of State Regulation II (Permits), Section 3.1.b decreases the exemption limit for certain gaseous fuel-fired combustion units from 250 to 100 million BTUs per hour. Therefore, more fuel burning equipment will be subject to the requirements of State Regulation II (Permits).

The State of Delaware certified that a public hearing with regard to this SIP revision was held on June 6, 1989 in Dover, Delaware, as required by 40 CFR 51.102.

### Summary of SIP Revision

The revision to the Delaware SIP PSD Regulation XXV (Requirements for Preconstruction Review) establishes the maximum allowable increase in ambient nitrogen dioxide concentrations above the baseline concentration. These allowable ambient increases are called

increments. The revision to State Regulation XXV establishes increments for nitrogen dioxide in accordance with 40 CFR 51.166. The baseline date for the nitrogen dioxide increments is February 8, 1988. Delaware has incorporated this baseline date into Regulation XXV, Section 1.9(N)2. Section 1.9(N)4 modifies the terminology by which the baseline dates are defined. Section 3.1 adds $NO_2$ increments to the PSD program. Section 3.9 updates the Air Quality Modeling procedures to be consistent with EPA "Guideline on Air Quality Models (Revised), including Guideline Supplement A (July 1987).

The revisions to Regulation II (Permits), Section 3.1.b. decreases the permit exemption limit for certain gaseous fuel-fired combustion units from 250 to 100 million BTUs per hour. Therefore, more fuel burning equipment will be subject to the requirements of this regulation.

**EPA Evaluation**

EPA evaluated Delaware's SIP revision and concluded the following: (1) The revised regulations provided for the protection of the PSD increments for nitrogen dioxide; (2) the revised regulations are enforceable; and (3) all of the applicable requirements of 40 CFR parts 51 and 52 are met. A more detailed evaluation is provided in a Technical Support Document, which is available upon request from the Regional EPA office listed in the ADDRESSES section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on September 27, 1993.

Final Action: EPA is approving the State of Delaware's revisions to Regulation XXV (Requirements for Preconstruction Review), Section 1.9 (N) 1, 2, 3, 4(i) and (ii), Section 3.1, Section 3.9; and Regulation II (Permits), Section 3.1.b.1.

The Agency has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements, irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve revision to the Delaware Prevention of Significant Deterioration SIP program must be filed in the United States Court of Appeals for the appropriate circuit by September 27, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 26, 1993.

**W.T. Wisniewski,**

*Acting Regional Administrator, Region III.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart I—Delaware**

2. Section 52.420 is amended by adding paragraph (c)(45) to read as follows:

**§ 52.420 Identification of plan.**

* * * * *

(c)* * *

(45) Revisions to the State Implementation Plan submitted by the Delaware Department of Natural Resources and Environmental Control on March 9, 1990.

(i) Incorporation by reference.

(A) Letter from the Delaware Department of Natural Resources and Environmental Control dated March 6, 1990 submitting a revision to the Delaware State Implementation Plan.

(B) The portion of Secretary Order 90–A–1 that amends Regulation II—Permits—Section 3.1.b.1; and Regulation XXV—Requirements for Preconstruction Review—Sections 1.9 (N) 1–4, 3.1, and 3.9. The amendments to Regulation II and Regulation XXV were adopted on January 31, 1990 and

were effective on May 15, 1990 in the state of Delaware.

[FR Doc. 93-17776 Filed 7-26-93; 8:45 am]
BILLING CODE 6560-50-P

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**40 CFR Part 261**

**[SW-FRL-4683-6]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in EPA regulations for certain solid wastes generated at Marathon Oil Company (Marathon), Texas City, Texas. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

**EFFECTIVE DATE:** July 27, 1993.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and is available for viewing [room M2427] from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-93-MOEF-FFFFF". The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 412-9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-7392.

**SUPPLEMENTARY INFORMATION:**

### I. Background

#### *A. Authority*

Under §§ 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that:

(1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and

(2) No other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

#### *B. History of This Rulemaking*

Marathon Oil Company, located in Texas City, Texas, petitioned the Agency to exclude from hazardous waste control its K051/K048 residual solids resulting from the treatment of its API separator bottom sludge and dissolved air flotation (DAF) float by thermal desorption. After evaluating the petition, EPA proposed, on February 3, 1993 to exclude Marathon's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 58 FR 6925).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Marathon Oil's petition.

### II. Disposition of Petition

Marathon Oil Company, Texas City, Texas

#### *A. Proposed Exclusion*

Marathon Oil Company (Marathon), located in Texas City, Texas, petitioned the Agency to exclude from hazardous waste control its residual solids resulting from thermal desorption treatment of its API separator bottom sludge and DAF float, presently listed as EPA Hazardous Waste No. K051—"API separator sludge from the petroleum refining industry" and EPA Hazardous Waste No. K048—"Dissolved air floatation (DAF) float from the petroleum refining industry". The listed constituents of concern for K048 and K051 wastes are hexavalent chromium and lead (see 40 CFR part 261, appendix VII).

In support of its petition, Marathon submitted:

(1) Detailed descriptions and schematics of its manufacturing process and the pilot-scale treatment process;

(2) Detailed descriptions of the proposed full-scale thermal desorption unit and its proposed operating parameters; [1]

(3) Total constituent analysis results for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24 and five other metals from representative samples of the thickened API/DAF sludge, untreated API/DAF filter cake, and residual solids;

(4) Results from the Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) for the TC constituents and other extractable metals, volatile organics and semi-volatile organics, pesticides, and herbicides from representative samples of residual solids;

(5) Total constituent analysis results for volatile and semi-volatile organic constituents from the thickened API/DAF sludge, untreated filter cake, and residual solids;

(6) Results from total oil and grease analyses from the untreated filter cake and residual solids;

(7) Total cyanide results and moisture content from the thickened API/DAF sludge, untreated filter cake, and residual solids;

(8) Test results and information regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity for the residual solids;

(9) Results from the Multiple Extraction Procedure (MEP, SW-846 Method 1320) for the TC and other metals from representative samples of the stabilized residual solids;

(10) Results from the TCLP for cyanide for the stabilized residual solids; and

(11) Reactive sulfide and cyanide results for the stabilized residual solids.

The Agency evaluated the information and analytical data provided by Marathon in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and environment. Specifically, the Agency used the modified EPA's Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in Marathon's petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 58 FR 6925 (February 3, 1993), for a detailed explanation of why EPA proposed to grant Marathon's petition for its K051/K048 residual solids.

#### *B. Response to Public Comments*

The Agency received public comments on the February 3, 1993 proposal from thirteen interested parties. All thirteen commenters supported the Agency's proposed

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[1] Marathon proposed to use a proprietary thermal desorption treatment process developed by Remediation Technologies, Inc. Marathon has claimed some treatment process descriptions as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

decision to grant Marathon's petition. Five of these commenters felt that this decision would encourage the petroleum industry to pursue oil recovery/recycling waste technologies, conserve resources, and increase the competitiveness of the oil industry by reducing a regulatory burden. The following sections address specific comments received on the proposed rule, in five areas of concern.

General Delisting

*Comment:* One commenter sought clarification as to whether the delisting concentrations proposed for Marathon would be deemed applicable to each refinery in the United States. The commenter also wanted clarification as to whether site-specific data would be required for facilities that already have equipment and meet the conditional verification concentrations set for Marathon. The commenter also suggested that facilities with equipment already on-site may be held to a different standard with regard to ground water because they have already generated the waste.

*Response:* The delisting concentrations proposed for Marathon are specific to Marathon's petitioned residual solids to be generated in Texas City, Texas, and are not necessarily applicable to wastes generated at any other refineries. Sections 260.20 and 260.22 provide an exclusion procedure allowing persons to demonstrate that specific wastes should not be regulated as a hazardous waste. Marathon's petitioned treatment residues will be generated from treating K048 and K051 wastes by specific thermal desorption and stabilization processes (see 58 FR 6925 for a complete description), and the Agency determined that the constituents in the petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. Based on the Agency's evaluation of the processes generating Marathon's waste, and the estimated volume of waste that would be generated annually, the Agency developed the testing conditions and established the delisting concentrations for the proposed exclusion. The Agency believes that the proposed testing conditions for Marathon may be considered as a "guideline" for other facilities seeking to delist similar wastes. However, Marathon's petition was only for the treatment residuals generated at its facility and did not include adequate data for any other wastestreams. Therefore, the exclusion granted by today's rule is only applicable to Marathon's waste. The testing conditions presented for Marathon do not limit the constituents or concentrations for future exclusions for other refining wastes.

For those facilities with full-scale equipment already on-site, the regulatory requirements for petitioning for exclusion are no different than those for Marathon. Facilities may still submit analytical data characterizing its petitioned waste, except such data would be from waste generated from full-scale processes.

Facilities that generate waste from full-scale operations may also need to submit ground-water monitoring data, if the petitioned waste has been disposed of in an on-site or off-site land-based waste disposal unit (*e.g.*, landfill, surface impoundment). Such data obviously would not be available for wastes that have not yet been generated from a full-scale operation, such as Marathon's. In cases where ground-water monitoring data would provide additional information about the petitioned waste (*i.e.*, where the petitioned waste made up a significant portion of the waste in a land-based unit), a petitioner would be requested to submit information to demonstrate that the petitioned waste has not caused ground-water contamination. The requested information would normally be available under the subtitle C RCRA requirements in subpart F of §§ 264 and 265. In lieu of submitting this information as part of the petition, a petitioner may simply identify the permitting authority that has possession of such data. For detailed information on use of ground-water data in delisting decisions see 54 FR 41930, October 12, 1989.

Use of the EPACML

Five commenters expressed support for the Agency's proposed use of the EPACML for this delisting. Several commenters, however, had comments regarding specific aspects of the model.

*Comment:* Three commenters believed that the EPACML was run without regard to attenuating mechanisms such as biodegradation, hydrolysis, solubility, and soil adsorption for individual organic constituents or classes of constituents, and that the Agency has neglected finite time and source considerations. The commenters believed that high molecular weight, surface adsorbing compounds like chrysene, with little potential to migrate, should not receive the same dilution/attenuation factor (DAF) derived from the EPACML as more mobile constituents. As a result, the commenters believed that the DAF used for evaluating Marathon's waste is too conservative and thus the proposed delisting levels for semivolatile organic compounds should be raised accordingly.

*Response:* The Agency recognizes that biodegradation can occur in the subsurface, and has finalized a protocol for the development of biodegradation rates for use in the EPACML. See 55 FR 22300 (June 15, 1988). However, the Agency does not yet have sufficient data to develop a nationwide probability distribution of biodegradation rates for any of the organic contaminants of concern. Similarly, the Agency also agrees that adsorption can occur. In fact, the EPACML as used can incorporate different types of sorption mechanisms, as long as they follow a linear equilibrium isotherm. However, at the present time, there are insufficient data available to the Agency for general soil minerals to accurately model nonlinear sorption processes. In addition, none of the commenters provided specific data or procedures to allow incorporation of biodegradation and adsorption mechanisms in delisting evaluations. Therefore, both for biodegradation and adsorption, the Agency believes the assumption of a reasonable worst-case scenario is appropriate.

The EPACML used to establish delisting levels also did not factor in the hydrolysis of the constituents of concern. However, the EPACML as applied can not easily account for degradation products produced by hydrolysis, and therefore, does not account for the hazards associated with hydrolysis byproducts. The Agency is still developing a method to address hydrolysis and hydrolysis byproducts (see 55 FR 11823, March 29, 1990). In any case, the key organic constituents evaluated in the proposed delisting for Marathon are relatively stable hydrocarbons. These compounds are not expected to undergo any significant hydrolysis under normal conditions. Therefore, for this class of compounds, hydrolysis will not effectively reduce the levels during ground-water transport.

The Agency also recognizes that the infinite source assumption (*i.e.*, there will continue to be a steady source for each constituent indefinitely) may not hold true for some constituents in some wastes. However, the Agency does not believe that there are sufficient data available at present to support the use of a finite-source model. Moreover, the commenters did not provide any specific data in this respect. The Agency is currently evaluating methods to address finite-source constituents and may consider use of these methods when they become available. However,

the Agency believes that since many contaminants do behave as an infinite source, that this is an appropriate reasonable worst-case assumption.

Development of Health-based Levels

*Comment:* One commenter believed that the development of health-based levels for ground-water consumption using single, high-end exposure assumptions was overly conservative and provided "bounding estimates" rather than "high-end" human exposure estimates. The commenter supported the use of a wide range and distribution of parameter values in "Monte Carlo" analyses to develop more reasonable health-based levels (HBLs). Such a concept was suggested in EPA's own guidance on exposure assessment as one possible approach.

*Response:* The Agency disagrees with the commenter that the point estimates used in the exposure equations are overly conservative. The single point estimates for ground-water consumption (*e.g.*, 2 liters/day, 70-year exposure duration, 70-year lifetime) are representative of plausible, high-exposure scenarios. The Agency remains concerned with protecting the most exposed individuals who may be exposed to contaminated water/media. Therefore, the EPA's use of single, high-end parameters, which when taken together form bounding estimates, is justified. Regarding the use of distributions and Monte Carlo analyses, the Exposure Assessment Group of EPA's Office of Health and Environmental Assessment prepared the "Exposure Factors Handbook" in 1989 as guidance for the Agency. The validity of Monte Carlo analyses depends on how well the distribution of each parameter is defined, and EPA must ensure that the distributions provided in the Handbook are appropriate for specific purposes prior to using them. At this time, the distribution of many parameters is not well defined, and thus EPA does not anticipate using Monte Carlo analyses for predicting exposure parameters for delisting evaluations.

List of Constituents for Verification Testing

*Comment:* Two commenters supported the approach used in the proposed exclusion for "tailoring" the list of constituents for verification testing. One commenter, however, objected to the number and type of constituents selected. This commenter suggested that the Agency's selected set of constituents was excessive for both the inorganic and organic constituents. The commenter believed that the data submitted in the petition demonstrate that a smaller set of constituents is reasonable. The commenter contended that only three metals (*i.e.*, chromium, lead, and nickel) presented a reasonable potential for concern. The commenter also believed that testing for volatile organic constituents was unwarranted, because the process operates under controlled conditions that ensure removal of all volatile constituents.

*Response:* The Agency disagrees with the commenter and believes that monitoring for the proposed list of constituents is needed to ensure that Marathon's full-scale thermal desorption system will be operating as described in the petition. All of the constituents on the list were found at significant concentrations in either Marathon's unfiltered sludge or the untreated filter cake. The Agency considers Marathon's pilot-scale data too limited to justify removal of any of the constituents in the verification testing list. The Agency feels that Marathon must verify that its full-scale thermal desorption system is as effective at removing the hazardous constituents of concern as Marathon demonstrated with the pilot-scale unit. Furthermore, the exclusion includes a mechanism for terminating the monthly organic testing requirement (*i.e.*, Condition (1)(C)), if as the commenter suggested, organic constituents are not of concern. The Agency believes that the conditional testing proposed ensures effective treatment, yet provides the option for a reduction in Marathon's analytical burden if the full-scale system operates successfully. Therefore the list of constituents for verification testing in Conditions (3)(A) and (3)(B) will remain as proposed.

Indicator Parameters

In the proposal the Agency requested comments on setting a process-based total level (3 ppm) for 1-methyl naphthalene (and possibly other constituents) as an indicator that Marathon's full-scale thermal desorption system operates effectively in removing organic constituents. One commenter supported and one commenter opposed the use of total constituent concentrations as indicator parameters.

*Comment:* The first commenter believed that more than one indicator parameter may be necessary to confirm that semivolatile organics are below levels of concern in the treated residual solids. The commenter indicated that while 1-methyl naphthalene (boiling point = 465 °F) may predict success at desorbing semivolatiles from the processed solids in most circumstances, some semivolatiles (such as benzo(a)pyrene) with boiling points at or above 600 °F may still remain.

The second commenter, however, argued that the use of the process-based total organic concentrations as indicator parameters is neither appropriate nor warranted. This commenter stated that leachable concentrations derived from health-based levels through the use of the EPACML represent a more viable and defendable delisting criteria. This commenter contended that Marathon's thermal desorption process showed little variability during treatability demonstrations, and therefore, did not warrant the additional verification testing requirement (*i.e.*, inclusion of 1-methyl naphthalene in the testing conditions).

*Response:* The Agency believes that in this case, an additional requirement of testing for indicator parameters is necessary to ensure that the full-scale thermal desorption unit operates as efficiently as the pilot-scale unit in removing all organic constituents of concern. The Agency considers Marathon's pilot-scale data too limited to justify the use of leachable concentrations alone to verify effective operation. As noted in the proposed rule (see 58 FR 6934), the Agency believes that setting a maximum total level for a key indicator chemical will provide additional assurance that the process is operated properly. While the Agency considered establishing operating parameters for the treatment process to ensure proper operation, (*e.g.*, temperature), the Agency believes that testing for key constituents would be a more direct indication that the process is operating effectively. This type of requirement also allows Marathon more latitude in selecting the optimum operating parameters to attain effective treatment.

The Agency disagrees with the second commenter that the process-based total constituent concentrations are less viable or defensible indicators of system operation than those leachable constituent concentrations derived from health-based levels through the use of the EPACML. While the total constituent concentrations are not based on health-based levels, the Agency believes they reflect the overall performance/efficiency of Marathon's treatment process, and thus provide additional assurance that the system is operating as described in Marathon's petition.

The Agency continues to believe that 1-methyl naphthalene is a good indicator parameter for monitoring the overall performance of the full-scale thermal desorption unit, because of this constituent's prevalence in Marathon's

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waste (see 58 FR 6925). Furthermore, the Agency agrees with the first commenter that additional, higher boiling point constituents should also be included in the verification testing. Of the organic constituents of concern detected in Marathon's petitioned waste (see 58 FR 6925 for details), benzo(a)pyrene has the highest molecular weight, and, as the commenter pointed out, a relatively high boiling point. As thermal desorption is temperature-dependent, benzo(a)pyrene should be a suitable indicator parameter for monitoring the removal of those constituents with boiling points above that of 1-methyl naphthalene (465° F) from Marathon's K051/K048 wastes. Therefore, in order to ensure that the full-scale unit operates effectively in removing all organic constituents of concern, the Agency is including both 1-methyl naphthalene and benzo(a)pyrene as indicator parameters in the verification testing requirements (in Condition (3)(C)) finalized in today's notice. The Agency is setting a delisting level of 3 ppm for benzo(a)pyrene based on the same rationale as for 1-methyl naphthalene (see 58 FR 6935).

*C. Final Agency Decision*

For the reasons stated in both the proposal and this notice, the Agency believes that Marathon's residual solids should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Marathon Oil Company, located in Texas City, Texas, for its residual solids, described in its petition as EPA Hazardous Waste Nos. K051/K048.

This exclusion only applies to the processes and waste volume (a maximum of 1,000 cubic yards generated annually) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (*e.g.*, if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated in excess of 1,000 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

## III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

## IV. Effective Date

This rule is effective July 27, 1993. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

## V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major because its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore no Regulatory Impact Analysis is required.

## VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse impact on small entities because its effect will be to reduce the overall costs of EPA's hazardous waste regulations and it is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

## VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

## Lists of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: July 15, 1993.

**Jeffery D. Denit,**

*Deputy Director, Office of Solid Waste.*

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C 6905, 6912(a), 6921, 6922, and 6938.

2. In part 261, table 2 of appendix IX add the following wastestream in

alphabetical order by facility to read as follows:

*Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22*

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * |
| Marathon Oil Co. | Texas City, Texas | Residual solids (at a maximum annual generation rate of 1,000 cubic yards) generated from the thermal desorption treatment and, where necessary, stabilization of wastewater treatment plant API/DAF filter cake (EPA Hazardous Waste Nos. K048 and K051), after [insert date of publication]. Marathon must implement a testing program that meets the following conditions for the exclusion to be valid:<br>(1) *Testing*: Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). Marathon must continue to test as specified in Condition (1)(A), including testing for organics in Conditions (3)(B) and (3)(C), until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B), or that testing for organics may be terminated as described in (1)(C) (to the extent directed by EPA).<br>(A) *Initial Verification Testing*: During at least the first 40 operating days of full-scale operation of the thermal desorption unit, Marathon must monitor the operating conditions and analyze 5-day composites of residual solids. 5-day composites must be composed of representative grab samples collected from every batch during each 5-day period of operation. The samples must be analyzed prior to disposal of the residual solids for constituents listed in Condition (3). Marathon must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.<br>(B) *Subsequent Verification Testing*: Following notification by EPA, Marathon may substitute the testing conditions in (1)(B) for (1)(A). Marathon must continue to monitor operating conditions, and analyze samples representative of each month of operation. The samples must be composed of representative grab samples collected during at least the first five days of operation of each month. These monthly representative samples must be analyzed for the constituents listed in Condition (3) prior to the disposal of the residual solids. Marathon may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.<br>(C) *Termination of Organic Testing*: Marathon must continue testing as required under Condition (1)(B) for organic constituents specified in Conditions (3)(B) and (3)(C) until the analyses submitted under Condition (1)(B) show a minimum of four consecutive monthly representative samples with levels of specific constituents significantly below the delisting levels in Conditions (3)(B) and (3)(C), and EPA notifies Marathon in writing that monthly testing for specific organic constituents may be terminated. Following termination of monthly testing, Marathon must continue to test a representative 5-day composite sample for all constituents listed in Conditions (3)(B) and (3)(C) on an annual basis. If delisting levels for any constituents listed in Conditions (3)(B) and (3)(C) are exceeded in the annual sample, Marathon must reinstitute complete testing as required in Condition (1)(B).<br>(2) *Waste Holding and Handling*: Marathon must store as hazardous all residual solids generated until verification testing (as specified in Conditions (1)(A) and (1)(B)) is completed and valid analysis demonstrates that Condition (3) is satisfied. If the levels of hazardous constituents in the samples of residual solids are below all of the levels set forth in Condition (3), then the residual solids are non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any 5-day composite or other representative sample equal or exceed any of the delisting levels set in Condition (3), the residual solids generated during the corresponding time period must be retreated and/or stabilized as allowed below, until the residual solids meet these levels, or managed and disposed of in accordance with Subtitle C of RCRA.<br>If the residual solids contain leachable inorganic concentrations at or above the delisting levels set forth in Condition (3)(A), then Marathon may stabilize the material with Type 1 portland cement as demonstrated in the petition to immobilize the metals. Following stabilization, Marathon must repeat analyses in Condition (3)(A) prior to disposal.<br>(3) *Delisting Levels*: Leachable concentrations in Conditions (3)(A) and (3)(B) must be measured in the waste leachate by the method specified in 40 CFR 261.24. The indicator parameters in Condition (3)(C) must be measured as the total concentration in the waste. Concentrations must be less than the following levels (ppm):<br>(A) *Inorganic Constituents*: antimony-0.6; arsenic, chromium, or silver-5.0; barium-100.0; beryllium-0.4; cadmium-0.5; lead-1.5; mercury-0.2; nickel-10.0; selenium-1.0; vanadium-20.0.<br>(B) *Organic Constituents*: acenaphthene-200; benzene-0.5; benzo(a)anthracene-0.01; benzo(a)pyrene-0.02; benzo(b)fluoranthene-0.02; chrysene-0.02; ethyl benzene-70; fluoranthene-100; fluorene-100; naphthalene-100; pyrene-100; toluene-100.<br>(C) *Indicator Parameters*: 1-methyl naphthalene-3; benzo(a)pyrene-3. |

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (4) *Changes in Operating Conditions*: After completing the initial verification test period in Condition (1)(A), if Marathon significantly changes the operating conditions established under Condition (1), Marathon must notify the Agency in writing. After written approval by EPA, Marathon must re-institute the testing required in Condition (1)(A) for a minimum of four 5-day operating periods. Marathon must report the operations and test data, required by Condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by EPA, Marathon may replace testing Condition (1)(A) with (1)(B). Marathon must fulfill all other requirements in Condition (1), as appropriate.<br>(5) *Data Submittals*: At least two weeks prior to system start-up, Marathon must notify in writing the Section Chief Delisting Section (see address below) when the thermal desorption and stabilization units will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS–333), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA or the State of Texas and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:<br>"Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C 6928), I certify that the information contained in or accompanying this document is true, accurate, and complete.<br>As to the (those) identified sections(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.<br>In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion." |

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 625

[Docket No. 930408–3172; I.D. 040693A]
RIN 0648–AE95

## Summer Flounder Fishery

**AGENCY:** National Marine Fisheries Service (NMFS) NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this rule to implement the conservation and management measures contained in Amendment 3 to the Fishery Management Plan for the Summer Flounder Fishery (amendment). The amendment increased the amount of summer flounder that may be on board an otter trawl vessel from November 1 through April 30 before becoming subject to the minimum mesh size requirement from less than 100 pounds (45.4 kg) to less than 200 pounds (90.8 kg); revises the boundary of the seasonal fishing area exempt from the minimum mesh size requirement; and implements a framework measure to adjust the boundary and season of the exemption area. The intent of the amendment is to enhance compliance with and enforcement of the minimum mesh size requirement, and to minimize the potential for excessive discards of legal-sized summer flounder.

**EFFECTIVE DATE:** August 26, 1993.

**ADDRESSES:** Copies of the amendment, the environmental assessment (EA), and the regulatory impact review (RIR) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 S. New Street, Dover, DE 19901–6790.

**FOR FURTHER INFORMATION CONTACT:** Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

**SUPPLEMENTARY INFORMATION:** The amendment was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. A notice of availability for the amendment was published in the **Federal Register** on April 9, 1993 (58 FR 18365), and the proposed rule was published on May 12, 1993 (58 FR 27987).

The management unit for the amendment is summer flounder (*Paralichthys dentatus*) in U.S. waters in the western Atlantic Ocean from the Southern border of North Carolina northward to the U.S.-Canadian border. This final rule increases the amount of summer flounder that may be on board a vessel from November 1 through April 30 before a vessel becomes subject to the minimum mesh size requirement, revises the boundary of a seasonal fishery area where vessels are exempt from the minimum mesh size requirement, and provides for the annual adjustment of the season and boundary of the exemption area.

The first measure is intended to minimize the waste of legal sized summer flounder while keeping the discard of undersized summer founder at a conservative level. From November 1 through April 30, an otter trawl vessel with a Federal permit may land or

possess summer flounder in an amount less than 200 pounds (90.8 kg) before being required to comply with the minimum mesh restriction. From May 1 through October 31, an otter trawl vessel with a Federal permit may land or posses summer flounder in an amount less than 100 pounds (45.4 kg) before the minimum mesh requirement applies during this period. Vessels fishing with an exemption certificate in the exemption area, set forth in § 625.24(b)(1), from November 1 through April 30 remain exempt from the minimum mesh size requirement and may retain any amount of legal-sized summer flounder.

The second measure revised the boundary of a limited area where vessels may fish with an exemption permit from November 1 through April 30 without being subject to the minimum mesh size requirement. The boundary implemented by this final rule is a straight line following 72°30′ W. longitude from the U.S. coast to the outer boundary of the EEZ. This boundary line is identical to the line implemented by emergency action by the Secretary of Commerce at the request of the Council and ASMFC (57 FR 58150, December 9, 1992). The emergency regulation was extended through April 30, 1993 (58 FR 13560, March 12, 1993).

This rule makes the boundary revision permanent, and provides a framework mechanism by which the Regional Director may annually adjust the season and boundary of the exemption area to minimize discarding which may occur as a result of sublegal-sized summer flounder migrating into the exemption area.

The third measure is the framework mechanism that allows the Regional Director to adjust annually the boundary of the exemption area by 30-minute intervals of longitude or latitude and adjustments to the season in 2-week intervals. The goal of the adjustment process is to achieve a discarding rate in the exemption area of below 10 percent by weight. As part of its annual review of catch quotas and other restrictions described in § 625.20 of the regulations, the Summer Flounder Monitoring Committee will review NMFS sea sampling data and winter trawl survey information regarding the size and area distribution of the summer flounder resource and make recommendations regarding adjustments to the season and boundary of the area to the Regional Director.

**Technical Change**

The amendment implements a technical change requested by the Council to make the provision governing net modifications consistent with a similar provision in the Northeast Multispecies Fishery Management Plan. The rule allows nets with a "bull rope" of the same size as that allowed in the regulations governing the multispecies fishery. This is desirable because many fishermen engage in both fisheries.

**Administrative, Clarifying, and Enforcement Changes**

These regulations include provisions of an administrative nature that were proposed by NMFS to clarify the intent of the amendment or enhance enforcement. These are: (1) A modification to § 625.8(a)(7) to clarify that nets or netting meeting the requirements of § 625.24 may be carried on board; (2) a modification to the prohibition on purchases of summer flounder in § 625.8(c)(4) to clarify that purchases may be made from vessels lawfully fishing in state waters; (3) a clarification to the section authorizing the Regional Director to terminate the small mesh exemption in § 625.24(b)(1)(i) by changing the phrase "the remainder of the year" to read "the remainder of the exemption season", to reflect the fact that the exemption program season does not fall within a single calendar year; (4) a minor change to § 625.24(b)(1)(ii) that changes the phrase "west and south" to "west or south"; and (5) a modification to the prohibition on net modifications in § 625.24(e) to prohibit clearly any net modification that would diminish the size of the mesh, while in use, to a size smaller than the minimum size specified in this part.

**Changes from the Proposed Rule to the Final Rule**

Two modifications to § 625.8(c) were added at the request of the NOAA Regional Attorney for the Northeast Region. The first clarifies that a person operating a vessel which is not issued a moratorium permit is subject to the recreational size limit when fishing in the EEZ. The second clarifies that it is illegal for a person to possess nets or netting with mesh not meeting the minimum mesh requirement of § 625.24 if the person possesses summer flounder in or from the EEZ in excess of the threshold limit in § 625.24(a). The absence of such prohibitions would have prevented prosecution of individuals operating vessels in the EEZ without a Federal permit who were fishing in violation of the recreational minimum size and minimum mesh size requirement.

The final regulations also modify the discard criteria in the framework provision. The proposed rule stated that the goal of the exemption program would be a discard rate of less than 10 percent by number. The final rule specifies that the goal of the program is a discard rate of less than 10 percent by weight. The change is being made because it is impractical to expect that sea samplers will be able to count the number of fish discarded for each species and tow.

**Comments and Responses**

The only comment received on the proposed rule was from the Department of the Interior, which requested an extension of the comment period. The request was denied due to the statutory requirements of the Magnuson Act.

**Classification**

The Regional Director determined that the amendment is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this amendment. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA may be obtained from the Council (see ADDRESSES).

An informal consultation under section 7 of the Endangered Species Act (ESA) was concluded for the amendment on March 12, 1993. As a result of the informal consultation, the Regional Director determined that fishing activities conducted under this rule are not likely to adversely affect endangered or threatened species or critical habitat.

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the RIR prepared by the Council. A copy of the RIR may be obtained from the Council (see ADDRESSES).

The General Counsel of the Department of Commerce certified to the Small Business Administration when this rule was proposed, that if adopted, it would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement

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for purposes of the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. For New Hampshire, the evaluation was that the amendment might affect the coastal zone and was consistent. For Pennsylvania, the Council determined that this rule will not affect the coastal zone. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. New Hampshire, Rhode Island, Connecticut, New York, and Pennsylvania agreed with this determination. North Carolina disagreed with this determination relative to the increase in the possession limit. The other states have not yet responded and consistency is inferred. The Council responded to the State of North Carolina on January 8, 1993, and explained that although Amendment 3 may not be a mirror image of the regulations of all of the States in the management unit because of local differences, the Council is "striving to make Amendment 3 consistent with the Coastal Zone Management Plans of the several coastal States to the maximum extent practicable."

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Regional Director has determined that fishing activities conducted under this rule will have no adverse impacts on marine mammals.

**List of Subjects in 50 CFR part 625**

Fisheries, Reporting and recordkeeping requirements.

Dated: July 21, 1993.

**Samuel W. McKeen,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 625 is amended to read as follows:

## PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

**Authority:** 16 U.S.C. 1801, *et seq.*

2. Section 625.8, paragraphs (c)(2) through (c)(10) are redesignated as paragraphs (c)(4) through (c)(12), respectively; paragraphs (a)(3), (a)(7) and newly redesignated (c)(6) are revised; and paragraphs (c)(2) and (c)(3) are added to read as follows:

**§ 625.8 Prohibitions.**

(a) * * *

(3) Possess 100 or more pounds (45.4 or more kg) of summer flounder between May 1 and October 31 or 200 or more pounds (90.7 or more kg) between November 1 and April 30, unless the vessel meets the minimum mesh size requirement specified in § 625.24(a), or is fishing in the exempted area with an exemption permit as specified in § 625.24(b)(1), or holds an exemption permit and is in transit from the exemption area with nets properly stowed as specified in 625.24(b)(1)(ii), or is fishing with exempted gear specified in § 625.24(b)(2);

* * * * *

(7) Possess nets or netting on board with mesh that does not meet the requirements of § 625.24(a), or nets that are modified or obstructed if fishing with an exempted net described in § 625.24(b), except pieces of netting may be carried on board if they are no larger than 3 feet square (0.9 m square);

* * * * *

(c) * * *

(2) Possess in or harvest from the EEZ summer flounder that do not meet the minimum size specified in § 625.23(b);

(3) Possess nets or netting with mesh not meeting the minimum mesh requirement of § 625.24 if the person possesses summer flounder harvested in or from the EEZ in excess of the threshold limit of § 625.24(a).

* * * * *

(6) Purchase or otherwise receive for commercial purposes summer flounder caught by other than a vessel with a moratorium permit not subject to the possession limit in § 625.5 unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

* * * * *

3. Section 625.20 paragraphs (a)(8) and (a)(9), are redesignated as paragraphs (a)(9) and (a)(10) respectively, and new paragraphs (a)(8) and (b)(8) are added to read as follows:

**§ 625.20 Catch quotas and other restrictions.**

(a) * * *

(8) Sea sampling and winter trawl survey data, or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses;

* * * * *

(b) * * *

(8) Adjustments to the exempted area boundary and season specified in § 625.24(b)(1) by 30-minute intervals of latitude and longitude and 2-week intervals, respectively, based on data specified in paragraphs (a)(8) and (10) of this section to prevent discarding of sublegal sized summer flounder in excess of 10 percent by weight.

* * * * *

4. Section 625.24 paragraphs (a), (b)(1), and (e) are revised to read as follows:

**§ 625.24 Gear restrictions.**

(a) *General.* Otter trawlers whose owners are issued a permit under § 625.4 and that land or possess 100 or more pounds (45.4 or more kg) of summer flounder between May 1 and October 31 or 200 or more pounds (90.8 or more kg) of summer flounder between November 1 and April 30, per trip, must fish with nets that have a minimum mesh size of 5½ inches (14.0 cm) diamond mesh or 6 inches (15.2 cm) square mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension.

(b) * * *

(1) Vessels issued a permit under paragraph § 625.4(b) and fishing from November 1 through April 30 in the "exemption area", which is east of a line that follows 72°30.0' W. longitude until it intersects the outer boundary of the EEZ. Vessels fishing with an exemption permit cannot fish west of the foregoing line.

(i) The Regional Director may terminate this exemption if he or she determines, after a review of sea sampling data, that vessels fishing under the exemption are discarding more than 10 percent by weight of their entire catch of summer flounder per trip. If he/she makes such a determination, the Regional Director shall publish a notice in the **Federal Register** terminating the exemption for the remainder of the exemption season.

(ii) Vessels issued a permit under paragraph § 625.4(o) may transit the area west or south of the line described in paragraph (b)(1) of this section if the vessel's fishing gear is stowed in a manner prescribed under 50 CFR 651.20(f) so that it is not "available for immediate use" outside the exempted area.

* * * * *

(e) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chaffing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the cod end along each of the following: The top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in § 625.24(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 625.24(a).

* * * * *

[FR Doc. 93–17817 Filed 7–26–93; 8:45 am]

BILLING CODE 3510–22–M

## 50 CFR Part 672

[Docket No. 921107–3068; I.D. 072193A]

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of thornyhead rockfish in the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the thornyhead rockfish total allowable catch (TAC) in this area has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t), July 22, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the thornyhead rockfish TAC for the GOA was established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as 1,062 metric tons.

The Director of the Alaska Region, NMFS, has determined in accordance with § 672.20(c)(3), that the TAC for thornyhead rockfish in the GOA has been reached. Therefore, NMFS is requiring that further catches of thornyhead rockfish in the GOA be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t., July 22, 1993, through 12 midnight, A.l.t., December 31, 1993.

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 21, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–17787 Filed 7–22–93; 11:35 am]

BILLING CODE 3510–22–M

## 50 CFR Part 678

[I.D. 072093B]

## Atlantic Shark Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Announcement of adjustments to the second semi-annual 1993 quotas for fisheries for the Atlantic large coastal and pelagic shark species groups.

**SUMMARY:** NMFS announces that the domestic Atlantic, Caribbean and Gulf of Mexico large coastal and pelagic sharks category quotas have either been overharvested or underharvested during the first semi-annual 1993 season. Therefore, the second semi-annual 1993 quotas are adjusted accordingly. The adjusted quotas for the period July 1 through December 31, 1993, are 875 metric tons (mt) for large coastal sharks and 357 mt for pelagic sharks.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813–893–3721, or Aaron E. King, 301–713–2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic, Caribbean and Gulf of Mexico shark fisheries are managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by the Secretary of Commerce under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1)(i) of the regulations provides for two semi-annual quotas of 1,218 mt of large coastal sharks to be harvested from Atlantic, Caribbean and Gulf of Mexico waters by commercial fishermen. The first semi-annual quota is available for harvest from January 1 through June 30, 1993.

Section 678.23(b)(1)(ii) of the regulations provides for two semi-annual quotas of 290 mt of large pelagic sharks to be harvested from Atlantic, Caribbean and Gulf of Mexico waters by commercial fishermen. The first semi-annual quota is available for harvest from January 1 through June 30, 1993.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 678.23 to monitor the catch and landing statistics and, on the basis of these statistics, determine when the catch of Atlantic, Caribbean and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). The Assistant Administrator is further authorized under § 678.23(c) to adjust the semiannual quota to reflect actual catches during the preceding semiannual period. Final data indicate that the catch from January through June of the large coastal shark species totaled 1,561 mt, exceeding the established quota by 343 mt. The pelagic shark fishery harvest was 223 mt, and thus the 290 mt quota was underharvested by 67 mt. Therefore, the new adjusted quotas for the 1993 semi-annual period will decrease for large coastal shark species from 1,218 mt to 875 mt, and the quota for pelagic shark species will increase from 290 mt to 357 mt.

### Classification

This action is taken under 50 CFR part 678 and complies with E.O. 12291.

**List of Subjects in 50 CFR Part 678**

Fisheries, Penalties, Reporting and recordkeeping requirements.

Dated: July 21, 1993.

Samuel W. McKeen,

*Assistant Administrator for Fisheries.*

[FR Doc. 93-17810 Filed 7-21-93; 3:08 pm]

BILLING CODE 3510-22-P

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**50 CFR Part 678**

**[I.D. 072193B]**

**Atlantic Shark Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure of the commercial segment of the Atlantic, Caribbean and Gulf of Mexico large coastal shark fisheries.

**SUMMARY:** NMFS closes the commercial fishery for Atlantic, Caribbean and Gulf of Mexico large coastal sharks. Closure of this fishery is necessary because the second semi-annual quota of 875 metric tons (mt) allocated for this fishery will have been attained. The intent of this action is to prevent overharvest of the quota established for this fishery.

**EFFECTIVE DATE:** The closure is effective from 0001 hours local time July 31, 1993, through December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Justen, 813-893-3721 or Richard B. Stone/Aaron E. King, 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Atlantic, Caribbean and Gulf of Mexico shark fisheries are managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Atlantic Sharks prepared by the Secretary of Commerce under authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR part 678.

Section 678.23(b)(1)(i) of the regulations provides for two semi-annual quotas of 1,218 mt of large coastal sharks to be harvested from Atlantic, Caribbean and Gulf of Mexico waters by commercial fishermen. The first semi-annual quota was exceeded by 343 mt, making 875 mt available for harvest from July 1, throught December 31, 1993.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 678.24 to monitor the catch and landing statistics and, on the basis of these statistics, determine when the catch of Atlantic, Caribbean and Gulf of Mexico sharks will equal any quota under § 678.23(b)(1). When shark harvests equal or exceed a quota established under § 678.24(b)(1), the Assistant Administrator is further authorized under § 678.28 to limit retention of sharks in the closed species group in or from the exclusive economic zone (EEZ) to four per vessel per trip; and to prohibit the sale, purchase, trade or barter of any shark carcass or fin of that species group in or from the EEZ.

The Assistant Administrator has determined, based on the reported landings for the first 2 weeks of July and the daily catch rate for that period, that the second half of the annual quota for Atlantic, Caribbean and Gulf of Mexico large coastal sharks will have been attained as of July 30, 1993. The following measures are effective from 0001 hours local time on July 31, 1993, through December 31, 1993:

(1) For vessels issued a permit under § 678.4, possession of sharks from the large coastal group is prohibited, unless the vessel is operating as a charter vessel or headboat, in which case the vessel limit per trip is four large coastal sharks;

(2) For vessels not issued a permit under § 678.4, the vessel limit per trip is four large coastal sharks.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of a shark carcass or fin of the closed species group in or from the EEZ is prohibited;

(4) The possession limit may not be combined with a bag or possession limit applicable to state waters;

(5) The operator of a vessel for which the possession limit applies is responsible for the vessel trip limit for the large group.

(6) A person aboard a vessel subject to the possession limit may not transfer at sea a shark of the larger coastal group—

(a) Taken in the EEZ, regardless of where such transfer will take place; or

(b) In the EEZ, regardless of where such shark was taken; and

(7) The prohibition regarding sale, purchase, trade, or barter, or attempted sale, purchase, trade, or barter, does not apply to trade in shark carcasses or fins of the large coastal group that were harvested, off-loaded, and sold, traded, or bartered, prior to July 31, 1993, and were held in storage by a dealer or processor.

**Classification**

This action is required by 50 CFR part 678 and complies with E.O. 12291.

**List of Subjects in 50 CFR Part 678**

Fisheries, Penalties, Reporting and recordkeeping requirements.

Dated July 22, 1993.

Samuel W. McKeen,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 93-17881 Filed 7-22-93; 3:55 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 58, No. 142
Tuesday, July 27, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93–NM–63–AD]**

## Airworthiness Directives; Airbus Model A320 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A320 series airplanes. This proposal would require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the airplane from extended overwater operations. This action also provides for an optional terminating action, which, if accomplished, would eliminate the need for the required AFM limitation. This proposal is prompted by a recent report that during an emergency evacuation demonstration, the lanyard became entangled on the girt bar indicator mechanism, and subsequently prevented an exit door from opening fully to a locked position. The actions specified by the proposed AD are intended to prevent the lanyard from becoming entangled on the girt bar indicator mechanism, if passengers are required to utilize the exit door during extended overwater operations where ditching may be required.

**DATES:** Comments must be received by September 21, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–63–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a recent report that, during an emergency evacuation demonstration on a Model Airbus A320 series airplane, the lanyard became entangled on the girt bar indicator mechanism, and subsequently prevented an exit door from opening fully to a locked position. (During extended overwater operations, the survival kit must be attached via a lanyard to the slide/raft, so it will not become separated from the slide/raft in the event of a ditching. The survival kit is not required to be attached via a lanyard during operations over land.) The actions specified by the proposed AD are intended to prevent the lanyard from becoming entangled on the girt bar indicator mechanism, if passengers are required to utilize the exit door during extended overwater operations where ditching may be required.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the airplane from extended overwater operations.

This action also provides modification of the lanyard that attaches the survival kit to the slide/raft as an optional terminating action for the required AFM limitation. If accomplished, this modification is required to be performed in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

The FAA estimates that 59 Model A320 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,623, or $28 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 93–NM–63–AD.

*Applicability:* All Model A320 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the lanyard from becoming entangled on the girt bar indicator mechanism, if passengers are required to utilize the exit door during extended overwater operations where ditching may be required, accomplish the following:

(a) Within 90 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Extended overwater operation is prohibited."

(b) Modification of the lanyard that attaches the survival kit to the slide/raft in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, constitutes terminating action for the requirements of paragraph (a) of this AD. Once an approved modification is accomplished, the airplane is eligible for extended overwater operations, and the AFM limitation required by paragraph (a) of this AD may be removed.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 21, 1993.

**Suzanne E. Stevens,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17818 Filed 7–26–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–NM–84–AD]**

## Airworthiness Directives; Fokker Model F28 Mk 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mk 0100 series airplanes. This proposal would require connection of the liftdumper system wiring shields to ground. This proposal is prompted by reports of liftdumper system wiring shields that were not connected to ground as intended. The actions specified by the proposed AD are intended to prevent inadvertent positive voltages on the affected system wiring, which could result in nuisance liftdumper alerts, the inability to arm the liftdumper system, and reduction in protection of the system against inadvertent liftdumper extension in the manual mode.

**DATES:** Comments must be received by September 21, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–84–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mk 0100 series airplanes. The RLD advises that there have been several reports indicating that the wiring shields of the liftdumper system on these airplanes have not been connected to ground as intended. The shields must be connected to ground in order to prevent inadvertent positive voltages on the wiring. Positive voltages on the wiring, if not corrected, could result in nuisance liftdumper alerts, and could prevent arming of the liftdumper system. Additionally, an inadvertent positive voltage on one manual control lane and a subsequent failure of a ground/flight switch reduces the protection of the system against inadvertent liftdumper extension in the manual mode.

Fokker has issued Fokker Service Bulletin SBF100–27–043, dated October 1, 1992, that describes procedures for connecting the affected wiring shields of the liftdumper system to ground. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 92–120, dated October 23, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an inspection to determine if the wiring shields of the liftdumper system are connected to ground, and connection of the shields to ground, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 54 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $35,640, or $660 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker: Docket 93–NM–64–AD.**

*Applicability:* Model F28 Mk 0100 series airplanes; serial numbers 11244 through 11392, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent inadvertent positive voltage on the wiring of the liftdumper system, accomplish the following:

(a) Within 8 months after the effective date of this AD, inspect the liftdumper system wiring shield ground connections to determine if the shields are connected to ground, in accordance with Fokker Service Bulletin SBF100–27–043, dated October 1, 1992. If any shield is not connected to ground, prior to further flight, connect the shield to ground in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 21, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17819 Filed 7–26–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 92–ANE–44]**

## Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D series turbofan engines. This proposal would require a record search of the service history of the 8th, 9th, and 10th high pressure compressor (HPC) disks, inspections of

the HPC disks for corrosion, and removal from service of engines with HPC disks corroded beyond serviceable limits. This proposal is prompted by an investigation into an uncontained PW JT8D engine failure caused by severe corrosion on the 9th stage HPC disk. The actions specified by the proposed AD are intended to prevent fracture of the HPC disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

**DATES:** Comments must be received by September 27, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–44, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location in between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information reference in the proposed rule may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, Connecticut 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

**FOR FURTHER INFORMATION CONTACT:** Mark Rumizen, Aerospace Engineer, Engine Certification Office, ANE–140, FAA, New England Region, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone no. (617) 238–7137; fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–ANE–44." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–44, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

**Discussion**

The FAA received a report that a Boeing 727 aircraft experienced an uncontained high pressure compressor (HPC) disk rupture on a Pratt & Whitney (PW) JT8D turbofan engine.

This compressor disk rupture resulted in a rejected takeoff and cabin fire that destroyed the airplane and cargo. Investigation into the cause of the compressor disk rupture identified a 9th stage HPC disk rim that had fractured due to a fatigue crack originating from a corrosion pit on the forward surface of the rim in the bottom of a compressor blade dovetail slot. The investigation also identified severe corrosion on other surfaces of this disk and similar conditions on other HPC disks of the same engine. Metallurgical laboratory examination revealed corrosion pits as deep as 0.020 inch and 0.060 inch in diameter in some areas of the 9th stage HPC disk that ruptured.

The FAA initiated a technical evaluation and investigation of the extent of PW JT8D HPC disk corrosion in the domestic fleet. A review of service experience of PW JT8D HPC disks indicated that disk corrosion is not an endemic problem to all PW JT8D engines. However, a subset of the PW JT8D population characterized by low utilization rates are more susceptible to HPC disk corrosion. Low utilization operating profiles can induce formation of condensation within the engine, thereby promoting corrosion scales and pits which adversely affects the disk fatigue lives. As a compounding influence, low utilization rates imply longer on-wing calendar intervals and less frequent engine shop visits and module disassemblies. The FAA has therefore determined that calendar time as well as hours and cycles are appropriate criteria for inspection in this AD.

The FAA has determined that certain PW JT8D engines may be operating in service with HPC disks corroded beyond serviceable limits or may be utilized in a manner conducive to corrosion, which can result in disk fracture. This condition, if not corrected, can result in fracture of the HPC disks, which can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage.

Evaluation of the effectiveness of the protective coatings and lubricant/antigallant films used on PW JT8D HPC disks indicates varying degrees of corrosion resistance depending on the type of coating. Protective coatings that can be applied to PW JT8D HPC disks include Nickel-Cadmium (NiCad) plating or a diffused aluminized coating applied in accordance with PW specification No. 110 (PWA 110). The AD inspection program accounts for this variability in corrosion resistance and provides separate inspection instructions and criteria depending on the type of protective coating applied.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. 6038, Revision 3, dated May 8, 1992, that describes on-wing and shop inspections to detect corrosion on HPC disks, and removal from service of HPC disks corroded beyond serviceable limits.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a record search, initial and repetitive on-wing and shop inspections to detect corrosion on HPC disks, and removal from service of engines with HPC disks corroded beyond serviceable limits. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 11,119 PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines of the affected design in the worldwide fleet. The FAA estimates that approximately 6,815 engines installed on aircraft of U.S. registry would be affected by this proposal, and 2 work hours would be necessary to conduct a search to acquire and evaluate the necessary engine service history records. Based on domestic fleet-wide data, the FAA estimates that approximately 8.7% or 593 engines would be considered to have low utilization rates. Approximately 75% or 445 of these low

utilization rate engines contain NiCad plated disks. The FAA estimates that it would take 5.1 work hours to accomplish the borescope inspection on these engines. Based on operator experience, 12% or 53 engines equipped with NiCad plated disks would be found corroded beyond serviceable limits and would require removal from service. Approximately 8.6 work hours would be required to remove these engines containing excessively corroded disks from the aircraft, 500 work hours to tear down, deblade, and to reassemble the engine, and 8.6 work hours to reinstall the reassembled engines. The FAA estimates 75% of the removed engines would require scrapping the disks. Three disks per engine would require replacements, and the cost of a new disk is approximately $7,000.

Approximately 25% or 148 low utilization rate PW JT8D engines incorporate disks coated with PWA-110. Approximately 8.6 work hours would be required to remove engines containing excessively corroded disks from the aircraft, 500 work hours to tear down, deblade, and reassemble removed engines, and 8.6 work hours to reinstall the reworked engines. The FAA estimates that 50% of the removed engines would require scrapping the disks. Three disks per engine would require replacements, and the cost of a new disk is approximately $7,000. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $8,986,119.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### §39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Pratt & Whitney:** Docket No. 92-ANE-44.

*Applicability:* Pratt & Whitney (PW) JT8D-1, -1A, -1B, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17, -17A, -17R, and -17AR turbofan engines installed on but not limited to Boeing 737 and 727 series, and McDonnell Douglas DC-9 series aircraft.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fracture of the high pressure compressor (HPC) disks, that can result in uncontained release of engine fragments, inflight engine shutdown, and airframe damage, accomplish the following:

(a) Within four months of the effective date of this AD, review engine records for the 8th, 9th, and 10th stage HPC disks to determine the type of surface treatment (Nickel-Cadmium (NiCad) or PWA 110) and to determine disk service history as follows:

(1) For 8th, 9th, and 10th stage NiCad plated HPC disks determine the following:

(i) Disk part number;

(ii) Total part time (TPT) in service; (iii) total part cycles (TPC) in service;

(iv) Calendar time since installed new in an engine;

(v) Calendar time since last NiCad disk plating;

(vi) Calendar time since the last shop inspection accomplished in accordance with Sections 72-36-42, 72-36-43, or 72-36-44, as applicable, of the PW JT8D Engine Manual Part Number (P/N) 481672;

(vii) Calendar times since the last visual bench inspection of the bladed disk accomplished in accordance with Section 72-36-00, PW JT8D Engine Manual P/N 481672; and

(viii) Disk utilization rate in accordance with Section 2.A.(2) of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. 6038, Revision 3, dated May 8, 1992.

(2) For 8th, 9th, and 10th stage HPC disks that have an aluminized coating applied in accordance with PW specification No. PWA 110, determine the following:

(i) TPC in service;

(ii) Calendar time since installed new in an engine;

(iii) Calendar time since last PWA 110 disk coating; and

(iv) Calendar time since the last shop inspection accomplished in accordance with Section 72-36-42, 72-36-43, or 72-36-44, as applicable, of the PW JT8D Engine Manual P/N 481672.

(3) If calendar times and the type of surface treatment is unknown, inspect in accordance with paragraph (d) of this AD.

(4) If the calendar times are known, but the surface treatment is unknown, inspect in accordance with paragraph (e) of this AD.

(5) For 8th, 9th, or 10th stage HPC disks coated in accordance with PW specification No. PWA 110-21 and containing PWA 474 antigallant in the blade slots, inspect in accordance with paragraph (f) of this AD.

(b) Inspect all 8th, 9th, or 10th stage NiCad plated HPC disks for corrosion, and if necessary, remove engines from service and replace with a serviceable disk, in accordance with paragraphs 2.A.(4) and 2.A.(6) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, as follows:

(1) Perform an initial borescope inspection of the rim region of all 8th, 9th, or 10th stage HPC disks, in accordance with the following schedule:

(i) For HPC disks identified by part number in paragraph 2.A.5.(a) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, that have a disk utilization rate of less than 1,300 hours per year or less than 900 cycles per year, determine the disk category (A or B, as applicable), based on the TPC on the effective date of this AD, in accordance with paragraph 2.A.5.(a) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, and perform an initial borescope inspection, prior to exceeding the following criteria, whichever occurs latest:

| Disk category | Disk borescope inspection time limit |
|---|---|
| A | 7 years since the disk was last plated or installed new in an engine, whichever occurs later; or<br>4 years since the last disk inspection accomplished in accordance with Sections 72-36-42, 72-36-43, or 72-36-44, as applicable, of PW JT8D Engine Manual P/N 481672; or<br>2½ years since the last visual bench inspection of the bladed disk accomplished in accordance with Section 72-36-00, of PW JT8D Engine Manual P/N 481672; or |

| Disk category | Disk borescope inspection time limit |
|---|---|
| B | 1 year after the effective date of this AD.<br>7 years since the disk was last plated or installed new in an engine, whichever occurs later; or<br>4 years since the last disk inspection accomplished in accordance with Sections 72–36–42, 72–36–43, or 72–36–44, as applicable, of PW JT8D Engine Manual P/N 481672; or<br>2½ years since the last visual bench inspection of the bladed disk accomplished in accordance with Section 72–36–00, of PW Engine Manual P/N 481672; or<br>4 months after the effective date of this AD. |

(ii) For HPC disks identified by part number in paragraph 2.A.(5)(a) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, that have a disk utilization rate greater than or equal to 1,300 hours per year and greater than or equal to 900 cycles per year, are defined as disk category C. Perform the initial borescope inspection, prior to exceeding the following criteria, whichever occurs latest:

| Disk category | Disk borescope inspection time limit |
|---|---|
| C | 11 years since the disk was last plated or installed new in an engine, whichever occurs later; or<br>7 years since the last disk inspection accomplished in accordance with Sections 72–36–42, 72–36–43, or 72–36–44, as applicable, of PW JT8D Engine Manual P/N 481672; or<br>6 years since the last visual bench inspection of the bladed disk accomplished in accordance with Section 72–36–00, of PW Engine Manual P/N 481672; or<br>1 year after the effective date of this AD. |

(iii) For HPC disks identified by part number in paragraph 2.A.(5)(b) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, and that have a disk utilization rate of less than 1,300 hours per year or less than 900 cycles per year, determine the disk category (AA or BB, as applicable), based on the TPC on the effective date of this AD, in accordance with paragraph 2.A.(5)(b) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, and perform the initial borescope inspection, prior to exceeding the following criteria, whichever occurs latest:

| Disk category | Disk borescope inspection time limit |
|---|---|
| AA | 9 years since the disk was last plated or installed new in an engine, whichever occurs later; or<br>6 years since the last disk inspection accomplished in accordance with Sections 72–36–42, 72–36–43, or 72–36–44, as applicable of the PW JT8D Engine Manual P/N 481672; or<br>2½ years since the last visual bench inspection of the bladed disk accomplished in accordance with Section 72–36–00, of the PW JT8D Engine Manual P/N 481672; or<br>1 year after the effective date of this AD. |
| BB | 9 years since the disk was last plated or installed new in an engine, whichever occurs later; or<br>6 years since the last disk inspection accomplished in accordance with Sections 72–36–42, 72–36–43, or 72–36–44, as applicable, of PW JT8D Engine Manual P/N 481672; or<br>2–1/2 years since the last visual bench inspection of the bladed disk accomplished in accordance with Section 72–36–00, of PW JT8D Engine Manual P/N 481672; or<br>4 months after the effective date of this AD. |

(iv) For HPC disks identified by part numbers in paragraph 2.A.(5)(b) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, that have a utilization rate greater than or equal to 1,300 hours per year and greater than or equal to 900 cycles per year, are defined as disk category CC. Perform the initial borescope inspection, prior to exceeding the following criteria, whichever occurs latest:

| Disk category | Disk borescope inspection time limit |
|---|---|
| CC | 13 years since the disk was last plated or installed new in an engine, whichever occurs later; or<br>9 years since the last disk inspection accomplished in accordance with Sections 72–36–42, 72–36–43, 72–36–44, as applicable, of PW JT8D Engine Manual P/N 481672; or<br>6 years since the last visual bench inspection of the bladed disk accomplished in accordance with Sections 72–36–00, of PW JT8D Engine Manual P/N 481672; or<br>1 year after the effective date of this AD. |

(2) Thereafter, inspect the applicable HPC disks in accordance with paragraphs 2.A.(4) and 2.A.(6) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, and if necessary replace with a serviceable disk.

(3) Performing the shop level HPC inspection in accordance with Sections 72–36–42, 72–36–43, or 72–36–44, as applicable, of PW JT8D Engine Manual P/N 481672 is an equivalent means of compliance to the on-wing borescope inspections required in paragraphs (b)(1) and (b)(2) of this AD.

(c) For engines which contain 8th, 9th, or 10th stage HPC disks that have a PWA 110–1, –2, –3, –4, –9, –11, –21, –31, –2/–4, –21/–9, –50, –51, or –52 type coating, inspect, and if necessary replace with a serviceable disk, as follows:

(1) For 8th, 9th, or 10th stage HPC disks with less than 12,000 TPC on the effective date of this AD, remove the engine HPC module, based on the 8th, 9th, or 10th stage HPC disk having the earliest removal requirements, and perform an initial inspection and replace if necessary with serviceable disks, all HPC disks, stages 7 through 12, for surface corrosion in accordance with Sections 72–36–41, 72–36–42, 72–36–43, 72–36–44, 72–36–45, or 72–36–46, as applicable, of the PW JT8D Engine Manual P/N 481672, prior to exceeding the following criteria, whichever occurs latest:

ENGINE HPC MODULE REMOVAL AND INSPECTION TIME LIMIT

—9 years since the HPC disk was installed new in an engine or since the last coating application, whichever occurs later; or

—4 years since the disk was last inspected in accordance with Sections 72–36–42, 72-

36–43, or 72–36–44, as applicable, of the PW JT8D Engine Manual, P/N 481672; or

—1 year after the effective date of this AD.

(2) For 8th, 9th, or 10th stage HPC disks with greater or equal to 12,000 TPC on the effective date of this AD, remove the engine HPC module, based on the 8th, 9th or 10th stage HPC disk having the earliest removal requirements, and perform an initial inspection and replace if necessary with serviceable disks, all HPC disks, stages 7 through 12, for surface corrosion in accordance with Sections 72–36–41, 72–36–42, 72–36–43, 72–36–44, 72–36–45, or 72–36–46, as applicable, of the PW JT8D Engine Manual P/N 481672, prior to exceeding the following criteria, whichever occurs latest:

ENGINE HPC MODULE REMOVAL AND INSPECTION TIME LIMIT

—9 years since the HPC disk was installed new in an engine or since the last coating application, whichever occurs later; or

—4 years since the HPC disk was last inspected in accordance with Sections 72–36–42, 72–36–43, or 72–36–44, as applicable, of the PW JT8D Engine Manual P/N 481672; or

—4 months after the effective date of this AD.

(3) Thereafter, remove the engine HPC module and inspect for surface corrosion all HPC disks stages 7 through 12, and replace if necessary with serviceable disks, in accordance with Sections 72–36–41, 72–36–42, 72–36–43, 72–36–44, 72–36–45 or 72–36–46, as applicable, of the PW JT8D Engine Manual P/N 481672, prior to exceeding the following the following criteria, whichever occurs latest:

REINSPECTION INTERVAL

—9 years since each 7th, 8th, 9th, 10th, 11th, and 12th stage HPC disk was installed new in an engine or since the last coating application, whichever occurs later, or

—4 years since each 7th, 8th, 9th, 10th, 11th, and 12th stage HPC disk was inspected in accordance with Sections 72–36–41, 72–36–42, 72–36–43, 72–36–44, 72–36–45, and 72–36–46, as applicable, of the PW JT8D Engine Manual P/N 481672.

(d) For 8th, 9th, or 10th stage HPC disks which have unknown surface treatment and where calendar times are unknown, remove the engine from service and inspect HPC disks, stages 7 through 12, for surface corrosion, and replace if necessary, with serviceable disks, in accordance with Sections 72–36–41, 72–36–42, 72–36–43, 72–36–44, 72–36–45, or 72–36–46, as applicable, of the PW JT8D Engine Manual P/N 481672, as follows:

(1) For 8th, 9th, or 10th stage HPC disks that have less than 12,000 TPC on the effective date of this AD, remove engine from service and inspect HPC disks within 1 year of the effective date of this AD.

(2) For 8th, 9th, or 10th stage HPC disks that have greater or equal to 12,000 TPC on the effective date of this AD, remove engine from service and inspect HPC disks within 4 months of the effective date of this AD.

(3) Thereafter, identify the type of surface treatment (NiCad or PWA 110) in accordance with Section 70–44–01, of the PW Overhaul Standard Practice Manual, PW 585005, and inspect the required disks in accordance with the reinspection requirements of paragraphs (b)(2) or (c)(3) of this AD, whichever is applicable.

(e) For 8th, 9th, or 10th stage HPC disks that have unknown surface treatment, but with known calendar times, remove the engine from service and inspect HPC disks, stages 7 through 12, for surface corrosion, and replace if necessary, with serviceable disks, in accordance with paragraphs (c)(1) or (c)(2), as applicable, of this AD.

(1) Thereafter, identify the type of surface treatment (NiCad or PWA 110) in accordance with Section 70–44–01, of the PW Overhaul Standard Practice Manual, P/N 585005, and inspect in accordance with the reinspection requirements of paragraphs (b)(2) or (c)(3) of this AD, whichever is applicable.

(f) For 8th, 9th, or 10th stage HPC disks coated in accordance with PW specification No. PWA 110–21 and containing PWA 474 antigallant in the blade slots, as an alternative to performing the requirements of (a)(2) and (c) of this AD, a record search and borescope inspection may be accomplished in accordance with the instructions of paragraph (a)(1) and (b), respectively, of this AD.

(g) Define the inspection program requirements independently for each 8th, 9th, and 10th stage HPC disk.

(h) If the HPC disks, stages 7 through 13 were deemed serviceable, as specified in the PW JT8D Engine Manual P/N 481672, at a shop visit, and the engine or HPC module was properly preserved and stored as specified in the PW JT8D Engine Manual P/N 481672, immediately after that shop visit, then the storage time can be deducted from the calendar times.

(i) Report within 30 days of inspection, disks that are borescoped inspected in accordance with this AD and are determined to have visible cracks or severe corrosion as defined in 2.A.(6) of the Accomplishment Instructions of PW ASB No. 6038, Revision 3, dated May 8, 1992, or disks that are inspected in the shop and inspection reveals visible cracks or corrosion exceeding serviceability limits as defined in PW Engine Manual, P/N 486172. This report should include inspection findings, compressor stage, disk P/N, and disk serial number. Submit reports to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, MA 01803–05299; fax (617) 238–7199; Telex 949301 FAANE BURL. The reporting requirements of this AD terminate 1 year from the effective date of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056.

(j) An alternative method of compliance or adjustment of the initial compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(k) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 16, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17816 Filed 7–26–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 91–ANE–39]**

## Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This proposed rule revises an earlier proposed airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D series turbofan engines, that would have required the installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube, and performance of any necessary corrective action, and required the installation of No. 4 and 5 bearing compartment hardware modifications for certain engines. That proposal was prompted by reports of high pressure turbine (HPT) shaft fractures caused by oil fires that resulted from internal leakage of thirteenth stage compressor discharge air into the No. 4 and 5 bearing compartment. This action revises the proposed rule by requiring installation of improved temperature indicators, extending the compliance time for installation of temperature indicators, and eliminating the requirement to perform No. 4 and 5 bearing compartment hardware modifications. The actions specified by this proposed AD are intended to prevent fracture of the HPT shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage.

**DATES:** Comments must be received by September 27, 1993.

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**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–39, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, CT 06108. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Mark Rumizen, Aerospace Engineer, Engine Certification Office, ANE–140, Engine and Propeller Directorate, FAA, New England Region, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (617) 238–7137, fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–ANE–39." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–39, 12 New England Executive Park, Burlington, MA 01803–5299.

**Discussion**

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive, applicable to Pratt & Whitney (PW) JT8D series turbofan engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 24, 1992. That NPRM would have required the installation and periodic inspection of temperature indicators installed on the No. 4 and 5 bearing compartment scavenge oil tube, performance of any necessary corrective action, and required the installation of No. 4 and 5 bearing compartment hardware modifications for certain engines. That NPRM was prompted by reports of high pressure turbine (HPT) shaft fractures caused by oil fires that resulted from internal leakage of thirteenth stage compressor discharge air into the No. 4 and 5 bearing compartment. That condition, if not corrected, could result in fracture of the HPT shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage.

Since the issuance of that NPRM, the Federal Aviation Administration (FAA) has determined that the bearing compartment hardware modifications do not adequately prevent internal leakage of thirteenth stage compressor discharge air into the No. 4 and 5 bearing compartment; therefore, the FAA has eliminated that requirement in this supplemental proposed rule. When improved bearing compartment hardware modifications are developed, the FAA may consider future rulemaking that may require this hardware as a terminating action to the repetitive inspections of the temperature indicators.

In addition, PW has issued Alert Service Bulletin (ASB) No. 5944, Revision 2, dated June 8, 1992, which describes procedures for installation of an improved temperature indicator that incorporates an adhesive sealant, revises the installation instructions, and adds a troubleshooting procedure to determine if the temperature indicators are functioning properly. This revision is reflected in this supplemental proposed rule.

Also, PW has issued ASB No. 6053, Revision 7, dated May 24, 1993, which describes minor hardware changes to the HPT containment shield assembly. This supplemental proposed rule has been changed to reflect this updated revision to the ASB.

Finally, this supplemental proposed rule extends the time allotted to install the improved temperature indicators from 65 hours time in service (TIS) to 90 days after the effective date of this AD. Service data indicates that this extension would have minimal safety impact to the fleet. The repetitive inspection interval, however, would remain 65 hours TIS since last inspection. This supplemental proposed rule has been changed accordingly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. Comments that did not relate specifically to the changes in the compliance program of this supplemental proposed rule will be addressed in the Final Rule.

Ten commenters state that the PW Part Number (P/N) 809129 and P/N 809130 temperature indicators are unreliable due to observed service problems. One commenter reports that the temperature indicators are peeling off the No. 4 and 5 bearing compartment scavenge oil tube and turning black due to oil saturation and contamination. The FAA concurs. This supplemental proposed rule would require installation of new and redesigned temperature indicators on engines mounted on Boeing 727 series aircraft. These temperature indicators incorporate a sealant which is applied over the indicator and prevents oil saturation. Field data indicates that the oil saturation problem associated with the temperature indicator is only occurring on engines installed on Boeing 727 series aircraft; engines installed on McDonnell Douglas MD–80 series aircraft may have the new or prior configuration of temperature indicators installed.

Five commenters request, based on the availability of temperature indicators and operator maintenance programs, a time period of greater than 65 hours TIS after the effective date of this AD to install the temperature indicators. The FAA concurs. The FAA has increased the time period to install the temperature indicators to 90 days and has determined that the extension of the time allotted to install temperature indicators would have minimal impact to the fleet based on the following: PW has been aggressively issuing the improved temperature indicator since May 1992; the old design temperature indicator is still allowed as

an option for engines installed on McDonnell Douglas MD–80 series aircraft; and this supplemental proposed rule will provide ample warning of the requirement to acquire and install the improved temperature indicators. The repetitive inspection interval, however, would remain 65 hours TIS since last inspection.

Three commenters state that service experience in their fleet indicates problems with the No. 5 bearing compartment hardware modification described in PW SB No. 5945, dated December 19, 1990, and recommend eliminating this requirement from the AD. The FAA concurs. The FAA has determined that the bearing compartment hardware modification described in PW SB No. 5945, dated December 19, 1990, and required by the previous NPRM, does not adequately prevent internal leakage of thirteenth stage compressor discharge air into the No. 4 and 5 bearing compartment and has therefore eliminated this requirement from the AD. PW is continuing to develop hardware that would prevent internal leakage of thirteenth stage compressor discharge air.

Five commenters request to allow the installation and monitoring of two temperature indicators and the performance of diagnostic testing only if both temperature indicators turn black. This procedure would provide relief from unnecessary engine maintenance due to faulty temperature indications without sacrificing safety. The FAA concurs. This supplemental proposed rule would allow the installation of one or two sets of temperature indicators and would modify the inspection program accordingly.

One commenter requests that all earlier revisions of PW SB No. 5514 be acceptable for hardware modifications to the No. 4 and 5 bearing oil compartment. The FAA does not concur. The FAA has determined that the No. 4 and 5 bearing oil compartment hardware modifications identified in PW SB No. 5945 and PW SB No. 5514 do not adequately prevent No. 4 and 5 bearing compartment oil fires. This supplemental proposed rule would eliminate the requirement for bearing compartment hardware modifications.

One commenter requests clarification on the requirement to install the bearing compartment hardware at the next shop visit. This supplemental proposed rule would not require the installation of bearing compartment hardware modifications.

Two commenters request extended time to install the No. 4 and 5 bearing compartment hardware modifications in accordance with PW SB No. 5945, dated December 19, 1990, and PW SB No. 5514, Revision 7, dated February 28, 1991. This supplemental proposed rule would not require these hardware modifications.

Two commenters state that the entire approach of temperature monitoring is unsatisfactory due to false indications, unnecessary engine removals, scheduling disruptions, and extra costs. Mandatory action should be focused on correcting the No. 4 and 5 bearing compartment hardware. The FAA concurs in part. The temperature monitoring is an interim program until such time that modified bearing compartment hardware is developed for PW Models JT8D–1 through JT8D–17AR or the HP turbine containment hardware is installed on PW JT8D–200 series engines. The FAA may require installation of improved bearing compartment hardware and HP turbine containment hardware in future rulemaking.

Three commenters request defining a troubleshooting procedure for the temperature indicators prior to engine troubleshooting when the temperature indicator has turned black. A method to validate and confirm a properly functioning temperature indicator would be desirable prior to beginning the costly and time consuming engine troubleshooting procedures. The FAA concurs. Pratt & Whitney ASB No. 5944, Revision 2, dated June 8, 1992, describes a procedure for confirming no oil saturation on temperature indicators. This supplemental proposed rule would allow this inspection as an optional procedure.

Two commenters state that the location of the temperature indicator specified in the previous NPRM and PW ASB No. 5944, Revision 1, dated April 10, 1991, is inconvenient and request a location with easier accessibility. The FAA concurs. Pratt & Whitney ASB No. 5944, Revision 2, dated June 8, 1992, describes installation in other areas of the No. 4 and 5 scavenge line, and the improved temperature indicator itself has been designed to allow for easier installation.

Three commenters request that the FAA meet with industry to address the operators' concerns and potential impact to the fleet prior to issuing the Final Rule for this program. The FAA does not concur. The FAA does not believe that a public meeting would be necessary at this point as the program has been modified to address many of the concerns identified in the comments. Also, this supplemental NPRM will allow 60 additional days of public comment before issuing the Final Rule.

One commenter notes a typographical error in paragraph (a)(4) of the NPRM with "ship" printed instead of "shop." The FAA concurs. "Shop" is the correct word.

One commenter states that the No. 4 and 5 bearing compartment hardware modifications and containment shield should not be required for engines installed on McDonnell Douglas MD–80 series aircraft. The FAA concurs in part. This supplemental proposed rule eliminates the requirement to install No. 4 and 5 bearing compartment hardware modifications. In addition, this proposed rule does not require installation of HPT containment hardware, but does exempt those PW JT8D–200 series engines which incorporate the HPT containment hardware from the installation and repetitive inspections of the temperature indicators. The FAA may, however, require the installation of HPT containment hardware in PW JT8D–200 series engines in future rulemaking.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 6,323 JT8D–1 through –17AR series engines and 1,843 JT8D–200 series engines of the affected design in the worldwide fleet. It is estimated that 5,237 engines in the domestic fleet would be affected by this proposed AD, that it would take approximately 1.5 work hours per engine to accomplish the required actions, and that the average labor rate would be $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $432,053.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Pratt & Whitney:** Docket No. 91–ANE–39.

*Applicability:* Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –15, –15A, –17, –17A, –17R, and –17AR turbofan engines installed on but not limited to Boeing 727 series aircraft, and JT8D–209, –217, –217A, –217C, and –219 turbofan engines installed on but not limited to McDonnell Douglas MD–80 series and Boeing 727 series aircraft.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fracture of the high pressure turbine (HPT) shaft, which can result in uncontained release of engine fragments, engine fire, inflight engine shutdown, or possible aircraft damage, accomplish the following:

(a) For PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –15, –15A, –17, –17A, –17R, and –17AR engines installed on Boeing 727 series aircraft, install and inspect one or two temperature indicators, Part Number (P/N) 810486, on the No. 4 and 5 bearing compartment scavenge oil tube, as follows:

(1) Install one or two temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. 5944, Revision 2, dated June 8, 1992, within 90 days after the effective date of this AD.

(2) Visually inspect temperature indicators within 65 time in service (TIS) of installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection.

(3) If upon inspection, the color of any temperature indicator window has turned completely black, perform troubleshooting and diagnostic testing and corrective action as required, in accordance with Section 2.A.(2) (c) and (d) or (f) and (g), as applicable, of the Accomplishment Instructions of PW ASB No. 5944, Revision 2, dated June 8, 1992. Prior to returning the engine to service, replace any temperature indicator that has turned black and inspect in accordance with paragraph (a)(2) of this AD.

(b) For PW JT8D–209, –217, –217A, –217C, and –219 engines that do not incorporate a HPT containment shield installed in accordance with PW ASB No. 6053, Revision 7, dated May 24, 1993, or earlier revisions of PW ASB No. 6053, install and inspect one or two temperature indicators, P/N 810486, or a single or double set of P/N 809129 and P/N 809130 temperature indicators, on the No. 4 and 5 bearing compartment scavenge oil tube, as follows:

(1) Install temperature indicators on the No. 4 and 5 bearing compartment scavenge oil tube in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW ASB No. 5944, Revision 2, dated June 8, 1992, within 90 days after the effective date of this AD.

(2) Visually inspect temperature indicators within 65 hours TIS of installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection.

(3) If upon inspection, the color of any temperature indicator window(s) has turned completely black, perform troubleshooting and diagnostic testing and corrective action as required, in accordance with Section 2.A.(2) (c) and (d) or (f) and (g), as applicable, of the Accomplishment Instructions of PW ASB No. 5944, Revision 2, dated June 8, 1992. Prior to returning the engine to service, replace any temperature indicator that has turned black and inspect in accordance with paragraph (a)(2) of this AD.

(c) For aircraft installations utilizing one P/N 810486 indicator or one set of P/N 809129 and 809130 indicators, and inspection reveals a missing indicator, inspect the remaining temperature indicator, if applicable, to determine if the indicator window has turned completely black. If the indicator window has turned completely black, perform troubleshooting and diagnostic testing, and corrective action as required, in accordance with paragraph (b)(3) of this AD. If the indicator window has not turned completely black or if there are no additional indicators installed, then install a new indicator in accordance with Section 2.A.(1) of the Accomplishment Instruction of PW ASB No. 5944, Revision No. 2, dated June 8, 1992, prior to return to service, and visually inspect temperature indicator within 65 hours TIS since installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection.

(d) For aircraft installations utilizing two P/N 810486 indicators or two sets of P/N 809129 and 809130 indicators, and inspection reveals a missing indicator(s), inspect the remaining temperature indicator(s) to determine if the indicator window has turned completely black. If the indicator window has turned completely black, perform troubleshooting and diagnostic testing, and corrective action as required, in accordance with paragraph (b)(3) of this AD. If the indicator window has not turned completely black, install a new indicator(s) in accordance with Section 2.A.(1) of the Accomplishment Instructions of PW ASB No. 5944, Revision 2, dated June 8, 1992, prior to return to service, and visually inspect temperature indicator within 65 hours TIS since installation. Thereafter, inspect at intervals not to exceed 65 hours TIS since last inspection.

(e) Report the data elements identified in Appendix E of the Accomplishment Instructions of PW ASB No. 5944, Revision 2, dated June 8, 1992, whenever an overtemperature condition is observed on any color temperature indicator which is the result of an internal engine problem only and not resulting from an external cause corrected by the published troubleshooting procedures. Data elements should be reported within 30 days of determining that the overtemperature condition is the result of an internal engine problem, to the Manager, Engine Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, MA 01803–05299; Telex Number 949301 FAANE BURL; fax (617) 238–7199. The reporting requirements of this proposed AD terminate six months from the effective date of the AD.

(f) Information collection requirements contained in this proposed regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished. Engines that are confirmed by diagnostic testing to have an overtemperature condition cannot be operated during ferry flights.

Issued in Burlington, Massachusetts, on July 19, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17824 Filed 7–26–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 7

National Institute of Standards and Technology

15 CFR Part 285

[Docket No. 930163-3063]

RIN 0693-AB15

## National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology, United States Department of Commerce, requests comments on proposed changes to regulations pertaining to the operation of the National Voluntary Laboratory Accreditation Program (NVLAP). The NVLAP procedures will be redesignated and revised to expand the procedures to include accreditation of calibration laboratories; update the Procedures for compatibility with conformity assurance and assessment concepts; assure consistency with relevant International Organization for Standardization (ISO) documents (e.g., ISO Guides 25, 38, 43, 58, and 9000); and facilitate and promote acceptance of calibration and test results between countries to avoid barriers to trade. Provisions in this regard will facilitate cooperation between laboratories and other bodies to assist in the exchange of information and experience, harmonize standards and procedures, and establish the basis for bi-lateral and multi-lateral agreements.

DATES: Comments on the proposed revisions must be received no later than October 12, 1993.

ADDRESSES: Comments on the proposed regulation must be submitted to: Albert D. Tholen, Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899, telephone number (301) 975–4016.

FOR FURTHER INFORMATION CONTACT: Albert D. Tholen, Chief, National Voluntary Laboratory Accreditation Program, (301) 975–4016.

SUPPLEMENTARY INFORMATION:

### Background

The National Institute of Standards and Technology (NIST) administers the National Voluntary Laboratory Accreditation Program (NVLAP) under regulations presently found at part 7 of title 15 of the Code of Federal Regulations. NVLAP provides an unbiased third party evaluation and recognition of laboratory performance, as well as expert technical assistance to upgrade that performance, by accrediting calibration laboratories and testing laboratories found competent to perform specific tests or calibrations. Competence is defined as the ability of a laboratory to meet the NVLAP conditions set out in the NVLAP regulations and to conform to the criteria in NVLAP publications for particular calibration and test methods. Specifically, NVLAP accreditation indicates that a laboratory's quality system, staff, facilities and equipment, calibration protocols, methods and procedures, records and reports have been evaluated and found to meet NVLAP criteria.

Accreditation is granted following successful completion of a process which includes submission of an application and payment of fees by the laboratory, an on-site assessment, resolution of any deficiencies identified during the on-site assessment, participation in proficiency testing, technical evaluation, and administrative review. The accreditation is formalized through issuance of a Certificate of Accreditation and Scope of Accreditation and is publicized by announcement in various government and private media. NVLAP accreditation does not imply any guarantee or certification of laboratory performance or test/calibration data; it is solely a finding of laboratory competence.

NVLAP accreditation is available to commercial laboratories, manufacturers' in-house laboratories, university laboratories, and federal, state and local government laboratories. Foreign-based laboratories may also be accredited if they meet the same requirements as domestic laboratories and pay any additional fees required for travel expenses.

NVLAP is comprised of a series of laboratory accreditation programs (LAPs) which are established on the basis of requests and demonstrated need. Each LAP includes specific calibration and/or test standards and related methods and protocols assembled to satisfy the unique needs for accreditation in a field of testing, field of calibration, product or service.

### Description and Explanation of Proposed Changes

NIST proposes to redesignate the NVLAP procedures as Part 285 of title 15 of the Code of Federal Regulations; to expand the procedures to include accreditation of calibration laboratories; update the procedures for compatibility with conformity assurance and assessment concepts; assure consistency with relevant International Organization for Standardization (ISO) documents (e.g., ISO Guides 25, 38, 43, 58, and 9000); facilitate and promote acceptance of calibration and test results between countries to avoid barriers to trade; and eliminate references to the NVLAP advisory committee. Section D has been replaced with language essentially identical to ISO Guide 25. Provisions in this regard will facilitate cooperation between laboratories and other bodies to assist in the exchange of information and experience, harmonize standards and procedures, and establish the basis for bi-lateral and multi-lateral agreements.

### Request for Comments

The Director of the National Institute of Standards and Technology, United States Department of Commerce, requests comments on proposed changes to regulations found at 15 CFR Part 7 pertaining to the National Voluntary Laboratory Accreditation Program.

Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection Facility, room 6228, Hoover Building, Washington, DC 20230.

### Additional Information

*Executive Order 12291*

The Director of the National Institute of Standards and Technology has determined that this rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required under Executive Order 12291.

**Executive Order 12612**

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

**Regulatory Flexibility Act**

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that if this proposed rule is adopted, it would not have a significant economic impact on a substantial number of small entities because (1) participation in NVLAP is entirely voluntary, and (2) the changes are primarily administrative, affecting the management of the program rather than laboratories seeking or holding accreditation. Further, the technical components of NVLAP, that is, the specific technical criteria that individual laboratories are accredited against, are not changed in any significant way by this proposal.

**Paperwork Reduction Act**

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act and have been assigned OMB control number 0693–0003.

**National Environmental Policy Act**

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environment Policy Act of 1969.

**List of Subjects in 15 CFR Part 285**

Commerce, business and industry, laboratories, measurement standards.

Dated: July 19, 1993.

**Arati Prabhakar,**

*Director, National Institute of Standards and Technology.*

Dated: July 19, 1993.

**Mark Bohannon,**

*Acting Deputy Under Secretary for Technology.*

For reasons set forth in the preamble, it is proposed that Title 15 of the Code of Federal Regulations be amended as follows:

**PART 7—[REDESIGNATED AS PART 285]**

1. Part 7 is redesignated as part 285.

1a. The authority citation for part 285 is revised to read as follows:

**Authority:** 15 U.S.C. 272 *et seq.*

**PART 285—[AMENDED]**

2. The Table of Contents for part 285 is revised to read as follows:

**Subpart A—General Information**


Sec.
285.1 Purpose.
285.2 Organization of procedures.
285.3 Description and goal of NVLAP.
285.4 References.
285.5 Definitions.
285.6 NVLAP Documentation.
285.7 Confidentiality.
285.8 Referencing NVLAP Accreditation.


**Subpart B—Establishing a LAP**


Sec.
285.11 Requesting a LAP.
285.12 LAP development decision.
285.13 Request from a government agency.
285.14 Request from a private sector organization.
285.15 Development of technical requirements.
285.16 Coordination with federal agencies.
285.17 Announcing the establishment of a LAP.
285.18 Adding to or modifying an established LAP.
285.19 Termination of a LAP.


**Subpart C—Accrediting a Laboratory**


285.21 Applying for accreditation.
285.22 Assessing and evaluating a laboratory.
285.23 Granting and renewing accreditation.
285.24 Denying, suspending, and revoking accreditation.
285.25 Voluntary termination of accreditation.
285.26 Change in Status of Laboratory.


**Subpart D—Conditions and Criteria for Accreditation**


285.31 Application of accreditation conditions and criteria.
285.32 Conditions for accreditation.
285.33 Criteria for accreditation.


3. Section 285.1 is revised to read as follows:

**§ 285.1 Purpose.**

The purpose of part 285 is to set out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates to accredit both calibration laboratories and testing laboratories.

Supplementary technical and administrative requirements are provided in supporting handbooks and documents as needed depending on the criteria established for specific Laboratory Accreditation Programs (LAPs).

4. Section 285.2 is revised to read as follows:

**§ 285.2 Organization of procedures.**

Subpart A describes considerations which relate in general to all aspects of NVLAP. Subpart B describes how new LAPs are requested, developed, and announced, and how LAPs are terminated. Subpart C describes procedures for accrediting laboratories. Subpart D sets out the conditions and criteria for NVLAP accreditation.

5. Section 285.3 is revised to read as follows:

**§ 285.3 Description and goal of NVLAP.**

(a) NVLAP is a system for accrediting calibration laboratories and testing laboratories found competent to perform specific tests or calibrations. Competence is defined as the ability of a laboratory to meet the NVLAP conditions (§ 285.32) and to conform to the criteria (§ 285.33) in NVLAP publications for specific calibration and test methods.

(b) NVLAP is a process which:

(1) Provides the technical and administrative mechanisms for national and international recognition for competent laboratories based on a comprehensive procedure for promoting confidence in calibration and testing laboratories that show that they operate in accordance with NVLAPs requirements;

(2) Provides laboratory management with documentation for use in the development and implementation of their quality systems;

(3) Identifies competent laboratories for use by regulatory agencies, purchasing authorities, and product certification systems;

(4) Provides laboratories with guidance from technical experts to aid them in reaching a higher level of performance resulting in the generation of improved engineering and product information; and

(5) Promotes the acceptance of calibration and test results between countries, and facilitates cooperation between laboratories and other bodies to assist in the exchange of information and experience, facilitating removal of non-tariff barriers to trade and promoting the harmonization of standards and procedures.

(c) NVLAP is comprised of a series of laboratory accreditation programs (LAPs) which are established on the basis of requests and demonstrated need. The specific calibration and test methods, types of calibration and test methods, products, services, or standards to be included in a LAP are determined by an open process during the establishment of the LAP (see § 285.11).

The Director of the National Institute of Standards and Technology (NIST) does not unilaterally propose or decide the scope of a LAP. Communication

with other laboratory accreditation systems is fostered to encourage development of common criteria and approaches to accreditation and to promote the domestic, foreign, and international acceptance of test data produced by the accredited laboratories.

6. Section 285.4 is revised to read as follows:

**§ 285.4 References.**

NVLAP is designed to be compatible with domestic and foreign laboratory accreditation programs to ensure the universal acceptance of test data produced by NVLAP-accredited laboratories. In this regard, these procedures are compatible with:

(a) The most recent official publications of ISO Guides 2, 25, 38, 43, 45, 49, 58, and Standards 8402, 9001, 9002, 9003, and 9004.

(b) International vocabulary of basic and general terms in metrology (VIM): 1984, issued by International Bureau of Weights and Measures (BIPM), International Electrotechnical Commission (IEC), International Standards Organization (IOS), and the International Organization of Legal Metrology (OIML).

7. Section 285.5 is revised to read as follows:

**§ 285.5 Definitions.**

*Accreditation (of a laboratory):* A formal recognition that a laboratory is competent to carry out specific tests or calibrations or types of tests or calibrations.

*Accreditation criteria:* A set of requirements used by an accrediting body which a laboratory must meet in order to be accredited.

*Approved Signatory (of an accredited laboratory):* An individual who is recognized by NVLAP as competent to sign accredited laboratory test reports.

*Assessment (of a laboratory):* The on-site examination of a testing or calibration laboratory to evaluate its compliance with the conditions and criteria for accreditation.

*Authorized Representative (of an accredited laboratory):* An individual who is authorized by the laboratory to sign the NVLAP application form and commit the laboratory to fulfill the NVLAP requirements (The Authorized Representative may also be recommended by the laboratory as an Approved Signatory).

*Calibration:* A set of operations which establish, under specified conditions, the relationship between values indicated by a measuring instrument or system, or values represented by a material measure, and the corresponding known values of a measurand.

*Calibration method:* A technical procedure for performing a calibration.

*Certificate of Accreditation:* A document issued by NVLAP to a laboratory that has met the criteria and conditions for accreditation. The Certificate of Accreditation may be used as proof of accredited status. A Certificate of Accreditation is always accompanied with a Scope of Accreditation.

*Deficiency:* The non-fulfillment of NVLAP conditions and/or criteria for accreditation.

*Director of NIST:* The Director of the National Institute of Standards and Technology or designate.

*Laboratory:* An organization that performs calibrations and/or tests. When a laboratory is part of an organization that carries out activities additional to calibration and testing, the term "laboratory" refers only to those parts of that organization that are involved in the calibration and testing process. The laboratory activities may be carried out at or from a permanent location, at or from a temporary facility, or in or from a mobile facility.

*LAP:* A laboratory accreditation program established and administered under NVLAP, consisting of test methods or calibrations relating to specific products or fields of testing or calibration.

*NIST:* The National Institute of Standards and Technology.

*NVLAP:* The National Voluntary Laboratory Accreditation Program.

*Person:* Associations, companies, corporations, educational institutions, firms, government agencies at the federal, state and local level, partnerships, and societies—as well as divisions thereof—and individuals.

*Product:* A type or a category of manufactured goods, constructions, installations, and natural and processed materials, or those associated services whose characterization, classification, or functional performance is specified by standards or test methods.

*Proficiency testing:* The determination of laboratory performance by means of comparing and evaluating tests on the same or similar items or materials by two or more laboratories in accordance with predetermined conditions.

*Quality system:* The organizational structure, responsibilities, procedures, processes, and resources for implementing quality management.

*Quality manual:* A document stating the quality policy, quality system, and quality practices of an organization. The quality manual may reference other laboratory documentation.

*Reference material:* A material or substance one or more properties of which are sufficiently well established to be used for the calibration of an apparatus, the assessment of a measurement method, or for assigning values to materials. A "certified reference material" means that one or more of the property values of the reference material are certified by a technically valid procedure, accompanied by or traceable to a certificate or other documentation which is issued by a certifying body.

*Reference standard:* A standard, generally of the highest metrological quality available at a given location, from which measurements made at that location are derived.

*Scope of accreditation:* A document issued by NVLAP which lists the test methods or services, or calibration services for which the laboratory is accredited.

*Sub-facility:* A laboratory operating under the technical direction and quality system of a main facility that is accredited.

*Test:* A technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

*Test method:* A technical procedure for performing a test.

*Testing laboratory:* A laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of products.

*Traceability of the accuracy of measuring instruments:* A documented chain of comparison connecting the accuracy of a measuring instrument to other measuring instruments of higher accuracy and ultimately to a primary standard.

8. Section 285.6 is revised to read as follows:

**§ 285.6 NVLAP documentation.**

NVLAP publications are available for information and use by staff of accredited laboratories, those seeking accreditation, other laboratory accreditation systems, and others needing information on the requirements for accreditation under the NVLAP program. Accredited laboratories will be sent revised publications routinely. Publications include:

(a) The Procedures and General Requirements;

(b) Handbooks containing the administrative and operational procedures and technical requirements of specific LAPs;

(c) A directory of accredited laboratories published annually and updated periodically; and

(d) Policy Guides that provide changes to the Procedures and General Requirements and Handbooks between formal revisions of those publications.

9. Section 285.7 is revised to read as follows:

**§ 285.7 Confidentiality.**

To the extent permitted by applicable laws, NVLAP will seek to ensure confidentiality of all information obtained relating to the application, on-site assessment, proficiency testing, evaluation, and accreditation of laboratories.

10. Section 285.8 is added to read as follows:

**§ 285.8 Referencing NVLAP accreditation.**

To become accredited and maintain accreditation, a laboratory shall agree in writing to:

(a) Advertise its accredited status on letterheads, brochures, test reports, and professional, technical, trade, or other laboratory services publications, and use the NVLAP logo under guidance provided by NVLAP.

(b) Inform its clients that the laboratory's accreditation or any of its calibration or test reports in no way constitutes or implies product certification, approval, or endorsement by NIST.

11. Section 285.11 is amended by revising paragraphs (a), (b)(1), (b)(3)(ii) and (c) to read as follows:

**§ 285.11 Requesting a LAP.**

(a) A request to establish a LAP must be made to the Director of NIST.

* * * * *

(b) * * *

(1) The scope of the LAP in terms of products, calibration services, or testing services proposed for inclusion;

* * * * *

(3) * * *

(ii) Evidence of a national need to accredit calibration or testing laboratories for the specific scope beyond that served by an existing laboratory accreditation program in the public or private sector;

* * * * *

(c) NVLAP may request clarification of the information submitted according to paragraph (b) of this section.

* * * * *

12. Section 285.12 is amended by revising paragraphs (a) and (b)(6) to read as follows:

**§ 285.12 LAP Development Decision.**

(a) The Director of NIST shall establish all LAPs on the basis of need. Government agencies may document the need by using § 285.13 and private sector organizations by using § 285.14.

* * * * *

(b) * * *

(6) The economic and technical feasibility of accrediting laboratories for the calibration or test methods, types of calibration or test methods, products, services, or standards requested; and

* * * * *

13. Section 285.13(a) is revised to read as follows:

**§ 285.13 Request from a government agency.**

(a) Any Federal, state or local agency responsible for regulatory or public service programs established under statute or code, which has determined a need to accredit laboratories within the context of its programs, may request the Director of NIST to establish a LAP.'

* * * * *

14. Section 285.14(a) introductory text is revised to read as follows:

**§ 285.14 Request from a private sector organization.**

(a) Any private sector organization which has determined a need to accredit laboratories for specific products, calibrations, or testing services, may request the Director of NIST to establish a LAP if it uses procedures meeting the following conditions:

* * * * *

15. Section 285.15 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 285.15 Development of technical requirements.**

(a) Technical requirements for accreditation are specific for each LAP. The requirements tailor the criteria referenced in § 285.33 to the calibration or test methods, types of calibration or test methods, products, services, or standards covered by the LAP.

* * * * *

(c) NVLAP shall make every reasonable effort to ensure that the affected calibration or testing community within the scope of the LAP is informed of any planned workshop. Summary minutes of each workshop will be prepared. A copy of the minutes will be made available for inspection and copying at the NIST Records Inspection Facility.

16. Section 285.17(c) is revised to read as follows:

**§ 285.17 Announcing the establishment of a LAP.**

* * * * *

(c) NVLAP shall establish fees in amounts that will enable it to recover its full costs, and shall, from time to time as necessary, revise the fees for this purpose.

17. Section 285.18 is revised to read as follows:

**§ 285.18 Adding to or modifying an established LAP.**

(a) Established or developing LAPs may be added to, modified, or realigned based on either a written request from any person wishing to add or delete specific standards, calibration or test methods, or types of calibration or test methods or a need identified by NIST.

(b) NVLAP may choose to make the additions or modifications available for accreditation under a LAP when:

(1) The additional standards, calibration or test methods, or types of calibration or test methods requested are directly relevant to the LAP;

(2) It is feasible and practical to accredit calibration or testing laboratories for the additional standards, calibration or test methods, or types of calibration or test methods; and

(3) It is likely that laboratories will seek accreditation for the additional standards, calibration or test methods, or types of calibration or test methods.

18. Section 285.19(a) is revised to read as follows:

**§ 285.19 Termination of a LAP.**

(a) The Director of NIST may terminate a LAP when the Director of NIST determines that a need no longer exists to accredit laboratories for the services covered under the scope of the LAP. In the event that the Director of NIST proposes to terminate a LAP, a notice will be published in the **Federal Register** setting forth the basis for that determination.

* * * * *

19. Section 185.21 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 285.21 Applying for accreditation.**

(a) A laboratory may complete and remit an application for accreditation in any of the established LAPs.

* * * * *

(c) Accreditation of laboratories outside of the United States may require:

(1) Translation of laboratory documentation into English; and

(2) Payment of additional traveling expenses for on-site assessments and proficiency testing.

20. Section 285.22 is revised to read as follows:

**§ 285.22 Assessing and evaluating a laboratory.**

(a) Information used to evaluate a laboratory's compliance with the

conditions for accreditation set out in § 285.32, the criteria for accreditation set out in § 285.33, and the technical requirements established for each LAP will include (not necessarily in this order):

(1) On-site assessment reports;

(2) Laboratory responses to identified deficiencies;

(3) Laboratory performance on proficiency tests; and,

(4) Application and other material submitted by the laboratory (§ 285.32(b)).

(b) NVLAP shall arrange the assessment and evaluation of applicant laboratories in such a way as to minimize potential conflicts of interest.

(c) NVLAP shall inform each applicant laboratory of any additional action(s) that the laboratory must take to qualify for accreditation.

21. Section 285.23 is amended by removing paragraph (d), and by revising paragraphs (a) and (b) to read as follows:

**§ 285.23 Granting and renewing accreditation.**

(a) NVLAP will take action to grant (1) initial accreditation, or (2) renew, suspend, or propose to deny or revoke accreditation of an applicant laboratory, based on the degree to which the laboratory complies with the specific NVLAP requirements.

(b) If accreditation is granted or renewed, NVLAP shall:

(1) Provide a Certificate of Accreditation and a Scope of Accreditation to the laboratory;

(2) Provide guidance on referencing the laboratory's accredited status, and the use of the NVLAP logo by the laboratory and its clients, as needed; and

(3) Remind the laboratory that accreditation does not relieve it from complying with applicable federal, state, and local laws and regulations.

* * * * *

22. Section 285.24 is revised to read as follows:

**§ 285.24 Denying, suspending, and revoking accreditation.**

(a) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(b) The laboratory will have 30 days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within the 30-day period.

(c) If NVLAP finds that an accredited laboratory has violated the terms of its accreditation or the provisions of these procedures, NVLAP may, after consultation with the laboratory, suspend the laboratory's accreditation, or advise of NVLAP's intent to revoke accreditation. If accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated.

(d) A laboratory whose accreditation has been denied, revoked, terminated, or expired, or which has withdrawn its application before being accredited, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the conditions and criteria for accreditation that are set out in §§ 285.32 and 285.33.

(e) Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test reports during the suspension period. The determination of NVLAP whether to suspend or to propose revocation of a laboratory's accreditation will depend on the nature of the violation(s) of the terms of its accreditation.

23. Section 285.26 is added to read as follows:

**§ 285.26 Change in status of laboratory.**

Accreditation of a laboratory is based on specific conditions and criteria including the laboratory ownership, location, staffing, facilities, and configuration. Changes in any of these conditions or criteria could result in loss of accreditation. NVLAP must be informed if any of the conditions or criteria for accreditation are changed so that a determination can be made concerning the status of the accreditation.

24. Section 285.31 is revised to read as follows:

**§ 285.31 Application of accreditation conditions and criteria.**

To become accredited and maintain accreditation, a laboratory must meet the conditions for accreditation set out in § 285.32, the criteria set out in § 285.33, and the guidance provided in the Handbooks for specific LAPs.

25. Section 285.32 is revised to read as follows:

**§ 285.32 Conditions for accreditation.**

(a) To become accredited and maintain accreditation, a laboratory shall agree in writing to:

(1) Be assessed and evaluated initially and on a periodic basis;

(2) Demonstrate, on request, that it is able to perform the calibrations or tests representative of those for which it is seeking accreditation;

(3) Pay all fees;

(4) Participate in proficiency testing as required;

(5) Be capable of performing the calibrations or tests for which it is accredited according to the latest version of the calibration or test method within one year after its publication or within another time limit specified by NVLAP;

(6) Limit the representation of the scope of its accreditation to only those calibrations, tests or services for which accreditation is granted;

(7) Resolved all deficiency;

(8) Limit all its work or services for clients to those areas where competence and capacity are available;

(9) Maintain records of all actions taken in response to complaints for a minimum of one year;

(10) Maintain an independent decisional relationship between itself and its clients, affiliates, or other organizations so that the laboratory's capacity to render calibration or test reports objectively and without bias is not adversely affected;

(11) Report to NVLAP within 30 days any major changes involving the location, ownership, management structure, authorized representative, approved signatories, or facilities of the laboratory; and

(12) Return to NVLAP the Certificate of Accreditation and the Scope of Accreditation for revision or other action should it:

(i) Be requested to do so by NVLAP;

(ii) Voluntarily terminate its accredited status; or

(iii) Become unable to conform to any of these conditions, the applicable criteria of § 285.33, and related technical requirements.

(b) To become accredited and maintain accreditation, a laboratory shall supply, upon request, the following information:

(1) Legal name and full address;

(2) Ownership of the laboratory;

(3) Organization chart defining relationships that are relevant to performing testing covered in the accreditation request;

(4) General description of the laboratory, including its facilities and scope of operation;

(5) Name, address, and telephone and FAX number of the authorized representative of the laboratory;

(6) Names or titles and qualifications of laboratory staff nominated to serve as approved signatories of calibration or test reports that reference NVLAP accreditation;

(7) The laboratory Quality Manual; and

(8) Other information as may be needed for the specific LAP(s) in which accreditation is sought.

26. Section 285.33 is revised to read as follows:

**§ 285.33 Criteria for accreditation.**

(a) *Scope.*

(1) This section sets out the general requirements in accordance with which a laboratory has to demonstrate that it operates, if it is to be recognized as competent to carry out specific calibrations or tests.

(2) Additional requirements and information which have to be disclosed for assessing competence or for determining compliance with other criteria may be specified by NVLAP, depending upon the specific character of the task of the laboratory.

(3) This section is for use by calibration and testing laboratories in the development and implementation of their quality systems. It may also be used by accreditation bodies, certification bodies and other concerned with the competence of laboratories.

(b) *Organization and management.*

(1) The laboratory shall be legally identifiable. It shall be organized and shall operate in such a way that its permanent, temporary and mobile facilities meet the requirements of this Guide.

(2) The laboratory shall:

(i) Have managerial staff with the authority and resources needed to discharge their duties;

(ii) Have policies to ensure that its personnel are free from any commercial, financial and other pressures which might adversely affect the quality of their work;

(iii) Be organized in such a way that confidence in its independence of judgement and integrity is maintained at all times;

(iv) Specify and document the responsibility, authority and interrelation of all personnel who manage, perform or verify work affecting the quality of calibrations and tests;

(v) Provide supervision by persons familiar with the calibration or test methods and procedures, the objective of the calibration or test and the assessment of the results. The ratio of supervisory to non-supervisory personnel shall be such as to ensure adequate supervision;

(vi) Have a technical manager (however named) who has overall responsibility for the technical operations;

(vii) Have a quality manager (however named) who has responsibility for the quality system and its implementation. The quality manager shall have direct access to the highest level of management at which decisions are taken on laboratory policy or resources, and to the technical manager. In some laboratories, the quality manager may also be the technical manager or deputy technical manager;

(viii) Nominate deputies in case of absence of the technical or quality manager;

(ix) Have documented policy and procedures to ensure the protection of clients' confidential information and proprietary rights;

(x) Where appropriate, participate in interlaboratory comparisons and proficiency testing programs.

(c) *Quality system, audit and review.*

(1) The laboratory shall establish and maintain a quality system appropriate to the type, range and volume of calibration and testing activities it undertakes. The elements of this system shall be documented. The quality documentation shall be available for use by the laboratory personnel. The laboratory shall define and document its policies and objectives for, and its commitment to, good laboratory practice and quality of calibration or testing services. The laboratory management shall ensure that these policies and objectives are documented in a quality manual and communicated to, understood, and implemented by all laboratory personnel concerned. The quality manual shall be maintained current under the responsibility of the quality manager.

(2) The quality manual, and related quality documentation, shall state the laboratory's policies and operational procedures established in order to meet the requirements of this Guide. The quality manual and related quality documentation shall also contain:

(i) A quality policy statement, including objectives and commitments, by top management;

(ii) The organization and management structure of the laboratory, its place in any parent organization and relevant organizational charts;

(iii) The relations between management, technical operations, support services and the quality system;

(iv) Procedures for control and maintenance of documentation;

(v) Job descriptions of key staff and reference to the job descriptions of other staff;

(vi) Identification of the laboratory's approved signatories;

(vii) The laboratory's procedures for achieving traceability of measurements;

(viii) The laboratory's scope of calibrations and/or tests;

(ix) Arrangements for ensuring that the laboratory reviews all new work to ensure that it has the appropriate facilities and resources before commencing such work;

(x) Reference to the calibration, verification and/or test procedures used;

(xi) Procedures for handling calibration and test items;

(xii) Reference to the major equipment and reference measurement standards used;

(xiii) Reference to procedures for calibration, verification and maintenance of equipment;

(xiv) Reference to verification practices including inter-laboratory comparisons, proficiency testing programs, use of reference materials and internal quality control schemes;

(xv) Procedures to be followed for feedback and corrective action whenever testing discrepancies are detected, or departures from documented policies and procedures occur;

(xvi) The laboratory management policies for departures from documented policies and procedures or from standard specifications;

(xvii) Procedures for dealing with complaints;

(xviii) Procedures for protecting confidentiality and proprietary rights;

(xix) Procedures for audit and review.

(3) The laboratory shall arrange for audits of its activities at appropriate intervals to verify that its operations continue to comply with the requirements of the quality system. Such audits shall be carried out by trained and qualified staff who are, wherever possible, independent of the activity to be audited. Where the audit findings cast doubt on the correctness or validity of the laboratory's calibration or test results, the laboratory shall take immediate corrective action and shall immediately notify, in writing, any client whose work may have been affected.

(4) The quality system adopted to satisfy the requirements of this section shall be reviewed at least once each year by the management to ensure its continuing suitability and effectiveness and to introduce any necessary changes or improvements.

(5) All audit and review findings and any corrective actions that arise from

them shall be documented. The person responsible for quality shall ensure that these actions are discharged within the agreed timescale.

(6) In addition to periodic audits the laboratory shall ensure the quality of results provided to clients by implementing checks. These checks shall be reviewed and shall include, as appropriate, but not be limited to:

(i) Internal quality control schemes using whenever possible statistical techniques;

(ii) Participation in proficiency testing or other inter-laboratory comparisons;

(iii) Regular use of certified reference materials and/or in-house quality control using secondary reference materials;

(iv) Replicate testings using the same or different methods;

(v) Re-testing of retained items;

(vi) Correlation of results for different characteristics of an item.

(d) *Personnel.*

(1) The testing laboratory shall have sufficient personnel, having the necessary education, training, technical knowledge and experience for their assigned functions.

(2) The testing laboratory shall ensure that the training of its personnel is kept up-to-date.

(3) Records on the relevant qualifications, training, skills and experience of the technical personnel shall be maintained by the laboratory.

(e) *Accommodation and environment.*

(1) Laboratory accommodation, calibration and test areas, energy sources, lighting, heating and ventilation shall be such as to facilitate proper performance of calibrations or tests.

(2) The environment in which these activities are undertaken shall not invalidate the results or adversely affect the required accuracy of measurement. Particular care shall be taken when such activities are undertaken at sites other than the permanent laboratory premises.

(3) The laboratory shall provide facilities for the effective monitoring, control and recording of environmental conditions as appropriate. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic interference, humidity, voltage, temperature, and sound and vibration levels, as appropriate to the calibrations or tests concerned.

(4) There shall be effective separation between neighboring areas when the activities therein are incompatible.

(5) Access to and use of all areas affecting the quality of these activities shall be defined and controlled.

(6) Adequate measures shall be taken to ensure good housekeeping in the laboratory.

(f) *Equipment and reference materials.*

(1) The laboratory shall be furnished with all items of equipment (including reference materials) required for the correct performance of calibrations and tests. In those cases where the laboratory needs to use equipment outside its permanent control it shall ensure that the relevant requirements of this section are met.

(2) All equipment shall be properly maintained. Maintenance procedures shall be documented. Any item of equipment which has been subjected to overloading or mishandling, or which gives suspect results, or has been shown by verification or otherwise to be defective, shall be taken out of service, clearly identified and wherever possible stored at a specified place until it has been repaired and shown by calibration, verification or test to perform satisfactorily. The laboratory shall examine the effect of this defect on previous calibrations or tests.

(3) Each item of equipment including reference materials shall, when appropriate, to be labelled, marked or otherwise identified to indicate its calibration status.

(4) Records shall be maintained of each item of equipment and all reference materials significant to the calibrations or tests performed. The records shall include:

(i) The name of the item of equipment;

(ii) The manufacturer's name, type identification, and serial number or other unique identification;

(iii) Date received and date placed in service;

(iv) Current location, where appropriate;

(v) Condition when received (e.g. new, used, reconditioned);

(vi) Copy of the manufacturer's instructions, where available;

(vii) Dates and results of calibrations and/or verifications and date of next calibration and/or verification;

(viii) Details of maintenance carried out to date and planned for the future;

(ix) History of any damage, malfunction, modification or repair.

(g) *Measurement traceability and calibration.*

(1) All measuring and testing equipment having an effect on the accuracy or validity of calibrations or tests shall be calibrated and/or verified before being put into service. The laboratory shall have an established program for the calibration and verification of its measuring and test equipment.

(2) The overall program of calibration and/or verification and validation of equipment shall be designed and operated so as to ensure that, wherever applicable, measurements made by the laboratory are traceable to national standards or measurement where available. Calibration certificates shall wherever applicable indicate the traceability to national standards of measurement and shall provide the measurement results and associated uncertainty of measurement and/or a statement of compliance with an identified metrological specification.

(3) Where traceability to national standards of measurement is not applicable, the laboratory shall provide satisfactory evidence of correlation of results, for example by participation in a suitable program of interlaboratory comparisons or proficiency testing.

(4) Reference standards of measurement held by the laboratory shall be used for calibration only and for no other purpose, unless it can be demonstrated that their performance as reference standards has not been invalidated.

(5) Reference standards of measurement shall be calibrated by a body that can provide traceability to a national standard of measurement. There shall be a program of calibration and verification for reference standards.

(6) Where relevant, reference standards and measuring and testing equipment shall be subjected to in-service checks between calibrations and verifications.

(7) Reference materials shall, where possible, be traceable to national or international standards of measurement, or to national or international standard reference materials.

(h) *Calibration and test methods.*

(1) The laboratory shall have documented instructions on the use and operation of all relevant equipment, on the handling and preparation of items and for calibration and/or testing, where the absence of such instructions could jeopardize the calibrations or tests. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be maintained up-to-date and be readily available to the staff.

(2) The laboratory shall use appropriate methods and procedures for all calibrations and tests and related activities within its responsibility (including sampling, handling, transport and storage, preparation of items, estimation of uncertainty of measurement and analysis of calibration and/or test data). They shall be consistent with the accuracy required, and with any standard specifications relevant to the calibrations or tests concerned.

(3) Where methods are not specified, the laboratory shall, wherever possible, select methods that have been published in international or national standards, those published by reputable technical organizations or in relevant scientific texts or journals.

(4) Where it is necessary to employ methods that have not been established as standard, these shall be subject to agreement with the client, be fully documented and validated, and be available to the client and other recipients of the relevant reports.

(5) Where sampling is carried out as part of the test method, the laboratory shall use documented procedures and appropriate statistical techniques to select samples.

(6) Calculations and data transfers shall be subject to appropriate checks.

(7) Where computers or automated equipment are used for the capture, processing, manipulation, recording, reporting, storage or retrieval of calibration or test data, the laboratory shall ensure that:

(i) The requirements of this Guide are complied with;

(ii) Computer software is documented and adequate for use;

(iii) Procedures are established and implemented for protecting the integrity of data; such procedures shall include, but not be limited to, integrity of data entry or capture, data storage, data transmission and data processing;

(iv) Computer and automated equipment is maintained to ensure proper functioning and provided with the environmental and operating conditions necessary to maintain the integrity of calibration and test data;

(v) It establishes and implements appropriate procedures for the maintenance of security of data including the prevention of unauthorized access to, and the unauthorized amendment of, computer records.

(8) Documented procedures shall exist for the purchase, reception and storage of consumable materials used for the technical operations of the laboratory.

(i) *Handling of calibration and test items.*

(1) The laboratory shall have a documented system for uniquely identifying the items to be calibrated or tested, to ensure that there can be no confusion regarding the identity of such items at any time.

(2) Upon receipt, the condition of the calibration or test item, including any abnormalities or departures from standard condition as prescribed in the relevant calibration or test method, shall be recorded. Where there is any doubt as to the item's suitability for calibration or test, where the item does not conform to the description provided, or where the calibration or test required is not fully specified, the laboratory shall consult the client for further instruction before proceeding. The laboratory shall establish whether the item has received all necessary preparation, or whether the client requires preparation to be undertaken or arranged by the laboratory.

(3) The laboratory shall have documented procedures and appropriate facilities to avoid deterioration or damage to the calibration or test item, during storage, handling, preparation, and calibration or test; any relevant instructions provided with the item shall be followed. Where items have to be stored or conditioned under specific environmental conditions, these conditions shall be maintained, monitored and recorded where necessary. Where a calibration or test item or portion of an item is to be held secure (for example, for reasons of record, safety or value, or to enable check calibrations or tests to be performed later), the laboratory shall have storage and security arrangements that protect the condition and integrity of the secured items or portions concerned.

(4) The laboratory shall have documented procedures for the receipt, retention or safe disposal of calibration or test items, including all provisions necessary to protect the integrity of the laboratory.

(j) *Records.*

(1) The laboratory shall maintain a record system to suit its particular circumstances and comply with any applicable regulations. It shall retain on record all original observations, calculations and derived data, calibration records and a copy of the calibration certificate, test certificate or test report for an appropriate period. The records for each calibration and test shall contain sufficient information to permit their repetition. The records shall include the identify of personnel involved in sampling, preparation, calibration or testing.

(2) All records (including those listed in § 285.33(f)(4) pertaining to calibration and test equipment), certificates and reports shall be safely stored, held secure and in confidence to the client.

(k) *Certificates and reports.*

(1) The results of each calibration, test, or series of calibrations or tests carried out by the laboratory shall be reported accurately, clearly, unambiguously and objectively, in accordance with any instructions in the calibration or test methods. The results should normally be reported in a calibration certificate, test report or test certificate and should include all the information necessary for the interpretation of the calibration or test results and all information required by the method used.

(2) Each certificate or report shall include at least the following information:

(i) A title, e.g., "Calibration Certificate", "Test Report" or "Test Certificate";

(ii) Name and address of laboratory, and location where the calibration or test was carried out if different from the address of the laboratory;

(iii) Unique identification of the certificate or report (such as serial number) and of each page, and the total number of pages;

(iv) Name and address of client, where appropriate;

(v) Description and unambiguous identification of the item calibrated or tested;

(vi) Characterization and condition of the calibration or test item;

(vii) Date of receipt of calibration or test item and date(s) of performance of calibration or test, where appropriate;

(viii) Identification of the calibration or test method used, or unambiguous description of any non-standard method used;

(ix) Reference to sampling procedure, where relevant;

(x) Any deviations from, additions to or exclusions from the calibration or test method, and any other information relevant to a specific calibration or test, such as environmental conditions;

(xi) Measurements, examinations and derived results, supported by tables, graphs, sketches and photographs as appropriate, and any failures identified;

(xii) A statement of the estimated uncertainty of the calibration or test result (where relevant);

(xiii) A signature and title, or an equivalent identification of the person(s) accepting responsibility for the content of the certificate or report (however produced), and date of issue;

(xiv) Where relevant, a statement to the effect that the results relate only to the items calibrated or tested;

(xv) A statement that the certificate or report shall not be reproduced except in full, without the written approval of the laboratory.

(3) Where the certificate or report contains results of calibrations or tests performed by sub-contractors, these results shall be clearly identified.

(4) Particular care and attention shall be paid to the arrangement of the certificate or report, especially with regard to presentation of the calibration

or test data and ease of assimilation by the reader. The format shall be carefully and specifically designed for each type of calibration or test carried out, but the headings shall be standardized as far as possible.

(5) Material amendments to a calibration certificate, test report or test certificate after issue shall be made only in the form of a further document, or data transfer including the statement "Supplement to Calibration Certificate for Test Report or Test Certificate), serial number . . . for as otherwise identified]", or equivalent form of wording. Such amendments shall meet all the relevant requirements of § 285.33(j).

(6) The laboratory shall notify clients promptly, in writing, of any event such as the identification of defective measuring or test equipment that casts doubt on the validity of results given in any calibration certificate, test report or test certificate or amendment to a report or certificate.

(7) The laboratory shall ensure that, where clients require transmission of calibration or test results by telephone, telex, facsimile or other electronic or electromagnetic means, staff will follow documented procedures that ensure that the requirements of this Guide are met and that confidentiality is preserved.

(l) *Sub-contracting of calibration or testing.*

(1) Where a laboratory sub-contracts any part of the calibration or testing, this work shall be placed with a laboratory complying with these requirements. The laboratory shall ensure and be able to demonstrate that its sub-contractor is competent to perform the activities in question and complies with the same criteria of competence as the laboratory in respect of the work being sub-contracted. The laboratory shall advise the client in writing of its intention to sub-contract any portion of the testing to another party.

(2) The laboratory shall record and retain details of its investigation of the competence and compliance of its subcontractors and maintain a register of all sub-contracting.

(m) *Outside support services and supplies.*

(1) Where the laboratory procures outside services and supplies, other than those referred to this Guide, in support of calibrations or tests, the laboratory shall use only those outside support services and supplies that are of adequate quality to sustain confidence in the laboratory's calibrations or tests.

(2) Where no independent assurance of the quality of outside support services or supplies is available, the laboratory shall have procedures to ensure that purchased equipment, materials and services comply with specified requirements. The laboratory should, wherever possible, ensure that purchased equipment and consumable materials are not used until they have been inspected, calibrated or otherwise verified as complying with any standard specifications relevant to the calibrations or tests concerned.

(3) The laboratory shall maintain records of all suppliers from whom it obtains support services or supplies required for calibrations or tests.

(n) *Complaints.*

(1) The laboratory shall have documented policy and procedures for the resolution of complaints received from clients or other parties about the laboratory's activities. A record shall be maintained of all complaints and of the actions taken by the laboratory.

(2) Where a complaint, or any other circumstance, raises doubt concerning the laboratory's compliance with the laboratory's policies or procedures, or with the requirements of this section or otherwise concerning the quality of the laboratory's calibrations or tests, the laboratory shall ensure that those areas of activity and responsibility involved are promptly audited in accordance with this section.

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## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 7, 10 and 148

RIN 1515–AB14

### Duty-Free Treatment of Articles Imported From U.S. Insular Possessions

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs Regulations to clarify and update the legal requirements and procedures which apply for purposes of obtaining duty-free treatment on articles imported from insular possessions of the United States other than Puerto Rico. The document also proposes certain organizational changes to improve the layout of the existing regulations and proposes to clarify and update the personal exemption provisions applicable to returning residents.

**DATES:** Comments must be received on or before September 27, 1993.

**ADDRESSES:** Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW, suite 4000, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Craig Walker, Office of Regulations and Rulings (202–482–6980).

**SUPPLEMENTARY INFORMATION:**

#### Background

General Note 3(a)(iv) of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) provides for duty-free treatment of goods imported from U.S. insular possessions provided that certain requirements or conditions are met. The General Note only applies to U.S. insular possessions which are outside the Customs territory of the United States (and thus does not apply to Puerto Rico which, under General Note 2, HTSUS, is part of the Customs territory of the United States). Specifically, the principal insular possessions to which General Note 3(a)(iv) applies are the U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, and Johnston Atoll; other U.S. insular possessions outside the Customs territory, which are technically subject to the benefits accorded by General Note 3(a)(iv) but which are uninhabited and thus are not involved with transactions covered by that General Note, include Kingman Reef, Baker and Howland Islands, Jarvis Island, Navassa Island, and Palmyra Atoll. In addition, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Public Law 94–241, 90 Stat. 263 (the Covenant), provided in section 603(c) that "[i]mports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States"; in C.S.D. 83–51, dated February 22, 1983, 17 Cust. Bull. 825 (1983), Customs interpreted this provision to mean that the Commonwealth of the Northern Mariana Islands (CNMI) is also entitled to the benefits conferred by General Note 3(a)(iv).

Duty-free treatment under General Note 3(a)(iv) applies to two classes of goods imported from insular possessions, as set forth in paragraph

(A) thereunder. The first class involves goods which are either (1) "the growth or product of any such insular possession", or (2) "manufactured or produced in any such possession from materials [which are] the growth, product or manufacture of any such possession or of the customs territory of the United States, or of both". Under the terms of the General Note, duty-free treatment may be accorded to such goods only if two conditions are met: (1) The goods must come "to the customs territory of the United States directly from any such possession"; and (2) the goods must not "contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to goods described in section 213(b) of the Caribbean Basin Economic Recovery Act" (the CBERA, title II of Public Law 98–67, 97 Stat. 384, codified at 19 U.S.C. 2701–2706 and also referred to as the Caribbean Basin Initiative or CBI). The General Note further provides in paragraph (B) that, in determining whether goods produced or manufactured in an insular possession contain foreign material "to the value of more than 70 percent", a material shall not be considered foreign if the material may be imported into the Customs territory from a foreign country and entered free of duty either (1) at the time the goods produced or manufactured in the insular possession are entered, or (2) at the time the material is imported into the insular possession (as further discussed below, in this case the General Note requires that adequate documentation be provided to show that the material was incorporated into the goods during the 18-month period after the date on which the material was imported into the insular possession).

The second class of goods to which duty-free treatment applies under paragraph (A) of General Note 3(a)(iv) involves all goods imported from an insular possession which were previously imported into the Customs territory of the United States with payment of all applicable duties and taxes. The General Note provides in the case of such goods that (1) shipment of the goods from the United States must be "without remission, refund or drawback of such duties or taxes", (2) the goods must be shipped from the United States "directly to the possession", and (3) the goods must be returned to the United States from the possession "by direct shipment".

General Note 3(a)(iv) also contains three exceptions to the duty treatment provided for therein. The first exception refers to Additional U.S. Note 5 to chapter 91, HTSUS, which sets forth special rules governing the dutiable status of articles classified in that HTSUS chapter which are products of the U.S. Virgin Islands, Guam and American Samoa, including duty-free treatment for watch movements and watches without regard to the value of any non-Communist-country foreign materials but subject to annual quantitative limits. The second exception concerns Additional U.S. Note 2 to chapter 96, HTSUS, which refers to certain buttons (*i.e.*, of acrylic resin, of polyester resin or of both such resins, whether or not covered with textile material) which are the product of an insular possession of the United States outside the Customs territory of the United States and which are manufactured or produced from button blanks or unfinished buttons which were the product of any foreign country. The third exception refers to section 423 of the Tax Reform Act of 1986 (set out at 19 U.S.C. 2703 note) which includes special rules applicable to ethyl alcohol and mixtures thereof for purposes of duty-free treatment under General Note 3(a)(iv). These three exceptions have relevance only in the context of that portion of General Note 3(a)(iv) which concerns goods produced in insular possessions. Thus, they do not limit or otherwise affect duty-free eligibility under that portion of the General Note which concerns goods previously imported into the Customs territory of the United States with payment of all applicable duties and taxes.

Section 7.8, Customs Regulations (19 CFR 7.8), addresses duty-free treatment under General Note 3(a)(iv).

Paragraph (a) concerns duty-free entry of articles produced in insular possessions and, except for shipments not valued over $100, provides for the submission of a certificate of origin on Customs Form 3229, signed by the chief or assistant chief customs officer at the port of shipment and showing that the merchandise is a product of the insular possession and complies with the maximum foreign materials content limitation. This paragraph also contains a footnote reference to identify the insular possessions and the agencies or governments responsible for their Customs administration.

Paragraph (b) refers to duty-free entry of articles returned to the United States from an insular possession in a shipment valued over $100 and requires that the following evidence be filed in connection with the entry:

(1) Unless the district director is satisfied that no drawback of duties or refund or remission of taxes was allowed on the merchandise and except when the merchandise was shipped from the port at which entry is made and the fact of such shipment appears on Customs records, a certificate, on Customs Form 3311, of the district director at the port from which the merchandise was shipped from the United States, which is mailed by the issuing officer directly to the port at which it is to be used; and

(2) Except where the district director is satisfied that the merchandise was shipped directly to the insular possession and was returned by direct shipment, a declaration of the shipper in the insular possession identifying the merchandise and tracing the movement of the merchandise from the United States to the insular possession and from the insular possession back to the United States.

Paragraph (c) provides that when merchandise, other than shipments valued at $100 or less, arrives unaccompanied by a certificate of origin or a declaration of the shipper, or when any other document necessary to complete the entry is lacking, a bond for the production thereof may be taken on Customs Form 301. This paragraph also provides that a bond for production of a bill of lading shall be taken on Customs Form 301.

Paragraph (d) sets forth the manner in which compliance with the maximum foreign materials content limitation is to be determined. In this regard the paragraph states that a comparison shall be made between the actual purchase price of the foreign materials, plus the cost of transportation to the insular possession (but excluding any duties and taxes assessed by the insular possession and any charges which may accrue after landing), and the final appraised value in the United States determined in accordance with section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a), of the article brought into the United States. In connection with the reference to the actual purchase price of the foreign materials contained in an article, the paragraph excludes "any material which at the time such article is entered, or withdrawn from warehouse, for consumption in the United States, may be imported into the United States from a foreign country, other than Cuba or the Philippines, free of duty".

Paragraph (e) provides that a special Customs invoice on Customs Form 5515 shall be required in connection with shipment of dutiable merchandise valued over $500 unless the shipment would have been exempt from the requirement of a special Customs invoice under 19 CFR 141.83 if it had been imported from a foreign country, or when the shipment is covered by a

certificate of origin provided for in paragraph (a).

Paragraph (f) provides that merchandise may be withdrawn from a bonded warehouse under section 557 of the Tariff Act of 1930, as amended (19 U.S.C. 1557), for shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, without payment of duty, or with a refund of duty if the duties have been paid, in like manner as for exportation to foreign countries. This paragraph further provides (1) that no drawback may be allowed under section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), on articles manufactured or produced in the United States and shipped to any insular possession and (2) that no drawback of internal-revenue tax is allowable under 19 U.S.C. 1313 on articles manufactured or produced in the United States with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands, Kingman Reef or Johnston Island.

A number of the provisions within § 7.8 discussed above do not reflect current law or are otherwise out-of-date. In this regard the following points are noted:

1. Paragraphs (a) and (d) currently refer to foreign materials to the value of "more than 50 percent", or "more than 70 percent" in the case of watches and watch movements. Thus, these two paragraphs do not reflect the changes made to the predecessor to General Note 3(a)(iv) (*i.e.*, General Headnote 3(a), Tariff Schedules of the United States (TSUS)) by (1) section 110 of Public Law 97–446, 96 Stat. 2329, which removed the reference to watches and watch movements so that they could be treated separately under the TSUS predecessor to Additional U.S. Note 5 to chapter 91, HTSUS, discussed above, and (2) section 214(a) of the CBERA, which increased the maximum foreign materials content limitation to 70 percent except in the case of goods excluded from duty-free treatment under section 213(b) of that statute (as to which the 50 percent limit was retained). These statutory changes, which are reflected in the present wording of General Note 3(a)(iv) as discussed above, should also be reflected in these regulatory provisions.

2. The footnote which pertains to paragraph (a) fails to mention the U.S. Virgin Islands and also does not indicate that the benefits under General Note 3(a)(iv) have been extended to the CNMI. In addition, the footnote unnecessarily refers to some uninhabited insular possessions and does not in all cases reflect the correct possession name or customs administration responsibility; similar corrections in possession nomenclature should be made in paragraph (f).

3. In paragraphs (a) and (b), the "$100" figure in regard to the value of shipments has reference to an outdated line of demarcation between formal and informal entries. Under 19 U.S.C. 1498 and 19 CFR 143.21, the current line of demarcation is, with some exceptions, $1,250. 4. Paragraph (c) should be removed to reduce the paperwork burden on the public.

5. The reference in paragraph (d) to any material imported into the United States from a foreign country "other than Cuba or the Philippines" free of duty does not reflect current law. This reference reflects language that was contained in section 401 of the Customs Simplification Act of 1954, Public Law 768, 68 Stat. 1139, which amended the Tariff Act of 1930 by adding a new section 301 (codified at 19 U.S.C. 1301a) relating to rates of duty applicable to articles from U.S. insular possessions. Section 301 was repealed in connection with the adoption of the TSUS which incorporated section 301 as General Headnote 3(a). Although General Headnote 3(a), TSUS, originally included the references to Cuba and the Philippines, those references were subsequently removed from General Headnote 3(a) and thus were not carried over into General Note 3(a)(iv), HTSUS. Accordingly, the references should be removed from the regulatory text.

6. Paragraph (e) concerning the submission of a special Customs invoice (Customs Form 5515) should be removed because the special Customs invoice was eliminated by T.D. 85–39, 50 FR 9610. Although T.D. 85–39 attempted to remove all references to the special Customs invoice in the Customs Regulations, 7.8(e) was overlooked in this regard.

In addition to the above, Customs notes that, as compared to the regulations implementing the Generalized System of Preferences (GSP), set forth as sections 10.171–10.178, Customs Regulations (19 CFR 10.171–10.178), and the regulations implementing the CBI, set forth as sections 10.191–10.198, Customs Regulations (19 CFR 10.191–10.198), section 7.8 does not reflect all of the provisions of General Note 3(a)(iv) and does not provide adequate guidance concerning the legal effect of those provisions, particularly as regards the determination of the origin of goods imported from insular possessions, the meaning of direct shipment to or from an insular possession, and the application of the maximum foreign materials content limitation. Moreover, Customs believes that certain organizational improvements could be made to the existing regulatory provisions covering the insular possessions, including the transfer of present 10.181 (19 CFR 10.181) to Part 7 since that section applies only to insular possessions and thus more properly falls within the specific context of Part

7. Finally, Customs notes that a number of provisions within part 148 of the Customs Regulations (19 CFR Part 148), which concerns personal declarations and exemptions, require changes to reflect the current duty exemption provisions applicable both to residents returning from American Samoa, Guam and the U.S. Virgin Islands and to residents returning from CBI beneficiary countries either directly or through one of those insular possessions, as set forth in subchapters IV and XVI of chapter 98, HTSUS. In addition, Customs has taken the position that section 603(c) of the Covenant as discussed above also had the effect of extending those personal exemption provisions to residents returning from the CNMI, with the result that a reference to the CNMI should be added to various provisions within part 148.

Accordingly, Customs proposes to extensively revise and reorganize the regulatory provisions in part 7 dealing with U.S. insular possessions other than Puerto Rico and to update various personal exemption provisions in part 148. The specific amendments proposed in this document are discussed in detail below.

**Discussion of Proposed Amendments**

*New Section 7.2*

This section is intended to identify the U.S. insular possessions other than Puerto Rico and to describe their legal status for Customs purposes.

Paragraph (a) generally describes the tariff status of imports from insular possessions under U.S. law and identifies the insular possessions. Reference is made to duty treatment as provided in (new) § 7.3 which covers General Note 3(a)(iv), HTSUS, and as provided in part 148 (simply for cross-reference purposes as regards the personal exemptions for residents returning from American Samoa, Guam or the U.S. Virgin Islands). The references to the specific insular possessions replace the references in the footnote to present § 7.8(a) but with the following changes:

(1) Only the principal (i.e., inhabited) insular possessions as discussed above are named;

(2) Reference is made to Johnston "Atoll" rather than "Island" to reflect current usage; and

(3) A reference to the privilege accorded to the CNMI under the Covenant has been included with citation to new section 7.3 and Part 148 which both apply to the CNMI under section 603(c) of the Covenant.

Paragraph (b) corresponds to the remainder of the text of the footnote to present § 7.8(a) regarding the customs administration of the insular possessions, updated as necessary but excluding the U.S. Virgin Islands which are dealt with in paragraph (c).

Paragraph (c) concerns the Customs administration of the U.S. Virgin Islands which is different from that of the other insular possessions and the CNMI. This paragraph reflects authority conferred on the Secretary of the Treasury by 48 U.S.C. 1406i.

*New Section 7.3*

This section is intended to replace the body of present § 7.8.

Paragraph (a) sets forth the basic statutory requirements for duty-free treatment under General Note 3(a)(iv), HTSUS. Paragraph (a)(1) concerns the first class of goods covered by the General Note, *i.e.*, goods produced in an insular possession, which are referred to in present § 7.8(a); this paragraph also references the three types of products discussed above which are expressly excepted from duty-free treatment in this context under the General Note. Paragraph (a)(2) covers the second class of goods covered by the General Note (that is, goods previously imported into the United States and shipped to an insular possession and returned) which are referred to in present § 7.8(b).

Paragraph (b) sets forth the standards for determining the origin of goods imported from insular possessions for purposes of duty-free treatment under paragraph (a)(1). Paragraph (b)(1) concerns goods "wholly obtained or produced" and refers in this regard to the meaning contained in "§ 102.1(e) of this chapter" which is set forth as part of proposed regulatory amendments regarding rules of origin published in the **Federal Register** on September 25, 1991, at 56 FR 48448; final action on this aspect of the present document will of course depend in part on what final action is taken on the referenced regulatory text contained in that earlier document. Paragraph (b)(2) sets forth the basic substantial transformation ("new and different article of commerce") rule which has traditionally been used in the United States to determine the origin of products not wholly obtained or produced in one country, including for purposes of duty-free treatment of goods imported from insular possessions.

Paragraph (c) is intended to clarify the meaning of "foreign materials" for purposes of applying the foreign materials content limitation under paragraph (a)(1). To this end, the paragraph refers to all materials which are not treated as foreign under the terms of General Note 3(a)(iv).

Paragraphs (c)(1) and (2) cover materials that have their origin in an insular possession or in the Customs territory of the United States and thus reflects the longstanding position of Customs that such materials are intended to be treated as non-foreign under the wording of General Note 3(a)(iv)(A). The origin principles set forth in these paragraphs are the same as those applicable to goods under paragraph (b). This treatment of the origin standards applicable to materials, in regulatory provisions separate from the provisions applicable to the origin of goods incorporating such materials, mirrors the approach taken in the GSP and CBI regulations cited above. Paragraph (c)(2) is based on the wording of § 10.196(a)(2) of the CBI regulations and is intended to reflect the position taken by Customs in T.D. 88–17, 53 FR 12143, which approved application of the double substantial transformation test in determining the foreign material content of goods imported from insular possessions.

Paragraph (c)(3) covers materials that may be imported into the Customs territory of the United States from a foreign country and entered free of duty, as specifically provided in General Note 3(a)(iv)(B). Since the General Note in this context only refers to foreign materials to the value of more than "70 percent" as noted above, the scope of the regulatory text must be similarly limited. The proviso at the end of proposed paragraph (c)(3)(ii) is intended to reflect the substantive effect of the documentary requirement at the end of General Note 3(a)(iv)(B). Although General Note 3(a)(iv)(B) states in this regard that "no goods containing [a material described in proposed paragraph (c)(3)(ii)] shall be *exempt from duty* under subparagraph (A)" (emphasis added) unless the required documentation is supplied, given the clear "foreign materials" context of subparagraph (B) of the General Note, Customs believes that this proviso should be limited in the regulations to that foreign materials context rather than be applied in the broader context of duty-free eligibility of the imported goods.

Paragraph (d) sets forth the manner in which compliance with the General Note foreign materials content limitation is to be determined. Although based on present § 7.8(d), this provision (1) incorporates the necessary substantive changes discussed above and (2) follows the GSP and CBI regulations regarding the cost of a material provided to the manufacturer without charge or at less than fair market value.

Paragraph (e) sets forth the meaning of direct shipment for purposes of the section and does not provide for any exceptions to direct movement to or from the insular possession without passing through any foreign territory or country. Although the absence of exceptions to this strict rule is at variance with the regulatory treatment of the similar "imported directly" requirement under the GSP (see 19 CFR 10.175) and under the CBI (see 19 CFR 10.193), Customs believes that exceptions should not be provided in the present case for the following reasons:

(1) The general absence of any intervening foreign territories or countries between the insular possessions and the United States obviates the need for such transshipments;

(2) Inclusion of exceptions to the strict rule would necessitate an increase in the regulatory burden in the form of additional documentary evidence to show compliance as is the case under the GSP and CBI regulations; and

(3) Given the generally more liberal tariff treatment under General Note 3(a)(iv) as compared to the GSP and the CBI, and in view of the connection between the direct shipment requirement and the determination of the origin of the imported goods, a more strict standard is necessary in the present case in order to ensure both that the intended benefits accrue to the insular possessions and that the interests of domestic industries are adequately protected from potential abuse of the General Note provisions.

Paragraph (f) sets forth documentary requirements for purposes of duty-free treatment under the General Note. Paragraph (f)(1) concerns goods for which duty-free treatment is claimed under the provisions applicable to products of insular possessions. Although this paragraph is derived from the documentary requirements in present § 7.8(a) (involving use of Customs Form 3229, Certificate of Origin, which will be revised to reflect all current legal requirements under

General Note 3(a)(iv)), the paragraph also provides, consistent with the practice under the GSP and CBI regulations, that the certificate of origin shall not be required if the district director is otherwise satisfied that the goods qualify for duty-free treatment. In addition, the certificate of origin would not be required for informal entries, and in this regard the paragraph simply refers to § 143.21 of the regulations which sets forth the current value limits for shipments eligible for informal entry. However, in a case where the goods incorporate a nondutiable material not treated as a foreign material under General Note 3(a)(iv) and proposed paragraph (c)(3)(ii), the certificate of origin will be required because General Note 3(a)(iv)(B) mandates that documentary evidence be provided to show that the material was incorporated in the goods within the specified 18-month period.

Paragraph (f)(2) concerns documentation applicable to goods previously imported and returned to the United States and is based on present § 7.8(b). However, Customs is proposing an alternative to continued use of a certificate on Customs Form 3311, Declaration for Free Entry of Returned American Products, as provided in present § 7.8(b)(1) because this certification procedure is cumbersome and in fact rarely used. In place of the certificate on Customs Form 3311, proposed paragraph (f)(2)(ii) sets forth the text of a declaration by the U.S. importer which would refer to the declaration by the insular possession shipper required under present § 7.8(b)(2) and set forth in proposed paragraph (f)(2)(i). This new declaration of the U.S. importer (which is principally intended to establish that there was no remission, refund or drawback of duties or taxes when the goods were shipped to the insular possession, as is the main purpose of the certificate on Customs Form 3311) could be included on, or attached to, the declaration by the insular possession shipper. However, none of the documentation specified in paragraph (f)(2) would be required if the shipment is eligible for informal entry under § 143.21 of the regulations or if the district director is otherwise satisfied that the goods qualify for the claimed duty-free treatment.

Paragraph (g), which concerns warehouse withdrawals and drawback, is taken from present § 7.8(f). This proposed paragraph follows the present provision without substantive change except (1) in the first sentence, reference is made to "any insular possession of the United States other than Puerto Rico" in lieu of naming those insular possessions and (2) in the last sentence, the reference to Kingman Reef has been deleted and Johnston "Island" has been changed to "Atoll".

*New Section 7.4 (Present Section 10.181)*

In addition to the transfer of present § 10.181 to part 7 as new § 7.4, three minor editorial amendments have been made to the section.

*Removal of Present Section 7.8*

As a consequence of the proposed adoption of new §§ 7.2 and 7.3 which are intended to replace present § 7.8, Customs proposes to remove § 7.8.

*Part 148*

The proposed modifications within Part 148 involve mainly (1) adding a reference to the CNMI wherever a reference to Guam appears, (2) changing "$800" to read "$1,200" throughout to reflect the personal exemption limit applicable to residents returning from American Samoa, Guam, the CNMI and the U.S. Virgin Islands and adding, where textually appropriate, a reference to the $600 portion thereof that can be acquired in CBI beneficiary countries, as currently provided in subheading 9804.00.70, HTSUS, (3) adding references to the separate $600 exemption applicable to residents returning from CBI beneficiary countries, as currently provided in subheading 9804.00.72, HTSUS, and (4) updating the tobacco and alcoholic beverage provisions to reflect the current limits specified in those two HTSUS subheadings. In addition, one "$800" reference to the flat rate of duty allowance is being corrected to read "$1,000" to reflect the current limit applicable under subheadings 9816.00.20 and 9816.00.40, HTSUS.

**Comments**

Before adopting the proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. The amendments primarily reflect statutory requirements that have been in effect for many years and, thus, any economic impact arising out of these amendments would be negligible at best. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**Paperwork Reduction Act**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to Customs at the address set forth previously.

The collection of information in these proposed regulations is in § 7.3. This information conforms to requirements in General Note 3(a)(iv), HTSUS, and is used by Customs to determine whether goods imported from insular possessions are entitled to duty-free entry under that General Note. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated total annual reporting and/or recordkeeping burden: _____ hours.

The estimated average annual burden per respondent/recordkeeper is _____ hours.

Estimated number of respondents and/or recordkeepers: _____.

Estimated annual frequency of responses: _____.

**Drafting Information**

The principal author of this document was Francis W. Foote, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects**

*19 CFR Part 7*

Customs duties and inspection, Imports, Insular possessions.

*19 CFR Part 10*

Customs duties and inspection, Imports.

*19 CFR Part 148*

Customs duties and inspection, Imports, Personal exemptions.

**Proposed Amendments to the Regulations**

Accordingly, it is proposed to amend parts 7, 10 and 148, Customs Regulations (19 CFR parts 7, 10 and 148), as set forth below:

## PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

1. The authority citation for part 7 is revised to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3, Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

2. Sections 7.2 and 7.3 are added to read as follows:

### §7.2 Insular possessions of the United States other than Puerto Rico.

(a) Insular possessions of the United States other than Puerto Rico are also American territory but, because those insular possessions are outside the customs territory of the United States, goods imported therefrom are subject to the rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States (HTSUS) except as otherwise provided in § 7.3 or in part 148 of this chapter. The principal such insular possessions are the U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, and Johnston Atoll. Pursuant to section 603(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Public Law 94–241 (90 Stat. 263, 270), goods imported from the Commonwealth of the Northern Mariana Islands are entitled to the same tariff treatment as imports from Guam and thus are also subject to the provisions of § 7.3 and of part 148 of this chapter.

(b) Importations into Guam, American Samoa, Wake Island, Midway Islands, Johnston Atoll, and the Commonwealth of the Northern Mariana Islands are not governed by the Tariff Act of 1930, as amended, or the regulations contained in this chapter. The customs administration of Guam is under the Government of Guam. The customs administration of American Samoa is under the Government of American Samoa. The customs administration of Wake Island is under the jurisdiction of the Department of the Air Force (General Counsel). The customs administration of Midway Islands is under the jurisdiction of the Department of the Navy. There is no customs authority on Johnston Atoll, which is under the operational control of the Defense Nuclear Agency. The customs administration of the Commonwealth of the Northern Mariana Islands is under the Government of the Commonwealth.

(c) The Secretary of the Treasury administers the customs laws of the U.S. Virgin Islands through the United States Customs Service. The importation of goods into the U.S. Virgin Islands is governed by Virgin Islands law; however, in situations where there is no applicable Virgin Islands law or no U.S. law specifically made applicable to the Virgin Islands, U.S. laws and regulations shall be used as a guide and be complied with as nearly as possible. Tariff classification of, and rates of duty applicable to, goods imported into the U.S. Virgin Islands are established by the Virgin Islands legislature.

### §7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.

(a) *General.* Under the provisions of General Note 3(a)(iv), HTSUS, the following goods may be eligible for duty-free treatment when imported into the customs territory of the United States from an insular possession of the United States:

(1) Except as provided in Additional U.S. Note 5 to chapter 91, HTSUS, and except as provided in Additional U.S. Note 2 to chapter 96, HTSUS, and except as provided in section 423 of the Tax Reform Act of 1986, as amended (19 U.S.C. 2703 note), goods which are the growth or product of any such insular possession, and goods which were manufactured or produced in any such insular possession from materials that were the growth, product or manufacture of any such insular possession or of the customs territory of the United States, or of both, provided that such goods:

(i) Do not contain foreign materials valued at either more than 70 percent of the total value of the goods or, in the case of goods described in section 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)), more than 50 percent of the total value of the goods; and

(ii) Come to the customs territory of the United States directly from any such insular possession; and

(2) Goods previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation, provided that:

(i) The goods were shipped from the United States directly to the insular possession and are returned from the insular possession to the United States by direct shipment; and

(ii) There was no remission, refund or drawback of such duties or taxes in connection with the shipment of the goods from the United States to the insular possession.

(b) *Origin of goods.* For purposes of this section, goods shall be considered to be the growth or product of, or manufactured or produced in, an insular possession if:

(1) The goods were "wholly obtained or produced" in the insular possession within the meaning of § 102.1(e) of this chapter; or

(2) The goods became a new and different article of commerce as a result of processing performed in the insular possession.

(c) *Foreign materials.* For purposes of this section, the term "foreign materials" covers any material incorporated in goods described in paragraph (b)(2) of this section other than:

(1) A material which was "wholly obtained or produced" in an insular possession or in the customs territory of the United States within the meaning of § 102.1(e) of this chapter;

(2) A material which was substantially transformed in an insular possession or in the customs territory of the United States into a new and different article of commerce which was then used in an insular possession in the production or manufacture of a new and different article which is shipped directly to the United States; or

(3) In the case of imported goods to which the 70 percent foreign materials value limitation applies as set forth in paragraph (a)(1)(i) of this section, a material which may be imported into the customs territory of the United States from a foreign country and entered free of duty either:

(i) At the time the goods which incorporate the material are entered; or

(ii) At the time the material is imported into the insular possession, provided that the material was incorporated into the goods during the 18-month period after the date on which the material was imported into the insular possession.

(d) *Foreign materials value limitation.* For purposes of this section, the determination of whether goods contain foreign materials valued at more than 70

or 50 percent of the total value of the goods shall be made based on a comparison between:

(1) The landed cost of the foreign materials, consisting of:

(i) The manufacturer's actual cost for the materials or, where a material is provided to the manufacturer without charge or at less than fair market value, the sum of all expenses incurred in the growth, production, or manufacture of the material, including general expenses, plus an amount for profit; and

(ii) The cost of transporting those materials to the insular possession, but excluding any duties or taxes assessed on the materials by the insular possession and any charges which may accrue after landing; and

(2) The final appraised value of the goods imported into the customs territory of the United States, as determined in accordance with section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a).

(e) *Direct shipment.* For purposes of this section, goods shall be considered to come directly from an insular possession, or to be shipped directly to an insular possession and returned by direct shipment, only if the goods proceed directly to or from the insular possession without passing through any foreign territory or country.

(f) *Documentation.* (1) When goods are sought to be admitted free of duty as provided in paragraph (a)(1) of this section, there shall be filed with the entry/entry summary a properly completed certificate of origin on Customs Form 3229, signed by the chief or assistant chief customs officer or other official responsible for customs administration at the port of shipment, showing that the goods comply with the requirements for duty-free entry set forth in paragraph (a)(1) of this section. Except in the case of goods which incorporate a material described in paragraph (c)(3)(ii) of this section, a certificate of origin shall not be required for any shipment eligible for informal entry under § 143.21 of this chapter or in any case where the district director is otherwise satisfied that the goods qualify for duty-free treatment under paragraph (a)(1) of this section.

(2) When goods in a shipment not eligible for informal entry under § 143.21 of this chapter are sought to be admitted free of duty as provided in paragraph (a)(2) of this section, the following shall be filed with the entry/entry summary unless the district director is satisfied by reason of the nature of the goods or otherwise that the goods qualify for such duty-free entry:

(i) A declaration by the shipper in the insular possession in substantially the following form:

I, _____(name) of _____ (organization) do hereby declare that to the best of my knowledge and belief the goods identified below were sent directly from the United States on _____, 19___, to _____(name) of _____ (organization) on _____(insular possession) via the _____(name of carrier) and that the goods remained in said insular possession until shipped by me directly to the United States via the (name of carrier) on _____, 19___.

| Marks | Numbers | Quantity | Description | Value |
|---|---|---|---|---|
| | | | | |

Dated at _____, this day of _____, 19___.

Signature: _____

(ii) A declaration by the importer in the United States in substantially the following form:

I, _____(name), of _____ (organization) declare that the (above) (attached) declaration by the shipper in the insular possession is true and correct to the best of my knowledge and belief, that the goods in question were previously imported into the Customs territory of the United States and were shipped to the insular possession from the United States without remission, refund or drawback of any duties or taxes paid in connection with that prior importation, and that the goods arrived in the United States directly from the insular possession via the _____(name of carrier) on _____, 19___.

_____

(Date)

_____

(Signature)

(g) *Warehouse withdrawals; drawback.* Merchandise may be withdrawn from a bonded warehouse under section 557 of the Tariff Act of 1930, as amended (19 U.S.C. 1557), for shipment to any insular possession of the United States other than Puerto Rico without payment of duty, or with a refund of duty if the duties have been paid, in like manner as for exportation to foreign countries. No drawback may be allowed under section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), on goods manufactured or produced in the United States and shipped to any insular possession. No drawback of internal-revenue tax is allowable under 19 U.S.C. 1313 on goods manufactured or produced in the United States with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands or Johnston Atoll.

**§ 7.8 [Removed]**

3. Section 7.8 and footnote 5 thereto are removed.

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read in part as follows:

**Authority:** 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

**§ 10.181 [Redesignated as § 7.4 and Amended]**

2. Section 10.181 is redesignated as § 7.4, and newly redesignated § 7.4 is amended as follows:

(a) Paragraph (b) is amended by adding the word "the" before the words "Department of Commerce".

(b) Paragraph (g), second sentence, is amended by removing the words "Form ITA–360" and adding, in their place, the words "Form ITA–361".

(c) Paragraph (h) is amended by removing the word "Department" and adding, in its place, the word "Departments".

## PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The authority citation for Part 148 continues to read in part as follows:

**Authority:** 19 U.S.C. 66, 1496, 1624. The provisions of this part, except for subpart C, are also issued under General Note 8, Harmonized Tariff Schedule of the United States, 19 U.S.C. 1202;

* * * * *

Sections 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

* * * * *

**§ 148.2 [Amended]**

2. Section 148.2(b), first sentence, is amended by adding after "Guam," the words "the Commonwealth of the Northern Mariana Islands,".

3. Section 148.12(b)(1)(i) is revised to read as follows:

§ 148.12 Oral declarations.

* * * * *

(b) * * *

(1) * * *

(i) The aggregate fair retail value in the country of acquisition of all accompanying articles acquired abroad by him and of alterations and dutiable repairs made abroad to personal and household effects taken out and brought back by him does not exceed:

(A) $400; or

(B) $600 in the case of a direct arrival from a beneficiary country as defined in § 10.191(b)(1) of this chapter, not more than $400 of which shall have been acquired elsewhere than in beneficiary countries; or

(C) $1,200 in the case of a direct or indirect arrival from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, not more than $400 of which shall have been acquired elsewhere than in such locations except that up to $600 of which may have been acquired in one or more beneficiary countries as defined in § 10.191(b)(1) of this chapter;

* * * * *

§ 148.17 [Amended]

4. Sections 148.17 (b) and (c) are amended by removing the words "$400 or $800" and adding, in their place, the words "$400, $600 or $1,200".

§ 148.31 [Amended]

5. Section 148.31(a), first sentence, is amended by adding after "Guam," the words "the Commonwealth of the Northern Mariana Islands,".

6. Section 148.31(b) is amended by removing the words "$400 or $800" and adding, in their place, the words "$400, $600 or $1,200".

§ 148.32 [Amended]

7. Section 148.32(d)(2) is amended by removing the words "$400 or $800" and adding, in their place, the words "$400, $600 or $1,200".

8. Section 148.33 is amended by revising paragraphs (a), (b), (d) and (f) to read as follows:

§ 148.33 Articles acquired abroad.

(a) *Exemption.* Each returning resident is entitled to bring in free of duty and internal revenue tax under subheadings 9804.00.65, 9804.00.70 and 9804.00.72, and chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), articles for his personal or household use which were purchased or otherwise acquired abroad merely as an incident of the foreign journey from which he is returning, subject to the limitations and conditions set forth in this section and §§ 148.34–148.38. The aggregate fair retail value in the country of acquisition of such articles for personal and household use shall not exceed:

(1) $400, and provided that the articles accompany the returning resident;

(2) Whether or not the articles accompany the returning resident, $600 in the case of a direct arrival from a beneficiary country as defined in § 10.191(b)(1) of this chapter, not more than $400 of which shall have been acquired elsewhere than in beneficiary countries; or

(3) Whether or not the articles accompany the returning resident, $1,200 in the case of a direct or indirect arrival from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, not more than $400 of which shall have been acquired elsewhere than in such locations except that up to $600 of which may have been acquired in one or more beneficiary countries as defined in § 10.191(b)(1) of this chapter.

(b) *Application to articles of highest rate of duty.* The $400, $600 or $1,200 exemption shall be applied to the aggregate fair retail value in the country of acquisition of the articles acquired abroad which are subject to the highest rates of duty. If an internal revenue tax is applicable, it shall be combined with the duty in determining which rates are highest.

* * * * *

(d) *Tobacco products and alcoholic beverages.* Cigars, cigarettes, manufactured tobacco, and alcoholic beverages, may be included in the exemption to which a returning resident is entitled, with the following limits:

(1) No more than 200 cigarettes and 100 cigars may be included, except that in the case of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Virgin Islands of the United States the cigarette limit is 1,000, not more than 200 of which shall have been acquired elsewhere than in such locations;

(2) No alcoholic beverages shall be included in the case of an individual who has not attained the age of 21; and

(3) No more than 1 liter of alcoholic beverages may be included, except that:

(i) An individual returning directly or indirectly from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands or the Virgin Islands of the United States may include in the exemption not more than 5 liters of alcoholic beverages, not more than 1 liter of which shall have been acquired elsewhere than in such locations and not more than 4 liters of which shall have been produced elsewhere than in such locations; and

(ii) An individual returning directly from a beneficiary country as defined in § 10.191(b)(1) of this chapter may include in the exemption not more than 2 liters of alcoholic beverages if at least 1 liter is the product of one or more beneficiary countries.

* * * * *

(f) *Remainder not applicable to subsequent journey.* A returning resident who has received a total exemption of less than the $400, $600 or $1,200 maximum in connection with his return from one journey is not entitled to apply the unused portion of that maximum amount to articles acquired abroad on a subsequent journey.

§ 148.34 [Amended]

9. Section 148.34(a) is amended by removing the words "$400 or $800" wherever they appear and adding, in their place, the words "$400, $600 or $1,200".

10. Section 148.35 is amended by revising paragraphs (a) and (b) to read as follows:

§ 148.35 Length of stay for exemption of articles acquired abroad.

(a) *Required for allowance of $400, $600 or $1,200 exemption.* Except as otherwise provided in this paragraph or in paragraph (b) of this section, the $400, $600 or $1,200 exemption for articles acquired abroad shall not be allowed unless the returning resident has remained beyond the territorial limits of the United States for a period of not less than 48 hours. The $400 exemption may be allowed on articles acquired abroad by a returning resident arriving directly from Mexico without regard to the length of time the person has remained outside the territorial limits of the United States.

(b) *Not required for allowance of $1,200 exemption on return from Virgin Islands.* The $1,200 exemption applicable in the case of the arrival of a returning resident directly or indirectly from the Virgin Islands of the United States may be allowed without regard to the length of time such person has remained outside the territorial limits of the United States.

* * * * *

§ 148.36 [Amended]

11. Section 148.36, is amended by removing the words "$400 or $800" wherever they appear and adding, in their place, the words "$400, $600 or $1,200".

**§ 148.37 [Amended]**

12. Section 148.37, is amended by removing the words "$400 or $800" wherever they appear and adding, in their place, the words "$400, $600 or $1,200".

**§ 148.38 [Amended]**

13. Section 148.38 is amended by removing the words "$400 or $800" and adding, in their place, the words "$400, $600 or $1,200".

14. Section 148.51 is amended by revising paragraph (a)(2) to read as follows:

**§ 148.51 Special exemption for personal or household articles.**

(a) * * *

(2) A returning resident who is not entitled to the $400, $600 or $1,200 exemption for articles acquired abroad under subheading 9804.00.65, 9804.00.70 or 9804.00.72, HTSUS (see Subpart D of this part).

* * * * *

**§ 148.64 [Amended]**

15. Section 148.64(a), first sentence, is amended by removing the words "subheadings 9804.00.30 or 9804.00.70," and adding, in their place, the words "subheading 9804.00.30, 9804.00.65, 9804.00.70 or 9804.00.72,".

**§ 148.74 [Amended]**

16. Section 148.74(c)(3) is amended by removing the words "subheading 9804.00.65 and 9804.00.70," and adding, in their place, the words "subheading 9804.00.65, 9804.00.70 or 9804.00.72,".

**§ 148.101 [Amended]**

17. In § 148.101, the sixth sentence is amended by adding after "Guam," the words "the Commonwealth of the Northern Mariana Islands,"; and example 2 is amended by removing the figure "$2,900" in the example text and adding, in its place, the figure "$4,900", by removing the figure "$800" wherever it appears in the example text and table and adding, in its place, the figure "$1,200", by removing the figure "$1,600" in the table column headed "Fair retail value" and adding, in its place, the figure "$2,400", by removing the figure "$4,100" in the table column headed "Fair retail value" and adding, in its place, the figure "$4,900", and by removing the figure "$1,00" in the table column headed "Duty" and adding, in its place, the figure "$100".

18. Section 148.102 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 148.102 Flat rate of duty.**

(a) *Generally.* The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States (exclusive of duty-free articles and articles acquired in Canada, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) shall be 10 percent of the fair retail value in the country of acquisition.

(b) *American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands.* The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States directly or indirectly from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands or the Virgin Islands of the United States (exclusive of duty-free articles), acquired in these locations as an incident of the person's physical presence there, shall be 5 percent of the fair retail value in the location in which acquired.

* * * * *

**§ 148.104 [Amended]**

19. Section 148.104(c) is amended by removing the figure "$800" and adding, in its place, the figure "$1,000".

**Subpart K Heading [Amended]**

20. The heading to Subpart K is amended by adding after "Guam," the words "the Commonwealth of the Northern Mariana Islands,".

**§ 148.110 [Amended]**

21. In § 148.110, the first paragraph is amended by adding after "Guam," the words "the Commonwealth of the Northern Mariana Islands,"; and the second paragraph is amended by adding after "Guam" the words ", the Commonwealth of the Northern Mariana Islands,".

**§ 148.111 [Amended]**

22. In § 148.111, the introductory text is amended by adding after "Guam," the words "the Commonwealth of the Northern Mariana Islands,"; and paragraph (a) is amended by removing the figure "$800" and adding, in its place, the figure "1,200".

**§ 148.113 [Amended]**

23. Section 148.113(a), first sentence, is amended by removing the figure "800" and adding, in its place, the figure "1,200".

**Michael H. Lane,**
*Acting Commissioner of Customs.*

Approved: July 1, 1993.

**Ronald K. Noble,**
*Assistant Secretary of the Treasury.*

[FR Doc. 93–17838 Filed 7–26–93; 8:45 am]
BILLING CODE 4820–02–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 17

**[Docket No. 91N–0447]**

### Civil Money Penalties: Biologics, Drugs, and Medical Devices; Extension of Comment Period; Correction and Addition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; extension of comment period; correction and addition.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to August 25, 1993, the comment period on the proposed rule to establish hearing procedures when a hearing is requested concerning the administrative imposition of civil money penalties by FDA. This action is being taken to give additional time for the preparation and submission of comments on the proposed rule. FDA is also correcting an inadvertant error in the proposed rule and is adding a reference to civil money penalties authority provided for in the Mammography Quality Standards Act of 1992 (the MQSA), and recently redelegated to FDA.

**DATES:** Written comments by August 25, 1993.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Alicia Abbott, Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 26, 1993 (58 FR 30680), FDA proposed regulations governing hearing procedures when a hearing is requested concerning FDA's administrative imposition of civil money penalties under the National Childhood Vaccine Injury Act of 1986, the Prescription Drug Marketing Act of

1988, the Safe Medical Devices Act of 1990 (the SMDA), and the Generic Drug Enforcement Act of 1992, as well as other legislation that Congress might, in the future, enact. FDA had provided for interested persons to submit written comments on the proposed rule by July 26, 1993. The agency received a request for an extension of the comment period and agrees that additional time may be necessary to evaluate and submit comments. Although the requester asked for an additional 60 days, FDA is granting only a 30-day extension because it believes that the proposed procedural regulation is neither so lengthy nor so complex as to justify a 60-day extension. Therefore, comments received by August 25, 1993, will be considered by FDA during its review.

Also, Congress has enacted the MQSA (Pub. L. 102–539), which provides for civil money penalties for violations. FDA proposes to include MQSA civil money penalties within the purview of the new procedure when the final rule promulgating 21 CFR part 17 is issued. FDA solicits comments as to this eventuality.

It has been pointed out to FDA that the preamble to the proposed rule misstated the law when it stated (58 FR 30680 at 30681) that:

> * * * civil money penalties are not authorized against persons who violate section 519(a) of the act (21 U.S.C. 360i(a)), with respect to recordkeeping and reporting, or section 520(f) of the act (21 U.S.C. 360j(f)), with respect to current good manufacturing practice (CGMP) requirements, unless the violation constitutes a significant *and* knowing departure from such requirements or a risk to the public health. (Emphasis added.)

In fact, section 17(f) of the SMDA (21 U.S.C 333(f)) states that civil money penalties shall not apply to any person who violates the requirements of section 519(a) or 520(f) "* * * unless such violation constitutes (I) a significant *or* knowing departure from such requirements, or (II) a risk to public health, * * *." (Emphasis added.)

FDA regrets the error and solicits comments based on the proposed rule as corrected.

Interested persons may, on or before August 25, 1993, submit to the Dockets Management Branch (address above) written comments regarding the original proposal and the above new proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

### The Correction

In FR Doc. 93–12314, appearing on page 30680 of the **Federal Register** of Wednesday, May 26, 1993, the following correction is made: On page 30681, in the 2d column, in the 2d full paragraph, in the 13th line, the word "and" is corrected to read "or".

Dated: July 21, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–17833 Filed 7–22–93; 3:12 pm]

BILLING CODE 4160–01–F

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## 21 CFR Part 101

**[Docket No. 90N–135D]**

## Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of June 18, 1993 (58 FR 33715). The document proposed to establish regulations for the nutrition labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. The document was published with some inadvertent errors. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5817.

In FR Doc. 93–14274, appearing on page 33715 in the **Federal Register** of Friday, June 18, 1993, the following corrections are made:

1. On page 33724, in the 1st column, in the 1st full paragraph, in the 7th line from the bottom, the word "disease" is added after the word "cardiovascular".

**§ 101.36 [Corrected]**

2. On page 33727, in § 101.36 *Nutrition labeling of dietary supplements of vitamins or minerals*, in the 3d column, in paragraph (c)(6), in line 11, the word "serving" is corrected to read "Serving".

Dated: July 20, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–17644 Filed 7–26–93; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 901

## Alabama Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing the receipt of proposed amendments to the Alabama regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment package deals with blaster's certification, requirements for permit maps and corrections to cross references. It is intended to make the requirements of the Alabama program no less effective than the Federal program.

This document sets forth the times and locations that the Alabama program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on August 26, 1993. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on August 23, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 11, 1993.

**ADDRESSES:** Written comments should be mailed or hand delivered to Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Birmingham Field Office. Office of Surface Mining Reclamation and Enforcement, Birmingham Field Office, 135 Gemini Circle, suite 215, Homewood, Alabama 35209. Telephone (205) 290–7282. Alabama Surface Mining Commission, First Federal Bank Building, 2nd. Floor, 1811 Second

Avenue, Jasper, Alabama 35501. Telephone: (202) 221–4130.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jesse Jackson, Jr., Director, Birmingham Field Office (205) 290–7282.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. Information regarding general background on the Alabama program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982 **Federal Register** [47 FR 22030]. Subsequent actions taken with regard to Alabama's program and program amendments can be found in 30 CFR 901.10, 901.15 and 901.30. The most recent action taken on the Alabama program was the approval of the amendment package pertaining to ownership and control and permitting issues [57 FR 20045].

**II. Discussion of Amendments**

The proposed amendments are not due to a 732 action or any other action on the part of OSM. They are initiated by Alabama in order to improve its regulations relative to blaster's certification, permit information and maps, and cross-references. The Alabama Surface Mining Commission by letter dated June 23, 1993, proposes the following rule making actions:

Rule No. and Subject [Intended Action]

880–X–8D–.05(8)—Application [New Rule]
880–X–8D–.09(2)—Reference [Amend]
880–X–8F–.08(2)(j)—Maps [New Rule]
880–X–8G–.05(89)—Application [New Rule]
880–X–8G–.09(2)—Reference [Amend]
880–X–8I–.07(2)—Maps [New Rule]
880–X–8I–.16(1)—Reference [Amend]
880–X–8K–.10(1)(a)—Reference [Amend]
880–X–10C–.41(1)—Reference [Amend]
880–X–10J–.03(f)—Water Rights [Amend]
880–X–12A–.07—Blasting Certification [Amend]

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h) OSM is now seeking comments on whether the amendments proposed by Alabama satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on August 11, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings will be open to the public and if possible, notices of meetings will be posted at the locations listed under **"ADDRESSES."** A written summary of each meeting will be made a part of the Administrative Record.

**IV. Procedural Determinations**

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OMS. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the

Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 901:**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 21, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 93–17844 Filed 7–26–93; 8:45 am]

BILLING CODE 4310–05–M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 35**

**[FRL–4683–3]**

## Ohio Maintenance of Effort Reduction

**AGENCY:** Environmental Protection Agency.

**ACTION:** Solicitation of comments; notice and opportunity for public hearing.

**SUMMARY:** U.S. Environmental Protection Agency (USEPA) announces an opportunity for public hearing and comment on a tentative determination that the Ohio Environmental Protection Agency (OEPA), Division of Air Pollution Control (DAPC), should be allowed a reduced Maintenance of Effort (MOE) level for Fiscal Year (FY) 1991, consistent with Maintenance of Effort requirements of the Clean Air Act (CAA) and USEPA financial assistance policies and procedures.

**DATES:** Written comments on this proposal must be received on or before August 26, 1993. Requests for a public hearing on this proposal must be received by no later than August 11, 1993. A time and place for a public hearing will be announced in the **Federal Register** at a later date, if a hearing is necessary.

**ADDRESSES:** Written comments on this proposed action should be sent to: Joseph Cleseri, Chief, Grants Management and Program Evaluation Section, Air Enforcement Branch (AE–17J), Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

**FOR FURTHER INFORMATION CONTACT:** Richard Cox, Grants Management and Program Evaluation Section, Air Enforcement Branch (AE–17), Air and Radiation Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–6072.

**SUPPLEMENTARY INFORMATION:**

### Background

U.S. Environmental Protection Agency provides financial assistance to the Ohio Environmental Protection Agency, Division of Air Pollution Control, for the operation of its Air Pollution Control program through an annual cooperative agreement. USEPA awards the cooperative agreement pursuant to section 105(c) of the Clean Air Act (CAA) (42 United States Code 7405) and Code of Federal Regulations (CFR) parts 30 and 35.210. Section 105(c) contains the following criteria:

(c) *Maintenance of Effort*—(1) No agency shall receive any grant under this section during any fiscal year when its expenditures of non-federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for the Administrator to award grants under this section in a timely manner each fiscal year the Administrator shall compare an agency's prospective expenditure level to that of its second preceding fiscal year. The Administrator shall revise the current regulations which define applicable nonrecurrent and recurrent expenditures, and in so doing, give due consideration to exempting an agency from the limitations of this paragraph and subsection (a) due to periodic increases experienced by that agency, from time to time, in its annual expenditures for purposes acceptable to the Administrator for that fiscal year. (2) The Administrator may still award a grant to an agency not meeting the requirements of paragraph (1) of this subsection if the Administrator, *after notice and opportunity for public hearing,* determines that a reduction in the expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government. No agency shall receive any grant under this section with respect to the prevention and control of air pollution unless the Administrator is satisfied that such a grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-federal funds. No grants shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected. [Emphasis added]

On May 6, 1993, the Ohio Environmental Protection Agency (OEPA) requested that USEPA consider Ohio's budget cuts in general revenue funds to State agencies as non-selective, in the context of section 105(c) of the CAA and appropriate Federal regulations (40 CFR 30 and 35.210), and, thereby, to reduce OEPA-DAPC's Maintenance of Effort (MOE) level for FY 1991. If USEPA were to disapprove the request regarding non-selective funding reductions and to determine OEPA ineligible for assistance under Section 105 of the CAA, the State would be required to return assistance funds for which it was then not eligible.

OEPA's request for the non-federal funding reduction to be considered non-selective is based on two separate rounds of budget cuts in general revenue funds (GRF) to State agencies during FY 1991. Information supporting this request, which was submitted on April 5, 1993, indicates that in the first round of budget cuts, several agencies' budgets contained an immediate four percent general revenue fund appropriation reduction from the previous year (1990) appropriations. Exemptions from cuts during this first round were given to debt service, property tax rollback, tangible tax exemption, utility bill credits, pension systems subsidies, GRF capital, income maintenance payments, prisons, Judicial Branch, Tax agents, small boards, student grants, and Department of Education and the Board of Regents. As a result, on average all appropriations were cut by a total of $114.5 million or 1.79 percent. The OEPA, where the Air Pollution Control functions reside, had its share in general funds reduced by $10,072,130 or 26 percent. The Division of Air Pollution Control experienced a $150,000 or 2.5 percent cut. One program area within the OEPA (i.e., State Revolving Loan Fund) was reduced by 70 percent.

During a second round of budget cuts of $127 million for GRF agencies, the OEPA-DAPC budget was cut by $87,059. The budgets of all GRF agencies were cut except the Ohio Consumer's Counsel, Public Utilities Commission, and a part of the Department of Taxation. Appropriations for debt service, pension benefits, property tax exemption were also not cut. Agencies which were not subject to or impacted by the first round of reductions, such as the Board of Regents and the Department of Development, were given relatively heavy cuts during the second round. The budgets of a total of 27 agencies were cut at percentages greater than OEPA's. One commission's (the Arts Facilities Commission) budget was reduced by 32.52 percent. The budget of the Department of Development was reduced by 16.10 percent.

During this second round of cuts nine of the 13 Division/Programs in the OEPA were cut. The OEPA budget was reduced by $981,354 or 2.5 percent. These reductions (rounds one and two) resulted in the shortfall of $171,424 of non-federal funding for the OEPA-DAPC during FY 1991.

After reviewing the above information, USEPA concludes that OEPA-DAPC's budget reduction meets the CAA criteria as non-selective since the OEPA-DAPC was not singled out in the budget reductions.

**Action**

As described above, based upon the preceding discussion and the information submitted by the OEPA, USEPA proposes to approve OEPA's request for USEPA to consider the FY 1991 reductions in non-federal funding of OEPA's air pollution control program as non-selective. USEPA believes, based on program evaluations, that there has not been a decline in the effectiveness of the air pollution control program in the State of Ohio, and that the reductions have been non-selective. Accordingly, USEPA is conditionally providing partial funding under the OEPA's FY 1993 Section 105 cooperative agreement. Pending this notice and opportunity for public hearing, if no substantive public comments are received concerning this action which indicate that the FY 1991 reduction was other than non-selective, the balance of the FY 1993 award will be made.

**Invitation to Comment, Opportunity for Public Hearing**

Any person who desires to comment on this intended action or requests a public hearing may do so by writing to the contact person listed above. Comments must be received by August 26, 1993.

A public hearing will be held if (and only if) a request for a public hearing is received at the USEPA office listed above by August 11, 1993. The purpose of such a hearing would be to take testimony as to whether the reduction in expenditures for the OEPA air program is or is not attributable to a non-selective reduction in expenditures. It is suggested that anyone wishing to verify whether the public hearing is to be held should call the USEPA office listed above.

(Section 105 of the Clean Air Act (42 U.S.C. 7405))

Dated: July 15, 1993.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 93–17868 Filed 7–26–93; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 52**

**[Region II Docket No. 115, NY 4–2–5634; FRL–4683–4]**

## Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan for Ozone

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a limited approval of a revision to the New York State Implementation Plan (SIP) related to the control of volatile organic compound (VOC) emissions from architectural coatings. EPA is also proposing to find that the State has partially met a commitment made in its 1982 ozone and carbon monoxide SIP for the New York City Metropolitan Area to regulate architectural coatings.

This document deals with revisions to the following State VOC regulations: Deletion of Part 205 (1979 version)—"Photochemically Reactive Solvents and Organic Solvents from Certain Processes—New York City Metropolitan Area"; and Addition of Part 205—"Architectural Surface Coating."

EPA has evaluated this regulation and proposes limited approval under sections 110(k)(3) and 301(a) of the Clear Air Act as amended in 1990 because these revisions strengthen the SIP.

**DATES:** Comments must be submitted on or before August 27, 1993.

**ADDRESSES:** All comments should be addressed to: William J. Muszynski, P.E., Acting Regional Administrator, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1034, New York, New York 10278

New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, Environmental Protection agency, 26 Federal Plaza, room 1034, New York, New York 10278, (212) 264–2517.

**SUPPLEMENTARY INFORMATION:** In its 1982 ozone and carbon monoxide State Implementation Plan (SIP) for the New York City Metropolitan Area (NYCMA) (comprised of New York City, Nassau, Suffolk, Westchester and Rockland counties) New York State committed, among other things, to adopt a regulation for the control of volatile organic compounds (VOCs) from architectural coatings. The fulfillment of this commitment is the subject of this **Federal Register** notice.

On October 14 and December 5, 1988 New York submitted a request to revise its SIP. Among the actions included in this request were the adoption of a new Part 205, "Architectural Surface Coating," effective September 15, 1988, and the repeal of the existing Part 205 (1979 version), "Photochemically Reactive Solvents and Organic Solvents from Certain Processes—New York City Metropolitan Area," effective August 23, 1979. Both of these regulations are contained in Title 6 of the New York Code of Rules and Regulations (NYCRR).

The following is a summary of EPA's review and proposed action concerning Part 205. This regulation involves coatings for which EPA has yet to publish guidance in the form of a Control Techniques Guideline (CTG). EPA's review is based on an evaluation of New York's technical basis and justification, and consistency with the Clean Air Act as amended in 1990, EPA regulations and guidance.

**Repeal of Part 205—Photochemically reactive Solvents and Organic Solvents From Certain Processes—New York City Metropolitan Area**

Part 205 (1979 version) was repealed in 1988 to eliminate an outdated regulation that has been superseded by a new regulation that is consistent with current principles of photochemical reactivity and emission control. The VOC content limits for architechtural coatings in the 1979 version of Part 205 are addressed in the new Part 205. The new versions, adopted by New York in 1988, will result in greater emission reductions.

EPA is proposing to remove the 1979 version of Part 205 from the SIP and replace it with an improved Part 205 which contains comprehensive requirements for the sale and use of architectural coatings.

**New Part 205—Architectural Surface Coating**

New Part 205 provides for the regulation of architectural surface coatings sold, offered for sale, or used in the NYCMA. Architectural surface coatings are defined to include any coating applied to stationary structures, mobile homes, pavements or curbs.

These coatings usually are not applied in a factory or manufacturing operation. In developing this rule, New York State Department of Environmental Conservation (NYSDEC) relied on studies and technical material developed during the regulatory process, as well as documents and regulations prepared by government entities in California. The NYSDEC estimated that this regulation will result in a minimum of 3,000 tons per year of VOC emission reductions. This is substantially less than the 11,682 tons per year of VOC emission reduction predicted and relied upon in the SIP approved by EPA in 1985. However, the scope of the coatings regulated and the emission limits placed on these coatings is consistent with the SIP commitment. The original emission reduction estimate was based on 1975 data which NYSDEC believes overestimated the amount of solvent based coatings in use in the NYCMA. This, however, was the best data available at the time. The present emission reduction estimate reflects current coating usage and solvent content and is believed by EPA to be more accurate.

The regulation establishes a general limit of 250 grams of VOC per liter of coating, excluding water and colorant added to tint bases. Bituminous pavement sealers are limited to water emulsion-type coatings. There is a limit of 380 grams per liter of VOC for non-flat coatings. In addition, there are a number of speciality coating limits.

The regulation requires any architectural coating manufactured after July 1, 1989 that is to be sold, offered for sale or used in the NYCMA to meet the designated VOC content limitations. Part 205 also contains recordkeeping and labelling requirements.

The VOC content limitations and definitions are generally consistent with the regulations in effect in California at the time the regulation was proposed. California has revised its regulation since NYSDEC adopted Part 205 in order to phase in new emission limits with time. Part 205 establishes limits for many specialty coatings that were previously exempt in California, but which will now be regulated as part of the revised California regulation. Six of New York's specialty limits remain more stringent, 13 limits are the same, and eight are less stringent than California's revised limits.

Compliance with these provisions is based on calculating the volatile content of the coatings and comparing it with the limits for the specific type of coating. The equation used for this purpose is the same as that used in Part 228, "Surface Coating Processes," for determining the maximum permitted pounds of VOCs per gallon of coating, minus water and excluded VOCs, for industrial coatings. Part 228 also refers to EPA Reference Method 24 (40 CFR part 60, appendix A) for application when it is necessary to measure certain coating parameters. However, this reference to Method 24 was inadvertently omitted from Part 205. For this reason and because EPA believes that the regulation will strengthen the SIP by resulting in additional VOC reductions, EPA proposes a limited approval of Part 205. EPA is proposing to accept New York's Part 205 as meeting in part its 1982 SIP commitment to adopt a control measure for this source category, but is limiting its approval because the regulation omitted a specific test method.

### SIP Deficiencies

On May 26, 1988 Governor Cuomo was informed that the NYCMA SIP was substantially inadequate to attain the national ambient air quality standard for ozone and carbon monoxide. A companion letter of June 14, 1988 to NYSDEC's Air Director contained the basis for this finding of SIP inadequacy and identified the specific regulatory deficiencies (referred to as "RACT Fix-up" deficiencies) and missing regulations.

This submittal addresses one of those identified missing regulations: architectural coatings. The regulation was required because of a commitment to adopt such a control measure in New York's 1982 SIP. Approval of this regulation would eliminate in part one of the deficiencies identified in the June 14, 1988 letter.

### Conclusion

EPA has reviewed New York's request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments to the Clean Air Act. The Agency has determined that this action conforms with those requirements even though the submittal preceded the date of enactment. The revision incorporates a control program equivalent to the one committed to in the SIP, and results in additional emission reductions. Therefore, New York's submittal meets the requirements of Section 193. Beyond that, the revision will not interfere with the SIP's ability to meet the new Act's requirements, and thus meets the test in section 110(l).

Because of the lack of a test method, EPA cannot grant full approval of this regulation under section 110(k)(3). Also, because the submitted regulation is not composed of separable parts which meet all the applicable requirements of the Clean Air Act, EPA cannot grant partial approval for the rule under section 110(k)(3). However, EPA may grant limited approval of the submitted regulation under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

EPA is also proposing to find that the State has partially fulfilled its commitment in the SIP to adopt an architectural coatings control measure (contained in Part 205). Adoption of a test procedure, as discussed above, is necessary to fulfill this commitment in whole.

Section 183(e)(3) of the Clean Air Act requires that EPA develop either national regulations or CTGs for consumer and commercial products which may include architectural coatings. If EPA promulgates a federal regulation for architectural coatings under this authority, then sources covered by New York's Part 205 would also be required to comply with the federal regulation. New York does retain the right to promulgate regulations that are more stringent than either a federal regulation or a CTG.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already state law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute federal inquiry into the economic reasonableness of the state actions. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone,

Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: March 10, 1993.

**William J. Muszynski,**

*Acting Regional Administrator.*

[FR Doc. 93–17866 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Public Hearing on Proposed Endangered Status and Designation of Critical Habitat for the Alabama Sturgeon

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule: notice of public hearing.

**SUMMARY:** The Service gives notice that a public hearing will be held on the proposed determination of endangered status and designation of critical habitat for the Alabama sturgeon, *Scaphirhynchus suttkusi.*

**DATES:** The public hearing will be held from 7 p.m. to 10 p.m., on Tuesday, August 31, 1993, in Mobile, Alabama. The comment period remains open until October 13, 1993.

**ADDRESSES:** The public hearing will be held in the William K. Weaver Hall Auditorium on the campus of Mobile College, Mobile Alabama. Written comments and materials should be sent to Complex Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, MS 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** James H. Stewart, at the above address (601/965–4900).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Alabama sturgeon, a small sturgeon with a maximum length of about 30 inches, is endemic to the Mobile River system, Alabama and Mississippi. Its current range is restricted to the lower Alabama River and the Cahaba River in Alabama. Both of these areas and the free flowing portion of the lower Tombigbee River are proposed as critical habitat. Factors in the sturgeon's decline include dams, and possible adverse effects from altered water flows, channel maintenance and gravel dredging.

On June 15, 1993, the Service published in the **Federal Register** (58 FR 33148) a proposed rule to determine the Alabama sturgeon, *Scaphirhynchus suttkusi*, to be an endangered species and to designate its critical habitat. The proposed rule indicated that details for a public hearing would be announced in a separate **Federal Register** notice and in newspapers of general circulation within the counties that may be affected. Legal notices are being published in newspapers more or less concurrently with this **Federal Register** notice.

The Service intends that any final action resulting from the proposed rule will be as accurate and as effective as possible. Therefore, comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments may be presented verbally at the public hearing or in writing. Verbal statements may be limited in length if the number of parties present necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service office in the **ADDRESSES** section. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and,

(5) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat.

Those parties wishing to make a verbal statement for the record are encouraged to provide a copy of their statement to the Service at the start of the hearing.

#### Author

The primary author of this notice is James H. Stewart (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: July 12, 1993.

**James W. Pulliam, Jr.,**

*Regional Director.*

[FR Doc. 93–17822 Filed 7–26–93; 8:45 am]

BILLING CODE 4310–55–M

# Notices

Federal Register
Vol. 58, No. 142
Tuesday, July 27, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

### Kagman Watershed, Saipan, CNMI

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of availability of a Draft Watershed Plan-Environmental Impact Statement for Kagman Watershed, Saipan, Commonwealth of the Northern Mariana Islands.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that the Draft Watershed Plan-Environmental Impact Statement has been prepared for Kagman Watershed, Saipan, Commonwealth of the Northern Mariana Islands.

A copy of the Draft Watershed Plan-Environmental Impact Statement is available upon request to the SCS Pacific Basin Area Office, GCIC Building, suite 602, 414 West Soledad Avenue, Agana, Guam 96910, telephone (671) 477–5940 or to the SCS CNMI Field Office, Horizon Building, Middle Road, Garapan, Saipan, MP 96950, telephone (670) 322–3415.

Requests for further information and written comments should be sent to Joan B. Perry, Director, Pacific Basin Area, Soil Conservation Service, GCIC Building, suite 602, 414 West Soledad Avenue, Agana, Guam 96910. Comments will be accepted until July 30, 1993. Oral and written comments may also be presented at a public meeting to be held on June 29, 1993 at 7:00 PM at the Convention Center, Capitol Hill, Saipan.

**SUPPLEMENTARY INFORMATION:** The Draft Watershed Plan-Environmental Impact Statement evaluates and presents a multi-purpose plan for agricultural flood prevention and agricultural water management in the Kagman Watershed, Saipan, CNMI. The Kagman Watershed accounts for three-quarters of the vegetable and fruit production on the island of Saipan. Two alternative plans were develop through consideration of numerous measures to alleviate the resource problems. The two alternative plans are a No Action alternative and a National Economic Development alternative, which is the Recommended Plan. The Recommended Plan proposes the installation of a system of waterways for flood protection and agricultural water collection and conveyance, a water storage reservoir, a supplemental well, and an irrigation water distribution system. The waterways will provide provide a 25-year level of flood protection. The irrigation system will provide 95 percent reliability of supply to 59 farms. The total installation cost is estimated to be $4,927,000, of which 57.9 percent will be federal funds. Economic benefits exceed costs with a ratio of 1.3 to 1.0. Environmental impacts include the loss of 0.45 acres of wetland which will be replaced with 1.78 acres of compensatory wetlands. The compensatory wetlands will enhance habitat for the endangered Mariana common moorhen.

Public participation has occurred throughout the planning process. Public meeting to provide information and opportunities for public input were held on Saipan on June 10, 1986; March 2, 1989; and November 28, 1990. A Notice of Intent was filed with the Federal Register On December 10, 1992.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Protection Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials.

Dated: July 12, 1993.

**Joan B. Perry,**

*Director, Pacific Basin Area.*

[FR Doc. 93–17836 Filed 7–26–93; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Telecommunicstions Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held August 24, 1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

*Agenda:*

*General Session*

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public. The public is encouraged to address the issue of current control limits on "routers" and to bring to the meeting specific examples of current models.
4. Other business.

*Executive Session.*

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, TAC Unit, ODAS/EA/BXA room 1621, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the

Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. Further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 21, 1993.

**Betty Ferrell,**

*Director, Technical Advisory Committee Unit.*

[FR Doc. 93–17887 Filed 7–26–93; 8:45 am]

BILLING CODE 3510–DT–M

## Economic Development Administration

### Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA).

**ACTION:** To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| DVH Corporation | 16126 Cantlay Street, Van Nuys, CA 91406 | 6/21/93 | Printed circuit boards. |
| Emissions Technology, Inc. | 8266 East 41st Street, Tulsa, OK 74147–1916 | 6/21/93 | Fuel purifying apparatus for internal combustion engine. |
| Puna Flowers & Foliage, Inc. | P.O. Box 9 (1 Post Office Rd.) Pahoa, HI 96778 | 6/22/93 | Tropical flowers |
| Heart's Designs, Inc. | 11650 West 85th Street, Lenexa, KS 66214–1541 | 6/24/93 | Boys, girls and infants apparel ensemble. |
| Dack Industries, Inc. | 100 Broderick Rd., Bristol, CT 06011 | 6/29/93 | Fasteners. |
| Integrated Industrial Services, Inc. | 1415 Illinois Avenue, Kansas City, MO 64127 | 6/29/93 | Rollstock packaging machinery for processed meats. |
| Avtech Corporation. | 3400 Wallingford Avenue North, Seattle, WA 98103 | 7/02/93 | Electronic ballasts. |
| Kurt Manufacturing Company, Inc. | 5280 Main Street, N.E., Minneapolis, MN 55421 | 7/06/93 | Parts for computer disk drives and gears for aircraft. |
| Long Manufacturing Co., Inc. | 1135 Commerce Street, Petersburg, VA 23803 | 7/07/93 | Trunk locks, combination locks for attaches, hinges, corners and clamps for footlockers. |
| Hesteco Manufacturing Co., Inc. | 443 West High Street, Elizabethtown, PA 17022 | 7/07/93 | Cotton and cotton poly blend fabric for children's dresses. |
| FB Optical Mfg., Inc. | 4 Central Avenue, St. Stephen, MN 56375 | 7/07/93 | Machinery to generate, cut, block and surface opthalmic lenses and prescription equipment. |
| Christy Refractories Company. | 4641 McRee Avenue, St. Louis, MO 63110 | 7/07/93 | Alumina-silica clay—high temperature insulation/refractory products. |
| Hallcrest Holdings Corporation. | 1820 Pickwick Lane, Glenview, IL 60025 | 7/08/93 | Temperature indicating devices containing thermochromic liquid crystals used in cosmetics. |
| Woodland Products, Inc. | Clintonville Municipal Airport, Rt. 2, Clintonville, WI 54929. | 7/08/93 | Cutting boards, doll furniture and pen boxes. |
| Spalding Knitting Mills. | 324 East Nrpad St., Drawer K, Griffin, GA 30224 | 7/13/93 | Socks for women and children. |

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or that thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment assistance Division, room 7023 Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 19, 1993.

**David L. McIlwain,**

*Acting Deputy Assistant Secretary for Program Operations.*

[FR Doc. 93–17886 Filed 7–26–93; 8:45 am]

BILLING CODE 3510–24–M

## International Trade Administration

**[A–475–059]**

### Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration/ International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce has conducted an administrative review of the antidumping finding on pressure sensitive plastic tape from Italy.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** July 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Todd Peterson or Thomas Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4195 or 482–3814, respectively.

**Background**

On October 21, 1977, the Department of Treasury published in the **Federal Register** (42 FR 56110) the antidumping finding on pressure sensitive plastic tape (PSPT) from Italy. On October 8, 1992, the Department of Commerce (the Department) published a notice of "Opportunity To Request Administrative Review" (57 FR 46371). On October 29, 1992, the petitioner, Minnesota Mining and Manufacturing Company (3M), requested that we conduct an administrative review for the period October 1, 1991, through September 30, 1992. We published a notice of initiation of the antidumping administrative review on November 27, 1992.

The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

**Scope of the Review**

Imports covered by the review are shipments of PSPT measuring over 1⅜ inches in width and not exceeding 4 mils in thickness, classifiable under item numbers 3919.90.20 and 3919.90.50 of the Harmonized Tariff Schedules (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

**Preliminary Results of Review**

Because the single manufacturer/exporter subject to review, NAR, had no shipments of this merchandise to the United States during the period of review, the Department has preliminarily assigned NAR the rate applicable to it from its most recent administrative review as the estimated cash deposit rate. This rate is 1.24 percent.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that firm's rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all other" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all other" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate amended for correction of clerical errors or as a result of litigation) as the "all/other" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding and we are unable to ascertain the "all other" rate from the Treasury LTFV investigation, the "all other" rate established in the first notice of final results of administrative review published by the Department (48 FR 35686, August 5, 1983).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Case briefs or other written comments from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including its results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 19, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–17885 Filed 7–26–93; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–351–821, A–122–824, and A–588–830]**

## Postponement of Preliminary Antidumping Duty Determinations: Steel Wire Rod From Brazil, Canada, and Japan

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**EFFECTIVE DATE:** July 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Erik Warga or David Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 482–0922 or (202) 482–4136.

**POSTPONEMENT:** On July 2, 1993, petitioners in these investigations, Connecticut Steel Corporation, Co-Steel Raritan (except against Brazil), Georgetown Steel Corporation (except against Japan), Keystone Steel & Wire Company, and North Star Steel Texas,

Inc. (except against Japan), requested that the Department postpone the preliminary determinations in accordance with section 733(c)(1) of the Tariff Act of 1930, as amended (the Act). Because the Department finds no compelling reasons to deny the request, we are postponing the date of the preliminary determinations until not later than November 19, 1993.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: July 21, 1993.

**Joseph A. Spetrini**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–17883 Filed 7–26–93; 8:45 am]

BILLING CODE 3510–DS–P

## University of Nevada, Reno, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 93–032. *Applicant:* University of Nevada, Reno, Reno, NV 89557. *Instrument:* ECR Multicharge Ion Source. *Manufacturer:* Centre D'Etudes Nucleaires De Grenoble, France. *Intended Use:* See notice at 58 FR 21973, April 26, 1993. *Advice Received From:* Oak Ridge National Laboratory, May 27, 1993.

*Comments:* No comments have been received with respect to this application. *Decision:* Application approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time it was ordered September 14, 1992. *Reasons:* The foreign instrument provides ion beams from metallic and gaseous elements with beam currents of 150, 250, 50 and 5 microamperes respectively, for $N^{6+}$, $Ar^{8+}$, $Xe^{10+}$, and $Ta^{22+}$ at 15.0 kV extraction potential. The Oak Ridge National Laboratory advises that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which was being manufactured in the United States at the time it was ordered.

**Frank W. Creel**

*Director, Statutory Import Programs Staff*

[FR Doc. 93–17884 Filed 7–26–93; 8:45 am]

BILLING CODE 3510–DS–F

## National Oceanic and Atmospheric Administration

[I.D. 072093D]

## South Atlantic Fishery Management Council; Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council's Snapper Grouper Plan Development Team (Team) and its Scientific and Statistical Committee (Committee) will meet on August 9–12, 1993, on different dates and locations. The Team will meet on August 9 from 1 p.m. until 5 p.m., and reconvene on August 10 from 9 a.m. until 5 p.m., at the office of the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407; telephone: (803) 571–4366. The Committee will meet on August 11 from 8:30 a.m. until 5 p.m., and reconvene on August 12 from 8:30 a.m. until 5 p.m., at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000.

The following items will be reviewed at both meetings:

(1) Florida Keys National Marine Sanctuary;
(2) 1992 snapper-grouper logbook survey;
(3) Frequency of fish less than legal size;
(4) Effects of incomplete survival on spawning stock biomass per recruit;
(5) Estimates of spawning stock biomass per recruit from 1991 data;
(6) Economic analyses of minimum size limits; and
(7) Snapper-Grouper Amendment #6.

**FOR FURTHER INFORMATION CONTACT:** Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone: (803) 571–4366.

Dated: July 21, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–17812 Filed 7–26–93; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072093C]

## South Atlantic Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of closed meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a closed session (not open to the public) meeting of the Advisory Panel Selection Committee (Committee) on August 4–5, 1993, at the Town and Country Inn, 2005 Savannah Highway, Charleston, SC; telephone: (803) 571–1000. The meeting will begin on August 4 at 10 a.m. and continue on August 5 until 12 p.m.

The Committee will consider candidates for vacancies on the Council's advisory panels.

**FOR FURTHER INFORMATION CONTACT:** Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone: (803) 571–4366.

Dated: July 21, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–17811 Filed 7–26–93; 8:45 am]

BILLING CODE 3510–22–F

## Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Issurance of permit 869 to the Idaho Department of Fish and Game (P503J).

On March 29, 1993, notice was published (58 FR 16522) that an application had been filed by the Idaho Department of Fish and Game (IDFG) to incidentally take listed Snake River Sockeye salmon (*Oncorhynchus nerka*) and listed Snake River fall and spring summer chinook salmon (*O. tshawytscha*) as a result of implementation of its state-authorized resident fish stocking program, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Notice is hereby given that on July 16, 1993, as authorized by the provisions of the ESA, NMFS issued a Permit for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA, was based on a finding that:

(1) The taking will be incidental;
(2) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;
(3) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
(4) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

The application, permit and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Services, 1335 East-West Highway, Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fishers Service, 911 North East 11th Ave., room 620, Portland, OR 97222 (503/230–5400).

Dated July 21, 1993.

**Patricia Montanio,**

*Acting Director, Office of Protected Resources.*

[FR Doc. 93–17815 Filed 7–26–93; 8:45 am]

BILLING CODE 3510-27-M

## Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service, (NMFS) NOAA, Commerce.

**ACTION:** Issuance of Permits 862 (P503E), 863 (P503F), 864 (P503G), and 865 (P503H) to the Idaho Department of Fish and Game.

On April 28, 1993, notice was published (58 FR 25810) that four applications had been filed by the Idaho Department of Fish and Game, to conduct scientific research and enhance the propagation and survival of the Pahsimeroi River, South Fork Salmon River, East Fork Salmon River, and Upper Salmon River stocks of listed Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) through operation of the Pahsimeroi Hatchery, McCall Hatchery, East Fork Salmon River weir, and the Sawtooth Hatchery, as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife (50 CFR parts 217–227).

Notice is hereby given that on July 14, 1993, as authorized by the provisions of the ESA (16 U.S.C. 1531–1543), NMFS issued Permits Numbered 862, 863, 864, and 865 for the above taking subject to certain conditions set forth therein.

Issuance of these Permits, as required by the ESA, was based on the finding that such Permits:

(1) Were applied for in good faith;
(2) Will not operate to the disadvantage of the listed species which is the subject of the Permits;
(3) Is consistent with the purposes and policies set forth in section 2 of the ESA. These Permits were also issued in accordance with and are subject to parts 217–222 of title 50 CFR, the NMFS regulations governing listed species permits.

The applications, Permits, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: July 14, 1993.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–17814 Filed 7–26–93; 8:45 am]

BILLING CODE 3510-22-M

## Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Issuance of Scientific Research Permit (P540).

**SUMMARY:** On June 4, 1993, notice was published in the **Federal Register** (58 FR 31693) that an application had been filed by Dr. Frank Cipriano, Kewalo Marine Laboratory, 13 Ahui Street, Honolulu, HI 96813 to obtain tissue samples for the following *Lagenorhynchus* species: (1) 100 samples each of dusky *L. obscurus* and Pacific whitesided dolphins *L. obliquidens;* and (2) 40 samples each of white-beaked *L. albirostris,* Atlantic white-sided *L. acutus,* hourglass *L. aruciger,* and Peale's *L. australis* dolphins.

Notice is hereby given that on July 20, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) the NMFS issued a Permit for the above taking, subject to certain conditions set forth therein.

**ADDRESSES:** The Permit is available for review by writing to or by appointment in the Permits Division, Office of Protected Resources, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713–2289); Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015), including the Pacific Area Office of NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831); Director, Northwest Region (206/526–6150) and Director, National Marine Mammal Laboratory (206/526–4020), NMFS, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115; Director, Alaska Region, NMFS, Federal Annex, P.O. Box 21668, Juneau, AK 99802 (907/586–7221); and Director, Southeast Region, NMFS, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: July 21, 1993

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–17820 Filed 7–26–93; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

## Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

*Title, applicable form, and OMB control number:* DoD Application for Press Pass; DD Form 398–3; OMB Control No. 0704–0279.

*Type of Request:* Reinstatement.

*Number of Respondents:* 216

*Responses Per Respondent:* 1.

*Annual Responses:* 216.

*Average Burden Per Response:* .5 hours.

*Annual Burden Hours:* 108.

*Needs and Uses:* This information will be collected when a member of the press applies for a building pass to obtain access to DoD-occupied buildings in the National Capital Region, and will be used to initiate a National Agency Check. The information collected is necessary to ensure propriety of pass issuance and to preserve the security of personnel and classified information.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 21, 1993.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–17859 Filed 7–26–93; 8:45 am]

BILLING CODE 5000–04–M

## Department of the Army

### Privacy Act of 1974; Notice to Amend Systems of Records

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of the Army is amending five systems of records notices in its existing inventory of records system subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on August 26, 1993, unless comments are received which result in a contrary determination.

**ADDRESS:** U.S. Army Information Systems Command, ATTN: ASOP-MP, Fort Huachuca, AZ 85613–5000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pat Turner at (602) 538-6856 or DSN 879-6856.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below. The proposed amendments are not within the purview of the provision of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system reports.

Dated: July 21, 1993.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**AMENDMENTS**

**A0001SAIS**

**SYSTEM NAME:**

Carpool Information/Registration System, (February 22, 1993, 58 FR 10026).

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Retained only on active participants, destroyed upon request/reassignment. Destroyed after 1 year'.

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with 'Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-IDP, Department of the Army, Washington, DC 20310–0107.'

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**A0055–355MTMC**

**SYSTEM NAME:**

Personal Property Movement and Storage, (February 22, 1993, 58 FR 10067).

**CHANGE:**

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**SYSTEM NAME:**

Delete entry and replace with 'Personal Property Movement and Storage Records'.

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**A0608–25CFSC**

**SYSTEM NAME:**

Army Retirement Service Program Files, (February 22, 1993, 58 FR 10154).

**CHANGE:**

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**SYSTEM NAME:**

Delete entry and replace with 'Chief of Staff, Army Retiree Council Files'.

* * * * *

**A0614–100/200USRAEC**

**SYSTEM NAME:**

Recruiter Identification/Assignment Records, (February 22, 1993, 58 FR 10157).

**CHANGE:**

**SYSTEM IDENTIFIER:**

Delete system identifier and replace with 'A0614–100/200USAREC'

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**A0621–1DASG**

**SYSTEM NAME:**

Long-Term Civilian Training Student Contract Files, (February 22, 1993, 58 FR 10159).

**CHANGE:**

* * * * *

**SYSTEM NAME:**

Delete entry and replace with 'Long-Term Civilian Training Student Control Files'.

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[FR Doc. 93–17841 Filed 07–26–93; 8:45 am]

BILLING CODE 3005–04–F

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection request.

**SUMMARY:** The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before August 26, 1993.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that

the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstracts. OMB invites public comments at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 21, 1993.

**Cary Green,**

*Director, Information Resources Management Service.*

**Office of Elementary and Secondary Education**

*Type of Review:* Reinstatement
*Title:* Comparability of Services Requirement—Section 201.44 of the Code of Federal Regulations—Information Collection to Document Compliance
*Frequency:* Annually
*Affected Public:* State or local governments
*Reporting Burden:*
Responses: 0
Burden Hours: 0
*Recordkeeping Burden:*
Recordkeepers: 2,051
Burden Hours: 4,153
*Abstract:* Operating agencies are required to provide services to students receiving Migrant Education Program Services who are at least comparable to those received by other students. States are required to monitor compliance with this requirement. To document compliance, a reporting and recordkeeping burden is imposed on SEAs and LEAs. The Department will use the information of ascertain compliance with § 201.44 of the Code of Federal Regulations.

**Office of Educational Research and Improvement**

*Type of Review:* Extension
*Title:* Application for Grants Under the Fund for the Improvement and Reform of Schools and Teaching (FIRST): Schools and Teachers Program/Family-School Partnership
*Frequency:* Upon completion of project—12 to 36 months
*Affected Public:* State and local governments; Non-profit institutions
*Reporting Burden:*
Responses: 800
Burden Hours: 11,527
*Recordkeeping Burden:*
Recordkeepers: 0
Burden Hours: 0
*Abstract:* Applications are required to receive grants under the FIRST program. Program participants include LEAs, SEAs, IHEs, nonprofit organizations, individual public and private schools, consortia of individual schools, and consortia of these schools and institutions.

**Office of Educational Research and Improvement**

*Type of Review:* Revision
*Title:* Schools and Staffing Survey
*Frequency:* Triennial
*Affected Public:* Individuals and households; State or local governments; Non-profit institutions
*Reporting Burden:*
Responses: 9,000
Burden Hours: 3,000
*Recordkeeping Burden:*
Recordkeepers: 0
Burden Hours: 0
*Abstract:* The Schools Staffing Survey is an integrated set of surveys consisting of the Teacher Demand and Shortage Survey, the School Survey, the School Administration Survey, and the Teacher Survey. The purpose of these surveys is to measure critical aspects of teacher supply and demand, the composition of the administrator and teacher work force, and the general status of teaching and schooling.

**Office of Special Education and Rehabilitative Services**

*Type of Review:* Revision
*Title:* Report of Infants and Toddlers Receiving Early Intervention Services in Accord with Part H
*Frequency:* Annually
*Affected Public:* State or local governments
*Reporting Burden:*
Responses: 58
Burden Hours: 2,393
*Recordkeeping Burden:*
Recordkeepers: 0
Burden Hours: 0
*Abstract:* This collection requirement provides instructions and forms for States to report the number of infants and toddlers with disabilities receiving early intervention services and serves as the basis for monitoring, implementing Federal programs and reporting to Congress.

[FR Doc. 93–17788 Filed 7–26–93; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

**Office of Policy, Planning, and Program Evaluation; Guidelines for Voluntary Reporting of Greenhouse Gas Emissions and Reductions, and Carbon Sequestration**

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of inquiry and request for comment.

**SUMMARY:** Pursuant to Section 1605(b) of the Energy Policy Act of 1992, the Department of Energy (DOE) is developing guidelines for the voluntary reporting of greenhouse gas emissions, their reduction, and carbon fixation achieved through any measure. The data will be reported on forms to be developed by the Energy Information Administration (EIA) and added to an EIA database.

Because of the potential broad public interest in the issues involved, DOE believes that the public should have an opportunity to provide input on the issues raised in the voluntary reporting program in advance of the proposal of the guidelines. DOE is requesting written comments as one means to bring a broad range of views into the guideline development process.

Subsequent to analysis of the submissions made in response to this notice, DOE contemplates scheduling, in consultation with the Environmental Protection Agency (EPA), a limited number of public workshops prior to releasing proposed guidelines for public comment. Each workshop would focus on a specific area, inviting the stakeholders for a technical discussion on the issues in that area. This process will help ensure that proposed guidelines address concerns so identified. The proposed guidelines themselves will be subject to public notice and comment prior to final issuance.

**DATES:** Written submissions are due on or before August 26, 1993. Comments should be submitted in quadruplicate.

**ADDRESSES:** Written comments should be submitted to Ms. Jean Vernet, Office

of Environmental Analysis (PO–60), U.S. Department of Energy, 1000 Independence Ave SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jean Vernet, at the address above, or by telephone at (202) 586–4755.

**SUPPLEMENTARY INFORMATION:** Under Section 1605(b) of the Energy Policy Act of 1992 (EPACT; Pub. L. 102–486), the Secretary of Energy with the Energy Information Administration (EIA) is to establish a voluntary reporting system and database on emissions of greenhouse gases (GHGs), reductions of these gases, and carbon fixation. Appropriate consultation with EPA is required under sec. 1605(c). This notice is directed at obtaining information that will be useful in developing the guidelines for the voluntary reporting program required under sec. 1605(b)(1). Under companion provisions of sec. 1605, EIA is to prepare a national aggregate inventory of GHG emissions, and develop reporting forms and a database for the voluntary reporting system.

## I. Background

Section 1605(b)(1) of EPACT requires that the Secretary of Energy issue, after opportunity for public comment, guidelines for the accurate voluntary collection and reporting of information on greenhouse gas emissions for a baseline period of 1987 to 1990 and subsequent years; annual GHG emissions reductions and carbon fixation; GHG emissions reductions specifically achieved as a result of voluntary reductions, plant or facility closings and state or Federal requirements; and an aggregate calculation of greenhouse gas emissions by each reporting entity. Subsections 1605(b) (2) and (4) further require that the Administrator of the EIA develop forms and a database for voluntary reporting under the guidelines. Subsection 1605(b)(4) also recognizes that the data may be used by the reporting entity to demonstrate achieved reductions of GHGs.

The statutory language identifies some specific GHG reduction and carbon sequestration activities that the program must cover but leaves discretion in both technical and policy areas, including those discussed below. A further discussion of the areas is contained in the appendix to this notice to aid in developing comments.

DOE recognizes that the design of the voluntary reporting program will greatly affect participation in the program, as well as the credibility and usefulness of data reported, including its use in demonstrating achieved reductions. DOE therefore specifically asks that respondents address the impact of any suggested approach(es) on the degree of participation by potential reporting entities, as well as on the credibility of both the individual data reported and the reporting system as a whole.

## II. Request for Submissions

DOE requests written comments on all aspects of the program from interested parties, especially those with particular knowledge in the institutional, legal, and technical areas related to reporting GHG emissions, their reduction, and carbon fixation. All written information provided by respondents will be available for public inspection at the Department of Energy, Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Pursuant to provisions of 10 CFR 1004.11 (1983), any person submitting information believed to be confidential and exempt by law from public disclosure should submit one copy only of the document and, if possible, 4 additional copies in which information believed to be confidential has been deleted. The Department of Energy will determine the confidential status of the information and treat it accordingly.

Some specific areas for comment are identified below; however, these areas are not intended to limit the content of submissions. While DOE recognizes that issues in the voluntary reporting program are highly diverse, they are grouped into two main categories, Institutional and Technical, to aid in presentation.

*Institutional Issues*

- To determine what constitutes the "reporting entity," discuss the appropriate legal structure(s) to identify and define, for the purpose of the program, both the reporting entity and reportable activity. Possible candidates for "entity" include the firm, parent company, subsidiary company, the facility, the emitting unit, and an individual person.
- Discuss the appropriateness of setting a *de minimis* reportable level of emissions, emissions reduction, or carbon sequestered; and *de minimis* level(s) appropriate for each gas and/or activity. Actions that by themselves emit or achieve such small levels of GHG reduction may not logistically be dealt with under the program.
- Discuss methods to identify appropriate reporting entities in multiple-party activities that reduce emissions or fix carbon.
- Discuss methods to address indirect causes of GHG emissions reductions; for example, when energy efficiency improvements in the residential and commercial sector result in decreased electricity production demand and subsequent decreased GHG emissions at the generating plant.
- In addition to using an historical baseline (for example, 1990 or the year immediately preceding the reduction activity), discuss the appropriateness of further defining baseline as projected emissions without the reduction activity (that is, including GHG emissions prevention as well as actual reductions).
- Discuss methods to address a reporting entity's emissions reductions that occur through shifting an activity and the accompanying emissions outside the reporting entity.
- Discuss factors that are particular to emissions reduction and carbon fixation actions taken by U.S. entities outside the U.S., for example, different verification techniques.
- Identify other State, Federal, or private reporting mechanisms for information similar to, or from which the reporting entity may derive, data used by the voluntary reporting system on GHGs emissions, emissions reductions, and carbon fixation.
- Discuss use of a reporting system to encourage and recognize reporting entities for achievement of emissions reduction goals.
- Discuss the balance between the cost of estimation methods and their relative accuracy.
- Discuss mechanisms for the reporting entity to verify the data reported; discuss how the design of the guidelines can promote accuracy; and discuss whether the reporting system should categorize data reported by degree of uncertainty or verification.
- Propose specific issue areas and groupings for workshops that would be useful in guideline design.

*Technical Issues*

- In addition to those GHGs specifically mentioned in sec. 1605(b), ($CO_2$, CFCs and methane), identify any additional GHGs that the voluntary program may cover and the rationale for including each in the program. For example, does the nature of the gas and its sources offer opportunities for reductions that could be reported?
- Discuss ways in which differences in radiative activity among the GHGs could be treated in the guidelines. Given the changing scientific understanding and continuing scientific refinement in this area, discuss the benefits of (a)

addressing radiative activity and global warming potential in reference documents for the use of the reporter or (b) requiring submission of reported emissions data reduced to common radiative factors provided in the guidelines.

- Identify existing protocols and techniques for measuring and estimating emissions, emissions reductions, and carbon fixation; discuss their suitability for use in the voluntary reporting system. For example, international protocols for estimating national total emissions of GHGs (currently under development) are not necessarily designed to accommodate individual activity estimations.
- Identify those prevalent GHG emissions reduction and carbon fixation activities that are likely to be reported, together with methods to quantify the resulting GHG or carbon effect of the activity.
- Identify any additional sectors not discussed in the appendix that the guidelines should address, identifying the GHG-emitting and emissions reduction activities, with methods for estimating GHG emissions and reductions. The major sectors discussed in the appendix are electric utility, residential and commercial, industrial, transportation, and agriculture and forestry.
- For the Electric Utility Sector, discuss calculating and estimating GHG emissions and reductions through activities such as more energy-efficient electricity generation, new technologies, fuel switching and pre-combustion treatment, cogeneration, equipment upgrade, conservation, and demand-side management programs.
- For the Residential and Commercial Sector, discuss estimating emissions and emissions reductions from energy sources other than electricity.
- For the Industrial Sector, specifically address emissions of CFCs and methane from industrial activities and the substitution of technologies in heat and mechanical applications.
- For the Transportation Sector, discuss estimating GHG emissions and reductions achieved through activities such as improved fuel efficiency, use of lower GHG-emitting fuels, and changes in public transit ridership and total personal vehicle use.
- For the Forestry and Agriculture Sector, discuss categorization and quantification of various forestry and agricultural activities by their potential for carbon fixation and storage; activities that increase biomass production, conservation, and biomass technology substitution for other fuel use; and practices in livestock production and fertilizer use that impact GHG emissions.

Respondents are invited to submit any additional information that they believe relevant to guideline development.

Issued in Washington, DC on July 20, 1993.

**Susan F. Tierney,**

*Assistant Secretary, Office of Policy, Planning, and Program Evaluation.*

## Appendix

This appendix provides additional background information and technical detail regarding issues related to development of the guidelines for the voluntary reporting program. DOE seeks comment and discussion on every aspect of the proposed guidelines; the additional information provided is not intended to limit subject areas or approaches that may be addressed in the written comments.

The request for submissions identifies two general categories of issues: Institutional and Technical; this appendix follows a similar format. The institutional category includes issues related to defining the reporting entity and its baseline emissions, activities undertaken jointly by reporting entities, international activities, the scope and credibility of the program, the accuracy of reports of emissions reductions and carbon sequestration, and the categorization of reports by motivation. The technical issues relate to identification of gases covered by the program, comparisons among gases, identification and treatment of specific activities, and identification of information needed for possible federal recognition of voluntary reductions. Emissions reduction and carbon sequestration activities are further categorized into five sectors: electric utility, residential and commercial, industrial, transportation, and agriculture and forestry.

### Institutional Issues

#### *Defining the Baseline*

Section 1605(b)(1) specifies the baseline period of 1987 through 1990 (the "historic baseline"), but does not specify the benchmark relative to which emissions reductions and carbon sequestration are to be measured.

Several approaches could be adopted for the guidelines. The guidelines might require that all emissions reductions be reported relative to the reporting entity's historic baseline. For this approach, the baseline could be further defined as the highest, lowest, or average of the annual emissions from 1987 to 1990. Baseline for reduction activity, moreover, could be the emissions level immediately proceeding the reduction activity.

The use of the historic baseline raises concerns about the treatment of newly formed reporting entities or those with growing emissions. Reasons for an increase in an entity's emissions include mergers and acquisition, increased production, and general economic growth. Alternatives to use of historic baselines include (a) measuring the reduction relative to an estimated level of emissions *without* the reduction activity, (b) reporting reductions in GHG emissions per unit of production output, or (c) reporting on a project or activity basis.

#### *Defining the Reporting Entity and Reportable Activity*

One critical element in establishing the baseline is the definition of the scope or boundaries of the reporting entity. If the reporting entity is not well defined, reductions can be achieved by shifting emitting activities from one subsidiary to another or by shifting certain activities to subcontractors.

If emissions reductions are reported on a project-by-project basis, then the project baseline may reflect what would have happened had the project not been undertaken. This might be accomplished, for example, through the use of reference cases or extrapolation from past trends.

#### *Joint Activities*

Many activities that reduce GHG emissions and increase carbon fixation will involve more than one party. For example, a conservation program under which an electric utility subsidizes the purchase of high efficiency refrigerators by residential customers involves the utility, the homeowners, and the appliance manufacturer. The guidelines may include methods to determine which entity may report the reductions.

#### *International Activities*

Section 1605 does not limit reportable emissions or reductions to those occurring within the U.S. Thus, the guidelines may address both the applicability of the program to, and appropriate methods addressing factors specific to, activities occurring outside the U.S. Examples of potentially reportable existing international activities include forestry projects in developing nations and energy efficiency improvement projects in countries-in-transition.

#### *Balancing Scope and Credibility of Program*

The level of specificity in the guidelines and reporting program can affect the level of participation, the credibility of the data reported, and the

potential for recognizing reported reductions achieved. GHG emissions data for some activities are well documented, for others less complete. Also, for any given area of activity, several different methods may be used to estimate the accomplishments of the reporting entity. The choice of methods involves achieving a balance between containing the costs of reporting the activity and increasing the credibility of the estimate.

An issue for the program is how to deal with varying levels of confidence in estimations of emissions, emissions reductions, and carbon sequestration. Alternative methods to address this issue include categorizing reports according to the level of uncertainty, and allowing reporting entities to choose from a menu of methods for estimating emissions reductions or carbon sequestration.

*Identifying Motivation for Reductions*

Section 1605(b)(1)(C) requires that the guidelines must identify reductions achieved as a result of (1) voluntary reductions, (2) plant or facility closings, and (3) state or Federal requirements. Motivation for voluntary reductions may include, for example, energy cost savings or participation in a federal environmental recognition program. These categories may not be mutually exclusive. For example, a firm may elect to comply with state or Federal regulations by closing, rather than upgrading, an existing facility. The reporting program may address appropriate allocation of reduction registrations by motivational category to prevent double counting.

*Accuracy and Credibility of Reports*

Section 1605(b)(2) provides that entities reporting under the voluntary program must certify the accuracy of the information reported but does not require independent verification or auditing. However, DOE recognizes the importance of maintaining the credibility of the database. The guidelines may address mechanisms available to reporting entities that promote the accuracy of individual reports. These mechanisms might include the use of records already maintained by the reporting entity, related reports provided to state or Federal regulatory agencies, or private monitoring or auditing of the reported data.

**Technical Issues**

Technical issues relate to coverage of the program, comparisons among gases, and GHG emissions reducing and carbon sequestering activities in each of five sectors.

*Coverage of Program*

EPACT does not define those greenhouse gases to be covered by the voluntary reporting program. Only three types of gases are specifically mentioned in sec. 1605 relative to reportable activities: carbon dioxide, methane, and chlorofluorocarbons.

Guidance in developing the list of greenhouse gases to be covered by the program may be found outside the legislative language. The United Nations Framework Convention on Climate Change, for example, defines greenhouse gases as "those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation." This broad definition would include, for example, water vapor. The Intergovernmental Panel on Climate Change (IPCC) has produced a list of greenhouse gases, illustrated in Tables 1 and 2 (included in the discussion of comparisons among gases). However, only six types of GHGs are actually listed by the IPCC: carbon dioxide, methane, nitrous oxide, carbon monoxide, nitrogen oxides, and the halogenated substances. The latter category includes not only chlorofluorocarbons, but also the hydrochlorofluorocarbons and hydrofluorocarbons.

Each of these substances may warrant more or less attention in the guidelines, depending upon the level of anthropogenic emissions, the extent of opportunities to reduce emissions, and their relative radiative activity and atmospheric lifetimes.

*Accounting for Differences Among Gases*

Section 1605(b)(1) also requires that the guidelines "establish procedures for taking into account the differential radiative activity and atmospheric lifetimes of each greenhouse gas." Human activities affect several of the greenhouse gases, carbon dioxide ($CO_2$), methane ($CH_4$), nitrous oxide ($N_2O$), and halogenated substances. Emissions of other gases, including carbon monoxide (CO), nitrogen oxide compounds ($NO_X$), and the non-methane hydrocarbons (NMHC) group, also result from human activity and affect the concentration of greenhouse gases. Some scientists believe that the presence of sulfur aerosols tends to cool the surface of the earth, making the emission of sulfur dioxide ($SO_2$) also of interest in the climate change issue.

The IPCC has attempted to compare the relative radiative forcing of these gases, although computing quantitative measures has proven difficult. In 1990, the IPCC provided estimates of direct and indirect effects of the release of one kilogram of each gas, relative to the release of one kilogram of $CO_2$; a measure termed "global warming potential (GWP) coefficient." Because gases are eliminated from the atmosphere at different rates, the GWP calculation varied depending upon the length of the period in which the cumulative change in radiative forcing was computed. GWP coefficients were provided in 1990 for each gas based on time horizons of 20, 100, and 500 years (Table 1).

TABLE ONE.—VALUES OF GLOBAL WARMING POTENTIAL AS USED BY THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC) IN 1990

| Trace gas | Global warming potential | | |
|---|---|---|---|
| | Integration time horizon (yrs) | | |
| | 20 | 100 | 500 |
| Direct Effects: | | | |
| Carbon dioxide | 1 | 1 | 1 |
| Methane (incl. indirect effects) | 63 | 21 | 9 |
| Nitrous oxide | 270 | 290 | 190 |
| CFC–11 | 4500 | 3500 | 1500 |
| CFC–12 | 7100 | 7300 | 4500 |
| HCFC–22 | 4100 | 1500 | 510 |
| CFC–113 | 4500 | 4200 | 2100 |

TABLE ONE.—VALUES OF GLOBAL WARMING POTENTIAL AS USED BY THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC) IN 1990—Continued

| Trace gas | Global warming potential | | |
|---|---|---|---|
| | Integration time horizon (yrs) | | |
| | 20 | 100 | 500 |
| CFC–114 | 6000 | 6900 | 5500 |
| CFC–115 | 5500 | 6900 | 7400 |
| HCFC–123 | 310 | 85 | 29 |
| HCFC–124 | 1500 | 430 | 150 |
| HFC–125 | 4700 | 2500 | 860 |
| HFC–134a | 3200 | 1200 | 420 |
| HCFC–141b | 1500 | 440 | 150 |
| HCFC–142b | 3700 | 1600 | 540 |
| HFC–143a | 4500 | 2900 | 1000 |
| HFC–152a | 510 | 140 | 47 |
| $CCl_4$ | 1900 | 1300 | 460 |
| $CH_3CCl_3$ | 350 | 100 | 34 |
| $CF_3Br$ | 5800 | 5800 | 3200 |
| Indirect Effects | | | |
| CH4 effect on tropospheric $O_3$ | 24 | 8 | 3 |
| $CH_4$ as $CO_2$ | 3 | 3 | 3 |
| $CH_4$ as stratospheric $H_2O$ | 10 | 4 | 1 |
| CO effect on tropospheric $O_3$ | 5 | 1 | 0 |
| CO as $CO_2$ | 2 | 2 | 2 |
| $NO_x$ effect on tropospheric $O_3$ | 150 | 40 | 14 |
| Non-methane hydrocarbons as tropospheric $O_3$ | 28 | 8 | 3 |
| Non-methane hydrocarbons as $CO_2$ | 3 | 3 | 3 |

In 1992, IPCC revised these estimates, but difficulties arose in uniquely defining a GWP for all effects of short-lived gases such as CO, $NO_X$, and $CH_4$. Therefore, IPCC reported only direct GWP coefficients, acknowledging that problems associated with the removal rate of $CO_2$ led to the potential biases even in the direct GWP coefficients published (Table 2).

TABLE TWO.—VALUES OF GLOBAL WARMING POTENTIAL AS USED BY THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (IPCC) IN 1992

| Gas | Life (years) | Direct effect for time horizons of | | | Signs of "indirect" effect |
|---|---|---|---|---|---|
| | | 20 years | 100 years | 500 years | |
| $CO_2$ | (1) | 1 | 1 | 1 | None[2]. |
| $CH_4$ | 10.5 | 35 | 11 | 4 | Positive. |
| $N_2O$ | 132 | 260 | 270 | 170 | Uncertain. |
| CFC–11 | 55 | 4500 | 3400 | 1400 | Negative. |
| CFC–12 | 116 | 7100 | 7100 | 4100 | Negative. |
| CFC–13 | 400 | 11000 | 13000 | 15000 | Negative. |
| CFC–14 | >500 | >3500 | >4500 | >5300 | None. |
| HCFC–22 | 15.8 | 4200 | 1600 | 540 | Negative. |
| CFC–113 | 110 | 4600 | 4500 | 2500 | Negative. |
| CFC–114 | 220 | 6100 | 7000 | 5800 | Negative. |
| CFC–115 | 550 | 5500 | 7000 | 8500 | Negative. |
| CFC–116 | >500 | >4800 | >6200 | >7200 | None[3]. |
| HCFC–123 | 1.71 | 330 | 90 | 30 | Negative. |
| HCFC–124 | 6.9 | 1500 | 440 | 150 | Negative. |
| HFC–125 | 40.5 | 5200 | 3400 | 1200 | None[3]. |
| HFC–134a | 15.6 | 3100 | 1200 | 400 | None[3]. |
| HCFC–141b | 10.8 | 1800 | 580 | 200 | Negative. |
| HCFC–142b | 22.4 | 4000 | 1800 | 620 | Negative. |
| HFC–143a | 64.2 | 4700 | 3800 | 1600 | None[3]. |
| HFC–152a | 1.8 | 530 | 150 | 49 | None[3]. |
| $CCl_4$ | 47 | 1800 | 1300 | 460 | Negative. |
| $CH_3CCl_3$ | 6.1 | 360 | 100 | 34 | Negative. |
| $CF_3Br$ | 77 | 5600 | 4900 | 2300 | Negative. |
| $CHCl_3$ | 0.7 | 92 | 25 | 9 | Negative. |
| $CH_2Cl_2$ | 0.6 | 54 | 15 | 5 | Negative. |
| CO | Months— | ..... | ..... | ..... | Positive. |
| NMHC | Days-months | ..... | ..... | ..... | Positive. |
| $NO_x$ | Days | ..... | ..... | ..... | Uncertain. |

[1] An approximate lifetime is 120 years.
[2] $CO_2$ is not involved in chemical reactions affecting the concentrations of the radiatively active species. However, it could affect the relevant chemical reactions through its influences on the atmospheric thermal structure.
[3] No currently known or negligible indirect effect.

To date no definitive set of relationships exists to compare differential radiative effects of greenhouse gases. DOE has not been able to identify a suitable method for accounting for differences among gases with respect to their contribution to radiative balance. DOE plans to rely on refinements produced by scientific research and on assessments of the IPCC. An issue in guideline development revolves around the appropriate way to fulfill, in the voluntary reporting program, the statutory requirement to address radiative forcing given the framework of the ongoing research, evolving scientific knowledge, and international scientific deliberation on this issue. The reporting program could require data to be reported by common units (for example, carbon dioxide equivalents), or it may be able to address the statutory requirement by issuing a reference document providing the current scientific consensus on this issue, for informational use by the reporting entity. Under this approach, all data would be reported in units of the GHG emitted/reduced or units of carbon sequestrated, and not reduced to a common radiative forcing unit.

*Emissions Reduction and Carbon Sequestration Activities*

Section 1605(b)(1) states that the guidelines are to establish procedures for the accurate voluntary reporting of information on "annual reductions of greenhouse gas emissions and carbon fixation achieved through any measures." The subsection includes a list of technologies and practices that might be used to reduce emissions of greenhouse gases or sequester carbon. The statutory list was not exclusive. Data on additional activities may be reported under the voluntary reporting system, and used by the reporter to demonstrate achieved reductions.

Where possible, DOE will provide specific guidance for each technology and practice on the calculation of emissions, emissions reductions, and carbon sequestration accomplishments. General, generic guidance will be necessary for activities not covered by a specific guideline.

DOE has identified five major sectors in which GHG emissions and carbon sequestration are likely to occur: electric utility, residential and commercial, industrial, transportation, and agriculture and forestry sectors.

*Electric Utility Sector*

Electricity generation is a major contributor to total U.S. $CO_2$ emissions. With a potential reporting population of over 2,000 fossil fuel generating units operated by approximately 300 utilities, this sector may require special attention in the voluntary reporting program. Four major activity groups in this sector cover most areas of reduction of GHG emissions: addition and replacement of generating capacity, maintenance and use of existing equipment, emissions abatement, and demand-side management.

As utilities add and replace generating capacity, they will have opportunities to significantly reduce GHG emissions. By increasing the capital turnover rate, utilities speed up the replacement of older, higher emitting generating plants with new technologies that have lower heat rates and higher conversion efficiencies. Turnover also allows utilities to substitute fuels with lower emissions, such as natural gas, for those with higher emissions, such as coal. Utilities can also adopt generating technology and fuel combinations that have low or no GHG emissions, such as nuclear, hydro, geothermal, wind, and solar technologies. GHG emissions can also be reduced by adoption of cogeneration technologies, that is, the joint production of electricity and useful heat from a single combustion process.

Utilities can also affect GHG emissions through their procedures for using, maintaining, and upgrading existing equipment. Both the rehabilitation and repowering of generation plants can lead to lower GHG emissions. Reducing transmission and distribution system losses and managing the generating mix can also indirectly result in reduced GHG emissions.

In addition, methods exist to capture $CO_2$ after it has been released by the combustion process. However, for economic reasons, pre-combustion fuel treatment technologies and direct post-combustion emissions controls are unlikely to play a significant role in emissions reductions in the foreseeable future.

During the past several years utilities have conducted a variety of demand-side management (DSM) programs intended to affect customer use of electricity and natural gas. DSM activities also have been undertaken by private conservation consultants and contractors. Measurement of both energy savings and emissions reductions under DSM programs appears to be a complex task. In this area, DOE may design flexible guidelines that balance measurement costs against uncertainty of estimation techniques, similar to the EPA Conservation Verification Protocols recently adopted for use in the sulfur dioxide allowance program under the Clean Air Act. The issue of joint activities and the appropriate reporting entity also clearly presents itself with DSM activities.

*Residential and Commercial Sector*

The combined residential and commercial sectors are responsible for a significant share of U.S. $CO_2$ emissions. Within the residential sector, energy is consumed for space and water heating, air conditioning, lighting, and appliance operation. Space heating is the largest single use of energy in the commercial sector, followed by lighting, air conditioning and ventilation. Addressing the direct generation of GHG by sources in those sectors, through on-site combustion of fossil fuels for space or water heating, for example, raises the issue of threshold levels of reportable activity. Addressing indirect generation of GHG by electricity consumption in these sectors presents the additional issue of how entities allocate reportable data on emissions and reductions.

Energy use reductions leading to GHG emissions reductions can be achieved by several activities. For example, building practices for new residential and commercial structures may be adopted, including increased insulation in ceilings, walls, and floors; double or triple glazing in windows and sliding glass doors; reduced infiltration with the use of caulking and weather stripping; and increased insulation of pipes and duct work. The heating and cooling requirements of existing buildings can also be reduced significantly through retrofitting a wide variety of weatherproofing measures. In the commercial sector the energy used for heating and cooling during non-working hours has already been reduced in most buildings in the United States.

Using high efficiency appliances can also help to reduce GHG emissions in the residential and commercial sectors. High efficiency lighting and HVAC systems, high efficiency gas furnaces, and high efficiency standard and groundwater heat pumps can also lower GHG emissions. Solar space heating and hot water heating can also reduce or eliminate GHG emissions related to those services.

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Additional areas for greenhouse gas (particularly methane) reduction activities are possible in the waste-related activities of these sectors, such as landfills, wastewater treatment, and sewage sludge disposal.

*Industrial Sector*

The majority of United States industrial fuel use, and a corresponding large share of industrial $CO_2$ emissions, are concentrated in eight industries. These industries are petroleum refining, chemicals, paper, steel, glass and stone, cement, transportation equipment, and aluminum. Because the processes within seven of these industries are relatively uniform, specific guidelines for emission reductions are possible. The chemical industry, however, has highly diverse manufacturing processes and does not present similar uniformity.

Industry uses energy primarily for process heat, mechanical power and electric drive, instrumentation and control, space heat, and light. Process heat can be conserved by waste heat recovery, process flow optimization improvements in combustion technologies, cogeneration, and preheating materials. Electric drive savings are possible through the use of improved motors and torque converters, clutched fly wheels, alternating current synthesizers, and robots. Energy efficiency in the area of instrumentation and control can be increased through the application of computer technology that allows improved metering of energy inputs to the production process. Space heating can become more efficient through improved use of insulation, use of waste heat, and more efficient HVAC equipment. Efficient illumination technologies and practices can also reduce energy use.

In addition, the industrial sector may achieve direct or indirect reductions in GHG emissions through fuel switching away from fossil or carbon-intensive fuels; increased recycling of materials such as aluminum, glass, and steel; and using less energy-intensive intermediate industrial products. Non-combustion processes, such as smelting of primary aluminum and cement manufacturing, may also offer opportunities for GHG emissions reductions. Substituting other building materials for cement may also result in a decrease in $CO_2$ emissions based on reduced cement production.

Energy extraction—coal mining, and oil and gas drilling—leads to significant releases of methane. Extraction processes also indirectly account for small amounts of GHG emissions from the use of combustion engines, compressors, and pumps. Coalbed methane emissions may be reduced by capture, flaring, or other technologies and practices. Emissions of methane can be reduced by repairing leaks in natural gas pipelines. However, data related to these emissions are not as precise as those for emissions from the combustion of fossil fuels.

Although the role of halogenated compounds in the greenhouse effect is uncertain, the statutory language includes addressing emissions reductions of CFC. Halogenated or other substances with lower radiative forcing potential may be substituted for substances with higher potential. The guidelines may need to distinguish between CFCs and other halogenated substances that are released as a by-product of manufacturing and those that are incorporated into a final product creating the potential for subsequent release.

*Transportation*

While vehicle operations are the most obvious source of GHG emissions from the transportation sector, construction of infrastructure, manufacture of vehicles, and production of fuels are also significant sources of emissions. Vehicle operation, a major fossil-fuel consumer, emits not only $CO_2$, but also $NO_x$, a possible precursor to $N_2O$. Within the area of vehicle operation the guidelines may address activities related to fuel use, fuel choice, and demand for transportation.

Fuel use in individual transportation may be reduced by the design, production, marketing, and purchase of vehicles with high fuel economy. Improved operation and maintenance practices, particularly among fleet owners, can also reduce emissions of greenhouse gases. Finally, programs and practices that promote replacement of less efficient vehicles and disposal of CFC refrigerants in mobile air conditioning units in accord with the Clean Air Act can also play a role in GHG emissions reductions. Substitution of halogenated substances by other compounds can also play a role.

Transportation fuels such as hydrogen, natural gas, methanol, and ethanol emit smaller quantities of greenhouse gases than petroleum fuels. Electricity emits no greenhouse gases at the point of use. Guidelines on fuel switching might provide provisions to calculate the net effect of switching from traditional to other transportation fuels, reflecting the effect upon the combined production and consumption system.

Programs to reduce the demand for certain types of transportation services may also contribute to the reduction of greenhouse gases. Most of what is understood about transportation demand involves mode choice rather than the decision or need to travel. The greatest potential for voluntary emissions reductions achieved within this area lies in the substitution of low emission modes of transportation, such as high occupancy vehicles and public transit, for the use of one and two passenger automobiles.

The guidelines may treat transportation-related petroleum refining, vehicle manufacturing, and cement making as processes in the industrial sector.

*Agriculture and Forestry Sector*

The forestry and agricultural sectors not only present opportunities to reduce GHG emissions but also have potential to remove carbon from the atmosphere and store it in biomass and soil organic carbon, a process known as carbon sequestration. The activities in these sectors that could reduce GHG emissions and sequester carbon vary widely. They include new and replacement tree planting, modified forest management practices, biomass plantations, agroforestry, and agricultural practices and related industries.

Newly established forest stands sequester carbon and reduce atmospheric carbon dioxide levels. Similarly, the management of existing forests can be modified to increase the rate of carbon fixation. Two issues related to forestry activities are quantification of carbon sequestration and the long-term fate of carbon.

The carbon sequestration effects of forestry projects could be estimated by initial and periodic field measurements or from U.S. Forest Service data. For tree planting, sufficient data may exist on the growth rates of forest stands, the density and distribution of carbon in trees, and the carbon content of the balance of the forest ecosystem to allow prediction of carbon sequestration patterns for specific sites. However, because of wide variations in the characteristics of forest land and forest management techniques, estimating increased sequestration that results from modified forest management practices may require periodic field measurements.

The temporary nature of carbon sinks raises two issues peculiar to forestry. First, the guidelines may need to address the issue of projects reported in the database, but later harvested or accidentally destroyed. Second, new forest projects may have secondary effects on the management of existing forests; for example, by encouraging early harvesting of existing timber

stands and discouraging replanting of these stands.

The woody biomass energy crops also serve as a temporary carbon sink. This temporary sequestration could be treated in much the same way as the short-lived carbon sinks in shorter rotation timber stands. As with herbaceous energy crops, once woody biomass energy crops are harvested they serve to displace fossil fuels and their carbon emissions.

Agroforestry combines annual or perennial cropping systems with silviculture on the same tract of land. The emphasis on the use of woody crops is to utilize the available rain-fed moisture and provide dual products, agricultural and forest. Agroforestry may provide carbon sequestration in the woody biomass as well as increase soil organic carbon, since soil stabilization, and often no-till cropping, are combined with woody plants.

This may sequester more carbon per hectare (acre) than other no-till agricultural systems.

The agriculture sector is responsible for some emissions of carbon dioxide and significant emissions of methane and nitrous oxide. Domestic ruminant livestock production and rice production result in methane emissions. The production of feed grains, whether for domestic meat production or export, contributes indirectly to emissions of carbon dioxide and nitrous oxide through the consumption of energy and fertilizer used. GHG emissions may be lowered by improving livestock management systems, and the improved handling of manure and other wastes. Improved efficiency in breeding may also reduce emissions. Use of naturally occurring hormones is under review by agricultural producers and the consuming public.

Changes in cropland management practices and reduced burning of agricultural wastes could also reduce GHG emissions. Changes in the application and management of the biological conversion process of chemically-derived nitrogen fertilizer may reduce nitrous oxide emissions. More efficient production of chemical fertilizers, and the development of manufactured coatings to release nitrogen when growing plants can best utilize them, it will aid in the reduction of field-released nitrous oxide. Irrigation agriculture, where sprinkler systems are used to apply water, or pumping systems used to raise water and deliver it to fields where surface irrigation systems distribute the water, consume large amounts of energy. Improved irrigation systems utilizing the newer technologies, or the development of new technologies, may conserve energy.

[FR Doc. 93–17878 Filed 7–26–93; 8:45 am]

BILLING CODE 6450–01–P

## Implementation of Noncompetitive Financial Assistance

**AGENCY:** U.S. Department of Energy (DOE), Nevada Operations Office (DOE/NV).

**SUMMARY:** DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.14(e)(1), it intends to award a noncompetitive financial assistance grant to the state of Alaska to improve the accountability of DOE in the areas of environmental protection and public health and safety.

This award will provide funds to chart a new course for DOE toward full accountability in the areas of environmental protection and public health and safety.

**PROJECT SCOPE:** The state of Alaska will provide independent oversight and validation of environmental remediation activities at the Project Chariot site, Cape Thompson, Alaska.

The state of Alaska will assume a substantive role in overseeing DOE's compliance with state environmental laws, and help to assure the citizens of Alaska that DOE operations do not constitute a health hazard.

Eligibility for the award of this grant is being limited to the state of Alaska because the applicant is a unit of government, and the activity to be supported is related to performance of a governmental function within the subject's jurisdiction, thereby precluding DOE provisions of support to another entity.

The project period of this grant is for two years, and the grant will commence August 1, 1993, and end July 31, 1995. The total established cost of this award is $500,000.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Nevada Operations Office, ATTN: Stephen A. Mellington, P.O. Box 98518, Las Vegas, NV 89193–8518.

Issued in Las Vegas, Nevada on July 15, 1993.

**Nick C. Aquilina,**

*Manager, DOE Nevada Operations Office.*

[FR Doc. 93–17873 Filed 7–26–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Assistance Award to Golden Technologies Co., Inc.

**AGENDY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to enter into a cooperative agreement with Golden Technologies Company Inc. to continue a project initiated with ALCOA for development of high temperature catalytic membrane reactors.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: M.A. Barron, Contract Specialist. The Contracting Officer is Paul K. Kearns.

**SUPPLEMENTARY INFORMATION:** Golden Technologies Company Inc. (GTC) proposed to continue a project initiated by ALCOA under DOE cooperative agreement #DE–FC07–88ID12778. The project involves high temperature ceramic membranes, a specialty of GTC, configured to retain catalytic materials. Feedstocks are introduced and reactions occur by virtue of the presence of the catalysts. The membranes allow certain products to leave the reaction zone and retain others. In this way reactions occur faster, at lower temperature, proceed to higher percentages of completion, etc.

The activity to be funded is necessary to the satisfactory completion of, and is a continuation of, an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity and satisfactory completion of the activity. Also, the applicant has exclusive domestic capability to perform the activity successfully based upon their relationship wit their principal subcontractor, M&P, who has the proprietary information, and technical expertise gained in the earlier phases of the project.

The project is estimated to cost $6,000,000. The proposed DOE cost share is $3,977,000 over the expected four year project period.

Issued in Chicago, Illinois, on July 2, 1993.

**Mike Kainrath,**

*Chief, Policy Branch, Contracts Division.*

[FR Doc. 93–17874 Filed 7–26–93; 8:45 am]

BILLING CODE 6450–01–M

## Award of a Cooperative Agreement, Noncompetitive Financial Assistance

**AGENCY:** U.S. Department of Energy (DOE), Nevada Operations Office (DOE/NV)

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**ACTION:** Notice of noncompetitive financial assistance.

**SUMMARY:** The DOE/NV announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2), it intends to award a cooperative agreement on a noncompetitive basis to the University of Nevada, Las Vegas (UNLV), to conduct scientific research projects unique to the National Environmental Resources Park at the Nevada Test Site (NTS).

The NTS has been formally dedicated as an Environmental Research Park under the Research Park System. Initiated by the DOE/NV management, this action fulfilled a number of objectives: (1) Satisfied the spirit of the National Environmental Policy Act and enhanced the ability of DOE/NV to comply with environmental regulations; (2) filled a significant gap within the existing DOE Research Park network as a national resource; (3) provided unique opportunities for research in an arid environment, both as an undisturbed site and as a disturbed site from past and current nuclear testing; and (4) complied with Secretary of Energy's interest in research parks for promoting DOE educational programs in science and engineering.

A Memorandum of Understanding has been signed between DOE and UNLV directed at reaching national educational goals related to mathematics, science, engineering, and other related technical subjects. The purpose of this cooperative effort is to increase the number of students pursuing careers in science and science-related areas, to improve teaching in these fields, and to improve the scientific and technical literacy of Americans.

DOE/NV management envision that the educational systems nearest to the site will benefit the most from its resources, thus providing a public service to those communities surrounding the DOE/NV complex. This cooperative agreement with UNLV, a part of the University of Nevada System, will provide educational and research opportunities for the students and faculty and technical support for the mission and programs of DOE/NV, thus benefitting both organizations.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Nevada Operations Office, ATTN: Doug Duncan, P.O. Box 98518, Las Vegas, NV 89193-8518.

**SUPPLEMENTARY INFORMATION:** The following areas chosen for academic pursuit include areas in which DOE has a vital interest and can provide extensive technical assistance.

Provide personnel, materials, supplies, equipment, and transportation to perform work on mutually agreed-upon projects.

Establish an intern training program and other educational opportunities for students as well as continuing or specialized educational programs for engineers and senior technical personnel working at the NTS.

Provide professors as project advisors to graduate students committed to research projects.

Provide students with an academic program promoting DOE sanctioned research projects within such broad areas of study as: earth sciences, atmospheric sciences, sociology, archaeology, anthropology, biology, ecology, chemistry, classical physics, nuclear physics, engineering, and information management.

Prepare quarterly progress reports on mutually agreed-upon research projects that encompass costs, schedule(s) and activities accomplished, and a final report on each project in the form of a thesis or paper acceptable for technical publication in a peer review journal.

Assist in the preparation of all documentation required by DOE Orders, such as safety reviews, site access authorizations, engineering designs, construction criteria and a Quality Assurance Program, incident to project activities requiring the use of the NTS infrastructure.

Assist in the preparation and development of data and records for the maintenance of an effective management system consistent with DOE Orders and the Management system used by DOE/NV.

Participate in periodic planning and status meetings with DOE/NV as required.

The project period for the cooperative agreement is a 5 year period expected to begin August 1, 1993. The total estimated cost of this award is $2,000,000 over the 5 year project period.

Issued in Las Vegas, Nevada, on July 15, 1993.

**Nick C. Aquilina,**

*Manager, DOE Nevada Operations Office.*

[FR Doc. 93-17077 Filed 7-26-93; 8:45 am]

BILLING CODE 6450-01-M

## Financial Assistance Award Based on Unsolicited Application

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent.

**SUMMARY:** The Department of Energy San Francisco Operations Office announces that it intends to make a financial assistance award based on an unsolicited proposal from the Oregon Graduate Institute for Science and Technology. The Grantee will conduct research to determine if porous silicon is a viable phosphor for lighting applications. The period of performance will extend from August 1, 1993, to July 31, 1994, for a total estimated cost of $51,174.

**ADDRESSES:** U.S. Department of Energy, San Francisco Operations Office, 1301 Clay Street, room 700N, Oakland, CA 94612-5208.

**FOR FURTHER INFORMATION CONTACT:** Susan Hamrick, Contracts and Assistance Management Division, (510) 637-1882.

**SUPPLEMENTARY INFORMATION:** Current lighting sources are not energy efficient. Development of more efficient light sources is a specific goal of DOE's on-going "New Concepts in Lighting" Program. Initial investigation of an alternative light source, multiphoton phosphor emission, has shown promising results as an energy efficient lighting source. Before a practical light source based on this technology can be realized, extensive research needs to be conducted to develop suitable phosphors and determine their properties. The objective of the research to be conducted under this grant is to investigate a new class of such phosphors, specifically porous silicon.

The unsolicited proposal submitted by the Oregon Graduate Institute of Science and Technology was selected for award pursuant to the criteria in 10 CFR 600.14. The results of the project could lead to the successful development of phosphors that will advance the goal of the development of a more efficient lighting source based on the concept of multiphoton phosphor emission. The Principal Investigator has begun some limited initial research into this new class of phosphors but cannot proceed successfully without assistance. This effort is not eligible under any recent, current, or anticipated solicitation and is not suitable for a competitive solicitation. The research is at a very preliminary stage and the scope of the project is limited to providing useful experimental data for initial analysis as to the potential for this class of phosphors. Dated: July 12, 1993.

**Joan Macrusky,**

*Branch Chief, ER/DP/EM Branch.*

[FR Doc. 93-17075 Filed 7-26-93; 8:45 am]

BILLING CODE 6450-01-M

## Non-Competitive Financial Assistance Renewal Award

**AGENCY:** U.S. Department of Energy, Bartlesville Project Office.

**ACTION:** Determination of noncompetitive financial assistance renewal with Reservoir Engineering Research Institute.

**SUMMARY:** The U.S. Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A) and (D), it intends to award a Grant through the Pittsburgh Energy Technology Center (PETC) to Reservoir Engineering Research Institute (RERI) for the continuation of its effort entitled "Fractured Petroleum Reservoirs".

**ADDRESSES:** Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

**FOR FURTHER INFORMATION CONTACT:** Dona G. Sheehan, Contract Specialist, (412) 892–5918.

**SUPPLEMENTARY INFORMATION:**

*Grant No.:* DE–FG22–93BC14875.

*Title of Research Effort:* "Research Consortium on Fractured Petroleum Reservoirs".

*Awardee:* Reservoir Engineering Research Institute.

*Term of Assistance Effort:* Thirty-six (36) months.

*Cost of Assistance Effort:* The total estimated value is $1,289,834. The DOE share of funding for this program study is $190,000.00.

*Objective:* The objective of this effort is to continue research along the previous line and conduct research in four areas: (1) Miscible displacement in fractured porous media, (2) Critical gas saturation, (3) Immiscible gas-oil gravity drainage in fractured/layered media, and (4) Water injection in fractured porous media. The study based on each of these tasks will include an analytical or experimental phase to be conducted in conjunction with the theoretical research.

In accordance with 10 CFR 600.7 (b)(2)(i) criteria (A) and (D), the Reservoir Engineering Research Institute has been selected as the grant recipient. (A) The grant is a continuation of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity. (D) The applicant has an exclusive domestic capability to perform the activity successfully, based on unique technical expertise and capability.

**Carroll A. Lambton,**

*Director, Acquisition & Assistance Division.*

[FR Doc. 93–17876 Filed 7–26–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket No. CP93–560–000]**

## Arkla Energy Resources Co.; Request Under Blanket Authorization

July 21, 1993

Take notice that on July 16, 1993, Arkla Energy Resources Company (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93–560–000 a request pursuant to §§ 157.205 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon certain facilities in Caddo Parish, Louisiana used to deliver natural gas to Cities Service Oil Company (Cities Service), under AER's blanket authorization issued in Docket No. CP82–384–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER specifically proposes to abandon in place Line CM–24, a 137 foot, 2-inch market lateral, built in 1969 for the sole purposes to deliver natural gas to be used in Cities Service's lease operations in Caddo Parish, Louisiana. AER further stated that Cities Service has terminated their service from AER and that line CM–24 is currently inactive. AER states that the abandonment of this line would not affect the remainder of the system.

AER states that Cities Service has discontinued service and has separated their line from Line CM–24.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17792 Filed 7–26–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP93–155–000]**

## Boundary Gas, Inc.; Proposed Changes in FERC Gas Tariff

July 21, 1993.

Take notice that on July 15, 1993, Boundary Gas, Inc. (Boundary) tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, First Revised Title Page and Tariff Sheet Nos. 2, 6 and 42, Second Revised Tariff Sheet Nos. 8 and 40, Third Revised Tariff Sheet Nos. 3, 4, 35, 36 and 38, and Fourth Revised Tariff Sheet No. 43, to supersede the Original Title Page and Tariff Sheet Nos. 2, 4A, 6 and 42, First Revised Tariff Sheet Nos. 8 and 40, Second Revised Tariff Sheet Nos. 3, 4, 35, 36 and 38, and Third Revised Tariff Sheet No. 43.

Boundary states that the principal purpose of this filing is to reflect the decision of National Fuel Gas Supply Corporation (N.F. Supply) to assign its Gas Sales Agreement with Boundary to Supply's affiliate, National Fuel Gas Distribution Corporation (N.F. Distribution). N.F. Supply, an interstate pipeline regulated by the Federal Energy Regulatory Commission (Commission), is assigning this Agreement to N.F. Distribution as part of the restructuring of its operations which it has undertaken in response to the Commission's restructuring of the natural gas industry. The revised tariff sheets are proposed to become effective on August 1, 1993, the effective date of N.F. Supply's Order No. 636 restructuring in Docket No. RS92–21.

Boundary states that in addition, this filing reflects minor changes to correct errors and update address information in the Tariff. It also includes certain revised pages from Boundary's last electronic filing, submitted at the request of the Commission, to correct electronic formatting.

Boundary states that copies of the filing have been served upon each of the Boundary purchasers and their respective state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations.

All such petitions or protests should be filed on or before July 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-17797 Filed 7-26-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP93-85-006]

## Colorado Interstate Gas Co., Compliance Filing

July 21, 1993

Take notice that Colorado Interstate Gas Company (CIG), on June 10, 1993, tendered for filing a semiannual compliance filing consisting of work papers detailing accrued interest payments made by CIG to its affected customers related to the unused portion of transportation credits in the instant docket.

CIG states that copies of the filing were served upon all of the parties to this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-17799 Filed 7-26-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP93-227-000]

## Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 21, 1993.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore), tendered for filing on July 19, 1993 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective July 1, 1993.

Eastern Shore states that it has come to Eastern Shore's attention that the above tariff sheets were paginated incorrectly in Eastern Shore's compliance filing in Docket No. PR92-227-002, as filed on June 25, 1993. Eastern Shore states that the purpose of this filing is to file correctly paginated revised tariff sheets which should have been filed with Eastern Shore's June 25, 1993 compliance filing.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-17794 Filed 7-26-93; 8:45 am]

BILLING CODE 6717-01-M

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## K N Energy, Inc.; Request Under Blanket Authorization

[Docket No. CP93-549-000]

July 21, 1993.

Take notice that on July 14, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228 filed in Docket No. CP93-549-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate, on a permanent basis, a delivery point to Louisiana Land and Exploration Company (LL&E) located on K N's 3-inch Cottonwood Creek Lateral in Fremont County, Wyoming, under K N's blanket certificate issued in Docket No. CP83-140-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N states that the delivery point was installed under an emergency transportation transaction to deliver natural gas to LL&E for the account of Northern Gas Company (Northern). K N states further that the point would be added as a delivery point to an existing transportation agreement with Northern.

It is said that K N expects to deliver up to 35 MCF of natural gas on a peak day and 10,000 MCF annually to LL&E at this point. It is said further that LL&E would reimburse K N for the cost of the facilities which is estimated to $2,500.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-17793 Filed 7-26-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket NO. CP93-574-000]

## Mid Louisiana Gas Co.; Application

July 21, 1993.

Take notice that on July 21, 1993, Mid Louisiana Gas Company (Mid Louisiana), 333 Clay Street, suite 2700, Houston, Texas 77002, filed in Docket No. CP93-574-000 an application pursuant to section 7(b) of the Natural Gas Act to abandon certain offshore pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Mid Louisiana seeks authorization to abandon and remove a riser extending from a production platform located in the West Cameron Block 32 Field Area, offshore Louisiana, to the sea floor and abandon in place the pipeline segment that extends from the sea floor to an onshore separation plant located in Cameron Parish, Louisiana. Mid Louisiana states that the proposed abandonment is in the public interest because the reserves previously transported through the pipeline facilities have been depleted and the producer who owns the production platform intends to remove it within the next two or three weeks. Mid Louisiana indicates that abandonment in place of

the facilities extending from the sea floor to the separation plant is appropriate since the costs of removal of such facilities are anticipated to exceed their salvage value. Mid Louisiana further states that abandonment and removal of the riser is necessary to avoid a potential navigational hazard that would be caused by the riser remaining in place after the production platform is dismantled.

Mid Louisiana requests that the Commission act on the request on an expedited basis and either grant the abandonment of all the facilities or, in the alternative, permit the removal of the riser concurrent with the producer's removal of the production platform in order to avoid the creation of the navigational hazard.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 2, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mid Louisiana to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17842 Filed 7–26–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–36–000]**

## Natural Gas Pipeline Company of America; Informal Settlement Conference

July 21, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Friday, July 30, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NW., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact David R. Cain at (202) 208–0917 or John P. Roddy at (202) 208–1176.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17795 Filed 7–26–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TM93–2–6–001]**

## Sea Robin Pipeline Co., Notice of Report of Refunds

July 21, 1993.

Take notice that Sea Robin Pipeline Company (Sea Robin) on April 30, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made in accordance with the Commission's order issued March 18, 1993, in Docket No. TM93–2–6 accepting its annual reconciliation filing. The annual reconciliation filing was made to reconcile Sea Robin's credit balance for noncash consideration recovered under supplier take-or-pay settlement agreements with actual expenditures made by Sea Robin to settle take-or-pay claims.

Sea Robin states that on April 30, 1993, it refunded $120,155 to Southern Natural Gas Company and $119,554 to United Gas Pipe Line Company, both including interest.

Sea Robin states that it mailed copies of the filing to all interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 28, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17796 Filed 7–26–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. EF93–4191–000]**

## United States Department of Energy—Western Area Power Administration (Pacific Northwest—Pacific Southwest Intertie Project); Notice of Filing

July 21, 1993.

Take notice that on July 16, 1993 the Acting Assistant Secretary of Energy for Energy Efficiency and Renewable Energy filed on behalf of the Western Area Power Administration rates for firm and nonfirm transmission service from the Pacific Northwest-Pacific Southwest Intertie Project. The Acting Assistant Secretary stated that he had confirmed and approved these rates on an interim basis by order of July 14, 1993, to be effective on August 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17791 Filed 7–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1999-004 Wisconsin]

**Wisconsin Public Service Corp. Establishing Procedures for Relicensing and Deadline for Submission of Final Amendments**

July 21, 1993.

The license for the Wausau Hydroelectric Project No. 1999 located on the Wisconsin River, in Marathon County, Wisconsin, expires on June 30, 1995. The statutory deadline for filing an application for new license was June 30, 1993. The project consists of a dam, a 284-acre reservoir, and a powerhouse with an installed capacity of 5.4 MW. An application for new license has been filed as follows:

| Project No. | Applicant | Contact |
|---|---|---|
| P-1999-004 .... | Wisconsin Public Service Corporation, 700 North Adams, P. O. Box 19002, Green Bay, WI 54307. | Mr. T. P. Meinz, Wisconsin Public Service Corporation, 700 North Adams P. O. Box 19002, Green Bay, WI 54307 (414) 433-1293. |

The following is an approximate schedule and procedures that will be followed in processing the application:

| Date | Action |
|---|---|
| October 1, 1993 .. | Commission notifies applicant that its application has been accepted. The notification of acceptance will specify the need for additional information and the date any information is due. |
| November 1, 1993. | Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests. |
| October 1, 1993 .. | Commission's deadline for applicant for filing a final amendment, if any, to its application. |

Upon receipt of all additional information and the information filed in response to the public notice of the acceptance of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to Mike Dees at 202-219-2807.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17798 Filed 7-26-93; 8:45 am]

BILLING CODE 6717-01-M

**Office of Energy Research**

**Energy Research (ER) Financial Assistance Program Notice 93-16; Atmospheric Ozone, Ultraviolet-B (UV-B), and Aerosol Research**

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy hereby announces its interest in receiving applications to support the experimental and theoretical study of atmospheric ozone and its physical and chemical effects. A physical effect of primary interest concerns UV-B radiation at the Earth's surface and its potential enhancement by ozone depletion. These studies are intended to be in support of DOE information needs under the National Energy Policy Act (Public Law 102-486) and will be conducted in conjunction with the DOE Atmospheric Chemistry Program (ACP).

Research under this notice will focus on ozone behavior and influences at mid-latitudes, in both the lower stratosphere and the remote free troposphere. It specifically does *not* address ozone production in polluted urban and regional areas nor does it consider ozone behavior in polar regions, except for influences of these phenomena on behavior in the mid-latitude, lower-stratosphere/free-troposphere domain.

This notice requests applications for grants to support:

(Category 1): Research to understand the fundamental scientific phenomena associated with atmospheric ozone formation and removal processes. Such fundamental studies can take the form of laboratory investigations, theoretical analyses of mechanistic behavior, or detailed computations of pollutant interactions with the physical environment (e.g., UV-B radiative transfer calculations and simulations of tropospheric energy-balance impacts). Of special interest are examinations of the possible catalytic/inhibition effects of aerosols (especially in the lower stratosphere), and possible new chemical mechanisms influencing ozone behavior in the remote free troposphere.

(Category 2): Field studies of ozone chemistry and removal processes. Such studies can be conducted independently or can be performed cooperatively with major ACP field campaigns.

(Category 3): Ozone and UV-B trend analysis, using past and emerging data sets. Of special interest in this category are competing/compensating effects of other trace gases, aerosols, and clouds, and their obscurance of ozone trend evaluations and associated UV-B impacts.

(Category 4): Instrument development for refined chemical and UV-B measurements, especially for deployment on advanced field studies. This category will emphasize development of multi-species chemical detectors capable of remote operation on unmanned high-altitude aircraft. Because of high performance demands, relatively long lead times for deployment of this instrumentation, of the order of three to five years, are expected. To meet the data requirements of the UV-B monitoring and UV-B effects communities, the design goal for UV-B instrumentation should be a spectral radiometer capable of measuring spectral irradiance with sufficient precision to detect UV-B trends of the order of 0.1 percent per year, over periods exceeding one decade. Rapid scanning is desirable.

**DATES:** Formal applications submitted in response to this notice must be received by 4:30 p.m. E.D.T. October 12, 1993, to permit timely consideration for award in Fiscal Year 1994.

**ADDRESSES:** Formal applications referencing Program Notice 93-16 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64 (GTN), Washington, DC 20585, ATTN: Program Notice 93-16. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Riches, U.S. Department of Energy, Office of Health and Environmental Research, Environmental Sciences Division, ER-74 (GTN),

Washington, DC 20585, telephone (301) 903–3264.

**SUPPLEMENTARY INFORMATION:** A major thrust of the Environmental Sciences Division in the OHER, is to provide DOE with the advanced information, pertaining to the atmospheric environment, that is required for long-range energy planning in fulfillment of the National Energy Policy Act. Over the past three years this thrust has been coordinated under the ACP, which has pursued a variety of activities, including theoretical studies, field measurements, and atmospheric-chemistry modeling. Although the ACP has traditionally focused primarily on tropospheric issues, more recent DOE concern regarding the global ozone issue has led to a progressive interest in stratospheric chemistry as well. This interest was reflected by a limited ACP notice on atmospheric ozone, which was published in the **Federal Register** on January 13, 1993. The purpose of the present notice is to broaden and expand the ACP's activities in this area.

Detailed descriptions of ACP plans, rationale, and focus are provided in the documents (1) *Overview of the DOE Atmospheric Chemistry Program's Ozone Project* (DOE/ER–0575T), and (2) *Atmospheric Chemistry Program, Program Operation Plan* (DOE/ER–0586T), which can be obtained on request from ER–74 at the above address. The first of these documents gives a rationale and scope for the ozone component of the ACP, which has the general goal of reducing key uncertainties about global ozone changes, in response to DOE requirements for energy policy analysis and evaluation. The second document provides a more general description of research thrusts as well as a tentative schedule of ACP field campaigns (which address a variety of issues in addition to ozone).

Research conducted under this notice is intended to support the following DOE objectives (see *Overview of the DOE Atmospheric Chemistry Program's Ozone Project* (DOE/ER–0575T):

1. *Improve estimates of ozone and UV-B trends.* This work will be done in coordination with the International Ozone Commission, the World Meteoroligical Organization, and other national and international organizations and monitoring programs such as the Network for the Detection of Stratospheric Change. Trend estimates will be improved through additional tests and increased understanding of the relevant instruments and their data-reduction algorithms. Also, improved statistical analyses of the data will account for other properties and processes that influence UV-radiation and ozone amounts and distributions, such as changes in other atmospheric chemicals (from volcanic particles to methane) and changes in meteorological fields (from clouds to stratospheric transport). Both observational and modeling research projects are invited. (Categories 1 and 3 above)

2. *Improve understanding of the chemical and dynamic processes that control mid-latitude, lower-stratospheric ozone and free-tropospheric ozone in regions remote from major air-pollution sources.* This work will be accomplished through laboratory and atmospheric field studies, both guided by improved mathematical models, and in coordination with DOE's Atmospheric Radiation Measurement (ARM) Program and other national and international programs. In FY 1996 it is anticipated that limited flight time on a high-altitude unmanned research aircraft will be available for flight testing of measurement equipment developed under this program. (Categories 1, 2, and 4)

3. *Develop improved predictions of future stratospheric and tropospheric ozone concentrations and their influence on (and response to) potential climate changes.* Work on this objective will use results of the process research addressed in Priority Objective 2 and will be coordinated with DOE's Computer Hardware, Advanced Mathematics, and Model Physics (CHAMMP) Program, other programs in the U.S. Global Change Research Program, and similar programs underway in other nations involved in the International Geosphere-Biosphere Program. This objective will emphasize the *application* of numerical models that currently exist or are being developed in other programs, as opposed to the *development* of such models within this program. (Categories 1, 2, 3, and 4)

It is anticipated that approximately $1.5M will be available for awards for the combined activity under Categories 1, 2, 3, and 4 above in FY 1994, contingent upon availability of appropriated funds. Multiple year funding is expected, also contingent upon availability of funds. The allocation of funds among the three categories will depend on the number and quality of applications received. Typical awards are $200,000 per year, but range between $50,000 and $750,000. Awards are anticipated to begin in March 1994.

The technical portion of the application should not exceed twenty-five (25) double-spaced pages.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the *Application Guide for the Office of Energy Research Financial Assistance Program, 10 CFR part 605.* The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, Environmental Sciences Division, ER–74 (GTN), Washington, DC 20585. Telephone requests may be made by calling (301) 903–4208.

The Catalog of Federal Domestic Assistance Number for this Program is 81.049.

Issued in Washington, DC, on July 16, 1993.

**D. D. Mayhew,**

*Director, Office of Management, Office of Energy Research.*

[FR Doc. 93–17679 Filed 7–26–93; 8:45 am]

BILLING CODE 6450–01–P

## Energy Research (ER) Financial Assistance Program Notice 93–17; Radon Health Effects Research

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice inviting grant applications.

**SUMMARY:** The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy, hereby announces its interest in receiving applications in support of the Health Effects and Life Sciences Research Division's radon program. The primary objective of the radon program is to develop the information base necessary to characterize and ultimately reduce the health consequences of exposure to indoor radon. The radon program examines effects at all levels of biology, including molecular, cellular, tissue/organ, and whole animals and uses these findings to develop a mechanistic understanding of effects and to provide the information necessary for predicting risk from exposure. The DOE is seeking applications that exploit recent technological advances and new information on biological mechanisms to understand the impacts on humans of exposure to low doses of radon. Biologists studying lung cancer caused by agents other than radon are encouraged to interact with the radiation biology community in addressing the specific areas of interest covered by this notice. Applicants who receive funding will be part of the OHER's coordinated, multidisciplinary radon program.

While the research covered by this program is broad in scope, the current notice is only seeking applications that directly examine the effects of radon or alpha particles with similar energies. The specific areas of interest include: (1) Elucidation of cellular responses (alterations in gene expression) caused by radon exposure; (2) development of mathematical models of radon lung cancer risk that consider not only dosimetric and epidemiologic-type information but also mechanistic information on lung cancer development; and (3) investigation of the cellular and molecular mechanisms of randon-induced lung carcinogenesis.

**PREAPPLICATION INFORMATION:** In accordance with 10 CFR 600.10(d)(2), potential applicants are strongly encouraged to first submit a brief preapplication that consists of two to three pages of narrative describing the research project objectives and method of accomplishment. Preapplications will be reviewed relative to the scope and the research objectives of the Department of Energy's Health Effects Research Division radon program. Preapplications referencing Program Notice 93–17 should be received by September 3, 1993, and sent to the following address: Dr. David Thomassen, Office of Health and Environmental Research, ER–72, Office of Energy Research, U.S. Department of Energy (GTN), Washington, DC 20585, 301–903–5037, FAX 301–903–8521. Telephone and FAX numbers are required to be part of a preapplication. A response to the preapplications discussing the potential programmatic relevance of a formal application will be communicated within 30 days of receipt.

**DATES:** Formal applications requested under this notice must be received by 4:30 p.m. E.S.T., December 3, 1993, to be accepted for a January 1994 review and to permit timely consideration for award by March 1994.

**ADDRESSES:** Formal applications referencing Program Notice 93–17 should be forwarded to: U.S. Department of Energy (GTN), Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585, ATTN: Program Notice 93–17. The following address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, 19901 Germantown Road, Germantown, MD 20874.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Thomassen, Office of Health and Environmental Research, Health Effects and Life Sciences Research Division, ER–72, U.S. Department of Energy (GTN), Washington, DC 20585, telephone 301–903–9817.

**SUPPLEMENTARY INFORMATION:** The most frequent radiation exposures for the general population are low dose and low-dose rate exposures to randon. The basic hypothesis of risk assessors is that the frequency of low-level radiation effects increases as a linear, nonthreshold function with dose. The DOE is particularly interested in research that will test this hypothesis at levels of <10 cGy. Studies that involve the development of novel cellular and molecular approaches to examine the biological effects of low dose (<10 cGy) and low-dose rate radon exposures, and/or collaborations with personnel at DOE National Laboratories having unique resources and capabilities for radon exposure and measurements are encouraged and will receive special consideration.

This notice is inviting applications for identifying and characterizing gene products that appear or disappear in response to damage by radon. Such studies would also increase our understanding of the basic mechanism by which radon-induced damage is processed, repaired, and/or misrepaired. Ongoing research has identified a number of genes that are induced in human cells following their exposure to X-rays. The levels of increased expression of X-ray induced proteins varies greatly depending on dose and time after exposure. Characterization of unique and/or dose related alterations in protein expression of radon exposed cells could have important implications for developing new and specific biomarkers of exposure, susceptibility, and effects. The DOE would also be very interested in studies to develop biomarkers of radon exposures or effects using highly exposed human populations (e.g., uranium miners).

The notice is also inviting applications that elucidate those radon-mediated molecular, cellular, genetic, and epigenetic events that lead to lung cancer. Carcinogenesis is a multistep process involving the amplification of and selection for cells that have accumulated genetic changes enabling them to form tumors and metastasize. Understanding the nature and origin of specific genetic changes required for malignancy will improve the estimation of specific carcinogenic risks associated with exposures to radon. For example, individuals at increased risk for development of cancer, due to their inheritance of predisposing genetic changes may be at greater risk for radon-induced cancer depending on the basis of their overall increase in cancer susceptibility. In addition, an understanding at the mechanistic level of the role of confounding factors, e.g., cigarette smoke and other co-pollutants, radiation dose and dose rate, in the development of radon-induced cancer, may clarify the cancer risk from exposures to radon received under different conditions.

It is anticipated that approximately $1M will be available for new awards contingent upon availability of appropriated funds. Multiple year funding is expected, also contingent on availability of funds. Typical health Effects and Life Sciences Research Division awards are $150,000 per year, but range between $50,000 and $250,000.

Information about development and submission of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later revision of those guidelines as may be published in the **Federal Register**. The Application Guide is available from the U.S. Department of Energy (GTN), Office of Health and Environmental Research, Health Effects and Life Sciences Research Division, ER–72, Washington, DC 20585. Telephone requests may be made by calling 301–903–5037.

The Catalog of Federal Domestic Assistance number for this program is 81.049

Issued in Washington, DC on July 16, 1993.

**D. D. Mayhew,**

*Director, Office of Management, Office of Energy Research.*

[FR Doc. 93–17880 Filed 7–26–93; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4681–7]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 26, 1993.

**FOR FURTHER INFORMATION OR A COPY OF THE ICR CONTACT:** Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Solid Waste and Emergency Response

*Title:* Part B Permit Application, Permit Modifications, and Special Permits (ICR No. 1573.04; OMB No. 2050–0009). This is a renewal of a currently approved ICR.

*Abstract:* This ICR is a comprehensive presentation of the information collection activities for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting applications for a Part B permit or permit modification, as provided in 40 CFR parts 264 and 270, and details the requirements for: demonstrations for exemptions from permit requirements, the Part B permit application, and permit modifications and special permits.

Applicants must respond to a variety of general reporting and recordkeeping requirements, including record retention, notice of changes, notice of health threat, etc. EPA will use this information to: (1) Issue permits, (2) substantiate information that has been submitted in the permit, (3) assure that facilities are in compliance with the conditions of their permits, and (4) identify instances where permits need to be revised to accommodate new situations.

EPA is submitting this ICR for renewal without substantive change to the information collection activities, but with a complete re-evaluation of the burden estimates. In developing the new burden estimates, EPA invited regional and state permit writers to participate in an intensive evaluation of the burden associated with the activities detailed in this ICR. As a result, the burden estimates for both respondent and EPA activities have been significantly revised. Also, burden estimates for legal review and counsel have been included as well. Respondent cost estimates were revised using Department of Labor statistics, a five percent per annum increase for inflation, and an overhead rate of 2.0. Estimates for the number of respondents are based on data from the RCRIS database (the National program management and inventory system of RCRA regulated handlers) and the permit writers' experiences.

Additionally, information collection activities in several approved ICRs were consolidated in this base ICR. Specifically, portions of the Liner and Leak Detection ICR (EPA No. 995; OMB No. 2050–0007) and the Wood Preserving ICR (EPA No. 1579; OMB No. 2050–0115) were consolidated into this ICR. Also, this ICR incorporates the new set of regulated units covered in the Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris ICR (EPA No. 1442; OMB No. 2050–0085) in the burden estimates. Finally, this renewal more thoroughly details the information collection activities covered by this ICR.

*Burden Statement:* The public reporting and recordkeeping burden for this collection is estimated to average 43 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners and operators of hazardous waste TSDFs.

*Estimated Number of Respondents:* 4,500.

*Estimated Number of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 198,226 hours.

*Frequency of Collection:* On occasion.

The Office of Solid Waste strongly encourages public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden. Please send comments to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

*Title:* Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types (ICR No. 1572.03; OMB No. 2050–0050). This is a renewal of a currently approved ICR.

*Abstract:* This ICR is a comprehensive presentation of the information collection activities related to specific unit requirements and special waste processes and types, as provided in 40 CFR parts 261, 264, 265, and 266, for owners/operators of facilities that treat, store, or dispose of hazardous wastes in tank systems, surface impoundments, waste piles, land treatment, landfills, incinerators, thermal treatment units, chemical, physical and biological treatment units, unit process vents, miscellaneous units, and specific hazardous waste recovery/recycling facilities.

Owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) must collect, record, and in some cases report to EPA. Activities include: demonstrations for exemptions and variances, system assessments and certifications, leak tests and inspections, repair certifications, design and operating requirements, waste management plans, certifications of closure, monitoring and inspection data, and reporting releases and information pertinent to releases. Recordkeeping requirements include maintaining records on the types of wastes treated, stored, or disposed; operating methods; location, design, and construction of facilities; contingency plans; and maintenance of facilities.

EPA uses the information for a variety of inspection, enforcement, and tracking purposes.

EPA is submitting this ICR for renewal without substantive change to the information collection activities, but with a complete re-evaluation of the burden estimates. In developing the new burden estimates, EPA invited regional and state permit writers to participate in an intensive evaluation of the burden associated with the activities detailed in this ICR. As a result, the burden estimates for both respondent and EPA activities have been significantly revised. Also, burden estimates for legal review and counsel have been included as well. Respondent cost estimates were revised using Department of Labor statistics, a five percent per annum increase for inflation, and an overhead rate of 2.0. Estimates for the number of respondents are based on data from the RCRIS database (the National program management and inventory system of RCRA regulated handlers) and the permit writers' experiences.

Additionally, information collection activities in several approved ICRs were

consolidated in this base ICR. Specifically, portions of the Liner and Leak Detection ICR (EPA No. 995; OMB No. 2050–0007) and the Wood Preserving ICR (EPA No. 1579; OMB No. 2050–0115) were consolidated into this ICR. Also, this ICR incorporates the new set of regulated units covered in the Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris ICR (EPA No. 1442; OMB No. 2050–0085) in the burden estimates. Finally, this renewal more thoroughly details the information collection activities covered by this ICR.

*Burden Statement:* The public reporting and recordkeeping burden for this collection is estimated to average 67.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners and operators of hazardous waste treatment, storage and disposal facilities.

*Estimated Number of Respondents:* 4,500.

*Estimated Number of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 303,171 hours.

*Frequency of Collection:* On occasion.

The Office of Solid Waste strongly encourages public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden. Please send comments to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

*Title:* General Hazardous Waste Facility Standards (ICR No. 1571.04; OMB No. 2050–0120). This is a renewal of a currently approved collection.

*Abstract:* This ICR is a comprehensive presentation of the information collection activities for hazardous waste treatment, storage, and disposal facilities (TSDFs), as provided in 40 CFR parts 264, 265 and 270. Owners or operators of hazardous waste facilities must collect, record, and in some cases report data to EPA. Activities include: developing and implementing a written waste analysis plan for wastes received; recording facility inspections; documenting compliance with required precautions to prevent reactions for ignitable, reactive or incompatible wastes; maintaining a written operating record with information on general facility operating practices; submitting copies of records of waste disposal locations and quantities; preparing and maintaining contingency plans; submitting emergency reports whenever an imminent or actual emergency situation occurs; and developing and maintaining closure and post-closure plans, amending plans when appropriate and submitting to EPA closure certifications and post-closure notices. Owners or operators are also required to establish financial assurance mechanisms for closure, post-closure care, and liability for third-party bodily injury or property damage; to provide initial cost estimates and subsequent updates of those estimates for closure and post-closure care; and to provide EPA with evidence of the established financial mechanisms.

Recordkeeping requirements for owners or operators of hazardous waste facilities include maintaining records of all hazardous wastes handled; copies of waste disposal locations and quantities; operating methods; techniques and practices for treatment, storage, or disposal of hazardous waste; contingency plans; financial requirements; personnel training documents; and location, design, and construction of facilities.

EPA is submitting this ICR for renewal without substantive change to the information collection activities, but with a complete re-evaluation of the burden estimates. In developing the new burden estimates, EPA invited regional and state permit writers to participate in an intensive evaluation of the burden associated with the activities detailed in this ICR. As a result, the burden estimates for both respondent and EPA activities have been significantly revised. Also, burden estimates for legal review and counsel have been included as well. Respondent cost estimates were revised using Department of Labor statistics, a five percent per annum increase for inflation, and an overhead rate of 2.0. Estimates for the number of respondents are based on data from the RCRIS database (the National program management and inventory system of RCRA regulated handlers) and the permit writers' experiences.

Additionally, information collection activities in several approved ICRs were consolidated in this base ICR. Specifically, portions of the Liner and Leak Detection ICR (EPA No.995; OMB No. 2050–0007) and the Wood Preserving ICR (EPA No. 1579; OMB No. 2050–0115) were consolidated into this ICR. Also, this ICR incorporates the new set of regulated units covered in the Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris ICR (EPA No. 1442; OMB No. 2050–0085) in the burden estimates. Finally, this renewal more thoroughly details the information collection activities covered by this ICR.

*Burden Statement:* The public reporting burden for this collection is estimated to average 171 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated annual recordkeeping burden is 111 hours per recordkeeper.

*Respondents:* Owners and operators of TSDFs.

*Estimated Number of Respondents:* 4,500.

*Estimated Number of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1,270,488 hours.

*Frequency of Collection:* On occasion.

The Office of Solid Waste strongly encourages public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden. Please send comments to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

*Title:* RCRA Hazardous Waste Permit Application and Modification, Part A (ICR No. 262.07; OMB No. 2050–0034). This is a renewal of a currently approved collection.

*Abstract:* This ICR discusses the requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting Part A permit applications or Part A permit modifications as required by Section 3005 of the Resource Conservation and Recovery Act (RCRA). The requirements for submitting and modifying a Part A permit application are codified at 40 CFR part 270.

The RCRA permit application asks for the characteristics and conditions of the site and of the hazardous waste handled. The information requested includes general facility information (name, mailing address, location), a description of the hazardous waste

activity, a topographic map, and a brief description of the nature of business. The application must be revised if certain changes are made to a facility.

EPA uses the information in the Part A permit application for a variety of purposes, to include: identifying the person(s) legally responsible for hazardous waste activity, determining which facilities require permits under more than one program, assessing potential for the facility to pollute nearby ground and surface waters, and defining the specific wastes a facility is legally allowed to handle for different purposes.

EPA is submitting this ICR for renewal without substantive change to the information collection activities, but with a complete re-evaluation of the burden estimates. In developing the new burden estimates, EPA invited regional and state permit writers to participate in an intensive evaluation of the burden associated with the activities detailed in this ICR. As a result, the burden estimates for both respondent and EPA activities have been significantly revised. Also, burden estimates for legal review and counsel have been included as well. Respondent cost estimates were revised using Department of Labor statistics, a five percent per annum increase for inflation, and an overhead rate of 2.0. Estimates for the number of respondents are based on data from the RCRIS database (the National program management and inventory system of RCRA regulated handlers) and the permit writers' experiences.

Additionally, information collection activities in several approved ICRs were consolidated in this base ICR. Specifically, portions of the Liner and Leak Detection ICR (EPA No. 995; OMB No. 2050–0007) and the Wood Preserving ICR (EPA No. 1579; OMB No. 2050–0115) were consolidated into this ICR. Also, this ICR incorporates the new set of regulated units covered in the Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris ICR (EPA No. 1442; OMB No. 2050–0085) in the burden estimates. Finally, this renewal more thoroughly details the information collection activities covered by this ICR.

*Burden Statement:* The public reporting burden for this collection is estimated to average 36 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners and operators of hazardous waste treatment, storage, and disposal facilities.

*Estimated Number of Respondents:* 120.

*Estimated Number of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 4,327hours.

*Frequency of Collection:* One-time per permit application.

The Office of Solid Waste strongly encourages public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden. Please send comments to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

*Title:* Notification of Hazardous Waste Activity (ICR No. 261.11; OMB No. 2050–0028). This is a renewal of a currently approved collection.

*Abstract:* Any person generating, transporting, and/or operating a facility for storage, treatment, or disposal of hazardous waste must file a notification form with EPA (or an authorized State). The information requested includes the location and general description of hazardous waste activity. EPA uses the information for a variety of inspection, enforcement, and tracking purposes.

EPA is submitting this ICR for renewal without substantive change to the information collection activities, but with a complete re-evaluation of the burden estimates. In developing the new burden estimates, EPA invited regional and state permit writers to participate in an intensive evaluation of the burden associated with the activities in this ICR. As a result, the burden estimates for both respondent and EPA activities have been significantly revised. Also, burden estimates for legal review and counsel have been included as well. Respondent cost estimates were revised using Department of Labor statistics, a five percent per annum increase for inflation, and an overhead rate of 2.0. Estimates for the number of respondents are based on data from the RCRIS database (the National program management and inventory system of RCRA regulated handlers) and the permit writers' experiences.

*Burden Statement:* The public reporting burden for this collection is estimated to average 4.1 hours per response and includes all aspects of the information collection including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Respondents:* Owners and operators of facilities that handle RCRA regulated waste.

*Estimated Number of Respondents:* 46,000.

*Estimated Number of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 188,600 hours.

*Frequency of Collection:* On occasion.

The Office of Solid Waste strongly encourages public comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden. Please send comments to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 21, 1993.

**David Schwarz,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 93–17870 Filed 7–26–93; 8:45 am]

BILLING CODE 6560–50–F

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[FRL–4683–1]

## Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; American Cyanamid

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final decision on petition modification.

**SUMMARY:** Notice is hereby given that a modification to an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to American Cyanamid, for the Class I injection wells located at Westwego, Louisiana. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous.

This final decision allows the underground injection by American Cyanamid, of the specific restricted hazardous waste identified in the modified petition, into the Class I hazardous waste injection wells at the Westwego, Louisiana facility specifically identified in the petition, for as long as the basis for granting an approval of this petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued May 11, 1993. The public comment period ended on June 28, 1993. No public comments were received during the public comment period. This decision constitutes final Agency action and there is no Administrative appeal.

**DATES:** This action is effective as of July 19, 1993.

**ADDRESSES:** Copies of the modified petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W-SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Mac A. Weaver, Chief UIC State Programs, EPA—Region 6, telephone (214) 655–7160.

**Myron O. Knudson,**

*Director, Water Management Division (6W).*

[FR Doc. 93–17869 Filed 7–26–93; 8:45 am]

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[FRL–4652–9]

## No-Migration Variance From Land Disposal Restrictions for Exxon Company, U.S.A., Billings, Montana New South Land Treatment Unit

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final no-migration variance.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is granting a no-migration variance to Exxon Company U.S.A. (Exxon). This variance allows Exxon to place specific untreated hazardous wastes, subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA), in the New South Land Treatment Unit (NSLTU) at its Billings, Montana refinery. Exxon submitted a petition to EPA, in July 1989, under 40 CFR 268.6 requesting a no-migration variance from the RCRA land disposal treatment standards on the grounds that treatment was unnecessary to protect human health and the environment because there would be no migration of hazardous constituents from the land disposal unit. After a review of Exxon's petition and supporting information and the public comments received on the proposal, EPA has concluded that Exxon has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents out of the NSLTU for as long as the wastes remain hazardous. The Agency is placing certain conditions on the variance. The variance expires on October 18, 1998.

**EFFECTIVE DATE:** July 27, 1993.

**ADDRESSES:** The RCRA regulatory docket for this notice (F–92–NEBP–FFFFF) is located at the U.S. Environmental Protection Agency (Room M2427), 401 M Street SW., Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. Call (202) 260–9327 for appointments. Up to 100 pages may be copied free of charge from any one regulatory docket. Additional copies are $0.15 per page.

Two additional copies of the record supporting this notice are available to the public in Montana. One copy is located at the Parmly Library at 510 North Broadway, Billings, Montana and is available for public review during regular library hours. The other copy is available in Helena, Montana at the EPA Region VIII, Montana Operations Office, Federal Building, 301 South Park. The public may make arrangements to view the documents in Helena by calling Stephanie Wallace at (406) 449–5414. This docket is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** General questions about the regulatory requirements under RCRA should be directed to the RCRA/Superfund Hotline at (800) 424–9346 toll free or at (703) 920–9810 in the Washington, DC area. Specific questions about the issues discussed in this notice should be directed to Athena Rodbell, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, at (703) 308–8647.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. RCRA Land Disposal Restrictions: No-Migration Variances*

The Hazardous and Solid Waste Amendments (HSWA) of 1984, which amended the Resource Conservation and Recovery Act (RCRA, 3001 *et seq.*), impose substantial new requirements on the land disposal of hazardous waste. In particular, HSWA prohibits the continued land disposal of hazardous wastes, unless either (1) the wastes meet treatment standards specified by EPA before land disposal occurs, or (2) a demonstration is made to EPA that "there will be no migration of hazardous constituents from the disposal unit for as long as the wastes remain hazardous" (42 U.S.C. 3004(d)(1), (e)(1) and (g)(5)). (A positive determination under this authority is referred to as a "no-migration" variance.) Exxon has chosen to comply with the land disposal restrictions for certain wastes at its Billings, Montana refinery by applying for a no-migration variance. Today's notice approves, with conditions, Exxon's petition for a no-migration variance for the New South Land Treatment Unit.

HSWA provides for a schedule according to which specific wastes become subject to the land disposal restrictions (LDR). In the case of certain petroleum refining wastes (EPA Hazardous Waste Nos. K048–K052) the restrictions went into effect on November 8, 1990 (55 FR 22520, June 1, 1990). As of that date, K048–K052 wastes that have not been treated to EPA-specified treatment standards may not be placed in a land disposal unit, unless EPA grants a no-migration variance specific to that waste and that unit. In the case of hazardous wastes listed after enactment of HSWA, EPA is required to make an LDR determination within six months after the listing is promulgated (RCRA 3004(g)(4)). Treatment standards for organic Toxicity Characteristic (TC) wastes are expected to be promulgated in 1993.

The Agency first promulgated no-migration standards for land disposal units, other than underground injection wells, on November 7, 1986 (51 FR 40572).[1] These regulations (40 CFR 268.6) codify the statutory standards, specify information to be included in a variance petition, and establish procedures for granting or denying a variance. EPA amended the regulations on August 17, 1988 (53 FR 31138) to add further procedural requirements and standards. EPA recently proposed further amendments on August 11, 1992, including a generic definition of "no-migration," for land disposal units other than underground injection wells (57 FR 35940). In conjunction with this proposal, EPA developed the document "No-Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for

[1] On July 26, 1988, the Agency promulgated standards under 40 CFR 148 for no-migration variances for underground injection wells (53 FR 28122).

Petitioners" (Draft), July 1992. This draft guidance manual has been used by Exxon and other companies in developing no-migration petitions. Copies of the guidance manual can be obtained from the National Technical Information Service (NTIS) U.S. Department of Commerce, Springfield, VA 22161, at (703) 487–4600; No Migration Guidance (NTIS #PB 92–207 695). It is also available in the docket for this rulemaking.

To date, EPA has received 31 no-migration petitions submitted in accordance with 40 CFR 268.6. Today's notice is the Agency's first decision on a no-migration petition under 40 CFR 268.6 which addresses disposal of petroleum refinery wastes in a land treatment unit. (On November 14, 1990, the Agency approved a conditional variance to allow temporary placement of mixed radioactive and hazardous waste in the Department of Energy's Waste Isolation Pilot Plant (WIPP), a Subpart X unit (an underground repository), near Carlsbad, New Mexico (55 FR 47700).) Of the other 40 CFR 268.6 petitions, which primarily address land treatment operations, 18 have been withdrawn. In addition, one petition was dismissed for lack of an adequate ground-water monitoring system. The remainder are currently under Agency review.

*B. New South Land Treatment Unit (NSLTU)*

Today's notice addresses the disposal of certain hazardous petroleum refinery wastes (Slop Oil Emulsion Solids (K049), API Separator Sludge (K051), and TC Contaminated Soils) at the New South Land Treatment Unit (NSLTU) located on Exxon refinery property in Billings, Montana. The Montana Department of Health and Environmental Sciences (DHES) issued a hazardous waste permit for this facility in October 1988 for the disposal of hazardous wastes at the NSLTU for a period of ten years. Only hazardous and solid wastes generated on-site will be disposed of at the NSLTU. The NSLTU covers an area of approximately 6.1 hectares and is expected to be in operation until the year 2013.

## II. Exxon Petition and EPA Proposed Determination

On July 31, 1989, Exxon submitted a no-migration petition to EPA for the NSLTU to allow it to continue the land treatment of restricted hazardous wastes generated at its Billings Refinery. Since then, in response to requests by EPA, Exxon has provided supplemental information in the form of attachments and letters. Together, the original petition and the supplemental documents are referred to as "the petition" throughout this notice and are located in the RCRA regulatory docket for today's notice. Exxon's petition included the following components: (a) Facility description, (b) site characterization, (c) waste characterization, (d) discussion of waste mobility, (e) fate and transport modeling, (f) air pathway assessment, (g) human-health and environmental risk assessment, (h) monitoring program, and (i) uncertainty analysis.

On March 26, 1992, after extensive review and evaluation of Exxon's no-migration petition, EPA proposed in the **Federal Register** to grant a no-migration variance to Exxon, pursuant to 40 CFR 268.6, which would allow Exxon to resume land disposal of EPA Hazardous Waste Nos. K049 (Slop Oil Emulsion Solids) and K051 (API Separator Sludge) at the NSLTU dependent upon certain conditions (57 FR 10478). Also, the proposal covered D018 (TC-contaminated soils) once land disposal treatment standards were promulgated for them. Specifically, EPA proposed that Exxon (1) comply with its Montana state permit conditions with respect to waste characterization and ground-water, soil, and soil-pore liquid monitoring, (2) provide additional characterization data on TC-hazardous tank bottoms and the non-hazardous wastestreams as those wastes are generated, (3) conduct air monitoring to confirm the conservatism of the predictive modeling, and (4) install a vehicle decontamination facility (57 FR 10490).

On May 14, 1992, as a result of public comment, the Agency extended the public comment period until June 10, 1992 (57 FR 20683). The comment period was extended, at the commenters' requests to allow commenters additional time both to review the docket (including information identified as missing from the initial docket) and to provide meaningful comment. On July 31, 1992, as a result of several requests from local citizens groups and residents of the Billings, Montana area, the Agency held a public hearing in Billings on the proposed decision (57 FR 27461). In addition, the comment period was reopened during the public hearing to allow the submission of oral and written testimony from attendees of the public hearing.

The Agency received a total of 94 written and oral comments on its proposed decision to grant a no-migration variance from the land disposal restrictions to Exxon for the NSLTU. Major issues raised by public commenters are discussed in Section IV of today's notice. All comments are addressed in the document "Summary and Response to Public Comments Received Regarding EPA's Proposed Decision to Grant a Variance from the Land Disposal Restrictions to Exxon Company, U.S.A., Billings, Montana," (hereafter called the Response to Comments document) which is available in the docket for today's notice.

## III. Discussion of EPA Determination and Conditions of Variance

*A. No-Migration Finding*

In making a no-migration determination, EPA is required, under sections 3004 (d)(1), (e)(1), and (g)(5) of RCRA, to find "to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." As EPA explained in the proposed decision and consistent with the court's opinion in *NRDC* v. *EPA*, 907 F.2d 1146, it interprets "no-migration" to mean that constituents listed in appendix VIII of 40 CFR 261 cannot migrate at hazardous levels from the disposal unit (57 FR 10480). In the case of the NSLTU, Exxon's modeling indicates that organic constituents will be degraded to non-hazardous levels within the treatment zone, and metals levels will not accumulate to hazardous levels in the treatment zone over the lifetime of the unit. In addition, air modeling indicates that air releases will not exceed hazardous levels. These results are confirmed by monitoring information to date. Given this and other evidence, the Agency concludes that Exxon has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the NSLTU for as long as the wastes remain hazardous. The basis for EPA's conclusion is discussed in more detail below.

EPA's action today allows Exxon to dispose of untreated hazardous wastes that would otherwise be subject to the RCRA land disposal restrictions at the NSLTU. Specifically, the variance covers the following wastes generated at the Exxon Refinery in Billings, Montana: Slop Oil Emulsion Solids (K049), API Separator Sludge (K051), and TC Contaminated Soils (D018) (once the LDRs for this waste become effective). It should be noted that Exxon may continue to dispose of non-hazardous solid wastes and non-restricted hazardous wastes at the NSLTU in compliance with its Montana Hazardous Waste Permit. If Exxon

wishes to dispose of additional restricted wastes at the NSLTU it will have to apply for an amendment to its no-migration variance. EPA will evaluate the amendment petition and propose a decision for public comment in the **Federal Register**, with a notice in the local press, before a final decision is made.

The Agency is placing conditions on the no-migration variance in addition to the requirements of 40 CFR 268.6. Those conditions are as follows: Exxon must comply with the waste characterization and monitoring conditions in the Montana State permit; Exxon must collect and analyze samples of various non-restricted wastes; Exxon must conduct air monitoring to confirm the conservatism of the modeling estimates; Exxon must not exceed an annual limit on the amount of benzene that is disposed of at the NSLTU; and Exxon must install a vehicle decontamination station. See Section III.B and Section VI for more information on these conditions.

Finally, under 40 CFR 268.6(k), the no-migration variance is valid only for the term of the facility's Montana Hazardous Waste Permit; therefore, Exxon's variance for the NSLTU will expire on October 18, 1998 (the date on which Exxon's Montana Hazardous Waste Permit expires). If Exxon wishes to continue to dispose of restricted wastes at the NSLTU after that date, it will have to petition EPA for another variance, as well as to seek a new permit from the State.

EPA's finding of no-migration is based on a detailed review of Exxon's petition, permitting and enforcement documents related to the site, and the extensive comments provided both by supporters as well as opponents of EPA's proposal. The Agency's finding is based on a careful review of all of the information provided in the petition and administrative record, including Exxon's predictive models, waste characterization and monitoring data from past operations, and the conditions that will be imposed on Exxon's activities through today's variance and the Montana State Hazardous Waste Permit. EPA's finding also considered the overall setting of the NSLTU, years of EPA Regional and State experience with the unit's operation, and Exxon's operating practices. These points are discussed in more detail in the following sections.

1. Overall Performance of the NSLTU

EPA (together with the Montana Department of Health and Environmental Sciences (DHES)) has overseen and regulated hazardous waste activity at the Exxon Billings refinery for more than a decade. During this period the NSLTU has successfully degraded, transformed, and immobilized the hazardous wastes disposed of at the unit. This conclusion is supported by the land treatment demonstration, conducted in accordance with 40 CFR 264 subpart M and completed in 1986, monitoring data generated since the NSLTU began operations in 1980, and modeling predictions using site-specific inputs.

The NSLTU is a good site for land treatment of petroleum refinery wastes because it is located in a semi-arid region (less than 39 cm precipitation per year) with relatively simple geology and hydrogeology, and it is located over generally homogeneous clay soils of low permeability ($1 \times 10-6$ to $1 \times 10-7$ cm/sec). In addition, waste loadings are closely controlled by the facility permit (not more than 5% freon-extractable oil and grease in the zone of incorporation (ZOI) and 70 metric tons freon-extractable oil and grease/hectare/year). The wastes are typical of petroleum refinery wastes, but with relatively low concentrations of hazardous constituents. For example, the benzene concentration in Exxon's API Separator Sludge and Slop Oil Emulsion Solids is less than half the average benzene concentration found in the same wastes at other refineries that also submitted no-migration variance petitions.

Exxon was issued a hazardous waste permit by the State of Montana and EPA in 1988 for the NSLTU. The record shows that the unit has been well managed, and that overloading is unlikely to occur because Exxon uses a computer-based decision matrix for waste placement, as required by the permit. This computer program is unusual for land treatment units and, in EPA's view, is at least partially responsible for the successful operation of the unit. The monitoring system at the NSLTU, required by the permit, consists of soil borings, lysimeters, and ground-water monitoring wells. It acts as a series of checks that can be expected to reveal elevated levels of hazardous constituents in the treatment zone long before actual migration above health-based levels could take place.

2. Predictions of Land Treatment Performance

To determine to a reasonable degree of certainty that hazardous constituents will not migrate from the unit in the future, EPA evaluated Exxon's predictions of the fate of organic constituents and metals in the unsaturated zone. Exxon used the Vadose Zone Interactive Processes (VIP) model to assess the long-term migration potential of several organic constituents in the treatment zone. Model inputs were either site-specific values, conservative literature-derived values, or calculations. The results of four simulations, including a worst-case scenario, all indicated that the organic constituents would be degraded to concentrations below health-based levels within the treatment zone. The modeling analysis, together with the site-specific inputs used by Exxon, was discussed in detail in EPA's proposed decision (57 FR 10478, March 26, 1992) as well as Exxon's petition NEBP-S0003, -S0021 and -S0028). Although several commenters raised concerns about Exxon's inputs to the model, EPA has concluded that both Exxon's modeling and its proposed conclusion based on that modeling were sound. Specific comments are addressed in Section IV of this notice and in the Response to Comments document accompanying today's decision.

The fate of the inorganic constituents (i.e., metals) was not predicted through a computer model; rather, Exxon was able to demonstrate, by projections based on actual data on total metals loadings to the NSLTU, that the final metals concentrations in the zone of incorporation (ZOI) would be low enough to preclude potential migration of any specific inorganic constituent. Under this analysis, metals concentrations will not accumulate in the ZOI above health-based levels for soil ingestion. This conclusion is supported by soil core data collected to date, and, in addition, the soil-pore liquid and ground-water monitoring data show no leaching of metals above health-based levels for drinking water. Specific comments on potential metals migration are discussed in the Response to Comments document.

3. Ground-Water and Soils Monitoring Data

The NSLTU has a multi-tiered monitoring system designed to detect migration of hazardous constituents at the earliest practicable time. This system, imposed through the Montana Hazardous Waste Permit, meets and in some cases exceeds the RCRA permitting standards for land treatment units. The monitoring consists of sampling for various parameters in the ZOI (monthly), soil cores (annually), soil-pore liquids (semi-annually) and ground water (semi-annually). The specific parameters and sampling methodology are discussed in the proposed notice (57 FR 10478, March 26, 1992) and in the permit located in the docket (NEBP-S0061). Exxon

provided EPA with all the monitoring data generated at the NSLTU for the soil and ground-water pathways. These data show that, in the 11 years of operation, no hazardous constituents have been detected below the treatment zone in the soil, soil-pore liquids, or ground water above health-based levels.

Numerous comments were submitted on the details of this system; these comments and EPA's responses are discussed in more detail in Section IV and in the Response to Comments document. It is EPA's judgment, however, that this system as a whole can reasonably be expected to detect any release of hazardous constituents from the unit and meets the regulatory requirements of 40 CFR 268.6(a)(4) and (c)(1), which require petitioners to provide a monitoring plan that detects migration at the earliest practicable time.

4. Air Pathway Assessment

Exxon estimated the concentrations of hazardous constituents at the unit boundary via the air pathway by doing a conservative modeling analysis. This analysis is discussed in detail in EPA's proposed decision (57 FR 10478, March 26, 1992) and in Exxon's petition (NEBP-S0003, -S0021 and -S0028) located in the docket for the proposed notice. A wide range of comments were received on Exxon's approach, some suggesting that it was too conservative, and others suggesting that the estimates of air releases were too low. In response to these comments, EPA reran the emission and dispersion models, incorporating all comments that it concluded were valid. The most significant changes made in the air quality analysis were the following:

- The current version of the ISCLT model was used (i.e., the ISCLT model has been revised (now called ISCLT2) since Exxon submitted its analysis);
- A more representative (weighted average) oil loading rate was used in the emissions modeling instead of the lowest oil loading rate that was conservatively input to the model by Exxon;
- Seasonal variability in wind erosion impacts during the first (winter) quarter was more realistically reflected (Exxon's modeling showed that the high wind erosion emissions occurred during the first quarter even though only minimal disturbance of the surface occurred during this period); and
- The model output was correctly adjusted for wind monitor height by applying a wind speed adjustment factor of 1.4. This factor adjusts the wind speed data from the 10 m high monitor at the Lockwood station (the source of the meteorological data) to represent wind speeds at 1.5 m (the modeled height).

The first three modifications were suggested by a commenter who correctly pointed out that Exxon's assumptions were more conservative than necessary to be consistent with guidance (see Air Pathway Assessment Methodology (APAM)). These modifications, if made, would lead to less conservative overall results. The final modification was suggested by commenters who noted that Exxon's final air quality modeling analyses did not include the wind speed adjustment factor. This modification would lead to more conservative results.

The revised estimates of annual average concentrations at the unit boundary, based on rerunning the model with the above modifications, are presented in Table 1 with the health-based levels (HBL) for these hazardous constituents. The revised, more realistic analysis shows results below the health-based levels.[2]

TABLE 1.—REVISED AIR MODELING ESTIMATES AT THE NSLTU

| Constituent | Modeled Concentration ($\mu g/m^3$) | HBL ($\mu g/m^3$) |
|---|---|---|
| Benzene | $5 \times 10^{-2}$ | $1 \times 10^{-1}$ |
| Toluene | $9 \times 10^{-2}$ | $2 \times 10^{+3}$ |
| Xylenes | $2 \times 10^{-1}$ | $3 \times 10^{+2}$ |
| Arsenic | $6 \times 10^{-5}$ | $2 \times 10^{-4}$ |
| Chromium (VI) | 0 | $8 \times 10^{-5}$ |
| Lead | $8 \times 10^{-4}$ | 1.5 |
| Cadmium | $4 \times 10^{-5}$ | $6 \times 10^{-4}$ |

EPA also recalculated modeling results incorporating only the more conservative change (i.e., the wind speed adjustment factor). In this case, the modeling shows higher concentrations than Exxon's modeling results but constituents still do not exceed health-based levels (e.g., benzene levels would be right at the health-based level of 0.1 $\mu g/m^3$).[3] Therefore, under either approach, Exxon's modeling shows acceptable results.

Although both approaches show no-migration, EPA believes that the revised modeling is more realistic, in that it more closely follows EPA's guidance and Exxon's actual operating conditions. EPA also concluded that, if the model were to be rerun, it was most reasonable to rerun the model by including all legitimate modifications suggested by commenters. In either case, EPA notes that Exxon's modeling shows no-migration. Furthermore, the required air monitoring program, which at this point can only take place after the variance has been granted, will allow confirmation of the conservatism in the modeling analysis.

Commenters also argued that Exxon's air modeling was not conservative in that it used average waste characterization data rather than reasonable worst-case data (e.g., data reflecting a 95% confidence level). EPA believes that average data are appropriate for air emissions, because, as explained in the proposal, HBLs for air (which are based on chronic toxicity levels) are based on annual averages. Nevertheless, EPA acknowledges that waste variability is a legitimate concern, particularly where modeled releases are within an order of magnitude of an HBL. Therefore, as a condition of today's decision, EPA is restricting the total mass of benzene that may be placed on the NSLTU to the amount used by Exxon in its modeling. This condition is discussed in more detail in Section III.

5. Other Elements of EPA's Finding

The major elements of EPA's no-migration finding are based on the NSLTU's site characterization, waste analysis data, monitoring data from past activities at the site, and Exxon's modeling. Exxon's permit requirements and the conditions of today's variance will ensure that Exxon continues to operate the unit in a way that prevents migration. Furthermore, Exxon's monitoring network, also required by the permit, will allow detection of releases (if any were to occur) at the earliest practicable time.

Beyond these major considerations, several other important factors entered into EPA's finding. These include:

(1) A review of run-on and run-off associated with storms. The NSLTU was specifically designed to contain the run-off from a 24-hour, 25-year storm, as required by RCRA and Montana state law. In fact, however, the unit's berms are sufficiently high to contain a 24-hour, 100-year storm for the area. (Therefore, the concerns of several commenters that designs should meet a 100-year storm level rather than a 25-year storm level are moot.) Also, the unit is located outside the Yellowstone River 500-year flood plain.

(2) Data in the record indicating that tornados and earthquakes are unlikely (and unpredictable) events (NEBP-S0003, Section 10). Therefore, no

[2] One group of commenters argued that the cumulative effect of multiple constituents should be accounted for. EPA disagrees. This issue is discussed in Section IV of today's notice.

[3] Multiplying Exxon's projected releases by 1.4, as one commenter did, yields a benzene release rate of 0.12 $\mu g/m^3$, which rounds to a rate of 0.1 $\mu g/m^3$. EPA notes that the Agency's HBL for benzene in air has also been rounded from 0.12 to 0.1 $\mu g/m^3$.

special measures to address these possible concerns were necessary.

(3) EPA Regional and State experience with Exxon's operations at the NSLTU. While commenters pointed out certain inspection reports citing possible violations at the refinery, they were either unrelated to the NSLTU, minor in nature, or (in some cases) subsequently shown not to be violations. Generally, it is the view of EPA's Region VIII office and the Montana DHES office that Exxon's NSLTU is a well-operated unit.

(4) Exxon's certification of compliance with other environmental laws. Commenters suggested that Exxon's Billings refinery does not meet Clean Air Act NESHAP standards for benzene. According to EPA Region VIII, however, Exxon is in compliance with the standards because its total benzene waste generation rate at the entire refinery is 2.3 metric tons per year (well below the NESHAP threshold of 10 metric tons per year (40 CFR 61)).

(5) Exxon's use of validated and widely accepted models in its modeling analyses and the acceptability of its analytical data. Where Exxon's data did not meet EPA's standards, EPA did not accept or use them in its analysis.

*B. Discussion of Conditions*

Today's decision to grant a no-migration variance to Exxon for disposal of restricted hazardous wastes at the NSLTU is subject to a series of conditions on Exxon's operations that will ensure that migration will not occur and that the variance can be effectively enforced. These conditions are discussed below.

*Hazardous waste characterization and monitoring.* As proposed, Exxon must comply with Montana State permit conditions with regard to characterization of wastes disposed of at the NSLTU, and monitoring of ground water, soil, and soil-pore liquids at that unit. The results of this characterization and monitoring must be provided to EPA Region VIII on the same schedule as they are provided to the State of Montana Department of Health and Environmental Sciences (DHES) under the facility's permit.

In addition, under 40 CFR 268.6(f), Exxon must notify EPA within 10 days if it determines through its monitoring that there has been migration of a hazardous constituent beyond the unit boundary. As proposed in the March 26, 1992 notice (57 *FR* 10478), the levels shown in Table 2 for the principal hazardous constituents (PHCs) listed in Exxon's Montana Hazardous Waste Permit would constitute migration for ground water at the unit boundary, soil-pore liquids below the treatment zone and soils below the treatment zone.[4]

TABLE 2.—HEALTH-BASED LEVELS FOR GROUND WATER, SOIL-PORE LIQUID AND SOILS FOR EXXON'S NO-MIGRATION VARIANCE

| Constituent (PHC) | Health-based level (HBL) | |
|---|---|---|
| | Ground water and soil-pore liquid (mg/L) | Soil (mg/kg) |
| Anthracene | N/A | N/A |
| Benzene | $5\times10^{-3}$ | $2\times10^{+1}$ |
| Benzo(a) anthracene | $1\times10^{-4}$ | $2\times10^{-1}$ |
| Benzo (b) fluoranthene | $2\times10^{-4}$ | N/A |
| Benzo(a)pyrene | $2\times10^{-4}$ | $1\times10^{-1}$ |
| Chromium | $1\times10^{-1}$ | $4\times10^{+2}$ |
| Chrysene | $2\times10^{-4}$ | N/A |
| Cresols | $2\times10^{-0}$ | $4\times10^{+3}$ |
| 2,4–Dimethylphenol | $7\times10^{-1}$ | $2\times10^{+3}$ |
| Ethylbenzene | $7\times10^{-1}$ | $8\times10^{+3}$ |
| Fluoranthene | $1\times10^{+0}$ | $3\times10^{+3}$ |
| Lead | $1.5\times10^{-2}$ | N/A |
| 1–Methylnaphthalene | N/A | N/A |
| Naphthalene | $1\times10^{+0}$ | $3\times10^{+3}$ |
| Phenanthrene | N/A | N/A |
| Phenol | $2\times10^{+1}$ | $5\times10^{+4}$ |
| Pyrene | $1\times10^{+0}$ | $2\times10^{+3}$ |
| Toluene | $1\times10^{+0}$ | $2\times10^{+4}$ |
| Xylenes | $1\times10^{+1}$ | $2\times10^{+5}$ |

N/A—No health-based level is available.

Monitoring for air migration, which is not required by the Montana Hazardous Waste Permit, is discussed below.

*Sampling of non-hazardous and non-restricted waste streams.* As proposed, Exxon must collect samples of the TC-hazardous Tank Bottoms and the non-hazardous wastestreams (Boiler House Lime Sludge; Cooling Tower Sludge; and DEA Sludge) and analyze them for all of the constituents on the list of "Petroleum Constituents of Concern." A copy of this list is provided in today's RCRA regulatory docket (NEBP–S0102). Exxon must analyze four representative samples of these wastestreams, or where a waste is infrequently generated, a sample each time the waste is generated for a period of two years from variance issuance. The results of the analyses must be provided in a written report to EPA Region VIII within 60 days of the last application of these wastes in each operating season.

As discussed in the proposal, the waste analysis will confirm the composition of non-hazardous waste, which is subject to fewer analytical requirements under the Montana permit. Also, Exxon may rely on the TC-tank bottom data to seek a modification to this variance to allow the waste's inclusion once it becomes subject to the land disposal restrictions.

*Confirmatory air monitoring.* Exxon must conduct confirmatory air quality monitoring at the NSLTU during the first July-August after variance issuance to confirm the conservatism of the modeling estimates. The monitoring must meet the standards described in the approved plan found in "Response to Technical Evaluation" Attachment 22, a copy of which is provided in the RCRA regulatory docket for today's notice. The results of the monitoring must be compared to concurrent short-term modeling (i.e., for the same source and dispersion conditions, and same monitor locations, as those that occurred during the monitoring period). This comparison will be used to confirm the conservatism of the average annual air quality results consistent with APAM. Exxon must provide the written results of the air monitoring program, including any revisions to the modeling estimates, to EPA Region VIII within 90 days of the last air monitoring sample collection.[5]

*Limitation on total benzene.* The total amount of benzene that may be disposed of at the NSLTU may not exceed 49 Kg (108 pounds) per calendar year. Exxon must determine the benzene content of each waste stream prior to placement at the land treatment unit. Representative samples of each waste stream must be analyzed for benzene as they are generated during the land application season in accordance with SW–846.[6] The term "as generated" means each time the wastes are removed from the wastewater system, created through a spill, or a tank is cleaned out, and the wastes are taken to the land treatment unit, which may be several times a year. A summary of these waste analyses must be provided to EPA Region VIII within 60 days of the last application of waste in each operating season. When the limit of 49 Kg benzene is reached, no additional waste containing detectable levels of benzene may be disposed of at the NSLTU until

[4] As discussed in Section V, migration of other 40 CFR 261, appendix VIII constituents above hazardous levels would also constitute migration.

[5] In the unlikely event that the air monitoring results indicate failure, Exxon, under 40 CFR 268.6(e), must notify EPA within 10 days of confirming this fact. Section 268.6(e)(2) requires the facility owner/operator, subject to a no-migration variance, to notify EPA within 10 days of discovering that a condition at the site which was modeled or predicted in the petition does not occur as predicted.

[6] Test Methods for Evaluating Solid Waste Physical/Chemical Methods, EPA, SW–846. This document is available from the Government Printing Office.

the next calendar year.[7] The above change from the proposal is justified by EPA's additional analysis of the modeling results for the air pathway based on comments. The benzene limit represents the total annual loading of benzene assumed by Exxon in its air modeling. While EPA believes that the air modeling is conservative, it also acknowledges that predicted releases of benzene are relatively close to the health-based level (as discussed in Section III(A)(4)). Therefore—in the absence of actual monitoring data—EPA concluded that it could not make a no-migration finding to a reasonable degree of certainty, unless some limit were set on the total annual benzene loading. EPA concluded that the most prudent limit would be the actual loading determined by Exxon through its waste analysis and used by Exxon in its modeling. Under Exxon's model as rerun by EPA, this loading would put Exxon at 50% of the HBL. EPA concluded that this margin of error is reasonable given that it reflects the actual data provided by Exxon and that the limit would not lead to migration at the health-based level, even under the most conservative modeling approach suggested by the commenters.

*Vehicle decontamination station.* Exxon must install the vehicle decontamination station at the NSLTU proposed in "Response to Technical Evaluation" Attachment 2, (located in the RCRA regulatory docket for today's notice), or one that provides no less adequate protection, prior to application of any restricted wastes, and must decontaminate all vehicles before they leave the unit. The decontamination station must be constructed so as to restrict access to and from the land treatment unit and prevent trackout of hazardous constituents on vehicles. Notification of installation of this station shall be sent to the EPA Region VIII Montana Operations Office within 30 days of installation. Exxon submitted a permit modification to its Montana Hazardous Waste Permit in 1992 to install this vehicle decontamination station.

## IV. Discussion of Major Issues Raised by Commenters

In response to its proposed decision, EPA received a total of 94 written and oral comments. Today's decision is based on a careful review of these comments.

[7] Of course, based on air monitoring data or other information, Exxon may petition EPA to raise or entirely eliminate the limit on benzene loading. Any revision of the variance in response to such a petition would be subject to public notice and comment under the procedures of 40 CFR 268.6.

The majority of the commenters supported EPA's proposed decision to grant a no-migration variance to Exxon, although several argued that EPA's standards were unrealistically stringent. The Agency also received comments disagreeing with its proposed decision from an industry trade association, several national and local environmental/public interest groups, and numerous individuals. These commenters presented both legal and technical arguments against the Agency's proposed variance. The legal issues revolved around EPA's interpretation of the statutory standard of no migration and the degree of certainty necessary for a no-migration determination. The technical comments focused on the completeness and adequacy of Exxon's petition, including waste characterization, site characterization, fate and transport modeling (air and unsaturated zone), and the monitoring systems; EPA's derivation of health-based levels; and similar issues. The major issues raised by commenters are discussed below.

The Agency has also responded to each of the comments on the proposed notice in a document "Summary and Response to Public Comments Received Regarding EPA's Proposed Decision to Grant a Variance from the Land Disposal Restrictions to Exxon Company, U.S.A., Billings, Montana" provided in the docket for today's notice. All comments (including a transcript of the public hearing) are also included in the docket.

### *A. Reasonable Degree of Certainty*

Section 3004(d)-(g) of RCRA requires that petitioners for a no-migration variance demonstrate, to a "reasonable degree of certainty," that there will be no migration of hazardous constituents for as long as the waste remains hazardous. One group of commenters argued that Congress established, through this standard, a stringent burden of proof for no-migration variances, one that differed from the traditional "preponderance of the evidence" standard in civil and administrative proceedings. The commenters, citing the *Steadman* doctrine, argued that Congress may, and in this case did, impose a higher standard of proof to govern administrative decision-making. The commenters also argued that, in construing the "reasonable degree of certainty" standard in state statutes, courts have equated the standard to the level of proof required in criminal cases, that is, EPA's conclusion must be free from any reasonable doubts.

EPA agrees, of course, that Congress specifically required that no-migration variance petitioners demonstrate no migration of hazardous constituents "to a reasonable degree of certainty." *See* 42 U.S.C. 6924 (d)(1), (e)(1) and (g)(5). However, EPA does not agree with the commenter's interpretation of this standard of proof. "[T]he task of determining the appropriate standard of proof * * * is one of discerning congressional intent * * *" *Steadman* v. *SEC*, 450 U.S. 91, 97 n. 10 (1981). In this case, the commenters' interpretation of the standard is unsupported by Congressional intent. While the Agency acknowledges that Congress mandated a standard of proof arguably different from the traditional "preponderance of the evidence" standard, EPA does not agree that requiring proof "to a reasonable degree of certainty" is equivalent to demanding proof "beyond a reasonable doubt." Neither the language of the 1984 Hazardous and Solid Waste Amendments (HSWA), nor its legislative history supports the commenters' proposition.

Had Congress intended petitioners to prove no migration "beyond a reasonable doubt," Congress would have used this well-known language when drafting HSWA. The "beyond a reasonable doubt" standard is commonly utilized in the criminal law, and in some instances, tort law; nonetheless, Congress did not choose to impose the strict burdens of this standard upon section 3004 petitioners and accordingly did not include it in the applicable sections of HSWA. Congress specifically required that petitioners demonstrate no migration "to a reasonable degree of certainty"—not "beyond a reasonable doubt."

The legislative history also provides no support for the commenters' position that "a reasonable degree of certainty" is analogous to "beyond a reasonable doubt." In the three instances of Congressional discussion on the issue, the standard was never equated with the "beyond a reasonable doubt" standard. The Senate Report explained that "the phrase 'reasonable degree of certainty' is intended to discount only the unpredictable future events." S. Rep. 284, 98th Cong., 2nd Sess. 15 (1984). Therefore, in making a no-migration determination, the Agency would be required to consider only future events that the petitioner could reasonably predict. The petitioner need not prove with absolute certainty (or indeed, "beyond a reasonable doubt") that no migration will occur; rather, the petition must rationally lead the Agency to conclude, based on a reasonable prediction of future events, that no migration of hazardous constituents will

occur for as long as the waste remains hazardous.

In floor debates, one senator stated:

> Although [the legislation] places a difficult test for the Administrator to meet in making a decision to allow a waste to continue land disposal, it recognizes that certain types of land disposal can be appropriate and environmentally sound.

129 Cong. Rec. S9153 (daily ed. July 25, 1984) (statement of Sen. Bentsen) (emphasis added). This statement was not subsequently questioned or challenged. Thus, Congress envisioned a strict standard, but one not so strict as to preclude land disposal of hazardous waste in all instances. The extreme interpretation of the commenters, however, would likely have such a result.

Lastly, the House Committee, in discussing the "certain limited circumstances" where land disposal of hazardous wastes might be appropriate, expressed the standard to require "reasonable certainty that wastes will be contained in the very long-term (i.e., at least several hundred years) and a very low likelihood that corrective action would ever become necessary." House Comm. On Energy And Commerce, Hazardous and Solid Waste Amendments Of 1984, H. Rep. No. 198, 98th Cong., 2d Sess., pt. 1, at 33, reprinted in 1984 U.S. Code Cong. & Admin. News 5576, 5592. This Congressional statement acknowledges that demonstration of no migration to an absolute certainty is an impossibility. Congress recognized and accepted that under the "reasonable degree of certainty standard" there would be a "very low likelihood" of migration. The strict "beyond a reasonable doubt" standard proposed by the commenters would completely preclude the "very low likelihood" of migration that Congress found acceptable.

With this limited legislative guidance, it is appropriate for the Agency to interpret the "reasonable degree of certainty" standard to impose a burden greater than the "preponderance of the evidence" standard, yet not as great as the "beyond a reasonable doubt" standard. A "*reasonable degree* of certainty" necessarily must be interpreted as encompassing some doubt. "[R]easonable certainty * * * does not require knowledge beyond a reasonable doubt." See, *United States* v. *Corral-Villavicencio*, 753 F.2d 785, 788 (9th Cir. 1985) (defining the "reasonable certainty" standard in the context of extended border searches to require that "the totality of facts and circumstances within the officers' knowledge of which they have reasonably trustworthy information be sufficient in light of their experience to warrant a firm belief that a border crossing has occurred"). In other words, proof to a reasonable degree of certainty does not eliminate uncertainty, rather it reduces uncertainty to that which is "reasonable."

Thus, EPA interprets the "reasonable degree of certainty" standard to require that a petitioner provide reasonably trustworthy information and data such that the totality of the facts and circumstances within the Agency's knowledge are sufficient, given its scientific and technical expertise, to warrant "a firm belief" that no migration of hazardous constituents from the injection zone will occur so long as the waste remains hazardous. The petition requirements at 40 CFR 268.6 ensure that the Agency is presented with the appropriate information, data, and modeling predictions upon which to make a no-migration determination. The Agency, based upon its scientific expertise and its thorough review of Exxon's no-migration petition and comments thereto, firmly believes that no migration will occur from the NSLTU. Therefore, the "reasonable degree of certainty" standard has been met.

*B. Definition of Migration*

Two groups of commenters questioned EPA's definition of "no-migration" because it allows releases at or below health-based levels. The Agency, however, continues to believe that the interpretation presented in the March 26, 1992 proposal (57 *FR* 10478) is consistent with the statute and notes that this definition is further supported by the court case *NRDC* v. *EPA*, 907 F.2d 1146 (D.C. Cir. 1990), which discussed the no-migration standard as it applies to underground injection wells. In that decision, the Court accepted EPA's interpretation of "no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" to mean no migration of constituents above hazardous (or health-based) levels (*NRDC* v. *EPA*, 907 F.2d at 1162). Based on this case, EPA decided to retain this standard in its final decision to grant a conditional no-migration variance to the Department of Energy's Waste Isolation Pilot Plant (WIPP) (55 *FR* 47700, November 14, 1990). The Agency is also using this definition of no migration in its final decision on Exxon's petition for the NSLTU.

One group of commenters argued that EPA is incorrect in using the case, *NRDC* v. *EPA*, to justify its use of health-based levels at the land treatment unit boundary to define no-migration. According to these commenters, EPA neither addressed the differences between disposal of hazardous wastes in underground injection control (UIC) wells versus its disposal in land treatment units (LTU), nor considered the statutory distinction between the "injection zone" and the "disposal unit" in RCRA sections 3004(d)-(g) when it applied the no-migration standard for UIC wells to surface units. The commenters also stated that EPA has not discussed how the court's holding in *NRDC* v. *EPA* with respect to UIC wells can be applied to surface facilities, especially when LTUs emit hazardous constituents to the air immediately upon waste application, while the waste remains hazardous. The commenters argued that EPA could not allow "some migration" via the air pathway while the waste remained hazardous on the surface of the land treatment unit.

The no-migration standard, upheld in *NRDC* v. *EPA*, states that no-migration is achieved so long as constituents do not migrate at hazardous levels (*NRDC* v. *EPA*, 907 F.2d at 1160). While EPA recognizes the physical and operational differences between UIC wells and LTUs, it believes that the no-migration standard of *NRDC* v. *EPA* is not only applicable to UIC wells, but to other disposal units as well. The court recognized that the standard it was affirming applied to all land disposal methods when it permitted EPA to "read this 'no migration' standard [of RCRA section 3004(d), (e) and (g)] into subsection (f) as well, in the interests of uniform treatment." *NRDC* v. *EPA*, 907 F.2d at 1159. While the court may have been specifically examining Agency regulation of UIC wells, the no-migration standard uniformly applies to all land disposal methods covered by RCRA sections 3004(d)-(g).

In arguing that the *NRDC* v. *EPA* decision does not apply to land treatment units, the commenters misconstrue the court's decision. The commenter does not acknowledge that the phrase "migration of hazardous constituents," as interpreted by the court, contains a concentration component (i.e., constituents must move beyond the unit boundary at hazardous levels to constitute "migration"). In today's decision, EPA has concluded that, upon application of prohibited hazardous waste to the NSLTU, constituents will not migrate at hazardous levels from the land treatment unit (by air or by any other medium). The fact that hazardous waste remains in the unit is irrelevant, as long

as constituents are not above health-based levels at the time they pass the unit boundaries. (Despite the commenters' argument, the situation for land treatment units is directly comparable to underground injection wells with respect to the no-migration standard: the court decision was not based on the conclusion that there was no longer any hazardous waste in the injection zone at the time *de minimis* levels of constituents crossed the unit boundary, but rather that those constituents were not inherently hazardous when they left the zone (*NRDC* v. *EPA*, 907 F.2d at 1159). EPA has made this same finding in today's decision. For these reasons, EPA has retained its proposed approach to defining "no migration."

*C. Derivation of Health-Based Levels*

To define levels of release that would constitute "migration" (or, alternatively, to define *de minimis* releases that do not amount to migration), EPA relies on what it calls health-based levels (HBLs). These are levels or concentrations of a hazardous constituent that would be acceptable (for example, that would pose a one in a million probability of adverse health effects) human exposure for a lifetime at the unit boundary. The health-based levels used in today's decision are based on the most up-to-date toxicological information available to EPA, combined with standard conservative exposure assumptions for inhalation and ingestion. These levels were made available for public comment together with EPA's proposed decision (NEBP–S0043); HBLs for the principal hazardous constituents (PHCs) in the permit are shown in Tables 1 and 2 of this notice.

While some commenters—as discussed above—completely opposed EPA's use of any HBLs, EPA also received numerous comments on the way it derived the HBLs in the proposal (57 *FR* 10478, March 26, 1992). EPA's HBLs, as explained earlier, are based on the Agency's most up-to-date toxicological data, combined with standard exposure assumptions reflecting lifetime exposure.

EPA received comments claiming that the HBLs were excessively high and excessively low. Commenters arguing that EPA's numbers were too high generally cited constituents where the HBL was relatively high—e.g., the HBL for soil ingestion of xylene is 200,000 mg/kg. On the other hand, commenters taking the other position cited numbers that were well below levels accepted under other regulatory regimes, or general background levels. For example, one commenter pointed out that the HBL for benzene in air was 3000 times below OSHA's workplace standard, and 100 times below general ambient urban levels of benzene. Also, while several commenters argued that the exposure assumptions behind EPA's numbers are extremely conservative, given plausible exposures at the unit boundary, commenters did not challenge the toxicological basis of EPA's HBLs.

In today's decision, EPA is retaining the proposed HBLs. EPA recognizes that some of the HBLs—as a few commenters pointed out—appear relatively high. These numbers, however, have been widely used in EPA risk assessments in other contexts. Furthermore, commenters provided no data to suggest alternative numbers. More important, the constituents cited as high did not drive EPA's analysis. In air, for example, the critical constituents were benzene and arsenic, which have very low HBLs based on chronic risks. Therefore, EPA believes the commenters' concerns about a few less critical constituents with relatively high HBLs are unfounded.

EPA acknowledges that the "exposure assumptions" underlying its use of HBLs in the context of no-migration determinations are very conservative (and do not necessarily reflect the actual conditions at the NSLTU). That is, EPA's levels are based on the assumption that direct, life-time exposure occurs at the unit boundary—a condition that does not exist at this site. Thus, "migration" would occur via the air pathway if a person living at the edge of the unit for a full life-time (i.e., 70 years) would experience anything greater than a one in a million increased probability of death due to exposure to any 40 CFR 261, Appendix VIII hazardous constituent. Similarly, migration would occur through the ground water pathway if risks would be unacceptable to a person drinking soil-pore liquid (leachate) from below the treatment zone as his or her sole source of water over a lifetime.

EPA took this conservative approach to defining no-migration because of the Congressional direction that the "no-migration" standard is high. EPA believes that Congress intended that EPA use a true *de minimis* level without allowances for attenuation outside the unit boundary or assumptions that exposure would not occur. Furthermore, the Agency's use of HBLs for no-migration determinations has been judicially approved (*NRDC* v. *EPA* , 907 F.2d 1146 (D.C. Cir. 1990)).

Several commenters, while arguing that individual HBLs were too high, also argued that EPA should take the approach to mixtures outlined in the Agency's Mixture Guidelines (51 *FR* 34014, September 24, 1986) and further described in the Air Pathway Assessment Methodology (APAM) guidance for no-migration petitioners. These mixture guidelines were originally developed for risk assessment under Superfund and similar programs; they apply to situations where there is exposure to multiple constituents, and they involve the application of a summation index for systemic toxicants and cancer risks. Commenters argued that, if EPA had required Exxon to account for the cumulative effects of all the constituents released to the air by performing a comparative summation index, as indicated in EPA's mixture guidelines or the APAM, the cumulative impact would have exceeded the criteria for a successful no-migration demonstration.[a] EPA notes that, under the revised modeling for air emissions, the cumulative impact of the modeled constituents would not exceed a combined one in a million risk. More important, however, EPA has concluded that the approach taken in the Agency's mixture guidelines (and in the APAM guidance, which was developed several years ago) is not the best approach for no-migration determinations. The Agency has not taken this approach because, as explained in its August 11, 1992 proposal, the determination of additive effects involves too many uncertainties and would be unnecessarily conservative (57 *FR* 35940). In fact, EPA's approach already has unusually conservative elements built in—including the exposure assumptions and the $1\times10^{-6}$ risk level for individual constituents under those exposure assumptions; EPA believes that the additional conservatism associated with an additive approach is inappropriate, especially given the implementation issues it would raise. Furthermore, this approach is not consistent with EPA's approach to RCRA delistings, which are analogous to no-migration determinations. (In delisting decisions, as in no-migration decisions, EPA determines whether a waste passes or fails the regulatory standard by comparing levels of individual hazardous constituents in the waste to specific allowable levels for each of the hazardous constituents, generally based on a one in a million risk. Cumulative effects of multiple constituents are not considered.)

EPA believes that the additive approach suggested by the commenters

[a] This would be a risk, of course, to a hypothetical person living for seventy years at the boundary of the land treatment unit, rather than to any person who would actually be exposed.

(and recommended in its 1990 APAM) does not fit the circumstances of a no-migration decision because this approach was developed within the context of a detailed risk assessment, providing greater flexibility in accounting for site specific factors and in determining acceptable risk levels. If EPA had adopted the Superfund approach, as recommended by some commenters, the NSLTU would have passed by a wider margin. For example, under the alternative risk assessment approach, EPA would have based its review on actual exposure, rather than hypothetical (but counter-factual) exposure at the unit boundary, and it could have allowed up to two orders of magnitude greater risk (i.e., $1\times10^{-4}$ risk vs. $1\times10^{-6}$ risk). Furthermore, EPA would not have assumed 70-years exposure, since the land treatment unit will be operating only twenty additional years. Under this risk assessment approach, allowable levels of benzene would most probably have been several orders of magnitude higher—even taking into account additive effects. Similarly, under the Burners and Industrial Furnaces (BIF) approach recommended by other commenters, a higher risk level ($1\times10^{-5}$) would have been acceptable. Instead, in today's decision (as well as in the recently proposed amendments to the no-migration regulations (57 *FR* 35940, August 11, 1992)) EPA has taken the generally more conservative but more easily implemented approach of establishing *de minimis* levels of individual hazardous constituents and defining migration as the exceedance of any of these levels at the unit boundary.

One commenter asked that the HBLs used in EPA's decision remain constant throughout the life of variance. EPA recognizes that certainty is needed in regulatory decision-making, and that the HBLs on which its decision is based have been subject to public comment in the course of this proceeding. (The numbers were included in the docket in NEBP–S0043). EPA does not intend to modify this variance based on new HBLs without providing prior notice and opportunity for comment to Exxon and the public. However, if new data suggest that individual numbers should be raised or lowered, EPA has the authority to amend them, through a rulemaking process with opportunity for notice and comment.

*D. Site Characterization*

Exxon provided extensive characterization of the NSLTU including information on the site soils, geology, hydrogeology, surface water hydrology, and meteorology/ climatology. EPA reviewed this information and concluded that it satisfied the requirements of 40 CFR 268.6(a)(3), which specifies that the no-migration demonstration include a comprehensive characterization of the unit site, including an analysis of background air, soil, and water quality. Several commenters on the other hand argued that Exxon failed to characterize the NSLTU site adequately and to identify all potential contaminant migration pathways. The commenters, for example, were concerned that the well borings taken beneath the NSLTU were insufficient to define the lithology and composition of the subsurface geology. The primary concerns of commenters were that the clay might not be as homogeneous and continuous as described by Exxon (i.e., continuous sand lenses might be present within the clay) and that there were insufficient data to establish the location of and direction of movement of ground water in the uppermost aquifer below the unit. (For more discussion on the sand and gravel unit as the uppermost aquifer, see Section IV.G.) In criticizing the site and the monitoring system, the commenters in particular relied on two 1985 reports prepared by or for EPA Region VIII that included discussions of the interim status ground-water monitoring system at the Exxon refinery. These reports, while providing relevant information, are now more than seven years old, and are outdated in important respects. They do not, for example, reflect improvements to the monitoring system imposed through the Montana Hazardous Waste Permit, issued in 1988, nor do they include the extensive monitoring data have been provided since 1985 that support the no-migration demonstration.

In summary, the Agency believes that the commenters' concerns on site characterization are unfounded. Drilling logs from 18 borings completed at or near the NSLTU substantiate that there is a generally continuous clay unit beneath the treatment zone (NEBP–S0003). The clay unit consists of clay and silt with occasional, discontinuous, thin silty sand layers below ten feet. The commenters provided no data to support their belief that the sand lenses are continuous, while on the other hand the numerous borings provide evidence that the lenses are not continuous.

Furthermore, Exxon used either site-specific or reasonable worst-case estimates of soil properties in its modeling work (which is supported by more than 11 years of monitoring data) to show that the soils are suitable for land treatment. One commenter correctly stated that approximately 95 percent of the NSLTU has soils belonging to the McRae Series not the Fort Collins Series, as stated in the March 26, 1992 notice (57 *FR* 10478). The Agency, however, believes that the significance of this point is limited, because the two soil series are very similar. The McRae series consists of deep, well drained, nearly level to strongly sloping, calcareous soils, and is moderately permeable, while the Fort Collins series consists of well-drained loamy soils that are slightly less permeable. Therefore, based on the similarity of the two soil types and the fact that Exxon used site-specific or reasonable worst-case soil inputs to its modeling, EPA concludes that Exxon has demonstrated that the NSLTU soils, regardless of their classification, are suitable for land treatment of petroleum refinery wastes.

*E. Waste Characterization*

The analytical data provided by Exxon fully characterized the restricted hazardous wastes (K049 and K051) and the TC-contaminated soils. These wastes were analyzed for a set of constituents previously identified by EPA as potentially being present in wastes from petroleum refining operations (known as the "Modified Skinner List"). The analytical data showed that the types of constituents in Exxon's wastes are typical of petroleum refinery wastes.

Several commenters argued that the K049 and K051 wastes were not completely characterized because Exxon did not analyze these wastes for all of the 40 CFR 261, Appendix VIII hazardous constituents. The Agency disagrees that the list of analytes used by Exxon, the "Modified Skinner List," is not adequate to characterize petroleum wastes. This list of hazardous constituents is a revision of the "Skinner list," which was developed by EPA in 1984 to identify the hazardous constituents of appendix VIII, 40 CFR 261, that are reasonably expected to be in, or derived from petroleum refinery wastes (K048–K052). The list was based on information from EPA research studies, in-house waste studies and analyses, and refinery process evaluations. In 1985, the "Skinner list" was modified to better reflect those constituents likely to be present at a petroleum refinery that has no associated chemicals manufacturing.

EPA further revised the "Modified Skinner List" in early 1992, creating a draft "List of Constituents of Concern for Wastes from Petroleum Processes." This list was based on additional analyses of petroleum wastes provided in petitions for delisting and no-migration variances. The draft list was

made available for public comment in the docket (NEBP-S0041) for this decision. This new list better reflected the hazardous constituents that are both consistently present in petroleum wastes and for which analytical methods are available. It also contained the Toxicity Characteristic (TC) constituents which might occasionally be detected in petroleum refinery wastes. While the commenters made the general argument that all Appendix VIII constituents should be monitored for—apparently solely on the grounds that they were hazardous constituents—they did not provide any information suggesting that any additional constituents would be present in Exxon's waste. In the absence of this information, and in the absence of other specific criticism of its approach, EPA does not believe it to be necessary to expand the draft list. However, one commenter recommended that several chlorinated organic constituents be removed from the list since they are not typically used at the Exxon Billings refinery. In responding to this comment, the Agency determined that these chlorinated organic compounds are not used in any appreciable amounts and are not produced in the petroleum refining process. Therefore, EPA deleted eight constituents (carbon tetrachloride, hexachlorobenzene, hexachlorobutadiene, hexachloroethane, pentachlorophenol, 2,4,5-trichlorophenol, 2,4,6-trichlorophenol and vinyl chloride) from the final "List of Constituents of Concern for Wastes from Petroleum Processes" for today's decision. This revised list is available in the docket for today's notice.

In the proposal, EPA determined that Exxon did not provide sufficient waste characterization data on TC-hazardous intermediate tank bottoms (ITB) to cover this waste in the no-migration variance. During the comment period Exxon provided additional information to support the validity of the analytical data characterizing this material and requested that the variance be expanded to cover these wastes. EPA reviewed the additional information and determined that, because of sample dilutions performed during the analyses, the reporting limits were high and the resultant data provided limited information. The Agency concluded that the data are not adequate to completely characterize these wastes as stipulated in 40 CFR 268.6(a)(2) and that Exxon must provide analytical results characterizing a minimum of four representative samples before the Agency can expand the variance to include the TC-hazardous ITB wastes. (Any amendment of the variance to include these or other restricted hazardous wastes will be locally noticed as well as published in the **Federal Register** with an opportunity for public comment.)

*F. Modeling Assessments*

Exxon relied on several verified models in its demonstration of no-migration. The models were either developed by EPA (e.g., ISC and CHEMDAT7) or determined to be appropriate for the conditions being assessed at the NSLTU (e.g., the VIP model). A number of commenters agreed with the Agency that the use of models to assess the environmental fate of waste constituents is an appropriate approach for demonstrating no-migration to a "reasonable degree of certainty." At the same time, several commenters criticized the way Exxon used EPA's models as insufficiently conservative. Specific comments on the modeling analysis are discussed below.

*1. Unsaturated Zone Modeling*

One group of commenters argued that Exxon used inappropriate and insufficiently conservative inputs to the Vadose Zone Interactive Processes (VIP) model, which was used to predict movement of organics in the unsaturated zone. EPA disagrees with these commenters, and believes that Exxon, in fact, used the correct values in the modeling. The commenters apparently did not refer to the actual model input files, but rather pulled values from some tables provided in the petition and assumed that these were used in the modeling. A quick examination of Exxon's modeling inputs (included in the docket in NEBP-S0021 and NEBP-S0028) shows that the values in the worst-case simulations were significantly longer (more conservative) than the values suggested by the commenter in every case except one (pyrene). And in this case, the value used for pyrene in the lower treatment zone is well within the range of values suggested by the commenter.

2. Air Quality Modeling

Many commenters addressed Exxon's air modeling analyses. In general, the commenters were concerned about various aspects of the emissions assessment, the dispersion modeling, and the impact of waste variability on the air modeling estimates. In response to these comments, EPA reran the dispersion and emission models, incorporating comments that were consistent with its Air Pathway Assessment Methodology (APAM) guidance, and conducted an analysis of the impacts from the NSLTU with the intent of improving the accuracy of the emissions and dispersion modeling. The results of the modeling are provided in Section III(A)(4) of this notice. The specific changes are described below.

a. *Emissions Assessment.* Commenters noted that Exxon's emissions assessment of gas and particle phase constituents contained several very conservative treatments, including treatments that were more conservative than those that were recommended in EPA's APAM guidance. The most conservative aspect of the gas-phase emissions analysis was that the oil loading rates used in the model were based on the most conservative waste stream, rather than a mass-weighted average oil loading rate that considered all waste streams. Exxon's approach resulted in substantially greater volatilization than what would be expected using more representative input data in the CHEMDAT7 emissions model. In EPA's revised modeling, the emission rate for the most critical constituent, benzene, was approximately 50 percent lower than that modeled by Exxon.

Wind erosion emissions of particulates also were substantially overestimated by Exxon, according to a commenter. Exxon's analysis shows that particulate emissions in the first (winter) and fourth (fall) quarters account for approximately 50 percent of total particulate loadings even though there is very little activity at the NSLTU during these periods. That is, there are periods of snow cover and frozen surfac. conditions and, with the exception of some minor activities associated with dumping and spreading contaminated soils, no other activity occurs at the NSLTU during the first and fourth quarters.

During the first quarter, when the NSLTU has been essentially inactive for a full quarter, the conservatism of assuming large particulate loadings is extreme. EPA modified the modeling analysis to reflect this fact. The fourth quarter wind erosion contribution also appears to be substantially overestimated by Exxon, but there were insufficient data to reassess wind erosion in this quarter and the conservatism in the fourth quarter was maintained.

The revised wind erosion emissions assessment of metals in the first quarter considered the volumes of expected contaminated soils, specific gravity, and the projected 5 cm spread depth. EPA calculated that approximately 1–2 percent of the surface would have freshly applied contaminated soils and that it would only be spread, not tilled.

Furthermore, since the concentrations of metals are much lower in the contaminated soils (the only material susceptible to erosion during this period) than the modeled concentrations based on maximum ZOI loadings (e.g., the concentration of arsenic is nearly six times lower), EPA considers the likely emission of metals during the first quarter to be negligible.

b. *Dispersion Modeling.* When EPA reran the dispersion modeling, several issues raised by commenters were addressed, namely: the revised version of ISCLT (ISCLT2) was used; a more refined placement of the receptor locations was used; and the modeling methodology described in the APAM was more closely followed (in particular, the appropriate wind speed adjustment factor of 1.4 was used). On this basis, relatively minor differences in the dispersion model results were found (i.e., the revised annual average normalized concentrations were only approximately five percent lower than Exxon's analysis). Therefore, the changes in the emission inputs had a greater impact on the modeled air quality concentrations (provided in Table 1) than the revised dispersion modeling.

EPA reran the model to determine the impact of what it considered to be valid comments on its proposed decision. As explained in Section III(A)(4) and Table 1, the revised modeling showed no migration—in fact the results were somewhat more favorable to Exxon's case than Exxon's original modeling. For the purposes of today's decision, EPA believes that these revised modeling results are the most appropriate measure of the NSLTU's performance with respect to air quality. EPA reemphasizes, however, that, even if only the comments arguing for a more conservative approach were accepted, Exxon still would meet the no-migration standard.

c. *Waste Variability.* Commenters were concerned that variability in concentrations of hazardous constituents would result in migration through the air pathway even though the no-migration demonstration showed that unit boundary estimates did not exceed health-based levels. The Agency agrees that this is a valid concern and is placing a condition on the variance such that benzene loading to the NSLTU is limited to 49 kg (108 pounds) per year. This was the total load of benzene assumed by the petitioner. Benzene was chosen for this limit because its estimated concentration at the unit boundary is nearest to its HBL (50%). If Exxon wishes to apply a greater benzene loading, it would need to petition to amend this variance with a revised no-migration demonstration to support this change. This condition is also discussed in Sections III and VI.

3. Confirmation of Air Modeling Conservatism

One commenter believed that EPA's proposed decision to grant a variance to Exxon would violate the recent court decision in *Kay* v. *EPA and Gibraltar Chemical Resources, Inc.* No. 6:90cy582 (Tyler Div., E.D.Tx., decided June 30, 1992). Gibraltar Chemical Resources, Inc. had petitioned the Agency for a no-migration variance for the underground injection of hazardous wastes. The court, in *Kay* v. *EPA*, determined that the Agency had erred by granting a no-migration variance for an unconstructed deep injection well without the required mechanical integrity data. Under 40 CFR 148.20(a)(2)(iv) (EPA regulations governing UIC wells) a no-migration petitioner is required to provide "the results of pressure and radioactive tracer tests performed within one year *prior* to the submission of the petition demonstrating the mechanical integrity of the well's long string casing, injection tube, annular seal, and bottom hole cement." (Emphasis added.) The court reasoned that (1) the regulation contemplated demonstration of the mechanical integrity data in the petition before EPA could find the no-migration standard had been met; (2) the requirements of 40 CFR 148.20(a)(2)(iv) could not be met by an unconstructed well; and (3) the approval process for the undrilled well precluded any public comment on the mechanical integrity data submitted after the notice and comment period had expired and the variance had been granted. The commenter stated that the court ruled that the petitioner needed to submit all of the required data before the Agency could meet the "reasonable degree of certainty standard of the law" and grant a variance.

In this case, the commenter was particularly concerned that the appropriate air monitoring to confirm the air modeling had not yet been conducted. The commenter stated that EPA recognized that Exxon had failed to verify the RITZ[9] modeling results, as EPA proposed to allow Exxon to conduct site-specific air monitoring after the variance was granted. The commenter recognized that Exxon could only conduct the monitoring after receiving a no-migration variance, because without the variance Exxon could not apply the wastes and conduct monitoring. The commenter, however, argued that Exxon had plenty of time to conduct the air monitoring before the land disposal restrictions became effective, and that this was no reason to contravene the regulations.

The *Kay* v. *EPA* decision does not control here. That decision—which addresses an underground injection well—is based on the specific regulatory requirements of 40 CFR 148.20; on the other hand, EPA's approval of Exxon's no-migration petition for a land treatment unit at its Billings Refinery is based on a different set of regulations—40 CFR 268.6. While the basic standard of the two regulations is the same statutory no-migration standard, the specific information requirements for a petition under each differ. These differences reflect the different types of activities covered by each regulation. In the case of the Exxon petition, EPA has concluded that Exxon provided all the information required in 40 CFR 268.6 to demonstrate to a reasonable degree of certainty that there will be no migration from the NSLTU. Furthermore, unlike the case of *Kay* v. *EPA*, all the required information has been subject to public notice and comment before any final action on the variance by EPA.

The commenter specifically asserted that the petitioner did not meet the requirements of 40 CFR 268.6(b)(3), which requires that models be "verified" for accuracy by comparison with actual measurements. EPA disagrees with the commenter on this point. The CHEMDAT and ISC models are widely accepted and have been verified by the model developer with actual measurements. "Model verification" is the process of testing a model for its ability to predict particular events (in this case, emission rates and airborne concentrations of volatile and particulate material in the air). The model developer (in this case EPA) conducts verification or validation before the model is accepted for use. In the case of no-migration petitions, the petitioner then uses site-specific information to run the model, which provides the predictive data on which a no-migration finding can be made (or alternatively, migration is predicted). Monitoring—that is, the measurement of actual concentrations during hazardous waste management operations—can take place only in this instance after EPA has granted a no-migration variance allowing waste placement. (It is for this reason that the regulations only require the petitioner to submit a monitoring plan as part of the petition, rather than monitoring data showing no releases of hazardous wastes (40 CFR 268.6(c)). Monitoring data from actual waste

[9] EPA believes the commenter meant the CHEMDAT/ISC models.

management operations are not required by the regulations unless they are otherwise already available.)

The commenter also argued that Exxon had ample time to conduct air monitoring before the land disposal restrictions became effective. The Agency disagrees. Due to the complex and site-specific nature of an air monitoring program, the Agency would not have expected Exxon, or any other petitioner, to conduct air monitoring without considerable Agency input to arrive at a mutually acceptable approach. Therefore, although draft guidance was available at the time Exxon submitted its petition (July 1989), the Agency did not complete its review and approval of Exxon's air monitoring plan until just prior to the November 8, 1990 effective date of the LDRs for the K048–K052 wastes. Realistically, EPA believes that Exxon had no real opportunity to conduct acceptable air monitoring before the land disposal restrictions went into effect.

*G. Ground-water Monitoring*

The Agency evaluated the ability of Exxon's ground-water monitoring system at the NSLTU to meet the no-migration standard. Contrary to the claims of several commenters, EPA did not just accept that the system was adequate because it met the Montana Hazardous Waste Permit standards. Based on its independent review of the NSLTU site hydrogeology, location and construction of monitoring wells (well logs), placement and vertical extent of well screens, piezometric data, monitoring data, and EPA/DHES inspection reports, the Agency found that the ground-water monitoring well system is acceptable and capable of detecting constituent releases to the uppermost aquifer at the earliest practicable time, as required by 40 CFR 268.6(a)(4).

There was some disagreement among commenters with regard to which zone constituted the uppermost aquifer, how long the well screens should be, and how far apart the wells are located. EPA's regulations require ground-water monitoring in the uppermost aquifer. The Agency defines the uppermost aquifer as the uppermost zone that could yield significant quantities of ground water (40 CFR 260.10). (See also "RCRA Ground-water Monitoring Technical Enforcement Guidance Document (TEGD), U.S. EPA, 1986). Exxon provided sufficient data to establish that the uppermost aquifer is located in a semi-confined sand and gravel zone at a depth between 27 and 38 feet. The aquifer is overlain by a thick clay layer that contains the piezometric surface at 18 feet below ground surface. Based on the regulatory definition, the saturated clay above the sand and gravel aquifer is not the uppermost aquifer because this zone would not yield significant quantities of ground water (i.e., in this particular case, less than one gallon per day).

Regardless of the regulatory definition of "uppermost aquifer," it was suggested that Exxon should monitor the saturated zone in the clay near the top of the water table, because constituents floating on the water table might escape detection. However, it would be impracticable to monitor the water table in the saturated clay zone above the uppermost aquifer because the water collected from this zone would not be suitable for analysis, nor representative of the formation's water. Because the permeability of the clay zone ranges between $10^{-6}$ and $10^{-7}$ cm/sec, a significant amount of time would be required to collect enough water for analysis. During this time, the sample would be exposed to the atmosphere, which would promote volatilization. The sample quality would be further degraded by suspended solids from the clay itself which could cause significant interferences during analysis. The Agency, therefore, relies on the unsaturated zone monitoring system (i.e., soil cores and soil-pore liquids monitoring) for early detection of hazardous constituents.

Some commenters were also concerned that the sampling intervals of the well screens (17 feet) were too long. Monitoring well design today often calls for multiple (or nested) monitoring wells with screen lengths of five to ten feet, particularly in complex geologic circumstances; however, there is no evidence to suggest that systems located in simple geologic settings that utilize screen lengths of up to 20 feet will not yield representative samples of ground water. EPA evaluated the hydrogeology at the NSLTU and determined that the sand and gravel zone, the uppermost aquifer, is fairly homogeneous throughout the site and no preferential pathways (fractures, faults, folds or solution channels) are present which would warrant shorter screen intervals. Thus, the Agency concluded that the monitoring well screens are installed at reasonable sampling intervals and allow the collection of representative samples of ground water from the uppermost aquifer at the NSLTU.

Finally, some commenters were concerned that the ground-water monitoring wells were spaced too far apart because a 1985 report describing the interim-status ground-water monitoring system at Exxon land treatment units indicated that some wells were up to 1000 feet apart. These wells, however, were not at the NSLTU. At the NSLTU the downgradient monitoring wells are between 400 and 450 feet apart (NEBP–S0003, Section 6) which is a reasonable distance considering the simple hydrogeologic conditions (no preferential pathways are present) as well as the uniform waste application practices at this facility. If a release were to occur, the resulting contamination would be dilute and diffuse and subject to dispersion. Therefore, the three wells at the unit boundary downgradient from the active area are in reasonable locations to detect contamination at the earliest practicable time.

*H. Surface Water*

Migration of hazardous constituents via a surface water pathway is not a concern at the NSLTU because berms surround the unit. Consistent with permitting standards (40 CFR 264.273 (c) and (d)), these two-to-five foot compacted clay berms were designed to be capable of containing the run-off and preventing run-on generated during a 24-hour, 25-year storm event. Commenters questioned why EPA allowed Exxon to rely on a run-on/run-off system designed for a 24-hour, 25-year storm as required by the Montana Hazardous Waste Permit and argued that mere compliance with the permit does not provide the "reasonable degree of certainty" of the no-migration standard. Rather, the commenters believed that the Agency is required to consider the strongest predictable storm, such as a 100-year storm.

EPA considers the commenter's point on this issue to be moot. The NSLTU is over-designed for a 24-hour, 25-year storm of 3.19 inches; in fact, the run-on/run-off system could completely contain the rainfall resulting from the 24-hour, 100-year design storm of 3.4 inches (calculations are in the docket for today's notice). More particularly, however, the Agency sees no compelling reason to modify the widely accepted 24-hour, 25-year design storm in the case of units handling wastes subject to the no-migration standard. EPA believes that a greater than 24-hour, 25-year storm is the sort of unpredictable event considered to be outside the scope of no-migration determinations (57 FR 39541, fn. 1, August 11, 1992). But in any case, this issue is moot for the NSLTU, since in fact it would contain a 24-hour, 100-year storm.

*I. Soil-Pore Liquids Monitoring*

Several commenters argued that Exxon's soil-pore liquid monitoring system in the unsaturated zone was inadequate because Exxon relied on an insufficient number and type of lysimeters. EPA's proposed notice (57 FR 10478, March 26, 1992) pointed out that, even though EPA guidance suggests that six lysimeters would be appropriate for a unit the size of the NSLTU (six-hectares), Exxon has only two lysimeters. One of the commenters also stated that EPA glossed over the lysimeter inadequacies in the proposed notice when it stated that the waste application rate and soil characteristics are uniform across the land treatment unit and, therefore, contamination will occur uniformly and be detected by two lysimeters. The commenter believed that EPA assumed away the types of problems that a monitoring system is supposed to detect.

EPA disagrees with the commenters' view that Exxon's soil-pore monitoring system is inadequate. The Agency recognizes that its general guidance in the *Hazardous Waste Land Treatment* manual indicates that a unit the size of the NSLTU should have six lysimeters, based solely on the size (NEBP–S0058). This manual, however, is intended to provide guidance which can be varied on the basis of site-specific circumstances. In fact, it has been EPA's experience in Region VIII that lysimeters, because of the semi-arid climate, are generally of limited value in measuring the chemical makeup of soil pore liquids beneath the treatment zone. For this reason, the Region has placed less emphasis on lysimeters at many facilities, including Exxon's Billings refinery. The fact that Exxon has regularly collected samples of the soil-pore liquids from the two pan lysimeters in place at the NSLTU provides added support to the no-migration demonstration.[10] EPA, however, continues to believe that, given the general problems with lysimeters in this area and the uniformity of the soils at Exxon's NSLTU and its waste management operations, there would be little if any benefit from additional lysimeters. As explained in the proposal, the disadvantages associated with further lysimeters—for example, the slight possibility that routes of migration might be created—outweigh their speculative benefits in this case.

More important, the Agency, when reviewing the variance petition, looked not only at the individual components of the monitoring system, but also at the monitoring system as a whole. Other aspects of the monitoring system that provide confirmatory data for Exxon's NSLTU include soil core monitoring, performed annually in accordance with the Montana Hazardous Waste Permit, and ZOI soil sampling and analysis conducted on a monthly basis during the active season. The monthly ZOI soil samples are analyzed for oil and grease, percent solids, and percent moisture. Also, annual composite ZOI samples are analyzed for pH, nutrients, and the following metals: antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, nickel, selenium, vanadium and zinc. This ZOI sampling program, which in certain respects goes beyond standard EPA regulatory requirements, provides important confirmatory data ensuring that the site is operating in a uniform, acceptable manner.

Because of the redundancy of the overall system, together with all of the reasons put forth in the proposed notice (i.e., uniform waste application, uniform soil characteristics, low permeability soil, low soil moisture, arid climate, and careful management and operation of the NSLTU), the Agency continues to believe that Exxon's monitoring system provides information of sufficient quality to determine the overall performance of the land treatment unit, and indicates whether hazardous constituents are migrating into soil-pore liquids below the treatment zone.

*J. Past Contamination at Other Units*

One commenter stated that, because the record shows contamination at other land treatment units at the Billings refinery, EPA cannot determine to a reasonable degree of certainty that there will be no migration from the NSLTU in the future. The commenter argued that this contamination resulted from the same land treatment practices of the same petroleum wastes in the same type of land treatment unit as the NSLTU.

EPA agrees that the Agency should consider past practices in reviewing a no-migration variance petition. However, after reviewing Exxon's petition and other information in the record, EPA concluded that the conditions associated with the other land treatment units referred to by the commenter were substantially different from those at the NSLTU and that the reported contamination at those units was not an indication that hazardous constituents would migrate from the NSLTU. In particular, one of the other land treatment units referred to by the commenters is located above an old solid waste management unit (SWMU) (operated prior to 1980), which may well be responsible for the reported releases, and the other is in an area that failed to maintain the minimum separation of at least three feet between the base of the treatment unit and the top of the seasonal high water table. These two units are subject to corrective action and closure requirements. The NSLTU, however, was not constructed over a previously existing waste site and the required three-foot minimum separation is consistently maintained (the separation between ground water and the treatment zone at the NSLTU is at least 14 feet). Therefore, the commenter's concerns are not well-founded regarding the NSLTU, and the Agency believes that the past history of those other units is not relevant, in this case, to predictions of performance of the NSLTU.

*V. Implementation of Variance*

This no-migration variance applies only to the New South Land Treatment Unit (NSLTU) and the wastes and waste volumes covered by the demonstration. The no-migration variance for land disposal of restricted wastes is applicable to only Slop Oil Emulsion Solids (K049), API Separator Sludge (K051), and TC Contaminated Soils (when the LDRs are promulgated for this waste) generated at the Exxon Refinery in Billings, Montana (40 CFR 268.6(i)).

Exxon is required to submit a petition for amendment of this variance and receive Agency approval before applying other restricted hazardous wastes to the land treatment unit. Of course, Exxon may continue to apply non-hazardous wastes or unrestricted hazardous wastes, in accordance with its Montana Hazardous Waste Permit.

EPA's final decision is based on specific information provided by Exxon in its petition, and Exxon's compliance with its Hazardous Waste Permit, issued by the State of Montana. Therefore, Exxon's petition and its State permit define the scope of permissible activities under the variance. Any significant departures from the terms of the variance would require amendment of the variance. If Exxon made such changes without first seeking an amendment, and if it continued to apply restricted wastes at the unit, it would be in violation of the RCRA land disposal restrictions and would potentially be subject to enforcement action.

EPA notes that the current RCRA regulations at 40 CFR 268.6(e) spell out

[10] One set of commenters criticized Exxon's use of pan lysimeters. EPA notes that Exxon's pan lysimeters have more consistently provided samples than have other types of lysimeters used in the region. This issue is discussed in a study done at the Conoco land treatment unit located near Billings, Montana, available in the docket for the proposed notice (Attachment 16 of S0021).

procedures that govern changes at facilities subject to no-migration variances, and that the regulations at 40 CFR 268.6(f) govern procedures to follow if a facility determines that a migration has occurred. Specifically, in accordance with 40 CFR 268.6(e), Exxon must report any changes in conditions at the NSLTU and/or the environment around the unit that significantly depart from the conditions described in the petition and affect the potential for migration of hazardous constituents from the unit. If Exxon plans to make changes to the design, construction, or operation of the NSLTU, or any other changes that may affect the potential for migration of hazardous constituents, such a change must be proposed in writing to EPA at least 30 days prior to the change. Any significant change must be approved before it is made. If Exxon discovers that a condition at the site (e.g., a tornado event) which was modeled or predicted in the petition, does not occur as predicted, this change must be reported, in writing, to the Administrator within 10 days of discovering the change. EPA will determine whether the reported change from the terms of the petition requires further action, which may include termination of waste acceptance, revocation of the variance, or other responses.

In addition, in accordance with 40 CFR 268.6(f), if Exxon determines that there is migration of a hazardous constituent(s) from the NSLTU, Exxon must immediately suspend receipt of restricted waste at the NSLTU, and notify the Agency in writing, within 10 days of the determination that a release has occurred. Within 60 days of receiving notification, EPA will determine whether Exxon can again receive restricted waste in the NSLTU, or whether the variance is to be revoked with respect to future disposal of restricted waste at the unit. As to any migration that already has occurred, EPA retains the right to initiate an enforcement action for violation of the Land Disposal Restrictions due to migration from the unit.

One commenter asked for a clearer definition of what would constitute migration. The confirmed presence of a constituent beyond the unit boundary at a concentration greater than the applicable health-based level, even a single event (except for the air pathway), indicates that migration has occurred and the unit is no longer functioning properly (i.e., it is unable to degrade, transform or immobilize the hazardous constituents to non-hazardous levels within the treatment zone). Of course, if the detection above an HBL can be shown to be a laboratory artifact or if the constituent can be shown to derive from some other source, then it would not be considered migration.

The same commenter suggested that migration should be defined as detection of Principal Hazardous Constituents (PHCs) above HBLs, rather than any hazardous constituent. The Agency notes that a petitioner is not required to monitor for each and every constituent present in the waste (let alone in 40 CFR 261, Appendix VIII). Rather, indicator constituents are used. Indicator constituents act as surrogates for other constituents which are equally or less toxic, mobile, or prevalent. If none of the indicators are present at hazardous concentrations, then the Agency assumes that the less toxic or mobile constituents also will not be present at hazardous concentrations. These indicator constituents are called principal hazardous constituents (PHCs) in the Montana Hazardous Waste Permit. However, as discussed in the proposed notice, in the event that Exxon should detect a non-PHC at a concentration above its HBL, this event also would be subject to the notification requirements of 40 CFR 268.6(f).

EPA notes that decisions on no-migration determinations, other than for underground injections wells, have been delegated to the Office of Solid Waste and Emergency Response (OSWER) (Delegation of Authority 8–40, EPA's Delegation Manual 1200 TN 166 September 2, 1989). Notices required under 40 CFR 268.6(e) and (f), therefore, should be submitted to the Chief, Assistance Branch, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In accordance with 40 CFR 268.6(k), the no-migration variance is valid for the term of the facility's Montana Hazardous Waste Permit; therefore, Exxon's variance for the NSLTU will expire on October 18, 1998 (the date on which Exxon's Montana Hazardous Waste Permit expires).

In addition, today's final decision imposes a series of specific conditions on Exxon's operations designed to ensure that migration will not occur, and that the no-migration variance can be effectively enforced. These proposed conditions are spelled out in Section VI of today's notice and are discussed in detail in Section III. These conditions are directly enforceable, and a violation of a condition would constitute a violation of the RCRA land disposal restrictions. EPA's Region VIII has primary responsibility for ensuring compliance.

## VI. Conditions of Exxon's No-Migration Variance

As a condition of granting a no-migration variance to Exxon to dispose of certain restricted hazardous wastes (K049, K051, and TC-Contaminated Soils) at the NSLTU, EPA is requiring that the following conditions be met for the term of this variance:

(1) Exxon must comply with Montana State permit conditions with regard to characterization of wastes disposed of at the NSLTU, and monitoring of ground water, soil and soil-pore liquids at that unit. Exxon must provide the results of this characterization and monitoring to the EPA Region VIII Montana Operations Office, Federal Building, 301 South Park, Helena, MT 59626, on the same schedule as they are provided to the State of Montana Department of Health and Environmental Sciences (DHES) under the facility's permit.

(2) Exxon must collect samples of the TC-hazardous Tank Bottoms and the non-hazardous waste streams (Boiler House Lime Sludge; Cooling Tower Sludge; and DEA Sludge) and analyze them for all of the constituents on the list of "Petroleum Constituents of Concern." A copy of this list is provided in today's RCRA regulatory docket (NEBP–S0102). Exxon must analyze four representative samples of these wastestreams, or where a waste is infrequently generated, a sample each time the waste is generated for a period of two years from variance issuance. The results of the analyses must be provided in a written report, to the EPA Region VIII Montana Operations Office, Federal Building, 301 South Park, Helena, MT 59626, within 60 days of the last application of these wastes in each operating season.

(3) Exxon must conduct confirmatory air quality monitoring at the NSLTU during the first July-August after the effective date of the variance to confirm the air modeling. The monitoring must meet the standards described in the approved plan found in "Response to Technical Evaluation" Attachment 22, a copy of which is provided in the RCRA regulatory docket for today's notice. The results of the monitoring must be compared to short-term modeling for the same source and dispersion conditions that occurred during the monitoring period. This comparison will be used to confirm the average annual modeling air release estimates. Exxon shall provide the written results of the air monitoring program, including any revisions to the modeling estimates, to the EPA Region VIII Montana Operations Office, Federal Building, 301 South Park, Helena, MT

59626, within 90 days of the last air monitoring sample collection.

(4) The total amount of benzene that may be disposed of at the NSLTU may not exceed 49 Kg (108 pounds) per calendar year. Exxon must determine the benzene content of each wastestream prior to placement at the land treatment unit. Representative samples of each waste stream must be analyzed for benzene as they are generated during the land application season in accordance with SW–846. The term "as generated" means each time the wastes are removed from the wastewater system, created through a spill, or a tank is cleaned out, and the wastes are taken to the land treatment unit, which may be several times a year. A summary of these waste analyses must be provided to EPA Region VIII Montana Operations Office, Federal Building, 301 South Park, Helena, MT 59626, within 60 days of the last application of waste in each operating season. When the 49 Kg limit is reached, no additional waste containing detectable levels of benzene may be disposed of at the NSLTU until the next calendar year.

(5) Exxon must install the vehicle decontamination station at the NSLTU proposed in "Response to Technical Evaluation" Attachment 2 (located in the RCRA regulatory docket for today's notice), or one that provides no less adequate protection, prior to application of any restricted wastes, and must decontaminate all vehicles before they leave the unit. The decontamination station must be constructed so as to restrict access to and from the land treatment unit and prevent trackout of hazardous constituents on vehicles. Notification of installation of this station shall be sent to the EPA Region VIII Montana Operations Office, Federal Building, 301 South Park, Helena, MT 59626, within 30 days of installation.

Dated: July 12, 1993.

**Richard J. Guimond,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 93–17872 Filed 7–26–93; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL MARITIME COMMISSION

**[Docket No. 93–14]**

### Parts-Tires-Imports, Inc. v. Florida Car Lines, Inc. d/b/a Florida Container Line; Filing of Complaint and Assignment

Notice is given that a complaint filed by Parts-Tires-Imports, Inc. ("Complainant") against Florida Car Lines, Inc. d/b/a Florida Container Line ("Respondents") was served July 21, 1993. Complainant alleges that Respondent engaged in violations of sections 10(a)(1) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709 (a)(1) and (d)(1), by taking possession of Complainant's goods for the purpose of shipment from the United States to Aquaba, Jordan, obtaining payment in full from Complainant, and failing to pay ocean carriers to complete the shipments, thus forcing Complainant to again pay shipping charges and storage charges in order to have its goods released by the ocean carriers.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 21, 1994, and the final decision of the Commission shall be issued by November 18, 1994.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–17782 Filed 7–26–93; 8:45 am]

BILLING CODE 6730-01-M

**[Petition No. 37–93, etc.]**

### Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petitions

In the matter of Petition No. P37–93, Petition of ISS Express Lines; Petition No. P38–93, Petition of Wiley International Transport, Inc.; Petition No. P39–93, Petition of Transfreight Express Lines; Petition No. P40–93, Petition of Glorious Shipping; Petition No. P41–93, Petition of Olimpex International, Inc.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than July 28, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on petitioners or their representatives as follows:

P37–93—Mr. John Hepworth, Managing Director, ISS Express Lines, 256–262 Adderley Street, West Melbourne, Vic. 3003, Australia

P38–93—Mr. Tom Wiley, President, Wiley International Transport, Inc., 5305 W. 102nd Street, Los Angeles, CA 90045

P39–93—Mr. Greg Vernoy, President, Transfreight Express Lines, Post Office Box 68271, Seattle, Washington 98168

P40–93—Mr. Paul Lam, President, Glorious Shipping, Room 521, 5/F., Star House, 3 Salisbury Road, Tsimshatsi, Kowloon, Hong Kong

P41–93—Ms. Ann Bruno, President, Olimpex International, Inc., 115 West Maple Street, Alexandria, Virginia 22301

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–17784 Filed 7–26–93; 8:45 am]

BILLING CODE 6730-01-M

**[Petition No. P42–93, etc.]**

### Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing of Petitions

In the matter of Petition No. P42–93, Petition of Turkey/U.S. Atlantic and Gulf Rate Agreement; Petition No. P43–93, Petition of Mediterranean/Puerto Rican Conference; Petition No. P44–93, Petition of South Europe/U.S.A. Freight Conference.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the August 27, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than July 29, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on counsel for Petitioners: Marc J. Fink, Esq., Sher & Blackwell, 1255 Twenty-

third Street, NW., suite 500, Washington, DC 20037–1194.

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–17783 Filed 7–26–93; 8:45 am]

BILLING CODE 6730–01–M

## GENERAL ACCOUNTING OFFICE

### Exposure Draft of Government Auditing Standards

**AGENCY:** General Accounting Office

**ACTION:** Notice.

**SUMMARY:** On July 26, 1993, the United States General Accounting Office issued an exposure draft of Government Auditing Standards, commonly known as the "yellow book." The exposure draft reflects the recommendations of the Government Auditing Standards Advisory Council based on discussions held at seven open meetings from April 1991 through February 1993. The exposure draft is being sent to audit officials at all levels of government, the public accounting profession, academia, professional organizations, and public interest groups. Comments on the proposed changes are encouraged, and are due by November 15, 1993.

**DATES:** Issuing of exposure draft of Government Auditing Standards: July 26, 1993.

**ADDRESSES:** To obtain a copy of the exposure draft write to: U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20884–6015.

Interested parties may also place orders by calling (202) 512–6000 or sending a fax to (301) 258–4066.

**FOR FURTHER INFORMATION CONTACT:** Marcia B. Buchanan, Project Manager, U.S. General Accounting Office, 441 G St., NW., room 6025, Washington, DC 20548 or call (202) 512–9321.

Dated: July 22, 1993.

**Donald H. Chapin,**

*Assistant Comptroller General.*

[FR Doc. 93–17704 Filed 7–26–93; 8:45 am]

BILLING CODE 1610–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Possible Adverse Effects of Folic Acid Consumption; Meeting

The National Center for Environmental Health of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Surveillance of Possible Adverse Effects of Folic Acid and Other Folate Consumption.

*Time and Date:* 8:30 a.m.–5 p.m., August 12, 1993.

*Place:* CDC, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

*Status:* Open to the public for observation and comment, limited only by space available.

*Purpose:* Spina bifida and anencephaly (SBA) are common and serious birth defects. On September 11, 1992, the U.S. Public Health Service recommended that all women of childbearing age in the U.S. who are capable of becoming pregnant should consume 0.4 mg of folic acid per day for the purpose of reducing their risk of having a pregnancy affected by SBA or other neural tube defects. The adverse effects of higher folic acid intake are not well known. Accordingly, CDC is considering the establishment of a surveillance program to monitor possible adverse effects of increased folate consumption, with emphasis on the possibilities for complicating the diagnosis of pernicious anemia and other vitamin B12 deficiencies.

CDC will convene this public meeting in order to receive individual advice on establishing surveillance systems for possible adverse health effects associated with increased folate consumption.

*Matters to be Discussed:* An invited group of qualified experts will be asked to provide individual data to answer the following questions:

(1) What are the possible adverse effects of increased folate consumption and what types of adverse effects are associated with a given level of increased folate intake?

(2) Are there population subgroups in which the possible adverse effects are most likely to occur?

(3) What are the possible methods to monitor the occurrence of these adverse effects? Please give advantages and disadvantages of each.

(4) How should CDC establish surveillance systems to monitor these possible adverse effects and which populations should be targeted?

(5) What should be the case definition for adverse effects related to folic acid consumption?

*Contact Person for More Information:* Marjorie A. Speers, Ph.D., Director, Division of Chronic Disease Control and Community Intervention, National Center for Chronic Disease Prevention and Health Promotion, CDC, Mailstop K–45, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, telephone 404/488–5532.

Dated: July 21, 1993.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–17823 Filed 7–26–93; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

[Docket No. 93M–0209]

### InterVentional Technologies, Inc.; Premarket Approval of IVT Coronary Atherectomy System (TEC®)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by InterVentional Technologies, Inc., San Diego, CA for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the IVT Coronary Atherectomy System (TEC®). After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 18, 1993, of the approval of the application.

**DATES:** Petitions for administrative review by August 26, 1993.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Tara A. Ryan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1197.

**SUPPLEMENTARY INFORMATION:** On July 15, 1991, InterVentional Technologies, Inc., San Diego, CA 92123, submitted to CDRH an application for premarket approval of the IVT Coronary Atherectomy System (TEC®). The IVT

Coronary Atherectomy System (hereinafter referred to as the TEC® System) is indicated for percutaneous transluminal endarterectomy of coronary arteries and bypass grafts excluding native artery diffuse lesions greater than 20 millimeter (mm), total occlusions, unprotected left main stem lesions and heavily calcified lesions. The microsurgical cutting component shaves intraluminal obstructions while the vacuum feature extracts the excised debris. In this manner the TEC® System, which operates over a guide wire, is used to recanalize coronary vessels by debulking and removing from the body atherosclerotic material. In order to achieve optimum angiographic results, adjunctive balloon angioplasty may be required in a majority of procedures performed with the TEC® device.

Use of the TEC® System is indicated in patients with coronary artery or bypass graft disease accessible to the device. In addition, the device may be useful in lesions complicated by thrombus. These patients generally will be candidates for percutaneous transluminal coronary angioplasty (PTCA).

Patients selected for TEC® atherectomy should meet the following criteria:

(1) Have significant atherosclerotic disease and/or thrombus in coronary arteries and bypass grafts whether untreated disease or restenosis of previously treated lesions;

(2) Have aorto-ostial, proximal, mid, or sometimes distal lesions that may be either short and discrete or long and diffuse (less than 20 mm in length);

(3) Stenoses should be such as to permit the TEC® guide wire to pass completely across the lesion of interest;

(4) Single or multiple vessel disease if treating the latter does not pose unacceptable risk to the patient such as unprotected left main disease, highly calcified lesions, or total occlusions of native coronary arteries; and

(5) Be candidates for PTCA.

On June 8, 1992, the Circulatory System Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On May 18, 1993, CDRH approved the application by a letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

## Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 26, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 14, 1993.

Joseph A. Levitt,

*Deputy Director for Regulations Policy.*

[FR Doc. 93-17761 Filed 7-26-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93S-0220]

## Establishment of a Public Docket for Medical Device/Radiological Health Policy Statements and Operating Procedure Guides

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is establishing a public docket for policy speeches, policy statements, and standard operating procedure guides pertaining to product evaluation and regulatory enforcement for its medical device and radiological health programs. The docket will operate on a 1-year trial basis and will serve both as a repository for critical policy documents generated by the Center for Devices and Radiological Health (CDRH) and as a public display mechanism for access by representatives of the industry and other interested persons. This action is one element of an overall communications initiative to ensure uniform and timely access to important information.

DATES: The trial period for this public docket will begin July 27, 1993, and will end July 27, 1994. Submit written comments on the establishment of the public docket by September 26, 1993.

ADDRESSES: The public docket is available under the docket number found in brackets in the heading of this document and is located in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and may be reviewed between 9 a.m. and 4 p.m., Monday through Friday. Submit written comments on the establishment of the public docket to the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT: John Stigi, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 1901 Chapman Ave., Rockville, MD 20852, 301-443-6597.

SUPPLEMENTARY INFORMATION: In recent years, FDA has revised some of the procedures and methods it uses in the scientific review of medical device submissions and enforcement of current good manufacturing practice regulations, bioresearch monitoring, and other requirements relating to device production. Employees of CDRH regularly communicate with trade associations and individual manufacturers, participate in industry-hosted meetings, sponsor small manufacturer workshops, and

disseminate publications to explain these changes. Establishment of this public docket will further this outreach effort.

The docket will include major speeches by agency policymakers and CDRH program managers, in addition to policy statements. It will also contain publicly available procedural guides which set forth a mode of business within CDRH, as well as requirements that medical device manufacturers must meet in conducting clinical studies supporting premarket submissions, the development of such submissions, and the requirements for the manufacture, promotion, sale, and distribution of medical devices.

Placement of a document in the docket does not bind the agency to any statement therein and does not create or confer any rights, privileges, or benefits on or for any person.

CDRH is creating this public docket on a pilot basis. A trial period of 1-year begins with publication of this notice. At the end of the trial period, the agency will assess the utility of the docket and make a determination whether to maintain or discontinue its use. Should the agency decide to continue the docket beyond the 1-year period, CDRH will periodically review the contents of the docket to remove outdated materials to ensure that industry has access to the most up-to-date information. During this trial period, CDRH will be receptive to ideas and suggestions regarding the operation of the docket and the types of material that should be made available.

Interested persons may, on or before September 26, 1993, submit to the Dockets Management Branch (address above) written comments on the establishment of the public docket. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

To further increase industry access to major CDRH policy documents in a real time and dynamic fashion, a nationwide electronic docket has been established. In this system, medical device companies, clinical researchers, manufacturers of radiation-emitting products, and others can electronically access the same documents available in the public docket. The documents can be read directly on the requestor's computer screen, printed at the requestor's terminal, downloaded to the requestor's personal computer, or be requested by mail. The system is to be menu-driven and will include automated searching capabilities.

CDRH is also pursuing other innovative ways to enhance its communications capability with the medical device and radiological health industries. On April 1, 1993, CDRH began a new information transfer program referred to as "Flash FAX." This program provides outside requestors with a precoded telephonic document identification system. Callers can use the coded system to order up to five documents per request, which are promptly made available by telefacsimile.

In addition, CDRH has instituted a premarket notification (510(k)) status reporting system. Beginning 90 days after receipt of a 510(k) submission, CDRH will respond to a manufacturer's written status request (sent by facsimile or mail), usually within 3 days. To assist manufacturers in preparing status report requests, a separate phone line (301–443–9435) and a 24-hour toll-free number (800–638–2041) are available.

Dated: July 16, 1993.

**William K. Hubbard,**

*Acting Deputy Commissioner for Policy.*

[FR Doc. 93–17832 Filed 7–22–93; 3:12 pm]

BILLING CODE 4160–01–F

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[Docket No. 93N–0029]

## Draft Revised "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food"; Availability; Extension of Comment Period

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to January 27, 1994, the comment period on the draft revision entitled "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food" (the "Redbook"), whose availability was announced in the **Federal Register** of March 29, 1993 (58 FR 16536). This revised "Redbook" will provide guidance to petitioners on criteria used by FDA for toxicological safety assessment of direct food and color additives, and in the agency's evaluation of the generally recognized as safe (GRAS) status of food ingredients. FDA is taking this action in response to requests to allow additional time for public comment.

**DATES:** Written comments by January 27, 1994.

**ADDRESSES:** Submit written comments on the revised "Redbook" to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Dennis M. Keefe, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 29, 1993 (58 FR 16536), FDA announced the availability of a draft revision of the "Redbook." The revised "Redbook" is intended to provide guidance to petitioners regarding criteria used by FDA for toxicological safety assessment of direct food additives and color additives used in food, and in the agency's evaluation of the GRAS status of food ingredients. Interested persons were given until July 27, 1993, to comment on this draft revision.

The agency has received several comments requesting an extension of the comment period for periods of 90 to 180 days. Some of the comments cited a delay in receiving copies of the revised "Redbook." Other comments cited the complexity and importance of the "Redbook."

The number of requests for copies of the draft revised "Redbook" has far exceeded the agency's expectation. The agency recognizes that there were delays in making copies available in a timely manner. Therefore, the agency has concluded that it is in the public interest to allow additional time for interested persons to submit comments. Accordingly, the comment period is extended for an additional 180 days.

Interested persons may, on or before January 27, 1994, submit to the Dockets Management Branch (address above) written comments regarding this draft revision of the "Redbook." Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 22, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–17920 Filed 7–26–93; 8:45 am]

BILLING CODE 4160–01–F

**Health Resources and Services Administration**

**Program Announcement for a Cooperative Agreement to a Professional Trade Association Representing Health Maintenance Organizations**

The Bureau of Health Professions (BHPr) of the Health Resources and Services Administration (HRSA) announces acceptance of applications for funding of a Cooperative Agreement for fiscal year 1994 to a recognized professional trade association representing health maintenance organizations (HMOs) for the purpose of supporting the demonstration of a model minority education program. This activity will be supported under the authority of title III, section 301 of the Public Health Service Act (the Act).

Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy. If funds become available, it is anticipated that one Cooperative Agreement for approximately $200,000 will be awarded on a competitive basis for each year of a 2 year project period.

**Background**

Several years ago, the Health Resources and Services Administration (HRSA) and the Office of the Assistant Secretary for Health (OASH), Office of Minority Health (OMH) in the Department of Health and Human Services (the Department) became aware of the low numbers of minority health administrators in health maintenance organizations (HMOs) and other managed care systems in the United States. The few minority graduates of health services administration programs in schools of public health and of health administration programs outside schools of public health, usually schools of business/management, either find positions in other areas of the health care system or have not acquired all the necessary technical knowledge and skills to accept an entry level position in an HMO or managed care system. In response to this concern, the Department developed a model education program for minority entry level health administrators in HMOs. The purpose of this cooperative agreement to a professional trade association representing HMOs is to demonstrate a practice oriented method of educating minority HMO health administrators which would involve the HMO management community in the education process, serve as an incentive to the academic community to become more practice oriented, and increase the number of academic HMO management education tracks in health administration programs in the United States.

**Purpose**

The primary objective of this project is to demonstrate a model practice-oriented educational track, focusing upon the need for more and better educated entry-level minority health administration graduates entering HMO management. A secondary objective will be to encourage and strengthen a practice oriented linkage between HMO management practice and the health administration academic community.

To achieve this objective, the recipient is to conduct at least two iterations of the previously developed Health Management Training Institute for Minorities in Health Maintenance Organizations, "the training program," in the Washington, DC metropolitan area. The Washington, DC area is specified because of the substantive involvement of Federal officials in developing the training program, proximity to Federal expertise, and scarce Federal resources for travel. The cooperative agreement should be designed to include activities such as:

1. Continuation of the previously developed Advisory Board to monitor implementation of the training program.
2. Continued monitoring of the knowledge, skills and abilities/attitudes required of minority health managers working in HMOs in the environment of health care reform.
3. Assessment of the pedagogical methods used to implement the previously developed educational objectives, e.g., didactic lectures, role playing, on-the-job training with an experienced mentor, etc.
4. Assessment of the HMO training sites used for experiential learning rotations in the Washington, D.C. area.
5. Further development of working relationships with accredited health administration programs in Washington D.C., e.g., George Washington University, Howard University and Johns Hopkins University.
6. Recruitment and matriculation of at least 12 Fellows for each of two years for the initial implementation of the previously developed educational objectives and curriculum of the training program.
7. Continued development of relationships with HMOs willing to hire Fellows upon completion of the training program.
8. During the implementation period of the training program, private sector support will continue to be sought for further iterations of the model training program.
9. Evaluation of the implemented training program, with the development of (1) appropriate recommendations concerning continued iterations of the training program and (2) recommendations to academic health administration programs concerning practice oriented HMO management.

**Federal Involvement**

The Cooperative Agreement mechanism is being used for this project to allow for substantial Federal programmatic involvement in the development of the details of the Cooperative Agreement.

Substantial Federal programmatic involvement will occur through Federal membership on the Advisory Board representing the Health Resources and Services Administration, including the Bureau of Health Professions, and the Office of Minority Health. Involvement primarily would be in the following areas:

- Continued identification of emerging health management practice issues in HMOs and managed care settings;
- Continued identification of special needs of minority populations using HMOs, and how this might be reflected in the education of minority health managers;
- Continued identification of appropriate consultation for implementation of the training program;
- Continued refinement of the educational objectives of the model training program;
- Continued refinement of the educational methods to most appropriately convey the knowledge, skills, and attitudes contained in the educational objectives;
- Continued development of appropriate linkages with academic institutions and appropriate professional associations in the Washington, DC area; and
- Participation in the review and selection of contracts and agreements developed in implementing the project;
- Participation in all appropriate meetings, committees, sub-committees and working groups, proposed under the agreement.

**Eligibility**

Entities eligible to apply for funding under this Cooperative Agreement must:

1. Be a recognized professional association representing health maintenance organizations (HMOs), and
2. Be located in the Washington, DC metropolitan area.

**National Health Objectives for the Year 2000**

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

**Education and Service Linkage**

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

**Review Criteria**

The review of applications will take into consideration the following criteria:

- The degree to which the proposal contains clearly stated, realistic, and achievable objectives;
- The extent to which the proposal includes an integrated methodology compatible with the scope of project objectives, including collaborative agreements with relevant institutions and professional associations;
- The administrative and management capability of the applicant to carry out the Cooperative Agreement; and
- The extent to which budget justifications are complete, appropriate, and cost-effective.

These review criteria are based on criteria established for the Bureau of Health Professions grant programs in fiscal year 1993.

Applications received will be reviewed by an ad hoc review panel using the criteria above for review guidance.

**Application Requests**

Eligible entities interested in receiving materials regarding this program should notify HRSA. Materials will be sent only to those entities making a request. Requests for proposal instructions and questions regarding grants policy and business management issues should be directed to: Ms. Sandra Bryant, Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915 FAX:(301) 443–6343.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed related to health administration issues, please contact: Ronald B. Merrill, M.H.A., Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6853 FAX: (301) 443–1164.

If additional programmatic information is needed related to minority issues, please contact: June Horner, Office of Minority Health/ HRSA, PHS, Parklawn Building, room 14–48, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–2964.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060. The deadline date for receipt of applications is August 26, 1993.

Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Sent* on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: June 8, 1993.

**William A. Robinson,**

*Acting Administrator.*

[FR Doc. 93–17837 Filed 7–26–93; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR–943–2300–02; GP3–313; OR–44571]

### Order Providing for Opening of Land; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action will open 375 acres of the 440 acres of acquired land to surface entry, mining and mineral leasing. The 65-acre balance is within the boundary for the Donner Und Blitzen Wild and Scenic River withdrawal.

**EFFECTIVE DATE:** August 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM Oregon/ Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

**SUPPLEMENTARY INFORMATION:** 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

**Willamette Meridian**

T. 33 S., R. 33 E.,
Sec. 4, S½SW¼;
Sec. 5, E½SW¼, SW¼SW¼, and SE¼;
Sec. 8, N½NW¼.

The area described contains 440 acres in Harney County.

2. The land lying within one-quarter mile of the river in the N½NW¼ of Sec. 8, is included in the withdrawal for the Donner Und Blitzen Wild and Scenic River and will remain closed to surface entry, mining, and mineral leasing.

3. At 8:30 a.m., on August 30, 1993, the land described in paragraph 1, except as provided in paragraph 2, will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 30, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on August 30, 1993, the land described in paragraph 1, except as provided in paragraph 2, will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30

U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on August 30, 1993, the land described in paragraph 1, except as provided in paragraph 2, will be opened to applications and offers under the mineral leasing laws.

Dated: July 16, 1993.

**Betty M. McCarthy,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 93-17829 Filed 7-26-93; 8:45 am]

BILLING CODE 4310-33-M

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[UT-060-4210-06 U-58364]

## Realty Action; Utah; Correction

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction notice.

**SUMMARY:** The legal description listed in the **Federal Register** Volume 58, No. 130, July 9, 1993 as it pertains to the Recreation and Public Purposes (R&PP) Act Classification; Utah; Realty Action needs to be changed as follows.

Incorrect:
Sec. 3, Lots 3 through 6, Lot 12 and W½S½
Correct:
Sec. 3, Lots 3 through 6, Lot 12 and W½SW¼
Incorrect:
Sec. 10, W½NW¼MW¼
Correct:
Sec. 10, W½NW¼NW¼

For further information please contact Gary Hall at (801) 896-8221.

**Samuel R. Rowley,**

*Associate District Manager.*

[FR Doc. 93-17830 Filed 7-26-93; 8:45 am]

BILLING CODE 4310-DC-M

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[ES-963-4960-10-4041; ES-046153, Group 86, Arkansas]

## Notice of Filing of Plat of the Dependent Resurvey and Subdivision of Sections

The plat of the dependent resurvey of a portion of the north boundary (Standard Parallel North); portions of the east and west boundaries; a portion of the subdivisional lines; the survey of the subdivision of certain sections, and the survey of the National Park Service Tract No. 14-141 in section 13, in Township 16 North, Range 21 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 26, 1993. The survey was made upon request submitted by the National Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 26, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 1, 1993.

**Larry Hamilton,**

*Acting State Director.*

[FR Doc. 93-17773 Filed 7-26-93; 8:45 am]

BILLING CODE 4310-GJ-M

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[ES-960-4730-02; ES-046150, Group 162, Minnesota]

## Notice of Filing of Plat of Dependent Resurvey and the Survey of Two Islands in Lake Patterson

The plat of the dependent resurvey of a portion of the subdivisional lines and the survey of two islands in Lake Patterson, Township 116 North, Range 25 West, Fifth Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 23, 1993.

The survey was executed in response to an application for survey submitted by Mr. Marvin Wacholz, 100 East Lake Street, Waconia, Minnesota 55387.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 23, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: June 28, 1993.

**Larry Hamilton,**

*Acting State Director.*

[FR Doc. 93-17774 Filed 7-26-93; 8:45 am]

BILLING CODE 4310-GJ-M

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[NV-930-4210-06; N-57186]

## Proposal Withdrawal and Opportunity for Public Meeting; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 8,344.22 acres of public land in Washoe County to establish and protect a proposed National Wild Horse and Burro Center. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

**DATES:** Comments must be received by October 25, 1993.

**ADDRESSES:** Comments should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

**FOR FURTHER INFORMATION CONTACT:** Vienna Wolder, BLM Nevada State office, 702-785-6526.

**SUPPLEMENTARY INFORMATION:** On July 16, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

**Mount Diablo Meridian**

T. 21 N., R. 19 E.,
Sec. 1, Lots 1-4, S½, S½N½;
Sec. 2, Lots 1-4, S½, S½N½;
Secs. 12 and 13.
T. 22 N., R. 19 E.,
Sec. 36.
T. 21 N., R. 20 E.,
Sec. 5, Lots 1-4, S½, S½N½;
Sec. 6, Lots 1-7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1-4, E½, E½W½;
Secs. 8 and 17;
Sec. 18, , Lots 1-4, E½, E½W½.
T. 22 N., R. 20 E.,
Sec. 31, , Lots 1-4, , E½, E½W½;
Sec. 32.

The area described contains 8,344.22 acres in Washoe County.

The purpose of the proposed withdrawal is to establish and protect a National Wild Horse and Burro Center. Nevada has over 39,000 wild horses and burros, which is over half of their population in the United States. The Center will service as Nevada's preparation facility where wild horses and burros will be adopted or shipped to other adoption facilities. The Center will handle approximately 8,000 animals each year. The Center will contain facilities to handle and prepare the wild horses and burros for adoption and will include an adoption facility, and an interpretive facility, an auditorium, exhibit area, office complex, and a drive-through area where wild horses can be viewed in a natural setting.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of the time and place will be published in the **Federal Register** and the Reno Gazette-Journal newspapers in Reno, Nevada, at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulation set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature.

Dated: July 19, 1993.

**Billy R. Templeton,**

*State Director, Nevada.*

[FR Doc. 93–17770 Filed 7–26–93; 8:45 am]

BILLING CODE 4310–HC–M

## Fish and Wildlife Service

### Availability of a Draft Recovery Plan for the Bruneau Hot Springsnail for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Brumeau Hot Springsnail (*Pyrgulopsis bruneauensis*). The species occurs only in a complex of related thermal springs and their immediate outflows along the Bruneau River in Owyhee County, Idaho on private lands and lands administered by the Bureau of Land Management (BLM). The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before September 27, 1993 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705 or by calling (208) 334–1931. Written comments and materials regarding the draft recovery plan should be addressed to Field Supervisor, Boise Field Office, U.S. Fish and Wildlife Service, at the address listed above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Chuck Lobdell or Steve Duke, Fish and Wildlife Service, Boise Field Office, 4696 Overland Road, room 576, Boise, Idaho 83705 (208) 334–1931.

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting and delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Bruneau Hot Springsnail occurs only in a complex of related thermal springs and their immediate outflows along the Bruneau River in Owyhee County, Idaho, primarily on lands administered by the BLM and also some private lands. The primary threat to this species is the reduction of themal spring habitats from agricultural-related ground water withdrawal/pumping. The recovery plan calls for implementing various conservation measures to preserve and maintain the species thermal spring habitats by stabilizing water levels in the geothermal aquifer to maintain existing springsnail habitats along the Bruneau River and in Hot Creek and protecting the remaining springsnail populations from vandalism and catastrophic events.

#### Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

#### Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 20, 1993.

**Marvin L. Plenert,**

*Regional Director.*

[FR Doc. 93–17821 Filed 7–26–93; 8:45 am]

BILLING CODE 4310–55–M

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 17, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 11, 1993.

**Beth M. Boland,**

*Acting Chief of Registration, National Register.*

**Arizona**

*Maricopa County*

*Grace Lutheran Church (Religious Architecture in Phoenix MPS)*, 1124 N. 3rd St., Phoenix, 93000835

**Florida**

*Brevard County*

*Hill, Dr. George E., House*, 800 Indianola Dr., Merritt Island, 93000819

**Louisiana**

*Caldwell Parish*

*Martin House*, Jct. of Martin Ln. and US 165, 2 mi. N of Columbia, Columbia vicinity, 93000832

*East Feliciana Parish*

*Fairview Plantation House*, 8338 LA 963, Ethel vicinity, 93000821

*Lafourche Parish*

*Toups, Zephirin, Sr., House (Louisiana's French Creole Architecture MPS)*, 1045 Bayou Blue By-Pass Rd., Thibodaux vicinity, 93000820

*Orleans Parish*

*Upper Central Business District (Boundary Increase)*, Jct. of Howard and St. Charles Aves. and along O'Keefe Ave. and Poydras St., New Orleans, 93000831

**New Jersey**

*Atlantic County*

*Black, William L., House*, 458 Bellevue Ave., Hammonton, 93000828

*Burlington County*

*Stokes, Charles, House*, 600 Beverly—Rancocas Rd., Willingboro Township, Riverside vicinity, 93000827

*Cape May County*

*Ludlam, Henry, House*, 1336 NJ 47, Dennis Township, Dennisville vicinity, 93000826

*Ocean County*

*Falkinburg Farmstead*, 28 Westcott Ave., Ocean Township, Waretown, 93000829

**Virginia**

*Arlington County*

*Carlin Hall*, 5711 4th St., S., Arlington, 93000833

*Clarke County*

*Lucky Hit*, VA 628 S side, 4500 ft. NE of jct. with VA 658, White Post vicinity, 93000834

*Frederick County*

*Frederick County Poor Farm*, VA 654 E side, S of jct. with VA 679, Round Hill vicinity, 93000823

*Halifax County*

*Eldridge, Bowling, House*, VA 622 W side, 1.5 mi. N of jct. with VA 659, Elmo vicinity, 93000824

*Lee County*

*Dickinson—Milbourn House*, US 58, Jonesville, 93000825

*Rockbridge County*

*Level Loop*, VA 724 1 mi W of Brownsburg and 0.5 mi. E of McClung's Mill, Brownsburg vicinity, 93000822

*Danville Independent City*

*Downtown Danville Historic District*, Roughly bounded by Memorial Dr. and High, Patton and Ridge Sts., Danville (Independent City), 93000830

[FR Doc. 93–17760 Filed 7–26–93; 8:45 am]

BILLING CODE 4310–70–M

## Office of Surface Mining Reclamation and Enforcement

## Request for Determination of Valid Existing Rights Within the Monongahela National Forest

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of request for determination and invitation for interested persons to participate.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) has received a request for a determination of valid existing rights (VER) to mine coal by surface and underground methods on 8,405 acres of Federal land within the Monongahela National Forest in Pocahontas and Randolph Counties, West Virginia. By this notice, OSM is inviting interested persons to participate in the proceeding and to submit relevant factual material on the matter. OSM intends to develop a complete administrative record and will render a final agency decision pursuant to section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and its implementing regulations.

**DATES:** OSM will accept materials on this request for a VER determination until 5 p.m. local time on September 10, 1993.

**ADDRESSES:** Hand deliver or mail written materials to the Eastern Support Center at the address listed below. Documents contained in the Administrative Record are available for public review at the locations listed below during normal business hours, Monday through Friday, excluding holidays.

Office of Surface Mining Reclamation and Enforcement Eastern Support Center, room 234, Ten Parkway Center, Pittsburgh, PA 15220, Telephone: (412) 937–2897.

Office of Surface Mining Reclamation and Enforcement Charleston Field Office, 603 Morris Street, Charleston, WV 25301, Telephone: (304) 347–7158.

**SUPPLEMENTARY INFORMATION:** Section 522(e) of SMCRA prohibits surface coal mining operations in certain areas, subject to VER and except for those operations which existed on August 3, 1977. Under section 522(e)(2), the prohibition is applied to any Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic or other values that may be incompatible with such surface coal mining operations and the surface operation and impacts are incident to an underground coal mine.

The term "VER" is not defined in SMCRA. On September 14, 1983 (48 FR 41312–41356), OSM adopted a regulatory definition of VER at 30 CFR 761.5 which defined VER as those rights, which if affected by the prohibitions in section 522(e), would entitle the owner to payment of just compensation under the Fifth and Fourteenth Amendments to the United States Constitution, the so-called "takings" test.

On March 22, 1985, the United States District Court for the District of Columbia held that the promulgation of the VER definition in 30 CFR 761.5 violated the Administrative Procedure Act and remanded the definition to the Secretary of the Interior (In Re: Permanent Surface Mining Regulation Litigation II No. 79–1144).

In the November 20, 1986, **Federal Register** (51 FR 41952), OSM suspended the Federal definition of VER insofar as it incorporates a takings test. OSM announced that during the period of suspension it would make VER determinations on Federal lands within the boundaries of national forests using the VER definition contained in the appropriate state regulatory program. By passage of the Energy Policy Act of 1992, Congress directed OSM to continue in force and effect during the one-year period following enactment of that Act, the polices set forth in the November 20, 1986, **Federal Register** notice.

The term VER is defined in CSR 38–2–2.129 of the West Virginia Surface Mining Reclamation Regulations. Section 2.129 provides that VER exists, except for haulroads, in each case in which a person demonstrates that the limitation provided for in section 22A–3–22(d) of the West Virginia Surface Coal Mining and Reclamation Act would result in the unconstitutional taking of that person's rights.

By a letter dated June 30, 1993, Charles and Katherine Kelly requested that OSM make a determination of VER for 8,405 acres of land located in Randolph and Pocahontas Counties, West Virginia. The Kellys allege that they are the owners of $^{9}/_{17}$ of the coal, oil and gas on this tract. The United States of America purchased the surface and $^{9}/_{17}$ of the coal rights on July 1, 1987, from the Trust for Public Land, a non-profit California public benefit corporation. The land is currently managed by the U.S. Department of Agriculture as part of the Monongahela National Forest.

The property is located in the Valley of the Shavers Fork River and on the

western flank of Back Allegheny Mountain about 23 miles south of the city of Elkins, West Virginia. It is bounded on the north by U.S. Highway No. 250, on the West by the Shavers Fork River, on the south by the boundary between Randolph and Pocahontas Counties, and on the east by the crest of Back Allegheny Mountain. The entire area is colloquially called Cheat Mountain.

The Kellys have requested a VER determination for the Eagle, Barton Knob, Gilbert Rider, Gilbert, Hughes Ferry and Sewell coal seams. The Kellys propose to mine the above seams by mountain top removal, contour and underground mining methods.

In evaluating this request, OSM must first determine whether the Kellys have demonstrated all necessary rights to mine the coal. OSM invites interested persons to provide factual information as to whether the Kellys have the property right to mine by the proposed methods, and other factual information on whether they have VER as defined by West Virginia's laws and regulations.

OSM will make a final decision on Charles and Katherine Kelly's VER request as soon as it is practicable following completion of the administrative record. If OSM determines that the requesters have VER, they may apply for permit(s) with the West Virginia Division of Environmental Protection which, if granted, would authorize surface and underground mining on the property in question. If it is determined that the requesters do not have VER, no permits may be issued for surface mining operations. However, in the absence of VER, permits may be issued for underground mining, if such operations are compatible with recreational, timber, economic and other values of the Monongahela National Forest.

Dated: Dated: July 21, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 93–17645 Filed 7–26–93; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF JUSTICE

### Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that proposed consent decrees in *United States* v. *Bethlehem Steel Corporation, et al.*, Civil Action No. 91–0634S, were lodged on July 14, 1993, with the United States District Court for the Western District of New York.

The proposed consent decrees resolve the action brought by the United States against defendants Bethlehem Steel Corporation ("Bethlehem"), Dismantling Corporation ("Dismantling") and Eastern Environmental Services of the Northeast, Inc. ("Eastern Environmental"), seeking civil penalties and injunctive relief for violations of the Asbestos NESHAP, 40 CFR 61.140 *et seq.* The proposed consent decree for defendant Bethlehem requires it to pay $500,000 in civil penalties, and to comply with an extensive asbestos removal management program. The proposed consent decree with defendant Dismantling requires it to pay $15,000 in civil penalties and also to comply with an extensive asbestos removal management program. The proposed partial consent decree for defendants Bethlehem and Eastern Environmental requires defendants to pay civil penalties of $45,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bethlehem Steel Corporation, et al.*, DOJ No. 90–5–2–1–1565.

The proposed consent decrees may be examined at the office of the United States Attorney, Attn: Denise E. O'Donnell, First Assistant U.S. Attorney, US Attorney's Office, 502 U.S. Courthouse, 68 Court Street, Buffalo, NY 14202; the Region 2 Office of the Environmental Protection Agency, Attn: Michael Arch, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 2, Jacob J. Javits Federal Building, Rm 400, New York NY 10278–00012; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $15.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**John C. Cruden,**

*Chief, Environment Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 93–17768 Filed 7–26–93; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree Pursuant To Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 14, 1993, a proposed Consent Decree in *United States* v. *Donald E. Buchs and Lorain Properties Company*, Case No. C86–4052, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M. The Consent Decree requires the defendants to pay a total civil penalty of $20,000 in full settlement of the claims set forth in the Complaint filed by the United States. The Consent Decree also requires the defendants to clean up all debris and demolition rubble at the facility that is the subject of the Complaint, to comply with the asbestos NESHAP, and to provide EPA with notice before removing any asbestos in the future.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Donald E. Buchs and Lorain Properties Company*, D.J. Ref. No. 90–5–2–1–1017.

The proposed Consent Decree may be examined at any of the following offices:

(1) The United States Attorney for the Northern District of Ohio, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114–2600 (contact Assistant United States Attorney Arthur I. Harris);

(2) The U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Monica Smyth); and

(3) The Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202–624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). For a copy of the Consent Decree please enclose a check in the amount of $3.00 (25 cents per page

reproduction charge) payable to Consent Decree Library.

John C. Cruden,

*Chief Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 93-17769 Filed 7-26-93; 8:45 am]

BILLING CODE 4410-01-M

## Drug Enforcement Administration

### Controlled Substances: Proposed Aggregate Production Quotas for 1994

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed aggregate production quotas for 1994.

**SUMMARY:** This notice proposed initial 1994 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

**DATES:** Comments or objections should be received on or before August 26, 1993.

**ADDRESSES:** Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative (CCR).

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307-7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations.

The quotas are to provide adequate supplies of each substance for: (1) The estimated medical, scientific, research, and industrial needs of the United States; (2) lawful export requirements; and (3) the establishment and maintenance of reserve stocks.

In determining the below listed proposed 1994 aggregate production quotas, the Administrator considered the following factors: (1) Total actual 1992 and estimated 1993 and 1994 net disposals of each substance by all manufacturers; (2) estimates of 1993 year end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; and (3) projected demand as indicated by procurement quota applications filed pursuant to § 1303.12 of title 21 of the Code of Federal Regulations.

Pursuant to § 1303.23(c) of title 21 of the Code of Federal Regulations, the Administrator of the DEA will, in early 1994, adjust individual manufacturing quotas allocated for the year based upon 1993 year-end inventory and actual 1993 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Based upon consideration of the above factors, the Administrator of the DEA hereby proposes that aggregate production quotas for 1994 for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

| Basic Class | Proposed 1994 Quotas |
|---|---|
| Schedule I: | |
| 2,5-Dimethoxyamphetamine | 15,400,000 |
| Dimethylamphetamine | 2 |
| Heroin | 4 |
| Levo-alpha-acetylmethadol | 150,000 |
| Lysergic acid diethylamide | 34 |
| Mescaline | 2 |
| 4-Methylaminorex | 4 |
| Methaqualone | 2 |
| Methcathinone | 2 |
| 3,4-Methylenedioxyampheta- tamine | 4 |
| 3,4-Methylenedioxymethamphetamine | 2 |
| N-Hydroxy-3,4-methylenedioxyamphetamine | 2 |
| Normorphine | 2 |
| Tetrahydrocannabinols | 50,000 |
| Schedule II: | |
| Alfentanil | 7,110 |
| Amobarbital | 5 |
| Amphetamine | 116,400 |
| Cocaine | 599,000 |
| Codeine (for sale) | 64,235,000 |
| Codeine (for conversion) | 10,644,000 |
| Desoxyephedrine | 1,065,000 |
| 1043 grams of levodesoxyphedrine for use in a noncontrolled, nonprescription product and 22,100 grams for methamphetamine: | |
| Dextropropoxyphene | 103,932,000 |
| Dihydrocodeine | 395,000 |
| Diphenoxylate | 1,023,00 |
| Ecgonine (for conversion) | 650,000 |
| Fentanyl | 69,000 |
| Glutethimide | 979,000 |
| Hydrocodone | 6,277,000 |
| Hydromorphone | 332,000 |
| Levorphanol | 6,400 |
| Meperidine | 8,480,000 |
| Methadone | 2,094,000 |
| Methadone (conversion) | 220,000 |
| Methadone Intermediate (for sale) | 700,000 |
| Methadone Intermediate (for conversion) | 2,610,000 |
| Methamphetamine (for conversion) | 723,000 |
| Methylphenidate | 4,583,000 |
| Morphine (for sale) | 6,480,000 |
| Morphine (for conversion) | 72,766,000 |
| Noroxymorphone (for sale) | 150,000 |
| Noroxymorphone (for conversion) | 700,000 |
| Opium | 842,000 |
| Oxycodone (for sale) | 4,038,000 |
| Oxycodone (for conversion) | 3,400 |
| Oxymorphone | 1,400 |
| Pentobarbital | 13,549,000 |
| Phencyclidine | 7 |
| Phenylacetone (for conversion) | 381,000 |
| Secobarbital | 550,000 |
| Sufentanil | 620 |
| Thebaine | 8,496,000 |

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to sections (3)(c)(3) and 3(e)(2)(c) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparations of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of an intent of the Regulatory Flexibility Act, 5 U.S.C., 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: June 10, 1993.

Robert C. Bonner,

*Administrator of Drug Enforcement.*

[FR Doc. 93-17855 Filed 7-26-93; 8:45 am]

BILLING CODE 4410-09-M

**Controlled Substances: Proposed Revised Aggregate Production Quotas for 1993**

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Notice of proposed revised aggregate production quotas for 1993.

**SUMMARY:** This notice proposes revised 1993 aggregate production quotas for controlled substances in Schedules I and II, as required under the Controlled Substances Act of 1970.

**DATES:** Comments or objections should be received on or before August 26, 1993.

**ADDRESSES:** Send comments or objections to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attn: DEA Federal Register Representative/CCR.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by § 0.100 of title 28 of the Code of Federal Regulations.

On December 16, 1992, a notice of the 1993 established aggregate production quotas was published in the **Federal Register** (57 FR 59845). The notice stipulated that the Administrator of the DEA would adjust the quotas in early 1993 as provided for in title 21, Code of Federal Regulations, § 1303.23(c). These aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1993 and do not include amounts which may be imported for use in industrial processes.

Based on a review of 1992 year-end inventories, 1992 disposition data submitted by quota applicants, estimates of the medical needs of the United States submitted to the DEA by the Food and Drug Administration and other information available to the DEA, the Administrator of the DEA, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator § 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the following changes in the 1993 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous acid or base.

| Schedule I | Previously established 1993 aggregate production quota | Proposed revised 1993 aggregate production quota |
|---|---|---|
| 2,5-Dimethoxyamphetamine | 15,000,000 | 15,300,000 |
| Lysergic acid diethylamide | 9 | 109 |

| Schedule II | Previously established 1993 aggregate production quota | Proposed revised 1993 aggregate production quota |
|---|---|---|
| Amphetamine | 445,000 | 161,000 |
| Codeine (for conversion) | 9,297,000 | 8,600,000 |
| Desoxyephedrine | 1,161,000 | 1,000,000 |

984,000 grams of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 16,000 grams for methamphetamine.

| | | |
|---|---|---|
| Dihydrocodeine | 579,000 | 357,000 |
| Diphenoxylate | 832,000 | 948,000 |
| Fentanyl | 50,900 | 68,000 |
| Hydrocodone | 6,137,000 | 6,106,000 |
| Hydromorphone | 261,000 | 283,000 |
| Levorphanol | 7,500 | 5,100 |
| Methamphetamine (for conversion) | 603,000 | 150,000 |
| Methylphenidate | 3,411,000 | 4,604,000 |
| Mixed Alkaloids of Opium | 000 | 0 |
| Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium) | 662,000 | 948,000 |
| Oxycodone (for conversion) | 6,300 | 600 |
| Oxymorphone | 2,500 | 250 |
| Pentobarbital | 12,912,000 | 14,783,000 |
| Phenylacetone (for conversion) | 320,000 | 572,000 |
| Secobarbital | 587,000 | 67,600 |

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

This is not a major rule for purposes of Executive Order (E.O.) 12291. Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this rule has been submitted for review by the Office of Management and Budget (OMB). The Administrator certifies that this rule meets the applicable standards set forth in sections 2(a) and 2(b)(2) of E.O. 12778. Rules establishing aggregate production quotas for controlled substances in Schedules I and II are required by statute, fulfill United States obligations under the Single Convention on Narcotic Drugs, 1961, and other international treaties, and are essential to a criminal law enforcement function of the United States. Without the periodic establishment and adjustment of aggregate production quotas, pharmaceutical manufacturers in the United States could not lawfully produce a wide variety of medically necessary pharmaceutical drugs.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612 and it has been determined that this matter raises no Federalism implications which would warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment and revision of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international obligations of the United States. Such quotas impact predominately upon major manufacturers of the effected controlled substances.

Dated: May 13, 1993.

**Robert C. Bonner,**

*Administrator of Drug Enforcement.*

[FR Doc. 93–17854 Filed 7–26–93; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade

Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 6, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustments Assistance, at the address shown below, not later than August 6, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of July, 1993.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Digital Equipment Corp (Co) | Tempe, AZ | 07/12/93 | 06/09/93 | 28,851 | Thin film discs. |
| Pope & Talbot (Wkrs) | Port Gamble, WA | 07/12/93 | 06/21/93 | 28,852 | Softwood dimensional lumber. |
| H.W. Jan Enterprises, Inc (ILGWU) | South River, NJ | 07/12/93 | 06/29/93 | 28,853 | Ladies' dresses. |
| Goulds Pumps, Inc (Wkrs) | Lubbock, TX | 07/12/93 | 06/25/93 | 28,854 | Turbine pumps. |
| Churchill Div. of Lufkin Indus. (Co) | Chanute, KS | 07/12/93 | 07/02/93 | 28,855 | Oilfield pumping units. |
| Pacific Wood Treating Corp (Co) | Ridgefield, WA | 07/12/93 | 07/12/93 | 28,856 | Pressure treated wood. |
| Cowden Dist. Center (IBT) | Lexington, KY | 07/12/93 | 07/01/93 | 28,857 | Ship clothing peices. |
| Magnetek Century Electric (Wkrs) | El Paso, TX | 07/12/93 | 06/30/93 | 28,858 | Assemble, evaluate electric motors. |
| Mead Paper Chilpaco Mill | Chillicothe, OH | 07/12/93 | 06/25/93 | 28,859 | Coated and papeterie paper products. |
| Wilson Hydrocarbon, Inc (Co) | Corpus Christi, TX | 07/12/93 | 06/29/93 | 28,860 | Oil and gas. |
| Bit Three Industries, Inc (USWA) | Farrell, PA | 07/12/93 | 06/25/93 | 28,861 | Industrial gases. |
| Ohio Edison Co (UWUA) | Toronto, OH | 07/12/93 | 06/30/93 | 28,862 | Electricity. |

[FR Doc. 93-17849 Filed 7-26-93; 8:45 a.m.]

BILLING CODE 4510-30-M

## Cathode Ray Tube Division of General Atronics Corp., Philadelphia, PA; TA-W-28, 112; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Cathode Ray Tube Division of General Atronics Corporation, Philadelphia, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-28, 112; Cathode Ray Tube Division of General Atronics Corporation, Philadelphia, Pennsylvania (July 15, 1993)

Signed at Washington, DC, this 16th day of July, 1993.

**Marvin M. Fooks,**

*Director, Office of Adjustment Assistance.*

[FR Doc. 93-17852 Filed 7-26-93; 8:45 am]

BILLING CODE 4510-30-M

## Grant Tensor Geophysical Corporation a/k/a Norpak International Nevada, Inc.; TA-W-27,881 Houston, TX; TA-W-27,881A Metairie, LA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 14, 1993, applicable to all workers of the subject firm. The Notice was published in the **Federal Register** on February 2, 1993 (58 FR 6811). The certification was amended on April 12, 1993 (58 FR 21320) to indicate that the claimants' wages on and after January 1, 1993 are reported under Grant Tensor's UI tax account.

At the request of the workers the Department reviewed the certification for workers of Grant Tensor Geophysical Corporation in Houston, Texas. New information from the company shows that worker separations occurred in Metairie, Louisiana.

The intent of the Department's certification is to include all workers of Grant Tensor Geophysical Corporation who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA-W-27,881 is hereby issued as follows:

"All workers of Grant Tensor Geophysical Corporation, also known as (a/k/a) Norpak International Nevada, Inc., Houston, Texas and Metairie, Louisiana who became totally or partially separated from employment on or after September 21, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 19th day of July 1993.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93-17851 Filed 7-26-93; 8:45 am]

BILLING CODE 4510-30-M

## Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-28,454; Triumph-Lor, Inc, Houston, TX*

*TA-W-28,548; Crown Cork & Seal Co., Inc., North Bergen, NJ*

*TA-W-28,598; Occidental Chemical Corp., Swift Creek, FL*

*TA-W-28,607; Occidental Chemical Corp., Suwannee River, FL*

*TA-W-28,597; Nerco Oil & Gas, Inc., Houston, TX*

*TA-W-28,673; Nerco Oil & Gas, Inc., Lafayette, LA*

*TA-W-28,674; Nerco Oil & Gas, Inc., Black Lake, LA*

*TA-W-28,675; Nerco Oil & Gas, Inc., Berwick, LA*

*TA-W-28,665; Horizon Potash Corp., Carlsbad, NM*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

*TA-W-28,531; Koch Gathering Systems, Inc., Wichita, KS*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-28,726; Rogue River National Forest, Medford, OR*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-28,591; Economy Industrial Corp., Ambridge, PA*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-28,547; 3 M Telecom Resources Div., Eatontown, NJ*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-28,777; Beth Energy, Mine #33, Ebensburg, PA*

Aggregate US imports of coal are negligible during the relevant period.

*TA-W-28,545; Nerco, Inc., Headquarters, Portland, OR*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA-W-28,811; Geological Consulting Services, Houston, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-670; Eugene Engines, Eugene, OR*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-605; Alcoa Technical Center, Alco Center, PA*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-28,667; Complete Auto Transit, Inc., Ypsilanti, MI*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-28,635; Tenneco Gas Pipeline Co., Houston, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-28,659; Carrier Corp., Allied Products Div., Knoxville, TX*

U.S. imports of air conditioners, refrigeration and heating equipment declined relative to domestic shipment in 1992 compared to 1991.

*TA-W-28,664; Ohio & Western Pennsylvania Dock Co, Cleveland, OH*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA-W-28,727; Ohio Edison Edgewater Plant, Lorain, OH*

U.S. imports of electricity were negligible in the relevant time period.

*TA-W-28,671 and TA-W-28, 671A; Atlantic Steel Industries, Inc., Atlanta, GA and Cartersville, GA*

U.S. Imports of semi-finished steel products (blooms, billets, slabs) declined in the first four months of 1993 compared to the same period in 1992.

*TA-W-28,480; National Cooperative Refinery Association, Exploration & Production Div. Headquarters, McPherson, KS*

*TA-W-28,480A; National Cooperative Refinery Association, Exploration & Production Div. Operations in Oklahoma*

Increased imports did not contribute importantly to worker separations at the firm.

*TA-W-28,632; WCI Steel, Warren, OH*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

**Affirmative Determinations**

*TA-W-28,614; Inland Steel Mining Co., Minora Mine, Virginia, MN*

A certification was issued covering all workers separated on or after March 23, 1992.

*TA-W-28,654; Armstrong World Industries, Inc., Braintree, MA*

A certification was issued covering all workers engaged in the production of textile apron machinery separated on or after April 19, 1992.

*TA-W-681; Simpson Paper Co., San Gabriel Mill, Pomona, CA*

A certification was issued covering all workers engaged in the production of uncoated free sheet paper separated on or after May 12, 1992.

*TA-W-28,638; Ellisville Manufacturing Co., Ellisville, MS*

A certification was issued covering all workers separated on or after April 23, 1992.

*TA-W-28,428; International Gear Corp, Euclid, OH*

A certification was issued covering all workers engaged in the production of helicopter transmission components separated on or after February 23, 1992.

*TA-W-28,511; TA-W-28,512; UTC Holdings, Inc., DBA Sure Fit, Bethlehem, PA and El Paso, TX*

A certification was issued covering all workers separated on or after March 26, 1992.

*TA-W-28,463; Roseburg Forest Products, Roseburg, OR*

A certification was issued covering all workers engaged in the production of plywood at Plant #3 separated on or after March 8, 1992.

I hereby certify that the aforementioned determinations were

issued during the month of July 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 19, 1993.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93–17853 Filed 7–26–93; 8:45 am]

BILLING CODE 4510–30–M

## Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

**ADDRESSES:** Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** *Regarding the Attestation Process:* Chief, Division of Foreign Labor Certifications, U.S. Employment Service Telephone: 202–219–5263 (this is not a toll-free number.)

*Regarding the Complaint Process:* Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 7th day of July 1993.

**Robert A. Schaerfl,**

*Director, United States Employment Service.*

### DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 06/01/93 TO 06/30/93

| CEO—Name, Facility—name/address | Approval date |
|---|---|
| Mr. Grant Asay, St. Ann's Nursing Home, 415 6th St., Juneau, AK 99801, 907–586–3883 | 06–18–93 |
| Mr. Richard A. Pierson, The University Hospital of Arkansas, Little Rock, AR 72205, 501–686–5096 | 06–11–93 |
| Mr. Jim Bushmiaer, Stuttgart Memorial Hospital, P.O. Box 1905, Stuttgart, AR 72160, 501–673–3511 | 06–22–93 |
| Ms. Nancy, Miller, Havasu Nursing Center, 3576 Kearsage Drive, Lake Havasu City, AZ 86403, 602–453–1500 | 06–18–93 |
| Mr. Robert Bogge, Douglas Manor Care Center, 1400 N San Antonio, Douglas, AZ 85607, 602–364–7937 | 06–25–93 |
| Mr. David Benn, Memorial Hospitals Association, 1700 Coffee Road, Modesto, CA 95355, 209–526–4500 | 06–11–93 |
| Mr. Daniel C. Zilafro, Lakewood Park Health Ctr., Mental Health Conval. Services, Downey, CA 90242, 310–869–0978 | 06–11–93 |
| Ms. Sherri Burke, Nurse Providers, Inc., 345 Gellert Blvd., Suite F, Daly City, CA 94015, 415–992–8559 | 06–11–93 |
| Mr. Larry J. Maya, Villa Convalescent Hospital, 8965 Magnolia Avenue, Riverside, CA 92503, 909–689–7468 | 06–11–93 |
| Mr. Bernard Matias, Primavera Nursing Home Care Services, Delano, CA 93215, 805–725–1223 | 06–11–93 |
| Mr. Robert Schapper, Monterey Park Hospital, 900 S. Atlantic Blvd., Monterey Park, CA 91754, 818–570–9000 | 06–11–93 |
| Mr. William A. Mathies, Beverly Manor Conval. Hospital, Beverly California Corp., Monterey, CA 93940, 408–624–1875 | 06–11–93 |
| Mr. Richard P. Blinn, Pine Towers Conval. Ctr., The Hillhaven Corporation, San Francisco, CA 94115, 415–563–7600 | 06–18–93 |
| Mr. Richard P. Blinn, Hillhaven San Leandro, The Hillhaven Corporation, San Leandro, CA 94577, 510–357–4015 | 06–18–93 |
| Mr. William L. Gilbert, Merced Community Med. Ctr., 301 E. 13th Street, Merced, CA 95340, 209–385–7000 | 06–18–93 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 06/01/93 TO 06/30/93—Continued

| CEO—Name, Facility—name/address | Approval date |
|---|---|
| Mr. Charles Wick, Visalia Convalescent Hospital, 1925 E. Houston Avenue, Visalia, CA 93292, 209–732–6661 | 06–18–93 |
| Ms. Karen Deemer, Westside Care Center, 300 Douglas Street, Petaluma, CA 94952, 707–763–6887 | 06–22–93 |
| Ms. Marlene Z. Robertson, Good Shepherd Conval. Ctr., c/o Primerica Nurs. Home Care Svcs., Delano, CA, 93215, 818–896–5391 | 06/25/93 |
| Mr. William Gamboa, Madera Rehab. & Conval. Ctr., c/o Primerica Nurs. Home Care Svcs., Delano, CA, 93215, 209–673–9228 | 06/25/93 |
| Mr. Neil Whipkey, Glades General Hospital, SW Health Care Subdistrict, Belle Glade, FL, 33430, 407–996–6571 | 06/02/93 |
| Mrs. Cecilia O'Ryan, Gulf Coast Hospital and Orthopaedic Institute, St. Petersburg, FL, 33705, 813–823–1122 | 06/11/93 |
| Mr. Paul Metts, Shands Teaching Hospital and Clinics, Inc., Gainesville, FL, 32605, 905–395–0441 | 06/11/93 |
| Ms. Judi L. Buxo, Harbour's Edge, 401 East Linton Blvd., Delray Beach, FL, 33483, 407–272–7979 | 06/11/93 |
| Mr. Samuel Leonor, Walker Memorial Medical Ctr., P.O. Box 1200, Avon Park, FL, 33825, 813–453–7511 | 06/11/93 |
| Mr. Richard Blinn, Hillhaven Healthcare Ctr., 950 Mellonville Avenue, Sanford, FL, 32771, 407–322–8566 | 06/18/93 |
| Mr. Dyer Mitchell, Munroe Regional Med. Ctr., 131 S.W. 15th Street, Ocala, FL, 32670, 904–351–7273 | 06/18/93 |
| Mr. Richard P. Blinn, Hillhaven Conval. Ctr. of Del, 5430 Linton Blvd., Delray, FL, 33484, 407–495–3188 | 06/18/93 |
| Mr. H. Neil Copelan, South Fulton Medical Ctr., 1170 Cleveland Avenue, East Point, GA, 30344, 404–305–3500 | 06/02/93 |
| Mr. E.J. Fechtel, Saint Mary's Hospital of Athens, Inc., Athens, GA, 30606, 706–548–7581 | 06/11/93 |
| Mr. William A. Mathies, Beverly Manor Conval. Ctr., Beverly Manor Inc. of Hawaii, Honolulu, HI, 96819, 808–847–4834 | 06/11/93 |
| Mr. William A. Mathies, Hale Nai Rehab & Nursing Ctr., Beverly Enterprises—Hawaii, Inc., Honolulu, HI, 96822, 808–537–3371 | 06/11/93 |
| Ms. Cora Tellez, Kaiser Foundation Hospitals, 3288 Moanalua Road, Honolulu, HI, 96819, 808–834–5553 | 06/25/93 |
| Mr. Alan Rosenbaum, Hillcrest Retirement Village, 1740 N. Circuit Dr., Round Lake Beach, IL, 60073, 708–546–5300 | 06/07/93 |
| Mr. Morris Esformes, West Chicago Terrace, 928 Joliet Street, West Chicago, IL 60185, 708–231–9292 | 06/11/93 |
| Mr. Jeff S. Berns, Norridge Nursing Centre, 7001 West Cullon Avenue, Norridge, IL 60634, 708–457–0700 | 06/11/93 |
| Ms. Charlotte Kohn, Dobson Plaza, Inc., 120 Dodge, Evanston, IL 60202, 708–869–7744 | 06/11/93 |
| Chung S. Kim, M.D., Lake Bluff Health Care Centre, Health Centre, Lake Bluff, IL 60044, 708–295–3900 | 06/11/93 |
| Ms. Joan Robinson Carl, Alden Management Services, In, 4200 West Peterson Avenue, Chicago, IL 60646, 312–286–3883 | 06/11/93 |
| Mr. Peter Fine, Grant Hospital of Chicago, 550 W. Webster, Chicago, IL 60614, 312–883–3500 | 06/11/93 |
| Mr. Robert Hartman, Imperial Conval & Geriatric C, Claridge Imperial Ltd, Chicago, IL 60614, 312–248–8300 | 06/11/93 |
| Mr. Gary Grondin, North Central Dialysis Center, 55 East Washington Street, Chicago, IL 60602, 312–332–6892 | 06/18/93 |
| Mr. Maurice I. Aaron, Woodbridge Nursing Pavilion, 2242 N. Kedzie Avenue, Chicago, IL 60647, 312–486–7700 | 06/18/93 |
| Ms. Amy Saltzman, Continental Care Center, 5336 N. Western, Chicago, IL 60625, 312–271–5600 | 06/18/93 |
| Mr. Eric Rothner, Edgewater Care & Rehab. Ctr., 5838 North Sheridan Road, Chicago, IL 60660, 312–769–2230 | 06/02/93 |
| Mr. Sam Gorenstein, Metropolitan Nursing Ctr. of Bridgeview, Bridgeview, IL 60455, 708–598–2605 | 06/11/93 |
| Ms. Joanne Minorini, Abbott House, 405 Central Avenue, Highland Park, IL 60035, 708–432–6060 | 06/11/93 |
| Mr. Tali Tzur, Maple Hill Nursing Ctr., LTD., Box 2308 R.F.D., Long Grove, IL 60047, 708–438–8275 | 06/11/93 |
| Ms. Valerie Brown, Quality Health Care, Inc., 531 Washington Street, Gary, IN 46402, 219–882–1224 | 06/11/93 |
| Mr. John Birdzell, St. Catherine Hospital, 4321 Fir Street, East Chicago, IN 46312, 219–392–7077 | 06/18/93 |
| Mr. Ronald T. Tyrer, Frankfort Hospital, Inc., 299 King's Daughters Drive, Frankfort, KY 40601, 502–875–5240 | 06/25/93 |
| Mr. Jerry Smith, St. Francis Medical Ctr., 309 Jackson Street, Monroe, LA 71210, 318–327–4143 | 06/01/93 |
| Mr. Gary M. Stein, Touro Infirmary, 1401 Foucher Street, New Orleans, LA 70115, 504–897–8900 | 06/11/93 |
| Mr. J. William Hankins, St. Patrick Hospital, 534 South Ryan Street, Lake Charles, LA 70601, 318–491–7572 | 06/18/93 |
| Mr. Richard Blinn, VFW Parkway Nursing Home, The Hillhave Corporation, West Roxbury, MA 02132, 617–325–1688 | 06/11/93 |
| Mr. James R. Wood, Maryland General Hospital, Inc., 827 Linden Avenue, Baltimore, MD 21201, 410–225–8000 | 06/11/93 |
| Mr. Charles Housley, Michigan Health Center, Michigan Osteopathic Med. Ctr., Detroit, MI 48208, 313–361–6000 | 06/11/93 |
| Ms. Elizabeth Wilde, Cambridge East Nursing Care Center, Madison Heights, MI 48071, 313–585–7010 | 06/18/93 |
| Mr. Jim Walker, Meadowbrook Manor of Kansas City, Inc., Kansas City, MO 64145, 816–942–1676 | 06/25/93 |
| Mr. Richard Blinn, Hillhaven Convalescent Ctr., First Healthcare Corp., Raleigh, NC 27605, 919–828–6251 | 06/11/93 |
| Michele B. Anderson, Aro Community Services, Inc., 1834 Banking Street, Greensboro, NC 27408, 919–378–9862 | 06/18/93 |
| Mr. Richard Blinn, Hillhaven Rose Manor Conval. Ctr., Durham, NC 27704, 919–477–9805 | 06/23/93 |
| Mr. Benjamin F. Miller, Delaire Nursing & Conval. Ctr., 400 W. Stimpson Avenue, Linden, NJ 07036, 908–862–3399 | 06/11/93 |
| Mr. John P. McGee, JFK Health Systems, Inc., 65 James Street, Edison, NJ 08818, 908–321–7170 | 06/11/93 |
| Ms. Marilyn Pomeroy, Cedar Grove Manor, Pompton Avenue Associates, Cedar Grove, NJ 07009, 201–239–7600 | 06/11/93 |

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 06/01/93 TO 06/30/93—Continued

| CEO—Name, Facility—name/address | Approval date |
|---|---|
| Ms. Shirley Lawler, Professional Nurse Recruitmen, 211 Main Avenue, Passaic, NJ 07055, 201–779–1479 | 06/11/93 |
| Ms. Carmen B. Alecci, West Hudson Hospital, 206 Bergen Avenue, Kearny, NJ 07032, 201–955–7014 | 06/11/93 |
| Mr. Edward Elnhorn, Hospitality Care Center, 300 Broadway, Newark, NJ 07104, 201–484–4222 | 6/11/93 |
| Sister Patricia A. Lynch, Holy Name Hospital, 718 Teaneck Road, Teaneck, NJ 07666, 201–833–3000 | 6/11/93 |
| Ne, Blanquita Bonifacio, Beverwyck Nursing Home, 420 So. Beverwyck Road, Parsippany, NJ 07054, 201–887–0156 | 6/18/93 |
| Ms. Helen M. Kennedy, Meadowlands Hospital Med Ctr, Meadowlands Parkway, Secaucus, NJ 07097, 201–392–3540 | 6/18/93 |
| Jonathan M. Metsch, Dr. P.H., Greenville Hospital, 1825 Kennedy Boulevard, Jersey City, NJ 07305, 201–547–6100 | 6/18/93 |
| Mr. Thomas L. Scott, Burdette Tomlin Mem. Hosp., Two Stone Harbor Blvd., Cape May Court House, NJ 08210, 609–463–2000 | 6/18/93 |
| Ms. Blanche Bonifacio, Merry Heart Nursing Home, 200 Route 10, Succasunna, NJ 07876, 201–584–4000 | 6/16/93 |
| Mr. L. Pal Andrews, Cottonwood Care Center, 987 Tillman Lane, Gardnerville, NV 89410, 702–265–3571 | 6/25/93 |
| Mr. Allen I. Herman, Nephrology Foundation of Brooklyn, Brooklyn, NY 11236, 718–857–3000 | 6/11/93 |
| Mr. Edward T. Sylcox, Jr., Sylcox Health Care Facilities, 56 Meadow Hill Road, Newburgh, NY 12550, 214–564–1700 | 6/11/93 |
| Mr. Alexander Hartman, Bainbridge Nursing Home, 3518 Bainbridge Avenue, Bronx, NY 10467, 718–655–1700 | 6/18/93 |
| Mr. Edward Stolzenberg, St. Agnes Hospital, 305 North Street, White Plains, NY 10605, 914–681–4507 | 6/18/93 |
| Mr. Harvey Finkelstein, W.K. Nursing Home Corporation, 100 W. Kingsbridge Road, Bronx, NY 10468, 212–579–0500 | 6/16/93 |
| Mr. Alexander Hartman, Wayne Nursing Home, 3530 Wayne Avenue, Bronx, NY 10467, 718–655–1700 | 6/18/93 |
| Ms. Raquel Ayala, North Central Bronx, NYCH&H Corp., New York, NY 10013, 212–788–3494 | 6/18/93 |
| Ms. Raquel Ayala, Gouverneur Killed Nursing, NYCH&H, New York, NY 10013, 212–788–3494 | 6/18/93 |
| Mr. Keith F. Safian, Phelps Memorial Hospital Ctr., 701 North Broadway, North Tarrytown, NY 10591, 914–366–3000 | 6/18/93 |
| Mr. Arthur Wheeler, Windsor Employent Agency, In, One Cutter Mill Road, Grat Neck, NY 10021, 516–487–2818 | 06/18/93 |
| Mr. Richard Blinn, Hillhaven Convalescent Center, First Healthcare Corp., Akron, OH 44310, 216–762–0901 | 06/11/93 |
| Charles M. King, Donelson Healthcare Center, 2733 McCampbell Road, Nashville, TN 37214, 615–885–0483 | 06/11/93 |
| Ms. Dixie G. Taylor, Cedars Health Care Center, 932 Baddour Parkway, Lebanon, TN 37087, 615–449–5170 | 06/18/93 |
| Mr. Thomas M. Lester, Nashville Health Care Ctr., 2215 Paterson Street, Nashville, TN 37203, 615–327–3011 | 06/25/93 |
| Mr. Douglas Streckert, Valley Regional Med. Ctr., 1 Ted Hunt Blvd., Brownsville, TX 78521, 210–831–5974 | 06/02/93 |
| Mr. Ernesto M. Flores, Jr., Mercy Regional Medical Ctr., 1515 Logan, Laredo, TX 78040, 210–718–6723 | 06/11/93 |
| Ms. Trinidad L. Garraton, International Professional Resources (IPR), Houston TX 77080, 713–932–6780 | 06/11/93 |
| Mr. John H. Styles, Jr., Doctors Hospital East Loop, Eastway General Hospital, Houston, TX 77029, 713–675–3241 | 06/11/93 |
| Mr. H. Dougles Garner, Coronado Hospital, One Medical Plaza, Pampa, TX 79065, 806–665–3721 | 06/11/93 |
| Mr. Pete T. Duarte, R.E. Thomason General Hospita, 4815 Alameda Avenue, El Paso, TX 79905, 915–544–1200 | 06/11/93 |
| Ms. Roseanna Warren, Lakeview Manor, 4215 Armstrong Street, San Angelo TX, 76903, 915–655–8986 | 06/11/93 |
| Mr. Callie W. Smith, Baptist Memorial Hospital Sys, 111 Dallas Street, San Antonio, TX 78205, 210–222–8431 | 06/11/93 |
| Mr. Rex C. McRae, Arlington Memorial Hospital Foundation, Arlington, TX 76012, 817–548–6160 | 06/18/93 |
| Mr. L. Marcus Fry, Jr., Sierra Medical Center, 1625 Medical Center Drive, El Paso, TX 79902, 915–747–4000 | 06/25/93 |
| Mr. Sam Wan, Kin on Nursing Home, The Chinese Nursing Home Society, Seattle, WA 98144, 206–322–0060 | 06/18/93 |
| Ms. Nita L. Corré, Milwaukee Jewish Home, 1414 N. Prospect Avenue, Milwaukee, WI 53202, 414–276–2627 | 06/11/93 |
| Mr. James F. Heltzerrater, Hampshire Memorial Hospital, 549 Center Avenue, Romney, WV 26757, 304–788–3141 | 06/11/93 |
| Total Attestations | 102 |

[FR Doc. 93–17848 Filed 7–26–93; 8:45 am]

BILLING CODE 4510–30–M

## Pension and Welfare Benefits Administration

### Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Economically Targeted Investments (ETI) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 1 p.m./3:30 p.m., Thursday, August 19, 1993, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to ETI for employee benefit plans covered by ERISA.

The purpose of the August 19 meeting is to take testimony and/or written submissions regarding access to and valuation of Economically Targeted Investments. The Working Group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the

Working Group should submit a written request on or before August 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 16, 1993.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 93–17808 Filed 7–26–93; 8:45 am]

BILLING CODE 4510–29–M

## Advisory Council on Employee Welfare and Pension Benefits Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Prohibited Transactions of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a:m./Noon, Friday, August 20, 1993, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW. Washington, DC 20210.

This Working Group was formed by the Advisory Council to study issues relating to Prohibited Transactions for employee benefit plans covered by ERISA.

The purpose of the August 20 meeting is to receive public testimony from interested parties who have opinions and advice concerning the current prohibited transactions process. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before August 16, 1993 to William E. Morrow, Executive Secretary, ERISA Advisory Council. U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 16, 1993.

**Olena Berg,**

*Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 93–17809 Filed 7–26–93; 8:45 am]

BILLING CODE 4510–29–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Application Filed With Maryland Department of the Environment

**AGENCY:** National Archives and Records Administration.

**ACTION:** Second notice of application and opportunity to request an informational meeting.

**SUMMARY:** The National Archives and Records Administration gives notice that an application has been filed with the Maryland Department of the Environment to install four natural gas/no. 2 oil fired boilers at the National Archives at College Park (Archives II), Maryland.

**FOR FURTHER INFORMATION CONTACT:** The Maryland Department of the Environment at 401–631–3230, or Marvin Shenkler of NARA at 301–713–6500.

**SUPPLEMENTARY INFORMATION:** The National Archives and Records Administration (NARA) has submitted to the Maryland Department of the Environment, Air and Radiation Management Administration (the Department) an application for a Permit to Construct to install four natural gas/no. 2 oil fired boilers rated at 16.7 million BTU/hour at the National Archives at College Park (Archives II). The plant will be located at 8601 Adelphi Road, Adelphi, Maryland, Prince George's County.

Copies of the application and other supporting documents, Docket #26–93, are available for public inspection at the following locations during normal business hours: Maryland Department of the Environment, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224, or Prince George's County Public Library, Hyattsville Branch, 6530 Adelphi Road, Hyattsville, MD 20782.

Interested persons may request an informational meeting. Requests for an informational meeting must be submitted in writing and must be received by the Department no later than 10 days from the date of this notice. All requests for an informational meeting should be directed to the attention of Ms. Caryn Coyle, Office of the Director, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224.

Dated: July 20, 1993.

**James C. Megronigle,**

*Assistant Archivist for Management and Administration.*

[FR Doc. 93–17771 Filed 7–26–93; 8:45 am]

BILLING CODE 7515–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Media Arts Advisory Panel (Media Arts Centers/National Services Section) to the National Council on the Arts will be held on August 24–26, 1993 from 9 a.m. to 6:30 p.m. on August 24 and 25, 1993, and from 9 a.m. to 5:30 p.m. on August 26, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 4:30 p.m. to 5:30 p.m. on August 26, 1993 for policy discussion.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on August 24 and 25, 1993, and from 9 a.m. to 4:30 p.m. on August 26, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the descretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the

Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439

Dated: July 21, 1993.

Yvonne M. Sabine,

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17763 Filed 7–26–93; 8:45 am]

BILLING CODE 7537–01–M

### Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Resources Education Section A) to the National Council on the Arts will be held on August 10–11, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. on August 10, 1993 for opening remarks and policy discussion.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m., on August 10, 1993, and from 9 a.m. to 5:30 p.m. on August 11, 1993, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 16, 1993.

Yvonne M. Sabine,

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17762 Filed 7–26–93; 8:45 am]

BILLING CODE 7537–01–M

### Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Utilization of Resources Presentation and Catalogue Section B) to the National Council on the Arts will be held on August 17–19, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m., on August 17, 1993 for opening remarks and policy discussion.

The remaining portions of this meeting from 10 a.m. to 5:30 p.m., on August 17, 1993, and from 9 a.m. to 5:30 p.m. on August 18–19, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9) (B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated July 16, 1993.

Yvonne M. Sabine,

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17764 Filed 7–26–93; 8:45 am]

BILLING CODE 7537–01–M

### Opera-Musical Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Opera-Musical Theater Advisory Panel (Professional Companies Section A) to the National Council on the Arts will be held on August 18–20, 1993 from 9 a.m. to 9 p.m. on August 18, 1993; from 9 a.m. to 10 p.m. on August 19, 1993, and from 9 to 5 p.m. on August 20, 1993. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 9:45 a.m. on August 18, 1993 for introductions and from 9 a.m. to 10:15 a.m. on August 20, 1993 for policy discussion.

The remaining portions of this meeting from 10 a.m. to 9 p.m. on August 18, 1993; from 9 a.m. to 10 p.m. on August 19, 1993, and from 10:30 a.m. to 5 p.m. on August 20, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW.,

Washington, DC 20506, 202/682–5532, TYY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 21, 1993.

**Yvonne M. Sabine,**

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17765 Filed 7–26–93; 8:45 am]

BILLING CODE 7537-01-M

### Opera-Musical Theater Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Opera-Musical Theater Advisory Panel (Professional Companies Section B) to the National Council on the Arts will be held on August 23–24, 1993 from 9 a.m. to 9 p.m. on August 23, 1993; from 9 a.m. to 10 p.m. on August 24, 1993, and from 9 a.m. to 5 p .m. on August 25, 1993. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 9:45 a.m. on August 23, 1993 for introductions and from 9 a.m. to 10:15 a.m. on August 25, 1993 for policy discussion.

The remaining portions of this meeting from 10 a.m. to 9 p.m. on August 23, 1993; from 9 a.m. to 10 p.m. on August 24, 1993, and from 10:30 a.m. to 5 p.m. on August 25, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the descretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 21, 1993.

**Yvonne M. Sabine,**

*Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17766 Filed 7–26–93; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL INSTITUTE FOR LITERACY

### National Institute for Literacy Advisory Board; Meeting

**AGENCY:** National Institute for Literacy Advisory Board, National Institute for Literacy.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

**DATES AND TIME:** August 12, 1993, 10 a.m. to 5 p.m.; August 13, 1993, 10 a.m. to 1 p.m.

**ADDRESSES:** National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Thomas R. Hill, Executive Officer, National Institute for Literacy, 800 Connecticut Avenue NW., suite 200, Washington, DC 20006. Telephone (202) 632–1500.

**SUPPLEMENTARY INFORMATION:** The Board is established under section 384 of the Adult Education Act, as amended by title I of Public Law 102–73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on August 12, 1993 from 10 a.m. to 5 p.m. and on August 13, 1993 from 10 a.m. to 1 p.m. The meeting of the Board is open to the public. The agenda includes briefings on current and upcoming program activities.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Dated: July 21, 1993.

**Lilian S. Dorka,**

*Acting Interim Director, National Institute for Literacy.*

[FR Doc. 92–17856 Filed 7–26–92; 8:45 am]

BILLING CODE 6055-01-M

## NUCLEAR REGULATORY COMMISSION

### Workshop on Integrated Safety Analysis for Nuclear Fuel Cycle Facilities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Meeting notice.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will hold a workshop to obtain information from licensees and license applicants relevant to the NRC's development of a guidance document on Integrated Safety Analysis of nuclear fuel cycle facilities. The workshop is open to the public, and all interested parties may attend

Integrated Safety Analysis (ISA) is a systematic examination, whereby a production facility and its process systems, components, and procedures are analyzed for hazards and potential accidents, so that adequate protective measures may be implemented. The ISA will consider all hazards that can affect the radiological safety of a facility including criticality, chemical, fire, and radiation hazards. The proposed document will provide guidance to licensees and license applicants in performing facility safety analyses in a

manner that will be acceptable to the NRC. The NRC staff is especially interested in obtaining information on safety analysis methods currently being used by industry and its current capabilities to perform such analyses.

**DATES:** August 27, 1993, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** U.S. Nuclear Regulatory Commission, One White Flint North, room 1F7/9, 11555 Rockville Pike, Rockville, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Dr. Amar Datta, Mail Stop 4E4/OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone 301–504–2536; FAX (301) 504–2474.

**SUPPLEMENTARY INFORMATION:** The NRC is currently reviewing its regulations on Domestic Licensing of Special Nuclear Material (10 CFR part 70) and supporting guidance. This review is the result of the findings and recommendations of the agency's Materials Regulatory Review Task Force and the Regulatory Impact Survey for Fuel Cycle and Materials Licensees. The purpose of the task force and the survey team was to evaluate the agency's licensing and oversight programs for fuel cycle and major materials plants, identify weaknesses, and recommend improvements. A report on the task force's review and findings is contained in NUREG–1324, "Proposed Method for Regulating Major Materials Licensees," dated February 1992.

One of the recommendations of the task force was that the nuclear fuel cycle licensee or license applicant be required to submit a Safety Analysis Report as part of the initial license application or license renewal. This report would also be required with a license amendment, if a facility or a facility's procedures are substantially modified. Another recommendation was to require a hazards analysis for each system and component within each process that contains radioactive material, or that serves as a barrier to the release of radioactive material to an unauthorized location, and to review changes against this analysis before implementing these changes.

An ISA is a systematic review process by which a licensee or license applicant will analyze its facility and processes and will assemble essential information for the Safety Analysis Report. In performing an ISA, the analyst licensee will analyze the plant systems, subsystems, processes, and procedures; identify hazards and potential accidents that may affect radiological safety; consider the consequences of accidents; and account for controls and barriers that prevent such accidents or mitigate their consequences. The final result will be an integrated evaluation of the safety of operation of the facility as a whole. An ISA will thus enable the licensee or license applicant to identify safety vulnerabilities so appropriate protective measures can be developed and will provide a basis for judging the safety of changes to process operations.

Accordingly, a guidance document is being developed, concurrent with the development of a revised 10 CFR part 70, that could be used by fuel cycle licensees or license applicants to perform an ISA. The document will describe alternate methods of performing and maintaining a comprehensive and integrated safety analysis that would be acceptable to the NRC and meet the NRC requirements when applying for a license or license renewal or, under certain conditions, a license amendment.

An outline of the proposed ISA guidance document will be presented at this workshop, which will provide a forum for an exchange of information among fuel cycle licensees, license applicants, NRC staff, and the NRC contractors who are developing this document. Other interested parties will also have opportunities to participate in this information exchange. The meeting will focus on learning what safety analysis methods are currently being used or are planned for use by licensees, and their capabilities to perform an ISA.

The workshop will include one morning and one afternoon session. The morning session will consist of a presentation of the document outline and presentations by certain fuel cycle licensees on their experiences with the ISA process. The afternoon session will involve a review, discussion, and information exchange on the document and any other ISA-related topics.

Attendees are requested to notify Dr. Amar Datta at 301–504–2536 of their planned attendance to ensure adequate meeting room space and if any special requirements are needed (e.g., for the hearing-impaired). Written information relevant to the development of the Integrated Safety Analysis guidance document may also be submitted to Dr. Datta, Mail Stop 4E4/OWFN, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 20 day of July 1993.

For the Nuclear Regulatory Commission,

**Robert F. Burnett,**

*Director, Division of Fuel Cycle Safety and Safeguards.*

[FR Doc. 93–17827 Filed 7–26–93; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on August 5–7, 1993, in Room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on June 24, 1993.

**Thursday, August 5, 1993**

*8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Commission will discuss priorities for preparation of ACRS reports.

*8:45 a.m.–10:45 a.m.: Proposed Resolution of Generic Safety Issue 57, "Effects of Fire Protection System Actuation on Safety-Related Equipment," and Lessons Learned from the La Salle Fire PRA* (Open)—The Committee will review and comment on the proposed resolution of Generic Safety Issue 57, and the Lessons Learned from the La Salle Fire PRA. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

*11:00 a.m.–11:30 a.m.: ACRS Subcommittee Report on the Advanced Boiling Water Reactor Fire Safety Issues* (Open)—The Committee will hear a report of the Subcommittee on Advanced Boiling Water Reactors on fire safety issues associated with the General Electric Advanced Boiling Water Reactor design. Representatives of the NRC staff will participate, as appropriate.

*11:30 a.m.–12:00 Noon: Reconciliation of ACRS Recommendations* (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

*1:00 p.m.–2:30 p.m.: Remaining Policy Issues for Passive Plant Designs* (Open)—The Committee will review and comment on the draft Commission paper on the remaining policy issues related to the passive plant designs. Representatives of the NRC staff will participate. Representatives of the industry will participate, as appropriate.

*2:30 p.m.–3:30 p.m.: Advanced Light Water Reactor Policy Issue on Emergency Planning* (Open)—The Committee will review and comment on a draft Commission paper related

to emergency planning for Advanced Light Water Reactors. Representatives of the NRC staff will participate.

*3:45 p.m.–4:00 p.m.: Prioritization of Generic Issues* (Open)—The Committee will discuss proposed assignments for reviewing the priority rankings proposed by the NRC staff for a group of generic issues.

*4:00 p.m.–5:00 p.m.: Meeting with Chairman Selin* (Open)—The Committee will hold discussions with NRC Chairman Selin on items of mutual interest.

*5:00 p.m.–6:00 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports regarding items considering during this meeting.

**Friday, August 6, 1993**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

*8:35 a.m.–10:00 a.m.: Proposed Resolution of Generic Issue 143, "Availability of Chilled Water Systems and Room Cooling"* (Open)—The Committee will review and comment on the NRC staff's proposed resolution of Generic Issues 143. Representatives of the NRC staff will participate.

*10:15 a.m.–11:00 a.m.: Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including matters related to the status of appointment of new members, and organizational and personnel matters relating to ACRS staff members.

Portions of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee pursuant to 5 U.S.C. 552b(c)(2) and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

*11:00 a.m.–11:30 a.m.: ACRS Subcommittee Activities* (Open/Closed)–The Committee will hear reports and hold discussions regarding the status of ACRS subcommittee activities, including reports from the Subcommittees on Thermal Hydraulic Phenomena and on Computers in Nuclear Power Plant Operations.

Portions of this session may be closed to discuss information, deemed proprietary by the Westinghouse Electric Corporation, related to the analytical and separate effects programs being conducted by Westinghouse in support of the AP 600 design certification effort, per 5 U.S.C. 552b(c)(4).

12:30 p.m.–3:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

*3:15 p.m.–4:00 p.m.: Future ACRS Activities* (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

*4:00 p.m.–5:00 p.m.: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

*5:00 p.m.–6:00 p.m.: Miscellaneous* (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

**Saturday, August 7, 1993**

*8:30 a.m.–Close of Business: Preparation of ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered per 5 U.S.C. 552(c)(4), information that involves the internal personnel rules and practices of the agency per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 8 a.m. and 4:30 p.m. est.

Dated: July 21, 1993.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 93–17828 Filed 7–26–93; 8:45 am]

BILLING CODE 7590–01–M

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## Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG–3009, "Topical Guidelines for the Licensing Support System," and is intended for Division 3, "Fuels and Materials Facilities." This guide is being developed to provide a list of topics for which Licensing Support System (LSS) participants should submit documentary materials for entry into the LSS. The LSS is an electronic information management system designed for the licensing of the geologic repository for high-level nuclear waste.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete

staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received my be examined at the NRC Public Document room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by October 29, 1993.

Although a time limit is given for comment on this draft, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on a automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

**Authority:** 15 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 30th day of June 1993.

For the Nuclear Regulatory Commission.

**Bill M. Morris,**

*Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 93–17826 Filed 7–26–93; 8:45 am]

BILLING CODE 7590-01-M

## POSTAL SERVICE

### Privacy Act of 1974; Computer Matching Program; Correction

In notice document 93–12440, beginning on page 30207, in the issue of Wednesday, May 26, 1993, make the following correction:

On page 30208, under D. 2., in the first column, in the 38th line, "3,000,000,000" should read "3,000,000".

**Stanley F. Mires,**

*Chief Counsel, Legislative Division.*

[FR Doc. 93–17882 Filed 7–26–93; 8:45 am]

BILLING CODE 7715-12

## PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

### Request for Proposals

**AGENCY:** Prospective Payment Assessment Commission.

**ACTION:** Notice.

The Prospective Payment Assessment Commission (ProPAC) is soliciting proposals from qualified organizations to provide research support services on a variety of issues related to the American health care system, Medicare, and the prospective payment system (PPS) for hospitals. One contract will be awarded under a fixed price requirements type contract. The period of performance of the basic contract will be for one year from the date of award. At the option of the government, the period of performance may be extended for up to two additional one-year periods. A complete Request for Proposal (RFP) will be available on or about Wednesday, August 11, 1993. Parties interested in receiving the RFP must submit a written request to the address given below.

### Roles and Responsibilities of ProPAC

ProPAC was created in the same legislation that enacted Medicare's prospective payment system for hospital inpatient care. ProPAC's responsibilities include analyzing payment policies for all facility services furnished to Medicare beneficiaries. Congress also has asked ProPAC to examine and report on the Medicaid program, and on broader issues regarding the effectiveness and quality of health care delivery in the United States. ProPAC writes reports on various aspects of health care reform, such as issues relating to expanding the PPS system to all payers, and on issues pertaining to implementing a global budget for health care services.

### Criteria for Proposals

Applicants are requested to submit proposals to provide analytic and background reports in support of various ProPAC activities on an as-required basis under the direction and supervision of a primary Project Officer and designated staff of the Commission. The following provides a basic outline of what should be included in a formal proposal:

1. Proposed personnel available to work on the contract.

2. Corporate qualifications, including documentation that the offeror has completed multiple projects of the type being proposed.

3. Management plan, including descriptions of how Delivery Orders will be completed on time and within the budget and how multiple tasks and projects can be successfully accomplished simultaneously.

4. Technical approach, describing a sample Delivery Order that investigates why hospital-based dialysis facilities have higher costs than free-standing dialysis facilities. The RFP will contain a description of this sample Delivery Order and the offeror will be required to submit a sample workplan that proposes an analytic approach, names key staff, provides a work-loading chart by task, and describes a management plan for completing this task on time and within budget.

The Contractor will have a broad range of skills and knowledge that will enable them to conduct analyses useful to ProPAC. These include:

*Data Collection Capability.* The Contractor will have experience in primary data collection, including case studies and small surveys. Primary data collection will not constitute major commitments of resources. Experience in both telephone and written surveys is desirable.

*Knowledge of Statistical Methodology.* Although many Delivery Orders will not require knowledge of statistical methods or econometrics, the Contractor will have individuals available with some knowledge of econometrics, survey sampling, and other statistical methods.

*Ability to Synthesize and Present Data.* Many Delivery Orders have focused on obtaining and synthesizing data to be used in ProPAC analyses or reports. The Contractor will have the ability to organize information to support policy analyses.

*Measurement Indicator Construction.* The Contractor will be able to construct and analyze various kinds of indexes and compare indexes to measure a particular variable, for example, home health supply or capital prices.

*Knowledge of Economic Theory.* ProPAC has examined how hospitals behave in an economic environment, exploring theories of why some hospitals do well under PPS and others do not. The Contractor should have knowledge of the economic theory underlying hospital behavior, as well as basic economic theory applicable to other providers.

*Knowledge of the Medicare Program.* The Contractor will have individuals available who are familiar with PPS for hospitals, as well as Medicare payment methodologies for other facilities.

*Accounting Theory and Cost Allocation Knowledge.* Medicare Cost Report and American Hospital Association Annual Survey data are used extensively by ProPAC. These

facility-level data have been used to predict costs for various facilities and to determine why different types of facilities that provide similar services, such as hospital-based and free-standing nursing facilities, have different costs. The Contractor will have knowledge of cost accounting principles, as well as the ability to understand cost report data.

*Mainframe Data Manipulation Capability.* The Contractor may be asked to manipulate Medicare or other data on a mainframe computer. This will not be a major part of any Delivery Order.

The skills and knowledge listed above are critical. The Contractor will also have individuals available with some substantive knowledge of other areas of interest to ProPAC. These include, but are not limited to, issues relating to quality of and access to health care, the Medicaid program, managed care, home health agencies, and other areas in which ProPAC is mandated to do work.

**Scope of Work**

Delivery Orders will be issued to the Contractor throughout the year. The time frame for completing the Delivery Orders will be short (i.e., 3 to 6 months). In addition, the Contractor often will be working on more than one Delivery Order simultaneously.

The Contractor shall complete Delivery Orders that are issued throughout the course of the contract within the time specified for each. ProPAC shall determine the number and duration of Delivery Orders and the type of tasks to be completed. Telephone consultations and meetings between the Contractor and ProPAC staff may occur during the course of the project.

ProPAC anticipates issuing three to six Delivery Orders under this contract during the base contract period. The same number may be issued during each of the two optional extension periods. Typically, the Delivery Orders will combine two or more of the types of tasks for a particular research topic. For example, a Contractor may be asked to design a research protocol and then conduct a small-scale survey. Alternatively, a literature review could be combined with a theoretical discussion of a measurement issue.

ProPAC will issue a separate statement of work for each Delivery Order. The statement of work will contain a description of the proposed project, as well as methods to accomplish the work (e.g. small telephone survey, review of the literature, etc.), number and composition of project tasks, assumptions about the level of effort, deliverables, and submission dates. The Contractor will submit a separate bid for each Delivery Order. The bid will include all persons budgeted to work on the Order, by activity (task) to be conducted. After negotiations with the Contractor on the statement of work, methods, the budget, deliverable dates, and Contractor staff, ProPAC will issue the Delivery Order at a fixed price.

Each Delivery Order will require an average of 3.0 to 5.0 person-months to complete. The level of effort and skills needed will vary depending on the specific needs of ProPAC.

**Submission of Proposals**

Applicants will be given approximately 30 days to submit a formal proposal.

**Review of Proposals**

Proposals will be reviewed by a panel of at least four (4) individuals. Reviewers will score applications, basing their scoring decisions and approval recommendations on the criteria established in the RFP. Foremost consideration will be given to the technical evaluation, however, a proposal must be fairly and reasonably priced to win the award.

**General Information**

*Number and Size of Project*

One contract will be awarded in response to this RFP. The period of performance of the basic contract will be for one year from the date of award. At the option of the government, the period of performance may be extended for up to two additional one-year periods.

*Authority*

The Commission's authority for issuing this RFP is based on section 1886(e)(6)(c)(iii) of the Social Security Act.

*Submission Address*

For a copy of this RFP, all interested sources must submit a written request to the following address: Prospective Payment Assessment Commission, 300 7th Street, SW., suite 301B, Washington, DC 20024, ATTN: Mrs. Jeannette A. Younes.

*Obligation*

This notice in no way commits ProPAC to obligate funds to any offeror.

Dated: July 21, 1993.

**Donald A. Young,**

*Executive Director.*

[FR Doc. 93-17891 Filed 7-26-93; 8:45 am]

BILLING CODE 6820-BW-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-32664; File No. SR-Amex-93-22]**

**Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval To Propose Rule Change by American Stock Exchange, Inc. Relating to an Extension of a Pilot Program Which Permits Specialists To Grant Stops in a Minimum Fractional Change Market**

July 21, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 22, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On June 28, 1993, the Amex submitted Amendment No. 1 to the proposed rule change in order to correct a typographical error.[3] On July 15, 1993, the Amex submitted Amendment No. 2 to the proposed rule change in order to clarify the duration of this pilot extension.[4]

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to extend until March 21, 1994 a pilot program which amended Amex Rule 109 to permit a specialist, upon request, to grant stops in a minimum fractional change market.[5] The text of the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] *See* letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated June 24, 1993 ("Amendment No. 1").

[4] *See* letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated July 14, 1993 ("Amendment No. 2").

[5] The Amex received approval to amend Rule 109, on a pilot basis, in Securities Exchange Act Release No. 30603 (April 17, 1992), 57 FR 15340 (April 27, 1992) (File No. SR-Amex-91-05) ("1992 Approval Order"). The Commission subsequently extended the Amex's pilot program in Securities Exchange Act Release No. 32185 (April 21, 1993), 58 FR 25681 (April 27, 1993) (File No. SR-Amex-93-10) ("April 1993 Approval Order"). Commission approval of these amendments to Rule 109 expired on July 20, 1993. the Amex originally requested that this pilot program be extended for an additional nine months. However, at the Commission's request, the Amex has agreed to extend the pilot until March 21, 1994, the date on which similar pilots for other exchange markets will expire. *See*

Continued

proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On April 21, 1993, the Commission extended its pilot approval of amendments to Exchange Rule 109 for a three month period, expiring on July 20, 1993.[6] The amendments permit a specialist, upon request and provided there is an order imbalance, to grant a stop[7] in a minimum fractional change market[8] for any order of 2,000 shares or less, up to a total of 5,000 shares for all stopped orders, without obtaining prior Floor Official approval. A Floor Official, however, must authorize a greater order size or aggregate share threshold.

During the course of the pilot program, the Exchange has closely monitored compliance with the rule's requirements; analyzed the impact on orders on the specialist's book resulting from the execution of stopped orders at a price that is better than the stop price; and reviewed market depth in a stock when a stop is granted in a minimum fractional change market. The Exchange believes that the amendments to Rule 109 have provided a benefit to investors by providing an opportunity for price improvement, while increasing market depth and continuity without adversely affecting orders on the specialist's book. The Exchange's findings in this regard have been forwarded to the Commission under separate cover.[9]

The Exchange is therefore proposing to extend the pilot program until March 21, 1994,[10] in order to provide an opportunity for the Exchange and the Commission to further study and monitor the effects of the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed amendments to Rule 109 are consistent with these objectives in that they are designed to allow stops, in minimum fractional change markets, under limited circumstances that provide for the possibility of price improvement to customers whose orders are granted stops.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-93-22 and should be submitted by August 17, 1993.

**IV. Commission's Findings and Order Granting Accelerated Approved of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b)(5)[11] and section 11(b)[12] of the Act. The Commission believes that the amendments to Rule 109 should further the objectives of section 6(b)(5) and section 11(b) through pilot program procedures designed to allow stops, in minimum fractional change markets, under limited circumstances that provide for the possibility of price improvement to customers whose orders are granted stops.[13]

In its orders approving the pilot procedures,[14] the Commission asked the Amex to study the effects of stopping stock in a minimum fractional change market. Specifically, the Commission requested information on: (1) The percentage of stopped orders executed at the stop price, versus the percentage of such orders receiving a better price; (2) whether limit orders on the specialist's book were being bypassed due to the execution of stopped orders at a better price (and, to this end, the Commission requested that the Amex conduct a one-day review of all book orders in the five stocks receiving the greatest number of stops); (3) market depth, including a comparison of the size of stopped orders to the size of the opposite side of the quote and to any quote size imbalance, and including an analysis of the ratio of the size of the bid to the size of the offer; and (4) specialist

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Amendment No. 2, *supra*, note 4. The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program to continue without interruption.

[6] *See* April 1993 Approval Order, *supra*, note 5.

[7] When a specialist agrees to a floor broker's request to "stop" an order, the specialist is obligated to execute the order at the best bid or offer, or better if obtainable. *See* Amex Rule 109(a).

[8] Amex Rule 127 sets forth the minimum fractional changes for securities traded on the Exchange.

[9] *See* letters from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated June 22, 1993 and June 28, 1993 ("June monitoring report"). *See also* letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated March 11, 1993 (March monitoring report").

[10] *See* Amendment No. 2, *supra*, note 4.

[11] 15 U.S.C. 78f (1988).

[12] 15 U.S.C. 78k (1988).

[13] For a description of Amex procedures for stopping stock in minimum fractional change markets, and of the Commission's rationale for approving those procedures on a pilot basis, see 1992 Approval Order, *supra*, note 5. The discussion in the aforementioned order is incorporated by reference into this order.

[14] *See supra*, note 5.

compliance with the pilot program's procedures.

On March 12, 1993, and on June 28 and July 1, 1993, the Exchange submitted to the Commission monitoring reports regarding the amendments to Rule 109.[15] The Commission believes that, although these monitoring reports provide certain useful information concerning the operation of the pilot program, the Amex must provide further data before the Commission can fairly and comprehensively evaluate the Amex's use of the pilot procedures. To allow such additional information to be gathered and reviewed, without compromising the benefit that investors might receive under Rule 109, the Commission believes that it is reasonable to extend the pilot program until March 21, 1994. During this extension, the Commission expects the Amex to respond fully to the concerns set forth below.

First, the June monitoring report indicates that 58% of orders stopped in minimum fractional change markets received price improvement. The Commission, therefore, believes that the pilot procedures provide a benefit to investors by offering the possibility of price improvement to customers whose orders are granted stops in minimum fractional change markets. According to the latest Amex report, moreover, 95% of stopped orders were for 2,000 shares or less. In this respect, the amendments to Rule 109 should mainly affect small public customer orders, which the Commission envisioned could most benefit from professional handling by the specialist.

During the pilot extension, the Commission requests that the Amex continue to monitor the percentage of stopped orders executed at the stop price, as compared to the percentage of such orders receiving a better price. To determine who receives the benefit of price improvement, the Amex should also calculate, for the same sample of orders the percentage of stopped orders which are for 2,000 shares of less.[16]

Second, the Amex preliminarily believes that, with respect to a significant majority of stops granted under these amendments to Rule 109, customer limit orders existing on the specialist's book were not disadvantaged.[17] This conclusion is based primarily on the Exchange's one-day review of a sample of those limit orders against which orders receiving price improvement were stopped. As part of this review, the Amex determined, for each stopped order in the sample, how often an equivalent volume (*i.e.*, the same number of shares as the stopped order) on the opposite side of the market was executed by the close of the day's trading.[18] Although the Amex's results suggest that a few limit orders, potentially, were disadvantaged, these results are not conclusive because they are based primarily on a one-day review of the pilot program's impact on the limit order book.[19]

The Commission historically has been concerned that book orders may get bypassed when stock is dropped.[20] To ensure that Rule 109 does not harm public customers with orders on the specialist's book, the Amex should provide detailed facts supporting its conclusions about the impact of its pilot procedures. The Commission therefore requests that the Amex conduct a more thorough review of this issue. At a minimum, the Amex should be able to determine, for every order stopped, how often an equivalent volume on the opposite side of the market is executed by the close of the day's trading.[21] In the alternative, the Amex may provide the same data in aggregate form.[22] Finally, the Amex should conduct another one-day review of all book orders in the *ten* stocks receiving the greatest number of stops, and should submit to the Commission both raw trade data for,[23] and a description of the final disposition of,[24] each such order.

In terms of market depth, the Amex's June monitoring report suggests that stock tends to be stopped in minimum fractional change markets where there is a significant disparity between the number of shares bid for and the number of shares offered.[25] The Amex's latest report also suggests that, given the depth of the opposite side of the market, orders affected by the Rule 109 pilot tend to be relatively small.[26] The Amex repeatedly has stated, both to the

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[15] *See supra*, note 9.

[16] The Commission believes that an effective compliance program should include continuous surveillance of how often stopped orders fall within the pilot's size parameters.

[17] When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

As for book orders on the same side of the market as the stopped stock, the Commission believes that Rule 109's requirements make it unlikely that these limit orders would not be executed. Under the Amex's pilot program, an order can be stopped if and only if a substantial imbalance exists on the opposite side of the market. *See infra*, text accompanying notes 27–33. Given that mandatory requirement, the stock would probably trade away from the large imbalance, resulting in execution of orders on the book.

[18] Although the Exchange could not make this determination for stocks generally, *see infra* note 19, it could do so as part of its one-day review of the five stocks receiving the greatest number of stops. Based on that manual review, the Amex found that, for 84.6% of stopped orders (including those that did not receive price improvement), an equivalent volume on the opposite side of the market was executed by the close of the day's trading.

[19] In the past, the Amex has stated that it does not have the electronic display book technology necessary to determine the final disposition of limit orders. Telephone conversation between William Iommi, Executive Director, Trading Analysis Division, Amex, and Beth Steckler, Attorney, Division of Market Regulation, on April 6, 1993. While use of such a display book on the Amex Floor began on April 28, 1993, *see* Securities Exchange Act Release No. 32140 (April 14, 1993), 58 FR 21327 (April 20, 1993) (File No. SR–Amex–92–46), the necessary technology has not yet been implemented Floor-wide.

[20] *See, e.g.*, SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt. 2 (1963).

[21] The Amex has stated that its electronic book, *see supra* note 19, will be gradually phased in Floor-wide over the next year. Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Steckler, Attorney, Division of Market Regulation, on July 15, 1993. As the phase-in of the electronic book continues, the Amex should provide the Commission with complete information (*i.e.*, not just a one-day review) for all stocks in which it has the capability to monitor the final disposition of limit orders, even if it has not yet completed Floor-wide implementation of the electronic book.

[22] Under this alternative, the Amex would first calculate the total number of shares of limit orders against which stock is stopped. The Amex would then determine, out of that total (rather than on an order-by-order basis), how many of those shares are executed by the close of the day's trading. In contrast to the Amex's current method, which shows the percentage of stopped orders for which an equivalent volume of limit orders is executed, this alternative method would show the percentage of shares on the opposite side of the specialist's book that ultimately receive an execution.

[23] In this regard, the Commission requests that the Amex submit the documentation the Amex is relying upon to support its conclusions about the final disposition of these limit book orders. *See infra*, note 24.

[24] As explained in *supra* notes 21–22 and accompanying text.

[25] There is a direct relationship between such a quote size imbalance and the likelihood of price improvement. A large imbalance on one side of the market suggests that subsequent transactions will take place on the other side. In those circumstances, it could be appropriate to grant a stop, since the delay might allow the specialist to execute the order at a better price for the customer.

[26] A relatively large order might begin to counteract the pressure the imbalance on the opposite side of the market is putting on the stock's price. Accordingly, it might not be as appropriate to stop such an order.

Commission[27] and to its members,[28] that specialists can only stop stock in a minimum fractional change market when (1) an imbalance exists on the opposite side of the market and (2) such imbalance is of sufficient size to suggest the likelihood of price improvement.[29] As noted above, the data in the June monitoring report is not inconsistent with that standard. Nevertheless, it is not clear that Amex specialists are taking into consideration both the absolute,[30] and the relative,[31] size of the imbalance before stopping the stock.

The Commission, therefore, emphasizes that Rule 109 can only be implemented when it is clear that the imbalance on the opposite side of the market from the order being stopped is of sufficient size to suggest the likelihood of price improvement. No other market condition (no matter how great the likelihood of price improvement) justifies a specialist's stopping stock in a minimum fractional change market. In summary, the Commission believes that the requirement of a sufficient market imbalance is the most critical aspect of the pilot program.[32] Strict adherence to this standard is necessary to ensure that stops are only granted, in a minimum fractional change market, when the benefit (*i.e.*, price improvement) to orders being stopped far exceeds the potential of harm to orders on the specialist's book.[33]

To evaluate how this standard is being applied in practice, the Commission requests that the Amex conduct another comprehensive quantitative analysis of market depth.[34] In its next monitoring report, the Amex should compare the size of the stopped order to the size of the opposite side of the quote and to any quote size imbalance.[35] The Amex should break individual orders down as follows: 2,000 shares or less; 2,001 to 5,000 shares; 5,001 to 10,000 shares; and over 10,000 shares. The Amex should provide the requested information in the form of an average for all buy orders stopped, and then for all sell orders stopped, in each of the above size ranges. Furthermore, when a Floor Official approves a stop that causes the total number of stopped shares to exceed 5,000 shares, the Amex should provide the Commission with information comparing the aggregate size of all orders stopped to the size of the opposite side of the quote and to any quote size imbalance.[36] The Amex should provide the requested information in the form of an average for multiple buy orders, and then for multiple sell orders, which require such Floor Official approval. Finally, the Amex should calculate, as of the time a stop is granted, the ratio of the size of the bid to the size of the offer.[37] The Amex should provide the requested information in the form of an average for all buy orders stopped, and then for all sell orders stopped, in each of the aforementioned order size ranges.[38]

Finally, the Amex report describes its efforts regarding compliance with the pilot procedures. To alleviate confusion about how to evidence Floor Official approval (which, as noted above, a specialist must obtain to stop any order for more than 2,000 shares, or a total of more than 5,000 shares for all stopped orders), the Exchange is in the process of developing new manual and automated reports, which will serve as a written audit trail for surveillance purposes. As a result, the Commission believes that the Amex now has sufficient means to determine whether a specialist complied with the amendments' order size and aggregate share thresholds and, if not, whether Floor Official approval was obtained for larger parameters. The Commission also notes the Amex's on-going effort to keep its specialists properly informed about the pilot program's requirements. In this context, the Amex has distributed Information Circulars[39] and held continuing educational sessions on the pilot program and its requirements for stopping stock in minimum fractional change markets.

During the pilot extension, the Commission requests that the Amex continue to monitor closely specialist compliance with Rule 109's procedures. As before, the Amex should determine how often orders requiring Floor Official approval to be stopped do not receive such approval. In so doing, the Amex should distinguish between instances where the specialist did not ask for permission and those where it was denied (and, if so, on what grounds). The Amex should gather and report information about the frequency of any non-compliance with the pilot program procedures (especially the requirement of a sufficient market imbalance, as discussed above),[40] and the market conditions prevailing at the time of each instance thereof. The Commission also requests that the Amex report on the action taken by the Exchange in response to each instance of specialist non-compliance with the pilot procedures.

The Commission requests that the Amex report its findings on these matters by December 15, 1993. In addition, the Amex should submit an interim report describing its preliminary findings on compliance with the pilot program procedures (including compliance with the requirement that a specialist obtain Floor Official approval to exceed Rule 109's size parameters) by October 15, 1993. Finally, if the Exchange determines to request either permanent approval or an extension of the pilot program beyond March 21, 1994, the Commission requests that the Amex also submit a proposed rule change by December 15, 1993.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the Federal Register for the full comment period and were approved by the Commission.[41]

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[27] See letter from Claire P. McGrath, Senior Counsel, Legal & Regulatory Policy Division, Amex, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated January 8, 1992 (Amendment No. 1 to File No. SR-Amex-91-05). Amendment No. 1 formally incorporated the requirement that the indicia of market depth discussed below must, without exception, be satisfied before a specialist is permitted to stop stock in a minimum fractional change market.

[28] See Amex Information Circular Nos. 83-74 (April 24, 1983) and 93-333 (April 7, 1993).

[29] For further discussion of the relationship between quote size imbalance and the likelihood of price improvement, *see supra* note 23.

[30] *See infra*, note 35 and accompanying text.

[31] *See infra*, note 37 and accompanying text.

[32] Recently, in approving a comparable proposal by the New York Stock Exchange, the Commission placed similar emphasis on the critical nature of the sufficient size standard. See Securities Exchange Act Release No. 32031 (March 22, 1993), 58 FR 16563 (March 29, 1993) (File No. SR-NYSE-93-18).

[33] *See supra*, text accompanying notes 17-24.

[34] The Commission believes that an effective compliance program should include surveillance of the indicia of market depth discussed below, see *infra* text accompanying notes 35-38, for every stopped order.

[35] Every time a specialist stops an order to buy, the size of that stopped order should be compared (1) to the size of the offer side of the quote and (2) to the quote size imbalance, *i.e.*, the difference between the size of the offer and the size of the bid.

Every time a specialist stops an order to sell, the size of that stopped order should be compared (1) to the size of the bid side of the quote and (2) to the quote size imbalance, *i.e.*, the difference between the size of the bid and the size of the offer.

[36] As explained in *supra* note 35.

[37] Every time a specialist stops an order to buy, the Amex should calculate the size of the bid as a percentage of the size of the offer.

Every time a specialist stops an order to sell, the Amex should calculate the size of the offer as a percentage of the size of the bid.

[38] *See supra*, text accompanying note 35.

[39] *See supra*, note 28.

[40] *See supra*, text accompanying notes 27-33.

[41] No comments were received in connection with the proposed rule change which implemented these

IT IS THEREFORE ORDERING, pursuant to section 19(b)(2)[42] that the proposed rule change (SR-Amex-93-22) is hereby approved until March 21, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-17846 Filed 7-26-93; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-19579; 812-7988]**

## SunAmerica Capital Appreciation Fund, Inc., et al.; Application for Exemption

July 21, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** SunAmerica Capital Appreciation Fund, Inc.; SunAmerica Cash Fund; SunAmerica Equity Portfolios; SunAmerica Fund Group; SunAmerica Income Portfolios; SunAmerica Money Market Securities, Inc.; SunAmerica Multi-Asset Portfolios, Inc.; SunAmerica Tax Free Portfolios; Home Investors Government Guaranteed Income Fund, Inc.; SunAmerica Asset Management Corp. ("SAAMCo"); Wellington Management Company ("Wellington") (SAAMCo and Wellington are referred to collectively as the "Adviser"); and SunAmerica Capital Services, Inc. ("SACS" or the "Distributor").

**RELEVANT ACT SECTIONS:** Exemption requested pursuant to section 6(c) of the Act from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order that would permit them to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales load on certain redemptions of shares.

**FILING DATE:** The application was filed on July 17, 1992, and amended on December 22, 1992, May 18, 1993, and July 16, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants (except Wellington), 733 Third Avenue, 3rd Floor, New York, New York 10017. Wellington, 75 State Street, Boston, Massachusetts 02109.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Barry D. Miller, Senior Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. Each of the SunAmerica funds is an open-end management investment company registered under the Act. SAAMCo, an indirect wholly-owned subsidiary of SunAmerica, Inc. (formerly, Broad, Inc.), serves as sponsor and investment adviser or manager to all of the SunAmerica Funds. SACS, also an indirectly wholly-owned subsidiary of SunAmerica, Inc., serves as the distributor for each of the SunAmerica Funds. Wellington, a registered investment adviser, serves as sub-adviser to certain of the SunAmerica Funds.

2. Applicants request that relief be extended to any other registered investment company, or separate investment series thereof, which in the future is advised by SAAMCo, or an affiliate thereof, or whose shares are distributed by SACS, or an affiliate thereof, and which is a member of the SunAmerica "group of investment companies" as defined in rule 11a-3(a)(5) under the Act (collectively with the applicant funds, the "SunAmerica Funds" or the "Funds").

3. The distribution structure of the SunAmerica Funds now varies from Fund to Fund; however, the existing distribution arrangements fall into three general categories. Shares of certain of the SunAmerica Funds currently are offered to investors at their respective net asset values plus the applicable front-end sales load and are subject to a distribution fee under a plan adopted pursuant to rule 12b-1 under the Act. Shares of certain other SunAmerica Funds currently are offered to investors subject to a contingent deferred sales charge ("CDSC") and a rule 12b-1 fee. Shares of two SunAmerica Funds currently are offered at net asset value without the imposition of a front-end sales load or CDSC, but are subject to a rule 12b-1 fee.

*A. The Multiple Distribution System*

1. Applicants propose to establish a multiple distribution system (the "Multiple Distribution System") that would allow each of the Funds to offer investors the option of purchasing one or more of the following classes of shares: (a) Class A shares with a front-end sales load of up to 5.75% of the public offering price, a rule 12b-1 fee of up to .35% of the average annual net assets of such shares, and a CDSC on purchases of $1 million or more for which the front-end sales load was waived; (b) class B shares with a CDSC of up to 6.00% over a period of up to six years, a rule 12b-1 fee of up to 1% of the average annual net assets of such shares; (c) class C shares with a CDSC of 1% in the first year following purchase, a rule 12b-1 fee of up to 1% of the average annual net assets of such shares; and/or (d) one or more additional classes of shares, the terms of which may differ from the classes of shares described above. The distribution structure for all classes of shares will comply with applicable National Association of Securities Dealers ("NASD") regulations relating to "asset-based" sales charges.

2. It is anticipated that class B shares will be offered in conjunction with class A shares. Further, to the extent class C shares are offered by a Fund, such shares will generally be offered in conjunction with class A shares or class A and class B shares. It is not anticipated that class C shares would be offered solely in conjunction with class B shares. Applicants intend to offer class A and B shares subject to a minimum initial investment of $500, while class C shares will be subject to a minimum initial investment of $100,000. Future classes may be subject to the same or different minimum initial investment amounts.

3. The Multiple Distribution System will be implemented by having each of the SunAmerica Funds create one or more additional classes of shares

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procedures. See 1992 Approval Order, *supra*, note 4.

[42] 15 U.S.C. 78s(b)(2) (1988).

[43] 17 CFR 200.30-3(a)(12) (1991).

(depending on the total number of classes to be offered by each SunAmerica Fund) so that each Fund may offer two or more classes of shares. Each class of shares will represent interests in the same portfolio of investments of a Fund and, with certain specific exceptions, be identical in all respects. The only differences among the three classes of the same Fund described above and any future additional classes will relate solely to: (a) The impact of the respective rule 12b–1 plan payments made by each class of shares of a Fund, and any class expenses that may be imposed upon a particular class of shares ("Class Expenses"), as set forth in condition 1 below; (b) voting rights on matters pertaining to rule 12b–1 plans, except as provided in condition 15 set forth below; (c) the different exchange privileges of the various classes of shares; (d) a class may have a conversion feature; (e) the designation of each class of shares of a Fund; and (f) the applicable investment minimum with respect to each class. Shares of different classes may be sold under different sales arrangements, *i.e.*, with different load structures and rule 12b–1 fees.

4. All expenses incurred by a Fund would be borne on a *pro rata* basis by each outstanding share of each class of shares, based on the relative net asset value of each class; except that each class's net asset value and expenses will reflect the rule 12b–1 plan payments and other Class Expenses attributable to the class A, class B, and class C shares.

5. If a Fund offers both class A and class B shares, class B shares will have a conversion feature providing for automatic conversion to class A shares. On the first business day of the month following the seventh anniversary of the issuance of class B shares, or other applicable anniversary, the class B shares (except those purchased through the reinvestment of dividends and other distributions) will automatically convert to class A shares of such Fund at the relative net asset values of each of the classes. All shares in a shareholder's Fund account that were purchased through the reinvestment of dividends and other distributions paid in respect of class B shares will be considered to be held in a separate sub-account. Each time any class B shares in the shareholder's Fund account (other than those in the sub-account) convert to class A, a *pro rata* portion of the class B shares then held in the sub-account also will convert to class A based on the ratio that the shareholder's class B shares converting to class A shares bears to the shareholder's total class B shares not acquired through dividends and distributions. Class B shares will be deemed to include Fund shares purchased prior to the implementation of the Multiple Distribution System that were subject to a CDSC. For purposes of calculating the period required for conversion to class A shares, such previously purchased shares will be deemed to have been acquired as if the new CDSC schedule were in effect on the date such shares originally were purchased.

6. The actual terms of a conversion feature would be determined on a class by class basis. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After a conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD rules of fair practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject to prior to the conversion. Any conversion feature will be subject to the availability of a ruling of the Internal Revenue Service or an opinion of counsel, as may be appropriate, that the conversion of shares does not constitute a taxable event under federal tax law. Any conversion feature adopted by a Fund will be fully disclosed in the Fund's then-current prospectus.

7. Currently, shares of the SunAmerica Fund having a front-end sales load may be exchanged at net asset value for shares of other SunAmerica Funds also having a front-end sales load and a money market fund sponsored by SAAMCo. The SunAmerica Funds that currently impose a CDSC offer similar exchange privileges among themselves and with a money market fund sponsored by the Adviser. Under the proposed Multiple Distribution System, shares of class A, B, or C will be exchangeable only for shares of the same class of another Fund, including shares of a money market fund sponsored by the Adviser. The exchange privileges applicable to all classes of shares will comply with rule 11a–3 under the Act.

*B. The CDSC*

1. An SEC order dated April 17, 1992 exempts the SunAmerica Funds from section 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to allow them to establish a CDSC arrangement. Investment Company Act Release No. 18661 (the "Existing Order"). The CDSC arrangement allowed by the Existing Order differs from the CDSC arrangement proposed to be established in connection with the implementation of the Multiple Distribution System to the extent that the proposed CDSC will be imposed over a specified period of up to six years rather than over a period of up to five years, may be in an amount of up to 6% rather than 5%, and will comply with amendments to the NASD Rules of Fair Practice. In addition, the circumstances under which the CDSC will be waived vary from those granted in the Existing Order. Any order issued on the current application relating to the proposed CDSC arrangement shall supersede the Existing Order and shall apply to each SunAmerica Fund, whether or not it implements the Multiple Distribution System. Any CDSC arrangement implemented pursuant to the requested relief will only apply to shares acquired after the Commission grants the relief.

2. Under the new CDSC arrangement proposed for the Funds, the class A, B, and C shares are expected to be made subject to a CDSC, and any additional classes created in the future also may be made subject to a CDSC. (The class A, B, and C shares and any future classes to be created with a CDSC collectively are referred to hereinafter as the "CDSC Shares.") In no event will the aggregate amount of the CDSC exceed 6% of the aggregate purchase payments made by an investor for class B shares of a Fund or 1% of the aggregate payments made by an investor for class C shares of a Fund.

3. Purchases of class A shares of less than $1 million are subject to a front-end sales load, which decreases from a maximum amount as the size of a purchase increases. For purchases of $1 million or more, no front-end sales load is imposed. A CDSC of 1% would be payable in the event of a redemption of such shares within 12 months following their purchase.

4. The CDSC will not be imposed on redemptions of CDSC Shares that were purchased more than a specified period, which period will not exceed six years in the case of class B shares or one year in the case of class A or C shares (the "CDSC Period"), prior to their redemption or on CDSC Shares derived from reinvestment of dividends and distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. In addition, the appropriate CDSC percentage rate, in calculating the CDSC, will be applied to

the lesser of (a) the purchase price of the shares being redeemed, or (b) the net asset value of such shares at the time of redemption.

5. Applicants request exemptive relief to waive the CDSC on the following redemptions of CDSC shares: (a) Redemptions requested within one year following death or initial determination of disability, as defined in Section 72(m)(7) of the Internal Revenue Code of 1986 (the "Code"), of a shareholder; (b) in connection with certain distributions from IRAs or other qualified plans [1]; (c) redemptions made pursuant to a systematic withdrawal plan established by the Funds that provides for the redemption of an amount not in excess of 12% of the value of an investor's investment per year; (d) redemptions of shares purchased for personal investment purposes by officers, directors, and employees of SAAMCo, its agents and affiliates (including family members of such officers, directors and employees), and employees and registered representatives of SACS and selected dealers engaged in the sale of shares of the Funds (including family members of such employees and registered representatives); and (e) redemptions from accounts individually managed by SAAMCo which pay an investment advisory fee to SAAMCo. If a Fund waives the CDSC, such waiver will be uniformly applied to all offerees in the class specified. Also, in waiving a CDSC, the Funds will comply with the requirements of rule 22d-1 under the Act. If a Fund waives the CDSC, such waiver will be uniformly applied by that Fund to all eligible offerees in the class specified. In the event an investor redeems shares and the proceeds are reinvested in a Fund within 6 months of the redemption, a credit of the CDSC will be paid to an investor by the Distributor. The proceeds must be reinvested in the same class of shares of the same Fund from which the shareholder redeemed his or her shares.

6. If the board of directors/trustees of a Fund (the "Directors") with CDSC Shares determine to revise the CDSC structure of such class, the Fund's prospectus will be revised to disclose such change. In addition, to the extent that such a change disadvantages shareholders, the shareholders of record as of the time the change is implemented would continue to be subject to the CDSC as described in the Fund's prospectus at the time their shares were purchased.

[1] The CDSC is waived for any redemption in connection with a lump-sum or other distribution following retirement under a tax-deferred retirement plan or, in the case of an IRA or Keogh Plan or a custodial account pursuant to section 403(b)(7) of the Code, after attaining age 59½. The charge is also waived on any redemption which results from the tax free return of an excess contribution to an IRA pursuant to section 408(d)(4) or (5) of the Code, or from the death or disability of the employee (*see* sections 72(m)(7) and 408(f)(3)) of the Code. In general, the CDSC is waived on redemptions which constitute retirement plan distributions which are permitted to be made without penalty pursuant to the Code, other than tax-free rollovers or transfers of assets.

## Applicants' Legal Analysis

### *A. The Multiple Distribution System*

1. Applicants seek an exemption from sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the Multiple Distribution System may result in a senior security as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent that the allocation of voting rights under the Multiple Distribution System may violate the provisions of section 18(i).

2. Applicants believe that the Multiple Distribution System does not create the potential for the abuses that section 18 of the Act is designed to ameliorate. The Multiple Distribution System will not involve borrowing and will not affect the Funds' existing (or then existing, in the case of future Funds) assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds, since all such shares will participate *pro rata* in any of the Funds' appreciation, income and expenses with the exception of the different rule 12b-1 fees and other Class Expenses.

3. Applicants believe that the proposed allocation of expenses and voting rights relating to the rule 12b-1 plans in the manner described above is equitable and would not discriminate against any group of shareholders. Interests of the class A, class B, and class C shareholders with respect to rule 12b-1 fees would be adequately protected, since the rule 12b-1 plans for each of those classes will conform to the requirements of rule 12b-1, including the requirement that their implementation and continuation be approved on an annual basis by the Directors of each respective Fund.

4. Since each class of shares will be redeemable at all times, no class of shares will have preferences or priority over any other class of a Fund in the usual sense (that is, no class will have distribution or liquidation preferences to particular assets and no class will be protected by any reserve or other account), and the similarities and dissimilarities of the classes of shares will be disclosed in the Funds' prospectuses and statements of additional information, it is submitted that investors will not be given misleading impressions as to the safety or risk of any class of shares, and the nature of each class of shares will not be rendered speculative.

### *B. The CDSC*

1. Applicants request an exemption from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder to permit the Funds to assess a CDSC on certain redemptions of the CDSC Shares as described above and to permit the Funds to waive the CDSC with respect to certain types of redemptions. Applicants submit that the requested exemption, as required by the standards for an exemption under section 6(c) of the Act, is in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

## Applicants' Conditions

### *A. Multiple Distribution System*

Applications agree that the order of the Commission granting the requested relief with respect to the issuance sale of multiple classes of shares shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below The only differences among various classes of shares of the same Fund will relate solely to: (a) The impact of the respective rule 12b-1 plan payments made by each class of shares of a Fund and any Class Expenses that may be imposed upon a particular class of shares which are limited to (i) transfer agency fees attributable to a specific class of shares, (ii) printing and postage expense related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a specific class, (iii) blue sky registration fees incurred by a class of shares, (iv) Commission registration fees incurred by a class of shares, (v) expenses of administrative personnel and services as required to support the shareholders of a specific class, (vi) litigation or other legal expenses relating solely to one class of shares, (vii) Directors' fees incurred as a result of issues relating to one class of shares, and (viii) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) voting rights on matters which pertain to rule 12b-1

plans, except as provided in condition 15 below; (c) the different exchange privileges of the various classes of shares; (d) a class may have a conversion feature; and (e) the designation of each class of shares of a Fund.

2. The Directors of each Fund, including a majority of the Independent Directors,[2] shall have approved the Multiple Distribution System, prior to the implementation of the Multiple Distribution System by a particular Fund. The minutes of the meeting of the Directors of each Fund regarding their deliberations with respect to the approvals necessary to implement the Multiple Distribution System will reflect in detail the reasons for determining that the proposed Multiple Distribution System is in the best interests of both the Fund and its respective shareholders and such minutes will be available for inspection by the Commission.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of Directors of each Fund, including a majority of the Directors who are not interested persons of the Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses will provide to the Directors, and the Directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Directors of each Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors of each Fund, including a majority of the Independent Directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The adviser and the distributor will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, the adviser and the distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. The Directors of the Funds will receive quarterly and annual statements concerning distribution expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only rule 12b–1 expenditures properly attributable to the sale of one class of shares will be used to support the rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the Directors to support 12b–1 fees charged to shareholders of such class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors in the exercise of their fiduciary duties.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that fee payments associated with any rule 12b–1 plans with respect to a particular class and any other Class Expenses attributable to that class will be borne exclusively by such class.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes, the proper allocation of income and expenses among the various classes, and financial statement disclosure has been reviewed by Price Waterhouse, the Funds' independent examiner (the "Independent Examiner"). The Independent Examiner has rendered a report to applicants, which has been provided to the staff of the Commission, stating that such methodology and procedures are adequate to ensure that such calculations, allocations, and disclosure will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations, allocations, and disclosure are being made and, based upon such review, will render at least annually a report to the Funds that the calculations, allocations, and disclosure are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by the Funds which the Fund agrees to make, will be available for inspection by the Commission upon the written request for such work papers by a senior member of the Commission staff, limited to the Director, and Associate Director, the Chief Accountant, the Chief Financial Analyst, and any Assistant Director of the Division of Investment Management, and any Regional Administrator, Associate Regional Administrator, and Assistant Regional Administrator. The initial report of the Independent Examiner is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation will be concurred with by the Independent Examiner in the initial report referred to in condition (7) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants will take immediate corrective measures if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

9. The prospectuses of the Funds will include a statement to the effect that a registered representative, and any other person entitled to receive compensation for selling Fund shares, may receive different levels of compensation for selling one particular class of shares over another in a Fund.

10. The distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors of a Fund with respect to the Multiple Distribution System will be set forth in guidelines which will be furnished to the directors as part of the materials setting forth the duties and responsibilities of the Directors.

12. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution

[2] "Independent Directors" are those Directors of the SunAmerica Funds who are not "interested persons" of the SunAmerica Funds, as that term is defined in section 2(a)(19) of the Act and who have no no direct of indirect financial interest in the operation of rule run 12b-1 plan or any agreements related thereto.

arrangements, services, fees, sales loads, deferred sales charges, and exchange privileges applicable to each class of shares offered through such prospectus. Class A, class B, class C, and any additional classes that may be created in the future by any Fund shares will be offered and sold through a single prospectus, to the extent two or more of such classes of a Fund are offered. Each shareholder report of each Fund will disclose the respective expenses and performance data applicable to all classes of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to the shares of class A, class B, class C, or any additional classes that may be created in the future, it will also disclose the expenses and/or performance data applicable to all classes. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset value and public offering price will separately present each class of shares.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

14. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the class of shares ("Target Class") into which the class of shares with a conversion feature ("Purchase Class") will convert under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approved the proposal. The Directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. A New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with conditions 4 above, any additional cost associated with the creation, exchange, or conversion of New Purchase Class or New Target Class shall be borne solely by SAAMCo or SACS. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to a higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

*B. CDSC*

Applicants agree that the order of the Commission granting the requested relief with respect to the imposition of a CDSC by the Funds shall be subject to the following condition:

1. The applicants will comply with proposed rule 6c–10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17847 Filed 7–26–93; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2662]**

### Illinois; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 9, 1993, and amendments thereto on July 13 and 14, 1993, I find that the Counties of Adams, Boone, Calhoun, Carroll, Hancock, Henderson, Henry, Jersey, Jo Daviess, Lake, Madison, McHenry, Mercer, Monroe, Pike, Rock Island, St. Clair, Stephenson, Whiteside, and Winnebago in the State of Illinois constitute a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 9, 1993, and for loans for economic injury until the close of business on April 11, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bond, Brown, Bureau, Clinton, Cook, DeKalb, Greene, Kane, Knox, Lee, Macoupin, McDonough, Montgomery, Ogle, Randolph, Schuyler, Scott, Stark, Warren, and Washington in Illinois, and Kenosha County in Wisconsin.

Any contiguous counties not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The interest rates are:

| | *Percent* |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.625 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 266206 and for economic injury the numbers are 793200 for Illinois and 792900 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 15, 1993.

Bernard Kulik,

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93-17806 Filed 7-26-93; 8:45 am]

BILLING CODE 8025-01-M

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[Declaration of Disaster Loan Area #2661]

**Iowa; Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on July 9, 1993, and amendments thereto on July 11 and 12, 1993, I find that all 99 counties in the State of Iowa constitute a disaster area as a result of damages caused by severe storms and flooding beginning on April 13, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 7, 1993, and for loans for economic injury until the close of business on April 11, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, suite 102, Fort Worth, Texas 76155 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Mower County in Minnesota; Lincoln and Union Counties in South Dakota; Burt, Cass, Dakota, Douglas, Sarpy, Thurston, and Washington Counties in Nebraska; and Putnam and Schuyler Counties in Missouri.

Any contiguous counties not listed herein are covered under a separate declaration for the same occurrence.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.625 |
| For economic injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 266106 and for economic injury the numbers are 793100 for Iowa; 793000 for Minnesota; 793300 for Missouri; 793400 for Nebraska; and 793800 for South Dakota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 15, 1993.

Bernard Kulik,

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93-17807 Filed 7-26-93; 8:45 am]

BILLING CODE 8025-01-M

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[Declaration of Disaster Loan Area #2665]

**Ohio; And Contiguous Counties in Indiana, Declaration of Disaster Loan Area**

Mercer County and the contiguous counties of Auglaize, Darke, Shelby, and Van Wert in the State of Ohio, and Adams and Jay Counties in the State of Indiana constitute a disaster area as a result of damages caused by high wind, rain, and flooding which occurred on July 1 and 2, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 13, 1993 and for economic injury until the close of business on April 15, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.625 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The numbers assigned to this disaster for physical damage are 266506 for Ohio and 266606 for Indiana. For economic injury the numbers are 793900 for Ohio and 794000 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 15, 1993.

Erskine B. Bowles,

*Administrator.*

[FR Doc. 93-17803 Filed 7-26-93; 8:45 am]

BILLING CODE 8025-01-M

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[Declaration of Disaster Loan Area #2663]

**Missouri; Declaration of Disaster Loan Area**

As a result of the President's major disaster declaration on July 9, 1993, and an amendment thereto on July 10, 1993, I find that the Counties of Andrew, Atchison, Barry, Bates, Boone, Buchanan, Callaway, Camden, Cape Girardeau, Carroll, Chariton, Clark, Clay, Cole, Cooper, Daviess, Franklin, Gasconade, Gentry, Harrison, Holt, Howard, Jackson, Jefferson, Lafayette, Lewis, Lincoln, Marion, McDonald, Miller, Moniteau, Montgomery, Newton, Nodaway, Osage, Perry, Pike, Platte, Pulaski, Ralls, Ray, Saline, Shelby, St. Charles, St Louis, Ste. Genevieve, Stone, Warren, Worth, and the City of St. Louis constitute a disaster area as a result of damages caused by severe storms and flooding beginning on June 28, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 7, 1993, and for loans for economic injury until the close of business on April 11,1994, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, suite 102, Fort Worth, Texas 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Audrain, Benton, Bollinger, Caldwell, Cass, Christian, Clinton, Crawford, Dallas, Delkalb, Grundy, Henry, Hickory, Jasper, Johnson, Knox, Laclede, Lawrence, Linn, Livingston, Macon,

Madison, Maries, Mercer, Monroe, Morgan, Pettis, Phelps, Randolph, Scotland, Scott, St. Clair, St. Francois, Taney, Texas, Vernon, and Washington in Missouri; Alexander, Jackson and Union in Illinois; Otoe, Nehama, and Richardson in Nebraska; Atchison, Brown, Cherokee, Doniphan, Johnson, Leavenworth, Linn, Miami, and Wyandotte in Kansas; Delaware and Ottawa in Oklahoma; and Benton, Boone, and Carroll in Arkansas.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.625 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 266306 and for economic injury the numbers are 793300 for Missouri; 793200 for Illinois; 793400 for Nebraska; 793500 for Kansas; 793600 for Oklahoma; and 793700 for Arkansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 15, 1993.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–17804 Filed 7–26–93; 8:45 am]

BILLING CODE 8025–01–M

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**[Declaration of Disaster Loan Area #2664]**

**Minnesota; Declaration of Disaster Loan Area**

As a result of amendments dated July 10, 1993 to the President's major disaster declaration of June 11, 1993, I find that the Counties of Blue Earth, Brown, Carver, Chippewa, Cottonwood, Dakota, Fairbault, Goodhue, Houston, Jackson, Le Sueur, Lincoln, Lyon, McLeod, Martin, Murray, Nicollet, Nobles, Pipestone, Ramsey, Redwood, Renville, Rock, Scott, Sibley, Washington, Watonwan, and Yellow Medicine constitute a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 6, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 10, 1993, and for loans for economic injury until the close of business on April 11, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, Georgia 30308 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specific date at the above location: Anoka, Chisago, Dodge, Fillmore, Freeborn, Hennepin, Kandiyohi, Lac Qui Parle, Meeker, Olmsted, Rice, Steele, Swift, Wabasha, Waseca, Winona, and Wright in Minnesota; and Brooklings, Deuel, Minnehaha, and Moody in South Dakota.

Any contiguous counties not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Business With Credit Available Elsewhere | 8.000 |
| Business and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.625 |
| For Economic Injury: | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 266406 and for economic injury the numbers are 793000 for Minnesota and 793800 for South Dakota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 15, 1993.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–17805 Filed 7–26–93; 8:45 am]

BILLING CODE 8025–01–M

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**[Declaration of Disaster Loan Area #2660]**

**Wisconsin; Amendment #1, Declaration of Disaster Loan Area**

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated July 8, 1993 to include the counties of Adams, Buffalo, Chippewa, Crawford, Dane, Green, Grant, Iowa, Juneau, La Crosse, Lafayette, Lincoln, Marathon, Pepin, Pierce, Price, Rock, Rusk, St. Croix, and Vernon in the State of Wisconsin as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Ashland, Iron, Jefferson, Langlade, Oneida, Sawyer, Vilas, Walworth, and Washburn in the State of Wisconsin.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The economic injury number for Wisconsin is 792900.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 1, 1993 and for economic injury the deadline is April 4, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 15, 1993.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–17802 Filed 7–26–93; 8:45 am]

BILLING CODE 8025–01–M

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## DEPARTMENT OF STATE

**[Public Notice No. 1833]**

**Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Safety of Navigation; Meeting**

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will

conduct an open meeting at 9:30 a.m. on Thursday, August 12, 1993, in room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting is to prepare for the 39th session of the Subcommittee on Safety of Navigation of the International Maritime Organization (IMO) which is scheduled for September 6–10, 1993, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Decisions of other IMO bodies
—Routing of ships
—Navigational aids and related equipment:
1. World-wide navigation system
2. Electronic chart display systems
3. Performance standards for radars, ARPA, gyro compasses and automatic pilots for high speed craft
4. Performance standards for non-compulsory shipborne navigational equipment
5. International Telecommunications Union (ITU) matters, including International Radio Consultative Committee (CCIR) Study Group 8
—Fishing vessel watchkeeping requirements
—International Code of Signals
—Officer of the navigational watch acting as the sole look-out in periods of darkness
—Review of World Meteorological Organization (WMO) handbooks on navigation in areas affected by sea-ice
—Revision of the navigational requirements in chapters 13, 14, 16, 17, and annex 3 of the Code of Safety for Dynamically Supported Craft
—Review of resolution A.578(14)
—Requirements for ship reporting
—Bridge procedures and revision of Standards of Training, Certification, and Watchkeeping (STCW) regulation II/1 and Standards of Training and Watchkeeping (STW) Conference resolution 1
—Revision of SOLAS chapter V
—Review of existing ship's safety standards
—Safety standards for combined pusher tug-barges
—Standard Marine Navigational Vocabulary and Seaspeak
—Removal of wreck and towage of offshore installations, structures, and platforms
—Standardization of essential bridge and engine room instrumentation
—Relationships between master/navigational watch and pilot
—The role of the human element in marine casualties
—Navigational risks in the Malacca and Singapore Straits
—Prevention of strandings at sea
—Maintaining a proper lookout
—Code for the Safe Carriage of Irradiated Nuclear Fuel
—Operational aspects of ekranoplanes
—Emergency towing requirements for tankers
—Use and application of onboard computers
—Work program
—Any other business

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NSR–3), room 1416, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: July 13, 1993.

Geoffrey Ogden,

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 93–17772 Filed 7–26–93; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 16, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49032
*Date filed:* July 14, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 11, 1993
*Description:* Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for amendment of its certificate of public convenience and necessity for Route 137 so as to authorize foreign air transportation of persons, property, and mail between a point or points in the United States and the Turks and Caicos Islands

*Docket Number:* 49040
*Date filed:* July 15, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 12, 1993
*Description:* Application of United Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, for a certificate of public convenience and necessity to authorize service between San Francisco, California, and Guadalajara, Mexico

Phyllis T. Kaylor,

*Chief, Documentary Services Division.*

[FR Doc. 93–17840 Filed 7–26–93; 8:45 am]

BILLING CODE 4910–62–P

### Aviation Proceedings; Agreements Filed During the Week Ended July 16, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 49024
*Date filed:* July 12, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC31 Reso/C 0238 dated May 18, 1993; Southeast Asia-TC1 (except USA/UST) r-1 to r-5
*Proposed Effective Date:* October 1, 1993
*Docket Number:* 49025
*Date filed:* July 12, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC123 Reso/C 0034 dated May 18, 1993; TC1–S. Asian Subc. via Atlantic (to/from USA/UST) r-1- 554d r-2- 590
*Proposed Effective Date:* October 1, 1993
*Docket Number:* 49026
*Date filed:* July 12, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC12 Reso/P 1509 dated June 29, 1993 r1-3; Expedited Mid Atlantic-Europe Resos; TC12 Reso/P 1510 dated June 29, 1993 r4-6; Expedited Mid Atlantic-Mideast Resos
*Proposed Effective Date:* Expedited August 1, 1993
*Docket Number:* 49027
*Date filed:* July 12, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC12 Reso/C 0921 dated May 18, 1993; Mid Atlantic Cargo Resos; r-1- 001aa, r-2-, 002 r-3- 554b, r-4- 584mm, r-5- 590; Tables—TC12 Rates 0491 dated June 29, 1993
*Proposed Effective Date:* October 1, 1993
*Docket Number:* 49028
*Date filed:* July 12, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC31 Reso/C 0241 dated May 18, 1993; Japan/Korea-TC1 (except USA/UST) r-1 to r-6
*Proposed Effective Date:* October 1, 1993
*Docket Number:* 49029
*Date filed:* July 12, 1993
*Parties:* Members of the International Air Transport Association

*Subject:* TC2 Reso.C 0370 dated May 21, 1993; Within Africa Cargo Resos; r-1-552, r-2- 590, r-3–003bb
*Proposed Effective Date:* October 1, 1993
*Docket Number:* 49031
*Date filed:* July 14, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC3 Telex Mail Vote 641—Japan-Philippines fares; Amendment TD 276 - to Mail Vote; r-1— 076ee, r-2— 085t
*Proposed Effective Date:* August 1, 1993
*Docket Number:* 49034
*Date filed:* July 14, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC123 Reso/C 0032 dated May 18, 1993; TC1–S. Asian Subc. via Atlantic; (except to/from USA/UST) r-1- 554d, r-2- 590
*Proposed Effective Date:* October 1, 1993
*Docket Number:* 49035
*Date filed:* July 14, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC23 Reso/C 0216 dated May 28, 1993; TC23/TC123 (except USA/UST) r-1 to r-27
*Proposed Effective Date:* October 1, 1993
*Docket Number:* 49036
*Date filed:* July 14, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC31 Reso/C 0244 dated May 18, 1993; South Pacific (except USA/UST) r-1 to r-4
*Proposed Effective Date:* October 1, 1993

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*

[FR Doc. 93–17839 Filed 7–26–93; 8:45 am]
BILLING CODE 4910-62-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 6.73 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1993.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

Dated: July 16, 1993.

**Richard E. Bowman,**
*Maritime Administrator.*

**D. James Baker,**
*Administrator, National Oceanic and Atmospheric Administration.*

**Leslie Samuels,**
*Assistant Secretary for Tax Policy.*

So ordered by: Maritime Administrator, Maritime Administration; Administrator, National Oceanic and Atmospheric Administration; Assistant Secretary for Tax Policy, Department of the Treasury.

[FR Doc. 93–17617 Filed 7–26–93; 8:45 am]
BILLING CODE 4910-81-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Discretionary Cooperative Agreement To Assess Potential Health Hazards From Wide-Spread Usage of Anti-Collision Devices Using IVHS Technologies

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Announcement of Discretionary Cooperative Agreement to conduct an evaluation of potential health hazards from wide-spread usage of anti-collision devices using IVHS technologies.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) announces the discretionary cooperative agreement program to assess potential health hazards from wide-spread usage of anti-collision devices using IVHS technologies, and solicits applications for projects under this program.

**DATES:** Applications must be received on or before August 24, 1993.

**ADDRESSES:** Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), 400 Seventh St., SW., room 5301, Washington, DC 20590; and must reference Solicitation Number DTNH22–93–R–07301.

**FOR FURTHER INFORMATION CONTACT:** Questions relating to technical issues about this cooperative agreement program should be directed to Paul R. Spencer, Office of Crash Avoidance Research (NRD–51), National Highway Traffic Safety Administration, 400 Seventh St., SW., room 6220A, Washington, DC 20590; (202) 366–5668. Questions relating to administrative issues or the budget should be directed to Doris E. Medley, Office of Contracts and Procurement (NAD–30), National Highway Traffic Safety Administration, 400 Seventh St., SW., room 5301, Washington, DC 20590; (202) 366–9560.

**SUPPLEMENTARY INFORMATION:**

**Background and Objectives**

The National Highway Traffic Safety Administration is responsible for devising strategies to save lives and reduce injuries and property damage through the prevention and reduction in severity of motor vehicle crashes. The NHTSA Office of Crash Avoidance Research conducts and manages research intended to:

- analyze vehicle performance and driver-vehicle interaction characteristics relevant to crash involvement and crash avoidance
- identify specific driver performance features associated with collision avoidance
- develop and evaluate the impact of vehicle-based crash avoidance countermeasure concepts and devices on public health and safety.

The above activities are discussed in more detail in publication DOT HS 807 850, NHTSA IVHS Plan dated June 12, 1992. One of the major elements of the Intelligent Vehicle-Highway System (IVHS) concept entails systems which will sense that a collision is pending and either instruct the driver on needed collision avoidance action or engage appropriate automatic controls as a countermeasure. These systems, when fully mature may offer a profound reduction in collision risk. A common element in all of these systems will be sensors which sense the presence, locations, speed, etc. of other highway users.

Examples include anti-collision radar systems and laser devices in lane-keeping systems, as well as radio-frequency transmissions for navigation and communications. Many of these sensors (the "active" sensors) will emit

electromagnetic radiation. Thus, widespread introduction of these technologies on the nations highways could result in a noticeable increase in the level of electromagnetic radiation. NHTSA seeks to identify and quantify, as early as possible, the nature of any potential health or safety hazards which could arise from exposure to this electromagnetic radiation. The purpose of this cooperative agreement program is to identify potential sources of radiation, estimate types and level of radiation, assess the potential health impacts, and establish health guidelines.

**NHTSA Involvement**

NHTSA, Office of Crash Avoidance Research, will be involved in all activities undertaken as part of the cooperative agreement program. NHTSA will:

1. Provide, on an as-available basis, one professional staff person, to be designated as the Contracting Officer's Technical Representative (COTR), to participate in the planning and management of the cooperative agreement, and to coordinate activities between the organization and NHTSA;

2. Make available information and technical assistance from government sources, within available resources and as determined appropriate by the COTR;

3. Provide liaison with other government agencies and organizations as appropriate;

4. Stimulate the exchange of information and ideas between the cooperative agreement recipient and other interested parties, both within and outside NHTSA through publication of non-proprietary information and other means.

**Period of Support**

NHTSA plans to support the research efforts described in this notice through the award of a cooperative agreement. NHTSA reserves the right to make multiple awards depending on the merits of the applications received.

Contingent on the availability of funds and satisfactory performance, cooperative agreement(s) will be awarded to eligible organization(s) for project periods of up to 18 months. No cooperative agreement awarded as a result of this notice shall exceed $100,000 total.

**Eligibility Requirements**

In order to be eligible to participate in this cooperative agreement program, an applicant must be a for-profit business organization (small or large), a non-profit organization, or an educational institution. Regardless of the type of organization applying for Federal funding assistance, no fee or profit will be allowed.

**Application Procedure**

Each applicant must submit one original and two copies of its application package to: National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Doris E. Medley, 400 Seventh Street, SW, room 5301, Washington, DC 20590. Only complete application packages received on or before August 24, 1993 shall be considered. Submission of three additional copies will expedite processing, but is not required. The applicant shall specifically identify any information in the application which is to be treated as proprietary, in accordance with the procedures of 49 CFR part 512, Confidential Business Information.

**Application Contents**

The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), with the required information filled in and the certified assurances included. While the Form 424–A deals with budget information, and Section B identifies budget categories, the available space does not permit a level of detail which is sufficient for a meaningful evaluation of proposed costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as the costs which the applicant proposes to contribute in support of this effort.

Applicants shall include a program narrative statement which addresses the following:

1. A description of the research to be pursued which addresses:

a. The objectives, goals, anticipated outcomes, and development efforts that will be undertaken as part of the proposed research effort;

b. The method or methods that will be used;

c. The relation of the proposed research to the public health and safety of potential electromagnetic radiation emissions.

2. The proposed program director and other key personnel identified for participation in the proposed research effort, including a description of their qualifications and their respective organizational responsibilities.

3. A description of the test facilities and equipment currently available or to be obtained for use in the conduct of the proposed research effort.

4. A description of the applicant's previous experience or on-going research program that is related to this proposed research effort.

5. A detailed schedule and budget for the proposed research effort, including the cost-sharing contribution proposed by the applicant, as well as any additional financial commitments made by other sources.

6. A detailed statement of any technical assistance which the applicant may require of NHTSA in order to successfully complete the proposed research effort.

**Application Review Process and Criteria**

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all the information required by the Application Contents section of this notice.

Each complete application from an eligible recipient will then be evaluated by a Technical Evaluation Committee. The applications will be evaluated using the following criteria:

1. The applicant's understanding of the purpose and agreement program as evidenced in the description of their proposed project. Specific attention shall be placed upon the applicant's stated proposed assessment approach.

2. The potential of the assessment effort to protect the health and safety of motor vehicle drivers, passengers, pedestrians, and bystanders.

3. The technical and financial merit of the proposed research effort, including the feasibility of approach, practicality, planned methodology, and anticipated results. Financial merit will be estimated by the cost of the cooperative agreement to be borne by NHTSA compared to the resources that would be contributed by the applicant.

4. The adequacy of test facilities and equipment identified to accomplish the proposed research effort.

5. The adequacy of the organizational plan for accomplishing the proposed research effort, including the qualifications and experience of the research team, the various disciplines represented, and the relative level of effort proposed for professional, technical, and support staff.

**Terms and Conditions of the Award**

1. If applicable, the protection of the rights and welfare of human subjects in NHTSA-sponsored experiments is established in NHTSA Orders 700–1 and 700–3. Any recipient must satisfy the requirements and guidelines of the NHTSA Orders 700 series prior to award of the cooperative agreement. A copy of

the NHTSA Orders 700 series may be obtained from the administrative information contact designated in this notice.

2. Prior to award, the recipient must comply with the certification requirements of 49 CFR part 20—Department of Transportation New Restrictions on Lobbying and 49 CFR part 29—Department of Transportation Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

3. During the effective period of the cooperative agreement(s) awarded as a result of this notice, the agreement(s) shall be subject to NHTSA's General Provisions for Assistance Agreements, the cost principles of OMB Circular A–21, A–122, or FAR 31.2, as applicable to the recipient, and the requirements of 49 CFR part 20 and part 29. The agreement(s) shall also be subject to the general administrative requirements of OMB Circular A–110, if applicable to the recipient (non-profit organizations and educational institutions).

4. If applicable, cooperative agreement(s) awarded as a result of this notice will include the provisions of Federal Acquisition Regulation (FAR) part 52 contract clauses under 52.227–11 Patent Rights Retention by the Contractor (Short Form) as applicable to and agreed to by the recipient.

5. **Reporting Requirements**

a. *Written Research Reports.* The recipient shall submit bimonthly research reports which shall be due 15 days after the reporting period, and a final research report within 45 days after the completion of the research effort. An original and three copies of each of these research reports shall be submitted to the COTR.

b. *Oral Briefings.* The recipient shall conduct semiannual oral presentations of research results for the COTR and other interested NHTSA personnel. For planning purposes, assume that these presentations will be conducted at the NHTSA Office of Crash Avoidance Research, Washington, DC. An original and three copies of briefing materials shall be submitted to the COTR.

Issue on: July 20, 1993.

**George L. Parker,**

*Associate Administrator for Research and Development.*

[FR Doc. 93–17800 Filed 7–26–93; 8:45 am]

BILLING CODE 4910–59–M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 142
Tuesday, April 27, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL ENERGY REGULATORY COMMISSION**

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

**DATE AND TIME:** July 29, 1993, 10:00 a.m.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro, 884th Meeting—July 29, 1993, Regular Meeting (10:00 a.m.)**

CAH–1.
Project No. 1835–094, Nebraska Public Power District
CAH–2.
Project No. 2425–002, The Potomac Edison Company
CAH–3.
Project No. 2528–020, Central Maine Power Company
CAH–4.
Project No. 9025–006, Weyerhaeuser Company
CAH–5.
Project No. 9401–017, Halocrest Company
CAH–6.
Project No. 1858–004, Beaver City Corporation
CAH–7.
Project Nos. 8990–029 and 8654–023, Noah Corporation
CAH–8.
Project No. 2711–002, Northern States Power Company
CAH–9.
Project No. 2832–019, Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District and Big Bend Irrigation District.
CAH–10.
Project No. 11409–001, North Side Canal Company

**Consent Agenda—Electric**

CAE–1.
Docket No. ER93–706–000, Indiana Michigan Power Company and Ohio Power Company
CAE–2.
Docket No. ER93–676–000, Wisconsin Power & Light Company
CAE–3.
Docket No. ER93–699–000, Puget Sound Power and Light Company
CAE–4.
Docket No. QF86–398–002, Pomona Cogeneration Limited Partnership
CAE–5.
Docket No. EG93–54–000, Great Bay Power Company
CAE–6.
Docket Nos. ER93–594–001, ER93–595–001 and ER93–604–001, Pennsylvania Power and Light Company
CAE–7.
Docket No. ER93–401–003, Montaup Electric Company
CAE–8.
Docket No. ER93–302–001, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE–9.
Omitted
CAE–10.
Omitted
CAE–11.
Docket No. EL93–39–000, Daggett Leasing Corporation
Docket No. QF84–434–002, LUZ Solar Partners Ltd.
Docket No. QF85–504–003, LUZ Solar Partners, II, Ltd.
CAE–12.
Docket No. EL93–37–000, Turlock Irrigation District v. Pacific Gas and Electric Company
CAE–13.
Omitted
CAE–14.
Docket Nos. ER76–205–014, (Phase II), ER79–150–022, (Phase II), ER81–177–016, ER82–427–011, ER84–75–017, ER86–271–003, ER87–483–002 and FA85–67–003, Southern California Edison Company
CAE–15.
Docket No. ER93–397–000, Ocean State Power
Docket No. ER93–398–000, Ocean State Power II
CAE–16.
Docket Nos. ER86–562–005, ER87–232–003 and ER91–149–000, Boston Edison Company
CAE–17.
Docket No. EL92–42–000, UNITIL Power Corporation and Public Service Company of New Hampshire
CAE–18.
Docket No. FA90–24–001, The Connecticut Light and Power Company
Docket No. FA90–25–001, Western Massachusetts Electric Company
CAE–19.
Docket No. RM90–8–000, Amendments to FERC Form Nos. 1 and 1–F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses; Technical Amendment
CAE–20.
Docket No. EG93–56–000, Las Vegas Energy Storage Limited Partnership

**Consent Agenda—Oil and Gas**

CAG–1.
Docket No. RP93–139–000, Transwestern Pipeline Company
CAG–2.
Docket No. RP93–141–000, Northern Natural Gas Company
CAG–3.
Docket No. RP93–146–000, Panhandle Eastern Pipe Line Company
CAG–4.
Docket No. RP93–149–000, ANR Pipeline Company
CAG–5.
Docket Nos. TA93–1–86–000, 001, 002, 003 and TQ93–5–86–000, Pacific Gas Transmission Company
CAG–6.
Docket No. TM93–6–16–000, Texas Gas Transmission Corporation
CAG–7.
Docket No. TQ93–7–34–000, Florida Gas Transmission Company
CAG–8.
Docket No. TQ93–8–16–000, National Fuel Gas Supply Corporation
CAG–9.
Docket Nos. RP93–56–001 and RP93–86–001, Transwestern Pipeline Company
CAG–10.
Omitted
CAG–11.
Docket No. RP93–87–000, Natural Gas Pipeline Company of America
CAG–12.
Docket No. RP93–62–005, Equitrans, Inc.
CAG–13.
Docket No. RP93–144–000, Southern Natural Gas Company
CAG–14.
Docket No. RP92–120–007, Panhandle Eastern Pipe Line Company
CAG–15.
Docket No. PR91–22–000, Cranberry Pipeline Corporation
CAG–16.
Docket No. PR92–10–000, Cranberry Pipeline Corporation
CAG–17.
Docket No. PR93–8–000, Bridgeline Gas Distribution Company
CAG–18.
Docket Nos. GP91–8–000 and 003, Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin

Drilling Program: 72–73 v. Rocky Mountain Natural Gas Company, a Division of KN Energy, Inc.
Docket Nos. GP91–10–000 and 003, Rocky Mountain Natural Gas Company v. Jack J. Grynberg, Individually and as General Partner for the Greater Green River Basin Drilling Program: 72–73

CAG–19.
Docket No. TF93–4–24–001, Equitrans, Inc.

CAG–20.
Docket No. RP93–14–011, Algonquin Gas Transmission Company

CAG–21.
Omitted

CAG–22.
Docket Nos. TA93–1–25–001 and TQ93–11–25–001, Mississippi River Transmission Corporation

CAG–23.
Docket No. RP88–211–039, CNG Transmission Corporation

CAG–24.
Docket No. RP93–106–003, Texas Gas Transmission Corporation

CAG–25.
Docket Nos. RP91–143–023, RP91–231–005 and RS92–63–003, Great Lakes Gas Transmission Limited Partnership

CAG–26.
Docket Nos. RP91–143–012, RP91–231–004 and RP89–186–011, Great Lakes Gas Transmission Limited Partnership

CAG–27.
Docket Nos. RP91–104–000, 001, RP91–106–000, 001, RP91–109–000, RP91–215–000, RP91–217–000 and RP92–8–000, Transwestern Pipeline Company

CAG–28.
Docket Nos. RP92–149–001 and 002, Transcontinental Gas Pipe Line Corporation

CAG–29.
Docket No. TM91–7–28–003, Panhandle Eastern Pipe Line Company

CAG–30.
Docket No. RP93–109–003, Williams Natural Gas Company

CAG–31.
Docket No. RP85–202–012, Trunkline Gas Company

CAG–32.
Docket Nos. RP85–203–014 and RP88–203–011, Panhandle Eastern Pipe Line Company

CAG–33.
Docket Nos. RP92–171–000, 001, 002, TA92–1–17–005, 006 and 007, Texas Eastern Transmission Corporation

CAG–34.
Docket Nos. TM90–3–42–005, 006, RP90–49–003, CP88–99–014, TM90–5–42–002, 003, RP86–126–007 and RP90–43–002, Transwestern Pipeline Company

CAG–35.
Docket No. RP93–14–004, Algonquin Gas Transmission Company

CAG–36.
Omitted

CAG–37.
Docket Nos. TA91–1–17–004 and TM91–1–17–001, Texas Eastern Transmission Corporation

CAG–38.
Docket No. RA88–1–000, LePaul Oil Company, Inc.

CAG–39.
Docket No. RA85–3–001, Commonwealth Oil Refining Company, Inc.

CAG–40.
Docket Nos. IS93–29–000 and OR93–4–000, Chevron Pipe Line Company

CAG–41.
Docket No. FA90–18–000, Eastern Shore Natural Gas Company

CAG–42.
Docket No. GP93–4–001, Railroad Commission of Texas, Tight Formation Determination, Texas-87, Edwards Limestone Formation, FERC JD93–00670T

CAG–43.
Docket No. RS92–11–015, Texas Eastern Transmission Corporation

CAG–44.
Docket Nos. RS92–23–010, RP91–203–030 and RP92–132–031, Tennessee Gas Pipeline Company

CAG–45.
Docket No. CP91–2759–001, Northern Natural Gas Company

CAG–46.
Docket No. CP91–2394–000, Questar Pipeline Company

CAG–47.
Docket No. CP92–697–000, United Gas Pipe Line Company

CAG–48.
Docket No. CP93–162–000, Colorado Interstate Gas Company

CAG–49.
Docket No. CP93–146–000, Columbia Gas Transmission Corporation

CAG–50.
Omitted

CAG–51.
Docket No. CP93–69–000, Petal Gas Storage Company

CAG–52.
Docket No. CP93–116–000, Panhandle Eastern Pipe Line Company

CAG–53.
Omitted

CAG–54.
Omitted

CAG–55.
Docket No. CP92–661–000 Freeport-McMoRan, Inc. and Aquila Energy Marketing Corporation v. KN Energy, Inc. Docket No. CP92–519–000, KN Energy, Inc

CAG–56.
Docket No. CP92–242–000, Northern Natural Gas Company

CAG–57.
Docket No. CP93–117–000, San Diego Gas & Electric Company Docket No. CP93–119–000, Southern California Gas Company and San Diego Gas & Electric Company

CAG–58.
Docket No. CP93–98–000, Gas Company of New Mexico, a Division of Public Service Company of New Mexico

CAG–59.
Docket Nos. RS92–86–004, RP92–108–006 and RP92–137–016, Transcontinental Gas Pipe Line Company

CAG–60.
Docket No. MG93–4–000, National Fuel Gas Supply Corporation

CAG–61.
Docket Nos. RP89–160–016, RP92–165–014 and RP89–114–001, Trunkline Gas Company

CAG–62.
Docket Nos. RP93–150–000, Northern Natural Gas Company

CAG–63.
Docket No. RS92–85–001, Trailblazer Pipeline Company

CAG–64.
Docket No. CP91–2206–000, Tennessee Gas Pipeline Company

CAG–65.
Docket Nos. RS92–21–004, 005, RP93–101–001, RP93–103–001 and RP93–105–001, National Fuel Gas Supply Corporation

CAG–66.
Docket Nos. RS92–64–001, 002, 003 and 004, High Island Offshore System Docket Nos. RS92–88–001, 002 and 006, U–T Offshore System

CAG–67.
Docket Nos. RS92–67–001 and 002, Northern Border Pipeline Company

**Hydro Agenda**

H–1.
Reserved

**Electric Agenda**

E–1.
Docket No. TX93–1–000, Tex-La Electric Cooperative of Texas, Inc. Order on complaint under section 211 of the Federal Power Act.

E–2.
Docket No. EC93–6–000, Cincinnati Gas & Electric Company and PSI Energy, Inc. Whether the merger between the two companies is consistent with the public interest.

E–3.
Docket No. PL93–2–002, Prior Notice and Filing Requirements Under Part II of the Federal Power Act.

E–4.
Docket No. RM93–3–000, Regional Transmission Groups.

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR–1.
Docket No. RM93–4–000, Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations. Notice of Proposed Rulemaking.

*II. Restructuring Matters*

RS–1.
Docket Nos. RS92–87–014 and 016, Transwestern Pipeline Company. Order on compliance and rehearing.

RS–2.
Docket Nos. RS92–9–002, 003 and RP93–18–001, Questar Pipeline Company. Order on compliance and rehearing.

RS–3.
Docket No. RS92–3–001, Arkla Energy Resources Company. Order on compliance and rehearing.

RS–4.
Docket Nos. RS92–74–000, RP92–157–000 and 003, Pacific Offshore Pipeline Company. Order on compliance.

RS–5.

Docket Nos. RS93–15–002, 003, RP93–62–004 and 001, Equitrans, Inc. Order on compliance.

RS–6.

Docket Nos. RS92–19–000, 001, 002, RP92–104–000 and RP92–131–000, KN Energy, Inc. Order on compliance and rehearing.

RS–7.

Docket Nos. RS92–12–002, 003, RP89–183–046, TC89–8–008, RP91–43–008, TM91–3–43–008 and RP91–152–024, Williams Natural Gas Company. Order on compliance and rehearing.

RS–8.

Docket Nos. RS92–30–001 and 002, Carnegie Natural Gas Company. Order on compliance and rehearing.

RS–9.

Docket No. RS93–2–000, Algonquin LNG, Inc. Order on compliance.

RS–10.

Docket Nos. RS92–33–002, RP91–204–013 and RP90–111–022, East Tennessee Gas Company. Order on compliance and rehearing.

RS–11.

Docket Nos. RS92–1–004 and 005, ANR Pipeline Company. Order on compliance and rehearing.

RS–12.

Docket Nos. RS92–25–000, 001, 002, 003 and CP93–504–000, Trunkline Gas Company. Order on compliance and rehearing.

RS–13.

Docket No. RS92–11–008, Texas Eastern Transmission Corporation.

Docket No. RS93–63–002, Great Lakes Gas Transmission Limited Partnership. Order on rehearing.

RS–14.

Docket Nos. RS92–20–001 and 002, Mid Louisiana Gas Company. Order on compliance and rehearing.

RS–15.

Docket No. CP91–1794–001, Trunkline Gas Company and United Gas Pipe Line Company. Order on amendment of existing capacity release authorization.

*III. Pipeline Certificate Matters*

PC–1.

Reserved

Dated: July 22, 1993.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17978 Filed 7–23–93; 11:19 am]

BILLING CODE 6717–01–M

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 11:00 a.m., Monday, August 2, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 23, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–18032 Filed 7–23–93; 2:40 pm]

BILLING CODE 6210–01–P

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**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of July 26, August 2, 9, and 16, 1993.

**PLACE** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

**MATTERS TO BE CONSIDERED:**

**Week of July 26**

*Thursday, July 29*

10:00 a.m.

Briefing on Options for Changes to Regulation of Nuclear Medicine (Public Meeting)

(Contact: Darrel Nash, 301–504–3610)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 2—Tentative**

*Monday, August 2*

1:30 p.m.

Briefing on Status of Part 100 Rule Change and Proposed Update on Source Term and Related Issues (Public Meeting)

(Contact: Leonard Soffer, 301–492–3916)

*Tuesday, August 3*

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Amendments to 10 CFR Part 73, to Require Annual Physical Fitness Performance Testing and Updated Day Firing Qualifications for Tactical Response Team Members, Armed Response Personnel, and Guards at Fuel Cycle Facilities Possessing Formula Quantities of Special Nuclear Material (Tentative)

(Contact: Harry Tovmassian, 301–492–3634)

**Week of August 9—Tentative**

*Wednesday, August 11*

2:00 p.m.

Briefing on Strategic Information Technology Plan (Public Meeting)

(Contact: Fran Goldberg, 301–492–7216)

3:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 16—Tentative**

*Thursday, August 19*

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice if provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the status of Meeting Call (Recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 504–1661.

Dated: July 23, 1993.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 93–18031 Filed 7–23–93; 2:30 pm]

BILLING CODE 7590–01–M

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**RURAL TELEPHONE BANK**

**ACTION:** Staff Briefing for the Board of Directors.

**TIME AND DATE:** 10 a.m., Thursday, August 5, 1993.

**PLACE:** Chesapeake II Room, Holiday Inn Inner Harbor Hotel, 301 West Lombard Street, Baltimore, MD.

**STATUS:** Open.

**MATTERS TO BE DISCUSSED:** The staff briefing will consist of matters relating to:

1. Status of proposed regulations and legislation.
2. Prepayment policy issues effecting loans approved since FY 1992.
3. The concept of compensating benefits.
4. Guidelines for determining Class C stock dividend rate.
5. Requirements for retiring Class A and Class B stock.
6. Ownership of RTB's balance sheet after privatization.
7. The status of Equity Fund account.

**ACTION:** Regular Meeting of the Board of Directors.

**TIME AND DATE:** 3 p.m., Thursday, August 5, 1993.

**PLACE:** Chesapeake II Room, Holiday Inn Inner Harbor Hotel, 301 West Lombard Street, Baltimore, MD.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.

2. Approval of Minutes of May 7, 1993, Board meeting.
3. Report on loans approved in the third quarter of FY 1993.
4. Review of third quarter, FY 1993, financial statements.
5. Report of ad hoc committee on privatization of the RTB
6. Report of ad hoc committee on prepayments.
7. Resolution to set annual Class C stock dividend rate.
8. Establish date and location of next regular Board meeting.
9. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720–0530.

Dated: July 22, 1993.

James B. Huff, Sr.,

*Governor, Rural Telephone Bank.*

[FR Doc 93–17979 Filed 7–27–93; 11:19 am]

BILLING CODE 3410–15–F

VOL 58 ISS 142 JL 27 1993 UMI



# Corrections

Federal Register
Vol. 58, No. 142
Tuesday, July 27, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**7 CFR Part 318**

**[Docket No. 91-094-2]**

### Fruits and Vegetables From Hawaii, Puerto Rico, and the Virgin Islands

*Correction*

In rule document 93-3282 beginning on page 7953 in the issue of Thursday, February 11, 1993, amke the following corrections:

**§ 318.13-16 [Corrected]**

1. On page 7959, in the second column, in the amendatory instruction 9. to § 318.13-16, in the second line, "transmit permit" should read "transit permit".

**§ 318.13-17 [Corrected]**

2. On page 7960, in the first column, in § 318.13-17(c), in the first line, "*Making* ***" should read "*Marking* ***".

3. On the same page, in the 2d column, in § 318.13-17(f), in the 12th line, "remaking" should read "remarking"

4. On the same page, in the 3rd column, in § 318.13-17(i)(1), in the 18th line, "transmit" should read "transit".

**§ 318.58-12 [Corrected]**

5. On page 7962, in the second column, in amendment 19., in the heading, "§ 318.58-1" should read "§ 318.58-12".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 93-051-1]**

### Availability of Environmental Assessments and Findings of No Significant Impact Relative To Issuance of Permits to Field Test Genetically Engineered Organisms

*Correction*

In notice document 93-11256 beginning on page 28387 in the issue of Thursday, May 13, 1993, make the following corrections:

1. On page 28388, in the table:

a. In the first column (Permit No.), in the fourth entry, "92-043-02" should read "93-043-02" and "12-22-92" should read "5-22-92".

b. In the same column, in the sixth entry, "91-333-03" should read "91-358-01" and "1-20-92" should read "4-10-92".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

**7 CFR Part 1980**

**RIN 0575-AB33**

### Certified Lender Program

*Correction*

In rule document 93-14486 beginning on page 34302 in the issue of Thursday, June 24, 1993, make the following correction:

**§ 1980.118 [Corrected]**

On page 34332, in the second column, in amendatory instruction 25. to § 1908.118, in the first line, insert "adding" after "by".

BILLING CODE 1505-01-D

## FEDERAL HOUSING FINANCE BOARD

**12 CFR Parts 935 and 940**

**[No. 93-43]**

### Advances

*Correction*

In rule document 93-11305 beginning on page 29456 in the issue of Thursday, May 20, 1993, make the following correction:

On page 29464, in the third column, in the sixth line from the top, "CAFE" should be removed.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Part 101**

**[Docket No. 90N-135D]**

**RIN 0905-AD96**

### Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances

*Correction*

In proposed rule document 93-14274 beginning on page 33715 in the issue of Friday, June 18, 1993, make the following corrections:

1. On page 33725, in the second column, in COMMENTS, in the second line, "July 19, 1993" should read "August 17, 1993".

**§ 101.12 [Corrected]**

2. On page 33726, in § 101.12(b), in Table 2, under Label statement, "packet(s)," should be flush with the dash.

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Part 101**

**[Docket No. 91N-334D]**

**RIN 0905-AD96**

### Food Labeling: Requirements for Nutrient Content Claims for Dietary Supplements of Vitamins, Minerals, Herbs, and Other Similar Nutritional Substances

*Correction*

In proposed rule document 93-14273 beginning on page 33731 in the issue of Friday, June 18, 1993, on page 33748, in the third column, in COMMENTS, in the

second line, "July 19, 1993" should read "August 17, 1993".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

### RIN 1218-AB26

### Air Contaminants

*Correction*

In rule document 93-15292 beginning on page 35338 in the issue of Wednesday, June 30, 1993 on page 35351, table Z-3 was published incorrectly and should read as set forth below:

TABLE Z–3 MINERAL DUSTS

| Substance | mppcf[a] | mg/m³ |
|---|---|---|
| Silica: | | |
| Crystalline | | |
| Quartz (Respirable) | 250[b] / %$SiO_2$+5 | 10 mg/m³[e] / % $SiO_2$ + 2 |
| Quartz (Total Dust) | | 30 mg/m³ / % $SiO_2$ + 2 |
| Cristobalite: Use ½ the value calculated from the count or mass formulae for quartz | | |
| Tridymite: Use ½ the value calculated from the formulae for quartz | | |
| Amorphous, including natural diatomaceous earth | 20 | 80 mg/m³ / %$SiO_2$ |
| Silicates (less than 1% crystalline silica): | | |
| Mica | 20 | |
| Soapstone | 20 | |
| Talc (not containing asbestos) | 20[c] | |
| Talc (containing asbestos) Use asbestos limit. | | |
| Tremolite, asbestiform (see 29 CFR 1910.1001). | | |
| Portland cement | 50 | |
| Graphite (Natural) | 15 | |
| Coal Dust: | | |
| Respirable fraction less than 5% $SiO_2$ | | 2.4 mg/m³[e] / %$SiO_2$+2 |
| Respirable fraction greater than 5% $SiO_2$ | | 10 mg/m³[e] / %$SiO_2$+2 |
| Inert or Nuisance Dust:[d] | | |
| Respirable fraction | 15 | 5 mg/m³ |
| Total dust | 50 | 15 mg/m³ |

Note—Conversion factors - mppcf X 35.3 = million particles per cubic meter = particles per c.c.

[a] Millions of particles per cubic foot of air, based on impinger samples counted by light-field techniques.

[b] The percentage of crystalline silica in the formula is the amount determined from airborne samples, except in those instances in which other methods have been shown to be applicable.

[c] Containing less than 1% quartz; if 1% quartz or more, use quartz limit.

[d] All inert or nuisance dusts, whether mineral, inorganic, or organic, not listed specifically by substance name are covered by this limit, which is the same as the Particulates Not Otherwise Regulated (PNOR) limit in Table Z–1.

[e] Both concentration and percent quartz for the application of this limit are to be determined from the fraction passing a size-selector with the following characteristics:

| Aerodynamic diameter (unit density sphere) | Percent passing selector |
|---|---|
| 2 | 90 |
| 2.5 | 75 |
| 3.5 | 50 |
| 5.0 | 25 |
| 10 | 0 |

The measurements under this note refer to the use of an AEC (now NRC) instrument. The respirable fraction of coal dust is determined with an MRE; the figure corresponding to that of 2.4 mg/m³ in the table for coal dust is 4.5 mg/m³.

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Part II

# Department of Education

34 CFR Part 110
Age Discrimination Act Implementation; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 110

RIN 1870–AA05

## Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: These final regulations implement provisions of the Age Discrimination Act of 1975 (Act) and the general governmentwide regulations published in the Federal Register on June 12, 1979. They incorporate the standards for determining what is age discrimination. They also discuss the responsibilities of Department of Education (ED) recipients and the investigation, conciliation, and enforcement proceedings that ED will use to ensure compliance with the Act.

EFFECTIVE DATE: These regulations will be effective on August 26, 1993.

FOR FURTHER INFORMATION CONTACT: Norma V. Cantú, Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–1100. Telephone: (202) 205–5413. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9683 or 1–800–421–3481.

SUPPLEMENTARY INFORMATION:

### I. Background Information

In November 1975, Congress enacted the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) as part of the amendments to the Older Americans Act (Pub. L. 94–135).

The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Civil Rights Restoration Act of 1987, Public Law 100–259, which was enacted on March 22, 1988, amended the Act and other civil rights statutes to define "program or activity" to mean all of the operations of specified entities, any part of which is extended Federal financial assistance.

The Act applies to discrimination at all age levels. It also contains certain exceptions that permit, under certain circumstances, use of age distinctions or reasonable factors other than age that would otherwise be prohibited by the Act. The final regulations implementing the Act contain a prohibition against intimidation or retaliation that is similar to that contained in the regulations implementing other civil rights statutes enforced by ED. See 34 CFR 100.7(e), incorporated by reference in 34 CFR 104.61 and 106.71.

The Act required the former Department of Health, Education, and Welfare (HEW), ED's predecessor agency, to issue general governmentwide regulations setting standards to be followed by all Federal departments and agencies in implementing the Act. The Act also required each department or agency that operates programs of Federal financial assistance to issue regulations to carry out the Act's prohibition against age discrimination and to provide appropriate investigative, conciliation, and enforcement procedures. Agency-specific regulations must conform to the general governmentwide regulations.

HEW issued the final governmentwide regulations on June 12, 1979 (44 FR 33768). The Act and the regulations' prohibition against age discrimination became effective on July 1, 1979. On September 24, 1979, HEW published a notice of proposed rulemaking (NPRM) for its agency-specific regulations in the Federal Register (44 FR 55108). In May 1980, HEW was reorganized as the Department of Health and Human Services (HHS) and the Department of Education pursuant to the Department of Education Organization Act (Pub. L. 96–88). HHS promulgated its final regulations on December 28, 1982 (47 FR 57850). Published today are the final ED age discrimination regulations, which are issued pursuant to the provisions of the Act, the governmentwide regulations, and the Department of Education Organization Act. Publication of the final regulations has been delayed due to the uncertainty created by litigation of the HHS agency-specific regulations, which complicated the drafting of these regulations. In addition, continuous changes occasioned by amendments from Congress and enactment of new programs made appendix A, which contains the age distinctions in ED's statutes and regulations, unwieldy and in need of constant updating.

Implementation of the final ED age regulations is integrally related to achieving the National Education Goals, which embody the belief that learning is a lifelong challenge and that efforts must be made to enhance the knowledge and skills of all Americans. National Education Goal 5 emphasizes the need for adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy. The purpose of the Act as implemented by the final ED age regulations complements the National Education Goals by promoting access to public education irrespective of age.

### II. Significant Changes From the NPRM

Several changes were made in these final regulations as a result of public comment and review in ED. The general changes are summarized first, and then additional changes are discussed by subpart.

#### *A. General Changes*

The NPRM incorporated by reference several provisions found in the governmentwide regulations in 45 CFR 90.3, 90.4, 90.12, 90.13, 90.14, 90.15, 90.16, and 90.49. Because public comment indicated that this incorporation by reference could be confusing and more time-consuming to the user and that the referenced regulations may not be available to the user, these provisions are fully set out in the final regulations as follows:

1. Section 90.3, "What programs and activities does the Age Discrimination Act of 1975 cover?" is found in these regulations in § 110.2, "To what programs do these regulations apply?"

2. The definitions in § 90.4 are added to the definitions in § 110.3 of these regulations. The final regulations define four terms that were not defined in the governmentwide regulations: "Applicant for Federal financial assistance," "Department," "ED," and "Subrecipient." Definitions of these terms have been included to provide greater clarity to both the public and recipients of Federal financial assistance.

3. Section 90.12, "Rules against age discrimination," is found in § 110.10 of these regulations.

4. Section 90.13, "Definitions of 'normal operation' and 'statutory objective,'" is found in § 110.11 of these regulations.

5. Section 90.14, "Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity," is found in § 110.12 of these regulations.

6. Section 90.15, "Exceptions to the rules against age discrimination: Reasonable factors other than age," is found in § 110.13 of these regulations.

7. Section 90.16, "Burden of proof," is found in § 110.14 of these regulations.

8. The requirements of section 90.49, "Remedial and affirmative action by recipients," are dealt with in § 110.38, "Remedial action by recipients," § 110.15, "Affirmative action by recipients," and § 110.16, "Special benefits for children and the elderly."

*B. Subpart A (§§ 110.1–110.3)*

A new paragraph (b) was added to § 110.2 (formerly § 91.2 of the NPRM) to make clear that although the Act generally covers all programs and activities that receive Federal financial assistance, it does not apply to any age distinction "established under authority of any law" that provides benefits or establishes criteria for participation on the basis of age or in age-related terms.

Age distinctions that are "established under authority of any law" may continue in use. Section 110.2(b) adopts the definition of "any law" established in the governmentwide regulations in 45 CFR 90.3. Therefore, these regulations do not apply to age distinctions contained in Federal statutes, State statutes, or local statutes or ordinances adopted by elected, general purpose legislative bodies.

The Act also excludes from coverage most employment practices, except in federally funded public service employment programs under the Job Training Partnership Act (formerly the Comprehensive Employment and Training Act of 1974; see 29 U.S.C. 1501 *et seq.*). However, the final regulations apply to the Federal Work Study Program, which is considered both employment and Federal financial assistance. The Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission continues to be the Federal statute that prohibits employment discrimination on the basis of age.

*C. Subpart B (§§ 110.10–110.17)*

Section 110.16 states that if a recipient provides special benefits to the elderly or children, the use of those age distinctions is presumed to be necessary to the normal operation of the program. Examples of special benefits may be special discounts or reduced fees for the elderly in a federally funded program.

The provision allowing special benefits has been revised somewhat from that contained in the governmentwide regulations and the NPRM to make it clear that special benefits are presumed to be within the statutory exception applicable to actions necessary to the normal operation of the program. The NPRM and governmentwide regulations stated that those benefits would be presumed to be voluntary affirmative action. The new wording follows the HHS regulations in 45 CFR 91.17 and is consistent with congressional intent that the normal operation of programs properly designed to provide special benefits for the elderly or children not be disturbed. Thus, those special benefits are entitled to a presumption of validity.

In reviewing special benefits in specific cases to ensure that they are in fact consistent with the Act and congressional intent, ED will consider the rationale for the special benefits, the effect on other individuals, and all other relevant factors. The regulations leave to the reasonable discretion of the recipient the definition of who qualifies as "children" or "the elderly" for purposes of receiving a special benefit.

A new § 110.17 was added to these final regulations to clarify the Act's effect on age distinctions contained in other regulations promulgated by ED. It provides that age distinctions contained in regulations published by ED are presumed to be necessary to the achievement of a statutory objective of the program to which the regulations apply. It follows the HHS agency-specific regulations (45 CFR 91.18), and it creates the presumption that all age distinctions contained in ED regulations are consistent with the Act.

Within 12 months of publishing these final age regulations, ED will review age distinctions imposed on recipients by its regulations and publish, for comment in the **Federal Register**, an accounting of the age distinctions, including a justification for continuance or a list of those to be eliminated.

*D. Subpart C (§§ 110.20–110.25)*

In response to comments and ED's review of the NPRM, § 91.33 of the NPRM, "Self-evaluation," has been revised and appears in the final regulations in § 110.24, "Recipient assessment of age distinctions." A self-evaluation is no longer automatically required, although ED may require a recipient to complete a self-evaluation in conjunction with a compliance review or a complaint investigation. Requiring a self-evaluation by all of ED's recipients employing more than 15 employees was deemed to be too burdensome. ED determined that a more effective and less intrusive way of achieving the objective of making recipients aware of their responsibilities under the Act was to add to the regulations two sections, one requiring assurances of compliance and the other requiring a recipient to designate an employee responsible for coordinating its compliance with the Act, to provide notice to beneficiaries, and to adopt grievance procedures.

Section 110.23 requires applicants for Federal financial assistance to complete assurances of compliance. The addition of standard assurances is less burdensome and less costly than a mandatory self-evaluation. Assurances of compliance are also required under other civil rights statutes enforced by ED. See 34 CFR 100.4, 104.5, and 106.4.

Section 110.25, "Designation of responsible employee, notice, and grievance procedures," was added to further the goals of the Act. As is true for § 110.23, these responsibilities are already required under other civil rights statutes enforced by ED. See 34 CFR 104.7–104.8 and 106.8–106.9. By designating an employee to coordinate compliance, a recipient helps to ensure that it will carry out its responsibilities under the Act and these regulations. The notice provision, whereby recipients are required to notify beneficiaries of information regarding the provisions of the Act and these regulations, helps ensure that beneficiaries are aware of their rights. Requiring recipients to have grievance procedures provides both recipients and complainants the opportunity to resolve disputes at the institutional level. However, filing a grievance with a recipient will not satisfy the exhaustion requirements of the Act and of these regulations in § 110.39.

*E. Subpart D (§§ 110.30–110.39)*

In § 110.32(b), which deals with mediation, the language has been modified to clarify that "meetings" may be conducted by telephone. Also, the sentence in the NPRM requiring at least one meeting with the mediator before ED accepts the judgment that an agreement is not possible has been deleted. As a practical matter, if either the recipient or the complainant refuses to meet for mediation, there is no point in holding the complaint for 60 days before returning it to ED for investigation. Section 110.32(e)(3) permits the mediator to return the complaint if the mediator determines that agreement cannot be reached. In some cases, it may be unnecessary to hold a meeting to determine that agreement cannot be reached.

The last sentence in § 110.32(c) has been revised to read, "ED takes no further action on the complaint unless *informed that* the complainant or the recipient fails to comply with the agreement, *at which time ED reinstates the complaint.* The italicized words were added to make clear that ED neither monitors nor enforces mediation agreements. A complainant must notify ED that the mediation agreement is not being complied with. When ED is so notified by the complainant, ED reinstates the complaint and investigates whether the recipient is complying with the Act and these regulations. ED does not investigate whether the agreement is being fulfilled.

Section 110.33 was revised to follow more closely the governmentwide regulations in 45 CFR 90.43(c) (4) and (5) and the procedures that are used by ED for complaints filed under other civil rights statutes enforced by ED. Thus, it requires that, in the initial investigation, ED use fact-finding methods, including discussions with the complainant and the recipient, to establish the facts, and, if possible, resolve the complaint to the mutual satisfaction of the parties.

## III. Analysis of Comments and Changes

More than 40,000 copies of the proposed HEW agency-specific regulations (NPRM) were distributed during the 60-day comment period following its publication on September 24, 1979. Informational meetings were conducted in Washington, DC., Wisconsin, Oregon, and Florida during October and November 1979. In response to the invitation for comments in the NPRM, 72 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations is published as appendix B to these final regulations.

## IV. Examples of How ED Interprets the Exemption From and Exceptions to the Prohibition Against Age Discrimination

Although the Act generally covers all programs and activities that receive Federal financial assistance, it does not apply to age distinctions established by laws that provide benefits or establish criteria for participation on the basis of age or in age-related terms. In addition, the Act and the regulations also include exceptions to the prohibition against age discrimination. If the action reasonably takes into account age as a factor necessary to the normal operation of a program or to the achievement of a statutory objective, it is not prohibited by the Act. Subpart B of the regulations sets out a four-part test that must be met.

The following discussion and examples illustrate the use of standards for determining whether age distinctions are permissible. It is important to recognize that the examples are simplified in order to illustrate a particular point. The examples are provided here in response to requests from 23 commenters to clarify the exceptions.

### *A. Age Distinctions "Established Under Authority of Any Law" (§ 110.2)*

The Age Discrimination Act of 1975 and these regulations do not apply to age distinctions "established under authority of any law" that provides benefits or establishes criteria for participation on the basis of age or in age-related terms. The governmentwide regulations have defined the term "any law" to mean age distinctions contained in a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body. Examples of age distinctions in State and local statutes that may affect ED-funded programs include age limits for compulsory school attendance or the provision of free public education.

### *B. Age Distinctions That Are Necessary to Normal Operation or to the Achievement of a Statutory Objective (§ 110.12)*

To qualify for the normal operation or statutory objective exception, an explicit use of age must meet all four parts of the test set out in § 110.12, which requires that—

(a) The age distinction must be used as a measure or approximation of one or more other characteristics;

(b) The other characteristic or characteristics must be measured or approximated for the program to operate normally or meet its statutory objective;

(c) The other characteristic or characteristics can be reasonably measured or approximated by using age; and

(d) It is impractical to measure the other characteristic or characteristics on an individual basis.

#### *Example 1: Permissible Use of Age Related to Normal Operation*

An organization receiving financial assistance from ED imposes a maximum age limit of 19 on membership. The organization's primary objective is to prepare youth to assume adult responsibility.

#### *Analysis of the Use of Age*

(a) Age is used by the recipient as a measure of the period during which its activities are needed to prepare for the assumption of adult responsibility.

(b) The need for the activities must be measured in order for the organization's objective to be met.

(c) Age is a reasonable measure of the need for its activities.

(d) It is not practical to measure this need on an individual basis. Although some persons over the age limit might benefit from the organization's activities and some persons within the age limit might not need them, there is no practical way to identify these persons individually.

The use of the age limit passes all parts of the four-part test and, therefore, *is necessary* to the normal operation of this recipient's program.

#### *Example 2: Prohibited Use of Age Related to Normal Operation*

The English department of a university receiving financial assistance from ED limits its graduate fellowships to persons under age 25. The university claims that the scholarship program is designed to encourage talented but relatively inexperienced and untrained individuals to pursue graduate training in the field of English literature.

#### *Analysis of the Use of Age*

(a) Age is used by the recipient to approximate experience and training in English literature.

(b) Measurement of experience and training is necessary to the normal operation of the English department's graduate fellowship program.

(c) Age, however, is not a reasonable measure of an individual's experience or training. Talented but inexperienced and untrained individuals of all ages may be seeking graduate aid through the university's English department. The use of age *fails* this part of the test.

(d) Experience and training in the field of English literature can reasonably be measured directly on an individual basis. The use of age *fails* this part of the test.

The age limitation does not pass either part (c) or part (d) of the four-part test. Therefore, the use of age *is not necessary* to the normal operation of the English department's graduate fellowship program.

#### *Example 3: Prohibited Use of Age Related to Statutory Objectives*

The purpose of the Adult Education Act is to provide education that will enable all adults to continue their education to at least the level of secondary school completion and enable them to become more employable, productive, and responsible citizens. The Act defines an adult as "any individual who has attained the age of 16." A recipient gives priority to applicants aged 16 to 35 for enrollment in its adult education program because they are more likely to find employment subsequent to completion of the program than older persons.

#### *Analysis of the Use of Age*

(a) The upper age limit of 35 is used as an approximation of employability in adults.

(b) It is not necessary to measure applicants' employability to achieve the statutory objective. Although the statute requires that adult education make an effort to improve employability in adults, it does not restrict participation to only those with the highest potential

for employment. The use of age *fails* this part of the test.

(c) Age is not a reasonable measure of a higher level of employability. Persons over age 35 may be as employable as those under 35. The use of age 35 *fails* this part of the test.

(d) It is impractical to measure directly each individual's employment potential.

The provision of priority consideration to applicants between the ages of 16 and 35 for admission to adult education programs does not pass either part (b) or part (c) of the test. Therefore, *it is not necessary* to achieve the statutory objective of the Adult Education Act.

*C. The Use of Reasonable Factors Other Than Age (§ 110.13)*

The Act permits a recipient to take an action that is based on "reasonable factors other than age." However, to justify rules or operating procedures that disadvantage any age group when age is not explicitly mentioned, recipients must demonstrate that these rules or procedures have a "direct and substantial" relationship to specific program objectives.

*Example 4: Permissible Use of Reasonable Factors Other Than Age*

A federally assisted skill training program uses a physical fitness test for selecting participants to train for a certain job. The job involves frequent heavy lifting and other demands for physical strength and stamina. Even though older persons might fail the test more frequently than younger persons, the physical fitness test measures a characteristic that bears a direct and substantial relationship to the job for which persons are being trained, and, therefore, *is permissible* under the Act.

*Example 5: Prohibited Use of Factors Other Than Age*

A federally assisted skill training program uses a physical fitness test as a factor for selecting participants to train for clerical skills. The physical fitness test assesses physical strength and stamina. The recipient claims that persons who pass the test are likely to do better work than those who are unable to pass the test. Even if this were true, the relationship between the requirements of the test and the requirements of the type of job for which training is being offered is not direct and substantial. That relationship is so tenuous and limited that it will not justify the test's age discriminatory effect. In this situation, use of the test *is not permissible* under the Act.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act does not require a regulatory flexibility analysis of these regulations because the NPRM was published before January 1, 1981. However, these regulations will not have a significant economic impact on a substantial number of small entities because it will not impose any significant new recordkeeping requirements or compliance costs on recipients that are either small or large entities.

**Paperwork Reduction Act of 1980**

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information contained in these regulations is not subject to the Office of Management and Budget review and approval.

**List of Subjects in 34 CFR Part 110**

Administrative practice and procedure, Adult education, Age discrimination, Children, Civil rights, Education Department, Grant programs—education, The elderly.

Dated: July 16, 1993.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number does not apply.)

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new part 110 to read as follows:

## PART 110—NONDISCRIMINATION ON THE BASIS OF AGE IN DEPARTMENT OF EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

### Subpart A—General

Sec.

110.1 What is the purpose of ED's age discrimination regulations?
110.2 To what programs do these regulations apply?
110.3 What definitions apply?

### Subpart B—Standards for Determining Age Discrimination

110.10 Rules against age discrimination.
110.11 Definitions of "normal operation" and "statutory objective."
110.12 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.
110.13 Exceptions to the rules against age discrimination: Reasonable factors other than age.
110.14 Burden of proof.
110.15 Affirmative action by recipients.
110.16 Special benefits for children and the elderly.
110.17 Age distinctions contained in ED's regulations.

### Subpart C—Duties of ED Recipients

110.20 General responsibilities.
110.21 Notice to subrecipients.
110.22 Information requirements.
110.23 Assurances required.
110.24 Recipient assessment of age distinctions.
110.25 Designation of responsible employee, notice, and grievance procedures.

### Subpart D—Investigation, Conciliation, and Enforcement Procedures

110.30 Compliance reviews.
110.31 Complaints.
110.32 Mediation.
110.33 Investigation.
110.34 Prohibition against intimidation or retaliation.
110.35 Compliance procedure.
110.36 Hearings, decisions, and post-termination proceedings.
110.37 Procedure for disbursal of funds to an alternate recipient.
110.38 Remedial action by recipients.
110.39 Exhaustion of administrative remedies.

**Authority:** 42 U.S.C. 6101 *et seq.*, unless otherwise noted.

### Subpart A—General

**§ 110.1 What is the purpose of ED's age discrimination regulations?**

The purpose of these regulations is to set out ED's rules for implementing the Age Discrimination Act of 1975. The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act permits federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age that meet the requirements of the Act.

(Authority: 42 U.S.C. 6101–6103)

**§ 110.2 To what programs do these regulations apply?**

(a) These regulations apply to any program or activity receiving Federal financial assistance from ED.

(b) These regulations do not apply to—

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body that—

(i) Provides any benefits or assistance to persons based on age;

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms; or

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except any program or activity receiving Federal financial assistance for employment under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

(Authority: 42 U.S.C. 6103)

**§ 110.3 What definitions apply?**

The following definitions apply to these regulations: *Act* means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135).

*Action* means any act, activity, policy, rule, standard, or method of administration, or the use of any policy, rule, standard, or method of administration.

*Age* means how old a person is, or the number of years from the date of a person's birth.

*Age distinction* means any action using age or an age-related term.

*Age-related term* means a word or words that necessarily imply a particular age or range of ages (e.g., "children," "adult," "older persons," but not "student" or "grade").

*Agency* means a Federal department or agency that is empowered to extend financial assistance.

*Applicant for Federal financial assistance* means one who submits an application, request, or plan required to be approved by a Department official or by a recipient as a condition to becoming a recipient or subrecipient.

*Department* means the United States Department of Education.

*ED* means the United States Department of Education.

*Federal financial assistance* means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which ED provides or otherwise makes available assistance in the form of—

(a) Funds;

(b) Services of Federal personnel; or

(c) Real and personal property or any interest in or use of property, including—

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government.

*Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance from ED is extended, directly or through another recipient. "Recipient" includes any successor, assignee, or transferee of a recipient, but excludes the ultimate beneficiary of the assistance.

*Secretary* means the Secretary of Education, or his or her designee.

*Subrecipient* means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

*United States* means the fifty States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(Authority: 42 U.S.C. 6103)

## Subpart B—Standards for Determining Age Discrimination

**§ 110.10 Rules against age discrimination.**

The rules stated in this section are subject to the exceptions contained in §§ 110.12 and 110.13 of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of—

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) *Other forms of discrimination.* The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

(Authority: 42 U.S.C. 6101–6103)

**§ 110.11 Definitions of "normal operation" and "statutory objective."**

For purposes of these regulations, the terms "normal operation" and "statutory objective" have the following meanings:

(a) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

(Authority: 42 U.S.C. 6103)

**§ 110.12 Exceptions to the rules against age discrimination: Normal operation or statutory objective of any program or activity.**

A recipient is permitted to take an action otherwise prohibited by § 110.10 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if—

(a) Age is used as a measure or approximation of one or more other characteristics;

(b) The other characteristic or characteristics must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(c) The other characteristic or characteristics can be reasonably measured or approximated by the use of age; and

(d) The other characteristic or characteristics are impractical to measure directly on an individual basis.

(Authority: 42 U.S.C. 6103)

**§ 110.13 Exceptions to the rules against age discrimination: Reasonable factors other than age.**

A recipient is permitted to take an action otherwise prohibited by § 110.10 that is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

(Authority: 42 U.S.C. 6103)

**§ 110.14 Burden of proof.**

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 110.12 and 110.13 is on the recipient of Federal financial assistance.

(Authority: 42 U.S.C. 6104)

**§ 110.15 Affirmative action by recipients.**

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(Authority: 42 U.S.C. 6103)

**§ 110.16 Special benefits for children and the elderly.**

If a recipient operating a program provides special benefits to the elderly or to children, the use of age distinctions is presumed to be necessary to the normal operation of the program, notwithstanding the provisions of § 110.12.

(Authority: 42 U.S.C. 6103)

**§ 110.17 Age distinctions contained in ED's regulations.**

Any age distinction contained in regulations issued by ED is presumed to be necessary to the achievement of a statutory objective of the program to which the regulations apply, notwithstanding the provisions of § 110.12.

(Authority: 42 U.S.C. 6103)

## Subpart C—Duties of ED Recipients

**§ 110.20 General responsibilities.**

Each ED recipient has primary responsibility for ensuring that its programs and activities are in compliance with the Act and these regulations and shall take steps to eliminate violations of the Act. A recipient also has responsibility to maintain records, provide information, and to afford ED access to its records to the extent required for ED to determine whether the recipient is in compliance with the Act and these regulations.

(Authority: 42 U.S.C. 6103)

**§ 110.21 Notice to subrecipients.**

If the recipient initially receiving funds makes the funds available to a subrecipient, the recipient shall notify the subrecipient of its obligations under the Act and these regulations.

(Authority: 42 U.S.C. 6103)

**§ 110.22 Information requirements.**

Each recipient shall—

(a) Provide ED with information that ED determines is necessary to ascertain whether the recipient is in compliance with the Act and these regulations; and

(b) Permit reasonable access by ED to the books, records, accounts, reports, and other recipient facilities and sources of information to the extent ED determines is necessary to ascertain whether a recipient is in compliance with the Act and these regulations.

(Authority: 42 U.S.C. 6103)

**§ 110.23 Assurances required.**

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which these regulations apply shall sign a written assurance, on a form specified by ED, that the program will be operated in compliance with these regulations. An applicant may incorporate this assurance by reference in subsequent applications to ED.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) If Federal financial assistance is provided in the form of real property or interest in the property from ED, the instrument effecting or recording this transfer must contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) If no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) If Federal financial assistance is provided in the form of real property or interest in the property from ED, the covenant must also include a condition coupled with a right to be reserved by ED to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, ED may, upon request of the transferee and if necessary to accomplish that financing and upon conditions that ED deems appropriate, agree to forbear the exercise of the right to revert title for as long as the lien of the mortgage or other encumbrance remains effective.

(Authority: 42 U.S.C. 6103)

**§ 110.24 Recipient assessment of age distinctions.**

(a) As part of a compliance review under § 110.30 or a complaint investigation under § 110.31, ED may require a recipient employing the equivalent of 15 or more full-time employees to complete a written self-evaluation, in a manner specified by ED, of any age distinction imposed in its program or activity receiving Federal financial assistance from ED to assess the recipient's compliance with the Act.

(b) Whenever an assessment indicates a violation of the Act or these regulations, the recipient shall take corrective action.

(Authority: 42 U.S.C. 6103)

**§ 110.25 Designation of responsible employee, notice, and grievance procedures.**

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Act and these regulations, including investigation of any complaints that the recipient receives alleging any actions that are prohibited by the Act and these regulations.

(b) *Notice.* A recipient shall notify its beneficiaries, in a continuing manner, of information regarding the provisions of the Act and these regulations and their applicability to specific programs. The notification must also identify the responsible employee by name or title, address, and telephone number.

(c) *Grievance procedures.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act or these regulations.

(Authority: 42 U.S.C. 6103)

## Subpart D—Investigation, Conciliation, and Enforcement Procedures

### § 110.30 Compliance reviews.

(a) ED may conduct compliance reviews, pre-award reviews, and other similar procedures that permit ED to investigate and correct violations of the Act and of these regulations. ED may conduct these reviews in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations occurred.

(b) If a compliance review or pre-award review indicates a violation of the Act or these regulations, ED attempts to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, ED arranges for enforcement as described in § 110.35.

(Authority: 42 U.S.C. 6103)

### § 110.31 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with ED alleging discrimination prohibited by the Act or by these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged discrimination. However, for good cause shown, ED may extend this time limit.

(b) ED attempts to facilitate the filing of complaints, if possible, by—

(1) Accepting as a complete complaint any written statement that identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant;

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a complete complaint;

(3) Widely disseminating information regarding the obligations of recipients under the Act and these regulations;

(4) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure; and

(5) Notifying the complainant and the recipient (or their representatives) of their right to contact ED for information and assistance regarding the complaint resolution process.

(c) A complaint is considered to be complete on the date that ED receives all the information necessary to process it, as described in paragraph (b)(1) of this section.

(d) ED returns to the complainant any complaint outside the jurisdiction of these regulations and states the reason or reasons why it is outside the jurisdiction of the regulations.

(Authority: 42 U.S.C. 6103)

### § 110.32 Mediation.

(a) ED promptly refers to the Federal Mediation and Conciliation Service or to the mediation agency designated by the Secretary of Health and Human Services, all complaints that—

(1) Fall within the jurisdiction of the Act and these regulations, unless the age distinction complained of is clearly within an exemption under § 110.2(b); and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or to make an informed judgment that an agreement is not possible. The recipient and the complainant need not meet with the mediator at the same time, and the meeting may be conducted by telephone or other means of effective dialogue if a personal meeting between the party and the mediator is impractical.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to ED. ED takes no further action on the complaint unless informed that the complainant or the recipient fails to comply with the agreement, at which time ED reinstates the complaint.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The mediation will proceed for a maximum of 60 days after a complaint is filed with ED. Mediation ends if—

(1) 60 days elapse from the time the complaint is received;

(2) Prior to the end of the 60-day period, an agreement is reached; or

(3) Prior to the end of the 60-day period, the mediator determines that agreement cannot be reached.

(f) The mediator shall return unresolved complaints to ED.

(Authority: 42 U.S.C. 6103)

### § 110.33 Investigation.

(a) *Initial investigation.* ED investigates complaints that are unresolved after mediation or reopened because of a violation of the mediation agreement. ED uses methods during the investigation to encourage voluntary resolution of the complaint, including discussions with the complainant and recipient to establish the facts and, if possible, resolve the complaint to the mutual satisfaction of the parties. ED may seek the assistance of any involved State, local, or other Federal program agency.

(b) *Formal investigation, conciliation, and hearing.* If ED cannot resolve the complaint during the early stages of the investigation, ED completes the investigation of the complaint and makes formal findings. If the investigation indicates a violation of the Act or these regulations, ED attempts to achieve voluntary compliance. If ED cannot obtain voluntary compliance, ED begins enforcement as described in § 110.35.

(Authority: 42 U.S.C. 6103)

### § 110.34 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who—

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of ED's investigation, conciliation, and enforcement process.

(Authority: 42 U.S.C. 6103)

### § 110.35 Compliance procedure.

(a) ED may enforce the Act and these regulations under § 110.35(a) (1) or (2) through—

(1) Termination of, or refusal to grant or continue, a recipient's Federal financial assistance from ED for a program or activity in which the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(2) Any other means authorized by law, including, but not limited to—

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations; or

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or of these regulations.

(b) ED limits any termination or refusal under § 110.35(a)(1) to the particular recipient and to the particular program or activity ED finds in violation of the Act or these regulations. ED will not base any part of a termination on a finding with respect to any program or activity that does not receive Federal financial assistance from ED.

(c) ED takes no action under paragraph (a) of this section until—

(1) ED has advised the recipient of its failure to comply with the Act or with these regulations and has determined that voluntary compliance cannot be obtained; and

(2) Thirty days have elapsed after the Secretary has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Secretary files a report if any action is taken under § 110.35(a)(1).

(d) The Secretary also may defer granting new Federal financial assistance from ED to a recipient if termination proceedings in § 110.35(a)(1) are initiated.

(1) New Federal financial assistance from ED includes all assistance for which ED requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from ED does not include increases in funding as a result of changed computation of formula awards or assistance approved prior to the initiation of termination proceedings.

(2) ED does not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 110.35(a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and ED. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(Authority: 42 U.S.C. 6104)

**§ 110.36 Hearings, decisions, and post-termination proceedings.**

(a) The following ED procedural provisions applicable to Title VI of the Civil Rights Act of 1964 also apply to ED's enforcement of these regulations: 34 CFR 100.9 and 100.10 and 34 CFR part 101.

(b) Action taken under section 305 of the Act is subject to judicial review as provided by section 306 of the Act.

(Authority: 42 U.S.C. 6104–6105)

**§ 110.37 Procedure for disbursal of funds to an alternate recipient.**

(a) If the Secretary withholds funds from a recipient under these regulations, the Secretary may disburse the funds withheld directly to an alternate recipient: any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) The Secretary requires any alternate recipient to demonstrate—

(1) The ability to comply with the Act and these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

(Authority: 42 U.S.C. 6104)

**§ 110.38 Remedial action by recipients.**

If ED finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action that ED may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated or if the entity that has discriminated is a subrecipient, both recipients or recipient and subrecipient may be required to take remedial action.

(Authority: 42 U.S.C. 6103)

**§ 110.39 Exhaustion of administrative remedies.**

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if—

(1) One hundred eighty days have elapsed since the complainant filed the complaint with ED, and ED has made no finding with regard to the complaint; or

(2) ED issues any finding in favor of the recipient.

(b) If ED fails to make a finding within 180 days or issues a finding in favor of the recipient, ED promptly—

(1) Advises the complainant of this fact;

(2) Advises the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Informs the complainant—

(i) That a civil action can be brought only in a United States district court for the district in which the recipient is found or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint filed with the court;

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary, the Secretary of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) That the notice shall state the alleged violation of the Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

(Authority: 42 U.S.C. 6104)

**Appendix A—Age Distinctions in Statutes Affecting Financial Assistance Administered by ED**

**Note: This appendix will not be codified in the Code of Federal Regulations**

Section 90.31(f) of the governmentwide regulations requires each Federal agency to publish an appendix to its final age discrimination regulations containing a list of each age distinction in a Federal statute or in regulations affecting financial assistance administered by the agency. This appendix contains age distinctions found in Federal statutes, as administered by the Department of Education. Emphasis has been added to indicate the statutory age distinction. The appendix contains the following tables:

Office of Bilingual Education and Minority Languages Affairs.

Office of Educational Research and Improvement.

Office of Elementary and Secondary Education.

Office of Postsecondary Education.

Office of Special Education and Rehabilitative Services.

Office of Vocational and Adult Education.

General Provisions.

### Office of Bilingual Education and Minority Languages Affairs

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Transition Program for Refugee Children. | Title III, Refugee Act of 1980, Pub. L. 96–212, as amended; 8 U.S.C. 1522. | Sec. 311(a)(2)(d) authorizes grants and contracts for projects "to provide special educational services (including English language training) to refugee *children* in elementary and secondary schools where a demonstrated need has been shown". | 34 CFR part 538. |
| Emergency Immigrant Education Program. | Title VI, Emergency Immigrant Education Act of 1984, Pub. L. 98–511, as amended by Pub. L. 100–297, 20 U.S.C. 3121–3130. | Sec. 4401 defines the term "immigrant *children*". | 34 CFR part 581. |
| | | Sec. 4407(a) states that formula payments to State education agencies made under this Act may be used for "supplementary educational services and costs * * * for immigrant *children* enrolled in the elementary and secondary public schools". | |
| Bilingual Education. | Title VII, Elementary and Secondary Education Act of 1965, Pub. L. 89–10 (Bilingual Education Act), as amended by Pub. L. 100–297, 20 U.S.C. 3281–3341. | Sec. 7002(a). In order to establish an equal educational opportunity for all children and to promote educational excellence, it is the policy of the United States "(A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques and methods, (B) to encourage the establishment of special alternative instructional programs for students of limited English proficiency * * * (C) for those purposes, to provide financial assistance to [State and local educational agencies], institutions of higher education, and community organizations". | 34 CFR parts 500–574, except 538. |
| | | This section states: "The programs assisted * * * include programs in elementary and secondary schools as well as related *preschool and adult* programs * * * with particular attention to *children* having the greatest need". | |
| Bilingual Education. | Title VII, Elementary and Secondary Education Act of 1965, Pub. L. 89–10 (Bilingual Education Act), as amended by Pub. L. 100–297, 20 U.S.C. 3281–3341. | Sec. 7003(a)(7) defines a "family English literacy program" as "a program of instruction designed to help limited English proficient *adults* and out-of-school *youth* achieve competence in the English language". | 34 CFR part 525. |

### Office of Educational Research and Improvement

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Public Library Services and Construction. | Library Services and Construction Act, 70 Stat. 293, as amended; 20 U.S.C. 351–375. | Sec. 2(a) declares that it is the purpose of this chapter to assist States in improving State and local public library services for *older* Americans, and for handicapped, institutionalized and other disadvantaged individuals. 20 U.S.C. 351(a). | 34 CFR part 770. |
| | | Sec. 101(1) provides that the Secretary shall make available grants to States that have approved plans and have submitted programs for the extension and improvement of library services to make public library services accessible to individuals who, by reason of (*inter alia*) *age*, are unable to receive the benefits of public library services regularly made available to the public. 20 U.S.C. 352(l). | |
| | | Sec. 103(4) requires that State programs for library services describe the uses of funds for programs for the *elderly*. 20 U.S.C. 354. | |
| Office of Educational Research and Improvement. | Title IV, General Education Provisions Act, Pub. L. 90–247, as amended, 20 U.S.C. 1221e. | Sec. 405(a)(1) declares the policy of the United States to provide to every individual an equal opportunity to receive an education of high quality regardless of race, color, religion, sex, *age*, handicap, national origin, or social class. | |
| Office of Educational Research and Improvement. | Title IV, General Education Provisions Act, Pub. L. 90–247, as amended, 20 U.S.C. 1221e. | Sec. 405(b)(2) and (b)(3)(B) requires that the Office of Educational Research and Improvement concentrate its resources on priority research and development needs, which include improving the ability of schools to provide equal educational opportunities for all students, including *older* students. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| National Center for Education Statistics. | Title IV, General Education Provisions Act, Pub. L. 90–247, as amended, 20 U.S.C. 1221e–1. | Sec. 406(a)(1) establishes within the Office of Educational Research and Improvement the National Center for Education Statistics, whose purpose is to acquire and diffuse useful statistical information on subjects connected with education. Sec. 406(b)(6) provides that the Center shall assess periodically the current and projected supply and demand for elementary and secondary school teachers (including teachers at the *preschool* level) and *early childhood* development personnel.<br>Sec. 406(i) requires the Center to carry out a National Assessment of Educational Progress, which periodically shall collect and report data on basic skills of students of *ages 9, 13, and 17* and in grades 4, 8, and 12. | |
| Blue Ribbon Schools Program. | Title I, Chapter 2, Part B, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Pub. L. 100–297; 20 U.S.C. 2966. | Sec. 1566 authorizes the Secretary to carry out programs to recognize elementary and secondary schools or programs that have established standards of excellence and that have demonstrated a high level of quality. This section provides that the Secretary shall competitively select public and private schools or programs within local educational agencies in the States, schools operated for Indian *children* by the Department of the Interior, and schools operated by the Department of Defense for dependents of its personnel. | |
| Fund for the Improvement and Reform of Schools and Teaching—Grants for Schools and Teachers—Family-School Partnership. | Title III, Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297, 20 U.S.C. 4811. | Sec. 3211(a)(1) authorizes the Secretary to support the improvement of educational opportunities for, and the performance of, elementary and secondary school students and teachers by, *inter alia*, helping educationally disadvantaged or at risk *children* meet higher educational standards, and by encouraging projects that reallocate existing resources to serve *children* better by refocusing priorities. | |
| | 20 U.S.C. 4821 | Sec. 3221(a)(2) finds that significant numbers of children attending school come from families with a single parent, or where both parents are employed outside the home, or where the primary caregiver is not the biological parent. Subsection (a)(4) encourages as Federal policy effective approaches to more fully involving families as partners in their *children's* education. Subsection (b) provides that the purpose of this subpart is to encourage eligible local educational agencies to increase family involvement in improving the educational achievement of their *children*. | |
| | 20 U.S.C. 4823 | Sec. 3223(a)(1) authorizes grants for the development of family-school partnership activities to support the efforts of families to work with *children* in the home to attain instructional objectives and instill positive attitudes about the importance of education. Subsection (b)(2) provides that grants may include planning and development of new school practices to meet the changing demographic characteristics of the families of *school-age children*. Subsection (c) declares that, consistent with the number of *children* enrolled in private elementary and secondary schools, an application may provide for the participation of such *children*, their families, and teachers. | |

## Office of Elementary and Secondary Education

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| School Assistance in Federally Affected Areas—Maintenance and Operations (Impact Aid; Disaster Assistance). | Pub. L. 81–874, Sections 1, 3–6; 20 U.S.C. 236, 238 through 241–1. | The purpose of sections 3–6 of Pub. L. 81–874 [the Impact Aid Program] is to provide Federal financial assistance for those local educational agencies upon which the United States has placed financial burdens because such agencies provide education for *children* who either reside on Federal property; or who reside with a parent employed on Federal property. | 34 CFR parts 219, 222, 223. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| | | The purpose of section 7 of Pub. L. 81–874 is to provide Federal financial assistance to local educational agencies (including other public agencies operating schools) providing technical, vocational or other special education to *children* of elementary or secondary school age that are located in areas that have experienced a major disaster as declared by the President. | |
| School Assistance in Federally Affected Areas—Maintenance and Operations (Impact Aid; Disaster Assistance). | 20 U.S.C. 244(2) | Under section 403(2) of Pub. L. 81–874, "[t]he term *child* means any *child* who is within the age limits for which the applicable State provides free public education.". | |
| School Assistance in Federally Affected Areas—Construction (Impact Aid; Disaster Assistance). | Pub. L. 81–815, as amended by Pub. L. 100–297; 20 U.S.C. 631–647. | The purpose of this chapter is to provide assistance for the construction of urgently needed minimum school facilities in school districts that have had substantial increases in school membership as a result of new or increased Federal activities. Sections 5, 8, 9, 10 and 14 of the Act specify the various types of Federal construction assistance that may be provided for *children*. The Act also provides construction assistance in the case of certain disasters. | 34 CFR parts 219 and 221. |
| School Assistance in Federally Affected Areas—Construction (Impact Aid; Disaster Assistance). | 20 U.S.C. 645 | Sec. 15(2) defines "*child*" as "any *child* who is within the age limits for which the applicable State provides free public education.". | |
| School Assistance in Federally Affected Areas—Construction (Impact Aid; Disaster Assistance). | Pub. L. 81–815, as amended by Pub. L. 100–297; 20 U.S.C. 648. | Sec. 16 authorizes school construction assistance to a local educational agency or other public agency that operates schools providing technical, vocational, or other special education to *children of elementary or secondary school age* in cases of a major disaster as declared by the President. | 34 CFR part 219. |
| State Task Forces on Teacher Training. | Title V, Part E Higher Education Amendments of 1986, Pub. L. 99–498, 20 U.S.C. 1115. | Sec. 501(a)(f) provides that funds appropriated under this subpart shall be allocated among the States based on the number of *children aged 5 through 17*, inclusive. | |
| High School Equivalency Program and the College Assistance Migrant Program. | Title IV, Part A, Subpart 2, Higher Education Act of 1965; Pub. L. 89–329, as amended most recently by Title IV, Part A, Chapter 8, Higher Education Act of 1992, Pub. L. 100–325; 20 U.S.C. 1070d–2. | Sec. 418A(a) authorizes assistance to maintain and expand existing secondary and postsecondary high school equivalency and college assistance migrant program projects designed to provide services to students of families engaged in migrant and seasonal farmwork. | 34 CFR part 206. |
| | | Sec. 418A(b)(1), (b)(7) and (c)(5) authorize recruitment services to reach persons who are *sixteen years of age and older* and who lack a high school diploma, activities designed to acquaint *youth* participating in the project with activities not usually available to migrant *youth*. | |
| Financial Assistance to Meet Special Educational Needs of Educationally Deprived Children. | Title I, Chapter 1, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Pub. L. 100–297, and Pub. L. 100–351, 20 U.S.C. 2701, 2711. | Sec. 1001 declares that it is "the policy of the United States to provide financial assistance to State and local educational agencies to meet the special needs of such educationally deprived *children* at the preschool, elementary, and secondary levels. . . .". | 34 CFR part 200. |
| | | Sec. 1005(b) provides that a local educational agency shall be eligible for a basic grant only if it meets certain requirements with respect to the number of *children* counted under subsection (c). | |
| | | Sec. 1005(c)(1) sets forth the formula for counting *children* in local educational agencies; such allocations are based on the *number of children aged five to seventeen*, inclusive, in low income families, *children* living in institutions for neglected or delinquent *children* in the school district, and *children* being supported in foster homes with public funds. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| | 20 U.S.C. 2724 | Sec. 1014(a)(1) provides that a local educational agency shall use funds under this program for educationally deprived *children* identified as having the greatest need for special assistance. Sec. 1014(a)(2) defines the eligible population for services under this program as "*children up to age 21* who are entitled to free public education through grade 12, and . . . children who are not yet at a grade level where the local educational agency provides free public education, yet are of an age at which they can benefit from an organized instructional program provided in a school or other educational setting.". | |
| Even Start Family Literacy Programs. | Title I, Chapter 1, Part B, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended most recently by Pub. L. 102–73, 20 U.S.C. 2741–2749. | Sec. 1051 declares that it is "the purpose of this part to improve the educational opportunities of the Nation's *children* and *adults* by integrating early *childhood* education and *adult* education for parents into a unified program to be referred to as "Even Start." The program shall be implemented through cooperative projects that build on existing community resources to create a new range of services." 20 U.S.C. 2741. | 34 CFR part 212. |
| | | Sec. 1053(a) reserves a portion of the allocation under the Even Start program for migrant *children* programs. 20 U.S.C. 2743(a). | 34 CFR 212.50–212.56. |
| Even Start Family Literacy Programs. | 20 U.S.C. 2744(a) and (b) | Sec. 1054(a) provides that funds made available to local educational agencies shall be used to pay the Federal share of the cost of providing family centered education programs that involve parents and *children* in a cooperative effort to help parents become full partners in the education of their *children* and to assist *children* in reaching their full potential as learners.<br>Sec. 1054(b) lists the elements of programs to be assisted under this part. Each program shall include "(1) the identification and recruitment of eligible *children*; (2) screening and preparation of parents and *children* for participation . . . (3) design of programs and provision of support services . . . including scheduling and location of services to allow joint participation by parents and *children*, and transportation for the purpose of enabling parents and their *children* to participate in the program . . . (4) the establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their *children*, and preparation of children for success in regular school programs; (5) provision of special training to enable staff to develop the skills necessary to work with parents and young *children* in the range of instructional services offered through this part . . . [and] (6) provision of and monitoring of integrated instructional services to participating parents and *children* through home-based programs. . . .". | 34 CFR 212.3, 212.7, and 212.24. |
| Even Start Family Literacy Programs. | 20 U.S.C. 2745 | Sec. 1055 provides that eligible participants in the Even Start programs are: (1) a parent or parents who are eligible for participation in an *adult* basic education program under the Adult Education Act, and (2) the *child* or *children* (*from birth to age 7*, inclusive) of any individual under paragraph (1), who reside in a designated school attendance area. | 34 CFR 212.7. |
| Even Start Family Literacy Programs. | 20 U.S.C. 2747–2748 | *See* Secs. 1057–58,, providing requirements for award of grants and evaluation of programs under this part, including the requirement that grants be awarded on the basis of proposals, which . . . demonstrate that the area to be served by the program has a "high percentage or a large number of *children* and *adults* who are in need of such services. . . ." and that an evaluation be conducted to determine the program's "effectiveness in providing home-based programs involving parents and *children*". | 34 CFR 212.20, 212.21, 212.22, and 212.27. |
| School Dropout Demonstration Assistance Act of 1988. | Pub. L. 89–10, as amended by Pub. L. 100–297; 20 U.S.C. 3241, *et. seq.* | The purpose of this part is to reduce the number of *children* who do not complete their elementary and secondary education by providing grants to local educational agencies to establish and demonstrate (1) effective programs to identify potential dropouts and prevent them from dropping out; (2) effective programs to identify and encourage *children* who have dropped out to re-enter school and complete their elementary and secondary education; (3) effective early intervention programs to identify at-risk students; and (4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of *children* not completing their elementary and secondary education and the reasons why those *children* have dropped out of school. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Secondary School Programs for Basic Skills Improvement and Dropout Prevention and Reentry. | Title I, Chapter 1, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Pub. L. 100–297, 20 U.S.C. 2761–2768. | Sec. 1101 declares that it is "the purpose of this subpart to provide additional assistance to local educational agencies with high concentrations of *low-income children, low-achieving children*, or school dropouts to improve the achievement of *educationally disadvantaged children* enrolled in secondary schools of such agencies, and to reduce the number of *youths* who do not complete their elementary and secondary education.". | |
| Migrant Education—Basic State Formula Grants. | Title I, Chapter 1, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Pub. L. 100–297, as amended, 20 U.S.C. 2781–2782. | Sec. 1202(a) sets forth requirements for approval of an application, including (1) a determination that payments will be used for programs and projects designed to meet the special educational needs of migrant *children*, and (2) the application's assurance that provision is made for the preschool education needs of migrant *children*.<br>Sec. 1202(b) provides that, with parental concurrence, a migratory *child* is still considered to be migratory for a period of up to five additional years. | 34 CFR part 201. |
| Federal, State, and Local Partnership for Educational Improvement—State and Local Programs. | Title I, Chapter 2, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Pub. L. 100–297, 20 U.S.C. 2921. | Sec. 1511(b) provides that "[F]rom the remainder of such sums [appropriated to carry out this chapter in any fiscal year,] the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the *school-age* population of the State bears to the *school-age* population of all States, except that no State shall receive less than an amount equal to one-half of 1 percent of such remainder.".<br>Sec. 1511(c) provides that for the purposes of this section—"(1) The term '*school-age* population' means the population *aged 5 through 17*.". | 34 CFR part 298. |
| | 20 U.S.C. 2922 | Sec. 1512(b) requires that State educational agencies allocate funds to local educational agencies on the basis of the number of *children* enrolled in public schools and the number of *children* enrolled in participating private schools. Enrollments are adjusted to provide higher per pupil allocations only to local educational agencies that serve the greatest numbers or percentages of *children* living in areas with high concentrations of low-income families, *children* from low-income families, or *children* living in sparsely populated areas. | 34 CFR part 298. |
| | 20 U.S.C. 2932 | *See* Sec. 1522(a), which sets out criteria for State applications, including a consultation process between the State educational agency and an advisory panel that is representative of the general public's education interests, including "public and private elementary and secondary *schoolchildren* . . . and "parents of elementary and secondary *schoolchildren*. . . .". | |
| Inexpensive Book Distribution Program. | Title I, Chapter 2, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Pub. L. 100–297, 20 U.S.C. 2963. | Sec. 1563 authorizes the Secretary to enter into a contract with Reading is Fundamental (RIF), a private nonprofit organization that has as its primary purpose the motivation of *children* to learn to read, and to support and promote the establishment of reading motivation programs that include the distribution of inexpensive books to preschool, elementary and secondary school *children*. | |
| Arts in Education | Title I, Chapter 2, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Pub. L. 100–297; 20 U.S.C. 2964. | Sec. 1564 requires the Secretary to carry out a program of grants and contracts to encourage and assist State and local educational agencies and other public and private agencies, organizations, and institutions to establish and conduct programs in which the arts are an integral part of elementary and secondary school curricula such as—<br>"(2) a program to develop and implement model projects and programs in the performing arts for *children* and *youth* through arrangements . . . with the John F. Kennedy Center for the Performing Arts.". | |
| Law-Related Education. | Title I, Chapter 2, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Pub. L. 100–297; 20 U.S.C. 2965. | Sec. 1565(a) authorizes the Secretary to carry out a program of grants and contracts to encourage the provision of law-related educational activities, such as—<br>(c)(2) support for new and ongoing programs in elementary and secondary schools, *adult* education, community organizations, and institutions of higher education.<br>(c)(7) *youth* internships for outside-the-classroom experiences with the law and the legal system. | 34 CFR part 241. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Critical Skills Improvement—Dwight D. Eisenhower Mathematics and Science Education Act. | Title II, Part A Elementary and Secondary Education Act; Pub. L. 89–10, as amended by Pub. L. 100–297, 20 U.S.C. 2981–2992. | Sec. 2006(b)(2) provides that local educational agencies receiving funds under this part shall assure that programs of training will take into account the need for greater access to and participation in mathematics and science programs by historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the handicapped, migrants, and, especially, gifted and talented *children* from within such groups. | 34 CFR part 208. |
| | | Sec. 2010 requires States to make provision for the participation of *children* enrolled in private nonprofit elementary and secondary schools, to the extent consistent with the number of *children* in the State or in the school district of each local educational agency who are enrolled in private nonprofit elementary and secondary schools. | |
| | | Sec. 2012(b) provides that the Secretary shall make grants or enter into cooperative agreements for programs of national significance in mathematics and science instruction, giving special consideration to providing special services to historically underserved and underrepresented populations, and especially to gifted and talented *children* within such populations. | 34 CFR part 755. |
| Critical Skills Improvement—Foreign Language Assistance Act of 1988. | Title II, Part B Elementary and Secondary Education Act; Pub. L. 89–10, as amended by Pub. L. 100–297, 20 U.S.C. 3001–3006. | Sec. 2103(b)(2) provides that all *children aged 5 through 17*, who reside within the school district of the local educational agency that will operate a model program in foreign language instruction, must be eligible to participate in it. | |
| | | Sec. 2103(d) requires States to make provision for the participation of *children* enrolled in private nonprofit elementary and secondary schools, to the extent consistent with the number of *children* in the State or in the school district of each local educational agency who are enrolled in private nonprofit elementary and secondary schools. | |
| Magnet Schools Assistance. | Title III, Elementary and Secondary Education Act; Pub. L. 89–10, as amended by Pub. L. 100–297, 20 U.S.C. 3021–3032. | Sec. 3002 of Pub. L. 100–297 states that a local educational agency is eligible for assistance if it "(1) is implementing a plan undertaken pursuant to a final order . . . which requires the desegregation of minority group segregated *children* or faculty in the elementary and secondary schools of such agency; or (2) without having been required to do so, has adopted and is implementing, or will . . . adopt and implement, a plan which has been approved by the Secretary as adequate under the Civil Rights Act of 1964 . . . for the desegregation of minority group segregated *children* or faculty in such schools.". | 34 CFR part 280. |
| | 20 U.S.C. 3028 | Sec. 3008 provides that, in approving applications, the Secretary shall give priority to, *inter alia*, "the proportion of minority group *children* involved in any approved plan.". | |
| Women's Educational Equity. | Title IV, Elementary and Secondary Education Act of 1965; Pub. L. 89–10, as amended by Title IX, Women's Educational Equity Act of 1978, Pub. L. 95–561, as amended by Pub. L. 100–297; 20 U.S.C. 3042–3047. | Sec. 4001 finds that educational programs in the United States are frequently inequitable, as such programs relate to women, and that excellence in education cannot be achieved without equity for women and girls. The purpose of this part is to provide educational equity for women and girls who suffer multiple discrimination, bias, or stereotyping based on sex and on race, ethnic origin, disability, or *age*. | 34 CFR parts 245, 246, 247. |
| | | Sec. 4002 authorizes the Secretary to make grants and enter into contracts for activities designed to achieve the purpose of this part at all levels of education, including *adult* education; and for activities to increase opportunities for *adult* women, including continuing educational programs for underemployed and unemployed women, and activities for women in vocational education, career education, physical education, and educational administration. | |
| Drug Education Purpose. | Title V, Elementary and Secondary Education Act; Pub. L. 89–10, as amended by Pub. L. 100–297, Pub. L. 100–690, Pub. L. 101–226, Pub. L. 101–647, 20 U.S.C. 3171–3232. | Sec. 5103(2) declares that one purpose of this subchapter is to establish programs of drug abuse education and prevention by provision of Federal aid to States for programs for school dropouts and other high risk *youth*. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| —State and Local Programs. | 20 U.S.C. 3192 | Sec. 5122(a) provides that a portion of a State's allotment under this title shall be used for grants and contracts for the development and implementation of, *inter alia*, other drug abuse education and prevention activities that may include a *youth* suicide prevention program.<br>Sec. 5122(b)(1) provides that a portion of State allotments shall be used for innovative community-based programs of coordinated services that are designed for high-risk *youth*. Sec. 5122(b)(2) defines high-risk *youth*. | |
| —National Programs. | 20 U.S.C. 3212 | Sec. 5132(b) provides that the Secretary, in conjunction with the Secretary of Health and Human Services, shall carry out Federal education and prevention activities on drug abuse, and shall facilitate communication to students at all educational levels about the dangers of drug abuse, especially using means that involve the participation of recognizable role models for many *young* people; identify research and development priorities with regard to school-based drug abuse prevention, particularly age-appropriate programs focusing on *kindergarten through grade 4*.<br>Sec. 5132(c) provides that the Secretary shall conduct, in conjunction with the Secretary of Health and Human Services, a study of the relationship between drug and alcohol abuse and *youth* suicide. | 34 CFR parts 231, 235. |
| Drug Education—National Programs. | 20 U.S.C. 3213 | Sec. 5133 provides that the Secretary shall enter into financial arrangements to carry out the purposes of this subchapter with respect to Indian *children* on reservations serviced by elementary and secondary schools funded by the Department of the Interior. | |
| | 20 U.S.C. 3216 | Sec. 5136(b)(2)(A)(ii) and (B) provide that a local educational agency shall be eligible to receive a grant for additional assistance for purposes of combating drug and alcohol abuse by students served by the agency provided that the agency serves an area—<br>"(A) in which there is a large number or a high percentage of—<br>(ii) convictions of *youth* for drug or alcohol-related crimes;<br>(B) in which there is a large number or high percentage of referrals of *youths* to drug and alcohol abuse treatment and rehabilitation programs. . . .". | 34 CFR part 232. |
| —General Provisions. | 20 U.S.C. 322 | Sec. 5141(b)(4) defines the term "*school-age population*" as the population aged *5 through 17* (inclusive). Sec. 5141(b)(5) defines the term "school dropout" as an individual *aged 5 through 18* who is not attending any school and who has not received a secondary school diploma or a certificate from a program of equivalency for such a diploma. | |
| Follow Through Programs. | Title VI, Chapter 8, Subchapter C, Omnibus Budget Reconciliation Act of 1981; Pub. L. 97–35, as amended, 42 U.S.C. 9861–9869. | Sec. 622(a) authorizes the Secretary to provide financial assistance to local educational agencies for the purpose of carrying out Follow Through programs "focused primarily on *children* from low-income families in kindergarten and primary grades, including such *children* enrolled in private nonprofit elementary schools, who were previously enrolled in Head Start or similar quality pre-school programs.". | |
| Education for Homeless Children and Youth. | Title VII, Stewart B. McKinney Homeless Assistance Act of 1987, Pub. L. 100–77; amended by Pub. L. 101–645 and Pub. L. 101–645; 42 U.S.C. 11431–11433. | Sec. 721 provides that it is the policy of the Congress that each State educational agency shall assure that each *child* of a homeless individual and each homeless *youth* have access to a free, appropriate public education which would be provided to the *children* of a resident of the State and is consistent with the State school attendance laws, and in any State that has a residency requirement as a component of its compulsory school attendance laws, or other laws, regulations, practices or policies that may act as a barrier to enrollment, attendance, or success in school of homeless *children* or *youth*, the State will review and undertake steps to revise such laws to assure that the *children* of homeless individuals and homeless *youth* are afforded a free and appropriate public education.<br>Sec. 722(c) authorizes the use of grant funds for activities for and services to homeless *children* and *youth* to enable such *children* and *youth* to enroll in, attend, and achieve success in school. This section also authorizes funds to be used to develop and implement programs for school personnel to heighten awareness of specific problems of the education of homeless *children* and *youth*. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| | | Sec. 722(d)(1), (4), and (5) provide that the Coordinator of Education of Homeless *Children* and *Youth* in each State shall once every two years gather data on the number and location of homeless *children* and *youth* in the State, including the number of homeless *children* and homeless *youths* enrolled in schools in the State, determined through random sampling or other statistical methods that ensure that such *children* or *youths* are not overtly identified as being homeless, the nature and extent of problems of access to, placement of and difficulties in identifying the special needs of homeless *children* and homeless *youth* in elementary and secondary schools and any progress made by State and local educational agencies within the State in addressing such problems and difficulties. The Coordinator in each State shall also facilitate coordination between the State educational agency, State social services agency, and other agencies providing services to homeless *children* and *youth* and coordinate with other relevant education, childhood development or preschool programs and providers of services to homeless *children* and homeless *youths* to improve the provision of comprehensive services to homeless *children* and homeless *youths* and their families.<br>Sec. 722(e)(1) requires that each State shall adopt a plan to provide for the education of each homeless *child* or homeless *youth* within the State which will contain provisions designed to authorize the State educational agency, the local educational agency, the parent or guardian of the homeless *child*, the homeless *youth*, or the applicable social worker to make the determinations required under this section; provide procedures for prompt resolution of disputes regarding the educational placement of homeless *children* and *youth*; develop programs for schools personnel to heighten their awareness of the specific educational needs of homeless *youths*; ensure that homeless *children* and homeless *youths* who meet the eligibility criteria are able to participate in Federal, State or local food programs and before- and after-school care programs; address problems with respect to the education of homeless *children* and homeless *youths*; demonstrate that State and local educational agencies in the State have developed, will review and revise policies to remove barriers to enrollment and retention of homeless *children* and homeless *youths* in schools in the State; and ensure that the State and local educational agencies within the State will adopt policies and practices to ensure that homeless *children* and homeless *youths* are not isolated or stigmatized.<br>Sec. 722(e)(3) provides that the local educational agency of each homeless *child* and each homeless *youth* shall either (I) continue the *child's* or *youth's* education in the school of origin for the remainder of the academic year or in the case in which a family becomes homeless between academic years, for the following year, or (ii) enroll the *child* or *youth* in any school that nonhomeless students living in that attendance area are eligible to attend whichever is in the *child* or *youth's* best interest. Consideration shall be given to a request made by a parent regarding school selection in determining the best interests of the *child* or *youth* for purposes of making a school assignment. The "school of origin" shall mean the school that the *child* or *youth* attended when permanently housed, or the school in which the *child* or *youth* was last enrolled.<br>*See* Sec. 722(e)(4)–(e)(9), and Secs. 723, 724. | |

**Office of Postsecondary Education**

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Partnerships for Educational Excellence—School, College, and University Partnerships—Grants. | Sec. 101 of the Higher Education Amendments of 1992 (1992 Amendments), adding a new sec. 103(c) to the Higher Education Act (HEA) of 1965, as amended. | New sec. 103 provides that when the Secretary makes grants to an institution of higher education (or a State educational agency or consortium of agencies) that has entered into a partnership agreement with a local educational agency, preference will be given to (among others) programs that will serve pregnant *adolescents* and *teenage* parents and *children* of migratory workers. | |
| Institutional Aid | Title III, Higher Education Act of 1965, Pub. L. 89–329, as amended; 20 U.S.C. 1051–1069f. | Section 312(a)(1) defines junior or community college as an institution of higher education that meets certain criteria, including that it "admits as regular students *persons who are beyond the age of compulsory school attendance* in the State in which the institution is located.". | 34 CFR 624.2. |
| Student Assistance—Grants to Students in Attendance at Institutions of Higher Education. | Title IV, Higher Education Act of 1965, Pub. L. 89–329, as amended; 20 U.S.C. 1070. | Sec. 401(a) [redesignated sec. 400(a), 1992 Amendments, sec. 402(a)(3), Conference Report at 37] states that the purpose of Title IV is to help make the benefits of postsecondary education available to eligible students by, among other things, providing special programs designed to identify and encourage qualified *youths* with financial or cultural need with a potential for secondary education. | 34 CFR part 668. |
| Basic Educational Opportunity (Pell) Grants. | 20 U.S.C. 1070a–6 | Sec. 411F(12)(A)(i) defines the term "independent" with respect to a student as any individual who is *24 years of age or older* by December 31 of the award year, or who meets the requirements of subparagraph (B). | 34 CFR 668.2. |
| Federal Early Outreach and Student Services Programs—Federal Trio Programs. | Sec. 402(a)(4) of the 1992 Amendments, adding sec. 402A to the HEA. | New sec. 402A(e), which governs documentation of an individual's status as a low-income individual, allows an individual who is *eighteen years of age* or younger to provide (among other choices) a signed statement from a parent or legal guardian, while an individual of *age 18 or older* may provide his or her own statement.<br><br>New sec. 402A(g)(3) provides that no veteran who meets stated criteria for dates of active duty and manner of discharge shall be ineligible to participate in the program by reason of that individual's *age*. | |
| —Talent Search | Sec. 402(a)(4) of the 1992 Amendments, adding sec. 402B to the HEA (formerly 20 U.S.C. 1070d-1.). | Sec. 402B(a) (formerly sec. 417B(a)) authorizes the "Talent Search" program under which qualified *youths* with the potential for postsecondary education are identified, informed about available financial aid, and otherwise encouraged to pursue such study.<br>Sec. 402B(c)(2) (formerly sec. 417B(c)(2)) expressly limits program participation to individuals who have completed five years of elementary education or are between the *ages of 11 and 27* unless the implementation of such limitation would defeat the purposes of this section or section 402F [Equal Opportunity Centers Program]. | 34 CFR 643.3. |
| —Upward Bound | Sec. 402(a)(4) of the 1992 Amendments, adding sec. 402C to the HEA (formerly 20 U.S.C. 1070d-1a.). | Sec. 402C(b) (formerly sec. 417C(b)) provides that Upward Bound projects may provide services for *youths*.<br><br>Sec. 402C(d)(4) (formerly sec. 417C(c)(4)) requires assurances from applicants that participants be persons who have completed eight years of elementary education and are *at least thirteen years of age but not more than nineteen years of age*, unless the imposition of any such limitation would defeat the purposes of this section. | 34 CFR 645.3. |
| National Early Intervention Scholarship and Partnership Program. | Sec. 402(a)(4) of the 1992 Amendments, adding sec. 404C(b)(3)(B) to the HEA. | New sec. 404C(b)(3)(C) provides that permissible activities using Federal early intervention funds include activities designed to ensure high school completion and college enrollment of at-risk children.<br><br>New sec. 404D requires, as a condition of certain Federal payments, that States establish grant programs that include as one eligibility criterion that each student assisted is *less than 22 years old* at the time of first grant award. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Federal Early Outreach and Student Services Program—Model Program Community Partnership and Counseling Grants. | The 1992 Amendments, adding new sec. 408A to the HEA. | New sec. 408A(a) authorizes the award of grants to develop model programs to counsel students, *at an early age*, about college opportunities, financial aid, etc. | |
| National Student Savings Demonstration Program. | The 1992 Amendments, adding new sec. 410A to the HEA. | New sec. 410A is designed to create a demonstration program to test the feasibility of establishing a national student savings program to encourage families to save for their *children's* education. (sec. 410A(a)(1)) (Sec. 410A repeatedly refers to "child" and "children".) In awarding demonstration grants, the Secretary is to give priority to States proposing programs that establish accounts for a *child* prior to the *age of compulsory school attendance* in the State in which that *child* resides. (sec. 410A(b)(3)). | |
| Federal Trio Programs—Educational Opportunity Centers. | Sec. 402(a)(4) of the 1992 Amendments, adding sec. 402F to the HEA (formerly 20 U.S.C. 1070d–1c.). | Sec. 402F(c)(2) (formerly sec. 417E(c)(2)) requires that "participants be . . . at least *nineteen years of age*, unless the imposition of such limitation . . . would defeat the purposes of this section . . . of section 402B [Talent Search].". | 34 CFR part 644. |
| High School Equivalency Program for Students Whose Families are Engaged in Migrant and Seasonal Farmwork. | Sec. 418A of the HEA, 20 U.S.C. 1070(d)-2, as amended by sec. 405(a) of the 1992 Amendments. | Sec. 418A(b) authorizes services including recruitment services to reach persons who are *17 years of age and over* or who are beyond the *age of compulsory school attendance* in State of residence and who have, or whose parents have, spent certain amounts of time in migrant and seasonal farmwork. | |
| Byrd Honors Scholarship Program. | Sec. 419D of the HEA, as amended by sec. 406 of the 1992 Amendments. | New sec. 419D provides that the number of scholarships made available in a State for any given fiscal year shall bear the same ratio to the total number of scholarships as a State's population *age 5 through 17* bears to the total population *age 5 through 17*, but with a minimum of 10 scholarships per State. | |
| Student Assistance—Federal Family Education Loan Program—Robert T. Stafford Federal Student Loan Program. | —Title IV, Part B, Higher Education Act of 1965, Pub. L. 89–329, as amended by Pub. L. 100–297; 20 U.S.C. 1071. | Sec. 421(a)(2) provides that no agency, organization, institution, bank, credit union, corporation, or other lender who regularly extends, renews, or continues credit or provides insurance under this part shall exclude from receipt, or deny the benefits of, or discriminate against any borrower or applicant in obtaining, such credit or insurance on the basis of race, national origin, religion, sex, marital status, *age*, or handicapped status. | 34 CFR part 682 |
| | 20 U.S.C. 1072 | Sec. 422(b)(I) provides that advances to nonprofit private institutions and organizations for the benefit of students in any State and to such State may not exceed an amount equal to the ratio of the population of such State which is *aged 18 to 22* inclusive to the population of all States which is *aged 18 to 22*, inclusive. | |
| | 20 U.S.C. 1078 | Under sec. 428(b)(1)(M)(xi), the Secretary and a State may agree that students receive subsidies if the State program, among other things, provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period not in excess of 12 months for mothers with *preschool age children* who are just entering or reentering the work force and who are compensated as prescribed. | |
| | | Sec. 428(c)(2)(F) requires that guaranty agreements entered into by the Secretary with a guaranty agency set forth adequate assurances that the agency will not engage in any pattern or practice which results in a denial of a borrower's access to loans because of, *inter alia*, the borrower's race, sex, color, religion, national origin, *age*, handicapped status, or income. | |
| | 20 U.S C. 1087–1 | Sec. 438(d)(3) requires that, for eligibility for special allowances, authorities issuing tax-exempt obligations shall not engage in any pattern or practice which results in a denial of a borrower's access to loans under this part because of, *inter alia*, the borrower's race, sex, color, religion, national origin, *age*, handicapped status, or income. | 34 CFR 682.802 |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Student Assistance—Federal Work-Study Programs. | Sec. 441(a) of the 1992 Amendments, amending sec. 441 of the HEA. | Sec. 441(a) provides that one of the purposes of work-study is to encourage students receiving assistance to participate in "community service" activities, defined to include work in the *youth* corps. | |
| Student Assistance—Cancellation of Loans for Certain Public Service. | Sec. 465 of the 1992 Amendments, amending sec. 465(a)(2) of the HEA, 20 U.S.C. 1087ee. | New sec. 465(a)(2)(C) provides that bases for cancellation of loans include work as a full-time special education teacher, including teacher of *infants, toddlers, children, or youth* with disabilities. | |
| | | New sec. 465(a)(2)(I) allows loan cancellation for work as a full-time employee of a *child* or family service agency providing or supervising provision of services to high-risk *children* from low income communities. | |
| | Sec. 465(d) of the 1992 Amendments, adding sec. 469 to the HEA. | New sec. 469(a) defines low income communities as those with a high concentration of *children* eligible to be counted under the Elementary and Secondary Education Act of 1965. New secs. 469 (a) and (b) define the terms "high-risk *children*" and "*infants, toddlers, children, and youth* with disabilities.". | |
| Student Assistance—Need Analysis. | The 1992 Amendments, adding sec. 472(8) (formerly 20 U.S.C. 1087ll). | Sec. 472(8) (formerly sec. 472(7)) defines "cost of attendance" for a student with one or more dependents, as an allowance based on the expenses reasonably incurred for dependent care based on the number and *age* of such dependents. | |
| | Sec. 471(a) of the 1992 Amendments, replacing sec. 474 of the HEA, formerly 20 U.S.C. 1087nn. | Sec. 474(b)(6) provides that one data element in determining the expected family contribution is the *age* of the older parent. | |
| Student Assistance—Need Analysis. | Sec. 471(a) of the 1992 Amendments, replacing sec. 474(d) of the HEA, formerly 20 U.S.C. 1087rr. | New secs. 474(d)(3), 476(d)(3), and 477(d)(3) establish tables of asset protection allowances based on the *age* of the oldest parent (for dependent students) or the *age* of the student (for independent students). | |
| Student Assistance—Need Analysis. | Sec. 471(a) of the 1992 Amendments, revising sec. 478 of the HEA (formerly 20 U.S.C. 1087rr). | Sec. 478(d)(3) requires the Secretary to publish in the FEDERAL REGISTER a table of asset protection allowances, such table to be developed by determining the present value cost of an annuity that would provide, for each *age cohort of 40 and above*, a supplemental income at *age 65*. . . . For each *age cohort below [age] 40*, the asset protection allowance shall be computed by decreasing the asset protection allowance for *age 40*, by a prescribed amount. | |
| | Sec. 471(a) of the 1992 Amendments, replacing sec. 480 of the HEA (formerly 20 U.S.C. 1087vv). | Sec. 480(d) defines the term "independent" with respect to a student as any individual who is *24 years of age or older* by December 31 of the award year or meets alternate criteria. | 34 CFR 668.2. |
| Higher Education Resources and Student Assistance—General Provisions. | Title XII, Higher Education Act of 1965, Pub. L. 89–329, as amended; 20 U.S.C. 1141(a). | Sec. 1201(a) defines "institution of higher education" to include a public or nonprofit private educational institution or a proprietary institution of higher education that admits as regular students *persons who are beyond the age of compulsory school attendance* in the State in which the institution is located and who have the ability to benefit from the training offered by the institution. | 34 CFR 600.4. |
| | 20 U.S.C. 1143 | Sec. 1203(b)(4)(C) requires that an agreement as to the Federal-State relationship consists of assurances by the State that the State has a comprehensive planning or policy formation process which considers the postsecondary educational needs of unserved and underserved individuals within the State, including *individuals beyond the traditional college age*. | |
| Student Assistance—General Provisions. | 50 U.S.C. App. 462(f) | See Section 12 of the Military Selective Service Act, which states in pertinent part that anyone required to register under Sec. 3 of the Act [males *between the ages of eighteen and twenty-six*] shall file with the higher education institution he attends or plans to attend a statement of compliance with Sec. 3 in order to receive assistance under the Higher Education Act of 1965. | 34 CFR 668.14. |

**Office of Special Education and Rehabilitative Services**

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Assistance for Education of All Children With Disabilities and Preschool Grants. | Parts A and B, Individuals With Disabilities Education Act (formerly the Education of the Handicapped Act (EHA)) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1400–1419. | Sec. 601(c) states it is the purpose of the Act to assure that all *children* with disabilities have available to them . . . a free appropriate public education . . . to assure that the rights of *children* with disabilities and their parents or guardians are protected, to assist States and localities in providing for the education of all *children* with disabilities, and to assess and assure the effectiveness of efforts to educate handicapped *children*.. | 34 CFR 300.1. |
| | 20 U.S.C. 1401 | Sec. 602(a)(1)(A) defines "*children* with disabilities" as mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, or orthopedically impaired, or other health impaired *children* or *children* with specific learning disabilities who by reason thereof require special education and related services. | 34 CFR 300.5. |
| | | Sec. 602(a)(1)(B) further defines that "*children* with disabilities" for *children aged 3 to 5*, inclusive, may, at a State's discretion, include children—(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, need special education and related services. | |
| | | Sec. 602(a)(20) requires statement of needed transition services in IEPs "for students beginning no later than *age 16* and annually thereafter (and, when determined appropriate for individuals beginning at *age 14 or younger*)". | |
| | | Sec. 602(b) defines "youth with disabilities" for purposes of Part C of the Act as any child with a disability who—(1) is *twelve years of age or older*; or (2) is enrolled in the seventh or higher grade in school. | |
| | 20 U.S.C. 1408 | *See* Sec. 609 concerning State eligibility for financial assistance. | |
| | 20 U.S.C. 1411 | Sec. 611(a) establishes a formula for determining the maximum grant to a State as "the number of *children* with disabilities *aged 3–5*, inclusive, in a State who are receiving special education and related services . . . and the number of children with disabilities *aged 6–21*, inclusive, in a State who are receiving special education and related services . . .". | |
| Assistance for Education of All Children With Disabilities and Preschool Grants. | Parts A and B, Individuals With Disabilities Education Act (formerly the EHA), as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1412. | Sec. 612 establishes eligibility requirements and conditions, including that—(1) the State have in effect a policy that assures all *children* with disabilities the right to a free appropriate public education; (2)(B) a free appropriate public education be available for all *children* with disabilities between the ages of three and eighteen . . . and for all children with disabilities between the *ages of three and twenty-one* ". . . except that, with respect to *children* with disabilities *aged three to five* and *aged eighteen to twenty-one*, inclusive, the requirements of this clause shall not be applied in any State if the application of such requirements would be inconsistent with State law . . . respecting public education within such *age* groups in the State". | 34 CFR 300.110. |
| Evaluation and Program Information. | Part B, Individuals With Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1418. | Sec. 618(a) directs the Secretary to assess progress in implementing the Education of the Handicapped Act, and to assess the impact and effectiveness of efforts to provide free appropriate public education to all *children and youth* with disabilities and to assess early intervention to *infants and toddlers* with disabilities. | 34 CFR part 327. |
| | | Sec. 618(b) describes the data to be collected to assess the implementation of this chapter, and State and local efforts to provide a free appropriate public education to *children and youth* with disabilities, and early intervention services to *infants and toddlers* with disabilities. The Secretary shall collect information on the number of *infants, toddlers, children, and youth* with disabilities. This section contains a number of distinctions by which information is to be collected on *infants, toddlers, children and youth* with disabilities. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| | | Sec. 618(c) provides that the Secretary will make grants to, or enter into contracts or cooperative agreements with State or local educational agencies, institutions of higher education, public agencies and private nonprofit organizations for the purpose of conducting studies, analyses, syntheses, and investigations for improving the provision of full educational opportunities and early interventions for all children with disabilities from *birth through age 21*. The section includes a nonexclusive list of the program and system improvements for which information gathered from such studies and investigations will be used. | |
| ..... | ..... | Sec. 618(e) directs the Secretary to provide for special studies to assess progress in the implementation of the chapter and to assess the impact and effectiveness of State and local efforts and efforts by the Secretary of the Interior to provide free appropriate public education to *children and youth* with disabilities, and early intervention services to *infants and toddlers* with disabilities. The section also lists a number of areas to which the Secretary may give first consideration in selecting priorities for fiscal years 1991 through 1994. | |
| | | Sec. 618(g)(1) requires the Secretary to issue an annual report on the progress being made toward the provision of a free appropriate public education to all *children and youth* with disabilities, and early intervention services for *infants and toddlers* with disabilities. The subsection requires that the Secretary include in the annual report, *inter alia*, an analysis and evaluation of the participation of *children and youth* with disabilities in vocational education programs and services, and an analysis and evaluation of the effectiveness of procedures undertaken to ensure that *children and youth* with disabilities receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for *children and youth* with disabilities. | |
| Evaluation and Program Information. | Part B, Individuals With Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1418. | Subpart (g)(5) provides that in consultation with the National Council on Disability and the Bureau of Indian Affairs Advisory Committee for Exceptional Children, the Secretary shall include in the report a description of the status of early intervention services for *infants and toddlers* with disabilities *from birth through age two*, inclusive, and special education and related services to *children* with disabilities *from 3 through 5 years of age*. | |
| Preschool and School Programs for Children With Disabilities. | Parts A and B, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1419. | Sec. 619(a)(1) provides that for fiscal years 1987–89 (or fiscal year 1990 if the Secretary makes a grant under this paragraph for that fiscal year), the Secretary shall make a grant to any State that "provides special education and related services to *children* with disabilities *aged three to five*, inclusive". | 34 CFR part 301. |
| | | Sec. 619(b)(1) provides that for fiscal year 1990 (or fiscal year 1991 if the Secretary makes a grant under sec. 619(a)(1) for that fiscal year), and for fiscal years thereafter, the Secretary shall make a grant to any State that "has a State plan . . . which includes policies and procedures that assure the availability under the State law and practice of such State of a free appropriate public education for all *children* with disabilities *aged three to five*, inclusive and for any *two-year old children* provided services by the State . . . or by a local educational agency or intermediate educational unit.". | |
| | | Sec. 619(c) provides that funds under the Pre-School Grants program may be used to provide services for *children* with disabilities from *three to five years of age*, inclusive. | |
| Regional Resource Centers for the Handicapped. | Part C, Individuals With Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476; 20 U.S.C. 1421. | Sec. 621(a) authorizes the Secretary to make grants or enter into contracts or cooperative agreements with institutions of higher education, public agencies, private non-profit organizations, State educational agencies or combinations of such agencies or institutions for the establishment and operation of regional resource centers. Each of these centers shall—. | 34 CFR part 305. |
| | | (1) assist in identifying and solving persistent problems in providing quality special education and related services to *children and youth* with disabilities and early intervention services to *infants and toddlers* with disabilities and their families;. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
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| | | (2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to *children and youth* with disabilities and their families and early intervention services to *infants and toddlers* with disabilities and their families; . . .<br>(4) assist in the improvement of information dissemination to and training activities for professionals and parents of *infants, toddlers, children and youth* with disabilities. | |
| Services for—Deaf-Blind Children and Youth. | Part C, Individuals With Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476; 20 U.S.C. 1422. | Sec. 622(a)(1) authorizes the Secretary to assist State educational agencies to assure the provision of special education and related services as well as vocational and transitional services to deaf-blind *infants, toddlers, children, and youth* and to make available to deaf-blind *youth*, programs and services to facilitate their transition from educational to other services.<br>Sec. 622(b) authorizes the Secretary to enter into cooperative agreements or contracts to establish and support regional programs for providing technical assistance in the education of deaf-blind *children and youth*.<br>*See also* Secs. 622(a)(2), 622(c), and 622(d). | 34 CFR part 307. |
| Early Education for Children with Disabilities. | Part C, Individuals With Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1423. | Sec. 623(a)(1) provides that the Secretary is authorized to arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of experimental, demonstration, and outreach preschool and early intervention programs for *children* with disabilities, including individuals who are at risk of having substantial developmental delays if early intervention services are not provided.<br>Sec. 623(a)(1) provides that the Secretary may fund programs that offer training about exemplary models and practices to State and local personnel who provide services to *children* with disabilities *from birth through age eight*.<br>Sec. 623(b) provides that "[t]he Secretary shall fund up to 5 grants to States for 3 years for the purpose of establishing an inter-agency, multidisciplinary, and coordinated statewide system for the identification, tracking and referral to appropriate services for all categories of *children* who are biologically and/or environmentally at-risk of having developmental delays.<br>Sec. 623(c) provides that "[t]he Secretary shall arrange by contract, grant or cooperative agreement with appropriate public agencies and private non-profit organizations for the establishment of a technical assistance development system to assist entities operating experimental, demonstration, and outreach programs and to assist State agencies to expand and improve services provided to *children* with disabilities".<br>Sec. 623(d) provides: "The Secretary shall arrange by contract, grant, or cooperative agreement with appropriate public agencies and private non-profit organizations for the establishment of *early childhood* research institutes to carry on sustained research to generate and disseminate new information on preschool and early intervention for *children* with disabilities and their families".<br>Sec. 623(e) provides for grants for research to identify and meet the full range of special needs of *children* with disabilities and for training of personnel of programs for *children* with disabilities, including programs to integrate *children* with disabilities into regular *preschool* programs.<br>Sec. 623(g) provides: "For purposes of this section the term 'T3children with disabilities' includes *children from birth through eight years of age*, including *infants and toddlers* with disabilities". | 34 CFR part 309. |
| Programs for Children with Severe Disabilities. | Part C, Individuals With Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1424. | Sec. 624(a) authorizes the Secretary to make grants to, or enter into contracts or cooperative agreements for—.<br>(1) research to identify and meet the full range of special needs of such infants, *toddlers, children, and youth* with severe disabilities;. | 34 CFR part 315. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
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| | | (2) the development or demonstration of new, or improvements in existing methods, approaches, or techniques which would contribute to the adjustment and education of such *infants, toddlers, children, and youth* with severe disabilities;.<br>(3) training of personnel for programs specifically designed for such *infants, toddlers, children, and youth* and.<br>(4) dissemination of materials and information about practices found effective in working with such *children and youth.* | |
| Postsecondary Education Programs for Individuals with Disabilities. | Part C, Individuals With Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476; 20 U.S.C. 1424a. | Sec. 625(a)(1) authorizes grants or contracts for the development, operation and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or *adult* education for individuals with disabilities.<br><br>Sec. 625(a)(2) provides that in making grants or contracts under Sec. 625(a)(1), the Secretary shall give priority consideration to certain programs, including model programs for individuals with disabling conditions other than deafness "for developing and adapting programs of . . . *adult* education to meet the needs of individuals with disabilities". | 34 CFR part 338. |
| Secondary Education and Transitional Services for Youth with Disabilities. | Parts C and B, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1425. | Sec. 626(a) authorizes the Secretary to make grants or enter into contracts to—<br><br>(1) strengthen and coordinate special education and related services for *youth* with disabilities . . . to assist them in the transition to postsecondary education, vocational training, competitive employment, continuing education, independent and community living, or *adult* services; [and].<br>(3) stimulate the improvement of the vocational and life skills of students with disabilities to enable them to be better prepared for transition to *adult* life and services.<br>Sec. 626(b) authorizes assistance for projects that may include—.<br>(1) developing strategies and techniques for transition to independent living, vocational training, vocational rehabilitation, postsecondary education and competitive employment for *youth* with disabilities.<br>*See also* Secs. 626(b)(2)–(b)(4), (b)(6), and (b)(7) through (b)(11) for further references to *youths* and *adults.*<br>Sec. 626(e) authorizes the Secretary to make one-time, 5-year grants, . . . to develop, implement, and improve systems to provide transition services for *youth* with disabilities from *age 14 through the age they exit school.* | 34 CFR part 326. |
| Programs for Children and Youth with Serious Emotional Disturbance. | Part C, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476; 20 U.S.C. 1426. | Sec. 627(a) authorizes the Secretary "to make grants to, or enter into contracts with institutions of higher education, State and local educational agencies, and other appropriate public and private non-profit institutions or agencies to establish projects for the purpose of improving special education and related services to *children* and *youth* with serious emotional disturbance.".<br>Sec. 627(b) authorizes the Secretary "to make grants, on a competitive basis, to local educational agencies in collaboration with mental health entities to provide services for *children* and *youth* with serious emotional disturbance". | 34 CFR part 328. |
| Training Personnel for the Education of Individuals with Disabilities. | Part D, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1431–35. | Sec. 631(a)(1) authorizes the Secretary, *inter alia*, to make grants or awards to institutions of higher education and other appropriate non-profit institutions or agencies to assist them in training personnel for careers in special education, related services, and early intervention, including—(B) related services to *children* and *youth* with disabilities in educational settings; (C) special education and other careers in preschool and early intervention services for *infants and toddlers* with disabilities; and (E) training of special education personnel and other personnel providing special services and pre-school and early intervention services for *children* with disabilities. | 34 CFR parts 316 and 318. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| | | Sec. 631(b) provides that the Secretary may make grants...to develop and demonstrate effective ways for preservice training programs to prepare regular educators to work with *children* and *youth* with disabilities and their families;...for inservice and preservice training of personnel to work with *infants, toddlers, children, and youth* with disabilities and their families and minority *infants, toddlers, children, and youth* with disabilities and their families; and for preservice and inservice training of special education and related services personnel to benefit *infants, toddlers, children, and youth* with disabilities.<br>Sec. 631(c)(1) provides that the Secretary shall fund up to five grants to States or entities to support the formation of consortia or partnerships of public and private entities for the purpose of providing opportunities for career advancement and/or competency-based training, including but not limited to, certificate or degree granting programs in special education, related services, and early intervention for current workers at public and private agencies that provide services to *infants, toddlers, children, and youth* with disabilities. Recipients shall meet the requirements of section 610(g) for the dissemination of information.<br>Sec. 631(c)(3) provides that the Secretary shall award, for the purpose of providing technical assistance to States or entities receiving grants under paragraph (1), a cooperative agreement through a separate competition to an entity that has successfully demonstrated the capacity and expertise in the education, training, and retention of workers to serve *children* and *youth* with disabilities through the use of consortia or partnerships established for the purpose of retaining the existing workforce and providing opportunities for career enhancement.<br>Sec. 631(d) provides that the Secretary may make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of *infants, toddlers, children and youth* with disabilities and persons who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of *children* with disabilities. Such grants shall be designed to meet the unique training and information needs of parents of *infants, toddlers, children, and youth* with disabilities living in the area to be served by the grant, particularly those who are members of groups that have been traditionally underrepresented. | |
| Training Personnel for the Education of Individuals with Disabilities. | Part D, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476; 20 U.S.C. 1431. | See subparts (c)(2) to (c)(7) ..... | 34 CFR part 319. |
| | | Sec. 632(c) provides: "The Secretary shall make grants... to meet the needs of *infants, toddlers, children, and youth* with disabilities or supervisors of such persons, consistent with the personnel needs identified in the State's comprehensive system of personnel development under [Sections 613 and 676(b)(8)]". | |
| Clearinghouses .. | Part D, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476; 20 U.S.C. 1433. | Sec. 633(a) authorizes the Secretary to make grants or to enter into contracts or cooperative agreements with public agencies or private nonprofit organizations or institutions for the establishment of three national clearinghouses: on *children* and *youth* with disabilities; on postsecondary education for individuals with disabilities; and on careers in special education . . . | 34 CFR part 320. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Research in the Education of Individuals with Disabilities—Research and Demonstration Projects. | Part E, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1441–42. | Sec. 641(a) provides that the Secretary may make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for the purpose of advancing and improving the knowledge base and improving the practice of professionals, parents, and others providing early intervention, special education, and related services including professionals who work with *children* and *youth* with disabilities in regular education environments, to provide such children effective instruction and enable them to successfully learn. The activities supported by this section shall support advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of *infants, toddlers, children, and youth* with disabilities. In carrying out this section, the Secretary may support research and related activities designed to—<br>(1) advance knowledge regarding the provision of instruction and other interventions to *infants, toddlers, children, and youth* with disabilities including . . .<br>(C) the improvement of knowledge regarding the developmental and learning characteristics of *infants, toddlers, children, and youth* with disabilities . . .<br>(G) the development of assessment techniques, instruments . . . and strategies for measurement of progress and the identification, location, and evaluation of *infants, toddlers, children, and youth* with disabilities . . .<br>(f)(1) The Secretary shall make grants or enter into contracts or cooperative agreements for the establishment of a center or centers designed to organize, synthesize, and disseminate current knowledge relating to *children* with attention deficit disorder with respect to the following:<br>(A) Assessment techniques, instruments, and strategies used for identification, location, evaluation and for measurement of progress.<br>(B) Knowledge and skill competencies needed by professionals providing special and regular education and related services.<br>(C) Environmental, organizational, resource, and other conditions necessary for effective professional practice.<br>(D) Developmental and learning characteristics.<br>(E) Instructional strategies, techniques, and activities.<br>(F) Curricula and instructional tools such as textbooks, media, materials, and technology.<br>(G) Strategies, techniques, and activities related to involvement of families.<br>(g)(1) The Secretary shall make grants, or enter into contracts or cooperative agreements, for the establishment of model demonstration programs, of which some will be school-based models, that provide the services of an ombudsman to assist in resolving problems that are barriers to appropriate educational, related services, or other services for *children and youth* with disabilities.<br>(2) Programs under paragraph (1) shall provide or identify personnel to assist *children and youth* with disabilities, their parents or guardians, special and regular education teachers, State and local education administrators, and related services personnel to resolve problems in a timely manner through dispute mediation and other methods, notwithstanding due process procedures, in order to further the delivery of appropriate education and related services.<br>Sec. 642 authorizes the Secretary to make grants for research and related purposes relating to physical education or recreation for *children* with disabilities . . . and to conduct research, surveys, or demonstrations relating to physical education or recreation for *children* with disabilities . . . . | 34 CFR part 324. |
| Instructional Media for Individuals with Disabilities. | Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1452–54. | Sec. 652(c) provides that the Secretary may make grants to or enter into contracts or cooperative agreements with the National Theatre of the Deaf, Inc. and other appropriate nonprofit organizations for the purpose of providing cultural experiences to enrich the lives of deaf and hard of hearing *children* and *adults*. | 34 CFR part 332. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
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| Technology, Educational Media, and Materials for Individuals with Disabilities. | Part G, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1461. | Sec. 661 provides that the Secretary may make grants to or enter into contracts or cooperative agreements with institutions of higher education, State and local educational agencies, or other appropriate agencies and organizations for the purpose of advancing the use of new technology, media, and materials in the education of students with disabilities and the provision of early intervention to *infants* and *toddlers* with disabilities. | 34 CFR part 333. |
| Infants and Toddlers with Disabilities. | Part H, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1471–85. | Part H authorizes an early intervention program under the Individuals with Disabilities Act for *infants and toddlers* with disabilities and their families, and for other purposes.<br><br>Sec. 671 provides that it is the policy of the United States to provide financial assistance to States—<br>(1) to develop and implement a statewide . . . program of early intervention services for *infants* and *toddlers* with disabilities and their families, . . . .<br>(3) to enhance their capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to *infants, toddlers* with disabilities, and their families. | 34 CFR part 303. |
| Infants and Toddlers with Disabilities. | Part H, Individuals with Disabilities Education Act, as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1472. | Sec. 672 states that, as used in this subchapter—<br>(1) The term infants and toddlers with disabilities means *individuals from birth to age 2*, inclusive, who need early intervention services because they—<br>(A) are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: cognitive development, physical development, language and speech development, psychosocial development or self-help skills, or<br>(B) have a diagnosed physical or mental condition which has a high probability of resulting in developmental delay<br>*See also* Secs. 673–76, 678–81, 683–84<br>Sec. 677(a) requires that each *infant* or *toddler* with a disability and the *infant's* or *toddler's* family shall receive—<br>(1) a multidisciplinary assessment of unique strengths and needs of the *infant* or *toddler* and the identification of services appropriate to meet such needs, and<br>(2) a family-directed assessment of the resources, priorities and concerns of the family and identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of their *infant* or *toddler* with a disability; and<br>(3) a written individualized family service plan . . .<br>Sec. 677(d) requires that the plan contain, *inter alia*, a statement of the *infant's* or *toddler's* present levels of physical development, cognitive, language and speech development, and psychosocial development.<br>Sec. 678(a)(8) requires that the State's application include a description of the policies and procedures to ensure a smooth transition to preschool programs under Part B, including a conference to review the *child's* program options, for the period commencing on the day the *child* turns 3 through the remainder of the school year.<br>Sec. 679 permits the use of funds under this part to provide a free appropriate public education, in accordance with Part B, to *children* with disabilities from their third birthday to the beginning of the following school year. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
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| Infants and Toddlers with Disabilities. | Part H, Individuals with Disabilities Education Act (formerly the EHA) as amended by Pub. L. 101–476 and Pub. L. 102–119; 20 U.S.C. 1482. | Sec. 682(b), which establishes the composition of a State Interagency Coordinating Council, provides in part that:<br>The Council shall be composed as follows: At least 20 percent . . . shall be parents . . . of *infants, toddlers* or *children* with disabilities *aged 12 or younger*, including at least one parent of *an infant, toddler or child* with a disability *aged 6 or younger* . . . other members representing each of the appropriate agencies involved in the provision of or payment for early intervention services to *infants and toddlers* with disabilities and their families . . . at least one member from the State agency responsible for preschool.<br>Sec. 682(e) provides that the Council may, *inter alia*, advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for *children aged birth to 5*, inclusive. | |
| Gallaudet University. | Title I, Education of the Deaf Act of 1986, Pub. L. 99–371, 20 U.S.C 4303. | Sec. 103(b) establishes a Board of Trustees for Gallaudet University, which is authorized to—(6) establish such departments and other units, including a department of higher learning for the deaf, a department of elementary education for the instruction of deaf *children* . . . as the Board deems necessary to carry out the purpose of Gallaudet University . . . | |
| Kendall Demonstration Elementary School. | Title I, Part B, Education of the Deaf Act of 1986, Pub. L. 99–371, 20 U.S.C. 4311. | Sec. 111(a) establishes that Gallaudet University will provide day and residential facilities for elementary education for individuals who are deaf in order to prepare them for high school and other secondary study and to provide an exemplary educational program to stimulate the development of similar excellent programs . . .<br>Sec. 111(a)(2) provides that the Kendall Demonstration Elementary School shall also provide technical assistance and outreach throughout the Nation to train parents of deaf *infants and children* in specialized learning skills; and develop curricula, instructional techniques, materials, and programs for teaching hearing impaired and deaf students in classroom situations with non-hearing impaired students.<br>Sec. 111(b) states, "Where a local educational agency, State educational agency, or intermediate educational unit refers a *child* to or places a *child* at the Kendall Demonstration Elementary School, such agency or unit shall be responsible for ensuring that the special education and related services provided to such *child* are consistent with Part B of the Education of the Handicapped Act [20 U.S.C. 1411 *et seq.*]. | |
| Model Secondary School for the Deaf. | Title I, Part C, Education of the Deaf Act of 1986, Pub. L. 99–371, 20 U.S.C. 4321. | Sec. 121(a) provides for the Board of Trustees of Gallaudet University to maintain and operate a model secondary school for the deaf to prepare them for college and other advanced study, and to provide an exemplary secondary program to stimulate the development of similarly excellent programs throughout the Nation.<br>Subsection (b) provides that "Where a local education agency, State educational agency, or intermediate educational unit refers a *child* to or places a *child* at the model secondary school, such agency or unit shall be responsible for ensuring that the special education and related services provided to such *child* is consistent with Part B of the Education of the Handicapped Act [20 U.S.C. 1411 *et seq.*]". | |
| Commission on Education of the Deaf. | Title III, Education of the Deaf Act of 1986, Pub. L. 99–371, 20 U.S.C. 4341–44. | Sec. 301(a) establishes a Commission on Education of the Deaf to make a study of the quality of *infant and early childhood* programs and of elementary, secondary, postsecondary, *adult*, and continuing education furnished to deaf individuals.<br>Sec. 302(a) provides that the Commission shall study—<br>(A) the degree to which appropriate postsecondary, *adult*, and continuing educational opportunities are available to deaf individuals; . . .<br>(C) the training and technical assistance needs of *infant and early childhood* education programs and elementary, secondary, postsecondary, *adult*, and continuing education programs which serve the deaf;.<br>(D) . . . the effects of part B of the Education of the Handicapped Act on *infant and early childhood* education programs.<br>Sec. 302(c) provides that the Commission shall cease to exist 90 days following the submission of its final report. | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
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| Education of the Deaf. | Title IV, Education of the Deaf Act of 1986, Pub. L. 99–371, 20 U.S.C. 4351. | Sec. 401 provides that:<br>(3) The term "elementary school" means a school which provides education for deaf *children from the age of onset of deafness to age fifteen*, inclusive, but not beyond the eighth grade or its equivalent.<br>(6) The term "secondary school" means a school which provides education in grades nine through twelve, inclusive ..... | |
| National Institute on Disability Rehabilitation Research. | Title II, Rehabilitation Act of 1973, Pub. L. 93–112, as amended by Pub. L. 99–506; 29 U.S.C. 762. | Sec. 204(b) authorizes Federal grants for specialized research activities, including:<br>(8) conduct of a program of research related to the rehabilitation of *children* with handicaps and *individuals with handicaps who are aged sixty or older*, except that research concerning Indian Americans with handicaps shall include those *55 and older* . . .<br>(11) Conduct of a model research and demonstration program to develop innovative methods of providing services for *preschool age handicapped children*, including the following:<br>(A) early intervention, parent counseling, *infant* stimulation, early identification, diagnosis, and evaluation of *children* with severe handicaps *to the age of five*, with special emphasis on *children* with severe handicaps *up to the age of three:*<br>(B) such physical therapy, language development, pediatric, nursing, psychological, and psychiatric services as are necessary for such *children;* and<br>(C) appropriate services for the parents of such *children;* including psychological and psychiatric services, parent counseling, and training. | 34 CFR parts 350, 351, 352. |
| Rehabilitation Services—Special Projects and Supplementary Services. | Title III, Part B, Rehabilitation Act of 1973; Pub. L. 93–112, as amended by Pub. L. 99–506; 29 U.S.C. 777a(c). | Sec. 311(c)(1) authorizes grants for ". . . special projects and demonstrations including research and evaluation for *youths* with handicaps to provide job training and prepare them for entry into the labor force.". | 34 CFR part 376. |
| | 29 U.S.C. 777f ..... | Sec. 316(a), which authorizes grants for special recreational programs, stipulates that ". . . with respect to *children* the activities for which the grant is to be made will be conducted before or after school.". | 34 CFR part 378. |
| State Independent Living Rehabilitation Services. | Title VII, Part A, Rehabilitation Act of 1973; Pub. L. 93–112, as amended by Pub. L. 99–506; 29 U.S.C. 796a(b). | Sec. 702(b) defines "comprehensive services for independent living" to include services for *children of preschool age* . . . and *child* development services. | 34 CFR part 365. |
| Independent Living Services for Older Blind Individuals. | 29 U.S.C. 796f ..... | Sec. 721(a) authorizes grants to provide independent living services to older blind individuals, defined by Sec. 721(d) as "an individual *aged fifty-five or older.*". | 34 CFR part 367. |

## Office of Vocational and Adult Education

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED

| Program | Statute | Section and age distinction | Regulations |
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| Adult Education—Basic Program Provisions—Purpose. | Title III, Part A, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1201–1213d. | Sec. 311 declares that the purpose of this chapter is to improve educational opportunities for *adults* who lack the literacy skills requisite to effective citizenship and productive employment, to expand and improve the current system for delivering *adult* educational services including delivery of such services to educationally disadvantaged *adults*, and to encourage the establishment of programs of adult education that will—(1) enable these *adults* to acquire basic educational skills necessary for literate functioning, (2) provide these *adults* with sufficient basic education to enable them to benefit from job training and retraining programs . . . and (3) enable *adults* who so desire to continue their education to at least the level of completion of secondary school. | 34 CFR 460.1. |
| Adult Education—Basic Program Provisions—Definitions. | Title III, Part A, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1201a. | Sec. 312(l) defines "*adult*" as "an individual who has attained *16 years of age or who is beyond the age of compulsory school attendance* under State law, except that for the purpose of section 313(b) of this title, the term 'adult' means *an individual 16 years of age or older.*". | 34 CFR 460.4. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| | | Sec. 312(2) defines the term "adult education" as services or instruction below the college level for *adults* who meet certain criteria. | 34 CFR 460.4. |
| Adult Education—Basic Program Provisions—Definitions. | Title III, Part A, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1201a. | Sec. 312(3) defines "educationally disadvantaged *adult*" as "an *adult* who—<br>(A) demonstrates basic skills equivalent to or below that of students at the fifth grade level; or.<br>(B) has been placed in the lowest or beginning level of an *adult* education program when that program does not use grade level equivalencies as a measure of students' basic skills.".<br>Sec. 312(11) defines an "individual of limited English proficiency" as "an *adult* or out-of-school *youth* who has limited ability in speaking, reading, writing, or understanding the English language. . . ."<br>Sec. 312(12) defines an out-of-school youth as "an individual who is under *16 years of age and beyond the age of compulsory school attendance* under State law who has not completed high school or the equivalent. | 34 CFR 460.4. |
| Adult Education—State Programs—Basic Grants. | Title III, Part B, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1203. | Sec. 321 establishes a State-administered program of *adult* basic and adult secondary education. | 34 CFR parts 460 and 461. |
| Adult Education—State Programs—Basic Grants. | Title III, Part B, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1205a. | Sec. 332 permits States to establish a State advisory council. The membership of the council shall be broadly representative of citizens and groups within the State having an interest in *adult* education and literacy. | 34 CFR 461.50–461.53. |
| Adult Education—State Programs—State Plans. | Title III, Part A, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1206a. | Sec. 342(c)(4) through (8), in setting out the requisites for State plans under this chapter, provides that the plans describe how adult education services will be delivered. Special focus is given to certain segments of the *adult* population in the State, including educationally disadvantaged *adults*, individuals with limited English language proficiency, the homeless, *adult* immigrants, the incarcerated, persons with handicaps, the chronically unemployed, the disadvantaged, and minorities. | 34 CFR part 425 and 34 CFR 461.12. |
| Adult Education—State Programs—State Plans. | Title III, Part B, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1208. | Sec. 353 requires that States use not less than 15 percent of their allotment for special projects that involve the use of innovative methods, systems, materials, or programs, or special projects that involve programs of *adult* education; and for training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Adult Education Act. | 34 CFR part 460 and 34 CFR 461.33. |
| Adult Education—Workplace and English Literacy Grants—Partnerships for Workplace Literacy. | Title III, Part C, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1211. | Sec. 371(a) authorizes direct grants to exemplary education partnerships for workplace literacy to pay the Federal share of the cost of *adult* education programs. Such programs are designed to teach literacy skills needed in the workplace through partnerships between business, industry, labor organizations, or private industry councils and State educational agencies, local educational agencies, institutions of higher education, or schools. Programs shall be designed to improve productivity through improvement of literacy skills needed in the workplace by, *inter alia*, providing *adult* literacy and other basic skills services and activities, meeting the literacy needs of *adults* with limited English proficiency, and improving the competency of *adult* workers in speaking, listening, reasoning, and problem solving. | 34 CFR part 472. |
| —English Literacy Grants. | 20 U.S.C. 1211a | *See* Sec. 372, which authorizes the Secretary to make grants to States for the establishment, operation, and improvement of English literacy programs for individuals of limited English proficiency, as defined in Sec. 312(11). | 34 CFR parts 463 and 474. |
| Adult Education—National Programs—Adult Migrant Farmworker and Immigrant Education. | Title III, Part D, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1213. | Sec. 381 authorizes the Secretary to carry out a program of making grants to States and local eligible recipients to support planning, developing, and evaluating programs which are designed to provide *adult* education programs, services, and activities to meet the special needs of migrant farmworkers and immigrants. | 34 CFR part 475. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Adult Education—National Programs—Adult Literacy Volunteer Training. | Title III, Part D, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1213a. | Sec. 382 authorizes the Secretary to carry out a program of making grants to States and local eligible recipients to support planning, implementation, and evaluation of programs designed to train *adult* volunteers, especially the *elderly*, who wish to participate as tutors in local *adult* education programs. | 34 CFR part 476. |
| Adult Education—National Programs—State Programs Analysis Assistance and Policy Studies. | Title III, Part D, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1213b. | Sec. 383 authorizes the Secretary to assist States in evaluating the status and progress of *adult* education in achieving the purposes of this title. | 34 CFR part 477. |
| Adult Education—State Literacy Resource Centers Program. | Title III, Part B, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–73; 20 U.S.C. 1208aa. | Sec. 356 authorizes the Secretary to make grants to establish a network of State or regional *adult* literacy resource centers. | 34 CFR part 464. |
| Adult Education—Functional Literacy for State and Local Prisoners Program. | Pub. L. 102–73, Title VI, section 601, National Literacy Act of 1991, as amended by Pub. L. 102–103, Title III, section 313; 20 U.S.C. 1211–2. | Sec. 601 authorizes the Secretary to make grants for functional literacy programs for *adult* prisoners. | 34 CFR part 489. |
| Adult Education—Life Skills for State and Local Prisoners Program. | Pub. L. 102–73, Title VI, section 601, National Literacy Act of 1991, as amended by Pub. L. 102–103, Title III, section 313; 20 U.S.C. 1211–2. | Sec. 601 authorizes the Secretary to make grants for programs of life skills necessary for reintegration of *adult* prisoners into society. | 34 CFR part 490. |
| Adult Education—Commercial Drivers Education Program. | Title III, Part C, Adult Education Act, Pub. L. 89–750, as amended by Pub. L. 102–26; 20 U.S.C. 1211b. | Sec. 373 authorizes the Secretary to make grants for *adult* education programs to help eligible commercial drivers complete the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986. | |
| Vocational Education—Assistance to States. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2311(a)(2) (A), (B), and (C), as amended by Pub. L. 99–159 and Pub. L. 101–392. | Sec. 101 provides that, subject to certain provisions, from the remainder of the sums appropriated pursuant to sec. 2302 (a) and (h) of this title, the Secretary shall allot to each State for each fiscal year—<br>(A) an amount that bears the same ratio to 50 percent of the sums being allotted as the product of the population *aged fifteen to nineteen* inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;<br>(B) an amount that bears the same ratio to 20 percent of the sums being allotted as the product of the population *aged twenty to twenty-four*, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;<br>(C) an amount that bears the same ratio to 15 percent of the sums being allotted as the product of the population *aged twenty-five to sixty-five*, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States. | |
| Vocational Education—Assistance to States—State Plan. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2323(a)(3)(A), as amended by Pub. L. 101–392 and Pub. L. 101–476. | Sec. 113 requires that, in developing the State plan, the State shall conduct an assessment that includes analysis of, among other things, the relative academic, occupational, training, and retraining needs of secondary, *adult*, and postsecondary students. | 34 CFR 403.203. |
| Vocational Education—Assistance to States—State Plan Approval. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2324(a), as amended by Pub. L. 101–392. | Sec. 114 requires the State board to develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for, among others, *adult* education. In developing the plan, the State board is required to take into consideration the relative training and retraining needs of secondary, *adult*, and postsecondary students, and shall include the estimated distribution of funds for adult instructional programs, the State's rationale for distribution of funds, and the methods to plan and coordinate programs with those conducted under the Adult Education Act. | 34 CFR 403.31 and 403.32. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Vocational Education—Assistance to States—Special Populations. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2328(b)(1), as amended by Pub. L. 101–392. | Sec. 118 requires each local educational agency to provide information on opportunities in vocational education, eligibility requirements for enrollment in vocational education programs, specific courses and special services that are available, employment opportunities, and placement to students who are members of special populations and parents of those students at least one year before the students enter or are *of an appropriate age* for the grade level in which vocational education programs are first generally available in the State, but in no event later than the beginning of the ninth grade. | 34 CFR 403.193. |
| Vocational Education—Basic State Grants—Other State-Administered Programs. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2335a(a)(2) and (b), as amended by Pub. L. 101–392. | Sec. 222 requires use of each State's allotment under section 102(a)(2)(B) for preparatory services and vocational education programs, services, and activities for girls and women, *aged 14 through 25*, designed to enable participants to support themselves and their families. Subsection (b) provides that the *age limitations* contained in this clause may be waived whenever the administrator appointed under section 102(b)(1) determines that the waiver is essential to meet the objectives of this section. | 34 CFR 403.91 and 403.92. |
| Vocational Education—Basic State Grants—Corrections Education. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2336(a)(1), as amended by Pub. L. 101–392. | Sec. 225 requires each State board to designate one or more State corrections agencies as State corrections educational agencies to administer vocational education programs assisted under this Act for *juvenile* and *adult* criminal offenders in correctional institutions in the State, including correctional institutions operated by local authorities. | 34 CFR 403.100. |
| Vocational Education—Secondary, Postsecondary, and Adult Vocational Education. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2341 (a)(3) and (d)(3)(A)(ii), as amended by Pub. L. 101–392. | Sec. 231 requires that, except as otherwise provided, one of the requirements for distribution by each State of funds available in any fiscal year for secondary school vocational education programs to local educational agencies within the State is that, from 10 percent of those funds, each local educational agency shall be allocated an amount that bears the same relationship to the 10 percent as the number of students enrolled in schools and *adults* enrolled in the training programs under the jurisdiction of the local educational agency in the preceding fiscal year bears to the number of students enrolled in schools and *adults* enrolled in training programs under the jurisdiction of all local educational agencies in the State in that year. | 34 CFR 403.112. |
| | | Sec. 231 provides that, for the purposes of this subsection, the State may determine the number of economically disadvantaged students attending vocational education programs on the basis of eligibility for, among others, the program for aid to dependent *children* under part A of Title IV of the Social Security Act (42 U.S.C. 601 et seq.). | 34 CFR 403.114. |
| Vocational Education—Secondary Postsecondary, and Adult Vocational Education. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2341a(a), 2341a(b)(2)(B), 2341a(b)(2)(D), and 2341a(d)(1), as amended by Pub. L. 101–392. | Sec. 232 provides that, with certain exceptions, each State shall distribute funds available in any fiscal year for postsecondary and *adult* vocational education programs to eligible institutions within the State. The Secretary may waive the general rules concerning distribution of funds in the case of any State that submits to the Secretary an application for a waiver that includes a proposal for an alternative formula that may include criteria relating to the number of individuals attending institutions within the State who, among other things, are members of families with dependent *children* or are enrolled in programs serving economically disadvantaged *adults*. | 34 CFR 403.116 and 403.118. |
| | | Sec. 232 also provides that the term "eligible institution" means an "institution of higher education," a local educational agency serving *adults*, or an area vocational educational school serving *adults* that offers or will offer a program that meets the requirements of 20 U.S.C. 2342 and seeks to receive assistance under this part. | 34 CFR 403.110 and 403.117. |
| Vocational Education—Secondary Postsecondary, and Adult Vocational Education. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2342(c)(2)(L), as amended by Pub. L. 101–392. | Sec. 235 provides that priority for assistance shall be given to sites or programs that serve the highest concentration of individuals who are members of special populations. In carrying out the provisions requiring that funds be used to provide vocational education in certain programs, grant funds may be used for activities such as programs that train *adults* and students for all aspects of the occupation, in which job openings are projected or available. | 34 CFR 403.111. |

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AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
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| Vocational Education—Secondary Postsecondary, and Adult Vocational Education. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2343(4) and 2343(12)(B), as amended by Pub. L. 101–392. | Sec. 240 provides that any eligible recipient desiring financial assistance under this part shall submit to the State board an application that shall contain, among other requirements for local applications determined by the State board, a description of how access to programs of good quality will be provided to economically disadvantaged students (including foster *children*). . . . The application shall also provide assurances that the eligible recipient will provide a vocational education program that, among other things, assists students who are economically disadvantaged, students of limited English proficiency, and students with handicaps to succeed through supportive services such as counseling, English-language instruction, *child* care, and special aids. | 34 CFR 403.190. |
| Vocational Education—Special Programs—State Assistance for Vocational Education Support Programs By Community-Based Organizations. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2351 (a)(3) and (a)(5). | Sec. 301(a) requires a community-based organization that desires to receive assistance under this part to submit an application prepared jointly with the appropriate eligible recipient to the State board. Each application shall— | 34 CFR 403.141. |
| | | (3) provide assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged *youth ages sixteen through twenty-one*, inclusive; . . . | |
| | | (5) describe the collaborative efforts with the eligible recipients and the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged *youth* into the vocational education programs; . . . | |
| Vocational Education—Special Programs—State Assistance for Vocational Education Support Programs By Community-Based Organizations. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2352 (b)(1) and (b)(4). | Sec. 302 provides that funds provided under this section may be used in accordance with State plans for— | |
| | | (1) outreach programs to facilitate the entrance of *youth* into a program of transitional services and subsequent entrance into vocational education, employment or other education and training; . . . . | |
| | | (4) special prevocational preparations programs targeted to inner-city *youth*, non-English speaking *youth*, Appalachian *youth*, and the *youth* of other urban and rural areas having a high density of poverty who need special prevocational education programs. | 34 CFR 403.150. |
| Vocational Education—Special Programs—Consumer and Homemaking Education. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2361, as amended by Pub. L. 101–392. | Sec. 311 authorizes the Secretary to make grants to States to assist them in conducting consumer and homemaking education programs that may include (1) instructional programs, services, and activities that prepare *youth* and *adults* for the occupation of homemaking, and (2) instruction in the areas of . . . *child* development and guidance. . . . | |
| Vocational Education—Special Programs—Consumer and Homemaking Education. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2362(b)(1), as amended by Pub. L. 101–392. | Sec. 312 provides that consumer and homemaking education grants may be used for program development and improvement of instruction and curricula relating to...improving responses to individual and family crises (including family violence and *child* abuse), strengthening parenting skills (especially among *teenage* parents), preventing *teenage* pregnancy, assisting *aged* and individuals with handicaps, and...improving individual, *child* and family nutrition and wellness. . . . | 34 CFR 403.150. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
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| Vocational Education—Special Programs—Comprehensive Career Guidance and Counseling Programs. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2382 (b) and (c), as amended by Pub. L. 101–392. | Sec. 322 provides that programs of career guidance and counseling under this part shall encourage the elimination of . . . *age* . . . bias and stereotyping. . . . | 34 CFR 403.160. |
| | | Sec. 322 also provides that not less than 20 percent of the sums made available to a State under this part shall be used for programs designed to eliminate . . . *age*. . . bias and stereotyping. . . . | 34 CFR 403.161. |
| Vocational Education—Special Programs—Business-Labor-Education Partnership for Training. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2392(a)(1), as amended by Pub. L. 101–392. | Sec. 332 authorizes the Secretary to make grants to States to enable States to award grants to partnerships among an area vocational education school, a State agency, a local educational agency, a secondary school funded by the Bureau of Indian Affairs, an institution of higher education, a State corrections educational agency or an *adult* learning center; and business, industry, labor organizations, or apprenticeship programs. . . . | 34 CFR 403.171. |
| Vocational Education—Special Programs—Business-Labor-Education Partnership for Training. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2393(d)(2), as amended by Pub. L. 101–392. | Sec. 333 provides that, when funds are used to provide vocational education to individuals in order to assist their entry into, or advancement in, high technology occupations or to meet the technological needs of other industries or businesses, special consideration shall be given to individuals who have attained *55 years of age*. | 34 CFR 403.172. |
| Vocational Education—Tech-Prep Education. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2394c(d)(3), as amended by Pub. L. 101–392. | Sec. 345 states that the Secretary or the State board, as appropriate, shall give special consideration to applications that, among other things, address effectively the issues of dropout prevention and re-entry and the needs of minority *youths*, *youths* of limited English proficiency, *youths* with handicaps, and disadvantaged *youths*. | 34 CFR 405.20 and 406.10. |
| Vocational Education—Community Education Employment Centers. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2396, as amended by Pub. L. 101–392. | Sec. 362 states that the purpose of this part is to establish and evaluate model high school community education employment centers to meet the education needs of low-income urban and rural *youth* by awarding grants . . . to enable . . . eligible recipients to establish community education employment centers. . . . | 34 CFR 408.1, 408.22, and 408.23. |
| Vocational Education—Community Education Employment Centers. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2396c(5), as amended by Pub. L. 101–392. | Sec. 365 requires each eligible recipient receiving a grant under this part to establish in each community education employment center a support system to coordinate services for students, including . . . access to day care services for *children* of participating students. | 34 CFR 408.30. |
| Vocational Education—Community Education Employment Centers. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2396d(a)(1), as amended by Pub. L. 101–392. | Sec. 366 requires each eligible recipient receiving a grant under this part to employ a parent or community coordinator to provide for the active and informed participation of parents and appropriate community representatives in each community education employment center by, among other things, encouraging parents and students to make informed decisions in reviewing and selecting the choice of community education employment center programs for their *children*. | |
| Vocational Education—Community Education Employment Centers. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2396g(b)(1), as amended by Pub. L. 101–392. | Sec. 369 requires each eligible recipient desiring to participate in the demonstration grant program authorized by this part to prepare and submit to the Secretary an application that, among other things, demonstrates that the area where the center is to be located has a high concentration of *children* from low-income families, relative to the county and State as a whole. | 34 CFR 408.10 and 408.22. |
| Vocational Education—National Programs—Research and Development. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2401(1), as amended by Pub. L. 101–392. | Sec. 401 states that a purpose of this part is to authorize research activities that contribute to improving the access to vocational education programs of individuals who are . . . *adults* who are in need of retraining, individuals who are single parents, displaced homemakers, or single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions. | 34 CFR 411.1 |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Vocational Education—National Programs—Research and Development. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2402(a)(1), as amended by Pub. L. 101–392. | Sec. 402 requires that, in order to carry out the objectives of this part, the Secretary conduct applied research on various aspects of vocational education, including, among other things, effective methods for providing quality vocational education to . . . *adults*. . . | 34 CFR 411.3. |
| Vocational Education—National Programs—Research and Development. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2403(d)(1)(A) and (D), as amended by Pub. L. 101–392. | Sec. 403 requires that the national assessment of vocational education programs assisted under this Act and as authorized by subsection (a) shall— | |
| | (A) consider the distributional effects of the formula for allocation to the States . . .,including the *age* cohorts and the per capita income allotment ratios; . . .[22 | (D) explore the use of other possible methods of targeting funds to individuals who are members of special populations, particularly individuals who are economically disadvantaged, including the poverty rate of the *school-aged* population, the gross State product per *school-aged* child. . . | |
| Vocational Education—National Programs—Research and Development. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2404(c)(1)(B), as amended by Pub. L. 101–392. | Sec. 404 states that the dissemination and training activities shall include, among other things, technical assistance to assure that programs serving special populations are effective in delivering well-integrated and appropriately articulated vocational and academic offerings for secondary, postsecondary, and *adult* students. | 34 CFR 413.3. |
| Vocational Education—National Programs—Demonstration Programs. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2412(d)(3), as amended by Pub. L. 101–392. | Sec. 412 states that, in awarding grants, the Secretary shall give priority to programs or projects that serve, among others, out-of-school *adults* in need of basic skills improvement or a high school equivalency diploma to improve the employability of those individuals. | 34 CFR 414.20, and 414.22. |
| Vocational Education—National Programs—Demonstration Programs. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2414(a)(2)(B)(i) and (c)(2), as amended by Pub. L. 101–392. | Sec. 414 states that the grants, awards, and stipends awarded by the Secretary shall provide opportunities for, among others, certified teachers who have been trained to teach in other fields to become vocational educators . . . and especially minority instructors and instructors with experience in teaching . . . *adult* and *juvenile* criminal offenders. The Secretary shall make available fellowships . . . to individuals (especially minority instructors and instructors with experience in teaching . . . *adult* and *juvenile* criminal offenders) who meet certain criteria. | 34 CFR 416.30, 416.2, 416.31, and 416.32. |
| Vocational Education—National Programs—Demonstration Programs. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2418(b)(1), as amended by Pub. L. 101–392. | Sec. 418 provides that grants awarded under this section are to be used to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school. These programs shall, among other things, serve special populations, including significant numbers of economically disadvantaged dropout-prone *youth*. | 34 CFR 423.3. |
| Vocational Education—National Programs—Demonstration Programs. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2420(b)(4)(B), as amended by Pub. L. 101–392. | Sec. 420 requires that, in awarding grants under this section, the Secretary ensure that programs supported under this section serve, among others, individuals enrolled in *adult* programs. | 34 CFR 425.3 and 425.21. |
| Vocational Education—National Programs—Demonstration Programs. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2420a(a)(4) and (5), as amended by Pub. L. 101–392. | Sec. 420A authorizes the Secretary to carry out . . . programs and projects that support, among other things, model programs . . . including *child* growth and development centers, and grants to community-based organizations in partnerships with local schools, institutions of higher education, and businesses for programs and projects that assist disadvantaged *youths* in preparing for technical and professional health careers. . . . | 34 CFR 426.1, 426.3, 426.5, 426.6, and 426.23 |
| Vocational Education—National Programs—Demonstration Programs. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2421(c)(2)(F) and (H), as amended by Pub. L. 101–392 and Pub. L. 101–476. | Sec. 421 requires the Secretary to establish a vocational educational data system that includes data reflecting the extent of participation of, among others, *adults* who are in need of training and retraining and *youths* incarcerated in juvenile detention or correctional facilities or criminal offenders who are serving time in correctional institutions. | |
| Vocational Education—General Provisions—Definitions. | Carl D. Perkins Vocational and Applied Technology Education Act; 20 U.S.C. 2471(9), (14)(A), (14)(B)(i), (14)(B)(iii), (30)(B)(i), and (31), as amended by Pub. L. 101–392. | Sec. 521 provides the following definitions containing age distinctions that apply to all programs and activities supported under this Act: | 34 CFR 400.4. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Vocational Education—General Provisions—Definitions. | | "Criminal offender" means any individual who is charged with or convicted of any criminal offense, including a *youth* offender or a *juvenile offender*.<br>"Displaced homemaker" means an individual who is an *adult*, and has worked as an *adult* primarily without remuneration to care for the home and family . . . or is a parent whose youngest dependent *child* will become ineligible to receive assistance under the program for aid to families with dependent children. . . .<br>"Single parent" means an individual who is unmarried or legally separated from a spouse and has a *minor child or children* for which the parent has either custody or joint custody, or is pregnant.<br>"Special populations" includes individuals with handicaps, educationally and economically disadvantaged individuals (including foster *children*). . . .<br>Section 400.4(b) of the regulations provides the following definitions containing age distinctions that apply to all programs and activities supported under this Act:<br>"Coherent sequence of courses" means a series of courses in which vocational and academic education are integrated. . . . The term includes . . . *adult* training or retraining, including sequential units encompassed within a single *adult* retraining course, that otherwise meets the requirements of this definition.<br>"Community-based organization" means a private nonprofit organization of demonstrated effectiveness that is representative of communities or significant segments of communities and that provides job training services (for example, . . . agencies serving *youth*, . . . ).<br>"Economically disadvantaged family or individual" means a family or individual that is . . . eligible for the program for aid to families with dependent *children*. . . .<br>"Institution of higher education" means, among other things, a public or nonprofit private education institution in any State that admits as regular students *persons who are beyond the age of compulsory school attendance* in the State in which the institution is located and who meet the requirements of section 484(d) of the Higher Education Act of 1965. | 34 CFR 400.4(b). |
| Indian Vocational Education Program. | | For purposes of the Indian Vocational Education Program, "tribal organization" means the recognized governing body of any Indian tribe or any legally established organization of Indians . . . that is democratically elected by the *adult* members of the Indian community to be served by the organization. . . . | 34 CFR 401.5(b). |
| Indian Vocational Education Program. | | The Secretary uses the following criteria to evaluate an application:<br>(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which it . . . includes a thorough description of the approach to be used including some or all of the following components . . . coordination of vocational instruction, academic instruction, and support services such as . . . *child* care. | 34 CFR 401.21. |
| Indian Vocational Education Program. | | Grants, cooperative agreements, or contracts with tribal organizations are subject to the terms and conditions of the Indian Self-Determination Act. These awards must be conducted by the recipient or contractor in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, that are relevant to the projects administered under this part . . . Section 5 pertains to participation of parents of Indian *children*. . . . | 34 CFR 401.30(a). |
| State Vocational and Applied Technology Education Program. | | The State board shall use funds awarded under the Business-Labor-Education Partnership for Training Program only for . . . expenses incurred in carrying out the programs, services, and activities described in § 403.170, including, for example, expenses for . . . *child*-care services for students necessary to ensure access of women, minorities, individuals with disabilities, and economically disadvantaged individuals. . . . | 34 CFR 403.173. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| State Vocational and Applied Technology Education Program. | | In determining if comparability requirements were met by a local educational agency (LEA) receiving funds under the State plan for vocational education, the LEA's written procedures . . . may not take into account any State and local funds spent in carrying out the following types of programs:<br>(A) Special local programs designed to meet the educational needs of educationally deprived *children*, including compensatory education for educationally deprived *children*, that were excluded in the preceding fiscal year from comparability determinations under Chapter 1<br>(B) Bilingual education for *children* of limited English proficiency<br>(C) Special education for *children* with disabilities. . . . | 34 CFR 403.194(b)(2). |
| Vocational Education Training and Study Grants Program and Vocational Education Leadership Development Awards Program. | | For purposes of the Vocational Education Training and Study Grants Program and the Vocational Education Leadership Development Awards Program, "dependent" means an individual's legal spouse, natural or adopted *minor child*, or any other person claimed as a dependent by that individual for Federal income tax purposes. | 34 CFR 416.5(b) and 34 CFR 417.5(b). |
| Internships for Gifted and Talented Vocational Education Students Program. | | Under the Internships for Gifted and Talented Vocational Education Students Program, the Secretary considers for internships only students recommended by State directors of vocational education. The State director's recommendation must include an assurance that . . . a parent or guardian of a student who has not reached the *age of majority* in a State has formally consented for the student to take part in this program. . . . | 34 CFR 419.20(c)(2). |
| Vocational Education Dropout Prevention Program. | | Under the Vocational Education Dropout Prevention Program, the Secretary uses the following criteria to evaluate an application:<br>(a) *Program factors.* (15 points) The Secretary reviews each application to assess the effectiveness of the project including the quality of . . . proposed methodology, specifically, the extent to which the project will include . . . adjustments for *child* care. . . .. | 34 CFR 423.21 |
| Cooperative Demonstration Program. | | The Secretary supports the following types of projects under the Cooperative Demonstration Program . . . model projects providing improved access to quality vocational education programs for . . . educationally and economically disadvantaged individuals (including foster *children*). . . . | 34 CFR 426.4. |
| Cooperative Demonstration Program. | | Under the Program for Model Consumer and Homemaking Education Projects, the Secretary supports model projects that develop programs and improve instruction and curricula related to . . . improving responses to individual and family crises, including family violence and *child* abuse; strengthening parenting skills, especially among *teenage* parents; preventing *teenage* pregnancy; assisting *aged individuals* with disabilities . . . improving individual, *child*, and family nutrition and wellness. . . . | 34 CFR 426.5. |
| Bilingual Vocational Training Program. | | The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for limited English proficient out-of-school *youth* and *adults*, to prepare these individuals for jobs in recognized occupations and new and emerging occupations | 34 CFR 427.1. |
| Bilingual Vocational Training Program. | | The Secretary provides grants, cooperative agreements, or contracts for bilingual vocational training projects for limited English proficient out-of-school *youth* and *adults* who are available for training and employment; bilingual vocational education and training projects for limited English proficient out-of-school *youth* and *adults* who have already entered the labor market but who desire or need English language skills and job skills training or retraining. . . . | 34 CFR 427.3. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Bilingual Vocational Training Program. | | The Secretary uses the following criteria to evaluate an application:<br>(c) *Program factors.* (20 points) (1) The Secretary reviews each application to determine the quality of training to be provided, including—<br>(iv) Recruitment procedures that are targeted towards limited English proficient out-of-school *youth* and *adults* who have the greatest need for bilingual vocational training | 34 CFR 427.1 |
| Bilingual Vocational Materials, Methods, and Techniques Program. | | Under the Bilingual Vocational Materials, Methods, and Techniques Program, the Secretary uses the following criteria to evaluate an application:<br>(b) *Plan of operation.* (20 points) The Secretary reviews each application for information that shows the need for the proposed services and activities for individuals with limited English proficiency. The Secretary looks for information that shows . . . a clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as . . . the *elderly.*<br>(c) *Quality of key personnel.* (20 points) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project. The Secretary looks for information that shows . . . the extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as . . . the *elderly.* | 34 CFR 429.31. |
| Education and Training for American Competitiveness. | Title VI, Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 20 U.S.C. 5002. | Sec. 6002(b) declares that the purpose of this title is, in part, to establish programs designed to "assist out-of-school *youth* and *adults* who are functionally illiterate in obtaining the basic skills needed for them to become productive workers in a competitive economy. | |
| | 20 U.S.C. 5015. | Sec. 6025 defines the term "school age population" as the population *aged 5 through 17.* | |
| —Educational Partnerships. | 20 U.S.C. 5034. | Secs. 6044(4) authorizes, among others, projects "which are designed to address the special educational needs of gifted and talented *children* in the elementary and secondary schools. . . .". | |
| Education and Training for American Competitiveness—Assistance to Address School Dropout Problems. | Title VI, Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, 20 U.S.C. 5052. | Sec. 6062 declares that it is the purpose of this subpart, in part, to reduce the number of *children* who do not complete their elementary and secondary education by providing grants to local educational agencies to establish and demonstrate effective programs to identify and encourage *children* who have already dropped out to reenter school and complete their elementary and secondary education, and model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of the *children* not completing their elementary and secondary education and the reasons why such *children* have dropped out of school. | |
| | 20 U.S.C. 5055 | Sec. 6065(b) requires each application to provide documentation of, *inter alia,* the number of *children* who were enrolled in the applicant's schools for the five academic years prior to the date application is made who have not completed their elementary or secondary education and who are classified as school dropouts pursuant to this title. Applicants must also provide documentation of the percentage that such number of *children* is of the total *school-age* population in the applicant's schools. | |
| —Assistance to Provide Basic Skills Improvement. | 20 U.S.C. 5062 | Sec. 6072 declares that it is the purpose of this subpart to assist local educational agencies with high concentrations of *children* from low-income families to improve the achievement of educationally disadvantaged *children* enrolled in the secondary schools of such agencies. | |
| | 20 U.S.C. 5066 | Sec. 6076(c) provides that, in approving applications, the Secretary shall give special consideration to programs that demonstrate the greatest need for services based on numbers or proportions of secondary school *children* from low-income families and of low-achieving secondary school *children* and offer innovative approaches to improving achievement among eligible secondary school *children.* | |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Adult Education for the Homeless | Title VII, Stewart B. McKinney Homeless Assistance Act of 1987, Pub. L. 100–77; as amended by Pub. L. 100–297, Pub. L. 100–628, and Pub. L. 101–645; 42 U.S.C. 11421. | Sec. 702(a) provides that the Secretary shall make grants to State educational agencies to enable each such agency to implement, either directly or through contracts and grants, a program of literacy training and basic skills remediation for *adult* homeless individuals within the State.<br><br>Sec. 702(b) requires that each State educational agency desiring to receive its allocation under this section shall submit to the Secretary of Education an application including an estimate of the number of homeless expected to be served. | 34 CFR 441.1, 441.21. |

**General Provisions**

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Prohibition of Sex Discrimination (Title IX). | Title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended; 20 U.S.C. 1681. | Sec. 901(a)(6)(B) exempts from the general prohibition against sex discrimination the membership practices of voluntary *youth* service organizations, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than *nineteen years of age*. | 34 CFR 106.21. |
| Protection of the Rights and Privacy of Parents and Students. | Title IV, Family Educational Rights and Privacy Act of 1974, Pub. L. 90–247, as amended by Pub. L. 95–561; 20 U.S.C. 1232g. | Sec. 438(a)(1)(A) prohibits making funds available under an applicable program to any educational agency or institution which has a policy of denying, or which prevents, parents of students who are or have been in attendance at a school of such agency or institution . . . the right to review and inspect the educational records of their *children*. It also requires each educational agency or institution receiving Department funds to establish appropriate procedures for granting a request by parents for access to the education records of their *children* within a reasonable time, but not later than forty-five days after the request has been made.<br>Sec. 438(a)(4)(B)(iv) excludes from the definition of "education records" "records on a student . . . *eighteen years of age or older* . . . which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional . . . which are made, maintained or used only in connection with the provision of treatment to the student, and are not available to anyone . . . [else]." | 34 CFR part 99, 34 CFR part 75, 34 CFR part 76. |
| Protection of the Rights and Privacy of Parents and Students. | Title IV, Family Educational Rights and Privacy Act of 1974, Pub. L. 90–247, as amended by Pub. L. 95–561; 20 U.S.C. 1232g. | Sec. 438(d) provides that "[f]or the purpose of this section, whenever a student has attained *eighteen years of age*, or is attending an institution of postsecondary education . . . the rights accorded to the parents of the student shall thereafter only be . . . accorded to the student.".<br>Sec. 438(e) prohibits making funds available to "any educational agency or institution unless . . . [it] informs the parents of students, or the students, if they are *eighteen years of age or older* of the rights accorded them by this section." | 34 CFR part 99, 34 CFR part 75, 34 CFR part 76. |
| | 20 U.S.C. 1232h | Sec. 439(a) provides that all instructional material used in connection with any research or experimentation project funded under an applicable program shall be available for inspection by the parents or guardians of the *children* engaged in such program.<br>Sec. 439(b) prohibits requiring a student to submit to psychiatric or psychological examination, . . . in which the primary purpose is to reveal information concerning certain subject matter without the prior consent of the student (if the student is an *adult* or *emancipated minor*) or, in the case of an *unemancipated minor*, without the parent's prior written consent. | |
| Regulations That Apply to Direct Grant Programs. | General Education Provisions Act, Title IV, Pub. L. 90–247, as amended; 20 U.S.C. 1221e–3. | Sec. 408(a) authorizes the Secretary to make, promulgate, issue, rescind and amend rules and regulations governing applicable programs administered by the Department. | 34 CFR part 75. |

AGE DISTINCTIONS IN STATUTES AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY ED—Continued

| Program | Statute | Section and age distinction | Regulations |
|---|---|---|---|
| Section 504—Nondiscrimination on the Basis of Handicap. | Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112; and Sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516; 29 U.S.C. 794. | Sec. 504 prohibits discrimination on the basis of handicap against an otherwise qualified handicapped individual in any program or activity receiving Federal financial assistance. (See implementing regulations for definition of the term "qualified handicapped individual.") | 34 CFR part 104. |

**Appendix B—Analysis of Comments and Changes**

**Note:** This appendix will not be codified in the Code of Federal Regulations.

Written comments on the proposed regulations published by the Department of Health, Education, and Welfare (HEW) on September 24, 1979, in the **Federal Register** (44 FR 55108) were received from 72 respondents. This appendix summarizes those comments and the Secretary's responses. First, general comments are summarized; then, specific comments are grouped according to specific sections of the proposed regulations.

**General Comments**

The proposed regulations solicited comments regarding whether the regulations should cross-reference the provisions contained in the governmentwide regulations or fully restate those requirements. Of the 14 responses received, a majority favored fully stating all requirements because the referenced regulations might not be available to the user, the need to refer to more than 1 document was more time-consuming, and the use of more than 1 document could be confusing. Some commenters preferred cross-referencing to differentiate between the general requirements and the requirements specific to Department of Education (ED) recipients. These regulations fully state all requirements contained in the governmentwide regulations to permit the reader to refer to one document. See 34 CFR 110.10 to 110.17. However, the regulations continue to adopt by reference the hearing procedures in 34 CFR 100.9 and 100.10 and 34 CFR part 101 used in other civil rights regulations enforced by ED.

Comments were also solicited on six alternate approaches to these regulations. The six specific questions raised by the proposed regulations were:

1. *Should the regulations address practices of specific recipient institutions?* Most commenters stated that the regulations should not address practices of specific recipients. Some indicated that provision of illustrative examples in the preamble was a better method than attempting to cover the wide variety of covered programs by specific regulatory provisions. Because no need has been established for the regulations to address the practices of specific ED recipients, ED has not included those separate provisions.

2. *Should the regulations expand the requirements for recipient self-evaluations?* Of the 19 responses to this question, 14 did not favor expansion of the requirements. Several commenters indicated that requirements for self-evaluation constituted an undue administrative burden. The final regulations do not include a mandatory self-evaluation requirement. This is discussed in more detail in the preamble and in the specific comments to § 91.33 of the notice of proposed rulemaking (NPRM).

3. *Should the regulations clarify the standards for determining what is age discrimination set out in the governmentwide regulations?* Of the 13 responses, 11 did not consider further clarification necessary. As a follow-up to this question, the proposed regulations asked whether the examples published in the proposed regulations helped to clarify the standards. Of the 23 responses, all favored inclusion of examples as a means of clarifying the standards. Accordingly, the preamble to these regulations contains an illustrative example of each of the standards contained in Subpart B.

4. *Should the regulations set out more detailed requirements about what technical assistance and educational materials ED provides its recipients?* Most commenters agreed with ED that the administrative details of technical assistance and educational materials need not be included in the regulations. ED is committed to providing technical assistance and educational materials to its recipients but does not believe that it is helpful to devise in advance the manner in which the assistance must be delivered.

5. *Should the regulations include more detailed provisions for disbursing funds to alternate recipients in the case of a fund termination?* Most commenters stated that it is impossible to make detailed provision for disbursing funds to alternate recipients in the case of a fund termination and that the only reasonable method is a case-by-case determination. Thus, these final regulations do not elaborate on a statutory standard for selecting an alternate recipient.

6. *Should ED use hearing procedures other than those used for other discrimination matters?* Commenters generally agreed with ED that the regulations implementing the Age Discrimination Act (Act) should incorporate the Title VI hearing procedures contained in 34 CFR 100.9 and 100.10 and 34 CFR part 101. These final regulations incorporate those hearing procedures.

In addition to the responses to the six questions, other general comments to which specific responses are not needed were received. Five respondents stated overall evaluations of the proposed regulations without specific references to the provisions. Of these responses, four stated that all provisions are good as written, and one stated that the whole approach to age discrimination is inappropriate. Also received were eight comments pertaining to matters over which ED does not have enforcement jurisdiction. Of these, five related solely to employment concerns not covered by the Act, and three related solely to programs now administered by the Department of Health and Human Services (HHS).

*Specific Comments*

Ten comments were received on specific provisions of the governmentwide regulations and will not be responded to here. Of these comments, one pertained to the effective date of the regulations; one proposed that school boards be included in the "any law" exception; one objected to "shifting the burden of proof" to the recipient; two objected to the agency's having access to books, records, and other information; one believed that compliance reviews are not authorized; and four objected to the prescribed mediation process.

The remaining comments were related to specific sections of the proposed regulations, which were to be published in 45 CFR part 91. Since these regulations are to be codified in 34 CFR part 110, comments relating to specific sections are identified first as published in the NPRM and then as the sections appear in the final regulations.

*§ 91.2 (§ 110.2 of these regulations) To what programs do these regulations apply?*

*Comments:* One commenter stated that the coverage of a recipient's programs and activities that benefit from Federal financial assistance, rather than receive funds directly, is inconsistent with the governmentwide regulations.

*Response:* A change is made. ED does not agree with the commenter's conclusion that the language "or benefits from" extends the jurisdiction of these regulations beyond the scope of the governmentwide regulations. However, the phrase "or benefits from" is now deleted in order for this provision to conform more closely with the language of the governmentwide regulations.

*§ 91.3 (§ 110.3 of these regulations) Definitions.*

*Comments:* Three commenters objected to the definition of subrecipient, stating that it is not needed or that it appears to include ultimate beneficiaries such as students.

*Response:* No change is made. Neither the definition of recipient nor subrecipient includes ultimate beneficiaries. It is important that recipients of ED funds understand that their obligations are not based on whether they receive the Federal financial assistance directly from ED or indirectly (as a subrecipient) through another ED recipient. The definition, therefore, states clearly that a subrecipient "has all the duties of a recipient."

*§ 91.11 (§§ 110.10–110.17 of these regulations) Standards.*

*Comments:* Eight commenters objected to certain examples that were provided in the preamble of the proposed regulations to illustrate the application of standards for determining age discrimination.

*Response:* A change is made. The preamble now provides clear examples illustrating the application of standards for determining age discrimination.

*Comments:* One commenter suggested that the regulations make clear that programs designed for high school students are not in violation. Another suggested that educational settings should not be separated on the basis of age.

*Response:* No change is made. These regulations do not preclude graded instructional levels in academic programs even though that grading results in those levels being closely associated with age groupings. Those differentiations generally fall within one or more of the exceptions that are permitted by the Act. See, for example, § 110.12.

*Comments:* One commenter requested that the regulations include criteria for acceptable affirmative action.

*Response:* No change is made. The types of affirmative action that a recipient may undertake voluntarily are too varied to be covered by any particular set of criteria.

*§ 91.31 (§ 110.20 of these regulations) General responsibilities.*

*Comments:* A commenter stated that the recipient's responsibility regarding "programs and activities" should be qualified to state "federally-assisted programs and activities." As written, § 91.31 suggests that any program or activity of a recipient, without regard for receipt of direct Federal financial assistance to that program or activity, may be subject to the regulations.

*Response:* No change is made. Implicit in the language referred to in this comment is that the programs and activities are federally funded. It should also be noted that the Civil Rights Restoration Act of 1987, Pub. L. 100–259, which amended the Act, defines "program or activity" very broadly to include most activities of ED recipients.

*Comments:* Seven commenters expressed concern that recordkeeping requirements are not specifically identified or described and that responsibilities are not clearly defined.

*Response:* No change is made. The decision not to include specific recordkeeping requirements and procedures was based on the concern for administrative burden those provisions would place on recipients. Needless burden can be avoided by gearing those requirements to the situation and objective to be achieved on a case-by-case basis until experience provides the basis for determining any specific or universal data needs.

*§ 91.32 (§ 110.21 of these regulations) Notice to subrecipients.*

*Comments:* Two commenters stated that the regulations should clarify the extent to which a recipient is accountable for the actions of subrecipients. One stated that notice should be included in the subgrant application, and one proposed that the section be eliminated.

*Response:* A change is made to allow recipients maximum flexibility in notifying subrecipients. These regulations do not prescribe the manner in which recipients are to notify subrecipients. Written notice in subgrant applications is one way of satisfying the requirement. Recipients may find more convenient and economical methods for accomplishing the required notification. To reduce paperwork burden on recipients, these regulations require only that the recipient notify its subrecipients. Any effective means will fulfill this notice requirement. No change is made with regard to the extent that a recipient is accountable for the actions of subrecipients. Both the recipient and the subrecipient are accountable for the actions of subrecipients. This section has not been eliminated as suggested because notification is necessary for effective implementation of the Act and these regulations.

*§ 91.33 (§§ 110.23–110.25 of these regulations) Self-evaluation.*

*Comments:* The self-evaluation provisions elicited 19 comments, most of which addressed whether the requirements for self-evaluation in the proposed regulations should be expanded. Most of the commenters opposed expanding the self-evaluation requirements, indicating that any further requirements for written documentation or consultations with community groups would impose an unjustified and costly administrative burden. Several of these commenters also indicated that the proposed requirements, while minimal, created an administrative burden. Some comments indicated that recipients should be required to list the corrective actions to be taken and the dates they would be completed. Several comments requested that the Department provide additional guidance on conducting the self-evaluation.

*Response:* A change is made. Section 110.24 is revised so that recipients are no longer automatically required to perform a self-evaluation. A self-evaluation may be required only in conjunction with an investigation pursuant to a complaint or a compliance review. ED believes that self-evaluation can be a useful tool to assist a recipient in complying with the Act without Federal intervention and will provide technical assistance to recipients requesting it. Instead of the mandatory self-evaluation, ED added a new § 110.23 requiring applicants for Federal financial assistance to complete assurances of compliance as is required for other civil rights statutes enforced by ED. See, for example, 34 CFR 100.4, 104.5, and 106.4. These standard assurances are less burdensome and less costly than a mandatory self-evaluation.

Section 110.25 was also added to these final regulations as a means of assisting recipients in complying with the Act without Federal intervention. It requires a recipient to designate an employee to coordinate its efforts to comply with the Act, to provide notice to its beneficiaries, and to adopt grievance procedures that provide for the prompt and equitable resolution of grievances. These requirements serve important public policy and civil rights objectives in informing both the recipients and the beneficiaries of their rights and responsibilities. Other civil rights statutes enforced by ED have similar requirements. See 34 CFR 104.7–104.8 and 106.8–106.9.

*§ 91.34 (§ 110.22 of these regulations) Information requirements.*

*Comments:* One commenter objected to the provision that "information necessary" to determine compliance could be requested, as opposed to "information required" to determine compliance, since only ED can determine what is "necessary."

*Response:* A change is made. The words "that ED determines is necessary" have been added. Effective compliance enforcement is based on information, and ED determines the type and amount of information that must be obtained in order to ascertain the compliance status of the recipient.

*§ 91.41 (§ 110.30 of these regulations) Compliance reviews.*

*Comments:* Three commenters objected to the phrase "may be as comprehensive as necessary" with regard to the scope of compliance reviews.

*Response:* No change is made. This phrase was included to make clear that compliance reviews are not limited in scope to determining the facts about a single issue. This language has been included to prevent misunderstandings that have arisen on that point.

*Comments:* Two commenters stated that the nature of compliance reviews should be clarified. Another stated that review procedures should be explained in detail.

*Response:* No change is made. The activities and scope of investigations conducted under § 110.30 will vary with the situation and the nature of the recipient institution. These regulations cannot prescribe a blueprint for those reviews, since flexibility is needed for effective investigations to be performed with minimum interference in the normal operations of recipients. This section retains the generality needed to accomplish that result.

*§ 91.42 (§ 110.31 of these regulations) Complaints.*

*Comments:* Four commenters proposed that third-party complaints should be curtailed or prohibited.

*Response:* No change is made. ED must act on complaints from third parties in order to ensure that recipients are not in violation of the Act.

*Comments:* Two commenters suggested that recipients be required to post notices explaining how to complain.

*Response:* A change is made. ED has added a new § 110.25, "Designation of responsible employee, notice, and grievance procedures." Under this section, a recipient must designate an employee to coordinate its efforts to comply with the Act and the regulations. The notice will provide beneficiaries with additional information,

including the availability of grievance procedures.

*Comments:* Six commenters expressed concerns about the 180-day limitation on filing complaints or the provision for extending that period. Two of these suggested that 180 days from the date the complainant "first knew" discrimination had occurred is not an effective limitation at all; one suggested a fixed period with no extensions; one suggested the 180-day limit should address continuing discrimination; and two expressed concern about "good cause" as a standard for extending the 180-day period.

*Response:* No change is made. The time period of 180 days is reasonable. The "good cause" exception is retained to avoid unjust exclusion of individuals who for sufficient reason were unable to file within the time limit.

*Comments:* Two commenters suggested that the period for adding information to complaints should be limited.

*Response:* No change is made. ED will permit a reasonable time period for complainants to add information that will meet the requirements of a sufficient complaint. The purpose of this provision is to facilitate, not limit, the filing of complaints that have a basis in fact.

*Comments:* Four commenters offered suggestions pertaining to ED's internal complaint processing procedures.

*Response:* No change is made. ED welcomes constructive suggestions but has decided not to specify its internal complaint processing procedures in these regulations. ED anticipates the need to revise its procedures as experience is gained in processing age discrimination complaints; therefore, a medium allowing more flexibility for revision will be used for the development of internal procedures.

*Comments:* Two commenters proposed that complaints should be filed at the local level.

*Response:* A change is made. ED has added a new § 110.25. It requires recipients to adopt grievance procedures that provide for the prompt and equitable resolution of grievances. Similar grievance procedures are required under other civil rights regulations enforced by ED. It should be noted that the regulations do not require that a complainant make use of the internal grievance procedures before filing a complaint with ED, and filing a grievance with the recipient will not meet the exhaustion requirements of the Act and these regulations.

***§ 91.43 (§ 110.32 of these regulations) Mediation.***

*Comments:* One commenter objected to the mediator's preparing the written agreement for signature of the parties as being contrary to the governmentwide regulations, § 90.43(c)(3)(ii), which require the parties to reduce the agreement to writing.

*Response:* No change is made. There is no inconsistency between the requirement for the parties to reduce their agreement to writing and the requirement for the mediator to prepare that agreement for their signatures.

*Comments:* One commenter suggested that the Federal Mediation and Conciliation Service (FMCS) be designated as the mediation agency for complaints.

*Response:* A change is made. The FMCS is designated in this section to provide further information about the mediation process.

*Comments:* One commenter suggested that the mediator should pass along findings of fact with unresolved complaints, and another suggested that mediation should not be limited to complaints.

*Response:* No change is made. The mediation process does not develop findings of fact, but attempts to facilitate an agreement between the complainant and the recipient without judging the merit of the allegations. This process has no place in compliance reviews, because there is no complainant with whom to mediate.

***§ 91.44 (§ 110.33 of these regulations) Investigation.***

*Comments:* Two commenters suggested that recipients found to be in compliance should be reimbursed for expenses incurred during mediation and investigation.

*Response:* No change is made. There is no authority in the Act or the governmentwide regulations for the reimbursement of costs incurred by the recipient during investigation and administrative enforcement proceedings.

*Comments:* One commenter objected to the provision that the Federal agency (ED) will put into writing any agreement reached during the informal fact-finding phase of investigation. The commenter believed the provision was contrary to the governmentwide regulations, § 90.43(c)(4). Another asked why the informal agreement does not constitute a finding of discrimination. A third suggested that the recipient should be notified of the commencement of the informal or formal investigation.

*Response:* A change is made. Although ED does not agree that the provisions were contrary to the governmentwide regulations, changes are made to § 110.33 (a) and (b) to conform with the governmentwide regulations in 45 CFR 90.43(c) (4) and (5) and to the procedures used by ED for complaints filed under other civil rights statutes enforced by ED. Under ED's procedures, recipients are always notified of the commencement of an investigation.

***§ 91.46 (§ 110.35 of these regulations) Compliance procedure.***

*Comments:* Three commenters were concerned about when recipients are again eligible to receive funding after funds are withheld or terminated. One suggested that funds should be withheld until compliance occurs and terminated if the recipient does not adhere to the remedial plan. Another suggested that restrictions on re-funding after termination should be clarified. The third suggested that "termination" and "withholding" should not be used synonymously.

*Response:* No change is made. The term "withholds funds" is used in § 110.37 to include both termination and refusal to grant funds. This usage is consistent with the governmentwide regulations. The restrictions on re-funding after termination are developed in detail in the post-termination proceedings applicable to Title VI of the Civil Rights Act of 1964, which are incorporated by reference in these regulations.

*Comments:* One commenter stated that the provision that funding will not be terminated until recipients have an opportunity for hearing should apply to reviews as well as to complaints.

*Response:* No change is made. Enforcement procedures apply to all findings of discrimination, whether they result from complaint investigations or compliance reviews.

*Comments:* One commenter stated that a copy of the report to congressional committees should be supplied to the recipient.

*Response:* No change is made. The information contained in the report is known by the recipient when the report is submitted. The Act specifies the content of the report as the circumstances and grounds for the termination or refusal to grant or to continue assistance under the program or activity involved. This action cannot occur until there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with these regulations.

*Comments:* Two commenters expressed confusion or dissatisfaction with the provision that an agency may defer granting new Federal financial assistance to a recipient when termination proceedings are initiated. One suggested alternate language to limit the scope of deferrals, and one suggested a definition is needed for "new" assistance.

*Response:* A change is made. Section 110.35(d)(1) defines "new" assistance as assistance administered by or through a Federal agency for which an application or approval is required during the deferral period. The deferral period begins when the recipient receives notice of an opportunity for hearing and continues no longer than 30 days following the close of the hearing.

***§ 91.48 (§ 110.38 of these regulations) Remedial action by recipients.***

*Comments:* A commenter objected to the provision that HEW (now ED) may require "any remedial action" to overcome discrimination and suggested that "any reasonable action" should be substituted.

*Response:* No change is made. The concept of reasonableness is implicit in any action that is necessary to overcome the effects of the prohibited discrimination.

***§ 91.49 (§ 110.37 of these regulations) Procedure for disbursal of funds to an alternate recipient.***

*Comments:* A commenter suggested that the phrasing of this section implies that withheld funds could be disbursed to an alternate recipient before enforcement due process procedures have been rejected by a recipient.

*Response:* No change is made. Assistance that a recipient is receiving may not be terminated and disbursed to an alternate recipient without first providing the recipient with an opportunity for a hearing.

***§ 91.50 (§ 110.39 of these regulations) Exhaustion of administrative remedies.***

*Comments:* A commenter suggested that the regulations should include a provision for recipient appeals.

*Response:* No change is made in this section, which refers to the complainant's rights. The regulations provide recipients with an opportunity for hearing and for appeals of hearing examiner decisions, including judicial review, under the procedural provisions incorporated by reference in § 110.36.

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Part III

# Environmental Protection Agency

**40 CFR Part 707**
**Export Notification Requirement; Change to Reporting Requirements; Final Rule**

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 707

[OPPTS-120004A; FRL-4067-2]

## Export Notification Requirement; Change to Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating amendments to its export notification rules that will change the current annual notification requirement for exporters of chemical substances and mixtures (chemicals) subject to test rules or consent orders (test rules) under section 4 of the Toxic Substances Control Act (TSCA) to a one-time export notification requirement for each exporter of such a chemical per country of destination. EPA believes these amendments will facilitate foreign governments' review of information and appropriate consideration of chemicals exported from the United States by reducing the number of section 4 notices they receive thereby relieving them of the administrative burden imposed by the present annual notices received on chemicals subject to TSCA section 4 test rules. Additionally, these amendments are necessary to reduce the notification burden on EPA and industry. Under the current annual notice requirement, the large volume of notices received has hampered EPA's ability to respond to requests from foreign governments for additional information on a particular chemical or export notice.

EFFECTIVE DATE: This rule shall become effective on January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

**Electronic Availability:** This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

EPA is promulgating amendments to the export notification rule (Subpart D of 40 CFR part 707) which will change the annual export notification requirement for section 4 test rule chemicals to a one-time export notification requirement for each exporter of such a chemical per country of destination. The rule also provides that EPA will give a one-time notice to each importing country for a particular section 4 test rule chemical.

### I. Authority

EPA is promulgating this amendment pursuant to section 12(b) of TSCA, 15 U.S.C. 2611(b).

Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which the submission of data is required under TSCA section 4 or 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or relief has been granted under section 5 or 7 to notify the Administrator of EPA of such exportation or intent to export. Upon receipt of such notification, section 12(b) of TSCA requires EPA to furnish the government of the importing country with:

1. Notice of the availability of data received pursuant to action under section 4 or 5(b), or

2. Notice of such rule, order, action, or relief under section 5, 6, or 7.

EPA maintains a public record of all notices received and sent under section 12(b), except for information that has been claimed as confidential business information under TSCA section 14.

### II. Background

In the **Federal Register** of July 12, 1989 (54 FR 29524), EPA proposed amendments to the export notification rule that would change the annual export notification requirement for section 4 test rule chemicals to a one-time notification requirement for each exporter of such a chemical per country of destination. The rule also proposed that EPA provide a one-time notice to each importing country for each particular section 4 test rule chemical. A number of comments were received in response to this proposed rule during the 60-day comment period. Some of these comments are addressed in Unit V, of this preamble, and in the record for this rule. The Agency has also prepared a more detailed discussion of the comments and EPA responses in a document titled "Disposition of Public Comments" which may be found in the public record for this rule.

### III. Summary of this Final Rule

EPA is exercising its discretion by streamlining the export notice requirements of TSCA section 12(b) by requiring persons who export or who intend to export to a specific country a chemical for which notification is required under section 12(b) by virtue of section 4 test rules to submit a one-time notice to EPA of that export for each such chemical and country. EPA is not promulgating a change in the current recurring annual export notification requirements triggered by a rule, order, action, or relief under sections 5, 6, and 7 of TSCA. EPA is neither promulgating any change in the required contents of the notice (40 CFR 707.67) nor any revision with regard to the time deadline for submission of an export notice to EPA (40 CFR 707.65(a)(3)). However, EPA is requiring that each exporter provide only one notification, per chemical, for each importing country after the issuance of a section 4 test rule. Currently, exporters are required to notify EPA annually of exports of chemicals subject to section 4 test rules.

EPA is also exercising its discretion by modifying the Agency process for notifying foreign governments of export of section 4 test rule chemicals by providing only one notice per section 4 test rule chemical to each importing country. The content of the information sent in the proposed one-time notification for section 4 test rule chemicals will be identical to that provided under the current annual notification scheme. Importing countries will get the same information on section 4 test rule chemicals, but only once.

### IV. Reasons for Promulgating this Rule

#### *A. Background*

In the **Federal Register** of July 12, 1989 (54 FR 29524), EPA proposed amendments to the rules implementing section 12(b) of TSCA. Persons subject to these rules (40 CFR 707.60) are currently required to submit a written notice to EPA for the first export or intended export to a particular country in a calendar year for chemicals subject to a rule, order, action, or relief under sections 4, 5, 6, and 7 of TSCA. Upon receipt of such notification from an exporter, the implementing rules (40 CFR 707.70) require that EPA provide the importing country with a summary of the regulatory action taken or indicate the availability of data received pursuant to action under section 4 or 5(b), or notice of a rule, order, action, or relief under section 5, 6, or 7 of TSCA.

In 1980, when EPA promulgated the section 12(b) rules at 40 CFR part 707, EPA did not have the practical experience it now has in implementing the notification requirements. At that time, EPA did not believe that the rule

would impose an excessive burden upon foreign governments, industry, or EPA resources. However, recent experience has demonstrated to EPA that an increasing number of section 12(b) notices are received by EPA each year, and this has caused EPA to amend the section 12(b) rule so that it performs more efficiently.

In 1983, EPA received 438 section 12(b) notices on 15 substances; of this number, none were in response to section 4 test rules. That number increased to 524 notices on 37 substances in 1984 (31 in response to section 4 actions); 819 notices on 115 substances in 1985 (283 in response to section 4 actions); 2,056 notices on 166 substances in 1986 (1,506 in response to section 4 actions); and 2,367 notices on 282 substances in 1987 (1,703 in response to section 4 actions). Approximately 4,300 notices were received in 1988 (3,350 in response to section 4 actions). These numbers steadily increased throughout the next 3 years. As of September 30, 1992, approximately 12,488 notices have been received (approximately 10,500 in response to section 4 actions). For 1993, the number is expected to be greater than 15,000 (approximately 12,000 in response to section 4 actions).

The increase in section 12(b) notices received by EPA has led to a corresponding increase in the number of notices EPA has sent to foreign governments. In 1984, EPA sent 406 notices to foreign governments. This number increased to 533 in 1985; 869 in 1986; and 1,035 in 1987. The number of notices also steadily increased throughout the next 3 years. As of September 30, 1992, 3,947 notices have been sent. For 1993, the number of notices sent to foreign governments is expected to reach 4,200. This continually increasing volume of notification has created a situation in which the effectiveness of many foreign governments' import information review and monitoring programs may be hampered by the processing of more and more notices.

At the present time, one-fourth to one-half of the section 12(b) notices received by EPA from a particular company are other than first-time notices (i.e., repeat notices for subsequent annual exports to the same country). EPA anticipates that the proportion of repeat notices will grow in relation to the total number of notices received because the regulatory actions that trigger section 12(b) reporting requirements either do not sunset (e.g., section 5 or 6 rules) or remain in place for relatively long periods of time (e.g., section 4 rules). The continuous increase in section 12(b) reporting is making import information review and monitoring more difficult for many foreign countries, is placing an increasing burden on industry, and is placing an increasing administrative burden on EPA.

EPA believes that this difficulty is based in part on the fact that importing countries believe that all notices received by them are for equally hazardous chemicals. As a result, based on inquires from importing countries, EPA believes that all notices of export are given the same level of attention by importing countries. In fact, however, the majority of section 12(b) notices sent to foreign governments pertain to TSCA section 4 test rule chemicals, which are issued because EPA does not have sufficient health and safety or environmental data on a particular chemical to make a fully informed decision regarding the appropriateness of regulatory control for that chemical. These test rules may be in effect for as long as 10 years before the end of the data reimbursement period during which time the section 12(b) export notification is triggered. EPA believes that annual reporting under section 12(b) for these chemicals is of limited value to foreign governments because such notices essentially report that EPA believes that insufficient health or environmental data on these chemicals exists.

EPA believes that the most practical means of focusing the scrutiny of importing countries on the most significant notices is to amend the section 12(b) reporting rules under 40 CFR part 707 to reduce the volume of notices. EPA believes the greatest utility to foreign governments in their efforts to protect human health and the environment is the modification of the notice requirement for section 4 test rule chemicals to allow persons to submit a one-time notice to EPA for a particular country for each section 4 test rule chemical rather than annual notices. This will also reduce the burden on both industry and EPA.

EPA believes these amendments will maintain the same, or higher, degree of protection to human health and the environment afforded by the current notification system, while reducing the reporting burden on exporters and the administrative burden on EPA. Under the current annual notice requirement, a large increase in the volume of annual notices, due primarily to a significant increase in the number of section 4 test rules promulgated by EPA, has reduced EPA's ability to respond to requests for additional information on a particular chemical or export notice. At the same time, the increasing volume of notices makes it difficult for countries which receive a large number of notices to distinguish between chemicals for which EPA has taken action to restrict based on a determination of unreasonable risk to human health or the environment, and those chemicals for which EPA has requested data but not yet made a definitive risk determination.

EPA believes that the purpose of the export notification requirements of section 12(b) of TSCA is to ensure that foreign governments are alerted when EPA takes certain regulatory actions, and to communicate relevant information concerning the regulated chemicals. The notification and accompanying information can be used by the importing governments to assess the risks and benefits of importing and using that chemical. While some countries may use the section 12(b) notices to monitor trends in imports from the United States, EPA believes the availability of data used to evaluate chemicals within the importing country will be substantially unchanged by this rule.

By decreasing the volume of notices importing countries receive on section 4 test rule chemicals, this final rule may actually increase the relative effectiveness of the notification by allowing foreign governments to focus their efforts on notices for chemicals for which restrictive regulatory action has been proposed or promulgated under sections 5, 6, or 7.

As previously stated, EPA believes that the large volume of section 12(b) notifications triggered by section 4 has previously obscured the relative significance of these regulatory actions and decreased the likelihood of foreign governments assigning them appropriate regulatory priority.

At the present time, EPA is in the process of implementing Prior Informed Consent (PIC), a joint United Nations Environment Programme (UNEP) and Food and Agriculture Organization (FAO) program. Generally under PIC, participating exporting countries will provide notice to participating importing countries prior to exporting a chemical which has been banned or severely restricted in the country of export. Under the PIC procedure, exporting countries should not export chemicals against the wishes of importing countries. The International Register of Potentially Toxic Chemicals (IRPTC) is instrumental in operating the PIC program in cooperation with UNEP and FAO; these organizations have developed a document called "Guidance for Governments" which describes how the procedure operates,

and provides interpretive material for governments to use in complying with the procedure. Information on the PIC program is included in the record of this rulemaking.

EPA considers the UNEP/FAO PIC program to represent an international consensus regarding the operation of an export notification program and strongly supports the PIC program. At the present time, 110 nations have agreed to participate in PIC. EPA considers this amendment to the section 12(b) export notification rule to be helpful in moving the section 12(b) export notification program closer to the UNEP/FAO PIC approach in that it emphasizes notifications of exports of chemicals that are restricted in the exporting country over notification of exports of chemicals in an information-gathering process.

Under PIC, only chemicals which have been banned or severely restricted become part of the export notification program. This differs somewhat from the requirements of TSCA section 12(b), which are described in Unit I of this preamble. The PIC program does not require notifications for chemicals under testing actions, nor does it require notifications for proposed bans or proposed severe restrictions, as does section 12(b) of TSCA.

EPA is following a two-step approach to ensure the mutually compatible implementation of both the section 12(b) and PIC programs. First, EPA is issuing this final rule which will bring the scope of section 12(b) reporting closer to the approach of the PIC program. However, EPA will continue to evaluate the coverage of section 12(b) with regard to implementing the PIC program, and, within the limits of statutory authority, determine whether further amendments to the section 12(b) regulations are appropriate. As the U.S. proceeds with PIC implementation, EPA would welcome any comments or observations by the public regarding additional changes to the section 12(b) rules which would improve the PIC program.

Second, when transmitting notices to foreign governments, EPA will clearly differentiate section 12(b) notices from PIC notices. Generally, this will be done as follows: unless otherwise requested by a foreign government, section 12(b) notices will be sent to the embassy of that government located in the U.S. while PIC notices will be sent to the PIC "Designated National Authority," who is located in the importing country; when a section 12(b) notice is for the same chemical as a PIC notice, each notice will reference the other; and, when section 12(b) notices are sent for chemicals which are not PIC chemicals, those cases will be clearly identified as not "banned or severely restricted," as defined by PIC, and should not be considered part of the PIC program.

EPA intends to use section 12(b) to implement PIC to the extent possible. Most, but not all, of the chemicals the U.S. has nominated to the PIC procedure are subject to section 12(b) through their regulation under TSCA section 5 or 6. EPA will use section 12(b) reports on those chemicals to notify countries that export of a banned or severely restricted chemical is taking place.

EPA will also use section 12(b) to monitor industry compliance with PIC. Under section 12(a) of TSCA, chemicals produced and labeled for export are excluded from TSCA jurisdiction (except sections 4 (in limited circumstances), 8, and 12(b)), unless EPA finds that the chemical will present an unreasonable risk in the U.S. In many circumstances, this exclusion will preclude the use of TSCA to prohibit the export of banned or severely restricted chemicals against the wishes of an importing country. EPA is encouraging voluntary industry compliance in not exporting banned or severely restricted chemicals against the wishes of importing countries. EPA will, however, use the recurring annual section 12(b) notification to monitor voluntary industry compliance with PIC.

## V. Response to Comments

Most commenters responded favorably to an EPA alternative which suggested that a one-time notification requirement be established for all actions which trigger section 12(b) notification. EPA believes however, that this approach could potentially hamper the ability of foreign governments to monitor and remain aware of information regarding chemicals for which EPA has a demonstrated degree of concern. Additionally, one-time notification for chemicals which are the subjects of section 5, 6, or 7 actions would likely interfere with EPA's ability to use section 12(b) notices to monitor voluntary compliance with PIC.

In addition to the proposed alternative to extend one-time notification to all actions which trigger section 12(b) reporting, some commenters also suggested that EPA expand the proposed one-time notification to substances which are the subject of section 5(a)(2) or 5(e) actions, since sections 4 and 5(a)(2) and 5(e) are all supported by findings similar in nature. They also believed that EPA has underestimated the number of future notices it will receive.

EPA believes that sections 5(a)(2) and 5(e) actions which are based on exposure/risk concerns for identified use scenarios, "restrict" in a limited sense, regulated uses. Under section 5(a)(2) (or section 5(e) until a section 5(a)(2) significant new use rule (SNUR) is promulgated), the restriction lasts until the Agency has an opportunity to review data associated with an intended use (at least 90 days). EPA may then take action under section 5(e), 5(f), 6, or 7 to further control uses/exposures. Under section 4, toxicity or exposure concerns exist, as well as a need for data, but use is not restricted. The fact that the Agency has authority to take immediate follow-up action under section 5(a)(2) via section 5(e) and the fact that there is no similar provision under section 4 (with the exception of a separate proceeding under section 6 or 7), provides a reasonable basis for treating the export notification requirements for chemicals regulated under sections 4 and 5 differently at this time.

In addition, according to the "Guidance for Governments" document which describes the PIC procedures, certain chemicals which are subject to SNURs under TSCA section 5(a)(2) will be considered "banned or severely restricted" by the U.S. and may be subject to PIC. As previously discussed, annual notification under section 12(b) will enable EPA to use the section 12(b) export notification procedure to monitor industry compliance with PIC requirements.

Some commenters maintained that EPA should establish a "percentage" cutoff for mixtures containing less than 1 percent (0.1 percent for carcinogens) of a substance for section 4 as presented in the proposed rule or, in the alternative, all export notification since reporting is not justified by potential health and environmental effects and is extremely burdensome.

As stated in the original section 12(b) rule (45 FR 82844, December 16, 1980), "EPA does not believe that such an exemption would be wise given that some toxic substances retain their toxic or hazardous properties below a 1 percent level in a mixture.

While de minimis-type regulatory exemptions may be appropriate in many circumstances, at the present time, EPA believes that it is preferable to provide foreign countries 12(b) notifications so they have the opportunity to make their own determinations regarding what level of a chemical in mixtures is deemed important. However, if further experience with the 12(b) or PIC programs indicate that a de minimis regulatory exemption is warranted, EPA

will re-examine this option at a later time.

In addition, some commenters also responded favorably to alternatives EPA included in the proposed rule to establish new "sunset" dates for reporting under section 12(b) for chemicals triggered by a final section 4 test rule. They stated that EPA should terminate, or sunset section 12(b) requirements when section 4 reporting is complete, since EPA will have sufficient data by the end of the reporting period to decide if the chemical warrants further regulation. EPA is not adopting this alternative because the Agency believes the current sunset date (This sunset date has been established as the end of the reimbursement period as defined in section 4(b)(4).) is necessary to allow EPA sufficient time to review the data submitted and consider the subject chemical for further regulatory action. Additionally, other commenters stated that changing the sunset period would add to the complexity of the rule out of proportion to any derived benefit.

These alternatives, if adopted without a change in the context of annual reporting, would not reduce burden as much as one-time reporting. If these options were adopted in addition to a change to one-time reporting, there would be greater reductions in reporting burden than with one-time reporting alone, but the amount of the added reduction would be very minimal.

A variety of other comments were received on the proposed amendment to section 12(b). A number of these comments presented variations of the percentage cutoff alternative and others suggested modifying the format of the notification form to provide foreign governments with additional or different information. The Agency appreciates all of the submitted comments which can be found, with the Agency's response, in the Public Docket.

## VI. Economic Impact

EPA is promulgating an amendment pursuant to section 12(b) of TSCA. Section 12(b) requires that EPA be notified when exporters intend to ship a chemical to a particular country if any of the following TSCA regulatory actions have been taken with regard to the exported chemical:

1. A final section 4 test rule.
2. A final section 4 testing consent agreement.
3. A final section 5(e) or 5(f) order or civil action.
4. A proposed or final section 5(b) "risk list" rule.
5. A proposed or final section 5 SNUR.
6. A proposed or final section 6 rule.
7. A final section 7 civil action.

Over the next 5 years, this amendment would reduce section 12(b) submissions by 43 percent to 57 percent and would reduce costs to industry and the Agency by between $843,000 and $2,740,000. A summary of the expected decreases in section 12(b) submissions and the resource savings associated with this amendment are given in the following Tables 1 to 3. A more detailed discussion of the economic impact of this rule is contained in the economic analysis which may be found in the public record for this rule.

Table 1.—Summary of Submissions: 1993 to 1997

| Year | Notices Expected without Section 4 One-Time Reporting | Notices Expected with Section 4 One-Time Reporting |
|---|---|---|
| 1993 | 12,538 | 5,647 to 7,369 |
| 1994 | 13,931 | 6,140 to 8,088 |
| 1995 | 15,324 | 6,634 to 8,698 |
| 1996 | 16,717 | 7,128 to 9,526 |
| 1997 | 18,111 | 7,624 to 10,245 |
| TOTAL | 76,621 | 33,173 to 44,035 |

Table 2.—Resource Savings First Year: 1993

| Industry Savings | Agency Savings | Total Savings |
|---|---|---|
| $72,000 to $413,000 | $83,000 to $111,000 | $156,000 to $525,000 |

Table 3.—Resource Savings

Net Present Value: 1993 to 1997

| Industry Savings Discounted at 7 Percent/Agency Savings Discounted at 3 Percent | | |
|---|---|---|
| Industry Savings | Agency Savings | Total Savings |
| $369,000 to $2,108,000 | $474,000 to $632,000 | $843,000 to $2,740,000 |

### Benefits

The primary intent of the rulemaking is to reduce burden to foreign governments, EPA, and exporters while maintaining the quality of the export notifications thus allowing for better scrutiny by foreign governments. This amendment will allow foreign countries to focus their efforts on those chemicals which are generally of greater concern by limiting the number of notifications on section 4 test rule substances. Test rules are issued primarily because there is a lack of health and environmental data on a particular chemical. As a result of this amendment, foreign countries will be able to focus their efforts on TSCA sections 5 and 6 chemicals for which more restrictive regulatory actions have been proposed and/or promulgated.

### Impact on Small Business

The amendment to reduce notification for section 4 test rule chemicals will reduce the resource expenditure burden for small business entities.

## VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number

OPPTS–120004A). The record includes basic information considered by EPA in developing this final rule. The record now includes the following:

1. Proposed rule.
2. Economic analysis of final amendments to 40 CFR part 707.
3. Chemical Imports and Exports; Notification of Export. Federal Register, December 16, 1980 (45 FR 82844).
4. International Guidelines:
a. Decision 14/27 of the Governing Council of the United Nations Environment Programme, *London Guidelines for the Exchange of Information on Chemicals in International Trade*, June 17, 1987;
b. Food and Agriculture Organization of the United Nations, *International Code of Conduct on the Distribution and Use of Pesticides, Rome*, 1986;
c. Recommendation of the Governing Council of the United Nations Environment Programme, *Concerning Information Exchange related to Export of Banned or Severely Restricted Chemicals*, April 4, 1984.
5. Comments received on the proposed amendment to section 12(b).
6. Response to Comment document.
7. PIC Guidance for Governments.

A public version of this record is available in the TSCA Public Docket Office, from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

## VIII. Regulatory Assessment Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a regulatory impact analysis. EPA has determined that this final rule is not a "major" rule because it will not have an effect on the economy of $100 million or more and will not have a significant effect on competition, costs, or prices.

This final rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this final rule will not have a significant impact on a substantial number of small businesses. This rule will decrease the reporting burden upon small businesses subject to the reporting requirements of TSCA section 12(b). This final rule will not add any economic burden to small businesses.

### *C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB Control Number 2070–0030.

The final rule will reduce the number of notices required from the public in 1993 by approximately 5,169 to 6,892 submissions. Public reporting burden for the collection of information under 40 CFR part 707 is estimated to average .5 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total public reporting burden is expected to decrease as a result of this final rule by approximately 2,272 hours.

## List of Subjects in 40 CFR Part 707

Chemicals, Environmental protection, Exports, Hazardous substances, Imports, Recordkeeping and reporting requirements.

Dated: July 7, 1993.

**Carol M. Browner,**

*Administrator.*

Therefore, 40 CFR part 707 is amended as follows:

## Part 707—[AMENDED]

1. The authority citation for part 707 continues to read as follows:

**Authority:** 15 U.S.C. 2611(b) and 2612.

2. By revising § 707.65(a)(2) and (c) to read as follows:

**§ 707.65 Submission to agency.**

(a) * * *

(2)(i) The notice must be for the first export or intended export to a particular country in a calendar year when data are required under section 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or an action is pending or relief has been granted under section 5 or 7.

(ii) The notice must be for the first export or intended export to a particular country when data are required under section 4.

* * * * *

(c) Notices shall be marked "Section 12(b) Notice" and sent to the TSCA Document Processing Center (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. By revising § 707.70(a) to read as follows:

**§ 707.70 EPA notice to foreign governments.**

(a)(1) Notice by EPA to the importing country shall be sent no later than 5 working days after receipt by the TSCA Document Processing Center of the first annual notification for each regulated chemical when data are required under section 5(b), an order has been issued under section 5, a rule has been proposed or promulgated under section 5 or 6, or an action is pending or relief has been granted under section 5 or 7.

(2) Notice by EPA to the importing country shall be sent no later than 5 working days after receipt by the TSCA Document Processing Center of the first notification for each regulated chemical when data are required under section 4.

* * * * *

[FR Doc. 93–17711 Filed 7–26–93; 8:45 am]
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Federal Register

Tuesday
July 27, 1993

Part IV

# Department of the Interior

**Bureau of Indian Affairs**

**Oglala Sioux Tribe; Plans for the Use of Judgments Funds; Notice**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Plan for the Use of the Oglala Sioux Tribe Judgment Funds Awarded in Docket 117 Before the United States Claims Court

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice. This Notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs for 209 DM 8.

**EFFECTIVE DATE:** This plan was effective as of May 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, MS 2611–MIB, 1849 C Street, NW., Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The Act of October 19, 1973, (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on January 15, 1992 in satisfaction of the award granted to the Oglala Sioux Tribe of the Pine Ridge Indian Reservation before the United States Claims Court in Docket 117. The plan for the use of the funds was submitted to Congress with a letter dated January 13, 1993, receipt of which was acknowledged for the Senate by a letter dated February 8, 1993, from the Chairman, Senate Committee on Indian Affairs and by the House of Representatives as recorded in the Congressional Record on February 2, 1993. The plan became effective as of May 3, 1993, as provided by the 1973 Act, as amended by Pub. L. 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use of Judgment Funds Awarded to the Oglala Sioux Tribe in Docket 117 before the United States Claims Court

The funds appropriated on January 15, 1992, in satisfaction of the award granted in Docket 117 to the Oglala Sioux Tribe before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows.

#### Programming

The principal, interest, and investment income accrued shall be available on a budgetary basis to the tribal governing body, subject to the approval of the Secretary of the Interior, for the following:

A. Tribal Government Operations ($100,000). These funds may be used for programs to include, but not be limited to: elderly assistance, burial funds, district government assistance, school loans, and food programs.

B. Oglala Sioux Tribe Land Office ($60,000). These funds may be used for research, treaty issues, and related issues as may be determined by the Oglala Sioux Tribe.

#### Debt Retirement

The remaining amount, ($27,773), shall be used for the purpose of repaying outstanding tribal debts. Any residual amounts remaining after such repayments shall revert to the programming aspect funds.

#### General Provisions

None of the funds used or made available under this plan shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for any per capita shares in excess of $2,000, any Federal or federally assisted programs.

Dated: July 9, 1993.

**Woodrow W. Hopper, Jr.,**

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 93–17767 Filed 7–26–93; 8:45 am]

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July 27, 1993

Part V

# Department of Education

34 CFR Parts 777, 778, 779
Library Research and Demonstration Program; Improving Access to Research Library Resources Program; College Library Technology and Cooperation Grants Program; Rule

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DEPARTMENT OF EDUCATION

34 CFR Parts 777, 778, and 779

RIN 1850-AA47

# Library Research and Demonstration Program; Improving Access to Research Library Resources Program; College Library Technology and Cooperation Grants Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Library Research and Demonstration Program, the Improving Access to Research Library Resources Program (formerly the Strengthening Research Library Resources program), and the College Library Technology and Cooperation Grants Program. These amendments are needed to implement the Higher Education Amendments of 1992 (1992 Amendments) (Pub. L. 102-325, enacted on July 23, 1992), to reflect changes in the Education Department General Administrative Regulations (EDGAR), and to clarify and restructure certain provisions in the existing regulations governing the programs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Louise V. Sutherland or Frank A. Stevens. Telephone: (202) 219-1315. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On April 16, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the Federal Register (58 FR 21052). The major issues relating to the proposed amendments for each program were discussed in the preamble to the NPRM. The only differences between the NPRM and these final regulations are changes in the definitions of "Developing institution of higher education" and "Network" in the regulations governing the College Library Technology and Cooperation Grants Program (34 CFR part 779).

## Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, four parties submitted comments on the proposed amendments to the regulations. All of the comments related to the proposed amendments to the regulations governing the College Library Technology and Cooperation Grants Program (34 CFR part 779). The following is an analysis of the comments and changes in the regulations since publication of the NPRM.

*Section 779.8(b)—Developing Institution of Education*

Comment: Three commenters expressed concern regarding the proposed definition of "Developing institution of higher education." In particular, commenters were concerned that many historically black colleges and universities would be excluded from eligibility under this program.

Discussion: Preliminarily, the Secretary notes that eligibility for networking grants is not restricted to developing institutions of higher education. Rather, projects that propose to assist developing institutions receive priority for networking grants, in accordance with the terms of the Secretary's announcement of this priority in a notice in the Federal Register. The Secretary agrees with the commenters that the proposed definition of "Developing institution of higher education," which was based on eligibility for the Strengthening Institutions program under 34 CFR part 607, would have had the effect of excluding some historically black colleges and universities from the priority because recipients of grants under the Strengthening Historically Black Colleges and Universities program (34 CFR part 608) are not eligible for grants under the Strengthening Institutions program. The Secretary did not intend to exclude those historically black colleges and universities from the definition of a developing institution.

Changes: The definition of "Developing institution of higher education" in § 779.8(b) has been revised to clarify that it includes institutions that are identified as eligible under the Strengthening Institutions Program or the Strengthening Historically Black Colleges and Universities Program.

*Section 779.8(b)—Network*

Comment: All four commenters requested clarification of the new definition of "network." In particular, commenters were concerned that only networks that serve multiple types of library entities would be eligible for networking grants under the new definition.

Discussion: The Secretary does not intend to restrict eligibility for networking grants to networks that serve multiple types of library entities. A network may coordinate the resources of one type of library entity or any combination of types of library entities.

Change: The definition of "Network" in § 779.8(b) has been revised to insert the phrase "one or more of the following types of library entities" and to replace the word "and" with the word "or" in the list of types of library entities.

*Section 779.21(b)(1)—Selection Criteria: Networking Grants*

Comment: Several commenters were concerned that the proposed selection criteria for networking grants would not screen out institutions that operate under severe financial constraints and may not be able to sustain a networking project after a Federal grant is expended.

Discussion: The Secretary believes that the selection criteria, which evaluate evidence of strong institutional willingness to share resources and participate in cooperative arrangements and networks, will provide ample basis for evaluating whether an institution is likely to be successful at sustaining a networking project after a Federal grant is expended.

Changes: None.

## Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

## Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 777*

Education, Educational research, Government contracts, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

*34 CFR Part 778*

Colleges and universities, Education, Grant programs—education, Libraries, Reporting and recordkeeping requirements, Research.

*34 CFR Part 779*

Colleges and universities, Education, Educational research, Grant programs—education, Libraries, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.039 Library Research and Demonstration Program; 84.091 Improving Access to Research Library Resources Program; and 84.197 College Library Technology and Cooperation Grants Program)

Dated: July 16, 1993.

**Richard W. Riley,**

*Secretary of Education.*

The Secretary amends parts 777, 778, and 779 of title 34 of the Code of Federal Regulations as follows:

## PART 777—LIBRARY RESEARCH AND DEMONSTRATION PROGRAM

1. The authority citation for part 777 continues to read as follows:

**Authority:** 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

2. Section 777.1 is amended by removing the period at the end of paragraph (a)(3), and adding, in its place, a semicolon; revising paragraph (b); redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

**§ 777.1 The Library Research and Demonstration Program.**

* * * * *

(b) Education in library and information science;

(c) The effective and efficient use of new technologies to enhance library services; and

* * * * *

3. Section 777.3 is amended by revising paragraph (a) to read as follows:

**§ 777.3 Regulations that apply to this program.**

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

* * * * *

4. Section 777.4 is amended by removing the definition of "Librarianship" in paragraph (b), and adding, in its place, a new definition of "Library and information science" to read as follows:

**§ 777.4 Definitions that apply to this program.**

* * * * *

(b) * * *

*Library and information science* means the study of recordable information and knowledge and the services and technologies to facilitate their management and use. The term encompasses information and knowledge creation, communication, identification, selection, acquisition, organization, description, storage, retrieval, preservation, analysis, interpretation, evaluation, synthesis, dissemination, and management.

5. Section 777.10 is revised to read as follows:

**§ 777.10 Authorized activities.**

The Secretary may award a grant for a project that supports research, development, demonstration, or any combination of these, related to—

(a) The improvement of libraries;

(b) Education in library and information science;

(c) The enhancement of library services through effective and efficient use of new technologies; and

(d) The dissemination of information derived from a project funded under the program.

(Authority: 20 U.S.C. 1021, 1033)

## PART 778—[AMENDED]

6. The title of part 778 is revised to read as follows:

## PART 778—IMPROVING ACCESS TO RESEARCH LIBRARY RESOURCES PROGRAM

7. The authority citation for part 778 continues to read as follows:

**Authority:** 20 U.S.C. 1021, 1041, 1042, unless otherwise noted.

**§ 778.1 [Amended]**

8. Section 778.1 is amended by removing "Strengthening" from the heading and the undesignated introductory text, and adding in its place "Improving Access to" both times it appears, and by correcting the spelling of "strengthen" in paragraph (a).

**§ 778.2 [Amended]**

9. Section 778.2 is amended by correcting the spelling of "users" in paragraph (b) introductory text.

10. Section 778.3 is revised to read as follows:

**§ 778.3 What restrictions on eligibility apply?**

The Secretary does not award a grant to an applicant otherwise eligible under this program if the applicant is eligible to receive a grant under other Federal programs, such as the Medical Library Assistance Act of 1965, for the project it proposes to receive assistance under this part, unless the applicant shows that—

(a) Payments under this part will not duplicate payments under those other Federal programs; and

(b) Special circumstances warrant assistance under this part.

(Authority: 20 U.S.C. 1021, 1041)

11. Section 778.5 is amended by revising the heading to read as follows:

**§ 778.5 What are the objectives of this program?**

* * * * *

12. Section 778.6 is amended by revising the undesignated introductory text and paragraph (a) to read as follows:

**§ 778.6 What regulations apply?**

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).
(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(5) 34 CFR part 82 (New Restrictions on Lobbying).
(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(7) 34 CFR part 86 (Drug-Free Schools and Campuses).
* * * * *

**§ 778.22 [Amended]**

13. Section 778.22 is amended by removing "10" in paragraph (a) introductory text and adding, in its place, "5", and removing "5" in paragraph (e) introductory text and adding, in its place, "10".

## PART 779—COLLEGE LIBRARY TECHNOLOGY AND COOPERATION GRANTS PROGRAM

14. The authority citation for part 779 is revised to read as follows:

**Authority:** 20 U.S.C. 1021 and 1029, unless otherwise noted.

**§§ 779.3 through 779.5, 779.8, 779.10, 779.20 and 779.21, [Amended]**

15. The authority citation following §§ 779.3 through 779.5, 779.8 (redesignated as 779.9), 779.10, 779.20 and 779.21 is revised to read as follows:

(Authority: 20 U.S.C. 1029)

16. Section 779.1 is revised to read as follows:

**§ 779.1 What is the College Library Technology and Cooperation Grants Program?**

(a) Under the College Library Technology and Cooperation Grants Program the Secretary provides grants of at least $25,000 for technological equipment, networking, and other special purposes designed to encourage the use of technology to enhance library resource sharing.
(b) In the case of Networking Grants, the maximum amount of a grant is $50,000.

(Authority: 20 U.S.C. 1029)

17. Section 779.2 is revised to read as follows:

**§ 779.2 What types of grants does the Secretary provide?**

The Secretary provides competitive grants in each of the following four categories:
(a) *Networking grants.* These grants are designed to provide assistance for the planning, development, acquisition, maintenance, or upgrading of technological equipment and software necessary to organize, access, or utilize material in electronic formats and to participate in networks for the accessing and sharing of library and information resources.
(b) *Combination grants.* These grants are designed to provide assistance for establishing and strengthening joint-use library facilities, resources, software, or equipment for accessing and sharing library and information resources.
(c) *Services to institutions grants.* These grants are designed to provide assistance for establishing, developing, or expanding programs or projects that improve the grantee's service to institutions of higher education.
(d) *Research and demonstration grants.* These grants are designed to provide assistance for conducting research or demonstration projects to improve information services to meet special national or regional needs by utilizing technology to enhance library and information services.

(Authority: 20 U.S.C. 1029)

18. Section 779.4 is amended by revising paragraphs (b)(2) and (b)(6) to read as follows:

**§ 779.4 What activities may the Secretary fund?**

* * * * *
(b) * * *
(2) Acquisition, maintenance, and upgrading of equipment and supplies, including computer hardware and software;
* * * * *
(6) Dissemination of information about the project.

**§§ 779.6–779.8 [Redesignated as 779.7–779.9]**

19. Sections 779.6, 779.7, and 779.8 are redesignated as §§ 779.7, 779.8, and 779.9, respectively.

20. A new § 779.6 is added to read as follows:

**§ 779.6 What priority does the Secretary establish for networking grants?**

(a) Each year, the Secretary gives priority for Networking Grants to institutions of higher education seeking assistance for projects that assist developing institutions of higher education to link with one or more institutions of higher education in resource sharing networks.
(b) The Secretary announces this priority in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1029)

21. Redesignated § 779.7 is amended by revising paragraph (a) to read as follows:

**§ 779.7 What regulations apply?**

* * * * *
(a) The Education Department General Administrative Regulations (EDGAR) as follows:
(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).
(2) 34 CFR part 75 (Direct Grant Programs).
(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).
(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(5) 34 CFR part 82 (New Restrictions on Lobbying).
(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(7) 34 CFR part 86 (Drug-Free Schools and Campuses).
* * * * *

**§ 779.8 [Amended]**

22. In redesignated § 779.8, paragraph (b) is amended by removing the definition of "Librarianship", revising the definitions of "Institution of higher education" and "Network", and adding new definitions of "Developing institution of higher education" and "Library and information science" in alphabetical order to read as follows:

**§ 779.8 What definitions apply?**

* * * * *
(b) * * *
*Developing institution of higher education* means an institution of higher education that is designated as an eligible institution under 34 CFR part 607 or 34 CFR part 608 in the most recent announcement of eligible institutions.
*Institution of higher education* means a public or nonprofit private institution of higher education as defined in 34 CFR 600.4.
* * * * *
*Library and information science* means the study of recordable information and knowledge and the services and technologies to facilitate their management and use. The term encompasses information and knowledge creation, communication, identification, selection, acquisition, organization description, storage, retrieval, preservation, analysis,

interpretation, evaluation, synthesis, dissemination, and management.

* * * * *

*Network* means any local, statewide, regional, interstate, or international cooperative association of library entities that provides for the systematic and effective coordination of the resources of one or more of the following types of library entities: school, public, academic, or special libraries, or information centers for improved supplementary services for the clientele served by each type of library entity.

23. Section 779.21 is amended by revising paragraph (b) to read as follows:

**§ 779.21 What selection criteria does the Secretary use?**

* * * * *

(b) *Special program criteria.* An applicant may receive up to 40 points under the special program criteria in this section for each category of grant, as follows:

(1) *Networking Grants.* The Secretary uses the following special criteria to evaluate each Networking Grant application:

(i) *Need and commitment* (15 points). The Secretary reviews each application to determine the extent to which—

(A) There is a need for special assistance as evidenced by the inability of the institution, because of fiscal constraints, institutional size, or other factors, to plan, develop, acquire, maintain, or upgrade technological equipment with its existing resources and to participate in resource-sharing networks; and

(B) There is evidence of strong institutional willingness to share library and information resources, participate in cooperative arrangements with other libraries, and take part in evolving networks such as the National Research and Education Network.

(ii) *Impact* (25 points). The Secretary reviews each application to determine the extent to which—

(A) The project will strengthen the academic programs of the institution;

(B) The applicants will possess, after an award of a grant under this program, equipment and software compatible with the evolving National Research and Education Network; and

(C) The project will increase local, regional, and national access to and the sharing of the institution's library and information resources.

(2) *Combination Grants.* The Secretary uses the following special criteria to evaluate each Combination Grant application:

(i) *Need and commitment* (15 points). The Secretary reviews each application to determine the extent to which—

(A) There is a need for special assistance as evidenced by the inability of the institutions to establish and strengthen joint use of library facilities, resources, or equipment with their existing resources because of fiscal constraints, institutional size, or other factors; and

(B) There is evidence of strong institutional willingness to share their library and information resources, participate in cooperative arrangements with other libraries or networks of libraries, and take part in evolving networks such as the National Research and Education Network.

(ii) *Impact* (25 points). The Secretary reviews each application to determine the extent to which—

(A) The project will strengthen the academic programs of the participating institutions;

(B) The applicants will possess, after an award of a grant under this program, equipment and software compatible with evolving networks such as the National Research and Education Network; and

(C) The project will increase local, regional, and national access to and the sharing of the institutions' library and information resources.

(3) *Services to Institutions Grants.* The Secretary uses the following special criteria to evaluate each Services to Institutions Grant application:

(i) *Need and commitment* (20 points). The Secretary reviews each application to determine the extent to which—

(A) There is evidence that the project is needed and desired by institutions of higher education, including those to be served by the project; and

(B) There is evidence that formal written cooperative agreements to provide library and information services exist between the applicant and the institutions of higher education identified in the application.

(ii) *Impact* (20 points). The Secretary reviews each application to determine the extent to which—

(A) There is evidence of the applicant's capability to continue project services and of the likelihood that the applicant will build upon the project when the grant period ends; and

(B) The project will establish, develop, or expand local, regional, and national access to and the sharing of library and information resources through evolving networks such as the National Research and Education Network.

(4) *Research and Demonstration Grants.* The Secretary uses the following special criteria to evaluate each Research and Demonstration Grant application:

(i) *Need* (5 points). The Secretary reviews each application to determine the extent to which there is evidence from library users, library educators, or library administrators that there is a special national or regional need for the project.

(ii) *Innovative utilization of technology* (10 points). The Secretary reviews each application to determine the extent to which the applicant proposes an innovative approach in utilizing technology to enhance library or information services.

(iii) *Consultation and dissemination* (15 points). The Secretary reviews each application to determine the extent to which—

(A) The project was developed in consultation with leading experts and takes account of current research; and

(B) The applicant provides plans to disseminate the results of the project.

(iv) *Impact* (10 points). The Secretary reviews each application to determine the extent to which the project meets special national or regional needs by utilizing technology to enhance library or information services through evolving networks such as the National Research and Education Network.

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Part VI

# Department of Education

## Assistance to States for the Education of Individuals With Disabilities; Notice

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**DEPARTMENT OF EDUCATION**

**Office of Special Education and Rehabilitative Services**

**Assistance to States for the Education of Individuals With Disabilities**

**AGENCY:** Department of Education.

**ACTION:** Notice of Written Findings and Decision and Compliance Agreement.

**SUMMARY:** Section 457 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234f, authorizes the Secretary to enter into Compliance Agreements with recipients that are failing to comply substantially with Federal program requirements. In order to enter into a Compliance Agreement, the Secretary must determine, in Written Findings and Decision, that the recipient cannot comply, until a future date, with the applicable program requirements, and that a Compliance Agreement is a viable means of bringing about such compliance. On April 28, 1993, the Secretary entered into a Compliance Agreement with the Puerto Rico Department of Education (PRDE) and issued Written Findings and Decision on that matter. Under section 457(c) of GEPA, 20 U.S.C. 1234f(c), the Written Findings and Decision and Compliance Agreement are to be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Lawrence J. Ringer, U.S. Department of Education; 400 Maryland Avenue, SW., room 3615, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8825. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9090.

**SUPPLEMENTARY INFORMATION:** Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient "is failing to comply substantially with any requirement of law applicable" to the Federal program funds administered by this agency. Specifically, the Department is authorized to:

(1) Withhold funds,

(2) Obtain compliance through a cease and desist order,

(3) Enter into a compliance agreement with the recipient, or,

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a) (1)–(4).

The Department, in a letter dated December 6, 1991, determined that PRDE has failed to comply substantially with the requirements of part B of the Individuals with Disabilities Education Act (IDEA). This determination was based on a Final Monitoring Report, issued by the Department on September 27, 1991, which found deficiencies regarding the provision of required evaluations, reevaluations, and related services to thousands of children with disabilities in the Commonwealth. As noted in the Report's cover letter, these problems:

> demonstrate a serious failure by PRDE to comply with its obligation, under 20 U.S.C. 1412(a)(1) and 34 CFR 300.121, to have "in effect a policy which assures that all children with disabilities have the right to a free appropriate public education."

In January 1992, Puerto Rico's Secretary of Education asked this Department to consider entering into a Compliance Agreement. The purpose of a Compliance Agreement "is to bring a recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f. In order to enter into a Compliance Agreement with a recipient, the Secretary must determine that compliance until a future date is not genuinely feasible and that a Compliance Agreement is a viable means for bringing about such compliance.

On April 28, 1993, the Secretary issued Written Findings and Decision which held that compliance by PRDE with the part B requirements on evaluation, reevaluation, and related services was not genuinely feasible until a future date because of the "magnitude of the problem" and the "long-term and complex causes" underlying that problem, *i.e.*, inadequate financial, personnel, and management resources. The Secretary also determined that the Compliance Agreement represents a viable means of bringing about compliance because PRDE has taken constructive steps to address the long-term causes of its non-compliance. Moreover, the Agreement sets out a very specific schedule that PRDE must meet in coming into compliance with the evaluation, reevaluation, and related services requirements. This schedule, coupled with specific data collection and reporting requirements, will allow the Department to monitor closely PRDE's progress in meeting the terms of the Compliance Agreement. The Secretary signed the Compliance Agreement on April 28, 1993. Puerto Rico's Secretary of Education had previously signed the Agreement on April 23, 1993.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the full text of the Secretary's Written Findings and Decision in the Matter of the Request of the Puerto Rico Department of Education to Enter into a Compliance Agreement and the Compliance Agreement are set forth in this publication.

(Authority: 20 U.S.C. 1234c and 1234f and 20 U.S.C. 1401, 1411–1420).

Dated: July 21, 1993.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for the Education of Individuals with Disabilities, under Part B of the Individuals with Disabilities Education Act (IDEA), as amended).

**Text of the Secretary's Written Findings and Decision**

*I. Introduction*

In the matter of the request of the Puerto Rico Department of Education to enter into a compliance agreement.

On December 6, 1991, the United States Department of Education (the Department) determined, pursuant to 20 U.S.C. 1234c, that the Puerto Rico Department of Education (PRDE) had failed to comply substantially with the requirements of Part B of the Individuals with Disabilities Education Act (Part B), 20 U.S.C. 1401, 1411–1420. Specifically, the Department, in a Final Monitoring Report (Monitoring Report) issued on September 27, 1991, determined that PRDE had failed to provide required evaluations, reevaluations, and related services to thousands of children with disabilities throughout the Commonwealth. In a meeting, held in Washington, DC., on January 8, 1992, Puerto Rico's Secretary of Education asked officials of this Department to consider the possibility of entering into a Compliance Agreement, as provided for at 20 U.S.C. 1234c(a)(3) and 1234f. This request was confirmed by PRDE in letters dated January 15 and 16, 1992. The purpose of a Compliance Agreement is to bring a "recipient into full compliance with the applicable requirements of law as soon as feasible." 20 U.S.C. 1234f(a).

In accordance with the requirements of 20 U.S.C. 1234f(b), a public hearing was conducted by Department officials on May 12, 1992, at Puerto Rico Junior College, Carolina, Puerto Rico. Witnesses representing PRDE, affected students and parents, and other concerned organizations testified at this hearing on the question of whether the Department should grant PRDE's request to enter into a Compliance Agreement. The Department has reviewed this testimony, the Compliance Agreement PRDE has agreed to sign, and other relevant materials.[1] On the basis of this evidence, the Department concludes, and hereby issues, written findings in accordance with 20 U.S.C. 1234f(b)(2), that PRDE has met its burden of establishing the following:

(1) That compliance by PRDE with the Part B requirements on evaluations, reevaluations,

[1] A copy of the Compliance Agreement, which was prepared by PRDE in conjunction with representatives of this Department, is appended to this decision as Attachment A.

and related services is not feasible until a future date and,

(2) That PRDE will be able to carry out the terms and conditions of the Compliance Agreement it has agreed to sign and come into full compliance with the Part B requirements on evaluation, reevaluation, and related services within three years of the date of this decision.

During the effective period of the Compliance Agreement, three years from the date of this decision, PRDE will be eligible to receive part B funds as long as it complies with all the terms and conditions of the Agreement, including Section VII. Any failure by PRDE to meet these conditions will authorize the Department to consider the Compliance Agreement no longer in effect. Under such circumstances, the Department may take any action authorized by 20 U.S.C. 1234c, including the withholding of part B funds from Puerto Rico. At the end of the effective period of the Compliance Agreement, PRDE must be in full compliance with part B in order to maintain its eligibility to receive funds under that program. 20 U.S.C. 1234c.

*II: Relevant Statutory and Regulatory Provisions*

A. Part B of the Individuals With Disabilities Education Act

Part B, formerly part B of the Education of the Handicapped Act, was passed in response to Congress' finding that a majority of children with disabilities in the United States "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to drop out." H. Rep. No. 332, 94th Cong., 1st Sess: 2 (1975), quoted in *Board of Education* v. *Rowley*, 458 U.S. 176, 181 (1982).[2] Part B provides Federal financial assistance to those State educational agencies (SEAs) that demonstrate, through a plan submitted to the Department, that they have in effect a "policy that assures all children with disabilities the right to a free appropriate public education [FAPE]."[3] 20 U.S.C. 1412(1).[3] FAPE is defined as special education and related services which:

(a) Are provided at public expense, under public supervision and direction and without charge,

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program [IEP] which meets the requirements under §§ 300.340–300.350 of Subpart C. [34 CFR 300.8.]

An essential part of FADE is the evaluation and reevaluation of, and provision of required related services to, children with disabilities. Part B requires PRDE to ensure that:

all children residing in the State who are disabled, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated.

20 U.S.C. 1412(2)(C). Moreover, a child with a disability cannot receive an initial special education placement until an initial evaluation has been performed in accordance with 34 CFR 300.531.[4] After initial evaluation and placement, children with disabilities must be reevaluated at least every three years. 34 CFR 300.534.

Related services is defined to mean:

transportation and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

20 U.S.C. 1401(17). The IEP for each child with a disability must specify the related services which are to be provided. 34 CFR 300.346(a)(3). As noted above, FAPE consists of special education and related services provided in accordance with a proper IEP. 34 CFR 300.8. In order to meet its obligation to make FAPE available, PRDE must be able to provide timely initial evaluations and reevaluations and required related services to all children with disabilities in the Commonwealth.

The Monitoring Report found that PRDE was not in compliance with its obligations under part B to provide eligible children with disabilities in the Commonwealth with timely evaluations, reevaluations, and required related services. Specifically, the Monitoring Report found that, as of December 1990, 1,949 children had not received an initial evaluation within 30 days of registration, as required by PRDE's own procedures. Monitoring Report at 12 and footnote of this Decision, *supra*. In March 1993, PRDE determined that 3,407 children with disabilities in the Commonwealth had not received their initial evaluations within 30 days of registration. Section III. A of the Compliance Agreement. The Monitoring Report also found that, as of December 1990, 11,850 children with disabilities had not been reevaluated within 3 years of their last evaluation. Monitoring Report at 18. As of March 1993, the number of children waiting for reevaluation for more than three years was 11,496. Section IV. A of the Compliance Agreement. Finally, the Monitoring Report determined that PRDE was not providing related services specified in IEPs to thousands of children. According to that Monitoring Report, 2,129 children were not receiving required speech therapy, 1,115 children were not receiving required occupational therapy, 201 children were not receiving required physical therapy, 1,116 children were not receiving required psychological services. Monitoring Report at 20–22. As of March 1993, PRDE determined that 6,219 children were not receiving related services specified in their IEPs. Section V.A of the Compliance Agreement.

*B. The General Education Provisions Act*

The General Education Provisions Act (GEPA) provides the Department with a number of options for dealing with a recipient of program funds which it believes is "failing to comply substantially with any requirements of law applicable to such funds." 20 U.S.C. 1234c. In such cases, the Department is authorized to:

(1) Withhold further payments under that program from the recipient,

(2) Issue a complaint to compel compliance through a cease and desist order,

(3) Enter into a compliance agreement with the recipient to bring it into compliance, and

(4) Take any other action authorized by law. 20 U.S.C. 1234c.

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[2] Congress first addressed the problem of educating individuals with disabilities in 1966 when it amended the Elementary and Secondary Education Act of 1965 for the purpose of "assisting the States in the initiation, expansion, and improvement of programs and projects for the education of handicapped children." Pub. L. 89–750, 161, 80 Stat. 1204. The program was repealed in 1970 by the Education of the Handicapped Act, Public Law 91–230, 84 Stat. 175, part B of which established a grant program similar in purpose to that of the repealed legislation. Spurred by two district court decisions holding that children with disabilities should be given access to a public education, *Mills* v. *District of Columbia Board of Education*, 348 F. Supp. 866 (D.D.C. 1972), and *Pennsylvania Ass'n for Retarded Children* v. *Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971), in 1974 Congress greatly increased Federal funding for education of individuals with disabilities and for the first time required recipient States to adopt a "goal of providing full educational opportunities to all handicapped children." Public Law 93–380, 88 Stat. 579, 583. This statute was recognized as an interim measure only, giving Congress an additional year in which to study what if any additional Federal assistance [was] required to enable the States to meet the needs of handicapped children." H.R. Rep. No. 94–332, at 4. The study led to the enactment of part B.

[3] Part B defines "children with disabilities" to mean children "with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities . . . who, by reason thereof, need special education and related services." 20 U.S.C. 1401(1). Under section 301 (a)(1) and (a)(2)(H) of the Department of Education Organization Act (DEOA), 20 U.S.C. 3441 (a)(1) and (a)(2)(H), Congress transferred the administration of the Act from the Commissioner of Education to the Secretary of Education. Section 2078 of the DEOA, 20 U.S.C. 3417, in turn delegates responsibility for part B to the Assistant Secretary for Special Education and Rehabilitative Services.

[4] Part B does not set forth a specific standard for conducting initial evaluations within a reasonable period of time; the determination of such standard is reserved to individual States, commonwealths, and territories, and each of these entities must ensure that each educational program for their children with disabilities meets the education standards of the State, commonwealth or territory. Under part B at 20 U.S.C. 1412(6), States are required to establish State standards for the implementation of programs for children with disabilities. PRDE has set forth its standard for the completion of initial evaluations in Section II.B.1.a. on page 15 of the Procedures Manual for Special Education: "The school district will perform the evaluation of the child no later than 30 days after he has been registered in the Office of the Superintendent of Schools."

If the Department decides to withhold program funds, it must notify the recipient of its intent to do so, explain the legal and factual basis for that decision, and provide the recipient with an opportunity to challenge this determination at a hearing to be held, before the Department's Office of Administrative Law Judges (OALJ), not less than 30 days after the date of the notice. 20 U.S.C. 1234d (b) and (c).[5] The OALJ shall uphold the decision to withhold funds if it is supported by substantial evidence. 20 U.S.C. 1234d(e). The decision of the OALJ shall become the final agency decision unless it is modified, set aside, or remanded by the Secretary within sixty days of being received by the recipient. 20 U.S.C. 1234d(f).

The procedures to be followed in obtaining a cease and desist order are similar to those used in a withholding proceeding. The Department issues a notice informing the recipient that it is failing to comply substantially with a program requirement. This notice must also inform the recipient of its right to appear before the OALJ and show cause why a cease and desist order should not be issued. 20 U.S.C. 1234e (a) and (b). The OALJ, if it concludes that the recipient has failed to comply with a program requirement, shall order the recipient to cease and desist from the practice which is causing the violation. 20 U.S.C. 1234e(c). This order becomes a final agency decision when it is received by the recipient and may be enforced by the Secretary by withholding funds from the recipient or by referring the matter to the Department of Justice. 20 U.S.C. 1234e (d) and (e).

As an alternative to withholding funds or issuing a cease and desist order, the Department may enter into a Compliance Agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. As set forth at 20 U.S.C. 1234f(a), the purpose of a Compliance Agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." Before entering into a Compliance Agreement with a recipient, the Department must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that full compliance with the applicable requirements of law is not feasible until a future date and that a Compliance Agreement is a viable means for bringing about such compliance. 20 U.S.C. 1234f(b)(1). If, on the basis of all the evidence available to it, the Secretary determines that compliance until a future date is genuinely not feasible and that a Compliance Agreement is a viable means for bringing about such compliance, he is to make written findings to that effect and publish those findings, together with the substance of any Compliance Agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A Compliance Agreement must set forth an expiration date, not later than 3 years from the date of the Secretary's written findings under 20 U.S.C. 1234f(b)(2), by which time the recipient must be in full compliance with all program requirements. In addition, the Compliance Agreement must contain the terms and conditions with which the recipient must comply during the period that Agreement is in effect. 20 U.S.C. 1234f(c). If the recipient fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or issuance of a cease and desist order. 20 U.S.C. 1234f(d).

*III. Analysis*

A. Overview of Issues to be Resolved in Determining Whether a Compliance Agreement is Appropriate

In deciding whether a Compliance Agreement between the Department and PRDE is appropriate, the Department must first determine whether compliance by the Commonwealth with the Part B requirements concerning evaluations, reevaluations, and related services is not feasible until a future date. 20 U.S.C. 1234f(b). If immediate compliance with these requirements is possible, then PRDE's continued receipt of Part B must be based on its coming into full compliance now, rather than its attaining compliance under the terms of an Agreement that can last up to three years. The second issue that must be resolved is whether PRDE will be able, within a period of up to three years, to come into compliance with the Part B requirements on evaluation, reevaluation, and the provision of related services. *Id.* Moreover, not only must PRDE come into full compliance by the end of the effective period of the Compliance Agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible, then a Compliance Agreement between the Department and PRDE would not be appropriate under 20 U.S.C. 1234f.

B. The Noncompliance of PRDE with the Evaluation, Reevaluation, and Related Services Requirements Identified in the Monitoring Report Cannot be Corrected Immediately

On March 1, 1993, 3,407 registered children in Puerto Rico had been waiting for initial evaluations for more than 30 days, 11,496 children with disabilities had been waiting for reevaluations for more than 3 years, and 6,219 children with disabilities were not receiving all of the related services specified in their IEPs. See sections III.A, IV.A, and V.A of the Compliance Agreement. These numbers establish that PRDE faces a great challenge in attaining compliance with the requirements of part B. Through the monitoring process and the public hearing, the Department has learned that the PRDE's difficulties in complying with the evaluation, reevaluation, and related services requirements of part B are the outgrowth of a number of complex and long-term causes. In responding to the draft Monitoring Report, which was issued on May 28, 1991, PRDE indicated that a shortage of funds impeded its capacity to comply with part B. As PRDE explained, "[t]he shortage of funds and the high cost of the services" adversely affected the Commonwealth's capacity to provide appropriate services to its children with disabilities. Monitoring Report at vi. The lack of adequate funds, while not the sole reason for the difficulties facing PRDE's special education program, has exacerbated other barriers to compliance—a lack of trained personnel in particular fields and an inadequate management system for its special education program.

According to PRDE administrators, the lack of adequate numbers of trained professionals in the Commonwealth, particularly classified personnel (*i.e.*, speech therapists, speech pathologists, physical therapists, occupational therapists, and psychologists), has contributed to the serious problems identified in the Monitoring Report. Monitoring Report at 13. A number of factors, in addition to inadequate funds, are responsible for this shortage. For example, rules on salaries, benefits, and working conditions, established by Puerto Rico's Central Office of Personnel Administration, have had the effect of discouraging individuals from working for PRDE as classified personnel. In particular, the entry level salaries for all classified personnel are lower than the entry level salary for teachers, who work fewer hours a day and have more paid vacation. Monitoring Report at 14–15. Concerns about the impact of this salary and benefit structure on the recruitment and retention of classified personnel were echoed by parties who testified at the public hearing. Another factor contributing to the personnel shortage faced by PRDE is the lack of a sufficient number of programs in the Commonwealth to train therapists, pathologists, and psychologists. Monitoring Report at 15.

All parties who testified at the public hearing, including the Commonwealth's Secretary of Education, agreed that PRDE must implement an effective system of managing its special education program. The failure of PRDE to comply with the evaluation, reevaluation, and related services requirements is caused not only by the lack of adequate financial and personnel resources, but by an historically ineffective and inefficient use of available resources.

The sheer magnitude of the problem faced by PRDE, as indicated by the numbers cited at the start of this section of the decision, plus the long-term and complex causes underlying those numbers (i.e., inadequate financial, personnel, and management resources), leads the Department to conclude that the Commonwealth will not be able to come into compliance with the part B requirements on evaluation, reevaluation, and related services until a future date. This conclusion is consistent with the testimony of all of the witnesses at the public hearing.

C. PRDE Can Meet the Terms and Conditions of a Compliance Agreement and Come into Full Compliance with the Requirements of Part B on Evaluation, Reevaluation, and Related Services Within Three Years

The Commonwealth has, since the Monitoring Report was issued, taken

[5] The Department is authorized to suspend program payments pending the outcome of this hearing. The recipient, however, is entitled to notice of a Departmental decision to suspend payments and an opportunity to show cause why such a suspension should not take place. 20 U.S.C. 1234d(d).

constructive steps to deal with the problem of inadequate financial resources for its special education program. In fiscal year 1991–92, the Commonwealth's legislature appropriated $60,209,053 for special education and related services, an increase of $18,718,007, or 45% from the $41,491,046 that was appropriated for fiscal year 1990–91. Testimony of Puerto Rico's Secretary of Education at the May 12, 1992 Public Hearing on the Compliance Agreement. This increased financial commitment continued in fiscal year 1992–93, when the Commonwealth's legislature appropriated $63,800,000 for the provision of special education and related services. For fiscal year 1993–94, Puerto Rico's legislature has appropriated $77,000,000 of funds for special education and related services. Thus, the annual appropriation for special education and related services has increased from $41,491,046 in fiscal year 1990–91 to $77,000,000 in fiscal year 1993–94. Clearly, Puerto Rico has made significant progress in addressing the problem of inadequate funds for its special education program.

PRDE has also developed a detailed plan, submitted in response to an inquiry from the Office of Special Education Programs, for obtaining the qualified personnel, specifically, occupational, physical, and speech therapists, speech pathologists, and psychologists, it will need to meet the terms and conditions of the Compliance Agreement. (A copy of the letter which sets out this plan is appended to this decision as Attachment B). This plan is designed to:

(1) Encourage individuals who are already employed by PRDE, and qualified as therapists, pathologists, and psychologists, to work, or work additional hours, providing services in those fields,

(2) Train, recruit, and hire additional qualified personnel in those fields,

(3) Utilize the services of graduate students, under the supervision of professors, to provide evaluations and therapies,

(4) Make more efficient use of existing personnel, and

(5) Bring qualified personnel to isolated parts of the Commonwealth. Among the specific steps proposed in this plan is the revision of PRDE's salary and benefit scales so that qualified individuals are not discouraged from working as therapists, pathologists, and psychologists. Many of the witnesses at the public hearing indicated that PRDE, if it is to meet the terms of a Compliance Agreement and come into full compliance with the requirements of Part B, would have to take specific action to deal with its shortage of qualified personnel. The Department concludes that PRDE has devised a realistic means of addressing this problem.

PRDE has also committed itself, in section VI of the Compliance Agreement, to developing a strong system for managing its special education program. Under the system described in the Compliance Agreement, PRDE will clearly define the duties of all its employees who are involved in the provision of special education services and hold them accountable for serving all children with disabilities in accordance with the requirements of Part B. Moreover, PRDE will implement a monitoring system that identifies and corrects any failure by its employees and private service providers to comply with part B. Many of the witnesses who testified at the public hearing, including the Commonwealth's Secretary of Education, agreed that the implementation of a management system of the type described in the Compliance Agreement is critical to bringing Puerto Rico into compliance with part B.

Finally, the Compliance Agreement sets out a very specific schedule, that PRDE must meet during the next three years, for attaining compliance with the evaluation, reevaluation, and related services requirements of part B. See sections II. B, III. B, and IV. B and Tables I, II, and III of the Compliance Agreement. Therefore, PRDE is committed not only to being in full compliance with Part B within three years, but to meeting a stringent, but reasonable, schedule for reducing the number of children with disabilities in the Commonwealth who have not received the evaluations, reevaluations, and related services to which they are entitled. The Compliance Agreement also sets out data collection and reporting procedures that PRDE must follow. These provisions will allow the Department to ascertain promptly whether or not PRDE is meeting each of its commitments under the Compliance Agreement. The Compliance Agreement, because of the obligations it imposes on PRDE, will provide the Department with the information and authority it needs to protect the part B rights of the Commonwealth's children.

PRDE has developed, and begun to implement, a thorough and reasonable plan for addressing the underlying causes of its non-compliance with the evaluation, reevaluation, and related services requirements of part B. For these reasons, the Department concludes that PRDE can meet all the terms and conditions of the Compliance Agreement and come into full compliance with part B within three years.

*IV. Conclusion*

For the foregoing reasons, the Department finds the following: (1) that full compliance by PRDE with the requirements of Part B respecting the provision of evaluations, reevaluations, and required related services is not feasible until a future date, and (2) that PRDE can meet the terms and conditions of the attached Compliance Agreement and come into full compliance with the requirements of part B within three years of the date of this decision. Therefore, the Department determines that it is appropriate for this agency to enter into a Compliance Agreement with PRDE. Under the terms of 20 U.S.C. 1234f, that Compliance Agreement becomes effective on the date of this decision.

Dated: April 28, 1993.

Richard W. Riley

**TEXT OF THE COMPLIANCE AGREEMENT—COMPLIANCE AGREEMENT UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT BETWEEN THE UNITED STATES DEPARTMENT OF EDUCATION AND THE PUERTO RICO DEPARTMENT OF EDUCATION**

*I. Introduction*

On September 27, 1991, the Office of Special Education and Rehabilitative Services of the United States Department of Education (the Department) issued, to the Puerto Rico Department of Education (PRDE), a final monitoring report on PRDE's compliance with the requirements of part B of the Individuals with Disabilities Education Act (Part B), 20 U.S.C. 1401, 1411–1420. That report found deficiencies regarding the provision of required evaluations, reevaluations, and related services to thousands of children with disabilities in the Commonwealth of Puerto Rico. As noted in the Report's cover letter, these problems: demonstrate a serious failure by PRDE to comply with its obligation, under 20 U.S.C. 1412(a)(1) and 34 CFR 300.121, to have "in effect a policy which assures that all children with disabilities have the right to a free appropriate public education."

In response to this Report, PRDE submitted a plan to the Department on October 25, 1991, to correct these deficiencies during the 1991–92 school year. The Department, while recognizing PRDE's good faith effort to deal with the problems identified in the report, concluded that the plan would not bring PRDE into compliance with the requirements of part B during the 1991–92 school year. This conclusion was predicated on the sheer magnitude of the problem and the practical and organizational difficulties involved in solving it during the course of a single school year. Consequently, the Department, in a letter dated December 6, 1991, determined, pursuant to 20 U.S.C. 1234c, that PRDE has failed to comply substantially with the requirements of Part B.

Under 20 U.S.C. 1234c, the Department has a number of options for dealing with PRDE's failure to comply substantially with the requirements of Part B:

(1) Withhold further part B payments from PRDE,

(2) Obtain a cease and desist order,

(3) Enter into a Compliance Agreement with PRDE, or

(4) Take any other action authorized by law with respect to PRDE. 20 U.S.C. 1234c(a) (1)–(4).

As set forth at 20 U.S.C. 1234f(a), the purpose of a Compliance Agreement is "to bring [PRDE] into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements."

In a meeting held in Washington, DC on January 8, 1992, Puerto Rico's Secretary of Education asked this Department to consider the possibility of entering into a Compliance Agreement. This request was confirmed by PRDE in letters dated January 15 and 16, 1992.

Pursuant to this Compliance Agreement under 20 U.S.C. 1234(f), PRDE must be in full compliance with the requirements of Part B no later than three years from the date of the Department's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. 20 U.S.C. 1234f. Specifically, PRDE must ensure and document that no later than three years after the effective date of this Agreement:

(1) An initial evaluation that meets the requirements of 34 CFR 300.532 is completed for all children with disabilities no later than 30 calendar days after the date on which each child is registered [1] and the backlog of children who have not received an initial evaluation within 30 days of registration is eliminated;

(2) A reevaluation that meets the requirements of 34 CFR 300.532 is completed for all children with disabilities no later than 36 months after the date on which the most recent previous evaluation or reevaluation was completed for each child and the backlog of children who have not been reevaluated within 36 months of their most recent evaluation is eliminated; and

(3) All children with disabilities receive all of the related services set forth in their individualized education program (IEP).

During the period that this Compliance Agreement is in effect, PRDE is eligible to receive part B funds if it complies with the terms and conditions of this Agreement, including the provisions of part B and other applicable Federal statutory and regulatory requirements as incorporated by section VII of this Agreement. Specifically, the Compliance Agreement sets forth commitments and timetables for PRDE to meet in coming into compliance with its part B obligations to evaluate, reevaluate, and provide required related services to children with disabilities, pursuant to 34 CFR 300.128, 300.300, 300.531, and 300.534(b). In addition, PRDE is required to submit documentation concerning its compliance with these goals and timetables. Any failure by PRDE to comply with the goals, timetables, documentation, or other provisions of the Compliance Agreement, including the reporting requirements, will authorize the Department to consider the Agreement no longer in effect. Under such circumstances, the Department may take any action authorized by 20 U.S.C. 1234c, including the withholding of part B funds from PRDE. This Agreement will take effect on the day the Department issues its written findings of fact, pursuant to the requirements of 20 U.S.C. 1234f, and will expire three years from that date.

*II. General Provisions*

This Compliance Agreement specifies the dates on which PRDE must submit each of several reports to the Department. If any of those dates is a weekend or legal holiday in either Washington, DC or Puerto Rico, PRDE may submit that report on the next day that is a business day in both jurisdictions.

This Compliance Agreement requires each of PRDE's school districts to submit monthly and quarterly reports to PRDE's central office throughout the three year period that this Compliance Agreement will remain in effect. PRDE must maintain all of these reports for a period that will end five years after the conclusion of this Agreement, or until the expiration of any litigation, claim, audit, or other action involving these reports, whichever is later. PRDE will comply with a request from the Department for a copy of any of those reports within 15 working days of receiving that request.

*III. Initial Evaluations*

A. Status of PRDE's Provision of Initial Evaluations

Pursuant to PRDE's standards, initial evaluations must be completed within 30 days after the registration of a child [2] (*see* Footnote 1). As of March 1, 1993, 3,407 children with disabilities had been waiting for initial evaluations for more than 30 days.

B. Commitment

PRDE is committed to coming into compliance with its obligation to perform initial evaluations for children within 30 days of their registration. Immediate compliance with this obligation is not, however, possible. By December 31, 1994, PRDE will have reduced to zero the number of children who have been waiting for initial evaluations for more than 30 calendar days, and will ensure that the initial evaluation for all children who are registered after that date will be completed no later than 30 calendar days after the date of registration. Table I sets out, on a quarterly basis, PRDE's commitment for incremental reduction to zero of the number of children who have been awaiting initial evaluation for more than 30 days after registration. PRDE is obligated not only to meet its final commitment of reducing the number of children awaiting initial evaluations for more than 30 days to zero, but also to meet all of the quarterly commitments for reducing that number, as set forth in Table I.

PRDE will implement the following data-collection and reporting procedures to determine and document the extent and rate of progress toward full compliance:

1. On March 1, 1993, each school district submitted to the Central Office the number of children who had been waiting for an initial evaluation for more than 30 days after registration as of February 26, 1993.

2. Beginning on June 7, 1993, each school district will be required to submit to the Central Office, on the seventh day of each month thereafter through May 7, 1996, the following information:

a. The number of children waiting for initial evaluation for more than 30 days after registration as of the last working day of the previous month.

b. The number of children added during the reporting period to the list of children waiting for initial evaluation for more than 30 days after registration. The first reporting period will be from March 1, 1993 to May 31, 1993. Each of the subsequent reporting periods will be the calendar month that immediately precedes the month in which the report must be submitted to the Central Office.

c. The number of children deleted during the reporting period from the list of children waiting for initial evaluation for more than 30 days after registration because their initial evaluations have been completed. If any children are deleted from the list for any reason other than the completion of their initial evaluation during the reporting period, the school district must list each such child by name and registration date, and include in the report a description of the specific reason why that child's name was deleted.

d. The number of children awaiting initial evaluation for more than 30 days at the end of the reporting period.

3. Each school district is required to submit to the Central Office on a quarterly basis,[3] the following information:

a. For the first quarterly report only (to be submitted by October 7, 1993):

(1) The names and registration dates of all children with disabilities who, as of March 1, 1993, had been waiting for an initial evaluation for more than 30 days after registration;

(2) A list of the names and registration dates of all children who have been registered since March 1, 1993, but have not yet, as of September 30, 1993, received initial evaluations within 30 days of their registration; and

(3) A list of the names, registration dates, and initial evaluation dates, of all children deleted between March 1, 1993 and September 30, 1993, from the list of children waiting for initial evaluation for more than 30 days after registration because their initial evaluation has been completed between March 1, 1993 and September 30, 1993. If any children are deleted from the list for any reason other than the completion of their initial evaluation during the reporting period, the school district must list each such child by name and registration date, and include in the report a description of the specific reason why that child's name was deleted.

b. For all succeeding quarterly reports:

(1) A list of the names and registration dates of all children with disabilities who have been added during the reporting period to the list of children waiting for initial evaluation for more than 30 days after registration; and

(2) A list of the names, registration dates, and initial evaluation dates, of all children

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[1] Part B does not set forth a specific standard for conducting initial evaluations within a reasonable period of time; the determination of such standard is reserved to individual States, commonwealths, and territories, and each of these entities must ensure that each educational program for their children with disabilities meets the education standards of the State, commonwealth or territory. Under part B at 20 U.S.C. 1412(6), States are required to establish State standards for the implementation of programs for children with disabilities. PRDE has set forth its standard for the completion of initial evaluations in section II.B.1.a. on page 15 of its Procedures Manual for Special Education: "The school district will perform the evaluation of the child no later than 30 days after he has been registered in the Office of the Superintendent of Schools."

[2] The term "children" as used in this Agreement means individuals under the age of 22 who are, or who are suspected of being, "children with disabilities" as defined at 34 CFR § 300.7.

[3] The date on which each quarterly report must be submitted to the Central office, and the beginning and ending dates of each reporting period, are specified in Table I.

with disabilities deleted during the reporting period from the list of children waiting for initial evaluation for more than 30 days after registration because their initial evaluation has been completed during the reporting period. If any children are deleted from the list for any reason other than the completion of their initial evaluation during the reporting period, the school district must list each such child by name and registration date, and include in the report a description of the specific reason why that child's name was deleted.

PRDE will implement the following reporting procedures to provide periodic documentation to the Department regarding the extent and rate of PRDE's progress toward full compliance:

1. Every three months, beginning on November 7, 1993,[4] PRDE will submit to the Department a report that contains the following information, broken down by Educational Region:

a. The number of children who—as of the last day of the previous quarterly reporting period (or, in the case of the first quarterly report, the number of children waiting for initial evaluation for more than 30 days as of March 1, 1993)—have been waiting for initial evaluation for more than 30 days after registration.

b. The number of children added during the reporting period to the list of children waiting for initial evaluation for more than 30 days after registration.

c. The number of children deleted during the reporting period from the list of children waiting for initial evaluation for more than 30 days after registration because their initial evaluation has been completed during the reporting period. If any children are deleted from the list for any reason other than the completion of their initial evaluation during the reporting period, PRDE must list each such child by name and registration date, and include in the report a description of the specific reason why that child's name was deleted.

d. The number of children waiting for initial evaluation for more than 30 days after registration at the end of the reporting period.

TABLE I—PRDE QUARTERLY REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIMELINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (INITIAL EVALUATIONS)

| Dates of reporting period | Number of children awaiting completion of initial evaluation more than 30 days after registration | Date quarterly report submitted by districts to PRDE | Date of PRDE report to the department |
|---|---|---|---|
| March 1, 1993 to Sept. 30, 1993 | 2,341 | Oct. 7, 1993 | Nov. 7, 1993. |
| Oct. 1, 1993 to Dec. 31, 1993 | 1,773 | Jan. 7, 1994 | Feb. 7, 1994. |
| Jan. 1, 1994 to March 31, 1994 | 1,215 | April 7, 1994 | May 7, 1994. |
| April 1, 1994 to June 30, 1994 | 647 | July 7, 1994 | August 7, 1994. |
| July 1, 1994 to Sept. 30, 1994 | 80 | Oct. 7, 1994 | Nov. 7, 1994. |
| Oct. 1, 1994 to Dec. 31, 1994 | 0 | Jan. 7, 1995 | Feb. 7, 1995. |
| Jan. 1, 1995 to March 31, 1995 | 0 | April 7, 1995 | May 7, 1995. |
| April 1, 1995 to June 30, 1995 | 0 | July 7, 1995 | August 7, 1995. |
| July 1, 1995 to Sept. 30, 1995 | 0 | Oct. 7, 1995 | Nov. 7, 1995. |
| Oct. 1, 1995 to Dec. 31, 1995 | 0 | Jan. 7, 1996 | Feb. 7, 1996. |
| Jan. 1, 1996 to April 30, 1996 | 0 | May 7, 1996 | June 7, 1996 |

*IV. Reevaluations*

A. Status of PRDE's Provision of Reevaluations

As of March 1, 1993, 11,496 children were waiting for reevaluation for more than 36 months after their most recent evaluation or reevaluation.

B. Commitment

PRDE is committed to coming into compliance with its obligation to perform reevaluations for all children with disabilities within 36 months of their initial evaluations or last reevaluations, or more frequently if conditions warrant or if the parent or teacher requests a reevaluation. Immediate compliance with this obligation is not, however, possible. By April 30, 1996, PRDE will reduce the number of children who have been waiting for reevaluations for more than 36 months to zero. Table II sets forth, on a quarterly basis, PRDE's commitment for reducing to zero, on an incremental basis, the number of children with disabilities who have been awaiting reevaluation for more than 36 months. PRDE is obligated not only to meet its final commitment for reducing the number of children waiting for reevaluations for more than 36 months to zero, but to meeting each of the commitments, set out in Table II, for reducing that number.

PRDE will implement the following data-collection and reporting procedures to determine and document the extent and rate of progress toward full compliance:

1. On March 1, 1993, each school district submitted to the Central Office the number of children who had been waiting for reevaluation for more than 36 months after their last evaluation or reevaluation, as of February 26, 1993.

2. Beginning on June 7, 1993, each school district will be required to submit to the Central Office, on the seventh day of each month through May 7, 1996, the following information:

a. The number of children waiting for reevaluation for more than 36 months after the last comprehensive evaluation or reevaluation on the last working day of the previous month.

b. The number of children added during the reporting period to the list of children waiting for reevaluation for more than 36 months after their last comprehensive evaluation or reevaluation. The first reporting period will be from March 1, 1993 to May 31, 1993. Each of the subsequent reporting periods will be the calendar month that immediately precedes the month in which the report must be submitted to the Central Office.

c. The number of children deleted during the reporting period from the list of children waiting for reevaluation for more than 36 months after their last comprehensive evaluation or reevaluation because their reevaluations have been completed during the reporting period. If any children are deleted from the list for any reason other than the completion of their reevaluation during the reporting period, the school district must list each such student by name, and include in the report a description of the specific reason why that student's name was deleted.

d. The number of children waiting for reevaluation for more than 36 months after their last comprehensive evaluation or reevaluation at the end of the reporting period.

3. Each school district is also required to submit to the Central Office on a quarterly basis[5] the following information:

[4] The specific date by which PRDE must submit each report to the Department, and the beginning and ending dates of each reporting period, are set forth in Table I.

[5] The date on which each quarterly report must be submitted to the Central Office, and the beginning and ending dates of each reporting period, are specified in the third column of Table II.

a. For the first quarterly report only (to be submitted on October 7, 1993):

(1) The names of all children with disabilities who, as of March 1, 1993, had been waiting for reevaluation for more than 36 months;

(2) A list of the names and date of last evaluation or reevaluation of all children with disabilities who have been added between March 1, 1993 and September 30, 1993, to the list of children waiting for reevaluation for more than 36 months; and

(3) A list of the names and date of last evaluation or reevaluation of all children with disabilities deleted between March 1, 1993 and September 30, 1993 from the list of children waiting for reevaluation for more than 36 months (because their reevaluation has been completed between March 1, 1993 and September 30, 1993). If any children are deleted from the list for any reason other than the completion of their reevaluation during the reporting period, the school district must list each such student by name, and include in the report a description of the specific reason why that student's name was deleted.

b. For all succeeding quarterly reports:

(1) A list of the names and date of last evaluation or reevaluation of all children with disabilities who have been added, since the last reporting period, to the list of children waiting for reevaluation for more than 36 months; and

(2) a list of the names and date of last evaluation or reevaluation of all children with disabilities who have been deleted, since the last reporting period, from the list of children waiting for reevaluation for more than 36 months because their reevaluation has been completed since the last reporting period. If any children are deleted from the list for any reason other than the completion of their reevaluation during the reporting period, the school district must list each such student by name, and include in the report a description of the specific reason why that student's name was deleted.

PRDE will implement the following reporting procedures to provide periodic documentation to the Department regarding the extent and rate of PRDE's progress toward full compliance:

1. Every three months, beginning on November 7, 1993,[6] PRDE will submit to the Department a report that contains the following information, broken down by Educational Region:

a. The number of children waiting for reevaluation more than 36 months after their last comprehensive evaluation or reevaluation as of the last day of the previous quarterly reporting period (or, in the case of the first quarterly report, the number of children waiting for reevaluations for more than 36 months as of March 1, 1993).

b. The number of children added during the reporting period to the list of children waiting for reevaluation for more than 36 months after their last comprehensive evaluation or reevaluation.

c. The number of children deleted during the reporting period from the list of children waiting for reevaluation for more than 36 months after their last comprehensive evaluation or reevaluation because their reevaluation has been completed during the reporting period. If any children are deleted from the list for any reason other than the completion of their reevaluation during the reporting period, PRDE must list each such student by name, and include in the report a description of the specific reason why that student's name was deleted.

d. The number of children awaiting reevaluation more than 36 months after their last comprehensive evaluation or reevaluation at the end of the reporting period.

TABLE II—PRDE QUARTERLY REPORTS TO THE DEPARTMENT: REQUIRED LEVELS AND TIMELINES FOR ACHIEVING AND DOCUMENTING PROGRESS TOWARD FULL COMPLIANCE (REEVALUATION)

| Dates of reporting period | Number of children awaiting reevaluation for more than 3 years after most recent previous evaluation or reevaluation | Date data submitted by districts to PRDE | Date of PRDE report to the department |
|---|---|---|---|
| March 1, 1993 to Sept. 30, 1993 | 10,346 | Oct. 7, 1993 | Nov. 7, 1993. |
| Oct. 1, 1993 to Dec. 31, 1993 | 9,771 | Jan. 7, 1994 | Feb. 7, 1994. |
| Jan. 1, 1994 to March 31, 1994 | 9,196 | April 7, 1994 | May 7, 1994. |
| April 1, 1994 to June 30, 1994 | 8,621 | July 7, 1994 | August 7, 1994. |
| July 1, 1994 to Sept. 30, 1994 | 8,046 | Oct. 7, 1994 | Nov. 7, 1994. |
| Oct. 1, 1994 to Dec. 31, 1994 | 6,437 | Jan. 7, 1995 | Feb. 7, 1995. |
| Jan. 1, 1995 to March 31, 1995 | 4,828 | April 7, 1995 | May 7, 1995. |
| April 1, 1995 to June 30, 1995 | 3,219 | July 7, 1995 | August 7, 1995. |
| July 1, 1995 to Sept. 30, 1995 | 2,146 | Oct. 7, 1995 | Nov. 7, 1995. |
| Oct. 1, 1995 to Dec. 31, 1995 | 1,073 | Jan. 7, 1996 | Feb. 7, 1996. |
| Jan. 1, 1996 to April 30, 1996 | 0 | May 7, 1996 | June 7, 1996. |

*V Related Services*

A. Status of PRDE's Provision of Related Services

As of March 1, 1993, 6,219 children were not receiving one or more of the related services listed in their IEPs.

B. Commitment

PRDE is committed to coming into compliance with its obligation to provide the related services set out in the IEPs of all children with disabilities in the Commonwealth. Immediate compliance with this obligation, however, is not possible. By April 30, 1996, PRDE will have reduced to zero the number of children with disabilities not receiving all of the related services provided for in their IEPs. Table III sets forth, on a quarterly basis, PRDE's commitment for reducing to zero, on an incremental basis, the number of children who are not receiving all of the related services specified in their IEPs.[7] PRDE is obligated not only to meet its final commitment for reducing the number of children who are not receiving all of the related services specified in their IEPs to zero, but to meeting all of the commitments, set out in Table III, for reducing that number.

PRDE will implement the following data-collection and reporting procedures to determine and document the extent and rate of progress toward full compliance:

1. On March 1, 1993, each school district submitted to the Central Office the number of children who were not receiving all of the related services in their IEPs, as of February 26, 1993.

2. Beginning on June 7, 1993, each school district will be required to submit to the Central Office, on the seventh day of each month through May 7, 1996, the following information:

a. The number of children with disabilities not receiving all the related services in their IEPs as of the last working day of the previous month.

b. The number of children added during the reporting period to the list of children not

[6] The specific date by which PRDE must submit each report to the Department, and the beginning and ending dates of each reporting period, are set forth in Table II.

[7] Table III distinguishes between students who, as of March 1, 1993, were not receiving all of the related services listed in their IEPS, and students who are added after that date to the list of students not receiving all of the related services listed in their IEPS.

receiving all of the related services in their IEPs. The first reporting period will be from March 1, 1993 to May 31, 1993. Each of the subsequent reporting periods will be the calendar month that immediately precedes the month in which the report must be submitted to the Central Office.

c. The number of children deleted during the reporting period from the list of children not receiving all of the related services in their IEPs because they are now receiving all of the related services in their IEPs. If any children are deleted from the list for any reason other than the fact that, during the reporting period, they are receiving all of the related services listed in their IEPs, the school district must list each such student by name, and include in the report a description of the specific reason why that student's name was deleted.

d. The number of children not receiving all of the related services in their IEPs at the end of the reporting period.

3. Each school district will also be required to submit to the Central Office, on a quarterly basis, the following information:

a. For the first quarterly report only (to be submitted on October 7, 1993):

(1) The names of all children with disabilities who, as of March 1, 1993, were not receiving all required related services specified in their IEPs;

(2) The names of all children with disabilities who, between March 1, 1993 and September 30, 1993, have been added to the list of children who were not receiving all required related services specified in their IEPs; and

(3) The names of all children with disabilities who, between March 1, 1993 and September 30, 1993, have been deleted from the list of children who were not receiving all required related services specified in their IEPs because they are receiving all specified related services. If any children are deleted from the list for any other reason, the school district must list each such student by name, and include in the report a description of the specific reason why that student's name was deleted.

b. For all succeeding quarterly reports: (1) The names of all children who, since the last reporting period, have been added to the list of those children not receiving all required related services specified in their IEPs.

(2) The names of all children who, since the last reporting period, have been deleted from the list of those children not receiving all related services listed in their IEPs because, during the reporting period, they were receiving all specified related services. If any children are deleted from the list for any other reason, the school district must list each such student by name, and include in the report a description of the specific reason why that student's name was deleted.

PRDE will implement the following reporting procedures to provide periodic documentation to the Department regarding the extent and rate of PRDE's progress toward full compliance:

1. Every three months, beginning on November 7, 1993,[a] PRDE will submit to the Department a report that contains the following information, broken down by Educational Region:

a. The number of children with disabilities not receiving all the related services in their IEPs as of last day of the previous quarterly reporting period (or, in the case of the first quarterly report, the number of children with disabilities not receiving all the related services in their IEPs as of March 1, 1993.)

b. The number of children added during the reporting period to the list of children not receiving all of the related services in their IEPs. (The first reporting period is from March 1, 1993 through September 30, 1993.)

c. The number of children deleted during the reporting period from the list of children not receiving all related services in their EIPs because, during the reporting period, they were receiving all of the specified related services. If any children are deleted from the list for any reason, PRDE must list each such student by name, and include in the report a description of the specific reason why that student's name was deleted.

d. The number of children not receiving all related services in their EIFs at the end of the reporting period. These numbers must be broken down in the report in two separate categories:

(1) Children who, as of March 1, 1993, were not receiving all of the related services listed in their IEPs, and

(2) Children who are added after that date to the list of children not receiving all of the related services listed in their IEPs.

TABLE III.—PRDE QUARTERLY REPORTS TO THE DEPARTMENT

| Dates of reporting period | Number of children not receiving all related services in IEP | | Date data submitted by districts to PRDE | Date of PRDE report to the department |
|---|---|---|---|---|
| | On March 1, 1993 List | Added to List after March 1, 1993 | | |
| March 1, 1993 to Sept. 30, 1993 | 5,529 | 450 | Oct. 7, 1993 | Nov. 7, 1993. |
| Oct. 1, 1993 to Dec. 31, 1993 | 5,183 | 413 | Jan. 7, 1994 | Feb. 7, 1994. |
| Jan. 1, 1994 to March 31, 1994 | 4,607 | 375 | April 7, 1994 | May 7, 1994. |
| April 1, 1994 to June 30, 1994 | 4,031 | 338 | July 7, 1994 | August 7, 1994. |
| July 1, 1994 to Sept. 30, 1994 | 3,455 | 300 | Oct. 7, 1994 | Nov. 7, 1994. |
| Oct. 1, 1994 to Dec. 31, 1994 | 2,879 | 263 | Jan. 7, 1995 | Feb. 7, 1995. |
| Jan. 1, 1995 to March 31, 1995 | 2,303 | 225 | April 7, 1995 | May 7, 1995. |
| April 1, 1995 to June 30, 1995 | 1,727 | 183 | July 7, 1995 | August 7, 1995. |
| July 1, 1995 to Sept. 30, 1995 | 1,151 | 150 | Oct. 7, 1995 | Nov. 7, 1995. |
| Oct. 1, 1995 to Dec. 31, 1995 | 575 | 100 | Jan. 7, 1996 | Feb. 7, 1996. |
| Jan. 1, 1996 to April 30, 1996 | 0 | 0 | May 7, 1996 | June 7, 1996. |

*VI. Management System*

A. PRDE will adopt and implement an organizational structure that clearly defines the duties and responsibilities of all administrative and supervisory staff. This system will apply at central, regional, district, and school levels and will ensure that evaluations and related services are provided in a manner that is consistent with Federal and Commonwealth requirements.

B. All personnel involved in the general supervision of programs for children with disabilities will be required to master the administrative and supervisory procedures and techniques needed to carry out their responsibilities.

C. PRDE will implement a monitoring process that will ensure that all districts are in compliance with Federal and Commonwealth regulations concerning the educational services, evaluations, and related services provided to children with disabilities. All public and private agencies, institutions, and schools involved in the process of providing special education to children with disabilities will be subject to this monitoring process.

D. In order to ensure that it has the capacity to meet this commitment to monitor in a manner that will ensure compliance with the requirements of part B, PRDE will take the following steps:

1. Produce general guidelines regarding the duties and responsibilities for all administrative and supervisory staff at all levels. These guidelines will be included in the procedures manual for monitoring. The process will include the following:

[a] The specific date by which PRDE must submit each report to the Department, and the beginning and ending dates of each reporting period, are set forth in Table III.

a. The appointment of a special committee to evaluate and revise current duties and responsibilities for all administrative and supervisory staff.

b. The evaluation and revision of duties and responsibilities of all administrative and supervisory staff at all levels.

c. The establishment of guidelines regarding the duties and responsibilities for all administrative and supervisory personnel at the central, regional, district, and school levels.

2. The implementation of an organizational structure for the administration and supervision of special education at the central, regional, district, and school levels. This process will include the following:

a. The evaluation and revision of the organizational structure for special education at all levels.

b. The adoption of an organizational structure for the administration and supervision of special education programs at the central, regional, district, and school levels. All administrative and supervisory personnel will be responsible for the supervision of their immediate staff and the provision of appropriate special education services, including evaluations and related services. PRDE will establish lines of authority and a system of accountability, including performance appraisals and a system of sanctions that are consistent with due process requirements.

3. PRDE will continue working with the existing Monitoring, Technical Assistance and Curriculum Unit to ensure the provision of appropriate special educational services, including evaluation, reevaluation, and related services. This unit will be responsible for the following:

a. Development of a monitoring program.

b. Conducting on-site visits.

c. Preparing progress and final monitoring reports.

d. Submitting these reports to the Undersecretary for final action.

e. Conducting weekly meetings with the Undersecretary of Education, Regional Directors, and Supervisors.

f. Requesting that the Regional Directors schedule and conduct weekly meetings with their school superintendents.

g. Requesting that the school superintendents schedule and conduct weekly meetings with the special education zone supervisors and school directors.

4. PRDE will implement a computerized system to facilitate the identification, registration, evaluation, and provision of educational and related services to children with disabilities.

E. PRDE will submit, no later than January 31, 1995, a report that outlines its efforts to implement these initiatives, as well as the initiatives outlined in Secretary Torres' letter to Patricia Guard, Acting Director of the Office of Special Education Programs, and that documents the effect of those initiatives on compliance with the requirements of Part B regarding initial evaluation, reevaluation, and the provision of related services specified in students' IEPs.

*VII. Other Conditions*

In addition to all of the terms and conditions set forth above, PRDE agrees that its continued eligibility to receive part B funds is predicated upon compliance with statutory and regulatory requirements of that program, that have not been addressed by this Agreement, including the requirements concerning the submission to the Department of an approvable State plan and the implementation of final decisions in due process hearings. PRDE also agrees that it will fully implement all components of the Corrective Action Plan set forth in the Final Monitoring Report, issued by the Department on September 27, 1991. If PRDE fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order. 20 U.S.C. 1234f(d).

For the Puerto Rico Department of Education:

Dated: April 23, 1993.

**Hon. Jose Arsenio Torres,**

*Secretary, Puerto Rico Department of Education.*

For the United States Department of Education:

Dated: April 28, 1993.

**Hon. Richard W. Riley,**

*Secretary, United States Department of Education.*

Date this Compliance Agreement becomes effective (Date of Secretary Riley's Written Decision and Findings): April 28, 1993.

Expiration Date of this Agreement: April 28, 1998.

[FR Doc. 93-17825 Filed 7-26-93; 8:45 am]

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Part VII

# Environmental Protection Agency

**40 CFR Part 799**
**Multi-Substance Rule for the Testing of Neurotoxicity; Final Rule**

VOL 58 ISS 142 JL 27 1993 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 799**

**[OPPTS-42134B; FRL 4650-9]**

**Rin 2070-AC27**

## Multi-Substance Rule for the Testing of Neurotoxicity

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is issuing a final rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of 10 substances to conduct testing for neurotoxicity. The 10 substances are acetone (CAS No. 67–64–1), technical grade *n*-amyl acetate (CAS No. 628–63–7), 1-butanol (CAS No. 71–36–3), *n*-butyl acetate (CAS No. 123–86–4), diethyl ether (CAS No. 60–29–7), 2-ethoxyethanol (CAS No. 110–80–5), ethyl acetate (CAS No. 141–78–6), isobutyl alcohol (CAS No. 78–83–1), methyl isobutyl ketone (CAS No. 108–10–1), and tetrahydrofuran (CAS No. 109–99–9). These substances are related in that all are volatile solvents with high production volumes, occupational exposure, presence in and/or release to the environment, and, with the exception of 2-ethoxyethanol, consumer exposure. This rule requires cognitive function and screening level tests for neurotoxicity.

**DATES:** This rule shall become effective on September 9, 1993. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on August 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability:** This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

EPA is issuing a final test rule under section 4(a) of TSCA to obtain neurotoxicity data for ten volatile substances that have substantial production, for which there is or may be substantial human exposure, and for which data on neurotoxicity are insufficient.

### I. Introduction

#### *A. Test Rule Development Under TSCA*

This final rule is part of the overall implementation of section 4 of TSCA, 15 U.S.C. 2603, which contains authority for EPA to require the development of data relevant to assessing the risk to health and the environment posed by exposure to particular chemical substances or mixtures (hereafter "substances").

Under section 4(a) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules, which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300). Additional discussion of the TSCA section 4(a)(1)(B) finding can be found in the **Federal Register** notice which articulates the criteria EPA uses for making that finding (58 FR 28736, May 14, 1993).

#### *B. Background*

On March 4, 1991 (56 FR 9105), EPA proposed a multi-substance test rule to test 10 substances for a single toxicological endpoint, neurotoxicity. EPA believes that available data on the neurotoxic effects of many chemicals in commerce, to which millions of Americans are exposed, are insufficient to evaluate human health risk and is initiating this program to test some of them. This approach is supported by a recent study by the Office of Technology Assessment (OTA) on the health threat from neurotoxic chemicals (Ref. 46). The OTA study stated that little is known about the potentially adverse effects of thousands of chemicals on the nervous system because of inadequate research and testing. Although EPA has previously required neurotoxicity testing as part of comprehensive test programs of individual substances, EPA intends this rule to be the first in a series of actions to obtain data solely on neurotoxicity.

Organic solvents were targeted for the first neurotoxicity endpoint rule because, as a group, they are associated with neurological effects. There is wide concern about a range of potentially adverse neurological consequences of short-term and long-term exposure to organic solvents. The human syndrome may include fatigue, difficulty in concentration, personality and mood changes, performance deficits, neurological signs, and neurological damage.

Organic solvents were also targeted for the first neurotoxicity endpoint rule because they include many high exposure substances (Ref. 47). By selecting those organic solvents with high exposure, the limited resources available for testing will be focused on a few substances with widespread use and human exposure, instead of requiring EPA to consider the whole universe of organic solvents for testing. Each solvent in this rule was selected for testing consideration because it has a high production volume, high vapor pressure, widespread use in the workplace, and, with the exception of 2-ethoxyethanol, widespread use by consumers. EPA believes these characteristics assure that many people are likely to have acute and/or chronic exposure to these substances. A more detailed description of how exposure criteria were used to select the 10 candidate solvents for testing can be found in the preamble to the proposed test rule (56 FR 9105–9108, March 4, 1991). The 10 solvents for which testing was proposed are acetone, n–amyl acetate, 1-butanol, *n*-butyl acetate, diethyl ether, 2-ethoxyethanol, ethyl acetate, isobutyl alcohol, methyl isobutyl ketone, and tetrahydrofuran.

EPA proposed that four neurotoxicity tests be conducted with each solvent. These tests are the functional observational battery, motor activity, neuropathology, and schedule-controlled operant behavior. These tests will examine neurobehavioral function in animals exposed by inhalation and will not only screen for certain neurotoxic effects of each solvent, but will also indicate the relative safety of the tested solvents for this endpoint. EPA does not consider this test program to be the most comprehensive program possible, but rather to be a start in addressing a complex and long-neglected issue. The testing in this rule, therefore, should not be viewed as a rigid universal template for all future test rules of solvents. Other test programs have been suggested in the past to examine solvent effects. A 1985 workshop co-sponsored by representatives from industry, academia, and government (Ref. 55) recommended batteries of neurobehavioral, electrophysiological, and neuropathological tests in rodents and primates exposed to solvents for up to several years.

EPA's efforts to obtain data to address its concern for the neurotoxicity of specific solvents dates back over 10

years to a proposed test rule (45 FR 48524, July 18, 1980) which discussed EPA's concerns for the neurotoxic effects of chloromethane in adults after chronic exposure and on offspring exposed *in utero*, and concerns related to abuse liability. All of these concerns are considered to be generally relevant to solvents as a class. This rule addresses only the first of these three concerns, and in a limited way. It will utilize relatively short-term (90–day) exposures as a surrogate for chronic exposures. It requires testing in adult rodents only. Further, it requires only a single test of complex neurobehavioral function, schedule-controlled operant behavior (SCOB). The SCOB evaluates the effect on performance of a complex task, which is dependent on memory and learning. By way of contrast, a much more extensive battery was proposed at the solvent workshop (Ref. 55), which included: sensory and motor electrophysiology; delayed matching-to-sample (a test of short term memory); repeated acquisition (a test of learning); cued reaction time, including a correlative electrophysiological monitor; a vigilance and tracking task; and psychomotor tests. Thus, EPA is requiring a very modest testing program in this area in comparison to the scientifically acknowledged diversity of the potential neurotoxic effects of concern.

In evaluating the testing needs for these substances, EPA considered the available published and unpublished information on the use, production volume, vapor pressure, occupational and consumer exposure, presence in and release to the environment, and neurotoxicity to animals and humans (56 FR 9106–9110, March 4, 1991). From its evaluation of these data, EPA proposed specific neurotoxicity testing for these substances under TSCA section 4(a)(1)(B). In addition, EPA considered available information on whether these substances may present an unreasonable risk of injury to health and as a consequence EPA also proposed neurotoxicity testing for six of the substances under TSCA section 4(a)(1)(A).

After reviewing the public comments submitted in response to the proposed rule, EPA is requiring neurotoxicity testing for the following 10 substances:

| Chemical name | CAS No. | Docket No. |
|---|---|---|
| acetone | 67–64–1 | 42134B/42135A |
| *n*-amyl acetate, technical grade | 628–63–7 | 42134B/42136A |
| 1-butanol | 71–36–3 | 42134B/42137A |
| *n*-butyl acetate | 123–86–4 | 42134B/42138A |
| diethyl ether | 60–29–7 | 42134B/42139A |
| 2-ethoxyethanol | 110–80–5 | 42134B/42140A |
| ethyl acetate | 141–78–6 | 42134B/42141A |
| isobutyl alcohol | 78–83–1 | 42134B/42142A |
| methyl isobutyl ketone | 108–10–1 | 42134B/42017C |
| tetrahydrofuran | 109–99–9 | 42134B/42143A |

EPA will continue to evaluate the need for this type of testing of additional substances and may pursue rulemaking on additional substances as necessary to require such testing. EPA intends to identify future candidates for addition to this rule from its chemical screening program, TSCA section 8(e) data, Premanufacture Notices, Structure-Activity Relationship data, nominations from other EPA programs, Interagency Testing Committee (ITC) recommendations, and other relevant sources.

The regulatory text of this rule is in tabular form under 40 CFR 799.5050. For future multi-substance rules, EPA is considering amending § 799.5050. Hence, this and subsequent multi-substance endpoint rules would be listed in a single table, and all the test requirements (health, environmental, chemical fate, etc.) for a substance will be in a single location. EPA believes that listing the test requirements for all the multi-substance endpoint rules in one table would be advantageous for persons subject to TSCA section 4 test rules and will simplify and aid in their monitoring and compliance.

## II. Public Comments

EPA received comments on the proposed "Multi-substance Rule for the Testing of Neurotoxicity" (56 FR 9105, March 4, 1991) from the Chemical Manufacturers Association (CMA) (Ref. 3), CMA's Acetone Panel (Refs. 4, 5 and 68), CMA's Glycol Ethers Panel (Ref. 6), CMA's Ketones Panel (Refs. 7 and 8), CMA's Oxo Process Panel (Refs. 9 through 12), the American Industrial Health Council (AIHC) (Ref. 1), the Diethyl Ether Manufacturers Task Group (DEMTG) (Ref. 13), BASF Corporation (BASF) (Ref. 2), The Dow Chemical Company (Dow) (Ref. 14), DuPont (Ref. 15), Kodak (Ref. 16), Monsanto (Ref. 17), Rohm and Haas (Ref. 18), Union Carbide (Ref. 19), the Interagency Testing Committee (ITC) (Ref. 21), Dr. J. Glowa of the U.S. Department of Health and Human Services (Ref. 20), Dr. D. McMillan of the University of Arkansas (Ref. 22), Dr. R. Neal of Vanderbilt University (Ref. 25), and Drs. D. Cory-Slechta (Ref. 23) and B. Weiss (Ref. 24) of the University of Rochester. These submissions contained both comments regarding the proposed rule and additional studies for EPA to consider before promulgating the final rule. These comments are addressed in detail below.

### *A. General Testing Policy Issues*

CMA (Ref. 3) submitted comments which addressed several general testing policy issues, specifically, comments regarding the use of endpoint versus comprehensive test rules, the selection criteria for determining candidates for testing consideration, the pre-rulemaking information gathering process, and the use of a screening battery. EPA believes that these comments address general policy issues that extend beyond the scope of this rulemaking. Although resolution of such general policy issues is largely within EPA's discretion, they are addressed briefly below.

The ITC (Ref. 21) indicated its support for the concept of a multi-substance endpoint rule in general and particularly when such a rule targets "substantially produced chemicals" as with the proposed neurotoxicity test rule. CMA (Ref. 3) commented that the multi-substance endpoint test rule

proposal was an important new initiative in the TSCA testing program noting that, in the past, EPA traditionally required in-depth testing of multiple endpoints on a single substance that was time and resource intensive for both EPA and industry. CMA and Monsanto (Ref. 17) further stated that the value of focused endpoint rules will be lost if, at a later date, EPA requires comprehensive testing on a substance that was subject to an endpoint rule.

EPA does not believe that multi-substance endpoint rules should be the exclusive means for testing chemical substances, nor that endpoint rules should always focus solely on the "endpoint of greatest concern." Multi-substance endpoint rules are only one means by which EPA can require testing to develop data on chemical substances for which there are insufficient data or experience upon which the effects of manufacture, distribution in commerce, processing, use, or disposal of such substance on health or the environment can reasonably be determined or predicted. EPA's testing efforts are intended to develop information on any endpoints of concern. Without any, or with only limited knowledge about a specific endpoint, it cannot be determined whether this endpoint is the "endpoint of greatest concern." Therefore, as scientific advances and developments may indicate a cause for concern in the future, EPA cannot, consistent with its statutory mandate, state that testing of a substance will be limited to a particular endpoint.

Furthermore, EPA does not believe that future comprehensive tests of a substance would lessen the value of the endpoint rule concept. "Endpoint" and "comprehensive" test rules are two valuable, but different, approaches to developing data on chemical substances that will not necessarily lead to duplicative testing requirements. If data generated under an endpoint rule adequately addresses the concerns underlying the testing requirements, there would be no justification for further testing on the same endpoint — even if additional "comprehensive" testing of the same chemical substance were later required. Under TSCA, additional testing can be required only where an appropriate rationale for such testing (including a "data insufficiency" finding) can be provided. In addition, data from endpoint testing may allow EPA to focus and tailor subsequent testing so as to obtain more useful data or, as indicated above, to decide that no additional data are necessary. For these reasons, EPA continues to believe that both types of rulemaking activities have their place in the TSCA section 4 process.

CMA (Ref. 3) commented that supportable criteria are needed in selecting substances for an endpoint rule to assure that the endpoint is a priority concern for the substance and not merely a data gap. CMA was also concerned that, as future substances are added to the endpoint rule, EPA provide a clear justification for and an opportunity to comment on the selection of substances for testing consideration.

EPA agrees that supportable criteria are needed for selection of substances as candidates for testing consideration, and that once EPA has determined it will require testing of certain substances — including any additions to this rule — the public must have the opportunity to comment on EPA's proposed findings in support of its testing decision. However, in the context of this rulemaking, CMA's concerns regarding the chemical selection process are addressed below.

In this rule, EPA has identified a class of substances (organic solvents) that demonstrate a high potential to be neurotoxic agents, as well as a high potential for exposure. EPA noted in the proposed rule that there are scientific data indicating that neurotoxicity is a concern for organic solvents as a class, including substances which have already been tested under TSCA section 4. While some of these scientific data may not specifically relate to the substances in this rule, taken as a whole, the data form the basis for evaluating the neurotoxicity of these solvents. This issue is outlined in the OTA report (Ref. 46). In addition, EPA believes that high production volume, substantial human exposure, substantial environmental release, and high volatility as outlined in the proposed rule are supportable criteria for selecting the group of solvents in this final rule. Therefore, EPA believes that there is adequate support for the selection of these substances for consideration for neurotoxicity endpoint testing.

CMA (Ref. 3) expressed concern that EPA relied too heavily on gross indicators of exposure in its chemical selection process for the proposed rule. These indicators included size of worker population, presence in consumer products, and total amount released into the environment. CMA believes that more relevant indicators include frequency and duration of workplace exposure, the use of protective equipment and process controls, concentrations at which exposure occurs, the levels at which the subject chemicals are present in consumer products, the likelihood of release during use of these products, and the frequency with which they are used. According to CMA, these exposure factors are important in the chemical selection process because studies indicate that neurotoxic effects are a function of dose levels and duration of exposure.

EPA believes that section 4 of TSCA does not require EPA to use CMA's approach in selecting, from the entire universe of substances currently in production, those substances which it wishes to consider for testing under section 4 of TSCA. In short, this level of exposure information is more appropriate in a determination to regulate the substances rather than a decision to require testing. In addition, the types of data suggested by CMA to evaluate exposure are not always available to EPA, nor is it always feasible for EPA to acquire them independently. A complete assessment of all exposure scenarios as suggested by CMA would be very resource intensive, and such costs are unjustified at this stage in the process. This type of exposure assessment is resource intensive since specific industries, processes, and work functions must be identified and analyzed for exposure potential; then monitoring studies must be designed, performed, and analyzed for each exposure scenario. Monitoring studies, additionally, must be conducted over a period of time that will allow some assessment of the variability in exposure concentrations and worker activities (e.g., maintenance activities, repair work), further adding to the cost of the assessment. Similarly, consumer exposure estimates require that many consumer products containing the substance in question be identified and the use patterns and frequency be identified, and expected exposure concentrations and routes estimated.

Although EPA agrees that more detailed exposure information is desirable and that neurotoxicity as well as most other toxic responses are dose/duration dependent, EPA believes that the strategy it used in selecting these substances for testing consideration is valid. Whenever there is a large number of workers involved in the manufacture and use of substances, it can readily be assumed that some exposure is likely and that smaller groups of the large population will have exposures higher than the average as a result of specific job functions, accidents, or poor work practices.

CMA also commented that EPA relied exclusively on exposure indicators, and did not take into account existing data on neurotoxicity in its chemical

selection process. EPA disagrees. EPA's chemical selection process for this endpoint rule had two stages. The first stage assessed potential exposure and release, while the second stage evaluated available neurotoxicity data. Clearly, EPA took into account existing health effects studies, since the original exposure and release assessment identified 14 substances for consideration in the proposed rule. Following evaluation of neurotoxicity data for the 14 substances, EPA determined that four of these substances were adequately tested for the types of tests required by this rule and these were removed from consideration.

CMA noted that existing 28– and 90–day tests may provide indicators of neurotoxicity or the absence of neurotoxic potential even if these studies do not follow current TSCA neurotoxicity guidelines. EPA agrees with CMA that data from subchronic studies can provide suggestive evidence that a substance is a neurotoxicant; however, the absence of an indication of neurotoxicity in a study not designed specifically to examine neurotoxicity provides at best only minimal indication of the neurotoxic potential of a compound. EPA does not believe that this level of information is sufficient to obviate the need to consider these substances for testing under TSCA section 4.

CMA noted that in the proposed rule EPA indicated that it was not going to rely on structure-activity relationships (SAR) in selecting candidates since existing information in this area is sparse for solvents. CMA concurred with a cautious use of SAR, but indicated that judicious use of SAR with exposure data and existing studies provide useful tools for prioritizing substances for neurotoxicity testing. Because of unique aspects of the nervous system, EPA believes that test design is critical in evaluating substances for neurotoxic potential. EPA fully understands the use of SAR as one of the tools available for prioritizing substances for testing. EPA chose not to use SAR data for selecting substances for testing consideration for this rule because the information on organic solvents was insufficient for a valid SAR analysis.

CMA (Ref. 3) expressed concern with how the endpoint rule will relate to other testing schemes such as the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) battery, and to previous evaluations of testing needs under TSCA. CMA believes that when exposure and production are the main reasons for requiring testing of a substance or class of substances, the first step in testing should be the conduct of a SIDS battery which would allow determination of the most appropriate test in a more focused endpoint rule.

EPA believes that there are a number of approaches to selecting and testing substances. However, discussion of these options is more appropriately addressed in the context of EPA's ongoing review of the role screening level testing and endpoint testing should play in the section 4 test program as part of its development of an overall testing strategy. One possible approach is use of the SIDS battery or other screening studies as a first examination of a substance followed by use of the data generated to select additional testing. The first SIDS data which became available in late 1992 will be important in this evaluation. It should be noted, however, that the SIDS battery does not explicitly address neurotoxicity and thus may not be useful to determine the need for such studies.

CMA (Ref. 3) and Monsanto (Ref. 17) noted that some of the substances in the proposed rule have had previous TSCA testing activity; in particular, the evaluation of methyl isobutyl ketone (MIBK) was reported to Congress as complete under section 4. CMA and Monsanto requested that EPA provide a rationale for reopening rulemaking on MIBK in the absence of additional scientific data. EPA notes that MIBK testing was complete only in regards to the previously agreed upon testing program. EPA, however, had not evaluated the need for neurotoxicity testing at the time industry proposed its testing program in 1982. This evaluation was not done because EPA did not have guidelines for neurotoxicity testing should it have determined that neurotoxicity testing was necessary. More importantly, as noted under Unit II.J of this preamble, EPA believes that evaluation of testing needs for a chemical is a progressive process which can be influenced by emerging scientific and social concerns, therefore, it is unlikely that EPA could say that complete data are available on any substance.

CMA (Ref. 3) noted that because the endpoint rule was not initiated by designation from the ITC, EPA did not have the advantage of the exposure and health effects studies that would have been submitted under TSCA sections 8(a) and 8(d). CMA suggested that EPA should publish lists of substances to be included in endpoint rules prior to committing resources to rulemaking in order to obtain any unpublished data. Similarly, Rohm and Haas (Ref. 18) stated that a section 8(d) rule is the most effective means of obtaining unpublished data, particularly from sources that may not be aware of the need for data because they are not manufacturers or importers of the substance. Furthermore, Rohm and Haas believes a modified section 8(d) rule, which requires only submission of data related to the endpoint and does not have a 10–year reporting requirement, would be effective in providing EPA with the data necessary to assure that duplicative testing is not required.

EPA agrees with the manufacturers that review of all reasonably available information, including unpublished studies, is necessary prior to promulgating a final rule. Although publishing a section 8(d) rule would result in submission of unpublished studies, publication of a proposed test rule requesting comments also results in the submission of unpublished studies and other relevant information. As indicated during the public meeting and by the submission of studies during the public comment period, publication of the proposed multi-substance neurotoxicity testing rule was effective in obtaining unpublished studies. EPA has the opportunity to review these studies and make any appropriate changes in the final rule. EPA also believes that the individuals who have data which would be submitted under section 8(d) are likely to be the same as those impacted by the rule, and thus they would submit any data that would meet the data needs of the rule during the comment period. In addition, since a section 8(d) rule was not promulgated, the need to submit data disappears after the final rule is promulgated, which addresses the concerns expressed by Rohm and Haas regarding the 10–year reporting requirement (Ref. 18).

### *B. Section 4(a)(1)(B) Finding*

In addition to comments on general testing policy issues, EPA received comments regarding its proposed findings in support of the neurotoxicity testing required by this rule. These comments are addressed below.

CMA (Ref. 3) commented that EPA should reexamine its proposed section 4(a)(1)(B) finding ("B" finding) for the 10 substances for which findings were made in the proposed rule. It believes that EPA should first finalize its policy for exposure-based findings ("B" findings) proposed in response to the Fifth Circuit Court of Appeals remand in the cumene case before taking final action in this rulemaking; second, avoid the use of gross indicators of human exposure to solvents, namely the

National Occupational Exposure Survey (NOES), to estimate worker exposure, and consumer usage and product surveys to estimate consumer exposure, in support of its findings for requiring testing of these solvents; and finally, avoid the use of chemical release data as contained in the Toxics Release Inventory (TRI) because, CMA contends, it is not sufficient to justify entry of a compound into the environment. CMA's Panels (Refs. 4, 6, 7 and 9), Dow (Ref. 14), Du Pont (Ref. 15), DEMTG (Ref. 13), BASF (Ref. 2), Kodak (Ref. 16), and Monsanto (Ref. 17) also commented that a "B" finding for either individual organic solvents or the group as a whole is not justified. Public comments which are specific to the individual members of this group will be addressed below on a substance by substance basis, while comments and responses appropriate to all members of this group follow.

1. *Policy for exposure-based findings.* CMA (Ref. 3), CMA's Oxo Process Panel (Ref. 9), and Monsanto (Ref. 17) commented that EPA should first finalize its policy for exposure-based findings ("B" findings) before taking final action in this rulemaking. (The "B" policy was proposed in the Federal Register of July 15, 1991 (56 FR 32294)). They maintain that formalization of this policy is required by the Fifth Circuit Court of Appeals in the cumene case and will aid in future rules enacted under TSCA.

The final "B" policy was issued on May 14, 1993 (58 FR 28736). However, EPA does not agree that issuance of this policy was mandated before final action could be taken in this rule. The Fifth Circuit Court of Appeals in *CMA vs. EPA* (Ref. 26 at p. 359) made it clear that EPA need not adopt a definition applicable to all cases, but may choose to proceed on a case-by-case basis, if it rationally explains its exercise of discretion. EPA has fully articulated its decision-making rationale in this rule and in the proposed multi-substance rule for the testing of 10 organic solvents for neurotoxicity (56 FR 9105, March 4, 1991). EPA believes that this rule and the proposed rule clearly articulate the criteria it used in making a finding under TSCA section 4(a)(1)(B)(i). Because EPA considers this rule to be legally sufficient, EPA did not reopen the comment period for this rule when the "B" policy was proposed on July 15, 1991 (56 FR 32294). Despite the independence of this rule from the "B" policy, the 4(a)(1)(B) findings in this rule meet the criteria of the "B" policy.

2. *Purposes of TSCA section 4(a)(1)(B).* In addressing EPA's findings under section 4(a)(1)(B), CMA and other commenters state that EPA has inadequately considered all of the factors relevant to testing decisions under section 4(a)(1)(B). CMA (Ref. 3, pp. 18–19) contends that:

> EPA's basic inquiry should be whether, taking into account known toxicity data for other chemicals, exposure is sufficiently great to present a significant and widespread risk if testing is positive for the endpoint in question.

Furthermore, if EPA cannot make such a determination:

> * * * testing would not be required to determine whether the substance presents an "unreasonable risk of injury" under TSCA section 6 because there would be no need to control its manufacture or use even if test results are positive.

EPA believes that CMA's comments reflect an inaccurate understanding of the role of chemical testing conducted under the authority of section 4 within TSCA's statutory framework and purposes. TSCA was enacted to ensure that, given the exposure of humans and the environment to a large number of chemical substances and mixtures with potentially harmful effects, there would be effective regulation of commerce in such substances (TSCA section 2(a), 15 U.S.C. 2601(a)). Since the potential effects of many chemical substances in commerce are not known, the policy provisions of TSCA reflect Congress' intent that:

> * * * adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such [substances]. (TSCA section 2(b)(1), 15 U.S.C. 2601(b)(1))

Section 4 of TSCA provides EPA the authority to require such testing. In contrast, section 6 of TSCA provides EPA the authority to regulate these chemical substances once their effects are more adequately characterized, i.e., once the Administrator makes a finding that a chemical substance "presents or will present an unreasonable risk of injury to health or the environment." 15 U.S.C. 2605.

In effect, CMA argues that EPA must make a finding that a chemical substance would pose an unreasonable risk of injury at some hypothetical level of toxicity in order to require testing under section 4(a)(1)(B) of TSCA. To do this, CMA envisions EPA doing a formal exposure assessment. This approach was explicitly rejected by the court in *CMA v. EPA* (Ref. 26 at 354–355), which stated:

> If the EPA properly concludes [under sections 4(a)(1)(B)(ii) and (iii)] that the existing data and experience do not suffice as a basis for it to reasonably predict that there will be no health or environmental injury from the manufacturing (or processing, etc.) of the chemical, then affirmative evidence and findings of risk of injury to health or the environment at hypothetical toxicity levels under section 4(a)(1)(B)(i) are not necessary to provide a nexus between requiring testing under section 4(a)(1)(B) and congressional concern for health and the environment.

Furthermore, CMA's approach would essentially have EPA making the same finding for a section 4 rule as for a section 6 rule — a requirement that the courts have repeatedly rejected. "[T]he level of certainty of risk warranting a section 4 test rule is lower than that warranting a section 6 regulatory rule" under TSCA. *CMA v. U.S. EPA* (Ref. 58 at 979). See also *Ausimont U.S.A. Inc. v. EPA* (Ref. 66 at 95–98), (EPA's burden is to demonstrate not fact, but doubt and uncertainty, in order to require testing under section 4); and *CMA v. U.S. EPA* (Ref. 58 at 984–988) (EPA need not gather information to make a reasonable prediction or determination of risk before issuing a test rule).

EPA now turns to addressing comments regarding the individual components of its findings under section 4(a)(1)(B) of TSCA in support of the testing requirements.

3. *Substantial production.* EPA indicated in the proposed rule that all 10 of the substances in the proposal are produced in quantities exceeding 12 million pounds annually (56 FR 9107, March 4, 1991). Production data reported for substances listed in the TSCA inventory (presently over 70,000 entries) indicate that only 4.8 percent of the listed substances have production volumes over 10 million pounds. Clearly, if the 10 members of this group of solvents are produced in quantities greater than 95 percent of the other compounds listed in the TSCA inventory, EPA believes it is reasonably and unambiguously justified in making a section 4(a)(1)(B)(i) finding based on substantial production. It should be noted that the "B" policy specifies that 1 million pounds be established as the substantial production threshold. The production volumes of all 10 substances in this rule are consistent with, and indeed, well above the threshold.

4. *Substantial human exposure.* CMA and its Panels (Refs. 3, 4, 6, 7, and 9), DEMTG (Ref.13), Dupont (Ref. 15), and Monsanto (Ref. 17) questioned the use of gross indicators of worker exposure to solvents, namely the size of the affected workplace population and the presence of these solvents in consumer products, as EPA's basis for making its TSCA section 4(a)(1)(B)(i) findings in support of the testing requirements. The

commenters maintained that the findings should place a greater emphasis on intensity, duration, and frequency of exposure in determining neurotoxic potential. CMA and the manufacturers maintained that a large number of exposed workers in itself does not constitute substantial exposure to support a section 4(a)(1)(B) finding.

EPA believes that the exposure parameters of intensity, duration and frequency are more relevant to a finding of "significant" exposure, than to a finding of "substantial" exposure. Although EPA did not make a finding of "significant" exposure, it, nevertheless, considered chemical/physical properties which would contribute to significant exposure. EPA articulated in the proposed rule that available data on the vapor pressure of these substances was of major concern to EPA in making its findings because inhalation is a major route of exposure for volatile organic solvents (56 FR 9111, March 4, 1991). The rule also stated that volatile organic solvents are typically small (low molecular weight) molecules which may permit a second major route of exposure, skin penetration. Therefore, EPA believes that it has explained, albeit generally, that the physical and chemical properties and uses of these solvents contribute to human exposure.

EPA also believes that it clearly articulated in the proposed rule its rationale for interpreting the term "substantial human exposure" to refer to "widespread human exposure" or "exposure to a large number of people" within the meaning of TSCA section 4(a)(1)(B)(i)(II). (56 FR 9110–9111, March 4, 1991). In the proposed rule, EPA found, using low-range estimates, that 172,000 workers and 3.7 million consumers are potentially exposed to each of the organic solvents subject to this test rule. High-range estimates indicate that as many as 1.5 million workers and 112 million consumers may be exposed to these substances (56 FR 9107, March 4, 1991). For these reasons, EPA believes that it has met its burden under TSCA section 4(a)(1)(B)(i)(II) to demonstrate that there is or may be substantial human exposure to each of the organic solvents subject to this rule.

CMA contends that both the National Occupational Exposure Survey (NOES) and EPA's own consumer product survey, on which a finding of substantial human exposure was based, are flawed. This position was shared by CMA's Panels (Refs. 4, 6, 7 and 9), Dow (Ref. 14), DuPont (Ref. 15), DEMTG (Ref. 13), AIHC (Ref. 1), BASF (Ref. 2), Kodak (Ref. 16), and Monsanto (Ref. 17). CMA's Acetone Panel (Ref. 4) commented that EPA's consumer usage and product surveys greatly overestimate both the number of products which contain acetone and human exposure to it. This position was also held by CMA's Ketones Panel (Ref. 7) for methyl isobutyl ketone, and by CMA (Ref. 3) for all 10 substances discussed in the proposed rule.

EPA does not agree that its reliance on the NOES and consumer usage and product surveys for its analysis of human exposure to the organic solvents was unreasonable. The NOES, conducted in 1981 to 1983, was based on field surveys of 4,490 facilities that served as a statistical sample of virtually all workplace environments, except mining and agriculture, in the United States where 8 or more persons are employed. Based on these samples, the numbers of persons nationwide who are potentially exposed to different substances were estimated. Substances in trade name products were also included. No information was obtained on actual or potential concentrations of substances at potential worker exposure sites (Ref. 61). Therefore, the NOES data is not intended to be an exact determination of worker exposure to a chemical compound in a quantitative sense; rather, it is intended as an estimate of potential human exposure to the test substances in the workplace. This information is a valid basis for, and is relevant to a determination that testing of these substances under TSCA section 4 is warranted. While EPA has acknowledged that there may be sampling errors in the NOES survey, EPA disagrees with the implication that the survey is of little value in determining occupational exposure relative to other substances used in commerce for purposes of TSCA section 4(a)(1)(B)(i). According to the NOES survey, at least 172,000 and as many as 1,510,107 workers are exposed to each of the organic solvents (56 FR 9107, March 4, 1991) subject to this rule. Although the exact numerical value of NOES estimates may be questioned, EPA believes that the range of potential exposures is a sufficient basis for concern under TSCA section 4(a)(1)(B)(i). In addition, the potential for occupational exposure to these solvents is consistent with EPA's "B" policy which specifies that the threshold criterion for substantial worker exposure be 1,000 workers (58 FR 28736, May 14, 1993). In fact, this substantial worker exposure threshold is clearly exceeded by all of the solvents subject to this test rule. Therefore, EPA concludes that there is, or may be, substantial worker exposure to these compounds.

In the proposed rule, EPA indicated that each of the solvents was present in from 1 to 51 consumer products, and that their formulations had widespread use in industry (56 FR 9107, March 4, 1991). EPA also notes that human exposure estimates from its consumer product survey, which incorporated a degree of uncertainty as to the range of values reported in the estimates, indicated that 3.7 to 112 million consumers were potentially exposed to each of the individual solvents (Id.). These estimates also clearly exceed EPA's threshold of 10,000 consumers as its criterion for a substantial human exposure finding (58 FR 28736, May 14, 1993). From data contained in their own submissions, manufacturers (Refs. 9c, 9h and 10b) and CMA (Refs. 7f, 7i and 7j) have indicated that the solvents contained in the proposed rule are widely present in commercial products. Also, based on the solvents' presence in numerous chemical formulations, CMA (Ref. 3) commented that compliance with the export notification requirement under section 12(b) of TSCA would be burdensome for thousands of formulators. This comment by CMA indicates that the solvents are present in products produced by thousands of formulators and that EPA's estimates of consumer exposure have a sound basis.

EPA concludes that both worker and consumer exposure, as described by NOES data and the consumer product usage survey respectively, are consistent with a section 4(a)(1)(B)(i)(II) finding by indicating that there is, or may be, substantial human exposure. Both worker and consumer exposure estimates far exceed the "B" finding threshold criteria. EPA believes that potential exposure to as many as 1.5 million workers and 112 million consumers (56 FR 9107, March 4, 1991), which, as indicated by the manufacturers own comments, may be underestimated, fulfills the spirit and intent of TSCA section 4(a)(1)(B).

5. *Substantial environmental release.* The CMA Panels (Refs. 4, 6, 7 and 9) commented that Toxics Release Inventory (TRI) release data are not sufficient to establish if a compound "enters the environment" within the meaning of TSCA section 4. While they agreed with the quantities of solvents cited as released to the atmosphere, they argued that atmospheric release of a substance does not in itself constitute "entry" into the environment as required by section 4(a)(1)(B). They supported this argument with atmospheric modeling results which indicated that fenceline concentrations

of the solvents are below occupational exposure guidelines (Refs. 4 and 7). CMA also commented that EPA should look at other factors, such as environmental fate and persistence, rather than release and monitoring data alone (Ref. 9).

The TRI was mandated by the Emergency Planning and Community Right-to-Know Act (EPCRA) enacted by Congress in October 1986 and requires certain manufacturers, processors, and users to report to EPA and the States the amounts of approximately 300 chemicals and categories of chemical compounds that they release directly to air, water, or land, or that they transfer to off-site facilities. These data must be compiled into an annual inventory available to the public in a computerized database. While not all industrial producers, importers, processors, and users are required to report (e.g., minimum volume production/use requirements), the inventory is a valuable resource in assessing releases (Ref. 65).

In the proposed rule, EPA made substantial release findings for four of the solvents, acetone, 1-butanol, 2-ethoxyethanol, and methyl isobutyl ketone, each of which were found to have been released into the environment in quantities exceeding 1 million pounds per year (56 FR 9108 and 9111, March 4, 1991). The proposed rule also indicated that 9 of the solvents have been detected in air, drinking water, disposal sites, effluent, ground water, and surface water samples, and points out that 3 of the 4 solvents for which a substantial release finding was made were in the top 25 TRI chemicals emitted into the air in 1987 (56 FR 9108, March 4, 1991).

EPA does not agree with the CMA Panels that use of TRI environmental release information to support a finding under TSCA section 4 is not appropriate, or that large releases of a compound do not necessarily constitute entry into the environment under section 4(a)(1)(B)(i)(I). Under TSCA section 4(a)(1)(B)(i), a finding can be made if, given substantial production, a substance enters, or may reasonably be anticipated to enter, the environment in substantial quantities (Ref. 27). EPA believes that it is reasonable to interpret the phrase "enters the environment in substantial quantities" to refer to large quantities of releases of a chemical into the environment. CMA's arguments notwithstanding, EPA believes that the statutory language and legislative history, which are silent as to consideration of quantities released versus the concentrations which result from these releases in making the determination that a chemical "enters the environment", do not compel EPA to adopt a different (i.e., CMA's) interpretation of TSCA section 4(a)(1)(B)(i)(I):

> In these circumstances, Congress is deemed to have implicitly delegated to the EPA the power to define or interpret "substantial," and we will sustain the agency's interpretation as long as it is rational and consistent with the statutory scheme and the legislative history.

*CMA v. EPA* (Ref. 26 at 354). The Court also stated that EPA "has considerable latitude in defining and interpreting 'substantial' as it is used in clauses (I) and (II) of section 4(a)(1)(B)(i)" and that EPA is "not obliged to adopt or take into account a specific criterion (such as, for example only, persistence after entry)" when interpreting and making a finding under section 4 (Ref. 26 at 359 and 360). As explained in the proposed rule (56 FR 9110–9111, March 4, 1991), EPA believes that substances that are released into the environment in millions of pounds annually must be considered to "enter the environment in substantial quantities" within the meaning of TSCA section 4(a)(1)(B)(i)(I). Furthermore, this is consistent with the recently published "B" policy which specifies an environmental release threshold of 1 million pounds aggregate annual release (58 FR 28736, May 14, 1993). In fact, the release data and exposure estimates found in this rule far exceed the thresholds for making "B" findings that EPA articulated in the proposed rule and specified in the "B" policy. By reasonable interpretation of TSCA section 4(a)(1)(B)(i), EPA believes these substances meet the definition of potential substantial release and/or exposure.

One CMA Panel (Ref. 9) commented that EPA should consider environmental fate and persistence when determining the extent to which a substance enters the environment, while other CMA Panels challenged "entry into the environment" by providing fenceline concentrations of solvents predicted by air dispersion modeling studies at several industrial sites (Refs. 4 and 7). While EPA agrees that many of the factors CMA has urged the Agency to consider when making its section 4(a)(1)(B)(i)(I) finding are useful in exposure assessment, EPA does not believe that it is required to consider them in each and every case. However, it should be noted that where sufficient fate and toxicity data are available, EPA analyzes the data to determine whether the data are adequate to reasonably determine or predict the effects of the substance and whether further testing is necessary. Consequently, EPA always welcomes exposure information of the type CMA urges it to consider.

EPA did consider air dispersion modeling studies submitted by CMA which confirmed that millions of pounds of solvents were released annually. CMA contended, however, that these studies demonstrate that the solvents do not "enter the environment in substantial quantities" because predicted short-term and annual average concentrations of the solvents would be at less than the allowable occupational exposure limits. While EPA believes there is merit in utilizing data on environmental persistence and atmospheric modeling to estimate human exposure, EPA disagrees with the contention that, under section 4(a)(1)(B), a solvent will not "enter the environment" when there are over a million pounds of aggregate annual releases of the substance based solely on modeling studies which point only to a low average fenceline concentration. These fenceline concentrations are typically modeled for ground level and they give no indication of what levels may exist at higher altitudes. Moreover, TSCA section 4(a)(1)(B) considers quantities released and not the concentration which results from these releases.

EPA also notes that consistency with the occupational exposure guidelines does not guarantee that all issues related to exposure to the substance have been resolved. These guidelines were developed to protect healthy workers exposed for 8 hours/day, 5 days/week, and are not necessarily protective of the general population, which contains both the very young and very old as well as individuals with varying health problems and sensitivities, exposed continually for 24 hours per day. Therefore, EPA believes the modeling studies submitted by the manufacturers do not negate a substantial release finding.

Other studies submitted during the comment period documented that some of the solvents are used in coatings, adhesives, nail polish, and printing inks (Refs. 7f, 7i, 8c and 9a). For products of this type which dry or cure over time, EPA believes that volatilization of the solvent to the atmosphere is often an intended outcome of its use. For solvents such as *n*-butyl acetate, of which 157,824,450 pounds are used in coatings (56 FR 9106, March 4, 1991), these types of releases, although unreportable under EPCRA, may make a considerable contribution to total environmental releases. In the case of *n*-butyl acetate, EPA believes it may have underestimated environmental release.

In conclusion, EPA does not agree that a TSCA section 4(a)(1)(B)(i)(I) finding is unjustified, or that release data does not qualify for a finding of entry into the environment. EPA does not believe that the arguments provided through public comment refute the data or rationale provided in this rule or the proposed rule in support of its "B" finding. In addition, EPA believes that it has rationally explained its decision in promulgating this rule, and therefore, has adhered to the directives of the Fifth Circuit Court of Appeals in its cumene decision.

*C. TSCA Section 4(a)(1)(A) Finding*

CMA (Ref. 3) commented that EPA failed to conduct an adequate exposure analysis to support a section 4(a)(1)(A) finding under TSCA. According to CMA, this analysis needs to relate exposure scenarios to toxicologic concerns by identifying the duration, level, and scope of human exposure, and determining whether an unreasonable risk would occur under these exposure conditions. CMA contends this analysis is needed to meet the mandates of a D.C. Circuit Court of Appeals decision in *CMA v. EPA* (Ref. 58)("EHA case") that the Agency needs to have a more-than-theoretical basis for determining that [the substance] may present an unreasonable risk before it can require testing under TSCA section 4(a)(1)(A). CMA's Panels (Refs. 4, 7 and 9) and Du Pont (Ref. 15) provided similar comments to those of CMA along with substance- specific comments on the section 4(a)(1)(A) findings which will be addressed later in this response.

EPA believes that it has clearly demonstrated in this rule that it has a more-than-theoretical basis for determining that exposure to these solvents may present an unreasonable risk. The high release to the environment, large production, presence in consumer products, and relatively high vapor pressure, taken together, provide the basis for a finding of potential human exposure in support of the testing required by this rule. Furthermore, EPA believes the type of data and analysis that the commenters would like EPA to perform before requiring testing is not generally available and very resource intensive to generate, and is far more justified when EPA is considering regulation of a substance under section 6 of TSCA rather than testing under section 4. In addition, EPA provided monitoring data from various media for nine of the solvents; four of the solvents, acetone, diethyl ether, ethyl acetate, and isobutyl alcohol, were detected in drinking water (56 FR 9108, March 4, 1991). EPA further contends that for the substances for which section 4(a)(1)(A) findings were made, although the (primarily acute) data discussed in the proposed rule show that these solvents are potential neurotoxins, these studies are inadequate to estimate the risk from long- term, low-level exposure. Such data that are suggestive of an adverse effect are adequate to support a TSCA section 4(a)(1)(A) "may present an unreasonable risk" finding.

According to the D.C. Circuit in the EHA case, EPA need not demonstrate fact, but rather "doubt and uncertainty," in order to support a "may present an unreasonable risk" finding under TSCA section 4(a)(1)(A) (Ref. 58 at 992). In light of the exposure and hazard information it has presented and considered, EPA believes that it has rationally articulated its basis for making a section 4(a)(1)(A) finding in support of the testing required by this rule.

In Units II.E through K of this preamble, which discuss specific substance issues, additional studies submitted during the comment period are reviewed to determine if there now are adequate data to define the potential risk from exposure.

*D. EPA's Data Analysis*

CMA (Ref. 3) commented that testing should not be required because risk assessment and risk management decisions can be made with existing data. CMA contended that it is unreasonable for EPA to rely on the current TSCA neurotoxicity test guidelines, which are of recent vintage and have not yet been validated as a standard for determining the quality of existing studies, as the basis for finding existing studies insufficient. CMA further maintained that although EPA used the TSCA neurotoxicity guidelines to determine if a study is inadequate to assess a substance's neurotoxic effects, EPA used existing studies that did not follow the guidelines to support concerns for the neurotoxic effects of chemicals in making a section 4(a)(1)(A) finding. CMA commented that if EPA is going to use the TSCA guidelines as a measure of adequacy, EPA should use the guidelines in all aspects of its testing decisions and not use studies that do not meet the guidelines to support 4(a)(1)(A) findings. AIHC (Ref. 1) and Dow (Ref. 14) submitted similar comments. CMA's Ketone Panel (Ref. 7) endorsed AIHC's comments.

EPA disagrees with CMA. Preliminary data which indicate concerns for hazards posed by a substance (or a class of substances) are exactly the type of information EPA should use to make its section 4(a)(1)(A) "may present an unreasonable risk" finding under TSCA. CMA's comment suggests that EPA should never use such data (and consequently, be unable to require testing), or alternatively, that EPA use such "insufficient data" as the basis for evaluating neurotoxic potential and making regulatory decisions. Neither is a reasonable interpretation of TSCA. TSCA section 4 was intended, and should be used to develop data through testing. These data may then be used to make regulatory decisions under TSCA section 6.

EPA agrees that if there are adequate neurotoxicity data for risk assessment and risk management, then additional testing should not be required. It is essential, however, that the data are adequate for the intended purpose. Some risk assessments have been performed using less than fully adequate data; however, even though a risk assessment is then available, this does not preclude the potential need for additional testing if the uncertainty in the risk assessment is unacceptably large for risk management decisions. EPA used scientific judgement in addition to the TSCA guidelines in evaluating existing data, utilizing a weight-of-evidence approach in addition to an individual study evaluation. Thus, it is sometimes possible that a group of studies, each of which would individually be judged inadequate, would, when considered together, yield enough information to characterize the toxicity of a substance. Existing data were reviewed and considered adequate for 4 of the 14 substances considered in developing the proposed rule and a decision was made not to require testing of these 4 (ethanol, methyl ethyl ketone, toluene, and xylenes).

Comments on existing data related to specific substances are discussed in Units II.E, II.F, and II.H through II.K of this preamble.

*E. Tetrahydrofuran*

BASF (Ref. 2) commented that tetrahydrofuran (THF) exposure needs to be more accurately evaluated for workers and consumers in terms of level and duration of exposure. BASF maintained that there is some evidence that occupational exposure is much less than applicable exposure guidelines and that consumer exposure will be limited by both the frequency of use of consumer products containing THF and the concentration of the solvent therein. BASF also noted that the exposure to the general public through environmental releases via effluent and

surface waters will not be significant as monitoring data indicate that current THF concentrations are much less than the Maximum Allowable Concentration (M.A.C.) of water class I used in the production of drinking water.

While EPA agrees with BASF that there are some uncertainties in the estimates of consumer exposure to this and other solvents, these uncertainties were allowed for by providing a range of consumer exposure, as noted in Unit II.B.4 of this preamble. EPA also believes the level of uncertainty does not eliminate the basis for the Agency's finding of potential substantial human exposure to THF. Furthermore, EPA believes that NOES data are a valid indication of potential substantial worker exposure to a substance. EPA notes that NOES data for THF exceed the 1,000 worker threshold specified in the "B" policy (58 FR 28736, May 14, 1993).

BASF contends that the environmental fate and persistence of THF should be considered when estimating human exposure for TSCA section 4(a)(1)(B) purposes. In essence, BASF would require EPA to undertake a risk assessment before making its finding under TSCA section 4(a)(1)(B). However, as was recognized by both the court in *CMA v. EPA* (Ref. 26 at 347) and by CMA (Ref. 3 at 17), section 4(a)(1)(B) authorizes EPA to require testing even without a finding that a substance may present an unreasonable risk of health or environmental injury. Furthermore, the environmental fate and persistence analysis urged by BASF is not relevant for determining occupational exposure where exposure will occur due to a definable release source, typically in close proximity to the worker such that degradative processes will not be operative and significant. For these reasons, EPA believes that potential substantial occupational and consumer exposure to THF evidenced by the NOES and consumer usage data is sufficient to support a TSCA section 4(a)(1)(B)(i)(II) finding for THF.

Concerning the relationship between potential human exposure and the existing regulatory standards for THF, EPA notes that the standards for THF have been established in the absence of any neurotoxicity data for this substance and may not be protective if neurotoxicity proves to be a sensitive toxicologic endpoint for THF. As BASF noted, there are no neurotoxicity test data available on THF; therefore EPA believes testing is necessary to develop such data.

BASF cited one acute study by Katahira (Ref. 2a), two subchronic studies by Katahira (Ref. 2b) and Chhabra et al. (Ref. 2c), and one developmental toxicity study by Mast et al. (Ref. 2d), which BASF believed provided some indication of the neurotoxic potential of THF. In addition, BASF noted that there is currently a 2–year study in mice and rats in progress under the National Toxicology Program (NTP) which may provide a good indication of neurotoxic potential.

EPA obtained and reviewed the cited studies (Ref. 50). Although the subchronic study by Katahira et al. (Ref. 2b) made no mention of central nervous system (CNS) effects, the other studies (Refs. 2a, 2c and 2d) reported some CNS effects despite the design of these studies which could detect only gross signs of neurotoxicity. The 2–year study underway in mice and rats by NTP is also not designed to permit sensitive measures of neurotoxicity and would not satisfy EPA's neurotoxicity data needs for THF. EPA believes that the detection of some CNS effects by these studies supports the need for the additional neurotoxicity testing specified in this rule; however, EPA does not believe that the available studies, taken as a whole, are sufficient for risk assessment purposes.

*F. Acetone*

CMA's Acetone Panel (Ref. 4) commented that EPA has not justified its finding that releases to the environment of acetone or human exposure to acetone are substantial within the meaning of TSCA section 4(a)(1)(B). The Panel asserted that a finding of substantial environmental release based on TRI data alone is not sufficient. They noted that EPA has not analyzed the likely level of human exposure from expected airborne concentrations of acetone beyond sites' boundaries, nor considered levels, frequency, or duration of consumer exposures. The Panel submitted airborne dispersion models to support this point. The Panel also contended that EPA's consumer usage survey does not characterize the nature and extent of exposure to acetone from the use of products in which it is contained, and that the data in the NOES survey do not provide a reliable basis for estimating the number of workers exposed to a substance.

EPA does not agree with CMA's Acetone Panel that environmental releases of acetone are not substantial within the meaning of TSCA section 4(a)(1)(B). Section 4(a)(1)(B) of TSCA indicates that a finding can be made if a compound enters, or may reasonably be anticipated to enter, the environment in substantial quantities. The statutory language makes no mention of concentrations which may result as a consequence of these releases. In the proposed rule, annual release of acetone was listed as 195 million pounds for 1987 (56 FR 9108, March 4, 1991). According to TRI data for 1989, 205,019,698 pounds of acetone were released to the environment, of which 199,209,247 pounds were released to air, 1,020,255 pounds were discharged to water, and 4,526,483 pounds were injected underground (Ref. 29). For the reasons set forth in the proposed rule (56 FR 9110–9111, March 4, 1991) and in Unit II.B.5 of this preamble, EPA believes that annual releases of over 195 million pounds of acetone to the environment are "substantial" within the meaning of TSCA section 4(a)(1)(B)(i). In addition, as indicated in the proposed rule, acetone is one of the top 25 chemicals emitted to the air according to the TRI data.

The computer modeling studies submitted by the manufacturers indicate that fenceline atmospheric concentrations of acetone were below established occupational exposure guidelines. However, this information does not negate the fact that substantial quantities of acetone are released into the environment. Although the modeling studies may predict that 24–hour concentrations are less than established exposure guidelines, these guidelines are based on an 8–hour work day and are not meant to protect from continuous 24–hour exposure. Moreover, since the guidelines are based upon a limited set of test data, they may be inadequate to protect all workers or the general population from the potential health effects of chronic environmental exposure to acetone. EPA believes that releases of acetone as high as 37,870 pounds per day, a value utilized in one of the modeling studies (Ref. 4, Appendix C, Hoechst Celanese, Narrows, Virginia), released every day, represents an emission resulting in substantial entry into the environment for just that single facility. EPA notes that this facility alone exceeds the threshold for substantial environmental release of 1 million pounds annually (58 FR 28736, May 14, 1993). EPA concludes that TRI release data and the individual site emission data submitted by the Panel both support an environmental release finding under section 4(a)(1)(B)(i)(I) of TSCA.

EPA does not agree with the Panel's comments that NOES data are an inadequate indication of potential occupational exposure to acetone for reasons presented in Units II.A and II.B.4 of this preamble.

The Panel also indicated that EPA's consumer exposure estimates, based on the presence of acetone in 51 consumer products (56 FR 9107, March 4, 1991), do not consider the nature and extent of exposure to acetone from use of the products. EPA used a consumer product usage survey to estimate consumer exposure to acetone, supporting its finding of substantial human exposure" under section 4(a)(1)(B)(i)(II) with 3.7 to 112 million consumers potentially exposed per product. While EPA does not believe that it is required to consider all of the factors cited by the Panel in making its findings under section 4(a)(1)(B)(i)(II), EPA did consider the product use characteristics and the physical/chemical properties of acetone. EPA indicated in the proposed rule (56 FR 9107, March 4, 1991) that acetone has a high vapor pressure (231.5 mmHg), which along with its small, nonpolar structure, will facilitate vaporization and absorption. In addition, EPA discussed how the use of solvent-containing products by consumers often involves close contact with the product, which increases exposure and the likelihood of absorption (Id.). EPA also identified 51 product types (including spot remover, furniture polish, engine cleaner, paint thinner, spray shoe polish) which contained 0.2 to 100 percent acetone (Ref. 62). The use of such products would obviously require the person to be in close contact with the solvent. As explained in Units II.A and II.B.4 of this preamble, EPA believes that extensive analysis of exposure parameters is very resource intensive and considers such an effort more relevant when making a finding for "significant" exposure, or when conducting a comprehensive risk assessment, in which an evaluation of the nature and extent of exposure to acetone would be done with the many products which contain it, for purposes of considering regulatory action, i.e., under TSCA section 6.

CMA's Acetone Panel (Ref. 4) commented that there are sufficient data on acetone to reasonably predict the potential for neurotoxicity. These data, the Panel contended, are of the same extent and quality as data EPA found sufficient to exclude other solvents from this proposed rule. In addition, the Panel stated that existing studies on isopropanol, a chemical which rapidly metabolizes to acetone, provide sufficient evidence that acetone does not cause adverse irreversible effects to the nervous system. The Panel recommended that EPA review all of the available data before finalizing the proposed rule and provided the following list of studies for EPA's review: Bruckner and Peterson (Ref. 5a), De Ceaurriz et al. (Ref. 5b), Dietz (Ref. 4a), Gamis and Wasserman (Ref. 5d), Garcia et al. (Ref. 4b), Geller et al. (Ref. 4c), Geller et al. (Ref. 4d), Goldberg et al. (Ref. 4e), Ladefoged and Perbellini (Ref. 5f), Ladefoged et al. (Ref. 4f) Matsushita et al. (Ref. 4g), Mayhew and Morrow (Ref. 4h), Misumi and Nagano (Ref. 5g), Spencer et al. (Ref. 4i), Seeber et al. (Refs. 68a and 68b), and Stewart et al. (Ref. 68c).

Although EPA agrees that isopropanol metabolizes to acetone, a pharmacokinetics study (Ref. 5h) submitted by CMA showed that unchanged isopropanol remains in the blood for up to 9 hours after the exposure. EPA therefore does not agree that neurotoxicity studies on isopropanol should be used instead of appropriate studies conducted with acetone, because effects observed during the first 9 hours could be due to isopropanol and not acetone. Some unknowns that also preclude the use of isopropanol studies include a lack of clear knowledge of the tissue concentration of acetone following administration of isopropanol, specifically in potential target tissues, and the potential for any metabolic interaction between acetone and isopropanol which may affect the metabolism and toxicity of acetone. EPA believes that there is a potential for extensive exposure to acetone, and thus to be assured of protecting human health, it is necessary to test acetone itself.

EPA reviewed the additional studies (Refs. 43, 4a through 4i, 5a through 5g, 68a through 68c) provided by the Panel and identified a number of problems which made the studies inadequate to satisfy EPA's neurotoxicity data needs for acetone (Refs. 50, 51 and 69). The specific problems are listed in Table 1, Unit III.A.5 of this preamble, and generally include insufficient test duration, insufficient description of methods and results, inadequate methods, inconclusive results, and the evaluation of an insufficient number of tissues and neurotoxicity endpoints. Despite the major limitations of these studies, which would prevent the use of the data in a neurotoxicity risk assessment, they did provide additional evidence that acetone can affect the nervous system.

CMA's Acetone Panel (Ref. 4) commented that the three studies cited in the proposed rule do not support EPA's conclusion that further testing is needed under a section 4(a)(1)(A) finding, but instead support the conclusion that acetone should be excluded from the rule because the quality and quantity of acetone information is superior to the data presented for several of the solvents excluded from the proposed rule. EPA does not agree with the Panel that the studies cited for acetone were superior to those on substances excluded from the proposed rule. All of the studies cited for acetone demonstrated some neurotoxic effects of acetone while being inadequate to fully evaluate the neurotoxicity of acetone even when the data from all of the studies were evaluated together. The study by Bruckner and Peterson (Ref. 5a) used a short exposure period of only 3 hours and the results were presented as average scores for a battery of five tests, making differentiation of effects on motor or sensory functions impossible. Similarly, the study by Glowa and Dews (Ref. 5e) used a short exposure, only 40 minutes, with effects noted on schedule-controlled response at 3,000 ppm and above. Although the Dick et al. (Ref. 5c) study was generally well conducted in humans, only one exposure level was used, and this produced an effect. As the Panel noted in its comments, there was some lack of consistency in this study with effects observed in the first session but not in the second. These data indicate that acetone has a potential to affect the nervous system, but the study was inadequate to assess these effects even for a standard 6–hour acute exposure. EPA contends that the above studies are the kind that fully support a section 4(a)(1)(A) finding and the need for additional data to assure the protection of human health.

EPA therefore concludes that human exposure data, in terms of the number of people potentially exposed, is sufficient for a TSCA section 4(a)(1)(B)(i)(II) finding, and that the available data, combined with the chemical/physical properties of acetone and the use characteristics of products containing acetone support the "risk" portion of the section 4(a)(1)(A)(i) finding. EPA also concludes that available data also support an environmental release finding under section 4(a)(1)(B)(i)(I). EPA notes that any one of these findings is sufficient to support a rule, and EPA believes that support for all three findings provides further impetus for promulgating a rule to require testing of acetone.

*G. n-Amyl Acetate*

CMA's Oxo Process Panel (Ref. 9) commented that EPA should not require the testing of pure *n*-amyl acetate because it is not produced in or imported to the United States. The Panel also commented that Union

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Carbide produces a technical grade amyl acetate which is 65 percent *n*-amyl acetate (Ref. 11) and that this mixture should be tested instead. Union Carbide's name for its technical grade *n*-amyl acetate is primary amyl acetate and Union Carbide has reported its production (in excess of 1 million pounds) to EPA under the CAS No. of *n*-amyl acetate (Refs. 30–32). CMA argued that because the production and exposure is to the technical grade *n*-amyl acetate, that it, and not pure *n*-amyl acetate, should be the test substance. Union Carbide stated that it participated in the development of and endorsed CMA's comments.

EPA agrees with CMA and Union Carbide and has accepted their recommendation to test the technical grade *n*-amyl acetate. This rule specifies that the percent *n*-amyl acetate in the test substance must be representative of the technical grade and will be selected by the test sponsor. Because EPA proposed that manufacturers and processors of *n*-amyl acetate other than as an impurity are subject to this rule, Union Carbide is subject to this rule. Although EPA has not identified any other manufacturers of pure *n*-amyl acetate or technical grade *n*-amyl acetate, other manufacturers of *n*-amyl acetate even as a byproduct or in a mixture are also subject to this rule.

CMA's Oxo Process Panel submitted rat inhalation studies (acute, subacute, and subchronic) of primary amyl acetate (Refs. 9j and 9k) and stated that no neurotoxicity was observed in these studies and, therefore, no testing should be required. EPA has reviewed these studies (Ref. 70) and determined that these studies did not adequately describe methods and results or evaluate the test animals for neurotoxic effects. EPA, therefore, does not consider them sufficient to satisfy its data needs for the neurotoxicity of *n*-amyl acetate.

*H. 1-Butanol, n-Butyl Acetate, Ethyl Acetate, and Isobutyl Alcohol*

The Oxo Process Panel of CMA (Ref. 9) commented that for 1-butanol, *n*-butyl acetate, ethyl acetate, and isobutyl alcohol, EPA does not provide an adequate basis for a "B" finding. Specifically, the Panel contends EPA's consumer product usage survey and the NOES do not demonstrate substantial human exposure to these chemicals (for all but 1-butanol) and that the surveys overestimated human exposure. In addition, the Panel and Monsanto (Ref. 17) commented that EPA did not consider likely levels of inhalation exposure or the potential for dermal exposure during the use of consumer products. The Oxo Process Panel (Ref. 9) also maintained that the fact that there are large releases of 1-butanol does not support the finding that it enters the environment in substantial quantities.

As stated in the response to general comments, EPA does not concur with the manufacturers that the NOES data are not an accurate indication of potential worker exposure. For the reasons set forth in Units II.A and II.B.4 of this preamble, EPA believes that the NOES data for 1-butanol, *n*-butyl acetate, ethyl acetate, and isobutyl alcohol indicate that there is or may be substantial worker exposure to these compounds within the meaning of TSCA section 4(a)(1)(B)(i)(II).

In the proposed rule, EPA clearly pointed out that these organic solvents were chosen for consideration for testing under section 4, in part, because they are volatile, relatively small non-polar compounds which are of concern for inhalation exposure and exposure by skin penetration (56 FR 9107, March 4, 1991). In data contained in their own submissions, the manufacturers have acknowledged that these solvents are used in coatings, lacquers, and nail polish products (Refs. 9c, 9h and 10b). For these products, EPA believes that volatilization of the solvent during drying or curing is an intended outcome of their use. EPA also believes that because many of these products are used and applied indoors, there may be consumer exposure both during and after their use, as the vapors may remain within the house. Available data indicate that the concentration of organic solvents may be much higher indoors than it is outdoors (Ref.33). Therefore, it is possible that consumer exposure to these solvents during and after their use may even be higher than indicated in the proposed rule. Therefore, EPA does not concur with the Panel that the potential for inhalation and dermal exposure of consumers to these substances is not substantial within the meaning of TSCA section 4(a)(1)(B)(i)(II). EPA concludes that for 1-butanol, *n*-butyl acetate, ethyl acetate, and isobutyl alcohol, there is substantial human exposure.

For 1-butanol, CMA's Oxo Process Panel (Ref. 9) commented that EPA has not justified its finding that releases to the environment of 1-butanol are substantial within the meaning of TSCA section 4(a)(1)(B). They asserted that a finding of environmental release based on TRI data alone is not sufficient, and submitted airborne dispersion models for acetone and MIBK to support this point.

As indicated in the discussion in Units II.B.5 and II.F. of this preamble, EPA believes that TRI release data are a sufficient indicator of environmental entry and it does not believe that the atmospheric modeling studies refute this point. In the proposed rule, annual release of 1-butanol was listed as 36 million pounds for 1987 (56 FR 9108, March 4, 1991). According to TRI data for 1989, 39 million pounds were released to the environment (Ref. 29). In addition, EPA notes that under section 4(a)(1)(B)(i) of TSCA, either an environmental release finding or a substantial human exposure finding is needed to support a test rule. For 1-butanol, EPA concludes that both findings are valid, and provide further impetus for promulgating a rule.

CMA's Oxo Process Panel (Ref. 9) commented that the studies used by EPA as a basis for an unreasonable risk finding under TSCA section 4(a)(1)(A) for 1-butanol do not support the findings. The Panel contended that the study (Ref. 44) showing motor function impairment only indicated that 1-butanol may induce acute pharmacological effects at high doses. Such short-term suppression of the neurologic system, the Panel maintained, was different from pathologic changes or other long-term effects. It was further maintained that, in the other studies (Refs. 52 and 53), 1-butanol was administered by gavage or injection at large dose levels which would result in very high blood levels of 1-butanol and depression of the CNS. The only inhalation study, by DeCeaurriz et al. (Ref. 34), used exposures of 470 to 965 ppm, which is an order of magnitude higher than the occupational guideline of 50 parts per million (ppm) which is based on irritation. The only effects observed in this study, it was maintained, were due to sensory irritation. The Panel noted that EPA did not refer in the proposed rule to the subchronic oral study (Ref. 9g) used to derive the oral reference dose (RfD) in which hypoactivity and ataxia were observed at a dose of 500 mg/kg and where the NOAEL was 125 mg/kg/day. This NOAEL would correspond to an inhalation exposure of 300 ppm which is considerably higher than the OSHA ceiling of 50 ppm.

EPA agrees that the effects observed in animals exposed to high concentrations or doses of 1-butanol might result from non-specific suppression of the nervous system. However, while these effects do demonstrate some interaction with the CNS, the study designs do not permit the determination of whether there was specific toxicity to the nervous system and whether there would be effects following longer term exposure. These

studies raise concern for the potential neurologic effects of 1-butanol. This concern is further supported by the observation of neurotoxic signs in the subchronic study (Ref. 9g) cited by the Panel. The effects of ataxia and hypoactivity were clearly not the result of transient high blood levels since the effects did not appear until the last 6 weeks of the study. EPA, therefore, concludes that the data it cited in the proposed rule were sufficient to determine that 1-butanol may present an unreasonable risk, and this is further supported by the additional oral subchronic study (Ref. 9g) brought to EPA's attention by the Panel which showed hypoactivity and ataxia. None of these studies, however, was sufficient to satisfy EPA's neurotoxicity data needs for 1-butanol for the reasons presented in Table 1 of Unit III.A.5. These reasons included insufficient number of endpoints examined, only one sex tested, insufficient study duration, and inappropriate route of administration.

The Panel (Ref. 9) commented that the irritation potential of 1-butanol reduces the potential for neurotoxic effects in humans since humans will avoid high concentrations. EPA does not believe that there is evidence that irritation from 1-butanol can be relied upon to protect human health. It is generally known that there is a large degree of individual variation with regard to sensitivity to airborne irritants as well as tolerance to irritation. The ACGIH cited studies that reported workers exposed to 100 ppm of 1-butanol that did not complain of irritation, while other studies reported auditory nerve injury in workers exposed to 80 ppm of 1-butanol (Ref. 35).

In regard to ethyl acetate, CMA's Oxo Process Panel (Ref. 9) commented that this compound is used as a flavoring agent (Ref. 9a), fragrance, and solvent (Ref. 9h), and is on the Food and Drug Administration's (FDA) "generally recognized as safe" (GRAS) list for use as a synthetic flavoring agent and adjuvant (21 CFR 182.60). The Panel cited a review of the toxicity of ethyl acetate by the Cosmetic Ingredient Review (CIR) Expert Panel which, after a review of oral, dermal, intraperitoneal and inhalation animal studies, concluded that ethyl acetate was safe as a cosmetic ingredient "in the present practices of use and concentration" (Ref. 9c). The Oxo Process Panel stated that these data along with low use pattern do not support EPA's section 4(a)(1)(A) finding for ethyl acetate.

EPA believes it provided sufficient data for a section 4(a)(1)(A) finding for ethyl acetate. The CIR Expert Panel reviewed primarily systemic acute and subchronic toxicity studies which did not focus on the nervous system (Ref. 9c). The study by Glowa and Dews (Ref. 5e) referred to in the proposed rule reported effects of ethyl acetate on schedule-controlled response following exposure of mice for 10 minutes to 560 ppm (the decrease in response was 75 percent, while 300 ppm was a no-observed-effect level). Effects produced following such a short exposure time raise concern that ethyl acetate may present an unreasonable risk, particularly when the CIR Expert Panel review (Ref. 9c) indicated that the occupational threshold limit value (TLV) is 400 ppm and consumers may have short-term high levels of exposure since ethyl acetate is present in consumer products at up to 97 percent.

CMA's Oxo Process Panel (Ref. 9) commented that testing is not needed on ethyl acetate since this compound is rapidly metabolized to ethanol for which there is sufficient neurotoxicity data, and that butyl acetate should not be tested if testing is required on 1-butanol since again the acetate is rapidly metabolized to the corresponding alcohol. The Panel provided sufficient data to support the contention that ethyl acetate is rapidly metabolized to ethanol (Refs. 9b, 9h, and 9i), and that this metabolism is facilitated through a first pass effect in the lungs (Ref. 9d). A review (Ref. 9c) noted that one study indicated that following inhalation exposure of rats to ethyl acetate, levels of ethyl acetate in the brain were higher than in the blood. Following an exposure to 10 percent ethyl acetate in air, the concentration of brain ethyl acetate reached a peak of 0.46 mg/g while ethyl acetate in the blood was less than 0.2 mg/g; while ethanol in the blood reached 1.24 mg/g (Ref.59). The Panel maintained that the effects observed in the studies cited in the proposed rule were identical to the symptoms of ethanol toxicity (Ref. 9e). With regard to butyl acetate and 1-butanol, the Panel (Refs. 12) commented that only one substance should be tested because *n*-butyl acetate rapidly hydrolizes to 1-butanol (Refs. 12a and 12b). The Panel (Ref. 9) recommended that butyl acetate be the test compound because of its greater potential for inhalation exposure due to its solvent use and greater volatility.

EPA does not believe that surrogate substances should be recommended for testing in either case. Although it is clear that ethyl acetate is rapidly metabolized to ethanol, the data provided by the Panel demonstrate that ethyl acetate does enter the systemic circulation and that levels are higher in the brain than in blood (Ref. 9c). This would suggest that even over the short exposure period used in an acute study, the brain would be exposed to potentially significant levels of the parent compound which could result in toxic effects. Although it is possible that the effects noted in the studies cited in the proposed rule were due to ethanol, which resulted from the metabolism of ethyl acetate, there are clearly insufficient data to confirm this assumption. In addition, one of the authors of the Glowa and Dews study (Ref. 5e), Dr. J. Glowa, stated in submitted comments that "available evidence for ethyl acetate suggests that it is much more potent in neurobehavioral toxicology measures than is ethanol" (Ref. 20). Dr. Neal (Ref. 25) also noted that the water solubility of the alcohols and esters are different, which may affect the pharmacokinetics of these compounds, that there may be differences in effects on metabolism of endogenous substrates, and even though metabolism of the ester is rapid, there still may be sufficient exposure to the ester to affect the results of *in vivo* testing.

Although EPA believes that the exposure rationale used by the Panel for choosing butyl acetate for testing instead of 1-butanol is appropriate, EPA believes that both butyl acetate and 1-butanol should be tested because the types of concerns EPA has with ethyl acetate also apply to the situation with 1-butanol and butyl acetate. The studies (Refs. 12a and 12b) submitted by the Panel to demonstrate hydrolysis of butyl acetate to butanol were reviewed by EPA (Ref. 41). Although hydrolysis was demonstrated, the rates of hydrolysis would not be competitive with the rates of uptake and distribution of butyl acetate, allowing butyl acetate the time to cause its unique effect on the body. Also, 1-butanol is a greater skin irritant than *n*-butyl acetate, and this difference in irritation potential would influence the response. EPA thus does not believe that butyl acetate or 1-butanol should be tested as a surrogate for the other.

For isobutyl alcohol, CMA's Oxo Process Panel (Ref. 9) commented that EPA did not review the 90-day oral subchronic study in rats (Ref. 9f) that was used as the basis for the oral RfD. In this study, hypoactivity and ataxia were observed at 1,000 mg/kg/day while no effects were noted at the next lowest dose of 316 mg/kg/day. EPA has reviewed this study, which indicated that the degree of hypoactivity decreased markedly after week 4, while ataxia was observed sporadically throughout the study. Although no histologic lesions were reported, the

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histologic evaluation of nerve tissue was limited to that which would only detect relatively severe tissue damage. EPA believes this study provides limited evidence that isobutyl alcohol can affect the nervous system and that the nervous system may be the most sensitive biological system. Although EPA is not relying on a TSCA section 4(a)(1)(A) finding to support testing of isobutyl alcohol, EPA believes that these additional data would support such a finding had EPA reviewed the study before it proposed this rule.

The Oxo Process Panel (Ref. 10) also commented that isobutyl alcohol should not be tested because it rapidly oxidizes to isobutyric acid (Refs. 10a, 10b, and 10c) which is not expected to pose an unreasonable risk to health because it is a natural component of food and is the primary metabolite of the essential amino acid valine. Although the submitted studies (Refs. 10a, 10b, and 10c) indicate metabolism of isobutyl alcohol to isobutyric acid, they also report that peak levels of isobutyl alcohol are present in the blood 30 to 90 minutes after exposure and that conversion to isobutyric acid isn't complete until 6 to 8 hours after exposure. EPA is concerned about the possible effects of isobutyl alcohol during the significant period of time before its metabolic conversion to isobutyric acid. Therefore, EPA believes the testing of isobutyl alcohol is still necessary. Also, the Panel did not indicate what foods contain isobutyric acid or in what concentrations. EPA believes that even though a substance may be present in food, it does not mean that at higher concentrations it cannot be toxic and that testing should not be required.

CMA's Oxo Process Panel (Ref. 9) commented that the rule should require that the maximum concentration tested of 1-butanol, *n*-butyl acetate, ethyl acetate, and isobutyl alcohol should not exceed the concentration at which aerosols form because the substance will be deposited on the fur of the test animals and be ingested during preening. The Panel contended that the combined oral and inhalation exposure will make the results of the tests difficult to interpret. EPA agrees that formation of aerosols can present difficulties in the design, conduct, and interpretation of data from inhalation studies. EPA notes, however, that the scientific literature contains many well conducted studies using aerosols, and that some occupational situations which use solvents, such as spray painting, generate aerosols. EPA believes it is not necessary to *a priori* restrict the upper concentration to that which does not produce aerosols. Furthermore, the solvents (1-butanol, *n*-butyl acetate, ethyl acetate and isobutyl alcohol) are relatively volatile with estimated vapor saturation concentrations of between approximately 9,200 and 120,000 ppm (Ref. 36), suggesting that the required testing can likely be conducted using vapor exposure only.

*I. Diethyl Ether*

DEMTG (Ref. 13) commented that EPA failed to present adequate evidence to support a "B" finding for diethyl ether. Objections were made to the use of NOES data and a consumer exposure analysis (Ref. 63) which DEMTG believed overestimated the number of people exposed to diethyl ether. DEMTG stated that because EPA has not made a finding that diethyl ether enters the environment in substantial quantities, human exposure must be the finding triggering the testing.

EPA agrees that human exposure is the issue triggering the finding for diethyl ether, and therefore, an environmental release finding under TSCA section 4(a)(1)(B)(i) is not an issue. Nonetheless, EPA does not concur with DEMTG that NOES data are not an adequate indication of potential occupational exposure. This rationale is discussed fully in Units II.A and II.B.4 of this preamble. EPA notes that its threshold for substantial occupational exposure is 1,000 workers (58 FR 28736, May 14, 1993). According to NOES data cited in the proposed rule, 175,489 workers are potentially exposed to diethyl ether (56 FR 9107, March 4, 1991). Furthermore, as DEMTG points out (Ref. 13 at 26 and Appendix I), the latest NOES data indicate even higher numbers of workers potentially exposed to diethyl ether. EPA believes that NOES data clearly indicate that potential substantial occupational exposure exists, and that a TSCA section 4(a)(1)(B)(i)(II) substantial human exposure finding is valid for diethyl ether.

EPA acknowledges that its consumer exposure analysis may contain a degree of error in its estimate of 67.8 million consumers exposed to diethyl ether from the use of engine starting fluid, the single consumer product which contains diethyl ether. However, the fact remains that 14 million cans of engine starting fluid containing diethyl ether were sold in 1989 and this product has numerous uses other than starting automobile engines; it is also used to start the engines of walk-behind power mowers, lawn tractors/riding mowers, riding garden tractors, rotary tillers, snow throwers, shredder/grinders, chain saws, trimmers/brushcutters, and blowers. EPA believes this wide variety of uses will cause several members of a household to be potentially exposed to diethyl ether, in addition to the person responsible for automobile maintenance. Therefore, EPA does not believe that the presence of diethyl ether in only one consumer product negates the validity of the finding that there is or may be substantial consumer exposure to diethyl ether.

DEMTG (Ref. 13) also challenged EPA's section 4(a)(1)(A)(i) finding for diethyl ether which was based on a study by Essman and Jarvik (Ref. 13g). DEMTG argued that even though the study showed that the administration of diethyl ether interfered with the retention of an avoidance response, EPA should not use the study as an indication of potential neurotoxicity because anesthetic dose levels were used, and EPA had declined to rely on other studies using anesthetic dose levels to characterize the neurotoxic effects of diethyl ether. As discussed in Unit II.D of this preamble, EPA believes that a different measure of adequacy can be applied to studies which it relies on as a basis of concern for toxicity when requiring testing as opposed to studies it considers adequate to satisfy data needs on the potential toxicity of a substance. EPA therefore believes the study by Essman and Jarvik is an adequate basis for a section 4(a)(1)(A)(i) finding. Also, in this case, EPA is interested in the effects of diethyl ether at low level, long term exposure, which cannot be addressed by acute studies run at anesthetic dose levels.

DEMTG (Ref.13) commented that there is sufficient data on the effects of diethyl ether in both humen and animal studies and submitted copies of these studies for review.

Human experience with diethyl ether was reviewed by Kirwin and Sandmeyer (Ref. 13i), Reynolds (Ref. 13q), and the ACGIH (Ref. 13b). These reviews provided limited discussion of the anesthetic effects of diethyl ether in humans and the apparent lack of any permanent effects after recovery from acute exposure. Although these reviews suggest that permanent neurotoxic effects do not occur following acute exposure, EPA considers the gross observations inadequate for a comprehensive evaluation of neurotoxic potential because only a limited number of neurotoxic endpoints were considered. EPA agrees with Mergler (Ref. 13n) that few data exist on the effects of prolonged exposure to diethyl ether. The epidemiologic study of Linde et al. (Ref. 13k) that evaluated deaths among early anesthesiologists also does not provide data on potentially subtle

neurologic effects. In this study, the only potential indicators of neurotoxicity are deaths by suicide and accident. EPA does not consider these data adequate to indicate that diethyl ether is not neurotoxic.

De Grosbois et al. (Ref. 13e) studied the effects of diethyl ether on workers at an explosives manufacturing plant. The 68 exposed workers were classified according to 2 exposure levels (≈1,200 mg/m³ and >1,200 mg/mg³), and also according to 3 cumulative exposure indices (moderate, high, and mixed exposure). The results showed that those exposed to diethyl ether concentrations >1,200 mg/m³ had numerous pre-narcotic symptoms (unspecified) during the work week. Those exposed to ≈1,200 mg/m³ complained mainly of headache during the first and last 3 hours of work, as well as eye irritation. Individuals classified as moderately and highly exposed to diethyl ether complained of fatigue, sleepiness, concentration and memory impairment, headaches and dizziness, sexual difficulties, mood instability, and peripheral neuropathies. The 74 control workers were asymptomatic. Although this study shows that diethyl ether may be neurotoxic in humans, it does not satisfy the requirement for SCOB testing nor give a quantitative estimate of the effects of diethyl ether on the nervous system (Ref. 51).

In 18 human volunteers studied by Flemming (Ref.13h), the recognition threshold (concentration at which 50 percent of the individuals recognized the chemical) for diethyl ether was reported to be 1.6 ppm; no other endpoints of neurotoxicity, however, were evaluated.

DEMTG provided a number of additional animal studies of the neurologic effects of diethyl ether. These studies were conducted by Chenoweth et al. (Ref. 13d), Stevens et al. (Ref. 13r), USEPA (Ref. 13f), Banergee and Das (Ref. 13e), Norton and Jewett (Ref. 13p), Lambert and Ven Murthy (Ref. 13j), Wimer and Huston (Ref. 13v), Van Buskirk and McGaugh (Ref. 13t), McGaugh and Alpern (Ref. 13m), Abt et al. (Ref. 13a), and Essman and Jarvik (Ref. 13g).

EPA reviewed these studies and two reviews (Refs. 13l and 13u) provided by DEMTG and EPA still believes that the testing proposed for diethyl ether is necessary. EPA identified problems with the submitted studies which made them inadequate to satisfy its data needs (Refs. 50 and 51). These problems are listed in Table 1, Unit III.A.5 of this preamble and include insufficient description of methods and results, inadequate methods, insufficient number of doses and animals, and the evaluation of an insufficient number of tissues and neurotoxicity endpoints. DEMTG (Ref. 13) expressed concern about the safety of testing diethyl ether, noting the lower explosive limit (LEL) is 1.85 percent (18,500 ppm) which is below the anesthetic concentration. Normal laboratory procedures dictate that testing of flammable material be done at no more than 50 percent of the LEL and that other precautionary measures should be taken. EPA agrees that, for safety reasons, diethyl ether should not be tested above 50 percent of the LEL since there is too great a potential for accidentally generating an explosive atmosphere.

DEMTG (Ref. 13) does not believe that the data generated by the proposed testing will help EPA determine the potential risk from exposure to diethyl ether, or that these data will reduce the uncertainties in assessment of human risk from expected exposure levels. Further, DEMTG contends the non-specific testing procedures proposed will raise difficult issues of data interpretation, particularly the lack of specificity of the SCOB test. These difficulties will be complicated by differences in response between and within test strains of rats and mice. Moser et al. (Ref. 13o) reported differences in baseline functional observational battery (FOB) values not only between strains but between suppliers of a given strain of rats. Differences in response between and within strains have also been reported by Valzelli et al. (Ref. 13s) and Wimer and Huston (Ref. 13v).

EPA must have adequate data for neurotoxicity in order to conduct an adequate risk assessment. Currently, with inadequate neurotoxicity data, it is impossible to determine whether neurotoxicity is a more sensitive indicator of risk from exposure to diethyl ether than other endpoints. The data provided from the tests in this rule should clarify diethyl ether's neurotoxic potential and hence reduce the uncertainties associated with risk assessment. This reduction of uncertainty will occur whether a test for neurotoxicity is specific, such as a test that demonstrates neuropathologic damage to certain nerves, or non-specific, where a test for neurotoxicity demonstrates effects on the general function of the nervous system although a specific physiologic lesion has not been detected. Further, EPA does not believe that strain difference, as reported in the above studies, should unduly complicate the interpretation of results. Strain differences, both inter and intra, are commonly observed in biologic tests, and it is precisely for this reason that concomitant control groups are used in testing rather than historical controls and that laboratories, as a general practice, use animals from a single supplier. As noted by Moser et al. (Ref. 13o), "although some behavioral and physiological parameters showed strain and supplier differences .... conclusions concerning its [the tested substance] neurotoxic potential in a screening context would be similar".

DEMTG (Ref. 13) commented that EPA has underestimated the economic impact of the proposed rule. The manufacturers estimate that the cost of testing will represent 3.4 percent of gross revenues. This estimate was made by dividing the cost of testing by the 2–year period from initiation of testing to submitting results. The difference in reported economic impact results from DEMTG asserting that all costs will be paid out in the years that they are accrued, while EPA estimated that costs will be annualized over a 15–year period. EPA believes that costs of this type would normally be annualized and has included in the estimate a cost-of-capital figure to cover annualization.

*J. Methyl Isobutyl Ketone*

CMA's Ketones Panel (Ref. 7) commented that EPA has not justified its "B" finding that there is substantial human exposure to, and release to the environment of methyl isobutyl ketone (MIBK). The Panel contended that TRI release data are not sufficient for a determination that MIBK enters the environment in substantial quantities, and presented an atmospheric modeling study to support its claims. The Ketones Panel also maintained that EPA must consider the nature, extent, frequency, and circumstances of MIBK's use, and not just the number of people exposed to the substance, in making its substantial human exposure finding under section 4(a)(1)(B)(i).

As stated in Unit II.B.4 of this preamble, EPA believes that NOES data are a useful tool in estimating occupational exposure to a chemical. EPA believes that 375,906 workers potentially exposed to MIBK, according to NOES data (56 FR 9107, March 4, 1991), constitutes substantial worker exposure to MIBK within the meaning of TSCA section 4(a)(1)(B)(i)(II). For the reasons set forth in Units II.A, II.B.4, II.B.5 and II.F of this preamble, EPA believes that a TSCA section 4(a)(1)(B)(i)(II) substantial human exposure finding is valid for MIBK.

EPA does not agree with the Ketones Panel that TRI data is not a sufficient basis for a section 4(a)(1)(B)(i)(I) finding. In the proposed rule, annual release of

MIBK was listed as 29 million pounds for 1987 (56 FR 9108, March 4, 1991). According to TRI data for 1989, 31 million pounds were released to the environment (Ref. 29). The computer modeling cited by the Panel (Ref. 7) indicated that fenceline concentrations of MIBK were below established occupational exposure guidelines. However, section 4(a)(1)(B)(i)(I) of TSCA indicates that a finding can be made if a compound enters, or may reasonably be anticipated to enter, the environment in substantial quantities, and it makes no mention of concentrations which may result as a consequence of those releases. Although the modeling studies may predict that 24–hour concentrations are less than established occupational exposure guidelines, these guidelines are based on an 8–hour work day and are not meant to protect from continuous 24–hour exposure. In addition, they do not take into account long-term environmental burden. EPA believes that releases of the size described in the modeling study, on a daily basis, represent substantial entry into the environment.

Moreover, submissions provided by CMA's Ketones Panel indicated that MIBK is used in coatings, adhesives, cleaning agents, and printing inks (Refs. 7f, 7i, and 7j). MIBK must be present in a large number of commercial products as the Ketones Panel, in discussing *de minimus* exclusions for MIBK under TSCA section 12(b), stated that a test rule "would be burdensome for thousands of formulators". Also, for most coatings, adhesives, and printing inks, EPA believes that volatilization of a solvent like MIBK is an intended outcome of the use of these products. This volatilization will result in additional amounts of MIBK entering the environment above and beyond the reported releases in the TRI.

EPA concludes that the annual release of 29 million pounds of MIBK to the environment in 1987 and 31 million pounds in 1989 is sufficient for a section 4(a)(1)(B)(i)(I) finding that MIBK enters, or may be reasonably expected to enter, the environment in substantial quantities. Its potential for release from commercial and consumer products strengthens this conclusion.

CMA's Ketone Panel (Ref. 7) provided additional studies on the neurotoxicity of MIBK and believes that these data justify excluding MIBK from the proposed rule. These studies were conducted by Selkoe et al. (Ref. 8b), Geller et al. (Refs. 7e and 8a), Spencer et al. (Ref. 8c), Spencer and Schaumburg (Ref. 7j), De Ceaurriz et al. (Ref. 7d), Abou-Donia et al. (Ref. 7a), Phillips et al. (Ref. 7i), MacEwen et al. (Ref. 7h), Carnegie-Mellon Institute of Research (CMIR) (Refs. 7b and 7c), and Hjelm et al. (Ref. 7f).

EPA reviewed the additional information provided by the Panel and still believes that the testing proposed for MIBK is necessary (Refs. 50, 51 and 60). EPA identified problems with the submitted studies which made them inadequate to satisfy its data needs. These problems are listed in Table 1, Unit III.A.5 of this preamble and include insufficient number of doses and animals, insufficient description of methods, no perfusion *in situ*, use of only one sex, use of a nonmammal, and evaluation of an insufficient number of neurotoxicity endpoints.

CMA's Ketone Panel (Ref. 7) commented that EPA did not acknowledge that the study (Ref. 45) cited in the proposed rule to support the section 4(a)(1)(A) finding was conducted as a result of a voluntary testing agreement following recommendation of MIBK to EPA by the ITC. The agreed upon testing included the developmental test cited in the proposed rule, a 90–day subchronic toxicity test, and mutagenicity studies. The Panel maintained that a 90–day study is generally accepted by EPA, for section 4 purposes, for determining chronic risk. Following completion of these studies, EPA stated in a letter to the House of Representatives Subcommittee on Environment, Energy and Natural Resources that the "data are complete" for MIBK. The Panel contended that EPA should explain why EPA has chosen to reopen testing, without any new data, following the voluntary testing agreement and the assessment of the completeness of the data. The Panel did not consider the hindlimb paralysis observed in the developmental study cited in the proposed rule as new data indicating a potential for neurotoxicity because the paralysis occurred only at near lethal doses and was reversible.

EPA does not agree with the Panel that the developmental study cited in the proposed rule is not new data which suggests the potential for MIBK to be neurotoxic. Paralysis, both permanent and reversible, is a gross, and not very sensitive, sign of neurotoxicity. Even though the effects were observed at high doses, the design of the developmental toxicity study did not permit assessing more sensitive endpoints of neurotoxicity which may have occurred at lower doses. Likewise, there was only an indication that the paralysis was reversible; however, regaining the ability to use the hindlimbs does not assure that permanent damage was not done to some nerve fibers, and that following repeated exposure this damage may accumulate and result in dysfunction. Furthermore, when EPA indicated that data were complete, this related solely to the completion of the negotiated testing agreement and indicated that the tests agreed upon had been submitted to EPA. Neurotoxicity was not an issue at the time because EPA had not evaluated the neurotoxicity data needs of MIBK because it had no neurotoxicity test guidelines in place. EPA believes that evaluation of testing needs for a chemical is a progressive process which is influenced by many scientific and social concerns, and because of this, it would be unlikely that a statement could ever be made that complete data are available on any chemical. For example, EPA anticipates that some substances considered to have been thoroughly tested are good candidates to be evaluated for immunotoxicological effects, but EPA does not currently have test guidelines to assess such effects.

*K. 2-Ethoxyethanol*

CMA's Glycol Ethers Panel (Ref. 6) commented that the proposed rule overstates the potential for exposure to 2–ethoxyethanol (2–EE) and that imminent regulation of 2–EE by OSHA will further reduce occupational exposure (Ref. 6e). The Panel provided on-site monitoring data to support its exposure claims (Refs. 6, 6f, 6g, and 6j). The Panel maintained that production levels of 2-ethoxyethanol have dropped from 1983 to 1990, 187 million to 108 million pounds, and that this decline has resulted in fewer uses and less exposure. The Panel (Ref. 6) commented that 2–EE is no longer used in consumer products, but only in industrial products. The Panel also maintained that release of 2–EE to the environment has decreased substantially from 1987 to 1989, 2.9 million pounds to 1.8 million pounds (Refs. 6 and 29), and that future emissions are likely to drop below EPA's release threshold of 1 million pounds. EPA agrees with the Glycol Ethers Panel that, when the OSHA regulation becomes effective, occupational exposure to 2–EE is likely to be lower than estimated in the proposed rule, and appreciates the additional information on worker and consumer exposure submitted for review. However, EPA does not agree that a substantial human exposure finding under TSCA section 4(a)(1)(B)(i)(II) is inappropriate.

The Panel (Ref. 6) commented that NOES data indicating that 233,418 workers are potentially exposed to 2–EE is overstated and based on outdated data. The Panel estimated that less than

10,000 workers are potentially exposed to 2–EE in the workplace, with 400 of this number involved in production and distribution (Ref. 6). EPA notes that its threshold for substantial worker exposure is 1,000 workers (58 FR 28736, May 14, 1993) and that the estimate of worker exposure provided by the Panel exceeds this threshold by an order of magnitude (tenfold). Other data which also demonstrate worker exposure to 2–EE were presented in OSHA's proposed glycol ethers standard (58 FR 15526, March 23, 1993) and its supporting documentation. Table VIII–2 (58 FR 15582 and 15583, March 23, 1993) presented data estimating that 45,786 workers are exposed to four glycol ethers, of this number 21,992 workers are exposed to 2–EE (Ref. 71). EPA concludes that worker exposure data contained in the proposed rule, the data provided by the manufacturers, and the data in OSHA's proposed standard clearly indicate that there is or may be substantial occupational exposure to 2–EE, which provides adequate support for a TSCA section 4(a)(1)(B)(i)(II) substantial human exposure finding for 2–EE.

The Glycol Ethers Panel also commented that occupational exposure was in the range of 0.03 to 0.7 ppm and that this compared so favorably with OSHA's permissible exposure limit (PEL) of 200 ppm that EPA's exposure finding was not justified (Ref. 6). EPA, however, did not make a finding for "significant" occupational exposure based on concentrations to which workers are exposed. Instead, EPA made a finding for "substantial" exposure based on the number of workers potentially exposed. Also, although CMA cited the future OSHA regulation of 2–EE as a reason for not testing, CMA failed to mention the possibility that the revised OSHA standard might include a lower PEL thus weakening their argument that actual exposure concentrations are well within the permissible limit. Subsequent to CMA's submission of these comments, OSHA proposed a health standard for 2–EE which did indeed include a much lower PEL of 0.5 ppm as an 8–hour time–weighted average (58 FR 15526, March 23, 1993).

In a letter dated April 23, 1993, the Panel cited OSHA's proposed health standard for glycol ethers (58 FR 15526, March 23, 1993) and claimed that most workplace exposures are generally low, i.e., below 1.0 ppm (Ref. 73). EPA reviewed OSHA's proposed health standard which presented data on exposure by job category. The data showed that of 25 job categories with exposure to 2–EE, four have exposures in the range of 1.98 to 7.9 ppm (58 FR 15582, March 23, 1993), and an estimated 1,949 workers are exposed to 2–EE over the proposed PEL (Ref. 72). Based on these data, it appears that, although not proposed, EPA could have made a finding for "significant" exposure as well as "substantial" exposure to 2–EE.

The Panel also challenged EPA's exposure finding by commenting that production levels have declined from 187 to 108 million pounds and that solvent use has declined from 7 to 6 percent. EPA notes that 6 percent of 108 million is 6.5 million pounds which is still considerable use for solvent purposes. The Panel also commented that 43 percent of 2–EE is exported, the implication being that no American workers or consumers are exposed during the use of 2–EE. This information has a bearing on the exposure of the end user of 2–EE, but it does not affect the exposure of the workers involved in the manufacture, processing, and distribution of 2–EE, which industry concedes is less than 10,000 workers and OSHA estimates to be nearly 22,000 workers. When 10,000 to 22,000 workers are engaged in the annual production, processing and distribution of 108 million pounds, EPA believes there is substantial potential exposure.

Concerning consumer exposure, the Glycol Ethers Panel (Ref. 6) provided labels from the two manufacturers of 2–EE indicating that 2–EE should not be used in consumer products, but did not indicate how the manufacturers can be certain their warnings are heeded. No survey of customers was performed to determine if 2–EE is formulated into consumer products. The Panel also provided a 1984 letter from the CPSC to EPA (Ref. 6) stating that 2–EE is not in consumer products, but another submission from the Panel (Ref. 6h) indicated that as of 1990, the CPSC regarded consumer exposure to 2–EE as "likely or possible." Given the insufficient and conflicting nature of this information, EPA could not conclude that there is no potential consumer exposure to 2–EE. Consequently, EPA questioned purchasers of 2–EE concerning the possible formulation of 2–EE into consumer products. Although every purchaser of 2–EE could not be contacted, EPA did not discover any consumer use of 2–EE (Ref. 74). Therefore, EPA is not making a section 4(a)(1)(B)(i)(II) finding for 2–EE based on consumer exposure.

EPA does not agree with the Panel that releases of 2–EE to the environment are not substantial within the meaning of TSCA section 4(a)(1)(B)(i)(I). The Panel (Ref. 6) commented that TRI data indicated that emissions of 2–EE are declining, and that 1990 releases are likely to be below EPA's threshold of 1 million pounds. EPA believes that the Panel's estimates of future emissions are speculative. Moreover, EPA does not believe that the Panel provided sufficient data to support its argument that environmental releases will have decreased by approximately 50 percent in 1 year. EPA notes that manufacturers provided 1989 TRI data indicating that 1.8 million pounds of 2–EE were released to the environment. This value clearly exceeds the environmental release threshold of 1 million pounds specified by EPA (58 FR 28736, May 14, 1993). Given the available data, EPA concludes that a TSCA section 4(a)(1)(B)(i)(I) substantial release finding is also valid for 2–EE.

EPA does not agree with the Glycol Ethers Panel that imminent OSHA regulation negates the need for testing under TSCA. OSHA regulations seek to protect only the worker population and are based on available toxicity data. The fact that an Agency decides to regulate based on available data does not preclude EPA from seeking testing under TSCA for significant health and environmental effects data gaps which may identify a more sensitive endpoint. Also, OSHA's regulation on 2–EE is only in the proposal stage and a final rule may not be promulgated for 1 to 2 years. What OSHA's final rule will require concerning level of protection, controls, or monitoring can not be determined at this time although EPA agrees with the Panel that the future OSHA rule should reduce worker exposure. However, a reduction may not be guaranteed in every case when engineering and administrative controls are not feasible and personal protective equipment is relied on to achieve compliance with the OSHA standard. There is some uncertainty concerning the actual protection provided by gloves and respirators because the employee must be motivated to use the equipment and use it properly for it to be effective. Because of the uncertainties involved at this stage of OSHA's regulatory efforts, EPA believes that it is justified in requiring development of test data to assess the potential risks posed by the continued potential for substantial occupational exposure to 2–EE.

CMA's Glycol Ethers Panel (Ref. 6) commented that the available toxicology data demonstrate that there is no need for additional testing because existing data are sufficient and provided copies of additional studies for consideration. These studies were conducted by Barbee

et al. (Ref. 6a), Foster et al. (Ref. 6c), Werner et al. (Ref. 6i), Gill and Negley (Ref. 6d), and Doe et al. (Ref. 6b).

EPA reviewed the additional studies provided by the Glycol Ethers Panel regarding the possible neurotoxic effects of 2–EE and still believes the testing proposed for 2–EE is necessary. EPA identified problems with the submitted studies which made them inadequate to satisfy its data needs (Refs. 50 and 51). These problems are listed in Table 1, Unit III.A.5 of this preamble and include insufficient exposure duration, insufficient description of methods, no *in situ* perfusion, and the evaluation of an insufficient number of neurotoxicity endpoints.

Dr. Gill (Ref. 6) commented that the summary of the Nelson et al. studies, used by EPA as the basis for its TSCA section 4(a)(1)(A)(i) finding for 2–EE, overstated the significance of the studies and incorrectly inferred that exposure concentration-related changes were observed in tests of neuromuscular function, exploratory activity, and aversive learning. EPA did state that the reported changes were statistically significant according to Nelson et al., and that more effects were seen at the higher dose, but it did not state or infer that these changes demonstrated a dose-response relationship, which in some cases they did not. Nelson et al. (Refs. 38 and 39) exposed pregnant Sprague-Dawley rats to 0, 100, or 200 ppm 2–EE (14–16/group) during gestation days 7–13. Behavioral testing was conducted on the pups up to 60 days of age. In the pups, rotarod performance was impaired at the two highest concentration levels of 2–EE, but the effect was not dose-related. Open field activity was decreased at 200 ppm only on one of the test days. Open field latency was increased only in the 100 ppm group. Results from the ascent test were mixed in the 200 ppm group with increased performance on day 10, but decreased performance on day 12. Avoidance crosses in a shuttle box were decreased in the 200 ppm group, whereas the mean number of shocks received in 20 trials and mean seconds shocked were not different among groups. Operant behavior was not significantly altered by 2–EE treatment. As with some neurobehavioral studies, the results are not easy to interpret. The results from Nelson et al. (Refs. 38 and 39) show some effects on neuromotor responses of the pups after prenatal exposure to 2–EE, but dose-response relationships were not clearly established. In general, as indicated by Nelson et al. (Ref. 39) and also by Dr. Gill (Ref. 6), these results fit a pattern of decreased neuromotor function, which EPA believes also supports its TSCA section 4(a)(1)(A)(i) finding.

*L. Testing Program*

1. *Tiering of tests.* CMA (Ref. 3) commented that a tiered approach to testing would be more cost effective for this and future neurotoxicity endpoint rules. CMA argued that a tiered approach would permit screening tests to be performed first, and only if the results of the screening tests are positive should additional second tier testing be required. CMA suggested that the first tier consist of a subchronic functional observational battery (FOB) and neuropathology; a second tier, decided on a case-by-case basis, could include motor activity (MA) and behavior tests. CMA also suggested that a subchronic study of 28 days duration may be appropriate since the Office of Pesticide Programs (OPP) recently revised its guidelines for delayed neurotoxicity for organophosphorus substances from 90 to 28 days in duration and OECD guidelines allow for a range of test durations.

Similar comments were expressed in reference to MIBK by CMA's Ketones Panel (Ref. 7). DuPont (Ref. 15) also suggested a two-tier approach, except that the first tier should be acute FOB and MA tests and the second tier should be a subchronic FOB, MA, and neuropathology. Du Pont further stated that a tier approach was outlined in the OTA report on neurotoxicity, used in a previous TSCA test rule on unsubstituted phenylenediamines (40 CFR 799.3300), and has been used for other toxicologic endpoints such as mutagenicity in other test rules (52 FR 21516, June 8, 1987; 53 FR 913, January 14, 1988). Monsanto (Ref. 17) also commented that testing should be tiered with the first tier consisting of a subchronic FOB test and neuropathology and the second tier required on a case-by-case basis consisting of cognitive function and behavior tests along with acute testing and assessments of reversibility of effects after acute exposure. In the tiered approach proposed by The Dow Chemical Company (Ref. 14), three tiers would be used. The first would be a classical subchronic study with FOB, MA, and neuropathology (fixation by immersion), the second tier would be a subchronic study with the high dose set below doses which cause systemic toxicity which would hamper data interpretation and with FOB, MA, neuropathology (perfusion), and evoked potentials battery included, and the third tier would assess cognitive functions in a subchronic study.

As indicated in the proposed rule, EPA has a concern about the neurotoxicity of solvents as a class, and this is supported by the discussion in Casarett and Doull's Toxicology (Ref. 47) which was cited in the proposed rule. Because EPA believes the likelihood is high that neurotoxic effects will be produced, there is less justification to use a tiered approach. A tiered approach will result in delays in receiving valuable data due to the added time needed to review first tier data, and because tests would not be performed concurrently. While EPA agrees that tiered testing is a valid and cost effective method of screening substances, and appreciates the value of this approach as indicated by its use of tiered testing in other test rules, the different tests proposed for first and second tiers in the above comments indicate that there is no universal agreement on what constitutes a first tier battery. In addition, while tiered testing is particularly useful for screening a large number of substances for which there is no indication that positive results will be produced, EPA believes that there is a high probability that these compounds are neurotoxic agents. For these reasons, EPA believes the tests required in this rule constitute a justifiable testing program that will result in the development of testing data necessary to reasonably determine or predict the neurotoxic effects of these solvents.

2. *Dose selection.* CMA (Ref. 3) commented that interpretation of data from the high dose group would be difficult as the high dose group is currently defined in the proposed rule, because substances which are highly irritating may affect breathing patterns and this, in turn, may have an effect on neurobehavioral, learning and memory endpoints in the test animals. CMA suggested that the concentration which results in a reduction in breathing rate (RD50) be used as the high dose rather than a concentration which results in clear neurotoxic effects or is near life threatening.

EPA believes that clearly demonstrated behavioral effects are valid criteria for the high dose. EPA acknowledges, however, that the occurrence of toxic effects on other organ systems in addition to the nervous system would require careful analysis to determine whether the behavioral effects were secondary to toxicant induced changes in other organ systems or more directly neurotoxic.

3. *Observation/testing times.* Dow (Ref. 14) commented that EPA should modify the neurotoxicity test guidelines for scientific and technical reasons. Dow

noted that the guidelines for the testing of acute motor activity require testing to be conducted at times that include the peak signs of toxicity. Dow stated that the time of peak signs is likely to be during exposure, but testing cannot be conducted until after the chamber has been vented which takes 30 to 35 minutes. If the elimination of the solvent from the brain is rapid, then the results that are generated may be worthless. Dow believes that other tests (e.g., evoked potential or EEG) should be substituted which can be used while the animal is being exposed. Although EPA would prefer to have the motor activity and SCOB tests conducted during exposure, EPA does not consider it practical to require testing in the inhalation chamber at this time. Therefore, EPA requires that testing be done as quickly as possible after exposure. EPA also believes that Dow's estimate of 30 to 35 minutes to vent a chamber seems an unusually lengthy period of time and that some adjustment here might allow peak signs to be measured sooner in the post-exposure observation/testing period. EPA is interested in motor activity as a quantified index of arousal of the test animal and does not accept that Dow's proposal has justified using other tests (e.g., evoked potential or EEG) instead of acute motor activity.

Dow also commented that for the FOB test, observations are required at 1, 6, and 24 hours, and commented that it is not clear if these times start from the beginning of exposure or start at the end of the 6–hour exposure. If the time starts at the beginning, then it is not possible to make all of the observations at 1 hour, which is during the exposure, and if time starts at termination of exposure, then the observations at 6 hours would require an extended work day. The time for FOB observations for the acute FOB and for the first exposure in the subchronic FOB is at the termination of exposure, although it is an established scientific practice to record those observations that can be made during the exposure period. To clarify further, according to the guideline, all animals should be observed prior to initiation of exposure. Also, subsequent to the first exposure in the subchronic FOB, all observations should be made before the daily exposure. Concerning the length of the work day, EPA believes extended work days occur in many testing situations and this should not be a major obstacle to conducting the required tests.

4. *Schedule-controlled operant behavior test.* AIHC (Ref. 1), CMA's Glycol Ethers Panel (Ref. 6), Du Pont (Ref. 15), Monsanto (Ref. 17), Union Carbide (Ref. 19), and Dr. R.A. Neal from Vanderbilt University (Ref. 25) commented that the validity of the schedule-controlled operant behavior (SCOB) test conducted under EPA guidelines has not been firmly established by systematic studies. EPA does not agree. SCOB has been used for over 40 years to study nervous system function. SCOB has been shown to be affected by brain lesions, many toxicants, and by virtually every category of psychoactive drugs, hundreds of which have been cited in the open literature. Moreover, SCOB has had extensive use as a tool for assessment of the role of specific brain regions/pathways, lesioning techniques, and biochemical pre-treatments such as receptor antagonists, in studying the mechanism or action of drug effects on behavior. There are, moreover, considerable toxicity data on SCOB and solvents, pesticides, and metals which have been gathered in many laboratories over the last 20 years. Clearly, there is a long standing research tradition and rich data base on SCOB as compared to many methods in use in regulatory toxicology.

CMA's Glycol Ethers Panel (Ref. 6), Du Pont (Ref. 15), Monsanto (Ref. 17), Union Carbide (Ref. 19), and Dr. R.A. Neal from Vanderbilt University (Ref. 25) considered some definitions in the guidelines to be unclear, i.e, whether or not a change in response rate represents an adverse effect. As asked by Wenger (Ref. 42) "is a decrease always bad and an increase always good?" Although the answer may not be perfectly clear in every case, EPA believes that there are no special difficulties in the interpretation of SCOB data. Disruptions in the rate or pattern of an organism's behavior obtained in studies that are scientifically valid, i.e., found to be statistically and toxicologically significant, are generally considered to be adverse. This is easily understood by analogy to the depressant effects of alcohol, the confused behavior of people under the influence of alcohol, or the stimulant effects of several cups of coffee. Of course, ultimately what is "adverse" can be a social judgment, but it is reasonable to assume that most people would not desire such effects from inadvertent exposures, and that public safety would also argue against them.

The AIHC (Ref. 1) provided references to several studies which have not demonstrated a consistent relationship between SCOB performance and neurotoxicity as measured by other tests. In response, EPA notes that it is not particularly uncommon that conflicting results are obtained between different tests of neurotoxicity. This is to be expected, since the different tests are evaluating different functions of the nervous system, and the reason for requesting different tests is based on the assumption that some tests may provide negative results while others will provide positive results or significant differences in the dose-response relationship. For example, the well known neurotoxicant tetrodotoxin completely blocks sodium channels leading to blockage of the action potential, paralysis, and death. Neuropathological assessments of the nerves by histological methods, or even by the use of electron microscopy of animals treated with this compound, do not reveal any alterations in the nerve fibers. Another example would be that the measures of motor function, such as grip strength, would not be modified if a few axons in the motor nerve were undergoing degeneration, although neuropathology would detect these changes. These examples support the rationale that batteries of tests should be used in assessing neurotoxicity, and that there is no *a priori* reason that the SCOB test would not be a useful addition to such a battery of tests.

The AIHC (Ref. 1) stated that "data generated under the SCOB guideline as proposed by EPA will not permit any inferences to be made about learning and memory because animals will be exposed to the chemicals after being trained to perform a task." Similar opinions were expressed by CMA (Ref. 3), CMA's Ketone Panel (Ref. 7), CMA's Oxo Process Panel (Ref. 9), Dow (Ref. 14), Du Pont (Ref. 15), Monsanto (Ref. 17), Union Carbide (Ref. 19), and DEMTG (Ref. 13). EPA does not agree. Although the SCOB measures the effect on the performance of a complex task, operant behavior refers to behavior that is acquired, i.e., learned and maintained by its consequences, more generally, rewards and punishments. Schedules of reinforcement refer to rules that specify what responses will be reinforced and when. SCOB is a set of methods for assessing the sensitivity of organisms to environmental conditions that may be varied in a number of ways to study the ability of organisms to adapt to change. The data base on SCOB compiled over the last 50 years has shown that schedules of reinforcement determine both the rate and pattern of responses over time. These rates and patterns have been shown to have broad generality across species and to be reliably affected by many environmental changes, different classes of drugs and several other classes of substances. Learning refers to the increase in probability of a

response following the association of the response with either an eliciting stimulus (Pavlovian conditioning) or with reinforcement (operant conditioning). Memory refers to the likelihood of a learned response after some temporal delay following training. Learning and memory cannot be directly observed but can only be inferred from changes in behavior. Learning and memory are broad constructs that cover many varied and complex functions that cannot be simply studied in humans, let alone in animals. A comprehensive assessment of learning and memory requires an extensive test battery. Regular performance under a schedule of reinforcement is a complex pattern of learned behavior and is an index of the organism's memory of the task as well as a measure of its ongoing moment by moment adaptation to its environment. Thus, deficits in performance of a complex task represent a failure of an ongoing adaptation to the environment fundamental to the learning process. EPA therefore believes the SCOB is currently the best single test for the assessment of complex behavior dependent on learning and memory.

Dr. D. Cory-Slechta from the University of Rochester (Ref. 23), though supportive of the inclusion of the SCOB test in the rule, disagreed with the type of schedule proposed, i.e., the multiple fixed-ratio, differential reinforcement of low rate (mult FR DRL) schedule. She commented that this schedule will mostly reflect changes in response rate per se rather than measure learning and memory and recommended the use of a multiple fixed-ratio, fixed-interval (mult FR FI) schedule. Dr. Weiss of the University of Rochester also considered the mult FR FI schedule to be an equally valid choice (Ref.24). The more extensive data base of the mult FR FI was an additional reason presented to support this choice (Refs. 22 and 23). Dr. Cory-Slechta also preferred the multi FR FI because changes in DRL response rates will affect the rate of reinforcement, which may evoke compensatory mechanisms that would prevail over test substance effects. Moreover, long interresponsive times (IRT) resulting from decreases in response rates at high doses will produce apparent increases in the animal's ability to space its responses in real time (Ref. 42).

EPA has reviewed the comments on the advantages and disadvantages of different schedules and has decided to revise its modification of § 798.6500(d)(8)(v) and require the mult FR FI schedule of reinforcement which was discussed under issues for comment in the proposed rule as a possible alternative schedule. EPA has several reasons for selecting this schedule. The multi FI FR schedule, as noted by several commenters, has a broad data base. Also, quality assurance questions can be easily addressed by analysis of rate and pattern of performance because the characteristic pattern of FI and FR performance has broad generality across species, and does not depend to any great degree on the particular response or reinforcer used in a study. SCOB response rates maintained by FI schedules can also be increased as well as decreased by solvents. In addition, disruptions in the FI or FR response patterns provide evidence of a specificity of effect on the nervous system that cannot be ascribed to changes in motivation, malaise, or an inability to perform. Finally, FI and FR schedules have been extensively used to study the effects of many solvents, and quantitative approaches have already been advanced by Dews, et al. (Ref. 56) and Glowa (Ref. 57) for quantitative risk assessment, i.e., benchmark doses, making better use of the data than conventional NOELs.

AIHC (Ref.1) commented on the large number of animals that would be necessary to conduct a SCOB test according to the guideline requirements and the attendant logistical problems. EPA understands these concerns and has decided that an acceptable alternative to the guideline requirement would be the testing of animals of the same sex if at least 10 animals per dose level and control are used. This alternative is listed under § 799.5050(b)(1)(iii).

5. *SCOB as a first tier test.* The AIHC (Ref. 1) commented that the SCOB is not appropriate for inclusion in a neurotoxicity screening battery. The AIHC states that although the SCOB test has a definite role in neurotoxicity testing, "its role should be reserved for more advanced questions about the behavioral effects of a compound and not as an initial assessment." This opinion was shared by the CMA's Ketone Panel (Ref. 7), CMA's Oxo Process Panel (Ref. 9), Du Pont (Ref. 15), Monsanto (Ref. 17), and Dr. R.A. Neal (Vanderbilt University) (Ref. 25). The submitters further cited a study by Moser and MacPhail (Ref. 28) in which the investigators examined the sensitivity of three tests (FOB, motor activity, and SCOB), for identifying the low observed effect levels (LOAELs) for six known neurotoxicants. This study is cited by the submitters as evidence that SCOB should only be included after other neurotoxicity tests have been completed.

EPA reviewed the study by Moser and MacPhail (Ref. 28) and found that although each of the six substances tested had a similar effective dose range across the different tests, the three test methods clearly assess different aspects of the overall nervous system function of the rat. For the chemicals tested, the FOB was an equally or more sensitive test than the motor activity or operant tests, while the motor activity and operant behavior tests were equally sensitive in most cases. Moser and MacPhail (Ref. 28) concluded that although the FOB and motor activity may be expected to adequately detect neurotoxicity of unknown substances, operant behavior testing can also characterize the actions and possible mechanisms of action of neurotoxicants. The conclusions of Moser and MacPhail (Ref. 28) are in agreement with earlier remarks of an expert subpanel of the Science Advisory Panel of the Office of Pesticide Programs regarding neurotoxicity testing that motor activity and SCOB do not always measure the same thing and that some effects might be missed if SCOB were a second tier test (Ref. 40). EPA, therefore, concludes that the SCOB test can provide valuable information about the neurotoxic properties of the substances in this rule. This rule does not require a simple screening test program, but is aimed at the specific kinds of neurotoxicity known or suspected to be associated with chronic solvent exposure. As such, inclusion of SCOB will provide meaningful data with respect to complex neurobehavioral and cognitive function.

*M. Cost of Testing*

CMA and its Glycol Ethers Panel (Refs. 3 and 6) commented that there is insufficient experience with the SCOB test for either EPA or CMA to reliably estimate the cost of testing. CMA noted that although a reliable estimate cannot be made, industry scientists believe the true cost could be twofold to threefold greater than EPA has indicated. Dow (Ref. 14) believed EPA's estimate was low because several subchronic studies (about $150,000 each) may have to be conducted on each chemical, and there will be development costs for pilot research which could add an additional $75,000 to the overall costs of the study.

EPA believes that it has made a reasonable estimate of the cost of the SCOB test. EPA has used the best information available, and the comments by CMA have provided no substantial data to demonstrate that EPA's estimate is too low. The estimate by Dow for the cost of subchronic testing is very similar to that used by

EPA. EPA does not agree with Dow that several subchronic tests will be required for each substance. EPA believes these multiple studies would only be required if the tiered testing approach proposed by Dow and outlined above were adopted in the final rule. In addition, as noted by EPA in the proposed rule, it is anticipated that the sponsor might combine subchronic tests, which would reduce the cost of testing for a given substance. EPA also believes it is likely that other types of cooperation will occur between sponsors that will substantially reduce the cost of any pilot research not considered in the economic analysis.

*N. Laboratory Capacity*

AIHC (Ref. 1), CMA (Ref. 3), CMA's Oxo Process Panel (Ref. 9), Dow (Ref. 14), DEMTG (Ref. 13), and Monsanto (Ref. 17) commented that there is insufficient laboratory space to conduct the required testing since laboratories are required that have expertise in both inhalation toxicology and neurotoxicology. The commenters stated that the surveys used by EPA to assess laboratory capacity assessed the capacity to conduct neurotoxicity and inhalation studies separately, while an informal survey conducted by AIHC of nine major contract testing laboratories indicated that only one or two could conduct the required testing. In addition, the commenters noted that EPA recently announced a data-call-in for neurotoxicity tests for certain pesticides and also announced requiring neurotoxicity testing for pesticides requiring new registration. The commenters maintained that any available laboratory capacity would be eliminated by these other EPA actions. Du Pont (Ref. 15) also indicated that laboratory capacity may be limited if the SCOB test is not deleted from the final rule, and further requested at least a 9–month extension on each test to allow for scheduling of laboratory space (it was noted that this is the time needed to reserve space in their laboratory).

Dr. D. McMillan (Ref. 22) commented that there are sufficient scientists available to staff new contract laboratories in neurotoxicity and that there is adequate laboratory space to conduct tests on 20 substances/year; however, he believes that space may become severely limited if tests were required on as many as 50 substances/year. Dr. D. Cory-Slechta (Ref. 23) suggested the time frame for obtaining results for this first set of substances in the endpoint rule might be increased to allow for the hiring and establishment of additional qualified personnel, but maintained that if subsequent chemicals are added to the rule, the time frame as outlined in the proposed rule should be adequate.

EPA believes that there will be sufficient laboratory space to comply with this rule (Refs. 48 and 49). EPA anticipates that despite the demand for laboratories to conduct neurotoxicity testing under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), there will be adequate capacity to accommodate neurotoxicity testing of 10 additional substances under this rule. However, to assist the test sponsor in scheduling laboratory space, EPA has decided to extend the due dates for the SCOB test from 21 to 24 months for three of the chemicals, from 21 to 30 months for three other chemicals, and from 21 to 36 months for the remaining four chemicals. The order in which these chemicals should be tested is as follows:

First set of three chemicals:

acetone
1-butanol
ethyl acetate

Second set of three chemicals:

methyl isobutyl ketone
2-ethoxyethanol
diethyl ether

Third set of four chemicals:

*n*-butyl acetate
isobutyl alcohol
tetrahydrofuran
*n*-amyl acetate

The criteria used for establishing the above order were proposed in Unit IV.D of the proposed rule. The substances to be tested first would be those with 4(a)(1)(A) and 4(a)(1)(B) findings and ranked according to production volume as reported in the proposed rule. Those substances with the largest production volumes would be required to be tested first, followed by those substances with the next largest volumes. The substances with only a section 4(a)(1)(B) exposure finding would be tested next and likewise ranked according to production volume as reported in the proposed rule. No comment was received on this method of prioritizing the chemicals for testing.

*O. Export Notification Requirements*

CMA (Ref. 3) commented that requiring exporters, under TSCA section 12(b), to notify EPA annually of the substances they export which are subject to this rule will be very burdensome and that a *de minimis* exemption should be allowed for substances present in small concentrations in exported products.

EPA realizes that annual export notification for the substances to be tested under this rule may be burdensome. EPA has proposed to offer some relief to exporters by requiring a one-time notice instead of an annual notice. That proposal was published in the **Federal Register** on July 12, 1989 (54 FR 29524). Currently, EPA is in the process of issuing a final rule.

**III. Final Testing Requirements**

*A. Findings*

EPA is basing the final health effects testing requirements on the authority of section 4(a)(1)(A) and (B) of TSCA. EPA finds that: available data indicate that six of the substances may present an unreasonable risk of injury to human health based on preliminary information suggesting that these substances may produce neurotoxic effects and upon the potential human exposure to these substances. EPA also finds that all 10 substances are produced in substantial quantities; there is or may be substantial human exposure to all 10 substances; and there is or may be substantial environmental release of four of these substances. Moreover, EPA has concluded that there are insufficient data and experience to reasonably determine or predict the neurotoxic effects from manufacturing, processing, use, and disposal of these substances, and testing is necessary to develop these data.

EPA published a general policy statement under TSCA section 4(a)(1)(B)(i) (the "B" policy) in which it articulated its criteria for making findings under this provision (58 FR 28736, May 14, 1993). The "B" policy was developed in response to the April 12, 1990 decision in *CMA v. EPA* (Ref. 26) in which the Court remanded to EPA the TSCA section 4 rule for cumene to "articulate the standards or criteria on the basis of which it found the quantities of cumene entering the environment from the facilities in question to be 'substantial' and human exposure potentially resulting to be 'substantial.'" Although not mandated by the cumene decision, EPA also articulated the criteria for substantial production and substantial and significant human exposure in the "B" policy.

EPA proposed the neurotoxicity test rule under TSCA section 4(a)(1)(B) without waiting for the "B" policy to be proposed and published in the **Federal Register** for comment by exercising the option of articulating the criteria used in making findings under TSCA section 4(a)(1)(B) in the specific proposed rule (56 FR 9110–9111, March 4, 1991). EPA did not base its section 4(a)(1)(B) finding in this rule on the "B" policy,

although the findings in this rule are consistent with the policy. For the reasons set forth in the proposed rule (Id.), in the response to the comments section of this notice, and in the discussion below, EPA believes that it has clearly articulated the bases for its findings under sections 4(a)(1)(A) and (B) of TSCA in support of the required testing.

1. *All 10 substances are or will be produced in substantial quantities.* The production volumes of all of the substances subject to this test rule are listed on the TSCA section 8(b) Inventory. Other sources of more recent production data have been evaluated to update the TSCA inventory data (see Economic Impact Analysis). EPA has reviewed these data and has found that the reported production volume of each substance (9.4 million to 2.4 billion pounds per year) is substantial. EPA believes it is reasonable to interpret substantial production to mean large production, and that 9.4 million pounds is a large amount of production. Furthermore, only 11 percent of the substances reported in connection with the TSCA section 8(b) inventory of the substances in commerce have annual production volumes over 1 million pounds (Ref. 64). EPA believes that it is reasonable to conclude that this small group of substances (i.e., the top 11 percent according to production volume), clearly are substances with substantial production.

2. *There is or may be substantial human exposure to each of the 10 substances.* With the exception of 2-ethoxyethanol, EPA finds there is potential for substantial consumer exposure to these substances from their widespread presence in consumer products. Consumer uses of these solvents include engine starting fluid, and solvent for paint, lacquer, ink, and enamel (56 FR 9106–9107, March 4, 1991). EPA has determined that these substances are present in 1 to 51 consumer products and has estimated that at least 3.7 million consumers are exposed to each product (56 FR 9107, March 4, 1991). EPA believes that it is reasonable to interpret the term "substantial human exposure" to mean widespread human exposure, or in other words, a large number of people. EPA believes that exposure of 3.7 million people is substantial exposure because where millions of people are exposed to a substance, it is reasonable that EPA should have data on the potential hazards associated with the substance.

EPA also finds there is or may be substantial occupational exposure to each of these substances. The industrial uses of these substances include extraction solvent, chemical synthesis, lube oil additive, solvent for coatings, adhesives, plastics, PVC cement and ink (56 FR 9106–9107, March 4, 1991). The NOES data indicate that at least 172,000 workers may be exposed to each of these substances (56 FR 9107, March 4, 1991). EPA believes that exposure to 172,000 workers is substantial exposure. As a general matter EPA has found that workers tend to be subject to routine or episodic exposure over a long period of time. Thus, to be considered substantial, exposure does not have to be as widespread for workers as for consumers or the general population. EPA believes that exposure of 172,000 workers is widespread enough to necessitate testing to determine the potential hazards of the substances.

EPA finds that exposure of over 100,000 workers and 3.7 million consumers is "substantial" as that term is used in TSCA section 4(a)(1)(B)(i)(II). Furthermore, these substances have a propensity to penetrate the skin, and have high volatility, which facilitates inhalation. Available data on skin absorption and the vapor pressures of these substances support this conclusion.

3. *Four of the substances enter or may reasonably be anticipated to enter the environment in substantial quantities.* Four of the substances (acetone, 1-butanol, 2-ethoxyethanol, and methyl isobutyl ketone) are listed on EPA's Toxics Release Inventory and have been reported to be released to the environment in quantities exceeding 1 million pounds per year. EPA believes that the term "substantial" used in connection with environmental releases means large release and is intended to capture substances with extensive release to the environment. EPA finds that 1 million pounds of release to the environment is a sufficiently large amount of release that EPA should require testing even in the absence of any hazard information. Moreover, the TRI shows that only 37 percent of the listed substances have releases over 1 million pounds, but account for over 99 percent of the total reported releases on the TRI by volume released. EPA believes that it is reasonable to conclude that this small group of substances (i.e., less than 37 percent), which accounts for over 99 percent of all releases, clearly are substances with substantial releases. EPA therefore finds that the releases of these four substances are "substantial" as that term is used in TSCA section 4(a)(1)(B)(i)(I).

4. *Activities involving six of the substances may present an unreasonable risk of injury.* In addition to the findings made under section 4(a)(1)(B)(i) for all the subject chemicals, EPA also finds under section 4(a)(1)(A)(i) that the neurotoxicity studies discussed in the proposed rule and Unit II of this preamble for acetone, 1-butanol, diethyl ether, 2-ethoxyethanol, ethyl acetate, and methyl isobutyl ketone, and the worker and/or consumer exposure to these substances indicate that the manufacturing, processing, use, and disposal of these substances may present an unreasonable risk of injury to human health. The finding that acetone may present a risk is based on the human study which showed a decrease in auditory tone discrimination after a 4–hour exposure to 250 ppm acetone (Ref. 5c) and the dose-related functional decrements observed in rats and mice after exposure to 1,000 to 56,000 ppm acetone (Refs. 43 and 5e). The finding that 1-butanol may present a risk is based on its observed impairment of motor control in rats (Refs. 52 and 53) and motor performance in mice (Refs. 34 and 44). The finding that diethyl ether may present a risk is based on its interference with the acquisition of an avoidance response in mice (Ref. 13g). The finding that 2-ethoxyethanol may present a risk is based on the alteration of motor performance and avoidance conditioning in the offspring of rats exposed to 100 and 200 ppm (Refs. 38 and 39). The finding that ethyl acetate may present a risk is based on the dose-related decrease in a schedule-controlled response in mice after exposure to 300 to 3,000 ppm (Ref. 5e). Also, intravenous injection of ethyl acetate depressed the vestibulo-ocular reflex in rats (Ref. 54). The finding that methyl isobutyl ketone may present a risk is based on the hindlimb paralysis seen in rats and mice exposed to 3,000 ppm (Ref. 45). The specific effects observed in these studies indicate that each of these substances presents a potential to cause neurotoxic effects.

5. *Insufficient data and experience.* Under section 4(a)(1)(A)(ii) and (B)(ii), EPA finds that there are insufficient data and experience to reasonably determine or predict the potential neurotoxic effects from acute and subchronic exposures from manufacturing, processing, use, and disposal of these substances.

EPA believes that the guidelines found at 40 CFR part 798 represent state-of-the-art methodology and form the basis for a valid and scientifically acceptable test standard for evaluating the neurotoxicity of these substances. The available studies, including some submitted to EPA during the public comment period, do not adequately assess the neurotoxic effects of the

substances subject to this rule (see Refs. 50, 51, 60, 73 and 74 for a detailed discussion of EPA's assessment). EPA has summarized its reasons for its finding for data insufficiency in the following Table 1:

TABLE 1.— DATA INSUFFICIENCY FINDINGS UNDER TSCA 4(A)(1)(A)(II) AND (B)(II)

| Name | Data insufficiency | References |
|---|---|---|
| acetone (67–64–1). | a | 43 |
| ..... | h | 4a |
| ..... | d,h,i,j | 4b |
| ..... | d,k,m | 4c |
| ..... | l,m | 4d |
| ..... | a,n | 4e |
| ..... | p | 4f |
| ..... | d,h,l | 4g |
| ..... | h,r,y,z,aa | 4h |
| ..... | h,m,q | 4i |
| ..... | o,u | 5a |
| ..... | d,k | 5b |
| ..... | l,t | 5c |
| ..... | d | 5d |
| ..... | a,b,d,n,u | 5e |
| ..... | b | 5f |
| ..... | m,s,t | 5g |
| ..... | d,t | 68a |
| ..... | d,t | 68b |
| ..... | m,ff,gg | 68c |
| *n*-amyl acetate, technical grade (628–63–7). | d,h,n,o | 9j |
| ..... | h,n,o | 9k |
| 1-butanol (71–36–3). | a,n | 44 |
| ..... | n | 9g |
| ..... | a,d | 34 |
| ..... | d,n | 52 |
| ..... | a,d,s | 53 |
| *n*-butyl acetate (123–86–4). | g. | |
| diethyl ether (60–29–7). | a,d,m,n,t,bb | 13g |
| ..... | a,d,m,t,bb | 13v |
| ..... | a,m,t,bb | 13a |
| ..... | n | 13b |
| ..... | bb,cc,dd | 13c |
| ..... | h,n,o | 13d |
| ..... | c,bb | 13e |
| ..... | h,r,y,z,aa | 13f |
| ..... | n | 13h |
| ..... | n | 13i |
| ..... | ee | 13j |
| ..... | n | 13k |
| ..... | a,m,t,bb | 13m |
| ..... | a,t,dd | 13p |
| ..... | n | 13q |
| ..... | h,n,o | 13r |
| ..... | a,m,t,bb | 13t |
| 2-ethoxyethanol (110–80–5). | c,e,f,j | 38 |
| ..... | c,e,f,j | 39 |
| ..... | h,n,r,z,aa | 6a |
| ..... | f,n | 6b |
| ..... | n | 6c |
| ..... | x | 6d |
| ..... | h,n | 6i |
| ethyl acetate (141–78–6). | a,b,d,n | 5e |
| ..... | n | 9c |
| isobutyl alcohol (78–83–1). | n | 9f |
| methyl isobutyl ketone (108–10–1). | f | 45 |
| ..... | ee | 7a |
| ..... | a,h,m,n,t,ff | 7b |
| ..... | a,m,r,t,z,aa | 7c |
| ..... | a,n,ff | 7d |
| ..... | b,l,m,t | 7e |
| ..... | c,ff | 7f |
| ..... | a | 7h |
| ..... | h,r,aa | 7i |
| ..... | h,m,n,s,w,dd | 7j |
| ..... | b,l,m,t | 8a |
| ..... | v | 8b |
| ..... | m,q,t | 8c |
| tetrahydrofuran (109–99–9). | n | 2a |
| ..... | n | 2b |
| ..... | n | 2c |
| ..... | f,n | 2d |

a. Only one sex was tested.
b. Animals were exposed to more than one chemical.
c. Dose-response not clearly established.
d. Insufficient duration of exposure; not a subchronic test.
e. Provided data on effects to offspring only.
f. This is primarily a developmental toxicity test.
g. No study addressing neurotoxicity was found.
h. Description of methods insufficient to allow evaluation of test.
i. Inconclusive results.
j. No statistical treatment of results provided, or not possible given available data.
k. Relevance of results to human health uncertain.
l. Significance of results is unknown.
m. Small number of animals/subjects.
n. Insufficient number of neurotoxicity endpoints evaluated.
o. Description of results insufficient to allow evaluation of test.
p. Longer treatment durations should have been explored.
q. Sex of study animals not reported.
r. In situ perfusion not done.
s. Inappropriate route of administration used.
t. Only one dose level.
u. Short exposure period.
v. An *in-vitro* study.
w. Effects of treatment at end of study not determined.
x. Study of a structurally similar but less toxic chemical (Refs. 50 at 77 and 37).
y. Animals were not stored in preservative at 4° C for 8–12 hours prior to removal of the cranium and vertebral column.
z. Tissue sampling was inadequate.
aa. No special stains were used.
bb. Not a test of schedule-controlled operant behavior.
cc. Number of test animals not specified.
dd. Concentration/dose of test substance not specified.
ee. Test animal was not a mammal.
ff. Test not comparable to functional observational battery.
gg. Exposure levels and durations were inconsistent across subjects.

6. *Necessity of testing.* Under section 4(a)(1)(A)(iii) and (B)(iii), EPA finds that testing each of these substances is necessary to develop such data for neurotoxicity. EPA believes the data resulting from the required testing will be relevant to a determination as to whether acute or subchronic exposure to these substances during manufacturing, processing, use, and disposal does or does not present an unreasonable risk of injury to human health.

*B. Test Standards*

Given the section 4(a)(1)(B) findings for the 10 substances, EPA has the authority to require other health effects testing for which there is an insufficiency of data and for which testing is necessary. However, as a matter of policy, EPA is requiring only neurotoxicity testing for the substances included in this final rule at this time to focus on the deficiency in neurotoxicity data. EPA may, in the future, find other data deficiencies for these substances and propose other tests.

The following Table 2 lists the tests to be conducted on each substance.

TABLE 2.— TEST REQUIREMENTS

| Name | Required Test | Test Guideline |
|---|---|---|
| acetone (67–64–1) ..... | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |

TABLE 2.— TEST REQUIREMENTS—Continued

| Name | Required Test | Test Guideline |
|---|---|---|
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| *n*-amyl acetone, technical grade (628–63–7). | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| 1-butanol (71–36–3) ..... | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| *n*-butyl acetate (123–86–4) .... | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| diethyl ether (60–29–7) ..... | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| 2-ethoxyethanol (110–80–5) .. | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| ethyl acetate (141–78–6) ..... | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| isobutyl alcohol (78–83–1) ..... | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| methyl isobutyl ketone (108–10–1). | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |
| tetrahydrofuran (109–99–9) ... | Functional observational battery, acute and subchronic | 798.6050 |
| ..... | Motor activity, acute and subchronic | 798.6200 |
| ..... | Neuropathology, subchronic | 798.6400 |
| ..... | Schedule-controlled operant behavior, subchronic | 798.6500 |

EPA is requiring that the above-referenced neurotoxicity test guidelines in Table 2, and modifications to these guidelines noted in this rule or granted in the future, be the test standards for testing these substances. The testing must also be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards (GLPs) in 40 CFR part 792.

The testing shall be performed in rats with inhalation as the route of administration. The duration of exposure for acute testing will be 6 hours per day for 1 day; duration of exposure for subchronic testing will be 6 hours per day for 5 days per week for 13 weeks (90 days).

*C. Test Substances*

With the exception of *n*-amyl acetate, EPA is requiring that the purity of the test substances be at least 99 percent or greater. In the case of *n*-amyl acetate, the test sponsor will be required to select and test a technical grade containing a representative percent of *n*-amyl acetate. The test sponsor will indicate the percent of *n*-amyl acetate in the test substance in the test protocol. EPA believes that the percent purities listed in the following Table 3 are readily available.

TABLE 3.— AVAILABLE PURITY OF TEST SUBSTANCE

| Substance | CAS No. | Available percent purity |
|---|---|---|
| acetone ..... | 67–64–1 | 99.9 |
| *n*-amyl acetate | 628–63–7 | 60.0–70.0 |
| 1-butanol ..... | 71–36–3 | 99.9 |
| *n*-butyl acetate | 123–86–4 | 99.9 |
| diethyl ether .... | 60–29–7 | 99.9 |

TABLE 3.— AVAILABLE PURITY OF TEST SUBSTANCE—Continued

| Substance | CAS No. | Available percent purity |
|---|---|---|
| 2-ethoxyethanol | 110–80–5 | 99.0 |
| ethyl acetate .... | 141–78–6 | 99.9 |
| isobutyl alcohol | 78–83–1 | 99.9 |
| methyl isobutyl ketone. | 108–10–1 | 99.5 |
| tetrahydrofuran | 109–99–9 | 99.5 |

With the exception of *n*-amyl acetate, EPA has specified relatively pure substances for testing because it is interested in evaluating the effects attributable to the substances themselves. This requirement lessens the likelihood that any effects seen are due to impurities or additives. In the case of *n*-amyl acetate, EPA has specified that a representative technical

grade be tested because that is the substance which is produced and to which there is exposure.

*D. Persons Required to Test*

Because of the findings in Unit III.A of this preamble, EPA is requiring that persons who manufacture (including import) and/or process, or who intend to manufacture and/or process one or more of the named test substances, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements in this rule. This period is defined in 40 CFR 791.3(h). Byproduct manufacturers and importers of one or more of these substances will be considered manufacturers under this rule. As explained in 40 CFR part 790, initially, manufacturers, but not processors of one or more of these substances, will be required to submit letters of intent or exemption applications. Pursuant to an amendment to part 790, small quantity research and development manufacturers are not required to submit letters of intent or exemption applications initially (40 CFR 790.42 to 790.48). Such manufacturers should consult the **Federal Register** of May 7, 1990 (55 FR 18881) for further details.

EPA is not requiring the submission of equivalence data as a condition for exemption from the testing requirements for these substances. With the exception of *n*-amyl acetate, EPA is interested in evaluating the effects attributable to the substances themselves and has specified relatively pure substances for testing.

*E. Reporting Requirements*

As required in 40 CFR 799.10, all data developed under the final rule must be developed, reported and retained in accordance with the TSCA GLPs which appear in 40 CFR part 792.

As required by TSCA section 4(b)(1)(C), EPA is requiring specific reports for each of the tests as follows. Final reports of acute testing under 40 CFR 798.6050 and 798.6200 will be due 9 months from the effective date of the final rule; interim progress reports will be due 6 months from the effective date of the final rule.

Final reports for subchronic testing under 40 CFR 798.6050, 798.6200, and 798.6400 will be due 21 months from the effective date of the final rule; interim progress reports will be due at 6–month intervals beginning 6 months from the effective date of the final rule.

For subchronic testing under 40 CFR 798.6500, final reports for acetone, 1-butanol, and ethyl acetate will be due 24 months from the effective date of the final rule, final reports for methyl isobutyl ketone, 2-ethoxyethanol, and diethyl ether will be due 30 months from the effective date of the final rule, and final reports for *n*-butyl acetate, isobutyl alcohol, tetrahydrofuran, and *n*-amyl acetate will be due 36 months from the effective date of the final rule. Interim progress reports will be due at 6–month intervals beginning 6 months from the effective date of the final rule.

According to a recent EPA report entitled "EPA Census of the Toxicological Testing Industry," laboratory availability for neurotoxicity testing should be adequate to accommodate the testing required in this rule (Ref. 48). If test sponsors can document that the neurotoxicity testing required in this rule needs to be staggered due to insufficient laboratory availability and that reporting deadlines cannot be met, they must request an extension of the deadline by submitting a written request. If the testing must be staggered, EPA anticipates that it will first grant requests for those substances which lack a 4(a)(1)(A) finding and have the lowest production as reported in the proposed rule (56 FR 9107–9108, March 4, 1991).

TSCA section 14(b) governs EPA disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture subject to a section 4 test rule are subject to the export reporting requirements of TSCA section 12(b). Final regulations interpreting the requirements of section 12(b) are in 40 CFR part 707. In brief, as of the effective date of this test rule, an exporter of any of the substances listed in this rule must report to EPA upon the first annual export of the compound to any one country. EPA will notify the foreign country about the test rule for the substance.

*F. Enforcement Provisions*

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15 of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to (1) establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce ..." EPA considers a testing facility to be a place where the substance is held or stored, and therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with this final test rule. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data, interpretations and evaluations, and to determine compliance with TSCA GLP Standards and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions.

This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to

submit such documents (see 40 CFR 790.49(b)).

Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

## IV. Economic Analysis

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (Ref. 67) that evaluates the potential for significant economic impacts of this testing on test sponsors. The economic analysis estimates the costs of conducting the required testing for each of the 10 substances, including both laboratory and administrative costs, and evaluates the potential for significant adverse economic impacts as a result of those costs, using a comparison between a substance's annualized test costs and its annual revenues.

The estimated total costs of testing for each of the substances are $494,188 to $875,100, including $395,350 to $700,080 in laboratory costs and $98,838 to $175,020 in administrative costs. This is based on the cost range for each test given in the following Table 4:

TABLE 4.—COST RANGE OF TSCA NEUROTOXICITY TESTS

| Test | Cost Range in Dollars |
|---|---|
| Functional observational battery. | |
| Acute, 40 CFR 798.6050 | 16,500–23,325 |
| Subchronic, 40 CFR 798.6050. | 92,013–170,625 |
| Motor Activity. | |
| Acute, 40 CFR 798.6200 | 19,625–26,388 |
| Subchronic, 40 CFR 798.6200. | 86,275–162,388 |
| Neuropathology. | |
| Subchronic, 40 CFR 798.6400. | 112,638–200,125 |
| Schedule-controlled operant behavior. | |
| Subchronic, 40 CFR 798.6500. | 168,138–292,250 |

Actual test costs per substance should be lower since EPA assumed that each test would be done independently of one another. However, the sponsors might choose to combine the subchronic tests for a given substance which would conserve both animals and resources.

To evaluate potential economic impacts of the required testing, test costs are annualized and compared with annual revenues. The annualized test costs, using a 7 percent cost of capital over a period of 15 years, are $54,259 to $96,081 for each of the 10 substances.

Dividing these annualized costs by the appropriate production volumes listed for each substance in Table 3 of the proposed rule (56 FR 9105, March 4, 1991), and then dividing these amounts by the appropriate price per pound in the following Table 5, the percent price increase per pound due to testing was estimated.

TABLE 5.—ECONOMIC ANALYSIS

| Chemical | CAS No. | Chemical Price/ Pound (Dollars) | Percent Chemical Price Increase/Pound |
|---|---|---|---|
| acetone | 67–64–1 | 0.310 | 0.0071–0.0126 |
| *n*-amyl acetate, technical grade | 628–63–7 | 0.660 | CBI |
| 1-butanol | 71–36–3 | 0.380 | 0.0077–0.0136 |
| *n*-butyl acetate | 123–86–4 | 0.430 | 0.0648–0.1147 |
| diethyl ether | 60–29–7 | 0.515 | 0.1916–0.3392 |
| 2-ethoxyethanol | 110–80–5 | 0.750 | 0.0594–0.1052 |
| ethyl acetate | 141–78–6 | 0.410 | 0.0514–0.0911 |
| isobutyl alcohol | 78–83–1 | 0.380 | 0.0863–0.1528 |
| methyl isobutyl ketone | 108–10–1 | 0.450 | 0.0535–0.0948 |
| tetrahydrofuran | 109–99–9 | 1.220 | 0.0289–0.0511 |

Table 5 shows that for the 10 substances, unit test costs are substantially lower than 1 percent of price. For these 10 substances, it appears that the costs of testing will have little significant adverse economic impact.

For a complete discussion of test cost estimation and potential for economic impact resulting from these costs, refer to the economic analysis which is contained in the public record for this rulemaking.

## V. Availability of Test Facilities and Personnel

EPA has determined that test facilities and personnel are available to perform the testing specified in this final rule (Refs. 48 and 49). EPA also anticipates that laboratory capacity will increase to accommodate the demand created by future rulemaking.

## VI. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPPTS–42134B). In addition, each substance in the rule has a separate docket number. This record contains the basic information considered by EPA in developing this final rule and appropriate Federal Register notices.

A public version of the record, from which all Confidential Business Information (CBI) has been deleted, is available for inspection in the TSCA Public Docket Office, Room G–004, NE Mall, 401 M St., SW., Washington, DC 20460, from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

The record includes the following information:

*A. Supporting Documentation*

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034, August 17, 1989).

(b) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(c) Notice of proposed multi-substance rule for the testing of neurotoxicity (56 FR 9105, March 4, 1991).

(d) Notice of TSCA section 4(a)(1)(B)(i) statement of policy (58 FR 28736, May 14, 1993).

(e) Notice of proposed test rule for chloromethane (45 FR 48524, July 18, 1980).

(f) Notice of proposed OSHA health standard for 2-ethoxyethanol (58 FR 15526, March 23, 1993).

(2) TSCA test guidelines cited as test standards for this rule.

(3) Communications consisting of:

(a) Contact reports of telephone conversations.

(b) Meeting summaries.

(4) Support documents consisting of:

(a) Economic impact analysis for the substances contained in this final rule.

(5) Reports - published and unpublished factual materials including "Evaluation of TSCA guidelines for neurotoxicity testing." (April 14, 1987).

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## VII. Other Regulatory Requirements

### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is certifying that this test rule will not have a

significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

*C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to range from 499 to 6,984 hours per response (average of 2,400 hours per response). The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503.

**List of Subjects in 40 CFR Part 799**

Chemicals, Chemical export, Environmental protection, Good laboratory practices, Hazardous substances, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: July 12, 1993.

**Victor J. Kimm,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR, chapter I, subchapter R, part 799 is amended as follows:

**PART 799—[AMENDED]**

1. The authority citation for Part 799 continues to read as follows:

**Authority:** 15 U.S.C. 2603, 2611, and 2625.

2. By adding § 799.5050 to subpart D to read as follows:

**§ 799.5050 Multi-test requirements for specific chemical substances.**

(a) *General testing provisions*—(1) *Identification of test substance.* Table 1 in paragraph (a)(5) of this section identifies those chemical substances that shall be tested in accordance with this section. The purity of each test substance shall be 99 percent or greater, unless otherwise specified in Table 1.

(2) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process, including persons who manufacture or process or intend to manufacture or process one or more of the substances listed in Table 1 in paragraph (a)(5) of this section as a byproduct, or who import or intend to import products which contain one or more of the substances listed in Table 1 in paragraph (a)(5) of this section after the effective date specified in Table 1 under paragraph (a)(5) of this section to the end of the reimbursement period, shall submit letters of intent to conduct testing, submit study plans, conduct tests and submit data, or submit exemption applications, as specified in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking. Persons who manufacture, import, or process one or more of the substances listed in Table 1 in paragraph (a)(5) of this section only as an impurity are not subject to these requirements.

(3) *Applicability of test guidelines.* The guidelines and other test methods cited in Table 1 under paragraph (a)(5) of this section are referenced here as they exist on the effective date listed in Table 1 for that specific test.

(4) *Reporting requirements.* All testing requirements in this section are subject to the submission of interim progress reports every 6 months beginning 6 months after the effective date for that specific test listed in Table 1 under paragraph (a)(5) of this section. The date for the submission of final reports is specified as the number of months after the effective date for the specific test listed in Table 1 under paragraph (a)(5) of this section.

(5) *Designation of specific chemical substances and applicable testing requirements.* The substances identified by name and CAS number in Table 1 of this paragraph shall be tested in accordance with the designated testing requirements and any additional requirements and limitations specified in the following Table 1:

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION

| CAS No. | Chemical name/types of testing | Basic testing requirements | (b) Additional testing requirements | Limitations and Restrictions | Final Reports Due | Effective dates |
|---|---|---|---|---|---|---|
| 60–29–7 | Diethyl Ether | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), (9)(i) ... | ..... | 9 mo. | (9/9/93) |
| | Motor activity ..... | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) .... | ..... | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |
| | Motor activity ..... | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

| CAS No. | Chemical name/types of testing | Basic testing requirements | (b) Additional testing requirements | Limitations and Restrictions | Final Reports Due | Effective dates |
|---|---|---|---|---|---|---|
| | Neuropathology | §798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior | §798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i). | | 30 mo. | (9/9/93) |
| 67-64-1 | Acetone | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Motor activity | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Motor activity | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Neuropathology | §798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior | §798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i). | | 24 mo. | (9/9/93) |
| 71-36-3 | 1-Butanol | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Motor activity | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Motor activity | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Neuropathology | §798.6400, except paragraphs (d)(1)(i), (5) and (5). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior | §798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i). | | 24 mo. | (9/9/93) |
| 78-83-1 | Isobutyl Alcohol | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

| CAS No. | Chemical name/types of testing | Basic testing requirements | (b) Additional testing requirements | Limitations and Restrictions | Final Reports Due | Effective dates |
|---|---|---|---|---|---|---|
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) .... | ..... | 9 mo. | (9/9/93) |
| | Motor activity ..... | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) .... | ..... | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |
| | Motor activity ..... | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |
| | Neuropathology ..... | §798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior ..... | §798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i). | ..... | 36 mo. | (9/9/93) |
| 108–10–1 | Methyl Isobutyl Ketone | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) .... | ..... | 9 mo. | (9/9/93) |
| | Motor activity ..... | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) .... | ..... | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |
| | Motor activity ..... | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |
| | Neuropathology ..... | §798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior ..... | §798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i). | ..... | 30 mo. | (9/9/93) |
| 109–99–9 | Tetrahydrofuran | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) .... | ..... | 9 mo. | (9/9/93) |
| | Motor activity ..... | §798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) .... | ..... | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | §798.6050, except paragraphs (d)(1)(i), (5) and (6) | (1)(i), (6)(ii), 2)(i) ... | ..... | 21 mo. | (9/9/93) |

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

| CAS No. | Chemical name/types of testing | Basic testing requirements | (b) Additional testing requirements | Limitations and Restrictions | Final Reports Due | Effective dates |
|---|---|---|---|---|---|---|
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Neuropathology | § 798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior | § 798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i) (3)(i), (6)(ii), (vi), 2)(i). | | 36 mo. | (9/9/93) |
| 110-80-5 | 2-Ethoxyethanol | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Neuropathology | § 798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior | § 798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i). | | 30 mo. | (9/9/93) |
| 123-86-4 | *n*-Butyl Acetate | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Neuropathology | § 798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior | § 798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i). | | 36 mo. | (9/9/93) |

TABLE 1.—CHEMICAL SUBSTANCES SUBJECT TO TESTING UNDER THIS SECTION—Continued

| CAS No. | Chemical name/types of testing | Basic testing requirements | (b) Additional testing requirements | Limitations and Restrictions | Final Reports Due | Effective dates |
|---|---|---|---|---|---|---|
| 141-78-6 | Ethyl Acetate | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i) | | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Neuropathology | § 798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i) | | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior | § 798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i). | | 24 mo. | (9/9/93) |
| 628-63-7 | *n*-Amyl Acetate | | | | | |
| | Health effects testing: | | | | | |
| | Acute neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i), (10)(i). | | 9 mo. | (9/9/93) |
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(i), 2)(i), (10)(i). | | 9 mo. | (9/9/93) |
| | Subchronic neurotoxicity: | | | | | |
| | Functional observational battery | § 798.6050, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i), (10)(i). | | 21 mo. | (9/9/93) |
| | Motor activity | § 798.6200, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i), (10)(i). | | 21 mo. | (9/9/93) |
| | Neuropathology | § 798.6400, except paragraphs (d)(1)(i), (5) and (6). | (1)(i), (6)(ii), 2)(i), (10)(i). | | 21 mo. | (9/9/93) |
| | Schedule-controlled operant behavior | § 798.6500, except paragraphs (d)(2)(i)(A), (iii)(A), (6), (7) and (8)(v). | (1)(i), (3)(i), (6)(ii), (vi), 2)(i), (10)(i). | | 36 mo. | (9/9/93) |

(b) *Additional testing requirements.* In addition to the testing requirements specified in Table 1 under paragraph (a)(5) of this section, the following additional requirements also apply when specified for a particular chemical substance in the "(b) Additional testing requirements" column of Table 1:

(1) *Test species and strains.* If a species other than the one specified is used, the test sponsors shall provide justification/reasoning to the Agency for their selection. Commonly used laboratory strains shall be employed. Commonly used species include the mouse, rabbit and hamster. The test species shall be the:

(i) Rat.

(ii) [Reserved]

(2) *Age.* [Reserved]

(3) *Sex.* (i) Approximately equal numbers of male and female animals are required for each dose level and control group. As an alternative, one sex may be tested, if 10 animals per dose and control are used.

(ii) [Reserved]

(4) *Numbers per dose group.* [Reserved]

(5) *Control groups.* [Reserved]

(6) *Duration and frequency of exposure.* (i) Animals shall be exposed for 6 hours per day for 1 day.

(ii) Animals shall be exposed for 6 hours per day, 5 days per week for a 90–day period.

(iii)–(v) [Reserved]

(vi) A multiple fixed-interval fixed-ratio schedule shall be used. Fixed-ratio and fixed-interval contingencies shall alternate throughout daily test sessions of at least 60 minutes duration.

(7) *Dose levels and dose selection.* [Reserved]

(8) *Test substance and administration.* [Reserved]

2) *Route of exposure.* (i) Animals shall be exposed via the inhalation route.

(ii) [Reserved]

(10) *Percent purity.* (i) A technical grade of *n*-amyl acetate shall be the test substance. The percent *n*-amyl acetate in the test substance shall be representative of the technical grades and shall be selected by the test sponsor. The test sponsor shall specify the percent *n*-amyl acetate in the test substance in the test protocol.

(ii) [Reserved]

(11) *Observation period.* [Reserved]

(12) *Test Procedures.* [Reserved]

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Part VIII

# Environmental Protection Agency

**Solicitation Notice for Fiscal Year 1994; Environmental Education Grants Program; Notice**

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-4583-5]

## Solicitation Notice for Fiscal Year 1994 Environmental Education Grants Program

### Important Pre-Application Information

Pre-applications must be postmarked no later than October 15, 1993. EPA expects to make the grant awards by April 1, 1994.

Pre-applications will serve as the sole basis for evaluation and recommendation for funding.

This notice contains all information and forms necessary to submit a pre-application.

Pre-applications for grants with a federal share between $25,001 and $250,000 (the statutory ceiling for a grant) must be mailed to EPA headquarters. Pre-applications for a federal share of $25,000 or less must be mailed to your EPA regional office. (A list of addresses and phone numbers for mailing pre-applications and for asking questions is included at the end of this notice).

### Purpose of Notice

This notice solicits pre-applications from eligible organizations and institutions for cooperative agreements or grants to support projects to design, demonstrate, or disseminate practices, methods, or techniques related to environmental education and training as specified in section 6 of the National Environmental Education Act (the Act) (Pub. L. 101-619). This grants program is separate from the Environmental Education and Training Program specified in section 5 of the Act.

### Congressional Appropriation

The Act requires that 38% of the total funds Congress appropriates in a given fiscal year for activities under the Act be awarded as grants or cooperative agreements under the section 6 Environmental Education Grants Program. Congress appropriated $2,470,000 in Fiscal Year 1992 and increased the appropriation to $2,700,00 in Fiscal Year 1993. The President's budget for Fiscal Year 1994 proposes to increase the section 6 grant funding to $3,060,000. EPA will award grants in Fiscal Year 1994 subject to the amount of the actual appropriated funds.

### Funding Authority and History

On November 16, 1990, the President signed the National Environmental Education Act. Section 6 of the Act requires that the U.S. Environmental Protection Agency (EPA) administer an environmental education grants program to: Solicit environmental education projects; select suitable projects from among those proposed; supervise such projects; evaluate the results; and disseminate information on the effectiveness and feasibility of the practices, methods, techniques and processes resulting from these projects. EPA published the Environmental Education Grant Program regulations on March 9, 1992 in the **Federal Register** under title 40 of the Code of Federal Regulations, Part 47 (40 CFR part 47).

In Fiscal Year 1992, EPA received more than 3,000 pre-applications requesting more than $100 million and awarded 219 grants for approximately $2,470,000 on June 29, 1992. Individual awards ranged from less than $5,000 to $250,000 in federal funding. Each of EPA's 10 regions awarded approximately $140,000 for grants with a federal share of $25,000 or less. At least half of these funds went to awards of $5,000 or less. In addition to the regional grants, EPA headquarters awarded approximately $1,000,000 for grants ranging between $25,001 and $250,000 in federal funds.

In Fiscal Year 1993, EPA received more than 2,000 pre-applications requesting nearly $70 million and awarded 261 grants for approximately $2,700,000 on June 28, 1993. Although the total number of pre-applications slightly decreased in Fiscal Year 1993, the overall quality of the pre-applications improved from the previous year. As in the first year, the amount of money awarded per grant ranged from less than $5,000 to $250,000 in federal funding. Each of EPA's 10 regions awarded approximately $170,000 for grants with a federal share of $25,000 or less. At least half of these funds went to awards of $5,000 or less. EPA headquarters awarded approximately $1,000,000 for grants ranging between $25,001 and $250,000 in federal funds.

### Eligible Activities

*A. What is the purpose of the Environmental Education Grants Program?*

The purpose of the EPA grants program is to stimulate environmental education by supporting projects to design, demonstrate, or disseminate practices, methods, or techniques related to environmental education. Funds for the program will not be used for technical training activities directed toward environmental management professionals or activities primarily directed toward support of non-educational research and development.

*B. What specific activities will be eligible to receive funding?*

As specified in the Act, the eligible environmental education activities that may receive funding must include at least one of, but is not limited to, the following:

1. Design, demonstration, or dissemination of environmental curricula, including development of educational tools and materials;
2. Design and demonstration of field methods, practices, and techniques, including assessment of environmental and ecological conditions and analysis of environmental pollution problems;
3. Projects to understand and assess a specific environmental issue or a specific environmental problem;
4. Provision of training or related education for teachers, faculty, or related personnel in a specific geographic area or region; and
5. Design and demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico.

To help ensure that federal funds are not used to duplicate already existing curricula in #1 above, EPA encourages applicants to focus on the demonstration or dissemination of existing environmental curricula rather than the design of new curricula. EPA believes that the environmental education field needs to improve its use and dissemination of existing curricula more than it needs to develop new curricula.

Nonetheless, EPA does recognize that there are gaps in the types of curricula that presently exist and that there is some difficulty in gaining access to quality materials. Thus, applicants who propose to design new curricula in their pre-applications must demonstrate that there is a need to develop these new materials. For example, the applicant could demonstrate that the curricula proposed for development has not been designed to reach a particular target audience, that existing curricula cannot be adapted well to a particular local environmental concern, or that existing curricula is not otherwise readily accessible.

One resource that may help applicants determine whether a particular curriculum already exists is by contacting the National Consortium for Environmental Education and Training (NCEET). NCEET is a consortium of institutions led by the University of Michigan whose primary mission is to facilitate teacher training opportunities and to improve teachers' access to quality environmental

education materials. NCEET received a grant from EPA of $1.6 million in Fiscal Year 1992 to establish this program. To contact NCEET please write to: NCEET, School of Natural Resources, University of Michigan, Dana Building, Ann Arbor, Michigan, 48109–1115, 313–763–1312.

*C. How does EPA define "environmental education" under the Environmental Education Grants Program? How is "environmental education" different from "environmental information" under this program?*

EPA will fund only environmental education projects. EPA will not fund projects that are solely designed to develop or disseminate environmental information. EPA defines these terms as follows.

Environmental education is a process that leads to responsible individual and group actions. Environmental education activities may take place in formal or informal settings. Environmental education should enhance critical thinking, problem solving, and effective decision-making skills. Education processes may include, but are not necessarily limited to, observing, measuring, classifying, experimenting, and other data gathering techniques that assist individuals in discussing, inferring, predicting, and interpreting information about environmental issues. Environmental education should engage and motivate individuals as well as enable them to weigh various sides of an environmental issue to make informed and responsible decisions.

Environmental information provides facts or opinions about environmental issues or problems, but does not enhance critical thinking, problem solving, or effective decision-making skills. Although information is an essential element of an educational effort, environmental information is not, by itself, environmental education.

*D. Who may submit pre-applications?*

Any local or tribal education agency, college or university, state education or environmental agency, not-for-profit organization, or noncommercial educational broadcasting entity may submit a pre-application. These terms are defined in section 3 of the Act and 40 CFR 47.105.

*E. May an organization submit more than one pre-application for Fiscal Year 1994?*

Yes, an organization may submit more than one pre-application for Fiscal Year 1994, but only if the pre-applications are for completely different projects. For example, a national non-profit organization or a large university may wish to submit pre-applications from different chapters or departments for different projects. No organization will be awarded more than one grant for the same project during the same fiscal year.

*F. May an applicant who was awarded funding for Fiscal Years 1992 or 1993 submit a pre-application for Fiscal Year 1994?*

Yes, applicants who were awarded funding for Fiscal Years 1992 and/or 1993 may submit a pre-application for Fiscal Year 1994. The Fiscal Year 1994 pre-application may or may not have any relationship to the project funded in Fiscal Year 1992 or 1993. If the pre-application for Fiscal Year 1994 is for a project which expands a project already funded in Fiscal Year 1992 and/or 1993, the Fiscal Year 1994 pre-application will be completely re-evaluated based upon its merit in relation to the other Fiscal Year 1994 pre-applications and the new criteria set forth in the Fiscal Year 1994 solicitation.

*G. May a teacher or educator apply?*

Only organizations and institutions—not individuals—are eligible to apply for grants. However, a teacher's or educator's school, institution or association may apply. The qualifications of those individuals participating in the proposed project will be an important factor in the evaluation and selection process.

*H. Are matching funds required?*

Yes. Federal funds for projects shall not exceed 75% of the total cost of such projects. EPA encourages non-federal matching shares of greater than 25%. The non-federal share of project costs may be provided in cash or by in-kind contributions and other noncash support. In-kind contributions often include salaries or other verifiable costs. In the case of salaries, applicants may use either minimum wage or fair market value. The proposed match, including the value of in-kind contributions, is subject to negotiation with EPA. All grants are subject to audit, so the value of in-kind contributions must be carefully documented.

The matching (non-federal) share is a percentage of the entire cost of the project. For example, if the 75% federal portion is $5,000, then the entire project should, at a minimum, have a budget of $6,667, with the recipient providing a contribution of $1,667. The amount of non-federal funds, including in-kind contributions, must be briefly itemized in Block 15 of the SF 424 included at the end of this notice.

**Funding Priorities**

*I. What type of projects will have the best chance of being funded?*

To increase the chance of successfully competing for funding, the applicant's project should follow the guidelines discussed under #1 and #2 below.

1. The project must develop an environmental education practice, method, or technique which meets all three of the following criteria:

a. Is new or significantly improved;

b. Demonstrates the potential for wide application; and

c. Addresses a high priority environmental issue.

The terms new or significantly improved, wide application, and a high priority environmental issue are relative terms. As such, these terms must be defined by the applicant as they relate to the applicant's specific project as discussed below.

For example, EPA may consider a project new or significantly improved if the project reaches a specific community for the first time. Alternatively, a project may be considered new or significantly improved if it reaches new audiences, develops new or improved teaching strategies, or uses new or improved applications for existing materials.

EPA may consider a project to have wide application if it targets a large and diverse audience in terms of numbers and demographics. It may also have wide application if it can serve as a model program in another setting such as another school, community, state, or region.

EPA may consider that a project addresses a high priority environmental issue if the applicant demonstrates that a particular issue is important to the community, state, or region being targeted by the project. For example, one community may have significant air pollution problems which would make teaching about solutions to air pollution important to that community. In another community, unplanned development may threaten a nearby forest and its wildlife, thus, making habitat or ecosystem protection a high priority issue. In still another community, urban decay may make lead poisoning from paint or lead pipes important, especially for ethnic minority or low-income residents.

Within the context of the applicant's perspective of their high priority environmental issue, EPA encourages applicants to develop projects that educate people about ways to address such issues through strategies that include pollution prevention. EPA also encourages applicants to develop projects that address the need to promote environmental equity.

The term pollution prevention refers to efforts to reduce or eliminate pollution upfront (i.e., before it is created) rather than waiting until the

pollution exists and then trying to minimize its impact through regulation or cleanup. Pollution prevention measures may include protecting natural resources through conservation or increasing efficiency in the use of raw materials, energy, water, or other resources. Pollution prevention is not the only strategy for reducing risk to public health and the environment, but it is EPA's preferred approach.

The term environmental equity refers to efforts to increase environmental literacy and environmental career opportunities for people of diverse backgrounds, especially underrepresented populations such as ethnic minorities, low-income citizens, senior Americans, and people with disabilities.

2. EPA will select projects which close important gaps in the field of environmental education, placing special emphasis on educator workshops. Applicants must submit one of the following types of projects for consideration for funding:

a. Projects that improve environmental education teaching skills through vehicles such as educator workshops;

b. Projects that build state, local, or tribal government capacity to develop and deliver environmental education programs;

c. Projects that facilitate environmental education partnerships between governmental agencies, non-profit organizations, educational institutions, and/or the private sector; and/or

d. Projects that motivate the general public to be more environmentally conscious in making informed and responsible decisions that affect the environment through vehicles such as print, film, or broadcast media.

The term educator workshop refers to training activities that better prepare educators to utilize existing or new environmental education materials. Such workshops may be directed toward young people and/or adults in formal and/or informal settings. A formal setting is a school or other similar institution devoted to learning and an informal setting includes institutions such as museums, nature centers, parks, and community centers.

Workshops should emphasize the process, problem solving, and investigative approach to learning that is a fundamental aspect of most established environmental education materials and curriculum. Workshops should, in all cases, use a "hands-on" process approach to learning that leads to the development of problem solving and critical thinking skills. Workshops may be specific to a particular set of environmental education materials and may include youth leaders and other professionals who work in the environmental education field.

The term building state, local, or tribal capacity refers to the development and implementation of plans designed to improve the coordinated delivery of environmental education at the state, local, or tribal level. Pre-applications addressing this priority should involve a coordinated effort by the primary environmental education providers from the respective state, local, or tribal government in the planning and implementation of the project. Examples of primary environmental education providers include State Departments of Education or Natural Resources, local school districts, and state, local, and tribal environmental education coordinating councils or associations. Examples of how an applicant may propose to build state, local, or tribal capacity includes the development of plans for:

- Identifying and assessing needs as well as setting priorities for environmental education;
- Creating grant programs or identifying funding sources for environmental education providers; and/or
- Addressing environmental education teacher training needs.

*J. How much money may be requested and what size grant pre-application has the best chance of being funded?*

Applicants may request funding up to the statutory ceiling for any one grant of $250,000 in federal funds. However, pre-applications which request relatively small amounts of funding have a much better chance of being funded because EPA awards a much greater number of grants at the lower funding level. The statistics cited below show the proportion of grants funded at various funding levels. To increase your chance of being awarded funding, EPA strongly encourages applicants to request regional grants of less than $5,000 and headquarters grants closer to the $25,000 level rather than the $250,000 level in federal funding.

The statutory ceiling for any one grant is up to $250,000 in federal funding. EPA's 10 regional offices award grants of up to $25,000 in federal funds. EPA headquarters awards grants with a federal share between $25,001 and $250,000. In Fiscal Year 1992, EPA's regions awarded 210 grants of up to $25,000, and in Fiscal Year 1993, the regions awarded 252 grants of up to $25,000. At least half of the funds were for $5,000 or less, which means that 80 percent of the total number of grants awarded were $5,000 or less. By contrast, EPA headquarters awarded only 9 grants in Fiscal Years 1992 and 1993 of between $25,001 and $250,000. In Fiscal Years 1992 and 1993, EPA headquarters awarded only one grant for each year at or near the $250,000 level.

**The Pre-Application**

*K. What is a pre-application?*

A pre-application is the "Application for Federal Assistance" form (Standard Form 424 referred to as an SF 424) and a work plan (described below). Please carefully follow the instructions that are provided with these forms. The SF 424 and the completed work plan contain all the information EPA needs to evaluate the merits of your pre-application. Applicants will not be asked to submit additional information to support their projects, unless applicants are identified as finalists. In this case, finalists will be asked to submit various other forms necessary to complete a formal application (e.g., a "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" form).

*L. How must the pre-application be submitted and what must the SF 424 and work plan include?*

The applicant must submit one original and two copies of the pre-application with the SF 424 signed. The pre-application must be signed by a person authorized to receive funds for the applicant. Please sign the original pre-application in blue ink to help EPA distinguish which is the signed original and which are the copies. Pre-applications must be reproducible. They should be stapled once in the upper left hand corner, on white paper, and with page numbers in the upper right hand corner. Pre-applications may not include brochures, video tapes, notebooks, or any other supporting material not described in Section L.2.

The following describes what an SF 424 and a work plan are and what they must contain:

1. *Application for Federal Assistance (SF 424).* An SF 424 is an official form required for all federal grants. A completed SF 424 must be submitted as part of your pre-application. This form, along with instructions and an example of how to fill out the form, are included at the end of this notice. Please pay close attention to the sample form.

2. *Work Plan.* A work plan describes the applicant's proposed project. Work plans must be no more than 10 pages for requests for a federal share of more than $5,000 and no more than 5 pages for requests for a federal share of $5,000 or less. These page limits apply only to the "summary," "project description," and "evaluation" sections of the work plan

mentioned below; they do not apply to the appendices. One page is one side of a single-spaced typed page. The pages must be letter size (8½×11 inches), with normal type size (10 or 12 cpi) and at least 1 inch margins. The only appendices and letters of support that EPA will accept are a budget, resumes of key personnel, and commitment letters from organizations that will be part of the applicant's project.

Work plans must contain the elements I–IV and must be submitted in the format described below. Note that next to some of the components of the work plan there are percentages which indicate the weight EPA will use to evaluate the proposal. Also note that certain components of the work plan are given greater weight than others.

I. *Summary:* A concise summary of no more than one page that states (1) the nature of the organization requesting funding, (2) the type of project the applicant is proposing to develop as described under section I.2.a–d., (3) the overall purpose, specific objectives, and method for implementing the project, (4) the demographics of the target audience, (5) the expected results of the project, and (6) how the funds will be used.

Weight: 10%.

II. *Project Description:* A clear and concise project description which explains the following:

A. How the project is new and significantly improved, has wide application, and addresses a high priority issue as discussed in Section I.1.a–c.

Weight: 30%.

B. How the project closes one of the important gaps in the field of environmental education by improving teaching skills, building governmental capacity, facilitating partnerships, and motivating the public as discussed in section I.2.a-d.

Weight: 30%.

III. *Evaluation:* A discussion on how the applicant will evaluate the outcome of the project. The evaluation must include a discussion on the anticipated strengths and challenges in implementing the project as well as how the benefits of the project will be sustained after the EPA grant period is completed.

Weight: 10%.

IV. *Appendices:* Attachments to the work plan which contain information on the budget, key personnel, and letters of commitment.

A. Budget: An appendix with a budget describing how funds will be used for personnel, fringe benefits, travel, equipment, supplies, contract costs, and other costs. Funds cannot be used for construction. Include an expenditure schedule or budget milestones for proposed activities. The budget will be evaluated in terms of a clear and accurate explanation of the use of funds, the extent to which it is reasonable given the activities proposed, and whether it illustrates wise use of public funds.

Weight: 10%.

B. Key Personnel: An appendix with one or two page resumes of up to three key personnel directing and implementing the project.

Weight: 10%.

C. Letters of Commitment: An appendix with one page letters of commitment from organizations with a significant role in the project. Letters of endorsement will not be considered.

No weight, but required if other organizations have a significant role in the project.

*M. When and where must pre-applications be submitted?*

Pre-applications must include the SF 424 and the work plan to be considered for funding. A signed original plus two copies of the original pre-application must be mailed to EPA postmarked no later than Friday, October 15, 1993. Pre-applications requesting $25,000 or less in federal funds must be submitted to the EPA regional office for the region where the project is located. Pre-applications for a federal share of more than $25,000 and up to $250,000 must be submitted to EPA's headquarters in Washington, DC. A list of addresses is included at the end of this notice.

**Review and Selection Process**

*N. How will pre-applications be reviewed and who will conduct the reviews?*

Pre-applications will be reviewed in two phases—the screening phase and the evaluation phase. During the screening phase, pre-applications will be reviewed to determine whether they meet the basic elements described in the "Eligible Activities" and "Funding Priorities" sections of this solicitation. Those pre-applications which meet these basic elements will enter the evaluation phase of the review process. During this phase, pre-applications will be evaluated based upon the quality of their work plans, especially the degree to which the "Project Description" section of the work plan follows the guidelines set forth in the "Funding Priorities" section H.1 and H.2.

Reviewers conducting the screening and evaluation phases of the review process will include EPA officials and external environmental educators approved by EPA. At the conclusion of the evaluation phase, the reviewers will rank the pre-applications based upon the weighting system described in section L.2.

*O. How will the final selections be made?*

After individual projects are evaluated and ranked by the reviewers as described in section N, EPA officials in the regions and at headquarters will select finalists among the highest ranked pre-applications. In making final selections, EPA will take into account geographic and socioeconomic balance, subject matter diversity, cost, and projects whose benefits can be sustained after the grant is completed.

Regional Administrators will select the grants for projects with federal funding of $25,000 or less. The Associate Administrator of the Office of Communications, Education, and Public Affairs at EPA headquarters will select the grants for projects with federal funding of more than $25,000, taking into account the recommendations of the Director of the Environmental Education Division.

*P. How will applicants be notified?*

After all pre-applications are received, EPA will mail acknowledgements to each applicant. EPA will notify applicants again after all pre-applications have been screened and evaluated and final recommendations for funding have been made. Applicants who have been recommended for funding will be asked to submit additional information necessary to complete the award process. EPA headquarters and each region will set up their own processes for providing feedback to individual applicants who did not receive funding to help improve their ability to successfully compete for funding in future years. The degree to which EPA can assist applicants in providing feedback will vary depending upon resources available to manage this process.

*Q. Where may an individual obtain more information on possible sources of funding other than EPA's grants program?*

The large number of pre-applications EPA received in Fiscal Years 1992 and 1993 demonstrate the strong demand for funding environmental education projects. EPA expects an equally large demand for funding for Fiscal Year 1994. Unfortunately, EPA alone cannot meet this demand. Thus, in cooperation with EPA, the North American Association for Environmental Education (NAAEE) has developed a publication called "Funding Your Environmental Education Program" which provides strategies for identifying potential sources of funding. This publication can be purchased for a $5.00

fee by writing to NAAEE, Publications and Member Services, P.O. Box 400, Troy, Ohio, 45373.

**Grant Activities**

*R. When can proposed activities start?*

Activities cannot start before funds are awarded. Award dates are targeted for April 1, 1994.

*S. When must proposed activities be completed?*

Applicants should plan to complete projects within the time frame specified in the pre-application.

*T. May an applicant request Fiscal Year 1994 funds for a project that extends beyond a one year budget period?*

Pre-applications submitted to EPA regional offices for up to $5,000 may request funds for only a one year budget period. Pre-applications submitted to EPA regional offices or headquarters requesting funds of more than $5,000 may request funds for up to a two year budget period.

*U. Who will perform projects and activities?*

The Act requires that projects be performed by the applicant or by a person satisfactory to the applicant and EPA. All pre-applications must identify any person other than the applicant that will assist in carrying out the project.

*V. What reports must grant recipients complete?*

All recipients must submit final reports and all work products for EPA approval prior to the expiration of the project period. Recipients must provide an annual progress report for projects of more than one year in duration. Recipients of grants with a federal share greater than $5,000 may be expected to report on quarterly or semiannual progress, as well as final project completion. Specific report requirements will be detailed in the award agreement. EPA will collect, evaluate, and disseminate final reports and work products from grantees to serve as model programs. Since sharing information is crucial to the overall success of the Section 6 grants program, grantees may be asked to transmit an extra copy of their final reports and work products to a central collection point.

**Fiscal Year 1995**

*V. How can information be obtained on the Fiscal Year 1995 EPA Environmental Education Grants Program?*

After the Fiscal Year 1994 grants process is completed, EPA will develop an entirely new mailing list for the Fiscal Year 1995 solicitation. The mailing lists compiled for Fiscal Years 1994 will not be used for Fiscal Year 1995. If you would like to receive information on the Fiscal Year 1995 Environmental Education Grants Program, you must mail (do not telephone) your request along with your name, organization, address, and phone number to: Environmental Education Grants Program (1995), Environmental Education Division (A–107), U.S EPA, 401 M Street, SW., Washington, DC 20460.

Dated: July 19, 1993.

**Loretta M. Ucelli,**

*Associate Administrator, Office of Communications, Education, and Public Affairs.*

**Contact Names and Addresses**

*U.S. EPA Headquarters*

*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Environmental Education Division (A–107), Office of Communications, Education, and Public Affairs, 401 M Street, SW., Washington, DC 20460
*Information:* George Walker, Environmental Education Specialist, (202) 260–3335

*EPA Regional Offices*

Region I: CT, ME, MA, NH, RI, VT
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Henry Burrell, Chief, Grants Information and Management Section, JFK Federal Building (PGI), Boston, MA 02203
*Or Hand-Deliver Applications to:* One Congress Street, 11th Floor Mail Room, Boston, MA 02114, [between 8 a.m. and 4 p.m.]
*Information:* Maria Pirie, Environmental Education Coordinator, (617) 565–9447
Region II: NJ, NY, PR, VI
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Grants Administration Branch, 26 Federal Plaza, Room 1714, New York, NY 10278
*Information:* Teresa Ippolito, Environmental Education Coordinator, (212) 264–2980
Region III: DC, DE, MD, PA, VA, WV
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Grants Management Chief (3PM71), Grants Management Section, 841 Chestnut Street, Philadelphia, PA 19107
*Information:* Bonnie Smith or Amelia Libertz, Environmental Education Coordinators, (215) 597–9076 or (215) 597–9817
Region IV: AL, FL, GA, KY, MS, NC, SC, TN
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Office of Public Affairs (E2), 345 Courtland Street, NE., Atlanta, GA 30365
*Information:* Rae Hallisey, Environmental Education Office, (404) 347–3004
Region V: IL, IN, MI, MN, OH, WI
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Grants Management Section (MC–10J), 77 West Jackson Boulevard, Chicago, IL 60604
*Information:* Suzanne Saric, Environmental Education Coordinator, (312) 353–3209
Region VI: AR, LA, NM, OK, TX
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Environmental Education Coordinator (6X), 1445 Ross Avenue, Dallas, TX 75202
*Information:* Sandy Sovier, Environmental Education Coordinator, (214) 655–2204
Region VII: IA, KS, MO, NE
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Grants Administration Section, 726 Minnesota Avenue, Kansas City, KS 66101
*Information:* Rowena Michaels, Environmental Education Coordinator, (913) 551–7003
Region VIII: CO, MT, ND, SD, UT, WY
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants (80EA), 999 18th Street, Denver, CO 80202–2405
*Information:* Cece Forget, Environmental Education Coordinator, (303) 391–6999
Region IX: AZ, CA, HI, NV, American Somoa, Guam, Northern Marianas, Republic of Palau
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Office of Public Affairs (E2), 75 Hawthorne Street, San Francisco, CA 94105
*Information:* Ida Tolliver, Environmental Education Coordinator, (415) 744–1581 or (415) 744–1582
Region X: AK, ID, OR, WA
*Mail Pre-Applications to:* U.S. EPA-Env. Ed. Grants, Public Information Center (SO–143), Environmental Education Grants; 1200 Sixth Avenue, Seattle, WA 98101
*Information:* Sally Hanft, Environmental Education Coordinator, (203) 553–1207

BILLING CODE: 6560-50-P

OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

| | |
|---|---|
| 2. DATE SUBMITTED | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify)

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 6 6 . 9 5 1
TITLE: Environmental Educational Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
a b c d (circle one) [see Section I.2]

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

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OMB Approval No. 0348-0043

**APPLICATION FOR FEDERAL ASSISTANCE**

2. DATE SUBMITTED: 10/10/93
Applicant Identifier:

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☒ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

3. DATE RECEIVED BY STATE:
State Application Identifier:

4. DATE RECEIVED BY FEDERAL AGENCY:
Federal Identifier:

5. APPLICANT INFORMATION

Legal Name: Clean-Up School
Organizational Unit: Environmental Office

Address (give city, county, state, and zip code):
100 State Street
Belle View, Green County
Any State 12345

Name and telephone number of the person to be contacted on matters involving this application (give area code):
Willie Doitt (123)456-7890

6. EMPLOYER IDENTIFICATION NUMBER (EIN): 12-3456789

7. TYPE OF APPLICANT: (enter appropriate letter in box) H
A. State
B. County
C. Municipal
D. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Re-

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award
C. Decrease Duration Other (specify):

SAMPLE

9. NAME OF FEDERAL AGENCY: U.S. EPA

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 66.951
TITLE: Environmental Educational Grants

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
(a) b c d (circle one) [see Section I.2]
Teacher environmental workshop: behavioral changes in setting positive influences on students

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):
Green and Surrounding Counties

13. PROPOSED PROJECT
Start Date: 4/1/94
Ending Date: 3/31/95

14. CONGRESSIONAL DISTRICTS OF
a. Applicant: 02
b. Project: 01, 02, 03

15. ESTIMATED FUNDING

| | | |
|---|---|---|
| a. Federal | $ | 5,000.00 |
| b. Applicant | $ | 1,667.00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | 6,667.00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☒ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☒ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative: Gertrude Smith
b. Title: Superintendent
c. Telephone number: 123-456-0987
d. Signature of Authorized Representative: Gertrude Smith
e. Date Signed: 10/10/93

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## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. Also circle a b c or d to indicate the focus of project as described in Section I.2 of Solicitation Notice. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

[FR Doc. 93-17871 Filed 2-26-93; 8:45 am]
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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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# Presidential Documents

Title 3—

## The President

**Presidential Determination No. 93–31 of July 14, 1993**

## Military Sales of Depleted Uranium Ammunition

**Memorandum for the Secretary of State [and] the Secretary of Defense**

Pursuant to the authority vested in me by Section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law No. 102–391), I hereby determine that, notwithstanding the limitations of that section of law, it is in the national security interest of the United States to allow funds provided in the above-mentioned or any other Act to be made available to facilitate the sale of M–829 depleted uranium antitank ammunition to Sweden.

You are hereby authorized and directed to transmit this determination to Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, July 14, 1993.*

[FR Doc. 93–18141
Filed 7–26–93; 2:28 pm]
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# Presidential Documents

**Presidential Determination No. 93–32 of July 19, 1993**

## Certification of Free, Fair, and Democratic Elections in Angola Under Section 842 of Public Law 102–484

**Memorandum for the Secretary of State**

Pursuant to the authority vested in me by Public Law 102–484, section 842, I hereby certify that free, fair, and democratic elections have taken place in Angola.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, July 19, 1993.*

[FR Doc. 93–18142
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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FARM CREDIT ADMINISTRATION

**12 CFR Part 614**

**RIN 3052–AB35**

## Loan Policies and Operations; Lending Limits

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations relating to lending limits. The Agricultural Credit Act of 1987 [1] (1987 Act), authorized the creation of new corporate entities from mandatory and voluntary mergers and the transfer of long-term real estate lending authorities from Farm Credit Banks (FCBs) to certain associations and directed the FCA to reconcile the authorities of the resulting institutions. These changes required amendments to FCA regulations to reflect the structural changes and the lending authorities of the new entities. Other provisions of the regulations are amended to make conforming changes and to eliminate a number of FCA prior approvals including provisions relating to lending limits.

The final regulations on lending limits contain a limit on extensions of credit to a single borrower of 25 percent of capital for all Farm Credit System (FCS or System) direct lender institutions, except banks for cooperatives (BCs). It provides for exceptions to the lending limitation and rules for the attribution of loans to separate but related borrowers for the purpose of making "single borrower" determinations. The FCA believes that limiting the amount that can be lent to any one borrower or a group of related borrowers is an effective way to control concentrations of risk in a lending institution and limit the amount of risk to an institution's capital arising from losses incurred by large "single credits."

**EFFECTIVE DATE:** These final regulations shall become effective on January 1, 1994, or upon the expiration of 30 days after publication during which either or both Houses of Congress are in session, whichever is later. Notice of the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**
Dennis K. Carpenter, Senior Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Gary L. Norton, Assistant General Counsel, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:**

### I. General

Lending limit regulations were originally included as part of the Eligibility/Lending Authorities regulations proposed on November 3, 1988, 53 FR 44438. The amendments were removed from the regulations prior to their adoption and were reproposed, along with appraisal and loan purchase and sale regulations, on January 23, 1991, 56 FR 2452. The comment period on the reproposed regulations ended on March 25, 1991. The FCA received approximately 430 letters in response to the published reproposed regulations. A substantial number of the comment letters expressed concern about the potential impact of the lending limits and appraisal requirements of the reproposed regulations. The FCA published a Notice of Public Hearings on May 10, 1991, 56 FR 21637, to provide an opportunity for System borrowers, institutions, and other interested parties to state their views and to offer constructive suggestions on issues of concern in the reproposed regulations. The Notice of Public Hearings contained a solicitation of comments on specific topics. It also clarified the application of specific rules relating to attribution (§ 614.4358(a)(1)) and nonconforming loans (§ 614.4359) that were used to compute lending limits under the reproposed regulations. Testimony was presented by 121 individuals during the 4 days of the public hearings; 94 comment letters responded to questions raised in the Notice and at the hearings; and 85 additional letters were received during the public hearing comment period which ended on July 31, 1991. Subsequent to the close of the public hearing comment period the loan purchase and sale and collateral evaluation requirement portions of the reproposed regulations were separated from the lending limit regulations and later adopted by the FCA Board as final regulations (57 FR 38237, August 24, 1992) and (57 FR 54683, November 20, 1992).

All comments received after publication of the reproposed regulations, as well as all documents, testimony, and comments relating to the public hearings, were considered by the FCA in the development of the final regulations. The significant changes to the reproposed regulations, including any comments received on the subject matter, are explained below in the Summary of Comments and in the Section-by-Section Discussion of Changes preceding the affected part of title 12 of the Code of Federal Regulations. Finally, the FCA made technical corrections to the regulations designed to shorten them and enhance their readability.

The FCA Board recognizes the importance of this topic to the business operations of the institutions and acknowledges the high level of concern about the content of these final regulations. Some commenters have continued to request that the Board repropose rather than adopt the regulations in the form published today. The Board desires to be responsive to the concerns of the FCS institutions, yet must be aware of the time and costs involved in reproposing the regulations and the operational constraints that could be placed on the institutions in the absence of the final regulations. The Board has established an effective date for these regulations of January 1, 1994. The Board believes that with the delayed effective date the public will have ample opportunity to further review the regulations and bring any observations to the Board's attention prior to the effective date of the regulations. As always, the Board will

[1] Pub. L. No. 100–233, 101 Stat. 1568 (1988).

consider requests for further clarification or amendments to the regulations prior to or after their effective date.

**II. Other Financial Institutions (OFIs)**

Several OFIs inquired as to whether they were required to comply with the provisions of the lending limits regulations. The OFIs stated that such compliance would be detrimental to their ability to do business. Alternatively, comments were received from several production credit associations (PCAs) objecting to the OFIs not being subject to the requirements of the lending limits regulations.

The FCA noted during its public hearings that the lending limits regulations do not apply to the OFIs. The OFIs obtain their financing under arrangements with FCBs. The FCA has authority to regulate the discount relationship between the OFIs and the FCBs. However, unlike its regulatory authority over the FCS associations, the FCA does not have direct regulatory authority over the OFIs. It is the FCA's position that an OFI's lending limit should be addressed in the financing agreement between the FCB and the OFI. The FCB, under its lending policies and the terms and conditions of the financing agreement, may require lending criteria to comply with the requirements of the FCA's lending limits regulations. FCBs are subject to the lending limits regulations and, therefore, are restricted by the regulations from extending more than the percent of their lending limit base established in the regulations to any "single borrower," whether such loans are discounted from an association or an OFI.

**III. Subpart J—Lending Limits**

*A. Summary of Comments*

1. Computation of Lending Limits

The reproposed regulations based the calculation of lending limits on permanent capital, eliminating any double-counted capital and including stock protected under section 4.9A of the Farm Credit Act of 1971, as amended (Act), until January 1, 1998. The final regulations have substituted the term "lending limit base" for the term "capital" throughout the regulations, to avoid confusion regarding the base against which institutions can extend credit. There is no significant difference in the net computation between the existing and the final regulations.

The lending limit base is comprised of an institution's permanent capital, as defined in § 615.5201(h) of this chapter. As defined, permanent capital includes all capital except stock and other equities that may be retired on the repayment of the holder's loan or otherwise at the option of the holder. For the purposes of the lending limits regulations, stock protected under section 4.9A of the Act may be included in the lending limit base until January 1, 1998. A new § 614.4351, entitled "Computation of lending limit," has been added to the final regulations, describing how the lending limit base should be adjusted for equity eliminations.

One FCB supported basing the calculation of the lending limits on permanent capital. The American Bankers' Association (ABA) also supported the use of permanent capital, but objected to including protected stock in the lending limit base. The ABA claimed that the inclusion would artificially inflate capital levels for FCS institutions.

The FCA continues to believe that for a limited period of time stock protected under section 4.9A of the Act should be included as capital for lending limit purposes. Excluding this stock from the computation of lending limits could have an immediate negative impact on the size of the loans some institutions can make. The FCA believes that it would not be justifiable or fair to remove protected borrower stock from the lending limit base while some institutions still have considerable amounts of such stock outstanding, but recognizes that the level of protected stock is declining. Therefore, the final regulation provides that after January 1, 1998, such stock will no longer be counted for lending limit purposes.

Several associations commented that the elimination of the FCBs' investments in the associations required under the permanent capital regulations would have a negative effect on their lending limits. The FCA recognizes that the lending limits of direct lender associations may be negatively impacted by equity allocations that assign the equity to the bank, as was required under the original permanent capital regulations. However, recent and pending changes to the capital regulations provide the associations with an opportunity to reach an agreement with the bank on the allocation of equities. Therefore, the FCA does not believe that the regulatory requirements are overly restrictive or impose an undue hardship on the associations.

The FCA's position is based on the following rationale: (a) The double counting of capital should be eliminated; (b) the double counting of capital is inappropriate for calculating lending limits; and (c) the capital must be counted for lending limit purposes where it is counted for capital purposes. When an association's investment in a bank is counted as the bank's capital, then the bank, not the association, is considered to have control over the capital. The bank is considered to have complete discretion, within its operating authorities, to invest or use the funds as it sees fit. It would not be prudent for an association to loan against capital over which it has no direct control. Accordingly, the final regulations continue to reflect the FCA's belief that it is important to count capital where control is vested.

Several associations and a FCB commented that the allowance for loan losses should be included in the capital calculation. They said this argument was particularly compelling in the case of the PCAs, which were required by law to maintain an allowance equal to 3.50 percent of loan assets even though that would exceed the allowance required under generally accepted accounting principles (GAAP). They also pointed out that commercial banks are permitted to include the allowance for loan losses in the capital base when determining lending limits. To assure equitable treatment, they urged that the allowance be included as permanent capital for lending limit calculations.

With regard to the PCA allowance, following the expiration of the comment period the Act was amended to delete the required 3.50 percent allowance requirement.[2] As amended, the law now requires all System institutions, including PCAs, to maintain their allowance in accordance with GAAP, therefore the PCA allowance is no longer an issue.

Contrary to the comments received and the practices of commercial banks, the FCA continues to believe that the allowance for loan losses computed in accordance with GAAP should be excluded from the definition of the lending limit base. Such funds already represent specifically known risk exposure and generally anticipated risk of loss. It would be inappropriate for an institution to expose funds already earmarked to cover losses to increased risk of loss by including them in the lending limit base. Therefore, the final regulation continues to exclude the amount of the allowance for losses required by GAAP from the lending limit base.

[2] Farm Credit Banks and Associations Safety and Soundness Act of 1992 (Pub. L. 102–552), 106 Stat. 4102.

The BCs commented that changing the basis of the calculation of lending limits from net worth to permanent capital, would adversely affect their lending limits. They said this would require the smaller BCs to participate more loans with CoBank. This adverse impact stems from the regulatory treatment of investments in other institutions due to participation of loans.

Under existing regulation, § 614.4354(d), a BC purchasing a participation interest in another BC's loan would calculate its lending limit by subtracting from its net worth the amount of any capital that the originating BC is required to have in the purchasing bank. Thus, when CoBank purchases a participation from the other BCs, it deducts from its net worth the amount of investment in CoBank owned by the other BCs. For example, assume that the originating bank has a net worth of $50 million and that its investment in the purchasing bank is $20 million. Further assume that the purchasing bank's net worth is $500 million. Under existing regulations, the purchasing bank can participate a seasonal and term loan with the originating bank up to 35 percent of its $480 million net worth, or $168 million. The originating bank can loan up to 35 percent of its $50 million net worth, or $17.5 million.

The reproposed regulation revised this elimination and required the originating bank to deduct from its capital the investment in the purchasing bank that the originating bank was required to purchase. Therefore, under the reproposed regulation, if the Springfield or St. Paul BCs sold a participation to CoBank, they would have to deduct from their capital the amount of their investment in CoBank in order to determine their lending limit. At the same time, if CoBank were to purchase a participation from the other BCs, it would not have to deduct from its capital the amount of investments owned by the other BCs.

In light of these comments, FCA has reconsidered this provision of the reproposed regulations and determined that the regulation should revert back to the computetion originally provided in the proposed regulations. It was determined that the reproposed regulation would have adversely impacted the lending limit of the two smaller BCs, and the FCA is prohibited by statute from setting more restrictive lending limits for the BCs than are currently in effect. FCA believes that application of this method of computation will not create a safety and soundness concern for the FCBs and associations and therefore should also be applicable to these institutions in order to provide a consistent methodology for computing lending limits.

Accordingly, for purposes of capitalizing participation interests, the final regulations have revised the manner in which the investment in other institutions is eliminated. Section 614.4351(c) of the final regulations requires the investment to be deducted from the purchasing institution's lending limit base rather than from the originating institution's lending limit base.

2. Computation of Obligations

The reproposed regulations allow an institution to exclude loans that are discharged in bankruptcy or that are legally unenforceable because of judicial decision or the expiration of the statute of limitations when making a determination if loans to a borrower are within the lending limit. The Farm Credit Council (FCC) commented that the regulation should be broadened to exclude those portions of a loan where the lender cannot legally enforce payment because of formal restructuring or similar actions. One FCB suggested that the phrase "because of judicial decision or the expiration of the statute of limitations" be deleted. The FCB maintained that an institution should not be required to obtain a judicial decision or to postpone extending credit during the statute of limitations period for otherwise qualified eligible borrowers. The FCB argued that the provision is excessively restrictive and would inhibit the restructuring of loans authorized by the Act.

One FCB also commented that charged-off loans should not be included in a borrower's total obligations when determining whether additional credit can be extended. The FCB asserted that the conditions under which previous indebtedness was charged off may have little similarity to the borrower's present financial condition and that each extension of credit requires a credit decision that takes into account existing credit factors.

The FCA agrees that all payments that are determined to be legally unenforceable are no longer considered to be a loan for lending limit purposes and should be excluded from a borrower's obligations. The final regulation has been clarified accordingly. The final regulation continues to include chargeoffs in the calculation of a borrower's total obligations because chargeoffs do not affect the borrower's legal obligation to repay the debt unless the institution has modified the obligating instruments. If the borrower's present financial condition has improved to the point that the institution wishes to extend additional credit, the institution should first make every effort to collect previous extensions of credit from which the borrower has not been legally released.

3. Timing of Determinations

Several comments were received requesting clarification as to when a loan or commitment is considered to have been made for the purpose of determining whether a borrower's indebtedness exceeds the lending limit. In addition, one association commented that lending limits should be based solely on the outstanding principal balance and should not include undisbursed commitments.

To ensure uniformity concerning the point in time when the lending determination is made, the definition of "commitment" has been revised. Under the final regulations, a commitment is effective at the time it becomes a legal obligation. Since commitments are contractual obligations of the institution when they are made, they must be combined with any other outstanding debts of a borrower in determining lending limits. Therefore, before an institution makes a loan commitment, it shall ensure that the commitment, together with all loans and commitments outstanding and attributed to that borrower, is within the lending limits or is able to be participated.

4. Attribution Rules

The attribution rules are intended to identify all loans to a single borrower or related borrowers which must be combined with the borrower's loan when calculating the borrower's lending limit. The criteria for attributing one borrower's loan to another is set forth in the final regulations to allow all FCS institutions to identify "single credit risks" before making a loan or commitment to lend.

A number of comments were received from FCS institutions, individual borrowers, the FCC, and other interested parties regarding the reproposed attribution rules. A majority of the comments were from BCs and their borrowers. The commenters were primarily concerned with how the regulations would impact loans to regional and local cooperatives. The BCs and their customers were concerned that the rules of attribution in the reproposed regulations would restrict the BCs' lending activities. Additional

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comments were received from the FCC with similar concerns.

Existing regulation § 614.4354(e) requires FCA prior approval to treat related BC borrowers as separate credit risks. The reproposed attribution rules apply to all FCS borrowers and were based on the same criteria that FCA has used internally in the past in determining whether to approve exceptions for those BC borrowers who were determined to be independently viable. These criteria were included in order to eliminate the prior approval requirement and allow all institutions to make their own determinations of "single credit risk."

In response to the comments the FCA reconsidered the reproposed regulations and the underlying rationale. The FCA also conducted a study of the various cooperative ownership structures found in the BCs lending portfolios as well as the ownership structures and borrowing relationships found in the FCBs' and associations' loan portfolios. Based on this analysis, the attribution rules have been modified in the final regulations. As modified, the attribution rules will not create a more restrictive application of lending limits on the BCs than already existed. Following the completion of the study, FCA confirmed that no existing BC borrowing relationship would have been required to be attributed that would not also have been required to be attributed, upon identification, under the existing regulations.

Under the final regulations, the issue of whether a related borrower's loan needs to be combined with the borrower's loans, when calculating the borrower's lending limit, will depend on whether the borrower either exerts corporate control over the related borrower's operation or is a primary source of repayment on the related borrower's loan(s). In cases where the borrower is obligated to repay or has the ability to influence the repayment of the related borrower's loan, the related borrower's debt must be attributed to the borrower and combined with the borrower's debt for lending limit purposes.

The following is a discussion of the specific changes to the regulations.

*(a) "Named" and "subject" borrower.* Under the rules of attribution in the reproposed regulations, loans to a borrower (named borrower) were required to be combined with and attributed to another borrower (subject borrower) when any one of five conditions occurred. Considerable comment was received stating that the terms "subject" and "named" borrower were confusing, making it difficult to determine how the rules of attribution should be applied. In response to these comments, the final regulations have been revised by deleting all reference to subject and named borrower. For the purposes of applying the lending limits to the indebtedness of an applicant for a loan, the applicant, previously referred to as the subject borrower is referred to as the borrower in the final regulations. A loan in the name of another borrower, previously referred to as "named" borrower, is referred to as the "related" borrower.

*(b) Liability.* Under the reproposed regulations, any loan for which the borrower is primarily or secondarily liable would be combined with the total debt of that borrower. Numerous commenters stated that the rules of attribution should only apply to the portion of the loan being guaranteed by the borrower. The FCA agrees with the commenters and has modified the regulations accordingly. While the final regulation continues to require attribution when the borrower has primary or secondary liability for a loan made to the related borrower, it clarifies that the amount of such loan attributable to the borrower is limited to the amount of the borrower's liability.

The FCA notes that guarantees are presumed to be taken in support of the credit decision and not out of an abundance of caution. Only when an institution documents in the appropriate loan files that the guarantee is not a necessary factor in the credit decision may the abundance of caution exception be taken. If the documentation fails to provide such support, then the portion of the loan that is guaranteed must be combined with the borrower's other debt for lending limit purposes. If this results in the loan to the borrower exceeding the lending limit the excess amount of the loan would be subject to the provisions of § 614.4359 of this subpart.

A substantial number of the comments continued to reflect the impression that loans guaranteed by a borrower must be attributed to both the borrower and the related borrower under the reproposed rules of attribution. The FCA had previously attempted to clarify this issue in its Notice of Public Hearings relating to the reproposed lending limit regulation (56 FR 21638, May 10, 1991). The reproposed regulations were intended to require all loans which the borrower guaranteed to be combined with the borrower's other loans when calculating the borrower's lending limit. As stated in the Notice, a loan guaranteed by a borrower would be combined with the loans outstanding to that borrower. However, loans outstanding to the guarantor would not be combined with and attributed to the related borrower whose loan is being guaranteed. For example, assume cooperative A (borrower) has a $100 million loan, and provides a full guarantee on cooperative B's (related borrower) $50 million loan. Because of the guarantee, cooperative B's loan would be attributed to the guarantor, cooperative A, and combined with cooperative A's outstanding loan. Cooperative A's total debt for lending limit purposes would be $150 million. Cooperative B's debt remains at $50 million for lending limit purposes.

A Comment received on behalf of the BCs expressed concern that the reproposed attribution rules would disallow the exception for "look-through" notes contained in § 614.4354(a)(2) of the existing regulation. This exception was not removed in the reproposed regulation and continues under the final regulation. Under the *Liability* section of the final attribution rules in § 614.4358(a), look-through notes are exempt from the lending limit provisions for the BCs, provided the notes meet all the criteria of § 614.4356.

*(c) Financial interdependence.* The reproposed regulations required attribution if two borrowers' operations were so intertwined that viability could not be independently determined. A number of comments were received regarding this section of the reproposed regulations and the terms used to determine when borrowers are financially interdependent. As discussed below, the financial interdependence section of the final regulations has been reorganized and modified to clarify the application of the regulation.

A number of commenters expressed concern that the attribution rule would be difficult to apply because the terms "intertwined" and "viability" were vague. The FCA agrees with the commenters and has modified the final regulations by deleting these terms and incorporating this concept under § 614.4358(a)(2). Under this section, the borrower's loan should be combined with and attributed to another borrower's loan when their operations are so financially interdependent that the economic survival of one operation will materially affect the economic survival and repayment capacity of the other operation.

A substantial number of comments received from the BCs and their borrowers regarded the source of repayment criteria used in the reproposed regulation. A majority of commenters did not object to the use of

the gross receipts standard but requested that the percentage be raised to 50 percent, stating that the higher percentage would result in less frequent consolidation of credits of different borrowers and provide more flexibility in addressing the credit risk associated with interdependence.

In response to these comments, the FCA analyzed the potential impact of the reproposed regulation on the BCs and their borrowers and in particular the various cooperative ownership structures and the use of the 30-percent gross receipts in the repayment criteria. Based on the results of its analysis, the FCA has modified the final regulations to increase the percentage of gross receipts from 30 to 50 percent. Under the final regulations, a borrower is considered to be the primary source of repayment if the borrower is obligated to supply 50 percent or more of the related borrower's annual gross receipts, and reliance on the income from one another is such that, regardless of the solvency and liquidity of the borrower's operations, the debt service obligation of the related borrower could not be met if income flow is interrupted or terminated. Gross receipts include, but are not limited to, revenues, intercompany loans, dividends, and capital contributions.

Under the final regulation, financial interdependence is not limited to borrowers who supply 50 percent or more of the related borrower's gross receipts. Borrowers will also be considered to be financially interdependent and required to combine their debts, when the assets or operations of the borrowers are commingled to such an extent that they cannot be separated without materially impacting the repayment capacity of each borrower. Therefore, even if a borrower supplies less than 50 percent of the gross receipts, the related borrower's loans must be attributed to the borrower if their assets or operations are so commingled.

The reproposed regulation provided that the gross receipts rule did not apply to "integrated operations." FCA received comments requesting clarification of the scope of this exception and its applicability to contract growers. The exception was intended to identify those relationships where one borrower could reasonably continue to do business or service its debt without a continuing, ongoing relationship with the other borrower. Those often involve contractual relationships that can easily be replaced in the marketplace without adversely affecting the viability or repayment ability of the related borrower. The final regulations were revised so that the source of repayment rule would apply the same criteria to all borrowers instead of attempting to specifically exclude a particular class of borrower, such as integrated operations from the attribution rules. As an example, the final rule would not require attribution for integrated operations where the integrator had choices as to which contract operators the integrator would have under contract. At the same time, the individual contract operators' loans would not be required to be consolidated as long as they have reasonable contract replacement alternatives and their viability or repayment ability is not jeopardized.

The reproposed regulations required attribution when the proceeds of loans to the related borrower are used by or for the direct benefit of the borrower. Direct benefit was deemed to have occurred when the proceeds of the loan were either transferred to or used to purchase an asset that was transferred to the borrower without a reasonably equivalent exchange of value. Several commenters objected to this direct benefit rule, asserting that it was difficult for institutions to measure or monitor. They also questioned why loans must be attributed solely because of loan purpose. The FCA agrees with the commenters and has deleted the direct benefit rule from the final attribution rules. The FCA believes that risk will be contained by focusing on financial interdependence and control rather than on loan purpose.

Contrary to a number of comments received from local and regional cooperatives who borrow from the BCs, the borrowers' loans are generally not required to be attributed to a related borrower for the purpose of calculating the related borrower's lending limit. FCA has modified the final regulation to further clarify this point. Under the final regulation, the only time the borrower's loan would be attributed to the "related" borrower would be if the related borrower controls repayment of the borrowers' loans.

*(d) Control.* The reproposed regulation required attribution when the borrower directly or indirectly controls or is controlled by the related borrower. Control was defined as exercising a controlling influence over the affairs of another borrower or operating under common control with another borrower. The criteria used to determine control included any one of the following: (1) Ownership or the power to vote 25 percent or more of the voting securities in another; (2) control of the election of a majority of directors of another; (3) the power to exercise a controlling influence over the management of another's operations; or (4) the sharing of a common directorate or management with another.

Comments regarding the definition of control came primarily from the BCs, BC borrowers, and the FCC. Several commenters stated that using 25-percent ownership as a basis for control was not consistent with established principles for operating on a cooperative basis because one characteristic of traditional cooperative structures is that one borrower equals one vote. They stated that the reproposed regulations presumed that 25-percent ownership could be translated into voting control. They felt that by using 25-percent stock ownership the FCA was equating stock ownership in cooperatives to stock ownership in corporations. The FCC and other commenters suggested that § 614.4350(d)(1) be revised to require attribution when a borrower has the power to vote 50 percent or more of the voting securities in another.

The FCC also stated that § 614.4350(d)(3), which defined "control" to include the authority to exercise a controlling influence over the management of another's operations was vague and should be deleted. Finally, the FCC recommended that § 614.4350(d)(4), regarding when a borrower shares a common directorate or management with another, be improved by establishing a more objective standard.

The FCA acknowledges that cooperative ownership structures may differ significantly from non-cooperative corporate ownership structures. Generally, in a cooperative, each member has only one vote regardless of the amount of stock owned while in a corporation, voting rights typically correspond to the amount of stock owned. The FCA also realizes that the nature of cooperative relationships is undergoing a transition to more capital-based ownership structures and has chosen to include the percentage of stock ownership as one of the criteria for determining control. The final regulations have been revised to reflect these distinctions and to incorporate both traditional and nontraditional cooperative structures.

The final regulations provide that, for purposes of lending limits, where a borrower owns 50 percent or more of the stock of another, direct control exists and attribution is required. Where a borrower owns or controls 25 percent of the voting stock, attribution will be required if at least one of three management control conditions is also present. By combining stock ownership with managerial control, the FCA has

addressed the concern that the control criterion is unduly subjective and restrictive for traditional cooperative relationships. At the same time, the regulation continues to require attribution in those instances where the borrower may indirectly control the stock, but plays a major role in the related borrower's operations.

Instead of requiring attribution if any one of the four criteria in the reproposed regulations are met, the final regulation at § 614.4358(a)(3) requires attribution when the borrower owns 50 percent or more of the stock of the related borrower or the borrower owns or has the power to vote 25 percent or more of the voting stock of a related borrower and meets at least one of the following three management control criteria. These three criteria were contained in the reproposed regulations and the way in which they are applied to the question of attribution has been modified in the final regulations. They are:

(1) The borrower shares a common directorate or management with a related borrower. A common directorate is deemed to exist when a majority of the directors, trustees, or other persons performing similar functions of one borrower also serves the other borrower in a like capacity. A common management is deemed to exist if any employee of the borrower holds the position of chief executive officer, chief operating officer, chief financial officer, or an equivalent position in the related borrower's organization.

(2) The borrower controls in any manner the election of a majority of directors of a related borrower.

(3) The borrower exercises or has the power to exercise a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping. An example of the test for determining borrower control under this condition would be where the related borrower's ability to make independent decisions is limited by the actions of the borrower.

5. Transition period

A number of comments were received regarding the transition period provisions of the reproposed regulations. The reproposed regulations required loans that were made prior to the effective date of the regulations which became nonconforming solely because of a change in the regulations to be retired or liquidated over a reasonable period, not to exceed 7 years. Several commenters requested this requirement be deleted, because institutions cannot unilaterally change existing terms of loan contracts that exceed the 7-year period. Some commenters also argued that institutions should not be penalized for retroactively failing to comply with new regulations. The FCC urged that the new lending limits be applied prospectively and that all existing loans be "grandfathered" unless subsequent loan servicing results in a material change in the contract terms allowing the institution to bring the loan into conformance with the new lending limits. One institution noted that loans maturing or renewing much earlier than 18 months, combined with the added restrictions on participations and the lowering of the lending limits, would create an undue burden. Several borrowers expressed concern that they would have to refinance their loans at the end of the 18-month period and that they might be forced to seek financing elsewhere if their loans were not within the institution's new lending limit.

The FCA recognizes that the term of some existing loans might exceed 7 years and that institutions cannot change the term of a loan contract to comply with their new regulatory lending limit. To address these concerns, the final regulations provide a "grandfather" provision for all loans on the books on the date these regulations become effective. Furthermore, after careful consideration of the comments expressing concern that institutions would not have ample time to conform to the new regulations, the FCA has chosen to delay the effective date of the regulations until January 1, 1994, or upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session, whichever is later. Since this date marks the beginning of a new year and quarter, the FCA believes it will be easier for institutions to calculate and comply with the new lending limits.

All new loans or commitments entered into after the regulations become effective must conform to the new regulations. A grandfathered loan will be considered a new loan if funds are advanced to the borrower in excess of existing commitments, the terms and conditions of the loan are materially changed, a different borrower is substituted for an original borrower who is released, or an additional person is added to the loan contract. Also, for purposes of this subpart, when a renewal or reamortization involves the capitalization of interest, new funds would be considered to have been advanced and the entire loan must then be within the lending limit.

The transition section of the reproposed regulations also allowed commitments made prior to the effective date of the regulations to be funded. If the commitment would result in a lending limit violation when fully funded, then no additional funds in excess of the commitment amount may be advanced. The FCC commented that § 614.4360(b) could be read as prohibiting the advance of additional funds under an existing commitment if the advance would result in a nonconforming loan. This was not the intent of the regulations and the final regulations were amended to eliminate any ambiguity.

6. Lending Limit Violations

The reproposed regulations contained a section governing "nonconforming" loans, which were defined as loans or commitments that were within the lending limit when made, but which subsequently exceeded the limits. The FCC and several other FCS institutions requested clarification of the nonconforming loan designation and its impact on the institutions.

The final regulations were reorganized and clarified to emphasize that all loans which exceed the lending limit, except "grandfathered" loans, are lending limit violations. However, the final regulation also provides an exception for those loans which were previously categorized as "nonconforming" and clarifies that these excepted loans are not required to be removed from an institution's collateral base. In addition, the final regulation adds an exception for loans which exceed the lending limits due to mergers and acquisitions.

The FCA recognizes that if the loan or commitment was legal at the time it was made, then the institution has not knowingly violated the lending limit regulations. Therefore, under the final regulations, if a loan or commitment, when combined with all other loans and commitments outstanding and attributed to the borrower, was within the lending limit when made, the loan may continue to be funded and advances can be made under the commitment even if: (a) The institution experiences a decline in capital and thus its lending limit base; or (b) the borrower's operations are merged with another borrower resulting in total consolidated loans in excess of the institution's lending limit.

To ensure that institutions make every effort to bring loans which violate the lending limit into conformance, the reproposed regulations required nonconforming loans to have a written plan prescribing specific actions that

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will be taken by the institution and the borrower to bring the loan into conformance with the legal lending limit. The FCC and several FCBs urged that this requirement be revised to remove any requirement for corrective action by the borrower. They asserted that this change was necessary since an institution cannot amend the borrower's contractual rights in order to bring a loan into conformance with the institution's lending limits. The FCC also suggested that the written plan is unnecessary because it will simply state that the loan will be retired in an orderly fashion in accordance with the loan contract.

The FCA continues to believe that a written plan to resolve lending limit violations is necessary. The plan should serve as the institution's vehicle to resolve the violation and should be used by the board and management to monitor both the level of loans in excess of the lending limit and the length of time such loans remain on its books. However, the FCA agrees with the commenters that the borrower has no control over the institution's lending limit and should not be obligated in the plan to an accelerated repayment schedule. The final regulations have been modified by deleting the requirements for corrective action by the borrower.

The FCA notes that there are options other than retiring a loan according to the loan contract that can cure a lending limit violation. For instance, where undisbursed commitments are consistently held in excess of a borrower's peak credit requirements the need for such excess commitments should be reviewed in terms of the loan's conformance with the institution's legal lending limits. In addition, if an institution has a loan which exceeds the lending limits, it is in the institution's best interest to try to participate the loan or commitment, particularly if it anticipates a request for additional credit from the borrower or a decline in capital.

The FCA is aware that the business environment in which FCS borrowers operate is changing, and such changes may impact the ability of FCS institutions to provide their borrowers with continuing credit. Therefore, § 614.4359(b)(3) of the final regulation includes an exception to the lending limit violations which addresses those instances where a merger or acquisition of a corporate borrower results in a combined lending relationship in excess of the legal lending limits. Where one borrower merges with, or the borrower's operations are acquired by, another borrower and the resulting consolidation of debt results in a total indebtedness in excess of the lending limit prior to a loan maturity or renewal, then the institution can renew or extend the maturity of a loan for a period of not more than 1 year from the date of the merger. During this waiver period, the institution may advance and/or re-advance funds under the same terms, conditions, and amounts as previously existed prior to the merger or acquisition. At the end of the maximum 1-year waiver, any remaining balances and undisbursed commitments in excess of the applicable lending limit will be considered lending limit violations.

7. Monthly Reporting Requirement

The reproposed regulations required lending limits to be calculated on a monthly basis. The FCC and several FCS institutions asked for additional clarification on this requirement. They expressed concern that participations would need to be adjusted monthly as loan balances and lending limits fluctuate, necessitating a new independent credit judgment. They urged that adjustments to the lending limit be calculated on a quarterly or semiannual basis.

The FCA continues to believe that lending limits should be calculated on a monthly basis as of the preceding month end. Institutions currently prepare monthly financial statements, therefore, this requirement should not be burdensome. If participations are shared on a last-in-first-out basis, then balances will be required to be adjusted as lending limits fluctuate. The loan purchase and sale regulations, § 614.4325(e), require an independent credit judgment be made prior to the purchase of the participation interest and prior to each servicing action that changes the terms of the contract under which the asset was purchased. The agreement or contract between the participating institutions must state the amount each institution is willing to lend. Therefore, a shift in balances among participating institutions would not constitute a servicing action which changes the terms and conditions and a new credit judgment would not be necessary every month.

8. Lending Limit Percentage

The reproposed regulations lowered the lending limit for all direct lender associations to 20 percent of capital. All banks, except the BCs, remained at the existing 20-percent level. Lending limits for BCs continued to vary according to the type of loan, with 25 percent for term debt, 35 percent for seasonal debt, and an overall limit of 35 percent of capital in most circumstances. Numerous comments were received from FCS institutions concerning the reproposed lending limit. Three FCBs fully supported the reproposed lending limit. One of the FCBs commented that they would strongly oppose lending limits in excess of the 20-percent level. This commenter stated that the limitation of risk concentration is an essential component in assuring safety and soundness of the System as a whole, as well as for individual institutions. Another FCB commented that the 20-percent lending limit is sound and quite appropriate, but only when considered in concert with a reasonable definition of loans, rules of attribution, and the permanent capital standards. The ABA supported the adoption of the reproposed regulations in the interest of competitive equality.

One FCB encouraged the FCA to re-examine whether the same lending limit is appropriate for both associations and banks. The FCB urged the FCA to adopt lending limits of 20 percent for associations, an overall limit of 35 percent for FCBs, with term or real estate loans not to exceed 25 percent. They asserted that such limits for FCBs would be comparable to the limits applicable to the BCs. Since the FCB's role has moved toward that of participant and pooler, the FCB believed that a 35-percent limit would be large enough to avoid unnecessary participations with other districts or lenders outside the System. The FCB also asserted that the higher 35-percent limit would provide all banks, including BCs, more equal treatment. One FCB suggested that each bank be authorized to establish a lending limit up to 50 percent for its affiliated associations. Another FCB suggested a limit of no less than 35 percent, stating that the 20-percent limit would be overly restrictive, and result in a loss of income to originating institutions as well as a loss of an appreciable share of the market. This FCB also felt exceptions could be incorporated into the limits, including exceptions based on the quality and quantity of collateral.

Several associations commented that the reproposed limit of 20 percent was overly restrictive and would reduce their ability to carry larger loans and thereby decrease earnings. One association requested that the FCA incorporate certain exceptions to the lending limit. It claimed that State banks, who are their primary competitors, have a limit of 20 percent and are allowed exceptions similar to those provided to national banks. The association suggested a 40-percent lending limit. A federation established

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to represent the PCAs in Texas urged the FCA to adopt a lending limit of no less than 35 percent. They asserted that the incorporation of certain exceptions to the lending limit would not be difficult to apply. The federation expressed concerns that the lower lending limit would increase participations. They claimed that as a number of institutions make independent credit decisions, credit service would be unacceptably delayed to borrowers whose loans exceed the lower lending limits.

The FCA has carefully considered the comments claiming that the reproposed lending limit would competitively disadvantage FCS institutions when compared to the lending limits for national and State banks. A review of lending limit regulations for State banks indicates that the lending limits for State banks vary widely. Many States closely align their regulations to those governing national banks, limiting loans to 15 percent of capital. Regulations of both national and State banks typically incorporate some exceptions into their lending limits, which increase the limits for many types of loans. However, a loan must be fully secured before any of the exceptions can be applied. Therefore, while the general limitation for national banks and some State banks is 15 percent of capital, an institution may lend a greater percentage of capital for certain types of fully collateralized loans.

In addition, the FCA reviewed the specific lending limits established by other Federal regulatory agencies such as the Office of the Comptroller of the Currency (OCC). The OCC's base lending limit is 15 percent with various exceptions provided. For instance, the OCC provides that loans that are fully secured by either short-term assets or real estate and/or are for the purpose of financing livestock operations are subject to a 25-percent lending limit. In comparison, a large majority of the loans financed by the FCS institutions would fall within the 25-percent lending limit used by the OCC.

Based on the comments received, an analysis of the lending limits of other regulators, and the results of an internal study completed on a representative sample of direct lender associations, the FCA believes that 25 percent of capital lending limit is the most appropriate. This lending limit will be applicable for all banks and direct lender associations operating under title I or title II authorities of the Act, respectively. In establishing the lending limit, the FCA has balanced the agency's safety and soundness concerns with the institutions' concerns of being able to service the credit needs of creditworthy, eligible borrowers.

FCA believes that a 25-percent lending limit will address the FCA's concerns of single credit concentrations and yet not impose a significant burden on any specific bank or district structure. In addition, due to the grandfathering provision of the final regulations, no existing loan would be forced to leave the System or be participated.

However, future loan structures may require further evaluation in light of the new limits. While a few individual associations may need to participate a portion of some of their loans to other institutions in the future, there is every reason to believe this can be done with minimum negative effects. Through the expanded loan participation authorities adopted by the FCA on September 10, 1992, no loans would be forced outside of the Farm Credit System solely on the basis of the final regulations. The association also has the opportunity to replace such participated loans with other loan interests purchased through participations from other FCS institutions. The 25-percent limit for the banks would allow the association's funding bank to fully carry any participation of existing loans resulting from these regulations.

The FCA considered the request of some FCBs to have lending limits that were at 35 or 50 percent in order to be comparable with the BCs. Because the FCBs direct lending authority is limited to long-term loans, the 25-percent limit in the final regulation is in fact comparable to the BCs 25-percent limit for long-term loans, as well as the limits for commercial banks. Finally, a 25-percent lending limit would place all institutions in the System, with the exception of BC seasonal loans, on a level playing field.

Exceptions are granted in § 614.4357 of the final regulations for government-guaranteed loans and loans fully secured by obligations fully guaranteed by the United States government. These loans were not exempt from lending limits under existing regulations.

FCA considered, but did not adopt exceptions based on the type and quantity of collateral supporting the loan. FCA concluded that such exceptions would be difficult and time-consuming to apply and administer while providing very little real advantage to FCS borrowers. For example, allowing exceptions based on collateral could disadvantage some institutions that do not extend loans secured by accepted collateral. Furthermore, the FCA does not wish to encourage institutions to place undue reliance upon collateral as a basis for extending credit above the 25-percent lending limit.

The FCA does not agree with the commenters that participations will prove onerous, disrupt credit service, and decrease earnings. In many cases, the borrower will not even be aware that the institution has participated the loan. While an institution might need to sell a portion of a loan that exceeds the lending limit, it can also buy loans from other FCS institutions to compensate for lost volume.

One FCB argued for a 5-year phase-in of the lending limits to allow institutions time to build capital. It maintained that immediate compliance with the lower lending limits would disadvantage its affiliated associations, forcing them to participate loans of their larger customers, thereby decreasing income. Another FCB and an association also supported a gradual implementation of the reduction in lending limits to 25 percent over a 5-year period. The FCB argued that the reduction in direct lender association lending limits would have a major detrimental impact on operations and earnings and hinder the associations' ability to service large customers.

The FCA does not believe that it is necessary or in the best interest of the System to phase-in the lending limits. The reproposed regulations were published in the **Federal Register** on January 23, 1991, putting institutions on notice of an intended change to the lending limits. In fact, several districts have used the time since publication to lower lending limits in anticipation of publication of the final lending limit regulations. The final regulations specifically address the institutions' concerns regarding immediate implementation of the lending limits through the transition criteria. In addition, the effective date of the lending limit regulations has been delayed until January 1, 1994, to provide institutions ample time to conform to the new regulations.

Two FCBs commented that single credit concentrations are safety and soundness issues that should be controlled by the FCA through its examination, supervision, and enforcement actions rather than through the regulatory establishment of lending limits. One association maintained that risk could be controlled through the association's lending agreement with the FCB. The association also believed that dynamic credit administration and proper management of loans would provide more risk protection than the regulation of loan size. Another association believed that the existing 50-

percent limit should remain in place and that the FCB should oversee the size of an association's loans. It stated that restricting loan size would result in significant earnings reduction, which would negatively impact the financial position of the institution more than the increased risk from large loans. Another association recommended that each FCB establish an association's lending limit based on demonstrated performance and quality of the association's loan portfolio.

The FCA believes that the safety and soundness of FCS institutions are maintained, not controlled, through examination and supervision. Enforcement actions are taken to implement corrective action in situations where safety and soundness have been jeopardized. The examination and supervision of institutions are retroactive, allowing corrective action only after the credit has been extended. In setting these lending limits, the FCA is attempting to reduce "single borrower" concentration risk to the financial position of an institution resulting from losses on loans disproportionate to their capital base before that risk is reflected on the institution's balance sheet. In addition, FCBs are encouraged to establish in-house lending limits which are less than the regulatory limit. Such in-house limits should be addressed as part of the bank/association lending relationship controlled by the terms and conditions of the general financing agreement.

FCA notes that these lending limits only address single borrower risks and are not intended to address the risks associated with industry concentrations, faulty credit administration, poor management practices, poor accounting practices, etc. While the regulations do not impose lending limits based on industry concentrations or direct loans to associations the institutions are encouraged to address such risk factors. Generally such risks can be addressed within the institution's capital requirements and the general allowance for loan loss allocations.

Comments were received from the FCC, an FCB, and several associations on the lending limits in relation to the permanent capital requirements. Commenters noted that permanent capital standards were issued when the lending limits were much higher. The FCA's justification for the level of permanent capital was the risk involved in single-industry lending. The commenters claimed that the FCA has not adequately explained why safety and soundness concerns dictate lower lending limits when minimum permanent capital standards are higher than those established for other federally regulated financial institutions.

The FCA wanted to allow time to implement the final capital adequacy regulations and to review the restructuring of institutions before making changes to the lending limits. The lending limits regulations originally proposed setting lending limits at the level applicable to the individual banks or associations prior to the mergers required or allowed by the 1987 Act. The reproposed regulations addressed the FCA's concerns with the level of risk associated with the existing lending limits and the problems that have arisen in the past due to such single borrower concentrations. The reproposed regulations were designed to address the lending limits after many institutions had completed mergers and capital between the banks and associations had been adjusted. The capital regulations were designed to address the institutions' overall financial strength and their ability to safely fund and manage their loan portfolios. As stated earlier, it is expected that the institutions will address issues such as general portfolio risks and industry concentrations through means such as their capital plans and allowance requirements. The lending limits are intended to address single borrower loan concentrations and limit the risk to an institution's capital associated with potential losses incurred by these large loans. After reviewing the comments and completing the associated impact studies, the FCA believes that the lending limits in the final regulations are appropriate for FCS institutions and adequately take into consideration all of the safety and soundness concerns of the agency.

*B. Section-by-Section Discussion of Changes*

1. Section 614.4350—Definitions

This section of the reproposed regulations contained the definitions used throughout subpart J. The final regulations have clarified several of the definitions, and moved the definition of "control" to the attribution rules contained in § 614.4358. The definition of "commitment" has been expanded to clarify when a commitment becomes effective. The term "capital" has been deleted from the definition section and has been replaced by a discussion of the computation of the "lending limit base" contained in § 614.4351. The identification of when an institution makes a loan has been broadened under the definition of "loan" to include when it enters into a commitment to lend.

2. Section 614.4351—Computation of Lending Limit Base

This section of the reproposed regulations contained the lending limits for all banks, except BCs. The lending limits for banks are now contained in § 614.4352. Under the final regulations, § 614.4351 contains the adjustments and eliminations required to be made to permanent capital (as defined in § 615.5201(h) of this chapter) for purposes of computing an institution's lending limit base. Under the reproposed regulations, the definition of "capital" required eliminations and adjustments according to § 615.5210(d)(1) through (d)(4) of this chapter. Section 614.4351 has been revised so that the investment resulting from loan participations is deducted from the purchasing institution's capital to determine its lending limit base, which is the same as required by existing lending limit regulations for BCs.

3. Section 614.4352—Farm Credit Banks and Agricultural Credit Banks

Under the reproposed regulations this section applied to direct lender associations. In the final regulations, this section sets forth the lending limit for FCBs and agricultural credit banks (ACBs) which is increased from the 20 percent contained in the reproposed regulations to 25 percent in the final regulations for the FCBs and for ACB loans made under the authority of title I of the Act. For ACBs making loans under the authority of title III of the Act the lending limits governing BCs as described in § 614.4355, would apply.

4. Section 614.4353—Direct Lender Associations

Section 614.4353 of the reproposed regulations addressed the endorsement liability limit of Federal land bank associations (FLBAs). Under the final regulations, § 614.4353 has been renumbered to § 614.4354. Section 614.4353 of the final regulations addresses the lending limit for all direct lender associations, which includes PCAs.

5. Section 614.4354—Federal Land Bank Associations

Section 614.4354 of the reproposed regulations detailed the lending limits applicable to BCs. Under the final regulations, most of this section has been renumbered to § 614.4355, while § 614.4354(a)(2) of the existing regulation has been renumbered as § 614.4356. Under the final regulations, § 614.4354 addresses the endorsement liability of FLBAs.

6. Section 614.4355—Banks for Cooperatives

Section 614.4355 under the final regulations sets forth the lending limits for the BCs. The reproposed and final regulations amend the existing regulations for the BCs, § 614.4354(a), by requiring lending limits to be calculated on a monthly basis, instead of semiannually. The final regulations do not change the BC lending limits contained in paragraph (a)(1) of the existing regulations and redesignate paragraph (a)(2) as § 614.4356 in the final regulations.

The attribution rules in § 614.4358 of the final regulations continue to exempt loans satisfying the criteria of existing § 614.4354(a)(2). Section 614.4354(a)(3) has been removed because it is no longer necessary to compute the total BCs' lending limit base under the final regulations. In addition, § 614.4354(a)(4) is removed. Paragraph (b) of § 614.4354 has been removed as the final regulations do not contain a requirement for a systemwide BC lending limit. The FCA believes this requirement is not necessary since the lending limit percentages applied to CoBank are nearly as large as the percentages applied to the combined net worth of the previous 13 individual BCs.

Paragraph (c) of § 614.4354, relating to the Central Bank for Cooperatives, has been removed because it is no longer appropriate. The lending limits contained in § 614.4355(a)(1) of the final regulations are applicable to all BCs. Paragraph (d) of § 614.4354 has also been removed. The content of this paragraph is addressed in the final regulations in § 614.4351 relating to the computation of the lending limit base. Paragraph (e) of § 614.4354 has been removed since the manner in which "one borrower" is determined is set forth in § 614.4358 in the final regulations relating to rules of attribution. Paragraph (f) of § 614.4354 has been removed in the final regulations.

7. Section 614.4356—Banks for Cooperatives Look-Through Notes

Section 614.4356 is a new section of the final regulations which incorporates the provisions of the existing § 614.4354(a)(2).

8. Section 614.4357—Computation of Obligations

Section 614.4357 of the final and reproposed regulations relates to the computation of obligations, parts of which were contained in § 614.4360 of the existing regulations. Section 614.4357 has been expanded and details what loans must be included in a borrower's total loans outstanding and what loans may be excluded. The exclusion for loans guaranteed by a FCS institution, contained in existing regulations § 614.4360(c), continues to apply and is set forth in the final regulations in § 614.4357(b)(2).

Paragraph (a) of § 614.4360 of the existing regulations, relating to participation loans, is addressed in the final regulations in paragraph (a)(2) of § 614.4357. The final regulations provide that loans sold with recourse must still be included in a borrower's total indebtedness. Section 614.4357(a)(1) of the final regulations has expanded the computation of borrower indebtedness to include the total amount of outstanding commitments in addition to the total unpaid principal balance, contained in § 614.4360(b) of existing regulations. The exemption from the indebtedness computation in paragraph (b) of existing § 614.4360 is no longer applicable.

9. Section 614.4358—Attribution Rules

The rules of attribution are contained in § 614.4358 in both the reproposed regulations and the final regulations. However, the contents of the reproposed regulations set forth in § 614.4358(a)(1) through (a)(5) were reorganized and clarified in § 614.4358(a)(1) through (a)(3) of the final regulations. Section 614.4358(a)(1) of the reproposed regulations remains unchanged except for some minor clarification. Section 614.4358(a)(2) through (a)(4) of the reproposed regulations was modified in response to comments received and was combined under § 614.4358(a)(2) of the final regulations. Section 614.4358(a)(5) of the reproposed regulations was expanded in the final regulations to clarify the control criteria and to incorporate the definition of "control" previously set forth in § 614.4350(d).

In the reproposed regulations, "control" was defined in § 614.4350(d)(1) through (d)(4) as exercising a controlling influence on the affairs of another borrower or operating under common control with another borrower. In the final regulations, control criteria are set forth in the attribution rules under § 614.4358(a)(3).

10. Section 614.4359—Lending Limit Violations

Section 614.4359 of the reproposed regulations discussed "nonconforming" loans and is not contained in the existing regulations. The final regulations have been revised to reduce their complexity and simplify their application. As revised, the final regulations recognize that any loan which exceeds the lending limit, except loans on the books on the effective date of these regulations (grandfathered loans), is a violation, but provide exceptions for loans that were originally designated as "nonconforming" in the reproposed regulations. The exceptions include a discussion of those situations where a loan would violate the lending limit because of a lending limit base reduction or as a result of a merger or acquisition. Other changes included deleting the statement under paragraph (c) of the reproposed regulation, concerning the guarantor's inability to pay the guaranteed loan. This statement was considered unnecessary as the guarantor is the United States government. Paragraph (c) of the final regulation deleted the requirement that the borrower correct nonconformance because such a requirement was considered unenforceable.

11. Section 614.4360—Transition Period

Section 614.4360 of the reproposed regulations deals with the transition period for implementing the new lending limits prescribed by the final regulations. Paragraph (a) of the reproposed regulations, which required all loans to be brought into conformance with the new regulations by the earlier of the next maturity date, loan servicing action, or a period not to exceed 18 months, is no longer necessary. Under § 614.4360(a) of the final regulation, loans or commitments which exceed the lending limits because of a regulatory change in the lending limits will be grandfathered until the current contract expires. Once the contract expires on such loans and commitments, funds advanced will be considered new loans and must conform with the lending limit rules. The content of paragraph (c) of the reproposed regulations requiring a written plan to bring loans into conformance is included in paragraph (c) of § 614.4359 of the final regulations and does not apply to those loans "grandfathered" by § 614.4360.

## IV. Subpart H—Loan Purchases and Sales

Section 614.4325(g) of the existing loan purchases and sales regulations, addressing exclusions from the lending limits, has been deleted and the language of the existing paragraph has been moved to § 614.4357(b)(4), *Computation of obligations.*

## List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, part 614 of chapter VI, title 12 of the

Code of Federal Regulations is amended as follows:

## PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

**Authority:** Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

### Subpart H—Loan Purchases and Sales

#### §614.4325 [Amended]

2. Section 614.4325 is amended by removing paragraph (g) and redesignating existing paragraph (h) as new paragraph (g).

3. Subpart J is revised to read as follows:

### Subpart J—Lending Limits

Sec.

614.4350 Definitions.
614.4351 Computation of lending limit base.
614.4352 Farm Credit Banks and agricultural credit banks.
614.4353 Direct lender associations.
614.4354 Federal land bank associations.
614.4355 Banks for cooperatives.
614.4356 Banks for cooperatives look-through notes.
614.4357 Computation of obligations.
614.4358 Attribution rules.
614.4359 Lending limit violations.
614.4360 Transition.

### Subpart J—Lending Limits

#### §614.4350 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity (except a Farm Credit System association or other financing institution, as defined in §614.4540 of this part) to which an institution has made a loan or a commitment to make a loan either directly or indirectly.

(b) *Commitment* means a legally binding obligation to extend credit, enter into lease financing, purchase or participate in loans or leases, or pay the obligation of another, which becomes effective at the time such commitment is made.

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender, including participation interests. The term "loan" includes loans outstanding, obligated but undisbursed commitments, contracts of sale, notes receivable, other similar obligations, guarantees, and lease financing. An institution "makes a loan" when it enters into a commitment to lend, advances new funds, substitutes a different borrower for a borrower who is released, or where any other person's liability is added to the outstanding loan or commitment.

(d) *Primary liability* means an obligation to repay that is not conditioned upon an unsuccessful prior demand on another party.

(e) *Secondary liability* means an obligation to repay that only arises after an unsuccessful demand on another party.

#### §614.4351 Computation of lending limit base.

(a) *Lending limit base.* An institution's lending limit base is comprised of the permanent capital of the institution, as defined in §615.5201(h) of this chapter, with the adjustments provided for in §615.5210(d)(1), (d)(2) and (d)(4) of this chapter, and paragraphs (a)(1) and (a)(2) of this section.

(1) Where one institution invests in another institution in order to capitalize a participation interest, the amount of investment in the purchasing institution that is owned by the originating institution shall be deducted from the purchasing institution's capital.

(2) Stock protected under section 4.9A of the Act may be included in permanent capital until January 1, 1998.

(b) *Timing of calculation.* The lending limit base will be calculated on a monthly basis as of the preceding month end.

#### §614.4352 Farm Credit Banks and agricultural credit banks.

(a) *Farm Credit Banks.* No Farm Credit Bank may make or discount a loan to a borrower, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceed 25 percent of the bank's lending limit base.

(b) *Agricultural credit banks.* (1) No agricultural credit bank may make or discount a loan to a borrower under the authority of title I of the Act, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds 25 percent of the bank's lending limit base.

(2) No agricultural credit bank may make or discount a loan to a borrower under the authority of title III of the Act, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds the lending limits prescribed in §614.4355 of this subpart.

#### §614.4353 Direct lender associations.

No association may make a loan to a borrower, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds 25 percent of the association's lending limit base.

#### §614.4354 Federal land bank associations.

No Federal land bank association may assume endorsement liability on any loan if the total amount of the association's endorsement liability on loans outstanding and undisbursed commitments to that borrower would exceed 25 percent of the association's lending limit base.

#### §614.4355 Banks for cooperatives.

No bank for cooperatives may make a loan if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds the following percentages of the lending limit base of the bank:

(a) *Basic lending limit.* (1) Term loans to eligible cooperatives: 25 percent.

(2) Term loans to foreign and domestic parties: 10 percent.

(3) Lease loans qualifying under §614.4020(a)(3) and applying to the lessee: 25 percent.

(4) Standby letters of credit qualifying under §614.4810: 35 percent.

(5) Guarantees qualifying under §614.4800: 35 percent.

(6) Seasonal loans exclusive of seasonal loans qualifying under §614.4231: 35 percent.

(7) Foreign trade receivables qualifying under §614.4700: 50 percent.

(8) Bankers' acceptances held qualifying under §614.4710 and seasonal loans qualifying under §614.4231: 50 percent.

(9) Export and import letters of credit qualifying under §614.4321: 50 percent.

(b) *Total lending limit.* (1) The sum of term and seasonal loans exclusive of seasonal loans qualifying under §614.4231: 35 percent.

(2) The sum of paragraphs (a)(1) through (a)(9) of this section: 50 percent.

#### §614.4356 Banks for cooperatives look-through notes.

Where a bank for cooperatives makes a loan to an eligible borrower that is

secured by notes of individuals or business entities, the basic lending limits provided in § 614.4355 may be applied to each original notemaker rather than to the loan to the eligible borrower, if:

(a) Each note is current and carries a full recourse endorsement or unconditional guarantee by the borrower;

(b) The bank determines the financial condition, repayment capacity, and other credit factors of the loan to the original maker reasonably justify the credit granted by the endorser; and

(c) The loans are fully supported by documented loan files, which include, at a minimum:

(1) A credit report supporting the bank's finding that the financial condition, repayment capacity, and other factors of the maker of the notes being pledged justify the credit extended by the bank and/or endorser;

(2) A certification by a bank officer designated for that purpose by the loan or executive committee that the financial responsibility of the original notemaker has been evaluated by the loan committee and the bank is relying primarily on each such maker for the payment of the obligation; and

(3) Other credit information normally required of a borrower when making and administering a loan.

**§ 614.4357 Computation of obligations.**

(a) *Inclusions.* The computation of total loans to each borrower for the purpose of computing their lending limit shall include:

(1) The total unpaid principal of all loans and the total amount of undisbursed commitments except as excluded by paragraph (b) of this section. This amount shall include loans that have been charged off on the books of the institution in whole or in part but have not been collected, except to the extent that such amounts are not legally collectible;

(2) Purchased interests in loans, including participation interests, to the extent of the amount of the purchased interest, including any undisbursed commitment;

(3) Loans attributed to a borrower in accordance with § 614.4358.

(b) *Exclusions.* The following loans when adequately documented in the loan file, may be excluded from loans to a borrower subject to the lending limit:

(1) Any loan or portion of a loan that carries a full faith and credit performance guaranty or surety of any department, agency, bureau, board, commission, or establishment of the United States government, provided there is no evidence to suggest that the guaranty has become unenforceable and the institution can demonstrate that it is in compliance with the terms and conditions of the guaranty.

(2) Any loan or portion of a loan guaranteed by a Farm Credit System institution, pursuant to the provisions of § 614.4345 on guaranty agreements. This exclusion does not apply to the institution providing the guaranty.

(3) Any loan or portion of a loan that is secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other obligations guaranteed as to principal and interest by the United States government, provided the loans are fully secured by the current market value of such obligations. If the market value of the collateral declines to below the balance of the loan, and the entire loan, individually, or when combined with other loans and undisbursed commitments to or attributed to the borrower, causes the borrower's total indebtedness to exceed the institution's lending limit, the institution shall have 5 business days to bring the loan into conformance before it shall be deemed to be in violation of the lending limit.

(4) Interests in loans sold, including participation interests, when the sale agreement meets the following requirements:

(i) The interest sold must be an undivided interest in the principal amount of the loan and in the collateral securing the loan; and

(ii) The interest must be sold without recourse; and

(iii) The agreement under which the interest is sold must provide for the sharing of all payments of principal, collection expenses, collateral proceeds, and risk of loss on a pro rata basis according to the percentage interest in the principal amount of the loan. Agreements that provide for the pro rata sharing to commence at the time of default or similar event, as defined in the agreement under which the interest is sold, shall be considered to be pro rata agreements, notwithstanding the fact that advances are made and payments are distributed on a basis other than pro rata prior to that time.

(5) Loans sold in their entirety to a pooler certified by the Federal Agricultural Mortgage Corporation, if an interest in a pool of subordinated participation interests is purchased to satisfy the requirements of title VIII of the Act.

**§ 614.4358 Attribution rules.**

(a) For the purpose of applying the lending limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of the following three conditions exist:

(1) *Liability.* (i) The borrower has primary or secondary liability on a loan made to the related borrower. The amount of such loan attributable to the borrower is limited to the amount of the borrower's liability.

(ii) This section does not require attribution of a guarantee taken out of an abundance of caution. To qualify for the abundance of caution exception to the requirements of this subpart, the institution must document in the loan file that the loan, when evaluated on the credit factors set forth in § 614.4160 of this part without considering the guarantee, would support the credit decision under the same basic terms and conditions.

(iii) For the banks for cooperatives and agricultural credit banks operating under title III authorities of the Act, look-through notes are exempt from the lending limit provisions provided they meet the criteria of § 614.4356.

(2) *Financial interdependence.* The operations of a borrower and related borrower are financially interdependent. Financial interdependence exists if the borrower is the primary source of repayment for a related borrower's loan, or if the operations of the borrower and the related borrower are commingled.

(i) The borrower shall be considered the primary source of repayment on the loan to the related borrower if the borrower is obligated to supply 50 percent or more of the related borrower's annual gross receipts, *and* reliance on the income from one another is such that, regardless of the solvency and liquidity of the borrower's operations, the debt service obligation of the related borrower could not be met if income flow from the borrower is interrupted or terminated. For the purpose of this paragraph, gross receipts include, but are not limited to, revenues, intercompany loans, dividends and capital contributions.

(ii) The assets or operations of the borrower and related borrower are considered to be commingled if they cannot be separated without materially impacting the economic survival of the individual operations and their ability to repay their loans.

(3) *Control.* The borrower directly or indirectly controls the related borrower. A borrower is deemed to control a related borrower if either paragraph (a)(3)(i) or (a)(3)(ii) of this section exist:

(i) The borrower, directly or acting through one or more other persons, owns 50 percent or more of the stock of the related borrower; or

(ii) The borrower, directly or acting through one or more other persons, owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and meets at least one of the following three conditions:

(A) The borrower shares a common directorate or management with a related borrower. A common directorate is deemed to exist when a majority of the directors, trustees, or other persons performing similar functions of one borrower also serves the other borrower in a like capacity. A common management is deemed to exist if any employee of the borrower holds the position of chief executive officer, chief operating officer, chief financial officer, or an equivalent position in the related borrower's organization.

(B) The borrower controls in any manner the election of a majority of directors of a related borrower.

(C) The borrower exercises or has the power to exercise a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping.

(b) Each institution shall make provisions for appropriately designating loans to a related borrower that are combined with the borrower's loan and attributed to the borrower to ensure that loans to the borrower are within the lending limits.

(c) *Attribution rules table.* For the purposes of applying the lending limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of three attribution rules are met as outlined in Table 1.

TABLE 1

| Attribution rule | Criteria per § 614.4358 | Attributs |
|---|---|---|
| (A) Liability | Borrower has primary or secondary liability | Yes.* |
| *to the extent of the borrower's liability | Borrower's liability is taken out of an abundance of caution | No.* |
| | Look-through notes (BC only) | No. |
| (B) Financial Interdependence | Source of Repayment: | |
| (Economic survival of the borrower's operation will materially impact economic survival of the related borrowers operation). | Borrower is obligated to supply 50 percent or more of related borrower's annual gross receipts, *and* reliance on the income from one another is such that the debt service of the related borrower could not be met if income flow from the borrower is interrupted or terminated. | Yes. |
| | Commingled Operations: | |
| | Assets or operations of the borrowers are commingled and cannot be separated without materially impacting the borrowers' repayment capacity | Yes. |
| (C) Control | The borrower owns 50 percent or more of the stock of the related borrower | Yes. |
| (The borrower, directly or indirectly, controls the related borrower). | The borrower owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and<br>(1) Shares a common directorate or management with a related borrower, or<br>(2) Controls the election of a majority of directors of a related borrower, or<br>(3) Exercises a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping | Yes. |

**§ 614.4359 Lending limit violations.**

(a) Each loan, except loans that are grandfathered under the provisions of § 614.4360, shall be in compliance with the lending limit on the date the loan is made, and at all times thereafter. Except as provided for in paragraph (b) of this section, loans which are in violation of the lending limit shall comply with the provisions of § 615.5090 of this chapter.

(b) Under the following conditions a loan that violates the lending limit shall be exempt from the provisions of § 615.5090 of this chapter:

(1) A loan in which the total amount of principal outstanding and undisbursed commitments exceed the lending limit because of a decline in permanent capital after the loan was made.

(2) Loans on which funds are advanced pursuant to a commitment that was within the lending limit at the time the commitment was made, even if the lending limit subsequently declines.

(3) A loan that exceeds the lending limit as a result of the consolidation of the debt of two or more borrowers as a consequence of a merger or the acquisition of one borrower's operations by another borrower. Such a loan may be extended or renewed, for a period not to exceed 1 year from the date of such merger or acquisition, during which period the institution may advance and/or readvance funds not to exceed the greater of:

(i) 110 percent of the advances to the borrower in the prior calendar year; or

(ii) 110 percent of the average of the advances to the borrower in the past 3 calendar years.

(c) For all lending limit violations except those exempted under § 614.4359(b)(3), within 90 days of the identification of the violation, the institution must develop a written plan prescribing the specific actions that will be taken by the institution to bring the total amount of loans and commitments outstanding or attributed to that borrower within the new lending limit, and must document the plan in the loan file.

(d) Nothing in this section limits the authority of the FCA to take administrative action, including, but not limited to, monetary penalties, as a result of lending limit violations.

**§ 614.4360 Transition.**

(a) A loan (not including a commitment) made or attributed to a borrower prior to the effective date of this subpart, which does not comply with the limits contained in this subpart, will not be considered a violation of the lending limits during the existing contract terms of such loans. A new loan must conform with the rules set forth in this subpart. A new loan includes but is not limited to:

(1) Funds advanced in excess of existing commitment;

(2) A different borrower is substituted for a borrower who is subsequently released; or

(3) An additional person becomes an obligor on the loan.

(b) A commitment made prior to the effective date of these regulations which exceeds the lending limit may be funded to the full extent of the legal commitment. Any advances that exceed

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the lending limit are subject to the provisions prescribed in § 614.4359.

**Subpart M—Loan Approval Requirements**

**§ 614.4470 [Amended]**

4. Section 614.4470 is amended by removing the reference "§ 614.4360(b)" and adding in its place "subpart J of this part" in paragraph (c).

**Subpart Q—Bank for Cooperatives Financing International Trade**

**§ 614.4710 [Amended]**

5. Section 614.4710 is amended by removing the reference "§§ 614.4350, 614.4354, and 614.4360" and adding in its place "subpart J" in the second sentence of the introductory paragraph; and by removing the reference "§ 614.4354" and adding "§ 614.4355" in the introductory paragraph at the second place it appears and in paragraphs (a)(2), (a)(3), and (b)(1).

Dated: July 20, 1993.

**Curtis M. Anderson,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 93–17917 Filed 7–27–93; 8:45 am]

BILLING CODE 6705–01–P

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 91–ANE–05; Amendment 39–8645; AD 93–14–20]**

## Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that requires initial and repetitive borescope inspections of high pressure turbine (HPT) stage 2 vane assemblies. This amendment is prompted by reports of uncontained engine failures. These failures were caused by distressed vanes inducing high vibratory stress on HPT stage 2 blades and the lenticular airseal. The actions specified by this AD are intended to prevent uncontained HPT stage 2 blade fractures or lenticular airseal failures.

**DATES:** Effective August 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, CT 06108. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130; fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines, was published in the **Federal Register** on January 10, 1992 (57 FR 1126). That action proposed to require initial and repetitive borescope inspections for distress of the high pressure turbine (HPT) stage 2 vane assemblies in accordance with PW Service Bulletin (SB) No. 5667, Revision 1, dated September 13, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the proposed rule does not apply to second stage HPT vane assemblies configured in accordance with PW SB No. 5829, Revision 4, dated November 14, 1990, (5829 vanes), PW SB No. 5895, Revision 2, dated October 16, 1990, (5895 vanes), or PW SB No. 5837, Revision 1, dated April 10, 1989 (5837 vanes). The commenter states that service experience shows that second stage HPT vane distress still occurs with the 5829 and 5837 vanes, and recommends that the AD apply to the 5829 and 5837 vanes as well. The Federal Aviation Administration (FAA) concurs. FAA analysis indicates that the service life and durability of the 5829 and 5837 vanes require the need for repetitive borescope inspections. The ceramic coated 5895 vanes, however, show greater durability with an improvement in vane metal temperature and vane life. The manufacturer has issued PW Service Bulletin No. 5667, Revision 2, dated June 11, 1992, which includes 5829 and 5837 vanes in the inspection program. The FAA has therefore changed the AD to include the 5829 and 5837 vanes, and has increased the number of engines affected in the economic analysis accordingly.

The commenter also states that the AD needs only to address the vane cluster assembly part numbers as these numbers are tracked by operators when HPT modules are built. The FAA concurs. The manufacturer has issued PW SB No. 5667, Revision 2, dated June 11, 1992, which lists only the vane cluster assembly part numbers. The FAA has changed the AD to reference this new revision of the SB.

One commenter mentioned that they had been performing borescope inspections of the second stage HPT vane assemblies for the past three years and that only one engine remains in service with the older second stage HPT vane assemblies. The commenter further states that there is no need for an AD since they are already in compliance with the requirements. This commenter requests that the FAA perform an audit to determine the number of engines that would be affected by adoption of this AD. If there are relatively few engines affected, and the operators of such engines are already performing inspections and have plans to shortly replace those second stage HPT vane assemblies with newer units, then an AD should not be issued. The FAA does not agree. The FAA completed an audit of the affected PW JT9D fleet. The audit indicates that approximately 70% of the world-wide fleet has not incorporated 5895 vanes. This audit confirms the need to issue the AD. In addition, operators who have already incorporated 5895 vanes on their engines are not required to accomplish the inspections of this AD.

Two comments state that the AD should refer to the appropriate aircraft maintenance manual instead of the PW maintenance manual (MM). The comments state that these PW MM's are written for the use by the airframe manufacturers, not operators, and the PW MM's are not readily available to the operators. The FAA does not agree. Aircraft MM's are often customized to meet individual operator's needs. These operator specific aircraft MM's may not receive engineering review by the Engine and Propeller Directorate or through a PW Designated Engineering Representative (DER). When citing a MM in an engine AD, the FAA considers imperative Engineering oversight of that MM by the Directorate, or the manufacturer's DER. Therefore, the AD will continue to reference the PW MM. The sections of the PW MM referenced in the AD are available either through PW or the FAA.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has revised the estimate of economic impact to reflect an increase in the number of engines affected.

There are approximately 602 PW JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 125 engines on aircraft of U.S. Registry will be affected by this AD, that the inspection will be performed approximately 6 times annually, the inspections will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $82,500 annually.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–14–20 Pratt & Whitney:** Amendment 39–8645. Docket No. 91–ANE–05.

*Applicability:* Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines installed on, but not limited to Boeing 747, McDonnell Douglas DC–10, and Airbus A300 aircraft, in which the following high pressure turbine (HPT) stage 2 vane assemblies, identified by vane cluster assembly part numbers, are installed: 743772, 774872, 806272, 807372, 807772, 807072, and 808372.

*Compliance:* Required as indicated, unless previously accomplished.

To prevent uncontained HPT stage 2 blade fractures or lenticular airseal failures, accomplish the following:

(a) For engines that have not incorporated the requirements of PW Service Bulletin (SB) 5566, Revision 5, dated August 10, 1990, and the requirements of PW SB 5428, Revision 3, dated March 12, 1984, borescope inspect the HPT stage 2 vanes in accordance with the Accomplishment Instructions of PW SB 5667, Revision 2, dated June 11, 1992, and in accordance with the criteria identified in the applicable PW Maintenance Manual (MM) listed in paragraph (c) of this AD, prior to accumulating 1,000 hours time in service (TIS) since vane installation, or within the next 125 hours TIS after the effective date of this AD, whichever occurs later, and remove from service, prior to further flight, second stage turbine vanes exhibiting distress beyond serviceable limits.

(b) For engines that have incorporated the requirements of PW SB 5566, Revision 5, dated August 10, 1990, and PW SB 5428, Revision 3, dated March 12, 1984, borescope inspect the HPT stage 2 vanes in accordance with the Accomplishment Instructions of PW SB 5667, Revision 2, dated June 11, 1992, and in accordance with the criteria identified in the applicable PW MM listed in paragraph (c) of this AD, prior to accumulating 2,000 hours total part TIS since new on the entire set of vanes, or within 1,000 hours TIS since vane installation, or within the next 125 hours TIS after the effective date of this AD, whichever occurs later, and remove from service, prior to further flight, second stage turbine vanes exhibiting distress beyond serviceable limits.

(c) Thereafter, inspect the HPT stage 2 vanes in accordance with the criteria identified in the following PW MMs, and remove from service, prior to further flight, HPT stage 2 vanes exhibiting distress beyond serviceable limits.

| Engine models | MM part number/Revision date | Section/Table |
|---|---|---|
| JT9D–7Q/7Q3 | 783777/December 25, 1989. | 72–00–00/604A |
| JT9D–59A/–70A | 783778/April 25, 1990. | 72–00–00/605A |
| JT9D–59A | 763779/September 15, 1989. | 72–00–00/605 |

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from Engine Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with the following service document:

| Document no. | Pages | Issue | Date |
|---|---|---|---|
| PW SB No. 5667. Total pages: 6. | 1–6 | Revision 2. | June 11, 1992. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 27, 1993.

Issued in Burlington, Massachusetts, on July 19, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17941 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93-ANE-28; Amendment 39-8503; AD 93-10-02]

## Airworthiness Directives; Teledyne Continental Motors O-200, O-300, IO/TSIO/LTSIO-360, O/IO/TSIO-470, IO/TSIO/LTSIO/GTSIO-520 and IO/TSIO/TSIOL-550 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 93-10-02 that was sent previously to all known U.S. owners and operators of Teledyne Continental Motors (TCM) O-200, O-300, IO/TSIO/LTSIO-360, O/IO/TSIO-470, IO/TSIO/LTSIO/GTSIO-520 and IO/TSIO/TSIOL-550 series reciprocating engines by individual letters. This AD requires inspection of affected engines to determine for each cylinder if the valve retainer key is missing or the roto coil, if applicable, is mispositioned; and repair or replacement, if necessary, of those cylinders. This amendment is prompted by a report from TCM of an engine shipped from the factory containing a cylinder with a valve retainer key missing. The actions specified by this AD are intended to prevent an engine failure due to a missing cylinder valve retainer key.

DATES: Effective on August 12, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93-10-02, issued on May 17, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-28, 12 New England Executive Park, Burlington, MA 01803-5299.

The applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438-3411 ext. 305, fax (205) 438-3411 ext. 179. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349; telephone (404) 991-3810; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: On May 17, 1993, the Federal Aviation Administration (FAA) issued priority letter AD 93-10-02, applicable to Teledyne Continental Motors (TCM) O-200, O-300, IO/TSIO/LTSIO-360, O/IO/TSIO-470, IO/TSIO/LTSIO/GTSIO-520, and IO/TSIO/TSIOL-550 series reciprocating engines listed by serial number in TCM Mandatory Service Bulletin (MSB) No. 93-12, dated May 12, 1993, or that contain cylinder assemblies purchased from TCM between July 29, 1992, and March 30, 1993. That priority letter AD requires inspection of affected engines to determine for each cylinder if the valve retainer key is missing or the roto coil, if applicable, is mispositioned; and repair or replacement, if necessary, of those cylinders. That action was prompted by a report from TCM of an engine shipped from the factory containing a cylinder with a valve retainer key missing. There has been one additional report from an operator of an engine failure resulting from a cylinder with a missing valve retainer key. There were 2,786 engines shipped from the factory between July 29, 1992, and March 30, 1993, that may be missing valve retainer keys, as well as an unspecified number of individual cylinder assemblies. On certain engine models, a missing valve retainer key may be indicated by a mispositioned roto coil. A missing valve retainer key on either the intake or exhaust valve will result in complete engine failure in a very short timeframe. The FAA has determined that cylinders that operate normally for 25 hours time in service (TIS) after new, rebuild, or overhaul do not have missing valve retainer keys, and therefore need not be inspected. This condition, if not corrected, could result in an engine failure due to a missing cylinder valve retainer key.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin No. 93-12, dated May 12, 1993, that lists affected engines by serial number and describes procedures for inspection of cylinders to determine if the valve retainer key is missing or the roto coil, if applicable, is mispositioned.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 93-10-02 to prevent an engine failure due to a missing cylinder valve retainer key. The AD requires inspection of affected engines to determine for each cylinder if the valve retainer key is missing or the roto coil, if applicable, is mispositioned; and repair or replacement, if necessary, of those cylinders. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letter issued on May 17, 1993, to all known U.S. owners and operators of engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–28." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–10–02 Teledyne Continental Motors:** Amendment 39–8603. Docket 93–ANE–28.

*Applicability:* Teledyne Continental Motors (TCM) O–200, O–300, IO/TSIO/LTSIO–360, O/IO/TSIO–470, IO/TSIO/LTSIO/GTSIO–520, and IO/TSIO/TSIOL–550 series reciprocating engines listed by serial number in TCM Mandatory Service Bulletin (MSB) No. 93–12, dated May 12, 1993, or that contain cylinder assemblies purchased from TCM between July 29, 1992, and March 30, 1993; installed on but not limited to: Aeronca Models 15AC and S15AC; American Champion (Bellanca) Models 7ACA and 402; Beagle Model 206S; Beech Models Debonaire, Bonanza, and Baron; Bellanca Models 14–19, 14–19–2, 14–19–3, 14–19–3A, 17–30, 17–31, and 17–31TC; Cessna Models 150, 170, 172, 180, 182, 185, 188, 205, 206, 207, 210, 303, 310, 320, 335, 336, 337, 340, 401, 402, 404, 414, 421, and T41; Aero Commander Models 200, 500, and 685; Champion Models Citabria and Lancer; Maule Models Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4–210, M–4–210C, M–4–210S, M–4–210T, and M–5–210C; Mooney Models 231 and 252; Navion series; Piper Models Arrow, Seneca, and PA46–310P; and Taylorcraft Model F–19 aircraft.

*Compliance:* Required prior to further flight, unless previously accomplished.

To prevent an engine failure due to a missing cylinder valve retainer key, accomplish the following:

(a) For engines that have less than 25 hours time in service (TIS), or unknown TIS, on the effective date of the AD since new, rebuild, or factory overhaul, visually inspect each cylinder to determine if both valve retainer keys are in place on each valve, and if the roto coil, if applicable, is properly positioned, in accordance with TCM MSB No. 93–12, dated May 12, 1993.

**Note:** Certain TCM engine models do not incorporate roto coils in the valve assembly.

(1) If a valve retainer key is missing, or if a roto coil, if applicable, is mispositioned, repair or replace the cylinder, as necessary, in accordance with the applicable TCM Overhaul Manual.

(2) If the valve retainer keys are in place, and the roto coil, if applicable, is correctly positioned, return engine to service in accordance with TCM MSB No. 93–12, dated May 12, 1993.

(b) For engines with individually installed new service or chrome plated cylinder assemblies purchased from TCM between July 29, 1992, and March 30, 1993, that have less than 25 hours TIS on the effective date of this AD since installation of any cylinder(s), visually inspect each new service or chrome plated cylinder, and repair or replace the cylinder, as necessary, in accordance with paragraph (a) of this AD.

(c) Uninstalled cylinder assemblies purchased from TCM between July 29, 1992, and March 30, 1993, must be inspected and repaired, as necessary, in accordance with paragraph (a) of this AD prior to installation on an engine.

(d) For engines that have 25 hours or more TIS on the effective date of this AD, since new, rebuild, or factory overhaul, no inspection is required.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) The inspections shall be done in accordance with the following service bulletin:

| Document no. | Pages | Revision | Date |
|---|---|---|---|
| TCM MSB No. 93–12. Total pages: 7. | 1–7 | Original ... | May 12, 1993. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411 ext. 305, fax (205) 438–3411 ext. 179. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 12, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–10–02, issued May 17, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on June 17, 1993.

**Michael H. Borfitz,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–17942 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 97**

**[Docket No. 27359; Amdt. No. 1555]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures

(SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
2. The Flight Inspection Field Office which originated the SIAP.

*For Purchase—*

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on July 16, 1993.

**Thomas C. Accaridi,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective September 16, 1993*

Dodge City, KS, Dodge City Regional, VOR RWY 14, Amdt. 17
Dodge City, KS, Dodge City Regional, ILS RWY 14, Amdt. 1
Tangier, VA, Tangier Island, VOR/DME RWY 2, Orig.
Tangier, VA, Tangier Island, VOR/DME RWY 2, Amdt. 6, Cancelled

* * * *Effective August 19, 1993*

Goodland, KS, Renner Field (Goodland Muni), RNAV RWY 12, Amdt, 4, Cancelled
Santa Fe, NM, Santa Fe County Muni, VOR RWY 33, Amdt. 7

Santa Fe NM, Santa Fe County Muni, VOR/DME-A, Orig.
Santa Fe, NM, Santa Fe County Muni, NDB RWY 2, Amdt. 3
Santa Fe, NW, Santa Fe County Muni, ILS RWY 2, Amdt. 3
Dickinson, ND, Dickinson Muni, NDB RWY 32, Orig.
Dickinson, ND, Dickinson Muni, ILS RWY 32, Orig.
Dickinson, ND, Dickinson Muni, ILS/DME RWY 32, Amdt. 3, Cancelled
East Stroudsburg, PA Birchwood-Pocono Airpark, VOR/DME RWY 32, Amdt. 3 Cancelled
Gordonsville, VA Gordonsville Muni, VOR-A, Amdt. 2, Cancelled

* * * *Effective July 6, 1993*

Gallatin, TN, Sumner County Regional, RADAR-1, Amdt. 3

[FR Doc. 93–17971 Filed 7–27–93; 8:45 am]
BILLING CODE 4910–13–M

## 14 CFR Part 97

[Docket No. 27360; Amdt. No. 1556]

## Standard Instrument Approach Procedures: Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference and realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAM have been cancelled. The FDC/P NOTAMs for the SIAPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on July 16, 1993.

Thomas C. Accardi,

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

**PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES**

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR, or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

| Effective | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 06/02/93 | OK | Henryetta | Henryetta Muni | 3/2946 | NDB RWY 35 AMDT 2... |
| 06/11/93 | WV | Clarksburg | Benedum | 3/3477 | ILS RWY 21 AMDT 12...THIS CORRECTS NOTAM IN PREVIOUS TL. |
| 06/16/93 | IA | Fort Dodge | Fort Dodge Regional | 3/3196 | ILS RWY 6 AMDT 6... |
| 06/16/93 | VT | Barre-Montpelier | Edward F. Knapp | 3/3191 | ILS RWY 17 AMDT 4... |
| 06/17/93 | TN | Memphis | Memphis Intl | 3/3219 | ILS RWY 36R AMDT 8A... |
| 06/21/93 | MS | Natchez | Hardy-Anders Field Natchez-Adams County. | 3/3285 | NDB RWY 17 AMDT 4... |
| 06/21/93 | MS | Natchez | Hardy-Anders Field Natchez-Adams County. | 3/3286 | VOR RWY 17 AMDT 10... |
| 06/22/93 | CA | San Francisco | San Francisco Intl | 3/3328 | ILS RWY 28L AMDT 19A... |
| 06/22/93 | MS | Natchez | Hardy-Anders Field Natchez-Adams County. | 3/3326 | VOR/DME RWY 13 AMDT 2... |
| 06/25/93 | SC | Hilton Head Island | Hilton Head | 3/3411 | RNAV RWY 3 AMDT 4... |
| 06/25/93 | SC | Hilton Head Island | Hilton Head | 3/3412 | RNAV RWY 21 AMDT 4... |
| 06/25/93 | SC | Hilton Head Island | Hilton Head | 3/3413 | VOR/DME-A AMDT 9A... |
| 06/29/93 | NH | Portsmouth | Pease International/Tradeport | 3/3484 | VOR OR TACAN RWY 16 AMDT 1... |
| 06/29/93 | NH | Rochester | Skyhaven | 3/3482 | VOR/DME-A ORIG... |
| 07/02/93 | FL | Jacksonville | Craig Muni | 3/3528 | ILS RWY 32 AMDT 2... |
| 07/02/93 | GA | Atlanta | The William B. Hartsfield Atlanta Intl. | 3/3532 | ILS RWY 08L AMDT 1... |
| 07/03/93 | GA | Atlanta | The William B. Hartsfield Atlanta Intl. | 3/3533 | ILS RWY 27R AMDT 2... |
| 07/02/93 | GA | Brunswick | Glynco Jetport | 3/3531 | RNAV RWY 25 AMDT 6A... |
| 07/02/93 | GA | Brunswick | Glynco Jetport | 3/3537 | ILS RWY 7 AMDT 7A... |
| 07/02/93 | GA | Brunswick | Glynco Jetport | 3/3539 | NDB RWY 7 AMDT 9A... |
| 07/02/93 | GA | Brunswick | Glynco Jetport | 3/3540 | RNAV RWY 7 AMDT 6A... |
| 07/02/93 | GA | Brunswick | Glynco Jetport | 3/3593 | BOR/DME-B AMDT 6A... |
| 07/02/93 | GA | La Grange | Callaway | 3/3534 | ILS RWY 31 AMDT 1... |
| 07/02/93 | GA | Savannah | Savannah Intl | 3/3535 | ILS RWY 9 AMDT 25... |
| 07/02/93 | GA | Tifton | Henry Tift Myers | 3/3536 | ILS RWY 33 ORIG... |
| 07/02/93 | MO | St. Louis | Spirit of St. Louis | 3/2950 | ILS RWY 8R AMDT 12B... |
| 07/13/93 | IA | Sioux City | Sioux Gateway | 3/3761 | ILS RWY 31 AMDT 24A... |

[FR Doc. 93-17972 Filed 7-27-93; 8:45 am]

BILLING CODE 4910-13-M

## CONSUMER PRODUCT SAFETY COMMISSION

**16 CFR Parts 1500 and 1505**

**Exemption of Video Games From Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children**

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission exempts video games from its safety regulations for electrically-operated toys and other electrically-operated articles intended for use by children. Video games are exempted because application of the regulations to video games would be unlikely to reduce future injuries to children. Further, compliance with the regulations would cause testing, recordkeeping, and labeling costs.

**EFFECTIVE DATE:** This change is effective August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Frank Krivda, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0400.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Electrically-Operated Toys*

The Consumer Product Safety Commission ("Commission" or "CPSC") administers the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1277. Before the Commission was created, the FHSA was administered by the Food and Drug Administration

("FDA"). In 1972, the FDA proposed safety regulations under the FHSA for electrically-operated toys and other electrically-operated articles intended for use by children. In 1973, the FDA issued these regulations, and the Commission later republished them in the Code of Federal Regulations at 16 CFR 1500.18(b)(1) and part 1505. 38 FR 6138 (March 7, 1973) and 38 FR 27032 (Sept. 27, 1973).

The regulations for electrically-operated toys apply to "any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children which is intended to be powered by electrical current from nominal 120 volt (110-125 V.) branch circuits." 16 CFR 1505.1(a)(1). They do not apply to components powered by circuits of 30 volts rms (42.4 volts peak) or less, or to articles designed primarily for use by adults that may be used incidentally by children. *Id.*

The Commission's regulations for electrically-operated toys contain requirements for labeling, manufacturing, electrical design and construction, performance, and maximum acceptable temperatures for surfaces and materials. If any toy or other children's article fails to meet a regulatory requirement, it is a "banned hazardous substance" under the FHSA. 15 U.S.C. 1261(q)(1)(A).

*B. Application to Video Games of the Regulations for Electrically-Operated Toys*

In 1972, the Electronic Industries Association's Consumer Electronics Group ("EIA/CEG") asked FDA for an interpretation of the proposed regulations for electrically-operated toys as they applied to consumer electronic equipment (February 17, 1972, letter from J. Edward Day, Esq.). FDA's Deputy Commissioner responded that "I should like to assure you that the proposal . . . is not intended to apply to television and radio receivers, phonographs, tape equipment, and audio components" (March 2, 1972, letter from FDA Deputy Commissioner James D. Grant). However, FDA indicated that the rule would apply to record players intended specifically for use by small children. *Id.*

Since the early 1970's, a wide variety of video games have been marketed. In 1982, the Commission's compliance staff decided that the regulations for electrically-operated toys applied to video games and informed certain video game manufacturers of this determination. The EIA/CEG and some manufacturers disagreed with that decision, and the industry made plans to petition the Commission for an exemption from the regulations. The compliance staff decided informally not to enforce the regulations against video games while such a petition was under consideration.

*C. EIA/CEG Petition for an Exemption for Video Games*

On December 21, 1983, EIA/CEG submitted its petition (docketed by the Commission as petition HP 84-1). The petition made the following points:

1. Most video games are designed for teenagers and adults.

2. Application of the regulations for electrically-operated toys to video games raises insurmountable definitional problems.

3. Video game safety is already assured.

4. The regulations burden manufacturers with recordkeeping, testing, and labeling requirements.

5. Commission policy would be served by excluding video games from the regulations.

Despite its request for an exemption, the EIA/CEG did not concede that video games actually fall within the scope of the regulations. The petition asserted that the regulations were never intended to cover electronic video games because (a) such games do not fall within the traditional scope of the regulations and (b) they are like televisions and other home entertainment devices that FDA had indicated were not subject to the regulations for electrically-operated toys.

*D. Commission Action on the Petition*

For reasons discussed below, the Commission preliminarily found that many video games fall within the FHSA's definition of toys and other articles intended for use by children, as well as within the scope of the Commission's regulations for electrically-operated toys. 15 U.S.C. 1261(f)(1)(D); 16 CFR part 1505. However, the Commission preliminarily concluded that video games present a small risk of injury to children, and application of the regulations to video games would be unlikely to reduce future injuries to children. Further, compliance with the regulations for electrically-operated toys would involve testing, recordkeeping, and labeling costs for manufacturers. Therefore, the Commission granted petition HP 84-1 and issued proposed changes to the regulations for electrically-operated toys that would generically exclude video games. 57 FR 46349 (October 8, 1992).

**II. Interpretation of the Applicability to Video Games of the Regulations for Electrically-Operated Toys**

Video games as a product group are difficult to define, but, for the purposes of this exemption, the term video games refers to video game hardware systems, which consist of games which produce a dynamic video image and which have some way to control movement of portions of the video image. The image may be produced on a specially manufactured viewing screen or, by the use of cables or remote controls, on a television set. The term includes only hardware systems (the console, cables, and controls); nonelectrical software systems (the video game cartridges) are not included, although software systems are required in order to operate the games.

The Commission concludes that video games, as defined above, are products intended for use by children, as that term is used in section 2(f)(1)(D) of the FHSA, and are thus subject to the electrically-operated toy regulation if they are powered by current from nominal 120 volts branch circuits. A U.S. Court of Appeals held that the determination of such intent "is vested in the sound discretion of the Commission." *Forester* v. *CPSC*, 559 F.2d 774 (D.C. Cir. 1977).

The fact that a children's product is also used by adults does not mean that the product is not intended for use by children under § 2(f)(1)(D). The *Forester* case was a challenge to the Commission's regulation of bicycles under the FHSA. Before issuing the regulation, the Commission had found that a large percentage of bicycles were of types that were used by adults, children, and adolescents, and that there was no precise way of distinguishing between the ones intended exclusively for adults and those intended for children as well as adults. 39 FR 26100 (1974). The Court upheld the bicycle regulation, refusing to find that the Commission "abused its discretion or acted contrary to law in determining that all bicycles except those excluded from the regulation are 'intended for use by children.'" *Forester* at 786.

In a more recent case, a Court considered FHSA jurisdiction over lawn darts. *First National Bank of Dwight* v. *Regent Sports Corp.*, 803 F.2d 1431 (7th Cir. 1986). The Court stated that sports equipment intended for the use of children falls within the statutory definition.

Under these principles, the Commission concludes that video games, as a product class, are intended

for use by children and fall within the meaning of the FHSA term "toy or other article intended for use by children." Based on such objective factors as advertising, marketing, and use patterns for these products, the Commission concludes that use of video games by children is reasonably foreseeable and that video games are therefore intended for use by children. *See U.S. v. Articles of Banned Hazardous Substances Consisting of 1030 Gross (More or Less) of Baby Rattles*, 614 F. Supp. 226, 231 (E.D.N.Y. 1985); *U.S. v. Focht*, 882 F.2d 55 (3rd Cir. 1989).

The Commission also concluded that most video games are the types of electrically-operated toys or articles intended for use by children that are within the scope of the regulation since they are intended to be powered from nominal 120 volt branch circuits. Video games that can be powered only by batteries are not currently subject to the regulation.

Only video games as described above are being exempted. However, the Commission notes that a product is not covered by the regulation in the first place unless it is a "toy or other article intended for use by children" as that term is used in section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D). Many home computers, for example, are not specifically adapted for use by children, and are thus not subject to the regulation for electrically-operated toys. For example, a home computer whose ability to function as a video game is incidental to other functions it can perform, which does not contain features intended to make the computer especially suitable for children, and which is not marketed as being especially advantageous for use by children may not be considered to be intended for use by children. In any event, such home computers would seem to fall within the intent of FDA's earlier interpretation that TV sets and other articles intended for the use of adults, but that are also used by children, are not within the scope of the regulation. The Commission sees no reason why this earlier interpretation by FDA should be changed.

### III. Effects of Applying the Regulations for Electrically-Operated Toys to Video Games

The Commission's Directorate for Epidemiology has reports of 36 incidents from January 1, 1983, through December 31, 1992, that may be related to the electrical aspects of products subject to this petition. Thirty-three of these incidents involved fires. Of these 33 fire incidents, 7 reports indicated that the fire was caused by either the video game or a television set, 5 reports cited short circuits, 11 cited the transformer or the AC adapter, 1 an overload in the AC circuit, and 2 an overload of a video computer game. The remaining seven fire incidents were categorized as involving video games, but the specific cause was not reported. The three remaining non-fire electrical incidents consisted of two incidents of electrical shock and one incident of plug failure.

There were 5 deaths and 10 injuries associated with the 36 reported incidents. One of the fire incidents resulted in four fatalities, but the exact involvement of the video game as a fire source was not established in that case. The other death occurred in a house fire started when an electrical adapter for a video game overheated while it was plugged into an electrical outlet.

Electronic video games are currently designed and tested to an existing voluntary standard (UL 961, Hobby and Sports Equipment). The Commission's Engineering Staff compared the Commission's regulations for electrically-operated toys with UL 961 to determine how effective each standard is in addressing electrical and thermal hazards associated with video games.

The Commission concludes that, despite differences in the requirements for video games in the CPSC regulation and the UL standard, there would not be a significant decrease in the risk of injury to children if the Commission enforced its regulation. The staff was unable to conclude from the 36 reports of incidents involving video games that any of these incidents would have been prevented had the games complied with all the requirements of the CPSC regulation for electrically-operated toys rather than only with the UL standard. Although the CPSC regulations do contain more stringent requirements in some areas, these deal with accessibility to electrically-live parts, labeling, and excessive surface temperatures in normal operation (to protect against burns, not against fires caused by failures or defects, which are addressed by the UL standard). None of the risks addressed by the CPSC standard but not the UL standard was found to be involved in the 36 known incidents, most of which were reported as fires.

If the regulations for electrically-operated toys were applied to video games, industry would incur a number of costs. These would include testing each model for compliance, keeping records of such testing, maintaining the records for three years, and labeling the games' packaging and transformers.

### IV. Regulatory Analysis

When issuing requirements under the FHSA, the Commission is required to develop a final regulatory analysis containing a discussion of various factors, including a description of the potential benefits and potential costs of the regulation (including any benefits or costs that cannot be quantified in monetary terms), an identification of those likely to receive the benefits and bear the costs, and a description of any reasonable alternatives to the regulation, together with a summary description of their potential costs and benefits and brief explanation why such alternatives were not chosen. Although these findings do not apply to rules granting exemptions from preexisting requirements, a discussion of these topics is given below. (See Section VII below concerning appropriate rulemaking procedure for exemptions.)

#### *A. Costs and Benefits of the Exemption*

*Costs.* Potential costs of exempting electronic video games from the current regulation, if any, will be borne by purchasing consumers, and their families, friends, and neighbors. The potential costs consist of the possibility that future injuries, deaths, or property damage will be associated with games that did not comply with the current regulation's requirements and that such injuries and deaths would have been prevented if the games had complied with the regulations. The Commission is aware of 33 fire incidents that occurred during the period from January 1, 1983, to December 31, 1992, that may have been related to the electrical aspects of products that will be subject to this exemption. In most of these cases, the available information does not permit a determination of whether a video game was responsible for the fire. The Commission's Engineering Sciences staff concluded that "[a] review of incidents associated with video games did not reveal any that would have been prevented had the games been manufactured in accordance with the requirements of the Federal regulation 16 CFR part 1505." At the end of 1992, there were an estimated 45-50 million video games in use. Video games are found in an estimated 50 percent of U.S. households. The current market is dominated by two firms, one of which accounts for nearly 70 percent of total sales.

Costs may also be incurred if future sales of video games included units which were significantly more hazardous than those marketed over the last decade. However, there is no information to suggest that future

entrants will market poorer quality hardware in order to obtain a price advantage, and the cost of hardware is not the primary determinant of demand. The current market leaders reached their market dominance through the marketing of popular game cartridges that are compatible only with their own hardware. Purchase decisions appear to be driven by the amount and popularity of the games' software, rather by than the price of the hardware systems.

The Commission's staff estimates that the number of "second-generation" (8-bit) video games in use has reached a 40 percent saturation of U.S. Homes. Trade sources indicate that this segment of the video game market is not expected to increase significantly, and these games are directed most heavily (through advertising and software content) at those households with members aged 8-15. Second-generation systems also see considerable use outside the target population. Future increases in households owning video games are expected to come from "third-generation" (16-bit) and "fourth-generation" (24-bit) systems, which currently are primarily targeted at consumers over 15 years of age. An estimated 15 percent of U. S. households had a third-generation system at the end of 1992.

Based on available epidemiological and engineering information, the CPSC staff expects no potential injuries or deaths to be associated with the exemption of video games from the electric-toy regulations. Thus, there will be no societal costs imposed by the exemption.

*Benefits.* The exemption will provide benefits to manufacturers through a continued avoidance of cost increases associated with compliance with the electric-toy regulations. The future purchasers of these products will also receive these benefits through the avoidance of retail price increases related to compliance. Manufacturers and retailers will also benefit through the elimination of uncertainty about enforcement of existing regulations, and from clarification of the requirements applicable to future product development.

The imposition of the requirements of 16 CFR part 1505 on video games would add certain costs to their production. As noted above, current production is designed and tested to an existing voluntary standard (UL 961, Hobby and Sports Equipment), and there are differences between requirements under the voluntary UL standard and the mandatory regulations under 16 CFR part 1505. For example, the mandatory regulation requires labels on both packages and instructional literature, while the UL standard requires labeling only on the product itself. (The per-unit costs of increased labeling, however, are not likely to be significant.) There are also differences between the two standards in construction and performance requirements.

Trade sources indicate that compliance with the CPSC electric-toy regulations could require a significant retooling of the hardware, and video game consoles could have to be significantly changed. For instance, the plastic console may require reinforcement in order to meet the CPSC regulation's drop test, compression test, and pressure test requirements. Also, the existing CPSC regulation does not allow detachable cords, which might affect the portability of video hardware systems. Each of these modifications could entail design and production cost increases.

Modification of the hardware also could require modification of the game cartridges. If this occurred, existing machines might be incompatible with future cartridges, resulting in increased costs to consumers wishing to compile a library of video games, or in decreased utility for those who are not in a position to purchase the modified hardware and software. Such a situation may result in a consumer rejection of the concept of home video games, as occurred in the early 1980's. This type of consumer rejection is not similar to consumers switching to third-generation systems, which, because of superior visual quality and graphics, provide a more desirable product to the consumer.

Industry sources have not indicated what the expected per-unit price increase would be if the mandatory standard were applied to future production of video games; however, the total cost to society could be substantial due to the numbers of units involved. Over the period 1985-92 (the period during which current second-generation video games have been marketed), video game hardware sales averaged about eight million units annually (including third-generation video games from 1989-92); an estimated 15 million units were sold in 1992, at an average retail price of about $125 each. If any modifications required by CPSC's current regulation added only a 1 percent increase at retail, the annual cost to consumers could be about $10 million (based on average sales).

Hand-held video games are designed to be used with batteries. Hand-held video games that are not sold with AC adapters are not subject to the regulations for electrically-operated toys because they operate on less than 30 volts rms. Some hand-held units, however, are sold with adapters that step down the AC house voltage to the voltage provided by the batteries. In this case, the AC adapter and the video game's package would be subject to the requirements of the electrically-operated toy regulation because the adapter operates off 120 volts.

Hand-held units are not included in the analysis given above because the Commission's staff does not know what percentage of hand-held units are subject to the regulations for electrically-operated toys because they are sold with AC adapters. To the extent such units would need to be changed if the Commission were to enforce this regulation, however, the annual costs to consumers given above would be increased. (An estimated five million hand-held units were sold in 1992, at an average price of about $90.)

Industry sources indicate that compliance with the existing electric-toy regulation would also impose additional recordkeeping, testing, and labeling costs on manufacturers. These sources indicate that compliance with the existing rule "would impose substantial burdens on manufacturers." These costs would likely be passed on to purchasers in the form of higher prices.

Another benefit of the exemption, considered by industry sources to be most significant, will be the elimination of market uncertainty involving future sales of these products. Recent products have been designed to be in compliance with the UL standard. If the more stringent mandatory standards are applied (despite the lack of known safety benefits), the product features required by such standards might place limitations on the innovations that can be designed for these products. The Commission is unable to determine the extent to which this consideration will be a significant benefit of the exemption. To the extent it is, however, withholding the exemption could have an adverse effect on innovation, such as the recent introduction of third- and fourth-generation systems.

An effective date as early as 30 days after publication of the final rule in the **Federal Register** will have little or no effect on the quantifiable costs and benefits associated with this exemption. Manufacturers and marketers will be expected to receive some benefits associated with removal of market uncertainty; these benefits will accrue at the time the industry becomes aware of the rule, rather than at the effective date. Thus, the timing of the effective date is not likely to affect marketers or consumers of these products.

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*B. Alternatives to the Rule*

As one alternative to the exemption, the Commission could have determined that electronic video games should comply with the existing electric-toy regulation. The Commission considered this option and decided to reject this alternative because the uncertain level of benefits accruing through enforcement may be significantly less than potential costs associated with this option.

Another alternative would be for the Commission to issue a statement of enforcement policy stating that the Commission would not enforce the existing regulation as to video games. However, such a statement of policy may not assuage manufacturers' concerns over continued future action involving video games. The resulting uncertainty may lead to market disruption through postponements in innovation.

Because electronic video games are currently designed and tested to existing voluntary standard UL 961, another possible alternative to the exemption of video games from the present mandatory standard would be to amend the mandatory standard to be essentially identical to the current UL standard. This would not be a feasible or desirable alternative for two reasons. First, the Commission is prohibited by statute from issuing a mandatory standard for a product when there is an adequate applicable voluntary standard for the product and there is substantial compliance with such voluntary standard. FHSA section 3(i)(2)(A); 15 U.S.C. 1262(i)(2)(A). This appears to be the situation with respect to video games and UL 961. Second, it is quicker and more feasible to revise a voluntary standard in response to changes in a product's design or use than it is to revise a mandatory standard.

The Commission determined that the available feasible alternatives may not address the concerns of the parties that petitioned the Commission for an exemption. Further, potential future hazards from video games with design or manufacturing defects may be addressed through section 15(c) of the FHSA, 15 U.S.C. 1274(c), without reliance on the existing regulations for electrically-operated toys.

**V. Environmental Impact**

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission's staff performed a preliminary assessment of the environmental impact associated with the rule. The assessment addresses the potential effects of an exemption of video games from existing regulations for electrically-operated toys.

The rule is not expected to affect preexisting packaging, molds, printed circuit boards, plastic stocks, production processes, or other materials of construction now in the hands of manufacturers. Thus, there will be no destruction or discarding of existing materials. Existing inventories of finished products, including those at retail, will not be rendered unusable through the implementation of the rule. Further, inventories will not require retrofit in order to comply with the exemption.

The requirements of the rule are not expected to have a significant effect on the materials used in production or packaging of video games, or on the amount or types of materials discarded after the rule. Therefore, the Commission finds that no significant environmental effects will result from the exemption for video games.

**VI. Final Regulatory Flexibility Analysis**

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601-612) requires agencies to prepare a final regulatory flexibility analysis whenever a general notice of proposed rulemaking is required for a rule. This analysis shall describe the impact of the rule on small businesses, small organizations, and small government jurisdictions. A regulatory flexibility analysis is not required, however, where the agency certifies that the rule is not likely to have a significant economic impact on a substantial number of small entities.

Since this exemption merely formalizes existing industry and regulatory practices and does not make substantial changes in the Commission's enforcement activities, it is not likely to have a significant impact on small businesses or other small entities. Accordingly, the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

**VII. Rulemaking Procedure**

The Commission's regulations for electrically-operated toys were issued under the authority of section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D), which includes within the definition of hazardous substance "[a]ny toy or other article intended for use by children which the [Commission] by regulation determines, in accordance with section 3(e) of [the FHSA, 15 U.S.C. 1262(e)], presents an electrical, mechanical, or thermal hazard." Under section 3(e)(1), 15 U.S.C. 1262(e)(1), the Commission may use the notice-and-comment procedures of 5 U.S.C. 553 to determine that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard. The Commission concludes that the additional procedures in sections 3(f)-(i) of the FHSA are intended to apply where products that previously could be manufactured are being banned, and not where, as here, products are being exempted from existing requirements. Sections 3(f)-(i) provide for an advance notice of proposed rulemaking and detailed findings designed to ensure that the regulation is necessary to reduce or eliminate an unreasonable risk of injury. These types of findings are inappropriate when an exemption is being considered; therefore, only the notice-and-comment procedures of 5 U.S.C. 553 are being used in this rulemaking.

**VIII. Comments on Proposed Rule**

Two comments were received on the proposed rule, and they both supported the exemption. One commenter, with no identified affiliation, analyzed the information in the proposal and concluded that the costs of requiring compliance of video games outweigh the benefits.

The other comment was from EIA. It reiterated its contention that video games are not subject to the electrically-operated-toy regulation in the first place. This argument is addressed in Section II of this notice. Otherwise, EIA agreed with the Commission's findings and data supporting the proposal.

**IX. Conclusion**

**List of Subjects**

*16 CFR Part 1500*

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

*16 CFR Part 1505*

Consumer protection, Electronic products, Infants and children, Toys.

For the reasons given above, the Commission amends title 16 of the Code of Federal Regulations as follows:

**PART 1500—[AMENDED]**

1. The authority citation for part 1500 is revised to read as follows:

**Authority:** 15 U.S.C. 1261-1277, 2079.

## PART 1505—REQUIREMENTS FOR ELECTRICALLY OPERATED TOYS OR OTHER ELECTRICALLY OPERATED ARTICLES INTENDED FOR USE BY CHILDREN

1. The authority citation for part 1505 is revised to read as follows:

**Authority:** 15 U.S.C. 1261-1262, 2079.

**§ 1505.1 [Amended]**

2. Section 1505.1(a)(1) is amended by removing the word "or" preceding the word "articles" in the last sentence and by adding ", or video games" before the period in the last sentence.

3. Section 1505.1 is amended by adding a new paragraph (a)(2) reading as follows:

**§1505.1 Definitions.**

(a) * * *

(2) The term *video games* means video game hardware systems, which are games that both produce a dynamic video image, either on a viewing screen that is part of the video game or, through connecting cables, on a television set, and have some way to control the movement of at least some portion of the video image.

Dated: July 23, 1993.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

### List of Relevant Documents

(Note: This list will not be published in the Code of Federal Regulations.)

1. 37 FR 1020 (January 21, 1972).
2. 38 FR 6138 (March 7, 1973).
3. Briefing package for the Commission, "Petition HP 84-1 on Video Games," dated August 22, 1988, with the following attachments:

TAB A. Letter from Gary J. Shapiro, Staff Vice President, Government and Legal Affairs, Consumer Electronics Group, Electronic Industries Association, re: "Petition for Exemption or Modification and Request for Stay of Enforcement Pending Decision on Petition," dated December 21, 1983 (HP 84-1).

TAB B.

a. Letter from J. Edward Day, Counsel for Consumer Electronics Group of the Electronics Industries Association, to James D. Grant, Deputy Commissioner, Food and Drug Administration, dated February 17, 1972.

b. Letter from James D. Grant, Deputy Commissioner, Food and Drug Administration, to J. Edward Day, dated March 2, 1972.

TAB C.

a. Memorandum from Carolyn Kennedy, Directorate for Economic Analysis, to David W. Thome, Office of Program Management and Budget, entitled "Video Game Petition, HP 84-1," dated June 24, 1988.

b. Memorandum from Carolyn Kennedy, Directorate for Economic Analysis, to Carl W. Blechschmidt, Office of Program Management and Budget, entitled "Video Games - Product Identification," dated November 21, 1984.

TAB D.

a. Memorandum from Debbie Tinsworth, Directorate for Epidemiology, to David W. Thome, Office of Program Management and Budget, entitled "Video Game Petition (HP 84-1)," dated July 11, 1988.

b. Memorandum from William Rowe, Directorate for Epidemiology, to Carole Shelton, Office of Program Management and Budget, entitled "HP 84-1 Video Games: EPI Review of Incidents," dated February 25, 1988.

TAB E. Memorandum from John Preston, Directorate for Engineering Sciences, to David W. Thome, Office of Program Management and Budget, entitled "Petition HP 84-1; Electronic Video Games," dated July 1, 1988.

TAB F. Draft proposed "Statement of Interpretation and Enforcement Policy on Video Games."

4. Briefing package for the Commission, "Proposed Exemption of Video Games," dated August 11, 1992, with the following attachments:

TAB A. Draft **Federal Register** notice, "Proposed Exemption of Video Games."

TAB B. Memorandum from Audrey E. J. Corley, EPHA, to Ron L. Medford, EXHR, entitled "Video Game Exemption," dated October 15, 1991.

TAB C.

a. Memorandum from John Preston, ESME, to David W. Thome, EXPB entitled "Petition HP 84-1 Electronic Video Games," dated July 1, 1988.

b. Memorandum from John Preston, ESME, to David W. Thome, FO, entitled "Video Games, Petition HP 84-1," dated February 18, 1992.

TAB D.

a. Anthony C. Homan and Terrance R. Karels, Directorate for Economic Analysis, "Preliminary Regulatory Analyses, Economic and Environmental Assessments: Proposed Amendments to the Electrically Operated Toy Regulation," October, 1991.

b. Memorandum from Anthony C. Homan, to Bert G. Simson, EXHR, entitled "Market Sketch Update," dated October 16, 1991.

c. Memorandum from Anthony C. Homan, EXPA, to Elaine A. Tyrrell, EX-P, entitled "Market Sketch Home Video Games," dated March 10, 1989.

5. Comments on the proposed exemption (2).

6. "Briefing Package – Exemption of Video Games," David W. Thome, EXHR, June 29, 1993, with the following attachments:

TAB A. Draft **Federal Register** notice.

TAB C. Memorandum from William Rowe, EPHA to David Thome, FO, "Video Games Incident and Injury Data," May 19, 1993.

TAB D. a. Memorandum from John Preston, ESMT, to David W. Thome, FO, "Video Games Petition, HP 84-1," June 2, 1993. b. Memorandum from John Preston, ESME, to David W. Thome, EXPB, "Petition HP 84-1 — Electronic Video Games," dated July 1, 1988.

TAB E. a. Memorandum from Anthony C. Homan, ECPA, to David W. Thome, FO, "Market Sketch Update – Home Video Games," June 9, 1993. b. Memorandum from Anthony C. Homan, ECPA, "Final Regulatory Analyses for the Proposed Amendment to the Electronically Operated Toy Regulation," June 1993.

TAB F. Comments on the proposal: a. Electronic Industries Association. b. Richard J. Renk, Jr.

[FR Doc. 93-18026 Filed 7-27-93; 8:45 am]

BILLING CODE 6355-01-P

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Parts 1 and 155**

### Final Rule Prohibiting Dual Trading by Floor Brokers

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") has adopted final rules that implement the statutory mandate of section 4j(a) of the Commodity Exchange Act ("Act") as amended by section 101 of the Futures Trading Practices Act of 1992 ("1992 Act").[1] New Commission regulation 155.5 prohibits dual trading in contract markets with average daily trading volume equal to or in excess of 8000 contracts, except to the extent permitted by contract market rules made effective under section 5a(a)(12) of the Act and Commission regulation 1.41. A contract market may petition the Commission for an exemption from the dual trading prohibition. The exemption petition must demonstrate that the contract market's trade monitoring system satisfies specified standards, or that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market and that the contract market will implement corrective actions to achieve compliance with the specified trade monitoring standards. Each contract market that meets the average daily volume threshold and that is not exempted must adopt rules pursuant to section 5a(a)12 of the Act and Commission regulation 1.41 to prohibit dual trading in accordance with the provisions of regulation 155.5.

**EFFECTIVE DATE:** The amendment to regulation 1.35(e)(1) and regulation 155.5 (a), (b), (c), and (e) are effective October 26, 1993. Regulation 155.5(d) and appendix A are effective

[1] Public Law Number 102-546, section 101, 106 Stat. 3590 (1192).

immediately upon publication in the Federal Register (July 28, 1993).

FOR FURTHER INFORMATION CONTACT: De'Ana H. Dow, Special Counsel, or Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

## I. Introduction

On March 9, 1993, the Commission published for public comment in the Federal Register proposed new regulation 155.5.[2] The new regulation was proposed in response to the statutory mandate set forth in section 101 of the 1992 Act. The 1992 Act generally requires the Commission to prohibit dual trading on each contract market with an average daily trading volume equal to or in excess of 8000 contracts and allows the Commission to exempt those contract markets that have trade monitoring systems capable of detecting and deterring trading abuses attributable to dual trading. Further, the Commission is required to provide for exceptions to the dual trading prohibition as necessary and appropriate to ensure fairness and orderly trading in contract markets subject to the dual trading prohibition and not otherwise exempted.

The Commission received ten written comments in response to the proposed rulemaking. The commenters included five contract markets (Chicago Board of Trade ("CBT"), Chicago Mercantile Exchange ("CME"), Commodity Exchange, Inc. ("Comex"), Coffee Sugar & Cocoa Exchange, Inc. ("CSC"),[3] and New York Mercantile Exchange ("NYMEX")), and four commodity industry trade associations (American Farm Bureau Federation ("AFBF"), Iowa Grain and Feed Association ("IGFA"), National Grain and Feed Association ("NGFA")), and Comodity Floor Brokers and Traders Association ("CFBTA")). The comments received on particular aspects of the proposed rulemaking are discussed below. The Commission has reviewed each of these comments and, based upon that review, is adopting the rules as proposed with certain modifications consistent with the statutory objectives of the 1992 Act.

[2] 58 FR 13625 (March 8, 1993).

[3] CSC submitted two comment letters, one pertaining to specific provisions of the proposed rule and the other pertaining to the alleged regulatory impact of the rule on CSC and small entities.

## II. Proposed Rulemaking

### A. Definitions

#### 1. Dual Trading

##### a. Proposed Regulation

Proposed regulation 155.5(a)(4) defined dual trading as the execution of customer orders by a floor broker during the same trading session in which the floor broker executes directly or indirectly a transaction in the same contract market for: (1) The floor broker's own account; (2) any account in which the floor broker's ownership interest or share of trading profits is ten percent or more; (3) an account for which the floor broker has trading discretion; (4) or an account controlled by a person with whom such floor broker is subject to trading restrictions under section 4j(d) of the Act, as amended, to the extent section 4j(d) has been applied by Commission rule or order.[4]

##### b. Comments Received

CBT, CSC, Comex, and NYMEX each commented on various aspects of the proposed dual trading definition. Regarding the execution of orders for "any account in which the floor broker's ownership interest or share of trading profits is ten percent or more," CBT and CSC commented that the proposed definition exceeds Commission authority because it is broader than the statutory definition, which references only the floor broker's own account. CBT also commented that all discretionary accounts should not be restricted because many brokers maintain discretionary authority, but have not actual control over trading the account and solely receive a salary or commission.

Comex, CBT, and NYMEX commented that the definition of dual trading, which refers in the 1992 Act to trades executed by the floor broker, should not be expanded to encompass trades executed indirectly by a floor member. In this regard, the commenters noted that the concept of "indirect execution" is vague and potentially overbroad, such that permissible and impermissible conduct may not be distinguishable. NYMEX further asked that the "indirect execution" provision not include trades that offset a pre-existing open position and customer type indicator ("CTI") 3 trades for which audit trail requirements are met.[5]

[4] At this time, there are no Commission-imposed trading restrictions among members of broker associations. See 58 FR 31167 (June 1, 1993).

[5] The CTI is a numerical code required by Commission regulation 1.35(e) that is used to identify the Commission regulation 1.35(d) that is used to identify the source of a trade. CTI 1 designates a trade by a broker for his own account; CTI 2, a trade for his clearing member's house account; CTI 3, a trade for another member present on the floor or an account controlled by such other member; and CTI 4, a trade for any other type of customer.

##### c. Regulation 155.5(a)(4)

The Commission has considered these comments in light of the language of section 101 and its legislative history. As the Commission stated previously, the proposed definition is intended to encompass all accounts that are owned in whole or in part or controlled by the floor broker, as these accounts all raise similar concerns. Including accounts in which the floor broker has an ownership interest or share of trading profits of ten percent or more prevents a floor broker from circumventing the dual trading prohibition through the use of other accounts in which he has a significant financial interest, and is otherwise consistent with rules of Commission defining proprietary or controlled accounts. Based on the scope of the statutory language, the Commission believes that the inclusion of such accounts in the prohibition is necessary and appropriate. The statute expressly includes discretionary accounts within the definition of dual trading because of the potential for abuse of customer orders through an account over which the floor broker has control.

The Commission, however, is amending the proposed rule to clarify the reference to "indirect" trading activity by deleting "indirectly" and identifying the specific type of trading activity intended to be covered. As revised, the rule now will prohibit a floor broker from initiating and passing an order for his personal account or other accounts listed in the regulation to another floor broker for execution on his behalf. The Commission believes that such CTI 3 trading activity clearly falls within the ambit of the statutory prohibition.

The Commission considered NYMEX's comment that the regulation should exempt from coverage trades that offset a pre-existing open position, but has determined that such an exception would defeat the purpose of the rule. The Commission believes that there are alternatives that the floor broker can choose to cover a pre-existing open position effectively. For example, the floor member, prior to the session in which the member intends to do brokerage, could place a protective stop or a limit order to liquidate a position.

##### d. Amended Regulation 1.35(e)(1)

The Commission has amended regulation 1.35(e)(1) regarding CTI 1

trades, which referenced trading for the floor member's own account, to include transactions for an account for which the floor member has discretion. The amendment would cover discretionary transactions to the extent that such transactions need not be passed off to another broker for execution under Commission regulation 155.2.[6] This amendment makes regulation 1.35(e)(1) coextensive with the statute and consistent with the definition of "dual trading" in regulation 155.5(a)(4), which includes an account for which the broker has trading discretion. An account over which a floor broker has discretion is similar to the floor broker's own account in terms of his interest or control over the account. In any event, the Commission believes that although a floor broker may not have any direct financial interest in a controlled account, there may be other incentives to trade discretionary accounts for personal gain.

By conforming the language of regulation 1.35(e)(1) to regulation 155.5(a)(4), the Commission also intends to facilitate the enforcement of the dual trading prohibition. In particular, the amendment will result in identification for surveillance purposes of trading for an account for which the floor broker has discretion as equivalent to trading for the floor broker's own account (CTI 1). Both types of trading would be subject to the dual trading prohibition. The Commission notes that the New York Cotton Exchange, Comex, NYMEX and CSC currently include accounts for which the floor broker has discretion within the definition of CTI 1 trades and that staff of other exchanges have indicated that this change could be implemented readily.[7]

2. Customer

*a. Proposed Regulation*

"Customer" was defined in proposed regulation 155.5 as an account owner for which a trade is designated with the CTI prescribed under regulation 1.35(e)(4). Only those trades required by Commission regulation to be identified as CTI 4 trades would be considered customer trades and, therefore, "customer" would not include the house account of the broker's clearing member (CTI 2 trades) or accounts for other members present on the floor (CTI 3 trades). The Commission excluded CTI 2 and CTI 3 trades because it believes that clearing members and member-customers are in a better position to protect themselves against potential abuse of their orders. However, the Commission invited comments as to whether the definition of "customer" should include CTI 2 trades.

*b. Comments Received*

CBT, NYMEX and CME agreed with the Commission's decision not to include CTI 2 trades in the definition of "customer." CBT stated that the broker's clearing member is capable of protecting itself from any abuses attributable to dual trading. NYMEX commented that a clearing member is not in need of the special safeguards accorded a public customer. NYMEX further noted that a clearing member is already in possession of information concerning a floor broker's personal trades and, as an industry professional, has the ability to monitor such personal trading for potential abuses relating to the clearing member's own trades.

*c. Regulation 155.5(a)(2)*

Based on the comments received, the Commission is adopting the definition of "customer" as proposed. "Customer" is defined as an account owner for which a trade is designated with the CTI prescribed under Commission regulation 1.35(e)(4) and excludes CTI 2 and 3 trades.

3. Contract Market

*a. Proposed Regulation*

Proposed regulation 155.5 defined "contract market" as any contract separately designated by the Commission, provided that two or more contracts trading concurrently pursuant to a single designation order on other than a transitory basis and for which the contract terms differ significantly other than as to delivery or expiration months would each be considered a contract market. Thus, where there is more than one contract trading pursuant to one designation order, the contracts would be identified for this purpose as separate contract markets.[8] The Commission requested that boards of trade identify in their comments any such contracts that they believe would constitute separate markets under the proposed definition.

*b. Comments Received*

NYMEX noted that the Commission's approach is important with respect to determining the threshold level for an affected contract market and to the applicability of the dual trading prohibition to a floor broker's activities. CBT commented that the proposed definition and accompanying proviso seem reasonable, but suggested some clarification. CBT believes that a broker should be permitted to trade for his personal account in delivery months in affected contracts other than those in which he executes customer orders.

*c. Regulation 155.5(a)(3)*

The Commission is amending the definition of "contract market" to recognize contracts trading through certain screen-based trading systems separately from contracts traded on the floor of an exchange by open outcry. This amendment is discussed below in response to comments regarding the exclusion of screen-based trading systems from the dual trading prohibition (Section IIB1).

With respect to the CBT's suggestion, the 1992 Act specifically defines dual trading in terms of transactions for a customer's account and the floor broker's account in the same contract market and requires the Commission, in prohibiting such activity, to reject the contract-month approach advocated by the exchanges. Accordingly, the statute does not provide the Commission with authority to implement the prohibition on a contract-month basis.

4. Trading Session

*a. Proposed Regulation*

Proposed regulation 155.5(a)(1) defined trading session to mean the hours during which a contract market is scheduled to trade continuously during a trading day, as set forth in contract market rules, including any related post-settlement trading session. It further provided that a contract market may have more than one trading session during a trading day; for example, a regular session and an evening session. A broker could trade for a customer and an account in which he has an interest in the same contract market during different trading sessions.

The Commission stated previously that although dual trading-related

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[6] Regulation 155.2(c) prohibits a floor broker from executing any transaction for any account over which a broker has trading discretion. Orders for such an account must be passed off to another member for execution, with certain exceptions. Those exceptions include accounts for which the broker has only time, price and contract month discretion, and accounts of immediate family members, of members present on the floor and his clearing member's house accounts.

[7] Regulation 1.35(e)(1) previously included accounts for which the floor broker has trading discretion. The provision, however, was deleted without explanation. 41 FR 3193 (January 21, 1976), 41 FR 56134 (December 23, 1976).

[8] For example, the Commission recently designated the CBT to trade futures on catastrophic insurance indices under four designation orders. Pursuant to each designation order, three separate indices contracts—quarterly, semi-annual, and annual—can trade. Another example of multiple contracts trading pursuant to a single designation order is the CSC sugar #11 and sugar #14 contracts.

abuses could occur over more than one trading session, it believes that a dual trading restriction based on a single trading session should render dual trading-related abuses more difficult to commit. Further, to the extent that dual trading has been regulated in the securities and equity option markets, the trading session-based restriction has been considered sufficient to address abusive trading activity.[9]

*b. Comments Received*

NYMEX endorsed the application of the dual trading prohibition to the hours during which the contract market is scheduled to trade continuously during a trading day, including any related post-settlement trading session. NYMEX noted that the period of restriction has been limited to a single trading session on securities exchanges and that it has been sufficient to deter trading abuse. Further, NYMEX suggested that because of the use of screen-based trading systems, it would be appropriate to distinguish between an on-floor open outcry trading session and a screen-based trading system trading session. In this regard, NYMEX requested that the Commission clarify that the definition of trading session does not treat an on-floor open outcry trading session and a screen-based system trading session in the same contract market as one trading session.

CBT commented that it does not believe that the proposal provides as much flexibility to respond to market factors as is necessary. Therefore, CBT requested that the Commission refine the definition of trading session to permit dual trading during a trading session depending upon such factors as time, volume, whether a market has been designated as "fast," or to permit dual trading in certain months of an affected contract. CBT also suggested that the Commission adopt a restriction similar to the CME's dual trading rule, under which a broker may switch from trading to brokerage upon receipt of a customer order during a trading session (but not from brokerage to trading).[10]

*c. Regulation 155.5(a)(1)*

As discussed below, trading in a contract market through certain screen-based trading systems will be treated separately from trading in the same commodity on the exchange floor. For example, Eurodollars traded on the CME floor by open outcry and Eurodollars traded on GLOBEX will be treated as separate contract markets for the purposes of this rule. In response to NYMEX, a distinction between trading sessions is not applicable to separate contract markets.

CBT's comment is addressed partially by permissible exceptions to the dual trading prohibition. For example, an exchange could adopt a rule permitting suspension of a dual trading prohibition based on emergency market conditions, such as abruptly changing market conditions that may result in an extraordinary influx of orders. An exchange also may adopt a rule to except low-volume months, as described in regulation 155.5(c)(4)(v). The Commission believes that these exceptions provide exchanges with sufficient flexibility to address different market conditions.

5. Volume Year

*a. Proposed Regulation*

Under the proposal, volume year was defined as a continuous 12-month period that includes the last calendar month-end date prior to the date on which the contract market computes its average daily trading volume.

*b. Comment Received*

CSC commented that the rule should provide for a date certain from which the computation of the average daily trading volume should initially be made, for example, the last date of the calendar month preceding the month in which the regulation becomes effective.

*c. Regulation 155.5(a)(7)*

The definition of "volume year" remains unchanged from the proposal. With respect to CSC's comment, regulation 155.5(c)(2) provides that at least five days before the effective date of the dual trading prohibition,[11] each contract market is required to publish a list of the affected contract markets. Accordingly, a contract market that may be subject to a dual trading prohibition must compute the average daily trading volume to determine whether it is an affected contract market at least five days before the dual trading prohibition becomes effective. CSC may determine a date certain from which the computation of the average daily trading volume should be made provided that such date is at least five days before the effective date of the dual trading prohibition.

6. Average Daily Trading Volume

*a. Proposed Regulation*

The proposed regulation would define "average daily trading volume" as an arithmetic average of daily trading volume, *i.e.*, the total number of sells (buys) executed in any contract market during a trading day for all trading sessions, in a contract market over the specified time period on any day when any option expiration or futures delivery month was listed for trading.[12] Ex-pit transactions, such as exchange of futures for physicals ("EFPs"), transfer trades and office trades, would be excluded from the computation of daily trading volume.

*b. Comments Received*

AFBF stated its support for the proposed definition of "daily trading volume" and noted that use of the 12-month period should define more accurately the contracts that are capable of sustaining trading levels that would make such markets subject to the dual trading prohibition.

NYMEX endorsed the exclusion of ex-pit trades, such as transfer trades and EFPs, from the computation of daily trading volume. NYMEX stated that the exclusion of ex-pit transactions is consistent with the objective of section 4j of the 1992 Act, *i.e.*, the curbing of trading abuses that occur on the trading floor.

CBT commented that trading months excluded the low volume exception, discussed below, should be excluded from the computation of average daily trading volume. Further, CBT commented that for the spot month, average daily trading volume should be defined more narrowly to reflect accurately the decreased activity in any spot month. Specifically, the CBT stated that a five-day moving average would be more representative of how trading activity occurs as expiration approaches than a full-month average.[13] The CBT added that the volume in such months should not be counted for purposes of computing average daily trading volume to determine affected contract market status.

Comex recommended that the Commission permit an exclusion from the computation for volume attributable

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[9] See, e.g., New York Stock Exchange Rule 112; Chicago Board Options Exchange Rule 8.8.

[10] CME Rule 932.

[11] The effective date of the prohibition would be the effective date under the regulation or under an order denying an exemption petition or granting an exemption.

[12] Section 4j(a)(1)(D) of the 1982 Act permits the Commission to specify the methodology for determining a contract market's average daily trading volume based on a moving daily average of either six or 12 months.

[13] The CBT apparently is suggesting that the spot month be treated differently from the other months for purposes of determining the average daily trading volume because the volume in the spot month is not representative of typical volume in a non-expiring month of a given contract market.

to rollover from one delivery month to another, as this volume merely reflects the transfer of open interest from one trading month to another.[14] Comex also commented that the exclusion of ex-pit transactions from the calculation was too narrowly drawn and urged the Commission to exclude EFPs.

*c. Regulation 155.5(a)(6)*

The Commission has considered the above comments but has determined not to revise the definition of "average daily trading volume." With respect to the comments that the volume in the excepted low volume months and in the rollover period should be excluded from the computation of average daily trading volume, the 8000 contracts threshold level established in the statute is based on the amount of liquidity in a contract market as a whole and not individual expiration months or trading days. Moreover, the Commission believes it would not be consistent with the Congressional intent to create various volume exclusions for trading volume occurring in the pit. Therefore, the Commission has determined to require that the volume in potentially excepted low volume months and volume attributable to the rollover period be counted for purposes of computing the contract market's average daily trading volume.

As to Comex's comments, the Commission reiterates that ex-pit transactions include EFPs, transfer trades and office trades. Ex-pit transactions by definition do not occur in the pit, and therefore, they are excluded from the computation of average daily trading volume and are not affected by the dual trading prohibition.

7. Affected Contract Market

*a. Proposed Regulation*

"Affected contract market" was defined as a contract market in which the average daily trading volume equalled or exceeded the threshold level of 8000 contracts, as specified in section 4j(a)(4) of the Act, for each of four quarters during the most recent volume year. Each contract market would be required to compute on a quarterly basis its average daily trading volume for each of four quarters during the most recent volume year to determine whether it was an affected contract market.

[14] The "rollover period" is the period of trading either immediately prior to or shortly after the beginning of each delivery period during which large numbers of traders liquidate their positions or roll their positions forward into more distant futures months.

*b. Comments Received*

NYMEX endorsed the Commission's proposed computation for determining affected contract market status. CSC commented that the Commission should ascertain a threshold level for each contract market rather than a uniform one for all exchanges, given the effect that a dual trading prohibition allegedly would have on certain markets.

*c. Regulation 155.5(a)(9)*

The definition of "affected contract market" reflects section 4j(a)(1)(D) of the Act, which requires the Commission to specify the methodology for determining the average daily trading volume in a contract market based on either six or 12 months. The Commission selected a 12-month period because it identifies more reliably than a six-month period those contract markets that can be expected to continue at the threshold trading level on a relatively permanent basis.[15]

Section 4j(a)(4)(B) requires the Commission to set the threshold trading level at 8000 contracts initially. After enactment, the Commission, by rule or order, may approve increases in the threshold trading level for specific contract markets and, beginning three years after enactment, may approve decreases in the threshold level. Dual trading will be prohibited in affected contract markets, subject to certain exceptions permitted by contract market rules, unless exempted under the proposed regulation.

*B. Dual Trading Prohibition*

1. Floor Brokers

*a. Proposed Regulation*

Proposed regulation 155.5(b) provided that no floor broker shall dual trade in an affected contract market, except as provided in contract market rules, unless that contract market is exempted. As discussed above, this prohibition would not affect ex-pit transactions. The Commission requested comment on whether any Commission-approved electronic trading system also should be excluded from the prohibition and the definition of daily trading volume.

[15] The statute also requires that the regulation provide transition measures for when a contract market's volume increases to or above, or decreases below, the threshold trading level. Further, the specification that the average daily trading volume meet the threshold in each quarter of a 12-month period distinguishes affected markets from those that may reach the threshold level based on only seasonal phenomena or as a result of other temporary surges in trading volume, rather than on a more long-term basis. For those affected markets where the trading volume falls below the threshold trading level, the quarterly assessment will result in relatively prompt removal from affected contract market status.

*b. Comments Received*

CME and CBT commented that the type of trading abuses facilitated by dual trading apply only to brokers operating on open-outcry trading floors and should not apply to the GLOBEX electronic trading system. They stated that the superior audit trail that exists for all trades conducted on GLOBEX negates the need to apply the prohibition to GLOBEX. CME and CBT also stated that GLOBEX volume should be excluded from the computation of average daily trading volume.

IGFA, NGFA and AFBA commented that Commission-approved electronic trading systems should permit dual trading because such systems should provide a superior audit trail to identify any trading irregularities clearly. AFBA also noted that such systems should reduce the possibility of trading abuses related to dual trading.

*c. Regulation 155.5(b)*

The Commission has considered the comments regarding the exclusion of screen-based trading from the prohibition.[16] For purposes of this regulation, a contract market trading on the floor of an exchange will be considered separate from a contract market in the same commodity trading through a screen-based trading system. In adopting this provision, the Commission believes that the two trading mechanisms are qualitatively different and sufficiently independent. Consequently, the average daily trading volume for electronic trading and for floor trading will be computed separately for purposes of determining affected contract market status. Currently, there are no electronic trading systems with volume in a contract market near the 8000 contract threshold level. Further, in the event that the trading volume in a contract market transacted through an electronic trading system were to reach that threshold in the future, that volume level or greater would have to be maintained for four consecutive calendar quarters before a dual trading prohibition could apply.

Accordingly, at this time, the Commission is not excluding electronic trading from the prohibition. Instead, the Commission is retaining the flexibility to consider this matter further. Based on its oversight

[16] Screen-based trading refers to trading on an electronic trading system conducted through a competitive auction process pursuant to an algorithm that applies nondiscretionary rules of priority as permitted under contract market rules made effective under the Act, such as GLOBEX (CME and CBT's screen-based system) and NYMEX ACCESS.

experience with such systems and the exchanges' experience in operating such systems, the Commission will determine whether a dual trading prohibition is appropriate for such trading at such time as the relevant contract market could be deemed an affected contract market. If such a market were deemed to be an affected contract market, the exemption process would be applicable.

2. Contract Markets

Proposed regulation 155.5(c) required each affected contract market, unless exempted, to adopt rules pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41 to prohibit dual trading in accordance with the proposed regulation. The contract market would be required to adopt such rules prior to the later of the effective date of the dual trading prohibition or the effective date set forth in a Commission order denying a contract market's exemption petition or revoking an exemption. Absent such contract market rules, Commission regulations 155.5 (a) and (b) would be deemed to be the contract market's rules upon the effective date of the dual trading prohibition. The Commission received no comments on this provision. Therefore, regulation 155.5(c) is being adopted as proposed.

*C. Exceptions*

Section 4j(a)(1)(B) of the 1992 Act requires that Commission regulations provide for exceptions to the dual trading prohibition as deemed necessary and appropriate to ensure fair and orderly trading in affected contract markets. The 1992 Act specifically directed that exceptions be provided for transition measures and a reasonable phase-in period; spread transactions; correction of trading errors; written customer consent annually naming a floor broker to dual trade; and other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest.

1. Correction of Errors

*a. Proposed Regulation*

Consistent with the express statutory directive regarding error trades, the Commission proposed an exception to permit a floor broker to offset trading errors by placing trades executed to fill customer orders that resulted in errors into his personal error account. A floor broker would be required to liquidate the position in his personal error account resulting from that error as soon as practicable, but not later than the close of business on the business day following the discovery of the error, which would occur at or before the time the trade is placed in the error account. In the event that the daily price fluctuation limit is reached and a floor broker is unable to offset the error trade, however, the floor broker would be required to liquidate the position as soon as practicable thereafter.

*b. Comments Received*

CBT commented that the proposed exception is necessary in order to comply with current regulations and also to protect the marketplace. However, CBT believes that the proposed time limit for floor brokers to liquidate error-related positions is unwarranted once the trade has been placed in a broker's error account. CBT noted that its regulations provide specific protection to the customer by placing the liabilities associated with errors on the relevant floor broker or clearing firm. Under CBT rules, the broker must assume any liabilities for errors associated with executing orders by making monetary adjustments to customers and assuming any erroneous position established. CBT further believes that its computer surveillance systems would readily detect dual trading conflicts involving error accounts.

Comex also supported the proposed exception, but believes that the time limitation for liquidation is unreasonable. Comex commented that requiring offset of the error within a prescribed time frame, rather than allowing a broker to exercise discretion as to how to minimize his exposure, may engender substantial losses to a broker without providing any corresponding customer protection. As an alternative, Comex suggested that each exchange adopting this exception be required to codify procedures for the resolution of errors incorporating audit trail and surveillance measures deemed sufficient by the Commission to ensure proper use of error accounts.

CME and CFBTA objected to the requirement that trading errors assigned to a personal error account be liquidated by the end of the day following their discovery. The commenters stated that the requirement is inconsistent with industry custom and practice and has no legislative basis.

NYMEX endorsed the proposed exception to permit a floor broker to offset trading errors subject to the time periods specified in the proposed regulation.

*c. Regulation 155.5(c)(4)(i)*

The Commission has considered the comments but does not agree that there should be no time limit on the liquidation of error trades. The Commission believes that if the position is the result of a true error, it should be offset promptly. In fact, Commission staff have observed that errors ordinarily are liquidated as soon as possible to avoid exposure. In adopting Commission regulation 1.46(d)(8)(ii),[17] the Commission stated that it had determined that the close of business on the day following discovery of the error is generally the appropriate demarcation for deeming an error trade to have changed to a speculative new position or a non-error trade.

The liquidation time limits are intended to reduce the potential for use of the floor broker's personal error account to circumvent the dual trading prohibition. However, the liquidation time limits are also intended to provide flexibility responsive to market conditions and the concerns raised by the commenters as to practice. For example, if the daily price fluctuation is reached and the trader is unable to offset the error trade, the FCM would have until "as soon as practicable thereafter" to offset the error trade. Thus, the time limits in the regulation take into consideration market conditions that could serve to frustrate good faith efforts to offset an error trade promptly. Also, in situations where errors are not discovered immediately, the floor broker is allowed one day after the discovery of the error to offset the trade.

2. Customer Consent

*a. Proposed Regulation*

Proposed regulation 155.5(c)(4)(ii) provide that a contract market could adopt rules pursuant to which a customer could consent to receiving brokerage services from a dual-trading broker. The customer would be required to designate in writing not less than once annually a specifically identified floor broker who would be authorized to dual trade while executing orders for such customer's account. This rule incorporated explicit language in the statute itself that plainly requires both

[17] Commission regulations 1.46(d)(8)(ii) provides an exception for trades in error accounts to the general rule pertaining to the application and closing out by a futures commission merchant ("FCM") of offsetting long and short commodity futures of option positions in a customer account. The time limits in the dual trading regulation are consistent with Commission regulation 1.46(d)(8)(ii). 57 FR 55082 (November 24, 1992).

designation of a named person and annual consent.[16]

The Commission requested comment whether an account controller acting pursuant to a power of attorney should be permitted to provide consent on behalf of the customer for a floor broker to dual trade while executing orders for such customer's account. Commenters also were asked to address the extent to which an account controller might provide such consent on the basis of the potential benefits to himself as distinguished from his fiduciary duty to the customer. Contract markets adopting rules to effectuate this exception were required to establish procedures to monitor compliance. The Commission suggested that one possibility would be for floor brokers or others, as designated under contract market rules, to be responsible for filing customer consent forms with the contract market.

*b. Comments Received*

CBT stated that the annual renewal requirement is unduly burdensome. NYMEX commented that the Commission should permit the customer to designate in writing more than one floor broker to dual trade or issue a blanket authorization allowing any floor broker, including subcontractors to dual trade. CBT and CSC commented that the requirement that the customer name a specific floor broker restricts the ability of an FCM to select the broker it believes can provide the best fill for its customers. Therefore, they argue that the regulation should permit an FCM to name floor brokers on behalf of its customer, provided the customer has given such consent to the FCM in the customer agreement. Comex and CBT commented that the regulation should permit the designation of "broker groups" as well as of individual brokers, because most customers vest discretion in a fund manager or FCM who often selects broker groups, rather than particular individuals, to handle their orders.

For monitoring compliance, CBT stated that it would seem more efficient to have the FCM carrying the customer account retain the consent form. CBT further commented that one form could cover a consent for brokers to dual trade on several exchanges rather than requiring one consent form for each exchange. Thus, CBT stated that the FCM's designated self-regulatory organization could verify that the appropriate consent has been obtained.

CBT, CME, Comex, IGFA, AFBF, NYMEX and CSC commented that an account controller by virtue of a power of attorney should be permitted to provide consent on behalf of the customer. CFBTA stated that the more appropriate requirement would be that the consent emanate from the non-clerical person who transmits the order to the floor and who has selected and knows the floor broker.

IGFA, NGFA, and NYMEX commented that a power of attorney need not detail every potential decision a controller might make on behalf of the customer. NYMEX further commented that no special power of attorney form should be required because the standardized form already authorizes such discretion. AFBF commented, however, that the consent from the customer to the account controller should be required to be explicitly granted in the power of attorney.

CSC also commented that certain customers who trade large quantity orders may wish to have those orders executed by floor brokers to whom they have given consent to dual trade, but may not wish to have their identity disclosed to those brokers. For example, a commercial firm wanting to effect a large transaction may wish to give orders to several different brokers and, to protect its identity, to send some orders through an FCM. The FCM, without identifying the customer, might place all or a portion of the order with a particular floor broker who had been named by the customer in a written dual trading consent. In such case, the floor broker would not know that he is accepting an order for a customer who has consented to dual trading, but must rely upon the FCM's representation that it is true. Such reliance should be expressly permitted in the proposed regulation.

*c. Regulation 155.5(c)(4)(ii)*

Pursuant to contract market rules, a customer may consent to receiving brokerage services from a dual-trading broker. The customer must designate in writing, not less than once annually, a specifically identified floor broker who will be authorized to dual trade while executing orders for such customer's account. This provision implements the requirement in the 1992 Act that a customer's consent expressly refer to "named" floor brokers. Therefore, a customer may grant consent to more than one floor broker, provided each floor broker authorized to dual trade on the customer's behalf is named individually. A customer may not grant consent to a broker group or registered broker association.[19] In accordance with the 1992 Act, the customer must renew consent for the designated floor broker to dual trade annually. These requirements are intended to ensure that the consent is the result of the customer's independent decision-making.

The statute does not require that a floor broker know the identity of the customer for whom he is authorized to dual trade. The customer can give written consent naming a particular floor broker or floor brokers authorized to dual trade while executing such customer's order through the floor broker's FCM. In response to CSC's comment, the FCM, upon the customer's request to remain anonymous, would not be prohibited from withholding from the floor broker the identity of the customer granting the dual trading consent. In this situation, as the CSC stated, the floor broker would have to rely on the FCM's representation that the customer granted consent for the floor broker to dual trade. In the event that a contract market wanted to permit such an arrangement, it would have to adopt rules that clearly define the responsibilities of each of the parties involved, *i.e.*, customer, FCM, and floor broker, and implement procedures to ensure that the FCM and floor broker adhere to the customer's decision regarding who may execute the orders. These duties and responsibilities may also be affected by the contractual relationships between the FCM, the floor broker and the ultimate customer.

The Commission is revising the proposed regulation to permit an account controller acting pursuant to a power of attorney to provide consent on behalf of his customer, provided that the customer explicitly grants in writing to the account controller the authority to select a dual trading broker. The power of attorney must run to an individual. Thus, for this purpose, the power of attorney could not be granted to an FCM, although it could be granted to a specific FCM employee who acts as the account controller. The Commission believes that these requirements implement the statutory mandate that customer consent to dual trade be obtained in a formal and particularized manner.

Of course, a contract market that adopts a rule to allow for this exception is responsible for enforcing the requirements of the rule. Regardless of

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[16] Section 4j(a)(1)(B)(iii).

[19] Commission regulation 156.1, in part, defines "broker association" as two or more contract market members with floor trading privileges, who engage in floor brokerage activity on behalf of the same employer and of whom at least one is acting as a floor broker. This definition would encompass floor brokers employed by the same FCM, such that the employing FCM would be considered a broker association.

where the consent filing is maintained (for example, with the contract market or clearing member), a contract market must use necessary and appropriate means to ensure that a customer's consent is not compelled or coerced, *i.e.*, that there is a real ability not to select a dual-trading broker.

3. Spread Transactions

*a. Proposed Regulation*

The Commission's proposal identified two limited circumstances in which it believed that an exception for spread transactions would be necessary and appropriate in order to facilitate customer order execution. First, dual trading would be permitted so that a broker who unsuccessfully attempted to leg into a spread transaction for a customer could take the executed leg into his personal account and offset the resulting position. This proposed exception for "legged in" spreads is intended to address the situation in which the broker is unable to fill a customer spread order, as requested, as a single transaction and attempts to leg into the position. If, for example, the market shifts after one leg of the spread is executed such that the broker is unable to leg into the remaining position at a price permissible under the terms of the customer order, the proposed exception would permit the broker to take the executed leg into his personal account and offset the position.

In order for the contract market and the Commission in its oversight role to verify the legitimacy of the transaction, the contract market would be required to prepare and to maintain a record to demonstrate that the customer order specified a spread trade, preferably on the contract market's trade register required under Commission regulation 1.35(e). Further, the contract market was to require the floor broker to identify the trade as a spread on both his trading card and the customer order that gave rise to the excepted position.

Second, dual trading would be permitted so that a broker could execute for his personal account a spread transaction recognized by a contract market [20] if at least one leg of the spread is in a non-affected contract market. As a result, under this spread exception, the member would be permitted to do brokerage in an affected market and still participate in and provide liquidity to non-affected contract markets.

*b. Comments Received*

NYMEX endorsed the proposed exception for spread transactions, specifically with respect to "legged in" transactions recognized by the relevant exchanges as spreads.

CBT commented that the spread exception should be broadened to include all spread transactions or, at least, all trades executed at a differential. CBT also stated that an exception for spread orders executed between mature and liquid months and less liquid months can create liquidity. Similarly, CSC commented that an exception should be fashioned for intracommodity spread transactions if at least one leg of the spread is in a low-volume contract month. CBT commented that it would be appropriate to provide an exception for spreads involving any expiring contract month beginning at first notice day. CBT also commented that if dual trading is necessary to execute a customer's spread order under the terms the customer requested, no reason exists not to lift the dual trading ban in order to give the customer the service requested.

CBT and Comex commented that the requirement that a record be prepared and maintained to demonstrate that the customer order was for a spread trade is unwarranted and unnecessary. The commenters noted that "legged in" spreads that are not designated with an "S" can be related easily to the underlying documentation for surveillance purposes.

*c. Regulation 155.5(c)(4)(iii)*

The Commission agrees that an exception for spreads can be appropriate to provide needed liquidity to low-volume contract months in an affected contract market. Therefore, the Commission is expanding the spread exception to include intra-commodity spreads where one leg of the spread is in a low-volume contract month, *i.e.*, futures delivery months or option expirations that reasonably can be expected to have an average daily trading volume of less than 500 contracts. This new exception would apply only where a contract market has in effect rules that provide for the low-volume months exception. The provision is a logical extension of the spread exception previously proposed.

Ideally, the contract market would identify the excepted "legged in" spreads on the trade register. Such transactions must be identified on the trading card and order ticket to permit compliance personnel to trace the leg placed in the broker's own account to the customer's order ticket reflecting the spread order. Further, the contract market must have in place procedures to monitor this exception.

With respect to CBT's comment regarding an exception for spreads involving expiring contracts beginning at first notice day, the Commission is making other changes, discussed below, to address exchange concerns.

4. Member Customers

*a. Proposed Regulation*

The proposed regulation allowed an exception for transactions for members of the contract market not present on the floor. This exception recognizes that members generally are better able than public customers to assure the proper handling of their orders. In order to facilitate surveillance, a contract market adopting this exception would be required, on its trade register, to identify such excepted transactions through account numbers, a separate CTI, or otherwise for surveillance purposes.[21]

*b. Comments Received*

CBT commented that it supports this proposal as long as "member" includes individual members and member firms. CBT further commented that given the necessary flexibility, it could implement this exception without imposing new major costs on market users and that a separate CTI designation is unnecessary. Comex and NYMEX endorsed the proposal and agreed with a requirement of special identification of such transactions on the exchange's trade register for surveillance purposes.

*c. Regulation 155.5(c)(4)(iii)*

A contract market adopting rules to provide the member customer exception must identify the excepted transactions, on the trade register required under Commission regulation 1.35(e), so that transactions for member customers off the exchange floor can be distinguished from transactions for public customers. Such identification may be accomplished through account identification numbers, a separate CTI code, or other means which facilitate surveillance of the excepted transactions. Thus, in response to the CBT, a contract market is not required necessarily to adopt a new CTI code, but

[20] An exchange-recognized spread is a spread for which an exchange has established lower margin rates because such positions carry less risk than outright futures positions, *e.g.*, T-Bills/Eurodollars, wheat/corn, hogs/pork bellies, and soybean futures/option spreads.

[21] Under Commission regulation 1.35(e), a transaction executed for the account of any type of customer, including a member customer not present on the floor, is required to be designated as a CTI 4. It would be difficult to monitor an exception for member customers without a method for differentiating between a floor broker's activity for member customers off the exchange floor and for public customers.

may determine the recordkeeping requirement most appropriate for its individual markets to provide the needed information on the trade register for ready computer monitoring.

The Commission considered the CBT's comment that it endorses the exception as long as "member" includes individual members and member firms. The Commission believes that the same rationale for allowing an exception for individual members not present on the floor applies to member firms.[22] However, the excepted transaction must be of the member firm's proprietary account and not for any customer of the member firm.[23] In this regard, a contract market that wishes to include member firm orders under the member-customer exception must be able to ensure that a dual trading broker accepts orders only for proprietary, and not customer, accounts of the member firm.

5. Low-volume Months

*a. Proposed Regulation*

The proposal permitted an exception for futures delivery months or option expirations in affected contract markets that reasonably can be expected to have an average daily trading volume of less than 500 contracts.[24] The volume in such potentially excepted months, however, would be counted for purposes of computing the contract market's average daily trading volume to determine affected contract market status. Excepted low-volume months would be identified based on historical data and an analysis thereof provided by the contract market and other factors identified. The contract market would be required to keep full and systematic records supporting its determinations and, as part of its trade surveillance program, to establish special procedures including appropriate reports to monitor dual trading activity in the excepted low-volume futures delivery months and option expirations.

*b. Comments Received*

CME and CSC commented that the average daily trading volume level of 500 contracts per day is too low.

Comex supported the exception but also believes that exchanges should be permitted to authorize dual trading during volume surges to assure the availability of reserve brokerage services, subject to the constraint that a floor broker not be permitted to resume trading for his own account after handling a customer order.

*c. Regulation 155.5(c)(4)(iv)*

Final regulation 155.5(c)(4)(iv) retains the exception for affected contract markets that reasonably can be expected to have an average daily trading volume of less than 500 contracts.[25] The Commission believes that the exception at the level specified will serve the intended purpose of minimizing the effect of a dual trading prohibition in those contract months where additional liquidity of any origin may be most significant.

The Commission reaffirms that determinations as to the applicability of this exception must be based on historical data and an analysis thereof provided to the Commission by the contract market and other factors it identifies to the Commission. The contract market must keep full and systematic records supporting these determinations.

As part of its trade monitoring program, a contract market must establish special procedures including appropriate reports to monitor dual trading activity in the relevant low-volume futures delivery months and option expirations. In addition, any contract market rule providing for this exception should address, as necessary, related matters such as transition issues. Contract markets also must publish a list of any excepted low-volume months, in conjunction with the quarterly publication of affected contract markets, in a manner sufficient to reach all members.

6. Spot Months

The Commission received several comments pertaining to the impact of a dual trading prohibition on trading activity during the spot month. CBT commented that an exception should be provided for spread transactions involving an expiring contract beginning at first notice day, noting that the resulting liquidity will assist in the orderly liquidation of the contract. In addition, CBT suggested that "average daily trading volume" be more narrowly defined to reflect accurately the decreased activity in any spot month.

The Commission recognizes that there may be periods of trading as a contract matures when additional liquidity may be necessary to assure proper functioning of a market with respect to hedging and to assist in orderly liquidation of the contract. For example, a maturing contract may experience a large influx of orders from market participants who do not desire to take delivery of the cash commodity or to have their position cash settled. These persons, particularly speculative traders, commonly move their position to the next expiring future by use of spread transactions or, in some instances, liquidate the position in the expiring future. During this period, the prices of effectively functioning futures markets converge with cash prices. Additional liquidity during this period may be necessary to facilitate execution of the influx of orders without impairing the convergence of cash and futures prices.

In addition, contracts in which there is simultaneous trading and delivery generally exhibit substantially reduced trading volume and a declining open interest during the period when notices are being issued and received. During this period, additional liquidity may be needed to assist in orderly liquidation of the remaining open interest.

In view of the above, the Commission has determined to provide an additional exception to the dual trading prohibition with respect to specific and limited periods of trading in the spot month. The Commission is revising the regulation to make available an exception pursuant to exchange rules to recognize a period of trading in a maturing futures contract during which a dual trading prohibition may be suspended with respect to both outright transactions in the expiring month and spread transactions between the expiring month and the next deferred month. The regulation provides that a contract market may specify such a period provided that it demonstrates that during the specified period, liquidity in the maturing futures contract reasonably can be expected, on the basis of historical data and an analysis thereof and other factors identified, to shift to the next contract month.[26] A contract market also would have to demonstrate that effective surveillance will be conducted for dual

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[22] The transaction for the member firm to be excepted from the prohibition is to be distinguished from a transaction for the broker's clearing member's house account (CTI 2), which is not affected by the dual trading prohibition. Trades for a member firm not affiliated with the floor broker are designated as CTI 4 trades, which, but for the specific exception, would be affected by the dual trading prohibition.

[23] Commission regulation 1.3(y) defines what constitutes a proprietary account.

[24] See 58 FR 13025 n. 47 for specific application of this exception.

[25] *Id.* As previously noted, the Commission intends that this exception could apply either to specific futures delivery months or option expirations or more generically to designated delivery months or option expirations specified in proximity to the nearby month (*e.g.*, "the fourth month out").

[26] CME, the only contract market that restricts dual trading, similarly allows flexibility with respect to application of the dual trading restriction during a period immediately prior to and including the last day of trading. CME Interpretation of Rule 552, Dual Trading Restrictions.

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trading-related abuses during the specified period.

7. Market Emergencies

The proposal would permit a contract market to suspend the dual trading prohibition in the event of a market emergency that required the contract market to take a temporary emergency action under recently amended Commission regulation 1.41(f). A contract market would be able to suspend the dual trading prohibition through emergency action to maintain an orderly market in the event of emergency conditions, such as abruptly changing market conditions that may result in an extraordinary influx of orders. Temporary emergency actions taken pursuant to Commission regulation 1.41(f) would be subject to Commission review and the various requirements mandated by the 1992 Act.[27]

NYMEX, CBT, and Comex endorsed this exception as being in the public interest and facilitating the ability of an exchange to maintain an orderly market. The Commission is making no changes to this provision.

*D. Exemption Petitions*

1. Standards

*a. Proposed Regulation*

Proposed regulation 155.5(d)(1) required a contract market to apply for an exemption from the dual trading prohibition by filing a written petition, signed by the contract's chief operating officer. In that petition, the contract market would be required to demonstrate that its trade monitoring system is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading. The contract market's trade monitoring system also would have to be capable of generating an audit trail that satisfies the requirements of Commission regulation 1.35.

The Commission proposed to establish guidelines as to what would be required for a contract market to demonstrate successfully that its trade monitoring system components are sufficient to detect and deter violations attributable to dual trading. The proposed guidelines, contained in Appendix A to the proposed regulation, set forth minimum standards with respect to each component of the contract market's trade monitoring system and would be applied to determine whether a particular contract market's trade monitoring system satisfies the exemption requirements. Specifically, appendix A contains guidelines for the following components of a contract market's trade monitoring system: Physical observation of trading areas; audit trail system; recordkeeping system; surveillance system; dual trading-related disciplinary actions; and commitment of resources. The Commission in its discretion, however, will consider the contract market's trade monitoring system as a whole in determining whether to grant a conditional or unconditional exemption.

*b. Comments Received*

NYMEX commented that contract market officials, other than the chief operating officer, including senior officials in charge of legal, operations, trade surveillance, compliance and/or regulatory affairs should be permitted to sign the petition in the event the chief operating officer is not available. CME, CSC, and Comex stated that the proposal would redundantly require exchanges to produce information on their ability to produce an audit trail that already has been formally reviewed and approved by the Commission.

CBT commented that the requirement that an exchange demonstrate that it satisfies dual trading rules and guidelines to obtain an exemption has no statutory basis. It believes that the Commission can only impose as a condition to an exemption that an exchange demonstrate that its trade monitoring system "satisfies CEA section 5a(b) with regard to violations attributable to dual trading at such contract market."

In its comments, CBT also argues that the proposed regulations contravene Constitutional due process requirements for both floor brokers and exchanges because they do not afford trial-type procedures to those seeking exemptions from the ban on dual trading.

*c. Regulation 155.5 (d)(1) and Appendix A*

Upon review of NYMEX's comment regarding the potential unavailability of the chief operating officer for purposes of signing the exemption petition, the Commission has determined to amend this provision. If the chief operating officer is unavailable, the exemption petition may be signed by the contract market official acting in the chief operating officer's capacity. The Commission is adding this degree of flexibility in order to ensure that the exemption process is not delayed due to the absence or unavailability of the chief operating officer. However, the Commission believes it is important to preserve the accountability of high-level contract market officials.

A contract market may not substitute information contained in a recent rule enforcement review in place of the specific information required under the regulation and the guidelines in appendix A. In drafting the exemption provisions, the Commission applied the new express requirements in the 1992 Act as to an exchange's trade monitoring system. The Commission's regulations are drafted to require contract markets to provide current, detailed, and uniform information in exemption petitions. However, as the Commission stated previously, a contract market may attach excerpts from recent rule enforcement reviews in support of its petition. The relevance of such attached excerpts will be in part determined based on the target period of the review in question.

CBT incorrectly asserts that the rules and guidelines to obtain an exemption have no statutory basis. The guidelines contained in appendix A add specificity to the statutory requirements of section 5a(b) of the 1992 Act and provide additional guidance to a contract market as to what the Commission believes is necessary to demonstrate that the components of a contract market's trade monitoring system are sufficient to detect and deter violations attributable to dual trading. Furthermore, section 4j(a)(1)(c) requires the Commission to specify the relevant data required to be submitted with each exemption petition. The Commission believes that the guidelines, as drafted, are consistent with the purpose and intent of the exemption process, which is designed to assess whether a contract market's trade monitoring system is sufficient to qualify it for an exemption from the dual trading prohibition. Whether a contract market's trade monitoring system is sufficient to qualify it for an exemption from the dual trading prohibition.

The underlying premise of CBT's due process contentions is that the practice of dual trading constitutes a protected interest, *i.e.*, a property right. We conclude, however, that the CBT has failed to demonstrate any protected property interest in dual trading for

[27] Regulation 1.41(f) requires a contract market to make every effort practicable to give the Commission notice of its intention to implement, modify, or terminate a temporary emergency rule before taking action. A temporary emergency rule will remain in effect unless the Commission suspends the effect of the rule pending review under section 5a(a)(12)(A) or otherwise based upon a determination that the emergency action was arbitrary, capricious, or an abuse of discretion; lacking reasonable basis in fact; or taken in bad faith by the contract market or its officials. 58 FR 26229 (May 3, 1993).

either the exchanges or the individual brokers themselves.

As the Supreme Court has stated, "(t)o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." [28] Generally, either a statute or a regulation is evidence of the creation of a property right by the Government.[29]

The relevant statutory provision, section 4j(a)(1) of the Act, prohibits dual trading in certain markets absent the grant of an exemption.[30] Thus, assuming without deciding that one could obtain a "property interest" in dual trading, whatever "interest" there is could only arise after obtaining this exemption.

Courts have recognized that an entitlement may exist for a benefit sought but not yet obtained, such as a license to engage in lawful activity, if the law limits the exercise of discretion by the official responsible for conferring the benefit.[31] But here Congress has declared the activity in question to be unlawful, rather than lawful. Moreover, the determination whether to grant any exemption is not "limited," but part of an exercise of broad authority to determine if a contract market has made the necessary showing to overcome the statutory prohibition against dual trading.

The CBT attempts to show entitlement under the Act on two bases. It first argues that a floor broker's existing license, authorized by the Act, incorporates the right to dual trade. Further, it contends that section 4j(a), which defines the term "dual trading," also creates the right to dual trade.

The notion that a floor broker's license encompasses a right to dual trade is not supported by any evidence of a mutual understanding between the Commission and the exchanges that this license subsumed a right to dual trade. Nothing in the regulations for floor brokers or in the Act grants or acknowledges a right to dual trade. To the contrary, in amending the Act in 1974, Congress instructed the Commission to determine whether the practice of dual trading should be permitted.[32] An ongoing study of whether dual trading would be allowed does not rise to the level of creating a legal guarantee of a protected activity. Indeed, section 4j(a)(1) of the Act refers to dual trading as a "privilege," underscoring that there is no entitlement to dual trade.

Based on the above, the Commission concludes that the CBT has articulated at best an expectation of continuing to dual trade. As explained, however, a protectable interest must be more than a "unilateral expectation." [33]

The CBT separately raises other concerns about the exemption process and its effect on an exchange's legal status under the Act. Purportedly, denial of an exemption based on a finding that the contract market's trade monitoring system does not satisfy the standards of section 5a(b) of the Act would be equivalent to a finding that the exchange is operating unlawfully and does not have adequate ability to police the contract market effectively.[34] This, in turn, would: (1) Preclude an exchange from obtaining contract market designations for new products; (2) result in an automatic suspension or revocation of the exchange's contract market designation; and (3) result in private-right-of-action suits by customers against the exchange for failing to enforce its rules. According to the CBT, these consequences of a denial make the exemption procedure adversarial in nature, and thus require a full evidentiary hearing.

Our review of the statute discloses no intent by Congress to make the exemption process adversarial in character. As part of the exemption analysis, the statute directs the Commission to exempt a contract market from the prohibition "upon finding that * * * (A) the trading monitoring system in place at the contract market satisfies the requirements of section 5a(b) with regard to violations attributable to dual trading at such contract market * * *." [35] Moreover, section 4j(a)(5)(B) requires the Commission, before denying an exemption or granting a conditional exemption, to provide the affected contract market, upon request, with an opportunity for oral presentation of views and comments, as opposed to the taking of oral testimony common to adversarial proceedings—under terms set by the Commission.

Such an exemption procedure, which focuses on the capability of an exchange's trade monitoring system, is fundamentally distinct from an enforcement proceeding instituted against an exchange by the Commission, where sanctions may be imposed for the exchange's failure to enforce its own rules or for engaging in violations of the Act or the Commission's rules.[36]

Even assuming the applicability of procedural due process considerations to the exemption denial or revocation procedure, such process is a flexible concept and "calls for such procedural protections as the situation demand." [37] Where an agency is called upon to consider whether groups of individuals are affected by identical operative facts, there is no requirement of individualized hearings, let alone trial-type hearings.[38]

The same considerations weaken the CBT's call for a provision for cross-examination.[39] The credibility of exchange members and individual brokers is not called into question anywhere in the applicable regulations. The focus instead is on the efficacy of the exchanges' trade monitoring systems. Consequently, any role of cross-examination, the hallmark of a full adversarial hearing, is, at best, questionable.[40]

2. Content Requirements

*a. Proposed Regulation*

Proposed regulation 155.5(d)(2) would require a contract market's exemption petition to identify each contract market that is, or is projected to be, affected. The petition would be required to include a full description of

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[28] *Board of Regents* v. *Roth*, 408 U.S. 564, 577 (1972).

[29] *See, e.g., Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532, 538 (1985); *Thompson* v. *Washington*, 497 F.2d 626, 635 (D.C. Cir. 1973).

[30] Prior to the 1992 Act, the Commission, under section 4j, was authorized to prohibit dual trading by rule. Apart from the statutory ban, the Commission has retained the authority to ban dual trading. See section 4j(b) of the Act.

[31] See, *e.g., Midnight Sessions, Ltd.* v. *City of Philadelphia*, 945 F.2d 667, 680 (3d Cir. 1991).

[32] Former section 4j(1) of the Act, as added in 1974, provided in part:

The Commission shall * * * make a determination * * * whether or not a floor broker may trade for his own account or any account in which such broker has trading discretion, and also execute a customer's order for future delivery and, if the Commission determines that such trades and such executions shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades and such executions shall be conducted * * *.

[33] *Board of Regents* v. *Roth*, 408 U.S. at 577. As noted, the CBT also urges that, by adding the definition of dual trading to section 4j(a)(2) of the Act, Congress intended to make dual trading a property right. A definition alone, however, cannot create such a right.

[34] CBT legal memorandum, attached to dual trading comment letter, at 8.

[35] Section 4j(a)(3) of the Act.

[36] *See* section 6(b), 6b and 6c of the Act.

[37] *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

[38] See, *e.g., Thompson* v. *Washington*, 497 F.2d 626, 640 (D.C. Cir. 1973).

[39] CBT legal memorandum at 10–12.

[40] See *Burr* v. *New Rochelle Municipal Housing Authority*, 479 F.2d 1165, 1169 (2d Cir. 1973), quoting *Geneva Towers Tenants Organizations et al.* v. *Federated Mortgage Investors et al* (N.D. Cal. Jan. 8, 1972) ("the opportunity to present oral evidence is not particularly valuable where technical financial data is at issue. The 'credibility' of conflicting data is not best resolved by evaluating the demeanor of witnesses; it is best resolved by independent agency investigation * * *").

each component of the contract market's trade monitoring system, including the systems in place, rules, policies and procedures in effect, standards applied, trading violations targeted, and the results achieved. The petition should include performance statistics covering the 12-month period ending with the month preceding the petition date. If such statistics are not available, specific representative performance examples should be provided. Contract markets also could attach materials, such as excerpts from recent rule enforcement reviews, and information regarding any programs adopted independently by the contract market to monitor certain trading activity, which the contract market could include in its exemption petition. The proposed regulation also would require that the contract market set forth in its petition the existing program or plan and projected implementation timetable for conformity with the audit trail requirements of section 5a(b)(3) of the 1992 Act.

*b. Comments Received*

CSC commented that unless a contract market complied with the guidelines before their publication date, an exemption request could not be made until one year after the effective date of the regulation, given the 12-month statistical period. CME stated that the regulation should clearly indicate that the Commission will consider, as part of the systems described in regulation 155.5(2)(iii), exchange rules and other regulatory measures designed to prevent dual trading abuses. IGFA, AFBF and NGFA commented that the proposed exemption guidelines are consistent with fair and orderly trading and that the proposed standards for exemption are appropriate.

*c. Regulation 155.5(d)(2)*

A contract market need not delay apply for an exemption because it does not believe that it comported with the guidelines set forth in appendix A for the 12-month statistical period. In this situation and for other appropriate reasons, the Commission could consider whether to grant a conditional exemption, providing sufficient time for a contract market to correct any deficiencies.

In response to the CME's comment, the Commission amended the regulation and appendix A to state that the Commission, in reviewing a contract market's exemption petition, will consider contract market rules and other regulatory measures designed to upgrade its existing program to prevent trading abuses attributable to dual trading. This amendment is consistent with the Commission's previous statement, noted above, that a contract market could support its exemption petition with information regarding any programs adopted independently by the contract market to monitor certain trading activity. Thus, a contract market could properly include within its petition for an exemption a description of any programs or procedures in place or to be put in place in the immediate future to limit dual trading.

3. Audit Trail and Recordkeeping Systems

*a. Proposed Regulation*

The proposed regulation would require a contract market to provide a detailed description of the methodology and procedures followed to verify the accuracy of recorded trade execution times. Further, the contract market would be required to demonstrate that its one-minute trade execution times, as required under Commission regulation 1.35(g), were accurate to the highest degree practicable (but in no event less than 90 percent accurate) during four consecutive months within the 12-month period ending with the month preceding the petition date. This standard, as well as others, would be subject to change as, for example, new statutory standards become effective and exchange systems evolve.

Contract markets that record trade execution times manually would be required to demonstrate the accuracy rate through, at a minimum, a comparison of times recorded for both the buying and sellings sides of the trade to the times reported in the price change register. If trade execution times are imputed at the contract market, the contract market would be required to demonstrate its accuracy rate through, at a minimum, the accuracy of the data inputted and a description of the contract market's trade imputation algorithm program. Such description would include information as to how and why the program based on input data reliably establishes the accuracy of the imputed trade execution times at the rate represented.

With respect to recordkeeping systems, the contract market would be required to demonstrate that a "representative sample" of documentation required to be prepared and maintained by each floor member and member firm regarding the execution of customer orders and other trading is reviewed for compliance with Commission regulation 1.35 at least once each year. A contract market should provide a checklist used in the annual reviews to evidence the completion of the required reviews and the performance of its floor members over the review period. A contract market also would have to demonstrate that evidence of inadequate or violative recordkeeping is incorporated into other compliance activities as appropriate.

*b. Comments Received*

NYMEX commented that the 90-percent test is not appropriate for every contract market and is not necessarily indicative of the quality of an audit trail system. NYMEX further commented, along with CBT, that the Commission should delete reference to the 90-percent accuracy test and substitute a qualitative review of each contract market's audit trail system. CBT also stated that the one-minute timing standard is arbitrary with no statutory basis and that the Commission should abandon its reliance on subjective measures. CME commented that the 90-percent accuracy standard is undefined and vague.

Comex asked for clarification of the description of the comparison methodology required for exchanges that rely upon manual trade time recordation. NYMEX noted that independent time-stamping by an exchange's employee and the use of an electronic hand-held system for recording trade execution times presumably would not be within the term "recorded manually." Therefore, NYMEX requested that the Commission clarify the term "recorded manually" in the guidelines to the final rule.

CME commented that the Commission should allow innovative exchanges to develop alternate surveillance procedures that otherwise satisfy the recordkeeping requirements. In this regard, CME stated that the proposed rules should be flexible enough to allow alternate recordkeeping procedures, which potentially can reduce market participant costs, to evolve.

*c. Regulation 155.5(d)(2)(ii)*

Final regulation 155.5 continues to require contract markets to demonstrate at least a one-minute trade timing accuracy rate of 90 percent. The Commission has considered the comments regarding the 90-percent accuracy standard, but believes that the specified standard is necessary and appropriate to achieve one-minute trade execution times that are accurate to the highest degree practicable. The Commission reaffirms, however, that a contract market's trade monitoring system will not be judged solely on this standard. Instead, the Commission, in its discretion, will consider the contract

market's trade monitoring system as a whole in determining whether to grant a conditional or unconditional exemption. Also, the Commission has amended Guideline A expressly to require that a contract market demonstrate the effective integration of trade timing data into the contract market's surveillance systems with respect to dual trading-related abuses.

As to the comparison methodology for a contract market that relies on manual trade time recordation, the contract market should compare both the buying and selling brokers' recorded execution times to the price change register. There is no requirement for comparison of the buying broker's time to the selling broker's time.[41]

NYMEX'S trade execution times, which are independently time-stamped on a pit card, are not manually recorded times in that they are not handwritten. For purposes of determining that exchange's one-minute timing accuracy rate, however, the comparison methodology is similar to that used by contract markets that rely on manual trade time recordation. NYMEX should compare each pit card time stamp to the trade time appearing on the price change register. The Commission is revising appendix A accordingly.

The Commission also is revising appendix A to recognize the impending use of electronic hand-held trading cards by stating the methodology for demonstrating the timing accuracy of such trading cards.[42] If trade execution times are recorded through electronic hand-held trading cards, the contract market must demonstrate the accuracy rate through, at a minimum, the accuracy of the timing mechanism (such as an internal clock), including a description of how the timing mechanism is set and the uniformity of the time set for all the electronic hand-held trading cards used on the contract market, and the unalterability of the trade execution times recorded.

The Commission considered CME's comment that the regulation should allow alternate recordkeeping procedures that otherwise satisfy the recordkeeping requirements. As the Commission has stated previously, the standards set forth in appendix A should serve as guidelines for a contract market to demonstrate the efficacy of its trade monitoring system for purposes of the exemption process. It is not intended to discourage innovative development of new systems and procedures which effectively accomplish the purposes of the regulation.

4. Appropriate Disciplinary Actions

*a. Proposed Regulation*

A contract market's exemption petition would be required to demonstrate use, on a consistent basis, of surveillance information to bring dual trading-related disciplinary actions. A contract market must submit a list of each investigation and related disciplinary proceeding involving dual trading-related abuses for the 12-month statistical review period. The list should indicate the source of the investigation, the type of dual trading-related abuse alleged or found, and the disposition at each level of the disciplinary process. For each settlement or adjudication, the list also must state any penalties assessed.

*b. Comment Received*

NYMEX commented that disciplinary cases included in the exemption petition should be identified by number rather than by name for purposes of confidentiality and in fairness to persons subject to investigation.

*c. Regulation 155.5(d)(2)(iv)*

The Commission is adopting this provision as proposed. In response to NYMEX's comment, contract markets must provide the names of persons subject to investigation and/or disciplinary action. The Commission will maintain the confidentiality of such information as appropriate under section 8 of the Act.

5. Remittal of Exemption Petition

*a. Proposed Regulation*

Proposed regulation 155.5(d)(4) would authorize the Director of the Division of Trading and Markets (or a designee) to remit to the contract market any exemption petition that does not comply with the content requirements set forth in the regulation. The remittal letter would provide, where practicable, an appropriate explanation of the remittal and would identify the content deficiencies. The contract market would have 20 days following receipt of the remittal letter in which to resubmit the exemption petition with the deficiencies corrected. If the corrected petition is not resubmitted within that time frame, the Commission could exercise its discretion to permit the dual trading prohibition to become effective as to the affected contract market.

*b. Comments Received*

NYMEX and COMEX commented that the Commission should delete the "where practicable" language and set forth an appropriate explanation for remittal of the exemption petition. CBT and CSC stated that the deadline for resubmission of an electronic remitted exemption petition with deficiencies corrected is unreasonable and recommended that the Commission lengthen the time for resubmission to at least 90 days.

*c. Regulation 155.5(d)(4)*

Based on the comments received, the Commission deleted the "where practicable" language from the final rule. Accordingly, the remittal letter will set forth an appropriate explanation for remittal of the petition.

The final regulation will continue to require resubmission of a remitted exemption petition 20 days following receipt of the remittal letter. The Commission believes that 20 days should be sufficient time to correct the deficiencies in the contents of the exemption petition. The specified time period is intended to ensure that a contract market's petition does not remain in remitted status for an extended period of time without the affected market being subject to the dual trading prohibition. Furthermore, the Commission, at its discretion, could extend the time period for resubmission under exceptional circumstances.

D. Other Comments

The Commission also received comments stating concerns regarding the competitive and systemic consequences of the dual trading prohibition from CSC, Comex and CFBTA. The Commission acknowledges the comments, but reiterates that the regulation responds to a specific statutory mandate.

## III. Related Matters

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA") requires federal agencies (including the Commission), in adopting rules, to consider the impact of those rules on small businesses.[43] Regulation 155.5 will directly affect certain contract markets, which are not small entities for RFA purposes,[44] and certain floor brokers, which may be considered small entities in the present context.[45] In

[41] Although there is no Commission requirement for a broker to broker comparison of trade execution times, a contract market may find such a comparison useful in other aspects of its trade practice surveillance program.

[42] Currently no electronic hand-held trading cards are in use.

[43] 5 U.S.C. 601 *et seq.* (1988).

[44] 47 FR 18618, 18619 (April 30, 1982).

[45] The Commission stated that it would determine in connection with specific rule proposals whether floor brokers should be considered small entities for

Continued

proposing regulation 155.5, the Commission stated its belief, and the Acting Chairman certified, that the proposal could be implemented without imposing a significant economic burden on a substantial number of floor brokers.[46] Consequently, the Commission did not prepare an initial regulatory impact analysis.[47]

The Commission received two comment letters on the proposed regulation that raised issues in connection with the RFA. In general, the commenters, CSC and Comex, contended that regulation 155.5 as proposed could have a significant economic impact on a substantial number of floor brokers at those exchanges due to the relatively high percentage of volume on the likely affected contract markets attributable to dual traders and their relatively low degree of specialization.[48] The Commission has evaluated those comments carefully and now believes that it cannot be determined whether or not regulation 155.5 will have a significant economic impact on a substantial number of small entities.

Consequently, in accordance with the RFA, the Commission prepared a regulatory impact analysis in conjunction with the adoption of regulation 155.5 as a final rule. The Commission, however, has been unable to identify any alternatives to regulation 155.5 that would satisfy the statutory requirements of section 4j(a) at a lower potential cost to certain dual-trading floor brokers at CSC and Comex.[49] In any event, the Commission's legal obligation to impose the dual trading prohibition in accordance with the section 4j(a), despite any potentially significant adverse impact such prohibition may have on a possibly substantial number of floor brokers that could be small entities (including those at CSC and Comex), is not lessened or superseded by the FRA.[50]

The analysis, together with a copy of this notice, has been transmitted to the Chief Counsel for Advocacy of the Small Business Administration.[51] Copies of the regulatory impact analysis are available to the public by contacting the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Steet, NW., Washington, DC 20581; telephone: (202) 254–6314/

*B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1980 ("PRA") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.[52] In compliance with the PRA, the Commission previously submitted this regulation in its proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"). It has been assigned OMB Control No. 3038–0022.

The burden associated with the entire collection, including this final rule, is as follows:

Average burden hours per response.....613.26
Number of respondents.....4,295
Frequency of response.....on occasion

The burden associated with this specific final regulation is as follows:

Average burden hours per response.....528.00
Number of respondents.....2,813
Frequency of response.....on occasion

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503; (202) 395–7340.

**List of Subjects in 17 CFR Parts 1 and 155**

Commodity futures, Commodity options, Contract markets, Customers, Dual trading, Floor brokers, Futures commission merchants, Members of contract markets.

For the reasons set out in the preamble and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4b, 4c, 4e, 4g, 4j, 5, 5a, 8 and 8a thereof, 7 U.S.C. 6, 6b, 6c, 6e, 6g, 6j, 7, 7a, 12 and 12a, the Commission amends parts 1 and 155 of title 17 of the Code of Federal Regulations as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

**Authority:** 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, unless otherwise noted.

2. Section 1.35(e)(1) is revised to read as follows:

**§ 1.35 Records of cash commodity, futures and option transactions.**

* * * * *

(e) * * *

(1) Was trading for his own account or an account for which he has discretion;

* * * * *

## PART 155—TRADING STANDARDS

3. The authority citation for part 155 continues to read as follows:

**Authority:** 7 U.S.C. 6b, 6g, 6j and 12a, unless otherwise noted.

4. Section 155.5 is added to read as follows:

**§ 155.5 Prohibition of dual trading by floor brokers.**

(a) *Definitions.* For purposes of this section:

(1) *Trading session* means the hours during which a contract market is scheduled to trade continuously during a trading day, as set forth in contract market rules, including any related post-settlement trading session. A contract market may have more than one trading session during a trading day.

(2) *Customer* means an account owner for which a trade is designated with the customer type indicator prescribed under Commission regulation 1.35(e)(4).

(3) *Contract market* means any contract separately designated by the Commission, *provided, that* two or more contracts trading concurrently pursuant to a single designation order on other

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RFA purposes. Any floor broker employed by an FCM, however, would not be considered a small business entity, because such a floor broker is part of the FCM's business and the Commission previously determined that FCMs are not small entities under the RFA. *Id.*

[46] 58 FR 13025, 13036–37 (March 9, 1993).

[47] The RFA provides that an initial regulatory impact analysis is not required in conjunction with a rule proposal if the head of the agency certifies that the rule will not, if promulgated, have significant economic impact on a substantial number of small entities. 5 U.S.C. 605 (1988).

[48] CSC letter dated May 7, 1993; Comex letter dated May 13, 1993.

[49] In their comments, CSC and Comex emphasized the extent to which their members are not highly specialized between brokerage and trading and argued the implications thereof. It is reasonable to expect that, in light of the comments they submitted, CSC and Comex will seek exemptions for their affected contract markets. If the Commission nevertheless denies such an exemption to any of their affected contract markets, the degree to which the floor participants do not specialize in customer or personal trading would be a factor in the Commission's determination of the date to be set for the prohibition to take effect.

[50] Exec. Order No. 12,291 § 3(f)(3), 46 FR 13193 (1981), reprinted in 5 U.S.C. 601 (1988) (nothing in the requirements for regulatory impact analysis and review under the RFA shall be construed as displacing the agency's responsibilities delegated by law).

[51] Ordinarily, a final regulatory impact analysis for a major rule is to be transmitted 30 days prior to the publication of the rule as a final rule. Exec. Order No. 12,291 § 3(c)(2). That procedure, however, does not apply to the extent that it conflicts with deadlines imposed by statute. Exec. Order No. 12,291 § 8(a)(2). Given the deadline imposed on the Commission by the 1992 Act for issuance of dual trading regulations (July 25, 1993), transmittal to the Chief Counsel for Advocacy 30 days in advance of publication was impracticable.

[52] 44 U.S.C. 3501 *et seq.* (1988). A collection of information includes applications to the government and reporting or recordkeeping requirements.

than a transitory basis and for which the contract terms differ significantly other than as to delivery or expiration months shall each be considered a contract market for purposes of this section, and *provided further, that* screen-based trading in a contract designated by the Commission to the extent conducted through a competitive auction process pursuant to an algorithm that applies non-discretionary rules of priority as permitted under contract market rules made effective under the Act shall be considered a separate contract market for purposes of this section.

(4) *Dual trading* means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes directly or initiates and passes to another member for execution a transaction in the same contract market for:

(i) The floor broker's own account;

(ii) Any account in which the floor broker's ownership interest or share of trading profits is ten percent or more;

(iii) An account for which the floor broker has trading discretion; or

(iv) Any other account controlled by a person with whom such floor broker is subject to trading restrictions under section 4j(d) to the extent section 4j(d) has been applied by Commission rule or order.

(5) *Daily trading volume* means the total number of sells (or buys) executed in any contract market during a trading day, excluding from the computation ex-pit transactions as permitted under contract market rules that have been made effective under the Act.

(6) *Average daily trading volume* means an arithmetic average of daily trading volume in a contract market over a specified time period on any day when any expiration or delivery month was listed for trading.

(7) *Volume year* means a continuous 12-month period that includes the last calendar month-end date prior to the computation date.

(8) *Computation date* means the date on which a contract market computes its average daily trading volume for the most recent volume year.

(9) *Affected contract market* means a contract market in which the average daily trading volume equals or exceeds the threshold level of 8,000 contracts for each of four quarters during the most recent volume year.

(b) *Dual trading prohibition.* No floor broker shall dual trade in an affected contract market, except as provided in contract market rules that have been made effective pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41, unless that contract market is exempted under paragraph (d) of this section. This prohibition shall not affect ex-pit transactions as described in paragraph (a)(5) of this section.

(c) *Contract markets.—(1) Contract market rules.* Prior to the effective date of the dual trading prohibition under this section or under a Commission order denying an exemption petition filed pursuant to paragraph (d) of this section or revoking an exemption pursuant to paragraph (e) of this section, each affected contract market, unless exempted under paragraph (d) of this section, shall adopt rules that have been made effective pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41 to prohibit dual trading in accordance with the provisions of this section. In the absence of such contract market rules, upon the effective date of the dual trading prohibition as implemented either under this section or by Commission order, Commission regulations 155.5 (a) and (b) shall be deemed to be rules of the contract market.

(2) *Volume computation.* Each contract market that may be subject to a dual trading prohibition shall determine whether it is an affected contract market by computing at least quarterly its average daily trading volume for each of four quarters during the most recent volume year. In addition, the contract market shall:

(i) At least five days before the effective date of the dual trading prohibition under this section or under a Commission order denying an exemption petition or revoking an exemption, and thereafter within at least two business days of each computation date, publish, in a manner sufficient to reach all members, a list of the affected contract markets and the effective date of the dual trading prohibition and, on the same date, provide that information in writing to the Director of the Division of Trading and Markets, or an employee of the Commission under the supervision of such Director, as may be designated by the Director; and

(ii) Maintain a record of its average daily trading volume computations required hereunder. Such record shall include the computation date, the beginning and ending dates for the volume year under consideration, the beginning and ending dates for each quarter in the volume year and the average daily trading volume for each quarter.

(3) *Newly affected contract market.* If a contract market that was not affected on the immediately preceding computation date becomes affected as of the current computation date, the effective date of a dual trading prohibition for that contract market shall be no more than 30 calendar days after the current computation date for that contract market.

(4) *Permitted exceptions.* Notwithstanding the applicability of a dual trading prohibition under this section, dual trading shall be permitted in affected contract markets in accordance with rules that have been submitted to the Commission pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41 as follows:

(i) *Correction of errors.* To offset trading errors resulting from the execution of customer orders, *provided, that* the floor broker must liquidate the position in his personal error account resulting from that error by open and competitive means as soon as practicable, but not later than the close of business on the business day following the discovery of the error. In the event that the daily price fluctuation limit is reached and a floor broker is unable to offset the error trade, however, the floor broker must liquidate the position in his personal error account resulting from that error as soon as practicable thereafter.

(ii) *Customer consent.* To permit a customer to designate in writing not less than once annually a specifically identified floor broker to dual trade while executing orders for such customer's accounts. An account controller acting pursuant to a power of attorney may designate a dual trading broker on behalf of its customer, *provided, that* the customer explicitly grants in writing to the individual account controller the authority to select a dual trading broker.

(iii) *Spread transactions.* To permit a broker who unsuccessfully attempts to leg into a spread transaction for a customer to take the executed leg into his personal account and to offset such position, *provided, that* a record is prepared and maintained to demonstrate that the customer order was for a spread trade; to permit a broker to execute for his personal account a spread transaction recognized by a contract market if at least one leg of the spread is in a non-affected market; and to permit a broker to execute for his personal account an intra-market spread transaction if at least one leg of the spread is in a low-volume month as described in § 155.5(c)(4)(v).

(iv) *Member customers.* To permit transactions for members of the contract market not present on the floor, *provided, that* the contract market, within the single record required by Commission regulation 1.35(e), specifically identifies such transactions

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through account numbers, a separate customer type indicator, or otherwise for surveillance purposes.

(v) *Low-volume months.* To recognize any expiration or delivery month that, on the basis of historical data and an analysis thereof and other factors identified by the contract market, reasonably can be expected to have an average daily trading volume of less than 500 contracts during the period beginning with the current computation date and ending with the next computation date, *provided, that* the contract market keeps full and systematic records supporting these determinations and, as part of its trade surveillance program, establishes special procedures, including appropriate reports, to monitor dual trading activity in the relevant low-volume contract months.

(vi) *Spot month.* To recognize a period of trading in a maturing futures contract, during which period liquidity in the maturing futures contract reasonably can be expected on the basis of historical data and an analysis thereof and other factors identified by the contract market, to shift to the next contract month, *provided, that* the contract market can demonstrate that effective surveillance will be conducted for dual trading-related abuses during such period.

(vii) *Market emergencies.* To address emergency market conditions resulting in a temporary emergency action under Commission regulation 1.41(f).

(d) *Exemption petitions.*—(1) *Standards.* A contract market may apply for an exemption from the dual trading prohibition of paragraph (b) of this section by filing a written petition, signed by the contract market's chief operating officer or, in his absence, an exchange official acting in the capacity of chief operating officer, that states facts sufficient to demonstrate that its trade monitoring system, consistent with the standards articulated in guidelines set forth in appendix A to this section, is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading, and is capable of generating an audit trail that satisfies the requirements of Commission regulation 1.35. The petition shall be directed to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, with a copy to the Director of the Division of Trading and Markets.

(2) *Content requirements.* An exemption petition must identify each contract market that is, or is projected to be, affected. The petition must include a full description of each component of the contract market's trade monitoring system including the systems in place, rules, policies and procedures in effect, standards applied, trading violations targeted, and the results achieved. To the extent practicable, the petition shall include performance statistics covering the 12-month period ending with the month preceding the petition date. Where such statistics are not available, specific, representative performance examples should be provided. The petition also must set forth the contract market's program or plan and projected implementation timetable for conformity with the requirements of section 5a(b)(3) of the Act. An exemption petition must address, in the order listed below, the following components of a contract market's trade monitoring system:

(i) Physical observation of trading areas;

(ii) Audit trail and recordkeeping systems able to, and used to, capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and outtrades) and otherwise satisfy the requirements of Commission regulation 1.35 and section 5a(b)(3) of the Act, as implemented by Commission regulations and orders;

(iii) Systems capable of reviewing, and used to review, trading data effectively on a regular basis to detect, and other measures designed to prevent, rule violations attributable to dual trading committed in the execution of trades and customer orders on the floor or subject to the rules of the contract market, including:

(A) Trading ahead of customer orders directly or indirectly;

(B) Trading against customer orders directly or indirectly in violation of contract market rules;

(C) Disclosing, misallocating or withholding customer orders;

(D) Failing to resolve errors, unmatched trades or outtrades properly and promptly; and

(E) Crossing customer orders by matching or "offsetting" customer orders directly or indirectly in violation of contract market rules;

(iv) The use of information gathered through such systems on a consistent basis to bring appropriate disciplinary actions against violators;

(v) The commitment of resources necessary for such systems to be effective in detecting and deterring violations attributable to dual trading, including adequate staff to investigate and prosecute disciplinary actions; and

(vi) The assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.

(3) *Alternative requirements.* If a contract market believes that its trade monitoring system does not meet the standards set forth in paragraph (d)(1) of this section, the contract market's petition must include, in addition to the information required to be provided under paragraph (d)(2) of this section:

(i) A specific description of the corrective actions the contract market will take that it believes to be sufficient and appropriate to meet the standards in paragraph (d)(1) of this section, together with an explanation of the sufficiency and appropriateness of such actions, including specific implementation dates, any related changes in systems, operations, staffing, policies, rules, procedures, and budget allocations; and

(ii) Data and an economic analysis of that data to demonstrate any adverse impact of a dual trading prohibition on hedging and price basing at the contract market.

(4) *Remittal.* The Director of the Division of Trading and Markets (or an employee of the Commission under the supervision of such Director as may be designated by the Director) may remit to the contract market, with an appropriate explanation, and not accept pursuant to paragraph (d) of this section, any petition for exemption that does not comply with the content requirements of paragraphs (d)(2) and (3) of this section, as identified in the remittal letter. The affected contract market must resubmit its exemption petition with deficiencies corrected no more than 20 days after receipt of the remittal notice. If the exemption petition is not resubmitted within the prescribed 20-day period, the Commission, at its discretion, may permit the dual trading prohibition provided for in paragraph (b) of this section to become effective as to any such affected contract market. The Commission's review period shall be calculated from the date of resubmission.

(5) *Deferred application of the prohibition.* If a contract market submits a petition for exemption that satisfies the content requirements of paragraphs (d)(2) and (3) of this section prior to the effective date of the dual trading prohibition, the Commission will suspend application of the prohibition against the contract market unless and until the petition is denied, pursuant to the effective date set forth in the denial order.

(6) *Publication.* A notice of the submission of each exemption petition deemed complete under paragraphs

(d)(2) and (3) of this section will be published promptly by the Commission or the Director of the Division of Trading and Markets (or by an employee of the Commission under the supervision of the Director, as may be designated by the Director) in the **Federal Register**. Upon publication of such notice, copies of each petition, with the exception of any information or materials determined by the Commission to be subject to confidential treatment, will be publicly available through the Office of the Secretariat in accordance with the provisions of part 145 of this chapter.

(7) *Grant of exemption without conditions*—(i) *Findings and order.* A contract market's exemption petition will be granted without conditions by Commission order if the Commission finds that, based on the information, views and arguments placed before it by the contract market in writing in its petition and any attachments or supplements thereto, and orally in any presentation pursuant to paragraph (d)(8)(iii) of this section, and other relevant information identified by the Commission, the contract market has demonstrated conformity with the standards contained in paragraph (d)(1) of this section. The Commission's order will state the Commission's findings.

(ii) *Publication.* A Commission order granting an exemption pursuant to this paragraph (d)(7) of this section will be published promptly in the **Federal Register**.

(iii) *Effective date.* A Commission order granting an exemption without conditions pursuant to this paragraph (d)(7) shall be effective upon issuance.

(8) *Proposed conditional exemption or petition denial*—(i) *Notice.* If the Commission intends to deny an exemption petition or to exempt a contract market subject to conditions, the Commission will notify the contract market in writing that it intends to deny or condition the petition and state:

(A) Specific deficiencies in the contract market's trade monitoring system;

(B) Any corrective actions to the trade monitoring system that the Commission believes the affected contract market must take to satisfy the standards of paragraph (d)(1) of this section, and a timetable for such corrective actions; and

(C) Any conditions or limitations that the Commission proposes to attach to an exemption under paragraph (d) of this section.

(ii) *Publication.* A notice issued to a contract market under this paragraph (d)(8) will be published promptly in the **Federal Register**.

(iii) *Opportunity for written submission and oral presentation.* Within five days of receipt of the notice from the Commission, the contract market may request in writing the opportunity to make an oral presentation to the Commission. The contract market will be notified promptly by the Commission of the date and the terms under which the contract market may make an oral presentation. The contract market must submit any written supplemental data, views, or arguments within 20 days of receipt of the Commission's notice, unless the Commission notifies the contract market otherwise.

(9) *Grant of conditional exemption*—(i) *Findings and order.* A contract market's exemption petition will be granted subject to conditions by Commission order if the Commission determines, based on the information, views and arguments placed before it by the contract market in writing in its petition and any attachments or supplements thereto, and orally in any presentation pursuant to paragraph (d)(8)(c)(iii) of this section and other relevant information identified by the Commission, that:

(A) The contract market's trade monitoring system does not satisfy the standards set forth in paragraph (d)(1) of this section, but other corrective actions are sufficient and appropriate to meet the standards in paragraph (d)(1) of this section;

(B) There is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market; and

(C) The conditions or limitations being attached to the grant of exemption by the Commission are appropriate in light of the purposes of this section.

The Commission's order will state the Commission's findings and the conditions or limitations placed upon the contract market.

(ii) *Publication.* A Commission order granting a conditional exemption pursuant to this paragraph (d)(9) will be published promptly in the **Federal Register**.

(iii) *Effective date.* A Commission order granting a conditional exemption pursuant to this paragraph (d)(9) shall become effective 20 days after issuance, unless the Commission determines that more immediate action is appropriate in the public interest and states an earlier effective date in the order.

(10) *Denial of petition.*—(i) *Findings and order.* A contract market's exemption petition will be denied by Commission order if the Commission determines, based on the information, views and arguments placed before it in connection with the petition and other relevant information, that:

(A) The contract market has not demonstrated that its trade monitoring system satisfies the standards set forth in paragraph (d)(1) of this section, and there is not a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market; or

(B) The contract market has demonstrated that there is a substantial likelihood that a dual trading prohibition may harm the public interest in hedging or price basing at the contract market, but has not demonstrated that other corrective actions are sufficient or appropriate to meet the standards in paragraph (d)(1) of this section.

The Commission's order denying the exemption will state the Commission's findings and the date on which the dual trading prohibition will take effect on the contract market.

(ii) *Publication.* A Commission order denying an exemption pursuant to this paragraph (d)(10) will be published promptly by the Commission in the **Federal Register**.

(iii) *Effective date.* A Commission order denying a contract market's petition for an exemption pursuant to this paragraph (d)(10) of this section shall become effective at least 20 days after issuance, unless the Commission determines that more immediate action is appropriate in the public interest.

(e) *Exemption revocation.* An exemption may be revoked if the Commission determines that the standards in paragraph (d)(1) of this section are not being met or if any condition of the exemption has not been met. The Commission shall notify the contract market in writing of its intent to issue an order to revoke the contract market's exemption. Such notice shall include the reasons for the proposed revocation and the procedures under which the contract market shall have the opportunity to be heard. After considering information relevant to the proposed revocation, the Commission shall determine whether to revoke the exemption. Any Commission revocation order shall state findings in support of the revocation and be effective at least 20 days after issuance unless the Commission determines that more immediate action is appropriate in the public interest. Such order shall state the date on which the dual trading prohibition shall take effect.

**Appendix A to Regulation 155.5 — Guidelines regarding Contract Market Petition for Exemption from Dual Trading**

**Prohibition Based on Sufficiency of the Trade Monitoring System.**

Regulation 155.5 permits a contract market to petition the Commission for exemption from the dual trading prohibition on the basis that its trade monitoring system satisfies certain standards. Appendix A is intended to provide additional guidance to a contract market as to what is necessary to demonstrate that the components of a contract market's trade monitoring system, as enumerated in the regulation, are sufficient to detect and deter violations attributable to dual trading. Although these guidelines include certain standards that the Commission intends to apply in determining whether a particular contract market's trade monitoring system meets the exemption standards in Regulation 155.5, the Commission may, in its discretion, consider a contract market's trade monitoring system as a whole, including contract market rules and other regulatory measures designed to prevent trading abuses attributable to dual trading.

**I. Physical Observation of Trading Areas**

Demonstrate (*e.g.*, by daily floor surveillance log) that compliance staff performs floor surveillance:

(1) To the extent practicable, on each open and close;

(2) Randomly at other times during each trading session; and

Demonstrate further that information developed through such surveillance is integrated into other compliance activities as appropriate.

(3) When special market conditions warrant.

**II. Audit Trail System**

Provide a detailed description of the methodology and procedures followed to generate and assure the accuracy of recorded trade execution times. Demonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) during four consecutive months within the 12-month period ending with the month preceding the submission of the exemption petition. Demonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses.

If trade execution times are recorded manually or independently time-stamped at the contract market, demonstrate accuracy rate through, at a minimum, a comparison of the times recorded for both the buying and selling sides of each trade, or the time stamp for the sides required to be time-stamped, to the times reported in the price change register.

If trade execution times are imputed for recordation at the contract market, demonstrate accuracy rate through, at a minimum, accuracy of the data inputted and a description of the contract market's trade imputation algorithm, including how and why it reliably establishes the accuracy of the imputed trade execution times.

If trade execution times are recorded through electronic hand-held trading cards, demonstrate accuracy rate through, at a minimum, the accuracy of the timing mechanism (such as an internal clock), including a description of how the timing mechanism is set and the uniformity of the time set for all the electronic hand-held trading cards used on the contract market, and the unalterability of the trade execution times recorded.

**III. Recordkeeping System**

Demonstrate that a "representative sample" of documentation required to be prepared and maintained by each floor member and member firm regarding the execution of customer orders and other trading is reviewed for regulation 1.35 compliance at least once each year. Provide checklist used in the review of the documentation. Demonstrate that information developed regarding inadequate or violative recordkeeping is incorporated into other compliance activities as appropriate.

**IV. Surveillance Systems to Detect Dual Trading-Related Abuses**

Demonstrate (*e.g.*, by description of procedures and by logs) that the contract market, on a daily basis, reviews trade registers and computerized surveillance reports to detect dual trading-related abuses. The contract market also must describe:

A. The extent to which available trade data, including account numbers, are reviewed; and

B. The cycle and generic content of such computerized reports.

**V. Use, on Consistent Basis, of Information to Bring Dual Trading-Related Disciplinary Actions and Assessment of Meaningful Penalties**

Provide a list of each investigation and disciplinary proceeding involving one or more dual trading-related abuses, which investigation or disciplinary proceeding was in an open status at any time during the 12-month period ending with the month preceding the submission of the exemption petition. Include in list:

A. Source of investigation (*e.g.*, customer complaint or inquiry; automated report; manual review; floor surveillance);

B. Type of abuse alleged or found; and

C. Disposition at each level of the process. For each settlement or adjudication, state any penalties (monetary or other) assessed.

**VI. Commitment of Resources**

Include statistics regarding the timeliness of the completion of investigations and the initiation of disciplinary proceedings.

Issued in Washington, DC, on July 22, 1993, by the Commission.

**Jean A. Webb,**

*Secretary.*

[FR Doc. 93-17965 Filed 7-27-93; 8:45 am]

BILLING CODE 6351-01-M

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 101**

**[T.D. 93-59]**

## Customs Field Organization—Portland, ME

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by updating the list of Customs stations under the jurisdiction of the district director, Portland, Maine. Customs has removed from the list the station at Knoxford Line (Mars Hill), no longer in operation, and added the stations at Deaquam, Estcourt, Ste. Aurelie and St. Pamphile, which are operational but unlisted.

**EFFECTIVE DATE:** August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Bob Jones, Office of Workforce Effectiveness and Development, Office of Inspection and Control, (202-927-0540).

**SUPPLEMENTARY INFORMATION:**

**Background**

As part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs published a document in the Federal Register on July 29, 1992 (57 FR 33461), which proposed to amend the list of Customs stations contained in § 101.4(c), Customs Regulations (19 CFR 101.4(c)). The list shows a station located at Knoxford Line (Mars Hill), under the jurisdiction of the district director, Portland, Maine. The building at this location was demolished many years ago, and the road that the station was located on now serves no useful purpose. Inasmuch as the station at Knoxford Line (Mars Hill) is no longer operational, Customs proposed to remove this station from its list of Customs stations. By contrast, four locations which primarily service woodcutting operations in the area are operational and manned. Customs proposed that these four locations be added to the list of Customs stations under the supervision of the district director, Portland. The stations are located at Ste. Aurelie, Daaquam, St. Pamphile and Estcourt, Maine.

No comments from the public were received in response to this proposal, the comment period for which expired on September 28, 1992, and Customs has determined to adopt the amendments without modification.

**Executive Order 12291 and Regulatory Flexibility Act**

In that this rule relates to agency organization and management, it is not subject to E.O. 12291. Likewise, although Customs solicited public comment, no notice of proposed rulemaking was required pursuant to 5 U.S.C. 553(a)(2). Accordingly, the rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, it is asserted that it will not have a significant economic impact on a substantial number of small entities as contemplated by that Act.

**Drafting Information**

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 101**

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

**Amendment**

Part 101, Customs Regulations (19 CFR part 101), is amended as set forth below.

**PART 101—GENERAL PROVISIONS**

1. The authority citation for part 101 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

2. Section 101.4(c), Customs Regulations (19 CFR 101.4(c)), is amended by removing "Knoxford Line (Mars Hill) * * * Bridgewater" from the columns headed, respectively, "Customs stations" and "Port of entry having supervision" for the Portland, Maine District, and inserting in appropriate alphabetical order under these column headings the following four Customs stations and corresponding ports of entry having supervision: "Daaquam, Maine * * * Jackman"; "Estcourt, Maine * * * Fort Kent"; "Ste. Aurelie, Maine * * * Jackman"; and "St. Pamphile, Maine * * * Jackman".

**George J. Weise,**

*Commissioner of Customs.*

Approved: July 12, 1993.

**Ronald K. Noble,**

*Assistant Secretary of the Treasury.*

[FR Doc. 93–17989 Filed 7–27–93; 8:45 am]

BILLING CODE 4820–02–P

**Bureau of Alcohol, Tobacco and Firearms**

**27 CFR Parts 4, 5, 7, 9, 19, 24, 53, 178, 194, 251, and 252**

**[T.D. ATF–344]**

**Technical Amendments**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** This Treasury decision makes technical amendments and conforming changes to chapter I of title 27 Code of Federal Regulations (CFR). All changes are to provide clarity and uniformity throughout title 27 Code of Federal Regulations.

**EFFECTIVE DATES:** July 28, 1993.

**FOR FURTHER INFORMATION CONTACT:** Angela R. Shanks, Revenue Programs Division, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20091, (202–927–8230).

**SUPPLEMENTARY INFORMATION:** The Bureau of Alcohol, Tobacco and Firearms administers regulations published in chapter I of title 27 Code of Federal Regulations. These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the **Federal Register** during the preceding year. Upon reviewing title 27 for the annual revision ATF and the CFR Unit of the Office of the Federal Register identified several amendments and conforming changes that are needed to provide uniformity in chapter I of title 27, Code of the Federal Regulations.

These amendments do not make any substantive changes and are only intended to improve the clarity of title 27.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 25, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

*Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12291**

Because this is a rule of agency management, it is not subject to Executive Order 12291.

**Administrative Procedures Act**

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

**Drafting Information**

The principal author of this document is Angela R. Shanks, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects**

*27 CFR Part 4*

Advertising, Consumer protection, Custom duties and inspection, Imports, Labeling, Packaging and containers, Wine.

*27 CFR Part 5*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements.

*27 CFR Part 7*

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements.

*27 CFR Part 9*

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

*27 CFR Part 19*

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, U.S. Possession, Virgin Islands, Warehouses, Wine.

*27 CFR Part 24*

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfer, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

*27 CFR Part 53*

Administrative practice and procedure, Arms and munitions, Authority delegation, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

*27 CFR Part 178*

Administrative practice and procedure, Arms and munitions, Export, Imports, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

*27 CFR Part 194*

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

*27 CFR Part 251*

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

*27 CFR Part 252*

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessel, Foreign trade zones, Liquors, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

**Authority and Issuance**

Title 27, Code of Federal Regulations is amended as follows:

**PART 4—LABELING AND ADVERTISING OF WINE**

1. The authority citation for part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205.

2. In § 4.40(b) a heading is added to paragraph (b) to read as follows:

**§ 4.40 Label approval and release.**

* * * * *

(b) *Release.* * * *

**§ 4.50 [Amended]**

3. In § 4.50(a) the second and the third sentence are removed.

**PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS**

4. The authority citation for part 5 continues to read as follows:

**Authority:** 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

**§ 5.32 [Amended]**

5. Section 5.32(c) is amended by removing "§ 5.48(a)," and adding "§ 5.46(d),".

**PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES**

6. The authority citation for part 7 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**§ 7.10 [Amended]**

7. Section 7.10 is amended by removing "§ 7.10" and adding "§ 7.51" in the definition of Advertisement.

**PART 9—AMERICAN VITICULTURAL AREAS**

8. The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**§ 9.74 [Amended]**

9. Section 9.74(c) introductory text is amended by revising the word "Fery," on the fourth line to read "Ferry," and the word "Gillman," on the eighth line to read "Gilliman,".

**§ 9.101 [Amended]**

10–11. Section 9.101(c) introductory text is amended by removing the word "Eastern" and adding "eastern" in the first sentence.

**§ 9.136 [Amended]**

12. Section 9.136(c) introductory text is amended by removing the word "Guadalure," and adding the word "Guadalupe," on the seventh line.

**PART 19—DISTILLED SPIRITS PLANTS**

13. The authority citation for part 19 is revised to read as follows:

**Authority:** 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5211–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

**§ 19.203 [Amended]**

14. Section 19.203(b)(1) is amended by removing "698 (5120.25)" and adding "5120.25".

**§ 19.204 [Amended]**

15. Section 19.204(b)(1) is amended by removing "2975 (5140.2)" and adding "5120.25".

**PART 24—WINE**

16. The authority citation for part 24 continues to read as follows:

**Authority:** 5 U.S.C. 552(a) 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5664, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9304, 9306.

**§ 24.75 [Amended]**

17. Section 24.75(f) is amended by removing the word "homemakers" and adding the phrase "home winemaker's" in the first sentence.

**§ 24.137 [Amended]**

18. Section 24.137(a) is amended by removing "§ 24.86." and adding "§ 24.92." in the last sentence.

**§ 24.295 [Amended]**

19. Section 24.295(a) is amended by removing the word "of" in the last sentence.

**PART 53—MANUFACTURES EXCISE TAXES—FIREARMS AND AMMUNITION**

20. The authority citation for part 53 continues to read as follows:

**Authority:** 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416.

21. In § 53.62(b)(3) the first sentence is revised to read as follows:

**§ 53.62 Exemptions.**

* * * * *

(b) * * *

(3) *Supporting evidence.* Any manufacturer, producer, or importer claiming an exemption from the tax imposed by section 4181 of the Code by reason of section 4182(b) and section 655, title 14 of the Code must maintain such records and be prepared to produce such evidence as will establish the right to the exemption. * * *

**§ 53.93 [Amended]**

22. Section 53.93(b) is amended by removing "§ 53.134(b)(2)" and adding "§ 53.174(b)" in the last sentence.

23. Section 53.133(a)(2)(ii) is amended by adding a sentence and Examples (1) and (2) at the end to read as follows:

**§ 53.133 Tax-free sale of articles for export, or for resale by the purchaser to a second purchaser for export.**

(a) * * *

(2) * * *

(i) * * *

(ii) * * * The provisions of this paragraph (a)(2) of this section may be illustrated by the following examples:

*Example (1).* Q, a U.S. manufacturer of shells and cartridges, previously sold shells and cartridges to R, a company in Canada. The sale was tax free under section 4221(a)(2). Prior to use, R sold the shells and cartridges to S, who imports the articles into the United States and sells them. The sale of the shells and cartridges subjects S to an excise tax liability under section 4181.

*Example (2).* X, a U.S. firearms manufacturer, sold a rifle to Y company in France. The sale was tax free under section 4221(a)(2). The rifle was sold by Y to W, an individual in the City of Nice, France. After initial use, W resold the rifle to X. X returned the rifle to the United States where it was resold. The resale of the rifle by X does not subject X to an excise tax liability under section 4181.

* * * * *

## PART 178—COMMERCE IN FIREARMS AND AMMUNITION

24. The authority citation for part 178 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

## PART 194—LIQUOR DEALERS

25. The authority citation for part 194 continues to read as follows:

**Authority:** 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

26. In § 194.11 the definition for "wine" is revised to read as follows:

**§ 194.11 Meaning of terms.**

* * * * *

*Wine.* When used without qualification, the term includes every kind (class and type) of product produced on bonded wine premises from grapes, other fruit (including berries), or other suitable agricultural products and containing not more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine. A wine product containing less than one-half of one percent alcohol by volume is not taxable as wine when removed from the bonded wine premises.

* * * * *

27. Section 194.134 is amended by revising the last sentence to read as follows:

**§ 194.134 Errors disclosed by taxpayers.**

* * * On receipt of the amended Form 5630.5 and a satisfactory explanation of the error, the regional director (compliance) will make the proper correction on the stamp and return it to the taxpayer.

**§ 194.291 [Amended]**

28. Section 194.291 is amended by removing "part 240" and adding "part 24".

**§ 194.292 [Amended]**

29. Section 194.292 is amended by removing "part 231" and adding "part 24" in the first sentence.

## PART 252—EXPORTATION OF LIQUORS

30. The authority citation for part 252 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5173, 5175–5177, 5206–5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

**§ 252.219 [Amended]**

31. Section 252.219 is amended by removing "27 CFR part 240:" and adding "27 CFR part 24:".

Signed June 28, 1993.

**Daniel R. Black,**

*Acting Director.*

Approved: July 9, 1993.

**Ronald K. Noble,**

*Assistant Secretary (Enforcement).*

[FR Doc. 93–17835 Filed 7–27–93; 8:45 am]

BILLING CODE 4810–31–M

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## 27 CFR Parts 25 and 252

**[T.D. ATF–345; Ref. Notice No. 755]**

## Change in the Frequency of Filing Brewer's Reports of Operations and Additional Listing of Case and Keg Sizes

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** ATF is revising regulations to allow certain small brewers to submit reports of operations quarterly instead of monthly. ATF is also revising the conversion table used to calculate the tax liability on removals in containers to include new bottle and keg sizes used by the brewing industry. The table of conversions is being reorganized for ease of use.

The reporting change will result in fewer forms being filed by brewers and fewer documents being processed by the government. The new sizes will simplify the tax computation process and eliminate special requests to use certain case and keg sizes. ATF believes these changes will result in cost savings both for the brewing industry and for the government, and will slightly reduce the regulatory burden on small brewers.

**EFFECTIVE DATES:** This final rule is effective August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Charles N. Bacon or Marjorie Ruhf, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; Telephone (202) 927–8230.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 28, 1992, as part of a regulatory review, ATF published Notice No. 755 (57 FR 44525), proposing changes to the beer regulations to allow certain brewers to file operations reports quarterly instead of monthly and to expand the conversion instructions to include other commercial case and keg sizes currently in use.

### Comments

ATF received eight comments on Notice No. 755. Five respondents, including the Beer Institute, the Institute for Brewing Studies, Crested Butte Brewery & Pub, Rowlands Calumet Brewing Co., Inc., and Fox Classic Brewing Co., supported the proposed changes. The Hudepohl-Schoenling Brewing Company commented that a package size they commonly use, a case of 24–24 oz. cans, was omitted from the proposed expansion of the conversion instructions. That case size is added to the listing in § 25.158. Another respondent, Temecula Valley Brewing, noted that ATF's proposals were a "good start," but asked why we did not reduce the requirements further, such as annual reports. As stated in the preamble to the notice of proposed rulemaking, ATF seeks to reduce the reporting burden on the smallest brewers without jeopardizing the revenue or depriving the industry and other interested persons of statistical information which is useful to them. Additionally, the internal revenue laws impose various regulatory requirements which ATF cannot change or reduce administratively.

The eighth respondent, Thomas P. Kerester, Chief Counsel for Advocacy of the Small Business Administration (SBA), did not comment on the substance of the proposal, but objected to ATF's certification under the Regulatory Flexibility Act, 5 U.S.C. 605, in the notice of proposed rulemaking. In

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particular, SBA questioned whether certain statements in the supplementary information (that ATF expects the proposed rule to result in cost saving to both the brewing industry and the government and that the proposal will reduce the regulatory burden on small brewers) triggered the need for a regulatory flexibility analysis.

After a complete consideration of the SBA comment, ATF believes that SBA misinterpreted these statements in the supplementary information. A regulatory flexibility analysis is not required if the final rule will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b), emphasis added. While the reduction in reporting frequency may affect a substantial number of small breweries, the overall reduced regulatory burden is slight and does not constitute a significant economic impact. Accordingly, as certified below, a regulatory flexibility analysis is not required in promulgating the final rule.

*Brewer's Report of Operations.* ATF is adopting the proposed amendments to the regulations. As proposed, § 25.297 is revised to allow small brewers to file quarterly the Brewer's Report of Operations, Form 5130.9, if, during the previous calendar year, the brewer produced less than 10,000 barrels of beer. Production is defined in § 25.297(b) as the amount of beer brewed, liquids added to beer, and beer received from other breweries of the same ownership in the previous year. New brewers may file quarterly reports if they do not anticipate producing more than 10,000 barrels of beer in their first year.

Quarterly reports will be filed within 15 days after the close of the calendar quarter; i.e., by January 15, for October through December reports, and by April 15, July 15, and October 15 for other calendar quarter reports. A definition of "calendar quarter" is added to § 25.11.

Brewers who are eligible to file the Brewer's Report of Operations, Form 5130.9, on a quarterly basis may file their first quarterly report on January 15, 1994 for the period October through December, 1993.

Finally, as proposed in Notice No. 755, the regional director (compliance) may require any brewer filing reports of brewery operations quarterly to file such reports monthly if there is a jeopardy to the revenue.

The Brewer's Monthly Report of Operations, ATF F 5130.9, is being revised to conform with these regulatory amendments and to make the form easier for brewers to use. The most important revision is the inclusion of a new line entitled "Tax Determined for Use at Tavern." This change will allow brewpubs to show removals in tanks or by pipeline from tanks in the brewery cellar, to a tavern operated on the brewery premises. When the form was originally designed, no provision was made for this activity, and brewpubs have reported such removals on a line which does not accurately describe the disposition. Therefore, this change does not require any new information, but simply changes the location on the form where the information will be reported.

ATF received no suggestions for other changes to the form during the comment period.

*Authorized Bottle, Case and Keg Sizes.* As explained in Notice No. 755, with the growth of the microbrewing industry, and the introduction of innovative packaging by many brewers, new bottle, case and keg sizes have come into common use; many of these are European in origin and reflect net contents in metric measure. As a result, individual brewers have requested permission to use keg sizes not prescribed by § 25.156 and advice as to the proper fractional barrel equivalents of bottles and cases.

ATF is adopting the proposal to amend § 25.156 by adding 5 gallon, 30 liter and 50 liter kegs as authorized keg sizes. In addition, this section is amended to include a barrelage equivalent for these keg sizes for the purpose of taxpayment and recordkeeping. ATF received no requests for other keg sizes during the comment period.

Additionally, as proposed, ATF is adding a number of bottle and case sizes to the table in § 25.158. Metric sizes, including 500 and 750 milliliter bottles, and 1 liter, 2 liter, and 5 liter bottles are now listed separately. Barrelage equivalents are prescribed for all case sizes. As noted previously, a new listing for 24–24 oz. bottles is added to the list as the result of a comment from one brewer. ATF is also adding a listing for a case of 48–8 oz. bottles to this section.

**Executive Order 12291**

In compliance with Executive Order 12291 issued February 17, 1981, ATF has determined that this document does not constitute a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and,

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Act**

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. As discussed elsewhere in this supplementary information, this final rule will slightly reduce the reporting burden on certain small proprietors and will not:

(1) Impose, or otherwise cause, any increase in recordkeeping or other compliance burdens on small entities, or

(2) Have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. No. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because it does not impose any new reporting requirements. This rule will eliminate some of the reporting and filing requirements applicable to certain brewers.

**Drafting Information**

The principal authors of this document are Charles N. Bacon and Marjorie Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects**

*27 CFR Part 25*

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

**List of Subjects**

*27 CFR 252*

Aircraft, Alcohol and alcoholic beverages, Armed Forces, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

**Authority and Issuance**

Accordingly, title 27, Code of Federal Regulations is amended as follows:

## PART 25—BEER

**Paragraph 1.** The authority citation for part 25 continues to read as follows:

**Authority:** 19 U.S.C. 81c, 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403; 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

**Par. 2.** The table of contents for part 25 is amended by revising the title of § 25.297 to read as follows: sec.

* * * * *

**§ 25.297 Brewer's Report of Operations, Form 5130.9.**

* * * * *

**Par. 3.** Section 25.11 is amended by revising the definition of the term "barrel" and by adding a definition of the term "calendar quarter" to read as follows:

**§ 25.11 Meaning of terms.**

* * * * *

*Barrel.* When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing a quantity of beer listed in § 25.156, or other size authorized by the regional director (compliance).

* * * * *

*Calendar quarter.* A 3-month period during the year as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

* * * * *

**§ 25.152 [Amended]**

**Par. 4.** Section 25.152(b)(2) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

**Par. 5.** Section 25.156 is revised to read as follows:

**§ 25.156 Determination of tax on keg beer.**

(a) In determining the tax on beer removed in kegs, a barrel is regarded as a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are whole barrels, halves, thirds, quarters, sixths, and eighths, and beer may be removed in kegs rated at those capacities. The following keg sizes are also authorized at the stated barrel equivalents:

| Size of keg | Barrel equivalent |
|---|---|
| 5 gallons | 0.16129 |
| 30 liter | 0.25565 |
| 50 liter | 0.42608 |

(b) If any barrel or authorized size keg contains a quantity of beer more than 2 percent in excess of its rated capacity, tax will be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg.

(c) The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(26 U.S.C. 5051)

**Par. 6.** Section 25.158 is revised to read as follows:

**§ 25.158 Tax computation for bottled beer.**

Barrel equivalents for various case sizes are as follows:

(a) *For U.S. measure bottles.*

| Bottle size (net contents in fluid ounces) | Number of bottles per case | Barrel equivalent |
|---|---|---|
| 6 | 12 | 0.01815 |
| 6 | 24 | 0.03629 |
| 7 | 12 | 0.02117 |
| 7 | 24 | 0.04234 |
| 7 | 32 | 0.05645 |
| 7 | 35 | 0.06174 |
| 7 | 36 | 0.06351 |
| 7 | 40 | 0.07056 |
| 7 | 48 | 0.08468 |
| 8 | 12 | 0.02419 |
| 8 | 24 | 0.04839 |
| 8 | 36 | 0.07258 |
| 8 | 48 | 0.09677 |
| 10 | 12 | 0.03024 |
| 10 | 24 | 0.06048 |
| 10 | 48 | 0.12097 |
| 11 | 12 | 0.03327 |
| 11 | 24 | 0.06653 |
| 11.5 | 24 | 0.06956 |
| 12 | 12 | 0.03629 |
| 12 | 15 | 0.04536 |
| 12 | 20 | 0.06048 |
| 12 | 24 | 0.07258 |
| 12 | 30 | 0.09073 |
| 12 | 48 | 0.14516 |
| 12 | 50 | 0.15121 |
| 14 | 12 | 0.04234 |
| 14 | 24 | 0.08468 |
| 16 (1 pint) | 12 | 0.04839 |
| 16 (1 pint) | 24 | 0.09677 |
| 22 | 12 | 0.06653 |
| 22 | 24 | 0.13306 |
| 24 | 12 | 0.07258 |
| 24 | 24 | 0.14516 |
| 30 | 12 | 0.09073 |
| 32 (1 quart) | 12 | 0.09677 |
| 40 | 12 | 0.12097 |
| 64 | 1 | 0.01613 |
| 64 | 4 | 0.06452 |
| 64 | 6 | 0.09677 |
| 128 (1 gallon) | 1 | 0.03226 |
| 288 | 1 | 0.07258 |

(b) *For metric measure bottles.*

| Bottle size (metric net contents) | Number of bottles per case | Barrel equivalent |
|---|---|---|
| 500 milliliters | 24 | 0.10226 |
| 750 milliliters | 12 | 0.07670 |
| 1 liter | 12 | 0.10226 |
| 2 liters | 6 | 0.10226 |
| 5 liters | 1 | 0.04261 |

(c) *For other case sizes.* If beer is to be removed in cases or bottles of sizes other than those listed in the above tables, the brewer shall notify the regional director (compliance) in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(26 U.S.C. 5412)

**§ 25.166 [Amended]**

**Par. 7.** Section 25.166(d) is amended by removing the words "monthly report" wherever they appear, and replacing them with the words "Brewer's Report of Operations."

**§ 25.192 [Amended]**

**Par. 8.** Section 25.192(c) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

**§ 25.195 [Amended]**

**Par. 9.** Section 25.195 is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

**§ 25.196 [Amended]**

**Par. 10.** Section 25.196(c) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

**§ 25.276 [Amended]**

**Par. 11.** Section 25.276(b) is amended by removing the words "monthly reports" and replacing them with the words "the Brewer's Report of Operations, Form 5130.9."

**Par. 12.** Section 25.286 is amended by revising paragraph (a) and the information, citation at the end of the section to read as follows:

**§ 25.286 Claims for remission of tax on beer lost in transit between breweries.**

(a) *Filing of claim.* Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 (ATF F 5620.8) by the brewer or the brewer's authorized agent and submitted with the Form 5130.9 of the receiving brewery for the reporting period in which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the reporting period in

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which the loss is discovered. When, for valid reason, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to Form 5130.9 stating the reason why the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed with the regional director (compliance) within 6 months of the date of the loss.

* * * * *

(27 U.S.C. 5056, 5414)

**Par. 13.** Section 25.296 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2) and the informational cite at the end of the section to read as follows:

**§ 25.296 Record of beer concentrate.**

* * * * *

(b) *Summary report of operations.* A brewer who produces concentrate or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer shall prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the reporting period. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

(1) Concentrate on hand beginning of the reporting period;

(2) Concentrate on hand end of the reporting period;

* * * * *

(26 U.S.C. 5415)

**Par. 14.** Section 25.297 is revised to read as follows:

**§ 25.297 Brewer's Report of Operations, Form 5130.9.**

(a) *Monthly report of operations.* Except as provided in paragraph (b) of this section, each brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9 to the regional director (compliance) not later than the 15th day of the month following the close of the month for which prepared.

(b) *Quarterly report of operations.* (1) For calendar quarters commencing on or after October 1, 1993, a brewer who produces less than 10,000 barrels of beer per calendar year may file the report of brewery operations quarterly. The report will be filed on Form 5130.9 with the regional director (compliance) not later than the 15th day of the month following the close of the calendar quarter for which prepared. For the purpose of establishing whether a quarterly report may be filed, the brewer will determine annual production of beer by adding up the quantities of beer produced, water/liquids added in cellars, and beer received from other breweries and from pilot brewing plants for all months of the previous calendar year.

(2) To begin the quarterly filing of a Brewer's Report of Operations, a brewer will state such intent in the "Remarks" section when filing the last monthly Form 5130.9 before the calendar quarter during which the brewer will commence quarterly filings. A brewer beginning business may file Form 5130.9 quarterly if the brewer states in the "Remarks" section of its initial monthly Form 5130.9 that the annual production of beer is not likely to exceed 10,000 barrels.

(3) If a brewer determines that the 10,000 barrel quantity for a calendar year will be exceeded in any month, the brewer shall file a Form 5130.9 for that month and for all subsequent months of the calendar year.

(4) The regional director (compliance) may at any time require a brewer who is filing a Brewer's Report of Operations quarterly to file such report monthly if there is a jeopardy to the revenue.

(c) *Retention.* The brewer shall retain a copy of the Form 5130.9 as part of the brewery records.

(26 U.S.C. 5415, 5555)

## PART 252—EXPORTATION OF LIQUORS

**Par. 15.** The authority citation for part 252 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 19 U.S.C. 81(c), 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5173, 5175–5177, 5204–5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

**Par. 16.** Section 252.148 is amended by revising the second sentence to read as follows:

**§ 252.148 Brewer's report.**

* * * The total quantity of beer or beer concentrate involved in all export shipments returned during any reporting period will be reported as a separate entry on Form 5130.9.

* * * * *

Signed: June 22, 1993.

**Stephen E. Higgins,**

*Director.*

Approved: July 9, 1993.

**Ronald K. Noble,**

*Assistant Secretary (Enforcement).*

[FR Doc. 93–17834 Filed 7–27–93; 8:45 am]

BILLING CODE 4810–31–P

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

**[CGD01–93–076]**

**Special Local Regulations: Portland Grand Prix, Portland, ME**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the Portland Grand Prix offshore powerboat race. The race will be held on Saturday, August 7, 1993, in the waters of Casco Bay adjacent to Cape Elizabeth and South Portland, Maine. This regulation is needed to restrict access to the area of the race course and provide for the safety of life during the event.

**EFFECTIVE DATES:** This temporary regulation is effective from 12 p.m. to 4 p.m. on August 7, 1993. In case of postponement, this regulation will be in effect on August 8, 1993 during the same time period.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Eric G. Westerberg, Chief Boating Safety Affairs Branch, (617) 223–8311.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of these regulations are LT E.G. Westerberg, Project Officer, First Coast Guard District Boating Safety Affairs Branch, and LCDR J.D. Stieb, Project Attorney, First Coast Guard District Legal Office.

### Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until July 1, 1993. After adjusting the position of the race course and exclusionary zone to best accommodate the needs of the boating public, insufficient time remained to publish proposed rules prior to the event or to provide for a delayed effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards associated with this type of marine event. The Portland Grand Prix has been conducted annually for the past five

years. The event is of such local popularity that delay or cancellation to provide for a NPRM would be against the public interest.

**Background and Purpose**

The Portland Grand Prix is a high speed powerboat race which will be held in the waters of Casco Bay, Maine adjacent to Cape Elizabeth. This event will include up to 25 powerboats competing on a triangular course at speeds approaching 100 mph. This regulation establishes an exclusionary zone for the race course and an anchorage area for spectator craft. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor-provided patrols, and state and local law enforcement officials. No vessel, other than participants, spectator craft or those vessels authorized by the Coast Guard Patrol Commander, shall enter the regulated area. Other vessels will be able to transit around the regulated area without interference or delay. The potential hazards to participants, spectators, and transiting vessels are such that in the interest of safety, the Coast Guard District Commander is issuing special local regulations governing the regatta.

**Regulatory Evaluation**

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Although the regulated area partially obstructs the commercial shipping approaches to South Portland, the Coast Guard will attempt to minimize any delays for commercial vessels. Weekend commercial traffic is anticipated to be minimal. Deep draft commercial traffic must proceed with caution while transiting the regulated area East of Cape Elizabeth. Due to the limited duration of the event, and the extensive marine advisories which will be made, the economic impact of this proposal is expected to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined above in the Regulatory Evaluation section, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

**Federalism**

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of this regulation and has concluded under section 2.B.2.c of Commandant Instruction-M16475.1B, that it is an action to protect public safety and is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

**Regulations**

In consideration of the foregoing, 33 CFR part 100 is amended as follows:

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35T01–76 is added to read as follows:

**§ 100.35T01–76 Portland Grand Prix, Portland, Maine.**

(a) *Regulated area.* The regulated area includes the coastal Atlantic waters of Casco Bay between the Portland Head Light and High Head of Cape Elizabeth, with a northern boundary extending from the Portland Head Light Eastward to Red Nun Buoy "6" at 43°37'07" N., 70°11'16" W., a southerly boundary extending from 43°33'25" N., 70°12'02" W., in the vicinity of High Head on Cape Elizabeth to the Red Nun Buoy "28AR" marking Alden Rock at 43°33'05" N. and 70°09'34" W. The eastern boundary of the regulated area consists of an approximate North/South line between Red Nun Buoy "6" and the Red Nun Buoy "2AR" at Alden Rock. The western boundary of the regulated area is the shoreline of South Portland and Cape Elizabeth. The triangular race course will be located within the regulated area approximately ½ nautical mile offshore. A designated spectator area in the vicinity of Red Nun Buoy "6" will be marked by the sponsor, subject to approval of the Commander, Coast Guard Group Portland.

(b) *Special local regulations.* (1) Commander, U.S. Coast Guard Group Portland reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The regulated area will be closed to all traffic except participants, patrol craft, and spectator vessels. The Commanding Officer, Coast Guard Group Portland or designee may, allow vessels to transit the regulated area. Spectator vessels may operate in the designated spectator area only.

(3) All persons and vessels shall comply with the instructions of Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and of other applicable laws.

(c) *Effective period.* This regulation will be effective between the hours of 12 p.m. and 4 p.m. on August 7, 1993. In case of inclement weather, the regulations will be effective between the hours of 12 p.m. and 4 p.m. on August 8, 1993.

Dated: July 19, 1993.

**Kent H. Williams,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 93–18012 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[COTP St. Louis Regulation 93–028]**

**Safety Zone Regulation: Kaskaskia River Between Mile 0.0 to Mile 30.0**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the Kaskaskia River from mile 0.0 to mile 30.0. This regulation is needed to control vessel traffic in the regulated area to prevent further wake damage to levees and property along the river.

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**EFFECTIVE DATES:** This regulation becomes effective on July 14, 1993 and will remain in effect until August 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** Coast Guard Maine Safety Office, St. Louis Missouri at 314–539–3823.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the regulated area.

**Drafting Information**

The drafter of this regulation is YN2 Johnnie S. Fritts, project officer for the Captain of the Port and Lieutenant Commander A.O. Denny, project attorney, Second Coast Guard District Legal Office.

**Regulatory History**

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent rainfall in the Upper Mississippi drainage area has caused unanticipated flood conditions on the Kaskaskia River leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period since the flood conditions are presenting immediate hazards.

**Background and Purpose**

The Upper Mississippi River and its tributaries have been suffering from high water conditions for 114 days. This has contributed to unusually wet conditions along the river with the resultant softening of the earth levees which protect the adjacent lowlands. Although the water levels in the river had fallen below flood stage during late June 1993, the levees have not had the opportunity to dry out before the recent rainfall over the midwest pushed the rivers back above the flood stage. As a result, the waters of the Kaskaskia River have overflowed its banks and some levees in the area have failed. The Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if they are subjected to the wake damage from passing vessels.

The present flood conditions also present a hazard to navigation in that the area's rivers are filled with a mass of trees and other debris which have been washed from the river banks and the inundated lowlands, once visible obstructions to navigation are now submerged, river currents are not following normal patterns, and insufficient clearances exist for vessels to pass under certain bridges. Taken a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic.

Given expected rainfall patterns, the rivers are not expected to crest until on or after July 19, 1993. The Army Corps of Engineers anticipates that the Mississippi River will crest at 45 feet—this is 15 feet above flood stage and may establish a record for flood waters in the area—and that it may take another four weeks for the waters to recede to normal levels.

**Regulatory Evaluation**

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor river conditions and will terminate the safety zones for specific areas as river conditions allow.

**Fedralism Assessment**

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occurring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

**Temporary Regulation**

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section 165.T0255 is added, to read as follows:

**§ 165.T0255 Safety zone: Upper Mississippi River Basin.**

(a) *Location.* The Kaskaskia River between mile 0.0 and 30.0 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective on July 14, 1993 and will terminate on August 15, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zone without authority of the Captain of the Port apply.

(d) The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by these safety zones by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: July 14, 1993.

**Scott P. Cooper,**

*Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.*

[FR Doc. 93–18009 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[CGD02–93–005]**

**RIN 2115–AA97**

**Safety Zone; Monongahela River, From Mile 96.0 to Mile 97.5**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the

Monongahela River from mile 96.0 to mile 97.5. This regulation is needed to control vessel traffic in the regulated area due to a restriction in channel width caused by a widening of the barge fleeting area at mile 96.5, left descending bank, Monongahela River. This regulation will restrict navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

**EFFECTIVE DATES:** This regulation is effective on July 16, 1993 and will terminate on August 31, 1993, unless terminated at an earlier date by the Captain of the Port, Pittsburgh, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** Lt. John Meeham, Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

**SUPPLEMENTARY INFORMATION:**

### Drafting Information

The drafters of these regulations are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

### Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent labor urrest associated with a coal miner's strike in the Upper Monongahela River Valley has led to an unanticipated need to consolidate and widen the barge fleet located within the regulated area to better provide for its protection, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation now, as the widened barge fleet presents an immediate hazard to vessels transitting the area.

### Background and Purpose

A strike involving members of the United Mine Workers of America (UMWA) against certain member companies of the Bituminous Coal Operators Association (BCOA) has been ongoing at selected mines in the Upper Monongahela River Valley since March, 1993. Labor unrest, and associated acts of property damage, have been reported at several mines. On two separate occasions, unidentified individuals have reportedly set (or attempted to set) strings of coals barges moored at a BCOA member company mine adrift on the Monongahela River. In an effort to better protect its barges from those acts of vandalism, this company asked for and received permission from the Army Corps of Engineers Pittsburgh District and the Coast Guard Captain of the Port Pittsburgh to consolidate its barge fleet near company security posts at mile 96.5, left descending bank, Monongahela River. The resulting barge fleet is to standard barge widths wider than normally permitted by the Army Corps of Engineers for that location and has significantly reduced adjacent navigable channel width on the Monongahela River. This condition presents hazards which hinder the safe navigation of vessels at this location and warrant the imposition of certain vessel traffic restrictions.

### Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it was not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the limited number of vessels transitting the area and the non-exclusionary nature of the vessel traffic restrictions applicable to the regulated area.

### Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Environmental Assessment

Under section 2.B.2.c, of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

### Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

## PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T0264 is added, to read as follows:

**§ 165–T0264 Safety zone; Monongahela River.**

(a) *Location.* The following area is a safety zone: The Monongahela River from mile 96.0 to mile 97.5.

(b) *Effective date.* This regulation becomes effective July 16, 1993. It will terminate on August 31, 1993, unless terminated at an earlier date by the Captain of the Port Pittsburgh.

(c) *Regulations.* Transit through the safety zone may be made only under the following conditions:

(1) Recreational vessels have blanket permission to enter and transit through the safety zone.

(2) Commercial vessels have permission to enter the safety zone provided they do not pass, meet, or overtake another vessel in the safety zone.

(3) Upbound vessels shall give way to downbound vessels and, when approaching mile 96.0, shall contact any downbound vessels to arrange transit of the area.

(4) All vessels transmitting the area shall steer to mid-channel to the maximum extent possible.

(5) Deviation from these requirements requires pre-authorization from the Captain of the Port Pittsburgh.

Dated: July 16, 1993.

**M.W. Brown,**

*Commander, U.S. Coast Guard, Captain of the Port Pittsburgh, PA.*

[FR Doc. 93–18013 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[COTP Los Angeles/Long Beach, CA, Regulation 93–06]**

## Safety Zone Regulations: Pacific Ocean, Gaviota, CA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final.

**SUMMARY:** The Coast Guard is establishing a moving safety zone within a 500 yard radius of tank ships enroute to or departing from the Gaviota Marine Terminal. It encompasses the vessel's transit out to three nautical miles off the coast. This safety zone is needed to ensure the safe arrival and departure of tank ships and to protect the boating public which may be attracted by the arrival of the first tankers to use this offshore marine terminal. Entry into this zone is

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prohibited unless authorized by the Captain of the Port.

**EFFECTIVE DATES:** This regulation becomes effective on July 12, 1993. It terminates on November 1, 1993. Comments must be received by September 13, 1993.

**ADDRESSES:** Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 165 North Pico Avenue, Long Beach, CA 90802. The comments will be available for inspection and copying at MSO LA–LB. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Curtis Gray, Marine Safety Office Los Angeles/Long Beach at (310) 980–4455.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and a good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect tank ships from being placed in extremis whether unintentionally by the general boating public or deliberately by water craft operated by special interest environmental groups or other similar activist organizations.

Although this regulation is published as an extended temporary rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give their comments. Based upon comments received, the regulation may be changed.

**Drafting Information**

The drafters of this regulation are Lieutenant Curtis Gray, project officer for the Captain of the Port, and Captain Bruce Weule, Project Attorney, Eleventh District Coast Guard Legal Office.

**Discussion of the Regulation**

The situation requiring this regulation is the continued need to safeguard specified tank vessels from being placed in extremis during transit to or from the Gaviota Marine Terminal. It is anticipated that protestors may demonstrate and possibly try to interfere or impede tank vessel movement. Particularly during approach and departure from the offshore moorage, it is imperative that a tanker's movement not be restricted. The tank vessel itself may be put into jeopardy, with possible loss of cargo or fuel, resulting in damage to nearby environmentally sensitive areas.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation**

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T1106 is added to read as follows:

**§ 165.T1106 Safety zone: Pacific Ocean, California, Gaviota Marine Terminal.**

(a) *Location.* The temporary safety zone, when activated by the Captain of the Port, Los Angeles-Long Beach, is established within a 500 yard radius of specified tank ships enroute to or departing from Gaviota Marine Terminal. The safety zone moves with the vessel out to three nautical miles from shore.

(b) *Effective date.* This regulation becomes effective on July 12, 1993. It terminates on November 1, 1993.

(c) *Regulations.* (1) The Captain of the Port Los Angeles-Long Beach, California will activate the temporary safety zone described in paragraph (b) by issuing a local broadcast notice to mariners.

(2) All persons and vessels in the vicinity of the safety zone shall immediately obey any direction or order of on-scene representatives of the Captain of the Port.

(3) The general regulations governing safety zones contained in 33 CFR 165.23 apply. No person or vessel may enter or remain within the designated zone without the permission of the Captain of the Port Los Angeles-Long Beach, California.

Dated: July 12, 1993.

**J.B. Morris,**

*Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, CA.*

[FR Doc. 93–18011 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[CGD–09–93–028]**

## Safety Zone Regulations: Woodlawn Beach, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on Lake Erie off Woodlawn Beach, NY. The zone is needed to ensure the safety of people, vessels, and aircraft participating in a joint military service airborne/seaborne amphibious assault exercise. It is also needed to protect spectator craft and other vessels from the hazards associated with the exercise. Entry into this zone is prohibited unless authorized by the Captain of the Port, Buffalo, New York, or his designated representative.

**EFFECTIVE DATES:** This regulation is effective from 9 a.m. to 1 p.m. on August 7, 1993 unless otherwise terminated by Captain of the Port, Buffalo, New York.

**FOR FURTHER INFORMATION CONTACT:** QM1 P. H. O'Keefe, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, 111 W. Huron Street, Buffalo, NY 14202–2395; telephone (716) 846–4168.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rule making (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Earlier publication of an NPRM for this regulation was not possible since the actual date of the exercise was only recently confirmed. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential danger to the vessels involved and to other waterway users. In preparing this regulation, local recreational fisherman were consulted.

**Drafting Information**

The drafters of this regulation are QM1 P. H. O'Keefe, project officer for the Captain of the Port, Buffalo, New York, and CDR J. M. Collins, project

attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulation**

The event requiring this regulation is a joint service airborne/seaborne amphibious assault exercise centered around the USS BOULDER and simulating the assault of Woodlawn Beach on Lake Erie just south of Buffalo, NY. Amphibious assault vehicles launched from the USS BOULDER, Navy SEALS conducting water landings via parachute, and helicopters delivering additional troops to the beach are several evolutions that will be included in the exercise. A safety zone is needed to protect spectator craft and other vessels from the hazards inherent with this level and type of activity. It is also needed to ensure that the safety of the exercise is not compromised by wakes and other hazards associated with transiting vessels.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

**Federalism**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determine that this emergency rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation**

In consideration of the foregoing, Subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T0982 is added to read as follows:

**§ 165.T0982 Safety zone: Woodlawn Beach, NY.**

a. *Location.* The waters of Lake Erie within an areas encompassed by the following boundaries is a safety zone: A southern boundary from the shoreline at position 42°46′48″ N, 78°51′42″ W running due west on a bearing of 270° true to position 42°46′48″ N, 78°55′ W. A western boundary from position 42°46′48″ N, 78°55′ W running due north on a bearing of 000° true to position 42°48′24″ N, 78°55′ W. A northern boundary from position 42°48′24″ N, 78°55′ W running due east on a bearing of 090° true to the intersection with the shoreline at position 42°48′24″ N, 78°51′45″ W, and an eastern boundary formed by the Woodlawn Beach Shoreline.

(b) *Effective date.* This regulation is effective from 9 a.m. to 1 p.m. on August 7, 1993 unless otherwise terminated or revised by the Captain on the Port, Buffalo, New York.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Buffalo, New York.

Dated: July 2, 1993.

**M. G. VanKeverbeke,**

*Commander, U.S. Coast Guard Captain of the Port, Buffalo, NY.*

[FR Doc. 93-18014 Filed 7-27-93; 8:45 am]

BILLING CODE 4910-14-M

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## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Part 201

[Docket No. RM 93-7c]

### Cable Compulsory License: Status of Multichannel Multipoint Distribution Services (MMDS)

**AGENCY:** Copyright Office; Library of Congress.

**ACTION:** Final rule; extension of effective date; policy decision.

**SUMMARY:** The Copyright Office is extending the effective date of its regulation denying satellite carriers, multipoint distribution services (MDS) and multichannel multipoint distribution services (MMDS) eligibility for the cable compulsory license. The new effective date for that regulation is January 1, 1995.

**EFFECTIVE DATE:** The effective date of § 201.17(k) published at 57 FR 3284, January 29, 1992, is extended from January 1, 1994 to January 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

**SUPPLEMENTARY INFORMATION:** On January 28, 1992, the Copyright Office issued a final regulation in its proceeding on the definition of a cable system. 57 FR 3284 (1992). The Office concluded that neither satellite carriers, MDS operators nor MMDS operators are cable systems within the meaning of the title 17, U.S.C., section 111(f) definition of a cable system and are therefore not eligible for compulsory licensing under section 111. 37 CFR 201.17(k). The Office stated that the effective date of the rulemaking is January 1, 1994, at which time the Office will no longer accept royalty filings from either satellite carriers, MDS or MMDS operators who claim compulsory licensing under section 111 for the retransmission of broadcast signals.

The purpose of the January 1, 1994 effective date is to permit sufficient time for legislative action providing a copyright solution for licensing of broadcast retransmissions by satellite carriers, MDS and MMDS operators. Several bills have already been introduced in this Congress addressing this issue. H.R. 1103 extends indefinitely the section 119 satellite carrier compulsory license, due to expire on December 31, 1994, and would expand the section 111 definition of a cable system to include broadcast retransmission providers such as MDS and MMDS. H.R. 759 would likewise broaden the section 111 definition of a cable system. Although there are currently no Senate bills pending, proposals addressing these issues are likely to soon be introduced. In short, the legislative climate is bright for satisfying the copyright needs of satellite carriers, MDS, MMDS and other providers with respect to retransmission of broadcast programming.

In order to foster the opportunity for congressional action, the Copyright Office is extending the effective date of its cable definition regulation, § 201.17(k), to January 1, 1995. Until that date, the Office will continue its policy of receiving and filing royalty submissions from MDS and MMDS operators under section 111 without ruling as to their sufficiency. Satellite carriers should continue to file under section 119.

**List of Subjects 37 CFR Part 201**

Cable systems, Cable compulsory license.

Dated: July 14, 1993.

**Ralph Oman,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 93-17916 Filed 7-27-93; 8:45 am]

BILLING CODE 1410-08-F

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300288A; FRL-4632-8]

RIN 2070-AB78

# Polyvinyl Acetate-Polyvinyl Alcohol Copolymer and Vinyl Acetate-Vinyl Alcohol-Alkyl Lactone Copolymer; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an exemption from the requirement of a tolerance for residues of polyvinyl acetate-polyvinyl alcohol copolymer (CAS Reg. No. 25213-24-5) and vinyl acetate-vinyl alcohol-alkyl lactone copolymer when used as inert ingredients (components of water-soluble film) in pesticide formulations applied to growing crops only. This regulation was requested by Chris Craft Industrial Products, Inc.

EFFECTIVE DATE: This regulation becomes effective on July 28, 1993.

ADDRESSES: Written objections, identified by the document control number [OPP-300288A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 26, 1993 (58 FR 30131), EPA issued a proposed rule announcing that Chris Craft Industrial Products, Inc., 407 County Line Rd., Gary, IN 46403-2699, had submitted a pesticide petition (PP 3E4217) to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of polyvinyl acetate-polyvinyl alcohol copolymer (CAS Reg. No. 25213-24-5) and vinyl acetate-vinyl alcohol-alkyl lactone copolymer when used as inert ingredients (components of water-soluble film) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The scientific data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, these ingredients are useful and tolerances are not necessary to protect the public health. Therefore, EPA is establishing the exemptions from the requirement of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

## List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 15, 1993.

**Douglas D. Campt,**

*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. Section 180.1001(d) table is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * * *

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * | * * * | * * * |
| Polyvinyl acetate-polyvinyl alcohol copolymer (CAS Reg. No. 25213-24-5). | Minimum number average molecular weight 50,000. | Component of water-soluble film |

| Inert ingredients | Limits | Uses |
|---|---|---|
| Vinyl acetate-vinyl alcohol-alkyl lactone copolymer ..... | Minimum estimated number average molecular weight 40,000; minimum viscosity of 18 centipoise. | Component of water-soluble film |

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[FR Doc. 93–17860 Filed 7–27–93; 8:45 am]
BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 93–104; RM–8200]

### Radio Broadcasting Services; Greenwood, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 282C2 for Channel 282C3 at Greenwood, Mississippi, and modifies the construction permit for Station WGNL(FM) to specify operation on Channel 282C2 in response to a petition filed by Team Broadcasting Co., Inc. See 58 FR 26089, April 30, 1993. The coordinates for Channel 282C2 are 33–28–50 and 90–09–35. With this action, this proceeding is terminated.

**DATES:** Effective September 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 93–104, adopted June 30, 1993, and released July 21, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 282C3 and adding Channel 282C2 at Greenwood.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17907 Filed 7–27–93; 8:45 am]
BILLING CODE 6712–01–M

### 47 CFR Part 73

[MM Docket No. 92–120; RM–7963]

### Radio Broadcasting Services; Hartford, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies the petition for rule making filed by Family Broadcasting, Inc., permittee of Station WGLV–FM, Channel 282A, Hartford, Vermont, requesting the substitution of Channel 282C3 for Channel 282A at Hartford and modification of Station WGLV–FM's construction permit to specify operation on the higher powered channel. See 57 FR 23188, June 2, 1992. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92–120, adopted June 29, 1993, and released July 21, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17908 Filed 7–27–93; 8:45 am]
BILLING CODE 6712–01–M

### 47 CFR Part 73

[MM Docket No. 92–227; RM–8070; RM–8072; RM–8166]

### Radio Broadcasting Services; Eatonton, Fayetteville, Greenville, Griffin, Hogansville, Sparta, and Thomaston, GA, and Ashland and Valley, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Good Medicine Radio Georgia, Inc., and Design Media, Inc., substitutes Channel 249C3 for Channel 249A at Sparta, Georgia, and reallots Channel 249C3 from Sparta to Eatonton, Georgia, and at the request of Orchon Broadcasting Company substitutes Channel 248C3 for Channel 249A at Griffin, Georgia, and reallots Channel 248C3 from Griffin to Fayetteville, Georgia, in accordance with § 1.420(i) of the Commission's Rules. The Commission also substitutes Channel 239C3 for Channel 239A at Greenville, Georgia; substitutes Channel 251C3 for Channel 248A at Hogansville, Georgia; substitutes Channel 266A for Channel 237A at Thomaston, Georgia; substitutes Channel 238A for Channel 237A at Ashland, Alabama; and substitutes Channel 237A for Channel 251A at Valley, Alabama. See 57 FR 49667, October 29, 1992, and **SUPPLEMENTAL INFORMATION**, *infra*.

**EFFECTIVE DATE:** September 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92–227,

adopted July 8, 1993, and released July 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Channel 249C3 can be reallotted to Eatonton with a site restriction of 8.6 kilometers (5.4 miles) northeast of the community, in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia, and to avoid a short-spacing to a construction permit for Station WKXK(FM), Channel 250C3, Fort Valley, Georgia. The coordinates for Channel 249C3 at Eatonton are North Latitude 33–23–03 and West Longitude 83–19–22. Channel 248C3 can be reallotted to Fayetteville with a site restriction of 2.7 kilometers (1.7 miles) southwest, in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia. The coordinates for Channel 248C3 at Fayetteville are North Latitude 33–25–42 and West Longitude 84–28–22. Channel 239C3 can be allotted to Greenville with a site reduction of 5.2 kilometers (3.2 miles west, in order to avoid a short-spacing to Station WNGC(FM), Channel 238C, Athen, Georgia. The coordinates for Channel 239C3 at Greenville are North Latitude 33–01–11 and West Longitude 84–46–06. Channel 251C3 can be allotted to Hogansville with a site restriction 16.0 kilometers (9.9 miles) west, in order to avoid a short-spacing to a construction permit for Station WVOK(FM), Channel 250A, Oxford, Alabama, to Station WAGH(FM), Channel 252A, Fort Mitchell, Alabama, and Station WSB(FM), Channel 253C, Atlanta, Georgia. The coordinates for Channel 251C3 at Hogansville are North Latitude 33–09–56 and West Longitude 85–05–11. Channel 266A can be allotted to Thomaston in compliance with the Commission's minimum distance separation requirements with a site restriction 5.7 kilometers (3.5 miles) west, in order to avoid a short-spacing to Station WPGA(FM), Channel 265A, Perry, Georgia, and Station WCJM(FM), Channel 265A, West Point, Georgia. The coordinates for Channel 266A at Thomaston are North Latitude 32–54–08 and West Longitude 84–23–13. Channel 238A can be allotted to Ashland, Alabama, in compliance with the Commission's minimum distance separation requirements at its currently licensed transmitter site. The coordinates for Channel 238A at Ashland are North Latitude 33–18–30 and West Longitude 85–50–58. Channel 237A can be allotted to Valley, Alabama, in compliance with the Commission's minimum distance separation requirements at its construction permit site. The coordinates for Channel 237A at Valley are North Latitude 32–55–12 and West Longitude 85–13–04. With this action, this proceeding is terminated.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 237A and adding Channel 238A at Ashland, and by removing Channel 251A and adding Channel 237A at Valley.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 249A, Griffin and adding Channel 248C3, Fayetteville, by removing Channel 249A at Sparta and adding Channel 249C3, Eatonton, by removing Channel 239A and adding Channel 239C3 at Greenville, by removing Channel 248A and adding Channel 251C3 at Hogansville, by removing Channel 237A and adding Channel 266A at Thomaston.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17913 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 93–98; RM–8207]**

**Radio Broadcasting Services; Rushford, MN**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 257C3 for Channel 257A at Rushford, Minnesota, and modifies the license for Station KWNO–FM to specify operation on Channel 257C3 in response to a petition filed by Wheeler Broadcasting of Minnesota, Inc. See 58 FR 25592, April 27, 1993. The coordinates for Channel 257C3 at Rushford are 43–50–51 and 91–42–11. With this action, this proceeding is terminated.

**DATES:** Effective September 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 93–98, adopted June 29, 1993, and released July 21, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 257A and adding Channel 257C3 at Rushford.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17909 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 76**

**[MM Docket Nos. 92–259; FCC 93–354]**

**Cable Act of 1992—Must-Carry and Retransmission Consent Provisions**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for reconsideration.

**SUMMARY:** By this *Order*, the Commission amends certain provisions of the must-carry rules adopted to implement the Cable Television Consumer Protection and Competition Act of 1992. The additional rules provided in this *Order* will facilitate the orderly transition between must-carry and retransmission consent.

**EFFECTIVE DATE:** August 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth W. Beaty, Mass Media Bureau, Policy and Rules Division, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Order* in MM Docket No. 92–259, FCC 93–354, adopted July 15, 1993, and released July 16, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), at (202) 857–3800, 2100 M Street, NW., Washington, D.C. 20037.

**Synopsis of the Order**

1. On March 11, 1993, the Commission adopted a *Report and Order* in this proceeding, 58 FR 17350 (April 2, 1993), to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"). The rules adopted in the *Report and Order* required cable systems to commence carriage of local broadcast television stations entitled to must-carry status beginning on June 2, 1993. On June 17, 1993, local broadcast stations were required to make their initial election of must-carry or retransmission consent status and were required to notify cable systems of their election. Those broadcast stations which elected must-carry status were required to notify the cable system of their preferred channel position. Those broadcast stations which failed to elect either must-carry or retransmission consent status are deemed must-carry stations by default.

2. The Association of Independent Television Stations, Inc. ("INTV") and the National Association of Broadcasters ("NAB") filed Petitions for Reconsideration which seek clarification that local commercial stations electing retransmission consent retain their must-carry rights until October 6, 1993. National Cable Television Association ("NCTA"), and Time Warner Entertainment Company, L.P. ("TWE") oppose this request and argue that such an interpretation contradicts the language of Section 325(3)(B) of the 1992 Act which states that must-carry rights shall not apply to stations which elect retransmission consent status.

3. The *Order* clarifies that local broadcast stations which are otherwise entitled to mandatory carriage and which have elected retransmission consent may not have their carriage discontinued by any cable system prior to October 6, 1993, the effective date of their retransmission consent elections. As we stated in the *Report and Order*, the implementation schedule was adopted to reduce the number of changes to which the cable operator and subscribers would be subjected. We rejected cable commenter's suggestions that retransmission consent and must-carry (except for channel positioning requirements) take effect on the same date because we believed Congressional intent precluded us from delaying implementation of must-carry until October 6, 1993. It was our intent that, during the transition period, all eligible signals continue to be carried until such time as the cable operator must discontinue carriage of the signal due to a lack of consent from the broadcast television station. We believe that this approach is consistent with the language of the 1992 Act which provides that must-carry rights are not available to stations that elect retransmission consent. See 47 U.S.C. 325(b)(4). Section 325(b)(3)(B), however, provides that the Commission's retransmission consent regulations shall require that television stations make an election between must-carry and retransmission consent "within one year after the date of enactment" of the 1992 Act and every three years thereafter. Reading these two sections together, and based on the reasons set forth in the *Report and Order*, we believe it reasonable to delay the effectiveness of stations' retransmission consent election (and thus their forfeiture of must-carry rights) until October 6, 1993. Accordingly, a station choosing retransmission consent is entitled to must-carry until that date. We reaffirm that this approach will be the least disruptive to subscribers and will ensure an orderly transition to retransmission consent. We are amending § 76.56 of our rules to reflect this clarification.

4. In an effort to assist cable systems in establishing the channel line-up changes which will be required on October 6, 1993, we also take this opportunity to clarify the channel positioning rights of local commercial broadcast stations which failed to elect must-carry or retransmission consent and which, therefore, default to must-carry status. We continue to believe that the channel positioning rights of all television broadcast stations were intended by Congress to be determined by the broadcaster and not determined by the cable system. However, in those instances where the broadcaster has failed to make an election and to notify the cable system, we believe it is unfair to leave the cable system uninformed as to where to place the signal.

5. As stated in the *Report and Order*, the default election was to be self-executing without need for interaction between the cable system and the broadcaster. We thus clarify that, after October 6, 1993, cable systems which are required to carry the signal of a default commercial must-carry broadcaster shall place that signal on one of the statutorily defined positions, at the system's discretion. We believe that this will preserve Congress' intent that must-carry stations be carried on their over-the-air, historical or current channel position while allowing the cable system to decide which of the statutory channel positions will be used. We are amending § 76.57 of our rules to reflect the channel position options of a default must-carry station.

6. In the *Report and Order*, we declined to establish any rules governing conflicts among must-carry stations' requests for specific channels. We now conclude that such rules are necessary to resolve conflicts between local commercial stations that affirmatively elected carriage and those receiving carriage by default. Specifically, in the event of such a conflict, the request from the local commercial station which made an affirmative election should be given priority. In the event this station has selected the only statutory channel position available to the station carried by default, the cable system may place that station on a channel of the cable system's choice, so long as that channel is included on the basic service tier. We believe this approach is fair to all parties since the default must-carry station could have protected its channel positioning rights by affirmatively electing must-carry and a specific channel position.

**Ordering Clauses**

7. Accordingly, *it is ordered* pursuant to sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r), that §§ 76.56 and 76.57 are amended as set forth below.

8. *It is ordered* that the Petitions for Reconsideration filed by the National Association of Broadcasters and the Association of Independent Television Stations, Inc., are granted in part, and the Petition filed by the Community Antenna Television Association is denied in part, only to the extent specified in this Order.

9. *It is ordered* that the rules set forth in this *Order* will be effective on August 30, 1993.

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.
**William F. Caton,**
*Acting Secretary.*

**Amendatory Text**

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 76—CABLE TELEVISION SERVICE**

1. The authority citation for part 76 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat, 1460.

2. Section 76.56 is amended by adding a paragraph (b)(7) to read as follows:

**§ 76.56 Signal carriage obligations.**

* * * * *

(b) * * *

(7) A local commercial television station carried to fulfill the requirements of this paragraph, which subsequently elects retransmission consent pursuant to § 76.64, shall continue to be carried by the cable system until the effective date of such retransmission consent election.

* * * * *

3. Section 76.57 is amended by adding a paragraph (e) following the note to read as follows:

**§ 76.57 Channel positioning.**

* * * * *

(e) Pursuant to § 76.64(f)(3), a local commercial broadcast television station that fails to make an election is deemed a must-carry station. A cable operator shall carry such a television station on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992. In the event that none of these specified channel positions is available due to a channel positioning request from a commercial television station affirmatively asserting its must-carry rights or such a request from a qualified local noncommercial educational station, the cable operator shall place the signal of such a television station on a channel of the cable system's choice, so long as that channel is included on the basic service tier.

[FR Doc. 93-17931 Filed 7-27-93; 8:45 am]
BILLING CODE 6712-01-M

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**47 CFR Part 90**

**[PR Docket No. 93-38; FCC 93-330]**

**Private Land Mobile Radio Services; Private Carrier Paging Service to Individuals**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has adopted rule changes that will enable private carrier paging (PCP) licensees to provide service to individuals. Specifically, we are adding individuals to the list of eligible users of PCP services set forth in our rules. This action responds to a petition for rule making by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc., and is intended to increase service alternatives available to individual paging users and to eliminate unnecessary regulation.

**EFFECTIVE DATE:** August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** David L. Furth, Policy & Planning Branch, Private Radio Bureau, (202) 634-2443.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order* in PR Docket No. 93-38 (FCC 93-330), adopted June 24, 1993, and released July 16, 1993. The full text of the *Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M St., NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857-3800.

**Summary of Report and Order**

1. In this Report and Order, we amend §§ 90.75 and 90.494 of the Commission's rules, 47 CFR 90.75, 90.494, to enable private carrier paging (PCP) licensees at 929-930 MHz and in the Business Radio Service to provide private carrier paging service to individuals as well as other currently eligible users. The proceeding was initiated by a Notice of Proposed Rule Making, 8 FCC Rcd 1716, published at 58 FR 15131 (March 19, 1993).

2. Part 90 of our rules previously authorized PCP licensees to offer paging services only to end users who are themselves eligible for licensing under part 90 and to the federal government. Thus, because private individuals (other than those who qualify as business licensees) are not eligible for a part 90 license, they could not obtain paging service from a PCP system, but could only do so from a common carrier paging system.

3. The Report and Order provides that private individuals, like business and government users, are now eligible to use PCP services. As paging technology becomes less costly and more widely available, increasing numbers of individual users are seeking service for private as well as business purposes. We conclude that these individuals will benefit from being able to choose between private and common carrier alternatives. In some instances, PCP operators may be able to provide technically superior service at a lower cost, or to offer specialized service tailored to the user's particular needs.

4. This action also removes an unnecessary barrier to competition in the paging marketplace. The prior rules required PCP licensees to screen customers to guard against ineligible users, and to similarly restrict resale to individuals. Because of the difficulty of enforcing these restrictions, some licensees were reluctant to serve any individual customers, including eligible business users, and many distributors were unwilling to resell PCP services. We conclude that eliminating these restrictions will make PCP services more widely available to the public.

5. Balanced against the competitive benefits that flow from allowing PCP licensees to serve individuals, there is no public interest benefit to retaining the existing rule. Current paging technology can readily accommodate additional users on existing PCP systems. Thus, the rule is not needed to prevent frequency overuse or degradation of service to existing customers. In the absence of an affirmative reason to retain the previous rule, we conclude that it should be eliminated.

6. Some commenters in this proceeding question whether our action blurs the distinction between common and private carrier paging, and suggest that we should look more broadly at our paging regulations in this proceeding. We conclude that such an inquiry is beyond the scope of this proceeding. The Report and Order is consistent with prior Commission decisions in which we have held that private carriers may serve individuals without affecting their private carrier status. However, we do not rule out the possibility of addressing

broader regulatory issues at a later time as circumstances warrant.

**Final Regulatory Flexibility Analysis**

7. Pursuant to the Regulatory Flexibility Act of 1980, a Final Regulatory Flexibility Analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be viewed at the Commission's offices or obtained from its copy contractor.

**Ordering Clauses**

8. Accordingly, it is ordered that, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), Part 90 of the Commission's Rules, 47 CFR part 90, is amended as set forth below.

9. *It is further ordered* that this *Report and Order* will be effective thirty days after publication in the **Federal Register**.

10. *It is further ordered* that this proceeding is terminated.

**List of Subjects in 47 CFR Part 90**

Business and industry, Eligible and users, Private carrier paging, Private land mobile radio services.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Amendatory Text**

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.75 is amended by revising paragraph (c)(10) to read as follows:

**§ 90.75 Business radio service.**

(c) * * *

(10) This frequency is assigned only for one-way paging communications to mobile receivers. Only A1D, A2D, A3E, F1D, F2D, F3E, or G3E emissions may be authorized. Licensees may provide one-way paging communications on this frequency to individuals, persons eligible for licensing under subpart B, C, D, or E of this part, and representatives of Federal Government agencies.

* * * * *

3. Section 90.494(a) is amended by revising the third sentence of footnote 1 to read as follows:

**§ 90.494 One-way paging operations in the 929–930 MHz band.**

(a) * * *

Frequencies listed in Pool 2 are available only for shared use by private carrier paging (PCP) licensees in providing one-way paging communications to individuals, persons eligible for licensing under subpart B, C, D, or E of this part, and representatives of Federal Government agencies.

[FR Doc. 93–17930 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

## OFFICE OF PERSONNEL MANAGEMENT

**48 CFR Chapter 21**

**RIN 3206–AE04**

**Federal Employees' Group Life Insurance Federal Acquisition Regulation**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rulemaking.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a final regulation that describes the method by which the OPM implements and supplements the Federal Acquisition Regulation (FAR) for the Federal Employees' Group Life Insurance (FEGLI) Program. The regulation identifies basic and significant acquisition policies unique to the FEGLI program.

**EFFECTIVE DATE:** August 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Abby L. Block, (202) 606–0191.

**SUPPLEMENTARY INFORMATION:** On June 10, 1992, OPM issued a proposed regulation in the **Federal Register** (57 FR 24704) to provide direction and uniformity in the agency's procurement of life insurance coverage for Federal employees, retirees, and survivors, and to assist life insurance carriers and other interested parties in understanding OPM's application of the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) to the FEGLI Program. The regulation is referred to as the Federal Employees' Group Life Insurance Federal Acquisition Regulation (LIFAR). The LIFAR describes the methods by which OPM will implement and supplement the FAR for the specific purpose of acquiring and administering contracts with life insurance carriers in the FEGLI Program.

OPM received comments from one insurance company during the 30-day comment period. The company wished to clarify that the deferred acquisition tax ("DAC" tax) referred to in the Supplementary Information portion of the proposed rule is neither a tax on assets nor a tax on net profit. OPM agrees. For a detailed description of the tax, interested parties should refer to Section 11301 of Title XI of the Omnibus Budget Reconciliation Act of 1990. The LIFAR provisions on taxes have been rewritten for clarity; however, OPM has made no substantial changes.

With respect to the cost control factor at 2115.905(a)(5) for consideration in setting the contractor's prenegotiation objective (specifically, cost containment accomplishments that will benefit the FEGLI Program), the commenter objected to OPM's limiting consideration to the contractor's "success" at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets and at limiting and recovering erroneous benefit payments. The commenter suggested substituting the word "efforts" for "success" in order to recognize activities aimed at correcting situations that may not necessarily result in reducing costs because of other factors, such as, erroneous benefit payments caused by an agency error or incorrect certification. We believe the comment is unfounded because OPM is able to identify erroneous benefit payments caused by agency error and will take this into consideration in determining the service charge. The contractor's detection of agency errors will be given positive consideration in determining the cost control factor, while agency errors undetected by the contractor that reasonably should have been detected will be given negative consideration. We believe the "success" standard is achievable and, therefore, have not adopted the commenter's suggestion.

The commenter also requested a clarifying example of how an unauthorized use of FEGLI Program assets might differ from misappropriation of FEGLI Program assets. An example of unauthorized use would be the contractor's use of FEGLI Program funds to purchase capital equipment that was not authorized under the contract, but which was used under the contract. An example of misappropriation of FEGLI Program assets would be the contractor's using FEGLI funds to its own advantage (i.e., stealing).

The commenter believes the weight ranges at 2115.905(b) assigned to the profit factors severely limit the contractor's profit opportunity.

particularly since the weights are to be applied to the contractor's Basic and Family Optional insurance claims paid in the previous contract year. The commenter points out that the dollar claim volume for basic and family optional coverage has grown at a rate less than the rate of inflation for the past few years and that the weights are lower than those generally used by other Federal agencies. Consequently, the commenter believes that the maximum weighting for contractor performance should be raised from .0005 to a minimum of .0008. We have not adopted this suggestion. The FAR states that the profit prenegotiation objectives represent that element of the total remuneration that contractors *may* receive for contract performance over and above allowable costs (FAR 15.901). The FAR also states that it is in the Government's interest to offer contractors opportunities for financial rewards. However, the FAR does not state that the standards should increase the general level of profits currently being awarded under the contract. The guidelines are merely intended to give structure to the process of determining the service charge and to provide justification and documentation of the profits paid.

The commenter suggested insertion of language at the beginning of paragraph 2131.205–41(b), concerning taxes on FEGLI premiums, to enable the contractor to claim as allowable costs state taxes on FEGLI premiums in the event the Federal law prohibiting the imposition of state taxes on FEGLI premiums is either amended or repealed. We have adopted this suggestion.

The commenter suggested referencing 26 U.S.C. 848 in paragraph 2131.205–41(c) (now 2131.205–41(e)) on the Deferred Acquisition Tax. We agree and have inserted the reference in the regulation.

Section 2131.205–3 (formerly 2131.205–71) refers to the recovery of benefit payments made by a contractor in error. It authorizes the contracting officer to allow a contractor's unrecovered erroneous benefit payments to be charged to the contract if the contractor demonstrates that payment was made in accordance with an approved system of internal control under 2146.270(b). The provision deems the contractor's use of a system approved for the purposes of 2146.270(b) to be a diligent effort by the contractor to recover overpaymemts. The commenter questions whether a contractor may consider a procedure filed with OPM as satisfying this requirement in the absence of OPM's written notice to the contrary. The contractor may consider a procedure as satisfying this requirement only after OPM provides the contractor with written notice. If OPM has not completed a review of the contractor's internal control system prior to the beginning of the contract year, OPM will issue an interim approval notice until a final study can be completed.

Sections 2131.205–32 and 2131.205–71 (formerly 2131.205–75 and 2131.205–77 respectively) set forth specific dollar amounts that may be allowed in connection with nonrecurring costs and reinsurer reimbursement costs. The commenter recommends that an adjustment factor be built into the provisions to recognize changes in relative cost levels over time. OPM expects to amend the LIFAR periodically to conform with new or amended FAR policies. Fixed dollar amounts such as these will be considered for adjustment when the LIFAR is updated.

Section 2131.205–70 (formerly 2131.205–76) limits the service charge on major subcontracts when the subcontract service charge costs exceed the subcontracts' allowable costs. The commenter suggested that OPM define or limit the types of subcontracts to which this section applies. We have accommodated the commenter by limiting the subcontracts for purposes of this section to subcontracts for enrollment and eligibility determinations, administration of claims, payment of benefits, and any other function for which prior subcontractor approval is necessary.

Section 2137.102 (formerly 2137.102–70) provides for continuation of the FEGLI Program contract without interruption in the event the contract is terminated. It is based on the reality that the continuation of life insurance coverage for Federal employees is of vital interest to the Government and that a phase-out period would give OPM the necessary time to find a new contractor. Paragraph (c) addresses the contractor's profit for the period after contract termination during which services are continued. The commenter objects to the provision that the profit paid can not exceed a pro rata portion of the profit for the final contract year and believes that the amount of profit during a phase-out period should be negotiated and set by contract at the beginning of the contract year. The commenter further objects to the use of subjective standards in paragraph (d) which OPM proposes to apply in determining the amount of profit during the continuation of services period. The commenter believes the standards do not take into consideration additional expenses associated with shut-down of the losing contractor's FEGLI office. We have considered the commenter's suggestions and understand the concerns. Nevertheless, we will continue to follow the continuation of services profit provisions in the FAR and FEGLI Program-specific criteria set forth in the proposed regulation in establishing the service charge, and will give due consideration to obstacles faced by the contractor during the phase-out period, as stated in paragraph (d).

OPM understands the commenter's overall concern with Section 2137.102, and believes that the contract clause at 2152.237–70 (formerly FAR 52.237–3, which was included by reference and amended by former 2137.102–70) may be misinterpreted. OPM believes that both the phase-in and the phase-out contractors must provide, in good faith, sufficient experienced personnel during the phase-in and phase-out period. OPM believes that the clause is primarily intended to prevent the phase-out contractor from switching experienced personnel to other projects at the expense of the continuity of the services under the contract. OPM understands that the phase-out contractor may lose some experienced personnel prior to the end of the phase-out period due to personnel accepting job offers by new employers. Nevertheless, the phase-out contractor must provide sufficient experienced personnel in light of the transition plan negotiated with the successor contractor. The reasonable costs necessary to provide those personnel, including, for example, bonuses to retain otherwise terminating personnel until the end of the phase-out period, the additional cost of temporary personnel or of overtime for personnel, and the expenses incurred in the use of personnel from the contractor's other lines of business, are costs reimbursable under the contract clause. The duties imposed by this contract clause terminate upon the termination of the phase-in, phase-out period, which may extend for as long as 10 months after the expiration of the contract.

One method of transition with the successor contractor that may minimize phase-in, phase-out problems, is the successor contractor's employment of the phase-out contractor's personnel who are experienced and proficient with the contract. The clause at 2152.237–70 encourages this method. The phase-out contractor, however, need disclose only necessary personnel records, including work-performance evaluations, but not medical records. OPM recommends that permission for

disclosure of the personnel records be obtained from affected personnel before the records are released. Any disagreement between the contractors on what personnel records must be disclosed would then be referred to the contracting officer for resolution. The reasonable expense of litigation or administrative action necessary to carry out or resulting from the contracting officer's direction is a legitimate phase-in, phase-out cost.

The contractors must negotiate in good faith the transfer of fringe benefits of personnel accepting employment with the successor contractor. However, this requirement to negotiate in good faith does not require either contractor to take any actions which may result in disqualification of any employee benefit plan under the Employee Retirement Income Security Act of 1974, as amended, or loss of any tax benefit under the Internal Revenue Code. The reasonable expense of any litigation or administrative action arising from the contractors' good faith negotiations or the transfer of fringe benefits is a phase-in, phase-out cost.

We believe part of the commentator's concerns are caused by a misunderstanding of the Changes Clause (formerly incorporated by reference, but now at 2152.243–70). Any change required by the contracting officer may not only change the fee or service charge, but may also change the time for performance of the services necessary under the contract, as required by equity, so long as the change is within the scope of the contract. Whether a change is within the contract's scope, and what is considered a modification to the price or time limitations, have been subjects of numerous decisions of the General Accounting Office, courts, and boards of contract appeals. OPM believes that this clause adequately protects the contractor from adverse effects of changes and notes that after a change ordered by the contracting officer equity may require that processing standards, quality standards, cost levels, and complaint levels, both during the time necessary to implement the change and after the change, be modified to protect the contractor.

The commenter suggested that OPM amend section 2143.171 (now 2143.205) to affirm that it would not make effective new regulations that would increase the contractor's liabilities or obligations under the contract until the following contract period. We have amended this section by referencing LIFAR 2101.370, "Effective date of LIFAR amendments," and by tailoring the clauses at FAR 52.243–1 to FEGLI Program contracts [see 2152.243–70]. We believe the changes will mitigate the commenter's concerns and more closely conform to the formatting scheme of the FAR.

Paragraph 2149.002(a)(1) (formerly 2149.002–70(a)(1)) references the statutory and regulatory provisions that govern termination of the FEGLI Program contract. The commenter believes that the termination provisions of the contract should also be referenced. We cannot agree to reference the contract until the current contract termination provisions are amended to conform to the LIFAR.

LIFAR 2149.002(a)(2) (formerly 2149.002–70(a)(2)) pertains to termination for default. It follows the FAR termination for default provisions, which authorize the Government to terminate a contract for default if the contractor does not cure a problem within 10 days after receipt of the notice from the contracting officer specifying the failure to comply. The contracting officer may authorize a longer time period in writing. The commenter believes that OPM should give the contractor 31-days' notice of termination in the event of default. OPM will follow FAR requirements. However, if the contractor can show good cause for requiring additional time to cure the problem, the contracting officer will consider a request for extension.

The commenter recommends adding a statement to paragraph 2149.002–70(a) (now 2149.002(a)) addressing the effective date of OPM's imposition of new regulatory requirements that increase the contractor's cost or obligation under the contract. The LIFAR does address this subject. However, because new regulations would result in a contract amendment, the effective date of new regulatory requirements is provided for under Subpart 2143.1, Contract Modifications.

The commenter suggests adding a reference to 2131.205–71 (now 2131.205–3) (contract cost principle—erroneous benefit payments) after the word "overpayments" in paragraph 2152.216–70(b)(2)(i) (now 2152.231–70(b)(2)(i)) on allowable costs to clarify that benefit overpayments made through no fault of the contractor and on which the contractor makes a diligent but unsuccessful effort to recover from the recipient are considered allowable benefit costs. We have adopted the commenter's suggestion.

In addition to the above substantive changes, we have reorganized parts of the LIFAR in order to more closely conform to the FAR. We have also made a number of minor technical changes and have added a new subpart 2109.4 to supplement FAR Subpart 9.4, Debarment, Suspension, and Ineligibility. The new subpart adds a clause for contractors and a certification for potential contractors based on the FAR provision in 52.209–5, substitutes the term "contractor" for the term "offeror," and makes minor adjustments to reflect the fact that, in accordance with the statutory exemption provided by 5 U.S.C. 8709, 8714a, 8714b, and 8714c, the FEGLI Program does not issue solicitations.

**Executive Order 12291, Federal Regulation**

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation implements and supplements the Federal Acquisition Regulation, which has already been established for entities contracting with the Federal Government.

**List of Subjects in 48 CFR Chapter 21**

Administrative practice and procedure, Government contracts, Life insurance.

Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

Accordingly, OPM is amending title 48, Code of Federal Regulations, by adding chapter 21 (parts 2100–2199) to read as follows:

**CHAPTER 21—OFFICE OF PERSONNEL MANAGEMENT, FEDERAL EMPLOYEES GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION**

**SUBCHAPTER A—GENERAL**

Part
2101 Federal Acquisition Regulations System.
2102 Definitions of words and terms.
2103 Improper business practices and personal conflicts of interest.
2104 Administrative matters.

**SUBCHAPTER B—ACQUISITION PLANNING**

2105 Publicizing contract actions.
2106 Competition requirements.
2109 Contractor qualifications.
2110 Specifications, standards, and other purchase descriptions.

**SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**

2114 Sealed bidding.
2115 Contracting by negotiation.
2116 Types of contracts.

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SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

2122 Application of labor laws to government acquisitions.
2124 Protection of privacy and freedom of information.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

2128 Bonds and Insurance.
2129 Taxes.
2131 Contract cost principles and procedures.
2132 Contract financing.
2133 Protests, disputes, and appeals.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

2137 Service contracting.

SUBCHAPTER G—CONTRACT MANAGEMENT

2143 Contract modifications.
2144 Subcontracting policies and procedures.
2146 Quality Assurance.
2149 Termination of contracts.

SUBCHAPTER H—CLAUSES AND FORMS

2152 Precontract provisions and contract clauses.

SUBCHAPTER A—GENERAL

PART 2101—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2101.1—Purpose, Authority, Issuance

Sec.
2101.101 Purpose.
2101.102 Authority.
2101.103 Applicability.
2101.104 Issuance.
2101.104–1 Publication and code arrangement.
2101.104–2 Arrangement of regulations.

Subpart 2101.3—Agency Acquisition Regulations

2101.301 Policy.
2101.370 Effective date of LIFAR amendments.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

## Subpart 2101.1—Purpose, Authority, Issuance

### 2101.101 Purpose.

(a) This subpart establishes Chapter 21, Office of Personnel Management Federal Employees' Group Life Insurance Federal Acquisition Regulation, within title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations. The short title of this regulation shall be LIFAR.

(b) The purpose of the LIFAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering a contract, or contracts, for life insurance under the Federal Employees' Group Life Insurance (FEGLI) Program.

### 2101.102 Authority.

(a) The LIFAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. Chapter 87 and other applicable laws and regulations.

(b) The LIFAR does not replace or incorporate regulations found at 5 CFR Parts 870 through 874, which provide the substantive policy guidance for administration of the FEGLI program under 5 U.S.C. chapter 87. The following is the order of precedence in interpreting a contract provision under the FEGLI Program:

(1) 5 U.S.C. chapter 87.
(2) 5 CFR parts 870 through 874.
(3) 48 CFR chapters 1 and 21.
(4) The FEGLI Program contract.

### 2101.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEGLI Program pursuant to 5 U.S.C. chapter 87. The LIFAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEGLI Program.

### 2101.104 Issuance.

### 2101.104–1 Publication and code arrangement.

(a) The LIFAR and its subsequent changes are published in:

(1) Daily issues of the **Federal Register**; and

(2) The Code of Federal Regulations, in cumulative form.

(b) The LIFAR is issued as chapter 21 of title 48 of the Code of Federal Regulations.

### 2101.104–2 Arrangement of regulations.

(a) *General.* The LIFAR conforms with the arrangement and numbering system prescribed by FAR 1.104 and 1.303. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding LIFAR part, subpart, etc. The LIFAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;
(2) LIFAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of Chapter 21 material that has been published in the **Federal Register** will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 21 may be identified as "LIFAR" followed by the section number.

## Subpart 2101.3—Agency Acquisition Regulations

### 2101.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEGLI Program shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with certain unique aspects of life insurance, or necessary to satisfy specific needs of the Office of Personnel Management, to the extent not otherwise regulated in the FAR, shall be implemented as amendments to the LIFAR and published in the **Federal Register**, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides which are necessary to clarify or implement the LIFAR within OPM may be issued by agency officials designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the LIFAR must:

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

### 2101.370 Effective date of LIFAR amendments.

(a) Except as provided in paragraphs (b) and (c) of this section, an amendment to the LIFAR is effective when promulgated or as provided in the amendment.

(b) Except as provided in paragraphs (c) and (d) of this section, if the LIFAR is amended in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will be made effective the October 1 subsequent to the amendment's promulgation, unless the contractor(s) agree(s) in writing to an earlier date.

(c) Except as provided for in paragraph (d) of this section, if the LIFAR is amended between July 31 and October 1 in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will not be effective until the October 1 in the year following the amendment's promulgation, unless the

contractor(s) agree(s) in writing to an earlier date.

(d) Paragraphs (b) and (c) of this section are not applicable to amendments that are necessary to implement new or existing legislation.

## PART 2102—DEFINITIONS OF WORDS AND TERMS

### Subpart 2102.1—Definitions

Sec.
2102.101 Definitions.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2102.1—Definitions

#### 2102.101 Definitions.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

*Contract* means a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by 5 U.S.C. chapter 87.

*Contractor* means an insurance company contracted to provide the benefits specified by 5 U.S.C. chapter 87.

*Director* means the Director of the Office of Personnel Management.

*Employees' Life Insurance Fund* means the trust fund established under 5 U.S.C. 8714.

*FEGLI Program* means the Federal Employees' Group Life Insurance Program.

*Fixed price with limited cost redetermination plus fixed fee contract* means a contract which provides for:

(1) A fixed price during the contract year with a cost element that is adjusted at the end of the contract term based on costs incurred under the contract; and

(2) A profit or fee that is fixed at the beginning of the contract term. The amount of adjustment for costs is limited to the amount in the Employees' Life Insurance Fund. The fee will be in the form of either a risk charge or a service charge.

*Insurance company*, as provided in 5 U.S.C. 8709, means a company licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia. It must have in effect, on the most recent December 31 for which information is available to the Office of Personnel Management, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

*OPM* means the Office of Personnel Management.

*Reinsurer* means a company that reinsures portions of the total amount of insurance under the contract as specified in 5 U.S.C. 8710 and is not an agent or representative of the contractor.

*Subcontract* means a contract entered into by any subcontractor that furnishes supplies or services for performance of a prime contract under the FEGLI Program. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term "subcontract" does not include a contract with a reinsurer under the FEGLI Program.

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor under the FEGLI Program contract. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term "subcontractor" does not include reinsurers under the FEGLI Program.

## PART 2103—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 2103.5—Other Improper Business Practices

Sec.
2103.570 Misleading, Deceptive, or Unfair Advertising.
2103.571 Contract clause.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2103.5—Other Improper Business Practices

#### 2103.570 Misleading, Deceptive, or Unfair Advertising.

(a) OPM prepares and makes available to enrolled Federal employees a booklet describing the provisions of the FEGLI Program which includes information about eligibility, enrollment, and general procedures. The booklet also operates as a certification of the employee's enrollment in the FEGLI Program. Because all necessary information is made available by OPM, advertising directed specifically at Federal employees and life insurance agent contacts with Federal employees for the purpose of selling FEGLI Program coverage are prohibited.

(b) The contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The contractor agrees that any advertising material authorized and released by the contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The contractor will use its best efforts to assure that its life insurance agents are aware of and abide by this prohibition.

(c) The contractor's failure to conform to the requirements of this subpart shall be considered by OPM in the determination of the service charge prenegotiation objective.

#### 2103.571 Contract clause.

The clause at 2152.203–70 shall be inserted in FEGLI Program contracts and in subcontracts.

## PART 2104—ADMINISTRATIVE MATTERS

### Subpart 2104.7—Contractor Records Retention

Sec.
2104.703 Policy.

### Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2104.7—Contractor Records Retention

#### 2104.703 Policy.

In view of the unique payment schedules of FEGLI Program contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1) and LIFAR 2115.106–270.

### Subpart 2104.70—Designation of Authorized Personnel

#### 2104.7001 Designation of authorized personnel.

The contractor shall notify the contracting officer in writing of the name(s), title(s), and address(es) of the individual(s) authorized to act on behalf of the contractor regarding a LIFAR Program contract. The notice shall include any restriction(s) upon the authority of the individual(s). Any change to the notice must also be provided to the contracting officer in writing.

## SUBCHAPTER B—ACQUISITION PLANNING

## PART 2105—PUBLICIZING CONTRACT ACTIONS

### Subpart 2105.70—Applicability

Sec.
2105.7001 Applicability.

**Authority:** 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2105.70—Applicability

**2105.7001 Applicability.**

FAR part 5 has no practical application to the FEGLO Program because OPM does not issue solicitations. Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709.

## PART 2106—COMPETITION REQUIREMENTS

### Subpart 2106.70—Applicability

Sec.
2106.7001 Applicability.

**Authority:** 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2106.70—Applicability

**2106.7001 Applicability.**

FAR part 6 has no practical application to the FEGLI Program in view of the statutory exception provided by 5 U.S.C. 8709.

## PART 2109—CONTRACTOR QUALIFICATIONS

### Subpart 2109.4—Debarment, Suspension, and Ineligibility

Sec.
2109.406 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
2109.409 Certification and contract clause.

### Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

2109.7001 Minimum standards for FEGLI Program contractors.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2109.4—Debarment, Suspension, and Ineligibility

**2109.406 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.**

FAR subpart 9.4 is implemented by changing the FAR offeror's certification at FAR 52.209–5 (which is part of a solicitation) to a pre-contract certificate and a contract clause. These provisions reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

**2109.409 Certification and contract clause.**

(a) The contracting officer may require the precontract certificate in 2152.209–70 to be filed prior to or during negotiations.

(b) The contracting officer shall insert the clause at 2152.209–71 in all FEGLI Program contracts.

### Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

**2109.7001 Minimum standards for FEGLI Program contractors.**

(a) The contractor must meet the requirements of chapter 87 of title 5, United States Code; parts 870, 871, 872, 873, and 874 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the standards in this subpart. The contractor shall continue to meet these and the following statutory and regulatory requirements while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's termination of the contract in accordance with part 2149 of this chapter.

(b) The contractor must actually be engaged in the life insurance business and must be licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia at the time of application.

(c) The contractor must not be a Federal, State, local or territorial government entity.

(d) The contractor must not be debarred, suspended or ineligible to participate in Government contracting or subcontracting for any reason.

(e) The contractor must keep statistical and financial records regarding the FEGLI Program separate from that of all its other lines of business.

(f) The contractor must enter into rate redeterminations as deemed necessary by OPM.

(g) The contractor must furnish such reasonable reports as OPM determines are necessary to administer the FEGLI Program.

(h) The contractor must establish and maintain a system of internal control that provides reasonable assurance that:

(1) The payment of claims and other expenses is in compliance with legal, regulatory, and contractual guidelines;

(2) Funds, property, and other FEGLI Program assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

(3) Revenues and expenditures applicable to FEGLI Program operations are properly recorded and accounted for to permit the preparation of reliable financial reporting and to maintain accountability over assets; and,

(4) Data are accurately and fairly disclosed in all reports required by OPM.

(i) The contractor must permit representatives of OPM and of the General Accounting Office to audit and examine records and accounts pertaining to the FEGLI Program at such reasonable times and places as may be designated by OPM or the General Accounting Office.

## PART 2110—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

### Subpart 2110.70—Contract Specifications

Sec.
2110.7000 Scope of subpart.
2110.7001 Definitions.
2110.7002 Contractor investment of FEGLI Program funds.
2110.7003 Significant events.
2110.7004 Contract clauses.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2110.70—Contract Specifications

**2110.7000 Scope of subpart.**

This subpart prescribes mandatory specifications for performance under FEGLI Program contracts.

**2110.7001 Definitions.**

*Investment income*, as used in this subpart, means the net amount on an investment of FEGLI Program funds earned by the contractor after deducting reasonable, necessary, and properly allocated investment expenses.

*Significant event*, as used in this subpart, means any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the contractor's ability to meet its obligations under the LIFAR.

**2110.7002 Contractor investment of FEGLI Program funds.**

(a) The contractor is required to invest and reinvest all FEGLI Program funds on hand, including any attributable to the special contingency reserve (as used in 5 U.S.C. 8712), until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the contractor shall seek to maximize investment income.

(b) The contractor is required to credit income earned from its investment of FEGLI Program funds to the FEGLI Program. Thus, the contractor must be able to allocate investment income to the FEGLI Program in an appropriate manner. If the contractor fails to invest funds on hand, properly allocate investment income, or credit any income due to the contract, for whatever reason, it shall return or credit any investment income lost to OPM or the FEGLI Program, retroactive to the date that such funds should have been originally invested in accordance with 2152.210–70.

**2110.7003 Significant events.**

The contractor is required to inform the contracting officer of all significant events.

**2110.7004 Contract clauses.**

(a) The clause at 2152.210–70 shall be inserted in all FEGLI Program contracts.

(b) The clause at 2152.210–71 shall be inserted in all FEGLI Program contracts.

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

## PART 2114—SEALED BIDDING

### Subpart 2114.70—Applicability

Sec.
2114.7001 Applicability.

**Authority:** 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2114.70—Applicability

**2114.7001 Applicability.**

FAR part 14 has no practical application to the FEGLI Program in view of the statutory exemption provided by 5 U.S.C. 8709, 8714a, 8714b, and 8714c.

## PART 2115—CONTRACTING BY NEGOTIATION

### Subpart 2115.1—General Requirements for Negotiation

Sec.
2115.106 Contract clauses.
2115.106–270 Specific retention periods.
2115.170 Negotiation authority.

### Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

2115.401 Applicability.

### Subpart 2115.6—Source Selection

2115.602 Applicability.

### Subpart 2115.8—Price Negotiation

2115.802 Policy.

### Subpart 2115.9—Profit

2115.902 Policy.
2115.905 Profit analysis factors.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2115.1—General Requirements for Negotiation

**2115.106 Contract clauses.**

**2115.106–270 Specific retention periods.**

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215–2, "Audit—Negotiation," the contracting officer shall also insert the clause at 2152.215–70 in all FEGLI Program contracts.

**2115.170 Negotiation authority.**

The authority to negotiate FEGLI Program contracts is conferred by 5 U.S.C. 8709.

### Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

**2115.401 Applicability.**

(a) FAR Subpart 15.4 has no practical application to the FEGLI Program because OPM does not issue solicitations.

(b) OPM will announce any opportunities to submit applications to provide life insurance through the FEGLI Program in insurance industry periodicals and other publications as deemed appropriate by OPM. The announcement will contain information on the address to which requests for application packages should be submitted and on deadline dates for submission of completed applications.

(c) Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709. Offerors voluntarily come forth in accordance with procedures provided in 2115.602.

(d) OPM may approve one or more life insurance companies that, in its judgment, are best qualified to provide life insurance coverage to Federal enrollees.

### Subpart 2115.6—Source Selection

**2115.602 Applicability.**

FAR Subpart 15.6 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and the following:

(a) Applications must be signed by an individual with legal authority to enter into a contract on behalf of the company for the dollar level of claims and expenses anticipated.

(b) Applications will be reviewed for evidence of substantial compliance in the following areas:

(1) *Management:* Stable management with experience pertinent to the life insurance industry and, in particular, large group management; sufficient operating experience to enable OPM to evaluate past and expected future performance.

(2) *Marketing:* Past ability to attract and retain large group contracts; steady or increasing amount of group life insurance in force.

(3) *Legal expertise:* Demonstrated competence in researching, compiling, and implementing various Federal and State laws that may impact payment of benefits; ability to defend legal challenges to payment of benefits.

(4) *Financial condition:* Establishment of firm budget projections and demonstrated success in keeping costs at or below those projections on a regular basis; evidence of the ability to sustain operations in the future and to meet obligations under the contract OPM might enter into with the company; adequate reserve levels; assets exceeding liabilities.

(5) *Establishment of office:* Ability to establish an administrative office capable of assessing, tracking, and paying claims.

(6) *Internal controls:* Ability to establish and maintain a system of internal control that provides reasonable assurance that the payment of claims and other expenses will be in compliance with legal, regulatory, and contractual guidelines; funds, property, and other FEGLI Program assets will be safeguarded against waste, loss, unauthorized use, or misappropriation; and revenues and expenditures applicable to FEGLI Program operations will be properly recorded and accounted for to permit the preparation of timely and accurate financial reporting and to maintain accountability over assets.

### Subpart 2115.8—Price Negotiation

**2115.802 Policy.**

Pricing of FEGLI Program premium rates is governed by 5 U.S.C. 8707, 8708, 8711, 8714a, 8714b, and 8714c. FAR Subpart 15.8 shall be implemented by applying cost analysis policies and procedures. To the extent that reasonable or good faith actuarial estimates are used for pricing, such estimates will be deemed acceptable and, if inaccurate, will not constitute defective pricing.

### Subpart 2115.9—Profit

**2115.902 Policy.**

(a) *Risk charge.* (1) Section 8711(d) of title 5, United States Code, provides for payment of a risk charge to FEGLI Program contractors as compensation for the risk assumed under the FEGLI Program. It is appropriate to pay such a charge when substantial risk is borne by the contractor; that is, when the balance in the Employees' Life Insurance Fund is no larger than five times annual claims.

(2) The risk charge is determined by agreement between the contractor and OPM. The amount of risk charge shall be specified in the contract.

(b) *Waiver of the risk charge.* (1) When the Fund balance is greater than five

times annual claims, OPM and the contractor may agree that the contractor will relinquish the risk charge in favor of a profit opportunity in the form of a service charge for the contractor. The service charge so determined shall be the total service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to surpluses, etc.) that may have been negotiated by the prime contractor with any subcontractor. At no time may both a risk charge and a service charge be paid for the same portion of a policy year.

(2) Once agreement to relinquish the risk charge is made, the agreement may not be cancelled unless OPM and the contractor mutually agree to reinstitute payment of a risk charge; or unless the Fund balance falls below the level defined in 2115.902(a) and 30 days notice of cancellation is provided; or unless the contractor or OPM provide notice of cancellation for any reason 1 year prior to the date cancellation is sought.

(c) Any profit prenegotiation objective (service charge) will be determined on the basis of a weighted guidelines structured approach.

**2115.905 Profit analysis factors.**

(a) The OPM contracting officer will apply a weighted guidelines method when developing the prenegotiation objective (service charge) for the FEGLI Program contract. In accordance with the factors defined in FAR 15.905–1, OPM will apply the appropriate weights derived from the ranges specified in paragraph (b) of this section and will determine the prenegotiation objective based on the contractor's Basic and Family Optional insurance claims paid in the previous contract year.

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, effectiveness of internal controls systems in place, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's *basic* responsibility for contract compliance and will be a measure of the extent and nature of the contractor's contribution to the FEGLI Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a zero weight. Innovations of benefit to the FEGLI Program will generally receive a plus weight; documented inattention or indifference to effective operations, a zero weight.

(2) *Contract cost risk.* OPM will evaluate the contractor's risk annually in relation to the amount in the Employees' Life Insurance Fund and will evaluate this factor accordingly.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905–1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will result in a plus weight; indifference to Federal socioeconomic programs will result in a zero weight; and only deliberate failure to provide opportunities to persons and organizations that would benefit from these programs will result in a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEGLI Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEGLI Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost Control.* This factor is based on the contractor's previously demonstrated ability to perform effectively and economically. In addition, consideration will be given to measures taken by the contractor that result in productivity improvements and other cost containment accomplishments that will be of future benefit to the FEGLI Program. Examples are containment of costs associated with processing claims; success at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets; and success at limiting and recovering erroneous benefit payments.

(6) *Independent Development.* Consideration will be given to independent contractor-initiated efforts, such as the development of a unique and enhanced customer support system, that are of demonstrated value to the FEGLI Program and for which developmental costs have not been recovered directly or indirectly through allowable or allocable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the Program at large. Improvements and innovations recognized and rewarded under any other profit factor cannot be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

| Profit factor | Weight ranges |
|---|---|
| 1. Contractor performance | 0 to +.0005 |
| 2. Contract cost risk | +.000001 to +.00001 |
| 3. Federal socioeconomic programs | −.00003 to +.00003 |
| 4. Capital investment | 0 to +.00001 |
| 5. Cost control | −.0002 to +.0002 |
| 6. Independent development | 0 to +.00003 |

## PART 2116—TYPES OF CONTRACTS

### Subpart 2116.1—Selecting Contract Types

Sec.
2116.105 Solicitation provision.

### Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.
2116.270–1 Contract clauses.

**Authority:** 5 U.S.C. 8709; 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2116.1—Selecting Contract Types

**2116.105 Solicitation provision.**

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 87 obviate the issuance of solicitations.

### Subpart 2116.2—Fixed-Price Contracts

**2116.270 FEGLI Program contracts.**

FEGLI Program contracts will be fixed price with limited cost redetermination plus fixed fee. The premium to the contractor will be based on an estimate of benefits and administrative costs, plus the fixed service or risk charge, and will be determined annually. Claims costs, including benefits and administrative expenses, in excess of premiums will be paid up to the amount in the Employees' Life Insurance Fund. Payment for costs exceeding the amount in the Fund are the responsibility of the contractor and reinsurers. The fee is fixed at the inception of each contract year. The fee does not vary with the actual costs, but may be adjusted as a

result of changes in the work to be performed under the contract. The fee will be in the form of either a risk charge or a service charge.

(a) *Risk charge.* The risk charge will be determined as prescribed in 5 U.S.C. 8711(d) and paragraph 2115.902(a)(2) of this subchapter. It will consist of a negotiated amount which will reflect the risk assumed by the contractor and the reinsurers and may be adjusted as a result of increased or decreased risk under the contract. When the applicable fee is a risk charge, no service charge shall be payable for the same period of time.

(b) *Service charge.* The amount of the service charge will be determined using a weighted guidelines structured approach in accordance with 2115.905 and negotiated with the contractor at the beginning of the contract term. When the applicable fee is a service charge, no risk charge will be paid for the same portion of a policy year in which a service charge is paid.

**2116.270–1 Contract clauses.**

(a) The clause at 2152.216–70 shall be inserted in all FEGLI Program contracts when a risk charge is negotiated.

(b) The clause at 2152.216–71 shall be inserted in all FEGLI Program contracts when a service charge is negotiated.

## SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

## PART 2122—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

### Subpart 2122.1—Basic Labor Policies.

Sec.
2122.170 Contract clauses.

**Authority:** 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2122.1—Basic Labor Policies

**2122.170 Contract clauses.**

The provisions at FAR sections 52.222–21, 52.222–22, 52–222.25 are implemented by changing the word "offeror" to "Contractor" and the word "solicitation" to "contract" wherever they appear in the text to reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

## PART 2124—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

### Subpart 2124.1—Protection of Individual Privacy

Sec.
2124.102 General.
2124.102–70 Policy.
2124.104 Contract clauses.
2124.104–70 Contract clause.

**Authority:** 5 U.S.C. 8716, 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2124.70—Protection of Individual Privacy

2124.102 General.
2124.102–70 Policy.

Records retained by FEGLI Program contractors on Federal insureds and members of their families serve the contractors' own commercial function of paying FEGLI Program claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for the contractors to keep certain records confidential. The clause at 2152.224–70 addresses this concern.

**2124.104 Contract Clauses.**

**2124.104–70 Contract clause.**

The clause at 2152.224–70 shall be inserted in all FEGLI Program contracts.

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

## PART 2128—BONDS AND INSURANCE

### Subpart 2128.3—Insurance

Sec.
2128.370 Contract clause.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2128.3—Insurance

**2128.370 Contract clause.**

The contract clause at FAR 52.228–7 is a mandatory clause in FEGLI Program contracts, except paragraph (d) is modified as follows:

(d) The Government's liability under paragraph (c) of this clause is limited to the amount available in the Employee's Life Insurance Fund. Nothing in this contract shall be construed as implying that the Government will make additional funds available later or that Congress will appropriate funds later sufficient to meet deficiencies.

## PART 2129—TAXES

### Subpart 2129.1—General

Sec.
2129.170 Policy.

### Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.
2129.305 State and local tax exemptions.

### Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.
2129.401–70 FEGLI Program Contract clauses.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2129.1—General

**2129.170 Policy.**

(a) OPM shall consider taxes as a FEGLI Program cost under 2131.205–41.

(b) For purposes of the limited cost redetermination of a FEGLI Program contract, taxes are not limited to those in effect as of the contract date, but shall include any taxes enacted, modified, or repealed, by legislative, judicial, or administrative means, during the contract year.

### Subpart 2129.3—State and Local Taxes

**2129.302 Application of State and local taxes to the Government.**

(a) 5 U.S.C. 8714(c)(1) prohibits the imposition of taxes, fees, or other monetary payment on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision or governmental authority of those entities.

(b) Paragraph (a) of this section shall not be construed to exempt the contractor from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by it from business conducted under the FEGLI Program if the tax, fee, or payment is applicable to a broad range of business activity.

**2129.305 State and local tax exemptions.**

(a) FAR 29.305 is modified for the FEGLI Program by substituting paragraph (b) of this section in the place of paragraph (b) of FAR 29.305.

(b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.

### Subpart 2129.4—Contract Clauses

**2129.401 Domestic contracts.**

**2129.401–70 FEGLI Program contract clauses.**

The fixed-price contract clauses in FAR subpart 29.4 are inappropriate for the FEGLI Program because of the limited cost-redetermination of FEGLI Program contracts. The clauses at FAR 52.229–1, 52.229–2, 52.229–3, and 52.229–4 shall not be inserted into FEGLI Program contracts.

## PART 2131—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 2131.1—Applicability

Sec.

2131.103 Contracts with commercial organizations.
2131.109 Advance Agreements.

### Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.
2131.201–5 Credits.
2131.203 Indirect costs.
2131.205 Selected costs.
2131.205–1 Public relations and advertising costs.
2131.205–3 Bad debts.
2131.205–6 Compensation for personal services.
2131.205–32 Precontract costs.
2131.205–38 Selling costs.
2131.205–41 Taxes.
2131.205–43 Trade, business, technical and professional activity costs.
2131.205–70 Major subcontractor service charge.
2131.205–71 Reinsurer administrative expense costs.
2131.270 Contract clauses.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2131.1—Applicability

#### 2131.103 Contracts with Commercial Organizations.

The contracting officer shall incorporate the cost principles and procedures of FAR subpart 31.2 and this part by reference in all FEGLI Program contracts because of the nature of a fixed price with limited cost redetermination plus fixed fee contract.

#### 2131.109 Advance agreements.

FAR 31.109 is applicable to FEGLI Program contracts, except that precontract costs and nonrecurring costs that exceed $25,000 shall not be allowed in the absence of an advance agreement.

### Subpart 2131.2—Contracts With Commercial Organizations

#### 2131.201 General.

#### 2131.201–5 Credits.

The provisions of FAR 31.201–5 shall apply to income, rebates and other credits resulting from benefit payments that include, but are not limited to—

(a) Uncashed and returned checks.

(b) Refunds attributable to litigation with regard to payments of FEGLI Program life insurance monies.

(c) Erroneous benefit payment, refunds, overpayment, and duplicate payment recoveries.

(d) Escheatments.

#### 2131.203 Indirect costs.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a "dividend or retention formula."

#### 2131.205 Selected costs.

#### 2131.205–1 Public relations and advertising costs.

The provisions of FAR 31.205–1 shall be modified to include the following:

(a) Costs of media messages are allowable if approved by the contracting officer and all of the following criteria are met:

(1) The primary objective of the message is to disseminate information on general health and fitness or encouraging healthful lifestyles;

(2) The costs of the contractor's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the contractor's messages to be charged to the FEGLI Program in advance of the policy year.

(b) Costs of media messages that inform enrollees about the FEGLI Program are allowable if approved by the contracting officer.

(c) In those instances where contracting officer approval of the total dollar amount is not solicited in advance, it is incumbent upon the contractor to show the contracting officer, for subsequent approval, that the costs are reasonable and do not unduly burden the administrative cost to the contract.

(d) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the contractor or subcontractor for the purpose of enhancing its overall image or selling its product or services are not allowable.

#### 2131.205–3 Bad debts.

*Erroneous benefit payments.* If the contractor or OPM determines that a FEGLI Program benefit has been paid in error for any reason, the contractor shall make a diligent effort to recover such erroneous payment from the recipient. The contracting officer shall allow an unrecovered erroneous payment to be charged to the contract provided the contractor demonstrates that the recovery of the erroneous payment was attempted in accordance with a system that is approved under 2146.270(b) and that either a diligent effort was made to recover the erroneous overpayment or it would not be cost effective to recover the erroneous overpayment. The contractor's compliance with a system that is approved under 2146.270(b) will be deemed to be a diligent effort to recover the erroneous overpayment.

#### 2131.205–6 Compensation for personal services.

FAR 31.205–6 is supplemented as follows: Overtime on a FEGLI Program contract normally would meet the conditions specified in FAR 22.103. Advance approval of the contracting officer is not required for overtime, extra-pay shifts, and multi-shifts.

#### 2131.205–32 Precontract costs.

Precontract costs shall be allowable in accordance with FAR Part 31, but precontract costs that exceed $25,000 shall not be allowable except to the extent allowable under an advance agreement negotiated in accordance with 2131.109.

#### 2131.205–38 Selling costs.

Selling costs are not allowable costs to FEGLI contracts except to the extent that they are attributable to conducting contract negotiations with the Government and for liaison activities involving ongoing contract administration, including the conduct of informational and enrollment activities as directed by the contracting officer.

#### 2131.205–41 Taxes.

(a) FAR 31.205–41, as modified in paragraphs (b) through (e), is applicable to contracts in the FEGLI Program.

(b) As long as 5 U.S.C. 8714(c) or other Federal law prohibits the imposition of taxes, fees, or other monetary payments on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any other political subdivision or governmental authority of those entities, payment of such preempted tax is an unallowable expense under FAR 31.205–41(b)(3).

(c) Paragraph (b)(1) of FAR 31.205–41 is not applicable to the FEGLI Program.

(d) Notwithstanding any other provision in FAR 31.205–41, the portion of the contractor's income or excess profits taxes allocated to the FEGLI Program, except those allocated to the risk charge or the service charge, are allowable costs under the FEGLI Program, including any income or excess profit taxes that arise from the operation of this paragraph. Income or excess profits taxes allocated to the risk charge or the service charge are not allowable costs.

(e) Notwithstanding any other provision in FAR 31.205–41, an amount equal to the "DAC Tax" is an allowable tax expense under FAR 31.205–41. "DAC Tax" means an amount equal to: (1) the amount of the contractor's

Federal, state, and local income tax allocated to payments under the FEGLI Program, less (2) the amount of the contractor's Federal, state, and local income tax allocated to payments under the FEGLI Program computed without regard to the operation of 26 U.S.C. 848, which requires that certain policy acquisition expenses be capitalized over a 60- or 120-month period, plus (3) the amount of the increase, if any, in the contractor's Federal, state, and local income tax that results from the operation of this section 2131.205–41(e).

**2131.205–43 Trade, business, technical and professional activity costs.**

(a) FEGLI Program contractors shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities when the allocable costs of such participation to the FEGLI Program will exceed $2,500 annually and the contractor allocates more than 50 percent of the membership cost of a trade, business, technical, or professional organization to the FEGLI Program.

(b) When approval of costs for membership in an organization is required, the contractor must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing services to FEGLI Program insureds, and that the organization is not engaged in activities such as those cited in FAR 31.205–22 (lobbying costs) for which costs are not allowable.

**2131.205–70 Major subcontractor service charge.**

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits and any other subcontract for which prior approval is necessary, when costs are determined on the basis of actual costs incurred, any amount that exceeds the allowable cost of a major subcontract (whether entitled service charge, incentive fee, profit, fee, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the risk charge or service charge negotiated between OPM and the contractor.

**2131.205–71 Reinsurer administrative expense costs.**

A charge of $500 per policy year per reinsurer of the FEGLI Program as set forth in the contract is an allowable cost when documented through an internal accounting entry of the contractor and actually paid. This amount is deemed to be sufficient to reimburse reinsurers for the minor administrative expenses incurred in reinsuring the FEGLI Program.

**2131.270 Contract clauses.**

The clause at 2152.231–70 shall be inserted in all FEGLI Program contracts.

## PART 2132—CONTRACT FINANCING

### Subpart 2132.1—General

Sec.
2132.170 Recurring premium payments to contractors.
2132.171 Contract clause.

### Subpart 2132.6—Contract Debts

2132.607 Tax credit.
2132.617 Contract clause.

### Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.
2132.771 Non-commingling of FEGLI Program funds.
2132.772 Contract clause.

### Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2132.1—General

**2132.170 Recurring premium payments to contractors.**

OPM and the contractor will concur on an estimate of benefits and administrative costs plus the fixed service or risk charge for the forthcoming contract year, as specified in the contract. The annual premium to the contractor will be determined based on this estimate. The premium will be determined annually and will be provided to the contractor in 12 equal monthly installments due on the first day of each month. Following the close of the contract year, a reconciliation of premiums, benefits, and other costs will be performed as a limited cost redetermination.

**2132.171 Contract clause.**

The clause at 2152.232–70 shall be inserted in all FEGLI Program contracts.

### Subpart 2132.6—Contract Debts

**2132.607 Tax credit.**

FAR 32.607 has no practical application to FEGLI Program contracts. The statutory provisions at 5 U.S.C. 8707 and 8708 authorize joint enrollee and Government contributions to the Employees' Life Insurance Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, contractors may not offset debts to the Fund by a tax credit that is solely a Government obligation.

**2132.617 Contract clause.**

The clause at FAR 52.232–17 is modified in FEGLI Program contracts to exclude the parenthetical phrase "(net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481))."

### Subpart 2132.7—Contract Funding

**2132.770 Insurance premium payments and special contingency reserve.**

Insurance premium payments and a special contingency reserve are made available to FEGLI Program contractors in accordance with 5 U.S.C. 8712 and 8714.

**2132.771 Non-commingling of FEGLI Program funds.**

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the contractor's books and records.

(b) This requirement may be modified by the contracting officer in accordance with the clause at 2152.232–71 when adequate accounting and other controls are in effect. If the requirement is modified, such modification will remain in effect until rescinded by OPM.

**2132.772 Contract clause.**

The clause at 2152.232–71 shall be inserted in all FEGLI Program contracts.

### Subpart 2132.8—Assignment of Claims

**2132.806 Contract clause.**

The clause set forth in 2152.232–72 shall be inserted in all FEGLI Program contracts.

## PART 2133—PROTESTS, DISPUTES, AND APPEALS

### Subpart 2133.2—Disputes and Appeals

Sec.
2133.270 Designation of Board of Contract Appeals.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2133.2—Disputes and Appeals

**2133.270 Designation of Board of Contract Appeals.**

The Armed Services Board of Contract Appeals [ASBCA] serves as the board of contract appeals for the FEGLI Program. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

## PART 2137—SERVICE CONTRACTING

Subpart 2137.1—Service Contracts—General

Sec.
2137.102 Policy.
2137.110 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2137.1—Service Contracts—General

**2137.102 Policy.**

(a) The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated.

(b) The contractor shall be reimbursed for all reasonable phase-in and phase-out costs (i.e., costs incurred within the agreed upon period after contract termination that result from phase-in and phase-out operations). The contractor also shall receive a risk or service charge for the full period after contract termination during which services are continued, not to exceed a pro rata portion of the risk or service charge for the final contract year. The amount of risk or service charge shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress.

**2137.110 Contract clause.**

The clause at 2152.237–70 shall be inserted in all FEGLI Program contracts in lieu of the clause at 52.237–3 that is prescribed by FAR 37.110(c).

SUBCHAPTER G—CONTRACT MANAGEMENT

## PART 2143—CONTRACT MODIFICATIONS

Subpart 2143.1—General

Sec.
2143.101 Definitions.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2143.1—General

**2143.101 Definitions.**

The effective date of a FEGLI contract modification is as defined in FAR 43.101, except to the extent that the definition conflicts with LIFAR 2101.370.

### Subpart 2143.2—Change Orders

**2143.205 Contract clause.**

The clause at 2152.243–70 shall be inserted in all FEGLI Program contracts in lieu of the clauses in FAR 52.243–1 that are prescribed by FAR 43.205(a).

## PART 2144—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2144.1—General

Sec.
2144.102 Policy.

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2144.1—General

**2144.102 Policy.**

For all FEGLI Program contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $200,000, but only if more than 25 percent of the subcontract cost is charged to the FEGLI Program contract.

### Subpart 2144.2—Consent to Subcontracts

**2144.204 Contract clause.**

The clause set forth at 2152.244–70 shall be inserted in all FEGLI Program contracts.

## PART 2146—QUALITY ASSURANCE

Subpart 2146.2—Contract Quality Requirements

Sec.
2146.201 General.
2146.270 FEGLI Program quality assurance requirements.
2146.270–70 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 2146.2—Contract Quality Requirements

**2146.201 General.**

(a) This part prescribes policies and procedures to ensure that services acquired under the FEGLI Program contract conform to the contract's quality requirements.

(b) OPM shall evaluate the contractor's system of internal controls under the quality assurance program required by 2146.270 prior to each contract year and will acknowledge in writing whether or not the system is consistent with the requirements set forth in this Subpart. After the initial review, each annual review may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

**2146.270 FEGLI Program quality assurance requirements.**

(a) The contractor shall develop and apply a quality assurance program specifying procedures for assuring contract quality, as directed by the contracting officer. At a minimum, the program should include procedures to address:

(1) Accuracy of payments and recovery of overpayments;

(2) Timeliness of payments to beneficiaries;

(3) Quality of services and responsiveness to beneficiaries;

(4) Quality of service and responsiveness to OPM; and

(5) Detection and recovery of fraudulent claims.

(b) The contractor shall prepare overpayment recovery guidelines to include a system of internal control for approval annually by the contracting officer. The contracting officer may withdraw such approval with 90 days' notice of prospective withdrawal.

(c) The contracting officer may order the correction of a deficiency or a modification in the contractor's services and/or quality assurance program. The contractor shall take the necessary action promptly to implement the contracting officer's order. If the contracting officer orders the correction of a deficiency or a modification of the contractor's services and/or quality assurance program pursuant to this paragraph after the contract year has begun, the costs incurred in correcting the deficiency or making the modification will not be considered to the contractor's detriment in the cost control factor of the service charge [if applicable] for the following contract year. However, if there is a deficiency, the deficiency itself may be taken into consideration.

**2146.270–1 Contract clause.**

The clause at 2152.246–70 shall be inserted in all FEGLI Program contracts.

## PART 2149—TERMINATION OF CONTRACTS

Sec.
2149.002 Applicability.

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.
2149.505–70 FEGLI Program contract termination clause.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

**2149.002 Applicability.**

(a) *Termination.* (1) Termination of FEGLI Program contracts is controlled by 5 U.S.C. 8709(c) and this chapter. The procedures for termination of FEGLI Program contracts shall be those contained in FAR part 49. For the purpose of this part, terminate means to "discontinue" as used in 5 U.S.C. 8709(c).

(2) A life insurance contract entered into by OPM may be terminated by OPM at any time for default by the contractor. A life insurance contract entered into by OPM may be terminated at the end of the 31st day after default for nonpayment by OPM [see 2152.232–70, Payments].

(3) A life insurance contract entered into by OPM may be terminated for convenience of the Government 60 days after the contractor's receipt of OPM's notice to terminate.

(4) The contractor may terminate its contract with OPM at the end of any policy year when notice of intent to terminate is given to OPM in writing at least 60 days prior to the end of the policy year (i.e., no later than July 31).

(b) *Continuation of services.* The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated. Consequently, the contract termination procedures contained in this paragraph must be used in conjunction with 2137.102, 2137.110, and the provisions of the "Continuity of Services" clause at 2152.237–70.

(c) *Settlement.* The procedures for settlement of contracts after they are terminated shall be those contained in FAR Part 49.

**Subpart 2149.5—Contract Termination Clauses**

**2149.505 Other termination clauses.**

**2149.505–70 FEGLI Program contract termination clause.**

The clause in 2152.249–70 shall be inserted in all FEGLI Program contracts.

**SUBCHAPTER H—CLAUSES AND FORMS**

**PART 2152—PRECONTRACT PROVISIONS AND CONTRACT CLAUSES**

Sec.

2152.070 Applicable clauses.

**Subpart 2152.2—Text of Provisions and Clauses**

2152.203–70 Misleading, deceptive, or unfair advertising.
2152.209–70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.
2152.209–71 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.
2152.210–70 Investment income.
2152.210–71 Notice of significant events.
2152.215–70 Contractor records retention.
2152.216–70 Fixed price with limited cost redetermination—risk charge.
2152.216–71 Fixed price with limited cost redetermination—service charge.
2152.224–70 Confidentiality of records.
2152.231–70 Accounting and allowable cost.
2152.232–70 Payments.
2152.232–71 Non-commingling of FEGLI Program funds.
2152.232–72 Approval for assignment of claims.
2152.237–70 Continuity of services.
2152.243–70 Changes.
2152.244–70 Subcontracts.
2152.246–70 Quality assurance requirements.
2152.249–70 Renewal and termination.

**Subpart 2152.3—Provision and Clause Matrix**

2152.370 Use of the matrix.

**Authority:** 5 U.S.C. 8716; 40 U.S.C. 486(c), 48 CFR 1.301.

**2152.070 Applicable clauses.**

The clauses of FAR subpart 52.2 specified below shall be applicable to FEGLI Program contracts. The most recent edition of the clause in the FAR shall be applied unless otherwise provided in the contract.

**Section and Clause Title**

52.202–1 Definitions
52.203–1 Officials Not to Benefit
52.203–3 Gratuities
52.203–5 Covenant Against Contingent Fees
52.203–6 Restrictions on Subcontractor Sales to the Government
52.203–7 Anti-Kickback Procedures
52.203–9 Requirement for Certificate of Procurement Integrity—Modification
52.203–10 Price or Fee Adjustment for Illegal or Improper Activity
52.203–12 Limitation on Payments to Influence Certain Federal Transactions
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.215–1 Examination of Records by Comptroller General
52.215–2 Audit—Negotiation
52.215–22 Price Reduction for Defective Cost or Pricing Data
52.215–24 Subcontractor Cost or Pricing Data
52.215–27 Termination of Defined Benefit Pension Plans
52.215–30 Facilities Capital Cost of Money
52.215–31 Waiver of Facilities Capital Cost of Money
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
52.219–13 Utilization of Women-Owned Small Businesses
52.220–3 Utilization of Labor Surplus Area Concerns
52.222–1 Notice to the Government of Labor Disputes
52.222–3 Convict Labor
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation-General
52.222–21 Certification of NonSegregated Facilities
52.222–22 Previous Contracts and Compliance Reports
52.222–25 Affirmative Action Compliance
52.222–26 Equal Opportunity
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts
52.222–29 Notification of Visa Denial
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans
52.222–36 Affirmative Action for Handicapped Workers
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
52.222–41 Service Contract Act of 1965, as Amended
52.223–2 Clean Air and Water
52.223–6 Drug-Free Workplace
52.227–1 Authorization and Consent
52.227–2 Notice and Assistance
52.232–9 Limitation on Withholding of Payments
52.232–17; 2132.617 Interest
52.232–23 Assignment of Claims
52.232–28 Electronic Funds Transfer Payment Method
52.233–1 Disputes (Alternate I)
52.242–1 Notice of Intent to Disallow Costs
52.242–13 Bankruptcy
52.244–5 Competition in Subcontracting
52.245–2 Government Property (Fixed-Price Contracts)
52.246–4 Inspection of Services—Fixed Price
52.246–25 Limitation of Liability—Services
52.247–63 Preference for U.S.-Flag Air Carriers
52.249–2 Termination for Convenience of the Government (Fixed-Price)
52.249–8 Default (Fixed Price Supply and Service)
52.251–1 Government Supply Sources
52.252–4 Alterations in Contract
52.252–6 Authorized Deviations in Clauses

**Subpart 2152.2—Text of Provisions and Clauses**

2152.203–70 Misleading, deceptive, or unfair advertising

As prescribed in 2103.571, insert the following clause:

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**MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (OCT 1993)**

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The Contractor agrees to use its best efforts to assure that its agents are aware of and abide by this provision.

The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.101.

(End of Clause)

**2152.208–70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.**

As prescribed in 2109.409(a), the contracting officer may require a potential contractor to provide the following certification:

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)**

(a)(1) The undersigned certifies, to the best of its knowledge and belief, that—

(i) The undersigned and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The undersigned has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the undersigned subject to prosecution under section 1001, title 18, United States Code.

(b) The undersigned shall provide immediate written notice to the Contracting Officer if, at any time prior to the contract award, the undersigned learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the actions mentioned in paragraph (a) of this provision exists will not necessarily result in the withholding of an award under a contract under the FEGLI Program. However, the certification, or the undersigned's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the undersigned's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in this certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a). The knowledge and information of the undersigned is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in (a) is a material representation of fact upon which reliance is placed during negotiation of a FEGLI Program contract. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this certification for default.

_____

(Name of Company)

By: _____

(Signature)

_____

(Name and Title of Signatory)

Date signed: _____

(End of Certificate)

**2152.209–71 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.**

As prescribed in 2109.409(b), insert the following clause:

**CERTIFICATION BY FEGLI PROGRAM CONTRACTOR REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)**

(a)(1) The Contractor certifies, to the best of its knowledge and belief, that—

(i) The Contractor and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The Contractor has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Contractor subject to prosecution under section 1001, title 18, United States Code.

(b) The Contractor shall provide immediate written notice to the Contracting Officer if, at any time, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A Contractor's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Contractor's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the Contractor's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer in making this contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

(End of Clause)

**2152.210–70 Investment income.**

As prescribed in 2110.7004(a), insert the following clause:

**INVESTMENT INCOME (OCT 1993)**

(a) The Contractor shall invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor shall seek to maximize investment income.

(b) All investment income earned on FEGLI Program funds shall be credited to the FEGLI Program.

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraphs (a) or (b) of this clause, the Contractor shall pay to the Office of Personnel Management (OPM) the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. "Failed to comply with paragraphs (a) or (b)" means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d)(1) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(2) Investment income lost as a result of failure to credit income due the contract or failure to place funds on hand in income-producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(3) The Contractor shall credit to the FEGLI Program income that is due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), *during* the periods specified in paragraphs (d)(1) and (d)(2).

(4) All amounts due and unpaid *after* the periods specified in paragraphs (d)(1) and (d)(2) shall bear simple interest at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury until the amount is paid [see FAR 32.614–1].

(End of Clause)

**2152.210–71 Notice of significant events.**

As prescribed in 2110.7004(b), insert the following clause:

**NOTICE OF SIGNIFICANT EVENTS (OCT 1993)**

(a) The Contractor agrees to notify OPM of any significant event within 10 working days after the Contractor becomes aware of it. As used in this section, a "significant event" is any occurrence of anticipated occurrence that might reasonably be expected to have a material effect upon the Contractor's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of 25 percent or more of the Contractor's assets within a six-month period;

(2) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Contractor's obligations under this contract;

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a policy year;

(4) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(5) The withdrawal of, or notice of intent to withdraw, by any State, its license to do business or any other change of status under Federal or State law;

(6) The Contractor's default on a loan or other financial obligation;

(7) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Contractor's facilities or facilities used by the Contractor in the performance of the contract;

(8) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Contractor's participation in the Federal Employees' Group Life Insurance Program;

(9) Any significant changes in policies and procedures or interpretations of the contract which would affect the benefits payable under the contract or the costs charged to the contract;

(10) Any fraud, embezzlement or misappropriation of FEGLI Program funds; or

(11) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an opinion on the annual accounting statements required by OPM for the FEGLI Program.

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

(1) Directing the Contractor to take corrective action;

(2) Making a downward adjustment to the weight in the "Contractor Performance" factor of the service charge; or,

(3) Withholding payments of the service charge.

(c) Prior to taking action as described in paragraph (b) of this clause, OPM will notify the Contractor and offer an opportunity to respond.

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification that is charged to the FEGLI Program exceeds $200,000, but only if more than 25 percent of the subcontract cost is charged to the FEGLI contract.

(End of Clause)

**2152.215–70 Contractor records retention.**

As prescribed in 2115.106–270, insert the following clause:

**CONTRACTOR RECORDS RETENTION (OCT 1993)**

Notwithstanding the provisions of FAR 52.215–2(d), "Audit-Negotiation," the Contractor will retain and make available all records applicable to a contract term that support the annual statement of operations for a period of 5 years after the end of the contract term to which the records relate. Individual enrollee and/or beneficiary claim records shall be maintained for 10 years after the end of the policy year to which the claim records relate.

(End of Clause)

**2152.216–70 Fixed price with limited cost redetermination—risk charge.**

As prescribed in 2116.270–1(a), insert the following clause when a risk charge is negotiated:

**FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—RISK CHARGE (OCT 1993)**

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a risk charge.

(b) OPM shall pay the Contractor the risk charge specified in Appendix _____for the risk assumed in performing this contract.

(End of clause)

**2152.216–71 Fixed price with limited cost redetermination—service charge.**

As prescribed in 2116.270–1(b), insert the following clause when a service charge is negotiated:

**FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—SERVICE CHARGE (OCT 1993)**

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a service charge.

(b) OPM shall pay the Contractor the service charge specified in Appendix _____.

(End of clause)

**2152.224–70 Confidentiality of records.**

As prescribed in 2124.104–70, insert the following clause:

**CONFIDENTIALITY OF RECORDS (OCT 1993)**

(a) The Contractor shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the **Federal Register** as a part of OPM's notice of systems of records.

(b) The Contractor shall also hold all medical records, evidence of insurability for insurance coverage, designations of

beneficiaries, amounts of insurance, and information relating thereto, of the insured and family members confidential except for disclosure as follows:

(1) as may be reasonably necessary for the administration of this contract;

(2) as authorized by the insured or his or her estate;

(3) as necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions; and

(4) as necessary to audit the contract.

(End of Clause)

**2152.231–70 Accounting and allowable cost.**

As prescribed in 2131.270, insert the following clause:

**ACCOUNTING AND ALLOWABLE COST (OCT 1993)**

(a) *Annual Accounting Statement.* (1) The Contractor shall prepare annually an accounting statement summarizing the financial results of the FEGLI Program for the previous contract year. This statement shall be prepared in accordance with the requirements issued annually by OPM and shall be due to OPM in accordance with a date established by those requirements.

(2) The Contractor shall have the most recent financial statement for the FEGLI Program audited by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted to OPM along with the annual accounting statement.

(3) Based on the results of either the independent audit or a Government audit, the annual accounting statements for the FEGLI Program may be (i) adjusted by amounts found not to constitute properly allocable or allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) The allowable costs chargeable to the contract for a policy year shall be the actual, necessary, reasonable, and allocable amounts incurred with proper justification and accounting support, determined in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 2131.2 of the Federal Employees Group Life Insurance Program Acquisition Regulation (LIFAR) applicable on October 1 of each year, and the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) *Benefits.* Claims costs consist of payments made and costs incurred for life insurance and accidental death and dismemberment insurance on behalf of FEGLI Program subscribers, including interest paid on delayed claims, less any overpayments (subject to the terms of 2131.205–3), refunds, or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all allocable, allowable, and reasonable expenses incurred in the adjudication of beneficiary claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, insurance and reinsurance premiums, the cost of investigation and settlement of policy claims, the cost of maintaining files regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (b)(2)(iii) of this clause.

(iii) *Investment income.* Investment income represents the amount earned by the Contractor after deducting reasonable, necessary, and properly allocable investment expenses as a result of investing of FEGLI Program funds. The direct or allocable indirect expenses incurred with respect to the investment of Program funds, such as brokerage fees, are netted against investment income earned rather than as part of administrative expenses.

(c) *Certification of Annual Accounting Statement.* (1) The Contractor shall certify the annual accounting statement in the form set forth in paragraph (c)(2) of this clause. The certificate shall be signed by the chief executive officer for the Contractor's FEGLI Program operations and the chief financial officer for the Contractor's FEGLI Program operations and shall be returned with the annual accounting statement.

(2) The certification required shall be in the following form:

**Certification of Annual Accounting Statement**

This is to certify that I have reviewed this accounting statement and, to the best of my knowledge and belief, attest that:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this policy year in conformity with those guidelines;

2. The costs included in the statement are allowable and allocable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);

3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement.

Contractor Name: _____

(Chief Executive Officer for FEGLI Operations)

Date signed: _____

(Chief Financial Officer for FEGLI Operations)

Date signed: _____

(Type or print and sign)

(End of Certificate)

(End of Clause

**2152.232–70 Payments.**

As prescribed in 2132.171, insert the following clause:

**Payments (OCT 1993)**

(a) OPM will provide to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost or for Contractor fraud, a fixed premium once per month on the first business day of the month. The premium will be determined by an estimate of costs for the contract year as provided in Section _____, and will be redetermined annually. In addition, an annual reconciliation of premiums and actual costs will be performed, and additional payment by OPM or reimbursement by the Contractor will be paid as necessary.

(b) If OPM fails to provide the premium in full by the due date, a grace period of 31 days shall be granted to OPM for providing any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued on the premium due date. The contract shall continue in force during the grace period.

(c) If OPM fails to provide any premiums within the grace period, the contract shall be discontinued at the end of the 31st day of the grace period, unless the Contractor and OPM agree to continue the contract. OPM shall be liable to the Contractor for all premiums then due and unpaid. If during the grace period OPM presents written notice to the Contractor that the contract is to be discontinued before the expiration of the grace period, the contract shall be discontinued the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for discontinuance. OPM shall be liable to the Contractor for all premiums then due and unpaid.

(d) The specific premium rates, charges, allowances and limitations applicable to the contract are set forth in 5 CFR Parts 870 through 874, 48 CFR chapter 1, LIFAR, and this contract.

(e) In accordance with FAR 52.243–2, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer shall make an equitable adjustment to the estimate on which the monthly premiums are based.

(f) In the event this contract is terminated in accordance with LIFAR Part 2149, the special contingency reserve held by the Contractor shall be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.

(End of Clause)

**2152.232–71 Non-commingling of FEGLI Program funds.**

As prescribed in 2132.772, insert the following clause:

**NON-COMMINGLING OF FUNDS (OCT 1993)**

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the Contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the Contractor's books and records.

(b) The Contractor may request a modification of this requirement from the Contracting Officer. The modification shall be requested in advance and the Contractor shall demonstrate that accounting techniques have been established that will clearly

measure FEGLI Program cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(End of Clause)

**2152.232–72 Approval for assignment of claims.**

As prescribed in 2132.806, insert the following clause:

**APPROVAL FOR ASSIGNMENT OF CLAIMS (OCT 1993)**

(a) The Contractor shall not make any assignment of FEGLI Program funds under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment of FEGLI Program funds shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of Clause)

**2152.237–70 Continuity of Services.**

As prescribed in 2137.110, insert the following clause:

**CONTINUITY OF SERVICE (OCT 1993)**

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration or termination, including termination by the Contractor, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in and phase-out services for up to 10 months after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in and phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in and phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract termination that result from phase-in and phase-out operations) and a risk or service charge not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the Contractor during the phase-in and phase-out period will be taken into consideration.

(End of Clause)

**2152.243–70 Changes.**

As prescribed in 2143.205, insert the following clause:

**CHANGES (OCT 1993)**

(a) Except as provided in paragraph (f) of this clause, the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e.: hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, or the Contractor's liability under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause with 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(f) The Contracting Officer shall not make any changes pursuant to paragraph (a) of this clause to conform this contract to any amendment in the LIFAR before the effective date of the amendment as provided for in LIFAR 2101.370.

(End of Clause)

**2152.244–70 Subcontracts.**

As prescribed by 2144.204, insert the following clause:

**SUBCONTRACTS (OCT 1993)**

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $200,000 and more than 25 percent of the subcontract cost is charged to the FEGLI Program contract.

(b) The advance notification required by paragraph (a) of this clause shall include the following information:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraph (a), (b), and (c) of this clause where the Contractor and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiations of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Office to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Contractor of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provisions of Section _____, Service Charge.

(g) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(End of Clause)

**2152.246–70 Quality assurance requirements.**

As prescribed by 2146.270–1 insert the following clause:

**QUALITY ASSURANCE REQUIREMENTS (OCT 1993)**

(a) The Contractor shall develop and apply a quality assurance program as directed by the Contracting Officer pursuant to LIFAR 2146.270.

(b) The Contractor shall keep complete records of its quality assurance procedures and the results of their implementation and make them available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Contracting Officer or his or her representative has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract and for as long afterward as the contract requires. The Contracting Officer or his or her representative shall perform any inspections and tests in a manner that will not unduly delay the work.

(End of Clause)

**2152.249–70 Renewal and termination.**

As prescribed in 2149.505–70, insert the following clause:

**RENEWAL AND TERMINATION (OCT 1993)**

(a) This contract renews automatically each October 1st, unless written notice of termination is given by the Contractor not less than 60 calendar days before the renewal date.

(b) This contract may be terminated by OPM at any time for default by the Contractor. This contract terminates at the end of the 31st day after default for nonpayment by the Government, unless the Contractor and OPM agree to continue the contract.

(c) This contract may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice of termination.

(d) Upon termination of the contract, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, 2137.110, and the provisions of the "Continuity of Services" clause at 2152.237–70.

(e) After receipt of a termination notice, the prime Contractor shall, unless directed otherwise by the Contracting Officer, terminate all subcontracts to the extent that they relate to the performance of the FEGLI Program contract. The failure of the prime Contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not affect the Contracting Officer's right to require the termination of the subcontract; or increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(End of Clause)

## Subpart 2152.3—Provision and Clause Matrix

**2152.370 Use of the matrix.**

(a) The matrix in this section lists the FAR and LIFAR clauses to be used with the FEGLI Program contract. The clauses are to be incorporated in the contract in full text.

(b) Certain contract clauses are mandatory for FEGLI Program contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or LIFAR. An "M" in the "Use Status" column indicates that the clause is mandatory. An "A" indicates that the clause is to be used only when the applicable conditions are met.

FEGLI PROGRAM CLAUSE MATRIX

| Clause No. | Text reference | Title | Use status |
|---|---|---|---|
| FAR 52.202–1 | FAR 2.2 | Definitions | M |
| FAR 52.203–1 | FAR 3.102–2 | Officials Not to Benefit | M |
| FAR 52.203–3 | FAR 3.202 | Gratuities | M |
| FAR 52.203–5 | FAR 3.404(c) | Covenant Against Contingent Fees | M |
| FAR 52.203–6 | FAR 3.503–2 | Restrictions of Subcontractor Sales to the Government | M |
| FAR 52.203–7 | FAR 3.502–3 | Anti-Kickback Procedures | M |
| FAR 52.203–9 | FAR 3.104–10(b) | Requirement for Certificate of Procurement Integrity—Modification | M |
| FAR 52.203–12 | FAR 3.808 | Limitation on Payments to Influence Certain Federal Transactions | M |
| 2152.203–70 | 2103.571 | Misleading, Deceptive, or Unfair Advertising | M |
| FAR 52.209–6 | FAR 9.409(b) | Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment. | M |
| 2152.209–71 | 2109.409(b) | Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters. | M |
| 2152.210–70 | 2110.7004(a) | Investment Income | M |
| 2152.210–71 | 2110.7004(b) | Notice of Significant Events | M |
| FAR 52.215–1 | FAR 15.106–1(b) | Examination of Records by Comptroller General | M |
| FAR 52.215–2 | FAR 15.106–2(b) | Audit—Negotiation | M |
| FAR 52.215–22 | FAR 15.804–8(a) | Price Reduction for Defective Cost or Pricing Data | M |
| FAR 52.215–24 | FAR 15.804–8(c) | Subcontractor Cost or Pricing Data | M |
| FAR 52.215–27 | FAR 15.804–8(e) | Termination of Defined Benefit Pension Plans | M |
| FAR 52.215–30 | FAR 15.904 | Facilities Capital Cost of Money | M |
| FAR 52.215–31 | FAR 15.904 | Waiver of Facilities Capital Cost of Money | A |
| FAR 52.215–39 | FAR 15.804–8(f) | Reversion or Adjustment of Plans for Post-retirement Benefits (PRB) Other Than Pensions. | A |
| 2152.215–70 | 2115.106–270 | Contractor Records Retention | |
| 2152.216–70 | 2116.270–1(a) | Fixed Price With Limited Cost Redetermination—Risk Charge | A |

FEGLI PROGRAM CLAUSE MATRIX—Continued

| Clause No. | Text reference | Title | Use status |
|---|---|---|---|
| FAR 52.215–39 | FAR 15.804–8(f) | Reversion or Adjustment of Plans for Post-retirement Benefits (PRB) Other Than Pensions | A |
| 2152.215–70 | 2115.106–270 | Contractor Records Retention | |
| 2152.216–70 | 2116.270–1(a) | Fixed Price With Limited Cost Redetermination—Risk Charge | A |
| 2152.216–71 | 2116.270–1(b) | Fixed Price With Limited Cost Redetermination—Service Charge | A |
| FAR 52.219–8 | FAR 19.708(a) | Utilization of Small Business Concerns and Small Disadvantaged Business Concerns | M |
| FAR 52.219–13 | FAR 19.902 | Utilization of Women-Owned Small Businesses | M |
| FAR 52.220–3 | FAR 21.302(a) | Utilization of Labor Surplus Area Concerns | M |
| FAR 52.222–1 | FAR 22.103–5(a) | Notice to the Government of Labor Disputes | M |
| FAR 52.222–3 | FAR 22.202 | Convict Labor | M |
| FAR 52.222–4 | FAR 22.305(a) | Contract Work Hours and Safety Standards Act—Overtime Compensation—General | M |
| FAR 52.222–21 | FAR 22.810(a)(1) | Certification of NonSegregated Facilities | M |
| FAR 52.222–22 | FAR 22.810(a)(2) | Previous Contracts and Compliance Reports | M |
| FAR 52.222–25 | FAR 22.810(d) | Affirmative Action Compliance | M |
| FAR 52.222–26 | FAR 22.810(e) | Equal Opportunity | M |
| FAR 52.222–28 | FAR 22.810(g) | Equal Opportunity Preaward Clearance of Subcontracts | M |
| FAR 52.222–29 | FAR 22.810(h) | Notification of Visa Denial | M |
| FAR 52.222–35 | FAR 22.1308(a) | Affirmative Action for Special Disabled and Vietnam Era Veterans | A |
| FAR 52.222–36 | FAR 22.1408(a) | Affirmative Action for Handicapped Workers | M |
| FAR 52.222–37 | FAR 22.1308(b) | Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era | M |
| FAR 52.223–2 | FAR 23.105(b) | Clean Air and Water | M |
| FAR 52.223–5 | FAR 23.505(c) | Drug-Free Workplace | A |
| 2152.224–70 | 2124.104–70 | Confidentiality of Records | M |
| FAR 52.227–1 | FAR 27.201–2(a) | Authorization and Consent | M |
| FAR 52.227–2 | FAR 27.202–2 | Notice and Assistance | M |
| FAR 52.228–7 | FAR 28.311–2 Modification: 2128.370 | Insurance—Liability to Third Persons | A M |
| 2152.231–70 | 2131.270 | Accounting and Allowable Cost | M |
| FAR 52.232–9 | FAR 32.111(c)(2) | Limitation on Withholding of Payments (Modified) | M |
| FAR 52.232–17 | FAR 32.617 Modification: 2132.617 | Interest | M |
| FAR 52.232–23 | FAR 32.806(a)(1) | Assignment of Claims | A |
| FAR 52.232–28 | FAR 32.908(d) | Electronic Funds Transfer Payment Method | M |
| 2152.232–70 | 2132.171 | Payments | M |
| 2152.232–71 | 2132.772 | Non-Commingling of FEGLI Program Funds | M |
| 2152.232–72 | 2132.806 | Approval for Assignment of Claims | M |
| FAR 52.233–1 | FAR 33.214 | Disputes (Alternate I) | M |
| 2152.237–70 | 2137.110 | Continuity of Services | M |
| FAR 52.242–1 | FAR 42.802 | Notice of Intent to Disallow Costs | M |
| FAR 52.242–13 | FAR 42.903 | Bankruptcy | M |
| 2152.243–70 | 2143.205 | Changes—FEGLI Program Contract | M |
| FAR 52.244–5 | FAR 44.204(e) | Competition in Subcontracting | M |
| 2152.244–70 | 2144.204 | Subcontracts | M |
| 4FAR 52.245–2 | FAR 45.106(b)(1) | Government Property (Fixed-Price Contracts) | M |
| FAR 52.246–4 | FAR 46.304 | Inspection of Services—Fixed-Price | M |
| FAR 52.246–25 | FAR 46.805(a)(4) | Limitation of Liability—Services | M |
| 2152.246–70 | 2146.270–1 | Quality Assurance Requirements | M |
| FAR 52.247–63 | FAR 47.405 | Preference for U.S.-Flag Air Carriers | M |
| FAR 52.249–2 | FAR 49.502(b)(1) | Termination for Convenience of the Government (Fixed Price) | M |
| FAR 52.249–8 | FAR 49.504(a)(1) | Default (Fixed-Price Supply and Service) | M |
| FAR 52.249–14 | FAR 49.505(d) | Excusable Delays | M |
| 2152.249–70 | 2149.505–70 | Renewal and Termination | M |
| FAR 52.251–1 | FAR 51.107 | Government Supply Sources | A |
| FAR 52.252–4 | FAR 52.107(d) | Alterations in Contract | M |
| FAR 52.252–6 | FAR 52.107(f) | Authorized Deviations in Clauses | M |

[FR Doc. 93–17980 Filed 7–27–93; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 252

### Defense Federal Acquisition Regulation Supplement (DFARS); Correction

**AGENCY:** Department of Defense (DoD).

**ACTION:** Correction to final regulation.

**SUMMARY:** The Department of Defense published miscellaneous amendments to acquisition regulations on November 12, 1992 (57 FR 53596). The revision of § 252.223–7005 inadvertently left out paragraph (e) of the Hazardous waste liability clause.

**EFFECTIVE DATE:** October 30, 1992.

**FOR FURTHER INFORMATION CONTACT:**

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Lucile Martin at (703) 697–7266.

**Claudia L. Naugle,**

*Executive Editor, Defense Acquisition Regulations Council.*

The following correction is made to the rule published on November 12, 1992:

1. On page 53601, in the third column, section 252.223–7005 is corrected by adding paragraph (e) to read as follows:

**§ 252.223–7005 Hazardous waste liability.**

* * * * *

(e) The Contractor shall include this clause, including this paragraph (e), in each subcontract under which the subcontractor receives hazardous waste from a defense facility.

(End of clause)

[FR Doc. 93–17982 Filed 7–27–93; 8:45 am]

BILLING CODE 3810–01–M

**Propo**

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**DEPARTMEN**

**Federal Avia**

**14 CFR Part**

**[Docket No. 2**

**RIN 2120–AD**

**Airworthines Protection St Category Air**

**AGENCY:** Fede Administrati

**ACTION:** Notic correction.

**SUMMARY:** Th error in the p Protection St Category Airp published on (58 FR 38028)

**FOR FURTHER** Mr. Michael E Engineer, Sta Aircraft Certif Airplane Dire Administratio Kansas City, M (816) 426–586

**SUPPLEMENTA** 93–1665 whic 14, 1993 (58 F Notice No. 93- No. 93–10.

**Debbie Swank,**

*Program Manag Counsel.*

[FR Doc. 93–17

BILLING CODE 491

**14 CFR Part 3**

**[Docket No. 93-**

**Airworthiness Aircraft Corp. Airplanes**

**AGENCY:** Feder Administratio

# Proposed Rules

Federal Register
Vol. 58, No. 143
Wednesday, July 28, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Part 23**

**[Docket No. 27344; Notice No. 93–10]**

**RIN 2120–AD27**

## Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking; correction.

**SUMMARY:** This document corrects an error in the proposed rule on "Occupant Protection Standards for Commuter Category Airplanes", which was published on Wednesday, July 14, 1993 (58 FR 38028).

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Downs, Aerospace Engineer, Standards Office (ACE–112), Aircraft Certification Service, Small Airplane Directorate, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426–5866.

**SUPPLEMENTARY INFORMATION:** FR Doc. 93–1665 which was published on July 14, 1993 (58 FR 38028), in the Heading, Notice No. 93–71 should read Notice No. 93–10.

**Debbie Swank,**

*Program Management Staff, Office of Chief Counsel.*

[FR Doc. 93–17973 Filed 7–27–93; 8:45 am]
BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 93–CE–22–AD]**

## Airworthiness Directives: Beech Aircraft Corp. 33 and 36 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

**SUMMARY:** This document proposes to revise an earlier proposed airworthiness directive (AD), which would have required repetitively inspecting the rudder spar on certain Beech Aircraft Corporation (Beech) 33 and 36 series airplanes, and repairing any cracks found; would have provided the option of modifying the rudder spar as terminating action for the repetitive inspections; and would have superseded AD 92–15–06. Based on comments received on this previous proposal and examination of all available information, the Federal Aviation Administration (FAA) has determined that the document should be revised to propose an additional procedure for a modification of a rudder found cracked in the area of the center hinge. The proposed actions are intended to prevent separation of the rudder from the airplane caused by cracks in the forward rudder spar.

**DATES:** Comments must be received on or before October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–22–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122; Facsimile (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–22–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–22–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Beech 33 and 36 series airplanes was published in the **Federal Register** on March 25, 1993 (58 FR 16137). The action proposed to supersede AD 92–15–06 with a new AD that would (1) retain the inspection, repair, and optional modification requirements of AD 92–5–06; and (2) incorporate the option of installing an SMP rudder middle-hinge bracket in accordance with STC SA5870NM as one of the modifications that would terminate the need for the repetitive inspection requirement.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter states that a rudder middle-hinge bracket alone should not

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be allowed as an inspection-terminating modification. This commenter explains that the middle-hinge bracket is designed to serve as a repair for a rudder spar with a crack in the area of the center hinge, and is then installed in conjunction with an upper-hinge bracket. The FAA concurs that the middle-hinge bracket is only necessary if a crack is found at the rudder spar center hinge area and has revised the proposed AD accordingly.

No comments were received concerning the FAA's estimate of the cost impact upon the public.

This additional requirement of installing the upper-hinge bracket in conjunction with the middle-hinge bracket modification if cracks are found at the rudder spar center hinge area was not included in the original proposal. Since it extends beyond the scope of that which was originally proposed, the FAA has (1) revised the document to add this modification procedure; and (2) reopened the comment period to provide additional time for public comment.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 33 and 36 series airplanes of the same type design, the proposed AD would supersede AD 92–15–06 with a new AD that would (1) retain the inspection, repair, and optional modification requirements of AD 92–15–06; and (2) require installing an SMP rudder spar middle-hinge bracket in accordance with STC SA5870NM if cracks were found in the rudder spar center hinge area in conjunction with the already required upper-hinge bracket.

The FAA estimates that 5,900 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $649,000. AD 92–15–06, which would be superseded by the proposed action, required the same actions as is proposed, except for the addition of a modification if a crack was found in the rudder spar center hinge area. Since this modification only affects airplanes with a crack found in the rudder spar center hinge area, the FAA has no way of knowing how much of an additional cost impact the proposed AD would have on U.S. operators over that which is already required by AD 92–15–06.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–15–06, Amendment 39–8300 (57 FR29200, July 1, 1992), and by adding the following new airworthiness directive:

**Beech Aircraft Corporation:** Docket No. 93–CE–22–AD. Supersedes AD 92–15–06, Amendment 39–8300.

*Applicability:* The following Beech model and serial numbered airplanes, certificated in any category:

| Models | Serial Numbers |
|---|---|
| 35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33. | CD–1 through CD–1304. |
| 35–C33A, E33A, F33A. | CE–1 through CE–1425. |
| E33C and F33C ..... | CJ–1 through CJ–179. |
| 36 and A36 ..... | E–1 through E–2518. |
| A36TC and B36TC .... | EA–1 through EA–500. |

*Compliance:* Required as indicated after the effective date of this AD, unless already accomplished (compliance with superseded AD 92–15–06 or superseded AD 91–23–07).

To prevent separation of the rudder from the airplane caused by cracks in the forward rudder spar, accomplish the following:

(a) Upon the accumulation of 1,000 hours time-in-service (TIS) or within the next 100 hours TIS, whichever occurs later, inspect the forward rudder spar for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2333, Revision 1, dated November 1991.

(b) If no cracks are found, accomplish one of the following:

(1) Reinspect the rudder forward spar for cracks in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991, at intervals not to exceed 500 hours TIS until either paragraph (b)(2), (b)(3), or (b)(4) of this AD is accomplished;

(2) Install Kit No. 33–6001–1 S in accordance with Beech SB No. 2333, Revision 1, dated November 1991;

(3) Install a Spacecraft Machine Products (SMP) reinforcement bracket in accordance with Supplemental Type Certificate (STC) SA4899NM; or

(4) Replace the rudder assembly with either part number 33–630000–137, -139, -141, -167, or -169, as applicable, in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991.

(c) If cracks are found, prior to further flight, accomplish one of the following:

(1) Replace the rudder assembly with either part number 33–630000–137, -139, -141, -167, or -169, as applicable, in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991;

(2) Install Kit No. 33–6001–1 S in accordance with Beech SB No. 2333, Revision 1, dated November 1991;

(3) If the cracks are only in the area of the upper hinge around the rivets and fasteners as illustrated in Figure 1 of Beech SB No. 2333, Revision 1, dated November 1991, then stop drill the cracks and install an SMP reinforcement bracket in accordance with SA4899NM; or

(4) If the cracks are only in the area of the middle hinge around the rivets and fasteners as illustrated in Figure 1 of Beech SB No. 2333, Revision 1, dated November 1991, then stop drill the cracks, install an SMP rudder spar middle-hinge bracket in accordance with STC SA5870NM, and install an SMP reinforcement bracket in accordance with SA4899NM.

(d) If a modification or replacement has been accomplished in accordance with either paragraph (b)(2), (b)(3), (b)(4), (c)(1), (c)(2), (c)(3), or (c)(4) of this AD, then no repetitive inspections are required by this AD.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(g) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

(h) This amendment supersedes AD 92–15–06, Amendment 39–8300.

Issued in Kansas City, Missouri, on July 21, 1993.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17944 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–U

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**14 CFR Part 39**

**[Docket No. 93–CE–32–AD]**

## Airworthiness Directives: Piper Aircraft Corp. PA31 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 93–02–13, which currently requires repetitively inspecting the engine baffle seals on Piper Aircraft Corporation (Piper) PA–31 series airplanes, and, if found improperly positioned, either reinforcing these seals or installing thicker material. That AD also allows for the termination of the repetitive inspections if the thicker baffle seal material is installed. The Federal Aviation Administration (FAA) has found that the baffle seal reinforcement is not preventing the seals from becoming improperly positioned, and that other baffle seal installations are available. This action incorporates these installations into the current AD, and eliminates the baffle seal reinforcement. The actions specified by the proposed AD are intended to prevent improper sealing of these seals to the engine cowling, which could result in high engine operating temperatures.

**DATES:** Comments must be received on or before September 30, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–32–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information and parts that apply to the proposed AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567–4361; or Brown Aircraft Supply, Inc, 4123 Muncy Road, Jacksonville, Florida 32207; Telephone (904) 396–6655, as applicable. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810; Facsimile (404) 991–3606.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–32–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–32–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

AD 93–02–13, Amendment 39–8496 (58 FR 7737, February 9, 1993), currently requires repetitively inspecting the engine baffle seals on Piper Aircraft Corporation (Piper) PA–31 series airplanes, and, if found improperly positioned, either reinforcing the baffle seals or installing thicker baffle material. AD 93–02–13 also allows for the termination of the repetitive inspections if the thicker baffle seal material is installed. The baffle seal reinforcement is accomplished in accordance with Piper Service Bulletin No. 693, dated July 28, 1980; and the referenced baffle seal installation is accomplished in accordance with Piper Kit 764 093 as referenced by Piper Service Letter No. 875, dated May 11, 1981. AD 93–02–13 superseded AD 92–26–02, Amendment 39–8429 (57 FR 57096, December 3, 1992), which superseded AD 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980).

The FAA's continuous review of the conditions that prompted these ADs related to the Piper PA–31 series airplane baffle seals reveals that the current baffle seal reinforcement is not preventing the seals from blowing back (becoming improperly positioned). In addition, the following baffle seal installations are available:

- Brown Aircraft Supply Engine Baffle Material, part number (P/N) BA71646–1 and BA71646–2, temperature range −40 to 300 degrees Fahrenheit.
- Brown Aircraft Supply, Fiber Reinforced High Temperature Silicone Engine Baffle Material (red), P/N T–05182, temperature range −65 to 550 degrees Fahrenheit; and
- Brown Aircraft Supply, Engine Baffle Material, P/N T–8071, temperature range −40 to 300 degrees Fahrenheit.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that: (1) The current baffle seal reinforcement is ineffective and should be eliminated; (2) the referenced installations provide an equivalent level of safety to that installation specified in AD 93–02–13; and (3) AD action should be taken in order to prevent improper sealing of

these seals to the engine cowling, which could result in high engine operating temperatures.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA–31 series airplanes of the same type design, the proposed AD would supersede AD 93–02–13 with a new AD that would: (1) Retain the inspection and installation requirements of AD 93–02–13; (2) eliminate the reinforcement option; and (3) incorporate the three additional installation options (referenced earlier) into the current AD. The Piper baffle seal installation would continue to be accomplished in accordance with Piper Kit 764 093 as referenced by Piper Service Letter No. 875, dated May 11, 1981. Either of the Brown Aircraft Supply baffle seal installations would be accomplished in accordance with procedures included in Figure 1 of the proposed AD.

The FAA estimates that 2,448 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Since an owner/operator who holds a private pilot certificate as authorized by FAR 43.7 is allowed to accomplish the proposed inspection, the only cost impact upon the public would be the time it takes to accomplish this inspection.

The airplane operator would have the option of installing thicker baffle seals and then eliminating the repetitive inspections. The proposed installation would take approximately 8 workhours to accomplish at an average labor rate of $55 an hour. Piper parts cost approximately $1,568, and Brown Aircraft Supply parts cost approximately $65. The cost difference is due to the Piper parts consisting of a kit that not only includes the baffle seals, but also new baffles. Based on these figures, the cost impact upon any U.S. operator who wishes to accomplish this baffle seal installation would be $2,008 (with Piper parts) per airplane, or $505 (with Brown Aircraft Supply parts) per airplane. The only difference between the proposed AD and AD 93–02–13, which would be superseded by the proposed action, is the addition of the Brown Aircraft Supply installations. These installations cost less than the other additions, so, if this option is accomplished, the proposed AD would actually cost less than the current inspection-terminating modification specified in AD 93–02–13.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing AD 93–02–13, Amendment 39–8496 (58 FR 7737, February 9, 1993), and by adding the following new airworthiness directive:

**Piper Aircraft Corporation:** Docket No. 93–CE–32–AD. Supersedes AD 93–02–13, Amendment 39–8496.

*Applicability:* Model PA–31, PA–31–300, and PA–31–325 airplanes (serial numbers 31–2 through 31–8012089), and Model PA–31–350 airplanes (serial numbers 31–5001 through 31–8052199), certificated in any category. Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–20–04, Amendment 39–3925, AD 92–26–03, Amendment 39–8429, or AD 93–02–13, Amendment 39–8496), and thereafter as indicated.

To prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures, accomplish the following:

(a) Visually inspect the engine baffle seals for proper positioning by using a light and looking in air inlets and access doors to ensure that forward seals and lower aft seals are all facing forward and not blown back.

(b) If baffle seals are improperly positioned (blown back), prior to further flight, accomplish one of the following:

(1) Install thicker baffle seals in accordance with Piper Kit 764 093 as referenced in Piper Service Letter 875, dated May 11, 1981; or

**Note 1:** Piper Kit 764 093 includes the entire baffle assembly consisting of both baffles and baffle seals. Replacing the baffle seals included in this kit is the only requirement of paragraph (b)(1) or (c)(2) of this AD.

(2) Install baffles of one of the following materials in accordance with Figure 1 of this AD:

(i) Brown Aircraft Supply Engine Baffle Material, part number (P/N) BA71646–1 and BA71646–2, temperature range −40 to 300 degrees Fahrenheit.

(ii) Brown Aircraft Supply, Fiber Reinforced High Temperature Silicone Engine Baffle Material (red), P/N T–95182, temperature range −65 to 550 degrees Fahrenheit; and

(iii) Brown Aircraft Supply, Engine Baffle Material, P/N T–8071, temperature range −40 to 300 degrees Fahrenheit.

### Figure 1

*Brown Aircraft Supply Baffle Seal Installation Procedures*

1. Inspect the existing baffle seals through the front of the cowl to ensure existing seals are of sufficient length to provide at least 1-inch of contact with upper and lower cowls when properly positioned. Mark areas that need lengthening, and note the minimum length needed to meet requirements.

2. Remove the cowls in accordance with the applicable maintenance manual. Remove rivets, wire, and screws, as applicable, that secure baffle seals (fabric) to the engine baffles (metal). Retain any metal strips that are used to secure seals to the engine baffles.

3. Remove existing baffle seals and lay against Brown Aircraft Supply baffle seal material.

4. Cut new seals around the layout, ensuring that seals are lengthened as noted in procedure 1.

5. Reattach new seals to the engine baffles with the original screws, rivets, and wires, as applicable, or new hardware of the same part number.

**Note:** The front upper cowl baffle seal is most critical, especially at the inboard and outboard corners. If the old material can be removed intact, and the curve can be transferred to the new flat material, then it may not be necessary to slit the material where it curves from vertical to horizontal contact with the cowl. If the curve requires a slit in the material at the corner, then it is recommended that the slit be tied with ty-raps or safety wire to ensure contact with the cowl around the radius.

(c) If baffle seals are properly positioned (not blown back), within the next 50 hours TIS, accomplish one of the following:

(1) Reinspect the engine baffle seals as specified in paragraph (a) of this AD, and continue to reinspect thereafter at intervals not to exceed 50 hours TIS; or

(2) Install thicker baffle seals as specified in either paragraph (b)(1) or (b)(2) of this AD. This installation terminates the inspection requirements of this AD.

(d) The inspections required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) All persons affected by this directive may obtain the parts and service instructions necessary to accomplish the required installation from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or Brown Aircraft Supply, Inc, 4123 Muncy Road, Jacksonville, Florida 32207, as applicable. The service instructions may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 93-02-13, Amendment 39-8496.

Issued in Kansas City, Missouri, on July 20, 1993.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-17946 Filed 7-27-93; 8:45 am]

BILLING CODE 4910-13-U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Ch. I

**[Docket No. 93N-0178]**

**RIN 0905-AD90**

## Regulation of Dietary Supplements; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting an advance notice of proposed rulemaking that appeared in the **Federal Register** of June 18, 1993 (58 FR 33690). The document announced that FDA is reviewing the manner in which it regulates dietary supplements, including products containing vitamins, minerals, amino acids, herbs, and other similar nutritional substances. This document was published with some inadvertent errors. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Judith S. Kraus, Center for Food Safety and Applied Nutrition (HFS-456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5233.

In FR Doc. 93-14271, appearing on page 33690, in the **Federal Register** of Friday, June 18, 1993, the following corrections are made:

1. On page 33695, in the 2d column, in the 3d full paragraph, in line 15, the acronym "(RDI's)" is removed and in the 3d column, in the 3d line from the top, the citation "(Ref. 3)" is removed.

2. On page 33699, in the 3d column, for the fifth item in the list of references, the number "15" is corrected to read "5".

Dated: July 22, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93-17922 Filed 7-27-93; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 100

## Alaska Federal Subsistence Board Meeting

**AGENCY:** Forest Service, USDA; Fish and Wildlife Service, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice informs the public that the Federal Subsistence Board (Board) will hold a public meeting on August 10, 1993. The public is invited to attend and to provide oral testimony before the Board.

**DATES:** August 10, 1993.

**ADDRESSES:** Anchorage, Alaska. The specific time and location of the meeting will be announced through the local media.

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3467. For questions related to subsistence management issues on National Forest Service lands inquires may also be directed to Norman Howse, Assistant Director, Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628; telephone (907) 586-8890.

**SUPPLEMENTARY INFORMATION:** Board discussion during the meeting will be largely devoted to the evaluation and analysis of three requests for reconsideration. These requests relate respectively to subsistence uses of moose and caribou in Unit 15, subsistence uses of moose in Unit 1(B), and the subsistence uses of moose in Unit 25(D)(West).

**Ronald B. McCoy,**

*Interim Chair, Federal Subsistence Board.*

[FR Doc. 93-18025 Filed 7-27-93; 8:45 am]

BILLING CODE 3410-11-M; 4310-55-M

VOL 58 ISS 143 JL 28 1993 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300291; FRL-4632-6]

RIN 2070-AC18

## 2-Butenedioic Acid (Z)-, Polymer With Ethenol and Ethenyl Acetate, Sodium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt (CAS Reg. No. 139871-83-3) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Nippon Gohsei (U.S.A.) Co., Ltd.

DATES: Comments, identified by the document control number [OPP-300291], must be received on or before August 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8328.

SUPPLEMENTARY INFORMATION: Nippon Gohsei (U.S.A.) Co., Ltd., 1002 Pennsylvania Ave., SE., Washington, DC 20003, has submitted pesticide petition (PP) 3E4208 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. The chemical substance 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum number average molecular weight of the above-mentioned polymer is 75,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned polymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned polymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned polymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned polymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned polymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned polymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned polymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned polymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a

tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300291]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic effect on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 16, 1993.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * * | * * | * * |
| 2-Butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt (minimum number average molecular weight 75,000; CAS No. 139871-93-3). | ..... | Component of water-soluble film |
| * * * | * * | * * |

* * * * *

[FR Doc. 93-17862 Filed 7-27-93; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Part 180**

**[PP 0E3821/P562; FRL-4628-5]**

**RIN 2070-AC18**

## Pesticide Tolerance for Sodium Salt of Acifluorfen

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for the combined residues of the herbicide sodium salt of acifluorfen (also referred to in this document as acifluorfen) and its metabolites in or on the raw agricultural commodity strawberries. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**DATES:** Comments, identified by the document control number [PP 0E3821/P562], must be received on or before August 27, 1993.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 0E3821 to EPA on behalf of the Agricultural Experiment Stations of Alabama, Arkansas, California, Connecticut, Florida, Indiana, Maryland, Michigan, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, and Washington. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for combined residues of the sodium salt of acifluorfen (sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoic acid) and its metabolites (the corresponding acid, methyl ester,

and amino analogues) in or on the raw agricultural commodity strawberry at 0.05 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year feeding study in dogs fed diets containing 0, 50, 300, or 1,800 ppm with a no-observed-effect-level (NOEL) of 50 ppm (equivalent to 1.25 mg/kg/day). Blood coagulation was observed in test animals at the 300-ppm dose level (lowest-effect level).

2. A two-generation reproduction study in rats fed diets containing 0, 25, 500 or 2,500 ppm with no adverse effect on adult reproductive performance observed under the conditions of the study. A NOEL was established at 25 ppm (equivalent to 1.25 mg/kg of body weight/day) based on decreased viability and increased incidence of kidney lesions in high-dose offspring.

3. A developmental toxicity study in rabbits given gavage doses of 0, 3, 12, or 36 mg/kg/day with no developmental toxicity observed at any of the dose levels tested.

4. A developmental toxicity study in rats given gavage doses of 0, 20, 90, or 180 mg/kg/day with an NOEL for developmental toxicity of 20 mg/kg/day based on reduced mean fetal weight and a maternal NOEL of 90 mg/kg/day based on reduced body weight.

5. A 2-year carcinogenicity study in rats fed diets containing 0, 25, 150, 500, 2,500, or 5,000 ppm with a NOEL of 500 ppm (equivalent to 25 mg/kg/day) based on increased liver enzyme changes in male and female rats and renal changes (nephritis) in male rats.

6. Acifluorfen produced positive results for gene mutation in a mitotic recombination assay in yeast cells and a dominant-lethal assay in fruit fly. The chemical was negative in a structural chromosome aberration test in bone marrow cells and an unscheduled DNA synthesis test in rat hepatocytes.

7. A metabolism study in mice showed that acifluorfen is excreted primarily as the parent compound within 4 days of ingestion.

8. An 18-month carcinogenicity study in B6C3F1 mice fed diets containing 0, 625, 1,250, or 2,500 ppm with statistically significant positive trends for liver tumors (adenomas, carcinomas, and adenomas/carcinomas combined) and stomach tumors (papillomas) in both male and female mice. These tumor types were significantly increased at the highest dose level tested (2,500 ppm) in male and female mice, and liver tumors were also significantly increased at the lowest dose level tested (625 ppm) in male mice.

9. A 2-year carcinogenicity study in CD-1 mice fed diets containing 0, 7.5, 45, or 270 ppm with a statistically significant increase in the total number of liver tumors (primarily adenomas) in high-dose (270 ppm) female mice. No significant increase in liver tumors was observed in male mice at any feeding level tested. The highest dose tested (270 ppm) did not approximate a maximum tolerated dose in male and female mice.

Based on a weight-of-evidence determination, the Agency has classified acifluorfen as a Group B2 carcinogen (probable human carcinogen). This decision, which is in accordance with proposed Agency guidelines published in the **Federal Register** of November 23, 1984 (49 FR 46294), was based primarily on evidence of an increased number of malignant, or combined benign and malignant, liver tumors in multiple experiments involving two different strains of mice. Acifluorfen also produced uncommon stomach tumors in male and female B6C3F1 mice. Other structurally related diethyl-ether pesticides have been shown to produce liver tumors in mice. In addition, mutagenicity studies show evidence of mutagenic activity, but not in mammalian cell systems.

Carcinogenic risk assessments have been completed for acifluorfen which indicate that carcinogenic risk from the proposed use on strawberries would be extremely low and that the risks from established uses and the proposed use on strawberries are well below EPA's negligible risk standard for carcinogenic pesticides of $1 \times 10^{-6}$. The potential carcinogenic risk to the general population from dietary exposure resulting from existing uses of acifluorfen is calculated at $5 \times 10^{-7}$. The proposed use on strawberries would increase the risk by $6 \times 10^{-8}$. The total carcinogenic risk for existing uses and the proposed use on strawberries is calculated at $6 \times 10^{-7}$.

The carcinogenic risk assessments are based on a potency estimator ($Q^*$) of $3.55 \times 10^{-2}$ $(mg/kg/day)^{-1}$. Dietary exposure was calculated using anticipated residue data and percent of crop treated information available to EPA.

The Reference Dose (RfD) for acifluorfen is established at 0.013 mg/kg of body weight/day, based on a NOEL of 1.25 mg/kg body weight/day and an uncertainty factor of 100. The NOEL is taken from the two-generation rat reproduction study in which decreased survival and increased incidence of kidney lesions were observed in the offspring of rats fed higher dose levels. The anticipated residue contribution (ARC) for the overall U.S. population from established tolerances and the proposed use on strawberries utilizes 0.1 percent of the RfD. In addition, less than 1 percent of the RfD is utilized for the population subgroups for which the Agency has dietary consumption data.

The nature of the residue is adequately understood for the purpose of the proposed tolerance and an adequate analytical method, gas chromatography, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since strawberries are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.383 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3821/P562]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification

statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 29, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By amending § 180.383 in the table therein by adding and alphabetically inserting the commodity, to read as follows:

**§ 180.383 Sodium salt of acifluorfen; tolerances for residues.**

* * * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Strawberry | 0.05 |

[FR Doc. 93–17710 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

**40 CFR Part 721**

**[OPPTS–50601B; FRL–4182–5]**

**Fluorene Substituted Aromatic Amine; Proposed Modification of Significant New Use Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for fluorene substituted aromatic amine based on a modification to the TSCA section 5(e) consent order regulating that substance. Data received by the Agency on an analogous substance indicated that a requirement in the SNUR calling for labels and a material safety data sheet (MSDS) were no longer necessary.

**DATES:** Written comments must be received by EPA by August 27, 1993.

**ADDRESSES:** All comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room E-G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50601B. Unit III. of this preamble contains additional information on submitting comments containing CBI.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543–A 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 23, 1992 (57 FR 44050), EPA issued a SNUR establishing significant new uses for fluorene substituted aromatic amine (P–91–43). Because of the modification to the consent order for this substance, EPA is proposing to modify this SNUR.

**I. Background and Rationale for Proposed Modification of the Rule**

During review of the PMN submitted for the chemical substance that was the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. Specifically, EPA concluded that regulation under dermal and respiratory protection, hazard communication requirements, industrial use, limit of production volume, and release to surface waters were necessary to control the potential unreasonable risks of the substance. The basis for such findings is referenced in Unit IV. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of data received for an analogous substance which indicates that the PMN substance is not expected to cause retinopathy, the submitter petitioned, and EPA determined, that the requirement that labels and material safety data sheets (MSDSs) indicate that the PMN substance may cause blindness and that eye protection should be worn when handling the substance was no longer appropriate and hence was unnecessary to protect human health. The section 5(e) order modification eliminated that labeling and MSDS requirement. The proposed modification of SNUR provisions for the substance designated herein is consistent with the modification of the section 5(e) order.

**II. Proposed Modification**

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

**PMN Number P–91–43**

*Chemical name:* (generic) Fluorene substituted aromatic amine.

*CAS number:* Not available.

*Effective date of section 5(a) SNUR:* November 22, 1992.

*Basis for modification to SNUR:* After the section 5(e) consent order was issued, EPA received new information which suggested that the PMN substance may not cause retinopathy. More specifically, based on test data recently received by EPA on a structurally similar chemical, the PMN substance is not expected to cause retinopathy as a result of inhaling the PMN substance. Therefore, the Agency is modifying both the applicable consent orders and the SNUR for this substance to remove the requirement that labels and MSDSs indicate that the PMN substance may cause blindness and that eye protection should be worn when handling the substance.

*CFR citation:* 40 CFR 721.3764.

**III. Comments Containing Confidential Business Information**

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a non-confidential version of the comments that EPA can place in the public file.

### IV. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50601. This record includes information considered by the Agency in developing this rule and includes the modification to consent order to which the Agency has responded with this proposal.

### V. Regulatory Assessment Requirements

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $7,198 to $8,170, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. In addition, EPA estimates that the cost of recordkeeping requirements for ongoing uses is $583 per year. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small business. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

*C. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, D.C. 20503.

### List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 12, 1993.

**Susan H. Wayland,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

## PART 721—[AMENDED]

1. The authority citation for Part 721 will continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

2. In § 721.3764 by revising paragraph (a)(2)(ii) to read as follows:

**§ 721.3764 Fluorene substituted aromatic amine.**

(a) * * *

(2) * * *

(ii) Hazard communication program. Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

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[FR Doc. 93–17423 Filed 7–27–93; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 93–210; RM–8253]

### Radio Broadcasting Services; Webster Springs, WV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition field by Cat Radio, Inc., proposing the substitution of Channel 262B for Channel 262A at Webster Springs, West Virginia, and the modification of its construction permit accordingly. Channel 262B can be allotted to Webster Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 262B at Webster Springs are North Latitude 38–28–42 and West Longitude 80–24–54. See **SUPPLEMENTARY INFORMATION**, *infra*.

**DATES:** Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy E. Welch, Esq., Dean George Hill & Welch, suite 113, 1330 New Hampshire Ave., NW., Washington, DC 20036 (Counsel for Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–210, adopted July 1, 1993, and released July 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 262B at Webster Springs or require the petitioner to demonstrate the availability of an additional

equivalent class channel. Since Webster Springs is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner will be required to comply with the notification requirements of § 73.1030(a) of the Commission's Rules.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division; Mass Media Bureau.*

[FR Doc. 93–17914 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–211, RM–8285]**

**Radio Broadcasting Services; Arizona City, AZ**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule-making filed on behalf of Arizona City Broadcasting Corporation, licensee of Station KONZ(FM), Channel 292A, Arizona City, Arizona, seeking the substitution of Channel 292A and modification of its authorization accordingly. Coordinates for this proposal are 32–45–21 and 111–40–13. Mexican concurrence will be requested for this proposed allotment.

As the petitioner's modification proposal seeks an equivalent channel substitution, we will not accept competing expressions of interest.

**DATES:** Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 1993.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Nancy L. Wolf, Esq., Dow, Lohnes & Albertson, 1255 23rd Street, NW., suite 500, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–211, adopted July 1, 1993, and released July 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17915 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–208, RM–8281]**

**Radio Broadcasting Services; Keno, OR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Brett E. Miller seeking the allotment of Channel 253A to Keno, Oregon, as the community's first local service. Petitioner is requested to provide further information demonstrating that Keno is a community for allotment purposes. Channel 253A can be allotted to Keno in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 42–07–30 and West Longitude 121–55–42.

**DATES:** Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Brett E. Miller, 11608 Blossomwood Court, Morpark, CA 93021 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–208, adopted July 1, 1993, and released July 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17905 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

VOL 58 ISS 143 JL 28 1993 UMI

47 CFR Part 73

[MM Docket No. 90-66; RM-7139, RM-7369; RM-7369]

**Radio Broadcasting Services; Lincoln, Osage Beach, Steelville and Warsaw, MO**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order to show cause.

SUMMARY: This document directs KRMS-KYLC, Inc., licensee of Station KYLC(FM), Channel 228A, Osage Beach, Missouri, to show cause why its license should not be modified to specify operation on Channel 265A instead of Channel 228A. This action would allow Twenty-One Sound Communications, Inc., permittee of Station KNSX(FM), Channel 227C1, Steelville, Missouri, to upgrade its facility to Channel 227C1. Channel 265A can be substituted for Channel 228A at the current site of Station KYLC(FM), at coordinates 38-07-29 and 92-40-39. This Order does not afford additional opportunity either to comment on the merits of the conflicting proposal or for the acceptance of additional counterproposals.

DATES: Comments must be filed on or before September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-5630.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, MM Docket No. 90-66, adopted July 1, 1993, and released July 21, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93-17906 Filed 7-27-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-206, RM-8204]

**Radio Broadcasting Services; Hermantown, MN**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bruce F. Elving requested the allotment of Channel 221A to Hermantown, Minnesota, as that community's first local broadcast service. Canadian concurrence will be requested for this allotment at coordinates 46-48-47 and 92-14-51. There is a site restriction 2 kilometers (1.2 miles) northeast of the community.

DATES: Comments must be filed on or before September 13, 1993, and reply comments on or before September 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Bruce F. Elving, P.O. Box 336, Esko, Minnesota 55733-03336.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-206, adopted June 29, 1993, and released July 21, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93-17910 Filed 7-27-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-204, RM-8266]

**Radio Broadcasting Services; Provincetown, MA**

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lower Cape Communications, Inc. proposing the substitution of Channel 221A for Channel *220A at Provincetown, Massachusetts, modification of the license for Station WOMR, Channel *220A, to specify operation on Channel 221A and reservation of the channel for noncommercial educational use. The coordinates for Channel *221A are 42-03-54 and 70-09-34.

DATES: Comments must be filed on or before September 13, 1993, and reply comments on or before September 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Roger H. Strawbridge, President, Lower Cape Communications, Inc., Radio Station WOMR, 6 Orissa Drive, Box 606, East Orleans, Massachusetts 02643.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-204, adopted June 28, 1993, and released July 21, 1993. The full text of this Commission decision is available

for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17911 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–213, RM–7214]**

**Radio Broadcasting Services; Menomonie, WI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Jay Lellman seeking the allotment of Channel 285A to Menomonie, Wisconsin, as the community's second local FM commercial service. Channel 285A can be allotted to Menomonie in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.2 kilometers (9.4 miles) west in order to avoid a short-spacing with Station WAXX–FM, Channel 283C, Eau Clair, Wisconsin. The coordinates for Channel 285A at Menomonie are North Latitude 44–56–28 and West Longitude 92–05–51.

**DATES:** Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Larry G. Fuss, P. O. Box 159, Fayetteville, Georgia 30214 (Consultant for petitioner).

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–213, adopted July 6, 1993, and released July 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–17912 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–214, RM–8287]**

**Radio Broadcasting Services; Ocracoke, NC**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Ocracoke Broadcasters seeking the substitution of Channel 224C1 for Channel 225A at Ocracoke, North Carolina, and the modification of its construction permit for a new station on the Class A channel to specify operation on the higher class channel. Channel 224C1 can be allotted to Ocracoke with a site restriction of 50 kilometers (31 miles) southwest, at coordinates North Latitude 34–51–15 and West Longitude 76–24–58, to accommodate petitioner's desired transmitter site. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Ocracoke or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, P.O. Box 2506, Pawleys Island, SC 29585 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Lesie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–214, adopted July 6, 1993, and released July 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93-17928 Filed 7-27-93; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 93-209; RM-8262]**

**Radio Broadcasting Services; Rainelle, WV**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by R-B Company, Inc., proposing the substitution of Channel 237B1 for Channel 237A at Rainelle, West Virginia, and the modification of Station WRRL-FM's license accordingly. Channel 237B1 can be allotted to Rainelle in compliance with the Commission's minimum distance separation requirements at petitioner's request site with a site restriction of 21 kilometers (13 miles) northeast to avoid a short-spacing to Station WXIL, Channel 236B, Parkersburg, West Virginia. The coordinates for Channel 237B1 at Rainelle are North Latitude 38-07-21 and West Longitude 80-37-37. See SUPPLEMENTARY INFORMATION, *infra.*

**DATES:** Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Hunsaker, Esq., Putbrese & Hunsaker, 6800 Fleetwood Road, suite 100, P.O. Box 539, McLean, Virginia 22101-0539 (Counsel for Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-209, adopted July 1, 1993, and released July 22, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 237B1 at Rainelle or require the petitioner to demonstrate the availability of an additional equivalent class channel.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93-17929 Filed 7-27-93; 8:45 am]

BILLING CODE 6712-01-M

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 579**

**Defect and Noncompliance Responsibility**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Termination of rulemaking.

**SUMMARY:** This notice announces that NHTSA has terminated a rulemaking proceeding to amend its regulations setting forth the responsibility of manufacturers for safety-related defects and noncompliance with Federal motor vehicle safety standards in motor vehicles and items of motor vehicle equipment. The amendments would have allocated among manufacturers in the chain of production for motor vehicles built in two or more stages responsibility for the notification and remedy of defects and noncompliances that are determined to exist in those vehicles. In November 1988, the agency granted a petition from the National Truck Equipment Association (NTEA) to commence this rulemaking proceeding. After evaluating the manner in which recent recall campaigns involving multistage vehicles have been conducted, the agency has concluded that the existing regulations provide an appropriate framework for manufacturers to use in exercising their responsibilities in this area, and that the requested amendments are therefore unnecessary.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jon White, Office of Defects Investigation (NEF-11), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202) 366-5226.

**SUPPLEMENTARY INFORMATION:**

**A. Multistage and Altered Vehicles**

Unlike passenger cars, which are normally produced by a single manufacturer, trucks, buses, and recreational vehicles are often manufactured in two or more stages, with separate manufacturers responsible for each stage of production. Typically, the basic motive and structural components, consisting at a minimum of the frame, the power train, and the steering, suspension, and braking systems, are first fabricated into the form of a "chassis," or, where a completed occupant compartment is also provided, into the form of a "chassis-cab." This is in turn delivered as an "incomplete vehicle" to a "final stage manufacturer," who adds cargo-carrying, work-performing, or load-bearing components that allow the vehicle to perform its intended function. If the vehicle is manufactured in three or more stages, "intermediate manufacturers" also become involved in its production.

If a previously certified vehicle is modified before it is first purchased in good faith for purposes other than resale, and the modifications consist of anything other than the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, or if the modifications are performed in such a manner that the stated weight ratings for the vehicle are no longer valid, the vehicle is deemed to have been "altered." In such a circumstance, the alterer must certify that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety standards.

**B. Statutory and Regulatory Basis for Manufacturers' Recall Responsibilities**

Under sections 151 and 152 of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1411 and 1412, if a motor vehicle or item of

replacement equipment is determined to contain a safety-related defect or not to comply with an applicable Federal motor vehicle safety standard, the manufacturer of that motor vehicle or replacement equipment item must furnish notification to the Secretary of Transportation, and to owners, purchasers, and dealers of the vehicle or equipment involved, and must remedy the defect or noncompliance. Section 159 of the Act, 15 U.S.C. 1419, defines "replacement equipment" as motor vehicle equipment other than "original equipment," which the section in turn defines as that "which was installed in or on a motor vehicle at the time of its delivery to the first purchaser." Section 159 further states that, unless otherwise provided in regulations of the Secretary, "[a] defect in, or failure to comply of, an item of original equipment shall be deemed to be a defect in, or failure to comply of, the motor vehicle in or on which such equipment was installed at the time of its delivery to the first purchaser" and that "[i]f the manufacturer of a motor vehicle is not the manufacturer of original equipment installed in or on such vehicle at the time of its delivery to the first purchaser, the manufacturer of the vehicle (rather than the manufacturer of such equipment) shall be considered the manufacturer of such item of equipment."

Regulations implementing section 159 of the Act are found at 49 CFR part 579. Section 579.5 of those regulations specify manufacturers' defect and noncompliance responsibilities. Paragraph (a) of that section states that "[e]ach manufacturer of a motor vehicle shall be responsible for any safety-related defect or any noncompliance determined to exist in the vehicle or in any item of original equipment."

### C. NHTSA's Interpretation That Incomplete Vehicle Is an Original Equipment Item

In its interpretations of the Act before the NTEA petition, NHTSA classified an incomplete vehicle as an original equipment item for which the final stage manufacturer has recall responsibility under section 159. This interpretation renders the final stage manufacturer responsible for the notification and remedy of all defects and noncompliances in a vehicle it completes, including those contained in the incomplete vehicle.

### D. NTEA's Petition for Rulemaking

On July 8, 1988, NHTSA received a petition from the NTEA requesting the agency to institute rulemaking to amend 49 CFR Part 579 "to clarify and equitably apportion" between incomplete and final stage vehicle manufacturers responsibility for the notification and remedy of defects and noncompliances. The petition proposed that Part 579 be amended to specify that a final stage manufacturer can elect "to make manufacturers of incomplete vehicles responsible for notification and remedy of noncompliances and safety-related defects inherent in the incomplete vehicle or that arise * * * when the incomplete vehicle is completed in a manner authorized by the incomplete vehicle manufacturer." The NTEA petition also requested that NHTSA amend its regulations to specifically address the recall responsibilities of vehicle alterers.

### E. NHTSA's Action on the Petition

NHTSA granted the NTEA's petition on November 10, 1988. Consistent with its rules for processing such petitions, 49 CFR 552.9, NHTSA advised the NTEA that it would begin a rulemaking proceeding, but that this did not signify that the rule in question would ultimately be issued. Before granting the petition, however, NHTSA had determined, pursuant to 49 CFR 552.8, that there was "a reasonable possibility" that such a rule would be issued. This determination was influenced by a conflict between incomplete and final stage vehicle manufacturers that NHTSA had witnessed over the issue of which party would be responsible for recalling vehicles that contained a safety-related defect.

That conflict arose in early 1987, when NHTSA approached Ford Motor Company and an association representing the majority of ambulance manufacturers to address fires caused by fuel expulsion that were being reported in an increasing number of ambulances built on certain Ford E–350 chassis. Initially, both Ford and the ambulance manufacturers raised legal and factual arguments to deny their own fault in the matter, and to attribute the defect to the other's actions. This process consumed time that could otherwise have been devoted to fashioning a remedy for the defect and ensuring the remedy's prompt implementation. Ultimately, Ford conducted a recall. However, because of the delay and uncertainty that preceded this action, NHTSA concluded that there was a need for it to examine whether its regulations should be amended to specifically allocate recall responsibility among the various manufacturers in the chain of production for multistage vehicles.

### F. Subsequent Experience With Multistage Vehicle Recalls

The conflicts between incomplete and final stage vehicle manufacturers that NHTSA witnessed in the ambulance recall have not been evident in subsequent enforcement actions involving multistage vehicles. For example, several motorhome manufacturers determined in April 1991 that a safety-related defect existed in certain of their 1978 through 1986 model year micro-mini motorhomes built on chassis manufactured by Toyota Motor Corporation with semi-floating axles that were modified through the addition of "aftermarket" dual rear wheels. Although some of the affected motorhome manufacturers originally suggested that Toyota should be responsible for the recall, they eventually recognized that under the Act, the final stage manufacturer had the responsibility to conduct the notification and remedy campaign. The motorhome manufacturers ultimately instituted their campaigns to recall those vehicles after Toyota agreed to supply them, at a reduced price, with full-floating axles equipped with factory-installed dual rear wheels to replace the defective equipment. In a more recent action, Navistar International Corporation agreed to recall 185,177 school buses that failed to comply with Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, despite the fact that, as the chassis manufacturer, it did not have the legal responsibility under the Act to do so.

### G. NHTSA's Existing Regulations on Multistage Vehicles Permit Recall Responsibility To Be Assumed by Any Manufacturer

NHTSA's existing regulations covering vehicles manufactured in two or more stages do not mandate that responsibility for defects and noncompliances be borne exclusively by final stage manufacturers, but instead permit such responsibility to be assumed by any other manufacturer in the production chain. This is reflected in 49 CFR 568.7, which specifies requirements for incomplete or intermediate stage vehicle manufacturers who assume legal responsibility for all duties and liabilities imposed on manufacturers under the Act. Additionally, 49 CFR 573.3(c) specifies that in the case of a defect or noncompliance determined to exist in a vehicle manufactured in two or more stages, compliance with agency notification and reporting requirements by any manufacturer in the production

chain shall be considered compliance by all such manufacturers. These regulations emphasize the fact that NHTSA is not concerned with which manufacturer in the production chain assumes responsibility for recalling a vehicle built in two or more stages, so long as there is a manufacturer who does so.

**H. Means Available for Final Stage Manufacturer To Avoid Recall Responsibility**

The fact that an incomplete vehicle manufacturer is not obligated by Federal law to conduct a recall unless it agrees to assume responsibility to do so does not place, in NHTSA's estimation, an insurmountable burden on the final stage manufacturer. In negotiating the purchase of incomplete vehicles, the final stage manufacturer can seek to have the incomplete vehicle manufacturer assume contractual responsibility for any defects and noncompliances inherent in the incomplete vehicle. Even in the absence of such contractual provisions, if the completed vehicles appear to contain a defect or noncompliance that was inherent in the incomplete vehicle, the two manufacturers could enter into an agreement under which the incomplete vehicle manufacturer would take responsibility for the recall campaign (as was done in the Navistar school bus recall noted above). Moreover, even if the incomplete vehicle manufacturer were to refuse to assume such responsibility, the final stage manufacturer would not be left without recourse. If the defect or noncompliance was in fact caused by the incomplete vehicle manufacturer, the final stage manufacturer would most likely be able to obtain reimbursement from the incomplete vehicle manufacturer for any losses it incurred in conducting the recall campaign (including direct expenses and other possible damages) under state commercial law.

**I. Leaving Recall Responsibility With the Final Stage Manufacturer Furthers Important Policy Objectives**

NHTSA recognizes that in many cases the incomplete vehicle manufacturer will be in the best position to identify a remedy for a defect or noncompliance, and may have a more extensive dealer network at which the remedy may be obtained. However, the agency has concluded that the better policy is to leave recall responsibility with the final stage manufacturer in circumstances where the incomplete or intermediate stage vehicle manufacturer refuses to assume such responsibility. The final stage manufacturer is the party who selects the components, assemblies, and systems that are incorporated into the vehicle as finally manufactured. Additionally, the final stage manufacturer is most likely to be able to identify owners from sales and warranty records, as well as state registration records, which may not be available to incomplete or intermediate stage vehicle manufacturers.

Leaving recall responsibility with the final stage manufacturer if it is not assumed by any other manufacturer in the production chain also provides a degree of certainty that is essential for assuring that defects and noncompliances are remedied as promptly as possible. This avoids delays that could have safety repercussions if the various manufacturers in the production chain were to engage in extended arguments over which one is responsible for the defect or noncompliance that necessitates the recall campaign.

**J. Vehicle Alterers**

The NTEA petition also proposed that the definition of replacement equipment in 49 CFR 579.4(b) be broadened to include motor vehicle equipment that is added, physically altered, or directly affected by an alteration that had not been expressly authorized by the manufacturer of a previously completed vehicle. In such a situation, the alterer would be considered a manufacturer of replacement equipment, and, under sections 151 and 152 of the Safety Act, 15 U.S.C. 1411 and 1412, be responsible for defects or noncompliance in that equipment. The petition further specified that the manufacturer of the previously completed vehicle that receives the alteration would continue to be regarded as the motor vehicle manufacturer and retain responsibility for any defect or noncompliance present in the vehicle before alteration or introduced through alterations performed with that manufacturer's express authorization.

NHTSA's existing regulations on vehicles manufactured in two or more stages (49 CFR part 568) impose certain requirements on persons who alter certified vehicles. Section 568.8 of those regulations provides that

> [a] person who alters a vehicle that has been previously certified * * * other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire or rim assemblies, or minor finishing operations such as painting, or who alters a vehicle in such a manner that its stated weight ratings are no longer valid, before the first purchase of the vehicle in good faith for purposes other than resale, shall ascertain that the vehicle as altered conforms to the standards which are affected by the alteration and are in effect on the original date of manufacture of the vehicle, the date of final completion, or a date between those two dates. That person shall certify the vehicle in accordance with § 567.7 of this chapter.

NHTSA's vehicle certification regulations at 49 CFR 567.7 provide that a person who alters previously certified vehicle shall allow the original certification label to remain on the vehicle and shall affix an additional label that specifies that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety standards affected by the alteration.

In light of these requirements, before it received the NTEA petition, NHTSA had issued interpretations stating that an alterer is considered a "manufacturer" for the purposes of the Act, and is responsible for the notification and remedy of defects and noncompliances caused by the alteration. The agency has consequently concluded that there is no need for the proposed NTEA amendment to 49 CFR 579.4(b) concerning vehicle alterations.

**Authority:** 15 U.S.C. 1392, 1407, and 1411–1420; delegations of authority at 49 CFR 1.50 and 501.8(f).

Issued on July 22, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–17977 Filed 7–27–93; 8:45 am]

BILLING CODE 4910-59-M

# Notices

Federal Register
Vol. 58, No. 143
Wednesday, July 28, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### Foster Grandparent Program and Senior Companion Program, Income Eligibility Levels

**AGENCY:** ACTION.

**ACTION:** 1993 SSI-adjusted income eligibility levels for the Foster Grandparent and Senior Companion Programs.

**SUMMARY:** This notice adjusts the 1993 income eligibility levels for the Foster Grandparent and Senior Companion Programs published in 58 FR 13735, March 15, 1993.

This adjustment is based on the 1993 state supplementations to Supplemental Security Income (SSI) disseminated by the Social Security Administration in April 1993. The revised income eligibility level for each state adopts the higher amount of either: (a) 125% of the Department of Health and Human Services (DHHS) Poverty Income Guidelines, or (b) 100% of the DHHS Guidelines plus the current amount of each state supplementation to SSI. Amounts are rounded to the next highest multiple of $5.00.

Persons whose income met the eligibility levels published on March 15, 1993, shall remain eligible under the conditions provided in current policy. The adjusted eligibility levels in this notice shall apply to persons enrolling in the Programs on or after its effective date.

SCHEDULES OF INCOME ELIGIBILITY LEVEL: FOSTER GRANDPARENT AND SENIOR COMPANION PROGRAMS

[For the following SSI-Adjusted States]

| States | Household units of | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | One | Two | Three | Four | Five | Six | Seven | Eight |
| Alaska | $13,190 | $18,310 | $21,390 | $24,470 | $27,550 | $30,630 | $33,975 | $37,625 |
| California | 10,020 | 16,920 | 19,380 | 21,840 | 24,300 | 26,760 | 29,220 | 31,680 |
| Colorado | 8,715 | 13,310 | 15,770 | 18,230 | 21,015 | 24,090 | 27,165 | 30,240 |
| Connecticut | 10,730 | 14,735 | 17,195 | 19,655 | 22,115 | 24,575 | 27,165 | 30,240 |
| Massachusetts | 8,715 | 11,855 | 14,865 | 17,940 | 21,015 | 24,090 | 27,165 | 30,240 |

(For household units with more than eight members, add $3,850 in Alaska, add $2,460 in California, and add $3,075 in Connecticut, Colorado and Massachusetts for each additional member.)

The following income eligibility levels reflecting 125% of the DHHS Poverty Income Guidelines were published in the March 15, 1993, Federal Register. They remain in effect for all states, the District of Columbia, Puerto Rico, and the Virgin Islands, with the exception of the SSI-adjusted states shown above.

| States | Household units of | | |
|---|---|---|---|
| | One | Two | Three |
| All | $8,715 | $11,790 | $14,865 |
| Hawaii | 10,050 | 13,575 | 17,100 |

(For household units with more than three members, add $3,075 in "All" states and $3,525 in Hawaii for each additional member.)

**EFFECTIVE DATE:** July 28, 1993.

**FOR FURTHER INFORMATION CONTACT:** Rey Tejada, Program Officer, Foster Grandparent Program, 1100 Vermont Avenue, NW., Washington, DC 20525 or telephone (202) 606–4849; or Douglas S. Hill, Acting Program Officer, Senior Companion Program, 1100 Vermont Avenue, NW., Washington, DC 20525 or telephone (202) 606–4851.

**SUPPLEMENTARY INFORMATION:** ACTION programs are authorized pursuant to sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guidelines published by DHHS pursuant to sections 652 and 673 (2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Signed at Washington, DC, this 16th day of July, 1993.

**G. Gary Kowalczyk,**

*Acting Director.*

[FR Doc. 93–17923 Filed 7–27–93; 8:45 am]

BILLING CODE [illegible]

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Rulemaking; Public Meeting

**SUMMARY:** Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The Committee will meet to further discuss a draft recommendation on improving the environment of agency rulemaking.

**DATES:** Wednesday, August 4, 1993 at 9 a.m.

**LOCATION:** Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Kevin L. Jessar, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

**SUPPLEMENTARY INFORMATION:** Attendance at the committee meeting is

open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: July 23, 1993.

**Michael W. Bowers,**

*Deputy Research Director.*

[FR Doc. 93–18129 Filed 7–27–93; 8:45 am]

BILLING CODE 6110–01–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Reversion of Land from the Jurisdiction of the USDA, Forest Service to the Tennessee Valley Authority

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In 1940 the Tennessee Valley Authority (TVA) transferred to the Forest Service administrative jurisdiction over certain lands the TVA had acquired for various reservoir projects. Some of these lands on Lake Blue Ridge became part of the Chattahoochee National Forest in Georgia. Under the terms of the 1940 agreement between the TVA and the Forest Service, notice is hereby given of the reversion of administrative jurisdiction over these lands back to the TVA. The subject lands are described in appendix A set out at the end of this notice.

**EFFECTIVE DATE:** The lands will revert to TVA jurisdiction January 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Questions about this notice should be addressed to David M. Sherman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20009–6090, (202) 205–1362.

**SUPPLEMENTARY INFORMATION:** On August 12, 1940, the U.S. Department of Agriculture, Forest Service, and the Tennessee Valley Authority executed an Agreement of Transfer of land from the Tennessee Valley Authority to the Forest Service. Notice of the agreement was published in the **Federal Register** on November 16, 1940, (5 FR 4512). By this Agreement the Tennessee Valley Authority transferred administrative jurisdiction over certain lands acquired by the TVA pursuant to the Act of May 18, 1933 (16 U.S.C. 831, *et seq.*) to the Department of Agriculture. These lands were included in the Chattahoochee National Forest by President Franklin D. Roosevelt on November 15, 1940, acting pursuant to section 24 of the Act of March 3, 1891 (16 U.S.C. 471) which authorized the creation of forest reserves for watershed protection. Notice of the Presidential action was published in the **Federal Register** on November 16, 1940 along with the transfer agreement (5 FR 4515), which states in part that:

> The assignment and transfer to Department (of Agriculture) of the right of possession and all other right, title, or interest to the above-described property now possessed by the Tennessee Valley Authority shall be effective so long as said property is administered and operated as a part of the national forest to provide a maximum of watershed protection and subject to the terms and conditions herein contained; and in the event said property shall at any time cease so to be administered then the right of possession and all other right, title, and interest herein assigned and transferred by the Tennessee Valley Authority shall thereupon revert to and become the property of the Tennessee Valley Authority automatically and without the necessity for the institution by it of any legal proceedings therefor whatsoever. 5 FR 4514.

Some of the lands transferred to the Department of Agriculture for administration under the 1940 Agreement are narrow strips of land, usually less than 100 feet in width, which constitute a portion of the shores of the reservoirs. Overall land and water management of the reservoir areas has been complicated by the tripartite jurisdiction of the Forest Service, the Corps of Engineers and the TVA. The TVA has managed the water for hydroelectric power and flood control, and some upland areas. The Forest Service has managed the narrow riparian strips constituting the shores of the reservoirs. The Corps of Engineers has had jurisdiction over any structures permitted in these navigable waters. This present inefficient pattern of land administration does not provide for "a maximum of watershed protection," as required in the 1940 Agreement, nor can the riparian lands be effectively administered or operated as part of the National Forest. Therefore, the reversionary terms of the 1940 Agreement previously cited are hereby effected with respect to certain lands, specifically described in appendix A.

Management of the described riparian lands will be improved by the reversion of the administrative jurisdiction over the lands to the TVA. Reversion will also make it more convenient for adjacent property owners who must now deal with multiple agencies in order to obtain permits. The Forest Service has requested of the TVA that any and all permittees occupying reverted lands under any authorization issued by the Forest Service will not have their occupancy unreasonably interrupted by the assumption of jurisdiction over the subject lands by the TVA. The Forest Service will work with the TVA to ensure the continuation of existing uses on the reverted lands until expiration of Forest Service permits. Subsequent authorizations of uses on the reverted land will be at the discretion of the TVA.

Effective January 1, 1994, administrative jurisdiction over the lands identified in appendix A is hereby reverted to the TVA, without consideration of any kind, and the administrative jurisdiction of the Secretary of Agriculture is thereby terminated. The Forest Service is providing written notice to all persons or entities possessing Forest Service permits or other special use authorizations on the lands reverting to the TVA.

Dated: July 15, 1993.

**Marvin Maier,**

*Acting Regional Forester.*

**Appendix A**

All acreages recited herein are approximate.

All those parcels of land lying on the waters of Blue Ridge Lake in Districts 7 and 8, Section 1, and Districts 7 and 8, Section 2, Fannin County, Georgia being all or part of certain of those tracts described by Contract TV 56798 as conveyed from the Tennessee Valley Authority to the Forest Service, Department of Agriculture by Presidential Proclamation dated August 12, 1940 and described as follows:

BRR–9 Wm. Garren, 12.35 acres.
BRR–10 R.C. Miller, 33.73 acres.
BRR–13 Mollie E. Prince—9.4 acres being that part of said tract that lies north of the Morganton Point Boat Ramp.
BRR–14 M.C. Smith, et al., 3.82 acres.
BRR–23 W.H. Collins—25 acres being the parts of said tract in Land Lot 323 District 8, Section 1 which lie between the 1690 and 1700 contour and between the 1690 and 1700 contour plus 150 horizontal feet, and which are not adjacent to other lands administered by the Forest Service.
BRR–24 W.D. Crawford, 3.22 acres.
BRR–26 Wade Allen—0.21 acres being that part of said tract which lies between the 1690 contour and the east line of Land Lot 305, District 8, Section 2.
BRR–30 Wm. B. Lovingood—4 acres being all the islands.
BRR–32 C.L. McClure, 3 acres being all of said tract that lies between the 1690 and 1700 contour in Land Lot 311, District 8, Section 2.
BRR–36 Starkey Flythee, 0.3 acre.

BRR–37 S.H. Green—36.8 acres being all the islands plus all parts of said tract that lie between the 1690 and 1700 contour and between the 1690 and 1700 contour plus 150 horizontal feet, and which are not adjacent to other lands administered by the Forest Service.
BRR–39 Mrs. Mattie Freeman—1.0 acre being all of said tract that lies north of the Morganton Point Boat Ramp.
BRR–40 M.J. Jones—10.1 acres being all the islands and that part of said tract in Land Lot 17, District 7, Section 2 that lies west of the Antioch Cemetery.
BRR–45 W.D. Crawford, 0.67 acre.
BRR–49 T.L. Ray, 4.45 acres.
BRR–68 Willis Wright—0.55 acre being all the islands.
BRR–76 M.J. Green, 0.3 acre.
BRR–80 A.L. Farmer, 0.10 acre.
Total 158.0 acres.

The above listed lands are more particularly delineated on maps which are on file with both the Tennessee Valley Authority and the United States Department of Agriculture, Forest Service.

[FR Doc. 93–17945 Filed 7–27–93; 8:45 am]

BILLING CODE 3410–11–M

## Newberry National Volcanic Monument Advisory Council Meeting Notice

**AGENCY:** Forest Service, USDA.

**ACTION:** Newberry National Volcanic Monument Advisory Council Meeting.

**SUMMARY:** The Newberry National Volcanic Monument Advisory Council will meet on August 26 and 27, 1993 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meetings will begin at 9 am and continue until 4 p.m. each day. Agenda items to be covered include: A tour of the Monument and adjacent areas to better understand the role of fire in this ecosystem, review of alternatives for the management plan, and staff reports on the summer season.

Interested members of the public are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383–4702 or 383–4704.

Dated: July 16, 1993.

**Sally Collins,**

*Deputy Forest Supervisor.*

[FR Doc. 93–17831 Filed 7–27–93; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

[Docket No. 930775-3175]

## Foreign Availability Assessment; Oil Well Perforators

**AGENCY:** Office of Foreign Availability, Bureau of Export Administration, Commerce.

**ACTION:** Notice of initiation of an assessment and request for comments.

**SUMMARY:** Pursuant to section 5(f) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) is providing notice that it has initiated an assessment of foreign availability of oil well perforators to all destinations. Oil well perforators are controlled under paragraph (o) of Export Control Classification Number (ECCN) 1C18A of the Commerce Control List (15 CFR 799.1, Supp. 1). OFA is seeking public comments on the foreign availability of these items worldwide.

**DATES:** The period for submission of information will close August 27, 1993.

**ADDRESSES:** Submit information relating to this foreign availability assessment to: Steven C. Goldman, Director, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room 1087, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Ron Rolfe, Office of Foreign Availability, Department of Commerce, Washington, D.C. 20230, Telephone: (202) 482-5953.

**SUPPLEMENTARY INFORMATION:** Under sections 5(f) and 5(h) of the EAA, OFA assesses the foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) (15 CFR part 730 *et seq.*) establishes the procedures and criteria for determining the foreign availability of goods and technology. OFA is publishing this notice pursuant to sections 5(f)(3) and 5(f)(9) of the EAA.

On June 21, 1993, OFA accepted a foreign availability submission pursuant to section 5(f) of the EAA relating to the decontrol of oil well perforators to all destinations. These items are controlled for national security reasons under paragraph (o) of ECCN 1C18A of the Commerce Control List (CCL) (15 CFR 799.1, Supp. 1): "Items on the International Munitions List."

The oil well industry uses oil well perforators to open up holes in the rock wall surrounding a drill shaft to allow oil to flow up and out of a well. These small devices typically have an outer case of steel, an interior shaped like a cone that is lined with a small amount of explosive (usually military explosives such as RDX, HMX, HNS, etc.), and a second lining of metal (often copper). By using these explosives, oil well perforators can tolerate the high temperatures encountered in underground wells.

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By November 21, 1993, consistent with the requirements of the EAA, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of the item.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address.

The following information would be especially useful:

—Product names and model designations of the U.S. and non-U.S. items;
—Names and locations of non-U.S. sources;
—Key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;
—Non-U.S. sources' production quantities and/or sales of any allegedly comparable item;
—An estimate of market demand and the potential economic impact of the control on the U.S. item;
—Extent to which any allegedly comparable item is based on U.S. technology;
—Product names, model designations, and value of U.S. controlled parts and components incorporated in any allegedly comparable item; and
—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is alleged.

Evidence supporting such relevant information may include, but is not limited to: Foreign manufacturers' catalogs, brochures, or operations or maintenance manuals; articles from reputable trade publications; photographs; and depositions based upon eyewitness accounts. Supplement

No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to OFA separately from any non-confidential information. The top of each page should be marked with the term "Confidential Information." Confidential submissions must include a statement from the submitter that the material is commercial or financial information which the submitter does not customarily release to the public. If OFA will not accept the submission in confidence, it will return it. A non-confidential summary must accompany such submissions of confidential information. OFA will make the summary available for public inspection.

Regardless of whether the submitter has requested confidential treatment, OFA will maintain the confidentiality of any information exempt from disclosure under the Freedom of Information Act (5 U.S.C. 522). This may include communications from agencies of the United States Government and foreign governments which are exempt from disclosure under the Freedom of Information Act.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 482-5653.

Due to the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close August 27, 1993. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

**Iain S. Baird,**

*Acting Assistant Secretary for Export Administration.*

[FR Doc. 93-17992 Filed 7-27-93; 8:45 am]

BILLING CODE 3510-DT-P

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## National Oceanic and Atmospheric Administration

### Marine Mammals

**AGENCY:** National Marine Fisheries Service, (NMFS), NOAA, Commerce.

**ACTION:** Receipt of applications to modify Permits No. 858 (P545) and 801 (P420C).

**SUMMARY:** Notice is hereby given that James R. Gilbert, Ph.D. Professor, Wildlife Department, University of Maine, Orono, ME 04469-5755 and J. Ward Testa, Ph.D. and Michael Castellini, Ph.D., Institute of Marine Science, University of Alaska 99775-1080, have requested a modification to their Permits No. 858 and 801, respectively.

**DATES:** Written comments must be received on or before August 27, 1993.

**ADDRESSES:** The modification request and related documents are available upon written request or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713-2289);

(P545)—Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200); and

(P420C)—Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586-7221).

Written data or views, or requests for a public hearing on these modification requests should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

**SUPPLEMENTARY INFORMATION:** The subject modifications to Permit No. 858 issued on July 6, 1993, and Permit No. 801 issued on October 16, 1992 (57 FR 48512) are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 858 authorizes Dr. James R. Gilbert to conduct population census on an unspecified number of harbor seals (*Phoca vitulina*) on coastal ledges in New England from Isle of Shoals north to the Canadian border using a fixed-wing aircraft.

The Permittee requests a modification of the Permit to include gray seals in his survey design for determining population estimates since gray seals are sometimes found in the study area.

Permit No. 801 authorizes J. Ward Testa, Ph.D. and Michael Castellini, Ph.D. to take up to 1200 Weddell seals (*Leptonychotes weddelli*) of which 550 may be pups, 400 may be adult females and 250 may be adult males, and up to 30 each of crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal (*Mirounga leonina*), and Antarctic fur seal (*Arctocephalus gazella*), may be captured, physically restrained and tagged annually with plastic cattle ear tags; up to 2000 Weddell seals may be harassed annually during research activities, approached up to 10 times to read tags, and during ground censuses; and blood samples and salvaged parts from the species authorized that were found dead from natural causes may be obtained and imported.

The Permit Holders request a modification to expand the research protocol on animals already authorized (no increase in the take authority is requested). Of the 1200 Weddell seals authorized, it is requested that: (1) 650 adults be tagged with subcutaneous transponders of which 20 may have satellite tags (SLTDRs) attached to their pelage, 20 may be injected with oxytocin (intramuscularly) to extract milk up to three times, and 50 may have a vibrissa clipped, a claw marked and pulled, and up to 3 blubber biopsies taken; (2) 30 pups may have one vibrissa clipped once, a claw marked once (not pulled) and blubber biopsies taken up to

3 times, 300 pups may be weighed, blood sampled and have body fat determined once, and 40 pups may be captured, tagged and released up to 2–3 times; (3) 30 each of crabeater, leopard, Ross, and Southern elephant seals may be weighed, blood sampled, have a vibrissa clipped, a claw pulled, and a blubber biopsy sample taken. Unused samples will be curated at the University of Alaska Museum.

Dated: July 22, 1993.

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–17947 Filed 7–27–93; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Performance Review Boards Membership

**AGENCY:** Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), DOD.

**ACTION:** Notice.

**SUMMARY:** Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

**EFFECTIVE DATE:** August 16, 1993.

**ADDRESS:** U.S. Army Senior Executive Service, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), SAMR–CPP(SES), 111 Army Pentagon, Washington, DC 20310–0111.

**FOR FURTHER INFORMATION CONTACT:** Jeanne Raymos, (703) 695–2975.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of title 5, United States Code, requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for Army Materiel Command include: Mr. Edward G. Elgart, Director, Command, Control, Communications and Intelligence Acquisition Center, U.S. Army Communications-Electronics Command, Fort Monmouth, NJ.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–17904 Filed 7–27–93; 8:45 am]

BILLING CODE 3710-08-M

### Department of the Navy

### Intent to Prepare an Environmental Impact Statement for the Construction of Facilities for Two Future Replacement Nimitz Class Aircraft Carriers at Naval Air Station North Island, San Diego, CA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the proposed facilities for homeporting of two future replacement Nimitz Class Aircraft Carriers at Naval Air Station (NAS) North Island, San Diego, California.

As part of its long-range planning program, the Navy is studying the feasibility of constructing facilities needed to provide homeport and transient berthing for as many as three nuclear-powered aircraft carriers at NAS North Island. Today, NAS North Island has the capacity to temporarily support one nuclear-powered and two conventionally powered aircraft carriers, or three conventionally powered carriers. The two carriers currently homeported at NAS North Island are conventionally powered. As the Navy changes to a smaller, more modern fleet, older conventionally powered aircraft carriers will be decommissioned and replaced with modern nuclear-powered aircraft carriers, which require additional support facilities.

Mechanical and electrical utilities, additional buildings, pier construction, dredging and bay fill will be required to support the proposed berthing plan.

The alternatives currently identified for consideration in the EIS are (1) no action, (2) alternative sediment disposal sites, (3) alternative pier locations at NAS North Island, and (4) the proposed action. Environmental issues which will be discussed in the EIS include: Methods of dredging; methods of disposal (bay fill, beach replenishment, and open water at LA–5); in-water construction; water quality impacts resulting from dredging and sediment disposal; potential impacts to California least tern, brown pelican, migratory waterfowl, and eelgrass habitat; and potential impacts to local traffic and air quality, socioeconomics, and listed cultural resources. Issue analysis will include an evaluation of direct, indirect, short-term, long-term, and cumulative impacts associated with the proposed action. The decision to implement the proposed action or any alternatives for the proposed action will not be made until the environmental (NEPA) process is complete.

The Navy will hold a public scoping meeting on August 17, 1993, at 7 p.m. in the Coronado High School Auditorium, 650 D Avenue, Coronado, California. This meeting will be advertised in San Diego area newspapers.

A formal presentation will precede public testimony. Navy representatives will be available at the scoping meeting to receive comments from the public. It is important that federal, state, and local agencies, as well as interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than August 31, 1993, to: Commanding Officer, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132–5178, Attn: Code 232.

Dated: July 23, 1993.

**Michael P. Rummel,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 93–18005 Filed 7–27–93; 8:45 am]

BILLING CODE 3810-AE-M

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

**[Recommendation 93–5]**

### Hanford Waste Tanks Characterization Studies

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice; recommendation.

**SUMMARY:** The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning improvements in the waste characterization program for the high level waste storage tanks at the Hanford Site. The Board requests public comments on this recommendation.

**DATES:** Comments, data, views, or arguments concerning this recommendation are due on or before August 27, 1993.

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**ADDRESSES:** Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: July 21, 1993.

John T. Conway,
*Chairman.*

**Hanford Waste Tanks Characterization Studies**

Dated: July 19, 1993.

Since its beginning almost four years ago, the Board has assigned one of its highest priorities to assurance of safety at the high level nuclear waste storage tanks at the Hanford Site. The Board addressed two of its sets of recommendations (90–3 and 90–7) to potential hazards associated with tanks containing ferrocyanide compounds and pointed to the need for action in connection with tank 101–SY, which periodically vents flammable mixtures of nitrous oxide and hydrogen gas. In Recommendation 90–7, the Board emphasized the urgent need for more rapid and complete sampling and analysis of tank wastes. The wastes in the Hanford tanks differ markedly from tank to tank. Identification of what specifically is in each tank is essential and urgent. Without timely characterization of the wastes, the nature of the risks associated with the tanks cannot be fully assessed and, where necessary, mitigated. Further, until the characteristics of the wastes are known, final methods for tank waste monitoring, retrieval, transport, and treatment cannot be realistically established.

The Board has repeatedly expressed its dismay at the continued slow rate of conduct of this characterization program and has urged a greater rate of progress. At last count only 22 of the 177 tanks on the site have been sampled. Only four of those sampled were among the 54 tanks on the watch list of tanks that generate the greatest safety concerns. The number of samples per tank continues to be insufficient to provide adequate characterization of the full tank. While the published schedules for sampling and analysis promise improvement, they seem optimistic when viewed against the record to date. They appear to present wishes rather than anticipated activities.

Two sets of problems appear to be principal contributors to the slow pace of characterization of the contents of the tanks. The first is a complex of factors acting to impede access to the interiors of the tanks and extraction of samples of their contents. The second is the exhaustive set of measurements made on each sample, along with limitations on laboratory capability for completing these measurements. The Board notes that measurements made for safety purposes do not necessarily receive priority over those done for other reasons, such as satisfaction of formal EPA-related requirements for final waste disposition.

The Board believes that accelerating the pace of the program of characterizing the contents of Hanford's high level nuclear waste tanks is important to nuclear safety at this important defense site. This view is shared by other experts, including DOE's own "Red Team", which reviewed the waste characterization program for the Hanford Tank Farm (DOE–EM, July 1992, Independent Technical Review of Hanford Tank Farm Operations). Characterization is essential for ensuring safety in the near term during custodial management and remedial activities, and also in the long term for advancing the development of permanent solutions to the high level waste problems at Hanford.

In addition to the matter of acceleration and reprioritization of the sampling schedules, the Board is also concerned about the sampling effort itself. The Board notes that a recently released DOE/RL audit (DOE–RL/OPA Audit 93–02, April 1993) of the sampling programs revealed significant weaknesses in the control, management, and technical implementation of core sampling, laboratory, and supporting activities.

Because the failure to vigorously pursue tank waste characterization raises important health and safety issues, DOE needs to take action to accelerate and strengthen the management of the characterization effort to ensure adequate protection of public health and safety.

Therefore, the Board recommends that DOE:

1. Undertake a comprehensive reexamination and restructuring of the characterization effort with the objectives of accelerating sampling schedules, strengthening technical management of the effort, and completing safety-related sampling and analysis of watch list tanks within a target period of two years, and the remainder of the tanks by a year later;

a. In accordance with the above, give priority in the schedule of tanks to be sampled to the watch list tanks and others with identified safety problems, and priority to the chemical analyses providing information important to ensuring safety in the near term during the period of custodial management. Other analyses, required by statutes such as the Resource Conservation and Recovery Act prior to final disposition of the waste, should not be cause for delay of safety-related analyses. In most cases, analyses needed for long-term disposition may be postponed until more pressing safety-related analyses are completed.

b. Reexamine protocols for gaining access to the tanks for sampling with the objective of simplifying documentation and approval requirements.

c. Increase the laboratory capacity and activities dedicated to tank sample analysis:

(i) Expedite efforts to obtain and begin utilizing additional sampling and analytical equipment now being procured, and the training of personnel needed for an enlarged through-put capacity.

(ii) Explore availability and utility of laboratory services on- and off-site, such as Hanford's Fuel Materials and Examination Facility and the INEL and LANL laboratories, for accelerating the waste characterization effort.

2. Integrate the characterization effort into the systems engineering effort for the Tank Waste Remediation System:

a. Schedule tank sampling consistent with engineering and planning for removal, pre-treatment, and vitrification of the tank wastes.

b. Critically examine the list of chemical analyses done on samples to establish the smallest set needed to satisfy safety requirements.

c. Strengthen the management and conduct of the sampling operations.

**Appendix—Transmittal Letter to Secretary of Energy**

July 19, 1993.

The Honorable Hazel R. O'Leary,
*Secretary of Energy, Washington, DC 20585.*

Dear Secretary O'Leary: On July 19, 1993, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 93–5 which is enclosed for consideration. Recommendation 93–5 deals with Hanford Waste Tanks Characterization Studies.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway,

*Chairman.*

[FR Doc. 93–17940 Filed 7–27–93; 8:45 am]

BILLING CODE 6360–XD–M

## Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 4, 1993. The hearing will be part of the Commission's business meeting which is open to the public and scheduled to begin at 1:30 p.m. in room 107/108 of the meeting facility at Penn State Great Valley, 30 East Swedesford Road, Malvern, Pennsylvania.

An informal conference among the Commissioners and staff will be open for public observation at 10 a.m. at the same location and will include discussions of the Delaware Estuary Model and a status report by the Commission's Ground Water Advisory Committee.

The subjects of the hearing will be as follows:

*Amendment of Renewal Procedures for Existing Dockets and Protected Areas Permits for Ground Water Withdrawal.* On February 17, 1993 the Commission adopted a proposal by its Ground Water Advisory Committee which set renewal periods for new surface and ground water docket approvals including Protected Area permits at a maximum of ten years, with provisions for extension beyond that based on an applicant's satisfactory demonstration of need. Previously, dockets for ground water withdrawal were issued for a maximum of five years. Following further deliberation, the Committee is now recommending that the Commission allow the expiration dates of existing dockets and Protected Area permits for ground water withdrawals issued prior to February 18, 1993 to be extended to a maximum of ten years from the original date of issuance in order to provide for equitable treatment of all ground water users. The proposed docket and Protected Area permit extensions would be subject to public notice and hearing and would be coordinated with the permitting requirements of the individual Basin states. Finally, the proposal calls upon the Executive Director to notify all docket and Protected Area permit holders potentially affected by this amendment to determine their eligibility for extension.

*Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact*

1. *Holdover Project: Wilmington Suburban Water Corporation D–91–72 CP.* A surface water supply project that entails an increase of withdrawal at the applicant's existing White Clay Creek intakes adjacent to its Stanton water treatment plant. The applicant provides water to portions of northern New Castle County and requests an increase in its water withdrawal from 16 million gallons per day (mgd) to 30 mgd. The project is located just off First State Boulevard in Stanton, New Castle County, Delaware. This hearing continues that of June 23, 1993.

2. *South Jersey Port Corporation (Beckett St. Terminal Expansion) D–91–17.* An application for approval to extend the existing Berth No. 4 of the Beckett Street Terminal on the Delaware River by 350 feet to allow berthing of more and larger vessels. The expansion would involve construction of a 100 ft. wide by 350 ft. long high deck pier structure, supported by piles. The outshore area of the extension will be dredged to a depth of 40 feet below mean low water by the removal of 80,000 cubic yards of river sediment. The terminal is located in the City of Camden, Camden County, New Jersey.

3. *New Jersey-American Water Company D–92–77 CP.* A proposed new surface water intake on the Delaware River to withdraw an average of 40 mgd for the design year 2000 projected demand. The water will be treated at a proposed water filtration plant to be located just off Taylor Lane in Delran, Burlington County, New Jersey. Finished water will be conveyed via new water main construction and interconnections to other purveyors, townships, boroughs and cities located in the regional tri-county service area of Burlington, Camden and Gloucester Counties, New Jersey. The proposed raw water intake will be located in Cinnaminson Township, Burlington County, approximately 4000 feet downstream of the Rancocas Creek confluence with the Delaware River and almost directly across the river from the City of Philadelphia's intake for the Baxter Water Treatment Plant at Torresdale. The intake will consist of a series of six wedge-wire type screens and two 54-inch diameter pipelines located approximately 850 feet offshore and 300 feet outside of the river's deep navigation channel. The intake capacity of each pipe is 50 mgd, the projected peak withdrawal rate.

4. *Musconetcong Sewerage Authority D–92–80 CP.* A project to expand the applicant's existing 2.275 mgd capacity tertiary level sewage treatment plant (STP) and increase the total average daily treatment capacity to 3.63 mgd with approximately 0.65 mgd being wastewater imported from the Raritan River Basin. The STP will continue to serve the Boroughs of Stanhope and Netcong, a portion of Mt. Olive Township, and the Landing Shore Hills and Port Morris areas of Roxbury Township. The expansion project will enable the STP to also serve the Borough of Mount Arlington and new demand in Mt. Olive (from which wastewater will be imported) and Roxbury Townships. The STP will continue to discharge to the Musconetcong River and is located in Mt. Olive Township, Morris County, New Jersey.

5. *Borough of Sellersville D–92–84 CP.* A revised notice of application for approval of a ground water withdrawal project to supply up to 7.5 mg/30 days of water to the applicant's distribution system from new Well No. 6, and to reduce the existing withdrawal limit from all wells of 39 mg/30 days to 20.54 mg/30 days. The project is located in West Rockhill Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Riverside Sewerage Authority D–93–2 CP.* A project to upgrade the applicant's existing secondary level 1.0 mgd sewage treatment plant (STP), provide tertiary filtration, and relocate its outfall from Tar Kiln Run, a tributary of Rancocas Creek, to a point discharging directly to Rancocas Creek in Water Quality Zone 2. The STP will continue to serve the Township of Riverside, and a portion of Delran Township, both in Burlington County, New Jersey and is located off Monroe Street, just south of Rancocas Creek in Riverside Township.

7. *Borough of Fleetwood D–93–22 CP.* An application for approval of a ground water withdrawal project to supply up to 9.1 mg/30 days of water to the applicant's distribution system from new Well No. 14, and to increase the existing withdrawal limit of 13.5 mg/30 days from all wells to 22 mg/30 days. The project is located in Ruscombmanor Township, Berks County, Pennsylvania.

8. *East Vincent Municipal Authority D–93–32 CP.* A project to acquire and modify a sewage treatment plant (STP) to serve as the Township Regional Sewage facility for East Vincent Township. The applicant proposes to take over an existing 0.5 mgd STP currently owned by the Southeastern Pennsylvania Veterans Center and

operated by the Commonwealth of Pennsylvania. The modified STP will continue to provide secondary biological treatment at 0.5 mgd and discharge to the Schuylkill River. The STP is situated just south of the Pennsylvania Railroad and north of Commonwealth Drive, in East Vincent Township, Chester County, Pennsylvania.

9. *White Haven Municipal Authority D–93–35 CP.* A project to modify and expand the applicant's existing sewage treatment plant (STP) from a 0.162 mgd trickling filter process to a 0.34 mgd activated sludge process. The expanded STP will continue to serve White Haven Borough and a portion of the adjacent Township of Dennison. The STP is located in the Borough of White Haven, 300 feet south of Route 940 on the west bank of the Lehigh River, to which it will continue to discharge, in Luzerne County, Pennsylvania.

10. *United Cornstock, Inc. D–93–40.* An application for approval of a ground water withdrawal project to supply up to 17.28 mg/30 days of water to the applicant's industrial facility from new Well No. 1, and to limit the withdrawal from all wells to 17.28 mg/30 days. The project is located in the City of Reading, Berks County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: July 20, 1993.

**Susan M. Weisman,**

*Secretary.*

[FR Doc. 93–17901 Filed 7–27–93; 8:45 am]

BILLING CODE 6360–01–P

## DEPARTMENT OF EDUCATION

**[CFDA Nos.: 84.261A, 84.142, 84.094B, 84.251]**

### Grants and Cooperative Agreements; Dwight D. Eisenhower Leadership Development Program

**AGENCY:** Department of Education.

**ACTION:** Extension of closing dates.

**SUMMARY:** The Department of Education published notices in the **Federal Register** inviting applications for new awards for fiscal year 1993 for the Dwight D. Eisenhower Leadership Development Program, the College Facilities Loan Program, the Patricia Roberts Harris Fellowship Program, and the Foreign Periodicals Program. Detailed information concerning these competitions was included in each notice.

The purpose of this notice is to allow those applicants affected by the recent flooding in the Midwest additional time to submit their applications. Applicants who reside in areas designated by the President as adversely affected by a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) between July 1 and the original closing date may take advantage of this extension. Applicants should indicate in their applications that they reside in an adversely affected area as designated by the President.

The deadline for receipt of applications is extended for the following programs.

**Note:** Applications must be received by the extended due date—*not* postmarked by that date. Applications received after the extension will not be accepted.

• *CFDA 84.261A.* The notice inviting applications for the Dwight D. Eisenhower Leadership Development Program was published in the **Federal Register** on May 28, 1993 (58 FR 31080–99). The extended deadline for receipt of applications is August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Donald N. Bigelow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3052, ROB–3, Washington, DC 20202–5249. Telephone: (202) 708–8813.

• *CFDA 84.142.* The notice inviting applications for the College Facilities Loan Program was published in the **Federal Register** on June 3, 1993 (58 FR 31616). The extended deadline for receipt of applications is August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** John D. Adams or Anne S. Young, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202–5339. Telephone: (202) 708–9417 or (202) 708–9241.

• *CFDA 84.094B.* The notice inviting applications for the Patricia Roberts Harris Fellowship Program was published in the **Federal Register** on June 16, 1993 (58 FR 33312–13). The extended deadline for receipt of applications is August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Cosette Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–7127.

• *CFDA 84.251.* The notice inviting applications for the Foreign Periodicals Program was published in the **Federal Register** on May 18, 1993 (58 FR 28956). The extended deadline for receipt of applications is August 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Paul, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3052, ROB–3, Washington, DC 20202–5331. Telephone: (202) 708–7283.

Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: July 23, 1993.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 93–18067 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

**[CFDA No.: 84.021A]**

### Fulbright-Hays Group Projects Abroad Program

Notice inviting applications for new awards for fiscal year (FY) 1994.

*Purpose of Program:* The Group Projects Abroad program provides grants to institutions of higher education, State departments of education, and private nonprofit educational organizations to support oversees projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, or group research or study.

*Eligible Applicants:* Institutions of higher education, State departments of education, private nonprofit educational organizations, and consortia of such institutions, departments, and organizations.

*Deadline for Transmittal of Applications:* October 22, 1993.

*Applications Available:* September 2, 1993.

*Available Funds:* $1,440,000.

*Estimated Range of Awards:* $35,000 to $70,000.

*Estimated Average Size of Awards:* $60,000.

*Estimated Number of Awards:* 24.

*Project Period:* Five weeks for short-term seminar projects, six to eight weeks for curriculum development projects, and two to twelve months for group research or study projects.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and

86; and (b) The regulations for this program in 34 CFR Part 664.

**Priorities**

*Competitive Priority*

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.32, the Secretary gives preference to applications that meet the following competitive priority: Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools. The Secretary awards up to 5 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

*Absolute Priorities*

Under 34 CFR 75.105(c)(3) and 34 CFR 664.32, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this program only applications that meet one of these absolute priorities. The priorities are the following world areas:

*Absolute Priority 1—Sub-Saharan Africa.*

*Absolute Priority 2—Latin America and the Caribbean.*

*Absolute Priority 3—East Asia.*

*Absolute Priority 4—Southeast Asia and the Pacific.*

*Absolute Priority 5—East Central Europe.* Poland, Czechoslovakia, Hungary, Bulgaria, Albania, Rumania, and the new republics that were formerly part of Yugoslavia, the Baltic States, and other new republics of the former Union of Soviet Socialist Republics.

*Absolute Priority 6—The Near East and North Africa.*

*Absolute Priority 7—South Asia.*

*For Applications or Information Contact:* Lungching Chiao, U.S. Department of Education, 400 Maryland Avenue, SW., room 3052, ROB–3, Washington, DC 20202–5332. Telephone: (202) 708–7283. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Program Authority:** 22 U.S.C. 2452(b)(6).

Dated: July 22, 1993.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 93–17957 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–U

**International Education Programs: Undergraduate International Studies and Foreign Language Program, the International Research and Studies Program, and the Business and International Education Program**

**AGENCY:** Department of Education.

**ACTION:** Combined notice inviting applications for new awards for fiscal year (FY) 1994.

**SUMMARY:** Applications are invited for new awards for FY 1994 under title VI of the Higher Education Act of 1965, as amended (the HEA), for the Undergraduate International Studies and Foreign Language Program, the International Research and Studies Program, and the Business and International Education Program. These programs support National Education Goal 5, which calls for all Americans to possess the knowledge and skills necessary to compete in a global economy.

**ADDRESSES:** The addresses for obtaining applications for, or further information about, these three programs are in the respective announcements for the programs. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

INTERNATIONAL EDUCATION PROGRAMS

| Title and CFDA number | Applications available | Application deadline date | Deadline for intergovernmental review | Available funds | Estimated range of awards | Estimated average size of awards | Estimated number of awards |
|---|---|---|---|---|---|---|---|
| Undergraduate International Studies and Foreign Language Program (84.016) | 8/27/93 | 11/5/93 | 1/7/94 | $2,135,000 | $30,000–85,000 | $61,000 | 35 |
| International Research and Studies Program (84.017) | 9/7/93 | 11/5/93 | N/A | 1,000,000 | 30,000–85,000 | 70,000 | 10 |
| Business and International Education Program (84.153) | 8/27/93 | 11/8/93 | 1/10/94 | 1,575,000 | 40,000–100,000 | 75,000 | 21 |

NOTE: The Department is not bound by any estimates in this notice.

**CFDA No. 84.016—Undergraduate International Studies and Foreign Language Program**

*Purpose of Program:* Provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

*Eligible Applicants:* Institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 655 and 658, as amended in the **Federal Register** on June 10, 1993 (58 FR 32574-78).

*Priority:* Under 34 CFR 75.105(c)(2)(i) and section 604(a)(4), title VI of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Applications from institutions of higher education or combinations of institutions that require entering students to have successfully completed at least 2 years of secondary school foreign language instruction or that require each graduating student to earn 2 years of postsecondary credit in a foreign language (or have demonstrated equivalent competence in the foreign language) or, in the case of a two-year degree granting institution, offer 2 years of postsecondary credit in a foreign language.

*Project Period:* 24 to 36 months.

*Matching Requirements:* An institutional grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year. This is a new statutory requirement under the Higher Education Amendments of 1992.

*For Applications or Information Contact:* Christine Corey, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB–3, Washington, DC 20202–5332. Telephone: (202) 708–7283.

**Program Authority:** 20 U.S.C. 1124.

**CFDA No. 84.017—International Research and Studies Program**

*Purpose of Program:* Provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields to provide full understanding of the places in which the modern foreign languages are commonly used.

*Eligible Applicants:* Public and private agencies, organizations, institutions, and individuals.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 655 and 660, as amended in the **Federal Register** on June 10, 1993 (58 FR 32574-78.

*Project Period:* 12 to 36 months.

*For Applications or Information Contact:* Jose L. Martinez, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB–3, Washington, DC 20202–5331. Telephone: (202) 708–9297.

**Program Authority:** 20 U.S.C. 1125.

**CFDA No. 84.153—Business and International Education Program**

*Purpose of Program:* Provides grants to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

*Eligible Applicants:* Institutions of higher education that have entered into agreements with business enterprises, trade organizations or associations engaged in international economic activity.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 655 and 661, as amended in the **Federal Register** on June 10, 1993 (58 FR 32574–78).

*Project Period:* 24 months.

*Matching Requirements:* A grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

*For Applications or Information Contact:* Susanna C. Easton, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB–3, Washington, DC 20202–5332. Telephone: (202) 708–7283.

**Program Authority:** 20 U.S.C. 1130-1130b.

Dated: July 22, 1993.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 93–17956 Filed 7–27–93; 8:45 am]

BILLING CODE 4000-01-P

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**(CFDA No.: 84.264A)**

**Rehabilitation Continuing Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994**

*Purpose of Program:* To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

*Eligible Applicants:* State agencies and other public or nonprofit agencies and organizations, including institutions of higher education.

*Deadline for Transmittal of Applications:* September 30, 1993.

*Deadline for Intergovernmental Review:* November 30, 1993.

*Applications Available:* August 17, 1993.

*Available Funds:* $1,000,000.

*Estimated Range of Awards:* $275,000-$375,000.

**Note:** Applicants will be subject to a four percent cost-share requirement on awards.

*Estimated Average Size of Awards:* $325,000.

*Estimated Number of Awards:* 3.

**Note:** Applications are invited for the provision of training for Department of Education Regions I and IV only. The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 389.

The Rehabilitation Act Amendments of 1992, enacted October 29, 1992, also apply. Specifically note that under section 21(b)(5) of the Rehabilitation Act, as amended, applicants are required to demonstrate how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

*For Applications:* Telephone (202) 205-9343. Individuals who use a telecommunications device for the deaf

(TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*For Further Information Contact:* Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 205-9481.

**Program Authority:** 29 U.S.C. 774.

Dated: July 22, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93-17964 Filed 7-27-93; 8:45 am]

BILLING CODE 4000-01-P

## Office of Human Resources and Administration

### Membership of the Performance Review Board

**AGENCY:** Department of Education.

**ACTION:** Notice of Membership of the Performance Review Board (PRB).

**SUMMARY:** Notice is hereby given of the names of members of the Department of Education's PRB.

**FOR FURTHER INFORMATION CONTACT:** Althea Watson, Director, Executive Resources Staff, Personnel Management Service, Office of Human Resources and Administration, Department of Education, room 1187-A, FOB-6, 400 Maryland Avenue, SW., Washington DC 20202, Telephone: (202) 401-0546. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Senior Executive Service (SES) PRBs. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive.

**Membership**

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Veronica Trietsch, Chair, Philip Link, Co-chair, Carol Cichowski, Thomas Skelly, Dick Hays, Jeanne Griffith, Mary Jean LeTendre, Alicia Coro, William Smith, Howard Hjelm, Susan Craig, Maureen McLaughlin, Jeanette Lim, Gretchen Schwarz, Sally Kirkgasler, and Gary Rasmussen. The following executives have been selected to serve as alternate members of the Performance Review Board: Valerie Plisko, Carl O'Riley, John Kristy, Allen Jackson, Charles Hansen, Andrew Pepin, and Therese Dozier.

Dated: July 22, 1993.

**Veronica D. Trietsch,**

*Acting Assistant Secretary for Human Resources and Administration.*

[FR Doc. 93-17955 Filed 7-27-93; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

**[Docket EA-63-B]**

### Application To Amend Export Authorization

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application.

**SUMMARY:** Northern States Power Company has applied to amend the electricity export authorization contained in Docket No. IE-78-6 in order to increase the capability to export electricity to Canada.

**DATES:** Comments, protests or requests to intervene must be submitted on or before August 27, 1993.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Docket Number EA-63-A should appear clearly on the envelope and the document contained therein.

**FOR FURTHER INFORMATION CONTACT:** William H. Freeman (Program Office) 202-586-5883 or Lise Howe (Program Attorney) 202-586-2900.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On July 16, 1993, Northern States Power Company (NSP) applied to the Office of Fossil Energy of the Department of Energy (DOE) to amend the electricity export authorization contained in Docket No. IE-78-6 authorizing exports of electric energy to Canada. As a part of the application, NSP supplied a copy of a Diversity Exchange Agreement (Agreement) between NSP and Manitoba Hydro dated February 1, 1991, providing for the seasonal exchange of 200 megawatts (MW) of electrical power starting on May 1, 1995, and ending April 30, 2015. Under the terms of the Agreement, Manitoba Hydro will make 200 MW available to NSP at all times during the summer season and NSP will make 200 MW available to Manitoba Hydro at all times during the winter season. NSP's need for amendment of the export authorization is occasioned by this Diversity Exchange Agreement.

**Procedural Matters**

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with James Alders, Manager, New Facility Permitting, and Michael Connelly, Attorney, Northern States Power Company, 414 Nicollet Mall, Minneapolis, Minnesota 55401.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE on whether the proposed action will impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued or amended, the environmental impacts of the proposed DOE action

must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA process is a cooperative, nonadversarial process involving members of the public, state governments and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on July 21, 1991.

**Anthony J. Como,**

*Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.*

[FR Doc. 93–18017 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–M

## Economic Regulatory Administration

### Proposed Consent Order with Revere Petroleum Corporation and Richard E. Dobyns

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Final action on proposed consent order.

**SUMMARY:** The Department of Energy (DOE) has determined that a proposed Consent Order between DOE and Revere Petroleum Corporation (Revere) and Richard E. Dobyns, which was published for public comment in 58 FR 32923 (June 14, 1993), shall be made final. The Consent Order resolves matters relating to Revere's and Dobyns' compliance with the federal petroleum price and allocation regulations for the period April 1, 1979 through March 31, 1980. To resolve these matters, Revere and Dobyns will pay to the DOE $50,000.00, plus the net proceeds resulting from the liquidation of Revere's assets, provided the latter amount will be at least $800,000; additionally, DOE receives fifty percent (50%) of any liquidation proceeds over $1,200,000.00. The liquidation must occur within nine (9) months of the publication of this notice. Following receipt of the settlement monies, the Economic Regulatory Administration (ERA) will petition the DOE's Office of Hearings and Appeals to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V. Those procedures provide persons who claim to have suffered injury from the alleged overcharges with the opportunity to submit claims for payment.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 820 First Street, NE., Suite 810, Washington, DC 20585, (202) 523–3045.

**SUPPLEMENTARY INFORMATION:** On June 14, 1993, ERA issued a Notice announcing a proposed Consent Order between DOE and Revere and Dobyns, which would resolve matters relating to their compliance with the federal petroleum price and allocation regulations for the period April 1, 1979 through March 31, 1980. 58 FR 32923. That Notice both summarized and contained the complete text of the proposed Consent Order, which requires Revere and Dobyns to pay to DOE (i) $20,000 within fifteen (15) days, and $30,000 within sixty (60) days, of the effective date of the Consent Order, which is the publication date of this notice; and (ii) at least $800,000 from the liquidation of Revere's assets, which must occur within nine (9) months of the effective date of the Consent Order, plus half of any proceeds of the asset liquidation above $1,200,000.

The June 14 Notice provided information regarding Revere's and Dobyns' potential liability for violations of the anti-"layering" rule (10 CFR 212.186) in connection with Revere's resales of crude oil at issue in a Remedial Order issued May 29, 1992. The Notice also detailed the considerations which underlay the ERA's preliminary view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. No comments were received.

Inasmuch as there are no bases proffered for rejecting or modifying the settlement as proposed, the DOE has determined that it is in the best interest of the public to make the proposed Consent Order final without change. By this Notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DOE and Revere and Dobyns is made a final Order of the Department of Energy, effective on the date of publication of this Notice in the **Federal Register**.

Issued in Washington, DC, on July 21, 1993.

**Milton C. Lorenz,**

*Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.*

[FR Doc. 93–18016 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–M

## Energy Information Administration

### Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** The energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before August 27, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be

telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.).

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for a review was:

1. Emergency Planning and Operations.
2. OE–411
3. 1901–0286
4. Coordinated Regional Bulk Power Supply Program
5. Extension
6. Annually
7. Voluntary
8. State or local governments, Businesses or other for-profit, Federal agencies or employees
9. 795 respondents
10. 1 response
11. 25 hours per response
12. 20,205 hours
13. The OE–411 provides a single, comprehensive source of information on current and planned electric power supply for the U.S. The data are used to evaluate the current and projected reliability of bulk electric power supply, and the effects of unforseen changes in powerplant construction schedules. Ten Regional Electric Reliability Councils submit.

**Statutory Authority:** Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44 United State Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 93–18018 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–M

## Office of Fossil Energy

**[FE Docket No. 93–57–NG]**

### The Washington Water Power Co.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Washington Water Power Company authorization to import, at Kingsgate, British Columbia, up to 61,400 Mcf per day of Canadian natural gas over a period of ten years, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18015 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER93–714–000, et al.]**

### Great Bay Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 21, 1993.

Take notice that the following filings have been made with the Commission:

**1. Great Bay Power Corp.**

[Docket No. ER93–714–000]

Take notice that on July 6, 1993, Great Bay Power Corporation (Great Bay) tendered for filing its executed copy of the Agreement for Short-Term Sales to Long Island Lighting Company.

*Comment date:* August 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**2. Montana-Dakota Utilities Co.**

[Docket No. ER93–790–000]

Take notice that on July 15, 1993, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing a request for authority to supplement its contract with the United States Department of Energy, Western Area Power Administration (Western) to accommodate the transfer of energy to Montana-Dakota's eastern system through Western's Miles City Converter Station.

Montana-Dakota requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the amended contract be made effective as of July 1, 1993.

*Comment date:* August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

**3. Tucson Electric Power Co.**

[Docket No. ER93–355–000]

Take notice that on July 20, 1993, Tucson Electric Power Company (Tucson) tendered for filing certain cost support data, in addition to a related Amendment No. 2 to an Agreement for the Sale/Purchase of Energy (the Agreement) between Tucson and Louis Dreyfus Electric Power Inc. (LDEP). The Agreement provides for the sale and purchase of capacity and energy between Tucson and LDEP under flexible arrangements commencing February 1993.

The filing is being made to (i) include Tucson's response to certain cost support and data requests received from the Commission's Staff and (ii) tender an Amendment No. 2 to the Agreement which reflects a change in the method of determining the ceiling rate under the pricing provisions of the Agreement.

The parties request an effective date of February 3, 1993, and therefore request waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

*Comment date:* August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

**4. Minnesota Power & Light Co. and Northern States Power Co.**

[Docket No. EC93–19–000]

Take notice that on July 14, 1993, Minnesota Power & Light Company and Northern States Power Company tendered for filing a joint application for authorization under section 203 of the Federal Power Act to sell and purchase, respectively, certain 500 kV facilities at the Forbes substation in St. Louis County, Minnesota.

*Comment date:* August 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**5. Great Bay Power Corp.**

[Docket No. ER93–721–000]

Take notice that on July 6, 1993, Great Bay Power Corporation (Great Bay) tendered for filing its executed copy of an Agreement for Short-Term Sales to Bangor Hydro-Electric Company.

*Comment date:* August 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

**8. Pennsylvania Power & Light**

[Docket No. ER93-804-000]

Take notice that on July 15, 1993, Pennsylvania Power & Light Company (PP&L) tendered for filing a Fifth Supplement to the Capacity and Energy Sales Agreement between PP&L and Baltimore Gas & Electric Company (BG&E) which Supplement is dated July 13, 1993. The only change made by the Supplement to the Agreement is to lower the rate of return on equity from 12.75% to 11%, which change implements a settlement reached at Docket No. ER93-268-000.

PP&L has requested an effective date of July 15, 1993 for the Supplement pursuant to Commission precedent under the Central Hudson doctrine.

PP&L states that a copy of its filing was served on the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, and BG&E.

*Comment date:* August 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

**7. Madison Gas and Electric Co. and Wisconsin Power and Light Co.**

[Docket No. EC93-18-000]

Take notice that on July 12, 1993, Madison Gas and Electric Company and Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission an application for disposition of an acquisition of facilities by sale and transfer, respectively. The facilities consist of a 138-69-kV transformer.

Copies of the filing have been provided to the Public Service Commission of Wisconsin.

*Comment date:* August 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

**8. Wisconsin Public Service Corp.**

[Docket No. EL93-54-000]

Take notice that on July 12, 1993, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission a petition for waiver of fuel clause regulations to allow the refund to its wholesale customers of Department of Energy refunds to WPSC for past spent nuclear fuel disposal fees. The customers affected by WPSC's filing are:

| Customer | Rate category | Rate schedule or tariff designation |
|---|---|---|
| Alger Delta Electric | W-1 | Tariff, original vol. 2 service agreement No. 8. |
| Washington Island Electric Cooperative | W-1 | Tariff, original vol. 2 service agreement No. 5. |
| Village of Daggett | W-1 | Tariff, original vol. 2 service agreement No. 3. |
| City of Stephenson | W-1 | Tariff, original vol. 2 service agreement No. 4. |
| Village of Stratford | W-1 | Tariff, original vol. 2 service agreement No. 6. |
| Wisconsin Public Power, Inc. System | W-1 | Tariff, original vol. 2 service agreement No. 1. |
| City of Wisconsin Rapids | W-1 | Tariff, original vol. 2 service agreement No. 7. |
| Consolidated Water Power | W-3 | Tariff, original vol. 3 service agreement No. 1. |
| City of Manitowoc | W-2 | Tariff, original vol. 1 service agreement No. 5. |
| City of Marshfield | | Supplement No. 3 to rate schedule—FERC No. 51. |

WPSC requests that the Commission waive the provision of 18 CFR 35.14 of its regulations to permit the refunds to take place. WPSC requests an effective date of the beginning of the first full billing cycle after 60 days after the Commission grants the waiver. WPSC requests that the Commission act on the petition within sixty days of the filing date.

WPSC states that a copy of the filing has been served on the affected customers and on the public service commissions of Michigan and Wisconsin and that the filing has been posted as required by the Commission's regulations.

*Comment date:* August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17967 Filed 7-27-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP93-157-000]

**Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

July 22, 1993.

Take notice that on July 20, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following revised tariff sheets, with proposed effective date of August 1, 1993:

Second Revised Sheet No. 11
Sixth Revised Sheet No. 138
Third Revised Sheet No. 139

Carnegie states that it is filing the above tariff sheets as a limited application pursuant to section 4 of the Natural Gas Act to permit Carnegie to flow through and bill to its customers, on an as-billed basis, amounts direct billed to Carnegie by Texas Eastern Transmission Corporation (Texas Eastern) as costs associated with Texas Eastern's contract assignment program (CAP), including amounts billed to Carnegie pursuant to Texas Eastern's filing of May 26, 1993, in Docket No. RP93-122-000 which was accepted by the Commission in an order June 30, 1993, citing *Texas Eastern Transmission Corp.*, 63 FERC ¶ 61,350 (1993).

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 29, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17936 Filed 7–28–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP93–156–000]

## Iroquois Gas Transmission System, L.P.; Proposed Changes in FERC Gas Tariff

July 22, 1993.

Take notice that on July 20, 1993, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective on August 19, 1993:

Sixth Revised Sheet No. 4
Second Revised Sheet No. 20
Third Revised Sheet No. 21
Fourth Revised Sheet No. 22
Second Revised Sheet No. 22–A
Third Revised Sheet No. 35
Second Revised Sheet No. 36

Because Iroquois has filed its compliance filing in Docket No. RS92–17 and anticipates an effective date of September 3, 1993, Iroquois also tendered for filing the following revised tariff sheets in First Revised Volume No. 1 of its FERC Gas Tariff to be effective September 1, 1993:

First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 45
First Revised Sheet No. 46
First Revised Sheet No. 47
First Revised Sheet No. 48
First Revised Sheet No. 63
First Revised Sheet No. 118
First Revised Sheet No. 187
First Revised Sheet No. 188
First Revised Sheet No. 189

Iroquois states that these tariff sheets permit Iroquois to recover its system fuel and the fuel that it reimburses to third-party transporters.

Iroquois states that copies of its filing have been mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 29, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17937 Filed 7–27–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket Nos. RP91–203–000 and RP92–132–000 (Phase I, and Phase II PCB Issues)]

## Tennessee Gas Pipeline Co., Informal Conference

July 22, 1993.

Take notice that an informal conference will be convened in this proceeding on July 27, 1993, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, at 1 p.m. or at the conclusion of the technical conference in Docket No. RS92–23–000, whichever is later, for the purpose of attempting to agree on procedures for the referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams (202) 208–0743 or Dennis H. Melvin at (202) 208–0042.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17939 Filed 7–27–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP93–139–001]

## Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 22, 1993.

Take notice that Transwestern Pipeline Company (Transwestern) on July 16, 1993 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, proposed to be effective August 1, 1993:

Substitute Original Sheet No. 5E(vi)

On June 9, 1993 Transwestern filed tariff sheet in which it sought to modify its take-or-pay, buy-out and buy-down mechanism (Transition Cost Recovery or TCR mechanism) in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs. Transwestern states the above-referenced tariff sheet is being filed to correct TCR amount #13, which inadvertently included a monthly amortization amount for July, 1993. This amount is hereby deleted, consistent with the effective date of the tariff sheet. Transwestern states that the deletion of this amount does not change any of the totals or calculations on other tariff sheets included in the original filing. Transwestern requests that the Commission grant any and all waivers of its rules, regulations and/or orders that may be necessary so as to permit the instant tariff sheet to become effective August 1, 1993.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 29, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–17938 Filed 7–27–93; 8:45 am]

BILLING CODE 6717–01–M

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## Office of Hearings and Appeals

### Cases Filed During the Week of July 2 Through July 9, 1993

During the Week of July 2 through July 9, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office

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of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 22, 1993.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 2 through July 9, 1993]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 7/6/93 | Carl Weissman & Sons, Great Falls, MT | LFA-0308 | Appeal of an Information Request Denial. If granted: The June 29, 1993 Freedom of Information Request Denial issued by the Richland Field Office would be rescinded, and Carl Weissman & Sons would receive a tabulation of bids received for RFP No. W-181155-FJ and any documents where bidders have extenuating circumstances in their bids, showing alternate prices and reasons. |
| 7/6/93 | Energy Refunds, Inc., Hardin, KY | LFR-0012 | Modification/Rescission. If granted: The June 4, 1993 Decision and Order (Case No. LFX-0010) which barred Energy Refunds, Inc. from representing refund applicants would be modified. |
| 7/7/93 | Albuquerque Tribune, Cleveland, OH | LFA-0309 | Appeal of an Information Request Denial. If granted: The May 26, 1993 Freedom of Information Request Denial issued by the Office of Reference and Information Management Division would be rescinded, and the Albuquerque Tribune would receive access to a complete copy of DOE records pertaining to experiments conducted from 1945 to 1947 in which plutonium was injected into 18 human subjects and a fee waiver. |

REFUND APPLICATIONS RECEIVED

[Week of July 2 through July 9, 1993]

| Date received | Name of firm | Case No. |
|---|---|---|
| 6/29/93 | Farmers Petroleum Coop, Inc | RF344-1 |
| 6/30/93 | Pride Terminals, Inc | RF351-3 |
| 6/30/93 | City of Pasadena | RF347-7 |
| 7/2/93 | Tri-City Gas, Inc | RF340-166 |
| 7/2/93 | Fairfield Gulf | RF300-21747 |
| 7/2/93 | Western Brassworks | RF347-9 |
| 7/2/93 thru 7/9/93 | Atlantic Richfield Applications Received | RF304-14183 thru RF304-14223 |
| 7/2/93 thru 7/9/93 | Beacon Oil Refund Applications Received | RF236-113 thru RF236-129 |
| 7/2/93 thru 9/9/93 | Texaco Refund Applications Received | RF321-19789 thru RF321-19793 |
| 7/6/93 | Cargill, Inc | RF347-8 |
| 7/6/93 | Shell Chemical Co | RF351-4 |
| 7/6/93 | Inland Reclamation | RF272-94761 |
| 7/6/93 | Hooker Equity Exchange | RD272-94762 |
| 7/6/93 | Farmers Oil Co., of Outlook | RF272-94783 |
| 7/7/93 | Rod Steinheiser Bottle Gas | RF340-167 |
| 7/7/93 | Silverock Baking Corp | RF272-94764 |
| 7/7/93 | State Line Grain Co | RF272-94765 |

[FR Doc. 93-18019 Filed 7-27-93; 8:45 am]

BILLING CODE 6450-01-P

**Issuance of Decisions and Orders; During the Week of May 17 Through May 21, 1993**

During the week of May 17 through May 21, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*Shapiro, Fussell, Wedge & Smotherman, 5/19/93, LFA-0288*

Shapiro, Fussell, Wedge & Smotherman (Shapiro) filed an Appeal from a determination issued to it by the Strategic Petroleum Reserve Project Management Office (SPRMO) of the DOE. The determination denied, in part, a Request for Information which Shapiro had submitted under the Freedom of Information Act (FOIA). Shapiro requested records pertaining to an award made to a subcontractor for

increased costs resulting from various engineering change notices. Shapiro also requested records referring to allegations of improper pricing by the subcontractor. The SPRMO withheld three documents in their entirety, one of which was subsequently released to Shapiro. The remaining two documents, a letter to the DOE Inspector General's Office (IG Letter), and a collection of cost estimates regarding the engineering change notices (Cost Estimates), were withheld pursuant to Exemption 5 of the FOIA. In considering the Appeal, the DOE found that SPRMO had correctly withheld most of the material in the IG Letter, but had incorrectly withheld some segregable factual material. At the same time, the SPRMO requested an opportunity to make a new determination to consider the applicability of Exemption 4 to the Cost Estimates. Consequently, the DOE remanded the matter back to SPRMO to release the segregable material contained in the IG Letter and to issue a new determination regarding the Cost Estimates.

*U.S. News & World Report, 5/18/93, LFA–0287*

U.S. News & World Report (U.S. News) filed an Appeal from determinations issued to it on February 18, 1993, March 26, 1993, and April 1, 1993, by the Office of Procurement, Assistance, and Program Management (OPA) under the Freedom of Information Act (FOIA). In its Appeal, U.S. News challenged OPA's application of Exemption 4 and Exemption 6 to the requested documents. In considering the Appeal, the DOE found that OPA properly withheld the information at issue under Exemption 4, but improperly applied Exemption 6 to the same material. In view of the Exemption 4 finding, the Appeal was denied.

**Refund Applications**

*Murphy Oil Corporation/Eastern Oil, Imperial Oil, 5/19/93, RR309–2, RR309–3*

The DOE issued a Decision and Order denying two Motions for Reconsideration filed in the Murphy Oil Corporation special refund proceeding on behalf of Eastern Oil Co., Inc. (Eastern), and Imperial Oil Co., Inc. (Imperial). In the Motions, Mr. Jack J. Ceccarelli of Joy Enterprises, Inc., parent company to Eastern and Imperial, requested that the DOE reconsider its previous determination in which it limited the combined refund which the two affiliates and their subsidiaries could receive $50,000 in principal. Mr. Ceccarelli asserted that the two firms should be eligible to receive two $50,000 maximum presumption refunds because they were separately-operated during the refund period. The two firms, however, currently share the same management, boards of directors, accountants, and headquarters facilities. Therefore, because the *current* degree to which two affiliated firms maintain their separate identities is the determinative factor in deciding whether to approve separate presumption refunds, the DOE denied Mr. Ceccarelli's Motion for Reconsideration.

*Murphy Oil Corporation/George E. Davis, 5/17/93, RF309–1365*

The DOE issued a Decision and Order denying an Application for Refund filed by Petroleum Funds, Inc. (PFI), in the Murphy Oil Corporation special refund proceeding on behalf of George E. Davis. Mr. Davis requested a refund based upon 1,489,150 gallons of Murphy gasoline and kerosene that he sold as a consignee dealer during the consent order period. Consignees, however, are presumed to have been uninjured by Murphy's alleged overcharges. In an attempt to rebut the consignee presumption of non-injury, Mr. Davis contended that he was, in fact, injured by Murphy's alleged overcharges because he was unable to compete with other retail stations in his marketing area. His assertions alone, however, were insufficient to rebut the consignee presumption. In the absence of any evidence that he was injured by Murphy's pricing practices, the DOE denied the Application for Refund.

*Murphy Oil Corp./Kickapoo Oil Co., 5/17/93, RF309–1281*

Kickapoo Oil Company, Inc. (Kickapoo) filed an Application for Refund with the DOE in the Murphy Oil Corp. Subpart V refund proceeding. In considering Kickapoo's Application for an above-volumetric refund based on its allegations that the Murphy Oil Corp. (Murphy) had violated the DOE's Allocation regulations, the DOE found that Kickapoo had failed to show that it had contemporaneously complained to the DOE about the allocation violations alleged in its Application. In addition, the DOE found that Kickapoo's failure to purchase all of the petroleum products allocated to it was often explained by factors other than Murphy's alleged violations of the allocation regulations. Accordingly, Kickapoo's Application for an above-volumetric refund based upon Murphy alleged allocation violations was rejected by the DOE. However, since the DOE determined that Kickapoo had adequately documented its purchases of 322,023,768 gallons of refined petroleum products from Murphy during the consent order period, it granted Kickapoo a volumetric refund of $50,000 in principal and $24,875 in interest.

*Shell Oil Company/ Firestone Tire and Rubber Co., 5/19/93, RF315–7217*

This Decision and Order considered the Application for Refund filed by Firestone Tire and Rubber Company (Firestone) that purchased substantial quantities of butadiene, styrene, bunker fuel, diesel fuel and motor gasoline from Shell Oil Company during the consent order period. The volume of purchases that formed the basis for the refund request was reduced because (1) styrene was not a covered product at any time during the consent order period and (2) butadiene was decontrolled on January 31, 1974. Therefore, 4,378,890 gallons of styrene and 81,621,253 gallons of butadiene (the sum of its post-decontrol butadiene purchases) were subtracted from Firestone's claimed purchase volume. The total refund granted in this Decision and Order was $2,188 (comprised of $1,422 in principal and $696 in interest) based on its purchase of 6,293,206 gallons of Shell refined product.

*Texaco Inc./College Center Texaco Service, 5/19/93, RR321–79*

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Wilson, Keller & Associates, Inc., in the Texaco Inc. Subpart V special refund proceeding on behalf of College Center Texaco Service. The DOE had previously denied two Applications for Refund filed on behalf of College Center Texaco Service by Wilson, Keller & Associates, Inc., and by Federal Refunds, Inc., because those Applications appeared to be deliberate duplicates. However, in the Motion for Reconsideration, Dale K. Hollick, owner of College Center Texaco Service and Wilson, Keller & Associates, Inc., provided reasonable explanations for the duplicate filings. The DOE, as a discretionary matter, reviewed the Motion and determined that it should be granted. Accordingly, the applicant was granted a refund in the amount of $1,137 ($838 principal plus $299 interest).

*Texaco Inc./Mapco Inc., 5/18/93, RF321–17068*

The DOE issued a Decision and Order approving an Application for Refund filed by MAPCO Inc. in the Texaco Inc. Subpart V special refund proceeding based on purchases of 120,555,041 gallons of refined product made by two of MAPCO Inc.'s subsidiaries, Thermogas Company and MAPCO Gas

Products, Inc. Accordingly, MAPCO Inc. was granted a refund of $87,815 ($50,000 principal plus $17,815 interest). However, the refund was not released to MAPCO Inc.; rather, it was placed in an interest bearing escrow account pending the final resolution of an enforcement proceeding involving another of MAPCO Inc.'s subsidiares MAPCO International Inc.

*Texaco Inc./Mike M. Marcello, Inc., 5/18/93, RR321–129*

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the Texaco Inc. special refund proceeding on behalf of Mike M. Marcello, Inc. (Marcello, Inc.). The original Application for Refund had been denied based upon the president of the firm's involvement with unauthorized Applications for Refund. After reviewing the submission, the DOE found the explanations offered in the Motion for the unauthorized filings to be unpersuasive. Furthermore, the DOE found no basis for reconsideration of the December 2, 1992 Decision and Order issued to Mike M. Marcello, Inc., and the Motion for Reconsideration was denied.

*Texaco Inc./Tubb's Oil Company, 5/18/93, RF321–3862*

The DOE issued a Decision and Order denying an Application for Refund filed by Lewis C. Gilbert on behalf of Tubb's Oil Company (Tubb's) in the Texaco Inc. special refund proceeding. Mr. Gilbert's claim was based on Tubb's Texaco purchases from March 1973 through March 1978. However, Mr. Gilbert did not purchase the assets of Tubb's until June 1979. After reviewing the documentation regarding the sale, the DOE determined that Mr. Gilbert did not acquire the stock of Tubb's and that the right to a refund was not transferred to him as an asset. Consequently, the DOE found that Mr. Gilbert was not entitled to a refund based on Tubb's Texaco purchases prior to June 1979.

**Refund Applications**

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| Anchor Gasoline Corporation/Theriot's Canal *et al* | RF346–22 | 05/17/93 |
| Atlantic Richfield Company/Fernandes ARCO *et al* | RF304–13349 | 05/19/93 |
| Atlantic Richfield Company/Ron's ARCO *et al* | RF304–11893 | 05/21/93 |
| Cumberland Cement & Supply *et al* | RF272–77466 | 05/18/93 |
| Enron Corp./Coastal States Trading, Inc. | RF340–183 | 05/18/93 |
| G I Trucking Company | RF272–92624 | 05/20/93 |
| Gulf Oil Corporation/Dick Cramer's Gulf Service | RF300–14386 | 05/17/93 |
| Harry's Gulf | RF300–15941 | |
| Gulf Oil Corporation/Newbridge Service Center | RF300–13685 | 05/20/93 |
| Newbridge Service Center | RF300–13686 | |
| Gulf Oil Corporation/P & B Gulf | RF300–14352 | 05/18/93 |
| Gulf Oil Corporation/Royster Transport Company | RF300–17196 | 05/20/93 |
| Gulf Oil Corporation/Simco Sales Service of PA *et al* | RF300–19009 | 05/18/93 |
| Gulf Oil Corporation/Village Gulf Service *et al* | RF300–17170 | 05/21/93 |
| Manitowoc School District *et al* | RF272–81401 | 05/21/93 |
| New York City Transit Authority | RF272–66878 | 05/20/93 |
| Shell Oil Company/Roger's Oil Company *et al* | RF315–437 | 05/21/93 |
| Texaco Inc./Anderson's Lakewood Texaco | RF321–19726 | 05/18/93 |
| Texaco Inc./ Anderson's Lakewood Texaco | RF321–19746 | 05/20/93 |
| Texaco Inc./Anita's Tortilleria *et al* | RF321–15553 | 05/18/93 |
| Texaco Inc./Fort Hale Fuel Co. *et al* | RF321–14191 | 05/21/93 |
| Texaco Inc./ I.B.E. Industries, Inc. *et al* | RF321–16232 | 05/19/93 |
| Texaco Inc./Lang's Grocery | RF321–19747 | 05/21/93 |
| Texaco Inc./ Wright-Hulse Oil Co. | RF321–19710 | 05/20/93 |
| Freeway Texaco Service | RF321–19736 | |
| Town of Madawaska School Dept. *et al* | RF272–80729 | 05/21/93 |

**Dismissals**

The following submissions were dismissed:

| Name | Case No. |
|---|---|
| Americus Wood Preserving | RF300–17485 |
| Anderson Texaco | RF321–17435 |
| Avondale Texaco | RF321–14823 |
| Big Walnut Local School District. | RF272–87293 |
| Borough of Mt. Arlington | RF272–83343 |
| Brooklyn Unit District 188 | RF272–87261 |
| Buffalo Center-Rake Community Schools. | RF272–87279 |
| Burbank School District 111 | RF272–87275 |
| Burkewitz Oil Company | RF300–21739 |
| Calaveras Cement Company | RF272–25984 |
| Caldwell Schools, U.S.D. 360 | RF272–87269 |
| Carbon Cliff-Barstow School District. | RF272–87264 |
| Carver School District | RF272–87261 |
| Cayuga Independent School District. | RF272–87259 |
| Central School District 51 | RF272–87253 |
| Central York School District | RF272–87252 |
| Chamberlain School District 7–1. | RF272–87240 |
| Chelsea School District | RF272–87244 |
| Cicero School District 99 | RF272–87226 |
| City of Fort Thomas | RF272–83392 |
| City of Oak Harbor | RF272–83423 |
| City of Pendleton | RF272–83349 |
| Contishipping | RF272–25150 |
| Contishipping Division | RD272–25150 |
| Dan Escobedo's Texaco | RF321–10562 |

| Name | Case No. |
|---|---|
| Dixie Junction | RF300–16484 |
| Dodson's Texaco | RF321–18638 |
| Falls Church County Public Schools. | RF272–87205 |
| Farmers Union Oil Co. | RF272–47459 |
| Farmersville Auto Company, Inc. | RF315–9583 |
| Finneytown Local School District. | RF272–87208 |
| First Midwest Corporation | RF272–91582 |
| Fowler School District 45 | RF272–87213 |
| Freesoil Community School District. | RF272–87220 |
| Gifford-Hill & Company, Inc | RF272–38282 |
| Gifford-Hill & Company, Inc | RD272–38282 |
| Gilbert J. Hess | RF272–92159 |
| Gordon Olson Clark Super 100 | RF342–228 |
| Hannaford Brothers Company, Inc. | RF272–92812 |
| Jerr-Dan Corporation | RF272–67782 |
| Joe Wilkison | RF272–91922 |
| John Franconia Trucking Co., Inc. | RF300–17438 |
| Krings Motors | RF315–7953 |
| Kwick Way, Inc | RF300–18413 |
| Lonas Construction Company, Inc. | RF272–92134 |
| M & B Metal Products Company. | RF272–90793 |
| M&M Construction Company | RF300–13924 |
| Manson Construction & Engineering Company. | RF272–93242 |
| Mechanics Laundry Company | RF321–17476 |
| Mechanics Laundry Company | RF321–17531 |
| Overland Sand & Gravel Company. | RF272–93791 |
| Polk County Department of Education. | RF272–86112 |
| Ray City Gulf | RF300–18347 |
| Reliance Universal Inc | RF321–17468 |
| Seward Avenue Gulf Service | RF300–17931 |
| St. Peter The Apostle Church | RF272–91929 |
| The Berldine Corporation | RF272–93277 |
| Town of Glocester | RF272–83364 |
| U.S. Elevator Corporation | LFA–0295 |
| Walt's Shell Service | RF315–9455 |

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 22, 1993.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 93–18020 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–50767; FRL–4633–4]**

### Receipt of an Application for Notification of a Genetically-Altered Microbial Pesticide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received from American Cyanamid Company a notification of intent to conduct a small-scaled field test of a genetically-altered microbial pesticide. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

**DATES:** Written comments must be received on or before August 27, 1993.

**ADDRESSES:** Comments in triplicate, must bear the docket control number OPP–50767 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7690).

**SUPPLEMENTARY INFORMATION:** An application for a notification has been received from American Cyanamid Company, Agricultural Research Division of Princeton, NJ, 08543–0400. The purpose of this small-scale field trial is to evaluate the efficacy of *Autographa californica* multiple nuclear polyhedrosis virus (AcMNPV) in which a section of the genetic material (EGT) has been deleted vEGTDEL (relative to AcMNPV wild-type and a commercial insecticide) against target lepidopteran pests: cabbage looper, beet armyworm, fall armyworm, southern armyworm, tobacco budworm, corn earworm, diamondback moth, and the cabbage worm. The proposed programs will consist of five test sites: Arizona, California, Florida, New Jersey, and Texas with one field trial per site to occur between August to December 1993. Total acreage for each field trial will consist of less than 1 acre. Each test will be conducted on land which is currently used for growth/production of row crops. Each field trial will consist of eight treatments to include: vEGTFEL @ 1 x $10^9$, $10^{11}$, and $10^{13}$ PIBs/acre; AcMNPV @ 1 x $10^9$, $10^{11}$, and $10^{13}$ PIBs/acre; local commercial standard insecticide; and untreated control. Within a given test, each treatment will be applied to the crop no more than six times; treatments will be applied using ground equipment. At the conclusion of each test, the test area as well as a 10 ft. wide untreated test perimeter will undergo crop destruction.

Dated: July 14, 1993.

**Stephanie R. Irene,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 93–17424 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP-180297; FRL 4622-6]

## Receipt of Application for Emergency Exemption to Use Imidacloprid; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Arizona Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827-78-9) to treat up to 7,000 acres of broccoli, 6,100 acres of cauliflower, 3,500 acres of cabbage, 50,000 acres of head lettuce, and 5,500 acres of leaf lettuce to control the sweet potato whitefly *Bemesia tabaci*. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before August 12, 1993.

**ADDRESSES:** Three copies of written comments, bearing the identification notation "OPP-180297," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Andrea Beard, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703-308-8791).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a state agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on broccoli, cauliflower, cabbage, head lettuce, and leaf lettuce to control the sweet potato whitefly (SPWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a new strain of SPWF, often referred to as the B, or poinsettia strain, was initially found in Arizona in 1988. Since that time, it has steadily spread to new host plants and grown in population size each summer and fall. This strain extracts up to 5 times as much sap as the original strain does. This excess feeding results in the production of elevated levels of honeydew which is deposited onto surfaces where the SPWF is feeding. The SPWF causes damage by feeding, and the honeydew secreted provides a substrate for mold, causing further damage. When SPWFs become numerous, as they did in many areas of the state in the past several years, their direct feeding lowers the yield. The SPWF has also been implicated as a vector of virus.

The Applicant claims that adequate control of the SPWF is not being achieved with currently registered products and alternative cultural practices. Along with this request, the Applicant has also requested a specific exemption for use of a different chemical, bifenthrin, on broccoli, cauliflower, and head lettuce, for control of the same pest, the SPWF. The Applicant justifies requests for two chemicals, by stating that the imidacloprid would be applied at planting, as a soil treatment; since imidacloprid is a systemic, it would be taken up by the seedling as it germinates, and protect the emerging seedling from SPWF feeding. The Applicant states that bifenthrin can only be applied as a foliar spray, which is of little value during the early establishment phase of seedling development, as there is limited leaf area at that time. Thus the Applicant proposed that use of bifenthrin be allowed later in the crop season, as a foliar treatment. The Applicant indicates that imidacloprid would not be of use as both a soil treatment and a foliar spray, because its mode of action is such that resistance development is a concern. The Registrant of imidacloprid will not support the use of this chemical further into the growing season for this reason. The Applicant indicates that without adequate control of the SPWF in broccoli, cauliflower, cabbage, head lettuce, and leaf lettuce, significant economic losses could be suffered.

The Applicant proposes to apply imidacloprid at a maximum rate of 5 oz. (dry) active ingredient (20 fluid oz. of product) per acre with a maximum of one application per crop season on a total of 72,100 acres of the above-listed crops. For each of the crops named, it is possible to produce two crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. However, the Applicant proposed to limit the maximum amount which could be applied per calendar year to 32 fluid oz. per acre. Therefore, use under this exemption could potentially amount to a maximum total of 36,050 pounds of active ingredient, or 18,025 gallons of product. This is the first time that the Applicant has applied for the use of imidacloprid on the named crops. However, the Applicant requested, and was granted, specific exemptions for the use of bifenthrin for SPWF control in broccoli, cauliflower, and head lettuce last year (1992).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona Department of Agriculture.

Dated: July 1, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93-17422 Filed 7-27-93; 8:45 am]

BILLING CODE 6560-50-F

[PP 2G4048 and 2G4049/T647; FRL 4630–7]

## Miles Inc.; Establishment of Temporary Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established temporary tolerances for residues of the insecticide *O*-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl)phosphorothioate and for residues of the insecticide cyfluthrin in or on certain raw agricultural commodities. These temporary tolerances were requested by Miles Inc., Agricultural Division.

**DATES:** These temporary tolerances expire December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6600.

**SUPPLEMENTARY INFORMATION:** Miles Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120–0013, has requested in pesticide petition (PP) 2G4048 and 2G4049, the establishment of temporary tolerances for residues of the insecticide O-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] O-ethyl O-(1-methylethyl)phosphorothioate and for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities corn, sweet (K + CWHR); corn, grain, field and pop; corn, forage and fodder, field, pop, and sweet at 0.01 part per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities treated in accordance with the provisions of the experimental use permit 3125–EUP–202, which was previously issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established with the following provisions:

1. The total amount of treated commodities to be covered by these temporary tolerances will not exceed that which was treated under the above-referenced experimental use permit which expired on December 31, 1992.

2. Miles Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1993. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide was legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**Authority:** 21 U.S.C. 346a(j).

**Dated:** July 18, 1993.

**Stephanie R. Irene,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93–17865 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

[PP 2E4124/T648; FRL 4634–7]

## Pseudomonas fluorescens; Establishment of Temporary Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established a temporary exemption from the requirement of a tolerance for residues of the biological pesticide *Pseudomonas fluorescens* strain NCIB 12089, in or on the raw agricultural commodity mushrooms.

**DATES:** This temporary exemption from the requirement of a tolerance expires June 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6900.

**SUPPLEMENTARY INFORMATION:** Interregional Research Project No. 4, New Jersey Agricultural Experiment Station, P.O. Box 231, New Brunswick, NJ 08903–0231, has requested in pesticide petition (PP) 2E4124, the establishment of a temporary exemption from the requirement of a tolerance for residues of the biological pesticide *Pseudomonas fluorescens* strain NCIB 12089, in or on the raw agricultural commodity mushrooms.

This temporary exemption from the requirements of a tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 66204–EUP–1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Sylvan Foods, Inc., must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires June 30, 1994. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is

legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: July 18, 1993.

Stephanie R. Irene,

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93–17864 Filed 7–27–93; 8:45 am]

BILLING CODE [illegible]

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[PF–578; FRL–4632–5]

## Rohm & Haas Co.; Pesticide Petition for 2-Methyl-4-isothiazolin-3-One and 5-Chloro-2-Methyl-4-isothiazolin-3-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rohm & Haas Co. the filing of a pesticide petition (PP 3E4189) proposing to establish an exemption from the requirement of a tolerance under 40 CFR 180.1001(d) for 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-578], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 7, 1988 (53 FR 34511), EPA granted an exemption from the requirement of a tolerance under § 180.1001(d) for 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one. This exemption included a limit of "0.00022% (or 2.25 ppm) in the formulation." The Agency's calculated maximum expected residue was based upon a concentration of 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one of 2.25 ppm in the final solution applied to growing crops. Because of confusion concerning what the term "formulation" means, Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, has filed a petition (PP 3E4189) with EPA requesting an amendment to the exemption entry under § 180.1001(d) to change the limit to "not more than 0.0022% (22.5 ppm) in the formulation; not more than 0.00022% (2.25 ppm) in the final solution applied to growing crops."

Authority: 7 U.S.C. 346a and 371.

Dated: July 18, 1993.

Stephanie R. Irene,

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93–17863 Filed 7–27–93; 8:45 am]

BILLING CODE [illegible]

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[FRL–4633–6]

## Effluent Guidelines Task Force; Open Meeting

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Meeting

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss improvements to the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on August 17, 1993, from 8:30 a.m. to 5 p.m., and August 18, 1993, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will take place at the Capital Hilton Hotel, 16th and K Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Effluent Guidelines Task Force Staff Director, Office of Water (WH–552), 401 M Street, SW., Washington, DC. 20460; telephone 202–260–7150, fax 202–260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to title III of the Clean Water Act (33 U.S.C. 1251 et seq.). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices.

The meeting agenda will include Task Force work group discussions and reports from the groups on specific problem areas, including: Selection criteria and methodology for preliminary industry studies, the role of non-water quality impacts and pollution prevention in effluent guidelines, and redesigning the data collection and/or rulemaking processes for effluent guidelines. EPA staff will also discuss economic analysis methodology and subcategorization processes used in developing effluent guidelines.

The meeting will be open to the public. Limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding

improvements to the Effluent Guidelines program. Comments should be sent to Eric Strassler at the above address. Comments submitted by August 10 will be considered by the Task Force at or subsequent to the meeting.

Dated: July 19, 1993.

**Gordon Schisler,**

*Acting NACEPT Designated Federal Official.*

[FR Doc. 93-18003 Filed 7-27-93; 8:45 am]

BILLING CODE 6560-50-F

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**[OPPTS-44600; FRL-4635-1]**

## TSCA Chemical Testing; Receipt of Test Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the receipt of test data for commercial hexane (CAS Nos. 96-37-7 and 110-54-3), submitted pursuant to a final test rule. This notice also announces the receipt of test data for sodium cyanide (CAS No. 143-33-9), 1,1,1-trichloroethane (CAS No. 71-55-6), and acrylic acid (CAS No. 79-10-7), submitted pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

### I. Test Data Submissions

Test data for commercial hexane were submitted by the American Petroleum Institute on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.2155. They were received by EPA on June 22, 1993. The submission describes "an inhalation oncogenicity study of commercial hexane in rats and mice: Part II - Mice." This chemical is used as a solvent to extract seed oils.

Test data for sodium cyanide were submitted by DuPont Chemicals on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on June 16, 1993. The submission describes the adsorption isotherm of sodium cyanide in soil. This chemical is used in the heap leaching process for mining.

Test data for 1,1,1-trichloroethane were submitted by the Halogenated Solvents Industry Alliance on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on June 22, 1993. The submission describes the "examination of rats for developmental neurotoxicologic effects from maternal exposure to 1,1,1-trichloroethane." This chemical is used as a solvent.

Test data for acrylic acid were submitted by Basic Acrylic Monomer Manufacturers on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on July 1, 1993. The submission describes the "developmental toxicity dose range-finding study of inhaled acrylic acid vapor in New Zealand white rabbits" and the "developmental toxicity evaluation of inhaled acrylic acid vapor in New Zealand white rabbits." This chemical is used in surface coatings; polyacrylic acid and salts, including superabsorbent polymers, detergents, water treatment and dispersants; textiles and nonwovens; exports; adhesives and sealants; leather and polishes; paper coating; miscellaneous acid and ester uses, including specialty acrylates.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

### II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44600). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. ET-G102, 401 M St., SW., Washington, DC 20460.

**Authority:** 15 U.S.C. 2603.

Dated: July 19, 1993.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 93-18002 Filed 7-27-93; 8:45 am]

BILLING CODE 6560-50-F

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## FEDERAL COMMUNICATIONS COMMISSION

**[DA 93-935]**

## Lottery for Interactive Video and Data Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission has announced the date and time for a lottery to be conducted to select two tentative selectees for each of the first nine markets of the Interactive Video and Data Service (IVDS). In addition, a list of the applications that will be the subject of the lottery will be made available for public inspection at various Commission locations around the country. Any applicant that believes that there is an error in this listing will have an opportunity to contact the Commission's licensing facility in Gettysburg, Pennsylvania and provide corrected information.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW. Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Corbin Small or Marc S. Martin, Private Radio Bureau, (202) 632-7175.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission will conduct a lottery on September 15, 1993 at 10 a.m. in room 856, 1919 M St., NW., Washington, DC, for the purpose of selecting two tentative selectees for each of the first nine IVDS markets. Applications for these markets were filed in response to a Report and Order adopted January 16, 1992. (Report and Order, PR Docket 91-2, FCC 92-22 (released February 13, 1992), 57 FR 8272 (March 9, 1992). Applications were accepted by the Commission for the first nine IVDS markets during three filing windows. The lottery will be conducted pursuant to authority contained in § 1.972 of the Commission's Rules, 47 CFR 1.972.

A listing of the applications that will be the subject of this lottery is available for public inspection during regular business hours at the following locations: (1) The Mass Media/ Adjudication Reference Room of the Federal Communications Commission,

1919 M Street, NW., room 239, Washington, DC 20554; (2) the Licensing Division Reference Room, Private Radio Bureau Licensing Division, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245; (3) all Field Office Locations of the Federal Communications Commission's Field Operations Bureau (see attachment for Field Location addresses); (4) the Authorization and Evaluation Division of the Office of Engineering and Technology, 7435 Oakland Mills Road, Columbia, Maryland 21046; (5) the Field Office of the Common Carrier Bureau, 90 Church Street, room 1309–X, New York, New York 10007; (6) The Public Services Division of the Associate Managing Director for Public Information and Reference Services, 1919 M Street, NW., room 254, Washington, DC 20554; (7) The Federal Communications Commission Library, 1919 M Street, NW., room 639, Washington, DC 20554.

Copies or excerpts of the list of applications may also be purchased from the Commission's duplicating contractor: International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20036, at (202) 857–3800.

The applications are listed by market area and then alphabetically by applicant name. Any applicant that believes there is an error in the listing should contact our Gettysburg licensing facility and provide the correct information. Any proposed corrections will be verified against the information contained in the applicant's original application. Additionally, interested parties may provide information to the Commission that may reflect on the suitability of an applicant to be a licensee. Corrections to the listing and information about the suitability of an applicant to be a licensee must be received within thirty (30) days of the publication of this Public Notice in the **Federal Register** at the following address by 4:30 e.d.t.: Federal Communications Commission, Private Radio Bureau Licensing Division, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245, ATTN: IVDS Lottery. Modifications to applications will not be accepted at this time. Only errors that have arisen in the preparation of this list or matters that reflect on the suitability of an applicant to be a licensee should be brought to the attention of our Gettysburg office. Allegations pertaining to tentative selectees will be investigated and resolved prior to issuance of any license to that applicant.

For a more complete discussion of lottery procedures, see FCC INST 1159.1, released August 13, 1992. Additional information regarding for this lottery session may be obtained from the Private Radio Bureau's Consumer Assistance Branch at (717) 337–1212. Procedural questions regarding the lottery may be directed to William F. Caton at (202) 632–6410.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

**FCC Office Addresses**

*Alaska*

Anchorage Office

Federal Communications Commission, 6721 West Raspberry Road, Anchorage, Alaska 99502–1896, (907) 243–2153

*Arizona*

Douglas Office

Federal Communications Commission, P.O. Box 6, Douglas Arizona 85608–0006, (602) 364–8414

*California*

San Diego Office

Federal Communications Commission, 4542 Ruffner Street, Room 370, San Diego, California 92111–2216, (619) 467–0549

Livermore Office

Federal Communications Commission, P.O. Box 311, Livermore, California 94551–0311, (510) 447–3614

Los Angeles Office

Federal Communications Commission, Cerritos Corporate Tower, Room 660, 18000 Studebaker Road, Cerritos, California 90701-3684, (310) 809–2096

San Francisco Office

Federal Communications Commission, 3777 Depot Road, Room 420, Hayward, California 94545–2756, (510) 732–5046

*Colorado*

*Denver Office*

Federal Communications Commission, 165 South Union Blvd., Suite 860, Lakewood, Colorado 80228–2213

*Florida*

Vero Beach Office

Federal Communications Commission, P.O. Box 1730, Vero Beach, Florida 32961–1730, (407) 778–3755

Miami Office

Federal Communications Commission, Rochester Building, Room 310, 8390 N.W. 53rd Street, Miami, Florida 33166–4868, (305) 526–7420

Tampa Office

Federal Communications Commission, 2203 N. Lois Avenue, Room 1215, Tampa, Florida 33607–2356, (813) 228–2872

*Georgia*

Atlanta Office

Federal Communications Commission, 3575 Koger Blvd., Koger Center-Gwinnett, Suite 320, Duluth, Georgia 30136–4958, (404) 279–4821

Powder Springs Office

Federal Communications Commission, P.O. Box 85, Powder Springs, Georgia 30073–1185, (404) 943–5420

*Hawaii*

Honolulu Office

Federal Communications Commission, P.O. Box 1030, Waipahu, Hawaii 96797–1030, (808) 677–3318

*Illinois*

Chicago Office

Federal Communications Commission, Park Ridge Office Center, Room 306, 1550 Northwest Highway, Park Ridge, Illinois 60068–1460, (312) 353–0195

*Louisiana*

New Orleans Office

Federal Communications Commission, 800 West Commerce Road, Room 505, New Orleans, Louisiana 70123–3333, (504) 589–2095

*Maine*

Belfast Office

Federal Communications Commission, P.O. Box 470, Belfast, Maine 04915–0470, (207) 338–4088

*Maryland*

Baltimore Office

Federal Communications Commission, 1017 Federal Building, 31 Hopkins Plaza, Baltimore, Maryland 21201, (301) 962–2729

Laurel Office

Federal Communications Commission, P.O. Box 250, Columbia, Maryland 21045, (301) 725–3474

*Massachusetts*

Boston Office

Federal Communications Commission, NFPA Building, 1 Batterymarch Park, Quincy, Massachusetts 02169–7495, (617) 770–4023

*Michigan*

Allegan Office

Federal Communications Commission, P.O. Box 89, Allegan, Michigan 49010–9437, (616) 673–2063

Detroit Office

Federal Communications Commission, 24897 Hathaway Street, Farmington Hills, Michigan 48335–1552, (313) 471–5605

*Minnesota*

St. Paul Office

Federal Communications Commission, 2025 Sloan Place, Suite 31, Maplewood, Minnesota 55117–2058, (612) 290–3819

*Missouri*

Kansas City Office

Federal Communications Commission, Brywood Office Tower, Room 320, 6800 East 63rd Street, Kansas City, Missouri 64133–4895, (816) 353–3773

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*Nebraska*

Grand Island Office

Federal Communications Commission, P.O. Box 1586, Grand Island, Nebraska 68802–1588, (308) 382–4295

*New York*

Buffalo Office

Federal Communications Commission, 111 West Huron Street, Suite 1307, Buffalo, New York 14202–2398, (716) 846–4511

New York Office

Federal Communications Commission, 201 Varick Street, New York, New York 10014–4870, (212) 620–3437

*Oregon*

Portland Office

Federal Communications Commission, 1220 S.W. Third Avenue, Portland, Oregon 97204–2898, (503) 326–4114

*Pennsylvania*

Philadelphia Office

Federal Communications Commission, One Oxford Valley Office Building, 2300 East Lincoln Highway, Room 404, Langhorne, Pennsylvania 19047–1859, (215) 752–1324

*Puerto Rico*

San Juan Office

Federal Communications Commission, 747 Federal Building, Hato Rey, Puerto Rico 00918–1731, (809) 766–5567

*Texas*

Dallas Office

Federal Communications Commission, 9330 LBJ Expressway, Room 1170, Dallas, Texas 75243–3429, (214) 235–3369

Houston Office

Federal Communications Commission, 1225 North Loop West, Room 900, Houston, Texas 77008, (713) 861–6200

Kingsville Office

Federal Communications Commission, P.O. Box 632, Kingsville, Texas 78364–0632, (512) 592–2531

*Virginia*

Norfolk Office

Federal Communications Commission, 1200 Communications Circle, Virginia Beach, Virginia 23455–3725, (804) 441–6472

*Washington*

Ferndale Office

Federal Communications Commission, 1330 Loomis Trail Road, Custer, Washington 98240–9303, (206) 354–4892

Seattle Office

Federal Communications Commission, 11410 N.E., 122nd Way, Suite 312, Kirkland, Washington 98034–6927, (206) 821–9037

[FR Doc. 93–18139 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–130; DA 93–890]

## Private Land Mobile Radio Services; Minnesota Public Safety Plan

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Minnesota (Region 22). As a result of accepting the Plan for Region 22, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

**EFFECTIVE DATE:** July 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

**SUPPLEMENTARY INFORMATION:**

### Order

In the Matter of Minnesota Public Safety Plan

Adopted: July 12, 1993.
Released: July 19, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 14, 1993, Region 22 (Minnesota) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Minnesota.

2. The Minnesota Plan was placed on Public Notice for comments due on June 14, 1993, 58 FR 28019 (May 12, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Minnesota and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Minnesota.

4. Therefore, we accept the Minnesota Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Minnesota may commence immediately.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

[FR Doc. 93–17925 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–131; DA 93–889]

## Private Land Mobile Radio Services; Missouri Public Safety Plan

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Missouri (Region 24). As a result of accepting the Plan for Region 24, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

**EFFECTIVE DATE:** July 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

**SUPPLEMENTARY INFORMATION:**

### Order

In the Matter of Missouri Public Safety Plan

Adopted: July 12, 1993.
Released: July 19, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 27, 1993, Region 24 (Missouri) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Missouri.

2. The Missouri Plan was placed on Public Notice for comments due on June 14, 1993, 58 FR 28019 (May 12, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Missouri and find that it conforms with the National Public Safety Plan. The Plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Missouri.

4. Therefore, we accept the Missouri Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Missouri may commence immediately.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

[FR Doc. 93–17926 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

**Application for Consolidated Hearing**

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City and State | File No. | MM Docket |
|---|---|---|
| A. Double W, Inc.; Cedar Falls, Iowa. | BPH-920506MD | 93-216 |
| B. Don Timmerman Broadcasting, Inc.; Cedar Falls, Iowa. | BPH-920507MA | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, it used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicants*

1. Comparative—A, B
2. Ultimate—A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 93–17927 Filed 7–27–93; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL RESERVE SYSTEM

**Federal Reserve Bank Services**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** On October 14, 1992, the Board requested comment on a proposal to change the opening time for the Fedwire funds transfer service from 8:30 a.m. Eastern Time (ET) to 6:30 a.m. ET, effective October 4, 1993. The Board is announcing a delay in taking final action on the proposal pending further analysis of the complex issues raised by commenters. Therefore, no changes in Fedwire operating hours will take place on October 4, 1993. Staff has initiated a study of issues related to the operating hours of the Fedwire funds and book-entry securities transfer services, especially the role of Fedwire in enhancing clearance and settlement practices in financial markets.

**FOR FURTHER INFORMATION CONTACT:** John H. Parrish, Assistant Director (202/452-2224), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, or Bruce J. Summers, Senior Vice President (804/697-8456), Federal Reserve Bank of Richmond. For the Hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** On October 14, 1992, the Board requested comment on a proposal to change the opening time for the Fedwire funds transfer service from 8:30 a.m. Eastern Time (ET) to 6:30 a.m. ET, effective October 4, 1993. The Board also requested comment on the opening time for the book-entry securities transfer service. In addition, the Board requested comment on the further expansion of Fedwire operating hours in the long-term, including opening the Fedwire funds transfer services earlier than 6:30 a.m. ET and/or closing these services later than the current 6:30 p.m. ET close. Comment on the further expansion of Fedwire operating hours was solicited to help evaluate the potential need for significantly expanded operating hours (i.e., 24-hour payment operations) to facilitate risk reduction associated with certain international financial transactions.

The issues raised by commenters were sufficiently complex as to warrant further analysis and review. Commenters expressed considerable interest in the Federal Reserve's longer term approach regarding Fedwire operating hours and requested the Federal Reserve to share its approach with the public. Toward this end, Federal Reserve staff is undertaking a study of the issues raised and the associated public policy concerns. The Board intends for the staff to discuss with various industry representatives and other interested parties issues related to the future development of Fedwire. The Board plans to communicate to the public the results of the staff efforts in order to stimulate further industry response to the issues associated with expanded operating hours and, more generally, on the potential role of the Fedwire payment system.

By order of the Board of Governors of the Federal Reserve System, July 22, 1993.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 93-17966 Filed 7-27-93; 8:45 am]

BILLING CODE 6210-01-F

**Gordon Family Investment Limited Partnership; Formation of, Acquisition by, or Merger of Bank Holding Companies**

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 16, 1993.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Gordon Family Investment Limited Partnership*, Chicago, Illinois; to become a bank holding company by acquiring 26.42 percent of the voting shares of CNBC Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Columbia National Bank of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, July 22, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17968 Filed 7-27-93; 8:45 am]

BILLING CODE 6210-01-F

**Ralph M. Hall; Change in Bank Control Notice**

**Acquisition of Shares of Banks or Bank Holding Companies**

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1993.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ralph M. Hall*, Rockwall, Texas; to acquire 11.1 percent of the voting shares of Lakeside Bancshares, Inc., Rockwall, Texas, and thereby indirectly acquire Lakeside National Bank, Rockwall, Texas.

Board of Governors of the Federal Reserve System, August 11, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17969 Filed 7-27-93; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Administration for Children and Families**

**Discretionary Grant Program Announcement for Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training; Correction**

**AGENCY:** Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

**ACTION:** Correction notice; revised eligibility criteria under Adoption Opportunities Priority Area 1.03.

**SUMMARY:** This notice amends program announcement ACF/ACYF/Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training, published in the **Federal Register** on July 15, 1993, by correcting an error in the eligible applicants section of Priority Area 1.03, Leadership Development: Adoptive Parent Groups, listed on page 38236.

**FOR FURTHER INFORMATION CONTACT:** Delmar Weathers (202) 205–8671.

**SUPPLEMENTARY INFORMATION:** On July 15, 1993, the Administration on Children, Youth and Families published the Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training Grant Program Announcement in the **Federal Register** (Vol. 58, No. 134, page 38232).

The announcement inadvertently published an incorrect eligibility statement. The announcement solicited applications from States, local government entities, public or private nonprofit licensed child welfare agencies or exchanges. Therefore, we are issuing this amendment to correct the announcement. Eligible applicants under Priority Area 1.03 are: Voluntary or public social service agencies, adoption exchanges or other national, regional or statewide adoption-related organizations.

Dated: July 23, 1993.

**Joseph A. Mottola,**

*Acting Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 93–18006 Filed 7–27–93; 8:45 am]

BILLING CODE 4184-01-M

**Centers for Disease Control and Prevention**

**Clinical Laboratory Improvement Advisory Committee; Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

*Name:* Clinical Laboratory Improvement Advisory Committee.

*Time and Date:* 8 a.m.–4:30 p.m., August 12, 1993.

*3Place:* CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services and the Assistant Secretary for Health regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

*Matters to be Discussed:* The agenda will include a review and discussion of cytology proficiency testing and the results of the meeting from the Subcommittee on Test Categorization which included criteria for waiver and physician-performed microscopy.

Written comments on the criteria for waiver, the process used in the classification of waived tests, physician-performed microscopy, and cytology proficiency testing are welcome. Comments on the classification of specific tests will not be accepted at this time. Comments should not exceed five single-spaced, typed pages in length and should be received by the contact person listed below no later than 12 noon on August 5, 1993. Copies of comments that are germane to the classification of waived tests, physician-performed microscopy, and cytology proficiency testing will be supplied to the committee members for review prior to the meeting. Public oral comments will be accepted at the discretion of the chairman at the close of the meeting if time permits.

Agenda items are subject to change as priorities dictate.

*Contact Person for Additional Information:* D. Joe Boone, Ph.D., Assistant Director for Science, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 1600 Clifton Road, NE, Mailstop G–25, Atlanta, Georgia 30333, telephone 404/639–1706.

Dated: July 22, 1993.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control And Prevention (CDC).*

[FR Doc. 93–17943 Filed 7–27–93; 8:45 am]

BILLING CODE 4160-18-M

**Administration for Children and Families**

**Statement of Organization, Functions and Delegations of Authority**

**AGENCY:** Administration for Children and Families, DHHS.

**SUMMARY:** Part K, Chapter K (Administration for Children and Families) of the Statement of Organization, Functions and

Delegations of Authority of the Department of Health and Human Services (50 FR 42232) is amended to reflect the changes in Chapter KL, the Office of Management (58 FR 6094) as last amended, January 29, 1993 and Chapter KJ, the Office of Information Systems Management. Specifically, to transfer the functional responsibility of the Privacy Act from Chapter KL, the Office of Management to KJ, the Office of Information Systems Management.

The changes are as follows:

1. Amend KL.20 Functions. Paragraph D to delete it in its entirety and replace it with the following:

D. *Division of Management Analysis* plans, organizes and conducts management studies, analyses and evaluations of administrative, management and organizational processes. It studies structural, functional and operational problems of interest to the Assistant Secretary for Children and Families. The Division acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; prepares functional statements and official organization charts; maintains official organizational files for ACF; and prepares formal program, administrative and personnel delegations of authority for the Assistant Secretary for Children and Families.

The Division develops, prepares, disseminates and maintains all personnel-related and administrative policies, procedures and manuals that affect ACF components. It provides assistance, training and guidance to ACF staff on establishing and maintaining office files and schedules for disposition of ACF records, and it designs, manages and maintains forms management systems for the Agency. It reviews advisory and assistance services contract proposals, makes recommendations to the Assistant Secretary for Children and Families on their disposition, and prepares required departmental reports.

The Division oversees and coordinates ACF's responsibilities under the Federal Managers' Financial Integrity Act (FMFIA). It is responsible for managing the FMFIA program for the Assistant Secretary for Children and Families and the Internal Control Officer.

2. Amend Chapter KJ.00 Mission to delete it in its entirety and replace it with the following:

KJ.00 Mission. *The Office of Information Systems Management (OISM)/Child Support Information Systems (CSIS)* advises the Assistant Secretary for Children and Families on issues and policies pertaining to the utilization of information resources throughout ACF. The Office approves, monitors and provides technical assistance on automated systems projects for effective and efficient state operations. It oversees and directs ACF's information systems and communications network. The Office provides direction and technical guidance on state automated data processing projects used by state governments to operate the Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills Training (JOBS), Child Support Enforcement, Child Care, Child Welfare, Foster Care, and Refugee Resettlement Programs. It develops, recommends and issues policies, procedures and interpretations on information, computer and telecommunications technologies for all ACF program and staff offices and to the state agencies funded under pertinent titles of the Social Security Act. It establishes policy, requirements, standards and guidelines for information systems for the Department to support programs funded under the Social Security Act and information systems improvement initiatives (e.g., Income Eligibility Verification System—IEVS and Systematic Alien Verification for Entitlement—SAVE) involved in the administration and operation of federally funded programs. It directs and coordinates ACF's implementation of the requirements of the Paperwork Reduction Act of 1980 as amended, the Computer Security Act of 1987, and the Computer Matching and Privacy Act of 1988. It is responsible for ensuring Agency compliance with the requirements of the Privacy Act.

3. Amend Chapter KJ.20 Functions. Paragraph D to delete it in its entirety and replace it with the following:

D. *State Systems Policy Staff* is responsible for developing departmental policies and procedures under which states obtain federal financial participation in the cost of ADP systems to support programs funded under the Social Security Act. It acts as a central receiving point for, and coordinates for the Department review and approval of, state requests for federal funding of the cost of ADP systems acquisition; coordinates with other federal agencies on activities related to state automated systems, including Electronic Benefits Transfer; coordinates the provision of technical assistance to states on information systems projects; and advances the use of computer technology in the administration of welfare and social services programs by states.

The Staff is responsible for planning, designing, coordinating and implementing major departmental and government-wide information systems improvement initiatives (e.g., IEVS, SAVE, National Integrated Quality Control System) involved in the administration and operation of state programs funded by ACF. It serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity (IEVS), welfare systems integration and related initiatives and programs; provides leadership and guidance to interagency work groups in these areas for the Department; and directs and coordinates ACF's responsibilities under the Computer Security Act of 1987 and the Computer Matching and Privacy Act of 1988. It is responsible for ensuring Agency compliance with the requirements of the Privacy Act.

Effective Date: May 3, 1993.

Lawrence J. Love,

*Acting Assistant Secretary for Children and Families.*

[FR Doc. 93-17948 Filed 7-27-93; 8:45 am]

BILLING CODE 4184-01-M

## Food and Drug Administration

[Docket No. 89D-0368]

### Revocation of Action Levels for Residues of Endrin in Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the agency's enforcement levels and action levels for residues of the cancelled pesticide, endrin, in human food and animal feed. The agency has revoked such levels because the Environmental Protection Agency (EPA) has revoked the tolerances for the foods to which FDA had applied its enforcement levels, and because the results of FDA monitoring indicate that endrin residues are no longer occurring as unavoidable contaminants in food and feed for which there were no tolerances established and for which FDA had applied action levels.

DATES: The revocation of the action levels for unavoidable rresidues of endrin in food and feed is effective June 28, 1993.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC-6), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1815.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 109.4(c)(2) and 509.4(c)(2), FDA is announcing changes in action levels for an added poisonous or deleterious substance. The changes concern the revocation of all enforcement levels and action levels for residues of the pesticide endrin in food and feed. The agency has taken this action because these limits are no longer required to regulate endrin residues in food and feed.

FDA is responsible under section 402(a)(2)(B) and (a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(B) and (a)(2)(C)) for enforcing the pesticide tolerances established by EPA pursuant to section 408 of the act and the food additive regulations established by EPA pursuant to section 409 of the act (21 U.S.C. 346a and 348). Under section 402(a)(2)(B) and (a)(2)(C) of the act, food or feed is adulterated when it contains a pesticide residue that is unsafe within the meaning of section 408 or 409 of the act. A pesticide residue is unsafe under the act if the residue exceeds an established EPA tolerance or food additive regulation or if it is one for which there is no established EPA tolerance or food additive regulation. Shipment of adulterated food or feed in interstate commerce is prohibited, and food or feed so shipped is subject to FDA enforcement action under sections 301(a) and 304 of the act (21 U.S.C. 331(a) and 334).

When tolerances were established for endrin residues in the late 1950's, they were set by regulation at a zero tolerance level because, at that time, the registered uses of endrin were not expected to result in detectable residues. Determining compliance with a zero tolerance, however, had the potential for a broad range of endrin residue levels being detected and thus triggering FDA enforcement action. To ensure uniformity and consistency in initiating enforcement action against food or feed containing endrin residues, FDA followed a policy of prescribing an enforcement level for endrin residues detected in those commodities that had a zero tolerance for endrin residues. The enforcement levels under this policy appeared in Attachment A of Compliance Policy Guide (CPG) 7141.01 and defined 0.05 part per million (ppm) as a level at which an enforcement action may be considered when endrin residues were found in a commodity having a zero tolerance specified in EPA's regulation in 40 CFR 180.131. The 0.05 ppm enforcement level was established at a level at which FDA laboratories could routinely detect, quantify, and confirm endrin residues.

The registered agricultural uses of endrin were cancelled over a period of years; EPA cancelled the last use in 1971. The zero tolerances in 40 CFR 180.131 that were established for these registered uses, however, continued in effect until June 9, 1993. EPA published a final rule in the Federal Register of June 9, 1993 (58 FR 32296), that revoked these zero tolerances for endrin residues. Because the zero tolerances are no longer in effect, FDA has concluded that it no longer needs to specify an enforcement level for endrin residues. Accordingly, FDA has rescinded its policy of having an enforcement level for endrin residues in the commodities that were subject to zero tolerances, effective June 28, 1993. The agency has advised its field offices to remove the enforcement levels for endrin residues listed in Attachment A of CPG 7141.01.

Tolerances and food additive regulations established by EPA generally apply to pesticide residues resulting from the approved, purposeful use of the chemical in agriculture. In some circumstances, however, FDA may encounter pesticide residues in food or feed due to an unavoidable source of contamination and for which there is no tolerance or food additive regulation. The pesticides most commonly associated with unavoidable contamination of food and feed are certain chlorinated hydrocarbon pesticides (e.g., DDT), which persist in the environment even after their uses have been discontinued. It has been the persistence of these pesticides in the environment that result in the unavoidable contamination of nontargeted food (e.g., fish) and feed (e.g., fish byproducts used as a feed ingredients). Generally, no tolerances or food additive regulations are in effect for unavoidable pesticide residues that may be present in nontargeted food or feed.

The act provides that in the absence of a tolerance or food additive regulation, any amount of a pesticide residue in a food or feed is unsafe, and therefore renders the food or feed adulterated under section 402(a)(2)(B) or (a)(2)(C) of the act. FDA has found, however, that the level of unavoidable pesticide residue is frequently so low that it is not of regulatory or public health significance. In these situations of low level, unavoidable contamination, FDA has regularly established action levels to define a level of unavoidable contamination at which food or feed may be regarded as adulterated under the act. FDA action levels are nonbinding guidelines as discussed in FDA's general policy statement that was published in the Federal Register of April 17, 1990 (55 FR 14359). The action levels currently in effect for unavoidable pesticide residues are contained in Attachment B of CPG 7141.01.

Endrin was one of the pesticides for which action levels were established. Action levels that appeared in Attachment B.7 of CPG 7141.01, were established for the following commodities: processed animal feed, asparagus, beans, citrus fruit, corn, eggs, figs, fish, fish byproducts (animal feed), guavas, certain leafy vegetables, milk, mangoes, melons, oilseed meal (animal feed), okra, peas, pimentoes, certain root vegetables, small fruits, stone fruits, and byproducts of vegetable oils and fats, including soap stocks (animal feed).

As previously mentioned, all registered uses of endrin were cancelled by EPA in 1971. The EPA tolerances for endrin residues in 40 CFR 180.131 were revoked by EPA on June 9, 1993 (58 FR 32296). Prior to EPA's revocation of the endrin tolerances, FDA reviewed its regulatory monitoring data for endrin residues for 1991 and 1992. These data showed that of the approximate 40,000 samples examined by FDA, only four were found to contain measurable levels of endrin. Several samples of fish contained 0.01 ppm of endrin residue and one cantaloupe sample contained 0.03 ppm of endrin residue. Based upon these limited findings of endrin residues, FDA has concluded that endrin is no longer present in the environment to the extent that it may be contaminating food or feed at levels of regulatory concern. For this reason, coupled with EPA's conclusion that endrin tolerances are no longer necessary, FDA has decided to revoke the action levels for unavoidable residues of endrin in food and feed, effective June 28, 1993. The agency has advised its field offices to remove the endrin action level listing in Attachment B.7 in CPG 7141.01.

Dated: July 19, 1993.

Daniel L. Michels,

*Acting Associate Commissioner for Regualtory Affairs.*

[FR Doc. 93–17921 Filed 7–27–93; 8:45 am]

BILLING CODE 4160–01–F

### Health Care Financing Administration

**Statement of Organization, Functions, and Delegations of Authority: Personnel Security Clearances Function**

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol. 56, No. 102, p. 24080, dated May 28, 1991, and Vol. 57, No. 169, pp. 39404–39405, dated August 31, 1992) is amended to reflect various changes resulting from the transfer of the personnel security clearance function from the Office of Administrative Services to the Office of Human Resources.

The specific changes to Part F are as follows:

Section FH.20.A.1.b. is amended to add the personnel security clearance function to the division's responsibilities. The new section reads as follows:

b. Division of Staffing and Employee Services (FHA84)

- Provides service to all Central Office HCFA components in the areas of recruitment, in-service staffing, selective placement, and pre-employment investigations for all types of appointments and all occupational classes and levels of work (except Senior Executive Service, Schedule C, and related appointments), and personnel security clearances.
- Provides advice, guidance, and consultation to HCFA supervisory and management officials on such issues as optimal staffing mixes, recruitment sources, and qualification factors.
- Interprets regulations, guides, directives, and bulletins related to staffing and personnel services.
- Establishes and maintains the employment data base for routine and special reports and statistical studies related to the employee population.
- Plans and controls the central system for all personnel and payroll employee transaction processes, (except U.S. Savings Bonds), serves as the official custodian for all personnel folder clearances, confidential reports, employment agreements and other related areas.
- Plans, administers, and evaluates HCFA-wide employee benefits, health, and wellness program activities.
- Provides general employee counseling on such matters as retirement, life insurance, health plans, workers' compensation claims, and related areas.
- Serves as the central HCFA reference point for inquiries, guidance, and interpretation on employee benefits, health, and wellness matters.
- Processes insurance claims and annuity applications for retirees and survivors of deceased employees. Processes the full range of employee benefit and payroll transaction documents, with the exception of U.S. Savings Bonds.
- Directs programs for occupational health services, employee health enhancement, physical fitness, and blood assurance programs. Plans and administers the Agency's contract for the Employee Assistance Program. Directs and administers HCFA's child care initiative. Directs the Agency's Voluntary Leave Transfer and Video Display Terminal Eye Care Programs.
- Under direction of the HCFA Deputy Ethics Officer, plans and administers the entire ethics program for both Central and Regional Offices. Reviews financial disclosure reports prior to departmental submittal and coordinates outside activity requests and approvals.
- Directs and coordinates all Agency medical determinations related to employability programs, such as fitness for duty and reasonable accommodation.

Section FH. 20. A.3.b. is amended to remove the personnel security clearance function from the division's responsibilities. The new section reads as follows:

b. Division of Safety and Property Management (FHA82)

- Provides direct service and establishes/implements policies and procedures for the HCFA personal property and supply management programs.
- Maintains and operates the warehouse and the computerized property management and accountability system.
- Provides direct service and establishes/implements policies and procedures for environmental safety nationwide, emergency preparedness, civil defense, tort claims, and accident and fire prevention.
- Conducts special studies and analyses in the areas of personal property and supply management, and environmental safety and security.

Dated: July 19, 1993.

**Robert A. Streimer,**

*Associate Administrator for Management.*

[FR Doc. 93–17935 Filed 7–27–93; 8:45 am]

BILLING CODE 4120–03–P

### Health Resources and Services Administration

**HIV Care Grant Program**

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of grants made to States and territories.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that fiscal year 1993 funds have been awarded to States and territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability, and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 102–394.

**SUPPLEMENTARY INFORMATION:**

**Availability of Funds**

A total of $102,304,599 was made available for the Title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control and Prevention for the 24 months ending September 30, 1992, and a per capita income factor. Below is the distribution of funds by State.

| State | Amount |
|---|---|
| Alabama | $939,176 |
| Alaska | 100,000 |
| Arizona | 751,528 |
| Arkansas | 528,077 |
| California | 17,183,378 |
| Colorado | 837,655 |
| Connecticut | 1,068,399 |
| Delaware | 229,208 |
| District of Columbia | 1,441,594 |
| Florida | 11,228,316 |
| Georgia | 3,124,415 |
| Hawaii | 371,756 |
| Idaho | 100,000 |
| Illinois | 3,598,455 |
| Indiana | 753,940 |
| Iowa | 215,475 |
| Kansas | 324,039 |

| State | Amount |
|---|---|
| Kentucky | 467,575 |
| Louisiana | 1,844,076 |
| Maine | 121,410 |
| Maryland | 2,130,383 |
| Massachusetts | 1,837,845 |
| Michigan | 1,486,048 |
| Minnesota | 501,656 |
| Mississippi | 546,105 |
| Missouri | 1,459,224 |
| Montana | 55,197 |
| Nebraska | 146,689 |
| Nevada | 531,149 |
| New Hampshire | 102,372 |
| New Jersey | 4,505,948 |
| New Mexico | 259,454 |
| New York | 17,618,806 |
| North Carolina | 1,366,064 |
| North Dakota | 19,872 |
| Ohio | 1,476,544 |
| Oklahoma | 512,925 |
| Oregon | 675,020 |
| Pennsylvania | 2,849,791 |
| Rhode Island | 210,219 |
| South Carolina | 763,896 |
| South Dakota | 100,000 |
| Tennessee | 905,045 |
| Texas | 7,078,303 |
| Utah | 304,258 |
| Vermont | 100,000 |
| Virginia | 1,430,800 |
| Washington | 1,270,740 |
| West Virginia | 135,148 |
| Wisconsin | 481,719 |
| Wyoming | 44,037 |
| Puerto Rico | 6,121,433 |
| Guam | 3,379 |
| Virgin Islands | 36,048 |

**Eligibility Criteria**

In order to receive funding under Title II of the CARE Act, each State was required to develop:

- A detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services; and
- A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the Title II grant, including a description of the purposes for which the State intends to use such assistance.

Each State was also required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including an assurance that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the Title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with Title II assistance will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuation of health insurance coverage, ensure that it has established a program which assures that (1) such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) that income, assets, and medical expense criteria will be established and applied by the State to identify individuals who qualify for assistance, and that information concerning such criteria will be made available to the public;
- The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive Title II funds from the State;
- The State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under Title II;
- The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under Title II; and
- The State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

**General Use of Grant Funds**

States may use the HIV Care Grant funds to:

- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease. Priority funding must be given to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects, and then to any other existing HIV care consortia.
- Provide home- and community-based care services for individuals with HIV disease.Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State) individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.
- Provide treatments that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the fiscal year 1993 Title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure within 120 days of the receipt of the grant by the State.

**FOR FURTHER INFORMATION, CONTACT:** Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Dr. Eric Goosby, Director, Division of HIV Services, at (301) 443–6745.

**Executive Order 12372**

It has been determined that the Title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The catalog of Federal Domestic Assistance Number is 93.917.

Dated: July 22, 1993.

**William A. Robinson,**

*Acting Administrator.*

[FR Doc. 93–17918 Filed 7–27–93; 8:45 am]

BILLING CODE 4160–15–P

## HIV Emergency Relief Grant Program

**AGENCY:** Health Resources and Services Administration, HHS.

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**ACTION:** Notice of grants made to eligible metropolitan areas.

**SUMMARY:** The Health Resources and Services Administration (HRSA) announces that fiscal year 1993 funds have been awarded to the 25 eligible metropolitan areas (EMAs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and the statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by Title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 102–394.

**SUPPLEMENTARY INFORMATION:**

**Availability of Funds**

A total of $182,326,998 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to the 25 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control and Prevention (CDC) as of March 31, 1992. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 25 EMAs.

| EMA | Total award |
|---|---|
| Atlanta, GA | $5,490,571 |
| Baltimore, MD | 3,250,343 |
| Boston, MA | 4,154,744 |
| Chicago, IL | 7,390,763 |
| Dallas, TX | 4,542,034 |
| Detroit, MI | 2,091,739 |
| Fort Lauderdale, FL | 4,591,215 |
| Houston, TX | 7,820,319 |
| Jersey City, NJ | 3,616,220 |
| Los Angeles, CA | 19,190,269 |
| Miami, FL | 9,716,264 |
| Nassau-Suffolk, NY | 2,012,009 |
| New Orleans, LA | 1,796,972 |
| New York, NY | 44,469,219 |
| Newark, NJ | 3,542,848 |
| Oakland, CA | 2,602,816 |
| Orange Co, CA | 1,829,726 |
| Philadelphia, PA | 4,729,230 |
| Ponce, PR | 1,280,364 |
| San Diego, CA | 3,761,979 |
| San Francisco, CA | 27,217,076 |
| San Juan, PR | 4,579,777 |
| Seattle, WA | 2,824,570 |
| Tmpa-St Ptrsbrg, FL | 2,265,553 |
| Washington, D.C. | 7,447,578 |

**Eligible Grantees**

Metropolitan areas which were eligible for grant awards under Title I were those areas for which, as of March 31, 1992, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data for the population in the area.

Grants were awarded to the chief elected official (CEO) of the city or urban county in each EMA that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under Title I, the CEO was required to establish or designate an HIV health services planning council to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: health care providers; community-based and AIDS service organizations; social services providers; mental health services providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; grantees receiving categorical grants for early intervention services under Title III of the CARE Act; and the lead agency of any HRSA adult or pediatric HIV-related care demonstration project operating in the area to be served. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under Title I, the EMAs were required to submit an application containing such information as the Secretary required, including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under Title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with the political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that receive Title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- That Title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with Title I assistance will be provided without regard to the ability of the individual to pay for such services, and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

**General Use of Grant Funds**

EMAs must use the Title I HIV Emergency Relief grants to provide financial assistance to public or nonprofit entities, for the purpose of delivering or enhancing—

- HIV-related outpatient and ambulatory health and support services,

including case management and comprehensive treatment services, for individuals and families with HIV disease; and

• HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

Services supported by the Title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, the homeless, and persons affected by chemical dependency.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the Title I HIV Emergency Relief Grant Program should contact the Office of the CEO in their locality, and may obtain information on their CEO contact by calling Dr. Eric Goosby, Director, Division of HIV Services, at (301) 443–6745.

**Executive Order 12372**

Grants awarded for the Title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: July 22, 1993.

William A. Robinson,

*Acting Administrator.*

[FR Doc. 93–17919 Filed 7–27–93; 8:45 am]

BILLING CODE 4160–15–P

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## Office of Refugee Resettlement

## Refugee Resettlement Program: Allocations to States of FY 1993 Funds for Refugee Social Services and for Refugees Who Are Former Political Prisoners From Vietnam

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHA.

ACTION: Final notice of allocations to States of FY 1993 funds for refugee social services and for refugees who are former political prisoners from Vietnam.

SUMMARY: This notice establishes the allocations to States of FY 1993 funds for social services under the Refugee Resettlement Program (RRP). In order to help meet the special needs of former political prisoners from Vietnam, the Director has decided to add to the formula allocation $2,000,000 in funds previously set aside for social services discretionary projects.

EFFECTIVE DATE: July 28, 1993.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION: Notice of the proposed social service allocations to States was published in the **Federal Register** on May 21, 1993 (58 FR 29586). The population estimates that were used in the proposed notice have been adjusted as a result of additional population information submitted by 7 States.

### I. Allocation Amounts

The Office of Refugee Resettlement (ORR) has available $80,806,336 in FY 1993 refugee social service funds as part of the FY 1993 appropriations for the Department of Health and Human Services (Pub. L. No. 102–394).

Of the total of $80,806,336, the Director of ORR will make available to States $68,685,386 (85%) under the allocation formulas set out in this notice. These funds will be made available for the purpose of providing social services to refugees. In addition, the Director of ORR is making available $2,000,000 from discretionary social service funds to be allocated under the formula in this notice for additional services to former political prisoners from Vietnam.

*A. Discretionary Social Service Funds for Vietnamese Political Prisoners*

In recognition of the special vulnerability of refugees who are former political prisoners from Vietnam, the Director of ORR has set aside $2,000,000 from discretionary social service funds to be allocated under the formula set forth in this announcement, based on the number of actual political prisoner arrivals in FY 1992. This formula allocation is shown separately in Table 1 (cols. 7 and 8). States are required to use this allocation to provide additional services, as described below, to recent arrivals from Vietnam who are former political prisoners and members of their families.

Allowable services for the above-cited funds for political prisoners include the following direct services: (1) Specialized orientation and adjustment services, including peer support activities; and (2) specialized employment-related services, as needed. Under no circumstances may these funds be used for direct cash payments or stipends, or for the purchase of advertising space or air time.

Allowable services under this allocation for Vietnamese political prisoners are intended to supplement, not to supplant, those services provided to refugees in general under the social service formula allocation, discussed below.

ORR intends to provide technical assistance to States and organizations that request it to assure effective program development and implementation.

Because these funds are being provided specifically for services for former political prisoners from Vietnam, States which allocate social service funds to other local administrative jurisdictions, such as counties, shall do so for these funds, using a formula which reflects recent and anticipated arrivals of this target population only.

ORR strongly encourages States and other contracting jurisdictions, in selecting service providers for the above, to award these funds, to the extent possible, to qualified refugee mutual assistance associations with experience serving the target population and that all contractors receiving these funds will have Vietnamese language capacity and Vietnamese cultural understanding.

States are required to provide to ORR program performance information on the Vietnamese political prisoner program that meets the reporting

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[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

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requirements contained in 45 CFR 92.40, under the terms and conditions of the social services grant awards to States.

*B. Refugee Social Service Funds*

The population figures for the social service allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

The Director will allocate $68,685,386 to States in the following manner:

- $65,185,386 will be allocated on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1992 (including a floor amount for States which have small refugee populations).
- $3,500,000 will be allocated on the basis of each State's proportion of the 3-year refugee population (including a floor amount of $5,000 for States with small refugee populations) in order to provide an incentive for States to fund refugee mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and nationality Act (INA) which states that the "funds available for a fiscal year for grants and contract [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the Federal Register of August 29, 1991, section I, "Allocation amounts" (56 FR 42745), for a variable floor amount for States which have small refugee populations will be calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population or 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,120,950 in remaining social service funds (15% of the total funds available) will be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. The discretionary funds will primarily support specific program activities designed to: (1) Reduce welfare dependency in Sates with large numbers of refugees on welfare; and (2) address the needs of special populations who experience particular difficulty adjusting to life in the U.S. (As indicated earlier, $2,000,000 of these discretionary funds is being allocated to States under this notice for services for former political prisoners from Vietnam.) One announcement of the availability of funding and grant application procedures has been issued: Availability of funding for Planned Secondary Resettlement of Refugees, 57 FR 12130, April 8, 1992. ORR expects to continue emphasis on discretionary grants to address problems of persistent welfare dependency and to promote favorable resettlement opportunities. Announcements will be made when discretionary initiatives are decided on.

*Population To Be Served*

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's length of residence, in accordance with the requirements of 45 CFR part 400 Subpart I—Refugee Social Services, published in the Federal Register of February 3, 1989 (54 FR 5481). However, in keeping with 45 CFR 400.147(a), a State must allocate an appropriate portion of its social service funds, based on population and service needs, as determined by the State, for services to newly arriving refugees who have been in the U.S. less than one year. The portion proposed for such use must be specified and justified as part of the State's Annual Services Plan under 45 CFR 400.11(b)(2).

While 45 CFR 400.147(b) requires that in providing employability services, a State must give priority to a refugee who is receiving cash assistance, social service programs should not be limited exclusively to refugees who are cash assistance recipients. Social services may be provided to any refugee in need of services, regardless of whether the refugee is receiving cash assistance.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. No. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

*Service Priorities*

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. States, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, if a State's cash assistance dependency rate for refugees (as defined in section 400.146(b)) is 55% or more, funds

awarded under this notice for the basic and MAA incentive allocations (but not the political prisoner set-aside) are subject to a requirement that at least 85% of the State's award be used for employability services as set forth in section 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year as part of a plan to achieve self-sufficiency. This reflects the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on "employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management services". (INA, section 412(a)(1)(B).)

Since current welfare dependency data are not available, those States that historically have had dependency rates at 55% and above are invited to submit a request for a waiver of the 85% requirement if they can provide reliable documentation that demonstrates a lower dependency rate.

ORR will consider granting a waiver of the 85% provision if a State meets one of the following conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that the dependency rate of refugees who have been in the U.S. 24 months or less is below 55% in the State.

2. The State demonstrates to the satisfaction of the Director that (a) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugee *and* (b) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

3. In accordance with section 412(c)(1)(C) of the INA, the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

In keeping with Congressional intent with respect to the FY 1993 appropriation, States must use social service funds, to the maximum extent possible, for specialized refugee service programs in addition to and not duplicative of mainstream employment programs. The Report of the House Appropriations Committee (H.R. Rep. No. 102–708, p. 117) states:

> The Committee intends that, to the maximum extent possible, States will use social services funds for specialized refugee services programs that address the specific language, vocational and cultural needs of the refugees, in addition to and not duplicative of other federally funded mainstream employment services that are available for low income and needy persons.

States, therefore, must limit refugee social service funds, to the maximum extent possible, to the provision of refugee-specific services that are in addition to, and not duplicative of, the regular employment services provided to low-income people through State JOBS programs and other mainstream employment programs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

*MAA Set-Aside*

ORR believes that the continued and/or increased utilization of qualified refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. Therefore, additional funds which are to be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

ORR believes it is essential to build the capacity of MAAs as community-based organizations in order to enable these organizations to continue serving their communities well into the future. Therefore, ORR considers the MAA incentive allocation to represent the minimum commitment a State should make in social service funding to qualified MAAs. In addition, ORR strongly encourages States when contracting for social services, particularly employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund qualified refugee mutual assistance associations for the direct provision of services to refugee clients.

2. That the MAA incentive allocation is subject to and included under ORR's expectation that the total amount of social service funds allocated by this notice to a State be used primarily for the provision of employability services, as defined in 45 CFR 400.146 and 400.154.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees or former refugees, including both refugee men and women.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447. States must respond by 30 days from the date of this notice in order to avail themselves of this special allocation.

*State Administration*

States are reminded that under current regulations at 45 CFR 400.206 and 400.207, States have the flexibility to charge the following types of administrative costs against their refugee program social service grants, if they so choose: direct and indirect administrative costs incurred for the overall management and operation of

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the State refugee program, including its coordination, planning, policy and program development, oversight and monitoring, data collection and reporting, and travel. See also State Transmittal No. 88–40.

**II. Discussion of Comments Received**

We received four letters of comment in response to the notice of proposed FY 1993 allocations to States for refugee social services. The comments are summarized below and are followed in each case by the Department's response.

*Comment:* Two commenters requested clarification on ORR's interpretation of Congressional intent, as reflected in the Report of the House Appropriations Committee, that "* * * to the maximum extent possible, States will use social service funds for specialized refugee services programs that address the specific language, vocational and cultural needs of the refugees, in addition to and not duplicative of other federally funded mainstream employment services that are available for low income and needy persons" (H.R. Rep. No. 708, 102d Cong., 2d Sess. 117 (1992)). One commenter wondered what is meant by the phrase "maximum extent possible" and questioned how ORR will be able to determine whether this requirement has been met. The commenter also felt that the term "specialized refugee service" was vague and requested a clear definition of both phrases.

The commenter also requested that the requirement be modified to allow States to use refugee social service funds to provide employment and language training to refugee AFDC recipients in the JOBS program.

Another commenter asked for clarification on whether ORR's interpretation of the Committee language would not allow a social services-funded provider who is also the area JTPA provider to be considered to be providing refugee-specific services even though this provider uses bilingual staff and tailors services to refugees.

*Response:* Although ORR currently does not have a definition of "maximum extent possible," we strongly encourage States to use their refugee social service funds for specialized refugee services programs. "Specialized refugee services programs" are defined as those which address the specific language, vocational and cultural needs of refugees, as indicated in the Committee Report language, and which are provided in a manner consistent with the employment goals of the Refugee Act.

The Congressional language does not preclude or endorse the use of refugee social service funds to provide employment and language training to refugee AFDC recipients in the JOBS program or to refugees served by the area JTPA provider. At a minimum, however, the language requires that such services be refugee-specific—i.e., they meet the definition above for specific language, vocational and cultural needs within the content of the provisions of the Refugee Act. Mainstream employment services providers, such as the area JTPA provider, may be considered to be providing refugee-specific services to the extent that the services reflect this definition, notwithstanding the presence or absence of bilingual staff.

*Comment:* One commenter asked for clarification on the MAA set-aside requirement: "That the MAA incentive allocation is subject to and included under ORR's expectation that the total amount of social service funds allocated by this notice to a State be used primarily for the provision of employability services, as defined in 45 CFR 400.146 and 400.154". The commenter wondered whether ORR intends this requirement to apply only to those States with a 55% or higher dependency rate or to all States.

*Response:* In accordance with 45 CFR 400.146, this requirement applies only to those States with a dependency rate of 55% or higher.

*Comment:* One commenter cited the language in the notice that states: "However, in keeping with 45 CFR 400.147(a), a State must allocate an appropriate portion of its social service funds for services to newly arriving refugees who have been in the U.S. less than one year." The commenter felt the language should be revised to include key phrases contained in 45 CFR 400.147(a) which allow States to consider population and service needs, as determined by the State, for planning and allocating services to the newly arrived.

*Response:* We agree. The language in the notice has been changed to include those phrases, as well as the language noting that the portion proposed must be specified and justified in the State's Annual Services plan.

*Comment:* One commenter suggested that the final notice require organizations that receive social service funds for services to Vietnamese political prisoners to report what services were provided, how many people were served, and what outcomes were obtained.

*Response:* The commenter's suggestion is well-taken. Since funds for services to Vietnamese political prisoners are included as part of the social services grant awards to States, the reporting requirements contained in 45 CFR 92.40, one of the terms and conditions of the social services grant award, would apply to the Vietnamese political prisoner program, as well as to the social service formula program. This provision requires States to report program performance information such as program accomplishments in relation to program objectives, quantifiable outputs, and per unit costs. We have added language to the notice to clarify for States that the reporting requirements under 45 CFR 92.40 apply also to the Vietnamese political prisoner program.

*Comment:* One commenter objected to the use of a minimum allocation floor for small States, stating that the use of a floor will result in eight States receiving a larger average per capita in social services than States receiving funds based solely on the 3-year refugee population formula. The commenter recommended that the minimum floor be eliminated and, as an alternative, that ORR use its discretionary funds to maintain a minimum level of funding to small States.

*Response:* We continue to believe that a minimum allocation for social services is necessary to cover basic costs which a State incurs in providing services, regardless of the number of refugees. Therefore, we view the establishment of a floor as a reasonable approach to allocating funds to States with small refugee populations, where the use of the formula alone would yield too small an amount to be practical.

*Comment:* One commenter objected to the statement in the notice that ORR expects social service funds to be used for services designed to enable refugees to obtain jobs in less than one year as part of a self-sufficiency plan. Objections were based on the belief that services aimed at removing pre-employment barriers would be precluded from funding, that ORR's policy is in conflict with the philosophy and policies of the Federal Job Opportunities and Basic Skills (JOBS) Training program, and that there is no statutory basis for predicating the use of social service funds on placing a refugee in a job within a specific time period. The commenter recommended elimination of ORR's policy regarding the one-year job placement requirement.

*Response:* We wish to clarify, as we did in the FY 1991 and FY 1992 final notices on social service allocations, that ORR expects, but does not require, the use of social service funds to result in job placements within one year. We have used the term "expects" rather

than "requires" in order to make that distinction.

While it is true that a time limit in not specified in the statute, we believe that the one-year policy complies with Congressional intent. Section 412(a)(1)(B) of the Act states that "* * * employable refugees should be placed on jobs as soon as possible after their arrival in the United States." We believe that an emphasis on providing services designed to help refugees become employed within one year is a reasonable interpretation of this provision.

We recognize that long-term training and services, such as those available in the JOBS program, may be desirable for many refugees as they continue to build their lives in this country; however, we believe that such long-term training activities are beyond the legislated intent, scope, and funding of the refugee program, whose purpose is to help refugees achieve self-sufficiency through employment as quickly as possible. ORR believes that a program of short or immediate-term training followed by intensive job placement activities is the most productive use of scarce resources.

*Comment:* One commenter noted that the proposed notice states that ORR "expects" States and counties to use day care funding from other publicly funded mainstream programs as a prior resource, while last year's notice stated that ORR "encourages" States and counties to use such day care funding. The commenter infers from the change in wording that ORR does not consider the training and employment of women as a priority and that States should use refugee social service funding for day care only as a last resort.

*Response:* ORR considers increased opportunities for refugee women a high priority in the refugee program and an important strategy for increasing refugee self-sufficiency. The change of wording from "encourages" to "expects" does not in any way represent a diminution of emphasis on services to refugee women, but rather adds emphasis to the need for States to use day care funded from other sources, to the extent available, before using limited refugee funds for this purpose.

*Comment:* One commenter objected to language in the notice that "* * * strongly encourages States to give priority to MAAs in contracting for refugee social services, particularly employment services, whenever bidders are equally qualified, if the ethnic composition of the MAA is the same as the dominant population to be served". The commenter protested that the proposed language implies that ORR believes that service providers can serve only their own ethnic group and that such a policy deters the acculturation process of refugees.

*Response:* The language in the notice is not meant to imply that MAAs or other service providers can only serve their own ethnic group. We have modified the language in the notice to make clear that ORR is encouraging, but not mandating, the use of MAAs as service contractors.

### III. Allocation Formula

Of the funds available for FY 1993 for social services, $65,185,386 is allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—
2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—
3. The number of persons in item 2, above, in the State as of October 1, 1992, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. Minimum allocations for small States are taken into account.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

Allocations for political prisoners are based on FY 1992 arrival numbers for this group in each State from the Refugee Data Center and are limited to States with 170 or more political prisoner arrivals. We have limited the population base to FY 1992 political prisoner arrival numbers because these funds are intended to serve recent arrivals. We have not included States with fewer than 170 former political prisoners in the political prisoner allocations formula because the resulting level of funding would be insignificant. In these States, we believe the small number of political prisoners could be served under the State's refugee social services program.

### IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1993 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1992, for estimated secondary migration. The data base includes refugees of all nationalities and Amerasians from Vietnam. Figures on the number of Cuban and Haitian entrants resettled are obtained from several sources, including the ORR Florida office and the Immigration and Naturalization Service.

For fiscal year 1993, ORR's formula allocations for the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1990, 1991, and 1992. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1989, and September 30, 1992, who are thought to be living in each State as of October 1, 1992. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The figures on arrivals of refugees and Amerasians used in developing these population estimates were based on final arrival data by State for FY 1990, FY 1991, and FY 1992. Deductions were made for refugees resettled under the private sector initiative. The figures on Cuban and Haitian entrants were based on arrival data by State for FY 1990, FY 1991, and FY 1992.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate. Because the reporting period covered on Form ORR–11 was a maximum of only 8 months as of June 1992 for the majority of States those reporting base was their cash/medical assistance caseload, extra weight was given to the secondary migration reported by those States to arrive at estimates of secondary migration over a 36-month period. In 1992, no count of recently-arrived refugee children was available from the Department of Education for use as a comparison.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each

State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1992, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the total allocation amounts after allowing for the minimum amounts (col. 5); and the amounts available as an incentive to States to use MAAs as service providers (col. 6). Table 1 also shows the number of former political prisoner arrivals in FY 1992 (col. 7); and the allocation amounts for services to this population (col. 8).

## V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan, as required by 45 CFR 400.11(b)(2). The following amounts are allocated for refugee social services in FY 1993:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1993; AND FORMER POLITICAL PRISONER ARRIVALS AND ALLOCATIONS FOR FY 1993

| State | Refugees (1) | Entrants (2) | Total population (3) | Formula amount (4) | Allocation (5) | MAA incentive allocation (6) | Former political prisoner arrivals from Vietnam in FY 1992 (7) | Former political prisoner allocation (8) |
|---|---|---|---|---|---|---|---|---|
| Alabama | 891 | 18 | 909 | $157,555 | $157,555 | $9,450 | 40 | $0 |
| Alaska[1] | 147 | 0 | 147 | 25,479 | 75,000 | 5,000 | 13 | 0 |
| Arizona | 4,486 | 29 | 4,515 | 782,576 | 782,576 | 41,973 | 302 | 32,599 |
| Arkansas | 444 | 0 | 444 | 76,958 | 100,000 | 5,000 | 36 | 0 |
| California[2] | 95,217 | 529 | 95,746 | 16,595,459 | 16,595,459 | 890,084 | 7,887 | 851,360 |
| Colorado | 3,968 | 2 | 3,970 | 688,112 | 688,112 | 36,906 | 175 | 18,890 |
| Connecticut | 3,708 | 73 | 3,781 | 655,353 | 655,353 | 35,149 | 123 | 0 |
| Delaware | 135 | 9 | 144 | 24,959 | 75,000 | 5,000 | 6 | 0 |
| District of Columbia | 2,855 | 21 | 2,876 | 498,491 | 498,491 | 26,736 | 252 | 27,202 |
| Florida | 12,727 | 16,063 | 28,789 | 4,989,765 | 4,989,765 | 267,522 | 451 | 46,683 |
| Georgia | 7,625 | 58 | 7,683 | 1,331,679 | 1,331,679 | 71,424 | 873 | 94,236 |
| Hawaii | 984 | 0 | 984 | 170,555 | 170,555 | 9,148 | 101 | 0 |
| Idaho | 920 | 1 | 921 | 159,635 | 159,635 | 8,562 | 12 | 0 |
| Illinois | 13,411 | 96 | 13,507 | 2,341,141 | 2,341,141 | 125,565 | 279 | 30,117 |
| Indiana | 987 | 7 | 994 | 172,288 | 172,288 | 9,241 | 96 | 0 |
| Iowa | 3,037 | 2 | 3,039 | 526,744 | 526,744 | 28,251 | 189 | 20,402 |
| Kansas | 2,204 | 1 | 2,205 | 382,188 | 382,188 | 20,498 | 215 | 23,206 |
| Kentucky | 1,812 | 15 | 1,827 | 316,670 | 316,670 | 16,984 | 132 | 0 |
| Louisiana | 2,482 | 57 | 2,539 | 440,080 | 440,080 | 23,603 | 344 | 37,133 |
| Maine | 743 | 1 | 744 | 128,956 | 128,956 | 6,915 | 3 | 0 |
| Maryland | 7,372 | 235 | 7,607 | 1,318,506 | 1,318,506 | 70,717 | 375 | 40,479 |
| Massachusetts | 11,582 | 263 | 11,845 | 2,053,070 | 2,053,070 | 110,115 | 674 | 72,755 |
| Michigan | 7,025 | 31 | 7,056 | 1,223,002 | 1,223,002 | 65,595 | 371 | 40,048 |
| Minnesota | 6,629 | 0 | 6,629 | 1,148,991 | 1,148,991 | 61,625 | 291 | 31,412 |
| Mississippi | 268 | 0 | 268 | 46,452 | 67,785 | 5,000 | 11 | 0 |
| Missouri | 4,885 | 26 | 4,911 | 851,214 | 851,214 | 45,654 | 290 | 31,304 |
| Montana | 273 | 0 | 273 | 47,319 | 80,652 | 5,000 | 0 | 0 |
| Nebraska | 2,314 | 2 | 2,316 | 401,428 | 401,428 | 21,530 | 247 | 26,662 |
| Nevada | 870 | 139 | 1,009 | 174,888 | 174,888 | 9,380 | 47 | 0 |
| New Hampshire | 667 | 0 | 667 | 115,610 | 115,610 | 6,201 | 66 | 0 |
| New Jersey | 7,546 | 794 | 8,340 | 1,445,555 | 1,445,555 | 77,531 | 180 | 19,430 |
| New Mexico | 1,064 | 63 | 1,127 | 195,341 | 195,341 | 10,477 | 51 | 0 |
| New York | 61,765 | 683 | 62,448 | 10,827,451 | 10,827,451 | 580,722 | 570 | 61,529 |
| North Carolina | 3,875 | 24 | 3,899 | 675,806 | 675,806 | 36,246 | 172 | 18,566 |
| North Dakota | 804 | 0 | 804 | 139,356 | 139,356 | 7,474 | 10 | 0 |
| Ohio | 5,871 | 46 | 5,917 | 1,025,582 | 1,025,582 | 55,006 | 153 | 0 |
| Oklahoma | 1,365 | 2 | 1,367 | 236,939 | 236,939 | 12,708 | 150 | 0 |
| Oregon | 6,516 | 54 | 6,570 | 1,138,765 | 1,138,765 | 61,077 | 375 | 40,479 |
| Pennsylvania | 11,171 | 85 | 11,256 | 1,950,980 | 1,950,980 | 104,639 | 324 | 34,974 |
| Rhode Island | 1,404 | 11 | 1,415 | 245,259 | 245,259 | 13,154 | 0 | 0 |
| South Carolina | 324 | 2 | 326 | 56,505 | 97,839 | 5,000 | 54 | 0 |
| South Dakota | 1,217 | 0 | 1,217 | 210,940 | 210,940 | 11,314 | 0 | 0 |
| Tennessee | 3,072 | 20 | 3,092 | 535,930 | 535,930 | 28,744 | 227 | 24,503 |
| Texas | 17,136 | 148 | 17,284 | 2,995,800 | 2,995,800 | 160,677 | 1,920 | 207,254 |
| Utah | 1,851 | 0 | 1,851 | 320,830 | 320,830 | 17,207 | 129 | 0 |
| Vermont | 721 | 0 | 721 | 124,969 | 124,969 | 6,703 | 0 | 0 |
| Virginia | 6,023 | 20 | 6,043 | 1,047,421 | 1,047,421 | 56,178 | 621 | 67,034 |
| Washington | 17,356 | 0 | 17,356 | 3,006,280 | 3,006,280 | 161,347 | 924 | 99,741 |
| West Virginia | 122 | 0 | 122 | 21,146 | 75,000 | 5,000 | 0 | 0 |
| Wisconsin | 4,393 | 3 | 4,396 | 761,950 | 761,950 | 40,867 | 37 | 0 |
| Wyoming | 13 | 0 | 13 | 2,253 | 75,000 | 5,000 | 4 | 0 |
| Total | 354,275 | 19,653 | 373,928 | $64,812,181 | $65,185,388 | $3,500,000 | 19,804 | $2,000,000 |

[1] The Alaska allocation has been awarded for a Wilson/Fish demonstration project.
[2] A portion of the California allocation is expected to be awarded to continue a Wilson/Fish project in San Diego.

### VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: July 22, 1993.

David B. Smith,

*Acting Director, Office of Refugee Resettlement.*

[FR Doc. 93-18007 Filed 7-27-93; 8:45 am]

BILLING CODE 4184-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N-93-3548]

### Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, Assistant Chief, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to a one-time research study of the relationship between lead in settled house dust and blood-lead levels of young children.

HUD is sponsoring the planned study of dust-lead/blood-lead relationships because it has a direct interest in the dust lead standard that EPA must set under section 403 of the Toxic Substances Control Act, as amended by Title X (specifically section 1021) of the Housing and Community Development Act of 1992. Under section 403, EPA must promulgate regulations that identify dangerous levels of lead in paint, dust and soil. These EPA standards shall apply to statutorily required HUD regulations and guidelines on lead-based paint hazards as well as to other purposes of the Toxic Substances Control Act.

The law stipulates that EPA must promulgate the section 403 regulations by April 1994. To meet that deadline, EPA must have the findings of the proposed study of dust-lead/blood-lead relationships by the middle of December 1993 to take them into account in setting the dust-lead standard. The study investigator's must have four and one-half months to complete data collection, laboratory analysis, data analysis, and interim report writing by mid December.

Therefore HUD has requested OMB to complete its processing of this information collection no later than ten (10) days after the date of the publication of this Notice.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to respond to the information collection, including the number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 9, 1993.

**Kay F. Weaver,**

*Director, Information Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Proposal:* One-time Research Study of the Relationship Between Lead in Settled House Dust and Blood Lead Levels of Young Children

*Office:* Lead-Based Paint Abatement and Poisoning Prevention

*Description of the Need for the Information and Its Proposed Use:* Results of the study will be used by the U.S. Environmental Protection Agency (EPA) in setting standards for dangerous levels of lead in dust, as required by section 403 of the Toxic Substances Control Act (enacted in subtitle B of Title X of the Housing and Community Development Act of 1992 (Public Law 102-550)). Such standards must be promulgated by April 1994, according to Title X.

The EPA standards will be used by HUD in regulations pertaining to the evaluation and reduction of lead-based paint hazards in HUD-associated housing and in housing being disposed of by the Federal Government. The HUD regulations are required by section 302 of the Lead-Based Paint Poisoning Prevention Act, as amended by sections 1012 and 1013 of the Housing and Community Development Act of 1992. Such regulations must be effective January 1, 1995.

HUD will also use the EPA standards in the technical guidelines for the evaluation and reduction of lead-based paint hazards in housing, which are required by section 1017 of the Housing and Community Development Act of 1992.

If the proposed data collection is not conducted, it will be necessary for EPA to base the standards on existing data that have major limitations: (1) Dust sampling methods in other studies have been too varied; (2) most studies have focused on children with elevated blood lead levels rather than children with a range of blood lead levels; (3) prior studies included children with unmeasured past lead exposures at previous residences; (4) the literature has not estimated the contribution of dust lead at each of three sites (floors, interior window sills, and window wells) on blood leads.

The aims of the study are to determine:

—The relationship between lead loading and lead concentration in house dust and the blood lead levels among urban children 12 to 30 months who have lived in the same house since the age of 6 months or younger;

—The contribution of other potential sources of lead exposure;

—Whether a vacuum method or wet-wipe method of measuring dust-contaminated lead levels is better correlated with blood lead levels of children;

—The risk of a child developing elevated blood lead levels on the basis of a known level of lead in house dust using a predictive model.

These objectives will provide definitive data for the development of a standard for lead-contaminated dust in residential dwellings.

The study will enroll 200–400 children in the city of Rochester, NY between the ages of 12 to 30 months who have resided in the same house since 6 months of age, spent a limited duration of time away from their primary residence (<20 hours/week), and have no known history of environmental, nutritional, or educational intervention for elevated blood lead. The following data will be collected: (1) A behavioral questionnaire to charactertize each child's potential exposure to lead in soil and household dust, play and hand-to-mouth activities, and nutritional status; (2) a demographic questionnaire to obtain relevant data on all members of the household; (3) venous blood lead and ferritin of enrolled children; (4) measurements of lead in paint in the home; (5) interior dust lead; (6) exterior dust lead; (7) soil lead; (8) tap water lead; and (9) various characteristics of the home and other environmental characteristics.

*Form Number:* None
*Respondents:* Enrolled Children and Related Households
*Frequency of Submission:* One-time Only
*Reporting Burden:*

| Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| 440 (maximum; includes 10 percent to be interviewed twice for reliability sample) | | 1 | | 2 | | 880 |

*Total Estimated Burden Hours:* 880
*Status:* New Collection
*Contact:* Steve Weitz, HUD (202) 755–1805, Angela Antonelli, OMB (202) 395–6880

[FR Doc. 93–17950 Filed 7–27–93; 8:45 am]
BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY–010–03–4333–04]

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure of public lands in Hot Springs County, Wyoming.

**SUMMARY:** The Bureau of Land Management (BLM) hereby gives notice that effective July 28, 1993, all of the following legally described public lands located in the South Fork Owl Creek and Cottonwood Creek drainages of Hot Springs County, Wyoming, are closed to all motorized vehicle access and travel where signed and gated. Exceptions to these closures are authorized administrative uses, emergency needs, and access authorized by the BLM right-of-way WYW–94065. Closure will remain in effect until rescinded or modified by the Authorized Officer.

Sixth Principal Meridian

T. 43 N., R. 102 W.,
Secs. 17 and 18;
T. 43 N., R. 103 W.,
Secs. 10, 11, and 13;
T. 44 N., R. 100 W.,
Secs. 3, 4, 5, 6, 8, 9, and 10;
T. 45 N., R. 100 W.,
Secs. 29, 30, 31, and 34;
T. 45 N., R. 101 W.,
Sec. 25.

**EFFECTIVE DATE:** Closure will begin on July 28, 1993, and will remain in effect until rescinded or modified by the Authorized Officer.

**FOR FURTHER INFORMATION CONTACT:** Joe Vessels, Area Manager, Grass Creek Resource Area, P.O. Box 119, 101 South 23rd Street, Worland, Wyoming 82401–0119, (307) 347–9871.

**SUPPLEMENTARY INFORMATION:** Maps describing the above mentioned areas are available at the BLM's Worland District Office for public review. The purpose of these closures is for access and use management to protect wildlife habitat and security areas, reduce damage to roads, minimize erosion, prevent trespass, provide for quality hunting and other allowable recreational experiences, and mitigate the impacts of access road development and range improvement. Year-round foot and horse access on these public lands is permitted.

The authority for this closure is the Federal Land Policy and Management Act of 1976, Public Law 94–579; and regulations 43 CFR 8341.2(a). This closure is consistent with the Grass Creek Management Framework Plan; the Absaroka Front Habitat Management Plan; the BLM's Cooperative Management Agreement with Rhodes Ranch Inc. and the Wyoming Game and Fish Department; and the terms and conditions of BLM right-of-way WYW–94065.

Any person who violates or fails to comply with this closure is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

Dated: July 16, 1993.
**Joseph T. Vessels,**
*Grass Creek Resource Area Manager.*

[FR Doc. 93–17897 Filed 7–27–93; 8:45 am]
BILLING CODE 4310-33-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Availability of Draft Supplemental Environmental Impact Statement; Management of Habitat for Species Within the Range of the Northern Spotted Owl

**AGENCIES:** Bureau of Land Management, Department of the Interior; and Forest Service, Department of Agriculture.

**ACTION:** Notice of availability of a draft supplemental environmental impact statement on management of habitat for late-successional and old-growth forest related species within the range of the Northern Spotted Owl.

**DATES:** The comment period on this draft supplemental environmental impact statement ends October 28, 1993.

**ADDRESSES:** Comments should be sent to: Interagency SEIS Team, P.O. Box 3623, Portland, OR 97208–3623.

**FOR FURTHER INFORMATION CONTACT:** Interagency SEIS Team, P.O. Box 3623, Portland, OR 97208–3623.

**SUPPLEMENTARY INFORMATION:** Copies of the draft supplemental environmental impact statement (SEIS) are available for review at local Bureau of Land Management and Forest Service offices and some public libraries in Oregon, Washington, and California. Alternatively, copies may be obtained by calling (503) 326–7883 or by writing the Interagency SEIS Team at P.O. Box 3623, Portland, OR 97208–3623.

Three public hearings on this draft SEIS will be scheduled. They will be announced at least 30 days in advance by notice in the Federal Register and in newspapers.

Dated: July 23, 1993.

**Willie R. Taylor,**

*Acting Director, Office of Environmental Affairs, Department of the Interior.*

Dated: July 23, 1993.

**David E. Ketcham,**

*Director, Environmental Coordination, Forest Service, U.S. Department of Agriculture.*

[FR Doc. 93–17951 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–11–M

## DEPARTMENT IF THE INTERIOR

### Bureau of Land Management

[MT–054–4333–03]

### Montana Off-Road Vehicle Designation

**AGENCY:** Bureau of Land Management, Valley Resource Area, Interior.

**ACTION:** Notice to limit off-road vehicle use on public lands.

**SUMMARY:** The Bureau of Land Management is cooperating in a Block Management Agreement with Page-Whitman Ranches of south Valley County, Montana, and the Montana Department of Fish, Wildlife, and Parks. In accordance with this agreement, the following rules will be in effect within the designated area from October 1, 1993 to November 30, 1993.

—Vehicles must stay on existing roads/trails designated as open. Maps of the area boundary and of roads/trails designated open are available from the BLM and the Montana Department of Fish, Wildlife, and Parks office in Glasgow, Montana and three field locations on the perimeter of the area boundary.
—Off-road vehicle use is allowed on public lands for game retrieval only.
—All gates should be left as signed.
—Open fires and littering are prohibited.

The block management area is described as all lands within the Square Creek, Desert Coulee, Taylor Coulee, Sheep Shed and Stone House pastures of the Carpenter Creek allotment. Legal description of the public lands within the block management area are as follows:

All or portions of the following sections in Valley County, Montana:

T. 25 N., R. 34 E., Sections 34 and 35
T. 25 N., R. 35 E., Sections 25 through 35
T. 25 N., R. 36 E., Sections 26 through 33
T. 24 N., R. 34 E., Sections 1, 2, 11, 12, 13, 14, 23
T. 24 N., R. 35 E., Sections 1–5, 7–15, 17–20, 23–28, 33–35
T. 24 N., R. 36 E., Sections 3–9, 17, 18, 30, 31
T. 23 N., R. 35 E., Sections 2, 3

**DATES:** This designation will be in effect from October 1, 1993 through November 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Holbert, Valley Resource Area, Area Manager, Route 1–4775, Glasgow, MT 59230–0796.

**SUPPLEMENTARY INFORMATION:** These regulations apply as found in 43 CFR 8364.1.

Dated: July 19, 1993.

**David L. Mari,**

*District Manager.*

[FR Doc. 93–17902 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–GN–M

[AZ–942–03–4730–02]

### Arizona; Notice of Filing of Plats of Survey

Date: July 19, 1993.

1. The plat of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines and a portion of the adjusted 1906 meanders; and a survey of a portion of the fixed and limiting boundary of the left bank of the abandoned channel of the Colorado River in Township 16 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted April 14, 1993, and was officially filed April 22, 1993.

A plat representing a dependent resurvey of a portion of the Fourth Standard Parallel North through Range 21 West, the 1963 partition line, (identical with a portion of the north boundary), the east boundary, the subdivisional lines, and a portion of the adjusted 1906 meanders; and a survey of a portion of the fixed and limiting boundary of the left bank of the abandoned channel of the Colorado River and a survey of accreted lands and a metes-and-bounds survey of a portion of the Havasu Fish and Wildlife boundary in Township 16 North, Range 22 West, Gila and Salt River Meridian, Arizona, was accepted April 14, 1993, and was officially filed April 22, 1993.

These plats were prepared at the request of the Department of the Interior, Fish and Wildlife Service.

A supplemental plat showing new lottings in section 21, Township 16 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted April 14, 1993, and was officially filed April 22, 1993.

This plat was prepared at the request of the Bureau of Land Management, Phoenix District Office, to facilitate a land exchange.

A plat representing a dependent resurvey of a portion of the subdivisional lines; and the subdivision of section 8 and a metes-and-bounds survey in section 8, Township 13 North, Range 10 West, Gila and Salt River Meridian, Arizona, was accepted May 18, 1993, and was officially filed May 27, 1993.

This plat was prepared at the request of the Bureau of Land Management, Kingman Resource Area.

A supplemental plat showing Tract 37 in partially surveyed Township 15 South, Range 30 East, Gila and Salt River Meridian, Arizona, was approved May 4, 1993, and was officially filed May 13, 1993.

A supplemental plat showing Tracts 37 and 38 in partially surveyed Township 19 South, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted May 4, 1993, and was officially filed May 13, 1993.

These plats were prepared at the request of the United States Forest Service, Conino National Forest.

A supplemental plat showing a subdivision of original lot 4, section 22, Township 17 North, Range 5 East, Gila and Salt River Meridian, Arizona was accepted May 17, 1993, and was officially filed May 27, 1993.

This plat was prepared at the request of the United States Forest Service, Conino National Forest.

A plat representing a survey of the Sixth Guide Meridian East, (west boundary), the east and north boundaries, and the subdivisional lines of Township 31 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted May 25, 1993, and was officially filed June 3, 1993.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the

open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

**James P. Kelley,**

*Chief Cadastral Surveyor of Arizona.*

[FR Doc. 93-17895 Filed 7-27-93; 8:45 am]

BILLING CODE 4310-32-M

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[NM-940-03-4730-12]

## Notice of Filing of Plats of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on August 24, 1993.

**New Mexico Principal Meridian, New Mexico:**

T. 19 N., R. 15 W., Accepted April 23, 1993, for Group 844 NM.

Supplemental:

T. 7 N., R. 2 E., Accepted June 14, 1993.

Indian Meridian, Oklahoma:

T. 7 N., R. 11 W., Sec. 11 and 24, Accepted June 16, 1993, for Group 62 OK.

T. 7 N., R. 11 W., Sec. 9, 16, 18, and 24, Accepted June 16, 1993, for Group 62 OK.

T. 13 N., R. 1 E., Accepted June 16, 1993, for Group 70 OK.

T. 13 N., R. 11 W., Accepted June 16, 1993, for Group 57 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

**John P. Bennett,**

*Chief, Cadastral Survey/Geo Sciences.*

[FR Doc. 93-17903 Filed 7-27-93; 8:45 am]

BILLING CODE 4310-FB-M

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## National Park Service

### Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area (GGNRA) Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, August 12, 1993, at Building 201, Fort Mason, San Francisco, California. The Advisory Commission was established by Public Law 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

The main agenda item at this public meeting will be a public hearing on the Alcatraz Development Concept Plan (DCP) and Environmental Assessment (EA). The DCP for Alcatraz was made available to the public the week of July 12, 1993.

The Plan will provide a blueprint for the future of Alcatraz Island, a 22-acre island in San Francisco Bay, managed by the National Park Service. It identifies specific management goals and practices to maximize resource protection, visitor use, and interpretation of the island.

According to the Plan some areas of Alcatraz Island currently closed to the public would be open with restrictions to protect wildlife and visitor safety. The detailed environmental assessment evaluates alternatives and potential impacts of each alternative on island resources and the visiting public. Alternatives focus on different levels of public access.

A draft Alcatraz Plan focused on the implementation of the vision for Alcatraz laid out in the General Management Plan (GMP). The Plan was updated to consider changing visitor patterns, wildlife values, and recent resource studies. Although still consistent with the original GGNRA GMP, the Development Concept Plan now focuses considerably more on preservation and protection. It offers additional public access to parts of the island now closed due primarily to safety concerns. Seasonal limitation to access are included to protect nesting birds, and some portions of the island would remain permanently closed for habitat preservation and visitor safety.

There will be a 30-day comment period on the Alcatraz Development Concept Plan (DCP) and Environmental Assessment (EA), and public comments will be taken at the August 12 meeting of the Advisory Commission at which Advisory Commission action is anticipated.

A second agenda item at this meeting is a presentation of the Cultural Resource Management Plan for the Golden Gate National Recreation Area. The GGNRA Cultural Resource Management Plan is a portion of the Congressionally-mandated Resources Management Plan for GGNRA and for all national park areas. The cultural section of the Resources Management Plan identifies existing cultural resources, themes, existing conditions, threats, and recommendations for future preservation and restoration actions. A major portion of the Plan is composed of programming documents identifying immediate and long-range planning, research, personnel, and funding needs to implement the Plan.

This meeting will also contain a Superintendent's Report which will include an update on issues relating to the transition and planning for the Presidio of San Francisco.

This public meeting is opened to all environmental, neighborhood, and community groups and others interested in being involved in the planning process for these GGNRA areas.

Copies of the Alcatraz Development Concept Plan (DCP) and Environmental Assessment (EA) can be obtained by writing to General Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after August 27, 1993. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: July 15, 1993.

**Stanley T. Albright,**

*Regional Director, Western Region.*

[FR Doc. 93-18024 Filed 7-27-93; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

### Release of Waybill Data for Use By Freight Equipment Management Research-Demonstration Program Association of American Railroads

The Commission has received a request from the Freight Equipment Management, Research-Demonstration Program of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1992 to ICC Waybill Sample.

A copy of the request (WB099–7/21/93) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17984 Filed 7–27–93; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on July 15, 1993, two proposed consent decrees in *United States* v. *Apache Energy & Mineral Company, et al.*, Civil Action No. 86–C–1675, were lodged with the United States District Court for the District of Colorado.

The proposed consent decree with defendant Leadville Silver & Gold, Inc. resolves the company's alleged liability to the United States based on its property ownership and operations at the California Gulch Superfund Site ("Site"). The decree reflects the company's financial inability to pay any of the United States' response costs at the Site but obligates the defendant to undertake future response activities on a specific area of the Site if EPA determines such activities to be necessary and if the defendant is deemed to be financially able to undertake any or all of the EPA selected response activities. The decree also requires the defendant to grant access to the United States and others performing response actions under the United States' oversight, file a notice sufficient to notify subsequent purchasers of defendant's property that its property is subject to the consent decree, and continue to exercise due care with respect to the hazardous substances at the Site. The decree further provides that, subject to general and specific reservations of rights, the United States covenants not to sue or take any other civil or administrative action against the defendant for any and all civil liability for reimbursement of response costs incurred by the United States or for injunctive relief, pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

The consent decree with C & H Development Company resolves the defendant's alleged liability to the United States based on its ownership of mining claims at the Site. The decree reflects the fact that the defendant has never worked any of its claims and that the defendant is financially unable to pay any of the United States' response costs incurred at the Site. The decree requires the defendant to grant access to the United States and others performing response actions under the United States' oversight, file a notice sufficient to notify subsequent purchasers of defendant's property that its property is subject to the consent decree, and continue to exercise due care with respect to the hazardous substances at the Site. The decree further provides that, subject to general and specific reservations of rights, the United States covenants not to sue or take any other civil or administrative action against the defendant for any and all civil liability for reimbursement of response costs incurred by the United States or for injunctive relief, pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

The Department of Justice will receive comments relating to the proposed consent decree with Leadville Silver & Gold, Inc. and the proposed consent decree with C & H Development Company for a period of thirty (30) days from the date of this publication. Comments on either of these decrees should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington DC 20530, and should refer to *United States* v. *Apache Energy and Mineral Company*, DOJ Ref. 90–11–3–138.

Copies of the proposed consent decrees may be examined at the office of the United States Attorney, District of Colorado, 633 17th Street, Suite 1600, Denver, Colorado 80202; the Region VIII office of the Environmental Protection agency, 999 18th Street, Denver, Colorado, 80202; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington DC 20005, (202–624–0892). A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington DC 20005. When requesting a copy of the proposed consent decrees, please enclose a check in the amount of $5.75 for the consent decree with Leadville Silver & Gold, Inc. and $4.50 for the proposed consent decree with C & H Development Company, (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

**Myles E. Flint,**

*Acting Assistant Attorney General, Environment & Natural Resources Division.*

[FR Doc. 93–17899 Filed 7–27–93; 8:45 am]

BILLING CODE 4410–01–M

### Notice of Lodging of Consent Decree

In accordance with Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Arthur Belanger et. al.*, Civil Action No. 91–0288–1, was filed in the United States District Court for the Western District of Missouri on March 29, 1991, On July 16, 1993 a consent decree was lodged with the Court in settlement of the allegations in the complaint. The proposed consent decree settles the government's claims set forth in the complaint pursuant to sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9607, for the recovery of costs incurred by the United States during a removal action undertaken in response to releases of hazardous substances from the B & B facility located in Warren Missouri. The complaint alleged, among other things, that the defendants either owned or operated a facility at which hazardous substances were disposed of, or arranged for disposal of hazardous substances at such a facility, and that the United States incurred costs in response to the release of hazardous substances from the Site.

Under the terms of the proposed consent decree, the defendants agree to pay the United States the sum of

$1,215,880 for past response costs incurred by the government at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Arthur Belanger et. al.*, D.J. Ref. 90–11–2–226B.

The proposed consent decree may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of *$21.50* (25 cents per page reproduction costs) payable to Consent Decree Library. The proposed Consent Decree may also be reviewed at the Environmental Protection Agency, Office of Regional Counsel, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and the Office of the United States Attorney, 549 Grand Avenue, Kansas City, Missouri 64106.

**Myles E. Flint,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93–17800 Filed 7–27–93; 8:45 am]

BILLING CODE 4410–01–M

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Semiconductor Research Corporation

Notice is hereby given that, on June 24, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SRC has added BTA Technology, Inc., Santa Clara, CA; MEREX Corporation, Tempe, AZ; and Electrical Engineering Software, Inc., Santa Clara, CA as affiliate members. The following companies have been deleted from SRC membership: Brantford Computer Haus, Ltd; Excimer Laser Systems; Realtime Performance; Scientific Exchange; and UTI Instruments.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SRC intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (52 FR 4281).

The last notification was filed with the Department on March 12, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 1993 (58 FR 26350).

**Joseph H. Widmer,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93–17900 Filed 7–27–93; 8:45 am]

BILLING CODE 4410–01–M

## MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

### Meeting

**AGENCY:** Martin Luther King, Jr. Federal Holiday Commission.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Federal Advisory Act, Public Law 92–463, as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

*Date:* September 16, 1993.

*Time:* 1:30 p.m.–3:30 p.m.

*Location:* U.S. House of Representatives, Cannon House Office Building, room 311, Washington, DC. The public is invited.

**FOR FURTHER INFORMATION CONTACT:** Gerrie Maccannon, Executive Officer, Washington Office (202) 708–1005.

Dated: July 15, 1993.

**Gerrie Maccannon,**

*Executive Officer.*

[FR Doc. 93–17949 Filed 7–27–93; 8:45 am]

BILLING CODE 4210–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (93–082)]**

### NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Human Factors

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on human factors.

**DATES:** August 25, 1993, 8:30 a.m. to 4:30 p.m.; and August 26, 1993, 8 a.m. to 4 p.m.; and August 27, 1993, 8 a.m. to Noon.

**ADDRESSES:** National Aeronautics and Space Administration, Langley Research Center, room 2120, Building 1268A, Hampton, VA 23681.

**FOR FURTHER INFORMATION CONTACT:** Dr. J.F. Creedon, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 804/864–5033.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Human Factors National Plan Overview
—Aviation Safety/Automation
—Human Factors Activities in High Performance Aircraft
—High Speed Rotorcraft Flight Deck Overview
—Terminal Area Productivity

Dated: July 21, 1993.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer.*

[FR Doc. 93–17889 Filed 7–27–93; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 56th meeting on Wednesday and Thursday, August 25–26, 1993, in the Maryland Room, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

During this meeting, the Committee plans to consider the following:

A. The Committee will meet in executive session to discuss a strategy for implementing recent direction from the Commission on the ACNW charter and renewal of appointments for members. Methods for ACNW operation, candidates for appointment to the Committee, and topical areas for ACNW review will form the central focus of this meeting.

B. *Committee Activities*—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational and personnel matters.

C. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit. This meeting will be closed to the extent it discusses organizational and personnel matters that relate solely to the internal personnel rules and practices of this advisory committee, the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to the personnel rules and practices of this advisory committee, the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

Dated: July 22, 1993.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 93–17983 Filed 7–27–93; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Request for Reclearance of Form RI 25–41

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25–41, Initial Certification of Full-time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity to children who are age 18 or older.

Approximately 1,200 RI 25–41 forms are completed annually. It takes approximately 90 minutes to complete the form. The total annual burden is 1,800 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

**DATES:** Comments on this proposal should be received on or before August 27, 1993.

**ADDRESSES:** Send or deliver comments to—

Lorraine E. Dettman, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:** Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0623.

U.S. Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

[FR Doc. 93–17890 Filed 7–27–93; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–32668; File No. SR–MSE–93–11]**

### Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by The Midwest Stock Exchange, Incorporated Establishing a Policy to Permit SuperMAX Executions for Certain Orders of the Exchange's Primary Odd-Lot Dealer

July 22, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), notice is hereby given that on May 5, 1993, the Midwest Stock Exchange, Incorporated ("MSE")[1] filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, III below, which have been prepared by the self-regulatory organization. The MSE has requested that the Commission grant accelerated approval of the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is simultaneously granting accelerated approval of the proposed rule change.

**I. Self-regulatory organizations statement of the terms of substance of the proposed rule change**

The MSE proposes to add a policy regarding the availability of SuperMAX executions for certain orders systematically generated by the Odd-Lot Execution Service (OLES), the primary odd-lot dealer registered on the Exchange. This policy is necessary because the SuperMAX system is designed to apply to retail agency market orders, whereas OLES orders are for the account of a broker-dealer and thus deemed to be professional orders. However, due to the size of OLES passively driven system—generated orders (under 200 shares)—and the unique status of those orders on the Exchange floor, the Exchange, with the concurrence of the Exchange's Floor Procedure Committee, has determined to grant those OLES orders SuperMAX treatment.

[1] On July 8, 1993, the Midwest Stock Exchange formerly changed its name to the Chicago Stock Exchange. For purposes of convenience and consistency, the old name and acronym are used in this order.

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**II. Self-regulatory organization's statement of the purpose of, and statutory basis for, the proposed rule change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-regulatory organization's statement of the purpose of, and statutory basis for, the proposed rule change*

The purpose of this rule filing is to establish an Exchange policy, in connection with the Exchange's companion rule filing (SR–MSE–93–10) seeking the institution of SuperMAX as a permanent Exchange system, regarding the availability of SuperMax executions for certain computer generated orders sent to MSE specialists by the primary odd-lot dealer on the MSE floor.

The Exchange is simultaneously submitting a rule proposal seeking permanent approval for its SuperMAX system, a system which provides automatic price improvement from the consolidated best bid or offer for small agency retail market orders according to certain pre-defined criteria. Because SuperMAX executions apply to retail agency orders, the price improvement features of SuperMAX are arguably unavailable to orders generated by the OLES system [2] due to OLES' position as an odd-lot dealer. However, because of the manner in which OLES functions on the floor of the Exchange, its unique status on the Exchange floor, and the passive nature of its computer generated market orders, the Exchange, with the concurrence of the Floor Procedure Committee, determined that SuperMAX should be made available to the passively driven OLES system-generated market orders, provided the order is for an issue which is on SuperMAX.

However, because OLES recently instituted an actively managed approach to some of its odd-lot dealer activity, the SuperMAX execution availability is limited to (1) OLES passively driven, system-generated market orders, (2) for order sizes of 200 shares or less, (3) for issues which are on SuperMAX.[3] Limit orders and market orders, regardless of size, sent to an Exchange specialist in OLES actively managed issues, as well as passively driven, computer generated market orders in excess of 200 shares, will not receive SuperMAX treatment, and instead will be handled as any other professional order.

The Exchange believes that allowing SuperMAX treatment for the passively driven OLES market orders described above is fair and reasonable. OLES does no anticipatory trading in these passively managed issues and has no control over when market orders are sent to an Exchange specialist. The passive OLES system responds to orders received by it from retail customers and fills them automatically and therefore acquires positions based entirely upon agency odd-lot transactions. There is no informational advantage available to OLES or its partners through the passive system, and no opportunity to selectively "manage" any issues in the passive system.[4]

*(B) Self-regulatory organization's statement on burden on competition*

The MSE does not believe that any burdens will be placed on competition as a result of the proposed rule change.

*(C) Self-regulatory organization's statement of comments on the proposed rule change received from members, participants or others*

The Floor Procedure Committee has approved the proposed rule change.

**III. Date of effectiveness of the proposed rule change and timing for commission action**

The MSE requests that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the Notice in the Federal Register. The MSE believes it appropriate to approve the proposed rule change based on the fact that the MSE floor community supports the policy change and SuperMAX has been granted permanent approval.[5]

The Commission finds that the proposed rule change establishing an Exchange policy which permits SuperMAX executions for certain passively driven market orders generated by the MSE's primary odd-lot dealer is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSE and, in particular, the requirements of Section 6 which states that a rule should promote just and equitable principles of trade and help to perfect the mechanism of free and open market and a national market system and foster competition among markets. The proposed rule change will accomplish these goals by adding smaller orders from the MSE's Odd-Lot Execution System to the category of orders eligible for price improvement under the SuperMAX system.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof for the reasons mentioned above and because the SuperMAX system has been approved on a permanent basis and this rule will allow the MSE to expand the range of securities eligible for SuperMAX's price improvement function.

**IV. Solicitation of comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission and at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by (insert date 21 days from the publication date).

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[2] The Odd-Lot Execution Service is the MSE's primary odd-lot dealer and is a partnership of several Exchange broker-dealers. Until recently, no trading by OLES was actively managed. All OLES orders were market orders, passively driven and system-generated according to a pre-determined parameter. For example, if OLES did not want to be long or short more than 200 shares, its system would automatically send out a buy or sell market order to the respective specialist as soon as the OLES "inventory" became long or short more than 200 shares, without regard to the quoted market.

[3] There are currently about 80 issues which are actively managed by OLES and in excess of 2000 issues which are traded according to pre-set computer driven parameters.

[4] The parameters which are set for OLES issues in the system remain identical for all issues. That is, the system will not permit different parameters for different issues. If the system parameter calls for a sell order to be generated when one issue is long 200 shares, then sell orders will be generated for every issue once it reaches the 200 share long position.

[5] See Securities Exchange Act Release No. 32021 (July 14, 1993).

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 93-18000 Filed 7-27-93; 8:45 am]

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[Release No. 34-32567; File No. SR-MSTC-93-1]

## Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change Relating to Procedures for Processing Partial Calls of Uniquely Denominated Callable Securities

July 22, 1993.

On January 27, 1993, Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR-MSTC-93-1) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change establishes procedures for applying MSTC's existing automated call lottery system to partial calls of uniquely denominated securities. The Commission published notice of this proposed rule change in the Federal Register on March 17, 1993.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

### I. Description

The proposed rule change establishes procedures for applying MSTC's existing automated call lottery system to partial calls of uniquely denominated securities.[3] Securities are considered uniquely denominated where the issuer has authorized the issuance and trading of securities in incremental amounts that are above the base denomination but that are not integral multiples of the base denomination. For instance, a bond with a base denomination of $100,000 might be issued and traded in such amounts as $100,000, $105,000, $110,000, and $125,000. In this example, positions in the bonds need not be held in integral multiples of the base denomination, $100,000, as long as the positions are integral multiples of $5,000 above the $100,000 base.

Currently, authorized denominations must be multiples of the base denomination to be eligible for MSTC's lottery services. For example, for an issue with a $100,000 base denomination to be eligible for MSTC's lottery service, authorized denominations would have to be $100,000, $200,000, $300,000, and so on. Issues with unique denominations, such as $105,000, would be ineligible for MSTC's lottery system because there is a risk that in a partial call a participant would be left with a position below the base denomination. For instance, if a participant had a position of $125,000 and a partial call was executed in lots of $100,000, the participant would be left with a position in an unauthorized denomination (*i.e.*, $25,000). Such unauthorized denominations would be virtually impossible to have certificated and might be undeliverable and unsalable.

MSTC's procedures for processing partial calls of uniquely denominated securities, which are outlined in four partial call scenarios that are attached as Exhibit A to its rule filing, make uniquely denominated securities[4] eligible for MSTC's lottery services. Under each scenario, MSTC first rounds[5] the called quantity and all participants' positions to amounts that are integral multiples of the issue's base denomination for the purpose of running the first lottery.[6] The denomination for the first lottery always will be the base denomination of the called issue. The first lottery then is run and results in one of four scenarios.

*Scenario #1*

If after the first lottery no participant's remaining uncalled position is less than the issue's base denomination and no participant's original even position has been converted into a unique amount (*i.e.*, participants' positions do not need to be adjusted), then the call allocation is completed after the first lottery.

*Scenario #2*

If after the first lottery is run any participant's remaining uncalled position is less than the base denomination but not equal to zero, MSTC will adjust each such position as follows:

(a) If a participant's remaining uncalled position is less than 50% of the issue's base denomination or is negative, MSTC will call the entire position;

(b) If a participant's remaining uncalled position is equal to or greater than 50% of the issue's base denomination and if the original position held was greater than the issue's base denomination, MSTC will restore the original position up to the issue's base denomination;

(c) If a participant's remaining uncalled position is equal to or greater than 50% of the issue's base denomination and if the original position held was less than the issue's base denomination, MSTC will not adjust the remaining uncalled position because it already equals the participant's original position;[7]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31982 (March 11, 1993), 58 FR 14455.

[3] Bond issuers sometimes call for the return of bonds prior to maturity. The call may be for a full redemption (*i.e.*, return of the entire issue) or a partial redemption (*i.e.*, return of a portion of the issue). An issuer making a partial call will run a lottery of all outstanding certificates to determine which certificates, or portions thereof, it will redeem. After the issuer notifies MSTC that it is conducting a partial call of an issue and of the number of certificates MSTC is required to deliver, MSTC, as the depository for these issues, will run its own lottery to allocate the called certificates among its participants with deposits in the called issue. MSTC then will redeem the called bonds on the day of redemption on behalf of the participants.

The Commission approved a similar proposal of The Depository Trust Company ("DTC") in 1992. Securities Exchange Act Release No. 30720 (May 21, 1992), 57 FR 22504 (File No. SR-DTC-92-4). MSTC patterned their procedures after those of DTC by following the same lottery scenarios and making the same types of securities eligible. Memorandum from Kathy Stats, Vice President, MSTC, to Larry Mallinger, Associate Counsel, MSTC (June 25, 1993) (hereinafter "Stats Memo") responding to questions in memorandum from Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission, to Larry Mallinger, Associate Counsel, MSTC (May 17, 1993).

[4] Any MSTC-eligible uniquely denominated, callable security will be eligible for the proposed lottery procedures. The proposed procedures will be used primarily for municipal bonds but also may be used for corporate bonds and preferred stock. Stats Memo, *supra* note 3.

[5] When a participant's position is rounded up in this initial rounding phase, it is done for the sole purpose of executing the lottery with the result being a "rounded callable position." For example, if the base denomination of a called security is $100,000 and a participant has a position in the called security of $95,000, the $95,000 position will be rounded up to a rounded callable position of $100,000, but the total amount of that participant's position that may be called through the lottery will be limited to $95,000 (*i.e.*, the participant's actual position).

[6] If both the quantity of called securities and the total of all participants' original positions are even amounts (*i.e.*, amounts that are integral multiples of the base denomination), MSTC will run the lottery using its normal call lottery procedures.

If the total of all participants' rounded positions is less than or equal to the rounded called quantity, all participants' rounded positions will be called. If, after the initial rounding, however, the total of all participants' positions in the partially called issue is greater than the rounded called quantity, MSTC will run the lottery under the new procedures.

[7] This adjustment leaves the participant with an unauthorized denomination (*i.e.*, below the minimum base denomination or not an integral multiple of the base denomination). This situation is one of the few times under the new procedures where a participant is left with an unauthorized denomination.

(d) Adjust for any overall called amount to be allocated or unwound.[8]

After MSTC makes the necessary adjustments to participants' positions, it nets the adjustments of steps (a), (b), and (d). A sum of zero indicates that the adjustments offset each other, and the call allocation is completed.

*Scenario #3*

If after the first lottery is run any participant's remaining uncalled position is less than the base denomination and not equal to zero, MSTC will adjust each such position as described in Scenario #2. If the sum of the adjustments is a positive number, meaning that the entire called quantity has not yet been allocated to participants' positions, MSTC will run additional lotteries to complete the call.[9]

*Scenario #4*

If after the first lottery is run the net of the adjustments to participants' positions is a negative number, indicating that an amount greater than the called quantity has been allocated, MSTC will run additional lotteries to unwind the excess amount allocated.[10]

**II. Discussion**

The Commission believes the proposed rule change is consistent with the Act and especially with section 17A(b)(3)(F) of the Act.[11] Section 17A(b)(3)(F) requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

As discussed above, the Commission previously approved similar lottery procedures proposed by DTC. By bringing its lottery procedures in line with those already used by DTC, MSTC's proposal helps to promote uniformity in the processing of securities and thereby removes an impediment to and helps perfect the mechanism of a national securities clearance and settlement system.

In addition, by including uniquely denominated securities in its lottery service, MSTC is promoting market liquidity in that, for the most part,[12] participants will no longer be left with positions of unauthorized denominations after a partial call. Positions in unauthorized denominations are generally unsalable and undeliverable.

**III. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–MSTC–93–1) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[8] This adjustment is necessary only when the amount called is not an integral of the base denomination (*i.e.*, must be rounded up or down before the first lottery is run). For instance, if the total amount called is $925,000 MSTC will round the amount to be allocated to $900,000 before the lottery is run. After the $900,000 is allocated by lottery, the additional $25,000 must be allocated. This number is then netted with the adjustments made in subparagraphs (a) and (b) to derive an aggregate adjustment.

[9] The procedures to be used in running these additional lotteries are detailed in MSTC's rule filing. Basically, the procedures are intended to draw remaining amounts of the called issue from eligible participants' accounts while minimizing the need to adjust unnecessarily participants' positions.

[10] The purpose of the procedures for Scenario #4, as detailed in MSTC's rule filing, is to unwind the excess amount called without converting participants' uncalled positions into unique denominations or driving participants' uncalled positions below the issue's minimum base denomination.

[11] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[12] As discussed above, there are a limited number of instances where certain participants may be left with unauthorized denominations.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1992).

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[Rel. No. IC–19584; 812–8348]

## Bando McGlocklin Capital Corp. et al.; Application

July 21, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Bando McGlocklin Capital Corporation ("Parent"); Bando McGlocklin Small Business Investment Corporation ("Subsidiary").

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 17(b) for an exemption from sections 8(b), 12(d), 17(a), 18(a), 18(c), 30(a), 30(b) and 30(d) and rules 8b–16, 30a–1, 30b1–1 and 30d–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek to amend a conditional order to permit Parent to issue one class of senior security which is a stock and to correct a citation. The existing conditional order permitted Parent to establish and operate Subsidiary as a wholly-owned subsidiary under the terms of a reorganization in which Parent transferred certain assets, including its small business investment company license, to Subsidiary in exchange for all of the common stock of Subsidiary and the assumption by Subsidiary of certain liabilities of Parent.

**FILING DATE:** The application was filed on April 14, 1993 and amended on May 28, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Any person may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 13555 Bishops Court, Brookfield, Wisconsin 53005.

**FOR FURTHER INFORMATION CONTACT:** Maura A. Murphy, Senior Attorney, at (202) 272–7779, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**APPLICANT'S REPRESENTATIONS**

1. Parent was incorporated under the laws of the State of Wisconsin in February, 1980. Parent is a diversified closed-end registered investment company that was, until March 26, 1993, licensed to operate as a small business investment company ("SBIC") under the Small Business Investment Act of 1958. As an SBIC, Parent provided long-term, primarily variable rate, secured loans to finance the growth, expansion, and modernization

of small businesses. As of December 31, 1992, Parent had total assets of $95,762,634, and had 3,831,576 shares of common stock outstanding. Subsidiary was incorporated under the laws of the State of Wisconsin on June 6, 1991 at the direction of Parent and, except for organizational matters, did not commence operations until March 26, 1993.

2. On November 10, 1992, the Commission issued a conditional order to Parent and Subsidiary granting exemptions from sections 8(b), 12(d), 17(a), 18(c), 30(a), 30(b), and 30(d) of the Act and Rules 8b–16, 30a–1, 30b–1, and 30d–1 thereunder to permit them to create a holding company structure with Subsidiary being a wholly-owned subsidiary of Parent. Investment Company Act Release Nos. 19030 (Oct. 15, 1992) (notice) and 19092 (Nov. 10, 1992) (order) (the "1992 Order"). Applicants seek to amend two conditions of the 1992 Order.

3. On March 26, 1993, Parent transferred its SBIC license to Subsidiary pursuant to a plan of reorganization (the "Reorganization") under section 351 of the Internal Revenue Code (the "Code") under which (a) virtually all of the assets of Parent were transferred to Subsidiary; (b) virtually all of the liabilities of Parent were assumed by Subsidiary; (c) all of the issued and outstanding shares of Subsidiary's common stock were issued to Parent; and (d) Parent became a holding company owning Subsidiary as its wholly-owned Subsidiary. Prior to the Reorganization, Parent applied for and received approval from the Small Business Administration (the "SBA") to transfer its SBIC license to Subsidiary. Parent also obtained the consent of its institutional lenders to the assumption by Subsidiary of Parent's liabilities to them, and the approval of its shareholders for the Reorganization.

4. Subsidiary registered as an investment company under the Act by filing a Notification of Registration on Form N–8A and a Registration Statement on Form N–5 under the Act on February 22, 1993.

5. Parent and Subsidiary have identical investment objectives and fundamental investment policies. All of the directors of Subsidiary also are directors of Parent. Parent and Subsidiary are both regulated investment companies under Subchapter M of the Code. Since the Reorganization, Subsidiary has continued the business conducted by Parent before the Reorganization. Parent may offer financial services related to the services offered by Subsidiary through lending company or loan servicing subsidiaries.

6. Since the Reorganization, Parent's activities have been limited to holding the stock of Subsidiary. Parent also intends to make long-term, primarily variable rate, secured loans to small business concerns. These loans will not qualify as permitted investments by an SBIC. Loans originated by Parent may be pursuant to the SBA's 504 Program.[1] Section 504 of the Small Business Investment Act authorizes the SBA to guarantee debentures, issued by qualified state or local development companies, the proceeds of which are used to finance loans to small business concerns in an amount not to exceed 50% of the cost of the projects with respect to which the loans are made. The objective of the 504 Program is to achieve community economic development through job creation and retention by providing long-term fixed asset financing to small business concerns. Such small business concerns must demonstrate that the project to be financed will have a significant economic impact on the community in which it is located. Loans originated pursuant to the SBA's 504 Program typically involve fixed asset financing in which 10% of the total funds for the project are provided by the small business, 40% by the SBA in the form of debentures guaranteed by the U.S. Treasury, and 50% by a third party private financier. Parent would provide the private financing and have a first lien on the project. The SBA would have a second lien on the project.

In all other respects the loans will be substantially similar to the loans made by Parent before the Reorganization and Subsidiary after the Reorganization (*i.e.*, the loans would be secured loans to small business concerns).

7. Parent also may make loans under the SBA's 7(a) Program.[2] Section 7(a) of the Small Business Act authorizes qualified lenders to make loans to small business concerns that are guaranteed by the SBA to the extent of 75% to 85% of the loan, depending upon the circumstances. SBICs are not permitted to participate in the SBA's 7(a) Program. Qualified lenders must be subject to continuing supervision and examination by a state or federal regulatory authority. Parent is not currently subject to such continuing supervision and examination but has applied to the Office of the Commissioner of Banking of the State of Wisconsin to be so supervised. The objective of the 7(a) Program is to provide funds to small business concerns (i) to finance construction, conversion, or expansion; (ii) to purchase equipment, facilities, machinery, supplies or materials; and (iii) to obtain working capital. Loans made by Parent pursuant to the 7(a) Program would be substantially similar to the loans made by Parent before the Reorganization and Subsidiary after the Reorganization (*i.e.*, the loans would be secured loans to small business concerns).

8. Parent also may make loans that are not pursuant to an SBA program. Such loans will be substantially similar to the loans made by Parent before the Reorganization and by Subsidiary after the Reorganization (*i.e.*, the loans would be secured loans to small business concerns).

9. Subject to receipt of the requested amended order, Parent's lending activities may be financed by (i) proceeds from offerings of shares of one class of senior security which is a stock to the extent permitted under section 18 of the Act; (ii) borrowings that constitute a single class of senior security representing indebtedness to the extent permitted under section 18 of the Act; and (iii) the proceeds from offerings of shares of its common stock following the Reorganization. Parent retained only nominal assets following the Reorganization.

10. Parent may from time to time make additional investments in Subsidiary either as contributions to capital, purchases of additional stock, or, subject to the prior approval of the SBA, loans. Parent and Subsidiary also may, subject to the prior approval of the SBA, from time to time purchase all or a portion of portfolio investments held by the other to enhance the liquidity of the selling company or for other reasons. None of these transactions would be pursuant to an express or implied agreement with any third party. As such, these transactions would not result from the functional equivalent of a guarantee by Parent to maintain a specified net worth for Subsidiary.

11. As indicated in the preceding paragraph, any loans made by Parent to Subsidiary require the prior approval of the SBA, as do any purchases or sales of portfolio securities between Parent and Subsidiary. As a result of the Reorganization, Subsidiary has outstanding debt securities that are guaranteed by the SBA, but Parent does not. Thus, while loans and portfolio securities transactions between Parent and Subsidiary would have no adverse

[1] The SBA's 504 Program is authorized by section 504 of the Small Business Investment Act (15 U.S.C. 697c).

[2] The 7(a) Program is authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)). Regulations implementing the 7(a) Program are located in 13 CFR pt. 120.

economic effect on Parent's shareholders, they could have an adverse economic effect on the SBA. "Self-dealing" transactions that are detrimental to the SBA are prohibited by 13 CFR 107.903(a). However, 13 CFR 107.903(g) provides that an SBIC that is registered under the Act and that has been granted an exemption by the SEC with regard to a self-dealing transaction is exempted from this prohibition. Arguably, 13 CFR 107.903(g) would have applied to loans or portfolio securities transactions between Parent and Subsidiary because the Commission granted the 1992 Order. Consequently, applicants agreed, as a condition to the 1992 Order, that the SBA must approve each such transaction between Parent and Subsidiary.

12. Parent intends to file with the Commission on behalf of itself and Subsidiary annual reports and amendments to its registration statement on a consolidated basis only in lieu of and in satisfaction of the separate filing and reporting obligations of Parent and Subsidiary.

13. Borrowings by Subsidiary will include debentures issued to, or guaranteed by, the SBA ("SBA Debentures"). In the Reorganization, Subsidiary assumed the obligations of Parent with respect to any of Parent's then outstanding SBA Debentures. Certain of Parent's SBA Debentures were issued on or before April 7, 1986 and are held by the Federal Financing Bank, an instrumentality of the United States under the general supervision of the Secretary of the Treasury. Other SBA Debentures of Parent were issued after April 7, 1986 and are held by a pool, which is treated as a grantor trust for tax purposes. Initially, any SBA Debentures issued by Subsidiary will be held by such a pool. However, the SBA has the authority to hold SBA Debentures rather than guarantee SBA Debentures held by others.

14. Parent will not guarantee any borrowings of Subsidiary; nor will Parent enter into any express or implied agreement that is the functional equivalent of such a guarantee, including any agreement that will ensure that Subsidiary has a tangible net worth of a specified amount.

15. Applicants seek to amend condition 5 of the 1992 Order to permit Parent to issue one class of senior security which is a stock. In addition, applicants seek to correct a citation in condition 6 of the 1992 Order.

**Applicants' Legal Analysis**

1. Applicants believe that, subsequent to the Reorganization, purchases by Parent of Subsidiary's common stock, and loans or advances from Parent to Subsidiary, would be considered acquisitions or issuances of securities prohibited by section 12(d). Accordingly, applicants requested an exemption from section 12(d) to the extent necessary to permit (i) future acquisitions by Parent of any common stock issued by Subsidiary and (ii) the acquisition from time to time by Parent of securities of Subsidiary representing indebtedness, if the prior approval of the SBA is obtained. The exemption was granted in the 1992 Order, and applicants request no additional relief from section 12(d).

2. Parent and Subsidiary are affiliated persons, as defined in section 2(a)(3) of the Act, of one another. The Reorganization might be deemed to violate section 17(a) of the Act because it involves the sale of securities or other property by Parent to Subsidiary. Applicants believe that, following the Reorganization, additional investments in Subsidiary by Parent in the form of stock purchases, capital contributions, or loans do not violate section 17(a) because the seller (Subsidiary) would be the issuer of any securities issued and is controlled by the purchaser (Parent). However, purchases and sales of portfolio securities between applicants would appear to be violations of sections 17(a)(1) and 17(a)(2). Accordingly, applicants requested an exemption from section 17(a) to the extent necessary to permit (i) the Reorganization and (ii) purchases and sales of portfolio securities between applicants, if the prior approval of the SBA is obtained. The exemption was granted in the 1992 Order, and applicants request no additional relief from section 17(a).

3. Parent and Subsidiary are subject to the asset coverage requirements of section 18(a). However, section 18(k) provides SBICs an exemption, which applies to Subsidiary, from sections 18(a)(1) (A) and (B). Parent nevertheless will comply with the asset coverage requirements of section 18(a) on a consolidated basis, and thus will treat as its own all assets of Parent and Subsidiary (with the value of Parent's investment in Subsidiary eliminated) and all liabilities of Subsidiary (with intercompany receivables and liabilities eliminated). As a result, Parent would be in violation of the asset coverage provisions of section 18(a) absent an order of the Commission. Similarly, Parent would be in violation of section 18(c) as Subsidiary has more than one class of senior security representing indebtedness outstanding.[3] Accordingly, applicants requested an exemption from the provisions of section 18(a) to the extent necessary to treat borrowings by Subsidiary as "liabilities and indebtedness not represented by senior securities" within the meaning of section 18(h) in applying the asset coverage requirements of section 18(a) to Parent and Subsidiary on a consolidated basis. Parent also requested an exemption from the provisions of section 18(c) because, on a consolidated basis, it would be deemed to have more than one class of senior security representing indebtedness because of the inclusion of indebtedness of Subsidiary. The exemptions were granted in the 1992 Order, and applicants request no additional relief from section 18.

4. Section 18(c) also prohibits a registered closed-end investment company from issuing or selling more than one class of senior security which is a stock. Subsidiary has not issued or sold any class of senior security which is a stock. Parent may not issue any senior security which is a stock, however, because condition 5 of the 1992 Order prohibits each of Parent and Subsidiary from issuing any senior security except certain senior securities representing indebtedness. Section 6(c) of the Act permits the Commission to modify conditions to orders previously granted. Accordingly, Parent requests a modification to condition 5 of the 1992 Order to permit Parent to issue one class of senior security which is a stock.

5. Absent a Commission order, each of Parent and Subsidiary would be required to file annual amendments to their registration statements and transmit to shareholders annual and semi-annual reports, and each of Parent and Subsidiary would be required to file semi-annual reports on Form N-SAR pursuant to sections 8(b), 30(a), 30(b), and 30(d), and rules 8b–16, 30b1–1, and 30d–1. Such separate filings and reports would be burdensome to Parent and unlikely to provide a convenient source of information to investors. Accordingly, applicants requested an exemption from the foregoing provisions (i) to permit Parent to file on behalf of itself and Subsidiary amendments to its registration statement containing information with respect to, and financial statements of, Parent and Subsidiary on a consolidated basis only, (ii) to file on behalf of itself and Subsidiary semi-annual reports on Form N-SAR, containing information with respect to Parent and Subsidiary on a

[3] Subsidiary qualifies for the exemption from section 18(c) contained in rules 18c–1 and 18c–2.

consolidated basis only, and (iii) to permit Parent to transmit to its shareholders semi-annually reports containing the financial information and statements as required for Parent and Subsidiary on a consolidated basis only, except as otherwise provided in condition 6 (set forth below). The exemptions were granted in the 1992 Order, and applicants request no additional relief from these provisions. However, applicants request a modification to condition 6 of the 1992 Order to correct a citation.

**Applicants' Legal Conclusions**

1. The holding company structure is intended to permit Parent to engage in an expanded scope of operations beyond that which was available to it as an SBIC. Parent and Subsidiary are investment companies and each will thus be engaged in operations subject to the provisions of the Act. Because Parent and Subsidiary have the same fundamental investment policies and Parent will at all times own and hold beneficially and of record all of the outstanding capital stock of Subsidiary, applicants believe that the Reorganization did not result in overreaching or in any person receiving an advantage to the detriment of any other party. Moreover, because Subsidiary is a wholly-owned subsidiary of Parent, applicants believe that any activity carried on by Subsidiary will in all material respects have the same economic effect and substance vis-a-vis Parent's shareholders as if done directly by Parent. The foregoing exemptions will have no material adverse financial or economic impact on Parent's public shareholders because Subsidiary will be a wholly-owned Subsidiary of Parent.

2. Subsidiary is a wholly-owned subsidiary of Parent, and Parent has represented that it will exercise its rights as a shareholder of Subsidiary only as directed by Parent's shareholders. Thus, the relationship of Parent's shareholders to the SBIC activities to be carried out by Subsidiary will be no different than if such activities were carried out by Parent. Accordingly, the objectives of section 12 will not be compromised and the public interest will not be harmed by future acquisitions by Parent of securities issued by Subsidiary or the acquisition from time to time by Parent of evidences of indebtedness issued by Subsidiary.

3. Subsidiary is a wholly-owned Subsidiary of Parent and no officers or directors of Subsidiary or Parent or any controlling person of Parent had any financial interest (other than as shareholders of Parent) in the Reorganization or will have any financial interest (other than as shareholders of Parent) in purchases and sales of portfolio securities between Parent and Subsidiary. Thus, with respect to the exemption from section 17(a), there can be no overreaching on the part of any persons and no harm to the public interest will occur in those transactions.

4. With respect to the exemptions from sections 18(a) and 18(c), the effect of applying the asset coverage and single class of indebtedness limitations to Parent and Subsidiary, on a consolidated basis, could be to restrict Subsidiary's ability to obtain the kind of financing that was available to Parent. Accordingly, the exemptions from section 18 will cause no harm to the public interest.

5. With respect to the exemptions from sections 8(b), 30(a), 30(b), and 30(d), and rules 8b–16, 30a–1, 30b1–1 and 30d–1, single filings by Parent provide the Commission and the investing public with adequate information concerning Parent and Subsidiary in a more meaningful form than separate filings by Parent and Subsidiary, and are consistent with the filings made by other public companies. Accordingly, these exemptions will cause no harm to the public interest.

6. The requested modification to condition 5 of the 1992 Order would permit Parent to have a capital structure which would be permissible under the Act but for the 1992 Order. The effect of the modification would be to permit Parent to issue a class of senior security requiring 200% rather than 300% asset coverage. Because Subsidiary would not be permitted to issue a class of senior security which is a stock, Parent and Subsidiary, on a consolidated basis, would never have issued and outstanding more than one class of senior security which is a stock. In addition, because Parent will not be permitted to guarantee any borrowings of Subsidiary or enter into any express or implied agreement that is the functional equivalent of such a guarantee, including an agreement that will ensure that Subsidiary has a tangible net worth of a specified amount, Parent's capital structure would consist of only one class of common stock, one class of senior security which is a stock, and one class of senior security representing indebtedness. Section 18(c) expressly permits such a capital structure. Accordingly, applicants believe that no harm to the public interest will occur if condition 5 is modified as requested.

7. The requested modification to condition 6 will correct a citation to regulation S–X. The correct citation should be to rule 6–03(c) rather than rule 6–03(e), and the correction will cause condition 6 to contain the citation originally intended to be included therein. Accordingly, applicants believe that no harm to the public interest will occur if condition 6 is modified as requested.

**Applicants' Conditions**

Applicants represent to the Commission that, as a condition to the granting of the exemptive relief sought by this application, they will comply with the following:

1. Parent will at all times own and hold beneficially and of record all of the outstanding capital stock of Subsidiary.

2. Subsidiary will have the same fundamental investment policies as Parent, as set forth in Parent's registration statement; Subsidiary will not engage in any of the activities described in section 13(a) of the Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Parent.

3. No person shall serve or act as investment adviser to Subsidiary under circumstances subject to Section 15 of the Act, unless the directors and shareholders of Parent shall have taken the action with respect thereto also required to be taken by the directors and shareholders of Subsidiary.

4. No person shall serve as a director of Subsidiary who shall not have been elected as a director of Parent at its most recent annual meeting, as contemplated by section 16(a) of the Act and subject to the provisions thereof relating to the filling of vacancies. Notwithstanding the foregoing, the board of directors of Subsidiary will be elected by Parent as the sole shareholder of Subsidiary.

5. Parent will not itself issue or sell any senior security representing indebtedness if immediately thereafter Parent will have outstanding more than one class of senior security representing indebtedness, and Parent will not issue or sell any senior security which is a stock if immediately thereafter Parent will have outstanding more than one class of senior security which is a stock, as provided under section 18(c) of the Act. Parent shall not guarantee any of Subsidiary's borrowings; nor shall Parent enter into any express or implied agreement that is the functional equivalent of such a guarantee, including any agreement that will ensure that Subsidiary has a tangible net worth of a specified amount. Parent will not cause or permit Subsidiary to issue or sell any senior security of which Subsidiary is the issuer except as hereinafter set forth: Subsidiary may

issue and sell to banks, insurance companies and other financial institutions its secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, and Subsidiary may issue debt securities held or guaranteed by the SBA, provided the following conditions are met: (1) Such notes or evidences of indebtedness are not intended to be publicly distributed; (ii) such notes or evidences of indebtedness are not convertible into, exchangeable for, or accompanied by any options to acquire, any equity security; and (iii) immediately after the issuance or sale of any such notes or evidences of indebtedness by Subsidiary, or the issuance or sale of any class of senior security by Parent, Parent and Subsidiary on a consolidated basis, and Parent individually, shall have the asset coverage required by section 18(a), except that, in determining whether Parent and Subsidiary, on a consolidated basis, have the asset coverage required by section 18(a), any borrowings by Subsidiary, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

6. Parent will file with the Commission pursuant to rule 8b–16 amendments to its registration statement pursuant to section 8(b) of the Act on behalf of itself and Subsidiary containing information with respect to, and financial statements of, Parent and Subsidiary on a consolidated basis only, such amendments to be in lieu of and in satisfaction of the separate filing obligations of Parent and Subsidiary pursuant to rule 8b–16. Parent will file with the Commission pursuant to sections 30(a) and 30(b) of the Act and rules 30a–1 and 30b1–1 thereunder semi-annual reports on Form N–SAR, or appropriate successor form, on behalf of itself and Subsidiary containing information with respect to Parent and Subsidiary on a consolidated basis only, such consolidated semi-annual reports to be in lieu of and in satisfaction of the separate filing obligations of Parent and Subsidiary pursuant to sections 30(a) and 30(b) and rules 30a–1 and 30b1–1. Parent will in response to the appropriate item of Form N–SAR or appropriate successor form indicate that the report is being filed on behalf of Subsidiary and the "811" number of Subsidiary. Parent will transmit to its shareholders semi-annually pursuant to section 30(d) of the Act and rule 30d–1 thereunder reports containing the financial information and statements prescribed and required by such section and rule for Parent and Subsidiary on a consolidated basis only, which reports shall be in lieu of and in satisfaction of the separate reporting obligations of Parent and Subsidiary pursuant to section 30(d) and rule 30d–1; provided, however, that if 10% or more of Parent's total assets on a consolidated basis are invested in assets other than securities issued by Subsidiary, then, in addition to the consolidated financial statements of Parent and Subsidiary, there shall be included in such reports separate financial statements of Subsidiary. Notwithstanding anything in this condition, Parent shall not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statement of Subsidiary required by Rule 6–03(c) of Regulation S–X. The selection of any independent public accountant who signs a consolidated financial statement filed by Parent and Subsidiary with the Commission shall be ratified in accordance with section 32(a)(2) of the Act by a majority of the outstanding voting securities (as defined in section 2(a)(42) of the Act) of Parent.

7. Parent will acquire securities of Subsidiary representing indebtedness only if, in each case, the prior approval of the SBA has been obtained. Parent and Subsidiary will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17997 Filed 7–28–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Rel. No. 19588; 811–5889]**

## Centennial Connecticut Tax Exempt Trust; Notice of Application

July 21, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** Centennial Connecticut Tax Exempt Trust.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on July 14, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 15, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 3410 South Galena Street, Denver, Colorado 80231.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On December 29, 1989, applicant filed a notification of registration pursuant to section 8(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on June 1, 1990, and applicant commenced its initial public offering on June 12, 1990.

2. On October 13, 1992, applicant's board of trustees approved a plan of reorganization under which all of the assets of applicant would be exchanged for shares of Centennial Tax Exempt Trust ("CTET"), a registered open-end management investment company, and the CTET shares would be distributed to applicant's shareholders. Applicant's trustees determined that the reorganization would be in the best interests of the shareholders of the applicant and that no shareholder's interest would be diluted as a consequence of the reorganization.

3. A prospectus and proxy statement relating to the reorganization was filed with the SEC on November 13, 1992 and declared effective on December 9, 1992.

The reorganization was approved by applicant's shareholders at a meeting held on January 28, 1993, adjourned to February 1, 1993 for failure to reach a quorum.

4. On February 19, 1993, the reorganization was consummated. Applicant transferred its net assets, aggregating $1,325,193.01 to CTET in exchange for 1,326,816.68 shares of CTET. The exchange was made at net asset value, with necessary valuation of assets and shares made as of the close of business on February 18, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders.

5. The cost of printing the proxies and proxy statements associated with the reorganization was paid by applicant. The cost of mailing the proxies and proxy statements, and the cost of obtaining a tax opinion were borne jointly by application and CTET. Any documents such as existing prospectuses or annual reports that were included in that mailing were an expense of the fund issuing the document. Any other out-of-pocket expenses, including legal, accounting, and transfer agent expenses, were borne by applicant and CTET, respectively. Reorganization expenses incurred by the applicant totaled $1,512, which were assumed by Centennial Asset Management Corporation.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17996 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

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[Rel. No. 19590; 811–7106]

## Citizens Acquisition Fund, L.P.; Application for Deregistration

July 22, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** Citizens Acquisition Fund, L.P.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on June 14, 1993, and amended on July 12, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 5909 Harvest Hill, Suite 1078, Dallas, Texas 75230.

**FOR FURTHER INFORMATION CONTACT:** Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant, a Texas partnership, is a non-diversified closed-end management investment company. Applicant registered under the Act by filing a notification of registration on Form N–8A on August 17, 1992. Applicant filed a registration statement under the Securities Act of 1993 on Form N–2 on May 17, 1993.

2. By letter dated May 28, 1993, applicant requested that the Commission withdraw its registration statement under the Securities Act of 1933. Applicant's registration statement never became effective and, pursuant to applicant's request, was declared withdrawn on June 8, 1993. Applicant has never made a public offering of its securities.

3. All of applicant's outstanding securities are held by its general partner, Citizens Capital Corp. All outstanding shares of Citizens Capital Corp. are owned by one individual.

Accordingly, applicant believes that it is eligible to deregister on the basis of section 3(c)(1) of the Act. Section 3(c)(1) provides that an issuer is not an "investment company" for purposes of the Act if its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and it is not making and does not presently propose to make a public offering of its securities.

4. Applicant has no liabilities, and no assets other than the initial contribution made by Citizens Capital Corp. Applicant is not a party to any litigation or administrative proceeding.

5. Applicant may hereafter engage in investment related activities. Unless applicant again registers under the Act, however, it will conduct its business so as to be exempt from registration as an investment company pursuant to section 3(c)(1) or some other provision of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17999 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

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[Investment Company Act Rel. No. 19587; 811–7430]

## The Marcette Fund, Inc.; Notice of Application

July 21, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** The Marcette Fund, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company under the Act.

**FILING DATE:** The application on Form N–8F was filed on May 13, 1993, and amended on July 12, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 18 English Turn Drive, New Orleans, LA 70131.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is an open-end, non-diversified management investment company organized under the laws of the State of Louisiana. On January 12, 1993, applicant registered as an investment company under the Act.

2. On January 12, 1993, applicant filed a registration statement to register its shares under the Securities Act of 1933. The registration statement has never become effective. The registration statement was withdrawn on July 21, 1993. Applicant did not make a public offering of its shares.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant has not commenced, and does not intend to commence, operations. Applicant is not now engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17994 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

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[Rel. No. IC–19585; 811–2538]

## Nuveen Income Fund; Notice of Application

July 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Nuveen Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on April 15, 1993, and amended on June 7, 1993 and July 16, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is a unit investment trust which offered shares in six series. Each of the series is a separately organized trust created under the laws of Massachusetts. On June 8, 1976, applicant filed a notification of registration pursuant to section (8)(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1993. The registration statement was declared effective and the initial public offering of shares of Series 1 commenced on July 28, 1976. Applicant filed a second registration statement on October 6, 1976. The second registration statement was declared effective and the initial public offering of shares of Series 2 commenced on December 9, 1976. Applicant filed a third registration statement on December 29, 1976. The third registration statement was declared effective and the initial public offering of shares of Series 3 commenced on May 24, 1977. Applicant filed a fourth registration statement on June 8, 1977. The fourth registration statement was declared effective and the initial public offering of shares of Series 4 commenced on August 11, 1977. Applicant filed a fifth registration statement on August 25, 1977. The fifth registration statement was declared effective and the initial public offering of shares of Series 5 commenced on November 9, 1977. Applicant filed a sixth registration statement on November 17, 1977. The registration statement was declared effective and the initial public offering of shares of Series 6 commenced on April 18, 1978.

2. Applicant's trust indenture provides that when the value of the trust funds is reduced to less than 40% of the aggregate principal amount of bonds initially deposited in the trust, the trustee, at the direction of applicant, is to terminate and liquidate the trust fund. As of November 26, 1991, the value of each trust fund had been reduced to below 40% of its original aggregate principal amount and applicant's board of directors recommended dissolution of applicant.

3. Applicant's remaining bonds were sold in market transactions prior to their maturity date. No brokerage commissions were paid in connection with such sales. On November 26, 1991, United States Trust Company of new York (the "Trustee") sent a notice of termination to all unitholders stating that the applicant would be terminated on December 10, 1991 and setting forth procedures to enable each unitholder to receive his or her *pro rata* share of the liquidating distribution. Beginning on December 10, 1991, applicant distributed the following amounts *pro rata* to those shareholders who confirmed their ownership interest: Series 1, $2,991,799 ($64.45 per unit); Series 2, $2,797,230 ($62.96 per unit); Series 3, $2,986,051 ($84.73 per unit); Series 4, $2,448,708 ($79.07 per unit); Series 5, $2,449, 294 ($74.43 per unit); and Series 6, $3,341,718 ($98.01 per unit). On October 23, 1992, the Trustee sent a second notice of termination to all unitholders who had not confirmed their ownership interest in applicant and received a liquidating distribution.

4. The following table lists the number of unitholders who had not claimed their liquidating distribution as of the date of the application, and the cash held for distribution to such unitholders:

| Series | Remaining Unitholders | Cash held for distribution |
|---|---|---|
| 1 | 30 | $123,240 |
| 2 | 21 | 97,917 |
| 3 | 20 | 69,533 |
| 4 | 7 | 24,100 |
| 5 | 14 | 37,789 |
| 6 | 8 | 33,603 |

The cash retained for distribution to these remaining unitholders is being held by the Trustee in a separate non-interest bearing account for each series. The Trustee currently is utilizing a number of services which provide current addresses and phone numbers for individual or corporate investors, and will promptly use such current information to attempt to locate remaining unitholders.

5. If the remaining unitholders do not claim their interest by December 10, 1994, the Trustee, as a holder of abandoned property, will make a report to the treasurer of the Commonwealth of Massachusetts and deliver all abandoned property to the Treasurer of the Commonwealth of Massachusetts. The Treasurer will then publish a notice at least once a week for two consecutive weeks in a newspaper of general circulation in each county in which any remaining unitholder had a last known address. Any person claiming an interest in property surrendered to the Treasurer may file a claim to retrieve such property. If the property remains unclaimed longer than one year after the delivery of such property to the Treasurer, the Treasurer may proceed to liquidate the abandoned property.

6. Expenses incurred in connection with the liquidation of applicant consist primarily of administrative, legal, accounting, reproduction, mailing, and telephone expenses. Anticipated expenses to locate remaining unitholders will consist of stationery and postage used for follow-up letters. All liquidation expenses, including amounts reserved for anticipated remaining expenses, were deducted from the assets of each series of applicant. Total liquidation expenses, including estimated remaining costs, retained from Trust assets are summarized as follows: Series 1, $1,010.03; Series 2, $1,098.20; Series 3, $637.07; Series 4, $542.86; Series 5, $681.86; and Series 6, $562.10.

7. Applicant has no debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-17995 Filed 7-27-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19586; 811-4713]

## Oppenheimer Blue Chip Fund; Application

July 21, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** Oppenheimer Blue Chip Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on July 14, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 16, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW, Washington, DC 20549. Applicant, 3410 South Galena Street, Denver, Colorado 80231.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On June 20, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on September 10, 1986, and applicant commenced its initial public offering on September 11, 1986.

2. On August 25, 1992, applicant's board of trustees approved a plan of reorganization under which all of the assets of applicant would be exchanged for shares of Oppenheimer Value Stock Fund ("Value Stock"), a registered open-end management investment company, and the Value Stock shares would be distributed to applicant's shareholders. A prospectus and proxy statement relating to the reorganization was filed with the SEC on November 13, 1992 and declared effective on December 9, 1992. The reorganization was approved by applicant's shareholders at a meeting held on January 28, 1993.

3. Applicant, Value Stock, and Massachusetts Life Insurance Company received an order under section 17(b) of the Act granting an exemption from the provisions of section 17(a) to permit Value Stock to acquire substantially all of the assets of applicant in exchange for shares of Value Stock.[1]

4. On March 26, 1993, the reorganization was consummated. Applicant transferred its net assets, aggregating $20,149,958.82, to Value Stock in exchange for 1,356,899.108 shares of Value Stock. The exchange was made at new asset value, with necessary valuation of assets and shares made as of the close of business on March 25, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders.

5. The cost of printing the proxies and proxy statements associated with the reorganization was paid by applicant. The cost of mailing the proxies and

[1] Investment Company Act Release Nos. 19298 (Feb. 25, 1993) (notice) and 19344 (Mar. 3, 1993) (order). The Division of Investment Management notes that rule 17a-8 under the Act grants an exemption from section 17(a) for reorganizations among registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. The reorganization could not be carried out under rule 17a-8, however, because applicant and Value Stock were affiliated persons of one another by virtue of the fact that the parent of their common investment adviser also owned more than 5% of the outstanding shares of Value Stock.

proxy statements, and the cost of obtaining a tax opinion were borne jointly by applicant and Value Stock. Any documents such as existing prospectuses or annual reports that were included in that mailing were an expense of the fund issuing the document. Any other out-of-pocket expenses, including legal, accounting, and transfer agent expenses, were borne by applicant and Value Stock, respectively. All such reorganization expenses were accrued by applicant prior to the closing date of the reorganization. Reorganization expenses paid by applicant totaled $14,022.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17998 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2662]**

### Illinois; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective July 17, 1993 to include the counties of Alexander, Jackson, Randolph, and Union in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Franklin, Johnson, Perry, Pulaski, and Williamson in the State of Illinois, and Mississippi County in Missouri.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The economic injury numbers are 793200 for Illinois and 793300 for Missouri.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 9, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 20, 1993.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–17986 Filed 7–27–93; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2667]**

### Nebraska; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 19, 1993, I find the counties of Buffalo, Cass, Lancaster, Sarpy, Seward, and Washington in the State of Nebraska constitute a disaster area as a result of damages caused by severe storms and flooding beginning on June 23, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 17, 1993, and for loans for economic injury until the close of business on April 19, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Fort Worth, Texas 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Burt, Butler, Custer, Dawson, Dodge, Douglas, Fillmore, Gage, Hall, Howard, Johnson, Kearney, Otoe, Phelps, Polk, Saline, Saunders, Sherman, and York in Nebraska.

Any contiguous counties not listed herein are covered under a separate declaration for the same occurrence.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 7.625 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 266706 and for economic injury the number is 793400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 20, 1993.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–17987 Filed 7–27–93; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2668]**

### South Dakota; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 19, 1993, I find that the Counties of Bon Homme, Brookings, Clay, Davison, Hanson, Hutchison, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton in the State of South Dakota constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding which occurred May 6, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 20, 1993, and for loans for economic injury until the close of business on April 19, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Aurora, Beadle, Charles Mix, Clark, Deuel, Douglas, Hamlin, and Jerauld in South Dakota; and Cedar, Dakota, Dixon, and Knox in Nebraska.

The interest rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 7.625 |
| For Economic Injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 266806. For

economic injury the numbers are 793800 for South Dakota, and 793400 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 20, 1993.

Bernard Kulik,

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93-17988 Filed 7-27-93; 8:45 am]

BILLING CODE 6025-01-M

## DEPARTMENT OF STATE

### Office of the Legal Adviser

[Public Notice 1637]

### Claims for Property Located in Albania

Albania has enacted two laws concerning return of expropriated or confiscated properties in Albania. This notice provides short, general descriptions of those laws and tells potential claimants whom to contact for further information. As explained below, these laws set deadlines of November 15, 1993, and May 15, 1994, for certain actions in Albania with respect to claimed property.

*Claims concerning agricultural properties.* The Law on Compensation in Value to Former Owners of Agricultural Land, Law No. 7699, entered into force on May 15, 1993. This law recognizes the right of former owners to ownership of agricultural land for purposes of compensation. The law covers natural and juridical persons who owned land at the time of the issuance of the Law on Agrarian Reform (Law 108, August 29, 1945) or the legal heirs of such persons. Agricultural land refers to all land in Albania designated as agricultural land, including olive groves, orchards, vineyards and lands which were regarded as agricultural in 1945. Under Law No. 7699, former owners or heirs who received agricultural land under Law No. 7501 of July 19, 1991 may receive compensation in value for the difference between the area of agricultural land they originally owned and the area returned to them.

Owners or heirs who did not receive agricultural land under Law No. 7501 may be compensated as provided in the following formula. Full compensation is available for up to 15 hectares (approximately 37 acres). For areas of more than 15 hectares, compensation is determined on the basis of the following formula: From 15 hectares to 100 hectares, compensation for each hectare above the initial 15 shall be at the rate of 0.1 hectare. For areas between 100 and 1,100 hectares, compensation for each hectare in excess of 100 shall be at the rate of 0.02 hectare. For land areas greater than 1,100 hectares, no additional compensation will be available. The maximum amount of compensation may not exceed the equivalent of compensation for an area of 43.5 hectares. The amount of compensation to be given for each hectare is to be specified by law within six months of the effective date of this law.

Compensation will be provided through state bonds denominated in leks, which will be payable before December 31, 1999, and which will be transferable and salable. After December 31, 1999, for a 5-year period compensation can also be provided in leks. The bonds will be guaranteed and may be used before the redemption date to purchase state property.

Claims for compensation must be presented to the State Committee for the Compensation of Property in the relevant district within one year after the date of entry into force of the law, i.e., by May 15, 1994.

The law does not cover properties belonging to the former king and to foreign or joint companies. In addition, certain persons may not benefit from compensation under the law, including former collaborators of the Nazi-Fascist occupiers for properties acquired during the occupation, former communist party and government officials for properties acquired as a result of the abuse of official position as provided by court decision, and persons convicted of massive appropriations of the wealth of the people.

*Claims concerning non-agricultural properties.* The Law on the Return and Compensation for Property of Former Owners, Law No. 7698, which covers property (in the form of lots, buildings and anything permanently connected with them, such as residential buildings, factories, workshops, shops, stores and any other type of building) within municipal limits, entered into force on May 15, 1993. The law does not cover properties which fall within the purview of the Law on Compensation in Value for Owners of Agricultural Land.

Under Law No. 7699, the right to ownership is recognized, and all properties that exist in the form of unoccupied lots or unchanged buildings shall be returned to their former owners or their heirs, with some exceptions. Other properties may also be returned, under a complex system of restitution and compensation, depending on the type of property, its current status and use. For example, the availability and amount of restitution or compensation may depend on factors such as use of the property or buildings (whether in public or private use), whether the building or lot is used for purposes for which it was expropriated, whether full compensation was received at the time of expropriation, whether properties have been transferred to third parties (in which case payment of rent may be required), whether improvements have been made by the state or the owner (in which case co-ownership or payments may be required), and whether permanent or temporary construction has been undertaken on lots. The law provides for co-ownership and payment of rents (at specified rates) in certain circumstances.

Unless otherwise specified, full restitution or compensation shall be provided up to 10,000 sq. meters (approximately 1 hectare or 2.5 acres). From 10,000 to 100,000 sq. meters, the amount of restitution shall be 10 percent. For property in excess of 100,000 sq. meters, the restitution or compensation provided shall be at the rate of 1 percent.

The law does not apply to properties belonging to the former king and to foreign or joint companies. In addition, certain types of people may not benefit from the law, including former collaborators of the Nazi-Fascist occupiers, for property acquired during the occupation, former communist party and government leaders for property acquired as a result of the abuse of an official position as proved by a court decision, and persons convicted of massive appropriations of the wealth of the people.

Actions for the recognition of ownership under the law are to be carried out by the agencies charged with the registration of real estate. Former owners are required to submit official documents proving ownership, or in the absence of such documents may have their ownership proven by court decision. Requests for transfer of ownership must be submitted within six months from the effective date of the law, i.e., by November 15, 1993. If former owners, for legitimate reasons, have not been informed of the deadline, they may seek extensions through the courts.

The law states that a State Committee for the return of property to former owners or for providing compensation has been created in the Council of Ministers for the purpose of certifying claims of former owners that are not otherwise resolved in the law.

*Information Concerning Albanian Property Laws.* Copies of the Albanian laws in Albanian and English may be obtained by writing or telephoning the State Department at the following

address: Office of International Claims and Investment Disputes, Office of the Legal Adviser, 2100 K. Street, NW., Washington, DC 20037–7180, (202) 632–6686. Further information concerning the laws may also be obtained from the Embassy of Albania at 1150 18th St., NW., Washington, DC 20036. (202) 223–4942.

*U.S. Registration of Claims.* In 1992, the Foreign Claims Settlement Commission requested registration of potential property claims against Albania. 57 FR 4067 (February 3, 1992). This program was designed to gather information concerning potential claims against Albania. It did not constitute a formal filing of a claim with the U.S. Government, and the Foreign Claims Settlement Commission has made no determinations concerning which claims are valid.

The United States has begun discussions with Albania for a claims settlement agreement. However, it is not yet clear whether or when such an agreement may be concluded. Any agreement would likely cover only claims for property which was owned by United States nationals at the time of expropriation by Albania. In addition, dual United States-Albanian nationals will be included only if those nationals are domiciled in the United States currently or for at least half the period of time between the taking of their property in Albania and the date entry into force of the agreement. Claimants who wish to pursue restitution or compensation for their property in Albania may wish to proceed to file claims for compensation with the required authorities in Albania. Claimants should note, however, that while the Governments of the United States and Albania have not yet decided what claims would be covered by a settlement agreement, the United States Government reserves the right to settle, as part of such an agreement, claims filed with the Government of Albania under the laws described above. Moreover, it is expected that no claim will be allowed to result in a double recovery.

Claimants are advised that neither the Foreign Claims Settlement Commission nor the Department of State has any information concerning the Albanian law other than that noted here and contained in the text of the law. Further information must be obtained from the Government of Albania. Claimants are also encouraged to consult with counsel familiar with Albanian law. Claimants are reminded that the United States Government cannot advise them concerning whether their claims will result in any form of compensation under Albanian law.

Dated: July 16, 1993.

**Ronald J. Bettauer,**

*Assistant Legal Adviser for International Claims and Investment Disputes.*

[FR Doc. 93–17894 Filed 7–27–93; 8:45 am]

BILLING CODE 4710–08–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advisory Circular; Operating Procedures for Airport Traffic Control Towers (ATCT) That Are Not Operated By, or Under Contract With, the United States (Non-Federal)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of Advisory Circular 90–93.

**SUMMARY:** The FAA is announcing the availability of Advisory Circular (AC) 90–93 which recommends government publications and procedures for the operation by, equipment installation at, and maintenance of, record keeping by, accident/incident reporting by, tower specialist training for, and management of a non-Federal ATCT (NFCT).

**DATES:** This AC is effective as of July 19, 1993.

**ADDRESSES:** A copy of AC90–93, Operating Procedures for Airport Traffic Control Towers (ATCT) That Are Not Operated By, or Under Contract With, The United States (Non-Federal), may be obtained by writing to Department of Transportation, Utilization and Storage Section, M–443.2, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

**SUPPLEMENTARY INFORMATION:** AC 90–81, Procedures for Obtaining Publications—Civil Non-FAA Operated Control Towers, dated November 9, 1983, is cancelled. This notice is issued pursuant to the FAAct, 49 U.S.C. App. 1343, 1346, 1347, 1348, 1354(a), 1355, 1401, 1421–1430, 1472(c), 1502, and 1522; 49 U.S.C. 106(g), 307(a), 313(a).

Dated: July 20, 1993.

**Harold W. Becker,**

*Acting Director, Air Traffic Rules and Procedures Service.*

[FR Doc. 93–17974 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–M

### Civil Tiltrotor Development Advisory Committee; Establishment

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of establishment of Civil Tiltrotor Development Advisory Committee.

Notice is hereby given of the establishment of the Civil Tiltrotor Development Advisory Committee. This committee will determine the costs, feasibility, and economic viability of developing a civil tiltrotor aircraft and establishing the necessary infrastructure to incorporate such aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system. Public Law 102–581, Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, directed the Secretary of Transportation to establish this advisory committee.

Meetings of the panel will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act.

**FOR FURTHER INFORMATION CONTACT:** The Office of System Capacity and Requirements (ASC), 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–7370.

Issued in Washington, DC, July 22, 1993.

**Edward T. Harris,**

*Director of System Capacity and Requirements.*

[FR Doc. 93–17976 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–M

### Environmental Impact Statement: New Runway and Associated Projects, Tulsa International Airport, Tulsa, OK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FAA is issuing this notice to advise the public that it is withdrawing its intent to prepare an Environmental Impact Statement (EIS) for a proposed third parallel runway which would accommodate air carrier traffic at Tulsa International Airport, Tulsa, Oklahoma.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Porter, Airport Environmental Specialist, ASW–640D, Federal Aviation Administration, Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0640. Telephone (817) 624–5652.

**SUPPLEMENTARY INFORMATION:** The FAA, after coordinating with the Tulsa Airports Improvement Trust, is withdrawing its notice of intent to

prepare an EIS for a proposed third parallel runway which would accommodate air carrier traffic at Tulsa International Airport.

Issued on: July 12, 1993.

**John M. Dempsey,**

*Manager, Airports Division.*

[FR Doc. 93–17970 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

July 22, 1993.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–1004
*Form Number:* IRS Form 1120–REIT
*Type of Review:* Resubmission
*Title:* U.S. Income Tax Return for Real Estate Investment Trusts
*Description:* Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents/ Recordkeepers:* 176
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—57 hours, 38 minutes
Learning about the law or the form—18 hours, 55 minutes
Preparing the form—38 hours, 22 minutes
Copying, assembling, and sending the form to the IRS—5 hours, 5 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 21,124 hours
*Clearance Officer:* Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
*OMB Reviewer:* Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 93–17924 Filed 7–27–93; 8:45 am]

BILLING CODE 4830–01–P

### Public Information Collection Requirements Submitted to OMB for Review

July 21, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0203
*Form Number:* IRS Form 5329
*Type of Review:* Revision
*Title:* Additional Taxes Attributable to Qualified Retirement Plans (including IRAs), Annuities, and Modified Endowment Contracts
*Description:* This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are for excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid
*Respondents:* Individuals or households
*Estimated Number of Respondents/ Recordkeepers:* 1,000,000
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—2 hours, 24 minutes
Learning about the law or the form—31 minutes
Preparing the form—1 hour, 17 minutes
Copying, assembling, and sending the form to the IRS—34 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting/ Recordkeeping Burden:* 4,780,000 hours
*OMB Number:* 1545–0877
*Form Number:* IRS Form 1099–A
*Type of Review:* Extension
*Title:* Acquisition or Abandonment of Secured Property
*Description:* Form 1099–A is used by lenders to report foreclosures and abandonments of property that is security for a loan.
*Respondents:* Businesses or other for-profit, Federal agencies or employees
*Estimated Number of Respondents:* 15,800
*Estimated Burden Hours Per Respondent:* 10 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting Burden:* 68,000 hours
*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 93–18022 Filed 7–27–93; 8:45 am]

BILLING CODE 4830–01–P

### Public Information Collection Requirements Submitted to OMB for Review

July 22, 1993

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0415
*Form Number:* IRS Form W–4P
*Type of Review:* Extension
*Title:* Withholding Certificate for Pension or Annuity Payments
*Description:* Used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or

to elect that no tax be withheld, so that the payer can withhold the proper amount.
*Respondents:* Individuals or households
*Estimated Number of Respondents/ Recordkeepers:* 12,000,000
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—40 minutes
Learning about the law or the form—20 minutes
Preparing the form—49 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting/ Recordkeeping Burden:* 12,000,000 hours
*OMB Number:* 1545–1027
*Form Number:* IRS Form 1120–PC
*Type of Review:* Revision
*Title:* U.S. Property and Casualty Insurance Company Income Tax Return
*Description:* Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents/ Recordkeepers:* 2,200
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—102 hours, 50 minutes
Learning about the law or the form—33 hours, 29 minutes
Preparing the form—55 hours, 15 minutes
Copying, assembling, and sending the form to the IRS—5 hours, 22 minutes
*Frequency of Response:* Annually
*Estimated Total Reporting/ Recordkeeping Burden:* 433,246 hours
*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 93–18021 Filed 7–27–93; 8:45 am]

BILLING CODE 4830–01–P

## Customs Service

### Revised Procedure Relating to Expiration of Generalized System of Preferences

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** General notice.

**SUMMARY:** The Generalized System of Preferences (GSP), a preferential trade program that allowed the products of many developing countries to enter the U.S. duty-free, expired on July 4, 1993. On July 1, 1993, Customs published a document in the Federal Register that both notified importers that claims for duty-free treatment under the GSP could not be made for merchandise entered or withdrawn from a warehouse on or after July 5, 1993, and set forth Customs mechanism to facilitate refunds if the GSP is renewed retroactively. This document notifies the public of a change in the procedures set forth in the July 1 document pertaining to persons filing paperless entry summaries.

**DATES:** The change in procedure is effective as of July 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lisa Crosby, Office of Trade Operations, 202–927–0163.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 1, 1993, Customs published a document in the Federal Register (58 FR 35506) notifying importers that the Generalized System of Preferences (GSP), the preferential trade program allowing the products of many developing countries to enter the U.S. duty-free, was expiring on July 4, 1993, unless extended by law. The document informed the importing public that claims for duty-free treatment under the GSP could not be made for merchandise entered or withdrawn from a warehouse on or after July 5, 1993, if the program was not extended before that date. The document also set forth Customs mechanism to facilitate refunds, if the GSP is renewed retroactively.

As of today, the GSP program has neither been extended nor renewed retroactively.

The purpose of this document is to inform the importing public of a modification to the procedures set forth in the July 1 document relating to filers of paperless entry summaries.

### Modification to Procedures

In the July 1 notice, Customs stated that all filers, other than those using the Automated Broker Interface (ABI) who file paperless entry summaries, may continue to file using the Special Program Indicator (SPI) for the GSP (the letter "A") as a prefix to the tariff number for all entries that would have qualified for the GSP if the GSP were still in effect.

Based on input from filers and field locations, Customs has determined that persons using ABI who file paperless entry summaries, including electronic invoice summaries, also may use the SPI "A".

Use of the SPI "A" will permit Customs Automated Commercial System (ACS) to perform its usual edits on the information transmitted by the filer, thereby ensuring that GSP claims are for acceptable country/tariff combinations. Further, the need for numerous statistical corrections will be eliminated.

### Refunds and Paperless Entry Summary Filers

While Customs will now permit paperless entry filers to use the SPI "A", Customs reiterates that even though the SPI "A" is used, a refund will not be processed automatically for these filers by Customs if the GSP is eventually renewed retroactively. Paperless entry filers who use the SPI "A" still will be required to file a refund request if and when the GSP is renewed retroactively.

As stated in the July 1 notice, if a filer submits an entry summary with both the SPI "A" and the blue cover sheet explained in the July 1 notice, no further action need be taken by the filer to request a refund; filing with the SPI "A" and the blue cover sheet constitutes a valid claim for a refund. Because paperless entry summaries will not be filed with the blue cover sheet and will not be in the special GSP batches, a refund will not be issued unless the importer requests a refund in writing.

Instructions on how to request a refund in writing will be issued if and when the GSP is renewed retroactively.

Customs cannot overemphasize that any refunds for duty-free claims under the GSP for merchandise entered or withdrawn from a warehouse on or after July 5, 1993 will only be issued provided that the GSP is renewed retroactively by Congress in the same manner that tariff preference programs have been renewed in the past.

Dated: July 21, 1993.

**Samuel H. Banks,**

*Assistant Commissioner, Commercial Operations.*

[FR Doc. 93–17990 Filed 7–27–93; 8:45 am]

BILLING CODE 4820–02–P

## Internal Revenue Service

### Privacy Act of 1974, as Amended; System of Records

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed new Privacy Act system of records.

**SUMMARY:** The Treasury Department, Internal Revenue Service, gives notice of

a proposed new system of records entitled Internal Security Management Information System (ISMIS)—Treasury/IRS 60.011, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

**DATES:** Comments must be received no later than August 27, 1993. This new system of records will be effective September 27, 1993, unless comments are received which results in a contrary determination.

**ADDRESSES:** Comments should be sent to the Disclosure Officer, Office of the Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

**FOR FURTHER INFORMATION CONTACT:** Program Analyst Mary Anderson, or Staff Inspector Jean Keller, Office of the Chief Inspector, Internal Security, Internal Revenue Service (703) 235–0567.

**SUPPLEMENTARY INFORMATION:** The development of the Internal Security Management Information System (ISMIS) was precipitated by the need for better resource management and greater continuity in case management. This system enables management to effectively track investigative cases and assists in determining budget and staffing requirements within Internal Security by drawing from data currently maintained in the following Inspection systems of records; Assault and Threat Investigation files—Treasury/IRS 60.001, Bribery Investigation Files—Treasury/IRS 60.002, Conduct Investigation Files—Treasury/IRS 60.003, Disclosure Investigation Files—Treasury/IRS 60.004, Enrollee Applicant Investigation Files—Treasury/IRS 60.005, Enrollee Charge Investigation Files—Treasury/IRS 60.006, Miscellaneous Information Files—Treasury/IRS 60.007, Security, Background and Character Investigation Files—Treasury/IRS 60.008, Special Inquiry Investigation Files—Treasury/IRS 60.009, and Tort Investigation Files—Treasury/IRS 60.010. There is the possibility that other databases will be added in future enhancements of ISMIS.

ISMIS consolidates the information into a data base providing more effective management of Internal Security resources, programs, and budget and staff requirements for the benefit of the Department of the Treasury, the Congress, and IRS officials.

The system notice, as proposed, is published in its entirety below. A proposed rule exempting this system from certain provisions of the Privacy Act is to be published separately in the **Federal Register**.

**Treasury/IRS 60.011**

**SYSTEM NAME:**

Internal Security Management Information System (ISMIS)—Treasury/IRS.

**SYSTEM LOCATION:**

Office of the Chief Inspector, National Office, and Regional Inspection Offices. (See IRS appendix A for Addresses.)

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

(1) Current and former employees of the Internal Revenue Service, other Bureaus and Services within the Department of the Treasury, and Private Contractors at IRS Facilities; (2) Taxpayers and non-IRS persons whose alleged criminal actions may affect the integrity of the Internal Revenue Service; (3) Former employees and non-IRS persons who apply for enrollment to practice before the IRS under the provisions of Circular 230; (4) Tax practitioners, attorneys, certified public accountants or enrolled persons.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) ISMIS personnel system records contain Internal Security employee name, office, start of employment, series/grade, title, separation date; (2) ISMIS tracking records contain status information on investigations from point of initiation through conclusion; (3) ISMIS timekeeping records contain assigned cases and distribution of time; (4) ISMIS case tracking records contain background investigations and criminal/administrative cases.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801 and 7802; Executive Order 11222.

**PURPOSE:**

The purpose of ISMIS is to: (1) Effectively manage Internal Security resources and assess the effectiveness of current Internal Security programs and to assist in determining budget and staff requirements; (2) Provide the technical ability for other components of the Service to analyze trends in integrity matters on an organizational, geographic and violation basis.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (2) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (3) Disclose information to a Federal, State, or local agency, or other public authority, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged; (5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (8) Disclose information to a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross-referenced third parties, social security number, or case number.

SAFEGUARDS:

Access is limited to authorized Inspection personnel who have a direct need to know. Hard copy of data is stored in rooms of limited accessibility except to employees. These rooms are locked after business hours. Access to magnetic media is controlled by computer passwords. Access to specific ISMIS records is further limited by computer security programs limiting access to select personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and are retained and archived as long as deemed necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Inspector (Internal Security), Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to them may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of record, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B.

Inquiries should be addressed to the Disclosure Officer, Office of the Chief Inspector, Internal Revenue Service, Room 6116, I:IS:I, 1111 Constitution Avenue, NW, Washington, DC 20224.

CONTESTING RECORDS PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORDS SOURCE CATEGORIES:

Department of the Treasury personnel and records, other Federal agencies, current and former employees of the Internal Revenue Service, taxpayers and non-IRS persons whose alleged criminal actions may affect the integrity of the Internal Revenue Service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2).

Dated: July 15, 1993.

**Deborah M. Witchey,**

*Deputy Assistant Secretary (Administration).*

[FR Doc. 93–17892 Filed 7–27–93; 8:45 am]

BILLING CODE 4830–01–M

## UNITED STATES INFORMATION AGENCY

### Exchange Visitor Program; Skills List

**AGENCY:** United States Information Agency.

**ACTION:** Amendment to delete Spain from the Exchange Visitor Skills List.

**SUMMARY:** The Exchange Visitor Skills List is amended by deleting the fields of specialization for Spain at the request of the Government of Spain.

**DATES:** This amendment shall become effective July 28, 1993.

**ADDRESSES:** Comments and requests for further information should be addressed to: Mary D. Hitt, Director, Exchange Visitor Program Services, USIA, 301 Fourth Street SW., suite 700, Washington, DC 20547, telephone (202) 475–6869.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), the Secretary of State designated on April 25, 1972, a list of fields of specialized knowledge or skill (referred to as the Exchange Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange visitor visa and/or became a participant in an Exchange Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the 2-year home country physical residence requirement of section 202(e) of the Immigration and Nationality Act as provided in section 212(e) and 22 CFR 41.65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of the United States Information Agency Authorization Act of August 24, 1982 (Pub. L. 97–241) and Executive Order Nos. 12048 (March 27, 1978) and 12388 (October 14, 1982) the Director, United States Information Agency, on June 12, 1984 further amended the 1972 Exchange Visitor Skills List, as revised in 1978, to increase the designated fields of specialized knowledge of skills. The 1984 amendment gave notice of the addition of China and the deletion of Cambodia, Iran and Viet-Nam from the skills list as well as the indefinite suspension of Afghanistan. In September, 1986 an amendment reflected the deletion of South Africa, addition of Iraq and changes in Group 4 for the People's Republic of China. It also clarified that the skills list for the People's Republic of China is not applicable to exchange visitors from Taiwan. A February, 1987 amendment gave notice of the indefinite suspension of Libya and the addition of two fields to Group (1) of the skills list for the People's Republic of China. Amendments in March and April, 1987, contained date corrections. An amendment in December, 1988 added additional fields to the skills list for the People's Republic of China.

This Notice amends Public Notice No. 356–37, 37 FR 8099, April 25, 1972; Public Notice No. 591, 43 FR 5910, February 10, 1978; Public Notice No. 49 FR 24194, June 12, 1984; 51 FR 34701, September 30, 1986; 52 FR 3744, February 5, 1987; 52 FR 8700, March 19, 1987; 52 FR 10437, April 1, 1987 and 53 FR 50619, December 16, 1988.

Accordingly, the Exchange Visitor Skills List, is further amended by deleting Spain from said list.

Dated: July 19, 1993.

**R. Wallace Stuart,**

*Acting General Counsel, United States Information Agency.*

[FR Doc. 93–17893 Filed 7–27–93; 8:45 am]

BILLING CODE 8230–01–M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 143
Wednesday, July 28, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-21]

**TIME AND DATE:** August 2, 1993 at 2:30 p.m.

**PLACE:** Room 101, 500 E Street S.W.,Washington, DC 20436.

**STATUS:** Open to the public.

1. Agenda for future meeting.
2. Minutes
3. Ratification List
4. Invs. Nos. 731–TA–651 (Preliminary) (Silicon Carbide from the People's Republic of China)—briefing and vote.
5. Continuation of discussion of APO matters
6. Outstanding action jackets
   1. EC–93–011; Antidumping and Countervailing Duty Laws and Practices in South America.
7. Any items left over from previous agenda

**CONTACT PERSON FOR MORE INFORMATION:** Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: July 23, 1993.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 93–18164 Filed 7–26–93; 3:28 pm]

BILLING CODE 7020-02-P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 26, 1993.

A closed meeting will be held on Wednesday, July 28, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 28, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: July 23, 1993.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 93–18165 Filed 7–26–93; 3:29 p.m.]

BILLING CODE 8010-01-M

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# Corrections

Federal Register
Vol. 58, No. 143
Wednesday, July 28, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**9 CFR Part 317**

**[Docket No. 91-019F]**

**RIN 0583-AB37**

### Listing of Minor Ingredients in Other Than Descending Order of Predominance

*Correction*

In rule document 93-16783 beginning on page 38046 in the issue of Thursday, July 15, 1993, make the following correction:

**§ 317.2 [Corrected]**

1. On page 38049, in the first column, in § 317.2(f)(1)(vi)(B), in the eighth line, "qualifying" should read "quantifying".

BILLING CODE 1505-01-D

## DEPARTMENT OF DEFENSE

## DEPARTMENT OF VETERANS AFFAIRS

**38 CFR Part 21**

**RIN 2900-AF52**

### Veterans Education; Disenrollment From the Post-Vietnam Era Veterans' Educational Assistance Program Following Election to Receive Other Benefits

*Correction*

In rule document 93-16728 beginning on page 38057 in the issue of Thursday, July 15, 1993, make the following correction:

**§ 21.5058 [Corrected]**

1. On page 38058, in the second column, in § 21.5058(b), in the fourth line, "disenrolled" should read "reenroll".

BILLING CODE 1505-01-D

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed, Manchester Terminal Corp./Southern Stevedoring Co., Inc. Terminal Agreement et al.

*Correction*

In notice document 93-16695 beginning on page 38126 in the issue of Thursday, July 15 1993, on page 38127, in the first column, "*Agreement No.:* 224-200229-001." should read "*Agreement No.:* 224-200229-002.".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**46 CFR Part 15**

**[CGD 92-061]**
**RIN 2115-AE28**

### Federal Pilotage Requirement for Foreign Trade Vessels

*Correction*

In proposed rule document 93-16082 beginning on page 36914 in the issue of Friday, July 9, 1993, make the following corrections:

1. On page 36914, in the second column, under **ADDRESSES**, in the third line, "(G-LFA/3406)" should read "(G-LRA/3406)".

2. On page 36915, in the first column, in the first paragraph, in the eighth line, "terminal" should read "terminals".

3. On page 36916, in the first column, in the first full paragraph, in the fifth line, "a departing" should read "or departing".

**PART 15—[CORRECTED]**

4. On page 36917, in the second column, in amendatory instruction 2., in the second line, "315.1040," should read "§ 15.1040,".

**§ 15.1010 [Corrected]**

5. On page 36917, in the third column, in § 15.1010(g), in the ninth line, "36°38'18"" should read "36°48'18"".

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**49 CFR Parts 218 and 229**

**[Docket No. LI-7; Notice 5]**

**RIN 2130-AA53**

### Event Recorders

*Correction*

In rule document 93-15966 beginning on page 36605 in the issue of Thursday, July 8, 1993, make the following correction:

On page 36605, in the 1st column, under the heading **DATES**, in the 11th and 12th lines, "January 16, 1995." should read "May 5, 1995.".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**29 CFR Part 1926**

### Incorporation of General Industry Safety and Health Standards Applicable to Construction Work

*Correction*

In rule document 93-15063 beginning on page 35076 in the issue of Wednesday, June 30, 1993, on page 35285, in "Appendix D to § 1926.1147," in the first column remove "Insert illus. 44" and add the following equation:

$$CV = \frac{3(.0277)^2 + 3(.0452)^2 + 3(.0333)^2}{3+3+3}$$

BILLING CODE 1505-01-D

federal register

Wednesday
July 28, 1993

Part II

# National Credit Union Administration

12 CFR Part 701

**Federal Credit Union Field of Membership and Chartering Policy; Proposed Interpretive Ruling and Policy Statement ("IRPS")**

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

**Federal Credit Union Field of Membership and Chartering Policy**

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed interpretive ruling and policy statement. ("IRPS").

SUMMARY: Significant changes have occurred since NCUA's comprehensive restatement of chartering and field of membership policy—Interpretive Ruling and Policy Statement ("IRPS") 89–1—became effective. Many corporate and governmental units served by credit unions have begun restructuring dramatically, leaving associated credit unions scurrying to keep their fields of membership up-to-date. Technology has expanded the geographic range within which many credit unions can effectively serve their members at the same time that much of the public have begun to accept and even demand the convenient service that the new technology offers. Those seeking to provide credit union service to low-income communities have shown they need more flexibility in the chartering and field of membership expansion process if these credit unions are to be effective in helping persons of small means obtain a source of credit in which they have a real voice.

In recognition of these changes, the NCUA Board directed a review of IRPS 89–1 to determine what updating might be needed in these and other areas. That review produced a number of recommended changes—some substantial, others technical; some in the form of specific proposals, others in the form of subjects for discussion by the credit union community. The following proposal, which would amend and replace IRPS 89–1, sets forth the proposed changes. The subjects for discussion are set forth at the end of the Supplemental Information section of this Preamble; changes along the lines suggested there may be incorporated into the final IRPS.

DATE: Comments must be received by October 26, 1993.

ADDRESSES: Send comments to Becky Baker, Secretary, NCUA Board. Comments mailed prior to September 1, 1993 are to be sent to 1776 G Street, NW., Washington, DC 20456; comments mailed after that date are to be sent to 1775 Duke Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Regional Director, Region III (Atlanta), 7000 Central Parkway, Suite 1600, Atlanta, GA 30328, or telephone (404) 396–4042.

SUPPLEMENTARY INFORMATION:

## The Proposed IRPS

The changes included in the proposed IRPS are designed:

- To facilitate corporate and military unit restructurings
- To clarify NCUA policy on the "operational area" requirement for select group expansions
- To update the low income and community development credit union policies, and to accelerate reaching final decision on a charter application
- To make minor or technical changes to modify or clarify NCUA policy.

*Corporate and Military Restructurings*

The radical restructurings taking place in many organizations served by credit unions have forced credit union officials to adapt quickly to significant changes to their fields of membership. Sponsoring organizations previously organized on geographic or military service lines, for example, are reorganizing more strictly on functional lines. With increasing frequency, entire business lines are being bought and sold. Military bases and industrial plants are closing, leaving credit unions effectively without a field of membership. Former employer-employee relationships are being converted to staff leasing arrangements. Much of IRPS 89–1, particularly with respect to adding new groups as part of either a primary sponsor or select group expansion, remains valid for restructuring situations. However, there appears to be need for some additional guidance and for some modification of existing policy.

The NCUA Board proposes:

- To help federal credit unions endangered by base or plant closings or similar shocks by liberalizing somewhat the agency's general policy against allowing a community federal credit union to include in its field of membership select groups outside the community boundaries but within the credit union's operational area. The proposed liberalization would be limited. It would be applicable only to an occupational, associational, or multiple-group federal credit union converting to a community charter as a result of a military base or plant closing, or significant cutbacks or downsizing. It would only allow the converting federal credit union to maintain service to the select groups in its field of membership prior to conversion and, for only so long as needed to ensure the credit union's continued viability, to add other select groups within the credit union's operational area after the conversion. Moreover, to ensure that this liberalized policy would be evenly and properly applied, a special administrative approval procedure would be put into place.
- To clarify NCUA policy on staff leasing arrangements. Where the requirements of existing policy are met, the employees leased to a firm listed in a federal credit union's field of membership may be added as a common bond expansion. Where those requirements are not met, the elements of a select group expansion to serve employees of the leasing company must be met. The proposal attempts to provide improved guidance in both these areas.
- To clarify NCUA policy on mergers, spin-offs and purchase and assumptions. Particularly in the context of base closings and plant shutdowns, there has been confusion in the credit union community in these areas.
- To clarify NCUA policy on the removal of groups from a federal credit union's field of membership. Recently, a number of credit unions have found that some of the groups in their fields of membership have ceased to exist. The proposal seeks to describe the credit unions' obligations in such situations.

Other suggestions for improvement in these areas are invited.

*Select Group Expansions—the "Operational Area" Requirement*

NCUA has traditionally focused multiple group field of membership additions around the "operational area" of a home or branch office. This policy was designed to ensure a satisfactory level of commitment and of service to the groups included in the field of membership, while also minimizing instances of overlap and deterring territorial stakeouts by overly aggressive credit unions. Notwithstanding some additional fixed asset cost and the fact that there have been some areas—primarily in rural parts of the country—into which federal credit unions were prevented from expanding, this policy has served the credit union community well.

Improved communication links that have been made available over the last few years and that likely will continue to be developed at an exponential rate require a rethinking of the necessity of strict adherence to past policy. Payroll deduction through electronic funds transfer and ATM networks, long available, are becoming generally accepted by the public. Fax and data transmission improvements now enable

many credit unions to carry out even the lending function quickly and efficiently despite many miles' separation from the member.

At the same time, credit unions, attempting to provide better low-cost service for their members, have been experimenting with variations on the traditional brick and mortar branch, owned and operated by a single institution. "Shared facilities" or "shared service centers"—brick and mortar operations owned by a group of credit unions through a credit union service organization and operated by a shared staff—are springing up around the country.

These developments suggest an updating of NCUA's "operational area" requirement may be appropriate. These changes are being proposed:

- A clarification that the "standard" operational area will be considered an area within a 25 mile radius of a home or branch office, but that this standard may be extended for rural areas.
- Added guidance on what constitutes a "home" or "branch" office. Though the proposal maintains much of the flexibility in existing IRPS 89–1 for evaluating individual facilities, "shared facilities" or "shared service centers" are specifically excluded from consideration as either a "home" or a "branch" office for purposes of meeting NCUA's operational area requirement, except in unusual circumstances—e.g., where a credit union is converting an existing home or branch office to a "shared facility."
- For state-chartered credit unions converting to federal credit unions, recognition that an established history of being able to serve multiple groups outside of the operational area of a "home" or "branch" office can justify permitting continued service to the groups without regard to the operational area requirement normally applicable to new federal multiple group charters. Future select group expansions would have to conform to all NCUA requirements applicable at the time, including the operational area limitation.

*Low Income Credit Unions*

Congress and the NCUA Board have long recognized that special efforts must be made for those who are attempting to use the credit union philosophy to help with the savings and credit needs of persons of truly small means. The proposal makes clear that the NCUA Board is committed to aid these efforts, and that NCUA will consider chartering and field of membership requests subject only to section 109 of the Federal Credit Union Act and safety and soundness requirements, to ensure that quality credit union service can be made available to those of limited means.

As part of this commitment, the proposal seeks to improve the process for evaluating new charters, the bulk of which are now for low-income credit unions. The proposed changes are designed to eliminate unnecessary burdens on the applicants and to speed up the decision process.

On a more technical level, the proposal updates the discussion in IRPS 89–1 to reflect the regulatory changes which have taken place in this area since the statement was issued.

*Technical Updates and Clarifications*

There are a number of relatively minor updates and clarifications in the proposal:

- Clarification that employees of different school systems and different governmental units do not have the same primary sponsor. Therefore, the addition of the employees of a particular school district by a federal credit union serving employees of an adjoining school district must be done under the select group addition procedures.
- Clarification that a federal credit union seeking to include an association in its field of membership may only include natural persons who pay dues and have voting rights or hold office in the association.
- Clarification that a federal credit union's field of membership must be updated and approved by NCUA when an association changes its bylaws to modify the scope of those eligible for membership.
- Modification of the existing IRPS 89–1 to facilitate inclusion of employees at office parks, industrial parks, shopping centers, and similar establishments. Experience suggests that the best reference point for requesting credit union service in these instances is not the individual employers but the leasing agent, who is on-site, is most likely to provide support, and has the most at stake in establishing a credit union presence in the facility. The proposal would modify existing policy to permit expansion to include all employees of such an establishment upon request from the leasing agent or similar authoritative figure. No overlap protection would be given to the expanding credit union and exclusionary clauses would be used to prevent injury to other credit unions serving a portion of these employees.
- Additional guidance on the safety and soundness concerns NCUA has with a credit union's using outside parties—insurance agents and car dealers, for example—to recommend select group expansions. The guidance, included as an appendix, is an update of a white paper which has been widely distributed to credit unions in the past.
- Clarification that NCUA may exclude from overlap protection state credit unions' with a field of membership so broadly defined as to include virtually everyone in a wide area.
- Clarification that NCUA must approve all prospective officials and management personnel of a newly chartered federal credit union during the first two years.
- Clarification of appeal rights for new charter applicants and for those federal credit unions denied a request for a field of membership expansion, merger, or spin-off.
- Clarification and amplification of the process for requesting additions to a federal credit union's field of membership.
- Inclusion of language to minimize potential conflicts of interest when adding certain professional organizations to the field of membership of a federal credit union.

**Additional Subjects on Which Comment Is Requested**

There are a number of additional possible changes or clarifications which are not included in the proposed IRPS but for which comment is requested.

*Special Procedures for Permitting Select Group Expansion "in the Public Interest"*

There has been considerable interest in establishing a middle ground between common bond and select group expansions to help credit unions serve groups without quality credit union service available. The Board requests comment on a limited "public interest" procedure by which NCUA might approve a federal credit union expansion to include a group outside the credit union's primary sponsor group and outside the operational area of a home or branch office, if such action is in the interest of making quality credit union service available to all eligible groups who wish to have it, and if doing so will not have a significant adverse effect on the safe and sound operation of credit unions. The federal credit union seeking expansion would have to provide:

- A list of all federal and state credit unions within a 25 mile radius of the group's location.
- A summary of the views of each credit union with a home or branch office within the 25 mile radius as to whether each has agreed to inclusion of the group in the applying credit union's

field of membership, and, if the credit union has refused, the reasons for the refusal.

• Copies of letters from each consenting credit union confirming agreements with the applying credit union's request.

• Either copies of letters from each credit union opposing the applying credit union's request or a summary of the unsuccessful efforts made to obtain such a letter.

• A statement, if necessary, of the reasons for granting the inclusion of the group in the applying credit union's field of membership notwithstanding the objection of one or more credit unions with service in the area.

• A justification for inclusion of the group in the applying credit union's field of membership. Included in the justification should be such matters as the relationship, if any, between the applying credit union's primary sponsor and the group; the service to be provided to the group and how that service is to be provided; the fact that the group is aware of and accepts the kind of service to be provided, supported by a letter from an responsible official of the group; and the effect inclusion of the group will have on the applying credit union.

*"File and Serve" Procedure*

One of the difficulties federal credit unions have had in reaching out to select groups has been the delay required between when the group requests service and when NCUA approves the expansion and the credit union can begin providing the service. The Board is therefore requesting comments on a "File and Serve" select group expansion procedure. It is envisioned that the procedure would permit CAMEL code 1 and 2 federal credit unions to approach new groups for credit union membership to sign up new members and to begin providing service prior to formal NCUA approval of the expansion. Such groups to be added could have not more than 50 potential members and must clearly be within the operational area of the credit union's home or a branch office. The credit union would be required to submit documentation to the appropriate regional director, similar to existing policy, within a specified time after service has begun. NCUA would then formally act to add the new select group to the credit union's field of membership. The procedure would permit credit unions to begin providing quality services much more quickly and efficiently. The Board invites comments on the appropriateness of such policy and suggested procedures for dealing with these expansions.

*Policy To Help Foster Service to Low-Income Communities*

The Board has considered two additional means for helping to enable federal credit unions to serve low-income communities:

• To permit credit union chartering and field of membership expansion based on associational groups formed for the sole purpose of making credit union service available to low-income persons, much as is now permitted for existing credit unions seeking to extend service to senior citizens.

• To permit occupational, associational, and multiple group federal credit unions to add to their fields of membership communities satisfying the "low income credit union" definition of § 701.32 of NCUA's rules and regulations.

The Board seeks comment on both of these approaches.

**Pending Litigation**

Currently, there are several lawsuits pending brought by banks challenging NCUA's interpretation of common bond requirements, particularly certain NCUA decisions with respect to the statutory limit on community charters and the permissibility of multiple group charters. These proposed changes in chartering policy are not being made in response to or because of these lawsuits. Since the proposed changes are basically a clarification of existing policies and practices, they will have no effect on the lawsuits. Moreover, NCUA believes its interpretations of section 109 of the Federal Credit Union Act are proper and will be upheld by the courts.

*Regulatory Procedures*

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The changes to NCUA policy resulting from adoption of this proposed IRPS would not have a significant economic impact on a substantial number of small credit unions; and resulting changes would clarify existing policy rather than create new restrictions. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

*Paperwork Reduction Act*

The information collection requirements contained in the proposed IRPS will be submitted to OMB for review under the Paperwork Reduction Act. Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503; Attn.: Gery Waxman.

**Executive Order 12612**

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation applies only to federal credit unions and, therefore, will not affect state interests.

**List of subjects in 12 CFR part 701**

Chartering, Conversions, Credit union, Field of membership, Field of membership addition, Mergers.

By the National Credit Union Administration on July 15, 1993.

**Becky Baker,**

*Secretary, NCUA Board.*

Accordingly, NCUA proposes to amend 12 CFR part 701, supersede IRPS 89–1, and add IRPS XX–X as follows:

## PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

**Authority:** 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.1 is revised as follows:

**§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.**

National Credit Union Administration practice and procedure concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement XX–X—Chartering and Field of Membership Policy XX–X (IRPS XX–X). The IRPS is incorporated into this regulation.

3. IRPS 89–1 is superseded by the following IRPS XX–X.

**Note:** The following ruling will not appear in the Code of Federal Regulations.

**Chapter 1—Federal Credit Union Chartering**

*Goals of NCUA chartering policy*

NCUA's chartering policies are directed toward achieving three goals:

- To uphold the provisions of the Federal Credit Union Act concerning granting federal charters.
- To promote credit union safety and soundness.
- To make quality credit union service available to all eligible groups who wish to have it.

*Who May Apply for a Federal Credit Union Charter*

NCUA may grant a charter to any group where it finds:

- The group possesses a recognizable and appropriate common bond;
- The subscribers are of good character and are fit to represent the group; and
- Establishment of the credit union is economically advisable—i.e., it will be a viable institution and its chartering will not materially affect the interests of other credit unions or the credit union system.

Generally, these are the only criteria NCUA will look to. In unusual circumstances, however, NCUA may consider other factors, such as other federal law or public policy, in deciding if a charter should be approved.

*Common Bond*

Congress has recognized three types of federal credit union common bonds—occupational, associational, and community. A federal credit union may also consist of a combination of occupational and associational groups. For example, NCUA may charter a federal credit union consisting of employees of a local school district and members of a church group.

The Federal Credit Union Act and NCUA recognize that individual groups have their own common bond. All of the groups belonging to one particular credit union (i.e., listed in section 5 of the credit union's charter) make up the credit union's field of membership. If the charter is granted, the federal credit union will only be able to grant loans and provide services within the groups defined in the charter.

If the federal credit union later wishes to add persons to its field of membership, it must submit a charter amendment request to NCUA in accordance with the procedures set forth in Chapter 2.

- *Occupational Common Bond*

NCUA has limited this common bond to employment by the same enterprise. Persons sharing this common bond may be geographically dispersed.

A proposed federal credit union whose primary sponsor is a particular corporation may include the employees of that corporation who work at another location, employees of the corporation who are paid from or are supervised from the headquarters location, such as sales persons or sales agents who work at a number of locations, employees of a division or majority-owned subsidiary of the parent corporation regardless of location, and employees of a related company (such as persons working regularly for an enterprise under contract and possessing a strong dependency relationship with the sponsoring enterprise). Each group to be served (e.g., majority-owned subsidiaries, and contractors) must be separately listed.

All occupational common bonds will include a geographic definition: e.g., "employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or any of these majority-owned subsidiaries. * * *" Other acceptable geographic definitions are: "employees of * * * who are paid from * * *" or "employees of * * * who are supervised from * * *". To the maximum extent possible, setting geographic definitions by changeable corporate or division boundary—e.g., "employees of Federal Reserve District 6"—is to be avoided.

The employer may also be included in this common bond—e.g., "ABC Corporation and its subsidiaries." The employer group will be defined in the last clause describing the group.

- Sample Fields of Membership

Some examples of occupational group definitions are:

- "Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania. * * *" (common bond—same employer)
- "Employees and elected and appointed officials of municipal government in Parma, Ohio. * * *" (common bond—same employer)
- "Employees of Johnson Soap Company and its majority-owned subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine. * * *" (common bond—parent and majority-owned subsidiary company)
- "Personnel of fleet units of the U.S. Navy home ported at Mayport, Florida. * * *" (common bond—same employer (U.S. Navy))
- "Department of Defense civilian and U.S. Army personnel who work or are stationed at, or are attached or assigned to Fort Belvoir, Virginia, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulations to receive and are receiving benefits or services from, that military installation. * * *" (common bond—same employer)
- "Employees of those contractors who work regularly at U.S. Naval Shipyard in Bremerton, Washington. * * *" (common bond—employees of contractors)
- "Employees, doctors, medical staff, technicians, medical and nursing students who work at Boston Medical Center at the locations stated:. * * *" (common bond—same employer)
- "Employees and teachers who work for the School District Number 3 in Austin, Texas. * * *" (common bond—same employer)

Some examples of insufficiently defined occupational groups are:

- "Employees of engineering firms in Seattle, Washington." (No common employer; names of firms must be stated; however, may be the basis for a multiple group.)
- "Persons employed or working in Chicago, Illinois." (No common employer; names of firms must be stated.)
- "Persons working in the entertainment industry in California." (No common employer; names of firms must be stated.)
- "Persons employed by the Atlanta, Georgia and the Jacksonville, Florida Boards of Education. * * *" (No common employer; not same operational area.)

- *Associational Common Bonds*

NCUA limits this common bond to groups consisting primarily of individuals (natural persons) who participate in activities developing common loyalties, mutual benefits, and mutual interests.

Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities which clearly demonstrate that the members of the group meet and interact frequently to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership—usually, this will be the association's charter and bylaws.

The clarity of the associational group's definition and compactness of its membership will be important criteria in reviewing the application. NCUA policy is to organize associational charters at the lowest organizational level which is economically feasible.

Associations formed primarily to obtain a credit union charter do not have a sufficient associational common bond; nor do associations based on a client-customer relationship—an

insurance company and its customers or a buyer's club and its members, for example.

NCUA charters associational federal credit unions consisting of natural person members. Associational members must be natural persons, pay dues, and have voting rights or hold office as prescribed in the association's charter and bylaws. In certain instances, NCUA will also allow non-natural persons (e.g., corporate sponsor or organizations of members) to be eligible for membership. Moreover, the common bond extends only to the association's members. The employees of a member of a local chamber of commerce, for example, do not have a sufficiently close tie to the association to be included. A proposal to include these persons among those to be served by the federal credit union will be considered as a multiple-group charter application.

All associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter and bylaws and a geographic limitation—unless the charter or bylaws of the associational group limits the geographical area—e.g., "Members of the ABC Association living or working in New York, New York, who qualify for membership in accordance with its charter and bylaws in effect on January 21, 1989."

If the association's charter and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's approval prior to serving members of the association added as a result of the change. This type of field of membership amendment will require following select group addition procedures discussed in Chapter 2.

Student groups, including students in a trade school curriculum, constitute an associational common bond and may qualify for a federal credit union charter. Since such groups usually do not have a formal charter, there is no requirement for these groups to provide a charter.

Labor union groups also constitute an associational common bond. Some labor unions serve members who work regularly for several employers, but others have members who work for only one employer. In these latter cases, overlap protection may be provided if a substantial portion of the company's employees are served by the credit union.

Homeowner associations, tenant groups, electric co-ops, consumer groups and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may be eligible to receive a federal charter. However, they must make a strong showing of common activities which clearly demonstrate that the group meets and interacts frequently to accomplish the objectives of the association. Furthermore, they must provide clear evidence of economic viability. Newly-organized associations must make a similar showing. Experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

The association itself may also be included in the field of membership—e.g., "ABC Association."

• Sample Fields of Membership

Some examples of associational group definitions are:

• "Regular members of Locals 10 and 13, IBEW, Miami, Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 1989."

• "Members of the Hoosier Farm Bureau who live or work in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1980."

• "Members of the First Baptist Church Topeka, Kansas."

• "Members of the Shalom Congregation in Chevy Chase, Maryland."

• "Regular members of the Corporate Executives Association, located in Westchester, New York, who live or work in Westchester, Rockland, and Suffolk Counties in New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1985."

• "Members of the Northern Michigan Electric Co-op located in Marquette, Michigan." Some examples of insufficiently defined associational group definitions are:

• "Members of military service clubs in the State of New Mexico." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group.)

• "Veterans of U.S. military service." (Group is too broadly defined; no formal association of all members of the group.)

Some examples of unacceptable associational common bonds are:

• "ABC Buyers Club." (An interest in purchasing only does not meet associational standards.)

• "Customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

• Community Common Bonds

Congress has required that a credit union charter based on a tie to a specific geographic location be limited to "a well-defined neighborhood, community, or rural district." NCUA policy is to limit the community to a single, compact, well-defined area where residents commingle and interact regularly.

NCUA recognizes two types of affinity on which a community common bond can be based: residence and employment. Businesses and other legal entities within the community boundaries may also qualify for membership. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following common bond requirements (see also appendix G for further discussion):

• The geographic area's boundaries must be clearly defined; and

• The charter applicant must establish that the area is recognized by those who live and/or work there as a distinct "neighborhood, community, or rural district."

A typical definition of a community-based common bond is: "Persons who live or work in, and businesses and other legal entities located in ABC, the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west."

If the community is also a recognized legal entity, it may also be included in the field of membership—e.g., "DEF Township, GHI County, Kansas."

• Sample Fields of Membership

Some examples of community common bond definitions are:

• "Persons who live or work in Green County, Maine."

• "Persons who live or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois."

• "Persons who live or work within a ten-mile radius of the main post office in Walnut, Illinois" (Rural areas only.)

Some examples of insufficiently defined community common bond definitions are:

• "Persons who live or work within and businesses located within a ten-mile radius of Washington, DC." (Not a recognized neighborhood, community, or rural district.)

• "Persons who live or work in the industrial section of New York, New York." (Not a recognized neighborhood, community, or rural district.)

• Community Service Area

The service area of a community federal credit union is the area defined in its charter, usually with north, east, south, and west boundaries.

• *Multiple group charters*

NCUA may charter a federal credit union to serve a combination of distinct, definable occupational and/or associational groups. However, NCUA will not charter as a single federal credit union multiple groups which include a group with a community common bond.

Persons with different employers but who work in the same or a similar occupation will not be considered as having a single common bond. For example, employees of two independent school districts will not be considered as having a single common bond. However, these disparate groups, identified and listed separately, may serve as the basis of a multiple group field of membership.

In addition to general chartering requirements, these special requirements pertaining to multiple group applications must be satisfied before NCUA will grant such a charter:

• Each group to be included in the proposed field of membership of the federal credit union must have its own occupational or associational common bond.

• Except for employee groups in the same industrial park, shopping center or similar facility, each group must individually request inclusion in the proposed federal credit union's charter.

• The proposed credit union must possess the financial resources and management capability to provide quality credit union service to each group. Evidence of this capacity must be included in the business plan.

• Each group must be within the "operational area" of the home or branch office of the proposed federal credit union. The "operational area" of a credit union is an area surrounding the credit union's home and each branch office that, as determined by NCUA in its discretion, can reasonably be served by that office. Normally, NCUA will consider the area within a 25 mile radius of the home or branch office as the operational area. With rural populations, however, the area the credit union can reasonably serve may be somewhat broader.

Whether a credit union facility qualifies as a "home" or "branch" office will depend on the circumstances of each particular case. On the one hand, a facility which is directly and solely owned by, leased by, or donated to a credit union, and has a credit union employee regularly on site who accepts payment on shares and disburses loans, is clearly a home or branch office. On the other hand, an ATM or similar cash dispensing machine is not.

Between these two extremes are a host of arrangements—e.g., shared ownership, full service facilities; individually owned facilities with shared staff; and facilities owned through a CUSO individually or jointly with other credit unions or other financial institutions (sometimes called "shared facilities" or "shared service centers"). Recognition of each of these intermediate cases as a home or branch office will take into account all relevant circumstances, including:

• The demonstrated commitment on the part of the credit union to serve the group in that area for the long term.

• The likelihood that the group will perceive that commitment.

• The adequacy of the facility and staff in relation to the needs of the group to be served.

• The desires of the group.

• The availability of other credit union service.

"Shared service centers" or "shared facilities" generally will not be considered "branches" for the purposes of field of membership expansions. Regional directors may make exceptions, considering a pertinent factors—for example, for credit unions which are converting an existing branch to a shared facility. It is not NCUA's intention to force a credit union to maintain an unprofitable branch just to enable select group expansions around that branch.

All persons within the group who work (for an occupational group) or meet regularly (for an associational group) within the operational area are "within" the operational area. The following are also "within" the operational area: employees of a firm who are paid or supervised from a place or employees of a firm or members of a group which has its headquarters at a place within the operational area; and all employees or members of a group which has a majority of its employees or members working within the operational area.

• Sample Field of Membership

An example of a multiple group field of membership is: "The field of membership of this federal credit union shall be limited to the following:

1. Employees of DuPont Corp. who work in Wilmington, Delaware;

2. Partners and employees of the law firm of Smith & Jones who work in Wilmington, Delaware;

3. Members of the *GHI Association* who live in Wilmington, Delaware, and qualify for membership in accordance with its charter and bylaws in effect on December 31, 1992.

• Additional Documentation

For multiple group charters, the applicable regional director will need the following, in addition to what is required for new charters generally:

• For each group seeking to be included in the credit union's field of membership, the credit union must provide a letter from the group, on the group's letterhead stationery and signed by an official representative of the group, containing this information:

• The fact that the group wants to obtain service from the requesting credit union and the extent to which the group supports the credit union—e.g., by providing access to its employees or members via payroll deduction, by permitting use of employee or members newsletter, etc.

• The number of employees or members in the group.

• The proximity to the credit union's closest office, either home or branch.

• The name of any credit union to which the group currently has access.

• The group's headquarters location and all other work locations the credit union is proposing to serve.

• If the group is eligible for membership in another credit union, documentation must be provided to support inclusion of the group under the standards set forth in the "Overlaps" section of this chapter.

• The credit union must submit sufficient information to support the conclusion that the group is in fact within the operational area of its home or a branch office.

• *Other persons sharing common bond*

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership:

• "Spouses of persons who died while within the field of membership of this credit union".

• "Employees of this credit union".

• "Persons retired as pensioners or annuitants from the above employment".

• "Members of their immediate families".

• "Volunteers".

• "Organizations of such persons".

"Members of their immediate families" may be generally defined as deemed appropriate by a federal credit union when including this group among those to be served. To be made effective,

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however, the federal credit union's board of directors must approve the definition by resolution, and include it in Article XVIII, section 2, of its bylaws. NCUA approval is not necessary.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under Article II, section 5, of NCUA's Standard Bylaws, if a member leaves the field of membership, standard member services are terminated. However, the board of directors may, by resolution, set forth the circumstances under which a member may maintain membership. This option is commonly referred to as the "once a member, always a member" bylaw provision.

*Character and fitness of subscribers*

The Federal Credit Union Act requires that seven or more natural persons must present, to NCUA for approval, a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union.
- The location of the proposed federal credit union and the territory in which it will operate.
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.
- The initial par value of the shares.
- The proposed field of membership, specified in detail.
- The term of the existence of the corporation, which may be perpetual.
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

These seven or more persons will be the proposed federal credit union's "subscribers." False statements on the organization certificate may be grounds for federal criminal prosecution.

The Act also requires NCUA to satisfy itself as to the "general character and fitness" of these subscribers. The subscribers, prospective officials and employees, therefore, will be the subject of credit and background investigations.

*Economic advisability*

Before chartering a federal credit union, NCUA must be assured that the institution will be viable and that it will not materially affect existing state or federal credit unions. This economic advisability inquiry has become especially important since 1970, when Congress assigned NCUA the obligation to establish a deposit fund insuring credit union shares and to preserve that fund.

NCUA will conduct an independent on-site investigation for each charter application to assure itself that the proposal can be successful. In general, the success of any credit union depends on: (a) The depth of the members' support; (b) the character and fitness of management; and (c) present and projected market conditions.

- Member Support

While NCUA has not set a minimum size field of membership for chartering a federal credit union, experience has shown that a credit union with under 500 potential members generally is unlikely to succeed. A charter applicant with a proposed field of membership of under 500 will have to demonstrate convincing support for the credit union. For example, in an occupational group a commitment for significant long-term support from the employer must be in evidence.

The group's size is only of help if members participate in the credit union. The charter applicant must show that a substantial percentage of the group's members will join the credit union and use its services. Survey results must be based, at a minimum, on a sampling of 250 potential members. In particular instances, especially where the common bond is broadly defined or newly established, NCUA may require a larger sampling.

- Proposed Management's Character and Fitness

The applicant must provide a list of the persons who will serve as officials and employees. NCUA will conduct a credit and background (including criminal record) investigation on each of the proposed federal credit union officials and employees. The costs of any such investigations will be borne by the subscribers.

NCUA will also need assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

- Present and Future Market Conditions

The ability to compete in the marketplace and to adapt to changing market conditions is key to the survival of any enterprise, and a crucial part of that is the ability to plan well. NCUA, therefore, requires an applicant to submit a business plan based on realistic and supportable projections and assumptions, including, as a minimum, these elements:

- Mission statement.
- Analysis of market conditions—economic prospects for the group availability of financial services from credit unions, banks, S&Ls.
- Summary of survey results.
- Financial services needed/desired.
- Financial services to be provided.
- How/when services are to be implemented.
- Staffing of credit union and credentials of key employees.
- Physical facility—office, equipment.
- Type of recordkeeping system.
- Budget for 1st, 2nd and 3rd year.
- Semiannual pro forma financial statements for 1st, 2nd and 3rd year, including assumptions—e.g., loan and dividend rates.
- Goals for number of members.
- Goals for operating independently.
- Source of funds to pay expenses during initial months of operation.
- Written policies (lending, investments, funds management, capital accumulation).
- Goals for dividends, generation of resources.
- Plan for continuity—directors, committee members.
- Evidence of sponsor commitment if subsidies are critical to success of the federal credit union—evidence may be in the form of letters, contracts, or any other such document on which the proposed federal credit union can substantiate its projections.

NCUA expects that the subscribers and proposed officials will understand and support the business plan submitted.

*Overlaps*

(This discussion pertains to new charters as well as existing charters.)

- In General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. General policy requires that every reasonable effort be made to avoid an overlap. Ideally, a group of persons should be included in the field of membership of only one credit union.

Both new and existing credit unions are obligated to investigate the possibility of an overlap prior to submitting an application for a new charter or adding a group by surveying the prospective field of membership and contacting the state credit union supervisor and the local credit union league or trade association.

If and when an overlap situation does arise, officials of the involved credit unions must attempt to work out the overlap problem between or among themselves. If the matter is resolved informally, the applicant must submit a letter to that effect from the credit union

whose field of membership already includes the subject group.

If no resolution is possible, an application for a new charter or expansion *may* still be submitted, but must also include information regarding the overlap and document attempts at informal resolution. In any event, the applicant federal credit union must clearly indicate why a new credit union or expansion is being sought and why existing and potential members of the current credit union will support and join a newly chartered or expanded federal credit union.

When resolution of an overlap problem is not forthcoming, and other circumstances warrant an overlap, then an overlap may be permitted. Among the circumstances which may justify an overlap are:

- Failure of the original credit union to provide quality service to the group.
- Limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.
- Incidental overlap (the group of persons in question is so small as to have no material effect on the original credit union).

In reviewing the overlap, the regional director will consider the nature of the problem, efforts made to resolve the problem, financial effect on the overlapped credit union, the desires of the group(s), the opinion of the state credit union supervisor, if applicable, and other interested parties, and the best interests of the involved potential of current members.

Potential overlaps of a state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. However, where a state credit union's field of membership is so broad as to include virtually everyone in a wide area, NCUA may exclude that state credit union from overlap protection altogether. Prior to making that decision, a regional director will consult the credit union and the state supervisor; any decision by the regional director will be made in writing and sent to the credit union and the state supervisor.

Generally, NCUA will not protect associational and community charters from overlaps with occupational charters. However, should the proposed overlap pose significant safety and soundness concerns, NCUA may provide overlap protection for any type charter.

Some situations may not justify approval of a requested overlap. For example, if the requesting credit union offers certain specialized services not offered by the original credit union (such as credit cards, ATMs, and IRAs), the extra services alone may not justify the overlap. Also, proximity, by itself, does not warrant approval of an overlap. A federal credit union in Chicago, Illinois, may not have a convincing argument, based on geography alone, that a select group also located in Chicago would be better served by it than by the select group's headquarters credit union located in Dallas, Texas.

From an overlap prevention perspective, new charter applicants and every occupational or associational group which comes before the regional director for affiliation with an existing federal credit union must advise in writing whether the group is included within the field of membership of any other credit union. This requirement will alert the regional director to possible overlap situations before they occur. Thus, most potential field of membership conflicts can be avoided. If cases do arise where the assurance given to a regional director concerning unavailability of credit union service turns out later to be inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

- Overlap Issues as a Result of Corporate Restructuring

A federal credit union's field of membership will always be governed by the group descriptions contained in section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of a group described in section 5. Where acquisitions are made which add a new wholly-owned or majority-owned subsidiary, the group cannot be served until the subsidiary and its location are individually listed in the field of membership.

However, overlaps may occur as a result of restructuring of the parent corporation. When corporate restructuring occurs, affected credit unions should identify to NCUA which groups they intend to serve after the restructuring. In addition, credit unions should submit to NCUA correspondence from the parent corporation explaining the restructuring and providing information regarding the new corporate structure.

The corporate structure should identify divisions and subsidiaries, whether they are majority-owned or not, and the location and number of employees at each location. Credit unions affected by resultant overlaps are required first to attempt to resolve overlap issues among themselves.

NCUA will not automatically grant an overlap, but will consider an overlap on a case-by-case basis after considering the will of the sponsor, the best interests of the members, safety and soundness, the significance of the overlap, and any other relevant factors.

Overlaps may also occur as a result of the parent corporation's merger. NCUA's general policy of avoiding overlaps applies to overlaps by corporate mergers as well. Affected credit unions must make every reasonable effort to identify up front and address the overlap issue raised by the parent corporation mergers and must attempt to resolve any differences among themselves. Ideally, the division of the field of membership between affected credit unions will be logical as it relates to the new corporate structure. In those rare cases which require NCUA's intervention, all attempts to resolve the issues must be fully documented by the affected credit union.

Affected credit unions should consider consolidation (merger), as a possible alternative to dividing up the field of membership, particularly if safety and soundness concerns exist or future viability is in question. A federal credit union which has a broad based field of membership generally has a better chance of survival when a sponsor restructures or closes.

While neutral, NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns or other issues which may adversely impact upon the National Credit Union Share Insurance Fund. NCUA will be flexible when working with credit unions affected by parent corporation mergers.

*Exclusionary clauses*

(This discussion pertains to new charters as well as existing charters.)

In certain instances, exclusionary wording prohibiting certain overlaps may be used to help define the field of membership of a federal credit union. Use of exclusionary wording should be avoided if possible.

Generally, a thorough investigation of a charter application or an application for a field of membership expansion will disclose the situations where other credit union service is available. The field of membership should be written so that only the specific locations where credit union service is not currently available are allotted to the new charter or to the federal credit union seeking the field of membership addition.

However, certain cases exist where a specific recitation of work locations (for an occupational group) or member locations (for an associational group) is not feasible. Corporations or associations with widely dispersed employees or members fall into this "exception" category. In these special cases, exclusionary wording could be used to provide some limits on an extensive field of membership.

An example might be employees of XYZ Corporation where XYZ Corporation is a relatively new company which specializes in acquisitions and divestitures and its corporate makeup is constantly changing. In this case the field of membership could be described as "employees of XYZ Corporation who work in the United States, except employees eligible for membership in another occupational-type credit union serving an employee unit of XYZ Corporation."

Another situation which may require exclusionary wording is the chartering of a new community credit union or the field of membership conversion of an existing occupational or associational credit union to a community charter. Although investigation may show that the residents of the proposed area of service by and large do not have access to a credit union, other credit unions wishing to remain autonomous entities may be operating in the community.

If the regional director determines that avoidance of overlap is warranted, an exclusionary clause may be inserted in the community credit union's field of membership. Examples of exclusionary wording are as follows:

- Persons who reside or work in Portland, Maine, except members of groups listed in the field of membership of ABC Employees Federal Credit Union or Portland City Employees Credit Union as of (the date of this charter).
- Persons who reside or work in Hilo, Hawaii, except employees of Hilo Sugar Company and the United States Government.

The exclusionary language in a community charter's field of membership ordinarily applies only to "primary" members of existing occupational-type credit unions. "Primary" is defined as the basic occupational or associational affinity to the field of membership defined in Section 5 of the charter.

In the first example above, assuming that the two excluded credit unions have single sponsor fields of membership, only employees of ABC Company and of the City of Portland would be excluded. Family members (or other secondary or derivative members) are not excluded.

Also, unless special circumstances warrant, only occupational and multiple group fields of membership will be protected by the exclusion. That is, associational and community credit unions will not normally be afforded protection from overlap.

Finally, if the exclusionary clause is dated, only those employee groups in the protected credit union's field of membership on the date the exclusion was granted are denied membership eligibility in the credit union subject to the exclusionary clause. Thus, members of groups added by an occupational credit union subsequent to the establishment of a community charter subject to an exclusionary clause are eligible for membership in the community credit union.

In the second example above, which is written very specifically, dating the exclusion clause is unnecessary.

Although use of exclusionary clauses by NCUA will normally be on an exception basis only, regional directors may, at their discretion, apply exclusionary wording to a credit union's field of membership. However, the clauses shall not be used in lieu of a thorough investigation of the availability of existing credit union service by a charter applicant or an applicant for a field membership addition. Furthermore, it is NCUA's intent to use exclusionary clauses only to increase the vitality and strength of the credit union system, not to prevent people from obtaining credit union service.

*Appropriateness of proposed Federal credit union name*

It is the responsibility of the federal credit union organizers to ensure that the federal credit union applicant's name or federal credit union name change does not constitute an infringement on the name of any corporation in their trade area. Prior to granting a charter or approving a name change, NCUA will ensure that the credit union's name:

- Is not already being used by another federal credit union;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

*Widely dispersed associational charters*

NCUA policy is to charter associational federal credit unions at the lowest organizational level which is economically feasible. This does not preclude the granting of associational charters with widely dispersed memberships. NCUA may grant such charters after scrutinizing the adequacy of the appplicant's common bond. NCUA may, in its discretion, require that the proposed field of membership be narrowed before granting a new charter. Expansion to include a larger portion of the association's members may be allowed at a later time, if appropriate.

Also, as with any widely dispersed group, overlap issues are likely to arise, either at the time of or subsequent to chartering. NCUA will consider the effect that granting a charter with such a group in its field of membership would have on any number of existing credit unions. In addition, an associational credit union with a widely dispersed membership may expect overlaps to be granted to other credit unions in the future, particularly at the local level.

In recognition of these unique circumstances, NCUA follows a separate internal procedure for associational charter applications for associations with proposed fields of membership of 500 or more persons which cross NCUA regional boundaries. NCUA's Director of Examination and Insurance and all NCUA regional directors with any of the association's members located in their region must vote on the charter application. A majority vote is required for approvals; tie votes are referred directly to the NCUA Board for decision: denials are appealable to the Board.

*Industrial parks, shopping centers and similar groups*

A federal charter may be available to persons working in a particular industrial park, shopping mall, or office complex either as a community or as a multiple group charter.

If the multiple group option is selected a request from the complex owner, leasing agent, or similar authoritative official must be submitted. The leasing agent or similar official must provide information regarding credit union service available to any segment of the proposed federal credit union. Exclusionary clauses, protecting existing credit unions, will be used on a case-by-case basis.

In those cases where each employer group in the complex has not specifically requested credit union service, NCUA may exercise broad discretion in addressing overlaps with other credit unions and any request from a group to be removed from the field of membership.

If the community option is selected, the industrial park, shopping center, or office complex must meet the standards for community charters.

The following wording will be used to define groups added under this procedure:

> Employees of the following businesses who regularly work in the Plaza Mall, New Orleans, Louisiana:
> [List businesses]

*Employee leasing companies*

In general, employee leasing companies, which employ persons and lease them, with insurance coverage and other benefits, to others under long-term contracts, will be treated as any other group eligible to become part of a multiple-group charter. When a leasing company is included in a credit union's field of membership, the company must identify each client and work location served by the leasing company. The following wording will be used to define such groups:

> Employees of (name of leasing company) who work regularly at the following businesses at the locations specified:
> (followed by a list of the name and location of the businesses supplied with employees by the leasing company.)

This type of group is not permissible if the leasing company only provides temporary employees with no extended relationship to the client company, i.e. temporary secretaries. This does not preclude regular employees of a temporary employment firm, such as Kelly Services or Manpower, being added to a credit union's field of membership as a select group.

*Specially designated Federal credit unions*

Some credit unions are recognized and designated by NCUA to perform certain functions different from those available to federal credit unions in general. An applicant wishing to be considered for such a designation may, at the time of charter application, provide the additional information NCUA needs. NCUA will then consider the designation and the charter application together. The designation can also be applied for at a later time if all the requirements are met.

• Low-Income Credit Unions

A low-income credit union is defined, in § 701.32 of the NCUA rules and regulations, as one where a majority of its members either earn less than 80 percent of the average for all wage earners, as established by the Bureau of Labor Statistics, or whose annual income falls at or below 80 percent of the median household income for the nation. In documenting its low-income membership, a credit union that serves a geographical area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members.

A credit union designated by NCUA as serving predominantly low-income members has greater flexibility in accepting non member deposits insured by the National Credit Union Share Insurance Fund.

NCUA recognizes that special efforts are needed to help make credit union service available to persons in these communities. Accordingly, the NCUA Board will consider chartering and field of membership issues subject only to section 109 of the Federal Credit Union Act and safety and soundness needs, to ensure that quality credit union service is available to persons in these communities.

The credit union charter applicant meeting the definition of low-income credit union should forward a separate request for low-income designation at the time the charter application is submitted, along with appropriate documentation. NCUA will consider the low-income designation simultaneously with the charter application. A charter applicant's low-income designation will be based on its primary field of membership and not on its actual members as is the practice for operating credit unions.

The proposed low-income credit union may also participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions if it is involved in the stimulation of economic development and community revitalization efforts. A credit union participating in the revolving loan program is also eligible for technical assistance. The requirements for participation in the revolving loan program are set forth on part 705 of the NCUA rules and regulations. Only operating credit unions are eligible for participation in the revolving loan program.

A low-income credit union charter applicant may contract with a third party to assist in the chartering process. Even after the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should be for a duration of one year subject to renewal. However, within three years of commencement of credit union operations, the credit union should no longer require such services.

A low-income credit union that has a community common bond should include the following language in its field of membership:

"Persons who live in (the target area); persons who regularly work, perform volunteer services, or participate in associations headquartered in (the target area); persons participating in programs to alleviate poverty or distress which are located in (the target area); incorporated and unincorporated businesses located in (the target area) or maintaining a facility in (the target area); and organizations of such persons."

• Corporate Federal Credit Unions

A corporate credit union is defined as one that:

• Is operated primarily for the purpose of serving other credit unions.

• Is designated by the NCUA as a corporate credit union.

• Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Corporate credit unions operate under and are governed by different standards than natural person credit unions. These standards are set forth in part 704 of NCUA's rules and regulations.

Supervision of corporate credit unions is the responsibility of NCUA's Office of Examination and Insurance. All applications for federal corporate charters as well as requested changes to section 5 of the charter of existing corporate federal credit unions should be directed to that office.

*Organizing a Federal credit union*

Federal credit unions are organized by persons who donate time and resources and are responsible for determining the interest, commitment, and advisability of forming a federal credit union. The organization of a federal credit union takes considerable planning and dedication in order to ensure the success of the new credit union.

Persons interested in organizing a federal credit union should contact the NCUA regional office serving the state in which the credit union will be organized or their state credit union league. Lists of NCUA offices and trade associations are attached in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in obtaining an organizer.

A credit union organizer may be a trade association representative, or a volunteer with training and experience in chartering new federal credit unions. The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's

functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the group members are critical to the chartering process.

• Steps to be Followed by Organizers

It is advisable for the organizers to obtain from NCUA written tentative approval of the proposed field of membership early in the process.

Once the field of membership has been tentatively approved, and the organizer is satisfied the application has merit, the organizer should conduct a preliminary organizational meeting to elect 7 to 10 persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

The organizers and subscribers should then complete an NCUA 4012, Report of Official or Employee, for each prospective board member, credit and supervisory committee member, and employee. The organizers must review each of the NCUA 4012s for elements—bankruptcies, indictments, etc.—that would prevent the prospective official or employee from serving in an official capacity. The organizers should also inform the proposed officials and employees that credit reports will be obtained and background investigations done on each of them and that the reports must demonstrate their ability to effectively handle financial matters.

The NCUA 4012s should be submitted to NCUA as early as possible to enable the necessary credit reports and background checks to be obtained well in advance of the anticipated charter date. The subscribers will be required to pay the direct costs of such credit reports and background checks.

The organizers and subscribers should arrange for any meetings necessary to develop the business plan discussed earlier in this chapter and to complete the forms and other supporting documentation for submittal to NCUA. Each of the required documents is discussed more fully later in this chapter.

The organizers and subscribers must apply for insurance of member accounts. The Certificate of Resolutions (NCUA 9501) will be executed by the prospective chief executive officer and recording officer. Following action on this issue, the prospective chief executive officer and chief financial officer will execute the Application and Agreements for Insurance of Accounts (NCUA 9500). These documents should be provided to NCUA as part of the charter application.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at the meeting.

• Steps to be Followed by NCUA

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizers, and a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

The staff member will review the application package and verify its accuracy and reasonableness. The staff member will inquire into the financial management experience, suitability and commitment of the proposed officials and make an assessment of economic advisability. The staff member will assist the subscribers in the proper completion of the Organization Certificate, NCUA 4008. By assisting in the completion of the Organization Certificate, the staff member may expedite the process without indicating his or her endorsement of the charter application.

The staff member will thoroughly analyze the prospective credit union's business plan for realistic projections, attainable goals, and time commitment. Any concerns should be reviewed with the organizers and discussed with the prospective credit union's officials.

The staff member will then make a recommendation to the regional director regarding the charter application. His or her recommendation may include specific provisions to be included in the Letter of Understanding and Agreement discussed later in this chapter.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors and credit committee of the proposed federal credit union. The new board of directors will then appoint the supervisory committee. The charter organization meeting should then be adjourned.

*Support for charter application*

As discussed previously in this chapter, applicants for federal credit union charters must, at a minimum, provide evidence that:

• The group constitutes a recognized common bond

• The subscribers, prospective officials and employees are of good character; and

• The establishment of the credit union is economically feasible.

In addition, the Federal Credit Union Act requires applicants to submit a sworn organization certificate setting forth seven criteria (see section entitled Character and Fitness of Subscribers earlier in this chapter). In order to process the application and capture all required information, NCUA has developed certain chartering forms to assist organizers.

• Federal Credit Union Investigation Report, NCUA 4001

Applications for new federal credit unions will be submitted on NCUA 4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See Chapter 3 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the form's reverse. Associational charter applicants must include a statement of their membership criteria (normally the group's charter or bylaws) and a current financial statement.

• Report of Official and Employee, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official must complete and sign this form. In addition, NCUA will request credit and background investigations of new officials and employees.

• Organization Certificate, NCUA 4008

This document establishes the seven criteria required of subscribers by the Federal Credit Union Act and is signed by the subscribers and notarized. This document should be executed in duplicate. The NCUA staff member assigned to the case will assist, during his or her on-site contact, in the proper completion of this document.

• Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for insurance of member accounts and has authorized the chief executive officer and chief financial officer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the chief executive officer and recording officer of the proposed federal credit union.

• Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts, including providing appropriate fidelity bond coverage of officials and employees. The document must be completed and signed by both the chief executive officer and chief financial officer. Each prospective federal credit union must qualify for federal share insurance.

• Business Plan

While the required business plan need not follow a prescribed form, it must include all of the information set forth in the section "Economic Advisability—Present and Future Market Conditions" earlier in this chapter.

• Appropriateness of Officials

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to notify NCUA at least 30 days prior to the change of any member of the board of directors or any credit or supervisory committee member or the employment of any individual as a senior executive officer.

If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change. NCUA may disapprove an individual serving as a director, committee member or senior executive officer if its finds that the competence, experience, charter, or integrity of the individual would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union.

Section 701.14 of the NCUA rules and regulations sets forth the notice and application requirements. The charter applicant should submit to NCUA the list of its officials—see Report of Officials above—early in the chartering process so the appropriate credit and background checks can be conducted in a timely fashion.

*Letters of understanding and agreement*

NCUA has found from experience that certain activities generally cause significant problems for new credit unions. Therefore, in most cases, NCUA will require the prospective federal credit union's officials to enter into an agreement not to engage in certain activities. The agreement is for a limited term—usually two to four years. A sample letter is attached in the appendix.

*Approvals*

NCUA will make every effort to process the application expeditiously. Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and bylaws from the regional director.

In addition, the officials will be advised of the name and mailing address of the examiner who has been assigned responsibility for supervising and examining the credit union.

Generally, the examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation). Assistance in commencing operations is generally available through the various trade organizations listed in the appendices.

*Denials*

If a charter application is disapproved, the organizers will be informed in writing of the specific reasons for the denial. Where applicable they will be provided information concerning options or suggestions that they could consider for gaining approval or otherwise acquiring credit union service.

The letter of denial will include information on the group's right to appeal the decision to the NCUA Board. The procedures for submitting the appeal will be provided.

*Appeals*

If a charter application is denied by the regional director, the group may appeal the decision to the NCUA Board. All such appeals must be sent to the denying regional office within 60 days of the denial. The regional director will then forward it to the NCUA Board. NCUA central office staff will independently review the facts of the case and present the appeal to the Board. (The prospective group may submit substantive new and additional information for reconsideration to the regional director. In these cases, the request will not be considered as a request for appeal but as a request for reconsideration by the regional director.)

The letter of appeal should contain information and applicable documentation responding to the reasons for the denial. It may provide only the information which the regional director had available to make the denial decision. The appealing group may submit written documentation only; neither the regional director nor the credit union will be permitted to present oral arguments to the Board.

**Chapter 2—Changes in Field of Membership**

*Reasons for requesting an amendment*

As in the case of NCUA chartering policy, the goals for field of membership expansion are:

• To uphold the provisions of the Federal Credit Union Act concerning expansion of federal charters

• To promote credit union safety and soundness

• To make quality credit union service available to all eligible groups who wish to have it.

A federal credit union's field of membership is an official statement which specifically defines who may become a member of the credit union. It is recorded in section 5 of the credit union's charter.

Any change to the field of membership, whether it is an addition, deletion, or simple update, must be reflected formally in section 5 of the credit union's charter. Changes to section 5 are normally initiated by the officials of the respective federal credit union and submitted in writing to the appropriate NCUA regional director for approval.

The National Credit Union Administration Board has delegated the authority to the regional directors to act on most charter amendment requests. This delegation enables the agency to respond to the majority of requests promptly.

However, certain complex proposals require special investigation by the regional directors, and may also require consultation with and approval by other regional directors, the NCUA Washington Office, and the NCUA Board. Applicants submitting such complex proposals will be advised in writing of the need of the special review and the likelihood of extra processing time.

A federal credit union's board of directors may wish to request a field of membership amendment for a variety of reasons, including, but not limited to:

• Providing credit union access and service to an additional, clearly-defined group of persons who desire to be served by the applicant credit union

• Accommodating sponsor acquisitions or reorganization

• Diversifying the membership base in order to withstand real or potential economic adversities (e.g., sponsor shutdown or cutback, economic downturn)

• Merger with another credit union

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• Expanding the membership base to facilitate an improvement of service to all members.

*Field of membership addition requests—types & criteria.*

As noted in the previous chapter, four types of charters exist—occupation, association, community, and multiple group—for purposes of establishing a federal credit union. Field of membership expansions are achieved by adding—either occupational, associational or community—to an existing credit union.

The definition of common bond for purposes of field of membership additions is the same as that found in the previous chapter concerning federal credit union chartering. The examples of groups which do and do not meet the definition of common bond found in that chapter apply to field of membership additions as well.

Different criteria apply to occupational, associational, and multiple group field of membership additions than those that apply to community field of membership expansions. These two sets of criteria are discussed below.

Special rules apply for credit union additions to provide service to retiree and senior citizen groups.

Additional methods of increasing the field of membership are possible through a merger, a spin-off, or a purchase & assumption. All of these types of expansions are discussed below.

Occupational and associational groups which share the same common bond as the credit union's primary sponsor fall under the category of common bond additions. Occupational and associational groups which have a separate common bond from a federal credit union's primary sponsor (common bond group) are added under the provisions of select group field of membership expansion policy. Select group and common bond expansions are treated somewhat differently.

*Additions within the common bond*

Some field of membership expansions for occupational and associational federal credit unions can be accomplished along traditional common bond lines.

For example, a federal credit union whose primary sponsor is a particular corporation may add, by a charter amendment, the employees of that corporation who work at another location, employees of the corporation—such as sales persons or sales agents who work at a number of locations—who are paid from or are supervised from the headquarters location, employees of a division or majority-owned subsidiary of the parent corporation regardless of location, or employees of a related company (such as persons who work regularly for an enterprise under contract and processing a strong dependency relationship with the sponsoring corporation). A federal credit union may expand its field of membership to include employees of a subsidiary that is not majority-owned by the parent corporation by using the select group expansion procedures.

A federal credit union's field of membership will always be governed by the group descriptions contained in section 5 of its charter. Where a sponsor organization expands its operations through an existing corporate entity, the credit union may serve these new entrants to its field of membership if they are part of a group described in section 5. Where acquisitions are made which add a new wholly- or majority-owned subsidiary, the group cannot be served until the subsidiary and its location are individually listed in the field of membership.

The written request for an addition must be supported by a letter from a representative of the corporate unit to be added. This letter must indicate:

• That the group wants to affiliate with the applicant federal credit union

• That at present the group does not have any credit union service available

• The number of persons currently employed by the corporate unit and their work locations

• The relationship to the primary sponsor

This letter should be submitted on the letterhead stationery of the respective corporate entity. Included with the request for expansion must be a current financial statement for the applicant federal credit union.

For associational federal credit unions, expansions along common bond lines will normally be allowed only at the lowest economically feasible organizational level of the sponsoring association. For example, a federal credit union serving the members of a local chapter of an association could apply to serve the members of another chapter.

The approval or disapproval of a field of membership amendment request of an existing federal credit union adding an association which crosses NCUA regional boundaries may be subject to special review, and this may cause some delay in processing. The regional director whose jurisdiction includes the applicant credit union will notify the applicant of the special review and will advise the applicant in writing of the estimated time needed to reach a decision.

Unlike select group additions, common bond additions do not have operational area requirements. That is, an addition within the common bond may be approved even through the applicant federal credit union does not have an office in the vicinity of the group to be added.

*Select group additions*

Occupational and associational groups dissimilar to the credit union's primary sponsor may be added as "select group additions." The following standards and procedures for adding these groups are similar—but not identical—to those described in Chapter 1 for including groups in a new multiple group charter.

It is possible for a federal credit union to serve the employees or members of a select group who are located outside the operational area of the credit union as long as the select group has its headquarters, or its "paid from" or its "supervised from" location within the credit union's operational area, or a majority of the company's employees work within the credit union's operational area. This provision also applies to a group whose headquarters location is within the operational area of the credit union but whose employees are so widely dispersed that no single location constitutes a majority.

• Standards for Adding Select Groups

Each group to be added must have its own common bond. The group may be either an occupational or associational group. However, the group cannot be defined by a common bond of community. Moreover, special care will be exercised by the regional directors in considering requests for select associational group expansions where the association's membership is geographically dispersed. The associational chartering criteria discussed in Chapter 1—Widely Dispersed Associational Charters—will apply in its entirety to select associational group expansion requests.

Each group must individually request inclusion in the federal credit union's field of membership.

The credit union must possess the financial resources and management capability to provide quality credit union service to the group. The applicant credit union's current CAMEL rating and financial condition will be considered under this criterion.

The addition request must be economically feasible and advisable.

Each group must be within the "operational area" of the credit union's home or branch office. The operational area of an existing credit union is an area surrounding the credit union's home and each branch office—either existing or planned—that, as determined by NCUA in its discretion, can reasonably be served by that office. Normally, NCUA will consider the area within a 25 mile radius of the home or branch office as the operational area. With rural populations particularly, however, the area the credit union can reasonable serve may be somewhat broader.

Whether a credit union facility qualifies as a "home" or "branch" office will depend on the circumstances of each particular case. On the one hand, a facility, which is directly and solely owned by, leased by, or donated by a credit union, and has a credit union employee regularly on site who accepts payment on shares and disburses loans, is clearly a home or branch office. On the other hand, an ATM or similar cash disbursing machine is not.

Between these two extremes are a host of arrangements—e.g., shared ownership, full service facilities; individually owned facilities with shared staff; and facilities owned through a CUSO individually or jointly with other credit unions or other financial institutions (sometimes called "shared facilities" or "shared service centers"). Recognition of each of these intermediate cases as a home or branch office will take into account all relevant circumstances, including:

- The demonstrated commitment on the part of the credit union to serve the group in that area for the long term
- The likelihood that the group will perceive that commitment
- The adequacy of the facility and staff in relation to the needs of the group to be served
- The desires of the group
- The availability of other credit union service

"Shared service centers" or "shared facilities" generally will not be considered "branches" for the purposes of field of membership expansions. Regional directors may make exceptions, considering all pertinent factors—for example, for credit unions which are converting an existing branch to a shared facility. It is not NCUA's intention to force a credit union to maintain an unprofitable branch just to enable select group expansions around that branch.

A home or branch office will be considered "planned" if it is actually going to be established and if the current field of membership constitutes a significant portion of the total field of membership to be served initially by the proposed office. Although the addition of a new select group alone is not enough to justify a proposed home or branch office, it is permissible to include new groups as partial justification for a proposed branch office if that office will also improve credit union service to the existing field of membership.

In the case of a planned office, NCUA may, in its discretion, require financial projections and/or a business plan supporting expansions around that branch office in order to determine the economic feasibility and to address any safety and soundness concerns of the expansion.

All persons within the group who work or meet regularly within the operational area are "within" the operational area. The following are also "within" the operational area: employees of a firm who are paid from or supervised from a place, or employees of a firm or members of a group which has their headquarters at a place within the operational area; and all employees of a firm or members of a group which has a majority of its employees working or members within the operational area.

Documentation Requirements

The process to add a select group to a federal credit union's field of membership is a relatively simple one. A federal credit union must submit a formal written request, using the Application for Field of Membership Change form shown in appendix E, or its equivalent, to the appropriate NCUA regional director. The request must be signed by the credit union's president or an authorized board members.

Included in the request must be the following:

- The requesting credit union's most current financial statements and, where available, branch office financial statements where the expansion is based on a branch office location
- For each group seeking to be included in the credit union's field of membership, the credit union must provide a letter from the group, on the group's letterhead stationery and signed by a responsible official of the group, containing the following information:
- The fact that the group wants to obtain service from the requesting credit union and the extent to which the group will support the credit union—e.g., by providing access to its employees or members via payroll deduction, by permitting use of employee or member newsletter, etc.
- The number of employees or members in the group
- The proximity to the credit union's closest office, either home or branch
- The name of any credit union to which the group currently has access; if there are none, the letter must state this fact
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the standards set forth in the "Overlaps" section of Chapter 1.
- If the group is to be included in the credit union's field of membership because it is within the operational area of a home or branch office, the credit union must submit sufficient information to support the conclusion that the group is within the operational area of its home or a branch office.

*Employee leasing companies*

In general, employee leasing companies will be treated as any other select group addition. Usually such leasing companies employ persons and then lease them, with insurance coverage and other benefits, to other companies under long-term contracts.

When a credit union is requesting the addition of an employee leasing company to its field of membership, the credit union must provide a listing of each of the leasing company's clients and their geographic locations.

Should the leasing company subsequently develop additional client relationships which desire credit union service, the federal credit union must submit a routine request for a select group addition for each new client.

The following wording will be used to define the groups in this type of field of membership request:

"Employees of [name of leasing company] who work regularly at the following businesses at the locations specified: (followed by a list of the name and location of the businesses supplied with employees by the leasing company.)

This type of field of membership expansion is generally for long term relationships and is not permissible if the leasing company only provides temporary employees with no extended relationship to the client company, i.e. temporary secretaries. This does not preclude the addition of regular employees of temporary employment firms, such as Kelly Services and Manpower, from being added to a field of membership as a select group.

*Block additions*

When a state chartered credit union is converting to federal charter or when a credit union is being merged into a

federal credit union, large blocks of select groups frequently are added to a credit union's field of membership. In such cases, the credit union whose field of membership is being revised should consult directly with the appropriate regional office early in the process to ensure the efficient treatment of such revisions and to avoid misunderstandings.

Therefore, when a block of 50 or more new groups is being added to a credit union's field of membership at any one time, in addition to requirements previously stated for adding select groups, NCUA may require a list of the prospective sponsors and their locations be provided on a computer diskette. Direct coordination with the appropriate NCUA regional office will ensure the compatibility of hardware and software.

*Community federal credit union field of membership expansions*

Community federal credit unions may expand their fields of membership only by redefining their boundaries. There must be regular contact among persons who live or work within the proposed well-defined neighborhood, community or rural district. The burden of proof for existence of the common bond is placed upon the applicant credit union. See appendix G for additional information regarding this issue.

In the majority of cases where community credit unions are asking to expand their areas of service, and in all cases where a conversion to a community charter is proposed, an NCUA staff member will make an on-site evaluation of the proposal. The staff member will prepare a separate analysis of the proposed expansion, independent of the credit union's application. Following completion of the on-site evaluation and regional office review of the staff member's report, the regional director will act on the proposal, provided that the size of the proposed area's population does not exceed his or her delegated authority. If so, the applicant credit union will be formerly apprised of the need for NCUA Board consideration.

*Conversion to community charter*

An existing occupational, associational or multiple group federal credit union may apply to convert to a community charter. (See appendix G for more information on the documentation necessary for consideration of a community charter.)

In most cases of an occupational, associational, or multiple group credit union converting to community charter, select groups outside the new community credit union's boundaries will no longer be eligible for credit union service. (The "once a member, always a member" bylaw provision can alleviate problems to some degree.) However, in the event of unusual and stressful situations—e.g., an announced military base or plant closing, or significant cutbacks or downsizing—NCUA may include existing select groups which are within the operational area of an existing home or branch office but outside the new community boundaries. NCUA may also subsequently permit the new community credit union to add other select groups, but only for so long and to the extent needed to ensure the credit union's continued viability. In all such cases, NCUA will carefully weigh all matters including safety and soundness and public policy. To ensure consistency in the application of this procedure and its proper application throughout NCUA, the responsible regional director will consult with each of the other regional directors and NCUA's Director of Examination and Insurance prior to permitting expansion of a community credit union's field of membership to include select groups. The views of the majority of the regional directors and the Director of Examination and Insurance will control. If the group is evenly divided on the issue, it will be referred to the NCUA Board for decision. Denials will be appealable to the Board under standard procedures.

In order to support a case for a conversion to community charter, the applicant federal credit union must develop a detailed business plan incorporating the following data:

- Current financial statements, including the income statement and a summary of loan delinquency.
- A map or maps showing both the existing and proposed boundaries for the field of membership.
- A written description of the area of community service for the proposed community credit union.
- The most current population figures for the existing and proposed boundaries.
- The source of the population information : census data are considered the most authoritative; the greater the population of the proposed area, the greater justification necessary to support the existence of the "community" and regular contact among its residents.
- Evidence in the form of surveys or letters from official representatives of prominent groups located in the area to be added showing that the residents of the area are interested in affiliating with the applicant credit union.
- Evidence that the proposed area is a "community" as defined in "Community Common Bond" in Chapter 1.
- Information concerning the availability of financial services to the residents of the new area.
- A list of credit unions with a home or branch office in the proposed area. (If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed conversion.)
- The attitude of current credit union sponsors and existing credit union members toward the proposed conversion.
- The advantages and disadvantages of the conversion to community charter.
- The anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

*Addition of retiree or senior citizen associations*

Special rules apply for retiree or senior citizen groups that seek credit union service. For field of membership addition purposes, these groups are viewed as unique associational groups which do not need to meet all the requirements for associations discussed in Chapter 1.

It is NCUA Board policy to make federal credit union service available to as many senior citizens and retirees as possible who are in fact interested in obtaining access to a credit union.

Federal credit unions are encouraged to bring associations of senior citizens or retired persons within their fields of membership, and to sponsor and assist in the formation of such associations where they do not exist.

The policies recited in Chapter 1 for associational groups (requiring that the sponsoring association be well-established and that it not be an organization created solely as a vehicle to obtain credit union service) do not apply to retirees or senior citizen associations. Such groups may be formed with the primary purpose of providing eligibility for federal credit union service to the associations and their members.

The definitions of senior citizen or retiree are left to each organization. The operational area criterion does not apply to senior citizen and retiree organizations.

Credit unions wishing to add retiree or senior citizen groups to their field of membership must submit a request to the appropriate regional director. However, supporting letters, charter and bylaws, and other documentation *are not* required.

*Additions via mergers, purchase & assumptions, and spin-offs*

NCUA supports credit unions desiring to remain a separate entity. However, there are three other ways a federal credit union can expand its field of membership, two of which result in a credit union's ceasing to exist—by taking in the field of membership of another credit union through merger or a purchase and assumption (P&A) of certain of the assets and liabilities of a credit union after it has been liquidated, or by taking a portion of a continuing credit union's field of membership through a spin-off.

Mergers Generally

With some exceptions, the standards applicable to field of membership additions apply to mergers. Moreover, where the merging credit union is state chartered, the field of membership rules applicable to a credit union converting to a federal charter generally apply as well. These are the differences:

• As to a merger which constitutes an addition within the common bond, the requirements to provide a request for credit union service from the corporate or associational unit to be added is not required, since the corporate unit already has credit union service.

• As to a merger which constitutes a select group addition:

• For the same reason, the requirement for a letter from each group requesting inclusion in the credit union's field of membership is not required.

• Where a state-chartered credit union is merging into a federal credit union, the operational area requirement may be waived on a proper showing that the state-chartered credit union has been able to provide quality credit union service to its field of membership and that the federal credit union will be able to continue quality service. The state credit union's field of membership will be worded to conform to federal credit union standards as discussed throughout this manual. Any subsequent field of membership additions must comply with select group expansion procedures.

• Mergers of community credit unions into a federal credit union of any type may be accomplished where the operational area requirement is satisfied and the continuing federal credit union is not interested in obtaining the field of membership of the merging community charter. The continuing federal credit union will only obtain the members of record of the merging community credit union.

Where both credit unions are community charters and the criteria for expanding the service area of a community credit union (as discussed previously in this chapter) are satisfied, the entire field of membership of the merging credit union will be added to the continuing federal credit union's charter.

• Distress Mergers

Regardless of the type of credit union involved, where the merging credit union is suffering such severe financial difficulties that it will become insolvent within twelve months, it may merge into any federal credit union in the same operational area.

If the merging credit union is community based, its field of membership, to the extent it complies with the requirements set forth in Chapter 1, will be transferred intact to the continuing federal credit union. In this case, the continuing federal credit union will remain as an occupational, associational, community or multiple group charter for purposes of future field of membership expansions.

• Emergency Mergers

A specifically designated emergency merger may be approved by NCUA without regard to field of membership or other legal constraints. An emergency merger involves NCUA's direct intervention. The credit union to be merged must either be insolvent or in danger of insolvency and NCUA must determine that:

• An emergency requiring expeditious action exists.

• Other alternatives are not reasonably available.

• The public interest would best be served by approving the merger.

In an emergency merger situation, NCUA takes an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing credit union without regard to any field of membership restrictions and without changing the character of the credit union for future expansions. Under this authority, therefore, a federal credit union may take into its field of membership a group defined by a community or associational common bond permitted under state law, regardless of whether that common bond definition could be approved under the Federal Credit Union Act.

• Purchase and Assumptions

Another alternative for acquiring the field of membership of a failing credit union is through consolidation known as purchase and assumption.

A purchase and assumption has limited application because the failing credit union must be placed into involuntary liquidation. However, in the few instances where purchase and assumption may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership along with loans, shares and certain designated assets and liabilities, without regard to field of membership expansion restrictions and without changing the character of the continuing credit union for purposes of future field of membership expansions.

• Spin-Offs

A "spin-off" is, in effect, a partial merger of a credit union. By agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union.

If the spin-off goes to a new federal charter, the requirements of Chapter 1 apply. (See that chapter for discussion of the field of membership and documentation requirements for new federal charters.)

If it goes to an existing federal charter, the requirements of Chapter 2 apply.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all affected regional directors, and the state supervisory authorities, as applicable.

The request for approval of a spin-off must be supported with a plan that addresses, as a minimum:

• Why the spin-off is being requested.

• What part of the field of membership is to be spun-off.

• Whether the affected credit unions have a common sponsor or are located within the same operational area.

• Which assets, liabilities, shares and capital are to be transferred.

• The financial impact the spin-off will have on the affected credit unions.

• The ability of the acquiring credit union to effectively serve the new members.

• The proposed spin-off date.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

Membership notice and voting requirements and procedures are the same as for mergers—part 708 of the

NCUA rules and regulations—except that only the members directly affected by the spin-off—those whose shares are to be transferred—are required to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote.

*Overlaps*—See Chapter 1 for discussion.

*Exclusionary clauses*—See Chapter 1 for discussion.

*Professional conflicts.*

It is important for a credit union, as well as professional organizations such as accounting firms, law firms, real estate title insurance firms and appraisal firms, to avoid the appearance of impropriety when the credit union contracts with a professional organization for services. This is even more critical if the professional organization and/or its employees are members of the credit union.

When a professional organization is added to a credit union's field of membership, the credit union should notify the professional organization of certain provisions. The following provision is intended to ensure that decisions made by a credit union and the professional organizations serving the credit union are independent of any loan decisions or deposit activities.

"Please be advised that with respect to the addition of the employees of (professional organization) to the [FCU], any lending, deposit and/or other credit union services involving credit union members who are also employees of the firm will be independent from any services rendered to the credit union by the firm and will avoid any appearance of impropriety."

A credit union should also make a similar notification to a professional organization when contracting with it to provide professional services to the credit union.

*Reviewing field of membership addition requests*

All field of membership addition requests will be reviewed by regional office staff in order to ensure that the requests conform to NCUA policy, are properly documented, including completion of the Application of Field of Membership Change, and do not cause significantly harmful or unreasonable overlap with the fields of membership of existing credit unions.

NCUA understands and appreciates the importance of timely processing of well-supported addition requests. To respond to this desire for prompt handling, each regional office has established a goal of ten working days from the date of receipt in the regional office for complete processing of a routine addition request. A fully documented request that fulfills all of the criteria discussed in this manual and does not require written or telephone follow-up will normally be processed within this time.

In some cases, an on-site review by NCUA staff may be requested by the regional director before acting on a proposed addition. Nonstandard or controversial requests, those involving associational, community or multiple charters, or those from credit unions with serious operational or management problems, are most likely to fall into this category.

In addition, the regional director may, at his discretion, after taking into account the significance of the field of membership expension proposed, require the applicant to submit a business plan.

The condition of the requesting credit union will be considered in every instance. The economic feasibility of expanding the field of membership of a credit union with serious management or operational problems must be carefully considered by regional staff if the safety and soundness of the credit union is to be preserved.

In most cases, field of membership additions will only be approved for credit unions which are operating satisfactorily. If a federal credit union is having difficulty providing good service to its current membership, it may have even more difficulty serving an enlarged field of membership.

In some cases, expanding the field of membership of a struggling credit union may do more harm than good. A struggling credit union's resources need to be focussed on current problems. Placing an additional strain on these resources by increasing the field of membership may also increase the credit union's problems.

If the requested addition is approved by the regional director, the credit union will be furnished a formal, updated section 5 of its charter which restates the field of membership, including the requested addition. After action by the board of directors, the form should be promptly filed with the credit union's official charter and bylaws.

*Removal of groups from the field of membership*

Credit unions may request removal of a group from its field of membership for various reasons. The most common reasons for this type amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service.
- The federal credit union cannot continue to provide adequate service to the group.
- The group has ceased to exist.
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from their field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. Membership must continue for those who are already members through the "once a member, always a member" provision.

The regional director will consider these types of requests on a case by case basis.

*Denials*

If a request for a field of membership amendment is denied by the regional director, the credit union will be so advised in writing. The letter of denial will include specific reasons why the request was not approved. The letter may include suggestions for making the request acceptable and other options the credit union could consider.

The credit union will be informed that there is a right to appeal the regional director's decision to the NCUA Board. (The credit union may submit substantive new and additional information to the regional director. In these instances, the submission will not be considered an appeal but a request for reconsideration by the regional director.)

The appeal must be sent to the regional office within 60 days of the denial. The letter of appeal should provide the credit union's response to the reasons for the denial. Only the information which the regional director had available to make the denial decision may be submitted for an appeal.

The regional director will forward the appeal to the NCUA Board. NCUA central office staff will independently review the facts of the case and present the appeal to Board. The appealing credit union may present written documentation only; neither the regional director not the credit union will be permitted to present oral arguments to the Board.

*Service status reports*

Federal credit unions which frequently add select groups to their fields of membership should be prepared to furnish a written summary of the results of their efforts to bring service to the employees or members of the select groups.

The regional directors will periodically request that such federal credit unions submit service status reports to NCUA showing, at a minimum, the number of primary potential members of each select group added and the number of persons from each select group who have actually enrolled as credit union members.

These service status reports can be enlarged to require information concerning aggregate share and loan activity by select group or participation in other credit union services.

In any event, federal credit unions using the select group addition method should implement an information gathering system early in their addition/diversification program to track their progress in providing service to the potential members of their select groups.

This information will help the credit union to operate more efficiently and will give management the data necessary to make decisions about marketing strategy, new promotions, implementation of new services, etc.

The service status reports will enable NCUA to determine which federal credit unions are serving newly added groups, as well as any federal credit unions that are not serving new groups.

If the NCUA determines that a federal credit union is not adequately serving new groups, the regional director may restrict further expansions and permit the groups not being adequately served to be overlapped with another federal credit union or remove the select group(s) not being served from section 5 of the credit union charter.

**Chapter 3—Charter Conversions**

A charter conversion is a change in the jurisdictional authority under which a credit union operates. A credit union's charter is the instrument given to the institution by the government, either state or federal, granting to it the authority to carry out credit union business in accordance with law.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation; they are incorporated under federal law.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's supervisory authority. If the state-chartered credit union's deposits are federally insured by NCUA, it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are principally derived from the Federal Credit Union Act and NCUA rules and regulations. State-chartered credit unions are principally governed by the state law and regulation.

There are two types of charter conversions—federal charter to state charter, and state charter to federal charter. Although common bond is not an issue from NCUA's standpoint in the case of a federal to state charter conversion, the procedures and forms relevant to such a conversion have been included.

*Conversion of a State Credit Union to a Federal Credit Union*

• General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so, it must:

• Comply with state law regarding conversion;

• File proof of compliance with NCUA;

• File the required conversion application, proposed federal credit union organization certificate and other documents with NCUA;

• Comply with the requirements of the Federal Credit Union Act, e.g., common bond and reserve requirements; and

• Be granted a charter by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter application.

Generally, a converting state credit union's field of membership must conform to NCUA chartering policy. However, if a converting credit union can demonstrate that it has been effectively serving groups outside what would have been its operational area if it had been a federal credit union, the regional director, in his or her discretion, may permit continued service to these groups after conversion. Every reasonable effort will be made to phrase the field of membership similar to the presentations in Chapters 1 and 2 with individually listed groups and their locations. In any case, subsequent changes must conform to NCUA expansion policy in effect at that time.

• *Submission of conversion proposal to NCUA*

The following actions are to be taken before submitting a conversion proposal:

• The credit union board must approve a proposal for conversion.

• The Application to Convert (NCUA Form 4401) must be completed. Its purpose is to provide the regional director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.

• The application must be accompanied by all required attachments including the following:

• Written evidence that the state supervisory authority is either in agreement with the conversion proposal, or, if not in agreement, the reasons therefor.

• The Application for Insurance of Accounts (NCUA 9600) in the case of a state credit union that is not federally insured.

• The Application and Agreements for Insurance of Accounts (NCUA 9500).

• The Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter (Form NCUA 4000).

• The most current financial report and delinquent loan schedule.

• The Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable, signed by the credit union officials. The NCUA regional office will complete the other sections of this document.

• *NCUA consideration of application to convert*

• Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

• Examination and Payment of Fees

NCUA will examine the books and records of the credit union on-site. NCUA will charge the credit union an examination fee.

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Note: This fee may be waived by the regional director in those cases where the converting credit union is federally insured. Non federally insured credit unions will also be assessed an application fee.

• Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement ("LUA"), which requires the signature of the officials and the regional director.

• Notification

The regional director will notify both the credit union and the state supervisory authority of the decision on the conversion.

• *Action by Board of Directors*

Upon being informed of the regional director's approval, the board must:

• Comply with all requirements of the state supervisory authority that will enable the credit union to convert to a federal charter and cease being a state credit union;

• Obtain a letter or official statement from the state supervisory authority certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;

• Submit a statement of the action taken to comply with any conditions imposed by the regional director in the approval of the conversion proposal and, if applicable, submit the signed LUA.

• Application for a Federal Charter

When the regional director has received evidence that the board has completed the actions described above, then a federal charter and new Certificate of Insurance will be issued. The credit union may then complete the conversion as discussed in the following section. Denials are appealable to the NCUA Board.

• *Completion of the Conversion*

• Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state supervisory authority of the date of the conversion.

• Assumption of Assets and Liabilities

As of the effective date, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

• Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA rules and regulations. Actions to be taken at this meeting include:

a. Change of the credit union's name on all records, accounts, investments and other documents evidencing assets or liabilities of the credit union;

b. Changes to the credit union's books and records:

(1) As of the commencement of business, the accounting system, records, and forms must conform to the standards established by NCUA;

(2) New journal and cash record and general ledger pages should be set up. The general ledger accounts for the state credit union will be posted through the effective date of the conversion, and the new balances will be transferred to the new general ledger accounts of the federal credit union;

(3) The income and expense accounts of the state credit union will not be closed unless the conversion is at the close of an accounting period or is required by the state supervisory authority; and

(4) The individual share and loan ledger accounts used by the state credit union may continue to be used. The federal credit union's names should be properly reflected on these accounts.

• Reports to NCUA

Within 10 days after commencement of operations, the federal credit union must submit to the regional director the following:

• Report of Officials (NCUA 4501)

• Financial and Statistical Reports, (Forms FCU 109A, 109B, and 109F, or their equivalent) as of the commencement of business of the federal credit union.

*Conversion of a Federal Credit Union to a State Credit Union*

• General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

• Comply with the requirements of the Federal Credit Union Act (section 125) that enable it to convert to a state credit union and to cease being a federal credit; and

• Comply with applicable state law and the requirements of the state supervisory authority.

• *Special provisions regarding Federal share insurance*

If the federal credit union wants to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (Form NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the Application.

If the converting federal credit union does not want to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to nonfederal share insurance, it must comply with the membership notice and voting procedures set forth in section 206 of the Federal Credit Union Act and part 708 of NCUA's rules and regulations.

Where the state credit union will be non federally insured, federal insurance ceases on the effective date of the conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit and any unused portion of the federal insurance premium after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

• *Submission of conversion proposal to NCUA*

Upon approval of a proposition for conversion by a majority vote of the

board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;
- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to members (NCUA 4506);
- Evidence that the state supervisory authority is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

- *Approval of proposal to convert*

- Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with section 125 of the Federal Credit Union Act. The regional director may make further investigation into the proposal and require the submission of additional information to support the request.

- Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

- Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of section 206 of the Federal Credit Union Act.

- Notification

The regional director will notify both the credit union and the state supervisory authority of the decision on the proposal.

- *Approval of proposal by members*

- Upon approval of the proposal by the regional director, the following actions will be taken by the board of directors:
- The proposal must be submitted to the members for approval and a date set for a vote on the proposal. The proposal may be acted on at the annual meeting, at a special meeting for that purpose, or by written ballot to be filed by the date set for the vote.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted in accordance with the provisions of the Federal Credit Union Bylaws (Article V). The notice shall:
- Specify the purpose, time and place of the meeting;
- Include a brief and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
- Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
- Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and
- State in bold face type that the issue will be decided by a majority of members who vote.
- A copy of the notice of the meeting shall be delivered to the regional director at the same time that it is delivered to the members.
- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

- *Compliance with state laws*

If the proposition for conversion is approved by a majority of all members who voted, the boerd of directors should then:

- Ensure that all requirements of state law and the state supervisory authority have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date members approved the proposal to convert;
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay.

- *Completion of conversion*

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports (FCU 109A and 109B) as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state supervisory authority in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state supervisory authority shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effected and completed until the improper actions and steps have been corrected.
- Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state credit union supervisory authority.
- If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.
- There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state supervisory authority for applicable state requirements. The credit union shall no longer use the

words "Federal Credit Union" in its name nor represent itself in any manner as being a federal credit union.

• If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

**Appendix A—Glossary**

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA rules and regulations as well as state laws may be used for further reference.

*Appeal*—The right of a credit union or charter applicant to request reconsideration of an unfavorable NCUA Regional Director's decision to a higher authority. Appeals are usually made to the NCUA Board through the Regional Directors.

*Associational common bond*—Association resulting from membership in an organization, participation in whose activities develops common loyalties, mutual benefits and mutual interests. The association should hold regular meetings and sponsor other activities that provide for contact among members.

*Associational credit union*—A credit union whose field of membership consists primarily of persons who are members of one or more related associational groups.

*Business plan*—Plan submitted by a charter applicant or existing federal credit union addressing the economic viability of a proposed charter or field of membership addition.

*Charter*—The document which authorizes a group or combination of groups to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

*Common bond*—The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are only three common bonds which can serve as a basis for a group's forming or being included in a federal credit union: employment by the same person or entity ("occupational common bond"), membership in the same association ("associational common bond"), and residence or employment in the same geographic area ("community common bond").

*Community common bond*—Residence or employment of persons and business and other legal entities located within the same well-defined neighborhood, community or rural district.

*Community credit union*—A credit union whose field of membership consists of persons who live or work in the same well-defined neighborhood, community, or rural district.

*Conversion*—The process of changing from a federal to a state or state to federal credit union charter.

*Credit union*—A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services. Federal credit unions are chartered as corporations pursuant to the Federal Credit Union Act.

*Economic viability*—An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

*Emergency merger*—Pursuant to section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to field of membership policy.

*Exclusionary clause*—A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group otherwise included in its field of membership. Exclusionary clauses are used to prevent certain overlaps of fields of membership between credit unions.

*Federal share insurance*—Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

*Field of membership*—The persons (persons may include organizations and other legal entities) a credit union is permitted to accept for membership. A federal credit union's field of membership, set forth in paragraph 5 of its charter, may be made up entirely of a single group, related groups with one common bond, or of unrelated groups each having its own common bond.

*Letter of understanding and agreement*—Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants, and occasionally with credit unions granted significant charter expansions and are for a limited time.

*Merger*—Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state supervisory authority whenever a state credit union is involved.

*Multiple group credit union*—A credit union whose field of membership consists of groups of persons, each group with its own common bond. The groups may be occupational, associational, or a combination thereof and do not need to share a common bond or be in any way related to one another.

*Occupational common bond*—Employment by the same employer. "Employment" includes long term contractual arrangements which are the practical equivalent of regular employment. "Employer" comprises a parent corporation and other corporations in which the parent directly or indirectly holds at least a majority interest.

*Occupational credit union*—A credit union whose field of membership consists primarily of persons employed by the same entity or related entities.

*Operational area*—The operational area of a credit union is an area surrounding the credit union's home and each branch office that, as determined by NCUA in its discretion, can reasonably be served by that office. Normally, NCUA will consider the area within a 25 mile radius of the home or branch office as the operational area. With rural populations, however, the area the credit union can reasonably serve may be somewhat broader. But a credit union cannot "annex" adjoining areas—i.e., add a group in an adjacent area because the group or a portion of the area the group is located in is within 25 miles of the outer edge of the credit union's operational area.

*Overlap*—The situation which results when a group is eligible for membership in more than one credit union.

*Potential membership*—Persons eligible to become primary members of a federal credit union.

*Primary members*—Members sharing the basic occupational, associational or community affinity to the field of membership.

*Primary sponsor*—That single enterprise that represents the largest potential segment of the field of membership.

*Purchase and assumption*—Purchase of all or a part of the assets of and assumption of all or a part of the liabilities of one credit union by another credit union. The purchased and

assumed credit union must first be placed into involuntary liquidation.

*Select group*—An occupational or associational group with its own common bond.

*Secondary or derivative members*—Members included in the field of membership by virtue of their close relationship to a common bond group (e.g., immediate family members, employees of the credit union, etc.).

*Service status report*—Periodic written statements made by federal credit unions to NCUA summarizing the results of efforts to bring service to the employees or members of select groups.

*Subscribers*—For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

**Appendix B—Letter of Understanding and Agreement**

To the Board of Directors and Other Officials _____
Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____ 19____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____day of _____19____

National Credit Union Administration Board on Behalf of the National Credit Union Share Insurance Fund

Regional Director _____

_____Federal Credit Union

By:

Chief Executive Officer _____
Date _____
Chief Financial Officer _____
Date _____
Secretary _____
Date _____

**Appendix C—Type-of-Membership Classification System**

The National Credit Union Administration (NCUA) has established a type-of-membership classification system. This system provides information on credit unions in major associational, community, industrial service and occupational groups. The classification system has been designed to be flexible and to produce data needed for program planning, analysis and research purposes.

Credit unions have individual differences. For example, membership affiliation, geographic location and industrial or associational attachment of the credit union are significant factors in determining the general nature of the problems the credit union may encounter and in evaluating economic feasibility for chartering and other purposes. Thus, these factors must be identified and analyzed in order for NCUA and the credit union industry to respond effectively to any changes occurring or anticipated.

The classification system uses a three digit code. The first number in each three digit code identifies the common bond type: Associational (010–090), Occupational (100–700), Multiple Groups (800) and Residential (Urban and Rural Community) (900). As appropriate, the next two numbers in each digit identify the specific categories, e.g., 030–religious groups within the associational common bond. Credit unions that have more than one group will receive a classification that most nearly represents the common bond of the majority of its potential members. For example, XYZ FCU's membership comprises 51% banking employees, 45% mixed associational groups and 4% senior citizens groups. The credit union's type of membership classification would be 500-Finance, Insurance and Real Estate.

The Multiple Group classification has the three-digit code 800. This classification will be used for credit unions that have more than one group with no single group predominant, e.g., industrial parks, shopping centers. The nine hundred (900) classification is used for all urban and rural community groups.

Limited income and other types of special codes are addressed in a separate classification system.

The classification system presented in this Section covers all federally insured

credit unions. The Section will be helpful to credit union officials, trade organizations and others in the use of NCUA data classified by type-of-membership.

This Section is a revision of the "Type-of-Membership Classification for Federally Insured Credit Unions" guide issued by NCUA in October 1975.

**Associational (010–099)**

Federally insured credit unions whose common bond consists primarily of individuals who participate in activities developing common loyalties, mutual benefits and mutual interests are classified as associational groups.

*010—Cooperatives*

Examples: Agricultural, production and marketing; Consumer-retail mercantile; Electric; Housing; Other cooperatives

*020—Fraternal, Professional and Trade Associations*

Examples: Knights of Columbus, Knights of Pythias, National Grange, Farm Bureau; American Leather Association; Kidney Association and similar groups.

*030—Religious*

Examples: Catholic, Jewish, Muslim, Protestant, Others.

*040—Labor Unions*

Examples: Carpenters, Electrical Workers, Food and Beverage Workers; Performing Arts; Retail Clerks and Workers; Teamsters, Typographic and Printing Workers, Others.

*050—Student Credit Unions*

Examples: Students enrolled (graduate, undergraduate, full time, part time) in any junior college, technical institute, college and university.

*060—Corporate Credit Unions*

Examples: Credit unions organized primarily to provide liquidity and other services to member credit unions.

*099—Associational Groups Not Elsewhere Classified*

**Occupational (100–799)**

Federally insured credit unions whose common bond is limited to members employed by the same enterprise are classified as occupational groups. Persons sharing this common bond may be geographically dispersed. Employees of a parent corporation and its wholly-owned subsidiaries and persons under contract who work regularly for an enterprise may be considered under a single occupational bond. Occupational common bonds may include agriculture, mining, transportation, communications, public utilities, wholesale and retail trade, finance, insurance, real estate, services and government.

**100—Natural Resources**

*101—Agriculture, Forestry, Fisheries and Mining and Construction*

Examples: Commercial and non commercial farms timber tracts, commercial fishing, other agricultural services, forestry services such as fire fighting and reforestation establishments primarily engaged in commercial fishing hunting and trapping or in the operation of game preserves.

*102—Mining*

Examples: Companies involved in the extraction of minerals occurring naturally: Solids such as coal and ores; liquids such as crude petroleum; and gases such as natural gas. Also includes companies primarily engaged in exploration and development of mineral properties.

**200—Manufacturing**

*201—Food and Kindred Products*

Examples: Establishments manufacturing foods and beverages for human consumption, prepared feeds for animal and fowls, and certain related products.

*202—Textile Mill Products*

Examples: Establishments manufacturing all types of textiles.

*203—Apparel and Other Finished Products Made From Fabrics and Similar Materials*

Examples: Establishments producing clothing and fabricated products by cutting and sewing purchased woven or knit textile fabrics and related materials such as leather, rubberized fabrics, plastic and furs.

*204—Lumber and Wood Products, Except Furniture*

Example: Establishments operating different types of lumber mills

*205—Furniture and Fixtures*

Examples: Establishments engaged in manufacturing household, office, public building and restaurant furniture; and office and store fixtures.

*206—Paper and Allied Products*

Examples: Establishments manufacturing pulps from wood and other cellulose fibers and rags; the manufacture of paper and paperboard; and the manufacture of paper bags, boxes and envelopes.

*207—Printing, Publishing and Allied Industries*

Examples: Establishments engaged in printing by one or more of the common processes such as letterpress, lithography, gravure or screen, and those establishments which perform services for the printing trade such as bookbinding, typesetting, engraving, photoengraving, and electrotyping. Also included are establishments engaged in publishing newspapers, books and periodicals, regardless of whether or not they do their own printing.

*208—Chemicals and Allied Products*

Examples: Establishments producing basic chemicals and establishments manufacturing products by predominantly chemical processes. Such chemicals include chemicals, plastic materials and synthetics, drugs, soap detergents and cleaning preparations, perfumes, cosmetics and other toilet preparations, paints, varnishes, lacquers, enamels and allied products, miscellaneous chemical products.

*209—Petroleum, Refining and Related Industries*

Examples: Establishments primarily engaged in producing gasoline, kerosene distillate fuel oils, residual fuel oils, lubricants and other crude petroleum.

*210—Rubber and Miscellaneous Plastics Products*

Examples: Establishments manufacturing tires and inner tubes; fabricated rubber.

*211—Leather and Leather Products*

Examples: Establishments engaged in tanning, currying, and finishing hides and skins, and establishments manufacturing leather and artificial leather products.

*212—Stone, Clay, Glass and Concrete Products*

Examples: Establishments engaged in manufacturing flat glass and other glass products, cement, structural clay products, pottery, concrete and gypsum products, cut stone products, abrasive and asbestos products, etc., from materials taken principally from the earth in the form of stone, clay and sand.

*213—Primary Metal Industries*

Examples: Establishments engaged in smelting and refining of ferrous and nonferrous metals from ore, pig, or scrap; in the rolling, drawing and alloying of ferrous and non-ferrous metals, and in the manufacturing of castings, forgings; and other basic

products of ferrous and non-ferrous metals; and in the manufacture of nails, spikes and insulated wire and cable.

*214—Fabricated Metal Products, Except Guided Missiles, Machinery and Transportation Equipment*

Examples: Establishments engaged in fabricating ferrous and non-ferrous products such as metal cans, tinware, hand tools cutlery, general hardware, non electric heating apparatus, fabricated structural metal products, metal stampings and a variety of metal and wire products note elsewhere classified.

*215—Machinery Except Electrical*

Examples: Establishments where machines are powered by built-in-or detachable motors, with the exception of electrical household appliances. Portable tools, both electric and pneumatic power, are included in this group but hand tools are classified in major group 214 (fabricated metal products, except guided missiles, machinery and transportation equipment).

*216—Electrical and Electronic Machinery, Equipment and Supplies*

Examples: Establishments that manufacture household appliances but industrial machinery and equipment powered by built-in or detachable electric motors is classified in major group 215 (machinery except electrical).

*217—Transportation Equipment-Motor Vehicles*

Examples: Establishments that manufacture aircraft and parts. Also includes manufacturing space vehicle and parts, tanks and tank components and guided missiles.

*219—Transportation Equipment—Ship and Boat Building and Repairing*

*220—Transportation Equipment—Railroad Equipment*

Examples: Establishments primarily engaged in building streetcars, trackless trolley buses and railway cars.

*221—Transportation Equipment—Other*

Examples: Establishments engaged in manufacturing motorcycles, bicycles and other items not elsewhere classified in codes 217–220.

*222—Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks*

Examples: Establishment engaged in manufacturing mechanical-measuring, engineering, laboratory and scientific research instruments; optical instruments and lenses; surgical, medical and dental instruments, equipment and supplies; ophthalmic goods, photographic equipment and supplies; watches and clocks.

*229—Miscellaneous Manufacturing Industries*

Examples: Establishments engaged in manufacturing tobacco, jewelry, silverware and plated ware, musical instruments and parts, toys, amusements, sporting and athletic goods, pens, pencils and other office artists' materials, furs, signs and other miscellaneous manufacturing industries not elsewhere classified.

**300—Transportation, Communication, Electric, Gas and Sanitary Services**

Examples: Establishments in this classification to a large extent are legally recognized as having a semipublic character. Most of the establishments are regulated by commissions or other public authorities as to the rates or prices they may charge and the services they may render.

*301—Transportation—Railroad*

Examples: Establishments include railroads, sleeping car and railroad express services.

*302—Transportation—Local, Suburban and Interurban Passenger*

Examples: Companies or systems providing municipal passenger transportation, taxicabs and intercity and highway transportation including school buses charter services and passenger terminals and service facilities.

*303—Transportation—Motor Freight and Warehousing*

Examples: Establishments engaged in local and long distance trucking, transfer and draying services, storage of goods, terminal facilities and warehousing.

*304—Transportation—Water*

Examples: Establishments engaged in freight and passenger transportation over water include towing, excursion boats and water taxis.

*305—Transportation—Air*

Examples: Establishments engaged in furnishing transportation by air including airports and terminal services.

*306—Transportation—Other*

Examples: Establishments not elsewhere classified in codes 301–305.

*310—Communication*

Examples: Establishments include telephone, telegraph, radio and television, and other.

*311—Electric, Water, Gas and Sanitary Services*

Examples: Establishments include electric services, gas production and distribution, combination electric and gas, and other utility services, water supply, sanitary services, irrigation systems, other.

**400—Wholesale and Retail Trade**

*401—Wholesale*

Examples: Establishments engaged in wholesale trade such as selling goods to trading facilities or to industrial commercial, institutional and professional users, and bringing buyer and seller together. Examples of such establishments include: Motor vehicles and automobile equipment; drug, chemicals and allied products—raw materials, electrical goods; hardware, plumbing and heating equipment, and supplies.

*402—Retail Trade*

Examples: Establishments that are classified by kind of business according to the principal lines of commodities sold (groceries, hardware, etc.) or the usual trade designation (drug store, department store, etc.). Examples of such establishments include: Building materials, hardware and farming equipment; general merchandise (department stores, mail order houses, etc.); retail trade—food; automobile dealers and gasoline service stations; retail trade—apparel and accessories; retail trade—eating and drinking places; retail trade—miscellaneous retail stores.

**500—Finance, Insurance and Real Estate**

Examples: Establishments such as a Federal Reserve Banks, commercial and stock saving banks, mutual savings banks, and banks and trust companies. Also includes establishments performing functions closely related to banking such as foreign exchange centers, check cashing agencies and currency exchanges, safe deposit companies, clearing house associations, establishments incorporated in the United States and engaged in international and foreign banking, credit agencies other than banks, insurance companies, security and commodity brokers, dealers and exchanges; real estate operators, and owners and lessors of real property as well as buyers, sellers, developers, and agents.

**600—Services and Construction**

Establishments engaged primarily in rendering a wide variety of services to individuals and business establishments, and in the building field.

*601—Services*

Examples: Establishments engaged in hotels and other lodging places; personal services (laundries, beauty salons, barber shops, shoe repair services, etc.); advertising agencies; consumer credit reporting agencies, collection agencies; private employment agencies; automobile repair, automobile services, and garages; motion pictures, and amusement and recreation services.

*602—Health*

Examples: Establishments that include associations or groups primarily engaged in providing medical or other health services to members, when the field of membership is limited to employees of such groups. Such establishments may include non government hospitals, medical and dental laboratories, health and allied services, not elsewhere classified.

*603—Construction*

Examples: Establishments engaged in building and heavy construction, and special trade contractors who are primarily engaged in specialized construction activities such as plumbing, painting, electrical work, and carpentry. Also, includes installation of prefabricated building equipment and materials by general contractors and special trade contractors.

*604—Other*

Examples: Service and construction groups not elsewhere classified.

**700—Government and Education**

*701—Federal Government—Civilian*

Examples: Establishments that include civilian employees in the various departments, agencies, and offices of the federal government including employees in federal government hospitals.

*702—Federal Government—Military*

Examples: Establishments that include civilian employees if they are together with military employees in the field of membership.

*703—State Government*

Examples: Establishments that include all state agencies and the national guard.

*704—Local Government*

Examples: Establishments that include county and city agencies, including hospitals, police and fire departments.

*705—International Government*

Examples: Establishments that include international government organizations Establishments that include county such as the United Nations and World Bank.

*706—Education—Colleges and Universities*

Examples: Establishments that include employees of private and trade schools, colleges and universities and other higher educational institutions.

*707—Education—Elementary and Secondary*

Examples: Establishments that include employees of private and trade schools, elementary and secondary school systems.

*799—Occupational Groups not Otherwise Classified*

**Multiple Groups (800)**

Credit unions whose members comprise multiple groups (associational and occupational) with no single group predominant, e.g. shopping centers, industrial parks.

*801—Multiple groups primarily associational*
*802—Multiple groups primarily occupational*
*803—Multiple groups primarily mixed*

**Community—Urban and Rural (900)**

Community groups that represent a well-defined neighborhood, community or rural district. The distinction between urban and rural is based on the latest Census definitions.

*902—Government assisted urban groups*
*909—Other urban community groups*
*952—Government assisted rural groups*
*959—Other rural community groups*
*999—Unclassified*

## Appendix D—NCUA Offices

**Note: Addresses and phone numbers will be updated at the time the interpretive ruling and policy statement is finalized.**

BILLING CODE 7535-01-M

APPENDIX E

NCUA FORMS

NCUA 4000 -- Conversion of State Charter to a Federal Charter

-- FCU Investigation Report

NCUA 4001 -- FCU Investigation Report

NCUA 9500 -- Application and Agreement for Insurance of Accounts

NCUA 9501 -- Certification of Resolutions

NCUA 4008 -- Charter

NCUA 4009 -- Approval of Organization Certificate & Certification of Insurance

NCUA 4012 -- Report of Official & Agreement to Serve

NCUA 4401 -- Application to Convert from a State Credit Union to an FCU

NCUA 4221 -- Notice of Meeting of Members

NCUA 4505 -- Affidavit

NCUA 4506 -- Ballot for Conversion Proposal

NCUA 9600 -- Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts

NCUA XXX -- Application for Field of Membership Change

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National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-0015)
Washington, D.C. 20503

Conversion of State Charter to Federal Charter

## FEDERAL CREDIT UNION INVESTIGATION REPORT
(NOTE TO ORGANIZER)

This report must be filled in completely and submitted with the other completed forms listed on page 2 under "SUBMITTAL OF CHARTER APPLICATION." Please refer to page 2 for instructions in completing this report.

### A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice of name _____ Federal Credit Union

2. Contact Person _____ Bus. Tel. No./Area Code _____
   Res. Tel. No./Area Code _____
   Address _____

3. The credit union will maintain its office at _____
   (City) (County) (State) (Zip)

4. Permanent mailing address of credit union _____

5. Define proposed field of membership (Attach a copy of current state charter/field of membership) _____

6. The board will have (an odd number, 5 to 15) ____ members; the credit committee (an odd number, 3 to 7) ____ members; the supervisory committee (3 to 5) ____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

### B. CHARACTER AND FITNESS OF SUBSCRIBERS
*(Please type or print)*

7. List of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature _____, Organizer
Organizer's address _____
_____

NCUA 4000

## INSTRUCTIONS

### A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

### B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

### C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons*, must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subecribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

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## FEDERAL CREDIT UNION INVESTIGATION REPORT

(Note to Organizer) This report form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

### A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice _____ Federal Credit Union

2. Contact Person _____ Business Tel. _____
   Residence Tel. _____
   Address _____

3. The credit union will maintain its offices at _____
   (City, State, County, Zip Code)
   _____

3a. Proposed permanent mailing address of credit union _____
   _____

4. Define proposed field of membership _____
   _____
   _____
   _____
   _____

5. The board will have (an odd number, 5 to 15) _____ members; the credit committee will have (an odd number, 3 to 7) _____ members; the supervisory committee will have (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

### B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate)

GENERAL INFORMATION

1. Potential membership _____.
   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).
   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.
   Number of people surveyed _____.
   Number of people responding to survey _____.
   Number of people pledging an initial deposit _____.
   Total dollars pledged $ _____.
   Number pledging systematic savings _____.
   Total dollars pledged (per month) $ _____.

3. Number of persons attending the charter-organization meeting _____.

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____.
   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

For Paperwork Reduction Act Notice, see page 7.



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5. What facilities and assistance, if any, will the sponsor provide?

_____ Office Space (Describe)
_____ Office Supplies
_____ Payroll deductions
_____ Funding for start-up costs, if so $ _____ .
_____ Other (Describe)

6. Is credit union service now available to any members of the group? _____ .
If so, explain the nature and approximate extent of overlapping of such service with the field of membership proposed in this application, i.e., employees who are labor union members eligible for membership in another credit union on an associational basis; labor union members who are eligible for credit union membership on an occupational basis; community residents who are eligible for credit union membership in occupational or associational credit unions located within the proposed boundaries. _____

7. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives? _____

NOTE TO ORGANIZER: The officials' projected goals for share growth must be recorded in the business plan.

8. What provisions have been made to overcome potential difficulties? _____

Dates of planned contacts by organizer to determine progress and to assist the group:

_____ (Date) _____ (Date) _____ (Date)

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## SPECIFIC INFORMATION - OCCUPATIONAL CHARTER APPLICANTS

9. How long has the sponsor company been in existence? _____.

10. What was the highest number of employees during the past three years? _____; Lowest number during the past three years _____. If a large variance, please explain, _____

11. Are there any contemplated changes in the corporate structure of the company? _____. If yes, explain _____

12. Have there been any significant changes in the corporate structure in the past three years? _____. If yes, please explain _____

13. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____. If yes, please explain _____

14. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

15. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

16. Are there other employees of the company who are not being included in the proposed field of membership? _____. If so, give the number and location of the other employees and explain why a credit union is being proposed for this group only. _____

## SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

17. State the purpose and goals of the organization sponsoring the charter. _____

18. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

19. In what year was the organization established? _____. Is it incorporated? _____. Where is the headquarters located? _____.

20. Give statistics as to trends in membership during the last five years. _____

21. What is the frequency of members' meetings? _____. Average attendance _____. Dues required _____.

22. State the geographic territory where members reside. _____

23. Except for religious and labor union groups, obtain a copy of the current bylaws, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement. Submit these documents with this application.

24. If the bylaws, constitution or articles of incorporation provides for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members. _____

25. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment. _____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

c. What has been done toward organizing a credit union on an employee basis? Discuss fully. _____

## SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

26. List the factors or conditions which make this residential unit a logical group for credit union operation. _____

27. If the area to be served by the credit union is adjacent to any major metropolitan area, explain why it is not considered a part of such metropolitan area. _____

28. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals. _____

29. Provide a map which clearly outlines the credit union's proposed community boundaries.

30. Are there currently any state or federal credit unions operating within the proposed community boundaries? _____. If so, provide a list of the credit union's names and mailing addresses.

31. List any other financial institutions, i.e. banks, savings and loan associations, etc., located within the proposed community boundaries.

## C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____



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Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

2. Are all of the subscribers within the field of membership? _____. Do they appear to be fairly representative of the group described in the definition of the field of membership? _____. If not, explain _____

3. Does your investigation indicate that the subscribers are persons of good character? _____. If not, explain _____

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____. If not, explain _____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____. If so, explain _____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served? _____.

7. Is an application for a State charter now pending? _____.

8. Has the group ever had a credit union? _____. If so, when did it liquidate or merge? _____.

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address _____

Telephone No. _____ Date _____

OMB No. 3133-0015
Expiration 8-30-92

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-0015)
Washington, D.C. 20503

## INSTRUCTIONS

### A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

### B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;
2. The nature of the common bond;
3. The attitude of the:
   a. (If occupational based field of membership) management of the sponsor organization;
   b. (If associational based field of membership) officers of the sponsor association;
   c. (If community based field of membership) community leaders and/or officers of prominent associations or organizations in the area to be served;
4. The facilities available for credit union operations;
5. The availability of existing credit union service, and
6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

## C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

## D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons*, must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 --one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

## APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union,

_____
(Mailing Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and of other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such regular reserves as may be required by Section 116 of the Federal Credit Union Act.

6. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

7. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

8. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

9. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

10. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

11. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

12. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

| Schedule No. | Title |
|---|---|

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ _____
Chief Executive Officer Chief Financial Officer

Note: A willfully false certification is a criminal offense. U S. Code, Title 18. Sec. 1001.

NCUA 9500

**CERTIFICATION OF RESOLUTIONS**

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____

Chief Executive Officer

_____

Recording Officer, Board of Directors

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NATIONAL CREDIT UNION ADMINISTRATION

FEDERAL CREDIT UNION

(A corporation chartered under the laws of the United States)

CHARTER NO. _____

NCUA 4008
1

TO NA

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# ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

*Charter No.* _____

**TO NATIONAL CREDIT UNION ADMINISTRATION:**

We, the undersigned, do hereby associate ourselves as a Federal credit union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal credit unions.

(1) The name of this credit union shall be _____

_____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

| NAME | ADDRESS | SHARES |
|---|---|---|

(4) The par value of the shares of this credit union will be as stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:



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(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS WHEREOF we[1] have hereunto subscribed our names this

day of _____, 19__.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

*Subscribed before me, an officer competent to administer oaths, at* _____
*CITY/STATE*

this _____ day of _____,

19__.

Signed _____

Title _____
*(Notary public or other competent officer)*

[1] At least seven signers, none of whom should administer the oath.

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## APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. seq.), the foregoing organization certificate and insurance of member accounts of _____ _____ Federal Credit Union are approved this _____ day of _____, 19__.

_____

ROGER W. JEPSEN
CHAIRMAN

NATIONAL CREDIT UNION ADMINISTRATION

NCUA 4009

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## REPORT OF OFFICIAL AND AGREEMENT TO SERVE

**TO: NATIONAL CREDIT UNION ADMINISTRATION**
(Type or Print)

Proposed _____ Federal Credit Union

☐ Mr. ☐ Ms.
Name
☐ Mrs. ☐ Miss _____
Last First Middle

Title of Newly Elected/Appointed Credit Union Position _____

Maiden Name (If Different From Above) _____

Address (Res.) _____
Street City State Zip Code

Phone + Area Code _____
(Residence) (Business)

Place of Birth _____ Date of Birth _____
City/State

Employer _____ Social Security Number _____

Type of Business _____

Number of years with present employer _____ Your position title _____

Education background (circle highest grade completed)

1 2 3 4 5 6 7 8 9 10 11 12
(Grade and High School)

1 2 3 4 ( )
(College)

MAJOR FIELD OF STUDY _____

Other training or experience _____

Are you willing to accept the position of trust for which you have been selected and to remain in office until such time as a qualified successor is found? ..... ☐ Yes ☐ No

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal credit union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? ..... ☐ Yes ☐ No

Estimated number of hours per month you will be able to donate as a volunteer _____.

**IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON REVERSE SIDE OF THIS FORM:**

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ..... ☐ Yes ☐ No

**To facilitate the process of obtaining a credit and background check, please provide the following:**

1. Any other names which you have used _____, and,
2. Previous address, (if your address changed over the past 2 years). _____
3. Name of Spouse _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

**CERTIFICATION AND AGREEMENT TO SERVE:**

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side of this form.

_____ _____ _____
Date Signature Witness

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**PRIVACY ACT NOTICE**

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.36 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on reverse side of form was YES:

**CRIMINAL OFFENSE:**

Nature of offense _____

_____

Date of occurrence _____ Date of conviction _____

Sentence conferred _____

_____

(Attach a separate sheet if space provided is not adequate)

**CRIMINAL OFFENSE GUIDELINES**

The Federal Credit Union Act, Subchapter II, section 205(d), requires that, "Except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust." To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage ☐ Yes ☐ No.

## APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____, 19___, by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.)

_____

_____

_____

_____

_____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully:

_____

_____

_____

_____

3. Standard financial and statistical reports as of _____, 19___, or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

a. Interest rates on loans: _____

_____

b. Charges incident to making loans which are passed on to borrowers: _____

_____

c. Maturity limits: _____

_____

_____

d. Unsecured loan limit: _____

_____

e. Secured loan limit: _____

_____

f. Types of security accepted: _____

_____

g. Requirements of amortization (Repayment requirements): _____

_____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe):

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act): _____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act.

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union: _____

We hereby authorize the National Credit Union Administration to examine our books and our records and agree to pay an examination fee in accordance with Section 701.6 of the National Credit Union Administration Rules and Regulations.

We, the undersigned _____ Chief Executive Officer and

_____ Chief Financial Officer of the _____ Credit

Union of _____, State of _____, certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectively, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____

TITLE:
(CHIEF EXECUTIVE OFFICER)

_____

TITLE:
(CHIEF FINANCIAL OFFICER)

NCUA 4401

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## NOTICE OF MEETING OF THE MEMBERS

_____ FEDERAL CREDIT UNION

_____, _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union, _____, _____ has been called and will be held at _____ on _____, 19__*, at _____ o'clock, ___ .M. for the purpose of considering and voting upon the following resolution:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to a State-chartered credit union"

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons: _____

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union: _____

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The board of directors recommends that the members approve the proposal to convert to a State charter.

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, have it postmarked no later than the date and the time announced for the meeting of the members, and mail it to the following address:_____

BY ORDER OF THE BOARD OF DIRECTORS

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

Issued _____
(Date)

NCUA 4221

**AFFIDAVIT**

**PROOF OF RESULTS OF MEMBERSHIP VOTE ON PROPOSED CONVERSION**

We, the undersigned _____
president/vice president and _____
secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____

_____, this _____ day of _____, 19___.

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____, 19___.

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## BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____, 19____, to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____, and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and complete the conversion of this credit union from a Federal to a State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date _____

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OMB No. 3133
Expiration 9-30-02

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

National Credit Union Administration
Administrative Office
1776 G Street, NW
Washington, D.C. 20456

and to: Office of Management and Budget
Paperwork Reduction Project (3133-
Washington, D.C. 20503

# INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____ Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered. _____ 19 ____
3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence, as discussed in the instructions. Schedule No. _____
4. Potential membership (total number of persons who could be served, including present members). _____
5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to Item No. 5.)

_____

_____

6. Does the credit union operate under standard bylaws provided by the State Supervisory Authority? Yes ☐ (Stop) No ☐ (Complete a.)
   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____
7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Explain fully on an attached schedule. Schedule No. _____
8. Attach a copy of the latest State supervisory authority examination report or attach a copy of the latest certified public accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.
9. Attach copies of the Balance Sheet and of the Statement of Income and Expense (or Financial and Statistical Report) for the month-end preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ . (Identify current year statement with (a) after schedule no. and previous year with (b).)
10 Reserves
   a. Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

11. Delinquent Loans and Charged-off Loans
   a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11a. Schedule No. _____ .

b. List below the requested information on delinquent loans for the last four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for same period.

| (a) *Other Delinquent Categories | (b) Delinquent Categories | Date _____ | Date _____ | Date _____ | Date _____ |
|---|---|---|---|---|---|
| | 2 mos. to less than 6 mos. | $ | $ | $ | $ |
| | 6 mos. to less than 12 mos. | $ | $ | $ | $ |
| | 12 mos. and over | $ | $ | $ | $ |
| | Totals | | | | |
| | Share Balances | $ | $ | $ | $ |
| | Loan Balances | $ | $ | $ | $ |

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end or current period).

| | 19 _____ | 19 _____ | 19 _____ | Current Yr. to Date _____ 19 ____ | *Totals Since Organization |
|---|---|---|---|---|---|
| Total Charged Off | | | | | |
| Total Recovered | | | | | |
| Net Charged Off | | | | | |
| Total of all Reserves | | | | | |

*If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities (including pending law suits or civil actions)? Yes ☐ (Complete a.) No ☐ (Stop)
a. List on a schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. _____ .

13. Do any asset accounts (other than loans to members, investments, and real estate) have actual values less than the book values shown on the Balance Sheet? Yes ☐ (Complete a.) No ☐ (Stop)
a. List on a separate schedule a description of such assets, showing at least the following information: account number, description of item, book value and actual value. Schedule No. _____ .

14. List below or on an attached schedule any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No._____ . Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

| Description of Item | Current Market Value | Current Book Value |
|---|---|---|
| _____ | $ _____ | $ _____ |
| _____ | $ _____ | $ _____ |
| _____ | $ _____ | $ _____ |

15. Individual Share and Loan Ledgers:

a. Were the totals of the trial balance tapes of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? Yes ☐ (Stop) No ☐ (Complete b.)

b. What are the differences as of the month end preceding the date of this application?

| | Shares | Loans |
|---|---|---|
| Balances in General Ledger | $ _____ | $ _____ |
| Totals of the trial balance of the individual ledgers | $ _____ | $ _____ |
| Differences | $ _____ | $ _____ |

16. Supervisory Committee:

a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee? Effective Date _____

(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts: Effective Date _____

(1) If all members' accounts have not been verified under controlled conditions during the last two years what is the supervisory committee's target date for completion of the verification program? Date _____

c. If it is necessary to complete either 16 a(1) or 16 b(1), please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17. Surety Bond. List below the credit union's surety bond coverage.

a. Name of carrier _____

b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 582 CU-1, other) _____

c. Basic amount of coverage $ _____

d. Bond premium paid to (date) _____

e. What is the amount of coverage required by State law or your bylaws? _____

f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

18. Credit Union Services

Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a schedule describing each activity in full. Schedule No. _____.

19. Does the credit union know of any adverse economic condition that is affecting or will affect its present or future operation or that of the sponsor organization? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____.

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? Yes ☐ (Complete a.) No ☐ (Stop)

a. Attach a statement describing the circumstances. Schedule No. _____.

21. Lending policies and practices:

a. Complete (on page 4) showing the present policies and practices on loans to members.

b. Complete page 5 in accordance with the instructions pertaining to item No. 21 b.

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## LENDING POLICIES AND PRACTICES

| | Maximum Loan Amount | Maximum Period of Repayment | Required Amount of Downpayment (Equity) |
|---|---|---|---|
| 1. *Credit Union Policies and Practices* | | | |
| a. Unsecured Loan Limits | | | |
| b. Secured Loan Limits | | | |
| (1) New Auto Collateral | | | |
| (2) Used Auto Collateral | | | |
| (3) Real Estate | | | |
| (a) First Mortgage | | | |
| (b) Second Mortgage | | | |
| (4) Comakers | | | |
| (5) Others (describe) | | | |
| c. Loans to Organizations | | | |
| d. Loans to Director, Officers, or Committee Members | | | |
| 2. *State Credit Union Law; Bylaws* | | | |
| a. Unsecured Loan Limits | | | |
| b. Secured Loan Limits | | | |
| c. Loans to Directors, Officers, or Committee Members | | | |

List below or on an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

## SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21 b.

| Account No. | Unpaid Loan Balance | Repayment Period (No. Months) | Status of Repayment | | Appraised Collateral Value* | Description of Collateral |
|---|---|---|---|---|---|---|
| | | | Current | Delinquent (No. Months) | | |
| | $ | | | | $ | |
| | | | | | | |
| | | | | | | |
| | | | | |

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## CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO's Organization _____
(Date of obtaining charter from State)

3. Type of organization (circle one):

a. General Partnership
b. Limited Partnership
c. Joint Ownership
d. Corporation

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

| Name - Charter Number (if FCU) | % | Name - Charter Number (if FCU) | % |
|---|---|---|---|
| a. | | | |
| b. | | | |

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

| Name - Charter Number (if FCU) | Amount | Name - Charter Number (if FCU) | Amount |
|---|---|---|---|
| a. | | | |
| b. | | | |

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by the CUSO (be as specific as possible).

_____

_____

_____

7. Comments (include all other pertinent information, if applicable, not previously discussed).

_____

_____

_____

8. Attach latest Financial and Statistical Report of CUSO, if available.

## INSTRUCTIONS FOR COMPLETION OF APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word "Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When page 1 specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

**Item No. 5:** Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

**Item No. 10: Reserves:** The term "reserve" in Exhibit A means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members. (These accounts are usually called Regular Reserve, Reserve for Bad Debts, Guarantee Reserve, Guarantee Fund, Special Reserve for Losses, and Allowance for Loan Losses.)

**Item No. 11 a:** The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principal, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

**Item No. 11 b:** the schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 months to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

**Adverse Trends:** If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

**Item No. 14:** This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principal and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks.
4. Deposits or accounts in State central credit unions.
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

**Item No. 21 b:** The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified

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below has been shown. The number of such loans to be listed will be determined as follows:

| If your credit union has the following no. of outstanding loans | You should list the following no. of the largest unpaid balances |
|---|---|
| Under 100 | 5 |
| 100 to 199 | 10 |
| 200 to 299 | 15 |
| 300 to 399 | 20 |
| 400 or more | 25 |

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Repayment" column.

Page 6: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

**TERMINATION OF INSURANCE**

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

## APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

Date _____

TO: The National Credit Union Administration Board

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____, _____
(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 701.20 and 741 of NCUA's regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal credit unions by Section 116 of the Federal Credit Union Act and Parts 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may by regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirements of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.6 of NCUA's regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

In support of this application we submit pages 1-6 and Schedules described below:

| Schedule No. | Title |
|---|---|

## CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We, further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed, or future officer, committee member or employee is indicted for such an offense.

(Signature) Presiding Officer, Board of Directors

(Print or type Presiding Officer's Name)

(Signature) Recording Officer, Board of Directors

(Print or type Recording Officer's Name)



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## APPLICATION FOR FIELD OF MEMBERSHIP CHANGE
NCUA XXX

(Attach a separate application for each group included in your request for expansion.)

1. NAME & ADDRESS OF CREDIT UNION: _____

_____

2. NAME OF FIRM/ASSOCIATION TO BE ADDED: _____

_____
(If Association, include Charter/Bylaws.)

DESCRIPTION OF BUSINESS: _____

ADDRESS: _____

_____

3. TOTAL NUMBER OF POTENTIAL EMPLOYEES/MEMBERS TO BE ADDED:

_____

SPONSOR'S HEADQUARTERS LOCATION: _____

WORK AND/OR PAID FROM LOCATION. ALSO, INDICATE THE NUMBER OF EMPLOYEES AT EACH LOCATION:

_____

_____

_____

4. DISTANCE IN MILES TO THE NEAREST CREDIT UNION OFFICE: _____

INDICATE NAME OF CLOSEST BRANCH: _____

5. IS THE GROUP ELIGIBLE FOR MEMBERSHIP IN ANY OTHER CREDIT UNION?
NO_____ YES_____

IF YES, GIVE NAME AND LOCATION OF THE OVERLAPPED CREDIT UNION. ALSO INCLUDE A LETTER OF RELEASE FROM THE OVERLAPPED CREDIT UNION. _____

6. ATTACH A COPY OF THE CREDIT UNION'S MOST CURRENT BALANCE SHEET AND YEAR-TO-DATE INCOME STATEMENT. _____

(NOTE: IF THIS IS PART OF A MULTIPLE GROUP REQUEST FOR EXPANSION, ENCLOSE ONLY ONE SET OF FINANCIAL STATEMENTS.)

(WHERE THE EXPANSION REQUEST IS BASED ON A BRANCH OFFICE, ATTACH FINANCIAL STATEMENTS FOR THAT BRANCH ALSO.)

7. ATTACH A LETTER, ON LETTERHEAD STATIONERY, FROM THE GROUP REQUESTING CREDIT UNION SERVICE. _____

8. IF THIS REQUEST FOR EXPANSION OR REDEFINITION AMENDMENT IS A RESULT OF A REORGANIZATION OF A SPONSORING GROUP, ENCLOSE A LETTER FROM THE SPONSORING GROUP WHICH EXPLAINS THE REORGANIZATION.

9. OTHER COMMENTS.

I CERTIFY THAT THIS EXPANSION IS NOT BASED ON THE LOCATION OF A SHARED SERVICE CENTER OR SHARE FACILITY.

NAME AND TITLE _____
(e.g., Credit Union President/CEO-Please print or type)

SIGNATURE _____ _____
(Date)

BILLING CODE 7535-01-C

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**Appendix F—Use of Outside Agents To Solicit Field of Membership Expansions**

*Purpose*

This appendix addresses the National Credit Union Administration's (NCUA) experience with credit unions and arrangements whereby the agents outside the organization of the credit union solicit credit union membership in conjunction with the sale of products or services. This section also provides guidelines for these arrangements.

While these guidelines are not mandated by federal law or regulation, they do represent what the NCUA considers to be safe and sound policies and procedures to protect the credit union's assets. Since state laws vary, the guidance may not address every area. Thus, each credit union considering such ventures should obtain a written legal opinion from its counsel, as well as financial counseling from its normal sources.

*Background*

As credit unions continue to grow and expand their fields of membership to select employee groups, there has been an increased interest by vendors in mutually beneficial relationships. Generally, such arrangements operate as follows:

- The vendor contacts select employee group sponsors providing information on the credit union and the insurance or other product to be offered.
- The vendor assists the sponsor in requesting inclusion in the credit union's field of membership.
- After the field of membership is approved by NCUA or the state supervisor, the vendor arranges to meet with employees.
- The vendor represents the credit union to the employees and enrolls them into membership in accordance with appropriate laws, regulations, and bylaws.
- The vendor explains the products or services being marketed and enrolls the employee in a program or plan. In the case of insurance plans, policies are typically paid by periodic installments, and frequently in one lump sum.
- The vendor arranges for payroll deductions to the credit union. If the employee has an insurance policy or some other plan with periodic installments, generally, the credit union's deduction is increased and arrangements are made for the credit union to forward the appropriate amount to the vendor's company.

These arrangements have been beneficial to some credit unions and vendors. The credit union receives a service—solicitation of members—free of charge. Membership increases and the credit union grows. The vendor has a marketing tool to complement its marketing program. Additionally, in the case of insurance vendors, if the credit union distributes the premiums or other payments directly to the vendor's company, the vendor's paperwork is greatly reduced.

**Safety and soundness issues**

NCUA's experience in these arrangements has shown that potential risk to the credit union exists unless prior planning and internal controls are in place. NCUA has liquidated or taken administrative action in a number of credit unions in recent years when these controls were absent. Some unsafe and unsound practices are described below:

- The credit union did not investigate the vendor's or the vendor's company's reputation, financial soundness, or the authority to do business in the state where the credit union operated. In these cases where NCUA liquidated the credit unions, the companies or firms were of the fly-by-night variety, out to obtain quick profits in short periods of time. Dealing with well established and reputable firms is important if problems arise due to member complaints. Additionally, in the event of suits against the company or firm, adequate financial standing can often mitigate the credit union's losses.
- The credit union did not review the programs or products offered to "its" new members. In several instances, the policies were life insurance policies or annuity contracts which called for annual premiums (normally paid by installments) over long periods of time—20 to 30 years. While normal for such contracts, they generally called for limited reimbursement in the event of cancellation, for instance 20 percent reimbursement, if canceled before one year, 45 percent, two years, 55 percent, three years, etc. Many members who enrolled in these contracts did not understand the terms. When they subsequently canceled the policy and received only a 20 percent return, they held the credit union responsible. While the credit union had no legal obligation, it presented public relation problems which could have been avoided.
- The credit union was unfamiliar with the sales techniques used by the vendor to enroll members into the credit union and in the vendor's programs. In the liquidated credit union mentioned above, unethical methods were used to sign uneducated members. It was not uncommon to have them just sign blank forms which included a membership card, payroll deduction authorization, insurance policy, and a loan application and the first year's premium or other payment.
- The credit union did not provide written instructions to the vendor on procedures to enroll members. Thus the vendor contracted groups which the credit union was ill-equipped to serve.
- The credit union authorized the vendor to approve loans enmasse to cover first year fees or insurance premiums. NCUA considers this an unsafe and unsound practice which will result in appropriate administrative action. In several liquidated credit unions which had arrangements with insurance vendors, employees were enrolled in the credit union, received a loan to pay the first year's premium and authorized payroll deductions. The reason the insurance agency proceeded in this manner was to be reimbursed immediately by the carrier for new policies. Such reimbursement ranged from 85 to 105 percent of the first year's premium. Thus an agency that enrolled just 100 new members for $500 per year insurance contracts could have received $42,500 to $52,500 in fees. This desire to obtain reimbursement clouded the vendor's objectivity and resulted in members having unwanted policies, which they generally canceled. At a minimum, since the policy holder received only 20 percent return on the policy, the credit union had a public relations problem collecting its exposed 80 percent. At the worst, the credit union had a loss loan.
- The credit union failed to obtain proper payroll deduction authorizations and authority to remit fees or insurance premiums to the company. In several cases, payroll deduction for all members, even those who chose not to enroll in the vendor's program, were sent to the credit union. This procedure exposed the credit union to misappropriation of funds by the company, to a potential surety problem, and to an uninsured status until the funds were received in the credit union.
- In another case, a vendor contracted with a credit union to assist credit union members select, locate, and negotiate the purchase or lease of automobiles. Members paid a fee to the vendor during the closing transactions. The vendor also provided marketing assistance to attract select employee groups into the credit union. The vendor was alleged to have falsified and concealed material facts and to have aided prospective credit union members in falsifying credit information to the credit union in attempts to obtain credit. In some cases the prospective member obtained possession of the automobile prior to being accepted as a member and in other cases prior to being approved

for the financing. In many instances, the prospective credit union member was pressured to solicit his employer for inclusion into the credit union's field of membership. In certain of these instances, the employer group had existing credit union affiliation with another credit union. In certain other instances, the vendor indicated the prospective member was affiliated with a legitimate group in the credit union's field of membership, when, in fact, the person was not employed by the group. The vendor failed to properly complete required documentation for loans and lease agreements. In some cases the vendor indicated excessively high annual mileage limits in lease agreements.

*Recommended Investigative Procedures*

Before entering into an agreement with a vendor acting as the credit union's agent in soliciting membership, a federally insured credit union should thoroughly investigate the impact of this action on its financial operations and condition; determine its legal liabilities; clearly define its moral responsibilities; and assure proper control of these activities. The following steps are recommended:

- Thoroughly investigate the financial condition of all corporations, partnerships or other entities involved in the activities. Obtain and review financial statements and credit reports, such as Dun and Bradstreet, on each entity. Consider the need for appropriate bonding by each company.
- Review the organizational structure and reputation of each entity. Included in the review should be a certification that each entity is authorized to do business in the state where the credit union is authorized to do business.
- Review and approve the contracts or policies to be offered. Since members may hold the credit union morally responsible for problems which may occur, the officials should consider the impact of each contract or policy on its public relations with members.
- Determine through a written legal opinion that all forms, documents and procedures used by the credit union to obtain membership, payroll deductions or to transfer funds to a vendor are legal and protect the credit union.
- Develop cash flow and budget projections showing the effect of increased membership on the credit union's financial condition and ability to serve new members.
- Develop procedures to monitor the activities of vendors as discussed below under Agreement.
- Develop brochures and handouts to be presented to potential members. Among these should be a disclaimer that the credit union does not endorse the products or services and that the vendor can make no commitments regarding membership approval or the granting of loans. Other materials to be presented are discretionary by the credit union.
- Obtain confirmation from surety that such activities are bondable.

*Agreements*

All arrangements with a vendor should be in writing and reviewed by credit union legal counsel. Such agreements should include, but not be limited to, the following:

- Scope of the vendor's authority to contact sponsors, such as limits on sponsor's assets, number of employees/potential members, financial condition, organizational structure, geographical location, and sponsor stability in the area.
- Procedures for the vendor to follow in contacting sponsors. These should require the vendor to present any product or service as separate and distinct from credit union membership and to state that inclusion in the field of membership is subject to regulatory approval. There should be absolute indication that the credit union is not endorsing any products or services marketed by the vendor.
- Procedures for vendors to follow once a sponsor is included in the credit union's field of membership.
- Agreement that products or services to be offered and materials, brochures and handouts to be presented by the vendor are to be approved, in advance, by the credit union.
- Agreement that all approved brochures and handouts of the credit union will distributed.
- Agreement that credit union representatives may accompany the vendor on contacts with sponsors and on membership enrollments.
- Agreement that the credit union may disqualify any vendor or vendor's representative from representing the credit union. Generally such an agreement will include a preliminary approval process as well as monitoring standards to include necessary credit union training.
- Any other standard contractual agreements necessary to contract law.

*Summary*

- Credit unions and vendors can engage in mutually beneficial contractual agreements provided that adequate planning and internal controls are instituted. Credit unions engaging in these activities should plan, direct, and control these activities in a safe and sound manner.

**Appendix G—Information Needed To Support Application for Community Federal Credit Union Charter**

A community credit union serves all persons who either reside or work in a well-defined neighborhood, community or rural district. The area chosen must be reasonably compact. Such compactness provides for a greater common bond among the residents. As population levels increase, the extent of the common bond tends to decrease. Therefore, the area chosen must be the most compact area practical from both a common bond and economic standpoint.

Information should be provided to support that the area chosen represents one well-defined area, separate and apart from the immediate surrounding areas and that the persons who reside and work in the area have the necessary commonalty of interests and commingling to provide for a sufficient common bond.

This may not be possible in all cases, especially for urban areas. Some items to be considered are as follows:

- Political jurisdictions
- Major trade areas (shopping patterns)
- Traffic flows
- Shared/common facilities (educational, medical, police and fire protection, water, etc.)
- Organizations/clubs whose membership is made up exclusively of persons within the area
- Newspapers or other periodicals published for and about the area
- Census tracts
- Common characteristics and background of residents (income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.)
- History of area
- In general, what causes the chosen area and its residents to be separate and apart from the immediate surrounding areas and residents—some examples are old, well established ethnic neighborhoods, planned communities and small/rural towns

Information to support a need for a community credit union includes the following:

- Number of credit unions presently in area and approximate percentage of residents who currently have credit union service available
- Number of other financial institutions (banks, savings and loan associations) that service the area
- Average/median income level of residents

Written documentation (letter, pledges, petitions) reflecting support for the application for or the conversion to a community credit union is as follows:

- For the residents of the area
- Approximate number contacted
- Number in favor of the credit union
- Number against the credit union
- Number who will join the credit union
- Number who have pledged initial and/or systematic savings and amount of pledges
- For the employers
- Number of area employers and numbers of employees
- Number contacted
- Number in favor of the credit union
- Number against the credit union
- Number willing to provide payroll deductions to the credit union
- Number willing to provide other type(s) of support to the credit union
- For organizations (including churches)
- Number in areas and number of members
- Number contacted
- Number in favor of the credit union
- Number against the credit union
- Number willing to provide some type of support to the credit union, i.e., advertising facilities, etc.
- Letters of support for area civic leaders

**Business Plan**

Community credit unions are frequently more susceptible to competition from other local financial institutions and generally do not have substantial support from any single sponsoring company or association. Also, the lack of payroll deduction creates special challenges in the development of savings promotion programs and in the collection of loans. Therefore, it is essential for the group to develop a detailed and practical business plan for at least the first three years of operation. The business plan should contain, but not necessarily be limited to, the following:

- Analysis of market area—geographic, demographic, employment, income, housing and economic data
- Service/market strategy—financial and other services to be provided, new member/share/loan promotion policies and procedures and income generation strategy
- Organizational/management plan—qualification and planned training of officials/employees, operating facilities to include office space/equipment and supplies, accounting system, safeguarding of assets, insurance coverage, etc.
- Financial plan—sources and applications of funds statements and proforma balance sheet and income/expense statements.

**Appendix H—Trade Associations**

**Note:** Addresses and phone numbers will be updated at the time the Interpretive Ruling and Policy Statement is finalized.

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Part III

# Department of the Interior

**Fish and Wildlife Service**
**50 CFR Part 17**
**Endangered and Threatened Wildlife and Plants; Saimaa et al.; Rule**

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC01

## Endangered and Threatened Wildlife and Plants; Listing of the Saimaa Seal as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is adding the Saimaa seal (*Phoca hispida saimensis*) to the List of Endangered and Threatened Wildlife. This measure, required by the Endangered and aThreatened Wildlife. This measure, required by the Endangered Species Act of 1973 (Act), corresponds with a determination of 1endangered status for this species, as defined under the Act, by the National Marine Fisheries Service, which has jurisdiction for pinniped species (except walrus).

EFFECTIVE DATE: June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Jon Fay, Acting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240 (703/358–2171).

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and in accordance with Reorganization Plan No. 4 of 1970, the National Marine Fisheries Services (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the Saimaa seal. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

NMFS published its determination of endangered status for the Saimaa seal on May 6, 1993 (58 FR 26920–26921). Accordingly, the FWS is now adding it to the List of Endangered and Threatened Wildlife as an endangered species. This addition is effective as of June 7, 1993, as indicated in the NMFS's determination. Because this action of the FWS is nondiscretionary, and in view of the public comment period provided by NMFS on the proposed listing (December 18, 1992, 57 FR 60162), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

### PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife

* * * * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | * | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | * | |
| Seal, Saimaa ..... | *Phoca hispida saimensis.* | Finland (Lake Saimaa). | Entire ..... | E | 508 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: July 10, 1993.
**Richard N. Smith,**
*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93-17932 Filed 7-27-93; 8:45 am]
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**50 CFR Part 17**

**RIN 1018-AB52**

## Endangered and Threatened Wildlife and Plants; The Plant Eutrema penlandii (Penland Alpine Fen Mustard) Determined to be a Threatened Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service determines that *Eutrema penlandii* (Penland alpine fen mustard) is a threatened species under the Endangered Species Act (Act) of 1973, as amended. Five to fourteen small populations of the plant are distributed in a 40-km (25 mi) stretch of the Continental Divide in central Colorado. Total abundance of the species is estimated at about 10,000 to 16,400 plants that grow on about 200 hectares (about 500 acres) of alpine tundra. The species grows on southerly to easterly facing slopes above 3,703 m (12,150 ft) in elevation. Its habitat is restricted to wetlands that are irrigated by melting snowfields. This wetland habitat is fragile and sensitive to watershed alterations that divert flows of surface water. Direct impacts to plants and habitats occur from mining, off-road vehicles, and other activities of man. Federal land is intermingled with private land (patented mining claims) in areas where *E. penlandii* grows, but the largest populations, about 80 percent of the plants, are on public land. Listing *E. penlandii* as threatened implements the Federal protection and recovery provisions provided by the Act.

**EFFECTIVE DATE:** August 12, 1993.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Colorado State Office, 730 Simms Street, room 290, Golden, Colorado 80401, or Western Colorado Suboffice, 529-25½ Road, suite B-113, Grand Junction, Colorado 81505-6199.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lucy A. Jordan, Botanist, at the above Grand Junction address (303/243-2778).

**SUPPLEMENTARY INFORMATION:**

### Background

The Penland alpine fen mustard has been found in 14 different areas (Schwendinger et al. 1991). It was first collected in 1935 at Hoosier Ridge in the Mosquito Range, Park County, Colorado, by the late Colorado College professor C.W.T. Penland. He recollected it in the same area in 1949 (Rollins 1950; Johnson 1981). The plant was described by R. Rollins (1950), an expert on species in the mustard family. The type specimen was found below a snowbank on Hoosier Ridge, near Hoosier Pass (Johnson 1981; Weber and Shushan 1955). This area contains about 2,000 plants, and it is one of three populations with more than 1,000 plants. The other 11 areas identified by Schwendinger et al. (1991) have fewer than 900 plants each (Table 1).

TABLE 1.—NAME AND SIZES OF EXTANT POPULATIONS OF EUTREMA PENLANDII (FROM JOHNSTON 1991). ( ) = YEAR DISCOVERED

| Population | Population name and year discovered | Number of plants |
|---|---|---|
| 1 | Hoosier Ridge (1935). | 2,000 |
| 2 | Pennsylvania Creek (1985). | 200 |
| 3 | Mount Silverheels (1988). | 100 |
| 4 | Cameron Amphitheater (1988). | 700 |
| 5 | Mosquito Pass-London Mt. (1987). | 3,250 |
| 6 | Mount Buckskin (1988). | 850 |
| 7 | Cooney Lake (1988). | 200 |
| 8 | Hilltop Mine (1987) | 750 |
| 9 | Kite Lake (1991) | 200 |
| 10 | Mount Evans (1991). | 6,900 |
| 11 | Sacramento Creek (1991). | 500 |
| 12 | Dauntless Mine (1991). | 200 |
| 13 | Peerless Mt.-Horseshoe (1991). | 510 |
| 14 | Loveland Mountain (1991). | unknown |

*Eutrema penlandii* is a small, herbaceous perennial plant that grows to 3–8 cm (1.2–3.2 in) in height. It is a shiny-green glabrous (hairless) plant with long-petioled (long-stemmed), heart-shaped basal leaves that grow up to 35 mm (1.4 in) long. It also has clusters of small, white flowers atop the stems that grow 2–3.5 mm (about 0.1 in) in length. The generic name refers to its small and rounded hollow fruits that are 1.5 mm (0.06 in) wide, and 4–8 mm (0.2–0.3 in) long (Johnston et al. 1981; Rollins 1950).

This taxon is closely related to *Eutrema edwardsii*, a circumboreal (inhabiting northern regions of North America and Eurasia) species in the Arctic whose range also extends into the mountains of central Asia (Weber and Shashan 1955). Rollins (1982) recognized *E. penlandii* at the species level, but Weber (1987) treated it as a subspecies of *E. edwardsii* (*E. edwardsii* ssp. *penlandii*).

The Fish and Wildlife Service (Service) recognizes *E. penlandii* as a species. If it is later recognized as a subspecies of *E. edwardsii*, its designation as a threatened species will remain valid because section 3(15) of the Endangered Species Act (Act) of 1973, as amended, (16 U.S.C. 1531 *et seq.*) permits the listing of subspecies.

A plant of Colorado alpine tundra, *E. penlandii* grows in a harsh environment. Alpine winters in Colorado may last 5 months or more, and summer temperatures are usually below 16° C (60° F). Growing seasons may only last from 0 to 70 days per year (Colorado Native Plant Society 1989). Thus, in its native habitat, the plant grows at the limits of most plant adaptations due to low temperatures and short growing seasons. Freezing and thawing soil (solifluction), drying winds, and windblown snow and ice crystals also result in low plant productivity on the tundra (Zwinger and Williard 1972).

*E. penlandii* is habitat-specific, growing only in oligotrophic, rheotrophic alpine marshes (Weber and Shushan 1955). It grows in a macroclimate of long, cold, wet winters and cool, windy summers, and a microclimate of relatively protected, wet, springy bogs (Johnston et al. 1981). Major components of its microenvironment include moss-covered peat fens, perennial subirrigation, and high elevation (above 3,703 m; 12,150 ft). Peat mats on which it grows form on small, flat-to-gently sloping benches in leeward cirques (i.e., steep-walled rounded glacial valleys). Water required for the development and sustenance of these peat mats comes from snowfields which persist through the summer. Conditions for maintaining these persistent snowfields exist along this east-west trending portion of the Continental Divide, where the plant is found on slopes that vary from southerly to easterly (Schwendinger et al. 1991). Most portions of the Continental Divide do not support the plant, presumably due to a north-south

trend which exposes slopes to blowing and snow-melting winds (Weber 1965; Naumann 1988).

*Eutrema penlandii* is found on deep organic soils in moist areas that are usually adjacent to clear, running water from snowmelt. Johnston et al. (1981) noted a relationship between the emergence of *E. penlandii* and snowmelt, i.e., that plant emergence at a site depended on the availability and timing of sufficient water to continuously moisten the mosses in which the plants were rooted, but not so much water as to flood them. Presumably, it is this phenomenon that, in part, affects standing crops during a particular year. Johnston et al. (1981) also stated that flowering was apparently subject to this same control.

The biogeography and phylogenetic history of *E. penlandii is unusual (Rollins 1982). As the only representative of its genus in the lower 48 States, it is an extremely disjunct species. Its range is separated by more than 1,600 km (1,000 mi) from its nearest relative, E. edwardsii,* an Arctic circumboreal species. All other species of *Eutrema* occur in Asia. This biogeographic pattern (i.e., disjunct species in central Asia and the interior of western North America) could have been caused by one of several possible historic conditions. *E. penlandii* populations may be glacial relicts from the Pleistocene epoch that migrated south of the Arctic with glaciation and were left stranded as the glaciers retreated. Alternatively, populations of *E. penlandii* may be relicts of a more widespread Tertiary flora (Weber 1987). These scenarios are supported by the existence of other rare alpine taxa with Arctic affinities that also occur in the Mosquito Range, either as separate species (e.g., *Saussurea weberi*) or disjunct populations of species (e.g., *Armeria scabra* ssp. *sibirica, Braya glabella,* and *Braya humilis;* Weber 1987).

As previously indicated, Penland discovered the first stand of *E. penlandii* in 1935. He recollected it in 1949 (Rollins 1950). This population was sampled again by W.A. Weber and others in 1951 and 1959. Weber discovered two new populations in 1967 (Johnston et al. 1981). The two new populations were located south of Hoosier Ridge, one at Mosquito Pass and London Mountain Saddle, and the other above Hilltop Mine on the slopes of Mount Sherman (Naumann 1988) in the Four Mile Creek cirque (between Mount Sheridan and Mount Sherman). Johnston et al. (1981) found and mapped all three populations within 4 km (2.5 mi) of the Continental Divide.

In addition to the three populations above, Johnston et al. (1981) reported nine other collections (in 1977, 1978, and 1980), which included five new sightings of the plant. Naumann (1988) revised and expanded Johnston et al. (1981) and reported sightings in eight extant populations (in 1985 and 1988). These sightings included five new populations of *E. penlandii.*

Studies by Schwendinger et al. (1991) and Kelso et al. (1991) further clarified the distribution and habitat preferences of *E. penlandii.* Schwendinger et al. (1991) reported six additional populations where *E. penlandii* previously had not been documented. They also reported extensions of four of the eight populations described by Naumann (1988). Schwendinger et al. (1991) reported seven new stands (subpopulations) in areas where the species previously had been known to occur and 16 more at new sites.

Johnston (1991) summarized his earlier findings and those of Naumann (1988) and Schwendinger et al. (1991) to report the total number of *E. penlandii* populations as 14. This total includes 29 distinct stands, with a total number of individuals estimated at about 16,400 (Table 2). All of these discoveries are within the original 40-km (25-mi) range of the species, and Service biologists estimate that the area actually occupied by *E. penlandii* plants is about 200 hectares (about 500 acres).

TABLE 2.—SIZE AND LANDOWNERSHIP STATUS OF KNOWN EUTREMA PENLANDII POPULATIONS AND SUBPOPULATIONS (JOHNSTON 1991; SCHWENDINGER 1991). (NO.=NUMBER; USFS=U.S. FOREST SERVICE; BLM=BUREAU OF LAND MANAGEMENT; PAT=PATENTED MINING CLAIMS; PPAT=PRESUMED PATENTED BUT NOT SURVEYED)

| Population | Subpopulation | No. of plants | Federal | State | Private |
|---|---|---|---|---|---|
| 1 | | 2,000 | USFS | | |
| 2 | | 200 | | | PAT |
| 3 | | 100 | USFS | | |
| 4 | A | 500 | | | PAT |
| | B | 100 | | | PAT |
| | C | 100 | USFS | | |
| 5 | A–D | 2,000 | BLM | | |
| | E | 1,000 | | | PPAT |
| | F | 200 | BLM | | |
| | G | 50 | | | PPAT |
| 6 | A–B | 50 | USFS | | PAT |
| | C | 500 | | | PAT |
| | D | 300 | USFS | | |
| 7 | | 200 | USFS | CO | |
| 8 | A–C | 750 | | | PAT |
| 9 | | 200 | USFS | | |
| 10 | A–G | 5,000 | BLM | | |
| | H | 1,800 | BLM | | |
| | I | 100 | BLM | | |
| 11 | | 500 | BLM[1] | | |
| 12 | | 200 | | | PAT |
| 13 | A | 10 | | | PAT |
| | B | 100 | | | PPAT |
| | C | 500 | USFS | | |
| 14 | | <100 | USFS | | |

[1] Landownership uncertain.

Federal and private land is intermingled in the alpine areas where *E. penlandii* is found, and exact boundaries often have not been determined on the ground. Most of the private land was once Federal land that was converted to patented mining claims under provisions of the General Mining Law of 1872.

The known elevational zone occupied by *E. penlandii* has been extended by Schwendinger et al. (1991), who reported *E. penlandii* populations at 3,703 m (12,150 ft) in elevation. This lowered its known growth zone about 100 m (328 ft). However, all *E. penlandii* plants are restricted to the Mosquito Range and recent reconnaissance of potential habitat in Summit, Gunnison, Chaffee, and Clear Creek Counties in Colorado, and in the Wind River Range in Wyoming failed to find *E. penlandii* (Schwendinger et al. 1991; Walter Fertig, Rocky Mountain Herbarium, pers. comm., 1991). Previous searches by other botanists also failed to locate *E. penlandii* outside of the Mosquito Range.

Federal action involving *E. penlandii* began in 1973 with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27847) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and of its intention thereby to review the status of those plants. *E. penlandii* was included for review as endangered in the July 1, 1975 petition.

In 1976, the Service proposed *E. penlandii* for endangered status, along with 1,700 other plant species (41 FR 24535), but this proposal was withdrawn in 1979 because a final rule had not been prepared within the time limits required under the 1978 amendments to the Act. On December 15, 1980 (45 FR 82485), the Service included the plant as a category 2 species in an updated notice reviewing native plants under consideration for classification as threatened or endangered. Category 2 consists of taxa for which there is some evidence of vulnerability, but for which there was not enough data to support listing proposals at that time.

Section 4(b)(3)(B) of the Act, as amended in 1982, required the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the 1982 amendments further required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *E. penlandii*, were treated as being newly petitioned on October 13, 1982.

On November 28, 1983 (48 FR 53665), the Service changed *E. penlandii* from Category 2 to Category 3C based on recommendations from Johnston et al. (1981). Category 3C consists of taxa that are no longer being considered for listing because they are more abundant and/or widespread than previously thought. In a notice published on January 24, 1984 (49 FR 2485), the Service announced a "not warranted" finding for listing *E. penlandii* due to its reclassification to Category 3C. This finding terminated the need for 1-year petition findings on the species. *E. penlandii* remained as a Category 3C species in the September 27, 1985, Notice of Review (50 FR 39552).

In a 1985–1986 reconnaissance survey, O'Kane (1988) found one new, small population of *E. penlandii* consisting of 200 plants on a 0.4-hectare (1-acre) plot at Pennsylvania Creek. However, he searched six sites that were previously occupied by the plant and was able to locate the plant on only two of these (O'Kane 1988). He observed ditching associated with gold mining operations and expressed concern that these operations could disrupt the hydrologic regime of peat fens and threaten the plant by desiccating its habitat.

In 1988, the Service funded a new status survey and report under a Section 6 Cooperative Agreement with the Colorado Natural Areas Program. Only four new populations were found during the 1988 status survey. Each consisted of about 0.4–0.8 hectares (1–2 acres) and all were within the previously documented range. Total numbers estimated for eight populations of the Penland alpine fen mustard in 1988 were 5,200 individuals from 25 hectares (62 acres; Naumann 1988). No plants were found in two previously known locations, one at London Mountain Saddle below Mosquito Pass and the other at the Dauntless Mine site below Mount Sherman. Desiccating effects of ditching from off-road vehicle ruts and mining activities were observed at several of the populations. For these reasons, Naumann (1988) recommended that *E. penlandii* be returned to the candidate list. On February 21, 1990, it was added to the 1990 Notice of Review (55 FR 6205) as a Category 1 candidate species, a species for which the Service has substantial information to support a proposal to list as threatened or endangered.

*Eutrema penlandii* was proposed for listing as a threatened species on October 15, 1990 (55 FR 41725). All interested parties were requested to submit factual reports or information that might contribute to the development of a final rule.

During the public comment period associated with the listing proposal, the Alma London Joint Venture, a mining company which has done geological mapping in the Mosquito Range, disagreed with the Service's summary of habitat requirements for *E. penlandii*, particularly with respect to reports that it required calcareous substrate for growth. The Service had based its determination that the plant needed calcareous substrates on its co-occurrence with calciphiles (plants that require calcareous substrates), and it had stratified its search for potential *E. penlandii* habitat by looking for calcareous substrates.

The mining company, based on their geologic mapping, stated that several sites occupied by the plant did not occur in areas with significant amounts of carbonate rock fragments. They suggested that new plants might be found if searches were broadened to include noncalcareous substrates. If so, they believed that a broadened search might show the species to be too common to qualify for listing. They requested a 6-month extension before a final decision was made on the listing to allow them to look for *E. penlandii* in additional areas. The company developed a 1991 study plan to search about 50 additional areas in the Mosquito and Sawatch (the next mountains to the west) ranges where other rare alpine plants occur. Alma London Joint Venture also believed the proposed rule overstated acid mine drainage as a threat to the plant.

The Service, the Colorado Natural Areas Program, and the mining company agreed that the plant's substrate preferences should be further evaluated. The Service then decided that substantial disagreement existed among scientists regarding interpretation of available data and that a 6-month extension would be appropriate to resolve habitat preference and distributional questions. The Service also worked with Colorado College in a study to:

(1) Determine pH (acidity) of *E. penlandii* habitat and

(2) Examine exchangeable calcium in soils where *E. penlandii* grows.

To allow time to resolve various issues, the Service published a notice of a 6-month extension on October 28,

1991 (56 FR 55487), extending the listing deadline to April 15, 1992. A 30-day comment period was granted from October 28, 1991, to November 27, 1991.

Alma American Mining Corporation (Schwendinger et al. 1991) and Colorado College (Kelso et al. 1991) prepared and submitted reports to the Service for use in the final listing decision. These reports were of interest to others, and numerous requests were received to extend the comment period to allow review and comment on them. The Service extended the comment period until February 7, 1992, an additional 45 days. Notice of reopening the comment period was published December 24, 1991 (56 FR 66614). Results from the two reports are presented and discussed in this rule.

## Summary of Comments and Recommendations

Seven comments were received during the initial comment period. Five of these were in support of the proposed listing. These comments were provided by one State agency, one Federal agency, and three professional botanists (from a botanical garden, a plant conservation center, and a university, respectively). The other two comments were received from a mining company and opposed listing. One comment from the company requested a public hearing, but indicated that this request would be withdrawn if further studies were agreed to. The other comment from the company questioned some of the information used to determine the status of the species and suggested that further listing action be delayed so that additional studies could be conducted.

Subsequent to the initial comment period, several letters were exchanged between the Service, the mining company, and a private conservation organization. These letters discussed the purpose and objectives of proposed studies, and consequences that this delay in the listing process might have on the species.

Notice of the availability of the two 1991 study reports and a solicitation for comments were sent to appropriate State and Federal agencies, scientific organizations, and other interested parties. Fifteen written and three oral comments were received (one individual responded both in writing and orally, and one group responded twice in writing). Comments were received from Federal and State agencies (7), local government (1), botanical gardens (1), universities (3), and private firms (6). Fifteen comments were in support of listing *E. penlandii* as threatened, one was neutral, and two comments from one group opposed the listing.

Written comments and oral statements received during the comment period are addressed in the following summary. Comments of a similar nature or point are grouped into general issues. These issues and the Service's response to each are discussed below.

*Issue 1:* Is *Eutrema penlandii* rare enough to warrant listing as threatened?

a. Comments claiming *Eutrema penlandii* is not rare

The sponsors (Alma Mining Company) and authors (Schwendinger et al. 1991) of a 1991 study of the distribution and habitat preferences of *E. penlandii* pointed out that they found its habitat specificity was broader than originally thought, i.e., that *E. penlandii* does not appear to require calcareous substrates as suggested by others. They stated that more potential habitat may exist than previously estimated and that prior searches had been inappropriately designed. They also noted that brief but intense searches by trained amateurs during the 1991 survey succeeded in expanding population sizes and numbers, leading them to conclude that the species is not uncommon in appropriate habitats. They speculated that similar efforts in other mountain ranges may well result in the same success. They concluded that the species is not as rare as previously thought and not sufficiently rare to qualify as a threatened species.

b. Comments claiming *Eutrema penlandii* is rare

Regarding the 1991 survey (Schwendinger et al. 1991) and comments provided by its proponents, several botanists noted that *E. penlandii* is diminutive, difficult to identify in the field, and that it can often be confused with similar-looking species that grow with it. They expressed concern that voucher specimens were collected at only two locations and that photographs were taken as documentation in the study in lieu of taking voucher specimens, particularly because most of the survey workers were amateurs and the principal investigators did not visit every site.

Several commenters disagreed with the estimates given by Schwendinger et al. (1991). One biologist commented that the number of *E. penlandii* at one location was overestimated by 1991 survey workers, and he estimated the total number of plants to be about 10,000 rather than the 16,400 reported by Schwendinger et al. (1991). Another group of biologists found significant discrepancies between numbers in populations that they counted in the same year that counts were made by Schwendinger et al. (1991). They suggested caution when using estimated numbers and that numbers provided by Schwendinger et al. (1991) be taken as possible overestimations. Another commenter stated that the delineation of discrete populations was arbitrary and not based on sufficient examination of biogeographical conditions and ecological parameters. This commenter stated that just as defensible a case could be made for 5 populations, or 2 major populations using existing data rather than the 14 populations described by the mining company and its contractors.

Some reviewers were concerned that the procedure used to estimate population sizes was not described in the study report. All professional botanists were pleased that additional plants were found. However, they pointed out that even if the estimate of 16,400 individuals were accurate, this should not be construed as a large population or sufficient for long-term viability of this species. Furthermore, populations were generally quite small in numbers (most numbering less than 900 individuals) and small areas of habitat were occupied. Thus, they were considered vulnerable to extirpation from any number of potential natural or human-caused threats.

Reviewers stated that *E. penlandii* requires special habitat conditions, including clear, running water from melting, persistent snowfields. These habitat conditions are restricted in the Mosquito Range (and elsewhere), and they serve to limit the number and size of the plant populations and their potential distribution. Furthermore, these habitat conditions would be virtually impossible to artificially produce should the species require propagation to bolster the declining populations. Whether or not the plant is limited by calcareous substrates, reviewers maintained that the species is highly specialized and restricted to sensitive and vulnerable habitats. Therefore, it was judged important to protect *E. penlandii* populations by listing the plant.

Some reviewers considered it significant that, even though additional plants and populations were discovered, 1991 surveys did not extend the range of *E. penlandii*. Small stands of the plant were found scattered in sensitive habitats in high elevations of the east-west trending portion of the Mosquito Range. Reviewers believed that this relict plant, a rare and disjunct species, should be considered an important evolutionary resource and that its

distribution pattern mandates preserving the full genetic complement of the species (i.e., all the populations). Those supporting listing indicated that loss of even a single population could compromise the ability of the species to adapt to changing conditions or threats.

Reviewers repeated that several trained botanists had searched suitable habitats in many mountain ranges over many years without discovering additional *E. penlandii* populations. Therefore, despite the apparent success of the 1991 study in locating additional plants and expanding the number of populations within the Mosquito Range, it is unlikely that other populations will be found outside this range. Searches by botanists were not limited to known calcareous substrates, and thus their surveys were not biased.

*Service Response*

The Service finds that *E. penlandii* is a rare species occupying small areas of specialized habitat within a limited range. Despite years of search, its documented distribution remains restricted to the Mosquito Range. Computations by Service biologists and others from survey maps indicate that most subpopulations identified in Table 2 occur in tracts of a few hectares (2.47 acres) or less in size, and the total area of all documented, occupied habitat is about 200 hectares (500 acres).

There is disagreement regarding the total population size for *E. penlandii*. Three field botanists have estimated the numbers at 5,200, 10,000, and 16,400, respectively. The most recent estimates are 10,000 and 16,400 plants, and the Service believes that the actual number of plants is likely to be somewhere between these two estimates. The Service points out that no statistically based estimate exists for the number of *E. penlandii* plants, and thus the significance or absolute statistical validity of either "estimate" remains open to question. However, even though the exact number is not known, it is apparent from the estimates that the total population size of this species is relatively small.

The Service also acknowledges that the number of *E. penlandii* populations or subpopulations is open to question. The 14 populations that have been identified may not warrant population status based on valid principles of biogeography and genetics. It has been suggested that there is no valid scientific reason why the number of populations is 14, and the number may be 2 or 5. The close proximity of some of the populations and many of the subpopulations warrants further investigation. It is likely that the extent of many of the stands of the plant is a function of the amount of annual precipitation, and thus some overlap may be expected in years of favorable hydrologic conditions. Thus, the reliance on one year of survey work to delineate populations and subpopulations is considered scientifically inadequate.

The Service has mapped and examined the locations of various stands of *E. penlandii* and finds that designation of subpopulations and populations is somewhat arbitrary. Only a few feet or less separate some of the subpopulations delineated by Schwendinger et al. (1991). As an example, subpopulations 10 a, c, d, e, f, and g (Table 2) all occur in an area less than about 16 hectares (40 acres), and it is arguable whether these should be construed as six or only one subpopulation. As an example of questionable population designations, it is debatable whether populations 5 and 10 characterized by Schwendinger are 2 populations or only 1 population. The Service believes that the present number of populations is between 5 and 14, and that this does not constitute a diverse and common species.

*Eutrema penlandii* primarily grows in soils that overlay the Leadville limestone formation. Its requirements for or relationship with these calcareous substrates are unknown, but the role of substrate has been debated (Kelso, et al. 1991; Schwendinger et al. 1991). The Service finds that regardless of whether *E. penlandii* is associated with calcareous substrates, the plant is otherwise highly restricted in its habitat use. Many questions about the life history and habitat requirements of the plant remain unresolved, but its habitats are uncommon and the amount of available habitat is highly dependent upon hydrology.

*Issue 2:* Are *Eutrema penlandii* populations or its habitat sufficiently threatened to warrant designation as a threatened species?

a. Comments Indicating Minimal Threats to Populations or Habitat

The sponsors and authors of the Schwendinger et al. report (1991) reiterated that there were no visible signs of ongoing mining activities where *E. penlandii* was found and, except for one instance, off-road vehicle travel appeared to be restricted to existing roads. Also, they found *E. penlandii* in areas that recently had been disturbed (within the past few years), indicating the plant had some tolerance for habitat disturbance. They concluded that the magnitude of threats to *E. penlandii* populations has been exaggerated (Schwendinger et al. 1991).

b. Comments Indicating Significant Threats to Populations or Habitat

The reviewers supporting listing *E. penlandii* emphasized that the habitat required by the species is created by specific hydrologic conditions that can easily be altered. Any activity that diverts water flow or changes the quality of water flowing to *E. penlandii* habitats could place an entire population at risk. Although reviewers acknowledged that *E. penlandii* can be found where there is some habitat disturbance, it would not tolerate disturbance that is frequent, repeated, or of large magnitude.

Although there is little current mining activity in areas where *E. penlandii* is established, much of the area occupied by the plant is staked for mining claims, and reviewers were concerned that mining activity could become a serious problem for the species if market conditions change. Even though *E. penlandii* may be somewhat tolerant of acidic soil and water conditions, this does not diminish threats due to actual destruction of populations and changes in the watershed and its hydrology.

Half of the *E. penlandii* populations occur, at least partially, on private land (patented mining claims). Reviewers suggested that listing would increase the incentives to create cooperative protection agreements with landowners.

Reviewers observed that recreation is growing in popularity in alpine areas along the Continental Divide and that many *E. penlandii* sites are accessible and near existing or proposed trails. They stated that listing the species as threatened would encourage Federal land managers to more adequately take into account the requirements of the species in their recreational and land-use planning.

*Service Response*

The Service finds that *E. penlandii* and its restricted habitat are under sufficient threat that the species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. *E. penlandii* populations exist in alpine habitats in which plant growing seasons may vary from 0 to 70 days depending on annual climatic changes. Plant growth is already reduced in some years by naturally extreme conditions characteristic of the alpine tundra, and human-induced changes can easily and quickly affect this sensitive ecosystem.

Threats from mining activities and recreation can destroy populations by modifying habitat through surface

disturbance or changes in hydrology, such that the habitat no longer supports the species. The Service notes that most of the populations and subpopulations of the plant are very small, and some are only a few square meters (yards) in size. These small plant stands are highly vulnerable to human-induced changes in surface topography, especially in upslope areas. Specific threats posed by anthropogenic impacts are discussed in detail later in this document under the five listing factors.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Eutrema penlandii* Rollins (Penland alpine fen mustard) are as follows:

*A. The present or threatened destruction, modification, or curtailment of its habitat or range.* The Service finds that *E. penlandii* is a rare species occupying a small area. Despite years of search, its documented distribution remains limited to a restricted range in specialized and uncommon habitat. Most subpopulations occur in small tracts and the total area of all documented, occupied habitat is about 200 hectares (500 acres). Only a few meters (yards) or less separate some of the *E. penlandii* subpopulations, and some populations do not appear to be biogeographically distinct. However, regardless of the number of populations and subpopulations, the Service believes that the areas occupied by *E. penlandii* are too small to provide a high degree of genetic diversity or to reduce the threats of endangerment to the species.

Evidently, because of its high degree of habitat specificity, which requires the combination of several microenvironmental factors as described earlier, the Penland alpine fen mustard is found only in the Mosquito Range in Colorado, where this combination of conditions occurs. Suitable habitat for the plant is rare, and most areas in Colorado and elsewhere that have a high potential as habitat have been surveyed by botanists. *E. penlandii* never has been collected outside the Mosquito Range in Colorado, and it appears unlikely that the plant exists outside of this area.

The most fragile aspect of the Penland alpine fen mustard's habitat is the continuous supply of water needed to maintain peat fens in which the species grows. *E. penlandii* grows in peat mounds along saturated stream margins and small hummocks within streams, and it rarely occurs more than 0.5 m (0.55 yd) away from flowing meltwater. Populations of *E. penlandii* are small, and some are found on areas of less than about 0.4 hectares (1 acre). Some subpopulations occupy only a few square meters (yards). Because stands of the plant are so small, they are vulnerable to surface disturbances that reroute the needed water supply. This can occur from ditching, diking, or other watershed perturbations that alter surface water flow (e.g., roads, trails, ruts of vehicle tracks, footpaths, or mining construction) to a peat fen in which the Penland alpine fen mustard grows. Desiccation and loss of a peat fen can cause a loss of *E. penlandii* plants, and reduction in the amount of its highly specialized habitat.

Old mines occur near every *E. penlandii* population, but the plant is not found in habitats that have been significantly altered by mining. Records show that most mining claims on public land are active (i.e., claims have not been allowed to lapse). Virtually all of the public land in the area, including *E. penlandii* habitat, is staked for mining claims under the Mining Act of 1872. For example, there are 2,500 mining claims on the South Park Ranger District of the U.S. Forest Service (Steve Currey, Clint Kyhl; U.S. Forest Service, pers. comm., 1992).

Mining activity includes such activities as prospecting, annual assessment work to validate a claim, and actual mineral extraction. Prospecting and assessment work are currently occurring in and near areas occupied by *E. penlandii*, and mineral extraction may resume whenever market and other conditions are favorable. The Hoosier Ridge area, the type location and largest population of *E. penlandii*, is under intense scrutiny for mining. If mining occurs there as planned, extirpation of that population appears imminent.

In a recent appeal to the establishment of a Hoosier Ridge Research Natural Area (HRRNA), St. Mary Minerals, Incorporated, stated:

> The proposed boundary of the HRRNA overlaps seven active lode mining claims * * * staked between 1980 and 1987 * * * we have both gold anomalies and high trace metal concentrations, which together indicate the possible presence of a mineral deposit in the area where the three watersheds originate (the HRRNA) * * * Sampling and analyses of rocks along the ridge which constitutes the eastern boundary of the proposed HRRNA * * * reveal zones of mineralized rock with elevated gold values, some of which are of ore-grade (economic concentrations).

The Hoosier Ridge area is one of the largest populations of *E. penlandii* and the type locality. Active prospecting and establishment of new claims has continued in this area through 1992. Threats to this population are imminent at this locality and at others as well. Thus, the Service believes that mining activities, including prospecting and annual assessments, threaten *E. penlandii* populations.

Full-scale mineral extraction is not necessary for mining to constitute a threat to *E. penlandii*. One trip by a drilling rig on the way to drilling a prospect hole could alter the hydrology of sensitive areas sufficiently to decimate a subpopulation or even a population of *E. penlandii*. In addition, Service biologists find that several *E. penlandii* subpopulations are in such close proximity that more than one could be severely impacted and perhaps lost due to a single upslope disturbance, such as a road, trail, or mine that would alter surface drainage patterns. Extensive mining activity will likely increase if economic conditions become more propitious. In that case, it is likely that several subpopulations would be impacted and perhaps extirpated.

Half of the *E. penlandii* populations occur on private land (patented mining claims) that was once Federal land. Although mineral extraction is not currently occurring on these claims, it could resume if market conditions become favorable. If public opinion favors reform of the 1872 mining law, many claimants may expedite patenting mining claims and thus convert even more Federal land and *E. penlandii* populations to private land. Under current law, only a few stipulations need be met to transfer public lands to private ownership at costs as low as $2.50 to $5 per 0.4 hectare (1 acre). *E. penlandii* plants on private land are not protected by Federal or State law, nor will they be after the species is listed as threatened.

Recreational activities are increasing in alpine areas of the Mosquito Range. Although many forms of outdoor recreation, such as hiking, appear benign, participation by enough people can lead to braided trail formation, soil compaction, and disruption of water flow from snowfields and in wetlands as people hike around or through them. Hiking has increased in the Mosquito Range and up to 4,000 people are now hiking during the short wildflower

season in some locations near *E. penlandii* populations (Sharon Kyhl, U.S. Forest Service, pers. comm., 1992). The plant occurs on gentle terrain below steep slopes, and these areas attract hikers because they appear as lush wildflower gardens that are adjacent to water.

Motorcycles, 4-wheel drive vehicles, and other off-road vehicles are adversely impacting alpine areas of the Mosquito Range. Numerous roads associated with tracts of privately owned mining claims provide vehicular access to most alpine areas. The Service finds that 8 of the 14 areas occupied by *E. penlandii* have roads or off-road vehicle trails that lead to them. The primary author of this rule observed direct impacts to *E. penlandii* plants at Mosquito Pass due to off-road vehicle use, indicating that motorized vehicles can, and in many instances do, go anywhere. Surface disturbances by vehicles can crush plants and directly impact *E. penlandii* populations, and rutting and other disturbance can degrade and destroy the alpine wetlands in which the plant grows.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No overutilization of *E. penlandii* has been documented. However, the existence of a threatened plant on Federal lands could be perceived by claim holders and others as a potential obstruction that could cause curtailment of the assessment work needed to retain a mining claim and convert Federal land to private ownership. Listing the plant also could place further environmental requirements on mining extraction. Thus, claim holders and others may destroy plants.

This species is a relict plant whose closest relative occurs in the Arctic. Listing the species could increase its value to plant collectors and lead to more taking. To help minimize these threats, the Service has not proposed critical habitat as this action requires delineation of the species' specific habitats (see "Critical Habitat" section of this rule).

C. *Disease or predation.* No serious threats are known. There is evidence that pika and microtine rodents feed on the plants, but these interactions are considered part of the natural history of *E. penlandii* (Naumann 1991). The significance of such herbivory is unknown; however, pikas may assist in seed dispersal by moving them to storage areas (Naumann 1991).

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws protect *E. penlandii.* A Research Natural Area was proposed for the Hoosier Ridge population on U.S. Forest Service land. However, several mining companies appealed this proposal because of their intent to conduct future mining operations in the area. The U.S. Forest Service then withdrew its proposal. Since that time, these mining companies have filed claims and are prospecting for minerals over the entire proposed area.

The research area proposal for Hoosier Ridge was developed over a 10-year period by several cooperating agencies, including the U.S. Forest Service and the Colorado Natural Areas Program. The proposed Hoosier Ridge area represented one of the most floristically complete and pristine alpine areas remaining in the Nation. Abandonment of this proposed research area concept in response to the appeal by mining companies leaves the type locality, one of the largest populations of *E. penlandii*, without protection and under imminent threat. Because Region 2 of the Forest Service does not include the plant as a sensitive species, *E. penlandii* habitat does not have any regulatory, planning, or policy protection.

The Bureau of Land Management treats *E. penlandii* as a sensitive species for management planning purposes. However, the species and its habitat are not necessarily given priority in multiple-use considerations. The area around Mosquito Pass has been nominated as an Area of Critical Environmental Concern (ACEC). Designation as an ACEC flags an area and the values for which the ACEC was established so that managers can take those values into consideration when developing resource management plans. However, a manager has the prerogative of disregarding or not giving high priority to those values if other values appear to have more importance. It is questionable whether the nominated area will become an ACEC. Even if it does, designation of *E. penlandii* habitat as an ACEC will not necessarily confer the level of protection the Service deems necessary, because not all *E. penlandii* populations are included in the nominated area. The Act would provide additional protection and encourage active management through the Available Conservation Measures discussed below.

E. *Other natural or manmade factors affecting its continued existence. E. penlandii* has a pattern of rarity (i.e., a few small populations on small areas of specialized habitat) that makes it particularly vulnerable to the threats described above, as well as to localized environmental catastrophes such as fungal blight, drought, or insect infestations. Alpine tundra is a harsh environment for plant growth. If climatic changes (local or global) reduce the amount of persistent snowfields, *E. penlandii* habitat might be further reduced, and the plant may become more rare than it is at present. In addition, the Service finds that several of the subpopulations and populations are located in such a small area that they are vulnerable to perhaps a single upslope surface disturbance.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to this species in determining to make this final rule. Based on this evaluation, and cognizant of the debate about the imminence and magnitude of threats to *E. penlandii* populations and habitat posed by activities in alpine areas, the Service believes *Eutrema penlandii* warrants listing as threatened.

*Eutrema penlandii* is a restricted endemic species, a relict of past glaciation whose fragile wetland habitat is being threatened by anthropogenic development. Threats include mining and recreational activities. Mining is presently at a low level, but the area supporting the plant is being extensively prospected, converted to mining claims, and patented to private mining lands. Miners are continuing assessment work on public lands, and they are not allowing their mining claims to lapse. Mining companies have indicated that economically viable deposits of various minerals occur and that these can be mined. As mining becomes more profitable, more public land will be patented and transferred to private ownership. Because *E. penlandii* populations are predominantly associated with areas under consideration for mining, it appears only a matter of time before extensive areas of its habitat are altered.

Recreational activities that are potentially disruptive to alpine wetland hydrology, such as backpacking, hiking, mountain biking, trail riding with horse and burro, and off-road vehicle use are gaining in popularity and increasing in the alpine areas where *E. penlandii* occurs. Roads now provide access to most *E. penlandii* populations. Many of these populations are very small and vulnerable to changes in local topography that would affect their water supply.

At present levels, these identified threats to *E. penlandii* and its habitat are not likely to result in the species' extinction in the foreseeable future. However, threats are acting on *E. penlandii*'s small populations and limited range, and this species is likely to become endangered within the

foreseeable future in all or a significant portion of its range. Thus, *E. penlandii* is a threatened species as defined by the Act. For reasons given below, it is not considered prudent to designate critical habitat.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *E. penlandii* because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor B, *E. penlandii* is vulnerable to taking. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant more vulnerable to incidents of vandalism and could contribute to the decline of the species. This has been documented with other listed species (e.g., *Hudsonia montana;* N. Murdock, U.S. Fish and Wildlife Service, pers. comm., 1991). Lacking mobility, plants are more vulnerable to vandalism than animals. A listing of *E. penlandii* as threatened would also publicize the rarity of this plant and encourage taking by researchers or collectors of rare plants. *E. penlandii* is a relict plant, and it is the only representative of its genus in the lower 48 States. Its rarity and biogeographic status would likely stimulate greater interest for collectors than most other species. Theft of an entire small population of another listed plant, *Asclepias meadii* (Mead's milkweed), in Illinois exemplifies the problem (U.S. Fish and Wildlife Service 1991).

Few additional benefits would be provided to the species by designating critical habitat that would not already be provided by listing the species as threatened. Any Federal action (e.g., approving a new road, etc.) that would impact the plant's habitat would also affect rooted plants; therefore, this impact would be addressed through Section 7 consultation. In addition, Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any threatened species of plant from areas under Federal jurisdiction. The Forest Service and the Bureau of Land Management are aware of the occurrence of *E. penlandii* on their lands and of their obligations under the Act.

The adverse modification standard for critical habitat under Section 7(a)(2) of the Act does not apply to private land if there is no Federal involvement. Thus, if Federal Agencies have no jurisdiction over activities on private land, designation of critical habitat on private land does not afford additional protection to listed species.

For the reasons discussed above, it would not be prudent to designate critical habitat for *E. penlandii.*

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to proposed or listed species and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal Agencies to confer informally with the Service on any action likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

The largest populations of *Eutrema penlandii* occur on Federal land administered by the Forest Service and Bureau of Land Management. Their involvement could include section 7 consultation on mining activities and land exchanges. A recreational plan is needed to manage off-road vehicle and other recreational use. On both Federal and private land, the Service expects that listing would elevate the awareness of this plant's status and foster efforts for its conservation.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All taking and trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale listed species in interstate or foreign commerce, or to remove and reduce it to possession from areas under Federal jurisdiction. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting up, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to Penland alpine fen mustard once revised regulations are promulgated. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. With regard to *E. penlandii,* it is anticipated that few, if any, trade permits would ever be sought or issued because this species is not in cultivation or common in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358–2104).

**National Environmental Policy Act**

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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### Author

The principal authors of this final rule are Dr. Lucy A. Jordan, U.S. Fish and Wildlife Service, John L. Anderson, Botanist, formerly with the U.S. Fish and Wildlife Service (see ADDRESSES above), and Dr. Harold M. Tyus, U.S. Fish and Wildlife Service, Denver Regional Office.

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

### PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following in alphabetical order under the family Brassicaceae to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| • • | • | • | • | • | • | • |
| Brassicaceae—Mustard family: | | | | | | |
| • • | • | • | • | • | • | • |
| *Eutrema penlandii* ..... | Penland alpine fen mustard. | U.S.A (CO) ..... | T ..... | 509 | NA | NA |
| • • | • | • | • | • | • | • |

Dated: June 24, 1993.

Richard N. Smith,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93–17933 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–55–P

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**50 CFR Part 17**

**RIN 1018–AB56**

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Astragalus applegatei (Applegate's Milk-vetch)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines the plant *Astragalus applegatei* (Applegate's milk-vetch) to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). This species has two extant populations in Klamath County, Oregon. The largest population is found on 6 acres of private land estimated to contain up to 30,000 individuals. The Nature Conservancy has leased this land on a year-by-year basis for *Astragalus applegatei* management. However, it is zoned for commercial development. The second site, on State of Oregon land, supports approximately 30 to 80 plants in three patches scattered over 1 acre (J. Kagan, Oregon Heritage Program, pers. comm., 1992). Survival of this species is threatened primarily by the loss of habitat from past and potential development and road construction. The increased number of plants observed in recent surveys is believed to be a result of studies more quantitative in nature, not an expansion or improvement of the species habitat. Wildlife grazing has been determined to be another serious threat to the two remaining populations. This plant's palatability to cattle is an additional factor contributing to its current status. This rule implements the protection and

recovery provisions provided by the Act for this plant.

**EFFECTIVE DATE:** This rule is effective on August 27, 1993.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Boise Field Office, 4696 Overland Road, room 576, Boise, Idaho 83705.

**FOR FURTHER INFORMATION CONTACT:** Robert Parenti at the above address (telephone number 208–334–1931).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Astragalus applegatei* was first discovered near Klamath Falls, Oregon, in 1927 by Morton Peck. Peck subsequently collected the species 2 miles (3.2 kilometers) east of Keno, Oregon, in 1931 and then described it (Peck 1936). It was thought to be extinct until its rediscovery in 1983 by James Kagan of the Oregon Natural Heritage Program (Kagan 1983). This perennial herbaceous plant of the pea family (Fabaceae) grows to approximately 1 foot (0.3 meters) in height and reproduces only by seed. The Melissa blue butterfly (*Lycaedies argycogromon*) is a specific known pollinator. The anthers and stigma ripen simultaneously, enabling self-pollination. Plants produce light purple, pea-like flowers, and 0.3–0.5 inch (8–13 millimeter) seed pods during June and July. *Astragalus applegatei* can be distinguished from other species of *Astragalus* in the area by its slightly curved stems, the number and location of flowers, and apparent inability to colonize dry, disturbed areas.

*Astragalus applegatei* grows in flat, open, seasonally moist remnants of floodplain alkaline grassland of the Klamath Basin. The species is a member of the *Poa nevadensis-Puccinellia lemmonii* grassland community (Yamamoto 1985). This community is characterized as a bunchgrass flat, with about 10 to 20 percent exposed ground. The substrate is poorly drained, fine silt loam with an underlying hardpan at depths of 20 to 40 inches (51 to 102 centimeters). Periodic flooding was probably a natural feature of this habitat type. The adjacent community is alkaline open shrubland dominated by *Sarcobatus vermiculatus* and *Distichlis stricta*. *Sarcobatus vermiculatus* occasionally occurs in the grassland community.

*Astragalus applegatei* historically occurred at three sites near Klamath Falls, Oregon. Extensive agriculture use has apparently extirpated one site near Keno, Oregon. The last known observation/collection at this site was in 1931. Further survey efforts near the Keno, Oregon, site have failed to locate the plant(s) (Yamamoto 1985; James Kagan, Oregon Natural Heritage Program, pers. comm., 1992).

*Astragalus applegatei* remains at two sites. The largest population, limited to 6 acres estimated to support up to 30,000 individuals (D. Salzer, Oregon Chapter of The Nature Conservancy, *in litt.*, 1991), is 1 mile south of downtown Klamath Falls. The initial 1,000 plant estimate for this site was a very rough estimate made without quantitative sampling. Field surveys conducted from 1988 through 1991, and extrapolations from those data, projected the population estimate to be up to 30,000 plants (Salzer, *in litt.*, 1991). The increased number of plants observed in recent surveys is believed to be a result of the more intensive studies, not an expansion or improvement of the species' habitat (Kagan, pers. comm., 1993).

The threats to this population include urban development and road construction. Portions of the population and remaining habitat for *Astragalus applegatei* have already been destroyed by the construction of a major four-lane avenue bisecting this population (Kagan, pers. comm., 1992). An additional road may soon be under construction through the remaining plant habitat. Remaining plants within this population occur on adjacent land that is zoned for light industrial, general commercial, or heavy industrial use. This area is posted with signs advertising future commercial development (Yamamoto 1985; Kagan, pers. comm., 1992). Extensive urban development has occurred in this area for many years and is continuing. If current land use patterns continue, this area will be further developed, eliminating this plant species (Kagan, pers. comm., 1992).

The third site, occurring on less than 1 acre, is located on the State's Klamath Management Area, approximately 6 miles from the above population. This site supports an estimated 30 to 80 plants. The plants appear to be older with no evidence of reproduction. Low population numbers, loss of habitat, wildlife grazing (rabbits), and management controls altering natural regimes (periodic wildfire and flooding) pose serious threats to this population (Kagan, pers. comm., 1992).

*Astragalus applegatei* is affected by the lack of seasonal flooding. Seasonal flooding may provide openings for the establishment of *Astragalus applegatei* and limit the dominance of other species (Yamamoto 1985).

**Previous Federal Action**

Federal action on this species began because of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Astragalus applegatei* was considered to be threatened. The Service published a notice on July 1, 1975, in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act and gave notice of its intention to review the status of the plant taxa named therein. As a result of that review, the Service published a proposed rule on June 16, 1976, in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. The list of 1,700 plant taxa was assembled based on comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. The Service published a notice on December 10, 1979, in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In all three cases, *Astragalus applegatei* was treated as a category 1 candidate. Taxa in category 1 are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, to be treated as being newly submitted on that date. That was the case for *Astragalus applegatei* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted but precluded by other pending listing actions, according to

section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. In October of 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petition to list *Astragalus applegatei* was warranted but precluded by listing actions of higher priority.

The Service published a proposal on November 26, 1991, to list *Astragalus applegatei* as an endangered species (56 FR 59917). This proposal was based, in large part, on additional survey information and occurrence data, and information on pending projects that would adversely affect the plant. The Service now determines *Astragalus applegatei* to be an endangered species with the publication of this rule.

## Summary of Comments and Recommendations

In the November 26, 1991, proposed rule (56 FR 59917) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on February 3, 1992. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. The Service received two comments during the comment period. One comment expressed support for the listing proposal, while the other comment opposed listing. The comment opposing the listing proposal and the Service's response is summarized as follows:

*Issue:* The commenter said the government has not shown sufficient effort, study, or facts to substantiate this listing. The commenter also said that populations of vetch exist throughout the county, State, and entire northwest. Furthermore, initial taxonomical work and subsequent verification were not extensive enough to imply that this subspecies is threatened.

*Service Response:* This plant was first discovered near Klamath Falls, Oregon, in 1927, and collected again in 1931 near Keno, Oregon. The Keno, Oregon, area was carefully searched in 1982, 1983, 1984, 1985, and more recently in 1990, 1991, and 1992. Exhaustive survey efforts for many years have failed to locate plants at this site.

The largest Klamath Falls population, containing up to an estimated 30,000 plants on 6 acres, is 1 mile south of downtown Klamath Falls. Threats include expanding urban development and road construction. Part of this population and most of its habitat have already been destroyed by a four-lane avenue bisecting the population (Kagan, pers. comm., 1992). Another part of the population is situated on land posted with signs advertising future development.

Most *Astragalus* species are plants adapted to growing in moisture deficient environments. However, *Astragalus applegatei* is a plant growing in a moderately moist environment (Barneby 1964). Extensive field surveys conducted in potential habitat of *Astragalus applegatei* have failed to yield additional locations.

No alternative taxonomic treatments are known. The last major comprehensive treatment for the genus *Astragalus* was made by Barneby (1964). No taxonomic changes were made on this species. There is no evidence that *Astragalus applegatei* was ever classified as a subspecies.

## Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus applegatei* should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus applegatei* Peck (Applegate's milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Astragalus applegatei* has historically been reported from three sites in Klamath County, Oregon. Extensive agricultural use has extirpated one of these populations located 2 miles east of Keno, Oregon. Recent survey efforts in the Keno area have failed to locate the species since its observation/collection in 1931 (Kagan, pers. comm., 1992).

A second, and the largest population, with up to 30,000 plants on 6 acres, is 1 mile south of downtown Klamath Falls. A major four-lane avenue bisecting this population was constructed, resulting in the elimination of some of the plants and most of the species habitat. Recent construction of a culvert over a large ditch that bisects the population has also destroyed plants and their habitat. The construction destroyed plants and their habitat by compacting the soil, denuding the surface, and crushing plants under dumped dirt and wheels of construction equipment. An additional road may soon be under construction through the remaining plant habitat (Kagan, pers. comm., 1992). Another portion of the population is situated on land posted with signs advertising future commercial development (Yamamoto 1985; Kagan, pers. comm., 1992). The Oregon Field Office of The Nature Conservancy has a year-to-year lease to manage the area for the plant. However, they have been unsuccessful in negotiating the acquisition of the property from the private landowner. It continues to be zoned for commercial development. This population is probably the only viable population left. If this area is commercially developed, *Astragalus applegatei* will probably be lost as a viable species (Kagan, pers. comm., 1992).

The third site contains 30 to 80 plants in an area less than 1 acre in size on the State's Klamath Wildlife Management Area. The plants are older and show no evidence of reproduction. This site is threatened by low population numbers, loss of habitat, wildlife grazing (rabbits), and management controls that alter natural fire and flooding regimes (Kagan, pers. comm., 1992).

*Astragalus applegatei* is adversely affected by lack of seasonal flooding. Irrigation and water control along the Klamath River have eliminated the seasonal flooding that once occurred along floodplains supporting the species. Seasonal flooding is important in that it may provide openings for the establishment of *Astragalus applegatei* and limit the dominance of other species (Yamamoto 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* *Astragalus applegatei* was only recently rediscovered. Six collections of the species exist. Because the plants are easily accessible by road, illegal collecting for scientific or horticulture purposes or excessive visits by individuals interested in seeing rare plants could become a threat.

C. *Disease or predation.* Chewed stems and rabbit-like pellets were found at the remaining extant populations. Rabbit predation has become one of the major obstacles to the survival of *Astragalus applegatei* (D. Borgois, The Nature Conservancy, pers. comm., 1992). The palatability of *Astragalus applegatei* to cattle is a factor in the absence of this species in areas grazed by cattle (Kagan, pers. obs., 1985 and 1992).

D. *The inadequacy of existing regulatory mechanisms.* Under the

Oregon Endangered Species Act (OAR 564.100–564.135) and pursuant regulations (OAR 603, Division 73) the Oregon Department of Agriculture has listed *Astragalus applegatei* as endangered. This statute prohibits the "take" of State-listed plants on State-owned or State-leased lands only. The smaller of the two remaining populations of *Astragalus applegatei* occurs on State-owned land. The larger population occurs on private land where the plant is not protected from actions the landowner may take that would adversely affect the species. The landowner has indicated that the private land is being held for development purposes (Kagan, pers. comm., 1992).

Some of the habitat occupied by *Astragalus applegatei* may be regulated as wetlands and subject to regulation under section 404 of the Clean Water Act by the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill into waters of the United States, including wetlands. Nationwide Permit No. 26 has been issued to regulate fill in wetlands under 10 acres. This nationwide permit would apply to all sites where *Astragalus applegatei* occurs. The Corps circulates a predischarge notification to the Service and other interested parties for comment under this permit program.

Individual permits are normally just required for fill in wetlands greater than 10 acres. However, the Corps has discretionary authority and can require an individual permit if resources are believed to be important regardless of the wetland's size. In practice, however, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit, unless a threatened or endangered species occurs on the site. The Corps is required to consult under section 7 of the Act prior to issuing nationwide or individual permits that may affect a federally listed species (see below under "Available Conservation Measures"). The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental effects.

*E. Other natural or manmade factors affecting its continued existence.* *Astragalus applegatei* has a poor reproductive potential due to its apparent inability to colonize dry, disturbed areas and ability to reproduce only by seed. The small number of populations, and small number of individual plants for each population of this species, increases the potential for extinction from stochastic events such as flood or fire. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy many of the individuals of this species.

The Klamath Wildlife Management Area population is threatened by extensive flooding. Although seasonal flooding may provide openings for the establishment of *Astragalus applegatei*, this population occurs in a small, localized area near the river, which could be destroyed if extensive flooding were to occur. The largest Klamath Falls' population is also vulnerable to extirpation. Continued reduction of the size of this population would render this site more susceptible to other human-caused or natural disturbances. In addition, genetic integrity would be lost, if the largest and only viable population continues to shrink (Kagan, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species. Based on this evaluation, the preferred course of action is to list *Astragalus applegatei* as endangered. The small number of individuals left, poor species reproductive potential, and vulnerability to destruction by development and road building show that the species is in danger of extinction throughout all or a significant portion of its range, and therefore fits the Act's definition of endangered. Critical habitat is not being designated for this species for reasons discussed in the Critical Habitat section of this rule.

## Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to *Astragalus applegatei*. Publication of precise maps and descriptions required when critical habitat is designated would increase the degree of threat to this plant from possible take, collection, or vandalism. This would in turn contribute to its decline and increase enforcement problems. All involved parties and principal landowners have been notified of the importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for *Astragalus applegatei* is not prudent at this time.

## Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

*Astragalus applegatei* does not occur on Federal land. Habitat for this plant may be regulated by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Individual or nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Astragalus applegatei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce during a commercial activity; sell or offer for sale in interstate or foreign commerce;

remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such plants on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy the plant on any other area in knowing violation of any State law or regulation, or during any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is uncommon in cultivation and is very rare in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (telephone number 703–358–2104).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**References Cited**

Barneby, R.D. 1964. Atlas of North America *Astragalus*. Memoirs of The New York Botanical Garden, Vol. 13. 1188 pp.

Kagan, J. 1983. Unpublished field report for *Astragalus applegatei*. The Nature Conservancy, Portland, Oregon.

Peck, M.E. 1936. Six new plants from Oregon. Proc. Biol. Soc. Wash. 49:111.

Yamamoto, S. 1985. Unpublished status report for *Astragalus applegatei*. Oregon Natural Heritage Data Base, Portland, Oregon. 35 pp.

**Author**

The primary author of this final rule is Dr. Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (telephone number 208–334–1931).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and Recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| • | • | • | • | • | • | • |
| Fabaceae—Pea family: | | | | | | |
| • | • | • | • | • | • | • |
| *Astragalus applegatei* | Applegate's milk-vetch. | U.S.A. (OR) | E | 510 | NA | NA |
| • | • | • | • | • | • | • |

Dated: July 12, 1993.

**Richard N. Smith,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 93–17034 Filed 7–27–93; 8:45 am]

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Part IV

# Department of Education

**Bilingual Education Programs; Notices**

VOL 58 ISS 143 JL 28 1993 UMI

## DEPARTMENT OF EDUCATION

[CFDA No.: 84.003G]

### Bilingual Education: Academic Excellence Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

**Purpose of Program:** To provide assistance to identify and disseminate effective bilingual education practices for limited English proficient (LEP) students.

*Eligible Applicants:* Local educational agencies (LEAs); institutions of higher education, including junior or community colleges; and nonprofit private organizations applying separately or jointly.

In order to be considered for assistance under this part, an applicant must administer a program of transitional bilingual education, developmental bilingual education, or special alternative instruction that is either nominated by its State educational agency (SEA) in accordance with 34 CFR 524.20 or approved by the Program Effectiveness Panel (PEP) as defined in 34 CFR 785.5.

*Deadline for Transmittal of Applications:* January 28, 1994.

*Deadline for Intergovernmental Review:* March 29, 1994.

*Applications Available:* October 28, 1993.

*Available Funds:* $1.8 million.

*Estimated Range of Awards:* $100,000–$200,000.

*Estimated Average Size of Awards:* $150,000.

*Estimated Number of Awards:* 12.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 500 and 524.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 524.31.

In addition to the maximum of 100 points awarded under 34 CFR 524.31, the program regulations in 34 CFR 524.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 524.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) How dissemination and adoption of the model program would relate to—

(i) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 524.32(a)(1)(i))—5 points.

(ii) The need to provide funding according to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 524.32(a)(1)(ii))—8 points.

(2) The relative numbers of children from low-income families likely to be benefited by the project (34 CFR 524.32(a)(2))—2 points.

*For Applications or Information Contact:* Dr. Mary T. Mahony, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8722. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3291.

Dated: July 21, 1993.

**Gilbert N. Garcia,**

*Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 93–17963 Filed 7–27–93; 8:45 am]

BILLING CODE 4000-01-P

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[CFDA No.: 84.003C]

### Bilingual Education: Program of Developmental Bilingual Education; Inviting Applications for New Awards for Fiscal Year (FY) 1994

*Purpose of Program:* To provide assistance to establish, operate, or improve programs of developmental bilingual education for limited English proficient (LEP) children.

*Eligible Applicants:* Local educational agencies (LEAs); and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

*Deadline for Transmittal of Applications:* November 19, 1993.

*Deadline for Intergovernmental Review:* January 18, 1994.

*Applications Available:* September 1, 1993.

*Available Funds:* $1 million.

*Estimated Range of Awards:* $75,000–$300,000.

*Estimated Average Size of Awards:* $167,000.

*Estimated Number of Awards:* 6.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

*Priorities:* Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

*Invitational Priority 1—Secondary School Projects*

Projects that serve one or more grade levels from grades six through twelve. These projects should implement instructional practices, curriculum development, staff development, and other program activities in coordination with any existing developmental bilingual education programs serving elementary grade levels in the school district.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2 and Goal 3, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, mathematics, science, history, geography, foreign languages, and the arts.

*Invitational Priority 2—Certain Languages*

Projects providing instruction in one of the following languages, in addition to English: Arabic, French, German, Hindustani, Italian, Japanese, Portuguese, Russian, Serbo-Croatian, Spanish, Vietnamese, or one of the Chinese languages. The special interest in programs of instruction in these major world languages is due to their importance in developing our international competitiveness.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 3 and Goal 5, in developing their applications. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English and foreign languages, and for schools to prepare students for productive employment in our modern economy. Goal 5 calls for every adult American to be literate and to possess the knowledge and skills necessary to compete in a global economy.

*Invitational Priority 3—Projects With Summer School Components in the Arts and Humanities*

Projects that include supplementary summer school activities in the arts and humanities. These activities should be designed to provide participants increased opportunities to improve their proficiency in English and a second language through involvement in public speaking, drama, or other areas of the arts and humanities.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 3, in developing their applications. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, foreign languages, and the arts, and for schools to prepare students for responsible citizenship, further learning, and productive employment in our modern economy.

*Invitational Priority 4—Parent Involvement*

Projects that, in addition to their basic goal of providing children an instructional program in English and a second language, contain training components that provide parents of participating children instruction in English and the second language used in the project. The training should prepare parents to serve as classroom and home tutors and second language-learning role models for their children.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 1 and Goal 5, in developing their applications. Goal 1 calls for all children in America to start school ready to learn. Goal 5 calls for every adult American to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—1 point.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—6 points.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—7 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—1 point.

*For Applications or Information Contact:* Dr. Alex Stein, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 205–9700. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3291.

Dated: July 21, 1993.

**Gilbert N. Garcia,**

*Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 93–17953 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

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[CFDA No.: 84.195R]

## Bilingual Education: Educational Personnel Training Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

*Purpose of Program:* To provide assistance to meet the need for additional or better trained educational personnel for programs for limited English proficient (LEP) persons.

*Eligible Applicants:* Institutions of higher education.

*Deadline for Transmittal of Applications:* January 27, 1994.

*Deadline for Intergovernmental Review:* March 28, 1994.

*Applications Available:* September 1, 1993.

*Available Funds:* $4.8 million.

*Estimated Range of Awards:* $65,000–$190,000.

*Estimated Average Size of Awards:* $150,000.

*Estimated Number of Awards:* 32.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 561.

*Priorities:* Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications:

*Invitational Priority 1—Preparation of Master Teachers*

Projects designed to prepare master teachers to serve as staff development experts in programs for limited English proficient students in elementary or secondary schools. These projects should emphasize training in effective and innovative instructional practices and appropriate student assessment strategies.

*Invitational Priority 2—Career Ladder Training for Paraprofessionals*

Projects designed to provide career ladder training for classroom teacher aides and other paraprofessionals. These projects should coordinate the following activities with local educational agencies: Recruitment and selection of participants, development of the scope and design of the program, and evaluation of the program. Projects that provide training at junior or community colleges should ensure that credit earned by students through this training is transferable to baccalaureate programs at four-year institutions of higher education.

The Secretary encourages applicants under either of the invitational priorities specified in this notice to consider the National Education Goals, particularly Goal 3, in developing their applications. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, mathematics, science, history, geography, foreign languages, and the arts, and for schools to prepare students for responsible citizenship, further learning, and productive employment in our modern economy. Projects implemented under one or both of the priorities should be designed to improve the skills of educational personnel in helping limited English proficient students and their schools achieve this goal.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 561.31.

In addition to the maximum of 100 points awarded under 34 CFR 561.31, the program regulations in 34 CFR 561.32(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 561.32(a).

For this competition, the Secretary distributes the 10 additional points as follows:

(1) Job placement and development (34 CFR 561.32(a)(1))—1 point.

(2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project (34 CFR 561.32(a)(2))—1 point.

(3) Evidence of demonstrated capacity and cost effectiveness as described in 34 CFR 561.31 (d) and (f) (34 CFR 561.32(a)(3))—8 points.

*For Applications or Information Contact:* Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8722. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3321.

Dated: July 21, 1993.

**Gilbert N. Garcia,**

*Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 93–17960 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

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**[CFDA No.: 84.003J]**

## Bilingual Education: Family English Literacy Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

*Purpose of Program:* To provide assistance to establish, operate, and improve family English literacy programs for limited English proficient (LEP) persons and their families.

*Eligible Applicants:* Local educational agencies (LEAs); institutions of higher education, including junior or community colleges; and nonprofit private organizations, applying separately or jointly.

*Deadline for Transmittal of Applications:* November 12, 1993.

*Deadline for Intergovernmental Review:* January 11, 1994.

*Applications Available:* September 1, 1993.

*Available Funds:* $3.3 million.

*Estimated Range of Awards:* $50,000–150,000.

*Estimated Average Size of Awards:* $125,000.

*Estimated Number of Awards:* 26.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 525.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 525.31.

In addition to the maximum of 100 points awarded under 34 CFR 525.31, the program regulations in 34 CFR 525.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 525.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 525.32(a)(1))—5 points.

(2) The need to provide assistance in proportion to the distribution or LEP children throughout the Nation and within each of the States (34 CFR 525.32(a)(2))—5 points.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons (34 CFR 525.32(a)(3))—3 points.

(4) The relative numbers of children from low-income families sought to be benefited by the program (34 CFR 525.32(a)(4))—2 points.

*For Applications or Information Contact:* Dr. Mary T. Mahony, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 205–8722. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3291.

Dated: July 21, 1993.

**Gilbert N. Garcia,**

*Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 93–17954 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

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**(CFDA No.: 84.195T)**

## Bilingual Education: Fellowship Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

*Purpose of Program:* To provide assistance, through approved institutions of higher education, to full-time students pursuing a graduate degree in areas related to programs for limited English proficient (LEP) persons.

*Eligible Applicants:* Institutions of higher education (IHEs).

**Note:** Any individual wishing to obtain a fellowship must apply to an IHE approved for participation in this program, not to the U.S. Department of Education.

*Deadline for Transmittal of Applications:* January 12, 1994.

*Applications Available:* October 15, 1993.

*Available Funds:* $1.8 million.

*Estimated Range of Awards:* $2,000–29,000 per individual fellow; $35,000–300,000 per IHE.

*Estimated Average Size of Awards:* $12,000 per individual fellow; $120,000 per IHE.

*Estimated Number of Awards:* 150 individual fellowships; 15 participating IHEs.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months for a master's program; up to 36 months for a doctoral program.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b). The regulations for this program in 34 CFR Parts 500 and 562.

*Priority:* Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

*Doctoral Programs of Study in Teacher Training*

Applications proposing programs of study that prepare teacher trainers and lead to a doctoral degree.

*For Applications or Information Contact:* Joyce M. Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 205-9727 or (202) 205-9729. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3323.

Dated: July 21, 1993.

**Gilbert N. Garcia,**

*Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 93–17959 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

(CFDA No.: 84.195V)

**Bilingual Education: Short-Term Training Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994**

*Purpose of Program:* To provide assistance to improve the skills of educational personnel and parents participating in programs for limited English proficient (LEP) persons.

*Eligible Applicants:* Local educational agencies (LEAs); State educational agencies (SEAs); and institutions of higher education (IHEs), including junior or community colleges, and private for-profit or nonprofit organizations that apply (1) after consultation with one or more LEAs or SEAs or (2) jointly with one or more LEAs or SEAs.

*Deadline for Transmittal of Applications:* November 5, 1993.

*Deadline for Intergovernmental Review:* January 4, 1994.

*Applications Available:* September 1, 1993.

*Available Funds:* $3.5 million.

*Estimated Range of Awards:* $75,000–150,000.

*Estimated Average Size of Awards:* $120,000.

*Estimated Number of Awards:* 29.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 574.

**Priorities**

*Competitive Priorities:* Under 34 CFR 75.105(c)(2)(i) and 34 CFR 574.30(a) the Secretary gives preference to applications that meet one or both of the following competitive priorities. The Secretary awards up to 10 points to an application that meets one or both of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

*Competitive Priority 1—Instructional Competence of Teachers*

Training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient persons (34 CFR 574.10(a)).

*Competitive Priority 2—Skills of Other Educational Personnel*

Training designed to improve the skills of educational personnel other than teachers, in carrying out their responsibilities in programs for limited English proficient persons (34 CFR 574.10(b)).

The Secretary encourages applicants under one or both of these competitive priorities to consider the National Education Goals, particularly Goal 2 and Goal 3, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, mathematics, science, history, geography, foreign languages, and the arts, and for schools to prepare students for responsible citizenship, further learning, and productive employment in our modern economy.

*Invitational Priorities:* Within the competitive priorities specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

*Invitational Priority 1—Regular Elementary Classroom Teachers*

Training designed to improve the competence of teachers in regular classrooms in providing instruction to limited English proficient (LEP) students at elementary grade levels.

*Invitational Priority 2—Teachers of Secondary Core Subjects*

Training designed to improve the competence of teachers in regular classrooms in providing instruction in English, mathematics, science, history, geography, and the arts to LEP students at secondary grade levels.

*Invitational Priority 3—Whole School Training*

Projects that focus on improving teaching, learning, and the school climate by providing training designed to increase the instructional competence of teachers and the knowledge and skills of other educational personnel, and to facilitate cooperation and collaboration among all school personnel involved in the education of LEP students, including bilingual teachers, English-as-a-second-language (ESL) teachers, regular classroom teachers, counselors, and administrators. The school or schools selected for participation in a project should enroll the children most in need of assistance within the LEA.

*Invitational Priority 4—LEA–IHE Collaboration in Interdisciplinary Training*

Projects conducted by LEAs that utilize IHE faculty for training in interdisciplinary instructional approaches involving bilingual education, English, mathematics, science, history, geography, economics, psychology, the arts, and related disciplines.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 574.32.

In addition to the maximum of 100 points awarded under 34 CFR 574.32, the program regulations in 34 CFR 574.33(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 574.33(a). For this competition, the Secretary distributes the 10 additional points as follows:

(1) Evidence of prior participants' success in serving LEP children in accordance with needs identified in the prior project (34 CFR 574.33(a)(1))—1 point.

(2) Evidence of demonstrated capacity and cost effectiveness as provided in 34 CFR 574.32(d) and (f) (34 CFR 574.33(a)(2))—9 points.

*For Applications or Information Contact:* Petraine A. Johnson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8722. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3321.

Dated: July 20, 1993.

**Rene Gonzalez,**

*Acting Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 93–17958 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

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[CFDA No.: 84.003E]

**Bilingual Education: Special Alternative Instructional Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994**

*Purpose of Program:* To provide assistance to establish, operate, or improve special alternative instructional programs for limited English proficient (LEP) children.

*Eligible Applicants:* Local educational agencies (LEAs); and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

*Deadline for Transmittal of Applications:* November 19, 1993.

*Deadline for Intergovernmental Review:* January 18, 1994.

*Applications Available:* September 1, 1993.

*Available Funds:* $8 million.

*Estimated Range of Awards:* $75,000–$300,000.

*Estimated Average Size of Awards:* $174,000.

*Estimated Number of Awards:* 46.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

*Priorities:* Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

*Invitational Priority 1—Preparation for Postsecondary Concentration in Mathematics or Science*

Projects that focus on preparing participants in one or more grade levels, from grades six through twelve, to meet secondary school requirements for pursuing a major in mathematics or science at an institution of higher education (IHE). These projects should emphasize both content instruction and development of literacy, study, and test-taking skills to prepare the participants for successful study at IHEs.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2, Goal 3, and Goal 4, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including mathematics and science, and for schools to prepare students for further learning. Goal 4 calls for American students to be first in the world in mathematics and science achievement.

*Invitational Priority 2—Magnet Middle School Projects*

Projects that serve one or more grade levels, from grades six through nine, in a district-wide magnet school. These projects should demonstrate effective approaches to academic achievement and dropout prevention. The approaches should focus on one or more of the following curriculum areas: English language arts, mathematics, science, history, civics, or the arts.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2, Goal 3, and Goal 4, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, mathematics, science, history, and the arts, and for schools to prepare students for responsible citizenship. Goal 4 calls for American students to be first in the world in science and mathematics achievement.

*Invitational Priority 3—Newcomer Centers*

Projects to establish and operate "newcomer" or "intake" centers for limited English proficient students and their parents. These centers should assess the English language and academic skills and needs of the students. In addition, the centers should provide intensive English-as-a-second-language (ESL) instruction, orientation on the educational process, and other short-term services to prepare students to participate in appropriate programs in their assigned schools, and to prepare their parents to assist in their education.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 1, Goal 2, and Goal 5, in developing their applications. Goal 1 calls for all children in America to start school ready to learn. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 5 calls for every adult American to be literate and to possess the knowledge and skills necessary to exercise the rights and responsibilities of citizenship.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

In addition to the 15 points distributed among the factors listed in 34 CFR 501.32(a), the program regulations in 34 CFR 501.33(b) provide that the Secretary may distribute 5 additional points among the factors listed in 34 CFR 501.33(a). For this competition the Secretary distributes the 5 additional points as follows:

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language (34 CFR 501.33(a)(1))—2 points.

(2) The unavailability of personnel qualified to provide bilingual instructional services (34 CFR 501.33(a)(2))—2 points.

(3) The presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location (34 CFR 501.33(a)(3))—1 point.

*For Applications or Information Contact:* Robert M. Trifiletti, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC. 20202–6641. Telephone: (202) 205–9700. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3291.

Dated: July 21, 1993.

**Gilbert N. Garcia,**

*Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 93–17981 Filed 7–27–93; 8:45 am]

BILLING CODE 4000-01-P

[CFDA No.: 84.003L]

**Bilingual Education: Special Populations Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994**

*Purpose of Program:* To provide assistance to preschool, special education, and gifted and talented programs for limited English proficient (LEP) children that are preparatory or supplementary to programs such as those assisted under the Bilingual Education Act.

*Eligible Applicants:* Local educational agencies (LEAs); institutions of higher education, including junior or community colleges; and nonprofit private organizations.

*Deadline for Transmittal of Applications:* October 20, 1993.

*Deadline for Intergovernmental Review:* December 20, 1993.

*Applications Available:* September 1, 1993.

*Available Funds:* $3 million.

*Estimated Range of Awards:* $130,000–250,000.

*Estimated Average Size of Awards:* $176,000.

*Estimated Number of Awards:* 17.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 500 and 526.

**Priorities**

*Competitive Priority:* Under 34 CFR 75.105(c)(2) and 34 CFR 526.30(a) the Secretary gives preference to applications that meet the following competitive priority. The Secretary may select an application that meets this competitive priority over applications of comparable merit that do not meet the priority:

*Preschool Projects for LEP Children*

Projects that establish, operate and improve preparatory or supplementary programs for LEP children who have not reached elementary school age.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 1, in developing their applications. Goal 1 calls for all children in America to start school ready to learn.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 526.32.

In addition to the maximum of 100 points awarded under 34 CFR 526.32, the program regulations in 34 CFR 526.31(b) and 34 CFR 525.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 525.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 525.32(a)(1))—5 points.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 525.32(a)(2))—6 points.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons (34 CFR 525.32(a)(3))—1 point.

(4) The relative numbers of children from low-income families sought to be benefited by the program (34 CFR 525.32(a)(4))—3 points.

*For Applications or Information Contact:* Barbara J. Wells, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8840. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3291.

Dated: July 21, 1993.

**Gilbert N. Garcia,**

*Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.*

[FR Doc. 93–17962 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

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[CFDA No.: 84.003A]

**Bilingual Education: Program of Transitional Bilingual Education; Inviting Applications for New Awards for Fiscal Year (FY) 1994**

*Purpose of Program:* To provide assistance to establish, operate, or improve programs of transitional bilingual education for limited English proficient (LEP) children.

*Eligible Applicants:* Local educational agencies (LEAs); and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

*Deadline for Transmittal of Applications:* November 19, 1993.

*Deadline for Intergovernmental Review:* January 18, 1994.

*Applications Available:* September 1, 1993.

*Available Funds:* $16 million.

*Estimated Range of Awards:* $75,000–$300,000.

*Estimated Average Size of Awards:* $174,000.

*Estimated Number of Awards:* 92.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

*Priorities:* Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

*Invitational Priority 1—Mathematics or Science Achievement*

Projects serving one or more elementary or secondary grade levels that focus on improving achievement in one or both of the following curriculum areas: mathematics or science. These projects should emphasize the application of principles of mathematics and science, such as principles involving critical thinking and problem-solving skills, to other curricular areas.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 3 and Goal 4, in developing their applications. Goal 3 calls for students to demonstrate competency in challenging subject matter, including mathematics and science. Goal 4 calls for American students to be first in the world in mathematics and science achievement.

*Invitational Priority 2—Preparation for Postsecondary Concentration in Mathematics or Science*

Projects that focus on preparing participants in one or more grade levels, from grades six through twelve, to meet secondary school requirements for pursuing a major in mathematics or science at an institution of higher education (IHE). These projects should emphasize both content instruction and development of literacy, study, and test-taking skills to prepare the participants for successful study at IHEs.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2, Goal 3, and Goal 4, in

developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including mathematics and science, and for schools to prepare students for further learning. Goal 4 calls for American students to be first in the world in mathematics and science achievement.

*Invitational Priority 3—Secondary School Projects With Summer Components in the Arts and Humanities*

Projects serving one or more grade levels, from grades six through twelve, that include supplementary summer school activities in the arts and humanities. These activities should be designed to provide participants increased opportunities to improve their English proficiency through involvement in public speaking, drama, or other areas of the arts and humanities.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2 and Goal 3, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English and the arts.

*Invitational Priority 4—Parent Involvement*

Projects that, in addition to their basic goal of providing an instructional program for limited English proficient children, contain training components designed to improve the skills of parents in assisting in the education of children participating in these projects. These parent-training components should include intensive English-as-a-second-language (ESL) instruction and training in effective tutoring strategies and use of educational technologies.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2 and Goal 5, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 5 calls for every adult American to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

*Selection Criteria:* In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

*For Applications or Information Contact:* Luis A. Catarineau, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 205–9700. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 3291.

Dated: July 21, 1993.

**Gilbert N. Garcia,**

*Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.*

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Part V

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 61**

**Annual and Biennial Flight Review Requirements; Rule**

VOL 58 ISS 143 JL 28 1993 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 26827; Amdt. No. 61-93]

RIN 2120-AE11

## Amendment of the Annual and Biennial Flight Review Requirements

AGENCY: Federal Aviation Administration (FAA.)

ACTION: Final Rule.

SUMMARY: This final rule amends the Federal Aviation Regulations (FAR) by deleting the requirement that recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time (hereafter, the "affected pilots") receive 1 hour of ground and 1 hour of flight instruction annually. The final rule also amends the FAR by requiring that the biennial flight review (BFR) for all pilots consists of a minimum of 1 hour of ground instruction and 1 hour of flight instruction. This action is needed to establish a minimum standard 2-hour requirement for the BFR for all pilots. The intended effect is to eliminate inadequate flight reviews while not unduly restricting the flight instructor from requiring additional instruction. Additionally with this final rule, flight instructors who renew their flight instruction's certificate by means of an approved flight instructor refresher course (FIRC) need not accomplish the 1 hour of ground instruction previously required in the BFR. In a minor conforming change, this final rule retains, in the BFR, alternate means of compliance for glider pilots, which was contained in the annual flight review requirement.

EFFECTIVE DATE: August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas Glista, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

### Background

The requirement for an annual flight review for the affected pilots originated, in part, from a petition for rulemaking submitted by the National Association of Flight Instructors (NAFI) [47 FR 11026, March 15, 1982]. The Federal Aviation Administration (FAA) proposed the requirement in Notice of Proposed Rulemaking (NPRM) No. 85-13 [50 FR 26286, June 25, 1985].

In a comment to the NPRM dated October 24, 1985, the Aircraft Owners and Pilot Association (AOPA) objected to the NPRM because the FAA proposed to attach additional training requirements for already certificated pilots to NAFI's proposal for an additional pilot certificate. AOPA disputed the justification for the FAA's proposal for the annual flight review, and provided data to indicate that there was no significant difference in the accident profile of the affected pilots as compared to the profile for all pilots. The FAA, however, evaluated the data in a different manner which supported the annual review requirement.

The annual flight review requirement was issued in a final rule titled "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer than 400 Flight Hours" [54 FR 13028, March 29, 1989].

By letter dated May 22, 1989, AOPA petitioned the FAA to revise FAR § 61.56(d) by deleting the annual flight review requirement. AOPA urged reconsideration of the annual flight review requirement and provided additional accident data for review. Also, by letter dated July 25, 1989, the Experimental Aircraft Association (EAA) petitioned the FAA to delete the annual flight review requirement for the affected pilots.

As a result of the data presented in the AOPA petition, representatives of AOPA and EAA met with FAA representatives on July 13, 1990. A record of that meeting is in Docket No. 24695. In that meeting, AOPA representatives stated that the safety data do not support singling out one particular segment of pilots for an annual flight review. EAA representatives noted the continuing decline in general aviation and commented that the general aviation public is unduly burdened by additional rules. AOPA and EAA agreed that the current BFR requirement is vague and that the standards for completion of the review vary considerably between different instructors. In lieu of the annual flight review, AOPA and EAA expressed support for a minimum hour requirement for the BFR.

As a result of petitions from the AOPA and the EAA to delete the annual flight review, and numerous other inquiries questioning the sufficiency of the data used to justify the annual flight review requirement, the FAA initiated a review of the documents and data that were used to justify the adoption of the annual flight review requirement. This review is described below in a section entitled, "Analysis of the Annual Flight Review." On March 27, 1990, the FAA completed this review and concluded that the data used in the development of the annual flight review rule may have been insufficient to justify imposing this requirement on the affected pilots. Therefore, on November 30, 1990, the FAA extended the compliance date for the annual flight review rule [§ 61.56(d)] to August 31, 1991 (Amendment No. 61-89, 55 FR 50312). This amendment also contained a request for comments. As a result of unforeseen delays in developing a proposed rule, on September 5, 1991, the FAA again extended the compliance date for the annual flight review until August 31, 1993 (Amendment No. 61-91, 56 FR 43970). Finally, on July 22, 1992, the FAA issued Notice No. 92-8 [57 FR 32680] that proposed to delete the annual flight review.

### FAA Analysis of the Annual Flight Review

In March 1990, the FAA completed a reevaluation of the data that was the basis for adopting the annual flight review requirement for the affected pilots [§ 61.56(d)]. These data show the private pilot accident totals from 1976 to 1981; it was organized into fatal and nonfatal accidents, and by pilot age and total flight hours. Accidents totals were provided for the various experience levels in 100-hour increments (through 999 hours).

Because the total number of accidents was higher in each of the first four 100-hour increments than in any of the other increments, the 400-hour pilot time level was selected as the time level for the annual flight review requirement. The FAA determined on reevaluation, however, that the data did not show whether the higher accident totals for these subgroups reflected higher accident rates per pilot, or greater activity levels (i.e., exposure), or a combination of these factors.

Also, the accident data did not distinguish between instrument-rated and noninstrument-rated pilots. Thus, it was impossible to determine the extent to which relatively inexperienced instrument-rated pilots may have contributed to the accident totals.

As a result of this review, the FAA determined that the documents and data sources it used to develop the annual flight review requirement were insufficient.

### FAA Analysis of Biennial Flight Review Requirements

Currently, the flight review requirements of § 61.56 are very general. Section 61.56(a) requires a review of the

current general operating and flight rules of part 91 of the FAR and a review of those maneuvers and procedures which, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate. This requirement could be interpreted in many different ways. At one extreme, a flight review could consist of a short discussion during preflight and a 10-minute flight with one takeoff and one landing. At the other extreme, a flight review could consist of a multihour oral and flight review of all of the maneuvers and procedures listed in the practical test standards for each certificate and rating the applicant holds.

To assist the general aviation public in maintaining proficiency, the FAA created the "Pilot Proficiency Award Program" (Wings) to provide pilots with the opportunity to establish and participate in a personal recurrent training program. This voluntary program has been very successful in reducing the number of accidents for participating pilots. The Report of the Safety Review Task Force of the Federal Aviation Administration Flight Safety Program, August 1985, stated that the Wings program has an outstanding record. Only 81 accidents, with a total of 10 fatalities, have occurred among the group of 45,000 airmen who have participated in the program since 1979. In addition, statistics show that participation in the Wings program has increased 51 percent from 8,738 Wings awarded in calendar year 1986 to 13,837 awarded in calendar year 1991. Data for the full year 1992 are not available. This trend indicates that the general aviation public recognizes the need for recurrent training. Amendment 61–90 [56 FR 11308, March 15, 1991] amended § 61.56 to state that persons who have satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review.

In spite of recognizing the need for recurrent training by the majority of general aviation pilots, the FAA has determined that a segment of the pilot population currently may not receive a satisfactory flight review. Therefore, a minimum of 1 hour of ground instruction and 1 hour of flight instruction should be required biennially to ensure that each person receiving a BFR receives a satisfactory review commensurate to the certificates and ratings held.

Requiring a minimum of 1 hour of flight instruction and 1 hour of ground instruction will help to eliminate inadequate flight reviews while not restricting the flight instructor from requiring additional instruction if, in the instructors opinion, it is needed to ensure that the pilot is capable of exercising the privileges of the certificates and ratings held.

The FAA assumes that 1 hour of flight instruction and 1 hour of ground instruction is the average duration of a flight review for pilots who have recently and consistently been exercising the privilege of their certificates and ratings. This is consistent with the recommendations of Advisory Circular AC–61–98A, described below. The FAA realizes that there are occasions when a flight review will require more than 1 hour of ground instruction and/or 1 hour of flight instruction. For example, if the pilot being reviewed has not exercised the privileges of the certificate for an extended period, it is very likely that the flight instructor would require the pilot to receive more than 1 hour of ground instruction and/or 1 hour of flight instruction. Thus, this minimum requirement of 1 hour of ground instruction and 1 hour of flight instruction does not restrict the flight instructor from requiring additional instruction, as needed, depending on the experience and skills of the pilot.

In addition, in response to comments that the FAA should publish guidelines concerning maneuvers and procedures, the FAA has developed AC–61–98A, Currency and Additional Qualification Requirements for Certified Pilots. The purpose of AC 61–98A, in part, is to provide information for certified pilots and flight instructors to use in complying with the flight review required by § 61.56. Advisory Circular 61–98A recommends that all flight reviews consist of a minimum of 1 hour of flight instruction and 1 hour of ground instruction for all pilots. The FAA has determined, however, that setting specific maneuvers and procedures requirements in the rules would unduly restrict a flight instructor's discretion in reviewing an individual's ability to safely exercise the privileges of the certificates and ratings held. Due to different pilot abilities, experience levels, type of operation, certificates, ratings, and aircraft, the flight review needs to be tailored to the individual pilot. Thus, guidance in the form of an AC will supplement this final rule and will continue to provide a useful reference source in putting together a BFR appropriate for the person receiving the review. The goals and objectives of the BFR still must be met.

**Current Safety Enhancement Activities**

The FAA has adopted a new approach to identifying and developing solutions for general aviation safety issues. An FAA-industry partnership called the General Aviation Action Plan Coalition (GAAPC) has been formed to address safety problems. The GAAPC consists of representatives from the FAA, Aircraft Owners and Pilots Association, Air Safety Foundation, National Business Aircraft Association, General Aviation Manufacturers Association, Experimental Aircraft Association, Helicopter Association International, National Air Transport Association, Sport Aircraft Manufacturers Association, and National Association of State Aviation Officials.

Through the GAAPC, the FAA and the general aviation community are seeking to enhance and promote general aviation. To this end, the GAAPC is working to identify problems, identify and develop the data needed to study these problems, and, where possible, suggest non-regulatory solutions to these problems. If the GAAPC determines that a solution to a problem would require regulatory action, it will forward such a recommendation to the FAA Aviation Rulemaking Advisory Committee.

The work of the GAAPC has superseded the general aviation safety studies discussed in Notice No. 92–8. Within the GAAPC, Working Group B studies issues involving initial, recurrent, and transition flight training. Priorities established for Working Group B include the BFR, complex aircraft training, and revision to the FAA's Flight Training Handbook.

Finally, the FAA currently is conducting a review of parts 61, 141, and 143. In connection with this review, the FAA is completing a thorough assessment of the skills that are needed for the different types of pilot certificates, ratings, and operations.

**Other, Conforming Changes**

On October 5, 1989, the FAA issued an amendment to the recreational pilot rule [Amendment No. 61–86, 54 FR 41234]. This amendment, in part, modified the annual flight review requirements for certain glider-rated private pilots. The amendment allowed glider-rated private pilots to substitute three instructional flights in a glider, each of which included a 360-degree turn, in lieu of the 1 hour of flight instruction. That change resulted, part, from comments submitted by the Soaring Society of America on the requirements for an annual review contained in the recreational pilot rule.

The FAA has determined that the change to the BFR should provide glider-rated pilots the same option for complying with the 1 hour of ground instruction and 1 hour of flight instruction as provided in Amendment No. 61–86 for glider-rated private pilots receiving the annual flight review.

**Discussion of Public Comments**

The FAA received 49 comments in response to Notice No. 92–8 mostly from private pilots and certified flight instructors (CFI's). The following organizations also submitted comments: the National Association of Flight Instructors (NAFI), the Air Line Pilots Association (ALPA), the Experimental Aircraft Association (EAA), the National Transportation Safety Board (NTSB), and the Aircraft Owners and Pilots Association (AOPA).

Several commenters, including EAA and AOPA, support the proposal to delete the annual flight review requirement; however, other commenters, including NAFI, ALPA, and the NTSB, are opposed to deleting the annual flight review requirement. In addition to the annual flight review requirement, other comments received in response to this NPRM reference the BFR requirement, the cost impact of the proposal, and recommended alternatives to the proposal.

*Annual Flight Review Requirements*

Sixteen commenters, including the EAA and AOPA, agree with the proposal to delete the annual flight review requirement indicating that this requirement should never have been imposed and that it would be beneficial for general aviation to delete it. Five other commenters, however, including the NTSB, NAFI, and ALPA, are opposed to deleting the annual flight review requirement indicating that there is a definite need for an annual flight review which is valuable in training all pilots operating in the aviation system to high standards of proficiency and performance. As a result of the reevaluation of the information used to justify the annual flight review requirements, the FAA concluded that the data used was insufficient to justify imposing this requirement on the affected pilots. Consequently, until analysis supports an annual flight review for a certain segment of the pilot population, the FAA has determined that the annual flight review requirement for the affected pilots should be removed.

Two commenters believe that the decision to delete the annual flight review requirement is based on preliminary work and incomplete studies. In March 1990, the FAA completed a review of the data used as the basis for adopting the annual flight review requirement. The FAA concluded that the data used to develop the annual flight review rule did not justify imposing it.

*Biennial Flight Review Requirement*

Sixteen commenters, including the NTSB, agree with the proposed requirement for 1 hour of ground and 1 hour of flight instruction indicating that it would enhance safety, apply a more specific framework to the BFR, and provide a greater measure of standardization.

Other commenters oppose the proposed requirement for 1 hour of ground and 1 hour of flight instruction. Two commenters believe that any competent instructor should be able to determine if pilots being reviewed are competent to exercise the privileges of their certificate in less than 1 hour of flight and 1 hour of ground instruction. Eight commenters, including the EAA, believe that the time spent on a flight review should be at the discretion of the person giving the review. Five commenters, including NAFI, indicate that there is no justification for requiring the 1 hour of flight and 1 hour of ground instruction until the studies that the FAA is conducting are complete. Although the FAA believes that most pilots are receiving a satisfactory flight review, the FAA has determined that a segment of the pilot population may not receive a satisfactory flight review. The FAA believes that requiring a minimum of 1 hour of flight instruction and 1 hour of ground instruction should help eliminate inadequate flight reviews while not unduly restricting the flight instructor from requiring additional instruction if, in the judgement of the flight instructor, it is needed to ensure that the pilot is capable of exercising the privileges of the certificates and ratings held. Additionally, the FAA has published guidelines concerning maneuvers and procedures in Advisory Circular AC–61–98A entitled "Currency and Additional Qualification Requirements for Certified Pilots." If an instructor follows the recommendations contained in AC–61–98A, a BFR would take at least 1 hour of flight instruction and 1 hour of ground instruction.

*Cost Impact*

Thirteen commenters believe that Notice 92–8 does not address the cost impact of the proposal which, they believe, will place additional financial burdens on aircraft owners and pilots who already are faced with the high cost of insurance, maintenance, annual inspections, and medicals. By contrast, however, AOPA commented that eliminating the annual flight review requirement would be cost-effective in that the general aviation community would avoid an estimated cost of $75 to $250 per pilot/per year. The FAA has prepared a detailed economic evaluation of this rule and placed it in the docket. As a result of this evaluation, the FAA has concluded that this final rule is cost beneficial. For a summary of this evaluation, refer to the "Regulatory Evaluation Summary" in this preamble.

*Recommendations*

NAFI indicates that, while it has no objection to the minimum requirement for 1 hour of ground and 1 hour of flight instruction for holders of private pilot certificates, it does oppose the requirement for commercial and ATP certificate holders who fly for a part 135 operator are required to have recurrent testing every 12 calendar months (§ 135.293). A pilot in command of an aircraft under instrument flight rules must accomplish an instrument proficiency check every 6 calendar months (§ 135.297). Commercial and ATP certificate holders who fly for a part 125 operator must comply with recurrent testing similar to part 135 pilots (§§ 125.287 and 125.291). Commercial and ATP certificate holders who fly for a part 121 operator are required to take 6-and-12-month proficiency checks listed in § 121.441. This recurrent testing fulfills the BFR requirement. Some commercial and ATP certificate holders, however, are not required, by other regulations, to have any recurrent training (i.e., flight instructors operating under part 61, sightseeing operations, parachute operators, and others). To maintain a level of safety commensurate with the operation and certificate held, the FAA has determined that requiring the 1 hour of flight instruction and 1 hour of ground instruction for commercial and ATP certificate holders is necessary.

One commenter suggests that an annual flight review be required for pilots who fly less than 20 hours per year. Another commenter suggests that an annual flight review be required if a pilot does not log more than 24 flights and 12 hours within the previous 12 months. Neither commenter provides any statistics to support this suggestion. As discussed previously under "Current Safety Enhancement Activities," Working Group B, within the GAAPC has been tasked to study issues involving initial, recurrent, and transition flight training.

Two commenters believe that the proposal should be modified to exempt CFI's from any flight review requirement or, at the very least, exempt the CFI from the ground instruction requirement. The FAA has determined that there is a difference between the ability to instruct and the ability to pilot an aircraft. The FAA has determined that, in certain situations, exempting the flight instructor from the 1 hour of ground instruction has merit. One of the avenues flight instructors have for renewing their flight instructor certificate is to successfully complete, within 90 days before the application for renewal of their certificate, an approved FIRC consisting of not less than 24 hours of ground or flight instruction or both [§ 61.197(c)]. Since an approved FIRC contains a review of the general operating and flight rules of part 91, the FAA has determined that flight instructors who have completed an approved FIRC will not be required to receive a minimum of 1 hour of ground instruction. The final rule reflects this change.

One commenter believes that the 1 hour of ground and 1 hour of flight instruction will become a de facto standard. The goal of the flight review requirement is to assure that the pilot being reviewed has the knowledge and skill necessary to exercise the privileges of the pilot certificate held. The FAA holds the flight instructor responsible for assuring that this performance standard is met. Since the ultimate goal is a performance standard, the FAA sees no reason that the minimum hour requirements for the flight review will become de facto.

One commenter suggests that the FAA require that the standards established in the Practical Test Standards be completion standards for the BFR, while another commenter suggests that the FAA consider the addition of a standardized curriculum for the BFR. The NTSB suggests adding specific required content for the BFR. The FAA has determined that setting specific maneuvers and procedures requirements in the rules would unduly restrict a flight instructor's discretion in reviewing an individual's ability to safely exercise the privileges of the certificates and ratings held. Due to different pilot abilities, experience levels, type of operation, certificates, ratings, and aircraft, the flight review needs to be tailored to the individual pilot. The FAA has, however, developed Advisory Circular AC–61–98A, Currency and Additional Qualification Requirements for Certified Pilots. The purpose of AC 61–98A, in part, is to provide information for certified pilots and flight instructors to use in complying with the flight review required by § 61.56.

Three commenters, including the EAA, suggest implementing either a voluntary or mandatory Wings program. Section 61.56(e) provides the option to satisfactorily complete one or more phases of an FAA-sponsored pilot proficiency award program (i.e., Wings program) in lieu of the BFR requirement. To satisfactorily complete one phase of the Wings program, a pilot must attend at least one meeting and receive at least 3 hours of flight instruction within a 12-month period. Since the cost of completing one phase of the Wings program would be much greater than receiving 1 hour each of flight and ground instruction, the FAA has determined that requiring attendance in this type of program would place an undue economic burden on the general aviation public, but should remain an option.

*Additional Comments*

The FAA received additional comments in response to the NPRM. Some commenters suggest that the FAA remove the BFR requirement from the regulations while other commenters suggest that the FAA require separate or supplementary flight reviews for each category of aircraft on which the pilot wishes to operate. These comments are beyond the scope of this project.

Two comments were received on Amendment No. 61–89 and two comments were received on Amendment No. 61–91. All four commenters agree with the deletion of the annual flight review requirement for the affected pilots.

**Regulatory Evaluation Summary**

**Introduction**

Executive Order 12291, dated February 17, 1981, directs Federal Agencies to promulgate new regulations or modifying existing regulations only if benefits to society for each regulatory change outweigh potential costs. Accordingly, the FAA has prepared a detailed economic evaluation of this rule and placed it in the docket. The evaluation identifies and analyzes both the quantifiable and nonquantifiable economic effects of this final rule. Based on the results of its investigation, the FAA has concluded that this final rule is cost-beneficial.

This section contains a summary of the benefits and costs analyzed in the regulatory evaluation. In addition, it includes a regulatory determination required by the 1980 Regulatory Flexibility Act and an international trade impact assessment. If more detailed economic information is desired than is presented in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

**Benefit/Cost Comparison**

On January 1, 1994, this final rule will cover approximately 450,000 active pilots. The FAA assumes that most pilots already receive 1 hour of flight instruction and 1 hour of ground instruction in their BFR's. Based on discussions with FAA field representatives and comments from the docket, however, some pilots are receiving 1 hour of flight instruction but only ½ hour of ground instruction during their BFR's. For the purpose of this analysis, this rule will require those pilots to incur costs of an additional ½ hour of ground instruction. Because the rule requires a biennial flight review, only half of the affected pilots would incur costs each year.

In 1994, the rule will cost affected pilots $2.1 million. For the years 1994–2003, the total costs will be $16.2 million discounted at 7 percent ($14.5 million discounted at 10 percent).

The rule will provide two categories of benefits. First, there will be a cost-savings from the elimination of the annual flight review requirement for the affected pilots. In addition, flight instructors who renew their flight instructor's certificate by means of an approved FIRC need not accomplish the 1 hour of ground instruction currently required in the BFR. Second, a more comprehensive BFR is expected to maintain and even enhance safety.

In 1994, the cost-savings to the affected pilots will be $17.8 million. For the years 1994–2003, the total cost-savings will be $135.3 million discounted at 7 percent ($121.6 million discounted at 10 percent). Because the discounted costs of the rule at 7 percent will be $16.2 million over the years 1994–2003, the rule is cost beneficial. The FAA also estimates that, if only 1 percent of the accidents that potentially could have been prevented by a more comprehensive BFR were avoided, safety benefits in 1991 would have been between $5.9 million and $7.7 million.

The cost-savings for this final rule is greater than the cost estimate shown in the final rule for an annual flight review [54 FR 13028 March 29, 1989] because the cost-savings estimated for this final rule include an estimate of the value of time for the affected pilots.

**International Trade Impact Analysis**

This final rule has a negligible impact on trade opportunities for U.S. firms

doing business overseas or on foreign firms doing business in the U.S. The final rule primarily affects recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time, not businesses involved in the sale of aviation products or services.

**Regulatory Flexibility Determination**

This final rule does not have a significant economic impact, positive or negative, on small entities. Pilots, rather than business entities, will be affected by this final rule. Where an affected pilot is also the sole proprietor of a small business, and exercises the privileges of his or her certificate in operations that are incidental to that business, this final rule has only a negligible cost impact. This final rule is, however, likely to reduce revenues for flight instructors who potentially could receive income from administering an annual flight review. In 1994, approximately 131,000 pilots will be affected by repeal of the annual flight review requirements. These pilots will each receive a cost-savings of $44 annually (2 hours at $22 per hour). The total instructor-related cost-savings to affected pilots will be $5.76 million. On December 31, 1991, there were 69,209 flight instructor certificates. Assuming that all of the certificates were active, the income to flight instructors will be reduced by approximately $83 each annually. This is not a significant impact.

**Federalism Impact**

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980, (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

**Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034 February 26, 1979). A regulatory evaluation of this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

**List of Subjects in 14 CFR 61**

Aeronautical knowledge, Aviation safety, Cross-country flight privileges, Eligibility requirements, Limitations, Operational experience, Student pilots.

**The Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends part 61 of the Federal Aviation Regulations (14 CFR part 61) as follows:

## PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

**Authority:** 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.56 is revised to read as follows:

**§ 61.56 Flight review**

(a) A flight review consists of a minimum of 1 hour of flight instruction and 1 hour of ground instruction. The review must include—

(1) A review of the current general operating and flight rules of part 91 of this chapter; and

(2) A review of those maneuvers and procedures which, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.

(b) Glider pilots may substitute a minimum of three instructional flights in a glider, each of which includes a 360-degree turn, in lieu of the 1 hour of flight instruction required in paragraph (a) of this section.

(c) Except as provided in paragraphs (d) and (e) of this section, no person may act as pilot in command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has—

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the person has satisfactorily completed the review.

(d) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed a pilot proficiency check conducted by the FAA, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section.

(e) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review required by this section.

(f) A person who holds a current flight instructor certificate who has, within the period specified in paragraph (c) of this section, satisfactorily completed a renewal of a flight instructor certificate under the provisions on § 61.197(c), need not accomplish the 1 hour of ground instruction specified in subparagraph (a)(1) of this section.

(g) The requirements of this section may be accomplished in combination with the requirements of § 61.57 and other applicable recency requirements at the discretion of the instructor.

Issued in Washington, DC, on July 19, 1993.

**Joseph M. Del Balzo,**

*Acting Administrator.*

[FR Doc. 93–17975 Filed 7–27–93; 8:45 am]

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Part VI

# Environmental Protection Agency

40 CFR Part 258

**Solid Waste Disposal Facility Criteria; Delay of the Effective Date; Proposed Rule**

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-4684-3/EPA530-Z-93-010]

## Solid Waste Disposal Facility Criteria; Delay of the Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 9, 1991, EPA promulgated revised Federal criteria for Municipal Solid Waste Landfills (MSWLFs) under Subtitle D of the Resource Conservation and Recovery Act (RCRA). EPA is proposing to amend these criteria by delaying the effective date for six months for certain small landfills and by delaying the effective date for one year of the financial assurance requirements for all landfills. The Agency has received a considerable number of requests from States, localities, and other groups to extend the effective date. This proposal is not intended to change the MSWLF criteria, but would provide certain owners/operators with additional time to come into compliance with the MSWLF criteria requirements.

This proposal announces future changes to the small landfill exemption related to ground-water monitoring and modifies the timing of compliance with the closure requirements for owners/operators that cease receipt of waste prior to the effective date.

DATES: Comments on this proposed rule must be submitted on or before August 27, 1993.

ADDRESSES: Commenters must send an original and two copies of their comments to: Docket Clerk, OSW (OS-305), Docket No. F-93-XMLP-FFFFF, U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number F-93-XMLP-FFFFF. The public docket is located in M2616 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260-9327. Copies cost $0.15/page. Charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346, TDD (800) 553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920-9810, TDD (703) 486-3323.

For more detailed information on specific aspects of this proposed rule, contact Allen Geswein or Andrew Teplitzky, Office of Solid Waste (OS-301), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-1099.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
A. Overview of Subtitle D Current Effective Dates
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C. Summary of Features in the Criteria that Serve to Facilitate Compliance
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A. Regulatory Impact Analysis
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## I. Authority

EPA is proposing today's regulations under the authority of sections 2002 and 4010(c) of the Resource Conservation and Recovery Act of 1976, as amended. RCRA section 2002 provides the EPA Administrator with the authority to promulgate regulations as are necessary to carry out her functions under the Act. 42 U.S.C. 6912. Under section 4010(c) of RCRA, the EPA Administrator is required to promulgate revised criteria for facilities that may receive household hazardous waste (HHW) or small quantity generator (SQG) waste. The criteria shall be those necessary to protect human health and the environment. At the same time, in promulgating these revised criteria, the Administrator may take into account the practicable capabilities of facilities that may receive HHW or SQG waste. 42 U.S.C. 6949a(c). EPA has interpreted "practicable capability" to include both the costs which facilities will incur in complying with the revised criteria and the technical capability of facilities that must comply with the regulations. 56 FR 50978, 50983-84 (October 9, 1991); 53 FR 33314, 3325 (August 30, 1988). EPA has taken practicable capability of MSWLF owners/operators into account in proposing to modify the effective date of the revised criteria as set forth in this **Federal Register** notice.

## II. Background

### *A. Overview of Subtitle D Current Effective Dates*

On October 9, 1991, EPA promulgated a rule under Subtitle D of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act pertaining to the disposal of solid waste and sewage sludge in municipal solid waste landfills (56 FR 50978 (October 9, 1991)). These regulations apply to owners and operators of all municipal solid waste landfill units that receive waste on or after October 9, 1993. Landfill owners/operators that stopped accepting waste before October 9, 1991 are not required to comply with the regulations. Landfill owners and operators that stop accepting waste between October 9, 1991 and October 9, 1993 are exempt from all of the regulatory requirements except for the final cover requirement (found in 40 CFR 258.60(a)), which must be applied within six months of last receipt of waste. While owners and operators that continue to receive waste beyond the effective date must comply with the remainder of the landfill regulations (including location restrictions, operation, design, ground-water monitoring and corrective action, closure and post-closure, and financial assurance), the regulations provide for a phase-in of two of the more costly requirements: The financial assurance requirements (April 9, 1994) and ground-water monitoring and corrective action requirements (October 9, 1994 through October 9, 1996).

### *B. Implementation of the MSWLF Criteria*

Section 4005(c)(1)(B) of RCRA, as amended, requires states to develop and implement permit programs or other systems of prior approval and conditions to ensure that the MSWLFs are complying with the MSWLF Criteria. EPA's role is to review and approve these programs. EPA believes that for permit programs to be considered adequate, a state must have the capability of issuing permits or some other form of prior approval for all

MSWLFs in the state, and must establish requirements adequate to ensure owners and operators will comply with the federal landfill criteria. A state also must be able to ensure compliance through monitoring and enforcement actions and must provide for public participation.

The Agency intends to extend to Indian Tribes the same opportunity to apply for permit program approval as is available to states. Providing Tribes with the opportunity to apply for approval to adopt and implement MSWLF permit programs, while not a statutory requirement in RCRA section 4005(c)(1)(B), is consistent with EPA's Indian Policy. The Agency plans to propose the concept of Tribal permit program approval when a tentative notice of permit program adequacy is published for the first Indian Tribe seeking program approval.

If EPA approves a state/Tribal program, a state/Tribe has the opportunity for more flexibility and discretion in implementing the criteria according to local conditions and needs. Owners and operators located in a state/Tribe with an approved program may benefit from this potential flexibility, which extends to many parts of the MSWLF regulations. For example, owners and operators in unapproved states/Tribes must design their landfill with a composite liner in compliance with 40 CFR 258.40(b), whereas approved states/Tribes may allow an owner/operator to use an alternative design based on the performance standard described in 40 CFR 258.40(a). Because of the tremendous flexibility provided in an approved permit program, and because it is mandated by section 4005(c)(1)(B) of RCRA, EPA fully expects that most states will apply for and receive full approval of their MSWLF permit programs, thereby maintaining the lead role in implementing and enforcing the MSWLF Criteria promulgated under 40 CFR part 258. States are currently in various stages of the program approval process. Several states have received "partial" program approval, whereby only some portions of the state program have been approved while the remainder of the program is awaiting approval pending completion of statutory and/or regulatory changes by the state. In situations where a state program is not approved, or where portions of a program are not approved (in the case of a partial approval), the MSWLF criteria are implemented by the owner and operator, with no Federal permitting program or interaction. In situations where the Criteria are self-implementing, each owner/operator must document compliance and maintain this documentation in his/her operating record.

### *C. Summary of Features in the Criteria That Serve to Facilitate Compliance*

When the MSWLF Criteria were developed, the Agency realized that owners and operators of MSWLFs would need time to come into compliance with the regulations and that some flexibility in the regulations would be necessary because one standard set of regulations would not necessarily accommodate the variety of conditions that exist at each landfill location across the country. Taking into account the practicable capability of MSWLF owners/operators, the MSWLF Criteria contain a number of features that serve to facilitate compliance.

#### 1. Phased Effective Dates

First, the current effective date of the Criteria is two years after the date of promulgation in order to provide sufficient time for facilities to acquire sufficient capital and resources to either upgrade their facilities or close and find an alternative waste management option. The Agency also recognized that a delayed effective date would provide time to review the adequacy of a state/Tribal permit program. The two-year window also accommodates owners and operators of MSWLFs that wish to close their landfills to avoid having to comply with all of the Criteria. These individuals may accept waste up until the effective date and then take another six months to complete closure, thereby maximizing the time available to secure an alternative method of waste management and procure funding and professional services to close the landfill.

In addition to a two-year effective date window, the Criteria also provide phased effective dates for certain provisions of the rule. First, ground-water monitoring requirements for existing units and lateral expansions of existing units are phased-in between October 9, 1994 and October 9, 1996, according to a schedule set by an approved state or, in a unapproved state, depending on the proximity of the MSWLF unit to a drinking water intake. As discussed in the October 9, 1991 preamble to the Final Rule, this additional time was provided to compensate for the lack of qualified drilling firms and hydrogeologists that would have been necessary to bring everyone into compliance at the same time. 56 FR 50978, 51062–51063 (Oct. 9, 1991).

Second, the effective date of the financial assurance requirements is April 9, 1994, or 30 months following the publication of the Final Rule. As discussed in the preamble to the Final Rule, this additional time was provided to accommodate promulgation of a financial test for local governments and corporations, to allow the financial market sufficient time to respond to new demands for financial instruments, and to provide time for local governments and corporations to plan for and obtain any needed financial assurance. 56 FR 51104 (Oct. 9, 1991).

EPA also included provisions in the rule that in some way phase in certain requirements. For example, should an existing unit not be able to comply with the location restrictions for airport safety, floodplains, or unstable areas, owners/operators would have until at least 1996, and potentially later if the landfill is located in an approved state, to close. In addition, the landfill Criteria do not require a liner for existing portions of MSWLF units; the owner or operator need not install a liner until the unit is expanded laterally.

Thus, for existing MSWLF units, this generally means that the only requirements that immediately take effect on October 9, 1993 are the operating criteria, which include "good housekeeping" requirements such as access control, liquid restrictions, and procedures to exclude the receipt of regulated hazardous wastes and polychlorinated biphenyls (PCBs).

#### 2. Small Landfill Exemption

Section 258.1(f) of the MSWLF Criteria includes an exemption from the design, ground-water monitoring, and corrective action requirements for some very small, remote MSWLFs, so long as these landfills show no evidence of ground-water contamination. The Agency's Regulatory Impact Analysis found that these three regulatory requirements as the costliest elements of the regulations. In adopting this exemption, EPA maintained that it had complied with the statutory standard to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. However, on May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit Court issued an opinion pertaining to a Sierra Club and Natural Resources Defense Counsel (NRDC) challenge to the MSWLF Criteria (*Sierra Club* v. *United States Environmental Protection Agency*, No. 92–1003 (D.C. Cir. May 7, 1993), which vacated the small landfill exemption relating to ground-water monitoring. Thus, all MSWLFs, regardless of size, are now required to perform ground-water

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monitoring. Small landfills that meet the criteria set forth in 40 CFR 258.1(f)(1) will continue to be eligible for the exemption from the design requirements.

3. Additional Flexibility Available to Owners/Operators in States With EPA-Approved Permit Programs

As mentioned earlier, states/Tribes with EPA-approved permit programs acquire a significant amount of flexibility with respect to the way in which they implement the MSWLF criteria, potentially resulting in considerable cost savings to the owner and operator. In addition to the example of flexibility discussed earlier with respect to an alternative liner design, an approved state/Tribe may use alternative approaches to the federal requirements that would apply in unapproved states/Tribes, while still protecting human health and the environment. Examples include: allowing siting in certain locations where owners/operators in unapproved states/Tribes could not; allowing an alternative cover material, other than six inches of soil, to be applied at the end of each operating day; altering groundwater monitoring frequencies and clean-up standards; allowing for alternative landfill cover designs; shortening the post-closure care period; and permitting the use of an alternative financial assurance mechanism.

## III. Delay of the Effective Date

### *A. Reasons Cited for a Delay of the Effective Date*

Despite the existing features of the Criteria that serve to facilitate compliance with the Subtitle D regulations, the Agency has received a considerable number of requests to extend the effective date. These requests have come largely from local governments that own/operate small MSWLFs, and a number of the national organizations who represent local government interests. These requestors cited a number of reasons for a delay of the effective date, which are summarized below.

1. Inability To Comply With Unfunded Federal Programs

The Agency has received a number of letters stressing the struggle that local governments are experiencing in their attempt to comply with an "overwhelming" number of "unfunded" federal requirements. In addition to the MSWLF criteria, local governments must deal with a variety of compliance costs of such environmental programs as the underground storage tank program, the safe drinking water program, and the wastewater treatment program, all of which are competing for already scarce local government funds. Local governments have requested a delay in the effective date of the MSWLF Criteria to give them additional time to put the financing in place to either upgrade their existing landfill(s) or close their landfill(s) and procure an alternative form of waste management.

2. Unavailability of Flexibility in Unapproved States

Because most states are in the process of having their permit programs approved by EPA, local governments have expressed uncertainty regarding the regulatory requirements they will be subject to on the effective date of the criteria. This creates a potentially confusing situation where, on October 9, 1993, owners/operators in unapproved states would be subject to "overlapping" federal and state requirements. In addition, where a state is not approved before the effective date, owners and operators in that state would not be afforded the flexibility that could be available in approved states to allow for consideration of local conditions and needs when designing and operating a landfill. For example, owners/operators in an unapproved state are required to place six inches of earthen material on top of their waste at the end of each operating day (known as "daily cover"); whereas an approved state would have the flexibility to allow owners/operators to use an alternative "daily" cover, such as foam, should it meet a general performance standard. These alternative daily covers could save valuable landfill space and result in considerable cost savings to the owner/operator.

3. Delays in Gaining Access to a New Waste Management Facility

Local governments that plan to close their own landfills and join a regional facility are experiencing delays in gaining access to the new facility due to difficulties in: Securing financial backing, acquiring permits and other approvals, and/or completing timely construction of a transfer station and/or the new landfill; information provided to EPA indicate that this is especially true for communities with smaller landfills (e.g., accepting less than 100 TPD) that are more likely to close existing units and join a regional facility. In some states, the permitting process is unable to handle the influx of applications for new landfill permits and for modifications of existing landfill permits, thereby delaying an owner's/operator's ability to meet the criteria on the effective date. In addition, many local governments have experienced continued opposition to the siting of new regional facilities by local opposition groups, who have initiated litigation to challenge siting decisions. Bond issues, tax increases, and tipping fee charges needed to finance the closure or construction of MSWLFs have had to go through the legal processes required for approval of such actions. Some local governments have had to seek new statutory authorization from their states to allow the local governments to form regional districts or to finance facilities. Because many state legislatures meet only for a few months each year, this task is just now getting completed in some places. These local governments are requesting a delay in the effective date so that, until the new landfill is complete, they can keep their local landfill(s) open without being subject to the new regulatory requirements (especially costly groundwater monitoring, post-closure care, and corrective action requirements).

### *B. Proposal To Extend the Effective Date*

In response to these concerns, the Agency today proposes a one-time extension of the effective date of the MSWLF criteria for a period of six months—from October 9, 1993 to April 9, 1994—for owners and operators of relatively small MSWLF units (existing and lateral expansions) if certain conditions are met. EPA is not proposing any changes in the substantive requirements of the criteria. To qualify for the extension, the following proposed conditions would need to be met: (1) The landfill receives 100 tons per day (TPD) or less of any combination of household, commercial, or industrial solid waste on an annual average basis; (2) the landfill is located in a state that has submitted an application for program approval to EPA by October 9, 1993 or is located on Tribal lands; and (3) the landfill is not currently on the Superfund National Priorities List (NPL). A further discussion of individual aspects of this proposed extension follows. It should be noted that a state/Tribe, regardless of its permit program approval status, may impose more stringent effective dates and/or more stringent criteria for qualifying for an extension.

1. Basis for Six-Month Timeframe

As discussed earlier, owners and operators have expressed concern that the federal criteria may be effective before their respective states obtain EPA approval of their permit programs, thereby subjecting such localities to a changing set of federal-then-state regulations over a short period of time

and initially limiting the flexibility available to, and potentially increasing design and operating costs for, owners and operators in states with EPA-approved permit programs. EPA's current data indicate that nearly all states will submit an application for approval by October 9, 1993. The Agency has found that the approval process for a state's application takes approximately six months. A six-month delay of the effective date would mean that most states will have an approved permit program by April 9, 1994. Therefore, by delaying the effective date for six months—until April 9, 1994—the vast majority of owners and operators will be able to take advantage of the flexibility afforded to states with approved programs and to take advantage of the potential cost savings that the flexibility may provide. In addition, because many state programs are expected to be approved in the period between October 9, 1993 and April 9, 1994; extending the effective date six months will allow many local governments to avoid the situation of gearing up to meet federal standards and then, a few months later, changing to meet newly approved state standards.

EPA has received comments from a number of communities that state that it has been impracticable for them to obtain a permit for a new facility within the current two year effective date time frame or to reach agreements with other communities to establish a regional landfill. The additional six months included in this proposal would provide communities that have already initiated attempts to utilize alternative disposal facilities with time to obtain either the permits for a new facility or to reach agreements with other communities. In addition, the six month delay will assure that communities that have already sought alternative disposal facilities, or have initiated efforts to modify their existing MSWLF to comply with the rule, will have the additional time to obtain adequate financing to support such efforts. Thus, the proposed six-month extension in the effective date takes into account the practicable capabilities of the owners/operators of MSWLFs in accordance with RCRA section 4010(c). Communities' efforts and their difficulties to comply with the rule by October 9, 1993 also are discussed in the next section of the preamble.

**2. The Extension Is Limited to Landfills Accepting 100 Tons Per Day or Less of Solid Waste**

Based on the information gathered by the Agency regarding the need for a delay of the effective date, it appears that the primary concern is the impact of the criteria on smaller community landfills where financial conditions and geography create significant obstacles to compliance, despite good-faith efforts to comply. In response to the MSWLF criteria and other factors, many of the smaller landfills may close and their users will instead send their waste to a regional waste management facility that can take advantage of an economy of scale. (EPA data indicate that average annual household payments in 1987 for environmental services in a sample of over 8,000 cities, towns, and townships were above average for cities of less than 50,000 and below average for cities of greater than 50,000, suggesting that economies of scale are available to communities of greater than 50,000.) The process of closing their own landfill and arranging for a regional facility has taken more time than many communities anticipated, hence the intense interest of small communities in a delay of the criteria effective date.

Based on available information, landfills accepting 100 tons per day or less of solid waste appear to be experiencing the most severe budget and technical problems that have led to a request for an extension. Such landfills generally serve communities with a population up to a range of 45,000 to 57,000. It is important to note that the effective date for MSWLF units accepting greater than 100 TPD continues to be October 9, 1993.

The Agency is concerned that some landfill owners/operators will alter the amount of waste they are presently accepting in order to take advantage of today's proposed six-month extension. For example, some landfills accepting greater than 100 TPD, on average, may want to achieve an extended effective date by suddenly reducing the amount of waste they receive to meet the 100 TPD cutoff. Because today's extension is intended for smaller landfills already in existence, the Agency is today proposing a method of determining whether an owner/operator meets the 100 TPD limit.

To determine whether one meets the 100 TPD limitation to qualify and continue to be eligible for the extension, the owner/operator must meet two conditions. First, to qualify for the extension, the owner/operator must assure that the average daily tonnage received over the one-year period extending October 9, 1991 through October 9, 1992 is 100 TPD or less. This should provide a reasonable "snapshot" of landfill size.

Second, the owner/operator also must assure that the daily tonnage received on a monthly basis during each month of the six-month extension period is 100 TPD or less. The Agency considered establishing a daily maximum of 100 tons, but decided that the use of monthly averages was a more flexible approach. This allows an owner/operator to occasionally receive above 100 tons per day without jeopardizing the extension, as long as the average received per day during the month was less than 100 TPD.

The Agency is not establishing mandatory recordkeeping and reporting requirements. Owners/operators of very small landfills (receiving far less than 100 TPD) probably need little or no documentation. However, owners/operators that handle close to 100 TPD may wish to retain evidence that they are eligible for the extended effective date.

To determine the average tons received per day over the one year period, the owner/operator could simply divide the total annual amount of waste received by 365 days. The Agency realizes that many small landfills do not have scales or other means to weigh the trash hauling vehicles as they enter the landfill. If no scales are available, owners/operators may use other means to assure they meet the ton per day limit. For example, the owner/operator could conduct a one-time measurement of typical full trash hauling vehicles. This could then be used to determine average tons per day. Other options include estimating weight from volume of trash hauling vehicles by using a conversion factor (e.g., one ton equal to three cubic yards), or using sales/acceptance receipts from trash haulers.

The Agency solicits comments on whether these two calculations are necessary in order to avoid extending the effective date for historically larger facilities. The Agency also seeks comment on the methods of calculating the tons per day.

While the MSWLF criteria apply only to landfills that accept household waste, the Agency is aware that many of these landfills also accept commercial and non-hazardous industrial solid waste. The definitions of household, commercial, and industrial solid waste may be found in 40 CFR 258.2. Data contained in the EPA Report "Characterization of Municipal Solid Waste in the United States: 1992 Update," indicate that 55 to 65 percent of municipal solid waste comes from residential sources and 35 to 45 percent comes from commercial sources. Other data compiled by the Agency suggest that, while the vast amount of nonhazardous industrial waste is generated by manufacturers and is

managed on-site, a small percentage of industrial waste is sent to MSWLFs. When deliberating over the qualifications for the proposed extension in today's rule, the Agency considered prohibiting MSWLFs that qualify for the extension from accepting non-hazardous industrial waste. For several reasons, however, the Agency decided against a prohibition of accepting industrial waste. Specifically, (1) This waste stream typically represents a small fraction of the entire waste sent to a MSWLF, (2) prohibition of certain waste streams would be difficult to enforce, (3) for some industries, the local MSWLF represents the only economical method of disposal of their waste, and (4) the extension would be granted for only a short period of time. Therefore, today's proposed extension applies to MSWLFs accepting 100 tons per day or less of any type of solid waste, which may include household waste, commercial solid waste, and industrial solid waste as defined in 40 CFR 258.2.

Finally, today's proposed extension, while providing an extension for a majority of the landfills in the country, will have little effect on the majority of waste disposed in landfills. Overall, limiting the extension to landfills receiving 100 TPD or less would extend the effective date for approximately 75 percent of the MSWLFs in the country, but would apply to less than 15 percent of the total waste stream.

**3. The Extension Is Limited to Existing MSWLF Units and Lateral Expansions of Existing Units**

The Agency, in § 258.2, defines an existing MSWLF unit as any unit that is receiving solid waste as of the effective date of the landfill criteria (currently set at October 9, 1993). The Agency has interpreted this to mean that an existing unit is defined by the areal extent of waste (sometimes referred to as the waste "footprint") placed as of October 9, 1993. A lateral expansion is defined as the horizontal expansion of the waste boundaries of an existing unit. A new MSWLF unit is any unit that has not received waste prior to the effective date (October 9, 1993). Today's proposed extension of the effective date for landfills accepting less than 100 TPD does not apply to new units. If a unit has not received waste by October 8, 1993, it is a new unit and must comply with the Part 258 requirements on October 9, 1993. The major rationale for today's proposed limited extension is to allow existing landfill units in small localities to remain open while they complete their plans for alternative waste management methods or for coming into full compliance with the criteria. Today's proposed extension is not intended to provide relief for owners/operators who wish to open new units. The Agency is allowing owners and operators of MSWLF units receiving less than 100 TPD and that meet the other criteria discussed herein, to laterally expand their units during this delay period so as not to disrupt the trench and area fill practices that occur at many of the smaller landfills in the U.S. For example, in a trench fill operation, a small trench is excavated, filled, and covered in a relatively short period of time. As the old trench is filled, it is extended to accommodate additional waste. This extension is by definition a lateral expansion. Limiting today's proposal to existing units would therefore limit the extension to considerably fewer landfills than intended.

**4. The MSWLF Is Located in a State That Has Submitted an Application for Permit Program Approval by October 9, 1993 or Is Located on Indian Lands**

As previously mentioned, among the reasons for today's proposed extension is the need to provide more time for states/Tribes to obtain EPA approval of their permitting programs so that many of the owners and operators will be able to take advantage of state/Tribal flexibility upon the new effective date and so that localities can avoid the re-tooling that would be necessary to meet federal standards in October and then different state standards several months later. The Agency's current data indicate that nearly all states are likely to have received final approval by April 9, 1994. In order to assure that this occurs, and to provide further incentives to the states, the Agency decided to limit today's proposed extension to owners and operators of MSWLF units receiving 100 TPD or less in states that have submitted an application for permit program approval. The Agency is linking today's proposed extension to the state permit program approval process so as not to slow the pace of state program approval. Conversely, this linkage may indeed serve as impetus for states to submit their applications sooner rather than later.

The Agency recognizes that, for an owner/operator to take advantage of this extension, that owner/operator must know whether their state has submitted an application for permit program approval on or before October 9, 1993. Therefore, when the Agency publishes the final rule for this extension, it will include a list of states who have submitted an application by the date on which the final rule was signed. EPA will subsequently acknowledge receipt of application for those States who submit their applications after this date but on or before October 9, 1993. Owners/operators with MSWLF units located in states that do not appear on this list in the final rule should contact their state to find out whether EPA has notified the state that it has officially submitted an application by October 9, 1993.

While states are required by RCRA Section 4005(c)(1)(B) to develop a permit program for MSWLFs, the statute does not require Indian Tribes to do the same. As mentioned previously in this preamble, the Agency plans to propose to extend this opportunity to Indian Tribes at the time the Agency publishes its first tentative decision to approve an Indian Tribe's permit program. Because many of the landfills on Indian lands could qualify for today's proposed six-month extension by virtue of the fact that they accept less than 100 TPD and are not on the National Priorities List, the Agency is proposing to allow MSWLF units on Indian lands to take advantage of the six-month extension, even if the Indian Tribe has not submitted an application for permit program approval by October 9, 1993.

For the purpose of today's proposal, an Indian Tribe is defined as any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers within Indian country. Indian lands means: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation, (b) all dependent Indian communities within the borders of the United States, whether original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

While the definition of Tribes in today's proposal does not explicitly include Alaska Native Villages, EPA believes that, to the extent these entities exercise substantial governmental duties and powers, they would be eligible to apply for permit program approval. For purposes of today's proposal, as with Indian Lands in other States, EPA is allowing that landfills on Native Village Lands be eligible for the six-month extension whether or not the Village has submitted an application for permit program approval.

5. The MSWLF is not Currently on the National Priorities List

Prior to publishing the proposed rule for the MSWLF criteria in 1988 (see 53 FR 33313), the Agency examined the characteristics of landfills in the Superfund data base. Of the 27,000 sites in the Superfund data base in 1986, almost one fourth were MSWLFs. In addition, as of May 1986, 22 percent of the sites on the Superfund National Priorities List (NPL) were identified as MSWLFs, as of May, 1986. Because the Agency does not wish to perpetuate any problems associated with MSWLFs currently on the NPL, today's proposed extension does not apply to landfills currently on the NPL as published in appendix B to 40 CFR part 300.

6. Issues Pertaining to Sewage Sludge

As discussed in the preamble to the October 9, 1991 final rule, the MSWLF criteria in 40 CFR part 258 fulfill a portion of the Clean Water Act (CWA) section 405(d) mandate that EPA promulgate regulations governing the use and disposal of sewage sludge. For this reason, the part 258 criteria were jointly promulgated under CWA and RCRA authorities and apply to all MSWLFs in which sewage sludge is co-disposed with household wastes. Section 307(b)(1) of the CWA provides that publicly owned treatment works (POTWs) may relieve industrial dischargers from pretreatment requirements for a pollutant (i.e., grant a "removal credit") under certain conditions, to avoid duplicative wastewater treatment by the POTW and industrial pretreater.

40 CFR 403.7(a)(3) of EPA's removal credits regulations provides that a POTW may be authorized to grant removal credits only if "the granting of removal credits will not cause the POTW to violate the local, state, and Federal sludge requirements which apply to the sludge management method chosen by the POTW." Where the management method is co-disposal in a MSWLF, the applicable regulations are spelled out in 40 CFR part 258. As stated in the preamble to the final rule for the MSWLF criteria, "EPA has determined that POTWs should not be authorized to grant removal credits until the MSWLF to which the POTW sends its sludge is in compliance with all the part 258 requirements * * *" In addition to the operating requirements, these would include location standards, design, ground-water monitoring, and financial assurance requirements. Despite any extensions to the effective date that may be promulgated, EPA will not grant removal credit authority to a POTW unless it sends its sludge to a MSWLF that complies with the full panoply of the part 258 rule requirements. Therefore, POTWs will not be eligible to receive removal credits if they send their sludge to small landfills that choose to take advantage of the six-month extension.

## IV. Delay of the Financial Assurance Requirements

### *A. Reasons for a Delay of the Financial Assurance Requirements*

In the final MSWLF criteria rule, the Agency promulgated an effective date of October 9, 1993 for most of the provisions of the rule; however, because the Agency was not prepared at that time to promulgate a financial test for local governments and for corporations, the Agency delayed the effective date of the financial responsibility provisions until April 9, 1994. In doing so, the Agency intended to provide adequate time to promulgate a financial test for local governments and another for corporations before the effective date of the financial assurance provisions. The financial test would allow owners and operators to demonstrate that they can satisfy the goals of financial assurance on their own, and that they do not need to procure a third-party instrument to assure that the obligations associated with their landfill will be met. Because an owner or operator using a financial test would not have to secure a third-party instrument, the cost of financial assurance to the regulated community would decrease.

The delayed effective date also was intended to provide owners and operators sufficient time to determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities, and obtain a guarantor or an alternate instrument, if necessary. The Agency also recognized that local governments, in particular, require notice of the requirements in order to plan their budgets for the upcoming year. However, the Agency encountered unanticipated delays in the rulemaking process during the development of both the local government and corporate financial tests. As a result, neither financial test will be promulgated within the timeframe anticipated when the Agency established the April 9, 1994 effective date for the financial responsibility provisions.

The Agency believes that it is important to have these financial tests in place before the financial responsibility provisions become effective. This will allow owners and operators that satisfy the requirements of a financial test to realize a significant decrease in the cost of compliance with the financial responsibility requirements, while assuring that the costs associated with MSWLFs will be met. It also will provide time for the remaining owners and operators to budget for and acquire the appropriate financial assurance mechanism.

### *B. Proposal To Delay the Financial Assurance Requirements*

Today's proposal includes a delay of the effective date of the financial assurance requirements to respond to the delay in promulgating final financial test rules. Today's rulemaking proposes to establish the effective date of subpart G, Financial Assurance, to be April 9, 1995. The Agency believes that this additional time will be adequate to complete the promulgation of the financial test rule and provide notice to affected parties. This one-year extension would be limited to the financial responsibility provisions published in subpart G of the final MSWLF criteria published on October 9, 1991. This one-year extension is not limited to small landfills. It is available to owners and operators of all MSWLFs required to comply with the financial responsibility requirements whether or not it is located in a state having submitted an application for permit program approval.

## V. Modifications to the Exemption for Very Small Landfills in § 258.1(f)

### *A. Background*

The October 9, 1991 Final Rule for the MSWLF Criteria included an exemption for owners and operators of certain small MSWLF units (existing, new, or lateral expansion) from the design (Subpart D) and ground-water monitoring and corrective action (Subpart E) requirements of the Criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day, on an average annual basis, exhibit no evidence of ground-water contamination, and serve either:

(i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

In adopting this limited exemption, the Agency maintained that it had complied with the statutory standard to

protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. See discussion in 56 FR 50991.

In January 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed petitions with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D criteria. The Sierra Club and NRDC suit alleged, among other things, that EPA acted illegally when it exempted these small landfills from the ground-water monitoring requirements. On May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit issued an opinion pertaining to the Sierra Club and NRDC challenge to the small landfill exemption. *Sierra Club* v. *United States Environmental Protection Agency*, No. 92–1003 (D.C. Cir. May 7, 1993).

The Court held that under section 4010(c), the only factor EPA could consider in determining whether facilities must monitor their ground water was whether such monitoring was "necessary to detect contamination," not whether such monitoring is "practicable." The Court noted that while EPA could consider the practicable capabilities of facilities in determining the extent or kind of ground-water monitoring that a landfill owner/operator must conduct, EPA could not justify the complete exemption from ground-water monitoring requirements. Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, directing the Agency to "* * * revise its rule to require ground-water monitoring at all landfills."

*B. Changes to the Small Landfill Exemption Regarding Ground-Water Monitoring*

As a result of the May 7, 1993 U.S. Court of Appeals decision requiring ground-water monitoring at all landfills that receive household hazardous waste or small quantity generator waste, the Agency, as part of today's proposal, is issuing a regulatory notice that announces conforming changes to the small landfill exemption. Based on the Court's decision, owners and operators of MSWLF units that meet the qualifications outlined in 40 CFR 258.1(f) are no longer exempt from ground-water monitoring requirements in 40 CFR 258.50–258.55. It is important to note that Sierra Club and NRDC challenged only that portion of the small landfill exemption relating to ground-water monitoring requirements, and the Court's opinion addressed only that portion of the exemption.

The Court's opinion only vacated that part of the exemption pertaining to ground-water monitoring and does not explicitly mention corrective action. However, the ground-water monitoring and corrective action requirements are highly inter-related parts of the regulatory program. (EPA promulgated these requirements together in subpart E of part 258.) Under the current regulations, these small facilities are not exempt from corrective action because the entire small landfill exemption under § 258.1(f) is eliminated if an owner/operator of a MSWLF unit has knowledge of ground-water contamination resulting from the unit. Therefore, in this circumstance, the existing regulations already subject owners/operators to all of the provisions in subpart E, including corrective action. Today's modification to § 258.1(f) reflects the current regulatory requirements by exempting owners/operators only from the design requirements under subpart D of part 258. It also is important to note that state/Tribal programs may be more stringent and may not allow such an exemption.

Today's notice serves to formalize the U.S. Court of Appeals decision by removing the exemption for small landfills from the ground-water monitoring requirements. In its decision, however, the U.S. Court of Appeals does not preclude the possibility that the Agency could undertake a rulemaking process to establish separate ground-water monitoring standards for small landfills that take such factors as size, location, and climate into account. The Agency continues to be sympathetic to the difficulties that these small, arid, and remote communities face with respect to meeting the landfill criteria. Accordingly, the Agency today solicits comment on alternative ground-water monitoring programs that could accommodate the practicable capability of small landfill owners/operators through consideration of size, location, and climate, while ensuring that the program is adequate to detect contamination.

*C. Proposal to Delay the Effective Date for Landfills That Qualify for the Small Landfill Exemption*

Owners and operators of very small landfills that qualified for the small landfill exemption in 40 CFR 258.1(f)(1) and made a decision to remain open based on their exemption from ground-water monitoring will now need to reevaluate their waste management alternatives in light of the U.S. Court of Appeals decision. Such landfills acted in good faith under the then existing regulatory requirements in making operational and financial decisions during the period that the exemption from ground-water monitoring was to have been available. The court's decision announced on May 7, 1993, changes the situation dramatically for many of these small landfills by making them subject for the first time to the often expensive ground-water monitoring requirements. EPA believes that these facilities should be given the same amount of time that all other facilities (not meeting the small landfill exemption) have had to deal with the Criteria and to make alternative waste management decisions, as appropriate.

The Agency considered two options for these small landfills: (1) Extend the effective date only for the ground-water monitoring requirements and exempt owners/operators from ground-water monitoring during the post-closure care period if they cease receipt of waste prior to the delayed effective date of ground-water monitoring, or (2) extend the effective date for all of the requirements of the criteria.

The first option considers the fact that the Court decision only affected ground-water monitoring and not the other criteria requirements. Therefore, these small landfills should be required to comply with all requirements that they would have had to comply with should they remain open. Should they decide to cease receipt of waste prior to the delayed effective date of ground-water monitoring, they would not have to expend any additional money to comply because they would be exempt from ground-water monitoring during the post-closure period.

The second option considers the fact that had small landfill owners/operators known on the October 9, 1991 promulgation date that they were subject to ground-water monitoring, it is probable that some, perhaps many, could have made arrangements to close their landfill and seek alternative waste management options. Now, almost two years later, these owners/operators find themselves re-evaluating whether it is within their practicable capability to comply not only with certain of the criteria requirements (namely location restrictions and operating criteria, subparts B and C, respectively), but also ground-water monitoring requirements.

Because the Agency believes that these small landfills should be given the opportunity to make a decision regarding closure and future waste management options under the same circumstances that all other landfill owners/operators had (i.e., not subject to any portion of the criteria) and

because EPA considers that compliance with all of the rule's requirements may be beyond the practicable capability of MSWLFs that meet the exemption criteria in the short term, the Agency, as part of today's proposed rule, proposes to extend the effective date for all requirements of the MSWLF criteria for a period of two years for all MSWLF units that qualify for the small landfill exemption under § 258.1(f). The Agency solicits comment on today's proposal to extend the effective date of all of the criteria, rather than just the ground-water monitoring requirements, for this select group of very small landfills.

Today's proposed two-year extension for these very small landfills would mean that the effective date for the location restrictions, operating requirements, and financial assurance would be October 9, 1995. The effective date for the ground-water monitoring and corrective action requirements would be adjusted to correspond, to some degree, with the current phase-in for all other MSWLF units as described in § 258.50(c). Therefore, EPA proposes that very small MSWLF units which meet the exemption criteria in § 258.1(f)(1) and are located less than two miles from a drinking water intake must be in compliance with the ground-water monitoring requirements by October 9, 1995 and those very small MSWLF units located greater than two miles from a drinking water intake must be in compliance by October 9, 1996. (Existing units and lateral expansions that do not meet the very small landfill exemption criteria under § 258.1(f) and are located less than one mile from a drinking water intake must still comply with the ground-water monitoring requirements by October 9, 1994. See 40 CFR 258.50(c)(1).)

Today's proposal to extend the effective date for two years for all requirements of Part 258 would be available to any MSWLF unit that meets the qualifications for the small landfill exemption in § 258.1(f). The Agency wishes to stress that owners/operators of these MSWLF units, must, in addition to meeting the tonnage requirements of less than 20 TPD and the requirement that there be no evidence of ground-water contamination, be able to document either of the following sets of conditions in order to qualify for the two-year extension: (1) An interruption in surface transportation for three consecutive months that would prevent access to a regional facility, or (2) no practicable waste management alternative exists and the MSWLF unit is located in an area that receives less than or equal to 25 inches of precipitation.

It should be noted that this extension for very small landfills that qualify for the exemption under § 258.1(f) is independent of today's proposed six-month extension for MSWLF units accepting less than 100 TPD. Landfills qualifying for the exemption under § 258.1(f) need not meet all the qualifications proposed for the six-month extension for MSWLF units accepting less than 100 TPD.

## VI. Modification of Closure Provisions for Facilities Ceasing Receipt of Waste by Their Respective Effective Date

The Final Rule for the MSWLF criteria requires owners and operators of MSWLF units accepting waste after October 9, 1991, but ceasing receipt of waste before October 9, 1993, to complete closure activities at their MSWLF unit within six months of last receipt of waste by placing a cover on the unit that is in compliance with the cover requirements of 40 CFR 258.60(a). Owners and operators who fail to complete cover installation within this six month period are subject to all of the requirements of the landfill criteria.

Since publication of the Final Rule, the Agency has received a number of inquiries regarding the practicality of requiring cover to be placed within six months of last receipt of waste. Owners and operators that wish to accept waste until the last possible date before being subject to the full Subtitle D criteria (i.e., cease receipt of waste by October 9, 1993) would be required to close during the late fall/winter months of October through March. Construction of a landfill cover during winter weather in some parts of the country would be most difficult and would be subject to the most delays that would make it difficult, if not impossible, to complete within the six month timeframe required.

To facilitate cover installation for those landfill owners and operators who intend to cease receipt of waste by their respective effective date, the Agency is today proposing to modify the requirement that a cover be placed within six months of last receipt of waste by replacing it with a requirement that cover installation be completed by a date certain—October 9, 1994. Again, should the owner/operator fail to install a cover by this new date, they would be subject to all of the requirements of part 258. Owners and operators of landfills that are subject to the October 9, 1993 effective date would then have one year to install a cover, while owners and operators of landfills that would be subject to the proposed April 9, 1994 effective date would have six months to install a cover. Both time frames will provide at least six months of moderate weather during which to plan and install a landfill cover. To accommodate the weather concerns of owners and operators of landfills that qualify for the small landfill exemption (under § 258.1(f)) and intend to cease receipt of waste before the proposed October 9, 1995 effective date, today's proposed rule would require cover installation by October 9, 1996.

## VII. Summary of This Proposed Rule

Table I provides a summary of the changes to the effective dates of the MSWLF criteria as outlined in today's proposed rule.

TABLE I.—SUMMARY OF PROPOSED CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA

| | New, existing, and lateral expansion MSWLF units accepting greater than 100 TPD | Existing and lateral expansion MSWLF units accepting less than 100 TPD; are located in a state that has submitted an application for approval by 10/9/93 or are located on Tribal lands; and are not on the NPL | MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f) |
|---|---|---|---|
| General effective date[1]. This is the effective date for location, operation, design, and closure/post-closure | Oct. 9, 1993 | Apr. 9, 1994 | Oct. 9, 1995. |

TABLE I.—SUMMARY OF PROPOSED CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA—Continued

| | New, existing, and lateral expansion MSWLF units accepting greater than 100 TPD | Existing and lateral expansion MSWLF units accepting less than 100 TPD; are located in a state that has submitted an application for approval by 10/9/93 or are located on Tribal lands; and are not on the NPL | MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f) |
|---|---|---|---|
| Date by which closure activities must be completed if cease receipt of waste by the general effective date. | Oct. 9, 1994 | Oct. 9, 1994 | Oct. 9, 1996. |
| Effective date of ground-water monitoring and corrective action. | Prior to receipt of waste of new units; Oct. 9, 1994 through Oct. 9, 1996 for existing units and lateral expansions. | Oct. 9, 1993 for new units; Oct. 9, 1994 through Oct. 9, 1996 for existing and lateral expansions. | Oct. 9, 1995 for MSWLF units less than 2 miles from a drinking water intake; Oct. 9, 1996 for MSWLF units greater than 2 miles from a drinking water intake. |
| Effective date of financial assurance requirements. | Apr. 9, 1995 | Apr. 9, 1995 | Oct. 9, 1995. |

[1] If receive waste on or after this date must comply with all of Part 258.

## VIII. Request for Comments

Throughout today's proposed rule, the Agency solicited comments on a number of specific issues such as: (1) The types of calculations necessary to avoid extending the effective date for historically larger facilities accepting greater than 100 tons per day and (2) alternative ground-water monitoring programs that could accommodate the practicable capability of very small landfill owners/operators that are no longer exempt from ground-water monitoring due to the Court's decision.

While the Agency is interested in these specific comments, the Agency is requesting comments on all aspects of today's proposal. In particular, EPA is soliciting comments on the four major aspects of today's proposal: (1) To delay the effective date for landfills accepting 100 TPD or less and are located in either a state that has submitted an application for permit program approval by October 9, 1993 or are located on Indian lands; (2) to delay the effective date of all of the MSWLF criteria for two years for those landfills meeting the small landfill exemption in 258.1(f); (3) to delay the effective date of the financial assurance requirements for all MSWLFs until April 9, 1995; and (4) to require that those landfills ceasing receipt of waste by their respective effective date complete final cover installation by October 9, 1994.

In addition to the aforementioned issues, the Agency is concerned about the recent flooding in midwestern states and the ability of localities to manage the potentially dramatic increase in solid waste that may be generated as a result of clean-up efforts. These concerns include: (1) Whether certain MSWLFs that may have qualified for the six-month extension under today's proposed rule may no longer qualify because of the dramatic increase in waste generated as a result of the floods; (2) whether a six-month extension is an adequate time frame for owner/operators of MSWLFs in areas impacted by the flooding to meet the Part 258 requirements; and (3) whether MSWLFs accepting greater than 100 TPD of waste also may now require an effective date extension to accommodate the additional waste generated by the floods.

Given these concerns, EPA is today soliciting comments on how best to accommodate MSWLFs that have been directly affected by the flood waters and MSWLFs that may be located outside the flooded areas, but will receive a dramatic increase in waste as a result of flood. Examples of such accommodations could include an increase in the TPD criterion for an extension (i.e., greater than 100 TPD) or an additional time extension for these landfills (i.e., greater than six months).

## IX. Economic and Regulatory Impacts

### *A. Regulatory Impact Analysis*

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis (RIA) in connection with a major rule. A "major" rule is defined as one that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state/Tribal, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposal, if finalized, will have none of the above effects because amendments to the regulations outlined in this proposal will, except for the provision requiring dry/remote small landfills accepting less than 20 TPD to perform ground-water monitoring, reduce requirements imposed by the 40 CFR part 258 criteria. Agency data indicate that the costs of ground-water monitoring requirements for small landfills will not result in this rule being defined as a "major rule" for the purposes of determining whether to conduct an RIA. Moreover, under this proposal, owners/operators of MSWLFs that meet the small landfill exemption of § 258.1(f) are provided regulatory relief by a delayed effective date.

During the development of the revised Subtitle D Criteria (October 9, 1991), EPA developed rough cost estimates for a wide variety of regulatory options. EPA estimated that the annualized costs attributable to the revised criteria for landfills accepting less than 20 tons per day and located in areas receiving less than 25 inches of precipitation per year were approximately $13 million per year (represented in 1992 dollars). While these costs represent ground-water monitoring, design, closure, post-closure care and corrective action, the majority of the costs are ground-water monitoring and thus should represent a rough estimate of ground-water monitoring costs resulting from the court decision. These national costs were developed using the same

assumptions as those in the Regulatory Impact Analysis (RIA) developed for the revised Criteria. For example, EPA assumed reduced costs for ground-water monitoring for landfills located in states already requiring ground-water monitoring (39 states required ground-water monitoring in 1991). This cost estimate was based on an initial universe of 1020 small landfills that were assumed to close over time and were replaced by fewer larger, less expensive regionalized landfills.

The Agency does not believe a significant number of MSWLFs will experience corrective action costs due to the Court's decision for several reasons. First, of the small landfills that would have qualified for the small landfill exemption, it is difficult to estimate the number of these landfills that will continue to operate now that they are required to perform ground-water monitoring. Many will choose to close because of these new requirements. Second, it is highly unlikely that continued operation of these small landfills will result in ground-water contamination that requires corrective action. Because these landfills generally are located in dry areas receiving less than 25 inches of precipitation per year, very little leachate will be available for release to the ground water. Additionally, many of these small dry landfills are situated above aquifers that are located several hundred feet below the ground surface, thereby creating a significant natural barrier to threat of contamination. Third, even if these landfill owners/operators detected contamination that would trigger corrective action, the MSWLF criteria currently allow the Director of a state with an EPA-approved permit program to waive corrective action under the circumstances outlined in 40 CFR 258.57(e).

Thus, given these factors, it is difficult to estimate the national cost impact of corrective action on these small landfills. The Agency believes that few, if any, would contaminate ground water and be required to perform these clean-up activities. However, if a landfill did trigger corrective action in a state that required clean-up, the Agency estimates that the average total annualized cost (over 20 years) of corrective action for that landfill would range from approximately $160,000 to $350,000 per year. These costs assume pump and treat clean-up technology and a 40-year post-closure care period.

Again, most of the cost assumptions in this estimate are based on unit cost assumptions from the Regulatory Impact Analysis for the Revised Subtitle D Criteria found in docket number F–91–CMLF–FFFFF. The Agency requests comments on cost assumptions including specifically the estimated number of small landfills which would be affected by today's proposed rule, and the estimated costs of ground-water monitoring and corrective action.

Because the proposed rulemaking does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis at this time. Today's proposal has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The estimates of potential total annualized costs for specific landfills are discussed above in Section IX–A. However, not all landfills will experience these costs. Several landfills are located in states that already require ground-water monitoring, liners and covers, and/or corrective action and thus there would be little incremental cost to these landfills due to the court decision. In addition, EPA believes there will be a reduction in small landfills over time as these landfills close and communities regionalize. Therefore, one cannot use the unit cost figures cited below to provide a national estimate of cost impact due to the Court's decision.

The proposed amendments to 40 CFR part 258, except for the provision requiring dry/remote small landfills accepting less than 20 TPD to perform ground-water monitoring, has the general effect of reducing the requirements of the Part 258 criteria, thereby imposing no additional economic impact to small entities. The provision requiring dry/remote landfills accepting less than 20 TPD to perform ground-water monitoring could have a significant economic impact on these small entities. Agency data indicate that economic impact will vary with size, with larger landfills experiencing a relatively moderate cost increase when compared to smaller landfills where economies of scale are not available. Agency data indicate that the total annualized costs of ground-water monitoring for a MSWLF unit accepting approximately 10 TPD would cost about $40 to $50 per household, while for landfills accepting less than one TPD (the Agency estimates that approximately one-third to one-half of all MSWLF units that qualify for the exemption are in this size category), the annualized cost per household could range from $270 to $350 per household. The higher number in these ranges assumes that the existing landfill life will be 10 years and will be replaced by a new landfill with a life of 20 years. The larger number assumes an existing landfill life of 20 years. In making these estimates, the Agency assumed that 10 TPD facilities would install five ground-water monitoring wells, while the one TPD facilities would install three wells. These cost figures are a rough estimate using national unit costs; labor and equipment costs will vary per site and may be more expensive in rural, remote areas of the country.

The Agency has not estimated the number of small landfills that will be affected. According to the 1986 landfill survey, many of the small landfills had plans to close by 1995. Others have been closed as communities participate in regionalized waste management. Therefore, while in 1986 there were over 1,000 landfills that would be affected by today's rule, it is unclear how many are in this universe today.

While the Agency believes that these are substantial impacts, the court decision leaves the Agency no choice but to promulgate these changes. However, as mentioned earlier, the Agency is soliciting comment on alternative ground-water monitoring requirements that could accommodate the practicable capability of small landfills through consideration of size, location, and climate, while ensuring that the program is adequate to detect contamination.

*C. Paperwork Reduction Act*

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's proposed rule.

**List of Subjects in 40 CFR Part 258**

Corrective action, Ground-water monitoring, Household hazardous waste, Liner requirements, Liquids in landfills, State/Tribal permit program approval and adequacy, Security measures, Small quantity generators, Waste treatment and disposal, Water pollution control.

Dated: July 22, 1993.

Carol M. Browner,

*Administrator.*

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

**PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS (EFF. 10–9–93)**

1. The authority citation for part 258 continues to read as follows:

**Authority:** 42 U.S.C. 6907(a)(3), 6944(a) and 6949(c); 33 U.S.C. 1345(d) and (e).

2. Section 258.1 is amended by revising paragraphs (d), (e), (f)(1) introductory text, (f)(3), and (j) to read as follows:

**§ 258.1 Purpose, scope, and applicability.**

* * * * *

(d)(1) MSWLF units that meet the conditions of § 258.1(e)(2) and receive waste after October 9, 1991 but stop receiving waste before April 9, 1994, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(2) MSWLF units that meet the conditions of § 258.1(f)(1) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1995, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1996. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1996 will be subject to all the requirements of this part 258, unless otherwise specified.

(3) MSWLF units that do not meet the conditions of § 258.1(e)(2) or (f) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1993, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(e)(1) All MSWLF units that receive waste on or after October 9, 1993, except those units that qualify for a delay under paragraph (e)(2) or (3) of this section, must comply with all requirements of this part 258 unless otherwise specified.

(2) The effective date is April 9, 1994 for an existing MSWLF unit or a lateral expansion of an existing MSWLF unit that meets the following conditions:

(i) The MSWLF unit disposed of 100 tons per day or less of solid waste between October 9, 1991 and October 9, 1992;

(ii) The unit does not dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994;

(iii) The MSWLF unit is located in a state that has submitted an application for permit program approval to EPA by October 9, 1993 or is located on Indian Lands or Indian Country; and

(iv) The MSWLF unit is not on the National Priorities List (NPL) as found in appendix B to 40 CFR part 300.

(3) The effective date is October 9, 1995 for a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section.

(f)(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty (20) tons of municipal solid waste daily, based on an annual average, are exempt from subpart D of this part, so long as there is no evidence of ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

* * * * *

(3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ground-water contamination resulting from the unit that has asserted the exemption in paragraph (f)(1)(i) or (f)(1)(ii) of this section, the owner or operator must notify the state Director of such contamination and, thereafter, comply with subpart D of this part.

* * * * *

(j) Subpart G of this part is effective April 9, 1995, except for MSWLF units meeting the requirements of paragraph (f)(1) of this section, in which case the effective date of subpart G is October 9, 1995.

* * * * *

3. Section 258.2 is amended by adding definitions for "Indian lands or Indian Country" and "Indian tribe or Tribe" in alphabetical order to read as follows:

**§ 258.2 Definitions.**

* * * * *

*Indian lands* or *Indian country* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

*Indian Tribe* or *Tribe* means any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

* * * * *

4. Section 258.50 is amended by revising paragraph (c) introductory text, by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g), and (h); and by adding paragraph (e) to read as follows:

**§ 258.50 Applicability.**

* * * * *

(c) Owners and operators of MSWLF units, except those meeting the conditions of § 258.1(f), must comply with the ground-water monitoring requirements of this part according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

* * * * *

(e) Owners and operators of all MSWLF units that meet the conditions of § 258.1(f)(1) must comply with the ground-water monitoring requirements of this part according to the following schedule:

(1) All MSWLF units less than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51 through 258.55 by October 9, 1995;

(2) All MSWLF units greater than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51 through 258.55 by October 9, 1996.

* * * * *

5. Section 258.70 is amended by revising paragraph (b) to read as follows:

**§ 258.70 Applicability and effective date.**

* * * * *

(b) The requirements of this section are effective April 9, 1995 except for MSWLF units meeting the conditions of

§ 258.1(f)(1), in which case the effective date is October 9, 1995.

6. Section 258.74 is amended by revising paragraph (a)(5) to read as follows:

**§ 258.74 Allowable mechanisms.**

* * * * *

(a) * * *

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

7. Section 258.74 is amended by revising the third sentence of paragraph (b)(1); by revising the second sentence of paragraph (c)(1); and by revising the second sentence of paragraph (d)(1) to read as follows:

**§ 258.74 Allowable mechanisms.**

* * * * *

(b) * * *

(1) * * * The bond must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

(c) * * *

(1) * * * The letter of credit must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

(d) * * *

(1) * * * The insurance must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

[FR Doc. 93–18008 Filed 7–27–93; 8:45 am]

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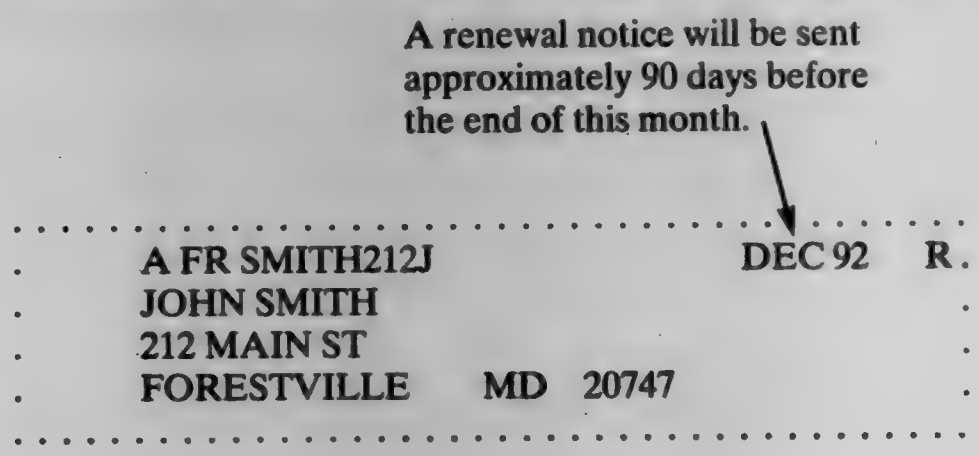

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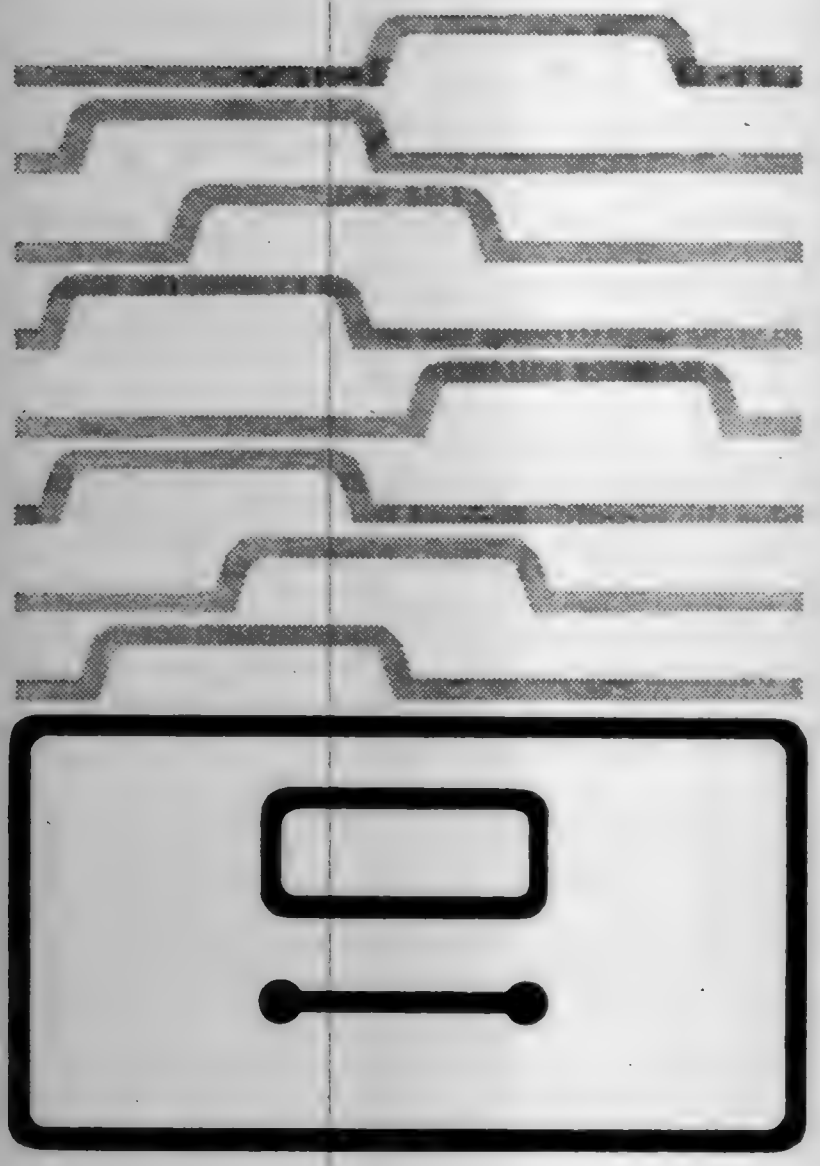

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# Rules and Regulations

Federal Register
Vol. 58, No. 144
Thursday, July 29, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 217**

**[INS No. 1622–93]**

**RIN 1115–AB93**

## Visa Waiver Pilot Program; Brunei

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Immigration and Naturalization Service (Service) amends its regulations by extending the Visa Waiver Pilot Program to permit nationals of Brunei to apply for admission for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. This action will facilitate travel to both the public and United States businesses.

**DATES:** This interim rule is effective July 29, 1993. Written comments must be submitted on or before August 30, 1993.

**ADDRESSES:** Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Ronald J. Hays, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone number (202) 514–3996.

**SUPPLEMENTARY INFORMATION:** Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public law 99–603, added section 217 to the Immigration and Nationality Act which established the nonimmigrant Visa Waiver Pilot Program. The Visa Waiver Pilot Program waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety (90) days. That original provision authorized the participation of eight countries in the Pilot Program. Initially, the United Kingdom was the only country designated to receive these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, was added as a designated country under the Pilot Program effective December 13, 1988. France, The Federal Republic of Germany, Italy, The Netherlands, Sweden, and Switzerland, having met all of the requirements for participation in the Visa Waiver Pilot Program, were added later as designated countries participating in the Pilot Program. This action was accomplished by the Secretary of State and the Attorney General, acting jointly through their designees, in a final rule published at 54 FR 27120–27121, on June 27, 1989.

The Immigration Act of 1990 (IMMACT 90), Public Law 101–649, dated November 29, 1990, revised the Visa Waiver Pilot Program as set forth in section 313 of IRCA by removing the eight-country cap and extending its provisions to all countries that met the qualifying provisions of the Visa Waiver Pilot Program and were designated by the Secretary of State and the Attorney General as Pilot Program countries thereunder. Section 201 of IMMACT 90 also extended the period of the pilot program until September 30, 1994 for the eight Pilot Program countries already designated under IRCA, as well as for any additional Pilot Program countries that were designated under the law, as amended, subject to their continued qualification.

As a result of these amendments to section 217 of the Act, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participation in the nonimmigrant Visa Waiver Pilot Program, were added, effective October 1, 1991. (56 FR 46716).

This interim rule further amends 8 CFR part 217 to extend the Visa Waiver Pilot Program to include the country of Brunei, which has agreed to provide reciprocal treatment for United States citizens entering Brunei under similar circumstances. Therefore, having met all of the other requirements of section 201 of IMMACT 90, Brunei is designated as a country participating in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Department of State Rule published elsewhere in this issue of the Federal Register.)

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the "good cause" exceptions established by 5 U.S.C. 553 (b)(B) and (d)(3). The reasons and the necessity for immediate implementation of this interim rule without prior notice and comment are as follows: a notice and comment period for a proposed rule would have been impracticable and contrary to public interest. Moreover, this interim rule confers a benefit upon eligible persons and does not impose a penalty of any kind. It is imperative that this interim rule become effective upon publication so that those persons who are entitled to the benefit may apply accordingly.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

### List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, part 217 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 217—VISA WAIVER PILOT PROGRAM

1. The authority citation for part 217 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

**§ 217.5 [Amended]**

2. In § 217.5 paragraph (a) is amended by replacing the word "and" with a "," immediately after the country name

"San Marino" and by adding the phrase ", and Brunei (effective July 29, 1993)" immediately after the phrase "Spain (effective October 1, 1991)".

Dated: July 23, 1993.

**Chris Sale,**

*Acting Commissioner, Immigration and Naturalization Service.*

[FR Doc. 93-18132 Filed 7-28-93; 8:45 am]

BILLING CODE 4410-10-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

**[Regulation Z; Docket No. R-0805]**

### Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final Rule; temporary exceptions.

**SUMMARY:** The Board is publishing a final rule amending Regulation Z (which implements the Truth in Lending Act). The amendment provides a temporary exception to Regulation Z provisions that prohibit the use of a preprinted form by a creditor to obtain a consumer's waiver of the right to rescind certain home-secured loans when loan proceeds are needed immediately to meet a consumer's bona fide personal financial emergency. Generally, Regulation Z requires a mandatory three-day waiting period on rescindable transactions before funds can be disbursed. In addition, a consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency for purposes of Regulation Z for transactions secured by consumers' principal dwellings located in areas of the Midwest recently declared to be major disaster areas because of extensive flooding. The exception expires one year from the date the area was declared a major disaster

**EFFECTIVE DATE:** July 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Hurt, Managing Counsel, or Jane Jensen Gell, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**(1) Background.**

Under the Truth in Lending Act (TILA), 15 USC 1601-1666j, and Regulation Z, 12 CFR part 226, with some exceptions, a consumer has the right to rescind a credit obligation secured by the consumer's principal dwelling for three days after becoming obligated, due to the risk of loss of the consumer's home in the event of default. There is a mandatory waiting period of three business days before funds can be disbursed in order to give consumers an opportunity to reflect on the loan terms and to elect to cancel the transaction (12 CFR 226.15 and 226.23). A consumer may modify or waive this right of rescission to meet a bona fide personal financial emergency. The consumer must provide the creditor with a written, signed and dated waiver statement that describes the emergency. Under Regulation Z, 12 CFR 226.15(e) and 226.23(e), the waiver statement may not be executed on a preprinted form.

In November 1992, the Board adopted an exception to Regulation Z for transactions secured by homes located in areas declared major disaster areas as a result of Hurricanes Andrew and Iniki and the April 1992 Los Angeles civil unrest. (57 FR 53,545 (Nov. 12, 1992)). The Board's exception permitted a temporary waiver of the provisions in Regulation Z that prohibit an institution's use of a preprinted form to obtain a consumer's waiver of the right to rescind certain home-secured loans when loan funds were needed immediately to meet a consumer's bona fide personal financial emergency. In addition, a consumer's need to obtain funds immediately was regarded as a bona fide personal financial emergency, for purposes of Regulation Z, where the home securing the loan was located in the disaster area.

**(2) Relief for Flood Affected Communities**

From April through July of 1993, extensive flooding has occurred in several Midwestern States and, as a result, the President has determined that extensive major disaster areas exist in those states. To aid consumers in obtaining credit speedily to begin repairs in flood damaged areas and to ease the paperwork burden on creditors extending credit in these areas, the Board has determined to provide a temporary exception to the restrictions in §§ 226.15(e) and 226.23(e) of Regulation Z. This exception will expire one year from the date the President declared that an area was a major disaster.

The Board is amending Regulation Z to permit a temporary exception to its provisions that prohibit the use of a preprinted form by a creditor to obtain a consumer's waiver of the right to rescind certain home-secured loans. In addition, a consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency, where the home securing the loan is located in the disaster area. The exception is limited to loans secured by homes located in areas that the President has declared, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC 5170, are major disaster areas as a result of the extensive flooding in 1993 in the Midwest. The exception expires one year from the date an area was declared a major disaster. The Board notes, however, that the consumer must still sign and date the waiver statement. The following counties in Minnesota, Wisconsin, Missouri, Iowa, Illinois, Nebraska, and South Dakota have been declared major disaster areas during June and July 1993.

*Minnesota:* Brown, Cottonwood, Lincoln, Lyon, Murray, Nobles, Pipestone, Redwood, Rock, Blue Earth, Nicollet, Renville, Sibley, Watonwan, Yellow Medicine, Carver, Chippewa, Faribault, Jackson, Le Sueur, Martin, McLeod, Scott, Goodhue, Washington, Dakota, Houston, Ramsey, Big Stone, Clay, Stevens, Swift, Traverse.

*Wisconsin:* Calumet, Clark, Columbia, Dunn, Eau Claire, Fond du Lac, Green Lake, Jackson, Marquette, Outagamie, Portage, Saulk, Trempealeau, Waupaca, Waushara, Winnebago, Wood, Adams, Buffalo, Chippewa, Crawford, Dane, Green, Grant, Iowa, Juneau, LaCrosse, Lafayette, Lincoln, Marathon, Pepin, Pierce, Price, Rock, Rusk, St. Croix, Vernon.

*Missouri:* Lewis, Lincoln, Marion, Pike, St. Charles, Andrew, Atchison, Barry, Bates, Boone, Buchanan, Callaway, Camden, Carroll, Cape Girardeau, Chariton, Clark, Clay, Cole, Cooper, Daviess, Franklin, Gasconade, Gentry, Harrison, Holt, Howard, Jackson, Jefferson, Lafayette, McDonald, Miller, Moniteau, Montgomery, Newton, Nodaway, Osage, Perry, Platte, Pulaski, Ralls, Ray, Saline, Shelby, St. Louis, St. Louis City, St. Genevieve, Stone, Warren, Worth.

*Iowa:* Clayton, Clinton, Des Moines, Dickinson, Humboldt, Jackson, Johnson, Louisa, Muscaine, Scott, Wapello, Polk, Lyon, Osceola, Emmet, Kossuth, Winnebago, Worth, Mitchell, Howard, Winneshiek, Allamakee, Fayette, Chickasaw, Floyd, Cerro Gordo, Hancock, Palo Alto, Clay, O'Brien, Sioux, Plymouth, Cherokee, Buena Vista, Pocahontas, Wright, Franklin, Butler, Bremer, Dubuque, Delaware, Buchanan, Black Hawk, Grundy, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Woodbury, Monora, Crawford, Carroll, Greene, Boone, Story, Marshall, Tama, Benton, Linn, Jones, Cedar, Iowa, Poweshiek, Jasper, Dallas, Guthrie, Audubon, Shelby, Harrison, Pottawattamie, Cass, Adair, Madison, Warren, Marion, Mahaska, Keokuk, Washington, Henry, Jefferson, Monroe, Lacas, Clarke, Union, Adams, Montgomery, Mills, Fremont, Page, Taylor, Ringgold, Decatur, Wayne, Appanoosa, Davis, Van Buren, Lee.

*Illinois:* Adams, Calhoun, Carroll, Hancock, Henderson, Henry, Jersey, Jo Daviess, Mercer, Pike, Rock Island, Whiteside, Madison, Monroe, St. Clair, Boone, Lake, McHenry, Stephenson, Winnebago, Alexander, Jackson, Randolph, Union.

*Nebraska:* Buffalo, Cass, Lancaster, Sarpy, Seward, Washington, Adams, Hall, Kearney, Phelps.

*South Dakota:* Bon Homme, Brookings, Clay, Davison, Hanson, Hutchison, Kinsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton.

**Public Comment and Effective Date**

The Administrative Procedures Act (APA), 5 U.S.C. 553, grants a specific exemption from its notice and public comment requirements for rulemakings when these requirements are contrary to the public interest (5 U.S.C. 553(b)(3)(B)). In the present case, the final rule amending Regulation Z provides a temporary exception and removes a restriction that otherwise may impair the availability of loan funds to consumers who encounter a bona fide personal financial emergency because their homes are located in an area devastated by flooding. The Board finds that it is in the public interest to provide this relief immediately and without advance notice and public comment. As explained above, the amendment to Regulation Z will reduce the paperwork burden on creditors extending credit in the disaster areas and aid in making credit speedily available to consumers in these areas. Consumers would continue to have the right to rescind certain loans unless they specifically waive that right. Moreover, the exception is limited in scope and duration. It will provide immediate assistance to consumers and lenders in their ongoing reconstruction and rehabilitation efforts in those areas that have been affected by recent major disasters recognized under the appropriate federal disaster relief statute.

The Board also believes that deferring the effective date in regard to the adoption of the final rule would be contrary to the public interest. The APA grants a specific exemption from its requirements relating to this item in such instances (12 U.S.C. 553(d)(3)). Accordingly, the amendments to Regulation Z are effective immediately.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board believes that the adoption of this final rule would not have a significant adverse impact on a substantial number of small entities. The amendment imposes no new requirements and temporarily removes a restriction imposed by Regulation Z on entities subject to the regulation.

**Paperwork Reduction Act Analysis**

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in these changes.

**List of Subjects in 12 CFR Part 226**

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in Lending.

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending 12 CFR part 226 as follows. The Board is publishing only those sections of the regulation that are affected by the changes.

## PART 226—TRUTH IN LENDING

1. The authority citation for part 226 continues to read:

**Authority:** Truth in Lending Act, 15 U.S.C. 1604 and 1637(c)(5); sec. 1204 (c), Competitive Equality Banking Act, 12 U.S.C. 3806.

**Subpart B—Open-End Credit**

3. Section 226.15 paragraph (e) is revised to read as follows:

**§ 226.15 Right of rescission.**

* * * * *

(e) *Consumer's waiver of right to rescind.* (1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited, except as provided in paragraph (e)(2) of this section. (2) The need of the consumer to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest.[36a] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

* * * * *

2. Section 226.16 is amended by redesignating existing footnotes 36a and 36b as footnotes 36b and 36c, respectively.

**Subpart C—Closed-End Credit**

4. Section 226.23 paragraph (e) is revised to read as follows:

**§ 226.23 Right of Rescission.**

* * * * *

(e) *Consumer's waiver of right to rescind.* (1) The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited, except as provided in paragraph (e)(2) of this section.

(2) The need of the consumer to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1993, pursuant to 42 U.S.C. 5170, to be a major disaster area because of severe storms and flooding in the Midwest.[46a] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 23, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93–18072 Filed 7–28–93; 8:45 am]

BILLING CODE 6210–01–P

[36a] A list of the affected areas will be maintained by the Board.

[46a] A list of the affected areas will be maintained by the Board.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-CE-20-AD; Amendment 39-8647; AD 93-15-01]

## Airworthiness Directives: Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92-16-11, which applies to certain Fairchild Aircraft SA226 and SA227 series airplanes. This AD currently requires modifying the horizontal stabilizer aft spar attach fitting installation and stabilizer skin, and repetitively inspecting the radius area of the rib splice straps for cracks, and, if found cracked, modifying this area. Based upon installation reports from SA227 series airplane operators, Fairchild Aircraft has improved the modification procedures, and, the Federal Aviation Administration (FAA) has determined that these procedures should be incorporated. The actions specified by this AD are intended to prevent horizontal stabilizer failure caused by broken pivot fitting fasteners, which could result in loss of control of the airplane.

DATES: Effective September 16, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; Telephone (512) 824-9421. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 4400 Blue Mound Road, Fort Worth, Texas 76193-0150; Telephone (817) 624-5155; Facsimile (817) 740-3394.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Fairchild Aircraft SA226 and SA227 series airplanes was published in the Federal Register on March 22, 1993 (58 FR 15309). The action proposed to supersede AD 92-16-11, Amendment 39-8320, with a new AD that would (1) retain the requirement of modifying the horizontal stabilizer aft spar attach fitting installation and stabilizer skin, and repetitively inspecting the radius area of the rib splice straps for cracks, and, if found cracked, modifying this area; and (2) incorporate improved modification procedures for the SA227 series airplanes as specified in Fairchild SB 227-55-006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993. The proposed actions would be accomplished in accordance with Fairchild Service Bulletin (SB) 226-55-010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Fairchild SB 227-55-006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supports the proposed rule.

The other commenter states that the word "unless" in Note 1 of the proposed AD is not needed and should read: "Compliance with superseded AD 92-16-11 is considered 'already accomplished' * * *"; instead of "Compliance with superseded AD 92-16-11 is considered 'unless already accomplished' * * *". The FAA does not concur. The reason Note 1 appears is for informational purposes to provide clarification that the operator may have already performed part of the AD. Quoting "unless already accomplished" refers the operator back to this portion of the Compliance section of the proposed AD.

This same commenter points out that the reference to Fairchild SB 227-55-006 in paragraph (c) of the proposed AD contains an incorrect revised date, and should read Revised: May 22, 1991, instead of Revised: December 13, 1991. The FAA concurs and has revised the proposed AD accordingly.

No comments were received on the FAA's determination of the cost on the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the revision described above and minor editorial corrections. The FAA has determined that this revision and minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The compliance statement of AD 92-16-11 referenced Fairchild Aircraft Model SA227-AC airplanes with serial numbers AC420 through AC783 and AC785. These particular model airplanes are either a Model SA227-AC or SA227-BC. The applicability statement in this AD is different than that of AD 92-16-11 in that it reflects this model and serial number effectivity. No additional serial number airplanes apply to the required AD than that which are already affected by AD 92-16-11.

The FAA estimates that 715 (368 SA226 series and 347 SA227 series) airplanes in the U.S. registry will be affected by this AD, that it will take approximately 32 workhours per SA226 series airplane and 33 workhours per SA227 series airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,400 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,278,485 ($1,162,880 for the SA226 series airplanes and $1,115,605 for the SA227 series airplanes). The required AD provides no additional cost impact upon U.S. operators than that which is currently required by AD 92-16-11, except for a slight additional procedure in the modification already required for the SA227 series airplanes. This procedure is so slight that the FAA has no means of determining the additional cost impact upon the public.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy

of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing AD 92–16–11, Amendment 39–8320 (57 FR 31959, July 20, 1992), and by adding the following new airworthiness directive:

**93–15–01 Fairchild Aircraft:** Amendment 39–8647; Docket No. 93–CE–20–AD. Supersedes AD 92–16–11, Amendment 39–8320.

*Applicability:* The following model and serial number airplanes, certificated in any category:

| Model | Serial Nos. |
|---|---|
| SA226–T | T201 through T275 and T277 through T291. |
| SA226–T(B) | T(B)276 and T(B)292 through T(B)417. |
| SA226–AT | AT001 through AT074. |
| SA226–TC | TC201 through TC419. |
| SA227–TT | TT421 through TT541. |
| SA227–AT | AT423 through AT695. |
| SA227–AC | AC406, AC415, and AC416. |
| SA227–AC | AC420 through AC783, and AC785. |
| SA227–BC | BC420 through BC783, and BC785. |

*Compliance:* Required initially upon the accumulation of 10,000 hours time-in-service (TIS) or within the next 1,000 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (see **Note 1**), and thereafter as indicated.

**Note 1:** Compliance with superseded AD 92–16–11 is considered "unless already accomplished" for the initial inspection and modification requirements of this AD except as specified in paragraph (c) of this AD.

To prevent failure of the horizontal stabilizer caused by broken pivot fitting fasteners, which could result in loss of control of the airplane, accomplish the following:

(a) Modify the horizontal stabilizer aft spar attach fitting installation in accordance with the Accomplishment Instructions section of Fairchild Service Bulletin (SB) 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993, as applicable.

(b) Modify the stabilizer skin in accordance with the Accomplishment Instructions section of Fairchild SB 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993, as applicable.

(c) If any Model SA227–AC or SA227–BC airplane incorporating any serial number of AC528 through AC783, AC785, BC528 through BC783, or BC785 has been modified as required by AD 92–16–11 in accordance with Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: May 22, 1991, then the only modification required by paragraphs (a) and (b) of this AD is that which is specified in paragraph B(3) of the Accomplishment Instructions section of Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993.

(d) Visually inspect the radius area of the rib splice strap for cracks in accordance with Figure 2 of Fairchild SB 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Figure 3 of Fairchild SB 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993, as applicable.

(i) If cracks are found, prior to further flight, repair in accordance with a scheme obtained from the manufacturer through the Fort Worth Airplane Certification Office at the address specified in paragraph (f) of this AD, and reinspect thereafter at intervals not to exceed 5,000 hours TIS.

(ii) If no cracks are found, reinspect thereafter at intervals not to exceed 5,000 hours TIS.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(g) The inspections and modifications required by this AD shall be done in accordance with Fairchild Service Bulletin 226–55–010, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: December 13, 1991, or Fairchild Service Bulletin 227–55–006, Horizontal Stabilizer Fitting Fasteners, Issued: May 13, 1991; Revised: January 20, 1993, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–8647) supersedes AD 92–16–11, Amendment 39–8320.

(i) This amendment (39–8647) becomes effective on September 16, 1993.

Issued in Kansas City, Missouri, on July 21, 1993.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18109 Filed 7–28–93; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF STATE

### Bureau of Consular Affairs

### 22 CFR Part 41

**[Public Notice 1842]**

### Visas: Passports and Visas Not Required for Certain Nonimmigrants

**AGENCY:** Bureau of Consular Affairs, DOS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends part 41, title 22 of the Code of Federal Regulations concerning visas for nonimmigrants pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, as amended. Section 217, as amended, extends the Visa Waiver Pilot Program to all countries that qualify under the provisions of the Pilot Program and which are designated by the Secretary of State and the Attorney General as countries whose nationals benefit from the waiver of the nonimmigrant B–1/B–2 visa requirement. Section 217, as amended, also extends the time period of the Pilot Program to September 30, 1994 for those countries already in the program as well as to any countries which may be designated thereunder. This amendment extends the Visa Waiver Pilot Program to Brunei, which has met all of the requirements for the Program.

**DATES:** This interim rule is effective July 29, 1993. Written comments are invited and must be received on or before August 30, 1993.

**ADDRESSES:** Written comments may be submitted, in duplicate, to the Deputy Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20522–0113.

**FOR FURTHER INFORMATION CONTACT:** A. Roy Mackay, Deputy Chief, Legislation and Regulations Division, Visa Office, Department of State, Washington, DC 20522–0113 (202) 663–1205.

**SUPPLEMENTARY INFORMATION:** Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603 added section 217 to the INA. Section 217, 8 U.S.C. 1187, established the nonimmigrant Visa Waiver Pilot Program (VWPP) which waives the nonimmigrant visa requirement for the admission of certain aliens into the United States for a period not to exceed ninety days. That original provision authorized the participation of eight countries in the VWPP. A final rule containing regulations designed to implement facilitation of the admission of certain nonimmigrant alien visitors under the VWPP was published at 53 FR 24903–24904 of the Federal Register of June 30, 1988. Its publication was codified in part 41 of title 22 of the Code of Federal Regulations (CFR), 22 CFR 41.2(l). Under that final rule the United Kingdom was the only country designated to receive these benefits for its nationals. Japan, having agreed to reciprocal treatment for United States citizens entering Japan under similar circumstances, was added as a designated country under the Pilot Program effective on December 15, 1988 in a final rule published at 53 FR 50161–50162 of the Federal Register of December 13, 1988. France, The Federal Republic of Germany, Italy, The Netherlands, Sweden, and Switzerland, having met all of the requirements for participants in the Visa Waiver Pilot Program, were added later as designated countries participating in the Pilot Program (i.e., the six remaining countries under the Eight Country Pilot Program established by section 313 of IRCA). This action was accomplished by the Secretary of State and the Attorney General, acting jointly through their designees, in a Final Rule published at 54 FR 27120–27121 of the Federal Register of June 27, 1989.

On November 29, 1990, the President approved The Immigration Act of 1990 (Pub. L. 101–649, 104 Stat.4978) [IA]. Section 201 thereof revised the Visa Waiver Pilot Program set forth in section 313 of IRCA (Sec. 217 INA, 8 U.S.C. 1187). It removed the eight-country cap and extended its provisions to all countries that meet the qualifying provisions of the Visa Waiver Pilot Program and are designated by the Secretary of State and the Attorney General as Pilot Program Countries thereunder. Section 201 also extended the period of the pilot program until September 30, 1994 for the eight pilot program countries already designated under IRCA as well as for any additional Pilot Program countries that may be designated under the law, as amended, subject to their continued qualification thereunder. [See also: Section 303 of the Immigration Technical Corrections Act of 1991, Pub. L. 102–232.]

As a result of these amendments to Section 217 of the INA, Andorra, Austria, Belgium, Denmark, Finland, Iceland, Liechtenstein, Luxembourg, Monaco, New Zealand, Norway, San Marino, and Spain, having met all of the requirements for participants in the nonimmigrant Visa Waiver Pilot Program, were added, effective on October 1, 1991. They were so designated as participants in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees, in an Interim Rule published at 56 FR 46716–46717 of the Federal Register of September 13, 1991.

Each of the above rules amended 22 CFR 41.2. This interim rule, with request for comments, further amends part 41, title 22 to extend the Visa Waiver Pilot Program to Brunei, which has agreed to provide reciprocal treatment for United States citizens entering Brunei under similar circumstances upon the commencement of its participation in the Program. Therefore, having met all of the other requirements of that Section, Brunei is added effective upon publication in the Federal Register and designated as a country participating in the Visa Waiver Pilot Program by the Secretary of State and the Attorney General, acting jointly through their designees. (See the Immigration and Naturalization Service Rule published elsewhere in this issue of the Federal Register.) The last sentence of § 41.2(l) is amended by adding at the end thereof the name of the newly designated country, effective upon publication in the Federal Register. Therefore, effective on that date, citizens of Brunei shall be eligible for participation in the Visa Waiver Pilot Program.

The implementation of this rule as an interim rule, with a 30-day provision for post-promulgation public comments, is based upon the "good cause" exceptions established by 5 U.S.C. 553(b)(B) and 553(d)(3). This rule grants or recognizes an exemption or relieves a restriction under 5 U.S.C. 553(d)(1) and is considered beneficial to both the travelling public and United States businesses. Therefore, it is being made effective less than thirty days after publication in the Federal Register.

In accordance with 5 U.S.C. 605(b) [Regulatory Flexibility Act], it is certified that this rule does not have a "significant adverse economic impact" on a substantial number of small entities, because it is inapplicable. No Regulatory Impact Analysis is required because this rule is not a major rule within the meaning of section 1(b) of E.O. 12291. The rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. Nor does this rule have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. This rule has been reviewed as required by E.O. 12778 and is certified to be in compliance therewith.

**List of Subjects in 22 CFR Part 41**

Aliens, Nonimmigrants, Visas, Passports, Temporary visitors, Waivers.

In view of the foregoing, 22 CFR part 41 is amended as follows:

## PART 41—VISAS; DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation is revised to read:

**Authority:** 8 U.S.C. 1104, 1153 Note, 1187

2. In § 41.2 the last sentence of paragraph (l) is amended by removing the period and adding the following text at the end of the sentence:

**§ 41.2 Waiver by the Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.**

* * * * *

(l) **Visa Waiver Pilot Program.** * * *; and Brunei (effective July 29, 1993).

Dated: June 28, 1993.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 93–18128 Filed 7–28–93; 8:45 am]

BILLING CODE 4710-06-P

**DEPARTMENT OF THE TREASURY**

**Bureau of Alcohol, Tobacco and Firearms**

**27 CFR Part 178**

**[T.D. ATF-346]**

**Domestic Assembly of Nonimportable Firearms (91-0001F)**

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final Rule (Treasury Decision).

**SUMMARY:** This final rule amends 27 CFR part 178, relating to firearms, to implement section 2204 of the Crime Control Act of 1990, Public Law 101-647 (104 Stat. 4789), approved November 29, 1990. Section 2204 makes it unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under the Gun Control Act of 1968, as amended, as not being particularly suitable for or readily adaptable to sporting purposes.

**EFFECTIVE DATE:** August 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lawrence G. White, ATF Specialist, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-927-8320).

**SUPPLEMENTARY INFORMATION:** Section 2204 of the Crime Control Act of 1990, Public Law 101-647, approved November 29, 1990, amended the Gun Control Act of 1968, as amended (18 U.S.C. chapter 44) (GCA) by adding a new section 922(r) to 18 U.S.C. 922(r) makes it unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under the GCA as not being particularly suitable for or readily adaptable to sporting purposes. Section 922(r) excepts from the general prohibition the assembly of rifles or shotguns for distribution by a licensed manufacturer to the United States or to any State and the assembly of such firearms for purposes of testing or experimentation authorized by the Secretary.

This prohibition was intended to preclude the circumvention of the importation restrictions on nonsporting rifles and shotguns by importing parts for "nonsporting" firearms and assembling them in the United States using domestically manufactured frames or receivers capable of accepting the imported parts.

On August 19, 1991, the Bureau published a Notice of Proposed Rulemaking, Notice No. 723, with a 90-day comment period. The proposed regulation would have prohibited the assembly of any semiautomatic rifle or any shotgun which would not qualify for importation as sporting firearms under 18 U.S.C. 925(d)(3) if two or more major components of the weapon were imported.

The proposed regulation would not have required that all parts of a firearm be imported before the prohibition would apply. Under current law, the frame or receiver alone of a nonsporting firearm cannot lawfully be imported into the United States. This prohibition flows from the GCA definition of "firearm" which includes the frame or receiver of a firearm. 18 U.S.C. 921(a)(3)(B). In addition, section 925(d)(3) expressly prohibits from importation the frame or receiver of a nonimportable firearm. Consequently, the assembly in this country of nonsporting semiautomatic rifles and nonsporting shotguns generally requires use of domestically made frames or receivers. If section 922(r) is interpreted to require that all of the parts, including the frame or receiver, be imported, the statute would address conduct that would not ordinarily occur. This interpretation would result in a statute which would have virtually no practical application and no meaning. Moreover, such an interpretation would totally ignore and defeat the purpose of the legislation, which was to curb the assembly of nonimportable firearms from imported parts on domestically made frames or receivers. Thus, the proposed regulation recognized that Congress was aware of the statutory prohibition on the importation of frames or receivers of nonimportable firearms, i.e., they could not have intended that the statute reach only the assembly of those weapons from totally imported parts.

On the other hand, the proposed regulation would not have prohibited the assembly of firearms containing any imported parts. There is no doubt that many essentially domestic weapons contain some minor imported parts, such as screws or springs. Accordingly, the proposed regulation would have prohibited the assembly utilizing imported parts which are required for the design function of the firearm. Further, because the assembly prohibition in the statute focuses on the plural "parts" rather than the singular "part", the proposed regulation would have only prohibited assembly of nonsporting rifles and shotguns utilizing two or more of these major firearms components.

This final rule lists the 20 major firearms components which ATF has determined are required for the design function of the weapon. Further, the rule modifies the proposed regulation by prohibiting the assembly of nonsporting firearms where the majority (11 or more) of the components used in their assembly are imported. As noted above, the purpose of the amendment was to prevent the circumvention of the importation restrictions by importing foreign parts and assembling them into complete nonsporting firearms. Thus, the amendment was concerned with the assembly of what are essentially foreign made weapons. However, by restricting the assembly of nonsporting firearms utilizing two or more imported parts, the regulation as proposed was unnecessarily broad. It would have gone beyond preventing circumvention of the importation ban, and actually would have precluded the assembly of domestically made weapons that use few foreign parts. Since the legislation was not intended to regulate or prohibit the legitimate use of foreign parts in domestic firearms, ATF concluded that the "two or more parts" aspect of the proposed rule needed to be refined. ATF believes that if a majority of the components were imported, the assembled weapon would reasonably be considered a foreign weapon prohibited from importation. By identifying the major firearms parts, and addressing only the assembly of those firearms using a majority of foreign components, ATF has determined that the rule will effectively preclude the assembly of foreign made firearms in the United States without interfering with legitimate use of foreign parts by domestic manufacturers.

**Comments Received**

During the comment period on Notice No. 723, 3,002 written comments with 3,392 signatures were received. Comments were received from United States Senators, members of the House of Representatives, several firearms industry members, and firearms interest groups.

**The Meaning of the Phrase "Assemble from Imported Parts"**

The most frequent comment related to the meaning of the term "assemble from imported parts." The concern expressed was that section 922(r) should be interpreted as only prohibiting the assembly of nonsporting rifles and shotguns exclusively from imported parts. ATF continues to believe that the history of the amendment does not

support such an interpretation. Moreover, as a practical matter, such an interpretation would render the prohibition virtually meaningless.

As the Notice of Proposed Rulemaking indicated, the assembly prohibition originated as part of the President's crime bill, S. 1225, 101st Cong., 1st Sess. (1989), "Comprehensive Violent Crime Control Act of 1989." The President's proposal, however, was not limited to the assembly of firearms from imported parts, but would have prohibited the assembly from any parts, either imported or nonimported. Significantly, this legislation followed ATF's administrative determination that certain semiautomatic assault-type rifles and certain shotguns were no longer considered to meet the requirement for importation under 18 U.S.C. 925(d)(3) as firearms "generally recognized as particularly suitable for or readily adaptable to sporting purposes."

Specifically, on March 14, 1989 and April 5, 1989, ATF announced that it was suspending the importation of assault-type rifles, pending the decision as to whether these weapons met the statutory test that they were of a type generally recognized as particularly suitable for or readily adaptable to sporting purposes. Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles, July 6, 1989. (hereinafter, "Report of the ATF working Group"). The principal purpose of S. 1225 was to avoid the circumvention of the import restrictions of the GCA by importing firearms parts and assembling them in the United States using domestically manufactured frames or receivers. The President's Message to Congress Transmitting A Draft of Proposed Legislation Entitled the "Comprehensive Violent Crime Control Act of 1989," H.R. Doc. No. 101–73, 101st Cong., 1st Sess. 81 (June 15, 1989). The Administration's bill would also have generally prohibited the assembly of these nonimportable firearms from domestically made parts that were not imported.

The assembly prohibition in the Administration's bill was substantially incorporated in section 705 of H.R. 5269, 101st Cong., 2d Sess. (1990) the "Comprehensive Crime Control Act of 1990." Consistent with the purpose of the Administration's bill, the House Judiciary Committee stated that the intent of section 705 was to preclude the circumvention of the importation restriction on nonsporting rifles and shotguns by the importation of their parts and the assembly of the firearms in the United States. H.R. Rep. No. 101–681, Part 1, 101st Cong., 2 Sess., 107 (Sept. 5, 1990). As in the case of the Administration's bill, H.R. 5269 would also have prohibited the assembly of these nonimportable firearms from domestically made parts that were not imported.

The language "from imported parts" was added to H.R. 5269 as a floor amendment in the House and was included in section 922(r) as enacted by the Congress. The concern of those House members who favored the amendment was that, without the amendment, the provision would make it unlawful for American firearms manufacturers to assemble semiautomatic rifles that had been in production in the United States for many years. In these members' view, the amendment was a technical, clarifying one which would carry out the principal purpose of the bill—to prevent the circumvention of the current prohibition on the importation of nonsporting firearms. To carry out congressional intent not to preclude the assembly of firearms manufactured in this country, the proposed regulation and the final rule only prohibit an assembly utilizing imported, foreign-made parts but not an assembly from imported parts which were originally produced in the United States.

The comments of most of these members shed no light on whether the assembly prohibition was intended to apply to the assembly of firearms from all or less than all imported parts. From a review of the legislative history of this issue, ATF does not believe that the amendment supports the interpretation that the phrase "from imported parts" was intended to require that all parts used in the assembly must be imported before the prohibition would apply. On the other hand, ATF believes that Congress did not intend to ban the assembly of essentially domestic firearms but rather to prevent the circumvention of the importation restriction as it applied to essentially foreign made firearms. Thus, the proposed regulation barring the assembly of nonimportable firearms using two or more imported parts was too restrictive. This final rule modifies the proposed regulation by prohibiting the assembly of nonsporting firearms where the majority of the major firearm components, *i.e.*, 11 or more of the 20 components listed in the regulation, were imported. This modification to the proposed regulation will ensure that only "foreign" firearms are subject to the assembly prohibition. ATF believes this is a reasonable interpretation of the statute which was intended by Congress to preclude the assembly of essentially foreign made weapons but not firearms which are essentially American-made or domestic weapons.

An additional comment was received in support of the position that section 922(r) should be interpreted to require that all of the parts, including the frame and receiver, be imported. This commenter stated that a person could import a frame or receiver as part of a "sporting" firearm and use the frame in the assembly of a nonsporting firearm using all imported parts. The commenter believes this is the only activity section 922(r) intended to address. ATF has not adopted this comment since it would address conduct that would not ordinarily occur. Moreover, this interpretation would result in a statute which would have virtually no practical application. Moreover, such an interpretation would totally ignore and defeat the purpose of the legislation which was to curb the assembly of nonimportable firearms from imported parts on domestically made frames or receivers.

**Meaning of the Term "Identical"**

The comment was made that the use of term "identical" in section 922(r) was intended to require that firearms prohibited from assembly under section 922(r) be exact copies of specific rifles or shotguns which ATF has found to be nonimportable. The comment has not been adopted because such an interpretation would result in a prohibition which could easily be circumvented by merely changing a minor feature on the assembled firearm, e.g., slightly changing the barrel length. Additionally, if the regulation adopted the position that only those specific firearms previously found to be nonimportable are prohibited from assembly under section 922(r), ATF would constantly be one step behind in enforcing the law. For example, an importer could make one or more minor changes in an existing nonimportable weapon, import the parts, and assemble the weapon without violating section 922(r), since the modified weapon would not have been ruled upon by ATF.

For the statute to have any definitive meaning, the phrase "identical to any rifle or shotgun prohibited from importation" must be interpreted to mean that a firearm may not be lawfully assembled from imported parts if the firearm would not be importable under 18 U.S.C. 925(d)(3). In the Report of the Working Group, ATF determined that semiautomatic assault rifles are a distinctive type of rifle prohibited from importation under section 925(d)(3) since they are not generally recognized as particularly suitable for, or readily

adaptable for sporting purposes. Thus, any rifle which would be classified as a semiautomatic assault rifle under the criteria specified in the Report of the Working Group could not be assembled in the United States from imported parts. Even if such a rifle had never been imported into the United States and ATF had never denied its importation, it could not be assembled from imported parts.

**Use of Replacement Parts**

The comment was made that ATF should allow the replacement of broken or defective parts in any rifle or shotgun which had been legally imported into or assembled in the United States. Pursuant to this comment, the regulation has been revised to allow the replacement of damaged or defective parts on firearms which were lawfully imported into the United States or which were lawfully assembled prior to November 30, 1990, the effective date of section 922(r). For example, the regulation will allow for the replacement of a broken stock or pistol grip on a damaged semiautomatic AK–47 which was legally imported into or legally assembled in the United States. Further, a defective fixed shoulder stock of an SKS type rifle which was lawfully imported as a sporting firearm could lawfully be replaced with a fixed shoulder stock. On the other hand, the shoulder stock could not be replaced with a folding stock since the assembly of the SKS rifle with a folding stock would result in a firearm which would be nonimportable.

**Publication of List of Nonimportable Firearms**

A commenter suggested that ATF is required to publish in the **Federal Register** a list of firearms which have been classified as nonsporting and prohibited from importation. This comment has not been adopted since there is no requirement that firearms classified as nonsporting be published in the **Federal Register**. Indeed, since the enactment of the GCA in 1968 ATF has never published a list of firearms found to be nonimportable under section 925(d)(3). Moreover, any person may request an opinion as to whether the assembly of any particular firearm would violate section 922(r).

**Executive Order 12291**

It has been determined that this document is not a "major rule" as defined in E.O. 12291 and a regulatory impact analysis is not required because the economic consequences of the regulations are the direct result of the implementation of a statute. Additionally, this final rule will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or foreign markets.

**Regulatory Flexibility Act**

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This certification is based upon the fact that the general economic effects flow directly from the underlying statute as well as from the fact that this final rule is not expected (1) to have secondary or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

**Paperwork Reduction Act**

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act [44 U.S.C. 3504(h)] under control number 1512–0510. The estimated average annual burden associated with this collection of information is 3 hours per respondent or recordkeeper depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Reports Management Officer, Information Programs Branch, room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512–0510), Washington, DC 20530.

**Drafting Information**

The originating drafter of this Treasury Decision is Robert Trainor of the Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms. Officials from the Bureau and from the Treasury Department, however, participated in developing this Treasury Decision, both on matters of substance and style.

**List of Subjects in 27 CFR Part 178**

Administrative Practice and Procedure, Arms and Ammunition, Authority delegations, Customs duties and inspections, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeiture, and Transportation.

**Authority and Issuance**

Therefore, as set forth in the preamble 27 CFR part 178—Commerce in Firearms and Ammunition is amended as follows:

## PART 178—COMMERCE IN FIREARMS AND AMMUNITION

**Paragraph 1.** The authority citation for part 178 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

**Par. 2.** Section 178.11 is amended by adding the following definition of "semiautomatic rifle" after the definition of "rifle" to read as follows:

**§ 178.11 Meaning of terms.**

* * * * *

*Semiautomatic rifle.* Any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

* * * * *

**Par. 3.** Section 178.39 is added to Subpart C to read as follows:

**§ 178.39 Assembly of semiautomatic rifles or shotguns.**

(a) No person shall assemble a semiautomatic rifle or any shotgun using more than 10 of the imported parts listed in paragraph (c) of this section if the assembled firearm is prohibited from importation under section 925(d)(3) as not being particularly suitable for or readily adaptable to sporting purposes.

(b) The provisions of this section shall not apply to:

(1) The assembly of such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) The assembly of such rifle or shotgun for the purposes of testing or experimentation authorized by the Director under the provisions of § 178.151; or

(3) The repair of any rifle or shotgun which had been imported into or assembled in the United States prior to November 30, 1990, or the replacement of any part of such firearm.

(c) For purposes of this section, the term *imported parts* are:

(1) Frames, receivers, receiver castings, forgings or stampings
(2) Barrels
(3) Barrel extensions
(4) Mounting blocks (trunions)
(5) Muzzle attachments
(6) Bolts
(7) Bolt carriers
(8) Operating rods
(9) Gas pistons
(10) Trigger housings
(11) Triggers
(12) Hammers
(13) Sears
(14) Disconnectors
(15) Buttstocks
(16) Pistol grips
(17) Forearms, handguards
(18) Magazine bodies
(19) Followers
(20) Floorplates

**Par. 4.** Section 178.151 is added to subpart I to read as follows:

**§ 178.151 Semiautomatic rifles or shotguns for testing or experimentation.**

(a) The provisions of § 178.39 shall not apply to the assembly of semiautomatic rifles or shotguns for the purpose of testing or experimentation as authorized by the Director.

(b) A person desiring authorization to assemble nonsporting semiautomatic rifles or shotguns shall submit a written request, in duplicate, to the Director. Each such request shall be executed under the penalties of perjury and shall contain a complete and accurate description of the firearm to be assembled, and such diagrams or drawings as may be necessary to enable the Director to make a determination. The Director may require the submission of the firearm parts for examination and evaluation. If the submission of the firearm parts is impractical, the person requesting the authorization shall so advise the Director and designate the place where the firearm parts will be available for examination and evaluation.

Signed: June 21, 1993.

**Stephen E. Higgins,**

*Director.*

Approved: June 25, 1993.

**Ronald K. Noble,**

*Assistant Secretary (Enforcement).*

[FR Doc. 93–18108 Filed 7–28–93; 8:45 am]

BILLING CODE 4810–31–U

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD5 91–054]**

**Drawbridge Operation Regulations: Rancocas River (Creek), NJ**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** At the request of the Burlington County Bridge Commission, the Coast Guard is changing the regulations governing the Riverside-Delanco (SR#543) bridge, mile 1.3. In conjunction with this change, the Coast Guard is also revising the regulations governing the Conrail bridge, mile 1.6 at Delanco and the SR#38 bridge, mile 7.8 at Centerton all over the Rancocas River. The change eliminates the requirement to open the bridges on signal from 7 a.m. to 11 p.m. from 1 through 30 November and requires at least 24 hour notice during that period. This action will relieve the bridge owners of the burden of having a person constantly available to open the draws during this time period but should still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on August 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** William C. Heming, Bridge Administrator-NY, Fifth Coast Guard District, (212) 668–7170.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The principal persons involved in drafting this document are Joe Arca Jr., Project Manager, and LT Monica Lombardi, Project Counsel, Fifth Coast Guard District, Legal Office.

**Regulatory History**

On 26 October 1992, the Coast Guard published a notice of proposed rule-making (57 FR 48488), concerning this amendment. The Commander, Fifth Coast Guard District, also published the proposal as a Public Notice dated 27 October, 1992. In each notice interested persons were given until 10 December and 21 November 1992 respectively, to submit comments.

**Background and Purpose**

Rancocas River (Creek), New Jersey is primarily a seasonal recreational waterway. The Riverside-Delanco (SR#543) bridge, mile 1.3, the Conrail bridge, mile 1.6 at Delanco and the SR#38 bridge, mile 7.8 at Centerton provide a vertical clearance to low steel in the closed position of 4, 3, and 6 feet at mean high water and 10, 9 and 10 feet at mean low water, respectively. The primary marine operations are located between the Conrail and SR#38 bridges. Additionally, except during the winter months, the Conrail bridge is left in the open position because of the limited number of trains crossing the bridge and increased boating. The Burlington County Bridge Commission requested a change in the hours of operation at the Riverside-Delanco bridge over the Rancocas River due limited number of openings during the month of November. In conjunction with the change, the Coast Guard also revised the regulations for the other two drawbridges on the waterway. This action should accommodate the reasonable needs of navigation and relieve the bridge owners of the burden of having persons constantly available to open the draws during the winter.

**Discussion of Comments**

No comments were received to the Notice of Proposed Rulemaking or Public Notice #5–798.

**Regulatory Evaluation**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact to be so minimal that a regulatory evaluation is unnecessary. This opinion is based on the fact that the regulations will not prevent the mariners from transiting the bridges during the period in question, but just require advance notice for openings. Additionally, all the moveable bridges on this waterway presently have and maintain clearance gauges. The minor cost of maintaining clearance gauges will be offset by reduced requests for openings.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this action will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this action to be minimal, as stated in the regulatory evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this action will not have a significant

economic impact on a substantial number of small entities.

**Collection of Information**

This action contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. Section 2.B.2g.(5) provides that Bridge Administration program actions relating to the promulgation of operating requirement or procedures for drawbridges are excluded. A Categorical Exclusion Determination is available in the docket for inspection at the Office of Bridge Administrator-NY, Fifth Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.745 is revised to read as follows:

**§ 117.745 Rancocas River (Creek).**

(a) The following requirements apply to all bridges across the Rancocas River (Creek):

(1) Public vessels of the United States, state or local vessels used for public safety and vessels in distress shall be passed through the draw of each bridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn, or a radio request.

(2) The owners of these bridges shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(3) Trains and locomotives shall be controlled so that any delay in opening the draw span shall not exceed ten minutes. However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, that train may continue across the bridge and must clear the bridge interlocks before stopping or reversing.

(b) The draws of the SR#543 bridge, mile 1.3 at Riverside, the Conrail bridge, mile 1.6 at Delanco and the SR#38 bridge, mile 7.8 at Centerton, shall operate as follows:

(1) From April 1 through October 31 open on signal from 7 a.m. to 11 p.m.

(2) From November 1 through March 31 from 7 a.m. to 11 p.m., open on signal if at least 24 hours notice is given, except as provided in paragraph (a)(1) of this section.

(3) Year round from 11 p.m. to 7 a.m. need not open for the passage of vessels, except as provided in paragraph (a)(1) of this section.

Dated: June 29, 1993.

**W.T. Leland,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 93–18010 Filed 7–28–93; 8:45 am]

BILLING CODE 4910–14–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 60**

**[AD–FRL–4684–7]**

## Standards of Performance for New Stationary Sources: Calciners and Dryers in Mineral Industries; Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to the standards of performance for new, modified, and reconstructed calciners and dryers in mineral industries published on September 28, 1992 (57 FR 44496). Corrections are made to the definition of exceedances for recordkeeping and reporting purposes.

**EFFECTIVE DATE:** July 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** For further information about this correction contact Mr. Warren Johnson, (919) 541–5124, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:**

**Background**

This correction document amends § 60.735 of subpart UUU of 40 CFR part 60. This section deals with the monitoring, recordkeeping and reporting requirements for the standards of performance for new, modified, and reconstructed calciners and dryers in mineral industries. As published, the final regulation contains errors that cause compliant monitoring records to be defined as exceedances, and vice versa.

Appropriate language defining exceedances for reporting purposes appeared in the notice of proposed rulemaking in the **Federal Register**, April 23, 1986, for which the public had no negative comments. Between proposal and promulgation, an attempt to shorten sentence structure inadvertently reversed the meaning of the intended exceedances provisions. Also, in the compliance provisions for a wet scrubber, the word "an" was inadvertently changed to "and" in describing an arithmetic average. This document restores the exceedances provisions to the language and meaning originally intended in the proposal, and also corrects the wet scrubber compliance provisions word error.

**List of Subjects in 40 CFR Part 60**

Air pollution control, Intergovernmental relations, Metallic minerals, Nonmetallic minerals, Reporting and recordkeeping requirements.

Dated: July 2, 1993.

**Robert D. Bremner,**

*Acting Assistant Administrator for Air and Radiation.*

Title 40, chapter I, part 60 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for part 60 is revised to read as follows:

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

**Authority:** 42 U.S.C. 7401–7601.

**§ 60.735 [Amended]**

2. In § 60.735, paragraph (b), the phrase "and arithmetic average" is revised to read "an arithmetic average".

3. In § 60.735, paragraph (c)(2), the phrase "that is within 10 percent of" is

revised to read "that is less than 90 percent of".

4. In § 60.735, paragraph (c)(3), the phrase "that is within 20 percent of" is revised to read "that is less than 80 percent or greater than 120 percent of".

[FR Doc. 93-18103 Filed 7-28-93; 8:45 am]
BILLING CODE 6560-50-P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 101-18

[FPMR Amendment D-92]

### Acquisition of Real Property

**AGENCY:** Public Buildings Service, General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** On December 9, 1991, the General Services Administration published in the **Federal Register** (56 FR 64221) a Proposed Rule which set forth certain revisions to the basic policy under which GSA leases, or delegates to other agencies the authority to lease, space in privately owned buildings. There are no major changes to the Final Rule as a result of agency comments on the Proposed Rule. These comments and GSA's response to them are addressed in the SUPPLEMENTARY INFORMATION below.

This Final Rule reinserts regulatory provisions which were inadvertently omitted from the CFR beginning with the July 1, 1986, issue. These provisions outline the scope of part and authority and are reinserted unchanged from the issued dated July 1, 1985. This Final Rule also increases to 20 years the allowable lease terms for certain categorical and agency special purpose space delegations. The maximum allowable lease term set forth in the Proposed Rule was 5 years.

**DATES:** Effective date: July 29, 1993.

**ADDRESSES:** Copies of comments that have been received are available in room 2324 of the General Services Building, 18th & F Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Ward, Director, Office of Real Estate, Office of Real Property Development, Public Buildings Service, General Services Administration, Washington, DC 20405, telephone 202-501-4266.

**SUPPLEMENTARY INFORMATION:** Subsequent to the December 9, 1991, publication of this proposed amendment to 41 CFR part 101-18, comments were received from the Departments of Agriculture, Air Force, Commerce, Interior, Justice, and Veterans Affairs. The United States Postal Service and the Advisory Council on Historic Preservation also submitted comments. The majority of the suggested changes have been incorporated into this Final Rule. In those cases where suggested changes could not be accommodated, agencies have been provided with explanations for not incorporating their comments into the Final Rule. All agency comments have been resolved either through incorporation or explanation.

This Final Rule also (a) corrects and/or updates authority citations; (b) rearranges the order of paragraphs and/or placement of information within paragraphs to promote clarity and more logical sequence of material presented therein; and (c) streamlines the listing of agency special purpose space delegations in § 101-18.104-3. Those authorities granted to agencies by statute and/or specific delegation(s) granted by the Administrator of General Services are not reiterated in this section.

### Executive Order 12291

GSA has determined that this Final Rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions on this Final Rule on adequate information concerning the need for and consequences of this Final Rule. GSA has also determined that the potential benefits to society from this Final Rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

### Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### List of Subjects in 41 CFR Part 101-18

Acquisition of real property by lease. Acquisition of real property by purchase or condemnation.

Accordingly, 41 CFR part 101-18 is amended as follows:

## PART 101-18—ACQUISITION OF REAL PROPERTY

1. The authority citation for 41 CFR part 101-18 is revised to read as follows:

**Authority:** 40 U.S.C. 486(c); sec. 1-201(b), E.O. 12072, 43 FR 36869.

2. Subpart 101-18.0 is added and subpart 101-18.1 is revised to read as follows:

## PART 101-18—ACQUISITION OF REAL PROPERTY

Sec.

101-18.000 Scope of part.
101-18.001 Authority.

**Subpart 101-18.1—Acquisition by Lease**

101-18.100 Basic policy.
101-18.101 Acquisition by GSA.
101-18.102 Acquisition by other agencies.
101-18.103 Agency cooperation.
101-18.104 Delegation of leasing authority.
101-18.104-1 Limitations on the use of delegated authority.
101-18.104-2 Categorical space delegations.
101-18.104-3 Agency special purpose space delegations.
101-18.105 Contingent fees and related procedure.
101-18.106 Application of socioeconomic considerations.

### § 101-18.000 Scope of part.

This part prescribes policies and procedures governing acquisition of interests in real property.

### § 101-18.001 Authority.

This part implements applicable provisions of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*); the Act of August 27, 1935, as amended, 49 Stat. 886 (40 U.S.C. 304c); the Public Buildings Act of 1959, as amended, Pub. L. 86-249, 73 Stat. 479 (40 U.S.C. 601-615); the Public Buildings Cooperative Use Act of 1976, Pub. L. 94-541, 90 Stat. 2505; the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894; the Federal Urban Land-Use Act, Pub. L. 90-577, 82 Stat. 1104 (40 U.S.C. 531-535); the Rural Development Act of 1972, as amended, Pub. L. 92-419, 86 Stat. 657 (42 U.S.C. 3122); the Fair Housing Act, as amended, Pub. L. 90-284, 82 Stat. 81 (42 U.S.C. 3601 *et seq.*); Reorganization Plan No. 18 of 1950, 15 FR 3177, 64 Stat. 1270 (40 U.S.C. 490 note); Executive Order 12072, 43 FR 36869 (40 U.S.C. 490 note); and OMB Circular A-95 (41 FR 2052).

## Subpart 101–18.1 Acquisition by Lease

### § 101–18.100 Basic policy.

(a) GSA will lease privately owned land and building space only when needs cannot be satisfactorily met in Government-controlled space and:

(1) Leasing proves to be more advantageous than the construction of a new or alteration of an existing Federal building;

(2) New construction or alteration is not warranted because requirements in the community are insufficient or indefinite in scope or duration; or

(3) Completion of a new building within a reasonable time cannot be ensured.

(b) Available space in buildings under the custody and control of the United States Postal Service (USPS) will be given priority consideration in fulfilling Federal agency space needs.

(c) Acquisition of space by lease will be on the basis most favorable to the Government, with due consideration to maintenance and operational efficiency, and only at charges consistent with prevailing scales for comparable facilities in the community.

(d) Acquisition of space by lease will be by negotiation except where the sealed bid procedure is required by 41 U.S.C. 253(a). Except as otherwise provided in 41 U.S.C. 253, full and open competition will be obtained among suitable available locations meeting minimum Government requirements.

(e) When acquiring space by lease, the provisions of § 101–17.205 regarding determination of the location of Federal facilities shall be strictly adhered to.

(f) When acquiring space by lease, the provisions of section 110(a) of the National Historic Preservation Act of 1966 (16 U.S.C. 470), as amended, regarding the use of historic properties shall be strictly adhered to.

### § 101–18.101 Acquisition by GSA.

(a) GSA will perform all functions of leasing building space, and land incidental thereto, for Federal agencies except as provided in this subpart.

(b) Officials or employees of agencies for which GSA will acquire leased space shall at no time, before or after a space request is submitted to GSA or after a lease agreement is made, directly or indirectly contact lessors, offerors, or potential offerors for the purpose of making oral or written representation or commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services, unless authorized by the Director of the Real Estate Division in the responsible GSA regional office or facility support center.

### § 101–18.102 Acquisition by other agencies.

(a) Acquisitions of leased space by agencies possessing independent statutory authority to acquire such space are not subject to GSA approval or authority.

(b) Upon request, GSA will perform, on a reimbursable basis, all functions of leasing building space, and land incidental thereto, for Federal agencies possessing independent leasing authority.

(c) GSA reserves the right to accept or reject reimbursable leasing service requests on a case-by-case basis.

### § 101–18.103 Agency cooperation.

The heads of executive agencies shall:

(a) Cooperate with and assist the Administrator of General Services in carrying out his responsibilities respecting office buildings and space;

(b) Take measures to give GSA early notice of new or changing space requirements;

(c) Seek to economize their requirements for space; and

(d) Continuously review their needs for space in and near the District of Columbia, taking into account the feasibility of decentralizing services or activities which can be carried on elsewhere without excessive costs or significant loss of efficiency.

### § 101–18.104 Delegation of leasing authority.

(a) Agencies are authorized to perform for themselves all functions with respect to the acquisition of leased space in buildings and land incidental thereto when the following conditions are met:

(1) The space may be leased for no rental, or for a nominal consideration of $1.00 per annum, and shall be limited to terms not to exceed one (1) year;

(2) Authority has been requested by an executive agency and a specific delegation has been granted by the Administrator of General Services;

(3) A categorical delegation has been granted by the Administrator of General Services for space to accommodate particular types of agency activities, such as military recruiting offices or space for certain county level agricultural activities. A listing of categorical delegations is found at § 101–18.104–2; or

(4) The required space is found by the Administrator of General Services to be wholly or predominantly utilized for the special purposes of the agency to occupy such space and is not generally suitable for use by other agencies. Prior approval of GSA shall be obtained before an agency initiates a leasing action involving 2,500 or more square feet of such special purpose space. The request for approval and a Standard Form 81 shall be filed with the GSA regional office having jurisdiction in the area of the proposed leasing action as shown in § 101–17.4801. GSA's approval shall be based upon a finding that there is no vacant Government-owned or leased space available that will meet the agency's requirements.

A listing of agency special purpose space delegations is found at § 101–18.104–3.

(b) The Departments of Agriculture, Commerce, and Defense may lease their own building space, and land incidental to its use, and provide for its operation, maintenance, and custody when the space is situated outside an urban center. Such leases shall be for terms not to exceed five (5) years. A list of urban centers follows.

#### List of Urban Centers

Aberdeen, SD:
  Brown County.
Abil:
  Jones County.
  Taylor County.
Akron, OH:
  Portage County.
  Summit County.
Alaska:
  The entire State.
Albany, GA:
  Dougherty County.
Albany, IL:
  Whiteside County.
Albany, OR:
  Linn County.
Albany-Schenectady-Troy, NY:
  Albany County.
  Rensselaer County.
  Saratoga County.
  Schenectady County.
Albuquerque, NM:
  Bernalillo County.
Alexandria, LA:
  Rapides Parish.
Allentown-Bethlehem-Easton, PA–NJ:
  Lehigh County, PA.
  Northampton County, PA.
  Warren, NJ.
Altoona, PA:
  Blair County.
Amarillo, TX:
  Potter County.
  Randall County.
Anaheim-Santa Ana-Garden Grove, CA:
  Orange County.
Ann Arbor, MI:
  Washtenaw County.
Asheville, NC:
  Buncombe County.
Athens, GA:
  Clarke County.
Atlanta, GA:
  Clayton County.
  Cobb County.
  De Kalb County.
  Fulton County.

Gwinnett County.
Atlantic City, NJ:
Atlantic County.
Augusta, GA–SC:
Richmond County, GA.
Aiken County, SC.
Augusta, ME:
Kennebec County.
Austin, TX:
Travis County.
Bakersfield, CA:
Kern County.
Baltimore, MD:
Baltimore City.
Anne Arundel County.
Baltimore County.
Carroll County.
Howard County.
Baton Rough, LA:
East Baton Rouge Parish.
Battle Creek, MI:
Calhoun County.
Bay City, MI:
Bay County.
Beaumont-Port Arthur, TX:
Jefferson County.
Orange County.
Billings, MT:
Yellowstone County.
Binghampton, NY-PA:
Broome County, NY.
Tioga County, NY.
Susquehanna County, PA.
Birmingham, AL:
Jefferson County.
Bismarck, ND:
Burleigh County.
Boise, ID:
Ada County.
Boston, MA:
Essex County.
Middlesex County.
Norfolk County.
Plymouth County.
Suffolk County.
Bridgeport, CT:
Fairfield County.
New Haven County.
Brockton, MA:
Bristol County.
Norfolk County.
Plymouth County.
Brownsville-Harlingen-San Benito, TX:
Cameron County.
Buffalo, NY:
Erie County.
Niagara County.
Burlington, VT:
Chittenden County.
Butte, MT:
Silver Bow County.
Calexico-El Centro, CA:
Imperial County.
Canton, OH:
Stark County.
Casper, WY:
Natrona County.
Cedar Rapids, IA:
Linn County.
Champaign-Urbana, IL:
Champaign County.
Charleston, SC:
Berkeley County.
Charleston, County.
Charleston, WV:
Kanawha County.
Charlotte, NC:
Mecklenburg County.
Union County.
Charlottesville, VA:
Charlottesville City.
Albemarle County.
Chattanooga, TN-GA:
Hamilton County, TN.
Walker County, GA.
Cheyenne, WY:
Laramie County.
Chicago, IL:
Cook County.
Du Page County.
Kane County.
Lake County.
McHenry County.
Will County.
Cincinnati, OH-KY-IN:
Clermont County, OH.
Hamilton County, OH.
Warren County, OH.
Boone County, KY.
Campbell County, KY.
Kenton County, KY.
Dearborn County, IN.
Cleveland, OH:
Cuyahoga County.
Geauga County.
Lake County.
Medina County.
Clinton, OK:
Custer County.
Cody, WY:
Park County.
Colorado Springs, CO:
El Paso County.
Columbia, MO:
Boone County.
Columbia, SC:
Lexington County.
Richland County.
Columbus, GA-AL:
Chattahoochee County, GA.
Muscogee County, GA.
Russell County, AL.
Columbus, OH:
Delaware County.
Franklin County.
Pickaway County.
Concord, NH:
Merrimack County.
Corpus Christi, TX:
Nueces County.
Dallas, TX:
Collin County.
Dallas County.
Denton County.
Ellis County.
Davenport-Rock Island-Moline, IA–IL:
Scott County, IA.
Henry County, IL.
Rock Island County, IL.
Dayton, OH:
Greene County.
Miami County.
Montgomery County.
Preble County.
Decatur, IL:
Macon County.
Denver, CO:
Adams County.
Arapahoe County.
Boulder County.
Denver County.
Jefferson County.
Des Moines, IA:
Polk County.
Detroit, MI:
Macomb County.
Oakland County.
Wayne County.
Dubuque, IA:
Dubuque County.
Duluth-Superior, MN-WI:
St. Louis County, MN.
Douglas County, WI.
Durango, CO:
LaPlata County.
Durham, NC:
Durham County.
Elkins, WV:
Randolph County.
El Paso, TX:
El Paso County.
Erie, PA:
Erie County.
Eugene, OR:
Lane County.
Evansville, IN-KY:
Vanderburgh County, IN.
Warrick County, IN.
Henderson County, KY.
Fall River, MA-RI:
Bristol County, MA.
Newport County, RI.
Fargo-Moorhead, ND-MN:
Cass County, ND.
Clay County, MN.
Fayetteville, NC:
Cumberland County.
Fitchburg-Leominster, MA:
Middlesex County.
Worcester County.
Flint, MI:
Genesee County.
Lapeer County.
Fort Collins, CO:
Larimer County.
Fort Lauderdale-Hollywood, FL:
Broward County.
Fort Smith, AR–OK:
Crawford County, AR.
Sebastian County, AR.
Le Flore County, OK.
Sequoyah County, OK.
Fort Wayne, IN:
Allen County.
Fort Worth, TX:
Johnson County.
Tarrant County.
Frankfort, KY:
Franklin County.
Fresno, CA:
Fresno County.
Gadsden, AL:
Etowah County.
Gainesville, FL:
Alachua County.
Galveston-Texas City, TX:
Galveston County.
Gary-Hammond-East Chicago, IN:
Lake County.
Porter County.
Grand Forks, ND:
Grand Forks County.
Grand Island, NE:
Hall County.
Grand Junction, CO:
Mesa County.
Grand Rapids, MI:
Kent County.
Ottawa County.
Great Falls, MT:

Cascade County.
Greeley, CO:
Weld County.
Green Bay, WI:
Brown County.
Greensboro-High Point, NC:
Guilford County.
Greenville, SC:
Greenville County.
Pickens County.
Greenwood, MS:
Le Flore County.
Hamilton-Middletown, OH
Butler County.
Harrisburg, PA:
Cumberland County.
Dauphin County.
Perry County.
Hartford, CT:
Hartford County.
Middlesex County.
Tolland County.
Hawaii:
The entire State.
Helena, MT:
Lewis and Clark County.
Hot Springs, AR:
Garland County.
Houston, TX:
Harris County.
Huntington-Ashland, WV-KY-OH:
Cabell County, WV.
Wayne County, WV.
Boyd County, KY.
Lawrence County, OH.
Huntsville, AL:
Limestone County.
Madison County.
Huron, SD:
Beadle County.
Idaho Falls, ID:
Bonneville County.
Indianapolis, IN:
Hamilton County.
Hancock County.
Hendricks County.
Johnson County.
Marion County.
Morgan County.
Shelby County.
Jackson, MI:
Jackson County
Jackson, MS:
Hinds County.
Rankin County.
Jackson, TN:
Madison County.
Jacksonville, FL:
Duval County.
Jefferson City, MO:
Cole County.
Jersey City, NJ:
Hudson County.
Johnstown, PA:
Cambria County.
Somerset County.
Kalamazoo, MI:
Kalamazoo County.
Kansas City, MO-KS:
Cass County, MO.
Clay County, MO.
Jackson County, MO.
Platte County, MO.
Johnson County, KS.
Wyandotte County, KS.
Kenosha, WI:
Kenosha County.
Klamath Falls, OR:
Klamath County.
Knoxville, TN:
Anderson County.
Blount County.
Knox County.
Lafayette, LA:
Lafayette Parish.
Lake Charles, LA:
Calcasieu Parish.
Lancaster, PA:
Lancaster County.
Lansing, MI:
Clinton County.
Eaton County.
Ingham County.
Laredo, TX:
Webb County.
Las Vegas, NV:
Clark County.
Lawrence-Haverhill, MA-NH:
Essex County, MA.
Rockingham County, NH.
Lawton, OK:
Comanche County.
Lewiston-Auburn, ME:
Androscoggin County.
Lexington, KY:
Fayette County.
Lima, OH:
Allen County.
Lincoln, NE:
Lancaster County.
Little Rock-North Little Rock, AR:
Pulaski County.
Logan, UT:
Cache County.
Lorain-Elyria, OH:
Lorain County,
Los Angeles-Long Beach, CA:
Los Angeles County.
Louisville, KY/IN.
Jefferson County, KY.
Clark County, IN.
Floyd County, IN.
Lowell, MA:
Middlesex County.
Lubbock, TX:
Lubbock County.
Lynchburg, VA:
Lynchburg City.
Amherst County.
Campbell County.
Macon, GA:
Bibb County.
Houston County.
Madison, WI:
Dane County.
Manchester, NH:
Hillsborough County.
Merrimack County.
Manhattan, KS:
Riley County.
McCook, NE:
Red Willow County.
Medford, OR:
Jackson County.
Memphis, TN-AR:
Shelby County, TN.
Crittenden County, AR.
Meriden, CT:
New Haven County.
Meridian, MS:
Lauderdale County.
Miami, FL:
Dade County.
Midland, TX:
Midland County.
Milwaukee, WI:
Milwaukee County.
Ozaukee County.
Waukesha County.
Minneapolis-St. Paul, MN:
Anoka County.
Dakota County.
Hennepin County.
Ramsey County.
Washington County.
Missoula, MT:
Missoula County.
Mobile, AL:
Baldwin County.
Mobile County.
Monroe, LA:
Ouachita Parish.
Montgomery, AL:
Elmore County.
Montgomery County.
Morgantown, WV:
Monongahela County.
Muncie, IN:
Delaware County.
Muskegon-Muskegon Heights, MI:
Muskegon County.
Muskogee, OK:
Muskogee County.
Nashville, TN:
Davidson County.
Sumner County.
Wilson County.
Newark, NY:
Essex County.
Morris County.
Union County.
New Bedford, MA:
Bristol County.
Plymouth County.
New Britain, CT:
Hartford County.
New Haven, CT:
New Haven County.
New London-Groton-Norwich, CT:
New London County.
New Orleans, LA:
Jefferson Parish.
Orleans Parish.
St. Bernard Parish.
St. Tammany Parish.
Newport News-Hampton, VA:
Hampton City.
Newport News City.
York County.
New York, NY:
Bronx County.
Kings County.
Nassau County.
New York County.
Queens County.
Richmond County.
Rockland County.
Suffolk County.
Westchester County.
Norfolk-Portsmouth, VA:
Chesapeake City.
Norfolk City.
Portsmouth City.
Virginia Beach City.
Norwalk, CT:
Fairfield County.
Odessa, TX:
Ector County.
Ogden, UT:

Weber County.
Oklahoma City, OK:
Canadian County.
Cleveland County.
Oklahoma County.
Olympia, WA:
Thurston County.
Omaha, NE–IA:
Douglas County, NE.
Sarpy County, NE.
Pottawattamie County, IA.
Orlando, FL:
Orange County.
Seminole County.
Parkersburg, WV:
Wood County.
Paterson-Clifton-Passaic, NJ:
Bergen County.
Passaic County.
Pensacola, FL:
Escambia County.
Santa Rosa County.
Peoria, IL:
Peoria County.
Tazewell County.
Woodford County.
Philadelphia, PA-NJ:
Bucks County, PA.
Chester County, PA.
Delaware County, PA.
Montgomery County, PA.
Philadelphia County, PA.
Burlington County, NJ.
Camden County, NJ.
Gloucester County, NJ.
Phoenix, AZ:
Maricopa County.
Pierre, SD:
Hughes County.
Pittsburgh, PA:
Allegheny County.
Beaver County.
Washington County.
Westmoreland County.
Pittsfield, MA:
Berkshire County.
Portland, ME:
Cumberland County.
Portland, OR-WA:
Clackamas County, OR.
Multnomah County, OR:
Washington County, OR.
Clark County, WA.
Portsmouth, NH:
Rockingham County.
Providence-Pawtucket-Warwick, RI-MA:
Bristol County, RI.
Kent County, RI.
Newport County, RI.
Providence County, RI.
Washington County, RI.
Bristol County, MA.
Norfolk County, MA.
Worcester County, MA.
Provo-Orem, UT:
Utah County.
Pueblo, CO:
Pueblo County.
Puerto Rico:
The entire Commonwealth.
Racine, WI:
Racine County.
Raleigh, NC:
Wake County.
Rapid City, SD:
Pennington County.
Reading, PA:
Berks County.
Reno, NV:
Washoe County.
Richmond, VA:
Richmond City.
Chesterfield County.
Hanover County.
Henrico County.
Roanoke, VA:
Roanoke City.
Roanoke County.
Rochester, NY:
Livingston County.
Monroe County.
Orleans County.
Wayne County.
Rockford, IL:
Boone County.
Winnebago County.
Rolla, MO:
Phelps County.
Rome, GA:
Floyd County.
Sacramento, CA:
Placer County.
Sacramento County.
Yolo County.
Saginaw, MI:
Saginaw County.
St. Albans, VT:
Franklin County.
St. Joseph, MO:
Buchanan County.
St. Louis, MO-IL:
St. Louis City, MO.
Jefferson County, MO.
St. Charles County, MO.
St. Louis County, MO.
Madison County, IL.
St. Clair County, IL.
Salem, OR:
Marion County.
Polk County.
Salina, KS:
Saline County.
Salisbury, MD:
Wicomico County.
Salt Lake City, UT:
Davis County.
Salt Lake County.
San Angelo, TX:
Tom Green County.
San Antonio, TX:
Bexar County.
Guadalupe County.
San Bernardino-Riverside-Ontario, CA:
Riverside County.
San Bernardino County.
San Diego, CA:
San Diego County.
San Francisco-Oakland, CA:
Alameda County.
Contra Costa County.
Marin County.
San Francisco County.
San Mateo County.
San Jose, CA:
Santa Clara County.
Santa Barbara, CA:
Santa Barbara County.
Santa Fe, NM:
Santa Fe County.
Savannah, GA:
Chatham County.
Scottsbluff, NE:
Scotts Bluff County.
Scranton, PA:
Lackawanna County.
Seattle-Everett, WA:
King County.
Snohomish County.
Sheridan, WY:
Sheridan County
Shreveport, LA:
Bossier Parish.
Caddo Parish.
Sioux City, IA-NE:
Woodbury County, IA.
Dakota County, NE.
Sioux Falls, SD:
Minnehaha County.
South Bend, IN:
St. Joseph County.
Marshall County.
Spartanburg, SC:
Spartanburg County.
Spokane, WA:
Spokane County.
Springfield-Chicopee-Holyoke, MA:
Hampden County.
Hampshire County.
Worcester County.
Springfield, IL:
Sangamon County.
Springfield, MO:
Greene County.
Springfield, OH:
Clark County.
Stamford, CT:
Fairfield County.
Steubenville-Weirton, OH-WV:
Jefferson County, OH.
Brooke County, WV.
Hancock County, WV.
Stillwater, OK:
Payne County.
Stockton, CA:
San Joaquin County.
Syracuse, NY:
Madison County.
Onondaga County.
Oswego County.
Tacoma, WA:
Pierce County.
Tallahassee, FL:
Leon County.
Tampa-St. Petersburg, FL:
Hillsborough County.
Pinellas County.
Temple, TX:
Bell County.
Terre Haute, IN:
Clay County.
Sullivan County.
Vermillion County.
Vigo County.
Texarkana, TX-AR:
Bowie County, TX.
Miller County, AR.
Toledo, OH-MI:
Lucas County, OH.
Wood County, OH.
Monroe County, MI.
Topeka, KS:
Shawnee County.
Trenton, NJ:
Mercer County.
Tucson, AZ:
Pima County.
Tulsa, OK:
Creek County.
Osage County.
Tulsa County.
Tuscaloosa, AL:

Tuscaloosa County.
Tyler, TX:
Smith County.
Utica-Rome, NY:
Herkimer County.
Oneida County.
Vallejo-Napa, CA:
Napa County.
Solano County.
Vicksburg, MS:
Warren County.
Virgin Islands:
The entire Territory.
Waco, TX:
McLennan County.
Walla Walla, WA:
Walla Walla County.
Benton County.
Washington, DC-MD-VA:
District of Columbia.
Montgomery County, MD.
Prince Georges County, MD.
Alexandria City, VA.
Fairfax City, VA.
Falls Church, VA.
Arlington County, VA.
Fairfax County, VA.
Waterbury, CT:
Litchfield County.
New Haven County.
Waterloo, IA:
Black Hawk County.
Wenatchee, WA:
Chelan County.
West Palm Beach, FL:
Palm Beach County.
Wheeling, WV-OH:
Marshall County, WV
Ohio County, WV.
Belmont County, OH.
Wichita, KS:
Butler County.
Sedgwick County.
Wichita Falls, TX:
Archer County.
Wichita County.
Wilkes Barre-Hazleton, PA:
Luzerne County.
Wilmington, DE-NJ-MD:
New Castle County, DE.
Salem County, NJ.
Cecil County, MD.
Wilmington, NC:
New Hanover County.
Winston-Salem, NC:
Forsyth County.
Worcester, MA:
Worcester County.
Yakima, WA:
Yakima County.
York, PA:
Adams County.
York County.
Youngstown-Warren, OH:
Mahoning County.
Trumbull County.
Yuma, AZ:
Yuma County.

(c) The Administrator of General Services has granted specific delegations of lease acquisition authority which designate urban or major urban centers different from those listed in paragraph (b) of this section. The list in paragraph (b) does not supersede or alter in any way leasing areas which are attached to such specific delegations. Agencies may continue to exercise the leasing authority granted in specific delegations in the manner and to the extent provided in those delegations.

**§ 101–18.104–1 Limitations on the use of delegated authority.**

(a) The authority granted in and pursuant to this subpart shall be exercised in accordance with the requirements and limitations of the Federal Property and Administrative Services Act of 1949, as amended; the Budget Enforcement Act of 1990 and OMB Bulletin 91–02, Part B; Federal Property Management Regulations, subchapter D, those authorities listed in § 101–18.001; and other applicable laws and regulations, including the General Services Administration Acquisition Regulation (GSAR), the Competition in Contracting Act (CICA), and other OMB requirements.

(b) Pursuant to GSA's long-term authority contained in section 210(h)(1) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 490(h)(1)), agencies delegated the authorities outlined herein may enter into leases for the term specified. In those cases where agency special purposes space delegations include the authority to acquire unimproved land, the land may be leased only on a fiscal year basis.

(c) In accordance with section 7(a) of the Public Buildings Act of 1959, as amended (40 U.S.C. 606), agencies must submit a prospectus to the Administrator of General Services for leases involving a net annual rental in excess of $1.6 million excluding services and utilities.

**Note:** The thresholds for prospectuses are indexed, and change each year.

(d) Agencies having a need for other than temporary parking accommodations in the urban centers listed in § 101–18.102, for Government-owned motor vehicles not regularly house by GSA, shall ascertain the availability of Government-owned or-controlled parking from GSA in accordance with the procedures outlined in § 101–17.202–2 prior to instituting procurement action to acquire parking facilities or services.

**§ 101–18.104–2 Categorical space delegations**

Subject to the limitations cited in § 101–18.104–1, all agencies are authorized to acquire the types of space listed in paragraphs (a) through (p) of this section. Except where otherwise noted, leases may be for terms, including all options, of up to 20 years. The types of space subject to categorical space delegations may be located inside or outside urban centers and are as follows:

(a) Space to house antennas, repeaters, or transmission equipment;

(b) Depots, including, but not limited to, stockpiling depots and torpedo net depots;

(c) Docks, piers, and mooring facilities (including closed storage space required in combination with such facilities);

(d) Fumigation areas;

(e) Garage space (may be leased only on a fiscal year basis);

(f) Greenhouses;

(g) Hangars and other airport operating facilities including, but not limited to, flight preparation space, aircraft storage areas, and repair shops;

(h) Hospitals, including medical clinics;

(i) Housing (temporary), including hotels (does not include quarters obtained pursuant to temporary duty travel or employee relocation);

(j) Laundries;

(k) Quarantine facilities for plants, birds, and other animals;

(l) Ranger stations; i.e., facilities which typically include small offices staffed by one or more uniformed employees, and may include sleeping/family quarters, parking areas, garages, and storage space. Office space within ranger stations is minimal and does not comprise a majority of the space. (May also be referred to as guard stations, information centers, or kiosks.)

(m) Recruiting space for the armed forces (lease terms, including all options, limited to 5 years);

(n) Schools directly related to the special purpose function(s) of an agency;

(o) Specialized storage/depot facilities, such as cold storage; self-storage units; and lumber, oil, gasoline, shipbuilding materials, and pesticide materials/equipment storage (general purpose warehouse type storage facilities not included);

(p) Space for short-term use as provided in § 101–17.203 (lease terms limited to 180 days with extensions granted on a case-by-case basis).

**§ 101–18.104–3 Agency special purpose space delegations.**

Subject to the limitations cited in § 101–18.104–1, the agencies listed below are authorized to acquire the types of space associated with that agency. Except where otherwise noted, agency special purpose space may be leased for terms, including all options, of up to 20 years. Such space may be located either inside or outside urban

centers. The agencies and types of space subject to special purpose space delegations are as follows:

(a) Department of Agriculture:

(1) Cotton classing laboratories (lease terms, including all options, limited to 5 years);

(2) Land (if unimproved, may be leased only on a fiscal year basis);

(3) Miscellaneous storage by cubic foot or weight basis;

(4) Office space when required to be located in or adjacent to stockyards, produce markets, produce terminals, airports, and other ports (lease terms, including all options, limited to 5 years);

(5) Space for agricultural commodities stored in licensed warehouses and utilized under warehouse contracts;

(6) Space utilized in cooperation with State and local governments or their instrumentalities (extension services) where the cooperating State or local government occupies a portion of the space and pays a portion of the rent.

(b) Department of Commerce:

(1) Census Bureau—Space required in connection with conducting the decennial census (lease terms, including all options, limited to 5 years);

(2) Laboratories for testing materials, classified or ordnance devices, calibration of instruments, and atmospheric and oceanic research (lease terms, including all options, limited to 5 years);

(3) Maritime training stations;

(4) Radio stations;

(5) Land (if unimproved, may be leased only on a fiscal year basis);

(6) National Weather Service meteorological facilities.

(c) Department of Defense:

(1) Air Force—Civil Air Patrol Liaison Offices and land incidental thereto when required for use incidental to, in conjunction with, and in close proximity to airports, including aircraft and warning stations (if unimproved, land may be leased only on a fiscal year basis; for space, lease terms, including all options, limited to 5 years);

(2) Armories;

(3) Film library in the vicinity of Washington, DC;

(4) Leased building at Air Force Base, Jackson, MS;

(5) Mess halls;

(6) Ports of embarkation and debarkation;

(7) Post exchanges;

(8) Postal Concentration Center, Long Island City, NY;

(9) Recreation centers;

(10) Reserve training space;

(11) Service clubs;

(12) Testing laboratories (lease terms, including all options, limited to 5 years).

(d) Department of Energy: Facilities housing the special purpose or special location activities of the old Atomic Energy Commission.

(e) Federal Communications Commission: Monitoring station sites.

(f) Department of Health and Human Services: Laboratories (lease terms, including all options, limited to 5 years).

(g) Department of the Interior:

(1) Space in buildings and land incidental thereto used by field crews of the Bureau of Reclamation, Bureau of Land Management, and the Geological Survey in areas where no other Government agencies are quartered (if unimproved, land may be leased only on a fiscal year basis);

(2) National Parks/Monuments Visitors Centers consisting primarily of special purpose space (e.g., visitor reception, information, and rest room facilities) and not general office or administrative space.

(h) Department of Justice:

(1) U.S. marshals Office in any Alaska location (lease terms, including all options, limited to 5 years);

(2) Border Patrol Offices similar in character and utilization to policy stations, involving the handling of prisoners, firearms, and motor vehicles, regardless of location (lease terms, including all options limited to 5 years);

(3) Space used for storage and maintenance of surveillance vehicles and seized property (lease terms, including all options, limited to 5 years);

(4) Space used for review and custody of records and other evidentiary materials (lease terms, including all options, limited to 5 years);

(5) Space used for trail preparation where space is not available in Federal Buildings, Federal Courthouses, USPS facilities, or GSA-leased buildings (lease terms limited to not more than 1 year.)

(i) Office of Thrift Supervision: Space for field offices of Examining Divisions required to be located within Office of Thrift Supervision buildings or immediately adjoining or adjacent to such buildings (lease terms, including all options, limited to 5 years).

(j) Department of Transportation:

(1) Federal Aviation Administration:

(i) Land at airports (if unimproved, land may be leased only on a fiscal year basis);

(ii) Not to exceed 10,000 square feet of space at airports that is used predominantly as general purpose office space in buildings under the jurisdiction of public or private airport authorities (lease terms, including all options, limited to 5 years);

(2) U.S. Coast Guard:

(i) Space for the oceanic unit, Woods Hole, MA;

(ii) Space for port security activities.

(k) Department of the Treasury:

(1) Comptroller of the Currency—Space and land incidental thereto for the use of the Comptroller of the Currency, as well as the operation, maintenance and custody thereof (if unimproved, land may be leased only on a fiscal year basis; for space, lease term, including all options, limited to 5 years);

(2) U.S. Customs Service—Aerostat radar facilities necessary for agency mission activities;

(l) Department of Veterans Affairs:

(1) Guidance and training centers located at schools and colleges;

(2) Space used for veterans hospitals, including outpatient and medical-related clinics, such as drug, mental health, and alcohol.

**§ 101–18.105 Contingent fees and related procedure.**

The provisions of subpart 3.4 of Title 48 with respect to contingent fees and related procedure are hereby made applicable to all negotiated and sealed bid contracts for the acquisition of real property by lease. The representations and covenants required by that subpart shall be appropriately adapted for use in leases of real property for Government use.

**§ 101–18.106 Application of socioeconomic considerations.**

(a) In acquiring space by lease, agencies will avoid locations which will work a hardship on employees because (1) there is a lack of adequate low- and moderate-income nondiscriminatory housing for employees within reasonable proximity to the location, and (2) the location is not readily accessible from other areas of the community.

(b) Consideration of low- and moderate-income nondiscriminatory housing for employees and the need for development and redevelopment of areas for socioeconomic improvement will apply to the acquisition of space by lease where:

(1) 100 or more low- or moderate-income employees are expected to be employed in the space to be leased; and

(2) The proposed leasing action involves residential relocation of a majority of the existing low- and moderate-income work force, a significant increase in their transportation or parking costs, travel time that exceeds 45 minutes to the new location, or a 20 percent increase in travel time if travel time to the present facility already exceeds an average of 45 minutes; or

(3) GSA requests Department of Housing and Urban Development (HUD) review in lease actions of special importance not covered by paragraphs (b) (1) and (2) of this section.

(c) HUD, as the agency responsible for providing information concerning the availability of nondiscriminatory low- and moderate-income housing in areas where Federal facilities are to be located, shall be consulted when such information is required.

(d) Other socioeconomic considerations described in § 101–19.101 are also applicable to lease acquisitions.

Dated: February 23, 1993.

Dennis J. Fischer,

*Acting Administrator of General Services.*

[FR Doc. 93–17682 Filed 7–28–93; 8:45 am]

BILLING CODE 6820–23–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 49 CFR Part 350

[FHWA Docket No. MC–93–20]

RIN 2125–AC90

### Motor Carrier Safety Assistance Program; Extension of Compliance Date

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The FHWA is removing the March 31, 1993, deadline regarding compatible physical qualifications for drivers of commercial motor vehicles (CMV) operated in intrastate commerce. Additionally, the FHWA is encouraging States to consider developing physical qualification waiver programs that are compatible with the FHWA's program.

**DATES:** Interim final rule effective July 29, 1993; comments must be received on or before August 30, 1993.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. MC–93–20, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Miller, Office of Motor Carrier Standards, (202) 366–2981, or Ms. Barbara Kenefeke, Office of Motor Carrier Field Operations, (202) 366–9579, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** Title 49, Code of Federal Regulations (CFR), part 350 was amended by a final rule published in the Federal Register on September 8, 1992 (57 FR 40946). The rule amended part 350 by adding, among other things, Appendix C—Tolerance Guidelines for Adopting Compatible State Rules and Regulations. Paragraph 3(i) of appendix C allows States to qualify any driver who cannot meet the Federal physical qualification requirements for drivers or compatible State requirements to operate a CMV wholly in intrastate commerce. Since March 31, 1993, the States can no longer qualify such drivers, but may waive those drivers already qualified under previously less stringent State rules.

The March 31, 1993, cut-off date exempting intrastate drivers from the physical qualification requirements and grandfathering those drivers already qualified under State standards is being replaced with a date three years from today. Further, the FHWA is encouraging the States to consider establishing their own waiver programs that are compatible with the FHWA's program. The States will be able to continue to exempt intrastate drivers from the physical qualification requirements for an additional three years.

Programs that embrace more stringent conditions will be acceptable (e.g., the State of California does not allow a driver with a vision waiver to drive hazardous material laden or passenger carrying vehicles). The States will have to adopt the Federal requirements or adopt compatible requirements that are the result of FHWA's ongoing rulemaking actions with respect to physical qualification waiver programs. This will include the findings made as a result of the waiver programs and docket comments to each of the Federal rulemaking actions, such as vision, insulin-using diabetes, hearing and epilepsy. States will not, however, be required to medically qualify intrastate drivers that were exempted or grandfathered before July 29, 1996 if the State otherwise meets the requirements of paragraph 3(i) of appendix C to part 350.

The FHWA considers the physical qualification requirements set forth in part 391 of the FMCSRs to be the minimum standards that contribute significantly to commercial motor vehicle safety. The FHWA continues to encourage the States to adopt its minimum standards as their own and use the exemption option judiciously to respond to legitimate hardships that will not adversely affect highway safety.

The FHWA is presently engaged in a research effort that may eventually require States to assure that, as part of the Commercial Driver's License (CDL) Program, drivers meet Federal physical qualification requirements. Several States are now pilot-testing a variety of prototype programs under which CMV drivers must show that they have been medically examined and meet existing physical qualification requirements in order to receive and retain a CDL. Some of these prototype programs include specific procedures for assessing the physical condition and functional abilities of drivers who do not meet all physical qualification requirements. If intrastate waivers are granted to such drivers, it is hoped that the State will impose appropriate conditions on the waiver and track the driver's driving record and accident involvement. The FHWA expects to use the findings from its research efforts as a basis for a rulemaking to address specific physical qualification requirements.

### Rulemaking Analyses and Notices

*Regulatory Impact*

This document permits States to continue allowing certain drivers of CMVs engaged in intrastate commerce to drive such vehicles after March 31, 1993. These drivers will be allowed to continue to drive CMVs for at least the next three years.

The FHWA for good cause finds that prior notice and opportunity for comment on this action would be contrary to the public interest under section 553(b)(3)(B) of the Administrative Procedure Act for the following reason. Because the deadline by which State regulations must be compatible with Federal medical standards has passed, States can no longer qualify new drivers adversely affected by upgraded State standards to operate wholly in intrastate commerce. Concurrently, the FHWA is reexamining the Federal driver qualification standards. The FHWA therefore finds that, without this rulemaking, States must deny employment opportunities to otherwise qualified individuals, to comply with Federal driver qualification standards, at a time when

the FHWA is reassessing the effectiveness of those standards. Additionally, prior notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information at this time.

This regulatory amendment is made effective upon publication. The FHWA believes this interim final rule may be made effective upon publication because it relieves a regulatory restriction. By postponing the deadline for requiring compatible physical qualification rules for CMV drivers, the FHWA relieves the States, for a period of three years, of the requirement of instituting federally-compatible rules as a prerequisite to receiving Federal MCSAP funds. Without this action, the States are unable to allow additional drivers, who do not meet all the Federal physical qualification requirements, to operate CMVs in intrastate commerce. Therefore, the FHWA finds that good cause exists under section 553(d)(1) of the Administrative Procedure Act to dispense with the 30 day delay of the effective date.

*Executive Order 12291 (Federal Regulation) And DOT Regulatory Policies And Procedures*

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rule merely removes the March 31, 1993, deadline and delays the date when States must have compatible programs and regulations.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rulemaking on small entities. This rule relieves the various States from enforcing FHWA-compatible physical qualification requirements on drivers who are engaged in wholly intrastate commerce. Small motor carriers will be able to continue their operations without change. The FHWA, therefore, certifies that this action will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Although this rule relates to the requirements that States must meet to be eligible for Federal funding, federalism implications, though unavoidable, have been kept to a minimum. This rule does implement express preemption provisions contained in the Motor Carrier Safety Act (MCSA) of 1984. The preemptive authority therein furthers the goal of national uniformity of commercial motor vehicle safety regulations and their enforcement, as intended by Congress. This intention was evidenced in the Surface Transportation Assistance Act of 1982, creating the Motor Carrier Safety Assistance Program (MCSAP); the review of State commercial motor vehicle safety laws and regulations and determinations of compatibility required by the MCSA of 1984; and the intrastate compatibility provision in section 4002 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. The FHWA believes that the requirements contained in this document are consistent with the principles and criteria in E.O. 12612 for the implementation of express statutory provisions.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

There are no information collection requirements in this interim final rule for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

*National Environmental Policy Act*

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

*Regulatory Identification Number*

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 350**

Grant programs—transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: July 22, 1993

**Rodney E. Slater,**

*Administrator.*

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, subtitle B, chapter III, part 350 as follows:

**PART 350—[AMENDED]**

1. The authority citation for part 350 continues to read as follows:

**Authority:** 49 U.S.C. app. 2301–2304, 2505–2507; 49 U.S.C. 3102; Sec. 15(d), Pub. L. 101–500, 104 Stat. 1213, 1219; Secs. 4002 and 4009, Pub. L. 102–240, 105 Stat. 2140; and 49 CFR 1.48.

2. Paragraph 3(i) of appendix C to part 350 is revised to read as follows:

**Appendix C to Part 350—Tolerance Guidelines for Adopting Compatible State Rules and Regulations**

* * * * *

3. * * *

(i) The States may qualify any driver engaged wholly in intrastate commerce who is adversely affected by current State medical standards, upgraded to be consistent with part 391, even if the States adopted those medical standards in the past. Drivers identified through July 29, 1996, as not meeting the upgraded State standards may also be qualified. Such a driver may remain qualified after July 29, 1996, as long as an examining physician determines during the biennial medical examination that existing medical or physical conditions that would otherwise render the driver not qualified under Federal standards have not significantly worsened or another non-qualifying medical or physical condition has not developed.

It should be noted that the FHWA still considers the physical qualification requirements in part 391 to be the minimum requirements that contribute significantly to commercial motor vehicle operational safety. The FHWA continues to encourage States to adopt these minimum standards as their own and to use this grandfathering option judiciously to respond to legitimate hardships. This policy should in no way be interpreted as discrediting the medical standards adopted in part 391.

This guideline will not preclude a State's adoption of or continuation of a waiver program which can be demonstrated to be based on sound medical judgment combined with appropriate performance standards causing no adverse effect on safety.

[FR Doc. 93–18063 Filed 7–28–93; 8:45 am]

BILLING CODE 4910–22–P

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1321**

**[Ex Parte No. MC–208]**

### Nonoperating Motor Carriers—Collection of Undercharges

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Vacation of final rule.

**SUMMARY:** The Commission is vacating its final rules promulgated in this proceeding because the regulations have been held unauthorized by the United States Court of Appeals for the Third Circuit, and the Commission chose not to seek further review.

**EFFECTIVE DATE:** The final rules are vacated on July 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon (202) 927–5610, [TDD for hearing impaired: (202) 927–5721].

**SUPPLEMENTARY INFORMATION:** The regulations adopted in this proceeding have been held to be beyond the Commission's authority by the court, in *Vedder J. White et al.* v. *United States*, 989 F.2d 643 (3d Cir. 1993), and the Commission chose not to seek further review. Accordingly, the Commission is vacating these rules. The final rules were published on September 8, 1992 at 57 FR 40857. An announcement delaying their effective date was published on September 23, 1992 at 57 FR 43925.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 289–4357/4359.

**List of Subjects in 49 CFR Part 1321**

Motor carriers, Undercharges.

Decided: July 14, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

**Sidney L. Strickland, Jr.,**

*Secretary.*

**PART 1321—[REMOVED]**

Accordingly, for the reasons set forth in the Preamble, under the authority of 49 U.S.C. 10322(g)(1) the Commission amends title 49, chapter X, of the Code of Federal Regulations, by removing part 1321.

[FR Doc. 93–18150 Filed 7–28–93; 8:45 am]

BILLING CODE 7035–01–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**50 CFR Part 672**

**[Docket No. 921107–3068; I.D. 072393A]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of the following species or target species categories in the Gulf of Alaska (GOA): (1) in the Western Regulatory Area, Pacific ocean perch (POP), shortraker/rougheye (SRRE), rockfish, and 'other rockfish;' and, (2) in the Central Regulatory Area, SRRE rockfish. Therefore, MNFS is requiring that incidental catches of these species or target species categories in these areas be treated in the same manner as prohibited species and returned to the sea with a minimum of injury. This action is necessary because the total allowable catches (TAC) of these species or target species categories in these areas have been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 24, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the TACs for these species or target species categories were established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as follows: (1) In the Western Regulatory Area, SRRE rockfish—90 metric tons (mt), and 'other rockfish'—214 mt; and, (2) in the Central Regulatory Area, SRRE rockfish—1,161 mt. The TAC for POP was established by the final 1993 initial specifications for POP (58 FR 3778, June 21, 1993) as 341 mt.

The Director of the Alaska Region, NMFS, has determined in accordance with § 672.20(c)(3), that the TACs for the following species or target species categories have been reached; (1) In the Western Regulatory Area, POP, SRRE rockfish, and 'other rockfish;' and, (2) in the Central Regulatory Area, SRRE rockfish. Therefore NMFS is requiring that further catches of POP, SRRE rockfish, and 'other rockfish' in the Western Regulatory Area, and SRRE rockfish in the Central Regulatory Area be treated as prohibited species in accordance with § 672.20(e) effective from 12 noon, A.l.t., July 24, 1993, through 12 midnight, A.l.t., December 31, 1993.

**Classification**

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 23, 1993.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–18037 Filed 7–23–93; 4:11 p.m.]

BILLING CODE 3510–22–M

**50 CFR Part 672**

**[Docket No. 921107–3068; I.D. 072393B]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of sablefish by persons using trawl gear in the West Yakutat district, Statistical Area 64, in the Gulf of Alaska (GOA), and is requiring that incidental catches of sablefish be treated in the same manner as prohibited species and returned to the sea with a minimum of injury. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to trawl gear in that area has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 24, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the

Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.24(c)(1), the share of the sablefish TAC assigned to trawl gear in the West Yakutat district is 192 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.24(c)(3)(ii), that the share of the sablefish TAC assigned to trawl gear in the West Yakutat district has been reached. Therefore, NMFS is requiring that further catches of sablefish by trawl gear in that area be treated as prohibited species in accordance with § 672.20(e) effective from 12 noon, A.l.t., July 24, 1993, through 12 midnight, A.l.t., December 31, 1993.

### Classification

This action is taken under 50 CFR 672.24, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 23, 1993.

**Richard H. Schaefer,**

*Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93-18036 Filed 7-23-93; 4:11 pm]

BILLING CODE 3510-22-M

## National Oceanic and Atmospheric Administration (NOAA)

### 50 CFR Part 672

[Docket No. 921107-3068; I.D. 072393A]

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 26, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Western Regulatory Area was established by the final 1993 interim specifications (58 FR 16787, March 31, 1993) as 1,000 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), established, in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for northern rockfish of 900 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibited directed fishing for northern rockfish in the Western Regulatory Area, effective from 12 noon, A.l.t., July 26, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 26, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93-18115 Filed 7-26-93; 3:14 pm]

BILLING CODE 3510-22-M

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# Proposed Rules

Federal Register
Vol. 58, No. 144
Thursday, July 29, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## SMALL BUSINESS ADMINISTRATION

**13 CFR Part 121**

**Small Business Size Standards: Increase Size Standard of Small Business Concerns Eligible for Assistance by Small Business Investment Companies**

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Small Business Administration (SBA) proposes to revise the primary size standard that establishes eligibility criteria for small business concerns applying for financial and/or management assistance from small business investment companies under the Small Business Investment Company (SBIC) Program. This proposal would update the two-test standard (herein called the "SBIC Standard" or "Standard") The present Standard specifies that an applicant concern is eligible for assistance when the concern, together with its affiliates, does not have net worth in excess of $6 million, and does not have average after-tax net income for the preceding two (2) years in excess of $2 million. This proposed rule would revise both financial measures by increasing the net worth test to $18 million and the net income test to $6 million. An applicant concern electing to meet the SBIC Standard would continue to be required to meet both tests. Alternatively, an applicant concern will continue to have the option of qualifying under the size standard that is specified for its industry (See § 121.802 (a) (2) (ii)).

The proposed rule will apply only to applicant concerns of the SBIC Program and will not apply to applicants for assistance under the Business Loan or the Development for assistance under the Business Loan or the Development Company Programs which will retain, unchanged, the present standard of $6 million net worth and $2 million net income.

**DATES:** Comments must be submitted on or before August 30, 1993.

**ADDRESSES:** Send comments to: Wayne S. Foren, Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., suite 6300, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Maureen Glebes, Special Assistant to the Associate Administrator for Investment, (202) 205–6510.

**SUPPLEMENTARY INFORMATION:** The Small Business Investment Act of 1958, as amended, (herein called the Act) authorizes the Small Business Administration (SBA) to license SBICs which are privately owned and managed investment corporations or partnerships that provide risk capital and management assistance to small businesses located in the United States. These licensees provide equity and long-term debt financing to the small business concerns for their sound financing and for their growth, modernization, or expansion.

SBA, by regulation, establishes eligibility criteria for small business concerns applying for SBIC assistance. The size eligibility criteria are set forth in part 121 of SBA Regulations and they provide a ceiling or maximum size that a business can be and still qualify for SBIC assistance. The other eligibility criteria are set forth in part 107 of SBA Regulations.

The first SBIC standard was developed and added to SBA's regulations in 1958. Following creation of the program for Specialized SBICs (SSBICs, formerly called Minority Enterprise SBICs or MESBICs, and authorized officially by amendments to the Act in 1972), SBA provided an alternative size-standard option for applicants seeking SBIC assistance which is the industry size standards used as eligibility criteria by other SBA programs.

As a result, concerns applying for assistance may qualify under the SBIC Standard or under the specific, single-test standard covering the industry in which the applicant concern is primarily engaged (See § 121.802(a)(2)).

Because SBICs have an expressed need for a single size standard which is consistent, simple and easy to apply, the SBIC Standard has remained, since its adoption, the primary standard used by applicants for assistance under the SBIC Program ("Program") is herein used to refer to the combined Regular SBICs and Specialized SBICs). This need exists because a substantial number of SBIC financings are made to small businesses engaged in pioneering or new ventures, or in commercializing technologies, which do not fit into traditionally defined industries and, so, do not fall under a specific industry size standard.

Since there are three types of SBICs that serve different segments of the small business population, the proposed change will not result in crowding out. Each type of SBIC will continue to serve its targeted small business segment, as follows:

- Regular SBICs provide a combination of financing (equity and/or subordinated debt financing) to small businesses in a broad range of industries. Generally, these are traditional SBICs that serve medium and smaller concerns.
- Specialized SBICs provide a combination of financing (equity and/or debt) to small businesses that are owned by persons who are socially or economically disadvantaged.
- Venture Capital SBICs provide equity oriented financing to growth-oriented small business concerns and they tend to be larger SBICs and assist concerns that are medium and larger small concerns.

The inflationary adjustment to the Standard will benefit all types of SBICs. The remaining increase in the Standard is primarily intended to allow Venture Capital SBICs with higher levels of private capital to provide both primary and secondary rounds of financing to development-stage and growth-oriented small concerns.

It should be noted that safeguards exist in the Program to prevent the proposed change in the Standard from having the effect of "crowding out" small businesses that are in the smaller and medium size range from assistance under the SBIC Program. The primary controls are: (1) The SBIC's operating plan which is approved by SBA, (2) the constraints on an SBIC that result from its level of private capital, (3) Regulatory provisions such as the overline limit which is based on private capital and (4) the Program funding authority (Leverage) is established by appropriations for each of the three types of SBICs. A final control factor is SBA's monitoring of a licensee's portfolio.

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**Change Proposed in the SBIC Standard**

SBA proposes to increase the two-tests in the SBIC Standard. The net worth test would be increased from $6 million to $18 million and the after-tax net income test would be increased from $2 million to $6 million.

Although the SBIC Standard now includes only the two tests for net worth and net income, it had previously included a third test for gross assets. By amendment in 1979, SBA eliminated the gross assets test. However, in September 1990, SBA had proposed reinstatement of the assets test at $20 million. The proposal applied only to SBIC change of ownership financings and SBA wanted to prevent SBICs from participating in highly leveraged transactions where the concern would be other than small. While SBIC regulations do not preclude change of ownership transactions, SBA found it necessary to have the ability to monitor and control these transactions to prevent the violation of Program integrity. Following Federal Register publication and an evaluation of the public comments received in response, SBA withdrew this proposal, in July 1991, for further analysis.

SBA's current proposal for a change in the SBIC Standard is the result of an extensive review and restructuring of the SBIC program over the past year. The proposal focuses on an update of the net worth and net income components of the Standard to facilitate the program changes underway including the legislative changes recently enacted, and to adjust for inflation. SBA is no longer proposing to reinstate an assets test to address the leveraged buyout issue as these transactions are considered to be an eligibility issue for SBIC financing rather than a size issue. Consequently, SBA is proposing, through a separate proposed rule, to amend SBIC regulations (§ 107.711) applicable to change of ownership transactions in order to address this issue.

**Purpose of the Proposed SBIC Standard Changes**

The Program revitalization efforts currently underway are designed to enhance the SBIC Program to be a more effective tool in providing small business concerns access to risk capital in a way that will result in job creation, economic growth, and other national objectives being achieved. The proposed SBIC Standard is a vital part of the structural changes that have been initiated to strengthen and improve the Program. It is estimated that about half of the proposed increase in the Standard is attributable to the need for financing growth-oriented small businesses as envisioned by title IV of Public Law 102–366, while the other half is an inflationary adjustment. The proposed change will accomplish the following specific purposes:

*Alignment with Legislative Changes*

Increasing the SBIC Standard will support the legislative changes provided in title IV of Public Law 102–366. Title IV permits SBICs to have higher levels of combined capital (leverage up to $90 million which will require $45 million in private capital) and encourages Venture Capital SBICs to provide equity oriented financing to growth-oriented small business concerns. It also provides a new security for Venture Capital SBICs to use in obtaining leverage (SBA guarantee of these securities which are funded in the public markets). These changes are designed to increase the flow of private capital into the SBIC Program and, together with leverage, increase risk capital available to small business concerns.

The optimum size of all three types of SBICs as measured by their private capital will significantly increase as a result of Public Law 102–366. An intent of the statute in authorizing this new capital structure is to foster investments in growth-oriented small businesses by SBICs. As such, the current Standard is too low since an SBIC is allowed to invest up to 20 percent of its private capital in any one small business concern. Thus, to make the types of financings clearly contemplated by the statute, the size of eligible small business concerns must increase.

*Adjustment for Inflation*

When established in 1979, the levels of $6 million for net worth and $2 million for net income, were considered appropriate. However, inflation and changes in the financial characteristics of small business concerns over time, have eroded these levels so that the Standard no longer accomplishes the Program goals. Simply adjusting for inflation boosts the SBIC standard by 84 percent, which is the increase in the Gross Domestic Product (GDP) Implicit Price Deflator. This inflation adjustment, which follows the methodology used by SBA since 1975 to adjust its receipts-based industry size standards, reflects the change in the Deflator since the last revision of the SBIC Standard in 1979 to the present. Based on this measure, it is estimated that to bring the standard up to current dollar levels would require an inflation adjustment of $8 million to the net worth test and almost $3 million to the net income test.

The erosion due to inflation has, in effect, prevented the SBIC Program from assisting the segment of small business it was established to serve. Also, the "institutional gap" that the SBIC Program was created to fill has widened. First identified by the Board of Governors of the Federal Reserve System, this "institutional gap," which is the difference between the amount of equity and long-term loan funds required by small business concerns and the amount available to them through private financing, was the basis for establishing the SBIC program in 1958. Follow-up studies over the years have documented that this "gap" continues to exist and there is an on-going need for risk capital by non-traditional, growth-oriented small businesses.

This change will, in effect, restore small business eligibility to many firms that lost this status solely because of inflation since 1979.

In conclusion, SBA has determined that given the two factors reviewed, i.e., and adjustment for inflation and the intent of the statutes, a Standard of $6 million in net income and a net worth of $18 million is reasonable.

**Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612 and 12778, and the Paperwork Reduction Act**

*General*

Although this proposed rule, if promulgated in final form, is expected to have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it would not constitute a major rule for the purpose of Executive Order 12291, since its annual economic effect is less than $100 million. An initial regulatory flexibility analysis of this proposal is as follows.

(1) Description of Entities to Which the Rule Applies

SBA estimates that 99.7% of firms could be eligible for SBIC financing if this proposed rule is adopted in final form (estimate based on Internal Revenue Service Statistics of Income for active corporations). By comparison, when the current standard was adopted in 1979, approximately 99.6% of all firms were eligible for SBIC assistance. In absolute terms, under the proposed standard, approximately 7,000 additional firms would gain eligibility as small businesses. Many of these concerns probably had small business status under the 1979 standard, but

since then have lost eligibility because of general price increases due to inflation.

However, it should be noted that the Standard sets the ceiling on how the target population is defined and on the entire population potentially eligible for SBIC assistance. In practice, the level of private capital invested in an individual SBIC and the SBIC's investment plan actually set the limits on each small business financing.

Actual Program experience shows the enormous gap between the total population eligible for SBIC financing and the number that actually participate in the Program. The total number of business concerns that fit under the current SBIC Standard and, therefore, are potentially eligible for SBIC assistance, is approximately 3.6 million small concerns. By contrast, the number of financings annually from both Regular SBICs and SSBICs averages 2,000 per year, based on Fiscal 1991 and 1992 data. Overall, from 1960 to 1991, almost 70,000 different small business concerns received financing under the SBIC Program.

Moreover, a review of the initial capitalization of SBICs indicates that based on the levels of private capital there are three types of SBICs each serving a limited segment of potentially eligible concerns for SBIC financing: The Regular SBICs with minimum private capital of $2.5 million and having a balanced portfolio with a primary emphasis on providing debt financing to small business; the SSBICs with minimum private capital of $1.5 million and specializing in financing small businesses that are owned by persons who are socially or economically disadvantaged; and venture capital SBICs which tend to have higher levels of private capital in order to provide equity oriented financings to growth oriented small business concerns.

Since current Program changes are designed to expand the private capital of all types of SBICs, the proposed Standard will allow SBICs with higher levels of private capital to provide larger amounts of financings to small business concerns. However, the optimum size venture capital SBIC is expected to be $10 to $20 million in private capital. There will be SBICs with private capital of less than $10 million and some SBICs will have as much as $50 million in private capital. At the lower levels (e.g., from $1 million to $5 million), SBIC will typically invest from $200,000 to $1 million in one small business since each SBIC is able to invest up to 20% of its private capital in any one small business concern.

Moreover, the SBIC Standard is a program Standard applicable only to small business concerns that apply for financing from an SBIC. As such, the proposed change affects only potential clients of SBICs and does not alter the definition of a small business for the wide variety of business development, financial assistance and procurement assistance programs offered by SBA.

The proposed Standard does not impose a regulatory burden because it does not regulate or control business behavior.

(2) Description of Reasons Why This Action Is Being Taken and Objectives of Rule

SBA has provided above in the Supplementary Information a description of the reasons why this action is being taken and a statement of the reasons for and objectives of this proposed rule.

(3) Legal Basis for the Proposed Rule

The legal basis for this rule are sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(4) Federal Rules

There are no Federal rules which duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards for small business concerns.

(5) Significant Alternatives to Proposed Rule

This rule sets forth changes from the current size standard in order to establish the most appropriate definition of small business concerns eligible for assistance under the SBIC Program. There are no significant alternatives to defining a small business concern other than developing another alternative size standard. As discussed in the Supplementary Information above, the SBIC Program already provides two options for determining the eligibility of applicant concerns, and this proposal applies to only one of those options. A review of the SBIC portfolio indicated that almost all applicant concerns were eligible under the single size standard covering the industry in which the applicant concern was primarily engaged even though these firms chose to qualify under the SBIC Standard instead of the industry-based standards.

SBA certifies that this rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. SBA also certifies that this proposed rule, if promulgated as final, will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For the purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Financial assistance—small business concerns, Small Business Investment Companies, Small Business Investment Company Program.

Accordingly, part 121 of 13 CFR is amended as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b) (6), 637(a) and 644(c).

2. Section 121.802(a)(2) is amended by removing the words "the Small Business Investment Company, and."

3. Section 121.802 is amended by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding a new paragraph (a)(3) to read as follows:

**§ 121.802 Establishment of the size standard.**

(a) * * *

(3) SBIC Standard. For financial and/or management/technical assistance under the Small Business Investment Company Program, an applicant's concern must meet one of the following standards:

(i) Together with its affiliates, it does not have net worth in excess of $18 million, and does not have average net income after Federal income taxes (excluding any carry-over losses) for the preceding 2 completed fiscal years in excess of $6 million; or

(ii) Together with its affiliates, it meets the size standard for the industry in which it is primarily engaged and, excluding its affiliates, meets the size standard for the industry in which it is primarily engaged. These size standards are set forth in § 121.601.

* * * * *

Dated June 3, 1993.

**Erskine B. Bowles,**

*Administrator.*

[FR Doc. 93–17985 Filed 7–28–93; 8:45 am]

BILLING CODE 8025–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141, 375 and 385

[Docket No. RM93-20-000]

# Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant; Proposed Rulemaking

July 23, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to amend its regulations to provide for the electronic filing of FERC Form No. 1. Commencing with the report for reporting year 1993, due on or before April 30, 1994, filing would be required in the form of a computer diskette in addition to the currently required number of paper copies. No changes are being proposed to the FERC Form No. 1 itself. The Commission also intends to conduct a test of the software and related elements of the electronic filing mechanism prior to formal implementation.

Additionally, the Commission proposes to delegate to the Chief Accountant authority to act on requests for waiver of the Form 1 and the Form 1-F filing requirements.

DATES: Written comments must be received by the Commission by August 30, 1993.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:
Richard Mattingly (Legal Information) Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-2070.
James G. Baird (Technical Information), Office of Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, (202) 219-2513.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Ccommission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of the Notice of Proposed Rulemaking will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend 18 CFR parts 141 and 385 to provide for the electronic filing of FERC Form No. 1, "Annual Report of Major electric utilities, licensees and others" (Form 1). In the future, in addition to paper copies, Form 1 filings would be made by means of a computer diskette incorporating software programming now under development by the Commission, Electronic reporting of the Form 1 would be required commencing with reporting year 1993; the Form 1 for reporting year 1993 is due on or before April 30, 1994. No changes are being proposed in Form 1 itself.

Additionally, the Commission proposes to amend 18 CFR part 375 to provide for delegating to the Chief Accountant or his designee the authority to act on requests for waiver of the Form 1 and the FERC Form No. 1-F filing requirements.

## II. Reporting Burden

The Commission anticipates that any increase in reporting burden for collection of information resulting from this proposed rule will be minimal. Initially, there may be some increase in the reporting burden from requiring the filing of a Form 1 in an electronic format. However, for the last few years, most electronic utilities have already prepared their Form 1 paper copies from computer-based systems. This proposed rule would thus result largely in a standardization of preparing and filing the forms electronically.

The automation of Form 1 will yield significant benefits to the Commission, the respondents, and to the electric utility industry as a whole. These benefits include more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and an eventual overall reduction in filing burden.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208-1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for the Federal Energy Regulatory Commission].

## III. Background

The Commission, in the exercise of its authority under the Federal Power Act, collects data pertaining to the electric utility industry in the United States.[1] One of the principal forms used for the collection of this information is Form 1, which is submitted annually, on a calendar-year basis, by some 198 electric utilities and licensees.

Form 1 consists of cover pages, four pages of general information and instructions, and 113 pages of schedules incorporating financial statements and operational information of the respondent companies. The Form 1 also requires that certain financial information be certified, by an independent accountant,[2] as conforming to the Commission's Uniform System of Accounts.[3]

Form 1 has heretofore been submitted in a paper or hardcopy format. Currently, Form 1 respondents must file an original and 6 copies. In recent years, the Commission and its staff have been approached by individual electric utilities and state commission staffs inquiring whether the Commission either had or planned to develop an automated data filing system for Form 1. These parties suggested that such a procedure could yield significant benefits in terms of process simplification and savings of time and expense. The Commission has given careful consideration to this matter and believes it is appropriate now to implement an electronic filing procedure for Form 1. The Commission believes the automation of Form 1 will yield significant benefits to the Commission, the respondents, and to

[1] 16 U.S.C. 825, 825c.

[2] 18 CFR 41.11.

[3] 18 CFR part 101. The Commission does not, however, under the changes proposed herein, propose to change the requirements for filing the independent accountant's report required by 18 CFR 41.11.

the electric utility industry as a whole. These benefits include more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and overall reduction of filing burden.

## IV. Summary of Proposal

The Commission proposes to develop a personal computer (PC) based software package for Form 1 reporting.[4] The software package will be made available to Form 1 respondents without charge. The software will be available on standard computer diskettes with instructions and documentation, and will be sent to each Form 1 respondent sufficiently in advance to allow respondents to meet the April 30 filing deadline. This package will display the Form 1, schedule by schedule, on a respondent's PC. The required data may then be manually key-entered on a respondent's PC. The program will also permit a respondent to "import" the required data from its PC or other, mainframe computer directly into the software package, thus avoiding the manual data-entry process. When the data entry is completed, the diskette will be submitted to the Commission, along with the required paper copies.[5]

The Commission also proposes to make the waiver procedures incorporated in 18 CFR 385.2011(e) available to Form 1 respondents who do not have and are unable to acquire the computer capability necessary to comply with the proposed electronic filing requirements.

Finally, the Commission proposes to delegate to the Chief Accountant authority to act on requests for waiver of the Form 1 and FERC Form No. 1–F filing requirements (18 CFR 141.1 and 141.2), and to incorporate this additional delegation in 18 CFR 375.303.

## V. Procedure for Implementation

The Commission has already initiated the process of procuring the necessary software package for automating Form 1 reporting. Upon receipt of the software package, the Commission's staff will test the software package, including data input, data output and print capability.

Also, the Commission will conduct a field test of the software package with volunteer Form 1 respondents. The volunteer respondents will be provided with the program and related documentation and instructions. It is anticipated that during the field test the volunteer respondents will be in contact with the Commission staff. The results of the testing process will be evaluated and, if necessary, the software package will be modified. The Commission expects the program to be complete and to have diskettes ready for distribution to each Form 1 respondent sufficiently in advance to allow respondents to meet the April 30, 1994 filing deadline.

## VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[6] requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a substantial number of small entities. Because most respondents do not fall within the definition of "small entity,"[7] the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

## VII. Information Collection

The regulations of the Office of Management and Budget (OMB)[8] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in FERC Form No. 1, "Annual Report of Major electric utilities, licensees and others" (OMB approval No. 1902–0021). Since this proposed rule does not propose new information requirements and will have a minimal effect on current information collections, there is no need to obtain OMB approval.

The Commission uses the data collected in these annual reports to carry out its regulatory responsibilities including establishing rates in rate proceedings, in formal investigations, and financial audits and in its continuous review of the financial condition of regulated companies. Electric utilities and licensees are required to file this form annually.

The automation of Form 1 will yield significant benefits to the Commission, the respondents, and to the electric utility industry as a whole. These benefits include more timely analysis and publication of data, increased data analysis capability, reduced cost of data entry and retrieval, simplification of form design, and an eventual overall reduction in filing burden.

## VIII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[9] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[10] The proposed rule does not substantially change the effect of the underlying legislation or change the Form 1 itself. Accordingly, no environmental consideration is necessary.

## IX. Public Comment Procedures

The Commission invites all interested persons to submit written comments on this proposal. An original and 14 copies of such comments should be filed with the Commission by August 30, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–20–000.

All written submissions will be placed in the Commission's public file and will be available for public inspection at the Commission's Public Reference Section, room 3408, 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

## List of Subjects

*18 CFR Part 141*

Electric power; Reporting and record keeping requirements.

*18 CFR Part 375*

Authority delegations (Government agencies); Seals and insignia; Sunshine Act.

*18 CFR Part 385*

Administrative practice and procedure; Electric power; Penalties; Pipelines; Reporting and record keeping requirements.

In consideration of the foregoing, the Commission proposes to amend parts 141, 375 and 385 in chapter I, title 18, Code of Federal Regulations, as set forth below.

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[4] An IBM compatible, DOS-based system.

[5] The software package will enable the paper copies to be printed directly from the diskette.

[6] 5 U.S.C. 601–612.

[7] See 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[8] 5 CFR 1320.13.

[9] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. and Regs. ¶ 30,783 (1987).

[10] 18 CFR 380.4(a)(2)(ii).

By direction of the Commission.
Lois D. Cashell,
*Secretary.*

**PART 141—STATEMENTS AND REPORTS (SCHEDULES)**

1. The authority citation for part 141 is revised to read as follows:

**Authority:** 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 141.1, the heading of paragraph (b) is revised and paragraph (b)(2) is revised to read as follows:

**§ 141.1 FERC Form No. 1, annual report of major electric utilities, licensees and others.**

* * * * *

(b) *Filing requirements.*

(1) * * *

(2) *When to file and what to file.* This report form shall be filed on or before April 30 of each year for the previous calendar year. This report form must be filed as prescribed in § 385.2011 of this chapter and as indicated in the general instructions set out in this report form, and must be properly completed and verified.

**PART 375—THE COMMISSION**

3. The authority citation for part 375 is revised to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 791a note, 2601–2645; 42 U.S.C. 7101–7532.

4. Section 375.303 is amended by adding paragraph (j) to read as follows:

**§ 375.303 Delegations to the chief accountant.**

* * * * *

(j) Deny or grant, in whole or part, requests for waiver of the requirements for statements or reports under § 141.1 of this chapter (FERC Form No. 1, Annual Report of Major electric utilities, licensees and others, and § 141.2 of this chapter (FERC Form No. 1–F, Annual report for Nonmajor public utilities and licenses), and of the filing of FERC Form No. 1 on electronic media (§ 385.2011 of this chapter, Procedures for filing on electronic media, paragraphs (a)(8), (c), (d), and (e)).

**PART 385—RULES OF PRACTICE AND PROCEDURE**

5. The authority citation for part 385 continues to read as follows:

**Authority:** 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7532; 49 U.S.C. 1–27.

6. Section 385.2011 is amended by adding paragraph (a)(8) and by revising paragraphs (c)(3), (e)(1), (e)(2) and (e)(4) to read as follows:

**§ 385.2011 Procedures for filing on electronic media.**

(a) * * *

(8) FERC Form No. 1, Annual report of Major electric utilities, licensees and others.

* * * * *

(c) * * *

(3) The electronic media must be accompanied by the prescribed number of paper copies.

* * * * *

(e) *Waiver*—(1) *Filing of petition.* If a natural gas company, electric utility or licensee does not have and is unable to acquire the computer capability to file the information required to be filed on electronic media, the company may request waiver from the requirement of this part, by filing an original and two copies of a petition. The natural gas company, electric utility or licensee may renew the waiver if the company can continue to show that it does not have and is unable to acquire the computer capability for electronic filing.

(2) *Standard for waiver.* The petition for waiver must show that the natural gas company, electric utility or licensee does not have the computer capability to file the information required under this section on electronic media and that acquisition of the capability would cause the company severe economic hardship. This waiver may be granted for up to one year.

* * * * *

(4) *Decision on petition.* The Commission or its designee will review a petition for waiver and notify the applicant of its grant or denial. Once the petition is decided, the natural gas company, electric utility or licensee will have 30 days from the date of notification of the decision to submit any information, in the manner specified by the Commission in the decision on the waiver petition, that was required to be filed while the petition was pending.

[FR Doc. 93–18090 Filed 7–28–93; 8:45 am]
BILLING CODE 6717–01–M

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 944**

**Utah Permanent Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** Utah previously proposed an amendment to the Utah permanent regulatory program (the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consisted of changes to the Utah program regulatory definitions of "affected area," "road," and "public road." Utah submitted the proposed amendment with the intent of amending the Utah program, as required by OSM regulations and an agreement between OSM and Utah that addresses, among other things, the regulation of coal mine access and haul roads in Utah. Subsequent to the submission of the proposed amendment and the close of two comment periods on the proposed amendment, OSM notified Utah that a part of the September 4, 1992, agreement was not valid. In response to a request to comment on the effect of the invalid part of the September 4, 1992, agreement on the amendment, OSM is reopening the comment period.

This document sets forth the times and locations that the Utah program, proposed amendment to that program, and the September 4, 1992, agreement are available for public inspection. It also sets forth the reopened comment period during which interested persons may submit written comments on the proposed amendment.

**DATES:** Written comments must be received by 4 p.m., m.s.t., August 13, 1993.

**ADDRESSES:** Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Utah program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette, NW., suite 1200, Albuquerque, New Mexico 87102, Telephone: (505) 766–1486.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, Utah 84180–1203, Telephone: (801) 538–5340.

**FOR FURTHER INFORMATION CONTACT:**

Robert H. Hagen, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Proposed Amendment
III. Discussion of Request for Reopening and Extension of Public Comment Period for Proposed Amendment
IV. Public Comment Procedures
V. Procedural Determinations

## I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981 **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

## II. Proposed Amendment

By letter dated September 17, 1992, Utah, pursuant to SMCRA, submitted to OSM a proposed amendment to the Utah program (administrative record No. UT–782). Utah submitted the proposed amendment in response to the required program amendments at 30 CFR 944.16(n) and (o) and a September 4, 1992, agreement between OSM and the Utah Division of Oil, Gas and Mining (administrative record No. UT–778). The proposed amendment consisted of revisions to the Utah program regulatory definitions of "affected area," "road," and "public road" at Utah Administrative Rule (Admin. R.) 645–100–200.

OSM published a notice in the November 16, 1992, **Federal Register** (57 FR 54032) announcing receipt of the proposed amendment and inviting public comment on its adequacy (administrative record No. UT–800). The public comment period closed on December 16, 1992.

During its review of the proposed amendment, OSM identified concerns regarding the definitions of "affected area," "road," and "public road" at Utah Admin. R. R645–100–200. OSM notified Utah of the concerns by letter dated January 21, 1993 (administrative record No. UT–817).

By letter dated February 16, 1993, Utah submitted to OSM additional material, including a revision to the proposed amendment (administrative record No. UT–824). However, OSM identified certain concerns with this revision and notified Utah of these concerns by telephone on March 4, 1993 (administrative record No. UT–825).

Utah responded in a letter dated March 24, 1993, by submitting additional explanatory information and revisions to the proposed amendment (administrative record No. UT–827).

OSM published a notice in the April 8, 1993, **Federal Register** (58 FR 18187) announcing receipt of the additional explanatory information and revisions to the proposed amendment and reopened and extended the public comment on its adequacy (administrative record No. UT–830). The extended public comment period closed on April 23, 1993.

By letter to Utah dated May 19, 1993 (administrative record No. UT–842), OSM found that provision II.1 of the September 4, 1992, agreement was not valid. In addition, OSM qualified the applicability of provision II.2 of the same agreement.

By letter dated June 22, 1993 (administrative record No. UT–847), Utah responded to OSM's May 19, 1993, letter and stated its interpretations of and intentions with respect to the September 4, 1992, agreement.

By letter dated July 1, 1993 (administrative record No. UT–845), the Joint National Coal Association/ American Mining Congress Committee on Surface Mining Regulations requested that OSM reopen the comment period for Utah's proposed amendment to allow additional public comment on the effect of OSM's May 19, 1993, letter on the September 4, 1992, agreement and the proposed amendment.

## III. Discussion of Request for Reopening and Extension of Comment Period for Proposed Amendment

### *A. The September 4, 1992, Agreement Between OSM and Utah*

On September 4, 1992, OSM and Utah entered into the following agreement:

The State of Utah, Division of Oil, Gas and Mining (Division) and the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSM), in consideration of the mutual promises contained herein, agree as follows—

I. The Division agrees to:

1. File a motion to dismiss, with prejudice, the Federal District Court case of *State of Utah* v. *Lujan*, No. 92–C–063–G (D. Utah, filed January 17, 1992); and

2. In recognition of the direction of the Director of OSM as set forth in OSM's final rule published on November 22, 1991, 56 FR 58846 (the final rule):

a. Confirm the withdrawal, effective December 5, 1991, of the Policy Statement entitled "Division of Oil, Gas and Mining Policy for the Implementation of Site Specific Determinations of the Public Status of Roads under R614–100–200";

b. Submit a program amendment of the Division's definition of the term "Road" to read the same as the corresponding federal definition at 30 CFR 701.5;

c. Submit a program amendment of the Division's definition of the term "Public Road", to read the same as the corresponding federal definition at 30 CFR 761.5 and, in addition, provide that the definition applies only in the context of Utah Admin. R645–103–100, *et seq.*, Areas unsuitable for coal Mining and Reclamation Operations; and

d. Submit a program amendment of the Division's definition of "Affected Area" to read the same as the federal definition at 30 CFR 701.5.

II. OSM and the Division agree that:

1. If a road in Utah has not previously been determined to be part of an existing surface coal mining operation, the road will not be required to be included within a permit, based on current federal statute and regulations and the current Utah statute and rules; and

2. With respect to any application for a permit to conduct surface coal mining and reclamation operations under the Utah Coal Regulatory Program, including any application pending at the time of this agreement, the state will apply the Utah statute and rules existing on the date of permit approval.

### *B. The May 19, 1993, Letter From OSM to Utah on the September 4, 1992, Agreement*

On May 19, 1993, the Acting Director of OSM sent a letter to Utah invalidating provision II.1 of the September 4, 1992, agreement and qualifying the applicability of provision II.2 of the same agreement. The entire text of the May 19, 1993, letter follows.

On September 4, 1992, the previous Directors of the Office of Surface Mining Reclamation and Enforcement (OSM) and the Utah Division of Oil, Gas and Mining (DOGM) entered into an agreement concerning the regulation of coal mine access and haul roads in the State of Utah. Because this agreement continued to be a source of controversy for OSM, I instructed OSM and the Office of the Solicitor to review the validity of the agreement.

For the reasons discussed in the enclosure, I find that provision II.1 of the agreement, the intent of which was to exempt certain mine roads existing on September 4, 1992, from regulation under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the approved Utah State regulatory program, is contrary to law and thus is not binding on OSM or DOGM. For this reason, this term of the agreement must not be applied by OSM or DOGM to any permitting or enforcement decisions in the State.

With respect to provision II.2 of the agreement, which states that DOGM "will apply the Utah statute and rules existing on the date of permit approval" to any permit applications pending on September 4, 1992, and to any future permit applications, I find that it is valid as long as:

• The phrase "Utah statutes and rules" is interpreted to mean the approved State program,

• Any application of the Utah statute and rules to a permitting decision is consistent with the Department of the Interior's actions in approving or not approving such statutes and rules (see e.g., 56 FR 58846, November 22, 1991), and

• The provision is not interpreted to prevent DOGM or OSM from taking action subsequent to permit approval, where appropriate under the approved program (e.g., requiring a permit revision to reflect changes in applicable law).

In response to provisions I.2.b through d of the agreement, DOGM submitted a proposed amendment to OSM on September 17, 1992, for the definitions of "road," "public road," and "affected area" (State Program Amendment Tracking System No. UT–017–FOR). The standards for review of these definitions remain the Federal statutory and regulatory provisions including the definitions of "surface coal mining operations" at section 701(28) of SMCRA and 30 CFR 700.5; the definitions of "road" and "affected area" at 30 CFR 701.5; and the definition of "public road" at 30 CFR 761.5. OSM's decision on these proposed definitions will be forthcoming shortly.

The entire text of the enclosure to the letter follows.

**Analysis of the September 4, 1992, the Office of Surface Mining Reclamation and Enforcement and the Division of Oil, Gas and Mining Settlement Agreement Concerning the Regulation of Roads**

**Background**

In a final rule published on November 22, 1991, the Office of Surface Mining Reclamation and Enforcement (OSM) disapproved in part a Utah State program amendment concerning the regulation of mine roads (56 FR 58846). OSM disapproved the proposed amendment to the extent it would have exempted from regulation public roads used as mine roads, regardless of their mining-related use.

In January 1992, the Division of Oil, Gas and Mining (DOGM) brought an action in the U.S. District Court for the District of Utah, pursuant to section 526 of the Surface Mining Control and Reclamation Act (SMCRA), for judicial review of the final rule (*Utah* v. *Lujan*, No. 92–C–063–G (D. Utah)). On September 4, 1992, DOGM and OSM resolved *Utah* v. *Lujan* by entering into the agreement in question. Under the agreement, DOGM withdrew *Utah* v. *Lujan* in return for OSM's agreeing to a blanket exemption of certain Utah mine roads from regulation under SMCRA and the approved Utah State program.

Pursuant to the agreement, DOGM filed a motion to dismiss *Utah* v. *Lujan*. DOGM did not, however, submit the agreement itself to the district court for review. On September 24, 1992, the court granted DOGM's motion and dismissed the case with prejudice. The court order dismissing the case was silent with respect to the agreement and did not in any way approve or adopt its terms.

**Discussion**

Since the agreement was not reviewed, approved, or adopted by the court in *Utah* v. *Lujan*, it is nothing more than a contract between OSM and DOGM. Thus, contract law governs the validity of the agreement.

A Federal agency cannot contract with a body that it regulates in a manner contrary to its statutory authority or in a manner which does not give full effect to the intent of the Congress (*Board of Directors and Officers, Forbes Federal Credit Union* versus *National Credit Union Admin.*, 477 F.2d 777, 784 (10th Cir. 1973), *cert. denied* 414 U.S. 924 (1973)). Contracts entered in violation of statutory or regulatory law are unenforceable if enforcement of the contract would "offend the essential purpose of the enactment" (*United States* versus *Mississippi Valley Co.*, 364 U.S. 520, 563 (1961). See also *Quinn* versus *Gulf & Western Corp.*, 644 F.2d 89, 93–94 (2d Cir. 1981); *D.M. Yates*, 74 IBLA 159, 161 (1983). See generally E. Farnsworth, Contracts §§ 5.5–5.6 (2d ed. 1982); 15 S. Williston, Contracts § 1763 (3d ed. 1972)).

In other words, OSM cannot modify its statutory responsibilities simply by entering into a contract. Thus, if any provisions of the September 4, 1992, agreement are contrary to law, such that its enforcement would offend an essential purpose of SMCRA, that provision is unenforceable. Paragraph II.1 is such a provision. It reads as follows:

If a road in Utah has not previously been determined to be part of an existing surface coal mining operation, the road will not be required to be included within a permit, based on current federal statute and regulations and the current Utah statute and rules.

Under this provision, DOGM and OSM agreed to a blanket exemption from regulation under SMCRA and the approved Utah State program of all unpermitted mine roads existing on September 4, 1992.

SMCRA jurisdiction over mine roads derives from the statutory definition of the term "surface coal mining operations" at section 701(28). SMCRA defines this term, in pertinent part, to mean:

(A) Activities conducted on the surface of lands in connection with a surface coal mine * * *; and

(B) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include * * * *all lands affected by the construction of new roads to gain access to the site of those activities and for haulage* * * *

(emphasis added). The Federal regulatory definition of "surface coal mining operations" at 30 CFR 700.5 and the approved Utah State program definition of that term at U.C.A. 40–10–1(18) are virtually identical to the SMCRA definition. (Any difference between these definitions has no effect on the issues discussed in this analysis).

Under these definitions, OSM and DOGM are required to regulate certain mine roads based, in part, on the extent and effect of mining-related use of the road (See 56 FR at 58847–49 (1991); 55 FR 13773, 13775 (1990); 53 FR 54190, 54192 (1988)). Nothing in SMCRA or the approved Utah State program provides for a blanket exemption of mine roads from regulation; on the contrary, case-by-case determinations of regulatory jurisdiction must be made.

By granting a blanket exemption to existing, unpermitted mine roads without any consideration given to the amount of their mining-related use, paragraph II.1 exempts roads which, under SMCRA and the approved Utah State program, OSM and DOGM are required to regulate. Thus, paragraph II.1 is contrary to SMCRA and the approved Utah State program.

Moreover, the enforcement of paragraph II.1 offends an essential purpose of these laws (See *Mississippi Valley*, 364 U.S. at 563). One of SMCRA's essential purposes is "to protect the environment and ensure the reclamation of mined areas" (*Daniel Brothers Coal Co.*, 2 IBSMA 45, 49 (1980); see also section 102(a) of SMCRA). Also, as U.C.A. 40–10–2(3) indicates, one of the purposes of the approved Utah State program is to "[a]ssure that surface coal mining operations are conducted so as to protect the environment." Given the significant environmental harm that can result from unregulated mine access and haul roads, these statutory purposes cannot be fully met by the agreement to grant an unauthorized regulatory exemption.

**Conclusion**

For the reasons given above, paragraph II.1 of the September 4, 1992, agreement is contrary to SMCRA and the approved Utah State program, and because its enforcement would offend an essential purpose of these laws, is legally unenforceable.

## IV. Public Comment Procedures

OSM is reopening the public comment period to allow the public the opportunity to comment on the effect of the invalid part of the September 4, 1992, agreement on Utah's proposed amendment. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether Utah's proposed amendment, as affected by the invalidated part of the agreement, satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Utah program.

Written comments should be specific, pertain only to the effect of the invalid part of the September 4, 1992, agreement on Utah's proposed amendment, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

**V. Procedural Determinations**

*1. Executive Order 12291*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*2. Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*3. National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*4. Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*5. Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 944**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 19, 1993.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

[FR Doc. 93–17843 Filed 7–28–93; 8:45 am]

BILLING CODE 4310–05–M

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**DEPARTMENT OF DEFENSE**

**Department of the Army**

**32 CFR Part 552**

**Prohibited Personnel Practices on the Installation of Fort Jackson, South Carolina**

**AGENCY:** Department of the Army, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This action establishes 32 CFR part 552, subpart L, Personnel—Prohibited Practices and authenticates Fort Jackson Regulation 600–3. This subpart establishes prohibited practices on the installation of Fort Jackson, South Carolina. These prohibited practices apply to all persons assigned to, attached to, or present on the installation of Fort Jackson, South Carolina. Prohibited practices listed in this part are not all inclusive.

**DATES:** Written comments must be submitted on or before August 27, 1993.

**ADDRESSES:** Commander, U.S. Army Training Center and Fort Jackson, Office of the Staff Judge Advocate, Fort Jackson, SC 29207–5000.

**FOR FURTHER INFORMATION CONTACT:** CPT Thomas M. Gagne, Trial Counsel, telephone: (803) 751–6848.

**SUPPLEMENTARY INFORMATION:** This part does not list all activities or practices prohibited on the installation of Fort Jackson, South Carolina. Various other Army and Fort Jackson regulations specifically prohibit other activities or practices. See Appendix A to this part.

**Executive Order 12291**

This proposed rule is not affected by Executive Order 12291.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act has no bearing on this proposed rule.

**Paperwork Reduction Act**

This proposed rule does not contain reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

**List of Subjects in 32 CFR Part 552 Subpart L**

Military personnel, Government employees.

Accordingly, it is proposed to add subpart L to 32 CFR part 552, to read as follows:

**Subpart L—Prohibited Personnel Practices on the Installation of Fort Jackson, South Carolina**

Sec.

552.139 Purpose.
552.140 Scope.
552.141 Prohibited practices.
552.142 Dissemination.

**Appendix A to Subpart L—Partial List of Other Publications Applicable on Fort Jackson Which List Prohibited Practices**

**Authority:** 10 U.S.C. Ch. 47, 21 U.S.C. 801, et seq.

**Subpart L—Prohibited Personnel Practices on the Installation of Fort Jackson, South Carolina**

**§ 552.139 Purpose.**

This part is punitive in nature and applies to all persons assigned to, attached to, or present on the installation of Fort Jackson, South Carolina. A violation of, attempted violation of, or solicitation or conspiracy to violate any provision of this part provides the basis for criminal prosecution under the Uniform Code of Military Justice, applicable Federal Law, other regulations, and/or adverse administrative action. Civilian visitors may be barred from the installation of Fort Jackson and prosecuted under appropriate Federal laws. The enumeration of prohibited activities in this part is not intended to preclude prosecution under other provisions of law or regulation.

**§ 552.140 Scope.**

This part does not list all activities or practices prohibited on the installation of Fort Jackson, South Carolina. Various other Army and Fort Jackson publications specifically prohibit other activities or practices. See Appendix A to this subpart.

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**§ 552.141 Prohibited practices.**

The following activities are prohibited:

(a) The possession, delivery, sale, transfer, or introduction into the installation of Fort Jackson of any device, instrument or paraphernalia designed or reasonably intended for use in introducing into the human body a controlled substance, as defined in the Controlled Substances Act, 21 U.S.C. 801, et seq., is prohibited.

(b) Unless an exception is approved by the Chief of Staff or a Major Subordinate Commander for a special occasion, consumption of alcoholic beverages, or the possession of an open container thereof, is prohibited under the circumstances listed in this section. For the purpose of this part, an "alcoholic beverage" is any liquid beverage containing any amount of ethyl alcohol, including wines, malt beverages and distilled spirits.

(1) By military personnel in uniform during duty hours (0730–1630).

(2) By military personnel during their assigned duty hours when different than those in paragraph (b)(1) of this section.

(3) By civilian employees during their assigned duty hours. Lunch time is not considered duty time for civilian employees.

(4) By civilian or military personnel in places of duty.

(5) By any person in a public place, except: in the Twin Lakes and Weston Lake Recreational Areas, in the immediate vicinity of Oyster Point (Officers' Club), at installation club facilities governed by Section II of AR 215–2, and at Army/Air Force Exchange Service (AAFES) eating establishments which serve alcoholic beverages for on-premises consumption.

(6) By any person in any Fort Jackson parking lot or parking area, to include the Burger King parking lot and all parking lots of AAFES facilities and installation club facilities.

(c) The presence of any person in a training area or of any permanent party soldier or civilian employee in a trainee/receptee billeting area while impaired by alcoholic beverages or illegal drugs is prohibited. For the purpose of this part, "Impaired by alcoholic beverages" for military personnel is defined as having a blood alcohol level of .05 percent (.05 is equivalent to 55 milligrams of alcohol per 100 milliliters of blood) or more.

(d) Privately Owned Firearms and Ammunition. For the purpose of this part, a "firearm" means any device which is designed to or readily may be converted to expel a projectile by the action of an explosive. Air/pellet guns, BB guns and bows are subject to all of the provisions of this paragraph except paragraph (d)(1) of this section.

(1) It is prohibited for persons residing on the installation to fail to register privately owned firearms with their unit commander.

(2) Storage of privately owned firearms in the barracks is prohibited. For the purposes of this part, "barracks" does not include BOQs or SBEQs.

(3) It is prohibited to store privately owned firearms in BOQs, SBEQs, or family quarters unless the firearm is unloaded, ammunition is stored separately from the firearm in a locked container, and one of the following methods for firearms storage is employed: by using a trigger locking device, by storing the firearm in a locked container, by removing the firing pin from the firearm and storing the firing pin in a locked container, or by disassembling the firearm and storing the disassembled parts in separate places. For the purposes of this part a "locked container" and a "locking device" mean locked containers and locking devices the keys to which are stored in a place not accessible to persons under 18 years of age.

(4) It is prohibited to carry on one's person any privately owned firearm in a public place on the installation of Fort Jackson unless participating in an authorized sporting activity or hunting in accordance with applicable regulations.

(5) In addition to the requirements of paragraph (d)(4) of this section, a person under 18 years of age is prohibited from carrying on his or her person a firearm outside the presence of a responsible adult.

(6) Carrying a concealed firearm on one's person, except by military, state and Federal law enforcement authorities in the performance of their duties, is prohibited.

(7) It is prohibited to transport in a vehicle any privately owned firearm except in a manner prescribed by the laws of South Carolina.

(8) It is prohibited to carry on one's person or transport in a vehicle any privately owned firearm within the Weston Lakes and Twin Lakes Recreation areas.

(e) Weapons Other Than Privately Owned Firearms. The possession of the following privately owned weapons or devices is prohibited:

(1) Any knife having a switchblade or automatic blade.

(2) Brass knuckles or similar devices.

(3) Blackjacks, saps, nunchaku and similar devices. As exceptions, nunchukes may be possessed for bona fide educational instruction or competition in a recognized martial arts program and may be carried and transported directly to and from educational and competitive martial arts events.

(4) When carried on one's person in an unconcealed manner, knives with blades in excess of three inches in length except while engaged in authorized hunting, fishing, camping or other outdoor recreational activities, or when required by duty purposes.

(5) When carried on one's person in a concealed manner, knives with blades in excess of three inches, razors and ice picks.

(f) The charging of a usurious interest rate, defined as a rate exceeding thirty-six (36) percent per annum or three (3) percent per month, for the loan of money or for the extension of credit, is prohibited.

(g) Sexual intercourse or any indecent, lewd or lascivious act in any office, barracks, training area, duty location, parking lot, public recreation area or public place is prohibited.

(h) Relationships between service members of different rank or sex which involve or reasonably give the appearance of partiality, preferential treatment, the improper use of rank or position for any personal gain, or which can otherwise be reasonably expected to undermine discipline, authority or morale, are prohibited.

(i) Being present in any "off-limits" or "limited access" areas, except as authorized in Fort Jackson Regulation 190–3, is prohibited.

(j) Use of a metal detector for other than official purposes is prohibited.

(k) When directed to do so by the Military Police, failure to relinquish possession or control to the Military Police of abandoned property found on the installation is prohibited.

(l) Scavenging in or removal of waste items or recyclable materials from dumpsters, garbage cans, outdoor trash receptacles, recycling collection points, or landfill areas is prohibited, except for official purposes. This part does not prohibit persons from collecting and disposing of scattered litter, including aluminum cans, from roadsides, parking lots and recreation areas.

(m) It is prohibited for military personnel to engage in outside employment of any nature, including ownership or operation of a private business, without the prior written approval of their commander. Soldiers reassigned or reattached from one Fort Jackson unit to another Fort Jackson unit must obtain approval for continued employment from the gaining commander within 30 days of reassignment.

(n) Except as authorized by the Installation Commander, Chief of Staff or a Major Subordinate Commander, the use of radios, stereos, tape players, compact disk players or any other similar electronic sound generating or amplification source, including equipment installed or located in motor vehicles, in a manner that sound can be heard more than 125 feet from the source, is prohibited. This paragraph does not apply to law enforcement or emergency vehicles, or safety warning devices.

(o) Loitering in any public place on Fort Jackson, to include all parking lots, is prohibited. Loitering is defined as remaining idle in essentially one location, spending time idly, loafing, or walking around without a purpose in a public place in such a manner as to create a disturbance or annoyance to the comfort of any person, create a danger of a breach of the peace, obstruct or interfere with any person lawfully in any public place, or obstruct or hinder the free passage of vehicles or pedestrians. Any person loitering as defined above in any public place may be ordered by a law enforcement officer to leave that place or the Fort Jackson military reservation.

**§ 552.142 Dissemination.**

(a) Unit commanders and supervisors shall ensure that newly assigned or attached military and civilian personnel are informed of the prohibitions contained in this regulation. Soldiers-in-training will be informed of the provisions of this regulation at the beginning of each training cycle.

(b) All permanent party personnel and civilian employees will be reminded annually of their duty to comply with this part.

**Appendix A to Subpart L—Partial List of Other Publications Applicable on Fort Jackson Which List Prohibited Practices**

1. Distribution of Written Materials on the Installation—Fort Jackson Supplement 1 to AR 210–10.
2. Demonstrations, Pickets, Sit-ins, etc.—Fort Jackson Supplement 1 to AR 210–10.
3. Standards of Ethical Conduct for Employees of the Executive Branch, 5 Code of Federal Regulations, Part 2635.
4. Improper Associations—Fort Jackson Regulation 600–5.
5. Mistreatment of Soldiers-in-Training—Fort Jackson Regulation 350–1.
6. Participation in Military Labor Unions—Army Regulation 600–20.
7. Traffic Violations—Fort Jackson Regulation 190–5.

These publications are available for inspection at the Office of the Staff Judge Advocate, Fort Jackson, SC 29207–5000.

Kenneth L. Denton,

*Army Federal Register Liaison Officer.*

[FR Doc. 93–17391 Filed 7–28–93; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 642

**[Docket No. 930791–3191; I.D. 070693A]**

## Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues a preliminary notice of changes in the management regime for the Atlantic migratory group of Spanish mackerel, in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). Specifically, this rule proposes for Atlantic group Spanish mackerel increases in the total allowable catch (TAC) and allocations and a reduction in the percentage of catch that triggers reduced commercial trip limits in the southern zone. The intended effect of this rule is to protect Spanish mackerel from overfishing and continue stock rebuilding programs while still allowing catches by important recreational and commercial fisheries dependent on Spanish mackerel.

**DATES:** Written comments must be received on or before August 13, 1993.

**ADDRESSES:** Comments may be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of the draft regulatory impact review/initial regulatory flexibility analysis/environmental assessment supporting this action should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609–2486.

**FOR FURTHER INFORMATION CONTACT:** Mark F. Godcharles, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The mackerel fisheries are regulated under the FMP, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642.

In accordance with framework procedure of the FMP, the Councils appointed a stock assessment panel (panel) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the panel's 1993 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to the TAC and allocations for the Atlantic migratory group of Spanish mackerel, a change in the commercial trip limits for Atlantic group Spanish mackerel in the southern zone, and a restatement of the current bag and possession limits for Atlantic group Spanish mackerel. The recommended changes are within the scope of the management measures that may be adjusted, as specified at 50 CFR 642.20. For the 1993/94 fishing year, the Councils recommended no changes for the other mackerel groups or for cobia.

Specifically, the Councils recommended that, effective with the fishing year that began April 1, 1993, the annual TAC for the Atlantic migratory group of Spanish mackerel be increased from 7.00 to 9.00 million pounds (m. lbs.) 3.18 to 4.08 million kilograms (m. kg)). This recommended TAC is within the range of the acceptable biological catch chosen by the Councils. Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of the TAC. Under the established percentages, the proposed TAC would be allocated for the fishing year that commences April 1, 1993, as follows:

| Species | M. lbs. | M. kg |
|---|---|---|
| Atlantic Spanish Mackerel—TAC | 9.00 | 4.08 |
| Recreational allocation (50%) | 4.50 | 2.04 |
| Commercial allocation (50%) | 4.50 | 2.04 |

The commercial sector of the Atlantic group Spanish mackerel fishery is managed under trip limits. In the southern zone, that is, south of a line extending directly east from the Georgia/Florida boundary, the specific trip limits vary depending on the percentage of catch of the adjusted

allocation. The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 pounds (227 kg) per vessel per day for the remainder of the fishing year after the adjusted allocation is reached. Concomitant with the increased commercial allocation, the Councils recommended that the adjusted allocation be increased from 3.25 to 4.25 m. lbs. (1.47 to 1.93 m. kg) and that the initial change in the trip limits occur when 75 percent of the adjusted allocation is taken rather than when 80 percent is taken, as is currently in effect. The trip limits would be expected to be compatible with similar limits applicable to Florida's waters and would allocate fairly the available resource among users, both of which were significant factors in the establishment of the trip limits.

The current Federal bag limit for Atlantic group Spanish mackerel in the northern area, that is, north of a line extending directly east from the Georgia/Florida boundary, is ten per person. The current Federal bag limit in the southern area is as prescribed for Florida's waters in Rule 46–23.005 of the Florida Administrative Code, or as that rule is subsequently amended, but not to exceed ten per person. Rule 46–23.005 currently sets the bag limit at ten per person. The Councils have concluded that the provision for further revision of the Federal bag limit in the southern area based on Rule 46–23.005 of the Florida Administrative Code is unnecessary and have recommended that the provision be deleted. The recommended change simplifies and clarifies the regulations by establishing a uniform bag limit of ten per person in both the northern and southern areas.

The Regional Director initially concurs that the Councils' recommendations are necessary to protect the Spanish mackerel stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment.

### Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because the total impact is well under the threshold level of $100 million used as a guideline for a "major rule."

The Councils prepared a regulatory impact review (RIR) on this action, the conclusions of which are summarized as follows. The increased allocations of Atlantic group Spanish mackerel are expected to generate additional benefits in ex-vessel revenues and consumer surplus. The changes to the commercial trip limits for Spanish mackerel in the southern zone, specifically, increase in the adjusted allocation and a reduction in the percentage of catch that triggers reduced commercial trip limits, are expected to continue the trend, initiated in Amendment 6 to the FMP, toward reallocating catch from large scale to small scale vessels. Data are not available to quantitatively evaluate the cost/benefit tradeoffs associated with this reallocation. Qualitatively, it is likely that such reallocation reduces consumer and producer benefits. However, there may be compensating social benefits. Copies of the RIR are available (see **ADDRESSES**).

The Councils prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which concludes that this proposed rule, if adopted, will have significant effects on small entities. The increase in the commercial allocation is expected to substantially increase gross revenues to the commercial sector of the fishery for Atlantic group Spanish mackerel. Copies of the IRFA are available (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 23, 1993.

**Samuel W. McKeen,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

## PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 642.24, paragraph (a)(1)(iv) is revised to read as follows:

**§ 642.24 Bag and possession limits.**

(a) * * *

(1) * * *

(iv) *Spanish mackerel Atlantic migratory group*—ten per person.

* * * * *

**§ 642.25 [Amended]**

3. In § 642.25, in paragraph (b)(2), the numbers "3.50" and "1.59" are revised to read "4.50" and "2.04", respectively.

4. In § 642.27, paragraphs (a)(2)(ii) introductory text, (a)(2)(iii), introductory text, (a)(2)(iii), and (b) are revised to read as follows: § 642.27 *Commercial trip limits for Atlantic group Spanish mackerel.*

(a) * * *

(2) * * *

(ii) From December 1 until 75 percent of the adjusted allocation is taken, in amounts as follows:

* * * * * *

(iii) After 75 percent of the adjusted allocation is taken until 100 percent of the adjusted allocation is taken, in amounts not exceeding 1,000 pounds (454 kg).

* * * * * *

(b) For the purpose of paragraph (a)(2) of this section, the adjusted allocation of Atlantic migratory group Spanish mackerel 4.25 million pounds (1.93 million kg). The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 pounds (227 kg) per vessel per day for the remainder of the fishing year after the adjusted allocation is reached. The Assistant Administrator, by filing a notice with the Office of the Federal Register, will announce when 75 percent and 100 percent of the adjusted allocation is reached or is projected to be reached.

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[FR Doc. 93–18116 Filed 7–28–93; 8:45 am]

BILLING CODE 3510–22–M

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**50 CFR Part 659**

**[Docket No. 930792–3192; ID 070693B]**

**RIN 0648–AD86**

## Shrimp Fishery Off the Southern Atlantic States

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues this proposed rule to implement the Fishery Management Plan for the Shrimp Fishery of the Southern Atlantic Region (FMP). The FMP proposes that, when North Carolina, South Carolina, Georgia, or Florida closes the fishery for brown, pink, and white shrimp in its Atlantic coastal waters following severe cold weather that results in an 80-percent or greater reduction in the population of white shrimp, NMFS may concurrently close the fishery for brown, pink, and white shrimp in the exclusive economic zone (EEZ) adjacent to the closed state waters. The intended effect of the FMP and this rule is to protect the white

shrimp resource when unusually cold weather conditions are likely to cause severe depletion of spawning stocks.

**DATES:** Written comments must be received on or before September 9, 1993.

**ADDRESSES:** Comments on the proposed rule should be sent to the Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Requests for copies of the FMP and supporting documents should be sent to the South Atlantic Fishery Management Council, Southpark Building, suite 306, 1 Southpark Circle, Charleston, SC 29407–4699.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Eldridge, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the South Atlantic Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

## Background

The white shrimp fishery is the most important commercial fishery in both Georgia and South Carolina. White shrimp has comprised approximately 80 percent of Georgia's commercial shrimp landings since 1972 and slightly over 50 percent of South Carolina's annual commercial landings since 1976. The fishery for brown shrimp is of lesser importance, while pink shrimp, the least important of the three species, comprises less than 5 percent of the total shrimp catch.

Low temperatures have decimated the white shrimp resource in 8 of the past 29 winters. The reduced production in the following fall fisheries resulted in reduced employment and revenues. In 5 of those 8 years, white shrimp landings in the fall fishery off South Carolina were substantially less than 1.5 million pounds (0.68 million kg). Landings generally range from 2 to 5 million pounds (0.91 to 2.27 million kg). White shrimp landings in Georgia, generally ranging from 5 to 7 million pounds (2.27 to 3.18 million kg), were less than 4 million pounds (1.81 million kg) for those same years. These landings data directly reflect the impacts of winter kills.

Extremely cold weather in December 1989 in Georgia and South Carolina resulted in high mortalities of white shrimp. In February 1990, the Georgia Department of Natural Resources and the South Carolina Wildlife and Marine Resources Department requested a concurrent closure of EEZ waters adjacent to closed State waters. NMFS implemented an emergency rule in April 1990 to prohibit the harvest of brown, pink, and white shrimp from the EEZ off South Carolina and Georgia. White shrimp landings in 1990 for the combined South Atlantic states were almost identical to the average of annual landings from 1957–1991, thus supporting the use of concurrent closures of the EEZ during the spring spawning season following freeze years.

## Proposed Actions

Under the FMP, when a state finds that severe winter cold weather results in an 80-percent or greater reduction in the population of white shrimp in its waters, based on standardized assessment sampling, and closes or expects to close all or a portion of its waters to the harvest of brown shrimp, pink shrimp, and white shrimp, such state may request that the Council recommend to the Director, Southeast Region, NMFS (Regional Director), concurrent closure of the EEZ adjacent to the closed state waters. Upon receiving such a request, the Council would convene a review panel to evaluate the data supporting the request. The panel would be composed of one person from the staff of the Council, one scientist from the Southeast Fisheries Science Center, NMFS, one member of the Council's Scientific and Statistical Committee, and a state shrimp biologist from each of the States of Florida, Georgia, North Carolina, and South Carolina. The panel would report its findings and make a recommendation to the Council for its approval or disapproval. The panel's review and the Council's approval or disapproval would be based on the accuracy of, and the methodology underlying, the state's conclusions regarding the amount of the reduction in the population of overwintering white shrimp.

If the Council recommends a closure, the Regional Director will forward the recommendation to the Assistant Administrator for Fisheries, NOAA (Assistant Administrator). Upon a determination that the recommended closure conforms to the FMP, the Magnuson Act, and other applicable law, the Assistant Administrator would effect closure by filing a notice of closure at the Office of the Federal Register.

Termination of a closure in the EEZ would occur simultaneously with opening of the adjacent state waters, but may occur earlier. An earlier termination of the EEZ closure usually would be based on the state's request after it determines, through monitoring programs, that conditions warrant termination. If termination of the closure in the EEZ is earlier than termination of the closure in state waters, the Assistant Administrator would terminate a closure in the EEZ by filing a notice to that effect with the Office of the Federal Register.

It is not expected that North Carolina would have occasion to employ a shrimp closure State-wide in its waters, but unusual circumstances might necessitate closure of the waters off the southern part of the State. The population of white shrimp off Florida is limited primarily to the northern three or four counties. Although neither North Carolina nor Florida has closed State waters to shrimping on an emergency basis, either State could request concurrent closure of the adjacent EEZ if the criteria were met. Based on past practice, Georgia and South Carolina would be expected to effect State-wide closures.

During a closure, it would be prohibited for a person to trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ or to possess aboard a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from the closed area. However, such shrimp could be possessed aboard a fishing vessel in the closed area if the vessel was in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm) were stowed below decks. This exception would allow the possession of brown shrimp, pink shrimp, and white shrimp aboard a fishing vessel returning to a port within the closed area after having legally harvested such shrimp outside the closed area.

Because white shrimp is a normal incidental catch in the fisheries for other *Penaeus* species, namely, pink shrimp and brown shrimp, a ban on trawling for all three *Penaeus* species would be necessary to protect the white shrimp resource to the maximum extent possible. In addition, differentiation among the three *Panaeus* species might cause confusion in enforcement of the ban if it were confined to white shrimp. However, there is no incidental catch of white shrimp in the trawl fisheries for rock shrimp or royal red shrimp, nor is there a likelihood of confusion in differentiating between the *Penaeus* species and rock or royal red shrimp. Accordingly, it is not intended that the ban on trawling extend to rock or royal red shrimp. Similarly, it is not intended that the trawl fishery for whiting be adversely affected.

To allow the fisheries for rock shrimp, royal red shrimp, and whiting to continue during a closure without jeopardizing enforcement of the ban on trawling for *Penaeus* shrimp species, a buffer zone would be established in that part of the closed area that is within 25

nautical miles of the baseline from which the territorial sea is measured. A vessel that trawls in that buffer zone could not use or have aboard a trawl net with a mesh size less that 4 inches (10.2 cm) stretched mesh. Both rock and royal red shrimp are commercially abundant in depths found generally outside the buffer zone. The principal exception is the area off Cape Canaveral, Florida; however, closure of state waters to trawling for *Penaeus* shrimp species would not be expected that far south. Conversely, off the southern Atlantic states, few, if any, *Penaeus* shrimp species are taken in depths found outside the buffer zone. Thus, the trawl fisheries for rock and royal red shrimp, which use trawl nets with mesh less than 4 inches (10.2 cm), would not be expected to be affected by the buffer zone off closed state waters. Persons in the fishery for whiting, which could occur in a buffer zone, would be required to use and possess on board only trawl nets with a mesh size of 4 inches (10.2 cm) or larger. Allowing trawling with nets of such mesh size would not endanger the white shrimp population and would be consistent with the regulations applicable to the waters of Georgia and South Carolina. Any *Penaeus* shrimp species taken incidental to the fishery for whiting could not be retained.

Additional background and rationale for the measures in this proposed rule are contained in the FMP, the availability of which was announced in the **Federal Register** on June 30, 1993 (58 FR 34982).

### Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP and proposed regulations. At this time, the Secretary has not determined that the FMP, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a Regulatory Impact Review (RIR) as part of the FMP, which concludes that this rule, if adopted, would have the effects summarized as follows. Closures of the EEZ following freeze years should result in substantially increased fall white shrimp landings and net revenues, which should enhance stabilized aggregate employment in the shrimp industry. In addition, concurrent closures of EEZ waters would increase compliance with state closures following freeze years and reduce state and Federal law enforcement costs. Additional analysis and discussion are contained in the RIR, a copy of which is available (see **ADDRESSES**).

The Council prepared an initial regulatory flexibility analysis (IRFA) as part of the FMP (Section 19.0). NMFS has analyzed the data in the RIR and IRFA and concludes that this proposed rule, if adopted, would have significant effects on small entities. Since all entities affected by this rule are small entities, there will be no disparate impacts on small entities. Under all possible scenarios, a concurrent closure of the EEZ adjacent to a state's closed waters following a severe winter freeze would cause minor losses to fishermen during the spring closure followed by significant gains during the following fall fishery—a net significant benefit. The specific amount of net benefits would vary, but even under a worst-case scenario, the net benefits would be significant. A copy of the IRFA is available (see **ADDRESSES**).

The Council prepared a draft environmental impact statement for the FMP; a notice of availability was published on April 9, 1993 (58 FR 18394). A final Environmental Impact Statement was prepared by the Council for this FMP and will be filed for public review with the Environmental Protection Agency on or before August 30, 1993, to begin a 30-day public review period.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Florida, North Carolina, and South Carolina. Georgia does not have an approved coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

A consultation conducted in accordance with section 7 of the Endangered Species Act (ESA) on this FMP concluded that shrimp trawling in the southeastern United States is in compliance with the 1992 Revised Sea Turtle Conservation Regulations, and fishing under the FMP is not likely to jeopardize the continued existence of threatened or endangered species under NMFS jurisdiction.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

### List of Subjects in 50 CFR Part 659

Fisheries, Fishing.

Dated: July 23, 1993.

**Samuel W. McKeen,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR is proposed to be amended by adding a new part 659 to read as follows:

## PART 659—SHRIMP FISHERY OFF THE SOUTHERN ATLANTIC STATES

### Subpart A—General Provisions

Sec.

659.1 Purpose and scope.
659.2 Definitions.
659.3 Relation to other laws.
659.4 Prohibitions.
659.5 Facilitation of enforcement.
659.6 Penalties.

### Subpart B—Management Measures

659.20 Closures.
659.21 Specifically authorized activities.

**Authority:** 16 U.S.C. 1801 *et seq.*

### Subpart A—General Provisions

#### § 659.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region (FMP) prepared by the South Atlantic Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of brown shrimp, pink shrimp, and white shrimp in the EEZ off the southern Atlantic states.

**§ 659.2 Definitions.**

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

*Brown shrimp* means the species *Penaeus aztecus*.

*Off a southern Atlantic state* means—

(1) *For North Carolina*, the waters from a line extending directly east from the Virginia/North Carolina boundary (36°33′00.8″N. lat.) to a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″N. lat., 78°32′32.6″W. long.;

(2) *For South Carolina*, the waters from a line extending in a direction of 135°34′55″ from true north from the North Carolina/South Carolina boundary, as marked by the border station on Bird Island at 33°51′07.9″N. lat., 78°32′32.6″W. long. to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary;

(3) *For Georgia*, the waters from a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary to a line extending directly east from the seaward terminus of the Georgia/Florida boundary (30°42′45.6″N. lat.); and

(4) *For Florida*, the waters from a line extending directly east from the seaward terminus of the Georgia/Florida boundary (30°42′45.6″N. lat.) to the eastern boundary of the Gulf of Mexico, which is a line from the outer limit of the EEZ north along 83°00′W. long. to 24°35′N. lat. (near Dry Tortugas), thence east to Marquesas Key, then through the Florida Keys to the mainland.

*Pink shrimp* means the special *Penaeus duorarum*.

*Southern Atlantic state* means North Carolina, South Carolina, Georgia, or Florida.

*White shrimp* means the species *Penaeus setiferus*.

**§ 659.3 Relation to other laws.**

The relation of this part to other laws is set forth in § 620.3 of this chapter.

**§ 659.4 Prohibitions.**

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Trawl for white shrimp, pink shrimp, or brown shrimp in a closed area or possess such shrimp in or from a closed area, as specified in § 659.20(b)(1)(i), except possession authorized under § 659.20(b)(2).

(b) Aboard a vessel trawling in that part of the closed area that is within 25 nautical miles of the baseline from which the territorial sea is measured, use or have aboard a trawl net with a mesh size less than 4 inches (10.2 cm), as specified in § 659.20(b)(1)(ii).

(c) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

(d) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of brown shrimp, pink shrimp, or white shrimp.

**§ 659.5 Facilitation of enforcement.**

See § 620.8 of this chapter.

**§ 659.6 Penalties.**

See § 620.9 of this chapter.

**Subpart B—Management Measures**

**§ S695.20 Closures.**

(a) *Procedure.* When a southern Atlantic state finds that severe winter cold weather results in an 80-percent or greater reduction in the population of overwintering white shrimp in its waters as determined by standardized assessment sampling, and closes or expects to close all or a portion of its waters to the harvest of brown, pink, and white shrimp, such state may request that the South Atlantic Fishery Management Council (Council) recommend to the Director, Southeast Region, NMFS (Regional Director), concurrent closure of the EEZ adjacent to the closed state waters. Pursuant to the procedures and criteria established in the FMP, including review by the Council of the state's procedures for standardized assessment sampling and the state's conclusions regarding the amount of the reduction in the population of overwintering white shrimp, the Assistant Administrator upon receipt from the Regional Director of a closure recommendation from the Council, and upon a determination that such closure conforms to the Magnuson Act and other applicable law, will effect concurrent closure of the adjacent EEZ by filing a notice of closure with the Office of the Federal Register. Closure of the adjacent EEZ will be effective until the ending date of the closure in state waters but may be ended earlier based on the state's request. In the latter case, the Assistant Administrator will terminate a closure of the EEZ by filing a notice to that effect with the Office of the Federal Register.

(b) *Restrictions during a closure.* (1) During a closure, as specified in paragraph (a) of this section—

(i) No person may trawl for brown shrimp, pink shrimp, or white shrimp in the closed portion of the EEZ off a southern Atlantic state (closed area); and no person may possess aboard a fishing vessel brown shrimp, pink shrimp, or white shrimp in or from the closed area, except as authorized in paragraph (b)(2) of this section.

(ii) No person aboard a vessel trawling in that part of the closed area that is within 25 nautical miles of the baseline from which the territorial sea is measured may use or have aboard a trawl net with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut.

(2) Brown shrimp, pink shrimp, or white shrimp may be possessed aboard a fishing vessel in a closed area provided the vessel is in transit and all trawl nets with a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, are stowed below deck while transiting the closed area. For the purpose of this paragraph (b)(2), a vessel is in transit when it is on a direct and continuous course through the closed area.

**§ 659.21 Specifically authorized activities.**

The Secretary may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

[FR Doc. 93–18114 Filed 7–26–93; 3:24 pm]

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**National Oceanic and Atmospheric Administration**

**50 CFR Parts 672 and 675**

**[Docket No. 930652–3152; I.D. 060893A]**

## Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes changes to the regulations that implement the limit on the amount of pollock roe that may be retained onboard a vessel during a fishing trip in the Alaska groundfish fisheries. These changes are necessary to curtail current fishing practices that undermine the intent of the limit, which is to prevent the wasteful use of the pollock resource by the stripping of roe (eggs) from female pollock and discarding female and male pollock carcasses without further processing.

commonly known as pollock roe stripping. The intended effect of this action is to promote the purposes and policies of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands management area (BSAI) with respect to groundfish management off Alaska.

**DATES:** Comments must be received at the following address no later than 4:30 p.m., Alaska local time, August 30, 1993.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel), or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, Suite 6, Juneau, Alaska. Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for Amendments 14 and 19 may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (telephone 907–271–2809).

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION**

**Background**

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA and BSAI is managed by the Secretary of Commerce (Secretary) according to the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

At times, amendments to regulations are necessary for conservation and management of the groundfish fisheries. This action proposes several changes to regulations at 50 CFR 672.20(i) and 675.20(j) that limit the proportion of pollock roe that may be retained onboard a vessel during a fishing trip. These regulations were issued in 1991 under the authority of Amendment 14 to the FMP for the Groundfish Fishery of the BSAI and Amendment 19 to the FMP for Groundfish of the GOA (56 FR 492, January 7, 1991). During the Secretarial review of these amendments, the Magnuson Act was amended to prohibit stripping pollock of its roe and discarding the flesh of the pollock (16 U.S.C. 1857(1)(N)).

The regulations at §§ 672.20(i) and 675.20(j) are intended to implement, to the maximum extent practicable, the prohibition on roe stripping to reduce wastage of the pollock resource, prevent possible adverse effects on the marine ecosystem and reproductive potential of pollock, and provide for an equitable distribution of the pollock resource among its users. A description of, and justification for, these measures were discussed in the preamble to the final rule published on January 7, 1991. Additional information is available in the EA/RIR/FRFA prepared for Amendments 14 and 19 (see **ADDRESSES**).

Since the regulations became effective, NMFS has become aware of fishing practices by operators of processor vessels that serve to undermine their intent. Although such activity has been limited to a small number of vessels, the potential exists for more vessel operators to engage in these practices in the future. NMFS is proposing three changes to §§ 672.20(i) and 675.20(j) to curtail these practices and prevent an increase in the occurrence of fishing practices that undermine the intent of the regulations. A description of these changes and the reasons for them follow:

1. Change the definition of "fishing trip" for purposes of calculating the proportion of BSAI pollock roe retained.

NMFS proposes to change the definition of fishing trip as it relates to § 675.20(i) to:

(1) Reduce the incentive for vessel operators to retain pollock roe amounts in excess of levels that reflect actual roe recovery rates; and

(2) Facilitate the enforcement of the limit on the proportion of pollock roe relative to other pollock product that may be retained onboard a vessel. The definition would be changed to make the end of a weekly reporting period (defined at § 675.2) the end of a fishing trip, unless all pollock product has been previously transferred or offloaded, or the vessel leaves the subarea or district where the fishing activity commenced, which, in either case, would end the fishing trip. This would reduce the potential duration of fishing trips and minimize the incentive to vessel operators to strip pollock of its roe at the end of a fishing trip to maximize the amount of roe retained relative to primary pollock product onboard the vessel and prevent a vessel operator from retaining only roe product onboard the vessel and offloading non-roe product. This definition change is intended to prohibit fishing practices that potentially undermine the intent of the regulations and complicate the enforcement of the limit on the amount of pollock roe relative to primary pollock product that may be transferred off the vessel.

Changes to the definition of "fishing trip" for purposes of implementing the limit in the GOA are not proposed for the following reasons. First, unlike the BSAI definition, the GOA definition of fishing trip already specifies the end of a weekly reporting period as the end of a fishing trip. Second, the practice of at-sea transfer of pollock product among processor vessels and associated incentives to retain GOA pollock roe in amounts beyond actual pollock roe recovery rates are not anticipated to occur in the GOA. This is because sufficient amounts of pollock are not available during the roe season to support a significant roe fishery, and processors identified as part of the offshore component at § 672.2 are prohibited from participating in the directed fishery for GOA pollock (§ 672.20(a)(2)(v)).

2. Require only pollock product processed for long-term storage (frozen, canned, or meal product) to be used as the primary pollock product to calculate the proportion of pollock roe retained and prohibit the at-sea discard of any primary pollock product used to calculate the proportion.

NMFS proposes this measure in response to fishing practices that involve the retention of whole, unprocessed pollock as primary product for purposes of calculating the proportion of pollock roe retained. Transfer of this primary product to other processor vessels from which it is subsequently discarded at-sea essentially constitutes roe stripping operations contrary to the intent of the regulations implementing Amendments 14 and 19 to the FMPs. This practice also frustrates the ability of enforcement agents to audit the proportion of pollock roe onboard a vessel when the primary product used to calculate the proportion is no longer onboard the vessel. Processing of pollock for long-term storage is necessary if a vessel operator intends to retain primary pollock product onboard the vessel, and such retention is consistent with the intent of regulations limiting pollock roe stripping. The physical presence of pollock product processed for long-term storage onboard a vessel also would facilitate enforcement of the limit on the proportion of pollock roe relative to

primary pollock product that may be retained onboard the vessel.

3. Define the term "pollock roe" and prohibit any primary pollock product containing roe from being used to calculate the round-weight equivalent of pollock for purposes of determining the proportion of pollock roe retained.

This measure is proposed to prohibit roe-bearing product from being used to calculate the proportion of pollock roe retained (e.g., using headed and gutted pollock with roe for calculating retainable amounts of roe). Existing regulations do not limit the amount of roe-bearing product other than pollock roe that may be retained onboard a vessel as primary product because these product types are produced onboard the vessel without employing the practice or pollock roe stripping. However, if vessels retain only roe-bearing pollock product and pollock roe, roe stripping operations would have to occur, contrary to regulatory intent. To counter this practice, roe-bearing primary product must be prohibited from being used to calculate retainable amounts of pollock roe.

The Council considered the changes discussed above at its April 21–24, 1993, meeting and recommended that they be submitted to NMFS for review and approval. NMFS preliminarily concurs with the proposed changes. Implementation of the changes would support the intent of the Magnuson Act prohibition and regulations limiting pollock roe stripping and prevent further wasteful use of the pollock resource.

NMFS is considering publishing a proposed rule to further revise the regulations at §§ 672.20(i) and 675.20(j). In pertinent part, that proposed rule would reduce the allowable amount of pollock roe onboard a vessel at any time during a fishing trip from 10 percent to 5 percent of the total round-weight equivalent of pollock as calculated from the primary pollock product onboard the vessel during the fishing trip.

## Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and is consistent with the Magnuson Act and other applicable laws.

This proposed regulatory amendment falls within the scope of alternatives addressed in the EA prepared for Amendments 14 and 19 to the FMPs. Therefore, this action is categorically excluded from the requirement to prepare an EA under section 6.02.c.3(f) of NOAA Administrative Order 216–6. A copy of the EA prepared for these amendments is available from the Council (see ADDRESSES).

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. The regulatory impact review (RIR) prepared for Amendments 14 and 19 analyzed the economic impacts that would result from the implementation of regulations that limit pollock roe stripping. This proposed rule would not result in any economic impacts that were not already analyzed in the RIR prepared for Amendments 19 and 24. Therefore, if adopted, this proposed rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic effect on a substantial number of small entities because the few processor vessels that have participated in fishing practices that this action would prohibit experience annual receipts in excess of $2 million and are not considered small entities for purposes of the Regulatory Flexibility Act (RFA). Catcher vessels typically are considered small entities under the RFA. Fishing practices that undermine the intent of regulations limiting pollock roe stripping have not been identified within the catcher vessel fleet. Small entities will not be affected by the proposed rule, if approved. As a result, a regulatory flexibility analysis was not prepared.

The proposed rule does not involve a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Director of the Alaska Region, NMFS (Regional Director), determined that the fishing activities that would be conducted under this proposed rule would not affect any endangered or threatened species listed under the Endangered Species Act (ESA) in any manner not already considered in: (1) the formal consultations conducted on the BSAI and GOA groundfish fisheries (both dated April 19, 1991), the 1992 BSAI total allowable catch (TAC) specifications (January 21, 1992), and Amendment 18 to the BSAI FMP (March 4, 1992); and (2) the informal consultations conducted regarding the impacts of the 1992 GOA TAC specifications (December 23, 1991), the 1993 BSAI and GOA TAC specifications on Steller sea lions (January 20, 1993 and January 22, 1993, respectively), and the impacts of the 1993 BSAI and GOA groundfish fisheries on listed species of salmon (April 21, 1993) and listed species of seabirds (U.S. Fish and Wildlife Service, February 1, 1993 and clarified on February 12, 1993). Therefore, NMFS has determined that no further consultation, pursuant to section 7 of the ESA, is required for adoption of the proposed action.

The Regional Director determined that the fishing activities that would be conducted under this proposed rule would have no adverse impacts on marine mammals.

## List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: July 23, 1993.

**Samuel W. McKeen,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

## PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraph (i) is amended by redesignating paragraphs (i)(1) through (i)(5) as paragraphs (i)(2) through (i)(6), respectively; redesignating the introductory text of paragraph (i) as paragraph (i)(1); revising redesignated paragraphs (i)(1) and (i)(2); and adding new paragraph (i)(7) to read as follows:

**§ 672.20 General limitations.**

* * * * *

(i) *Allowable retention of pollock roe.* (1) For purposes of this paragraph (i), pollock roe means product comprised of pollock eggs, either loose or in sacs or skeins. Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 10 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph (i). Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. Pollock or pollock products from previous fishing trips that are retained onboard a vessel must not be used to determine the allowable retention of pollock roe for that vessel.

(2) For purposes of this paragraph (i), only one primary pollock product per fish, other than roe, may be used to calculate the round-weight equivalent. A primary pollock product that contains roe (such as headed and gutted pollock with roe) must not be used to calculate the round-weight equivalent of pollock. The primary pollock product must be distinguished from ancillary pollock products in the daily cumulative production logbook required under § 672.5. Ancillary products are those such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

* * * * *

(7) Any primary pollock product used to calculate retainable amounts of pollock roe under paragraph (i)(6) of this section must be frozen, canned, or reduced to meal onboard the vessel retaining the pollock roe. Any pollock product that has been frozen, canned, or reduced to meal must not be discarded at sea.

## PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

4. In § 675.20, paragraph (j) is amended by redesignating paragraphs (j)(1) through (j)(5) as paragraphs (j)(2) through (j)(6), respectively; redesignating the introductory text of paragraph (j) as paragraph (j)(1); revising redesignated paragraphs (j)(1), (j)(2), and (j)(5); and adding new paragraph (j)(7) to read as follows:

### § 675.20 General limitations.

* * * * *

(j) *Allowable retention of pollock roe.* (1) For purposes of this paragraph (j), pollock roe means product comprised of pollock eggs, either loose or in sacs or skeins. Pollock roe retained onboard a vessel at any time during a fishing trip must not exceed 10 percent of the total round-weight equivalent of pollock, as calculated from the primary pollock product onboard the vessel during the same fishing trip as defined in this paragraph (j). Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip. Pollock or pollock products from previous fishing trips that are retained onboard a vessel must not be used to determine the allowable retention of pollock roe for that vessel.

(2) For purposes of this paragraph (j), only one primary pollock product per fish, other than roe, may be used to calculate the round-weight equivalent. A primary pollock product that contains roe (such as headed and gutted pollock with roe) must not be used to calculate the round-weight equivalent of pollock. The primary pollock product must be distinguished from ancillary pollock products in the daily cumulative production logbook required under § 675.5. Ancillary products are those such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product.

* * * * *

(5) *Fishing trip.* For purposes of this paragraph (j), an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of pollock is begun or resumed until:

(i) the transfer or offloading of all pollock product;

(ii) the vessel leaves the subarea or district where fishing activity commenced; or

(iii) the end of a weekly reporting period, whichever comes first.

* * * * *

(7) Any primary pollock product used to calculate retainable amounts of pollock roe under paragraph (j)(6) of this section must be frozen, canned, or reduced to meal by the vessel retaining the pollock roe prior to any transfer of the product to another vessel. Any pollock product that has been frozen, canned, or reduced to meal must not be discarded at sea.

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# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Castle Mountains Range Analysis, Lewis and Clark National Forest, Meagher County, MT

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of implementing range and vegetative management practices in the Castle Mountains. The range management practices include consolidation and boundary adjustments reducing the present 17 allotments to 12 allotments; implementing rest rotation grazing management systems on eight allotments; installing 34 stock tanks; constructing about 15 miles of fence; installing about 16 miles of water pipeline (6.5 miles pumped and 9.5 miles gravity feed); and installing 7 pumping units and 3 storage ponds. In addition, 6.5 miles of fence would be removed.

Prescribed fire will be used to reduce conifer/sagebrush encroachment and improve forage production on approximately 3,000 acres of the Castle Mountains.

The proposed range and vegetative management practices are designed to move the vegetative conditions in the Castle Mountains towards the desired plant communities. Desired plant communities are diverse plant communities in a healthy and productive state benefiting all resources on the allotment. The desired plant communities reflect the Forest's desired future condition of the vegetation.

**DATES:** Comments concerning the scope of the analysis should be received in writing by September 8, 1993 in order to receive timely consideration in the preparation of the Draft Environmental Impact Statement (DEIS).

**ADDRESSES:** Send written comments to William Fortune, District Ranger, Musselshell Ranger District, P.O. Box 1906, Harlowton, MT 59036.

**FOR FURTHER INFORMATION CONTACT:** Wayne Butts, Castle Mountain Range Analysis Interdisciplinary Team Leader, Musselshell Ranger District, (406) 632–4391.

**SUPPLEMENTARY INFORMATION:** The Castle Mountains project area is located approximately 5 miles east of White Sulphur Springs and 5 miles west of Martinsdale, Montana, in Meagher County. The project area is approximately 86,000 acres and includes about 70,056 acres of National Forest System land and approximately 15,902 acres of private land. The project area includes headwaters drainages for the North and South Forks of the Musselshell and Smith Rivers. Elevations range from about 5,080 feet at Pasture Gulch drainage (east boundary) to 8,566 feet at Elk Peak. The project area includes a mosaic of timberlands, grass parks, riparian drainage bottoms, limestone ridges, and granite outcrops.

Range and vegetative management practices are addressed together because the timing and geographic locations represent a similar action under 40 CFR 1508.25(a)(3). The scope of the proposed action is site-specific with range and vegetative management practices identified on an allotment basis. Appropriate mitigation measures are designed to respond to the identified issues and anticipated effects.

This EIS will tier to the Lewis and Clark National Forest Land and Resource Management Plan of June, 1986, which provides goals and objectives. Forest-wide management standards and management area prescriptions are identified in the Plan to provide overall guidance and management practices in achieving these goals and objectives. The proposed actions of range and vegetative management are designed to help move from the existing condition of the Castle Mountains to the desired plant communities. Desired plant communities are generally in a later successional stage and have higher resource values. The primary purpose and need for the proposed action is: (1) Allotment management plans (AMPs) on most of the grazing allotments need updating, revision, and/or initial development. Some allotments do not have an AMP, and some AMPs do not match the requirements outlined in the current grazing permit; (2) livestock are disproportionately using some riparian and upland areas; (3) the shortage of water in the Castle Mountains has limited the development of livestock watering facilities. This situation contributes to the disproportionate livestock use in the riparian areas and some uplands areas; (4) seventy years of fire suppression has resulted in the late serial successional stages for sagebrush and conifer vegetative types, which produce less forage for both wildlife and livestock; (5) of the 53 miles of streams surveyed in the Castle Mountain, the hydrologic function of 33% of these streams was inventoried in poor condition; of the 18 miles of sensitive fish habitat, 60% was inventoried in poor condition; and (6) Management Area allocations in the Forest Plan are a combination of Management Areas C, E, G, H, J, and L. These Management Area allocations are not consistent with other lands on the National Forest with similar characteristics.

Two public open houses will be held during the scoping period: On Wednesday, August 25, from 7 p.m. to 9 p.m. at the Musselshell Ranger District Office in Harlowton, MT and on Thursday, August 26, from 7 p.m. to 9 p.m. at the Kings Hill Ranger District Office in White Sulphur Springs, MT. A letter indicating the proposed action, maps of the project area/proposed action, and notification of the open houses will be sent to interested publics. Additional public meetings will be held when the DEIS is released for public comment, January 1994. The public is invited to visit with Forest Service officials at any time during the EIS preparation prior to the issuance of the Record of Decision.

The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals and organizations who may be interested in or affected by the proposed actions. The agency invites written comments and suggestions on the issues and management opportunities in the area being analyzed. This information will be used in preparing the DEIS. This process includes:

1. Identification of potential issues related to the proposed action.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of alternatives to the proposed action.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential cooperating agencies and task assignments.

The analysis will consider a range of alternatives. One of these will be the "No-Action" alternative, which is the current management direction documented for most allotments in an individual Allotment Management Plan. All range and vegetative management practices would be deferred under the no-action alternative. Other alternatives will examine various levels and locations of range management and vegetative treatments to return the Castle Mountains to a more ecologically productive state and desired future condition.

The analysis will disclose the environmental effects of alternative ways of implementing management direction outlined in the Forest Plan and in addressing the identified issues. The Forest Service will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose site-specific mitigation measures and the effectiveness of each proposed mitigation measure.

Preliminary scoping has been done for this project by the interdisciplinary team from the Lewis and Clark National Forest and seven major issues have been identified.

Range Management (Issue 1)

(a) What grazing management practices and range improvements should be implemented to move vegetation towards the desired plant communities?

(b) How can vegetation on upland range sites be moved toward the desired plant communities?

(c) How can vegetation on the riparian range sites be moved toward the desired plant communities?

(d) What measures are needed to reduce the potential spread of noxious weeds on rangelands?

(e) How would livestock management be affected by combining livestock herds?

(f) What management practices should be implemented to prevent livestock grazing in the municipal watershed?

Watershed Management (Issue 2)

(a) How does the proposed action affect water quality?

(b) What management actions should be taken to restore the hydrologic function of deteriorated stream channels?

Sensitive Species (Issue 3)

(a) How would the proposed action affect sensitive species (plant & animal) in the project area?

Wildlife Management (Issue 4)

(a) How would the proposed grazing systems affect elk distribution and forage utilization?

(b) What are the effects of the proposed action on fish and their habitats?

(c) How would the proposed action affect Management Indicator Species?

Land Uses (Issue 5)

(a) How would the unauthorized grazing along the National Forest boundary be reconciled?

Fire (Issue 6)

(a) What are the effects of fire management practices on available forage for wildlife and livestock?

(b) How would fire management practices affect the landscape?

(c) How can fire management be implemented to maintain ecosystems in a productive and healthy state?

Social and Economic (Issue 7)

(a) How would the proposed action affect the local economies and ranching culture of the Castle Mountains?

(b) How would changes in livestock numbers or classes affect the permittees' operation or financial situation?

(c) What are the effects of the proposed actions on permittees and government expenditures and income?

The DEIS will be filed with the Environmental Protection Agency (EPA) and a notice of availability of the DEIS published in the **Federal Register**. It is estimated that the DEIS will be available for public review in January 1994.

The comment period on the DEIS will be for 45 days from the date of publication in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS) may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by June, 1994. The Forest Service will respond in the FEIS to the comments received on the DEIS. John D. Gorman, Forest Supervisor for the Lewis and Clark National Forest, the responsible official for this EIS, will make a decision regarding this proposal after considering the comments, responses, and environmental consequences discussed in the FEIS as well as applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The Forest Supervisor's address is: 1101 15th St. N., Box 869, Great Falls, MT 59403.

Dated: July 19, 1993.

**John D. Gorman,**

*Forest Supervisor, Lewis and Clark National Forest.*

[FR Doc. 93–18046 Filed 7–28–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40-87]

**Foreign-Trade Zone 66—Wilmington, North Carolina; Withdrawal of Application for Subzone Status for Carolmet, Inc.**

Notice is hereby given of the withdrawal of the application submitted by the Department of Commerce of the State of North Carolina, grantee of FTZ 66, requesting special-purpose subzone status for the germanium lens blank manufacturing operation of Carolmet, Inc., located in Scotland County, North Carolina. The application was filed on December 1, 1987 (52 FR 47438, 12/14/87).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: July 21, 1993.

Dennis Puccinelli,

*Acting Executive Secretary.*

[FR Doc. 93-18134 Filed 7-28-93; 8:45 am]

BILLING CODE 3510-DS-P

[Docket 32-93]

**Foreign-Trade Zone 38—Spartanburg County, SC; Application for Subzone, BMW Manufacturing Corporation Plant, (autos) Spartanburg County, South Carolina**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting special-purpose subzone status for the automobile manufacturing plant of the BMW Manufacturing Corporation (BMWMC) (subsidiary of BMW AG, Germany), located in Spartanburg County, South Carolina. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 19, 1993.

The proposed subzone would be located at the new BMW plant at Interstate Highway 85 and South Carolina Highway 101, adjacent to the Greenville-Spartanburg Airport in Spartanburg County, South Carolina, some seven miles west of Spartanburg. The facility (200 acres, 1.7 million sq. ft.), currently under construction, will directly employ some 1,900 workers to produce up to 219,000 compact automobiles (various models) annually, displacing models that are currently imported from Germany. The application indicates that foreign-sourced parts and materials may represent up to 50 percent of the finished autos' material value. Foreign subcomponents and parts to be admitted to the proposed subzone include: Engines and transmissions (and parts thereof), mirrors, steel mill products, items of plastic/rubber, wiring harnesses, fasteners, steel springs, bearings, lamps, and instruments (duty rate range: 3.1–10.0%). The finished autos would be sold in the U.S. and exported.

Zone procedures would exempt BMWMC from Customs duty payments on the foreign items used in export production. On domestic sales, the company would be able to choose the duty rate that applies to finished autos (2.5%) for the foreign material inputs noted above. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 27, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 12, 1993).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 150–A West Phillips Road, Greer, SC 29650.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitutional Avenue, NW., Washington, DC 20230.

Dated: July 22, 1993.

Dennis Puccinelli,

*Acting Executive Secretary.*

[FR Doc. 93-18135 Filed 7-28-93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A-421-805]

**Initiation of Antidumping Duty Investigation: Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Lori Way or Jeffery B. Denning, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0656 and 482–4194, respectively.

INITIATION OF INVESTIGATION:

**The Petition**

On July 2, 1993, we received a petition filed in proper form by E.I. Du Pont de Nemours & Company (petitioner). Petitioner filed supplements to the petition on July 19, 20, and 21, 1993, pursuant to 19 CFR 353.12(e). In accordance with 19 CFR 353.12, petitioner alleges that aramid fiber formed of poly para-phenylene terephthalamide (PPD–T aramid) from the Netherlands is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner states that it has standing to file the petition because it is an interested party as defined under section 771(9)(C) of the Act, and because the petition is being filed on behalf of the U.S. industry producing the product subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

**Scope of Investigation**

The merchandise covered by this investigation is all forms of poly para-phenylene terephthalamide aramid fiber (PPD–T aramid) from the Netherlands. This includes PPD–T aramid fiber in the form of filament yarn, staple, pulp (wet or dry), non-wovens, chopped fiber and floc. PPD–T aramid is classifiable under subheadings 5402.10.3020, 5402.10.3040, 5402.32.3000, 5503.10.0000 and 5601.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS numbers are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

**United States Price and Foreign Market Value**

Petitioner originally supplied U.S. and foreign price quotes on six different PPD–T aramid products. The foreign prices were obtained from six European countries, including the Netherlands. Petitioner provided non-Netherlands prices because, petitioner claims, the home market is not viable and because not all of these six products are sold in the Netherlands or any other single European country. Further, based upon its claim that all home market prices are below the cost of production (COP), petitioner relied only upon constructed value for its estimate of foreign market value (FMV) for the six PPD–T aramid products. Pursuant to a request from the Department, petitioner provided a price-to-price comparison for the one product for which it has provided a Dutch price, 2160 denier PPD–T aramid yarn. Because we have rejected petitioner's allegation of sales below the COP (see **Sales Below the Cost of Production,** below), the margin upon which we are initiating this investigation is based on a price-to-price comparison of 2160 denier PPD–T aramid yarn.

Petitioner based United States Price (USP) on exporter's sales price (ESP), in accordance with section 772(c) of the Act. Petitioner based USP for sales of 2160 denier PPD–T aramid yarn on a call report of U.S. prices offered to U.S. consumers of this product. Petitioner made deductions for U.S. selling expenses, foreign inland freight, ocean freight, U.S. duty charges, and credit expenses. We rejected the number of credit days petitioner used in calculating credit expenses, using instead the terms reported in the call report. We also rejected petitioner's deduction for U.S. inland freight because petitioner provided insufficient evidence demonstrating that foreign producers incur this cost.

For FMV, we have utilized petitioner's reported price for sale in the Netherlands of 2160 denier PPD–T aramid yarn. Petitioner based this price on a call report of prices offered to Dutch consumers of this product. Petitioner made deductions for indirect selling expenses, foreign inland freight, and credit expenses. Petitioner converted this price to U.S. dollars using the average of the exchange rates in effect during the period of investigation. We rejected that conversion, and instead used the exchange rate in effect during the first quarter for which the U.S. offer for sale of 2160 denier yarn was effective.

The price-to-price dumping margin alleged by petitioner and adjusted by the Department for 2160 denier PPD–T aramid yarn is 43.43 percent.

**Home Market/Third Country Sales Below the Cost of Production**

Petitioner alleges that respondent is selling the subject merchandise in the home market/third country below its COP. We have requested additional clarification, recalculation, and documentation necessary to initiate a cost investigation. Consequently, for purposes of this initiation, the Department has rejected petitioner's allegation that home market/third country sales are below COP. In accordance with 19 CFR 353.31(c)(i), petitioner will have until 45 days prior to the scheduled date of the Department's preliminary determination in this investigation to perfect and renew this allegation.

**Initiation of Investigation**

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether a petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioners supporting the allegation.

We have examined the petition on PPD–T aramid from the Netherlands and have found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of PPD–T aramid from the Netherlands are being, or are likely to be, sold in the United States at less than fair value.

**ITC Notification**

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of this action and we have done so.

**Preliminary Determination by the International Trade Commission**

The ITC will determine by August 16, 1993, whether there is a reasonable indication that imports of PPD–T aramid from the Netherlands are materially injuring, or threaten material injury to, a U.S. industry. Pursuant to section 733(a) of the Act, a negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 22, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18137 Filed 7–28–93; 8:45 am]

BILLING CODE 3510–DS–P

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[A–570–804]

## Sparklers From the People's Republic of China: Adverse Decision and Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance With Decision Upon Remand

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** July 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2613.

**SUMMARY:** On May 7, 1993, the Court of International Trade (CIT) affirmed the results of remand in this case. As a result, the Department of Commerce (the Department) is publishing this notice of adverse decision, and is ordering suspension of liquidation and collection of cash deposits as specified. The CIT's decision was not appealed. Thus, the Department will further instruct the U.S. Customs Service as to liquidation of entries in accordance with the results of this remand.

**BACKGROUND:** On May 6, 1991, the Department published its final determination that sparklers from the People's Republic of China were being sold at less than fair value. See, Final Determination of Sales at Less Than Fair Value: Sparklers From the People's

Republic of China, 56 FR 20588 (Dept. Comm. 1991).

On June 18, 1991, the Department published an antidumping duty order on Sparklers From the People's Republic of China, 56 FR 27946 (Dept. Comm. 1991). Elkton Sparkler Company, a domestic manufacturer, filed an action contesting the results of the final less-than-fair-value (LTFV) determination. Shortly thereafter, the CIT granted a joint motion for remand by plaintiff and defendant to have the Department conduct verifications of the questionnaire responses submitted by Guangxi Native Produce Import and Export Corporation, Beihai Fireworks and Firecrackers Branch (Guangxi), and Jiangxi Native Produce Import and Export Corporation, Guangzhou Fireworks Company (Jiangxi). Jiangxi did not permit verification of its questionnaire response. However, the Department did conduct a verification of Guangxi's questionnaire response.

The Department determined at verification that Guangxi did not properly report its factors of production for caddies (small cardboard boxes in which sparklers are packed). The Department declined to use factors of production information on caddies proffered by Guangxi at verification; instead, the Department resorted to the use of the best information available, in accordance with section 776(b) of the Tariff Act of 1930, as amended (the Act).

On June 15, 1992, the Department issued, but did not publish, the results of the remand. The remand results are available in the Import Administration's Central Records Unit located in room B–099 of the Main Commerce Building. The remand determination was challenged at the CIT by Guangxi. On May 7, 1993, the CIT dismissed the action, holding that the Department had acted reasonably and in accordance with law. See, Slip Op. 93–69. The CIT's decision was not appealed.

**Notice of Adverse Decision**

In accordance with *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department is publishing this notice of determination adverse to its original determination, and will adjust the cash deposit rates for Guangxi, Jiangxi, and "all others". In addition, in the remand results, we determined that critical circumstances exist with respect to imports of sparklers from the People's Republic of China (PRC) exported by Jiangxi and all other companies (except Guangxi and Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation (Hunan)). Therefore, in accordance with 19 CFR 353.16(d) and section 735(c)(4)(C) of the Act, with respect to Jiangxi and all other companies (except Guangxi and Hunan), we hereby order the suspension of liquidation on all entries of subject merchandise entered or withdrawn from warehouse on or after 90 days before December 17, 1990, the date of the Department's preliminary determination.

**Continuation of Suspension of Liquidation**

In accordance with 19 CFR 353.15(a)(3)(i), we are directing the United States Customs Service to continue to suspend liquidation of all entries of sparklers from the PRC, as defined in the "Scope of Investigation" section of this notice, exported by Guangxi that are entered, or withdrawn from warehouse, for consumption on or after December 17, 1990, the date of publication of the preliminary determination in the **Federal Register**. For Jiangxi and all other exporters of sparklers from the PRC, we are directing the United States Customs Service to suspend liquidation of all entries, entered or withdrawn from warehouse on or after 90 days before December 17, 1990. The Customs Service shall require a cash deposit equal to the estimated amounts by which the foreign market value of subject merchandise from the PRC exceeds the U.S. price, as shown below. We will further instruct the Customs Service as to the liquidation of entries in accordance with the results of this remand.

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Guangxi Native Produce Import & Export Corporation, Beihai Fireworks and Firecrackers Branch .. | 41.75 |
| Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company ..... | 93.54 |
| All others ..... | 93.54 |

This suspension of liquidation will remain in effect until further notice.

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our critical circumstances determination.

Dated: July 20, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18136 Filed 7–28–93; 8:45 am]

BILLING CODE 3510-DS-P

## National Telecommunications and Information Administration

### Spectrum, Planning and Policy Advisory Committee; Meeting

**AGENCY:** National Telecommunications and Information Administration, DOC.

**ACTION:** Notice of meeting, Spectrum Planning and Policy Advisory Committee (SPAC).

**SUMMARY:** In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on September 27, 1993 from 9 a.m. to 4:30 p.m. in room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balance in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Discussion of the New Charter;
(2) Report of Progress in CITEL Conferences;
(3) Report on the NTIA Approach to Reallocate 200 MHz of Spectrum;
(4) Discussion of OSM Vision and Configuration Steering Group;
(5) Report on the NTIA Strategic Spectrum Planning.

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before September 15, 1993. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20

seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, room 4090, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4487.

Dated: July 23, 1993.

Richard A. Lancaster,

*Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.*

[FR Doc. 93–18054 Filed 7–28–93; 8:45 am]

BILLING CODE 3510–60–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

July 23, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53473, published on November 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

July 23, 1993

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber appparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 30, 1993, you are directed to amend further the directive dated November 4, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 338/339 | 1,825,635 dozen. |
| 340/640 | 987,720 dozen of which not more than 543,245 dozen shall be in Categories 340–Y/640–Y [2]. |
| 341/641 | 645,778 dozen. |
| 638/639 | 1,559,095 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–18133 Filed 7–28–93; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Advanced Planning Grants for Communities Economically Dependent on DoD Spending

AGENCY: Office of Economic Adjustment (OEA), DoD.

ACTION: Notice of funding availability for advanced planning grants for communities economically dependent on DoD spending.

SUMMARY: Over the next several years, DoD will significantly reduce the number of military and civilian personnel. In addition, defense industry employment will also experience substantial reductions. The effects will be felt in communities throughout the nation. The Defense Conversion Commission in its report "Adjusting To The Drawdown," points out that, "Although it is not possible to predict the effects that the planned drawdown will have on specific communities, it is possible to identify which communities, in general, might be particularly vulnerable to economic dislocation if defense spending were to be reduced abruptly. * * * Most communities are not highly vulnerable to reductions in defense spending. However, those communities that are dependent on defense spending are, by definition, potentially more vulnerable to defense reductions."

To help minimize the potential economic impacts resulting from reductions in DoD spending, the OEA has statutory authority to award Advanced Planning Grants (only) in Fiscal Year (FY) 1994 to help develop community adjustment and diversification strategies in response to possible defense related job losses. Advanced Planning Grants may be made available to States and local governments that can demonstrate an economic dependence on military, DoD civilian, and defense industry employment. Advanced Planning Grants are authorized under section 4301 of the Defense Conversion, Reinvestment, and Transition, Assistance Act of 1992, (Division D of the National Defense Authorization Act for Fiscal Year 1993) which states:

"Advanced Adjustment Planning—During fy 1993, the Secretary of Defense may make grants and other assistance available under 2391(b) of title 10 U.S.C., to assist a State or local government in planning community adjustment and economic diversification even though the State or local government currently fails to meet the criteria for assistance under such section if the Secretary determines that a substantial portion of the

economic activity or population of the geographic area to be subject to the adjustment or diversification planning is dependent on Department of Defense expenditures."

**DATES:** Applications for grants will be accepted commencing August 1, 1993. The closing date for receipt of applications is September 15, 1993. Selections will be made by September 30, 1993.

**ADDRESSES:** Applications should be mailed to Mr. Paul J. Dempsey, Director, Office of Economic Adjustment, ODUSD (ES), 400 Army Navy Drive, suite 200, Arlington, VA 22202–2284.

**ELIGIBLE APPLICANTS:** States, local governments, sub-state jurisdictions, and regional organizations, or States on behalf of local governments are eligible applicants if they can demonstrate economic dependence on DoD employment (military, DoD civilian, and defense industry employees). States applying on behalf of local governments should include evidence of support from elected officials of the local government.

Communities affected by the proposed closure or realignment of DoD installations pursuant to the Base Closure and Realignment Act of 1993 may apply to OEA for grant under OEA's Community Planning Assistance Grant Program.

Private non-profit organizations are not eligible for Advanced Planning Grants.

**ELIGIBILITY ACTIVITIES:** Advanced Planning Grants may be used for salaries and benefits of personnel to administer the planning to develop community adjustment and economic diversification strategies, and/or to procure the services of an expert or consulting firm to develop community adjustment and economic diversification strategies. Federal grant funds may not be used to cover the costs of salaries and benefits of existing personnel.

**FUNDING AVAILABILITY:** The Federal share of the grant may be up to $100,000. A non-Federal cash match of at least 40 percent of the project is required. Only one Advanced Planning Grant will be awarded to a State, local government, sub-state jurisdiction, or a State on behalf of a local government. A total of $2,000,000 is available.

**SELECTION CRITERIA:** An evaluation of information submitted on each of the following factors will be the basis for selecting the winning proposals:

*1. Need Criteria*

(a) The level of economic dependence on military, DoD civilian, and defense industry employment.

(b) The probability of reductions in defense employment in the local area and potential impacts.

(c) The average net non-DoD job growth/loss between 1987 and 1992.

*2. Proposed Strategy/Activities*

(a) An appropriate and clear project design that will lead to the near-term generation of non-DoD jobs.

(b) Innovative quality of the proposed approach to stimulating economic adjustment or economic diversification.

(c) The relationship of the proposed activities to other planning efforts to undertake and promote adjustment and/or diversified non-DoD economic activity.

(d) The ability to stimulate private and public investment for economic and community development purposes.

(e) The capacity of the organization and qualifications of the staff to undertake the planning.

*3. Budget*

(a) A reasonable, itemized budget for the proposed planning.

(b) The level of non-Federal cash match above the mandatory 40 percent.

**PROPOSAL SUBMISSION PROCEDURES:** An original and four copies of the proposal shall be submitted. The proposal shall consist of:

1. Statement of Need.

2. Technical Proposal—which should generally follow the format outlined here:

(a) Proposed Project: Provide a comprehensive description of the proposed advanced planning—no more than ten pages, how the work will be accomplished, by whom, its responsiveness to the problems resulting from potential reductions in DoD employment, and the accomplishments to be achieved. If accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments.

(b) Coordination and Linkages: Describe the ways which the project will be integrated with other local, State, Federal, and private sector resources and programs.

(c) Administration Plan: Explain how the work will be administered. List each organization, key individuals, or firms that will work on the project along with a short description of their experience, and the nature of their effort or contribution and associated costs. Provide a schedule of milestones and deliverables.

3. The financial proposal. It should contain:

(a) Standard Form (SF) 424, "Application for Federal Assistance."

(b) SF424A, "Budget." The budget shall include a separate page, with a detailed budget showing cost breakdowns with OEA and non-OEA costs presented in separate columns.

**FOR FURTHER INFORMATION CONTACT:** Ms. Merle Thomas, Office of Economic Adjustment. Telephone (703) 614–8529.

Dated: July 23, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–18028 Filed 7–28–93; 8:45 am]

BILLING CODE 5000–04–M

## Planning Grants To Respond to Economic Impacts From Loss of Jobs

**AGENCY:** Office of Economic Adjustment (OEA), DoD.

**ACTION:** Notice of funding availability for planning grants to States to respond to actual or potential economic impacts from the loss of military, DoD civilian, or defense industry-related jobs.

**SUMMARY:** The reductions in the DoD budget could have significant adverse economic effects on some States and local governments. The National Governors' Association's publication, A Governor's Guide to Economic Conversion, notes that, "In some States defense-related spending accounts for a large portion of total State spending. In others, a significant percentage of their workforce is employed in defense-related occupations. Still others will experience the loss of both civilian and military jobs due to base closing and military reductions. Even States with a lower share of defense employment may feel significant impacts due to regional and community dependence on military bases and defense procurement contracts."

OEA will award grants to States to help States and local governments minimize the adverse effects of military base closures, realignments and reductions in defense industry employment. The objective of the program is to: (a) Enhance States' capacities to assist defense-impacted communities, businesses, and workers; (b) help States to better support local adjustment and diversification initiatives, and (c) stimulate cooperation between and among State-wide and local adjustment and diversification efforts.

OEA grants to States are authorized under section 4301 of the Defense Conversion, Reinvestment, and

Transition Assistance Act of 1992, (Division D of the National Defense Authorization Act for Fiscal Year 1993).

**DATES:** Applications for grants will be accepted commencing August 1, 1993. The closing date for receipt of applications is September 15, 1993. Selections will be made by September 30, 1993.

**ADDRESSES:** Applications should be mailed to Mr. Paul J. Dempsey, Director, Office of Economic Adjustment, 400 Army Navy Drive, suite 200, Arlington, VA 22202–2284.

**ELIGIBLE APPLICANTS:** States or State agencies affected or potentially affected by base closures, realignments, or reductions in defense spending may apply. A State's submission must be signed by the Governor.

**ELIGIBLE ACTIVITIES:** Funds may be used to hire additional personnel and/or to retain the services of an expert or consulting firm to:

1. Develop a State-wide adjustment or diversification strategy responding to base closures, realignments, or reductions in defense spending and/or;
2. Build staff capacity to assist or coordinate assistance to defense-impacted communities, firms, and/or workers and/or;
3. Provide support in the design and development of industrial modernization and diversification services to small and medium-sized defense-related businesses and/or;
4. Support State and local defense adjustment and diversification initiatives.

Federal grant funds may not be used to cover the costs of:

1. Salaries and benefits of existing staff.
2. Planning that duplicates existing or on-going planning.
3. State indirect charges.

The grant period may not exceed 18 months.

**FUNDING AVAILABILITY:** The Federal share of the grant may be up to $200,000. A non-Federal cash match of at least 25 percent of the project is required. A State may receive only one grant. A total of $2,500,000 is available.

**SELECTION CRITERIA:** An evaluation of information submitted on each of the following factors will be the basis for selecting the winning proposals:

*1. Need Criteria*

(a) The actual and potential impacts of the base closures and realignments or reductions in defense industry employment.

(b) The net annual non-DoD job growth/loss between 1987 and 1992.

*2. Existing State Adjustment Efforts*

(a) Financial and technical support to local adjustment and diversification initiatives.

(b) Involvement of State Legislatures and local governments in state-wide adjustment and diversification strategy development.

*3. Proposed Strategy/Activities*

(a) The presentation of an appropriate and clear project design that responds to the state's defense adjustment needs.

(b) Innovative quality of the proposed approach to stimulating economic adjustment or diversification.

(c) The relationship of the proposed activities to local efforts to assist defense-impacted and defense-dependent communities, businesses, and workers.

(d) The state's capacity and qualifications of the staff to undertake the project.

*4. Budget*

(a) A reasonable, itemized budget for the proposed planning.

(b) The level of non-Federal cash match above the mandatory 25 percent.

**PROPOSAL SUBMISSION PROCEDURES:** An original and four copies of the proposal shall be submitted. The proposal shall consist of:

1. Statement of Need.
2. Technical Proposal—which should generally follow the format outlined here:

(a) Proposed Project: Provide a comprehensive description of the proposed advanced planning—no more than ten pages, how the work will be accomplished, by whom, its responsiveness to the problems resulting from potential reductions in DoD employment, and the accomplishments to be achieved. If accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments.

(b) Coordination and Linkages: Describe the ways which the project will be integrated with other local, State, Federal, and private sector resources and programs.

(c) Administration Plan: Explain how the work will be administered. List each organization, key individuals, or firms that will work on the project along with a short description of their experience, and the nature of their effort or contribution and associated costs. Provide a schedule of milestones and deliverables.

3. The financial proposal. It should contain:

(a) Standard Form (SF) 424, "Application for Federal Assistance."

(b) SF424A, "Budget." The budget shall include a separate page, with a detailed budget showing cost breakdowns with OEA and non-OEA costs presented in separate columns.

**FOR FURTHER INFORMATION CONTACT:** Ms. Merle Thomas, Office of Economic Adjustment. Telephone (703) 614–8529.

Dated: July 23, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–18027 Filed 7–28–93; 8:45 am]

BILLING CODE [illegible]

## Department of the Army

### Inclusion of DOD Non-Appropriated Fund (NAF) Employees in the DOD Personal Property Shipping and Storage Program

**AGENCY:** Military Traffic Management Command (MTMC), DOD.

**ACTION:** Notice.

**SUMMARY:** MTMC provided a comment period for the above action in a Federal Register notice published in Volume 58, Number 36, February 25, 1993, page 11401. This notice advised that the domestic personal property rate solicitation would include provisions for NAF employees. Comments have been reviewed. The rate solicitation will be changed as follows: Page 1, general Requirements and conditions, paragraph 8, Certification, 1st sentence, "Provisions of this Domestic Personal Property Rate Solicitation, hereafter referred to as "Rate Solicitation," apply in conjunction with the individual Rate Records/Tenders filed by carriers for the entire DOD, including civilian appropriated and non-appropriated fund employees, and United States Coast Guard sponsored household goods shipments".

**FOR FURTHER INFORMATION CONTACT:** Ms. Janet Neimer, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050; Tel: (703) 756–1190.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–18049 Filed 7–28–93; 8:45 am]

BILLING CODE 3710-08-M

## Defense Information Systems Agency

### Membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board

**AGENCY:** Defense Information Systems Agency.

**ACTION:** Notice of membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board.

**SUMMARY:** This notice announces the appointment of members of the Senior Executive Service Performance Review Board of the Defense Information Systems Agency. The publication of Performance Review Board membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Information Systems Agency.

**EFFECTIVE DATE:** August 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pamela J. Horvath, SES Program Manager, Civilian Personnel Division (BC), Center for Agency Services (BA), Defense Information Systems Agency, Washington, DC 20305–2000, (703) 692–2792.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the Senior Executive Service Performance Review Board. The members will serve a one-year renewable term, effective August 1, 1993.

James A. Rhoads,
*Civilian Personnel Officer, DISA.*

Michael F. Slawson, Director, Center for Agency Services.
George J. Hoffman, Comptroller.
Donovan K. Leydea, Chief of Staff.
Thomas R. Epperson, Acting Director, Joint Data Systems Support Center.
David T. Signori, Jr., Associate Director.
Warren P. Hawrylko, Acting Director, Joint Interoperability Engineering Organization.
Dennis W. Groh, Deputy Director, Acquisition Management.
Clyde Jeffcoat, Director, Defense Information Technology Services Organization.
Sarah Jane League, Chief, Information Officer.
BGEN Bruce J. Bohn, Director, Defense Network Systems Organization.
Steven P. Schanzer, Deputy Director for Acquisition.
BGEN John M. Watkins, Jr., Deputy Director for Operations, Customer Relations and Service.

[FR Doc. 93–18039 Filed 7–28–93; 8:45 am]
BILLING CODE 3510–05–M

## DEPARTMENT OF EDUCATION

### Requests for Comments on Improving the Regulatory Process

**AGENCY:** Department of Education.

**ACTION:** Request for comments on improving the regulatory process.

**SUMMARY:** The Department of Education is exploring ways to improve the process for promulgating competitive discretionary grant regulations, including regulatory priorities, so that discretionary grants may be issued in a more timely manner. Comments are solicited from applicants for discretionary grants, grantees, and other interested parties about their participation in the regulatory process and the effect of that process on the award of discretionary grants. This request for comments in the result of the Department's efforts to improve services to the grant community.

**DATES:** Comments are requested by September 13, 1993, so they may be considered in the Department's analysis.

**ADDRESSES:** Comments in response to this notice should be addressed to Sylvia Wright, Chair of the Discretionary Grants Regulations Team, room 2059 FB 6, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6246.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Wright, at the above address or call her at (202) 401–0360. Individuals who sue a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Department of Education chartered a Quality Improvement Team to make recommendations about ways the Department might improve the process for promulgating discretionary grant regulations, including regulatory priorities, so that awards made after the development of the regulations could be made in a more timely manner. The efforts of this Team are consistent with the objectives of the Task force to Reinvent Government that is headed by the Vice President. The Team is examining the Department's current process for promulgating regulations and priorities and its effect on when recipients of discretionary grants receive their awards. The Team is now gathering data about the effect of the current regulatory process on the needs of applicants and grantees. The following questions are designed to elicit useful data from applicants, grantees, and other interested parties.

The Department will consider all timely comments received and does not request commenters to identify themselves. The data requested in this notice regarding the individual or type of organization commenting and its experience with the ED regulatory process are needed for analysis of the general effect of that process on individuals and entities.

#### General

1. Please indicate the kind of organization you represent or your individual perspective, e.g. Local educational agency, State educational agency, Institution of higher education, Individual teacher, Individual student, Private nonprofit agency, Other (please specify).

2. Please describe your experience over the past three years in applying for and receiving competitive grants.

3. How do you find out about the Department's grant competitions and regulations—by reading the Federal Register? By some other means?

4. Is there some process other than publication in the Federal Register that the Department could use to notify you of grant competitions and regulations? What would that process be?

#### Grant Applications and Awards

A number of statutory and administrative factors affect the timing of the Department's grant competi. ons and awards, including whether the grant must be timed to coincide with the school year. Answers to the following questions will help to identify where the timing of those activities may not serve the needs of grant applicant and grantees.

5. How much time do you need to prepare a grant application—would you need more or less time, depending upon the type of grant (Training, Research, Demonstration, Service, Capacity Building) for which you applied?

6. What would be the best time of year for the Department to solicit grant applications? Why? Would the type of grant award for which you apply make any difference in the time of year that the Department should solicit applications?

7. When is the latest date that you can star the project(s) for which you applied? Why? When is the latest date that you need to be notified of that (those) grant award(s)? Why? Would the type of grant award for which you apply make any difference?

#### Development of Program Regulations

The Department conducts all of its grant competitions through regulations that identify, among other things, the various criteria that will be used to evaluate grant applications. some programs adopt the general criteria in part 75 of the Education Department General Administrative Regulations

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(EDGAR), while other programs have their own specific regulations that modify those EDGAR criteria. Whenever a program needs new regulations to administer a grant competition, the Department publishes them in the **Federal Register** only after giving the public an opportunity to comment upon proposed regulations. Generally, the Department cannot proceed with a grant competition until completing the process of developing regulations.

Answers to the following questions will help to identify the usefulness of the regulatory process to grant applicants and grantees.

8. In general, do the Department's regulations provide you wish enough information about the program to help you prepare your project applications? If not, why not?

9. If you have commented during the past three years on a proposed regulation that would govern a competitive grant program, how important have you found the public comment period? Extremely important? Somewhat important? Not important? Why?

10. Would you be willing to give up an opportunity to comment on proposed regulations in order to ensure earlier grant awards? If so, under what circumstances?

**Development of Absolute Funding Priorities**

Grant competitions under many of the Department's programs are open to any applicant whose project is consistent with the program's objectives. However, in some cases, the Department chooses to target program funds in specific program areas, and does not consider applications that do not address those areas. Where it does so, the Department establishes the narrower scope of projects that it will fund through "absolute funding priorities." These absolute priorities are announced as final in the **Federal Register** before the grant competition can begin, and after the Department reviews any public comment that it receives in response to a published notice of proposed absolute priorities.

If you applied for a grant in the past three years that was subject to an absolute funding priority, please answer the following questions. Your answers will help the Department to identify how its use of absolute funding priorities should be improved.

11. Did the absolute priority notice adequately explain those activities that the Department would fund? If not, why not?

12. Do you believe that the absolute priorities that the Department established for the program are consistent with important needs of your community or State? Please explain.

13. If you have commented during the past three years on a proposed priority that would govern a competitive grant program, how important have you found the public comment period? Extremely important? Somewhat important? Not important? Why?

14. Would you be willing to give up an opportunity to comment on proposed absolute priorities in order to ensure earlier grant awards? If so, under what circumstances?

Dated: July 22, 1993.

**Madeleine M. Kunin,**

*Deputy Secretary.*

[FR Doc. 93–18058 Filed 7–28–93; 8:45 am]

BILLING CODE 4000–01–M

## National Assessment Governing Board; Meeting

**AGENCY:** National Assessment Governing Board.

**ACTION:** Amendment to notice of a partially closed meeting.

**SUMMARY:** This amends the notice of a partially closed meeting of the National Assessment Governing Board published in vol. 58, no. 136, Page 38559.

**DATE:** July 21, 1993.

**TIME:** August 6, 1993, Executive Committee, 7 a.m.–8:30 a.m. (open); 8:30 a.m.–8:45 a.m. (closed).

**LOCATION:** Ritz-Carlton Hotel, 1700 Tysons Boulevard, Mclean, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC 20002–4233.

**SUPPLEMENTARY INFORMATION:** On August 6, the Executive Committee of the National Assessment Governing Board will meet in partially closed session from 7 a.m. to 8:45 a.m. The meeting will be closed to the public from 8:30 a.m. to 8:45 a.m. to permit the committee to discuss the qualifications of current Board members to serve as Chairman of NAGB. Based on these discussions, the Board will recommend a Chairman to the Secretary. This session will disclose information of a personal nature where disclosures would constitute a clearly unwarranted invasion of personal privacy, and as such, is protected by exemption (6) of section 552b(c) of Title 5 U.S.C.

The period 7 a.m. to 8:30 a.m., the meeting will be open to the public.

A summary of the activities of the closed session and related matters, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b, will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: July 26, 1993.

**Roy Truby,**

*Executive Director.*

[FR Doc. 93–18066 Filed 7–28–93; 8:45 am]

BILLING CODE 4000–01–M

## Non-Competing Continuation Grant Award Process; Meeting

**AGENCY:** Department of Education.

**ACTION:** Notice of public meeting on non-competing continuation grant award process.

**SUMMARY:** The Department of Education will conduct a meeting (hearing) to solicit customer feedback on the current process for making non-competing continuation awards in discretionary grant programs.

**DATES:** The one-day meeting will be held from 8:30 a.m. to 12 noon on August 18, 1993. If you are unable to attend, the Department will accept written comments until August 27, 1993.

**ADDRESSES:** The meeting will be held at the GSA Regional Office Building Auditorium located at 7th and D Streets SW., Washington, DC (entrance on the D Street side). Written comments should be sent to Carol Chelemer, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6439.

**FOR FURTHER INFORMATION CONTACT:** Carol Chelemer, Office of Elementary and Secondary Education, U.S. Department of Education. Telephone: (202) 401–1258. Individuals who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Department uses non-competing continuation grant awards to continue funding after the first year of a project for the remaining years of a multi-year project that was initially selected on a competitive basis. During the meeting participants are invited to present testimony on all aspects of the non-competing continuation award process, including but not limited to—

- Paperwork requirements for the grantee;
- Timing of the request for a continuation application;
- Content of the continuation application;
- Timing of the notification of a continuation award;
- Length of the process;
- Interactions with Department staff regarding the process; and
- Alternative structures for accomplishing the same ends.

Representing the Department will be the seven members of the Quality Improvement Team for Non-Competing Continuations.

Although the meeting is open, you are encouraged to pre-register if you plan to present testimony. To pre-register please contact Tammy Connelly, Office of Elementary and Secondary Education, U.S. Department of Education. Telephone: (202) 401–0616. It would be helpful to submit your testimony in writing at the meeting.

Dated: July 22, 1993.

**Madeleine M. Kunin,**

*Deputy Secretary.*

[FR Doc. 93–18057 Filed 7–28–93; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Notice of Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for the Proposed York County, Pennsylvania, Cogeneration Facility

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that DOE intends to prepare an Environmental Impact Statement (EIS) to assess the environmental effects of the construction and operation of a proposed coal-fired cogeneration facility in North Codorus Township, York County, Pennsylvania, and to conduct a public scoping meeting. DOE will prepare such an EIS pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, to evaluate the environmental impacts of the construction and operation of a project proposed by York County Energy Partners, L.P. (YCEP). The proposed project involves the construction and operation of a new coal-fired 250-megawatt electric (MWe) (2,400 tons/day) single-train circulating fluidized bed (CFB) boiler, and a pollution control system consisting of selective non-catalytic reduction (SNCR) for reducing emissions of oxides of nitrogen and a baghouse for reducing emissions of particulate matter. This facility would be constructed adjacent to the P.H. Glatfelter Company paper mill, which would be the purchaser of the steam produced by the proposed project. The generated electricity would be sold to the Metropolitan Edison Company (Met-Ed).

Preparation of the EIS will be in accordance with NEPA, the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE regulations for compliance with NEPA (10 CFR part 1021). The purpose of this Notice is to invite public participation in the process that DOE will follow to comply with NEPA, and to solicit public comments on the proposed scope and content of the EIS.

**INVITATION TO COMMENT AND DATES:** To ensure that the full range of issues related to this proposal is addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Written comments or suggestions to assist DOE in identifying significant environmental issues and the appropriate scope of the EIS will be considered in preparing the draft EIS and should be postmarked by September 24, 1993. Written comments postmarked after that date will be considered to the degree practicable.

DOE will also hold a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The location, date, and time of the scoping meeting are provided in the section of this Notice entitled **SCOPING MEETING.** Written and oral comments will be given equal weight and will be considered in determining the scope of the draft EIS. When the draft EIS is completed, its availability will be announced in the **Federal Register**, and public comments will again be solicited. Comments on the draft EIS will be considered in preparing the final EIS. Requests for copies of the draft and/or final EIS, or questions concerning the project, should be sent to Dr. Suellen A. Van Ooteghem at the address noted below.

**ADDRESSES:** Written comments or suggestions on the scope of the EIS, requests to speak at the scoping meeting, or questions concerning the project, should be directed to: Dr. Suellen A. Van Ooteghem, Environmental Project Manager, U.S. Department of Energy, Morgantown Energy Technology Center (METC), P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304) 284–5443.

Envelopes should be labeled "Scoping for the York EIS."

**FOR FURTHER INFORMATION:** For general information on the EIS process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Tel. (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:**

### Background and Need for the Proposed Action

Under terms of Public Law No. 99–190, Congress provided approximately $400 million to DOE to support the construction and operation of demonstration facilities selected for cost-shared financial assistance as part of DOE's Clean Coal Technology (CCT) Demonstration Program. The CCT projects cover a broad spectrum of technologies having the following in common: (1) All are intended to increase the use of coal in an environmentally acceptable manner, and (2) all are ready to be proven at the demonstration scale.

On February 17, 1986, DOE issued Program Opportunity Notice (PON) Number DE-PSO1–86FE60966 for Round I of the CCT program, soliciting proposals to conduct cost-shared projects meeting the above criteria. In response to the solicitation, 51 proposals were received. From these proposals, nine projects were selected by DOE for negotiation in July 1986, and a list of alternate candidates was established from which replacement selections could be made should any of the original nine not proceed. In November 1990, the Arvah B. Hopkins Circulating Fluidized Bed Repowering Project, proposed by the City of Tallahassee, Florida, was selected from the alternate list. As originally envisioned, this project would have repowered one of the City of Tallahassee's municipally-owned natural gas boilers with advanced circulating fluidized bed combustion "clean coal technology." DOE determined that an EIS would need to be prepared for the project, and published a **Federal Register** Notice of Intent to Prepare an EIS on October 15, 1990 (55 FR 41747). A public scoping meeting was held in the City of Tallahassee on October 30, 1990, and public comments were received. However, in the fall of 1991, the City chose to not move forward with the project based upon economic conditions specific to the proposed repowering.

Accordingly, preparation of the EIS was cancelled, and other potential hosts for the project were considered. The City of Tallahassee indicated its willingness to cooperate with the effort to relocate the project.

Subsequently, DOE agreed to reassign the project to YCEP, a subsidiary of Air Products and Chemicals, Inc., of Allentown, Pennsylvania. The new sponsors had proposed to relocate the project from Tallahassee, Florida, to an industrial site adjacent to the J.E. Baker Company quarry and brick manufacturing operation in York County, Pennsylvania, where it was proposed to operate as a cogeneration facility. Steam produced by the project would have been purchased by the J.E. Baker Company. All other major aspects of the project would have remained unchanged from the original project. In support of this proposed project, a Federal Register Notice of Intent to Prepare an EIS was published on August 11, 1992 (57 FR 35790), a scoping meeting was held by DOE on August 26, 1992, in York, Pennsylvania, and public comments were received.

However, during the summer of 1992, YCEP sought opportunities for air emissions reductions from existing companies in the proposed project vicinity as a means of acquiring an enhanced level of air emissions offsets. Discussions with the P.H. Glatfelter Company (PGC) indicated that the desired level of air emissions reductions could be achieved by the relocation of the project to PGC's Spring Grove paper mill facility, if the proposed YCEP project could provide sufficient steam to largely displace the utilization of an existing Glatfelter coal-fired boiler. (The old boiler would be relegated to standby operation for periods when sufficient steam from the proposed YCEP project might not be available.) Additionally, it was determined that the co-location of the YCEP project with the Spring Grove paper mill would enable YCEP to treat and recycle wastewater from the mill for removal of waste heat from the YCEP plant, thereby greatly reducing the usage of fresh water by the facility.

Accordingly, on February 1, 1993, YCEP and Glatfelter issued a joint statement that they were evaluating the feasibility of relocating the proposed YCEP project to the Spring Grove site. DOE was requested to consider this proposed site change shortly thereafter, and issued its approval on June 23, 1993. DOE has also determined that an EIS would need to be prepared for this proposed project.

The Industrial Participant for the proposed relocated project is YCEP, a subsidiary of Air Products and Chemicals, Inc., of Allentown, Pennsylvania. Other than the location and the treatment and recyclying of wastewater, all other major aspects of the project, including the technology, the technology supplier (Foster-Wheeler Energy Corporation), the 250 megawatt plant size, and the Federal contribution of nearly $75 million would remain unchanged from the original project. However, proposed steam production would increase from 1,725,000 pounds per hour (lb/hr) to 2,100,000 lb/hr, and coal consumption would change from 2,000 tons/day to 2,400 tons/day.

YCEP has requested financial assistance from DOE for the design, construction, and operation of the 250–MWe CFB boiler facility. This project would use bituminous coal from eastern United States mines and have as the project objective the utility-scale demonstration of CFB technology. The proposed project would be a "grass roots" independent power plant in North Codorus Township, York County, southeastern Pennsylvania. The proposed 36-acre site is adjacent to the P.H. Glatfelter Company paper mill. The paper mill would be the purchaser of the steam that would be generated by this project. The proposed site, currently being used for recreational and agricultural purposes, had long been intended for future industrial development by the P.H. Glatfelter Company. As noted in the section of this Notice entitled Identification of Environmental Issues, DOE will evaluate cumulative impacts in the EIS for all important issues in the vicinity of the site. Cost, environmental, and technical data from the project would be developed for use by the utility industry in evaluating this technology as a commercially viable power generation alternative. After the anticipated 24-month demonstration period of operation is concluded, YCEP plans to continue project operation on a commercial basis.

**Proposed Action**

The proposed Federal action is for DOE to provide cost-shared financial assistance to YCEP for the design, construction, and operation of a 250-MWe CFB boiler facility, known as the York County Energy Partners cogeneration facility, to be located adjacent to the P.H. Glatfelter Company paper mill in York County, Pennsylvania. The objective of the proposed project would be to demonstrate utility-scale CFB cogeneration technology, while incorporating a pollution control system for reducing emissions of oxides of nitrogen and a baghouse for reducing emissions of particulate matter.

The total cost of the proposed project is projected to be approximately $380 million, with DOE's share being less than 20 percent, or nearly $75 million. The project would last approximately 105 months, including design, construction, and demonstration. If the outcome of the NEPA review process is favorable, construction currently is projected to start in January, 1995. Operation of the project during the anticipated 24-month demonstration period would provide the information and experience needed to successfully demonstrate CFB technology as a viable alternative to conventional coal-fired power plant technologies. Once DOE's involvement is completed, YCEP plans to continue operating the project on a commercial basis.

The proposed York County Energy Partners cogeneration facility would be located on a 36-acre site in North Codorus Township currently owned by the P.H. Glatfelter Company; however, YCEP would purchase the site prior to construction. The site is bounded to the south by State Route 116, on the east by Kessler Pond, on the west by the existing P.H. Glatfelter Company's processing area for incoming logwood (referred to as the roundwood facility), and on the north by Codorus Creek. The proposed site is vacant and currently used for recreational and agricultural purposes. Topography of the proposed site is generally flat. Landscaping and berming would be incorporated into the facility design to provide an attractive view of the completed facility. A preliminary land development plan has been filed by YCEP with the North Codorus Township Board of Supervisors and is currently under review.

The proposed facility would include the following major subsystems and key components:

- Turbine Bay,
- Switch Yard,
- Water Treatment Building,
- Boiler Room, Sump, and Utility Pump Building,
- Live Coal Storage Area and Coal Unloading Building,
- Raw Water and Condensate Tanks,
- Limestone and Ash Storage Silos,
- Cooling Tower,
- Baghouse, and
- Stack for air emissions.

The proposed project would require the construction of an electric interconnection system and a new 115,000 volt interconnection power line to a Met-Ed owned substation located several miles from the site. Several alternative interconnection arrangements and power line routes are

currently being evaluated by YCEP and the Metropolitan Edison Company.

**Alternatives**

Section 102(2)(C) of NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an impact statement. The term "reasonable alternatives" is not self-defining, but rather must be determined by the underlying legislation. The goals of the proposed Federal action establish the limits of its reasonable alternatives. Congress established a very specific goal for Round I of the CCT Program, i.e., to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable, coal technologies.

Congress also directed DOE to pursue the goals of the legislation by means of partial funding (cost-sharing) of projects owned and controlled by non-Federal government sponsors. This statutory requirement places DOE in a much more limited role than if the Federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted, because the agency must focus on alternative ways to accomplish its purpose which reflect both the application before it and the functions it plays in the decisional process. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

A Final Programmatic Environmental Impact Statement (PEIS) for the CCT Program was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) The "no action" alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies with flue gas desulfurization and oxides of nitrogen controls to meet New Source Performance Standards would continue to be used; and (2) the proposed action, which assumed that CCT projects were selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

Based on the foregoing principles and the analysis developed in the PEIS, the only reasonable alternative to the proposed action of providing cost-shared funding support for the YCEP project is the no-action alternative. In the no-action case, the project would not contribute to the objective of the CCT program, which is to make available to the U.S. energy marketplace a number of advanced, more efficient, economically feasible, and environmentally acceptable coal technologies. The facility probably would not be constructed and operated; therefore, neither potential environmental impacts related to facility construction and operation, nor potential environmental benefits resulting from commercialization of the technology, would occur.

DOE acknowledges its obligation to examine reasonable alternatives which are beyond its immediate authority to implement, but which could also meet the objectives of the CCT Program. DOE is requesting public comment on reasonable alternatives to the proposed YCEP cogeneration facility CFB Demonstration Project.

**Identification of Environmental Issues**

The following issues associated with the construction and operation of the proposed project will be considered in detail by DOE during its evaluation. This list is neither intended to be all inclusive, nor is it a predetermination of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

(1) Air Quality: The effects of air emissions within the region surrounding the site.

(2) Water Resources and Water Quality: The qualitative and quantitative effects on water resources and other water users in the region.

(3) Wetlands: Wetlands potentially impacted by facility construction and operation.

(4) Socioeconomics: Potential bearing on communities that might be affected by the project, as well as consumer costs associated with this project.

(5) Land Use: The potential consequences to land, utilities, transportation routes, and traffic patterns resulting from the project as well as issues related to prime farmlands.

(6) Solid Waste: The environmental effects of generation, treatment, transport, storage, and disposal of solid wastes.

(7) Biological Resources: Potential disturbance or destruction of species, including the potential effects on biodiversity and threatened or endangered species of flora and fauna. However, neither threatened nor endangered species have been identified thus far to be associated with the proposed project area. DOE will consult with the U.S. Fish and Wildlife Service of the U.S. Department of the Interior regarding potentially threatened or endangered species.

(8) Cultural Resources: Potential effects on historical, archaeological, scientific, or culturally important sites.

(9) Cumulative Impacts: NEPA requires that the EIS evaluate the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Cumulative impacts will be evaluated within the EIS for all important issues in the vicinity of the site.

(10) Pollution Prevention and Waste Minimization.

Issues that are significant will be addressed in detail; issues that are not considered significant will be discussed in less detail, or as appropriate to clarify and distinguish impacts among alternatives.

**NEPA and the Scoping Process**

DOE will comply with the NEPA process as outlined in the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508) and DOE regulations for compliance with NEPA (10 CFR part 1021).

Scoping, which is an integral part of the NEPA process, is a procedure that solicits public input to the EIS process to ensure that: (1) Issues are identified early and properly studied; (2) issues of little significance do not consume time and effort; (3) the draft EIS is thorough and balanced; and (4) delays occasioned by an inadequate draft EIS are avoided (40 CFR 1501.7). DOE NEPA regulations require that the scoping process commence as soon as practicable after a decision has been reached to prepare an EIS in order to provide an early and open process for determining the scope of issues to be addressed and to identify the significant issues related to a proposed action. The scope of issues to be addressed in a Draft EIS will be determined, in part, from written comments submitted by mail and comments presented orally or in writing at a public scoping meeting (see below). The results of the scoping process will be incorporated into a document called an Implementation Plan (IP), which provides guidance for the preparation of the EIS.

The above preliminary identification of reasonable alternatives and environmental issues is not meant to be

exhaustive or final. DOE identified the reasonable alternatives and potential environmental issues shown above based on its experience with similar concerns that have been raised for other comparable DOE projects. DOE considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant examination, and new matters may be identified for potential evaluation. The scoping process will involve all interested agencies (Federal, State, County, and local), groups, and individual members of the public. Interested parties are invited to participate in the scoping process by providing comments on both the alternatives and the issues to be addressed in the EIS. DOE will consider all comments in preparing the IP, which will specify the reasonable alternatives, identify the significant environmental issues to be analyzed in depth, and eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent. When complete, the IP will be available for public review at the locations identified below.

The Draft EIS will be released to the public for review and comment. Comments will be invited both by mail and at a public hearing, the procedures for which will be similar to the public scoping meeting discussed in this Notice. After all oral and written comments have been considered, DOE will publish a Final EIS and issue a Record of Decision (ROD) that will inform the public whether DOE intends either (1) to proceed with the proposed Federal action, (2) to proceed with an alternative to the proposed Federal action, or (3) to adopt the "no-action" alternative described earlier in this Notice. No Federal funds are authorized for construction, operation, or dismantlement of the proposed project unless and until the NEPA review process has culminated in a favorable outcome to proceed with the proposed project or an alternative to the proposed project, as documented in the ROD.

**Scoping Meeting**

A public scoping meeting will be held at the location, on the date, and at the time indicated below. This scoping meeting will be informal, with a presiding officer designated by DOE who will establish procedures governing the conduct of the meeting. The meeting will not be conducted as an evidentiary hearing, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting. They will be called on to present their comments as time permits. Oral and written comments will be given equal weight by DOE. Written comments may also be submitted after the scoping meeting, but should be postmarked by September 24, 1993, and forwarded to Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, as provided in the ADDRESSES section of this Notice. Written comments postmarked after that date will be considered to the degree practicable.

The meeting is scheduled as follows:

*Date:* Thursday, August 19, 1993.

*Time:* 7 p.m. (Registration opens at 6 p.m.)

*Place:* North Codorus Township Fire Company Auditorium, RD 1, Box No. 1034A, Fire Hall Road, North Codorus Township, PA 17362, (717) 225–4812.

Complete transcripts of the public scoping meeting will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, and at the Department of Energy, Morgantown Energy Technology Center, 3610 Collins Ferry Road, Morgantown, West Virginia 26505. Additional copies of the public scoping meeting transcript will also be made available during normal business hours at the following locations:

1. Glatfelter Memorial Library, 101 Glenview Road, Spring Grove, Pennsylvania 17362, (717) 225–3220.
2. York County Library, 118 Pleasant Acres Road, York, Pennsylvania 17401, (717) 757–9685.
3. York County Court House, 28 E. Market Street, York, Pennsylvania 17401, (717) 771–9675.

In addition, copies of the public scoping meeting transcript will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft EIS when it is prepared, should notify Dr. Suellen A. Van Ooteghem, Environmental Project Manager, Morgantown Energy Technology Center, at the address given in the ADDRESSES section of this Notice.

Signed in Washington, DC, this 26th day of July 1993, for the United States Department of Energy.

**Peter N. Brush,**

*Acting Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 93–18120 Filed 7–28–93; 8:45 am]

BILLING CODE 6450–01–P

## Energy Information Administration

### Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Economic Regulatory Administration
2. ERA–766R
3. 1903–0073
4. Recordkeeping Requirements of DOE's Allocation and Price Rules
5. Extension
6. Recordkeeping
7. Mandatory
8. Businesses or other for-profit
9. 551 recordkeepers
10. Not applicable
11. 4 hours per recordkeeper
12. 2,204 recordkeeping hours
13. ERA–766R requires firms in all segments of the oil industry to maintain only those records essential to the orderly and timely completion of the oil pricing enforcement program. Firms not having such records would be exempt from the recordkeeping requirements of 10 CFR 210.1.

**Statutory Authority:** Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c) (1)).

Issued in Washington, DC, July 22, 1993.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 93–18121 Filed 7–28–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. ER93–783–000, et al.]**

### Northern States Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Northern States Power Co.**

[Docket No. ER93–783–000]

July 22, 1993.

Take notice that on July 12, 1993, Northern States Power Company (Northern States) tendered for filing a Power and Energy Supply Agreement between the City of Wakefield and Northern States.

*Comment date:* August 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

**2. Montana-Dakota Utilities Co.**

[Docket No. ER93–791–000]

July 22, 1993.

Take notice that Montana-Dakota Utilities Co. ("Montana-Dakota"), on July 15, 1993, tendered for filing: (1) a Special Services Agreement ("Agreement") dated December 8, 1965 between Montana-Dakota and United Power Association ("UPA"); (2) Supplement No. 1 to the Agreement, dated December 23, 1983; and (3) Notice of Montana-Dakota, pursuant to 18 CFR U35.15, that the Agreement is terminated as of April 30, 1992.

As described in the filing Montana-Dakota requests waiver of the notice requirements so that the Agreement, Supplement, and Notice are deemed effective on January 1, 1966, November 1, 1983, and April 30, 1992, respectively. Alternatively, Montana-Dakota seeks waiver of any refunds.

Copies of the filing were served upon UPA and the North Dakota Public Service Commission.

*Comment date:* August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

**3. Midwest Power Systems, Inc.**

[Docket No. ER93–784–000]

July 22, 1993.

Take notice that on July 13, 1993, Midwest Power Systems Inc. (MPSI) tendered for filing a request for rate schedule redesignation. Subsequent to the merger of Iowa Power Inc. (IP) and Iowa Public Service Company (IPS), approved by the Commission in Docket No. EC92–5–000, all rate schedules were redesignated under MPSI.

In Docket No. ER92–288–000, accepted by the Commission on August 17, 1992, MPSI submitted for filing a General Facilities Agreement with Central Iowa Power Cooperative (CIPCO) which consolidated existing interconnection, transmission service, and facilities agreements with CIPCO. The Commission designated the General Facilities Agreement as Iowa Power (IP) Rate Schedule No. 82 (redesignated as MPSI Rate Schedule No. 30 in Docket No. ER92–784–000).

In the process of designating Rate Schedule No. 82, the following rate schedules were superseded to account for the consolidation of the various CIPCO agreements:

1. IP FPC No. 27
2. IP FPC No. 31
3. IP FERC No. 48
4. IP FERC No. 51

Upon further review, we determined that Item No. 4 above (IP FERC No. 51) should have been IP FERC No. *59* (redesignated MPSI Rate Schedule No. 17 in Docket No. ER92–794–000).

MPSI is requesting the designation of an MPSI Rate Schedule to accommodate the Cedar Falls Agreement (IP Rate Schedule No. 51) that was unintentionally canceled in Docket No. ER92–288–000.

Notice of the filing has been served upon the Iowa Utilities Board and Cedar Falls Utilities.

*Comment date:* August 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

**4. Public Service Electric and Gas Co.**

[Docket No ER93–799–000]

July 22, 1993.

Take notice that on July 19, 1993, Public Service Electric and Gas Company (PS), tendered for filing Agreement between Philadelphia Electric Company and Public Service Electric and Gas Company dated January 12, 1932, as amended October 21, 1982.

PS states that the reason for the filing is to cover the facilities and payments to PS for supplying electrical power on PE's behalf to the National Rail Passenger Corporation (AMTRAK) at PS's Metuchen Switching Station.

PS requests that the filing be permitted to become effective as of the date of the agreement, January 12, 1932, and therefore requests waiver of the Commission's notice requirements.

PS states that a copy of this filing has been sent to PE and to the New Jersey Board of Regulatory Commissioners.

*Comment data:* August 5, 1993, in accordance with Standard Paragraph E end of this notice.

**5. New England Power Co.**

[Docket No ER93–801–000]

July 22, 1993.

Take notice that on July 19, 1993, New England Power Company (NEP), tendered for filing an executed copy of its Service Agreement No. 1 under NEP's FERC Electric Tariff No. 6. According to NEP, the Commission had previously made the Service Agreement effective as of April 1, 1993 in Docket No. ER93–348–000.

*Comment date:* August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

**6. Florida Power & Light Co.**

[Docket No ER93-546-000]

July 22, 1993.

Take notice that on July 21, 1993, Florida Power & Light Company (FPL) filed supplemental information regarding its filing in this docket.

*Comment date:* August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

**7. Boston Edison Co.**

[Docket No ER93-787-000]

July 22, 1993.

Take notice that on July 13, 1993, Boston Edison Company (BECo) tendered for filing a Service Agreement and Appendix A for Consolidated Edison Company of New York for the sale and/or exchange or power from time to time pursuant to BECo's Electric Tariff, Original Volume No. 6. BECo requests that this Service Agreement and Appendix A become effective on July 15, 1993.

*Comment date:* August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

**8. Arizona Public Service Co.**

[Docket No ER93-798-000]

July 23, 1993.

Take notice that on July 19, 1993, Arizona Public Service Company (APS) tendered for filing supplemental information in response to a Staff request for additional information related to APS original filing in this docket.

Copies of this filing have been served upon YCA and the Arizona Corporation Commission.

*Comment date:* August 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

**9. Central Power and Light Co.**

[Docket No. ER93-796-000]

July 23, 1993.

Take notice that on July 16, 1993, Central Power and Light Company (CPL) tendered for filing an Agreement for Transmission Wheeling Service dated June 15, 1993 between CPL and Cap Rock Electric Cooperative, Inc. acting for and on behalf of its Hunt-Collin Division. Under the Agreement, CPL will provide Hunt-Collin with transmission wheeling service for firm capacity and associated energy that Hunt-Collin will purchase from the Lower Colorado River Authority. CPL requests that the Agreement be accepted to become effective as of July 17, 1993.

Copies of the filing have been served on Cap Rock and the Public utility Commission of Texas.

*Comment date:* August 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

**10. New England Power Co.**

[Docket No. ER93-802-000]

July 23, 1993.

Take notice that New England Power Company (NEP), on July 19, 1993, tendered for filing supplements to its service agreement with Connecticut Municipal Electric Energy Cooperative under NEP's FERC Electric Tariff, Original Volume No. 3.

*Comment date:* August 9, 1993, in accordance with Standard Paragraph E end of this notice.

**11. Minnesota Power & Light Co.**

[Docket No. ER93-797-000]

July 23, 1993.

Take notice that on July 19, 1993, Minnesota Power & Light Company (Minnesota Power) tendered for filing an amendment to its Negotiated Capacity Option Agreement with Wisconsin Power & Light Company (WP&L). Minnesota Power requests an effective date of July 23, 1993.

Copies of the filing have been served upon WP&L, the Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin.

*Comment date:* August 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

**12. West Texas Utilities Co.**

[Docket No. ER93-795-000]

July 23, 1993.

Take notice that on July 16, 1993, West Texas Utilities Company (WTU) tendered for filing an Agreement for Transmission Wheeling Service dated June 15, 1993 between WTU and Cap Rock Electric Cooperative, Inc. acting for and on behalf of its Hunt-Collin Division. Under the Agreement, WTU will provide Hunt-Collin with transmission wheeling service for firm capacity and associated energy that Hunt-Collin will purchase from the Lower Colorado River Authority. WTU requests that the Agreement be accepted to become effective as of July 17, 1993.

Copies of the filing have been served on Cap Rock and the Public Utility Commission of Texas.

*Comment date:* August 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

**13. The Connecticut Light and Power Co.**

[Docket No. ER93-793-000]

July 23, 1993.

Take notice that on July 16, 1993, The Connecticut Light and Power Company (CL&P), an operating subsidiary of Northeast Utilities Service Company, tendered for filing, pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's Regulations, proposed changes to the nuclear decommissioning cost estimate contained in the Life-of-Unit Contract between CL&P and Connecticut Municipal Electric Energy Cooperative (CMEEC) for Millstone Point Unit Nos. 1 and 2. By agreement of the parties, the proposed change in decommissioning expense payments reflect the revised decommissioning cost estimates approved by the Connecticut Department of Public Utility Control (DPUC) for retail rates. CL&P requests an effective date of July 1, 1994.

CL&P states that copies of its filing have been provided to CMEEC and the Connecticut DPUC.

*Comment date:* August 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

**New York State Electric & Gas Corp.**

[Docket No. ER93-800-000]

July 23, 1993.

Take notice that New York State Electric & Gas Corporation (NYSEG), on July 19, 1993, tendered for filing Supplement No. 8 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would increase revenues by $40,120 based on the twelve month period ending March 31, 1994.

This rate filing, Supplement No. 8, is made pursuant to section 1 (e) and (f) and 2 (e), (f) and (g) of Article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1992. In addition, Con Edison's pro rata share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Monhansic plus estimated NYSEG and Con Edison one hour peak input at Wood Street. The levelized annual carrying charges included in the calculation reflect a 11.20 percent return on equity which

was approved by the New York State Public Service Commission's Opinion 92–21 in Cases 91–E–0863, 91–E–0864, 91–G–0865, effective August 1, 1992.

NYSEG requests an effective date of April 1, 1993, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

*Comment date:* August 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18089 Filed 7–28–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. CP93–558–000, et al.]**

## Panhandle Eastern Pipe Line Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

### 1. Panhandle Eastern Pipe Line Co.

[Docket No. CP93–558–000]

July 22, 1993.

Take notice that on July 16, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–558–000 a request under Section 7(b) of the Commission's Regulations under the Natural Gas Act for a certificate permitting and approving abandonment of a gas purchase, transportation and exchange agreement (Master Agreement) between Panhandle and Colorado Interstate Gas Company (CIG), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that in compliance with the Commission's Order On Show Cause Order And Dismissing Request For Rehearing issued on June 22, 1993, Panhandle is requesting that the Commission issue an order pursuant to section 7(b) of the Natural Gas Act authorizing the abandonment of the Master Agreement, effective on July 22, 1993.

*Comment date:* August 12, 1993, in accordance with Standard Paragraph F at the end of this notice.

### 2. Carnegie Natural Gas Co. and Carnegie Interstate Pipeline Co.

[Docket No. CP93–552–000]

July 22, 1993.

Take notice that on July 14, 1993, Carnegie Natural Gas Company (Carnegie) and Carnegie Interstate Pipeline Company (CIPCO), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, jointly referred to as Applicants, filed an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act and part 157 of the Commission's regulations for authorization to permit Carnegie to abandon facilities and services by transfer to CIPCO and for a certificate of public convenience and necessity authorizing the acquisition, ownership and operation by CIPCO of jurisdictional facilities and the transportation and sale for resale by CIPCO of natural gas in interstate commerce, respectively, all as more fully set forth in the application. Applicants also request that the Commission authorize certain of the facilities proposed in the application to be transferred to CIPCO to be refunctionalized from the gathering function to the transmission function.

Applicants state that, upon the effective date of the transfer, CIPCO, an affiliate of Carnegie, would become a natural gas company under the Natural Gas Act and a successor-in-interest to Carnegie's interstate pipeline business. Applicants further state that, upon the effective date of the transfer, Carnegie would become exempt from the Commission's jurisdiction by reason of Section 1(c) of the Natural Gas Act.

Applicants specifically request that the Commission: (1) authorize Carnegie to abandon, by transfer to CIPCO, all of its FERC-jurisdictional services and facilities, except for certain transmission facilities located at the northern portion of Carnegie's system (consisting of eight discrete segments of pipeline, a compressor station, and associated facilities), which Carnegie proposes to retain for use in its distribution operations; (2) issue a certificate of public convenience and necessity authorizing CIPCO to acquire, own and operate the jurisdictional facilities transferred by Carnegie and to provide jurisdictional sales and transportation services using those facilities, and for blanket authorization pursuant to the terms and conditions set forth in subparts G and J of part 284 and subpart F of part 157 of the Commission's Regulations; and (3) authorize the refunctionalization of certain facilities from gathering to transmission for the reason that the primary function of certain facilities that connect Carnegie's production area gathering systems to Carnegie's main transmission lines is transmission. Applicants state that these authorizations would permit CIPCO to own and operate the facilities previously owned and operated by Carnegie as an interstate pipeline and to perform previously authorized Carnegie to perform.

*Comment date:* August 12, 1993, in accordance with Standard Paragraph F at the end of this notice.

### 3. Williams Natural Gas Co.

[Docket No. CP93–561–000]

July 22, 1993.

Take notice that on July 16, 1993, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–561–000 a request pursuant to §§ 157.205, and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon in place approximately 0.4 miles of 4-inch diameter lateral pipeline and to reclaim measuring, regulating and appurtenant facilities serving the City of Humboldt, Kansas, under its blanket certificate issued in Docket No. CP82–479–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams states that Humboldt's gas needs will be met through two additional existing town border settings. Williams also indicates that the reclaim cost is estimated to be $2,770 with a salvage value of $5,272.

*Comment date:* September 7, 1993, in accordance with Standard Paragraph G at the end of this notice.

### 4. Northern Natural Gas Co.

[Docket No. CP93–554–000]

July 22, 1993.

Take notice that on July 15, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a

request with the Commission in Docket No. CP93–554–000 pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point for an interruptible natural gas transportation service for Kind and Knox, a division of Knox Gelatine, Inc. (Knox), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northern proposes to construct and operate a delivery point in Woodbury County, Iowa, in order to deliver natural gas to Knox's food processing plant. Northern would delivery 2,060 Mcf of natural gas daily and 568,000 Mcf annual on an interruptible basis to Knox under its FERC Rate Schedule TI. Northern states that Knox would pay the $170,000 estimated construction cost for the proposed delivery point. Northern also states that its existing tariff does not prohibit additional delivery points and that Northern has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

*Comment date:* September 7, 1993, in accordance with Standard Paragraph G at the end of this notice.

**5. Northern Natural Gas Co.**

[Docket No. CP93–571–000]

July 23, 1993.

Take notice that on July 19, 1993, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188 filed in Docket No. CP93–571–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate two new delivery points to accommodate natural gas deliveries to Superior Water, Light and Power Company (SWL&P) under the authorization issued in Docket No. CP82–401 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to install and operate the new delivery points in order to accommodate natural gas deliveries to the communities of Brule, Poplar, Lake Nebagomon, Maple, Bennett, Amnicon, Hawthorne and Highland, Wisconsin. Northern asserts that these communities do not currently have natural gas service. It is stated that SWL&P has requested installation of these delivery points due to the expansion of its distribution system into new areas.

Northern is proposing to install two new delivery points at the Brule town border station (TBS) and the Poplar TABS. It is stated that the Brule TABS will serve the community of Brule, Wisconsin. Northern states that the Poplar TABS will serve the combined communities of Poplar, Lake Nebagomon, Maple, Bennett, Amnicon, Hawthorne and Highland, Wisconsin.

It is asserted that the proposed volumes to be delivered to the proposed delivery points would be 757 Mcf on a peak day and 141,157 Mcf on an annual basis. Northern estimates that the total cost to install the proposed delivery points is $205,000.

Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without significant detriment or disadvantage to Northern's other customers.

*Comment date:* September 7, 1993, in accordance with Standard Paragraph G at the end of this notice.

**6. Wallkill Transport Company, L.P.**

[Docket No. CP93–548–000]

July 23, 1993.

Take notice that on July 14, 1993, Wallkill Transport Company, L.P. (Wallkill Transport), 7475 Wisconsin Avenue, Bethesda, Maryland 20814, filed an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Wallkill Transport to construct and operate approximately 23 miles of 10 and ¾ inch natural gas pipeline and appurtenant facilities from Tennessee Gas Pipeline Company's Compressor Station 325 in Libertyville, New Jersey to a new gas-fired electric generating facility to be located near Middletown, Orange County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Wallkill Transport states that the proposed facilities will be used for the sole purpose of providing up to 30,000 Mcf of natural gas per day to a new gas-fired electric generating facility of approximately 150 megawatt nominal capacity being developed under the name of Wallkill Generating Company, L.P. Wallkill Transport states that construction of the proposed facilities will cost an estimated $10,318,000 which will be financed with 80 percent non-recourse debt and 20 percent equity.

Wallkill Transport states that because it will not be charging a rate for the proposed transportation service, Wallkill Transport requests that the Commission waive those aspects of its regulations requiring the filing of a tariff, and to grant any other necessary waivers of otherwise applicable regulations. Finally, Wallkill Transport requests that since it has no other jurisdictional facilities, the Commission limits its jurisdiction over Wallkill Transport to the specified authorization requested.

*Comment date:* August 13, 1993, in accordance with Standard Paragraph F at the end of this notice.

**7. Texas Eastern Transmission Corp.**

[Docket No. CP93–572–000]

July 23, 1993.

Take notice that on July 20, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP93–572–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to modify an existing delivery point in order to deliver natural gas to Entre Energy Corporation (Entre), an independent producer, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to modify an existing delivery point in order to deliver natural gas to Entre, an independent producer, under its Rate Schedule IT–1. It is stated that the peak and average day deliveries would be 60,000 Dth, and would have no impact on peak or annual deliveries or other customers.

*Comment date:* September 7, 1993, in accordance with Standard Paragraph G at the end of this notice.

**8. Texas Gas Transmission Corp.**

[Docket No. CP93–567–000]

July 23, 1993.

Take notice that on July 19, 1993, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP93–567–000, a request pursuant to § § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a delivery point for Westlake Vinyl Corporation (Westlake) in Marshall County Kentucky, under it

blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that Westlake currently receives natural gas service for its Calvert City, Kentucky plant from Western Kentucky Gas Company (Western). Westlake has requested that Texas Gas construct a new delivery point in Marshall County, Kentucky, to enable Westlake to receive natural gas service directly from Texas Gas. The proposed new delivery point to Westlake will be known as the Westlake-Calvert City Meter station.

*Comment date:* September 7, 1993, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person of the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18088 Filed 7–28–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–13245T New Mexico–43]**

**United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation**

July 23, 1993.

Take notice that on July 22, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation in a portion of the South Jicarilla Area Basin Dakota Pool underlying a portion of Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 3,840 acres, all of which are Jicarilla Apache Indian Reservation Lands. The recommended area is described as follows:

*Township 24 North, Range 5 West*

Sections 9–10: All
Section 15–16: All
Sections 21–22: All

The notice of determination also contains BLM's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18050 Filed 7–28–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–35–000]**

**Natural Gas Pipeline Company of America; Informal Settlement Conference**

July 23, 1993.

Take notice that an informal settlement conference scheduled for Friday, July 30, 1993 has been rescheduled for Wednesday, August 25, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact David R. Cain at (202) 208–0917 or John P. Roddy at (202) 208–1176.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18051 Filed 7–28–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–5–000]**

**Northwest Pipeline Co.; Extension of Informal Settlement Conference**

July 23, 1993.

Take notice that the informal settlement conference scheduled in this proceeding for August 11, 1993, at 10 a.m., has been extended and will be convened on August 11 and 12, 1993, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

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For additional information, contact Marc G. Denkinger at (202) 208–2215 or Kathleen M. Dias at (202) 208–0524.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18052 Filed 7–28–93; 8:45 am]

BILLING CODE 6715–01–M

## Office of Fossil Energy

[FE Docket No. 93–58–NG]

## Amoco Energy Trading Corp.; Application for Blanket Authorization To Export Natural Gas to Mexico

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 9, 1993, of an application filed by Amoco Energy Trading Corporation (Amoco) requesting blanket authorization to export up to 146 Bcf of natural gas to Mexico over a period of two years. The authorization would begin on the date of first delivery after November 8, 1993, the expiration date of Amoco's existing blanket export authorization granted by DOE/FE Opinion and Order No. 354 (1 FE ¶ 70,269, December 6, 1989).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 30, 1993.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585. (301) 903–2338

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–6667

**SUPPLEMENTARY INFORMATION:** Amoco, a Delaware corporation with its principal place of business in Houston, Texas, is a natural gas reseller and marketer. It is a wholly-owned subsidiary of Amoco Production Company, which is a wholly-owned subsidiary of Amoco Company, which is wholly owned by Amoco Corporation. Amoco Corporation is an integrated company engaged in exploration, production, transportation, refining, and marketing of natural gas and other hydrocarbons.

The gas to be exported by Amoco would be produced in the southwest United States and sold in Mexico at competitive prices under short-term and spot market agreements. Amoco would use only existing pipeline facilities to transport the gas and would comply with DOE's quarterly reporting requirements.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. Amoco asserts there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this application bear the burden of overcoming this assertion.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Amoco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 23, 1993.

Clifford P. Tomaszewski,

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18125 Filed 7–28–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93-64-NG]

## Associated Natural Gas, Inc.; Application for Blanket Authorization To Export Natural Gas to Mexico

**AGENCY:** Office of Fossil Energy, DOE.
**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed on June 29, 1993, by Associated Natural Gas, Inc. (ANGI) requesting blanket authorization to export up to 200 billion cubic feet of natural gas to Mexico over a period of two years. The authorization would begin on the date of the first delivery. ANGI states that it will use existing pipeline facilities to transport the gas and will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Orders Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene of notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 30, 1993.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

C. Frank Duchaine, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–8233

Diane Stubbs, office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW, Washington, DC 20585. (202) 586–6667

**SUPPLEMENTARY INFORMATION:** ANGI, a marketer of natural gas, is a Delaware corporation with its principal place of business in Denver, Colorado. ANGI proposes to export domestically-produced gas under short-term and spot market transactions, either on its own behalf or as the agent for others. All sales would be individually negotiated at competitive prices. ANGI asserts that there is no current need in the United States for the gas that would be exported under the proposed arrangement.

ANGI's export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy to promote competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those who may oppose the application, should comment on these matters as they relate to the requested export authority. Parties opposing this arrangement bear the burden of overcoming ANGI's assertion that the domestic gas exported would be surplus to domestic needs.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ANGI's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 23, 1993.

**Clifford P. Tomaszewski,**
*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18123 Filed 7–28–93; 8:45 am]
BILLING CODE 6450–01–M

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[FE Docket No. 93–65–NG]

## Nortech Energy Corp.; Application for Blanket Authorization To Import and Export Natural Gas From and to Mexico

**AGENCY:** Office of Fossil Energy, DOE.
**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on June 30, 1993, of an application filed by Nortech Energy Corp. (Nortech) requesting blanket authorization to import up to 40 Bcf of natural gas from Mexico and to export up to 40 Bcf of natural gas to Mexico over a two-year period beginning with the date of the first import or export delivery. Nortech states it would use existing pipeline facilities to transport the gas. Also, Nortech would advise DOE of the date of first deliveries and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and Doe Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 30, 1993.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–9478.

**FOR FURTHER INFORMATION CONTACT:**

C. Frank Duchaine, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–8233

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–6567

**SUPPLEMENTARY INFORMATION:** Nortech, a Texas corporation with its principal place of business in Houston, Texas, will import and export the gas under spot and short-term transactions, either on its own behalf or as the agent for others. The specific terms of these arrangements, including the price and volumes, would be negotiated individually. Nortech previously had blanket authority to import and export natural gas from and to Mexico which expired June 30, 1993 (1 FE ¶ 70,343, DOE/FE Opinion and Order No. 417, issued August 13, 1990).

The decision on Nortech's request for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing Nortech's export proposal DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. Nortech asserts the proposed imports would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing Nortech's application bear the burden of overcoming these assertions.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Nortech's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 23, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Program, Office of Fossil Energy.*

[FR Doc. 93–18124 Filed 7–28–93; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4684–1]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 30, 1993.

**FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT:** Sandy Farmer at EPA (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Prevention, Pesticides and Toxic Substances

*Title:* Certified/Commercial Pesticide Applicator Survey (EPA ICR No.: 1628.02). This is a new collection.

*Abstract:* Under the authority of Pub. L. 101–624, the EPA will conduct a survey of non-agricultural Certified/

Commercial Pesticide Applicators. The survey is designed to provide the Agency with comprehensive data of pesticide usage by non-agricultural applicators by site and pest. The respondents surveyed are asked to identify each chemical they use, by EPA registration number and by other means used to identify the product. Respondents are also asked to identify the quantity of each chemical product used over a specified 12-month period; the number of individual applications of the pesticide; the dates of application; and the quantity of each product used by site, target pest, units treated and geographic area. In addition, respondents are asked to identify the number and kinds of sites treated with the pesticide, such as lawn, residence, type of business, or golf course. Also required is information on the the rate of application.

EPA will use the data to meet the Congressional mandate which directs the Agency to publish an annual comprehensive report on pesticide use.

*Burden Statement:* The burden for this collection of information is estimated to average 5.45 hours per response. This estimate includes the time needed to review instructions, gather the data needed, complete the forms and review the collection of information.

*Respondents:* Non-agricultural Certified Pesticide Applicators and Commercial Applicators.

*Estimated No. of Respondents:* 4,000.

*Estimated No. of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 21,805 hours.

*Frequency of Collection:* Annually.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 22, 1993.

**David Schwarz,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 93–18106 Filed 7–28–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4584–2]

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before August 30, 1993.

**FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT:** Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Prevention, Pesticides and Toxic Substances

*Title:* Recall of Suspended and Canceled Pesticides. (EPA ICR No: 1520.03; OMB No: 2070–0110) This is a request for reinstatement of a previously approved collection.

*Abstract:* Under section 19 (b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA may request the voluntary recall of a suspended and canceled pesticide product.

Under the voluntary program, respondents are requested–not required–to submit to EPA, and keep records of, a recall plan. The plan would contain general information on the person responsible for the recall, and information on transportation and storage of the recalled pesticide product. In addition, at the completion of each recall, holders of the product would submit to the Agency a final report giving general information on the type and the amount of pesticide being held.

Although registrants are not obligated to submit a plan, once a plan is accepted, EPA has the authority to order the registrant to carry out the plan. If a registrant does not submit a plan, under section 6 of FIFRA (7 U.S.C. 136d) the Agency has the authority to proceed with rulemaking for a mandatory recall.

The Agency uses the information to monitor compliance with FIFRA, for indemnification purposes, and to plan for reimbursement of storage costs incurred as a result of the recall.

*Burden Statement:* The burden for this collection of information is estimated to average 68 hours per response for reporting and 3 hours per recordkeeper annually. This estimate includes the time needed to review instructions, develop a recall plan, create and gather data, and review and store the information.

*Respondents:* Registrants of suspended and canceled pesticides.

*Estimated No. of Respondents:* 20.

*Estimated No. of Responses Per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1,420 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: July 22, 1993.

**David Schwarz,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 93–18107 Filed 7–28–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4584–4]

## North Dakota; Partial Program Adequacy Determination of State Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency (Region VIII).

**ACTION:** Notice of tentative determination on Partial Program Application of North Dakota for Partial Program Adequacy Determination, Public Comment Period, and Public Hearing.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is

in the process of proposing the State/Tribal Implementation Rule (STIR) that will allow both States and Tribes to apply for and receive approval of a partial permit program. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal Criteria will apply to all permitted and unpermitted MSWLFs.

North Dakota applied for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed North Dakota's application and made a tentative determination of adequacy for those portions of the State's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The State plans to revise the remainder of its permit program to assure complete compliance with the revised Federal Criteria and gain full program approval. North Dakota's application for partial program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the **DATES** section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **CONTACTS** section below.

**DATES:** All comments on North Dakota's application for a partial determination of adequacy must be received by the close of business on September 14, 1993. The public hearing is tentatively scheduled for 10 a.m. to 12 p.m., September 14, 1993, at the North Dakota State Department of Health Environmental Training Center, 2639 East Main Avenue, Bismarck, North Dakota 58501. Should a public hearing be held, EPA may limit oral testimony to five minutes per speaker, depending on the number of commenters. Commenters presenting oral testimony must also submit their comments in writing by close of business on September 14, 1993. The hearing may adjourn earlier than 12 noon if all of the speakers deliver their comments before that hour. North Dakota will participate in the public hearing held by EPA on this subject.

**ADDRESSES:** Copies of North Dakota's application for partial adequacy determination are available from 8 a.m. to 5 p.m. CST during normal working days at the following addresses for inspection and copying: North Dakota State Department of Health and Consolidated Laboratories, Attn: Martin Schock, Environmental Health Section, 1200 Missouri Avenue, Bismarck, North Dakota 58502–5520; and U.S. EPA Region VIII Library, 999 18th Street, suite 500, Denver, Colorado 80202–2466, phone 303/293–1444. All written comments should be sent to Gerald Allen (8HWM–WM), Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

**FOR FURTHER INFORMATION CONTACT:** Gerald Allen (8HWM–WM), Waste Management Branch, U.S. EPA Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, Phone 303/293–1496.

**SUPPLEMENTARY INFORMATION:**

## A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria. Subtitle D also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in the STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. These requirements, if promulgated, will address the potential problems posed by the dual State/Tribal and Federal programs that will come into effect in October 1993 in those States/Tribes that only have partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State/Tribe's program that has not received EPA approval will become enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the revised Federal Criteria, EPA's national Subtitle D standards will take effect on October 9, 1993 in any State/Tribe that lacks an approved program. Consequently, any remaining portions of the Federal Criteria which are not included in an approved State/Tribal program by that date would apply directly to the owner/operator.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/

Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in the STIR.

### B. State of North Dakota

On June 25, 1993, North Dakota submitted an application for partial program adequacy determination. EPA has reviewed North Dakota's application and tentatively determined that the following portions of the State's Subtitle D program will ensure compliance with the Federal revised Criteria.

1. Location restrictions for airport safety (40 CFR 258.10(a), (c), and (d)), flood plains (40 CFR 258.11), wetlands (40 CFR 258.12), fault areas (40 CFR 258.13), seismic impact zones (40 CFR 258.14), and unstable areas (40 CFR 258.15).

2. Operating criteria for cover material (40 CFR 258.21), disease vector control (40 CFR 258.22), explosive gases control (40 CFR 258.23(a)), air criteria (40 CFR 258.24), access requirements (40 CFR 258.25), run-on-run-off control systems (40 CFR 258.26), surface water (40 CFR 258.27), and liquids restrictions (40 CFR 258.28).

3. Design Criteria requirement for composite liners (40 CFR 258.40(b)).

4. Ground-water monitoring for applicability and duration of monitoring (40 CFR 258.50(a) and (e)); ground-water monitoring systems including casing, number, depth, and spacing of wells (40 CFR 258.51(c) and (d)); and ground-water sampling and analysis including documentation procedures, frequency, and ground-water elevation measurements (40 CFR 258.53(a), (c), and (d)).

5. Closure and post-closure care requirements including final cover design (40 CFR 258.60(a) and (b)), final cover description (40 CFR 258.60(c)(1)), waste inventory and schedule (40 CFR 258.60(c)(3) and (4)), beginning and completion of closure (40 CFR 258.60(f) through (j), post-closure care period (40 CFR 258.61(a) and (b)), and post-closure plan and land use (40 CFR 258.61(c)(1) and (c)(3)).

6. Financial assurance requirements including applicability (40 CFR 258.70) and allowable mechanisms (40 CFR 258.74).

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate.

To ensure compliance with all the Federal Criteria, North Dakota needs to revise to following aspects of its permit program.

1. North Dakota will revise its regulation and add a "FAA notification" requirement to comply with part 258.10(b) (airport safety).

2. North Dakota will revise its regulations to incorporate the Federal operating requirements for the exclusion of hazardous waste (40 CFR 258.20), explosive gases control including monitoring and detection/remediation (40 CFR 258.23(b) and (c)), and record keeping (40 CFR 258.29).

3. North Dakota will revise its regulations to incorporate the Federal design criteria relative to protection of ground-water (40 CFR 258.40(a), (c), and (d)).

4. North Dakota will revise its regulations to incorporate the Federal ground-water monitoring requirements, including no-migration demonstrations, scheduling, and alternative schedules (40 CFR 258.50(b) through 258.50(d)); number, depth, and location of wells, and the use of multiunit ground-water systems (40 CFR 258.51(a) and (b)); ground-water sampling analytical methods (40 CFR 258.53(b)); background and statistical procedures (40 CFR 258.53(e) through (i)); detection monitoring (40 CFR 258.54); assessment monitoring (40 CFR 258.55); assessment of corrective measures (40 CFR 258.56); selection of remedy (40 CFR 258.57); and, implementation of the corrective action program (40 CFR 258.58).

5. North Dakota will revise its regulations to incorporate the Federal closure and post-closure care requirements, specifically final cover estimate (40 CFR 258.60(c)(2)); State notifications (40 CFR 258.60 (d) and (e)); post-closure contact (40 CFR 258.61(c)(2)); and State notifications (40 CFR 258.61 (d) and (e)).

6. North Dakota will revise its regulations to incorporate financial assurance requirements for closure, post-closure, and corrective action (40 CFR 258.71 through 258.73).

North Dakota has developed and implemented a series of guidance documents that were submitted to the Region as part of its June 25, 1993, application for partial program adequacy determination. These documents are as follows:

1. Guidelines for Hydrogeological Investigations of Solid Waste Facilities;

2. Guidelines for Quality Assurance in Construction of Landfill and Surface Impoundment Liners, Caps, and Leachate Removal Systems;

3. Guidelines for Statistical Analysis of Ground-Water Monitoring Data for Solid Waste Facilities; and

4. Guidelines for Corrective Actions of Solid Waste Landfills.

If the criteria now existing in these guidance documents were instead contained in enforceable regulations issued by the North Dakota State Department of Health, then a significantly larger portion of North Dakota's program could have been approved by EPA at this time. However, because the criteria in these guidance documents cannot be made an enforceable condition of permits and permit modification issued by the State of North Dakota, regulatory changes appear necessary.

North Dakota indicates that it will be able to complete these revisions by mid-1994. To allow the State to begin exercising some of the flexibility allowed in States/Tribes with adequate permit programs, EPA is proposing to approve those remaining portions of the State/Tribe's program that are ready for action today.

EPA reviewed the State's schedule and believes it is reasonable because of the simplicity of North Dakota's rule making process. The rule making process typically takes seven to nine

months to complete. North Dakota has already begun to revise its rules and expects to have the rule changes necessary for full program approval complete by mid-1994.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact within 30 days of the publication of this notice, the Region will hold a hearing on September 14, 1993, at the North Dakota State Department of Health Environmental Training Center, 2639 East Main Street, Bismarck, North Dakota 58501.

North Dakota has not asserted jurisdiction within the exterior boundaries of Indian reservations in its application for adequacy determination. Accordingly, this approval does not extend to lands within Indian reservations in North Dakota. Until EPA approves a State or Tribal MSWLF permitting program in North Dakota for any part of "Indian Country," as defined in 18 U.S.C. 1151, the requirements of 40 CFR part 258 will, after October 9, 1993, automatically apply to that area. Thereafter, the requirements of 40 CFR part 258 will apply to all owners/operators of MSWLFs located in any part of "Indian Country" that is not covered by an approved State or Tribal MSWLF permitting program.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for North Dakota's program. EPA will make a final decision on whether or not to approve North Dakota's program by October 8, 1993, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF Criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9 1991).

### Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 22, 1993.

**Nola Cooke,**

*Acting Regional Administrator.*

[FR Doc. 93-18105 Filed 7-28-93; 8:45 am]

BILLING CODE [illegible]

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[FRL-4684-8]

## Science Advisory Board, Drinking Water Committee; Open Meeting

Under the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board's (SAB) Drinking Water Committee (DWC) will meet on August 16-17, 1993. The Committee will meet on Monday, August 16, from 8:30 a.m. to 5 p.m. and on Tuesday, August 17, from 9 a.m. to no later than 4:30 p.m. at U.S. EPA Headquarters, Waterside Mall Conference Center, room 3 North, 401 M Street, SW, Washington, DC 20460. The meeting is open to the public and seating is on a first-come basis.

At this meeting, the Committee will: (1) During a working session, review the progress of its reports concerning the Agency's research program for disinfectants and disinfection by-products, and the September 30, 1992 draft *Drinking Water Criteria Document on Inorganic Arsenic* (prepared under contract for the Office of Science and Technology, Office of Water), (2) plan its activities for the next fiscal year, (3) receive a briefing regarding the status of the Regulatory Negotiation process for the Disinfectant/Disinfection By-products rule, and (4) explore the appropriate role of the Committee with regard to the outcome of the aforementioned negotiation process.

The Committee has been provided with the latest drafts (including preambles) of the Information Collection Rule, the Enhanced Surface Water Collection Rule, and the Disinfection and Disinfection By-Products Rule as background for item 3 above. These documents are available from Thomas R. Grubbs, U.S. Environmental Protection Agency, 401 M Street SW (Mail Code WH550-D), Washington, DC 20460. Telephone: (202) 260-7270. They are not available from the Science Advisory Board. No background documents are available for items 1, 2 and 4 above.

For additional information concerning this meeting, including copies of a draft agenda, please contact Ms. Dorothy Clark, Staff Secretary, or Mr. Manuel R. Gomez, Designated Federal Official, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Telephone: (202) 260-6552; FAX: (202) 260-6118.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Gomez no later than Monday, in order to be included on the Agenda. Written statements of any length (at least 35 copies) may be provided to the Committee up until the meeting. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes or less, at the Chair's discretion.

Dated: July 19, 1993.

**Samuel Rondberg,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 93-18101 Filed 7-28-93; 8:45 am]

BILLING CODE [illegible]

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[FRL 4684-5]

## Wilson Concepts of Florida Site; Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under section 122 (g) and (h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Wilson Concepts of Florida Site, Pompano Beach, Florida with Carter and Crawley Precision Metals, Inc. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the

proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. A copy of the proposed *De Minimis* settlement is available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–5059.

Written comments must be submitted to the person above within 30 days from the date of publication.

Dated: June 7, 1993.

**Richard D. Green,**

*Acting Director, Waste Management Division.*

[FR Doc. 93–18100 Filed 7–28–93; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 1955]**

### Petitions for Reconsideration of Actions in Rulemaking Proceedings

July 23, 1993.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed August 13, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4 (b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Homerville, Lakeland and Statenville, Georgia) (MM Docket No. 90–214, RM No. 7101 and 7226)

Number of Petitions Filed: 2.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–18034 Filed 7–28–93; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–996–DR]**

### Iowa; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

The counties of Crawford, Des Moines, Dickinson, Johnson, Polk, Pottowattamie, Shelby, Scott, Van Buren, and Wapello for Public Assistance. (Already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18099 Filed 7–28–93; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA–993–DR]**

### Minnesota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–993–DR), dated June 11, 1993, and related determinations.

**EFFECTIVE DATE:** July 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Minnesota, dated June 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 1993:

The counties of Becker, Lac Qui Parle, and Wabasha for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18098 Filed 7–28–93; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA–995–DR]**

### Missouri; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Missouri (FEMA–995–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Missouri dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

The counties of Adair, Caldwell, Johnson, Livingston, Macon, Pemiscot, Pettis, Putnam, Scott, and Scotland for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18094 Filed 7–28–93; 8:45 am]

BILLING CODE 6718-02-M

**[FEMA–998–DR]**

### Nebraska; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–998–DR), dated July 19, 1993, and related determinations.

**EFFECTIVE DATE:** July 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 19, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding on June 23, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alex Burns of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Buffalo, Cass, Lancaster, Sarpy, Seward, and Washington Counties for Individual Assistance.

Adams, Buffalo, Hall, Kearney, Lancaster and Phelps Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**James Lee Witt,**

*Director.*

[FR Doc. 93–18095 Filed 7–28–93; 8:45 am]

BILLING CODE 6718–02–M

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[FEMA–998–DR]

## Nebraska; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Nebraska (FEMA–998–DR), dated July 19, 1993, and related determinations.

**EFFECTIVE DATE:** July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

The counties of Boyd, Douglas, Otoe, Saunders, and York for Individual Assistance and Public Assistance.

The counties of Hall and Phelps for Individual Assistance. (Already designated for Public Assistance.)

The counties of Butler, Clay, Colfax, Cuming, Hamilton, Fillmore, Nemaha, Pawnee, Platte, Polk, Richardson, and Stanton for Public Assistance.

The county of Seward for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18096 Filed 7–28–93; 8:45 am]

BILLING CODE 6718–02–M

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[FEMA–999–DR]

## South Dakota; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–999–DR), dated July 19, 1993, and related determinations.

**EFFECTIVE DATE:** July 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 19, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, tornadoes and flooding beginning on May 6, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint John D. Swenson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of South Dakota to have been affected adversely by this declared major disaster:

The counties of Bon Homme, Brookings, Clay, Davison, Hanson, Hutchison, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**James Lee Witt,**

*Director.*

[FR Doc. 93–18102 Filed 7–28–93; 8:45 am]

BILLING CODE 6718–02–M

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[FEMA–994–DR]

## Wisconsin; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), dated July 2, 1993, and related determinations.

**EFFECTIVE DATE:** July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal

Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Wisconsin dated July 2, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993.

The county of Rock for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18097 Filed 7–28–93; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

**[Docket No. 93–15]**

### Waterman Steamship Corp. v. General Foundries Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Waterman Steamship Corporation ("Complainant") against General Foundries Inc. ("Respondents") was served July 26, 1993. Complainant alleges that Respondent, as consignee on several freight collect shipments, engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by inducing Complainant to provide transportation, tendering checks to Complainant for payment of freight, and, upon receipt of the cargo, stopping payment on the checks.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the Presiding Officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by July 25, 1994, and the final decision of the Commission shall be issued by November 27, 1994.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–18068 Filed 7–28–93; 8:45 am]

BILLING CODE 6730–01–M

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Natural Freight Ltd., 53 Park Place, Ste. 1002, New York, NY 100007, Officers: Willy Burkhardt, President; Alfons Strub, Exec. Vice President

Avair Services, Inc., 300 Middlesex Avenue, Carteret, NJ 07008, Officers: Gianfranco Germiniani, President; Francisco Cordaro, Exec. Vice President; Derek Buckle West, Director

Freight Brokers International, Inc., 1235 North Loop West, Ste. 601, Houston, TX 77008, Officers: Allan B. Appelbaum, President; Linda G. Appelbaum, Secretary

Marubeni Transport Service Corp., 444 West Ocean Blvd., Ste. 1504, Long Beach, CA 90802, Officers: Katsutoshi Suzuki, President/CEO/Director; Yasuhisa Ebisutani, Treasurer/Secretary/General Manager; Maria Lourdes V. Angeles, Assistant Secretary; Tadashi Tonaka, Director; Minoru Agarida, Director.

Dated: July 23, 1993.

By the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–18029 Filed 7–28–93; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Bailey Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 23, 1993.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Bailey Financial Corporation*, Clinton, South Carolina; to acquire 100 percent of the voting shares of The Saluda County Bank, Saluda, South Carolina.

*2. First United Corporation*, Oakland, Maryland; to acquire 100 percent of the voting shares of HomeTown Bancorp, Inc., Myersville, Maryland, and thereby indirectly acquire Myersville Bank, Myersville, Maryland.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. White Eagle Financial Group, Inc.*, Boca Raton, Florida; to become a bank holding company by acquiring 90 percent of the voting shares of Admiralty Bank, Palm Beach Gardens, Florida.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Dearborn Bancorp, Inc.*, Dearborn, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Dearborn, Dearborn, Michigan, a *de novo* bank.

*2. Farmers Savings Bank Employee Stock Ownership Plan and Trust*, West Union, Iowa; to acquire 50.1 percent of the voting shares of Westmont Corporation, West Union, Iowa, and thereby indirectly acquire Farmers Savings Bank, West Union, Iowa.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Union Planters Corporation*, Memphis, Tennessee; to acquire 100

percent of the voting shares of First Financial Services, Inc., Brownsville, Tennessee, and thereby indirectly acquire First State Bank, Brownsville, Tennessee.

**E. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. FirstBank Holding Company of Colorado ESOP*, Lakewood, Colorado; to acquire 28.6 percent of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of West Arvada, National Association, Arvada, Colorado; FirstBank of Aurora, National Association, Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of South Boulder, National Association, Boulder, Colorado; FirstBank of Boulder, National Association, Boulder, Colorado; Breckenridge FirstBank, National Association, Breckenridge, Colorado; FirstBank of Castle Rock, National Association, Castle Rock, Colorado; FirstBank of Denver, National Association, Denver, Colorado; FirstBank of Cherry Creek, National Association, Denver, Colorado; FirstBank of Republic Plaza, N.A., Denver, Colorado; FirstBank of Erie, Erie, Colorado; FirstBank of Tech Center, National Association, Englewood, Colorado; FirstBank of Colorado, National Association, Littleton, Colorado; FirstBank of Lakewood, National Association, Lakewood, Colorado; FirstBank of Westland, National Association, Lakewood, Colorado; FirstBank of Academy Park, Lakewood, Colorado; FirstBank of Villa Italia, National Association, Lakewood, Colorado; FirstBank of Littleton, National Association, Littleton, Colorado; FirstBank at Wadsworth/Coal Mine, National Association, Littleton, Colorado; FirstBank of Arapahoe County, National Association, Littleton, Colorado; FirstBank of Longmont, National Association, Longmont, Colorado; FirstBank at Arapahoe/Yosemite, National Association, Englewood, Colorado; FirstBank of Silverthorne, National Association, Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank at 88th/Wadsworth, N.A., Westminster, Colorado; and FirstBank of Wheatridge, National Association, Wheat Ridge, Colorado.

Board of Governors of the Federal Reserve System, July 23, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18070 Filed 7-28-93; 8:45 am]

BILLING CODE 6210-01-F

## Juanita B. Henry, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 18, 1993.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Juanita B. Henry* jointly with Joseph M. Henry, III, Natchitoches, Louisiana, to acquire an additional 67 percent, totalling 69 percent, of the voting shares of Exchange Bancshares, Inc., Natchitoches, Louisiana, and thereby indirectly acquire Exchange Bank and Trust, Natchitoches, Louisiana.

Board of Governors of the Federal Reserve System, July 23, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18071 Filed 7-28-93; 8:45 am]

BILLING CODE 6210-01-F

## Stichting Prioriteit ABN AMRO Holding; Stichting Administratiekantoor ABN AMRO Holding; and ABN AMRO Holding N.V., all of Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam Zuid-Oost, The Netherlands; and ABN AMRO North America, Inc., Chicago, Illinois; Application to Engage in Nonbanking Activities

Stichting Prioriteit ABN AMRO Holding; Stichting Administratiekantoor ABN AMRO Holding; and ABN AMRO Holding N.V., all of Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam Zuid-Oost, The Netherlands; and ABN AMRO North America, Inc., Chicago, Illinois (collectively, Applicants), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through ABN AMRO Securities (USA) Inc., formerly known as ABN Capital Markets Corporation (Company), a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), and registered with the States of New York, Florida, Connecticut, Massachusetts and Illinois, in underwriting and dealing in, to a limited extent:

(i) Debt securities, including without limitation, sovereign debt securities, corporate debt, debt securities convertible into equity securities, and securities issued by a trust or other vehicle secured by or representing interests in debt obligations; and

(ii) Equity securities, including without limitation, common stock, preferred stock, American Depositary Receipts, and other direct and indirect equity ownership interests in corporations and other entities, but not including ownership interests in open-end investment companies.

Company is a wholly owned subsidiary of ABN AMRO Capital Markets Holding, Inc., a Delaware corporation, which itself is a direct subsidiary of ABN AMRO North America, Inc., and an indirect subsidiary of the other Applicants. Applicants propose to conduct the proposed activities throughout the United States and the world from an office in New York, New York, and, to the extent permitted by Canadian law, from a representative office in Toronto, Canada.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be

expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board previously has approved, by order, underwriting and dealing in, to a limited extent, all types of debt and equity securities. *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *as modified by* Orders dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989), and January 26, 1993, 79 Federal Reserve Bulletin 226 (1993) (collectively, Modification Orders). In addition, the Board has modified certain conditions contained in the 1989 Section 20 Order for foreign banking organizations to address certain issues raised by an organization's foreign status and to avoid extending U.S. bank supervisory standards to foreign banks. *See Canadian Imperial Bank of Commerce, et al.*, 76 Federal Reserve Bulletin 158 (1990) (Canadian Imperial Order). Applicants have stated that they will conduct the proposed underwriting and dealing activities using the same methods and procedures, and subject to the same prudential limitations, established by the Board in the 1989 Section 20 Order, as modified by the Modification Orders and the Canadian Imperial Order, including the Board's 10 percent revenue limitation on such activities. However, Applicants are requesting that Company be permitted to engage immediately in the underwriting and dealing in debt and equity securities, rather than be subject to the one-year waiting period imposed in those orders, because the Applicants have had broad experience with equity securities in the past when they were owned by non-banks. For the foregoing reasons, Applicants contend that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.[1]

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicants believe that the proposed activities will benefit the public by promoting competition, lower financing costs, and more innovative financing. Applicants also believe that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicants believe that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 20, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, July 23, 1993.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 93-18069 Filed 7-28-93; 8:45 am]

BILLING CODE 6210-01-F

[1] In connection with this application, Applicants are also requesting relief from their commitment that they would not enter quotes for specific securities in the NASDAQ or any other dealer quotation system in connection with riskless principal transactions. *See Stichting AMRO and Amsterdam-Rotterdam Bank N.V.*, 76 Federal Reserve Bulletin 682 (1990). Applicants are requesting that they be permitted to indicate interest in purchasing and selling securities, in connection with those activities, to the extent permitted in previous Board orders. *See Dauphin Deposit Corporation*, 77 Federal Reserve Bulletin 672 (1991).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[Program Announcement Number 338]

### The Great Lakes Human Health Effects Research Program Notice of Availability of Funds for Fiscal Year 1993

#### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that grant applications will be accepted to conduct research on the impact on human health of fish consumption from the Great Lakes. ATSDR's mission includes the prevention of adverse health effects resulting from human exposure to hazardous substances in the environment. The ATSDR Great Lakes Human Health Effects Research Program will focus on populations that have been identified to have a higher risk of long-term adverse health effects from exposure to contaminants in Great Lakes fish, i.e., Native Americans, sport anglers, urban poor, and fetuses and nursing infants of mothers who consume contaminated Great Lakes fish.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

#### Authority

This program is authorized in sections 104(i)(5)(A) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604(i)(5)(A) and (15)]; and

section 106, subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)].

**Eligible Applicants**

Eligible applicants are the Great Lake states and political subdivisions thereof, including federally-recognized Indian tribal governments. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant. The Great Lake states include Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, New York and Wisconsin, consistent with section 105 subsection 118(e) of the Great Lakes Critical Programs Act of 1990 [33 U.S.C. 1268(e)]. ATSDR encourages collaborative efforts among these potential applicants.

**Availability of Funds**

Approximately $140,000 is available in FY 1993 to fund one new award. It is expected that the award will be made on or about September 30, 1993. It is anticipated that the new award will be for a 12-month budget period with a proposed project period of 1 to 2 years. The continuation award within the project period will be made on the basis of satisfactory progress and the availability of funds. ATSDR anticipates that funds will be available in FY 1994 to continue approved projects. Funding estimates may vary and are subject to change.

**Purpose**

The purpose of this announcement is to solicit scientific proposals designed to investigate and characterize the association between the consumption of contaminated Great Lakes fish and potential long-term adverse health effects. The objectives of this program are to:

(1) Build upon and amplify the results from past and on-going research;

(2) Develop information, databases and/or research methodology that will provide long-term benefit to the Great Lakes human health research effort;

(3) Develop directions and methodology for future human health effects research;

(4) Provide health information to the subjects of the research and their medical professionals; and

(5) Increase the public awareness of the health implications of toxic pollution in the Great Lakes.

**Program Requirements**

ATSDR will provide financial assistance to applicants in conducting studies on potential human health effects which result from human consumption of contaminated fish from the Great Lakes region. ATSDR encourages the submission of applications that emphasize research that will extend existing studies. ATSDR is also interested in funding applicant programs that identify populations which have a higher risk of short- and long-term adverse health effects from exposure to Great Lakes contaminants in fish, i.e., Native Americans, sport anglers, urban poor, and fetuses and nursing infants of mothers who consume contaminated Great Lakes fish. The program areas of research may include, but are not limited to:

1. Characterizing exposure and determining the profiles and levels of Great Lakes contaminants in biological tissues and fluids in high risk populations;

2. Identifying sensitive and specific human reproductive/developmental endpoints and correlating them to exposure to Great Lakes contaminants;

3. Determining the short- and long-term risk(s) of adverse health effects in progeny which result from parental exposure to Great Lakes contaminants (special emphasis on reproductive/developmental, behavioral, neurological, endocrinological, and immunological endpoints);

4. Investigating the feasibility of establishing registries and/or surveillance cohorts in the Great Lakes region; and

5. Establishing a chemical mixtures database with emphasis on tissue and blood levels in order to identify new cohorts, conduct surveillance and health effects studies, and establish registries and/or surveillance cohorts.

In awarding grants pursuant to the ATSDR Great Lakes Human Health Effects Research Program, ATSDR shall consider proposed projects that will help fill information gaps and address research needs regarding the human health impact of consumption of contaminated fish from the Great Lakes. ATSDR encourages collaborative efforts among potential applicants in pursuing these research needs.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

*1. Scientific and Technical Review Criteria of New Applications*

A. Proposed Program—60%

The extent to which the applicant's proposal addresses:

(1) The scientific merit of the hypothesis of the proposed project, including the originality of the approach and the feasibility, adequacy, and rationale of the design;

(2) The technical merit of the methods and procedures (including quality assurance and quality control) for the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the PURPOSE section of this announcement;

(3) The proposed project schedule, including clearly established and obtainable project objectives for which progress toward attainment can and will be measured;

(4) The proposed mechanism to be utilized as a resource to address community concerns and opinion, and create lines of communication; and

(5) The proposed method to disseminate the study results to state, tribal governments, Indian Health Service, local public health officials, community residents, and to other concerned individuals and organizations.

B. Program Personnel—30%

The extent to which the proposal has described:

(1) the qualifications, experience, and commitment of the Principal Investigator, and his/her ability to devote adequate time and effort to provide effective leadership; and

(2) the competence of associate investigators to accomplish the proposed study, their commitment, and time devoted to the study.

C. Applicant Capability—10%

Description of the adequacy and commitment of the institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

D. Program Budget—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of grant funds.

*2. Review of Continuation Applications*

Continuation awards within the project period will be made on the basis of the following criteria:

a. Satisfactory progress has been made in meeting project objectives;

b. Objectives for the new budget period are realistic, specific, and measurable;

c. Proposed changes in described long-term objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives;

d. Budget request is clearly justified and consistent with the intended use of grant funds; and

e. Availability of funds for the remaining project years, if any.

**Executive Order 12372**

The applications submitted under this announcement are not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Toxic Substances and Disease Registry.

**Other Requirements**

*A Protection of Human Subjects*

If the proposed project involves research on human subjects, the applicants must comply with Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurances must be provided that the project will be subject to initial and continuing review by the appropriate institutional review committees. The potential applicant should be aware that proposed project(s) which involve a Native community should have the project reviewed by the Indian Health Service if any component thereof is involved or will support the project, as well as the local tribal government for which that part of the project is applicable. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

*B. Cost Recovery*

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), provides for the recovery of costs incurred for health-related activities at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated costs including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final financial status report, unless there is a litigation, claim, negotiation, audit, or other action involving the specific site; then the records will be maintained until resolution of all issues on the specific site.

*C. Third Party Agreements*

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

(1) State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review (ATSDR selected peer reviewers), ownership of data, and the arrangement for copyright when publications, data, or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity;

(2) State that any copyrighted or copyrightable works shall be subject to a royalty-fee, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes;

(3) State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work; and

(4) State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall therefore retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

**Application Submission And Deadline Dates**

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305 by August 27, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date or,

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

To receive additional written information call (404) 332–4561. You will be asked your name, address, and phone number and will need to refer to Announcement Number 338. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, or by calling (404) 842–6797. Programmatic technical assistance may be obtained from Dr. Heraline Hicks, Research Implementation Branch, or Michael Youson, Office of the Director, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–29, Atlanta, Georgia 30333, or by calling (404) 639–6306 or 6300.

**Please Refer To Announcement Number 338 When Requesting Information And Submitting An Application**

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (telephone 202–783–3238).

Dated: July 23, 1993.

**Walter R. Dowdle,**

*Deputy Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 93–18065 Filed 7–28–93; 8:45 am]

BILLING CODE 4160–70–D

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## Centers for Disease Control and Prevention

**[Announcement Number 327]**

## State and Community-Based Programs To Prevent Bicycle Injuries; Notice of Availability of Funds for Fiscal Year 1993

### Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of funds in fiscal year (FY) 1993 for new cooperative agreements for State and Community-based Injury Control Programs to Prevent Bicycle Injuries. These programs will develop, implement, and evaluate multifaceted bicycle injury prevention programs to reduce the incidence of injuries and deaths among bicyclists which are preventable by helmet usage. They will also pilot test the prototype Injury Control and Risk Factor Surveillance System (ICARIS).

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Unintentional Injuries. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

### Authority

This program is authorized under sections 301, 317, and 394 of the Public Health Service Act, (42 U.S.C. 241, 247b and 280b), as amended. Program regulations are set forth in 42 CFR part 52.

### Eligible Applicants

Eligible applicants are the official public health agencies of states, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Marshall Islands, and the Republic of Palau. Additionally, official public health agencies of county or city governments with jurisdictional populations greater than 1,000,000 people are eligible. This includes recipients under Program Announcement 927 (State and Community-based Injury Control Programs).

### Availability of Funds

Approximately $675,000 is available in FY 1993 to fund up to 3 programs. It is expected that the average award will be $225,000 ranging from $150,000 to $250,000. It is expected that the awards will begin on or about September 30, 1993 and will be made for a 12-month budget period within a project period not to exceed 3 years. Funding estimates outlined above are subject to change based on the actual availability of funds. Non-competing continuation awards within the approved project period will be made on the basis of satisfactory progress in meeting program objectives and the availability of funds.

Note: At the request of the applicant, Federal personnel may be assigned to a project area in lieu of a portion of the financial assistance.

### Purpose

The purpose of these cooperative agreements is to develop, implement, and evaluate the effectiveness of multifaceted bicycle injury prevention programs in reducing morbidity, mortality, severity, disability, and costs associated with bicycle injuries which are preventable by helmet usage. This program is designed to facilitate the development, expansion, and improvement of bicycle injury control programs, and in particular, bicycle helmet usage programs within state and local health agencies. Programs within state and local health agencies are expected to establish or strengthen a lead capacity for the prevention and control of bicycle-related injuries. This capacity will enable these agencies to define and monitor the injury problem, mobilize broad collaborations for developing intervention strategies, including public education programs, and evaluate the program's effectiveness in terms of reduced morbidity and mortality, severity, disability, and cost. These programs will also be expected to pilot test the ICARIS system, pending OMB clearance.

Specifically, these awards are intended to:

A. Establish a state-wide bicycle injury prevention and control program by creating, within a health agency, a coordinator and support staff to coordinate bicycle injury control activities both within and outside the health agency;

B. Develop or improve injury surveillance activities to identify bicycle-related injuries, including data describing the magnitude of the problem and who is affected. Conduct injury risk factor surveillance using ICARIS. Head injury surveillance efforts should incorporate the core variables from the Head Injury Reporting Guidelines minimum data set. Case definitions should be consistent with the reporting guidelines;

C. Implement and evaluate multifaceted prevention activities to address and define the bicycle injury problem;

D. Provide injury control information to the public, legislators, the academic community and others based upon program findings and;

E. Promote statewide strategies (e.g., legislation) and community prevention programs (including educational, promotional and legislative strategies) to encourage the use of bicycle helmets.

### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below and CDC shall be responsible for the activities under B., below:

*A. Recipient Activities*

1. Provide a director/coordinator and staff who have authority and responsibility to carry out the project.

2. Define the magnitude of the bicycle-related injury problem; define the population at risk, and collect adequate injury data. These data include deaths and injuries attributable to bicycle-related head injury, use rates among various age groups in the community, and barriers to helmet use. Potential data sources include: E-coded hospital discharge data, Emergency Room data, Head and Spinal Cord Injury Registries, and random digit dial phone surveys of behavior (e.g., BRFSS).

3. Conduct state-wide injury risk factor surveillance using ICARIS using existing computer-assisted telephone interview (CATI) capabilities. Questions which have been proved valid and

feasible as determined by the ICARIS national evaluation study will be available for states to use.

4. Compare ICARIS results to Behavioral Risk Factor Survey results.

5. Establish a statewide coalition of appropriate individuals, agencies, and organizations with experience and interest in bicycle helmet usage campaigns. The coalition should provide for community input and seek to generate community support for the program. The coalition should include members internal and external to the health department (e.g. highway safety, EMS, media, private physicians, local public health leaders, community leaders, voluntary groups, acute care and rehabilitation.) Similar coalitions should be established for each intervention site.

6. Work with role highway safety officials (e.g., Governor's Highway Safety Representative, police) to promote bicycle helmet usage.

7. Demonstrate the role highway safety officials (e.g., Governor's Highway Safety Representative, police) will play in promoting bicycle helmet usage.

8. Promote and develop local and statewide legislation requiring bicycle helmet usage for all riders and passengers under 16 years of age.

9. Work with state and local community groups to develop and promote public information programs/strategies to increase the use of bicycle helmets (e.g., development of overall Plan to include selection of target groups, implementing the intervention(s): media/educational/promotional activities, and evaluation).

10. Evaluate the effectiveness of each intervention activity and the program as a whole.

*B. CDC Activities*

1. Provide consultation and assistance in problem assessment and target population determination; the evaluation of coverage, cost, and impact of current and potential interventions; and design of scientific protocols.

2. Collaborate in the design of all phases of the intervention demonstrations. Provide consultation on data collection instruments and procedures, and provide coordination of research, evaluation, and intervention activities between and among the sites.

3. Monitor data collection and analysis of information collected from evaluation, and provide consultation in establishing standardized data collection and reporting systems to monitor program activities and costs of interventions.

4. Assist states to develop a state-specific injury risk factor questionnaire based on ICARIS.

5. Assist states in determining adequate sample size for surveys.

6. Assist states to modify the existing national CATI system for ICARIS to a state-specific form.

7. Provide statistical and programming support to states for appropriate data analysis and interpretation.

8. Provide consultation in standardized implementation of intervention activities.

9. Provide up-to-date scientific information about injury prevention and coordinate with related activities in CDC's national injury prevention program.

10. Assist in the transfer of information and methods developed in these program to other programs through CDC's national injury prevention and control program.

**Review and Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria (Maximum 100 total points):

1. *Background and Need:* (10%)

The extent to which the applicant presents data justifying need, identifies suitable target populations, and demonstrates capacity through related activities to conduct such a program.

2. *Goals and Objectives:* (10%)

The extent to which the applicant has included goals which are specific, measurable, and relevant to the purpose of the proposal. The extent to which the applicant has included objectives which are specific, time-framed, measurable and feasible. The extent to which objectives are related to goals presented and to increasing bicycle helmet usage and pilot testing ICARIS.

3. *Methods:* (30%)

The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective for the budget period. The extent to which the applicant provides a reasonable schedule for implementation of the activities and the extent to which coordination and supervision of staff and organizations involved in activities is apparent.

4. *Evaluation:* (30%)

The extent to which the evaluation system will document program process and measure program effectiveness and impact, bicycle helmet usage and prevention of bicycle related injuries. The extent to which a feasible plan for reporting evaluation results and using evaluation information for programmatic decisions is included. The extent to which a feasible plan for evaluating ICARIS is included.

5. *Collaboration:* (20%)

The extent to which relationships between the program and the other agencies, organizations, health department units and local health departments is clear, complete and provides for complementary or supplementary working interactions. The extent to which coalition membership and roles are clear and appropriate. The extent to which relationships with the Governor's Office of Highway Safety, Maternal and Child Health, Injury Control Research Centers (ICRCs) or local academic institutions and local communities are completely described, are activity-specific and show evidence of support.

6. *Budget and Justification:* (not weighted)

The extent to which the applicant provides a detailed budget and justification consistent with stated objectives and planned program activities. NOTE: At the request of the applicant, Federal personnel may be assigned to a project area in lieu of a portion of the financial assistance.

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number (CFDA) is 93.136.

**Other Requirements**

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

**Application Submission and Deadline**

The program announcement and application kit were sent to all eligible applicants in May 1993.

**Where To Obtain Additional Information**

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 327. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Adrienne Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, Georgia 30305, (404) 842–6634.

Programmatic assistance may be obtained from James S. Belloni, Chief, Program Development and Implementation Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop F–41, Atlanta, Georgia 30333, (404) 488–4400. (Additional information on the Injury Control and Risk Factor Surveillance System (ICARIS) and Injury Control Research Centers (ICRCs) may be obtained from the programmatic contact.)

Please refer to Announcement Number 327 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 23, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18064 Filed 7–28–93; 8:45 am]

BILLING CODE 4160–18–P

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## Food and Drug Administration

**[Docket No. 93N–0189]**

## Warning Statements for Medical and Food Products Containing or Manufactured With Chlorofluorocarbons and Other Ozone-Depleting Substances; Alternative Language; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 29, 1993 (58 FR 34812). The document announced the availability of alternative language with respect to warning statements for human drug, biological, and device products containing or manufactured with chlorofluorocarbons (CFC's) and other ozone-depleting substances. The agency inadvertently omitted a paragraph from that document. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Philip L. Chao, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8049.

In FR Doc. 93–15233, appearing on page 34812 in the **Federal Register** of Tuesday, June 29, 1993, the following correction is made: On page 34813, in the 3d column, after the 1st full paragraph under the quoted text, the following paragraph is added:

"FDA notes that the EPA regulations (58 FR 8136 at 8166) state that, for prescription medical products that FDA finds to be essential for public health, the warning statement may be placed in supplemental printed material intended to be read by the prescribing physician, as long as the alternative statement is placed on the product, in packaging, or supplemental printed material intended to be read by the patient at time of purchase. For prescription human medical products which contain or are manufactured with class I substances, FDA declines, at this time, to determine which products are essential for public health. The Clean Air Act mandated that the warning labels be on all products containing or manufactured with CFC's on and after May 15, 1993. Given this date, FDA believes it would be impractical to engage in case-by-case determinations of which prescription human medical products are essential to public health. Thus, until FDA can establish criteria and make individualized determinations as to whether a medical product is essential to public health, the most prudent course of action is to presume, for purposes of the warning statement, that all prescription human medical products are essential to the public health."

Dated: July 22, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–18073 Filed 7–28–93; 8:45 am]

BILLING CODE 4160–01–F

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**[Docket No. 93F–0201]**

## Asahi Denka Kogyo K. K.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Asahi Denka Kogyo K. K. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium 2,2-methylenebis(4,6-di-*tert*-butylphenyl) phosphate as a clarifying agent in polypropylene articles intended for contact with food to include the use at temperatures up to and including retort conditions.

**DATES:** Written comments on petitioner's environmental assessment by August 30, 1993.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Helen R. Thorsheim, Center for Food

Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4378) has been filed by Asahi Denka Kogyo K. K., c/o Japan Technical Information Center, Inc., 1002 Pennsylvania Ave. SE., Washington, DC 20003. The petition proposes that the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of sodium 2,2′-methylenebis(4,6-di-*tert*-butylphenyl) phosphate as a clarifying agent in polypropylene articles intended for contact with food to include the use at temperatures up to and including retort conditions.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before August 30, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 21, 1993.

**Fred R. Shank,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 93–18035 Filed 7–28–93; 8:45 am]

BILLING CODE 4160–01–F

## Health Resources and Services Administration

### Final Funding Priority for Grants for Nurse Anesthetist Education Programs for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces the final funding priority for fiscal year (FY) 1993 Grants for Nurse Anesthetist Education Programs under the authority of section 831(a), title VIII of the Public Health Service Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

This program was announced in the **Federal Register** at 58 FR 21177 on April 19, 1993. The announcement included a proposed funding priority. A comment period of 30 days was established to allow public comment concerning the proposed funding priority. One comment was received. This notice includes a discussion of the comment received and the final funding priority for Grants for Nurse Anesthetist Education Programs for Fiscal Year 1993, which remains as proposed. Comments on program aspects that were not specifically proposed for public comment are not addressed in this notice.

*Purpose*

Section 831(a) of the Public Health Service Act authorizes the Secretary to make grants to cover the costs of projects to develop and operate programs for the education of nurse anesthetists.

*Eligibility*

Eligible applicants for Grants for Nurse Anesthetist Education Programs are public or private nonprofit institutions, accredited by an entity or entities designated by the Secretary of Education. Grants may be awarded to develop and operate a new nurse anesthetist program. Grants may also be awarded to maintain or expand an existing program.

*Other Considerations*

In addition, funding factors may be applied in determining funding of approved applications. It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

*Statutory Funding Preference*

In making awards of grants under this section, preference will be given to any qualified applicant that—(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. Preference will be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group.

Additional details about the implementation of this preference were published in the **Federal Register** at 58 FR 9570 on February 22, 1993. The burden for collection of information to request this preference is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

*Final Funding Priority*

It was proposed that a funding priority be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating students from those minority or low-income populations identified as at-risk of poor health outcomes. The comment received objected to including low-income populations in this priority because, "The average income for registered nurses prevents applicants from qualifying for this funding priority." This language does not hinder applicants for this program since applicants can qualify for this priority by enrolling and graduating students from minority populations. However, since nurse anesthetist students are registered nurses whose income would be higher than the low-income figures, we agree that low-income populations be deleted from this priority. The final funding priority is as follows.

A funding priority will be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating students from those minority populations identified as at-risk of poor health outcomes.

*Information Requirements Provision*

Under section 860(e)(2) of the Act, the Secretary may make an award under the Grants for Nurse Anesthetist Education Programs only if the applicant for the award submits to the Secretary information regarding the programs of the applicant. These requirements will be provided in the applications materials. The burden for collection of

this information is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

*Additional Information*

If additional programmatic information is needed, please contact: Mary S. Hill, R.N., Ph.D., Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6193 FAX: (301) 443-8586.

This program, Grants for Nurse Anesthetist Education Programs, is listed at 93.916 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: July 23, 1993.

William A. Robinson,

*Acting Administrator.*

[FR Doc. 93–18075 Filed 7–28–93; 8:45 am]

BILLING CODE 4160–15–P

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## Final Criteria for Fellows and Final Review Criteria for Grants for Nurse Anesthetist Faculty Fellowships for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces the final criteria for fellows and final review criteria for fiscal year (FY) 1993 Grants for Nurse Anesthetist Faculty Fellowships under the authority of section 831(b), title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Pub. L. 102–408, dated October 13, 1992.

This program was announced in the **Federal Register** at 58 FR 21986 on April 26, 1993. The announcement included proposed criteria for fellows and proposed review criteria. A comment period of 30 days was established to allow public comment concerning the proposed criteria for fellows and proposed review criteria. One comment was received. This notice includes a discussion of the comment received and the final criteria for fellows and final review criteria for Grants for Nurse Anesthetist Faculty Fellowships for FY 1993. Comments on program aspects that were not specifically proposed for public comment are not addressed in this notice.

*Purpose*

Section 831(b) of the Public Health Service Act authorizes the Secretary to make grants to provide financial assistance to certified registered nurse anesthetists (CRNA) who are faculty members in accredited program to enable such nurse anesthetists to obtain advanced education relevant to their teaching functions.

*Eligibility*

Public and private nonprofit institutions which employ CRNA faculty to teach registered nurses in a full-time accredited nurse anesthetist training program may apply for a Grant for Nurse Anesthetist Faculty Fellowships.

*Final Criteria for Fellows*

No comments were received regarding the criteria for fellows which remain as proposed. To be eligible for traineeship support an individual must be:

1. a United States citizen, national, or permanent resident;
2. a certified registered nurse anesthetist with current licensure to practice, and with teaching responsibilities in an accredited nurse anesthetist education program;
3. enrolled or accepted for enrollment in a formal program of study which leads to a master's or doctoral degree;
4. proposed for a fellowship in the applicant institution's grant proposal; and
5. a faculty member employed by, or affiliated with, the applicant institution during the period of approved fellowship support.

*Final Review Criteria*

The comment received suggested that the review criterion related to faculty practicing or teaching in medically underserved communities should be eliminated because "faculty are employed by major medical centers, large universities or physician groups located in metropolitan areas and do not meet the requirements of underserved * * *" Since underserved populations exist in metropolitan areas as well as rural areas, the review criteria remain as proposed.

The review of applications will take into consideration the following criteria:

1. The plan for faculty development at the applicant school, and the relationship of the faculty fellowship request to the overall program plan.
2. The extent to which the described advanced education is relevant to the faculty member's teaching function.
3. The extent to which the faculty practices and/or teaches in medically underserved and rural communities.
4. The justification and reasonableness of the budget request.
5. Qualifications of the Program Director.

*Other Considerations*

In addition, funding factors may be applied in determining funding of approved applications. It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

*Statutory Funding Preference*

Section 860(e) of the PHS Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, enacted on October 13, 1992, provides for the following statutory preference for this program of Grants for Nurse Anesthetist Faculty Fellowships, as well as for certain other programs under titles VII and VIII of the PHS Act.

Statutory preference will be given to qualified applicants that: (1) Have a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (2) have achieved, during the 2-year period preceding the fiscal year for which such an award is sought, a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile of applications that have been recommended for approval.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 9570, dated February 22, 1993. The burden for collection of information to request this preference is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

*Established Funding Preference*

The following funding preference was established in fiscal year 1990 after public comment (55 FR 36325, dated September 5, 1990). A revised version is being extended in fiscal year 1993. The Department determined that this is a more appropriate means to achieve program goals.

A funding preference will be given first to faculty who will be completing degree requirements before or by the end of the funded budget year, second

to faculty who are full-time students, and third to faculty who are part-time students.

*Additional Information*

If additional programmatic information is needed, please contact: Mary S. Hill, R.N., Ph.D., Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193, FAX: (301) 443–8586.

This program, Grants for Nurse Anesthetist Faculty Fellowships, is listed at 93.907 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12373, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: July 22, 1993.

**William A. Robinson,**

*Acting Administrator.*

[FR Doc. 93–18076 Filed 7–28–93; 8:45 am]

BILLING CODE 4160–15–P

## Announcement of Proposed Methodology for Implementation of the Statutory General Funding Preference for Selected Grant Programs Under Titles VII and VIII of the Public Health Service Act for Fiscal Year 1994

**SUMMARY:** The Health Professions Education Extension Amendments of 1992 and the Nurse Education and Practice Improvement Amendments of 1992 (Pub. L. 102–408, dated October 13, 1992) authorize a general funding preference (sections 791(a) and 860(e)(1)) for selected grant programs in titles VII and VIII of the Public Health Service (PHS) Act. For the purpose of making grant and cooperative agreement awards, funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications in a discretionary program, or favorable adjustment of the formula which determines the grant award in a formula grant program.

This statutory general preference was implemented in Fiscal Year (FY) 1993 following publication of a proposed **Federal Register** notice (57 FR 60212, dated December 18, 1992) which announced the implementation methodology for FY 1993. Following public comment, modifications were made in the proposed methodology and a final notice was published in the **Federal Register** (58 FR 9570, dated February 22, 1993). In addition, input was elicited from constituency groups affected by this preference provision. This notice will describe the proposed methodology for FY 1994 implementation of the general funding preference authorized by sections 791(a) and 860(e)(1) of the PHS Act.

**EFFECTIVE DATE:** The methodology for implementing the statutory general funding preference which is described in this notice is for use in FY 1994 grant cycles for the programs which are subject to this funding preference.

**SUPPLEMENTARY INFORMATION:** Sections 791(a) and 860(e)(1) of the PHS Act include a general funding preference for selected grant programs under titles VII and VIII. Grant programs which are subject to this funding preference are:

Departments of Family Medicine (section 747(b)),

Grants for Predoctoral Training in Family Medicine (section 747(a)),

Grants for Graduate Training in Family Medicine (section 747(a)),

Grants for Faculty Development in Family Medicine (section 747(a)),

Grants for Predoctoral Training in General Internal Medicine and/or General Pediatrics (section 748),

Grants for Residency Training in General Internal Medicine and/or General Pediatrics (section 748),

Grants for Faculty Development in General Internal Medicine and/or General Pediatrics (section 748),

Residency Training and Advanced Education in the General Practice of Dentistry (section 749),

Grants for Physician Assistant Training Program (section 750),

[1] Grants for Physician Assistant Faculty Development (section 750),

Podiatric Primary Care Residency Training (section 751),

Grants for Preventive Medicine Residency Training (section 763),

Allied Health Traineeships (section 766),

Allied Health Project Grants (section 767),

Advanced Nurse Education (section 821),

Nurse Practitioner and Nurse-Midwifery Programs (section 822)

Professional Nurse Traineeships (section 830),

Nurse Anesthetist Education Programs (section 831(a)),

Nurse Anesthetist Traineeships (section 831(a)), and

Grants for Nurse Anesthetist Faculty Fellowships (section 831(b)).

Programs which will have competitive cycles this year will be determined following approval of appropriations for FY 1994. A notice will be published to announce each competitive cycle.

[1] Program currently in development.

### Statutory General Funding Preference Provision

Under sections 791(a) and 860(e)(1) of the Act, with respect to the above listed grant programs, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

When program applications are peer reviewed, preference will be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. In several formula grant programs affected by this preference, the applications are not required to be submitted to a peer review group.

### Statutory Definition of "Graduate"

Under sections 791(c) and 860(e)(3), "graduate" is defined as an individual who has successfully completed all training (and residency requirements) necessary for full certification in the health profession selected by the individual.

Completion of all training for certification purposes will be defined in program specific notices based on the characteristics of the program.

### Methodology for Implementation

The methodology for implementing this statutory general funding preference includes (1) the definition of terms including "high rate," "significant increase in the rate," and "medically underserved community," (2) implementation specifics for new programs and small programs, (3) a system of providing access to lists of work settings which are recognized as medically underserved areas, and (4) a system of ranking applications when multiple funding preferences are used. Comments are invited only on the proposed changes in the definitions of "high rate," "significant increase in the rate," and "medically underserved communities" and in the implementation specifics for new programs and small programs. No changes have been made in the system of providing access to lists of work settings or in the system of ranking applications since the final FY 1993 notice.

To qualify for this funding preference, an applicant must meet the criteria for either part (A) or part (B) of the statutory

provision cited above and be ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group for all program applications that are peer reviewed. Information submitted to apply for this statutory funding preference will be subject to the normal monitoring and Federal audit processes.

**Proposed Definitions of "High Rate" and "Significant Increase in the Rate"**

"High rate" is defined as a minimum percent of graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings. The minimum percent for "high rate" for each program will be identified in the **Federal Register** announcement for that program and in the program materials. This rate will be based on the data obtained during the FY 1993 grant cycles and/or other available data. For undergraduate medical education programs academic years 1988–89 and 1989–90 will be used. Preventive medicine, public health, dental public health, and public health nurse graduates can be counted if they identify a primary work affiliation at one of the qualified work sites. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing graduates in the specified settings has increased by a minimum percent and that not less than 15 percent of graduates from the most recent year are working in these settings. The minimum percent for "significant increase in the rate" for each program will be identified in the **Federal Register** announcement for that program and in the program materials. This rate will be based on the data obtained during the FY 1993 grant cycles and/or other available data.

**Proposed Implementation Specifics for New Programs**

Experience with this preference, during FY 1993, points out that new programs are generally unable to compete effectively for funding under grant programs which are subject to this preference. In FY 1993, applications for the development of new programs were permitted to provide information about the placement of graduates from the entire school in medically underserved areas. Some new programs are not part of a larger school, others were unfairly penalized by the record of the entire school, and others are not directly related to the entire school (i.e., a Physician Assistant program in a medical school). The reauthorization legislation for several of the programs which are subject to the general funding preference specifically includes support for new programs. To allow new programs to compete more equitably in FY 1994, criteria for the general funding preference have been developed which will apply only to new programs.

A new program is defined as any program which has graduated less than three classes. After a program has graduated three classes, that program will be able to provide the information necessary for the general funding preference as defined in the law and will no longer be considered a new program. A new program will qualify for the general funding preference if four or more of the following criteria are met:

1. The mission statement of the program identifies a specific purpose of preparing health professionals to serve underserved populations.
2. The curriculum includes content which will help to prepare practitioners to serve underserved populations.
3. Substantial clinical training experience is required in medically underserved communities.
4. A minimum of 20 percent of the faculty spend at least 50 percent of their time providing/supervising care in medically underserved communities.
5. The entire program or a substantial portion of the program is physically located in a medically underserved community.
6. Student assistance, which is linked to service in medically underserved communities following graduation, is available to the students in the program.
7. The program provides a placement mechanism for deploying graduates to medically underserved communities.

Meeting these criteria for the statutory general funding preference will qualify new programs to receive the statutory general funding preference.

In FY 1993, new programs could also qualify for the general funding preference by providing assurance that 20 percent of their prospective graduates had signed, prior to December 18, 1992, commitments to practice in medically underserved communities after graduation. In FY 1994, new programs can qualify for the general preference by providing assurance that a minimum percent of their prospective graduates have signed commitments to practice in medically underserved communities after graduation contingent to receiving some type of student assistance. This minimum percent will be equal to the minimum percentage for "high rate." Students who have signed such agreements are subject to the terms and conditions as identified by the student assistance program of the school.

In summary, new programs can qualify for the general funding preference by: (1) Meeting four or more of the criteria for new programs, or (2) providing assurance that a minimum percent of their prospective graduates have signed commitments to practice in medically underserved communities after graduation contingent to receiving some type of student assistance.

**Proposed Implementation Specifics for Small Programs**

In FY 1993, small programs were (1) defined as programs with less than 10 graduates per year and (2) required to submit data for two years to qualify for the general funding preference based on high rate. Because of the small number of graduates involved, the ability to qualify for the general funding preference could have been based on the decision of 1 or 2 graduates. For FY 1994, the program materials for grant programs whose applicants typically have less than 10 graduates per year will request data for the preceding three years which will be aggregated to determine whether or not the "high rate" has been achieved.

**Statutory Definition of "Medically Underserved Community"**

Section 799(6) of the PHS Act defines "medically underserved community" as an urban or rural area or population that—

(A) Is eligible for designation under section 332 as a health professional shortage area;

(B) Is eligible to be served by a migrant health center under section 329, a community health center under section 330, a grantee under section 340 (relating to homeless individuals), or a grantee under section 340A (relating to residents of public housing); or

(C) Has a shortage of personal health services, as determined under criteria issued by the Secretary under section 1861(aa)(2) of the Social Security Act (relating to rural health clinics).

In FY 1993, a graduate was deemed to be serving in a medically underserved community if he or she worked in any of the work settings identified in the **Federal Register** notice. Following public comment in FY 1993, the category of "ambulatory practice sites designated by State or local governments as serving medically underserved communities" was added to the list of acceptable work settings. In

FY 1994 this item is clarified as "ambulatory practice sites designated by State Governors as serving medically underserved communities." We recognize that States may not use identical criteria in determining these designations. Therefore, HRSA will begin working with the States to identify ways of obtaining more uniform data. It is expected that changes based on this collaboration with the States will be implemented after FY 1994.

For implementation of this general funding preference in FY 1994, it is proposed that service in a "medically underserved community" will include service in the following work settings:

Community Health Centers (section 330)
Migrant Health Centers (section 329)
Health Care for the Homeless Grantees (section 340)
Public Housing Primary Care Grantees (section 340A)
Rural Health Clinics, federally designated (section 1861(aa)(2) of the Social Security Act)
National Health Service Corps sites, freestanding (section 333)
Indian Health Service Sites (Pub. L. 93–638 for tribally operated sites and Pub. L. 94–437 for IHS operated sites)
Federally Qualified Health Centers (section 1905 (a) and (l) of the Social Security Act)
Primary Medical Care Health Professional Shortage Areas (HPSAs) (facilities and geographic) (designated under section 332) For primary care physicians and other health personnel except dentists and nurses
Dental HPSAs (facilities and geographic) (designated under section 332) For dentists only
Nurse Shortage Areas (old section 836, currently section 846) For nurses only
State or Local Health Departments (Regardless of sponsor—for example, local health departments who are funded by the State would qualify.)
Ambulatory practice sites designated by State Governors as serving medically underserved communities

It is recognized that some practices and/or facilities that provide care to medically underserved populations are not included in these work settings. Public comment in FY 1993 encouraged inclusion of additional work settings such as "at least one-third of the patients * * * are either indigent, covered by Medicaid, or covered by some other type of program associated with underserved communities * * *" or "practice consists of at least 50 percent uninsured or Medicaid patients in the previous year." These work settings, which describe the relative number of underserved patients seen in a practice and/or facility, are not included in the list of work settings for FY 1994 since they are outside the scope of the statutory definition of medically underserved community.

**Access to the Lists of Medically Underserved Work Settings**

A listing of Community Health Centers, Migrant Health Centers, Health Care for the Homeless Grantees, Public Housing Primary Care Grantees, Rural Health Clinics, National Health Service Corps Sites, Indian Health Service Sites, Federally Qualified Health Centers, and State Health Departments will be available through an electronic bulletin board, called the BHPr (Bureau of Health Professions) Bulletin Board. Data will be available in two formats, as a dBASE III file or as an ASCII file. The BHPr Bulletin Board can be accessed by using a personal computer with a communication package and a modem by dialing (301) 443–5913. Detailed instructions for how to proceed will appear on the screen as soon as access to the Bulletin Board is complete. Applicants who do not have the necessary equipment to access the electronic bulletin board may obtain additional information by calling the Program Official identified in the application materials for the grant programs subject to this statutory funding preference.

A list of designated Primary Medical Care Health Professional Shortage Areas (HPSAs) was published in the Federal Register on October 28, 1992 (57 FR 48854).

For additional information concerning Local Health Departments, applicants may call the National Association of County Health Officials (NACHO) at (202) 783–5550.

**Ranking Applications When Multiple Funding Preferences Are Used**

For grant programs that include multiple funding preferences, preference points will be assigned. An application will receive one point for qualifying for each statutory funding preference and one half point for qualifying for each administrative preference, but no applicant qualifying only for an administratively determined preference would be funded ahead of an applicant qualifying for a statutory funding preference. The total number of preference points for any grant program will equal the number of statutory preferences plus half the number of administrative preferences.

**Additional Information**

Interested persons are invited to comment on the proposed definitions of "high rate," "significant increase in the rate," and "medically underserved community" and the implementation specifics for new programs and small programs. The comment period is 30 days. All comments received on or before August 30, 1993, will be considered before the final implementation methodology for fiscal year 1994 is established. Written comments should be addressed to: Ms. Shirley Johnson, Director, Office of Program Development, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Office of Program Development, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Dated: July 23, 1993.

**William A. Robinson,**

*Acting Administrator.*

[FR Doc. 93–18074 Filed 7–28–93; 8:45 am]

BILLING CODE 4160–15–P

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## National Institutes of Health Division of Research Grants; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meeting and roster of panel members.

MEETING TO REVIEW INDIVIDUAL GRANT APPLICATIONS:

Scientific Review Administrator: Dr. Jane Hu (301) 594–7269
Date of Meeting: August 2, 1993
Place of Meeting: Chevy Chase Holiday Inn, Bethesda, MD
Time of Meeting: 8:30 a.m.

This notice is being published less than 15 days prior to the meeting due

to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 22, 1993.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 93–18140 Filed 7–28–93; 8:45 am]

BILLING CODE 4140–01–M

## Social Security Administration

**[Social Security Acquiescence Ruling 93-3(6)]**

### Akers v. Secretary of Health and Human Services; Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Social Security Acquiescence Ruling.

**SUMMARY:** In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Principal Deputy Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 93-3(6).

**EFFECTIVE DATE:** July 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Walt Burton, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966-5041.

**SUPPLEMENTARY INFORMATION:** Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling when implementing the decision of a court within the Sixth Circuit which has reversed the final decision of the Secretary and awarded benefits to the claimant. This Social Security Acquiescence Ruling will apply to all such cases on or after July 29, 1993.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security - Disability Insurance; 93.803 Social Security Retirement Insurance; 93.805 Social Security Survivors Insurance; 93.806 - Special Benefits for Disabled Coal Miners; 93.807 - Supplemental Security Income.)

Dated: January 11, 1993.

Louis D. Enoff,

*Principal Deputy Commissioner of Social Security.*

**Editorial note:** This document was received at the Office of the Federal Register July 26, 1993.

### Acquiescence Ruling 93-3(6)

*Akers* v. *Secretary of Health and Human Services*, 966 F.2d 205 (6th Cir. 1992)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act

*Issue:* Whether continued benefits paid to claimants pursuant to section 2(e) of the Social Security Disability Benefits Reform Act of 1984 or section 223(g) of the Social Security Act (the Act) are "past-due benefits" within the meaning of section 206(b)(1) of the Act.

*Statute/Regulation/Ruling Citation:* Sections 206(b)(1) and 223(g) of the Social Security Act (42 U.S.C. 406(b)(1) and 423(g)); sections 2(d) and 2(e) of the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460; 20 CFR 404.1703; 20 CFR 404.1728-1730; and section 5106 of Pub. L. No. 101-508.

*Circuit:* Sixth (Kentucky, Michigan, Ohio, Tennessee).

*Akers* v. *Secretary of Health and Human Services*, 966 F.2d 205 (6th Cir. 1992).

*Applicability of Ruling:* This Ruling applies to cases in which a court may allow an attorney's fee as a result of a civil action in which the court has reversed the final decision of the Secretary and awarded benefits to the claimant. It does not affect the way the Social Security Administration (SSA) adjudicates cases, but only affects how SSA calculates past-due benefits and disburses accumulated past-due benefits within the meaning of section 206(b)(1) of the Act.

*Description of Case:* In October 1987, SSA determined that plaintiff's medical condition had improved and that his disability benefits would therefore cease as of December 1987. Plaintiff requested reconsideration of the cessation decision and received continued[1] benefits pending his appeal. SSA upheld the cessation determination throughout the administrative process and discontinued the continuing benefits in June 1989. Plaintiff filed a complaint in the U.S. District Court for the Eastern District of Kentucky. The district court reversed SSA's decision and held that plaintiff's benefits should not have been terminated.

Subsequently, plaintiff's counsel moved the district court pursuant to section 206(b)(1) of the Act, for attorney's fees in the amount of twenty-five percent of plaintiff's "past-due benefits," including continued benefits. The Secretary maintained that continued benefits are not "accumulated because of a favorable * * * decision," (20 CFR 404.1703), and thus are not past-due benefits for purposes of calculating attorney's fees. The district court accepted the Secretary's argument and ordered SSA to pay plaintiff's counsel twenty-five percent of only those benefits accrued since plaintiff's continued benefits were discontinued.

*Holding:* In reversing the district court's decision, the Sixth Circuit held that "interim benefits" paid to social security claimants pursuant to the Social Security Disability Benefits Reform Act of 1984 should be included in the calculation of title II past-due benefits for the purpose of awarding attorney's fees under section 206(b) of the Act. The court rationalized its decision on several grounds. It first noted that "interim benefits are similar to a loan, since they must be repaid by unsuccessful claimants (absent waiver by the Secretary)." Accordingly, stated the court, a claimant is not "entitled" to the benefits absent a final favorable decision. Second, the court stated that the Secretary's definition of past-due benefits would

(1) Create an "unjustifiable dichotomy" between attorneys of claimants who did and did not elect "interim benefits;"

(2) Create a potential conflict between attorneys and claimants; and

[1] Although the district court and the Sixth Circuit stated that the plaintiff elected to receive "interim" benefits pursuant to section 223(g) of the Social Security Act (42 U.S.C. 423(g)), consistent with statutory language, SSA refers to section 223(g) benefits as "continued" benefits.

(3) Impose greater hardships on claimants by discouraging competent attorneys from representing them.

Additionally, the Sixth Circuit acknowledged that Congress had amended section 206(a) of the Act, through the Omnibus Budget Reconciliation Act of 1990, to exclude "interim benefits" from "past-due benefits," for purposes of calculating attorney's fees for representation before the Secretary. The court did not apply the section 206(a) definition of past-due benefits to cases under section 206(b), but could not infer any congressional intent for excluding interim benefits from calculating past-due benefits under section 206(b).

*Statement as to How Akers Differs From Social Security Policy*

Under section 206 of the Act, the Secretary is authorized to withhold up to 25 percent of the total of title II past-due benefits to which a claimant is entitled for possible payment of attorney's fees. Although section 206 does not expressly define past-due benefits for section 206(b) purposes, 20 CFR 404.1703 defines past-due benefits as the total amount of benefits payable under title II of the Act to all beneficiaries that has accumulated because of a favorable administrative or judicial determination or decision. When calculating past-due benefits, SSA does not consider continued benefits to be past-due benefits because:

(1) They have already been paid and are, therefore, not accumulated and payable, and

(2) They result from legislation, not from an "administrative or judicial determination or decision."

Accordingly, when computing the 25 percent withholding amount from which attorney's fees can be paid, SSA considers only those benefits which are payable to the claimant. Contrary to SSA's interpretation of the term "past-due benefits," the court of appeals held that continued benefits paid to social security claimants are included in past-due benefits for the purpose of calculating attorney's fees under section 206(b).

Although Congress has expressly excluded continued benefits from the calculation of "past-due benefits" for section 206(a) purposes, the legislative history is silent as to whether continued benefits are to be included in the amount of money available for court allowed attorney's fees (section 206(b) cases). Under the Sixth Circuit *Webb* rule, the tribunal (i.e., SSA or the court) which awards benefits sets the fee for both administrative and court services. SSA believes its policy of not including continued benefits in the "past-due benefit" calculation for section 206(b) purposes addresses the overriding concern of Congress in enacting section 223(g), i.e., to provide claimants with "continuation of payments during appeal * * * to ease the severe financial and emotional hardships that would otherwise be suffered." H.R. Rep. No. 98-618, 98th Cong., 2d Sess. 18, *reprinted in* 1984 U.S. Code Cong. & Ad. News 3038, 3055.

*Explanation of How SSA Will Apply Akers Within The Circuit*

This Ruling applies to title II disability cases and the title II portion of concurrent title II and title XVI disability cases in which a fee petition is filed in a court within the Sixth Circuit (Kentucky, Michigan, Ohio, Tennessee).

When a case involves: (1) A fee petition that has been filed in a federal court based on proceedings on the issue of continuing entitlement to disability insurance benefits and (2) a claimant who has received continued benefits pursuant to section 2(e) of the 1984 Disability Amendments or section 223(g) of the Act during any period considered in the court's decision, SSA will consider both accumulated benefits and continued benefits already paid to be "past-due benefits" within the meaning of section 206(b)(1) of the Act.

SSA will not withhold funds from continued benefits to pay an attorney's fee. SSA will pay the approved fee directly to the attorney from the accumulated past-due benefits held by the Secretary, subject to the maximum of 25 percent of the total past-due benefits amount (as defined by the court, i.e., past-due benefits include both accumulated benefits and continued benefits).

If the sum of accumulated past-due benefits which the Secretary certifies for direct payment and any funds held in trust or escrow by the attorney is less than the fee set by the court, SSA will advise the attorney to seek payment of the balance of the authorized fee directly from the claimant.

[FR Doc. 93–18080 Filed 7–28–93; 8:45 am]
BILLING CODE 4190–29–F

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[Social Security Acquiescence Ruling 93–4(2)]

## Condon and Brodner v. Bowen; Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Social Security Acquiescence Ruling.

**SUMMARY:** In accordance with 20 CFR 422.406(b)(2) published January 11, 1990 (55 FR 1012), the Principal Deputy Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 93–4(2).

**EFFECTIVE DATE:** July 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Walt Burton, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–5041.

**SUPPLEMENTARY INFORMATION:** Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims in which judicial review of the decision of the Secretary has been sought in the Second Circuit. This Social Security Acquiescence Ruling will apply to all such judicial reviews on or after July 29, 1993.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security Survivors Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

**Louis D. Enoff,**
*Principal Deputy Commissioner of Social Security.*

### Acquiescence Ruling 93–4(2)

*Condon and Brodner* v. *Bowen*, 853 F.2d 66 (2d Cir. 1988)— Attorney's Fees

**Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act**

*Issue:* Whether continued benefits paid to claimants pursuant to section 2(e) of the Social Security Disability Benefits Reform Act of 1984 or section 223(g) of the Social Security Act (the Act) are "past-due benefits" within the meaning of section 206(b)(1) of the Act.

*Statute/Regulation/Ruling Citation:* Sections 206(b)(1) and 223(g) of the Social Security Act (42 U.S.C. 406(b)(1) and 423(g)); sections 2(d) and 2(e) of the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98–460; 20 CFR 404.1703; 20 CFR 404.1728–1730; and section 5106 of Pub. L. No. 101–508.

*Circuit:* Second (Connecticut, New York, Vermont).

Condon and Brodner v. *Bowen*, 853 F.2d 66 (2d Cir. 1988).

*Applicability of Ruling:* This Ruling applies to cases in which a court may allow an attorney's fee as a result of a civil action. It does not affect the way the Social Security Administration (SSA) adjudicates cases, but only affects how SSA calculates past-due benefits and disburses accumulated past-due benefits within the meaning of section 206(b)(1) of the Act.

*Description of Case:* Plaintiffs William Condon and Leatrice Brodner[1], who were found eligible for disability insurance benefits under title II of the Act since 1974 and 1972, respectively, were subsequently found no longer entitled to such benefits as of October 1982 and March 1983, respectively. After exhausting their administrative remedies, both plaintiffs sought judicial review in the United States District Court for the District of Connecticut of the decisions to terminate their benefits. While their cases were pending in the district court, the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98–460 (1984 Disability Amendments) was enacted. Under the provisions of section 2(d) of the 1984 Disability Amendments, these cases were remanded by the court to the Secretary for further review under a medical improvement standard. Both plaintiffs elected to receive continued benefits pursuant to section 2(e) of the 1984 Disability Amendments.

Upon readjudication, the Secretary reinstated Condon's entitlement to benefits as of August 1982 and Brodner's entitlement to benefits as of June 1983. The Secretary then calculated the amounts of accumulated past-due benefits to which the plaintiffs were entitled. Prior to releasing the past-due benefits to the plaintiffs, the Secretary withheld 25 percent of the benefits pursuant to section 206 of the Act (42 U.S.C. 406) for the possible payment of attorney's fees.

The plaintiffs' attorney then filed petitions with the Social Security Administration pursuant to section 206(a) of the Act (42 U.S.C. 406(a)) seeking approval to charge and collect a fee for services performed in the administrative proceedings. The Secretary authorized a fee and certified direct payment to the attorney out of a portion of the withheld funds and released the balance of the withheld funds to the plaintiffs. Condon deposited the balance of his withheld funds in an escrow account with his attorney.

The plaintiffs' attorney subsequently filed motions in the district court pursuant to section 206(b)(1) of the Act (42 U.S.C. 406(b)(1)) seeking compensation for his services in proceedings before the court. Section 206(b)(1) permits a court, whenever it renders a judgment favorable to a claimant who was represented before the court by an attorney, to set a reasonable fee for attorney's services not in excess of 25 percent of the past-due benefits to which the claimant is entitled. The attorney's fee requests were based on his calculation of the total amount of all benefits payable or paid to the plaintiffs from the dates benefits stopped to the dates of reinstatement, including the continued benefits.

The Secretary filed briefs opposing the plaintiffs' motions for attorney's fees. The Secretary contended that continued benefits paid to claimants were not past-due benefits within the meaning of section 206(b)(1) and that the court could only award the attorney 25 percent of the accumulated past-due benefits.

A magistrate concluded that "interim benefits" (i.e., continued benefits) do constitute past-due benefits for the purpose of calculating attorney's fees, and awarded attorney fees based on both the accumulated past-due benefits and the "interim benefits."[2] The district court adopted the magistrate's opinion. The funds held in escrow by Condon's attorney were released in payment of the fee for his representation of Condon in court. Brodner paid the attorney the fee that the district court awarded in full. The Secretary appealed the district court's decision to award attorney's fees to the United States Court of Appeals for the Second Circuit. The Second Circuit affirmed the decision of the district court.

*Holding:* The Second Circuit held that "interim benefits" (i.e., continued benefits) paid to Social Security claimants pursuant to section 2(e) of the 1984 Disability Amendments in accordance with section 223(g) of the Act should be included in the calculation of past-due benefits for the purpose of awarding attorney's fees under section 206(b) of the Act.

Because the language of the statute did not expressly state whether or not continued benefits are included in the definition of past-due benefits, the court looked to congressional intent to reach its conclusion. The court stated that "[i]n implementing section 206(b) of the Act, Congress was seeking to 'encourage effective legal representation of claimants' by assuring attorneys that they would receive adequate pay for representing Social Security claimants while at the same time prohibiting attorneys from charging claimants 'inordinately large fees.'" 853 F.2d at 70. The court further concluded that: (1) 25 percent of the continued benefits that attorneys could receive would not constitute the type of inordinately large fees that Congress intended to prohibit under section 206(b)(l) and, (2) the Secretary's reading of the statutes would undermine "the Act's purpose of encouraging attorneys to represent Social Security claimants."

In addition, the court specifically stated that it did not intend to transform SSA into "a collection agency for the Social Security bar." It noted that claimants can enter into their own private arrangements with their attorneys, i.e., by setting up escrow accounts for possible payment of attorney's fees, as Condon did in his action. Consequently, it should not be necessary for SSA to become involved in the collection of attorney's fees.

*Statement as to How Condon and Brodner Differs From Social Security Policy*

Under section 206 of the Act, the Secretary is authorized to withhold up to 25 percent of the total of title II past-due benefits to which a claimant is entitled for possible payment of attorney's fees. Although at the time of the court's decision section 206 did not expressly define past-due benefits, 20

[1]These two cases were consolidated for the purpose of ruling on the motions for attorney's fees because they presented the same issue and the same attorney represented both plaintiffs.

[2]The benefits received by the plaintiff were authorized by section 2(e) of the 1984 Amendments. The characteristics of "interim" benefits under section 223(g) of the Social Security Act (42 U.S.C.423(g)) and benefits under section 2(e) of the 1984 Amendments are not distinguishable in any manner relevant to the issue of whether "interim" benefits are considered "past-due" benefits.

CFR 404.1703 defines past-due benefits as the total amount of benefits payable under title II of the Act to all beneficiaries that has accumulated because of a favorable administrative or judicial determination or decision. When calculating past-due benefits, SSA does not consider continued benefits to be past-due benefits because: (1) they have already been paid and are not accumulated and payable, and (2) they result from legislation, not from an "administrative or judicial determination or decision."

Accordingly, when computing the 25 percent withholding amount from which attorney's fees can be paid, SSA considers only those benefits which are payable to the claimant. Contrary to SSA's interpretation of the term "past-due benefits," the court of appeals held that continued benefits paid to Social Security claimants are included in past-due benefits for the purpose of calculating attorney's fees under section 206(b).

Although Congress has since expressly excluded continued benefits from the calculation of "past-due benefits" for section 206(a) purposes, the legislative history is silent as to whether continued benefits are to be included in the amount of money available for court allowed attorney's fees for court services (section 206(b) cases).[3] SSA believes its policy of not including continued benefits in the "past-due benefit" calculation for section 206(b) purposes addresses the overriding concern of Congress in enacting section 223(g), i.e., to provide claimants with "continuation of payments during appeal * * * to ease the severe financial and emotional hardships that would otherwise be suffered." H.R. Rep. No. 98–618, 98th Cong., 2d Sess. 18, *reprinted in* 1984 U.S. Code Cong. & Ad. News 3038, 3055.

*Explanation of How SSA Will Apply The Decision Within The Circuit*

This Ruling applies to title II disability cases and the title II portion of concurrent title II and title XVI disability cases in which a fee petition is filed involving court services performed within the Second Circuit (Connecticut, New York or Vermont).

When a case involves: (1) A fee petition that has been filed in a federal court based on proceedings on the issue of continuing entitlement to disability insurance benefits and (2) a claimant who has received continued benefits pursuant to section 2(e) of the 1984 Disability Amendments or section 223(g) of the Act during any period considered in the court's decision, SSA will consider both accumulated benefits and continued benefits already paid to be "past-due benefits" within the meaning of section 206(b)(1) of the Act.

SSA will not withhold funds from continued benefits to pay an attorney's fee. SSA will pay the approved fee directly to the attorney from the accumulated past-due benefits held by the Secretary, subject to the maximum of 25 percent of the total past-due benefits amount (as defined by the court, i.e., past-due benefits include both accumulated benefits and continued benefits).

If the sum of accumulated past-due benefits which the Secretary certifies for direct payment and any funds held in trust or escrow by the attorney is less than the fee set by the court, SSA will advise the attorney to seek payment of the balance of the authorized fee directly from the claimant.

[FR Doc. 93–18081 Filed 7–28–93; 8:45 am]
BILLING CODE 4190–29–F

[3]Section 5106 of Pub. L. No. 101–508, the Omnibus Budget Reconciliation Act of 1990 states that for the purposes of section 206(a) of the Social Security Act the term "past-due benefits" excludes continued and interim benefits payable under sections 223(g) and (h), respectively, of the Act. Congress did not expressly exclude continued benefits from "past-due benefits" for purposes of calculating attorney fees under section 206(b) of the Act.

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**[Social Security Acquiescence Ruling 93–5(11)]**

## Shoemaker v. Bowen; Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Social Security Acquiescence Ruling.

**SUMMARY:** In accordance with 20 CFR 422.406(b)(2) published January11, 1990 (55 FR 1012), the Principal Deputy Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 93–5(11).

**EFFECTIVE DATE:** July 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Walt Burton, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 966–5041.

**SUPPLEMENTARY INFORMATION:** Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 422.406(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals decision as explained in this Social Security Acquiescence Ruling to claims in which judicial review of the decision of the Secretary has been sought in the Eleventh Circuit. This Social Security Acquiescence Ruling will apply to all such judicial reviews on or after July 29, 1993.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security Survivors Insurance; 93.806—Special Benefits for Disabled Coal Miners; 93.807—Supplemental Security Income.)

**Louis D. Enoff,**

*Principal Deputy Commissioner of Social Security.*

**Acquiescence Ruling 93–5(11)**

*Shoemaker* v. *Bowen*, 853 F.2d 858 (11th Cir. 1988)— Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act

*Issue:* Whether continued benefits paid to claimants pursuant to section 2(e) of the Social Security Disability Benefits Reform Act of 1984 or section 223(g) of the Social Security Act (Act) are "past-due benefits" within the meaning of section 206(b)(1) of the Act.

*Statute/Regulation/Ruling Citation:* Sections 206(b)(1) and 223(g) of the Social Security Act (42 U.S.C. 406(b)(1) and 423(g)); sections 2(d) and 2(e) of the Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98–460; 20 CFR 404.1703; 20 CFR 404.1728–1730; and section 5106 of Pub. L. No. 101–508.

*Circuit:* Eleventh (Alabama, Florida, Georgia).

*Shoemaker* v. *Bowen*, 853 F.2d 858 (11th Cir. 1988).

*Applicability of Ruling:* This Ruling applies to cases in which a court may allow an attorney's fee as a result of a civil action. It does not affect the way the Social Security Administration (SSA) adjudicates cases, but only affects how SSA calculates past-due benefits and disburses accumulated past-due benefits within the meaning of section 206(b)(1) of the Act.

*Description of Case:* In March 1979, plaintiff Mary Shoemaker applied for and subsequently was awarded disability insurance benefits under title II of the Act. In August 1982, SSA determined that plaintiff's disability had ceased and that she was no longer entitled to disability insurance benefits. After exhausting her administrative remedies, plaintiff sought judicial review in the United States District Court for the Northern District of Alabama.

The district court remanded the case to the Secretary for further review. While her case was pending on remand, plaintiff elected to receive continued benefits pursuant to section 2(e) of the 1984 Disability Amendments.[1]

The plaintiff received continued benefits from December 1984 until December 1986 when, based on a favorable decision by the Secretary, her entitlement to disability insurance benefits was reinstated. The Secretary then calculated the accumulated past-due benefits to which the plaintiff was entitled to include past-due benefits for the period from October 1982, when her payments had stopped, until December 1984, when her continued benefits began.

The plaintiff's attorney subsequently filed a petition with the district court pursuant to section 206(b)(1) of the Act, seeking compensation for his representation of the plaintiff before the court. The attorney stated that the request did not exceed 25 percent of "past-due benefits payable or paid" to the plaintiff. The attorney suggested that the funds withheld from the past-due benefits by the Secretary and the amount retained from the plaintiff's continued benefits and placed in trust by the attorney be used for payment of the fee award.

The Secretary opposed the attorney's fee request on the ground that under section 206(b)(1) attorney's fees may not exceed 25 percent of a claimant's past-due benefits. The Secretary maintained that continued benefits, because they have already been paid, are not considered past-due benefits within the meaning of section 206(b)(1). The district court rejected the Secretary's position that attorney's fees could not be granted out of the continued benefits and awarded attorney's fees based on both the accumulated past-due benefits and the continued benefits. The Secretary appealed the district court's decision to the United States Court of Appeals for the Eleventh Circuit. The court of appeals affirmed the decision of the district court.

*Holding:* The court held that "interim benefits" a claimant receives pursuant to section 223(g) of the Act may be considered by a district court in awarding attorney's fees under section 206(b)(1) of the Act.

Because the language of the statute did not expressly state whether or not continued benefits are included in the definition of past-due benefits,[2] the court looked to congressional intent to reach its conclusion. The court stated that "[w]hile one of the purposes of section 406 [(206(b) of the Act)] is to limit attorney's fees, Congress also intended 'to encourage effective legal representation' by ensuring that attorneys will receive a fee for their representation." 853 F.2d at 860. The court concluded that under the Secretary's interpretation (i.e., not to include continued benefits in the definition of past-due benefits), claimants who do not elect to receive continued benefits have a greater amount of money available for a reasonable attorney's fee than those who elect the continued benefits, placing claimants who elect to receive the continued benefits at a disadvantage in obtaining effective legal representation.

*Statement as to How Shoemaker Differs From Social Security Policy*

Under section 206 of the Act, the Secretary is authorized to withhold up to 25 percent of the total of title II past-due benefits to which a claimant is entitled for possible payment of attorney's fees. Although section 206 did not expressly define past-due benefits at the time of the court's decision, 20 CFR 404.1703 defines past-due benefits as the total amount of benefits payable under title II of the Act to all beneficiaries that has accumulated because of a favorable administrative or judicial determination or decision. When calculating past-due benefits, SSA does not consider continued benefits to be past-due benefits because:

(1) They have already been paid and are not accumulated and payable, and

(2) They result from legislation, not from an "administrative or judicial determination or decision."

Accordingly, when computing the 25 percent withholding amount from which attorney's fees can be paid, SSA considers only those benefits which are payable. Contrary to SSA's interpretation of the term "past-due benefits," under the court of appeals decision continued benefits paid to social security claimants constitute past-due benefits for the purpose of calculating attorney's fees under section 206(b)(1).

Although Congress has expressly excluded continued benefits from the calculation of "past-due benefits" for section 206(a) purposes, the legislative history is silent as to whether continued benefits are to be included in the amount of money available for attorney's fees the court may award for court services (section 206(b) cases). SSA believes its policy of not including continued benefits in the "past-due benefit" calculation for section 206(b) purposes addresses the overriding concern of Congress in enacting section 223(g), *i.e.*, to provide claimants with "continuation of payments during appeal *** to ease the severe financial and emotional hardships that would otherwise be suffered." H.R. Rep. No. 98–618, 98th Cong., 2d Sess. 18, *reprinted in* 1984 U.S. Code Cong. & Ad. News 3038, 3055.

*Explanation of How SSA Will Apply The Decision Within The Circuit*

This Ruling applies to title II disability cases and the title II portion of concurrent title II and title XVI disability cases in which a fee petition is filed involving court services performed within the Eleventh Circuit (Alabama, Florida or Georgia).

When a case involves: (1) A fee petition that has been filed in federal court based on proceedings on the issue of continuing entitlement to disability insurance benefits and (2) a claimant who has received continued benefits pursuant to section 2(e) of the 1984 Disability Amendments or section 223(g) of the Act during any period considered in the court's decision, SSA will consider both accumulated benefits

[1] Although the district court and the Eleventh Circuit stated that the plaintiff elected to receive "interim" benefits pursuant to 223(g) of the Social Security Act (42 U.S.C. 423(g)), the benefits the plaintiff received were authorized by 2(e) of the 1984 Amendments. The characteristics of the "interim" benefits provided by the two statutes are not distinguishable in any manner relevant to the issue of whether "interim" benefits are to be considered "past-due" benefits under 206(b)(1) of the Act (42 U.S.C. 406(b)(1)).

[2] Subsequent to this decision Congress enacted Section 5108 of Pub. L. No. 101–508, the Omnibus Budget Reconciliation Act of 1990, which states that for the purposes of section 206(a) of the Social Security Act the term "past-due" benefits excludes continued and interim benefits under sections 223(g) and (h), respectively, of the Act. Congress did not expressly exclude continued benefits from "past-due benefits" for purposes of calculating attorney fees under section 206(b) of the Act.

and continued benefits already paid to be "past-due benefits" within the meaning of section 206(b)(1) of the Act.

SSA will not withhold funds from continued benefits to pay an attorney's fee. SSA will pay the approved fee directly to the attorney from the accumulated past-due benefits held by the Secretary, subject to the maximum of 25 per cent of the total past due benefits amount (as defined by the court, i.e., past-due benefits include both accumulated benefits and continued benefits).

If the sum of accumulated past-due benefits which the Secretary certifies for direct payment and any funds held in trust or escrow by the attorney is less than the fee set by the court, SSA will advise the attorney to seek payment of the balance of the authorized fee directly from the claimant.

[FR Doc. 93-18082 Filed 7-28-93; 8:45 am]

BILLING CODE 4190-38-F

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3422; FR-3220-N-02]

### Fiscal Year 1992 NOFA for the Hiring of Service Coordinators for Section 202 Projects; Announcement of Funding Awards

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Announcement of competition winners.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the NOFA for the hiring of service coordinators for section 202 projects for fiscal year 1992. The announcement contains the names and addresses of the competition winners and the amounts of the awards.

**FOR FURTHER INFORMATION CONTACT:** Jerold S. Nachison, Housing for Elderly and Handicapped People Division, room 6122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-3291. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On May 5, 1992 (57 FR 19338), the Department published in the **Federal Register**, a Notice of Funding Availability (NOFA) that announced the funding of regional lotteries for the hiring of service coordinators in section 202 projects for the elderly and people with disabilities.

Service Coordinators assist frail and "at risk" elderly individuals. They also serve persons with disabilities and temporarily disabled individuals living in section 202 housing. Eligible applicants are the borrowers/owners of projects funded under the section 202 program that are at sustaining occupancy at the time of application to HUD. If selected for funding, the applicant enters into a HAP Contract amendment with HUD to fund a coordinator for a period of no more than five years. The contract may be renewed based upon need and availability of funding. Applicants may also be approved to utilize residual receipts for the purpose of funding a service coordinator.

The May 5, 1992 NOFA contained information concerning: (a) The purpose of the Notice; (b) eligibility, available amounts, and technical criteria; (c) application processing, including how to apply and how selections will be made; and (d) a checklist of steps and exhibits involved in the application procedure.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing, in this Notice, the names and addresses of the section 202 projects that received funding awards under the FY 1992 NOFA, and the amounts of the awards. This information is set forth in Appendix A to this Notice.

Dated: July 7, 1993.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

## APPENDIX A

[FY 1992 Service Coordinator Selection List]

| Field office; Applicant/project name and address | Residual receipts amount | Sec. 8 amount | Time period req. |
|---|---|---|---|
| Boston: | | | |
| JCHE V-Campus Hse, 677 Winchester St., Newton, MA 02161 | 33,030 | 116,791 | 5 yrs. |
| Golda Meir, 160 Stanton Avenue, Newton, MA 02166 | 56,935 | 118,084 | 5 yrs. |
| Covenant House I, 30 Washington St., Brighton, MA 02146 | 0 | 197,491 | 5 yrs. |
| Hartford: | | | |
| Roncalli Apartments, 430 Grant Street, Bridgeport, CT 06610 | 0 | 133,932 | 5 yrs. |
| Tower East, 18 Tower Lane, New Haven, CT 06519 | 0 | 224,111 | 5 yrs. |
| DeLorenzo Towers, 284 N. Main Street, Bristol, CT 06010 | 0 | 135,000 | 5 yrs. |
| Manchester: | | | |
| Stella Maris House,* 148 Broadway, Rockland, ME 04841 | 0 | 72,000 | 5 yrs. |
| Chateau Cushnec,* 36 Townsend Street, Augusta, ME 04330 | 0 | 90,000 | 5 yrs. |
| Brook Hollow,* Route 302, Naples, ME 04055 | 0 | 148,349 | 5 yrs. |
| Kallock Terrace,* Therrin Ave., Saco, ME 04072 | Included in above | | |
| Prescott Heights,* Route 4, N. Berwick, ME 03906 | Included in above | | |
| Ridgewood,* 99 School St., Gorham, ME 04038 | Included in above | | |
| Woods Edge,* Saco St., Alfred, ME 04002 | Included in above | | |
| Applewood,* Buxton Rd., Waterboro, ME 04087 | Included in above | | |
| Northern Lights Housing,* 25 Success St., Berlin, NH 03570 | 0 | 87,000 | 5 yrs. |
| Groveton Housing,* 2 Spring St., Groveton, NH 03582 | 0 | 14,000 | 5 yrs. |
| Gilman Housing,* Cedar St., Gilman, VT 05904 | 0 | 14,000 | 5 yrs. |
| Elderly Homes,* 9 First Avenue, Madawaska, ME 04756 | 0 | 63,000 | 5 yrs. |
| LaMaison Acadienne,* 14 French Street, Madawaska, ME 04756 | 0 | 93,000 | 5 yrs. |

APPENDIX A—Continued

[FY 1992 Service Coordinator Selection List]

| Field office; Applicant/project name and address | Residual receipts amount | Sec. 8 amount | Time period req. |
|---|---|---|---|
| Senior Congress Park, 67 Maple Avenue, Claremont, NH 03743 | 0 | 120,000 | 5 yrs. |
| Subtotal Region I | 99,965 | 1,626,758 | |
| New York: | | | |
| Wells Manor, Inc., Northern Dutchess Hospital, 10 spring Brook Avenue, Rhinebeck, NY 125752. | 0 | 112,500 | 5 yrs. |
| Northeastern Conference House, 131–10 Guy R. Brewer Blvd., Jamaica, NY 11434. | 0 | 165,000 | 5 yrs. |
| Rockland Home for the Aged, 200 Lafayette Avenue, Suffern, NY 10901 | 0 | 146,800 | 5 yrs. |
| Sister Lucian HDFC, 191 Joralemon Street, Brooklyn, NY 11201 | 0 | 173,835 | 5 yrs. |
| Bishop Mugavero Apts, 191 Joralemon Street, Brooklyn, NY 11201 | 0 | 68,167 | 5 yrs. |
| Monsignor O'Brien Apartments, 191 Joralemon Street, Brooklyn, NY 11201 | 0 | 176,335 | 5 yrs. |
| Monsignor Mullaney Apartments, 191 Joralemon Street, Brooklyn, NY 11201. | Included in above | | |
| Buffalo: | | | |
| Senior Cit. Hsg. Develop. Corp., of Steuben County, 105 Geneva St., Bath, NY 14810. | 0 | 225,000 | 5 yrs. |
| Newark: | | | |
| NCSC/UAW Senior Housing Co., 16 Commerce Drive, Cranford, NJ 07106 | 0 | 93,108 | 5 yrs. |
| Bridgewater Community Service, 491 Shasta Drive, Bridgewater, NJ 08807 | 0 | 89,063 | 5 yrs. |
| Montclair Senior Housing, 340 Orange Road, Montclair, NJ 07042 | 0 | 96,000 | 5 yrs. |
| Daughters of Miriam Center for the Aged, 155 Hazel Street, Clifton, NJ 07015. | 0 | 146,945 | 5 yrs. |
| Daughters of Miriam Center for the Aged, 155 Hazel Street, Clifton, NJ 07015. | 0 | 146,945 | 5 yrs. |
| Subtotal Region II | 0 | 1,859,898 | |
| Philadelphia: | | | |
| Philadelphia Presbytery Homes, Inc., 2000 S. 58th Street, Philadelphia, PA 19143. | 0 | 98,359 | 5 yrs. |
| Schwenckfeld Manor East,* 1290 Allentown Road, Lansdale, PA 19446 | 0 | 53,945 | 5 yrs. |
| Schwenckfeld Manor South,* 1290 Allentown Road, Lansdale, PA 19446 | 0 | 17,985 | 5 yrs. |
| One West Penn Apartments, One West Penn Street, Carlisle, PA 17013 | 0 | 115,490 | 5 yrs. |
| Center Park House, 10102 Jameson Avenue, Philadelphia, PA 19116 | 0 | 110,736 | 5 yrs. |
| Scottish Rite House, 1525 Fitzwater Street, Philadelphia, PA 19146 | 8,836 | 102,537 | 5 yrs. |
| Phoebe Apartments, 1901 Linden Street, Allentown, PA 18104 | 0 | 179,875 | 5 yrs. |
| Baltimore: | | | |
| Concord Apartments, Inc., 2500 W. Belvedere Avenue, Baltimore, Maryland 21215. | 0 | 161,203 | 4 yrs. |
| Richmond: | | | |
| Lafayette House Elderly Housing Inc., 214 South Sycamore, Petersburg, VA 23803. | 0 | 116,043 | 5 yrs. |
| Pittsburgh: | | | |
| Riverview Towers, Phase I Inc., 52 Garetta Street, Pittsburgh, PA 15217 | 0 | 126,561 | 5 yrs. |
| Bellmead Congregate Apts., 5 South Main Street, Washington, PA 15301 | 0 | 142,009 | 5 yrs. |
| Sweetbriar Place,* 211 Sweetbriar Street, Pittsburgh, PA 15211 | 0 | 73,370 | 5 yrs. |
| Shady Park Place,* 415 Lobinger Avenue, Braddock, PA 15104 | 0 | 53,130 | 5 yrs. |
| Park Manor Apartments,* 188 Alameda Road, Butler, PA 16001 | 0 | 71,442 | 5 yrs. |
| Commons of Saxonburg,* 160 Pittsburgh Street, Saxonburg, PA 16056 | 0 | 38,468 | 5 yrs. |
| Steelworkers Tower, 2639 Perrysville Ave., Pittsburgh, PA 15214 | 0 | 120,000 | 5 yrs. |
| Ellsworth Parkview,* 19 Main Street, Ellsworth, PA 15331 | 0 | 41,985 | 5 yrs. |
| Houston Heritage House,* 140 W. Pike Street, Houston, PA 15342 | 0 | 54,172 | 5 yrs. |
| Bridge Street Commons,* 600 Bridge Street, Waynesburg, PA 15370 | 0 | 41,985 | 5 yrs. |
| Subtotal Region III | 8,836 | 1,719,295 | |
| Atlanta: | | | |
| Campbell-Stone Apartments, 2911 Pharr Road, Atlanta, GA 30305 | 0 | 241,387 | 5 yrs. |
| Campbell-Stone Apartments, 2911 Pharr Road, Atlanta, GA 30305 | 0 | 228,296 | 5 yrs. |
| St. Paul Apartments, 1330 Forsyth St., Macon, GA 31201 | 0 | 199,995 | 5 yrs. |
| Birmingham: | | | |
| SEASHA,* Sojourner Apartments, Highway 80 West, Tuskegee, AL 36088 | 0 | 213,000 | 5 yrs. |
| SEASHA,* E. D. Nixon Apartments, 2005 Georgia St., Tuskegee, AL 36088. | 0 | Included in above | |
| Caribbean: | | | |
| Torre Jesus Sanchez Erazo Housing for the Elderly, Carretera 174, KM.0 HM.07, Bayamon, PR 00959. | 0 | 150,000 | 5 yrs. |
| Columbia: | | | |
| John's Island Rural Hsg., P.O. Box 689, John's Island, SC 29455 | 0 | 130,500 | 5 yrs. |

## APPENDIX A—Continued

[FY 1992 Service Coordinator Selection List]

| Field office; Applicant/project name and address | Residual receipts amount | Sec. 8 amount | Time period req. |
|---|---|---|---|
| Jacksonville: | | | |
| North Dade Senior Citizens Hsg. Development Corp., Robert Sharp Towers I, 103 NW 202 Terrace, N. Miami Beach, FL 33169. | 0 | 148,606 | 5 yrs. |
| Miami Beach Senior Citizens HDC, Inc., Council Towers, 1040 Collins Ave., Miami Beach, FL 33139. | 29,566 | 183,349 | 5 yrs. |
| Urban League Hsg. Corp. of Greater Miami, Inc., Covenant Palms, 8400 NW 25th Ave., Miami, FL 33147. | 0 | 174,690 | 5 yrs. |
| Jefferson Center, 930 N. Tamiami Trail, Sarasota, FL 33577 | 0 | 94,600 | 5 yrs. |
| Presbyterian Retirement Communities, Gateway Terrace Apts., 1943 Karen Drive, Ft. Lauderdale, FL 33304. | 3,245 | 126,907 | 5 yrs. |
| Louisville: | | | |
| The Puritan Apartments, 1244 S. 4th Street, Louisville, KY 40203 | 0 | 200,618 | 5 yrs. |
| Subtotal Region IV | 32,872 | 2,091,948 | |
| Chicago: | | | |
| Senate Apartments, 5801 N. Pulaski, Chicago, IL 60646 | 0 | 212,895 | 5 yrs. |
| The Oaks, 114 S. Humphrey, Oak Park, IL 60302 | 0 | 121,071 | 5 yrs. |
| Woodlawn I,* 6100 S. Cottage, Chicago, IL 60637 | 0 | 243,978 | 5 yrs. |
| Woodlawn II,* 6100 S. Cottage, Chicago, IL 60637 | Included in above | | |
| Bethany I,* 3811 W. Washington, Chicago, IL 60624 | 0 | 243,978 | 5 yrs. |
| Bethany II,* 3811 W. Washington, Chicago, IL 60624 | Included in above | | |
| Cincinnati: | | | |
| Canterbury Court, 450 N. Elm Street, West Carrollton, OH 45449 | 0 | 69,385 | 5 yrs. |
| Deerfield Commons, 5629 Deerfield Circle, Mason, OH 45040 | 0 | 86,666 | 5 yrs. |
| Springboro Commons, Pioneer Drive, Springboro, OH 45066 | 0 | 42,687 | 5 yrs. |
| Minneapolis/St. Paul: | | | |
| Guardian Angels Homes, 350 Evans Avenue, Elk River, MN 55330 | 0 | 135,741 | 5 yrs. |
| Cleveland: | | | |
| United Labor Agency, 1800 Euclid Avenue, Cleveland, OH 44115 | 131,156 | 0 | 5 yrs. |
| Portage Trail Village, 45 Cathedral Lane, Cuyahoga Falls, OH 44223 | 25,000 | 192,333 | 5 yrs. |
| Federation Towers, 2250 Community College, Cleveland, OH 44106 | 0 | 162,295 | 5 yrs. |
| Westerly I,* 14300 Detroit Avenue, Lakewood, OH 44107 | 0 | 226,939 | 5 yrs. |
| Westerly II,* 14300 Detroit Avenue, Lakewood, OH 44107 | Included in above | | |
| Mayfield Manor, 3844 11th St., SW., Canton, OH 44710 | 0 | 160,433 | 5 yrs. |
| George Mance Commons, 2050 Warren, Toledo, OH 43606 | 0 | 40,114 | 3 yrs. |
| Charles Crest, 1200 Schreier Road, Rossford, OH 43460 | 21,278 | 23,280 | 3 yrs. |
| Indianapolis: | | | |
| LHDC Housing for Elderly,* RR No. 3, Old RD 64, English, IN 47118 | 6,800 | 43,969 | 5 yrs. |
| LHDC Housing for Elderly,* RR No. 1, Milltown, IN 47115 | 7,191 | 43,571 | 5 yrs. |
| LHDC Housing for Elderly,* RR No. 1, Marengo, IN 47140 | 15,601 | 35,168 | 5 yrs. |
| Chicago Trail Village, Chicago Trail, New Carlisle, IN 46552 | 0 | 57,896 | 5 yrs. |
| Subtotal Region V | 208,026 | 2,142,399 | |
| New Orleans: | | | |
| Village de Memoire II,* 1001 N. Reed Street, Ville Platte, LA 70586 | 0 | 52,500 | 5 yrs. |
| Savoy Heights,* 909 Cherry Street, Mamou, LA 70554 | 0 | 81,000 | 5 yrs. |
| Village de Memoire I, 1001 N. Reed Street, Ville Platte, LA | 0 | 118,500 | 5 yrs. |
| Little Rock: | | | |
| Gorman Towers, 5800 Grand Avenue, Fort Smith, AR 72904 | 0 | 150,000 | 5 yrs. |
| Jacksonville Towers, 200 S. Hospital Boulevard, Jacksonville, AR 72076 | 0 | 150,000 | 5 yrs. |
| San Antonio: | | | |
| Sacred Heart Villa,* 120 S. Trinity, San Antonio, TX 78207 | 0 | 66,000 | 5 yrs. |
| Villa Alegre,* 6902 Marbach, San Antonio, TX 78227 | 0 | 66,000 | 5 yrs. |
| Tulsa: | | | |
| Pythian Manor West, 1700 Riverside Drive, Tulsa, OK 74119 | 0 | 150,000 | 5* yrs. |
| Subtotal Region VI | 0 | 834,000 | |
| Kansas City: | | | |
| John Calvin Manor, 310 N. Murray Rd., Lee's Summit, MO 64603 | 0 | 78,000 | 5 yrs. |
| Cerebral Palsy Research Foundation, 2021 N. Old Manor Rd., Wichita, KS 67208. | 0 | 60,000 | 2 yrs. |
| St. Louis: | | | |
| Metropolitan Village, 3114 Franklin, St. Louis, MO 63103 | 0 | 199,019 | 5 yrs. |
| Subtotal Region VII | 0 | 337,019 | |
| Denver: | | | |
| Eagles Manor, 9th & 15th Avenue SO, Great Falls, MT 59405 | 52,356 | 104,440 | 5 yrs. |

APPENDIX A—Continued

[FY 1992 Service Coordinator Selection List]

| Field office; Applicant/project name and address | Residual receipts amount | Sec. 8 amount | Time period req. |
|---|---|---|---|
| Prairie Tower, Inc., Prairie Tower, 725 North 25th, Billings, MT 59101 | 0 | 89,465 | 5 yrs. |
| Kappa Housing, Inc., Kappa Tower, 2160 Downing, Denver, CO 80205 | 0 | 77,071 | 5 yrs. |
| Bishop Richard Allen Center, Inc., Allen Gardens, 13100 Richard Allen Ct., Denver, CO 80207. | 0 | 86,909 | 5 yrs. |
| Northern Utah Labor Council Housing Corp., Union Gardens, 375 2nd Ave., Ogden, UT 84404. | 0 | 73,500 | 5 yrs. |
| Episcopal Management Corp., St. Mark's Terrace, 50 North 500 West, Brigham City, UT 84401. | 9,300 | 37,200 | 5 yrs. |
| Calvary Towers Housing, Inc., Calvary Tower, 511 East 700 South, Salt Lake City, UT 84102. | 0 | 45,000 | 5 yrs. |
| St. Mark's Tower, 650 SO. 300 East, Salt Lake City, UT 84111 | 88,200 | 58,600 | 5 yrs. |
| Subtotal Region VIII | 149,858 | 592,385 | |
| San Francisco: | | | |
| Strawberry Creek Lodge, 1320 Addison, Berkely, CA 94702 | 0 | 188,989 | 5 yrs. |
| Westlake Christian, 251 28th Street, Oakland, CA 94611 | 0 | 188,989 | 5 yrs. |
| Sister Thea Bowman, 6400 San Pablo Ave., Oakland, CA 94608 | 0 | 56,599 | 5 yrs. |
| Burbank Orchards, 777 Bogoda Ave., Sebastopol, CA 95472 | 0 | 56,599 | 5 yrs. |
| Garfield Park Village, 71 Bay St., Santa Cruz, CA 95060 | 0 | 103,594 | 5 yrs. |
| Las Vegas: | | | |
| NAACP–NEV Hsg. Dev. Corp., 800 N. Eastern, Las Vegas, NV 89101 | 0 | 190,572 | 5 yrs. |
| Phoenix: | | | |
| Paradise Valley BRC, 11640 N. 27th St., Phoenix, AZ 85028 | 0 | 77,050 | 5 yrs. |
| Christian Care Manor I, 11830 N 19th Ave., Phoenix, AZ 85029 | 0 | 123,231 | 5 yrs. |
| Christian Care Manor II, 11802 N. 19th Ave., Phoenix, AZ 85029 | Included in above | ..... | |
| Silvercrest Residences of Phoenix, 613 N. 4th Ave., Phoenix, AZ 85003 | 0 | 148,039 | 5 yrs. |
| San Diego: | | | |
| St. Paula Manor, 2365 2nd Ave., San Diego, CA 92103 | 0 | 161,185 | 5 yrs. |
| Los Angeles: | | | |
| Stovall Development Corp.,* Fairmont Terrace I, 4000 E. Fairmont, Los Angeles, CA 90063. | 0 | 90,900 | 3 yrs. |
| Stovall Development Corp.,* Fairmont Terrace II, 822 N. Hazard, Los Angeles, CA 90063. | Included in above | | |
| Stovall Housing Corp.,* Leonard Stovall Terrace, 4075 S. Figueroa, Los Angeles, CA 90037. | Included in above | | |
| Oldtimers Housing Development Corp. of Fontana, 16707 Marygold Ave., Fontana, CA 92335. | 0 | 225,000 | 5 yrs. |
| Oldtimers Housing Development Corp. of Chino, 12855 Oaks Ave. SW., Chino, CA 91710. | 0 | 126,000 | 5 yrs. |
| Sycamore Terrace Corp., Royal Vista Terrace, 1111 N. Brand Blvd., No. 300, Glendale, CA 91202. | 0 | 95,261 | 5 yrs. |
| Subtotal region IX | 0 | 1,832,006 | |
| Seattle: | | | |
| Garden Terrace,* 500 N. Emerson Avenue, Wenatchee, WA 98801 | 0 | 94,200 | 5 yrs. |
| Garden Terrace West,* 500 N. Emerson Avenue, Wenatchee, WA 98801 | Included in above | | |
| Sunset House, 2519 First Avenue, Seattle, WA 98121 | 0 | 123,000 | 4 yrs. |
| Portland: | | | |
| Ross Knotts Retirement Center, 2874 Creekside Circle, Medford, OR 97504. | 0 | 60,454 | 5 yrs. |
| Donald E. Lewis Retirement Center,* 500 YMCA Way, Ashland, OR 97520 | 0 | 47,499 | 5 yrs. |
| Subtotal Region X | 0 | 325,153 | |
| National Total | 499,555 | 13,150,663 | |

*Multiple Project Application

[FR Doc. 93-18060 Filed 7-28-93; 8:45 am]
BILLING CODE 4310-07-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-020-01-4210-05]

### Conveyance of Mineral Interests Applications

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of minerals segregation.

Notice is hereby given that pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1719(b), the following applications have been filed for the conveyance of certain Federally-owned mineral interests within each accompanying land description:

**Gila and Salt River Meridian, Arizona**

AZA-11970
T. 5 N., R. 2 E.,
Sec. 13.
T. 5 N., R. 3 E.,
Sec. 27.

AZA-17364
T. 4 N., R. 3 E.,
Secs. 3 and 10.
T. 5 N., R. 3 E.,
Secs. 33 and 34.

AZA-19175
T. 7 N., R. 5 W.,
Secs. 9, 17, 18 and 20.

AZA-20613
T. 7 N., R. 1 W.,
Sec. 6.
T. 7 N., R. 2 W.,
Sec. 1.

AZA-21222
T. 10 N., R. 5 W.,
Secs. 3, 9 and 15.
T. 11 N., R. 5 W.,
Secs. 23, 26, 27, 33, 34 and 35.
T. 9 N., R. 6 W.,
Secs. 12, 13, 14 and 24.

AZA-22531
T. 1 N., R. 7 E.,
Sec. 3.

AZA-22628
T. 7 N., R. 4 W.,
Sec. 17.

AZA-22965
T. 7 N., R. 2 W.,
Sec. 1.

AZA-23386
T. 9 N., R. 2 E.,
Sec. 13.
T. 9 N., R. 3 E.,
Secs. 29 and 30.

AZA-23506
T. 9 N., R. 4 W.,
Sec. 8.
T. 9 N., R. 5 W.,
Secs. 1, 11, 15 and 22.
T. 10 N., R. 5 W.,
Secs. 21 and 28.
T. 9 N., R. 6 W.,
Secs. 12, 13 and 14.

AZA-23553
T. 6 N., R. 3 E.,
Sec. 13.
T. 6 N., R. 4 E.,
Sec. 18.

AZA-23806
T. 14 N., R. 1 W.,
Sec. 21.

AZA-23807
T. 11 N., R. 24 E.,
Secs. 8, 10, 12, 14 and 22.

AZA-24035
T. 6 N., R. 1 W.,
Secs. 22 and 23.

AZA-24036
T. 6 N., R. 1 W.,
Sec. 23.

AZA-24106
T. 10 N., T. 5 W.,
Sec. 10.

AZA-24411
T. 10 N., R. 3 W.,
Secs. 5 to 8, incl., 17 and 18.
T. 11 N., R. 3 W.,
Secs. 6, 7, 18, 21, 22, 23 and 26 to 31, incl.
T. 12 N., R. 3 W.,
Secs. 5, 6, 8, 17, 18, 20 and 29.
T. 10 N., R. 4 W.,
Sec. 13.
T. 11 N., R. 4 W.,
Secs. 1, 2 and 24.
T. 12 N., R. 4 W.,
Secs. 11, 13, 14, 15, 21, 22, 23, 25 and 26.

AZA-25358
T. 8 N., R. 1 W.,
Secs. 7 and 30.
T. 8 N., R. 2 W.,
Secs. 12, 13 and 24.

The mineral interests may be conveyed in whole or in part.

The purpose of the conveyances is to allow consolidation of surface and subsurface ownership where there are no known mineral values, or in those instances where the reservation of mineral interests to the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use.

Additional information concerning the applications may be obtained from Vivian Reid, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests owned by the United States in the lands under application shall be segregated to the extent that they will not be open to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of publication of this notice, whichever comes first.

Dated: July 21, 1993.

**G. L. Cheniae,**
*District Manager.*

[FR Doc. 93-18084 Filed 7-28-93; 8:45 am]
BILLING CODE 4310-32-M

[CA-010-02-4212-13; CACA-31356]

### Realty Action; Proposed Land Exchange in Merced, Monterey, Fresno, and San Benito Counties, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; exchange of public and private lands in Merced, Monterey, Fresno, and San Benito Counties, California (CACA-31356).

**SUMMARY:** The following described public lands are being considered for exchange to CAL-BLMX, Inc., under section 206 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1716). The exchange is for the surface estate only and does not affect ownership of the mineral estate.

**Note:** Not all the land identified below will be included in the exchange. Some parcels may be deleted to eliminate possible conflicts that could arise during processing. Additional lands previously identified for exchange to CAL-BLMX, Inc. and published in the **Federal Register** on March 30, 1990; December 24, 1991; and April 24, 1992, may also be included in the exchange. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

**SELECTED PUBLIC LANDS:** The following parcels are identified for exchange of only the surface estate:

**Mount Diablo Meridian, California**

T. 11S., R. 7E.,
Sec. 21; Lot 4
Sec. 28; Lot 3
T. 12S., R. 7E.,
Sec. 1; W½SW¼
Sec. 11; N½NE¼, SW¼NE¼
Sec. 12; NW¼NW¼
Sec. 14; SE¼SW¼, SW¼SE¼
Sec. 23; E½NE¼, NW¼NE¼, NE¼NW¼, NW¼SE¼
Sec. 24; SW¼NE¼, NW¼, SE¼SW¼, SW¼SE¼
T. 12S., R. 8E.,
Sec. 6; Lot 6
Sec. 7; Lot 1 &
T. 12S., R. 9E.,
Sec. 28; S½NW¼
Sec. 32; NE¼SW¼, N½SE¼

Sec. 33; N½NE¼, E½NW¼, NW¼SW¼, SE¼SW¼
T. 13S., R. 9E.,
Sec. 11; Lot 1, NW¼NE¼, NE¼NW¼
Sec. 12; Lot 4
Sec. 30; SE¼NW¼, E½SW¼, Lot 4
Sec. 35; E½NW¼, NW¼NW¼
T. 14S., R. 9E.,
Sec. 32; SE¼SW¼
Sec. 34; SW¼NW¼
Sec. 35; NW¼NW¼
T. 14S., R. 10E.,
Sec. 5; N½SW¼
T. 15S., R. 5E.,
Sec. 14; Lot 9
Sec. 32; Lot 3, SE¼SE¼
T. 15S., R. 7E.,
Sec. 32; Lots 6, 9, 10, & 11
Sec. 33; Lots 3, 4, 8 & 11, SW¼NE¼
T. 15S., R. 9E.,
Sec. 1; Lot 4, S½ NE¼, SE¼ NW¼, NE¼ SE¼ E½ NW¼ SE¼, NE¼ SW¼ SE¼, N½ SE¼ SE¼
Sec. 2; Lots 1 & 8
Sec. 4; Lot 7
Sec. 5; Lot 12
Sec. 6; Lot 9
T. 16S., R. 5E.,
Sec. 5; NW¼ NE¼
T. 16S., R. 6E.,
Sec. 12; NW¼ NE¼, SE¼ SW¼
T. 16S., R. 7E.,
Sec. 4; Lots 2, 3, 5, 6, 7, 10, 11
Sec. 5; Lot 2
T. 16S., R. 10E.,
Sec. 8; E½ SW¼, SE¼
Sec. 9; SW¼
Sec. 10; W½ NW¼, SE¼ NW¼, SW¼
T. 17S., R. 5E.,
Sec. 29; SW¼ NE¼, SW¼ SE¼
T. 17S., R. 12E.,
Sec. 21; Lot 5
T. 18S., R. 10E.,
Sec. 13; Lots 11, 14, 15, 16, & 19
T. 18S., R. 11E.,
Sec. 25; Lot 3
Sec. 26; Lot 8, E½ SE¼ SE¼, SW¼ SE¼ SE¼, SE¼ SW¼ SE¼
T. 19S., R. 13E.,
Sec. 13; W½ SE¼
Sec. 24; NE¼, NE¼ SE¼
T. 19S., R. 14E.,
Sec. 18; S½ Lot 6, E½
Sec. 19; Lot 13
Sec. 22; W½ W½
Sec. 24; NW¼ NW¼, S½ NW¼, SW¼, SW¼ SE¼
Sec. 28; N½ N½
Sec. 30; Lots 13 & 14, NE¼
Sec. 31; Lot 14
Sec. 34; NW¼ NW¼
T. 19S., R. 15E.,
Sec. 18; Lots 1, 2, 3, & 4
T. 20S., R. 12E.,
Sec. 24; SE¼ NE¼, NE¼ SE¼
Sec. 35; E½ NW¼
T. 20S., R. 13E.,
Sec. 19; Lots 1, 2, 3, & 4, SW¼ SE¼
Sec. 20; S½ SW¼
Sec. 29; N½ NW¼, SW¼ NW¼, NW¼ SW¼
T. 20S., R. 14E.,
Sec. 19; SE¼ NW¼
Sec. 29; SE¼ SW¼
Sec. 32; E½ NW¼, NW¼ NW¼
T. 21S., R. 13E.,
Sec. 27; W½ NW¼
Sec. 28; E½ NE¼, N½ SE¼
T. 22S., R. 8E.,
Sec. 24; SW¼, W½SE¼
Sec. 27; SW¼NE¼, NW¼SE¼
T. 22S., R. 9E.,
Sec. 15; Lot 4
Sec. 22; NE¼SW¼, SW¼SW¼
T. 22S., R. 14E.,
Sec. 2; SW¼NE¼, S½NW¼, SW¼
Sec. 7; NE¼SW¼
Sec. 11; NE¼NE¼, NE¼SW¼, NW¼SE¼
Sec. 12; S½NE¼, SE¼NW¼, NE¼SW¼, SE¼
Sec. 17; SW¼NE¼
T. 22S., R. 15E.,
Sec. 7; Lots 3, 4, E½W½, SW¼NE¼, W½SE¼, SE¼SE¼
Sec. 18; NE¼NE¼
T. 22S., R. 16E.,
Sec. 30; Lots 1, 2, 3, 4, 5, 6, S½ Lot 10, SE¼NE¼
Sec. 32; SW¼NW¼
T. 23S., R. 9E.,
Sec. 11; NW¼NW¼, W½SW¼, E½SE¼
Sec. 13; NW¼NW¼
Sec. 14; NE¼NE¼, NW¼NW¼
Sec. 17; NW¼SW¼
Sec. 21; NE¼, N½SE¼
T. 23S., R. 16E.,
Sec. 6; Lots 1, 2, 3, 4, 5, 6, 10, 11, 13, 14, S½NE¼, N½SE¼
Sec. 18; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, E½
T. 24S., R. 8E.,
Sec. 11; SW¼SW¼
Sec. 12; SW¼SW¼
T. 24S., R. 9E.,
Sec. 31; SE¼NE¼
T. 24S., R. 10E.,
Sec. 18; NE¼NE¼
T. 24S., R. 16E.,
Sec. 20; NE¼NE¼
Sec. 26; SW¼SW¼

Total 11,224.35 Acres more or less.

In exchange for these lands, the Federal Government will acquire the surface estate of non-Federal lands in Fresno and San Benito Counties from CAL–BLMX, Inc. described as follows:

**Mount Diablo Meridian, California**

T. 15S., R. 11E.,
Sec. 13; S½S½
Sec. 14; S½S½
Sec. 22; SE¼NE¼, S½SW¼, SE¼
Sec. 23; N½
Sec. 24; N½N½
Sec. 25; W½, SE¼
Sec. 26; SE¼
Sec. 36; NE¼NE¼, SW¼NE¼, SE¼SE¼
T. 15S., R. 12E.,
Sec. 16; Lot 1, 2, 3, 4, 5, 6, 7, 8, S½
Sec. 18; S½SE¼, SE¼SW¼, Lot 4
Sec. 19; Lot 1, 2, 3, 4, 7, 8, 9, 10, 15, 16
Sec. 20; N½NW¼, NW¼NE¼, SW¼NW¼
Sec. 27; SW¼SW¼
Sec. 28; SE¼NE¼, E½SE¼
Sec. 29; E½W½, W½E½
Sec. 31; Lot 8, 9, 15 & 16
Sec. 32; SW¼NW¼, E½NW¼, N½SW¼, SW¼SW¼
T. 16S., R. 11E.,
Sec. 16; All
T. 16S., R. 12E.,
Sec. 1; SW¼
Sec. 6; Lot 2, 4, 5, & 6, SW¼NE¼, NW¼SE¼
Sec. 23; SW¼NW¼, N½SW¼, SE¼SW¼, SW¼SE¼, E½SE¼
Sec. 24; SW¼SW¼
Sec. 25; All
Sec. 27; SE¼NE¼, E½SW¼
Sec. 35; N½, E½SW¼, SE¼
Sec. 36; All
T. 16S., R. 13E.,
Sec. 33; All
T. 17S., R. 13E.,
Sec. 23; E½SE¼
T. 17S., R. 14E.,
Sec. 19; All
T. 18S., R. 12E.,
Sec. 1; Lots 1, 6, 7, 8, & 9, SW¼NE¼, S½NW¼,N½SW¼, NW¼SE¼
Sec. 2; Lot 2, S½NE¼, N½SE¼
T. 18S., R. 13E.,
Sec. 9; All
Sec. 11; All
Sec. 13; All
Sec. 16; S½SE¼, NE¼SW¼
Sec. 22; SW¼NE¼, N½SE¼, SE¼NW¼
T. 18S., R. 14E.,
Sec. 30; SE¼
Sec. 32; SE¼NW¼
T. 20S., R. 14E.,
Sec. 30; Lots 9 & 10; S½ of Lot 12

Total: 12,001.61 acres more or less.

**SUPPLEMENTARY INFORMATION:** The primary purpose of this exchange is (1) to acquire habitat for several threatened or endangered species including the San Joaquin woollythreads (*Lembertia congdonii*), San Benito evening primrose (*Camissonia benitensis*), giant kangaroo rat (*Dipodomys ignens*), blunt-nosed leopard lizard (*Gambelia silus*), and San Joaquin kit fox (*Vulpus macrotis mitica*), (2) to acquire habitat for several rare species that could become threatened or endangered including the San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), the southwestern pond turtle (*Clemmys marmorata pallida*), the foothill yellow-legged frog (*Rana boylei*), and the San Benito fritillary (*Fritillaria viridea*), (3) to enhance regional biodiversity objectives by acquiring a cross-section of Diablo Range ecosystems ranging from Jeffrey/Coulter/Digger pine forests to alkali desert shrub communities, (4) to acquire eight miles of riparian habitat, and (5) to enhance public recreation opportunities by acquiring key parcels that improve public access to existing public lands.

Federal lands identified for disposal are generally small isolated parcels without public access and with low public resource values. The exchange is consistent with the Bureau's land use plans for the lands involved. The public interest will be well served by making the exchange.

Lands to be transferred from the United States will be subject to the

following reservations, terms, and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

(2) Authorized pipelines, power lines, roads, highways, telephone lines, minerals leases, and any other authorized land uses will be identified as prior existing rights.

(3) All necessary clearances for archaeology, rare plants and animals shall be completed prior to conveyance of title.

(4) Grazing operations that will have their allotments affected by this exchange are entitled to a 2-year adjustment period. However, a lessee may waive this 2-year notice.

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. This action is necessary while eliminating conflicting encumbrances on the public lands during exchange processing.

Detailed information concerning the exchange, including the environmental assessment, is available at the Hollister Resource Area Office, 20 Hamilton Court, Hollister, CA 95023.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Hollister Resource Area at the above address. Comments should specify the specific parcel affected by the comment. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination.

**FOR FURTHER INFORMATION CONTACT:** Steve Addington, Hollister Resource Area Office, (408) 637–8183 or at the address above.

**Robert E. Beehler,**

*Hollister Area Manager.*

[FR Doc. 93–18086 Filed 7–28–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–060–01–3110–10–D001; IDI–29531]

## Realty Action; Exchange of Public Lands; Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, exchange of public lands in Idaho County, Idaho.

**SUMMARY:** The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

**Boise Meridian, Idaho**

T. 30 N., R. 4 E.,
Sec. 19, lots 4, 9, and 10.
T. 30 N., R. 3 E.,
Sec. 24, lot 1.
Sec. 35, SW¼SW¼.
T. 29 N., R. 3 E.,
Sec. 2, lots 3 to 7, inclusive:
T. 29 N., R. 1 W.,
Sec. 14, N½NW¼.
T. 27 N., R. 1 E.,
Sec. 17, SE¼SW¼.
T. 26 N., R. 2 E.,
Sec. 5, NW¼SE¼,
Sec. 17, NW¼SE¼,
Sec. 18, NE¼NE¼,
Sec. 19, NE¼NW¼,
Sec. 30, NE¼NW¼, NE¼SE¼.

Comprising approximately 750.28 acres in Idaho County, Idaho.

In exchange for these lands, the United States will acquire the following described lands from Keymor Land and Timber Company:

**Boise Meridian, Idaho**

T. 29 N., R. 1 E.,
Sec. 14, 15, 22, and 23, Copper Queen Lode—Mineral Survey 2591.
Sec. 23, Rosetta Lode—Mineral Survey 2592; Riverview Lode—Mineral Survey 2593.
T. 21 N., R. 1 E.,
Sec. 1, lots 2 & 3, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 12, N½N½, S½NW¼, NE¼SW¼.

Comprising approximately 672.70 acres in Idaho County, Idaho.

**DATES:** The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. Any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the applicant. The segregative effect shall terminate as provided by 43 CFR 2201.1(b).

**ADDRESSES:** Detailed information concerning the exchange is available for review at the Cottonwood Resource Area Office, Rte. 3, Box 181, Cottonwood, Idaho, 83522, or by contacting Ron Grant at (208) 962–3245.

**SUPPLEMENTARY INFORMATION:** The purpose of this exchange is to improve the resource management programs of the Bureau of Land Management through consolidation of ownership and to benefit the public interest by obtaining important resource values. The public lands to be exchanged are, for the most part, isolated parcels without public access. The private lands to be exchanged have recreation, wildlife, fisheries, and forestry values that merit acquisition into public ownership. The exchange is consistent with the Bureau's land use plans and the public interest will be well served by the exchange. Final determination on disposal will await completion of an environmental analysis and compilation of further information. The value of the lands to be exchanged will be approximately equal. The federal acreage will be reduced and/or the proponent will make cash payment to equalize values upon completion of final appraisals of the lands. Lands to be transferred from the United States will be subject to the following reservations:

1. A reservation of the United States of a right-of-way for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. Valid existing rights, including any right-of-way, easement, permit, or lease of record.

Lands to be acquired by the United States will be subject to valid existing rights of record.

**COMMENTS:** For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Coeur d'Alene District Office, Bureau of Land Management, 1808 North Third Street, Coeur d'Alene, Idaho 83814. Objections will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: July 20, 1993.

**Fritz U. Rennebaum,**

*District Manager.*

[FR Doc. 93–18083 Filed 7–28–93; 8:45 am]

BILLING CODE 4310–GG–M

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[NV–030–03–4210–03; NVN 33494]

## Realty Action; Lease of Public Land in Lyon County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Initiation of a 45 day public comment period on the proposed lease of public land for airport purposes.

**SUMMARY:** Pursuant to the authority in the Act of May 24, 1928, as amended (49 U.S.C. appendix, 211–213), a 45 day public comment period is initiated on the following land proposed to be leased for airport purposes to Rosaschi Dusters, Inc.:

Mt. Diablo Meridian, Nevada

T. 11 N., R. 24 E.
Sec. 6, Lot 1, SE¼NE¼.
Containing 81.06 acres.

**SUPPLEMENTARY INFORMATION:** The public land is located three miles north of Smith in Lyon County, Nevada. The land is adjacent to lands currently under lease for airport purposes and will allow construction of a new runway. The land is not needed for Federal purposes. Lease of the land is consistent with current BLM land use planning and would be in the public interest.

This notice segregates the above described land from operation of the public land laws, including the general mining laws. The segregative effect will end upon issuance of the lease or one year from the date of this publication, whichever occurs first.

**DATES:** For a period of 45 days from September 13, 1993, interested parties may submit comments.

**ADDRESSES:** Written comments should be sent to: Walker Resource Area Manager, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the decision to approve this realty action will become the final determination of the Department of the Interior 60 days from the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Charles J. Kihm, Walker Area Realty Specialist, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638; (702) 885–6000.

Dated: July 19, 1993.

**John Matthiessen,**

*Walker Resource Area Manager.*

[FR Doc. 93–18078 Filed 7–28–93; 8:45 am]

BILLING CODE 4310–HC

[OR 45639; OR–080–03–4212–05; GP3–325]

## Realty Action; Proposed Direct Sale; Oregon

July 20, 1993.

The following described public lands have been examined and determined to be suitable for transfer out of Federal ownership by modified competitive sale under the authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

**Willamette Meridian, Oregon,**

T. 9S., R. 5W.,
Sec. 32, Lots 1 and 2.

The above-described parcels contain 2.90 acres in Polk County.

The parcels will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcels have not yet been determined. Anyone interested in knowing the values may request this information from the address shown below.

The above-described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcels are difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcels' remoteness from other public lands and small size, their best use is to merge them with the surrounding ownership. The sale is consistent with the Westside Management Framework Plan and the public interest will be served by offering these parcels for sale.

The parcels are being offered only to Starker Forests, Inc. Use of the direct sale procedures authorized under 43 CFR 2711.3–3, will avoid an inappropriate land ownership pattern.

The terms, conditions, and reservations applicable to the sale are as follows:

1. Starker Forests, Inc., will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than 20 percent of the appraised value. The remainder of the full appraised price must be submitted prior to the expiration of 180 days from the date of the sale. Failure to submit the remainder of the full appraised price shall result in the cancellation of the sale and the forfeiture of the deposit.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act. Starker Forests, Inc., must include with its bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. The patent will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, 1717 Fabry Road SE., Salem, Oregon 97306.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Yamhill Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

**Jeffrey F. Kovach,**

*Acting Yamhill Area Manager.*

[FR Doc. 93–18085 Filed 7–28–93; 8:45 am]

BILLING CODE 4310–33–M

[ES–960–4950–4513; ES–046169, Group 191, Florida]

## Filing of Plat of the Dependent Resurvey and Subdivision of Section 10 and Metes-and-Bounds Survey in Sections 10 and 15

The plat of the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 10, and the metes-and-bounds survey of certain parcels in sections 10 and 15, Township 47 South, Range 29 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 9, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 9, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 15, 1993.

**Harry Hamilton,**

*Acting State Director.*

[FR Doc. 93–18047 Filed 7–28–93; 8:45 am]

BILLING CODE 4310–GJ–M

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**[ES–062–4950–4377; ES–046171, Group 147, Wisconsin]**

## Filing of Plat of Dependent Resurvey and Subdivision of Section 4

The plat of the dependent resurvey of a portion of the north boundary (Fourth Standard Parallel North), a portion of the subdivisional lines and the subdivision of section 4 in Township 40 North, Range 5 East, Fourth Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 9, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 9, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $1.75 per copy.

Dated: July 15, 1993.

**Larry Hamilton,**

*Acting State Director.*

[FR Doc. 93–18048 Filed 7–28–93; 8:45 am]

BILLING CODE 4310–GJ–M

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## Fish and Wildlife Service

## Availability of a Draft Revised Recovery Plan for the Plymouth Redbelly Turtle for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft Revised Recovery Plan for the Plymouth Redbelly Turtle (*Pseudemys rubriventris*). This population is found in Plymouth County, Massachusetts. Based on a taxonomic review, the Service is treating the Plymouth redbelly turtle as a disjunct population of the more southerly *P. rubriventris*, which ranges from New Jersey to North Carolina, rather than as a subspecies, thereby eliminating use of the trinomial *P. r. bangsii*. The Service solicits review and comment from the public on this draft Plan.

**DATES:** Comments on the draft Recovery Plan must be received September 13, 1993 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft Recovery Plan can obtain a copy from the U.S. Fish and Wildlife Service, New England Field Office, 22 Bridge Street, Concord, New Hampshire 03301, telephone 603/225–1411.

**FOR FURTHER INFORMATION CONTACT:** Michael Amaral (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Plymouth Redbelly Turtle Revised Recovery Plan. The redbelly turtle has a relatively continuous distribution from central New Jersey to eastern North Carolina, and a disjunct population in southeastern Massachusetts. Based on recent findings, the Plymouth redbelly turtle appears insufficiently different from southern redbelly turtles to warrant subspecific status, and is now considered by the Service to be a distinct population segment warranting continued protection under the current Service vertebrate population policy.

While the redbelly turtle does not appear to be threatened or endangered in the southern portion of its range, the Plymouth population is limited by its small size and highly restricted range: the population is currently numbered at 300–400 turtles, and its range is confined to 17 ponds in a small section of Plymouth County, Massachusetts. Continuing threats to this population include low survival of hatchlings and young turtles due to predation; loss of nesting and basking sites due to development, recreation, and forest canopy closure; loss of aquatic vegetation as a food resource due to herbicide use and other manipulations; use of insecticides and other chemicals in proximity to the turtle's pond habitat; collection, harassment, and incidental mortality; and loss of genetic variability through inbreeding and genetic drift.

The Plymouth redbelly turtle was listed as endangered in April 1980. The document under review is the second revision of the recovery plan, which was first approved in 1981 and revised in 1985. The primary objective of the draft Recovery Plan is to stabilize the long-term status and ensure the viability of the species in the wild, thereby enabling the Plymouth redbelly turtle's reclassification and eventual removal from the Federal list of endangered and threatened wildlife and plants. Conditions that must be met to reclassify the Plymouth redbelly turtle include successful maintenance of at least 15 self-sustaining subpopulations with a total of 600 breeding-age individuals, and adequate habitat protection to ensure the long-range survival of these populations. Delisting will be considered when at least 20 self-sustaining subpopulations totaling 1,000 or more breeding-age individuals are established in the wild, with commensurate habitat protection to ensure their long-range survival. Due to the delayed sexual maturity of this large turtle, recovery will be gradual, even under optimum conditions. The estimated date for reclassification is the year 2000; delisting may be achieved by the year 2015 if recovery proceeds on schedule.

Several actions will be undertaken to achieve recovery objectives. Continuing and proposed recovery activities include: monitoring of population status and trends; searches for additional populations and further delineation of the population's historical range; continued research into limiting factors,

natural history, and threats to the population; management to maintain or improve habitat; continued efforts to supplement subpopulations and establish new subpopulations; continued enforcement of laws and regulations protecting the turtle and its habitat; and educational programs.

The draft Recovery Plan is being submitted for agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

**Public Comments Solicited**

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 20, 1993.

**Ronald E. Lambertsen,**

*Regional Director.*

[FR Doc. 93-18079 Filed 7-28-93; 8:45 am]

BILLING CODE 4310-55-M

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**[INS No. 1621-93; AG Order No. 1767-93]**

**RIN 1115-AC30**

**Extension of Designation of Bosnia-Hercegovina Under Temporary Protected Status Program**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice extends, until August 10, 1994, the Attorney General's designation of Bosnia-Hercegovina under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act (Act). Accordingly, eligible aliens who are nationals of Bosnia-Hercegovina, or who have no nationality and who last habitually resided in Bosnia-Hercegovina, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons already registered or still eligible to register for the initial period of Temporary Protected Status, which ends on August 10, 1993.

**EFFECTIVE DATES:** This designation is effective on August 11, 1993, and will remain in effect until August 10, 1994. Re-registration procedures become effective on July 29, 1993, and will remain in effect until August 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, room 7123, 425 I Street, NW., Washington, DC 20536, telephone (202) 514-5014.

**SUPPLEMENTARY INFORMATION:** Under section 244A of the Act, as amended by section 302(a) of Public Law 101-649 and section 304(b) of Public Law 102-232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General so designates a state, or a part thereof, upon finding that the state is experiencing ongoing armed civil strife, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on August 10, 1992, the Attorney General designated Bosnia-Hercegovina for Temporary Protected Status for a period of 12 months, 57 FR 35604. This notice extends the designation of Bosnia-Hercegovina under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Bosnia-Hercegovina, or who have no nationality and who last habitually resided in Bosnia-Hercegovina, must comply in applying for Temporary Protected Status or continuation of that status.

**Notice of Extension of Designation of Bosnia-Hercegovina Under Temporary Protected Status Program**

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have determined that, as a result of the continued armed conflict in that nation, there still exist extraordinary and temporary conditions in Bosnia-Hercegovina that prevent aliens who are nationals of Bosnia-Hercegovina, and aliens have no nationality who last habitually resided in Bosnia-Hercegovina, from returning to Bosnia-Hercegovina in safety. I have further determined that permitting nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, to remain temporarily in the United States is not contrary to the national interest of the United States. Accordingly, it is ordered as follows:

(1) The designation of Bosnia-Hercegovina under section 244A(b) of the Act is extended for an additional 12-month period from August 11, 1993, to August 10, 1994.

(2) I estimate that there are approximately 300 nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Bosnia-Hercegovina, or an alien having no nationality who last habitually resided in Bosnia-Hercegovina, who received a grant of Temporary Protected Status during the initial period of designation from August 10, 1992, to August 10, 1993, must comply with re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Bosnia-Hercegovina, or an alien having no nationality who last habitually resided in Bosnia-Hercegovina, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I-821, together with an Application for Employment Authorization, Form I-765, within the 30-day period beginning on July 29, 1993, and ending on August 30, 1993, in order to be eligible for Temporary Protected Status during the period from August 11, 1993, until August 10, 1994. Late re-registration applications will be allowed for "good cause" pursuant to 8 CFR 240.17(c).

(5) There is no filing fee for the Form I-821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1) will be charged for the Form I-765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I-821 together with Form I-765 for information purposes, but in such cases both Form I-821 and Forms I-765 will be without fee.

(6) Eligible applicants may still file their initial Temporary Protected Status registration applications until August 10, 1993. These applications may be filed as combined applications for the initial registration and for the re-registration, if filed from July 29, 1993, until August 10, 1993, inclusive. Combined registration applications must include one Form I-821 and two

Forms I–765: one for the initial period and one for the extension.

The Form I–821 of the combined application has a $50 filing fee for the initial registration; there is no fee for the re-registration alone. If no employment authorization is requested, both Forms I–765 will be filed without fee. If employment authorization is requested only from August 11, 1993 onward, only one I–765 filing fee is required. If employment authorization is requested both until and after August 10, 1993, filing fees are required for both Forms I–765.

(7) Pursuant to section 244A(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 10, 1994, the designation of Bosnia-Hercegovina under the Temporary Protected Status program to determine whether the conditions for designation continue to exist. Notice of that determination, including the basis for the determination, will be published in the Federal Register.

(8) Information concerning initial registration and re-registration for the Temporary Protected Status program for nationals of Bosnia-Hercegovina, and aliens having no nationality who last habitually resided in Bosnia-Hercegovina, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: July 20, 1993.

**Janet Reno,**

*Attorney General.*

[FR Doc. 93–18043 Filed 7–28–93; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Commission on the Future of Worker-Management Relations; Reopening of Comment Period

In the Federal Register notice of Wednesday, June 30, 1993, (58 FR 35048) Volume 58, Number 124, the Commission sought comments from representatives of management, labor and other interested parties on whether the Commission should hold a hearing on issues related to the Railway Labor Act in the railroad or airline industries and their applicability to the following three questions contained in the Commission's charter:

(1) What (if any) new methods of institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?

(2) What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity and reduce conflict and delay?

(3) What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties, themselves, rather than recourse to state and federal courts and government regulatory bodies?

The Commission requested that any submission contain a brief statement regarding the questions listed above in the event a party believes a hearing is appropriate. Comments were to be submitted by July 26, 1993 and were to be addressed to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, room C–2318, 200 Constitution Avenue, NW., Washington, DC 20210.

**REOPENING OF COMMENT PERIOD:** Because of interest in this subject, and requests for additional time to file comments, the Commission is reopening the comment period. Therefore, the period of request for comments is reopened through September 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, room C–2318, Washington, DC, telephone (202) 219–9148.

Signed at Washington, DC, this 23rd day of July, 1993.

**June M. Robinson,**

*Designated Federal Official, Commission on the Future of Worker-Management Relations.*

[FR Doc. 93–18092 Filed 7–28–93; 8:45 am]

BILLING CODE 4510–23–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Networking and Communications Research.

*Date and Time:* August 18–19, 1993; 8:30 a.m. to 5 p.m.

*Place:* Room 416, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

*Type of Meeting:* Closed.

*Contact Person:* Mr. David Staudt, NSFNET Connections Program, National Science Foundation, room 416, Washington, DC 20550 (202 357–9717).

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the SBIR Program.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 93–18093 Filed 7–28–93; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50–328]

### Tennessee Valley Authority (Sequoyah Nuclear Plant, Unit 2); Exemption

I.

The Tennessee Valley Authority (TVA) is the holder of Facility Operating License No. DPR–79, which authorizes operation of the Sequoyah Nuclear Plant, Unit 2 (the facility, Unit 2). The facility consists of a pressurized water reactor located on TVA's Sequoyah site in Hamilton County, Tennessee. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II.

Section III.A.6(b) of appendix J to 10 CFR part 50 requires that if two consecutive Type A tests fail to meet the applicable acceptance criteria, a Type A test shall be conducted at each refueling outage. This increased testing frequency would continue until two consecutive Type A tests meet the acceptance criteria, after which time the normal retest frequency of three Type A tests at approximately equal intervals within each 10-year service period would resume. The approximately equal intervals are defined in Surveillance Requirement 4.6.1.2.a of the Sequoyah Technical Specifications (TSs) as 40±10 months. Type A tests are tests of the primary reactor containment to measure the expected overall integrated leakage rate of the containment for the loss-of-coolant accident conditions.

The action would exempt the licensee from the provisions in section III.A.6(b)

of Appendix J with respect to the requirement to accelerate the Type A frequency if there have been two consecutive failures of Appendix J containment Type A tests. If two consecutive Type A tests fail to meet the acceptance criteria of 0.75 La, a Type A test must be performed at each refueling outage until two consecutive Type A tests meet the acceptance criteria. Thereafter, the test frequency in Section III.D of Appendix J, which requires performing three Type A tests at approximately equal intervals during each 10-year service period, may resume. The exemption would relax the acceleration of the Type A test frequency and the requirement to perform a Type A test during the Unit 2 Cycle 6 refueling outage scheduled for fall of 1993. If this exemption is granted, the next scheduled Type A test would be performed during the Cycle 7 refueling outage currently scheduled for April 1995.

The applicable acceptance criteria per 10 CFR part 50, appendix J, section III.A.5.(b)(2) is 0.75 times the allowable leakage (La), which results in a limit of 0.#1875 percent-per-day. At Unit 2, the licensee conducted Type A testing during the pre-operational testing in 1981, and refueling outages in November 1984 (Cycle 2), March 1989 (Cycle 3), and April 1992 (Cycle 5). The cause of the Cycle 2 and Cycle 3 Type A leak tests exceeding the acceptance criteria of 0.75 La was packing leakage from two outboard root valves on two containment pressure sensing lines. Repairs were performed and, after due consideration, the staff granted an exemption from performing a test during Cycle 4 by letter dated August 27, 1990.

As a result of the Type A test performed during the Cycle 5 refueling outage, the measured leakage rate was again found to exceed the acceptance criteria of 0.75 La. This failure resulted when the leakage from the local leak rate test of valve 2–FCV–61–191 (which is attached to glycol Penetration X–47A) was added into the result of the Type A test that was performed during the outage. The leakage was caused by a small nut that was found under the valve stem nut on the outboard valve, which prevented the valve from going fully closed. (The nut was from unrelated work in the vicinity of the valve). Following removal of the loose nut, lubrication of the valve stem, and cycling of the valve several times, the local leak test was re-performed. No measured leakage was found. It could not be determined which action, removal of the foreign material that prevented full valve closure or sticking of the valve stem (or both), corrected the problem. Corrective measures that have been adopted to prevent recurrence of the problem include a monthly inspection of the glycol valves for foreign material and monthly lubrication of the valve stems.

The history of the results of Type A tests conducted at Unit 2 is summarized as follows:

| Type A tests performed | As-found leak rate (percent per day) | 0.75 La limit (percent per day) | 1.0 La limit (percent per day) | Status |
|---|---|---|---|---|
| Preop Test | 0.14 | 0.1875 | 0.25 | Pass. |
| Cycle 2 (1984) | 0.22 | 0.1875 | 0.25 | Fail. |
| Cycle 3 (1989) | 0.22 | 0.1875 | 0.25 | Fail. |
| Cycle 5 (1992) | 0.42 | 0.1875 | 0.25 | Fail. |

The staff has reviewed the licensee's submittal and agrees with the licensee that the root cause of the previous Type A test failures was excessive leakage from a single component in the pressurization boundary, and that a general containment leakage problem does not exist. Once the component was repaired, the retest confirmed the adequacy of the repair. In addition, corrective actions have been implemented to prevent future test failures, and the corrective actions taken on the two previous Type A test failures have been effective since they are unrelated to the leakage through Penetration X–47A. The staff agrees with the licensee that failures of this type are random and that the leakage that caused the 1992 test failure can best be addressed through the alternative corrective actions rather than increasing the frequency of performing a Type A test.

Therefore, the staff concludes that performing future Type A testing on an accelerated schedule would serve no technical purpose and the requested exemption has no significant impact on containment integrity. Pursuant to 10 CFR 50.12(a)(2)(ii), the staff agrees that application of the regulation is not necessary to achieve the underlying purpose of the rule and that the requested exemption should be granted.

III.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are presently justifying the exemption; namely, that the application of the regulation in the particular circumstances for Unit 2 in the Cycle 6 refueling outage would not serve, and is not necessary, to achieve the underlying purpose of the rule. The application of the regulation is not necessary to assure the integrity of the containment in the event of a postulated design basis loss-of-coolant accident.

Accordingly, the Commission hereby grants an exemption from section III.A.6(b) of appendix J to 10 CFR part 50 for Sequoyah Unit 2.

– Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (55 FR 21602).

For further details with respect to this action, see the request for exemption dated January 7, 1993, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 23rd day of July 1993.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–18087 Filed 7–28–93; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Request for Extension of SF 177 Submitted to OMB for Clearance

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension to a form which collects information from the public. Standard Form 177, Statement of Physical Ability for Light Duty Work, is used to collect information from applicants for positions in the competitive service about their physical capacity to perform the duties of sedentary and moderately active jobs. The SF 177 is used by agencies in lieu of requesting or requiring medical examinations to determine qualifications for these positions. There are 678 individuals who respond annually for a total burden of 113 hours. For copies of this proposal, call C. Ronald Trueworthy on (703) 908–8550.

**DATE:** Comments on this proposal should be received on or before August 30, 1993.

**ADDRESSES:** Send or delivery comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, CHP 500, 1900 E Street, NW., Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Raleigh Neville, (202) 606–0960.

U.S. Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

[FR Doc. 93–17961 Filed 7–20–93; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–32651; File No. SR–PSE–93–06]**

### Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Amendment to its Rule Governing Competing Specialists

July 16, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 10, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its Rule 5.35(b) to modify the functions and responsibilities of competing specialists. The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange is proposing to amend its Rule 5.35(b) to expand the responsibilities of competing specialists.[1] This rule change is intended to provide the Exchange with the ability to enhance its markets in securities traded on a competing specialist basis and otherwise to allow the Exchange increased flexibility in developing new policies and procedures to improve specialists' performance in trading certain designated securities.

Exchange rules currently provide that a competing specialist is a member who is registered with the Exchange for the purpose of making transactions as a dealer-specialist on the floor of the Exchange in securities traded on a competing specialist basis.[2] Appointments of competing specialists are made by the Equity Floor Trading Committee ("EFTC") based on a consideration of the applicant's ability to perform the duties of a competing specialist and the applicant's financial resources.[3]

The responsibilities of competing specialists include the following: (a) Making transactions that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market; (b) engaging, to a reasonable degree under the circumstances, in dealings for such specialist's own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and the demand for a particular security, or a temporary distortion of the price relationships between the Exchange and other markets; (c) responding to a request for a quotation made at any time by Exchange personnel for the purpose of dissemination over a quote reporting system; and (d) maintaining bid-ask spreads that are less than the stated maximum bid-ask spreads established by the Exchange with respect to certain designated securities.[4]

The PSE's current rules provide for the appointment of competing specialists in conjunction with the appointment of a book broker, whom the EFTC selects to operate the book of limit orders and to execute odd lot orders and SCOREX-routed orders in securities traded on a competing specialist basis.[5] Book brokers are generally prohibited from engaging in principal transactions.[6] In certain circumstances, a book broker is obligated to call on the designated competing specialist(s) to make bids and/or offers or to narrow spreads in existing bids and offers or to take other appropriate action as mandated by Exchange rules.[7] The book broker must take action whenever a floor broker so requests or whenever in the book broker's opinion the interests of a fair, orderly and competitive market are served by such action.[8]

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[1] Securities traded on a competing specialist basis are traded in accordance with the provisions of PSE Rules 5.27 through 5.38. See PSE Rule 5.35(a); see also PSE Rules 5.35(b), (f)–(h) definition and responsibilities of competing specialists; 5.35(i) (other Exchange rules specifically applicable to competing specialists).

[2] See PSE Rule 5.35(b).

[3] Id.

[4] See, e.g., PSE Rule 5.35(f), Commentary .01(a), which provide that a competing specialist, in trading BankAmerica Corporation Common Stock, must bid and/or offer so as to create differences of no more than ⅛ of $1.

[5] See PSE Rule 5.35(c) and 5.35(d). At the present time, there are no competing specialists or book brokers registered with the Exchange.

[6] See PSE Rule 5.35(a).

[7] See PSE Rule 5.35(f).

[8] Id.

The Exchange is now proposing to expand the role of competing specialists by permitting the Board of Governors to authorize the Floor Trading Committee to appoint a competing specialist who shall accept limit orders for placement in the book and execute odd lot orders and SCOREX-routed orders in securities traded on the Exchange on a competing specialist basis. Competing specialists would thus be appointed to supplement the market provided by the registered specialist in certain securities to be designated by the Exchange. In instances where the Board of Governors waives the applicable provisions of Rules 5.35(b), (c) and (e) and the Floor Trading Committee appoints a competing specialist, there would be no need for a book broker. The Exchange believes that implementation of this proposal will provide significant liquidity, continuity and depth to the market, and narrower bid-ask spreads in securities traded on a competing specialist basis.

The proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and published its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–08 and should be submitted by August 19, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18053 Filed 7–28–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19592; 811–2696]**

## Cash Reserve Management, Inc.; Application for Deregistration

July 23, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

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**APPLICANT:** Cash Reserve Management, Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application on Form N–8F was filed on January 14, 1992, and amended on May 27, 1992.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 17, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington DC 20549. Applicant, Two World Trade Center, New York, NY 10048.

**FOR FURTHER INFORMATION CONTACT:** Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is an open-end diversified management investment company organized as a Maryland corporation on October 8, 1976. On October 21, 1976, applicant registered under the Act and filed a registration statement on Form S–5 under the Securities Act of 1933. The registration statement became effective on December 30, 1976 and applicant's initial public offering commenced immediately thereafter.

2. On August 5, 1988, applicant's board of directors approved an Agreement and Plan of Reorganization ("Plan") providing for the transfer of applicant's assets to Shearson Lehman Daily Dividend Inc. ("Successor Fund") in exchange for shares of the Successor Fund and the assumption by the Successor Fund of certain stated liabilities of applicant. The Successor Fund's board of directors approved the Plan on July 20, 1988. On or about September 19, 1988, proxy materials relating to the Plan were mailed to applicant's shareholders, who approved the Plan at a special meeting held on December 2, 1988.

3. On December 2, 1988, pursuant to the Plan, each shareholder of applicant became a shareholder of the Successor Fund, receiving shares of that fund having an aggregate net asset value equal to the aggregate net asset value of his/her investment in applicant. The net asset value of applicant as of December 2, 1988 was $2,774,874,784.

4. The expenses incident to the reorganization, consisting of accounting, printing, administrative, and legal expenses, totaled $1,341,236.99. These expenses were borne by applicant ($580,034.44), the Successor Fund ($59,046.46), and Shearson Lehman Brothers Inc., applicant's investment adviser ($702,156.09). Applicant is aware that such expenses, in the aggregate, are in excess of those incurred in most other reorganizations. Applicant represents that the primary reason for the elevated level of expenses was the number of accounts involved in the reorganization, i.e., 415,023 accounts. The amount expended, per account, in the reorganization was $3.23. Applicant submits that, on a per account basis, the expenses incurred were not in excess of those reasonably incurred in other reorganizations.

5. Articles of Transfer were filed on December 2, 1988 and Articles of Dissolution will be filed on behalf of applicant with the Maryland State Department of Assessments and Taxation to effect the dissolution of applicant as a Maryland corporation.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18117 Filed 7–28–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19591; File No. 812–8260]**

## College Retirement Equities Fund, et al.

July 23, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application for exemptions and approval under the Investment Company Act of 1940 (the "1940 Act").

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**APPLICANTS:** College Retirement Equities Fund ("CREF") and TIAA–CREF Individual & Institutional Services, Inc. ("TC Services", together with CREF, the "Applicants").

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 6(c) of the 1940 Act granting exemptions from sections 12(b), 26(a)(2) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder, and, pursuant to section 17(d) of the 1940 Act and Rule 17d–1 thereunder, approving certain joint arrangements.

**SUMMARY OF APPLICATION:** Applicants seek an order pursuant to section 6(c) of the 1940 Act exempting the arrangement for financing the distribution of CREF's variable annuity certificates (the "Certificates") from the provisions of sections 12(b), 26(a)(2) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder, and for an order pursuant to section 17(d) of the 1940 Act and Rule 17d–1 thereunder granting approval with respect to the same distribution arrangement. Applicants seek this relief to make permanent certain exemptive relief previously granted by the Commission on a temporary basis. If the relief is granted. Applicants would comply with all applicable provisions of Rule 12b–1 except those relating to shareholder approval.

**FILING DATE:** The application was filed on January 26, 1993, and an amended and restated application was filed on July 8, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 17, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: Peter C. Clapman, Esq., TIAA–CREF, 730 Third Avenue, New York, New York 10017.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Whisler, Attorney, or Michael V. Wible, Special Counsel, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

### Applicant's Representations

1. CREF, a nonprofit membership corporation subject to the Not-For-Profit Corporation Law of New York, was established by a special act of the New York State Legislature in 1952 to provide retirement benefits suited to the needs of employees of tax-exempt and publicly supported colleges, universities and other educational and research institutions. CREF is also subject to regulation by the Superintendent of Insurance of New York State. CREF is registered as an open-end diversified management investment company under the 1940 Act and the Certificates are registered under the Securities Act of 1933. The Certificates are funded by CREF's five investment portfolios: The Stock Account; the Money Market Account; the Bond Market Account; the Social Choice Account; and the Global Equities Account (collectively, the "Accounts").

2. The Teachers Insurance and Annuity Association of America ("TIAA"), CREF's companion organization, was established in 1918 as a nonprofit corporation under New York insurance law. TIAA and CREF are legally distinct entities; however, officers and other employees of TIAA generally are also officers and employees, respectively, of CREF. Additionally, the seven individuals comprising the Board of Overseers of CREF also comprise the members of TIAA's Board of Overseers.

3. TC Services, a member of the National Association of Securities Dealers and a wholly-controlled subsidiary of TIAA formed on September 4, 1990, is a not-for-profit entity currently exempt from federal and state taxation. TC Services provides all services relating to the distribution of the Certificates and the administration of CREF. TIAA–CREF Investment Management Inc. ("TC Management"), formed on September 4, 1990 as a not-for-profit entity exempt from federal and state taxation, is also a wholly-controlled subsidiary of TIAA. TC Management is registered under the Investment Advisers Act of 1940 and serves as investment advisor to the CREF Accounts. Thus, all services for CREF are performed by personnel of TC Services or by personnel of TC Management.

4. Concurrently with the filing of registration statements under the 1993 Act and the 1940 Act, CREF filed an application on September 26, 1985, for exemptive relief under the 1940 Act. On August 22, 1989, the Commission issued an order (the "1989 Order") granting certain relief, including temporary relief under sections 12(b), 26(a)(2) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder and under section 17(d) of the 1940 Act and Rule 17d–1 thereunder to permit a daily deduction from the

Accounts to cover expenses related to the distribution of the Certificates. The temporary relief, granted for a period of four years, expires on August 22, 1993.

5. The application states that the distribution expense arrangement which was the subject of the relief has not changed materially since the 1989 Order. Applicants state that the sole difference is that the manner in which services are provided to CREF has been restructured. Prior to January 1, 1992, these services were provided at cost by salaried personnel of CREF pursuant to an expense reimbursement agreement with TIAA. On December 19, 1990, the Commission issued an order pursuant to section 17(d) of the 1940 Act and Rule 17d–1 thereunder approving a restructuring of CREF pursuant to which TC Services and TC Management (the "Subsidiaries") would provide all services necessary for CREF's operations. Most of the officers and employees of the Subsidiaries were officers and employees of CREF prior to CREF's restructuring. Thus, Applicants note that after the reorganization, as before, no services for CREF are provided directly by an unrelated or for-profit entity. Applicants further state that the change does not impact the issues addressed in the application.

6. Distribution, administrative and investment advisory services are provided to CREF at cost by personnel of the Subsidiaries. Each year a committee of three CREF trustees (who are not interested persons of CREF) establishes proposed levels of distribution, investment advisory and administrative deductions based upon the expenses anticipated to be incurred by CREF for those services during the coming year. For accounting purposes the levels of deductions are converted into percentages which, when applied as deductions against the Accounts, are expected to produce an amount equal to the anticipated level of expenses. These rates are then approved by CREF's Board of Trustees, including a majority of those Trustees who are not interested persons of CREF. Pursuant to the terms of the respective agreements between CREF and the Subsidiaries, each of the three entities receives amounts daily from CREF corresponding to the daily deductions made from the Accounts established in the manner described above. A soon as is practicable after the end of each quarter (usually within 30 days), the amounts necessary to correct any differences between the deductions made from the Accounts and the expenses actually incurred will be determined. These amounts are then deducted or credited, as appropriate, between CREF and each of the Subsidiaries in equal daily installments over the remaining days in the quarter. Accordingly, the amounts deducted each year as a percentage of the net assets of each Account may be higher or lower than the actual expenses incurred depending upon expense experience. However, regardless of the annual rates that CREF's Trustees establish for the respective deductions, the actual amounts paid for distribution, administrative and investment advisory services will reflect, and will not exceed, actual expenses incurred.

7. Applicants state that because the arrangement for services among CREF and the Subsidiaries involves nonprofit entities, there is no source of funds to "subsidize" or temporarily "cover" expenses for the services provided by the Subsidiaries until the amount of incurred expenses is determined. Applicants argue that it would be administratively impossible to deduct the actual amount of expenses from the assets of the Accounts on a "real-time" basis when the expenses are incurred because the portion of expenses attributable to CREF are determined following the end of each quarter. Given these factors, CREF has adopted the above-described distribution expense arrangement to finance actual expenses that will be incurred during the year.

8. Currently, the deduction for distribution expenses is made at the annual rate of 0.03%. The deductions made pursuant to CREF's distribution expense deduction represent the total of sales related deductions assessed against Certificate owners; there are no front-end loads or back-end loads (contingent or otherwise). Additionally, CREF does not assess a mortality and expense risk charge or any other charges or deductions which could be used to finance sales-related expenses.

**Applicants' Legal Analysis and Conditions**

1. Because a daily deduction will be made from the assets of the Accounts for expenses incurred in connection with the distribution of the Certificates, CREF may be deemed to be acting as a distributor of its own securities within the meaning of Rule 12b–1, and the deduction for distribution expenses may be deemed to involve a payment proscribed by sections 26(a)(2)(C) and 27(c)(2) which restrict deductions from periodic payment plan certificates. Further, because CREF's distribution arrangement involves all the Accounts, the arrangement could be deemed a joint transaction involving a registered investment company and an affiliate, a transaction which is generally prohibited by Section 17(d) absent an order of the Commission pursuant to section 17(d) and Rule 17d–1. Accordingly, Applicants request an order pursuant to section 6(c) of the 1940 Act exempting CREF's arrangements for financing the distribution of the Certificates from the provisions of sections 12(b), 26(a)(2) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder. Applicants also seek an order pursuant to section 17(d) and Rule 17d–1 thereunder for the necessary approval for the same distribution arrangement.

2. Section 12(b) of the 1940 Act makes it unlawful for a registered open-end investment company to act as a distributor of securities of which it is the issuer, except through an underwriter. This section is designed to protect funds from excessive sales and promotional expenses. Rule 12b–1, however, allows an investment company to bear expenses related to the distribution of its shares provided that, among other things, the plan of distribution is approved by both the fund's board of directors, including its disinterested directors, and by a vote of a majority of the fund's outstanding voting securities. Rule 12b–1 is designed to ensure that the disinterested directors are not dominated or unduly influenced by management and that the disinterested directors are fully informed and exercise reasonable business judgment.

3. The prohibition found in section 12(b) against a fund serving as distributor of its own securities is based on the fact that investment advisers are paid fees based upon a percentage of a fund's assets, causing the growth of the fund through the sale of additional shares to be in the adviser's interest. This leads to a conflict of interest on the part of the adviser with respect to recommendations to the fund's board of directors regarding the use of fund assets to promote distribution.

4. Applicants argue that section 12(b) and Rule 12b–1 were not designed to cover situations where, as in CREF's case, no profit is made in connection with providing investment advisory or distribution services to an investment company. CREF represents, however, that it intends to fulfill all of the applicable requirements of Rule 12b–1 with the exception of those related to approval by a majority of the outstanding voting securities. Applicants assert that failure to obtain shareholder approval will not adversely affect Certificate owners because the conflict of interest concerns underlying section 12(b) and Rule 12b–1 do not apply to CREF's distribution financing arrangement. First, Applicants state that

the advisory fee paid by CREF to TC Management is based upon actual expenses and not a percentage of CREF's assets. Although the fee is collected based on a percentage of assets, it is thereafter adjusted to reflect actual expenses. Second, Applicants assert that TC Management does not make recommendations to CREF's Board of Trustees regarding the use of the assets of the Accounts to pay distribution expenses. Finally, as a not-for-profit entity that provides its services on an at cost basis, TC Management does not stand to gain from an increase in CREF's assets. Therefore, Applicants assert, TC Management has no incentive to encourage the growth of assets at the expense of certificate owners.

5. Applicants also argue that if CREF were required to submit the distribution financing arrangement to a vote of at least a majority of its outstanding voting securities, it is uncertain whether the required quorum could be obtained.[1] Applicants also insist that because the distribution fee is so low, even a small increase in the fee would be considered a material change requiring shareholder approval. CREF asserts that frequent shareholder votes would be unreasonably burdensome. Applicants assert that nothing has occurred since the 1989 Order to suggest that the relief granted at that time was inappropriate. Because this arrangement has been in effect for a number of years, Applicants argue that Certificate owners are not now faced with a new or additional charge.

6. The application states that CREF does not believe that its current distribution expense deduction will increase significantly or approach even the low-end of the fund industry's average level of 12b–1 charges in the foreseeable future; in fact, if CREF's assets increase substantially, the deduction actually could decrease. Moreover, CREF represents that the rate of any deduction made pursuant to relief granted as requested herein will never exceed .25%.

7. Applicants assert that CREF's investment advisory and distribution arrangement, with its combination of nonprofit entities providing services on an at cost, expense reimbursement basis, differs fundamentally from the typical fund arrangement. The most significant distinction is that for CREF there is no entity or area or division of the company (*e.g.*, a for-profit adviser or insurance company general account) whose profits can be used to "subsidize" CREF's distribution expenses. Applicants argue that the lack of other sources to finance CREF's distribution expenses renders it virtually impossible for CREF to diverge from its current at cost, expense reimbursement arrangement. Moreover, Applicants argue that implementing an alternative method of financing CREF's distribution expenses will result in greater administrative difficulties and higher costs to Certificate owners without any corresponding benefits. Applicants assert not only that CREF's current investment advisory and distribution arrangement is the only feasible method of providing these services, but also that the asset-based method of financing this arrangement is the most favorable method for Certificate owners.

8. The variable annuities issued by CREF are considered to be periodic payment plans. Accordingly, CREF is subject to sections 26 and 27 of the 1940 Act. Section 27 subjects periodic payment plan certificates issued by a management company to the charge limitations found in section 26. Applicants assert that the deduction of distribution expenses from the assets of the Accounts to cover actual expenses is consistent with the Commission's positions under section 26 with respect to the deduction of administrative and insurance related risk charges. Applicants assert that this is especially true where, as in CREF's case, no profit arises from the deduction.

9. Section 17(d), in part, prohibits an affiliated person of a registered investment company, acting as principal, from effecting any transaction in which the registered company is a joint participant with the affiliated person. The Commission may grant approval for such transactions under Rule 17d–1 if the participation of the registered company is on a basis no different from that of any other participant. Because CREF's distribution financing arrangement involves all the Accounts, it could be viewed as a joint transaction prohibited by section 17(d). Applicants, however, argue that the distribution financing arrangement represents the most equitable and cost-efficient means of allocating distribution expenses among the Accounts. CREF represents that it will monitor all sales material and marketing efforts to ensure that one Account will not be preferred over the other. Applicants represent that this is consistent with CREF's marketing approach which highlights the Certificates themselves as the retirement vehicle rather than the nature of the underlying Accounts. The application states that CREF represents that it will monitor all sales material and marketing efforts to ensure that, in the vast majority of cases, and unless otherwise appropriate and consistent with CREF's purpose, one Account will not, for marketing purposes, be preferred over any other Account.

### Conclusion

For the reasons and upon the facts set forth above, Applicants request exemptions from sections 12(b), 26(a)(2) and 27(c)(2) of the 1940 Act and Rule 12b–1 thereunder and assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants further request the necessary approval pursuant to section 17(d) and Rule 17d–1 thereunder.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–18119 Filed 7–28–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Rel. No. 19593; 811–4300]**

## The Thoroughbred Group; Application

July 23, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

**APPLICANT:** The Thoroughbred Group.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application on Form N–8F was filed on April 29, 1993 and amended on July 15, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be

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[1] Section 2(a)(42) defines "majority of outstanding voting securities" as follows:

"* * * the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

CREF currently has over one million Certificate owners. In order to obtain the required 50% quorum, at least 500,000 Certificate owners would need to be contacted. CREF asserts that this would entail considerable expense.

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received by the SEC by 5:30 p.m. on August 17, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, c/o The Winsbury Company, 1900 E. Dublin-Granville Road, Columbus, Ohio 43229.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Staff Attorney, at (202) 272–5287, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**Applicant's Representations**

1. Applicant is an open-end diversified management investment company organized as a Massachusetts business trust. On May 13, 1985, applicant filed a notification of registration under section 8(a) of the Act, and a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement became effective on October 7, 1985. Applicant's initial public offering commenced on or about October 15, 1985 (with respect to the Prime Obligations Portfolio) and October 28, 1985 with respect to the U.S. Government Obligations Portfolio).

2. At a meeting held on November 9, 1992, the Board of Trustees of applicant approved an Agreement and Plan of Reorganization (the "Agreement") between applicant and NCC Funds to provide for the transfer of all of the assets and liabilities of applicant's portfolios to NCC Funds (File No. 811–4416) in exchange for shares of the corresponding NCC portfolios, the distribution of shares in the NCC portfolios to the shareholders of applicant's portfolios according to their respective interests, and the termination of applicant under state law and its deregistration under the Act. The Board of Trustees determined that the proposed transactions described in the Agreement were advisable and in the best interests of applicant's shareholders, and that the interests of applicant's shareholders would not be diluted as a result of such transactions. The Agreement was executed on January 21, 1993.

3. A combined proxy statement and prospectus was filed with the SEC as part of the NCC Funds registration statement on Form N–14 on December 21, 1992. On or about January 25, 1993, the combined proxy statement and prospectus was sent to applicant's shareholders. Definitive copies of these materials were filed with the SEC on January 26, 1993. At a special meeting held on February 27, 1993, applicant's shareholders approved the transactions contemplated by the Agreement.

4. As of January 19, 1993, applicant had 63,928,812 shares outstanding of its Prime Obligations Portfolio with a net asset value of $1 per share, 112,348,369 shares of its Government Obligations Portfolio outstanding with a net asset value of $1 per share, 956,373 shares of its Total Return Stock Fund portfolio outstanding with a net asset value of $13.67 per share, and 2,035,063 shares of its Fixed Income Fund portfolio outstanding with a net asset value of $10.51 per share.

5. On March 1, 1993, applicant transferred all of the assets of its portfolios to NCC Funds as follows: shares of applicant's Prime Obligations Portfolio were exchanged for shares of the Money Market Portfolio of NCC Funds, shares of applicant's U.S. Government Obligations Portfolio were exchanged for shares of the Government Portfolio of NCC Funds, shares of applicant's Total Return Stock Fund portfolio were exchanged for shares of the Equity Portfolio of NCC Funds, and shares of applicant's Fixed Income Fund portfolio were exchanged for shares of the Fixed Income Portfolio of NCC Funds. Thereafter, pursuant to the Agreement, applicant's portfolios made liquidating distributions of the portfolio shares of NCC Funds to their shareholders so that the shareholders received the number of shares of the corresponding NCC Funds portfolios with an aggregate net asset value equal to the aggregate net asset value of their shares of applicant's portfolios.

6. In connection with the transfer of assets from applicant's portfolios to NCC Funds, applicant incurred expenses such as legal and auditors' fees, expenses associated with the special meeting of applicant's shareholders (such as proxy solicitation, tabulation and mailing expenses) and with the winding up of applicant's affairs (such as fees related to the filing of final tax returns). These expenses totaled approximately $160,000, all of which NCC Funds will pay, or arrange to have paid, pursuant to the Agreement. NCC Funds also assumed or paid all share registration expenses in connection with the transactions contemplated by the Agreement.

7. At the time of the application, applicant had no shareholders, assets or liabilities, nor was applicant a party to any litigation or administrative proceeding.

8. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

9. Applicant intends to file the necessary documentation with the Commonwealth of Massachusetts to terminate its existence as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18118 Filed 7–28–93; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[Public Notice No. 1836]**

### United States Organization for the International Telegraph & Telephone Consultative Committee, Study Group C; Meeting

The U.S. Department of State announces that Study Group C of the U.S. Organization for the ITU Telecommunication Standardization Sector (formerly known as CCITT and now called TS) will meet on Thursday, August 19, 1993 at the Newark Airport Marriott. The meeting will begin at 9:30 a.m. and end at 4:30. The agenda for the meeting will include consideration of delayed contributions to the TS for Study Groups 4 and 15. Please submit proposed contributions to the Chairman of SG C on or before July 29, 1993 to allow time for mailing and review prior to the meeting. Contributions should be mailed to: Dennis Thovson, AT&T room 5A256, P.O. Box 752, 900 Routes 202/206, Bedminster, NJ 07921–0752. Alternatively, contributions endorsed by a U.S. standards body can be brought into the meeting for consideration and approval.

The persons presenting these contributions should bring 40 copies of each to the meeting. No contributions will be approved for submission to the TS without prior review through either SG C distribution or the endorsement by a U.S. TSC prior to the meeting.

For agenda planning purposes, please notify Madeleine Mendez on 908–234–3628 if you plan to attend the meeting

and which TS Study Groups you are interested in. Members of the general public may attend the meeting and participate in the discussions subject to available space in the room. Please call at least three days before the meeting.

Dated: July 13, 1993.

**Earl S. Barbely,**

*Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.*

[FR Doc. 93-18040 Filed 7-28-93; 8:45 am]

BILLING CODE 4710-45-M

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**[Public Notice No. 1835]**

## Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Bulk Chemicals; Meeting

The working Group on Bulk Chemicals (BCH) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 1 p.m. on August 25, 1993, in room 2415, at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. The purpose of the meeting is to provide a preview of the agenda items to be addressed at the Twenty-Third Session of BCH scheduled for September 13-17, 1993 at the IMO Headquarters in London.

Among other things, the items of particular interest are:

a. Amendments and interpretation of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) and the international Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code).

b. Amendments and interpretation of the provisions of Annex II of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

c. Amendments and interpretation of the provisions of the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (GC Code) and the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code).

d. Guidelines for technical assessment for intervention under the 1973 Intervention Protocol.

e. Role of the human element in maritime casualties.

f. Air pollution from ships.

g. Existing ships' standards.

h. International Convention on Oil Pollution Preparedness, Response and Cooperation.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Commander K.J. Eldrige, U.S. Coast Guard (G-MTH-1), 2100 Second Street SW., Washington, DC 20593-0001 or by calling (202) 267-1217.

Dated: July 15, 1993.

**Geoffrey Ogden,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 93-18041 Filed 7-28-93; 8:45 am]

BILLING CODE 4710-07-M

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## Bureau of Oceans and International Environmental and Scientific Affairs

**[Public Notice 1838]**

## Certification Pursuant to Section 609 of Public Law 101-162

**SUMMARY:** On July 12, 1993, the Department of State certified, pursuant to section 609 of Public Law 101-162, that Honduras has adopted a regulatory program governing the incidental taking of sea turtles in its commercial shrimp fishery comparable to that in the United States. As a result of this certification, the ban on certain shrimp exports from Honduras that has been in effect since May 1, 1993, has been lifted.

**EFFECTIVE DATE:** July 12, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bill Gibbons-Fly, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520-7818; telephone (202) 647-3940.

**SUPPLEMENTARY INFORMATION:** Section 609 of Public Law 101-162 prohibits imports of shrimp from certain nations unless the President certifies annually to the Congress either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States; or (2) that the fishing environment in the harvesting nations does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the **Federal Register** on February 18, 1993 (58 FR 9015).

The countries subject to the provisions of Public Law 101-162 include Belize, Brazil, Colombia, Costa Rica, French Guiana (EC), Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Suriname, Trinidad and Tobago, and Venezuela. On April 30, 1993, the Department of State certified that 10 of the 14 affected countries have met, for the current year, the requirements of the law. The countries that received a certification at that time were Belize, Brazil, Colombia, Costa Rica, Guatemala, Guyana, Mexico, Nicaragua, Panama and Venezuela. The Department was unable to issue certifications at that time for Honduras, Trinidad and Tobago, Suriname, and French Guiana and, as a result, shrimp imports from these four countries were banned on May 1, 1993. The ban was subsequently lifted for Trinidad and Tobago on May 13, 1993.

The Government of Honduras has now provided documentary evidence sufficient to demonstrate that it has met the requirements for certification, including the use of TEDs covering at least 50 percent of the fishing effort of the commercial shrimp trawl fleet. Therefore the Department certified on July 12, 1993, that Honduras has met, for the current year, the requirements of Public Law 101-162 and notified the U.S. Customs Service that the ban on imports from Honduras is no longer in effect. Further, imports of farm raised shrimp from Honduras may be imported into the United States without an accompanying Exporter's Declaration and Government Certification (Form DSP-121) which had been required for any such shipments since May 1, 1993.

As with the other 11 countries certified thus far in 1993, the Department of State will remain in close contact with the Government of Honduras in order to ensure that the program developed meets the standards of comparability established in the Department's guidelines. Subsequent annual certifications will depend on the extent to which Honduras has made progress toward full implementation of its program.

Dated: July 16, 1993.

**David A. Colson,**

*Deputy Assistant Secretary, Oceans and Fisheries Affairs.*

[FR Doc. 93-18044 Filed 7-28-93; 8:45 am]

BILLING CODE 4710-26-M

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## Bureau of Politico-Military Affairs

**[Public Notice 1839]**

## Determination Under the Arms Export Control Act

Pursuant to section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Under Secretary of State for International Security Affairs has made two determinations pursuant to section 73 of the Arms Export Control Act and has concluded that publication of the

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determinations would be harmful to the national security of the United States.

Dated: July 5, 1993.

**Robert L. Gallucci,**

*Assistant Secretary of State for Politico-Military Affairs.*

[FR Doc. 93-18045 Filed 7-28-93; 8:45 am]

BILLING CODE 4710-25-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Stanislaus County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project adjacent to the city of Oakdale, Stanislaus County, California.

**FOR FURTHER INFORMATION CONTACT:** Leonard E. Brown, Chief District Operations, Federal Highway Administration, 980 Ninth Street, suite 400, Sacramento, CA 95814. Telephone (916) 551-1307.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the California Department of Transportation (CALTRANS) will prepare an Environmental Impact Statement (EIS) on a proposal to reconstruct State Route 120 to bypass the city of Oakdale, in Stanislaus County.

The purpose of the project is to relieve the congestion on the existing highway which passes through the commercial center of Oakdale. The bypass will require a new crossing of the Stanislaus River and local circulation will be provided only at controlled access points.

Several alignment alternatives are being considered for this project. Also being considered is a "no-build" alternative; and an operational improvement to the existing highway.

The appropriate federal, state and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal will be placed on a mailing list. A Planning Development Team (PDT) will be established; the team consists of federal, state and local agency staff along with Caltrans and consultant personnel. Also, a Citizen Advisory Committee (CAC) will be formed of area residents appointed by the Oakdale City Council and Stanislaus Board of Supervisors. The public hearing will be held after the EIS is available for review, and is scheduled for the summer of 1994. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues of this proposed action are addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. The view of agencies which may have knowledge about historic and archaeological resources potentially affected by the proposal or interest in the effects of the proposal on endangered species/habitat are specifically solicited. Comments or questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program)

Issued on: July 20, 1993.

**John R. Schultz,**

*Chief, District Operations—A, Sacramento, California.*

[FR Doc. 93-18077 Filed 7-28-93; 8:45 am]

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# Sunshine Act Meetings

Federal Register
Vol. 58, No. 144
Thursday, July 29, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL ELECTION COMMISSION

**DATE AND TIME:** Tuesday, August 3, 1993 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, August 5, 1993 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC. (Ninth Floor.)

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.
Advisory Opinion 1993-11: Daniel A. Taylor on behalf of the Dukakis-Bentsen Committee.
Advisory Opinion 1993-13: T. Michael Hurley, Jr. on behalf of Wyche Fowler for Senate Campaign Committee.
Routine Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:**
Fred Eiland, Press Officer, Telephone: (202) 219-4155.

**Delores Hardy,**
*Administrative Assistant.*

[FR Doc. 93-18197 Filed 7-27-93; 10:58 am]
BILLING CODE 6715-01-M

## FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 11-93
Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

| *Date and Time* | *Subject Matter* |
|---|---|
| Tues., August 10, 1993 at: | Oral Hearing on objection to Proposed Decision issued on claim for prisoner of war compensation under the War Claims Act of 1948: |
| —10:00 a.m. | SPN-1870—Erma McKinney, et al. |
| —11:00 a.m. | Hearings on the record on objections to Proposed Decisions in the following claims against Iran: |
| | —IR-1737—Thomas J. Temple |
| | —IR-0269—Gwenn Honnold |
| | —IR-2518—Ross T. Sherman |
| | —IR-0153—James M. & Bonna J. McLeod |
| | —IR-0775—Robert J. Russell |
| | —IR-0194—Lou Dano |
| | —Consideration of Proposed Decisions on claims against Iran. |

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208-7727.

Dated at Washington, DC on July 27, 1993.

**Jeanette Matthews,**
*Administrative Assistant.*

[FR Doc. 93-18248 Filed 7-27-93; 2:28 pm]
BILLING CODE 4410-01-M

## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-22]

**TIME AND DATE:** August 6, 1993 at 10:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436.

**STATUS:** Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 731-TA-539D and E (Final) Uranium from Tajikistan and Ukraine)—briefing and vote.
6. Outstanding action jackets
7. Any items left over from previous agenda

**CONTACT PERSON FOR MORE INFORMATION:**
Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: July 23, 1993.

**Donna R. Koehnke,**
*Secretary.*

[FR Doc. 93-18268 Filed 7-27-93; 3:33 pm]
BILLING CODE 7020-02-M

# Corrections

Federal Register
Vol. 58, No. 144
Thursday, July 29, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FEDERAL DEPOSIT INSURANCE CORPORATION

**12 CFR Part 330**

**RIN 3064-AB01**

**Deposit Insurance Coverage**

*Correction*

In rule document 93-12227 beginning on page 29952 in the issue of Tuesday, May 25, 1993, make the following corrections:

1. On page 29953, in the second column, in the first full paragraph, in the first line, "We not" should read "We note".

2. On the same page, in the same column, in the second full paragraph, in the third line, before "section 10" insert "to".

3. On page 29962, in the third column, in the last paragraph, in the last line, "plant" should read "plan".

**§ 330.12 [Corrected]**

4. On page 29964, in the first column, in § 330.12(c)(2)(i)(C), in the sixth line, after "401(d)" insert ")".

5. On the same page, in the second column, in § 330.12(e), in the second line, "employee"' should read "employees"'.

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA-940-4210-06; CACA-30123]**

**Proposed Withdrawal and Opportunity for Public Meeting; California**

*Correction*

In notice document 93-16723 beginning on page 38137 in the issue of Thursday, July 15, 1993, make the following correction:

On page 38137, in the third column, under the heading **Mount Diablo Meridian** where it first appears, in T. 37 N., R. 11 E., in Sec. 8, "N¼NW¼," should read "N½NW¼,".

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Part II

# Department of Transportation

**Federal Highway Administration**

**49 CFR Part 391**
**Qualification of Drivers; Waivers; Diabetes; Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[FHWA Docket No. MC–87–17]

RIN 2125–AB91

Qualification of Drivers; Waivers; Diabetes

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FHWA announces its decision to issue waivers to certain insulin-using diabetic drivers of commercial motor vehicles (CMVs) from the qualification requirements contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The FHWA will immediately begin accepting waiver applications from individuals and will continue to accept such applications for waivers until April 30, 1994. All applications must be postmarked by April 30, 1994 and those received after that date will not be accepted. If granted, waivers will be valid for a period of three years unless revoked for failure by the driver to comply with the conditions of the waiver, or until resolution of a concurrent rulemaking action, whichever occurs first.

DATES: This document is effective on July 29, 1993.

ADDRESSES: Applications may be submitted to the Diabetes Waiver Program, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The FHWA has established a special telephone number to receive inquiries regarding this notice. The number is 1–800–832–5660. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

## Background

The FHWA established its current requirement for diabetes in 1970 (35 FR 6458). This rule provides that a person is physically qualified to drive a CMV if the person "[h]as no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control." 49 CFR 391.41(b)(3). The FHWA has considered various amendments to its diabetes requirement since 1977. The most recent proposal to amend this requirement was the notice of proposed rulemaking (NPRM) published on October 5, 1990. See 55 FR 41028; see also 52 FR 45204 (November 25, 1987) (advance notice of proposed rulemaking) and 53 FR 42 (January 1, 1988) (extension of comment period). In addition, the FHWA published in the Federal Register a notice of intent to initiate a waiver program for certain insulin-using diabetic drivers. See 57 FR 48011, October 21, 1992. That notice proposed the issuance of waivers to certain insulin-using diabetic drivers of CMVs from the diabetes mellitus prohibitions contained in the FMCSRs. Please refer to these notices for a complete background discussion of the FHWA's efforts in this area.

Initiation of a waiver program will allow the FHWA to analyze and compare a group of insulin-using drivers who have documented CMV driving experience with a control group of drivers who meet the current Federal diabetes requirement, and use its findings as a reliable basis to amend, if warranted, the current diabetes requirement.

## Docket Comments

With respect to the FHWA's notice of intent to issue waivers, 302 comments were received. Two hundred and seventy one comments favor the FHWA's proposal. Of those commenters, 224 believe that neither the diabetic drivers who use insulin nor the public will be at more risk if certain insulin-using diabetics are allowed to drive CMVs under the conditions set forth in the notice. They cite the scientific advances that have been made in the medical treatment of diabetes over the last 50 years as the rationale for their support.

Fourteen commenters who support the proposal believe that the requirement that waiver applicants must have been driving a CMV and using insulin during the previous 3-year period should be relaxed. Four other supporters contend that there is a shortage of endocrinologists and call for other types of physicians to be allowed to examine waiver applicants. A physician for a State Driver License Division believes that glucose monitoring should be done every two hours instead of every four hours, as proposed.

Of the 38 States that currently allow insulin-using drivers to operate CMVs, six commented that their programs are very successful. In fact, the State of Alabama stated that there have been no accidents reported involving insulin-using drivers since the inception of its program. The State of California supported the proposal but recommends prohibiting the transportation of passengers and hazardous materials by insulin-using diabetics.

The Insurance Institute for Highway Safety (IIHS) stated that medical specialists cannot identify, in advance, a large proportion of the insulin-using persons who will experience a severe hypoglycemic reaction and that many of those persons who experience severe hypoglycemia cannot recognize the warning symptoms that precede such an event.

The IIHS cited the 1991 Diabetes Control and Complications Trial (DCCT). The DCCT was a multicenter randomized clinical trial that was designed to compare the standard therapy for insulin-dependent diabetes with intensive therapy directed toward achieving blood glucose levels as close as possible to the normal nondiabetic range ("tight control"). The DCCT concluded that a person under tight control has a greater propensity for episodes of hypoglycemia than a person under less rigid control.

The IIHS also cited a study (LaPorte, et al., "Review of 49 CFR 391.41(b)(3) Regarding Diabetic Commercial Motor Vehicle Drivers," University of Pittsburgh (1991)) that questioned the accuracy of self-reported blood glucose logs kept by persons with diabetes mellitus. The IIHS suggested that the FHWA undertake a retrospective cohort study of the driving records of diabetic and nondiabetic vehicle drivers rather than the prospective study proposed. The IIHS asserts that such a retrospective study could be done without needlessly endangering the driving public.

The American Trucking Associations, Inc. (ATA), in its opposition to the waiver program, cited the 1988 study "Motor Vehicle Accidents and IDDM [1]," by Songer, et al. The ATA asserted that the Songer study shows an accident rate of 2 to 2.5 times higher than that of a noninsulin-using control group. That accident rate, coupled with the complexity of driving commercial vehicles, long driving hours, unpredictable work schedules and other variables, led the ATA to conclude that the proposed waiver program would not shed any new light on the issue of the safety of insulin-using drivers of commercial motor vehicles.

The United Parcel Service (UPS) cited a study by Waller ("Chronic Medical Conditions and Traffic Safety," 1965) which indicated an accident rate for diabetics that is almost twice the rate of nondiabetic drivers and a traffic violation rate of 1.5 times the rate of a

[1] The acronym "IDDM" means insulin-dependent diabetes mellitus.

control group. The UPS believes that the findings in this study warranted the FHWA's withdrawal from the proposed research activity.

The American Movers Conference, UPS, IIHS, Kenan Transport and the Idaho State Police all stated that insulin-using diabetics would have a harder time regulating their blood sugar level than the general public. Problems cited by the commenters include erratic and improper nutrition, fatigue, lack of exercise followed by periods of over-exertion, duty hour changes, and sleep deprivation.

The Advocates for Highway and Auto Safety (AHAS) shared the same concerns as other commenters opposing the initiation of a waiver program for certain insulin-using diabetics. These concerns include hypoglycemia, reliable self-verification, tight control of blood sugar levels, work schedules, and additional accidents resulting in injury or death. The AHAS submitted a voluminous document to the docket, and many of its comments are similar to those of other commenters. Those similar comments and other more specific comments are addressed below.

**FHWA Response to Docket Comments**

*3-year Insulin-Using Requirement*

By requiring a waiver applicant to prove that he/she has operated a CMV safely for a period of three years while controlling his/her diabetes with the use of insulin, the FHWA will ensure that those individuals receiving a waiver are safe drivers who have adjusted to their diabetes without incident. The FHWA believes this requirement is consistent with the mandate of the Motor Carrier Safety Act of 1984, (49 U.S.C. app. 2505(f)), which requires that before a waiver is granted, the Secretary of Transportation must make a finding that such waiver is consistent with the safe operation of commercial motor vehicles.

**Shortage of Endocrinologists**

Although they supported the waiver program, four commenters suggested that there is a shortage of endocrinologists, and therefore, the FHWA should permit other physicians to examine waiver applicants. American Medical Association (AMA) statistics indicate that as of January 1, 1992, there were 3,075 endocrinologists (board-certified and board-eligible) practicing in the United States. Although endocrinologists are one of the smallest specialty groups within the AMA, they may be found anywhere there is a teaching hospital, as well as in most large and medium sized population cities.

Because the FHWA is embarking upon a pilot research effort, it has determined that only highly qualified specialists should examine the insulin-using diabetic applicants to ascertain if they can physically qualify for the waiver program. The FHWA has, therefore, decided to permit only board-certified or board-eligible endocrinologists to perform the required examinations.

*Glucose Monitoring*

The American Movers Conference, UPS, IIHS, and other commenters raised concerns about glucose monitoring. The FHWA's October 21, 1992, proposal would have given a waived driver a degree of discretion in choosing the type of portable glucose monitoring device to use. It would have also allowed the driver to manually record the reading obtained from the monitoring device. The IIHS, in its comments, claimed that the accuracy of self-reported blood glucose logs kept by persons with diabetes mellitus is questionable. The IIHS further claimed that portable glucose monitoring devices are inaccurate. The IIHS supported its claim concerning the inaccuracy of such devices by quoting LaPorte's finding that "more than half of the blood glucose values are more than 20 percent off from the true values."

The FHWA has carefully reviewed the LaPorte study and finds that the study, in fact, concluded that while earlier models of the devices had a problem with user variability, manufacturers have since greatly improved the accuracy of self-monitoring of blood glucose (SMBG) devices. The LaPorte study stated, "these instruments (SMBG devices) are readily adaptable for CMV drivers and should not impose any major barriers for use."

The FHWA agrees with the commenters that accurate glucose monitoring is a valid concern. Therefore, the FHWA has determined that each waived driver will be required to use a portable SMBG device equipped with a computerized memory while participating in the waiver program. This will enable the waived driver to transfer accurate glucose values to a hand-written or typed log following blood glucose tests with a minimum of difficulty and time expended.

As an additional means of ensuring the safety of both the waived driver and the general public, the FHWA will require waived drivers to undergo an examination twice a year by an endocrinologist, and every six months each waived driver must obtain a signed statement from an endocrinologist stating that the waived driver's diabetic condition continues to be stable and under control. The endocrinologist must also review the waived driver's blood glucose logs for the preceding three month period. These requirements will reestablish the fact that the waived driver's condition remains stable and under control. Moreover, any waived driver involved in an accident while operating a commercial motor vehicle must submit his or her hand-written or typed logs of the required tests for the 24-hour period immediately prior to the accident.

One commenting physician took exception to the four-hour monitoring requirement and recommended that it be reduced to two hours. The physician's position is somewhat different from that of the American Diabetes Association (ADA) and a number of endocrinologists that originally recommended the four-hour requirement. The ADA proposal would have required a blood glucose test one hour prior to and approximately every four hours while driving.

The FHWA has determined that requiring a blood glucose test every two hours is overly burdensome to drivers and unnecessary in light of the other safety precautions required by this waiver program. It is believed that an additional margin of safety will be introduced, while placing no additional burden on the waived driver, by requiring a blood glucose test one hour prior to and approximately every four hours while on duty, which is defined in 49 CFR 395.2. Consequently, the FHWA will insist upon this monitoring schedule as a condition of participation in the waiver program.

*Transportation of Passengers and Hazardous Materials*

The State of California suggested prohibiting insulin-using diabetics from driving CMVs carrying passengers or hazardous materials. The State of California presented no data to support such action. The FHWA lacks independent evidence on the issue and is not aware of similar restrictions in any of the other States that allow insulin-using diabetics to operate CMVs. Because of the extraordinary cautions and conditions otherwise imposed upon diabetes waivers, the FHWA does not believe it is necessary to impose this further restriction upon participants in this waiver program. Nevertheless, any State adopting an intrastate waiver program for insulin-using drivers may preclude the participants of that waiver program from transporting passengers or hazardous materials.

*Hypoglycemia unawareness*

Both the IIHS and the AHAS claimed that hypoglycemia unawareness presents an insurmountable problem to highway safety and the waiver program should, therefore, be canceled. The IIHS used the findings of the DCCT to support its conclusions. The DCCT, as stated previously, is designed to compare the standard therapy for insulin-using diabetics with intensive therapy directed toward achieving blood glucose levels as close as possible to the normal nondiabetic range ("tight control").

The FHWA has reviewed the comments of the IIHS and analyzed the findings of the DCCT. Based upon that review and analysis, the FHWA has determined that the data developed by the DCCT regarding intensive therapy is not persuasive. The FHWA reached this conclusion based upon the fact that it is not mandating tight control for its waiver participants, nor will it allow hypoglycemia unaware applicants into the waiver program.

The ADA, in its second submission to the docket responding directly to statements made by the AHAS, commented that individuals with hypoglycemia unawareness should be excluded from the operation of commercial motor vehicles. The ADA claimed, however, that this condition was not enough to exclude all diabetics from participating in a waiver program. That conclusion was based, in part, upon the ability of an experienced physician and the use of SMBG devices to identify individuals experiencing hypoglycemia unawareness. Because hypoglycemia unaware individuals can be identified and excluded, the ADA believes they do not pose a major, unidentifiable risk to the general public.

The ADA also asserted that simply because SMBG testing is often used by hypoglycemia unaware individuals, that alone is not sufficient to exclude its use by other insulin-using individuals participating in the waiver program. These SMBG devices permit diabetics to know and adjust their blood glucose levels as necessary.

For purposes of this waiver program, the FHWA agrees with the comments of the IIHS, AHAS, and ADA that individuals experiencing hypoglycemia unawareness should not be included as participants. The FHWA also accepts and adopts the ADA's comments on SMBG. The use of SMBG by insulin-using diabetics who do not experience hypoglycemia unawareness will increase their cognizance of early symptoms of an imminent hypoglycemic reaction. This information will allow drivers to take steps to avert an accident, including stopping the vehicle and/or ingesting glucose. Moreover, with the advent of computerized SMBG devices equipped with memory function, blood glucose readings are considerably more accurate and verifiable. Consequently, more SMBG testing will be required of waiver program participants.

*Severe Hypoglycemia*

The AHAS, the IIHS, and others expressed concern about medical specialists being unable to identify, in advance, a large proportion of the insulin-using persons who will experience a severe hypoglycemic reaction.

The ADA comments acknowledged that no test exists to make a determination, in retrospect, regarding which individuals experienced severe hypoglycemic reactions. However, by requiring that each applicant be examined by an endocrinologist, the risk that such an individual will remain undetected is not likely.

Based upon the data provided, the FHWA has determined that individuals with severe hypoglycemia should be excluded from participating in the waiver program. The FHWA also believes that today's medical technology provides sufficient methods for screening individuals with severe hypoglycemia from the waiver program.

*Mild Hypoglycemia*

The AHAS commented on the effects of mild hypoglycemia on CMV drivers and placed great significance on the minor cognitive effects of mild hypoglycemia.

The ADA notes that mild hypoglycemia is not an immediately threatening emergency, although it must be addressed within a few minutes by ingesting glucose. Such ingestion can occur quickly and without stopping the vehicle.

The FHWA believes that the conditions and other special procedures included in its waiver program mitigate the importance of mild hypoglycemia as a potential cause of accidents. Mild hypoglycemia alone, therefore, will not prevent insulin-using diabetics from participating in the waiver program.

*Medical Studies*

Many commenters to the docket referred to various studies in their arguments for and against the waiver program. The ADA provided rebuttals to five of the studies relied upon by AHAS and other commenters.

The ADA asserted that the California (Waller, "Chronic Medical Conditions and Traffic Safety," 1965) and Oklahoma (Davis et al., "Oklahoma's Medically Restricted Drivers—A Study of Selected Medical Conditions," 1973) studies "lumped together" individuals with a variety of chronic conditions, including alcoholism, epilepsy and neurologic conditions. The ADA believes the results regarding diabetics were invalid because of the higher safety risks associated with the other chronic conditions included in the study. Because the FHWA's waiver program will only study the driving experience of certain insulin-using diabetics, the FHWA believes the results of the California and Oklahoma studies are insufficient to block the commencement of the waiver program.

The Prince Edward Island report (Campbell and Ellis, "Chronic Medical Conditions and Traffic Violation and Accident Experience of Diabetic Drivers," 1969) appears to indicate an increased accident risk among individuals with diabetes, however the ADA pointed out that the risk is not related to any type of drug therapy. That fact, the ADA concluded, precludes insulin-induced hypoglycemia as the cause of the risk. Other studies (Ratner and Whitehouse, "Motor Vehicles, Hypoglycemia, and Diabetic Drivers," 1989) showed accident rates involving insulin-using drivers were 35% lower than accident rates of a control group of non-diabetic drivers. Conversely, other groups of insulin-using drivers had an accident rate 78% higher than a control group of nondiabetic drivers. The ADA pointed out that such results were reached without excluding individuals with demonstrable hypoglycemia or other impairments.

The FHWA considers the results of these studies to be offset by the strenuous conditions waiver participants must meet to participate in this program and, therefore, is unconvinced by commenters' reliance on such studies' findings, which are not relevant to the scope of the waiver program. Additionally, the FHWA finds the five State driver waiver programs for diabetes (referenced in AHAS' comments) provide an additional basis for implementing this waiver program, since none of those programs demonstrated any increased risk posed by these drivers.

In its analysis of the LaPorte/University of Pittsburgh study, ("Review of 49 CFR 391.41(b)(3) Regarding Diabetic Commercial Motor Vehicle Drivers," University of Pittsburgh (1991)), the ADA relied upon that study's findings that without any regulations to control driving privileges among insulin-using individuals, only

14 additional accidents would be likely to occur. The ADA accepted the LaPorte study's conclusion that the controls placed upon participants in the proposed waiver program would reduce that number by half. The FHWA believes that restricting the issuance of waivers to only those drivers who meet the conditions set forth below will meet its statutory burden of ensuring such a waiver program is not contrary to the public interest and is consistent with the safe operation of CMVs.

The FHWA also reviewed the Songer study, "Motor Vehicle Accidents and IDDM," cited by the ATA in opposing the proposed waiver program. Contrary to the assertions of the ATA regarding the accident rate of IDDM drivers, the Songer study actually reveals that the accident rate of the IDDM population does not appear to differ significantly from the accident rate of the nondiabetic population. In the concluding paragraph of that study, the authors state, "There is little evidence regarding the motor vehicle accident risk of the driver with IDDM. Our data suggest that, overall, *drivers with IDDM do not have an increased accident risk.*" (emphasis added).

*Irregular Hours/Eating Habits*

Several commenters expressed concern regarding the irregular hours and eating habits that often accompany the truck driving profession. These factors, the commenters stated, may have a deleterious effect on an insulin-using diabetic's ability to safely operate a CMV.

The FHWA believes that schedules associated with CMV driving may allow better long-term planning for the prevention of hypoglycemia than are usually associated with personal driving. Also, it is expected that waived insulin-using diabetic drivers may act in a more responsible manner during their working hours since their jobs depend upon their performance. Moreover, many CMV drivers in fact work regular hours and return home each evening.

**Determination**

The FHWA believes that the waiver conditions are more than sufficient to satisfy the mandate that this action be consistent with the safe operation of commercial motor vehicles. Therefore, in light of FHWA's adoption of intensive safety related conditions, the FHWA has concluded that the waiver program will be consistent with the safe operation of CMVs and will not be contrary to the public interest.

**Discussion**

Section 206(f) of the Motor Carrier Safety Act of 1984 (49 U.S.C. app. 2505(f)) requires that, before a waiver is granted, the Secretary of Transportation must make a finding that such a waiver is not contrary to the public interest and is consistent with the safe operation of CMVs.

After a thorough review of the comments submitted in response to the notice of October 21, 1992, the FHWA has decided to proceed with the waiver program. The FHWA has established an extensive set of conditions to ensure that the waiver program is consistent with the safe operation of CMVs.

The FHWA believes the waiver program is entirely consistent with the public interest, particularly since the enactment of the Americans with Disabilities Act. The Senate report on the Americans with Disabilities Act directed the FHWA to undertake, within two years of the enactment of Title I of that legislation, a thorough review of the physical qualification regulations "in order to ascertain whether the standards conform with current knowledge about the capabilities of persons with disabilities and currently available technical aids and devices . . .." S. Rep. No. 116, 101st Cong., 1st Sess. at 27. This mandate was issued, in part, based on information which showed that individuals with disabilities experience staggering levels of unemployment and poverty. For instance, a Lou Harris poll referenced in the report found that "two-thirds of all disabled Americans between the ages of 16 and 64 are not working at all; yet, a large majority of those not working say that they want to work." *Id.* at 9. This waiver program will afford opportunities for employment for otherwise qualified individuals with disabilities while the study is in progress.

With respect to safety, the FHWA believes this waiver program is consistent with the safe operation of commercial motor vehicles and has developed an extensive set of conditions for applicants to satisfy before being accepted into the program. These conditions include at least three years experience driving a CMV while the individual has been insulin-using, a good driving record, and certification from a board-certified or board-eligible endocrinologist that the diabetic condition will not adversely impact on the applicant's ability to operate a CMV. In addition, those individuals accepted into the waiver program must meet other conditions to retain their waiver. These conditions include maintaining accurate logs of their blood glucose, submitting monthly driving activity reports to the FHWA, notifying the FHWA of any involvement in an accident, and a twice annual examination by a board-certified or board-eligible endocrinologist.

The waiver program is not a substitute for the substantive rulemaking currently under consideration, nor does it modify or lessen the existing safety standard. Because the lack of empirical data regarding the effect of diabetes mellitus on CMV safety has impeded responsible standard development in this area, the waiver program will enable the FHWA, for the first time, to collect the needed information. In conjunction with the waiver program, the FHWA will conduct a study comparing a group of experienced, insulin-using diabetic drivers with a control group of experienced drivers who meet the requirements of the FMCSRs, and provide the reliable empirical data.

Applications will be accepted until April 30, 1994, and will be processed as quickly as possible. If granted, waivers will be valid for a period of three years or until the concurrent rulemaking addressing the FHWA's diabetes requirements is completed, whichever occurs first.

The information collected during this waiver program will be retained by the FHWA's research contractor and will be held in a strictly confidential manner. The information will only be used for purposes of the waiver research program.

The FHWA recognizes that States are already incorporating the current Federal diabetes standard into their requirements for drivers operating CMVs in intrastate commerce as a condition for receipt of Motor Carrier Safety Assistance Program (MCSAP) funds and the certification required of applicants for the CDL. However, States receiving funds under the MCSAP have been allowed to grandfather intrastate drivers qualified under State medical standards as long as the driver's waived condition remains under control. Due to a rulemaking incorporating the Tolerance Guidelines into 49 CFR part 350, and the medical studies being conducted by the FHWA, the grandfather provision was extended for one year to March 31, 1993 (57 FR 40962, September 8, 1992). Published elsewhere in today's **Federal Register** is a notice extending the grandfather provision for an additional three year period.

The amended Tolerance Guidelines will allow States latitude in establishing waiver programs for intrastate drivers and building a data base which will be beneficial to the FHWA in future

rulemakings involving medical qualifications. Under the MCSAP, however, the States will continue to be required to meet the intrastate Tolerance Guidelines.

Some States have already adopted the Federal physical qualification standards. The FHWA encourages these States to establish compatible waiver programs to allow qualified individuals to participate in this study. These States may find it necessary to requalify drivers who are able to meet the conditions for waivers stated herein. However, nothing contained in this notice of final disposition requires States to adopt a Federal diabetes waiver program for drivers who operate wholly in intrastate commerce or to change or alter their current physical qualification standards or waiver programs. Nevertheless, States must give full faith and credit to any validly licensed interstate driver operating a CMV under a Federal diabetes waiver.

**Application Conditions**

The FHWA must ensure that the issuance of diabetes waivers will not be contrary to the public interest and is consistent with the safe operation of CMVs. To eliminate any adverse impact on the public and to ensure consistency with safe operation of CMVs, drivers who now hold a valid Federal vision waiver issued by the FHWA and have recently begun using insulin to control a diabetic condition, may not apply for a waiver from the insulin-using prohibition of the diabetes mellitus qualification requirement.

Waivers will only be granted to those insulin-using persons who, as demonstrated by appropriate documentation, satisfy all of the prerequisite conditions and are otherwise physically qualified pursuant to 49 CFR part 391. Waivers will be valid for a period of three years unless revoked for failure by the driver to comply with the conditions of the waiver, or until resolution of the concurrent diabetes rulemaking action, whichever occurs first. These prerequisite conditions are as follows:

(1) Are currently licensed to operate a CMV or were validly licensed after April 1, 1990, but could not renew their license because of their diabetic condition;

(2) Operated a CMV, with a diabetic condition controlled by the use of insulin, for the three-year period immediately preceding:

(a) The date of the application for waiver, if the applicant is currently licensed to operate a CMV; or

(b) The date (after April 1, 1990) the applicant last held a valid license to operate a CMV;

(3) Have a driving record for that three-year period that:

(a) Contains no suspensions or revocations of the applicant's driver's license for the *operation* of *any* motor vehicle (including their personal vehicle) (does not include suspensions or revocations due to nonpayment of fines);

(b) Contains no involvement in an accident (as defined in 49 CFR 390.5) for which the applicant received a citation for a moving traffic violation while operating a CMV;

(c) Contains no convictions for a disqualifying offense described in 49 CFR 383.51 or more than one serious traffic violation defined in 49 CFR 383.5 while operating a CMV; and

(d) Contains no more than two convictions for any other moving traffic violations while operating a CMV;

**Special Note:** Any waiver applicant who is arrested or cited for, or convicted of, any disqualifying offense or other moving violation during the period of time the application is pending, must immediately report such arrests, citations, or convictions to the Diabetes Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to do so may result in a denial or rescission of the waiver. No waiver will be issued while any charge against an applicant, for what would be a disqualifying offense, is still pending. Convictions occurring during the processing of the application will be considered in the overall driving record.

(4) Have provided a board-certified or board-eligible endocrinologist with a complete medical history (including, but not limited to, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies pertaining to the diabetes, and follow-up reports) and reports of any hypoglycemic insulin reactions within the last three years.

(5) Have been examined by a board-certified or board-eligible endocrinologist who has conducted a complete medical examination after July 29, 1993. The complete medical examination must consist of a comprehensive evaluation of the applicant's medical history and current status, including a review of:

(a) Fasting blood studies (glucose, glycosylated hemoglobin/Hb $A_{1c}$, including lab reference range) and urinalysis performed during the last six months; and

(b) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken;

(6) Submit a signed statement prepared by the examining endocrinologist whose status (board-certified or board-eligible) is indicated. The signed statement must include separate declarations indicating the following medical determinations:

(a) The endocrinologist is familiar with the applicant's medical history for the past three years either through actual treatment over that time or through consultation with a physician who has treated the applicant during that time;

(b) The applicant has been using insulin to control his/her diabetes from the date of the application back to the date the three years of driving experience began;

(c) The applicant does not have *severe hypoglycemia* (i.e., episodes of altered consciousness requiring the assistance of another person to regain control);

(d) The applicant does not have *hypoglycemia unawareness* (i.e., the inability to recognize the early symptoms of hypoglycemia such as sweating, anxiety, forceful heartbeat and light-headedness);

(e) Within the past three years, the applicant has not had a hypoglycemic reaction, at any time, that resulted in any change in mental status that would have been, in the endocrinologist's opinion, detrimental to safe driving;

(f) The applicant's diabetic condition will not adversely affect his/her ability to operate a CMV.

(g) The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage his/her diabetes and what procedures should be followed if complications arise; and

(h) The applicant has the ability and has demonstrated willingness to properly monitor and manage his/her diabetes.

(7) Submit a separate signed statement from an examining ophthalmologist that the applicant has been examined after July 29, 1993 and that the applicant does not have *unstable proliferative diabetic retinopathy* (i.e., unstable advancing disease of blood vessels in the retina) and has stable visual acuity (at least 20/40 [Snellen] in each eye separately, with or without corrective lenses.

**Note:** If a waiver is granted, the individual must obtain a certificate of qualification from a medical examiner showing that he or she is qualified under part 391 with the waiver from § 391.41(b)(3).

**Application Instructions**

Applicants for a waiver from the insulin-using diabetes mellitus qualification requirement are required to submit their applications on plain

paper (there is no application form), include all supporting documents, and use the format set forth below. Each information item must be completed by an appropriate answer or marked "None", if not applicable.

**Vital Statistics**

Name of applicant (first name, middle initial, last name);
Address (street number and name);
City, State, and Zip Code;
Telephone Number (area code and number);
Sex (male or female);
Date of Birth (month, day, and year);
Age;
Social Security Number;
State Driver's License Number (List all licenses held during the three-year period either immediately preceding the date of application, or the three-year period immediately preceding the date you last held a license (after April 1, 1990) to operate a CMV.]);
Issuing State;
Driver's License Expiration Date; and
Driver's License Classification Code (If not a CDL classification code, specify what vehicles may be operated under such code).

**Experience**

**Note:** If you have no experience in a particular type of vehicle, indicate with "0" or "None." List the number of years and the number of miles driven for each category below.

Number of years driving straight trucks;
Approximate number of miles driving straight trucks;
Number of years driving tractor trailer combinations;
Approximate number of miles driving tractor/trailer combinations;
Number of years driving buses; and
Approximate number of miles driving buses.

**Anticipated Operations After Waiver Is Issued**

Your employer's/prospective employer's name, address and telephone number;
The type of vehicle you will operate (straight truck, tractor trailer combination, bus);
The commodities that will be transported (e.g., general freight, liquids in bulk (in cargo tanks), steel, dry bulk, large heavy machinery, refrigerated products);
The States in which you will drive;
The estimated number of miles you will drive per year;
The estimated number of daylight driving hours per week; and
The estimated number of nighttime driving hours per week.

**Experience Factor**

You must have accumulated at least three years experience operating a CMV on a regular basis and that experience must be recent enough to reflect your capabilities. You must have accumulated the required experience during the most recent three years. To qualify for a waiver, you must have been an insulin-using diabetic during the period from the date of the application back to the date the documented cumulative three-years of driving experience began.

**Supporting Documents**

Your application must include supporting documents for each of the six areas listed below, showing that:

(1) You currently possess a license to operate a CMV by submitting one of the following:

(a) A legible photostatic copy of both sides of the commercial driver's license (CDL) you now possess; or

(b) Submitting a legible photostatic copy of both sides of the driver's license (non-CDL) you now possess or the license you last possessed to operate a CMV after April 1, 1990; or

(c) A certification from the State licensing agency showing the type and effective dates of your last license;

(2) You have operated a CMV for the three-year period immediately preceding:

(a) The date of the application, if you are currently licensed to drive a CMV; or

(b) The date (after April 1, 1990) you last held a valid license to operate a CMV by submitting the following:

(i) A signed statement from your present and/or past employer(s) on company letterhead. If letterhead is unavailable, you must obtain a notarized statement from the employer(s). In the event your previous employer(s) are no longer in business, or you were operating as an independent motor carrier, submit a notarized statement, signed by you.

(ii) Information in the statements must indicate if your job was driving a CMV; what type of vehicle was operated; whether it was full-time or part-time employment (part-time employment must be explained in detail); and the dates you started and stopped driving a CMV;

(3) Your motor vehicle driving record (MVR) for the period from the date of the application back to the date the documented cumulative three-years of driving experience began (You must submit an MVR from each State in which you were licensed during that cumulative three-year period);

(a) Contains no suspensions, cancellations, or revocations of your driver's license for the operation (moving violations) of any motor vehicle (including your personal vehicle);

(b) Contains no involvement in an accident, as defined in 49 CFR 390.5, for which you received a citation and were subsequently convicted for a moving traffic violation while operating a CMV

(c) Contains no convictions for a disqualifying offense, as defined in 49 CFR 383.51(b)(2), or more than one serious traffic violation, as defined in 49 CFR 383.5, while driving a CMV which disqualified, or should have disqualified, you in accordance with the driver disqualification provisions of 49 CFR 383.51; and

(d) Contains no more than two convictions for any other moving traffic violations in a CMV;

**Note:** The driving record must be furnished by an official State agency, on its letterhead, bear the State seal, or official stamp and be signed by an authorized State official. No other documentation will be accepted. If the MVR shows either convictions for moving violations or accident involvement but does not indicate the type of vehicle operated or the number of miles above the posted speed limit, additional official documentation must be provided by you (e.g., a copy of the citation or accident report, or copies of court records).

**Special Note:** Any waiver applicant who is arrested or cited for, or convicted of, any disqualifying offense or other moving violation during the period of time the application is pending, must immediately report such arrests, citations, or convictions to the Diabetes Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to do so may result in a denial or rescission of the waiver. No waiver will be issued while any charge against an applicant, for what would be a disqualifying offense, is still pending. Convictions occurring during the processing of the application will be considered in the overall driving record.

(4) You have been examined by a board-certified or board-eligible endocrinologist who has conducted a complete medical examination after July 29, 1993. You are urged to supply the examining endocrinologist with a copy of this Federal Register notice. The complete medical examination must consist of a comprehensive evaluation of your medical history and current status, including a review of:

(a) Fasting blood studies (glucose, glycosylated hemoglobin/Hb $A_{1c}$, including lab reference range) and urinalysis during the last six months; and

(b) Insulin dosages and types, diet utilized for control, and any significant factors such as smoking, alcohol use, and other medications or drugs taken.

(5) You must submit a signed statement prepared by a board-certified or board-eligible endocrinologist whose status (board-certified or board-eligible) is indicated. The signed statement from the endocrinologist must include separate declarations, based upon the findings that resulted from the required examination, indicating the following medical determinations:

(a) The endocrinologist is familiar with your medical history for the past three years either through actual treatment over that time, or through consultation with a physician who has treated you during that time;

(b) You have been using insulin to control your diabetes during the period from the date of the application back to the date the documented cumulative three-years of driving experience began;

(c) You do not have *severe hypoglycemia* (i.e., episodes of altered consciousness requiring the assistance of another person to regain control);

(d) You do not have *hypoglycemia unawareness* (i.e., the inability to recognize the early symptoms of hypoglycemia such as sweating, anxiety, forceful heartbeat and light-headedness);

(e) Within the last three years, you have not had a hypoglycemic reaction that resulted in any change in mental or physical status that would have been, in the endocrinologist's opinion, detrimental to safe driving;

(f) Your diabetic condition would not adversely impact on your ability to operate a CMV.

(g) You have been educated in diabetes and its management, thoroughly informed of and understand the procedures which must be followed to monitor and manage your diabetes, and what procedures should be followed if complications arise;

(h) You have the ability and have demonstrated your willingness to properly monitor and manage your diabetes;

**Note:** A sample of the required declarations appears below.

(6) You must submit a separate signed statement from an examining ophthalmologist that you have been examined after July 29, 1993 and that you *do not have unstable proliferative diabetic retinopathy* and that you *have stable distant visual acuity* (at least 20/40 [Snellen] in each eye separately, with or without corrective lenses).

In an effort to aid the examining physician in furnishing the required signed statements, a suggested format is furnished below:

**Examining Physician's Letterhead**

(Name, address and telephone number)

I examined _____(first name, middle initial, last name) on _____(month, date, year). I understand that the examination is one of the preconditions required of a person who applies to the Federal Highway Administration for a waiver from the qualification requirements contained in the Federal Motor Carrier Safety Regulations at 49 CFR 391.41(b)(3). I fully understand what type of examination is required. I, therefore, based upon my examination, do declare:

(a) I am familiar with the patient's medical history for the past three years either through actual treatment over that time, or through consultation with the physician who has treated the patient during that time;

(b) The patient has been using insulin to control his/her diabetes during the period from the date of the application back to the date the documented cumulative three-years of driving experience began;

(c) The patient does not have *severe hypoglycemia*;

(d) The patient does not have *hypoglycemia unawareness*;

(e) Within the last three years, the patient has not had a hypoglycemic reaction that resulted in any change in mental or physical status that would have been detrimental to safe driving;

(f) The patient's diabetic condition would not adversely impact on the patient's ability to operate a CMV.

(g) The patient has been educated in diabetes and its control, thoroughly informed of and understands the procedures which must be followed to monitor and manage his/her diabetes, and what procedures should be followed if complications arise;

(h) The patient has the ability and has demonstrated his/her willingness to properly monitor and manage his/her diabetes.

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(Physician's Signature)

[ ] Board-Certified Endocrinologist
[ ] Board-Eligible Endocrinologist

**Note:** Do not submit medical records, doctor notes, medical bills, insurance records, lab reports, etc.

**Waiver Conditions**

Once an individual is accepted into the waiver program, there are 14 requirements that must be complied with in order to retain the waiver. These requirements will ensure the driver's diabetes is managed properly and that the FHWA receives the necessary data needed to complete the research effort. Failure to comply with any of these special conditions may result in the revocation of the waiver. As a waived driver, you will be required to:

(a) Carry, use, and record, in a log, the readings from a portable self-monitoring blood glucose device (SMBG) that is equipped with a computerized memory. Blood glucose monitoring must be performed one hour prior to and approximately every four hours while on duty as defined in 49 CFR 395.2. Paper tapes generated by SMBGs having a printing capability may be used in lieu of a log prepared by the waived driver. Make log records of blood glucose values available to any authorized enforcement official upon request;

(b) Carry upon your person and use, as necessary, a source of rapidly absorbable glucose;

(c) Carry insulin and the equipment/materials necessary for administering the medication;

(d) Report, in writing, any citation for a moving violation involving the operation of a CMV to the Diabetes Waiver Program no later than 15 days following the issuance of such citation. A photostatic copy of the citation issued must accompany the written report;

(e) Report, in writing, the judicial/administrative disposition of any citation for a moving violation involving the operation of a CMV to the Diabetes Waiver Program no later than 15 days following the notice of disposition;

(f) Report, in writing, involvement in any accident whatsoever while operating a CMV to the Diabetes Waiver Program no later than 15 days following the accident (include State, insurance company, and/or motor carrier accident reports);

(g) Report, in writing, any change of residence, address, or telephone number to the Diabetes Waiver Program no later than 15 days after such a change;

(h) Report, in writing, any change of employer, including name, address, and telephone number, or type of vehicle operated to the Diabetes Waiver Program no later than 15 days after such a change.

(i) Submit any medical information derived from medical assistance or treatment arising from any accident involvement to the Diabetes Waiver Program no later than 15 days following the accident. A copy of the attending medical specialist's and laboratory reports will meet the reporting requirement;

(j) Submit log records of your blood glucose values for the 24-hour period immediately prior to any accident involvement to the Diabetes Waiver Program no later than 15 days following the accident.

(k) Submit a signed statement from the board-certified or board-eligible endocrinologist who conducted the initial medical evaluation to the Diabetes Waiver Program, no later than 15 days before each 6-month anniversary of the waiver issuance date, that you have been examined and your diabetic condition is currently stable and under control. This semi-annual examination must be conducted within the 6-week period immediately

preceding each 6-month anniversary of the waiver issuance date. You must make your log records of your blood glucose values for the preceding 3 months available to the examining endocrinologist at the time of the required examination;

(l) Waived drivers who use a medical specialist, other than the specialist who conducted the initial medical evaluation, must be reexamined by an endocrinologist, using the criteria and procedures established for the pre-qualification examination and submit a signed statement from that board-certified or board-eligible endocrinologist;

**Note:** Do not submit medical records, bills, or reports.

(m) Submit a signed statement from an ophthalmologist to the Diabetes Waiver Program, no later than 15 days before each anniversary of the waiver issuance date, that you have been examined and that you do not have unstable proliferative diabetic retinopathy, and that you continue to have stable visual acuity (at least 20/40 [Snellen] in each eye, corrected or uncorrected). This annual examination must be conducted within the 6-week period immediately preceding the anniversary of the waiver issuance date;

**Note:** Do not submit medical records, bills, or reports.

(n) Report to the Diabetes Waiver Program, no later than the 15th calendar day of each month (not including the month in which the waiver becomes effective), the following information:

(1) The number of interstate/intrastate miles you drove a commercial motor vehicle (CMV) during the preceding month. For example, if you drove 3,000 miles for the preceding month (July), you must report that information no later than the 15th day of the next month (August);

(2) The number of daylight hours and the number of nighttime hours you drove a CMV during the preceding month. For example, if you drove 170 daylight hours and 50 nighttime hours during the preceding month (July), you must report that information no later than the 15th day of the next month (August); and

(3) The number of days you did not drive a CMV during the preceding month. For example, if you did not drive a CMV a total of 9 days during the preceding month (July), you must report that information no later than the 15th day of the next month (August).

**Note:** This monthly report must be mailed as soon after the first day of each month as possible. This will ensure that the report will be received at the office of the Driver Waiver Program no later than the 15th day of each month.

All documentation described in items (d) through (n), above, must be mailed to the Diabetes Waiver Program, 400 Seventh Street, SW., Washington, DC 20590. Failure to submit timely reports will be cause for revocation of the waiver.

**Control Group Participants**

The FHWA is seeking a large number of drivers who are currently qualified under the FMCSRs to volunteer for the control group. These volunteers will be asked to submit the same demographic and work-related information required from waiver applicants. The FHWA seeks the cooperation of all motor carriers, owner-operators, drivers, trade associations, and labor unions to encourage drivers to volunteer for participation in this very important study. The FHWA will pursue additional outreach efforts to enlist the necessary cooperation. Those drivers interested in participating in the control group should notify the FHWA of their interest by writing the Waiver Program Control Group, 400 Seventh Street, SW., Washington, DC 20590 or by calling 1–800–832–5660 and asking for information concerning the Waiver Program Control Group. Following such contact, information will be sent to each prospective control group volunteer.

Those drivers who voluntarily participate in the control group will be asked to:

(a) Report any citation for a moving violation involving the operation of a CMV to the Waiver Program Control Group within 15 days following issuance (a photostatic copy of the citation issued will meet the reporting requirement);

(b) Report the judicial/administrative disposition of such charge to the Waiver Program Control Group within 15 days following the notice of disposition;

(c) Report any accident involvement whatsoever while operating a CMV to the Waiver Program Control Group within 15 days following the accident (include State, insurance company, and/or motor carrier accident reports);

(d) Report any change of residence address or telephone number to the Waiver Program Control Group within 15 days after such a change;

(e) Report any change of employers, including name, address, and telephone number, or type of vehicle operated to the Waiver Program Control Group within 15 days after such a change.

(f) Report the below information to the Waiver Program Control Group by the 15th calendar day of each quarter. The quarterly report should be mailed as soon after the first day of each quarter as possible. This will ensure that the report will be received at the office of the Driver Waiver Program by the 15th day of each quarter.

(1) The number of interstate/intrastate miles you drove a commercial motor vehicle (CMV) during the preceding quarter. For example, you drove 12,000 miles for the preceding quarter (three-month period) that ended on June 30. You must report that information by the 15th day of the next quarter (July 15);

(2) The number of daylight hours and the number of nighttime hours you drove a CMV during the preceding quarter. For example, you drove 500 daylight hours and 150 nighttime hours during the preceding quarter that ended on June 30. You must report that information by the 15th day of the next quarter (July 15); and

(3) The number of days you did not drive a CMV during the preceding quarter. For example, you did not drive a CMV a total of 26 days during the preceding quarter that ended on June 30. You must report that information by the 15th day of the next quarter (July 15).

(49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.)

Issued on: July 21, 1993.

**Rodney E. Slater,**

*Administrator.*

[FR Doc. 93–18062 Filed 7–28–93; 8:45 am]

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Part III

# Department of Education

**Office of Postsecondary Education**

**Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Education Opportunity Grant Programs; Notice of Revised Hardware Requirements**

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## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

### Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

**AGENCY:** Department of Education.

**ACTION:** Notice of revised hardware requirements for the electronic submission of the Fiscal Operations Report and Application to Participate in the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs.

**SUMMARY:** The Secretary gives notice to institutions of higher education that, beginning with the 1992–93 Fiscal Operations Report and 1994–95 Application to Participate (FISAP), the minimum hardware requirements for three components have been revised by the Department. The Dual Floppy version of submission will be eliminated. If you used the Dual Floppy version last year, you must call (301) 565–0032 to request either the 3½" or 5¼" hard disk version. Further, the internal memory minimum is increased from 512K to 640K (with at least 512K available for Electronic FISAP) and the DOS version minimum is increased from 2.0 to 3.1. An institution of higher education must utilize equipment that meets the revised hardware requirements to file the Electronic FISAP.

### Background

The Department has determined that these revised hardware requirements will make the Electronic FISAP process more efficient and less burdensome for institutions of higher education that participate in the campus-based programs. It is no longer cost effective to support the Dual Floppy version of the Electronic FISAP. Further use of the Dual Floppy would hamper future enhancements to the software. The revised hardware requirements for the Electronic FISAP process will further reduce the number of some common institutional data errors because it enables new screen edits to be incorporated into the data submission process. The revised hardware requirements will also reduce the time needed to complete the Electronic FISAP process because it allows the addition of screen switching. Screen switching enables an institution of higher education to change between data entry screens without the need to go to the selection menu.

### General Information

In order to file the FISAP electronically, the following hardware requirements must be met:

| Component | Minimum | Recommended |
|---|---|---|
| CPU | IBM compatible. | Same. |
| Drives | Hard Disk (with at least one diskette drive). | Same. |
| Internal Memory. | 640K | Same. |
| Size of drives | 3½" or 5¼" | Same. |
| MS DOS | 3.1 | Same. |
| Printer | Not required. | 132 column width. |
| Modem | Not required. | 1200 baud (Hayes compatible). |

**Note:** A printer or a modem is not required for submission of the Electronic FISAP data, although both may be helpful. An important feature of the Electronic FISAP software is the ability of the institutional user to enter and edit data before proceeding from one screen to the next; a printer enables the user to print the error messages that are displayed on the screen before returning to the line items to change data. A modem allows the user to transmit the data via a telephone line, which is recognized as a safer means of data submission than mailing the diskettes. In addition, telephone transmission guarantees an automatic acknowledgement of the Department's receipt of the institution's FISAP data. If an institution does not currently have the hard disk drive equipment that is necessary for the electronic transmission of its FISAP data, it must either purchase or lease the equipment or make arrangements to have another party or parties (e.g., another postsecondary institution or firm) complete the data transmission process.

### Applicable Regulations

The following regulations are applicable to these programs:

Federal Perkins Loan—34 CFR parts 674 and 668.

Federal Work-Study—34 CFR parts 675 and 668.

Federal Supplemental Educational Opportunity Grant—34 CFR parts 676 and 668.

**FOR FURTHER INFORMATION CONTACT:** Arthur Iwanicki, Chief, Systems Improvement and Planning Branch, Campus-based Programs Systems Division, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4651, ROB–3), Washington, DC 20202–5452. Telephone (202) 708–5739. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Authority:** 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance Numbers: 84.038, Federal Perkins Loan Program; 84.033, Federal Work-Study Program; and 84.007, Federal Supplemental Educational Opportunity Grant Program)

Dated: July 22, 1993.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 93–18056 Filed 7–28–93; 8:45 am]

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Part IV

# Department of Education

**Research in Education of Individuals With Disabilities Program; Notice Inviting Applications**

VOL 58 ISS 144 JL 29 1993 UMI

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

**Research in Education of Individuals With Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year 1994**

*Purpose of Program:* To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services, including professionals in regular education environments, to provide children with disabilities effective instruction and enable them to successfully learn.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

*Eligible Applicants:* Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324.

*Applications Available:* August 20, 1993.

*Priorities:* Under 34 CFR 75.105(c)(3) and 34 CFR 324.10, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

*Absolute Priority 1—Advancing and Improving the Research Knowledge Base (CFDA 84.023A)*

This priority supports a wide range of research and related activities that support innovation, development, exchange, and use of advancements in knowledge and practice designed to contribute to the improvement of instruction and learning of infants, toddlers, children, and youth with disabilities.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications.

The Secretary is particularly interested in pilot studies, projects that employ new methodologies, descriptive studies, projects to advance assessment, projects that synthesize state-of-the-art research and practice, projects for research dissemination and utilization, and projects that analyze extant data bases. The Secretary further encourages studies that use these approaches to address the needs of infants, toddlers, children and youth with disabilities from racial or ethnic minority groups.

*Absolute Priority 2—Student-Initiated Research Projects (CFDA 84.023B)*

This priority provides support for student-initiated research projects focusing on special education and related services for children and youth with disabilities and early intervention services for infants and toddlers, consistent with the purposes of the program, as described in 34 CFR 324.1.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Short-term projects (up to 12 months) that would develop research skills in postsecondary students. The Secretary further encourages projects that, while carried out by the student, would include a principal investigator who serves as a mentor to the student/researcher.

*Absolute Priority 3—Field-Initiated Research Projects (CFDA 84.023C)*

This priority provides support for field-initiated research projects focusing on special education and related services for children and youth with disabilities and early intervention services for infants and toddlers, consistent with the purposes of the program, as described in 34 CFR 324.1.

RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM

[Application Notices for Fiscal Year 1994]

| Title and CFDA No. | Deadline for transmittal of applications | Estimated available funds* | Estimated range or size of awards | Estimated No. of awards* | Project period in months |
|---|---|---|---|---|---|
| Advancing and improving the research knowledge base (CFDA No. 84.023A). | 10/22/93 | $1,725,000 | $50,000–100,000 for entire project period[1]. | 23 | Up to 12. |
| Student-initiated research projects (CFDA No. 84.023B). | 10/22/93 | 150,000 | 5,000–20,000 for entire project period[2]. | 12 | Up to 12. |
| Field-initiated research projects (CFDA No. 84.023C). | 01/14/94 | 3,120,000 | 100,000–180,000 per year[3] .. | 20 | Up to 60. |

[1] Projects will not be funded in excess of $100,000 for the entire project period. Any project approved by reviewers that exceeds the estimated size of award will be required to be performed, as proposed, within the announced amount.

[2] Projects will not be funded in excess of $20,000 for the entire project period. Any project approved by reviewers that exceeds the estimated size of award will be required to be performed, as proposed, within the announced amount.

[3] Projects will not be funded in excess of $180,000 in the first year. Any project approved by reviewers that exceeds the estimated size of award will be required to be performed, as proposed, within the announced amount. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

NOTE: The Department of Education is not bound by any estimates of available funds or number of awards contained in this notice.

*For Technical Information Contact:* For information on the Advancing and Improving the Research Knowledge Base (CFDA 84.023A) competition, please contact Judith Fein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8116. For information on the Student-Initiated Research Projects (CFDA 84.023B) competition, please contact Dr Melville

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room 3528,

J. Appell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3529, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8113. For information on the Field-Initiated Research Projects (CFDA 84.023C) competition, please contact Dr. Tom V. Hanley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3526, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8110.

*For Applications and General Information Contact:* Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone (202) 205–8953. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1–800–877–8339.

**Program Authority:** 20 U.S.C. 1441–1443.

Dated: July 23, 1993.

William L. Smith,

*Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93–18055 Filed 7–28–93; 8:45 am]

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Part V

# Department of Education

34 CFR Part 377

Demonstration Projects to Increase Client Choice Program; Final Rule

VOL 58 ISS 144 JL 29 1993 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 377

RIN 1820–AB23

## Demonstration Projects to Increase Client Choice Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary adopts these regulations to implement the Demonstration Projects to Increase Client Choice Program (program) authorized in the Rehabilitation Act Amendments of 1992. The program provides grants to States and public and nonprofit agencies and organizations to pay all or part of the costs of projects to demonstrate ways to increase client choice in the rehabilitation process. The final regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds provided under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ann Queen, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3038, Mary E. Switzer Building, Washington, D.C. 20202–2575. Telephone: (202) 205–8292. Individuals who use a telecommunication device for the deaf (TDD) may call the TDD number at (202) 205–5886.

SUPPLEMENTARY INFORMATION: These final regulations implement the Demonstration Projects to Increase Client Choice Program authorized in title VIII, section 802(g), of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1992 (Pub. L. 102–569, enacted October 29, 1992) (the Act). The purpose of the program is to stimulate creative efforts to increase client choice in the rehabilitation process, including choice in selecting vocational goals and objectives, services to achieve those objectives, and providers of services, thereby improving the quality of the rehabilitation process. The program is an important step forward in achieving the National Education Goals. Specifically, the program addresses Goal Five, which calls for every adult American to be literate and to possess the skills necessary to compete in a global economy and to exercise the rights and responsibilities of citizenship, by providing improved vocational rehabilitation opportunities for an increased number of people with disabilities.

On April 1, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (58 FR 17308). The major issues related to this program are discussed in the preamble to the NPRM. The major differences between the proposed regulations and these final regulations are as follows:

- The minimum scope of choice that grantees are required to provide to clients has been expanded from choice in the selection of providers to choice in the selection of goals, services, and providers.
- Several provisions have been added to ensure that clients who participate in this program are provided the information they need to make informed choices and that, if the client requests, family members, guardians, or authorized representatives will be permitted to participate in the development of the client's written plan.

### Analysis of Comments and Changes

Fifteen commenters responded to the Secretary's invitation to comment on the NPRM. The following is an analysis of those comments and of the changes that have been made in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Minor and technical changes to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not always addressed.

### Title I standards

*Comment:* Two commenters expressed the view that all of the standards, rights, and remedies applicable to the State Vocational Rehabilitation Services Program and its clients, such as an order of selection requirement that gives priority to individuals with the most severe disabilities and client appeal rights, should apply to the demonstration projects under this program.

*Discussion:* The State Vocational Rehabilitation Services Program and all of the standards, rights, and remedies applicable to that program and its clients are authorized under title I of the Act. Congress established this demonstration program under section 802(g) of title VIII of the Act. There is no basis in section 802(g) for requiring demonstration projects under this program to comply with all of the standards, rights, and remedies applicable to the State Vocational Rehabilitation Services Program. In addition, as a matter of policy, the Secretary believes that applying all of the title I requirements would be too burdensome for, and contrary to the nature of, demonstration projects that will be operating on budgets of approximately $400,000.

*Changes:* None.

### Scope of choice (Section 377.3)

*Comment:* A number of commenters objected to the fact that the proposed regulations do not require projects to provide choice in all aspects of the rehabilitation process. Several commenters stated that the regulations are inconsistent with the statute in this respect. Some commenters specifically urged that choice of employment goals and outcomes be required, and some commenters specifically emphasized the need for choice of services.

*Discussion:* Section 802(g)(1) of the Act provides the Commissioner with the authority to make grants for projects to demonstrate ways to increase client choice in the rehabilitation process, including the selection of providers of vocational rehabilitation services. The Secretary does not interpret this provision to require each project to demonstrate choice in all aspects of the rehabilitation process. However, the Secretary agrees that the program regulations should require each project to demonstrate ways to provide increased client choice in the selection of goals and services, as well as providers. Moreover, the Secretary will seek to fund projects that, as a group, demonstrate choice in all aspects of the rehabilitation process.

*Changes:* Section 377.1 has been revised to provide that the program is designed to assist projects that demonstrate ways to increase client choice in the vocational rehabilitation process, including the choice of goals, services, and providers.

Section 377.3(a) has been revised to provide that, at a minimum, all projects must demonstrate ways to increase the choices available to clients in selecting goals, services, and providers.

Section 377.21(a)(1)(i) has been revised to provide that the Secretary reviews each applicant's plan of operation to determine the extent to which the project will provide increased client choice in the rehabilitation process, including, at a minimum, choice in the selection of goals, services, and providers.

Section 377.21 has also been revised to add a new paragraph (a)(8) to provide that in reviewing each applicant's plan of operation, the Secretary considers the extent to which the applicant's plan describes a satisfactory system for conducting vocational assessment with eligible clients to ensure that a full range of vocational goals are considered.

**Eligible client (Section 377.5(b))**

*Comment:* One commenter asked why individuals who are currently receiving vocational rehabilitation services are not eligible clients under this program. Another commenter recommended that the definition of "eligible client" under this program be revised to be consistent with the eligibility requirements under the State Vocational Rehabilitation Services Program.

*Discussion:* The definition of "eligible client" is taken from section 802(g)(8)(B) of the statute. The Secretary does not have the authority to change this definition.

*Changes:* None.

**Employment outcome (Section 377.5(c))**

*Comment:* One commenter wondered whether sheltered employment is excluded from the definition of "employment outcome."

*Discussion:* The definition of "employment outcome" in the regulations for this program is consistent with the definition of the term under the title I program. Any employment outcome that the Secretary has permitted in the past under the State Vocational Rehabilitation Services Program is permitted under this program. "Sheltered employment" is included within the phrase "extended employment in a community rehabilitation program" in the definition of "employment outcome" in these regulations.

*Changes:* None.

**Voucher (Sections 377.5(c) and 377.21(a)(7))**

*Comment:* One commenter recommended that the definition of this term be revised to specify that a voucher must be for a specific service to be delivered during a specific time period. Another commenter was concerned that a voucher of a certain monetary value might provide an affluent client with a greater range of choices than a voucher of the same monetary value would provide a more financially needy client. That commenter recommended an economic needs test for anyone participating in a voucher program to ensure comparability of services.

*Discussion:* The definition of "voucher" is purposely broad because the Secretary does not wish to restrict creativity in the development of demonstration projects proposing the use of vouchers. The Secretary believes that the regulations provide appropriate checks on the use of vouchers in § 377.11(a)(6), which requires applicants that propose a voucher system to describe the manner in which they will determine the monetary value of vouchers, and in § 377.21(a)(7), which authorizes the Secretary to consider the extent to which the proposed use and valuation of vouchers is workable. The Secretary declines to add any further restrictions on the potential uses of vouchers to the regulations.

*Changes:* None.

**Informed choice (Section 377.11)**

*Comment:* A number of commenters recommended that provisions be added to the regulations to ensure that clients are provided necessary information to make informed choices. One commenter recommended that each project include a training component to improve clients' abilities to make informed choices. Several commenters noted that individuals with cognitive disabilities may need alternative modes of communication, in order to participate meaningfully in the preparation of the written services plan. One commenter suggested that the written plan be prepared in a client's native language. Several commenters recommended that family members, guardians, or authorized representatives be allowed to participate in the development of the written plan. Several commenters recommended that the written plan include a statement by the client describing how he or she was informed about and involved in choosing among alternative goals, services, and providers. Several commenters recommended that applicants be required to describe in their applications the manner in which they would provide the information necessary for clients to make informed choices.

*Discussion:* The Secretary agrees with the commenters that clients should be afforded the opportunity to make informed choices. The Secretary believes that in order to afford this opportunity, clients must be provided with information about their options and have the right to have family members, guardians, advocates, or other authorized representatives participate in the development of their written plan. In addition, the Secretary believes alternative modes of communication should be provided for individuals with cognitive disabilities, if necessary, to provide informed choice. Although the Secretary agrees that preparing the written plan in the native language of clients would also promote informed client choice, the Secretary believes it would impose too great a burden to require this of all demonstration projects and declines to add it to the regulations.

*Changes:* Section 377.11(a) would oe revised to add a new provision that requires applicants to describe the manner in which they will provide individuals, including individuals with cognitive disabilities, the information necessary to make informed choices, including, at a minimum, informed choices in the selection of goals, services, and providers.

Section 377.11(b)(1) would be revised to require that applicants assure that, if a client elects, the client's written plan will be established with the participation of family members, guardians, advocates, or other authorized representatives of the client.

**Accreditation standards (Section 377.11(a)(3))**

*Comment:* Several commenters were concerned that existing State accreditation standards may not be appropriate for the new methods and types of providers that may be used in this demonstration program, and one commenter recommended that projects be allowed to develop alternative accreditation methods. Other commenters were concerned that the existing accreditation standards in some States may not be stringent enough and recommended that professional certification be required. Several commenters suggested that the regulations should include more specific requirements regarding the quality assurance of providers. One commenter recommended that accreditation be required from national credentialing bodies.

*Discussion:* The requirement that providers be accredited or meet other quality or cost control criteria of the State is taken from section 802(g)(3)(ii) of the statute. The Secretary believes it is both appropriate and consistent with the Act to leave quality assurance standards up to the States. The Secretary intends to evaluate the effectiveness of State accreditation and other quality assurance standards in the Department's overall evaluation of the demonstration programs.

*Changes:* None.

**Misspent Funds (Section 377.11(a)(5)/ Preamble)**

*Comment:* Several commenters requested clarification of the term "misspent funds," which is used in the

preamble of the NPRM. Commenters asked if funds would be considered "misspent" if a client did not find a job or was not successfully rehabilitated, if the cost of a service was too high, or if a client was dissatisfied with the services provided. One commenter asked if the term "misspent funds" would be interpreted to apply only to situations in which a provider engages in false, misleading, or deceptive practices. Commenters recommended that the reference to misspent funds be removed from the preamble of the NPRM or that the term be defined more clearly, and that more guidance be provided concerning the establishment of costs for services.

*Discussion:* The Secretary does not believe funds are misspent if a client does not find a job or if a client is dissatisfied with services. The Secretary believes funds are misspent if they are spent in violation of the regulatory or statutory provisions governing the program. For example, the Secretary believes funds would be misspent if they were provided to an individual with a disability who was already receiving services under an individualized written rehabilitation program established through a designated State unit or if they were paid to a service provider that did not meet the accreditation or other quality assurance criteria established by the State. The Secretary does not believe any further guidance in the regulations regarding the establishment of costs for services or the meaning of misspent funds is necessary or appropriate at this time.

*Changes:* None.

**Plan of Operation: Range of disabilities (Section 377.21(a))**

*Comment:* Some commenters were concerned that the proposed regulations do not require demonstration projects to serve individuals from a full range of disability groups, including individuals with severe disabilities. One commenter suggested that a significant cross-disability sample is necessary for evaluation purposes. Some commenters recommended that the non-discrimination provision also require applicants to ensure that clients would be selected without regard to the type or severity of their disability.

*Discussion:* The Secretary agrees that a significant cross-disability sample would be most useful for evaluation purposes. For this reason, under § 377.22(b), the Secretary considers the diversity of clients served among all of the funded projects in making grants under this program. However, the Secretary does not intend to require each project to serve a full range of disability groups because the Secretary believes that it would restrict the creativity of strategies proposed by applicants to increase client choice.

*Changes:* None.

**Project period (Section 377.21(a)(1)(ii))**

*Comment:* Several commenters expressed concern that not all eligible clients would attain employment outcomes within the project period. One commenter suggested that applicants be permitted to request an extended project period based on the needs of eligible clients.

*Discussion:* The term "project period" is defined in the Education Department General Administrative Regulations (EDGAR) to mean the period for which the appropriate official of the Department approves a project. (34 CFR 77.1) EDGAR also provides for an extension of the project period under special circumstances described in 34 CFR 75.261. The Secretary does not believe there is any need to deviate from the provisions contained in EDGAR for projects funded under this program.

*Changes:* None.

**Application requirements (Section 377.21(a)(4))**

*Comment:* Two commenters expressed the view that it will be very difficult for applicants to provide information regarding the number of eligible clients available to participate in a project by type of disability and the number of eligible clients available to participate in a project who are individuals with severe disabilities.

*Discussion:* The Secretary believes it is important for applicants to have some knowledge regarding the available pools of eligible clients in order to develop useful demonstration projects. The Secretary expects applicants to use existing data sources to obtain this information, including, for example, data from the decennial census that includes information on the numbers of individuals with work-related disabilities in a given geographic area.

*Changes:* None.

**Adequacy of resources: Facilities (Section 377.21(b)(2)(i))**

*Comment:* One commenter asked whether the word "facilities" in the selection criteria should be replaced with the word "programs."

*Discussion:* "Facilities" as used in this provision of the selection criteria refers to the buildings an applicant for a demonstration project plans to use. "Facilities" is defined in the Department's grant regulations in 34 CFR 77.1(c). The Secretary does not believe it would be appropriate to replace the word "facilities" with the word "programs" in this context.

*Changes:* None.

**Enabling Choice (Section 377.21(c)(3))**

*Comment:* One commenter suggested replacing the word "allowing" in § 377.21(c)(3) of the proposed regulations with the word "enabling."

*Discussion:* The Secretary agrees that the concept of "enabling" choice is more consistent with the purposes of the program, which is to empower clients to make informed choices.

*Changes:* The word "allowing" in paragraph (c)(3) of § 377.21 has been removed, and the word "enabling" has been inserted in its place.

**Evaluation plan (Section 377.21(d))**

*Comment:* Several commenters made suggestions for strengthening the evaluation plan requirements. One commenter suggested requiring independent evaluations of project outcomes. One commenter suggested that evaluation make use of qualitative, as well as quantitative, data. One commenter recommended that systems for monitoring and accounting for the use of funds, for determining the monetary value of services or products, and for ensuring client satisfaction be highlighted in any evaluation plan.

*Discussion:* Section 802(g)(7) of the Act requires the Commissioner of the Rehabilitation Services Administration (RSA) to conduct an evaluation of the demonstration projects funded under this program with respect to services provided, clients served, client outcomes obtained, implementation issues addressed, the cost effectiveness of the project, and the effects of increased client choice on clients and service providers. The Department is in the process of developing an evaluation plan for this program in accordance with these statutory requirements and will consider these comments in formulating that plan. The Secretary does not believe it is necessary or useful to require each project to have an independent evaluator evaluate its project. Nor does the Secretary believe it is necessary to strengthen the evaluation plan requirements for each project.

*Changes:* None.

**Record collection requirements (Section 377.30(a))**

*Comment:* One commenter noted that the record collection provisions in the proposed regulations would require grantees to collect information regarding the national origin of clients, which is not required under the current data

reporting system for the State Vocational Rehabilitation Services Program. Other commenters recommended that grantees be required to provide information regarding post-placement services and consumer satisfaction.

*Discussion:* The Secretary agrees with the commenter that the record collection requirements under this program should be consistent with the requirements under the State Vocational Rehabilitation Services Program. The Secretary also agrees that information should be provided regarding any post-placement services that are provided and believes that paragraph (a)(1) of this section, which requires grantees to provide information regarding the types of services provided, includes any post-placement services that are provided. The Secretary agrees that client satisfaction information should be obtained and evaluated, but believes this is best done independently in the Department's program evaluation, rather than by each grantee as part of its project evaluation.

*Changes:* The term "national origin" has been removed from the record collection requirements in § 377.30(a)(3) of the final regulations.

**Client Assistance Program (CAP) (Section 377.31)**

*Comment:* Some commenters requested that RSA provide additional guidance to the CAP in terms of its jurisdiction over and relationship to service providers under this program.

*Discussion:* The Secretary agrees that additional guidance regarding this issue would be useful, but does not believe the regulations for this program are the proper vehicle for providing this guidance. This issue will be clarified in future sub-regulatory guidance regarding the nature, scope, and authority of the CAP.

*Changes:* None.

**Matching (Section 377.32)**

*Comment:* One commenter recommended that a provision be added to the regulations to permit waiver of the matching requirement for applicants from rural or economically depressed areas.

*Discussion:* The regulations do not establish a specific matching requirement, but instead permit the Secretary to determine each year that new awards are made whether to require a match, not to exceed 10 percent of project costs. The Secretary believes that if such a requirement is imposed it should be applied uniformly to all grantees.

*Changes:* None.

**Miscellaneous**

*Comment:* One commenter urged that a portion of funds under this program be set aside for demonstration projects that increase choice for individuals who have mental retardation.

*Discussion:* There is no basis in the statute for setting aside funds under this program for projects that serve only individuals who have mental retardation.

*Changes:* None.

*Comment:* One commenter recommended that the proposed regulations be strengthened to require each project to establish an advisory committee of consumers and providers to participate in the design, oversight, and evaluation of the project.

*Discussion:* The Secretary encourages projects to establish advisory committees, but declines to require that every project be designed and overseen by an advisory committee of consumers and providers. The Secretary notes that if a project does establish an advisory committee, the requirements relating to advisory committees in 34 CFR 369.46 would apply, as provided under § 377.4 of these final regulations.

*Changes:* None.

*Comment:* None.

*Discussion:* Through Department review, it was noted that the term "individual with a severe disability," which is used several times in the proposed regulations, was not defined.

*Changes:* The term "Individual with a severe disability" is defined in section 7(15)(A) of the Rehabilitation Act of 1973, as amended, and that definition has been added to § 377.5 of the final regulations.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 377**

Choice, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number has not been assigned)

Dated: July 9, 1993.

**Richard W. Riley,**

*Secretary of Education.*

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 377 to read as follows:

## PART 377—DEMONSTRATION PROJECTS TO INCREASE CLIENT CHOICE PROGRAM

**Subpart A—General**

Sec.

377.1 What is the Demonstration Projects to Increase Client Choice Program?
377.2 Who is eligible for an award?
377.3 What types of activities may the Secretary fund?
377.4 What regulations apply?
377.5 What definitions apply?

**Subpart B—How Does One Apply for an Award?**

377.10 How does an eligible entity apply for an award?
377.11 What is the content of an application for an award?

**Subpart C—How Does the Secretary Make an Award?**

377.20 How does the Secretary evaluate an application?
377.21 What selection criteria does the Secretary use?
377.22 What additional factors does the Secretary consider in making grants?

**Subpart D—What Post-Award Conditions Must be Met by a Grantee?**

377.30 What information must a grantee maintain and provide to the Secretary?
377.31 What information must a grantee provide to eligible clients?
377.32 What are the matching requirements?

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**Authority:** Sec. 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g), unless otherwise noted.

## Subpart A—General

### § 377.1 What is the Demonstration Projects to Increase Client Choice Program?

The Demonstration Projects to Increase Client Choice Program is designed to provide financial assistance for projects that demonstrate ways to increase client choice in the vocational rehabilitation process, including choice in the selection of vocational rehabilitation goals, services, and providers.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

### § 377.2 Who is eligible for an award?

States and public and nonprofit agencies and organizations are eligible to receive a grant under this program.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

### § 377.3 What types of activities may the Secretary fund?

The Secretary provides financial assistance under this program for activities that are directly related to planning, operating, and evaluating projects to demonstrate effective ways to increase the choices available to eligible clients in the rehabilitation process as follows:

(a) At a minimum, all projects must demonstrate effective ways to increase the choices available to clients in selecting goals, services, and providers of services.

(b) Projects may also use these funds to demonstrate additional ways to increase the choices available to clients in the rehabilitation process.

(Authority: Secs. 802(g)(1) and 802(g)(2)(A) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g) (1) and (2))

### § 377.4 What regulations apply?

The following regulations apply to the Demonstration Projects to Increase Client Choice Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR Part 82 (New Restrictions on Lobbying).

(8) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR Part 86 (Drug-Free Schools and Campuses).

(b) The following regulations in 34 CFR Part 369 (Vocational Rehabilitation Service Projects): §§ 369.43, 369.46, and 369.47.

(c) The regulations in this part 377.

(Authority: Sec. 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g))

### § 377.5 What definitions apply?

(a) *Definitions in the Rehabilitation Act of 1973, as amended (the Act).* The following terms used in this part are defined in the Act:

*Client or eligible client* means an individual with a disability who is not currently receiving services under an individualized written rehabilitation program established through a designated State unit. (Section 802(g)(8) of the Act)

*Individual with a disability* means any individual who—

(1) Has a physical or mental impairment that for that individual constitutes or results in a substantial impediment to employment; and

(2) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, II, III, VI, or VIII of the Act. (Section 7(8)(A) of the Act)

*Individual with a severe disability* means an individual with a disability—

(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation. (Section 7(15)(A) of the Act)

*State* means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau (until the Compact of Free Association with Palau takes effect). (Section 7(16) of the Act)

*Vocational rehabilitation services* means the services authorized in section 103(a) of the Act. (Section 103(a) of the Act)

(b) *Definitions in EDGAR.* (1) The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Nonprofit
Project
Project period
Public
Secretary

(2) The following terms used in this part are defined in 34 CFR 74.3:

Grant
Grantee

(c) *Other definitions.* The following definitions also apply to this part:

*Employment outcome* means entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market, the practice of a profession, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than in cash), extended employment in a community rehabilitation program, supported employment, or other gainful work.

*Voucher* means a credit of specified monetary value, issued by a grantee to an eligible client, that the eligible client exchanges for vocational rehabilitation services from a qualified provider.

(Authority: Secs. 7(5), 7(8)(A), and 802(g) of the Rehabilitation Act of 1973; 29 U.S.C. 706 and 29 U.S.C. 797a(g))

## Subpart B—How Does One Apply for an Award?

### § 377.10 How does an eligible entity apply for an award?

In order to apply for a grant, an eligible entity shall submit an application to the Secretary in response to an application notice published in the Federal Register.

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

### § 377.11 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The manner in which the applicant intends to promote increased client choice in the geographical area identified in the application;

(2) The manner in which the applicant intends to provide individuals, including individuals with cognitive disabilities, the information necessary to make informed choices, including, at a minimum, informed choices in the selection of goals, services, and providers.

(3) The outreach activities the applicant plans to conduct to obtain eligible clients, including clients who are individuals with a severe disability;

(4) The manner in which the applicant will ensure that service providers are accredited or meet any quality assurance and cost-control criteria established by the State;

(5) The manner in which the applicant will ensure that eligible clients are satisfied with the quality and scope of services provided;

(6) The manner in which the applicant will monitor and account for use of funds to purchase services;

(7) The manner in which the applicant will determine the monetary value of the services or products available to clients, including, if appropriate, the monetary value of vouchers;

(8) The manner in which the applicant will address the needs of individuals with disabilities who are from minority backgrounds; and

(9) Those features of the proposed project that the applicant considers to be essential and a discussion of their potential for widespread replication.

(b) The application also must include assurances from the applicant that—

(1) A written plan to provide vocational rehabilitation services will be established for, and with the full participation of, each eligible client, and, if the client elects, with the participation also of family members, guardians, advocates, or authorized representatives, that at a minimum will include—

(i) A statement of the client's vocational rehabilitation goals, which must include goals that are designed to lead to an employment outcome consistent with the client's unique strengths, resources, priorities, concerns, abilities, and capabilities;

(ii) A statement of the specific vocational rehabilitation services to be provided and the projected dates for the initiation and termination of each service; and

(iii) A description of an evaluation procedure for determining whether the client's vocational rehabilitation goals are being achieved, including—

(A) Objective evaluation criteria; and

(B) An evaluation schedule;

(2) The Federal funds granted under this part will be used to supplement, and in no case to supplant, funds made available from other Federal and non-Federal sources for projects providing increased choice in the rehabilitation process;

(3) At least 80 percent of the funds awarded for any project under this part will be used to provide vocational rehabilitation services, as specifically chosen by eligible clients;

(4) The applicant will cooperate fully with the Secretary in a national evaluation, including assisting the Department's contractor in selecting and obtaining data for a control group established through random assignment or by the selection of a matched comparison group; and

(5) Individuals with disabilities will be involved in the development and implementation of the project.

(c) Each applicant also shall submit to the Secretary any other information and assurances that the Secretary determines to be necessary.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 21(b)(5), 802(g)(2), 802(g)(3), 802(g)(5), 802(g)(6), and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 718b and 29 U.S.C 797a(g)(2), (3), (5), (6), and (7))

## Subpart C—How Does the Secretary Make an Award?

### § 377.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 377.21.

(b) The Secretary awards up to 100 points for these criteria.

(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

### § 377.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purpose of the program to provide increased client choice in the rehabilitation process, including at a minimum increased choice in the selection of goals, services, and providers, leading to an employment outcome;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are objective and measurable for purposes of evaluation, including an estimate of the numbers of clients to be served;

(iv) Include objectives to be met during each budget period that can be used to determine the progress of the project toward meeting its intended outcomes;

(2) The extent to which the plan of operation specifies the methodology for accomplishing each objective of the project;

(3) The extent to which the applicant's plan of management, including resources and timelines, is designed to achieve each objective and intended outcome during the period of Federal funding;

(4) The extent to which the applicant's plan identifies the numbers of eligible clients by type of disability and the number of eligible clients with severe disabilities who are available to participate in the project;

(5) The extent to which the applicant plans to conduct outreach activities to obtain eligible clients;

(6) The extent to which the applicant's plan ensures that clients who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, or age;

(7) The extent to which the applicant's plan describes a workable process for determining the monetary value of any service or product offered to eligible clients, including, if appropriate, the value of vouchers; and

(8) The extent to which the applicant's plan describes a satisfactory system for conducting vocational assessment with eligible clients to ensure that a full range of vocational goals are considered.

(b) *Key personnel and other resources.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel proposed for the project, including—

(i) The relevant experience and training of the project director;

(ii) The relevant experience and training of each of the other key personnel to be used on the project;

(iii) The amount of time that each person referred to in paragraphs (b)(1)(i) and (ii) of this section will commit to the project;

(iv) The extent to which persons referred to in paragraphs (b)(1)(i) and (ii) of this section are capable of providing technical assistance to other entities interested in replicating the project; and

(v) The extent to which the applicant will ensure that persons employed through the project are selected and work without regard to race, color, national origin, gender, age, or disabling condition.

(2) The Secretary reviews each application to determine the adequacy of the resources the applicant plans to devote to the project, including—

(i) The facilities that the applicant plans to use;

(ii) The equipment and supplies that the applicant plans to use; and

(iii) The recordkeeping capabilities of the applicant for financial and evaluation purposes.

(c) *Service provision.* (20 points) The Secretary reviews each application to determine the quality and comprehensiveness of the services to be offered and the applicant's capacity to provide increased choice in the provision of services to eligible clients, including the extent to which the applicant—

(1) Has the capacity to evaluate the eligibility of applicants for services and to develop written plans for services for individual clients;

(2) Has demonstrated knowledge of a wide range of potential service providers that can meet the needs of eligible clients;

(3) Has described a workable process for enabling eligible clients to choose from among a wide range of service providers;

(4) Has described satisfactory systems to account for the appropriate expenditure of funds; and

(5) Has described satisfactory systems to ensure the provision of quality services.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes; and

(3) Are objective and produce data that are quantifiable, including data that are required under § 377.30.

(e) *National significance.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) Project findings might be effectively used within the State vocational rehabilitation service system; and

(2) Project activities might be successfully replicated by other entities.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sec. 802(g)(3) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(3))

### § 377.22 What additional factors does the Secretary consider in making grants?

In addition to the criteria in § 377.21, the Secretary considers the following factors in making grants under this program:

(a) The diversity of strategies to increase client choice, in order to ensure that a variety of approaches are demonstrated by funded projects.

(b) The diversity of clients to be served, in order to ensure that a variety of disability populations are served by funded projects.

(c) The geographical distribution of funded projects.

(Authority: Sec. 802(g)(4) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(4))

## Subpart D—What Post-Award Conditions Must be Met by a Grantee?

### § 377.30 What information must a grantee maintain and provide to the Secretary?

(a) Each grantee shall maintain the records that the Secretary requires to conduct an evaluation of projects funded under this program, which at a minimum must include information regarding the—

(1) Types of services provided;

(2) Costs of services provided;

(3) Number of clients served by disability, race, gender, and age;

(4) Number of clients with a severe disability served;

(5) Client outcomes obtained;

(6) Implementation issues addressed; and

(7) Any other information the Secretary requires.

(b) Each grantee shall comply with any request from the Secretary for those records.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Secs. 802(g)(5) and 802(g)(7) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g) (5) and (7))

### § 377.31 What information must a grantee provide to eligible clients?

Each grantee shall advise all clients and applicants for services under this program, or their parents, family members, guardians, advocates, or authorized representatives, of the availability and purposes of the Client Assistance Program under section 112 of the Act, including information on means of seeking assistance under that program.

(Authority: Sec. 20 of the Rehabilitation Act of 1973; 29 U.S.C 718a)

### § 377.32 What are the matching requirements?

Grants may be made for paying all or part of the costs of projects under this program. If part of the costs is to be covered by the grantee, the amount of grantee contribution is specified in the application notice and will not be required to be more than 10 percent of the total cost of the project.

(Authority: Sec. 802(g)(1) of the Rehabilitation Act of 1973; 29 U.S.C. 797a(g)(1))

[FR Doc. 93–18059 Filed 7–28–93; 8:45 am]

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Part VI

# Department of the Interior

**Bureau of Indian Affairs**

**Soboba Band of Mission Indians; Judgment Funds; Notice**

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**Plan for the Use of the Sobobe Band of Mission Indians Judgment Funds in Docket No. 80–A–1 Before the United States Claims Court**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs for 209 DM 8.

EFFECTIVE DATE: This plan was effective as of April 29, 1993.

FOR FURTHER INFORMATION CONTACT: Terry Lamb, Historian, Bureau of Indian Affairs, Division of Tribal Government Services, MS 2611–MIB, 1849 C Street NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, (Pub. L. 93–134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on January 8, 1992 in satisfaction of the award granted to the Sobobe Band of Mission Indians before the United States Claims Court in Docket 80–A–1. The plan for the use of the funds was submitted to Congress with a letter dated January 7, 1993, and was received (as recorded in the Congressional Record) by the Senate on January 27, 1993, and by the House of Representatives on February 2, 1993. The plan became effective April 29, 1993, as provided by the 1973 Act, as amended by Public Law 97–458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

**For the Use of Judgment Funds Awarded to the Sobobe Band of Mission Indians in Docket 80–A–1 Before the United States Claims Court**

The funds appropriated on January 8, 1992, in satisfaction of the award granted in Docket 80–A–1 to the Sobobe Band of Mission Indians before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as herein provided.

*A. Twenty percent (20%)*

Twenty percent (20%) of the funds, including principal, interest, and investment income accrued, shall be available on a budgetary basis for programming purposes, for tribal economic and social development programs, in accordance with priorities determined by the tribal governing body in areas which may include, but are not limited to: Health care, education, social services, elderly assistance, housing, general community improvement, and tribal government programs.

*B. Eighty percent (80%)*

The remaining eighty percent (80%) of the funds, including principal, interest, and investment income accrued, shall continue to be invested by the Secretary of the Interior, until such time as the tribal governing body adopts and submits a plan for the use of the funds. Such a plan shall require approval by the Secretary.

**General Provisions**

None of the funds used or made available under this plan shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources, nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for any per capita shares in excess of $2,000, any Federal or federally assisted programs.

**Woodrow W. Hopper, Jr.,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 93–18112 Filed 7–28–93; 8:45 am]

BILLING CODE 4310–02–M

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Part VII

# Department of the Interior

## Bureau of Indian Affairs

**Indian Gaming; Notice**

VOL 58 ISS 144 JL 29 1993 UMI

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved addendum to Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Pari-Mutuel Racing Addendum to Gaming Compact Between the Turtle Mountain Band of Chippewas and the State of North Dakota, which was enacted on April 8, 1993.

DATES: This action is effective July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 14, 1993.

Woodrew W. Hopper,

*Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 93–18111 Filed 7–28–93; 8:45 am]

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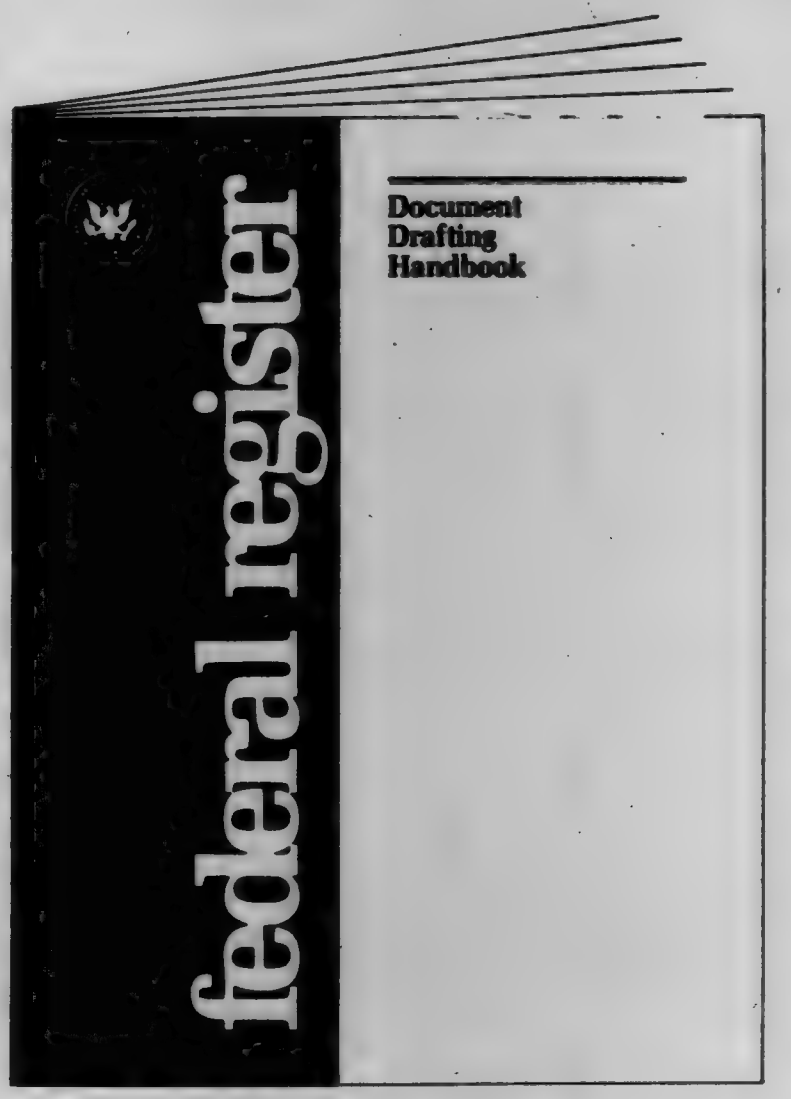


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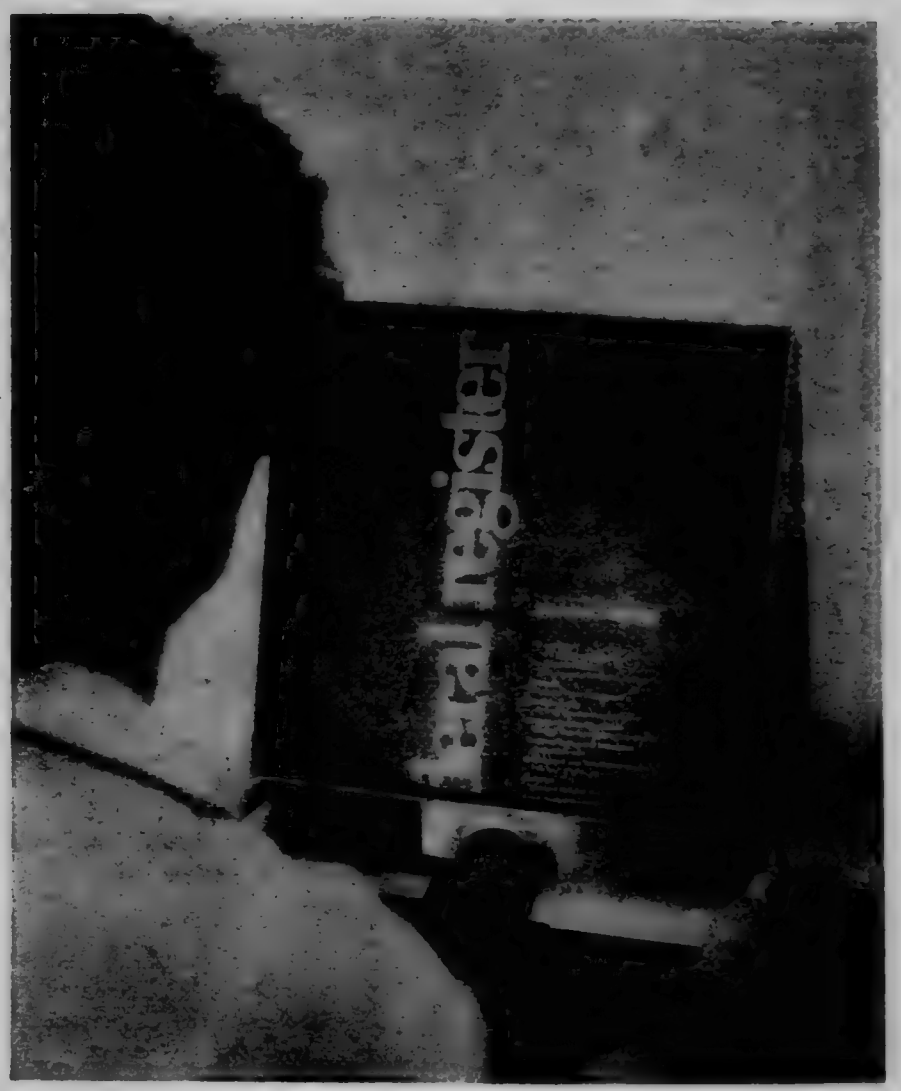


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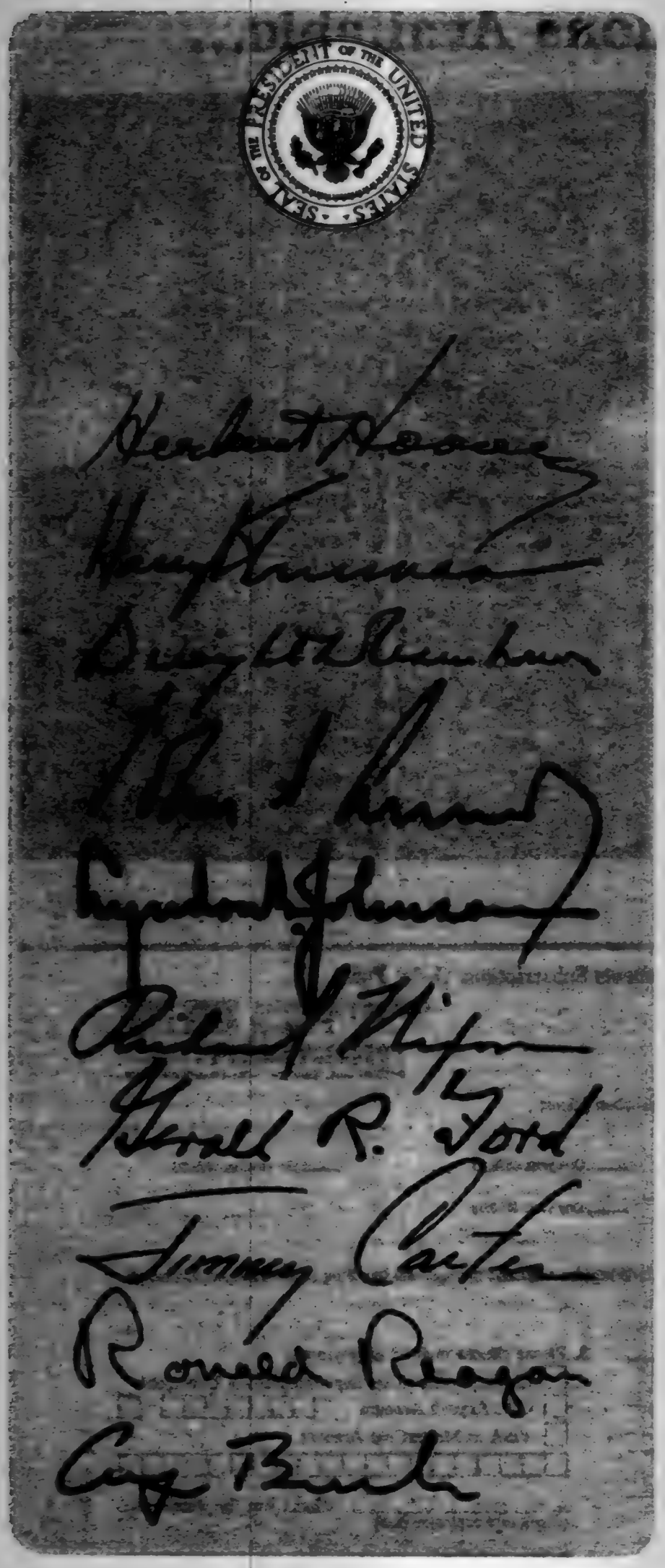


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# Presidential Documents

Title 3—

## The President

**Proclamation 6582 of July 27, 1993**

## 40th Anniversary of the Korean Armistice

**By the President of the United States of America**

**A Proclamation**

The friendship between the United States and South Korea is one formed in blood, for our troops fought shoulder to shoulder in defense of freedom. On the 40th anniversary of the signing of the Korean Armistice, it is appropriate that we honor those who fell in defense of freedom and human dignity and that we strive to create a new vision of how we as a community of neighbors can live in peace in the post-Cold War era.

When President Truman sent American troops to Korea's defense 43 years ago, he said he aimed to prove that "Free men under God can build a community of neighbors working together for the good of all." The joint efforts of the United States and South Korea since then have benefited the citizens of our two countries and the peoples of the Asian Pacific region. Our relationship has made that region more secure, more prosperous, and more free.

I join with all Americans in paying tribute to those who served in the Korean War and in remembering those who died in that conflict. We must not forget the lessons we learned—the Korean War must not be the "Forgotten War."

Veterans of Korea served America valiantly during one of the most destructive wars of this century. Their experiences remind all Americans of our great debt to those who have risked—and sometimes lost—their lives in defense of our liberty. As a Nation, we must always remember the sacrifices made by our men and women in uniform and by their families. I salute the distinguished service records of our veterans, as well as the sacrifices that they have made for America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, do hereby urge all Americans to observe July 27, 1993—the 40th Anniversary of the Korean Armistice—with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-18376
Filed 7-28-93; 2:36 pm]
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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV93-905-1 FR]

## Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Finalize Relaxed Grade Requirements for Florida Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes without change an interim final rule which temporarily relaxed the minimum grade requirement for domestic shipments of red seedless grapefruit for the remainder of the 1992–93 season. The relaxation was based on current and prospective crop and market conditions, and on the grade and quality of the remaining supplies of such grapefruit. The relaxation was designed to make increased fresh supplies of such grapefruit available to consumers from this season's remaining crop.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or John R. Toth, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b).

The Citrus Administrative Committee (committee) met April 27, 1993, and unanimously recommended that the minimum grade requirement for domestic shipments of fresh red seedless grapefruit be relaxed. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The interim final rule was issued on May 27, 1993, with an effective date of May 31, 1993, and published in the Federal Register (58 FR 31465, June 3, 1993). The interim final rule provided a 30-day comment period ending July 6, 1993, and no comments were received.

The interim final rule revised paragraph (a) of § 905.306 by temporarily relaxing the minimum grade requirement for fresh domestic shipments of red seedless grapefruit during the period May 31, 1993, through August 22, 1993. The revision relaxed the minimum grade for such grapefruit from "Improved No. 2 External, U.S. No. 1 Internal" to "Improved No. 2", which in effect reduced the internal grade requirement from "U.S. No. 1" to "U.S. No. 2". The relaxation permitted handlers to ship grapefruit with slightly more dryness, allowing fruit to be

shipped with one-half inch of dryness on the stem end of the fruit, instead of the one-fourth inch previously permitted. The grapefruit crop tends to dry out during the latter part of the harvest season. The relaxation enabled Florida citrus shippers to ship red seedless grapefruit grading at least "Improved No. 2" to the fresh market, rather than diverting such fruit to processing where returns may have been lower than in the fresh market. The relaxation was designed to make increased supplies of fresh fruit available to consumers from this season's remaining red seedless grapefruit crop grown in Florida.

The minimum grade requirements under the order are designed to provide fresh markets with fruit of acceptable quality, thereby maintaining consumer confidence for fresh Florida citrus. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is designed to increase returns to Florida citrus growers.

Under this order, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This final rule reflects the committee's and the Department's appraisal of the need to finalize the grade relaxation set forth in the interim final rule. The Department's view is that this action will have a beneficial impact on producers and handlers, since it will allow Florida citrus handlers to continue shipping those grades of fruit consistent with consumers' needs and crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the **Federal Register** (58 FR 31465, June 3, 1993), will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 905**

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 905.306 [Amended]**

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** (58 FR 31465, June 3, 1993), is adopted as a final rule without change.

**Note:** This section will appear in the annual Code of Federal Regulations.

Dated: July 22, 1993.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 93–18158 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 931**

**[Docket No. FV93–931–1IFR]**

## Fresh Bartlett Pears Grown in Oregon and Washington; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenses and establishes an assessment rate for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under M.O. 931 for the 1993–94 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

**DATES:** Effective July 1, 1993, through June 30, 1994. Comments received by August 30, 1993, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone: 503–326–2724; or Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: 202–690–0932.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 141 and Marketing Order No. 931, both as amended (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order now in effect, Bartlett pears grown in Oregon and Washington are subject to assessments. Funds to administer the Bartlett pear marketing order are derived from such assessments. It is intended that the assessment rate as specified herein will be applicable to all assessable pears during the 1993–94 fiscal period beginning July 1, 1993, through June 30, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the

district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers regulated under the marketing order each year and approximately 1,800 producers of Bartlett pears. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Bartlett pear handlers and producers in Oregon and Washington may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the Northwest Fresh Bartlett Pear Marketing Committee (Committee), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears grown in Oregon and Washington. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on June 3, 1993, and unanimously recommended a 1993–94 budget of $112,425, which is $3,965 less than the previous year. Decreases in budgeted expenses include those for Committee meetings and the contingency fund. These decreases will be partially offset by increases in salaries, benefits, unemployment, and payroll taxes.

The Committee also unanimously recommended an assessment rate of $0.025 per standard box, or equivalent, the same as last season. This rate, when applied to anticipated pear shipments of 2,673,400 standard boxes, will yield $66,835 in assessment income. Assessment income, combined with $5,100 from other income, and $40,490 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The withdrawal of $40,490 from the Committee's authorized reserve will result in no reserve remaining at the end of the 1993–94 fiscal year.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

(1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis;

(2) The fiscal year began on July 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Bartlett pears handled during the fiscal year;

(3) Handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and

(4) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 931**

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 931 is amended as follows:

## PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 931 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 931.228 is added to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

**§ 931.228 Expenses and assessment rate.**

Expenses of $112,425 by the Northwest Fresh Bartlett Pear Marketing Committee, are authorized, and an assessment rate of $0.025 per standard box or equivalent of assessable pears is established for the fiscal year ending June 30, 1994. Unexpended funds may be carried over as a reserve.

Dated: July 22, 1993.

**W. H. Crocker,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–18155 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 993**

**[Docket No. FV93–993–1IFR]**

## Dried Prunes Produced in California; Expenses and Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures of $248,805 and establishes an assessment rate of $1.90 per salable ton under Marketing Order No. 993 for the 1993–94 crop year. Authorization of this budget enables the Prune Marketing Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Effective beginning August 1, 1993, through July 31, 1994. Comments

received by August 30, 1993, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Van Diest, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone 209–487–5901; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California prunes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable prunes handled during the 1993–94 crop year, beginning August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,400 producers of California prunes under this marketing order, and approximately 20 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California prune producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 crop year was prepared by the Prune Marketing Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of California prunes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of dried California prunes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 22, 1993, and unanimously recommended a 1993–94 budget of $248,805, $36,195 less than the previous year. An increase of $1,750 for operating expenses would be offset by decreases of $29,400 for salaries and wages and $8,545 in the reserve for contingencies.

The Committee also unanimously recommended an assessment rate of $1.90 per salable ton, $0.30 more than the previous year. This rate, when applied to anticipated shipments of 130,950 salable tons, will yield $248,805 in assessment income, which will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the crop year begins on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable California prunes handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other

budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 993**

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 993 is amended as follows:

## PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 993.344 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

**§ 993.344 Expenses and assessment rate.**

Expenses of $248,805 by the Prune Marketing Committee are authorized, and an assessment rate of $1.90 per salable ton of dried prunes is established for the crop year ending July 31, 1994. Unexpended funds may be carried over as a reserve within the limitations specified in § 993.81(c).

Dated: July 22, 1993.

**W.H. Crocker,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–18156 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 1007**

**[DA–93–16]**

## Milk in the Georgia Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends indefinitely the provisions of the Georgia Federal milk order that limit diversions of producer milk to 25 percent of pool plant receipts. This suspension is necessary to prevent the uneconomic movement of milk under the order. It was requested by a dairy farmer cooperative association.

**EFFECTIVE DATE:** August 1, 1993. This suspension will remain in effect for an indefinite period of time.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 9, 1993; published June 15, 1993 (58 FR 33038).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice of proposed rulemaking was published in the Federal Register (58 FR 33038) on June 15, 1993, concerning the proposed indefinite suspension of the provisions of the Georgia Federal milk order that limit diversions of producer milk to 25 percent of pool plant receipts. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by June 22, 1993. One comment was received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1007.13, paragraph (b)(4), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;"

2. In § 1007.13, paragraph (b)(5), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk;"

**Statement of Consideration**

This action suspends indefinitely the provisions of the Georgia Federal milk order that limit diversions of producer milk to 25 percent of pool plant receipts. This suspension is necessary to prevent the uneconomic movement of milk under the order.

This suspension is necessary due to the termination of the Nashville Order, effective midnight July 31, 1993. Plants that are now regulated by the Nashville order will likely become regulated by other Federal orders, namely the Georgia order. This suspension will allow producer milk that has been pooled under the Nashville order for the supply needs of plants regulated under that order, to continue to be pooled for those plants that become regulated by the Georgia order. The continued pooling of this producer milk, which is now regulated under the Nashville order, is necessary to insure orderly marketing conditions and to prevent uneconomic movements of milk strictly for pooling purposes.

The suspension will not substantially liberalize the market performance of producer milk, since § 1007.13 paragraph (b)(2) requires that not less than 10 days' production of the producer whose milk is diverted be physically received at a pool plant.

The suspension of diversion limitations for an indefinite period of time is needed in recognition that proposals have been made to the Department for consolidation of several

orders in the Southeast, including the Georgia order. In the consolidation proposals, changing market conditions and the need for producer milk diversion provisions that more closely reflect current market needs are addressed. A decision has not been made concerning whether a hearing will be called. In the meantime, an indefinite suspension is needed to assure pooling of producer milk that has been historically regulated under the Nashville order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the plants shifting to this market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting suspension of the diversion limits was received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the Federal Register.

**List of Subjects in 7 CFR Part 1007**

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, § 1007.13(b) (4) and (5) of the Georgia order are hereby suspended, effective August 1, 1993. This suspension will remain in effect for an indefinite period of time.

**PART 1007—MILK IN THE GEORGIA MARKETING AREA**

1. The authority citation for 7 CFR part 1007 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1007.13 [Indefinitely suspended in part].**

2. In § 1007.13, paragraph (b)(4), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;" are suspended.

3. In § 1007.13, paragraph (b)(5), the words "Provided, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk;" are suspended.

Dated: July 23, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18159 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 1036**

**[DA–93–15]**

## Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Temporary Revision of Cooperative Association Reserve Processing Plant Shipping Requirement

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Revision of rule.

**SUMMARY:** This action relaxes for the months of July 1993 through August 1994 the percentage of a cooperative association's member milk that must be delivered to fluid milk plants to qualify reserve processing plants operated by cooperative associations as pool plants under the Eastern Ohio-Western Pennsylvania Federal milk order (Order 36). The revision reduces from 35 percent to 25 percent the percentage of a cooperative association's member milk that must be delivered to pool distributing plants to qualify the cooperative's reserve processing plant for pooling. This action is necessary to prevent uneconomic movements of milk for the purpose of pooling much of the market's supply.

**EFFECTIVE DATE:** July 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7311.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Revision: Issued June 9, 1993; published June 15, 1993 (58 FR 33039).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1036.7(f) of the Eastern Ohio-Western Pennsylvania order.

Notice of proposed rulemaking was published in the Federal Register on June 15, 1993 (58 FR 39039) concerning a proposed reduction of the cooperative reserve processing plant shipping requirements of the order. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by June 22, 1993. Comments filed by three cooperative associations supported the proposed revision. A comment filed by a proprietary supply plant operator favored extending the revision only through August 1993, and

including supply plant shipping standards.

**Statement of Consideration**

This action eases the pooling requirements for cooperative reserve processing plants by 10 percentage points for the period July 1, 1993, through August 31, 1994. The revision reduces from 35 percent to 25 percent the total minimum quantity of a cooperative association's milk supply that is required to be delivered to distributing plants in order for the cooperative's reserve supply plant to maintain pool status.

In order for a cooperative association plant that does not qualify as a pool distributing or pool supply plant to be a pool plant, the Eastern Ohio-Western Pennsylvania order requires that the cooperative must deliver to pool distributing plants a minimum of 35 percent of the total quantity of milk marketed by the cooperative, either during the month or during the 12-month period ending with the immediately preceding month.

The Eastern Ohio-Western Pennsylvania milk order provides authority for the Director of the Dairy Division to increase or decrease the required shipping percentages for cooperative reserve supply plants by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

The revision was requested by Milk Marketing, Inc. (MMI), a cooperative association that represents many of the market's producers. Comments supporting the revision were received from MMI and two other cooperative associations with members whose milk is pooled under Order 36. MMI, Eastern Milk Producers Cooperative Association, Inc. (Eastern), and Dairylea Cooperative, Inc. (Dairylea), stated that the revision is needed to prevent unnecessary and uneconomic movements of milk because of the current severe milk supply-demand imbalance in the Eastern Ohio-Western Pennsylvania marketing area. Eastern's comments included projections of milk production, Class I needs, and resulting Class III use that indicated that current production increases and reduced Class I use can be expected to continue. Dairylea stated that extension of the revision to include qualifying shipments required of proprietary supply plants would prevent uneconomic movements of milk and offer some relief to proprietary supply plant operators.

Hans Rothenbuhler and Son, Inc. (Rothenbuhler), objected to MMI's request on the basis that the amendments that may be effective October 1, 1993, that will increase the order's shipping requirements for pool supply plants were proposed and supported by MMI. Rothenbuhler's comments asserted that if qualifying percentages for cooperative reserve processing plants are now to be reduced, the required shipping percentages for pool supply plants also should be revised downward.

Rothenbuhler's comments were the only ones received that dealt with the question of the appropriate duration of the revision. Rothenbuhler suggested that the revision should last no longer than August 1993 because of school reopenings in late August, and the resulting need for greater shipments of milk to distributing plants.

The comments filed by MMI indicate that milk supplies historically pooled under the order currently are losing their markets and having to find new outlets for their production. Apparently, Order 36 pool distributing and pool supply plants are releasing some of their milk suppliers to find their own markets for milk. Such institutional changes in the sources of supply for various plants may result in market instability and disorder.

Milk production in the Eastern Ohio-Western Pennsylvania marketing area appears to be increasing while Class I use is declining. As a result, greater volumes of milk must be diverted to manufacturing uses than in prior years. The last full year before the 1990 proceeding that resulted in the amendments that may take effect October 1, 1993, was 1989. During the short production months (September through November) of 1989, the percentage of Order 36 producer milk needed for Class I use was over 60 percent, with less than 30 percent of the market's milk used in Class III. For the same period of 1992, the percentage of producer milk used in Class I was just 55 percent, with the Class III percentage increasing to nearly 36 percent.

The increased production and decline in Class I sales, coupled with the market's changing handler-producer relationships, necessitates a reduction in the percentage of milk that must be delivered by a cooperative association to pool distributing plants in order to assure the pool status of the cooperative's member milk.

A similar reduction in shipping percentages for proprietary supply plants should not be necessary. Cooperatives typically perform a function of balancing the market that is not customarily performed by proprietary supply plants. In the present situation, it appears that the cooperative association is attempting to deal with market disruptions caused by the actions of other handlers. Therefore, the revision should apply only to cooperative associations' pool qualification.

This revision should be effective for a period long enough to allow the institutional shifts currently in process to work themselves out, and for the cooperative associations to assure themselves of an adequate fluid market for their producer milk. Therefore, the revision should remain in place through the next flush production season, through August 1994.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The revision is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action is necessary to permit the continued pooling of cooperative reserve processing plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Three comments were filed in support of this action, and one comment was filed opposing the action.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1036**

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR part 1036 is amended as follows:

## PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

The authority citation for 7 CFR part 1036 continues to read as follows:

**1. Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1036.7 [Amended]**

2. In § 1036.7 paragraph (d), introductory text is amended by revising the phrase "35 percent" to "25 percent" and in paragraph (d)(2) by revising the phrase "35-percent" to read "25 percent".

Dated: July 22, 1993.
W. H. Blanchard,
*Director, Dairy Division.*
[FR Doc. 93-18157 Filed 7-29-93; 8:45 am]
BILLING CODE 3410-05-P

7 CFR Part 1098

[DA-92-41]

## Milk in the Nashville, Tennessee Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.
**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends the requirement that dairy farmers who are producers under the Nashville order be paid on the basis of a base and excess payment plan for the month of July 1993. This action is needed to appropriately compensate producers for milk production at a time when milk production is declining.
**EFFECTIVE DATES:** July 1, 1993 through July 31, 1993.
**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9368.
**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 18, 1993; published June 24, 1993 (58 FR 34230).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action also will tend to encourage milk production during the month of July, which is a month of declining milk production.

This final rule has been reviewed by the Department in accordance with Department Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Nashville, Tennessee, marketing area.

Notice of proposed rulemaking was published in the Federal Register on June 24, 1993 (58 FR 34230) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Four comments were received, two from proprietary handlers and two from individual producers. One handler and one producer opposed the suspension, and one handler and one producer supported it.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the month of July 1993 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1098.61(a), the words "for each of the months of August through February".
2. In § 1098.61(a)(5), the words "in the months of August through February."
3. In § 1098.61, paragraph (b).

### Statement of Consideration

The suspension would make inoperative the requirement that producers be paid on the base and excess plan for the month of July 1993. The suspension was requested by Fleming Companies, Inc. (Fleming), a proprietary handler operating a distributing plant that is regulated under the Nashville order.

The suspension is needed to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of July. The current order provisions provide that producers, for the months of March through July, be paid a base and excess price. The plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of March through July when the additional milk production is not needed for fluid use.

Marketing conditions have changed since those provisions were adopted in the Nashville order. In recent years, milk production during the month of July has been less than needed to have a full supply. In view of this, the base-excess plan does not comport with market conditions during the month of July.

Four comments were filed: One handler and one producer opposed the suspension, and one handler and one producer supported the suspension. The handler opposing the suspension indicated a belief that its adoption will not appreciably increase the milk supply for the market, and that it will penalize those producers who structure their production to optimize their financial return available within the base and excess plan. On the other hand, the handler claimed, dairy farmers who have not attempted to maximize their economic returns would receive an unjustified benefit at the expense of the other dairy farmers.

The producer who opposed the suspension indicated that he has worked hard to build base so that only a small amount of his production would be paid for at the excess price. He stated that to grant the suspension request would be unfair to those producers who have based their milk production around the base-excess plan.

The handler who proposed the suspension filed a comment in support of this action. The handler indicated that the recent hot and humid weather pattern in the Nashville production area has reduced milk production significantly to the point where the handler regularly purchases loads of milk from other handlers, some of which are handlers whose milk supply is not pooled on the Nashville order. In the proponent's view, it is inconsistent to pay producers for some of their milk at excess prices when the supply is so short that outside milk is being purchased. Moreover, the handler noted that in 1991 the amount for which producers received the excess price was greater than Class II and Class III use. The producer who supported the

suspension said he believed there has been a change in the supply-demand ratio and in marketing strategy and procedure since the order was first established. He endorsed the suspension.

After reviewing the comments received, it is concluded that the base and excess payment provisions of the Nashville order should be suspended for the month of July 1993. In reality, milk supplies are short and therefore producers should not be paid a lower price for a portion of their production as excess milk.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions in the marketing area in that milk production should be encouraged rather than discouraged;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded the opportunity to file written data, views or arguments concerning this suspension. Four comments were filed: two in opposition and two in support of this action.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register.**

**List of Subjects in 7 CFR Part 1098**

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in title 7 part 1098 are suspended as follows:

## PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

1. The authority citation for 7 CFR part 1098 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1098.61 [Temporarily suspended in part]**

2. In § 1098.61(a), the words " for each of the months of August through February " are suspended for July 1993.

3. In § 1098.61(a)(5), the words " in the months of August through February." are suspended for July 1993.

4. In § 1098.61, paragraph (b) is suspended for July 1993.

Dated: July 27, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18220 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 1126**

**[DA–93–12]**

## Milk in the Texas Marketing Area; Order Suspending Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends segments of the pool plant and producer milk definitions of the Texas Federal milk order for a two-year period. This suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from pooling. In addition, this suspension is necessary to prevent the uneconomic and inefficient movement of milk under the order.

**EFFECTIVE DATE:** August 1, 1993 through July 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 4, 1993; published June 10, 1993 (58 FR 32465).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (58 FR 32465) on June 10, 1993, concerning the proposed suspension for August 1, 1993, through July 31, 1995, of segments of the pool plant and producer milk definitions of the Texas Federal milk order. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by June 25, 1993. Two written comments were received that discussed the nature of the proposed suspension. One comment included full support of the suspension of rule, as published in the **Federal Register**. The other comment included support for the proposed suspension for one year, but not for the two-year time period.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b),

(c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In 1126.13(e)(2), the paragraph references "(a), (b), (c) and (d)".

5. In 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

**Statement of Consideration**

This action suspends segments of the pool plant and producer milk definitions for the Texas order. This suspension will be in effect from August 1, 1993, through July 31, 1995. The current suspension of some of these provisions will expire July 31, 1993. This action suspends : (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. This action continues to inactivate the 60 percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. This action continues the current suspension of these performance standards for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. This action will keep these requirements suspended.

Renewal of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am) and Associated Milk Producers. Inc. (AMPI), cooperative associations that represent a substantial number of the dairy farmers who supply the Texas market. Mid-Am also filed comments supporting the proposed suspension.

A comment also was filed on behalf of Southern Foods Group (SFG). SFG does not object to a one-year suspension, but does maintain that a suspension for two years should not be granted. SFG's view is that after being suspended for each of the past five years, it is time to review the Texas order's pooling provisions through the hearing process. SFG expressed the view that if a hearing is called on proposals to merge several southeastern and southern orders, such a hearing perhaps could provide an opportunity to consider what the Texas pooling provisions should be.

For January through May 1993, daily average producer milk receipts were up 2.9 percent from a year earlier. In comparison, Class I utilization for the same period was up only 0.34 percent. It is anticipated that Class I sales of milk in the forseeable future will not keep up with expected increases in producer milk receipts on the Texas Order.

This suspension action is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. In addition the suspension will continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers supplying the market.

While granting this suspension for a two-year period, the concerns raised by SFG should be considered. Beginning in August of 1988, for over five years, these provisions have been suspended in their entirety. In future years, it may be preferable to resolve this issue through the hearing process, not through informal rulemaking, so that the Order may contain appropriate pooling provisions based on current market conditions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Comments were received from two parties.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

**List of Subjects in 7 CFR Part 1126**

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, part 1126, are amended as follows:

**PART 1126—MILK IN THE TEXAS MARKETING AREA**

1. The authority citation for 7 CFR part 1126 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1126.7 [Temporarily suspended in part]**

2. In § 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section" are suspended.

3. In § 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested" are suspended.

**§ 1126.13 [Temporarily suspended in part]**

4. In § 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant" are suspended.

5. In § 1126.13(e)(2), the paragraph references "(a), (b), (c) and (d)" are suspended.

6. In § 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;" are suspended.

Dated: July 27, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18219 Filed 7–29–93; 8:45 am]

BILLING CODE 3410-02-P

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**7 CFR Part 1137**

**[DA–93–13]**

**Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rule.

**SUMMARY:** This action suspends certain provisions of the Eastern Colorado Federal milk order. This suspension is necessary to prevent the uneconomic movement of milk that otherwise would be required in order to maintain the pooling status of milk that has been historically associated with the order.

**EFFECTIVE DATES:** The suspension to § 1137.7 is effective September 1, 1993 through February 1994; the suspension to § 1137.12 is effective September 1, 1993 through August 1994.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 4, 1993; published June 10, 1993 (58 FR 32467).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action does not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) ("the Act"), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (58 FR 32467) on June 10, 1993, concerning the proposed suspension of the provisions of the Eastern Colorado Federal milk order that limit the period of automatic pool plant status for a supply plant and suspend the touch-base and diversion limitation requirements. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by June 25, 1993. One written comment was received that discussed the nature of the proposed suspension. It included full support of the suspension of rule, as published in the **Federal Register**.

After consideration of all relevant material, including the proposal in the notice, the comment, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1993 through February 1994:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August;" and

2. For the months of September 1993 through August 1994:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant;" and in the second sentence "30 percent in the months of March, April, May, June, July, and December, and 20 percent in other months of," and the word "distributing."

**Statement of Consideration**

This action suspends the provisions of the Eastern Colorado Federal milk order that limit the period of automatic pool plant status for a supply plant and suspends the touch-base and diversion limitation requirements. This suspension is necessary to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

For the months of September 1993 through February 1994, the limit on the period of automatic pool plant status for a supply plant which met pool shipping

standards during the previous September through February period is suspended. The touch-base and diversion limitation requirements during the months of September 1993 through August 1994 are also suspended.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. The marketing conditions in the Eastern Colorado order area that existed when the provisions were previously suspended still continue. During 1992, producer milk was 5.6 percent above 1991 while Class I sales were up 1.3 percent. During the period January through May 1993, producer receipts and Class I sales were virtually unchanged from the same period in 1992.

Current projections indicate that there will be ample supplies of locally produced milk to meet the requirements of Eastern Colorado distributing plants without requiring that each producer's milk be received at least three times each month at a pool distributing plant and without restricting the amount of milk that can be diverted to non-pool plants. Without the suspension action, it may be necessary to ship milk from distant areas to Denver area bottling plants. This would displace locally produced milk that would then have to be shipped from the Denver area to surplus handling plants.

The suspension of the touch-base provisions of the order will not allow additional milk supplies to be pooled, but rather will provide for more efficient disposition of producer milk not needed for fluid requirements of Eastern Colorado distributing plants. By suspending the touch-base provision, producer milk will not be required to be delivered to pool plants for the sole purpose of meeting provisions of the Eastern Colorado order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such action is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment was received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1137**

Milk marketing orders.

It is therefore ordered, that the following provisions in title 7, part 1137, are amended as follows:

## PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR part 1137 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1137.7 [Suspended in part]**

2. In § 1137.7(b), for the months of September 1993 through February 1994:

In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and the words "of March through August" are suspended; and

**§ 1137.12 [Suspended in part]**

3. In § 1137.12(a)(1), for the months of September 1993 through August 1994:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing" are suspended.

Dated: July 27, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18218 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 1220**

**[No. LS–93–005]**

**RIN 0581–AA94**

## Soybean Promotion and Research; Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule amends the Rules and Regulations which implemented the Soybean Promotion and Research Order (Order). The Order established a national industry-funded soybean promotion and research program. The rule modifies the remittance date for assessments from first purchasers, thus providing a uniform remittance date for assessments which is consistent with other commodity State checkoff programs, and removes the requirement for certification of nonproducer status for certain transactions, thereby reducing the paperwork burden imposed on first purchasers who collect the assessments.

**DATES:** *Effective date:* July 30, 1993.

**COMMENTS:** Comments must be received on or before August 30, 1993.

**ADDRESSES:** Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service (AMS), USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch 202/720–1115.

**SUPPLEMENTARY INFORMATION:** Prior document: Final Rule—Soybean Promotion and Research; Rules and Regulations published July 2, 1992 (57 FR 29436).

**Regulatory Impact**

This interim final rule was reviewed in accordance with Executive Order No. 12291 and Department Regulation No. 1512–1 and has been determined to be a "nonmajor" rule because it does not meet the criteria for a major rule as stated in the Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The statute provides that the district court of the United States in any district in which the person who is a petitioner resides or carries on business has jurisdiction to review a ruling on the petition if a complaint for the

purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards. The exception provides that to ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a Qualified State Soybean Board or State soybean assessment.

This action was also reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This interim final rule: (1) Amends the remittance date for assessments from first purchasers, and (2) removes the requirement for certification of nonproducer status for certain transactions. These changes are expected to have a positive economic impact on the first purchasers of soybeans. An estimated 10,000 first purchasers of soybeans are required to collect and remit the assessments, and most of them are small businesses under the criteria established by the Small Business Administration (13 CFR 121.2). As explained in more detail below, the amendment to the remittance date in this rule would make the date correspond with the date assessments are due to State assessment programs under some State laws. It will eliminate the current requirement for some first purchasers to examine their records twice each month in order to report and remit commodity assessments. The elimination of the requirement of certification of nonproducer status for certain transactions will reduce the expense associated with this recordkeeping burden. The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small business entities.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. chapter 35) the reporting and recordkeeping included in 7 CFR part 1220 were previously approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093.

**Background**

The Soybean Promotion, Research and Consumer Information Act (Act) (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Soybean Promotion and Research Rules and Regulations, 7 CFR part 1220, published in the Federal Register on July 2, 1992 (57 FR 29436), specify in § 1220.312(d) that assessments shall be remitted not later than the 15th day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed. This interim final rule requires that assessments be remitted not later than the last day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed.

This interim final rule is designed to provide a uniform remittance date for assessments consistent with certain State checkoff programs for other commodities. Several other checkoff programs require payment of the assessments on the last day of the month following the month in which the product was marketed. The requirement to submit soybean checkoff payments on the 15th day of the month following the month in which the soybeans were marketed creates difficulties for collectors and sometimes results in incorrect submissions. A uniform submission date will greatly alleviate these problems and also reduce the paperwork burden imposed on first purchasers as a result of having different reporting requirements.

The Order's Rules and Regulations also specify in § 1220.315 that a person marketing soybeans, processed soybeans, or soybean products on which an assessment has been collected may claim nonproducer status and shall not be required to pay an assessment if such person certifies to the purchaser that the assessment has been collected and remitted or will be remitted in a timely fashion. Currently, purchasers are required to either collect the assessment or obtain and maintain a "Statement of Non-Producer Status" form on purchases of soybeans. On the nonproducer status form, the seller certifies to the purchaser that the assessment has been collected and remitted or will be remitted in a timely fashion. This requirement has caused a paperwork burden for purchasers. This interim final rule reduces the workload for both the purchaser and the Board. It deletes § 1220.315, Certification of nonproducer status for certain transactions, in its entirety. This interim final rule eliminates the current requirement to utilize nonproducer status forms and requires purchasers to utilize their own system to verify collection of assessments on soybeans purchased from producers. Deletion of this provision does not relieve the first purchaser of the requirement to collect an assessment from producers and does not relieve producers of their obligation to pay assessments due. First purchasers may be held liable for failure to collect and remit if they cannot verify nonproducer status for soybeans not assessed.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action includes provisions to reduce the recordkeeping and paperwork burden imposed on industry; (2) a 30-day comment period is provided; (3) this action imposes no additional requirements on the soybean industry; and (4) no time is needed by the industry to prepare for this action.

**List of Subjects in 7 CFR Part 1220**

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, 7 CFR part 1220, subpart B, is amended as follows:

## PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

### Subpart B—Rules and Regulations

1. The authority citation for 7 CFR part 1220 continues to read as follows:

**Authority:** Title XIX, Public Law 101–624, 104 Stat. 3359, 3881 (7 U.S.C. 6301–6311).

2. Section 1220.312 paragraph (d) is revised to read as follows:

§ 1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.

* * * * *

(d) *Remittances.* Each first purchaser or producer responsible for remitting assessments shall remit all assessments to the Qualified State Soybean Board, its designee, or the United Soybean Board. All assessments shall be remitted in the form of a check or money order payable to the order of the applicable Qualified State Soybean Board or the United Soybean Board and shall be sent to the designated address not later than the last day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed and shall be accompanied by the reports required by paragraph (c) of this section. All remittances shall be received subject to collection and payment at par.

* * * * *

§ 1220.315 [Removed]

3. Section 1220.315 is removed.

Dated: July 27, 1993.

Eugene Branstool,

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-18217 Filed 7-29-93; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 91-ANE-12; Amendment 39-8511; AD 91-08-13]

### Airworthiness Directives; Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731-2, -3, and -3R Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 91-08-13 that was sent previously to all known U.S. owners and operators of Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731-2, -3, and -3R turbofan engines by individual letters. This AD requires the inspection of fan rotor discs within certain schedules. This amendment is prompted by a report of an in-service uncontained failure of the first stage fan rotor disc in which a segment of the disc rim and five fan blades departed the engine. The actions specified by this AD are intended to prevent uncontained failure of the fan rotor disc due to fatigue cracking.

**DATES:** Effective August 16, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 91-08-13, issued on April 16, 1991, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 16, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 28, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-12, 12 New England Executive Park, Burlington, MA 01803-5299.

The applicable service information may be obtained from Allied-Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64-3/2102-1M, P.O. Box 29003, Phoenix, AZ 85038-9003; telephone (602) 365-2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joe Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806-2425; telephone (310) 988-5246, fax (310) 988-5210.

**SUPPLEMENTARY INFORMATION:** On April 16, 1991, the Federal Aviation Administration (FAA) issued priority letter AD 91-08-13, applicable to Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731-2, -3, and -3R turbofan engines, which requires the inspection of fan rotor discs within certain schedules. That action was prompted by a report of an in-service uncontained failure of the first stage fan rotor disc in which a segment of the disc rim and five fan blades departed the engine. Metallurgical examination of the fractured fan rotor disc determined that a fatigue crack had initiated in the area of the aft acute corner of one of the dovetail slots in the disc. Failure of this disc occurred at 3300 cycles which was less than the then FAA-approved life limit of 4100 cycles. This condition, if not corrected, could result in uncontained failure of the fan rotor disc due to fatigue cracking.

The FAA has reviewed and approved the technical contents of Garrett Engine Division, Allied-Signal Aerospace Company, Alert Service Bulletin No. TFE731-A72-3432, dated April 11, 1991, that describes procedures for eddy-current and fluorescent penetrant inspections of fan rotor disk for cracks.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 91-08-13 to prevent uncontained failure of the fan rotor disc due to fatigue cracking. The AD requires the inspection of fan rotor discs within certain schedules. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on April 16, 1991, to all known U.S. owners and operators of Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731-2, -3, and -3R turbofan engines. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to

modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–ANE–12." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**91–08–13 Garrett Engine Division, Allied-Signal Aerospace Company:** Amendment 39–8611. Docket 91–ANE–12.

*Applicability:* Garrett Engine Division, Allied-Signal Aerospace Company, Model TFE731–2, –3, and –3R series turbofan engines installed in aircraft certificated in any category equipped with fan rotor discs, part number (PN) 3072162–1, –2, –3, and –4 or PN 3073436–1, –2, –3, and –4, installed on but not limited to the following airplane models:

| Engine model No. | Aircraft manufacturer | Airplane model |
|---|---|---|
| TFE731–2–1C | Avions Marcel Dassault-Breguet Aviation, Paris, France | Falcon 10, 100. |
| TFE731–2–2B | Learjet Inc., Wichita Kansas | Learjet 35, 35A, 36, 36A. |
| TFE731–2–3B | Learjet, Wichita, Kansas | Learjet 31. |
| TFE731–3–1C | Avions Marcel Dassault-Breguet Aviation, St. Cloud, France | Falcon 50. |
| TFE731–3–1E | Airesearch Aviation Company, Los Angeles, California | 731 Jetstar. |
| TFE731–3–1F | Lockheed-Georgia Corp., Marietta, Georgia | 1329–25 (Jetstar II). |
| TFE731–3–1G | Israel Aircraft Industries Ltd., Israel (USA—Atlantic Aviation, Wilmington, Delaware). | 1124, 1124A (Westwind). |
| TFE731–3–1H | British Aerospace (BAs) Hatfield-Chester Division, Hatfield, England | BAe HS125 Series. |
| TFE731–3–K | Lockheed-Georgia Corp., Marietta, Georgia (AC modified by STC SA333GL–D). | 1329–25 (Jetstar II). |
| TFE731–3R–1D | Sabreliner Corp. (formerly Sabreliner Division, North American Aviation Co. or Rockwell International), Chesterfield, Missouri. | NA 265–65 (Sabreliner 65, 65A). |
| TFE731–3R–1G | Israel Aircraft Industries USA (Atlantic Aviation, Wilmington, Delaware) | 1124, 1124A (Westwind). |
| TFE731–3R–1H | British Aerospace (BAe), Hatfield-Chester Division, Hatfield, England | BAe HS125 Series. |

*Compliance:* Required as indicated, unless accomplished previously.

To prevent uncontained failure of the fan rotor disc due to fatigue cracking, accomplish the following:

(a) Remove and inspect for cracks by eddy-current or fluorescent penetrant methods, fan rotor discs, PN 3072162–1, –2, –3, and –4 and PN 3073436–1, –2, –3, and –4, and install a serviceable disc in accordance with the Accomplishment Instructions described in Garrett Engine Division, Allied-Signal Aerospace Company, Alert Service Bulletin (ASB) No. TFE731–A72–3432, dated April 11, 1991, as required by the following initial schedule of fan rotor disc cycles since new (CSN) on the effective date of this AD:

| Fan rotor disc CSN | Initial inspection schedule |
|---|---|
| Less than 1600 | Prior to accumulating 1600 CSN. |
| 1601 through 2300. | Within the next 200 cycles in service (CIS) after the effective date of this AD or prior to 2400 CSN, whichever occurs first. |
| 2301 through 2800. | Within the next 100 CIS after the effective date of this AD or prior to 2850 CSN, whichever occurs first. |
| Greater than 2800. | Within the next 50 CIS after the effective date of this AD. |

(b) Thereafter, re-inspect the fan rotor discs for cracks in accordance with the Accomplishment Instructions described in Garrett Engine Division, Allied-Signal Aerospace Company ASB No. TFE731–A72–3432, dated April 11, 1991, in accordance with the following repetitive schedule:

| Last fan rotor disc inspection method | Next inspection due |
|---|---|
| Eddy-Current | At engine Major Periodic inspection not to exceed 1300 CIS since last inspection. |
| Fluorescent | Not to exceed 200 CIS since last Penetrant inspection. |

**Note:** The inspection requirements of paragraphs (a) and (b) of this AD are no longer applicable after installation of a serviceable disc, PN 3073539–1, –2, or PN 3074529–1 or –2, or later serviceable FAA-approved discs.

(c) Remove from service, prior to further flight, fan rotor discs which exhibit crack indications following inspection in accordance with paragraph (a) or (b) of this AD, and replace with a serviceable disc.

(d) Report fan rotor discs found cracked following inspection in accordance with this AD by disc PN, Serial Number, CSN, and crack location to the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, FAA, 3329 East Spring Street, Long Beach, CA 90806–2425, within 10 days of the inspection. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB Control Number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections shall be done in accordance with the following Garrett Engine Division, Allied-Signal Aerospace Company, Alert Service Bulletin:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| ASB No. TFE731–A72–3432 ..... Total pages: 16. | 1–16 | Original .... | Apr. 11, 1991. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allied-Signal Propulsion Engines, Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 55038–9003; telephone (602) 365–2548. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective August 16, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 91–08–13, issued April 16, 1991, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on July 15, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–18188 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–CE–35–AD; Amendment 39–8649; AD 93–15–02]**

## Airworthiness Directives: Fairchild Aircraft SA226 and SA227 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to Fairchild Aircraft SA226 and SA227 series airplanes that are equipped with certain Simmonds-Precision pitch trim actuators. This action requires repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; immediately replacing any actuator if certain freeplay limitations are not met or rod slippage is evident; and eventually replacing the actuator regardless of the inspection results. Two in-flight incidents where the referenced actuators failed prompted the proposed action. The actions specified by this AD are intended to prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane.

**DATES:** Effective August 23, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 23, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 30, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 93–CE–35–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; Telephone (512) 824–9421. This information may also be examined at the FAA, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0150; Telephone (817) 624–5163; Facsimile (817) 624–5029.

**SUPPLEMENTARY INFORMATION:** The FAA has received reports of two in-flight incidents where the Simmonds-Precision pitch trim actuators, part number (P/N) DL5040M5, failed. These actuators are installed on Fairchild Aircraft SA226 and SA227 series airplanes. In one case, the horizontal stabilizer went full-nose down, and in the other instance, the horizontal stabilizer jammed. Fortunately, the pilots were able to safely land their airplane in both of these instances. Upon removal and inspection of the pitch trim actuators, fatigued barrel nuts were found and the actuator usage time was well over 5,000 hours time-in-service (TIS). Based on all available information, the FAA estimates that approximately 50 of the 250 affected airplanes or 20 percent have over 5,000 hours TIS accumulated on the Simmonds-Precision pitch trim actuators, P/N DL5040M5.

Fairchild has issued SA226 Series Service Letter (SL) 226–SL–005, and SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: April 28, 1993. These service letters specify instructions for measuring the freeplay of the Simmonds-Precision pitch trim actuators, P/N DL5040M5, and inspecting for actuator rod slippage.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that: (1) Failure of these barrel nuts could lead to pitch trim actuator rod slippage or improper freeplay; (2) in order to ensure the safety of the Simmonds-Precision pitch trim actuators after 5,000 hours TIS, these actuators should be periodically inspected, and eventually replaced; and

(3) since these pitch trim actuators are installed on certain Fairchild SA226 and SA227 series airplanes, AD action should be taken in order to prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design that are equipped with Simmonds-Precision pitch trim actuators, P/N DL5040M5, this AD requires repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage; and, if certain freeplay limitations are not met or rod slippage is evident, replacing any actuator with a new actuator of the same part number or of improved design, P/N 27–19008–01 or 27–19008–02. The requirements of the AD will no longer apply when an actuator of improved design is installed. The freeplay measurements and inspections are accomplished in accordance with the instructions in Fairchild SA226 Series SL 226–SL–005, and Fairchild SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: April 28, 1993, as applicable. The pitch trim actuator replacement is accomplished in accordance with the applicable maintenance manual.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–35–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–15–02 Fairchild Aircraft:** Amendment 39–8648; Docket No. 93–CE–35–AD.

*Applicability:* All SA226 and SA227 series airplanes (all models and serial numbers) that are equipped with a Simmonds-Precision pitch trim actuator, part number (P/N) DL5040M5, certificated in any category.

*Compliance:* Required as indicated, unless already accomplished.

To prevent the horizontal stabilizer from going nose-down or jamming because of pitch trim actuator failure, which could result in loss of control of the airplane, accomplish the following:

(a) Upon accumulating 5,000 hours time-in-service (TIS) on a Simmonds-Precision pitch trim actuator, P/N DL5040M5, or within the next 50 hours TIS accumulated on this type pitch trim actuator after the effective date of this AD, whichever occurs later, unless already accomplished, and thereafter at intervals not to exceed 300 hours TIS until paragraph (b) is complied with, accomplish the following:

**Note 1:** If hours TIS accumulated on the pitch trim actuator are not maintained, then hours TIS accumulated on the airplane may be substituted.

(1) Measure the freeplay of the pitch trim actuator and inspect the actuator for rod slippage in accordance with the INSTRUCTIONS section of Fairchild SA226 Series Service Letter (SL) 226–SL–005, and Fairchild SA227 Series SL 227–SL–011, both Issued: April 8, 1993, Revised: April 28, 1993, as applicable.

(2) If certain freeplay limitations specified in the service letters are not met or rod slippage is evident, prior to further flight, accomplish the replacement specified in either paragraph (b)(1) or (b)(2) of this AD.

(b) Within 600 hours TIS after the inspection specified in paragraph (a) of this AD or upon accumulating 6,500 hours time-in-service (TIS) on a Simmonds-Precision pitch trim actuator, P/N DL5040M5, whichever occurs later, accomplish one of the following:

(1) Replace the pitch trim actuator with a new part of the same design and part number in accordance with the applicable maintenance manual, and reinspect and replace as specified in paragraph (a) and (b) of this AD, respectively; or

(2) Replace the pitch trim actuator with a new part of improved design, P/N 27–19008–01 or 27–19008–02, in accordance with the applicable maintenance manual.

(i) This replacement eliminates the repetitive inspection requirement of this AD.

(ii) This replacement may be accomplished at any time to eliminate the inspection requirement of this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(e) The inspections and modification required by this AD shall be done in accordance with Fairchild SA226 Series Service Letter 226–SL–005, and Fairchild SA227 Series Service Letter 227–SL–011, both Issued: April 8, 1993, Revised: April 28, 1993, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8648) becomes effective on August 23, 1993.

Issued in Kansas City, Missouri, on July 20, 1993.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18189 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–13–U

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**14 CFR Part 91**

**[Docket No. 24456; Amendment No. 91–233]**

## Airspace Reclassification

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Rule; correction.

**SUMMARY:** This document corrects the Airspace Reclassification final rule promulgated on December 17, 1991. The Airspace Reclassification rule, which will become effective September 16, 1993, inadvertently omitted the authority of Air Traffic Control (ATC) to allow aircraft operators to deviate from any of the operating requirements in Class C airspace areas, as currently contained in Section 91.130 of the Federal Aviation Regulations (FAR). This action will continue ATC's authority to allow deviations under § 91.130 when Airspace Reclassification becomes effective.

**EFFECTIVE DATE:** This amendment is effective as of September 16, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Aaron I. Boxer, Air Traffic Rules Branch (ATP–230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8783.

**SUPPLEMENTARY INFORMATION:** On October 18, 1989, the FAA published a Notice of Proposed Rulemaking on Airspace Reclassification (54 FR 42916) which proposed, among other things, that the nomenclature of Airport Radar Service Areas (ARSA) be changed to Class C airspace. Neither the preamble to the proposed regulation nor the actual proposed rule language indicated any changes to the conditions under which a pilot may deviate from the provisions of § 91.130. On December 17, 1991, the FAA published a final rule on Airspace Reclassification (56 FR 65638). The preamble to the final rule stated that other than the reclassification of ARSA's as Class C airspace areas, "No other modifications to Class C airspace areas or changes in operating rules were proposed." However, the rule language in the final rule inadvertently omitted the provisions for pilot deviation from the requirements of § 91.130 under the provisions of an ATC authorization. This technical amendment corrects that inadvertent omission.

### List of Subjects in 14 CFR Part 91

Air traffic control, Air transportation, Airmen, Airports, Aviation safety.

### The Amendment

Accordingly, 14 CFR part 91 in effect as of September 16, 1993, is amended by making the following correcting amendment:

### PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 21251 articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 stat. 1180); 42 U.S.C. 4321 et seq; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

2. Section 91.130 is corrected by revising paragraph (a) to read as follows:

**§ 91.130 Operations in Class C airspace.**

(a) General. Unless otherwise authorized by ATC, each aircraft operation in Class C airspace must be conducted in compliance with this section and § 91.129. For the purpose of this section, the primary airport is the airport for which the Class C airspace area is designated. A satellite airport is any other airport within the Class C airspace area.

* * * * *

Issued in Washington, DC, on July 26, 1993.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93–18207 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–13–M

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**FEDERAL TRADE COMMISSION**

**16 CFR Part 4**

**Miscellaneous Rules**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The FTC is amending Rule 4.1(c) of its Rules of Practice so that information identifying the subject of a nonpublic investigation would be redacted from clearance materials placed on the public record. The Commission has determined that disclosing such information adds little to public understanding of clearance determinations, and may harm unjustifiably the subject's reputation and make it less cooperative, thereby impairing the FTC's ability to conduct its investigations.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Elaine W. Crockett, Attorney, Office of the General Counsel, FTC, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2453.

**SUPPLEMENTARY INFORMATION:** Former FTC members and employees are required to submit clearance requests to participate in certain Commission investigations and proceedings. Commission Rule 4.1(b) (1)&(2), 16 CFR 4.1(b) (1)&(2). These clearance requests and the responses to them are placed on the public record. Commission Rule 4.1(c). The FTC generally redacts nonpublic information from these materials before they are placed on the public record. See Commission Rule 4.10(a). However, the FTC previously determined that it would not redact information in these materials that reveals the identity of the subject of a nonpublic investigation because such

redactions would "impair the public's ability to assess and understand these important rulings." 42 FR 64135 (1977).

In the FTC's experience, however, disclosing identifying information in clearance materials adds little to public understanding of clearance determinations. In addition, the Commission is unaware of any instance in which a member of the public has used clearance materials on the public record as a basis for furnishing information to the Commission about its clearance actions. Moreover, disclosing such identifying information may harm unjustifiably the subject's reputation and may make it less cooperative, thereby impairing the FTC's ability to conduct its investigations. Accordingly, the FTC is amending its current policy to provide for redaction of identifying information before clearance materials are placed on the public record.

Because the amendment relates solely to agency practice, it is not subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2), or the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2).

**List of Subjects in 16 CFR Part 4**

Administrative practice and procedure, Freedom of Information Act, Sunshine Act, and Privacy Act.

Accordingly, the Federal Trade Commission amends part 4 of title 16, chapter I, subchapter A of the Code of Federal Regulations, as follows:

**PART 4—MISCELLANEOUS RULES**

1. The authority for part 4 continues to read as follows:

**Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.1 is amended by revising paragraph (c) to read as follows:

**§ 4.1 Appearances.**

* * * * *

(c) *Public disclosure.* All applications requesting authorization to appear or participate in a proceeding or investigation, and the Commission's responses thereto, are part of the public records of the Commission, except for information exempt from disclosure under § 4.10(a) of this chapter. Information identifying the subject of a nonpublic Commission investigation will be redacted from all applications and responses before they are placed on the public record.

* * * * *

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–18210 Filed 7–29–93; 8:45 am]

BILLING CODE 6750–01–M

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

**[CGD 09–93–025]**

**Special Local Regulations: Great Lakes Annual Marine Events**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising its list of annual marine events which occur within the Ninth Coast Guard District. Publication of this list in part 100 of the Code of Federal Regulations establishes permanent special local regulations for marine events within the Ninth Coast Guard District which recur on an annual basis and which have been determined by the District Commander to require the issuance of special local regulations. This action is taken to ensure the safety of life and property during each event, while avoiding the necessity of publishing a separate temporary regulation each year for each event. The revised list reflects the approximate dates and locations of each annual marine event.

**DATES:** *Effective date:* These regulations become effective on July 1, 1993.

*Comment dates:* Comments must be received by September 13, 1993.

**ADDRESSES:** To be placed on the mailing list for notices concerning marine events, write to Commander (OAN), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060. Comments should be mailed to Commander (OAN) at the above address.

**FOR FURTHER INFORMATION CONTACT:** William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, Aids to Navigation and Waterways Management Branch, Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The applications to hold these annual events were not received by the Commander, Ninth Coast Guard District, until June, 1993, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Although this regulation is published as a final rule without prior notice, public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Those with comments should include their names and addresses, identify the docket number for the regulation, and give reasons for their comments. Based upon comments received, the regulations may be changed.

**Drafting Information**

The drafters of these regulations are William A. Thibodeau, Marine Science Technician Second Class, U.S. Coast Guard, project officer, Aids to Navigation and Waterways Management Branch and James M. Collin, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

This rulemaking updates an existing list of anticipated annual events. Each year various public and private organizations sponsor marine events on the navigable waters of the United States within the Ninth Coast Guard District. These events include slow moving boat parades, sailboat races, high speed hydroplane races, fireworks displays, and other water related events. The listed events are held in approximately the same location during the same general period of time each year. Exact times and dates will be published in the Local Notice to Mariners instead of being published in this final rule. The nature of each event is such that special local regulations are deemed necessary to ensure the safety of life, limb, and property on and adjacent to navigable waters during the events. Group Commanders have consulted and will continue to consult with parties potentially affected by any significant changes to the nature, date, time, and location proposed by an event sponsor for any of the events covered in this rule.

Table 1 gives the approximate dates, times, and locations for the annual events listed. Each year, one or more Local Notice to Mariners will be published giving the exact dates, times, and locations for the annual events. It

should be noted that Table 1 in the regulation is not a complete list of all marine events that will occur in the Ninth Coast Guard District. It does not include events which the District Commander has determined do not require establishment of regulations for the safety of life, limb, and property on or adjacent to navigable waters. It also does not include nonannual events or events which have not been scheduled in time for this publication.

These regulations are issued pursuant to 33 U.S.C. 1233 as set out in the authority citation for all of part 100.

**Federalism Implications**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of these regulations and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The impact of these regulations is expected to be minimal, and the Coast Guard therefore certifies that, if adopted, they will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

**Collection of Information**

These regulations will impose no collection information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**List of Subjects in 33 CFR Part 100**

Harbors, Marine safety, Navigation (water) Security measures, Vessels, Waterways.

**Final Regulations**

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.901 is amended by revising Table 1 to read as follows:

**§ 100.901 Great Lakes annual marine events.**

* * * * *

**Table 1**

*Group Buffalo, NY:*

East River Classic
Sponsor: WNY Offshore Powerboat Association
Date: Mid August
Location: Niagara River, from the South Grand Island Bridge to the south entrance of the Niagara River Yacht Club, near Tonawanda, NY

Flagship International Kilo Speed Challenge
Sponsor: Presque Isle Powerboat Racing Association
Date: Late June
Location: Lake Erie, Presque Isle Bay, near Erie, Pa

Flagship International Offshore Challenge
Sponsor: Presque Isle Powerboat Racing Association
Date: Late June
Location: Lake Erie, Presque Isle Bay, near Erie, Pa

Grand Island Offshore Challenge
Sponsor: Champion Offshore Boat Racing Association
Date: Early September
Location: Niagara River, Tonawanda Channel, near Tonawanda, NY

Miller Genuine Draft Offshore Challenge
Sponsor: Thunder Island and Champion Offshore Boat Racing Association
Date: Mid June
Location: Lake Ontario, between Oswego, NY and West Ninemile Point, NY, near Oswego, NY

New York State Hydroplane Championships
Sponsor: Niagara Inboard Boat Club
Date: Late July
Location: Niagara River, off Two Mile Creek, near Tonawanda, NY

Sodus Bay 4th of July Fireworks
Sponsor: Sodus Bay Historical Society
Date: Early July
Location: Lake Ontario, Sodus Bay, near Sodus Point, NY

*Group Detroit, MI:*

Bay City Fireworks Display
Sponsor: Bay City Fraternal Order of Police, Lodge 103
Date: Early July
Location: Saginaw River, between Veterans Memorial Bridge and the River Walk Pier, near Bay City, MI.

Bay Harbor Charity Classic
Sponsor: Harbor Yacht Sales
Date: Late August
Location: Saginaw Bay, mouth of the Saginaw River, near Saginaw, MI

Budweiser APBA Gold Cup Race
Sponsor: Spirit of Detroit Association
Date: Early June
Location: Detroit River, between Belle Isle and the U.S. shoreline, near Detroit, MI

Buick Watersports Weekend
Sponsor: Adore Ltd. and APBA
Date: Late July
Location: Saginaw River, between the Liberty and Veterans Memorial bridges, near Bay City, MI

Cleveland National Air Show
Sponsor: Cleveland National Air Show
Date: Labor Day Weekend
Location: Lake Erie and Cleveland Harbor, near Cleveland, OH

Cleveland Superboat Grand Prix
Sponsor: Ohio Superboat Grand Prix Inc.
Date: Mid August
Location: Lake Erie, Cleveland Harbor, near Cleveland, OH

Detroit Grand Prix
Sponsor: Detroit Renaissance Foundation
Date: Early June
Location: Detroit River, off Belle Isle, near Belle Isle, MI

Flatsfest
Sponsor: Flats Riverfest Corporation
Date: Late July
Location: Cuyahoga River, Conrail Railroad Bridge at Mile 0.8 above the mouth of the river to the Eagle Avenue Bridge, near Cleveland, OH

Huron Water Festival
Sponsor: Huron Festivals, Inc.
Date: Mid July
Location: Huron River, Huron Inner Light and the Huron Inner East Light to the U.S. Highway 6 bridge, near Huron, OH

International Bay City River Roar
Sponsor: Bay City River Roar, Inc.
Date: Late June
Location: Saginaw River, between the Liberty and Veterans Memorial bridges, near Bay City, MI

International Freedom Festival Fireworks
Sponsor: Detroit Renaissance Foundation
Date: Late June
Location: Detroit River, between Hart Plaza and Cobo Arena, near Detroit, MI

International Freedom Festival Tug Across the River
Sponsor: Detroit Renaissance Foundation
Date: Late June
Location: Detroit River, Hart Plaza to Windsor Riverfront, near Detroit, MI

Quake on the Lake
Sponsor: Lake St. Clair Offshore Racing Association
Date: Early August
Location: Lake St. Clair, between Point Huron and Masonic Boulevard, near St. Clair Shores, MI

Sandusky Bay Challenge
Sponsor: Great Lakes Offshore Powerboat Racing Association
Date: Late May
Location: Lake Erie, Sandusky Bay, near Sandusky, OH

Thunder on the River Hydroplane Race
Sponsor: Toledo Prop Spinners
Date: Late August
Location: Maumee River, between the Martin L. King and Anthony Wayne bridges, near Toledo, OH

Toledo 4th of July Fireworks
Sponsor: City of Toledo
Date: Early July
Location: Maumee River, between the Cherry and Anthony Wayne bridges, near Toledo, OH

Toledo International Grand Prix

Sponsor: City of Toledo, Toledo International Grand Prix and Greater Toledo Marketing Group
Date: Late May
Location: Maumee River, between the Cherry Street Bridge and the Anthony Wayne Bridge, near Toledo, OH

Toledo Labor Day Fireworks
Sponsor: Reams Broadcasting Corporation
Date: Early September
Location: Maumee River, between the Cherry and Anthony Wayne bridges, near Toledo, OH

*Group Sault Ste. Marie, MI:*

Bridgefest Regatta
Sponsor: Bridgefest Committee
Date: Mid June
Location: Keweenaw Waterway, near Houghton, MI

Duluth Fourth Fest Fireworks
Sponsor: Office of the Mayor, Duluth, MN
Date: Early July
Location: Duluth Harbor Basin Northern Section, near Duluth, MN

Festival USA Fireworks
Sponsor: Superior Area Chamber of Commerce
Date: Early July
Location: Duluth Superior Harbor, off Barker's Island, near Superior, WI

July 4th Fireworks
Sponsor: City of Sault Ste. Marie, MI
Date: Early July
Location: St. Marys River, Sault Ste. Marie Locks, near Brady Park, Sault Ste. Marie, MI

National Cherry Festival Blue Angels Air Demonstration
Sponsor: National Cherry Festival Inc.
Date: Early July
Location: Lake Michigan, Western Arm of Grand Traverse Bay, near Traverse City, MI

*Group Grand Haven, MI:*

Coast Guard Festival Fireworks
Sponsor: Grand Haven Coast Guard Festival, Inc,
Date: Early August
Location: Grand River, near Grand Haven, MI

Grand Haven Area Jaycees Annual 4th of July Fireworks Display
Sponsor: Grand Haven Area Jaycees
Date: Early July
Location: Grand River, near Grand Haven, MI

Offshore Challenge
Sponsor: Michigan Offshore Powerboat Racing Association
Date: Late June
Location: Lake Michigan, off South Haven, MI

Spirit of America Offshore Grand Prix
Sponsor: Grand Isle Marina
Date: Mid August
Location: Lake Michigan, off Grand Haven, MI

Tulip Time Fireworks and Water Ski Show
Sponsor: Holland Tulip Time Festival Inc.
Date: Early May
Location: Lake Michigan, Holland Harbor, near Holland, MI

Tulip Time Water Ski Show.
Sponsor: Holland Tulip Time Festival Inc.
Date: Mid May
Location: Lake Michigan, Holland Harbor, near Holland, MI

*Group Milwaukee, WI:*

Chicago Air and Water Show
Sponsor: Chicago Park District
Date: Mid August
Location: Lake Michigan, off North Avenue Beach, near Chicago, IL

Festa Italiana
Sponsor: The Italian Community Center
Date: Mid July
Location: Lake Michigan, Milwaukee Harbor, near Milwaukee, WI

Milwaukee Summerfest
Sponsor: Milwaukee World Festival, Inc.
Date: Late June through early July
Location: Lake Michigan, Milwaukee Harbor, near Milwaukee, WI

Racine on the Lakefront Airshow
Sponsor: Rotary Club of Racine
Date: Mid June
Location: Lake Michigan, Racine Harbor, near Racine, WI

Dated: July 1, 1993.

**Rudy K. Peschel,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 93–18247 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 110**

**[CGD 09–93–029]**

## Special Anchorage Area, Lake Ontario, Sodus Bay, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim final rule.

**SUMMARY:** The Coast Guard is establishing a special anchorage area in Sodus Bay, Lake Ontario, New York. Although the area had been previously disestablished, it has now become apparent that there is still a significant public need for this Special Anchorage Area. The intended effect of this interim rule and the modification of the original area is to reduce risk vessel collisions in Sodus Bay.

**DATES:** This regulation becomes effective on July 30, 1993. Comments must be received on or before September 13, 1993.

**ADDRESSES:** Comments and supporting materials should be mailed or delivered to Chief, Aids to Navigation Branch, room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060. Please reference the name of the proposal and the docket number in the heading above. If you wish receipt of your mailed comment to be acknowledged, please include a stamped self-addressed envelope or postcard for that purpose. Comments and materials received will be available for public inspection at the above location from 9 a.m. to 3 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Captain Roderick A. Schultz, U.S. Coast Guard, Chief, Aids to Navigation Branch, Ninth Coast Guard District, room 2083, 1240 East Ninth Street, Cleveland, Ohio, 44199–2060, (216) 522–3990.

**SUPPLEMENTARY INFORMATION:** On March 5, 1993, the Coast Guard published a final rule in the **Federal Register** (58 FR 12539, March 5, 1993) which disestablished the special anchorage area previously in effect at Sodus Bay, NY, and under 33 CFR 110.86. Although there had been no comments on the previous notice of proposed rulemaking for that action (57 FR 47431, October 16, 1992), there has been significant adverse public comment since the disestablishment of the anchorage area. Therefore, the Coast Guard has decided to reestablish the anchorage area, in modified form, by establishing an EASTERN and WESTERN Section with a 160 foot approach to the Sodus Bay Marina Pier. The Coast Guard is taking this action immediately without publication of a notice of proposed rulemaking because it appears to be manifestly in the public interest under 5 U.S.C. 553(b), and is making the final rule effective immediately, under 5 U.S.C. 553(d), because a special anchorage area is a regulatory action which merely grants an exemption from other legal requirements (the Inland Navigational Rules). However, because this is a final rule without prior notice, further public comment on this action is desirable, and is invited. Persons wishing to comment may do so by submitting written comments to the office listed under ADDRESSES in this preamble. Commenters should include their names and addresses, identify the docket number of the regulations, and give reasons for their comments. Based on comments received, the Coast Guard may further reconsider this action.

### Drafting Information

The drafters of this regulation are Captain Roderick A. Schultz, U.S. Coast Guard, Chief, Ninth Coast Guard District Aids to Navigation Branch, and Lieutenant Karen E. Lloyd, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

### Discussion of Proposed Regulations

A "special anchorage area" is an area on the water in which vessels less than 20 meters (approximately 65 feet, 7.4 inches) in length are allowed to anchor without displaying the navigation lights which are otherwise required for

anchored vessels under Rule 30 of the Inland Navigations Rules, codified at 33 U.S.C. 2030. When the Coast Guard recently disestablished the anchorage area previously established at Sodus Bay, NY, there were two reasons for doing so. First, it appeared that use of the area had changed, and there was less need for a special anchorage area because of newly constructed piers. Also, it appeared that there was greater danger of collision with unlighted vessels because of increased congestion and background lighting in the area. Since the disestablishment of the area, it has become clear from the adverse public comment received that the first rationale was incorrect. In fact, it is now apparent that there is still a significant public need for this special anchorage area. The Coast Guard remains concerned about the increased congestion and background lighting in the area. For that reason, the configuration of the area being reestablished is being modified to lessen that danger.

**Federalism Implications**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. These regulations do not impose any new regulatory requirements in an area not heretofore regulated by the Federal Government, and do not impose any requirements or restrictions on State or local authorities.

**Environment**

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, they are categorically excluded from further environmental documentation.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034 of February 26, 1979). The impact of these regulations is expected to be minimal, and the Coast Guard therefore certifies that, if adopted, they will have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

**Collection of Information**

These regulations will impose no collection of information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds, Navigation (water).

**Final Regulations**

In consideration of the foregoing, the Coast Guard amends part 110 to of title 33, Code of Federal Regulations, as follows:

**PART 110—[Amended]**

1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In part 110, a new § 110.86 is added to read as follows:

**§ 110.86 Sodus Bay, NY.**

The water area in Sodus Bay, New York, south of Sand Point, two separate sections, enclosed by:

(a) Eastern Section, beginning at a point on the shoreline at:

| *Latitude* | *Longitude* |
|---|---|
| 43°15'58.1" N ..... | 076°58'34.0" W, to |
| 43°15'51.9" N ..... | 076°58'33.5" W, to |
| 43°15'53.5" N ..... | 076°58'47.5" W, to |
| 43°16'01.8" N ..... | 076°58'43.0" W, |

thence along the natural shoreline and structures to:

| | |
|---|---|
| 43°15'58.1" N ..... | 076°58'34.0" W. |

(b) Western Section, beginning at a point on the shoreline at:

| *Latitude* | *Longitude* |
|---|---|
| 43°16'02.5" N ..... | 076°58'45.0" W, to |
| 43°15'54.0" N ..... | 076°58'50.0" W, to |
| 43°15'54.8" N ..... | 076°59'00.1" W, to |
| 43°16'07.0" N ..... | 076°59'47.0" W, |

thence along the natural shoreline and structures to:

| | |
|---|---|
| 43°16'02.5" N ..... | 076°58'45.0" W. |

Dated: July 21, 1993.

**Rudy K. Peschel,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 93–18242 Filed 7–29–93; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR Part 165**

**[COPT St. Louis Regulation 93–009]**

**RIN 2115–AA97**

**Safety Zone Regulations; Upper Mississippi River Basin**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two safety zones on the Mississippi River. These regulations are needed to control vessel traffic in the regulated areas to prevent further wake damage to levees and property along the river. The regulations will restrict general navigation in the regulated areas for the safety of vessel traffic and the protection of life and property along the river.

**EFFECTIVE DATES:** These regulations are effective on July 20, 1993 and will terminate on August 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** LTJG Paul Barragan, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of these regulations are LTJG Paul Barragan, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

**Regulatory History**

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent rainfall in the Upper Mississippi drainage area has caused unanticipated flood conditions on the Mississippi River leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue regulations without waiting for a comment period since the flood conditions are presenting immediate hazards.

**Background and Purpose**

The Upper Mississippi River and its tributaries have been suffering from high water conditions for more than 140 days. This has contributed to unusually wet conditions along the river with the resultant softening of the earth levees which protect the adjacent lowlands. The recent rainfall over the midwest

pushed the rivers above the flood stage, setting records for high water. As a result, the waters of the Mississippi River have overflowed its banks and some levees in the area have failed. The Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if they are subjected to wakes from passing vessels.

The present flood conditions also present a hazard to navigation in that the area's rivers are filled with a mass of trees and other debris which have been washed from the river banks and inundated lowlands, once visible obstructions to navigation are now submerged, river currents are not following normal patterns, and insufficient clearances exist for vessels to pass under certain bridges. Taken as a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic.

The Mississippi River crested on Sunday, July 18, 1993 at 46.9 feet, establishing a record. The Army Corps of Engineers anticipates that it may take another four to six weeks for the waters to recede to normal levels.

With the addition of these regulations to those which have already been issued by the Captain of the Port, St. Louis and by the Captain of the Port, Pacucah, the Upper Mississippi River is closed from mile 0.0 UMR to mile 636.0 UMR.

**Regulatory Evaluation**

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor river conditions and will terminate the safety zones for specific areas as river conditions allow.

**Federalism Assessment**

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occuring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Temporary Regulation**

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–60 is added, to read as follows:

**§ 165.T02–60 Safety zone: Upper Mississippi River Basin.**

(a) *Location.* The Mississippi River between mile 55.3 and 179 and between mile 181.5 and 200.8 are established as safety zones.

(b) *Effective Dates.* This section becomes effective on July 20, 1993 and will terminate on August 15, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply.

(d) The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covers by these safety zones by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: July 20, 1993.

**Scott P. Cooper,**

*Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.*

[FR Doc. 93–18246 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 165**

**[CGD01 93–093]**

**Safety Zone; Hartford, CT Triathlon, Connecticut River**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in the Connecticut River at Riverside Park, Hartford, CT on August 8, 1993. This safety zone is needed to protect participating athletes and the maritime community from possible hazards associated with approximately 1500 athletes competing in the swimming portion of the Hartford Triathlon. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

**EFFECTIVE DATE:** This regulation is effective from 7:15 a.m. through 9:30 a.m. on August 8, 1993 unless terminated sooner by the Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander T. V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are LCDR T. V. Skuby, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

**Regulatory History**

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Due to the date the application was received, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date. This event is being held on behalf of Riverfront Recapture, Inc. It is a nonprofit organization working to regain public access for Greater Hartford on the Connecticut River through recreational vessel activities, festivals and other community activities. The City of Hartford is actively promoting this event and has already taken regulatory action in support of it. Publishing a NPRM and delaying the date of the event would be contrary to the public interest since immediate action is needed to respond to any potential hazards and to support the efforts taken by the City of Hartford

government which is supporting this event.

**Background and Purpose**

On July 8, 1993, the sponsor, CAT Sports, Inc., Carlsbad, CA requested that a two hour safety zone be established on the Connecticut River at Riverside Park, Hartford, CT. This request is to protect athletes during the swimming portion of the Hartford Triathlon. The Hartford Triathlon is a major athletic event with over 1500 competing athletes from 30 states. It is being held on behalf of Riverfront Recapture, Inc. The City of Hartford is supporting this event and has taken regulatory action to close recreational boating ramps in the area. This Coast Guard regulatory action supports their efforts to promote the safety of the maritime community and the participating athletes during this event.

The Coast Guard is establishing a safety zone from 7:15 a.m. to 9:30 a.m. on August 8, 1993 for this event. This zone is required to protect the maritime community and the participating athletes from the dangers and potential hazards to navigation associated with approximately 1500 athletes competing in the swimming portion of the Hartford Triathlon. With 1500 athletes swimming competitively in the confined waters of the Connecticut River, any boating traffic not associated with the event, either recreational or commercial, would create a major risk of injury. The zone covers all waters of the Connecticut River between the Bulkeley Memorial US 44 Bridge (river mile 52.0) and the Hartford-E Hartford Conrail Bridge (river mile 52.7). There is no commercial traffic north of the Bulkeley Memorial Bridge. The City of Hartford will be closing the small boat launching ramp in Riverside Park during the event. An alternative launching ramp is available at Great River Park in East Hartford.

**Regulatory Evaluation**

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately 120 minutes. The short duration of this event will be a minimal inconvenience for recreational boaters. There are ample alternate areas for recreational boaters to use during this safety zone. The area affected by this event receives no commercial traffic. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

**Federalism**

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they are an action to protect public safety and they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Final Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—[Amended]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–93 is added to read as follows:

**§ 165.T01–93 Safety zone; Hartford, CT Triathlon, Connecticut River.**

(a) *Location.* The following area has been declared a safety zone: All waters of the Connecticut River between the Bulkeley Memorial US 44 Bridge (river mile 52.0) and the Harford-E Hartford Conrail Bridge (river mile 52.7).

(b) *Effective date.* This regulation is effective from 7:15 a.m. through 9:30 a.m. on August 8, 1993 unless terminated sooner by the Captain of the Port.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: July 22, 1993.

**Phillip J. Heyl,**

*Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 93–18243 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–14–M

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**33 CFR Part 165**

**[CGD01 93–085]**

## Safety Zone; Fireworks Display, Westhampton Beach, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in Moneybogue Bay at Westhampton Beach, NY on August 20, 1993. This safety zone is needed to protect the maritime community from possible navigation hazards associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

**EFFECTIVE DATE:** This regulation is effective from 8:45 p.m. through 9:20 p.m. on August 20, 1993 unless terminated sooner by the Captain of the Port. The rain date for this event is August 28, 1993 at the same times.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander T.V. Skuby, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4464.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this notice are LCDR T.V. Skuby, project officer for Captain of the Port, Long Island Sound, and LCDR J. Stieb, project attorney, First Coast Guard District Legal Office.

**Regulatory History**

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not

published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. The Coast Guard did not receive from the sponsor the final details concerning the event's exact location and position, which are essential information for the purposes of establishing a safety zone, until July 13, 1993. Publishing a NPRM and delaying the date of the event would be contrary to the public interest since the fireworks display is for the benefit of the public and immediate action is needed to respond to any potential hazards.

**Background and Purpose**

On June 21, 1993, the sponsor, Ronald Feldstein, Westhampton Beach, NY requested that a 35 minute fireworks display, launched from a floating platform, be permitted in the port of Westhampton Beach, in the vicinity of Moneybogue Bay, Westhampton Beach, NY. This zone is required to protect the maritime community from the dangers associated with this fireworks display. The zone covers all waters of Moneybogue Bay within a 1200 foot radius of the Chesterfield Associates fireworks barge.

**Regulatory Evaluation**

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The event will last approximately 35 minutes. The area affected by this event receives infrequent commercial traffic. Because of the short duration of the event and the extensive advisories which will be made, commercial entities will be able to adjust to any disruptions. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, they are an action to protect public safety and they are categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Final Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary § 165.T01–85 is added to read as follows:

**§ 165.T01–85 Safety zone; fireworks display, Westhampton Beach, NY.**

(a) *Location.* The following area has been declared a safety zone: All waters of Moneybogue Bay within a 1200 foot radius of the Chesterfield Associates Barge, the fireworks launching platform, which will be located approximately in the center of Moneybogue Bay in approximate position 40°48′05″ N., 072°38′20″ W.

(b) *Effective date.* This regulation is effective from 8:45 p.m. through 9:20 p.m. on August 20, 1993 unless terminated sooner by the Captain of the Port. The rain date for this project is August 28, 1993 at the same times.

(c) *Regulations.* The general regulations covering safety zones contained in § 165.23 of this part apply.

Dated: July 21, 1993.

**Phillip J. Hoyl,**

*Commander, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 93–18244 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 165**

**[CGD01–93–063]**

## Safety Zone; Mount Hope Bay, RI

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary safety zones in Mount Hope Bay in the vicinity of Fall River, MA, for activities associated with Fall River Celebrates America 1993. Safety zones will be established for two events during the weekend, for the tall ships parade on Friday, August 13, 1993, and for the fireworks display the evening of August 14, 1993. These safety zones are needed to promote the safe navigation of vessels in Mount Hope Bay in anticipation of an increased volume of traffic due to spectator craft attending the events.

**EFFECTIVE DATE:** The safety zone for the tall ships parade will be in effect between the hours of 5:30 and 6:30 p.m. on August 13, 1993, or until each parade vessel is safety moored. The safety zone for the fireworks display will be in effect between the hours of 8:30 p.m. and 10 p.m. on August 14, 1993.

**FOR FURTHER INFORMATION CONTACT:** LT T. Burke of Marine Safety Field Office New Bedford at (508) 999–0072.

**SUPPLEMENTARY INFORMATION:**

**Drafting Information**

The drafters of this regulation are Lieutenant Tina Burke, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander Stieb, Project Counsel for the First Coast Guard District Legal Office.

**Regulatory History**

As authorized by 5 U.S.C. 533, a NPRM was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying the events would be contrary to the public interest since the tall ships parade and the fireworks display are important events during the Fall River Celebrates America festival.

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**Background and Purpose**

Fall River Celebrates America is a festival held annually in Fall River, MA, which entails several events through the entire weekend. This year's celebration will be held August 13–14, 1993. The regulated events include a parade of tall ships through Mount Hope Bay to the Fall River State Pier and a fireworks display in Mount Hope Bay. The celebration is an important event for the town of Fall River as its draws numerous people to the area for the weekend, increasing tourism and economically benefiting the town.

The Coast Guard is establishing temporary safety zone regulations in Mount Hope Bay for the period August 13–14, 1993. These safety zones are necessary to control vessel movements during the various events in order to ensure the safety of event participants, spectator craft, and other vessels transiting the waterway. They are necessary in light of the limited size of the affected waterway and the expected number of spectator craft (more than 200 for each event), which will greatly increase the congestion in the waterway and create a larger potential for marine accidents.

**Regulated Events**

*1. Tall Ships Parade, August 13, 1993*

The parade of tall ships provides the kickoff for the Fall River Celebrates America festival. The parade is significant because it allows the public to view the tall ships under sail before they moor in Fall River for the weekend. Approximately nine tall ships are expected to participate in the parade. These ships will muster just north of the Mount Hope Bridge and will transit the Mount Hope Bay Channel, from the Mount Hope Bay Junction Lighted Gong Buoy "MH" (light list number 18790) to the Fall River State Pier. The parade is scheduled to take place between 5:30 p.m. and 6:30 p.m. The Coast Guard is establishing a moving safety zone, from 200 yards ahead of the lead vessel in the parade, to 100 yards astern of the last vessels in the parade, and 200 yards abeam of each parading vessel. This safety zone will be in effect for the duration of the parade until each parade vessel is safely moored. This zone is needed to protect recreational boaters from the hazards which are present when tall ships maneuver in restricted waters.

Implementation of this zone will close the main shipping channel of Mount Hope Bay to navigation by deep draft vessels while the zone is in effect. Entry into the moving safety zone is prohibited unless authorized by the Captain of the Port (COTP) Providence.

*2. Fireworks, August 14, 1993*

On the evening of August 14, 1993, Fall River Celebrates America will be sponsoring a fireworks display in Mount Hope Bay, in the vicinity of Mount Hope Bay Channel Buoy 17. The fireworks barge will be anchored in approximate position 41°42'42" N, 71°09'52" W. The fireworks are scheduled to take place between 9:15 and 10 p.m. The Coast Guard will establish a safety zone between 8:30 p.m. and 10 p.m., in Mount Hope Bay to encompass the area of water within a three hundred (300) yard radius around the fireworks barge. This safety zone is needed to protect fireworks barges and attending tugs, spectator craft, and other vessels or personnel in the area, from the hazards associated with explosive-laden barges and the display itself. Implementation of this zone will close the main shipping channel of the Mount Hope Bay Channel to navigation by deep draft vessels while the zone is in effect.

**Regulatory Evaluation**

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact of this proposal to be minimal because these regulations will be in effect only for small segments of a two day period, specifically for one hour on August 13, 1993, and for one hour and a half on August 14, 1993. The fact that the time periods for the safety zones are limited, as well as the advance notice given to pilots, vessel agents, and waterfront facilities in the area, will allow vessel traffic to schedule transits around the planned activities with minimal hardship. The entities most likely to be affected are large commercial ships and barges in or outbound from Fall River terminals, fishing vessels, and recreational vessels. Only a limited number of large commercial vessels, approximately four or five, transit the impacted waters per week. Because of their limited number and the advance notice given, these vessels will not be heavily impacted. Fishing and recreational vessels have shallow drafts such that they are able to transit the waters around the regulated areas. These vessels have alternate routes available outside the main shipping channel and outside the safety zones in which they may transit or conduct operations. Furthermore, in the case of the tall ships parade safety zone, vessels will be able to transit the area as soon as the moving zone passes.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

**Federalism**

The Coast Guard has analyzed this final rule in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this is an action under Coast Guard statutory authority to protect safety and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be made available in the docket.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Final Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 USC 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5, 49 CFR 1.46.

2. A temporary § 165.T01–63 is added to read as follows:

**§ 165.T01–63 Safety zone: Mount Hope Bay, RI.**

(a) *Location.*

(1) Tall ship safety zone: While transiting Mount Hope Bay, RI, a moving safety zone around the Fall River Celebrates America tall ships parade, extending a distance of two hundred (200) yards ahead of the lead vessel in the parade to one hundred (100) yards astern of the last vessel in the parade, and two hundred (200) yards abeam of each parading vessel. The zone of enforcement will be initiated at Mount Hope Bay Junction Lighted Gong Buoy MH (LL 18790), the start of the parade, and will end at the State Pier, Fall River, MA, after each parading vessel is safely moored.

(2) Fire works safety zone: The area within a three hundred (300) yard radius around the fireworks barge, anchored in approximate positions 41°42′42″ N, 71°09′52″ W, in the vicinity of Mount Hope Bay Channel Buoy 17.

(b) *Effective date.*

(1) Tall ship safety zone: This regulation is effective at 5:30 p.m. on August 13, 1993, and terminates at 6:30 p.m. on August 13, 1992, or when each parade vessel is safely moored.

(2) Fireworks safety zone: This regulation is effective while the Fall River Celebrates America fireworks are in progress, between the hours of 8:30 p.m. and 10 p.m. on August 14, 1993, unless terminated sooner by the Captain of the Port Providence.

(c) *Regulations.* The general regulations governing safety zones contained in 165.23 apply.

Dated: July 16, 1993.

**H. D. Robinson,**

*Captain, U.S. Coast Guard, Captain of the Port.*

[FR Doc. 93–18245 Filed 7–29–93; 8:45 am]

BILLING CODE 4910–14–M

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Parts 2 and 14**

**RIN 2900–AG57**

**Delegations of Authority; Federal Tort Claims**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final Regulation.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its regulations to delegate to the VA General Counsel and designees the authority to adjust, determine, compromise, and settle a claim under the Federal Tort Claims Act where the amount of settlement does not exceed $200,000. This authority was granted to the Secretary pursuant to 38 U.S.C. 515, 28 U.S.C. 2672, and 28 CFR appendix to part 14. The previous authority was limited to $25,000 by 28 U.S.C. 2672 and subsequently increased to $100,000 by 28 CFR appendix to part 14. This amendment will facilitate processing of claims under the Federal Tort Claims Act in a more timely manner.

**EFFECTIVE DATE:** July 22, 1993.

**FOR FURTHER INFORMATION CONTACT:** E. Douglas Bradshaw, Jr., Deputy Assistant General Counsel (021B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC (202) 523–3207.

**SUPPLEMENTARY INFORMATION:** Section 203 of the Veterans Benefits and Services Act of 1988 (Pub. L. 100–322) added section 515 to title 38, United States Code, permitting the Secretary to settle tort claims not exceeding an amount to be delegated by the Attorney General, with the delegation not to exceed the maximum delegated to the United States Attorneys. A similar provision was added to 28 U.S.C. 2672 by the Administrative Dispute Resolution Act, Public Law 101–552. In 1988, the Attorney General delegated $100,000 in settlement authority to the Secretary. The Attorney General has now delegated to the Secretary an increase in settlement authority to an amount not to exceed $200,000.

This amendment to 38 CFR 2.6(e)(1) delegates to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), or those authorized to act for them, authority to consider, ascertain, adjust, determine, compromise, and settle a claim arising under the Federal Tort Claims Act; provided that any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the Attorney General or his designee. The amendment also provides for the execution of a memorandum explaining the basis for settlement of a claim in excess of $100,000 to be sent to the Department of Justice, as required by the Attorney General's delegation to the Secretary. Authority is also delegated to the District Counsels or those authorized to act for them and the Deputy Assistant General Counsel (Professional Staff Group I) to consider, ascertain, adjust, determine, compromise, and settle any claim under the Federal Tort Claims Act; provided that any award, compromise, or settlement does not exceed $100,000; and provided, further, that whenever a settlement is effected in an amount in excess of $50,000, a memorandum fully explaining the basis for the action taken shall be sent to the Assistant General Counsel (Professional Staff Group I).

Conforming amendments are made to 38 CFR 14.602(a), 14.602(a)(4), and 14.602(b)(2).

Under 38 CFR 1.12 and 5 U.S.C. 553(d)(3), prior publication of these delegations of authority for public comment is unnecessary since they concern only internal VA management. Because a prior notice of proposed rulemaking is not required and will not be published, these changes do not come within the term "rule" as defined in and made subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 602(2).

In any case, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in that Act. No regulatory or administrative burdens are imposed upon small entities. Also, since these amendments are related solely to internal agency management, they do not come within the term "rule" as defined in section 1(a)(3) of Executive Order 12291, entitled Federal Regulation; consequently, they are not subject to requirements of that order.

There are no Catalog of Federal Domestic Assistance numbers associated with these amendments.

**List of Subjects in 38 CFR, Parts 2 and 14**

Administrative practice and procedure, Claims, Government employees, Lawyers, Legal services, Organization and functions.

Approved: July 22, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR parts 2 and 14 are amended as set forth below:

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**PART 2—DELEGATIONS OF AUTHORITY**

1. The authority citation for part 2 continues to read as follows:

**Authority:** 72 Stat. 1114; 38 U.S.C. 501, unless otherwise noted.

2. In § 2.6, paragraph (e)(1) is revised to read as follows:

**§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).**

* * * * *

(e) *General Counsel.* (1) Under the Federal Tort Claims Act, pursuant to the provisions of 28 U.S.C. 2672; Pub. L. 100–322; 38 U.S.C. 515, and the delegation of authority from the Attorney General in 28 CFR appendix to part 14:

(i) Authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, or those authorized to act for them, to consider, ascertain, adjust, determine, compromise, and settle any claim accruing on and after January 18, 1967, and asserted under the Federal Tort Claims Act, as amended by Pub. L. 89–506 (80 Stat. 306), and to execute an appropriate voucher and other necessary instruments in connection therewith; provided that any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the Attorney General or his designee; provided, further, that whenever a settlement is effected in an amount in excess of $100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(ii) Authority is delegated to the District Counsels or those authorized to act for them and the Deputy Assistant General Counsel (Professional Staff Group I) to consider, ascertain, adjust, determine, compromise, and settle any claim under the Federal Tort Claims Act and to execute an appropriate voucher and other necessary instruments in connection therewith; provided that any award, compromise, or settlement does not exceed $100,000; provided, further, that whenever a settlement is effected by a District Counsel in an amount in excess of $50,000 a memorandum fully explaining the basis for the action taken shall be sent to the Assistant General Counsel (Professional Staff Group I).

* * * * *

**PART 14—LEGAL SERVICES, GENERAL COUNSEL**

3. The authority citation for part 14 continues to read as follows:

**Authority:** 38 U.S.C. 501(a), 5502, 5902–5905, unless otherwise noted.

4. In § 14.602, paragraph (a) introductory text, (a)(4), and (b)(2) are revised to read as follows:

**§ 14.602 Scope and authority to consider claims.**

(a) The Secretary and those delegated such authority in § 2.6(e) of this chapter are authorized to consider, ascertain, adjust, determine, compromise, and settle claims for money damages against the United States in accordance with regulations prescribed by the Attorney General (38 CFR 14.1 et seq.). Any award, compromise, or settlement exceeding $200,000 shall be effected only with the prior written approval of the Attorney General or designee. In addition, a claim may be compromised or settled only after consultation with the Department of Justice when:

(Authority: 38 U.S.C. 515; 28 CFR appendix to part 14)

* * * * *

(4) For any reason, the compromise of a particular claim, as a practical matter, will, or may, control the disposition of a related claim in which the amount to be paid may exceed $200,000; or

(Authority: 38 U.S.C. 515; 28 CFR appendix to part 14)

* * * * *

(b) * * *

(2) Where full development of a claim indicates that liability exists and the potential settlement value exceeds $100,000, the District Counsel who received the claim will submit the case to the General Counsel for consideration. Whenever a settlement is effected in an amount in excess of $50,000 a memorandum fully explaining the basis for the action taken shall be sent to the Assistant General Counsel (Professional Staff Group I).

(Authority: 38 U.S.C. 515; 28 CFR appendix to part 14)

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[FR Doc. 93–18166 Filed 7–29–93; 8:45 am]
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 72, 73, and 75**

**[FRL–4656–9]**

**Acid Rain Program: Permits, Allowance System, and Continuous Emission Monitoring; Corrections**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** The Acid Rain Program was established under Title IV of the Clean Air Act, as amended on November 15, 1990. In order to implement this statutory mandate, EPA codified the Acid Rain Program in five (of seven total) regulations including: Permits, Allowance System, Continuous Emissions Monitoring, Excess Emissions Penalties, and Administrative Appeals. This action contains corrections to the Permits, Allowance System, and Continuous Emission Monitoring final regulations (FRL–4666–9) that were published on Monday, January 11, 1993 (58 FR 3590).

**DATES:** These corrections become effective on July 30, 1993. The revised incorporation by reference of certain publications listed in the regulations was approved by the Director of the Federal Register as of February 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Brian McLean, Director, Acid Rain Division (6204J) US Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, 202–233–9150.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The final regulations that are the subject of this action correct portions of 40 CFR Parts 72, 73, and 75 effective on July 30, 1993. 40 CFR parts 72, 73, and 75 were added to the CFR pursuant to Title IV of the Clean Air Act, 42 USC 7401, *et seq.*, as amended by Public Law 101–549 (November 15, 1990).

**II. Need For Correction**

During the process of implementing the Acid Rain Program, many individuals and organizations requested clarification on various aspects of the Acid Rain Core Rules. Representatives from industry, state and local governments, environmental groups, and the general public requested clarification of typographical errors, unclear wording, incorrect citations, and conflicting requirements in different locations of the regulations. Today's action resolves these requests for clarification.

**III. Correction of Publication**

Accordingly, the publication on January 11, 1993, of the Final Regulations [FRL–4543–5], which were the subject of FR Doc. 93–1, is corrected as follows:

**PART 72—[CORRECTED]**

**§ 72.2 [Corrected]**

1. On page 3652, in the third column, § 72.2, paragraph (2) of the definition of

*Calibration gas*, "A NIST/EPA-approved certified reference material" is corrected to read "A NIST Traceable Reference Material (NTRM)".

**§ 72.2 [Corrected]**

2. On page 3653, in the first column, § 72.2, in the last line of paragraph (2) under the definition of *Coal fired*, "PRIMEFUEL" is corrected to read "PRIMFUEL".

**§ 72.2 [Corrected]**

3. On page 3656, in the first column, § 72.2, in the last line of the definition of *Maximum potential $NO_x$ emission rate*, "part 77" is corrected to read "part 75".

**§ 72.2 [Corrected]**

4. On page 3657, in the third column, § 72.2, the last line of the definition of *Protocol 1 gas*, "of this chapter)", is corrected to read "of this chapter) or such revised procedure as approved by the Administrator".

**§ 72.8 [Corrected]**

1. On page 3661, in the second column, § 72.8(c)(2)(ii), line 3, the word "proposed" is corrected to read "draft".

**§ 72.41 [Corrected]**

1. On page 3669, in the first column, § 72.41(e)(3)(iii), line 2, the reference "(e)(2)(ii)" is corrected to read "(e)(3)(ii)".

**§ 72.41 Corrected**

2. On page 3669, in the first column, § 72.41(e)(3)(iii), line 6, the reference "(e)(2)(ii)(B)" is corrected to read "(e)(3)(ii)(B)".

**§ 72.41 [Corrected]**

3. On page 3669, in the second column, § 72.41(e)(3)(iv), line 6, the reference (e)(2)(ii) is corrected to read "(e)(3)(ii)".

**§ 72.74 [Corrected]**

1. On page 3680, in the first column, § 72.74(b)(1)(iii), line 8, the phrase "governs a under" is corrected to read "governs a unit under".

**§ 72.91 [Corrected]**

1. On page 3682, in the first column, § 72.91(a) introductory text, line 3, "Adjusted utilization-baseline" is corrected to read "Adjusted utilization = baseline".

**§ 72.91 [Corrected]**

2. On page 3682, in the third column, § 72.91(a)(3)(iii), line 12, "Shift to sulfur-free generator-actual" is corrected to read "Shift to sulfur-free generator = actual".

**§ 72.92 [Corrected]**

1. On page 3685, in the second column, § 72.92(c)(2)(v)(C), line 2, "weighted average rate" is corrected to read "weighted average emissions rate".

**PART 73—[CORRECTED]**

**§ 73.10 [Corrected]**

1. On pages 3687 through 3691, the header for Table 1 of § 73.10 (a) is corrected to read "Table 1—Phase I Allowance Allocations".

**§ 73.101 [Corrected]**

2. On page 3688, in Table 1 of § 73.10 (a), under "Illinois" for "Kincaid" boiler 1, the value in Column A is corrected to read "34564".

**§ 73.30 [Corrected]**

1. On page 3691, in the third column, § 73.30(a), line 6 is corrected by replacing the word "reordered" with the word "recorded".

**§ 73.31 [Corrected]**

1. On page 3691, third column, § 73.31(c)(1) introductory text, in line 8, is corrected by removing the word "General".

**§ 73.32 [Corrected]**

1. On page 3692, second column, § 73.32(a)(1), line 3, the citation "§ 72.25(a)(3)" is corrected to read "§ 72.24(a)(3)".

**§ 73.72 [Corrected]**

1. On page 3695, third column, under "Subpart E—[Amended]," line 1, correct amendatory instruction 4 to read as follows: "4. Paragraph (c) of § 73.72 is revised to read as follows:

**§ 73.80 [Corrected]**

1. On page 3695, second column, § 73.80(b), line 6, the year is corrected to read "1992".

**§ 73.81 [Corrected]**

1. On page 3695, third column, § 73.81(b)(4), line 1, the language "Loan management" is corrected to read "Load management".

**§ 73.82 [Corrected]**

1. On page 3696, first column, the section heading for § 73.82 is corrected to read "Application for allowances from reserve program.".

**PART 75—[CORRECTED]**

**§ 75.1 [Corrected]**

1. On page 3702, first column, § 75.1(b), the first subparagraph is designated as paragraph (b)(1) and the second subparagraph is designated as paragraph (b)(2). In paragraph (b)(2), last line, the reference "appendix C" is corrected to read "appendix G".

**§ 75.5 [Corrected]**

1. On page 3703, first column, in § 75.5(b), line 5, the reference "appendices A through G" is corrected to read "appendices A through I".

**§ 75.6 [Corrected]**

1. On page 3703, second column, § 75.6(a)(4), line 3, is corrected by removing the words "incorporation by reference".

**§ 75.7 [Corrected]**

1. On page 3704, first column, § 75.7, line 4, is corrected by replacing the words "reference monitor variance" with the words "reference method variance".

**§ 75.11 [Corrected]**

1. On page 3705, second column, § 75.11(c), introductory text, line 7, is corrected by adding a comma between the words "unit" and "or", and by adding the word "where" between the words "or" and "installation".

**§ 75.15 [Corrected]**

1. On page 3706, third column, § 75.15(a), introductory text, lines 9 and 10, "$SO_x$-diluent continuous emission monitoring" is corrected to read "$SO_2$-diluent continuous emission monitoring system".

**§ 75.15 [Corrected]**

2. On page 3706, third column, § 75.15(a), introductory text, lines 13 and 14 from the bottom of the paragraph, "December 31, 1991" is corrected to read "December 31, 1999".

**§ 75.15 [Corrected]**

3. On page 3707, first column, § 75.15 (a)(2), line 8, is corrected by replacing the reference "appendix F to this part" with the reference "section 5.5.3 of appendix F of this part".

**§ 75.15 [Corrected]**

4. On page 3707, third column, § 75.15(b)(1), in Equations 5 and 7, the references "Appendix G, Section 2.5.4 of this part" is corrected to read "Appendix F, section 5.5.3, of this part".

**§ 75.16 [Corrected]**

1. On page 3709, first column, § 75.16(e), line 6 from the bottom of the paragraph, is corrected by replacing the word "or" with the word "and" between the phrases "$SO_2$ mass emissions" and "emissions".

**§ 75.17 [Corrected]**

1. On page 3709, second column, § 75.17, the paragraph designation

(a)(2)(iii)(a) is corrected to read (a)(2)(iii)(A).

**§ 75.17 [Corrected]**

2. On page 3709, second column, § 75.17(a)(2)(iii)(B), line 9, is corrected by adding the words "the combined" before the phrase "$NO_x$ emission rate".

**§ 75.17 [Corrected]**

3. On page 3709, second column, § 75.17(b)(2), line 9, is corrected by adding the words "the combined" before the phrase "$NO_x$ emission rate".

**§ 75.20 [Corrected]**

1. On page 3711, second column, § 75.20(b)(3), line 9, is corrected by adding the words "except that" after the comma which immediately follows the word "section".

**§ 75.20 [Corrected]**

2. On page 3711, second column, § 75.20(c), introductory text, lines 9 and 22, are corrected by adding the word "thereof" after the word "components".

**§ 75.20 [Corrected]**

3. On page 3711, third column, § 75.20(c)(5), paragraph (c)(5)(iv) is correctly added after paragraph (c)(5)(iii) to read as follows:

* * * * *

(c) * * *

(5) * * *

(iv) A cycle time/response time test.

**§ 75.20 [Corrected]**

4. On page 3712, first column, § 75.20(c)(9)(i), introductory text, last line, is corrected by replacing the word "including" with the words "such that".

**§ 75.20 [Corrected]**

5. On page 3712, first column, § 75.20(c)(9)(i)(B), line 2, is corrected by adding the words "is available" between the word "tests" and the following comma.

**§ 75.20 [Corrected]**

6. On page 3712, first column, § 75.20(d), lines 10 and 11, the reference to "paragraphs (a) and (c) of this section" is corrected to read "paragraphs (a), (b) and (c) of this section".

**§ 75.31 [Corrected]**

1. On page 3714, second and third columns, § 75.31(b)(2), line 6, and § 75.31(c)(3), line 9, are corrected by adding the phrase "of this part" after the reference "appendix A".

**§ 75.31 [Corrected]**

2. On page 3714, second column, § 75.31(c)(2), lines 3 and 4, is corrected by replacing the phrase "owner and operator" with the phrase "owner or operator".

**§ 75.31 [Corrected]**

3. On page 3714, third column, § 75.31(c)(3), line 3, is corrected by replacing the words "any load range," with the words "the corresponding load range, or any higher load range,".

**§ 75.31 [Corrected]**

4. On page 3714, third column, § 75.31(c)(3), line 8, the reference to ":section 2.1 of" is corrected to read "§ 72.2 of this chapter and section 2.1 of".

**§ 75.32 [Corrected]**

1. On page 3714, second and third column, § 75.32(b) is corrected to read:

* * * * *

(b) The monitor data availability need not be recorded during the missing data period. The owner or operator shall record the percent monitor data availability at the end of each missing data period, (and thereafter continue to record monitor data availability hourly, pursuant to § 75.50).

**§ 75.34 [Corrected]**

1. On page 3716, third column, § 75.34(b)(1), lines 1 and 2 are corrected by replacing the phrase "monitoring data availability" with the phrase "monitor data availability".

**§ 75.41 [Corrected]**

1. On page 3717, third column, § 75.41(a)(9)(i), line 5, is corrected by adding the phrase "(or reference method)" after the words "continuous emission monitoring system".

**§ 75.41 [Corrected]**

2. On page 3717, in the third column, § 75.41(a)(9)(ii), lines 2 and 3 are corrected by replacing the phrase "continuous emissions monitoring system" with "continuous emission monitoring system (or reference method)".

**§ 75.41 [Corrected]**

3. On page 3718, first column, § 75.41(a)(9)(ii), line 6 from the top, and § 75.41(b)(1)(i), lines 3, 4, and 5, are corrected by adding the phrase "(or reference method)" after the phrases "certified continuous emission monitoring system or certified flow monitoring system".

**§ 75.41 [Corrected]**

4. On page 3718, in the first column, § 75.41(b)(1)(i), lines 5 and 17 respectively, are corrected by adding the captions "(Eq. 11)" after "using the following equation:" and "(Eq. 12)" after "lognormalized data values lp:".

**§ 75.41 [Corrected]**

5. On page 3718, second column, § 75.41(b)(2)(i), line 7, is corrected by moving the word "where," from directly before Equation 13 to directly after the caption "(Eq. 13)", and by adding the word "where," after each caption for Equations 14 through 18.

**§ 75.41 [Corrected]**

6. On page 3719, first column, § 75.41(b)(2)(iv)(A), lines 4 and 5, and § 75.41(c)(1)(i), lines 3 and 4, are corrected by adding the phrase "(or reference method)" after the phrases "or certified flow monitoring system" and "or certified flow monitor".

**§ 75.41 [Corrected]**

7. On page 3719, second column, § 75.41(b)(2)(iv)(C), line 5, and § 75.41(c)(1)(ii), line 5, are corrected by adding the phrase "(or reference method)" after the phrases "or certified flow monitoring system" and "or certified flow monitor".

**§ 75.41 [Corrected]**

8. On page 3719, third column, in § 75.41(b)(2)(v)(A), line 1 of the column, "original variance in the F-test Equation 23 of this section" is corrected to read "original variance, as calculated using Equation 23 of this section, in the F-test (Equation 24) of this section."

**§ 75.41 [Corrected]**

9. On page 3719, third column, § 75.41(b)(2)(v)(B), line 4, is corrected by adding the phrase "of this part" after the reference "Appendix A".

**§ 75.41 [Corrected]**

10. On page 3719, third column, § 75.41(c)(2)(i), line 11, is corrected by adding the phrase "(or reference method)" after the phrase "continuous emission monitoring system".

**§ 75.48 [Corrected]**

1. On page 3720, third column, and on page 3721, in the first column, § 75.48(a)(3), all references to equations from § 75.41(c) are corrected by using the next higher equation number, to read as follows:

a. In paragraph (a)(3)(iv), "Equation 24" is corrected to read "Equation 25", and "Equation 25" is corrected to read "Equation 26".

b. In paragraph (a)(3)(viii), "Equation 22" is corrected to read "Equation 23".

c. In paragraph (a)(3)(ix), "Equation 23" is corrected to read "Equation 24".

d. In paragraph (a)(3)(xi), "Equation 26" is corrected to read "Equation 27".

**§ 75.48 [Corrected]**

2. On page 3720, third column, § 75.48(a)(3)(iii), lines 2 and 3, and

§ 75.48(a)(3)(viii), line 4 and 5, are corrected by replacing the phrase "continuous emissions monitoring system" with the phrase "continuous emission monitoring system (or reference method)".

**§ 75.50 [Corrected]**

1. On page 3721, second column, § 75.50(b), introductory text, lines 8 and 9, and § 75.50(b)(6), line 1, "gas-fired units" is corrected to read "when units combust gas."

**§ 75.50 [Corrected]**

2. On page 3721, second column, § 75.50(c)(1)(iii), line 1, § 75.50(c)(1)(iv), line 1, and § 75.50(c)(1)(vi), line 2, are corrected by replacing the phrase "Average hourly $SO_2$ concentration" with the phrase "Hourly average $SO_2$ concentration".

**§ 75.50 [Corrected]**

3. On page 3721, third column, § 75.50(c)(2)(iii), line 1, § 75.50(c)(2)(iv), line 1, § 75.50(c)(2)(v), line 1, § 75.50(c)(2)(vii), line 2, § 75.50(c)(3)(ii), line 1, and § 75.50(c)(3)(iii), line 1 are corrected by replacing the words "Average hourly" with the words "Hourly average".

**§ 75.50 [Corrected]**

4. On page 3721, second and third columns, § 75.50(c)(1)(vi), line 3 and § 75.50(c)(2)(vii), lines 2 and 3, are corrected by replacing the reference "using Codes 1–12 in Table 3" with the reference "using Codes 1–13 in Table 3".

**§ 75.50 [Corrected]**

5. On page 3722, first and second columns, § 75.50(d)(8), line 3 and § 75.50(e)(1)(vii), line 3, are corrected by replacing the reference "using Codes 1–12 in Table 3" with the reference "using Codes 1–13 in Table 3".

**§ 75.50 [Corrected]**

6. On page 3721, third column, § 75.50 Table 3, Code 4, is corrected by adding a line to read "$CO_2$ or $O_2$: Method 3, 3A or 3B" below the last line "$NO_x$: method 7, 7A, 7C, 7D, or 7E".

**§ 75.50 [Corrected]**

7. On page 3722, first column, § 75.50(d), introductory text, line 7, is corrected by replacing the word "option" with the word "optional".

**§ 75.50 [Corrected]**

8. On page 3722, first column, § 75.50(d)(3), line 1, 75.50(d)(4), line 1, § 75.50(d)(5), line 1, § 75.50(d)(6), line 1, § 75.50(d)(8), line 2, and § 75.50(d)(9), line 3, are corrected by replacing the words "Average hourly" with the words "Hourly average".

**§ 75.50 [Corrected]**

9. On page 3722, second column, § 75.50(e)(1)(iii), line 1, § 75.50(e)(1)(iv), line 1, § 75.50(e)(1)(v), line 1, § 75.50(e)(vii), line 2, and § 75.50(e)(1)(viii), line 2, are corrected by replacing the words "Average hourly" with the words "Hourly average".

**§ 75.50 [Corrected]**

10. On page 3722, second column, § 75.50(e)(2)(ii), line 1, § 75.50(e)(2)(iv), line 3, and § 75.50(e)(2)(v), line 3 are corrected by removing the word "average".

**§ 75.51 [Corrected]**

1. On page 3722, third column, § 75.51(a)(1)(iii), line 1, § 75.51(a)(1)(iv), line 1, § 75.51(a)(1)(v), line 1, and § 75.51(a)(1)(vi), line 1, are corrected by replacing the words "Average hourly" with the words "Hourly average".

**§ 75.51 [Corrected]**

2. On page 3722, third column, § 75.51(a)(1)(viii), lines 2 and 3 are corrected by replacing the phrase "average hourly $SO_2$ mass emissions" with the phrase "hourly average inlet and outlet $SO_2$ emission rates".

**§ 75.51 [Corrected]**

3. On page 3722, third column, § 75.51(a)(2)(i), lines 2 and 3 are corrected by replacing the phrase "$SO_2$ continuous emission monitoring system" with the phrase "$SO_2$-diluent continuous emission monitoring system".

**§ 75.51 [Corrected]**

4. On page 3723, first column, § 75.51(a)(2)(iii), line 1, is corrected by replacing the words "Average hourly" with the words "Hourly average".

**§ 75.51 [Corrected]**

5. On page 3723, first column, § 75.51(b), introductory text, line 5, is corrected by replacing the words "$NO_x$ emission data" with the words "$NO_x$ emissions data".

**§ 75.51 [Corrected]**

6. On page 3723, first column, § 75.51(b), introductory text, lines 12 and 13 are corrected by removing the phrase "then the owner or operator".

**§ 75.51 [Corrected]**

7. On page 3723, first column, § 75.51(b), the second paragraph referred to as "vii" is corrected to read "viii". This paragraph § 75.51(b)(1)(viii) is corrected by adding the words "For a unit with a dry flue gas desulfurization system," as the first line of the paragraph, directly before the words "The slurry feed rate (gal/min) to the atomizer nozzle; and".

**§ 75.51 [Corrected]**

8. On page 3723, first column, § 75.51(b)(1)(ix), line 3, is corrected by replacing the words "Codes 1–12" with the words "Codes 1–13".

**§ 75.51 [Corrected]**

9. On page 3723, second column, § 75.51(c)(1)(ii), line 1 and § 75.51(c)(1)(vi), line 1, are corrected by replacing the words "Average hourly" with the word "Hourly".

**§ 75.51 [Corrected]**

10. On page 3723, third column, § 75.51(d)(1)(ii), line 1, is corrected by replacing the word "daily" with "hourly".

**§ 75.51 [Corrected]**

11. On page 3723, third column, § 75.51(d)(1)(ii), line 3 is corrected by replacing both occurrences of the word "day" with the word "hour".

**§ 75.51 [Corrected]**

12. On page 3723, third column, § 75.51(d)(1)(iv), line 1, is corrected by replacing the word "daily" with "hourly".

**§ 75.52 [Corrected]**

1. On page 3724, second column, § 75.52(a)(5)(iv)(G) and § 75.52(a)(5)(iv)(H) are corrected by redesignating the paragraphs as § 75.52(a)(5)(v) and § 75.52(a)(5)(vi) respectively.

**§ 75.53 [Corrected]**

1. On page 3724, second column, § 75.53(a), introductory text, lines 4 and 5, is corrected by replacing the reference to "paragraphs (c) and (d) of this section" with the reference "paragraph (d) of this section".

**§ 75.53 [Corrected]**

2. On page 3724, third column, § 75.53(c)(2) introductory text is corrected to read as follows:

* * * * *

(e) * * *

(2) *Unit table.* A table identifying ORISPL numbers developed by the Department of Energy and used in the National Allowance Database, for all affected units involved in the monitoring plan, with the following information for each unit:

* * * * *

**§ 75.53 [Corrected]**

3. On page 3725, first column, § 75.53(c)(4)(vi), line 3, is corrected by replacing the reference "§ 75.10(g)" with the reference "§ 75.10(e)".

§ 75.53 [Corrected]

4. On page 3725, second column, § 75.53(c)(8), lines 3 and 4 are corrected by replacing the phrase "dimensions, and also showing location" with the phrase "dimensions and location".

§ 75.53 [Corrected]

5. On page 3725, second column, § 75.53(c)(9), lines 1 and 2 are corrected by replacing the words "at flue exit." with the words "at flow monitor location.".

§ 75.53 [Corrected]

6. On page 3725, second column, § 75.53(c)(10), § 75.53(c)(10)(i), § 75.53(c)(10)(ii), § 75.53(c)(10)(ii)(A), and § 75.53(c)(10)(ii)(B) are correctly redesignated as § 75.53(d), § 75.53(d)(1), § 75.53(d)(2), § 75.53(d)(2)(i), and § 75.53(d)(2)(ii) respectively.

**PART 75, APPENDIX A [CORRECTED]**

*Appendix A, Section 1.1 [Corrected]*

1. On page 3727, second column, Appendix A, Section 1.1, line 16, is corrected by replacing the parenthetical statement "(see section 6)" with the parenthetical statement "(see section 6 of this Appendix)".

*Appendix A, Section 1.2.2 [Corrected]*

1. On page 3728, first column, Appendix A, Section 1.2.2, line 5 of the first full paragraph is corrected by changing the word "and" to the word "or".

*Appendix A, Section 2.1.4 [Corrected]*

1. On page 3729, at the bottom of the page, Appendix A, Section 1.2.2, the equation is corrected by adding the label "(Eq. A–3a)".

*Appendix A, Section 5.1.2 [Corrected]*

1. On page 3731, second column, Appendix A, Section 5.1.2, the heading, is corrected to read as follows: "NIST Traceable Reference Materials (NTRM)".

*Appendix A, Section 6.2 [Corrected]*

1. On page 3731, third column, Appendix A, Section 6.2, lines 5 and 6 are corrected by replacing the phrase "/EPA-approved certified" with the word "Traceable".

*Appendix A, Section 6.3.1 [Corrected]*

1. On page 3732, first column, Appendix A, Section 6.3.1, third paragraph, the last sentence is corrected to read as follows: "Use only NIST Traceable Reference Material (NTRM), standard reference material, Protocol 1 calibration gases certified by the vendor to be within 2 percent of the label value, or where applicable, zero ambient air material as defined in § 72.2 of this part."

*Appendix A, Section 6.3.2 [Corrected]*

1. On page 3732, second column, Appendix A, Section 6.3.2, fourth paragraph, lines 8–12, is corrected by replacing the parenthetical statement "(i.e., less than or equal to 3 percent error each day and does not require corrective maintenance, repair, replacement, or manual adjustment during the 7-day test period)" with the parenthetical statement: "(i.e., less than or equal to 3 percent error each day and requiring no corrective maintenance, repair, replacement or manual adjustment during the 7-day test period)".

*Appendix A, Section 7.3.1 [Corrected]*

1. On page 3734, first column, Appendix A, Section 7.3.1, Equation A–7, the variable definitions for Equation A–7 are corrected by placing "i=1" as a subscript under the sigma (summation sign).

*Appendix A, Section 7.3.4 [Corrected]*

1. On page 3734, second column, Appendix A, Section 7.3.4, Equation A–10, the definitions for the variables for Equation A–10 are corrected by revising "|d|" to read "|d|" and by revising "RM" to read "RM".

*Appendix A, Section 7.6.5 [Corrected]*

1. On page 3735, first and second columns, Appendix A, Section 7.6.5, Equation A–12, the definitions for the variables for Equation A–12 are corrected to read as follows: |d|=Absolute value of the arithmetic mean of the difference obtained during the failed bias test using Equation A–7" and CEM=means of the data valves provided by the monitor during the failed bias test.

**Part 75, Appendix B [Corrected]**

*Appendix B, Section 2.3.1 [Corrected]*

1. On page 3739, second column, Appendix B, "Section 23.1" is corrected by replacing the current label of "section 23.1" and with the label "section 2.3.1".

*Appendix B, Section 2.3.1 [Corrected]*

2. On page 3739, second column, Appendix B, Section 2.3.1, first paragraph, lines 4 through 7, are corrected by replacing the word "for" with the word "or" between the phrases "$NO_x$ continuous emission monitoring system" and "$SO_2$-diluent continuous emission monitoring system".

*Appendix B, Section 2.3.1 [Corrected]*

3. On page 3739, third column, Appendix B, Section 2.3.1, third paragraph, lines 13 through 21 from the top of the page, are corrected by revising phrase (5) to read as follows: (5) on low $SO_2$ emitting units ($SO_2$ concentration ≤250.0 ppm, or equivalent lb/mmBtu value for $SO_2$-diluent continuous emission monitoring systems), when the monitor or monitoring system mean is within ±8.0 ppm (or equivalent in lb/mmBtu for $SO_2$-diluent continuous emission monitoring systems) of the reference method mean or achieves a relative accuracy of 7.5 percent or less during the previous audit; or.

*Appendix B, Section 2.3.2 [Corrected]*

1. On page 3739, third column, Appendix B, Section 2.3.2, first paragraph, lines 15 through 19, is corrected by adding "(or ±0.03 lb/mmBtu for $SO_2$-diluent monitors from January 1, 1997 through December 31, 1999)" following the words "exceeds ±15.0 ppm" in statement (5).

*Appendix B, Section 2.3.3 [Corrected]*

1. On page 3740, first column, Appendix B, Section 2.3.3, is corrected by adding section 2.3.3 to read as follows:

* * * * *

2.3.3 Bias Adjustment Factor. If an $SO_2$ pollutant concentration monitor, flow monitor, or $NO_x$ continuous emission monitoring system fails the bias test specified in Section 7.6 of Appendix A of this part, use the bias adjustment factor given in Equations A–11 and A–12 of Appendix A of this part to adjust the monitored data.

* * * * *

*Appendix B, Figure 1 [Corrected]*

1. On page 3740, second column, Appendix B, Figure 1 is corrected by deleting the check mark ("√") from the quarterly column for the row labelled "Interference (flow).", and by adding a new row labelled "Leak (flow)." with a check mark ("√") in the quarterly column.

*Appendix B, Figure 2 [Corrected]*

1. On page 3740, last column of Figure 2, Appendix B, is corrected by replacing the annual relative accuracy requirement for $SO_2$ of "RA ≤7.7% or ±8ppm" with "RA ≤7.5% or ±8ppm".

**Part 75, Appendix C [Corrected]**

*Appendix C, Section 1.4 [Corrected]*

1. On page 3741, first column, Appendix C, Section 1.4.1, line 13, and Appendix C, Section 1.4.2, line 14, are

corrected by replacing the reference "section 1.2" in the definition of variable E with the reference "section 1.3".

*Appendix C, Section 2.2.1 [Corrected]*

1. On page 3741, second column, Appendix C, Section 2.2.1, lines 5 through 7, are corrected by moving the parenthetical statement "(that is, load resulting from all combustion of fuel, including internal usage and generation for sale)" after the phrase "gross load of the unit" and before the comma following that phrase.

**Part 75, Appendix D [Corrected]**

*Appendix D, Section 1.3 [Corrected]*

1. On page 3742, first column, Appendix D, Section 1.3, lines 4 through 6, is corrected by removing the phrase "for the certification of continuous emission monitoring system".

*Appendix D, Section 2.1.1 [Corrected]*

1. On page 3742, first column, Appendix D, Section 2.1.1, line 9, is corrected by deleting the words "for use".

*Appendix D, Section 2.2.6 [Corrected]*

1. On page 3742, third column, Appendix D, Section 2.2.6, line 4 is corrected by removing the "1" before the word "Reapproved".

2. On page 3742, third column, Appendix D, Section 2.2.6, line 7, is corrected by replacing the citation for "ASTM D1382–88" with the citation "ASTM D2382–88".

*Appendix D, Section 3.1.1 [Corrected]*

1. On page 3743, first column, Appendix D, Section 3.1.1, line 5, is corrected by replacing the caption "(Eq. D–1)" with the caption "(Eq. D–2)".

*Appendix D, Section 3.2.3 [Corrected]*

1. On page 3743, second column, Appendix D, Section 3.2.3, line 7, is corrected by replacing the caption "(Eq. D–2)" with the caption "(Eq. D–3)".

**Part 75, Appendix E [Corrected]**

*Appendix E, Section 1.3.1 [Corrected]*

1. On page 3743, second column, Appendix E, Section 1.3.1, line 3, is corrected by replacing the word "installation" with the word "certification".

*Appendix E, Section 2.1.3.1 [Corrected]*

1. On page 3744, first column, Appendix E, Section 2.1.3.1, line 16, is corrected by replacing "ASME MFC–7N–1987" with "ASME MFC–7M–1987".

*Appendix E, Section 3.4.3 [Corrected]*

1. On page 3745, third column, Appendix E, Section 3.4.3, line 1, is corrected by replacing the phrase "quarterly average" with the phrase "annual average".

**Part 75, Appendix F [Corrected]**

*Appendix F, Section 3.3.1 [Corrected]*

1. On page 3746, third column, Appendix F, Section 3.3.1 is corrected to read "K=1.194x10−7 (lb/dscf)/ppm $NO_x$.".

*Appendix F, Section 3.4 [Corrected]*

1. On page 3747, second column, Appendix F, Section 3.4, Equations F–9 and F–10, are corrected by replacing both occurrences of "$No_x$" with "$NO_x$".

*Appendix F, Section 4.3 [Corrected]*

1. On page 3747, third column, Appendix F, Section 4.3, Equation F–12, is corrected by substituting "$E_{co24}$" with "$E_{CO2q}$" in the definitions for the variables.

*Appendix F, Section 4.4.1 [Corrected]*

1. On page 3748, first column, Appendix F, Section 4.4.1, line 5 from the top of the page is corrected by removing "Q02".

**Part 75, Appendix G [Corrected]**

*Appendix G, Section 2.1 [Corrected]*

1. On page 3749, second column, Appendix G, Section 2.1, Equation G–1, is corrected by replacing "$W_{o2}$" with "$MW_{O2}$" in the definitions for the variables.

*Appendix G, Section 2.2 [Corrected]*

1. On page 3749, second column, Appendix G, Section 2.2, lines 5 and 6, is corrected by replacing "section 2.21–2.23 or Section 2.24 of the appendix." with the phrase "sections 2.2.1 through 2.2.3 or section 2.2.4 of this appendix."

*Appendix G, Section 2.3 [Corrected]*

1. On page 3749, third column, Appendix G, Section 2.3, Equation G–4, the variable definitions are corrected by replacing "$W_{CO2}$ emitted" with "$W_{CO2}$ = $CO_2$ emitted" and by adding "$MW_{CO2}$ = Molecular weight of carbon dioxide (44.0)." as the last variable for Equation G–4.

*Appendix G, Section 3.1.2 [Corrected]*

1. On page 3750, first column, Appendix G, Section 3.1.2, Equation G–6, the definition for the variables are corrected by replacing "SE=" with "$SE_{CO2}$=".

**Part 75, Appendix H [Corrected]**

*Appendix H, Table 7.1 [Corrected]*

1. On page 3751, Appendix H, Table 7.1, the heading "Balancegas" is corrected to read "Balance gas [1]".

*Appendix H, Table 7.1 [Corrected]*

2. On page 3751, Appendix H, Table 7.1, in the heading in the fourth column, "Al or SS" is corrected to read "Passivated Aluminum".

*Appendix H, Table 7.1 [Corrected]*

3. On page 3751, Appendix H, Table 7.1, in the row for Carbon monoxide, the third column is corrected by replacing "5" with "8" and in the fourth column replacing "18" with "36".

*Appendix H, Table 7.1 [Corrected]*

4. On page 3751, Appendix H, Table 7.1, in the row for Nitric oxide, the third column is corrected by replacing "10" with "5" and in the fourth column replacing "18" with "24".

*Appendix H, Table 7.1 [Corrected]*

5. On page 3751, Appendix H, Table 7.1, in the row for Sulfur dioxide, the second column is corrected by adding the words "or air" following "$N_2$", in the third column, replacing "≥10" with "50–499" and in the fourth column, replacing "18" with "24".

*Appendix H, Table 7.1 [Corrected]*

6. On page 3751, Appendix H, Table 7.1, immediately following the row for Sulfur dioxide, add two rows as follows: for the first row, in the first column, add "Sulfur dioxide", in the second column add "$N_2$ or air", in the third column add "≥500 ppm", in the fourth column add "36" and in the fifth column, add "6"; for the second row, in the first column, add "Oxides of nitrogen", in the second column add "Air", in the third column add "≥100 ppm", in the fourth column add "24" and in the fifth column, add "6".

*Appendix H, Table 7.1 [Corrected]*

7. On page 3751, Appendix H, Table 7.1, the row for Nitrogen dioxide is corrected in the second column by removing "$N_2$ or" so that the column reads "Air", in the third column, replacing "10" with "1000", and in the fourth column, replacing "6" with "24".

*Appendix H, Table 7.1 [Corrected]*

8. On page 3751, Appendix H, Table 7.1, the row for Carbon dioxide is corrected in the fourth column by replacing the number "18" with the number "36".

*Appendix H, Table 7.1 [Corrected]*

9. On page 3751, Appendix H, Table 7.1, is corrected by adding a row immediately following the row for Carbon dioxide as follows: in the first column, add "Carbon dioxide and oxygen, (i.e. blood gas)", in the second column, add "$N_2$", in the third column, add "≥5% $CO_2$, ≥0% $O_2$", in the fourth column add "36", and in the fifth column, add "6".

*Appendix H, Table 7.1 [Corrected]*

10. On page 3751, Appendix H, Table 7.1, is corrected in the row for Oxygen, in the fourth column by replacing the number "18" with the number "36".

*Appendix H, Table 7.1 [Corrected]*

11. On page 3751, Appendix H, Table 7.1, is corrected in the first column in the row for Sulfur dioxide and carbon dioxide, by revising the column to read "Carbon dioxide and nitrous oxide", in the second column, replacing "$N_2$" with "Air", in the third column, replacing "≥200 ppm $SO_2$, 10 percent $CO_2$" with "≥300 ppm $CO_2$, ≥300 ppb $N_2O$", and in the fourth column replacing "18" with "36".

*Appendix H, Table 7.1 [Corrected]*

12. On page 3751, Appendix H, Table 7.1, is corrected by removing the entire row beginning in the first column with "Propane".

*Appendix H, Table 7.1 [Corrected]*

13. On page 3751, Appendix H, Table 7.1, is corrected by adding 2 rows immediately following "Others not specifically listed", as follows: for the first row, in the first column, adding "Multicomponent mixtures", in the second column, adding "____", in the third column, adding "____", in the fourth column adding "See [2]", and in the fifth column, adding "6"; for the second row, in the first column, adding "Mixtures with lower concentrations", in the second column, adding "____", in the third column, adding "____", in the fourth column, adding "See [3]", and in the fifth column, adding "6".

*Appendix H, Table 7.1 [Corrected]*

14. On page 3751, Appendix H, Table 7.1, is corrected by adding footnotes 1, 2, and 3 as follows:

[1] When used as a balance gas, "air" is defined as a mixture of $O_2$ and $N_2$ where the minimum concentration of $O_2$ is 10% and the concentration of $N_2$ is greater than 80%.

[2] This protocol may be used to assay and certify individual components of multicomponent standards, provided that none of the components interferes with the analysis of other components and provided that individual components must not react with each other or with the balance gas. A multicomponent standard can be certified for a period of time equal to that of its most briefly certifiable component. For example, a standard containing 250 ppm sulfur dioxide and 100 ppm carbon monoxide in nitrogen can be certified for 24 months because the shortest certification period is 24 months.

[3] This protocol may be used for the certification of standards with concentrations that may be lower than those listed in Table 7.1. The initial certification period for such a lower concentration standard is 6 months. After this period, the standards may be recertified. If the recertification demonstrates that the standard is not unstable, the second certification period for this lower concentration standard is the same time period as indicated for the corresponding concentration standard listed in Table 7.1.

Dated: June 18, 1993.

**Brian McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93-15194 Filed 7-29-93; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### 42 CFR Part 1001

### Medicare and State Health Care Programs: Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From the Medicare and Medicaid Patient and Program Protection Act

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Final rule.

**SUMMARY:** This document amends a technical error that appeared in the final rule, which amends the OIG exclusion and CMP authorities, published on January 29, 1992 designed to implement section 2 of the Medicare and Medicaid Patient and Program Protection Act, along with other conforming amendments. The final rule is designed to protect program beneficiaries from unfit health care practitioners, and otherwise improve the anti-fraud provisions of the Department's Medicare and State health care programs.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619-0089.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 29, 1992, a final rule, Amendments to OIG Exclusion and CMP Authorities Resulting From Public Law 100-93, was published in the **Federal Register** (57 FR 3298). Specifically, the final rule is designed to protect program beneficiaries from unfit health care practitioners, and otherwise to improve the anti-fraud provisions of the Department's health care programs under titles V, XVIII, XIX, and XX of the Social Security Act. In the final regulations, a new § 1001.1301—Failure to grant immediate access—was codified in 42 CFR part 1001 to permit, among other things, the exclusion of individuals or entities who fail to grant immediate access to the OIG or State Medicaid Fraud Control Units (MFCUs) for the purpose of reviewing documents to determine if a statutory or regulatory violation has occurred.

*Technical Amendment to § 1001.1301*

Section 1128(b)(12)(D) of the Social Security Act, the statutory authority upon which this regulatory provision is based, specifically allows for the exclusion of any individual or entity from Medicare and State health care program participation if that "individual or entity fails to grant immediate access, upon reasonable request, * * * to a State Medicaid Fraud Control Unit (as defined in section 1903(q)), for the purpose of conducting activities described in that section." The regulations at § 1001.1301(a)(3) went on to define the term "reasonable request" to mean "* * * a written request for documents, *signed by the IG or a delegatee,* and made by a properly identified agent of the OIG or a State Medicaid Fraud Control Unit during reasonable business hours * * *" (emphasis added). As currently drafted, however, this definition now inadvertently bars the State MFCU from directly carrying out one of its statutorily-allowed functions in the absence of a written request signed by an OIG official.

Since the IG cannot under this provision delegate to State MFCUs its authority to issue "reasonable request," the current definition for "reasonable request" in § 1001.1301(a)(3) unintentionally restricts the State MFCUs' authority to request access to documents by requiring the IG or a delegatee to sign such a request. To correct this definition of "reasonable request," we are modifying § 1001.1301(a)(3) to have it read consistent with the statutory language contained in section 1128(b)(12)(D) of the Act.

**List of Subjects in 42 CFR Part 1001**

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

Therefore, 42 CFR Chapter V, part 1001 is amended as set forth below:

**PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS**

1. The authority citation for part 1001 is revised to read as follows:

**Authority:** 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh.

2. In § 1001.1301, the definition for the term "reasonable request" in paragraph (a)(3) is revised, and the introductory text of paragraph (a)(3) is republished to read as follows:

**§ 1001.1301 Failure to grant immediate access.**

(a) *Circumstance for exclusion.* * * *

(3) For purposes of paragraphs (a)(1)(iii) and (a)(1)(iv) of this section, the term—

* * * * *

*Reasonable request* means a written request for documents, signed by a designated representative of the OIG or the State Medicaid fraud control unit, and made by a properly identified agent of the OIG or a State Medicaid fraud control unit during reasonable business hours, where there is information to suggest that the individual or entity has violated statutory or regulatory requirements under titles V, XI, XVIII, XIX or XX of the Act. The request will include a statement of the authority for the request, the rights of the individual or entity in responding to the request, the definition of *reasonable request* and *immediate access*, and the effective date, length, and scope and effect of the exclusion that would be imposed for failure to comply with the request, and the earliest date that a request for reinstatement would be considered.

* * * * *

Dated: July 14, 1993.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 93–17277 Filed 7–29–93; 8:45 am]

BILLING CODE 4810–04–M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3120**

**[WO–610–4110–24–03: Circular No. 2649]**

**RIN 1004–AC08**

**Federal Onshore Oil and Gas Competitive Leasing**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** This administrative final rule will extend the primary term of all new competitive Federal onshore oil and gas leases from 5 years to 10 years. This revision in the lease term is necessary to comply with provisions of the Energy Policy Act of 1992 (Pub. L. 102–486) which require that both competitive and noncompetitive onshore oil and gas leases issued under section 17(e) of the Mineral Leasing Act of 1920, *et. seq.* (30 U.S.C. 226(e)) be for a primary term of 10 years.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Erick Kaarlela, Chief, Division of Fluid Minerals, Bureau of Land Management, 1849 C Street NW. (510 LS), Washington, DC 20240, (202) 653–2127.

**SUPPLEMENTARY INFORMATION:** Prior to the enactment of the Energy Policy Act of 1992, all onshore competitive oil and gas leases had a primary term of 5 years. The provision in section 2509 of the Act amended section 17(e) of the Mineral Leasing Act (30 U.S.C. 226(e)) by extending the primary term for all onshore competitive oil and gas leases to 10 years. This extension applies only to future leasing actions.

This provision in no way changes the manner in which the Bureau of Land Management conducts business; it simply extends the duration of competitive onshore oil and gas leases. This rule is being published as a final rule because public comment is unnecessary and contrary to the public interest inasmuch as the change in lease terms is mandated by law and was effective upon signature by the President. For the same reasons, this rule will become effective upon publication in the **Federal Register** (5 U.S.C. 553(d)(3)).

The principal author of this rule is G. Jean Austin of the Division of Fluid Minerals with assistance from the Division of Legislation and Regulatory Management of the Washington Office.

It has been determined that the rulemaking is categorically excluded from the review process established by the National Environmental Policy Act of 1969 pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, item 1.10, and 516 DM, chapter 2, appendix 2.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that no Regulatory Impact Analysis is required. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has further determined that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). This rule will result in modest benefits to all oil and gas lessees and/or operators by providing additional time to assemble blocks of oil and gas leases, thus presenting more economical opportunities for exploration.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule will not cause a taking of private property.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The information collection requirements contained in part 3120 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004–0074 and 1004–0065.

**List of Subjects in 43 CFR Part 3120**

Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 43, chapter II, part 3120 of the Code of Federal Regulations, is amended as follows.

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## PART 3120—COMPETITIVE LEASES

1. The authority citation for part 3120 continues to read as follows:

**Authority:** Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act as amended (16 U.S.C. 3101 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

2. Section 3120.2–1 is revised to read as follows:

**§ 3120.2–1 Duration of Lease.**

Competitive leases shall be issued for a primary term of 10 years.

Dated: July 1, 1993.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 93–18196 Filed 7–29–93; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### 45 CFR Part 400

### Refugee Resettlement Program; Refugee Cash Assistance and Refugee Medical Assistance

**AGENCY:** Administration for Children and Families (ACF), HHS, Office of Refugee Resettlement.

**ACTION:** Withdrawal of a final rule.

**SUMMARY:** This rule withdraws the regulation that was published in the **Federal Register** on March 31, 1993, (58 FR 16777) to reduce the duration of the special programs of refugee cash assistance (RCA) and refugee medical assistance (RMA) from a refugee's first 8 months in the United States to a refugee's first 3 months. A document delaying the effective date of June 1, 1993 to August 1, 1993 of the March 31 rule was published in the **Federal Register** on May 25, 1993 (58 FR 29981).

Public Law No. 103–50, which was enacted on July 2, 1993, contains the following provision:

Sec. 501. Funds appropriated pursuant to section 414(a) of the Immigration and Nationality Act under Pub. L. 102–170 for fiscal year 1992 shall be available for the costs of assistance provided and other activities conducted in such year and in fiscal year 1993.

Based on that provision, the Department has determined that sufficient funds are available to continue the RCA/RMA eligibility period at the current 8-month level for the remainder of FY 1993.

Under the Secretary's authority, the final rule amending 45 CFR part 400 that was published in the **Federal Register** on March 31, 1993, on page 16777 is withdrawn. The RCA and RMA eligibility period remains at the current level of a refugee's first 8 months in the U.S.

**DATES:** Effective July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Toyo Biddle (202) 401–9250.

Dated: July 12, 1993.

**Laurence J. Love,**

*Acting Assistant Secretary for Children and Families.*

Approved: July 23, 1993.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 93–18211 Filed 7–29–93; 8:45 am]

BILLING CODE 4184–01–M

# Proposed Rules

Federal Register
Vol. 58, No. 145
Friday, July 30, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 246

### Special Supplemental Food Program for Women, Infants and Children (WIC): Fifteen Percent Capping Provision Rule

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes a revision to the food funds allocation formula for the Special Supplemental Food Program for Women, Infants and Children (WIC) to remove the provision limiting any State agency to a 15 percent increase in food funding. The change will ensure that all funds appropriated for Fiscal Year 1994 and subsequent years are allocated. This proposed rule should be finalized by October 1, 1993 to assure that grant allocations for Fiscal Year 1994 are affected.

**DATES:** To be assured of consideration, written comments must be received on or before August 30, 1993.

**ADDRESSES:** Comments may be mailed to Alberta C. Frost, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2710. All written comments will be available for public inspection during regular business hours (8:30 a.m.–5 p.m., Monday through Friday) at the above-stated address.

**FOR FURTHER INFORMATION CONTACT:** Deborah McIntosh, Chief, Program Analysis and Monitoring Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2710.

**SUPPLEMENTARY INFORMATION:**

*Classification*

This proposed rule has been reviewed under Executive Order 12291, and has been determined not to be major. The Assistant Secretary for Food and Consumer Services does not anticipate that this rule will have an impact on the economy of $100 million or more. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Further, this rule will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Acting Administrator of the Food and Nutrition Service (FNS) has certified that this rule will not have a significant impact on a substantial number of small entities. Some State and local agencies will be most affected because of the additional program administration involved; however, the effect on these entities will be minimal. Additional participants and applicants may be served by the Program, and, accordingly, would also be affected.

*Paperwork Reduction Act*

This rulemaking imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

*Executive Order 12372*

This program is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

*Executive Order 12778*

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "EFFECTIVE DATE" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State or local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

*Fifteen Percent Capping Provision of the Food Funds Allocation Formula*

*Background.* Each fiscal year, once an appropriation is enacted for the WIC Program, funds are allocated to State agencies through funding formulas. Food funds are first allocated for stability grants, which provide State agencies with their prior fiscal year's total food grant adjusted by an inflation factor, and with funds set aside to serve migrant participants. Any funds remaining after the stability food grants are satisfied are classified as residual funds and are allocated equally through targeting and growth components of the funding formula. All States receive targeting funds based on their service to Priority I participants (mainly prenatal women with identified health risks and/or who are at nutritional risk). Growth funds are allocated only to those States which, when compared to other States, receive less than their equitable share of funds based primarily on the size of their income eligible populations. Census data from 1990, used for the first time in the allocation of Fiscal Year 1993 food growth funds, revealed that certain States, termed "growth" States, are significantly underfunded based on the size of their income eligible populations. Through the growth component of the funds allocation formula, these underfunded States were eligible for substantial funding increases in Fiscal Year 1993 and will again be

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eligible for large increases in Fiscal Year 1994.

Although the allocation formula provides additional funds for growth States, the formula also limits the increase in residual funding that any State may receive from one fiscal year to the next to 15 percent above the level of the stability grant adjusted for inflation. This 15 percent capping provision was implemented primarily for two reasons. First, it prevented State agencies from receiving funds beyond their growth capacity in one fiscal year. The limitation also assured that residual funds were shared widely among all growth State agencies in need of funds.

The ability of State agencies to handle rapid Program growth efficiently and effectively has proven to be variable. Even with the 15 percent cap, some State agencies which do not yet have space and staff readily available to expand participation have had to voluntarily return funds during the fiscal year that they are unable to use, or unable to use in a manner which maintains quality of service to participants. More importantly, the cap prevents some underfunded States from receiving the full share of funds that they would otherwise be allocated through the allocation formula. Many of these States have the ability to efficiently and effectively utilize these additional funds.

In Fiscal Year 1993, an unprecedented complication occurred with the current funds allocation formula as a result of the large number of growth States which declined additional funds, while other growth States which desired additional funds were limited by the 15 percent capping provision. Without an emergency revision to current regulations waiving the 15 percent capping provision from July 1, 1993 to September 30, 1993, FNS would have been unable to allocate all available funds in Fiscal Year 1993.

Accordingly, FNS published a Final Rule on July 13, 1993 (58 FR 37633) which waived the 15 percent cap for the remainder of Fiscal Year 1993. Congress authorized such a waiver in Public Law 103–50, the Supplemental Appropriations Act of 1993, enacted on July 2, 1993.

*Justification for the Removal of the 15 Percent Capping Provision*

The funds allocation formula was intended to move growth State agencies toward their equitable share of funds; however, the 15 percent cap impedes the capability of the formula to advance this goal. Removal of the 15 percent cap will therefore permit FNS to reduce current inequities among State agencies by allowing growth State agencies to receive larger allocations to use to serve their eligible populations.

Furthermore, it is very possible that the scenario which occurred in Fiscal Year 1993, in which available funds could not be allocated without a waiver to the 15 percent capping provision, will reoccur in Fiscal Year 1994. If this situation again arises, available funds will not be optimally utilized and participants who could be served within current funding levels will not be served without removal of the 15 percent cap.

Congress was unambiguous about its findings and purpose in creating the WIC Program. As set forth in section 17(a) of the Child Nutrition Act of 1966 (the Act), it found that substantial numbers of pregnant, postpartum and breastfeeding women, and infants and children are from families with inadequate income and are at special risk with respect to their physical and mental health by reason of inadequate nutrition and health care. Section 17(a) further states that the purpose of the WIC Program is to provide supplemental foods and nutrition education to these individuals, "up to the authorization levels set forth in [this Act]."

*Removal of the 15 Percent Capping Provision*

This rule proposes to remove the 15 percent capping provision from the funds allocation formula so that State agencies may receive the full share of funds which would otherwise be indicated by the formula, regardless of the percent increase any one State agency might receive from the allocation. As it is imperative that this change occur in time for initial allocation of Fiscal Year 1994 grants, the Department has allowed only a 30 day comment period.

**List of Subjects in 7 CFR Part 246**

Food assistance programs, Food donations, Grant programs—Social programs, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

Accordingly, 7 CFR part 246 is proposed to be amended as follows:

## PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 is revised to read as follows:

**Authority:** Secs. 123 and 213, Pub. L. 101–147, 103 Stat. 877 (49 U.S.C. 1751); sec. 3201, Pub. L. 100–690, 102 Stat. 4181 (42 U.S.C. 1786); sec. 645, Pub. L. 100–460, 102 Stat. 2229 (42 U.S.C. 1786); secs. 212 and 501, Pub. L. 100–435, 102 Stat. 1645 (42 U.S.C. 1786); sec. 3, Pub. L. 100–356, 102 Stat. 669 (42 U.S.C. 1786); sec. 8–12, Pub. L. 100–237, 101 Stat. 1733 (42 U.S.C. 1786); sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599 (42 U.S.C. 1786); sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786).

2. In Section 246.16, the introductory text of paragraph (c)(2)(ii) is revised to read as follows:

**§ 246.16 Distribution of funds.**

* * * * *

(c) * * *

(2) * * *

(ii) *Allocation of residual funds.* Any funds remaining available for allocation for food costs after the allocation of stability food funds required by paragraph (c)(2)(i) of this section has been completed shall be allocated as follows;

* * * * *

Dated: July 23, 1993.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 93–18185 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–30–U

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**Agricultural Marketing Service**

**7 CFR Part 926**

**[Docket No. FV–92–035PR]**

## Tokay Grapes Grown in San Joaquin County, California; Proposed Rule Revising the Minimum Grade Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would add the U.S. No. 1 Institutional grade to the minimum grade requirements under the handling regulation in effect for fresh market shipments of California Tokay grapes. This action is expected to aid handlers in developing new markets for Tokay grapes.

**DATES:** Comments must be received by August 30, 1993.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular

business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–8139.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Order No. 926 (7 CFR part 926), both as amended, regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5 handlers of San Joaquin County, California Tokay grapes subject to regulation under the marketing order, and approximately 20 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Tokay grape handlers and producers may be classified as small entities.

Tokay Grape Industry Committee (committee), the agency responsible for local administration of the order, met on February 4, 1992, and unanimously recommended revising the minimum grade requirements in the handling regulation to include the U.S. No. 1 Institutional grade as set forth in the United States Standards for Grades of Table Grapes (European and Vinifera Type) (7 CFR 51.880 to 51.913), hereinafter referred to as the Standards.

Under current requirements, from August 12 through November 15 each season, Tokay grapes must meet the minimum grade and size requirements specified for U.S. No. 1 Table, as set forth in the Standards, and must meet applicable color requirements.

The committee recommended adding the U.S. No. 1 Institutional grade to the minimum grade requirements in the domestic handling regulation. The requirements of the U.S. No. 1 Institutional grade are the same as for U.S. No. 1 Table grade except for bunch size and container marking requirements. Individual bunches of grapes grading U.S. No. 1 Table cannot weigh less than one-fourth pound (4 ounces). Individual bunches of grapes grading U.S. No. 1 Institutional cannot weigh less than 2 ounces nor more than 5 ounces. Additionally, at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional must be legibly marked "Institutional Pack." No labelling requirements are established under the U.S. No. 1 Table grade.

The committee believes that adding the U.S. No. 1 Institutional grade to the handling regulation would promote domestic sales and exports of institutional grape packs, particularly to Canada. The committee reports an increased demand for institutional grape packs by the food service industry (e.g., school systems, airlines, and restaurants). Due to the requirements of the current handling regulation, Tokay grape handlers are prohibited from making domestic and export shipments of institutional grape packs. The Standards were amended in April 1991 to establish the U.S. No. 1 Institutional grade.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for grapes under a domestic marketing order, imported table grapes must meet the same or comparable requirements. Because this proposed rule would relax the minimum grade requirements to add U.S. No. 1 Institutional to the domestic handling regulation, a corresponding change would be needed in the table grape import regulation. Such change would be addressed in a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to comment on this proposed rule. All written comments received within the comment period will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 926**

Marketing agreements, Reporting and recordkeeping requirements, Tokay grapes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 926 be amended as follows:

## PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 926 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 926.324 is amended by revising paragraphs (a)(1) and (b) to read as follows:

**§ 926.324 California Tokay Grape Regulation 23.**

(a) * * *

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 Table grade or U.S. No. 1 Institutional, and the following additional requirement: Of 25 percent, by count, of the berries of each bunch which are attached to the lowerpart of the main

stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

* * * * *

(b) *Definitions.* "U.S. No. 1 Table grade," "U.S. No. 1 Institutional," and "characteristic color," shall mean the same as in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880 through 51.912).

Dated: July 22, 1993

Robert C. Keeney,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93-18154 Filed 7-29-93; 8:45 am]

BILLING CODE 3410-02-P

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**7 CFR Part 944**

**[Docket No. FV-92-036PR]**

## Tokay Grapes Imported Into the United States; Proposed Rule Revising Minimum Grade Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would add the U.S. No. 1 Institutional grade to the minimum grade requirements for imported Tokay grapes. Currently, imported Tokay grapes must grade at least U.S. No. 1 Table which includes a requirement that individual bunches weigh at least one-fourth pound (4 ounces). Grapes that grade U.S. No. 1 Institutional must meet all of the requirements of U.S. No. 1 Table except for bunch size, and are subject to additional container marking requirements. This action would permit smaller bunches of Tokay grapes to be imported into the United States, and is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

**DATES:** Comments received by August 30, 1993, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they would be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone: (202) 720-5127.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including Tokay grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements as those in effect for the domestically produced commodity.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are no known importers of Tokay grapes at this time.

This action is being initiated by the Department because section 8e of the Act requires imported Tokay grapes to meet the same or comparable requirements as those established under a domestic marketing order. Under this proposed rule, imported Tokay grapes would need to meet the same minimum grade requirements as Tokay grapes that are grown in San Joaquin County, California, and regulated under Marketing Order No. 926 (7 CFR part 926).

Under the terms of the marketing order, from August 12 through November 15 each year, Tokay grapes must meet the minimum grade and size requirements specified for U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880 to 51.913), hereinafter referred to as the Standards. In addition, under the handling regulation Tokay grapes are subject to an additional color requirement. Effective April 18, 1991, a new U.S. No. 1 Institutional grade was established under the Standards.

The Tokay Grape Industry Committee (committee), the agency responsible for local administration of the marketing order, recommended that the minimum grade requirements established for domestically grown Tokay grapes be revised to include the new U.S. No. 1 Institutional grade.

The U.S. No. 1 Institutional grade would: (1) Provide greater tolerance by permitting more weight variance of individual bunches; individual bunches of grapes grading U.S. No. 1 Institutional cannot weigh less than 2 ounces or more than 5 ounces; and (2) provide that at least 95 percent of the containers in a lot of grapes grading U.S.

No. 1 Institutional are required, under the Standards, to be marked "Institutional Pack." Grapes grading U.S. No. 1 Table consist of bunches of well developed grapes, which are fairly well colored, uniform in appearance, and free from decay, mold and other condition factors. Bunches must weigh at least one-fourth pound (4 ounces). The requirements of the U.S. No. 1 Institutional grade are the same as for U.S. No. 1 Table grade except for bunch size and container marking requirements.

The committee's recommendation to revise domestic handling requirements is being taken under a separate rulemaking action. This proposed rule relaxing the minimum grade requirement for imported Tokay grapes would be necessary to make import requirements consistent with those in effect under the marketing order. This action would permit smaller bunches of grapes to be imported into the United States by adding the U.S. No. 1 Institutional grade to the minimum grade requirements for Tokay grape imports.

A primary purpose of the Standards is to provide uniform trading terms relative to quality criteria commonly recognized by buyers and sellers of grapes. Because the requirements for U.S. No. 1 Table and U.S. No. 1 Institutional grapes are identical except for bunch size, it has been determined that the U.S. No. 1 Institutional grade requirements must include a container marking requirement to avoid buyer confusion in the marketplace. Because this requirement has been determined to be essential in identifying U.S. No. 1 Institutional grapes, imports of U.S. No. 1 Institutional grade Tokay grapes would have to meet all of the requirements of that grade set forth in the Standards, including the requirement that containers of such grapes be marked "Institutional Pack."

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to comment on this proposal. All written comments received within the comment period would be considered prior to issuing any final rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 944 be amended to read as follows:

## PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.605 is amended by revising paragraph (a) to read as follows:

**§ 944.605 Tokay Grape Import Regulation 5.**

(a) *Applicability to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period August 12 through November 15 of each year the importation into the United States of Tokay variety grapes is prohibited unless such grapes meet the grade and size specifications of U.S. No. 1 Table Grade, or U.S. No. 1 Institutional, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880 through 51.913), and the following additional requirement: Of the 25 percent, by count, of berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color.

* * * * *

Dated: July 22, 1993

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–18153 Filed 7–29–93; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 189

**[Docket Nos. 82P–0371 and 91N–0165]**

### Lead-Soldered Food Cans; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the Federal Register of June 21, 1993 (58 FR 33860). The document announced that FDA was proposing to prohibit the use of lead solder in cans that contain food. The document was published with some inadvertent errors. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** In FR Doc. No. 93–14465, appearing on page 33860, in the Federal Register of Monday, June 21, 1993, the following corrections are made:

1. On page 33860, in the first column, in the third line from the bottom, the mail code "(HFF–335)" is corrected to read "(HFS–216)".

2. On page 33861, in the third column, in the third line from the bottom, the word "points." is corrected to read "points:".

3. On page 33864, in the first column, in the second full paragraph, in line 10, the phrase "(Refs. 28 and 290)" is corrected to read "(Refs. 28 and 29)".

4. On page 33866, in the first column, in the first full paragraph, in line 18, the phrase "PTTIL is likely" is corrected to read "PTTIL are likely"; in the second full paragraph, in line 12, the word "form" is corrected to read "from"; and in the second column, third full paragraph, in line 10, the phrase "converted food" is corrected to read "converted to food".

5. On page 33870, in the third column, in Reference 45, in line 3, the word "Sela" is corrected to read "Seal".

Dated: July 26, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–18147 Filed 7–29–93; 8:45 am]

BILLING CODE 4160-01-F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MI5–1–5161; FRL–4584–6]**

### Approval and Promulgation of Implementation Plan; Michigan

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** USEPA is proposing disapproval of revisions to the Michigan State Implementation Plan (SIP) for ozone which were submitted to USEPA by the Michigan Department of Natural Resources (MDNR) on April 28, 1989. The proposed revisions concern R 336.1628 (Rule 628), "Emission of volatile organic compounds from components of existing process

equipment used in manufacturing synthetic organic chemicals and polymers; monitoring program", and R 336.1629 (Rule 629), "Emission of volatile organic compounds from components of existing process equipment used in processing natural gas; monitoring program", of Michigan's Administrative Rules.

**DATES:** Comments on this revision and on the proposed USEPA action must be received by August 30, 1993.

**ADDRESSES:** Comments may be mailed to: Carlton T. Nash, Chief, Regulation Development Section (AT-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request and USEPA's analysis are available for inspection at the following location: (It is recommended that you telephone Kathleen D'Agostino at (312) 886-1767 before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air Toxics and Radiation Branch, Eighteenth Floor, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Kathleen D'Agostino, Air Toxics and Radiation Branch (AT-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-1767.

**SUPPLEMENTARY INFORMATION:**

## Background

Under section 107 of the Clean Air Act, as amended in 1977 (1977 Act), USEPA designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For Michigan, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, section 172(a) of the 1977 Act, required that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982.[1]

Sections 172(b) and (c) of the 1977 Act, require that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of reasonably available control technology (RACT) to sources of volatile organic compound (VOC) emissions. For the purpose of assisting state and local agencies in developing RACT rules, USEPA prepared a series of Control Technique Guideline (CTG) documents which establish the presumptive norm for RACT for a specific source category. In cases where the state adopts rules that are less stringent than in the CTG, the state must justify that those rules are RACT for that source or source category. In partial response to the requirement for RACT VOC rules, the State of Michigan submitted and USEPA approved controls representing the application of RACT for certain stationary sources of VOCs covered by the first two groups of CTGs [RACT I—40 CFR 52.1170(c)(16) (45 FR 29790); 40 CFR 52.1170(c)(39) (46 FR 43422); 40 CFR 52.1170(c)(56) (47 FR 32116) and RACT II—40 CFR 52.1170(c)(56) (47 FR 32116)].

Section 172 of the 1977 Act allowed USEPA to grant extensions to those States that could not demonstrate attainment of the ozone standard by December 31, 1982, if certain conditions were met by the States in revising their air pollution control program. These areas became known as extension areas. Michigan requested and received an extension to December 31, 1987, for achieving the ozone NAAQS in Wayne, Oakland and Macomb Counties. This extension was granted on June 2, 1980, (45 FR 37196) and obligated the State to develop, for those counties, RACT regulations for sources that are addressed by the Group III CTGs (RACT III) and RACT regulations for major sources that are not addressed by a CTG (major non-CTG RACT).[2]

On May 26, 1988, pursuant to section 110(a)(2)(H) of the 1977 Act, USEPA Region 5 notified Governor James J. Blanchard that the Michigan SIP was substantially inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (USEPA's SIP-Call). Among other deficiencies, USEPA noted that the State had not yet submitted the RACT regulations for sources in Wayne, Oakland and Macomb Counties that were covered by the third set of CTGs.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399 (codified at 42 U.S.C. 7401 *et seq.*). By operation of law, the Detroit area, including Wayne, Oakland and Macomb Counties, retained its nonattainment designation and was classified as a moderate nonattainment area for ozone. Section 182(a)(2)(A) of the Clean Air Act (CAA), requires each state to submit to USEPA by May 15, 1991, revisions or additions to its SIP to correct deficiencies in its RACT rules for ozone. Section 182(a)(2)(A) of the Clean Air Act applies to those areas classified as marginal or above and requires states to adopt and correct RACT rules for such areas pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] Because the Detroit area (including Wayne, Oakland and Macomb Counties) is classified as moderate, the area is subject to the RACT fix-up requirement and the May 1991 deadline.

Other areas within Michigan also retained a designation of nonattainment and were classified by operation of law upon enactment. These areas are also subject to the RACT fix-up requirement. However, under USEPA's pre-amendment guidance, interpreting the requirements of section 172(b), these areas were not required to adopt RACT rules for sources covered by the Group III CTGs. Therefore, for purposes of the May 15, 1991 deadline, only three counties were required to have RACT rules for Group III CTG sources.

Areas that are designated nonattainment, that are classified as moderate or above, and that were not previously required to adopt RACT rules for sources covered by the Group III CTGs, are required to adopt such rules under section 182(b)(2) of the amended Act.[4] Section 182(b)(2) requires that these areas adopt RACT rules for: (1) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of enactment of the CAAA and the date of attainment, by a date specified by the Administrator, and (2) all VOC sources in the area covered by any CTG issued before the date of enactment and (3) all other major stationary sources of VOCs that are located in the area, by November 15, 1992 (catch-up requirements). For these areas, RACT rules for the Group III CTGs are due on November 15, 1992.

On April 28, 1989, MDNR submitted final regulations to satisfy outstanding

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[1] The 1977 Act's requirements for an approvable SIP are described in a "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

[2] On January 22, 1981, (46 FR 7182), USEPA published guidance for the development of 1982 ozone SIPs in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension".

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 Ozone and Carbon Monoxide Policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] This requirement would apply to the remainder of the Detroit nonattainment area as well as the Grand Rapids (Kent and Ottawa Counties), and Muskegon (Muskegon County) areas which are all designated as nonattainment and classified as moderate.

commitments in its 1982 ozone SIP for southeast Michigan (Wayne, Oakland and Macomb Counties). Today USEPA is rulemaking on the regulations contained in the submittal which address two RACT III categories, VOC leaks from synthetic organic chemical and polymer manufacturing plants (Rule 628) and natural gas processing plants (Rule 629). At the time MDNR submitted these rules, USEPA only required adoption of RACT III in extension areas. However, MDNR chose to expand the applicability of these rules to all of the counties listed in USEPA's SIP-Call, which include the Detroit, Grand Rapids, and Muskegon areas. This submittal, therefore, addresses requirements of USEPA's SIP-Call, section 182(a)(2)(A) of the CAA (for Wayne, Oakland, and Macomb Counties), and section 182(b)(2) of the CAA (for Livingston, Monroe, St. Clair, Washtenaw, Kent, Ottawa, and Muskegon Counties). The following is USEPA's evaluation and proposed action for Michigan's RACT III rules.

**USEPA's Evaluation and Proposed Action**

In determining the approvability of a VOC rule, USEPA must evaluate the rule for consistency with the requirements of the CAA and USEPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The USEPA interpretation of these requirements, which forms the basis for today's action, appears in the various USEPA policy guidance documents listed in footnote 3. Among these provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for existing major stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

Under the amended Act, Congress ratified USEPA's use of CTG documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The USEPA policy document applicable to Rule 628 is Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment, dated March 1984. The USEPA policy document applicable to Rule 629 is Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants, dated December 1983. Further interpretations of USEPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

MDNR Rules 628 and 629 are new rules which were adopted to establish a monitoring program for leaking components of manufacturing process equipment at synthetic organic chemical and polymer manufacturing plants and natural gas processing plants, respectively. Both rules include provisions relating to the inspection of components, the repair of leaks, and recordkeeping.

Below is a description of the regulations submitted and USEPA's evaluation of them.

*Definitions*

Rules 103, 104, 106, 108, 114, 119 and 121 contain definitions of terms used in Rules 628 and 629. These definitions are generally consistent with the CTGs and are, therefore, approvable.

*Applicability*

Rule 601 has been revised to define "existing source" as it relates to Rules 628 and 629. An existing source is any process or process equipment subject either to Rule 628 or 629 which has been placed into operation or for which an application for a permit to install was made before January 5, 1981 (for Rule 628) or January 20, 1984 (for Rule 629). These revisions are approvable because they are consistent with the applicability dates for the NSPS for these categories. Any sources installed after these dates must meet NSPS requirements.

Rules 628(1) and 629(1) specify that the requirements of Rules 628 and 629 apply to existing sources located in any county listed in table 64. The counties listed are: Kent, Lapeer, Livingston, Macomb, Monroe, Muskegon, Oakland, Ottawa, St. Clair, Washtenaw and Wayne. At the time of MDNR's submittal, USEPA required the adoption of RACT III only in extension areas; however, MDNR chose to expand the applicability of these rules to all of the counties listed in USEPA's SIP-Call. This applicability is consistent with the requirements of section 182(a)(2)(A) and section 182(b)(2) of the amended Act. Pursuant to these sections, MDNR is required to adopt and submit RACT III regulations to USEPA by May 15, 1991, for Oakland, Macomb and Wayne Counties (section 182(a)(2)(A)) and by November 15, 1992, for Kent, Livingston, Monroe, Muskegon, Ottawa, St. Clair and Washtenaw Counties (section 182(b)(2)).

These rules also contain provisions which allow the Michigan Air Pollution Control Commission to approve an "equivalent control method." USEPA previously commented that this type of provision is unacceptable unless accompanied by either a requirement that such methods be approved by USEPA as site-specific SIP revisions or a replicable procedure (which USEPA has determined to be approvable) for establishing an equivalent control method. If the State is not required to submit alternate methods to USEPA, the State would have the ability to alter the SIP, possibly in a way which would interfere with expeditious attainment of the NAAQS, without providing USEPA with the opportunity to rulemake on the SIP revision. MDNR chose not to remove this language because it believes that it is appropriate and consistent with existing VOC rules. MDNR states that it will submit alternative programs as SIP revisions if necessary. USEPA does not consider this to be an adequate response to this issue. USEPA has identified this type of provision as a deficiency in Michigan's existing VOC rules.

*Inspection Requirements*

Rules 628 (2) and (3) and 629 (2) and (3) establish inspection programs which are consistent with the CTGs, and are, therefore, approvable.

Rules 628(4) and 629(4) provide for annual rather than quarterly inspection of valves in a process unit if the quarterly leak detection program shows that 2 percent or less of the process valves in that unit are leaking for 2 consecutive quarters. These provisions are not consistent with the CTGs, which allow annual monitoring only after the quarterly leak detection program shows that 2 percent or less of the valves are leaking for 5 consecutive quarters.

Rules 628(6) and (7) and 629(6) and (7) and (8) contain various exemptions from the inspection requirement which are generally consistent with the CTGs and are approvable, with the exception of Rule 629(8)(a). This rule exempts components which contain or contact a process stream with a VOC concentration of less than 10 percent by weight. The CTG states that "Equipment with process streams containing relatively low percentages of VOC (i.e., between 1.0 and 10 percent) contribute a significant portion of total emissions from natural gas plants and, therefore, are subject to RACT requirements." MDNR has provided no justification for this exemption. In addition, with respect to Rules 628(6)(a) and 629(7)(a), MDNR should require initially and at any other time they deem fit, a stack test to demonstrate the efficiency of the control devices.

*Repair Requirements*

Rules 628(9) and 629(10) require leaking components to be repaired no later than 15 days after detection. These provisions are consistent with the CTGs.

Rules 628(11) and 629(12) allow for a delay in the repair of leaking components. With the exception of Rules 628(11)(b) and 629(12)(b), these provisions are acceptable. Rules 628(11)(b) and 629(12)(b) allow for a delay of up to 6 months for repair of leaks that "cannot be repaired within 15 days due to circumstances beyond the control of the person operating" the plant. USEPA believes this provision is too vague; it is not clear what would constitute circumstances beyond the control of the operator. Therefore, USEPA believes that this language affects the enforceability of the requirement to repair leaking components. An acceptable alternative would be for Michigan to include recordkeeping requirements which would allow both the State and USEPA to determine the impact of this exemption.

*Recordkeeping and Reporting Requirements*

Rules 628(7)(a) and 629(8)(a) should require an analysis demonstrating that relevant components are not in VOC service.

Rules 628(12) and 629(13) require a log to be kept of all leaks. These provisions are consistent with the CTGs.

Rules 628(13) and 629(14) contain acceptable quarterly reporting requirements.

*Compliance Date*

Rules 628(14) and 629(15) require sources subject to Rules 628 and 629 to submit a written program detailing how the provisions will be implemented and require sources to begin inspections within 6 months after the effective date of the rules. This is an acceptable timeframe for implementing the provisions of these rules.

A detailed discussion of the deficiencies in Rules 628 and 629 can be found in the Technical Support Documents dated July 3, 1989, and July 20, 1989, which are available from the USEPA Region 5 office. Because these rules contain provisions which are not consistent with section 172 of the pre-amended Act as interpreted in the CTGs and the Blue Book, they are not approvable pursuant to sections 182(a)(2)(A) and (b)(2) of the CAA. Therefore, USEPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, USEPA cannot grant partial approval of the rule under section 110(k)(3).

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time USEPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

**Regulatory Process**

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under section 110 and subchapter I, Part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

Under Executive Order 12291, this action is not "major". It has been submitted to the Office of Management and Budget for review.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: March 9, 1993.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 93–18227 Filed 7–29–93; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 76**

**[MM Docket No. 93–215; FCC No. 93–353]**

## Cable Television Act of 1992

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has adopted a Notice of Proposed Rulemaking proposing cost-of-service standards for the cable industry. This action will provide notice to the public that the Commission intends to establish cost-of-service requirements governing the cable industry and seeks comment on these requirements. This action will provide a record on which the Commission can establish cost-of-service requirements.

**DATES:** Comments due August 25, 1993; reply comments due September 14, 1993.

**ADDRESSES:** Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jennifer A. Manner, (202) 653–5940; Lawrence A. Walke, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rulemaking in MM Docket No. 93–215; FCC No. 93–353, adopted July 15, 1993, and released July 16, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

**Synopsis of the Notice of Proposed Rulemaking**

*I. Introduction*

1. In this Notice of Proposed Rulemaking ("Notice"), we propose regulatory requirements to govern cost-of-service showings submitted by cable operators seeking to justify rates above levels determined under our primary method of regulating rates using benchmarks and price caps. We also

delegate authority to the Mass Media Bureau to conduct cost studies of individual cable companies in conjunction with this rulemaking. We further propose a productivity offset feature that could be incorporated into our price cap mechanism governing cable service rates, and information collection requirements to implement section 623(g) of the Cable Act of 1992.

*II. Background*

2. On May 3, 1993, the Commission released a Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266, FCC 93–177, 58 FR 29736 (May 21, 1993) ("Report and Order"), establishing rules to implement the cable television rate regulation provisions of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). The 1992 Cable Act provides that rates for cable service, other than per channel and pay-per-view services, provided by cable systems not subject to effective competition, as defined in the statute, shall be subject to regulation. The statute provides for regulation of the basic service tier generally by local franchising authorities, and of cable programming services tiers exclusively by the Commission.

3. In the Report and Order, the Commission adopted a benchmark and price cap approach to setting rates for regulated cable services. Under that approach, existing rates for cable service are compared to a benchmark that reflects the rates charged by cable systems subject to effective competition, with a given number of subscribers, channels, and satellite channels. In general, systems with current rates above the benchmark must either lower rates to the benchmark or to the rates in effect on September 30, 1992, reduced by ten percent, whichever reduction is less. The Commission established forms and associated instructions that determine the precise manner of conducting the benchmark comparison and reducing rates. Once initial rates are determined by comparison to the benchmark, rates are governed on a going-forward basis by a price cap mechanism. The price cap permits annual adjustments for inflation and a recovery of increases in external costs, including programming costs, costs of franchise requirements, taxes, and franchise fees.

4. The Commission based its adoption of the benchmarking and price cap approach for regulation of cable service rates on an evaluation of the advantages and disadvantages of that approach and traditional cost-of-service regulation. The Commission determined that a benchmark and price gap approach should serve as the primary method for regulation of cable service rates given the disadvantages associated with cost-of-service regulation, including increased administrative burdens imposed on cable operators and regulators.

5. At the same time, the Commission was concerned that the benchmark and price cap regulatory framework might not in all cases permit cable operators to recover the reasonable costs of providing regulated cable service. Accordingly, the Commission established an opportunity for cable operators to justify rates above benchmark or capped levels based on costs. Although the Commission had previously proposed and sought comment on regulatory requirements to govern cost-of-service showings by cable operators, the Commission determined that the record at that time was not sufficient to permit the careful balancing of subscriber and cable operator interests that should be embodied in cost-of-service requirements. The Commission stated that it would issue the instant Notice to gather the record necessary for adoption of cost-of-service requirements. Pending adoption of rules in this proceeding, local franchising authorities for the basic tier and the Commission for cable programming services, will review cost-of-service showings by cable operators on a case-by-case basis under general cost-of-service principles.

*III. A Regulatory Framework to Govern Cost-Based Cable Service Rates*

6. In this Notice, we propose to establish a regulatory framework to govern rates for cable service based on costs. This regulatory framework will consist of regulatory goals for cost-based regulation of cable service rates and the regulatory requirements that will achieve those goals. We discuss first our tentative goals for cost-based regulation of cable service rates and then the requirements that we could adopt to achieve them.

A. Regulatory Goals

7. As indicated, in the Report and Order, the Commission adopted a benchmark and price cap approach as the primary means of governing rates for regulated cable service. Our benchmark and price cap requirements will continue to serve as the primary mechanism for regulation of cable service rates. We are concurrently with the instant proceeding addressing petitions for reconsideration of the Report and Order. We incorporate by reference petitions for reconsideration of the Report and Order. We may adopt in the instant proceeding proposals made on reconsideration concerning cost-of-service requirements and the role they should play in our overall approach for regulation of cable service rates. We additionally intend to establish an opportunity for cable operators to justify rates based on costs, as we will explore in this proceeding. We believe that our benchmark, price cap, and cost-of-service requirements should constitute a complete regulatory approach for setting cable service rates. Thus, a goal for the cost-of-service requirements that we ultimately adopt in this proceeding will be that they form a "backstop" for the benchmark approach to rate regulation. We solicit comment on what cost-of-service requirements we should adopt that will best form this part of our comprehensive plan for regulation of cable service rates. In particular, we request comment on what rate levels our cost-based requirements should produce in relation to benchmark rates. We also solicit comment on what role generally a cost-based approach to ratemaking should play in our regulation of cable service rates. We believe that the principal purpose of cost-based ratemaking in the overall framework of our regulations should be to permit regulatory authorities to evaluate whether rates that exceed the benchmark for a specific system are nonetheless reasonable in light of that system's permissible costs, as discussed more fully below.

8. Our regulatory framework for cost-based rates for cable service will govern the rates for cable service set pursuant to cost-of-service showings by cable operators seeking to justify rates above benchmark and capped levels. Our framework will determine the price that operators may charge for cable service and the earnings that cable operators may achieve through cost-based rates. We believe that our regulatory requirements determining cost-based rates must reflect a balancing of the interests of cable operators and consumers that is fair and reasonable to both. Our requirements should permit cable operators to recover the reasonable costs of providing cable service and to attract capital, including the opportunity for reasonable earnings, while protecting consumers from paying inappropriate costs and unreasonable charges, which was one of Congress' primary concerns when effective competition for cable is not present.

9. Congress also identified the policy goal of ensuring that cable operators continue, where economically justified, to expand their telecommunications

infrastructure. The Commission agrees that cable operators can, and should, contribute to the continued development of an advanced telecommunications infrastructure. Cable operators have major communications capabilities in place and are rapidly making facilities and services improvements. They are also actively exploring ways to combine existing services with new telecommunications services that could increase competition in the provision of communications services to the public and bring new services to consumers. We also believe that, in the near future, cable operators may experience significant competition in delivery of video programming to consumers. We believe that, consistent with the Act, our requirements should not thwart operators' ability to respond to competitive forces by means of facility and service improvements. For these reasons, we further tentatively conclude that our regulatory requirements for cost-based rates should also be designed to assure that cable operators may fully respond to incentives to provide a modern communications infrastructure and to respond to competitive forces. We believe that such an approach directly serves Congress' intent to encourage "economically justified" expansion of the cable infrastructure.

10. In the Report and Order, the Commission determined that the benchmarking process for setting rates would be based on the goal of achieving rates for cable service that approach rates of competitive systems. The Commission established a regulatory framework with procedures designed to ensure that systems with rates above the competitive benchmark will reduce rates by the competitive differential of ten percent. The Commission explicitly selected such an approach as the preferred method of rate regulation, as opposed to using traditional cost-based regulation as its primary regulatory tool. We solicit comment on whether our regulatory framework for cost-based rates should also be guided by the goal of producing rates that approximate competitive rate levels, i.e., rates that approach the operators' costs. The key distinction between the benchmark/price cap approach and the cost-based approach, however, is that operators making a cost-of-service showing are seeking to justify rates that exceed the benchmarks but that nevertheless are reasonable because they are based on costs, as determined under our requirements. We seek comment on whether this is the correct formulation of the cost-of-service objectives.

11. In the Report and Order, we also concluded that we should adopt a benchmark for regulation of cable service rates that is tier-neutral. We concluded that a regulatory framework that produced a low-priced basic service tier but that also created incentives for cable operators to move programming from the basic to higher tiers did not have any advantages over a regulatory scheme that was tier-neutral. We tentatively conclude, for the same reasons, that we should adopt standards of reasonableness of cable service rates based on costs that are also tier-neutral. We solicit comment on this tentative conclusion.

12. Determination and evaluation of cost-based rates can be a complex and resources intensive activity. In-depth evaluation of cost-based rates for many cable operators would impose significant administrative burdens on cable operators and regulators. Therefore, we believe that our requirements for cost-based rates must, to the extent possible, be based on a pragmatic approach geared to the feasibility of implementation of cost-based regulation by local regulators and the Commission. We believe that, to the extent possible, our regulations should be designed to reduce administrative burdens on cable operators and regulators.

13. We also believe that our regulations, while protecting consumers from paying unreasonable charges, should nonetheless permit the recovery of costs for providing cable service in high cost areas. Our regulations should not preclude operators facing unusual operating costs to recover such costs in rates for cable service. We will endeavor to fashion requirements that give ratemaking recognition to all legitimate costs while preventing recovery in rates of unreasonable costs.

14. Finally, we believe that the goals we adopt for fashioning regulatory requirements for cost-based cable service rates should carefully consider the potential impact of such goals and requirements on consumers and the cable industry. In order to permit the Commission to fully assess the impact of possible requirements that we could adopt in this proceeding, we seek comment on the present economic and financial performance and practices of the cable industry, including expert opinion and economic models, and on the financial and economic impact of cost-based rates on the cable industry and consumers.

B. Regulatory Requirements

15. In this section, we propose and discuss the regulatory requirements that could be adopted as part of our regulatory framework governing cost-based rates of cable service. These requirements will be designed and selected to achieve our balancing of goals for cost-based regulation of cable service. These possible regulatory requirements consist of the regulatory tools employed by this Commission and other federal and state regulatory bodies to govern the rates of rate regulated industries based on costs. We tentatively conclude that we may employ these requirements for cost-based regulation under the Cable Act of 1992.

16. We have previously recognized the disadvantages of traditional cost-based rate regulation when regulating other telecommunication industries and have sought to develop other alternatives. For the same reasons, we have adopted in this proceeding a benchmark and price cap mechanism to serve as the primary method of regulating cable service rates. Accordingly, while we propose traditional concepts of cost-of-service regulation, we will endeavor to fashion a framework from them that achieves our goals and avoids to the extent possible the disadvantages of traditional cost-based regulation. We intend to adopt requirements tailored to the cable industry. We also seek alternative proposals for governing the rates of cable service based on costs, including modifications to the possible requirements discussed below. We may adopt such proposals offered by commenters even though not specifically proposed in this *Notice*. At paras. 70–75, *infra*. we discuss possible alternatives for streamlining cost-of-service showings.

*(1) Procedural requirements for cost-of-service showings.* 17. As indicated, in the Report and Order, we established an opportunity for cable operators to justify rates for the basic service tier and/or cable programming service tiers above levels permitted under the benchmark and price cap approach based on costs. We propose to establish limits on the frequency with which cable operators may make cost-of-service showings for the basic service tier and cable programming services tier. We propose that once a cost-of-service showing has been evaluated by either the local franchising authority or the Commission, another such showing for the tier may not be made for one year. This approach will eliminate burdens of repetitive filings and should not unduly financially affect operators because we do not anticipate that costs will change markedly within a one year period. We solicit comment on this proposal.

18. We also solicit comment on whether we should establish procedural limits or bars on cost-of-service showings seeking to justify rates higher than existing rates absent a demonstration of special circumstances or extraordinary costs. Under this approach, absent a special showing, we would not entertain cost-of-service applications to justify initial regulated rates higher than the systems' existing rates. This approach would be based on the presumption that most operators have set rates in an unregulated environment at a level to be fully compensatory. We solicit comments on this approach and presumption.

19. In order to facilitate review of cost-of-service showings, we propose to require that in any cost-of-service showing, costs and supporting data be presented on an FCC prescribed form and associated worksheets. The form and accompanying instructions would embody the cost-of-service standards, cost allocation, and cost accounting requirements that we will adopt in this proceeding. The form would require explanations and descriptions of cost information and averaging and allocations used, to the extent not prescribed by the Commission, to permit evaluation of the showing by regulators. This form and worksheets would be used for cost-of-service showings for both the basic service tier and cable programming service tiers. We believe that use of such a form would generally reduce administrative burdens by providing for a uniform presentation of development of cost-based rates for cable service. We solicit comment on this proposal.

*(2) Cost-of-service standards.* 20. In this section, we propose cost-of-service standards that will determine both the opportunity for, and limits of, recovery from subscribers of costs incurred by cable operators. Under traditional cost-of-service regulation, rates are set at a level to provide the company with a recovery of its costs and a reasonable opportunity to earn a fair return on its invested capital. Under the traditional formulation, the company's revenue requirement is equal to the expenses of providing service and its return on investment. In other words, the rates an enterprise is permitted to charge must be adequate to pay its expenses and earn a reasonable return on investment. We propose this traditional formulation as the overarching standard to govern cost-based rates for cable service. We solicit comment on this proposal.

21. We address below specific requirements that could govern the expenses and return on investment that cable operators would be permitted to recover in rates for regulated cable service. We tentatively conclude that we should exclude from permitted annual expenses the expenses of providing services unrelated to provision of cable service and certain special expenses. We also tentatively conclude that the Commission should prescribe depreciation rates for cable plant and that those rates should be designed to accurately match the useful life of the plant. In addition, we tentatively conclude that we should use an original cost methodology to value cable operator's ratebase and that we should exclude excess acquisition costs from ratebase for purposes of developing cost-based rates. Finally, we tentatively conclude that we should establish a rate of return for provision of regulated cable service by all cable operators, and that we should establish a rate of return between approximately 10%–14%, after taxes, for provision of regulated cable service, depending on the balancing of goals that we adopt in this proceeding and prevailing costs of capital. We solicit comment on whether these general requirements should form part of our regulatory framework to govern cost-based rates for cable service.

22. The foregoing or other requirements that we could adopt governing costs may constitute different costing, accounting, and financial practices for purposes of setting rates than current practices in the cable industry. They may also represent different measures of industry performance than currently used by the cable industry and lenders. An important determinant of the standards that we adopt will be the impact on the industry and consumers. We solicit comment on the extent to which we should establish in our regulations explicit transition elements addressing the changes in financial practices and structure required by cable operators as they adapt to a rate regulated environment. For example, as discussed below, we could allow in ratebase a portion of excess acquisition costs when evaluating the reasonableness of current rates. To the extent our cost-of-service standards will encourage most cable operators to elect the benchmarking approach to setting rates, the primary impact of these standards will be that most rates will, in fact, be set by the benchmark approach. We seek comment on the impact of the standards that we could adopt in this proceeding. We also solicit comment on the extent to which cable service rates are already developed on the basis of costs, and the methodologies used by cable operators to do so.

*a. Annual expenses.* 23. We propose that a cost-based showing permit the cable operator to recover operating expenses, depreciation, and taxes as annual expenses of providing cable service. We will prohibit recovery through regulated cable rates of expenses unrelated to provision of regulated cable service. We solicit comment on these tentative conclusions.

*(1) Operating expenses.* 24. Operating expenses incurred by cable operators could be expected to include plant specific costs (e.g., maintenance), plant non-specific costs (e.g., programming expense, power, engineering and testing), customer operations (e.g., marketing, billing and collection), and corporate operations (e.g., legal, planning, accounting and finance). We tentatively conclude that these costs should be included as operating expenses that cable operators are entitled to recover in rates for regulated cable service. We believe that this will permit operators to fully recover the reasonable costs of providing service in high cost areas. We seek comment on this tentative conclusion. We also seek comment on whether other operating expenses should be recoverable. We tentatively conclude that programming expense would be a recoverable operating expense, but would not be a cost element for inclusion in ratebase. We solicit comment on whether we should nonetheless permit a profit or mark-up on programming expense for development of cost-based rates. This could create incentives for cable operators to provide programming but would increase charges to subscribers. We solicit comment on whether cable operators will continue to have sufficient incentives to provide adequate levels of programming service without an allowed profit on programming expense. We also tentatively conclude that we should not permit recovery of certain special expenses. Specifically, we propose to exclude lobbying expenses, contributions for charitable, social or community welfare purposes, membership fees and dues in social, service and recreational or athletic clubs and organizations, and penalties and fines paid on account of violations of statutes and rules. Our rules presumptively exclude these costs from costs-of-service for rates for telephone interstate access service. Our regulations governing operating expenses will also determine the costs that must be expensed and those that must be capitalized. We solicit comment on

what costs should be expensed or capitalized.

*(2) Depreciation.* 25. Depreciation can affect rates in two ways. First, depreciation expense is a recurring expense that recovers in rates the cost of the depreciated asset over its useful life. Second, accumulated depreciation is the sum of depreciation previously recovered as an expense and is subtracted from gross plant to calculate the ratebase to which the prescribed rate of return is applied.

26. Under a traditional regulatory cost-of-service scheme, allowing rapid depreciation will increase the regulated company's cash flow and provide additional funds that could be used to upgrade infrastructure, although the regulated company is not necessarily obligated to use such funds for infrastructure improvements. On the other hand, rapid depreciation can increase subscriber rates. In the cable context, depreciation may be a significant expense in current development of rates for cable service; thus, limits on depreciation expense could significantly reduce the annual expenses that could be recovered in rates for cable service. Depreciation practices, therefore, could play a significant role in our balancing of goals for cost-based rates of cable service. At the same time, current depreciation practices may vary widely across the industry. Thus, depreciation requirements could have a significant impact on the industry.

27. We tentatively conclude that we should prescribe depreciation rates for purposes of developing cost-based rates for regulated cable service. This prescription could be an industry-wide depreciation rate or band of reasonable rates, or individual rates for each plant category. We could also require cable operators to use company-wide expense as reported in Securities and Exchange Commission ("SEC") financial statements, link depreciation to the specific circumstances in each franchise, or adopt some other standard. We seek comments on these alternatives. Comments favoring prescription should further address the number of depreciable plant categories and the evidence that should be taken into account in setting rates. We also solicit comment on whether we should prescribe recovery on a straightline remaining life basis, or some other recovery methodology. Under a straightline, remaining life approach, the depreciation rate is calculated under the following formula: Depreciation Rate=100% Book Value—Accumulated Depreciation—Salvage%/Average Remaining Life. We seek comment on how salvage value should be determined. If we determine that we should prescribe depreciation rates, we tentatively conclude that depreciation should be based on the book value of the asset as opposed to its economic or fair market value. We solicit comment on this conclusion. The Commission will consider in this proceeding, whether to require that the ratebase be valued for ratemaking purposes at original costs. If the original cost ratebase is adopted, comment is sought on the impact of using existing book reserves (which may or may not reflect original cost and which may reflect use of accelerated depreciation methods), as well as the impact of prescribing depreciation rates on the basis of expected remaining service life.

28. We further tentatively conclude that any depreciation rates we prescribe should be designed to accurately reflect, and recover the costs of the asset over, its useful life. We believe that this will best balance subscriber and operator interests. We solicit comment on what the impact on cable rates would be if we prescribed for the purpose of a cost of service showing depreciation schedules designed to allow recovery of capitalized costs over the maximum reasonable expected life of the plant. We seek comment on current industry depreciation practices, including the number of classes of depreciable plant, service lives, retirement schedules and depreciation methods (*e.g.*, straightline, accelerated). We solicit comment on the useful life and salvage value of all categories of facilities used by cable operators to provide regulated cable service.

29. As an alternative to prescription of depreciation practices, we solicit comment on whether we should for the time being only monitor operator depreciation practices. This monitoring could be facilitated by requiring cable operators to explain and justify depreciation practices in cost-of-service showings and/or by requiring reporting of depreciation practices under our collection of information requirements. This approach could reduce administrative burdens on the Commission and cable operators, but may involve a heightened risk of higher rates for cable subscribers. We solicit comment on this alternative.

*(3) Taxes.* 30. We propose to allow, in determining a cable operator's annual expenses, taxes incurred in the provision of regulated cable services. Taxes would include only those payable by the business entity. Income taxes payable on income from cable operations by individual owners, partners or Subchapter S Corporation owners would not be recoverable rates for regulated cable service. This would include all state and federal taxes on the provision of cable service and on income taxes attributable to the provision of regulated cable service. We solicit comment on this conclusion.

*b. Ratebase.* 31. As indicated, we propose to permit cable operators to recover in rates for cable service a return on the investment—*i.e.*, ratebase—used to provide regulated cable service. Our regulatory requirements concerning ratebase are likely to have a significant impact on cost-based rates for cable service. We tentatively conclude that cable operators should be permitted to include in ratebase: (1) Plant in service, (2) plant held for future use within a reasonable period of time, and (3) working capital, for the purpose of developing cost-based rates.

*(1) Plant in service.* 32. Plant in service is likely to be the largest portion of ratebase. We seek comment generally on what standards we should employ to determine costs that may be included in plant in service. In other rate regulated industries, the costs that the regulated company may include in the ratebase have been determined by applying the used and useful and prudent investment standards to the original construction cost of the assets dedicated to service. We tentatively conclude that we should adopt these standards to govern the costs that may be included in plant in service. We seek comment on this tentative conclusion.

33. *Valuation of Plant in Service.* We propose to establish standards to determine the value of plant in service that cable operators may include in ratebase. The value of the plant in service will be a major determinant of the level of costs that operators will be entitled to recover in rates. A number of approaches have been, or could be, used to determine the value of plant included in ratebase: market value, original cost, replacement cost, and reproduction cost, or a combination of these approaches. Under a market value approach, plant in service would be valued at the fair market value of assets at the time they are acquired. The original cost approach of valuation of plant for ratebase purposes can best be defined as the initial construction cost of the property, adjusted for all subsequent capital transactions, including depreciation, retirements, and improvements. This could be a relatively simple approach to apply because cable operators and regulators can base determinations on accounting records. The results of this approach are also not affected by economic conditions, making it somewhat easier

to determine. It also facilitates the prescription of depreciation rates by fixing the objective as the recovery of the actual cost of construction of the cable system. However, where adequate accounting records have not been kept, this approach may be more difficult to apply. Under a replacement cost approach, plant would be assigned a value of the cost of building a new "state of the art" facility. This approach, with appropriate safeguards and commitments from the operator, could promote infrastructure development. In addition, where new technology and efficiencies have made provision of current levels of service with new technology less expensive than the cost of existing plant, this could result in savings to consumers. Reproduction cost is the present cost to construct the plant that is in service. This approach has been favored by regulators in several instances. Under applicable judicial precedent, regulators have wide discretion to select a methodology for purposes of valuating ratebase, and we will select an approach consistent with that precedent that best implements our balancing of goals for cost-based rates of cable service. We request comments on each approach to valuing plant used and useful in the provision of regulated cable service. We also solicit comment on how each methodology would affect systems under original ownership, and those that have been refinanced or rebuilt. We also seek comment on whether the Commission should adopt one valuation methodology for determining initial regulated rates determined by a cost-of-service showing and another for assessing proposed increases in rates of regulated cable services under subsequent cost-of-service showings.

34. Our balancing of regulatory goals for cost-based rates for cable service will determine the valuation methodology that we select for plant in service. An original cost methodology might produce the lowest rates for consumers, and would additionally permit cable operators to fully recover the costs incurred to construct the plant used and useful in provision of regulated cable service. On the other hand, a replacement methodology might encourage operators to employ new technologies. Our choice of valuation methodology may also affect the amount of "excess" acquisition costs that could be disallowed from ratebase, discussed below, for those operators that purchased a cable system for amounts in excess of the value of the plant in service. Our valuation methodology could thus have a significant impact on the industry which, in turn, will affect subscribers.

35. We tentatively conclude that we should adopt an original cost methodology to determine the value of a cable operator's plant in service for ratebase purposes. As indicated, this may produce lower rates for consumers while permitting cable operators to recover the costs incurred, by the current operator or the previous owner, in constructing assets used to provide cable television service. At the same time, this approach does not necessarily preclude recovery of excess acquisition costs, as discussed below, to the extent we permit excess acquisition costs to be included in ratebase or amortized over a specified number of years. We solicit comment on this tentative conclusion.

36. *Excess Acquisition Costs.* Cable operators that have purchased cable systems in an unregulated environment may have paid a price for the enterprise as an ongoing business that exceeded the value of the plant in service that would be permitted under the valuation methodology that we select for plant in service, i.e., for such operators there will be an "excess" acquisition cost. Traditionally, excess acquisition costs have been excluded from the ratebase of regulated concerns, at least in part, because they are seen as inappropriate costs for the ratepayer to bear. This is because the premiums from excess acquisition costs directly benefit the seller, not the ratepayer, since they do not contribute to the plant supporting service to consumers. We note that subscribers may benefit indirectly from the sale if the purchaser is able to realize operating efficiencies that are unobtainable by the seller, but this is not likely to be the case where competition does not exist, since premiums may reflect an expectation of monopoly earnings. Generally, where competition does not exist, the presumption is that premiums reflect an expectation of monopoly earnings.

37. The legislative history of the Cable Act of 1992 reveals a congressional concern that excess acquisition costs may reflect the undue market power of cable operators not subject to effective competition, which has enabled the industry to charge rates higher than would be possible in a more competitive environment. We seek comment on whether Congress intended that we disallow excess acquisition costs.

38. Some or all of the acquisition costs in excess of original, replacement, or reproduction cost would ordinarily be considered goodwill for accounting purposes. We solicit comment on the extent to which cable operators may reasonably assign a portion of the purchase price of a cable system in excess of value of the plant in service, as determined under the valuation methodology that we select, to intangible assets such as customer lists or franchise rights. We solicit comment on how such assignments should be determined and whether we should establish limits on cable operators' discretion to do so.

39. We also solicit comment on the appropriate treatment of excess acquisition costs, including any portion thereof that can appropriately be assigned to intangible assets such as goodwill, customer lists, and franchise rights. As indicated, the traditional practice in rate regulation is to disallow excess acquisition costs from ratebase. On the other hand, it may be appropriate in some cases to allow such costs, at least in part. Where company policy has resulted in expense recognition of expenditures that produced value, still retained in the company, such as in development of customer lists, it could be appropriate to recognize that value. There may have been various and substantial expenditures by many operators which, as a matter of company policy or as a result of application of conservative accounting practices, have been expensed even though they have effectively resulted in the creation of assets with future economic value. One such area where this may be true is in the early marketing efforts of operators to develop their customer base, e.g., the subscriber list. Likewise the expenditures to obtain franchise and operating rights, though wholly or substantially written off early on, can be considered to be still beneficial in that companies are still operating under such rights. Similarly, the application of certain depreciation practices may have resulted in a general undervaluation of property, plant and equipment on the books of cable operators as the industry comes under regulation. We note that large financial losses are common across the industry and the write-offs of various organizational and development costs, and accelerated depreciation practices, appear to be at least partly responsible for the accumulation of those losses. It may be reasonable to view such accumulated losses as capital invested with an expectation of recovery over future periods as the industry reaches maturity. We seek comment on the appropriate treatment of accumulated losses. Should losses be amortized over some future period and should a return be allowed on such unrecovered amounts until they are fully recovered? Further, should there

be some provision for recovery of the return foregone in past years on unrecovered expenditures, and should the amount provided reflect a reduction for tax benefits received? Are there specific elements, e.g., the subscriber list, for which such provision should be made, but others for which no special provision should be made? And, if consideration is to be given to previously written off expenditures for customer lists, franchise rights, and other organizational items, how shall they be valued now? It thus may be appropriate to allow such amounts in ratebase or to recognize their amortization as a recoverable operating expense. We solicit comment on whether we should permit this treatment of intangible assets. In addition, an equitable balancing of consumer and cable operators interests may require an allowance in ratebase of some excess acquisition costs in view of the transition of the industry from a nonregulated to a regulated environment.

40. We tentatively conclude that the best balancing of our goals for cost-based rates will be achieved by exclusion of excess acquisition costs from ratebase, including portions assigned to goodwill, customer lists, franchise rights, and other intangible assets. To the extent cable operators on the record of this proceeding can demonstrate a need to allow such costs in ratebase as a transition mechanism or that such costs represent a value to the subscriber, we may alter this conclusion. We seek comment on this tentative conclusion, and on its potential impact on the cable industry, subscribers, and lenders.

41. To the extent that excess acquisition costs are disallowed from ratebase, we solicit comment on whether we should allow the amortization of such costs over time as an annual expense. In addition, to the extent any intangible assets are permitted in ratebase, we solicit comment on what amortization period should be required for such assets. We also seek comment on the appropriate amortization period. We note that an extended period, *e.g.*, 40 years, would have the effect of producing the lowest subscriber rates. We seek comment on whether cable operators require a more rapid recovery of excess acquisition costs, either permanently or as a transition mechanism.

42. *Plant Under Construction.* We solicit comment on whether we should impose any limits on inclusion of plant under construction in ratebase. We also solicit comment on what practices the cable industry currently follows in accounting for plant under construction. Moreover, we seek comment on whether the Commission should apply the traditional rule under ratebase/rate-or-return regulation that plant under construction will be withheld from ratebase until it meets the used and useful test, but that interest during construction can be capitalized.

43. *Excess Capacity, Cost Overruns and Premature Abandonments.* We also seek comment on whether the Commission should require exclusion from ratebase of costs incurred by a cable operator that represent excess capacity, cost overruns and premature abandonment. We solicit comment on whether these areas require regulatory limitations or whether we can monitor industry practices and impose requirements later if necessary. To the extent we permit any of these costs in ratebase, we solicit comment on several options for doing so. There are several ways that the Commission could treat excess capacity, cost overruns and premature abandonments for ratebase purposes. For example, we could permit the entire cost to be included in ratebase. This would allow the cable operator to recover capital and a return on capital. This option shifts all risk on to the consumer. Or, we could exclude from ratebase any costs that represent excess capacity, cost overruns and premature abandonments. This would reduce costs that must be borne by subscribers but could discourage operators from undertaking the risks of making facility improvements. As an intermediate approach, we could permit depreciation or amortization of the costs of excess capacity, cost overruns and premature abandonments but exclude them from ratebase. This would allow operators to recover such costs over time but would not allow an annual investment return on them. Should we permit amortization of such costs, we solicit comment on the appropriate time period. In any amortization, we also seek comment on whether the return of capital should be defined to include both equity and debt capital or only debt expense. We tentatively conclude that it should include only debt expense.

*(2) Working capital.* 44. As indicated, we propose to permit cable operators to include working capital in ratebase. Working capital is funding supplied by investors to support the regulated operation between the time the operator pays its creditors and the time it receives payment from its customers. Working capital can be either a negative or positive amount. We request comment on whether the cable industry generally incurs a negative or positive working capital requirement in its provision of regulated cable service. We also note that, traditionally, cost of service regulation has required that the leads and lags associated with payments should be analyzed in determining working capital. We recognize that this is an arduous task for most companies.

45. One approach to handling working capital would be to determine an industry-wide working capital allowance. Another would be to allow individual operators to use a balance sheet approach to determine working capital. This would require a determination of the average difference between current assets and current liabilities. Alternatively, we could require that cable operators study the timing of operating revenues and disbursements (a lead/lag study) to determine the mount of working capital included in ratebase. This would be more burdensome than a simple balance sheet determination of working capital but could more closely reflect the amount of working capital contribution form investors necessary for operation of the business. This is because a lead/lay study will reveal the extent to which revenues received prior to disbursements can meet working capital needs. We solicit comment on each of these approaches.

*c. Rate-of-return.* 46. As noted above, we propose to permit cable operators to recover in rates for regulated cable service a reasonable return on investment used and useful in providing regulated cable service. We tentatively conclude that it will not be possible, as a practical matter, to establish a separate rate of return for provision of cable service within each franchise area or for each cable company. While providing for a determination of separate rates of return for each franchise area or company might permit the most accurate balancing of subscriber and operator interests, this advantage is outweighed by the increased burden on local franchise authorities, cable operators, and the Commission of developing myriad rates-of-return. Nor do we believe that the factors on which a rate-of-return is based are likely to be so different that it is necessary to establish separate rates-of-return. Accordingly, in this informal notice and comment rulemaking proceeding we propose to establish a single rate-of-return for provision of regulated cable service by all cable operators for the purpose of setting rates based on a cost-of-service showing. We solicit comment on this analysis and proposal. However, we further solicit comment on the alternative of establishing rates-of-return for groups or types of cable operators

based on the major considerations that can guide establishment of rates-of-return. This could provide for variations to the industry rate of return based on appropriate factors. We solicit comment on what these factors would be and how this approach could be constructed.

47. The rate-of-return that we establish in this proceeding will be determined primarily by the balancing of the goals that we select, discussed above, for cost-based rates for regulated cable service. As we noted above, Congress declared the policy of the Act to include both the protection of consumers and the economically justified expansion of cable infrastructure. We seek comment on how to balance those goals in fixing the rate of return level. If the primary goal is ensuring the subscribers pay rates that are consistent with a competitive level, for example, we may select a relatively lower rate-of-return within the "zone of reasonableness" in which ratepayer interests are protected. Alternatively, if we want primarily to encourage reinvestment in infrastructure, we may select a relatively higher rate-of-return, within the zone of reasonableness.

48. In addition, we believe that the rate-of-return we select must be based on a careful analysis of the considerations that this agency, other regulators, and courts have employed in setting and reviewing rates-of-return for other industries subject to rate regulation. Accordingly, we proposed that the rate-of-return for regulated cable service shall be established, at least in part, by identifying the rate-of-return of a surrogate industry or activity, or of several industries or activities. We propose that this be accomplished by first choosing a surrogate that has comparable risk to that of the cable industry. We propose that we then determine the surrogate's cost of capital by ascertaining the cost of equity and the cost of debt of the surrogate and then deriving a composite, weighted average cost of capital based on the capital structure (debt/equity ratio) of the surrogate. The resulting figure would be the rate-of-return of the surrogate that would then weigh heavily in our determination of the rate-of-return for regulated cable service.

49. We also proposed that we carefully consider the differences in the financial characteristics and capital structure of the surrogate or surrogates and the cable industry in determining the rate-of-return of regulated cable service. The cable industry differs from mature regulated industries like telephone, gas and electric, each of which is characterized by a steady return on investment. The cable industry is still a relatively new industry, characterized by growth and reinvestment of earnings with the possibility that the expectations of investors in the cable industry differ from other regulated industries. Moreover, the cable industry, unlike industries such as telephone, relies heavily on private and semi-public sources of capital. We seek comment on the capital structure of the cable industry in comparison to traditional regulated industries. We initially have found that current cable industry practice is difficult to evaluate given that much financing is provided by private or closely held companies that do not publish SEC scrutinized statements of position. At least some cable operators have very high leverage (that is, debt contributing all but a small portion of total capital). We seek comment on the impact of the requirements that we could adopt in this proceeding on the current overall financial structure of cable industry. For instance, if we relied upon the traditional capital structure of regulated industries (e.g. 50% debt/50% equity) in determining the cost of capital for the cable industry, what would be the impact on the cable industry? We solicit comment, including detailed economic analysis, on the extent that these differences should affect our development of a rate of return for regulated cable service. We also solicit expert economic analysis on what is a reasonable return on investment for regulated cable service and on what models the Commission should rely in order to achieve a reasonable rate of return. We solicit comment on this general approach to determining the rate-of-return of the cable industry. We also solicit comment on how often the prescription should be revisited and represcribed. If the S&P 400 approach described below is adopted, should the allowed rate of return be automatically updated annually? If a more elaborate methodology is adopted, how often should a proceeding be undertaken?

50. Regulated Cable Service Surrogates. We tentatively conclude that the choice of the surrogate to use in determining the rate-of-return of regulated cable service should be guided primarily by an assessment of risk. Thus, we proposed to choose a surrogate that experiences the same approximate risk of economic loss as the provision of regulated cable service. We solicit comment on other factors that could guide our choice of a surrogate or surrogates. In the Notice of Proposed Rulemaking in MM Docket No 92-266, 58 FR 48 (January 4, 1993), we proposed the Standard & Poors 400 Industrials (S&P 400) as a surrogate and sought comment comparing the average cost of capital for companies in the S&P 400 to regulated cable service. We tentatively conclude that the S&P 400 offers a broad range of investor expectations of the trade-off between risk and return, and that investors in S&P 400 firms experience risks of economic loss that are roughly equivalent to those experienced in the provision of regulated cable service. Accordingly, we tentatively conclude that either the S&P 400 as a whole, or a subgroup of firms within it, can constitute a reasonable surrogate for regulated cable service and that the cost-of-capital of the S&P 400 shall be our primary guide in determining the rate-of-return of regulated cable service. We solicit comment on this analysis and tentative conclusion. Furthermore, we seek comment on the extent that companies in the S&P 400 demonstrate a range of financial strength—as manifested by the range of ratings—that would accurately reflect the range of financial strength for companies in the cable industry. We also solicit comment on whether a different surrogate should be used, such as regulated telephone companies.

51. Cost of Equity. Cost of equity can never be more than estimated because there is no written guarantee that a stockholder will receive any return. Generally, we have relied upon market based, forward looking methods to evaluate investor expectations for surrogate common stocks. There are two common methods of measuring the cost of equity, the discounted cash flow method ("DCF") and the risk premium analysis method, that could be used to estimate cost of equity. The DCF methodology relies upon the use of current dividends and stock prices combined with analyst estimates of long term earnings growth to estimate the return on equity demanded by investors. According to the DCF formula, the return investors expect to earn on a share of common stock equals the dividend yield they expect from that share plus the long-term growth they expect in earnings. For telephone utilities, the current dividend yield is a significant fraction of the investor expected return. For the S&P 400, current dividend yield is a much lower fraction of the investor expected return. For the cable industry, investors appear to rely predominantly on long term earnings and, thus, the DCF estimate is wholly dependent on the analyst long term growth estimates. Parties proposing surrogates with no current dividends should pay particular

attention to the stability and range of long term analyst estimates. The risk premium method estimates the cost of equity by developing a risk premium, typically by comparing historic data on equity returns and bond yields, that can be added to a current long term bond rate, such as US Treasury bonds. There is no set formulation of the risk premium method.

One that has achieved some theoretical prominence is the capital asset pricing model (CAPM). A more recent version of the CAPM is the arbitrage pricing model. It should be noted that neither the CAPM nor the arbitrage model has yet been given great weight in regulatory proceedings. Two of the more serious problems have been determining an acceptable risk premium and adjusting the measure of risk to reflect current (rather than historic) investor risk expectations. CAPM uses estimates of the risk of a surrogate stock by looking at how the stock price has fluctuated in relationship to the market as a whole. Its risk estimator, beta, equals one if the stock is no riskier than the overall stock market. Utility stocks have typically had betas significantly less than one (indicating less risk than the stock market as a whole). CAPM also requires an estimate of the risk premium—generally taken as the historic difference between some measure of stock returns for the stock market taken as a whole, and yields on US Treasury bonds. The beta for the S&P 400, which is itself broadly representative of the market, is one. The CAPM estimate for a surrogate company is calculated by multiplying beta times the risk premium and adding the current yield on bonds. We seek comment on the beta and risk premium appropriate for regulated cable service. We also seek comments comparing the appropriateness of the DCF and CAPM approaches for setting the cost of equity for regulated cable service. We seek comment on which approach or combination of the two approaches we should use.

52. In the Telco Reform Notice we examined the historic (1982–1992 1stQtr) risk premium between the yield on public utility "Aa" rated bonds and companies with estimated costs of equity in the lower half of the S&P 400. The risk premium ranged from 1.5% to 4.3%, with half of the estimates falling between 3% and 4%, another third evenly falling in the ranges 2.5%-3.0% and 4.0%-4.5%, and the remainder falling below 2.5%. We tentatively conclude that the cost of equity for risks comparable to the average S&P 400 company would be no more than 5% above the yield on public utility "Aa" grade bonds. Based on recent bond yield of approximately 7.5%, this would produce a cost of equity of no higher than 13%. If the risk of regulated cable service is judged to be comparable to the risks of the lowest quartile of S&P 400 companies, the cost of equity would be closer to 12%. If regulated cable service was judged to be more comparable to the risks of the highest quartile of S&P 400 companies, the cost of equity would be around 15%. We solicit comment on whether we should use a cost of equity based on the average S&P 400 company or on companies in a particular earnings quartile of the S&P 400, and on the relative risks of cable programing service as compared to the S&P 400 companies. We also request comment on other potential surrogates for the regulated cable services of the cable industry. If we use the S&P 400, or a subgroup of S&P 400 companies, as the primary surrogate for determining an appropriate cost of equity of regulated cable service, we tentatively conclude that the cost of equity will be in the range of 12%-17%. This, in turn, assuming a debt/equity ratio of 50%, would lead to a rate-of-return for regulated cable service of between approximately 10% to 12.4%. Given market changes in the cost of debt and equity, we tentatively conclude that a rate of return somewhere in the range of 10% to 14%, after taxes, would reflect a reasonable balancing of subscriber and cable operator interests and that we could select a final rate of return within this range to achieve our balancing of goals for cost-based rates for cable service. We solicit comment on selection of a maximum rate of return for regulated cable service within this range.

53. *Cost of Debt.* We solicit comment on what methodology the Commission should adopt for measuring the cost of debt. We tentatively conclude that this will be in large part a factual examination of the cost of debt of the surrogate. We solicit comment on what debt instruments, or weighting of different types of instruments, we should evaluate for this purpose. We also solicit comment on whether we should include preferred stock as debt. Finally, we solicit comment on whether we should accord any weight to existing (embedded) debt of the cable industry in determining an appropriate cost of debt.

54. *Measures of Financial Performance.* As indicated, we propose to carefully examine the impact on the cable industry of the rate of return—and of the other cost-of-service standards—that we could prescribe in this proceeding. A critical aspect of that assessment will be an appropriate measure of current financial performance of the cable industry and of the provision of cable service. We solicit comment on what methodology we should employ for this purpose. We tentatively reject a cash-flow analysis as the appropriate measure of financial performance because it does not take into account the character of cash revenues and expenditures. Thus, cash expenditures that represent investment or return of capital (loan amortization) may be appropriately characterized as positive earnings for purposes of measuring financial performance. We tentatively conclude that we will evaluate the current performance of provision of cable service subject to regulation under the cost-of-service standards, including the prescribed rate-of-return, that we will adopt in this proceeding. We will measure financial performance based on costs presented in accordance with our cost-of-service requirements. We solicit comments on this tentative conclusion.

55. We also solicit comment on what test year methodology should be employed for measuring the rate-of-return for a cable company making a cost-of-service showing. Traditionally, regulatory authorities use a test year which measures a regulatee's operating experience during a twelve-month period as a basis for determining representative levels of revenues, expenses ratebase and capital structure. Commenting parties should also address what test year methodology should be adopted: historical test year; future test year; or a combined historical and future test year. Under a historical test year, the cable operator's operating experience is adjusted for known and measurable changes. This provides flexibility in allowing for inflation or attrition changes. Furthermore, the historical test year need not be based on a calendar year. A future test year is a projection of what the level of revenues, expenses, ratebase and capital structure will be in the rate year, with the operating experience adjusted for projected changes. Last, a combined historical and future test year allows some portion of the test year to be based upon recent actual operating experience with the remainder of the test year based on financial projections. We also solicit comment on whether we should use one of these test year methodologies for determination of all costs and revenues in cost-of-service showings.

56. We also seek comment on whether we should incorporate into our test year methodology an investment cycle approach to measuring the rate-of-return. Under an investment cycle approach, recoverable costs might be

allocated over the life of the investment based on the proportion of total subscriber usage in the test year, with the rate-of-return measured over the projected life of investment. Under this approach negative or low current earnings might not justify an upward adjustment in rates if higher earnings are expected by investors later in the investment cycle. We solicit comment on this proposal. We also solicit comment on whether this period should be prospective only or should include some historic data (e.g. centered on current period). We further seek comment on what a reasonable investor time horizon period for measuring performance would be. Should the Commission base this on the average prescribed depreciable life of investment or some other measure?

*(3). Cost accounting and cost allocation requirements. (a) Cost accounting requirements.* 57. In the Report and Order, we required cable operators to maintain their accounts in accordance with Generally Accepted Accounting Principles (GAAP), unless otherwise directed by the Commission. We also required cable operators to maintain accounts in a manner that will enable identification of appropriate costs and application of cost assignment and cost allocation procedures to cost categories necessary for cost-of-service showings. We required that such categories be sufficiently detailed and supported to permit verification and audit against the company's accounting records.

58. Financial accounting practices of cable operators will provide the underlying basis for identification of expenses and revenues involved in the provision of regulated cable television service. We have already required that cable operators comply with GAAP, but have not specified any accounts that must be maintained, or any categories of costs that must be derived from accounts, for purposes of demonstrating costs of providing cable service. We have prepared, and attached as changes to the Commission's rules, possible supplemental financial and cost accounting requirements that we could adopt in this proceeding. These requirements would provide substantial supporting documentation to presentations of costs by cable operators in cost-of-service showings. They could also facilitate allowance or disallowance of costs in cost-of-service showings by providing for identification of types of costs in the specified accounts. On the other hand, they could impose additional burdens on cable operators. We solicit comment on the relative costs and benefits of these possible additional requirements. We will tailor any additional financial or cost accounting requirements that we adopt to an analysis of the costs and benefits. We also solicit comment on whether we should establish a more comprehensive system of accounting for cost-of-service showings similar to the Uniform System of Accounts (USOA) for telecommunications companies set forth in part 32 of the Commission's rules. A uniform system of accounts has the advantage of facilitating both comparison of costs between firms, and an analysis of the costs of individual firms. On the other hand, it can impose significant burdens. In the event that we elect to adopt a uniform system of accounts, we solicit comment on ways that it could be simplified to reduce burdens.

b. *Cost allocations requirements.* 59. In the Report and Order, we required that cable operators generally aggregate expenses and revenues at either the franchise, system, regional, or company level in a manner consistent with the practices of the operator as of April 3, 1993. We also established cost allocation requirements. Costs aggregated at a higher level are to be allocated to the franchise level proportional to the number of subscribers in the franchise area, and costs are to allocated between tiers proportional to the number of channels on the tier. We established procedures for allocation of common costs, and required that cost categories for regulated cable service exclude unrelated expenses and revenues. We solicit comment on whether we should adopt different or supplemental cost allocation requirements for purposes of developing cost-based rates for regulated cable service. We note that, in the near future, telephone services, personal communications services (PCS) transport, and other telecommunications services may be offered by cable operators. We seek comment on whether we should adopt new or supplemental cost allocation requirements to govern allocation of costs between regulated cable service and unrelated activities.

60. We see a continuum between the poles of attempting to uniquely identify all the costs of a franchise, and MSO-wide cost averaging. The former approach requires accounting, allocations, and full ratebase—rate of return investigation at the franchise level. While this approach would provide local franchise authorities with the maximum discretion in determining the costs recoverable in local basic tier rates, it places a very high burden on both the regulatory authority and the cable operator. Currently only a few ratebase—rate of return proceedings are conducted each year by all authorities practicing cost-of-service regulation. Under this approach it is conceivable that thousands of cost-of-service showings may be filed, with any single MSO a party to hundreds of such proceedings. Another potential effect is that the amount of MSO-wide price uniformity would be reduced.

61. At the other end of the averaging continuum, cost-of-service showings would be greatly simplified by using a unitary, industry-wide cost of capital; company-wide (MSO) average per subscriber ratebase, operating expenses and depreciation; and franchise specific levies (taxes and obligations). The revenue requirement would be developed at total company level and the average per subscriber revenue requirement would be allocated to a specific franchise. The Commission would evaluate cable programming service rates subject to complaint, and local franchise authorities would evaluate basic tier rates, based on average per subscriber costs determined in accordance with Commission requirements plus franchise specific levies, divided by the number of channels providing tiered service.

62. Under this approach, with a minimum of franchise-specific data, rates based on cost-of-service showings would be similar across the franchise operations of an MSO. While franchise authorities would not be faced with the full burden of a ratebase—rate of return proceeding, they would have a diminished ability to tailor rates to the specific set of circumstances that apply to a particular franchise. Cost averaging at a high level could also eliminate any reflection in rates of regional cost differences. On the other hand, to the extent that franchise share head-ends and centralized maintenance and customer service facilities, obtain capital from a multi-franchise entity, and benefit from multi-system discounts of programming rates, averaging would reduce duplicative regulatory investigations without loss of accuracy.

63. We seek comment on each of the above approaches. What modifications should be made to the approach that comes closest to achieving the right balance of accuracy and administrative burden? We ask for comment on the ability of operators under each of the three above proposals to recover their costs, make improvements in service, and expand channel capacity and program offerings. We seek comment on the impact these proposals might have on the ability of local franchise authorities to ensure that basic tier rates

are reasonable and our ability to ensure, subject to complaint, that cable programming service rates are not "unreasonable".

64. We also seek comment on the level at which general industry practice would allow the major categories of costs to be identified. What costs are generally joint and common and have to be allocated to the franchise level? Is a per subscriber basis the best allocator? What is the impact of a per subscriber allocator on the allocation of costs to systems with low and high penetration rates? How might the number of channels in tiered service be factored into the allocator given that the relationship between cost and channels is not linear?

65. In addition, we request comment on the impact of various amounts of cost averaging on rates. Is franchise-specific costing consistent with our goal of minimizing overall rate disruption? Is cost averaging consistent with our goal that cost-of-service should be a safety net and not an alternative form of regulation? Under company-wide cost averaging, how would a cost-of-service showing in one franchise affect rates based on the benchmark or cost-of-service showings in other, related franchises? Should operators be able to elect, or local franchise authorities select, the level of cost averaging? Should operator election of cost averaging be all or nothing, or could it differ from franchise area to franchise area? Should the current pattern of rate averaging be an option, and, if so, should the operator and/or the local authority be allowed to increase and decrease averaging over time?

(4) *Design of rates.* 66. In foregoing sections, we have addressed regulatory requirements that will determine the costs that can be recovered in rates for cable service. It is also necessary to establish requirements that will govern the way in which those costs will be recovered in rates. As indicated, in the Report and Order we established cost allocation requirements. We required that costs aggregated at higher levels be allocated to the franchise level proportional to the number of subscribers in the franchise area, and costs are to be allocated between tiers proportional to the number of channels on the tier. We established procedures for allocation of common costs, and required that cost categories for allocation of common costs, and required that cost categories for regulated cable service exclude unrelated expenses and revenues. We tentatively conclude that these requirements will be sufficient for the design of rates to recover costs permitted under our other regulatory requirements. We solicit comment on this tentative conclusion, and on whether other approaches might result in a more appropriate way of designing rates to recover permitted costs.

*(5) Affiliate transactions.* 67. In transactions that do not involve affiliates, we intend to allow cable operators to recover the actual cost of a service, or to reflect in rates actual revenue earned for providing a service. However, prices set by affiliates may not accurately reflect market prices. In particular, transactions with affiliates can be priced at a level so that the regulated enterprise is paying an undue portion of the costs of the nonregulated affiliate. Hence, they may be poor indicators of underlying value. Accordingly, we propose to establish affiliate transaction rules concerning transactions between the regulated and nonregulated portions of cable systems. We proposed that an affiliated entity shall be an entity with a five percent or greater ownership interest in the cable operator including general partnership interests, direct ownership interests, and stock interests in a corporation where such stockholders are officers or directors or who directly or indirectly own 5 percent or more of the outstanding stock, whether voting or nonvoting. We also intend to include within the scope of our cable affiliate transaction rules those transactions that occur between regulated and nonregulated portions of the same cable company, e.g. intracompany transfers. We solicit comment on these proposals. We will adopt rules that will prevent cable systems, in cost-of-service showings, from imposing the costs of nonregulated activities on regulated cable subscribers through improper cross-subsidization. We believe that this comports with the legislative intent of the Cable Act of 1992, in that the Commission should ensure that rates for cable service are reasonable. These requirements will generally govern the costs incurred in affiliate transactions that cable operators may seek to recover in rates based on a cost-of-service showing. We tentatively conclude, furthermore, that our affiliate transaction rules should encompass transactions with affiliates concerning programming. In the Report and Order, we generally permitted increases in price capped rates based on increases in programming costs, but limited pass-through of costs incurred with respect to affiliated programmers to no more than inflation. We solicit comment on whether we should, and provide notice that we may, in this proceeding adopt our affiliate transaction requirements instead of, or as an alternative to, our inflation limitation on pass-through of programming costs incurred with respect to affiliated programmers. We seek comment on this proposal to adopt affiliation transaction requirements.

68. We propose to assure that transactions with affiliates do not result in unreasonable charges for regulated cable service based on cost-of-service showings by prescribing the method of valuation of transactions between cable operators and affiliates and that cable operators seek to recover in a cost-of-service showings. We request comment on what that method should be used to value affiliate transactions. In particular, we invite comment on whether we should require cable system operators to record affiliate transactions at prevailing company prices offered in the marketplace to third parties, whenever the supplying affiliate has established such prices. We note that this option would depart from cost-based valuation and, hence, may not be appropriate for use when the operator has elected to make a cost-of-service showing. Additionally, this method may be inappropriate when there are not substantial third party transactions that establish a credible arm's length transaction price.

69. We also invite comment on whether we should require cable systems to record affiliate transactions at their estimated fair market value. Under this option, we could require cable operators to record each affiliate transaction at the higher of net book cost and estimated fair market value when the regulated cable system is the seller and at the lower of net book cost and estimated fair market value when the regulated cable system is the purchaser. We solicit comment on these alternatives.

C. Streamlining Alternatives

*(1) General alternatives.* 70. The Cable Act of 1992 requires the Commission to consider alternatives that will reduce administrative burdens on subscribers, cable operators, franchising authorities and the Commission in fashioning regulations governing the basic service tier. We may also consider reduction of administrative burdens in establishing regulations governing rates for cable programming service. As indicated, we recognize that traditional rate-of-return regulation can impose significant burdens and that a goal of our overall regulatory approach is feasible implementation. Accordingly, we seek alternatives that will streamline establishment of cost-based rates by cable operators.

71. We believe that such streamlining could be accomplished by two general approaches. First, we could establish standards of reasonableness, other than the benchmark approach, under which existing rates could be maintained in effect, obviating the need for making cost-of-service showings. We solicit comment on whether we should establish that initial rates for cable service will be considered reasonable if they are no higher than 1986 rates adjusted forward both by a general measure of inflation and a productivity offset. In evaluating this proposal, we solicit comment on whether it is reasonable to assume that past regulated rates were reasonable as cost-based, or reasonable on some other basis, and that, therefore, such rates adjusted forward for inflation and a productivity offset could also be considered cost-based. Under this proposal we would use the productivity offset that we discuss below. We also solicit comment on the appropriate treatment of capital improvements since 1986 under this approach.

72. Another potential alternative to cost-of-service proceedings would be to permit cable operators to document key cost factors, financial charecteristics, or other combination of factors that could be said to justify existing rates. Operators who could demonstrate the existence of such factors might than be permitted to charge rates equal to the benchmark plus an "add-on" amount attributable to those extraordinary factors. We solicit comment on what factors could be used to show that such "add-ons" are presumptively cost-justified, thereby obviating the need for cost-of-service showings.

73. Under the second approach to streamlining, we would establish simplified or reduced showing requirements for those operators electing to make cost-of-service showings. One possibility under this approach would be that cable operators would be required to present costs in accordance with our cost-of-service standards in only one or a few areas of costs. For example, if the cost studies that we are initiating in this proceeding reveal that "excess" acquisition costs is the category of costs that most accounts for the competitive and non-competitive differentials, it might be possible to require only that cable operators in cost-of-service showings demonstrate that their proposed cost-based rates exclude all, or a portion of, excess acquisition costs. Or, if we can identify key areas of cost that can account for substantial rate differences, and if the operator has experienced costs in those areas, we could permit rate adjustments based only on showings in those areas. We solicit comment on whether we could limit cost-of-service showings to this or other factors, and on what those factors would be. We also solicit comment on whether we could use ratios of some financial characteristics, such as a ratio of "excess" acquisition costs to other assets, to obviate the need for identification of some types of costs by cable operators. Instead, the ratio would show that the operator's costs in the specified areas are reasonable.

74. Another alternative for simplified cost-of-service showings would be to permit cable operators to justify rates based on average costs of providing cable service based on the costs experienced by all systems, or of similar systems with specified defined characteristics, rather than on the individual costs of the system. Under an average schedule approach, cost-of-service showings would not be based on the individual costs of the operator, averaged or otherwise, but on the average costs of providing regulated cable service. As we discuss, permitting cable operators to average their own costs across several franchise areas served by a system, or across several systems, could significantly reduce administrative burdens on operators and regulators because average costs would not require identification of direct costs at lower levels and because a single set of average costs could support cost-of-service showings in many service areas, instead of requiring different showings for many different areas. We solicit comment on the use of cost averaging to reduce administrative burdens on cable operators and regulators. This would be similar to the "average schedule" regulatory scheme for provision of interstate access by some telephone companies. Under that regulatory scheme, some 700 small local exchange carriers file rates based not on their own costs, but on an average cost schedule. This approach could reduce administrative burdens by obviating the need for identification of individual system costs, but would assume the availability of sufficient representative costs data for the determination of average costs. In the Report and Order, we rejected this alternative for use as the primary method of regulating cable service rates because of the lack of sufficient data and because of questions as to the feasibility of updating average industry cost data. We solicit comment, however, on whether this approach could be used for cost-of-service showings. As we explain, see para. 80, infra, our cost studies will explore the feasibility of collecting this average cost data, and we may undertake to collect such data in this rulemaking. We also envision that permitted average costs that could establish cost-based rates would reflect the cost-of-service standards that we will adopt in this proceeding. We solicit comment on whether we should adopt this alternative.

75. We also solicit comment on whether we could establish an abbreviated cost-of-service showing for significant prospective capital expenditures used to improve the quality of service or to provide additional services. Under this abbreviated showing, operators seeking to raise rates to recover the costs of a planned upgrade would submit only the costs of the upgrade instead of all current costs. If otherwise in accordance with our cost-of-service requirements, the costs of the upgrade would then be added to the rate permitted under the benchmark and price cap approach to the extent costs could not be recovered under that approach. The recovery of these costs would also need to comply with our cost allocation requirements, particularly to ensure that only the costs allocable to regulated services are imposed on subscribers. This approach could reduce burdens on cable operators and regulators by eliminating the need for development and examination of all costs to support the desired rate, while permitting operators to make facility and service improvements. We seek comment on this streamlining approach, and, in particular on the extent to which our benchmarks and price cap approach already reflect the costs of system upgrades and service improvements.

(2) Small systems. 76. Under the Cable Act of 1992, the Commission is to design its rate regulations in a manner that reduces "the administrative burdens and cost of compliance of cable systems that have 1,000 or fewer subscribers." In crafting our rate regulations, we have been careful to take this mandate into account. We solicit comment on whether we should additionally establish modifications to the requirements that we will adopt generally to govern cost-of-service showings that will reduce administrative burdens on small systems making cost-of-service showings. Specifically, we solicit comment on appropriate modifications to these requirements to effectuate a reduction in burdens for small systems. We also solicit comment on whether, if we do not adopt one of the general streamlining alternatives discussed above that could be applied to all systems, we should nonetheless adopt some, or all of them, for small systems.

77. Several suggestions have also been made in petitions for reconsideration of the Report and Order that could be used to reduce burdens on small systems. It has been suggested that we exempt small systems from rate regulation. We solicit comment on whether we should establish an exemption for small systems for some or all rate regulation requirements in order to reduce administrative burdens on them. We ask whether this would be consistent with congressional intent, and whether this could serve to promote the availability of cable television service in rural areas. Another suggestion would establish a presumption that rates are reasonable if the net revenue of the small system is below a specified level. We propose these suggestions as additional possibilities for reducing burdens on small systems and solicit comment on them.

78. We also solicit comment on what definition of small systems we should establish for purposes of cost-of-service requirements. Should small system streamlining provisions apply to systems with fewer than 1,000 subscribers owned or affiliated with multisystem operators (MSOs)? Should we limit the application of small system streamlining provisions to systems owned or affiliated with MSOs of certain size? For example, should such provisions be applicable only to systems that have fewer than 1,000 subscribers and that are owned or affiliated with MSOs that have fewer than 500,000 subscribers? In the Report and Order we carefully examined the definition of small systems for purposes of application of provisions designed to reduce administrative burdens. This issue will also be examined on reconsideration. We will coordinate our treatment of small system burdens for cost-of-service showings with our examination of this issue on reconsideration.

(3) *Equipment.* 79. The Cable Act of 1992 requires the Commission to establish standards for setting, on the basis of actual cost, the rate for lease of equipment used by subscribers to receive the basic service tier, including converter boxes and remote control units, and lease of monthly connections for additional television receivers. In the Report and Order, we established a comprehensive regulatory scheme for development of cost-based rates for equipment used to receive the basic service tier. We solicit comment on whether a feasible method of reducing administrative burdens of rate regulation of equipment charges would be to ascertain average equipment costs, for some or all categories of regulated equipment charges, and permit operators to charge these rates as an alternative to the method of determining charges specified in the Report and Order. Average costs could be the average costs experienced by all systems or of groups of systems based on defined system characteristics. As with average schedules for provision of cable service generally, discussed above, this approach would require the availability of representative equipment costs. We solicit comment on whether the Commission should seek to implement this approach. We seek data on average equipment costs, and whether there are significant regional or other differences in equipment costs experienced by cable operators. The Commission may additionally seek to obtain information on equipment costs as part of the cost studies that will be conducted in conjunction with this proceeding. We also solicit comment on whether this approach would comply with the "actual cost" standard for equipment rates in the Cable Act of 1992.

## IV. Cost Studies

80. As indicated, in this proceeding we will carefully consider the impact on the cable industry of the requirements that we could adopt to govern cost-based rates for cable service. We have determined that information concerning costs of cable service and the financial and accounting practices of the cable industry is necessary for achieving a complete record on which to base a decision. Comments will provide such information. However, we have determined that in-depth information from individual companies would be helpful. Accordingly, we are delegating to the Chief, Mass Media Bureau authority to conduct cost studies of individual companies. This will include authority to order individual companies to provide information specified by the Bureau. These studies will examine the financial structure and practices of the cable industry and may seek representative cost information to enable us to explore fully some of our streamlining alternatives. We will additionally assess in these cost studies whether any refinements to the competitive benchmark based on costs should be made. Any information obtained in this manner, or a summary of it, will be placed in the public record of this proceeding.

## V. Productivity Offset

81. In the Report and Order, we incorporated an annual inflation adjustment into our price cap mechanism governing rates for cable service. We concluded that the use of an index would help achieve the statutory goal of reducing administrative burdens on cable systems, consumers, and regulators by permitting rate increases when cable operators experience increases in the cost of doing business shared by all sectors of the economy, without requiring cable operators to make, and regulators to consider, cost-of-service showings. As a result, we adopted the Gross National Product Price Index (GNP–PI), which measures inflation in the gross national product, as the annual adjustment index for the cap for basic service tier rates.

82. Under our rules, regulated cable operators are permitted to adjust the capped base per channel rate for the basic service tier annually by the GNP–PI. In addition, there are certain categories of costs that cable operators are permitted to "pass through" to subscribers without a cost of service showing, even if resulting rates exceed the applicable price cap. In the Report and Order, we declined to adopt a productivity offset to the GNP–PI for the non-programming costs incurred by cable companies given the paucity of information in the record that would provide a basis for determining productivity in the cable industry. We made it clear, however, that we would seek such information in a Notice.

83. An important consideration under any form of regulation that is based on the costs of production is how to take productivity gains, if any, into account. While we recognize that the GNP–PI automatically reflects certain productivity gains in the economy, it does not necessarily reflect the entirety of productivity gains experienced by cable operators. While productivity may be measured in several ways, it is our responsibility in this proceeding to consider whether to apply a productivity offset feature in the price cap mechanism for cable operators. Such a productivity offset would mandate reductions in rates based on a prescribed productivity rate.

84. We recognize, however, that productivity can be measured in a number of ways. Perhaps the simplest is a one factor productivity index, such as the Bureau of Labor Statistics labor productivity index. Another, and one we used in establishing a productivity offset under price caps for the telephone industry, is the use of industry-specific studies.

85. As noted in the Order, however, there is insufficient information available in the record to adopt a productivity offset in the price cap mechanism for cable operators. Therefore, we solicit comment on whether there is a valid economic basis

for assuming that cable service has been, and will be, experiencing efficiency gains. We invite the submission of industry studies or other expert economic analysis. In undertaking such expert analysis, we invite parties to examine, in particular, the following four options: (1) No productivity offset; (2) a consumer productivity dividend of 0.5 percentage points; (3) a "telecommunications" industry adjustment of between 3.0 (AT&T) and 3.3 (local exchange carriers) percentage points; and (4) a different productivity offset for cable operators.

### VI. Cost Allocation Requirements for External Costs

86. In Section III. above, we have proposed possible cost accounting and cost allocation requirements that could be applied to development of rates for cable service based on costs. These requirements could also be applied to the development of external costs. Thus, for example, we could permit or require that some categories of external costs be aggregated or averaged at the company level and then allocated to the franchise level and tier in accordance with our cost accounting requirements. We solicit comment on whether we should also apply the cost accounting and cost allocation requirements discussed in Section III. above to development of external costs.

### VII. Collection of Information

87. The 1992 Cable Act requires that cable systems file with the Commission or franchising authority, as appropriate, within one year after the date of enactment, and annually thereafter, such financial information as may be needed to administer and enforce regulation of cable rates. The Report and Order concluded that the data provided in response to the *Order* adopted last December, in which we directed a random sample of cable systems to submit certain rate and other information to aid in designing benchmarks, met the statutory requirement regarding the collection of information. In the Report and Order, we stated that we would examine in the instant proceeding what further requirements should be adopted to implement the information collection requirements of the statute.

88. We solicit comment on two alternatives to implementing the information collection provisions of the statute. First, we solicit comment on whether we should require all systems to submit data annually. For this purpose, we offer for comment the form attached as an Appendix. We also request comment on whether we should require the information that was obtained in our survey of cable systems which formed the basis of our competitive benchmark. We solicit comment on the availability of the information specified in these documents, and the burdens that the collection of this information may impose on operators. To the degree such information is not readily maintained by cable systems, we seek comment on the extent to which we should require systems to develop and maintain it. In particular, we solicit comment on how we should treat small systems in this context, e.g., whether we should exempt small systems for the collection of information requirements altogether, or perhaps require small systems to submit their data on a less frequent basis than annually. We solicit comment on how we may best tailor the information we require to the cost-of-service standards and accounting requirements proposed herein, as well as to the rate regulatory framework adopted in the Report and Order. We also solicit comment on whether we should impose any reporting requirements on systems that change ownership. We solicit comment on whether we should obtain information concerning the purchase price, the purchase price per subscriber, the amount of goodwill paid, the amount of excess acquisition costs paid, and the actual value of tangible assets. We solicit comment generally on this proposal, and on other information related to the sale of a cable system we should require.

89. Alternatively, instead of requiring reporting from each cable operator, we could rely on an annual survey of cable systems. We tentatively conclude that we should adopt this approach. Relying on a sampling of systems would reduce the total administrative burdens imposed on the industry, while at the same time providing adequate data for purposes of administering rate regulation. We seek comment on the appropriate sampling methodology we could employ, and on how to select the systems that would be surveyed. We further seek comment on how to treat small systems within a survey approach to gathering information on cable rates and services.

90. In the Report and Order, we also stated that we would explore in this proceeding whether we should impose any collection of information requirements regarding leased channel access. We stated our intention to incorporate into our general reporting and monitoring process certain mechanisms particular to gathering information on leased commercial access. We believe information such as the channel capacity designated for leased commercial access, the percentage of such capacity actually used, the percentage used by certain categories of customers, and the rates charged to leased access users could facilitate our ability to monitor provision of leased commercial access by cable operators. Accordingly, we seek comment on whether we should require reporting of this, and similar information, concerning leased commercial access by means of the two alternatives discussed above.

### VIII. Initial Regulatory Flexibility Act Analysis

91. Pursuant to section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

92. *Reason for action.* The Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission has adopted rate regulations that require a comparison to the rate of cable systems subject to effective competition, as defined in the Cable Act of 1992. This Notice proposes to establish regulations governing the setting of rates for regulated cable service based on costs.

93. *Objectives.* To propose rules to implement section 623 of the Cable Television Consumer Protection and Competition Act of 1992. We also desire to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

94. *Legal basis.* Action as proposed for this rulemaking is contained in sections 4(i), 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

95. Description, potential impact and number of small entities affected. Until we receive more data, we are unable to estimate the number of small cable systems that would be affected by any of the proposals discussed in the *Notice*. We have, however, attempted to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by Section 623(i) of the Cable Act of 1992.

96. Reporting, record keeping and other compliance requirements. The proposals under consideration in this *Notice* include new reporting and record keeping requirements for cable systems. These reporting requirements include the possibility of filings by cable operators of financial and/or leased access data annually at the Commission or participating in an annual survey. Additionally, this Notice proposes the use of a form to submit data that is to be presented to the regulating entity in a cost-of-service showing by a cable operator. Furthermore, the *Notice* proposes general cost accounting and cost allocation requirements that could be imposed on the cable industry.

97. Federal rules which overlap, duplicate or conflict with this rule. None.

98. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. Wherever possible, the Notice proposes general rules, or alternative rules for small systems, to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers as required by section 3(i) of the Cable Act of 1992.

## IX. Paperwork Reduction Act

99. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

## X. Procedural Provisions

100. For purposes of this non-restricted informal rulemaking proceeding, members of the public are advised that ex parte contacts are permitted from the time of issuance of a notice of proposed rulemaking until the time a draft Order proposing a substantive disposition of the proceeding is placed on the Commission's Open Meeting Agenda. In general, an ex parte presentation is any written or oral communication (other than formal written comments or pleadings and oral arguments) between a person outside this addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation addressing matters not fully covered in any written summary must be served on this Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each ex parte presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally § 1.1231 of the Commission's Rules. 47 CFR 1.1231.

101. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 25, 1993 and reply comments on or before September 14, 1993. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, Federal Communications Commission, 1919 M Street NW., Washington DC 20554.

## XI. Ordering Clauses

102. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 303(r), 612(c) and 623 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 303(r), 532(c), 542(c), and 543, notice is hereby given of proposed amendments to part 76, in accordance with the proposals, discussions, and statement of issues in this Notice of Proposed Rulemaking, and that comment is sought regarding such proposals, discussion, and statement of issues.

103. It is further ordered that, the Secretary shall send a copy of this Notice of Proposed Rulemaking and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

104. It is further ordered that, authority is delegated to the Chief, Mass Media Bureau to conduct cost studies in conjunction with this proceeding, as described in paragraph 80.

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.
**William F. Caton,**
*Acting Secretary.*

**Rule Changes**

Part 76 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 76—[AMENDED]

1. The authority citation for part 76 continues to read:

**Authority:** Secs 2, 3, 4, 301, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 108 Stat. 1460.

2. Part 76 is amended by adding a new subpart P to read as follows:

## Subpart P—Accounting and Cost Allocation Requirements

76.1100 General accounting requirements.
76.1101 Recoverable costs.
76.1102 Service cost categories.

### § 76.1100 General accounting requirements.

(a) For the purposes of providing accounting and costing data to the Commission and for making cost showings before this Commission, cable operators shall maintain their accounts in accordance with generally accepted accounting principles except as otherwise directed by the Commission.

(b) Each cable operator shall also maintain accounts in a manner that will enable it to aggregate investments, expenses and revenues into categories and to make other disclosures as specified in the following table:

**Income Statement Items**

*A. Revenues*

1. Basic Tier Subscription Fees
2. Regulated Cable Programming Services Revenues
3. Other Cable Programming Services:
   a. Premium Channel Revenues
   b. Pay-per-View Revenues
   c. Other Cable Programming Services Revenues
4. Advertising Revenues
5. Leased Commercial Access Activities
   a. Leased Access Revenues
   b. Billing and Collection Services Revenues
   c. Other Leased Commercial Access Activities Revenues
6. Customer Premises Activities:
   a. Service Installation Revenues
   b. Equipment Sales Revenues
   c. Equipment Lease Revenues
   d. Equipment Installation, Maintenance, & Repair
7. Other Operating Revenues

*B. Operating Expenses*

8. Technical (Operation and Maintenance of Cable System) Expenses
a. Salaries, Wages, and Benefits
b. Other
9. Programming Expenses
a. Salaries, Wages, and Benefits
b. Copyright Fees and Other Cost of Programming
c. Pay-per-View Fees
d. Other
10. Marketing Expenses
a. Salaries, Wages, and Benefits
b. Other
11. General and Administrative Expenses
a. Salaries, Wages, and Benefits
b. Franchise Levies (Fees, Taxes, and Other Obligations)
c. Other

*C. Depreciation and Amortization*

12. Depreciation Expense
13. Amortization Expense
a. Goodwill Amortization
b. Other Amortization

**Balance Sheet Information**

*A. Current Assets*

14. Cash
15. Accounts Receivable
16. Inventories (Equipment Held for Sale to Customers)
17. Other Current Assets

*B. Fixed Assets*

18. Land and Buildings
19. Headend
20. Trunk and Distribution System
21. Subscriber Devices
22. Program Origination Equipment
23. Construction and Maintenance Vehicles and Equipment
24. Construction Work in Progress
25. Other Fixed Assets
26. Accumulated Depreciation

*C. Other Assets*

27. Investments
28. Deferred System Development and Franchise Costs
29. Goodwill
30. Other Intangibles and Deferred Items
31. Accumulated Amortization

*D. Current Liabilities*

32. Accounts Payable
33. Loans Payable
34. Customer Deposits
35. Other Current Liabilities

*E. Long Term Liabilities*

36. Funded Debt
37. Obligations under Capital Leases
38. Other Long Term Liabilities and Deferred Credits

*F. Owner's equity*

39. Paid-in Capital
40. Retained Earnings (Accumulated Losses)

Supplemental disclosure shall be made of critical accounting policies. Such disclosure shall include a description of depreciation and amortization practices and other such practices as specified by the Commission.

**§ 76.1101 Recoverable costs.**

(a) Costs recoverable for cable services regulated by this Commission shall include operating expenses, and depreciation, amortization, taxes and return on the allowable rate base. The allowable rate base shall include, except as limited by the Commission, the average annual investment indicated in the following table:

Net Working Capital (Current Assets—Current Liabilities)
Fixed Assets (Net of Accumulated Depreciation):
Land and buildings
Headend
Trunk and Distribution System
Subscriber Devices
Program Origination Equipment
Construction and Maintenance Vehicles and Equipment
Construction Work in Progress
Other Fixed Assets
Other Assets (Net of Accumulated Amortization):
Deferred System Development and Franchise Costs
Goodwill
Other Intangible and Deferred Items

**§ 76.1102 Service cost categories.**

(a) If a cost of service showing is to be made for any cable service, the cable operator shall establish service cost categories to aggregate costs on the basis of the services they are incurred to provided. The cable operator shall provide sufficient detail to demonstrate compliance with Commission regulations in the assignment of costs to the specified service cost categories and shall establish a sufficient audit trail to allow verification of cost assignments against the company's accounting records. In each operating unit at each organizational level that costs are identified, they shall be directly assigned to the service cost category if possible. Common costs shall be allocated to service cost categories in accordance with the allocation procedures in § 76.924(f), Common Costs. Costs accumulated in service cost categories at any organizational level shall be allocated to lower organizational levels on the basis of number of subscribers.

(b) The following service cost categories shall be established for such a cost of service showing:

(1) Basic Service Tier Activities. A Basic Service Tier Activities Category shall be established and shall include only recoverable amounts as defined in § 76.1101. This category shall include the direct material and labor costs plus the indirect costs associated with the provision of the basic service tier to customers (basic cable service). In addition, marketing, and general and administrative overhead costs for basic cable service activities shall be included in this category. Costs associated with advertising on basic service tier channels are also includible in this category. All common costs assignable to the Basic Service Tier Activities Category, including marketing, and general, and administrative overheads, shall be determined by the methodology specified in § 76.924(f). Local franchising taxes and obligations may not be aggregated at organizational or operating levels higher than the franchise level. Such costs may be identified at the franchise level and appropriate amounts assigned to this service cost category at the franchise level only.

(2) Cable Programming Services Activities. A Cable Programming Services Activities Category shall be established and shall include only recoverable amounts as defined in § 76.1101. This category shall include the direct material and labor costs plus the indirect costs associated with the provision of cable programming service. This category may not include Equipment Basket costs. Marketing, and general and administrative overhead costs for cable programming services activities shall be included in this category. Costs associated with advertising on the cable programming channels are also includible in this category. All common costs assignable to the Cable Programming Services Activities Category, including marketing, and general and administrative overheads, shall be determined by the methodology specified in § 76.924(f). Local franchising taxes and obligations may not be aggregated at organizational or operating levels higher than the franchise level. Such costs may be identified at the franchise level and appropriate amounts assigned to this service cost category at the franchise level only.

(3) Other Cable Programming Services Activities. An Other Cable programming Services Activities Category shall be established. This category shall include the direct material and labor costs plus the indirect costs associated with the provision of any cable service other than basic cable service and cable programming service, such as, per-channel or per-program premium services. In addition, marketing, and general and administrative overhead costs, as well as local franchising taxes and obligations, for such other cable programming services activities shall be included in this category. Costs

associated with advertising on the other cable programming channels are also includible in this category. All common costs assignable to the Other Cable Programming Services Activities Category, including, marketing, and general and administrative overheads, shall be determined by the methodology specified in § 76.924(f).

(4) Other Cable Activities. An Other Cable Activities Category shall be established. This category shall include the direct material and labor costs and the indirect costs associated with any cable activities not assignable to the Basic Service Tier Activities, the Cable Programming Services Activities, the Other Cable Programming Services Activities, and the Equipment Basket categories, such as leased commercial access services, billing and collection services provided to leased commercial access customers, studio and equipment engineering and rental services, sale of equipment, and maintenance and repair of equipment sold to customers. In addition, marketing, and general and administrative overhead costs for such other cable activities, as well as local franchising taxes and obligations, shall be included in this category. All common costs assignable to the Other Cable Activities Category, including marketing, and general and administrative overheads, shall be determined by the methodology specified in § 76.924(f).

(5) Non-Cable Activities. A Non-cable Activities Category shall be established. This category shall include direct material and labor costs and the indirect costs associated with non-cable activities performed by the cable services entity. In addition, marketing, and general administrative overhead costs for such non-cable activities shall be included in this category. All common costs assignable to the Non-cable Activities Category, including marketing, and general and administrative overheads, shall be determined by the methodology specified in § 76.924(f).

**Appendix**

Note: This appendix will not appear in the Code of Federal Regulations.

**Federal Communications Commission—Annual Report of Cable Television Systems**

*Financial Unit Data—FCC Form 326, Schedule 1*

This is Schedule 1 of YOUR FCC FORM 326. It must be completed and/or corrected and returned to the Commission with Schedules 2 through 5. If the communities listed do not reflect your present consolidation, add or delete as necessary. If the pay cable fee is a "per program", rather than "per month" charge, attach a rate schedule. Include cents with all fee data.

PREVIOUSLY FILED:

SYSTEM COMMUNITIES COMPRISING THIS FINANCIAL UNIT

IDENT
NAME
TYPE
OPERATIONAL STATUS
INSTALLATION FEE
SUBSCRIBER FEE
MONTHLY PAY CABLE FEE

BILLING CODE 6712-01-M

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SCHEDU
FOR PE
Line
No.
1
1
2
3
4
5
6
7
1
1
1
8
9
10
11
12

SCHEDULE 2 CABLE TELEVISION REVENUES AND EXPENSES

FOR PERIOD BEGINNING: 19| | | mo| | | dy| | | ending: 19| | | mo| | | dy| | |

| Line No. | ITEM | AMOUNT (OMIT CENTS) |
|---|---|---|
| | OPERATING REVENUES | |
| 1 | Installation Revenue | \| \| \| \| \| \| \| \| |
| 2 | Regular Subscriber Revenue | \| \| \| \| \| \| \| \| |
| 3 | Per Program or Per Channel Gross Revenue (Pay Television) | \| \| \| \| \| \| \| \| |
| 4 | Advertising Revenue | \| \| \| \| \| \| \| \| |
| 5 | Special Service Revenue | \| \| \| \| \| \| \| \| |
| 6 | Other Revenue | \| \| \| \| \| \| \| \| |
| 7 | Total Operating Revenues | \| \| \| \| \| \| \| \| |
| | OPERATING EXPENSES | |
| | SERVICE EXPENSES: | |
| | | |
| | - | |
| 8 | Salaries, Wages, and Employee Benefits | \| \| \| \| \| \| \| \| |
| 9 | Pole Rentals | \| \| \| \| \| \| \| \| |
| 10 | Duct Rentals | \| \| \| \| \| \| \| \| |
| 11 | Private Microwave Service (CARS) | \| \| \| \| \| \| \| \| |
| 12 | Common Carrier Microwave Service | \| \| \| \| \| \| \| \| |

| | | |
|---|---|---|
| | | |
| | Total Tariff (Leaseback) Charges (Applies only to | |
| 13 | Systems receiving telephone company channel service.) | |
| 14 | All Other Service Expenses | |
| 15 | **PAYMENTS TO PAY CABLE PROGRAM SUPPLIES** | |
| | **ORIGINATION EXPENSES:** | |
| 16 | Salaries, Wages, and Employee Benefits | |
| 17 | All Other Origination Expenses | |
| | **SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES:** | |
| 18 | Salaries, Wages, and Employee Benefits | |
| 19 | Franchise Fees | |
| 20 | Copyright Fees | |
| 21 | All Other Selling, General, and Administrative Expenses | |
| 22 | **TOTAL OPERATING EXPENSE** | |
| 23 | **TOTAL OPERATING INCOME** | |
| | **DEPRECIATION AND AMORTIZATION** | |
| 24 | Depreciation | |
| 25 | Amortization | |
| | **OTHER INCOME AND EXPENSES** | |
| | **OTHER INCOME** | |
| 26 | Total Other Income | |
| | **OTHER EXPENSES:** | |
| 27 | Interest | |
| 28 | Miscellaneous | |
| 29 | **TOTAL OTHER INCOME (OR LOSS)** | |
| 30 | **EXTRAORDINARY ITEMS** | |



| | |
|---|---|
| 31 | |
| 32 | |
| | |
| | |
| | SCHEDU |
| | Line No. |
| | |
| | |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |

| | | |
|---|---|---|
| 31 | TOTAL INCOME (OR LOSS) BEFORE TAXES | |
| | TOTAL ASSETS: | |
| 32 | To be entered only for those systems (fewer than 1,000 subscribers) exempted from filing schedule 3. | |

SCHEDULE 3 — BALANCE SHEET INFORMATION

| Line No. | ITEM | |
|---|---|---|
| | ASSETS | |
| | CURRENT ASSETS: | |
| 1 | Cash | |
| 2 | Accounts Receivable | |
| 3 | Other Current Assets | |
| 4 | Total Current Assets | |
| | FIXED ASSETS: | |
| 5 | Land and Buildings | |
| 6 | Headend | |
| 7 | Trunk and Distribution System | |
| 8 | Subscriber Devices | |
| 9 | Program Origiration Equipment | |
| 10 | Construction Work in Progress | |
| 11 | Other Fixed Assets | |
| 12 | Plant Adjustment | |
| 13 | Less: Accumulated Depreciation | |

| | | |
|---|---|---|
| 14 | Total Fixed Assets | |
| | **OTHER ASSETS:** | |
| 15 | Other Assets | |
| 16 | Less: Accumulated Amortization | |
| 17 | Total Other Assets | |
| 18 | **TOTAL ASSETS** | |
| | **LIABILITIES** | |
| | **CURRENT LIABILITIES:** | |
| 19 | Loans Payable | |
| 20 | Accounts Payable | |
| 21 | Other Current Liabilities | |
| 22 | Total Current Liabilities | |
| | **DEFERRED CREDITS:** | |
| 23 | Total Deferred Credits | |
| | **LONG TERM DEBT:** | |
| 24 | Total Long Term Debt | |
| | **OWNER'S EQUITY:** | |
| 25 | Total Stock Issued | |
| 26 | Proprietor's Equity | |
| 27 | Retained Earnings | |
| 28 | Other Owner's Equity | |
| 29 | Total Owner's Equity | |
| 30 | **TOTAL LIABILITY AND OWNER'S EQUITY** | |
| | | |
| | **CHECK METHOD OF DEPRECIATION USED** | |
| | | |



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| | (1) Straight line__ (2) Declining Balance__ | |
|---|---|---|
| | | |
| 31 | (3)Double Declining Balance__ | |
| | | |
| | (4) Sum-of-the-Year-Digits__ | |
| | (5) Other__ | |
| | | |
| | | |

SCHEDULE 4 SUPPLEMENTAL ACCOUNTING INFORMATION

| PART A | Amortization term in year | Amortization method used (code) | Amount capitalzed during yr. | Amount amortzed during yr. |
|---|---|---|---|---|
| 1. Deferred System Development Costs | | | $ | $ |
| 2. Franchise Costs (recorded as assets | | | $ | $ |
| 3. Goodwill | | | $ | $ |

CODES (1)Straight line (3)Double declining balance (5) Other
(2)Declining balance (4)Sum-of-the-years digits

| PART B | Total Capitalized | Amt. capitalized During year | Useful Life years |
|---|---|---|---|
| 4. Capitalized Interest on System Construction | $ | $ | |

| PART C | Total Amt. of Asset | Amount NOT Being Amortized | Amount Being Amortized |
|---|---|---|---|
| 5. Deferred Sys. Develpmnt.costs | $ | $ | $ |
| 6. Franchise Costs | | | |

| | | | |
|---|---|---|---|
| (recorded as assets) | \$ | \$ | \$ |
| 7. Goodwill | \$ | \$ | \$ |
| **PART D** | Total Amt. of Allocated Costs | Method Used To Allocate Costs | To System Code |
| 8. Overhead Costs Allocated To System | \$ | \$ | \$ |
| **PART E** | | | Amount |
| 9. Original Cost of Fixed Assets (Seller's Book Value) | | | \$ |
| 10. Portion of Purchase Price Allocated to Seller's Book Value | | | \$ |
| 11. Recorded Cost of Fixed Assets by Purchaser | | | \$ |

| **PART F** | Fixed asset classification | Amount | Useful Life Years | Amount | Useful Life Years |
|---|---|---|---|---|---|
| 12. Estimated Useful Lives of Fixed Assets | | \$ | | \$ | |
| | | \$ | | \$ | |
| | | \$ | | \$ | |
| | | \$ | | \$ | |

| **PART G** | Amount | Number of Persons |
|---|---|---|
| 13. Salaries to Owners | \$ | |
| 14. Other Direct Payment Included in Total | Total Amount | Type |
| 15. Expense Payments to Spouse or Relatives | \$ | |

16. Expense Payments to Spouse or Relatives |$ | | | |

TYPE| (1) Rent - (3) Payment for equipment (5) Travel & Entertainment

| (2) Payments for services (4) Payments for supplies (6) Other

SCHEDULE 5 EMPLOYMENT

Indicate the number of employees for the work week in which the last day of the Fiscal Year fell. |NUMBER OF EMPLOYEES

|FULL TIME | | | | | | |

|PART TIME | | | | | | |

BILLING CODE 6715-01-C

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**Certification**

This report must be certified by the individual owning the reporting cable television system. If individually owned; by a partnership; by an officer of the corporation, if a corporation; or by a representative holding power of attorney in a case of physical disability or an individual owner or his/her absence from the United States.

I certify that I have examined this report, and that all statements of fact contained therein are true, complete, and correct to the best of my knowledge, information, and belief, and are made in good faith.

SIGNATURE _____
PRINTED NAME OF PERSON SIGNING _____
DATE _____
LEGAL NAME OF RESPONDENT _____
STREET ADDRESS _____
RESPONDENT _____
ADDRESS _____
CITY _____
STATE _____
DATE _____

FCC Form 326

[FR Doc. 93-18196 Filed 7-27-93; 3:11 pm]

BILLING CODE 6712-01-M

# Noti

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## DEPART

### Forms U
### Manage

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# Notices

Federal Register
Vol. 58, No. 145
Friday, July 30 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

July 23, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

**Revision (Expedited Clearance)**

• Agricultural Marketing Service
Almonds Grown in California, Marketing Order No. 981
Recordkeeping; On occasion; Monthly; Semi-monthly, every 6 years
Businesses or other for-profit; 6,323 responses; 2,556 hours
Kathleen Finn (202) 720–1509

**Extension**

• Agricultural Marketing Service
Tobacco Reports
TB–26 & TB–39
Quarterly
Businesses or other for-profit; Small businesses or organizations; 700 responses; 650 hours
Larry L. Crabtree, (202) 205–0235

• Food and Nutrition Service
State Issuance and Participation Estimates
FNS–385
Recordkeeping; Monthly
State or local governments; 636 responses; 4,542 hours
John Bedwell, (703) 305–2386

**New Collection**

• Food and Nutrition Service
Recipient Claims Collection: Expansion of Test of Offsetting Federal Income Tax Refunds
On occasion
Individuals or households; State or local governments; 505,010 responses; 58,555 hours
John Hitchcock, (703) 305–2385.

**Larry K. Roberson,**
*Deputy Department Clearance Officer.*

[FR Doc. 93–18160 Filed 7–29–93; 8:45 am]
BILLING CODE 3410–01–M

## Federal Grain Inspection Service

### Request for Applications From Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Kankakee (IL) Agency, and the States of California (CA) and Washington (WA)

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Kankakee Grain Inspection, Inc. (Kankakee), the California Department of Food and Agriculture (California), and the Washington Department of Agriculture (Washington), will end January 31, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

**DATES:** Applications must be postmarked or sent by telecopier (FAX) on or before September 1, 1993.

**ADDRESSES:** Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Kankakee, main office located in Bourbonnais, Illinois, California, main office located in Sacramento, California. and Washington, main office located in Olympia, Washington, to provide official grain inspection services under the Act on February 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Kankakee, California, and Washington end on January 31, 1994. The geographic area presently assigned to Kankakee, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Bureau County line; the northern LaSalle and Grundy County lines; the northern Will County line east-southeast to Interstate 57;

Bounded on the East by Interstate 57 south to U.S. Route 52; U.S. Route 52 south to the Kankakee County line;

Bounded on the South by the southern Kankakee and Grundy County lines; the southern LaSalle County line west to State Route 17; State Route 17 west to U.S. Route 51; U.S. Route 51 north to State Route 18; State Route 18 west to State Route 26; State Route 26 south to State Route 116; State Route 116 south to Interstate 74; Interstate 74 west to the western Peoria County line; and

Bounded on the West by the western Peoria and Stark County lines; the northern Stark County line east to State Route 88; State Route 88 north to the Bureau County line.

The geographic area presently assigned to California, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of California, except those export port locations within the State, and the geographic area assigned to the Los Angeles Grain Inspection Service, Inc., which is as follows:

Bounded on the North by the Angeles National Forest southern boundary from State Route 2 east; the San Bernadino National Forest southern boundary east to State Route 79;

Bounded on the East by State Route 79 south to State Route 74;

Bounded on the South by State Route 74 west-southwest to Interstate 5; Interstate 5 northwest to Interstate 405; Interstate 405 northwest to State Route 55; State Route 55 northeast to Interstate 5; Interstate 5 northwest to State Route 91; State Route 91 west to State Route 11; and

Bounded on the West by State Route 11 north to U.S. Route 66; U.S. Route 66 west to Interstate 210; Interstate 210 northwest to State Route 2; State Route 2 north to the Angeles National Forest boundary.

The geographic area presently assigned to Washington, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Washington, except those export port locations within the State.

Interested persons, including Kankakee, California, and Washington are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning February 1, 1994, and ending January 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 21, 1993.

Neil E. Porter,

*Director, Compliance Division.*

[FR Doc. 93–18162 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–EN–F

## Request for Comments on the Applicant for Designation in the Geographic Area Currently Assigned to the State of New York (NY)

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** FGIS requests interested persons to submit comments on the applicant for designation to provide official services in the geographic area currently assigned to the New York State Department of Agriculture and Markets (New York).

**DATES:** Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by August 27, 1993.

**ADDRESSES:** Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 15, 1993, Federal Register (58 FR 33066), FGIS asked persons interested in providing official services in the geographic area assigned to New York to submit an application for designation. Applications were due by July 15, 1993. New York, the only applicant, applied for designation in the entire area currently assigned to it. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning New York. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of New York. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the Federal Register, and FGIS will send the applicant written notification of the decision.

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 21, 1993.

Neil E. Porter,

*Director, Compliance Division.*

[FR Doc. 93–18163 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–EN–F

## Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Aberdeen (SD) Agency and the State of Missouri (MO)

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Aberdeen Grain Inspection, Inc. (Aberdeen), and the Missouri Department of Agriculture (Missouri).

**DATES:** Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by September 1, 1993.

**ADDRESSES:** Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 3, 1993, **Federal Register** (58 FR 31492), FGIS asked persons interested in providing official services in the geographic areas assigned to Aberdeen and Missouri to submit an application for designation. Applications were due by July 1, 1993. Missouri applied for designation in the entire area currently assigned to it. There were two applicants for the Aberdeen geographic area. Aberdeen applied for designation in the entire area currently assigned to it except for: Farmers Elevator, Guelph, Dickey County; Farmers Equity Exchange, and Sun Grain, both in New England, Hettinger County; and Regent Grain Company, and Regent Equity, both in Regent, Hettinger County (located inside Grain Inspection, Inc.'s, area). Grain Inspection, Inc. (Jamestown), applied for designation to serve Farmers Elevator, Guelph, Dickey County; Farmers Equity Exchange, and Sun Grain, both in New England, Hettinger County; and Regent Grain Company, and Regent Equity, both in Regent, Hettinger County, in addition to the area they are already designated to serve. The Aberdeen and Jamestown agencies are contiguous official agencies.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation in the Aberdeen and Missouri areas. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: July 21, 1993.

**Neil E. Porter,**

*Director, Compliance Division.*

[FR Doc. 93–18161 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–EN–F

## Forest Service

### Exempt Decision for Shirt Salvage Timber Sale From Appeal, Malheur National Forest, Oregon

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice to exempt decision from administrative appeal.

**SUMMARY:** This is a notification that the decision to implement the Shirt Salvage Timber Sale, located on the Bear Valley Ranger District, Malheur National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Boche, Forest Supervisor, Malheur National Forest, 139 NE. Dayton Street, or Barb Boaz, Timber Management Planner, Bear Valley Ranger District, 528 E. Main Street, John Day, Oregon 97845, phone: (503) 575–1731.

**SUPPLEMENTARY INFORMATION:** Mountain pine beetle is rapidly building up large populations over the Shirttail sub-watershed in response to the overstocked stand conditions. The outbreak has obtained catastrophic proportions within several timber stands. Infestation will continue to spread, along with associated mortality, to adjacent stands each time the brood develops to maturity and flies in the springtime to new host trees.

Prompt and aggressive action is needed to contain this epidemic. Each time the brood flies, the outbreak will increase in magnitude and geographic area. Survey of the area identified about 1,399 acres that are already infested or which are very susceptible to an infestation.

The Shirttail environmental analysis was started in October 1992. An interdisciplinary team of resource specialists developed four alternatives to analyze, including the No-Action Alternative. An environmental assessment document has been prepared to disclose the effects of alternatives developed to meet the objectives of the proposed action and responds to the major issues. The proposed action would treat 2,453 acres to reduce future outbreaks of insects.

To facilitate implementation in a timely manner, A Decision Notice will be prepared to separate the treatment into two salvage sales: (1) Shirt Salvage Timber Sale and (2) Shirttail Salvage Timber Sale.

Shirt Salvage Timber Sale will be exempt from appeal. Shirttail Salvage Timber Sale, which harvest other high priority stands, will not be exempt from appeal.

The preferred alternative of the Shirt Salvage Timber Sale will harvest approximately 4.1 million board feet on 863 acres. No road construction will be required. Only beetle-infested trees will be harvested from the forest by the spring of 1994 to reduce the population of mature mountain pine beetles.

Biological evaluations have been completed for all plant, wildlife and fish proposed, endangered, threatened, and sensitive species. The biological evaluation indicates that the project could proceed as planned.

The Shirt Salvage Timber Sale and accompanying work is designed to accomplish objectives as quickly as possible and minimize any further loss of volume and resource damage. Based upon the environmental analysis for the two salvage timber sales, I have determined that good cause exist to exempt Shirt Salvage Timber Sale decision from administrative appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal.

Decision related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Notice for the Shirt Salvage Timber Sale can be signed by the Forest Supervisor. Therefore, this Shirt Salvage will not be subject to review under 36 CFR part 217.

Dated: July 23, 1993.

**Nancy Graybeal,**

*Deputy Regional Forester.*

[FR Doc. 93–18260 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–11–M

### Rocky Canyon Timber Sale, Boise National Forest, Valley County, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Environmental Impact Statement cancellation notice.

**SUMMARY:** Site-specific environmental analysis has indicated that the Rocky Canyon project area is comprised of extremely harsh, low-productivity sites. Damaging insect populations and disease pathogens are at normal levels and do not pose a threat to present or future management objectives.

The purpose and need for this proposal was to maintain the resilience

of the forest, to improve and protect old growth habitat, and to provide timber from suited timberlands. Based on new resource information and recent harvest from other areas on the Forest, I do not believe vegetative treatment in the Rocky Canyon area is necessary to meet the proposal's objectives.

Further, other areas of the Boise National Forest, with a much higher productivity, are currently experiencing severe forest health problems or present a high risk to catastrophic insect, disease, or fire impacts. I believe, given more pressing forest health priorities on the Forest, that the need to treat the Rocky Canyon area at this time is very low. Therefore, I have decided not to pursue a timber management proposal in Rocky Canyon at this time.

The Notice of Intent to prepare an Environmental Impact Statement published in the **Federal Register** of April 6, 1993 is hereby rescinded (Vol. 58, No. 64, pages 17859 and 17860).

**FOR FURTHER INFORMATION CONTACT:** Cyd Weiland, Environmental Coordinator; Boise National Forest; Emmett Ranger District; 1805 Highway 16, room 5; Emmett, Idaho 83617; telephone 208–365–7000.

Dated: July 21, 1993.

**Catherine S. Barbouletos,**

*Deputy Forest Supervisor.*

[FR Doc. 93–18183 Filed 7–29–93; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Business Development Center Applications: Gary-Hammond-East Chicago, IN, MSA

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3 year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated at $169,125 in Federal funds, and a minimum of $29,846 in non-federal (cost-sharing) contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof.

The period of performance will be from January 1, 1994 to December 31, 1994. The MBDC will operate in the Gary-Hammond-East Chicago, Indiana geographic service area. The award number of this MBDC will be 05–10–94001–01.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can coordinate and broker public and private resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applicatins will be evaluated initially by Regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodology) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purposes of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate, after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Award recipients and subrecipients under this program shall be subject to all Federal Department regulations, policies, and procedures applicable to Federal assistance awards.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce (DOC) are made.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying:"

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applicable/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Any applicant that has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

The Departmental Grants Officer may terminate any grants/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Government to cover pre-award costs.

If an application is selected for funding, the U.S. Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity; and a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

**CLOSING DATE:** The closing date for applications is September 9, 1993. Applications must be postmarked on or before September 9, 1993.

**ADDRESS:** Chicago Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 55 East Monroe, suite 1440, Chicago, Illinois 60603.

**FOR FURTHER INFORMATION CONTACT:** David Vega, Regional Director, Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, suite 1440, Chicago, Illinois 60603, 312/353–0182.

**STATUTORY AUTHORITY:** 15 U.S.C. 1512.

**FUNDING AUTHORITY:** Executive Order 11625, October 13, 1971.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Intergovernmental Review of Federal Programs" is not applicable to this program. A pre-bid conference will be held on August 20, 1993, at 10 a.m. at the MBDA Chicago Regional Office. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 27, 1993.

**David Vega,**

*Regional Director, Chicago Regional Office.*

[FR Doc. 93–18259 Filed 7–29–93; 8:45 am]

BILLING CODE 3510–21–M

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## National Institute of Standards and Technology

**[Docket No. 930699–3199]**

**RIN 0693–AB19**

## A Proposed Federal Information Processing Standard for an Escrowed Encryption Standard (EES)

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** A Federal Information Processing Standard (FIPS) for an Escrowed Encryption Standard (EES) is being proposed. This proposed standard specifies use of a symmetric-key encryption/decryption algorithm and a key escrowing method which are to be implemented in electronic devices and used for protecting certain unclassified government communications when such protection is required. The algorithm and the key escrowing method are classified and are referenced, but not specified, in the standard.

This proposed standard adopts encryption technology developed by the Federal government to provide strong protection for unclassified information and to enable the keys used in the encryption and decryption processes to be escrowed. This latter feature will assist law enforcement and other government agencies, under the proper legal authority, in the collection and decryption of electronically transmitted information. This proposed standard does not include identification of key escrow agents who will hold the keys for the key escrow microcircuits or the procedures for access to the keys. These issues will be addressed by the Department of Justice.

The purpose of this notice is to solicit views from the public, manufacturers, and Federal, state, and local government users so that their needs can be considered prior to submission of this proposed standard to the Secretary of Commerce for review and approval.

The proposed standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical aspects of the standard. Both sections are provided in this notice.

**DATES:** Comments on this proposed standard must be received on or before September 28, 1993.

**ADDRESSES:** Written comments concerning the proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Escrowed Encryption Standard, Technology Building, room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Dr. Dennis Branstad, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2913.

**SUPPLEMENTARY INFORMATION:** This proposed FIPS implements the initiative

announced by the White House Office of the Press Secretary on April 16, 1993. The President of the U.S. approved a Public Encryption Management directive, which among other actions, called for standards to facilitate the procurement and use of encryption devices fitted with key-escrow microcircuits in Federal communication systems that process sensitive, but unclassified information.

Dated: July 26, 1993.

**Arati Prabhakar,**

*Director.*

**Federal Information Processing Standards Publication XX**

1993 XXXX

Announcing the Escrowed Encryption Standard (EES)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

**Name of Standard:** Escrowed Encryption Standard (EES).

**Category of Standard:** Telecommunications Security.

**Explanation:** This Standard specifies use of a symmetric-key encryption (and decryption) algorithm and a Law Enforcement Access Field (LEAF) creation method (one part of a key escrow system) which provide for decryption of encrypted telecommunications when interception of the telecommunications is lawfully authorized. Both the algorithm and the LEAF creation method are to be implemented in electronic devices (e.g., very large scale integration chips). The devices may be incorporated in security equipment used to encrypt (and decrypt) sensitive unclassified telecommunications data. Decryption of lawfully intercepted telecommunications may be achieved through the acquisition and use of the LEAF, the decryption algorithm and escrowed key components.

To escrow something (e.g., a document, an encryption key) means that it is "delivered to a third person to be given to the grantee only upon the fulfillment of a condition" (Webster's Seventh New Collegiate Dictionary). A key escrow system is one that entrusts components of a key used to encrypt telecommunications to third persons, called key component escrow agents. In accordance with the common definition of "escrow", the key component escrow agents provide the key components to a "grantee" (i.e., a government agency) only upon fulfillment of the condition that the grantee properly demonstrates legal authorization to conduct electronic surveillance of communications which are encrypted using the specific device whose key component is requested. The key components obtained through this process are then used by the grantee to reconstruct the device unique key and obtain the session key (contained in the LEAF) which is used to decrypt the telecommunications that are encrypted with that device. The term, "escrow", for purposes of this standard, is restricted to the dictionary definition.

The encryption/decryption algorithm has been approved for government applications requiring encryption of sensitive unclassified telecommunications of data as defined herein. The specific operations of the algorithm and the LEAF creation method are classified and hence are referenced, but not specified, in this standard.

Data, for purposes of this standard, includes voice, facsimile and computer information communicated in a telephone system. Telephone system, for purposes of this standard, is limited to systems circuit-switched up to no more than 14.4 kbs or which use basic-rate ISDN, or to a similar grade wireless service.

Data that is considered sensitive by a responsible authority should be encrypted if it is vulnerable to unauthorized disclosure during telecommunications. A risk analysis should be performed under the direction of a responsible authority to determine potential threats and risks. The costs of providing encryption using this standard as well as alternative methods and their respective costs should be projected. A responsible authority should then make a decision, based on the risk and cost analyses, whether or not to use encryption and then whether or not to use this standard.

**Approving Authority:** Secretary of Commerce.

**Maintenance Agency:** Department of Commerce, National Institute of Standards and Technology.

**Applicability:** This standard is applicable to all Federal departments and agencies and their contractors under the conditions specified below. This standard may be used in designing and implementing security products and systems which Federal departments and agencies use or operate or which are operated for them under contract. These products may be used when replacing Type II and Type III (DES) encryption devices and products owned by the government and government contractors.

This standard may be used when the following conditions apply:

1. An authorized official or manager responsible for data security or the security of a computer system decides that encryption is required and cost justified as per OMB Circular A–130; and

2. The data is not classified according to the National Security Act of 1947, as amended, or the Atomic Energy Act of 1954, as amended.

However, Federal departments or agencies which use encryption devices for protecting data that is classified according to either of these acts may use those devices also for protecting unclassified data in lieu of this standard.

In addition, this standard may be adopted and used by non-Federal Government organizations. Such use is encouraged when it provides the desired security.

**Applications:** Devices conforming to this standard may be used for protecting unclassified communications.

**Implementations:** The encryption/decryption algorithm and the LEAF creation method shall be implemented in electronic devices (e.g., electronic chip packages) that can be physically protected against unauthorized entry, modification and reverse engineering. Implementations which are tested and validated by NIST will be considered as complying with this standard. An electronic device shall be incorporated into a cyptographic module in accordance with FIPS 140–1. NIST will test for conformance with FIPS 140–1. Cryptographic modules can then be integrated into security equipment for sale and use in an application. Information about devices that have been validated, procedures for testing equipment for conformance with NIST standards, and information about obtaining approval of security equipment are available from the Computer Systems Laboratory, NIST, Gaithersburg, MD 20899.

**Export Control:** Implementations of this standard are subject to Federal Government export controls as specified in title 22, Code of Federal Regulations, parts 120 through 131 (International Traffic of Arms Regulations —ITAR). Exporters of encryption devices, equipment and technical data are advised to contact the U.S. Department of State, Office of Defense Trade Controls for more information.

**Patents:** Implementations of this standard may be covered by U.S. and foreign patents.

**Implementation Schedule:** This standard becomes effective thirty days following publication of this FIPS PUB.

**Specifications:** Federal Information Processing Standard (FIPS XXX)(affixed).

**Cross Index:**

a. FIPS PUB 46–2, Data Encryption Standard.

b. FIPS PUB 81, Modes of Operation of the DES

c. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

**Glossary:**

The following terms are used as defined below for purposes of this standard:

Data—Voice, facsimile and computer information communicated in a telephone system.

Decryption—Conversion of ciphertext to plaintext through the use of a cryptographic algorithm.

Device (cryptographic)—An electronic implementation of the encryption/decryption algorithm and the LEAF creation method as specified in this standard.

Digital data—Data that have been converted to a binary representation.

Encryption—Conversion of plaintext to ciphertext through the use of a cryptographic algorithm.

Key components—The values from which a key can be derived (e.g., $KU_1 \oplus KU_2$).

Key escrow—A process involving transferring one or more components of a cryptographic key to one or more trusted key component escrow agents for storage and later use by government agencies to decrypt ciphertext if access to the plaintext is lawfully authorized.

LEAF Creation Method 1—A part of a key escrow system that is implemented in a cryptographic device and creates a Law Enforcement Access Field.

Type I cryptography—A cryptographic algorithm or device approved by the National Security Agency for protecting classified information.

Type II cryptography—A cryptographic algorithm or device approved by the National Security Agency for protecting sensitive unclassified information in systems as specified in section 2315 of Title 10 United State Code, or section 3502(2) of Title 44, United States Code.

Type III cryptography—A cryptographic algorithm or device approved as a Federal Information Processing Standard.

Type III(E) cryptography—A Type III algorithm or device that is approved for export from the United States.

**Qualifications.** The protection provided by a security product or system is dependent on several factors. The protection provided by this standard against key search attacks is greater than that provided by the DES (e.g., the cryptographic key is longer). However, provisions of this standard are intended to ensure that information encrypted through use of devices implementing this standard can be decrypted by a legally authorized entity.

**Where to Obtain Copies of the Standard:** Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication XX (FIPS PUB XX), and identify the title. When microfiche is desired, this should be specified. Prices are published by NTIS in current catalogs and other issuances. Payment may be made by check, money order, deposit account or charged to a credit card accepted by NTIS.

## Specifications for the Escrowed Encryption Standard

### *1. Introduction*

This publication specifies Escrowed Encryption Standard (EES) functions and parameters.

### *2. General*

This standard specifies use of the SKIPJACK cryptographic algorithm and the LEAF Creation Method 1 (LCM–1) to be implemented in an approved electronic device (e.g., a very large scale integration electronic chip). The device is contained in a logical cryptographic module which is then integrated in a security product for encrypting and decrypting telecommunications.

Approved implementations may be procured by authorized organizations for integration into security equipment. Devices must be tested and validated by NIST for conformance to this standard. Cryptographic modules must be tested and validated by NIST for conformance to FIPS 140–1.

### *3. Algorithm Specifications*

The specifications of the encryption/decryption algorithm (SKIPJACK) and the LEAF Creation Method 1 (LCM–1) are classified. The National Security Agency maintains these classified specifications and approves the manufacture of devices which implement the specifications. NIST tests for conformance of the devices implementing this standard in cryptographic modules to FIPS 140–1 and FIPS 81.

### *4. Functions and Parameters*

#### 4.1 Functions

The following functions, at a minimum, shall be implemented:

1. Data Encryption: A session key (80 bits) shall be used to encrypt plaintext information in one or more of the following modes of operation as specified in FIPS 81: ECB, CBC, OFB (64) CFB (1, 8, 16, 32, 64).

2. Data Decryption: The session key (80 bits) used to encrypt the data shall be used to decrypt resulting ciphertext to obtain the data.

3. Key Escrow: The Family Key (KF) shall be used to create the Law Enforcement Access Field (LEAF) in accordance with the LEAF Creation Method 1 (LCM–1). The Session Key shall be encrypted with the Device Unique Key and transmitted as part of the LEAF. The security equipment shall ensure that the LEAF is transmitted in such a manner that the LEAF and ciphertext may be decrypted with legal authorization. No additional encryption or modification of the LEAF is permitted.

#### 4.2 Parameters

The following parameters shall be used in performing the prescribed functions:

1. Device Identifier (DID): The identifier unique to a particular device and used by the Key Escrow System.

2. Device Unique Key (KU): The cryptographic key unique to a particular device and used by the Key Escrow System.

3. Cryptographic Protocol Field (CPF): The field identifying the registered cryptographic protocol used by a particular application and used by the Key Escrow System (reserved for future specification and use).

4. Escrow Authenticator (EA): A binary pattern that is inserted in the LEAF to ensure that the LEAF is transmitted and received properly and has not been modified, deleted or replaced in an unauthorized manner.

5. Initialization Vector (IV): A mode and application dependent vector of bytes used to initialize, synchronize and verify the encryption, decryption and key escrow functions.

6. Family Key (KF): The cryptographic key stored in all devices designated as a family that is used to create the LEAF.

7. Session Key (KS): The cryptographic key used by a device to encrypt and decrypt data during a session.

8. Law Enforcement Access Field (LEAF): The field containing the encrypted session key and the device identifier and the escrow authenticator.

*5. Implementation*

The Cryptographic Algorithm and the LEAF Creation Method shall be implemented in an electronic device (e.g., VLSI chip) which is highly resistant to reverse engineering (destructive or non-destructive) to obtain or modify the cryptographic algorithms, the DID, the KF, the KU, the EA, the CPF, the operational KS, or any other security or Key Escrow System relevant information. The device shall be able to be programmed/personalized (i.e., made unique) after mass production in such a manner that the DID, KU (or its components), KF (or its components) and EA fixed pattern can be entered once (and only once) and maintained without external electrical power.

The LEAF and the IV shall be transmitted with the ciphertext. The specifics of the protocols used to create and transmit the LEAF, IV, and encrypted data shall be registered and a CPF assigned. The CPF shall then be transmitted in accordance with the registered specifications.

The specific electric, physical and logical interface will vary with the implementation. Each approved, registered implementation shall have an unclassified electrical, physical and logical interface specification sufficient for an equipment manufacturer to understand the general requirements for using the device. Some of the requirements may be classified and therefore would not be specified in the unclassified interface specification.

[FR Doc. 93-18264 Filed 7-29-93; 8:45 am]

BILLING CODE 3810-CH-M

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[Docket No. 930655-3155]

## National Fire Codes: Request for Proposals for Revision of Standards

**AGENCY:** National Institute of Standards and Technology, DOC.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Interested persons may submit proposals on or before the dates listed with the standards.

**ADDRESSES:** Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269-9101.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770-3000.

**SUPPLEMENTARY INFORMATION:**

### Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

### Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269-9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of the disposition of each proposal by the NFPA Committee as the Technical Committee Report. Each person who has submitted a written proposal will receive a copy of the report.

Dated: July 26, 1993.

**Arati Prabhakar,**

*Director.*

| NFPA No. | Title | Proposal closing date |
|---|---|---|
| NFPA 11C-1990 | Mobile Foam Apparatus | 10/15/93 |
| NFPA 12B-1990 | Halon 1211 Fire Extinguishing Systems | 1/21/94 |
| NFPA 13E-1989 | Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems | 7/16/93 |
| NFPA 16-1991 | Installation of Deluge Foam-Water Sprinkler and Foam-Water Spray Systems | 7/16/93 |
| NFPA 18-1990 | Wetting Agents | 10/15/93 |
| NFPA 25-1992 | Water-Based Extinguishing Systems | 7/16/93 |
| NFPA 26-1988 | Supervision of Valves Controlling Water Supplies for Fire Protection | 7/16/93 |
| NFPA 32-1990 | Drycleaning Plants | 7/16/93 |
| NFPA 35-1987 | Manufacture of Organic Coatings | 7/16/93 |
| NFPA 50-1990 | Bulk Oxygen Systems at Consumer Sites | 7/15/94 |
| NFPA 51A-1989 | Acetylene Cylinder Charging Plants | 7/15/94 |
| NFPA 52-1992 | Compressed Natural Gas (CNG) Vehicular Fuel Systems | 1/24/94 |
| NFPA 58-1992 | Storage and Handling of Liquefied Petroleum Gases | 7/16/93 |
| NFPA 59-1992 | Liquefied Petroleum Gases at Utility Gas Plants | 7/16/93 |
| NFPA 61A-1989 | Manufacturing and Handling Starch | 7/16/93 |
| NFPA 61B-1989 | Grain Elevators and Facilities Handling Bulk Raw Agricultural Commodities | 7/16/93 |
| NFPA 61C-1989 | Fire and Dust Explosions in Feed Mills | 7/16/93 |
| NFPA 61D-1989 | Milling of Agricultural Commodities for Human Consumption | 7/16/93 |
| NFPA 70-1993 | National Electric Code | 11/5/93 |
| NFPA 81-1986 | Fur Storage, Fumigation, and Cleaning | 7/16/93 |

| NFPA No. | Title | Proposal closing date |
|---|---|---|
| NFPA 86–1990 | Ovens and Furnaces | 7/15/93 |
| NFPA 86C–1991 | Industrial Furnaces Using Special Processing Atmosphere | 1/21/94 |
| NFPA 86D–1990 | Industrial Furnaces Using Vacuum as an Atmosphere | 1/21/94 |
| NFPA 92B–1991 | Smoke Management Systems in Malls, Atria, and Large Areas | 1/21/94 |
| NFPA 122–1990 | Flammable and Combustible Liquids Within Underground Metal and Nonmetal Mines (Other than Coal). | 7/15/93 |
| NFPA 123–1990 | Underground Bituminous Coal Mines | 7/16/93 |
| NFPA 124–1988 | Diesel Fuel and Diesel Equipment in Underground Mines | 7/16/93 |
| NFPA 130–1993 | Fixed Guideway Transit Systems | 1/24/94 |
| NFPA 150–1991 | Firesafety in Racetrack Stables | 7/16/93 |
| NFPA 231C–1991 | Rack Storage of Materials | 7/16/93 |
| NFPA 232–1991 | Protection of Records | 1/24/94 |
| NFPA 251–1990 | Fire Tests of Building Construction and Materials | 7/16/93 |
| NFPA 252–1990 | Fire Tests of Door Assemblies | 7/16/93 |
| NFPA 255–1990 | Surface Burning Characteristics of Building Materials | 7/16/93 |
| NFPA 269–[1] | Toxic Hazard Modeling | 1/21/94 |
| NFPA 291–1988 | Fire Flow Testing and Marketing of Hydrants | 7/15/93 |
| NFPA 297–1986 | Telecommunications Systems—Principles and Practices for Rural and Forestry Services | 1/24/94 |
| NFPA 318–1992 | Protection of Cleanrooms | 7/16/93 |
| NFPA 385–1990 | Tank Vehicles for Flammable and Combustible Liquids | 1/15/94 |
| NFPA 386–1990 | Portable Shipping Tanks for Flammable and Combustible Liquids | 1/15/94 |
| NFPA 407–1990 | Aircraft Fuel Servicing | 10/15/93 |
| NFPA 409–1990 | Aircraft Hangars | 10/15/93 |
| NFPA 414–1990 | Aircraft Rescue and Fire Fighting Vehicles | 10/4/93 |
| NFPA 417–1990 | Aircraft Loading Walkways | 10/15/93 |
| NFPA 481–1987 | Titanium | 7/15/93 |
| NFPA 482–1987 | Zirconium | 8/15/93 |
| NFPA 497M–1991 | Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified Locations | 1/21/94 |
| NFPA 501C–1993 | Recreational Vehicles | 7/15/94 |
| NFPA 501D–1993 | Recreational Vehicle Parks and Campgrounds | 7/15/94 |
| NFPA 550–1986 | Firesafety Concepts Tree | 7/16/93 |
| NFPA 650–1990 | Pneumatic Conveying Systems for Handling Combustible Materials | 7/16/93 |
| NFPA 780–1992 | Lightning Protection Code | 1/21/94 |
| NFPA 801–1991 | Facilities Handling Radioactive Materials | 7/16/93 |
| NFPA 820–1992 | Wastewater Treatment Plants Collection Facilities | 7/16/93 |
| NFPA 901–1990 | Uniform Coding for Fire Protection | 7/16/93 |
| NFPA 902M–1990 | Fire Reporting Field Incident Manual | 11/1/93 |
| NFPA 903–1992 | Fire Reporting Property Survey Guide | 11/1/93 |
| NFPA 904–1992 | Incident Follow-Up Report Guide | 11/1/93 |
| NFPA 921–1992 | Fire and Explosion Investigations | 7/16/93 |
| NFPA 1051–[1] | Wildland Fire Management Personnel Professional Qualifications | 1/21/94 |
| NFPA 1401–1989 | Fire Service Reports and Records | 7/16/93 |
| NFPA 1404–1989 | Fire Department Self-Contained Breathing Apparatus Program | 7/16/93 |
| NFPA 1583–[1] | Fire Fighter Physical Performance | 1/21/94 |
| NFPA 1600–[1] | Disaster Management | 1/21/94 |
| NFPA 1983–1990 | Fire Service Life Safety Rope, Harnesses, and Hardware | 1/15/94 |
| NFPA 1984–[1] | Close-Circuit SCBA for Fire Fighters | 1/24/94 |
| NFPA 2002–[1] | Fire Suppression System Properties | 7/16/93 |
| NFPA 8506–[1] | Heat Recovery Steam Generators | 1/21/94 |

[1] Proposed NEW drafts. Copies of proposed drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 93–18309 Filed 7–29–93; 8:45 am]
BILLING CODE 3510–13–M

[Docket No. 93065–3157]

## National Fire Codes: Request for Comment on NFPA Technical Committee Reports

**AGENCY:** National Institute of Standards and Technology, DOC.

**ACTION:** Notice of request for comments.

**SUMMARY:** The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1994 Annual Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Forty reports are published in the 1994 Annual Meeting Technical Committee Reports and will be available on July 30, 1993. Comments received on or before October 8, 1993 will be considered by the respective NFPA committees before final action is taken on the proposals.

**ADDRESSES:** The 1993 Annual Technical Committee Reports are available from NFPA, Publications Department, 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standard Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

**Background**

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Technical Committee Reports.

**Request for Comments**

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standard Council, NFPA, 1 Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 8, 1993, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by March 25, 1994, prior to the Annual Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commenter. Action on the Technical Committee Reports (adoption or rejection) will be taken by NFPA members at the Annual Meeting, May 16–18, 1994 in San Francisco, California.

Dated: July 26, 1993.

**Arati Prabhakar,**

*Director.*

**1994 Annual Meeting**

*Technical Committee Reports*

(P = PARTIAL REVISION; W = WITHDRAWAL; R = RECONFIRMATION; N = NEW; C = COMPLETE REVISION)

| Doc. No. | Title | Action |
|---|---|---|
| NFPA 10 | Portable Fire Extinguishers | P |
| NFPA 10L | Sale or Leasing and Servicing of Portable Fire Extinguishers | W |
| NFPA 17 | Dry Chemical Extinguishing Systems | C |
| NFPA 17A | Wet Chemical Extinguishing Systems | C |
| NFPA 30B | Aerosol Products | P |
| NFPA 40 | Cellulose Nitrate Motion Picture Film | P |
| NFPA 43D | Pesticides in Portable Containers | C |
| NFPA 49 | Hazardous Chemicals Data | C |
| NFPA 57 | LNG Vehicle Fuel | N |
| NFPA 70B | Electrical Equipment Maintenance | P |
| NFPA 79 | Electrical Standard for Industrial Machinery | P |
| NFPA 221 | Fire Walls | N |
| NFPA 231D | Storage of Rubber Tires | P |
| NFPA 258 | Determining Smoke Generation of Solid Materials | R |
| NFPA 262 | Fire and Smoke Characteristics of Wires and Cables | P |
| NFPA 263 | Heat and Visible Smoke Release Rates for Materials and Products | C |
| NFPA 264A | Heat Release Rates of Upholstered Furniture Components or Composites and Mattresses Using an Oxygen Consumption Calorimeter. | R |
| NFPA 266 | Upholstered Furniture, Subjected to Open Flame Ignition, Using a Large-Scale Oxygen Consumption Calorimeter. | N |
| NFPA 267 | Mattresses, Subjected to Open Flame Ignition, Using a Large-Scale Oxygen Consumption Calorimeter | N |
| NFPA 298 | Foam Chemicals for Wildland Fire Control | C |
| NFPA 302 | Pleasure and Commercial Motor Craft | C |
| NFPA 325 | Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids (Formerly 325M) | P |
| NFPA 408 | Aircraft Hand Fire Extinguishers | C |
| NFPA 410 | Aircraft Maintenance | R |
| NFPA 422 | Aircraft Fire and Explosion Investigators (Formerly 422M) | C |
| NFPA 423 | Aircraft Engine Test Facilities | R |
| NFPA 485 | Lithium | N |
| NFPA 654 | Chemical, Dye, Pharmaceutical, and Plastics Industries | P |
| NFPA 914 | Rehabilitation and Adaptive Reuse of Historic Structures | C |
| NFPA 1000 | Certification and Accreditation of Fire Service Professional Qualifications Programs | N |
| NFPA 1003 | Airport Fire Fighter Professional Qualifications | C |
| NFPA 1201 | Developing Fire Protection Services for the Public | C |
| NFPA 1221 | Public Fire Service Communication Systems | C |
| NFPA 1222 | Self-Contained Pumping Units | C |
| NFPA 1931 | Design of and Design Verification Tests for Fire Department Ground Ladders | N |
| NFPA 1932 | Fire Department Ground Ladders | P |
| NFPA 1975 | Station/Work Uniforms for Fire Fighters | C |
| NFPA 1991 | Vapor-Protective Suits for Hazardous Chemical Emergencies | C |
| NFPA 1992 | Liquid Splash-Protective Suits for Hazardous Chemical Emergencies | C |
| NFPA 1993 | Support Function Protective Garments for Hazardous Chemical Operations | C |

[Docket No. 930777-3177]

**Proposed Voluntary Product Standard; PS 20-94 "American Softwood Lumber Standard"**

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of circulation of proposed Voluntary Product Standard PS 20-94 "American Softwood Lumber Standard".

**SUMMARY:** This is to advise the public that the National Institute of Standards and Technology is circulating for review and comment a proposed Voluntary Product Standard PS 20-94 "American Softwood Lumber Standard" that is an updated edition of PS 20-70 "American Softwood Lumber Standard." This new edition is being processed in accordance with the provisions of the Department of Commerce "Procedures for the Development of Voluntary Product Standards" (15 CFR part 10, as amended; 51 FR 22496 dated June 20, 1986).

**DATES:** Written comments regarding the standard should be submitted to the Standards Management Program, Office of Standards Services, on or before October 13, 1993.

**ADDRESSES:** Copies of the PS 20-94 may be obtained from the Standards Management Program, Office of Standards Services, National Institute of Standards and Technology, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** Barbara Meigs, Office of Standards Services, National Institute of Standards and Technology, telephone: 301-975-4025, FAX: 301-963-2871.

**SUPPLEMENTARY INFORMATION:** PS 20-94 was developed by the American Lumber Standards Committee, composed of representatives of softwood-lumber producers, distributors, consumers, and others with an interest in the Standard. The Standard differs from the previous edition, PS 20-70, in that its text has been simplified and updated. Terms have been modernized, and units of measurement in both conventional and metric units are presented. The basic sizes, technical requirements, and administrative structure for implementing and enforcing the Standard have been retained.

The Standard establishes standard sizes and requirements for developing and coordinating the lumber grades of the various species of softwood lumber, the assignment of design values, and the preparation of grading rules applicable to each species. Its provisions include implementation of the Standard through an accreditation and certification program; establishment of principal trade classifications and lumber sizes for yard, structural, factory/shop use; classification, measurement, grading and grade-marking of lumber; definitions of terms and procedures to provide a basis for the use of uniform methods in the grading, inspection, measurement and description of softwood lumber; commercial names of the principal softwood species; definitions of terms used in describing standard grades of lumber; and commonly used industry abbreviations. The Standard also includes the organization and functions of the American Lumber Standard Committee, the Board of Review, and the National Grading Rule Committee.

Dated: July 26, 1993.

**Arati Prabhakar,**

*Director.*

[FR Doc. 93-18263 Filed 7-29-93; 8:45 am]

BILLING CODE 3510-13-M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

**Procurement List; Additions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to the Procurement List commodities, a military resale commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** August 30, 1993

**ADDRESSES:** Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On April 30 and May 21, 28, June 4 and 11, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 26125, 29571, 31016, 31694 and 32656) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities, military resale commodity and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities, military resale commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities, military resale commodity and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities, military resale commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodities, military resale commodity and services are hereby added to the Procurement List:

**Commodities**

Parts Kit, Transmission Oil Filter
4330-01-211-6702
Fishing Kit, Emergency
4220-01-181-3154
Mouse Pad, Computer
7045-01-368-4808
7045-01-368-4809
7045-01-368-4810
7045-01-368-4811
Pad, Executive Message Recording
7510-01-357-6829
7510-01-357-6830
Bag, Polyethylene
8105-LL-S04-8618
8105-LL-S04-8619
8105-LL-S04-8620
(Requirements for the Fleet and Industrial Supply Center, Bremerton, Washington.)

*Military Resale Commodity*

Wrist Pad, Computer
M.R. 021

*Services*

Bursting and Packaging of Stamps, U.S. Department of the Interior, Washington, DC
Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Third and Sharkey Street, Clarksdale, Mississippi.

This action does not affect contracts awarded prior to the effective date of

this addition or options exercised under those contracts.

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 93–18250 Filed 7–29–93; 8:45 am]

BILLING CODE 6820–33–P

## Procurement List; Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to procurement list.

**SUMMARY:** This action adds to the Procurement List a filter element to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** August 30, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On May 7, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 27272) of the proposed addition of this element to the Procurement List.

Comments were received from the most recent contractor for the filter element. The contractor stated that it is a minority owned business which has no customers other than the Department of Defense (DoD) and that it did not expect any revenue from its other DoD contracts. The contractor made a profit in 1991, when it had a contract for the filter element, and lost money in 1992 when DoD did not purchase the filter element. The contractor also objected to losing the opportunity to recoup its investment in tooling and machinery to produce the filter element.

Because DoD did not buy the filter element in 1992, the Committee added the value of the quantity of this item which DoD now plans to buy to the contractor's 1992 sales to calculate the impact which loss of the item would have on the contractor's total sales. Using this method, the value of the quantity of this item to be procured is less than fifteen percent of the contractor's total sales. The Committee does not normally consider a loss of this size to constitute severe adverse impact on a contractor.

The Committee has determined that the contractor has at least two other DoD contracts. DoD has informed the Committee that it has made payments to the contractor on one of these contracts. Under the competitive bidding system, no contractor is guaranteed a Government contract. A contractor assumes a business risk if it invests in tooling and machinery in the belief that it will recoup its investment from the proceeds of future Government contracts. Consequently, the Committee does not consider loss of the opportunity to recoup this investment to constitute severe adverse impact on a contractor.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodity, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Filter, Element
4330–01–099–9351

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 93–18251 Filed 7–29–93; 8:45 am]

BILLING CODE 6820–33–P

## Procurement List Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to procurement list.

**SUMMARY:** This action adds to the Procurement List a flexible disk to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** August 30, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On May 21, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 29570) of the proposed addition of this disk to the Procurement List. Comments were received from one of the current contractors for the disk. The commenter questioned whether the proposed addition of the disk to the Procurement List meets the legal tests for an addition and whether the nonprofit agency involved will be able to produce a disk which meets the Government's needs. The commenter asserted that the proposed addition does not meet a requirement of the Committee's law that 75% of the work needed to produce an item be done by people with severe disabilities. The commenter identified fourteen steps in the production of a disk, from manufacture of iron oxide to packaging of the final product. Because the nonprofit agency will be performing only two of the fourteen steps, the commenter claimed that the proposed addition is improper under the Committee's law.

The commenter has misstated the Committee's law, which requires that 75% of the total direct labor performed by a nonprofit agency, whether for the Committee's program or not, be performed by people with severe disabilities. The percentage requirement applies to the work actually performed by the nonprofit agency, not the total amount of work required to produce an item. This longstanding Committee position has been upheld by a court decision. In this case, the nonprofit agency estimates that all of the direct labor it will perform on the disk will be performed by people with severe disabilities. It should also be noted that the commenter has informed the Committee that it performs very few of the fourteen steps involved in producing the disk.

The commenter also asserted that its quality standards far exceed the industry standards established by ANSI. It claimed that these high production and testing standards are needed because the Government uses the disk

in ways and environments which place greater demands on the disk than normal commercial use. The nonprofit agency is required to purchase the blank disks it will process from sources approved by the Government agency which buys the disks. The disks, cartridges and media must meet or exceed ANSI and ISO standards and dimensional requirements. Testing and inspection will be performed in accordance with the Government agency's requirements. The nonprofit agency has been producing another disk for the same Government agency for the past year and has produced over a million disks with no quality deficiencies. Accordingly, the Committee considers the nonprofit agency capable of producing the disk here in question as well. After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodity, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Disk, Flexible
7045–01–251–7527

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
*Executive Director.*

[FR Doc. 93–18254 Filed 7–29–93; 8:45 am]
BILLING CODE 6820–33–P

## Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities, military resale commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 30, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities, military resale commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities, military resale commodities and services.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities, military resale commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities, military resale commodities and services to the Procurement List for production by the nonprofit agency listed:

**Commodities**

Standard BUS Equipment
5999–00–NSH–0001
(Requirements for the U.S. Coast Guard)
Nonprofit Agency: Sheltered Workshop for the Disabled, Inc., Binghamton, New York

Bottle, Applicator
8125–00–488–7952
Nonprofit Agency: Kansas City Association for the Blind, Kansas City, Missouri

*Military Resale Commodities*

Clothespin, Wood
M.R. 571
Nonprofit Agency: Industries of the Blind, Inc., Greensboro, North Carolina

Scrubber, Pot and Dish
M.R. 582
Nonprofit Agency: Lighthouse Industries, Long Island City, New York

Refill, Scrubber, Pot and Dish
M.R. 592
Nonprofit Agency: Lighthouse Industries, Long Island City, New York

Strainer
M.R. 817
Nonprofit Agency: Alabama Institute for Deaf and Blind, Talladega, Alabama

Can Opener
M.R. 819
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio

Peeler, Vegetable
M.R. 825
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio

Pizza Cutter
M.R. 827
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio

Pastry Brush
M.R. 829
Nonprofit Agency: Alabama Institute for Deaf and Blind, Talladega, Alabama

Clip, Bag
M.R. 844
Nonprofit Agency: The Lighthouse for the Blind, Inc., Seattle, Washington

Whisk, Wire Loop

M.R. 849
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio

Lint Remover, Roller Type
M.R. 853
Nonprofit Agency: Lighthouse Industries, Long Island City, New York

*Services*

Grounds Maintenance
Bristol Veterans USARC
2501 Ford Road
Bristol, Pennsylvania
Nonprofit Agency: Community Interactions—Bucks County, Inc., Levittown, Pennsylvania

Grounds Maintenance
Philadelphia Memorial USARC
2838–98 Woodhaven Road
Philadelphia, Pennsylvania
Nonprofit Agency: Community Interactions—Bucks County, Inc., Levittown, Pennsylvania

Janitorial/Custodial
Federal Building
123 Fourth Street, SW.
Albuquerque, New Mexico
Nonprofit Agency: The Rehabilitation Center, Inc., Albuquerque, New Mexico

Janitorial/Custodial
Corpus Christi Army Depot
Corpus Christi, Texas
Nonprofit Agency: Nueces County Mental Health/Mental Retardation Center, Inc., Corpus Christi, Texas

Mailroom Operation
U.S. Army Research Laboratory
405 Arsenal Street
Watertown, Massachusetts
Nonprofit Agency: Jewish Vocational Service, Inc., Boston, Massachusetts

**Beverly L. Milkman,**
*Executive Director.*
[FR Doc. 93–18252 Filed 7–29–93; 8:45 am]
BILLING CODE 6820–33–P

## Procurement List; Proposed Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed addition to procurement list.

**SUMMARY:** The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** August 30, 1993.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from a nonprofit agency employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following service to the Procurement List for production by the nonprofit agency listed:

**Food Service**

McClellan Air Force Base, California
Nonprofit Agency: Pride Industries, Roseville, California

**Beverly L. Milkman,**
*Executive Director.*
[FR Doc. 93–18253 Filed 7–29–93; 8:45 am]
BILLING CODE 6820–33–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meetings

**AGENCY:** Defense Intelligence Agency Scientific Advisory Board, DoD.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provision of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Director of Military Intelligence Staff Advisory Panel has been scheduled as follows:

**DATES:** August 3, 1993 (0900–1700).

**ADDRESSES:** Tuesday, August 3, 1993, the Defense Intelligence Analysis Center, Building 6000, Bolling Air Force Base, Washington, DC 20340–1328.

**FOR FURTHER INFORMATION CONTACT:** Dr. W. S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328, (202) 373–4930.

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical issues and advise the Director of Military Intelligence.

Dated: July 26, 1993.

**L.M. Bynum,**
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 93–18152 Filed 7–29–93; 8:45 am]
BILLING CODE 5000–04–M

## Membership of the Office of the Secretary of Defense Performance Review Board

**SUMMARY:** This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint Staff, the U.S. Mission to NATO, the Advanced Research Projects Agency, the Defense Investigative Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Field Activities, and the U.S. Court of Military Appeals. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

**EFFECTIVE DATE:** July 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Janet E. Thompson, Assistant Director for Executive Personnel and Classification, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, The Pentagon, (202) 697–6304.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB; specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 1993.

**Office of the Secretary of Defense**

*Chairman*

Vincent P. Roske, Jr.

*Members*

Frank J. Aurelio
Diana L. Blundell
Pete A. Bryan
Robert Bruce
Paul E. Chistolini
Deborah P. Christie
Michael L. Dominguez
Jeanne B. Fites
William G. D. Frederick
Joan E. Freeman
Claiborne D. Haughton, Jr.
Robert T. Mason
Ronald S. Oxley
John J. Quill
John A. Roth
Francis M. Rush, Jr.
Kenneth C. Scheflen
Mary H. H. Smith
Peter M. Sullivan
Diana G. Tabler
Charles C. Wilson, Jr.

*Alternates*

Howard G. Becker
James D. Carlson
Kenneth I. Daugherty
E. William Harding
Philip M. Hitch
Sally K. Horn
H. Steven Kimmel
Ernest W. Liska
Gail H. McGinn
John S. Mester
Harry E. Pontius
John B. Rosamond
John M. Russ
Melvin W. Russell
Ronald P. Sanders
Nicolai Timenes, Jr.
Andrus Viilus
George W. Wauer

Dated: July 26, 1993.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-18151 Filed 7-29-93; 8:45 am]

BILLING CODE 5000-04-M

**Department of the Navy**

**CNO Executive Panel; Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Future Naval Forces Task Force will meet July 28, 1993, from 9 a.m. to 4 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, VA 22303-0268.

The purpose of this meeting is to discuss issues relating to determination of future naval force capabilities. As part of this study, discussions will also involve officer education, platform development, and future roles and functions.

This Notice is being published late because of administrative delays which constitute an exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting, contact: J. Kevin Mattonen, Executive Secretary to the Executive Panel, 4401 Ford Avenue, suite 601, Alexandria, VA 22302-0268, Phone (703) 756-1205.

Dated: July 19, 1993.

**Michael P. Rummel,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 93-18270 Filed 7-27-93; 4:41 pm]

BILLING CODE 3810-AE-F

**DEPARTMENT OF EDUCATION**

**National Science Scholars Program**

**AGENCY:** Department of Education.

**ACTION:** Notice of the closing date for the submission of fiscal year 1994 nominations under the National Science Scholars Program.

**SUMMARY:** The Secretary of Education (the Secretary) announces the closing date and procedures for the State nominating committees approved by the Secretary to submit the names of fiscal year 1994 nominees to the President under the National Science Scholars Program (NSSP) authorized by title VI, part A of the Excellence in Mathematics, Science and Engineering Education Act of 1990, as amended, 20 U.S.C. 5381 *et seq.* (the Act).

The NSSP supports the National Education Goals, particularly Goals 4 and 5. Goal 4 calls for American students to be first in the world in science and mathematics achievement. Goal 5 calls for Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This program advances these goals by providing scholarship assistance and other benefits to students selected by the President for undergraduate study of the physical, life, or computer sciences, mathematics, or engineering.

The Secretary will accept the names of nominees on behalf of the President from the nominating committees of States participating in the NSSP, including the 50 States and the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands. Each State nominating committee must submit for consideration the names and pertinent information of at least four nominees from each congressional district in the State. The Act provides that at least one half of the nominees from each congressional district must be female and all of the nominees must be ranked in order of priority within each congressional district. A State with an approved nominating committee that desires to have a nominee considered for selection as a National Science Scholar must provide each nominee's name, permanent address, home telephone number, social security number, if provided by the nominee, sex, congressional district, congressional representative's or delegate's name for that congressional district, priority ranking within the congressional district, and NSSP subject area in which the nominee intends to major, and specific major, if known.

**CLOSING DATE AND MEDIA FOR TRANSMITTING NSSP NOMINEE INFORMATION:** A State must provide its NSSP nominations for fiscal year 1994 by—

(1) Submitting the nominee information in typewritten format;

(2) Submitting the nominee information on a data diskette provided by the U.S. Department of Education that the U.S. Department of Education sends directly to all States; or

(3) Submitting the nominee information through a modem using a software program on a diskette provided by the U.S. Department of Education that the U.S. Department of Education sends directly to all States.

To ensure that State nominees are considered for fiscal year 1994 funds, a State must submit nominee information by November 2, 1993.

**STATE NSSP NOMINATIONS DELIVERED BY MAIL:** NSSP nominations must be sent to the address provided below.

A State must obtain proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary.

If a State's NSSP nominations are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S.

Postal Service. A State should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office. A State is encouraged to use registered or at least first-class mail.

Each State submitting nominations after the closing date will be notified that its nominees cannot be assured of consideration for fiscal year 1994 funding.

**ADDRESSES:** Nominations that are mailed must be sent to the following address: National Science Scholars Program, U.S. Department of Education, Office of Student Financial Assistance, ROB–3, room 4621, 400 Maryland Avenue, SW., Washington, DC 20202–5453.

**STATE NSSP NOMINATIONS DELIVERED BY HAND:** State NSSP nominations that are hand-delivered must be taken to the U.S. Department of Education, Office of Student Financial Assistance, 7th and D Streets, SW., room 4621, GSA Regional Office Building #3, Washington, DC 20202–5453. Hand-delivered nominations will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

State nominations that are hand delivered after 4:30 p.m. on the closing date cannot be assured consideration.

**STATE NSSP NOMINATIONS TRANSMITTED THROUGH A MODEM:** NSSP nominations transmitted to the U.S. Department of Education through a modem must be transmitted to (301) 587–2187. Modem transmissions must be received by the server (computer) no later than November 2, 1993. The transmission will be acknowledged by the server through transmission of a file to the sender that will display on the sender's computer screen, providing proof of the U.S. Department of Education's receipt of the transmission.

**PROGRAM INFORMATION:** Under the NSSP, the Secretary is authorized to award scholarships to outstanding students selected by the President for the study of physical, life, or computer sciences, mathematics, or engineering. The Secretary is authorized to award initial scholarships of up to $5,000 for the first year of undergraduate study to graduating high school students as well as continuation awards of up to $5,000 for up to four additional years of undergraduate study.

**APPLICABLE STATUTORY AND REGULATORY PROVISIONS:** The following statute and regulations are applicable to the fiscal year 1994 NSSP:

(1) The program statute, 20 U.S.C. 5381 *et seq.*

(2) The National Science Scholars Program regulations in 34 CFR part 652.

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (with the exception of subpart C, §§ 75.200–75.216, 75.218, and 75.220–75.261 of subpart D, and §§ 75.580–75.592 of subpart E), 77, 79, 81, 82, 85, and 86.

**INTERGOVERNMENTAL REVIEW:** This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles R. Brazil, Program Specialist, U.S. Department of Education, Division of Higher Education Incentive Programs, Washington, DC 20202–5251. Telephone: (202) 708–4609. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Program Authority:** 20 U.S.C. 5381 *et seq.*

(Catalog of Federal Domestic Assistance Number 84.242, National Science Scholars Program)

Dated: July 23, 1993.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 93–18190 Filed 7–29–93; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Financial Assistance, Marine Safety Systems, Inc.

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent to make an award based on an unsolicited application.

**SUMMARY:** The Department of Energy (DOE), Chicago Field Office, through the Dallas Support Office, announces, pursuant to the DOE Financial Assistance Rule 10 CFR 600.14(f), that DOE intends to award a grant to Marine Safety Systems, Inc. to develop an automated sonic system for oil tankers that would identify the location and extent of damage to oil-containing tanker sections and safely and rapidly transport oil from a ruptured section or sections to temporary storage tanks, invented by Mr. Booth B. Strange.

**SUPPLEMENTARY INFORMATION:** DOE announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Marine Safety Systems Inc., would be based on the acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1). Prior to the inventor's work, the subject invention did not exist. The patented invention is an on-board pumps-and-piping system which uses hydrostatic pressure differentials and placement of suction pipes extending from the upper deck into the tank to quickly transfer cargo. The technology should have a significant impact on energy conservation by substantially reducing the magnitude of loss in accidents involving large oil tankers. The proposed project is deemed meritorious based on the general evaluation in accordance with DOE 600.14(d) and represents a unique idea that would not be eligible for financial assistant under a recent, current, or planned solicitation.

The project period for the grant award is 24 months. DOE plans to provide funding in the amount of $99,000.00.

**FOR FURTHER INFORMATION CONTACT:** Linda K. Carter, U.S. Department of Energy, Dallas Support Office, 1420 West Mockingbird Lane, suite 400, Dallas, TX 75247.

Issued in Chicago, Illinois on July 20, 1993.

**Maurice A. Broderick,**

*Deputy Director, Operations Management Support Division.*

[FR Doc. 93–18258 Filed 7–29–93; 8:45 am]

BILLING CODE 6450–01–M

### Noncompetitive Financial Assistance Award To The National Association of Regulatory Utility Commissioners

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE), Chicago Operations Office, through the Denver Support Office, announces that pursuant to DOE Financial Assistance Rules 600.7(b)(2), it intends to award a grant to the National Association of Regulatory Utility Commissioners (NARUC) for an Integrated Resource Planning Project. The objective of this activity is to assist the National Association of Regulatory Utility Commissioners and its members, (state utility commissions) and individual utility companies to develop

new methods of incorporating regulatory, environmental, and energy analysis factors and education programs into Integrated Resource Planning (IRP) and Demand-Side Management (DSM) program planning.

NARUC will provide support and assistance to its State regulatory commission members to stimulate work in Integrated Resource Planning and Demand-Side Management. NARUC will work with its State public utility commissions, individual utilities, and expert consultants, to conduct analysis in financial and regulatory incentives, methodology and quantification of externalities, performance of demand-side practices, and methodology of gas IRP. NARUC will also sponsor two national conferences on IRP and will maintain a data-base on regulatory commission rate orders for State public utility commissioners.

The activity is necessary for the satisfactory completion of a project currently being undertaken by NARUC and competition would have an adverse effect on the completion of the activity.

This effort would be conducted by NARUC using their own resources; however, DOE support of the activity would enhance the public benefits to be derived by supporting and stimulating the understanding and practice of Integrated Resource Planning by utilities.

The applicant has exclusive domestic capability to perform the activities successfully based on the unique nature of the organization. NARUC is the only national association representing the State public regulatory commissions.

The estimated cost for the three year project period is $700,000. The estimated award amount for the first budget period of eighteen months is $330,000.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Denver Support Office, 2801 Youngfield St., suite 380, Golden, Colorado, 80401–2266. Attention: Margaret Learmouth. Telephone: (303) 231–5750, Extension 138.

Issued in Chicago, Illinois on July 3, 1993.

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 93–18257 Filed 7–29–93; 8:45 am]

BILLING CODE 6450–01–M

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[PR 01–93FE62928.000]

## U.S.–ASEAN Council; Financial Assistance Award

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent.

**SUMMARY:** The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary noncompetitive financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i)(A) and (D) to the U.S.–ASEAN Council (Council) under Grant Number DE–FG01–93FE62928 to enable the DOE and the Council to jointly coordinate the U.S.–ASEAN Energy/Environment Initiative.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Office of Placement and Administration, Attn: H.D. Watkins, PR–322.1, 1000 Independence Avenue, SW., Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** The initiative will consist of a broad effort to assist Indonesia and Thailand, and American companies, in the implementation of Coal Technology Projects. The Council, in conjunction with DOE, will organize two missions to the U.S. from Indonesia and Thailand. These missions will focus on specific areas which are of interest to the electric utilities and government agencies of Thailand and Indonesia, and in which American companies have a competitive advantage. The anticipated project period of the proposed grant is 24 months from the effective date of award.

The DOE has concluded that in accordance with 10 CFR 600.7(b)(2)(i)(A) and (D) that the proposed activity is necessary for the continuation of an activity recently funded by DOE to support a clean coal technology trade mission to Thailand and Indonesia. Competition for this support would have a significant adverse effect on the activity. Follow-on activities to capture immediate trade opportunities identified by the past mission would be jeopardized by competition for support. The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

The estimated cost of the project is $124,870 of which $100,000 will be paid for by DOE.

**Scott Sheffield,**

*Acting Director, Division "B", Office of Placement and Administration.*

[FR Doc. 93–18255 Filed 7–29–93; 8:45 am]

BILLING CODE 6450–01–M

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## Energy Information Administration

## Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistant requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before August 30, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:**

Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC–582
3. 1902–0132
4. Oil, Gas and Electric Fees and Annual Charges
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for-profit; Small businesses or organizations
9. 179 respondents
10. 1 response
11. 4 hours per response
12. 716 hours
13. The FERC requires information in order to assess annual charges and to review requests for public utilities for waiver from annual charges, imposed under authority provided in the Independent Offices Appropriation Act of 1952 and the Omnibus Reconciliation Act of 1986.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended chapter 35 of title 44 United States Code (See 44 U.S.C. 3506 (a) and (c)(1).

Issued in Washington, DC, July 23, 1993.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 93–18258 Filed 7–29–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

[Docket No. JD93–12345T New Mexico–44]

## Department of the Interior, Bureau of Land Management; NGPA Notice of Determination By Jurisdictional Agency Designating Tight Formation

July 26, 1993

Take notice that on July 22, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Gallup and Dakota Formations in a portion of the West Lindrith Area of the Lindrith Gallup-Dakota West Pool underlying a portion of San Juan County, New Mexico, qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 10,240 acres, all of which are Jicarilla Apache Indian Reservation Lands. The recommended area is described as follows:

*Township 25 North, Range 4 West*

Sections 15–22: All
Sections 27–34: All

The notice of determination also contains BLM's findings that the referenced portion of the Gallup and Dakota Formations meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20528. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18172 Filed 7–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–11–63–000 and TM 93–11–63–000]

## Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 26, 1993

Take notice that on July 22, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

1st Rev Forty-Fourth Revised Sheet No. 8
1st Rev Forty-Fourth Revised Sheet No. 9

Carnegie states that pursuant to Sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment (PGA) and Transportation Cost Adjustment (TCA) to reflect changes in its projected purchased gas costs and projected Account No. 858 costs. The proposed effective date of the tendered tariff sheets is June 1, 1993.

Carnegie states that the proposed rate changes are necessitated by the implementation of restructured services pursuant to Order No. 636 of Texas Eastern Transmission Corporation (TETCO), Carnegie's former upstream pipeline supplier, effective June 1, 1993. Carnegie states that the purpose of its filing is to correct Carnegie's June 1993 sales rates to reflect the TETCO rates in effect as of June 1, 1993. Carnegie further states that rate changes reflected in the above tariff sheets are the same rates proposed by Carnegie as part of Carnegie's compliance filings submitted in Docket Nos. TQ93–8–63–001, et al., which were rejected by the Commission in a Letter Order dated July 12, 1993.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 2, 1993.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell**

*Secretary.*

[FR Doc. 93–18173 Filed 7–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–8–63–004 and TM93–8–63–004]

## Carnegie Natural Gas Co.; Compliance Filing

July 26, 1993.

Take notice that on July 22, 1993, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

3rd Sub Forty-Fourth Revised Sheet No. 8
4th Sub Forty-Fourth Revised Sheet No. 9

The proposed effective date of these revised tariff sheets is June 1, 1993.

Carnegie states that it is filing the above tariff sheets in compliance with the Letter Order dated May 27, 1993, issued by the Director of the Office Pipeline and Producer Regulation in this proceeding, as interpreted by the Director's subsequent Letter Order dated July 12, 1993. Carnegie states that, as compared to Carnegie's original April 30, 1993 PGA and TCA filing in this proceeding, the enclosed tariff sheets reflect a PGA demand charge decrease of $0.3186 per dth, a DCA decrease of $0.0105 per dth, and a decrease in the maximum interruptible sales rate under

Rate Schedule SEGSS of $0.0105 per dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before August 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18174 Filed 7–29–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. EC93–6–000]

## The Cincinnati Gas & Electric Co. and PSI Energy, Inc.; Filing

July 26, 1993.

Take notice that on July 26, 1993, The Cincinnati Gas & Electric Co. (CG&E), PSI Energy, Inc. (PSI), Union Light, Heat & Power Co., and Miami Power Corp. (collectively, Applicants) filed a response to a letter issued on July 23, 1993 by the Director, Division of Opinions and Systems Analysis (July 23 letter). The July 23 letter requested that the Applicants provide further information concerning the Applicants' amended application filed with the Commission on July 9, 1993.

In their July 26, 1993 filing, the Applicants provide further information regarding, *inter alia*, the nature of Commission authorization that the Applicants request; the effect of the registered holding company structure on merger benefits and rates; and the parameters of the Applicants' commitment to hold harmless their wholesale customers. The Applicants also provide affidavits concerning: (1) Savings in labor and non-labor administrative and general costs; (2) savings in production and capacity costs; and (3) a summary of the principles that the Applicants anticipate will govern the allocation of merger savings between PSI and CG&E.

Any person desiring to be heard or to protest the above filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20436, in accordance with 18 CFR 385.211 and 385.214. All such motions or comments should be filed on or before August 2, 1993. Copies of this filing are on file and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18171 Filed 7–29–93; 8:45 am]

BILLING CODE 6717–01–M

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[Project No. 2590–000]

## Consolidated Water Power Co.; Authorization for Continued Project Operation

July 26, 1993.

On June 26, 1991, Consolidated Water Power Company, licensee for the Wisconsin River Diversion Project No. 2590, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2590 is located on the Wisconsin River in Portage County, Wisconsin.

The license for Project No. 2590 was issued for a period ending June 30, 1993. Section 15 (a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2590 is issued to Consolidated Water Power Company for a period effective July 1, 1993, through June 30, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Consolidated Water Power Company is authorized to continue operation of the Wisconsin River Diversion Project No. 2590 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18179 Filed 7–29–93; 8:45 am]

BILLING CODE 6717–01–M

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[Project No. 2366–000]

## Maine Public Service Co.; Authorization for Continued Project Operation

July 26, 1993.

On June 27, 1991, Maine Public Service Company, licensee for the Millinocket Project No. 2366, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2366 is located on Millinocket Stream in Piscataquis County, Maine.

The license for Project No. 2366 was issued for a period ending June 30, 1992. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b),

to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2366 is issued to Maine Public Service Company for a period effective July 1, 1992, through June 30, 1993, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. Notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Maine Public Service Company is authorized to continue operation of the Millinocket Project No. 2366 until such time as the Commission acts on its application for subsequent license.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18180 Filed 7-29-93; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 2536-000]

## Niagara of Wisconsin Paper Corp.; Authorization for Continued Project Operation

July 26, 1993.

On June 26, 1991, Niagara of Wisconsin Paper Corporation, licensee for the Little Quinnesec Falls Project No. 2536, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2536 is located on the Menominee River in Marinette County, Wisconsin and Dickinson County, Michigan.

The license for Project No. 2536 was issued for a period ending June 30, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2536 is issued to Niagara of Wisconsin Paper Corporation for a period effective July 1, 1993, through June 30, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Niagara of Wisconsin Paper Corporation is authorized to continue operation of the Little Quinnesec Falls Project No. 2536 until such time as the Commission acts on its application for subsequent license.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18177 Filed 7-29-93; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 2711-000]

## Northern States Power Co.; Authorization for Continued Project Operation

July 26, 1993.

On March 27, 1991, Northern States Power Company, licensee for the Trego Project No. 2711, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2711 is located on the Namekagon River in Washburn County, Wisconsin.

The license for Project No. 2711 was issued for a period ending March 31, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2711 is issued to Northern States Power Company for a period effective April 1, 1993, through March 31, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Northern States Power Company is authorized to continue operation of the Trego Project No. 2711 until such time as the Commission acts on its application for subsequent license.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18178 Filed 7-29-93; 8:45 am]

BILLING CODE 6717-01-M

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[Project No. 1651-000]

## Swift Creek Power Company, Inc.; Authorization for Continued Project Operation

July 26, 1993.

On November 29, 1990, Swift Creek Power Company, Inc., licensee for the Swift Creek Project No. 1651, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 1651

is located on Swift Creek and the Salt River in Lincoln County, Wyoming.

The license for Project No. 1651 was issued for a period ending November 30, 1992. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 1651 is issued to Swift Creek Power Company, Inc., for a period effective December 1, 1992, through November 30, 1993, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 1993, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Swift Creek Power Company, Inc. is authorized to continue operation of the Swift Creek Project No. 1651 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-18175 Filed 7-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2394-000]

## Wisconsin Electric Power Co.; Authorization for Continued Project Operation

July 26, 1993.

On June 20, 1991, Wisconsin Electric Power Company, licensee for the Chalk Hill Project No. 2394, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2394 is located on the Menominee River in Menominee County, Michigan and Marinette County, Wisconsin.

The license for Project No. 2394 was issued for a period ending June 30, 1993. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2394 is issued to Wisconsin Electric Power Company for a period effective July 1, 1993, through June 30, 1994, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before June 30, 1994, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Wisconsin Electric Power Company is authorized to continue operation of the Chalk Hill Project No. 2394 until such time as the Commission acts on its application for subsequent license.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-18176 Filed 7-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 710-000 Wisconsin]

## Wisconsin Power and Light Co.; Meeting

July 26, 1993.

a. *Date and Time of Meeting:* August 16, 1993 at 10 a.m.

b. *Place:* First Floor Auditorium, Wisconsin State Historical Society, 816 State Street, Madison, Wisconsin.

c. *FERC Contacts:* James T. Griffin (202) 219-2799; Ed Lee (202) 219-2809

d. *Purpose of the Meeting:* The Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the Wisconsin State Historic Preservation Officer intend to execute a Statewide Programmatic Agreement for the Management of properties listed on or eligible for listing on the National Register of Historic Places that may be affected by issuing new licenses to existing hydroelectric projects in the State of Wisconsin. A draft Programmatic Agreement has been developed by these three parties and provided to other interested parties for their comment. At this meeting, participants will be afforded the opportunity to ask questions and present comments, concerns, and observations about the draft Programmatic Agreement prior to its being finalized for execution.

e. *Proposed Agenda:* (1) Discussion of the draft Programmatic Agreement.

f. All local, state and Federal agencies, licensees, Indian Tribes, and interested parties, are hereby invited to attend this meeting as participants. Questions should be directed to Messrs. Griffin and Lee at the numbers listed above.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-18213 Filed 07-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Rate Order No. SEPA-31]

## Southeastern Power Administration; Georgia-Alabama-South Carolina System of Projects

**AGENCY:** Southeastern Power Administration (Southeastern), DOE.

**ACTION:** Notice.

**SUMMARY:** On July 22, 1993, the Acting Assistant Secretary, Energy Efficiency and Renewable Energy, confirmed and approved, on an interim basis, thirteen replacement Rate Schedules, GA-1-D, GA-2-D, GA-3-C, GU-1-D, ALA-1-H,

ALA–3–D, MISS–1–H, MISS–2–D, SC–3–C, SC–4–B, CAR–3–C, SCE–2–C, and GAMF–3–B for Georgia-Alabama-South Carolina Projects' power. The rates were approved on an interim basis through September 30, 1998, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

**DATES:** Approval of rates on an interim basis is effective on October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Leon Jourolmon, Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia, 30635.

Rodney L. Adelman, WDC, Director, Washington Liaison Office, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission by Orders issued April 13, 1991, and September 30, 1991, in Docket No. EF90–3011–000 and 001 confirmed and approved Wholesale Power Rate Schedules GA–1–C, GA–2–C, GA–3–C, GU–1–D, ALA–1–G, ALA–3–C, MISS–1–G, MISS–2–C, SC–3–B, SC–4–A, SC–5–A, CAR–3–B, CAR–4–A, SCE–2–B, SCE–4–A, and GAMF–3–B through September 30, 1993. Rate Schedules GA–1–D, GA–2–D, GA–3–C, ALA–3–D, MISS–2–D, GU–1–D, ALA–1–H, MISS–1–H, SC–4–B, SC–3–C, CAR–3–C, SCE–2–C, and GAMF–3–B replace these schedules.

Issued in Washington, DC, July 22, 1993.

**Robert L. San Martin,**

*Acting Assistant Secretary.*

## Order Confirming and Approving Power Rates on an Interim Basis

In the Matter of Southeastern Power Administration—Georgia-Alabama-South Carolina Projects' Power Rates.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Assistant Secretary Conservation and Renewable Energy the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. The Office of the AS/CE was subsequently redesignated as the Assistant Secretary for Energy Efficiency and Renewable Energy by the Secretary of Energy on March 3, 1993.

Alternative two proposed a two tier rate. The first tier is an extension of current rates for five years. The second, higher tier, would automatically go into effect when the Russell pumping units are declared commercially operable during the 5 year period.

All comments were evaluated by Southeastern. Six substantive comments are address below.

*Comment 1*

Given the uncertainty surrounding the date that the pumping units will become commercially operable, extend the modified rate in alternative one for five years instead of three.

*Response*

Most of the comments supported extending the three year rate for a period of five years. Southeastern agrees with our preference customers. We are extending the existing capacity and energy rates for five years.

*Comment 2*

Support for the proposed rates is conditioned upon the current allocations of SEPA capacity and energy to SEPA's customers in the Georgia-Alabama-South Carolina System.

*Response*

The allocation of power is a Power Marketing Policy issue and is not addressed in the rate filing.

*Comment 3*

How will the rates be modified when the Richard B. Russell pumping units become commercially operable?

*Response*

Southeastern has contract agreements with each of our customers that allow us to raise rates on October 1st of any year. When the units are declared commercially operable, we will initiate a rate adjustment to be effective the next feasible October 1st to begin recovering the costs. For example, if the units became commercially operable in August, it would not be feasible to prepare a final rate study before October of the following year.

*Comment 4*

Has Southeastern given any consideration to not collecting the tandem charge from those customers that were providing their own transmission?

*Response*

Southeastern established the tandem rate on October 1, 1985. The tandem rate was established to recover the cost of wheeling power to customers in Florida and Mississippi. Charging customers in Florida and Mississippi the cost of wheeling power across multiple transmission systems would result in very high transmission charges to these customers. The tandem transmission charge was established as an equitable means of sharing these costs.

*Comment 5*

Will the tandem wheeling charge decrease from $.20 per KW to $.17 per KW for both Proposals?

*Response*

Yes. We have a better estimate of the transmission costs associated with completing the AEC West Point transmission line. The costs are lower than estimated in the previous rate filing which allows us to decrease the tandem wheeling rate.

*Comment 6*

Explain the $.18 per KW wheeling charge included in the second tier of Proposal Two.

*Response*

The increase accounts for the added capacity of the Richard B. Russell pumping units.

**Discussion**

*System Repayment*

An examination of Southeastern's system power repayment study, prepared in May 1993, for the Georgia-Alabama-South Carolina System of Projects, reveals that over the 5-year rate review period, current revenues are adequate to repay all system power costs within their repayment life. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to consumers consistent with sound business principles.

*Environmental Impact*

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National

Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

*Availability of Information*

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaison Office, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

*Submission to the Federal Energy Regulatory Commission*

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning October 1, 1993, and ending no later than September 30, 1998.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1993, attached Wholesale Power Rate Schedules GA 1–D, GA–2–D, GA–3–C, GU–1–D, ALA–1–H, ALA–3–D, MISS–1–H, MISS–2–D, SC–3–C, SC–4–B, CAR–3–C, SCE–2–C, and GAMF–3–B. The rate schedules shall remain in effect on an interim basis through September 30, 1998, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

GEORGIA-ALABAMA-SOUTH CAROLINA SYSTEM RATES

| Rate schedule | Present | Proposed Oct. 1, 1993–Sept. 30, 1998 |
|---|---|---|
| GA–1–D: | | |
| Capacity ($/KW/MO) | 2.67 | 2.67 |
| Energy (Mills/KWH) | 7.21 | 7.21 |
| Transmission ($/KW/MO) | (0.10) | 0.00 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| GA–2–D: | | |
| Capacity ($/KW/MO) | 2.67 | 2.67 |

GEORGIA-ALABAMA-SOUTH CAROLINA SYSTEM RATES—Continued

| Rate schedule | Present | Proposed Oct. 1, 1993–Sept. 30, 1998 |
|---|---|---|
| Energy (Mills/KWH) | 7.21 | 7.21 |
| Transmission ($/KW/MO) | (0.10) | 0.00 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| GA–3–C: | | |
| Capacity ($/KW/MO) | 2.67 | 2.67 |
| Energy (Mills/KWH) | 7.21 | 7.21 |
| Transmission ($/KW/MO) | 3.19 | 3.29 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| ALA–3–D: | | |
| Capacity ($/KW/MO) | 2.67 | 2.67 |
| Energy (Mills/KWH) | 7.21 | 7.21 |
| Transmission ($/KW/MO) | 1.63 | 1.73 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| MISS–2–D: | | |
| Capacity ($/KW/MO) | 2.67 | 2.67 |
| Energy (Mills/KWH) | 7.21 | 7.21 |
| Transmission ($/KW/MO) | 1.22 | 1.32 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| GU–1–D: | | |
| Capacity ($/KW/MO) | 2.67 | 2.67 |
| Energy (Mills/KWH) | 7.21 | 7.21 |
| Transmission ($/KW/MO) | 1.62 | 1.72 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| ALA–1–H: | | |
| Capacity ($/KW/MO) | 2.26 | 2.67 |
| Energy (Mills/KWH) | 7.21 | 7.21 |
| Transmission ($/KW/MO) | (0.10) | 0.00 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| MISS–1–H: | | |
| Capacity ($/KW/MO) | 2.26 | 2.26 |
| Energy (Mills/KWH) | 7.21 | 7.21 |
| Transmission ($/KW/MO) | 0.87 | 0.97 |

GEORGIA-ALABAMA-SOUTH CAROLINA SYSTEM RATES—Continued

| Rate schedule | Present | Proposed Oct. 1, 1993–Sept. 30, 1998 |
|---|---|---|
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| SC–4–B: | | |
| Capacity ($/KW/MO) | 2.26 | 2.26 |
| Energy (Mills/KWH) | 9.17 | 7.21 |
| Transmission ($/KW/MO) | 0.00 | 0.00 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| SC–3–C: | | |
| Capacity ($/KW/MO) | 2.72 | 2.72 |
| Energy (Mills/KWH) | 7.21 or 9.17 | 7.21 |
| Transmission ($/KW/MO) | 1.48 | 1.48 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| Revenue | | |
| CAR–3–C: | | |
| Capacity ($/KW/MO) | 3.21 | 3.21 |
| Energy (Mills/KWH) | 7.21 or 9.17 | 7.21 |
| Transmission ($/KW/MO) | 1.21 | 1.21 |
| Tandem Transmission ($/KW/MW) | 0.20 | 0.17 |
| Revenue | | |
| SCE–2–C: | | |
| Capacity ($/KW/MO) | 3.22 | 3.22 |
| Energy (Mills/KWH) | 7.21 or 9.17 | 7.21 |
| Transmission ($/KW/MO) | 1.85 | 1.65 |
| Tandem Transmission ($/KW/MO) | 0.20 | 0.17 |
| Revenue | | |
| PUMPING SCHEDULE: | | |
| GAMF–3–B | | COST |

The algorithm for calculating the pumping energy rate is given below.

**Wholesale Power Rate Schedule GAMF–3–B For Pumping Energy**

*Monthly Rate*

The rate for energy sold under this rate schedule for the months specified shall be:

$$EnergyRate=(C_{mon}+F)\div(1-L_{ad})$$

[computed to the nearest $.00001 (1/100 mill) per kwh]

(The weighted average cost of energy for pumping divided by the energy conversion factor, quantity divided by one minus losses for delivery.)

Where:

$C_{wav}=C_T+E_t$

(The weighted average cost of energy for pumping is equal to the total cost of energy for pumping divided by the total energy for pumping.)

$C_T=C_p+C_s$

(Total cost of energy for pumping is equal to the cost of energy purchased plus the cost of energy in storage carried over from the month preceding the specified month.)

$$E_T = E_P \times (1-L_P) + E_S^{t-1}$$

(Total energy for pumping is equal to the energy purchased, after losses, plus the energy for pumping in storage as of the end of the month preceding the specified month.)

$$C_S = C_{wav}^{t-1} \times E_S^{t-1}$$

(Cost of energy in storage is equal to the weighted average cost of energy for pumping for the month preceding the specified month times the energy for pumping in storage at the end of the month preceding the specified month.)

F

=Energy conversion factor for pumping at the Carters Project (by contract, .70 or 70 percent.)

$L_t$

=Weighted average energy loss factor on energy delivered by the facilitator to the customer. (This value will be a constant, currently estimated to be .0529 or 5.29 percent.)

$C_p$

=Dollars cost of energy purchased for pumping during the specified month, including all direct costs to deliver energy to the project. (Wheeling charges are expected to be $.027 per mwh.)

$E_p$

=Kilowatt-hours of energy purchased for pumping during the specified month.

$L_p$

=Energy loss factor for transmission on energy purchased for pumping (Expected to be .03 or three percent.)

$E_S^{t-1}$

=Kilowatt-hours of energy in storage as of the end of the month immediately preceding the specified month.

$C_{wav}^{t-1}$

=Weighted average cost of energy for pumping for the month immediately preceding the specified month.

*Energy to be Furnished by the Government*

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Facilitator (less any losses required by the Facilitator). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Facilitator's system.

*Billing Month*

The billing month for power sold under this schedule shall end at 12 midnight on the last day of each calendar month.

*Conditions of Service:*

The Customer shall at its own expense provide, install, and maintain the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment shall be coordinated with that which is installed by and at the expense of the Facilitator on its side of the delivery point.

Issued in Washington, DC, this 22 day of July 1993.

Robert L. San Martin,

*Acting Assistant Secretary.*

[FR Doc. 93-18122 Filed 7-29-93; 8:45 am]

BILLING CODE 6450-01-P

## Office of Fossil Energy

[FE Docket No. 93-73-NG]

## AIG Trading Corp.: Application for Blanket Authorization To Import and Export Natural Gas From and to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 14, 1993, of an application filed by AIG Trading Corporation, Inc. (AIG) requesting blanket authorization to import up to 200 Bcf of natural gas from Mexico and to export up to 200 Bcf of natural gas to Mexico over a two-year period beginning with the date of the first import or export delivery. AIG states it would use existing pipeline facilities to transport the gas. Also, AIG would advise DOE of the date of first deliveries and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, August 30, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H-087, FE-53, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903-2338

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: AIG is a Delaware corporation with its headquarters in Greenwich, Connecticut. AIG, which is a subsidiary of American International Group, Inc., is engaged in the business of dealing and trading in commodities, including natural gas. Under the authority requested, AIG will import and export the gas under spot and short-term purchase arrangements, either on its own behalf or as the agent for others. The specific terms of these arrangements would be negotiated individually, including the price and volumes..

The decision on AIG's request for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing AIG's export proposal, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. AIG asserts the proposed imports would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing

AIG's application bear the burden of overcoming these assertions.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties. including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of AIG's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 27, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18352 Filed 7–28–93; 1:20 pm]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–4685–6]**

**Acid Rain Program; Final Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final permit.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 7 utility plants: Des Moines, George Neal, Milton Kapp and Riverside in Iowa, Quindaro in Kansas, and Asbury and New Madrid in Missouri.

**FOR FURTHER INFORMATION:** Jon Knodel at (919) 551–7622. Air and Toxics Division, contact EPA Region 7 (ARTX), 726 Minnesota Ave., Kansas City, Kansas 66101.

Dated: July 26, 1993.

**Brian McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93–18228 Filed 7–29–93; 8:45 am]

BILLING CODE 6560–50–M

**[FRL–4685–5]**

**Acid Rain Program: Notice of Draft Permits And Public Comment Period**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Draft Permit and Public Comment Period.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year Acid Rain permits to 10 utility plants according to the Acid Rain Program regulations (40 CFR part 72).

**DATES:** Comments on draft permits must be received no later than August 30, 1993 or the publication date of this notice in local newspapers.

**ADDRESSES:**

**Administrative Records**

The administrative record for each draft permit, except information protected as confidential, may be viewed at the addresses listed in "SUPPLEMENTARY INFORMATION."

**Comments**

Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to the following:

For plants in Massachusetts and New Hampshire: Linda Murphy, Director, Air, Pesticides, and Toxics Division, EPA Region 1, JFK Federal Bldg., One Congress St., Boston, MA 02203.

For plants in Indiana, Michigan and Ohio: David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the permit.

**Hearings**

To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

**FOR FURTHER INFORMATION:** Contact the following persons for more information about the draft permits:

For plants in Massachusetts and New Hampshire, Ian Cohen, (617) 565–3229. Air Permits and Assessment Section, EPA Region 1 (APA), (address above).

For plants in Indiana, Patrick Gimino at (312) 353–8651; for plants in Michigan, Beth Burns at (312) 886–

2703. Air and Radiation Division, EPA Region 5 (A–18J), (address above).

SUPPLEMENTARY INFORMATION

**Permits**

EPA proposes to approve, for 1995 only, substitution plans and reduced utilization plans (and parts of plans) with compensating units that are consistent with the current rules and proposes to defer action on these plans and parts of plans for 1996–99.

EPA recently stated, in a July 16, 1993 Federal Register notice , that it is concerned that the existing Acid Rain Program regulations could be read to provide utilities an open-ended ability to use substitution and reduced utilization plans to bring Phase II units into Phase I and create a significant number of excess, new allowances in Phase I. 58 FR 38370, 38371 (July 16, 1993). This creation of allowances would threaten achievement of the sulfur dioxide emissions reductions intended to be made under the Act and thus would be contrary to the purposes of the Act. *Id.* As stated in the July 16, 1993 notice, EPA is therefore planning to propose revision of the January 11, 1993 regulations implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization. *Id.* EPA plans to explain these matters in more detail in a notice of proposed rulemaking.

The owners and operators of some affected sources, however, have already submitted to EPA substitution and reduced utilization plans based on their reading of the existing regulations. In order to provide owners and operators an opportunity to adjust their compliance strategies in the event of regulatory revisions, EPA issued on July 16, 1993, and is issuing today, draft permits that approve for 1995 those substitution plans and those reduced utilization plans (and parts of plans) with compensating units that comply with the January 11, 1993 regulations. In the draft permits, EPA defers action on those plans and parts of plans for 1996–1999 pending the potential regulatory revisions.

Further, as explained in the July 16, 1993 notice, the one-year approval is applicable only to those plans that were submitted before July 16, 1993 and that are not revised on or after that date to add units to the plans. *Id.* Where plans are submitted, or revised to add units, on or after that date and before issuance of Phase I permits for the units involved and where EPA issues the permits before the completion of the rulemaking discussed above, EPA intends to defer action on the plans for 1995–99. Similarly, where plans are submitted or revised on or after July 16, 1993 and after issuance of Phase I permits for the units, EPA also intends to defer action on those plans for 1995–99 until completion of the rulemaking. Plans on which action is deferred will be reviewed and acted on in accordance with the regulations that result from the rulemaking.

EPA proposes to approve draft permits that specify the sulfur dioxide emission allowances and compliance plans for the following utility plants:

*Region 1*

Mount Tom in Massachusetts: 11,444 allowances under 40 CFR 72.41 (substitution allowances) in 1995 to unit 1; a conditional substitution plan for 1995 in which Merrimack units 1 and 2 designate unit 1 as a substitution unit; and a conditional reduced utilization plan that relies on energy conservation measures and sulfur-free generation. The designated representative is Ronald G. Chevalier.

Merrimack in New Hampshire: 9,922 allowances under column A of Table 1 of 40 CFR 73.10 (Table 1 allowances) in each year 1995–1999 to unit 1; 21,421 Table 1 allowances in each year 1995–1999 to unit 2; two conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designated Mount Tom unit 1 and Newington unit 1 as substitution units; and two reduced utilization plans, one for each unit, that rely on energy conservation measures and sulfur-free generation. The designated representative is Ronald G. Chevalier.

Newington in New Hampshire: 20,567 substitution allowances in 1995 to unit 1; a conditional substitution plan in which Merrimack units 1 and 2 designate unit 1 as a substitution unit; and a conditional reduced utilization plan that relies on energy conservation measures and sulfur-free generation. The designated representative is Ronald G. Chevalier.

*Region 5*

Breed in Indiana: 20,280 Table 1 allowances in each year 1995–1999; and a reduced utilization plan that relies on energy conservation measures and sulfur-free generation. The designated representative is John M. McManus.

B C Cobb in Michigan: 5,944 substitution allowances in 1995 to unit 4; 6,110 substitution allowances in 1995 to unit 5; two conditional substitution plans for 1995, one for each unit, in which J H Campbell units 1 and 2 designate units 4 and 5 as substitution units; and two conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designation representative is Robert J. Nicholson.

Dan E Karn in Michigan: 10,728 substitution allowances in 1995 to unit 1; 11,761 substitution allowances in 1995 to unit 2; 973 substitution allowances in 1995 to unit 3; 902 substitution allowances in 1995 to unit 4; four conditional substitution plans for 1995, one for each substitution unit, in which J H Campbell units 1 and 2 designate units 1, 2, 3 and 4 as substitution units; and four conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Robert J. Nicholson.

J C Weadock in Michigan: 6,269 substitution allowances in 1995 to unit 7; 6,194 substitution allowances in 1995 to unit 8; two conditional substitution plans for 1995, one for each substitution unit, in which J H Campbell units 1 and 2 designate units 7 and 8 as substitution units; and two conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Robert J. Nicholson.

J H Campbell in Michigan: 18,773 Table 1 allowances in each year 1995–1999 to unit 1; 22,453 Table 1 allowances in each year 1995–1999 to unit 2; 28,171 substitution allowances in 1995 to unit 3; twelve conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2 designate J H Campbell unit 3, B C Cobb units 4 and 5, Dan E Karn units 1, 2, 3 and 4, J C Weadock units 7 and 8, and J R Whiting units 1, 2 and 3 as substitution units; and three conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Robert J. Nicholson.

J R Whiting in Michigan: 4,543 substitution allowances in 1995 to unit 1; 4,652 substitution allowances in 1995 to unit 2; 5,949 substitution allowances in 1995 to unit 3; three conditional substitution plans for 1995, one for each substitution unit, in which J H Campbell units 1 and 2 designate units 1, 2 and 3 as substitution units; and three conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Robert J. Nicholson.

Avon Lake in Ohio: 33,413 Table 1 allowances in each year 1995–1999 to unit 12; 12,771 Table 1 allowances in each year 1995–1999 to unit 11; 9,849 substitution allowances in 1995 to unit 9; 8,648 substitution allowances in 1995 to unit 10; two conditional substitution plans for 1995, one for each substitution unit, in which unit 12 designates units 9 and 10 as substitution units; two conditional reduced utilization plans, for units 9 and 10, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; a reduced utilization plan for unit 12 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation; and a reduced utilization plan for unit 11 that relies on energy conservation measures and sulfur-free generation. The designated representative is Fred J. Lange, Jr.

**Addresses**

The administrative records for each plant may be viewed during normal operating hours at the following locations:

*Region 1*

For plants in Massachusetts and New Hampshire: EPA Region 1, JFK Federal Bldg., One Congress St., Boston, MA 02203.

*Region 5*

For plants in Indiana: EPA Region 5, Ralph H. Metcalfe Federal Bldg., room 1822, 77 West Jackson Blvd., Chicago, IL 60604.

For plants in Michigan and Ohio: EPA Region 5, Ralph H. Metcalfe Federal Bldg., 17th Floor, 77 West Jackson Blvd., Chicago, IL 60604.

Dated: July 26, 1993.

**Brian McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93–18230 Filed 7–29–93; 8:45 am]

BILLING CODE [illegible]

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[FRL–4685–7]

## Draft Acid Rain Permits Public Comment Period; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Correction.

**SUMMARY:** In notice document 93–16898 beginning on page 38370 in the issue of Friday, July 16, 1993, make the following correction:

On page 38373, in the second column, in lines 14 and 15 of the first full paragraph, Conesville unit 3 should not be listed as a transfer unit for Gibson in Indiana.

On page 38374, in the second column, in line 13 of the third full paragraph, the word "and" should be deleted. In the second to the last line of the same paragraph, after the word "unit" and before the period, a semicolon and the following phrase should be added: and a conditional reduced utilization plan for 1995–1999 for unit 1 that relies on energy conservation measures.

On page 38374, in the third column, lines 14 and 15 of the first full paragraph should read "unit 1, Muskingum River units 1, 2, 3, and 4, Picway unit 9, and".

On page 38375, in the first column, in line 7 of the first full paragraph, after the word "units", the following phrase should be added: "a Phase I extension plan in which unit 9 is a transfer unit for Gen J M Gavin units 1 and 2;".

Comments on the draft permits for Cardinal in Ohio, Gen J M Gavin in Ohio, and Picway in Ohio must be received no later than 30 days after the date of this notice or the publication date of the notice of these draft permits in local newspapers.

Dated: July 26, 1993.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93–18229 Filed 7–29–93; 8:45 am]

BILLING CODE [illegible]

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[FRL–4685–3]

## Request for Suggestions of Candidates for Membership on the National Advisory Council for Environmental Policy and Technology

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) hereby requests suggestions of candidates for membership on the National Advisory Council for Environmental Policy and Technology (NACEPT), an Advisory Council to EPA's Administrator established under the Federal Advisory Committee Act (FACA), as amended (Public Law 92–463, 5 U.S.C., App.). The Advisory Council provides advice and counsel to the Administrator on broad, cross-cutting domestic and international environmental policy and technology issues. The membership of the Advisory Council is comprised of senior officials drawn from business and industry; Federal, State and local government organizations; academic, education and training institutions; Non-governmental associations, environmental, trade and labor organizations and public interest groups.

**DATES:** Submit suggestions of candidates no later than August 30, 1993. Any interested person or organization may submit the names of qualified persons. Suggested candidates should be identified by name, occupation, position, organization, address and telephone number. Candidates must submit a resume of their background, experience and other relevant information.

**ADDRESSES:** Submit suggestion for candidates to: Office of Cooperative Environmental Management (A–101 F6), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attn: Abby J. Pirnie.

**FOR FURTHER INFORMATION CONTACT:** Abby J. Pirnie or Gordon Schisler at the above address or call 202–260–7567. The Agency will not formally acknowledge or respond to suggestions.

**SUPPLEMENTARY INFORMATION:** Copies of the Advisory Council Charter, current membership list and annual report are available upon request. The Advisory Council provides advice, consultation and makes recommendations on a continuing basis to the Administrator. The Council is focusing on improving domestic and global environmental protection with sustainable development as a primary theme. The Council is also involved in advancing innovative pollution control technology and pollution prevention activities; cooperative, mutually supportive partnerships and increasing communication among all levels of government, the business community, industry and the academic institutions to improve the effectiveness of Federal and non-Federal resources directed at solving environmental problems. NACEPT conducts meetings, analyzes problems, presents findings and makes recommendations and performs other necessary activities at the Administrator's request. The Advisory Council is constituted into the following standing committees: Policy Integration, Technology Innovation and Economics, State and Local Environment, Superfund Evaluation, Trade and Environment, Environmental Information and Assessments. Each member sits on at least one committee. The Advisory Council meets at least annually and standing committees meet as necessary. Members are appointed as representatives of non-federal interests. No honoraria or salaries are provided for members of the Advisory Council. Compensation for travel and per diem expenses while attending meetings may

be provided. Members serve for 2 year terms.

Suggestions for the list of candidates should be submitted no later than August 30, 1993.

Dated: July 23, 1993.

**Abby J. Pirnie,**

*Director, Office of Cooperative Environmental Management.*

[FR Doc. 93–18231 Filed 7–29–93; 8:45 am]

BILLING CODE 6560–50–M

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[ER–FRL–4623–2]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 12, 1993 through July 16, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

### Draft EISs

ERP No. D–AFS–J61091–00 Rating EC2, Continental Divide National Scenic Trail Comprehensive Plan, Designation, Construction and Reconstruction, Implementation, Medicine Bow National Forest, Hayden Ranger District, WY to Rio Grande National Forest, Conejos Peak Ranger District, CO.

*Summary:* EPA expressed environmental concerns for potential impacts to water quality and wetlands. EPA felt that the DEIS does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment.

ERP No. D–AFS–J65204–MT Rating EC2, Tolan Creek Timber Sale, Harvest Timber and Road Construction, Tolan Creek, Bitterroot National Forest, Sula Ranger District, Ravalli County, MT.

*Summary:* EPA expressed environmental concerns regarding the adequacy of the monitoring program to measure adverse effects to aquatic habitat. EPA also recommended expanding the wetlands impact analysis and air quality analysis.

ERP No. D–AFS–L60198–OR Rating EC2, Oregon Dunes National Recreation Area, Land and Resource Management Plan Amendment, Suislaw National Forest, Coos, Douglas and Lane Counties, OR.

*Summary:* EPA had environmental concerns primarily based on the need for greater funding and possible staff support to implement six of the action alternatives including the preferred alternative. Additional information was needed to describe monitoring plans, the funding process and the contingency plans for each alternative if adequate funding is not available.

ERP No. D–BLM–J65203–MT Rating EC2, Big Dry Land and Resource Management Plan, Implementation, Miles City District, several Counties, MT.

*Summary:* EPA expressed environmental concerns with the Bureau of Land Management's (BLM) Big Dry Resource Area Management Plan draft EIS. These concerns regarded: the generalized discussion of environmental impacts; the inadequacy of the cumulative effects analysis; the inadequacy of the air quality analysis; inadequate identification and description of livestock grazing best management practices; and inadequate water quality and fisheries monitoring.

ERP No. D–FHW–C40129–NY Rating EC2, NY–9A Reconstruction Project, Battery Place to 59th Street along the western edge of Manhattan, Funding and Approval of Permits, New York County, NY.

*Summary:* EPA expressed environmental concerns about the proposed project because of an inadequate secondary impacts analysis; lack of contingency measures for accidential hazardous waste spills; and the need for clarification with regard to assumptions made in the air quality analysis and the proposed project's compliance with the New York State Department of Transportation's congestion management system. Further, EPA recommended that an alternative be selected that does not result in a substantial noise level increase. EPA had requested that additional information to assess the above impacts/issues be included in the final EIS.

ERP No. D–FRC–L02022–AK Rating EO2, Yukon Pacific Liquefied Natural Gas (LNG) Liquefaction Plant Construction and Operation, Approval, Anderson Bay, Port Vardez, AK.

*Summary:* EPA expressed environmental objections based on the potential for air quality impacts, particularly ozone levels; intertidal wetlands loss; and violations of Alaska Water Quality Standards. Additional information was requested to describe the proposed project in more detail, expand and clarify the air quality impacts analysis, more fully evaluate a deep water disposal option for excavated materials, develop a site-specific wetland mitigation plan, and better describe waste disposal options on the plant site.

ERP No. D–USA–A10066–00 Rating EC2, Theater Missile Defense (TMD) Comprehensive System, Research and Development, Active Defense Counterforce and Passive Defense, Implementation, United States.

*Summary:* EPA expressed environmental concerns regarding the lack of sufficient information pertaining to the no action alternative, criteria to be used for decisions regarding the component mixes of the proposed action, and the need to assess indirect and cumulative impacts. EPA recommended that the final PEIS include an evaluation of the impacts associated with the proposed action, and that subsequent environmental documentation include sufficient baseline data so that the comparative merits of each alternative can be evaluated.

### Final EISs

ERP No. F–AFS–J65193–MT, Beaver-Dry Timber Sales, Harvest Timber and Road Construction, Implementation, Helena National Forest, Lincoln Ranger District, Lewis and Clark and Powell Counties, MT.

*Summary:* EPA supported the development and selection of a new modified preferred alternative but expressed concerns about water quality and fisheries impacts to Beaver, Dry, and Arrastra Creeks.

ERP No. F–SFW–J28018–ND, Lake Ilo Dam and Reservoir Modification Project, Elimination of Existing Dam Safety Deficiencies and Section 404 Permit Issuance, Lake Ilo National Wildlife Refuge, Spring Creek, Dunn County, ND.

*Summary:* Review of the Final EIS was not deemed necessary. No formal letter was sent to the preparing agency.

Dated: July 26, 1993.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 93–18232 Filed 7–29–93; 8:45 am]

BILLING CODE 6560–50–U

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[ER–FRL–4623–1]

## Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements filed July 19, 1993 through July 23, 1993 Pursuant to 40 CFR 1506.9.

*EIS No. 930248,* Final EIS, UAF, TX, Bergstrom Air Force Base (AFB) Disposal and Reuse, Implementation and Possible Permits Issuance, Travis County, TX , Due: August 30, 1993, Contact: Lt. Col. Gary Baumgartel (512) 536–3869.

*EIS No. 930249,* Final EIS, COE, MS, Abiaca Creek Watershed Project, Demonstration Erosion Control Project and Sediment and Flood Control Measures, Implementation, Yazoo Basin, Mathews Brake National Wildlife Refuge, Carroll, Holmes and Leflore Counties, MS , Due: September 13, 1993, Contact: Wendell King (601) 631–5967.

*EIS No. 930250,* Draft Supplement, AFS, CA, WA, OR, Northern Spotted Owl Management Plan, Updated Information concerning Late-Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl, OR, WA and CA , Due: October 28, 1993, Contact: Robert T. Jacobs (503) 326–7883.

The US Department of Agriculture's, Forest Service and the US Department of the Interior's, Bureau of Land Management are Joint Lead Agencies for this project.

*EIS No. 930251,* Final Supplement, AFS, WA, OR, Pacific Northwest Region National Forests Nursery Pest Control Management Plan, New Information concerning the Use of Additional Chemicals at Wind River Nursery, Gifford Pinchot National Forest and J. Herbert Stone Nursery, Rogue River National Forest, Implementation, several Counties, OR and Skamania County, WA, Due: August 30, 1993, Contact: Sally Campbell (503) 326–7755.

*EIS No. 930252,* Final EIS, USN, GU, US Navy Facilities Relocation and Development from the Republic of the Philippines to the Territory of Guam, Implementation and COE Section 404 Permit, GU , Due: August 30, 1993, Contact: Stanley Uehara (808) 471–9338.

**Amended Notices**

*EIS No. 930190,* Draft EIS, AFS, MT, Big Mountain Ski and Summer Resort Expansion Project, Special-Use-Permit, Flathead National Forest, Tally Lake and Glacier View Ranger Districts, Whitefish, MT, Due: September 17, 1993, Contact: Bert Stout (406) 862–2508. Published FR–6–18–93—Review period extended.

Dated: July 27, 1993.

William D. Dickerson,

*Deputy Director, Office of Federal Activities.*

[FR Doc. 93–18233 Filed 7–29–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4665–3]

## Public Water System Supervision Program Revision for the State of Indiana

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Public notice is hereby given in accordance with the provisions of Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.,* and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Indiana is revising its Public Water System Supervision (PWSS) primacy program. The Indiana Department of Environmental Management (IDEM), has adopted: (1) Drinking water regulations for total coliform that correspond to the NPDWR for total coliform promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on June 29, 1989, (54 FR 27544–27568); and (2) drinking water regulations for the treatment of surface water that correspond to the NPDWR for surface water treatment promulgated by the U.S. EPA on June 29, 1989, (54 FR 27486–27541). The U.S. EPA has completed its review of Indiana's PWSS primacy program revision.

The U.S. EPA has determined that the Indiana Surface Water Treatment and Total Coliform rule revisions meet the requirements of the Federal rules. Therefore, the U.S. EPA is proposing to approve these revisions.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before August 30, 1993. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time, following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Miguel Del Toral (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, these determinations shall become effective 30 days from this Notice date.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the Federal Register and in newspapers of general circulation in the State of Indiana. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Indiana. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own motion, these determinations shall become effective on August 30, 1993. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents relating to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Drinking Water Branch, Indiana Department of Environmental Management, 105 South Meridian Street, Indianapolis, Indiana 46206–6015.

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Miguel Del Toral, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–5253.

**Authority:** Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Signed this 20th day of July, 1993.

**Valdas V. Adamkus,**

*Regional Administrator, U.S. EPA, Region 5.*

[FR Doc. 93–18234 Filed 7–29–93; 8:45 am]

BILLING CODE 6560-60-P

[FRL–4686–1]

## Drinking Water Program Revision for the State of New Jersey

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the state of New Jersey is revising its approved Public Water Supply Supervision Program. The state of New Jersey has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Total Coliforms Rule (TCR) promulgated by USEPA on June 29, 1989 (54 FR 27544).

The USEPA has determined that New Jersey's TCR regulations are no less stringent than the corresponding Federal regulations and New Jersey continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, EPA proposes to approve New Jersey's TCR program revision.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a request or a public hearing is made within the required thirty-day (30) period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Insubstantial requests for a hearing may be denied by the Regional Administrator.

If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

New Jersey Department of Environmental Protection and Energy, Bureau of Safe Drinking Water, Division of Water Resources, Trenton, NJ 08625.

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section, room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

**FOR FURTHER INFORMATION, YOU MAY CONTACT:** Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: July 6, 1993.

**Herbert Barrack,**

*Acting Regional Administrator, EPA, Region II.*

[FR Doc. 93–18235 Filed 7–29–93; 8:45 am]

BILLING CODE 6560-60-M

[FRL–4684–5]

## Public Water System Supervision Program Revision for the State of New York

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the State of New York is revising its approved Public Water System Supervision Primacy Program. The State of New York has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Surface Water Treatment Rule (SWTR) promulgated by USEPA on June 29, 1989 (54 FR 27486).

The USEPA has determined that New York's SWTR regulations are no less stringent than the corresponding Federal regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, the USEPA has determined to approve the State of New York's requested revision to its Public Water System Supervision Primacy Program for compliance with the NPDWR for the Surface Water Treatment Rule.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** Request for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

New York State Department of Health, Bureau of Public Water Supply Protection, room 406, 2 University Plaza/Western Avenue, Albany, New York 12203–3399.

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section, room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

**FOR FURTHER INFORMATION, YOU MAY CONTACT:**

Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.
(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR).

Dated: July 1, 1993.

**Kathleen C. Callahan,**

*Acting Regional Administrator, EPA, Region II.*

[FR Doc. 93–18104 Filed 7–29–93; 8:45 am]

BILLING CODE 6560-50-M

[FRL–4686–2]

## Drinking Water Program Revision for the State of New York

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the state of New York is revising its approved Public Water Supply Supervision Program. The state of New York has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Total Coliforms Rule (TCR) promulgated by USEPA on June 29, 1989 (54 FR 27544). The USEPA has determined that New York's TCR regulations are no less stringent than the corresponding Federal regulations and New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, EPA proposes to approve New York's TCR program revision.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a request for a public hearing is made within the required thirty-day (30) period, a public hearing will be held and notice will be given in the **Federal Register** and a newspaper of general circulation. Insubstantial request for a hearing may be denied by the Regional Administrator.

If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

New York State Department of Health, Bureau of Public Water Supply, 2 University Place, room 406, Albany, NY 12203.

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section, room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

**FOR FURTHER INFORMATION, YOU MAY CONTACT:** Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: June 25, 1993.

**William J. Muszynski,**

*Acting Regional Administrator, EPA, Region II.*

[FR Doc. 93–18236 Filed 7–29–93; 8:45 am]

BILLING CODE 6560-50-M

[FRL–4695–9]

## Drinking Water Program Revision for the Territory of the Virgin Islands

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Territory of the Virgin Islands is revising its approved Public Water Supply Supervision Program. The Territory of the Virgin Islands has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Total Coliforms Rule (TCR) promulgated by USEPA on June 29, 1989 (54 FR 27544).

The USEPA has determined that the Virgin Islands' TCR regulations are no less stringent than the corresponding Federal regulations and the Virgin Islands continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, EPA proposes to approve the Virgin Islands TCR program revision. All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a request for a public hearing is made within the required thirty-day (30) period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice. Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or the entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Government of the Virgin Islands of the United States, Department of Planning and Natural Resources, Nisky Center—suite 231, Carlotte Amalie, St. Thomas, V.I. 00802.

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section, room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

**FOR FURTHER INFORMATION, YOU MAY CONTACT:** Walter E. Andrews, Chief,

Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1600.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR

Dated: July 6, 1993.

**Herbert Barrack,**

*Acting Regional Administrator, EPA, Region II.*

[FR Doc. 93–18237 Filed 7–29–93; 8:45 am]

BILLING CODE [illegible]

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[FRL–4685–2]

## Science Advisory Board Clean Air Scientific Advisory Committee; Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board (SAB) will conduct a meeting to review the two documents: (1) The Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatics, and (2) Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum. Both documents, which constitute supplements to existing documents, will be reviewed and evaluated with respect to their scientific and technical adequacy.

The meeting will be held at the Guest Quarters Suites Hotel, 2515 Meridian Parkway, Durham, North Carolina 27713. The hotel telephone number is (919) 361–4660. The meeting will be held on August 19, 1993, from 9 a.m. to 5:30 p.m. Seating is limited and will be on a first come basis.

### Availability of Documents

The following documents are not available from the Science Advisory Board.

1. Single copies of the Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatics are available from Dr. Dennis J. Kotchmar, U.S. EPA, Environmental Criteria Assessment Office, (MD–52), Research Triangle Park, NC 27711, telephone (919) 541–4158. Members of the public who wish to provide comments directly to EPA on the Criteria Document Supplement may do so by sending their written comments to Dr. Kotchmar at the above address. Comments must be received by EPA no later than 30 calendar days following the publication date of this notice in the Federal Register.

2. Single copies of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum are available from Mr. John Haines, U.S. EPA, Office of Air Quality Planning and Standards, (MD–12), Research Triangle Park, NC, 27711, telephone (919) 541–5533. Members of the public who wish to provide comments directly to EPA on the Staff Paper Supplement may do so by sending their written comments to Mr. Haines at the above address. Comments must be received by EPA no later than 30 calendar days following the publication date of this notice in the Federal Register.

Opportunity to comment directly to the Clean Air Scientific Advisory Committee on these documents or related issues is discussed below.

### For Further Information

For additional information concerning this meeting, please contact Mr. Randall C. Bond, Designated Federal Official, or Ms. Janice Jones, Management Analyst, at (202) 260–8414, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Those individuals requiring a copy of the agenda should contact Ms. Lori Gross at the phone number above.

### Opportunity for Providing Comments

Members of the public who wish to make a brief oral presentation to the Committee must contact Ms. Janice Jones not later than Thursday, August 12, 1993 in order to be included on the Agenda. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written statements of any length (at least 30 copies) may be provided to the Committee up until the meeting. These written statements may be the same as those provided directly to EPA or may be tailored to the Committee. Please send these comments to Ms. Jones at the address given above. The Science Advisory Board expects that public statements presented at its meeting will not be repetitive of previously submitted oral or written statements.

Dated: July 20, 1993.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 93–18238 Filed 7–29–93; 8:45 am]

BILLING CODE [illegible]

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## FEDERAL COMMUNICATIONS COMMISSION

[DA 93–857]

## Comments Invited on Florida Public Safety Plan Amendment

July 21, 1993.

On May 10, 1990, the Commission accepted the Public Safety Plan for Florida (Region 9). On June 28, 1993, Region 9 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 9 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before August 27, 1993 and reply comments on or before September 13, 1993. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington DC 20554 and should clearly identify them as submissions to Gen. Docket 90–119 Florida-Public Safety Region 9.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–18145 Filed 7–29–93; 8:45 am]

BILLING CODE 6712–01–M

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[DA 93–[illegible]]

## Comments Invited on Louisiana Public Safety Plan Amendment

July 21, 1993.

On December 19, 1990, the Commission accepted the Public Safety Plan for Louisiana (Region 18). On July 13, 1993, Region 18 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 18 plan, the Commission is soliciting comments from the public before taking action. (See Report and

Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before August 27, 1993 and reply comments on or before September 13, 1993. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to Gen. Docket 90–498 Louisiana-Public Safety Region 18.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–18144 Filed 7–29–93; 8:45 am]

BILLING CODE 6712–01–M

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[DA 93–936]

## Comments Invited on Philadelphia Area Public Safety Plan Amendment

July 21, 1993.

On February 2, 1990, the Commission accepted the Public Safety Plan for the Philadelphia area (Region 28). On June 28, 1993, Region 28 submitted a proposed amendment to its plan that would revise the current channel allotments. Because the proposed amendment is a major change to the Region 28 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before August 27, 1993 and rely comments on or before September 13, 1993. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to Gen. Docket 89–573 Philadelphia-Public Safety Region 28.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–18146 Filed 7–29–93; 8:45 am]

BILLING CODE 6712–01–M

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## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed; Iceland Steamship/Samskip Slot Charter

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 217–011424.

*Title:* Iceland Steamship/Samskip Slot Charter Agreement.

*Parties:*

Iceland Steamship Company, Ltd. ("Iceland")

Samskip hf. ("Samskip")

*Synopsis:* The proposed Agreement would permit Samskip to charter space on vessels owned or operated by Iceland in the trade between U.S. North Atlantic ports and Reykjavik, Iceland.

Dated: July 26, 1993.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–18200 Filed 7–29–93; 8:45 am]

BILLING CODE 6730–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Cognitive Function and Hypoglycemia in Children With IDDM

**AGENCY:** National Institute of Child Health and Human Development (NICHD), National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The Office for Protection from Research Risks (OPRR) convened a panel of experts, pursuant to the requirements of 45 CFR part 46, subpart D, section 407, concerning a proposed protocol entitled "Cognitive Function and Hypoglycemia in Children with IDDM." The grant number is 1 R01 HD29487–01A1. Because the participants in this study would be children as research subjects, DHHS regulations regarding the involvement of children as subjects (45 CFR part 46, subpart D, section 407(a) and (b)) apply. OPRR has made an initial determination that these regulatory requirements would be met only after the informed consent and assent documents had been rewritten, submitted to, and approved by OPRR, and recommended that the protocol be approved contingent upon submission of acceptable documents. Public review and comment are solicited pursuant to the requirements of 45 CFR part 46, subpart D, section 407.

**DATES:** To be assured of consideration, comments must be received on or before 5 p.m., September 17, 1993.

**ADDRESSES:** Please send comments or requests for additional information to Diane L. Aiken, Assurance Coordinator, Division of Human Subject Protections, Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Building 31, room 5B63, Bethesda, Maryland, 20892.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Aiken, Office for Protection from Research Risks, National Institutes of Health. Telephone (301) 496–7041 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** DHHS regulations regarding the involvement of children as research subjects specify that research protocols involving risks significantly greater than minimal and offering no prospect of direct benefit to individual subjects may not be supported unless the research has been reviewed by a panel of experts (45 CFR part 46, subpart D, section 407(a) and (b)).

The Office for Protection from Research Risks (OPRR), Office of Extramural Research (OER), National Institutes of Health, received a request from the Institutional Review Board (IRB) of the Children's Hospital of Pittsburgh to convene a panel of experts pursuant to 45 CFR part 46, subpart D, section 407. The request referenced a protocol titled "Cognitive Function and Hypoglycemia in Children with IDDM" (1R01 HD29487–01A1). The IRB determined that the research involved greater than minimal risk and offered no prospect of direct benefit to the individual children who were to be the normal control subjects.

OPRR convened such a panel of experts under authority delegated by the Secretary of HHS. OPRR has made an initial determination, subject to public comment, that the proposed protocol may be supported by DHHS contingent

upon major modifications in the informed consent documents and the assent procedure. Recruitment processes must be clarified. Once this additional information has been submitted to and approved by OPRR, the research would be in conformance with 45 CFR 46.407. and 45 CFR 46.406.

The Office for Protection from Research Risks, National Institutes of Health makes this initial determination on behalf of the Secretary of HHS. Public review and comment are solicited pursuant to the requirements of 45 CFR part 46, subpart D, section 407.

Dated: July 23, 1993.

Ruth L. Kirschstein,

*Acting Director, National Institutes of Health.*

[FR Doc. 93-18240 Filed 7-29-93; 8:45 am]

BILLING CODE 4140-01-M

## National Center for Research Resources; Notice of Meeting

Notice is hereby given that the National Center for Research Resources (NCRR), National Institutes of Health, will hold a meeting to draft a strategic plan. The 3-day meeting is scheduled for the Hyatt Dulles, 2300 Dulles Corner Blvd., Herndon, Virginia on:

September 28, 1993 5 p.m.–9 p.m.
September 29, 1993 8:30 a.m.–5 p.m.
September 30, 1993 8:30 a.m.–4 p.m.

Individuals who are interested in obtaining more information about the meeting should contact Caroline Holloway, Ph.D., Director, Office of Science Policy, NCRR/NIH, 9000 Rockville Pike, Bldg. 12A, rm. 4047, Bethesda, MD 20892–1012, 301–496–2992.

Dated: July 22, 1993.

Ruth Kirschstein,

*Acting Director, NIH.*

[FR Doc. 93-18143 Filed 7-29-93; 8:45 am]

BILLING CODE 4140-01-M

## Public Health Service

## Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 16, 1993.

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690–7100.

1. Medical Device Recall Cost Survey—New—To assess industry benefits from the Food and Drug Administration (FDA) regulations associated with the Safe Medical Devices Act, the cost of medical device product recalls is needed. A random survey of device manufacturers that have recently conducted product recalls will provide quantitative information on these costs and allow FDA to calculate these benefits pursuant to E.O. 12291. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 264; Number of Responses Per Respondent: 1; Average Burden Per Response: .6731 hr.; Estimated Annual Burden: 178 hours.

2. Standardized Reporting System and Associated Epidemiologic Investigations of Occupationally-Related Infection with Human Immunodeficiency Virus in Health Care and Public Safety Meetings—0920–0286—The data collection instrument is designed to gather information on documented or presumed occupational exposure to HIV and to establish whether seroconversion or an illness consistent with an acute retroviral illness has occurred. Respondents: Individuals or households; Number of Respondents: 100; Number of Responses per Respondent: 1; Average Burden per Response: 1 hr.; Estimated Annual Burden: 100 hours.

3. NIH Consultant Information File System—0925–0358—This information is collected from scientists and other experts to identify potential consultants and to appoint members to serve on committees that review and offer recommendations to the National Institutes of Health on grants, cooperative agreements, or contract proposals. Respondents: Individuals or households; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations.

| Title | Number of respondents | Number of responses per respondent | Average burden per response (hours) |
|---|---|---|---|
| Initial Consultant Information | 3,075 | 1 | .50 |
| Consultant Information Update | 6,833 | 1 | .25 |

Estimated Total Annual Burden.....3,246

4. Maternal and Child Health Block Grant Program: Application and Annual Report—New—This is a request for approval of the collection of information from the 59 States and jurisdictions in applications and annual reports, to qualify for allotments of funds authorized by section 502 of the Social Security Act, for services and the development of service systems for pregnant women, mothers, infants, children and adolescents and children with special health care needs. Respondents: State or local governments.

| Title | Number of respondents | Number of responses per respondent | Average burden per response (hours) |
|---|---|---|---|
| Application | 59 | 1 | 847 |
| Annual Report | 59 | 1 | 163.5 |

Estimated Total Annual Burden.....59,625 hours

5. Childhood Lead Poisoning Program Quarterly Report—0920–0282—The Centers for Disease Control (CDC) awards grants to State and community health agencies as the principal delivery points for childhood lead screening and related medical and environmental management activities. In order to properly manage recipient activities, CDC requests quarterly reports from the recipients. Respondents: State or local governments; Number of Respondents: 35; Number of Responses Per Respondent: 4; Average Burden Per Response: 2 hours; Estimated Annual Burden: 280 hours.

6. A School-Based Intervention to Reduce Behaviors that Result in HIV/STD Infection (TX, CA)—Implementation Evaluation—New—The purpose of this data collection is to evaluate the implementation process of a school-based HIV/STD prevention program. Selected schools in Texas and California receiving a multiple component intervention will be compared to schools receiving a knowledge-based curriculum. Respondents: Individuals or households; Number of Respondents: 8,290; Number of Responses Per Respondent: 1.98; Average Burden Per Response: 0.141 hour; Estimated Annual Burden: 2,191 hours.

7. A School-Based Intervention to Reduce Behaviors that Result in HIV/STD Infection (NY, NJ)—Implementation Evaluation—New—The purpose of this study is to evaluate the implementation of a school-based HIV/STD prevention program. Selected schools in New York and New Jersey

receiving a multiple component intervention will be compared to schools receiving a knowledge-based curriculum. Respondents: Individuals or households; Number of Respondents: 5,450; Number of Responses Per Respondent: 4.97; Average Burden Per Response: .102 hour; Estimated Annual Burden: 2,754 hours.

8. State Estimates for the National Health Interview Survey (NHIS) Using Dual Frames—New—The efficiency of supplementing the National Health Interview Survey with telephone interviews to produce State estimates will be determined. To assess the magnitude of the sampling and nonsampling errors, telephone surveys will be conducted in States. Respondents: Individuals or households; Number of Respondents: 5,569; Number of Responses Per Respondent: 2.268; Average Burden Per Response: .168 hour; Estimated Annual Burden: 2,126 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

**James Scanlon,**

*Director, Division of Data Policy, Office of Health Planning and Evaluation.*

[FR Doc. 93–18033 Filed 7–29–93; 8:45 am]

BILLING CODE 4160–17–M

## SOCIAL SECURITY ADMINISTRATION

### Finding Regarding Foreign Social Insurance or Pension System—Latvia

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of finding regarding Foreign Social Insurance or Pension System—Latvia.

**FINDING:** Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Commissioner has redelegated that authority to the Director of the Office of International Policy. Under that authority the Director of the Office of International Policy has approved a finding that Latvia, beginning October 1, 1992, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Latvia to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside Latvia.

Accordingly, it is hereby determined and found that Latvia has in effect, beginning October 1, 1992, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This is our first finding under section 202(t) of the Social Security Act for Latvia. Latvia declared independence from the Union of Soviet Socialist Republics (USSR) on August 21, 1991. Prior to that date, the USSR occupied Latvia and enforced its laws there. Thus, for purposes of administering the United States Social Security program, Latvia was considered to be part of the USSR. The USSR's social insurance or pension system was found to meet the requirements of section 202(t)(2) (A) but not of (B). This finding was published on September 3, 1970 (35 FR 14021). Under that finding, United States Social Security benefits have not been paid based on citizenship in Latvia (nor have they been paid based on citizenship in the USSR).

**FOR FURTHER INFORMATION CONTACT:** Donna Powers, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3568.

(Catalog of Federal Domestic Assistance: Program Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance)

Dated: July 26, 1993.

**James A. Kissko,**

*Director, Office of International Policy.*

[FR Doc. 93–18203 Filed 7–29–93; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–42]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**ADDRESSES:** For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following

categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S.Navy:* John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; *U.S.Army:* Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; *Corps of Engineers:* Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE–MC, Room 4224, 20 Massachusetts Ave. NW, Washington, DC 20314–1000; (202) 272–1753; *GSA:* Leslie Carrington, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 208–0619; (These are not toll-free numbers).

Dated: July 23, 1993.

**Jacquie M. Lawing,**

*Deputy Assistant Secretary for Economic Development.*

**Title V, Federal Surplus Property Program Federal Register Report for 7/30/93**

**Suitable/Available Properties**

*Buildings (by State)*

Arizona

Bldg. S-120
Yuma Proving Ground
Yuma Co: Yuma/LaPaz AZ 85365-9104
Landholding Agency: Army
Property Number: 219320202
Status: Underutilized
Comment: 6845 sq. ft., 1 story, wood frame, presence of asbestos, most recent use - bowling center, scheduled to be vacated 11/15/93

California

Bldg. 50, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943-
Landholding Agency: Navy
Property Number: 779320022
Status: Underutilized
Comment: 252 sq. ft., 1 story wood frame, needs rehab, secured area w/alternate access, 5% in airport runway, most recent use - storage.

Bldg. 25, Annex Area
Naval Postgraduate School
Monterey Co: Monterey CA 93943-
Landholding Agency: Navy
Property Number: 779320023
Status: Unutilized
Comment: 1512 sq. ft., 1 story wood frame, most recent use - child care center, secured area w/alternate access

Colorado

Bldg. T-3449
Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219320205
Status: Unutilized
Comment: 7528 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use - storage.

Bldg. T-6010
Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219320206
Status: Unutilized
Comment: 2830 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use - storage.

Bldg. T-6034
Fort Carson
Colorado Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219320208
Status: Unutilized
Comment: 1328 sq. ft., 1 story concrete frame, needs rehab, off-site removal only, most recent use - offices.

Georgia

Bldg. 13503
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320209
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - residential.

Bldg. 14502
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320210
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - residential.

Bldg. 481
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320211
Status: Unutilized
Comment: 1325 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - offices.

Bldg. 10417
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320212
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use - offices.

Bldg. 10502
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320213
Status: Unutilized
Comment: 1580 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use - offices.

Bldg. 10503
Fort Gordon

Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320214
Status: Unutilized
Comment: 2516 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - offices.

Bldg. 10602
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320215
Status: Unutilized
Comment: 2000 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - offices.

Bldg. 14503
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320216
Status: Unutilized
Comment: 1075 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use - offices.

Bldg. 20501
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320217
Status: Unutilized
Comment: 2116 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use - offices.

Bldg. 20502
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320218
Status: Unutilized
Comment: 3195 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use - offices.

Bldg. 21501
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320219
Status: Unutilized
Comment: 7394 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - offices.

Bldg. 21502
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320220
Status: Unutilized
Comment: 1315 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use - offices.

Bldg. 21504
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320221
Status: Unutilized
Comment: 7036 sq. ft., 2 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - offices.

Bldg. 22502
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320222
Status: Unutilized
Comment: 3271 sq. ft., 1-story wood frame, presence of asbestos, off-site use only, most recent use - offices.

Bldg. 25304
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320223
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use - office/storage.

Bldg. 25307
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320224
Status: Unutilized
Comment: 1556 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use - offices.

Bldg. 26306
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320225
Status: Unutilized
Comment: 1272 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use - storage.

Bldg. 29503
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320226
Status: Unutilized
Comment: 2456 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use - offices.

Bldg. 33406
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320227
Status: Unutilized
Comment: 3456 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use - offices.

Bldg. 33436
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320228
Status: Unutilized
Comment: 2632 sq. ft., 1 story wood frame, presence of asbestos, need repairs, off-site use only, most recent use - offices.

Bldg. 33438
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320229
Status: Unutilized
Comment: 2668 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - storage.

Bldg. 39502
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320230
Status: Unutilized
Comment: 1316 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - offices.

Bldg. 45306
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320231
Status: Unutilized
Comment: 6044 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - community center.

Bldg. 14301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320232
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, needs rehab, off-site use only, most recent use - storage.

Bldg. 25301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320233
Status: Unutilized
Comment: 1196 sq. ft., 1 story wood frame, possible asbestos, need repairs, off-site use only, most recent use - storage.

Bldg. 26301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320234
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, needs roof repairs, off-site use only, most recent use - storage.

Bldg. 27301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905-
Landholding Agency: Army
Property Number: 219320235
Status: Unutilized
Comment: 2788 sq. ft., 1 story wood frame, presence of asbestos, off-site use only, most recent use - storage.

Hawaii

Bldg. 302
Fort Shafter
Honolulu Co: Honolulu HI 96818-
Landholding Agency: Army
Property Number: 219320236
Status: Unutilized
Comment: 39 sq. ft., most recent use - sentry station, off-site use only.

Kansas

Bldg. T-2343, Fort Riley
Ft. Riley Co: Geary KS 66442-
Landholding Agency: Army
Property Number: 219320237
Status: Unutilized
Comment: 3148 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use - storage.

Kentucky

Bldg. 0001
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army

Property Number: 219320238
Status: Unutilized
Comment: 3535 sq. ft., 2 story, secured area w/alternate access, most recent use - administration.

Bldg. 00003
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320239
Status: Unutilized
Comment: 3500 sq. ft., 2 story, secured area w/alternate access, most recent use - administration.

Bldg. 00004
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320240
Status: Unutilized
Comment: 7800 sq. ft., 2 story, secured area w/alternate access, most recent use - administration.

Bldg. 00008
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320241
Status: Unutilized
Comment: 3500 sq. ft., 2 story, secured area w/alternate access,most recent use - administration.

Bldg. 00009
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320242
Status: Unutilized
Comment: 900 sq. ft., 2 story, secured area w/ alternate access, most recent use - administration/CPO.

Bldg. 00017
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320243
Status: Unutilized
Comment: 46285 sq. ft., 1 story, secured area w/alternate access, most recent use - administration.

Bldg. 00018
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320244
Status: Unutilized
Comment: 2664 sq. ft., 1 story, secured area w/alternate access, most recent use - administration.

Bldg. 00019
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320245
Status: Unutilized
Comment: 5310 sq. ft., 1 story, secured area w/alternate access, most recent use - administration.

Bldg. 00023
Fort Campbell
Vicinity Ohio & Chaffee Avenue
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320246
Status: Unutilized
Comment: 3143 sq. ft., 1 story, secured area w/alternate access, most recent use - administration.

Bldg. 102
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320247
Status: Unutilized
Comment: 8971 sq. ft., 2 story, secured area w/alternate access, most recent use - billets.

Bldg. 108
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320248
Status: Unutilized
Comment: 12580 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction bldg.

Bldg. 128
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320249
Status: Unutilized
Comment: 18864 sq. ft., 2 story, secured area w/alternate access, most recent use - billets.

Bldg. 130
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320250
Status: Unutilized
Comment: 17894 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction/billets.

Bldg. 132
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320251
Status: Unutilized
Comment: 17736 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction/billets.

Bldg. 134
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320252
Status: Unutilized
Comment: 18546 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction/billets.

Bldg. 135
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320253
Status: Unutilized
Comment: 11389 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction bldg.

Bldg. 136
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320254
Status: Unutilized
Comment: 18864 sq. ft., 2 story, secured area w/alternate access, most recent use - general instruction bldg.

Bldg. 2839
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320255
Status: Unutilized
Comment: 8042 sq. ft., 2 story, secured area w/alternate access, most recent use - enlisted quarters.

Bldg. 2841
Fort Campbell
Old Hospital Area
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320256
Status: Unutilized
Comment: 8042 sq. ft., 2 story, secured area w/alternate access, most recent use - enlisted quarters.

Bldg. 6122
Fort Campbell
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320257
Status: Unutilized
Comment: 2732 sq. ft., 1 story, secured area w/alternate access, most recent use - vehicle maintenance shop.

Bldg. 6123
Fort Campbell
Ft. Campbell Co: Christian KY 42223-
Landholding Agency: Army
Property Number: 219320258
Status: Unutilized
Comment: 4020 sq. ft., 1 story, secured area w/alternate access, most recent use - vehicle maintenance shop.

Utility Bldg, Nolin River Lake
Moutardier Recreation Site
Co: Edmonson KY
Landholding Agency: COE
Property Number: 319320002
Status: Unutilized
Comment: 541 sq. ft., concrete block, off-site use only

Louisiana

Bldg. 7214, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320260
Status: Unutilized
Comment: 19301 sq. ft., 2-story, needs rehab, most recent use - storage

Bldg. 7410, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320261
Status: Unutilized

Comment: 2591 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 7411, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320262
Status: Unutilized
Comment: 2450 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 7426, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320263
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7427, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320264
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7430, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320265
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7444, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320266
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7445, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320267
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7446, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320268
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7447, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320269
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7448, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320270
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7462, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320271
Status: Unutilized
Comment: 1688 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 7472, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320272
Status: Unutilized
Comment: 2093 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 7473, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320273
Status: Unutilized
Comment: 2093 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 7474, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320274
Status: Unutilized
Comment: 1875 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 7475, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320275
Status: Unutilized
Comment: 1875 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 7476, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320276
Status: Unutilized
Comment: 2233 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 7660, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320277
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - storage
Bldg. 7677, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320278
Status: Unutilized
Comment: 2233 sq. ft., 1-story, needs rehab, most recent use - storage
Bldg. 1805, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320279
Status: Unutilized
Comment: 9294 sq. ft., 1-story, needs rehab, most recent use - admin.
Bldg. 1731, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320280
Status: Unutilized
Comment: 7470 sq. ft., 2-story, needs rehab, most recent use - admin.
Bldg. 1730, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320281
Status: Unutilized
Comment: 5006 sq. ft., 2-story, needs rehab, most recent use - admin.
Bldg. 7422, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320282
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - barracks
Bldg. 7662, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320283
Status: Unutilized
Comment: 4957 sq. ft., 2-story, needs rehab, most recent use - barracks
Bldg. 7461, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320284
Status: Unutilized
Comment: 1688 sq. ft., 1-story, needs rehab, most recent use - dining facility
Bldg. 4402, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320285
Status: Unutilized
Comment: 1196 sq. ft., 1-story, needs rehab, most recent use - office
Bldg. 4407, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320286
Status: Unutilized
Comment: 1647 sq. ft., 1-story, needs rehab, most recent use - office
Bldg. 4408, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320287
Status: Unutilized
Comment: 1100 sq. ft., 1-story, needs rehab, most recent use - office
Bldg. 7464, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320288
Status: Unutilized
Comment: 2093 sq. ft., 1-story, needs rehab, most recent use - company hdqts.
Bldg. 7465, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320289
Status: Unutilized
Comment: 1688 sq. ft., 1-story, needs rehab, most recent use - office
Bldg. 658, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320290
Status: Unutilized
Comment: 4765 sq. ft., 1-story, needs rehab, most recent use - child support center
Bldg. 659, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459-7100
Landholding Agency: Army
Property Number: 219320291
Status: Unutilized
Comment: 5135 sq. ft., 1-story, needs rehab, most recent use - child support center

Maryland

Bldgs. 303-308, 323-328, 333-337
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320293
Status: Unutilized
Comment: 4720 sq. ft. each, 2-story wood frame, possible asbestos, most recent use -

barracks/classrooms, fair to good condition, off-site use only

Bldg. 309
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320294
Status: Unutilized
Comment: 2324 sq. ft., 1-story wood frame, possible asbestos, fair to good condition, off-site use only

Bldgs. 312, 319
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320295
Status: Unutilized
Comment: 2594 sq. ft., 1-story wood frame, possible asbestos, most recent use - storage, fair condition, off-site use only

Bldgs. 313-314, 317-318
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320296
Status: Unutilized
Comment: 1144 sq. ft., 1-story wood frame, possible asbestos, most recent use - storage, fair to good condition, off-site use only

Bldgs. 302, 329, 332, 339
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320297
Status: Unutilized
Comment: 2208 sq. ft., 1-story wood frame, possible asbestos, most recent use - storage, fair condition, off-site use only

Bldg. 2239
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320298
Status: Unutilized
Comment: 24528 sq. ft., 1-story concrete block, possible asbestos, most recent use - mess hall, needs rehab, off-site use only

Bldg. 9600
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320299
Status: Unutilized
Comment: 80 sq. ft., metal/wood sentry station, needs rehab, off-site use only

Bldg. 2175
Aberdeen Proving Ground
Co: Harford MD 21005-5001
Landholding Agency: Army
Property Number: 219320300
Status: Underutilized
Comment: 2879 sq. ft., 1-story, needs rehab, most recent use - storehouse

Bldg. 2176
Aberdeen Proving Ground
Co: Harford MD 21005-5001
Landholding Agency: Army
Property Number: 219320301
Status: Unutilized
Comment: 4425 sq. ft., 1-story, needs rehab, most recent use - admin.

Bldg. 3036
Aberdeen Proving Ground
Co: Harford MD 21005-5001
Landholding Agency: Army
Property Number: 219320302
Status: Unutilized
Comment: 11016 sq. ft., 1-story, needs rehab, most recent use - gym, presence of asbestos

Missouri

Bldg. T1238
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473-5000
Landholding Agency: Army
Property Number: 219320303
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

Bldg. T1245
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473-5000
Landholding Agency: Army
Property Number: 219320304
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

Bldg. T1256
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473-5000
Landholding Agency: Army
Property Number: 219320305
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

Bldg. T1257
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473-5000
Landholding Agency: Army
Property Number: 219320306
Status: Unutilized
Comment: 1144 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

Bldg. T1270
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473-5000
Landholding Agency: Army
Property Number: 219320307
Status: Unutilized
Comment: 1296 sq. ft., 1-story, most recent use - admin., possible asbestos, off-site use only

New York

(P) Form. Alex. Bay CG Station
Landon Road, Wellesley Island
Alexandria Co: Jefferson NY
Landholding Agency: GSA
Property Number: 549310006
Status: Excess
Comment: 2500 sq. ft. 2-story wood bldg., new septic system needed, needs rehab with approximately 15 acres of land. Only approx. 10 acres are available at this time.
GSA Number: 2-GR-NY-0730A

North Carolina

Bldg. A-4625, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219320308
Status: Unutilized
Comment: 2794 sq. ft., 1-story, most recent use - mess, needs repair, off-site use only

Bldg. A-4628, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219320309
Status: Unutilized
Comment: 2794 sq. ft., 1-story wood, most recent use - recreation bldg., off-site use only

Bldg. C-4731, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307-
Landholding Agency: Army
Property Number: 219320310
Status: Unutilized
Comment: 780 sq. ft., concrete block press box, off-site use only

Ohio

Bldg. P-3
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662-
Landholding Agency: Army
Property Number: 219320311
Status: Unutilized
Comment: 10752 sq. ft., 1-story brick, most recent use - office, possible asbestos

Bldg. P-4
Doan U.S. Army Reserve Center
Portmonth Co: Scioto OH 45662-
Landholding Agency: Army
Property Number: 219320312
Status: Unutilized
Comment: 2508 sq. ft., 1-story brick, most recent use - vehicle maint. shop

Bldg. P-2
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420-
Landholding Agency: Army
Property Number: 219320314
Status: Unutilized
Comment: 3956 sq. ft., 1-story brick, most recent use - office, possible asbestos

Bldg. P-3
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420-
Landholding Agency: Army
Property Number: 219320315
Status: Unutilized
Comment: 1259 sq. ft., 1-story brick, most recent use - vehicle maint. shop, possible asbestos

Oklahoma

Bldg. P2946, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320317
Status: Unutilized
Comment: 842 sq. ft., 1-story wood frame, possible asbestos, most recent use - bath house, off-site use only

Bldg. T-3543, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320318
Status: Unutilized
Comment: 3202 sq. ft., 1-story wood frame, possible asbestos, most recent use - personnel support facility, off-site use only

Bldg. T-3555, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320319

Status: Unutilized
Comment: 1646 sq. ft., 2-story wood frame, possible asbestos, most recent use - admin., off-site use only

Bldg. T-3630, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320320
Status: Unutilized
Comment: 2974 sq. ft., 1-story wood frame, possible asbestos, most recent use - classroom, needs rehab, off-site use only

Bldg. T-3634, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320321
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos, most recent use - barracks, needs rehab, off-site use only

Bldg. T-3639, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320322
Status: Unutilized
Comment: 4525 sq. ft., 2-story wood frame, possible asbestos, most recent use - barracks, needs rehab, off-site use only

Bldg. T-3640, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320323
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, needs rehab, off-site use only

Bldg. T-3641, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320324
Status: Unutilized
Comment: 1255 sq. ft., 1-story wood frame, possible asbestos, most recent use - day room, needs rehab, off-site use only

Bldg. T-3642, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320325
Status: Unutilized
Comment: 1255 sq. ft., 1-story wood frame, possible asbestos, most recent use - day room, off-site use only

Bldg. T-3643, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320326
Status: Unutilized
Comment: 1259 sq. ft., 1-story wood frame, possible asbestos, most recent use - day room, off-site use only

Bldg. T-3644, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320327
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only

Bldg. T-3646, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320328
Status: Unutilized
Comment: 1257 sq. ft., 1-story wood frame, possible asbestos, most recent use - day room, off-site use only

Bldg. T-3647, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320329
Status: Unutilized
Comment: 1257 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, off-site use only

Bldg. T-3648, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320330
Status: Unutilized
Comment: 1311 sq. ft., 1-story wood frame, possible asbestos, most recent use - admin/supply, needs rehab, off-site use only

Bldg. T-3655, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320331
Status: Unutilized
Comment: 4524 sq. ft., 2-story wood frame, possible asbestos, most recent use - barracks, off-site use only

Bldg. T-3667, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320332
Status: Unutilized
Comment: 2850 sq. ft., 1-story wood frame, possible asbestos, most recent use - storage, needs rehab, off-site use only

Bldg. T-4722, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320333
Status: Unutilized
Comment: 13500 sq. ft., 2-story wood frame, possible asbestos, most recent use - band training facility, off-site use only

Bldg. T-5122, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320334
Status: Unutilized
Comment: 1-story wood frame, possible asbestos, off-site use only

Bldg. P-6220, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320335
Status: Unutilized
Comment: 848 sq. ft., 1-story metal frame, possible asbestos, most recent use - construction bldg., off-site use only

Bldg. S-6228, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320336
Status: Unutilized
Comment: 352 sq. ft., 1-story wood frame, possible asbestos, most recent use - range house, off-site use only

Bldg. P-6600, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320338
Status: Unutilized
Comment: 1102 sq. ft., 1-story brick frame, possible asbestos, most recent use - FE maintenance shop, off-site use only

Bldg. P-6601, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320339
Status: Unutilized
Comment: 1606 sq. ft., possible asbestos, most recent use - boy scout bldg., off-site use only

South Carolina

Bldg. 2505, Fort Jackson
Ft. Jackson Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219320340
Status: Unutilized
Comment: 2358 sq. ft., 1-story wood frame, most recent use - storage, off-site use only

Bldg. 3365, Fort Jackson
Ft. Jackson Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219320341
Status: Unutilized
Comment: 9810 sq. ft., 2-story wood frame, most recent use - post thrift shop, off-site use only

Bldg. E5884, Fort Jackson
Ft. Jackson Co: Richland SC 29207-
Landholding Agency: Army
Property Number: 219320344
Status: Unutilized
Comment: 240 sq. ft., 1-story wood frame, most recent use - range house, off-site use only

Texas

Bldg. 441, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320345
Status: Unutilized
Comment: 6033 sq. ft., 2-story wood frame, most recent use - offices, needs rehab, off-site use only

Bldg. 442, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320346
Status: Unutilized
Comment: 6033 sq. ft., 2-story wood frame, most recent use - offices, needs rehab, off-site use only

Bldg. 2331, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320347
Status: Unutilized
Comment: 2000 sq. ft., 1-story wood frame, most recent use - R&U shop, needs rehab, off-site use only

Bldg. 2814, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320348
Status: Unutilized
Comment: 1500 sq. ft., 1-story wood frame, most recent use - offices, needs rehab, off-site use only

Bldg. 2816, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320349
Status: Unutilized
Comment: 1450 sq. ft., 1-story wood frame, most recent use - storage, needs rehab, off-site use only

Bldg. 4168, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army

Property Number: 219320350
Status: Unutilized
Comment: 2100 sq. ft., 1-story steel frame, most recent use - vehicle wash platform, needs rehab, off-site use only

Bldg. 56172, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320351
Status: Unutilized
Comment: 1350 sq. ft., 1-story wood frame, most recent use - classroom/storage, needs rehab, off-site use only

Bldg. 56173, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320352
Status: Unutilized
Comment: 1350 sq. ft., 1-story wood frame, most recent use - classroom/storage, needs rehab, off-site use only

Bldg. 56174, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320353
Status: Unutilized
Comment: 1350 sq. ft., 1-story wood frame, most recent use - classroom/storage, needs rehab, off-site use only

Bldg. 440, Fort Bliss
El Paso Co: El Paso TX 79916-
Landholding Agency: Army
Property Number: 219320355
Status: Unutilized
Comment: 1651 sq. ft., 1-story brick, most recent use - education facility, off-site use only

Bldg. 445, Fort Bliss
El Paso Co: El Paso TX 79916-
Landholding Agency: Army
Property Number: 219320356
Status: Unutilized
Comment: 1358 sq. ft., 1-story brick, most recent use - youth center, off-site use only

Virginia

Bldg. T-250, Fort Monroe
Ft. Monroe VA 23651-
Landholding Agency: Army
Property Number: 219320358
Status: Underutilized
Comment: 2415 sq. ft., 1-story wood, needs repair, most recent use - storage, off-site use only

Bldg. T-251, Fort Monroe
Ft. Monroe VA 23651-
Landholding Agency: Army
Property Number: 219320359
Status: Underutilized
Comment: 2178 sq. ft., 1-story wood, most recent use - storage, off-site use only

Bldg. 630, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320360
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood, needs rehab, most recent use - office, off-site use only

Bldg. 636, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320361
Status: Unutilized
Comment: 2592 sq. ft., 1-story wood, needs rehab, most recent use - office, off-site use only

Bldg. 637, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320362
Status: Unutilized
Comment: 2740 sq. ft., 1-story wood, needs rehab, most recent use - admin., off-site use only

Bldg. 638, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320363
Status: Unutilized
Comment: 1600 sq. ft., 1-story wood, needs rehab, most recent use - communications, off-site use only

Bldg. 639, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320364
Status: Unutilized
Comment: 2592 sq. ft., 1-story wood, needs rehab, most recent use - office, off-site use only

Bldg. 835, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320365
Status: Unutilized
Comment: 1472 sq. ft., 1-story, needs rehab, most recent use - office off-site use only

Bldg. 1533, Fort Eustis
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320366
Status: Unutilized
Comment: 4720 sq. ft., 2-story wood, needs rehab, most recent use - storage, off-site use only

Bldg. 510, Fort Story
Newport News Co: None VA 23604-
Landholding Agency: Army
Property Number: 219320367
Status: Unutilized
Comment: 7800 sq. ft., 2-story wood, needs rehab, most recent use - barracks, off-site use only

Washington

Reserve Center, Longview
14 Port Way
Longview Co: Cowlitz WA 98632-
Landholding Agency: Army
Property Number: 219320368
Status: Unutilized
Comment: 17,304 sq. ft., 1-story training facility, scheduled to be vacated 9/93

Residence - Tract 1500-1
LSRFWCP Area, Hwy 12
Walla Walla Co: Walla Walla WA 99362-
Landholding Agency: COE
Property Number: 319320006
Status: Excess
Comment: 1176 sq. ft., 1-story frame residence, need roadway easement, off-site use only

West Virginia

House - Stonewall Jackson Lake
Entrance to State Park off Route 19
Roanoke Bay Co: Lewis WV 26452-
Landholding Agency: COE
Property Number: 319320007
Status: Excess
Comment: 2367 sq. ft., 1-story frame residence, off-site use only

Wisconsin

Bldg. 353, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320369
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose

Bldg. 456, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320370
Status: Unutilized
Comment: 1250 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose

Bldg. 554, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320371
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose

Bldg. 7174, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320372
Status: Underutilized
Comment: 8466 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose warehouse

Bldg. 7176, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320373
Status: Underutilized
Comment: 5415 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose warehouse

Bldg. 7261, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320374
Status: Unutilized
Comment: 4800 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - gen. purpose warehouse

Bldg. 1361, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320375
Status: Underutilized
Comment: 3709 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - vehicle storage

Bldg. 1364, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320376
Status: Underutilized
Comment: 4416 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - vehicle storage

Bldg. 1469, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-

Landholding Agency: Army
Property Number: 219320377
Status: Underutilized
Comment: 4416 sq. ft., 1 story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - vehicle storage.

Bldg. 1471, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320378
Status: Underutilized
Comment: 4416 sq. ft., 1 story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - vehicle storage.

Bldg. 449, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320379
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - confinement facility

Bldg. 457, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320380
Status: Underutilized
Comment: 573 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - officer's quarters

Bldg. 900, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320381
Status: Underutilized
Comment: 13417 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - theater with dressing room

Bldg. 1365, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320382
Status: Underutilized
Comment: 2688 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use maintenance shop

Bldg. 2214, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320383
Status: Underutilized
Comment: 1360 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - storage shed

Bldg. 7236, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320384
Status: Underutilized
Comment: 2898 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - riding stable

Bldg. 355, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320385
Status: Underutilized
Comment: 3748 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - unit chapel

Bldg. 556, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320386
Status: Underutilized
Comment: 3748 sq. ft., 2-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - unit chapel

Bldg. 354, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320387
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply

Bldg. 434, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320388
Status: Underutilized
Comment: 2682 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply

Bldg. 448, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320389
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply

Bldg. 455, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320390
Status: Underutilized
Comment: 2750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply

Bldg. 551, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320391
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply

Bldg. 555, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320392
Status: Underutilized
Comment: 1750 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply

Bldg. 1734, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320393
Status: Underutilized
Comment: 13620 sq. ft., 2-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - admin/supply

Bldg. 351, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320394
Status: Underutilized
Comment: 2255 sq. ft., 1-story, presence of asbestos, needs rehab,used intermittently by Army, most recent use - clinic w/o beds

Bldg. 552, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320395
Status: Underutilized
Comment: 2255 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - clinic w/o beds

Bldg. 450, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320396
Status: Underutilized
Comment: 2350 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - dining

Bldg. 352, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320397
Status: Underutilized
Comment: 7428 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - exchange branch

Bldg. 553, Fort McCoy
Ft. McCoy Co: Monroe WI 54656-
Landholding Agency: Army
Property Number: 219320398
Status: Underutilized
Comment: 7200 sq. ft., 1-story, presence of asbestos, needs rehab, used intermittently by Army, most recent use - exchange branch

*Land (by State)*

California

Dixon Relay Station
7514 Radio Road
Dixon Co: Solano CA 95620-9853
Landholding Agency: GSA
Property Number: 549320002
Status: Excess
Comment: 787.53 acres with 7 bldgs., most recent use - transmitter site.
GSA Number: 9-2-CA-1162B

Indiana

Portion of Tract No. 116
Huntington Lake
Huntington Co: Huntington IN 46750-
Landholding Agency: COE
Property Number: 319320001
Status: Excess
Comment: 3.41 acres with road easement

Kentucky

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008-0305
Landholding Agency: COE
Property Number: 319320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Portion of Lock & Dam No. 2
Kentucky River
Lockport Co: Henry KY 40036-9999
Landholding Agency: COE
Property Number: 319320004
Status: Underutilized
Comment: approx. 13.14 acres (sloping), access monitored

Ohio

5 acres
Doan U.S. Army Reserve Center
Portmouth Co: Scioto OH 45662-

Landholding Agency: Army
Property Number: 219320313
Status: Unutilized
Comment: 5 acres including paved roads, parking, sidewalks, etc.

3 acres
Hayes U.S. Army Reserve Center
Fremont Co: Sandusky OH 43420-
Landholding Agency: Army
Property Number: 219320316
Status: Unutilized
Comment: 3 acres including paved roads, parking, sidewalks, etc.

Texas

Parcel No. 201
Lake Texoma
Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320007
Status: Excess
Comment: 8.07 acres, most recent use - low density recreation, upland timber wildlife hatitat
GSA Number: 7-D-OK-0507-H

Parcel No. 203
Lake Texoma
Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320008
Status: Excess
Comment: 62.36 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H

Parcel No. 205
Lake Texoma
Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320009
Status: Excess
Comment: 11.18 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H

Parcel No. 209
Lake Texoma
Co: Grayson TX
Landholding Agency: GSA
Property Number: 549320010
Status: Excess
Comment: 12.67 acres, most recent use - low density recreation and grazing
GSA Number: 7-D-OK-0507-H

Washington

Portion of Tract 905
Lower Monumental Lock & Dam
1/2 mi SE of Lyons Ferry Marina
Co: Whitman WA
Landholding Agency: COE
Property Number: 319320005
Status: Excess
Comment: 3.788 acres with encroaching private well

**Suitable/Unavailable Properties**

*Buildings (by State)*

Colorado

Bldg. T-1445
Fort Carson
Coloredo Springs Co: El Paso CO 80913-
Landholding Agency: Army
Property Number: 219320204
Status: Unutilized
Comment: 2255 sq. ft., 1 story wood frame, needs rehab, off-site removal only, most recent use - administration.

Guam

Parcels 1 & 2
Former U.S. Naval Facility
Ritidian Point Co: Mun. of Machana GU
Landholding Agency: GSA
Property Number: 549330001
Status: Excess
Comment: 10 bldgs. with approx. 360 acres, access restrictions, contains historic archaeological sites and endangered species, potential contamination
GSA Number: 9-N-GU-0437

Maryland

Bldgs. TMA4, TMA5, TMA8, TMA9
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755-5115
Landholding Agency: Army
Property Number: 219320292
Status: Unutilized
Comment: approx. 800 sq. ft. steel plate, gravel base ammunition storage area, fair condition

Virginia

Bldg. 178, Fort Monroe
Ft. Monroe VA 23651-
Landholding Agency: Army
Property Number: 219320357
Status: Unutilized
Comment: 1470 sq. ft., 1-story, needs repair, most recent use - entomology facility, off-site use only

**Unsuitable Properties**

*Buildings (by State)*

Guam

Bldg. 6118
U.S. Naval Ship Repair Facility
PSC 455 Co: Box 191, FPO AP GU 96540-1400
Landholding Agency: Navy
Property Number: 779330001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Oklahoma

Bldg. TM6230, Fort Sill
Lawton Co: Comanche OK 73501-5100
Landholding Agency: Army
Property Number: 219320337
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Texas

Bldg. 91055, Fort Hood
Ft. Hood Co: Bell TX 76544-
Landholding Agency: Army
Property Number: 219320354
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

[FR Doc. 93-18061 Filed 7-29-93; 8:45 am]

BILLING CODE 4210-29-F

## Office of Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3633; FR-3442-C-02]

## Funding Availability for FY 1993 for Public Housing Development; Correction

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of funding availability (NOFA) for Fiscal Year (FY) 1993 for public housing development; correction.

**SUMMARY:** On June 28, 1993, the Department published a NOFA to announce the availability of FY 1993 funding for public housing development. This document changes Sections I.B (Fund Availability), I.C. (Fund Assignments) and III.E (Ineligible Applications) of the June 28, 1993 NOFA to: (1) Refelect the transfer of $60 million from the FY 1993 public housing development appropriation for major reconstruction of obsolete public housing projects (MROP) activities in accordance with Congressional directive; (2) advise that some of the $11,155,481 which was to be made available from recaptures has been realized—thus increasing the amounts available for various categories of applications under the June 28, 1993 NOFA; and (3) notify the public of the Department's intention to publish a separate NOFA for MROP activities.

**DATES:** The due date for submission of applications by PHAs in response to the June 28, 1993 NOFA is set forth in the NOFA at 58 FR 34670. This document does not change the due date.

**FOR FURTHER INFORMATION CONTACT:** Janice Rattley, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4136, Washington, DC 20410. Telephone (202) 708–1800 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The Department's FY 1993 NOFA for Public Housing Development was published in the **Federal Register** on June 28, 1993 (58 FR 34670). The Supplemental Appropriations Act for FY 1993 was signed into law on July 2, 1993 (Pub. L. 103–50). The Conference Report and Joint Explanatory Statement of the Committee of Conference on the Supplemental Appropriations Act directs the Department to "transfer $60,000,000 of the fiscal year 1993 housing development appropriation for MROP activities, consistent with section 111 of the Housing and Community

Development Act of 1992." (H.R. Rep. No. 103–165, 103d Cong., 1st Sess. (1993) at 63.)

Accordingly, this document amends Sections I.B (Fund Availability), I.C (Fund Assignments) and III.E (Ineligible Applications) of the June 28, 1993 Public Housing Development NOFA to: (1) Reflect the transfer of $60 million from the FY 1993 public housing development appropriation for MROP activities, and advise of the Department's intention to publish a separate NOFA announcing the availability of $60 million for MROP activities; (2) advise that some of the recaptures of prior year obligations have occurred, thus increasing the amounts available for various categories of applications that may be submitted under the June 28, 1993 NOFA (See Section II.A of the June 28, 1993 NOFA); and (3) adjust the amounts to be made available for fair-share, HOPE 1, and 5(h) because more current estimates reduced the need for HOPE-1/5(h) replacement units by approximately half.

The amount available for section 18 replacement housing units is being increased from $116,655,000 (thirty percent of the amount available when the NOFA was prepared) to a maximum of $120 million (thirty percent of the appropriated amount). The actual amount will be limited to no more than 30 percent of the amount available, up to $120 million. The amount available for fair share is being increased from $100 million to $130 million, thereby reducing the amount available for HOPE-1/5(h) replacement housing applications by approximately half, based on more recent estimates of need.

Accordingly, for the reasons stated above, the following correction is made to FR Doc 93–15101 published on June 28, 1993 at 58 FR 34670.

**Section I.B. [corrected]**

1. On page 58 FR 34670, in the second column, Section I.B. is corrected to read as follows:

*B. Fund Availability*

The FY 1993 VA-Housing and Urban Development-Independent Agencies Appropriation Act (Pub. L. 102–389, approved October 6, 1992) makes available $400 million of budget authority (grants) for public housing development under section 5(a)(2) of the USHA. Since some of the appropriated funds are to be derived from the recapture of prior year obligations, the actual amount available may be less. If recaptures of funds within the Annual Contributions account occur during the fiscal year, these amounts will be made available for allocation to public housing development up to the fully appropriated amount. In addition, $1,614,875 in carryover funds will be added to the above amount.

In accordance with section 624 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (HCD Act of 1992), HUD has established a set-aside of $20,000,000 for the development of housing designated for disabled families. Additionally, the Conference Report and Joint Explanatory Statement of the Committee of Conference on the Supplemental Appropriations Act (Pub. L. 103–50, approved July 2, 1993) directs the Department to transfer $60,000,000 of the FY 1993 public housing development appropriation for MROP activities, consistent with section 111 of the Housing and Community Development Act of 1992. Applications for designated housing for disabled families and for MROP activities will be the subject to separate NOFAs, to be published by the Department. The use of funds for replacement housing subject to section 18 of the USHA is limited to 30 percent of the amount appropriated for development, or up to $120 million.

**Section I.C. [corrected]**

1. On page 58 FR 34670, in the third column, paragraph 1 of Section I.C. is corrected to read as follows:

*C. Fund Assignments*

* * * * *

1. A minimum of $130 million will be fair shared for Regional Administrators to approve "other" applications. Threshold-approvable applications relating to litigation settlements involving a lack of assisted housing or minority housing opportunities shall be assigned Headquarters Reserve funding before the allocations are determined. Up to $120 million will be made available for applications for replacement housing subject to section 18 of the USHA. Remaining funds will be made available for approvable applications for replacement units for HOPE 1 or section 5(h) homeownership transfers or sales. Any remaining funds not reserved for HOPE 1 or section 5(h) applications will be added to the $130 million to be fair shared for "other" approvable applications.

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**Section III.E. [corrected]**

1. On page 58 FR 34673, in the first column, Section III.E. is corrected to read as follows:

*E. Ineligible Applications*

Applications for intermediate care facilities and nursing homes may not be approved under this NOFA. Applications for housing designated for disabled families and for MROP activities will be the subject of separate NOFAs and may not be applied for under this NOFA.

Dated: July 27, 1993.

**Joseph Shuldiner,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 93–18241 Filed 7–29–93; 8:45 am]

BILLING CODE 4210–33–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–030–5700–10; Closure Notice No. NV–030–93–07]**

### Temporary Closure of Public Lands; Washoe County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 1993 Reno National Championship Air Races.

**EFFECTIVE DATES:** September 13 through September 19, 1993.

**FOR FURTHER INFORMATION CONTACT:** James M. Phillips, Lahontan Resource Area Manager, Carson City District, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706. Telephone (702) 885–6100.

**SUPPLEMENTARY INFORMATION:** This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

**Mt. Diablo Meridian**

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼ and E½SE¼.
Sec. 16, N½ and SW¼.
Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated this 22nd day of July, 1993.

**Karl L. Kipping,**

*Acting District Manager.*

[FR Doc. 93–18182 Filed 7–29–93; 8:45 am]

BILLING CODE 4310–HC–M

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**[AZ–040–03–4320–01–ADVB]**

## Safford District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

**DATES:** Friday August 20, 1993; 8 a.m.

**ADDRESSES:** BLM Office, 711 14th Ave., Safford, Arizona 85546.

**FOR FURTHER INFORMATION CONTACT:** Jack Rietz, Range Conservationist, Safford District, 711 14th Ave., Safford AZ 85546. Telephone (602) 428–4040.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with Public Law 92–463. The agenda for the meeting will include:

1. Election of Chairperson.
2. Discussion of the Empire/Cienega Ranch.
3. Update of the Wild & Scenic Rivers study.
4. Update on the Gila Box Riparian National Conservation Area.
5. Status of the San Pedro Coordinated Resource Management plan.
6. Protest resolutions of the Safford District Resource Management Plan.
7. Business from the floor.
8. BLM management update.

The meeting will be open to the public. Board members will meet at the BLM Office, 711 14th Ave., Safford, Arizona at 8 a.m. From there they will depart via BLM provided vehicles for the Empire/Cienega Ranch headquarters located about 10 miles North of Sonita, Arizona. Members of the public may attend the meeting, but must provide their own transporation to the ranch headquarters. It is expected the Board members will return to Safford by 5 p.m.

Interested persons may make oral statements to the Board. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 711 14th Ave., Safford, Arizona 85546, by 4:15 p.m., Thursday, August 19, 1993.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: July 21, 1993.

**William T. Civish,**

*District Manager.*

[FR Doc. 93–18184 Filed 7–29–93; 8:45 am]

BILLING CODE 4310–GG–M

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**[ID–010–03–4350–08]**

## Revision of Proposed Land Use Plan Amendment

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of availability.

**SUMMARY:** The Boise District, Bureau of Land Management (BLM), has revised a proposed land use plan amendment to the Cascade Resource Management Plan (RMP). The revision is available for a 30-day public protest period.

**DATES:** The 30-day protest period for this revised proposed plan amendment will begin on August 2, 1993, and end on September 2, 1993. Protests must be postmarked no later than the closing date.

**ADDRESSES:** Protests must be sent to the BLM Director at the following address: Director (760), Bureau of Land Management, Department of the Interior, 18th and C Streets NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** John Fend, Cascade Resource Area Manager, Bureau of Land Management, 3948 Development Avenue, Boise, ID 83705. Telephone (208) 384–3370.

**SUPPLEMENTARY INFORMATION:** On September 28, 1992, the Boise District began a 30-day protest period on a proposed plan amendment to the Cascade RMP. The Notice of Availability was published in the **Federal Register** on October 1, 1992. The proposed plan amendment addressed the designation of six sites as Areas of Critical Environmental Concern (ACECs), and transfer of four parcels of public land from federal ownership. The ACECs were proposed to protect habitat for *Allium aaseae* (Aase's onion), a plant being considered by the U.S. Fish and Wildlife Service for listing as threatened or endangered. Subsequently, new information was received regarding three of the proposed ACECs, and the proposed amendment had been reviewed and revised. The revised proposal would exclude a 40-acre parcel previously included as part of a proposed ACEC, and would add a 100-acre parcel that was previously omitted. Also, two proposed ACEC management actions would be modified slightly. The remainder of the proposed amendment remains the same as it was.

In addition to publishing this Notice of Availability, the Boise District has mailed the proposed changes to all parties on the mailing list for the original proposed amendment. Copies of the changes and the original proposal are available at the above address or may be obtained by calling the above BLM contact person. Any protests must meet the requirements of 43 CFR 1610.5–2.

Dated: July 23, 1993.

**J. David Brunner,**

*District Manager.*

[FR Doc. 93–18128 Filed 7–29–93; 8:45 am]

BILLING CODE 4310–GG–M

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**[ES–962–4950–10–4041; ES–046155, Group 90, Arkansas]**

## Filing of Plat of the Dependent Resurvey and Subdivision of Sections

The plat of the dependent resurvey of a portion of the south boundary (Standard Parallel North); portion of the west boundary; portion of the subdivisional lines, and the survey of the subdivision of certain sections in Township 17 North, Range 21 West, Fifth Principal Meridian, Arkansas, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on August 26, 1993.

The survey was made upon request submitted by the National Park Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 26, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 1, 1993.

**Larry Hamilton,**

*Acting State Director.*

[FR Doc. 93–18208 Filed 7–29–93; 8:45 am]

BILLING CODE 4310–GJ–M

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## Competitive Sale of Public Land

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following described land has been identified for disposal under

the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374). The Bureau of Reclamation (Reclamation) will accept bids on the following land, and will reject any bids, written or oral, for less than $180,000, the appraised fair market value.

**DATES:** Comments must be submitted on or before September 13, 1993.

The sale will be held on September 28, 1993 (Tuesday—Friday).

**ADDRESSES:** All comments concerning this notice should be addressed to Regional Director, Lower Colorado Region, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006–1470.

Resource clearances can be viewed at Reclamation's Arizona Projects Office, 23636 North 7th Street, Phoenix, Arizona 85068.

The sale will be held at Reclamation's Arizona Projects Office, P.O. Box 9980, 23636 North 7th Street, Phoenix, Arizona 85068.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Seale, Realty Specialist, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068, (602) 870–6733.

**SUPPLEMENTARY INFORMATION:**

*Land identified for disposal as follows:*

Tract No. APO–HR–12–26A–9—Two parcels of land, to be sold as one, in Section 26, Township 3 North, Range 5 East, Gila and Salt River Meridian, Maricopa County, Arizona, containing a combined area of 4.55 acres, more or less. A more complete legal description may be obtained from the local Reclamation office referenced above.

The land will be offered for sale through the competition bidding process. The sale will be held at Reclamation's Arizona Projects Office.

Registration of qualified bidders will begin at 9 a.m. Bid opening will be at 10 a.m. at which time sealed bids will be opened and oral bids will be accepted. Sealed bids will be received at the Arizona Projects Office until 4 p.m., the day before the sale. Reclamation may accept or reject any or all offers; or withdraw any land or interest in land for sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Act of February 2, 1911, (36 Stat. 895, 43 U.S.C., 374), or other applicable laws.

The sale of the land is consistent with the Reclamation land use planning and it is determined that the public interest will be best served by offering these lands for sale; the parcel listed and platted is offered for sale "as is" and "where is."

Resource clearance consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) requirements have been completed and approved and can be viewed at Reclamation's Arizona Projects Office.

The deed issued for the parcel sold will be subject to rights-of-way for ditches and canals constructed by the authority of the United States in accordance with the Act of August 30, 1890 (26 Stat. 391, 86 U.S.C. 945), and reservations for public road and utility easements identified by the City of Scottsdale and the County of Maricopa in Arizona. This land sale will be for the surface and mineral estate.

Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Notice of Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Notice of Realty Action will become final determination of the Department of the Interior.

In compliance with the Federal Property Management Regulations, 114S–47.304–8, and Interior Property Management Regulations 114.47.304–51, the successful bidder will be required to sign a certificate to the effect that "the bid was arrived at by the bidder or offeror independently and was tendered without collusion with any other bidder or offeror."

Dated: July 26, 1993.

**Donald R. Glaser,**

*Deputy Commissioner.*

[FR Doc. 93–18193 Filed 7–29–93; 8:45 am]

BILLING CODE 4310–09–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–334]**

### Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles; Commission Decision To Reverse Portions of an Initial Determination

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Commission has determined to reverse portions of the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation. The Commission has determined to reverse the ID's findings on the issues of enablement under 35 U.S.C. 112, first paragraph, anticipation under 35 U.S.C. 102(b), obviousness under 35 U.S.C. 103, and enforceability. The Commission has affirmed the ID's determination on indefiniteness under 35 U.S.C. 112, second paragraph. The Commission has also determined that there has been importation of the accused condensers, a finding not made in the ID. The Commission's earlier determination to adopt the ID's dispositive findings on the issues of claim interpretation and infringement resulted in adoption of the ID's determination of no violation of section 337 of the Tariff Act of 1930 on June 25, 1993. 58 FR 36701–2 (July 8, 1993). Although the investigation has been terminated, the Commission has retained jurisdiction over the administrative protective order while it considers issues of post-termination document retention.

**FOR FURTHER INFORMATION CONTACT:** Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

**SUPPLEMENTARY INFORMATION:** On December 12, 1991, Modine Manufacturing Company ("Modine") filed a complaint under section 337 of the Tariff Act of 1930 alleging infringement of claims of U.S. Letters Patent 4,998,580 in the importation and sale of certain condensers used in automobile air conditioning systems. On January 13, 1992, the Commission voted to institute an investigation of Modine's complaint. The Commission's notice of investigation was published in the **Federal Register** on January 23, 1992.

The final ID finding no violation of section 337 was filed on April 26, 1993. Complainant Modine and the Commission investigative attorney (IA) filed petitions for review of the ID on May 6, 1993. The IA filed a response to Modine's petition on May 13, 1993. Respondents filed a joint response to both petitions for review on May 18, 1993.

On June 25, 1993, the Commission determined to review the issues of validity, enforceability, and importation. 58 FR 36701–2 (July 8, 1993). Since the Commission did not review the dispositive issues of claim interpretation and patent infringement, the ID's finding of no violation of section 337 was adopted by the Commission.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are

advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission interim rule 210.56 (19 CFR 210.56).

Issued: July 23, 1993.

By order of the Commission.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 93–18149 Filed 7–29–93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–345]

**Certain Diltiazem Hydrochloride and Diltiazem Preparations; Commission Determination Not To Review an Initial Determination Designating the Investigation "More Complicated"**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation is extended by three months, *i.e.*, from March 31, 1994, to July 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

**SUPPLEMENTARY INFORMATION:** On June 17, 1993, respondent Abic, Ltd. filed a motion to designate the investigation "more complicated." The other respondents, complainants, and the Commission investigative attorney supported the motion.

On June 28, 1993, the ALJ issued an ID (Order No. 14) granting the motion to designate the investigation more complicated because of the involved nature of the investigation due to complications in discovery resulting from having nine respondents located in Israel, Italy, Finland, and the United States. The ALJ also noted that the process of the patent-in suit is alleged to be practiced by a complainant in Japan.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 C.F.R. 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

Issued: July 23, 1993.

By order of the Commission.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 93–18148 Filed 7–29–93; 8:45 am]

BILLING CODE 7020-02-P

## INTERSTATE COMMERCE COMMISSION

### Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503.When submitting comments, refer to the OMB number or the title of the form.

*Type of Clearance:* Extension without change of a currently approved form
*Bureau/Office:* Office of Economics
*Title of Form:* Quarterly Wage A and B
*OMB Form Number:* 3120–0074
*Agency Form Number:* Quarterly Wage A and B
*Frequency:* Quarterly
*No. of Respondents:* 113
*Total Burden Hours:* 6240

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 93–18222 Filed 7–29–93; 8:45 am]

BILLING CODE 7035-01-M

### Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

*Type of Clearance:* Extension without change of a currently approved form.
*Bureau/Office:* Office of Economics.
*Title of Form:* Monthly Report of Number of Employees of Class I Railroads.
*OMB Form Number:* 133.
*Agency Form Number:* Monthly Wage Report of Employees.
*Frequency:* Monthly.
*No. of Respondents:* 13.
*Total Burden Hours:* 2184.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 93–18223 Filed 7–29–93; 8:45 am]

BILLING CODE 7035-01-M

### Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

*Type of Clearance:* Extension without change of a currently approved form.
*Bureau/Office:* Office of Economics.
*Title of Form:* Annual Wage A and B.
*OMB Form Number:* 3120–0074.
*Agency Form Number:* Annual Wage A and B.
*Frequency:* Annually.
*No. of Respondents:* 13.

*Total Burden Hours:* 520.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18224 Filed 7–29–93; 8:45 am]

BILLING CODE 7036–01–M

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**Intent To Engage in Compensated Intercorporate Hauling Operations**

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A.1. Parent corporation and address of principal office: B&B Holding Co., Inc., P.O. Box 108, McLean, TX 79057. A Texas Corp.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

B&B Turbine Engine Services, Inc., P.O. Box 108, McLean, TX 79057. A Texas Corp.
B&B Racing Enterprises, Inc., 1221 Hickory Street, Altus, OK 73521. A Texas Corp.

B.1. Parent corporation and address of principal office: Deggeller Attractions, Inc., 3350 SW. Degeller Ct., Palm City, FL 34990.

2. Wholly owned subsidiary which will participate in the operations, and State of incorporation: Coastal Transportation Leasing, Inc., Florida.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18221 Filed 7–29–93; 8:45 am]

BILLING CODE 7036–01–M

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## DEPARTMENT OF LABOR

### Employment Standards Administration

### Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

#### New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

*Volume I*

New York
- NY930031 (Jul. 30, 1993)
- NY930032 (Jul. 30, 1993)
- NY930033 (Jul. 30, 1993)
- NY930034 (Jul. 30, 1993)
- NY930035 (Jul. 30, 1993)

Pennsylvania
- PA930032 (Jul. 30, 1993)
- PA930033 (Jul. 30, 1993)

Tennessee
- TN930045 (Jul. 30, 1993)

#### Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Georgia
- GA930003 (Feb. 19, 1993)
- GA930004 (Feb. 19, 1993)
- GA930022 (Feb. 19, 1993)
- GA930023 (Feb. 19, 1993)
- GA930031 (Feb. 19, 1993)
- GA930032 (Feb. 19, 1993)
- GA930033 (Feb. 19, 1993)
- GA930040 (Feb. 19, 1993)
- GA930044 (Jun. 04, 1993)
- GA930050 (Jun. 04, 1993)
- GA930053 (Jun. 04, 1993)
- GA930058 (Jun. 04, 1993)
- GA930065 (Jun. 04, 1993)
- GA930066 (Jun. 04, 1993)
- GA930073 (Jun. 04, 1993)

Maryland
- MD930002 (Feb. 19, 1993)
- MD930015 (Feb. 19, 1993)
- MD930017 (Feb. 19, 1993)
- MD930023 (Feb. 19, 1993)
- MD930031 (Feb. 19, 1993)

New York
- NY930002 (Feb. 19, 1993)
- NY930003 (Feb. 19, 1993)
- NY930007 (Feb. 19, 1993)
- NY930009 (Feb. 19, 1993)
- NY930010 (Feb. 19, 1993)

Tennessee
- TN930003 (Feb. 19, 1993)
- TN930005 (Feb. 19, 1993)
- TN930042 (Jul. 16, 1993)
- TN930043 (Jul. 16, 1993)

TN930044 (Jul. 16, 1993)
Virginia
VA930048 (Feb. 19, 1993)

*Volume II*

Iowa
IA930009 (Feb. 19, 1993)
Illinois
IL930002 (Feb. 19, 1993)
IL930008 (Feb. 19, 1993)
Indiana
IN930001 (Feb. 19, 1993)
IN930002 (Feb. 19, 1993)
IN930003 (Feb. 19, 1993)
IN930005 (Feb. 19, 1993)
IN930006 (Feb. 19, 1993)
IN930016 (Feb. 19, 1993)
IN930018 (Feb. 19, 1993)

*Volume III*

Nevada
NV930001 (Feb. 19, 1993)
NV930005 (Mar. 26, 1993)
NV930009 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)
WA930007 (Feb. 19, 1993)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 23rd day of July 1993.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 93–18004 Filed 7–29–93; 8:45 am]

BILLING CODE 4510–27–M

**Employment and Training Administration**

**Job Training Partnership Act; Native American Employment and Training Council; Notice of Appointment of Members**

SUMMARY: Notice is hereby given that appointments have been made to fill seventeen (17) vacancies on the Native American Employment and Training Council.

The membership of the Council and categories represented are as follows:

**Representing JTPA Section 401 Grantees**

Mr. Terry Polchies*, Executive Director, Central Maine Indian Association, Inc., Bangor, Maine.
Ms. Joan Cofield*, JTPA Director, Powhatan-Renape Nation, Rancocas, New Jersey.
Ms. G. Anne Richardson**, Executive Director, Mattaponi-Pamunkey-Monacan, Inc., King William, Virginia.
Mr. Elkton Richardson**, JTPA Director, North Carolina Commission on Indian Affairs, Raleigh, North Carolina.
Ms. Karen Kay**, Executive Director, Michigan Indian Employment and Training Services, Inc., Holt, Michigan.
Mr. Frank Siow**, JTPA Director, Pueblo of Laguna, Laguna, New Mexico.
Ms. Alice Roach**, JTPA Director, Lincoln Indian Center, Lincoln, Nebraska.
Ms. Bernadine Wallace**, JTPA Director, Montana United Indian Association, Helena, Montana.
Mr. Harold Wauneka**, JTPA Director, Navajo Nation, Window Rock, Arizona.
Ms. Carol Peloza**, JTPA Director, Seattle Indian Center, Seattle, Washington.
Mr. Richard Fast**, Director, Community Services Department, Cook Inlet Tribal Council, Inc., Anchorage, Alaska.
Ms. Winona Whitman*, Employment and Training Program Administrator, Alu Like, Inc., Honolulu, Hawaii.

**Representing Other Disciplines**

Mr. Eddie L. Tulis*, Tribal Chairman, Poarch Bank of Creek Indians, Atmore, Alabama.
Dr. Rose-Alma McDonald-Jacobs*, Native American Consultant, Hogansburg, New York.
Mr. Gaiashkibos*, Chairman, Lac Courte Oreilles, Hayward, Wisconsin.
Mr. Clarence W. Skye*, Executive Director, United Sioux Tribes of South Dakota, Pierre, South Dakota.
Mr. Dave Archambeult*, President, American Indian College Fund, Fort Yates, North Dakota.

The Native American Employment and Training Council was established under section 401(k)(1) of title IV of JTPA, as amended, to provide advice with respect to the implementation of JTPA programs for Native American youth and adults.

DATES: These appointments were made and were effective on July 9, 1993. Eight of these appointments will expire on June 30, 1994, and the remaining nine will expire on June 30, 1995.

CONTACT PERSON FOR MORE INFORMATION: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–5500 (this is not a toll-free number).

Signed at Washington, DC on this 23rd day of July, 1993.

**Carolyn M. Golding,**

*Acting Assistant Secretary.*

[FR Doc. 93–18204 Filed 7–29–93; 8:45 am]

BILLING CODE 4510–30–M

*These members have been appointed for term which will end on June 30, 1994.

**These members have been appointed for a term which will end on June 30, 1995.

**Federal-State Unemployment Compensation Program; Availability of Benefits Quality Control Annual Report Results**

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of Unemployment Insurance Benefits Quality Control Annual Reports for calendar year 1992.

SUMMARY: The purpose of this notice is to announce the availability of calendar year 1992 Quality Control (QC) Annual Reports of each State's Unemployment Insurance (UI) Program and indicate how they may be obtained.

DATES: The Federal digest will be available after July 31, 1993.

ADDRESSES: Copies may be obtained by writing to Mary Ann Wyrsch, Director, Unemployment Insurance Service, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. The digest and this notice contain a list of names and addresses of persons in each State who will provide the State report and clarifications upon request.

FOR FURTHER INFORMATION CONTACT: John Sharkey, Chief, Division of System Operations and Analysis, Office of Quality Control at 202–219–7656.

SUPPLEMENTARY INFORMATION: Each week, staff in each State's Employment Security Agency investigate random samples of UI benefit payments and record information based on personal interviews with claimants, employers, and third parties to determine whether State law, policy, and procedure were followed correctly in processing the sampled payment.

The Department of Labor is publishing results from the investigations in a digest which includes information on the 52 jurisdictions participating in the UI QC program. Five items are reported for each State: Total UI benefit dollars paid to the population of claimants; size of the QC samples; and the percentages of proper payments, overpayments, and underpayments in the population estimated from the QC investigations. Ninety-five percent confidence intervals have been computed for each of the three percentages presented (proper payments, overpayments, and underpayments). States have been encouraged to provide narratives to further clarify the meaning of the data based on their specific situations.

In addition, each State has published its Annual Report separately. Persons interested in specific State reports are encouraged to request copies from the individual States using the attached mailing list.

They should also request clarifications of the data from the States since law, policies, and procedures in each State vary considerably. The data cannot be used to draw comparisons among States.

Signed at Washington, DC, on July 13, 1993.

**Carolyn M. Golding,**

*Acting Assistant Secretary of Labor for Employment and Training.*

**UI QC Annual Report—State Contacts—Cy 1992**

**Alabama**

Bill Mauldin, QC Supervisor, Department of Industrial Relations, 649 Monroe Street, room 321, Montgomery, AL 36131, (205) 242–8130

**Alaska**

Karen Van Dusseldorp, QC Data Analyst, Alaska Department of Labor, P.O. Box 21149, Juneau, AK 99802–1149, (907) 465–3000

**Arizona**

Dave Berggren, UI Technical Support Section, P.O. Box 6123, Site code 701B4, Department of Economic Security, Phoenix, AZ 85005, (602) 542–3771

**Arkansas**

Rober Morgan, UI Director, Employment Security Department, P.O. Box 2981, Little Rock, AR 72203, (501) 682–3200

**California**

Suzanne Schroeder, Office of Constituent Affairs, Employment Development Dept., P.O. Box 826880, MIC 85, Sacramento, CA 94280–0001, (916) 654–9029

**Colorado**

Glenn Reynolds or Bill Lafferty, Colorado Dept. of Labor & Employment, Quality Control Unit, UI Staff Services, 393 South Harland, Lakewood, CO 89226, (303) 937–4905

**Connecticut**

Robert Pollick, Director of Communications, Employment Security Division, 200 Folly Brook Boulevard, Wethersfield, CT 06109, (203) 566–4374

**Delaware**

W. Thomas MacPherson, Director, Division of Unemployment Insurance P.O. Box 9029, Newark, DE 19714, (302) 368–6735

**District of Columbia**

Roberta Bauer, Assistant Director, Compliance & Ind. Monitoring Staff, DC Dept. of Employment Services, 500 C Street, NW., room 511, Washington, DC 20001, (202) 724–7492

**Florida**

James M. Everington, QC Supervisor, Florida Dept. Labor & Emp. Security, Caldwell Building, room 106, Tallahassee, FL 32399–0209, (904) 487–3448

**Georgia**

David B. Poythress, Commissioner, Georgia Department of Labor, 148 International Blvd., NE., Suite 600, Atlanta, GA 30303, (404) 656–3011

**Hawaii**

Douglas Odo, UI Administrator, Dept. of Labor & Ind. Relations, 830 Punchbowl Street, Honolulu, Hawaii 96813, (808) 586–9069

**Idaho**

Dale Edstrom, QC Research Analyst, Idaho Department of Employment, 317 Main Street, Boise ID 83735, (208) 334–6285

**Illinois**

Joseph Wojcik, Department of Employment Security, One Congress Center, QC Unit, room 301, 401 South State Street, Chicago, IL 60605, (312) 793–1175

**Indiana**

Sandy Tipton, Quality Control Supervisor, Department of Workforce Development, IN Dept. of Emp. & Training Services, 10 North Senate Avenue, Indianapolis, IN 4604, (317) 232–7680

**Iowa**

Larry Venenga, QC Supervisor, Iowa Dept. of Employment Services, 1000 East Grand Avenue, Des Moines, IA 50319, (515) 281–8398

**Kansas**

Joseph Ybarra, QC Supervisor, 401 SW Topeka Blvd., Topeka, KS 66603, (913) 296–4077

**Kentucky**

Thomas DeName, Director, Div. of Unemployment Insurance, 275 East Main Street, 2nd Floor, East, Frankfort, KY 40621, (502) 564–5283

**Louisiana**

Marianne Sullivan, UI Claims Coordinator, Louisiana Dept. of Labor, P.O. Box 94094, Baton Rouge, LA 70804–9094, (504) 342–7103

**Maine**

Gail Thayer, UI Director, Bureau of Employment Security, 20 Union Street, Augusta, ME 04330, (207) 289–2316

**Maryland**

Thomas Wendel, Executive Director, Unemployment Insurance Division, Dept. of Econ. & Emp. Development, 1100 North Eutaw Street, Baltimore, MD 21201, (301) 333–5306

**Massachusetts**

Rena Kottcamp, Director of Research, Division of Employment Security, Charles F. Hurley ES Building, Boston, MA 02114, (617) 727–6556

**Michigan**

Powell Cozart, Bureau Manager, Audits and Investigations, MI Employment Security Commission, Fisher Building, Suite 1030, 3011 West Grand Blvd., Detroit, MI 48202, (313) 876–5691

**Minnesota**

Bob Dockendorf, Minnesota Dept. of Jobs & Training, QC Unit, 2nd Floor, 390 North Roberts Street, St. Paul, MN 55101, (612) 297–3456

**Mississippi**

Merrill Merkle, QC Supervisor, Mississippi Employment Security Commission, P.O. Box 1699, Jackson, MS 39215–1699, (601) 961–7764

**Missouri**

Marilyn Hutcherson, Asst. Dir. for UI, Missouri Division of Emp. Security, P.O. Box 59, Jefferson City, MO 65104, (314) 751–3670

**Montana**

Robert R. Jensen, Administrator, Unemployment Insurance Division, P.O. Box 1728, Helena, MT 59624, (406) 444–2723

**Nebraska**

Allan Amsberry, UI Director or Don Gammill, UI Program Evaluation Administrator, P.O. Box 94600, Lincoln, NE 68509–4600, (402) 471–9000

**Nevada**

Karen Rhodes, Public Information Officer, Nevada Employment Security Dept., 500 East Third Street, Carson City, NV 89713, (702) 687–4620

**New Hampshire**

Paul Grace, QC Supervisor, Quality Control Unit, New Hampshire Dept. of Employment Security, 10 West Street, Concord, NH 03301, (603) 228–4073

**New Jersey**

Charles G. Davis, Asst. Commissioner for Employment Security & Training, New Jersey Dept. of Labor, CN 058, Trenton, NJ 08625–0058, (609) 984–5666

**New Mexico**

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Betty Campbell, QC Supervisor, Quality Control Section, New Mexico Department of Labor, 401 Broadway NE., Albuquerque, NM 87103, (505) 841–8435

**New York**

Charles G. Kilb, Director, Division of Audit & Compliance, NY State Department of Labor, State Office Campus, Building 12–room 261, Albany, NY 12240, (518) 457–0294

**North Carolina**

Preston L. Johnson, UI Director, Employment Security Comm. of NC, P.O. Box 25903, Raleigh, NC 27611, (919) 733–3121

**North Dakota**

Lyle Holverson, Job Service North Dakota, P.O. Box 1537, Bismarck, ND 58502, (701) 224–2825

**Ohio**

Gay M. Gilbert, Director, Unemployment Compensation Division, Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, OH 43216, (614) 466–0756

**Oklahoma**

Terry McHale, Oklahoma Employment Security Comm., Will Rogers Memorial Office Bldg., rm. 102, Oklahoma City, OK 73105, (405) 557–7206

**Oregon**

Michelle Kennedy, Communications Manager, Oregon Department of Human Resources, Employment Division, 875 Union Street NE., room 303, Salem, OR 97311, (503) 378–3216

**Pennsylvania**

Jack Rudy, Acting Director, Bureau of Unemployment Compensation, Department of Labor & Industry, 7th & Forster Streets, rm. 415, Harrisburg, PA 17121, (717) 787–3547

**Puerto Rico**

Denia Cruz de Hernandez, Assistant Secretary, Puerto Rico Dept. of Labor, and Human Resources, 505 Munoz Rivera Avenue, Hato Rey, PR 00918, (809) 754–2131

**Rhode Island**

Marvin Perry, Deputy Director, Department of Employment Security, 24 Mason Street, Providence, RI 02903, (401) 277–3648

**South Carolina**

R. Michael Baker, Deputy Exec. Dir.-UI, South Carolina Emp. Security Comm., P.O. Box 995, Columbia, SC 29202, (803) 737–2400

**South Dakota**

Dennis Angerhofer, Unemployment Insurance Division, Department of Labor, P.O. Box 4730, Aberdeen, SD 57402–4730, (605) 622–2005

**Tennessee**

Ann Ridings, QC Supervisor, TN Department of Employment Security, 10th Floor, Volunteer Plaza Bldg., 500 James Robertson Parkway, Nashville, TN 37245–2700, (615) 741–3190

**Texas**

James Jackson, Deputy Administrator for UI, Texas Employment Commission, TEC Building, Austin, TX 78778, (512) 463–2661 or

Bert West, QC Supervisor, Texas Employment Commission, TEC Building, Austin, TX 78778, (512) 463–2394

**Utah**

Terry Burns, Director, Unemployment Insurance, Department of Employment Security, 174 Social Hall Avenue, P.O. Box 11249, Salt Lake City, UT 84147, (801) 533–2201

**Vermont**

Robert Herbst, Quality Control Chief, Dept. of Employment & Training, P.O. Box 488, Montpelier, VT 05602, (802) 229–0311

**Virginia**

F.W. Tucker, IV, Chief of Benefits, Unemployment Insurance Services, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, (804) 786–3032

**Washington**

Teresa Morris, Director, WA Employment Security Department, Office of Management Review, P.O. Box 9046, Olympia, WA 98507–9046, (206) 493–9435

**West Virginia**

Andrew Richardson, Commissioner, Bureau of Employment Programs, 112 California Avenue, Charleston, WV 25305, (304) 558–2629

**Wisconsin**

Chet Frederick, Department of Industry, Labor and Human Relations, Quality Control Unit, P.O. Box 7905, Madison, WI 53707, (608) 266–8260

**Wyoming**

Beth Nelson, Administrator, Unemployment Insurance Administration, P.O. Box 2760, Casper, Wy 82602, (307) 235–3254

[FR Doc. 93–17991 Filed 7–29–93; 8:45 am]
BILLING CODE 4510–30–M

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. Rm 93-8]**

### Duration of Copyright Term of Protection

**AGENCY:** Copyright Office; Library of Congress.

**ACTION:** Notice of Public Hearing and Notice of Inquiry

**SUMMARY:** The Copyright Office publishes this Notice to inform the public that it is preparing a report on the arguments for and against possible amendment of the copyright law to extend the duration of copyright protection under U.S. copyright law. In order to assist in the preparation of this report, the Copyright Office is scheduling an open public hearing in order to gather input, as well as requesting the submission of written comments.

**DATES:** The public hearing will be held in room 407, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC on September 29, 1993 beginning at 10 a.m. Those persons who wish to make oral presentations should contact Dorothy Schrader, Copyright General Counsel by telephone at (202) 707-8380 or fax (202) 707-8366, one week before the date of the hearing. Written comments by those persons who are making oral presentations at the hearing are due one week prior to the date of the hearing; other comments including reply comments are due 30 days after the date of the hearing.

**ADDRESSES:** Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, DC 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, room 407, James Madison Memorial Building, First and Independence Avenue, SE., Washington, DC 20559.

**FOR FURTHER INFORMATION:** Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, DC 20540. Telephone (202) 707-8380.

**SUPPLEMENTARY INFORMATION:**

#### 1. Background

The Copyright Office is conducting a study examining the term of protection for copyrighted works under U.S. law, 17 U.S.C. 300 *et. seq.* This study is conducted in light of the recent developments in Europe favoring harmonization of the terms of protection.

Section 302 of the Copyright Act, 17 U.S.C., specifies the copyright term of protection for works created on or after January 1, 1978, the effective date of the Act. In the case of a work created by a natural author, the term of copyright begins "from its creation" and lasts for "the life of the author and fifty years after the author's death." 17 U.S.C. 302(a). In the case of works of joint authorship, protection continues for fifty years after the death of the last surviving author, section 302(b), and for anonymous and pseudonymous works and works made for hire, the term is "seventy-five years from the year of its first publication, or a term of one hundred years from the year of its

creation, whichever expires first." Section 302(c).

The term of life of the author plus fifty years embodied in the 1976 Copyright Act marked a distinct break in tradition from the first copyright statute in 1790. Previous American copyright law had always established a specific period of protection (in the case of the 1909 Copyright Act, 28 years with a potential for a renewal period of an additional 28 years) which commenced from either publication or registration of the work. The current law, however, creates a generally broader and less specific period of protection by utilizing the date of the author's death, and commences the term of protection from the creation of the work, as opposed to its publication or registration.[1] The House Report to the 1976 Act described the reasons for the change:

(1) The 56 year term of protection under the 1909 Act is not long enough "to insure an author and his dependents the fair economic benefits from his works" due to increases in normal life expectancy.

(2) The growth in communications media substantially lengthened the commercial life of many works, particularly serious works whose value might not be recognized until after many years.

(3) Too short a term harms the author without a corresponding benefit to the public, since "[t]he public frequently pays the same for works in the public domain as it does for copyrighted works, and the only result is a commercial windfall to users at the author's expense."

(4) The death of the author is a more certain and discernible date than the publication of the work, and means that all of the author's works will go into the public domain at the same time, eliminating the need for keeping track of varied publishing dates.

(5) The life-plus-50 system eliminates the need for copyright renewal.

(6) The generous life-plus-50 term compensates authors for the loss of previously enjoyed common law protections, due to federal preemption of copyright.

(7) The life-plus-50 term brings the U.S. in line with the term of protection granted in most foreign countries and opens the way for U.S. adherence to the Berne Convention.

H.R. Rep. No. 1476, 94th Cong., 2d Sess. 134-135 (1976).

The life-plus-50 term has served its purpose well and, indeed, was one of the key elements which aided in eventual U.S. adherence to the Berne Convention. However, several recent international developments have once again raised the issue of whether the duration of U.S. copyright protection is too limited.

### 2. European Community Draft Directive

One significant development affecting duration of protection in the international arena has been a proposal for a Council Directive published by the Commission of the European Communities in March, 1992. Concerned over the varying terms of protection in European countries and the barriers to trade and distortions of competition brought about by those differences, the Commission proposed a uniform standard. For natural authors, protection would last for the life of the author plus seventy years. As with current U.S. law, publication has no bearing on the term of protection for such works, since protection begins at the time of creation of the work. Joint works would likewise have the life-plus-70 term from the death of the last surviving author.

For anonymous, pseudonymous and collective works and works made for hire (described as "works considered under the legislation of a Member State to have been created by a legal person"), the Commission proposed a term of protection of seventy years from the time when "the work is lawfully made available to the public"—i.e. publication. Art. I, para. 3. Anonymous and pseudonymous works do not continue to receive protection if it is reasonable to presume that the author has been dead for seventy years. Art. I, para. 4. And for collective works which are works for hire, protection runs for seventy years from the date of its creation. Art. I, para. 6.

The Commission also proposed separate terms of protection for so-called "related rights,"[2] only some of which are recognized under U.S. copyright law. Thus, for performers, the duration of protection is fifty years from the publication of the fixation of the performance or, if there has been no publication of the fixation, fifty years from the first dissemination of the performance. Likewise, the rights of producers of phonograms and producers of cinematographic works run for fifty years from first publication, or from the date of fixation if there has been no publication. And the rights of broadcasters run for fifty years from the first transmission of a broadcast.

Although the Commission's proposal is not without controversy, European Community member states agreed in Luxembourg in mid-June 1993 to adopt the life-plus-70 term by an 8 to 4 vote.

### 3. Berne Protocol

The other recent international development affecting copyright duration is the possible protocol to the Berne Convention. Article 7(1) of the Berne Convention establishes the general rule that "[t]he term of protection granted by this Convention shall be the life of the author and fifty years after his death." The life-plus-50 term of protection is a Convention *minima*—i.e. countries are free to accord greater protection than life-plus-50 if they so desire. Numerous Berne countries currently grant such greater protection (ex. Brazil and Spain for 60 years; Austria, Germany and France (musical works) for 70 years).

In a 1991 report of the First Session of the Committee of Experts on a Possible Protocol to the Berne Convention, the Committee stated that "It may be justified to consider the inclusion of a provision in the possible Protocol under which all references to the 50 years in the Berne Convention would be replaced by 70 years." Report at 30. A certain period of time, possibly 5 years, would be granted to member countries whose term of protection was shorter than life-plus-70 to enact legislation to raise their standards to the Convention minima. If this provision is included in a final protocol to which the United States should elect to adhere, the United States would be obligated to amend Chapter 3 of the Copyright Act to meet the life-plus-70 term. Although the Committee has not formerly adopted the position of life-plus-70[3], there nonetheless remains the real possibility of it someday becoming the Berne Convention standard especially in light of the recent decision by the European Community.

### 4. Copyright Office Study and Public Hearing

Because of changes in the international arena and the extensive

[1] As noted above, publication still has significance for term of protection for anonymous and pseudonymous works and works made for hire.

[2] "Related rights" or "neighboring rights" constitute separate legal forms of protection for categories of persons who are not considered copyright authors in the traditional sense under the laws of many European countries. Examples are broadcasters, performers, and producers of phonorecords. U.S. law, which does not recognize neighboring rights, treats some of these categories as works of authorship, subject to copyright protection.

[3] In its 1992 Report from the Second Session of the Committee of Experts on a Possible Protocol to the Berne Convention, the Committee noted that there was considerable discussion and disagreement over a life-plus-70 proposal. Absent general agreement, the proposal has been postponed to future meetings of the Committee.

circulation and use of U.S. copyrighted works in foreign markets, the Copyright Office is studying the arguments for and against an expanded term of protection in our copyright laws. In order to facilitate this endeavor, the Office announces an open public hearing to address the implications of an extension to the Copyright Act's duration of protection. The Copyright Office also requests that interested parties submit formal written comments regarding extension of the duration of copyright. Such comments should address issues related to changes in foreign protection, such as the effect on marketplace competition and U.S. works in foreign markets, as well as issues related to domestic protection. In order to better facilitate discussion during the open hearing, comments from those who intend to make oral presentations at the hearing are due one week prior to the date of the hearing.

Dated: July 26,1993.

**Ralph Oman,**

*Register of Copyrights.*

[FR Doc. 93-18187 Filed 7-29-93; 8:45 am]

Billing Code: 1410-07-F

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-338, 50-339]**

### Virginia Electric and Power Company North Anna Power Station, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of 10 CFR part 50 appendix E to Virginia Electric and Power Company (the licensee), for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2) located in Louisa County, Virginia.

### Environmental Assessment

*Identification of the Proposed Action*

The proposed exemption would allow temporary relief from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2., for the licensee at NA-1&2 to annually exercise its emergency plan. The one-time exemption would relieve the licensee from the requirement to conduct the 1993 NA-1&2 Emergency Plan partial participation exercise which is presently scheduled for August 18, 1993.

The request for exemption is based on the implementation of the licensee's emergency response capability during the April 24, 1993 Alert at NA-2. The licensee states that the implementation of the NA-1&2 and Corporate emergency plans, along with the demonstration of the response capability, satisfy the requirements for the partial participation (small scale) exercise demonstration as specified in the North Anna Emergency Plan.

The licensee also states that this response demonstration included involvement of the cognizant State and local jurisdictions and was critiqued by the license and evaluated by the Nuclear Regulatory Commission (NRC).

As the implementation of the emergency plan was demonstrated and evaluated, the licensee concludes that the adequacy of the emergency preparedness program implementation has already been demonstrated during the year 1993.

*The Need for the Proposed Action*

The proposed exemption is needed in order to reduce the duplication of the demonstration of emergency response elements. The license states that the conduct of the exercise is an unnecessary use of Federal, company, State and local resources that would only serve to reconfirm the established adequacy of the plan as well as the company's capability to implement the plan. Performance of the 1993 NA-1&2 Emergency Plan partial participation exercise, given the licensee's specific circumstances and performance in this area, represents an undue regulatory burden with minimal benefit to public safety.

*Environmental Impacts on the Proposed Action*

The proposed exemption does not involve any measurable environmental impacts since the exemption deals with the exercise of the licensee's emergency plan. Plant configuration and operations are not changed. The requirements for annual testing of the NA-1&2 Emergency Plan in a partial participation exercise in 1993 were essentially satisfied based on implementation of the licensee's emergency response during the April 24, 1993 alert at NA-2. Thus, the proposed exemption would not affect the probability or consequences of a potential reactor accident and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves the action of emergency plan exercises. It does not affect nonradiological plant effluents and there are no other nonradiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the staff has concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require strict compliance with 10 CFR part 50, appendix E, section IV.F.2., for the licensee at NA-1&2 to annually exercise its emergency plan. The 1993 NA-1&2 Emergency Plan partial participation exercise would take place during the calendar year.

*Alternative Use of Resources*

This exemption from the scheduled partial participation exercise on August 18, 1993, would allow the licensee, State, local agencies and NRC, to reallocate the resources that are scheduled to support the exercise to other necessary functions.

*Agencies and Persons Consulted*

The staff consulted with the State of Virginia regarding the environmental impact of the proposed action.

### Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application dated June 18, 1993, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland, this 23rd day of July 1993.

For the Nuclear Regulatory Commission.

**Bart C. Buckley,**

*Acting Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93-18201 Filed 7-29-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-331]

**Iowa Electric Light & Power Company; Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49 issued to Iowa Electric Light and Power Company (IELP or the licensee), for operation of the Duane Arnold Energy Center (DAEC) located in Linn County, Iowa.

The proposed amendment would revise the Technical Specifications to increase the storage capacity of the Spent Fuel Pool to a maximum of 3152 fuel assemblies, including storage capacity for 323 fuel assemblies in a proposed rack that could temporarily be located in the cask loading area of the cask pit during full-core offloading.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated?

In the course of the analysis, IELP has considered the following potential accident scenarios:

1. A spent fuel assembly drop in the spent fuel pool (SFP).
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.

The increased storage capacity of the DAEC SFP has been analyzed for the existing fuel handling equipment and procedures, SFP cooling system, and seismic events. As with the existing racks, movement of a spent fuel cask over the SFP is prevented by safety interlocks and limit switches, as discussed in the DAEC UFSAR (Reference Section 9.1.4.4.5). Additionally, all fuel movements associated with this modification will be accomplished in accordance with existing fuel handling procedures. Consequently, the probability of dropping a fuel assembly per individual fuel movement is not increased. This modification will also necessitate movement of heavy loads within the SFP. No heavy loads will be moved directly over irradiated fuel. The DAEC SFP was reracked once before in 1979 and this modification will employ similar controls. Thus, the proposed modification does not increase the probability of any of the above accidents.

Sections 5.1.1, 5.1.2 and 5.1.6 of NUREG–0612, entitled "Control of Heavy Loads at Nuclear Power Plants," provide guidance for heavy load handling operations pursuant to a spent fuel storage rack replacement. Section 5.1.2 provides four alternatives for assuring the safe handling of heavy loads during a fuel storage rack replacement. Alternative (1) of Section 5.1.2 provides that the control of heavy loads guidelines can be satisfied by establishing that the potential for a heavy load drop is extremely small, as demonstrated by satisfaction of the single-failure-proof crane guidelines. The provisions of alternative (1) will be met during implementation of the subject activities.

NUREG–0554, entitled "Single-Failure-Proof Cranes for Nuclear Power Plants," provides guidance for the design, fabrication, installation and testing of new cranes that are of a high reliability design. For operating plants, NUREG–0612, Appendix C, entitled "Modification of Existing Cranes," provides guidelines on the implementation of NUREG–0554 at operating plants. An evaluation of storage rack movements, which will be accomplished by the DAEC Reactor Building crane, to determine conformance with the NUREG–0612, Appendix C guidelines demonstrated that alternative (1) above is satisfied, i.e., the probability of a drop of a storage rack is extremely small. As stated in the DAEC UFSAR, the Reactor Building crane has a rated capacity of 100 tons, which incorporated a design safety factor of five. The maximum weight of any existing or replacement storage rack and its associated handling tool is 12 tons. Therefore, there is ample safety factor margin for movements of the storage racks by the Reactor Building crane. This applies to non-redundant load-bearing components. Redundant special lifting devices, which have a rated capacity sufficient to maintain the safety factors, will be utilized in the movements of the storage racks. As per NUREG–0612, Appendix B, the substantial safety factor margin ensures that the probability of a load drop is extremely low.

IELP evaluated the consequences of a spent fuel assembly drop in the spent fuel pool and found that the criticality acceptance criterion, k-effective is less than or equal to 0.95, is not violated. In addition, IELP found that there was no significant change in the radiological consequences of a fuel assembly drop from the previous analysis. IELP analyses found that the calculated doses are well within 10 CFR part 100 guidelines. The results of an analysis show that a dropped spent fuel assembly on the racks will not distort the racks to the extent that they would not perform their safety function. Thus, the consequences of this type of accident are not significantly increased from the previously evaluated spent fuel assembly drops.

The probability and consequences of a spent fuel cask drop will not be affected by the replacement of the racks. During the modification phase of the reracking project, administrative controls governing safe load paths will supplant the Reactor Building crane interlocks and limit switches. The limit switches represent a physical limitation on Reactor Building crane travel to prevent heavy load movement over irradiated fuel. The proposed administrative controls will accomplish the same objective of restricting movement of heavy loads to safe load paths. Similar controls were implemented during the previous SFP reracking modification in 1979. Upon completion of the rerack installation, the Reactor Building crane safety interlock and limit switch functions will be restored.

The consequence of a fuel handling accident during this modification has been considered. No heavy loads will be carried directly over irradiated fuel. In addition, no load weighing more than the combined weight of a fuel bundle and grapple (assumption for fuel handling accident) will be carried in the spent fuel pool area until all fuel in the pool has decayed for a minimum of three months. This provides sufficient time for decay of gaseous radionuclides in the fuel (gap activity) such that an assumed release of gases from damage to all stored fuel assemblies would result in a potential offsite dose less than 10% of 10 CFR part 100 limits. Therefore, the consequences of a fuel handling accident are not significantly increased from previously evaluated events.

The consequences of a loss of spent fuel pool cooling system flow have been evaluated and it was found that sufficient time is still available to provide an alternate means for cooling in the event of a complete failure of the cooling system. Thus, the consequences of this type of accident are not significantly increased from previously evaluated loss of cooling system flow accidents.

The consequences of a seismic event have been evaluated. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and published standards. The new free-standing racks are designed, as are the existing free-standing racks, so that the integrity of the racks and the pool structure is maintained during and after a seismic event. Thus, the consequences of a seismic event are not increased from previously evaluated events.

Therefore, it is concluded that the proposed amendment to replace the spent fuel racks in the spent fuel pool does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated?

IELP has evaluated the proposed modification in accordance with the

guidance of the NRC Position Paper entitled "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," appropriate NRC Regulatory Guides, appropriate NRC Standard Review Plans, and appropriate industry codes and standards. In addition, IELP has reviewed several previous NRC Safety Evaluation Reports for rerack applications similar to this proposed modification.

No unproven technology will be utilized either in the construction process or in the analytical techniques necessary to justify the planned fuel storage expansion. In fact, the basic reracking technology in this instance has been developed and demonstrated in over 80 applications for fuel pool capacity increases previously approved by the NRC.

Further, IELP reracked the SFP previously. That modification was accomplished following similar procedures. This modification will not introduce any new accidents from those previously analyzed.

The temporary installation of a spent fuel rack in the cask pit will only be done if the storage is necessary to support full core offloading. If this rack is installed, a cask cannot be placed in the cask pit. No heavy loads will be allowed above the pit with irradiated fuel stored in it. Several additional restrictions will be implemented if this rack is to be utilized. The analysis performed for the SFP reracking also supports temporary installation of a rack in the cask pit. The cask pit is included as part of the SFP so that a cask drop in the water would, if it results in local failure of the floor, only drain the cask pit. Since a cask will not be allowed in the pit with the temporary fuel rack installed, there is no possibility for an accident involving a heavy load being dropped on irradiated fuel, or pool drainage resulting in uncovered fuel.

Based upon the foregoing, IELP concludes that the proposed reracking does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety?

The NRC Staff Evaluation Review process has established that the issue of margin of safety, when applied to a reracking modification, should address the following areas:

1. Nuclear criticality considerations
2. Thermal-hydraulic considerations
3. Mechanical, material and structural considerations

The established acceptance criterion for criticality is that the effective neutron multiplication factor k-effective in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design.

The methods used in the criticality analysis conform to the applicable portions of the appropriate NRC guidance and industry codes, standards, and specifications. The acceptance criteria for maintaining fuel subcritical in the SFP is met if k-effective is always less than 0.95. The SFP analysis for this rerack modification includes uncertainties at 95%/95% probability and confidence levels, therefore the proposed amendment does not involve a significant reduction in the margin of safety for nuclear criticality.

Conservative methods were used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pool. The thermal-hydraulic evaluation used the methods previously employed for evaluations of the present spent fuel racks to demonstrate that the temperature margins of safety are maintained. The proposed modification will increase the heat load in the spent fuel pool. The evaluation shows that the existing spent fuel cooling system will maintain the bulk pool water temperature at or below 165°F. Thus a margin of safety exists such that the maximum allowable temperature for bulk boiling is not exceeded for the calculated increase in pool heat load. The evaluation also shows that maximum local water temperatures along the hottest fuel assembly are below that for a nucleate boiling condition to exist. Thus, there is no significant reduction in the margin of safety for spent fuel cooling concerns.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal or abnormal loadings. Abnormal loadings which have been considered are the effect of an earthquake, the drop of a spent fuel assembly, or the drop of any other heavy object in the pool. The mechanical, material, and structural design of the new spent fuel racks is in accordance with applicable portions of NRC Position Paper, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," dated April 14, 1978, as modified January 18, 1979; Standard Review Plan 3.8.4; and other applicable NRC guidance and industry codes. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural considerations of the new racks address margins of safety against tilting and deflection or movement, such that the racks do not impact each other during the postulated seismic events. In addition the spent fuel assemblies remain intact and no criticality concerns exist. Thus the margins of safety are not significantly reduced by the proposed rerack.

In summation, it has been shown that the proposed spent fuel storage facility modifications do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 30, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman

Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Cedar Rapids Public Library, 500 1st Street, Cedar Rapids, Iowa 52401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John H. Hannon: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jack Newman, Esquire and Kathleen H. Shea, Esquire; Newman and Holtzinger, 1615 L Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, proceeded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985)). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filled within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G continue to govern the filing of request for a hearing or petitions to intervene, as well as the admission of contentions. The presiding officer shall grant a timely request for oral argument). The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely

request. If the presiding officer grants a request or oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available to discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated March 26, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Cedar Rapids Public Library, 500 1st Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 26th day of July 1993.

For the Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Acting Director, Project Directorate III–3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–18202 Filed 7–29–93; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Salary Council; Meeting

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice of meeting.

**SUMMARY:** According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the twenty-fifth meeting of the Federal Salary Council will be held at the time and place shown below. The agenda for the meeting will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting will be open.

**DATES:** August 31, 1993, beginning at 10 a.m.

**ADDRESSES:** Office of Personnel Management, 1900 E Street NW., room 7B09, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

[FR Doc. 93–18091 Filed 7–29–93; 8:45 am]

BILLING CODE 6325–01–M

## PEACE CORPS

### Information Collection Requests Under OMB Review

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request to approve a Classroom Speaker Form to be used by the World Wise Schools program through September 1996. A copy of the information collection may be obtained from Sue Anne Athens, Office of World Wise Schools, Peace Corps, 1990 K St. NW, Washington DC 20526. Ms. Athens may be called at (202) 606–3294. Comments on this form should be addressed to Jeff Hill, Desk Officer, Office of Management and Budget, Washington, DC 20503.

### Information Collection Abstract

*Title:* Classroom Speaker Form.

*Frequency of collection:* Ongoing per the needs of educators.

*Need for and Use of the Information*

This form is completed voluntarily by educators throughout the country. Once returned, the form will provide information regarding the specific request of the educator. From this, speakers or information resources will be provided from a willing pool of former Peace Corps Volunteers. The effort to involve the returned Peace Corps Volunteer is an effort to fulfill the third goal of Peace Corps as required by Congressional legislation and to enhance the Office of World Wise Schools global education program. Participation in the World Wise Schools program is voluntary.

*Description of Respondents*

All parties who are interested in being assisted by former Peace Corps Volunteers. These include educators and librarians throughout public and private school systems.

*Burden on the Public*

a. Annual Reporting Burden: 1,667 hours.

b. Annual Record Keeping Burden: 520 hours.

c. Estimated Maximum Burden per Response: 20 minutes.

This notice is issued in Washington, DC on July 20, 1993.

**Joan Ambre,**

*Acting Associate Director for Management.*

[FR Doc. 93–18199 Filed 7–29–93; 8:45 am]

BILLING CODE 6051–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### Request for Extension of Approval Under the Paperwork Reduction Act of Collection of Information No. 1212–0030

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget under the Paperwork Reduction Act for a currently approved collection of information. The collection of information has not been materially modified. OMB's current approval of this collection of information, under OMB control number 1212–0030, expires on September 30, 1993. The collection of information, which is not contained in a regulation, is a survey of insurance company rates for pricing annuity contracts that is conducted under the auspices of the American Council of Life Insurance.

**ADDRESSES:** All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0030), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8850 (202–778–1958 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** The title of the collection of information for which extension of approval is requested is: Survey of Nonparticipating Single Premium Group Annuity Rates.

The Pension Benefit Guaranty Corporation (PBGC) has promulgated regulations prescribing actuarial valuation methods and assumptions to be used in determining the actuarial

present value of benefits under single-employer plans that terminate (29 CFR part 2619) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 2676). The PBGC calculates interest rates under those regulations each month. In order that the rates may reflect current conditions in the investment and annuity markets, the PBGC gathers data from those markets that are used in setting the rates. The Survey of Nonparticipating Single Premium Group Annuity Rates is needed to give the PBGC information about the annuity market so that its rates will reflect conditions in that market. The information gathered through the survey is used by the PBGC in determining those rates.

The survey is directed at insurance companies that have volunteered to participate, most or all of which are members of the American Council of Life Insurance (ACLI). The survey is conducted quarterly. The PBGC estimates that the total annual burden of responding to the survey is 72 hours.

Issued at Washington, DC, this 23rd day of July 1993.

**Martin Slate,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 93–18209 Filed 7–29–93; 8:45 am]

BILLING CODE 7708–01–M

## DEPARTMENT OF STATE

**[Public Notice 1843]**

### Preparatory Meeting for U.S. Participation in International Telecommunication Union World Telecommunication Development Conference (WTDC); Meeting

The Department of State/CIP announces that the initial meeting of government officials and private sector representatives preparing for U.S. participation in the International Telecommunication Union (ITU) World Telecommunication Development Conference (WTDC) will be held on Friday, August 20, 1993, from 2 to 4 p.m. in room 3519, Department of State, 2201 "C" Street, NW., Washington, DC.

The WTDC is scheduled for March 21–29, 1994, in Buenos Aires. The U.S. will be preparing proposals addressing the principal topics for consideration by the Conference such as:

1. Development Policies—Organization and management of telecommunications—Regulatory and structural issues.

2. Investment strategies and mobilization of resources for telecommunication development worldwide.

3. Harmonization of telecommunication networks, including, among others,

- Measures to enhance the participation of developing countries in the activities of the standardization and radiocommunication sectors;
- Use of the radio spectrum and the geostationary satellite orbit;
- New technologies and applications;
- Industrialization, including transfer of technology.

4. Development and management of human resources—telecommunication management.

5. Special programs for the Least Developed Countries (LDCs).

The purpose of this initial meeting will be to review the Conference agenda and to establish a process for preparing U.S. positions.

Mr. Richard C. Beaird, Acting U.S. Coordinator and Director of the Bureau of International Communications and Information Policy, U.S. Department of State, will chair the meeting.

Members of the general public may attend the meeting and participate in the preparations for the Conference, subject to instructions of the Chairperson. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled, and individual passes are required for each attendee. Arrangements must be made in advance of the meeting.

Prior to the meeting, persons who plan to attend should so advise the office of Ms. Doreen F. McGirr, CIP, Room 6317, Department of State, Washington, DC 20520; telephone (202) 647–5220, FAX (202) 647–0158. They must provide their name, title, company name, social security number, and date of birth. All attendees must use the "C" Street entrance to the building.

Dated: July 26, 1993.

**Doreen F. McGirr,**

*Senior Counselor, Bureau of International Communications and Information Policy.*

[FR Doc. 93–18194 Filed 7–29–93; 8:45 am]

BILLING CODE 4710–45–M

## Bureau of Political-Military Affairs

**[Public Notice 1844]**

### Policy on Munitions Export Licenses to Nigeria

**AGENCY:** Bureau of Political-Military Affairs, Department of State.

**ACTION:** Public notice.

**SUMMARY:** Notice is hereby given that, until further notice, all license applications and other approvals to export or otherwise transfer commercial defense articles or defense services to Nigeria are being reviewed on a more highly scrutinized case-by-case basis with a presumption of denial. This action is being taken pursuant to Sections 2, 38, and 42 of the Arms Export Control Act.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Dean Rogers, Office of Defense Trade Policy, Bureau of Political-Military Affairs, Department of State (202–647–4231).

**SUPPLEMENTARY INFORMATION:** Effective immediately, it is the policy of the U.S. Government to review all license applications and other approvals to export or otherwise transfer commercial defense articles and defense services to Nigeria with a presumption of denial. This action is being taken in response to the Nigerian military regime's continuing refusal to allow an orderly and timely transition to unhindered elected civilian government.

The licenses and approvals that are affected include any manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind involving Nigeria subject to the Arms Export Control Act. This action also precludes the use in connection with Nigeria of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

This action has been taken pursuant to Sections 2, 38, and 42 of the Arms Export Control Act (22 U.S.C. 2752, 2778, and 2791) and § 126.7 of the ITAR in furtherance of the foreign policy of the United States. In accordance with §§ 126.3 and 126.7 of the ITAR, affected persons desiring review of this policy with regard to a particular export may petition the Director, Office of Defense Trade Controls. Exceptions to this policy will be considered on a case-by-case basis.

Dated: July 23, 1993.

**Robert L. Gallucci,**

*Assistant Secretary, Bureau of Political-Military Affairs, Department of State.*

[FR Doc. 93–18195 Filed 7–29–93; 8:45 am]

BILLING CODE 4710–25–M

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**DATES:** July 22, 1993.

**ADDRESSES:** Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

**FOR FURTHER INFORMATION CONTACT:** Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735.

**SUPPLEMENTARY INFORMATION:** Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

### Items Submitted to OMB for Review

The following information collection requests were submitted to OMB on July 22, 1993:

*DOT No:* 3782.
*OMB No:* 2120-0009.
*Administration:* Federal Aviation Administration.
*Title:* Pilot Schools—FAR Part 141.
*Need for Information:* The information is needed to certify pilot schools and insure that minimum acceptable training standards are met.
*Proposed Use of Information:* The information will be used to assure continuing compliance with Part 141, renewal of certificates every 24 months, and for any amendments to pilot school certificates.
*Frequency:* On occasion.
*Burden Estimate:* 46,674 hours.
*Respondents:* Businesses/pilot schools.
*Form(s):* FAA Form 8420-8.
*Average Burden Hours Per Response:* 4 hours and 12 minutes reporting; 50 hours recordkeeping.

*DOT No:* 3783.
*OMB No:* 2115-0507.
*Administration:* U.S. Coast Guard.
*Title:* Cargo Pump System Test.
*Need for Information:* This information is needed to ensure that waterfront facility cargo pump systems are in compliance with the testing requirements of the Ports and Waterways Safety Act of 1972.
*Proposed Use of Information:* This information will be used to determine that testing has been done at each facility and that a record of the results have been made.
*Frequency:* On occasion.
*Burden Estimate:* 1,403 hours.
*Respondents:* Owners or operators of waterfront facilities.
*Form(s):* None.
*Average Burden Hours Per Response:* 8 hours and 15 minutes recordkeeping.

*DOT No:* 3784.
*OMB No:* 2115–0143.
*Administration:* U.S. Coast Guard.
*Title:* Records Relating to Citizenship of Personnel on Units Engaged in Outer Continental Shelf (OCS) Activities.
*Need for Information:* This information collection is needed to ensure compliance with statutory mandates to man or crew OCS facilities with U.S. citizens or permanent resident aliens.
*Proposed Use of Information:* This information will be used to ascertain the citizenship of personnel employed on the OCS. This requirement is used in conjunction with the commercial vessel safety program.
*Frequency:* On occasion.
*Burden Estimate:* 1,510 hours.
*Respondents:* Employers of personnel, and the employees engaged in exploration, development and production or resources on the OCS.
*Form(s):* None.
*Average Burden Hours Per Response:* 3 minutes reporting; 34 minutes recordkeeping.

*DOT No:* 3785.
*OMB No:* 2115–0050.
*Administration:* U.S. Coast Guard.
*Title:* Bridge Permit Application Guide.
*Need for Information:* This information collection is needed to evaluate plans to construct bridges or causeways over navigable waters of the United States.
*Proposed Use of Information:* Coast Guard will use this information to evaluate the effect a bridge project will have on navigation and the environment.
*Frequency:* On occasion.
*Burden Estimate:* 5,600 hours.
*Respondents:* Bridge permit applicants.
*Form(s):* None.
*Average Burden Hours Per Response:* 40 hours reporting.

*DOT No:* 3786.
*OMB No:* New.
*Administration:* U.S. Coast Guard.
*Title:* Recordkeeping of Refuse Discharges from Ships.
*Need for Information:* This information collection is needed by the Coast Guard to evaluate the waste handling practices of the maritime community and to determine the level of compliance with MARPOL 73/78 Annex V.
*Proposed Use of Information:* Coast Guard will use this information collection to: (1) Determine how ship-generated waste is being handled; (2) enforce MARPOL 73/78 Annex V; and (3) provide research material in evaluating the regulatory program.
*Frequency:* On occasion.
*Burden Estimate:* 169,372 hours.
*Respondents:* Masters or persons in charge of oceangoing vessels.
*Form(s):* None.
*Average Burden Hours Per Response:* 7 hours and 42 minutes recordkeeping.

*DOT No:* 3787.
*OMB No:* 2115–0042.
*Administration:* U.S. Coast Guard.
*Title:* Certificate of Discharge to Merchant Mariners.
*Need for Information:* This information collection is needed to provide merchant mariners with evidence of their sea service, determine eligibility of various union benefits and to develop maritime sea service statistics for the Federal Government.
*Proposed Use of Information:* Coast Guard will use this information collection to establish sea service time and to determine qualifications of merchant mariners in issuing or upgrading their documents.

*Frequency:* On occasion.
*Burden Estimate:* 2,340 hours.
*Respondents:* Merchant mariners.
*Form(s):* CG–718A.
*Average Burden Hours Per Response:* 3 minutes reporting.
*DOT No:* 3788.
*OMB No:* 2115–0111.
*Administration:* U.S. Coast Guard.
*Title:* Course Approvals for Merchant Marine Training Schools.
*Need for Information:* This information collection is needed to ensure that training schools desiring to have a course approved by the Coast Guard are in compliance with the statutory requirements.
*Proposed Use of Information:* Coast Guard will use this information to determine if approved training received by mariners can be substituted for required sea service.
*Frequency:* Every 5 years.
*Burden Estimate:* 3,460 hours.
*Respondents:* Merchant Marine Training Schools.
*Form(s):* None.
*Average Burden Hours Per Response:* 4 hours reporting; 42 hours recordkeeping.
*DOT No:* 3789.
*OMB No:* New.
*Administration:* Federal Highway Administration.
*Title:* Transportation of Hazardous Materials; Highway Routing.
*Need for Information:* The information is needed by FHWA to meet the requirements mandated by the Hazardous Materials Transportation Act of 1975, as amended by the Hazardous Materials Uniform Safety Act of 1990, to provide Federal standards for States and Indian tribes if they establish, maintain or enforce non-radioactive hazardous materials highway routing designations.
*Proposed Use of Information:* The information will be used by FHWA to maintain a database of highway routing designations and to publish this information annually in the Federal Register so carriers of placarded non-radioactive hazardous materials will have knowledge of the restrictions.
*Frequency:* Annually.
*Burden Estimate:* 63 hours.
*Respondents:* State highway agencies.
*Form(s):* None.
*Average Burden Hours Per Response:* 15 minutes reporting.
*DOT No:* 3790.
*OMB No:* 2115–0086.
*Administration:* U.S. Coast Guard.
*Title:* Application for Tonnage Measurement of Vessels.
*Need for Information:* This information collection is needed to ensure that tonnage measurements are taken on vessels before they are documented or recorded under the laws of the United States. Tonnage measurements are also needed to determine the application of U.S. laws required for each vessel.
*Proposed Use of Information:* This information collection will be used to establish vessel register dimensions and tonnages. Tonnages are also used as a basis for vessel taxes, licensing, inspections, safety requirements and operating fees.
*Frequency:* Once (unless the vessel is altered).
*Burden Estimate:* 20,620 hours.
*Respondents:* Vessel owners.
*Form(s):* CG–5397.
*Average Burden Hours Per Response:* 2 hours and 11 minutes reporting.
*DOT No:* 3791.
OMB No: 2105–0009.
*Administration:* Office of the Secretary.
*Title:* Advisory Committee Candidate Biographical Information Request.
*Need for Information:* In accordance with the Federal Advisory Committee Act (P.L. 92–463), the information is needed to prepare an annual report on the membership of each committee as part of the President's Report to the Congress on Federal Advisory Committees.
*Proposed Use of Information:* The information will be used to determine if prospective members fit statutory and other requirements for balance and represent particular interest groups or affected parties.
*Frequency:* Once per candidate for a two or three-year term.
*Burden Estimate:* 35 hours.
*Respondents:* Individuals being considered for appointment to DOT advisory committees.
*Form(s):* DOT 1120.1.
*Average Burden Hours Per Response:* 15 minutes reporting; 1 hour recordkeeping.
*DOT No:* 3792.
*OMB No:* New.
*Administration:* Federal Aviation Administration.
*Title:* Kansas City Center Customer Satisfaction Questionnaire.
*Need for Information:* As part of Total Quality Management, the Kansas City Air Route Traffic Control Center (ARTCC) wants to have contact with their customers to assure that customers' needs are being met and that service is improved.
*Proposed Use of Information:* This information will be used by the facility to solve problems and to generally improve service to the public. Problems that cannot be solved at the facility level will be escalated to the regional level.
*Frequency:* Annually.
*Burden Estimate:* 25 hours.
*Respondents:* Users of the Kansas City ARTCC.
*Form(s):* ZKC Form 7010–1.
*Average Burden Hours Per Response:* 15 minutes reporting.
*DOT No:* 3793.
*OMB No:* New.
*Administration:* Federal Aviation Administration.
*Title:* Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes.
*Need for Information:* The information is needed to check for compliance of seat flammability.
*Proposed Use of Information:* The information collected will be a record of the test results on seat cushion flammability. The tests will be performed by manufacturers of seat cushions and will become a part of the type certification basis for the airplane.
*Frequency:* On occasion.
*Burden Estimate:* 2.5 hours.
*Respondents:* Businesses (airplane seat manufacturers).
*Form(s):* None.
*Average Burden Hours Per Response:* 30 minutes reporting.
*DOT No:* 3794.
*OMB No:* 2120–0536.
*Administration:* Federal Aviation Administration.
*Title:* Security Programs for Foreign Air Carriers.
*Need for Information:* Section 129.25(e)(1) requires each foreign air carrier landing or taking off in the United States to submit a security program for the Administrator's acceptance to ensure adequate security measures are being implemented by those foreign air carriers.
*Proposed Use of Information:* The written security programs of the foreign air carriers will be used by the Administrator to ensure that adequate security measures are being implemented by foreign air carriers with respect to operations to, within, and from the United States.
*Frequency:* One time.
*Burden Estimate:* 25,280 hours.
*Respondents:* Foreign air carriers/governments.
*Form(s):* None.
*Average Burden Hours Per Response:* 160 hours reporting.
*DOT No:* 3795.
*OMB No:* 2132–0547.
*Administration:* Federal Transit Administration.
*Title:* Section 11(a) University Research and Training Program.
*Need for Information:* Information is needed to determine the eligibility of

grant applicants and to assure that all FTA and Federal requirements are met.

*Proposed Use of Information:* The information will be used for certain research purposes that address specific public transportation problems and policy issues.

*Frequency:* Annually, quarterly.

*Burden Estimate:* 4,727 hours.

*Respondents:* Federal agencies or employees, non-profit institutions.

*Form(s):* None.

*Average Burden Hours Per Response:* 39 hours and 24 minutes reporting.

*DOT No:* 3796.

*OMB No:* 2132–0546.

*Administration:* Federal Transit Administration.

*Title:* Section 6 of the Federal Transit Act, as amended.

*Need for Information:* The information is needed as part of the application for grants and cooperative agreements and as a project management tool.

*Proposed Use of Information:* The purpose of the data is to assist FTA in providing technical assistance to improve mass transportation (facilities, equipment, etc.) and to assist State or local governments, and transit and planning agencies in such improvements.

*Frequency:* Quarterly, semi-annually, annually.

*Burden Estimate:* 31,240 hours.

*Respondents:* State or local governments, businesses or other for-profit and non-profit organizations.

*Form(s):* SF–424.

*Average Burden Hours Per Response:* 11 hours and 24 minutes reporting.

*DOT No:* 3797.

*OMB No:* 2132–0551.

*Administration:* Federal Transit Administration.

*Title:* Section 10 Managerial Training Program.

*Need for Information:* Collection is necessary to assist the Federal Government in providing important training programs for the transit industry.

*Proposed Use of Information:* Information will be used to determine the eligibility of grant applicants, assure that FTA/Federal requirements are met, and to collect data on the number of transit employees trained and the cost effectiveness of the training grant program.

*Frequency:* Annually, semi-annually, quarterly.

*Burden Estimate:* 1,412 hours

*Respondents:* State or local governments, businesses or other for-profit, and non-profit institutions.

*Form(s):* None.

*Average Burden Hours Per Response:* 3 hours and 36 minutes reporting.

*DOT No:* 3798.

*OMB No:* 2127–0512.

*Administration:* National Highway Traffic Safety Administration.

*Title:* Consolidated Labeling Requirements for Motor Vehicles (except VIN numbers), 49 CFR 571.105, 205, 209 and Part 567.

*Need for Information:* The information is necessary because motor vehicles and motor vehicle equipment must be properly labeled to provide for safe operation by users, and to ensure prompt identification of such equipment in the event of safety-related defects.

*Proposed Use of Information:* The information is used to ensure the proper handling of equipment, to certify compliance with applicable safety requirements, and to determine product liability.

*Frequency:* On occasion.

*Burden Estimate:* 71,095 hours.

*Respondents:* Manufacturers.

*Form(s):* None.

*Average Burden Hours Per Response:* 3 minutes reporting.

*DOT No:* 3799.

*OMB No:* 2127–0038.

*Administration:* National Highway Traffic Safety Administration.

*Title:* Assigning DOT Code Numbers to Glazing Materials.

*Need for Information:* Federal Motor Vehicle Safety Standard No. 205 requires all automotive glazing materials to be certified by affixing a DOT Code Number on each piece of glazing material manufactured. The DOT Code is assigned by NHTSA.

*Proposed Use of Information:* The information is used to identify the manufacturer if a defect is found in the glazing material.

*Frequency:* On occasion.

*Burden Estimate:* 11 hours.

*Respondents:* Manufacturers of Glazing Materials.

*Form(s):* None.

*Average Burden Hours Per Response:* 30 minutes reporting.

*DOT No:* 3800.

*OMB No:* 2133–0015.

*Administration:* Maritime Administration.

*Title:* Trustee's Supplemental Certification.

*Need for Information:* The Shipping Act of 1916, as amended, requires the approval of banks and trust companies to act as Trustees under certain ship financing trusts and provides a procedure for assuring the validity and preferred status of certain mortgages on U.S.-flag vessels. The approved bank or trust company is required to furnish its supplemental certification every five years in order to remain on the roster of Approved Trustees.

*Proposed Use of Information:* The information will be used by the Maritime Administration to determine whether the bank or trust company continues to qualify financially to act as Trustee under ship financing guarantees.

*Frequency:* Every five years, or when requested for ship financing closings.

*Burden Estimate:* 49 hours.

*Respondents:* Banks, Trust Companies.

*Form(s):* MA–580.

*Average Burden Hours Per Response:* 45 minutes reporting.

*DOT No:* 3801.

*OMB No:* 2125–0028.

*Administration:* Federal Highway Administration.

*Title:* Highway Performance Monitoring System.

*Need for Information:* The information is needed by the FHWA to evaluate the effectiveness of Federal-aid highway safety programs and future highway needs.

*Proposed Use of Information:* The information will be used to plan, design and administer safe and efficient transportation systems; to develop and implement legislation; to prepare reports; and to respond to inquiries, including those of the Congress.

*Frequency:* Annually.

*Burden Estimate:* 111,013 hours.

*Respondents:* State highway agencies.

*Form(s):* None.

*Average Burden Hours Per Response:* 1,982 hours reporting.

*DOT No:* 3802.

*OMB No:* 2133–0508.

*Administration:* Maritime Administration.

*Title:* Claims Against the Maritime Administration Under the Federal Tort Claims Act.

*Need for Information:* The information is necessary to process and settle claims involving the Maritime Administration under the Federal Tort Claims Act.

*Proposed Use of Information:* The information is used to evaluate and allow, disallow, or settle claims.

*Frequency:* On occasion.

*Burden Estimate:* 22 hours.

*Respondents:* Claimants.

*Form(s):* SF–95.

*Average Burden Hours Per Response:* 2 hours reporting.

*DOT No:* 3803.

*OMB No:* 2127–0511.

*Administration:* National Highway Traffic Safety Administration.

*Title:* Child Restraint Systems, 49 CFR 571.213.

*Need for Information:* Manufacturers are required to provide each child restraint with a permanently attached label and an instruction brochure which gives the model, manufacturer's name, date of manufacture, certification that the seat conforms with Federal Motor Vehicle Safety Standard No. 213, and owner's name and address in the event of a recall.

*Proposed Use of Information:* The information is used to inform the consumer of the different models of child safety seats and how they are to be installed in passenger cars; to instruct the user on the importance of registering the restraint; and to notify the child restraint owner in the event of a recall.

*Frequency:* On occasion.

*Burden Estimate:* 133,000 hours.

*Respondents:* Manufacturers.

*Form(s):* None.

*Average Burden Hours Per Response:* 1 minute reporting; 5,400 hours recordkeeping.

Issued in Washington, DC on July 22, 1993.

**Cynthia C. Rand,**

*Director of Information Resource Management.*

[FR Doc. 93–18205 Filed 7–29–93; 8:45 am]

BILLING CODE 4910-62-F

## Federal Aviation Administration

### Intent To Rule on Application To Impose and Use Passenger Facility Charge (PFC) at Washington Dulles International Airport, Chantilly, VA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Washington Dulles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before August 30, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James A. Wilding, General Manager of the Metropolitan Washington Airports Authority, at the following address: Metropolitan Washington Airports Authority, 44 Canal Center Plaza, Alexandria, Virginia 22314.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Washington Airports Authority under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenues from a PFC at Washington Dulles International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 24, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by The Metropolitan Washington Airports Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 21, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: October 1, 1993

Proposed charge expiration date: August 6, 2003

Total estimated PFC revenue: $199,752,390

Brief description of proposed project(s):

—New Midfield Facilities, including Aprons/Taxiways and Electrical services

—Midfield Apron, Service Building and Fuel Line (Bravo Ramp)

—Replace Airfield Lighting Circuits

—Airfield Signage

—Perimeter Fencing

—North Service Road Upgrades

—Reconstruct Dulles Access Highway and Bridges

—Mobile Lounge Road and Apron Area

—Access Road, Third Lane Phase I

—Holding Apron, Runway 1R

—Holding Apron 19R

—Touch Down Zone Lighting, Runway 1L

—Extend Taxiway E–2 to E–7

—Interim Financing Cost

—

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 On Demand Air Taxis filing FAA Form 1800–31 Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at The Metropolitan Washington Airports Authority.

Issued in Jamaica, New York on July 19, 1993.

**Louis P. DeRose,**

*Manager, Airports Division, Eastern Region.*

[FR Doc. 93–18206 Filed 7–29–93; 8:45 am]

BILLING CODE 4910-13-M

## Federal Highway Administration

### Environmental Impact Statement: Crawford and Perry Counties, Indiana

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The Federal Highway Administration is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed construction of a new road section of state road 145 from Interstate 64 (I–64) near the town of St. Croix northward to the existing intersection of SR 145 and SR 164 for an approximate distance of 8.3 to 9.6 miles depending on the alternate selected. The project is located in the southern Indiana counties of Crawford and Perry.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Heil, Staff Environmentalist, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, room 254, Indianápois, IN 46204. Telephone (317) 226–7491.

**SUPPLEMENTARY INFORMATION:** The Federal Highway Administration, in cooperation with the Indiana Department of Transportation, will prepare an environmental impact statement (EIS) on a proposed construction of a new segment of State Road 145 in Crawford and Perry counties of southern Indiana. The proposed alignments generally follow three different corridors through the

region. The alignments vary in length from 9.57 miles for Alternate 1, or 9.60 miles for Alternate 2 and 8.35 miles for the third alternate. The last alternate uses more of the existing state road 145 than any of the other alignments. The proposed roadway section will be a 2 lane facility built to current standards. It will also include several small bridges across the various small to intermittent waterways. This project will provide a more direct access to the Patoka Reservoir and its facilities from interstate 64. This route will reduce the distance traveled to the reservoir by about five miles for some of the visitors.

The following alternatives are being considered: (1) Do-nothing; (2) Alternate 1 (length 9.57 miles); (3) Alternate 2 (length 9.6 miles); (3) Alternate 3 (length 8.35 miles); (4) Improve existing SR 145 (either totally or TSM improvements).

The project has been coordinated with the following: Indiana Department of Natural Resources, U.S. Fish and Wildlife Service, U.S. Forest Service, U.S. Soil Conservation Service, Indiana Aeronautics Commission, Indiana Department of Environmental Management, U.S. Department of the Interior, Army Corps of Engineers, Crawford County Community School Corporation, Perry Central Community School Corporation, local health departments, county commissioners and state/local police agencies.

No public informational meeting has been held as of this date. Notification of public meetings or hearing will be advertised. Public notice will be given of the time and place of the public hearing. The draft Environmental Impact Statement will be available for public and agency review and comment. At this point in the planning process, it is not expected that a formal scoping meeting will be held.

To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations and individuals interested in submitting comments and/or questions should direct them to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, (Highway Research, Planning and Construction). The provisions of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.)

**Robert L. Burch,**

*Assistant Division Administrator, Indianapolis, Indiana.*

[FR Doc. 93–18138 Filed 7–29–93; 8:45 am]

BILLING CODE 4910-22-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review.

July 26, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New.
*Form Number:* None.
*Type of Review:* New collection.
*Title:* Buffalo Business Assistance Center Focus Group Interviews.
*Description:* The Buffalo District plans to open an assistance for small business owners in October 1993. Focus group moderators from Research Division will conduct focus group interviews with the Buffalo business community to solicit their opinions on the products and services needed at the center.
*Respondents:* Small businesses or organizations.
*Estimated Number of Respondents:* 130.
*Estimated Burden Hours Per Respondent:*
Screening Call—5 minutes
*Focus Group Interviews—2 hours*
*Travel Time—1 hour*
*Frequency of Response:* Other (One-time study).
*Estimated Total Reporting Burden:* 91 hours.
*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 93–18265 Filed 7–29–93; 8:45 am]

BILLING CODE 4830-01-P

### Public Information Collection Requirements Submitted to OMB for Review.

July 26, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New.
*Form Number:* IRS Form 9550 .
*Type of Review:* New collection.
*Title:* Application to Develop Software for the 1993 1120–A/PC Format Return, U.S. Corporation Short-Form Income Tax Return.
*Description:* Form 9550 will be filled in by software developers and submitted to IRS as an application for producing software for Form 1120–A/PC Distributed Input System (DIS) data processing tax returns.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents:* 1,000.
*Estimated Burden Hours Per Respondent:* 15 minutes.
*Frequency of Response:* Annually .
*Estimated Total Reporting Burden:* 250 hours.
*OMB Number:* 1545–0091.
*Form Number:* IRS Form 1040X.
*Type of Review:* Revision.
*Title:* Amended U.S. Individual Income Tax Return.
*Description:* Form 1040X is used by individuals to claim a refund of income taxes, pay additional income taxes, or designate a dollar to a presidential election campaign fund. The information is needed to help verify that the individual has correctly figured his or her income tax.
*Respondents:* Individuals, Farms, Businesses or other for-profit, Small businesses or organizations.
*Estimated Number of Respondents/Recordkeepers:* 2,395,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—1 hour, 12 minutes
Learning about the law or the form—20 minutes
Preparing the form—1 hour, 10 minutes
Copying, assembling, and sending the form to the IRS—35 minutes
*Frequency of Response:* On occasion.
*Estimated Total Reporting/Recordkeeping Burden:* 7,879,550 hours.

*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW.,Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 93–18266 Filed 7–29–93; 8:45 am]

BILLING CODE: 4830–01–P

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Eighteen Century Dutch Watercolors from the Rijksmuseum Printroom, Amsterdam" (see list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Frick Collection, New York, New York, from on or about September 13, 1993, to on or about November 7, 1993; the Center for Fine Arts, Miami, Florida, from on or about November 20, 1993 to on or about January 2, 1994; and the Flint Institute of Arts from on or about January 15, 1994 to on or about February 27, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: July 27, 1993.

**R. Wallace Stuart,**

*Acting General Counsel.*

[FR Doc. 93–18267 Filed 7–29–93; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Cornelia Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5077, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

## DEPARTMENT OF VETERANS AFFAIRS

### Secretary's Educational Assistance Advisory Committee; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 3692, will be held on August 23 and 24, 1993, from 8:30 a.m. to 4:30 p.m. each day. The meeting will take place at The Vista Hotel, 1400 M Street, NW., Washington DC 20005. Meeting room number to be posted in lobby of hotel. The purpose of the meeting will be to discuss Veterans Affairs education issues.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia P. Dollarhide, Executive Secretary, Veterans' Education Advisory Committee (phone 202–233–2152) prior to August 16, 1993.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 10 a.m. on August 24, 1993.

Dated: July 21, 1993.

By direction of the Secretary.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 93–18167 Filed 7–29–93; 8:45 am]

BILLING CODE 8320–01–M

### Privacy Act of 1974; Report of Amended Matching Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Social Security Administration (SSA) income tax records with VA pension, compensation and parents' dependency and indemnity compensation records. The match will include the records of current VA beneficiaries as well as records of former beneficiaries.

The goal of this match is to compare income and employment status as reported to VA with income tax records maintained by SSA. This is a reinstatement of a matching program which expired September 30, 1992.

The Department of Veterans Affairs (VA) plans to match records of veterans and surviving spouses and children who receive pension and parents who receive dependency and indemnity compensation (DIC) from VA with income tax records maintained by SSA. VA also plans to match records of veterans who are receiving compensation pursuant to a rating of disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service connected disability or disabilities, not rated as total with wage and self-employment income tax information maintained by SSA. The match with SSA will provide VA with data from the SSA Earnings Recording and Self-Employment Income System.

VA will use the data to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Currently, information about a VA beneficiary's receipt of wages, self employment and other income as well as employment status is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income and employment status.

**Records To Be Matched**

The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) contained in the Privacy Act Issuances, 1991 compilation, Volume II, pages 967–971 as amended. The SSA records consist of information from the Earnings Recordings and Self-Employment Income System HHS/SSA/OSR, 09–60–0059. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match is estimated to start August 1, 1993, but will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 30 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program

has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may comment on the proposed matches by writing to the Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW. Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: David G. Spivey (213B), (202) 233–3504.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: July 21, 1993.

Jesse Brown,

*Secretary of Veterans Affairs.*

[FR Doc. 93–18169 Filed 7–29–93; 8:45 am]

BILLING CODE 8320-01-M

## Privacy Act of 1974, Amendment of Routine Uses

ACTION: Notice; amendment of routine uses.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending a routine use statement that appears in 19 systems of records.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendment to the routine uses. All relevant materials received before August 30, 1993 will be considered. All written comments received will be available for public inspection in Room 170 of the address given below between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until September 8, 1993. If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine uses are effective August 30, 1993.

ADDRESSES: Written comments concerning the proposed amendment to the routine uses may be mailed to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Harold Ramsey, Program Specialist, Medical Administration Service (161B4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 535–7657.

SUPPLEMENTARY INFORMATION: The Health Care Quality Improvement Act of 1986 (Title IV of Pub. L. 99–660) set forth requirements for private sector health care facilities and organizations to report to the Secretary of the Department of Health and Human Services (HHS) adverse actions taken against physicians and licensed health care practitioners. These reports on medical malpractice, sanctions taken by State Licensing Board, and reduction of clinical privileges following peer review are to be reported to the National Practitioner Data Bank.

Under the terms of a memorandum of understanding with HHS, VA participates in the Bank. Two routine uses were added to the appropriate notices of the Privacy Act systems of records that contain information which may be used for participation in the Bank. One routine use addresses inquiries to the Bank when individuals apply for VA employment. The second routine use addresses the disclosure of information to the Bank concerning malpractice payments and settlements made on behalf of physicians, dentists and other licensed health care practitioners, and actions taken by health care entities which adversely affect a practitioner's clinical privileges. This routine use is being amended to provide also for the reporting of the acceptance of the surrender of clinical privileges or any restriction of privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. The routine use is included in the following systems of records which are contained in the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," on the pages indicated:

02VA135 Applicants for Employment Under Title 38, U.S.C.-VA on page 920.
08VA05 Employee Medical File System Records (Title 38)-VA on page 924.
09VA05 Employee Unfair Labor Practice Charges and Complaints, Negotiated Agreement Grievances and Arbitrations-VA on page 926.
11VA51 Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc.-VA on page 927.
13VA047 Individuals Submitting Invoices/Vouchers for Payment-VA on page 930.
14VA135 Individuals Serving on a Fee Basis or Without Compensation (Consultants, Attendings, Others) Personnel Records—VA on page 931.
23VA136 Patient Fee Basis Medical and Pharmacy Records-VA on page 937 and amended at 57 FR 38003, June 23, 1992.
24VA136 Patient Medical Records-Va on page 938 and amended at 57 FR 38003, June 23, 1992, 57 FR 45419, October 1, 1992, and 58 FR 29853, May 24 1993.
27VA947 Personnel and Accounting Pay System-VA on page 942.
28VA119 Personnel Registration Under Controlled Substance Act-VA on page 943.
29VA11 Physician, Dentist and Supervisory Nurse Professional Standards Board Action File-VA on page 944.
32VA00 Veteran, Employee and Citizen Health Care Facility Investigation Records-VA on page 945.
34VA11 Veteran, Patient, Employee, and Volunteer Research and Development Project Records-VA on page 947.
63VA05 Grievance Records-VA on page 972.
66VA53 Inspector General Complaint Center Records-VA on page 975.
73VA14 Health Professional Scholarship Program-VA on page 979.
76VA05 General Personnel Records (Title 38)-VA on page 981.
77VA11 Health Care Provider Records-VA on page 983.
79VA162 Decentralized Hospital Computer Program (DHCP) Medical Management Records-VA on Page 986.

Also, the retention and disposal sections in two system notices are being amended, Patient Medical Records-VA (24VA136) and Health Care Provider Records-VA (77VA11).

Approved: July 20, 1993.

Jesse Brown,

*Secretary of Veterans Affairs.*

### Notice of Amendment to System of Records

1. In the system identified as 02VA135, "Applicants for Employment Under Title 38, U.S.C.–VA" appearing on page 920 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

02VA135

SYSTEM NAME:

Applicants for Employment Under Title 38, U.S.C.—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

19. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning:

(1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical

malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual;

(2) A final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or,

(3) The acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

* * * * *

2. In the system identified as 08VA05, "Employee Medical File System Records (Title 38)-VA" appearing on page 924 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**08VA05**

**SYSTEM NAME:**

Employee Medical File System Records (Title 38)—VA.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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26. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

* * * * *

3. In the system identified as 09VA05, "Employee Unfair Labor Practice Charges and Complaints, Negotiated Agreement Grievances and Arbitrations—VA" appearing on page 926 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**09VA05**

**SYSTEM NAME:**

Employee Unfair Labor Practice Charges and Complaints, Negotiated Agreement, Grievances and Arbitrations—VA.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

* * * * *

7. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

* * * * *

4. In the system identified as 11VA51, "Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc.—VA" appearing on page 927 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**11VA51**

**SYSTEM NAME:**

Investigation Reports of Persons Allegedly Involved in Irregularities Concerning VA Laws, Regulations, Etc.—VA.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

* * * * *

14. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

* * * * *

5. In the system identified as 13VA047, "Individuals Submitting Invoices/Vouchers for Payment-VA"

appearing on page 930 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**13VA047**

**SYSTEM NAME:**

Individuals Submitting Invoices/Vouchers for Payment.—VA.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

* * * * *

6. In the system identified as 14VA135, "Individuals Serving on a Fee Basis or Without Compensation (Consultants, Attendings, Others) Personnel Records-VA" appearing on page 931 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**14VA135**

**SYSTEM NAME:**

Individuals Serving on a Fee Basis or Without Compensation (Consultants, Attendings, Others) Personnel Records—VA.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

9. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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7. In the system identified as 23VA136, "Patient Fee Basis Medical and Pharmacy Records-VA" appearing on page 937 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," and amended at 57 FR 28003, June 23, 1992, the following routine use is amended:

**23VA136**

**SYSTEM NAME:**

Patient Fee Basis Medical and Pharmacy Records—VA.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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11. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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8. In the system identified as 24VA136, "Patient Medical Records-VA" appearing on page 938 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," and amended at 57 28003, June 23, 1992, 57 FR 45419, October 1, 1992, and 58 FR 29853, May 24, 1993, the following changes are being made:

**24VA136**

**SYSTEM NAME:**

Patient Medical Records—VA.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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32. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a

claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETENTION AND DISPOSAL:

Consolidated health records are retained at health care facilities for a minimum of 3 years after the last episode of care. After the third year of inactivity the paper record is transferred to the nearest Federal record center for 72 more years of storage. Information stored on electronic storage media is retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

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9. In the system identified as 27VA047, "Personnel and Accounting Pay System-VA" appearing on page 942 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

27VA047

SYSTEM NAME:

Personnel and Accounting Pay System—VA.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

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24. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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10. In the system identified as 28VA119, "Personnel Registration Under Controlled Substance Act-VA" appearing on page 943 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

28VA119

SYSTEM NAME:

Personnel registration Under Controlled Substance Act—VA.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

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8. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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11. In the system identified as 29VA11, "Physician, Dentist and Supervisory Nurse Professional Standards Board Action File–VA" appearing on page 944 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

29VA11

SYSTEM NAME:

Physician, Dentist and Supervisory Nurse Professional Standards Board Action File—VA.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

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9. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist

either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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12. In the system identified as 32VA00, "Veteran, Employee and Citizen Health Care Facility Investigation Records–VA" appearing on page 945 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**32VA00**

**SYSTEM NAME:**

Veteran, Employee and Citizen Health Care Facility Investigation Records–VA.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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13. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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13. In the system identified as 34VA11, "Veteran, Patient, Employee and Volunteer Research and Development Project Records–VA" appearing on page 947 of the **Federal Register** publication, "Privacy Act Issuance, 1991 Compilation, Volume II," the following routine use is amended:

**34VA11**

**SYSTEM NAME:**

Veteran, Patient, Employee and Volunteer Research and Development Project Records–VA.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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11. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice of an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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14. In the system identified as 63VA05, "Grievance Records-VA" appearing on page 972 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**63VA05**

**SYSTEM NAME:**

Grievance Records-VA.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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13. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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15. In the system identified as 66VA53, Inspector General Complaint Center Records-VA" appearing on page 975 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**66VA53**

**SYSTEM NAME:**

Inspector General Complaint Center Records-VA.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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10. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located and/or in which an act or omission occurred upon which a medical malpractice

claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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16. In the system identified as 73VA14, "Health Professional Scholarship Program-VA" appearing on page 969 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**73VA14**

**SYSTEM NAME:**

Health Professional Scholarship Program-VA.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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12. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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17. In the system identified as 76VA05, "General Personnel Records (Title 38)–VA" appearing on page 981 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following routine use is amended:

**76VA05**

**SYSTEM NAME:**

General Personnel Records (Title 38)–VA.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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39. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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18. In the system identified as 77VA11, "Health Care Provider Records-VA"appearing on page 983 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the following changes are being made:

**77VA11**

**SYSTEM NAME:**

Health Care Provider Records-VA.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

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19. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

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RETENTION AND DISPOSAL:

Records are maintained at the employing VA facility. If the individual transfers to another VA facility location, the record is transferred to the new employing location. Records are retired to a Federal records center 3 years after the individual separates from VA employment (in some cases, records may be maintained at the facility for a longer period of time) and are destroyed 30 years after separation from employment. Records for applicants who are not selected for VA employment are destroyed 2 years after non-selection or when no longer needed for reference, whichever is sooner. Information stored on electronic storage media is maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

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19. In the system identified as 79VA162, "Decentralized Hospital Computer Program (DHCP) Medical Management Records—VA" appearing on page 986 of the Federal Register publication, "Privacy Act Issuances, 1991 Compilation, Volume II, the following routine use is amended:

79VA162

SYSTEM NAME:

Decentralized Hospital Computer Program (DHCP) Medical Management Records—VA.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

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20. Relevant information from this system of records may be disclosed to the National Practitioner Data Bank and/or State Licensing Board in the State(s) in which a practitioner is licensed, in which the VA facility is located, and/or in which an act or omission occurred upon which a medical malpractice claim was based when VA reports information concerning: (1) Any payment for the benefit of a physician, dentist, or other licensed health care practitioner which was made as the result of a settlement or judgment of a claim of medical malpractice if an appropriate determination is made in accordance with agency policy that payment was related to substandard care, professional incompetence or professional misconduct on the part of the individual; (2) a final decision which relates to possible incompetence or improper professional conduct that adversely affects the clinical privileges of a physician or dentist for a period longer than 30 days; or, (3) the acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist either while under investigation by the health care entity relating to possible incompetence or improper professional conduct, or in return for not conducting such an investigation or proceeding. These records may also be disclosed as part of a computer matching program to accomplish these purposes.

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[FR Doc. 93-18169 Filed 7-29-93; 8:45 am]
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# Sunshine Act Meetings

Federal Register
Vol. 58, No. 145
Friday, July 30, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Board's meeting described below. The Board will also conduct a public hearing pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning current health or safety questions at the Y–12 Plant, Oak Ridge, Tennessee.

**TIME AND DATE:** 5:00 p.m., August 26, 1993—Department of Energy presentations; 7:00 p.m.—Opportunity for interested persons to present oral comments concerning the matters to be considered.

**PLACE:** American Museum of Science & Energy, 300 S. Tulane Avenue, Oak Ridge, TN 37830.

**STATUS:** Open. While the Government in the Sunshine Act does not require that the scheduled briefing be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

**MATTERS TO BE CONSIDERED:** The open public meeting and hearing are being held so as to provide the Board with the latest and best information on topics related to the adequate protection of public health and safety at the Y–12 Plant, and to receive from members of the public any pertinent comments they wish to make on health and safety issues at the Y–12 Plant. The Department of Energy (DOE) will take appropriate measures to safeguard any classified or controlled nuclear information it presents at this meeting. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

**FOR MORE INFORMATION CONTACT:** Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (202)208–6400. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of the oral presentation. Those who contact the Board prior to close of business on August 25, 1993, will be scheduled for time slots, beginning at approximately 7:00 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the auditorium at the start of the 5:00 p.m. meeting.

Anyone who wishes to comment, provide technical information or data may do so in writing, either in lieu of, or in addition to making an oral presentation. The Board members may question presenters to the extent deemed appropriate. The Board will hold the record open until September 7, 1993, for the receipt of materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at the DOE's public reading room at the DOE Federal Building, 200 Administration Road, Oak Ridge, TN 37830.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: July 27, 1993.

**John T. Conway,**

*Chairman.*

[FR Doc. 93–18307 Filed 7–28–93; 8:59 am]

BILLING CODE 6820–KD–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, July 27, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation concerning an administrative enforcement proceeding.

Matters relating to the probable failure of a certain insured bank.

Recommendation regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: 1993 National Real Estate Auction (Case No. 000–00021–93–BOD)

Matters relating to the Corporation's corporate and supervisory activities.

Matters relating to an assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: July 27, 1993.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Deputy Executive Secretary.*

[FR Doc. 93–18328 Filed 7–28–93; 11:13 am]

BILLING CODE 6714–01–M

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**TIME AND DATE:** 10 a.m., Wednesday, August 4, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Payments system risk policy matters: (a) publication for comment of proposed revisions to the Payments System Risk Policy Statement and accompanying changes to the Guide to the Payments System Risk Policy, and (b) issuance of an Overview of the Payments System Risk Policy.

2. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 28, 1993.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 93–18329 Filed 7–28–93; 11:44 am]

BILLING CODE 6210–01–P

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** Approximately 11:00 a.m., Wednesday, August 4, 1993, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 28, 1993.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 93–18330 Filed 7–28–93; 11:14 am]

BILLING CODE 6210–01–P

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**SECURITIES AND EXCHANGE COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** [58 FR 38601 July 19, 1993].

**STATUS:** Closed meetings.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** Thursday, July 15, 1993.

**CHANGE IN THE MEETING:** Deletion.

An open meeting scheduled for Friday, July 3, 1993, at 10:00 a.m. was cancelled.

Consideration of whether to adopt rules 53, 54 and 57, under the Public Utility Holding Company Act of 1935. Rule 53 defines a partial safe harbor for registered holding company financing of exempt wholesale generator acquisitions, and rule 54 creates a similar safe harbor for other transactions involving companies in the registered system. Rule 57 prescribes notification (Form U–57) and reporting requirements (Form U–33–S) for foreign utility companies and their associate public-utility companies. The Commission will also consider amendments to Forms U5S and U–3A–2. Further, the Commission will consider whether to publish for comment proposed amendments to rule 87 to require Commission approval for the sale of goods and construction and services rendered, directly or indirectly, both to exempt wholesale generators and foreign utility companies from, and by such entities to, other companies in the registered holding company system. For further information, please contact Karrie McMillan at (202) 504–3387.

Commissioner Beese, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2100.

Dated: July 27, 1993

Jonathan G. Katz,

*Secretary.*

[FR Doc. 93–18305 Filed 7–28–93; 8:58 am]

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July 30, 1993

Part II

# Department of Agriculture

**Farmers Home Administration**

**7 CFR Part 1930, et al.**
**Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients; Final Rule**

VOL 58 ISS 145 JL 30 1993 UMI

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1930, 1944, 1951 and 1965

RIN 0575-AA49

## Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing the management and supervision of FmHA Multiple Family Housing Loan and Grant Recipients. This action is taken to incorporate administrative clarifications and revisions, program objectives, and changes required by the Fair Housing Amendments Act of 1988. The intended effect of this action is to implement policy changes based on consideration of public comments received in response to the proposed rule.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Daniel, Senior Loan Officer, Multiple Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, room 5321, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250, Telephone: (202) 720-1619.

SUPPLEMENTARY INFORMATION:

### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "non-major." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

### Civil Justice Reform

This document has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

### General Information

The Fair Housing Amendments Act of 1988 was enacted September 13, 1988, and became effective on March 12, 1989. The Act expanded title VIII of the Civil Rights Act of 1968 to prohibit discriminatory housing practices based on handicap and familial status and to otherwise undergird the idea that persons with handicaps be accorded reasonable accommodation in all facets of access to housing. This action incorporates the provisions of the Fair Housing Amendments Act.

Other changes correct, revise, expand and clarify the proposed rule in response to questions and comments raised by the public and FmHA staff.

### Public Comment Response

A total of 86 responses were received from throughout the nation in response to the proposed rulemaking action published in the Federal Register, volume 56, August 27, 1991, at page 42364. There were 35 from Agency staff; 18 from rental housing management firms; 8 from state and national councils of owners and managers; 6 from tenant advocacy groups; 5 from Certified Public Accounting firms; 4 from housing consultants; 3 from profit motivated developers; 2 from nonprofit housing sponsors; 2 from energy auditors; and 1 from the Department of Treasury. One response identified this rulemaking action but actually provided response to another rulemaking action. One other response was received in duplicate. Several responses represented an aggregate of constituent contribution to the submitted responses.

General comment was provided by 36 commenters covering a variety of topics not specific to any particular section or paragraph in the regulation. Several expressed concern that the Agency would become more involved in micromanagement of project operations if the proposed rule was adopted without change. The Agency has duly considered this concern and has modified its stance by providing program objective statements in such areas as the management plan, management agreement, management reporting and Agency review of management reports. A concept of reasonable tolerance is introduced in further response to this concern. This means that project actual expenses within plus or minus five percent of planned expenses will be considered reasonable. Throughout this final rule, the Agency stresses its role as a monitor of borrower compliance in the tone and intent of the regulation.

A number of commenters suggested the Agency prepare a topical index of the material contained in the regulation. The Agency recognizes this would be helpful but it is not immediately essential in view of the urgency to complete and issue this rulemaking.

Waste, fraud and abuse was the theme of a number of commenters, both in general and specific comment. The agency is responding to this concern in its management reporting, review and audit process requirements. Specific changes are made for disclosure and certification of identity of interest between borrowers and management firms and any combination of relationship with vendors or providers of supplies and/or services. One commenter suggested that the Agency require audits of management firms. The Agency declines this suggestion on the basis that the internal operation of a management firm is not governed by the Agency; rather the Agency is concerned that the borrower receives management services that meet the standards of the management plan as contracted for in the management agreement and provided by the management firm.

A general change was proposed throughout the regulation by the Agency to change the term "market rent" to "note rate rent." Another general change proposed by the Agency was to distinguish farm labor housing where rent is assessed from on-farm labor housing where no rent is assessed. Public comment was generally supportive of these changes.

A general administrative change is being made with this action. All references to District Office and District Director are changed to Servicing Official and Servicing Office respectively throughout. This change is made to conform with restructuring of the state organization by some FmHA State Offices. The new terms are generic and will apply to those states retaining the traditional Agency structure and those who will adopt a different structure. Other general changes identified in the proposed rule are addressed where they are primarily mentioned in sequence of the text.

**Part 1930—General**

The Agency made modifications to its prior rulemaking action in response to comments concerning the responsibility of projects to ensure that accommodations in rules, policies, practices or services are afforded to ensure that those persons with handicaps or disabilities are treated with fairness required by law and the dictates of common sense.

Comments were received which suggested the Agency should be using this rulemaking action to move more aggressively against owners of farm labor projects who have agreed to provide housing for free to their laborers in exchange for not signing loan agreements but are not honoring their responsibilities. This commenter's concerns have been primarily addressed in a separate rulemaking action at 57 FR 59900, December 17, 1992, which included modifications now inclusive in this rulemaking.

Several commenters stated concerns about the Agency's responsiveness to requests for budget approval, rent changes, and other requests such as return on investment or withdrawal of initial operating capital, warranting a timely response by Agency personnel. The Agency is concerned that it be able to provide timely responses to the public. In its review of the proposed rulemaking action, the Agency identified several underlying causes which may be contributing to these concerns and the Agency is taking steps to address these concerns.

A major step taken is to modify the manner and timing in which annual management reports will be submitted, reviewed and evaluated by Agency officials. What has previously been an annual reports process will now be divided into an annual budget review process, that should take place in the last quarter of a project fiscal year in preparation for the ensuing fiscal year, and an annual audit review which will follow after a fiscal year is complete.

Concurrent with the budget review process will be a process of annual review of project operations. This review will incorporate review of the preceding year's audit and recommendations, the current and proposed budget, and other items such as the latest supervisory visit, energy audit report, and identity of interest disclosure documents already on file in the Servicing Office. This is intended to permit the Agency and the borrower to evaluate project operations and incorporate appropriate planned changes for the ensuing fiscal year of project operation before the beginning of the new fiscal year.

Agency adoption of the foregoing annual budget/review and audit review process is intended to forestall a practice often used by the Agency by waiting for the audit report before reviewing a project budget and completing evaluation of the preceding year's project operation. Often this evaluation was completed several months into the fiscal year when results of the evaluation should have already taken place. This practice has contributed to unsound evaluation practices and unwarranted delays in taking action on proposed budgets and rent change requests.

*Exhibits A and A–1*

Exhibits A and A–1 dealing with Agency review of project audits have been slightly modified to correspond with the shift in timing for audit review and to indicate whether an audit addressed the concerns identified in the Agency's Audit Program booklet. Several commenters requested definition of subjective terms such as reasonable, significant and excessive. Such terms are used to convey intent. The Agency believes defining these terms could be detrimental as well as beneficial. The Agency would rather allow judgment to be exercised within the idea of reasonable tolerance.

*Exhibit B*

Paragraph II—Definitions

The definitions of Adjusted Annual Income, Annual Income, Net Family Assets and Resident Assistant are revised to incorporate changes of wording for the same definitions used by the Department of Housing and Urban Development (HUD). The Housing and Urban-Rural Recovery Act of 1983 requires the Departments of HUD and Agriculture to use the same meanings of the definitions. The Agency is clarifying that forecasting of medical expenses may be calculated using past experience as a guide. The Agency agrees with several commenters who pointed out the futility in forecasting such expenses on exclusively a prospective basis.

The definition for Congregate Housing is clarified to distinguish that such facilities may provide specific services which may possibly not be all services needed by some tenants.

Some commenters suggested that the definitions for handicap and disability be combined since the Fair Housing Act only mentions handicap. The Agency considered this but chooses to retain the separate definitions since the Housing Act of 1949 governing Agency housing programs includes coverage for persons who are disabled.

Definitions for Member/Comember, Overage and Utility Allowance have been added to explain the meaning of these terms used throughout the regulation. In response to comment, the term Minor is revised to identify a minor as a dependent person under 18 years of age rather than any person, such as a cohabitant, who is under 18.

Paragraph III—Borrower Responsibilities

Commenters indicated that the regulations should be clarified to bring out the fact that residents of on-farm single family housing type dwelling units need not complete Form FmHA 1944–8, "Tenant Certification." The Agency has clarified its regulations to eliminate the need for the tenant certification form in instances where farm labor housing residents are not required to pay rent for their housing.

Public comments also suggested additional wording to more clearly highlight existing policies; however, the Agency determined that if several of these suggestions were adopted, it would repeat policies found elsewhere in the regulations.

Paragraph IV—Rent Subsidy Opportunities

Commenters pointed out that paragraph IV(A)(2)(d) is no longer needed. This paragraph limited an increase of tenant rent by 10 percent in any 12 month period caused by a previous change that increased tenant contribution from 25 percent to 30 percent of adjusted monthly income. The Agency agrees and has deleted the paragraph.

In paragraph IV C, the Agency has clarified that HUD Section 8 tenant subsidies can be administered through other agencies such as State Housing Finance Agencies. The Agency made other minor editorial changes to paragraph IV while not altering existing policies.

One commenter suggested that private rental assistance agreements which call for a per unit ceiling to limit the amount of subsidy exposure to a known maximum was not a good idea. The Agency disagrees because other tenant subsidies will benefit additional tenants and financially strengthen projects. To prohibit other sources of subsidy just because they provide less subsidy than the subsidy the Agency can provide would unacceptably deny benefit to tenants.

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Paragraph V—Management Operations

One commenter recommended that the management fee be based on gross rents and other collections. The Agency did not adopt this recommendation. Management fees are established in a variety of ways in both the private and public sector. The Agency does not want to arbitrarily impose a particular manner in which management fees are established. It is sufficient to evaluate the reasonableness of the fees without restricting the methodology used to establish the fees.

Several commenters recommended that clarifications be made as to the types of management plans and management agreements acceptable to the Agency. The Agency is not adopting these recommendations because regulations are adequate in this area. Exhibit B-1 of this rule describes the various kinds of information that should be described in a management plan. Exhibit B-3 of this rule is a sample management agreement and is intended as a guide to set the tone of items, information and contractual language that should be used in carrying out program objectives. With the guidance contained in these two exhibits, the Agency believes it prudent to allow owners the flexibility to tailor management plans and agreements to fit the particular features and needs of each project.

Recommendations were also made to clarify policies with regard to projects managed by companies sharing an identity of interest relationship with the owner/borrower. Commenters stated identity of interest managers were being subjected to having fees curtailed by Agency staff for unjustified reasons. Other commenters stated the need for better guidance to improve the Agency's ability to curtail management fees of identity of interest management companies when compensation for services they provide are deemed too high. In response to these concerns, the Agency believes there is a need to require better disclosure of when an identity of interest exists. The Agency believes compensation must be evaluated for reasonableness on a case by case basis in view of facts unique to a project such as its management plan, project location, and availability of services, compared to actual data of other project operations similarly situated. The Agency adopted modifications to paragraph V to clarify and implement these principles. The Agency is hopeful of later establishing standards of management with measurable criteria for use in the evaluation process.

Commenters suggested that requiring site managers/caretakers to pay rent based on their total income, when in a revenue producing unit, will cause many of them to move off site. This represents a fundamental misunderstanding of the regulation's intent. Site managers or caretakers occupying a rent producing unit occupy the unit as an employee, not as a tenant per se. However, to determine the rent to be paid by the employee, rent contribution is calculated by the same rules applying to a tenant. Likewise any rental assistance or interest credit subsidy is paid or credited respectively, or overage collected, same as for a tenant. The Agency has clearly distinguished two scenarios of operation; one where the site manager/caretaker lives in a rent-free nonrevenue unit and one where the person lives in rent producing unit. This clarity should not, nor is it intended to, force site managers/caretakers from a project; rather the opposite is the intended result by allowing project owners the option to choose which of the two scenarios to use in their plan of operation.

Paragraph VI—Renting Procedure

Extensive comments were received dealing with the myriad of tenant-landlord issues covered in this paragraph. Most prominent were those from each of the tenant advocacy groups who responded. Two of the groups focused only on occupancy standards; three dealt with all aspects of the paragraph. One focused on the specific provisions of the Fair Housing Amendments Act of 1988, and by reference, supported comments of another commenter who addressed many concerns.

The Agency has made substantive modifications to the prior rule which are consistent with the intent and application of the Fair Housing Amendments Act. The concept of reasonable accommodation in attitudes, rules, policies, practices, and access are incorporated throughout the paragraph in such areas as affirmative action, handicap accessibility, tenant eligibility, occupancy standards, applications, waiting lists, and tenant or member selection.

A central theme in the Fair Housing Amendments Act is that persons with handicaps shall not be deterred by physical or administrative barriers from otherwise acquiring housing, like other qualified persons can, that meets their needs to maintain their sense of independence in living within their own freedom of choice. Thus, the long held Agency requirement that a project owner or manager determine an applicant's, tenant's or member's ability to live independently is summarily removed and other references or inferences throughout the regulation are removed or modified. A person other than the applicant, tenant or member making such a determination would be performing a discriminatory act in violation of law.

Occupancy standards will remain the responsibility of the borrower to establish as proposed. However, the standards first proposed have been replaced with more objective guidelines than originally described. These standards are adopted from those used by HUD's Public and Indian Housing and Multi-Family Housing Programs. The net result will be that applicant or resident families will have greater choice and flexibility in being housed within the unit sizes available in FmHA financed projects.

The Agency has additionally established an objective threshold for determining when overcrowded occupancy occurs for guidance when State or local statutes or codes are silent on the issue. The general intent of the threshold of overcrowding is to achieve a balance between the needs of a family for housing and community health and safety concerns. The Agency looked to several codes, including the Uniform Housing Code issued by the International Conference of Building Officials in Whittier, California, the Standard Housing Code issued by the Southern Building Code Congress International, Inc. of Birmingham, Alabama, and the recommended minimum housing standards adopted by the American Public Health Association and the Center for Disease Control (APHA–CDC). These codes state that minimum space in a habitable sleeping room shall be 70 square feet. The Uniform Housing Code states that two people may occupy this minimum space and such space shall be increased at the rate of 50 square feet for each additional person in excess of two. Both the Southern Housing Code and the APHA–CDC state that one person may occupy the minimum 70 square feet and when more than one person occupies the sleeping room, it shall have at least 50 square feet for each person over two people. Thus, in the first instance, three people in one habitable sleeping room would need 120 square feet or 40 square feet per person, and in the second instance, three people would need 150 square feet or 50 square feet per person. Habitable sleeping rooms in FmHA financed housing meet and generally exceed the 70 square foot minimum stated in all of the three model codes.

Agency occupancy standard guidelines are based on the premise that two people can occupy each habitable sleeping room. The Agency is further adopting the guidance that when more than two people occupy a sleeping room, there shall be at least 50 square feet of area per person. Fifty square feet of sleeping area per person is recommended by each of the three model codes. FmHA believes this standard of 50 square feet per person is reasonable when more than two persons occupy a habitable sleeping room given the types and sizes of dwelling units typically financed by the Agency. The adopted standard will allow a family to use a living room as a sleeping room if such use will meet their needs for housing.

Paragraph VII—Certification and Verification of Information and Corrective Actions

Commenters presented a number of suggestions for improving certification and verification of information and for improving guidance on pursuing corrective actions when abuses are uncovered. The Agency is responding by providing greater guidance on what information is applicable for labor housing residents, particularly those residing in rent free units. Greater guidance is provided on how reviews of tenant or member income and/or employment verifications may be conducted, particularly in matters of timing and third party verification. Better guidance is provided on how to service and recover unauthorized benefits discovered as a result of a review of receipt of information from third party sources.

The Agency received a large number of comments about the need to better define the magnitude of change in income, benefits, or family size that warrant being reported to the landlord, and further, when filing of a new tenant certification is required. Tenants or cooperative members will be required to report any change in household income, size or composition. Borrowers will be required to recertify tenants or members when their gross monthly income or adjustments to income increase by $40 or more per month ($480 per year). Likewise, the same will be required when a tenant's or member's change of gross income or adjustments to income decrease by $20 or more per month ($240 per year). Borrowers will be required to recertify a tenant or member whenever there is a change of household size or composition.

The Agency also provided positive response to requests for policy clarifications on processing tenant certifications when delay in receiving third party verifications is beyond the control of the tenant or landlord. The Agency is also providing additional guidance on how to proceed to resolve cases where inaccurate information is suspected or shown to occur on tenant certifications.

Paragraph VIII—Lease Agreements, Occupancy Agreements, Rules, and Other Tenant Information

Several comments pointed out that the proposed rule did not include certain lease references to occupancy surcharges promulgated by a previous rulemaking. As a matter of course, this rulemaking includes those previous changes. The Agency has provided added coverage of lease provisions to ensure that tenants are protected against having to incur higher out of pocket expenditures for shelter costs as a result of a monetary or non-monetary default by the borrower which resulted in subsidy being suspended or cancelled by the Agency.

The lease provisions are modified to address public concerns over the policies which should apply where the use of controlled substances are involved. Many and varied comments were received on the policies set out in the prior rulemaking on the controlled substance issue. As a result of the concerns noted, the Agency determined its policies should be modified to provide more extensive coverage. As a result of public comments objecting to the lack of adequate guidance in this area, the Agency determined that its regulations should attempt to afford greater protection against requiring non-adult members to vacate a unit as a result of controlled substance abuse. The Agency also determined that it needed better guidance on how to proceed when an adult member is required to vacate the unit and any remaining adult or non-adult member seeks to continue residency in the unit. The Agency determined that its policies should be modified to be more specific about the circumstances under which a member who was asked to vacate a unit as a result of controlled substance abuse could return to the unit.

Paragraph IX—Rent or Occupancy Charge Collection and Account Servicing

The discussion on delinquent rent payments has been modified in response to several comments. Subject to provisions of State or local law, late charges may not exceed the higher of $10 or 5 percent of gross tenant contribution to rent. This will protect tenants paying lower rent while increasing the incentive for tenants paying higher rent to pay timely. Provision is provided to extend grace periods in instances such as persons receiving social security checks at or near the end of the otherwise normal grace period. Other changes were made to clarify that late fee waivers must be reported to the IRS and late fees charged in error by the Agency will be administratively corrected and not reported to the IRS.

Paragraph X—Maintenance

Few comments were received for this topic. Those who did were generally supportive of the Agency's effort to distinguish whether long term maintenance type items may be paid from annual operating expenses or from the reserve account.

Paragraph XI—Rent or Occupancy Charge and/or Utility Allowance Changes

No changes were proposed to this paragraph which refers the reader to exhibit C of this rule for guidance in processing changes of rent or occupancy charges. However, reference to utility allowance change is now included to correlate to changes proposed and incorporated at the aforementioned exhibit C.

Paragraph XII—Borrower Project Budget, and Paragraph XIII—Accounting and Reporting Requirements and Financial Management Analysis

As discussed in the general section, the Agency made extensive changes to the content of these sections to modify discussion about project budget processes and Agency evaluation practices. Also, the Agency has expanded its discussion and guidance concerning the investment of reserve account funds in response to public comment. Additionally, the Agency has included revised guidance in the matter of separate accountability of project funds. The Agency will now allow combining of multiple project funds owned by the same borrower in one bank account. It will not, however, permit funds of multiple projects owned by multiple borrowers to be combined in one bank account. A management agent handling multiple bank accounts for multiple borrowers will be permitted to maintain a central funds collection and disbursement system that is linked to the separate bank accounts of separate projects provided the principle of separate accountability is maintained as described in this rulemaking.

Paragraph XIV—Termination and Eviction

Public comment came from a cross-section of interests on this topic. The issues of illegal use of controlled substances and protection of tenant rights captured the greatest concern. The Agency has removed arrest of a tenant or household member as a cause for termination of occupancy on the principle that a person is innocent until proven guilty. Notice requirements have been modified to comply with State or local law, or in the absence of same, to follow the guidance of this paragraph. The Agency has added the provision that a tenant, or tenant's counsel, may view its tenant occupancy file and copy any information it contains to aid in the tenant's defense of termination.

Paragraph XV—Security Servicing

Public comment was generally supportive of the Agency proposal to permit blanket crime policies as well as fidelity bonds as instruments of fiduciary coverage. Most of the commenters expressed concern that the proposed formula for determining an exposure index and the proposed sloping line chart for determining an amount of coverage would be confusing to understand and apply. The Agency has simplified the formula to determine exposure index and the line chart has been replaced with a chart that accomplishes the same intent by listing coverage factors for various levels of exposure index.

Commenters also recommended that hazard insurance requirements be modernized in the same general manner as with fidelity coverage. The Agency agrees and it has modified this paragraph to require evidence of first year paid premium with follow up notice of any cancellation for nonpayment of premium or nonrenewal to be sent to the Agency. Other administrative changes were made concerning policy endorsements and source of coverage amount.

Paragraph XVI—Automation of FmHA Forms and Formats

All comments concerning this paragraph were supportive of this new paragraph that describes Agency recognition and provision for automating various aspects of project administration.

*Exhibit B–1 Management Plan Requirements*

The central theme of public comment was that a detailed management procedure would evolve rather than a plan for management. Other comments were very specific in nature in suggesting improvements of wording. Taking this into account, the Agency has maintained the former structure of topic discussion but has restated many of the management requirements into management issues, whereby the Agency is asking the borrower to describe its standards of performance in the management of its project. To help make the management plan as generic as possible, the Agency is further asking owners to describe the employee or staff position responsible for any particular function rather than naming the person.

*Exhibit B–2 Requirements for Management Agreements*

The few comments received on this Exhibit focused on identity of interest concerns. The Agency is requiring full disclosure of such identity when it exists or will exist between the management agent and borrower and vendors and suppliers. The Agency agrees with comments that the borrower may delegate responsibility to represent the borrower in appeal matters. The balance of changes made correlate to the discussion that follows for exhibit B–3.

*Exhibit B–3 Sample Management Agreement*

Public comment on this Exhibit was more technical than philosophical. The Agency responds to the comment by first making it clear in the title that the exhibit is a sample which means a sample outline for an owner and management agent to be guided by when preparing and adopting a management agreement. The Agency intends that all points or issues shown in the exhibit be addressed, but actual wording will depend on local conditions and factors. A definition of "agent" is included along with identity of interest disclosure requirements. Discussion is added for a borrower's authorization to the management agent. Language has been modified for the management agreement to distinguish whether site staff are employees of the management agent or the borrower. The description of project accounts has been eliminated from the text of the management agreement and may henceforth reference paragraph XIII of this rulemaking to cover the topic of project accounts.

*Exhibits B–4 and B–5 Outlines for Prospective Management Agent and Owner*

Only one comment was received concerning these exhibits; it dealt with identity of interest disclosure. In keeping with this comment and other comments in general, the Agency made appropriate changes to have those persons or groups who will manage a rental property to describe any identity of interest that exists or will exist in connection with management of a project.

*Exhibits B–6, B–7 and B–8 Management Reports*

The few comments received on these exhibits were correlated to comments made by the same commenters in other parts of the rulemaking. The comments dealt with timing of the various management reports. These exhibits are handy reference charts and have been modified to reflect changes made in text.

*Exhibit B–9 Notice of Authorization to Withdraw and Use Reserve Funds*

This exhibit was shown as exhibit B–10 in the proposed rulemaking. Public comment generally supported adoption of this new exhibit. Commenters, however, suggested a more definitive description of what the terms "capital type" and "annual recurring type" expenses mean. Some commenters wanted a detailed list of examples shown. The Agency rejected the last idea but has adopted generic terms which are meant to convey the intended meanings.

*Exhibit B–10 Reserve Account Tally*

Shown as exhibit B–14 in the proposed rulemaking, comments were divided as to support or opposition to its use. The Agency believes it wise to establish a consistent tracking format for use across the country in view of waste, fraud and abuse concerns. The Agency is moving toward some form of increased Agency surveillance of the withdrawal and use of reserve funds in response to Office of Inspector General findings. This tracking form will assist in that effort.

*Exhibits B–11, B–12, and B–13 Equal Housing Opportunity Logotype, Farmers Home Administration Logotype, and International Symbol of Accessibility*

The two logotypes were proposed as exhibits B–11 and B–12, respectively. Exhibit B–13 has been added as part of the Agency response to the reasonable accommodation aspects of the Fair Housing Amendments Act of 1988 and section 504 of the Rehabilitation Act of 1973. This international symbol is to be used at any handicap parking spaces and along routes of accessibility. It will not be necessary to show it on the project identifier sign.

Two commenters indicated that another exhibit showing only the words "Equal Housing Opportunity" should be provided to augment the logotype now

at exhibit B–11. The Agency chose to not add another exhibit, but within text, the Agency recognizes as acceptable, use of only the words "Equal Housing Opportunity" without showing the house symbol. Other commenters pointed out the words "Farmers Home Administration" on the FmHA logotype are unnecessary and the Agency agrees. Further, the Agency will not require use of the FmHA logotype on the project identifier sign.

*Exhibit B–14 Sample Waiting List*

This exhibit provoked polarized supportive and oppositional comments. Some felt the example contained too much information and others suggested additional or different information. The intent of this sample waiting list is to standardize this item across the country. All too often, the Agency has observed inadequate waiting lists or the absence of waiting lists during its site visits. The Agency believes adherence to properly prepared and maintained waiting lists is vital to proper compliance in tenant and subsidy selection decisions.

*Exhibit C Rental and Occupancy Charge and/or Utility Allowance Changes*

The Agency received many and varied comments concerning its rent change policies. The most significant of these centered on the need to have policies that ensure timely processing of rent changes; to improve coverage on how to process rent changes where section 8 assistance is involved; to include the overage policy clarifications contained in FmHA AN's 2256 and 2319 dated March 28, 1991, and July 3, 1991, respectively; and to modify the Special Market Rent (SMR) policies. The Agency adopted many of the recommended policy changes. The Agency did not agree that it is prudent to significantly alter its SMR policies to make it significantly easier to qualify for an SMR. The Agency did modify its policies however to eliminate the need to demonstrate that a borrower request to rent to ineligible tenants as a condition to qualify for an SMR. The Agency determined however, that it is sufficient to require a borrower to have evidenced attempting to resolve the problems through the servicing or budget workout provisions, exclusive of SMR considerations, prior to considering approval of an SMR.

*Exhibit D Energy Audit*

Two energy auditors offered support and technical changes to the proposed language. Most of the several other commenters suggested that energy audits are not needed beyond an initial energy audit performed several years after initial construction. The Agency is retaining the energy audit in keeping with the National Energy Strategy which calls for all citizens and activities in the nation to conserve energy in an effort to lessen national dependence on foreign sources of energy. Exhibit D is modified to place greater emphasis on energy conservation practices. In the past, the exhibit placed emphasis on energy conservation measures, which are addressed in the design and construction phase of a project's life. Energy conservation practices involve those attitudes and applications of management and maintenance throughout the operation and maintenance life of the project. Exhibit D was modified to incorporate these ideas.

*Exhibit E Rental Assistance Program*

Comments on this exhibit were of a technical and administrative nature. The Agency has responded accordingly to provide clarification of policy and otherwise make editorial changes. A significant policy modification is that once a borrower has filed an application for rental assistance, further submittals of applications will not be required. This is intended to reduce paperwork, especially at times when rent changes will cause rent overburden on one or more tenants, and section 530 of the Housing Act of 1949, as amended, requires the borrower to apply for rental assistance, even when the borrower and the Agency know that rental assistance allocation is not available. The Agency is also adding language to indicate that tenants can be informed that their rents will increase and they may quit their lease should the event ever occur where their landlord's rental assistance contact cannot be renewed because of lack of appropriated funds. The Agency is making provision that in certain situations, when a borrower loan is delinquent, the Agency may agree to releasing that portion of rental assistance payment needed for project operation while holding in suspense that portion it would otherwise capture as payment on the borrower's loan.

The rental assistance transfer policy is modified to permit transfer of any remaining unused rental assistance unit that remains unused after a specified time.

*Exhibits F and G Supervisory Visit Preparation Worksheet and Checklist*

All comments about these exhibits were of a technical nature, many of them offering suggested changes. Many of the comments pointed out a typographical error in the proposed rulemaking concerning the random sapling formula. The Agency has retained the substance of these companion exhibits but has reformatted them to make preparation easier and recording of findings more succinct.

*Exhibit H Interest Credits*

This exhibit is largely an administrative and informational exhibit. All comment focused on the Agency's discussion that interest credit would cease for any unit 60 days after loss of operation due to fire, natural cause or other substantial damage. Commenters understood the principle behind the Agency's reason for ceasing interest credit, but stressed that 60 days is often an inadequate time to restore a severely damaged unit or units, let alone arrange an insurance settlement. In view of this rationale, the Agency is increasing this period to 180 days. If after that time, repair or replacement has not occurred, the interest credit will be withdrawn unless the FmHA State Director makes an exception under certain conditions.

*Exhibit I Section 8 Rental Certificates and Rental Vouchers*

The few comments received here were supportive of the inclusion of discussion about section 8 rental vouchers. With assistance from the staff of HUD's Office of Public and Indian Housing, the Agency has modified and clarified the discussion about these two HUD subsidy programs in how they interface with the FmHA section 515 rental and cooperative housing program.

*Exhibit J Management of Congregate and Group Home Housing*

Virtually all commenters pointed out that the provisions of the Fair Housing Amendment Act of 1988 were not adequately incorporated into this portion of the proposed rule. The Agency has made fundamental changes in program objective and direction, particularly in its congregate housing program as a result of public comment. As revised, borrowers will develop a strategic marketing plan to attract that universe of people, from a tenant base or market area, that desire and request the services provided at or arranged by the congregate project located in the market area. Project owners and management personnel will not determine whether such tenants or applicants can live independently; that decision is for the applicant or tenant to make. In the case of group home housing, however, applicants must prove to the owner and management that they qualify for the unique services provided by the housing. Substantial

change of wording was made throughout the exhibit to reflect the preceding discussion.

**List of Subjects**

*7 CFR Part 1930*

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

*7 CFR Part 1944*

Administrative practice and procedure, Aged, Farm labor housing, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

*7 CFR Part 1951*

Account servicing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages.

*7 CFR Part 1965*

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1930—GENERAL

1. The authority citation for part 1930 is revised to read as follows:

**Authority:** 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

2. Subpart C of part 1930 is revised to read as follows:

### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

Sec.


1930.101 General.
1930.102 Definitions.
1930.103 Nondiscrimination assurance.
1930.104 Reasonable accommodations.
1930.105 Objective of management and supervision.
1930.106–1930.107 [Reserved]
1930.108 Extent of borrower management.
1930.109 Extent of FmHA supervision.
1930.110 Methods of supervision.
1930.111–1930.112 [Reserved]
1930.113 Borrower responsibilities.
1930.114–1930.116 [Reserved]
1930.117 Agency responsibilities
1930.118 [Reserved]
1930.119 Supervisory visits, compliance review, and inspections.
1930.120–1930.121 [Reserved]
1930.122 Borrower accounting methods, management reporting, and audits.
1930.123 Annual review.
1930.124 [Reserved]
1930.125 Changing project designation.
1930.126–1930.127 [Reserved]
1930.128 LH grants.
1930.129 RHS loans.
1930.130–1930.133 [Reserved]
1930.134 FmHA office records.
1930.135–1930.136 [Reserved]
1930.137 State Supplements, guides, forms and other issuances.
1930.138 Supervisory actions for distressed projects.
1930.139–1930.140 [Reserved]
1930.141 Materials to be provided borrower/applicant.
1930.142 Complaints regarding discrimination in use and occupancy of MFH.
1930.143 Delegation of responsibility and authority.
1930.144 Exception authority.
1930.145 Appeals.
1930.146–1930.149 [Reserved]
1930.150 OMB control number.


**Exhibits to Subpart C**


Exhibit A—Steps for Farmers Home Administration (FmHA) Personnel in Conducting Annual Review of Multiple Housing Operations
Exhibit A-1—Audit Report Review Guide
Exhibit B—Multiple Housing Management Handbook
Exhibit B-1—Management Plan Requirements for Farmers Home Administration Financed Multiple Family Housing (MFH) Projects
Exhibit B-2—Requirements for Management Agreements
Exhibit B-3—Sample Management Agreement for Farmers Home Administration Financed Multiple Family Housing (MFH) Projects
Exhibit B-4—Outline for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project
Exhibit B-5—Outline for Owner who Proposes Owner-Management of a Multiple Family Rental or Labor Housing Project
Exhibit B-6 Monthly and Quarterly Project Management Reports
Exhibit B-7—Annual Project Management Reports
Exhibit B-8—Miscellaneous Project Management Reports or Submittals
Exhibit B-9—Notice of Authorization to Withdraw and Use Reserve Funds
Exhibit B-10—Reserve Account Tally
Exhibit B-11—Equal Housing Opportunity Logotype (Required for Project Sign)
Exhibit B-12—Farmers Home Administration Logotype (Optional for Project sign)
Exhibit B-13—International Symbol of Accessibility (Required for Handicap Parking Space and along Handicap Accessibility Route)
Exhibit B-14—Sample Waiting List
Exhibit C—Rental and Occupancy Charge and/or Utility Allowance Changes
Exhibit C-1—Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change
Exhibit C-2—Notice of Approved Rent (Occupancy Charge) and Utility Allowance Change
Exhibit D—Energy Audit
Exhibit D-1—Calculation of Financial Impact (Energy Audit)
Exhibit E—Rental Assistance Program
Exhibit F—Farmers Home Administration Multiple Family Housing Supervisory Visit—Pre-Visit Worksheet
Exhibit F-1—Suggested Random Sampling Technique for Tenant Reviews
Exhibit F-2—Suggested Format for a Pre-Visit Tenant Contact Letter
Exhibit G—Farmers Home Administration Multiple Family Housing Supervisory Visit—Summary of Findings
Exhibit G-1—Farmers Home Administration Multiple Family Housing Supervisory Visit—Tenant File Review
Exhibit G-2—Farmers Home Administration Multiple Family Housing Supervisory Visit—Tenant Interview and Unit Review
Exhibit H—Interest Credits on Insured Rural Rental Housing and Rural Cooperative Housing Loans
Exhibit H-1—Example of Interest Credit Determination for Rural Rental Housing or Rural Cooperative Housing Projects (Plan II)
Exhibit I—Rural Rental Housing Loans and the Housing and Urban Development Section 8 Rental Certificate and Rental Voucher Programs (Existing Units)
Exhibit J—Management of Congregate Housing and Group Homes


### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

**§1930.101 General.**

This subpart prescribes the policies, authorizations, and procedures for management and supervision of all of the following Farmers Home Administration (FmHA) Multiple Family Housing (MFH) loan and grant recipients:

(a) Farm Labor Housing (LH).

(b) Rural Rental Housing (RRH) including congregate housing.

(c) Rural Cooperative Housing (RCH).

(d) Rural Housing Site Loans (RHS).

(e) Special provisions and exceptions.

(1) Unless otherwise specified in this subpart and except for Exhibit C of this Subpart, individual type RRH borrowers who were not required by program regulation to execute a loan agreement are exempted from the requirements of this subpart as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA. However, these borrowers must provide evidence of tenant income

eligibility by properly completing Form FmHA 1944–8, "Tenant Certification," for each tenant as required by the Forms Manual Insert (FMI), except in LH situations where the tenant is not paying rent.

(2) The State Director may require any borrower determined to be in default of any program requirement, security instrument, payment, or other agreement with FmHA, or when otherwise failing to meet the program objectives, to comply with any appropriate section of this subpart to assure that the loan objectives are met.

(3) For RHS borrowers, the following sections of this subpart do not apply: §§1930.108, 1930.122, and 1930.141.

**§1930.102 Definitions.**

*Acceptable tolerance.* For the purpose of this subpart, acceptable tolerance means actual financial activity as expressed in numeric terms that is operating within plus or minus 5 percent of projected or forecasted estimates.

*Adviser to the board.* An individual or organization who will work with and provide guidance to a cooperative board of directors.

*Borrowers. Borrowers* means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations, and other organizations who have received a loan or grant from FmHA for LH, RRH, RCH, or RHS purposes.

*Consumer cooperative.* A corporation which is organized under the cooperative laws of a State or Federally recognized Indian tribe; will own and operate the housing on a cooperative basis solely for the benefit of the members; will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with Subpart E of Part 1944 of this chapter will not be considered gains or profits; and will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA permit, to others in special circumstances.

*FmHA. FmHA* means the United States of America acting through the Farmers Home Administration or FmHA's predecessor agencies.

*Governing body. Governing body* means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

*Management. Management* is the overall direction given by the borrower or the borrower's agent to meet the needs of the tenants or members, maintain the project, and provide sound and economical project operation.

*Member.* A person who has executed documents pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

*Occupancy agreement.* A contract setting forth the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing.

*Office of the General Counsel (OGC). OGC* means the Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney in the field office of the Office of the General Counsel of the United States Department of Agriculture (USDA).

*Office of Inspector General (OIG). OIG* means the Office of Inspector General of the USDA.

*Patronage capital refund.* Amounts received by the cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

*Project.* A project is the total number of rental housing units that are operated under one management plan with one loan agreement/resolution. (The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project under §1965.68 of subpart B of part 1965 of this chapter.)

*Servicing Office.* The FmHA office designated by the State Director to service MFH accounts.

*Servicing Official.* The individual who by job description or other qualification is designated by the State Director with delegated responsibility to service MFH accounts.

*State Director.* For the purpose of this subpart, State Director also includes the Rural Housing Chief, Multiple Family Housing Coordinator, Rural Housing Specialist, and other qualified State staff when delegated responsibilities under this subpart according to §1930.143 and the provisions of FmHA Instruction 2006–F, (available in any FmHA office).

*Supervision. Supervision* includes the broad scope of FmHA guidance available to assist borrowers to carry out the objectives of the loan and comply with FmHA regulations.

**§1930.103 Nondiscrimination assurance.**

All management and supervision actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or handicap. Borrowers, tenants and cooperative members must possess the legal capacity to enter into a legal contract. The provisions of subpart E of part 1901 of this chapter enforcing title VI of the Civil Rights Act of 1964, as amended, along with other similarly worded statutes will be complied with.

**§1930.104 Reasonable accommodations.**

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations would afford an individual with a handicap equal opportunity to use or continue to use and enjoy a dwelling unit, including public and common use areas.

(b) It shall be unlawful for any person to refuse to permit, at the expense of an individual with a handicap, reasonable modifications of an existing unit, occupied or to be occupied by an individual with a handicap, if the proposed modifications may be necessary to afford the individual with a handicap full enjoyment of the dwelling unit.

**§1930.105 Objective of management and supervision.**

(a) The primary objective of management and supervision is to provide effective supervision to each borrower to accomplish the objectives of the loan or grant.

(b) To provide effective supervision, FmHA will assure that the borrower's management plan accomplishes the following:

(1) Provide proper and efficient management policies as prescribed in exhibit B of this subpart.

(2) Comply with loan and grant agreements.

(3) Repay loans on schedule.

(4) Maintain security property.

(5) Protect the interests of FmHA.

(6) Operate facilities according to State and local laws and regulations.

(7) Maintain accounts and records.

(8) Submit reports and audits.

(9) Process rent and occupancy charge changes according to exhibit C of this subpart.

(10) Operate the facilities according to Equal Opportunity requirements of title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(11) Maintain facilities and premises that are free of illegal controlled substances.

(12) Collect and remit any occupancy surcharges as applicable.

§§ 1930.106–1930.107 [Reserved]

§ 1930.108 Extent of borrower management.

According to exhibit B of this subpart, the borrower and/or the borrower's agent will develop a management plan for each project that describes the scope of property management needed to maintain program objectives. When the management is from other than the borrower, a management agreement will be used to define the responsibilities of the management agent. Initial, modified and/or replacement management agreements will be approved by authorized FmHA officials. A sample management agreement is provided in exhibit B–3 of this subpart.

§ 1930.109 Extent of FmHA supervision.

The objective of FmHA supervision is to guide and advise borrowers and their designated representatives in their quest to meet MFH program objectives, goals, and obligations, not to direct the borrower's activity. Supervision does not relieve borrowers of their own responsibilities and obligations. Supervision starts with the first contact by the applicant and continues as long as any loan balance remains outstanding. In the case of a grant, supervision continues until the requirements of the grant agreement have been fulfilled. Supervision of borrowers is a primary responsibility of the Servicing Official; however, additional supervision and guidance will be given by the State Director and/or other appropriate members of the State Office staff. Security servicing actions will be handled according to subpart B of part 1965 of this chapter.

§ 1930.110 Methods of supervision.

Supervisory methods used by FmHA employees include organizational and development planning; property management planning; affirmative marketing; construction conferences; long-term, annual, and other periodic planning and evaluation; accounts, budgets, and records inspections and guidance; project inspections; attendance at membership and governing body meetings; periodic group meetings with borrowers; analysis of accounting, budgets, and audit reports; guidance by memorandums; and similar activities. Supervision of cooperative borrowers will include coordination with the adviser to the board. Supervision of grant-only recipients will consist of at least the reviews and inspections outlined in § 1930.119 of this subpart.

(a) *Applicants.* Prior to loan or grant closing, supervision will largely be conducted during conferences and meetings with prospective borrowers and their various representatives such as applicant's attorney, architect, property manager, etc. Examples of supervision include:

(1) Organizational meetings to discuss needs, services available, owner obligations, and to establish organizational committees.

(2) Preapplication and application conferences.

(3) Preconstruction conferences to reach an understanding regarding responsibilities and the manner in which development will be performed. The applicant at this point should be made fully aware of the responsibilities detailed in § 1930.103 of this subpart.

(4) Preloan and/or grant closing conferences to review requirements of the loan resolution or agreement, closing requirements, and management plan and to establish responsibilities for the operation of the project. The applicant at this point should be made fully aware of the responsibilities entailed in § 1930.103 of this subpart.

(5) Preoccupancy conferences to review the management plan, marketing plan, and the general readiness of project facilities, recordkeeping systems, renting or occupancy procedures, and personnel assignments to begin project operation. This conference will be conducted according to § 1944.235 (h) of subpart E of part 1944 of this chapter.

(b) *Borrowers who have yet to demonstrate their ability and borrowers with problems.* When the borrower is establishing its operations, or when borrowers are delinquent, or have other difficulties, supervisory guidance will include:

(1) Implementation and/or review for compliance with the management plan.

(2) Establishment and maintenance of a financial recordkeeping and reporting system.

(3) Compliance with the requirements of the loan agreement or loan resolution.

(4) Review of annual audit and budget requirements.

(5) Any other supervision that may be necessary to assure effective and successful operation of the project.

(6) A requirement that the borrower contract with a management firm with proven background and/or experience in property management. In the case of cooperative housing, this stipulation will apply only when it has been determined that the cooperative is unable to manage itself.

(c) *Borrowers who have demonstrated ability.* Supervision will consist of at least an annual review of budgets and other management reports according to § 1930.122, and a triennial supervisory visit according to § 1930.119 of this subpart when the borrower is:

(1) Successful in completing a first full fiscal year of operation.

(2) Current with loan payments.

(3) In compliance with other loan or grant requirements.

(4) Maintaining the security in a satisfactory manner.

(5) Otherwise progressing satisfactorily.

§§ 1930.111–1930.112 [Reserved]

§ 1930.113 Borrower responsibilities.

Borrower responsibilities are described in paragraph III of exhibit B of this subpart.

§§ 1930.114–1930.116 [Reserved]

§ 1930.117 Agency responsibilities.

Effective supervision requires FmHA employees to be familiar with the various types of borrowers and their management plan; to communicate effectively with borrowers and their management agent, when applicable; and to provide guidance in the operation and management of MFH projects.

(a) *Servicing Official.* Servicing Officials are responsible for effective borrower supervision. Servicing Officials will:

(1) Organize their work and the work of their staffs in order that time is used effectively in providing borrower supervision and place emphasis on supervisory visits and review of borrower management reports.

(2) Emphasize to the borrower and/or the borrower's management agent that they, not FmHA, are responsible for managing the project, planning and following budgets within acceptable tolerance, collecting rents or occupancy charges, repaying the loan on schedule, budgeting for adequate project operations and maintenance; and for compliance with any loan or grant agreement or resolution, State laws, and other FmHA requirements.

(3) Monitor all provisions or conditions of the FmHA approval documents to ensure that they are fully complied with throughout the life of the project.

(4) Monitor the borrowers' compliance with FmHA regulations concerning real property tax, insurance, bonding, security, budgeting, and reporting requirements.

(5) Systematically monitor response to OIG report findings at specific intervals and/or during routine supervisory visits, compliance reviews, and physical inspections.

(6) Assure that borrower financing statements are continued and not allowed to lapse.

(7) Have each borrower designate a representative to serve as its contact source for Agency communication on project related matters.

(8) Become familiar with the borrower's bylaws or other rules and regulations when necessary to assure compliance with FmHA program civil rights and Fair Housing Act requirements.

(9) Provide borrower governing bodies with suggestions for information distribution that may be helpful in keeping the membership in touch with activities to increase and maintain membership interest.

(10) Provide informed advice and guidance to borrowers as needed.

(11) Identify problem borrower accounts and initiate servicing plans including workout agreements with the borrower according to Exhibit F of Subpart B of Part 1965 of this chapter.

(12) Gather, maintain, analyze, and distribute a database of actual MFH operation and maintenance expense for determination of expense reasonableness that reflects variables of project operation and characteristics.

(13) Avoid doing any of the following:

(i) Try to run the borrower's business.

(ii) Take charge of the borrower's meetings.

(iii) Attempt to supervise the borrower only through its attorney, architect, or management agent.

(iv) Presume that projects without adverse complaints do not require monitoring and/or supervision by FmHA.

(b) *State Director.* State Directors will:

(1) Coordinate and direct supervisory activities related to borrowers and perform other functions as prescribed by this subpart.

(2) Provide guidance and leadership to assure that the State staff and Servicing staff thoroughly understand and carry out their responsibilities.

(3) Develop and conduct training programs necessary to assure that FmHA personnel are kept up-to-date regarding the most effective supervisory methods, that the proper time is allotted to supervision, and that borrowers receive adequate supervision and financial counseling.

(4) Establish and maintain a system to monitor followup to findings in OIG reports, supervisory visits, compliance reviews, physical inspections, or other factual sources.

(5) Maintain necessary liaison with the OGC.

(6) Maintain necessary liaison with State and local authorities, agencies, and other organizations. For example, in the case of projects benefiting the elderly, it is essential that liaison be maintained with the aging network such as State and Area Agencies on Aging to assure that available support services are offered to or accessible by the tenants.

(7) Maintain and update State Office records for effective program supervision and evaluation.

(8) Assist the Servicing Official in developing a realistic plan to resolve project operational problems.

(c) *State staff.* State staff members who are designated by the State Director as MFH Servicing Officials responsible for supervision of borrowers covered by this subpart will:

(1) Continuously monitor supervisory and account servicing activities and borrower status to assure that each project is receiving timely and effective supervision.

(2) Train staff to effectively perform the required supervisory and account servicing activities, and to provide informed guidance in sound operation and management policies. The assistance of the aging network such as State and Area Agencies on Aging should be sought in connection with training which pertains to the management of services to the elderly.

(3) Post review closing of loans and grants to determine that they have been properly closed.

(4) Visit a sufficient number of projects to assure that proper supervision and account servicing is being provided.

(5) Assemble, analyze, and distribute a statewide database of actual MFH operation and maintenance costs for determination of cost reasonableness that reflects variable characteristics of project operation.

**§ 1930.118 [Reserved].**

**§ 1930.119 Supervisory visits, compliance reviews, and inspections.**

(a) *Purpose.* Servicing Officials and other FmHA authorized persons will visit the MFH project site, including the management office, as necessary to accomplish the objectives of the loan or grant. Following are the major purposes for which visits may be made:

(1) To assist with satisfactory development of the project.

(2) To evaulate the management program of the project pursuant to exhibit B of this subpart, such as:

(i) Adherence to the management plan.

(ii) Compliance with the management agreement when applicable.

(iii) To review compliance with the Affirmative Fair Housing Marketing Plan and/or the Equal Opportunity requirements of title VI of the Civil Rights Acts of 1964, the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(3) To review borrower records and verify required compliance and information, such as:

(i) Tenant or member eligibility.

(ii) Tenant or member income.

(iii) Tenant or member selection criteria.

(iv) Waiting lists.

(v) Rental or occupancy rates are in accordance with an FmHA approved budget.

(vi) Other necessary items.

(4) To inspect and ascertain proper maintenance and assure protection of the security for the FmHA loan.

(5) To determine if the project is being operated according to the approved budget.

(6) To determine that borrower and/or borrower's managment agent is fully complying with all provisions and conditions of the approval document regarding site development and use restrictions.

(7) In the case of all LH borrowers, including on-farm LH, to determine that the housing is serving domestic farm laborers, as defined by paragraph II of exhibit B of this subpart, and that the LH housing provided is decent, safe, and sanitary.

(b) *Frequency and standards.* Visits will be made as follows:

(1) Supervisory visits will be made as needed to assure compliance with FmHA policies and objectives. A Servicing staff person or other FmHA authorized person will perform a post rent-up or occupancy visit before the end of the first 90 days of operation; and a thorough supervisory visit no later than 12 months following the post occupancy visit, and at least every 36 months thereafter at each project.

(i) More frequent visits to delinquent or problem projects, irrespective of loan type, should be scheduled as needed.

(ii) In the case of borrowers with on-farm LH unit(s) or LH borrowers providing seasonal farm labor housing, such visits should be made during the season of occupancy and preferably during an annual farm visit.

(iii) Planned visits will be included in the monthly work calendar.

(iv) The visit shall be conducted with the borrower and/or the borrower's designated representative.

(v) Exhibits F, F–1, F–2, G, G–1, and G–2 of this subpart should be used to assist in the preparation, completion, and followup of visits.

(vi) For small rental projects consisting of only a few units (usually

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1 to 3), the degree of completion of exhibits F, G, G–1 and G–2 may be minimized. Supervisory visits to such projects are required only once every three years and should concentrate on tenant eligibility, income and adjustments to income verification, maintenance, insurance coverage, and status of loan payments.

(2) The Servicing Official or other FmHA authorized person will conduct an inspection of each project at least once every 36 months with the borrower, site manager, or designated representative present.

(i) This inspection may be made simultaneously with a supervisory visit scheduled in accordance with this section.

(ii) The results of the inspection will be documented on HUD Form 9822, "Report of Physical Condition and Estimate of Repair Costs," or a similar form for the same purpose may be used for this inspection.

(iii) Based on the Servicing person's knowledge, without further research, the estimated repair need and cost columns of the form will be completed during the inspection visit.

(c) *Preparation.* The person planning to make the visit and inspection will review the most recent quarterly or annual reports, the running records, correspondence, and other Servicing Office records to be fully aware of the supervisory needs of the project. This awareness should be developed into an informal visit plan and include, but not be limited to such things as: payment status, subsidy status, due dates of taxes and insurance, adequacy of fidelity coverage, and any known maintenance problems.

(d) *Notice of visit or inspection.* The management agent, or when applicable, the owner should receive a written notice of the scheduled visit or inspection from the Servicing Office 30 days before the event to insure that needed records and staff are available (see Guide Letter 1930–2 for borrower notification.)

(e) *Conducting visit or inspection.* The person making the visit or inspection should spend sufficient time at the project to accomplish the visit plan and any additional needs that are observed or brought out by the tenants, members, or management staff.

(f) *Recording, reporting and followup.* The preparation notes and results of each visit should be recorded on exhibits F, G, G–1 and G–2 of this subpart and filed in the borrower's servicing file. A letter highlighting any needed followup actions and a copy of the completed supervisory visit checklist will be directed to the management agent and/or the borrower within 30 days after the visit. Followup will continue through resolution of any problems. Any major problems with the project will be reported in writing to the State Director with recommendations for corrective action. Exhibit A to subpart A of part 1955 of this chapter or Form FmHA 1955–2, "Report on Real Estate Problem Case," may be used as appropriate.

(g) *Compliance reviews.* As authorized State or Servicing staff member or other FmHA authorized person will complete the Civil Rights and Fair Housing review requirements according to subpart E of part 1901 of this chapter. If initial rent-up or occupancy has not occurred by the time of initial review, a subsequent review will be due one year following initial occupancy and then every 36 months thereafter or in accordance with subpart E of part 1901 of this chapter.

**§§ 1930.120–1930.121 [Reserved]**

**§ 1930.122 Borrower accounting methods, management reporting and audits.**

It is the objective of FmHA that borrowers will maintain accounts and records necessary to conduct their operation successfully and from which they may accurately report operational results to FmHA for review, and otherwise comply with the terms of their loan agreements with the Agency. Borrower accounts and records will be kept or made available in a location within reasonable access for inspection, review, and copying by representatives of FmHA or other agencies of the U.S. Department of Agriculture authorized by the Department.

(a) *Accounting methods and records*—(1) *Method of accounting and financial statements.* Borrowers may choose a cash or accrual method of accounting, bookkeeping, and budget preparation as described in their project management plan, unless otherwise specified in a work-out plan as part of a servicing action. Balance sheets or statements of financial condition may be prepared reflecting the same accounting method, except that the accrual method of reporting financial condition will be used where the borrower is required to submit an annual audit.

(2) *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall incorporate a description of its method of accounting, bookkeeping, budget preparation, and reporting of financial condition and, when applicable, plans for auditing, in the project management plan that must be approved by FmHA.

(3) *Records.* Form FmHA 1930–5, "Bookkeeping System-Small Borrower," may be used by small organizations as a method of recording and maintaining accounting transactions. Automated systems may be used if they meet the conditions of paragraph XVI of exhibit B of this subpart.

(4) *Record retention.* Each borrower shall retain all financial records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA, the OIG, the Comptroller General, or to their representatives.

(b) *Management reports and review processes.* The objective of management reports and review processes is to furnish the management and FmHA with a means of evaluating prior decisions and to serve as a basis for planning future operations and financial conditions. Timely reports and their review furnish necessary information to make sound management decisions. All reports will relate only to the FmHA financed project and borrower entity. Separate reports will be prepared and submitted for each project owned by the same borrower. Forms necessary in making the required reports may be requested from FmHA. The various review processes described in this paragraph are illustrated at § 1930.123 (i) of this chapter.

(1) *Annual budget and utility allowance*—(i) *Objective.* It is the objective of FmHA that project budgets and/or utility allowances be prepared, reviewed, and approved in such manner and timing that the approved budget and/or utility allowance, including any authorized changes to same, become effective on the beginning of a fiscal year of project operation.

(ii) *Documents.*

(A) The annual project budget will be prepared on Form FmHA 1930–7, "Multiple Family Housing Project Budget," by the borrower or its agent following the instructions on the form. It will reflect budget planning for a 12 month fiscal year. Figures in the "actual" column will reflect at least 9 months of actual fiscal year activity and no more than 3 months of estimated activity for the balance of the same fiscal year based on recent actual experience.

(B) When tenants pay their own utilities, the housing allowance for utilities and other public services will be prepared on exhibit A–6 to subpart E of part 1944 of this chapter. Exhibit A–6 will be prepared by the borrower or its agent following instructions attached to the exhibit and will be submitted to FmHA together with Form FmHA 1930–

7 with justification to either retain or change the utility allowance.

(iii) *Supporting data.* Any data, justification, or other documentation required by the instructions for preparation of Form FmHA 1930–7 and exhibit A–6 to subpart E of part 1944 of this chapter, or otherwise required by the Servicing Official on an individual case basis, shall be attached to the respective document when submitted to the Servicing Office.

(iv) *Due date.* The borrower can submit the necessary documents as soon as 9 months of current fiscal year actuals are available, but in sufficient time to meet the objective stated in (b)(1)(i) of this section. The Servicing Official needs 15 to 30 days to review project budgets and utility allowances when no changes of rents, occupancy charges, or utility allowances are needed. When such changes are needed, the borrower needs to submit documents to allow sufficient time for review and proper notice of change to tenants or members.

(v) *FmHA review.* Form FmHA 1930–7 and Exhibit A–6 to subpart E of part 1944 of this chapter and any attachment will be reviewed by the Servicing Office as part of the rental or occupancy charge/utility allowance change review and/or annual review process.

(2) *Rental or occupancy charge budget and/or utility allowance change—(i) Objective.* It is the objective of FmHA that changes to project rental or occupancy charges and/or utility allowances be incorporated into the annual budget review and planning process in such manner and timing that authorized changes become effective at the beginning of a fiscal year of project operation.

(ii) *Documents.* When a rental or occupancy charge and/or utility allowance change is proposed, the borrower or its agent will prepare and submit Form FmHA 1930–7 and exhibit A–6 to subpart E of part 1944 of this chapter and any supporting attachments following the instructions for either document.

(iii) *Standards and timing.* (A) The policies and procedures governing rental or occupancy charge and/or utility allowance change are contained in exhibit C of this subpart, (available in any FmHA office or the "Borrower Handbook" made up of selected exhibits of this Subpart and parts of this chapter).

(B) To meet the projected effective date of change, the necessary documents need to be received by the Servicing Official at least 75 days ahead of the effective date of change to allow FmHA review to authorize a 60 day notice to tenants or members of an impending change. The "actual" column of Form FmHA 1930–7 shall contain actual data for the fiscal year to date plus the projection of expected data for the remainder of the fiscal year. This projection should cover a period not exceeding 90 days. The same supporting data standards of paragraph (b)(1)(iii) of this section will apply.

(C) Should the borrower need to request a rental or occupancy charge and/or utility allowance change at some time other than described in paragraph (b)(2)(iii)(B) of this section, e.g., mid-fiscal year, Form FmHA 1930–7 shall reflect the project's financial needs for the next 12 months of operation and the "actual" column shall reflect the most recent 12 months of actual data. The previous fiscal year's audit report, or Form FmHA 1930–8, "Multiple Family Housing Borrower Balance Sheet," as appropriate, shall be submitted with the change request if it was not previously submitted to the Servicing Office.

(iv) *FmHA review.* Exhibit C of this subpart shall govern FmHA review of the borrower's request for rental or occupancy charge and/or utility allowance change.

(3) *Quarterly report—(i) Objective.* The objective of FmHA is for quarterly reports to provide a monitoring means for borrowers and FmHA to mutually check a borrower's progress in achieving program objectives and when applicable, meeting servicing goals.

(ii) *Document.* Form FmHA 1930–7 will be used by borrowers to prepare the quarterly report.

(iii) *Standards.* Form FmHA 1930–7 will be completed following the instructions on the form for preparation of a quarterly report. The quarterly report shall be required upon commencement of any of the following situations:

(A) Start up of initial occupancy after completion of new construction or substantial rehabilitation.

(B) Reamortization, transfer of an existing project loan or a 100 percent membership change.

(C) Failure to make a scheduled loan payment, failure to maintain required transfers to the reserve account, or failure to maintain reserve accounts at authorized current levels.

(D) Existence of reasons stated in paragraph (b)(3)(iv)(B) of this section when quarterly reports will suffice in place of monthly reports.

(iv) *Frequency and discontinuance—* (A) *Quarterly reports.* Quarterly reports shall be prepared and submitted for each quarter year at least through the first year of operation for any situation described in paragraph (b)(3)(iii) of this section and each quarter year thereafter for new or existing projects until discontinuance is authorized by the Servicing Official. The Official will evaluate the following in reaching a decision to discontinue:

(*1*) An adequate accounting system is functioning properly, is kept current, and the most recent required annual financial reports are complete and have been submitted to the Servicing Office.

(*2*) Project loan payments to FmHA are on schedule.

(*3*) The project reserve account is ahead or on schedule, allowing for authorized expenditures or authorized reduction in funding as set forth in an approved servicing plan or budget.

(*4*) The annual review has been completed by the Servicing Office and the annual audit, or verification of review when appropriate, has been found acceptable.

(*5*) The Servicing Official has inspected the project, reviewed project operations, and found them acceptable. When this and the preceding determinations are made, a letter of discontinuance of the quarterly report shall be sent to the borrower or its agent with a copy sent to the State Director.

(B) *Monthly reports.* Preparation and submission of the reports described in this paragraph may be required monthly at the option of the Servicing Official, rather than quarterly, when warranted in unusual situations.

(*1*) This requirement may be invoked when determined essential by the Servicing Official as part of a servicing plan made in accordance with exhibit F of subpart B of part 1965 of this chapter (available in any FmHA office).

(*2*) Reasons for invoking the reporting requirement on a monthly basis may include, but not be limited to, factors such as apparent violations of policy or reporting practices, audit findings, sudden increases of vacancy and/or accounts payable or receivables, or other evidence of weak financial condition.

(v) *Due date.* Quarterly (or monthly) reports shall be due in the FmHA Servicing Office by the 20th day of the month immediately following the close of the respective reporting period.

(vi) *FmHA review.* (A) The Servicing Official will review the reports for year-to-date status of project operations. When reports reveal actual data that exceeds acceptable tolerance from a forecasted budget SUBTOTAL item, or vacancies and accounts receivable and/or payable are increasing, the Servicing Official will initiate verbal and/or written dialogue with the borrower for further resolution of problems or to otherwise achieve acceptable progress.

(B) The Servicing Official will complete the FmHA review and forward the borrower's report and any related documentation to the State Director by the 30th day of the month following close of the reporting period.

(C) If the borrower fails to submit its report by the due date, this fact will be reported to the State Director by the 30th day of the month following the close of the reporting period; otherwise, the Servicing Office will complete its review of a submitted report no later than 10 calendar days following receipt of the borrower's report.

(4) *Annual audit reports and verifications of review*—(i) *Documents and general standards*—(A) *Annual audit report.* An audit report will be in the format as prepared by a Certified Public Accountant (CPA) or Licensed Public Accountant (LPA), provided the LPA was licensed on or before December 31, 1970.

(1) All audits are to be performed in accordance with generally accepted government auditing standards, as set forth in "Government Auditing Standards" (1988 Revision), established by the Comptroller General of the United States, and any subsequent revisions (this publication is commonly referred to as the "Yellow Book" or "General Accounting Office Standards"). In addition, the audits are also to be performed in accordance with applicable portions of various Office of Management and Budget (OMB) Circulars, Departmental Regulations, parts 3015 and 3016 of chapter XXX of title 7, and the FmHA Audit Program as specified in separate sections of this subpart.

(2) An audit report is required for any project with 25 or more units unless the State Director or Servicing Official determines that a project with 24 or fewer units requires an audit for reasons of good cause. Such reasons include, but are not limited to, situations where project records are incomplete or inaccurate, or it appears that the borrower has not adequately accounted for project funds, or where the borrower's operation consists of multiple projects where each project is 24 or fewer units (with subsidiary reports prepared for each project).

Note: The State Director or Servicing Official may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.

(3) The project audit report should cover the borrower entity and the expense for preparation of the audit report may include the auditor's preparation of any Internal Revenue Service (IRS) required borrower entity reports, i.e., Schedule K1 (IRS Form 1065), "Partner's Share of Income, Credits, Deductions, etc.".

(4) The CPA or LPA auditor who prepares the audit report may not be an individual or organization that is associated with the borrower in any manner, other than the performance of the audit review and preparation of the project audit report and required IRS reports, that creates an identity of interest or possible conflict of interest (as described in paragraph V B of exhibit B of this subpart). For example, the CPA or LPA auditor may not be an employee of the borrower or an employee of any officer of the organization, nor be an employee of any member, stockholder, partner, principal, or have any ownership or other interest in the borrower organization.

(5) The State Director or Servicing Official may authorize the initial audit report to cover a period up to 18 months for new projects whose first operating year does not exceed 6 months.

(6) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one successive year in a specific case providing: The borrower submits a written request; the FmHA approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of an audit would increase the monthly per unit rental rate by more than $4.00; and the required reports, including a CPA or LPA prepared audit, were properly submitted for the prior year's project operations.

(B) *Verification of review.* Form FmHA 1930–8 will be prepared by a competent person qualified by education and/or experience who has no identity of interest or possible conflict of interest with the borrower or its principals. However, in the case of a nonprofit institution, the verification of review may be made by a committee of the membership but may not include any officer, director or employee of the borrower.

(1) Form FmHA 1930–8 will be used for the verification of review of project accounts and the review verifier will also review the actual data on Form FmHA 1930–7 for projects with 24 or fewer units unless the requirements of paragraph (b)(4)(i)(A)(1) of this section are invoked by the State Director or Servicing Official.

(2) The State Director or Servicing Official may authorize the initial verification of review to cover a period of up to 18 months for a new project whose first operating year was less than 6 months.

(C) *Project operating budget actuals.* An annual report of actuals for the full operating year will be submitted by the borrower, or its agent, using Form FmHA 1930–7. The report will reflect the actual income and expenses for the project for the borrower's 12 month operating year. The report will be submitted with the annual audit report or Form FmHA 1930–8, as appropriate.

(D) *Form FmHA 1930–10, "Annual Multiple Family Housing Project Review."* When the annual audit report or verification of review is received by the Servicing Office, parts II C and D of Form FmHA 1930–10 may be prefilled to the extent possible to record previous year status as reported in the audit report or verification of review. The Form FmHA 1930–10 will be completed later as described in § 1930.123 (e)(2) and (i) of this subpart.

(E) *Fraud, abuse, and illegal acts.* If the review verifier becomes aware of any indication of fraud, abuse or illegal acts in FmHA financed projects, prompt written notice shall be given to the appropriate USDA OIG Regional Inspector General and the Servicing Official.

(ii) *Specific standards*—(A) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart, subpart I of 7 CFR part 3015, and OMB Circular A–128, with copies of the audit being forwarded by the borrower to the Servicing Official and the appropriate Federal cognizant agency, if applicable. For guidance in meeting these requirements, the auditor may refer to the American Institute of Certified Public Accountants Audit and Accounting Guide for "Audits of State and Local Governmental Units." The term "Federal financial assistance" used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(1) *Cognizant agency.* (*i*) "Cognizant agency" means the Federal agency assigned by OMB Circular A–128. Within USDA, the USDA OIG shall fulfill cognizant agency responsibilities.

(*ii*) Cognizant agency assignments. Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted.

(2) *Audit standards.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the

audit work should be done in conjunction with those audits.

(*i*) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128.

(*ii*) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128 or in accordance with the FmHA Audit Program. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with the FmHA Audit Program, the audit shall be in accordance with paragraph (b)(4)(ii)(C) of this section.

(*iii*) State and local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from compliance with OMB Circular A–128 and the FmHA Audit Program. These State and local governments and Indian tribes shall be governed by audit standards prescribed by State and local law or regulation.

(*iv*) Public hospitals and public colleges and universities may be excluded from OMB Circular A–128 audit standards. If such entities are excluded, audits shall be made in accordance with paragraph (b)(4)(ii)(B) of this section.

(*v*) Indications of fraud, abuse, and illegal acts shall be processed in accordance with paragraph (b)(4)(i)(E) of this section.

(B) *Nonprofit institutions.* These organizations are to be audited in accordance with this subpart, subpart I of 7 CFR Part 3015, and OMB Circular A–133, with copies of the audit being forwarded by the borrower to the Servicing Officer and the appropriate Federal cognizant agency, if applicable. The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(*1*) *Cognizant agency.* See paragraph (b)(4)(ii)(A)(*1*) of this section.

(*2*) *Audit standards.* (*i*) Nonprofit institutions that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with the provisions of OMB Circular A–133. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program in accordance with paragraph (b)(4)(ii)(C) of this section. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution will be required to conduct audits for those programs in accordance with paragraph (b)(4)(ii)(C) of this section.

(*ii*) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–133 or in accordance with the FmHA Audit Program. If the election is made to have an audit performed in accordance with the FmHA Audit Program, the audit shall be performed in accordance with paragraph (b)(4)(ii)(C) of this section.

(*iii*) Nonprofit institutions receiving less than $25,000 a year in Federal financial assistance are exempt from Federal audit standards, but records must be available for review by appropriate officials of FmHA.

(*3*) Indications of fraud, abuse and illegal acts shall be processed in accordance with paragraph (b)(4)(i)(E) of this section.

(C) *FmHA Audit Program.* For-profit organizations and other entities referred to this paragraph by paragraphs (b)(4)(ii)(A) and/or (B) of this section, audits will be performed under the guidance of the audit guide entitled "U.S. Department of Agriculture, Farmers Home Administration-Audit Program" (available in any FmHA office).

(iii) *Due date.* (A) Annual audit reports and verifications of review, as appropriate, and Form FmHA 1930–7 with 12 months of project operation actuals are due in the Servicing Office no later than 90 days following the close of the project fiscal year.

(B) If the audit or verification of review cannot be submitted by the due date, and the owner presents a request for extension supported by evidence that delay is at the request of the auditor, and the request has a reasonable explanation of why an extension of the due date is needed, the Servicing Officer may authorize up to a 30-day extension of the due date.

(C) If an explanation is not forthcoming from the auditor, or the explanation received is without good reason, or the Servicing Official otherwise suspects fiscal difficulty, the Servicing Official may request the borrower to submit to the Servicing Office for review, the project bank statements for the general operating, reserve, and investment accounts covering the most recent 60 day period.

(D) If the borrower fails to submit the requested bank statements by the date stipulated by the Servicing Official, the Servicing Official will immediately refer the matter to the OIG.

(iv) *FmHA review.* An audit report or verification of review will be reviewed by the Servicing Official within 60 days following receipt of the audit report or verification of review. From this annual audit review process, the Servicing Official will initiate action on findings and concerns needing immediate attention. Those findings and concerns not needing immediate action will be considered in the next budget planning and annual review process at the end of the fiscal year for implementation in the following fiscal year of project operation.

(5) *Miscellaneous management reports.* These reports include, but are not limited to, the following items that provide additional or unique information that augment or otherwise support other management reports described in this section:

(i) *Documents and formats*—(A) *Minutes of annual meetings.* Written record of annual meeting of organizational borrowers who, by their organizational charter, are required to maintain such written records.

(B) *Energy audit.* Prepared according to the guidance of exhibit D of this subpart. Energy audits, including implementation plans for energy conservation, are prepared and submitted on 5-year cycles.

(C) *Miscellaneous items.* These include other written or electronically stored data or information such as financial or income/expense data, justification statements, or other technical or informative material that stands alone or supports other managements reports described in this section, whether volunteered by the borrower or requested by the Servicing Official.

(ii) *Due date.* Annual minutes and miscellaneous items are due along with the report they are attached to as supporting documentation. New energy audits are due with the next submission of Form FmHA 1930–7 following expiration of the old energy audit.

(iii) *FmHA review.* FmHA review of miscellaneous management reports will coincide with review of the management report that each is attached to as documentation.

**§1930.123 Annual review.**

(a) *Objective.* The objective of the annual review is for the FmHA Servicing Official to determine the degree and adequacy of the borrower's achievement of operational compliance with the applicable FmHA loan and/or grant agreements and to provide followup consultation or supervision to

the borrower in meeting program objectives.

(b) *Annual review process.* During the annual review process, the Servicing Official will consider the overall project financial and operational activity. Project strengths and weaknesses will be identified, based on review of various documents, and resultant conclusions will be incorporated into the annual budget planning process that should happen concurrently with the annual review process.

(c) *Documents used in the review.* (1) Form FmHA 1930–7.

(2) Exhibit A–6 of subpart E of part 1944 of this chapter.

(3) Prior fiscal year annual audit report as prepared by a CPA or LPA, or when applicable, Form FmHA 1930–8 prepared by a review verifier accompanied by Form FmHA 1930–7 with actual income and expense data.

(4) Exhibit A–1 of this subpart prepared in conjunction with the prior year annual audit report.

(5) Applicable attachments required as part of any of the above documents (or other information as volunteered by the borrower or specifically requested by the FmHA Servicing Officer for the review at hand).

(6) Minutes of annual meeting for association type borrowers.

(7) Current energy audit with energy conservation implementation plan (from FmHA borrower casefile except when new energy audit is due with Form FmHA 1930–7).

(8) Latest supervisory visit and physical inspection of property reports (from FmHA borrower casefile).

(d) *Preparation for the annual review.* Some documents needed are available in the borrower's casefile and the balance needed will be submitted with the annual budget review request. Therefore, annual review should occur within 30 days of receipt of all necessary documents. This should result in annual reviews being completed in the last 2 months of a fiscal year or the first 2 months of the next fiscal year. When determined necessary, the Servicing Officer should:

(1) Notify the borrower of the required management reports and their due dates, and provide the borrower with necessary guides and forms for use in preparing the reports.

(2) With a new nonprofit borrower organization, determine that the borrower is properly planning for its annual meeting for the correct date according to its organizational documents. The Servicing Official should plan to attend the annual meeting unless the borrower has progressed as described in § 1930.110(c) of this subpart.

(e) *Timing, conducting, and completing the review.* (1) The annual review process will be scheduled and performed concurrently with the budget planning process, normally in the last quarter of a project fiscal year (see illustration in paragraph (i) of this section). This process will occur separately from the annual audit review process (which will occur following close of a project fiscal year).

(2) The Servicing Official will use the applicable resource documents listed above when performing the review. The Servicing Official will conduct the annual review following the review and recording guidance of Form FmHA 1930–10. The Form FmHA 1930–10 will be completed during the prescribed last quarter review period.

(3) The Servicing Official may invite the borrower or its agent to participate in any part of the annual review.

(f) *Distribution of reviewed documents.* (1) A copy of the results of the annual review on Form FmHA 1930–10 along with recommendations or compliance requirements will be sent to the borrower and/or its agent and to the State Director as soon as the review is completed.

(2) The individual items required to perform the annual review will be distributed according to appropriate FMI's as listed on exhibit B–7 of this subpart.

(g) *State Director's review of annual reviews.* Upon receipt of the items identified in this section, the State Director will:

(1) Review all submissions of Form FmHA 1930–10 that are used by the Servicing Official to record summary results of an annual project review.

(2) Conduct a more detailed review of only those annual reviews that warrant further review. The State Director should provide summarized comment to Servicing Officials after completion of statewide review, otherwise the State Director will comment on any specific borrower and/or project annual review selected for further review.

(3) Will review Form 1930–7 and exhibit A–6 of subpart E of part 1944 for approval when the authority to approve budgets as part of the annual review is not delegated to the FmHA Servicing Official.

(4) Be prepared for a sample review of annual reviews by the National Office upon request during a combined assessment review or other specific need.

(h) *On-farm LH annual review.* For individual farm borrowers with on-farm LH unit(s), the objective of this section will be satisfied by completing the recordkeeping and reporting requirements of their farm and home planning with FmHA as outlined in subpart D of part 1944 of this chapter.

(i) *Illustration of MFH budget planning, annual review, and annual audit review cycles.*

| Items on hand during fiscal year | Last quarter of fiscal year | First quarter of next fiscal year | Second quarter | |
|---|---|---|---|---|
| Management Reports/Items in borrower casefile.<br>—Previous fiscal year annual audit or Form FmHA 1930–8 ..... | *Budget Planning Process*—Form FmHA 1930–7 & util. allowance Review change or no change of rents or occupancy charges and/or utility allowance. | Annual audit preparation by auditor *or* Form FmHA 1930–8 by verifier. | FmHA review of annual audit or Form FmHA 1930–8.<br>60-day review period ..... | File annual audit or Form FmHA 1930–8 for next budget planning & annual review process. |
| —Exhibit A–1<br>—Latest supervisory visit/ inspection. | FmHA starts annual review process. | Form FmHA 1930–7 showing 12 months of project operating actuals submitted by borrower. | FmHA completes annual review process. | |
| —Energy audit & implementation plan. | —Form FmHA 1930–7 | ..... | ..... | |
| —Compliance review .....<br>—Management Plan .....<br>—Management Agreement | —Review project financial and management reports. | ..... | FmHA may pre-fill parts II C and D of Form FmHA 1930–10. | |

| Items on hand during fiscal year | Last quarter of fiscal year | First quarter of next fiscal year | Second quarter | |
|---|---|---|---|---|
| —Identity of Interest Disclosure Certification Memorandum. | FmHA completes Form FmHA 1930–10. | ..... | Take immediate action on significant items found in the Audit Review. | |
| Other—as applicable. | | | | |

**§ 1930.124 [Reserved]**

**§ 1930.125 Changing project designation.**

Generally, RRH projects designated for families, elderly and persons with handicaps, including congregate housing, will be used for the original purpose throughout the life of the FmHA loan. However, if it becomes necessary to change the designation of a project due to housing market changes which inhibit the borrower's ability to maintain occupancy levels sufficient to sustain the project, the State Director may change the designation. Project design must meet the housing requirements of the target group when changing the designation. The State Director shall consider such requests on a case-by-case basis when all of the following information has been provided:

(a) The complete borrower case files have been submitted together with the Servicing Official's specific recommendations and analysis of the present and long term situation.

(b) A market needs survey which substantiates the rationale for the change has been provided by the borrower. (The market survey must clearly indicate the present long term marketability of the project is significantly changed from the original market, and include the appropriate demographic information which reflects the population trends in the area.)

(c) A summary of all servicing actions taken by FmHA to aid the borrower in maintaining the present designation.

(d) A summary of all actions taken by the borrower to effectively market the units to potential eligible tenants.

(e) A summary of the impact the change will have on any existing tenants, rent subsidy needs, and the community as a whole.

(f) A summary of any needed or required physical modifications and analysis of cost feasibility to complete the modifications.

**§ 1930.126–1930.127 [Reserved]**

**§ 1930.128 LH grants.**

In addition to the supervision provided in connection with LH loans, recipients of LH grants will receive supervision to assure that the terms of the grant agreement and other objectives of the LH grant are carried out. This supervision will be continued to assure that the grant purposes will be accomplished. Comments on the following points will be included in appropriate reports, to assure that:

(a) The rents are reasonable.

(b) The project is operated as a community service for the benefit of the tenants.

(c) Domestic farm laborers are given absolute priority in occupancy. (This requirement also applies to borrowers who have LH loans only.)

(d) No public or private nonprofit organization borrower may require that an occupant work for a particular farm or for a particular owner or interest as a condition of occupancy of the housing.

**§ 1930.129 RHS loans.**

RHS loans will be serviced according to program regulations and the conditions specified in the borrower's loan resolution. The following additional supervisory action by the Servicing Official will also apply to assure that the terms of the loan resolution and loan objectives are carried out:

(a) Review of the site development account records for compliance with authorized loan expenditures.

(b) Work with the borrower on the adjustment of sales price, not to exceed market value, of the developed lots as they are being sold to assure adequate income to repay the loan, pay taxes, accrued interest, and any other authorized debt or expenditures.

(c) Determine that lots are sold only to eligible buyers.

(d) Work closely with the borrower to plan for the sale of all lots prior to the due date of the note.

(e) Should the RHS borrower default in its loan obligations, the account will be serviced according to § 1965.85 of subpart B of part 1965 of this chapter. The Servicing Official's report to the State Director should contain the following information:

(1) The status of the account, number of lots unsold, and reasons for the problem.

(2) Prospects of selling lots to eligible buyers and a target date as to when this can be accomplished, if feasible.

(3) General comments and recommendations for future servicing of this account. Where necessary, liquidation may be recommended.

(f) State Directors will take the following actions in connection with problem RHS accounts:

(1) Provide additional guidance and assistance as necessary.

(2) If a satisfactory proposal for selling the lots can be developed, the account will be serviced according to program regulations and the provisions of this subpart and subpart B of part 1965 of this chapter.

(3) Where no satisfactory proposal for selling the remaining lots can be developed, the account will be handled according to § 1965.85(e) of subpart B of part 1965 of this chapter for liquidation.

**§§ 1930.130–1930.133 [Reserved]**

**§ 1930.134 FmHA office records.**

FmHA officials will maintain records in accordance with FmHA Instructions 2033–A and G (available in any FmHA office).

**§§ 1930.135–1930.136 [Reserved]**

**§ 1930.137 State Supplements, guides, forms, and other issuances.**

It is FmHA's practice to follow the provisions of the Administrative Procedures Act by inviting public comment before adopting public policy, unless otherwise directed by statute. However, the State Director may, in accordance with FmHA Instruction 2006–B (available in any FmHA office), and with prior approval of the National Office and the assistance of the OGC, develop State Supplements, guides, or issuances to the extent necessary to enable borrowers to comply with the policies, procedures, and exhibits of this subpart and the applicable provisions of State laws. Under no circumstances will State forms be developed as replacements for the forms referred to in this subpart.

**§ 1930.138 Supervisory actions for distressed projects.**

MFH projects experiencing high vacancy rates which would lead to project failure can apply for a special servicing market rate rent change in accordance with paragraph IX of exhibit C of this subpart.

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§§ 1930.139–1930.140 [Reserved]

§ 1930.141 Materials to be provided borrower/applicant.

To enable borrowers and applicants to meet the intent of this subpart, they will be supplied with one reproducible copy of the following FmHA exhibits and forms and materials as they are issued and/or updated:

(a) Exhibits B and B–1 thru 14 of this subpart, when applicable.

(b) Exhibits C, C–1, and C–2 of this subpart.

(c) Exhibits D and D–1 of this subpart.

(d) Exhibit E of this subpart.

(e) Exhibits H and H–1 of this subpart.

(f) Exhibit I of this subpart.

(g) Exhibit J of this subpart, when applicable.

(h) Subpart L of part 1944 of this chapter.

(i) Booklet entitled "Audit Program."

(j) For farm LH borrowers and/or applicants, exhibit B of subpart D of part 1944 of this chapter in addition to the preceding items of this section.

(k) The following forms:

(1) Form FmHA 1930–7 and attached exhibit A–6 of subpart E of part 1944, if applicable.

(2) Form FmHA 1930–8.

(3) Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement."

(4) Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance."

(5) Form FmHA 1944–8.

(6) Form FmHA 1910–5, "Request for Verification of Employment."

§ 1930.142 Complaints regarding discrimination in use and occupancy of MFH.

Any tenant or prospective tenant seeking occupancy or use of RRH, RCH, LH, or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age, familial status, or handicap may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC 20410, or any HUD office, or to the Administrator, FmHA, USDA, Washington, DC 20250. If the complaint is made to an FmHA County, Servicing, or State Office, it must be directed to the Director of Equal Opportunity Staff (EOS), National Office by the FmHA employee in charge of that office. When a complaint is sent to FmHA–EOS by a FmHA Servicing Office, the State Director will be made aware of the complaint.

(a) Personnel in FmHA field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.

(b) Each complaint must contain the following information:

(1) The name and address of the respondent (complainant).

(2) The name and address of the aggrieved person.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(c) Participants in FmHA's housing program failing to comply with the requirements of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. All complaints will be handled in accordance with prescribed procedure. Victims of alleged discriminatory housing practices may seek reparations through HUD or by private lawsuit.

§ 1930.143 Delegation of responsibility and authority.

(a) The Administrator may on an individual state basis, authorize the State Director to contract out selective fact gathering, nondecision making servicing actions in this subpart.

(b) The State Director may delegate in writing any authority delegated to the State Director in this subpart unless otherwise restricted, to those State staff members who, in the opinion of the State Director, have been adequately trained and who demonstrate their knowledge in understanding and administering the MFH policies and procedures of FmHA. The State Director may further delegate such authority in like manner to Servicing Offices by either of two options:

(1) To individual Servicing Office staff members, including the Servicing Official.

(2) To the position of Servicing Official, the incumbent of which may further delegate specified authority to identified Servicing Office staff members. A copy of such delegation will be filed with the State Director.

(c) Individual delegation of responsibility and authority may be limited or expanded in scope, or revoked, as deemed appropriate by the State Director, or the Servicing Official when applicable, and will be prepared according to FmHA Instruction 2006–F (available in any FmHA office).

§ 1930.144 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the accomplishment of the purposes of the MFH program or result in undue hardship by applying the requirement. The Administrator may exercise the authority at the request of the State Director or the Assistant Administrator for Housing. The request must be supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated.

§ 1930.145 Appeals.

Only the borrower, or the borrower's representative (as defined in subpart B of part 1900 of this chapter), can appeal an FmHA decision. The borrower's management agent may not request an appeal unless he/she has been designated as the borrower's representative. This means he/she must be authorized in writing by the borrower to act for the borrower in the administrative appeal, as required by subpart B of part 1900 of this chapter (this may be addressed in the management agreement). The borrower's request for review of an alleged adverse decision must be made to FmHA in written form. Appeals and reviews will be handled in accordance with directions set forth in subpart B of part 1900 of this chapter.

§§ 1930.146–1930.149 [Reserved]

§ 1930.150 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0033. Public reporting and recordkeeping burden for this collection of information is estimated to vary from 5 minutes to 10.25 hours per response, with an average of 0.43 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250;

and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0033), Washington, DC 20503.

## Exhibits to Subpart C

### Exhibit A—Steps for Farmers Home Administration (FmHA) Personnel in Conducting Annual Review of Multiple Housing Operations

I *Examine the Condition of the Borrower/ Management Reports to Determine that:*

A Required accounts are being properly maintained in accordance with the loan resolution or agreement.

B Decisions of officials are being entered in the minutes book, if applicable.

C Any membership or stock transfers have been approved by FmHA and recorded as required.

D Financial records are maintained by qualified persons.

E The financial records are being reviewed by a qualified auditor where an audit is required or by a competent individual or committee when a verification of review of accounts is required.

II *Study the Financial Progress:* Compare current financial condition and owner's equity with previous years to discover any trends, for example:

A Has cash carryover increased or decreased?

B Are the debts greater or less?

C Is the owner's equity greater or less?

D Are accounts receivable greater or less?

E Are collection provisions being enforced?

F Are reserve and other required funds or accounts properly maintained?

III *Study the State of Income and Expenditures for the Past Year:* Compare it with the budget for the past year and the same statement for previous years.

A Were rents or occupancy charges, subsidies, and other monies collected sufficient to produce the required revenues for planned expenditures?

B Were actual expenditures significantly different from those budgeted?

C Were the expenditures sufficient to adequately maintain the project?

D Were expenditures reasonable and typical for similar projects?

E Were any essential items of maintenance deferred during the past year?

F Were payments made on authorized debts in the proper amounts and on the dates agreed to?

G If the borrower is operating on a limited profit basis, did net cash return exceed the amount permitted in the loan agreement or loan resolution?

H Did the borrower charge late fees to project accounts other than the Return on Investment Account?

I Were an excessive number of overage charges paid by the project?

IV *Study the Budget for the next Year:* Compare it with the statement of income and expenditures for the past year, taking into consideration any known increase or decrease in operating expenses for the planned year and the prevailing costs of doing similar business in the market area.

A Are proposed expenditures adequate for normal maintenance and operation of the project?

B Are proposed fees to be paid to firms closely associated with the borrower and their management agents typical, reasonable, and earned for the services to be provided?

C Does the budget make provision for financing maintenance or energy conservation measures/practices deferred from the previous year?

D Does it provide for the required financial reserves?

E Is planned revenue adequate to cover planned expenditures?

F Will the budget and planned operating practices correct any deficiencies in the past year's operations?

V *Study the Audit Report:* Compare it with the audit from the previous year, noting any significant changes affecting the borrower's operations. Exhibit A–1 of this subpart may be used as a guide.

VI *Review the Energy Audit:* Review the most recent energy audit and the borrower's plan for implementation.

VII *Determine Whether or Not the Borrower Has:*

A Maintained required financial records and accounts, made required reports, submitted required financial audits or verifications of review and taken appropriate action to correct previously noted deficiencies of such records, reports, audits or verifications.

B Renewed fidelity coverage and insurance policies.

C For borrowers with governing bodies.

1 Held regular board, committee, and membership meetings.

2 Conducted the affairs along sound business lines.

D Made a change in any organizational documents without FmHA consent.

E Made a change in the plans for management and operations of the project without FmHA consent.

F Made a change in the membership or interest in ownership without FmHA consent.

VIII *Summary:* Summarize major observations and decisions reached as the result of the review and record on Form FmHA 1930–10, "Annual Multiple Family Housing Project Review."

### Exhibit A–1—Audit Report Review Guide

I *Purpose.* To present a general guide for use of Farmers Home Administration (FmHA) staffs in the review of independent accountants' audit reports in order to obtain maximum benefit from these audits. The procedures are designed to provide uniformity in the audit review, improve loan program servicing, and help to promote better independent audits.

II *General.* FmHA guidelines for independent auditors are detailed in the booklet, "U.S. Department of Agriculture, Farmers Home Administration—Audit Program" (hereinafter called Audit Program and available in any FmHA office). This Audit Program, along with other instructions, is designed to protect the security of Government loans. The review of the financial and financially related information in the audits must be performed from a technical standpoint in a prompt manner so that the facts and conclusions are readily available for analysis; only then can results be used effectively for management purposes and help to insure improved audit practices.

III *Scope.* The review should include:

A A determination of the adequacy of the audit in relation to FmHA regulations and the Audit Program.

B Interpretation of information included in the audit.

C Preparing a letter to the borrower on any missing or adverse audit data.

D Informing appropriate FmHA offices of review results and recommendations.

IV *Review Procedures to Be Followed.*

A *General.* The individual professional judgment of the reviewer should be used at all times. Considerations and decisions requiring the exercise of judgment should be used in the following:

1 Circumstances peculiar to the borrower.

2 Degree of importance attached to each item questioned.

3 Number of exceptions.

4 Whether the exceptions relate to the auditor's work or the borrower's records and operations.

5 If specific action is to be requested of the borrower.

6 Whether or not the report, as a whole, is acceptable.

B *Review and Procedure.*

1 *Specific.*

a Determine if the audit was performed by a Certified Public Accountant (CPA) or a Licensed Public Accountant (LPA) who was licensed on or before December 31, 1970.

b Determine if the audit was conducted in accordance with Government Auditing Standards (1988 Revision), often referred to as generally accepted government auditing standards (GAGAS).

c Does the audit cover the most recent 12 months since the previous audit?

d Was the audit received within 90 days after the borrower's year end, or was an extension of up to an additional 30 days authorized by the Servicing Official, and if so, was it met?

2 *Evaluation checklist for audit reports.* The "Evaluation Checklist for Audit Reports" which is attachment 1 of this exhibit is designed to systematically record and reveal the audit findings. Information tallied on this form is a good indication of whether or not additional contact(s) need to be made with the borrower.

3 *Previous audits and correspondence.* Reference to the prior audit and any correspondence concerning it can be most helpful in the current review. Determine whether corrections requested in the previous year have been made, and whether the borrower has complied with previous suggestions for improvement in the audit report.

C *Preparing the audit review letter.* After completion of the "Evaluation Checklist for Audit Reports" (attachment 1 of this exhibit) and applying personal judgment, a decision must be made on whether or not to prepare an audit review letter similar to that shown as attachment 2 of this exhibit.

1 If the audit fully complies with the Audit Program and instructions, a letter is not necessary.

2 If the audit substantially meets the requirements and is lacking in only a few points, ask the borrower to have the auditor furnish this additional information.

3 Audits which are unacceptable should be returned to the borrower for full compliance, indicating the reasons and a timetable for resubmitting.

**Attachment 1—Evaluation Checklist for Audit Reports**

State

County

Name of Borrower

Address

Case No.

Name of Auditor

Project No.

Date of Audit Report

Period Covered

| Yes/no | |
|---|---|
| | 1. Auditor's Opinion. (section G–1*). |
| | (a) Unqualified. |
| | (b) Qualified. |
| | (c) No Opinion. |
| | 2. Financial Statement. (section J–1*). |
| | (a) Balance Sheet. |
| | (b) Results of Operations. |
| | (c) Statement of Cashflow (Changes in Financial Position). |
| | (d) Statement of Changes in Retained Earnings. |
| | (e) Notes to the Financial Statements. |
| | 3. Statement on Auditing Standards. (section J–2*). |
| | Audit Report contains a statement that the audit was made in accordance with Generally Accepted Government Auditing Standards (GAGAS). |
| | 4. Report on Compliance. (section J–3*). |
| | The auditor should prepare a written report on the tests of compliance with applicable laws, regulations, loan covenants and agreement and grant agreements. List significant compliance findings: |
| | _____ |
| | _____ |
| | _____ |
| | 5. Report on Internal Controls. (Section J–4*). The auditor's report should assess the borrower's control risk including discussion on the scope of the auditor's assessment, significant internal controls assessed, and any material weaknesses of internal control noted. List significant internal control findings: |
| | _____ |
| | _____ |
| | _____ |
| | 6. Reporting Instances of Indication of Illegal Acts. (Section J–5*). List any noted: |
| | _____ |
| | _____ |
| | 7. Uncorrected Prior Audit Findings. (Section J–6*). List: |
| | _____ |
| | _____ |
| | 8. Was report received within 90 days after the end of the borrower's operating year or within a 30 day extension? |
| | 9. Was audit performed and signed by a CPA or LPA? If by an LPA, verify that the LPA was licensed on or before December 31, 1970. |

*References to "Sections" indicate the appropriate section in the FmHA Audit Program booklet.

**Attachment 2—Example Audit Review Letter**

Dear Borrower (or Borrower Representative):

We have reviewed your audit report for the period _____to _____, prepared by _____on _____. This review was made in accordance with current Farmers Home Administration (FmHA) regulations and the Audit Program entitled "U.S. Department of Agriculture, Farmers Home Administration-Audit Program." Based on this review, your audit:

1. ( ) Is acceptable. However, the auditor's recommendations concerning _____ should be implemented prior to next year's audit.

2. ( ) Is acceptable but did not include comparative-type financial statements as indicated in Section J–1 of the Audit Program. Please inform the auditor to prepare such statements next year.

3. ( ) Is acceptable but was not submitted within 90 days or an authorized delay of _____days after the end of the borrower's fiscal year. Please insure that next year's audit is forwarded before _____.

4. ( ) Substantially meets all the requirements. However, the following items were omitted as detailed in the Audit Program, Section J, "Reporting Standards." Please have your auditor comment on the item(s) circled and forward a copy to us. The circled numbers correspond to the 6 items listed in Section J of the August Program.

J–1 J–2 J–3 J–4 J–5 J–6

5. ( ) Is returned as unacceptable for the following reason(s). Please have the auditor prepare your audit in accordance with the Audit Program.

a. [ ] It was prepared without audit.

b. [ ] The following financial statements were omitted: (Audit Program, Section J–1)

[ ] Balance Sheet.
[ ] Results of Operations.
[ ] Statement of Cash Flow.
[ ] Statement of Changes in Retained Earnings, or
[ ] Reconciliation of Owner's or Partner's Equity.
[ ] The auditor's opinion of Compliance. (Audit Program, Section J–3).
[ ] The auditor's opinion of internal control. (Audit Program, Section J–4).

Servicing Official

This letter will be prepared in the Servicing Office. A copy of the audit and the approval memorandum will be sent to the State Office.

## Exhibit B—Multiple Housing Management Handbook

I *Purpose*: This exhibit prescribes the Farmers Home Administration (FmHA) regulations, policies, and procedures for management of Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects to be used by multiple housing borrowers (owners) and applicants and their management agents and site managers. Several exhibits are included to provide guidance. These regulations are intended to assist borrowers in the successful operation of FmHA-financed rental and cooperative projects.

II *Definitions*:

*Adjusted annual income*. This is the annual income of the household members, who live or propose to live in the unit for the next 12 months. (Households with a member permanently confined to a hospital or nursing home may choose to either include annual income attributable to such person, less deductions for which the person would qualify, or exclude the annual income attributable to such person and not take any deductions for which the person would qualify.), excluding:

1 $480 for each member of the family residing in the household (other than the tenant, cotenant, member, or comember or spouse of either, or foster children) who is under 18 years of age; or who is 18 years of age or older and is disabled, handicapped or a full-time student. The student must carry a subject load considered full-time by the educational institution attended. This deduction does not apply to an unborn child in the household.

2 $400 for any elderly family.

3 In the case of an elderly family, the total of actual medical and/or handicap assistance expenses paid in excess of 3 percent of annual family income may be deducted. If an elderly family has both medical and handicap assistance expense, the 3 percent of annual income must first be deducted from handicap assistance and any

remainder then deducted from medical expenses.

a Total medical expense includes medical expenses not covered by insurance that the tenant or member anticipates incurring over the 12 months following the effective date of the certification, using past experience as a guide.

b Examples of medical expenses are dental expenses, prescription and nonprescription medicines, medical insurance premiums including medicare, eyeglasses, hearing aids and batteries, medical related travel cost, the cost of attendant care including a live-in-resident assistant, monthly payments required on accumulated major medical bills including that portion of a household member's nursing home care paid from household income(s). Note: Premiums paid for nursing home insurance are not an allowable deduction unless a household member is housed at a nursing home and that person's income is included in the household income.)

c Handicap assistance includes reasonable attendant care and auxiliary apparatus expenses described as follows for each member with handicaps of the family to the extent needed to enable any family member (including such member with handicaps) to be employed:

(1) That portion of attendant care attributable to specialized medical reasons (the portion attributable to companionship is not counted).

(2) Auxiliary apparatus including but not limited to wheelchairs, oxygen equipment, reading devices for the visually impaired, and the cost of equipment added to cars and vans to permit their use by the handicapped or disabled family member proportionate to the amount of use by such persons.

4 In the case of any nonelderly family, total handicap assistance expense in excess of 3 percent of annual family income may be deducted:

a For any handicap assistance expense described in paragraph 3 c of this definition that is anticipated to occur over the 12 months following the effective date of the certification, using past experience as a guide, to the extent needed to enable any family member (including the handicapped or disabled family member) to be employed.

b The amount of deduction may not exceed the LESSER of the amount by which total expenses for handicap assistance exceed 3 percent of annual family income, or the amount of income received by adult members from such employment.

5 The amounts paid by the family for the care of minors under 13 years of age may be deducted only to the extent such expenses are not reimbursed. In the case of families assisted by American Indian housing authorities, the amount will be the greater of child care expenses; or excessive travel expenses, not to exceed $25 per family per week. Deductions for these expenses are permitted only when such care is necessary to enable a family member to further his or her education or to be gainfully employed, including the gainful employment of the disabled or handicapped family member. When the deduction is to enable gainful employment the amount may not exceed the amount of income received from such employment. When the deduction is to facilitate further education, the amount must not exceed a sum reasonably expected to cover class time and travel time to and from classes. The tenant file must contain justifying documentation. (Child support payments made on behalf of a minor child who does not reside in the unit may not be deducted as a child care expense).

*Adjusted monthly income.* This is the amount obtained by dividing the adjusted annual income by 12.

*Annual income.* Annual income is the anticipated total amount of income to be received by all members of the household (even if temporarily absent) to be in residence during 12 months following the effective date of Form FmHA 1944–8, "Tenant Certification."

1 *Income Included.* The following are included when determining annual income:

a The gross amount (before any deductions) of wages and salaries, overtime pay, commissions, fees, tips, and bonuses reasonably expected to be received by all members of the household.

b The net income reasonably expected to be received from operations of a business or profession or from rental of real or personal property. Expenditures for business expansion or amortization of indebtedness are not considered in the computation of net income. Net losses will be computed as zero. Deductions from gross business or rental income to arrive at net income may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the trade or business of the adult household members under the straight line method of depreciation. An itemized schedule must be provided in support of any deductions from gross income made under the provisions of this section. The schedule should be consistent with the amount of depreciation permitted for these items for Federal income tax purposes under the straight line method of depreciation.

c Interest, dividends, and other received income as defined under net family assets in this paragraph. On contracts for sale of real estate, deeds of trust, or mortgages held by the applicant, tenant or member, only the interest portion of the monthly or annual payments received by the applicant, tenant or member is included as income.

d The gross amount of periodic payments from Social Security (including Social Security payment received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements), and other similar types of periodic receipts.

e Payments received in lieu of earnings, such as unemployment and disability compensation, worker compensation, and severance pay.

f Periodic and determinable allowances, such as alimony and child support payments, which the applicant, tenant or member can reasonably expect to receive.

g Regularly recurring contributions or gifts received from persons not residing in the dwelling.

h Any amount of education grants or scholarships or Veterans Administration benefits expected to be received on behalf of tenant, cotenant, member, or comember, applicant, or other adult that exceeds attendance expenses for tuition, fees, books, and equipment to include materials, supplies, transportation, and miscellaneous personal expenses of the student (i.e., that portion of benefits received for "room and board").

i All regular pay, separation pay, special pay (except hazard duty pay for persons exposed to hostile fire), and allowances of a member of the armed forces who is head of the family or spouse, whether or not that family member lives in the unit.

j Payment received from an adoption incentive program to compensate support of a minor child legally adopted by the tenant household.

k *Public assistance.*

(1) A public assistance payment that DOES NOT designate an amount specifically for rent and utilities shall be counted entirely as income.

(2) A public assistance payment, when administered "as-paid" by the public assistance agency, DOES designate a specific amount for rent and utilities and may adjust (or ratably reduce) that amount based upon what the family is currently paying for those items (only one ratable reduction will be permitted). The SUM of the ratably reduced amount for rent and utilities and the amount for subsistence and other needs shall be counted as income.

(3) Example: The public agency's published schedule shows a monthly maximum of $180 for rent and utilities for a particular size family. The public assistance agency has verified that the family will receive $220 monthly for subsistence and other needs. If the agency does not apply a ratable reduction, $400 per month ($180 + $220) will be included in annual income. If the agency applies a ratable reduction (e.g., 20 percent) annual income will be computed as shown below:

| Public assistance (P.A.) rent | Income |
|---|---|
| $180 maximum allowed for housing. | $220 basic needs |
| | +144 P.A. rent |
| x.80 P.A. adjustment factor. | $364 mthly income |
| $144 monthly P.A. rent. | x12 months |
| | *$4,368 annual income |

*Shown on line 17 f of Part IV of Form FmHA 1944–8.

2 *Income Exempted.* The following are not included in annual income:

a Income of dependent minors (including foster children) under 18 years of age except as specified under 1d of the definition of annual income in this paragraph. (Tenant, cotenant, member or comember, or spouse of either may never be considered minors.)

b In the case of contracts for sale of real estate, mortgages or Deeds of Trust held by the tenant, cotenant, member, or comember, the principal portion of the payments received by the tenant, cotenant, member, or comember.

c The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

d Payments received for the care of foster children.

e Temporary, nonrecurring, or sporadic income (including gifts).

f Lump-sum additions to family assets such as inheritances; capital gains; insurance payments included under health, accident, hazard, or worker compensation policies, and settlements for personal or property losses.

g Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses for any household member. Medical expenses may include those expenses incurred by disabled or handicapped residents so that they may maintain independence in living (e.g., attendent care).

h Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the attendance costs of tuition, fees, books, and equipment to include materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amounts of such scholarships or veterans payments, which are not used for above purposes and are available for subsistence and shelter, are considered to be income of tenant, cotenant, member, comember, or applicant.

i Student loans.

j The special hazard duty pay to a household member serving in the Armed Forces away from home, who is exposed to hostile fire.

k Payments received pursuant to participation in the following programs:

(1) Programs under the Domestic Volunteer Service Act of 1973 including, but not limited to, the National Older Americans Volunteer Programs of the Federal Action Agency for persons age 60 and over including the:

(i) Retired Senior Volunteer Program.

(ii) Foster Grandparent Program.

(iii) Senior Companion Program.

(iv) Older American Committee Service Program.

(2) National Volunteer Antipoverty Programs such as Volunteers in Service to America, Peace Corps, Service Learning Program and Special Volunteer Programs.

(3) Small Business Administration Programs such as the National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives and Active Corps of Executives and,

(4) Title V—Community Service Employment for Older Americans which include:

(i) Senior Community Service Employment Program

(ii) National Caucus Center on Black Aged

(iii) National Urban League

(iv) Association National Pro Personas Mayors

(v) National Council on Aging

(vi) American Association of Retired Persons

(vii) National Council of Senior Citizens

(viii) Green Thumb.

(5) Payments received from a State or local low income energy assistance program.

l Relocation payments made pursuant to title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

m Payments received under the Alaska Native Claims Settlement Act.

n Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.

o Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.

p That portion of tenant income paid from the Job Training Partnership Act, whether paid directly or through the employer.

q Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

r The first $2,000 of per capital shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an Indian tribe by the Secretary of Interior.

s Any funds which a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled. (Note: The Department of Housing and Urban Development (HUD) periodically publishes a notice in the **Federal Register** identifying the programs and benefits that qualify for this exemption.)

t Income of a resident assistant, as defined in this paragraph.

u Amounts received under training programs funded by HUD.

v Amounts received by a disabled person (including a sight impaired person) that are disregarded for a limited time for purposes of Supplemental Security Income eligibility, and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency.

w Amounts received by a participant in other public assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program.

x Gifts, payments, or credits provided by the borrower for the same purposes as interest credit or rental assistance for the benefit of residents in accordance with an FmHA approved budget when needed to alleviate or avoid financial distress in a project for a temporary specified time period identified by FmHA.

y Interest accrual to an annuity that cannot be withdrawn due to the terms of the annuity or its being under the control of others.

z Payments received after January 1, 1993, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the IN RE Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.)

aa Payments received under the Maine Indian Claims Settlement Act of 1980 (Public Law (Pub. L.) 96–420, 94 Stat 1785).

bb Earned Income Tax Credit Refund Payments

cc Redress payments received by Japanese American internment camp survivors.

dd Reparations paid by foreign governments arising out of the Holocaust.

ee Deferred periodic payments received in a lump sum from SSI and Social Security.

*Borrower.* "Borrower" means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations, and other organizations and have received a loan or grant from FmHA for LH, RRH, RCH, or Rural Housing Site (RHS) purposes.

*Caretaker.* The individual(s) employed by the borrower or the management agent to handle normal interior and exterior maintenance and upkeep of the project as specified in the management plan.

*Cash value of assets.* Current market value less cost to convert assets to cash.

*Chore service worker.* An individual who provides intermittent assistance essential to the well being of household members whose services are compensated by a Federal, State, or local assistance program. A chore service worker will not be a resident of the household living unit.

*Congregate Housing.* Residential housing for persons or families who are elderly or have handicaps or disabilities, consisting of private apartments and central dining facilities in which a number of specific pre-established services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them within their own financial, familial, or social resources.

*Domestic farm laborers.* Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either are citizens of the United States, or reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons, including retired or disabled domestic farm laborers as defined in subpart D of part 1944 of this chapter.

*Elderly (senior citizen).* A person who is at least 62 years old. The term elderly (senior citizen) also means individuals with handicaps or disabilities as separately defined in this paragraph, regardless of age.

*Elderly family.* A household where the tenant, cotenant, member, or comember (individual) is at least 62 years old, disabled or handicapped as defined separately in this paragraph. An elderly family may include a person(s) younger than 62 years of age who is essential to the care and well being of the person who is elderly or has handicaps or disabilities. (To receive an elderly family deduction, the person who is elderly, or has disabilities or handicaps must be the tenant or cotenant or member or comember.)

*Eligibility income.* The calculated adjusted annual income which is compared to the income limits in exhibit C of subpart A of part 1944 of this chapter (available in any FmHA office).

*Familial status.* This term means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody; with the written permission of such parent or other person. The protection against discrimination afforded by familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

*Forms Manual Insert (FMI).* A type of directive which includes a sample of the form and complete instructions for its preparation, use, and distribution.

*Group home.* Housing that is occupied by individuals who are elderly, or have handicaps or disabilities sharing living space within a rental unit in which a group home resident assistant may be required.

*Household.* One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.

*Individual with disability.* A person is considered disabled if the person meets the criteria or either of the following:

1 The person has an inability to engage in any substantial gainful activity, but with use of auxiliary apparatus can otherwise participate in gainful activity, by reason of any medically determinable physical or mental impairment, where the disability:

a Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death, and

b Substantially impedes the ability to live independently, and

c Is of such a nature that such ability could be improved by more suitable housing conditions, or

d In the case of a sight impaired person who is at least 55 years old (within the meaning of sight impairment as determined in section 223 of the Social Security Act), is unable, because of the sight impairment, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

e Receipt of veteran's or Social Security Disability payments benefits for disability, whether service-oriented or otherwise does not automatically establish disability.

2 The person has a developmental disability; a severe, chronic disability which;

a Is attributable to a mental or physical impairment or combination of mental or physical impairment; and

b Was manifested before age 22; and

c Is likely to continue indefinitely; and

d Results in substantial functional limitations in three or more of the following areas of major life activity:

(1) Self care

(2) Receptive and expressive language

(3) Learning

(4) Mobility

(5) Self-direction

(6) Capacity for independent living

(7) Economic self-sufficiency

e Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

*Individual with handicap.*

1 A person with a physical or mental impairment, that:

a Is expected to be of long-continued and indefinite duration; and

b Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

2 The term handicap further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. THIS TERM DOES NOT INCLUDE CURRENT ILLEGAL USE OF OR ADDICTION TO A CONTROLLED SUBSTANCE. As used in this definition:

a Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, acquired immunodeficiency syndrome (AIDS), mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

b Major life activities means functions such as caring for one's self, performing major tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

d Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantively limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has one of the impairments defined in paragraph 2 a (1) and 2 a (2) of this definition but is treated by another person as having such an impairment.

*LH.* Means Farm labor housing loans and/or grants.

*Limited equity.* The amount of funds which have accumulated in the cooperative member's patronage capital account and as further described in Subpart E of Part 1944 of this chapter.

*Low-income household.* A household having an adjusted annual income not exceeding the maximum low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter which is periodically updated (available in any FmHA Office).

*Management agent.* The firm or individual engaged by the borrower and charged with the responsibility to manage the project in accordance with a written agreement.

*Management agreement.* The written agreement between the borrower and management agent setting forth the management agent's responsibilities and fees for management services.

*Management fee.* The compensation for providing overall management services for a Multiple Family Housing (MFH) project as described in the management plan. The fee is compensation for the time, expertise, and knowledge required to direct and oversee the present and future operation of the project. A management fee does not include the compensation paid to a site manager.

*Management plan.* The primary management charter constituting a comprehensive description of the detailed policies and procedures to be followed in managing a project.

*Management reserve.* That portion of the cooperative occupancy charge which is designated for payment of professional management services.

*Member/comember.* A person(s) who has executed documents pertaining to a cooperative housing type of living arrangement and has committed himself/herself to upholding the cooperative concept.

*Migrant.* A domestic farm laborer who works in any given local area on a seasonal basis and relocates his or her place of residence as farm work is obtained in other areas during the year.

*Minor.* A person who is a Dependent of the tenant, cotenant, member or comember under 18 years of age. A dependent person age 18 or older who is a full-time student is treated as a minor.

*Moderate-income household.* A household having an adjusted annual income within the maximum moderate-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA Office).

Net family assets.

1 Net family assets include cash on hand and the value of savings, certificates of deposit, and dollars in checking accounts reported as "cash on hand." It will be such amounts reported on the day of third party verification. This definition also includes the net cash value of real property, cash value of whole life insurance policies, IRAs, market value of bonds and other forms of capital, or personal property held as investments, irrespective of location, minus debts against them, minus cost of converting such assets to cash. Examples of conversion costs are

penalties for early withdrawal, broker/legal fees assessed to sell an asset, and settlement costs for real estate transactions.

2 Net family assets also include the value of equity of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) in excess of the consideration received therefrom during the 2 years preceding the effective date of certification/recertification. In the case of a disposition as part of a divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

3 Income from net family assets which is included in annual income is determined as follows:

a If net family assets equal $5,000 or less, annual income includes the actual income derived from the net family assets.

b If net family assets exceed $5,000, annual income includes the greater of:

(1) Actual income derived from all net family assets, or

(2) A percentage of the cash value of such assets based on the Bank Passbook annual savings rate.

4 Net family assets exclude:

a Interests in Indian trust land.

b The value of necessary items of personal property such as furniture and automobile(s), and the debts against them.

c The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation.

d The value of a trust fund (i.e., for a minor or a legally incompetent household member) that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.

e A vehicle specially equipped for the handicapped.

f Face value of life insurance policies.

g A cooperative member's patronage capital in the housing cooperative unit in which the family resides.

h Prepaid funerary arrangements and expenses.

i Retirement funds not accessible for withdrawal by a household member.

j Assets legally owned but not accessible or that accrue income to someone else.

k Savings accounts of dependent minors when such accounts are under the minor's social security number.

*New housing.* Newly constructed or substantially rehabilitated RRH, RCH, or LH project financed by FmHA. For new construction rental assistance (RA) purposes, it further means before any units are occupied.

*Nonprofit corporation.* A corporation which is organized and operated for purposes other than making gains or profits for the corporation or its members; is legally precluded from distributing to its members any gains or profits during its existence; and in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a public corporation which will operate the housing for the same or similar purposes.

*Occupancy charge.* The amount of money charged a cooperative member to cover his/her proportionate share of the cooperative's operating costs and cash requirements.

*Occupancy surcharge.* A monthly surcharge on units in projects where the initial loan was made or insured pursuant to a contract entered into, on or after December 15, 1989. This surcharge will be collected from tenants by borrowers and transmitted to FmHA and set aside to offset any rent increases which may result when the project becomes eligible for a guaranteed equity loan, 20 years from the date of the loan in the project which made the project subject to surcharge.

*Operational housing.* A completed RRH, RCH, or LH project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants or members.

*Overage.* The portion of a tenant's or member's net contribution to shelter cost that exceeds basic rent.

*Pet.* A commonly accepted domesticated household animal (i.e., dog, cat, bird, etc.) owned or kept by a tenant or member.

*Profit basis.* Applies to an individual or organizational applicant who will operate the housing at rental rates low- and moderate-income nonelderly or nonhandicapped persons, and/or elderly and persons with handicaps of any income can afford, where return on initial investment is not limited to a certain percentage per year.

*Project.* A project is the total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

*RCH* means Rural Cooperative Housing Loans.

*Rental agent.* The individual responsible for the leasing of the units. If other than the borrower, this individual may be hired by the borrower or the management agent as specified in the management plan.

*Rental assistance (RA).* RA, as used in this exhibit, is the portion of the approved shelter cost paid by FmHA to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV of this exhibit. When the monthly gross tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the tenant that difference according to paragraph IX A 2 of exhibit E of this subpart. RA used in cooperative housing will be calculated in the same manner.

*Resident assistant.* A person(s) residing in a tenant's housing unit who is essential to the well-being and care of the person(s) who are elderly or have handicaps or disabilities residing in the unit, but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent of the household for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant is not a chore service worker. A resident assistant may function in any type of housing affected by this subpart.

*RHS* means Rural Housing Site loans.

*RRH* means Rural Rental Housing loans.

*Service agreement.* A written agreement between the borrower and a service provider detailing the specific service to be provided, the cost of the service, and the length of time the service will be provided.

*Service plan.* A written plan describing how services will be provided to a FmHA financed project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

*Shelter cost.* Consists of basic and/or note rate rent plus utility allowance and occupancy surcharge, when required. Basic and/or note rate rent must be shown on the project budget for the year and approved according to paragraph XII of this exhibit. Utility allowances, when required, must be determined and approved according to Exhibit A–6 of Subpart E of Part 1944 of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C of this subpart. The shelter cost in a cooperative housing project will consist of occupancy charge plus utility allowance.

*Site manager.* The individual employed by the borrower or the management agent who lives at or near the project site and is responsible for the day-to-day operations of the project. A site manager residing at the project site may also be referred to as a resident manager. A site manager is not an "independent contractor."

*Tenant contribution.* The portion of the approved shelter cost, including occupancy surcharge, paid by the tenant household (tenant rent). For tenants not receiving HUD Section 8, this amount will be calculated according to Form FmHA 1944–8. For tenants receiving HUD Section 8, this will be the amount referred to on HUD Form 50059, "Certification and Recertification of Tenant Eligibility," (or other HUD approved Form), as family contribution. The proportion of tenant income and adjusted income paid as the tenant contribution will vary according to the type of subsidy provided to the household.

*Tenant/cotenant.* A person(s) who has signed a lease and is, or will be, an occupant of a unit in an RRH or LH project.

*Utility allowance.* A monetary allowance used by a tenant or member to pay the utility cost portion of their total shelter cost when such amounts are not otherwise included in project rents or occupancy charges.

*Very low-income household.* A household having an adjusted annual income within the maximum very low-income limit stated in Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office).

III *Borrower Responsibilities:*

A *General.* All borrowers are responsible for:

1 Understanding the distinction between FmHA supervised credit and the credit provided by other Federal, State, or conventional loans.

2 Meeting the objectives for which the loan and/or grant was made and complying with the respective program requirements.

3 Understanding the unique characteristics and function of their

particular type of borrower entity as provided by charter, articles of incorporation, by-laws, and/or statute.

4 Assuring that a site manager or contact person is in close proximity to their MFH project.

5 Complying with the provisions of their security instruments and any directive issued by FmHA.

6 Following the approved management plan and reporting to FmHA any changes to the management plan for prior consent, and when appropriate, reporting and obtaining FmHA prior consent to any change of management agent.

B *Borrowers without a loan agreement.* Unless otherwise specified, these borrowers are exempt from the requirements of this subpart, except for exhibit C of this subpart, as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA. However, except for LH borrowers not charging for on-farm labor housing, these borrowers must provide evidence of tenant eligibility.

C *Borrowers with a loan and/or grant agreement in a multiple unit project.* These borrowers are responsible for meeting the requirements and conditions of their agreement/resolution and the requirements of this subpart.

D *Borrowers with governing bodies.* The elected or appointed officials comprising the governing body of the borrower are responsible for:

1 Maintaining records of all current members and maintaining membership at the required level.

2 Holding meetings as required by the organizational documents, and as otherwise necessary, to provide proper control and management of its operations, and to keep the membership informed.

3 Coordinating and monitoring activities of established cooperative committees.

E *Borrowers with a membership.* Members of a membership type borrower are responsible for full support of the project and operation by:

1 Promptly paying any dues, fees, and other required charges.

2 Electing responsible officials.

3 Complying with organization rules and regulations.

4 Participating in annual and special meetings.

5 Participating in established cooperative committees to which they have voluntarily accepted assignment.

6 Carrying out duties and services necessary to maintain the cooperative property for which they have voluntarily accepted assignment.

F *Delegation of responsibility and authority.* The borrower may delegate or assign management responsibilities to a property manager such as a management agent, a site manager, or as appropriate, a caretaker. Delegations or assignments of duties and responsibility will be included in written documents such as management agreements and job descriptions. FmHA will hold the borrower ultimately responsible for management of the project. FmHA may require a borrower to change the plan of project management and/or make appropriate redelegations of project management responsibility to achieve program objectives.

IV *Rent Subsidy Opportunities:* The available subsidy programs should be considered at the time of developing a project proposal and during project operation as they may be available to meet the tenants' needs. Congregate type services such as meals, limited homecare, medical, transportation, and social activities are not included in these subsidy programs. The subsidy programs are as follows:

A *FmHA Interest Credit—RRH and RCH Loans.* Regulations are contained in Exhibit H to this subpart and include:

1 *Plan I*—Only those borrowers who received this type of interest subsidy prior to October 27, 1980, may continue to utilize this Interest Credit Plan. Those broadly-based nonprofit corporations and consumer cooperatives may continue operating under this plan provided:

a Occupancy is limited to very-low or low-income non-elderly; very low-, low- and moderate-income person(s) who are elderly or have disabilities or handicaps.

b Budgets and rental rates are based on a 3 percent loan amortization.

2 *Plan II*—This interest subsidy is available to broadly-based nonprofit corporations, consumer cooperatives, State or local public agencies, or to other organizations and individuals operating on a limited profit basis.

a Occupancy is limited to very-low, low- and moderate-income persons except as noted in paragraph VI D 2 i of this exhibit.

b Budgets are prepared showing two rental or occupancy charge rates, basic and note rate. The minimum (basic) rate for persons not receiving rental assistance is based on a 1 percent subsidized rate. The maximum note rate is based on the loan amortized at the interest rate shown in the promissory note.

c Tenant's or member's contribution for shelter cost, calculated according to the FMI for Form FmHA 1944–8, may not exceed the highest of:

(1) Thirty percent of monthly adjusted income, or

(2) Ten percent of gross monthly income, or

(3) If the household is receiving payment for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter costs (see example in 1k of the definition of annual income in paragraph II of this exhibit), or

(4) The basic rent or occupancy charge when no RA is available from FmHA.

d RRH borrowers whose loans were approved on or after August 1, 1968, may convert from Plan I to Plan II. When they are presently a full profit operation, they may convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit and RA agreement according to exhibit H of this subpart.

e RRH borrowers with Plan I Section 8 interest credit agreements may change to Plan II when the 1 percent or 2 percent interest reduction is insufficient for the HUD contract rent to meet budgeting needs. The change of interest credit plan will be approved in accordance with paragraph VII B of Exhibit C of this subpart (available at any FmHA office). A new Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," is required.

B *Rental assistance (RA) program—FmHA.* This is a subsidy program available to RRH, RCH, and LH borrowers to assist very-low and low-income tenants and members in paying their shelter cost. RA is not authorized for tenants or members whose adjusted income is initially above the low-income level. RA is not available to LH borrowers who are individual farmowners, partnerships, family corporations, or an association of farmers. RRH borrowers with loans approved on or after August 1, 1968, must be operating under, or change to, Interest Credit Plan II to receive RA. Full profit borrowers may utilize RA by converting to a limited profit operation. The provisions of the RA program are covered in detail in Exhibit E of this subpart.

C *HUD project based Section 8 and tenant based Section 8 Rental Certificate or Rental Voucher Program.* These subsidy programs are administered by HUD or others authorized to administer the program such as State Housing Finance Agencies or the local public housing agency. Projects operating under the Memorandum of Understanding between FmHA and HUD (available at the FmHA National Office, Washington, DC 20250) will also be subject to the requirements of the Housing Assistance Payments Contract executed by the borrower. Projects accepting tenants utilizing Section 8 rental certificates or rental voucher assistance assigned by a local public housing agency will also comply with any requirements imposed by such agency. However, in all cases, tenants receiving section 8 assistance must meet the eligibility requirements specified in paragraph VI D of this exhibit. Requirements that conflict with FmHA requirements should be referred to the Servicing Official for guidance. (Generally, the most restrictive HUD or FmHA requirements or limitations will apply.)

D *State provided subsidy.* This is a subsidy program provided and funded by some States and available to RRH borrowers to assist tenants on approximately the same basis as the FmHA RA Program. The assistance is in accordance with a CONTRACT between the borrower and the State and concurred in by FmHA.

E *Privately provided subsidy.* This is a subsidy program whereby the project owner(s) or others enter into an Agreement with FmHA to provide and fund subsidy to tenants of the project on approximately the same basis as the FmHA RA Program. In some instances, the agreement may include a limit on the number of units and a Per Unit Ceiling on the amount of assistance. Privately provided subsidies are typically referred to as private rental assistance.

V *Management Operations:*

A *Management plan.*

1 A comprehensive management program is essential to the successful operation of a project. A written plan is the primary ingredient which should describe the

detailed objectives, policies and procedures in managing the project. A management plan is required to be submitted to the Agency for all projects, new and existing, except for those on-farm LH units where rent is not required. The plan should be developed in detail commensurate to project size and complexity and should be reviewed annually and updated at least triennially by the borrower. To reflect project needs and to meet current program objectives, use of an addendum is permitted when few changes are made in the update of the plan. Exhibit B–1 of this subpart outlines the requirements of the plan.

2 In the case of congregate housing/group homes, the management plan should describe, in addition to the preceding general items, the specific items in paragraph V B of exhibit J of this subpart.

B *Identity of interest disclosure.*

1 *General principles.* FmHA requires that applicants/borrowers and/or management agents describe and fully justify any identity of interest, or appearance of same, that exists or will exist between the borrower, management agent, suppliers of materials and/or services, or vendors in any combination of relationship. Identity of interest will be construed as existing between the applicant/borrower and/or management entity and suppliers of materials and/or services described under but not limited to any of the following conditions:

a When there is any financial interest between the applicant/borrower and/or management entity and the supplying entity.

b When one or more of the officers, directors, stockholders or partners of the applicant/borrower or management entity is also an officer, director, stockholder, or partner of the supplying entity.

c When any officer, director, stockholder, or partner of the applicant/borrower and/or management entity has any financial interest whatsoever in the supplying entity.

d When the supplying entity advances any funds to the applicant/borrower and/or management entity.

e When the supplying entity provides and pays on behalf of the applicant/borrower and/or management entity the cost of any materials and/or services in connection with obligations under the management plan/management agreement.

f When the supplying entity takes stock or any interest in the applicant/borrower and/or management entity as part of the consideration to be paid them.

g When there exist or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or cancelling any of the management plan/management agreement documents, except as approved by FmHA.

2 Any individual or organization sharing an identity of interest for the project must certify by memorandum that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract.

a The initial disclosure shall be in effect for a period of 3 years and renewed every 3 years thereafter, except if there are any changes in the business practices of the applicant/borrower and/or management entity during the interim years that include identity of interest concerns, the entity must file an amended disclosure.

b Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of subpart M of part 1940 of this chapter (available in any FmHA office).

C *Management agreement.* The management agreement is the primary document by which the management agent is guided, evaluated, and compensated. It bears a close relationship to the management plan. A management agreement is required except in cases where the borrower (owner) fills the role of manager. Requirements of a management agreement are listed in exhibit B–2 of this subpart. Exhibit B–3 of this subpart is a sample management agreement. The two types of agreements acceptable to FmHA are described as follows:

1 The owner hires a professional management agent to oversee and operate the project. The management agent may provide a site manager for on-site management and/or caretaker when justified by the size of the project. A qualifications statement by the management agent is required by the borrower and FmHA. Exhibit B–4 of this subpart provides a guideline for preparing the statement.

2 The owner maintains all or a part of the management role. The owner may use the services of a site manager in providing onsite management and/or services of a caretaker when justified by the size of the project. FmHA requires a qualifications statement by the owner who proposes to personally provide the management to determine management capability. Exhibit B–5 of this subpart provides a guideline for preparing the statement.

D *Responsibility.* The management plan and management agreement must be based on applicable provisions of local, State, and Federal statutes and the regulatory requirements of the loan used to finance the project, regardless of the management system used. The owner remains totally responsible to FmHA for the project, regardless of the authority delegated by the owner to the management agent.

E *Compensation for project administration.*

1 *General principles.* Compensation for project administration is the remuneration for performance of administrative duties and responsibilities by those selected by the owner and approved by the Agency as having sufficient background and experience to manage project operations. The administrative duties and responsibilities must be set out in the management plan along with the manner in which compensation will be determined. It is the option of the project owners to determine whether to use a management agent to carry out project administrative functions in full or in agent to carry out project administrative functions in full or in part. Should a management agent be used, it is the option of the owner to decide which duties the management agent will perform and which duties will be performed by others. Whenever the owner chooses to use a management agent, a management agreement must be used. The management agreement must describe the duties and compensation for the services provided by the management agent. Any other duties and compensation for project administration not covered in by the management agreement, may also be considered as project expenditures. All project administrative expenditures must be evaluated by the Agency as being reasonable for the services provided, including the reasonableness of the expenditures for management agent services.

2 *Review of administrative expenses.* The Agency is responsible for determining that project administrative expenses are reasonable for the services performed in administering project operations in an acceptable manner. Therefore, the Agency may use data from FmHA projects or other sources for use in making this determination. The Agency may establish guidelines for administrative expenses for use within a State or area. Administrative expenses falling within such guidelines for services typically performed under the guidelines may expect expeditious action on requests for budget approval. Administrative expenses falling outside of such guidelines for services typically performed under the guidelines may also warrant approval when justified. The management agent or owner will be primarily responsible for providing evidence that such fees are reasonable for the services performed when the administrative expenses are falling outside of any established guidelines.

3 *Review of management fees.* The Agency is responsible for determining that the fees paid for services performed by management agents are reasonable. Therefore, the Agency may use data from FmHA projects or other sources for use in determining what fees are reasonable for the services performed in an acceptable manner by management agents. The Agency may establish guidelines for management fees for use within a State or area. Management fees falling within such guidelines for services typically performed under the guidelines may expect expeditious action on requests for approval of management agreements and budgets. Management fees falling outside of those guidelines may also warrant approval when justified. The management agent or owner will be primarily responsible for providing evidence that such fees are reasonable for the services performed when management fees are falling outside of any established guidelines. Whenever disputes arise as to whether an administrative expense is appropriate for listing under the management fee, or as to some other project expense, the Agency will seek to mutually resolve such concerns. This will be done by using the approved management agreement or management plan to determine which services are being performed by the management agent.

4 *Project administrative expenses.*

a *Acceptable administrative expenses.* Those administrative expenses necessary to successfully carry out project operations may be approved provided such expenses do not duplicate any such expenses which may be included in the management fee as specified in the approved management agreement. The

instructions that accompany Form FmHA 1930–7, "Multiple Family Housing Project Budget," provide further guidance on acceptable project administrative expenses. Preparation of an IRS required report for the project, if required (e.g., Schedule K–1 (IRS Form 1065), "Partner's Share of Income, Credits, Deductions, etc." is an acceptable project expense.)

b *Unacceptable administrative expenses.* Those administrative expenses not necessary to successfully carry out project operations may be denied. Preparation of income tax returns for project owners are unacceptable project expenses.

5 *Projects with a management agent.* When management agents are used, the duties and compensation of the management agent must be set out in a management agreement. All such agreements are subject to Agency review and concurrence. The amount of compensation for the services rendered is to be negotiated between the owner and the management agent but is subject to Agency concurrence with the management agreement and approval in the project budget.

6 *Owner-managed projects.* The owner will be authorized to manage the rental project only when FmHA determines in writing that the owner (either as the individual borrower or as a part of an organizational borrower) has the necessary management capabilities.

a Projects with owners with identity-of-interest relationships to the management agent will not be considered as an owner managed project. A typical management fee may be charged as an expense to the project. The compensation must be according to the provisions of paragraph V E of this exhibit and be reasonable, earned, and not exceed the normal cost of similar services, had such services been provided by an independent management agent.

b Since cooperatives are to be organized as self-managed entities, the board of directors is not expected to have management experience. In lieu of this experience, the adviser to the board will provide management guidance during the formative years of the cooperative. Under the adviser's direction, the cooperative will become accustomed to this role and thus gain the ability to assume management responsibilities. If, after the required trial period outlined in subpart E of part 1944 of this chapter, the cooperative's board is unable to assume management responsibilities, professional management will be hired by the cooperative. We would expect the amount of compensation paid to a cooperative adviser to be less than that paid to other types of management agents in order to provide the members with some equity in the early years. (See subpart E of part 1944 of this chapter).

7 *Initial rent-up fees.* Payment of fees for a one-time effort to achieve initial rent-up of a newly constructed rental project is permitted when it is determined necessary and documented by the FmHA loan approval official and the loan applicant. Rent-up fees should be paid on a per-unit basis only after each unit has been occupied by the initial tenant. Payment of the rent-up fee and other project management start-up expenses should generally be made from the 2 percent initial operation and maintenance fund. A person or firm, preferably the management agency, may be compensated at a rate negotiated with the applicant/borrower that represents reasonable compensation for the incurred marketing cost and project management start-up expenses.

F *Site manager and/or caretaker services.* The borrower is responsible for describing the plan for site management in the management plan. The plan needs to identify whether the site manager will occupy one of the project units as a revenue producing unit or as a rent free unit, or will live away from the project. The on-site services of a site manager and/or caretaker may be used when justified by the size, composition, and location of a project, whether the project is managed by a management agent or by the owner. There should be a written agreement between the owner or the management agent and the site manager to define the role and duties and compensation for the site manager and to provide a basis for evaluating the site manager's performance. FmHA may require an on-site resident manager and/or caretaker to assure that the loan objectives are met and/or to protect the tenant's or Government's interests. It is not mandatory that the site manager and/or caretaker meet tenant occupancy eligibility requirements. However, if management considers the occupied unit to be a rental unit, the rent paid will be determined according to the site manager's/caretaker's income.

1 *Calculation of rental rate for site manager or caretaker.* The expense of providing the unit occupied by the site manager or caretaker will be included in the project budget the same as the expense for other nonrevenue producing portions of the project such as a laundry or community room. The rental rate will be determined as follows:

a When used as a revenue producing unit at approved rental rates, the salary paid to the site manager and/or caretaker will be included in the project operation and maintenance expenses. The same amount will be included in the annual income of the site manager and/or caretaker. The site manager and/or caretaker may be an eligible or ineligible tenant and their rent contribution will be based on their total income from all sources as shown on the tenant certification form. Occupancy surcharges will be applicable in eligible projects.

b When the unit is used as a nonrevenue producing unit, the project cost of providing the unit will be treated the same as those of other nonrevenue producing portions of the project. Project rental rates will be established as if the unit did not exist as living quarters. Debt payment will be as if the unit were rented at basic rent. A tenant certification form will not be prepared for this situation. Occupancy surcharge will not be collected in nonrevenue producing units.

2 *Owner occupancy.* With the prior approval of the State Director, owners may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or a site manager. The size, composition, and location of the project must justify the services of a site manager or caretaker, and the State Director must determine the owner is capable of performing these services. The rental rate will be included as described in paragraph V F 1 of this exhibit.

G *Projects without a site manager and/or caretaker.* Projects without a site manager and/or caretaker must have, at a minimum, a tenant who will serve as a contact person or have a person who is easily accessible to the project who is able to represent the project manager or owner on maintenance and management matters.

H *Supplemental services.* Supplemental services include laundry, vending machine, commissary store, pay telephones, or similar tenant benefit services.

1 *Borrower provided supplemental services.*

a Income from supplemental services and/or equipment and expense of acquisition and replacement cost shall be planned and recorded as part of the annual operating budget.

b Failure to account for all proceeds is a fraudulent act.

2 *Consignor provide supplemental services.*

a A written contact between the borrower and consignor is required. The contract terms should follow "industry" standards for the type of service.

b Comparability in all respects to conventional supplemental services contracts shall govern contract with identity of interest between the contracting parties.

c The borrower's share of income will be shown as planned and actual income in the project operating budget.

d Failure by the contractual parties to account for all proceeds is a fraudulent act.

VI *Renting Procedure:*

A *General.* Preparations for initial rent-up, occupancy and maintenance should begin at least 90 to 120 days ahead of the projected completion date of the project as described in § 1944.235 of subpart E of part 1944 of this chapter. This procedure will include a prerent-up conference between the FmHA Serving Official, the borrower, and the person(s) responsible for project management. Decisions to be made concern the advertisement of available units, affirmative marketing practices, tenant eligibility, and tenant selection criteria. It is important that this conference precede active marketing and the receipt of tenant applications.

B *Accommodations in communication.*

1 The borrower shall take appropriate steps to ensure effective communication with applicants, tenants, members, and members of the public with handicaps and disabilities.

a The borrower shall furnish appropriate auxiliary aids (electronic, mechanical, or personal assistance) where necessary to afford an individual with handicaps or disabilities an equal opportunity to participate in and enjoy the benefits of a MFH project receiving FmHA financial assistance.

(1) In determining what auxiliary aids are necessary, the borrower shall give primary consideration to the requests of an individual with handicaps or disabilities.

(2) The borrower is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

b Where a borrower communicates with applicants and tenants or members by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be available for use.

2 The borrower shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities in the project and community.

3 This paragraph does not require a borrower to take any action that the borrower can demonstrate would result in a fundamental alteration in the nature of the project or operation or an undue financial and administrative burden. If an action would result in such undue alteration or burden, the borrower shall take any other action that would otherwise ensure that, to the maximum extent possible, individuals with handicaps or disabilities receive the benefits and services of the project.

C *Affirmative Fair Housing Marketing Plan.* All borrowers with five or more rental units must meet the requirements of § 1901.203(c) of subpart E of part 1901 of this chapter by preparing and submitting HUD Form 935.2, "Affirmative Fair Housing Marketing (AFHM) Plan." Records must be maintained by the borrower reflecting efforts to fulfill the plan and will be reviewed by FmHA and updated by the borrower during compliance reviews for title VI of the Civil Rights Act of 1964. *The approved plan will be posted by the borrower for public inspection at the borrower's project site, rental office, or at any other location where tenant applications are received for the project.* In developing the plan, the following items should be considered:

1 *Direction of marketing activities.* The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area regardless of race, color, religion, sex, age, familial status, national origin, or handicap. The plan must show which efforts will be made to reach very low-income or low-income groups who traditionally would least likely be expected to apply for such housing without special outreach efforts.

2 *Marketing program.* The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc., are best suited to reach those very low-income or low-income groups who are least likely to apply for occupancy in the project. Marketing should not totally rely on "word of mouth" advertising. Appropriate social agencies and networks should be contacted to assist in reaching elderly (senior citizens), persons with handicaps, etc.

a *Advertising.*

(1) *Frequency.* The borrower should advertise availability of housing units in advance of their availability to allow time to receive and process applications, determine eligibility, and arrange for move-in of tenants or members in a smooth flow of project operation. Advertising by newsprint or electronic media should occur at least annually to promote project visibility, even if there is an adequate waiting list.

(2) *Posters, brochures, etc.* Any radio, TV, or newspaper advertisement, pamphlets, or brochures used must identify the project's handicap accessibility and contain the appropriate fair housing logotype or the equal housing opportunity slogan. A copy of this proposed material is to be submitted along with the HUD Form 935.2 for approval. The nondiscrimination poster entitled "And Justice For All," the "Fair Housing" poster and the tenant grievance and appeals procedure must be displayed in the rental office. If the rental office is not on site, the items must be displayed in a common conspicuous place on the site.

b *Signage.*

(1) *Permanent project sign.* A permanent sign identifying the project is required for all MFH projects approved on or after September 13, 1977. To meet minimum requirements for an existing or new project, the sign, subject to state or local code:

(i) Must be located at the primary site entrance and be readable and recognizable from the roadside.

(ii) Must be located near the site manager's (or contact person's) office when the project has multiple sites. Portable signs will be placed where vacancies exist at other site locations of a "scattered" project.

(iii) May be of any shape.

(iv) For projects of 8 or more units, must have not less than 16 square feet of area. Smaller projects may have smaller signs.

(v) Including its supports, must be made of durable material.

(vi) Must include the project name.

(vii) Must show rental contact information including but not limited to the project's office location and a telephone number where applicant inquiries may be made.

(viii) Must show the equal housing opportunity logotype (house symbol and slogan) as shown in exhibit B–11 of this subpart, OR the slogan "Equal Housing Opportunity" OR the statement "We are pledge to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin." The logotype and/or slogan must be permanently affixed, clearly visible and should be at least equal to approximately 3 to 5 percent of the sign area.

(ix) May display the FmHA logotype as shown in exhibit B–12 of this subpart.

(2) *Handicap accessibility signs.*

(i) *Parking spaces.* Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the international symbol of accessibility (see exhibit B–13 of this subpart). The sign should be mounted on a post at a height readily visible from an occupied vehicle. In snow areas, the sign needs to be visible above piled snow.

(ii) *Handicap accessibility route.* When the continuous unobstructed ingress/egress handicap accessibility route to a primary building entrance is other than the usual or obvious route, the alternate route for handicap accessibility shall be clearly marked with handicap symbols and directional signs to aid a handicapped person's ingress/egress to the building, through an accessible entrance, and to accessible common use and public and living areas.

c *Community contact.* Community leaders and special interest groups such as community, public interest, religious organizations, and organizations for the handicapped should be contacted in small communities without formal communication media aimed at the group or groups least likely to apply for available housing. Community contacts should also be used in reaching specific elements of the community such as the elderly or particular ethnic groups determined least likely to apply for the available housing.

d *Rental staff.* All staff persons responsible for renting the units must have had training provided on Federal, State, and local fair housing laws and regulations and in the requirements of fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair housing must be attached to the AFHM plan according to the instructions for part 7 of HUD Form 935.2.

3 *Marketing records.* The borrower will be required to develop and maintain a system to provide data to indicate to what extent the borrower is carrying out the objective of the AFHM plan.

D *Tenant eligibility and occupancy guidelines.* The rental agent of the project must be knowledgeable about the FmHA tenant eligibility and occupancy requirements as they relate to a particular project. FmHA loans require occupancy of the unit by eligible tenants. Except for migrant farmworker tenants in LH projects, tenant/applicants must occupy the housing unit they qualify for as their permanent residence on the provision they do/will not maintain a separate subsidized rental unit in a different location.

1 *Eligible tenants.* The following tenant eligibility criteria will apply where appropriate, unless otherwise authorized such as in the case of LH as described in subpart D of part 1944 of this chapter.

a To determine eligibility for occupancy, the applicant's eligibility income must be as defined in paragraph II and include income from net family assets as defined in paragraph II of this exhibit.

b The adjusted annual income must meet the definition of very low-, low- or moderate-income as defined in paragraph II of this exhibit as required for that specific project for applicant selection, tenant contribution, and continued occupancy.

c To determine eligibility for continued occupancy, the tenant's adjusted annual income must be determined at least once every 12 months. When the tenant's adjusted annual income exceeds the moderate-income limit established for the area in which the project is located, the tenant is no longer eligible and will be required to vacate the project according to the terms of the lease

and paragraph VI D 6 of this exhibit. Continued occupancy by cooperative members will not be affected by this income criteria. Cooperative members, after initial certification of income eligibility, may remain members regardless of income.

d In RRH projects operating on a Plan I basis, tenants will:

(1) Be a very low-, low-, or moderate-income person who is elderly, or has handicaps, or disabilities, or

(2) Be a very low or low-income nonelderly, nondisabled, or nonhandicapped person.

e In RRH projects operating on a nonprofit or limited profit Plan II basis, tenants will be a very low-, low-, or moderate-income person regardless of age, disability, or handicapping condition.

f In RRH projects operating on a full-profit basis, tenants will:

(1) Be a person of any income who is elderly, or has handicaps, or disabilities, or

(2) Be a very low-, low-, or moderate-income nonelderly, nondisabled, or nonhandicapped person.

g In LH projects designed and operated either for year-round or seasonal occupancy, eligibility is established in subpart D of part 1944 of this chapter.

h Occupancy in RRH project units designated by FmHA as:

(1) Family housing may be occupied by any combination of elderly, disabled, or handicapped, and/or nonelderly, nondisabled, or nonhandicapped tenants including those tenants with familial status. Marketing priorities for this category should not exclude one group over another.

(2) Elderly housing must be occupied by tenants who are elderly, disabled, and/or handicapped but not at the exclusion of children if they are members of the "elderly" household, nor shall it be restricted exclusively for use by tenants who are disabled and/or handicapped.

(3) Housing which consists of specific units in a project designated as family housing and other units designated as elderly housing units should be governed by paragraphs VI D 1 h (1) and (2) of this exhibit.

(4) Congregate housing and group homes shall be occupied by persons described in the definitions for congregate housing and group home, respectively in paragraph II of this exhibit.

i *Tenant of member independence.*

(1) *RRH, RCH, and LH housing.* It shall be a tenant's or member's responsibility to determine the ability to meet the legitimate and uniformly applied requirements of tenancy, thus assuming risk and responsibility of living within and upon the project premises. It shall be the owner's or representative's responsibility to respond to requests for what reasonable accommodations the tenant or member may need, otherwise the owner or its representative MAY NOT under possible penalty prescribed by Pub. Law No. 100–430, 102 stat. 1619 (1988) codified at 42 U.S.C. 3601 et seq:

(i) Judge whether individuals with handicap or disability are capable of independent living.

(ii) Require a physical examination as a condition for tenant or member selection.

(iii) Impose conditional leases requiring individuals with handicaps or disabilities to participate in supportive services.

(2) *Congregate and group home housing and housing with handicap unit(s).* Because the purpose of such housing is to provide specific supportive services to individuals, it is permissible for the owner or its representative to inquire only to the extent necessary in the case of congregate housing whether the project offers the services wanted by the individual and in the case of group home housing, whether the individual has a handicap or disability that would qualify the individual to occupy, or continue to occupy the housing.

(3) *Legal capacity.* Tenants or members in FmHA financed MFH projects must possess the legal capacity to enter into a lease agreement, except where a legal guardian (an individual) may sign when the tenant or member is otherwise eligible and is a tenant residing in a group housing project.

j For LH projects and units in RRH projects specifically designed and designated for the elderly, disabled, and/or handicapped as defined by FmHA, occupancy is limited solely to those meeting the eligibility requirements for the specific type of project (i.e., domestic farm laborers, elderly, disabled, and/or handicapped). Eligible occupants in these projects may also include other persons who are usually household members of the families of the domestic farm laborer, or persons who are elderly, or have disabilities, or handicaps. Resident assistants or chore workers will not be considered members of the tenant's household.

k A student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in an RRH or RCH project may be considered an eligible tenant when all of the following conditions are met:

(1) Is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(2) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(3) The persons seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(4) The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

l A domestic farm laborer may continue occupancy of an LH project after retirement (having reached age 55) or after becoming disabled [(determined to have an impairment which is expected to be of long-continued and indefinite duration and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician)].

m A tenant who does not personally reside in a rental unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, is considered ineligible for subsidy and shall be required to pay note rate rent in Plan II projects or 125 percent of rent in Plan I projects for the period of absence exceeding 60 consecutive days.

(1) If the tenant continues to be absent from the unit, the borrower must notify the tenant by certified mail at least 30 days prior to the end of the leasing period, to occupy the living unit by the end of the lease period or the borrower will start termination proceedings.

(2) In those cases where the tenant's lease does not contain the lease clause in paragraph VIII B 4 c of this exhibit, the tenant will be advised that the lease will not be renewed, unless replaced with a lease meeting current requirements.

2 *Occupancy policy and guidelines.*

a *Objective.* The objective of the occupancy policy and guidelines in FMHA financed projects is to achieve utilization of subsidized space without overcrowding or providing more space than is needed by the number of people in the household.

b *Policy.*

(1) FmHA does not specify the number of persons who may live in MFH housing units of various sizes.

(2) The borrower must set reasonable occupancy standards which will assist as many people as possible without overcrowding the unit or the project and which will minimize vacancies.

(3) In setting the occupancy standards, the borrower must comply with all reasonable State and local health and safety restrictions regarding the maximum number of occupants permitted to occupy a dwelling. In the absence of State or local health safety restrictions, overcrowding shall occur when the TOTAL occupancy level in a housing unit exceeds 2 people per *habitable sleeping room,* except that an additional person(s) may be allowed when a habitable sleeping room provides at least 50 square feet per person. A habitable sleeping room shall not include a kitchen, bathroom, hallway, or dining area.

(4) In placing families on waiting lists and in assigning families to MFH housing, a borrower should allow families to choose whether to opt for larger or smaller units to permit families to occupy units of sufficient size, so that persons of opposite sex (other than spouses) or persons of same sex, persons of different or same generation, and unrelated or related adults may have separate bedrooms according to the particular needs of the family.

(5) Borrowers may have different standards for different projects but such standards must not result in or perpetuate patterns of occupancy which would be inconsistent with title VI of the Civil Rights Act of 1964 or the Fair Housing Act.

(6) For the purpose of determining unit size, borrowers need to include, as members of the household:

(i) All full-time members of the household.

(ii) Dependent minors who are away at school but live with the family during school recesses.

(iii) Dependent minors who are subject to a joint custody agreement but live in the unit at least 50 percent of the time.

(iv) An unborn child or a child in the process of being adopted by or granted custody of an adult.

(v) A foster child residing in the unit, or a household child temporarily residing elsewhere in foster care.

(vi) A live-in attendant.

(7) Borrowers shall not provide bedroom space for others who are not members of the household such as adult children on active military duty, permanently institutionalized family members, or visitors.

c *Guidelines.* These guidelines are designed to assist the borrower in implementing the occupancy policy into workable occupancy standards. The project occupancy standard should be available for review by applicant, tenant, member, and project representative upon request.

(1) In setting objective occupancy standards, the borrower should set the standards to permit the tenant to select the unit size they deem appropriate to their needs insofar as overcrowding by the household does not happen and underutilization of the unit does not occur. The occupancy standard selected should attempt to reflect ideal ranges of occupant density. In developing an ideal occupancy standard, it should be based so that:

(i) *No more than two* persons *should be required* to occupy a bedroom.

(ii) Persons of different generations, persons of the opposite sex (other than spouses), and unrelated adults *should not be required* to share a bedroom.

(iii) Children of the same sex may share a bedroom.

(iv) Children, with the possible exception of infants, *should not be required* to share a bedroom with persons of different generations, including their parents.

(2) These guidelines should result in the following ideal range of persons per housing unit:

| No. of bedrooms | Occupant density range | |
|---|---|---|
| | minimum | |
| 0 | 1 | 1 |
| 1 | 1 | 2 |
| 2 | 2 | 4 |
| 3 | 3 | 6 |
| 4 | 5 | 8 |
| 5 | 7 | 10 |

For example, if the borrower adopts these standards, households with three people generally should be accomodated in a two bedroom unit and should not receive apartments with more than three bedrooms. Nor should such households be required to live in apartments with fewer than two bedrooms. A household of three persons could be permitted to live in an apartment with fewer than two bedrooms if the household so chooses, unless it would constitute overcrowding OR there is a state or local occupancy law forbidding occupancy of the unit by three or more persons.

(3) If, because of a physical or mental handicap of a household member or a person associated with that household, a family may need a unit that is larger than the unit size suggested by the guidelines in paragraph VI D 2 c (2) of this exhibit, it may be an unlawful failure to make reasonable accommodation to deny such a family the opportunity to apply for and obtain such a unit.

d These occupancy guidelines may serve also as general guidelines for migrant and on-farm LH. Projects developed in compliance with local and/or state design requirements will determine the appropriate occupancy standards for migrant LH. In dormitory type LH housing, there must be at least 400 cubic feet of habitable sleeping area for each person.

e When there are no units of appropriate size available in the project:

(1) The tenant may be admitted and/or remain, provided the unit is not overcrowded or underutilized.

(2) The tenant may receive available rental subsidy if otherwise qualified by income.

f When an occupied unit becomes overcrowded or underutilized and there is a waiting list for the size unit occupied:

(1) The tenant must move to another unit in the project of adequate size and accommodation when it becomes available. If the tenant then refuses to move to the available unit, or if none is available.

(2) Vacate the project within a reasonable time period established by the borrower as specified in the lease or by the end of the lease period, whichever is later.

g To avoid prolonged vacancy and loss of revenue, management may permit temporary occupancy of specially designed handicapped accessible units by households not needing such specially designed features, under the following conditions:

(1) No household needing the specially designed features of a handicapped accessible unit is available to occupy the unit and management has made a diligent effort to reach tenants who qualify for the specially designed unit;

(2) The tenant agrees to transfer to an appropriate unit if and when it becomes available in the project once an applicant with handicaps needing the features of a handicapped accessible unit is on the waiting list and ready to move in;

(3) The responsibility to pay all costs associated with the subsequent move to the appropriate unit shall be mutually determined between the owner and the tenant. The owner's share of cost, if any, may be a project expense; and

(4) The appropriate lease clause in paragraph VIII C of this exhibit is incorporated in the tenant's lease.

h Borrowers with RRH projects specifically built and designated for the elderly prior to October 27, 1980, with only a few or no one-bedroom units, may permit occupancy of two-bedroom units by single eligible tenants if this provision is included in the project occupancy policy. The occupancy policy should reflect the needs of the local market area. This eligibility determination made by management must be included in the tenant's lease and will entitle such tenant to all benefits without need for further FmHA approval.

i When a unit cannot be rented under the provisions in paragraph VI D 2 g and h of this exhibit, the Servicing Official may authorize an exception according to paragraph VI D 7 of this exhibit.

j A tenant who was determined eligible and allowed to occupy under regulations in effect prior to October 1, 1986, who does not meet eligibility requirements regarding income or occupancy policy as prescribed in these regulations may be permitted continued occupancy in the same unit for the duration of their residency. This provision specifically refers to:

(1) Elderly tenants of any income level who have occupied their unit, since before October 27, 1980.

(2) Tenants who were determined eligible before October 27, 1980, but did not meet income and occupancy requirements on that date. Examples are:

(i) Individual tenants occupying a unit with separate tenant certifications whose combined income on October 27, 1980, would disqualify joint tenancy.

(ii) Tenant households whose composition did not meet the occupancy guidelines in paragraph VI D 2 c (2) of this exhibit.

(3) Tenants who became income ineligible due to changes of income and shelter cost determination on October 1, 1986. This provision did not apply to normal increase of household income which may have made them ineligible before October 1, 1986.

k For each RRH project specifically designated for the elderly, the borrower or management may not prohibit, prevent, restrict, or discriminate against any tenant for continued occupancy or applicant for occupancy who owns or will keep a pet in their apartment unit unless the approved project pet rules are violated.

l Nothing in this subpart requires that an apartment unit be made available to any individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others, Except, when such threat can be removed by applying a reasonable accommodation.

3 *Reasonable accommodations.*

a The Fair Housing Amendment Act of 1988 requires persons to make reasonable accommodations in rules, policies, practices, or services, when such accommodations would afford a handicapped or disabled person equal opportunity to occupy or continue to occupy and enjoy a dwelling unit, including public and common use areas. For example:

(1) It would be unlawful to refuse a person with a sight impairment with a service animal to live in a dwelling unit when there is otherwise a no-pet policy in the apartment complex.

(2) It would be reasonable accommodation to grant a request by an applicant or tenant with a mobility impairment to be assigned a reserved parking space as near to that person's dwelling unit as possible, even though all other designated handicapped parking spaces are already reserved, having been assigned on a first-come, first served basis.

(3) It would be reasonable accommodation to remove a gas cooking stove and install a microwave oven when such accommodations to a tenant or member would remove a direct

threat to the project, the tenant and other tenants. Other examples are changing water faucets to push or electronic activated faucets and door knobs to door handles for persons with infirmed hands.

b The Fair Housing Amendment Act requires owners to permit, at the expense of a person with handicaps, reasonable modifications of an existing unit, occupied or to be occupied by a person with handicaps, if the proposed modifications may be necessary to afford that person full enjoyment of the dwelling unit.

(1) The borrower may, where it is reasonable to do so, condition permission for a modification on the applicant or tenant agreeing to restore the interior of the dwelling unit to the condition that existed before the modifications, reasonable wear and tear excepted. (Note: It should not, for example, be necessary to remove blocking previously installed to support bathtub handrails when restoring to "original" condition since the blocking does not affect future use.)

(2) The borrower may not increase the customarily required security deposit. However, where it is necessary to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of tenancy, the borrower may negotiate as part of such a restoration agreement a provision requiring that a tenant pay into an interest bearing escrow account, over a reasonable period, an amount of money not to exceed the cost of restoration. The interest in any such account shall accrue to the tenant's benefit.

4 *Other items the borrower should consider in determining eligibility of applicants for admission to the project.*

a Any criteria or documentation must be applied uniformly for all applicants for occupancy for the following items:

(1) Verification of income and/or employment according to paragraph VII of this exhibit. (Mandatory in all cases.)

(2) Credit reports to reflect the applicant's past record of meeting obligations. (Optional.)

(3) Prior landlord references to determine if the tenant was responsive to meeting rent payment obligations, care, and maintenance of the unit. (Optional.)

(4) The applicant's financial capability to meet other basic living expenses and the rental charge, taking into consideration any subsidy assistance that could be made available to the tenant. Where RA is not available, the borrower should inform any very-low or low-income household that would be required but unable to pay the approved rent, including utilities, that they may be eligible for a particular form of rent subsidy described in paragraph IV of this subpart. The borrower should indicate where information about other subsidies can be obtained. (Optional.)

(5) Written verification of an unborn child by a doctor or other qualified third party. (When applicable.)

b A borrower or manager should consider mitigating factors when tenants or members have had or presently have a period of hardship beyond their control, when they have had disputes with creditors, including landlords, or when they were having difficulty paying overburdened rent levels.

5 *Surviving or remaining members of eligible tenant household.*

a *Surviving* members of an elderly, disabled, and/or handicapped tenant's household may continue occupancy of the unit after the death of the original tenant, even though they may not meet the definition of an elderly, disabled or handicapped person stated in paragraph II of this exhibit, provided:

(1) They are eligible occupants with respect to income and were either cotenant or member of the household and have legal capacity to sign and assume the lease,

(2) They occupied the unit with the original tenant at the time that the original tenant died, and

(3) A surviving nonelderly cotenant or comember shall not qualify for the elderly family adjustments to income.

b Surviving members of a domestic farm laborer's household may continue to occupy when they meet the definition of a domestic farm laborer as defined in paragraph II of this exhibit.

c *Remaining* household member(s) of a nonelderly, nondisabled and/or nonhandicapped household, who is included on the current tenant certification may continue to occupy the rental unit if they otherwise independently meet tenant eligibility requirements with respect to income and occupancy standard size and sign a succeeding tenant certification establishing their own tenancy.

d When tenants no longer meet the requirements of paragraph VI D 5 a, b, or c of this exhibit, the provisions for formerly eligible tenants in paragraph VI D 6 of this exhibit shall apply.

6 *Formerly eligible tenants.* Unless authorized by paragraph VI D 2 j of this exhibit, formerly eligible tenants will be required to vacate their unit within 30 days (7 days for migrant farm labor tenants with week-to-week lease agreements) or the end of the term of their lease agreement, whichever is longer. If, however, there is not an eligible applicant on the waiting list available for occupancy, the formerly eligible tenant may remain until there is an eligible tenant on the waiting list available to occupy the unit; at which time, the requirements for notice to vacate stated in paragraph VI D 6 c of this exhibit will take effect. If vacating the unit in the time period described creates an undue hardship on the family, the Servicing Official may permit continued occupancy for a reasonable period of time. The following "formerly eligible" situations apply to this paragraph:

a Tenants who no longer meet FmHA income eligibility requirements. (This includes tenants receiving RA or Section 8 assistance.)

b Tenants in LH projects who no longer meet the farm labor occupation requirements, and who are neither retired nor disabled domestic farm laborers, are considered to be "formerly eligible tenants" as long as a need for housing for domestic farm laborers exists in the project's farm market area.

c Tenants who no longer meet the occupancy policy for the project. These tenants must agree in writing to move to a unit of appropriate size in the project when one becomes available, or when an appropriate sized unit does not exist in the project, vacate the project at the termination of their lease. However, the tenant may remain as an ineligible tenant if the unit is not overcrowded and there are no other applicants on the waiting list for the size of unit presently occupied.

7 *Servicing official authority to permit an RRH or LH borrower to rent to ineligible tenants.*

a The Servicing Official may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move for initially documented ineligibility. A copy of the authorization to rent to ineligibles will be forwarded to the State Office. The following determinations must be made by the authorizing FmHA official.

(1) There are no eligible persons on a waiting list.

(2) The borrower provided evidence that a diligent but unsuccessful effort to rent any vacant unit(s) to an eligible tenant household has been made. Such evidence may consist of advertisements in appropriate publications, posting notices in several public places, and other places where persons seeking rental housing would likely make contact; holding open houses, making appropriate contacts with public housing agencies and authorities (where they exist), State and local agencies and organizations, Chamber of Commerce, and real estate agencies.

(3) The borrower will continue with aggressive efforts to locate eligible tenants and submit to the Servicing Office, along with Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," a report of efforts made. The required followup should be posted in the Servicing Office on Form FmHA 1905–6, "Management System Card-Multifamily Housing."

(4) To protect the security interest of the Government, the units may be rented for no more than a year after which the lease must convert to a monthly lease. The monthly lease must require that the unit be vacated when an eligible prospective tenant is available. The ineligible tenant will then be given 30 days to vacate.

(5) Tenants residing in RRH units who are ineligible, because their adjusted annual income exceeds the maximum for the RRH project, will be charged the FmHA approved note rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate.

(6) Tenants permitted to occupy but who are ineligible for reasons other than income may benefit from RA and/or interest credit.

(7) Tenants residing in off-farm LH units who are ineligible because their adjusted

annual income exceeds the maximum for the area will be charged the lesser of the LH project's note rate rent or the prevailing market rent rate for the project as determined by subpart D of part 1944 of this chapter. For on-farm tenants, rent determination may be subject to local discretion with limitations as set out in subpart D of part 1944 of this chapter. Excess rent shall be remitted to the Agency for credit to the Rural Housing Insurance Fund.

b Examples of situations where the Servicing Official may authorize a borrower to rent units to ineligible persons to reduce chronic vacancy are:

(1) In housing designated as "family" housing, permitting persons or households to occupy who are not eligible because they have an above normal income.

(2) In housing designated as "elderly" housing, permitting persons or households to occupy that meet the definitional requirements of qualifying as elderly, but who otherwise have an above moderate income. This provision will not permit nonelderly persons or households to occupy housing for the elderly.

c When the Servicing Official determines that a borrower may rent to an ineligible tenant, the written authorization must contain the appropriate clauses which must be inserted into the ineligible tenant's lease. At a minimum it should include:

(1) The reason for ineligibility.

(2) The term of ineligible occupancy.

(3) Any conditions under which the tenant will be required to vacate the unit including moving to an appropriate size unit when warranted to comply with the established occupancy standards.

(4) The length of notice the tenant will be given to vacate.

E *Applicant inquiries and waiting lists.*

1 When a prospective tenant or member inquires (by telephone, letter, or visit) concerning the availability of a rental or cooperative unit, the borrower or rental agent will advise the prospective applicant of their right to file an application.

2 When a prospective tenant or member files a completed application for occupancy and is determined eligible, the borrower or rental agent will place the prospect's name chronologically by date and time on the appropriate written waiting list. Exhibit B–14 of this subpart contains a sample waiting list. An application is a written document(s) prescribed by the management providing sufficient information for the rental agent to complete the steps necessary to determine eligibility.

a Eligibility shall be governed by paragraph VI F of this exhibit.

b The actual determination of eligibility will be conducted according to the application process described in paragraph VI F of this exhibit.

c Priority on the waiting list shall be determined according to paragraph VI E 3 of this exhibit. Eligibility for cooperative membership will be determined in accordance with subpart E to part 1944 of this chapter.

3 Separate waiting lists by categories and/or a master waiting list with income levels identified (very low-, low- and moderate-income), and categories or priorities indicated will be maintained for rural rental, cooperative, and year-round occupancy farm labor housing. Each list must be maintained in chronological order. When there are separate lists, they must be cross-referenced for prospective tenants who fit more than one category or priority. Separate lists may be maintained for:

a Income levels (very low-, low-, moderate-income, or ineligible).

b Various size units.

c Units for elderly, disabled, or handicapped persons, families, or any other combination as planned for the project according to the borrower's loan agreement or resolution and management plan.

d Persons who require the special design features of the handicapped accessible units(s) in the project such as persons confined to a wheelchair or requiring other auxiliary apparatus for mobility and/or life support. Persons on this list have priority for these units.

e Holders of Letters of Priority Entitlement issued by FmHA according to subpart E of part 1965 of this chapter will be given top of the waiting list priority within an income group for the category of unit size for which the applicant qualifies. This same priority shall also extend to persons displaced due to housing rendered uninhabitable or actually seized by legal action (for other than illegal activities).

f In congregate housing projects, priority can be given to tenants who qualify for the services provided by the congregate facility insofar as there is available capacity in the facility to provide the services.

g In LH projects, lists should be maintained in accordance with the priorities of occupancy established by § 1944.154 of subpart D of part 1944 of this chapter.

h In only those projects with project based Section 8 units, priority for such units will go to applicants who, at their time of housing need, are involuntarily displaced, or living in substandard housing, or paying more than 50 percent of income for rent.

i Tenant applicants that qualify the borrower for tax credit.

4 For seasonal farm LH a waiting list should be chronologically compiled by date and time received as in paragraphs VI E 2 and VI E 3 of this exhibit. These lists should be maintained for the season in which the project will be operating. Prospective tenants should be advised that the waiting list will terminate on the closing date of the project in any given season. Tenant selection shall be governed according to paragraph VI H 6 of this exhibit.

a Seasonal LH management plans should identify a date when applications will be accepted for a new operating season and a waiting list compiled.

b A process should be specified in the plan for advising prospective tenants of the application process and the dates of project operation.

5 A waiting list must show the racial identity of the prospective tenant. Rental housing managers may determine how the identification is to be made according to the guidance found at exhibit B–14 of this subpart, which may include the use of a code system.

6 When prospective tenants are first assigned to the waiting list, they will be notified of the category(s) to be assigned to their application. Prospective tenants may inquire to determine the *place* of their application on the waiting list. However, to protect the privacy of all prospective tenants, the waiting list should not be shown to any prospective tenants.

7 Borrowers may establish a procedure for purging the waiting list(s) periodically of prospective tenants who are no longer interested in occupancy. The borrower must inform each prospective tenant of this procedure and any actions they must take to maintain their priority position on the waiting list. When a name is removed from the waiting list by the borrower, the prospective tenant must be informed in writing at their last known address. The letter must include appeal rights under subpart L of part 1944 of this chapter.

8 Expired waiting lists must be kept on file by the borrower or management agent until a compliance review has been conducted by FmHA in accordance with subpart E of part 1901 of this chapter.

F *Applications, eligibility determination and notification of eligibility or rejection.*

1 *Application status for determining eligibility.* All persons desiring to apply for occupancy, whether as the initial applicant household or as a person(s) later joining an existing tenant household, will be provided the opportunity to submit a complete application. The borrower or rental agent will provide prospective tenants or members with a written list of all information required for a complete application and offer assistance in completing the application if needed.

a After the potential tenant or member has submitted all required forms and information but additional information is required, the borrower or rental agent must notify the applicant within 10 days of the items needed to complete a review of eligibility. The application file will be documented on the action taken.

b When the application is complete, and occupancy by the applicant is expected within 90 days of completing the application, eligibility will be determined, including verification of applicant information performed according to paragraph VII of this exhibit; otherwise, verification of applicant information will be initially satisfied upon sufficient review of the information to determine whether the applicant is clearly eligible or not eligible.

c Applicants determined eligible will be added to the waiting list according to paragraph VI E 2 of this exhibit, even when an operational project has few or no vacancies, and there are sufficient active applications from households determined eligible to fill expected vacancies.

d Application fees are discouraged, but when used, any fee charged to a prospective tenant shall be limited to the cost of actual services incurred for obtaining necessary information associated with completing a tenant certification.

2 *Fair housing restrictions and provisions.*

a It shall be unlawful for a person to make an inquiry to determine whether an

applicant for a housing unit, or anyone associated with that applicant, has a handicap or disability or to make inquiry as to the nature or severity of a handicap or disability of such a person. However,

b The following inquiries are not prohibited, provided these inquiries are made of all applicants, whether or not they have handicaps or disabilities.

(1) Inquiry into an applicant's ability to meet the requirements of tenancy (i.e., eligibility, history of meeting financial obligations) and without being a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(2) Inquiry to determine whether an applicant is qualified for a housing unit or adjustment to income available only to persons with handicaps or disabilities or to a persons with a particular type of handicap or disability.

(3) Inquiry to determine whether an applicant for a housing unit is qualified for a priority available to persons with handicaps or disabilities or to persons with a particular type of handicap.

(4) Inquiring whether an applicant for a dwelling is a current illegal user of a controlled substance or has a previous conviction of the same.

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(6) Inquiring whether an applicant answering positively to F 2 b (4) or (5) of this paragraph has successfully completed a controlled substance abuse recovery program or is presently enrolled in such a program.

3 *Application requirements.* At a minimum to be considered complete, applications must include for each prospective tenant household sufficient information, such as the following, to complete a tenant certification form:

a Name and present address.

b Household income information, as defined under annual income, adjusted annual income, and net family assets in paragraph II of this exhibit.

c Age and number of household members.

d Indication whether applicant requests either a handicap/disability adjustment to income or a special handicapped accessible unit or both.

e Applicant's certification that the unit applied for will be the applicant household's permanent residence and it does/will not maintain a separate subsidized rental unit in a different location.

f Signature and date section.

g Race, national origin and sex designation. This designation shall be placed as the last section of the application form beneath the signature and date section.

(1) The borrower or management agent will request that each prospective tenant or member provide this information on a voluntary basis to enable monitoring or compliance with Federal laws prohibiting discrimination. When the applicant does not provide this information, the rental agent or board will complete this item based on personal observation or surname.

(2) The following disclosure notice shall appear on the tenant application form or on an amendment to the application:

"The information regarding race, national origin, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Farmers Home Administration, that Federal Laws prohibiting discrimination against tenant applicants on the basis of race, color, national origin, religion, sex, familial status, age, and handicap are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname."

h The application form shall contain the fair housing logotype or slogan and indication of handicap accessibility on the first page of the form.

i Retired or disabled domestic farm labor applicants must meet the definition requirements of § 1944.153 of Subpart D of Part 1944 of this chapter.

4 *Notification to applicant.* The applicant who has submitted a completed application will be notified in writing that he or she has been selected for immediate occupancy, placed on a waiting list, or rejected.

5 *Applicants determined ineligible.* After due consideration of mitigating circumstances, applicants determined ineligible will be notified in writing of the specific reasons for rejection. The letter will include the following statement: "The Fair Housing Act prohibits discrimination in the sale, rental or financing of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. Federal law also prohibits discrimination on the basis of age. Complaints of discrimination may be forwarded to the Administrator, FmHA, USDA Washington, DC 20250." This statement can be placed on all materials and correspondence done by the borrower, owner, or management company.

a The rejection letter must also outline the applicant's rights to appeal the rejection and be sent or hand-delivered according to subpart L of part 1944 of this chapter except for those clearly not eligible for occupancy according to FmHA regulations.

b When the rejection is based on information from a credit bureau, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

c Any applicant household may be rejected due to:

(1) A history of unjustified and/or chronic nonpayment of rent and/or financial obligations.

(2) A history of living or housekeeping habits that would pose a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(3) A history of disturbance of neighbors.

(4) A history of violations of the terms of previous rental agreements, especially those resulting in eviction from housing or termination from residential programs.

d Rejection of applicants on a arbitrary basis is prohibited. Examples of such arbitrary rejections includes considering the following factors in determining a tenant's eligibility:

(1) Race, color, religion, sex, age, familial status, national origin, handicap (except in those projects or portions of projects designated for elderly, disabled and/or handicapped, where occupancy by nonelderly, nondisabled or nonhandicapped can be prohibited).

(2) Receipt of income from public assistance.

(3) Families with children of uncertain parentage.

(4) Participation in tenant organizations.

(5) Tenants or tenant family members with AIDS.

e In the case of LH projects, no organization borrower, other than an association of farmers of family farm corporation or partnership, will block lease to, or otherwise require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

f Rejected applications must be kept on file by the borrower or management agent for a period of 3 years or until a compliance review has been conducted by FmHA in accordance with subpart E of part 1901 of this chapter.

G *Tax credit compliance.* The Tax Reform Act of 1986 permits certain RRH borrowers to receive tax credits for low-income housing projects if 20 percent or more of the units are occupied by very low-income tenants whose annual gross income is 50 percent or less of the area median gross income; or 40 percent or more of the units are occupied by tenants whose annual gross income is 60 percent or less of the area median gross income.

1 Eligible borrowers with projects qualified to receive tax credits will follow the tenant selection criteria of paragraph VI H of this exhibit except that tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow borrowers to meet their tax credit requirements.

2 Borrowers using IRS tax credits may neither terminate a tenant's occupancy nor refuse to renew a tenant's lease except for material noncompliance or other good cause as described in paragraph XIV of this exhibit. Tenants whose income increases after initial occupancy and exceeds IRS tax credit thresholds, but otherwise still meet FmHA income eligibility thresholds, remain qualified to occupy with respect to income eligibility.

H *Tenant and member selection.*

1 An eligible applicant will be selected from a waiting lists(s) identifying the category on basis of the applicant's unit size needed, income level (very low-, low-, moderate-income, or ineligible) or from a priority waiting list, as described in paragraph VI E of this exhibit, when the available size unit meets the applicant's need. The eligible applicant will further be selected on a first-come, first-served basis from the selected category or priority waiting list in the following order:

a Very low-income

b Low-income, up to 60 percent of median income, (in "tax credit" projects)
c Low-income
d Moderate-income
e Ineligible

2 When RA is available:

a Very low-income applicants eligible for RA have a priority over all other applicants on each type of waiting list maintained by the borrower in accordance with paragraph XI of exhibit E to this subpart.

b Low-income applicants may be selected provided no very low-income applicants remain on the waiting list.

c Moderate-income applicants may not be selected for occupancy when the number of unassigned RA units equals or exceeds the number of vacant units. (Borrowers unable to use RA may consider requesting a transfer of RA authority according to paragraph XV of exhibit E of this subpart).

3 In only those projects when project based section 8 is available, the following applicants, as described in HUD handbook 4350.3 (available at any HUD regional or area office), will have priority over other applicants if at the time of their housing needs, they are:

a involuntarily displaced, or
b living in substandard housing, or
c paying more than 50 percent of income for rent.

4 Selections are to be made from the waiting list or category maintained for the particular unit size and/or unit type in which a vacancy exists. If the applicant cannot accept the unit at that time, the reason for not accepting the living unit will be documented in the project records and confirmed with the applicant in writing. The applicant's name will then be removed from the waiting list following the notice procedure at paragraph VI E 7 of this exhibit unless the rental agent determines that hardship exists for reasons such as documented health problems or project rent exceeds 30 percent of adjusted monthly income without RA in which case the applicant's name will remain on the list in chronological order. An applicant whose name has been removed from the waiting list may reapply.

5 When there are no applicant names on the waiting list for the size and/or type of vacant living unit, a name may be selected from the waiting list of another size and/or type of living unit according to the date order of the application on the master waiting list. The selected tenant will be subject to the provisions for ineligible tenants found in paragraph VI D 7 of this exhibit and the provisions of paragraph VI D 2 of this exhibit.

6 In LH projects, paragraphs VI H 1 and 2 of this exhibit do not apply. Eligible LH applicants will be selected according to paragraphs VI H 4 and 5 of this exhibit and the priority stated in § 1944.154 (a) of subpart D of part 1944 of this chapter irrespective of the availability of RA. However, when FmHA concurs with the LH borrower's determination that there is a diminished need for housing for domestic farm laborers in accordance with § 1944.154 (b) of subpart D of part 1944 of this chapter, all the provisions of this paragraph are applicable to initial occupancy by applicants eligible only under the RRH program.

I *Tenant or member record file.* A separate file must be maintained for each tenant or member. Tenants must be allowed reasonable access to their own file for review during regular project office hours. This file will include items such as application, tenant certification with attached income and adjustment(s), verification forms and calculations, lease or occupancy agreement and attachments, inspection reports for moving in and moving out, correspondence and notices to the tenant or member, and any other necessary information. The income verification, tenant and member eligibility certification and recertification information must be retained for at least 3 years while the tenant or member is living in the unit and for 3 years after the tenant or member has moved out.

J *Marketing incentives:* Marketing incentives, as described in the management plan, may be used anytime as a means of maintaining occupancy levels and revenue needed to carry out the objectives of the housing and the projections of the annual project budget.

1 When a need is documented, marketing incentives will be included in annual project operations as reflected in the project budget, Form FmHA 1930–7. The incentives will be governed by the guidance at paragraph III B 3 c of exhibit F of subpart B of Part 1965 of this chapter (available at any FmHA office).

2 *FmHA approval of marketing incentives.*

a When marketing incentives will enhance program objectives during a "soft" market and FmHA is otherwise not aware of any loan servicing difficulties of major concern, cost effective incentives may be approved by the FmHA Servicing Official as part of normal project budget approval.

b When major loan servicing difficulties exist, cost effective marketing incentives may be approved as part of a servicing plan according to the provisions of exhibit F of subpart B of part 1965 of this chapter (available in any FmHA office).

*VII Certification and Verification of Tenant or Member Income and/or Employment Information and Corrective Actions.*

The borrower/management agent shall obtain tenant or member authorization to verify income and/or employment information needed to establish eligibility before pursuing verifications.The Borrower/management agent shall seek verification of income and/or employment information disclosed from third party sources without further involvement of the members of the tenant household. This borrower/management agent shall seek to verify employment for all FMH program recipients. The borrower/management agent shall also seek to verify income for all MFH program recipients, except those residents of LH farm borrowers who are living in housing provided on a nonrental basis. The applicable employment and/or income verifications must normally be verified by the borrower or management agent before the person is determined eligible. Exceptions may be made for those unusual cases described herein. Information for the determination of eligibility is valid for not more than 90 days before the effective date of the tenant certification. Should verifications reveal discrepancies from the information provided, the borrower or management agent will seek prompt resolution using the principles set out in this subpart.

A *Verification of income from employment.* Verification of income from employment, authorized by the tenant or member/applicant, must be obtained from the employer in writing and filed in the "Tenant or Member Record File." Form FmHA 1910–5, "Request for Verification of Employment," or comparable form, will be used for this purpose. (A reproducible copy of Form FmHA 1910–5 is available in any FmHA office.)

B *Verification of income from other sources.* Any income from other than employment (e.g., social security, Veterans Administration, public assistance) must be verified in writing by the income source. Verification of income must be documented and filed in the "Tenant or Member Record File." When it is not immediately possible to obtain the written verification from the income source, the income may be temporarily verified by actually examining the income checks, check stubs, or other reliable data the person possesses which indicates gross income.

C *Verification of income and/or employment for LH tenants.*

1 *Verification of income from all sources.* Income verification is required for domestic farm laborers, including migrant farmworkers, except for those farmworkers where their housing is provided rent free on a farm as part of their employment compensation for farm labor performed on the farm where they live and work. All domestic farmworkers, where income verification is required, must have a substantial portion of income from farm labor as defined in § 1944.153 of subpart D of part 1944 of this chapter. When the tenants do not have easily verifiable income, the borrower may forecast income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance.

2 *Farm labor employment verification.* Farm labor employment verification is required for all domestic farm laborers, whether they are year-round, seasonal, or migrant farmworkers, or farmworkers living in rent-free housing on the farm where they work. Such employment verification is in addition to the income verification requirements described in paragraph VII C 1 of this exhibit.

3 *Third party verification.*

a Third party verification of income and employment, as applicable, is required whenever it is possible or available.

b When third party verification of income and employment is not possible or available, for reasons such as refusal or lack of third party availability or cooperation, the borrower may "self-certify" the farmworker applicant using any available documents or records the applicant may have or information the applicant can provide. In the absence of available income and employment documents, records, or information, the borrower may forecast income as described in paragraph VIIC1 of this exhibit.

4 *Tenant record file.* Verifications of any type must be documented and filed in the "Tenant Record File" or in the borrower loan docket, as appropriate.

D *Sample of tenant or member income and/or employment verification.*

1 The Servicing Office staff is required to make a sample of tenant or member income verifications and adjustments to income; in the case of LH tenants, employment verifications for use in evaluating the adequacy of such verifications. This will normally be performed during a scheduled supervisory visit.

2 The sample will follow the process set out in exhibit F–1 of this subpart. The sample can be derived from information on the certification forms that will be submitted to the Servicing Office in accordance with paragraph VII F of this exhibit and may include verification of information from third party sources. At least six tenant households will be sampled (or 100 percent of all tenant households for projects having six or fewer units) during any sampling.

3 The sample should be representative of very low-, low-, and moderate-income persons in the project, including those receiving subsidy assistance, those paying in excess of the level cited in paragraph IVA2c (1), (2), or (3) of this exhibit for the costs of rent or occupancy charge and utilities, and those paying the note rate rent.

4 The Servicing Office staff will conduct the sample (and document the selection method) at any time he/she may be knowledgeable of discrepancies in income and/or employment verifications.

5 If the sample discloses discrepancies of amounts in excess of $40 monthly or $480 annually, the Servicing Officer will be required to notify the borrower/management agent to resolve the issues. Should resolution not be satisfactorily approved, the Servicing Officer will be required to investigate further and report to the State Director along with a recommendation for further action. Such further actions may include those authorized under FmHA Instructions 2012–B or 1940–M (available in any FmHA office) or subpart N of Part 1951 of this chapter.

E *Use of HUD certification form for Section 8 or Section 8 Rental Certificate or Rental Voucher Recipients.* HUD Form 50059, or another HUD form approved by HUD for this purpose, may be used in lieu of Form FmHA 1944–8 for the tenants receiving project based Section 8 or tenant based Rental Certificate or Rental Voucher assistance. However, the tenant's income cannot exceed FmHA limits for the type of housing project involved if it has been calculated according to the formula contained in Form FmHA 1944–8.

F *Certifications and corrective actions.*

1 To be current, the tenant or member certification Form FmHA 1944–8 (or for section 8, the appropriate HUD form) must be submitted in such manner that it is received in the FmHA Servicing Office by the close of business (COB) of the due date as follows:

a *New tenant or member move-in certification due date.*

(1) *Move in on the 2nd through the 23rd.* The certification is due for receipt in the Servicing Office on or before the first of the next month for all new tenants or members permitted to move in for occupancy from the 2nd through the 23rd day of a month for overage charges to be avoided (Example: A change is reported on July 2nd, the effective date is August 1, and the Servicing Office must receive the certification by COB on August 1). If the due date falls on a nonworking day, overage will not be charged if the tenant certification is received in the Servicing Office on the next working day.

(2) *Move in from 24th through the 1st of next month.* The certification is due for receipt in the Servicing Office on or before the tenth of the month in which it is effective in order to avoid overage charges (Example #1: Move-in is June 24th, effective date is July 1st and the Servicing Office must receive the certification by COB July 10th. Example #2: Move-in is July 1st, effective date is July 1st and the Servicing Office must receive by COB July 10th). If the due date falls on a nonworking day, overage will not be charged if the tenant certification is received in the Servicing Office on the next working day.

b *Certification due dates for renewals.* Tenant certifications represent the contractual basis for delivery of benefits to tenants. Therefore, any certification being renewed must be received by Servicing Officials on or before the effective date in order to avoid overage charges. The effective date is the first day of the month following expiration of the current certification. Certifications expire on the last day of the month, 12 months from the effective date (Example: The last certification was effective on July 1 and its ending period date was 12 months later on June 30, therefore, the renewed certification effective date is July 1). If the due date falls on a nonworking day, overage will not be charged if the tenant certification is received in the Servicing Office on the next working day.

c *Tenant reported changes and corrective actions.* Changes to unexpired tenant certifications represent adjustments to the existing contractual basis for delivery of benefits to tenants. Therefore, overage may not be invoked as a penalty for any late reporting, since overage is merely an offset to arrive at the proper subsidy benefits a tenant is entitled to receive. Tenants are responsible for reporting any changes in household gross income, adjustments to household income or changes in household size (as set out in paragraph VIIF3a of this exhibit) no later than 30 days after the change occurred. Landlords must recertify tenant households in accordance with the provisions of paragraph VIIF3b of this exhibit. When recertification is required, landlords must promptly seek to verify employment and/or income with third-party sources in accordance with the provisions of paragraphs VII A, B, C, and F 10 of this exhibit. Once verification is obtained from third-party sources, landlords are expected to forward such certifications to the Servicing Office in accordance with the timeframes set out herein.

(1) *Reporting 2nd through 23rd.* If the third-party verifications are received from the 2nd through the 23rd day of the month, the recertification is due for receipt in the Servicing Office on or before the first day of the next month. If the due date falls on a nonworking day, it will be considered on time if received in the Servicing Office on the next working day.

(2) *Reporting 24th through the 1st of the next month.* If the third-party verifications are received from the 24th through the 1st of the next month, the recertification is due for receipt in the Servicing Office on or before the COB on the tenth of the month. If the due date falls on a nonworking day, it will be considered on time if received in the Servicing Office on the next working day.

(3) *Effective date of changed net tenant contribution.* The effective date of a tenant's changed net tenant contribution will be the first day of the month following third-party verification of changes or the first day of the following month (generally 30 days later) permitted according to the tenant notice requirements of State or local law.

(4) *Corrective actions on tenant problems.*

(i) Should the tenant be found to not comply with the 30-day reporting requirements, the landlord may initiate actions as set out in the lease and the Agency may initiate action to ensure appropriate corrective action is taken.

(ii) If the landlord chooses to pursue termination, the landlord need not further pursue recovery of any improper benefits from the tenant but shall instead forward a report on the circumstances to the Agency for its consideration on whether to initiate an appropriate servicing action.

(iii) If the landlord chooses to permit the continued occupancy by the tenant the landlord must take steps to pursue corrective actions, taking into consideration any rights the tenant may have under the grievance procedures in subpart L of part 1944 of this chapter.

(iv) In processing corrective actions where existing certifications have not expired, overage may not be charged for failure to report changes in a timely manner and the note rate rent will not be charged. Processing corrective actions will use the corrected accurate information to establish the proper rent levels, subsidies, and any overage charges using the same principles as would apply had the change been promptly processed.

(v) Upon determining any resulting differences, the landlord may initiate actions to seek recovery from the tenant of any improper benefits derived from inappropriate rent levels or inappropriate subsidies. Such recovery efforts will normally not extend over a 3-month period, but may not ever extend over a 12-month period.

(vi) The Servicing Office may be consulted if guidance is needed on processing corrective actions when payments are affected.

(vii) When appropriate, the Agency may pursue servicing initiatives which may include seeking corrective action by the landlord or using the authorities set out in subpart N of part 1951 of this chapter or FmHA Instruction 2012–B (available in any FmHA office).

(5) *Corrective actions on landlord problems.* Should the landlord be found to not comply with the above reporting dates, the Agency may initiate action to ensure that

the proper rent levels were assessed, the proper payments were remitted to the Government, and that any remittances involving any improperly paid Government subsidies are recovered by the Government. Such initiations may involve seeking corrected payment remittances, or the use of authorities set out in subpart N of part 1951 of this chapter as cited in paragraph VII F 1 c (4) of this exhibit.

d *Modifications.*

(1) Modifications will likely result from changes to project rents or utility allowances or when the tenant household moves to a different unit within the project. In such cases the landlord may revise the unexpired tenant certification form by notating the changes in rents or utility allowances and recomputing the net tenant contribution when necessary.

(2) Unexpired tenant certification forms showing modification(s) which do not result from changes in income or adjustments to income or change of household size or composition need not be submitted to the Agency. Such modifications do not affect the certification effective dates or expiration dates of the certification form being modified, therefore, the certification expiration date will remain unchanged (and overage is not applicable). (**Example:** Certification with a July, 19xx effective date is in effect for a 12-month period, and any mid-term modification will not alter the July 1, 19xx effective date).

(3) Form FmHA 1951–29, "Multiple Family Housing—Changes To Tenant Status," or similar reporting format, will be prepared and submitted to report the modifications, impact on rental assistance, move-outs, 60-day absences, and expired tenant certifications.

2 When the Servicing Office does not have a certification in the office as required in F 1 of this paragraph, the tenant or member is ineligible for RA and interest credit for that month and overage for the month will be charged to the project account. This does not apply to modification of a certification as described in paragraph VII F 1 d of this exhibit or in a situation as described at paragraph XIV A 5 b (2) (vi) of this exhibit.

a If a formal eviction process has started, the provisions of paragraph VII F 6 d of this exhibit will be followed.

b If the late certification was due to noncooperation by the tenant or member (noncooperation does not include situations beyond the control of the tenant member, such as delays by third-party sources in completing income or employment verifications), overage must be paid and is a project expense; however, the borrower or management agent may attempt to recover the charge by billing the person note rate rent (overage) for the month. If the error was due to the borrower's or management's action, the cost of overage will be a project expense and it will not be charged to the person.

c Overage charges due to negligent management may not be considered cause for a rent increase. The costs should be deducted from return on owner investment or from management agent fees and may be cause for requiring different management.

3 *Reporting changes.*

a *Tenant reporting.* Tenants must report changes in household income (gross income) or adjustments to household income. In addition, any change in household size must be promptly reported to the landlord. Changes to household income may result from changes in hours worked, salary rates, social security, pensions, public assistance payments, the sale of assets, interest income, the amount of net family assets exceeding $5,000, imputed income, or other sources of income. Changes in adjustments to income may result from changes in household members other than the tenant or cotenant (e.g., changes in the number of minors, disabled, handicapped or full-time students 18 or older), changes in the tenant or cotenant (e.g., changes in the elderly, disabled, or handicapped status), changes in medical care expenses, and changes in child care expenses.

b *Landlord reporting.* Landlords must recertify tenant households whenever permanent changes to gross household income or permanent adjustments to household income result in an increase of $40 or more per month or $480 or more per year. Landlords must recertify tenant households whenever changes to permanent household income or permanent adjustments to household income result in a decrease of $20 or more per month or $240 or more per year. If the permanent gross income of a tenant household does not exceed $20 a month or $240 annually, and the tenant requests certification, the borrower will process the recertification. In addition, landlords must recertify changes in household size or composition.

4 The current certification form will be revised by correcting entries and being initialed by the tenant or member and the owner's representative when there are project changes such as:

a Changed rental or occupancy rates and/or utility allowances.

b Tenant or member relocation within the project.

c Addition or removal of household RA.

5 Form FmHA 1944–8 must be processed as follows:

a Borrowers or their representatives may sign Form FmHA 1944–8 up to 60 days prior to the effective date.

b Borrowers or their representatives should submit Form FmHA 1944–8 to the FmHA Servicing Office during the 30 day period preceding the effective date. Borrowers should not delay submitting certifications until Form FmHA 1944–29 is submitted. Borrowers should avoid submitting certifications just before or on the first day of a month to reduce impact on first of month account servicing at the Servicing Office, and to minimize late delivery and the charge of overage.

c The FmHA Servicing Office date stamps each Form FmHA 1944–8 when received, reviews each form submitted and determines that the information is complete, and correctly computed based on the information provided on the form (see Guide Letter 1930–1 for use in noting exceptions).

d The FmHA approved tenant certifications and recertifications have an effective period of 12 months. The effective period begins on the effective date which is always the first day of a month.

6 Each tenant or member must be recertified within 12 months of the previous certification. Tenants receiving Section 8 assistance will be certified according to HUD regulations.

a It is the tenant's or member's responsibility to provide income information and sign the certification form as a condition for continued occupancy. Failure to do so will cause a charge for overage/surcharge during those months such information was not provided, and it may result in termination of occupancy.

b The borrower's responsibility is to:

(1) Notify the tenant or member that a current certification and income verification is required before the due date and explain the procedure necessary to accomplish recertification. Normally, this initial written notice will be sent 75 to 90 days prior to the expiration date of the current certification; then

(2) Obtain verification of income from tenant or member records and/or directly from tenant or member employers and process the appropriate tenant recertification; and

(3) Submit the signed recertification to be received by the Servicing Office *by the due date* stipulated in paragraph VII F 1.

(c) The borrower must provide a second written notice to the tenant or member 30 days prior to the due date if they have not responded. The second notice must advise the tenant or member that without a current certification, the person will be required to pay note rate rent or occupancy charge (i.e., the person pays overage) as well as maximum occupancy surcharge, and that termination proceedings may be started as of the due date since an annual recertification is required for continued occupancy. [**Note:** In any event, the borrower is required to pay the overage amount to FmHA according to § 1951.506 (a)(5)(iii) of subpart K to part 1951 of this chapter.] If the tenant or member has RA, the person must be advised that without a current certification, the person's RA will be canceled and possibly may not be immediately available for reinstatement should a proper certification be provided at a later date.

d When a notice of termination has been served on a tenant or member for failure to recertify, the borrower must provide a copy of the termination notice to the Servicing Office prepared according to paragraph XIVB of this exhibit. If the Servicing Official does not receive a new certification on such person(s), the Servicing Official will annotate the project master list with an E beside the "Expiration Date of Tenant Certification" on Form FmHA 1944–29 for the appropriate tenant(s) or member(s). The Servicing Official will continue to authorize interest credit and waiver of overages and occupancy surcharges while the termination is being actively pursued until resolution of the termination. The payment of RA will be suspended during the termination process. Upon conclusion of the termination process the RA will either be reinstated or given to another tenant or member.

7 The borrower must submit Form FmHA 1944–29 to the Servicing Office with each payment, report of overage, or request for RA as required in paragraph XIIIC2f(1) of this exhibit. The calculations on Part II of the form must be for tenants or members in residence on the first day of the month preceding the payment due date. All calculations will be made as if the tenant or member was in residence for the full month. Adjustments Will Not Be Made to the Borrower's Subsidy, RA Request, Payment, or Overage Charges for Persons Moving In or Out After the First of the Month. (See Guide Letter 1930–1 for any necessary Servicing Official's response after review of Form FmHA 1944–29.)

8 Paragraph VIII B 4 b of this exhibit is a required lease or occupancy agreement provision requiring tenants or members to notify the management of any change in gross household income or adjustments to income, or size or composition of household. Upon receipt of such notice, the borrower must promptly obtain a new certification form and income verification and submit it to the Servicing Office when there is a permanent change in size or composition of the household, or a permanent increase of $40 or more per month ($480 per year) or a permanent decrease of $20 or more per month ($240 per year) in gross household income or adjustment to income.

9 When a borrower/agent believes that an applicant/tenant or member certification or income verification is inaccurate, they may provide the information including the tenant's or member's social security number to the Servicing Office requesting a further verification through the appropriate State employment agency. The Servicing Office will forward the request to the State Director for submission to the State Agency that keeps records on the incomes of wage earners. The State Director will develop a method of obtaining the information from the State Agency. Any reasonable cost for information provided by a State shall be a project expense.

10 Landlords may use the following emergency certification/recertification procedure in the unusual cases described herein, but must otherwise meet the FmHA submission requirements stated in paragraph VII F 1 of this exhibit:

a When a tenant or member applicant needs to initially occupy before income verification is complete, or when a borrower has been unable to initiate recertification on time, an "estimated" verification may be performed and the certification and the lease or occupancy agreement completed and marked "subject to verification of income." Temporary verification may also be obtained through contacts with individuals who may be knowledgeable of the person's income. When no other verifiable source is available, a written, dated, and signed statement, certifying that the disclosed annual gross income of the household is accurate to the best knowledge of the tenant or member, may be accepted. After normal verification is completed, any needed adjustment in tenant or member contribution can be made and recorded on the certification and when appropriate, the lease or occupancy agreement.

b When a tenant or member decides to continue occupancy after giving indication of vacating the project and insufficient time remains to complete the verification of income or when an employer fails to return a verification of income on time, the procedure of F 10 a of this paragraph may be followed.

c When a delay is caused by circumstances beyond the control of the tenant or landlord, such as when delays are encountered in receiving verification of income, employment, etc., from third party sources, the procedure of F 10 a of this paragraph may be followed.

G *Mid-month tenant or member certification.* The certification effective date for a tenant or member starting occupancy on a day other than the first day of the month shall be the first day of the following month. Certification shall be completed according to paragraph VII F of this exhibit.

H *Resolution of suspected inaccurate information.* Should forms, interviews, unit inspections, complaints, or other information bring into question the accuracy or reasonableness of information relied upon to qualify the residents for occupancy or benefits, it should be further explored and resolved by the owner and/or management agent. Should the matter remain unsolved, the borrower or management agent may forward a report to the Agency along with a recommendation for further action. The Agency may evaluate such material to determine whether further action is warranted. Such actions may include those authorized under FmHA Instructions 2012–B, 1940–M, or subpart N of part 1951 of this chapter (available in any FmHA office).

VIII *Lease Agreements, Occupancy Agreements, Rules, and Other Tenant Information:* A lease agreement is a written contract between a tenant and landlord assuring the tenant quiet, peaceful enjoyment and exclusive possession of a specific dwelling unit in return for payment of rent and reasonable use and protection of the property. The contract between a cooperative member and the cooperative is called an occupancy agreement. Should the provisions of any lease or occupancy agreement be in violation of any State or local law, it may be modified to the extent needed to comply with the law; however, the change should be as consistent as possible with the provisions set out herein.

A *Form of lease or occupancy agreement.* Each State Director is encouraged to prepare a sample lease form complying with individual State laws and FmHA requirements. Occupancy agreements for cooperatives are to be prepared in accordance with applicable State laws and subpart E of part 1944 of this chapter. The State Director may incorporate clauses which meet a specific need in compliance with State law. Any sample lease must be reviewed and approved by the OGC before being provided to borrowers as a guide for preparing an acceptable project lease.

1 All leases will be in writing. Initial leases for units for which tenants are eligible must cover a period of 1 year. If the tenant is not subject to termination of occupancy according to paragraph XIV A of this exhibit, a renewal lease, or an addendum of lease extension, shall cover a period of 1 year. Leases for LH may be for shorter periods where occupancy is typically seasonal. Leases for all tenants signed after notification of intent to prepay, but prior to prepayment, may be for a term which ends on the date of prepayment. Leases for tenants who entered a project with a Letter of Priority Entitlement and who are temporarily occupying a unit for which they are not occupancy eligible, will have the clause in paragraph VIII C 1 of this exhibit inserted to deal with their obligation to move when an eligible unit becomes available.

2 Leases and occupancy agreements must contain an appropriate escalation clause permitting changes in basic and/or note rate rents or occupancy charges prior to the expiration of the document. Such changes would normally be necessary due to changing utility and other operating costs. Any changes must be approved by FmHA according to exhibit C of this subpart. Leases must specify that no increases in tenant contribution to rent will take place due to prepayment of the FmHA loan during the term of the lease. Leases must also state that should any Federal subsidies paid to the borrower on behalf of tenants be suspended or canceled, due to a monetary or nonmonetary default by the borrower, the monetary payment made by the tenant to the borrower (or, when applicable, the monetary payment received by the tenant from the borrower) shall not change over that which would have been required had the subsidy remained in place.

3 Projects in which occupant surcharge collection is required must contain an appropriate lease clause permitting increases in the surcharge assessed. This clause should contain at least the following:

a That occupancy surcharges are mandated by law, therefore, they must be paid by the tenant in addition to regular rent. If they are not paid, these unpaid surcharges constitute good cause for possible termination of occupancy.

b That the current occupancy surcharge unit rate is $____per unit and will increase annually on the surcharge anniversary date by $2 per month for each unit, not to exceed a total of $40 per month per unit.

c That the portion of the unit surcharge assessment which the tenant pays will be based upon the tenant household income and will not cause the tenant's contribution for rent and occupancy charge plus utility allowance to exceed 30 percent of adjusted income.

d That tenant households may experience increases or decreases in the amount of occupancy surcharge they pay prior to the expiration of the lease.

4 Pursuant to the Fair Housing Amendments Act of 1988, no provision may be incorporated into a lease that would prohibit:

a Occupancy by families with children under 18 years of age. As applied to housing designated as elderly, those residing with the elderly household who are under 18 years of age may not be excluded under the terms of the lease.

b Occupancy by a person with a handicap who is willing and able to make reasonable

modifications to an apartment unit, at the tenant's expense, to afford such person full enjoyment of the apartment. The owner may include in the lease, where reasonable, permission to occupy the apartment on the condition the tenant agrees to restore the interior of the apartment to the condition that existed before any modifications, reasonable wear and tear excepted.

5 In areas where there is a concentration of non-English speaking individuals in the project or in the community, leases or occupancy agreements and the established rules and regulations for the project written in both plain English and the appropriate non-English language must be available to the tenants or members. The tenant or member should have the opportunity to examine and execute either form of lease or occupancy agreement.

6 The form of lease or occupancy agreement to be used by the borrower and any modifications of the same must be approved by the FmHA Servicing Official. When submitting a lease or occupancy agreement form for FmHA approval, it must be accompanied by a letter from a practicing attorney licensed in the State regarding its legal sufficiency and compliance with State law and FmHA regulations.

7 A copy of a properly completed and approved exhibit A–6 of subpart E of part 1944 (when the tenant or member will pay utilities) and a copy of the established rules and regulations for the project will be provided to the tenant or member as attachments to the lease or occupancy agreement.

8 A copy of a properly completed and signed Form FmHA 1944–8 or HUD Form 50059 or other HUD approved form for those tenants receiving HUD section 8 tenant subsidy will be used to calculate each tenant's contribution and will be provided to the tenant as an attachment to the lease.

B *Required lease or occupancy agreement clauses.* The following clauses will be required in leases used in connection with FmHA-financed housing projects. Only clauses in paragraphs 1, 4 b, 4 d, 4 e, 5, and 7 of this exhibit are applicable to cooperative occupancy agreements.

1 All lease and occupancy agreements must include a statement indicating that the project is financed by FmHA and is subject to nondiscrimination provisions of title VI of the Civil Rights Act of 1964, title VIII of the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975; and that all complaints are to be directed to the Administrator, FmHA, USDA, Washington, DC 20250. However, complaints of Fair Housing violations may be sent directly to the Secretary of Housing and Urban Development, Washington, DC 20410.

2 All lease agreements must specify that should the unit become overcrowded or underutilized or should the tenant no longer meet the eligibility requirements of the project during the term of the lease agreement, he/she will be required to vacate the unit at the end of the lease term unless eligibility can be established following specified steps, such as moving to an appropriate size unit, or an exception is granted by management.

3 All lease agreements must contain a provision that a tenant household's tenancy still exists during the time that the tenant household's personal possessions remain in the apartment unit after the tenant household has personally ceased occupancy with the intent to vacate and leave the project, until such time the personal possessions have been removed voluntarily or by legal means, subject to the provision of State or local law in such matters.

4 All leases used in FmHA-financed RRH projects must include the following clauses except for persons who are elderly, disabled, or handicapped living in a full profit plan project unless otherwise noted. (Occupancy agreements must include the clauses contained in paragraphs VII B 4 b, d, and e of this exhibit.)

a "I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined periodically by the Farmers Home Administration for the (State/Territory)."

b "I agree I must immediately notify the [landlord or cooperative] when there is a change in my gross income or adjustment to income, or when there is a change in the number of persons living in the household. I understand my rent or benefits may be affected as a result of this information. I also understand that failure to report such changes may result in my losing benefits to which I may be entitled or may result in the [landlord or cooperative] taking corrective action if benefits were mistakenly received. I understand the corrective action the [landlord or cooperative] may take includes the initiation of a demand for repayment of any benefits or rental subsidies improperly received, initiation of a notice to cancel any rental assistance or section 8 assistance being received for the balance of my certification period, initiation of a notice to increase my monthly rent to $____ per month (note rate rent for Plan II projects or 125 percent of rent in Plan I projects), or initiation or a notice of termination. I understand that one or more of these remedies may be initiated at the option of the [landlord or cooperative]."

c "I understand that I must promptly notify the lessor of any extended absences and that if I do not personally reside in the unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, my net monthly tenant contribution shall be raised to $____ per month (note rate rent for Plan II projects or 125 percent of rent in Plan I projects) for the period of my absence exceeding 60 consecutive days. I also understand that should any rental assistance be suspended or reassigned to other eligible tenants, I am not assured that it will still be available to me upon my return. I also understand that if my absence continues, that as landlord, you may take the appropriate steps to terminate my tenancy."

d "I understand that should I receive occupancy benefits to which I am not entitled due to my/our failure to provide information or due to incorrect information provided by me or on my behalf by others, or for any other household member, I may be required to make restitution and I agree to repay any amount of benefits to which I was not entitled."

e "I understand that income certification is a requirement of occupancy and I agree to promptly provide any certifications and income verifications required by the owner or cooperative board to permit determination of eligibility and, when applicable, the monthly tenant or member contribution to be charged."

5 Leases and occupancy agreements used by borrowers participating in the FmHA RA program will contain the following clauses. (These clauses can be made an addendum to the lease and they must be signed by the lessor and lessee):

"I understand and agree that as long as I receive rental assistance, my gross monthly contribution (as determined on the latest Form FmHA 1944–8, which must be attached to this lease) for rent or occupancy charge and utilities will be $____. If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $____will be deducted from my gross monthly contribution and my resulting net monthly contribution will be $____. If my net monthly contribution would be less than zero, the lessor will pay me $____.

I also understand and agree that my monthly contribution under this lease or occupancy agreement may be raised or lowered, based on changes in the household income or adjustments to income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this contract. Should I no longer receive rental assistance as a result of these changes, or the rental assistance agreement executed by the [owner or cooperative] and FmHA expires, I understand and agree that my monthly contribution may be adjusted to no less than $____(basic) nor more than $____(note rate) during the remaining term of this [lease or occupancy agreement], except that based on the escalation clause in this contract these rates may be changed by a Farmers Home Administration approved rent or occupancy charge change."

[Note No. 1: Eligible borrowers with LH loans and grants, Plan I direct RRH or insured RRH loans approved before August 1, 1968, may omit the words "no less than $____(Basic) nor more than" from the last sentence of the above statement.]

"I understand that every effort will be made to provide rental assistance so long as I remain eligible and the rental assistance agreement between the [owner or cooperative] and FmHA remains in effect. However, should this assistance be terminated I may arrange to terminate this contract, giving proper notice as set forth elsewhere in this [lease or occupancy agreement]."

[Note No. 2: The following additional clause is needed by those borrowers with Plan I direct or insured RRH loans approved before August 1, 1968.]

"I further agree that should I be permitted to occupy when my income exceeds maximum limits, I shall pay a 25 percent rental rate surcharge in addition to my rental rate of $____."

6 For leases with tenants occupying units in which borrowers are operating under Plan I either with or without interest credit approved on or after August 1, 1968:

"I understand and agree that my rent rate of $____(includes) (excludes) my cost of utilities. I further understand and agree that should I be permitted to occupy when my income exceeds maximum limits, I shall pay a 25 percent rental rate surcharge in addition to my rental rate."

7 For leases or occupancy agreements in projects which borrowers are operating under Plan II Interest Credit Only:

"I understand and agree that my gross monthly contribution as determined on the latest Form FmHA 1944–8, which must be attached to this contract, for [rent or occupancy charge] and utilities will be $____.

If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $____will be deducted from my gross monthly [rent or occupancy charge] except that I will pay not less than the basic rent nor more than the note rate [rent or occupancy charge] stated below. My net monthly [rent or occupancy charge] will be $____. I understand that should I receive rental subsidy benefits (interest credit) to which I am not entitled, I may be required to make restitution and I agree to pay any amount of benefit to which I was not entitled. I also understand and agree that my monthly tenant [rent or occupancy charge] under this [lease or occupancy agreement] may be raised or lowered based on changes in the household income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this contract. My [rent or occupancy charge] will not, however, be less than $____(basic) nor more than $____(note rate) during the term of this contract, except that based on the escalation clause in this [lease or occupancy agreement], these rental rates or occupancy charges may be changed by a Farmers Home Administration approved [rent or occupancy charge] change."

8 Leases used by borrowers with LH loans and/or grants will use the following additional clauses:

a "I understand that the project is operated and maintained for the purpose of providing housing for domestic farm laborers and their immediate families. I do hereby certify that a substantial portion of my immediate family income is and will be derived from farm labor. I further understand that domestic farm labor means persons who receive a substantial portion of their income as laborers on farms in the United States and either are citizens of the United States, or reside in the United States, Puerto Rico, or the Virgin Islands, after being legally admitted for permanent residence therein, and may include the immediate families of such persons. Laborers on farms may include laborers engaged in handling agricultural commodities while in the unprocessed stage. It also includes labor for the production of aquatic organisms under a controlled or selected environment."

b "I agree that if my household income ceases to be substantially from farm labor for reasons other than disability or retirement, I will vacate my dwelling after proper notification by the owner."

9 All leases, including all renewal leases, shall contain the following clause:

"It is understood that the use, attempted use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, State, or federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereafter called a "drug violation") may be evidenced upon the admission to or conviction of a drug violation.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or nonadult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord, and not thereafter enter upon the landlord's premises or the lessee unit without the landlord's prior consent as a condition for continued occupancy by members of the tenant household. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any nonadult member of the tenant household occupying the unit, who committed a drug violation, agrees to not commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation be committed by any nonadult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.

C *Special lease clause.*

1 *Handicapped accessible units occupied by those not needing specially designed features.* A clause should be used in addition to the required clauses in the special situation where management temporarily assigns a nonhandicapped households to occupy a handicapped accessible unit specially designed for handicapped households under the conditions of paragraph VI D 2 g of this exhibit. Any agreements between the landlord and the tenant concerning who bears the costs of moving to another suitably sized vacant unit should be documented.

"I/we acknowledge that I/we am/are occupying a designated handicapped accessible unit. I/we acknowledge that priority for such units is given to those needing special physical design features. I/we acknowledge that I/we am/are permitted to occupy the unit until management issues a notice that a priority applicant is on the waiting list and that I/we must move to another suitably sized vacant unit in the project. Upon receiving this notice, I/we agree to move at [my/our own] [shared (as agreed)] [project] expense within 30 calendar days to the suitably sized vacant unit within the project, if one is available. I/we further understand my/our rental rate will change, when appropriate, to the rental rate for the unit I/we move to and this lease will be modified accordingly."

2 *Prepayment subject to restrictive-use covenants.* Upon FmHA approval and acceptance of a prepayment, subject to restrictive-use covenants, the landlord will ensure all existing tenant leases and renewals of such leases are amended to include the following provisions:

"As a condition of the Government's approval of a request to accept early payment on notes owed, the tenant household is protected, to the extent herein disclosed, against involuntary displacement (except for good cause) and against having the tenant household contribution level (rent) materially increased until [insert a date 20 years from the date of the last FmHA loan or servicing action making the loan subject to prepayment restrictions, or insert "the tenant household decides to move" depending on the restrictive-use provision accepted by the owner (see § 1965.215(e)(5) of subpart E of part 1965 of this chapter)]. Specifically, the tenant household contribution level (rent) must be consistent with those necessary to maintain the project for low- and moderate-income tenants. Those tenant households whose tenant household contribution level (rent) did not exceed 30 percent of their monthly adjusted income at the time the prepayment was accepted, may have their tenant household contribution level (rent) raised to the lesser of 30 percent of their monthly adjusted income or 10 percent of their gross monthly income per year. Those tenant households whose tenant household contribution level (rent) exceeded 30 percent of their monthly adjusted income at the time the prepayment was accepted, may have their tenant household contribution level (rent) raised to the lesser of the latest U.S. Consumer Price Index or 10 percent per year."

D *Other lease provisions.* All leases or occupancy agreements must contain provisions covering:

1 Names of the parties to the contract and all individuals to reside in the unit and the identification of the unit.

2 The amount and due date of monthly contributions, including occupancy surcharge levied, if any.

3 Any penalty for late payment of monthly contributions according to paragraph IX B of this exhibit.

4 The utilities and quantities thereof and the services and equipment to be furnished to the tenant or member by the management or cooperative and the tenant's or member's responsibility to pay utility charges promptly when due.

5 The process by which contribution and eligibility for occupancy shall be determined and redetermined including:

a The frequency of such contribution and eligibility determinations.

b The information which the tenant or member shall supply to permit such determinations: Usually, income verification; names and ages of household members; in congregate facilities, only that essential information about the person's request for provided service(s) to determine whether the project provides the services requested by the applicant/tenant and/or to determine how to best serve the applicant's/tenant's/member's request with reasonable accommodation, referral services, etc. In the case of a group home, the information may also include an assessment by a professional medical examiner or practitioner, social service caseworker, representative of an advocacy group, member of the clergy, etc., that the tenant/applicant provides to support the application or recertification for housing and services.

c The standards by which rents or occupancy charge, eligibility, and appropriate dwelling unit size shall be determined.

d Tenant's household agreement to move to a unit of appropriate size if the household size changes.

e The circumstances under which a tenant or member may request a redetermination of tenant contribution.

f The effect of misrepresentation by the tenant or member of the facts upon which contributions or eligibility determinations are based.

g The time at which shelter cost change, contribution changes, or notice of ineligibility shall become effective.

6 The limitation upon the tenant or member of the right to the use and occupancy of the dwellings. Limitations may not be discriminatory in nature.

7 The responsibilities of the tenant or member in the maintenance of the dwelling and the obligation for intentional or negligent failure to do so.

8 Agreement of management or cooperative to accept a tenant or member contribution without regard to any other charges owed by tenant or member to management or cooperative and to seek separate legal remedy for the collection of any other charges which may accrue to management from tenant(s) or member(s).

9 The responsibility of management to maintain the buildings and any common areas in a decent, safe, and sanitary condition in accordance with local housing codes and FmHA regulations, and its liabilities for failure to do so.

10 The responsibility of management or cooperative to provide the tenant or member with a written statement of the condition of the dwelling unit (when the tenant or member initially enters into occupancy and when vacating the dwelling unit), and the conditions under which the tenant or member may participate in the inspection of the premises which is the basis for such statement.

11 The circumstances under which management or the cooperative may enter the premises during the tenant's or member's possession thereof, including a periodic inspection of the dwelling unit as a part of a preventive maintenance program.

12 Responsibility of tenant or member to advise management or the cooperative of any planned absence for an extended period, usually 2 weeks or more.

13 Agreement that tenant or member may not let or sublet all or any part of the premises without the consent of management or cooperative and FmHA.

14 Understanding that should the RRH project be sold to a buyer approved by FmHA, the lease will be transferred to the new owner.

15 The formalities that shall be observed by management or the cooperative and the tenant or member in giving notice one to the other as may be called for under the terms of the lease or occupancy agreement.

16 The circumstances under which management or the cooperative may terminate the lease or occupancy agreement, all limited to good cause, and the length of notice required for the tenant or member to exercise the right to terminate.

17 The procedure for handling tenant's or member's abandoned property as provided by State law.

18 Disposition of lease or occupancy agreement if building becomes uninhabitable because of fire or other disaster. Right of owner or cooperative to repair or rehabilitate the building within a certain period or terminate the lease or occupancy agreement.

19 The agreement that any tenant or member grievance or appeal from management's or cooperative's decision shall be resolved in accordance with procedures consistent with FmHA regulations covering such procedures which are posted in the rental office or at the cooperative.

20 That the lease may be terminated by the tenant, with 30 days notice, prior to expiration of its term for "good cause" such as moving to another location for employment, loss of job, severe illness, death of spouse, or other reasons customary or mandatory in the community, or after notification by RRH borrower of intent to prepay. The prior notice on which a cooperative member may cancel an occupancy agreement for "good cause" shall be 4 months.

21 The usual signature clause attesting that the lease or occupancy agreement has been executed by the parties.

E *Prohibited lease or occupancy agreement clauses.* Clauses in the classifications listed below shall not be included in any lease or occupancy agreement.

1 *Confession of judgment.* Prior consent by tenant or member to any lawsuit the landlord or board may bring against the tenant or member in connection with the lease or occupancy agreement and to a judgment in favor of the landlord or board.

2 *Distraint for rental or occupancy charge or other charges.* Authorization to the landlord or cooperative board to take property of the tenant or member and hold it as a pledge until the tenant or member performs any obligation which the landlord has determined the tenant or member has failed to perform.

3 *Exculpatory clause.* Agreement by tenant or member not to hold the landlord or landlord's agents or cooperative board liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents or the cooperative board.

4 *Waiver of legal notice by tenant or member prior to actions for eviction or money judgments.* Agreement by tenant or member that the landlord or board may institute suit without any notice to the tenant or member that the suit had been filed.

5 *Waiver of legal proceedings.* Authorization to the landlord or board to evict the tenant or member or hold or sell the tenant's or member's possessions whenever the landlord or board determines that a breach or default has occurred.

6 *Waiver of jury trail.* Authorization to the landlord's or board's lawyer to appear in court for the tenant or member and to waive the tenant's or member's right to trail by jury.

7 *Waiver of right to appeal judicial error in legal proceedings.* Authorization to the landlord's or board's lawyer to waive the tenant's or member's right to appeal on the ground of judicial error in any suit or the tenant's or member's right to file a suit in equity to prevent the execution of a judgment.

8 *Tenant or member chargeable with costs or legal actions regardless of outcome.* Agreement by the tenant or member to pay attorney's fees or other legal costs whenever the landlord or board decides to take action against the tenant or member even though the court finds in favor of the tenant or member. (Omission of this clause does not mean that the tenant or member, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant or member loses the suit.)

F *Modification of lease or occupancy agreement and notification to tenants or members.* The landlord or board may modify the terms and conditions of the lease or occupancy agreement with FmHA prior consent, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant or members, together with the tender of a revised lease or occupancy agreement or an addendum revising the existing lease or occupancy agreement. This notice and tender shall be delivered to the tenant or member either by first-class mail, properly stamped and addressed or hand-delivered to the premises to an adult member of the household. The date on which the notice shall be deemed to be received by the tenant or member shall be the date on which the first-class letter is mailed or the date on which the copy of the notice is delivered to the premises. The notice must be received at least 30 days prior to the last date on which the tenant or

member has the right to terminate the occupancy without executing the revised lease or occupancy agreement. The notice must advise the tenants or members that they may appeal modifications to the lease or occupancy agreement in accordance with subpart L of part 1944 of this chapter if the modification will result in a denial, substantial reduction, or termination of benefits being received. The same notification will be applicable to any changes in the rules and regulations for the project.

G *Occupancy rules and informative material.* Occupancy rules establish the basis for the management-tenant or member relationship. Occupancy rules and regulations must be provided and explained by the project management to enable the tenant or member to understand the purposes, objectives, and standards of the project. The rules will be approved by the FmHA State Director or designee, generally together with the project management plan, management agreement, and lease or occupancy agreement form.

1 All rules for occupancy and rent or occupancy charge structures will be in writing posted conspicuously in the borrower's and/or manager's offices and provided to each tenant or member with the lease or occupancy agreement.

2 Proposed changes of any rules for occupancy must be made available to each tenant or member at least 30 days in advance of implementation, and tenants or members must be advised that they may appeal changes in accordance with FmHA tenant grievance and appeals procedure subpart L of part 1944 of this chapter.

3 Landlords or cooperatives may not place unreasonable restrictions on residents desiring to use federally financed community rooms for their enjoyment. No rule may infringe on the rights of the rental tenants to organize an association of tenants. Such associations may be organized to bargain with management, as well as to act socially and/or provide for the welfare of its members. The project management person or organization should be available and willing to work with a tenant organization. Examples of unreasonable restrictions include rules requiring management representatives to be present in order to use community rooms, rules barring tenant or cooperative organizational meetings from using the rooms, or rules requiring management representatives to be present at any resident organizational meeting held in community rooms.

4 Rules may be promulgated that prohibit activities which are detrimental to management, tenants and members. Such activities include threats to the health or safety of other tenants or members or the employees of the borrower, interference with the quiet enjoyment of the premises by other tenants or members, or damage to the physical structure of the project.

5 The borrower may choose to provide rules for nonelderly projects that either permit or exclude pets except that no rules may be promulgated that would prohibit the occupancy of a household member who requires the services of a service animal to achieve the normal function of that household member.

6 For each RRH project or portion of a project specifically designated for the elderly, the borrower must have established project rules permitting elderly, handicapped, or disabled tenants to keep commonly accepted household pets. These pet rules are to be governed by the following guidelines:

a Pet rules must not:

(1) Prohibit, prevent, restrict, or discriminate against any tenant who owns or keeps a pet in their apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated.

(2) Prohibit, prevent, restrict, or discriminate against any applicant who owns a pet with respect to obtaining occupancy in the project.

(3) Charge an extra monthly rental charge for pets.

b Borrowers with operational projects must consult with the tenants of the project when revising pet rules and retain documentation on how the consultation process was conducted.

c. Borrowers with new projects will establish pet rules prior to occupancy, but may revise those rules based on tenant comments and suggestions received after rent-up begins.

d Pet rules will be approved by FmHA as part of, or an amendment to, the project lease. FmHA approval will be granted when the rules meet the provisions and intent of this subparagraph.

e Pet rules will be reasonable and will be written to consider at the least the following factors:

(1) Density of project units.

(2) Pet size.

(3) Type of pet.

(4) Potential financial obligations of tenants who own or keep pets.

(5) Standards of pet care.

(6) Pet exercise areas.

(7) State and local animal laws or ordinances.

(8) Liability insurance.

f Pet rules must allow the borrower or project manager authorization to remove from the project any pet whose conduct or condition is duly determined to constitute a nuisance or threat to the health or safety of other tenants or members in the project or persons in the surrounding community.

7 Initial rules will be attached to the lease or occupancy agreement. Approval by FmHA for changers and additions may be requested as needed.

8 The following items illustrate areas that are among those which should be addressed in rules or informative materials developed by management and provided to all tenants or members prior to move-in:

a Explanation of rights and responsibilities under the lease or occupancy agreement. Where a non-English language is common to a project area, a lease or occupancy agreement written in that language should also be provided.

b Rent payment or occupancy charge policies and procedures should be fully explained.

c Policy on periodic inspection of units.

d Responding to tenant or member complaints.

e Maintenance request procedure.

f Project services and facilities available to tenants or members.

g Office location, hours, and emergency telephone numbers.

h Map showing location of community facilities including schools, health care, libraries, parks, etc.

i Restrictions on storage and prohibition against abandoning vehicles in the project area.

j A rental project newsletter or other printed material distributed to potential tenants or the public. If a newsletter or other printed material is desired, it must contain an appropriate nondiscrimination statement, or fair housing slogan or logotype.

k Community and public transportation schedules.

9 Tenant or member may be permitted to have a guest(s) visit their household. However, the landlord reserves the right to request a recorded declaration of domicile or proof of domicile if it is suspected that the guest is an unauthorized household occupant. Such suspicion may arise whenever an adult person(s) is making reoccurring visits or one continuous visit of 14 days and/or nights in a 45–day period without prior notification of the management. Should the tenant or person in question not provide the requested information needed to confirm other domicile, or should the facts be sufficient to evidence domicile in the project, then the landlord may consider such person(s) a member of the tenant household and may enforce any lease covenants shown to be broken and/or require recertification.

10 No provisions may be incorporated into occupancy rules that would discriminate against or otherwise deny equal opportunity to any person (whether the tenant or a person associated with the tenant) in the terms, conditions, or privileges of rental of a dwelling unit, or in the provision for services or facilities in connection wherewith, because of race, color, religion, sex, familial status, National origin, or handicap.

11 The borrower must establish and enforce rules to ensure there are reasonable accommodations to persons who are handicapped or disabled.

H *Security deposits.*

1 Security deposits are encouraged and they should be used when it is reasonable and customary for the area for assurance of rental payment or charges for damages. The amount of security deposits must be reflected in the borrower's management plan and may not be changed without the written consent of the FmHA Servicing Official. When security deposits are used, they should not exceed an amount equal to the net tenant contribution for one month or basic rent, whichever is greater. Families receiving a HUD rental subsidy will pay security deposits according to HUD requirements. In an elderly project, the amount of additional security deposit for pets must be reasonable and not designed to prohibit or discourage tenancy but in no case should it exceed the basic rent of the project. Where a service animal is necessary for the normal function of a household member, an additional security deposit for the animal may not be

charged. A membership fee, equal to one month's occupancy charge, will be required from members of a cooperative.

2 Security deposits for persons eligible for RA or Section 8 assistance shall be administered in a manner to prevent hardship on the household. If such tenants or members cannot pay the full amount initially, they may be given terms that may ordinarily:

a For RRH projects, not exceed a downpayment of 30 percent of adjusted monthly income plus $15 per month or that amount needed monthly to complete the security deposit within 3 months, whichever is greater (landlords may provide payment over longer terms if desired). For RCH projects, not exceed an initial payment of $25 plus the amount needed monthly to complete the membership fee within 3 months (longer terms may be permitted if desired by the project). Should installments not be met, the total security deposit charge may become due and payable in full.

b For low-income farmworkers in an LH project, not exceed $25 downpayment and $15 per month until an equivalent of one month's project rent is reached. In the case of migrants who will occupy the units for a short period of time, exception to this policy by FmHA may be made upon written request from the borrower when it is shown that such deposits need to be raised to protect the interest of the government and it will not create a hardship on the tenants.

3 Security deposits or membership fees shall be handled in accordance with any State or local laws governing security deposits. Both security deposits and membership fees shall be deposited in a separate account when required by State or local law, and such funds must be held in a Federally insured institution, and shall be handled in accordance with any State or local laws governing such deposits. Funds in the security deposit account shall only be used for authorized purposes as intended and represented by the project management in the management plan, and until so used, shall be held by the borrower in trust for the respective tenants. Funds in the membership fee account shall only be used for authorized purposes, until so used, shall be held by the borrower in trust for the respective members.

4 Borrowers may assess fair and reasonable charges to the security deposit or membership fee for damage and loss caused or allowed by the tenant or member. An itemized accounting for such charges must be presented to the tenant or member after the move-out inspection provided for in paragraph X E 2 of this exhibit, unless the tenant or member has abandoned the property and his/her whereabouts are unknown and cannot be ascertained after reasonable inquiry.

5 The owner may not increase, for persons with handicaps, any customarily required security or membership fee deposit for restoration made to earlier modifications that permitted the handicapped person's full enjoyment of the dwelling unit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restoration(s) at the end of the occupancy, the borrower may negotiate as part of such a restoration agreement, a provision requiring that the tenant or member pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restoration(s). The interest in any such account shall accrue to the benefit of the tenant or member.

I *Leases for Section 8 and Section 8 Rental Certificate or Rental Voucher tenants/members.* Guidance on leases for such tenants/members is set out herein; however, the use of any addendum necessary to meet the requirements of FmHA, HUD, or other provider of subsidy or assistance as needed to comply with the requirements of any such other program, may be used as needed. Whenever conflicts or disputes arise, the servicing office may forward a request for guidance to the State Director, along with any recommendation. The State Director may take those actions necessary to resolve the issue with the advice and consent of the Office of the General Counsel.

1 Borrowers/Management agents are encouraged to use HUD approved lease agreements. Evidence of HUD's approval should be contained in the borrower casefile.

2 The HUD approved lease must include modifications of addenda that meet the conditions or requirements of paragraphs VIII A, B1, B2, and B3 of this subpart.

3 An FmHA-approved lease may also be used when acceptable by HUD and the local housing authority when this option proves more practical.

IX *Rent or Occupancy Charge Collection and Account Servicing:* Rents or occupancy charges should be due on the first day of each month of the lease period. The time and place of on-site collection and/or the correct address for payment by mail should be well publicized and consideration should be given to an after-hours depository if needed.

A *Receipts.* A form of serially-numbered receipts should be selected for use and the collection agent held accountable for every receipt. Optional collection services may be considered when they are available.

B *Delinquencies.* A system to identify and detect unpaid rents or occupancy charges within the project should be instituted in the management plan and made known to tenants in their lease. The borrower may adopt the late rental payment penalty and grace period prescribed by State law; otherwise, they may not exceed a grace period of 10 days from the rental or occupancy charge due date and not have the late payment penalty exceed the highest of:

1 An amount up to $10 after the grace period, or

2 An amount equal to 5 percent of the tenant's gross tenant contribution (GTC) (found at line 30 of Form 1944–8) after the grace period,

3 Any late payment policy established should address unusual situations such as tenants receiving income from Social Security, pension and retirement type funds that tenants receive routinely in the few days following the first day of a month. A 5-day grace period following the usual receipt date of such payment could be permitted.

4 The plan should also address any provisions for waivers of late payment penalty, if appropriate

C *Recapture of improperly advanced RA and interest credit.* Recapture of improperly advanced RA and interest credit will be processed in accordance with subpart N of part 1951 of this chapter.

D *Project late fees on Predetermined Amortization Schedule System (PASS) accounts.*

1 Project late fees are charged on PASS account loan payments not received by FmHA by close of business of the 10th day of the month as further described in § 1951.510(c)(2) of subpart K of part 1951 of this chapter.

2 A borrower may request in writing a waiver of a late fee according to § 1951.510(c)(2) of subpart K of part 1951 of this chapter. Borrowers may appeal a denial of a request for a late fee waiver under the Agency's uniform appeal procedures set out in subpart B of part 1900 of this chapter.

3 Late fee waivers are determined to be a benefit to the borrower entity and must be reported to IRS by the FmHA Finance Office.

4 If the cause of the late fee is an FmHA accounting system error, the FmHA may suspend sending monthly billings to the borrower until the error is corrected. If delinquency persists after correcting the error, late fees will be charged. Late fees charged as a result of FmHA error will be administratively corrected and not reported to IRS by the FmHA Finance Office.

5 Except for cooperatives, project late fees are not a project expense. Borrowers shall record a line item entry on Form FmHA 1930–7 showing late fees, offset by an equal transfer-in of the borrower's own funds or a reduction of the borrower's return to owner.

X *Maintenance:* Maintenance is the process by which a project is kept up in all respects and includes land, buildings, and equipment. Maintenance responsibilities will be included in the management plan. Proper maintenance will help to keep a good image for the project, help to minimize vacancies, and help to preserve the project. Plans and policies for inspections, effective maintenance and repair are to be established at the outset and modified periodically as needed. The following types of maintenance are necessary:

A *Routine maintenance.* Routine maintenance and repairs will be those cost items and services included in the annual budgets to be paid out of the operations and maintenance expense account. It includes regular maintenance tasks of the project that can be prescheduled or planned for, based on equipment availability and property characteristics tasks performed on a regular basis to maintain the appearance of the project and to prevent an accumulation of debris and subsequent deterioration.

B *Responsive maintenance.* This includes all maintenance tasks performed in response to either requests for service from tenants or members or unplanned breakdowns. An essential part of any maintenance system is to plan for requests coming from the dwelling units and for emergencies occurring in the systems serving the apartments. The project manager or the cooperative's board of directors should develop a plan to focus on: who receives the requests, how they are handled, how specific employees or members

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are assigned to the tasks, and what kind of records are kept. The capacity of the project manager or board to respond to requests and emergencies is one of the true tests of a successful maintenance program.

C *Preventive maintenance.* This is similar to inspection type maintenance. Regular checking and servicing of equipment and systems is done as required by service information. Preventive maintenance of mechanical systems, building exteriors, elevators, and heating and cooling systems in projects require specially trained personnel. The project manager should establish biweekly or monthly schedules in which the routine oiling, adjusting, replacing of filters, and the like is done based on manufacturer's manuals and specifications.

D *Long-term maintenance and replacement (curable depreciation).* These are major expense items which normally do not occur on an annual basis and cannot be afforded from an annual budget income. These expenses include items such as repaving the parking lot or repainting an entire building or project; replacement of furnishings and equipment, including such items as stoves, refrigerators, carpets, water heaters, furnaces, etc., whenever such replacements are beyond the capacity of the project to pay out of the normal operating budget. The borrower may request permission to use reserve funds to pay for these expenses when they occur. However, use of funds out of the reserve account must be preapproved by FmHA.

E *Inspection maintenance.* These are maintenance inspections performed periodically to discover problems before crisis situations develop. The following inspections of each apartment should be made at appropriate times:

1 *Move-in inspection.* Before move-in occurs, the management and the applicant accepted for occupancy should together inspect the unit to be occupied and agree upon any needed repairs. A written inspection report shall be prepared and a copy retained in the tenant's or member's file. Any of the identified deficiencies not corrected prior to occupancy should be noted on the lease or occupancy agreement or inspection move-in report and signed by the tenant or member and borrower's or cooperative's representative.

2 *Move-out inspection.* An inspection should be scheduled with the tenant or member when the management becomes aware that the tenant or member is moving out or has vacated the unit. Whenever possible, the inspection should be performed after the furniture has been moved out and before any portion of the security deposit or membership fee is returned to the tenant or member. Any repairs or costs to be charged to the tenant or member will be according to the terms of the lease or occupancy agreement, local law, and regulations governing security deposits or membership fees in paragraph VIII H of this exhibit.

3 *Periodic inspection.* An inspection of this type should be made at least annually. The borrower should make provisions in the lease or occupancy agreement for periodic inspection of the units as a part of a preventive maintenance program.

XI *Rent or Occupancy Charge and/or Utility Allowance Changes:* It may be necessary as operating costs and/or revenues fluctuate to consider a change of rental or occupancy charge rates and/or utility allowance to keep the project viable. Before any change of rates or utility allowances may occur, prior written consent of FmHA is required. The procedure to request and implement a rental or occupancy charge and/or utility allowance change is specifically covered in exhibit C of this subpart.

XII Borrower Project Budgets:

A *Budget development and preparation.* Borrowers are responsible for developing project budgets using past actual experiences in developing realistic forecasts of projected project operations. The budgets must reflect realistic income sources, uses and amounts of funds, and allow realistic vacancy and contingency factors. Generated funds must be sufficient to pay the forecasted operating costs and authorized expenditures of the project including reserves and return on investment, leaving adequate cash on hand as a normal course of business. When the income from typical project operations (operational income) is not sufficient to meet the normal project cash requirements, the borrower is responsible for reducing expenditures, seeking FmHA consent for authorized withdrawals from the reserve account, and/or providing other funds (nonoperational funds) to meet project budget requirements.

1 Budgets will be prepared according to the instructions contained in Form FmHA 1930–7.

2 Borrowers are required to develop a project budget annually.

3 Budgets will cover a 12-month period selected by the borrower that is to be the project fiscal year of operation.

4 Separate budgets will be developed for each project when the borrower owns more than one MFH project.

5 The priority order of planned and actual budget expenditures will be:

a Critical operating and maintenance expenses.

b FmHA debt service.

c Reserve account requirements.

d Other authorized expenditures.

e Return on owner's investment.

6 Project funds may not be used for borrower organizational expenses, except in the case of a cooperative or a nonprofit organization.

7 When tenants pay their own utilities, an updated or current exhibit A–6 to subpart E of part 1944 of this chapter is to accompany each budget submitted to FmHA for approval with justification to either retain or change the utility allowance(s).

8 When planned expenses appear to be excessive (such as when expenses at any subtotal level on the budget exceed 5 percent of that shown for typical costs for the area) for the area based on current cost data, the FmHA budget approval official may require justification prior to any approval action. Such justifications may include evidence that the cost is in line with what others charge for the same or similar services (i.e., cost estimates from others, summaries of rental housing revenues and expenditures from Agency or third-party sources, etc.). Such evidence may also be verified by the Agency at its option. When differences cannot be mutually resolved, the request for budget approval may be denied and the borrower or the borrower's designated representative will be advised of any applicable appeal rights in accordance with subpart B of part 1900 of this chapter. Any unapproved expenditure actually paid which is clearly in excess of a fair and equitable amount may be required to be repaid to the project from any authorized return on owner's investment or from nonproject sources, such that tenant rents will not be increased.

B *Return on investments authorized by borrower's RRH loan agreement/resolution.*

1 Limited profit borrowers may take the return authorized for the project's current budget year without further FmHA approval under the following conditions. (NOTE: This does not require delaying taking a return on owner's investment pending submission, review and/or action on any required audit by Agency officials):

a Payment may be only once a year based on the project's financial condition as of the end of the project fiscal year. Borrowers are encouraged to draw the return on investment in the days or weeks immediately following the close of the fiscal year. The return on owner's investment must be taken within 9 months of the last day earned, except when the circumstances described in paragraph XII B 2 a of this exhibit are applicable.

b Payment must have been approved as part of the borrower's annual budget on Form FmHA 1930–7.

c The project must produce income at approved monthly rental rates during that year, which is used to pay for the project expenses in accordance with the approved budget and, when appropriate, an approved servicing plan.

d The balance in the reserve account must be on schedule less any authorized withdrawals not requiring immediate redeposit. The amount of reduction of the annual reserve requirement approved as part of a servicing plan will be considered like an authorized withdrawal not requiring redeposit.

e Payment of the return may not produce a negative ending year unrestricted cash balance on Form FmHA 1930–7.

2 If income is not adequate in any given fiscal year to cover payment of the return to owner, FmHA may authorize a well-documented request that the return be paid, provided:

a The return can be paid from excess funds available at the end of the following fiscal year of operation, as long as it does not result in a rent increase and the reserve account is current less authorized withdrawals. (Noncash losses of the borrower entity do not qualify to be recouped in following years.) This option is authorized only for the year immediately following the year in which the return was not paid. The prior year's return on owner's investment may be taken first, and any residual left to apply to the current year's return on owner's investment at the borrower's option.

b Release of reserve funds at the end of the current budget year with Servicing

Official approval, if the principles set out in paragraphs XII B 1 b, c, and d of this exhibit are met, and further provided that:

(1) The reserve account will not be reduced below the amount required to be accumulated by that time considering any previously authorized withdrawals or adjustments; and,

(2) During the next 12 months, the amount in the reserve account will not likely fall below that required to be accumulated by the end of such 12-month period.

(3) This option is authorized only for the year immediately following the year in which the return was not paid. This does not apply to the return on investment waived while a special market rent budget is in effect.

3 Borrowers operating under a servicing (workout) plan and/or using special servicing market rate rents that call for less than full debt service payment to FmHA shall forego and cannot recoup the annual return to owner for the budget year that such plans or rents are in place.

4 When the provisions of paragraph XII B 1, 2 of this exhibit are not met only because the payment was not earlier approved on Form FmHA 1930–7, and the conditions are such that approval can now be made, an adjusted form may be submitted to seek approval of the return on owner's investment.

5 Should the return to owner be suspected or discovered as being improperly taken, the Agency may initiate appropriate servicing actions, including using the authorities set out in subpart N of part 1951 of this chapter and/or FmHA Instructions 2012–B and/or 1940–M (available at any FmHA office).

C *Advancement (loan) of funds to a RRH project by the owner, member of the organization, or agent of the owner.*

1 Prior written approval by the Servicing Office is required. Such advances may be authorized when justified by unusual short-term conditions. When conditions are not short-term in nature, a servicing plan may be developed and advances may be approved in accordance with the provisions set out in subpart B of part 1965 of this chapter. Justification will be based on the following:

a A review of the documented circumstances and the project operating budget before any funds are advanced (loaned). The financial position of the project must not be jeopardized.

b Funds are not immediately available from any of the following sources:

(1) Reserve funds

(2) Initial operating capital

(3) An imminent rent increase

2 The funds will be applied to ordinary project operating and maintenance expenses.

3 Interest may be charged or paid on the loan from project income; however, interest must be reasonable. The proposal may be denied if FmHA financing can be provided to resolve the problem in a more cost effective manner.

4 No lien in connection with the loan will be filed against the property securing the FmHA loan or against project income. The advance may show as an unsecured project liability on financial statements prepared for year-end reports until such time as it is authorized to be repaid.

5 The payback of the advance (loan) may be permitted by the Servicing Official provided the terms and conditions were mutually agreed to by the borrower and FmHA at the time of the advance and the financial position of the project will not be jeopardized. Payback should only be permitted on the advance when the FmHA debt is current and the reserve requirements are being maintained at the authorized levels.

D *Special budget planning.*

1 Budgets must be prepared according to the special servicing guidelines of subpart B of part 1965 of this chapter when a project is experiencing abnormal vacancy or is otherwise detrimentally impacted by economic reversal in the community.

2 The borrower is responsible for obtaining FmHA approval of budget revisions that reflect significant change to approved operating cost levels that occur during the budget year. Minor revisions to an approved FmHA budget to reflect changes of 5 percent or less in any subtotal area of the budget need not be subject to FmHA approval unless specifically required as an approval condition. Other minor revisions of a few line items may be entered on the current approved budget as "pencil" changes and initialed by the borrower and approved by FmHA. Major changes involving many budget line items will warrant a new budget being prepared and approved by FmHA.

3 When revisions to approved budgets are required, the Agency action should normally be obtained within 30 days. Should action be delayed, the borrower or management should notify the Agency of any changes which they deem as being essential and in the project's best interest provided such changes do not involve the use of reserve funds, a rent change, or added secured debt, and proceed to meet the needs of the project. In such cases, the borrower may request, and the Agency may grant, postapproval of the actions when shown to be in the best interest of the project.

XIII *Accounting and Reporting Requirements and Financial Management Analysis:*

A *General.* FmHA anticipates that RRH, RCH, and LH borrowers will account for all project income and expenses through a bookkeeping or accounting system as a normal business practice appropriately reflecting the complexity of project operations. The degree of sophistication will also reflect such factors as the type of borrower; the size, location, and type of project and the type of financial management information needed to provide adequate guidance and supervision to assure program objectives are being met.

1 *Separate accountability.* Separate accountability of funds is required and may be accomplished by bookkeeping entry for each required account for each project owned by the same borrower. The policies set out herein are aimed at facilitating efficient accounting of services by one borrower. Commingling of the funds of two or more different borrowers is prohibited to guard against the failure of one borrower threatening the financial resources of other borrowers (i.e., ensuring that a bankruptcy does not result in freezing bank accounts of several borrowers due to the failure of one borrower to fulfill its responsibilities).

a *Multiple projects owned by one borrower.*

(1) The principle of separate accountability permits a borrower's approved accounting system to combine project funds in one or more bank accounts for two or more projects owned by the same borrower. The principle is met as long as the accounting system segregates and tracks each project's funds separately. This means for example, that a Housing Authority, or any other borrower owning two or more projects, can maintain one bank account for:

(i) All project accounts, or

(ii) The same type of account, such as general operating account or tax and insurance account, for two or more projects.

(2) When the borrower seeks approval of its accounting and funds tracking system according to § 1930.122(a)(2) of this subpart, it must demonstrate to FmHA that the funds tracking system will segregate and maintain separate recordkeeping accountability for separate projects. Such demonstration must include a certification issued by a Certified Public Accountant (CPA) stating the system will function to meet this principle of separate accountability.

b *Multiple projects owned by multiple borrowers.* When a management agent is handling funds for multiple borrowers, the principles of separate accountability within a bank account does not extend across multiple borrowers, thus a separate general operating bank account is required for each separate borrower.

c *Central funds collection and disbursement system.* When a management agent is handling multiple bank accounts for multiple borrowers, a central funds collection and disbursement accounting system may be maintained. This would permit systems under which a management agent could track funds going into and out of the bank accounts of more than one borrower. This practice would facilitate the hiring and paying of firms providing services to multiple borrowers. A central funds collection and disbursement accounting system would permit billings to be prorated between projects and permit funds to be withdrawn from many bank accounts to facilitate payment by one check to a firm providing services to multiple borrowers.

d *Prorating.* The accounting system and/or management plan must document how funds are prorated for revenue and expenses which are not clearly identifiable as being associated with a particular project (e.g., how interest earned on a general operating account or reserve account serving two or more projects owned by a single borrower will be prorated between projects, etc.) Where this documentation is not present for some unusual reason, and the Agency and the borrower become involved in a dispute over this issue which cannot be mutually resolved, the Agency will consider proration by the number of units in the respective projects to be an appropriate guide for prorating the funds involved.

e *Tenant security deposit concerns.* When tenant security deposits are being accounted for, the provisions of state and local laws

must be met. This may dictate that such accounts be held in a separate bank account or otherwise separately identified and may require such funds be held in trust for the tenant. The manner in which tenant security deposits must be kept must also be documented in the accounting system and/or management plan. Where this documentation is not provided for some unusual reason, resolution of any disputes must be done according to State and local law.

2 *Borrowers with loan agreements or resolutions.* Borrowers with loan agreements or resolutions are subject to the following conditions:

a All RRH, RCH, and LH projects with loan agreements or resolutions approved on or after October 27, 1980, are required to comply with the provisions of paragraph XIII of this exhibit.

b All RRH, RCH, and LH projects with loan agreements or resolutions approved prior to October 27, 1980, will be guided by the recordkeeping and reporting requirements of their respective loan agreement or resolution.

(1) They are encouraged, however, to adopt the provisions of this paragraph by amending their existing loan agreement or resolution.

(2) The State Director may require adoption of these provisions when deemed necessary as a loan servicing action.

c Any amendment to an existing loan agreement, or resolution, requires concurrence of all parties and written consent of the Servicing Office staff who may, when deemed necessary, obtain advice from the State Director or the OGC prior to enactment of the amendment.

3 *Individual LH Borrowers.* Individual farm borrowers with nonrental LH units will be considered in general compliance with this paragraph by virtue of completing the recordkeeping and reporting requirements of their farm and home planning with FmHA as outlined in subpart D of part 1944 of this chapter.

4 *Borrowers without loan agreements or resolutions.* Borrowers without loan agreements or resolutions are required to maintain information in sufficient detail to provide the necessary assurance that program objectives are being met. As necessary to protect the integrity of the program, the State Director may require the borrower to establish a system capable of accounting for project operations and reporting.

B *Accounting System.* A bookkeeping and accounting system provides the financial information needed to effectively plan, control, and evaluate project activity, whether required by FmHA or not. The type of system should be determined prior to loan closing, but may be revised with FmHA approval to meet program objectives. The Agency may also prescribe the system to be used. Form FmHA 1930–5, "Bookkeeping System—Small Borrower," can be adapted to the bookkeeping needs of small MFH borrowers. Bookkeeping for MFH operations may be maintained using a cash or accrual method of accounting.

1 *Type of borrower accounts.* As used in this paragraph, the term account is used interchangeably to mean either a ledger (or bookkeeping account) or an actual banking account, or an actual securities account provided any securities account meets the conditions set out herein. Depending upon the complexity of the accounting system being used, these accounts may be further subdivided into subsidiary ledgers or accounts to assist the borrower in providing the information needed for project financial analysis or reporting requirements. Regardless of the number or types of accounts established, or whether a bookkeeping and accounting system is required, the borrower must meet the following:

a All project funds shall be held only in domestic bank accounts insured by an agency of the Federal Government, or backed by collateral provided by the bank, or held in securities meeting the conditions set out herein.

b All funds in any account shall be used only for authorized purposes as described in their loan agreement or resolution and this Exhibit.

c All funds received and held in any account, except the tenant security deposit, membership fee, and management reserve (patronage capital), shall be held in trust by the borrower for the loan obligation until used and serve as security for the FmHA loan or grant.

d All project funds will be accounted for by adequate and clear accounting methods or practices that otherwise maintain proprietary identity of said funds for each borrower.

e Each borrower will maintain at least one demand deposit or checking account. However, it is not necessary for each bookkeeping account within one project to be maintained as a checking account.

f In no case shall project fund accounts be pledged as collateral for non-FmHA debts.

2 *Accounts.* All RRH, RCH, and LH borrowers will maintain, as a minimum, the accounts required by their loan agreement or resolution. The following accounts are standard for all RRH and RCH loans approved after October 27, 1980, and for those who have amended their previous loan agreements or resolutions to adopt these accounts, or those required by a servicing plan. The following listing of accounts also identifies the order of funding of each of the listed accounts through available project revenues each month:

a *General operating account.* This account records all project income and disbursements exclusive of tenant security deposits. Excess project cash held in this account may be combined with other project funds described in this paragraph in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for the individual project accounts. This account may be further subdivided as folllows:

(1) *Initial operating capital.*

(i) The initial operating capital may be in the form of cash, an irrevocable letter of credit, or in a combination of the two as set forth in § 1944.211(a)(6) of subpart E of part 1944 of this chapter.

(ii) The borrower will have deposited the required initial operating cash into the general operating account by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. These funds will blend with other revenue that accrues to the account to cover budgeted expenditures including payment of return to owner. Any letters of credit will be supplied by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first.

(iii) Letters of credit will be maintained in the casefile.

(A) They must be renewed as needed so that a current letter of credit is always in effect.

(B) If a borrower does not renew the letter of credit they will be required to deposit an equivalent amount of cash into the general operating account before the letter of credit expires.

(C) If a borrower supplied all or part of the initial operating capital in the form of a letter of credit and the borrower makes cash deposits into the general operating account for operating purposes, the borrower can provide the Servicing Office with a new letter of credit in a smaller amount with evidence of the cash deposit.

(D) The new letter of credit and the cash deposit must total the required initial operating capital.

(E) The old letter of credit will be returned to the borrower.

(iv) After two, but before five full (12 month) borrower fiscal years of project operation, the borrower may request (in writing) the State Director's authorization to make a one time withdrawal of the initial operating capital, or a part of it. The withdrawal can be in the form of cash, release or reduction in the letter of credit, or a combination of both. The one-time withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that:

(A) The project has achieved at least a 95 percent occupancy level at time of the withdrawal request or achieved a 95 percent occupancy level for a 12-month period preceding the request and show strong prospects of retaining at least a 95 percent occupancy level in the immediate future.

(B) The withdrawal will not affect the financial integrity of the project. After withdrawal, 10 percent of projected project expenses should remain in the general operating account in excess of current liabilities then outstanding. The reserve account must be on schedule less authorized withdrawals. The borrower must demonstrate that all prudent maintenance is being planned and performed, and payment of necessary project expenses are not being deferred.

(C) The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next year of operation, except that rent increases needed because of normal increases of operation and maintenance expenses unrelated to the withdrawal may be approved; and

(D) The State Director has reviewed and approved any required borrower reports before the initial operating capital is withdrawn. Promptness is expected but

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actual withdrawal of funds could occur in the sixth year.

(2) *Deposits.* All income and revenue from the housing project shall, upon receipt, be immediately deposited in the general operating account. This will include rent or occupancy charge receipts, housing subsidy payments (including HUD section 8 and FmHA RA payments), occupancy surcharge monies, laundry revenue, or any other project income including interest earned on project accounts. The borrower may also deposit other funds at any time which are to be used for purposes authorized by this section, including transfers from the reserve account.

(3) *Disbursements.* The borrower shall pay or fund the actual, reasonable, and necessary monthly project expenses out of the general operating account. Current expenses may include the initial purchase and installation of furnishings and equipment with any other funds deposited in the general operating account which are not proceeds of the loan or income or revenue from the project. (However, nonprofit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in subparts D and E of part 1944 of this chapter.) Other authorized disbursements are FmHA approved installments of debt service including occupancy surcharge; real estate tax and insurance escrow as provided in paragraph XIII B 2 b of this exhibit; reserve, and return on investment as provided in paragraph XIII B 2 c of this exhibit. In RRH accounts, any balance remaining in a general operating account, except as authorized, above, may be retained in this account or transferred to the reserve account. In RCH accounts, any balance in excess of three months of average operating expenses remaining in a general operating account will be transferred into the cooperative's patronage capital account at the end of the fiscal year.

(4) *Unauthorized disbursements.* Except for cooperatives, late fees charged the borrower according to subpart K of part 1951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA from payments made from project income, the project general operating account must be reimbursed from nonproject income of the owner or management agent or deducted from the owner's return on investment.

b *Real estate tax and insurance escrow account.* According to the borrower's management plan, project funds for periodic payment(s) of real estate taxes and real property insurance may be deposited in a real estate tax and insurance escrow account or held in the general operating account as cash on hand. The escrow account may be an interest bearing account. Deposits to the account should be in monthly increments of one-twelfth of the annual anticipated real estate tax and insurance payments. Any interest earned shall accrue to the project as project operational cash income.

c *Reserve account.* The reserve account is a required account subject to the requirements set out on this paragraph. The borrower will initiate monthly deposits in this project account, preferably an interest bearing account, starting the same month the first loan payment is due FmHA. As projects age, the required reserve account level may be adjusted to meet anticipated "life-cycle" needs, including equipment and facility replacement costs, by amending the loan agreement/resolution.

(1) *Monthly installments.* Immediately after paying each installment for the orderly retirement of the FmHA loan, as provided in the borrower's promissory note, required reserve installments shall be transferred to the Reserve Account at least at the monthly rate stipulated by the borrower's loan agreement or resolution starting with the date the first payment is due to the Agency. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution. Monthly transfers shall be resumed the month following withdrawals that decrease the reserve account balance below its required level until it is restored to the specified total minimum sum.

(2) *Reserve account principles.* Reserve account funds are governed by the following principles:

(i) *Primary use.* The reserve account is primarily used to meet the major capital expense needs of a project. It is expected that the reserve account should rarely have to be used to meet any noncapital expense need of a project; however, the Servicing Official may approve such uses when warranted in unusual circumstances (e.g., a cash income shortfall, using the notice of approval at exhibit B–9 of this subpart).

(ii) *Investment vehicles and institutions.* Reserve account funds not immediately needed to pay for expenses for authorized purposes may be held as set out herein. Reserve account funds may be held in the form of a checking, savings, negotiable order of withdrawal, or similar account at a Federally insured domestic institution such as a bank, savings and loan, or credit union. Reserve account funds may be held in the form of readily marketable obligations of the United States Treasury Department (e.g., U.S. Treasury bonds, U.S. Savings bonds, zero coupon bonds, etc.) at a Federally insured domestic institution or at an insured domestic institution authorized to sell securities. Reserve account funds may also be held in the form of an account (the account may be a tax exempt account or a taxable account) established at an insured domestic institution authorized to sell securities (the institution may or may not charge brokerage fees), provided the accounts so established meet the remaining conditions set out herein and are not used in a speculative manner.

(iii) *Limitations on investments in securities.* Any securities must be backed by the United States (U.S.) Government or an Agency of the U.S. Government, or be triple A (AAA) rated Government National Mortgage Association collateralized tax-emempt bonds or be AAA rated prerefunded bonds. Prerefunded bonds are bonds that originally may have been issued as general obligation or revenue bonds but are now secured, until the call date or maturity, by an "escrow fund" consisting entirely of direct U.S. Government obligations that are sufficient for paying the bondholders.

(iv) *Reporting actual costs of securities.* In order to assure that required amounts have been paid into the reserve account, the actual costs of securities (which in many cases may not be the face value) must be shown on the project books. In addition, details of these transactions should be disclosed in footnotes to financial information provided to the Agency.

(v) *Security sales.* When the Agency approves withdrawals from the reserve account and the funds are invested in securities, borrowers must, to the extent that securities are available, assure that securities are sold in an amount which results in proceeds sufficient to cover the disbursement.

(vi) *Forecasting security sales.* Since the sale or redemption of any securities may result in cash proceeds of less than the amount invested, borrowers should take steps to minimize the risk of loss from converting securities to cash. Needed reserve account withdrawals should be forecasted well in advance to permit Agency approval of anticipated needs such that security sales can be arranged to be sold in favorable market conditions. When sales of securities take place the proceeds will normally be held in a reserve fund at a domestic bank, savings and loan, credit union, or similar institution insured by an Agency of the Federal Government until such time as withdrawals are actually needed for the purposes authorized. Should unusual circumstances require the sale of securities in unfavorable market conditions the borrower will not be required to reimburse the project for any losses incurred.

(vii) *Knowledge required of securities investors.* Those investing in securities must be knowledgeable of common industry practices prior to investing in securities. Knowledge of the various fees that may be associated with the purchase and sale of securities and the maintenance of security accounts must be considered when making security investments (e.g., front end loads or fees, back end loads or fees, maintenance fees, etc.). Such fees may be paid by the general operating account or by the reserve account. However, the Agency must give its prior consent before reserve account funds may be used.

(viii) *Financial advisor limitations.* Project proceeds may not be permitted to be used to pay for the services of a financial advisor to assist in the selecting of securities for investments, since the securities permitted are relatively limited and must meet the requirements set out herein. However, normal brokerage fees may be paid to secure and sell securities. It is recognized that financial advice may also be provided as part of the normal brokerage fee service package to consummate the purchase and sale of securities. Separate financial advisor services fees, apart from normal brokerage fees, are prohibited, however.

(3) *Reserve account tracking.* Any deposit and withdrawal from the reserve account should be recorded on a withdrawal format for tracking and reconciliation of the account similar to that found in exhibit B–10 of this exhibit.

(4) *Excess reserve.* Any amount in the reserve account which exceeds the total sum specified in the loan agreement or resolution

may be transferred to the general operating account for the authorized purposes only when it is agreed between the borrower and FmHA to be in excess of the requirement and there is a specific need for the excess funds. However, the FmHA Servicing Official may direct the excess sum to be retained in the reserve account or applied as an extra payment on the loan.

(5) *Reserve account use.* Funds in the reserve account may be used for purposes in accordance with this paragraph. The borrower will request withdrawal of reserve funds in a written or confirmed manner before they are needed. Annual budgets are to include realistic routine income and expense levels to avoid the need to use the reserve for routine expenses (operating shortfalls), not caused by emergencies or very unusual servicing situations; but when needed, use of reserve funds may be permitted with Agency approval. The Servicing Official will take prompt action on a request for reserve withdrawal (normally within 5 working days of the request) and provide written authorization to the borrower for any authorized withdrawal of funds by the use of a letter in the form of Exhibit B–9 of this subpart (or other similar letter containing at least the information shown on Exhibit B–9 of this subpart) before the borrower actually withdraws any funds. Any conditions for approval (e.g., a copy of paid invoices, inspections, etc.) will be indicated in the letter. Although the prior consent of the Government is required for the use of reserve funds, the Servicing Official may post approve the use of reserve funds if they were used for authorized purposes and their expenditure would have been approved had a request for approval been submitted prior to the withdrawal. The borrower must provide documented evidence showing the actual amount and use of funds before the post-approval action. Authorized purposes are:

(i) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for that purpose.

(ii) To pay cost of repairs or replacements to the housing, furnishings or equipment or shortfalls of current expenses. Withdrawal for planned authorized purposes should be approved in advance during the annual budget approval process.

(iii) To make improvements to the housing project without creating new living units or to retrofit units to make them accessible to the physically handicapped.

(iv) For other purposes desired by the borrower, which in the judgement of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the project and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security. Reserve funds may also be used to facilitate payment of fees associated with the buying or selling of securities or maintaining a securities account.

(v) To pay a return on investment at the end of the borrower's project operating year, provided that after such disbursements the amount in the reserve account will not be less than that required by the loan agreement or resolution to be accumulated by that time (taking into consideration the provisions of any approved servicing plan which may be authorizing a temporary adjustment to these provisions), minus any authorized withdrawals, and provided that the amount in the reserve account will likely not fall below that required to be accumulated during the next 12 months.

(A) In the case of borrowers operating on a limited profit basis, to pay a return on the borrower's initial investment as identified in the loan agreement or resolution.

(B) In the case of borrowers operating on a full profit basis, to pay an annual return as specified in the borrower's loan agreement or resolution.

(6) Exhibit B–10 of this subpart may be used by the borrower and FmHA to record deposits and withdrawals in the reserve account and to perform reconciliation of the account to determine the current account balance.

d *Management reserve account (patronage capital account).* Any funds in excess of three months of average operating expenses remaining in the general operating account of an RCH project at the end of the fiscal year will be transferred and maintained in a lump sum in an interest bearing patronage capital account and will be handled according to any state laws governing patronage capital. That amount will then be equally assigned, by bookkeeping entry only, to each member. The patronage capital funds will be held by the cooperative in trust for the respective member until that member terminates membership in the cooperative, provided the member has paid all charges and costs due the cooperative. The patronage capital funds will not be used for any other purpose.

e *Security deposit or membership fee account (when applicable).* Upon receipt, all security deposit or membership fee funds collected shall be recorded in a bookkeeping account that is kept separate from the project bookkeeping accounts. These funds shall be deposited in a separate bank account that is kept separate from any project funds and will be handled according to any state or local laws governing security deposits. Funds in the security or membership fee deposit account shall be used only for authorized purposes as intended and represented by the project management plan. They shall be held by the borrower or borrower's management agent in trust for the respective tenants or members until so used. Any amount of the security deposit account which is retained by the borrower as a result of lease or occupancy agreement violations shall be transferred to the general operating account and treated as income of the housing.

(1) The owner will follow all State and local requirements governing the handling and disposition of security or membership fee deposits.

(2) In no case will interest earned on security or membership fee deposits accrue to project management or the owner of a rental project. Any interest earned but not returned to the tenants, or in the case of a cooperative, interest earned on membership fees but not returned to members will, accrue to the project's general operating account for disposition as outlined in the management plan.

C *Borrower reporting requirements.* It is the objective of FmHA that borrowers will maintain accounts and records necessary to conduct their operation successfully and from which they may accurately report operational results to FmHA for review, and otherwise comply with the terms of their loan agreements with the Agency. Certain reports are necessary to verify compliance with FmHA requirements and to aid the borrower in carrying out the objectives of the loan. Some reports must be submitted with the FmHA payments and others submitted to FmHA either monthly, quarterly, or annually. Exhibits B–6, B–7, and B–8 of this subpart are to be used as a guide for determining when reports are due and the number of copies required. Borrower accounts and records will be kept or made available in a location within reasonable access for inspection, review and copying by representatives of FmHA or other agencies of the U.S. Department of Agriculture authorized by the Department.

1 *Accounting methods and records.*

a *Method of accounting and financial statements.* Borrowers may choose a cash or accrual method of accounting, bookkeeping and budget preparation as described in their project management plan. Balance sheets or statements of financial condition may be prepared reflecting the same accounting method, except that the accrual method of reporting financial condition will be used where the borrower is required to submit an annual audit.

b *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall incorporate a description of its method of accounting, bookkeeping, budget preparation, and reporting of financial condition and, when applicable, plans for auditing in the project management plan that must be approved by FmHA.

c *Records.* Form FmHA 1930–5 may be used by small organizations as a method of recording and maintaining accounting transactions. Automated systems may be used if they meet the conditions of paragraph XVI of this exhibit.

d *Record retention.* Each borrower shall retain all financial records, books, and supporting material for at least 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA, the Office of Inspector General (OIG), the Comptroller General, or to their representatives.

2 *Management reports and review processes.* The objective of management reports and review processes is to furnish the management and FmHA with a means of evaluating prior decisions and to serve as a basis for planning future operations and financial conditions. Timely reports and their review furnish necessary information to make sound management decisions. All reports will relate only to the FmHA financed project and borrower entity. Separate reports will be prepared and submitted for each project owned by the same borrower. Forms necessary in making the required reports may be requested from FmHA. The various review processes described in this paragraph are

illustrated at paragraph XIII C 3 of this exhibit.

a *Annual budget and utility allowance.*

(1) *Objective.* It is the objective of FmHA that project budgets and/or utility allowances be prepared, reviewed, and approved in such manner and timing that the approved budget and/or utility allowance, including any authorized changes to same, become effective on the beginning of a fiscal year of project operation.

(2) *Documents.*

(i) The annual project budget will be prepared on Form FmHA 1930–7 by the borrower or its agent following the instructions on the form. It will reflect budget planning for a 12 month fiscal year. Figures in the "actual" column will reflect at least 9 months of actual fiscal year activity and no more than 3 months of estimated activity for the balance of the same fiscal year based on recent actual experience.

(ii) The housing allowance for utilities and other public services will be prepared on exhibit A–6 of subpart E of part 1944 of this chapter. The exhibit A–6 will be prepared by the borrower or its agent following instructions attached to exhibit A–6 of subpart E of part 1944 of this chapter.

(3) *Supporting data.* Any data, justification or other documentation required by the instructions for preparation of Form FmHA 1930–7 and exhibit A–6 of subpart E of part 1944 of this chapter, or otherwise required by the Servicing Official on an individual case basis, shall be attached to the respective document when submitted to the Servicing Office.

(4) *Due date.* The borrower can submit the necessary documents as soon as 9 months of current fiscal year actuals are available, but in sufficient time to meet the objective stated at C 2 a (1) of this paragraph. The Servicing Official needs 15 to 30 days to review project budgets and utility allowances when no changes of rents, occupancy charges, or utility allowances are needed. When such changes are needed, the borrower needs to submit documents to allow sufficient time for review and proper notice of change to tenants or members.

(5) *FmHA review.* Form FmHA 1930–7 and exhibit A–6 of subpart E of part 1944 of this chapter and any attachment will be reviewed by the Servicing Office as part of the rental or occupancy charge/utility allowance change review and/or annual review process.

b *Rental or occupancy charge budget and/or utility allowance change.*

(1) *Objective.* It is the objective of FmHA that changes to project rental or occupancy charges and/or utility allowances be incorporated into the annual budget review and planning process in such manner and timing that authorized changes become effective at the beginning of a fiscal year of project operation.

(2) *Documents.* When a rental or occupancy charge and/or utility allowance change is proposed, the borrower or its agent will prepare and submit Form FmHA 1930–7 and exhibit A–6 of subpart E of part 1944 of this chapter and any supporting attachments following the instructions for either document.

(3) *Standards and timing.*

(i) The policies and procedures governing rental or occupancy charge and/or utility allowance change are contained in exhibit C of this subpart, (available in the "Borrower Handbook" or any FmHA office).

(ii) To meet the projected effective date of change, the necessary documents need to be received by the Servicing Official at least 75 days ahead to allow FmHA review and allow for a 60-day notice to tenants or members of an impending change. The "actual" column of Form FmHA 1930–7 shall contain actual data for the fiscal year to date plus the projection of expected data for the remainder of the fiscal year. This projection should cover a period not exceeding 90 days. The same supporting data standards of paragraph XIII C 2 a (3) of this exhibit will apply.

(iii) Should the borrower need to request a rental or occupancy charge and/or utility allowance change at some time other than described at paragraph XIII C 2 b (3) (ii) of this exhibit (e.g., mid-fiscal year), the Form FmHA 1930–7 shall reflect the project's financial needs for the next 12 months of operation and the "actual" column shall reflect the most recent 12 months of actual data. The previous fiscal year's audit report, or Form FmHA 1930–8, as appropriate, shall be submitted with the change request if it was not previously submitted to the Servicing Office.

(4) *FmHA review.* Exhibit C of this subpart shall govern FmHA review of the borrower's request for rental or occupancy charge and/or utility allowance change.

c *Quarterly report.*

(1) *Objective.* The objective of FmHA is for quarterly reports to provide a monitoring means for borrowers and FmHA to mutually check a borrower's progress in achieving program objectives and when applicable, meeting servicing goals. The Servicing Official may require monthly reports rather than quarterly reports when warranted in unusual situations.

(2) *Document.* Form FmHA 1930–7 will be used by borrowers to prepare the quarterly report.

(3) *Standards.*

(i) For quarterly reports, Form FmHA 1930–7 will be completed following the instructions on the form for preparation of a quarterly report. The quarterly report shall be required upon commencement of any of the following situations:

(A) Start-up of initial occupancy after completion of new construction or substantial rehabilitation.

(B) Reamortization, transfer of an existing project loan or a 100-percent membership change.

(C) Failure to make a scheduled loan payment, failure to maintain required transfers to the reserve account, or failure to maintain reserve accounts at authorized current levels.

(ii) For monthly reports, Form FmHA 1930–7 will be completed following the instructions on the form for preparing a monthly report. The monthly report may be invoked:

(A) When determined essential by the Servicing Official as part of a servicing plan made in accordance with exhibit F of subpart B of part 1965 of this chapter (available in any FmHA office).

(B) When there are factors such as apparent violations of policy or reporting practices, audit findings, sudden increases of vacancy and/or accounts payable or receivables, or other evidence of weak financial condition.

(4) *Frequency and discontinuance of quarterly and monthly reports.*

(i) Reports shall be prepared and submitted at least through the first year of operation for any situation described in paragraph XIII C 2 c (3) of this exhibit and each quarter or month thereafter for new or existing projects until discontinuance is authorized by the Servicing Official. The Servicing Official will evaluate the following in reaching a decision to discontinue:

(A) The project has been operated and maintained in a satisfactory manner during the most recent 6 months of the required reporting period.

(B) An adequate accounting system is functioning properly, is kept current, and the most recent required annual financial reports are complete and have been submitted to the Servicing Office.

(C) Project loan payments to FmHA are on schedule.

(D) The project reserve account is ahead or on schedule, allowing for authorized expenditures or authorized reduction in funding as set forth in an approved servicing plan or budget.

(E) The annual review has been completed by the Servicing Office and the annual audit, or verification of review when appropriate, has been found acceptable.

(F) The Servicing Official has inspected the project, reviewed project operations, and found them acceptable. If a determination is made to discontinue, a letter shall be sent to the borrower or its agent with a copy sent to the State Director.

(ii) The reporting and audit requirements of paragraphs XIII C 2 c (4) (i) (B) and (E) do not apply when the most recent 6 continuous months of successful operation occur before the first audit and/or annual review is due.

(5) *Due date.* Quarterly (or monthly) reports shall be due in the FmHA Servicing Office by the 20th day of the month immediately following the close of the respective reporting period.

(6) *FmHA review.*

(i) The Servicing Official will review the reports for year-to-date status of project operations. When reports reveal actual data that exceeds acceptable tolerance from a forecasted budget Subtotal item, or vacancies and accounts receivable and/or payable are increasing, the Servicing Official will initiate verbal and/or written dialogue with the borrower for further resolution of problems or to otherwise achieve acceptable progress.

(ii) The Servicing Official will complete the FmHA review and forward the borrower's report and any related documentation to the State Director by the 30th day of the month following close of the reporting period.

(iii) If the borrower fails to submit its report by the due date, this fact will be reported to the State Director by the 30th day of the month following the close of the reporting period; otherwise, the Servicing Office will complete its review of a submitted report no later than 10 calendar days following receipt of the borrower's report.

d *Annual audit reports and verifications of review.*

(1) *Documents and general standards.*

(i) *Annual audit report.* An audit report will be in the format as prepared by a CPA or Licensed Public Accountant (LPA), provided the LPA was licensed on or before December 31, 1970.

(A) All audits are to be performed in accordance with generally accepted government auditing standards or GAGAS, as set forth in "Government Auditing Standards" (1988 Revision), established by the Comptroller General of the United States, and any subsequent revisions (this publication is commonly referred to as the "Yellow Book" or "Government Accounting Office Standards"). In addition, the audits are also to be performed in accordance with applicable portions of various Office of Management and Budget (OMB) Circulars, Departmental Regulations, parts 3015 and 3016 of chapter XXX of title 7, and the FmHA Audit Program as specified in separate sections of this subpart.

(B) An audit report is required for any project with 25 or more units unless the State Director or Servicing Official determines that a project with 24 or fewer units requires an audit for reasons of good cause. Such reasons include, but are not limited to, situations where project records are incomplete or inaccurate, or it appears that the borrower has not adequately accounted for project funds, or where the borrower's operation consists of multiple projects where each is 24 or fewer units (with subsidy reports prepared for each project). (NOTE: The State Director or Servicing Official may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.)

(C) The project audit report should cover the borrower entity and the expense for preparation of the audit report may include the auditor's preparation of any IRS required borrower entity reports (i.e., Schedule K–1 (IRS Form 1065), "Partner's Share of Income, Credits, Deductions, etc.").

(D) The CPA or LPA auditor who prepares the audit report may not be an individual or organization that is associated with the borrower in any manner, other than the performance of the audit review and preparation of the project audit report and required IRS reports, that creates an identity of interest or possible conflict of interest (as described in paragraph V B of this exhibit. For example, the CPA or LPA auditor may not be an employee of the borrower or an employee of any officer of the organization, nor be an employee of any member, stockholder, partner, principal, or have any ownership or other interest in the borrower organization.

(E) The State Director or Servicing Official may authorize the initial audit report to cover a period up to 18 months for new projects whose first operating year does not exceed 6 months.

(F) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one successive year in a specific case providing: the borrower submits a written request; the FmHA approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of an audit would increase the monthly per unit rental rate by more than $4.00; and the required reports, including a CPA or LPA prepared audit, were properly submitted for the prior year's project operations.

(ii) *Verification of review.* Form FmHA 1930–8 will be prepared by a competent person qualified by education and/or experience who has no identity of interest or possible conflict of interest with the borrower or its principals. However, in the case of a nonprofit institution, the verification of review may be made by a committee of the membership but may not include any officer, director, or employee of the borrower.

(A) Form FmHA 1930–8 will be used for the verification of review of project accounts and the review verifier will also review the actual data on Form FmHA 1930–7 for projects with 24 or fewer units unless the requirements of paragraph XIII C 2 d (1)(i)(A) of this exhibit are invoked by the State Director or Servicing Official.

(B) The State Director or Servicing Official may authorize the initial verification of review to cover a period up to 18 months for a new project whose first operating year was less than 6 months.

(iii) *Project operating budget actuals.* An annual report of actuals for the full operating year will be submitted by the borrower, or its agent, using Form FmHA 1930–7. The report will reflect the actual income and expenses for the project for the borrower's 12-month operating year. The report will be submitted with the annual audit report or Form FmHA 1930–8, as appropriate.

(iv) *Form FmHA 1930–10, "Annual Multiple Family Housing Project Review."* When the annual audit report or verification of review is received, Parts II C and D of Form FmHA 1930–10 may be prefilled to the extent possible to record previous year status as reported in the audit report or verification of review. The Form FmHA 1930–10 will be completed later as described in § 1930.123(e)(2) and (i) of this subpart.

(v) *Fraud, abuse, and illegal acts.* If the review verifier becomes aware of any indication of fraud, abuse, or illegal acts in FmHA financed projects, prompt written notice shall be given to the appropriate Servicing Official.

(2) *Specific standards.*

(i) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart, 7 CFR part 3015, and OMB Circular A–128, with copies of the audit being forwarded by the borrower to the Servicing Official and the appropriate Federal cognizant agency, if applicable. For guidance in meeting these requirements, the auditor may refer to the American Institute of Certified Public Accountants Audit and Accounting Guide for "Audits of State and Local Governmental Units." The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(A) *Cognizant agency.* (*1*) "Cognizant agency" means the Federal agency assigned by OMB Circular A–128. Within the U.S. Department of Agriculture (USDA), the USDA OIG shall fulfill cognizant agency responsibilities.

(*2*) Cognizant agency assignments. Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted.

(B) *Audit standards.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(*1*) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128.

(*2*) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128 or in accordance with the FmHA Audit Program. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with the FmHA Audit Program, the audit shall be in accordance with paragraph XIII C 2 d (2)(iii) of this exhibit.

(*3*) State and local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from compliance with OMB Circular A–128 and the FmHA Audit Program. These State and local governments and Indian tribes shall be governed by audit standards prescribed by State and local law or regulation.

(*4*) Public hospitals and public colleges and universities may be excluded from OMB Circular A–128 audit standards. If such entities are excluded, audits shall be made in accordance with paragraph XIII C 2 d (2)(ii) of this exhibit.

*(5)* Indications of fraud, abuse, and illegal acts shall be referred to FmHA for processing in accordance with paragraph XIII C 2 d (1) (v) of this exhibit.

(ii) *Nonprofit institutions.* These organizations are to be audited in accordance with this subpart, 7 CFR part 3015, and OMB Circular A–133, with copies of the audit being forwarded by the borrower to the Servicing Office and the appropriate Federal cognizant agency, if applicable. The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(A) *Cognizant agency.* See paragraph XIII C 2 d (2) (i) (A) of this exhibit.

(B) *Audit standards.*

*(1)* Nonprofit institutions that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with the provisions of OMB Circular A–133. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the OMB Circular A–133 or having an audit made of the one program in

accordance with paragraph XIII C 2 d (2) (iii) of this exhibit. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution will be required to conduct audits for those programs in accordance with paragraph XIII C 2 d (2) (iii) of this exhibit.

*(2)* Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–133 or in accordance with the FmHA Audit Program. If the election is made to have an audit performed in accordance with the FmHA Audit Program, the audit shall be performed in accordance with paragraph XIII C 2 d (2) (iii) of this exhibit.

*(3)* Nonprofit institutions receiving less than $25,000 a year in Federal financial assistance are exempt from Federal audit standards, but records must be available for review by appropriate officials of FmHA.

(C) *Fraud, waste, and abuse.* Indications of fraud, abuse, and illegal acts shall be processed in accordance with paragraph XIII C 2 d (1) (v) of this exhibit.

(iii) *FmHA Audit Program.* For-profit organizations and other entities referred to this paragraph by paragraphs XIII C 2 d (2) (i) and/or (ii) of this exhibit, audits will be performed under the guidance of the audit guide entitled "U.S. Department of Agriculture, Farmers Home Administration-Audit Program" (available in any FmHA office).

(3) *Due date.* (i) Annual audit reports and verifications of review, as appropriate, and Form FmHA 1930–7 with 12 months of project operation actuals are due in the Servicing Office no later than 90 days following the close of the project fiscal year.

(ii) If the audit or verification of review and Form FmHA 1930–7 with 12 months of project operation actuals cannot be submitted by the due date, and the owner presents a request for extension supported by evidence that delay is at the request of the auditor, and the request has a reasonable explanation of why an extension of the due date is needed, the Servicing Official may authorize up to a 30-day extension of the due date.

(iii) If an explanation is not forthcoming from the auditor, or the explanation received is without good reason, or the Servicing Official otherwise suspects fiscal difficulty, the Servicing Official may request the borrower to submit to the Servicing Office for review, the project bank statements for the general operating, reserve, and investment accounts covering the most recent 60-day period.

(iv) If the borrower fails to submit the requested bank statements by the date stipulated by the Servicing Official, the Servicing Official will immediately refer the matter to the OIG.

(4) *FmHA review.* An audit report or verification of review and Form FmHA 1930–7 with 12 months of project operation actuals will be reviewed by the Servicing Official within 60 days following receipt of the audit report or verification of review. From this annual audit review process, the Servicing Official will initiate action on findings and concerns needing immediate attention. Those findings and concerns not needing immediate action will be considered in the next budget planning and annual review process at the end of the fiscal year for implementation in the following fiscal year of project operation.

e *Miscellaneous management reports.* These reports include, but are not limited to, the following items that provide additional or unique information that augment or otherwise support other management reports described in this section:

(1) *Documents and formats.* (i) *Minutes of annual meetings.* Written record of annual meeting of organizational borrowers who, by their organizational charter, are required to maintain such written records.

(ii) *Energy audit.* Prepared according to the guidance of exhibit D of this subpart. Energy audits, including implementation plans for energy conservation, are prepared and submitted on multi-year cycles.

(iii) *Miscellaneous items.* These include other written or electronically stored data or information such as financial or income/expense data, justification statements, or other technical or informative material that stands alone or supports other managements reports described in this section, whether volunteered by the borrower or requested by the Servicing Official.

(2) *Due date.* Annual minutes and miscellaneous items are due along with the report they are attached to as supporting documentation. New energy audits are due with the next submission of Form FmHA 1930–7 following expiration of the old energy audit.

(3) *FmHA review.* FmHA review of miscellaneous management reports will coincide with review of the management report that each is attached to as documentation.

f *Project worksheets.*

(1) Submit Form FmHA 1944–29, with the payment to the Servicing Office. This form must be submitted each month to report overage, occupancy surcharge, and/or request RA, even if a loan payment is not submitted. This form reflects occupancy in the project as of the first day of the month preceding the payment due date. The form will be retained indefinitely.

(2) For LH projects, Form FmHA 1944–29 will be submitted monthly for the LH tenants who receive RA. Otherwise, the Form FmHA 1944–29 covering all LH tenants will be submitted to FmHA at least once annually with the annual reports. The form will be retained indefinitely.

(3) *Illustration of MFH budget planning, annual review, and annual audit review cycles.*

| Items on hand during fiscal year | Last quarter of fiscal year | First quarter of next FY | Second quarter | |
|---|---|---|---|---|
| Management Reports/items in borrower *casefile* ..... —Previous fiscal year annual audit or Form FmHA 1930–6. ..... | *Budget Planning Process* Form FmHA 1930–7 & util. allowance Review change or no change of rents or occupancy charges and/or utility allowance. | Annual audit preparation by auditor or Form FmHA 1930–6 by verifier. | FmHA review of annual audit or Form FmHA 1930–6 60-day review period. | File annual audit or Form FmHA 1930–6 for next budget planning & annual review process. |
| —Exhibit A–1 —Latest supervisory visit/inspection ..... | FmHA starts annual review process. | Form FmHA 1930–7 showing 12 months of project operating actuals submitted by borrower. | FmHA completes annual review process. | |
| —Energy audit & implementation plan ..... —Compliance review ..... —Management plan ..... —Management agreement ..... | —Form FmHA 1930–7. —Review project financial and management reports. . | ..... | FmHA may prefill Parts II C and D of Form FmHA 1930–10. | |

| Items on hand during fiscal year | Last quarter of fiscal year | First quarter of next FY | Second quarter | |
|---|---|---|---|---|
| —Identity of Interest Disclosure Certification Memorandum. | FmHA completes Form FmHA 1930–10. | ..... | Take immediate action on significant items found in the Audit Review. | |
| Other—as applicable | | | | |

D *Financial and management analysis.* Financial and management analysis provides information on the status of the project's operation. Regular analysis by the borrower and/or FmHA can help identify strengths, weaknesses, and reasonableness of income and expenses so that appropriate corrective actions can be taken. Some methods of analysis FmHA encourages are:

1 *Budget analysis:* Using quarterly (or monthly if deemed necessary) and annual reports, the borrower or project manager compares actual income and expenses with the budgeted amounts. Any differences between the budget and actual figures indicate areas of the project operation where the manager may need to focus added attention and/or take corrective action.

2 *Ratio analysis:* Ratios are an effective tool for financial analysis. They prescribe various measures of actual operating performance. FmHA and borrowers should develop a data base of recorded ratios for comparative analysis. Some useful ratios are:

$$\text{a Vacancy rate} = \frac{\text{Total vacancy days for the month}}{\text{Total unit days for the month}}$$

$$\text{b Resident turnover ratio} = \frac{\text{Total units becoming vacant during the period}}{\text{Average units occupied for the period}}$$

$$\text{c Expense ratio} = \frac{\text{Total expense}}{\text{Total income}}$$

$$\text{d O\& M cost per unit} = \frac{\text{Total expense (By category)}}{\text{Total no. of units}}$$

$$\text{e Working capital ratio} = \frac{\text{Current assets}}{\text{Current liabilities}}$$

$$\text{f Collection ratio} = \frac{\text{Total collections}}{\text{Total occupancy roll}}$$

$$\text{g Percent of revenue from Government sources} = \frac{\text{FmHA Rental Assistance or HUD Section 8 payments}}{\text{Total market rent}}$$

$$\text{h Management expense per unit} = \frac{\text{Management fee and costs}}{\text{Total no. of units}}$$

XIV *Termination and Eviction:* Borrowers and project managers should actively develop ways and means to avoid forced termination of leases or occupancy agreements and the eviction of tenants or members by considering the following:

A *Entitlement to continued occupancy.*

1 *General.* The borrower or project manager may terminate or refuse to renew any occupancy only for material noncompliance with the lease or occupancy agreement or other good cause such as:

a Noneligibility for tenancy.

b Action or conduct of the tenant or member which disrupts the livability of the project by being a direct threat to the health or safety of any person, or the right of any tenant or member of the quiet enjoyment of the premises and related project facilities, or that results in substantial physical damage causing an adverse financial effect on the project, or the property of others, Except when such threat can be removed by applying a reasonable accommodation.

c Expiration of the lease or occupancy agreement period is not sufficient grounds for eviction of a tenant or member.

2 *Material noncompliance.* Material noncompliance with the lease or occupancy agreement includes:

a One or more substantial violations of the lease or occupancy agreement; or

b Nonpayment or repeated late payment of rent or occupancy charge or any other financial obligation due under the lease or occupancy agreement (including any portion thereof) beyond any grace period constitutes a substantial violation; or

c Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance that:

(1) is conducted in or on the premises by the tenant or someone under the tenant's control.

(2) is allowed to happen by a household member or guest because the tenant has not taken reasonable steps to prevent or control such illegal activity; or because the tenant has not taken steps to remove the household member or guest who is conducting the illegal activity.

(3) It is not the intent that this provision of material lease violation apply to innocent members of the tenant's household who are not engaged in the illegal activity, nor are responsible for control of another household member or guest. It is the intent that such innocent persons can remain in the dwelling unit if an otherwise eligible household remains or can be formed.

3 *Other good cause.*

a Repeated minor violations of the lease or occupancy agreement which disrupt the livability and harmony of the project by adversely affecting the health or safety of any person, or the right of any tenant or member to the quiet enjoyment of the leased premises and the related project, or that have an adverse financial effect on the project.

b The borrower or project manager must base their decision on current objective data, not on supposition that the tenant may or could pose a harm or threat to other persons or property.

c Conduct cannot be considered as other good cause unless the borrower or project manager has given the tenant or member *prior notice* that the conduct will constitute a basis for termination of occupancy.

4 *Rent overburden.*

a Any tenant household (except those receiving Section 8 benefits) paying more than the contribution levels cited in paragraphs IV A 2 c (1), (2), or (3) of this exhibit toward rent, including utilities, is considered to be experiencing rent overburden that may jeopardize a tenant's ability to maintain occupancy.

b Whenever a tenant is experiencing rent overburden, borrowers are encouraged to utilize any available and compatible governmental or private rental subsidies including FmHA RA and/or interest credit; or to inform tenants where they may apply for Section 8 housing assistance to minimize termination of tenancy.

c With reference to FmHA RA or interest credit, no further action by the borrower is necessary if the borrower has already requested RA in conjunction with a previous rental or occupancy charge change request.

d For purpose of this provision, the term "rent overburden" also refers to occupancy charges paid by cooperative members.

5 *Tenant or member benefits during termination through eviction.*

a *Continued occupancy.* Tenant or member households may continue occupancy through the specified termination date, or if judicial action is initiated to evict, to the specified date in a court order for eviction. In addition, this policy applies when a tenant or member has filed a discrimination complaint and a final decision on the complaint's resolution is awaited from the Department's Office of Advocacy and Enterprise or the Department of Housing and Urban Development.

b *Rental subsidy.* During termination, RA payments and/or interest credit and occupancy surcharge will be administered following this outline according to type of situation:

(1) *Failure to recertify.*

(i) If failure to recertify is the fault of the tenant or member:

(A) The borrower will charge the tenant or member note rate rent or occupancy charge, and occupancy surcharge during the period of occupancy with an expired certification and will remit collected overage and occupancy surcharge to the Servicing Office.

(B) If the tenant or member does not pay rent or occupancy charge and occupancy surcharge during this period, the project will not be required to pay overage or to pay the occupancy surcharge.

(ii) The borrower will send a copy of the termination notice to the Servicing Official, together with a copy of the "90 day" and "30 day" letters sent to the tenant.

(iii) The Servicing Official will suspend payment of any RA until the recertification process is completed; otherwise until the tenant or member moves out or is evicted by court order, whichever occurs first.

(iv) The Servicing Official will annotate the next processed project master list with an "E" for expiration in column 5 of Part II of Form FmHA 1944–29 for the appropriate tenant(s) or member(s).

(v) If failure to recertify is the fault of the borrower or management, through no fault of the tenant or member:

(A) The Servicing Official will advise the borrower or management to rescind the notice of termination.

(B) Overage will be paid from project funds or by the management agent, depending on the provisions of the management plan and management agreement.

(C) Until a new tenant certification is effective, the tenant shall continue to pay the rent or occupancy charge established by the expired tenant certification, as well as the occupancy surcharge.

(vi) If the termination process is nullified, either by completing the recertification process, by judicial action or the resolution of a discrimination complaint, the Servicing Official will restore RA and request RA payment retroactive to the date it was withheld, based on the newly verified tenant certification. If the termination process ends with voluntary tenant/member move-out or court ordered eviction, whichever occurs first, the RA will be assigned to the next tenant or member that is RA eligible at the time of the move-out or eviction.

(2) *Lease violation.*

(i) The borrower will send a copy of the termination notice to the Servicing Official.

(ii) The Servicing Official will annotate the next processed project master list with a "T" for termination in column 5 of Part II of Form FmHA 1944–29 for the appropriate tenant(s) or member(s).

(iii) The Servicing Official will continue to authorize RA for the tenant or member.

(iv) The borrower will continue to charge and collect the rental or occupancy charge rate established by the tenant's or member's current tenant certification, as well as the occupancy surcharge.

(v) If the termination process is nullified, either by resolution of the lease violation or by court action, normal tenant/member status resumes. If the termination ends with tenant/member move-out or court ordered eviction, whichever occurs first, the RA will be assigned to the next tenant or member that is RA eligible at the time of the move-out or eviction.

(vi) If the tenant certification expires while a notice of termination for lease violation or good cause is in effect (i.e., litigation is pending):

(A) The borrower will continue to assess the rent or occupancy charge and occupancy surcharge to the tenant/member at the rates established by the expired tenant certification, through such time the court has rendered a decision, or the tenant/member has moved out, whichever occurs first. (Note: the tenant/member must pay the rent or occupancy charge and occupancy surcharge into an escrow account pending the outcome of litigation.)

(B) The project will not be required to pay overage or the occupancy surcharge.

(C) Should the court deny the termination and order reinstatement of occupancy, the borrower shall promptly complete the recertification process as of the current time to become effective as soon as possible, collect the due rent or occupancy charge and reimbursement for occupancy surcharge, and request RA retroactive to the date it was suspended.

B *Notice of lease or occupancy agreement violation.* A notice of lease or occupancy agreement violation is prepared and issued by the borrower or authorized representative. Any such notice must be based on material violation of the lease or occupancy agreement terms or for other documented good cause as determined by the borrower or the project manager.

1 The notice of lease or occupancy agreement violation will be handled according to the terms of the lease or occupancy agreement. Tenants or members will be given prior notice of lease or occupancy agreement violation according to State or local law. The notice must:

a Refer to relevant provisions in the lease or occupancy agreement.

b State the violations with enough information describing the nature and frequency of the problem to enable the tenant or member to understand and correct the problem. In those cases where the lease or occupancy agreement violation is due to the tenant's failure to pay rent or the member's failure to pay occupancy charge, a notice stating the dollar amount of the balance due on the rent or occupancy charge account and the date of such computation shall satisfy this requirement.

c State that the tenant or member will be expected to correct the lease or occupancy agreement violation by a specified date.

d State that the tenant or member may informally meet with the borrower or borrower representative to attempt to resolve the stated violation before the date of corrective action specified in the notice.

e Advise the tenant or member that if he or she has not corrected the stated violation by the date specified, the borrower may seek to terminate the lease or occupancy agreement by bringing forth a judicial action, at which time the tenant or member may present a defense.

2 The notice shall be accomplished by: sending a letter by first class mail to the tenant or member at his or her address at the project; or by serving a copy of the notice on any adult person answering the door at the dwelling unit, or if no adult responds, by placing the notice under or through the door,

if possible, or by affixing the notice to the door. Service shall not be deemed effective until either method of notice as described herein has been accomplished. The date on which the notice shall be deemed to be received by the tenant or member shall be the date on which the required first class letter is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever method of service is used.

C *Notice of termination.*

1 Upon failure by the tenant or member to meet the condition(s) or correct the violation(s) stated in the notice of lease or occupancy agreement violation by the date specified, the tenant or member will be notified that the occupancy is terminated and that eviction is being sought through the appropriate judicial process according to State or local law.

2 The notice of termination is prepared and issued by the borrower or its authorized representative in accordance with the prior notice requirements and provisions of State or local law.

3 If State or local law is silent or otherwise not explicit, the notice must state the reason and basis for the termination of occupancy (i.e., material or other good cause violation, or both).

4 The notice of termination must include the location and regular office hours during which the tenant or member (or counsel) may view its file and copy any information it contains to aid in the tenant's member's defense.

5 The notice will be accomplished in the same manner described at paragraph XIV B 2 of this exhibit.

6 A copy of the notice of termination will simultaneously be forwarded to the Servicing Office.

7 In those states where the notice of lease or occupancy agreement violation automatically becomes the notice of termination after a prescribed period of time, the requirements of the notice of termination have been met.

D *Servicing Official review.*

1 Upon receipt of a copy of notice of termination, the Servicing Official shall promptly review the notice for technical compliance with paragraph XIV C of this exhibit and any applicable State Supplements. The Servicing Official will not review the notice for the merits of the action, nor express any opinion on the merits of the action (this responsibility resides with the State or local court).

2 No further action is required if the notice of termination meets technical requirements of preparation.

3 If the notice of termination fails to meet the technical requirements of preparation, the Servicing Official will:

a Inform the borrower how the notice of termination failed to meet the technical requirements of preparation,

b Inform the borrower to cease the action,

c Inform the borrower that it may reissue a new revised notice of termination if the borrower believes the conditions still warrant such action, and

d Send to the tenant a copy of the Servicing Official's letter that was sent to the borrower.

E *Notice of eviction.* A notice of eviction is prepared and issued by a court of law, not the borrower or its authorized representative. Eviction will be carried out as specified by the terms of the eviction notice and court order.

XV *SECURITY SERVICING:* Security servicing, as referenced in this exhibit, concerns the borrower's general responsibilities in relation to the loan agreement or resolution, note, mortgage, and other loan documents. It does not deal with security items between the borrower and the tenants or members. FmHA will look to the borrower to fulfill its obligation according to the requirements of the loan agreement or resolution, note, mortgage, and other legal or closing documents. Some items of special emphasis are:

A *Fidelity coverage.* It is the borrower's overall responsibility as described in the management plan to see that fidelity coverage is in place on any personnel entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable property other than money or securities. The borrower should have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. Coverage must be from a company licensed to provide coverage in the state where the project is located. Fidelity coverage obtained should utilize standard industry forms copyrighted by an organization such as the American Association of Insurance Services, or AAIS; Insurance Services Office, Inc., or ISO; or the Surety Association of America, or SSA. Use of the following guidelines will meet the administrative intent of FmHA:

1 Fidelity coverage policies must declare in the insuring agreement(s) that the insurance company will provide protection to the insured against the loss of project money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by any "employee," whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage. The FmHA minimally requires any insuring policy to include an insuring agreement that covers employee dishonesty.

2 The types of coverage policies acceptable to FmHA are:

a *Blanket crime policy.* This type of policy usually provides the broader fidelity coverage and economy of cost options. Premiums are subject to discount based on the level of internal control exercised by the insured operation. This type of policy can provide the following insuring agreements:

(1) Employee dishonesty—Form A, Blanket. (Required)

(2) Loss inside the premises—Money and Securities Broad Form. (Recommended)

(3) Loss outside the premises—Money and Securities Broad Form. (Recommended)

(4) Depositor's forgery or alteration. (Recommended)

b *Fidelity bond.* Fidelity bonds limit coverage only to employee dishonesty. Fidelity bonds are generally used when one or two employees are covered. Premiums are based on established rate charges that are usually greater than for blanket crime policies.

(1) *Schedule and position bonds.* A schedule bond covers a named employee and is acquired with each change of employment. A position bond covers a named position of responsibility and permits continuous coverage even though the person holding that position changes. Of the two, a position bond is preferred by FmHA.

(2) *Blanket bonds.* Blanket bonds cover all employees in either of two forms:

(i) Commercial blanket bond (Form A). This bond limits coverage to each loss, irrespective of how many persons are involved. This form of bond is available on a "standard" basis.

(ii) Blanket position bond (Form B). This bond limits coverage to each employee, hence it can provide greater protection if there is collusion of two or more persons. This is a nonstandard form of bond available from some insurance companies who use their own individualized forms.

3 The FmHA requires only an endorsement listing all FmHA financed properties and their locations covered under the policy or bond. The policy or bond may also include properties or operations other than FmHA financed properties on separate endorsement listings.

4 Individual or organizational borrowers will have fidelity coverage when they have employees with access to project assets as cited in paragraph XV A of this exhibit; otherwise, a management company with exclusive access to the borrower's assets will have the fidelity coverage.

5 Borrowers who use a management agent with exclusive access to project assets as cited above will require the Agent to have fidelity coverage on all principals and employees with access to the project assets. Should active management revert to the borrower, the borrower will obtain fidelity coverage as specified in XV A 1 of this paragraph as a first course of business.

6 Fidelity coverage is not required when a loan is made to an individual (a natural person) or a General Partnership and that person or general partner will be responsible for a project's financial activities. (An individual person cannot bond or obtain coverage against its own actions.)

7 In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

8 A limited partnership will not be required to have fidelity coverage on its general partners UNLESS one or more of its general partners perform financial acts coming within the scope of the usual duties of an "employee."

9 The minimum amount of fidelity coverage will be the amount calculated by multiplying an exposure index by a coverage factor. When the calculated amount is less than $10,000, minimum coverage of $10,000 must be provided. This calculation is made as follows:

a *Determine exposure index:* Exposure index=25 percent of the SUM of annual cash receipts (rents, cash subsidy, interest, etc.) and cash (cash carryover, reserves, CD's, tax

and insurance escrows, etc.). Round to next higher $1,000.

b *Determine coverage:* Coverage=exposure index X coverage factor taken from the coverage chart. Round to next higher $1000.

c *Coverage chart:*

| Exposure index | Coverage factor |
|---|---|
| $100,000 or less | .30 |
| $100,000 to $200,000 | .28 |
| $200,000 to $300,000 | .26 |
| $300,000 to $400,000 | .24 |
| $400,000 to $500,000 | .22 |
| $500,000 to $600,000 | .20 |
| $600,000 to $700,000 | .18 |
| $700,000 to $800,000 | .16 |
| $800,000 to $900,000 | .14 |
| $900,000 to $1,000,000 | .12 |
| $1,000,000 or more | .10 |

d *Example:* $245,000 exposure index X .26=$63,700 Minimum coverage [rounded]=$64,000

10 A deductible is designed to allow flexibility in balancing what the project can prudently pay from its own assets, at a time of loss, against the economy of annual premiums in its annual budget. The following deductible levels will meet FmHA requirements:

| Fidelity coverage | Deductible level |
|---|---|
| Under 50,000 | $1,000 |
| In the area of $100,000 | 2,500 |
| In the area of $250,000 | 5,000 |
| In the area of $500,000 | 10,000 |
| In the area of $1,000,000 | 15,000 |

11 When discussing fidelity coverage with its insurance agent, the borrower and/or management agent should inquire how it can improve its internal controls to reduce exposure to risk. Adoption of improvement measures may result in lower premiums.

12 The premium for a borrower's fidelity coverage on project site employees is a project expense.

13 The premium of a management agent's fidelity coverage for the agent's principals and employees will be the management agent's business expense (i.e., it is included within the management fee). When a project site employee is covered under the "umbrella" of the agent's fidelity coverage, the pro rata portion of the premium covering the employee may be considered a project expense.

14 Fidelity coverage should be reviewed during annual review and adjusted when necessary.

B *Insurance.* The minimum amounts and types of insurance required of the borrower will be determined by FmHA in accordance with subparts A and B of part 1806 of this chapter (FmHA Instructions 426.1 and 426.2) except as otherwise described in this paragraph. All references to County Supervisor shall be construed to mean Servicing Official when applied to the multiple housing program. The borrower or its agent shall obtain:

1 Adequate fire, extended coverage, and earthquake insurance as needed will be required on all buildings included as security for the loan or grant (see Guide Letter 1930–4 for requesting renewals). The amount of coverage will be not less than the "Total Estimated Reproduction Cost New of Improvements," on page 5 of Form FmHA 1922–7, "Appraisal Report for Multi-Unit Housing." The following additional provisions will apply:

a An initial insurance policy with evidence of first year paid premium will be delivered to the FmHA Servicing Official at the time of loan closing or transfer of loan, providing at least 1 year of coverage.

b Form FmHA 426–2, "Property Insurance Mortgage Clause," or the provisions thereof printed in the policy or in a blanket letter from an insurance company, must be part of the policy; namely to provide FmHA, as mortgagee, with at least 10 days advance notice of cancellation.

c Evidence of paid premium in subsequent years will not be required.

d Any change of insurance provider or level of coverage or term, will be provided to the Servicing Official by use of Part VII "Notice of Change to Borrower/Project Status," of Form FmHA 1930–7.

2 Suitable Worker's Compensation Insurance on all its employees. Worker's Compensation Insurance for employees of a management agent shall be paid out of the agent's management fee. When a project site employee is covered under the "umbrella" of the agent's insurance, the portion of premium attributable to a project site employee may be a project expense.

3 Adequate liability insurance.

4 Flood insurance when the project is located in a designated flood hazard area.

5 A blanket insurance policy may be accepted from a borrower when blanket coverage is more cost effective for each FmHA financed project on a prorata basis, and an endorsement is attached to the policy listing FmHA financed projects, locations, and coverage limits separate from any other properties covered by the policy.

C *Real estate and personal property taxes.* All borrowers will be required to pay their taxes before they become delinquent and provide FmHA with proof of payment (see Guide Letter 1930–7 to remind borrowers to pay taxes). An exception to the above may be made if the borrower has formally contested the amount of the property assessment and had escrowed the amount of taxes in question in a manner acceptable to the Servicing Official.

XVI *Automation of FmHA Forms and Formats:* The various forms and formats approved or prescribed for use by borrowers and their agents throughout this subpart may be prepared on automated systems when the following criteria is complied with:

A *FmHA forms approved for official use by OMB.*

1 The *identical* wording and nomenclature of an official form must be included in the automated version of the form, including the OMB approval number.

2 The function (i.e., logic or mathematical calculation) of an official form must be the same in an automated version of the form.

3 The name or logo of the source of an automated form must be visibly annotated on each output of the automated form.

4 Nominal spacing adjustment of the content of an official form on the automated format is permitted to accommodate limitations of automation software and hardware.

5 Output size must be 8½ inches × 11 inches.

6 Output on colored paper is permissible but not required by FmHA.

B *Unofficial FmHA formats.* Items such as management plans, management agreements, waiting lists, and FmHA guide letters should be automated to the extent possible. Content and completion of the format must be developed according to FmHA guidelines for the item.

## Exhibit B–1—Management Plan Requirements for Farmers Home Administration Financed Multiple Family Housing (MFH) Projects

The objective of a management plan is to describe the property owner's expectations and standards for performance, timing, and results of management of all aspects of the various components of property operation, maintenance, and compliance with applicable laws and regulations. This exhibit is intended to guide the owner in identifying the various components of property management in an organized manner. The listing of discussion items under each component is intended as further guidance. Items should be added if needed; likewise, those items listed and not applicable to a given property situation need not be addressed.

FmHA requires management of FmHA financed MFH projects to be in compliance with applicable Federal, State, and local laws and this regulation. Exhibit B–4 of this subpart will be used by a prospective management agent to provide a resume of management background and/or experience. Exhibit B–5 of this subpart will be used by an owner who proposes to provide direct project management. In rural cooperative housing (RCH), a cooperative's board of directors will manage the business of the cooperative with the assistance of the adviser to the board. If the board is unable, in the adviser's opinion, to manage the cooperative after an adequate period of training, then FmHA will make the determination of whether the cooperative will hire professional management.

FmHA will review the management plan to evaluate the borrower's standards for project management. The management plan and any subsequent revisions must be signed by the borrower, and then approved and signed by the authorized FmHA official. No loan will be closed or construction started, or loan transfer completed, without a properly approved and signed management plan. Management plans should be reviewed annually and updated at least triannually by the borrower. Any updated or modified management plan will need to be reviewed and approved by the Servicing Official at the time of annual review. When only a few changes are needed, use of an addendum to the plan is acceptable to FmHA.

A management plan will reflect understanding of FmHA program requirements for the project and address each of the following areas:

1 *The role and responsibility of the owner and the relationship and delegations of authority to the management agent.* A management agreement must be provided where a management agent is to be used. If there is no management agent, the management plan should supply the equivalent information concerning the management staff assigned to day-to-day operation of the project even when the owner provides direct management.

a Describe and fully justify any identity of interest as described in paragraph V B of Exhibit B of this subpart.

b Identify the supervisory relationships, and to whom the incumbent of the position responsible for the day-to-day operation of the project is accountable.

c Describe the conditions when the management agent must consult the owner before taking any action.

d Identify the person or position in the owner's organization that is the key contact for the management agency. Describe the type of decisions to be made by this contact person.

e Describe the fundamental responsibilities and duties of the owner and the managing agent. Identify any areas of overlap and describe how the overlap will be handled.

f Describe any pro rata divisions of singularly incurred operating expense that is common to the management agent and the owner (project) (i.e., fidelity coverage that may be divided between both).

2 *Personnel policy and staffing arrangements.*

a Describe hiring practices of management and their conformance with equal employment opportunity requirements.

b Include a staffing plan for the project.

c Describe the lines of authority, responsibility, and accountability (internal controls) within the management entity.

d Describe the standards and plans for training and familiarizing employees with their job related responsibilities and applicable FmHA program requirements. Describe how such training will generally be achieved.

3 *Plans and procedures for marketing units, achieving and maintaining full occupancy, and meeting HUD Form 935.2, "Affirmative Fair Housing Marketing Plan," requirements.*

a Describe how affirmative marketing practices will be used. Describe the outreach and marketing efforts that will be used to reach those low-income and minority persons who are least likely to apply for such housing without special outreach efforts.

b Describe the methods that will be used to achieve and maintain the highest possible level of occupancy. When applicable, indicate any additional compensation or incentives that may be allowed management agents for early initial rent-up. (If this area is not covered in the management plan, it will usually not be allowed by FmHA at a later date.

c Describe how the units will be advertised. Indicate minimum levels planned regardless of occupancy levels.

d Describe the appropriate communication system, auxiliary aids, or other assistance that will be used to ensure effective communication with applicants, tenants or members, and members of the public that have sight or hearing impairments.

e Describe the kinds of reasonable accommodation the project can readily provide such as changing water faucets, kitchen equipment, door knobs, assigning handicap parking spaces, etc.

f Describe the process management will follow in reviewing and determining whether structural modification of an apartment unit is practical and feasible to reasonably accommodate a tenant or household member who has a handicap or disability.

g Indicate whether the FmHA sample waiting list (exhibit B–14 of this subpart) or some other waiting list will be used. If another waiting list is used, indicate how its use will otherwise comply with FmHA guidelines.

h Attach copies of sample forms that will be used to record unit condition, and indicate who will receive copies of the inspection forms.

i Describe any orientation services to be provided tenants or members to acquaint them with the project and care of the units. Indicate what printed project information will be given to applicants.

j Identify the person or staff position responsible for determining tenant or member eligibility and their location on the waiting list.

k In projects receiving tax credits, describe how special waiting lists will be established and when eligible tenants with incomes higher than tax credit limits will be considered for occupancy.

4 *Procedures for determining eligibility and for certifying and recertifying incomes.*

a Describe how applications and other records relevant to this function will be kept. If application fees are used, describe them.

b Describe the level of knowledge, skill, and ability that management official(s) will be expected to possess before assuming rental related duties such as application processing, eligibility determination, selection, unit assignment, certification, recertification, rent or occupancy charge and occupancy surcharge collection, and recordkeeping. This discussion should mention training and testing to be provided or obtained to achieve and maintain the level expected.

c Identify whether project funds or the management agent will pay overage when overage is due through no fault of the tenant or member.

5 *Leasing and occupancy policies.*

a Describe the occupancy standards for the project. (This could be shown as an annex to the management plan.)

b Describe the project admissions and leasing/occupancy policies and procedures, and criteria for selecting tenants/members for occupancy. (This could be shown as an annex to the management plan.)

c Describe the level of knowledge, skill, and ability that management official(s) will be expected to understand and apply regarding project lease provisions and prohibitions, occupancy standards, and admissions policies.

d Describe special procedures that will be used where the marketing area includes non-English speaking or reading persons to assure that such persons will understand leases or occupancy agreements and established rules.

6 *Rent and occupancy charge and occupancy surcharge collection policies and procedures.*

a Describe the project rent/occupancy charge and occupancy surcharge collection policy and procedure, covering such matters as where the collection point is, which staff position handles the collection, provisions for collection after normal office hours, recording, and safeguarding of collections.

b Describe the project security deposit/membership fee policy and procedure covering matters similar to the preceding item. Include discussion on handling of any interest earned on such deposits.

7 *Procedures for requesting and implementing a rent or occupancy charge change.*

a Describe the process to be followed for preparation and request of a change of rents/occupancy charges and/or utility allowances, and to notify tenants of such change, to meet FmHA requirements.

b Identify which staff position or person will process change requests.

c Describe when such change requests will normally be made in terms of economic need and timing within a fiscal year of operation.

8 *Plans and procedures for carrying out an effective maintenance, repair, and replacement program.*

a Describe the project objective and general plan for preventive maintenance.

b Describe where the project's as-built plans and specifications will be located and identify the staff position responsible for updating it as modifications occur.

c Describe the general maintenance procedures and schedules or cycles to: (this list could be attached as an addendum)

(1) Check and service appliances and mechanical equipment.

(2) Perform safety checks of smoke/fire alarms, fire extinguishers, outside lighting, and ice removal, etc.

(3) Inspect and perform maintenance and redecoration incident to tenant/member move-out and move-in.

(4) Perform major interior and exterior painting and redecorating.

(5) Perform major repairs and grounds maintenance.

(6) Remove garbage and trash.

(7) Perform common areas cleanup (parking lot, entryways, hallways, community room, etc.)

d Describe the project policy and procedure for tenants/members to prepare and submit maintenance requests.

e Describe the general timing for handling purchase orders and payments.

f Describe the project policy for budgeting for and/or requesting use of reserve funds for funding major maintenance or replacement items.

g In migrant or seasonally occupied labor housing (LH), describe the above items in terms of season opening and closing dates.

9 *Plans and procedures for providing supplemental services.*

a Describe the types of supplemental services such as laundry and vending machines that will be provided to benefit occupants.

b Explain whether this equipment will be owned and operated by the owner or a consignee (vendor).

c Describe the safekeeping and recording practices (internal control) of any cash collections from use of the equipment.

d Describe who will be responsible for maintaining the equipment and stocking any vending machines.

e When a consignee will operate the equipment, describe the general terms of the consignment contract.

10 *Plans for accounting, recordkeeping, and meeting FmHA reporting requirements.*

a Briefly describe the type of project accounting methods (i.e., cash or accrual) and records that will be used, how will they be maintained, and which staff position will prepare and maintain them.

b Describe how interest earned on project reserve funds will be prorated and accounted "separately" if such funds are deposited jointly with funds of another project owned by the same borrower.

c Describe whether the project bookkeeping chart of accounts and bank accounts is compatible with Form FmHA 1930–7, "Multiple Family Housing Project Budget," requirements, and if not, what adjustments will be made when reporting actuals on the form.

d Identify which staff member or position will be responsible for the preparation and submission of the quarterly and annual reports required by FmHA.

e Provide assurance or explanation that the person or firm who will perform and prepare the annual audit, or verification of review, is not associated with the project, other than to perform the audit or review.

f Discuss the proposed tenant or member record maintenance system including retention of records and identify which person/position will handle and maintain the records.

g Identify where records subject to FmHA review will be kept and which person/position FmHA will contract to review the records.

11 *Energy conservation measures and practices.*

a Describe the plan to inform and encourage tenants/members in use of energy conservation practices they can use in their unit to save utility expense (and thus minimize utility allowances and conserve rental assistance).

b Describe the plan to utilize energy conservation practices in the common areas of the project (to conserve operating expense and help minimize rent/occupancy charge levels).

c Describe the project objective in implementing energy conservation measures, if any, as they are identified in an energy audit.

12 *Plans for tenant participation in rural rental housing (RRH) project operations and tenant's relationship with management.*

a Decribe any plans for a tenant organization and how management and staff will work with the organization.

b Describe where the Tenant Grievance and Appeals Procedure (subpart L of part 1944 of this chapter) will be posted in the project and otherwise made available to tenants. Identify which person or staff position will be responsible for responses to and consideration of a tenant/member grievance.

13 *Plans for member participation in RCH project operations.*

a Decribe who will explain to the members the types of committees the cooperative will be using.

b Describe what the cooperative will do to attract member participation on committees.

c Describe how the board members will participate with the committee.

d Describe where the cooperative will post, and otherwise make available to members, the Tenant Grievance and Appeals Procedure (subpart L of part 1944 of this chapter). Identify which person or staff position will be responsible for response to and consideration of a member grievance.

14 *Plan for carrying out management training programs.*

a Describe the standards of training and proficiency that management or board members will be expected to attain and maintain to perform their duties and responsibilities in carrying out project objectives, including compliance with applicable Federal, State, and local laws.

b Describe the plan to conduct internal training and to otherwise use external training sources to maintain levels of attained proficiency.

c For RCH, describe the actions the board will take if a board member(s) does not participate in training.

d For RCH, describe the role the board will assume in making sure the RCH membership as a whole understands its role and functions in the cooperative.

15 *Termination of leases or occupancy agreements and eviction.*

a Identify which person or staff position is responsible for knowing and administering State and local laws and FmHA's requirements regarding termination of leases or occupancy agreement and evictions.

b Identify which person or staff position is responsible for knowing and administering State and local laws and FmHA's requirements regarding the notification that must be given to a tenant or member when termination of lease or occupancy agreement is proposed and subsequent eviction procedures through the State or local judicial process.

16 *Security servicing.*

a Identify which person or staff position is responsible for knowing and complying with FmHA requirements for fidelity coverage and acquiring such coverage.

b Identify which person or staff position is responsible for knowing and complying with FmHA's insurance coverage requirements and acquiring such coverage.

17 *Management agreement.* Attach a copy of the management agreement, when applicable. (If an initial loan, attach a copy of the proposed management agreement, when applicable.) See Exhibit B–2 of this subpart for requirements for management agreements.

18 *RCH board of director/adviser relationship.* Discuss the relationship of the adviser and its effect on decisions made by the board.

19 *Management compensation.*

a If management is provided directly by the owner, describe the amount of management fee, how it will be determined, and how it will be paid.

b In the case of a cooperative, describe the amount of compensation to be paid to the adviser by the board.

20 *On-site management.*

a Describe who (owner, site manager, caretaker, board) will perform on-site management duties and responsibilities.

b Describe the duties and responsibilities of the on-site management staff.

c Identify whether the site manager will live in the project in a rent-free unit or pay rent, or live off-site.

d Describe established office hours and indicate where they will be posted.

21 *Validity of the management plan.* The plan must provide space at the end for the following:

a Date, title, and signature of borrower or borrower's authorized representative.

b Date, title, and signature of the FmHA official approving the plan.

## Exhibit B–2—Requirements for Management Agreements

A completed and executed management agreement must be reviewed and approved by the Farmers Home Administration (FmHA) whenever a management agent is to be used. A management agreement must be submitted to FmHA for review as part of a project loan docket, whenever there is a change of management agents or ownership, or when a major revision of an existing agreement is necessary or required.

1 A written management agreement is required for any project when the owner retains a management agent. A management agreement is not required when the project is managed by the owner as described in paragraph V E 6 of Exhibit B of this subpart. However, a written management plan is required for all projects new and existing, except for on-farm labor housing units where rent is not required. Although the adviser to a cooperative board of directors is not the same type of agent as those who are now managing rental projects, a written agreement between the board and the adviser is required which sets forth their relationship and what the adviser is expected to do for the cooperative. Exhibits F, F–1, and G of subpart E of part 1944 of this chapter outline the functions and responsibilities of an adviser. The agreement may follow the content of Exhibit B–3 of this subpart.

2 The management agreement must address how FmHA requirements will be met. The owner may delegate to the agent any management duties which are not required to be performed by the owner. The

owner may delegate selected ownership responsibilities, such as requests for review and/or appeal of adverse decisions by third parties that affect the owner. However, the owner remains totally responsible to FmHA for all aspects of management.

3 The management plan is the primary management charter, constituting a comprehensive description of the policies and procedures to be followed in managing the project. The management agreement describes how the objectives and policies in the management plan will be carried out. The agreement should be clear and concise, should not merely repeat the management plan, but indicate how the management agent will implement the plan.

4 The management agreement shall describe the management agent's organization and staffing structure, management controls, and any management company identity of interest relationship(s) such as the borrower, vendors, and suppliers of materials, labor, and services. When such relationships exist, the management agent shall prepare and sign the forms described in paragraph V B 2 a of Exhibit B of this subpart as "applicant".

5 The management agreement sets forth the standards and expectations negotiated between the borrower and the management agent. The agreement should follow the guidelines of Exhibit B–3 of this subpart. Each management agreement should be tailored to the specific conditions and staffing arrangements of the particular project. The site, design, size of the project, and fiscal constraints; market conditions; social factors; local law; and business practices are among the elements which may require variations to Exhibit B–3 of this subpart.

**Exhibit B–3—Sample Management Agreement for Farmers Home Administration (FmHA) Financed Multiple Family Housing (MFH) Projects**

This Agreement is made this ____day of ____, 19____, between _____(the "Owner"), and _____(the "Agent") under the terms and conditions set forth herein.

I *General.*

A *Appointment and acceptance.* The Owner appoints the Agent as exclusive agent for the management of the property described in paragraph I B of this agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this agreement.

B *Project description.* The property to be managed by the Agent under this agreement (the "Project") is a housing development consisting of the land, buildings, and other improvements which make up Project No. ____. The Project is further described as follows:

Name _____

Location

City: _____

County: _____

State: _____

No. of dwelling units _____

Type of units _____

(Family, Elderly, (Mixed, Congregate)

C *Definitions.* As used in this agreement:

1 "FmHA" means the Farmers Home Administration, including any successor agencies.

2 "Principal Parties" means the Owner and the Agent.

3 "Agent," as used throughout this agreement, means the person or business entity, including employees at the Agent's office and project site, engaged in the task of providing management of a FmHA financed MFH project in contractual arrangement with the Owner.

D *Identity of interest.* The Agent discloses to the Owner and FmHA any and all identities of interest that exist or will exist between the Agent and the Owner, suppliers of material and/or services, or vendors in any combination of relationship. A certification by memorandum of such disclosure is attached and made part of this agreement.

E *FmHA requirements.* In performing its duties under this management agreement, the Agent will comply with all relevant requirements of FmHA. FmHA requirements include preparation of forms and reports in the format of prescribed FmHA forms and exhibits.

F *Basic information.* As soon as possible, the Owner will furnish the Agent with a complete set of "as built" plans and specifications and copies of all guarantees and warranties relevant to construction, fixtures, and equipment. With the aid of this information and inspection by competent personnel, the Agency will become thoroughly familiar with the character, location, construction, layout, plan, and operation of the project, and especially with the physical plant.

G *Compliance with governmental orders.* The Agent will take such action as it may deem necessary to comply promptly with any and all governmental orders or other requirements affecting the project, whether imposed by Federal, State, county or municipal authority, subject, however, to the limitation stated in paragraph IV D of this exhibit with respect to litigation and repairs. Nevertheless, the Agent shall take no action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Agent will notify the Owner in writing of all notices of such orders or other requirements, within 72 hours from the time of their receipt.

H *Nondiscrimination.* In the performance of its obligations under this agreement, the Agent will comply with the provisions of any Federal, State or local Fair Housing law prohibiting discrimination in housing on the grounds of race, color, religion, sex, familial status, national origin, or handicap. Other nondiscrimination provisions include title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241), Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as they relate to the FmHA multi-housing program.

I *Fidelity coverage.* The Agent agrees to furnish, at its own expense, fidelity coverage to the Owner, with copy to the FmHA Servicing Office on the employees of the Agent who are entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable property other than money or securities. The minimum coverage of $____will be provided according to the coverage chart found in paragraph XV of Exhibit B of this subpart. The Agent will obtain coverage from a company licensed to provide coverage in the project locality. Coverage will be in force to coincide with the assumption of fiscal responsibility by the Agent until that responsibility is relinquished. Endorsement listing FmHA projects separate from other projects or operations will be obtained and made part of the coverage policy or bond. The other terms and conditions of the coverage, and the surety thereon, will be subject to the requirements and approval of the owner.

J *Bids, discounts, rebates, etc.* With prior approval of the owner, the Agent will obtain contracts, materials, supplies, utilities, and services on the most advantageous terms to the project, and is authorized to solicit bids, either formal or informal, for those items which can be obtained from more than one source. The Agent will secure and credit to the Owner all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.

II *Management plan.*

A *Description.* Attached is a copy of the management plan for the project, which provides a comprehensive description of the policies and procedures to be followed in the management of the project.

B *Relationship with management plan.* The Agent shall conduct its management activities in accordance with the policies and procedures set forth in the management plan. In addition, the Agent will also carry out the tasks and responsibilities set forth in paragraph IV of this agreement.

C *Division of duties and common expense.* An identification of duties and supervisory relationship for project site staff and Agent's office staff are described in the management plan as is the pro rata division of singularly incurred operating expense common to the Agent and the Owner.

III *Budget.*

A *Preparation.* The Agent shall prepare an original project budget for submission to the owner and FmHA for approval. For each subsequent fiscal year the Agent shall prepare a new budget.

B *Budget categories.* The budget shall be prepared using the format and categories of FmHA Form 1930–7, "Multiple Family Housing Project Budget."

IV *Agent's authorizations.* The Owner authorizes the Agent to:

A Operate the project according to the Owner's management plan and in compliance with the Owner's loan agreement (or resolution) with FmHA, and applicable FmHA regulations an guidelines.

B Operate and maintain the project within reasonable tolerance (as defined by FmHA) of the expense category subtotals in the project budget.

C Purchase all material, equipment, tools, appliances, supplies and services necessary

[1] **Note:** The intent of this sample document is to provide a guide of topics and items to be considered and described by the Owner and the Agent in negotiating the agreement. It is not intended to be used verbatim.

for proper maintenance and repair of the project as stipulated by the Owner in the management plan, project budget, and/or other form of written documentation.

D Notwithstanding any of the foregoing provisions or any similar provisions that follow, the prior written approval of the Owner will be required for any expenditure which exceeds $____ in any one instance for litigation involving the project, or labor, materials, or otherwise in connection with the maintenance and repair of the project. This limitations is not applicable for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any necessary service to the project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.

E Represent the Owner in specific matter related to management of the project. (Items such as representing the Owner's interest at appeal hearings may be specified here or may be indicated that such authorizations will be provided in writing as an addendum when appropriate.)

V *Agent's obligations.*

A *Management input during and after FmHA processing.* The Agent will advise and assist the Owner with respect to management planning and input during FmHA loan processing and subsequent review. The Agent's specific tasks will be:

1 Participation in any conference with FmHA officials involving project management.

2 Preparation and submission of Form FmHA 1930–7 as a quarterly report throughout the period from initial occupancy after FmHA loan closing until such time as no longer required by FmHA. If the management is authorized to sign the reports for the owner, a copy of the signed report as submitted to FmHA will be provided to the Owner.

3 Participation in the on-site final inspection of the project, required by FmHA prior to initial occupancy.

4 Continuing review of the management plan, for the purpose of keeping the Owner advised of necessary or desirable changes.

B *Liaison with architect and general contractor.* At the direction of the owner during the planning and construction phases, the Agent will maintain direct liaison with the architect and general contractor, in order to:

1 Coordinate management concerns with the design and construction of the project,

2 To facilitate completion of any corrective work, and

3 To facilitate the Agent's responsibilities for arranging utilities and services pursuant to paragraph V J of this agreement. The Agent will keep the Owner advised of all significant matters of this nature.

C *Marketing.* The Agent will market the rental units according to the management plan, observe all requirements of the Affirmative Fair Housing Marketing Plan, and maintain records of the marketing activity for compliance review purposes.

D *Rentals.* The Agent will offer for rent and will endeavor to rent the dwelling units in the project. The following provisions will apply:

1 The Agent will make preparations for initial rent-up, as described in the management plan.

2 The Agent will follow the tenant selection policy described in the management plan.

3 The Agent will show the premises and available units to all prospective tenants without regard to race, color, national origin, sex, religion, familial status, handicap or age; and will provide for reasonable accommodation to individuals with handicaps.

4 The Agent will take and process all applications received for rentals. If an application is rejected, the Agent will inform the applicant in writing of the reason for rejection. The rejected application, with the reason for rejection noted thereon, will be kept on file until a compliance review has been conducted. If the rejection is because of information obtained from a credit bureau, the source of the report must be revealed to the applicant according to the Fair Credit Reporting Act. A current list of qualified applicants will be maintained.

5 The Agent will prepare all dwelling leases, parking permits, and will execute the same in its name, identified thereon as Agent for the Owner. The terms of all leases will comply with the relevant provisions of FmHA regulations and State and local law. Dwelling leases will be in a form approved by the Owner and FmHA.

6 The Owner will furnish the Agent with rental and income report forms required by FmHA, showing rents as appropriate for dwelling units, other charges for facilities and services, and income data relevant to determinations of tenant eligibility and tenant rents. In no event will the rents and other charges be exceeded.

7 The Agent will counsel all prospective tenants regarding eligibility and will prepare and verify eligibility certifications and recertifications in accordance with FmHA requirements.

E *Reports.* The Agent will furnish information (including occupancy reports) as may be requested by the Owner, FmHA, and/or the Office of Inspector General from time to time with respect to the project's financial, physical, or operational condition. The Agent will also prepare and submit:

Form FmHA 1944–8: "Tenant Certification"
Form FmHA 1944–29: "Project Worksheet for Interest Credit and Rental Assistance"
Form FmHA 1930–7: "Multiple Family Housing Project Budget"

The Agent will assist the owner in initiating or completing all additional reporting forms and data prescribed by FmHA affecting the operation and maintenance of the project.

F *Collection of rents, security deposits and other receipts.* The Agent will endeavor to collect when due all rents, charges, and other amounts receivable on the Owner's account in connection with the management and operation of the project. Such receipts will be deposited immediately in the project's general operating account with _____ (name of bank or such other financial institution designated by the owner), whose deposits are insured by an agency of the Federal Government. The Agent will collect, deposit, and disburse security deposits, if required, in compliance with any State or local laws governing tenant security deposits. Security deposits will be deposited by the Agent in a separate account, at a Federally insured institution. This Account will be carried in the owner's name and designated of record "Name of Project) Security Deposit as Account."

G *Accounting system.* The Agent must develop a systematic method to record the business transactions of the project that appropriately reflects the complexity of project operations and the owner's requirements. The Agent may be required to implement and use a bookkeeping and accounting system acceptable to FmHA. The accounts described in paragraph VI of this agreement, as a minimum, will be established and regularly maintained by the Agent.

H *Enforcement of leases.* The Agent will endeavor to ensure full compliance by each tenant with the terms of the lease. Voluntary compliance will be emphasized. The Agent, using the services of local social service agencies when available, will counsel tenants and make referrals to community agencies in cases of financial hardship or other circumstances deemed appropriate by the Agent. Involuntary termination of tenancies should be avoided to the maximum extent consistent with sound management of the project. Nevertheless, and subject to the relevant procedures prescribed in the management plan, the Agent may initiate action to terminate any tenancy when, in the Agent's judgment, there is material noncompliance with the lease or other good cause as prescribed by FmHA regulations for such termination. The tenant must be properly notified of his/her right to appeal the proposed action according to FmHA regulations. Attorney's fees, and other necessary costs incurred in connection with such actions will be paid out of the general operating account as project expenses within the itemized limit of the project budget.

I *Maintenance and repair.* The Agent will endeavor to maintain and repair the project in accordance with the management plan and local codes, and keep it in a condition acceptable to the Owner and FmHA at all times. This will include, but is not limited to, cleaning, painting, decorating, plumbing, carpentry, grounds care, energy conservation measures and practices, and such other maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to those contained therein.

Incidental thereto, the following provisions will apply:

1 Special attention will be given to preventive maintenance, and to the greatest extent feasible, the services of regular maintenance employees will be used.

2 The Agent will contract with qualified independent contractors acceptable to the Owner for the maintenance and repair of air conditioning, heating systems, and elevators, and for extraordinary repairs beyond the capability of regular maintenance employees. Any identity of interest will be identified in accordance with paragraph V B of Exhibit B of this subpart.

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3 The Agent will systematically receive and promptly investigate all service requests from tenants, take such action as may be justified, and keep records of the same. Emergency requests will be received and serviced on a 24 hour basis. Serious complaints will be reported to the Owner after investigation.

4 The Agent will advise the Owner of any cost-effective and adaptable energy conservation measures or practices that should be used in the project. The Agent will encourage their use and will assist the Owner during any installation of these measures or institution of practices.

J *Utilities and services.* In accordance with the Owner's management plan, the Agent will make arrangements for water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service.

K *Insurance.* The Owner will inform the agent of insurance to be carried with respect to the project and its operations, and the Agent will cause such insurance to be placed and kept in effect at all times. The Agent will pay premiums out of the general operating account, and premiums will be treated as operating expenses. All insurance will be placed with companies, on conditions, in amounts, and with beneficial interests appearing thereon as shall be acceptable to the Owner and the FmHA provided that the same will include public liability coverage, with the Agent designated as one of the insured, in amounts acceptable to the Agent as well as the Owner and FmHA. The Agent will investigate and furnish the Owner with full reports on all accidents, claims, and potential claims for damage relating to the project, and will cooperate with the owner's insurers in connection therewith.

L *Taxes, fees and assessments.* The Agent shall provide for the payment from project funds all taxes, assessments, and government fees for the owner promptly when due and payable. The Agent shall also evaluate local property taxes to determine if they bear a fair relationship to the project value and if they do not, at the direction of the Owner, appeal such taxes on behalf of the Owner or assist the Owner in the appeal, whichever is required by local jurisdiction or is appropriate.

M *Employees and/or services.* The Agent will employ persons and/or services, (or will manage persons and/or services employed by the Owner) to perform duties and responsibilities at the project site as described in the management plan. Compensation of such persons and/or services will be paid as a direct expense to the project as specified in the management plan and this agreement. The Agent will employ sufficient resources (staff and/or services) within the Agent's operation to fulfill Agent's obligation to the Owner under the terms of this agreement.

VI *Project accounts.* The Agent will maintain and safeguard the Owner's project financial accounts and tenant security deposit accounts according to the current requirements set forth in paragraph XIII B 2 of Exhibit B of subpart C of part 1930 of this chapter, which is part of the "Multiple Housing Management Handbook."

VII *Agent's compensation, tenure, and identification.*

A *Agent's compensation.* The Agent will be compensated for its services for providing management described under this agreement, and the Owner's management plan, by monthly fees, to be paid from the general operating account and treated as a project operation and maintenance expense. Such fees will be payable on the first day of each month for the preceding month. Each monthly fee will be in an amount computed as follows:

(The following are acceptable methods in no order of preference. Any other method of compensation will be fully described and inserted in this section.) The costs incurred by the Agent for performing the specified services listed in this agreement shall be allocated to the owner and Agent as outlined in the agreement, management plan, and approved project budget.

1. $____occupied unit on the first of a month.

2. % of cash rent collected. (Plan I and full profit)

3. % of basic rents collected. (Plan II)

Maximum annual compensation under this agreement and the approved project budget shall be $____year.

B *Term of agreement.* This agreement shall be in effect for a period of not more than 3 years, beginning on the ____day of ____, 19____, subject, however, to the following conditions:

1 This agreement will not be binding upon the Principal Parties until approved by FmHA.

2 This agreement may be terminated by mutual consent of the principal parties as of the end of any calendar month, provided that at least 30 days advance written notice thereof with reasons given is submitted to FmHA.

3 In the event that a petition in bankruptcy is filed by or against either of the Principal Parties, or in the event that either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this agreement without notice to the other, provided that prompt written notice with reasons given for such termination is submitted FmHA.

4 It is expressly understood and agreed by and between the Principal Parties that the State Director may terminate this agreement with cause upon the issuance of a 30-day written notice of cancellation to each of the Principal Parties. It is further understood and agreed that no liability will attach to either of the Principal Parties in the event of such termination.

5 Upon termination of this agreement, the Agent will submit to the Owner all project books and records and any financial statements required by the FmHA. After the Principal Parties have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Agent security, in form and Principal amount satisfactory to the Agent, against any obligations or liabilities which the Agency may properly have incurred on behalf of the Owner hereunder.

C *Agent's indemnification.* Notwithstanding any provision of this agreement or any obligation of Agent hereunder, it is understood and agreed: that Owner has assumed and will maintain its responsibility and obligation throughout the term of this agreement for the finances and the financial stability of the project; and that Agent shall have no obligation, responsibility, or liability to fund authorized project costs, expenses, or accounts other than those funds generated by the project itself or provided to the project or to Agent by Owner. In accordance with the foregoing, Owner agrees that Agent shall have the right at all times to secure payment of its compensation, as provided for under paragraph VII A of this agreement, from the operating and maintenance account, immediately when such compensation is due and without regard to other project obligations or expenses provided the Agent has satisfactorily discharged all duties and responsibilities under this agreement. Moreover, Owner hereby indemnifies Agent and agrees to hold it harmless with respect to project costs, expenses, accounts, liabilities, and obligations during the term of this agreement and further agrees to guarantee to Agent the payment of its compensation under paragraph VII A of this agreement during the term of this agreement to the extent that the project's operating and maintenance account is insufficiently funded for this purpose. Failure of Owner at any time to abide by and to fulfill the foregoing shall be a breach of this agreement entitling Agent to obtain from Owner, upon demand, full payment of all compensation owned to Agent through the date of such breach and entitling Agent, at its option, to terminate this agreement forthwith.

VIII *Interpretative provisions.*

A This agreement constitutes the entire agreement between the Owner and the Agent with respect to the management and operation of the project. No change will be valid unless made by supplemental written agreement approved by FmHA.

B This agreement has been executed in several counterparts, each of which shall constitute a complete original agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

C This agreement is NOT in full force and effect unless and until concurred with by FmHA.

D At all times, this agreement will be subject and subordinate to all rights of the FmHA, and will work to the benefit of and constitute a binding obligation upon the Principal parties and their respective successors and assigns. To the extent that this agreement confers rights upon the consenting parties, it will be deemed to work to their benefit, but without liability to either, in the same manner and work with the same effect as though the consenting parties were primary parties to the agreement.

The Principal Parties [by their duly authorized officers] have executed this agreement on the date first above written.

Owner: _____

By: _____

Title: _____

Agent: _____

By: _____

Title: _____

As lender or insurer of funds to defray certain costs of the project and without liability for any payments hereunder, the Farmers Home Administration hereby concurs with this agreement.

Farmers Home Administration

By: _____
Title: _____
Date: _____

Attachments: Management plan, Loan resolution or agreement, Identity of interest disclosure certificate

## Exhibit B–4—Outline for Prospective Management Agent of a Multiple Family Rental or Labor Housing Project

Farmers Home Administration (FmHA) expects that Multiple Family Housing (MFH) property and program financed by the Agency will be managed to comply with authorizing statutes and regulatory requirements in meeting the objective of providing decent, safe, and sanitary housing for eligible tenants and members.

The following outline is intended to be a guide that borrowers can use in evaluating the level and quality of services that a prospective management agent plans to provide in the management of a multiple housing project. The borrower is encouraged to add those items it deems appropriate and to delete any that do not apply.

1 Provide your name, address, name of project, location of project, and the name of the owner.

2 Provide information about projects previously or presently managed by the management entity and its employees, including information relative to default history, mortgage relief history, and foreclosure history along with an explanation of the circumstances that led to such actions.

3 Describe your firm including number of main office staff employed in the following capacities: supervisory, clerical, maintenance, and social services.

4 Explain where project records will be kept.

5 Describe your plan for project on-site staff including their duties and work frequency.

6 Give the distance in miles from your home office and the nearest branch office, if applicable, to the project.

7 Describe the accounting system, rent-up procedure, rent collection policy, and preventive maintenance program including energy conservation you intend to use in the proposed project.

8 Describe any and all identities of interest as described in paragraph V B of Exhibit B of this subpart.

9 Describe the frequency and type of direct supervision to be given the site manager.

10 Give a description of your financial condition, stability, and financial resources.

11 Describe your plan to implement applicable FmHA accounting requirements for the project. If you have managed this type of project before, cite those projects as an indication of your knowledge of such requirements. If you have not managed such projects, indicate your understanding of what needs to be done to fulfill such requirements.

12 Please also describe.

a Your plans for handling tenant grievances and appeals, providing tenant counseling, and using outside social service agencies.

b The extent of your knowledge of FmHA requirements for tenant eligibility, tenant certifications and recertifications.

c Your plans to train your personnel in the management of FmHA MFH, including training on the nondiscrimination and fair housing (reasonable accomodation) provisions of the civil rights laws.

13 Describe the internal controls you will use to safeguard project monies, securities, and readily saleable property other than money and securities.

14 Provide evidence of fidelity coverage capacity.

15 Include where appropriate the following statement: "I hereby certify that there is no close association between the management agent and the owner of the above described project in such manner that creates a possible conflict of interest." If such an association exists (e.g., the management agent is a member, stockholder, partner, principal, etc., of the borrower organization, familial relationship) explain the relationship in detail (this may be combined with item 8 of this exhibit).

## Exhibit B-5—Outline for Owner Who Proposes Owner-Management of a Multiple Family Rental or Labor Housing Project

Farmers Home Administration (FmHA) expects that Multiple Family Housing (MFH) property and program financed by the Agency will be managed to comply with authorizing statutes and regulatory requirements in meeting the objective of providing decent, safe, and sanitary housing for eligible tenants and members.

The following outline is intended to be a guide that the borrower can use in describing the level and quality of services that the borrower plans to provide in the management of an MFH project. The borrower is encouraged to add those items it deems appropriate and to delete any that do not apply. Response to the outline will be used by FmHA to evaluate the level and quality of project management planned by the borrower when the borrower plans to provide the project management.

1 Provide name of owner, address, and the name and location of project. State the number or rental units in the proposal.

2 Provide information about your previous projects, regardless of the source of financing, including mortgage relief and foreclosure history along with an explanation of the circumstances that led to such actions.

3 List names and addresses of management agents who manage your previously or presently owned projects, if any.

4 Describe your understanding of the responsibilities connected with owning and managing an MFH project under FmHA.

5 Outline your experience and capabilities in providing housing for low- and moderate-income tenants.

6 Describe your intended tenure of ownership and the extent of personal involvement in operating and managing this project.

7 Describe any identities of interest as described in paragraph V B of Exhibit B of this subpart.

8 Describe your intentions and capacity to meet negative cash flow situations.

9 Describe your plans for the management and maintenance of the proposed project. If you intend to manage the project, describe your own management capacity by answering applicable portions of Exhibit B–4 of this subpart.

10 Describe the internal controls you will use to safeguard project monies, securities, and readily saleable property other than money and securities.

## Exhibit B–6—Monthly and Quarterly Project Management Reports

| Report of item required | Due date | Prepared by | Report or item applicable to | Distribution | References and notes |
|---|---|---|---|---|---|
| Project worksheet for interest credit and rental assistance (Form FmHA 1944–29). | Monthly payment date. | All borrowers (Agent). | Each project ..... | Copy kept by borrower; original goes to the FmHA Servicing Office with payments. | Instructions for preparation are in the FMI for Form FmHA 1944–29. |

| Report of item required | Due date | Prepared by | Report or item applicable to | Distribution | References and notes |
|---|---|---|---|---|---|
| Quarterly Report (Form FmHA 1930–7, Multiple Family Housing Project Budget). | Due in FmHA Servicing Office by the 20th of month following each reporting period; forward to State Office by the 30th. | All borrowers (Agent). | Each project until discontinued. | Copy kept by borrower. Original and one copy goes to FmHA Servicing Office; Servicing Office to forward original to State Office. *State Office makes copy and signed original returned to Servicing Office. | Reports will continue until written notice for discontinuance is received from FmHA Servicing Official. Instructions for preparation are in the FMI for Form FmHA 1930–7. |

*Signed copy goes to State Office when Servicing Office staff have received delegated approval authority.

**Exhibit B–7—Annual Project Management Reports**

| Report of item required | Due date | Prepared by | Report or item applicable to | Distribution | References and notes |
|---|---|---|---|---|---|
| Multiple Family Housing Project Budget Form FmHA 1930–7. | In last quarter of fiscal year in sufficient time for FmHA approval before start of next fiscal year. | Borrower (Agent) .... | All projects ..... | Copy kept by borrower. Original and one copy to FmHA Servicing Office; original with comments to State Office by Servicing Office. *State Office makes copy (with State Office comments) and returns original to Servicing Office. | Instructions for preparation are in the FMI for Form FmHA 1930–7. |
| Housing allowance for Utilities & Other Public Services (Exhibit A–6 to Subpart E of Part 1944 of this chapter). | Must be submitted with Form FmHA 1930–7. | Borrower (Agent) .... | Plan II and rental assistance projects where tenant pays any utilities. | Copy kept by borrower. Original and one copy to FmHA Servicing Office with backup data; Servicing Office returns original to borrower after State Office approval.*. | Instructions for preparation are in Subpart E of Part 1944 of this chapter. |
| **Note: All Preceding Items Will Be Submitted Separate From Audit/Verification of Review** | | | | | |
| Audit Report ..... | Within 90 days following close of borrower's fiscal year. | Borrower's CPA or LPA in accordance with booklet "U.S. Department of Agriculture, Farmers Home Administration Audit Program". | Projects with 25 or more units in one or more projects, or as required by FmHA State Director. | Copy kept by borrower. Original and one copy to FmHA Servicing Office; one copy to State Office. | Will be submitted separately from other borrower management reports. |
| Multiple Family Housing Borrower Balance Sheet (Form FmHA 1930–8). | Within 90 days following close of borrower's fiscal year. | Borrower (Agent) .... | All projects ..... | Copy kept by borrower. Original and one copy to FmHA Servicing Office. Servicing Office sends original to State Office. *State Office makes copy and returns signed original to Servicing Office. | Instruction for preparation in the Forms Manual Insert for Form FmHA 1930–8. |
| Verification of Review (in lieu of audit report) according to this Subpart (Form FmHA 1930–8). | Within 90 days following close of borrower's fiscal year. | Qualified individual, independent of the borrower. | Projects with 24 or fewer units. | Copy kept by borrower. Original to FmHA Servicing Office; Servicing Office makes one copy for State Office. | Instruction for preparation in the FMI for Form FmHA 1930–8. Submitted separate from annual review items. |

*Signed copy goes to State Office when Servicing Office staff have received delegated approval authority.

**Exhibit B–8—Miscellaneous Project Management Reports or Submittals**

| Report of item required | Due date | Prepared by | Report or item applicable to | Distribution | References and notes |
|---|---|---|---|---|---|
| Minutes of Annual Meeting (when applicable). | Submit with next Form FmHA 1930–7, "Multiple Family Housing Project Budget". | Borrower ..... | All organizational borrowers with governing bodies, and all corporations. | Two copies to FmHA Servicing Office; one to be sent by Servicing Office to State Office. | |

| Report of item required | Due date | Prepared by | Report or item applicable to | Distribution | References and notes |
|---|---|---|---|---|---|
| Energy Audit | Submit with next Form FmHA 1930–7. | Energy Auditor | All projects | One copy to Servicing Office. | Exhibit D of this subpart. |
| Request for Rental Assistance (Form FmHA 1944–25). | When rental assistance is requested. | Borrower (Agent) | Multiple Family Housing borrowers and applicants with tenants paying rent in excess of 30% of their adjusted income. | Original and copy to Servicing Office; submit to State Office for approval after Servicing Office review. | Refer to Exhibit E of this subpart for material to be included with request. Instructions for preparation are in Forms Manual Insert for Form FmHA 1944–25. |
| Compliance reviews (review conducted within the 1st reporting year after the project opens for operation). | Nov. 1st to Oct. 31st of each year. | FmHA Servicing Official. | All Multiple Family Housing borrowers. | Copy to State Office; original retained in Servicing Office. | Refer to 1901.204(a) of Subpart E of Part 1901 of this chapter. |
| (a) Initial reviews (Form FmHA 400–8, "Compliance Review" (Non-discrimination Recipients of Financial Assistance through FmHA)*. | The Oct. 31st following loan closing. | | | | |
| (b) Subsequent reviews (Form FmHA 400–8). | Minimum of every 3 years. | | | | |
| Management Plan | Start of operations; update every third year of operation. | Borrower | All borrowers except those with nonrent LH projects. | Original to borrower; copy to Servicing Office. | Reviewed annually during annual review. |
| Management Agreement (Exhibit B–3 of this subpart). | Start of management by management agent. | Borrower and management agent. | All borrowers not providing their own management. | Copies with FmHA concurrence to Borrower, management agent and FmHA. | Reviewed at least annually during annual review. |
| Identity of Interest (IOI) Disclosure Certificate Memorandum. | Start of operations or whenever there is a change in identity of interest relationship. | Borrower, management agent, individuals, vendors or organizations sharing identity of interest with the project. | All borrowers | Original to Servicing Office; copies to borrower and any other individual or organization sharing identity of interest with the project. | Reviewed at least annually during annual review. |

*If initial rent-up has not occurred by initial review, a subsequent review will be due within 1 year following initial occupancy and then every 3 years.

**Exhibit B–9—Notice of Authorization to Withdraw and Use Reserve Funds**

To: Borrower Name, Borrower Address

Subject: Authorization to Withdraw and Use Reserve Account Funds

Project Name & Number

This letter authorizes the withdrawal of $_____from the subject reserve account to be used for _____(describe uses)

---

• The (This) amount of $_____is a capital replacement/improvement expenditure and repayment by increasing the reserve payment level is not required; however, the period of deposits are extended until the required deposit level is achieved.

• The (This) amount of $_____is an annual operating and maintenance expense and must be restored in the reserve account plus any required annual reserve payment before any return on investment can be authorized subsequent to this date. (During the second to fifth year of project operation, add this sentence if the initial operating capital has not yet been withdrawn, "This amount will be deducted from the initial operating capital to be withdrawn if said capital is being withdrawn during the current budget year, and this amount has not been restored to the reserve account.")

• The (This) amount of $_____is an annual recurring type of expense and must be restored in the reserve account according to the terms and conditions contained in your special servicing work-out plan with Farmers Home Administration.

(Add any additional discussion required.)

The correct level of funding of the project reserve account after this disbursement is (amount) as of (date).

/s/

Servicing Official

• Select appropriate paragraph(s).

**Exhibit B–10—Reserve Account Tally**

Starting Date: (1)

Amount Shown on Loan Agreement/ Resolution: $(2)

Contribution: $(3)/Month × 12 = $(4) Annually

| Fiscal year | Planned deposits | | | Planned use of reserve | | | Actual deposits | | | | End of fiscal year | Comments |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | Withdrawal | | | | Interest earned/used | | | | |
| | Beginning of fiscal year | Req. annual deposit | Planned ending balance | Date authorized | Purpose | Amount | Transfer to reserve | Earned on reserve | Transfer to GOA | Left in reserve | Ending reserve balance | |
| (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) | (15) | (16) | (17) |

Reserve Account Tally Instructions

1. Enter month and year that cash flow started from rental income.

2. Enter the ultimate reserve amount to be achieved as shown on the loan agreement/resolution (as modified and increased, if applicable).

3. Enter monthly reserve deposit installment.

4. Enter yearly reserve deposit installment.

5. Enter borrower fiscal year for which records apply.

6. Enter fiscal year beginning balance carried forward from preceding fiscal year.

7. Enter the required annual deposit. If borrower is authorized by an approved budget to contribute less than the amount required by the loan agreement, enter the reduced amount. For amounts "restored" to reserve after a previous withdrawal, enter restored amount in this column on a separate line and describe in comment column.

8. Enter the required balance at the end of the borrower fiscal year.

9. Enter the date of authorization for withdrawal from reserve.

10. Enter the purpose (capital or annual recurring expense); and describe in comment column any agreement (see Exhibit B–9 of this subpart) to restore the withdrawal.

11. Enter amount of authorized withdrawal.

12. Enter the actual amount paid into the reserve account.

13. Enter amount of interest earned on reserve deposit during fiscal year.

14. Enter portion of earned interest transferred to project general operating account.

15. Enter balance of earned interest left (accrued) in the reserve account. (Note: At borrower's choice, this amount may be used to help meet or increase the annual reserve deposit.)

16. Enter the reserve balance at the end of the fiscal year.

Balance at end of last fiscal year.
Less authorized withdrawal.
Plus transfer to reserve.
Plus accrued interest.

Note: Reconciliation of the current account balance may be accomplished by entering the following calculations of the tally sheet.

(1) Calculate: Gross Potential Reserve (GPR); No. of Deposit Installments since start date X $ amount of installments = GPR. Then separately,

(2) Add: regular and extra deposits = $ Additions.

(3) Subtract: FmHA authorized withdrawals = $ Subtractions.

(4) Result: current balance = $ balance.

(5) Compare GPR to current balance.

17. Enter appropriate notes (e.g., withdrawal uses, explain discrepancies with other documents).

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**Exhibit B–11—Equal Housing Opportunity Logotype (Required for Project Sign)**

**EQUAL HOUSING OPPORTUNITY**

Exhibit B–12—Farmers Home Administration Logotype (Optional for Project Sign)

FmHA

**Exhibit B–13—International Symbol of Accessibility (Required for Handicap Parking Space and Along Handicap Accessibility Route)**

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EXHIBIT B-14—SAMPLE WAITING LIST

(1) Project Name.
(2) Location.

| Applicant information | | | | | | | Selection criteria | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| App. No. | Date/ time | Name/ address | Phone No. | Race code | HH size | | Displ. prior yes/no | Income level | | | | Unit size | | | | RA elig. yes/ no | | Dates contacted for occupancy | Lease date | Removal date | Comments |
| | | | | | | | | VL | L | M | I | 1 br | 2 br | 3 br | 4 br | | | | | | |
| (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | | | | (12) | | | | (13) | (14) | (15) | (16) | (17) | (18) |

**Waiting List Instructions**

This sample waiting list may be used as a model in developing a project waiting list. It combines income level and unit size groupings on one page. Separate pages for different income levels or unit sizes are an option.

Waiting lists need to be updated periodically by carrying forward active applications and removing applications that have become tenants or members or have been withdrawn. This should be done with sufficient frequency so that a substantial number of lines on the waiting list are filled with active applications. Retired waiting lists must be kept through the next compliance review performed by Farmers Home Administration (FmHA).

**Description of Input:**

1. Project name—Self-explanatory.
2. Location—Project location name.
3. Application No.—This is the sequential number of the order by which the completed application was received. This may be a continual sequence from a given start date or it may be the sequential number in a particular year. Example: 93–3 denotes the third application received in 1993.
4. Date/time—The date and time a completed application is received.
5. Name/address—Name of applicant and current street and/or mailing address.
6. Phone number—Applicant's current phone number or a contact person's phone number.
7. Race code—Local management should use a code known to itself of the code provided in Form FmHA 1944–8, "Tenant Certification." Use letters or numbers or a combination of both. Do not state or abbreviate racial or ethnic descriptions.
8. Household size—The total number of people who will actually occupy a unit.
9. Blank column—For optional use; for labor housing purposes.
10. Displaced priority—If applicant possesses a letter of priority entitlement (LOPE) issued by FmHA or from other assisted housing enter yes/LOPE. If applicant is displaced due to a natural disaster or catastrophe, housing rendered uninhabitable, or seized by legal action (other than for illegal activity) enter yes/other. Enter no if applicant is not a displacee.

Note: Section 8 applicants who at time of housing need are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent have priority over other Section 8 applicants.

11. Income level—Enter a checkmark under the income level determined by income verification.
12. Unit size—Enter a checkmark under each unit size the applicant is qualified to occupy or deems appropriate to its need. Circle the checkmark denoting the size requested. Legend: VL—Very low-income, L—Low-income, M—Moderate-income, I—Ineligible.
13. Rental assistance eligibility—Indicate whether or not the income level qualifies the applicant to receive rental assistance (RA). (If RA is being used in the project).
14. Blank column—For optional use. It could denote Sec. 8 handicap status, elderly family status, LH status, or tax credit eligibility status.
15. Dates contacted for occupancy—Enter the dates management contacted or attempted to contact the applicant to offer an apartment for occupancy. Note the method of contact and the results.
16. Lease date—Fill in date of Lease to denote that applicant has changed to tenant status.
17. Removal date—Enter date of removal from the waiting list, when applicable.
18. Comments—Self-explanatory.

## Exhibit C—Rental and Occupancy Charge and/or Utility Allowance Changes

I. *Objectives*

This exhibit prescribes the method of processing changes in the monthly rental or occupancy charge rates for tenants or members in Farmers Home Administration (FmHA) Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects. This exhibit covers all RRH, RCH, and LH loans (except "nonrental" LH loans), including those approved before the date of this subpart.

II. *Definitions*

A. *Approval official.* State Director or designated State and Servicing Office staff with delegated authority according to § 1930.143 of this subpart.

B. *Utility.* Sewer, water, trash collection, electricity, natural gas, and any other fuel used specifically for cooking, heating, and/or cooling.

C. *Rental or occupancy charge rate (rental or occupancy charge).* The term rental rate means RRH or LH project rent rates that include utilities; or net project rent rates plus an allowance for utilities, either of which should be equal in value. In RCH projects, the term occupancy charge means the charge for occupancy including utilities; or the net charge for occupancy exclusive of an allowance for utilities according to the operating plan of the cooperative.

III. *Initial Understanding With Borrower*

A. All RRH, RCH, and LH applicants will be informed at the application stage of the agency's rental or occupancy charge change procedure. All borrowers will be advised that any proposed rent or occupancy charge changes must comply with this exhibit. Utility allowance changes will comply with this exhibit and exhibit A–6 of Subpart E of Part 1944 of this chapter. This exhibit will also apply to rental changes resulting from the Department of Housing and Urban Development's (HUD) Automatic Annual Adjustment Factors for units receiving section 8 assistance. Request for a rental or occupancy charge change will be based on a realistic projected budget for the interim year or the ensuing full year.

B. *Rental or occupancy charge change policies.*

1. Rental or occupancy charge rates in projects financed in whole or in part by an RRH, RCH, or LH loan may not be raised without FmHA written consent according to requirements in loan agreements, loan resolutions, and other instruments executed in connection with RRH, RCH, and LH loans.
2. Changes requiring only prior FmHA review are those which are beyond the borrowers' control to cover changes in taxes or utilities, and changes which do not result in an increase in the tenant's or member's total shelter cost.
3. Borrowers are encouraged to have the effective date of needed changes coincide with the start of their fiscal year or with the start of the season in the case of LH projects occupied on a seasonal basis.
4. Change requests normally should be made 60 to 90 days prior to the end of the borrower's fiscal year.
5. It is anticipated that rental or occupancy charge changes would not be necessary more frequently than once a year.

6. Changes in rental or occupancy charge rates will apply to all units in the project.

7. Projects with operating budgets that consistently generate a surplus of unrestricted cash greater than 10 percent of project yearly expense (exclusive of any qualifying refund of 2 percent initial operating capital contribution) should reduce their rental or occupancy charge rates.

8. Current tenant or member certifications on Form FmHA 1944–8, "Tenant Certification," or other form approved by FmHA must be on file in the Servicing Office.

C. All borrowers are encouraged to participate in the FmHA rental assistance (RA) program. However, unless the Administrator notifies State and Servicing Offices otherwise, all borrowers with projects meeting the eligibility requirements of paragraph II B of exhibit E of this subpart, except full profit borrowers, will be automatically treated as having applied for rental assistance, since section 530 of title V of the Housing Act of 1949, as amended, requires such consideration.

D. Borrowers must accept RA when it is available and it appears that a rental or occupancy charge change will cause any very low or low-income tenant to pay in excess of 30 percent of adjusted monthly income for shelter costs. If FmHA does not have RA appropriation available for this purpose, the borrower is encouraged to use other sources of governmental subsidies. The availability or unavailability of governmental subsidies will not preclude FmHA from processing a rental or occupancy charge change request. The borrower will retain the option of submitting an RA request at any time that it appears that any very low- or low-income tenant cannot pay in excess of 30 percent of adjusted monthly income in shelter costs, even without a rent change action. In such cases, the borrower must apply for RA on Form FmHA 1944–25, "Request for Rental Assistance," unless such form is already on file at the FmHA Servicing Office.

E. Even though RA is not available, borrowers are encouraged to convert to Interest Credit Plan II to give tenants and members the most favorable rental rates possible.

IV. *Borrower's Responsibility in Processing Rental or Occupancy Charge Change Requests Which Change Housing Costs to Tenants or Members*

A. When an RRH, RCH, or LH borrower determines that a project rental or occupancy charge change is needed, the borrower must meet or consult with the Servicing Office staff, unless such requirement is waived by the Servicing Office, to review the following information before the "Notice to Tenants (members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change," Exhibit C–1 of this subpart, is posted and delivered to the tenants or members:

1. Facts demonstrating the need and justification for a rental or occupancy charge change in accordance with paragraph III A of this exhibit.

2. A new operating budget for the borrower fiscal year showing:

a. Currently approved budget at old rents or occupancy charges.

b. Actual income and expenses to date.

c. Proposed budget at proposed new basic rents or occupancy charges.

d. Proposed budget at proposed new note rate rents or occupancy charges (when applicable).

3. An application for RA is considered to have been automatically filed with the Agency. However, the borrower may submit an application for RA at any time on Form FmHA 1944–25, if the borrower's project is an eligible project and the proposed change will cause any very low- and low-income tenants or members to pay in excess of 30 percent of adjusted monthly income for shelter costs.

4. A new energy audit, if one is due, or a listing of deferred improvements identified in a previous energy audit that were performed within the past 5-year period according to the requirements of Exhibit D of this subpart.

5. Information on actual utility costs for representative units in the project and, whenever any utility allowance was approved over 12 months ago, an updated Exhibit A–6 of Subpart E of Part 1944 of this chapter when tenants or members pay their own utilities.

6. Any other information the borrower believes necessary to justify the proposed shelter cost change.

B. *Required actions and timeframes for shelter cost changes.* Requests for shelter cost changes (i.e. changes to the rent and/or utility allowance) may be submitted at any time, however, the Agency encourages such requests to be submitted within the last quarter of the calendar year in conjunction with the annual budget review.

1. *Agency action.*

a. The Agency must act on any shelter cost change request and take one of the following actions within 25 days of its receipt:

(1) Review the request package and if it is incomplete, return it to the borrower/manager, advising what additional information is needed, or

(2) Request a meeting with the borrower/manager and state the proposed meeting date. The request should inform the borrower/manager of the purpose of the meeting. When a meeting is held, the Servicing Official will either:

(i) Approve posting of the proposed rental or occupancy charge change and advise the borrower in writing to post the notice, or

(ii) If the proposed change as submitted is not acceptable, the Servicing Official and the borrower/manager will arrive at a mutually acceptable change, and the Servicing Official will authorize in writing, posting of the agreed to revised figure, OR

(iii) Reject posting of the proposed change, advise the borrower in writing to not post the notice and advise the borrower of their appeal or review rights in accordance with subpart B of part 1900 of this chapter.

(3) If the borrower/manager does not attend the proposed meeting or other mutually agreed date, the change request will be considered withdrawn and returned to the borrower/manager, or

(4) The Servicing Official may waive the meeting requirement and authorize the posting subject to any minor changes or other requirements listed, if any, or

(5) Allowing posting of the request by not taking action on the request (de facto posting approval).

b. Once a rental or occupancy charge change has been permitted to be posted, the only decision that can be made is to "approve" or "reject," which would be based on material concerns in comments of the tenants or members. When the request is rejected, the borrower will be advised of any appeal or review rights in accordance with subpart B of part 1900 of this chapter.

2. *Borrower action.* When approval to post notice is given by FmHA, the borrower is required to:

a. *Notify tenants or members.*

(1) Tenants or members must be notified in writing at least 60 days before the anticipated effective date of change using Exhibit C–1 of this subpart. The written notice may be delivered by mail or by other means. In addition, the borrower must post at least one notice in a visible place at the project site.

(2) *Tenant or member comment period.* Tenants or members will be informed of their right to submit comments to the Servicing Office during the 20-day period following the date of the notice. Tenants or members will also be informed of their rights to inspect and copy records on file with the Agency, which are related to the request, throughout the 20-day period.

b. *Notify the Agency.* The Agency must be given a copy of the written and dated notification which was mailed or delivered to the tenants or members.

3. *Implementation timeframes.* Shelter cost changes cannot be implemented until such time as the tenants or members are informed of the changed rates. When increases are involved, tenants or members must be informed at least 30 days in advance of their effectiveness or such longer time as State law may prescribe. Tenants or members receiving notice of a shelter cost increase via the use of Exhibit C–1 of this subpart will already have been "informed at least 30 days in advance" and need not receive a second notice provided the final approval action (i.e., See Exhibit C–2 of this subpart) does not change the shelter cost rate established in Exhibit C–1.

V. *Determination by FmHA*

A. *Actions by servicing official.* The Servicing Official will not consider a rental or occupancy charge change application complete and acceptable until the borrower has complied with all terms listed in paragraph IV of this exhibit. When the application and all attachments for the proposed change have been received (including the tenant or member comments when notification is required), the Agency will:

1. Review all the material submitted.

2. Review a copy of the borrower's latest Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance."

3. Determine if RA is available for an eligible project on behalf of the low-income tenants or members. If RA is available, and it is apparent from record sources that at least one tenant is eligible for RA, the Servicing Office staff must require the borrower to apply for RA if an application for RA using

Form FmHA 1944.25 is not already on file at the Servicing Office.

4. When the change is requested for energy saving improvements identified in an energy audit, the Servicing Official shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit. The Servicing Official's determination will be made according to paragraph VI of Exhibit D of this subpart.

5. When State Office approval is required, the Servicing Office will submit to the State Director (see Guide Letter 1930–3 for outlining the change request package being submitted):

a. Appropriate recommendations on the request,

b. An indication of the number of tenants or members who will need RA as a result of the rent changes,

c. All the material received from the borrower, including tenant or member comments or objections at the end of the 20-day comment period, and

d. A short narrative describing the general tone and material content of tenant or member comments and concerns.

6. When a member of the Servicing Office staff is the approval official, the documentation required by paragraph V A 5 of this exhibit, will be attached to the rent change request.

7. When the borrower has requested RA, complete Form FmHA 1944–25 and forward it to the State Director.

B. *Actions by the approval official.* When the application, attachments, and comments are received, the approval official will review the material to determine if the change is justified and act on the request within 25 days. The borrower will be notified by the Approval Official of the determination within 45 days from the date the "Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change" (Exhibit C–1 of this Subpart) is posted, otherwise the request will be considered approved.

1. *Approval actions.*

a. When a change is approved, the Approval Official will notify the borrower by using Exhibit C–2 of this subpart. The notice letter (Exhibit C–2 of this subpart) will be prepared using the required and/or optional paragraphs as applicable. The reasons for the approved rent change should be concise. The notice letter will be mailed or hand delivered to each tenant or member *and* posted in a conspicuous places(s).

b. When the borrower's project is operated on a profit basis and the purpose of the rental change is for: justified operating and maintenance expense; funding the reserve account; other project expenses; and providing or maintaining a profit, the change may be allowed as long as eligible tenants can afford the new rental rate.

2. *Disapproval actions.* When the Servicing Official determines an application for a proposed rental or occupancy charge change is not justified on the basis of the information submitted, the Servicing Official will notify the borrower in writing of the reason(s) why the change is not approved. The borrower will be advised of their appeal rights in accordance with subpart B of part 1900 of this chapter. Rental or occupancy charge changes may not be approved when any of the following circumstances exist:

a. The borrower is able but unwilling: To comply with applicable tenant eligibility requirements; the audit and reporting requirements of this subpart; or, the conditions set forth in the borrower's loan agreement or resolution, interest credit and/or rental assistance agreement, promissory note, or mortgage.

b. The budget for the project reflects sufficient income at the present rental or occupancy charge structure to meet operation and maintenance expenses which are appropriate and reasonable in amount, meet the FmHA debt service requirements, meet the required reserve account deposit, and provide a return to the borrower, when appropriate.

c. The borrower's project is operated on a profit basis and the proposed rental change is for purposes other than meeting operation and maintenance expenses and debt service (i.e., the purpose is to allow excessive profits and the proposed rental change will result in rental rates in excess of what eligible tenants can afford).

d. The State Director is able to provide RA to the project and the borrower's project is operated on a nonprofit basis, or a limited profit basis (as defined in § 1944.205 of subpart E of part 1944 of this chapter); but the borrower has not applied for RA within the most recent period of 180 days prior to the rental change request or otherwise already has an application for RA on file at the Servicing Office on Form FmHA 1944–25.

VI. *Unauthorized Rental or Occupancy Charge Changes*

When a borrower implements a change that does not meet the requirements of this exhibit, the borrower will be notified in writing that: the change has not been authorized; and the rates must be rolled back to the last FmHA authorized level. Tenants or members affected by the unauthorized change will be given a rebate or credit for the unauthorized amounts retroactive to the date of the unauthorized change. Those borrowers that fail to comply the provisions of this paragraph will be handled according to § 1965.85(d) of subpart B of part 1965 of this chapter or paragraph X of this exhibit.

VII. *Annual Adjustment Factors for Section 8 Units*

A. *HUD allowance of change.*

1. If the Servicing Official disapproves a rental rate change, or approves a lesser amount than permitted by HUD, as a result of HUD's annual adjustment factors for units receiving Section 8 assistance, the Servicing Official must require the borrower to deposit any excess funds, the difference between the FmHA approved note rate rent and the higher HUD authorized rental rate, into the reserve account.

2. If this results in an accumulation of funds in the reserve account behind the sum shown in the loan agreement or loan resolution, the interest credit reduction on a Section 8/515 project should be adjusted or canceled through field office terminals.

3. This adjustment or cancellation can be done without borrower consent for projects with interest credit agreements dated on or after October 27, 1980. For projects with interest credit agreements dated before October 27, 1980, this cancellation or reduction of interest credit may occur only with the borrower's written consent.

4. When interest credit cannot be canceled or reduced, the Agency will collect overage. Overage, for each tenant, in this instance is the difference between the FmHA interest credit reduced rate rent and the lesser of the FmHA note rate rent or the HUD contract rent. The total overage collected should not exceed an amount equal to the interest credit authorized by the interest credit agreement for the period of time covered by the loan payment installment.

5. Even though interest credit is canceled or nullified by collecting overage, the borrower will still be required to operate on a limited profit basis.

B. *HUD disallowance of change.* If HUD will not allow an annual adjustment of rents, and the project operating budget justifies need for rent(s) greater than HUD's contract rent(s), the State Director only may authorize conversion from a plan of 1 or 2 percent interest reduction (Interest Credit Plan II) to a plan of debt amortization at 1 percent interest plus overage up to the HUD contract rent(s) level by meeting the requirements of paragraph IV A2e of Exhibit B of this subpart.

C. *Reviewing budgets where HUD subsidies are involved.* FmHA has the responsibility to review and approve project budgets based on need to meet the cash flow and expense requirements without regard to HUD's automatic annual adjustment. Since HUD and FmHA approved rent rates frequently differ, it may be necessary to have a 3 column budget in projects with Section 8 Housing Assistance Program (HAP) agreements. (Refer to the examples shown in paragraph VIID of this exhibit).

1. *When HUD contract rent and the 1 or 2 percent reduced rate are the same.* In a project where 100 percent of the units receive Section 8 (100 percent Section 8 projects), and the HUD contract rent rate and the 1 or 2 percent reduced rate are the same, only the HUD contract rent rate column on the budget is needed.

2. *When HUD contract rent falls between the 1 or 2 percent reduced rate and the FmHA note rate.* In a 100 percent Section 8 project where the HUD contract rental rate falls between the 1 or 2 percent reduced rate rent and the note rate rent, a 3 column budget showing the 1 or 2 percent reduced rate rent, the HUD contract rental rate, and FmHA note rate rent is needed.

3. *When HUD contract rate exceeds the FmHA note rate.* In a 100 percent Section 8 project without interest credit and where the HUD contract rental rate exceeds the note rate rent, the budget should show 2 columns reflecting each rent rate. The difference between the two rent rates is considered excess funds and is to be deposited in the reserve account.

4. *When part of units are covered by Section 8 HAP contract.* In a project where only part of the units are under a Section 8 HAP contract, a 3 column budget of basic

rental rate, HUD contact rental rate, and note rate rent is needed. The HUD contract rental rate may fall between the basic and note rate, or it may be higher than the note rate rent.

D. *Overage payments and excess income from an interest credit agreement:*

1. Overage is the amount by which total rental payments paid or to be paid by the tenants or members exceed the total basic monthly rental rate. In 100 percent Section 8/515 projects, and Plan II projects, where the HUD contract rental rate exceeds the approved 1 or 2 percent (or greater percentage in the case of Plan II) reduced rental rate, the FmHA approved rate is the required "basic" monthly rental rate. Whenever FmHA approves a note rate rent change for a lesser amount than the change permitted by HUD, the FmHA Servicing Official must require the borrower to deposit any excess funds into the reserve account.

2. Any Section 8 subsidy funds paid by HUD are paid on behalf of the tenant or member, and therefore, any Section 8 payments are not considered as excess funds until after any benefits provided by the interest credit agreement are recovered. Therefore, the following applies:

a. *Projects on an Interest Credit plan coded 7 or 8 on Form FmHA 1944–7.* See figure 1 of paragraph VIID 2 a (3) of this exhibit.

(1) *When HUD rate is equal to or less than FmHA note rate.* In 100 percent Section 8/515 projects when the HUD contract rental rate is more than the 1 or 2 percent reduced rate and is either equal to or less than the FmHA note rate rent, overage will be paid to FmHA in an amount equal to the difference between the HUD contract rental rate and the 1 or 2 percent reduced rate.

(2) *When HUD rate is greater than FmHA note rate.* In 100 percent Section 8/515 projects when the HUD contract rental rate is greater than the FmHA note rate rent, overage will be paid to FmHA as in D 1 of this paragraph, and the amount equal to the difference between the HUD contract rental rate and the FmHA note rate rent will be deposited in the reserve account as excess income. In 100 percent Section 8/515 projects, when the HUD contract rental rate exceeds the note rate rent the borrower/manager needs to use FmHA Form 1944–29, part I, items 23 through 29, to document the required deposit in the reserve account.

(3) *Figure 1.* Projects with 100 percent of units assisted by HUD Section 8.

**Example 1:**

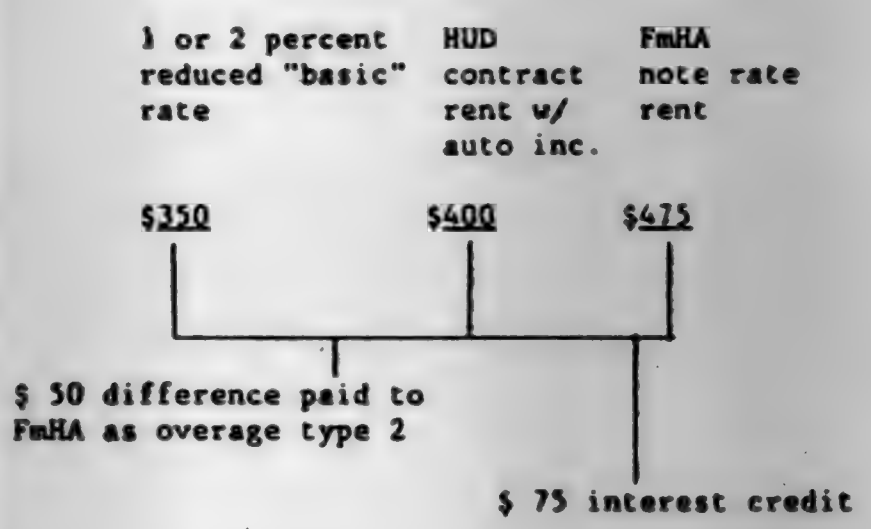


Note: If the HUD contract rent and FmHA 1 or 2 percent reduced rent are the same, then the first budget column would not apply.

**Example 2:**

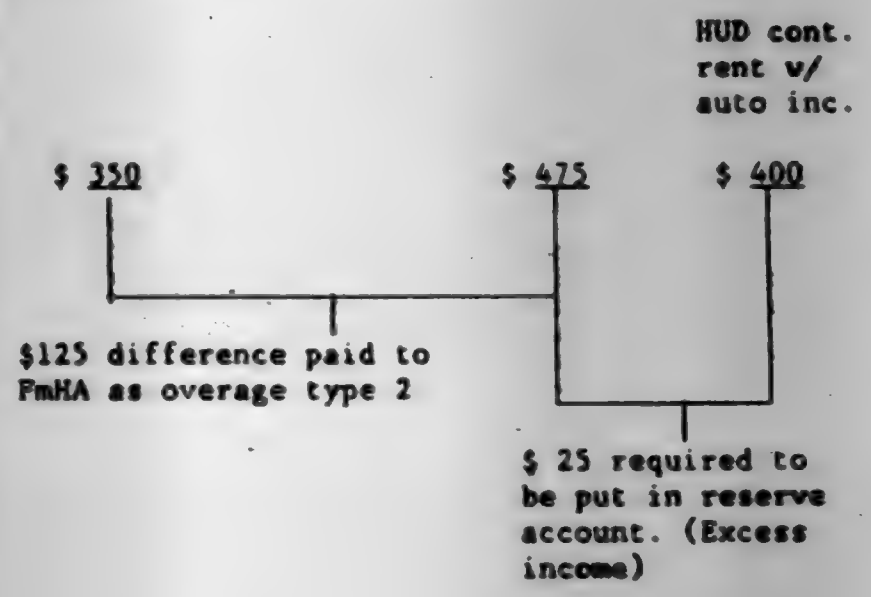

b *Projects on Interest Credit Plan II and receiving Section 8 Assistance.* See figure 2 of paragraph VII D 2 b (3) of this exhibit.

(1) *Calculating overage.* In Section 8/515 projects the overage will be the difference between basic rental rate and the note rate rent including the income from HUD. The overage will be reported as type 3.

(2) *Depositing excess income in the reserve account.* In the cases where the HUD contract rental rate exceeds the note rate rent, the difference is excess income and will be deposited in the reserve account. The borrower/manager should use FmHA Form 1944–29, part I, item 23 through 29, to document the required deposit in the reserve account.

(3) *Figure 2.* Projects with some HUD Section 8/515 units.

**Example 1:**

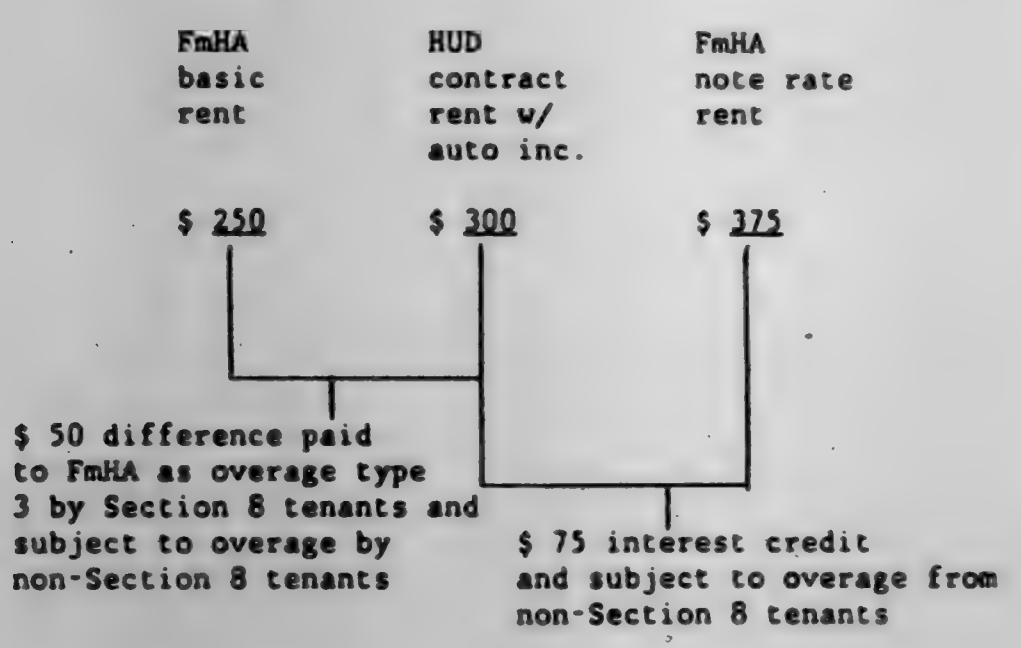


**Example 2:**

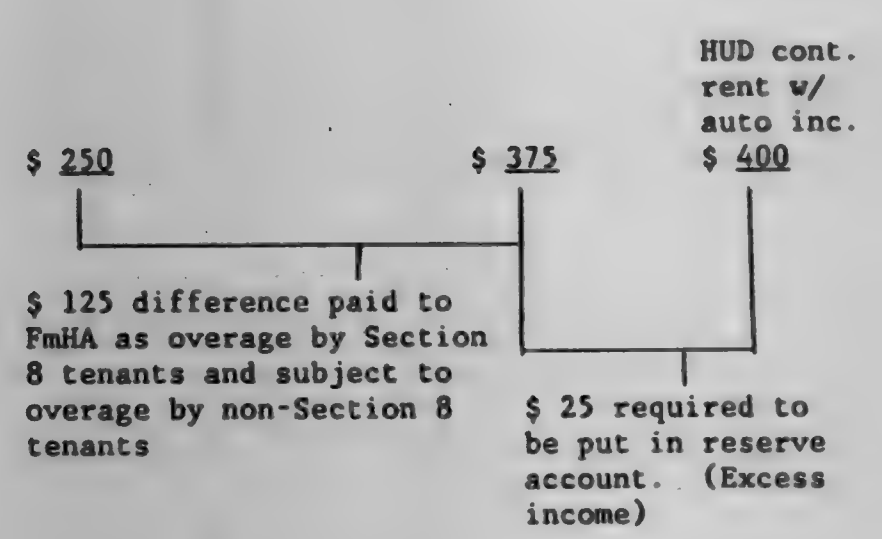


VIII *Rental or Occupancy Charge Control Preemption Policy.* In order to carry out the provisions of this subpart and to protect a housing source in rural areas for very low-, low- and moderate income families; the financial obligation of borrowers; and the financial interest of the government in such housing, the entire field of rental or occupancy charge control that may be exercised by any local rental control board or other authority pursuant to State and local law, as it affects housing covered by this subpart, is hereby preempted.

IX *Special Servicing Market Rate Rent (SMR) Change:* When a Plan II or Plan II RA RRH project is experiencing serve vacancies due to poor local market conditions, an SMR change may be implemented to attract and keep tenants who could pay more than basic rent as part of a workout plan according to the provisions of Exhibit F of subpart B of part 1965 of this chapter. An SMR addresses the situation where some existing and prospective tenants are not willing to pay 30 percent of adjusted income or note rate rent because the rental rates would exceed those of other rental properties in the community. This action may only be taken after supervisory efforts by FmHA and management efforts by the borrower have not produced an acceptable level of occupancy. For the purposes of this paragraph, market area and community are used as defined in paragraph I of Exhibit A–6 of subpart E of part 1944 of this chapter.

A *Eligibility for SMR.* Based on borrower documentation and FmHA servicing records, the Servicing Official will prepare a written recommendation for borrower eligibility for an SMR.

1 *Based on borrower documentation and Servicing Office verification:*

a Over the most recent 6-month period, the monthly vacancy rate has averaged at least 15 percent or the project shows financial losses considering the following:

(1) Each month was at least 12 percent vacant, and

(2) When RA is not available, units subsidized by funds of the project/owner will be considered vacant for SMR calculations, or

(3) The project submits financial records that show a 15 percent loss of rents available below basic rent not including project provided subsidies, and provided

(4) The loss of rents available is not a result of management's failure to effectively market the units.

b Comparable market rental rates in the community are lower than the previously approved FmHA note rate rents. Exhibit A–2 of subpart E of part 1944 of this chapter can be used to document comparable market rents.

c The borrower has aggressively marketed the project including the following actions:

(1) Significant outreach efforts in the community, including (but not limited to) contacts listed in the Affirmative Fair Housing Marketing Plan.

(2) The borrower had obtained approval from FmHA for a servicing workout plan, exclusive of SMR features, at least 3 months earlier.

d The borrower complies with FmHA regulations and encourages occupancy through good maintenance and positive relations with tenants.

e The borrower has provided a signed statement agreeing to forego, without provision to recoup, the return on initial investment while operating with an SMR.

f The borrower has submitted a project budget on Form FmHA 1930–7, "Multiple Family Housing Project Budget," with only minimally sufficient operation and maintenance expenses. The project budget should continue to fund other cash expenditures such as FmHA payments and the reserve account, except for the return on initial investment which the borrower has agreed to forego according to paragraph IX A 1 e of this exhibit.

2 *Based on Servicing Office servicing actions and documentation:*

a The project has been operational for at least 24 months. The National Office may make exceptions to this requirement on a case-by-case basis for extreme hardship.

b No more than 10 percent of budgeted expenses are reflected in unrestricted cash on hand, and reserve account balances do not exceed the required accumulation-to-date minus authorized withdrawals.

c The Servicing Official has reviewed and discussed with the borrower the feasibility of using borrower contributed funds, including advances, in accordance with paragraph XII C of Exhibit B of this subpart.

d The Servicing Official has reviewed and approved a project budget with only minimally sufficient operation and maintenance expenses and other expenses as specified in paragraph IX A 1 f of this exhibit.

e The Servicing Official has reviewed any market studies or surveys received from MFH loan applicants for the market area and considered any information that may conflict with the request for an SMR.

B *Approval of SMR.*

1 The State Director may approve the use of an SMR when the conditions listed in paragraph IX A of this exhibit are met.

2 While a request for an SMR is pending or an SMR is in effect, no initial RRH loan may be obligated for the same market area unless such loans would not cause financial harm to any existing projects in the market area and the request is authorized by the Assistant Administrator, Housing.

C *Implementing an SMR.*

1 After the use of an SMR has been approved by the State Director, the Servicing Official will establish an SMR for the project with the borrower.

a The SMR will be obtained by adjusting the "FmHA Debt Payment" item in the "Proposed Budget" column of Form FmHA 1930–7, to reflect a payment to FmHA amortized at an interest rate which is less than the full note rate on the borrower's promissory note. The interest rate chosen may never be less than 2 percent.

b The interest rate of the SMR budget will be set at a level that will make project SMR rental rates comparable with community rental rates. This rate will remain constant except as provided in paragraph 4 D of this exhibit.

2 The initial change to SMR rents or a decrease in SMR rents will be accomplished in accordance with the following:

a The borrower will submit to the Servicing Official, the items listed in paragraph IV A 1, 2, 4, 5, and 6 of this exhibit.

b The Servicing Official shall review the budget and supporting documentation, and when found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.

c In addition to any State requirements, the borrower notifies each tenant or member of the new rates and/or utility allowance and:

(1) Include in the notice an explanation of the changes and events which necessitated the change. Also, the explanation must specify any adverse and/or positive effect the change may have on the tenants or members.

(2) Mail a copy of the notice to the tenant or member at least 30 days prior to the effective date of the change.

(3) Offer the tenants or members an opportunity to meet with management to discuss the change and review any material contributing to the change.

(4) Inform the tenants or members of their right to request a review of the rate change approval decision within 45 days of the date of the notice by writing to the next higher FmHA approval official. Until the request is resolved, the tenants or members are required to pay the changed amount of rent as indicated in the notice of approval.

3 When an SMR is implemented in a Plan II section 8/515 Project, use lines 23 through 29 of Form FmHA 1944–29 to report any additional payments to the reserve account required when HUD contract rents exceed SMR rental rates.

D *Changing an SMR.*

1 An SMR may be increased or decreased whenever the local market conditions warrant, but must be reviewed at least annually.

a If the local market conditions that caused the need for the SMR have not been resolved and corrected, document same and update the monitoring timeframes and proceed no further. However,

b If the local market conditions have changed and change in the SMR is warranted, the requirements listed in paragraphs IX D 2, 3, and 4 of this exhibit apply.

2 An SMR must have the SMR rate rent increased by a minimum of 10 percent per year (or a higher amount if mutually agreed to by the borrower and FmHA) when the:

a Vacancy rate drops to 10 percent or below for 6 consecutive months, or

b The borrower does not continue to satisfy the conditions of paragraphs IX A 1 c (1) and (2), d, e, or f of this exhibit.

3 An SMR is completely terminated when the note rate rent is regained.

4 An increase in an SMR will be accomplished in accordance with paragraph IV of this exhibit.

E *Disapproval of SMR.* When the approval official determines a request for an SMR is not justified on the basis of the information submitted, the approval official will notify the borrower in writing of the reason(s) why the SMR is not approved. The borrower will be advised of their appeal rights in accordance with Subpart B of Part 1900 of this chapter.

X *Special Problem Cases.* Problem cases which cannot be handled under this subpart should be submitted to the National Office for review with the State Director's recommended plan of action.

## Exhibit C–1—Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change

_____

Date Posted

You as a tenant (member) are hereby notified that, subject to Farmers Home Administration (FmHA) approval, rents (occupancy charge) and utility allowances will be changed effective _____. (at least 60 days from this posting or other timeframe if required by State law)

_____(Project Owner Name) has filed with FmHA, United States Department of Agriculture, a request for approval of a change in the monthly rent (occupancy charge) rates and/or utility allowances of the (Name of apartment complex) for the following reasons:

1.
2.
3.
4.

Planned rent (occupancy charge) changes are as follows:

| Unit size | Present rent (occupancy charge) | | Proposed rent (occupancy charge) | | Amount changed |
|---|---|---|---|---|---|
| | Basic | Note rate | Basic | Note rate | |

Planned utility allowance changes are as follows:

| Unit size | Present utility allowance | Proposed utility allowance | Amount changed |
|---|---|---|---|

(Use where applicable such as when only basic or note rate rents and/or utility allowances are changing and the tenant is receiving rental assistance: Since you receive subsidy, your contribution for rent (occupancy charge) and utilities will not be changed so long as your income and household composition remain unchanged).

All materials justifying the proposed changes have been reviewed by FmHA and will be made available to you and other tenants (members) to inspect and copy at _____during the hour of _____.

You may submit comments or objections in writing to the FmHA Servicing Official during the 20-day period immediately following the posting of this notice. Comments or objections should include reasons or information you feel should be considered by the FmHA Servicing Official. Your comments or objections must be filed prior to _____with the FmHA Servicing Official, _____, at the Servicing Office located at _____.

These comments will be reviewed by the FmHA Servicing Official and forwarded to the FmHA approval official who will decide if the change(s) should be approved.

Each tenant (member) will be notified in writing of the FmHA decision to approve or deny the change. The approved rents and utility allowances will then be effective upon the effective date given above. If the approved change cannot be made effective by such date, an additional notice will be posted and the tenants (members) will be notified in writing that new rents (occupancy charges) and utility allowances will be effective at the next rent (occupancy charge) due date following the additional notice and the FmHA approval.

By _____

Borrower/Borrower's Representative

## Exhibit C–2—Notice of Approved Rent (Occupancy Charge) and Utility Allowance Change

Dear

You are hereby notified that the Farmers Home Administration (FmHA) has reviewed the request for a change in shelter costs for the _____project(s), and considered all justifications provided by project management (and comments provided by tenants). The FmHA has approved the following rent (occupancy charge) and/or utility allowance rates listed below. The changes for all units will become effective on _____, 19____. (Insert effective date shown in exhibit C–1 of this subpart or later effective date in accordance with last paragraph of Exhibit C–1 of this subpart.) The change is needed for the following reasons:

(Insert Reasons for Approval)

*The approved changes are as follows:*

| Unit size | Present rent (occupancy charge) | | Approved rent (occupancy charge) | |
|---|---|---|---|---|
| | Basic | Note rate | Basic | Note rate |

*The approved utility allowance changes are as follows:*

| Unit size | Present utility allowance | Proposed utility allowance | Approved utility allowance |
|---|---|---|---|

Should you have any questions or concerns, you may contact FmHA. The FmHA Servicing Office address is:

(Use the following required and/or optional paragraphs where applicable.)

*You must notify the tenants (members) of FmHA's approval of the rent (occupancy charge) and utility allowance changes by posting this letter in the same manner as the "Notice to Tenants (Members) or Proposed Rent (Occupancy Charge) and Utility Allowance Change (Exhibit C–1 of this subpart)." This notification must be posted in a conspicuous place and cannot be substituted for the usual written notice to each individual tenant (member).

*This approval does not authorize you to violate the terms of any lease (occupancy agreement) you currently have with your tenants (members).

**For those tenants (members) receiving rental assistance (RA), their costs for rent (occupancy charge) and utilities will continue to be based on the higher of 30 percent of their adjusted monthly income or 10 percent of gross monthly income or if the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter cost. If tenants are receiving Housing and Urban Development (HUD) Section 8 subsidy assistance, their costs for rent and utilities will be determined by the current HUD formula.

**Your application for RA units on behalf of eligible tenants (members) has been received (or is on hand). Since RA units are not available, the approved rate and/or allowance change is subject to your acceptance of the RA units should they become available.

**This rate and utility allowance change is conditioned on the requirement that you carry out energy conservation measures and operating practices as determined necessary by the project energy audit. You will be allowed _____days for completion of the work. FmHA assistance may be available to finance any needed improvements.

**You may file an appeal regarding the rate and utility allowance change as approved within 45 days of the date of this notice. See attached Form FmHA 1900–1, "Request for Appeal of Adverse Action," for your appeal rights. A request for a hearing must be sent to the Area Supervisor, National Appeals Staff, (T3address), postmarked no later than (*30 days from date of this letter*).

*You must inform the tenants (members) of their right to request an explanation of the rate and utility allowance change approval decision within 45 days of the date of this notice by writing to (*insert the name and address of next higher FmHA approval official*). All tenants (members) are required to pay the changed amount of rent (occupancy charge) as indicated in the notice of approval.

*Any tenant who does not wish to pay the FmHA approved rent changes may give the owner a 30-day notice that they will vacate. The tenant will suffer no penalty as a result of this decision to vacate, and will not be required to pay the changed rent. However, if the tenant later decides to remain in the unit, the tenant will be required to pay the changed rent from the effective date of the changed rent.

Sincerely,

_____

FmHA Approving Official

*Required

**Optional, as applicable

## Exhibit D—Energy Audit

I *Objective:* It is the objective of the Farmers Home Administration (FmHA) that Multiple Family Housing (MFH) financed by the Agency incorporates energy conservation measures and operating practices in keeping with the National Energy Strategy for a more efficient, less vulnerable, and environmentally sustainable energy future. Monitoring of this objective will be accomplished by energy audit.

II *Purpose and Intended Outcome:*

A The purpose of this exhibit is to define the FmHA requirements for energy audits. While energy audits will review the functioning of energy conservation measures initially incorporated in the housing, or previously retrofitted, and identify need for any further measures, the main thrust of energy audits will be to evaluate and/or recommend operating practices used in individual dwelling units and the common areas of a project.

B The intended outcome is to reduce tenant or member utility expenses; reduce project operating and maintenance expense; reduce usage of subsidy; improve the marketability of units and value of the property; conserve national energy resources within cost effectiveness; and increase the comfort and enjoyment level of tenants or members.

III *Borrower Responsibility:*

A *Initial audit.* An initial energy audit is required for each project during the third year of operation following completion of construction for "early" detection and correction of any deficiencies in energy conservation measures and/or operating practices.

B *Subsequent audit.* A subsequent energy audit is required at least within 5 years of the initial audit and at 5-year intervals thereafter, to identify if energy conservation improvements are needed.

C *Submission of audit.* The borrower shall submit a copy of the initial or subsequent energy audit along with the next submission of Form FmHA 1930–7, "Multiple Family Housing Project Budget." The borrower's plan for implementing the recommended improvements shall be included in the project budget. The submitted copy of the energy audit will be retained in the file by the Servicing Office for review during subsequent annual reviews. If any of the improvements are deferred due to cost ineffectiveness, the borrower shall, each year thereafter, include with the annual project budget, an updated cost feasibility analysis of the deferred improvements, along with the borrower's recommendation for implementing the improvements.

D *Cost of audit.* An energy audit is beneficial to the operation of an MFH project. The cost of the audit is an operational expense. The cost should be consistent with the size of the project and comparable to the cost of other audits in the area. The cost may be paid from annual revenue or from the reserve account depending on the amount.

IV Performance of Energy Audit

A An energy audit shall be an in-depth, on-site inspection of the building shell and of the space heating, space cooling, ventilation, and water heating equipment for the building. It shall be conducted by a qualified energy auditor.

B Persons shall be considered qualified to perform an energy audit if they:

1 Are authorized under a State Plan approved by the Department of Energy (DOE) in accordance with the requirements in 10 CFR Part 456,

2 Are authorized under a Federal Standby Plan promulgated by DOE in accordance with the requirements in 10 CFR part 456, or,

3 Can otherwise demonstrate that they possess the technical skills and knowledge necessary to perform energy audits.

C When persons meeting the qualifications in paragraph IV B of this exhibit are not available, the FmHA State Director, with prior National Office approval, may institute a plan and method to accomplish the requirements of this exhibit using Agency staff and resources, provided it is cost and time effective to perform such task.

D The energy auditor shall inspect the building to determine which energy saving measures and operating practices should be improved. The energy auditor is expected to summarize the results of this inspection and projected cost savings in priority order and include them in a written report.

1 The report shall address the condition or application of the following energy saving measures:

a Caulking and weatherstripping;
b Central high efficiency air conditioners;
c Ceiling, wall, and floor insulation;
d Crawlspace or foundation wall insulation;
e Duct or pipe insulation;
f Water heater insulation;
g Storm or thermal windows and doors;
h Heat-reflective window and door material;
i Crawlspace and/or attic ventilation;
j Energy management devices;
k Clock thermostats;
l Furnace efficiency modifications; and
m Vent dampers for water heaters, furnaces, and boilers.

2 The report may address the following energy saving measures if significant benefits can be shown in the opinion of the energy auditor:

a Solar domestic hot water systems;
b Active solar space heating system;
c Combined active solar space heater and solar domestic hot water systems; and
d Passive solar space heating and cooling systems.

3 The auditor shall inspect the building and report any improvement of energy conserving operating practices that can lead to immediate energy savings. These practices include, but are not limited to, the following:

a Furnace efficiency maintenance and adjustments (air filters should be changed frequently);
b Water flow reduction on showers and faucets;
c Sealing leaks and check insulation of pipes and ducts;
d Raising thermostat settings in summer and lowering them in winter;
e Cleaning baseboard convectors and refrigerator coils;
f Nightime temperature setback;
g Reducing energy use when apartment is unoccupied;
h Plugging leaks in attics, basements, and fireplaces;
i Efficient use of shading; and
j Reduce water heater temperature setting (should not exceed 120 degrees Fahrenheit).

4 The report shall include a list of any recommended energy saving measures and/or operating practices. The following information shall be provided as applicable:

a Description;
b Estimated useful life;
c Estimated annual energy cost savings in the first year;
d Cost; and
e Estimate of any incremental annual operation and maintenance costs.

5 The report shall include a summary of the energy auditor's qualifications.

V *Funding:* Improvements may be funded from annual project income, project reserve, a subsequent loan, borrower's funds, or any other FmHA authorized funding which will keep the improvement cost effective. Plans for funding the improvements should be included in the borrower's recommendation for implementation.

VI *Servicing Official Responsibility:*

A The Servicing Official shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit.

1 *Cost effectiveness.* Cost effectiveness shall be determined by comparing the value-in-use of the facility with and without the proposed energy saving improvement. Exhibit D of FmHA Instruction 1922–B, (available in any FmHA office), describes the "value-in-use" approach that may be used to appraise cost effectiveness.

2 *Financial impact.* Financial impact shall be determined by comparing the estimated net energy and operation and maintenance costs savings in the first year to the annual cost of amortizing a loan to install the proposed energy saving improvement. A positive financial impact occurs when the first year annual savings equals or exceeds the annual cost of amortizing any loan(s) for the proposed energy savings improvement. Exhibit D–1 of this subpart may be used to organize the calculation of the financial impact.

3 When the identified and/or deferred improvements determined by an energy audit obtained within the immediate past 5-year period are found to be cost effective and have a positive financial impact, the Servicing Official shall recommend or require that any rent or occupancy charge increase approval requested by the borrower be conditioned upon installation of such energy saving improvement(s).

4 The Servicing Official may recommend a rent or occupancy charge increase for energy saving improvements which are not "cost effective" whenever the borrower contributes sufficient funds to reduce the cost of the improvement so that, on the basis of the FmHA investment only, the improvement is cost effective. A positive first year financial impact is not required. Any contribution made by the borrower to reduce the cost of the improvement to the cost effective limits will not be an eligible contribution for computing return on investments. The project reserve may not be utilized for such contribution.

B When the improvements are not cost effective or do not have a positive financial impact, and the borrower does not elect to reduce the cost of the energy saving measures as described in paragraph VI A 4 of this exhibit, the Servicing Official shall recommend deferral of implementation of the improvements. Any deferred improvements must be analyzed during each subsequent year's annual analysis.

C A copy of the decision regarding the energy audit will be included in the annual reports forwarded to the State Director.

VII *State Director Responsibility:* The State Director shall review the Servicing Official's recommendations and the decision regarding implementation of the proposed improvements and/or practices as a part of the annual report review.

VIII *Development:* All development will be performed in accordance with the

requirements of subpart E of part 1944 of this chapter and subpart A of part 1924 of this chapter, except that § 1924.6 (b)(3)(i) of subpart A of part 1924 of this chapter will not apply to improvements made by the owner-builder method.

IX *Rent or Occupancy Charge Change:* Any rental or occupancy charge change necessitated by the improvements must be processed as set forth in Exhibit C of this subpart.

**Exhibit D–1—Calculation of Financial Impact (Energy Audit)**

A. First Year Annual Savings (from audit). $_____

B. Annual Cost of Amortized Loan (from calculation in part D below). $_____

C. Difference (A–B) (if zero or greater, energy saving measure has a positive financial impact). $_____

D. Calculation of Annual Cost of Amortized Loan for Energy Saving Measure:

1. Appraisal of Energy Saving Measure (for calculation of appraised value, of FmHA Instruction 1922–B see Exhibit D available in any FmHA office). $_____
2. Amortization Factor (for calculation of Amortization Factor, use interest rate of Rural Rental Housing and Rural Cooperative Housing from FmHA Instruction 440.1, Exhibit B (available in any FmHA office); the Useful Life or weighted average of Full Life for more than one energy saving measure from the energy audit; and the Amortization Factor from FmHA Instruction 440.1, (available in any FmHA Office). ×_____
3. Annual Cost (Appraisal × Amortization Factor enter answer in part B above). $_____

**Exhibit E—Rental Assistance Program**

I *General.* The objective of the rental assistance (RA) program is to reduce rents paid by low-income households. This exhibit sets forth the policies and procedures and delegates authority under which RA will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and eligible members occupying Rural Cooperative Housing (RCH) projects financed by the Farmers Home Administration (FmHA). For the purposes of this exhibit, the term "tenant" also means "member." This exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public agency. RA will supplement the benefits available to tenants under the interest credit program outlined in Exhibit H to this subpart.

II *Definitions.*

A *Eligible tenants.* Any very low-income, or low-income household meeting the following requirements:

1 The household adjusted annual income must not exceed the very low- or low-income limit established for the area as indicated in Exhibit C of subpart A of part 1944 of this chapter (available in any FmHA Office).

2 The household must be unable to pay the approved rental rate plus utility allowance and occupancy surcharge within a portion of their income not exceeding the highest of:

a 30 percent of their adjusted monthly income;

b 10 percent of gross monthly income; or

c If the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter cost.

3 The household must meet the occupancy policy established for the project and approved by FmHA according to paragraph VI D 2 of Exhibit B of this subpart.

4 The household must have an unexpired and signed Form FmHA 1944–8, "Tenant Certification," on file with the borrower.

B *Eligible project.*

1 All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except LH loans, direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be eligible for RA the project must have a:

a RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, including Senior Citizen Housing;

b RRH insured loan to an individual or organization who has or will execute a loan resolution or loan agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205 of subpart E to part 1944 of this chapter;

c RCH insured or direct loan; or

d LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public agency.

2 Borrowers may utilize the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program and FmHA RA in the same project. In such cases, Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," for the project will reflect coding for "Plan II RA."

3 Borrowers will provide RA to only those eligible tenants occupying LH, RCH, or RRH rental housing units financed by FmHA.

C *Operational project.* A completed RRH, RCH, or LH project financed by FmHA which has been opened for occupancy and has at least been partially occupied by tenants.

D *New projects.* Newly constructed or substantially rehabilitated RRH, RCH, or LH project financed by FmHA. For new construction RA purposes, if further means before any units are occupied.

E *Rental assistance.* RA, as used in this exhibit, is the portion of the approved shelter cost paid by FmHA to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV A 2 c of Exhibit B to this subpart. When the household's monthly gross tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the household that difference according to paragraph IX A 2 of this exhibit.

F *RA agreement.* The term refers to Form FmHA 1944–27, or its predecessor. Form FmHA 444–27 and Form FmHA 444–27A.

G *RA obligation.* The obligation consisting of the number of RA units and associated dollar amounts of rental assistance specified in a particular RA agreement.

H *RA obligation number.* The identification number associated with a particular RA obligation.

I *Replacement units.* RA units which replace RA units in RA agreements expiring because obligated funds have been fully disbursed.

J *Servicing units.* RA units which increase the number of RA units resulting in initial or additional RA agreements.

K *Shelter cost.* The approved shelter cost consists of basic or note-rate rent plus utility allowance and occupancy surcharge, when required. Basic and/or note rate rent must be shown on the project budget for the year and approved according to § 1930.122 of (b)(1) of this subpart. Utility allowances, when required, are determined and approved according to Exhibit A–6 of subpart E of part 1944 of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C of this subpart.

L *Utility allowances.* The allowance approved by FmHA according to Exhibit A–6 of subpart E of part 1944 of this chapter to cover the cost of utilities which are payable directly by the households.

III *Utilization of RA.* All borrowers with eligible projects as defined in paragraph II B of this exhibit are encouraged to utilize the RA program and receive RA payments on behalf of eligible tenants. Generally, the borrower, or the borrower's approved management agent, will initiate the processing of a RA application.

IV *Priority of RA applications.*

A *State of allocations.* The National Office may establish a State quota on the number of RA units that may be approved and obligated in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for operational projects and the number of RA units to be used for new construction.

B *Allocation to projects within a State.* The State Director will distribute any RA units allocated to the State according to any specific guidance established by the National Office. When no specific guidance is established by the National Office the State Director will approve requests for RA to projects according to the provisions of this exhibit. Priority in allocating RA units will be as follows:

1 *Replacement units:* The State Director will distribute or reserve RA units and give priority to projects needing replacement units before any initial or additional units are

allocated to other new or operational projects. The State Director should ascertain how many RA units are expected to expire in each Servicing Office during the current fiscal year and the first quarter of the following fiscal year.

2 *New housing:* Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order:

a Applications for RRH and RCH loans where the market survey information indicates that a large percentage of the prospective tenants needed RA. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects having highest need located in areas identified as having the greatest need for low-income housing, and selected for funding in accordance with § 1944.231 of Subpart E of Part 1944 of this chapter.

b For LH projects, RA units will be allocated by the National Office from the National Office reserve on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3 *Operational housing:* When the National Office provides an allocation for servicing RA units, the State Director will distribute them to operational RRH, RCH, and LH projects based on Form FmHA 1944–25, "Request for Rental Assistance," that have been submitted by eligible borrowers. Priority will be given to projects based on this exhibit and administrative directives issued by the National Office under the annual RA allocations or other authorizations or guidelines established through the budget process. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA for consideration.

V *Processing of RA applications.* All requests for RA will be processed according to this paragraph and may be approved by the State Director.

A *Operational projects.*

1 A borrower with an eligible project in which there are tenants paying in excess of 30 percent of their adjusted income for rent should be encouraged to have on file a Form FmHA 1944–25 with the Servicing Official to avoid delays in processing future servicing requests. Once a Form FmHA 1944–25 is on file at the FmHA Servicing Office, subsequent submittals of the form will not be necessary to support subsequent approvals of RA by FmHA. A separate Form FmHA 1944–25 will be submitted for each project. The borrower should include the following with each request.

a Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," with all columns completed for each tenant in the project. (All Forms FmHA 1944–8 must be current.)

b Approved or proposed budget for the year on Form FmHA 1930–7, "Multiple Family Housing Project Budget," with Exhibit A–6 of Subpart E of Part 1944 of this chapter attached, when applicable.

2 Prior to the full disbursement of obligated funds on any agreement, a borrower or approved management agent may submit a request for replacement RA units. The request should contain all the material requested in paragraph V A 1 of this exhibit and should be submitted no later than 3 months prior to the expected full disbursement of obligated funds, to allow time for processing the request. The number of replacement units may not exceed the number of units that are expiring. Once replacement units have been requested, additional units may not be requested until Form FmHA 1944–51, "Multiple Family Housing Obligation-Fund Analysis," is received obligating the replacement units. Form FmHA 1944–51 requesting the additional units must be coded sequentially as required in paragraph V C 5 of this exhibit.

3 The Servicing Official will review the budget, Exhibit A–6 of Subpart E of Part 1994 of this chapter, Form FmHA 1944–29, and Form FmHA 1944–25 submitted by the borrower to assure that the items are complete and accurate. The Servicing Official will complete Form FmHA 1944–25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B *Projects to be funded.*

1 Applicants requesting funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA 1944–25 to the Servicing Official when submitting a preapplication or application for funding.

2 The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C *State Director action on requests for RA.* Only the State Director or delegated members of the State Office staff may approve or disapprove RA requests.

1 *Approval actions.* When the State Director determines that RA can be obligated or transferred, part III of Form FmHA 1944–51 for obligation, or Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," for transfers, will be prepared and distributed according to the Forms Manual Insert (FMI). Form FmHA 1944–27, "Rental Assistance Agreement," will not be executed or amended until the obligation or transfer is verified by the Finance Office. The State Office will verify the obligation or transfer via the computer terminal on the day following the request.

2 *Completing RA agreements.* When the State Director verifies that RA units have been obligated or transferred by the Finance Office, the State Director will forward a copy of either Form FmHA 1944–51 or Form FmHA 1944–55 to the Servicing Official. The Servicing Official will complete Form FmHA 1944–27, and attach the appropriate copies of Form FmHA 1944–51 or Form FmHA 1944–55 according to the FMI.

a *Initial RA agreements.* The Servicing Official will prepare the original and two copies of Form FmHA 1944–27. When the project does not have a Form FmHA 1944–7 in effect, the Servicing Official will prepare an original and three copies. The Servicing Official and the borrower will then execute the originals and all copies of Form FmHA 1944–27 and Form FmHA 1944–7. The forms will be distributed according to their FMIs.

b *Replacement or modified RA agreements.* When a Form FmHA 444–27 initiated prior to May 1, 1985, is replaced or modified, a new Form FmHA 1944–27 will be prepared and distributed according to the FMI. For every replacement or modification on or after May 1, 1985, the original and all copies of the affected RA agreement will be noted, assembled and distributed by the Servicing Official according to the FMI.

3 *Modification of an existing RA agreement.* After any request for a change in the amount of RA has been obligated, a copy of Form FmHA 1944–51 or Form FmHA 1944–55 will be attached to Form FmHA 1944–27 and distributed according to the FMI. A new FmHA 1944–7 is not required.

4 *Denial of RA Request.*

a If RA funds are available but cannot be provided due to a determination of ineligibility, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights in accordance with subpart B of part 1900 of this chapter in such cases. When RA funds are not available from the State's allocation or the National Office Reserve the decision will be considered nonappealable, however, the decision is still reviewable, under subpart B of part 1900 of this chapter.

b Should RA not be available for lack of appropriation to replace an expiring RA obligation, the State Director will advise the borrower to notify tenants of the increase to their contribution to rent following the notification requirements of Exhibit C of this subpart. Tenants who cannot afford the increased rent shall be given the opportunity to quit the lease and vacate the project without penalty.

5 *RA obligation numbers.*

a Each RA obligation will be assigned a six digit RA obligation number by the Approving Official as follows:

(1) First two digits—Fiscal year (FY) in which the funds were obligated (i.e., 85, 86, etc).

(2) Second two digits—Numbers in sequential order for each fiscal year starting with 01 (i.e. 93–01, 93–02, 94–01, 94–02).

(3) Third two digits—All obligations will be coded 00.

b RA obligation obligated before FY 1985 will be coded as follows:

(1) First two digits—FY initial obligation was made on the project (i.e., 78, 79, 80, etc.)

(2) Second two digits—Relate to the pre-Automated Multi-housing Accounting System conversion loan number to which the RA obligation was processed.

(3) Third two digits—Indicate the number of modifications plus 1. (Form FmHA 1944–27 with two modifications on September 30, 1984, will be designated "03.")

c The Finance Office will track RA obligations and undisbursed balances by number.

*VI Terms of the RA Agreement*

A *Effective date.* Each Form FmHA 1944–27 will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal according to paragraph XVI of this exhibit, the effective date will be retroactive to the first day of the month in which the assistance

was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive period.

B *Term.*

1 *Twenty-year RA agreement.* Twenty-year agreements were authorized during the initial years of the RA program through FY 1982. Twenty-year agreements were restricted to new projects or modifications of existing 20-year agreements. The agreement is effective for 20-years from the effective date of the agreement. This agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in section 1 of Form FmHA 1944–27 are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a 5-year period.

2 *Five-year RA agreement.* Five-year agreements may be used for operational projects, or for new projects when 20-year units are not available. The agreement shall be effective for 5 years from the effective date of the agreement. This 5-year agreement may be modified or terminated in accordance with the terms stated on Form FmHA 1944–27.

The agreement will expire when the funds obligated for the RA units described in section 1 of Form FmHA 1944–27 are fully disbursed. This can be any time before or after the end of the 5-year period.

3 *Modification of RA agreements.* Forms FmHA 1944–27 may be modified:

a To add or subtract RA units assigned to the project through obligation, through transfer from another RA obligation, or as an incentive to avert prepayment.

b To reinstate a suspended RA obligation(s) to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the Multiple Family Housing (MFH) program; or

c To transfer a suspended RA obligation(s) to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

4 *Amendment of RA agreements.*

a Any existing RA obligation executed prior to February 15, 1983, which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in section 9, "Term of the Agreement," may be modified by the use of Form FmHA 444–27A, "Amendment to Rental Assistance Agreement." The amended agreement will expire when the obligated funds are fully disbursed.

b Any existing RA agreement on earlier Form FmHA 444–27 or Exhibit D–2 (of now obsolete FmHA Instruction 444.5) containing an occupancy standard may be amended by mutual consent of the borrower and FmHA when a new occupancy policy for the project is approved according to paragraph VI D 2 of Exhibit B of this subpart. To amend the form:

(1) Delete section 5 of the original and the borrower's copy and have the deletion dated and initialed by the appropriate FmHA official and the person(s) authorized to sign for the borrower.

(2) Type the following statement on the reverse of the original agreement and the borrower's copy and have the statement dated and initialed by the appropriate FmHA official and the person(s) authorized to sign for the borrower. "Amended (date) _____by authority of paragraphs VI B 4 of Exhibit E and VI D 2 a of Exhibit B of subpart C of part 1930, chapter XVIII, title 7, Code of Federal Regulations."

5 *Replacement RA obligations.* Replacement RA obligation(s) for either 5-year or 20-year obligations will be for a 5-year period. All requirements in paragraphs VI B 2 and 3 of this exhibit apply. Expiring RA obligations and replacement RA obligations may run concurrently for a period of 30–50 days so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

*VII Recordkeeping Responsibilities*

A The Finance Office (FO) will track the use of RA obligation and ensure that RA obligation is not disbursed or credited to a borrower's account in excess of the RA obligation. Quarterly and annually, the FO will provide the Servicing Official with an RA payment and obligation status report for each project. The annual version of this report will be filed in position 2 of the project case file and maintained indefinitely.

B The Servicing Official will notify the borrower to apply for replacement RA obligation when the RA undisbursed balance reaches a level sufficient to cover approximately 6 months of RA requests. This figure will be based on the project's average monthly request for RA.

*VIII Responsibilities of Borrower in Administering the RA Program*

The borrower and management agent for each project receiving RA should fully understand the responsibilities and requirements of carrying out the program. The following guidelines will be followed:

A RA payments will not be made directly to eligible tenants receiving RA except as specified in paragraph IX A of this exhibit. The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants. All other RA payments will be recorded as a credit to the tenant's monthly rental payment.

B The borrower must submit Form FmHA 1944–8 for each tenant as required in paragraph VII F of Exhibit B of this subpart.

C The incomes reported by the tenants must be verified by the borrower in accordance with paragraph VII of Exhibit B of this subpart.

D Borrowers utilizing RA must comply with § 1930.122(b)(1) of this subpart. RA will not be approved for a project until the operating budget has been approved by the FmHA State Office or the Servicing Official. Servicing Officials, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E A borrower participating in the RA program must have an FmHA approved lease with the assisted household. All leases must comply with the provisions of paragraph VIII of Exhibit B of this subpart.

F The borrower will be responsible to FmHA for any errors made in the administration of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of any incorrectly advanced RA funds. If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the Office of Inspector General according to FmHA Instruction 2012–B (available in any FmHA office).

*IX Handling Utility Allowances*

A *Payment of utilities.*

1 When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and the portion of income cited in paragraphs II A 2 a, b, or c of this exhibit.

2 When utilities are paid by the household receiving RA and the portion of income cited in paragraphs II A 2 a, b, or c of this exhibit is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and one of those limits of the household's adjusted monthly income.

3 In a project where the owner pays all utilities, the tenant rent will be the portion of income cited in paragraphs A 2 a, b, or c of this exhibit up to the approved rent for the rental unit being occupied.

B *Determining the allowance.* The utility allowance will be determined and recorded by the use of Exhibit A–6 of Subpart E of Part 1944 of this chapter.

C *Changes in allowances.* The utility allowance should be reviewed annually and adjusted if there are substantial changes in utility and public service rates. Allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in changed rent paid by tenants will be processed according to Exhibit C of this subpart.

*X Method of Payment of RA to Borrower*

A *Regular monthly RA payments.*

1 *Borrower responsibilities.*

a Any RA due the borrower will be deducted from the balance of scheduled loan payments, any delinquent payments, and other charges due on Form FmHA 1944–29 and the remaining balance must be submitted to the Servicing Office by check. If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, no additional payment is due from the borrower and an RA check for the excess will be issued by the FO.

b Each month the borrower must forward to the Servicing Official a Form FmHA 1944–29. Any new Forms FmHA 1944–8 must be submitted to the Servicing Office as required in Exhibit B of this subpart. Both forms must be prepared for each project according to the instruction attached to the respective forms.

2 *Servicing Official responsibilities.*

a When new Forms FmHA 1944–8 are received, the Servicing Official will immediately date stamp each form with the receival date, review each Form FmHA 1944–

8 and verify that the information contained on the form is complete and correctly computed based on information contained in the form.

b When a Form FmHA 1944–29 is received, the Servicing Official will:

(1) Date stamp each form FmHA 1944–29, and review the form and ensure that entries are supported by the current form FmHA 1944–8.

(2) Enter the payment data via field office terminals as required in Exhibit A to subpart K of part 1951 of this chapter (available in any FmHA office).

c The Servicing Official should verify the accuracy of the borrower's servicing address shown on the FO record. When the address shown is incorrect, corrections must be made on AMA5 screen M5A "Record Borrower/ Project Data" via a field computer terminal.

B When a project account is delinquent, the Servicing Official may agree to release a portion of the monthly RA for project operation according to provisions authorized in a servicing plan developed in accordance with Exhibit F of subpart B of part 1965 of this chapter (available in any FmHA Office).

C An RA payment request must be based on actual occupancy as of the first day of the month.

*XI Assigning RA to tenants*

A *New project.* Applications for occupancy should be accepted during the construction phase of the project, after the preconstruction conference has been held, and placed on a waiting list. During initial rent-up period, the following priorities will apply:

1 Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for eligible tenants as defined in paragraph II A of this exhibit who qualify for RA, even if there are applications on other lists that applied earlier. Applications qualifying for RA will be considered according to the priority established by paragraph XI B of this exhibit, by passing those applicants on the waiting list whose income is above the low-income limits for the area. The remaining units equal to the number of units that will not be subsidized with RA can be rented simultaneously to other applicants.

2 If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants not eligible for RA, the borrower may request a transfer of unused RA units in accordance with paragraph XV B 5 of this exhibit. However, applicants not eligible for RA cannot be selected to occupy units initially reserved to be used with RA until the unused RA units are transferred.

3 If there are still vacant units, those applicants by-passed because they did not qualify for RA will be considered for occupancy on a first-come, first-served basis.

B *Operational RRH and RCH projects.* To determine priority for assigning an available RA unit in an operational project, the latest Form FmHA 1944–29 for the project must be updated as of the date the unit is available, assuring that columns 3 through 9 of part II are current and accurate.

1 *First priority* for assigning RA must always be given to eligible very low-income households in the following order:

a Eligible *very low-income tenants* paying the highest percentage of adjusted annual income for approved shelter costs.

b Eligible *very low-income applicants* from the project waiting list according to the order provided in paragraph VI H of Exhibit B of this subpart. No eligible tenant household in the project may be required to move from the project to allow an applicant on the waiting list who is eligible for RA to move in.

2 *Second priority* for assigning RA will be given to eligible households with low-income in the following order.

a Eligible *low-income tenants* in the project paying the higher percentage of adjusted annual income for approved shelter cost.

b Eligible *low-income applicants* from the project waiting list. Low-income applicants will be selected according to paragraph VI H of Exhibit B of this subpart, provided the borrower has satisfied the requirements of paragraph XI C of this exhibit.

3 *Third priority* for RA will be given to occupancy ineligible tenants as described in paragraph VI D 7 b of Exhibit B of this subpart living in the project.

4 Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for RA, as the RA calculation formula shows a moderate income tenant that was initially eligible for RA as a very low- and/or low-income tenant who still needs RA and there is an RA agreement in effect.

C *Limits on low-income RRH and RCH applicants who may receive occupancy and RA:*

1 When no more very low-income applicants are on the waiting list *and RA is available,* eligible low-income applicants may obtain occupancy and receive RA provided that:

a For projects available for initial occupancy prior to November 30, 1983, no more when 25 percent of the vacant units receiving RA may become occupied by low-income tenants other than very low-income tenants.

b For projects available for initial occupancy on or after November 30, 1983, no more than 5 percent of the vacant units receiving RA may become occupied by low-income tenants other than very low-income tenants.

2 The borrower may rent units and provide RA to other than very low-income applicants/tenants in excess of the percentage in paragraph XI C 1 a and b of this exhibit respectively, only when there are no more very low-income applicants or tenants available in the market area. The borrower must have documentation in its file and available to FmHA for its review to show the efforts made, and the facts used to determine that there are currently no more very low-income applicants in the market area.

D *Operational LH projects:* Tenants who meet the definitional requirements of domestic farm laborers found at § 1944.153 of subpart D of part 1944 of this chapter shall be assigned RA in the following priority order within the subcategories of priority occupancy established by that subpart:

1 Very low-income.

2 Low-income.

E *Assigning RA other than the first of the month:*

1 When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately reassigned to another tenant or an applicant using the priorities given in paragraph XI B of this exhibit.

2 When RA is assigned to an applicant and the applicant initially enters the project on a day other than the first of the month, the applicant's tenant contribution for housing costs will be prorated for the remaining portion of the month the same as if the tenant was receiving RA. [Example: Basic rent of $200 and the tenants monthly contribution with RA would be $120, the prorate amount for ½ month would be $60.]

3 When RA is assigned to a tenant other than the first of the month, no adjustment to their tenant contribution on Form FmHA 1944–29 for that month will be made. The borrower will begin to receive reimbursement of RA for the tenant as of the first day of the next month.

4 No adjustment will be made on Form FmHA 1944–29 to request additional RA payment or to refund any excess RA payment or overage for the previous month when RA is reassigned other than the first of the month.

XII *RA assigned to wrong household:* When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be canceled and reassigned. Incidents involving incorrect reporting are addressed in subpart N of part 1951 of this chapter.

A Before the borrower notifies the tenant, the borrower or management agent shall review the case with the Servicing Official. If the Servicing Official verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due date after the end of the 30-day notice period. The tenant will also be notified in writing that:

1 The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

2 The RA granted in error will not be recaptured from the tenant.

3 The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal from the decision. If the tenant feels there is justification for further review, the borrower must give the tenant appeal rights under subpart L of part 1944 of this chapter.

B *Reassigning RA.* The RA unit will be reassigned to the next eligible household, based on Form FmHA 1944–29 from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the

tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

XIII *RA payment cancellation*: When an RA check must be canceled, the following procedure will be followed:

A *Return of the original RA U.S. Treasury Check:* The Servicing Office will prepare Form FmHA 1944–53, "Multiply Family Housing Cancellation of U.S. Treasury Check and/or Obligation" as specified in the FMI and mail it to the MFH unit in the FO.

B *Return of all or a portion of the monthly RA payment or refund of RA previously advanced:* A check from the borrower made payable to FmHA will be submitted to the MFH unit in the FO on Form FmHA 1944–53, completed according to the FMI.

XIV *Terminating existing RA agreements obligated in prior and/or current FYs.*

A When a project's obligated funds are fully disbursed under any given RA obligation number, RA will be automatically terminated by the FO and no further RA requests will process against the RA obligation number. The Servicing Official must monitor these balances through field office terminals and AMAS Report No. 513–C. The Servicing Office will modify Form FmHA 1944–27 according to the FMI to indicate that a termination has occurred. The Servicing Official will notify the borrower in writing that the obligation under the RA obligation number has expired and the RA obligation number must be stricken from the agreement.

1 *For all RA obligations before FY 1985.* RA is considered fully disbursed by the FO when all RA funds obligated before FY 1985 are disbursed.

2 *For all RA obligations after FY 1984.* RA is considered fully disbursed by the FO when all RA funds obligated in a particular FY are disbursed. This includes RA transferred from a different MFH project.

3 When a Form FmHA 1944–27 consists of several different obligations (Form FmHA 1944–51, part III, or Form FmHA 1944–55) identified by different RA obligation numbers, and the obligations will not be fully disbursed at the same time, only those RA obligation numbers with fully disbursed obligation will be terminated.

B *Prior to full disbursement of obligated funds:*

1 *Prior FY obligations.* Prior FY obligations will not be terminated. They will be suspended by the State Director using procedures in paragraph XV of this exhibit.

2 *Current FY obligations.* The State Director is authorized to terminate RA obligation prior to the disbursement of obligated funds if the funds were obligated during the current FY. The undisbursed funds for the RA obligation will be returned to the current FY obligation authority.

XV *Suspending or transferring existing RA.*

A *RA may be suspended or transferred according to the requirements for each situation described in paragraph XV B of this exhibit and the following:*

1 *Suspension.*

a The State Director may approve a suspension of a project's RA agreement and obligation as a result of the servicing actions described in paragraphs XV B 2, 3, and 4 of this exhibit. The State Director will maintain records and control of the suspended RA.

b The State Director or Servicing Office will notify the borrower in writing, stating the reason(s) the RA is suspended.

c The Servicing Office will put a suspend code on the account. This is done on the M5A "Record Borrower/Project Data" screen in AMAS using Suspend Code 7. After suspension, only RA payments described in paragraph XV B 4 of this exhibit will be processed by the Servicing Office.

d The State Director may approve reinstatement of the RA to the same borrower in the same project. After approval, the Servicing Office will remove the suspend code from the project using the M5A screen.

e The State Director may reinstate the RA to the same borrower in the same project by removing the suspend code from the M5A screen through field office terminals.

2 *Transfer.*

a Only the State Director may approve an RA transfer.

b RA may be transferred to any borrower with an RA eligible project according to the priorities established by this exhibit or the National Office.

c AMAS will determine the per unit value of the RA obligation being transferred by dividing the undisbursed balance of the RA obligation on the date the transfer is processed by the number of RA units in the agreement. The number of units being transferred times the per unit value equals the total amount transferred. After the transfer processes the State Director should enter the dollar amount of the transfer in the Remarks area of Form FmHA 1944–55.

d RA units identified by different RA obligation numbers may be transferred. New RA obligation numbers should be assigned according to the FMI for Form FmHA 1944–55.

e All or any portion of the units in an RA Agreement with an undisbursed balance may be transferred by the State Director.

f When the State Director approves an RA transfer, Form FmHA 1944–55 completed according to the FMI, will be used to notify the FO except as noted in paragraph XV B 1 of this exhibit.

g Form FmHA 1944–27, with Form FmHA 1944–55 attached, will be completed according to the FMI for each transferee. The transferee may use the transferred units effective the first day of the month in which the transfer is approved.

h The transferor's Form FmHA 1944–27 will be modified by attaching a copy of Form FmHA 1944–55 according to the FMI to indicate that a portion of the agreement has been transferred. When all the RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

B *RA may be suspended and/or transferred in the following situations according to the following directions:*

1 *RA transfer accompanying a project transfer.* When a project is transferred to an eligible borrower, the transferee may assume the transferor's liquidated RA obligation(s). Form FmHA 1944–55 will be forwarded to the FO attached to Form FmHA 1965–10, "Information on Assumption of Multiple Family Housing Loans," as required in § 1965.65(c)(11) of Subpart B of Part 1965 of this chapter.

2 *Suspension and transfer after a voluntary conveyance or foreclosure sale.* When a project with RA is voluntarily conveyed to the Government or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower's name when the FO processes Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired." These units will be held in suspense until the final disposition of the acquired property has been determined. During the inventory period tenants will pay 30 percent of their income for rent. Tenants entitled to reimbursement for utilities will be paid from project income.

3 *Suspension and transfer after a liquidation or prepayment.*

a When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be suspended and, subsequently, transferred to a different FmHA financed project in accordance with paragraph XV B 3 b of this exhibit, if applicable, or if not, to another project at the State Director's discretion.

b When a tenant receiving RA is, or will be, displaced from an FmHA project due to prepayment or liquidation, the RA the tenant was receiving will be transferred, or suspended and transferred, to any other FmHA project, regardless of location, to which the displaced tenant moves. That tenant will be given first priority for a unit of RA, regardless of other priorities for the RA, if all the following conditions are met:

(1) The borrower is eligible to receive and administer RA.

(2) The tenant is eligible to occupy the project and to receive RA.

(3) The tenant had taken all the following steps to insure eligibility to receive priority for the unit of RA:

(i) Had been placed on at least one waiting list for a FmHA project with a Letter of Priority Entitlement.

(ii) Moved to the project as soon as the name was reached on a waiting list, even if it meant temporarily occupying an ineligible unit. The ineligiible unit may not differ from the one for which the tenant is eligible by more than one bedroom.

(iii) Moved to an eligible unit as soon as one was available.

(4) The RA has not previously been transferred for the tenant's current displacement.

c Procedures for transferring RA and modifying RA agreements outlined in paragraphs V C and XV A 2 of this exhibit will be followed, but the receiving project borrower need not submit Form FmHA 1944–25 if the RA was received as a result of the occupancy of a displaced tenant.

4 *Suspension and transfer or reinstatement due to a servicing action.*

a When servicing a project's account according to § 1965.85 of subpart B of part 1965 of this chapter and the account has been accelerated:

(1) The RA will be suspended to the extent that no payments will be credited to the

project's account. Interest credit will be credited to the project's account until the appeal period for the acceleration has expired. After the expiration of the appeal period, if it is determined that foreclosure will proceed, the interest credit will be cancelled as of the last day of the month in which the appeal period expired. RA will be automatically suspended by the interest credit cancellation.

(2) That portion of the monthly RA not needed to pay the project monthly installment and other charges as specified in paragraph VIII of Exhibit A to subpart K of part 1951 of this chapter (available in any FmHA office) may be processed and returned to the project operating account to maintain project operation.

(3) RA agreements expiring during the acceleration and appeal process may be renewed in order to continue payment of RA as described in paragraph X V B 4 a (2) of this exhibit.

b After final disposition of the acceleration, expiration of the appeal and redemption period of the defaulting borrower the RA will be:

(1) *Transferred with a credit sale.* If the project is sold through a credit sale to an eligible borrower within the program, the suspended RA should be transferred from the previous borrower's case number and project number to the new case number and project number. Form FmHA 1944–55 will be attached to Form FmHA 1965–20 "Multiple Family Housing Advice of Mortgaged Real Estate Sold," when it is sent to the FO, or

(2) *Transferred to a different project when the defaulting project is sold outside the program.* When the suspended RA is not needed for the project after the credit sale or other disposition of the acquired property, the State Director should transfer the RA to a different project or projects as provided in paragraph XV A 2 of this exhibit, or

(3) Reinstated to the same project when the defaults are corrected and the State Director reinstates the borrower's account.

c The borrower will be apprised of the appeal rights available under subpart B of part 1900 of this chapter upon notification of the pending suspension. The suspension will not be effective until these appeal rights have been exhausted.

5 *Transfer of unused RA.* When RA is unused after initial rent-up and not needed because of a lack of eligible potential tenants in the area, all or a portion of it may be transferred when the State Director determines that the following conditions have been met:

a The borrower describes the efforts made to market the subsidized units and further demonstrates that:

(1) The market survey indicated there should be a significant need for rental housing by households in the market area that would have required RA for occupancy, but all or a substantial portion of the RA units available remain unused after a 2-year period since initial availability. The borrower must:

(i) Document the efforts made to market the project to RA eligible applicants;

(ii) Demonstrate that the waiting list does not contain RA eligible applicants and the project is not occupied by RA eligible tenants who do not receive RA; and

(iii) Certify that project management has not used a policy of discouraging RA eligible households from applying for or obtaining tenancy in the project.

(2) Rent increases anticipated for the following 2 years will not prompt a request for RA according to the provision of Exhibit C of this subpart.

b The Servicing Official recommends the RA transfer after reviewing documentation submitted by the borrower and finding that the applicable conditions of paragraph XV B 5 of this exhibit have been met.

c If, after the end of the initial year of a RA agreement, the borrower has not used a portion of the RA units for any ensuing consecutive 12-month period, the State Director may transfer the number of unused units, minus at least one, to another project without the borrower's request. If the remaining unit(s) remains unused after an additional 12-month period, the State Director may authorize its transfer to another project. This would apply only if the current agreement is on form FmHA 1944–27 and when:

(1) The borrower has made the efforts described in paragraphs XV B 5a (1)(i), (ii), and (iii) of this exhibit to market the project to tenants needing RA, or if the borrower's failure to use RA has resulted in an acceleration of the loan account.

(2) The Servicing Official has reviewed the project occupancy list, waiting list, past RA usage, and any other data available and verified that there is no apparent RA needs in the project.

(3) The State Director has notified the borrower at least 30 days in advance of FmHA's intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with subpart B of part 1900 of this chapter.

(4) If the borrower appeals the decision, the appeal is resolved in accordance with subpart B of part 1900 of this chapter before any transfer action is taken.

(5) The transfer will be completed in accordance with paragraph XV A 2 of this exhibit.

6 *Transfer due to an unclosable loan.* When RA will be unused because the loan to which it was obligated will not be closed, or the RA agreement is not signed, the RA obligation may not be transferred except as provided under the conditions of § 1944.235 (b) of subpart E of part 1944 of this chapter. However, if this situation occurs during the same FY of obligation, the obligation should be cancelled and reobligated immediately using current authorities. Obligations from prior FY must be canceled and will be lost unless the conditions of § 1944.235 (b) of subpart E of part 1944 of this chapter exist.

XVI *Rights for appeal if RA is not granted or is cancelled by FmHA.*

A Borrowers who have requested RA in writing and are denied such assistance due to a determination of ineligibility by FmHA, or when RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA and will be notified of their appeal rights in accordance with subpart B of part 1900 of this chapter.

B If at any time a borrower or a household is granted RA under an appeal, the borrower or household will receive the next available RA unit.

C Borrower denial of RA to tenants will be handled according to subpart L of part 1944 of this chapter.

XVII *Forms and exhibits.* Exhibit A–6 to subpart E of part 1944 of this chapter and Form FmHA 1944–7 are to be used in determining the amount of RA to be provided.

## Exhibit F—Farmers Home Administration Multiple Family Housing Supervisory Visit—Pre-Visit Worksheet

Purpose and Use of This Document

Use this document to help organize information and plan for a supervisory visit, compliance review, and physical inspection. It should be completed far enough in advance so that all relevant concerns and issues surrounding project operations are known and considered prior to the site visit.

Appropriate Servicing Office staff should examine the project casefile, consult with coworkers, and review any outstanding issues raised by FmHA's most recent annual review of project operational and financial status. Other relevant issues may be obtained from a variety of sources such as ongoing tenant certification or payment processing concerns, Automated Multi-housing Accounting System (AMAS) status, correspondence from tenants or project management, or other issues contained in the running record.

Use your available tracking systems, AMAS, FOCUS, or Multi-housing Tenant File System (MTFS) to gather statistical information relevant to this document and the visit, to help define current project status and to determine if that status falls within acceptable FmHA norms for occupancy or financial operations.

Thoroughly review the management plan and management agreement to assure that the management practices at the project are in accordance with FmHA procedure and with the way project management has agreed to operate.

You should use the random sampling technique contained in Exhibit F–1 of this subpart to establish a sample of tenants for conducting tenant file reviews, interviews and apartment unit reviews, or wage matching. You may use an alternative sampling technique; however, you must fully explain any alternative sampling techniques on this document. Also, you may supplement your random sample with additional tenants that appear to represent unique occupancy or verification situations.

You may contact tenants to advise them of your visit and provide them the opportunity to express their view of project operations. Exhibit F–2 of this subpart may be used for this purpose.

FmHA MFH Supervisory Visit—Pre-Visit Worksheet

Project name: _____

Borrower name: _____

Borrower ID and project number: _____

Project location: _____

Project management: _____

FmHA visit to be completed by: _____

General information.

Visit Date: ( – – ) Bor/Mgt notified of visit: ( – – ) _____

Tax Credit Eligible: (y)(n) Number of Sec. 8 Units: _____

Project Type: (RRH)(RCH)(LH) Number of RA Units: _____

Latest tenant termination notice attached: (y)(n)(na) _____

Project's latest tenant grievance attached: (y)(n)(na) _____

Current tenant information for supervisory visit.

[Latest MTFS project worksheet attached. As of: ( – – )] _____

Total Units: _____

Vacant Units: _____

Overburdened Tenants: _____

Tenants Receiving RA: _____

Unused RA Units: _____

Expired Certifications: _____

Current tenant information for compliance review.

[Latest MTFS documentation attached. As of: ( – – )] _____

Tenants by race national origin code.

White, Non-Hispanic: _____

Black, Non-Hispanic: _____

Asian, Pacific Island: _____

American Indian, Alaska Native: _____

Hispanic: _____

Tenants by Sex.

Male, single member household: _____

Female, single member household: _____

Family (nonsingle member) household: _____

Tenants by handicapped/disability status.

Designated handicapped household member: _____

Designated disabled household member: _____

Number of designated handicapped units: _____

Number of designated handicapped units occupied by a handicapped or disabled household member: _____

Review of Current Documentation

| | Date of most recent action or approval: (Enter date) | Outstanding concerns: (Check if yes, and explain briefly in Comments below) |
|---|---|---|
| 1. | (___ ___ ___) Supervisory Visit | |
| 2. | (___ ___ ___) Physical Inspection of Property | |
| 3. | (___ ___ ___) Compliance Review | |
| 4. | (___ ___ ___) Management Plan | |
| 5. | (___ ___ ___) Management Agreement | |
| 6. | (___ ___ ___) Affirmative Fair Housing Marketing Plan | |
| 7. | (___ ___ ___) Lease | |
| 8. | (___ ___ ___) Occupancy Rules | |
| 9. | (___ ___ ___) Rent Change | |
| 10. | (___ ___ ___) Energy Audit and Implementation Plan | |

Comments: _____

Other operational or financial concerns: _____

Additional documentation for the upcoming visit:

Most recently completed Exhibit A–2 of this subpart attached: (y)(n)(na)

Most recently approved Form FmHA 1930–7 Multiple Family Housing Project Budget attached: (y)(n)

Tenants selected for tenant file review:

Name and unit number

_____

_____

_____

_____

_____

_____

_____

_____

_____

Tenants selected for interview and apartment unit review (if other than above):

Name and unit number

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Tenants selected for wage match (if other than above):

Name and unit number

Tenant data review actions:

Reviewed tenant records & selected tenant sample: ( – – )

Tenant list sent to State Office for wage match: ( – – )

Final Report to file, borrower, HUD etc.: ( – – )

Exhibit F–1 (of this subpart) process used to select tenant sample: (y)(n)

Explanation of other sampling process attached: (y)(n)(na)

## Exhibit F–1—Suggested Random Sampling Technique for Tenant Reviews

Enter information to be used in the sampling calculation.

A. _____Total number of revenue producing units.

B. _____Percentage of units to be reviewed (based on Servicing Office preference for sample size, expressed as a decimal, for example .10 for 10 percent or .50 for 50 percent).

**Note:** At least six tenant households will be sampled or 100 percent of all households for projects having six or fewer units.

Determine the sample size.

C. _____(A times B)

Determine the sampling "interval."

D. _____(A divided by C)

Determine the "starting point" of the sample.

E. _____(the last digit of the current calendar year)

Sampling process.

Using the most current project worksheet, start selecting tenants with the tenant at the "starting point" (E) and select every tenant on the worksheet at the "interval" (D). To assure that you have a full sample (C), you may need to "wrap around" the project worksheet.

For example:

A 24-unit project is to be visited. Based on the June 1, 199X, project worksheet, a 25 percent sampling will be used.

A. Total number of units is 24

B. Percentage to be reviewed is ".25"

C. Sample size is 6

D. Interval is 4

E. Starting point is X year digit

Starting with the second tenant on the project worksheet, every fourth occupied unit will be selected for the sample.

**Exhibit F–3—Suggested Format for a Pre-Visit Tenant Contact Letter**

Date
Name
Address
Dear Tenant:

The Farmers Home Administration (FmHA) of the United States Department of Agriculture (USDA) financed the apartment project where you now live. At least once every three years, FmHA makes a site inspection and management review. The purpose of the visit is to help assure that this FmHA financed project is being operated in accordance with Federal laws and regulations.

Our next visit is scheduled for _____ at approximately _____. We would appreciate knowing any questions, comments, or concerns that you would like to share with us regarding your occupancy. We may be able to talk to you directly during the visit, or you may want to contact us before the visit at:

(Insert Servicing Office Address)

Some of the issues FmHA reviews during the visit are to determine: if fair and equal access is provided to apartments in your project; if outstanding maintenance, repair, or security concerns exist; how income is verified or certified; and if occupancy charges are at FmHA approved levels.

Your response to this letter is completely voluntary. We appreciate your assistance.

Sincerely,

Servicing Official

**Exhibit G—Farmers Home Administration—Multiple Family Housing Supervisory Visit—Summary of Findings**

Project name:

Borrower name:

Borrower ID and project number:

Date of visit:

Persons interviewed:

FmHA visit completed by:

Purpose and use of This Document

This document summarizes the findings obtained during the subject supervisory visit. Information is collected directly by the FmFA reviewer on this form or summarized from information obtained from any of the following sources:

1. Pre-visit worksheet (Exhibit F of this subpart)
2. A concurrent compliance review
3. A concurrent project physical inspection
4. Tenant file reviews
5. Tenant interviews & unit reviews
6. Tenant wage matching findings
7. FmHA docket information
8. Any other relevant document or worksheet

FmHA will review the project file and any other project management documentation prior to the visit to identify areas of concern.

The FmHA reviewer may prepare questions in advance to draw responses from project management or tenants that will enable FmHA to answer the question on the supervisory visit forms. The questions should be prepared to allow the respondent to describe how tasks or functions are performed (i.e., who, what, when, where, or why), rather than "do you do this."

The findings are listed to highlight areas of project management and operation activities as they relate to the project management plan as described in Exhibit B–1 of this subpart.

Concerns resulting from this supervisory visit may be used as a basis for requiring improved borrower/project management performance.

Status/Analysis (Indicate Yes, No, or Not Applicable)

1. Identity of interest (IOI) and relationship of borrower, management agent and suppliers.

____ Borrower and management agent IOI properly disclosed.
____ Borrower & material/services suppliers IOI properly disclosed.
____ Management Agent & material/services suppliers IOI properly disclosed.
____ Are IOI provided management, material and services comparable in cost, quality or scope to "arms-length" transactions?

Comments:

2. Personnel policy and staffing.

____ Personnel policy and staffing per management plan.

Comments:

3. Marketing and Occupancy.

Signs and posters compliance.

____ Project sign.
____ Equal Housing LOGO on sign.
____ Handicapped LOGO at handicapped parking space.
____ Sign indicates where to apply for housing.
____ Equal Housing Opportunity posters visible.
____ ". . .and Justice for All" posters visible.

Affirmative marketing.

____ Affirmative Fair Housing Marketing Plan (AFHMP) available for review.
____ AFHMP signed and dated by authorized FmHA official.
____ Advertising documented (Attach copies).
____ Race/Ethnic composition of the project reflects market area.

Applications Management/Occupancy Policy

____Applications accepted at project.
____Applications accepted from anyone.
____Proper documentation of applicant contacts.
____Proper written documentation of withdrawn/rejected applicants.
____Applicants on waiting list. Number: _____.
____Applicants with a Letter of Priority. Number: _____.
____Tenant file review indicates proper application maintenance.
____Waiting list meets 1930–C requirements.
____Most recent tenant selection met 1930–C requirements.
____Correct priorities for selection followed.
____Marketing and occupancy policy per management plan.
____Occupancy ineligible tenants properly admitted.
____Occupancy ineligibles are placed on a unit transfer list.
____Occupancy ineligibles have appropriate lease clauses.

Achieving full occupancy.

____Tenant vacancy percentage is within an acceptable range.
____Tenant turnover rate is within an acceptable range.
____Tax credit eligibility is not affecting project viability.
____Marketing incentives are used to attract tenants.

Comments:

4. Determining eligibility and adjusted income.

____Income included or excluded correctly.
____Frequency and timing of verification is correct.
____Manager believes tenant provided data is accurate & complete.
____Form FmHA 1944–29, updated before rental assistance (RA) is assigned.
____All qualified households listed on the updated Form FmHA 1944–29.
____RA assignment policy meets 1930–C, Exhibit E requirements.
____Most recent tenant RA assignment met 1930–C, requirements.
____Tenant file review indicates income/status correctly verified.
____Tenant file review indicates income/information correct on Form FmHA 1944–8, "Tenant Certification.".
____Tenant file review indicates proper recertification notice.
____Determining eligibility & adjusted income per management plan.
____Site manager's income verified by third party when appropriate.

Comments:

5. Leasing and occupancy policies.

____Tenants placed in units according to occupancy standards.
____Tenant lease prepared by project site manager.
____Tenant file review indicates rent is properly determined.
____Tenant file review indicates correct lease maintenance.
____Tenant file review indicates FmHA approved lease used.
____Tenant file review indicates FmHA approved occupancy rules.
____Leasing and occupancy policies per management plan.

Comments:

6. Rents, occupancy charges, and occupancy surcharges.

____Utilities paid by tenants correspond to FmHA approved levels.
____Tenants do not pay additional utility fees or charges.
____Actual costs for tenant utilities verified annually.
____Tenant rent payments accepted and tracked on site.
____Rent payments on site are adequately protected.

___Tenants receive appropriate evidence of cash payment.
___Rent and occupancy charge policy per management plan.
___Tenant security deposit processing per management plan.
___Application fees per 1930–C and management plan.
Comments:

7. Rent changes.

___Rents and utility allowances charged are FmHA approved.
___Most recent rent change per 1930–C and management plan.
___Most recent utility allowance per 1944–E and management plan.
Comments:

8. Maintenance, Repair, and Replacement.

___Maintenance per management plan.
___Routine repair and replacement per management plan.
___Routine unit inspection per management plan.
___Services (i.e., exterminating) provided per management plan.
___Security services provided per management plan.
___Followup needed on exterior items inspected.
___Followup needed on energy efficiency items inspected.
___Followup needed on interior items inspected.
___Followup needed on miscellaneous items inspected.
___Followup needed on individual units inspected.
___Capital improvements needed, planned and reserve account use plan updated.
Comments:

9. Supplemental Services.

___Laundry and vending machines operated per management plan.
___Laundry and vending proceeds handled per management plan.
Comments:

10. Accounting, Recordkeeping, and FmHA Reporting.

Project Records

___Project O&M expenses appear per approved Form FmHA 1930–7.
___Project capital expenses appear per approved Form FmHA 1930–7.
___Project revenue appears per approved Form FmHA 1930–7.
___Project account information reviewed, balances obtained:
Reserve account: _____
General operating account: _____
Tax and insurance escrow: _____
Tenant security deposit account: _____
___Accounts are kept per 1930–C and management agreement.
___Funds are protected by a Federal agency or bank collateral.
___Bookkeeping location per management plan.
___Project financial information maintained per management plan.
___Project is operated as part of a "consolidated" project.
___If operations are consolidated, arrangement per 1930–C.
___Internal control conducted per management plan.
___Do multiple accounts by borrower or management entity in one bank exceed collateral limits.

Tenant Records

___Current tenant files retained for 3 years.
___Former tenant and rejected applicant files retained 3 years.
___Privacy of tenant files adequately protected.
___Tenant files maintained per management plan.
Comments:

11. Energy conservation measures and practices.

___Implemented feasible measures identified by energy audit.
___Physical inspection recommends further energy conservation.
___Physical inspection recommends more tenant education efforts.
Comments:

12. Tenant participation and relationship with management.

___Tenant appeals since last visit. Number _____.
___Tenants are being informed of their appeal rights.
___"FmHA Instruction 1944–L" posted for review by tenants.
___Standing hearing panel for the project.
___Records maintained of settlements and hearings.
___Project management is responsive to tenant grievances.
Comments:

13. Management training programs.

___Site manager training per management plan.
___Site manager has received FmHA requirements training.
Date of last FmHA requirements training: (___-___-___)
___Site manager "certified" from an FmHA recognized source.
___Equal Opportunity training per AFHMP.
Comments:

14. Termination of leases and eviction.

___The latest tenant termination was properly conducted.
___The latest eviction was properly conducted.
___Is termination and eviction per 1930–C and management plan.
Comments:

15. Management agreement plan and project operations.

___Project uses the management plan as a working document.
___The management plan accurately describes project operations.
___The management agreement accurately describes project operations.
___Indication of an unreported change to insurance coverage.
___Indication of an unreported change to fidelity coverage.
___Indication of unreported change to management.
___Indication of unreported change to borrower entity.
Comments:

16. Management compensation.

___Management fee paid per management agreement.
Comments:

17. On-site management.

___Site manager compensation per management plan and agreement.
___Site manager's unit operated per management plan.
Date current site manager hired: (___-___-___)
Comments:

FmHA MFH Supervisory Visit—Conclusions and Recommendations

Listed below are the major findings of the supervisory visit, compliance review, and physical inspection of the project, and any followup actions required by the Servicing Office.

FmHA MFH Supervisory Visit—Rating

Above Average ___Satisfactory___
Below Average___Unsatisfactory___
Next follow-up needed (Letter, telephone, etc.) _____
Next scheduled review _____

FmHA MFH Supervisory Visit—Additional Rural Cooperative Housing Questions

___The cooperative treasurer has received relevant training.
___The board of directors considers and acts on new member applications.
___Applicants are screened for suitability before being placed on the waiting list.
___There are signed "What is Cooperative Housing?" forms indicating the member recognizes and accepts the responsibilities associated with cooperative living.
___Cooperative members perform maintenance functions.
___Maintenance functions are contracted out. Explain:
___The borrower cooperative is working with FmHA.
___The board of directors holds monthly meetings.
___There is an agreement with the adviser.
___The adviser to the board attends each meeting.
___It appears that the board has control over the cooperative's operations.
___The cooperative has active committees. What are the committees and how many members on each?

| | |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

How often do the committees meet?
_____
___A board member attends committee meetings.
___Management agreements and contracts are being followed.
Comments:

**FmHA MFH Supervisory Visit—Additional Labor Housing Questions**

___In the case of on-farm LH, the housing is serving eligible farm laborers employed by this LH borrower.
___Borrower is ( ) charging, or ( ) not charging rent in accordance with their FmHA approved budget.
___Properly verifying farm labor employment.
___Properly determining "substantial" portion of income from farm labor.
Comments:

**FmHA MFH Supervisory Visit—Additional Congregate Housing or Group Home Questions**

___Project provides a basic services package to tenants.
___Project provides optional services package to tenants.
___Meals provided per service agreement.
___Transportation provided per service agreement.
___Housekeeping provided per service agreement.
___Personal service provided per service agreement.
___Recreational/social services provided per service agreement.
Comments:

**Exhibit G–1—Farmers Home Administration Multiple Family Housing Supervisory Visit—Tenant File Review**

Project Name: _____
Borrower Name: _____
Borrower ID and Project Number: _____
Date of Visit: _____
Management Representative Present: _____
FmHA Review Completed by: _____

| | Tenant 1 | Tenant 2 | Tenant 3 |
|---|---|---|---|
| Apartment number | | | |
| Tenant name | | | |
| Application: | | | |
| Signed and dated | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| EO Statement | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| 1930–C requirements met | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Credit report/references | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Verifications/Documentation: | | | |
| Handicap/disability | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Signed asset statement | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Assets documented | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Income | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Medical expenses | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Child care expenses | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| FmHA "wage match" used | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Correct Value on Certification: | | | |
| Assets | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Income | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Medical | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Child care | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Remaining calculations | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Occupancy standards met | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Lease: | | | |
| FmHA approved | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Correct rent/provisions | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Re-Certification Notice: | | | |
| Used 75–90 day notice | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Used 30 day notice | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Other Documentation: | | | |
| Annual inspection | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Move-in inspection | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Record of contacts | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Unit repairs & maintenance | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| 3 years of tenant files | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Follow-up Required | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |

Comments:

**Farmers Home Administration Multiple Family Housing Supervisory Visit—Tenant Interview and Unit Review**

Project Name: _____
Borrower Name: _____
Borrower ID and Project Number: _____
Date of Visit: _____
Management Representative Present: _____
FmHA Review Completed by: _____

| | Tenant 1 | Tenant 2 | Tenant 3 |
|---|---|---|---|
| Apartment number | | | |
| Tenant name | | | |
| NTC from MTFS | | | |
| From Tenant Interview: | | | |
| Number of bedrooms | | | |
| Number of individuals | | | |

| | Tenant 1 | Tenant 2 | Tenant 3 |
|---|---|---|---|
| Date of occupancy | ( - - ) | ( - - ) | ( - - ) |
| Rent paid | | | |
| Utilities paid (average) | | | |
| Knows verification rules | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Knows grievance procedures | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Maintenance is acceptable | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Repairs are acceptable | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Other comments | | | |
| From FmHA Apartment Review—Maintenance Needed: | | | |
| Energy Efficiency Items Inspected: | | | |
| Insulation | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Caulking & weatherstrip | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Storm doors & windows | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Water saver devices | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| _____ | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Interior items inspected: | | | |
| Floors, carpets, tiles | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Stairs, walks, common areas | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Cabinets, doors | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Painting | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Curtains & shades | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Refrigerators & ranges | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Garbage disp. & exhaust | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Compactor & incinerator | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Electrical fxtrs & system | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Plumbing fxtrs & systems | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Heating & air condition | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| Hot water, boiler room | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |
| _____ | (y)(n)(na) | (y)(n)(na) | (y)(n)(na) |

Comments:

## Exhibit H—Interest Credits on Insured Rural Rental Housing and Rural Cooperative Housing Loans

I *Purpose:* This exhibit outlines the policies and conditions under which interest credits will be made on insured Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans.

II *Definitions:* As used in this exhibit:

A *Interest credit* is the amount of assistance the Farmers Home Administration (FmHA) may give a borrower toward making its payments on an insured RRH or RCH loan.

B *Interest credit and rental assistance (RA) agreement* is an agreement between FmHA and the borrower providing for interest credits and/or RA for RRH or RCH loans. This agreement will be on Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement."

C *Project* is the total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

D *Basic rent* is determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum and covering budgeted project expenses. Basic rent also means basic occupancy charge.

E *Note rate rental* is a unit rental charge determined on the basis of operating the project with payments of principal and interest which the borrower is obligated to pay under the terms of the promissory note and meet budgeted project expenses. Note rate rental also means note rate occupancy charge in an RCH housing project.

F *Overage* is the amount by which total rental or occupancy charge payments paid or to be paid by the tenants or members of a project exceed the total basic monthly charge.

G *Surcharge* is 25 percent of the established rent in a Plan I project which is added to the rent of an ineligible tenant or member.

III *Eligibilty:* Borrowers may receive interest credit provided the loan was made on or after August 1, 1986, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; is repaid over a period of 30 years or more; and meets the other requirements of this exhibit subject to the following limitations:

A Plan I will be only to broadly-based nonprofit corporations and consumer cooperatives. Except for subsequent loans to projects approved before August 1, 1968, Plan I interest credit is no longer available. All borrowers already operating on Plan I may continue operating under it according to the applicable requirements of this exhibit and of this subpart. A subsequent loan on a Plan I project approved after August 1, 1968, will require the project to convert to Plan II.

B Plan II will be available to broadly-based nonprofit corporations, cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

C Units must be ready for occupancy (decent, safe, and sanitary) to qualify for interest credit.

IV *Options of Borrowers:* An eligible borrower operating under Plan I or Plan II, as described below, will determine interest credits on its loan in the respective manner indicated.

A *Plan I.*

1 Borrowers operating under this plan must agree to limit occupancy of the housing to very low-or low-income nonelderly and very low-, low- and moderate-income elderly, disabled, or handicapped persons.

2 A borrower under Plan I generally must:

a Determine that there is firm market and continuing demand for rental housing by persons within the applicable income limits.

b Prepare a budget on the basis of a 3 percent loan.

c Determine rentals to be charged.

d Determine adjusted personal income of each tenant or member and have each tenant or member complete Form FmHA 1944–8, "Tenant Certification." Determine the monthly rent or occupancy charge to be paid by each tenant or member household.

B *Plan II.*

1 Borrowers operating under this plan must agree to limit occupancy of the housing to households, including elderly, disabled, and handicapped persons of very-low, low- and moderate-incomes. Under Plan II, interest credits are based on the cost of operating the project and the size and income of the household.

2 A borrower under Plan II generally must:

a Prepare one budget form that reflects two rent levels; the first level on the basis of a 1 percent interest rate loan to determine basic rental; the second level on the basis of a loan at the interest rate shown in the promissory note to determine note rate rental.

b Determine both basic rental and note rate rental for the different units based on the two budgets. (See Exhibit H-1 of this subpart).

c Determine adjusted personal income of each tenant or member and have each tenant

or member complete Form FmHA 1944–8. Determine the monthly rent or occupancy charge to be paid by each tenant or member household.

d Determine the required monthly payment on the loan at 1 percent interest plus overage for the month for the total units. The amount of the project payment will be entered on Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance."

V *Determining the Amount of Payment:*

A *For Plan I.* The amount of payment will be determined by using the amortization factor for a payment at a 3 percent interest rate [use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a 1 percent interest rate [use the same number of years that was used for computing the regular installment on the note) plus all overage.

C *For the project.* The payment amount for all loans on the project will be added together to determine the project payment. The amount due FmHA will also include all overage, surcharges, late fees, audit receivables, and cost item charges.

VI *Special Conditions:*

A *Leases or occupancy agreements.* Borrowers participating in the interest credit program must have an FmHA approved lease or occupancy agreement with the assisted household. Leases and occupancy agreements must comply with the requirements of paragraph VIII of Exhibit B of this subpart.

B *Rental surcharges to ineligible tenants.* If a unit is rented in accordance with the provisions of paragraph VI A of this exhibit to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1 Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for $100 per month, this ineligible tenant would pay $125 per month. The 25 percent surcharge, or $25 in this illustration, would be paid on the account and would be included with, but in addition to, the regular payment on the loan.

2 Under Plan II, be charged the note rate rental.

C *Vacancies.*

1 When all construction is not completed but some units are ready for occupancy and the contractor consents in writing to permit occupancy, the State Director may authorize the occupancy of those completed units to eligible tenants or members at the rent or occupancy charge they would be paying as if the amortization effective date (AED) and subsidy levels had been established. A prerent-up or preoccupancy conference is required before marketing and rent-up begins. All income generated must be deposited in the general operating account and used for management and operation of the units except for member's patronage capital contributions.

2 Multi-Family Housing units rendered unusable due to fire, natural cause, or other damage requiring less than 180 days to repair or replace shall be assumed to be rented or occupied at the monthly basic rate rental or occupancy charge rate. If the units are not repaired or replaced within the 180 day period, they shall thereafter be assumed to be unmarketable and the units will be carried at the monthly note rate rental or occupancy charge rate (i.e., full overage for such units will be paid by the borrower until the units are again ready for occupancy). The Form FmHA 1944–7 will be cancelled, effective the first day of the month following the 180-day period.

3 The State Director may make an exception to the 180-day period if *all* of the following conditions are met:

a The repairs have not been started or completed due to circumstances beyond the borrower's control; and

b The borrower must be able to show that they have acted in good faith and they face serious financial difficulties in maintaining the project for existing tenants and they are unable to meet the payments on the indebtedness without the subsidy.

4 Any borrower directly or indirectly affected by action under this subpart will be granted the appropriate appeal rights according to Subpart B of Part 1900 of this chapter.

5 RRH or RCH units vacant for lack of tenant or member applications on the waiting list or for repair not associated with paragraph VI C 2 of this exhibit shall be assumed to be charged at the basic rent.

D *Interest credit for tenants in projects under the Department of Housing and Urban Development (HUD) Housing Assistance Payment Program or FmHA rental assistance.* When any rental units in an RRH project are leased under the new construction Section 8 program, Form HUD 50059, "Certification and Recertification of Tenant Eligibility," or other acceptable HUD Form will be completed. When any rental units in an RRH project are leased under the FmHA RA program, Form FmHA 1944–8 will be completed.

E *Special cases.* Situations not covered by this exhibit or Exhibit E to this subpart will be handled individually with instructions from the National Office.

F *Understanding eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing. Instructions for tenant or member eligibility are in paragraph VI D of Exhibit B of this subpart.

VII *Execution of Agreements:*

A *Interest credit and rental assistance agreement.*

1 *Multiple advance loans.* Interest credit may become effective the first day of the month following substantial completion of construction when the project is ready for full operation, which is the AED. When the Servicing Official determines that the project is ready for full operation, the borrower and the Servicing Official should execute Form FmHA 1944–7. A separate Form FmHA 1944–7 will be executed for each loan on the project.

2 *Interim financing and servicing.* Effective dates for interim financed loans and servicing action will be according to the Form Manual Insert (FMI) for Form FmHA 1944–7.

B *Change in interest credit plan.* A borrower under Plan I may change, if it can meet the requirements of the other plan, by executing a new Form FmHA 1944–7.

C *Borrowers who are not receiving interest credit.* If an eligible borrower did not execute a Form FmHA 1944–7 according to paragraph VII A of this exhibit, interest credit may be instituted at any time during the life of the loan provided the borrower agrees to the requirements of Form FmHA 1944–7 and this exhibit. When Form FmHA 1944–7 is executed, it will be effective for the first of the month in which the Form FmHA 1944–7 is executed.

D *Borrowers who have had interest credit terminated.*

1 If an interest credit agreement on Form FmHA 1944–7 has been terminated because the benefits were not needed and circumstances change to where an interest credit is again needed, a new Form FmHA 1944–7 may be executed.

2 If an interest credit agreement on Form FmHA 1944–7 has been terminated because of the borrower's failure to comply with requirements and the appropriate corrective actions have been accomplished, a new Form FmHA 1944–7 may be executed.

VIII *Tenant or Member Certification:* Tenant or member certification and recertification for interest credit borrowers will be performed in accordance with paragraph VII of Exhibit B to this subpart.

IX *Project Payments:* With each payment made, the borrower will complete Form FmHA 1944–29. The FmHA representative handling the transmittal to the Finance Office will transmit the payments according to subpart B of part 1951 of this chapter and Exhibit A of subpart K of part 1951 of this chapter (available in any FmHA office).

A *Plan I.*

1 The borrower will make monthly payments in an amount necessary to repay the project loans as if the loans carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this exhibit, the surcharge will be included and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX A 2 of this exhibit.

2 When a payment is made for any month that involves a rental surcharge, Form FmHA 1944–29 will be completed with the amount of the surcharge being inserted in the spaces provided. This form will be completed and the amount shown and will be charged to the project account regardless of whether the surcharge is actually collected by the borrower.

B *Plan II.* The borrower will make monthly payments as though the project notes were written at a 1 percent interest rate plus any overage due and payable whether or not collected from the tenant or member.

X *Servicing:* Handling of interest credits when servicing a project's accounts according to § 1965.85 of subpart B of part 1965 of this chapter will be handled according to the applicable parts of subpart A of part 1955 of this chapter. Any unusual cases that cannot be serviced in accordance with these sections should be submitted to the National Office with the State Director's recommendations.

**Exhibit H–1—Example of Interest Credit Determination for Rural Rental Housing or Rural Cooperative Housing Projects**

**(Plan II)**

$260,000 loan—approved during 1987 fiscal year project contains four 1-bedroom units (600 sq. ft. each) and four 2-bedroom units (700 sq. ft. each) total floor area = 5200 sq. ft.

| Budget for note rate rent**[a] | Budget for basic rent** |
|---|---|
| Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable: $10,560 | Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable: $10,560 |
| Loan repayment at 9½% interest: $260M × $95.88[b] $24,929 | Loan repayment at 1% interest: $260M × $25.44[b] $6,615 |
| Total annual cost $35,489 | Total annual cost $17,175 |
| $35,489 ÷ 12 = $2958* cost/month | $17,175 ÷ 12= $1432* cost/month |
| One bedroom rent: 600/5200 = .1154 × 2958 = 341.35 | One bedroom rent: 600/5200 = .1154 × 1432 = 165.25 |
| Two bedroom rent: 700/5200 = .1346 × 2958 = 398.15 | Two bedroom rent: 700/5200 = .1346 × 1432 = 192.75 |
| (341.35 × 4) + (398.15 × 4) = $2,958 monthly income | (165.25 × 4) + (192.75 × 4) = $1432 monthly income |
| $35,489 ÷ 12 = $2958* cost/mo. | $17,175 ÷ 12 = $1432* cost/mo. |

[a] One budget form reflecting two rent levels must be prepared; one level for the note rate rent and another level for the basic rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not itemized.)

[b] Annual amount using monthly amortization factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

* Rounded to the nearest dollar.

** In cooperatives, the term "rent" shall mean "occupancy charge."

**Exhibit I—Rural Rental Housing Loans and the Housing and Urban Development Section 8 Rental Certificate and Rental Voucher Programs (Existing Units)**

I *General.* This exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of existing Section 515 Rural Rental Housing (RRH) units and the Department of Housing and Urban Development (HUD) *tenant-based* Section 8 Rental Certificate and Rental Voucher Programs.

II *Applicability.* This exhibit is not applicable to units in Section 515/8 projects which use the *project-based* Section 8 new construction and substantial rehabilitation programs. Otherwise, FmHA RRH borrowers are authorized to utilize the procedure outlined in this exhibit and the HUD Section 8 Rental Certificate Program or the Rental Voucher Program for existing housing as outlined in HUD's regulations 24 CFR part 882 and 24 CFR part 887 (as amended) respectively. To promote the use of these programs with existing projects, the following action should be taken:

A Servicing Officials should inform RRH borrowers operating in the area of their jurisdiction of the contents of this exhibit.

B The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 30 percent of its income for rent and utilities. Therefore, RRH borrowers should advise tenants who are paying more than 30 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. Those tenants paying 50 percent or more of their adjusted income for housing have preference over those paying less. In the Rental Certificate Program, families generally pay 30 percent of their monthly adjusted income toward the rent and the total rent to the owner must be below a maximum amount. Section 8 Rental Certificate and Rental Voucher assistance is administered by local Public Housing Agencies (PHA) authorized by HUD to administer the program in the area. This Section 8 assistance can be used in the unit of the family's choice anywhere in the State where the issuing PHA is located, and in certain areas in adjacent States. Families must apply to the PHA and come to the top of its waiting list through normal PHA selection preferences.

C The HUD Rental Voucher Program uses a "shopper's incentive." If a unit rents for less than the payment standard established by the local PHA, the eligible family benefits by paying less than 30 percent of its monthly adjusted income toward rent and utilities, subject to a minimum rent calculation by the PHA. If a unit rents for more than the payment standard for the area (not the actual rent), the housing assistance payment is not increased, nor is the family told it must find another unit, as in the Rental Certificate Program. Instead, the family pays the entire difference between the rent and the rental voucher payment standard. The family may rent the unit if it is willing to pay more than 30 percent of its income toward rent. There is no maximum rent as in the Rental Certificate Program.

D In Rural Cooperative Housing (RCH), cooperatives are considered rental housing in the Section 8 Rental Certificate and Rental Voucher programs. Wherever the word tenant appears in this exhibit, it shall also mean member; rent shall also mean occupancy charge; and lease shall also mean occupancy agreement.

III *FmHA Policies Concerning Rental Rates and Payments.*

A Under the Section 8 Rental Certificate and Rental Voucher Programs, the PHA will pay a portion of the tenant's rent including utility allowance as described in paragraphs II B or C of this exhibit, whichever is appropriate. The contract rent to be established under either HUD program will be as follows:

1 For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit Plan I, the contract rent will be the note rate rental rate for the units as determined by the current approved annual budget using a 3 percent amortization factor for principal and interest payments;

2 For borrowers operating without interest credit, the contract rent will be the note rate rental rate for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments;

3 For borrowers operating in accordance with interest credit Plan II, the contract rent:

a For Rental Certificate participants will be the basic rental rate as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments;

b For Rental Voucher participants, the rent to owner must be the lesser of the note rate rent for the unit as approved by FmHA OR the payment standard approved by the PHA (but not less than basic rent approved by FmHA).

(1) When basic rent is less than the PHA approved payment standard, the borrower will collect and remit the difference between the basic rent and payment standard to FmHA as overage to avoid double subsidy on behalf of the tenant.

(2) Should the PHA inadvertently pay the owner (borrower) more than the amount specified in the housing assistance contract between the PHA and the owner, the owner shall return the overpayment to the PHA as an excess payment

B The method of calculation and transmittal of the scheduled payment to the Finance Office will be in accordance with paragraph IX of Exhibit H of this subpart.

*IV Responsibilities.*

A *Family.* A household family must apply to the PHA and be issued a Certificate of Family Participation or a Rental Voucher to obtain the appropriate housing assistance. Households receiving housing assistance under either program will be responsible for fulfilling all of their obligations under the Certificate of Family Participation or Rental Voucher issued to them by the PHA and under the lease with the owner. However, a lease violation is not necessarily a reason for terminating Section 8 assistance.

B *Owner (FmHA borrower).* Upon being presented a Certificate of Family Participation or a Rental Voucher by a family, an owner wishing to participate in the program shall sign a Request for Lease Approval (Form HUD 52517–A) which is then submitted to the PHA. After PHA approval the owner will execute a Housing Assistance Contract (Form HUD 52535–A) with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C *FmHA.*

1 FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

e Obtaining and reviewing all reports from the borrower in accordance with paragraph XIII C of Exhibit B of this subpart.

b Review and approval of budgets and rental rates.

c Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2 FmHA will not be responsible for the requirements and conditions of the contract entered into between the PHA and owner but will cooperate with HUD and the PHA to the extent possible to assure that the borrower carries out all obligations under the contract.

*V Special Conditions.*

A *Eligibility of family.*

1 The PHA will determine a household's eligibility before the Certificate of Family Participation or Rental Voucher is issued. To be eligible for either form of housing assistance, the household's income as determined by HUD generally may not exceed the very low-income limit, based on 50 percent of the median income for the area. The household's eligibility for housing assistance payments under the Rental Voucher program continues until the amount payable by the family equals or exceeds the payment standard or when the amount payable by the family equals or exceeds the rent to owner plus any applicable utility allowances. However, when these conditions are exceeded, the family may still be able to occupy a rental unit under the FmHA interest credit program if 30 percent of the family's adjusted gross income is greater than the lowest established rental rate for the unit. In both the Rental Certificate and Rental Voucher Programs, the housing assistance contract terminates when 1 year has elapsed since the last Housing Assistance Payment (HAP) to the owner.

2 Form FmHA 1944–8, "Tenant Certification," will not be required for tenants who have obtained a Certificate of Family Participation or a Rental Voucher from the PHA. A copy of the Certificate of Family Participation or the Rental Voucher, however, needs to be provided to the FmHA Servicing Official.

3 At admission, the tenant's adjusted household income must not exceed the maximum income limitations (initially in the case of RCH) as authorized by FmHA for the project.

B *Security deposits.* According to HUD regulations, the owner may require a household to pay a security deposit. For certificate participants the maximum amount will be the greater of the amount of one month's total tenant payment or $50. For voucher participants, the security deposit may not exceed the lesser of the limit established by the PHA or one month's rent to the owner. Under HUD regulations, if a certificate household vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed two month's contract rent. For voucher participants, the owner may claim up to one month's rent to owner for amounts owed under the lease. Neither program allows claims for reimbursement of unpaid rent for the period after the family moves from the unit.

C *Payment for vacated units.*

1 *Rental Certificate Program.* If a certificate family vacates the unit in violation of the provisions of the lease, the owner may receive the full housing assistance payment for the month in which the family vacates and then in the amount of 80 percent of the contract rent for a vacancy period not exceeding an additional month or the expiration or other termination of the lease, whichever comes first.

2 *Rental Voucher Program.* If the voucher family moves from the unit, the owner shall promptly notify the PHA. The PHA shall make no additional housing assistance payment to the owner for any month after the month in which the family moves out. However, the owner may retain the housing assistance payment for the month in which the family moves.

D *Recertification for families with either a Section 8 Rental Certificate or Rental Voucher.*

1 The PHA, not the FmHA borrower, must reexamine the income and family composition of all Rental Certificate and Rental Voucher families at least annually, and adjust the housing assistance payment made on behalf of the family to reflect any changes in the family's monthly adjusted income, size, or composition. Once a HAP contract expires, recertification responsibility reverts to the borrower and FmHA forms and income verification and certification requirements apply.

2 All changes in family composition must be reported to the PHA.

3 A family may request a redetermination of the housing assistance payment at any time, based on a change in the family's income, adjusted income, size, or composition.

4 Whether reporting of increases of family income between annual recertifications is required is determined by the PHA. The PHA policy must be stated in its administrative plan.

E *Rent changes.*

1 *When project rents in all units change.*

a *Rental Certificate Program.* Rents for tenants receiving rental certificate assistance under HUD Form 52535–A (Section 8 Existing Housing Assistance Payments Contract for Subsidized Units) may change after the beginning (day 1) of the HAP contract term for the initial leasing of the unit with Section 8 assistance. The amount of the contract rent adjusts automatically when the subsidized rent is changed. However, the adjustments are subject to rent reasonableness limitations which are determined by the PHA. Adjustments may not result in material differences between the rents charged for assisted and comparable unassisted units as determined by the PHA.

b *Rental Voucher Program.* Rents for tenants receiving rental voucher assistance may not change until the end of the initial 12 months of the individual lease, even though all unit rents may have been changed in the meantime. The lease may provide that the owner may increase the tenant's rent any time AFTER the first anniversary of the lease, but the Owner must give the tenant and the PHA 60 days prior written notice of any increase before it takes place.

2 *When tenant household income, size, and composition change.* The following items apply to both the Section 8 Rental Certificate and Rental Voucher Program.

a The PHA must examine the income and family composition of all rental certificate and rental voucher families at least annually and adjust the housing assistance payment made on behalf of the family to reflect any changes in the family's income, size, or composition.

b All changes in family composition must be reported to the PHA.

c A family may request a redetermination of the housing assistance payment at any time, based on a change in the family's income, size, or composition.

d Whether reporting of increases of family income between annual recertifications is required is determined by the PHA. The PHA policy must be stated in its administrative plan.

(1) Should household income INCREASE to where HUD assistance becomes zero, the HAP contract between borrower/owner and the PHA remains in effect for 12 more months. When 12 months of "zero" assistance occurs, the HAP contract automatically terminates. However, if during that year the family's income decreases to the level where subsidy is needed again, the PHA will resume subsidy payments under the HAP contract after notification by the family of the change.

(2) In both the Rental Certificate and Rental Voucher programs, the tenant's lease term runs concurrently with the Housing Assistance Contract until the tenant or owner terminates the lease or the PHA terminates the contract. In a situation where a tenant's income increases to where the tenant does not receive a subsidy for 12 months, the owner can offer the tenant a new lease for execution. If the tenant fails to execute the new lease after a reasonable time, the owner may terminate the tenant's occupancy.

F *Changes in household size and composition.*

1. An increase in household size that results in the occupied unit not meeting the PHA occupancy standards or housing quality standards (namely, overcrowding) requires the PHA to issue the household a new rental certificate or rental voucher for a larger unit. The PHA must provide assistance to the family in locating another unit. The PHA may not terminate the current contract unless the family has rejected with good cause the offer of a new unit.

2. If the OWNER fails to maintain the dwelling unit at acceptable housing quality standards, the PHA may, after unsuccessful efforts to correct the problem, terminate or abate the housing assistance payments, even though the household continues to occupy the unit.

3. A decrease in household size will not necessarily require the household to move. In the Rental Voucher Program, the household may rent a unit with greater number of bedrooms than indicated on the housing voucher and still receive housing assistance. In the Rental Certificate Program, the family may continue to receive assistance in the unit if the gross rent (contract rent plus utility allowance) is within the fair market rent for

the smaller size unit appropriate for the size and composition of the family.

G *Limitation of owner's participation in the two programs.* HUD's regulations provide that assistance under Section 8 Certificates will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded on a case-by-case basis for the purpose of relieving hardship of a particular household or households with the approval of the HUD field office. There is no corresponding limit under the HUD Rental Voucher program. The HUD limits shall not affect the number of rental assistance units the project receives through FmHA.

H *Special problems.* Any problems on utilizing either the HUD Section 8 Certificate or the Rental Voucher program for existing RRH projects not covered by this exhibit should be referred to the National Office by the State Director.

## Exhibit J—Management of Congregate Housing and Group Homes

I *Purpose:* This exhibit prescribes additional requirements for the management of congregate housing and group homes. It applies in addition to other requirements in this subpart.

II *Objective:* The objective in the management of congregate and group home housing is to provide shelter and predetermined services as separate components, based on a market study identification of need, that are affordable to the housing's tenant base. It is further the objective to permit resident tenants to cover their individual medical and discretionary needs, and/or service needs or preferences not provided or arranged by the housing provider, within their own financial, familial and social resources.

III *Definitions:*

*Congregate housing.* Residential housing for persons or families who are elderly, or have handicaps, or disabilities, consisting of private apartments and central dining facilities in which a number of preestablished services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them within their own financial, familial, or social resources.

*Group home.* Housing that is occupied by individuals who are elderly or have handicaps or disabilities, sharing living space within a rental unit in which a group home resident assistant may be required.

*Service agreement.* A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service, and the length of time the service will be provided.

*Service contract.* A written contract between the borrower and the tenant listing the package of services selected by the tenant that will be provided or arranged by the borrower, the fee or fees to be charged, and applicable conditions and agreements pertaining thereto.

*Service plan.* A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

*Tenant-base.* The demographic and economic profile of eligible people in a housing market area who would benefit, whether by need or preference, from the housing and supportive services provided by a congregate housing or group home facility located in the market area.

IV *Rent Subsidy Opportunities:* Congregate housing and group homes are subject to the provisions of paragraph IV of Exhibit B of this subpart. Subsidy discussed in that paragraph cannot be used to pay for services in congregate housing or group homes.

V *Management Operations:* Borrowers must comply with paragraph V of Exhibit B of this subpart in managing congregate housing and group homes. In addition, borrowers must submit a service plan that explains how services will be provided.

A *Borrower's experience.* Borrowers and management agents must outline their experience and plans for providing congregate and group home services when completing the management outline in either Exhibit B–4 or B–5 of this subpart. Borrowers who are not experienced with congregate housing/group homes must obtain assistance from organizations or individuals experienced with congregate issues in developing management and servicing plans. The service provider's experience and ability to furnish the services must be documented.

B *Management plan.* In addition to the general requirements for a management plan described at paragraph V A of Exhibit B of this subpart, the management plan should describe the plan for management of features unique and essential to congregate/group home housing. This portion of an overall management plan may either be incorporated within the framework of the management plan or as an addendum to the plan. The following areas should be described:

1 *Tenant mix.* For congregate housing, describe the mix of tenants who will have a greater number of services and tenants who will have a lesser number of services that the project is designed to accommodate. For group home housing, describe the "group(s)" of tenants the group home is intending to serve such as elderly tenants, developmentally disabled, or mentally impaired persons.

2 *Marketing plan.* Describe the strategies, ways and means that marketing and advertising will be focused to attract and retain tenants from the market area (tenant base) that would benefit by the congregate/group home housing project.

3 *Service package.* Describe the basic and any alternative "package" of service(s), or combination of service packages, that a tenant may acquire at the project. Describe any deviations to a service package that can be accommodated on an individual tenant basis by the project in a reasonable and practical manner.

4 *Referral service.* Describe the plan for identifying other services available to tenants and for establishing liaison between the project and the other services. Describe the plan to make the information of such services available and known to tenants. Describe what arrangements the project can provide as part of a service package to help tenants use referral services.

5 *Tenant consultation.* Describe how the project management staff will use tenant consultation to assist tenants with information, modification of service package, referral to medical, clinical, family or other services, and identifying what, if any, reasonable accommodations or assistance are needed and whether they are feasible and practical to provide.

6 *Emergency evacuation plan.* Describe what the project will do to inform and train tenants on safe evacuation of an apartment and building. Describe which community/public services will be informed about and incorporated into the project evacuation plan.

C *Service plan.* Congregate housing/group home borrowers must submit a service plan as defined in paragraph III of this exhibit. See Exhibit E of subpart E of part 1944 of this chapter for guidance on the issues that should be included in the plan. The service plan will be an addendum to the management plan when appropriate, or subject to the signature and authorization requirements of the management plan when the service provider is not the borrower or management agent.

D *Service agreements.* Borrowers must submit a service agreement for each service they do not provide directly. The agreement must stipulate the specific service to be provided, the cost of the service and the length of time the service will be provided. The service agreement will be an addendum to the management agreement when appropriate, or subject to the signature and authorization requirements of the management agreement when the service provider is not the borrower or management agent.

Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year.

E *Service contract.* Borrowers must submit a sample of the service contract for Agency review for compliance with Fair Housing Act requirements/restrictions and Agency requirements in or referenced by this subpart. The service contract may not be a requirement for occupancy in the congregate housing project and it must be made separate and apart from the occupancy lease agreement.

VI *Renting Procedure:* In addition to meeting the conditions of paragraph VI of Exhibit B of this subpart, borrowers must meet the following conditions.

A *Eligible tenants.* Tenants must meet the general provisions of paragraph VI D of Exhibit B of this subpart and be eligible to occupy congregate or group home housing as defined in paragraph III of this exhibit. Borrowers must be careful to follow the condition described in paragraph VI D 1 i of Exhibit B of this subpart when inquiring

about the applicant's or tenant's request for congregate/group home housing and the service it provides.

B *Tenant selection.* Borrowers must meet the provisions of paragraph VI H of Exhibit B of this subpart. Borrowers should be further guided by the following in selecting tenants for congregate housing and group homes:

1 *Congregate housing.*

a *Tenant mix.* It is the primary intent of a congregate housing project to provide or arrange for service packages made up of various component services to serve the needs of tenants needing such services. If it is not feasible to provide service packages to all tenants, the borrower may serve tenants needing services and tenants not needing services. The number of tenants that can be served with service package(s) will be described in the project management plan. Project management should be consulted when establishing the tenant mix. The plan should establish a percentage of tenants who will use a service package with a greater number of component services as differentiated from tenants whose service package will contain fewer services. As existing tenants age and new tenants move in, the percentage may fluctuate. Farmers Home Association must concur with the proposed plan.

b *Selecting services needed or wanted by tenants in congregate housing.*

(1) It is the borrower's responsibility to inform applicants or tenants about the supportive services provided at or by the congregate project. Such services or service packages need to be identified on the project's application form as part of an application package.

(2) It is the applicant's or tenant's responsibility to identify and request the services or service package provided by the project which that person desires or needs.

(3) The borrower may have the applicant/tenant provide only such essential information about the person's desire for provided service(s) to determine whether the project provides the services desired by the applicant/tenant and/or to determine how to best serve the applicant's/tenant's request for services with reasonable accommodation, referral services, etc. The essential information may include an explanation by the applicant/tenant. In the case of a group home, it may also include an assessment by a professional medical examiner or practitioner, social service caseworker, representative of an advocacy group, member of the clergy, etc. that the tenant/applicant provides to support the application for housing and services.

c *Waiting lists.* To sustain the number of tenants requesting services, management may maintain waiting lists for tenants requesting large component service packages, small component service packages, and those wanting a service package at a later time. Management may choose tenants from the lists in such manner to maintain the feasibility in providing services, however, priority in tenant selection should go to an applicant requesting a service package over one requesting a service package at some later date. The other provisions contained in paragraph VI H of Exhibit B of this subpart concerning waiting lists are applicable.

2 *Group home.* A group home may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants. This limitation will be outlined in the borrower's management plan. The following will apply to group homes.

a Applicants for group home housing must demonstrate their need for such housing.

b Tenants of group homes cannot be required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or other organization.

c Tenants should be selected from the local area before considering other areas.

C *Determining per unit rental rates for group living arrangements.* A "unit" in a group home consists of the space occupied by a specific tenant household. It may be a traditional apartment unit, a bedroom, or a portion of a bedroom. Rents are determined as follows:

1 When all units are of equal size, divide operational costs equally.

2 When all units are not of equal size, determine the size of each unit and divide operational costs accordingly.

a The size of traditional units is their square footage.

b The size of nontraditional units is the bedroom or portion of bedroom occupied by the household and portion of the common area to be used by all potential units in nontraditional units.

3 A unit occupied by a resident assistant is not considered a revenue producing unit and would be excluded from the rent determination.

VII *Verification and Certification of Tenant Income, and/or Employment and Review of Support Services:* The provisions of paragraph VII of Exhibit B of this subpart apply. In addition to recertifying income, management should consult with each tenant to explain the available support services and determine if the tenant desires any available services not presently used and/or if any other practical and feasible accommodations can be provided to the tenant.

VIII *Lease Agreements:* In addition to the conditions contained in paragraph VIII of Exhibit B of this subpart, the following should be addressed:

A *Tenants who request services in congregate housing.* If a tenant requests services, the lease must contain the following clauses:

1 "I understand that use of the service package I have selected is not mandatory, and if I later choose to modify or not renew my service contract, such action on my part will not cause default under the terms of this lease agreement. I further understand and agree that I may not use any aspect of dissatisfaction with my service contract as grounds to withhold rents due under the terms of this lease agreement."

2 "The lessor warrants that the following basic services will be made available to all tenants for a fee separate and apart from any rent described in the terms of this lease. The basic services are: _____. If these services cannot later be provided, such failure or inability to provide the services will not constitute a breach of this lease agreement and the lessor will hold the tenant harmless should the tenant elect to terminate this lease on the grounds that provision of these services was cause for the tenant to apply for and accept occupancy in this congregate housing project."

B *Services provided to people other than tenants of FmHA financed congregate housing.* If the meal facility serves people other than the tenants of the project, the borrower must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt services and reserve account attributable to the portion of increased space that is in excess of the needs of the tenants in the project. Tenants of the congregate housing must have priority in receiving the services. When the facilities are provided with loan funds, the following conditions must be met:

1 The services to be provided and the fees to be charged (if any) must be fully documented in the service plan, if provided by the applicant, or in the service plan and lease agreement if the services will be provided by others.

2 Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement: "This agreement will not be effective until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative."

IX *Rent Collection:* The provisions of paragraph IX of Exhibit B of this subpart will apply for services as well as rent. Tenants must pay charges for the services as documented in their lease. The payment for rent or services may be made separately or combined; however, payments for rent and services must be accounted for separately.

X *Borrower Project Budgets:* Borrowers must separate the revenue and expenses of project operations from the service component. Form FmHA 1930–7, "Multiple Family Housing Project Budget," must reflect project operations only. Also, if project employees provide any part of the services, the project operation budget and the services budget must reflect the proration of employee compensation between the respective budgets as further described in Exhibit E of subpart E of part 1944 of this chapter.

XI *Accounting and Reporting Requirements and Financial Management Analysis:* Borrowers must maintain separate financial records for the operation and maintenance of the project and the service component. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of services, nor may service component funds be used to supplement the project operation and maintenance. Detailed financial reports on the service component will not be required unless specifically requested by FmHA, and then only to the extent necessary for FmHA and the borrower to discuss the affordability (and competitiveness) of the service component by the tenant base in keeping

with the objective stated in paragraph II of this exhibit. The project audit, or verification of accounts on Form FmHA 1930–8, "Multiple Family Housing Balance Sheet," together with an accompanying Form 1930–7 showing actuals, must allocate revenue and expense between project operations and the service component.

XII *Termination of Tenancy and Eviction.* In keeping with the spirit and provisions of the Fair Housing Amendments Act of 1988, a tenant living in congregate or group home housing project may remain as long as they are eligible to occupy and the tenant expresses or otherwise maintains they can care for themself with or without services provided by the project, or by familial or social services from outside the project. Tenants are otherwise bound by the terms of their lease and their occupancy may be terminated only according to the provisions contained in paragraph XIV of Exhibit B of this subpart.

## PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

**Authority:** 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

## Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

### § 1944.153 [Amended]

4. Section 1944.153 is amended in the definition of "Familial status" by adding the words "Exhibit B of" after the word "or"; in the definition of "Farm owner" by removing the quotation marks around the word "owners" and by revising the words "these two terms are" to read "this term is"; in the definition of "Handicap" by revising the term "Handicap" to read "Individual with handicap," by adding the words "Exhibit B of" after the word "See," and by inserting this definition in alphabetical order; and in paragraph (3)(i) of the definition of "Substantial portion of income" by removing the words "and exempted income" and the words "A, B, and C" by revising the word "are" to read "is," and by adding the words "under the terms annual income (describing inclusive and exempted income), adjusted annual income, and adjusted monthly income" after the word "defined".

5. Section 1944.169 is amended by revising the heading of paragraph (i) and by revising paragraph (i) (2) to read as follows:

### § 1944.169 Technical, legal, and other services.

* * * * *

(i) *Surety bonding and fidelity coverage.*

* * * * *

(2) If the applicant is an organization, it will provide fidelity coverage for any personnel entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable personal property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described at paragraph XV A of Exhibit B of subpart C of part 1930 of this chapter.

* * * * *

6. Section 1944.170 is amended by adding introductory text to read as follows:

### § 1944.170 Processing preapplications.

When an applicant indicates an intent in filing a preapplication, the District Director should schedule a preapplication conference to review program objectives and to provide copies of appropriate exhibits and forms, including those listed at § 1930.141 of subpart C of part 1930 of this chapter; furnish guidance necessary for orderly application processing; and initiate a processing checklist for use in establishing a schedule for completion of docket items.

* * * * *

## Exhibit B of Subpart D of Part 1944—[Amended]

7. Exhibit B of subpart D of part 1944 is amended by revising in paragraph 13 the words "Exhibit F of subpart C of part 1930 of this chapter. (FmHA Instruction 1930–C, Exhibit C)" to read "Exhibit C of subpart C of part 1930 of this chapter" and by revising in paragraph 14 the words "Non-Discrimination Agreement" to read "Assurance Agreement."

## Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

8. Section 1944.205 is amended by revising in the first sentence of the definition for "Eligible tenants or cooperative members" the words "Elderly, handicapped, or disabled persons" to read "Persons who are elderly, or have handicaps or disabilities"; by revising in the first sentence of the definition for "Initial operating capital" the word "bond" to read "coverage"; by revising in paragraph (4) of the definition for "Private nonprofit corporation" the word "municipal" to read "public"; by removing the definitions for "Disabled" and "Handicap"; by adding alphabetically the definitions for "Individual with disability", "Individual with handicap" and "Loans to build or acquire new units"; and by revising the definitions for "Congregate housing", "Consumer cooperative", "Elderly (Senior Citizen)", "Elderly family", "Group home", "Limited equity", "Resident assistant", "Service agreement" and "Service plan" to read as follows:

### § 1944.205 Definitions.

* * * * *

*Congregate housing.* Residential housing, for persons or families who are elderly, have handicaps or disabilities, consisting of private apartments and central dining facilities in which a number of specific pre-established services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them with their own financial, familial or social resources.

*Consumer cooperative.* A corporation which:

(1) Is organized under the cooperative laws of a State or Federally recognized Indian tribe;

(2) Will own and operate the housing on a cooperative basis solely for the benefit of the members;

(3) Will operate at cost and, for this purpose, any patronage refunds accruing to members as defined in § 1944.205 of this subpart will not be considered gains or profits; and

(4) Will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA permit, to others in special circumstances.

* * * * *

*Elderly (Senior Citizen).* A person who is a least 62 years old. The term elderly (senior citizen) also means individuals with handicaps or disabilities as separately defined in this section, regardless of age.

*Elderly family.* A household where the tenant, cotenant, member or comember (individual) is a least 62 years old, disabled, or handicapped as defined separately in this section. An elderly family may include a person(s) younger than 62 years of age who is essential to the care and well-being of the person who is elderly, disabled, and/or handicapped. (To receive an elderly family deduction, the person who is elderly, or has disabilities or handicaps must be the tenant, cotenant, member or comember.)

* * * * *

*Group home.* Housing that is occupied by tenants who are elderly, or

have handicaps, or disabilities sharing living space within a rental unit in which a group home resident assistant may be required.

* * * * *

*Individual with disability.* A person is considered disabled if the person meets the criteria of either of the following:

(1) The person has an inability to engage in any substantial gainful activity, but with use of auxiliary aids apparatus can otherwise participate in gainful activity, by reason of any medically determinable physical or mental impairment where the disability:

(i) Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death, and

(ii) Substantially impedes the ability to live independently, and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(iv) In the case of a sight impaired person who is at least 55 years old (within the meaning of sight impairment as determined in section 223 of The Social Security Act), is unable, because of the sight impairment, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

(v) Receipt of veteran's benefits or Social Security Disability Payments for disability, whether service oriented or otherwise, does not automatically establish disability.

(2) The person has a developmental disability; a severe, chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairment; and

(ii) Was manifested before age 22; and

(iii) Is likely to continue indefinitely; and

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency.

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

*Individual with handicap.* (1) A person with a physical or mental impairment that:

(i) Is expected to be of long-continued and indefinite duration: and

(ii) Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

(2) The term handicap further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current illegal use of or addiction to a controlled substance. As used in this definition:

(i) Physical or mental impairment includes:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special senses organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatics; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and special learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, acquired immunodeficiency syndrome (AIDS), mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more of major life activities.

(iv) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has one of the impairments defined in paragraphs (2)(i)(A) and (2)(i)(B) of this definition but is treated by another person as having such an impairment.

* * * * *

*Limited equity.* The amount of funds which have accumulated in the cooperative member's patronage capital account (defined in § 1944.205) and as described in Exhibit H of this subpart.

* * * * *

*Loans to build or acquire new units.* Any initial or subsequent loan made on or after December 15, 1989, to build or acquire new RRH units. Loans under this category may not be prepaid for the term of the mortgage.

* * * * *

*Resident assistant.* A person(s) residing in a tenant's housing unit who is essential to the well-being and care of person(s) who are elderly, or have handicaps or disabilities residing in the unit but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant is not a chore service worker. A resident assistant may function in any type of housing affected by this subpart.

*Service agreement.* A written agreement between the borrower and service provider detailing the specific service to be provided, the cost of the service and length of time the service will be provided.

*Service plan.* A written plan describing how services will be provided to a FmHA financed project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

* * * * *

9. Section 1944.211 (a)(6)(iv) is revised to read as follows:

**§ 1944.211 Eligibility requirements.**

(a) * * *

(6) * * *

(iv) If the borrower provided the initial 2 percent operating capital from its own funds, the State Director may, in accordance with subpart C of part 1930 of this chapter, authorize the borrower to make a one-time withdrawal from project funds. The borrower must request in writing the withdrawal after

2 years, but before 5 full (12-month) borrower fiscal years of operation.

* * * * *

**§ 1944.215 [Amended]**

10. Section 1944.215 is amended by adding in paragraph (b)(5) the words "measures and practices" at the end of the first sentence; by revising in paragraph (b)(6) in the first sentence the words "handicapped tenants" to read "tenants with handicaps," in the second sentence the words "physically handicapped persons" to read "persons with physical handicaps," and in the third sentence the words "handicapped people" to read "people with handicaps"; by revising in paragraph (b)(7) the words "Amendments Act of 1988" to read "Act"; and by adding in paragraph (c)(5)(ii) the words "Multiple Family Housing" before the word "Interest."

11. Section 1944.222 is amended by revising the heading of paragraph (k) and by revising paragraph (k)(2) to read as follows:

**§ 1944.222 Technical, legal, and other services.**

* * * * *

(k) *Surety bonding and fidelity coverage.*

* * * * *

(2) If the applicant is an organization, it will see that fidelity coverage is in place on any personnel entrusted with the receipt, custody and disbursement of any project monies, securities, or readily salable property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described at paragraph XV A of Exhibit B of subpart C of part 1930 of this chapter.

* * * * *

12. Section 1944.224 is amended as follows:

a. By revising in the first sentence of paragraph (a)(5)(iii) the word "require" to read "request";

b. By revising in the first sentence of paragraph (a)(5)(iv) the words "need them to remain independent" to read "request them";

c. By revising in the last sentence of paragraph (a)(7) the word "IV" to read "V D"; by revising in the last sentence of paragraph (a)(8) the words "VII C" to read "VIII B"; by revising in paragraph (c)(5) the word "§ 1944.224(a)(6)" to read "paragraph (a)(6)"; and

d. By revising the third and eighth sentences of the introductory text of this section, the first sentence of the introductory text of paragraph (a), paragraph (a)(1), the fourth sentence of the introductory text of paragraph (a)(2), the first sentence of paragraph (a)(2)(i), the first sentence of paragraph (a)(2)(iii), paragraph (a)(2)(vi), the first, second, third and fourth sentences of paragraph (a)(4), the second sentence of the introductory text of paragraph (a)(5), the first and second sentences of the introductory text of paragraph (b), paragraph (b)(1)(iv), paragraph (b)(2), paragraph (b)(7), and the first two sentences of paragraph (c)(2) to read as follows:

**§ 1944.224 Supplemental requirements for congregate housing and group homes.**

* * * Congregate housing and group homes are types of Section 515 RRH that require a broader commitment from applicants to ensure that needed and desired services will be provided when requested by prospective tenants. * * * The management of congregate housing requires supervision of support services and more interaction and consultation with tenants. * * *

(a) *Congregate housing.* Congregate housing will create an environment that will assist individuals who request services to maintain their independence longer by making available nutritious meals and other services that can help enhance their independence. * * *

(1) *Eligible tenants.* Eligible tenants are described in § 1944.205 of this subpart and paragraph VI A of Exhibit J of subpart C of part 1930 of this chapter.

(2) * * * Congregate housing must be planned and developed in accordance with Subparts A and C of part 1924 of this chapter. * * *

(i) Applicants must pay particular attention to the site requirements contained in § 1944.215 (r) of this subpart. * * *

* * * * *

(iii) The design must accommodate the needs of the individuals the housing is designed to serve. * * *

* * * * *

(vi) The entrances to all living units must be on a route accessible to individuals with handicaps. Living units accessible only via exterior steps or interior stairs will not be acceptable.

* * * * *

(4) *Management of congregate projects.* Applicants must meet the provisions of Exhibit J of subpart C of part 1930 of this chapter in managing congregate housing and are encouraged to review Exhibit J before completing a loan application. In addition to the elements of managing a typical RRH project, congregate housing requires increased management experience and skills. Delivery of services, counseling with tenants, and the decisionmaking process of tenant selection add a unique dimension to prudent management. The success or failure of a project will rely heavily upon management's specialized management and marketing skills and abilities and delivery of services. * * *

(5) * * * Adequate services must be offered to assist tenants in living independently and be reasonably priced to ensure affordability by very low- and low-income tenants of the tenant base as defined in paragraph III of Exhibit J of subpart C of part 1930 of this chapter. * * *

* * * * *

(b) *Group homes.* Group homes will provide housing in a residential environment for individuals capable of caring for themselves in the basic functions of everyday living but otherwise need the direction and/or assistance of a trained resident assistant. Group homes may be designed for individuals who are elderly, have handicaps, or disabilities as defined in § 1944.205 of this subpart. * * *

(1) * * *

(iv) The entrances to all living units must be on a route accessible to handicapped persons.

(2) Prospective tenants must be evaluated to determine if they meet the essential eligibility requirements to reside in a group home. Applicants should be guided by paragraph VI B 1 b of Exhibit J of subpart C of part 1930 of this chapter.

* * * * *

(7) A legal guardian (an individual) may execute a lease agreement on behalf of a tenant in a group home when that tenant does not possess the legal capacity to enter into a legal contract with the project owner.

* * * * *

(c) * * *

(2) An expanded market area may be considered only when the additional communities are part of the trade area and are so rural that they cannot support development of a congregate or group home facility. If an expanded market area is proposed, the market study must establish conclusively that the community will be able to draw enough tenants from the market area to ensure feasibility of the project. * * *

* * * * *

13. Section 1944.235 is amended in paragraph (h) by removing the words "Prerent-up or" in the heading and by revising in the first sentence of the introductory text the words "soon after loan approval" to read "90 to 120 days prior to the construction completion date"; by removing in the last sentence of paragraph (h)(1) the words after the

comma and adding the words "the budget and rent schedule will be revised by the borrower and approved by the loan approval official"; by adding at the end of the first sentence of paragraph (h)(2) the words "determined least likely to apply for the available housing"; and by removing in the first sentence of paragraph (h)(3) the words "anticipated occupancy results" and by revising in the last sentence of paragraph (h)(3) the words "FmHA compliance officer" to read "civil rights coordinator."

14. Section 1944.239 is amended by revising the introductory text and paragraph (c) and by adding paragraph (d) to read as follows:

**§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH and RCH.**

Any tenant/member or prospective tenant/member seeking occupancy or use of RRH, RCH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, familial status, handicap or national origin may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC, 20410, or any HUD office, or to the Administrator, FmHA, USDA, Washington, DC 20250. If a complaint is made to an FmHA County, District or State Office, it must be directed to the Director of Equal Opportunity Staff (EOS), National Office, by the FmHA employee in charge of that office. When a complaint is sent to FmHA-EOS by a county or district office, the State Director will be made aware of the complaint.

* * * * *

(c) Participants in FmHA's housing program failing to comply with the requirements of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. Victims of discriminatory housing practices may seek reparations from HUD or by private lawsuit.

(d) All complaints will be handled in accordance with prescribed procedure.

**Exhibit A of Subpart E of Part 1944—[Amended]**

15. Exhibit A of subpart E of part 1944 is amended by revising in paragraph III C the words "Review of Preapplication Action" to read "Preapplication Review Action"; by revising in the third sentence of paragraph IV B 5 a the word "bond" to read "coverage"; by revising in paragraph IV B II c the words "Statement of Budget and Cash Flow" to read "Multiple Family Housing Project Budget" and by adding the words "of this subpart" after the word "A–6"; by removing in paragraph IV 16 a (1) the words "marital or"; and by revising in paragraph IV 16 b the words "Exhibits B–10 and B–10A to" to read "Exhibit J of."

**Exhibit A–6 of Subpart E of Part 1944—[Amended]**

16. Exhibit A–6 of subpart E of part 1944 is amended by adding the words "Effective Date _____" under the heading.

**Exhibit E of Subpart E of Part 1944—[Amended]**

17. Exhibit E to subpart E of part 1944 is amended in paragraph II by removing the last sentence.

**Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure**

18. Section 1944.552(a) is revised to read as follows:

**§ 1944.552 Definitions.**

(a) *Applicant.* A person who has submitted an application for occupancy in a RRH, RCH, or LH project, and is not a tenant or member. This includes persons who have been denied an application for admission.

* * * * *

**§ 1944.553 [Amended]**

19. Section 1944.553(e) is amended by revising the words "paragraph XIV B" to read "paragraph XIV C."

20. Section 1944.544(b) is revised to read as follows:

**§ 1944.554 Reasons for grievance and appeal.**

* * * * *

(b) *Applicant.* Grievance and appeal procedure provides an appeal right for a person whose application for admission to occupancy in an RRH or LH project has been rejected, as well as for a person who has been denied an application for admission. This appeal right does not apply to those persons who are clearly not eligible for occupancy under FmHA regulations.

**PART 1951—SERVICING AND COLLECTIONS**

21. The authority citation for part 1951 is revised to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; and 7 CFR 2.70.

**Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing**

22. Section 1951. 506 is amended as follows:

a. By revising in the first sentence of paragraph (a)(3) the word "20th" to read "11th", and by adding the word "(RA)" after the word "assistance" in the last sentence; by revising in paragraph (a)(5)(i) the words "for which payment is due" to read "prior to the payment due date";

b. By revising in paragraph (a)(5)(ii) the words "rental assistance" to read "RA"; by revising in paragraph (a)(5)(iii) the words "VII F" to read "VII F 6 c";

c. By revising in paragraph (c) the words "subpart B of this part" to read "subpart B of part 1951 of this chapter", and

d. By revising paragraphs (a)(1), (a)(2), and (a)(5)(v) and by adding paragraph (a)(7) to read as follows:

**§ 1951.506 Processing payments.**

(a) * * *

(1) All payments will be based on tenants occupying the units as of the first day of the month prior to the payment due date. For example, a payment due on July 1 is based on tenants occupying the units June 1. For the purposes of this subpart, the word "tenant" also means RCH "member."

(2) The borrower must deliver all Forms FmHA 1944–8, "Tenant Certification," or for tenants receiving Section 8 assistance, the acceptable Department of Housing and Urban Development (HUD) form to the District Director according to paragraph VII F 1 of Exhibit B to subpart C to part 1930 of this chapter. The District Director will date stamp each certification and will verify the information on the tenant certification also as required in paragraph VII F of Exhibit B to subpart C of part 1930 of this chapter. The data from the tenant certifications must be entered into the Multi-Family Housing Tenant File System (MTFS) which will calculate the tenant's rent payment.

(i) If the calculations on the tenant certification do not agree with MTFS, the District Office will contact the borrower/management to resolve the discrepancy. MTFS calculations will be used to calculate interest credit and rental assistance due the borrower.

(ii) A copy of MTFS "Project Worksheet—Interest Credit and Rental Assistance," an automated printout, will be generated and compared to the borrower's Form FmHA 1944–29, "Project Worksheet for Interest Credit

and Rental Assistance." Only tenants with current tenant certifications shown on MTFS will be certified for interest credit or rental assistance when processing payments.

(iii) A copy of the monthly MTFS project worksheet report will be filed with Form FmHA 1944–29 to document the approved subsidies.

(iv) At the borrower's request, a copy of the MTFS project worksheet report may be used as Parts I and II in lieu of Form FmHA 1944–29. The District Office will provide a copy of the MTFS project worksheet report to the borrower about the 20th of the month. When using the MTFS project worksheet report as Parts I and II of Form FmHA 1944–29, the borrower will verify the data, sign the MTFS project worksheet report, and return it with the monthly payment to the District Office. Borrowers using the MTFS project worksheet report as Part II, only, will complete, sign, and attach Part I of Form FmHA 1944–29 to the MTFS project worksheet report, before returning it with the monthly payment. Borrowers with Section 8 units who are reporting overage payment, and/or excess HUD contract rent to the reserve account are required to complete Part I of either Form FmHA 1944–29 or the MTFS project worksheet report.

* * * * *

(5) * * *

(v) The borrower may subtract any RA due the project (supported by current tenant certifications) from the payment due and remit a "net" payment. Calculations supporting the "net" payment must be shown on Part I of Form FmHA 1944–29. The Finance Office will net enough RA to bring the account status current and pay any unpaid overage, late fees, occupancy surcharges, interest on delinquent principal, etc., based on the payment reception date. If the account is on or ahead of schedule on the payment reception date, enough RA will be netted to pay one full installment and any unpaid coverage, occupancy surcharge, interest on delinquent principal, etc.

* * * * *

(7) Payment input by FmHA will be based on correct amounts regardless of the amount remitted by the borrower.

* * * * *

23. Section 1951.507(e) is revised to read as follows:

**§ 1951.507 Maintaining borrower accounts.**

* * * * *

(3) *District Office monitoring.* District Offices should review each account at least monthly by accessing the Automated Multi-Housing Accounting System (AMAS) through field office terminals. For projects on PASS, the Management System card will be flagged with an orange signal between Position "5" and "RRH." Exhibit A–1 of this subpart (available in any FmHA office) should be used to track payments.

24. Section 1951.510 is amended by adding in the first sentence of the introductory text of paragraph (c)(2) the words "close of business of" after the words "District Office by" and by revising paragraph (c)(1), by redesignating paragraph (c)(3) as (c)(4) and revising the newly redesignated (c)(4), and by adding a paragraph (c)(3) to read as follows:

**§ 1951.510 Payment application.**

* * * * *

(c) * * *

(1) A loan payment is due on the first day of a month. A loan payment is considered past due when it is received on the second day or a subsequent day through the close of business of the tenth day of the month. A loan payment is late when it is received after normal business hours of the tenth day of the month, without regard to weekends, holidays or payment transmission factors. Thereafter, a late fee will be charged as described in paragraphs (c)(2) and (c)(4) of this section.

* * * * *

(3) A project is considered delinquent on the 30th day of the month when any due amount is unpaid.

(4) When a regular PASS payment continues to be delinquent on the first of the month following the delinquent payment due date, interest will be charged on the unpaid delinquent principal at the note rate from the date the principal was due until all regular payments, recoverable cost charges, late fees, and occupancy surcharges have been paid current in accordance with the number of full installments required by the promissory note. This interest will be in addition to the scheduled interest of the regular payment. The interest on delinquent principal will be added to the regular payment amount due for the month.

* * * * *

25. Section 1951.512 is amended by adding the phrase "by the AMAS Coordinator" at the end of the last sentence.

26. Section 1951.517 is amended by revising in paragraph (a) the words "will be converted on May 1, 1985" to read "was converted", and by revising paragraphs (b)(3)(ii) and (b)(4) to read as follows:

**§ 1951.517 Conversion from DIAS to PASS.**

* * * * *

(b) * * *

(3) * * *

(ii) When the borrower will continue to receive interest credit following conversion, the current interest credit plan type will be passed through to the PASS loan. However, a new Form FmHA 1944–7 must be prepared to reflect the PASS payment and subsidy amount.

* * * * *

(4) *Principal balance to be converted.* For transfers and reamortizations, the applicable transfer or reamortization form will convert the account to PASS. The principal balance converted to PASS will be established according to the FMI for Forms FmHA 1965–9, FmHA 1965–10, "Information on Assumption of Multiple Family Housing Loans," or FmHA 1965–16, and the following:

(i) For DIAS to PASS transactions (new terms):

(A) First of the month closings: The unpaid interest, overage, occupancy surcharge and late fees accrued through the last day of the previous month will be capitalized.

(B) Other than the first of the month closing: Accrued interest, overage, occupancy surcharge and late fees through the date of closing will be capitalized. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and applied to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(ii) For DIAS to PASS transactions (same terms):

(A) First of the month closings: Accrued interest, overage, occupancy surcharge and late fees through the last day of the previous month will be collected from the transferor at closing and credited to the transferor's account.

(B) Other than the first of the month closings: Accrued interest, overage, occupancy surcharge and late fees through the date of closing will be collected from the transferor at closing and credited to the transferor's account. The date of credit is the day before closing. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and credited to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(iii) Reamortizations will always be effective the first day of the month.

Unpaid interest, including any unpaid overage, occupancy surcharge and late fees may be capitalized as follows: DIAS to PASS transactions, through the last day of the previous month; PASS to PASS transactions, through the 30th day of the previous month.

(iv) Audit receivables may not be transferred or reamortized. They will be established as a "Collection Only" account for the transferor and must be collected or charged off.

* * * * *

**Exhibit B of Subpart K of Part 1951—[Amended]**

27. Exhibit B of subpart K of part 1951 is amended in the last sentence of paragraph XV C by revising the words "VII F 5 b" to read "VII F 6 c."

**PART 1965—REAL PROPERTY**

28. The authority citation for part 1965 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

**Subpart B—Security Servicing for Multiple Housing Loans**

**§ 1965.61 [Amended]**

29. Section 1965.61 is amended in the introductory text of paragraph (e)(2) by removing the words "laundries, commissary stores" and by revising in paragraph (e)(2)(iv) the words "1 year" to read "3 years."

**§ 1965.65 [Amended]**

30. Section 1965.65 is amended in paragraph (b)(11) by revising the word "§ 1930.124" to read "§ 1930.122."

**Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans**

**§ 1965.204 [Amended]**

31. Section 1965.204(b) is amended in the first sentence by revising the words "paragraphs IV C and V B" to read "paragraph IV B."

**§ 1965.214 [Amended]**

32. Section 1965.214(f)(2) is amended in the first sentence by revising the word "IV A 2 e" to read "IV A 2 d."

Dated: July 2, 1993.

**Bob Nash,**

*Undersecretary for Small Community and Rural Development.*

[FR Doc. 93–17299 Filed 7–29–93; 8:45 am]

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Part III

# Department of Education

34 CFR Part 303

Early Intervention Program for Infants and Toddlers With Disabilities; Final Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 303

RIN 1820-AA97

## Early Intervention Program for Infants and Toddlers With Disabilities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations that govern the Early Intervention Program for Infants and Toddlers with Disabilities. These final regulations are needed to implement the Individuals with Disabilities Education Act Amendments of 1991. The regulations incorporate statutory changes and provide rules for applying for and spending Federal funds under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FURTHER INFORMATION CONTACT: Peggy Cvach or Bobbi Stettner-Eaton, U.S. Department of Education, 400 Maryland Avenue, SW (Switzer Building, rooms 4609 and 4618, respectively), Washington, DC 20202-2732, Telephone: (202) 205-9807 and (202) 205-8828, respectively. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement the Individuals with Disabilities Education Act Amendments of 1991, Pub. L. 102-119 (enacted October 7, 1991), as that statute affects the program authorized by Part H of the Individuals with Disabilities Education Act. The 1991 amendments to the Part H program were enacted to promote a seamless system of services for children with disabilities from birth through five years of age and their families.

The amendments to Part H are an important step forward in addressing the National Education Goals. Specifically, the amendments address Goal 1, that all children will start school ready to learn.

On May 1, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for the Part H program in the Federal Register (57 FR 18986). This document included a summary of (1) the major provisions of the 1991 statutory amendments that were incorporated in the NPRM, (2) regulations proposed to implement those statutory provisions, and (3) other regulations proposed to update, clarify, and in other ways improve the rules for the Part H program. See 57 FR 18986-18990.

### Major Changes in the Regulations

The major differences between the NPRM and these final regulations are the following:

*Section 303.12 Early Intervention Services*

The definition of "assistive technology services" in paragraph (d)(1) of this section has been revised to conform the language to the scope of the Part H program. Paragraph (d)(1)(vi) has been revised (1) to delete references to "education or rehabilitation" services and substitute "early intervention" services, and (2) to delete references to the employment of the individuals with disabilities served by the program.

In the definition of "physical therapy," paragraphs (d)(9) (ii) and (iii) have been amended to add references to "treatment" and to services to "compensate for" functional problems in order to encompass physical therapy for children whose conditions can be neither prevented nor alleviated.

*Section 303.16 Infants and Toddlers With Disabilities*

Note 1 after the text of this section relates to children who need early intervention services because they have "a diagnosed physical or mental condition that has a high probability of resulting in developmental delay." The proposed language of Note 1 has been amended by striking the second paragraph, relating to a combination of factors. Only children who have one or more conditions that, considered separately, have a high probability of resulting in developmental delay fall within the quoted language, as is the case under current regulations.

Note 2 after the text of § 303.16 relates to children who are at risk of having substantial developmental delays if early intervention services are not provided and who may be served at a State's discretion. Proposed Note 2 is amended by referring to biological and "environmental" rather than "other" identifiable factors that place infants and toddlers at risk.

*Section 303.148 Transition to Preschool Programs*

Paragraph (b)(2) of this section has been revised to provide that the statutorily-required conference among the lead agency, the family, and the local educational agency or unit must be convened at least 90 days before the child's third birthday or, if earlier, the date on which the child is eligible for the Part B preschool program under State law.

*Section 303.321 Comprehensive Child Find System*

Paragraph (c)(1) of this section, which lists some programs that may locate and identify children in need of early intervention services, has been revised to add a reference to the Supplemental Security Income program under Title XVI of the Social Security Act.

*Section 303.342 Procedures for IFSP Development, Review, and Evaluation*

Paragraph (e) of this section has been revised to clarify that if parents withdraw consent to a particular early intervention service after first providing consent, that service may not be provided. In addition, a parallel change has been made in § 303.405—Parent right to decline service.

*Section 303.344 Content of an IFSP*

Paragraph (e)(1)(ii) of this section has been revised to require that the IFSP include, for the non-required services that are listed in that document, either the funding sources to be used in paying for those services or the steps that will be taken to secure them through public or private sources. A conforming change has been made to the language in the note following § 303.13.

*Section 303.404 Parent Consent*

Note 2 following the text of this section has been revised to clarify that a public agency may initiate procedures to challenge a parent's refusal to consent to the child's initial evaluation and, if successful, permit the evaluation to proceed.

*Section 303.510 Adopting Complaint Procedures*

This section has been revised to allow the lead agency to provide that all complaints must be filed with it or that complaints may also be filed with another public agency subject to a right of appeal to the lead agency. Conforming changes have been made to the note following this section, to § 303.511, and to § 303.512(a). In addition, the reference to an independent on-site investigation in § 303.512(a)(1) has been expanded to

include the material in proposed § 303.510(c) concerning such an investigation. Finally, § 303.512 has been revised to provide clarifications that parallel those in § 300.661 of regulations adopted on September 29, 1992 (57 FR 44794, 44829), under Part B of the Act.

*Section 303.520 Policies Related to Payment of Services*

The final regulations do not include the requirement in proposed paragraph (b)(4)(ii) of this section that a State that determines not to charge fees for early intervention services include an explanation for this determination in its policies. The requirement in proposed paragraph (b)(4)(i), which is taken from current § 303.13, is retained with conforming editorial changes.

*Analysis of Comments and Changes*

In response to the Secretary's invitation in the NPRM, 173 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes that have been made in the regulations since publication of the NPRM is published as an appendix to these final regulations. Comments on provisions outside the scope of the proposed regulations will be considered in any future rulemaking for the Part H program.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on the processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**List of Subjects in 34 CFR Part 303**

Education, Education of individuals with disabilities, Programs-Education, Medical personnel, State educational agencies.

Dated: May 6, 1993.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.181, Early Intervention Programs for Infants and Toddlers with Disabilities)

The Secretary amends title 34 of the Code of Federal Regulations by revising part 303 to read as follows:

## PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

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**Authority:** 20 U.S.C. 1471–1485, unless otherwise noted.

## Subpart A—General

### Purpose, Eligibility, and Other General Provisions

**§ 303.1 Purpose of the early intervention program for infants and toddlers with disabilities.**

The purpose of this part is to provide financial assistance to States to—

(a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency program of early intervention services for infants and toddlers with disabilities and their families;

(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

(c) Enhance the States' capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

(d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city, and rural populations.

(Authority: 20 U.S.C. 1471)

**§ 303.2 Eligible recipients of an award.**

Eligible recipients include the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Secretary of the Interior, and the following jurisdictions: Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658).

(Authority: 20 U.S.C. 1401(a)(6), 1484)

**§ 303.3 Activities that may be supported under this part.**

Funds under this part may be used for the following activities:

(a) To plan, develop, and implement a statewide system of early intervention services for children eligible under this part and their families.

(b) For direct services for eligible children and their families that are not otherwise provided from other public or private sources.

(c) To expand and improve on services for eligible children and their families that are otherwise available, consistent with § 303.527.

(d) To provide a free appropriate public education, in accordance with Part B of the Act, to children with disabilities from their third birthday to the beginning of the following school year.

(Authority: 20 U.S.C. 1473, 1479)

**§ 303.4 Limitation on eligible children.**

This part 303 does not apply to any child with disabilities receiving a free appropriate public education, in accordance with 34 CFR part 300, with funds received under 34 CFR part 301.

(Authority: 20 U.S.C. 1419(g))

**§ 303.5 Applicable regulations.**

(a) The following regulations apply to this part:

(1) The Education Department General Administrative Regulations (EDGAR), including—

(i) Part 76 (State Administered Programs), except for § 76.103;

(ii) Part 77 (Definitions that Apply to Department Regulations);

(iii) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

(iv) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(v) Part 81 (Grants and Cooperative Agreements under the General Education Provisions Act—Enforcement);

(vi) Part 82 (New Restrictions on Lobbying);

(vii) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Work Place (Grants)); and

(viii) Part 86 (Drug-Free Schools and Campuses).

(2) The regulations in this part 303.

(3) The following regulations in 34 CFR part 300 (Assistance to States for Children with Disabilities Program): §§ 300.560 through 300.576, and §§ 300.581 through 300.586.

(b) In applying the regulations cited in paragraphs (a)(1) and (a)(3) of this section, any reference to—

(1) *State educational agency* means the lead agency under this part;

(2) *Special education, related services, free appropriate public education, free public education,* or *education* means "early intervention services" under this part;

(3) *Participating agency,* when used in reference to a local educational agency or an intermediate educational agency, means a local service provider under this part;

(4) Section 300.128 means §§ 303.164 and 303.321; and

(5) Section 300.129 means § 303.460.

(Authority: 20 U.S.C. 1401–1418, 1420, 1483)

**Definitions**

**Note:** Sections 303.6–303.24 contain definitions, including a definition of "natural environments" in § 303.12(b)(2), that are used throughout these regulations. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections in which they are defined:

Appropriate professional requirements in the State (§ 303.361(a)(1))
Assessment (§ 303.322(b)(2))
Consent (§ 303.401(a))
Evaluation (§ 303.322(b)(1))
Frequency and intensity (§ 303.344(d)(2)(i))
Highest requirements in the State applicable to a profession or discipline (§ 303.361(a)(2))
Individualized family service plan and IFSP (§ 303.340(b))
Impartial (§ 303.421(b))
Location (§ 303.344(d)(3))
Method (§ 303.344(d)(2)(ii))
Native language (§ 303.401(b))
Personally identifiable (§ 303.401(c))
Primary referral sources (§ 303.321(d)(3))
Profession or discipline (§ 303.361(a)(3))
Special definition of "aggregate amount" (§ 303.200(b)(1))
Special definition of "infants and toddlers" (§ 303.200(b)(2))
Special definition of "State" (§ 303.200(b)(3))
State approved or recognized certification, licensing, registration, or other comparable requirements (§ 303.361(a)(4))

**§ 303.6 Act.**

As used in this part, *Act* means the Individuals with Disabilities Education Act.

(Authority: 20 U.S.C. 1400)

**§ 303.7 Children.**

As used in this part, *children* means "infants and toddlers with disabilities" as that term is defined in § 303.16.

(Authority: 20 U.S.C. 1472(1))

**§ 303.8 Council.**

As used in this part, *Council* means the State Interagency Coordinating Council.

(Authority: 20 U.S.C. 1472(4))

**§ 303.9 Days.**

As used in this part, *days* means calendar days.

(Authority: 20 U.S.C. 1471–1485)

**§ 303.10 Developmental delay.**

As used in this part, *developmental delay* has the meaning given to that term by a State under § 303.300.

(Authority: 20 U.S.C. 1472(3))

**§ 303.11 Early intervention program.**

As used in this part, *early intervention program* means the total effort in a State that is directed at meeting the needs of children eligible under this part and their families.

(Authority: 20 U.S.C. 1471–1485)

**§ 303.12 Early intervention services.**

(a) *General.* As used in this part, *early intervention services* means services that—

(1) Are designed to meet the developmental needs of each child eligible under this part and the needs of the family related to enhancing the child's development;

(2) Are selected in collaboration with the parents;

(3) Are provided—

(i) Under public supervision;

(ii) By *qualified* personnel, as defined in § 303.21, including the types of personnel listed in paragraph (e) of this section;

(iii) In conformity with an individualized family service plan; and

(iv) At no cost, unless, subject to § 303.520(b)(3), Federal or State law provides for a system of payments by families, including a schedule of sliding fees; and

(4) Meet the standards of the State, including the requirements of this part.

(b) *Natural environments.* (1) To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.

(2) As used in paragraph (b)(1) of this section, *natural environments* means settings that are natural or normal for the child's age peers who have no disability.

(c) *General role of service providers.* To the extent appropriate, service providers in each area of early intervention services included in paragraph (d) of this section are responsible for—

(1) Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; and

(3) Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the individualized family service plan.

(d) *Types of services; definitions.* Following are types of services included under "early intervention services," and, if appropriate, definitions of those services:

(1) *Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. *Assistive technology service* means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include—

(i) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such

as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for a child with disabilities or, if appropriate, that child's family; and

(vi) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

(2) *Audiology* includes—

(i) Identification of children with auditory impairment, using at risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(3) *Family training, counseling, and home visits* means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this part in understanding the special needs of the child and enhancing the child's development.

(4) *Health services* (See § 303.13).

(5) *Medical services only for diagnostic or evaluation purposes* means services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(6) *Nursing services* includes—

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) Provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) Administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) *Nutrition services* includes—

(i) Conducting individual assessments in—

(A) Nutritional history and dietary intake;

(B) Anthropometric, biochemical, and clinical variables;

(C) Feeding skills and feeding problems; and

(D) Food habits and food preferences;

(ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (d)(7)(i) of this section; and

(iii) Making referrals to appropriate community resources to carry out nutrition goals.

(8) *Occupational therapy* includes services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—

(i) Identification, assessment, and intervention;

(ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(9) *Physical therapy* includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include—

(i) Screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;

(ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

(10) *Psychological services* includes—

(i) Administering psychological and developmental tests and other assessment procedures;

(ii) Interpreting assessment results;

(iii) Obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) *Service coordination services* means assistance and services provided by a service coordinator to a child eligible under this part and the child's family that are in addition to the functions and activities included under § 303.22.

(12) *Social work services* includes—

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a social or emotional developmental assessment of the child within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

(iv) Working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(13) *Special instruction* includes—

(i) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's individualized family service plan;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the child to enhance the child's development.

(14) *Speech-language pathology* includes—

(i) Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal

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disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communicative or oropharyngeal disorders and delays in development of communication skills.

(15) *Transportation and related costs* includes the cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable a child eligible under this part and the child's family to receive early intervention services.

(16) *Vision services* means—

(i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(iii) Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

(e) *Qualified personnel.* Early intervention services must be provided by qualified personnel, including—

(1) Audiologists;

(2) Family therapists;

(3) Nurses;

(4) Nutritionists;

(5) Occupational therapists;

(6) Orientation and mobility specialists;

(7) Pediatricians and other physicians;

(8) Physical therapists;

(9) Psychologists;

(10) Social workers;

(11) Special educators; and

(12) Speech and language pathologists.

(Authority: 20 U.S.C. 1401 (a)(25), and (a)(26), 1472(2); H.R. REP. No. 198, 102d Cong., 1st Sess. 14 (1991); S. REP. No. 84, 102d Cong., 1st Sess. 21–22 (1991))

**Note:** The lists of services in paragraph (d) and qualified personnel in paragraph (e) of this section are not exhaustive. Early intervention services may include such services as the provision of respite and other family support services. Qualified personnel may include such personnel as vision specialists, paraprofessionals, and parent-to-parent support personnel.

### § 303.13 Health services.

(a) As used in this part, *health services* means services necessary to enable a child to benefit from the other early intervention services under this part during the time that the child is receiving the other early intervention services.

(b) The term includes—

(1) Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

(2) Consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(c) The term does not include the following:

(1) Services that are—

(i) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(ii) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose).

(2) Devices necessary to control or treat a medical condition.

(3) Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.

(Authority: 20 U.S.C. 1472(2))

**Note:** The definition in this section distinguishes between the health services that are required under this part and the medical-health services that are not required. The IFSP requirements in subpart D of this part provide that, to the extent appropriate, these other medical-health services are to be included in the IFSP, along with the funding sources to be used in paying for the services or the steps that will be taken to secure the services through public or private sources. Identifying these services in the IFSP does not impose an obligation to provide the services if they are otherwise not required to be provided under this part. (See § 303.344(e) and the note 3 following that section.)

### § 303.14 IFSP.

As used in this part, *IFSP* means the individualized family service plan, as that term is defined in § 303.340(b).

(Authority: 20 U.S.C. 1477)

### § 303.15 Include; including.

As used in this part, *include* or *including* means that the items named are not all of the possible items that are covered whether like or unlike the ones named.

(Authority: 20 U.S.C. 1471–1485)

### § 303.16 Infants and toddlers with disabilities.

(a) As used in this part, *infants and toddlers with disabilities* means individuals from birth through age two who need early intervention services because they—

(1) Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

(i) Cognitive development.

(ii) Physical development, including vision and hearing.

(iii) Communication development.

(iv) Social or emotional development.

(v) Adaptive development; or

(2) Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

(b) The term may also include, at a State's discretion, children from birth through age two who are at risk of having substantial developmental delays if early intervention services are not provided.

(Authority: 20 U.S.C. 1472(1))

**Note 1:** The phrase "a diagnosed physical or mental condition that has a high probability of resulting in developmental delay," as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.

**Note 2:** With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled.

Under this provision, States have the authority to define who would be "at risk of having substantial developmental delays if early intervention services are not provided." In defining the "at risk" population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers "at risk" for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that "at risk" factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

### § 303.17 Multidisciplinary.

As used in this part, *multidisciplinary* means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services, including evaluation and assessment activities in § 303.322 and development of the IFSP in § 303.342.

(Authority: 20 U.S.C. 1476(b)(3), 1477(a))

### § 303.18 Parent.

As used in this part, *parent* means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent

who has been appointed in accordance with § 303.406. The term does not include the State if the child is a ward of the State.

(Authority: 20 U.S.C. 1477)

Note: The term "parent" has been defined to include persons acting in the place of a parent, such as a grandparent or stepparent with whom a child lives, as well as persons who are legally responsible for the child's welfare. The definition in this section is identical to the definition used in the regulations under Part B of the Act (34 CFR 300.13).

**§ 303.19 Policies.**

(a) As used in this part, *policies* means State statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the State's position concerning any matter covered under this part.

(b) State policies include—

(1) A State's commitment to develop and implement the statewide system (see § 303.150);

(2) A State's eligibility criteria and procedures (see § 303.300);

(3) A statement that, consistent with § 303.520(b), provides that services under this part will be provided at no cost to parents, except where a system of payments is provided for under Federal or State law.

(4) A State's standards for personnel who provide services to children eligible under this part (see § 303.361);

(5) A State's position and procedures related to contracting or making other arrangements with service providers under subpart F of this part; and

(6) Other positions that the State has adopted related to implementing any of the other requirements under this part.

(Authority: 20 U.S.C. 1471–1485)

**§ 303.20 Public agency.**

As used in this part, *public agency* includes the lead agency and any other political subdivision of the State that is responsible for providing early intervention services to children eligible under this part and their families.

(Authority: 20 U.S.C. 1471–1485)

**§ 303.21 Qualified.**

As used in this part, *qualified* means that a person has met State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person is providing early intervention services.

(Authority: 20 U.S.C. 1472(2))

Note: These regulations contain the following provisions relating to a State's responsibility to ensure that personnel are qualified to provide early intervention services:

1. Section 303.12(a)(4) provides that early intervention services must meet State standards. This provision implements a requirement that is similar to a longstanding provision under Part B of the Act (i.e., that the State educational agency establish standards and ensure that those standards are currently met for all programs providing special education and related services).

2. Section 303.12(a)(3)(ii) provides that early intervention services must be provided by qualified personnel.

3. Section 303.361(b) requires statewide systems to have policies and procedures relating to personnel standards.

**§ 303.22 Service coordination (case management).**

(a) *General.* (1) As used in this part, except in § 303.12(d)(11), *service coordination* means the activities carried out by a service coordinator to assist and enable a child eligible under this part and the child's family to receive the rights, procedural safeguards, and services that are authorized to be provided under the State's early intervention program.

(2) Each child eligible under this part and the child's family must be provided with one service coordinator who is responsible for—

(i) Coordinating all services across agency lines; and

(ii) Serving as the single point of contact in helping parents to obtain the services and assistance they need.

(3) Service coordination is an active, ongoing process that involves—

(i) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the individualized family service plan;

(ii) Coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided;

(iii) Facilitating the timely delivery of available services; and

(iv) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility.

(b) *Specific service coordination activities.* Service coordination activities include—

(1) Coordinating the performance of evaluations and assessments;

(2) Facilitating and participating in the development, review, and evaluation of individualized family service plans;

(3) Assisting families in identifying available service providers;

(4) Coordinating and monitoring the delivery of available services;

(5) Informing families of the availability of advocacy services;

(6) Coordinating with medical and health providers; and

(7) Facilitating the development of a transition plan to preschool services, if appropriate.

(c) *Employment and assignment of service coordinators.* (1) Service coordinators may be employed or assigned in any way that is permitted under State law, so long as it is consistent with the requirements of this part.

(2) A State's policies and procedures for implementing the statewide system of early intervention services must be designed and implemented to ensure that service coordinators are able to effectively carry out on an interagency basis the functions and services listed under paragraphs (a) and (b) of this section.

(d) *Qualifications of service coordinators.* Service coordinators must be persons who, consistent with § 303.344(g), have demonstrated knowledge and understanding about—

(1) Infants and toddlers who are eligible under this part;

(2) Part H of the Act and the regulations in this part; and

(3) The nature and scope of services available under the State's early intervention program, the system of payments for services in the State, and other pertinent information.

(Authority: 20 U.S.C. 1472(2))

Note 1: If States have existing service coordination systems, the States may use or adapt those systems, so long as they are consistent with the requirements of this part.

Note 2: The legislative history of the 1991 amendments to the Act indicates that the use of the term "service coordination" was not intended to affect the authority to seek reimbursement for services provided under Medicaid or any other legislation that makes reference to "case management" services. See H.R. REP. NO. 198, 102d Cong., 1st Sess. 12 (1991); S. REP. NO. 84, 102d Cong., 1st Sess. 20 (1991).

**§ 303.23 State.**

Except as provided in § 303.200(b)(3), *State* means each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the jurisdictions of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Pub. L. 99–658).

(Authority: 20 U.S.C. 1401(a)(6))

**§ 303.24 EDGAR definitions that apply.**

The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Contract
Department
EDGAR
Fiscal year
Grant
Grantee
Grant period
Private
Public
Secretary

(Authority: 20 U.S.C. 1471–1485)

## Subpart B—State Application for a Grant

### General Requirements

**§ 303.100 Conditions of assistance.**

(a) In order to receive funds under this part for any fiscal year, a State must—

(1) Have an approved application that contains the information required in this subpart for the year in which the State is applying; and

(2) Have on file with the Secretary the statement of assurances required under §§ 303.120 through 303.128.

(b) For years one through five, a State shall submit an annual application. Thereafter, a State may submit a three-year application.

(Authority: 20 U.S.C. 1478)

**§ 303.101 How the Secretary disapproves a State's application or statement of assurances.**

The Secretary follows the procedures in 34 CFR 300.581 through 300.586 before disapproving a State's application or statement of assurances submitted under this part.

(Authority: 20 U.S.C. 1478)

### Public Participation

**§ 303.110 General requirements and timelines for public participation.**

(a) Before submitting to the Secretary its application under this part, and before adopting a new or revised policy that is not in its current application, a State shall—

(1) Publish the application or policy in a manner that will ensure circulation throughout the State for at least a 60-day period, with an opportunity for comment on the application or policy for at least 30 days during that period;

(2) Hold public hearings on the application or policy during the 60-day period required in paragraph (a)(1) of this section; and

(3) Provide adequate notice of the hearings required in paragraph (a)(2) of this section at least 30 days before the dates that the hearings are conducted.

(b) A State may request the Secretary to waive compliance with the timelines in paragraph (a) of this section. The Secretary grants the request if the State demonstrates that—

(1) There are circumstances that would warrant such an exception; and

(2) The timelines that will be followed provide an adequate opportunity for public participation and comment.

(Authority: 20 U.S.C. 1478(a)(4))

**§ 303.111 Notice of public hearings and opportunity to comment.**

The notice required in § 303.110(a)(3) must—

(a) Be published in newspapers or announced in other media, or both, with coverage adequate to notify the general public throughout the State about the hearings and opportunity to comment on the application or policy; and

(b) Be in sufficient detail to inform the public about—

(1) The purpose and scope of the State application or policy, and its relationship to Part H of the Act;

(2) The length of the comment period and the date, time, and location of each hearing; and

(3) The procedures for providing oral comments or submitting written comments.

(Authority: 20 U.S.C. 1478(a)(4)(A))

**§ 303.112 Public hearings.**

Each State shall hold public hearings in a sufficient number and at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(Authority: 20 U.S.C. 1478(a)(4))

**§ 303.113 Reviewing and reporting on public comments received.**

(a) *Review of comments.* Before adopting its application, and before the adoption of a new or revised policy not in the application, the lead agency shall—

(1) Review and consider all public comments; and

(2) Make any modifications it deems necessary in the application or policy.

(b) *Reporting on comments to the Secretary.* In submitting the State's application or policy to the Secretary, the lead agency shall include—

(1) A summary of the public comments received as a result of the activities required in §§ 303.110 through 303.112;

(2) The State's responses to those comments; and

(3) Copies of news releases, advertisements, and announcements used to provide notice.

(Authority: 20 U.S.C. 1478(a))

### Statement of Assurances

**§ 303.120 General.**

(a) A State's statement of assurances must contain the information required in §§ 303.121 through 303.128.

(b) Unless otherwise required by the Secretary, the statement is submitted only once, and remains in effect throughout the term of a State's participation under this part.

(c) A State may submit a revised statement of assurances if the statement is consistent with the requirements in §§ 303.121 through 303.128.

(Authority: 20 U.S.C. 1478(b))

**§ 303.121 Reports and records.**

The statement must provide for—

(a) Making reports in such form and containing such information as the Secretary may require; and

(b) Keeping such records and affording such access to those records as the Secretary may find necessary to assure compliance with the requirements of this part, the correctness and verification of reports, and the proper disbursement of funds provided under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(4))

**§ 303.122 Control of funds and property.**

The statement must provide assurance satisfactory to the Secretary that—

(a) The control of funds provided under this part, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this part; and

(b) A public agency will administer the funds and property.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(3))

**§ 303.123 Prohibition against commingling.**

The statement must include an assurance satisfactory to the Secretary that funds made available under this part will not be commingled with State funds.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(5)(A))

Note: As used in this part, *commingle* means depositing or recording funds in a general account without the ability to identify each specific source of funds for any expenditure. Under that general definition, it is clear that commingling is prohibited. However, to the extent that the funds from each of a series of Federal, State, local, and private funding sources can be identified—with a clear audit trail for each source—it is appropriate for those funds to be

consolidated for carrying out a common purpose. In fact, a State may find it essential to set out a funding plan that incorporates, and accounts for, all sources of funds that can be targeted on a given activity or function related to the State's early intervention program.

Thus, the assurance in this section is satisfied by the use of an accounting system that includes an "audit trail" of the expenditure of funds awarded under this part. Separate bank accounts are not required.

**§ 303.124 Prohibition against supplanting.**

(a) The statement must include an assurance satisfactory to the Secretary that Federal funds made available under this part will be used to supplement and increase the level of State and local funds expended for children eligible under this part and their families and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section, the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this part and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for—

(1) Decreases in the number of children who are eligible to receive early intervention services under this part; and

(2) Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(5)(B))

**§ 303.125 Fiscal control.**

The statement must provide assurance satisfactory to the Secretary that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(6))

**§ 303.126 Payer of last resort.**

The statement must include an assurance satisfactory to the Secretary that the State will comply with the provisions in § 303.527, including the requirements on—

(a) Nonsubstitution of funds; and

(b) Non-reduction of other benefits.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(2))

**§ 303.127 Assurance regarding expenditure of funds.**

The statement must include an assurance satisfactory to the Secretary that the funds paid to the State under this part will be expended in accordance with the provisions of this part, including the requirements in § 303.3.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(1))

**§ 303.128 Traditionally underserved groups.**

The statement must include an assurance satisfactory to the Secretary that policies and practices have been adopted to ensure—

(a) That traditionally underserved groups, including minority, low-income, and rural families, are meaningfully involved in the planning and implementation of all the requirements of this part; and

(b) That these families have access to culturally competent services within their local geographical areas.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(b)(7))

## General Requirements for a State Application

**§ 303.140 General.**

A State's application under this part must contain the information required in §§ 303.141 through 303.148.

(Authority: 20 U.S.C. 1478(a))

**§ 303.141 Information about the Council.**

Each application must include information demonstrating that the State has established a State Interagency Coordinating Council that meets the requirements of Subpart G of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(3))

**§ 303.142 Designation of lead agency.**

Each application must include a designation of the lead agency in the State that will be responsible for the administration of funds provided under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(1))

**§ 303.143 Designation regarding financial responsibility.**

Each application must include a designation by the State of an individual or entity responsible for assigning financial responsibility among appropriate agencies.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(2))

**§ 303.144 Assurance regarding use of funds.**

Each application must include an assurance that funds received under this part will be used to assist the State to plan, develop, and implement the statewide system required under subparts D through F of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475, 1478(a)(4))

**§ 303.145 Description of use of funds.**

(a) *General.* Each application must include a description of how a State proposes to use its funds under this part for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the Council, and include the information required in paragraphs (b) through (d) of this section.

(b) *Administrative positions.* Each application must include—

(1) A list of administrative positions, with salaries, and a description of the duties for each person whose salary is paid in whole or in part with funds awarded under this part; and

(2) For each position, the percentage of salary paid with those funds.

(c) *Planning, development, and implementation activities.* Each application must include—

(1) A description of the nature and scope of each major activity to be carried out under this part in planning, developing, and implementing the statewide system of early intervention services; and

(2) The approximate amount of funds to be spent for each activity.

(d) *Direct services.* (1) Each application must include a description of any direct services that the State expects to provide to eligible children and their families with funds under this part, consistent with §§ 303.521 and 303.527.

(2) The description must include information about each type of service to be provided, including—

(i) A summary of the methods to be used to provide the service (e.g., contracts or other arrangements with specified public or private organizations); and

(ii) The approximate amount of funds under this part to be used for the service.

(e) *Activities by other agencies.* If other agencies are to receive funds

under this part, the application must include—

(1) The name of each agency expected to receive funds;

(2) The approximate amount of funds each agency will receive; and

(3) A summary of the purposes for which the funds will be used.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(4) and (a)(6))

**§ 303.146 Information about public participation.**

Each application must include the information on public participation that is required in § 303.113(b).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(5))

**§ 303.147 Equitable distribution of resources.**

(a) Each application must include a description of the procedures used by the State to ensure an equitable distribution of resources made available under this part among all geographic areas within the State.

(b) In determining equitable distribution of resources, a State must take into account the need for services across all geographical areas within the State.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(7))

**§ 303.148 Transition to preschool programs.**

Each application must include the policies and procedures used to ensure a smooth transition for individuals participating in the early intervention program under this part who are eligible for participation in preschool programs under Part B of the Act, including—

(a) A description of how the families will be included in the transitional plans;

(b) A description of how the lead agency under this part will—

(1) Notify the appropriate local educational agency or intermediate educational unit in which the child resides; and

(2) Convene, with the approval of the family, a conference among the lead agency, the family, and the local educational agency or unit at least 90 days before the child's third birthday or, if earlier, the date on which the child is eligible for the preschool program under Part B of the Act in accordance with State law, to—

(i) Review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(ii) Establish a transition plan; and

(c) If the State educational agency, which is responsible for administering preschool programs under Part B of the Act, is not the lead agency under this part, an interagency agreement between the two agencies to ensure coordination on transition matters.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1478(a)(8))

**Note 1:** Among the matters that should be considered in developing policies and procedures to ensure a smooth transition of children from one program to the other are the following:

- The financial responsibilities of all appropriate agencies, consistent with §§ 303.523 and 300.152.
- The responsibility for performing evaluations of children (see §§ 303.322 and 300.531).
- The development and implementation of an individualized education program ("IEP") or an individualized family service plan ("IFSP") for each child, consistent with the requirements of law (see § 303.344(h) and sections 613(a)(15) and 614(a)(5) of the Act).
- The coordination of communication between agencies and the child's family.
- The mechanisms to ensure the uninterrupted provision of appropriate services to the child.

**Note 2:** While the transition requirements of the Act and this section pertain to children who are eligible for preschool programs under Part B, States are encouraged to adopt policies and procedures to facilitate a smooth transition of other children who are exiting the Part H program as well.

## Specific Application Requirements for Years One Through Five and Thereafter

**§ 303.149 Application requirements for first and second years.**

A State's annual application for the first and second years of participation under this part must contain the information required in §§ 303.141 through 303.148.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475, 1478(a))

**§ 303.150 Third year applications.**

(a) *General.* A State's third year application under this part must contain the following:

(1) The information required in §§ 303.141 through 303.148.

(2) Either—

(i) The information and assurances regarding the statewide system of early intervention services, as required in paragraph (b) of this section; or

(ii) If the State is eligible for a waiver, a request for a waiver, in accordance with the requirements in § 303.151.

(3) Other information that the Secretary may require.

(b) *Adoption of policy on statewide system.* Each third year application must include information and assurances demonstrating to the satisfaction of the Secretary that—

(1) It is the policy of the State to develop and implement a statewide, comprehensive, coordinated, interagency, multidisciplinary system for providing early intervention services to all children eligible under this part and their families;

(2) The policy in paragraph (b)(1) of this section incorporates all of the components of the statewide system of early intervention services that are required under this part; and

(3) Subject to § 303.341(a), the statewide system will be in effect no later than the beginning of the State's fourth year of participation under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(b), 1478(a))

**§ 303.151 Waiver of the policy adoption requirement for the third year.**

The Secretary may award a grant to a State under this part for the third year even if the State has not adopted the policy required in § 303.150(b), if the State, in its third year application, includes a statement requesting a waiver, including—

(a) Information demonstrating that the State has made a good faith effort to adopt a policy that meets the requirements in § 303.150(b)(1) and (b)(2);

(b) The reasons why the State was unable to meet the timeline for policy adoption, and the steps remaining before the policy will be adopted; and

(c) An assurance that, except as provided in § 303.341(a), the policy required in § 303.150(b)(1) and (b)(2) will be adopted and go into effect no later than the beginning of the State's fourth year of participation under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(b)(2))

**Note:** An example of when the Secretary may grant a waiver is a situation in which a State's policy is awaiting action by the State legislature, but the legislative session does not commence until after the State's application must be submitted.

**§ 303.152 Fourth year applications.**

A State's application for the fourth year of participation under this part must contain—

(a) The information required in §§ 303.141 through 303.148;

(b) Information and assurances to demonstrate that—

(1) The requirements in § 303.150(b)(1) and (b)(2) are met; and

(2) Subject to § 303.341(a), the statewide system of early intervention services is in effect, or will be in effect no later than the beginning of the fourth year of the State's participation under this part;

(c) Information and assurances required in §§ 303.161 through 303.176; and

(d) Other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(b), 1478(a))

**§ 303.153 States with mandates as of September 1, 1986, to serve children with disabilities from birth.**

(a) Subject to the requirements in paragraph (b) of this section, a State that has in effect a State law, enacted before September 1, 1986, that requires the provision of a free appropriate public education to children with disabilities from birth through age two is eligible for a grant under this part for the first through the fourth year of its participation.

(b) A State meeting the conditions in paragraph (a) of this section must—

(1) Have on file with the Secretary a statement of assurances containing the information required in §§ 303.121 through 303.128;

(2) Submit an annual application for years one through four that contains the information in §§ 303.141 through 303.148;

(3) Meet the public participation requirements in §§ 303.110 through 303.113; and

(4) Provide a copy of the State law that requires the provision of a free appropriate public education to children with disabilities from birth through age two.

(c) In order to receive funds under this part for the fifth and succeeding years, the State must submit an application that meets the requirements in § 303.154.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(d))

**§ 303.154 Applications for year five and each year thereafter.**

(a) *Fifth year application.* A State's application for the fifth year of its participation under this part must contain—

(1) The information and assurances required in §§ 303.141 through 303.148 and §§ 303.161 through 303.176;

(2) Information and assurances demonstrating to the satisfaction of the Secretary that the statewide system of early intervention services required in this part is in effect;

(3) A policy that, no later than the beginning of the fifth year of the State's participation, appropriate early intervention services will be available to all children in the State who are eligible under this part and their families;

(4) A description of the services to be provided no later than the beginning of the fifth year, in accordance with the timetables under § 303.302; and

(5) Other information that the Secretary may require.

(b) *Applications for succeeding years.* A State's applications for the succeeding years of participation under this program must contain information and assurances demonstrating to the satisfaction of the Secretary that the State will continue to meet all applicable conditions in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(c), 1476(b)(2), and 1478(a))

**§ 303.155 Differential funding.**

Notwithstanding any other provision of this part, an eligible entity that is experiencing significant hardships in meeting the eligibility requirements for a grant under this part for the fourth or fifth year of participation may qualify for a grant for fiscal years 1990, 1991, or 1992 under section 675(e) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1475(e))

**Components of a Statewide System—Application Requirements for Years Four, Five, and Thereafter**

**§ 303.160 Minimum components of a statewide system.**

Each application must address the minimum components of a statewide system of coordinated, comprehensive, multidisciplinary, interagency programs providing appropriate early intervention services to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities on reservations. The minimum components of a statewide system are described in §§ 303.161 through 303.176.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(a), 1478(a)(9))

**§ 303.161 State definition of developmental delay.**

Each application must include the State's definition of "developmental delay," as described in § 303.300.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(1))

**§ 303.162 Central directory.**

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has developed a central directory of information that meets the requirements in § 303.301.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(7))

**§ 303.163 Timetables for serving eligible children.**

Each application must include an assurance that the timetables required in § 303.302 have been established and will be met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(2))

**§ 303.164 Public awareness program.**

Each application must include information and assurances demonstrating to the satisfaction of the Secretary that the State has established a public awareness program that meets the requirements in § 303.320.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(6))

**§ 303.165 Comprehensive child find system.**

Each application must include—

(a) The policies and procedures required in § 303.321(b);

(b) Information demonstrating that the requirements on coordination in § 303.321(c) are met;

(c) The referral procedures required in § 303.321(d), and either—

(1) A description of how the referral sources are informed about the procedures; or

(2) A copy of any memorandum or other document used by the lead agency to transmit the procedures to the referral sources; and

(d) The timelines in § 303.321(e).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(5))

**§ 303.166 Evaluation, assessment, and nondiscriminatory procedures.**

Each application must include information to demonstrate that the requirements in §§ 303.322 and 303.323 are met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(3); 1477 (a)(1), (d)(2), and (d)(3))

**§ 303.167 Individualized family service plans.**

Each application must include—

(a) An assurance that the IFSP requirements in § 303.341 will be met; and

(b) Information demonstrating that—

(1) The State's procedures for developing, reviewing, and evaluating IFSPs are consistent with the requirements in §§ 303.340, 303.342, 303.343 and 303.345; and

(2) The content of IFSPs used in the State is consistent with the requirements in § 303.344.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(4), 1477(d))

**§ 303.168 Comprehensive system of personnel development (CSPD).**

Each application must include information to show that the requirements in § 303.360(b) are met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(8))

**§ 303.169 Personnel standards.**

(a) Each application must include policies and procedures that are consistent with the requirements in § 303.361.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(13))

**§ 303.170 Procedural safeguards.**

Each application must include procedural safeguards that—

(a) Are consistent with §§ 303.400 through 303.406, 303.420 through 303.425 and 303.460; and

(b) Incorporate either—

(1) The due process procedures in 34 CFR 300.506 through 300.512; or

(2) The procedures that the State has developed to meet the requirements in §§ 303.420(b) and 303.421 through 303.425.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(12))

**§ 303.171 Supervision and monitoring of programs.**

Each application must include information to show that the requirements in § 303.501 are met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20. U.S.C. 1476(b)(9)(A))

**§ 303.172 Lead agency procedures for resolving complaints.**

Each application must include procedures that are consistent with the requirements in §§ 303.510 through 303.512.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

**§ 303.173 Policies and procedures related to financial matters.**

Each application must include—

(a) Funding policies that meet the requirements in §§ 303.520 and 303.521;

(b) Information about funding sources, as required in § 303.522;

(c) Procedures to ensure the timely delivery of services, in accordance with § 303.525; and

(d) A procedure related to the timely reimbursement of funds under this part, in accordance with §§ 303.527(b) and 303.528.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(D) and (b)(9)(E), 1476(b)(11), 1481)

**§ 303.174 Interagency agreements; resolution of individual disputes.**

Each application must include—

(a) A copy of each interagency agreement that has been developed under § 303.523; and

(b) Information to show that the requirements in § 303.524 are met.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(E))

**§ 303.175 Policy for contracting or otherwise arranging for services.**

Each application must include a policy that meets the requirements in § 303.526.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(10))

**§ 303.176 Data collection.**

Each application must include procedures that meet the requirements in § 303.540.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(14))

**Participation by the Secretary of the Interior**

**§ 303.180 Payments to the Secretary of the Interior for Indian tribes and tribal organizations.**

(a) The Secretary makes payments to the Secretary of the Interior for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary and secondary schools for Indian children operated or funded by the Department of the Interior.

(b) (1) The Secretary of the Interior shall distribute payments under this part to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or combinations of those entities, in accordance with section 684(b) of the Act.

(2) A tribe or tribal organization is eligible to receive a payment under this section if the tribe is on a reservation that is served by an elementary or secondary school operated or funded by the Bureau of Indian Affairs ("BIA").

(c)(1) Within 90 days after the end of each fiscal year the Secretary of the Interior shall provide the Secretary with a report on the payments distributed under this section.

(2) The report must include—

(i) The name of each tribe, tribal organization, or combination of those entities that received a payment for the fiscal year;

(ii) The amount of each payment; and

(iii) The date of each payment.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1484(b); H.R. Rep. No. 198, 102d Cong., 1st Sess. 22 (1991))

**Subpart C—Procedures for Making Grants to States**

**§ 303.200 Formula for State allocations.**

(a) For each fiscal year, from the aggregate amount of funds available under this part for distribution to the States, the Secretary allots to each State an amount that bears the same ratio to the aggregate amount as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

(b) For the purpose of allotting funds to the States under paragraph (a) of this section—

(1) *Aggregate amount* means the amount available for distribution to the States after the Secretary determines the amount of payments to be made to the Secretary of the Interior under § 303.203 and to the jurisdictions under § 303.204;

(2) *Infants and toddlers* means children from birth through age two in the general population, based on the most recent satisfactory data as determined by the Secretary; and

(3) *State* means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1484(c))

**§ 303.201 Distribution of allotments from non-participating States.**

If a State elects not to receive its allotment, the Secretary reallots those funds among the remaining States, in accordance with § 303.200(a).

(Authority: 20 U.S.C. 1484(d))

**§ 303.202 Minimum grant that a State may receive.**

No State receives less than 0.5 percent of the aggregate amount available under § 303.200 or $500,000, whichever is greater.

(Authority: 20 U.S.C. 1484(c)(1))

**§ 303.203 Payments to the Secretary of the Interior.**

The amount of the payment to the Secretary of the Interior under § 303.180 for any fiscal year is 1.25 percent of the aggregate amount available to States after the Secretary determines the amount of payments to be made to the jurisdictions under § 303.204.

(Authority: 20 U.S.C. 1484(b))

**§ 303.204 Payments to the jurisdictions.**

From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve up to 1 percent for payments to the jurisdictions listed in § 303.2 in accordance with their respective needs.

(Authority: 20 U.S.C. 1484(a))

**§ 303.205 Differential funding grants.**

Notwithstanding any other provision of this part, section 675(a) of the Act governs—

(a) The amount of any grant for fiscal year 1990, 1991, or 1992 under that subsection; and

(b) The reallotment of funds for those fiscal years.

(Authority: 20 U.S.C. 1475(a))

## Subpart D—Program and Service Components of a Statewide System of Early Intervention Services

### General

**§ 303.300 State eligibility criteria and procedures.**

Each statewide system of early intervention services must include the eligibility criteria and procedures, consistent with § 303.16, that will be used by the State in carrying out programs under this part.

(a) The State shall define *developmental delay* by—

(1) Describing, for each of the areas listed in § 303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child's development; and

(2) Stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas.

(b) The State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to determine the existence of a condition that has a high probability of resulting in developmental delay under § 303.16(a)(2).

(c) If the State elects to include in its system children who are at risk under § 303.16(b), the State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1472(1), 1476(b)(1))

**Note:** Under this section and § 303.322(c)(2), States are required to ensure that informed clinical opinion is used in determining a child's eligibility under this part. Informed clinical opinion is especially important if there are no standardized measures, or if the standardized procedures are not appropriate for a given age or developmental area. If a given standardized procedure is considered to be appropriate, a State's criteria could include percentiles or percentages of levels of functioning on standardized measures.

**§ 303.301 Central directory.**

(a) Each system must include a central directory of information about—

(1) Public and private early intervention services, resources, and experts available in the State;

(2) Research and demonstration projects being conducted in the State; and

(3) Professional and other groups that provide assistance to children eligible under this part and their families.

(b) The information required in paragraph (a) of this section must be in sufficient detail to—

(1) Ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory; and

(2) Enable the parent of a child eligible under this part to contact, by telephone or letter, any of the sources listed in the directory.

(c) The central directory must be—

(1) Updated at least annually; and

(2) Accessible to the general public.

(d) To meet the requirements in paragraph (c)(2) of this section, the lead agency shall arrange for copies of the directory to be available—

(1) In each geographic region of the State, including rural areas; and

(2) In places and a manner that ensure accessibility by persons with disabilities.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(7))

**Note:** Examples of appropriate groups that provide assistance to eligible children and their families include parent support groups and advocate associations.

**§ 303.302 Timetables for serving eligible children.**

Except as provided in § 303.4, each system must include timetables for ensuring that appropriate early intervention services will be available to all infants and toddlers with disabilities in the State, including Indian infants and toddlers with disabilities on reservations, no later than the beginning of the fifth year of the State's participation under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1419(g), 1476(b)(2))

**Note:** Amendments to the Act made by Public Law 102–119 extend the State's duty to make services available to Indian children on reservations served by BIA schools. The State's obligation under prior law to make services available to other Indian children is unaffected by these amendments.

### Identification and Evaluation

**§ 303.320 Public awareness program.**

Each system must include a public awareness program that focuses on the early identification of children who are eligible to receive early intervention services under this part and includes the preparation and dissemination by the lead agency to all primary referral sources of information materials for parents on the availability of early intervention services. The public awareness program must provide for informing the public about—

(a) The State's early intervention program;

(b) The child find system, including—

(1) The purpose and scope of the system;

(2) How to make referrals; and

(3) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and

(c) The central directory.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(6))

**Note 1:** An effective public awareness program is one that does the following:

1. Provides a continuous, ongoing effort that is in effect throughout the State, including rural areas;

2. Provides for the involvement of, and communication with, major organizations throughout the State that have a direct interest in this part, including public agencies at the State and local level, private providers, professional associations, parent groups, advocate associations, and other organizations;

3. Has coverage broad enough to reach the general public, including those who have disabilities; and

4. Includes a variety of methods for informing the public about the provisions of this part.

**Note 2:** Examples of methods for informing the general public about the provisions of this part include: (1) Use of television, radio, and newspaper releases, (2) pamphlets and posters displayed in doctors' offices, hospitals, and other appropriate locations, and (3) the use of a toll-free telephone service.

**§ 303.321 Comprehensive child find system.**

(a) *General.* (1) Each system must include a comprehensive child find system that is consistent with Part B of the Act (see 34 CFR 300.128), and meets the requirements of paragraphs (b) through (e) of this section.

(2) The lead agency, with the advice and assistance of the Council, shall be responsible for implementing the child find system.

(b) *Procedures.* The child find system must include the policies and procedures that the State will follow to ensure that—

(1) All infants and toddlers in the State who are eligible for services under this part are identified, located, and evaluated; and

(2) An effective method is developed and implemented to determine which children are receiving needed early intervention services, and which children are not receiving those services.

(c) *Coordination.* (1) The lead agency, with the assistance of the Council, shall ensure that the child find system under this part is coordinated with all other major efforts to locate and identify children conducted by other State agencies responsible for administering the various education, health, and social service programs relevant to this part, tribes and tribal organizations that receive payments under this part, and other tribes and tribal organizations as appropriate, including efforts in the—

(i) Program authorized under Part B of the Act;

(ii) Maternal and Child Health program under Title V of the Social Security Act;

(iii) Early Periodic Screening, Diagnosis and Treatment (EPSDT) program under Title XIX of the Social Security Act;

(iv) Developmental Disabilities Assistance and Bill of Rights Act;

(v) Head Start Act; and

(vi) Supplemental Security Income program under Title XVI of the Social Security Act.

(2) The lead agency, with the advice and assistance of the Council, shall take steps to ensure that—

(i) There will not be unnecessary duplication of effort by the various agencies involved in the State's child find system under this part; and

(ii) The State will make use of the resources available through each public agency in the State to implement the child find system in an effective manner.

(d) *Referral procedures.* (1) The child find system must include procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for—

(i) Evaluation and assessment, in accordance with §§ 303.322 and 303.323; or

(ii) As appropriate, the provision of services, in accordance with § 303.342(a) or § 303.345.

(2) The procedures required in paragraph (b)(1) of this section must—

(i) Provide for an effective method of making referrals by primary referral sources;

(ii) Ensure that referrals are made no more than two working days after a child has been identified; and

(iii) Include procedures for determining the extent to which primary referral sources, especially hospitals and physicians, disseminate the information, as described in § 303.320, prepared by the lead agency on the availability of early intervention services to parents of infants and toddlers with disabilities.

(3) As used in paragraph (d)(1) of this section, *primary referral sources* includes—

(i) Hospitals, including prenatal and postnatal care facilities;

(ii) Physicians;

(iii) Parents;

(iv) Day care programs;

(v) Local educational agencies;

(vi) Public health facilities;

(vii) Other social service agencies; and

(viii) Other health care providers.

(e) *Timelines for public agencies to act on referrals.* (1) Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible.

(2) Within 45 days after it receives a referral, the public agency shall—

(i) Complete the evaluation and assessment activities in § 303.322; and

(ii) Hold an IFSP meeting, in accordance with § 303.342.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1472(2)(E)(vii), 1476(b)(5))

**Note:** In developing the child find system under this part, States should consider (1) tracking systems based on high-risk conditions at birth, and (2) other activities that are being conducted by various agencies or organizations in the State.

**§ 303.322 Evaluation and assessment.**

(a) *General.* (1) Each system must include the performance of a timely, comprehensive, multidisciplinary evaluation of each child, birth through age two, referred for evaluation, including assessment activities related to the child and the child's family.

(2) The lead agency shall be responsible for ensuring that the requirements of this section are implemented by all affected public agencies and service providers in the State.

(b) *Definitions of evaluation and assessment.* As used in this part—

(1) *Evaluation* means the procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility under this part, consistent with the definition of "infants and toddlers with disabilities" in § 303.16, including determining the status of the child in each of the developmental areas in paragraph (c)(3)(ii) of this section.

(2) *Assessment* means the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility under this part to identify—

(i) The child's unique strengths and needs and the services appropriate to meet those needs; and

(ii) The resources, priorities, and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their infant or toddler with a disability.

(c) *Evaluation and assessment of the child.* The evaluation and assessment of each child must—

(1) Be conducted by personnel trained to utilize appropriate methods and procedures;

(2) Be based on informed clinical opinion; and

(3) Include the following:

(i) A review of pertinent records related to the child's current health status and medical history.

(ii) An evaluation of the child's level of functioning in each of the following developmental areas:

(A) Cognitive development.

(B) Physical development, including vision and hearing.

(C) Communication development.

(D) Social or emotional development.

(E) Adaptive development.

(iii) An assessment of the unique needs of the child in terms of each of the developmental areas in paragraph (c)(3)(ii) of this section, including the identification of services appropriate to meet those needs.

(d) *Family assessment.* (1) Family assessments under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family related to enhancing the development of the child.

(2) Any assessment that is conducted must be voluntary on the part of the family.

(3) If an assessment of the family is carried out, the assessment must—

(i) Be conducted by personnel trained to utilize appropriate methods and procedures;

(ii) Be based on information provided by the family through a personal interview; and

(iii) Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(e) *Timelines.* (1) Except as provided in paragraph (e)(2) of this section, the evaluation and initial assessment of each child (including the family assessment) must be completed within the 45-day time period required in § 303.321(e).

(2) The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days (e.g., if a child is ill), public agencies will—

(i) Document those circumstances; and

(ii) Develop and implement an interim IFSP, to the extent appropriate and consistent with § 303.345 (b)(1) and (b)(2).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(3); 1477 (a)(1), (a)(2), (d)(1), and (d)(2))

**Note:** This section combines into one overall requirement the provisions on evaluation and assessment under the following sections of the Act: (1) section 676(b)(3) (timely, comprehensive, multidisciplinary evaluation), and (2) section 677(a) (1) and (2) (multidisciplinary and family-directed assessments).

The section also requires that the evaluation-assessment process be broad enough to obtain information required in the IFSP concerning (1) the family's resources, priorities, and concerns related to the development of the child (section 677(d)(2)), and (2) the child's functioning level in each of the five developmental areas (section 677(d)(1)).

### § 303.323 Nondiscriminatory procedures.

Each lead agency shall adopt nondiscriminatory evaluation and assessment procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that—

(a) Tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;

(b) Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;

(c) No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

(d) Evaluations and assessments are conducted by qualified personnel.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(3); 1477 (a)(1), (d)(2), and (d)(3))

## Individualized Family Service Plans (IFSPs)

### § 303.340 General.

(a) Each system must include policies and procedures regarding individualized family service plans (IFSPs) that meet the requirements of this section and §§ 303.341 through 303.346.

(b) As used in this part, *individualized family service plan* and *IFSP* mean a written plan for providing early intervention services to a child eligible under this part and the child's family. The plan must—

(1) Be developed in accordance with §§ 303.342 and 303.343;

(2) Be based on the evaluation and assessment described in § 303.322; and

(3) Include the matters specified in § 303.344.

(c) *Lead agency responsibility.* The lead agency shall ensure that an IFSP is developed and implemented for each eligible child, in accordance with the requirements of this part. If there is a dispute between agencies as to who has responsibility for developing or implementing an IFSP, the lead agency shall resolve the dispute or assign responsibility.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477)

**Note:** In instances where an eligible child must have both an IFSP and an individualized service plan under another Federal program, it may be possible to develop a single consolidated document, provided that it (1) contains all of the required information in § 303.344, and (2) is developed in accordance with the requirements of this part.

### § 303.341 Meeting the IFSP requirements for years four and five.

(a) *Fourth year requirements.* No later than the beginning of the fourth year of a State's participation under this part, the State shall ensure that—

(1) Evaluations and assessments are conducted in accordance with § 303.322;

(2) An IFSP is developed, in accordance with §§ 303.342(a) and 303.343(a), for each child determined to be eligible under this part and the child's family; and

(3) Service coordination services are available to each eligible child and the child's family.

(b) *Requirements for the fifth year.* No later than the beginning of the fifth year of a State's participation under this part, a current IFSP must be in effect and implemented for each eligible child and the child's family.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(2) and (b)(4), 1477(a)(2) and (c))

### § 303.342 Procedures for IFSP development, review, and evaluation.

(a) *Meeting to develop initial IFSP—timelines.* For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period in § 303.321(e).

(b) *Periodic review.* (1) A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine—

(i) The degree to which progress toward achieving the outcomes is being made; and

(ii) Whether modification or revision of the outcomes or services is necessary.

(2) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(c) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate the IFSP for a child and the child's family, and, as appropriate, to revise its provisions. The results of any current evaluations conducted under § 303.322(c), and other information available from the ongoing assessment of the child and family, must be used in determining what services are needed and will be provided.

(d) *Accessibility and convenience of meetings.* (1) IFSP meetings must be conducted—

(i) In settings and at times that are convenient to families; and

(ii) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

(2) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(e) *Parental consent.* The contents of the IFSP must be fully explained to the parents and informed written consent from the parents must be obtained prior to the provision of early intervention services described in the plan. If the parents do not provide consent with respect to a particular early intervention service or withdraw consent after first providing it, that service may not be provided. The early intervention services to which parental consent is obtained must be provided.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477)

**Note:** The requirement for the annual evaluation incorporates the periodic review process. Therefore, it is necessary to have only one separate periodic review each year (i.e., six months after the initial and subsequent annual IFSP meetings), unless conditions warrant otherwise.

Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings in paragraphs (b) and (c) of this section.

**§ 303.343 Participants in IFSP meetings and periodic reviews.**

(a) *Initial and annual IFSP meetings.* (1) Each initial meeting and each annual meeting to evaluate the IFSP must include the following participants:

(i) The parent or parents of the child.

(ii) Other family members, as requested by the parent, if feasible to do so;

(iii) An advocate or person outside of the family, if the parent requests that the person participate.

(iv) The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the public agency to be responsible for implementation of the IFSP.

(v) A person or persons directly involved in conducting the evaluations and assessments in § 303.322.

(vi) As appropriate, persons who will be providing services to the child or family.

(2) If a person listed in paragraph (a)(1)(v) of this section is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including—

(i) Participating in a telephone conference call;

(ii) Having a knowledgeable authorized representative attend the meeting; or

(iii) Making pertinent records available at the meeting.

(b) *Periodic review.* Each periodic review must provide for the participation of persons in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477(b))

**§ 303.344 Content of an IFSP.**

(a) *Information about the child's status.* (1) The IFSP must include a statement of the child's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development.

(2) The statement in paragraph (a)(1) of this section must be based on professionally acceptable objective criteria.

(b) *Family information.* With the concurrence of the family, the IFS must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child.

(c) *Outcomes.* The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, and the criteria, procedures, and timeliness used to determine—

(1) The degree to which progress toward achieving the outcomes is being made; and

(2) Whether modifications or revisions of the outcomes or services are necessary.

(d) *Early intervention services.* (1) The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in paragraph (c) of this section, including—

(i) The frequency, intensity, and method of delivering the services;

(ii) The natural environments, as described in § 303.12(b), in which early intervention services will be provided;

(iii) The location of the services; and

(iv) The payment arrangements, if any.

(2) As used in paragraph (d)(1)(i) of this section—

(i) *Frequency* and *intensity* mean the number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis; and

(ii) *Method* means how a service is provided.

(3) As used in paragraph (d)(1)(iii) of this section, *location* means the actual place or places where a service will be provided.

(e) *Other services.* (1) To the extent appropriate, the IFSP must include—

(i) Medical and other services that the child needs, but that are not required under this part; and

(ii) The funding sources to be used in paying for those services or the steps that will be taken to secure those services through public or private sources.

(2) The requirement in paragraph (e)(1) of this section does not apply to routine medical services (e.g., immunizations and "well-baby" care), unless a child needs those services and the services are not otherwise available or being provided.

(f) *Dates; duration of services.* The IFSP must include—

(1) The projected dates for initiation of the services in paragraph (d)(1) of this section as soon as possible after the IFSP meetings described in § 303.342; and

(2) The anticipated duration of those services.

(g) *Service coordinator.* (1) The IFSP must include the name of the service coordinator from the profession most immediately relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part), who will be responsible for the implementation of the IFSP and coordination with other agencies and persons.

(2) In meeting the requirements in paragraph (g)(1) of this section, the public agency may—

(i) Assign the same service coordinator who was appointed at the time that the child was initially referred for evaluation to be responsible for implementing a child's and family's IFSP; or

(ii) Appoint a new service coordinator.

(3) As used in paragraph (g)(1) of this section, the term "profession" includes "service coordination."

(h) *Transition from Part H services.* (1) The IFSP must include the steps to be taken to support the transition of the child to—

(i) Preschool services under Part B of the Act, in accordance with § 303.148, to the extent that those services are considered appropriate; or

(ii) Other services that may be available, if appropriate.

(2) The steps required in paragraph (h)(1) of this section include—

(i) Discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting; and

(iii) With parental consent, the transmission of information about the child to the local educational agency, to ensure continuity of services, including evaluation and assessment information required in § 303.322, and copies of IFSPs that have been developed and implemented in accordance with §§ 303.340 through 303.346.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477(d))

**Note 1:** With respect to the requirements in paragraph (d) of this section, the appropriate location of services for some infants and toddlers might be a hospital setting—during the period in which they require extensive medical intervention. However, for these and other eligible children, early intervention services must be provided in natural environments (e.g., the home, child care centers, or other community settings) to the maximum extent appropriate to the needs of the child.

**Note 2:** Throughout the process of developing and implementing IFSPs for an eligible child and the child's family, it is important for agencies to recognize the variety of roles that family members play in enhancing the child's development. It also is important that the degree to which the needs of the family are addressed in the IFSP process is determined in a collaborative manner with the full agreement and participation of the parents of the child. Parents retain the ultimate decision in determining whether they, their child, or other family members will accept or decline services under this part.

**Note 3:** The early intervention services in paragraph (d) of this section are those services that a State is required to provide to a child in accordance with § 303.12.

The "other services" in paragraph (e) of this section are services that a child or family needs, but that are neither required nor covered under this part. While listing the non-required services in the IFSP does not mean that those services must be provided, their identification can be helpful to both the child's family and the service coordinator, for the following reasons: First, the IFSP would provide a comprehensive picture of the child's total service needs (including the need for medical and health services, as well as early intervention services). Second, it is appropriate for the service coordinator to assist the family in securing the non-required services (e.g., by (1) determining if there is a public agency that could provide financial assistance, if needed, (2) assisting in the preparation of eligibility claims or insurance claims, if needed, and (3) assisting the family in seeking out and arranging for the child to receive the needed medical-health services).

Thus, to the extent appropriate, it is important for a State's procedures under this part to provide for ensuring that other needs of the child, and of the family related to enhancing the development of the child, such as medical and health needs, are considered and addressed, including determining (1) who will provide each service, and when, where, and how it will be provided, and (2) how the service will be paid for (e.g., through private insurance, an existing Federal-State funding source, such as Medicaid or EPSDT, or some other funding arrangement).

**Note 4:** Although the IFSP must include information about each of the items in paragraphs (b) through (h) of this section, this does not mean that the IFSP must be a detailed, lengthy document. It might be a brief outline, with appropriate attachments that address each of the points in the paragraphs under this section. It is important for the IFSP itself to be clear about (a) what services are to be provided, (b) the actions that are to be taken by the service coordinator in initiating those services, and (c) what actions will be taken by the parents.

### § 303.345 Provision of services before evaluation and assessment are completed.

Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessment in § 303.322, if the following conditions are met:

(a) Parental consent is obtained.

(b) An interim IFSP is developed that includes—

(1) The name of the service coordinator who will be responsible, consistent with § 303.344(g), for implementation of the interim IFSP and coordination with other agencies and persons; and

(2) The early intervention services that have been determined to be needed immediately by the child and the child's family.

(c) The evaluation and assessment are completed within the time period required in § 303.322(e).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477(c))

**Note:** This section is intended to accomplish two specific purposes: (1) To facilitate the provision of services in the event that a child has obvious immediate needs that are identified, even at the time of referral (e.g., a physician recommends that a child with cerebral palsy begin receiving physical therapy as soon as possible), and (2) to ensure that the requirements for the timely evaluation and assessment are not circumvented.

### § 303.346 Responsibility and accountability.

Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part H of the Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1477)

## Personnel Training and Standards

### § 303.360 Comprehensive system of personnel development.

(a) Each system must include a comprehensive system of personnel development.

(b) The personnel development system under this part must—

(1) Be consistent with the comprehensive system of personnel development required under Part B of the Act (34 CFR 300.380 through 300.387);

(2) Provide for preservice and inservice training to be conducted on an interdisciplinary basis, to the extent appropriate;

(3) Provide for the training of a variety of personnel needed to meet the requirements of this part, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators; and

(4) Ensure that the training provided relates specifically to—

(i) Understanding the basic components of early intervention services available in the State;

(ii) Meeting the interrelated social or emotional, health, developmental, and educational needs of eligible children under this part; and

(iii) Assisting families in enhancing the development of their children, and in participating fully in the development and implementation of IFSPs.

(c) A personnel development system under this part may include—

(1) Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;

(2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part;

(3) Training personnel to work in rural areas; and

(4) Training personnel to coordinate transition services for infants and toddlers with disabilities from an early intervention program under this part to a preschool program under Part B of the Act.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(8))

### § 303.361 Personnel standards.

(a) As used in this part—

(1) *Appropriate professional requirements in the State* means entry level requirements that—

(i) Are based on the highest requirements in the State applicable to the profession or discipline in which a person is providing early intervention services; and

(ii) Establish suitable qualifications for personnel providing early intervention services under this part to eligible children and their families who are served by State, local, and private agencies.

(2) *Highest requirements in the State applicable to a specific profession or discipline* means the highest entry-level academic degree needed for any State approved or recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.

(3) *Profession or discipline* means a specific occupational category that—

(i) Provides early intervention services to children eligible under this part and their families;

(ii) Has been established or designated by the State; and

(iii) Has a required scope of responsibility and degree of supervision.

(4) *State approved or recognized certification, licensing, registration, or other comparable requirements* means the requirements that a State legislature either has enacted or has authorized a State agency to promulgate through rules to establish the entry-level standards for employment in a specific profession or discipline in that State.

(b)(1) Each statewide system must have policies and procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained.

(2) The policies and procedures required in paragraph (b)(1) of this section must provide for the establishment and maintenance of standards that are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline in which a person is providing early intervention services.

(c) To the extent that a State's standards for a profession or discipline, including standards for temporary or emergency certification, are not based on the highest requirements in the State applicable to a specific profession or discipline, the State's application for assistance under this part must include the steps the State is taking, the procedures for notifying public agencies and personnel of those steps, and the timelines it has established for the retraining or hiring of personnel that meet appropriate professional requirements in the State.

(d)(1) In meeting the requirements in paragraphs (b) and (c) of this section, a determination must be made about the status of personnel standards in the State. That determination must be based on current information that accurately describes, for each profession or discipline in which personnel are providing early intervention services, whether the applicable standards are consistent with the highest requirements in the State for that profession or discipline.

(2) The information required in paragraph (d)(1) of this section must be on file in the lead agency, and available to the public.

(e) In identifying the "highest requirements in the State" for purposes of this section, the requirements of all State statutes and the rules of all State agencies applicable to serving children eligible under this part and their families must be considered.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(13))

**Note:** This section requires that a State use its own existing highest requirements to determine the standards appropriate to personnel who provide early intervention services under this part. The regulations do not require States to set any specified training standard, such as a master's degree, for employment of personnel who provide services under this part.

The regulations permit each State to determine the specific occupational categories required to provide early intervention services to children eligible under this part and their families, and to revise or expand these categories as needed. The professions or disciplines need not be limited to traditional occupational categories.

## Subpart E—Procedural Safeguards

### General

**§ 303.400 General responsibility of lead agency for procedural safeguards.**

Each lead agency shall be responsible for—

(a) Establishing or adopting procedural safeguards that meet the requirements of this subpart; and

(b) Ensuring effective implementation of the safeguards by each public agency in the State that is involved in the provision of early intervention services under this part.

(Authority: 20 U.S.C. 1480)

**§ 303.401 Definitions of consent, native language, and personally identifiable information.**

As used in this subpart—

(a) *Consent* means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time;

(b) *Native language*, where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under this part;

(c) *Personally identifiable* means that information includes—

(1) The name of the child, the child's parent, or other family member;

(2) The address of the child;

(3) A personal identifier, such as the child's or parent's social security number; or

(4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1480)

**§ 303.402 Opportunity to examine records.**

In accordance with the confidentiality procedures in the regulations under Part B of the Act (34 CFR 300.560 through 300.576), the parents of a child eligible under this part must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

(Authority: 20 U.S.C. 1480(4))

**§ 303.403 Prior notice; native language.**

(a) *General.* Written prior notice must be given to the parents of a child eligible under this part a reasonable time before a public agency or service provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

(b) *Content of notice.* The notice must be in sufficient detail to inform the parents about—

(1) The action that is being proposed or refused;

(2) The reasons for taking the action; and

(3) All procedural safeguards that are available under this part.

(c) *Native language.* (1) The notice must be—

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parents, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that—

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met.

(3) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, braille, or oral communication).

(Authority: 20 U.S.C. 1480(6) and (7))

**§ 303.404 Parent consent.**

(a) Written parental consent must be obtained before—

(1) Conducting the initial evaluation and assessment of a child under § 303.322; and

(2) Initiating the provision of early intervention services (see § 303.342(e)).

(b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent—

(1) Is fully aware of the nature of the evaluation and assessment or the services that would be available; and

(2) Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

(Authority: 20 U.S.C. 1480)

**Note 1:** In addition to the consent requirements in this section, other consent requirements are included in (1) § 303.460(a), regarding the exchange of personally identifiable information among agencies, and (2) the confidentiality provisions in the regulations under Part B of the Act (34 CFR 300.571) and 34 CFR part 99 (Family Educational Rights and Privacy), both of which apply to this part.

**Note 2:** Under § 300.504(b) of the Part B regulations, a public agency may initiate procedures to challenge a parent's refusal to consent to the initial evaluation of the parent's child and, if successful, obtain the evaluation. This provision applies to eligible children under this part, since the Part B evaluation requirement applies to all children with disabilities in a State, including infants and toddlers.

**§ 303.405 Parent right to decline service.**

The parents of a child eligible under this part may determine whether they, their child, or other family members will accept or decline any early intervention service under this part in accordance with State law, and may decline such a service after first accepting it, without jeopardizing other early intervention services under this part.

(Authority: 20 U.S.C. 1480(3))

**§ 303.406 Surrogate parents.**

(a) *General.* Each lead agency shall ensure that the rights of children eligible under this part are protected if—

(1) No parent (as defined in § 303.18) can be identified;

(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) *Duty of lead agency and other public agencies.* The duty of the lead agency, or other public agency under paragraph (a) of this section, includes the assignment of an individual to act as a surrogate for the parent. This must include a method for—

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

(c) *Criteria for selecting surrogates.* (1) The lead agency or other public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate parent—

(i) Has no interest that conflicts with the interests of the child he or she represents; and

(ii) Has knowledge and skills that ensure adequate representation of the child.

(d) *Non-employee requirement; compensation.* (1) A person assigned as a surrogate parent may not be an employee of any agency involved in the provision of early intervention or other services to the child.

(2) A person who otherwise qualifies to be a surrogate parent under paragraph (d)(1) of this section is not an employee solely because he or she is paid by a public agency to serve as a surrogate parent.

(e) *Responsibilities.* A surrogate parent may represent a child in all matters related to—

(1) The evaluation and assessment of the child;

(2) Development and implementation of the child's IFSPs, including annual evaluations and periodic reviews;

(3) The ongoing provision of early intervention services to the child; and

(4) Any other rights established under this part.

(Authority: 20 U.S.C. 1480(5))

## Impartial Procedures for Resolving Individual Child Complaints

**§ 303.420 Administrative resolution of individual child complaints by an impartial decision-maker.**

Each system must include written procedures for the timely administrative resolution of individual child complaints by parents concerning any of the matters in § 303.403(a). A State may meet this requirement by—

(a) Adopting the due process procedures in 34 CFR 300.506 through 300.512 and developing procedures that meet the requirements of § 303.425; or

(b) Developing procedures that—

(1) Meet the requirements in §§ 303.421 through 303.425; and

(2) Provide parents a means of filing a complaint.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(1))

**Note 1:** Sections 303.420 through 303.425 are concerned with the adoption of impartial procedures for resolving individual child complaints (i.e., complaints that generally affect only a single child or the child's family). These procedures require the appointment of a decision-maker who is impartial, as defined in § 303.421(b), to resolve a dispute concerning any of the matters in § 303.403(a). The decision of the impartial decision-maker is binding unless it is reversed on appeal.

A different type of administrative procedure is included in §§ 303.510 through 303.512 of subpart F of this part. Under those procedures, the lead agency is responsible for (1) investigating any complaint that it receives (including individual child complaints and those that are systemic in nature), and (2) resolving the complaint if the agency determines that a violation has occurred.

**Note 2:** It is important that the administrative procedures developed by a State be designed to result in speedy resolution of complaints. An infant's or toddler's development is so rapid that undue delay could be potentially harmful.

In an effort to facilitate resolution, States may wish, with parental concurrence, to offer mediation as an intervening step prior to implementing the procedures in this section. Although mediation is not required under either Part B or Part H of the Act, some States

have reported that mediations conducted under Part B have led to speedy resolution of differences between parents and agencies, without the development of an adversarial relationship and with minimal emotional stress to parents.

While a State may elect to adopt a mediation process, the State cannot require that parents use that process. Mediation may not be used to deny or delay a parent's rights under this part. The complaint must be resolved, and a written decision made, within the 30-day timeline in § 303.423.

**§ 303.421 Appointment of an impartial person.**

(a) *Qualifications and duties.* An impartial person must be appointed to implement the complaint resolution process in this subpart. The person must—

(1) Have knowledge about the provisions of this part and the needs of, and services available for, eligible children and their families; and

(2) Perform the following duties:

(i) Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) *Definition of impartial.* (1) As used in this section, *impartial* means that the person appointed to implement the complaint resolution process—

(i) Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(1))

**§ 303.422 Parent rights in administrative proceedings.**

(a) *General.* Each lead agency shall ensure that the parents of children eligible under this part are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under § 303.420.

(b) *Rights.* Any parent involved in an administrative proceeding has the right to—

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;

(4) Obtain a written or electronic verbatim transcription of the proceeding; and

(5) Obtain written findings of fact and decisions.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480)

**§ 303.423 Convenience of proceedings; timelines.**

(a) Any proceeding for implementing the complaint resolution process in this subpart must be carried out at a time and place that is reasonably convenient to the parents.

(b) Each lead agency shall ensure that, not later than 30 days after the receipt of a parent's complaint, the impartial proceeding required under this subpart is completed and a written decision mailed to each of the parties.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(1))

**Note:** Under Part B of the Act, States are allowed 45 days to conduct an impartial due process hearing (i.e., within 45 days after the receipt of a request for a hearing, a decision is reached and a copy of the decision is mailed to each of the parties). (See 34 CFR 300.512.) Thus, if a State, in meeting the requirements of § 303.420, elects to adopt the due process procedures under Part B, that State would also have 45 days for hearings. However, any State in that situation is encouraged (but not required) to accelerate the timeline for the due process hearing for children who are eligible under this part—from 45 days to the 30-day timeline in this section. Because the needs of children in the birth-through-two-age range change so rapidly, quick resolution of complaints is important.

**§ 303.424 Civil action.**

Any party aggrieved by the findings and decision regarding an administrative complaint has the right to bring a civil action in State or Federal court under section 680(1) of the Act.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(1))

**§ 303.425 Status of a child during proceedings.**

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(7))

### Confidentiality

**§ 303.460 Confidentiality of information.**

(a) Each State shall adopt or develop policies and procedures that the State will follow in order to ensure the protection of any personally identifiable information collected, used, or maintained under this part, including the right of parents to written notice of and written consent to the exchange of this information among agencies consistent with Federal and State law.

(b) These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576, with the modifications specified in § 303.5(b).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1480(2), 1483)

**Note:** With the modifications referred to in paragraph (b) of this section, the confidentiality requirements in the regulations implementing Part B of the Act (34 CFR 300.560 through 300.576) are to be used by public agencies to meet the confidentiality requirements under Part H of the Act and this section (§ 303.460).

The Part B provisions incorporate by reference the regulations in 34 CFR Part 99 (Family Educational Rights and Privacy); therefore, those regulations also apply to this part.

## Subpart F—State Administration

### General

**§ 303.500 Lead agency establishment or designation.**

Each system must include a single line of responsibility in a lead agency that—

(a) Is established or designated by the Governor; and

(b) Is responsible for the administration of the system, in accordance with the requirements of this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

**§ 303.501 Supervision and monitoring of programs.**

(a) *General.* Each lead agency is responsible for—

(1) The general administration and supervision of programs and activities receiving assistance under this part; and

(2) The monitoring of programs and activities used by the State to carry out this part, whether or not these programs or activities are receiving assistance under this part, to ensure that the State complies with this part.

(b) *Methods of administering programs.* In meeting the requirement in paragraph (a) of this section, the lead agency shall adopt and use proper methods of administering each program, including—

(1) Monitoring agencies, institutions, and organizations used by the State to carry out this part;

(2) Enforcing any obligations imposed on those agencies under Part H of the Act and these regulations;

(3) Providing technical assistance, if necessary, to those agencies, institutions, and organizations; and

(4) Correcting deficiencies that are identified through monitoring.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(A))

## Lead Agency Procedures for Resolving Complaints

### § 303.510 Adopting complaint procedures.

Each lead agency shall adopt written procedures for—

(a) Resolving any complaint that any public agency is violating a requirement of Part H of the Act or this part by—

(1) Providing for the filing of a complaint with the lead agency; and

(2) At the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and

(b) Informing parents and other interested individuals about the procedures in §§ 303.510 through 303.512.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

Note: Because of the interagency nature of Part H of the Act, complaints received under these regulations could concern violations by (1) any public agency in the State that receives funds under this part (e.g., the lead agency and the Council), (2) other public agencies that are involved in the State's early intervention program, or (3) private service providers that receive Part H funds on a contract basis from a public agency to carry out a given function or provide a given service required under this part. These complaint procedures are in addition to any other rights under State or Federal law. The lead agency must provide for the filing of a complaint with the lead agency and, at the lead agency's discretion, with a public agency subject to a right of appeal to the lead agency.

### § 303.511 An organization or individual may file a complaint.

An individual or organization may file a written signed complaint under § 303.510. The complaint must include—

(a) A statement that the State has violated a requirement of Part H of the Act or the regulations in this part; and

(b) The facts on which the complaint is based.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

### § 303.512 Minimum State complaint procedures.

Each lead agency shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after a complaint is filed under § 303.510(a) to—

(1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part H of the Act or of this part; and

(4) Issue a written decision to the complainant that addresses each allegation in the complaint and contains—

(i) Findings of fact and conclusions; and

(ii) The reasons for the lead agency's final decision.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) Procedures for effective implementation of the lead agency's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

(d) The right of the complainant or the public agency to request the Secretary to review the lead agency's final decision.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

## Policies and Procedures Related to Financial Matters

### § 303.520 Policies related to payment for services.

(a) *General.* Each lead agency is responsible for establishing State policies related to how services to children eligible under this part and their families will be paid for under the State's early intervention program. The policies must—

(1) Meet the requirements in paragraph (b) of this section; and

(2) Be reflected in the interagency agreements required in § 303.523.

(b) *Specific funding policies.* A State's policies must—

(1) Specify which functions and services will be provided at no cost to all parents;

(2) Specify which functions or services, if any, will be subject to a system of payments, and include—

(i) Information about the payment system and schedule of sliding fees that will be used; and

(ii) The basis and amount of payments; and

(3) Include an assurance that—

(i) Fees will not be charged for the services that a child is otherwise entitled to receive at no cost to parents; and

(ii) The inability of the parents of an eligible child to pay for services will not result in the denial of services to the child or the child's family; and

(4) Set out any fees that will be charged for early intervention services and the basis for those fees.

(c) *Procedures to ensure the timely provision of services.* No later than the beginning of the fifth year of a State's participation under this part, the State shall implement a mechanism to ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9))

### § 303.521 Fees.

(a) *General.* A State may establish, consistent with § 303.12(a)(3)(iv), a system of payments for early intervention services, including a schedule of sliding fees.

(b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense by a State, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in § 303.321.

(2) Evaluation and assessment, as included in § 303.322, and including the functions related to evaluation and assessment in § 303.12.

(3) Service coordination, as included in §§ 303.22 and 303.344(g).

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs in §§ 303.340 through 303.346; and

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subparts D and F of this part.

(c) *States with mandates to serve children from birth.* If a State has in effect a State law requiring the provision of a free appropriate public education to children with disabilities from birth, the State may not charge parents for any services (e.g., physical or occupational therapy) required under that law that are provided to children eligible under this part and their families.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1472(2))

**§ 303.522 Identification and coordination of resources.**

(a) Each lead agency is responsible for—

(1) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources; and

(2) Updating the information on the funding sources in paragraph (a)(1) of this section, if a legislative or policy change is made under any of those sources.

(b) The Federal funding sources in paragraph (a)(1) of this section include—

(1) Title V of the Social Security Act (relating to Maternal and Child Health);

(2) Title XIX of the Social Security Act (relating to the general Medicaid Program, and EPSDT);

(3) The Head Start Act;

(4) Parts B and H of the Act;

(5) Subpart 2 of Part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended;

(6) The Developmental Disabilities Assistance and Bill of Rights Act (Pub. L. 94–103); and

(7) Other Federal programs.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(B))

**§ 303.523 Interagency agreements.**

(a) *General.* Each lead agency is responsible for entering into formal interagency agreements with other State-level agencies involved in the State's early intervention program. Each agreement must meet the requirements in paragraphs (b) through (d) of this section.

(b) *Financial responsibility.* Each agreement must define the financial responsibility, in accordance with § 303.143, of the agency for paying for early intervention services (consistent with State law and the requirements of this part).

(c) *Procedures for resolving disputes.* (1) Each agreement must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the State's early intervention program. Those procedures must include a mechanism for making a final determination that is binding upon the agencies involved.

(2) The agreement with each agency must—

(i) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(ii) Include the process that the lead agency will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

(d) *Additional components.* Each agreement must include any additional components necessary to ensure effective cooperation and coordination among all agencies involved in the State's early intervention program.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(C) and (b)(9)(F))

**Note:** A State may meet the requirement in paragraph (c)(1) of this section in any way permitted under State law, including (1) providing for a third party (e.g., an administrative law judge) to review a dispute and render a decision, (2) assignment of the responsibility by the Governor to the lead agency or Council, or (3) having the final decision made directly by the Governor.

**§ 303.524 Resolution of disputes.**

(a) Each lead agency is responsible for resolving individual disputes, in accordance with the procedures in § 303.523(c)(2)(ii).

(b)(1) During a dispute, the individual or entity responsible for assigning financial responsibility among appropriate agencies under § 303.143 ("financial designee") shall assign financial responsibility to—

(i) An agency, subject to the provisions in paragraph (b)(2) of this section; or

(ii) The lead agency, in accordance with the "payor of last resort" provisions in § 303.527.

(2) If, during the lead agency's resolution of the dispute, the financial designee determines that the assignment of financial responsibility under paragraph (b)(1)(i) of this section was inappropriately made—

(i) The financial designee shall reassign the responsibility to the appropriate agency; and

(ii) The lead agency shall make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(c) To the extent necessary to ensure compliance with its action in paragraph (b)(2) of this section, the lead agency shall—

(1) Refer the dispute to the Council or the Governor; and

(2) Implement the procedures to ensure the delivery of services in a timely manner in accordance with § 303.525.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476 (b)(9)(C) and (b)(9)(E))

**§ 303.525 Delivery of services in a timely manner.**

Each lead agency is responsible for the development of procedures to ensure that services are provided to eligible children and their families in a timely manner, pending the resolution of disputes among public agencies or service providers.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(9)(D))

**§ 303.526 Policy for contracting or otherwise arranging for services.**

Each system must include a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. The policy must include—

(a) A requirement that all early intervention services must meet State standards and be consistent with the provisions of this part;

(b) The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and

(c) The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(10))

**Note:** In implementing the statewide system, States may elect to continue using agencies and individuals in both the public and private sectors that have previously been involved in providing early intervention services, so long as those agencies and

individuals meet the requirements of this part.

**§ 303.527 Payer of last resort.**

(a) *Nonsubstitution of funds.* Except as provided in paragraph (b)(1) of this section, funds under this part may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source but for the enactment of Part H of the Act. Therefore, funds under this part may be used only for early intervention services that an eligible child needs but is not currently entitled to under any other Federal, State, local, or private source.

(b) *Interim payments—reimbursement.* (1) If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, funds under this part may be used to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

(2) Payments under paragraph (b)(1) of this section may be made for—

(i) Early intervention services, as described in § 303.12;

(ii) Eligible health services (see § 303.13); and

(iii) Other functions and services authorized under this part, including child find and evaluation and assessment.

(3) The provisions of paragraph (b)(1) of this section do not apply to medical services or "well-baby" health care (see § 303.13(c)(1)).

(c) *Non-reduction of benefits.* Nothing in this part may be construed to permit a State to reduce medical or other assistance available or to alter eligibility under Title V of the Social Security Act (SSA) (relating to maternal and child health) or Title XIX of the SSA (relating to Medicaid for children eligible under this part) within the State.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1481)

Note: The Congress intended that the enactment of Part H not be construed as a license to any agency (including the lead agency and other agencies in the State) to withdraw funding for services that currently are or would be made available to eligible children but for the existence of the program under this part. Thus, the Congress intended that other funding sources would continue, and that there would be greater coordination among agencies regarding the payment of costs.

The Congress further clarified its intent concerning payments under Medicaid by including in section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) an amendment to Title XIX of the Social Security Act. That amendment states, in effect, that nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary of Health and Human Services to prohibit or restrict, payment under subsection (a) of section 1903 of the Social Security Act for medical assistance for covered services furnished to an infant or toddler with a disability because those services are included in the child's IFSP adopted pursuant to Part H of the Act.

**§ 303.528 Reimbursement procedure.**

Each system must include a procedure for securing the timely reimbursement of funds used under this part, in accordance with § 303.527(b).

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(11))

## Reporting Requirements

**§ 303.540 Data collection.**

(a) Each system must include the procedures that the State uses to compile data on the statewide system. The procedures must—

(1) Include a process for—

(i) Collecting data from various agencies and service providers in the State;

(ii) Making use of appropriate sampling methods, if sampling is permitted; and

(iii) Describing the sampling methods used, if reporting to the Secretary; and

(2) Provide for reporting the data required under section 676(b)(14) of the Act, and other information that the Secretary may require, including information required under section 618 of the Act.

(b) The information required in paragraph (a)(2) of this section must be provided at the time and in the manner specified by the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1476(b)(14))

## Use of Funds for State Administration

**§ 303.560 Use of funds by the lead agency.**

A lead agency may use funds under this part that are reasonable and necessary for administering the State's early intervention program for infants and toddlers with disabilities.

(Authority: 20 U.S.C. 1473, 1476(b)(9))

## Subpart G—State Interagency Coordinating Council

## General

**§ 303.600 Establishment of Council.**

(a) A State that desires to receive financial assistance under this part shall establish a State Interagency Coordinating Council composed of at least 15 members but not more than 25 members, unless the State provides sufficient justification for a greater number of members in the application submitted under this part.

(b) The Council must be appointed by the Governor. The Governor shall ensure that the membership of the Council reasonably represents the population of the State.

(c) The Governor shall designate a member of the Council to serve as the chairperson of the Council or require the Council to do so. Any member of the Council who is a representative of the lead agency designated under § 303.500 may not serve as the chairperson of the Council.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(a))

Note: To avoid a potential conflict of interest, it is recommended that parent representatives who are selected to serve on the Council not be employees of any agency involved in providing early intervention services.

It is suggested that consideration be given to maintaining an appropriate balance between the urban and rural communities of the State.

**§ 303.601 Composition.**

(a) The Council must be composed as follows:

(1)(i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.

(ii) At least one member must be a parent of an infant or toddler with a disability or a child with a disability aged six or younger.

(2) At least 20 percent of the members must be public or private providers of early intervention services.

(3) At least one member must be from the State legislature.

(4) At least one member must be involved in personnel preparation.

(5) At least one member must—

(i) Be from each of the State agencies involved in the provisions of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

(6) At least one member must—

(i) Be from the State educational agency responsible for preschool services to children with disabilities; and

(ii) Have sufficient authority to engage in policy planning and implementation on behalf of that agency.

(7) At least one member must be from the agency responsible for the State governance of insurance, especially in the area of health insurance.

(b) The Council may include other members selected by the Governor, including a representative from the BIA or, where there is no school operated or funded by the BIA, from the Indian Health Service or the tribe or tribal council.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(b))

**§ 303.602 Use of funds by the Council.**

(a) *General.* Subject to the approval by the Governor, the Council may use funds under this part—

(1) To conduct hearings and forums;

(2) To reimburse members of the Council for reasonable and necessary expenses for attending Council meetings and performing Council duties (including child care for parent representatives);

(3) To pay compensation to a member of the Council if the member is not employed or must forfeit wages from other employment when performing official Council business;

(4) To hire staff; and

(5) To obtain the services of professional, technical, and clerical personnel, as may be necessary to carry out the performance of its functions under this part.

(b) *Compensation and expenses of Council members.* Except as provided in paragraph (a) of this section, Council members shall serve without compensation from funds available under this part.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1479, 1482 (c) and (d))

**§ 303.603 Meetings.**

(a) The Council shall meet at least quarterly and in such places as it deems necessary.

(b) The meetings must—

(1) Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend; and

(2) To the extent appropriate, be open and accessible to the general public.

(c) Interpreters for persons who are deaf and other necessary services must be provided at Council meetings, both for Council members and participants. The Council may use funds under this part to pay for those services.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482 (c) and (d))

**§ 303.604 Conflict of interest.**

No member of the Council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(f))

**Functions of the Council**

**§ 303.650 General.**

(a) Each Council shall—

(1) Advise and assist the lead agency in the development and implementation of the policies that constitute the statewide system;

(2) Assist the lead agency in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the State;

(3) Assist the lead agency in the effective implementation of the statewide system, by establishing a process that includes—

(i) Seeking information from service providers, service coordinators, parents, and others about any Federal, State, or local policies that impede timely service delivery; and

(ii) Taking steps to ensure that any policy problems identified under paragraph (a)(3)(i) of this section are resolved; and

(4) To the extent appropriate, assist the lead agency in the resolution of disputes.

(b) Each Council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children aged birth to five, inclusive.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(e)(1)(A) and (e)(2))

**§ 303.651 Advising and assisting the lead agency in its administrative duties.**

Each Council shall advise and assist the lead agency in the—

(a) Identification of sources of fiscal and other support for services for early intervention programs under this part;

(b) Assignment of financial responsibility to the appropriate agency; and

(c) Promotion of the interagency agreements under § 303.523.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(e)(1)(A))

**§ 303.652 Applications.**

Each Council shall advise and assist the lead agency in the preparation of applications under this part and amendments to those applications.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(e)(1)(B))

**§ 303.653 Transitional services.**

Each Council shall advise and assist the State educational agency regarding the transition of toddlers with disabilities to services provided under Part B of the Act, to the extent those services are appropriate.

(Approved by the Office of Management and Budget under control number 1820–0578)

(Authority: 20 U.S.C. 1482(e)(1)(C))

**§ 303.654 Annual report to the Secretary.**

(a) Each Council shall—

(1) Prepare an annual report to the Governor and to the Secretary on the status of early intervention programs operated within the State for children eligible under this part and their families; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

(b) Each annual report must contain the information required by the Secretary for the year for which the report is made.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(e)(1)(D))

**Existing Councils**

**§ 303.670 Use of existing councils.**

If a State established a Council before September 1, 1986, that is comparable to the requirements for a Council in this subpart (e.g., in terms of its composition, meetings, and functions), that Council is considered to be in compliance with these requirements. However, within four years after the date that a State accepts funds under this part, the State shall establish a Council that complies in full with the requirements of this subpart.

(Approved by the Office of Management and Budget under control number 1820–0550)

(Authority: 20 U.S.C. 1482(g))

**Appendix—Analysis of Comments and Responses**

Note: This appendix will not be codified in the Code of Federal Regulations.

The following is an analysis of the comments and of the changes in the regulations since publication of the NPRM on May 1, 1992 (57 FR 18986). Substantive issues are discussed under the section of the regulations to which they pertain. Minor changes made to the language published in the NPRM—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are generally not addressed.

**Subpart A—General**

*Section 303.1 Purpose of the Early Intervention Program for Infants and Toddlers With Disabilities.*

*Comment:* Two commenters requested that the Department substitute the term "early intervention needs" for the term "needs." One commenter suggested that the Department define the term "historically underrepresented."

*Discussion:* The amendment to § 303.1 is taken from section 671(a)(5) of the Individuals with Disabilities Education Act (the Act), as added by Pub. L. 102–119, enacted October 7, 1991 (1991 Amendments). The Secretary believes that it is unnecessary to elaborate upon the statutory language incorporated in this section of the regulations.

*Changes:* None.

*Section 303.3 Activities That May Be Supported Under This Part.*

*Comment:* Some commenters requested that the Department provide States with the flexibility to serve children from their third birthday to the beginning of the next school year in accordance with either Part H or Part B requirements. Some commenters requested that the Department require parental consent prior to the transition of a child to Part B services when the child is below the age of three. One commenter requested that the Department clarify the effect of a parent's refusal to consent to Part B services.

*Discussion:* The amendment to § 303.3 is taken from section 679(3) of the Act, as added by the 1991 Amendments. This new statutory provision permits Part H funds to be used for an additional purpose—to provide a free appropriate public education (FAPE) in accordance with Part B from a child's third birthday to the beginning of the next school year. The requirements relating to services for children who turn three, including the requirement that these children receive a free appropriate public education in accordance with Part B, are unaffected by this statutory change, and the Secretary is not authorized to revise those requirements by regulation. The effect of the statutory amendment reflected in § 303.3 is to permit Part H as well as Part B funds to be used for three-year-old children where only Part B funds had previously been authorized for this purpose.

The requirements relating to parental consent are unaffected by the change to § 303.3. For the Part B requirements concerning parental consent for a preplacement evaluation and initial placement, see 34 CFR 300.504 (57 FR 44794, 44820; Sept. 29, 1992). Whatever the child's age, parental consent must be obtained before the initial placement of a child in a special education program. If parental consent for the initial placement of a child below the age of three in a special education program is refused, the lead agency remains responsible for the provision of Part H services until the child's third birthday (or an earlier successful challenge to the parent's refusal to consent under the procedures in 34 CFR 300.504).

*Changes:* None.

*Section 303.4 Limitation on Eligible Children*

*Comment:* Commenters requested that the Department clarify the relationship between §§ 303.4 and 303.3(d) of the proposed regulations. One commenter requested that the Department clarify which agency—the SEA under Part B or the lead agency under Part H—has responsibility for the delivery of services to children during the year in which they reach age three. Another commenter recommended clarifying that some Part H services may be required to be continued under Part B. Finally, some commenters requested that the Department clarify whether the transition from Part H to Part B terminates service planning for the child and the family throughout the early childhood years.

*Discussion:* Section 303.4 simply incorporates new section 619(g) of the Act. Under the 1991 Amendments, a State may, for the first time, use funds under section 619 of the Act to provide FAPE in accordance with Part B to two-year-old children with disabilities who will reach age three during the school year. See section 619(c)(1)(B)(iii) and (f). Section 619(g) exempts those children from coverage under Part H.

As a general matter, a State that participates in the Part H program must provide early intervention services to all eligible children (see section 676(a) of the Act), and the source of funds for services to a child determines which program requirements are applicable. If a child receives services with Part H funds, the Part H program requirements in this part 303 apply unless the child has reached age three. (The Part B requirements in 34 CFR part 300 apply to services to all children age three or above.) If a child of any eligible age receives services with funds under the section 619 program for preschool children, the program requirements in part 300 but not part 303 apply. (See 34 CFR 301.4(c) and section 619(g) of the Act, discussed above.) Finally, if a child below age three receives services with Part B funds under section 611, the requirements of both part 300 and part 303 must be met.

If only Part B requirements apply, the State educational agency (SEA) and not the lead agency under Part H is responsible for ensuring that those requirements are met. 34 CFR 300.600(a)(1). The SEA may carry out this responsibility through the use of an interagency agreement with the Part H lead agency or by other means. See 34 CFR 300.152 and 300.600(b). If both Part B and Part H requirements apply, the SEA is responsible for ensuring compliance with the requirements of Part B, while the lead agency is responsible for ensuring compliance with the requirements of Part H. Respecting the effects of a child's movement from Part H to Part B on service planning and the continuation of particular services, the Secretary points out that services to the family may be provided as "related services" under Part B if they are necessary to assist the child to benefit from special education. See 34 CFR 300.16. The Secretary encourages the continuation of services agreed to by the family, such as those described in the legislative history of the 1991 Amendments (H.R. REP. NO. 198, 102d Cong., 1st Sess. 7–8 (1991)). Commenters are referred to § 303.148, which contains detailed new requirements designed to ensure that the transition from Part H to Part B is a smooth one.

*Changes:* None.

*Section 303.5 Applicable Regulations*

*Comment:* None.

*Discussion:* Current regulations contain duplicative and technically inaccurate provisions relating to the applicability of regulations outside this part to the Part H program. Specifically, both §§ 303.5 and 303.460 contain provisions that apply Part B regulations on the confidentiality of information (§§ 300.560–300.576) to the Part H program and change the meanings of certain terms for Part H purposes. In order to eliminate redundant and unnecessary provisions and to consolidate cross-references to applicable regulations in one location, § 303.5(b) has been expanded to include the necessary cross-references to Part B regulations that are found in § 303.460(b) of current regulations. The Secretary believes this change will clarify the requirements relating to the confidentiality of information under the Part H program.

*Changes:* Paragraph (b) of this section has been revised to add cross-references to, and Part H meanings for, two terms and two section numbers of the Part B regulations that are found in §§ 300.560–300.576. Conforming changes have been made in § 303.460 and the note following the text of that section. In addition, in the note following the text of this section (§ 303.5), the reference to "natural environments" has been placed in its proper location.

*Section 303.12 Early Intervention Services.*

Paragraph (b)—*Natural environments.*

*Comment:* Commenters requested clarification of the flexibility afforded to service providers in determining which environments are "natural" for children with disabilities. Some commenters requested that the Department clarify when a child should be served in a natural environment by providing a detailed list of examples or by other means.

Other commenters expressed concern that the needs or wishes of the family not be ignored in determining the location of service delivery. One commenter felt that center-based services might be an appropriate delivery mechanism for some services and might serve the needs of the family for support and collegiality.

*Discussion:* The Secretary believes that no further guidance is appropriate at this time. Decisions on the early intervention services to be provided to a child and his or her family, including decisions on the location of service delivery, are made in the development of the individualized family service plan (IFSP) described in §§ 303.340–303.346. The Secretary contemplates that the range of available options will be reviewed at the IFSP meeting described in § 303.342, in which the parents of the child are full participants. With respect to the comment on center-based services, the Secretary emphasizes that decisions on the location of service delivery must be made on an

individualized basis in accordance with the needs of the child and the family. See § 303.344(d).

*Changes:* None.

Paragraph (d)—*Types of services; definitions.*

(1) *Assistive technology device.*

*Comment:* Several commenters expressed the concern that the proposed definition of "assistive technology device" is too broad and could require service agencies to fund medically-related equipment, supplies, and services (e.g., eyeglasses, wheelchairs, repair and maintenance of wheelchairs, and hearing aids). These commenters suggested limiting the term "assistive technology device" to include only devices that result in an educational benefit to children with disabilities or that serve a child's developmental needs, and exclude all medically-related items. Commenters also expressed concern about the costs of providing assistive technology devices under the proposed definition of the term.

Commenters requested clarification of certain phrases in the definition of "assistive technology device," including "product system" and "functional capabilities." Some commenters suggested substituting "developmental capabilities" for "functional capabilities" to clarify that assistive technology devices are used to meet the developmental needs of the child. This suggested substitution was opposed by other commenters.

*Discussion:* The definition of "assistive technology device" is taken from section 602(a)(25) of the Act, and there is no authority to change the substance of that definition. However, the Secretary points out that in the context of the Part H program, assistive technology devices are required only if they relate to the developmental needs of the infants and toddlers served by the program. See § 303.12(a)(1). Linking the provision of those devices to an educational benefit is not appropriate under a program that serves children from birth to age three. Part H does not require that assistive technology devices be provided to meet the medical or quotidian, life-sustaining needs of a child.

The Secretary shares the concern of some commenters that the costs of assistive technology be manageable. The Secretary reiterates that the purpose of assistive technology devices is to meet the unique developmental needs of the child, as determined on an individualized basis through the IFSP development process. The Secretary recognizes that interagency cooperation will be needed to identify all available sources of assistive technology funding, both public and private.

*Changes:* None.

*Assistive technology service.*

*Comment:* Commenters expressed the concern that the proposed definition of "assistive technology service" is overly broad. Commenters expressed the same concerns that were expressed with regard to the proposed definition of "assistive technology device." These commenters stated that assistive technology services should not include medically-related services, but rather should focus on the educational or developmental needs of children with disabilities.

Other commenters had questions about the list of the specific types of assistive technology services. One commenter requested that the Department clarify the financial obligation of the service provider in acquiring an assistive technology device in paragraph (d)(1)(ii), and selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing an assistive technology device in paragraph (d)(1)(iii). Another commenter suggested adding "installing" and "monitoring" to the listed activities in paragraph (d)(1)(iii). One commenter recommended that paragraph (d)(1)(vi) be adapted to the Part H program by referring to individuals providing "early intervention services" rather than "education or rehabilitation services." Finally, several commenters requested that, because the Part H program serves only young children, the Department either clarify or delete the phrase "employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities" in paragraph (d)(1)(vi).

*Discussion:* The definition of "assistive technology service" is taken from section 602(a)(26) of the Act and may not be substantively altered by regulation. Commenters are referred to the above discussion of the nature, purpose, and cost of assistive technology devices for responses to similar comments and concerns relating to assistive technology services.

The Secretary agrees that paragraph (d)(1)(vi) should be revised to conform the statutory language of the definition, which applies to all of the Individuals with Disabilities Education Act, to the scope of the Part H program.

*Changes:* Paragraph (d)(1)(vi) has been revised (1) to delete references to "education or rehabilitation" services and substitute "early intervention" services, and (2) to delete references to the employment of the individuals with disabilities served by the program.

(9) *Physical therapy.*

*Comment:* One commenter expressed concern about broadening the scope of "physical therapy" under the Part H program. This commenter expressed the view that intensive hospital-level services should not be transferred to community-based early intervention services.

Other commenters requested certain clarifications of and amendments to the definition of "physical therapy." One commenter requested that the Department distinguish occupational therapy from physical therapy. Another commenter requested that the Department add the term "treatment" to services to "prevent or alleviate" movement dysfunction and related functional problems in paragraph (d)(9)(iii) to further explain the types of physical therapy services available to children with disabilities. Also, this commenter requested that the Department add the phrase "compensate for" to paragraphs (d)(9)(ii) and (iii) to encompass physical therapy for children whose conditions can be neither prevented nor alleviated.

Finally, other commenters suggested that the Department amend the list of physical therapy services. One commenter requested that the list of physical therapy services be amended to include assistance in the use of assistive technology needed for postural support, ambulation, and independent mobility. Another commenter requested that the Department amend the list of services to include "providing assistive technology and services."

*Discussion:* The purpose of the proposed revisions of the definition of "physical therapy" is to keep pace with advances in the field and, in particular, to reflect the full scope of the practice of physical therapists in a pediatric setting. The revisions do not address whether a particular service is appropriate for an individual child or where a service should be provided.

A definition of "occupational therapy" appears in § 303.12(d)(8), and no revision of that definition has been proposed. The Secretary believes the distinction between "occupational therapy" and "physical therapy" is sufficiently clear. The Secretary agrees with the suggestions to amend the definition of "physical therapy" to add references to "treatment" and to services to "compensate for" movement dysfunction and related functional problems. The Secretary believes the broad application of assistive technology devices and services makes the inclusion of assistive technology in the definition of any one type of early intervention service inappropriate.

*Changes:* Paragraphs (d)(9)(ii) and (iii) have been amended to add the suggested references to "treatment" and services to "compensate for" functional problems.

(15) *Transportation and related costs.*

*Comment:* One commenter requested that the Department require that all transportation services provided under Part H meet State safety standards. Some commenters were concerned about the costs of providing transportation to children with disabilities and their families, and one commenter asked whether families are required to use the least expensive mode of transportation available. Another commenter asked that the regulations provide that Part H funds may be used for the transportation costs of family members, caregivers, or service providers if needed for the provision of early intervention services.

*Discussion:* The Secretary does not believe that further guidance on the meaning of "transportation and related costs" is needed. The legislative history of the 1991 Amendments indicates that the addition of the quoted phrase to the statutory list of early intervention services was intended as an endorsement of current regulations on the subject. The regulations would not alter current program requirements.

No change in the proposed regulation is needed to ensure that transportation services meet State safety standards. Compliance with those standards is required by § 303.12(a)(4). Federal regulations for the Part H program do not require the use of any particular mode of transportation. Whether to impose such a requirement, consistent with the requirements of this part, is a matter of State responsibility.

*Changes:* None.

(16) *Vision services.*

*Comment:* One commenter requested that the Department clarify which State agencies are required to reimburse families for vision testing.

*Discussion:* The allocation of financial responsibility for early intervention services among State agencies is a matter of State responsibility. See §§ 303.143 and 303.523. The Secretary believes that no change to the proposed definition of "vision services" is necessary.

*Changes:* None.

Paragraph (e)—*Qualified personnel.*

*Comment:* One commenter requested that the Department define the terms "family therapists" and "orientation and mobility specialists" used in this paragraph of the proposed regulations. Another commenter requested that personnel who are qualified to provide transportation services and paraprofessionals be added to the list of qualified personnel and that the regulations include minimum standards for all personnel.

*Discussion:* Since the list of qualified personnel in paragraph (e) is not exhaustive, the Secretary declines to amend it except as provided by the 1991 Amendments. Nor does the Secretary believe it is necessary that Federal regulations define or provide minimum standards for categories of qualified personnel. The qualifications of early intervention service providers are a matter of State responsibility. See §§ 303.12(a)(3)(ii), 303.21, and 303.361, none of which has been proposed to be amended.

*Changes:* None.

*Note following § 303.12.*

*Comment:* Several commenters addressed the statement in the note following the regulatory text that qualified personnel may include paraprofessionals. Some commenters requested that paraprofessionals not be considered qualified to provide early intervention services because they lack adequate training. One commenter suggested that the Department permit paraprofessionals to provide early intervention services only under the supervision of qualified professionals. Another commenter suggested requiring that paraprofessionals be appropriately trained.

One commenter requested that the terms "vision specialists" and "paraprofessionals" used in the note be defined. Another commenter requested that the Department state that developmental stimulation is an early intervention service that can be provided independent of special instruction. Also, one commenter requested that the Department clarify what types of services are included in "respite and other family support services" as that phrase is used in the note.

*Discussion:* The proposed revision of the language of the note (Note 2 following § 303.12 in current regulations) regarding paraprofessionals contains no substantive changes. Whether paraprofessionals are permitted to provide early intervention services and the standards applicable to their work are matters of State responsibility. See, for example, § 303.361 and the note following that section, which have not been proposed to be substantively revised. For this reason, and because the services and personnel referred to in the note are illustrative only, the Secretary believes that the commenters' suggested revisions are unnecessary. Commenters are referred to § 303.12(a) for the definition of "early intervention services" as that term is used in this part.

*Changes:* None.

*Section 303.16 Infants and Toddlers With Disabilities*

*Comment:* Comments on proposed § 303.16 focused on the notes following the regulatory text. Most commenters objected to the proposed revision of Note 1 and requested that States be given the flexibility to determine whether to serve children who have a multiplicity of factors that make developmental delay highly probable. One commenter expressed support for the proposed revision concerning the cumulative effect of a combination of risk factors.

Commenters requested that the Department clarify the extent to which States are authorized to define which children have conditions that have "a high probability of resulting in developmental delay" and children who are "at risk." One commenter suggested that States encourage communities to meet the needs of unserved "at risk" children. Commenters also requested that the Department further define the terms "high probability" and "toxic substances," as used in proposed Note 1.

Some commenters requested that certain phrases be substituted for phrases in the notes. Commenters requested that the phrase "maternal substance abuse" in the second paragraph of proposed Note 1 be revised to place the emphasis on the exposure of the child rather than the behavior of the mother. Commenters also requested that the Department specify in proposed Note 2 that environmental as well as biological factors may place infants at risk of developmental delay in order to update the note in light of current knowledge.

In addition to the comments on the notes following the regulatory text, the Department received comments requesting a definition of the term "physical development" as used in § 303.16(a)(1)(ii).

*Discussion:* The regulatory text of this section is unchanged except for the updating of terminology required by the 1991 Amendments. The Secretary believes it is unnecessary to revise the text of § 303.16 to define a term, "physical development," that has been used in its present context since the program regulations were first promulgated.

Note 1 after the text relates to children who need early intervention services because they have "a diagnosed physical or mental condition that has a high probability of resulting in developmental delay." Under § 303.300(b), relating to State eligibility criteria and procedures, States retain substantial discretion in determining the existence of such a condition. For this reason, and because the determinations at issue do not lend themselves to quantitative precision, the Secretary believes it is inappropriate to define the term "high probability." The Secretary intends no special meaning for the phrase "disorders secondary to exposure to toxic substances" that is included in the list of examples of diagnosed conditions in Note 1. Therefore, the term "toxic substances" is not defined. However, the Secretary is persuaded that the proposed clarification regarding a combination of factors should be withdrawn. Only children who have one or more conditions that, considered separately, have a high probability of resulting in developmental delay fall within the category described in § 303.16(a)(2), as is the case under current regulations.

Note 2 after the text of § 303.16 relates to children who are at risk of having substantial developmental delays if early intervention services are not provided and who may be served at a State's discretion. The Secretary agrees with the suggestion to refer to "environmental" risk factors in this note. The note is further revised to add two examples of this kind of risk factor.

*Changes:* Proposed Note 1 has been amended by striking the second paragraph, relating to a combination of factors. Proposed Note 2 is amended by referring to biological and "environmental" rather than "other" identifiable factors that place infants and toddlers at risk and by adding two examples of environmental risk factors: nutritional deprivation and a history of abuse or neglect.

*Section 303.22 Service Coordination (Case Management)*

*Comment:* One commenter suggested revising the statement of the service coordinator's role in paragraph (a)(2)(i) to emphasize that the service coordinator's responsibility is to assure and not duplicate coordination. The same commenter suggested revising paragraph (a)(2)(ii) to read that the service coordinator is "a point of contact," rather than "the single point of contact" in assisting parents in need of Part H services. The commenter believed this change was needed to permit parents to access services through means other than the service coordinator. Other commenters suggested revising paragraphs (a)(3)(i) and (b)(3) to ensure that service coordinators assist families in making financial arrangements for early intervention services. Regarding the qualifications of service coordinators described in paragraph (d), these commenters requested that the Department require that service coordinators have knowledge of possible funding sources for providing Part H services.

*Discussion:* The text of § 303.22 (§ 303.6 of current regulations) is proposed to be revised only to reflect a change in terminology required by the 1991 Amendments. The Secretary declines to adopt the suggested revisions of paragraphs (a)(2) (i) and (ii). The service coordinator's role as the single point of contact helps to ensure that coordination services are not duplicative. Since parents may access services independently of the coordinator under current regulations, no revision is needed to accomplish this purpose. The Secretary also declines to adopt the suggested revisions relating to service coordinators' knowledge of funding sources and their responsibility to assist in making financial arrangements for early intervention services. The broad language of current regulations makes these revisions

unnecessary. See, in particular, paragraphs (a)(2)(ii) and (d)(3).

*Changes:* None.

**Subpart B—State Application for a Grant**

*Section 303.124 Prohibition Against Supplanting*

*Comment:* One commenter recommended that the "particular cost" test not be removed from the supplanting prohibition in the Part H regulations until the effects of doing so were studied further.

*Discussion:* The removal of the prohibitions against using funds under Part B and Part H to displace State or local funds for any "particular cost" was proposed in an NPRM published on December 30, 1991 (56 FR 67420). The May 1, 1992 NPRM for Part H included § 303.124 as it had been proposed to be revised in the earlier notice. The comment described above was submitted in response to both NPRMs. On August 19, 1992, the Secretary adopted final regulations that removed the "particular cost" test from both the Part B and the Part H supplanting prohibitions. In the analysis of comments and changes that accompanied those regulations, the Secretary expressed the view that there was no need to delay the removal of the "particular cost" test from the Part H regulations. See 56 FR 37653.

*Changes:* None.

*Section 303.128 Traditionally Underserved Groups*

*Comment:* Commenters requested that the Department clarify the meaning of "traditionally underserved," "meaningfully involved," "culturally competent services," and "local geographical area" as used in this section. Some commenters suggested that the regulations incorporate minimum standards for the involvement of, and services to, traditionally underserved groups or that illustrations of satisfactory State policies and practices be provided. Other commenters requested that the Department clarify the responsibilities of States to ensure the meaningful involvement of Indian tribes and the provision of culturally competent services to Indian families on reservations.

*Discussion:* The Secretary declines to provide further guidance at this time on the content of the new required assurance concerning traditionally underserved groups. Respecting Indian tribes and families on reservations, commenters are advised that the 1991 Amendments extend the State's duty to ensure the availability of early intervention services to Indian children on reservations served by BIA schools. See § 303.302.

While the regulations do not prescribe State policies and practices in this area, the Secretary points out that considerations of cultural competency are relevant to many aspects of the statewide system under Part H—e.g., the development of a central directory of information (see § 303.301), the establishment of a public awareness program (see § 303.320), the content of a comprehensive child find system (see § 303.321), the procedures for the evaluation and assessment of children and for family assessments (see § 303.322), and the content of the comprehensive system of personnel development (see § 303.360)—as well as the provision of early intervention services. The Secretary encourages States to explore effective means of involving minority, low-income, and rural families and other traditionally underserved groups in the Part H system and of ensuring effective services to these groups.

*Changes:* None.

*Section 303.148 Transition to Preschool Programs*

*Comment:* Commenters suggested that the Department change all references to children who "are eligible" for participation in Part B to children who "may be eligible." This change was suggested to emphasize that a determination of eligibility for Part B occurs when a child exits the Part H program and that transition plans should be developed only for children who are reasonably likely to be eligible for Part B services. Another commenter suggested broadening the scope of the section to address the transition from Part H of children who are not eligible for Part B. This commenter urged that service delivery models appropriate under Part H be available to all children with disabilities from birth through age five.

Commenters also requested that the Department clarify the use of evaluation data and the role and financial responsibility of each State agency in the transition process. One commenter asked that the Department add language to emphasize that the goal is an individualized program, whatever the funding source.

*Discussion:* The Secretary agrees that it would be helpful to clarify when the conference described in § 303.148(b)(2) must be convened. The clarification adopted in the final regulations is based upon the legislative history of the 1991 Amendments. See S. REP. NO. 84, 102d Cong., 1st Sess. 17 (1991).

The Secretary does not believe it is appropriate to expand the requirements for transition planning beyond the scope of the statute. However, Note 2 following this section encourages States to facilitate a smooth transition of all children who are exiting the Part H program. As regards service delivery models, nothing in these regulations precludes the use of models that are appropriate to Part H under the preschool program authorized by Part B so long as services comply with Part B requirements. Moreover, regulations under Part B specifically authorize the use of an IFSP for children aged three through five under certain conditions. See 34 CFR 300.343(a).

The Secretary declines to prescribe the appropriate elements of transition planning in greater detail. The Secretary contemplates that the use of evaluation data and the allocation of financial responsibility will be addressed in any State's planning and in the interagency agreement required by paragraph (c) in a State where the SEA is not the lead agency under Part H. Note 1 following this section lists several matters that should be considered in developing policies and procedures to ensure a smooth transition of children from the Part H to the Part B program.

*Changes:* Paragraph (b)(2) has been revised to provide that the statutorily-required conference among the lead agency, the family, and the local educational agency or unit must be convened at least 90 days before the child's third birthday or, if earlier, the date on which the child is eligible for the Part B preschool program under State law. A conforming change has been made in § 303.344(b)(1). In addition, the citation of authority following § 303.148 has been corrected.

*Section 303.180 Payments to the Secretary of the Interior for Indian Tribes and Tribal Organizations*

*Comment:* One commenter requested that, in view of the respective responsibilities of tribes and States, the Department clarify: (1) Whether the Bureau of Indian Affairs (BIA) schools will provide screening, evaluation, and assessment for non-Indian children in rural areas; (2) whether tribal health clinics will be open to the public; (3) whether county health districts will extend outreach into tribal lands and reservations; (4) how States will ensure extension of services to tribal communities; and (5) whether the BIA or the State lead agency will monitor the activities of a tribal school that receives Part H funds. Another commenter asked for clarification of the provision of technical assistance to States and tribes concerning services to Native American children with disabilities on reservations.

*Discussion:* The Secretary believes it would be inappropriate to provide the requested guidance on the responsibilities of the Secretary of the Interior. Commenters are referred to section 684(b) of the Act for a description of the Secretary of the Interior's responsibility to distribute payments under the Act to tribes and tribal organizations. Many of the clarifications sought by commenters concern matters that are the responsibility of the Department of the Interior, tribes, or States and do not relate specifically to the Part H program. The Secretary declines to address these matters in the Part H regulations.

The State lead agency's supervision and monitoring responsibilities, including the provision of technical assistance to entities used by the State to carry out the Part H program, are stated in § 303.501. These responsibilities apply to tribal schools to the extent that those schools conduct activities that receive Part H assistance from the State or carry out the State's Part H program. The Part H regulations do not make further provision for technical assistance, and section 684(b)(6) of the Act prohibits use of Part H funds by the Secretary of the Interior for that purpose.

*Changes:* None.

**Subpart D—Program and Service Components of a Statewide System of Early Intervention Services**

*Section 303.300 State Eligibility Criteria and Procedures*

*Comment:* One commenter requested that the Department clarify whether "informed clinical opinion," which is required by this section to be a part of a State's assessment criteria and procedures, permits a determination that a child is eligible for Part H services without "testing." Another commenter suggested that further

information be provided on the use of informed clinical opinion.

*Discussion:* The use of informed clinical opinion in determining a child's eligibility under Part H is substantively unaffected by the proposed regulations. Section 303.322(c)(2), which is unchanged, requires that the evaluation and assessment of each child be based upon informed clinical opinion. The note following § 303.300, which is also unchanged in substantive terms, provides further guidance on the use of informed clinical opinion. The Secretary believes that no further guidance to States on this matter is necessary.

*Changes:* None.

*Section 303.321 Comprehensive Child Find System*

*Comment:* Two commenters requested that the Department add Supplemental Security Income (SSI) to the list of programs to be coordinated with the Part H child find system by the lead agency. Commenters requested the addition of several other programs as well.

*Discussion:* The list of programs that may locate and identify children in need of early intervention services in § 303.321(c)(1) is not exhaustive. However, the Secretary agrees with the suggestion to add the SSI program because it represents a major national effort to locate and identify children who may have disabilities.

*Changes:* Section 303.321(c)(1) has been revised to add a reference to the Supplemental Security Income program under Title XVI of the Social Security Act.

*Section 303.322 Evaluation and Assessment*

*Comment:* Commenters requested that the Department clarify the term "family assessment." One commenter requested that the term be changed to "description of family resources, priorities, and concerns." Another commenter recommended that the term be changed to "family-directed assessment." Finally, one commenter recommended that § 303.322 incorporate the new requirement relating to "natural environments." See § 303.12(b).

*Discussion:* The revisions of § 303.322 relating to the term "family assessment" used in paragraph (d) are for the purpose of incorporating the new requirement for a family-directed assessment in section 677(a)(2) of the Act. The Secretary believes that the substantive provisions of the amended statute are fully and accurately reflected in the revised regulations and that there is no need to revise the term "family assessment."

The Secretary declines to adopt the suggestion to incorporate the "natural environments" requirement in this section because it is not the function of the evaluation and assessment to identify where early intervention services should be provided. Like all other aspects of services to a particular child, the setting for service delivery must be determined through the IFSP process described in §§ 303.340–303.344. The "natural environments" requirement is referenced in § 303.344(d)(1)(ii) of the regulations relating to the IFSP process.

*Changes:* The citation of authority following § 303.322 has been corrected.

*Section 303.342 Procedures for IFSP Development, Review, and Evaluation*

*Comment:* One commenter requested that the Department clarify whether parents may withdraw consent for a particular service after initially approving the service. Other commenters suggested that the Department implement more effective procedures for ensuring that a family's and child's needs are identified, that the family has the opportunity to make choices from among alternatives as to how to meet those needs, and that the periodic review of IFSPs address the "natural environments" requirement in § 303.12(b).

*Discussion:* The Secretary agrees that the regulations should make clear that parents may bar the provision of a particular early intervention service by withdrawing consent that they have previously given for that service. This clarification is based upon the legislative history of the 1991 Amendments. See S. REP. No. 84, 102d Cong., 1st Sess. 28 (1991) and H.R. REP. No. 198, 102d Cong., 1st Sess. 21 (1991). The Secretary believes that the requirements for the development, review, and evaluation of an IFSP contained in current regulations and those derived from the 1991 Amendments provide sufficiently detailed guidance and declines to prescribe additional requirements on the subject.

*Changes:* Section 303.342(e) has been revised to provide that if parents withdraw consent to a particular early intervention service after first providing consent, that service may not be provided. In addition, a parallel change has been made in § 303.405—Parent right to decline service.

*Section 303.344 Content of an IFSP*

Paragraph (d)—*Early intervention services.*

*Comment:* Some commenters requested that the Department provide flexibility to States in determining which environments are "natural environments." Other commenters requested that the Department provide parents with the option of choosing the environments in which their children will receive Part H services. Finally, commenters requested that the Department require that IFSPs include the provision of information to the family on funding sources and the steps that will be taken to secure Part H services through public or private sources.

*Discussion:* Commenters are referred to the above discussion of the "natural environments" provisions of § 303.12(b) for the Secretary's views on the process by which decisions on the settings for service delivery are made. Respecting the early intervention services that must be included in an IFSP, commenters are advised that § 303.344(d)(1)(iv) requires any payment arrangements for services to be included in that document. The Secretary does not believe it is necessary to prescribe the inclusion of funding sources and the steps to be taken to secure them for services provided or paid for by a public agency. Arrangements for those services will already have been made as a part of the establishment of the early intervention system.

*Changes:* None.

Paragraph (e)—*Other services.*

*Comment:* Several commenters addressed the proposed requirement, in paragraph (e)(1)(ii), that funding sources for medical and other non-required services that are included in the IFSP also be included in that document. Some commenters supported the proposed requirement. Other commenters opposed it, stating that the requirement would cause confusion for families, create burdens for the lead agency and others, or delay the provision of services. One commenter recommended continuing the approach in current regulations, which requires that if an IFSP includes non-required services it must also include the steps to be taken to secure those services through public or private sources. Another commenter recommended that the current and proposed approaches be combined.

Commenters also requested that the Department (1) clarify the responsibilities and obligations of the service coordinator in assessing or assuring the provision of or payment for the non-required services included in the IFSP; (2) add services that address family needs, as well as the child's needs; (3) clarify that some services may not require funding, but rather may be addressed through "natural supports;" and (4) substitute the phrase "child-specific needs" for "child needs" to avoid an interpretation that the regulation addresses housing and employment.

*Discussion:* The proposed requirement to include in the IFSP the funding sources of listed non-required services is based upon language in the note following § 303.13 of the current regulations. The language of the note, incorporated in proposed § 303.344(e)(1)(ii), is quoted with approval in the legislative history of the 1991 Amendments. See S. REP. No. 84, 102d Cong., 1st Sess. 21 (1991) and H.R. REP. No. 198, 102d Cong., 1st Sess. 13–14 (1991). The Secretary believes the proposed language should be adopted. However, the Secretary also believes the approach in current § 303.344(e)(1)(ii), which requires that the IFSP include the steps to be taken to secure services, may be appropriate when the funding sources for all listed non-required services are not immediately identifiable. Therefore, that paragraph has been revised to combine the two approaches.

The Secretary encourages States to apply the regulations in § 303.344(e) consistent with their broad purpose of providing a comprehensive picture of the family's need for services and assisting the family in obtaining those services. Note 3 following § 303.344 discusses the medical and other non-required services addressed in this paragraph. The note, which is substantively unchanged, states some of the reasons why the inclusion of non-required services in an IFSP can be helpful to both the child's family and the service coordinator. These same reasons underlie the requirement to include in the IFSP information described in paragraph (e)(1)(ii) for those non-required services that are listed in that document. Note 3 also makes clear that services to meet the needs of the family related to enhancing the development of the child are a proper subject for the IFSP. The Secretary believes that the guidance in current Note 3 is

sufficiently detailed and declines to address the subject matter of the note further.

*Changes:* Section 303.344(e)(1)(ii) has been revised to require that the IFSP include, for the non-required services that are listed in that document, either the funding sources to be used in paying for those services or the steps that will be taken to secure them through public or private sources. A conforming change has been made to the language in the note following § 303.13.

Paragraph (f)—*Dates; duration of services.*

*Comment:* Commenters requested that the Department clarify the circumstances under which it may be appropriate to delay the start of certain services identified in the IFSP. These commenters expressed the concern that a complete list of services for a child may not be able to be identified at the time of the development of the IFSP. Also, commenters requested that the regulations provide that services be initiated on a schedule formulated by the family and appropriate for the family's particular circumstance.

*Discussion:* The purpose of the proposed revision of § 303.344(f) is to ensure that there is no unnecessary delay between the development and the implementation of the service plan in the IFSP. The revision does not compel the initiation of all services immediately; the needs of the child and the family determine the timelines for the initiation of services. Like other aspects of the IFSP, the schedule of service delivery is developed in the process described in § 303.342, and the parents of the child are full participants in that process. If a need for additional services is identified after the initial development of the IFSP, the document may be modified as described in § 303.342.

*Changes:* None.

Paragraph (g)—*Service coordinator.*

*Comment:* One commenter requested that the Department add a note stating that parents may serve as their own service coordinators, as well as serve as service coordinators for other families after they receive appropriate training. Another commenter requested that the Department clarify who would be responsible for providing Part H services to hospitalized children and how a child would receive Part H services after discharge from the hospital. Finally, one commenter requested that the Department substitute the phrase "child care" for "day care" in Note 1 following § 303.344.

*Discussion:* The Secretary acknowledges that parents of children with disabilities have the primary responsibility for coordinating their children's affairs. At the same time, the Part H statute requires that the IFSP identify the person who will be responsible for the implementation of the IFSP and "coordination with other agencies and persons." Section 677(d)(7) of the Act. The Secretary believes this responsibility is properly the State's and that the Part H program functions best when parents work with a service coordinator provided by the State.

The legislative history of the 1991 Amendments suggests that the qualifications for a service coordinator reflected in § 303.344(g) were expanded in order to include persons from professions other than the one "most immediately relevant to the (child's) or family's needs" (section 677(d)(7)) and appropriately trained parents of other children. H.R. Rep. No. 198, 102d Cong., 1st Sess. 18–19 (1991); S. Rep. No. 84, 102d Cong., 1st Sess. 25–26 (1991). All service coordinators must also meet the qualifications for this area under §§ 303.21 and 303.22. Parents may perform certain coordinating responsibilities for their own children in concert with the service coordinator provided by the State.

The Secretary declines to provide further guidance on the provision of services to hospitalized children, which is governed by the IFSP process discussed above. The Secretary agrees with the commenter's suggested editorial changes in Note 1 following the regulatory text.

*Changes:* Note 1 following § 303.344 has been revised to refer to "child care centers" rather than "day care centers" in the list of examples of natural environments.

*Section 303.360 Comprehensive System of Personnel Development*

*Comment:* One commenter requested that the Department add regulatory language emphasizing interdisciplinary training. Another commenter requested that the Department clearly indicate the supervisory relationship between a paraprofessional and a professional. A third commenter requested that language be added to require training related to the understanding of preschool special education under section 619 of the Act. Fourth, a commenter requested that the comprehensive system of personnel development (CSPD) be permitted to include training personnel to work in urban areas as well as the rural areas referred to in the Act. Finally, commenters requested that the Department expand the list of who may be trained and the types of training they may receive.

*Discussion:* The Secretary declines to revise the regulations to emphasize interdisciplinary training, which is addressed in § 303.360(b)(2). Commenters are referred to the discussion of the note following § 303.12 for the Secretary's views on the use of paraprofessionals in the Part H program. Training related to the preschool program under section 619 may be included in the CSPD under § 303.360(c)(4), which reflects new section 676(b)(8)(D) of the Act. The Secretary declines to make mandatory an activity that is permissible under the statute. The Secretary interprets the recitation of permissible elements of a CSPD in section 676(b)(8)(A)–(D) (implemented in proposed § 303.360(c)) as illustrative and not exhaustive. Therefore, no regulatory change is needed to allow the inclusion in the CSPD of training personnel to work in urban areas. The determination of whether to include this activity is a matter of State responsibility. Similarly, since the regulations do not specify each type of personnel needed for the early intervention system or the types of training to be provided, no change is necessary in response to the last comment summarized above.

*Changes:* The numbering of paragraphs in § 303.360(c) has been corrected.

**Subpart E—Procedural Safeguards**

*Section 303.404 Parent Consent*

*Comment:* Commenters requested clarification of whether a parent's refusal to consent to either the provision of services or an initial evaluation of his or her child is final, or whether a public agency may override a parent's refusal to consent through a due process hearing. Also, one commenter requested that written parental consent be required for initial IFSP development.

*Discussion:* The Secretary agrees that a clarification of the consequences of a parent's refusal to consent would be useful. A public agency may not override a parent's refusal to consent to the provision of Part H services. See § 303.405. However, the initial evaluation of a child is a requirement under Part B as well as Part H. See § 300.128(a)(1) and Note 2 following that section of the Part B regulations. Therefore, the governing regulations in the case of a parent's refusal to consent to an initial evaluation are those issued under Part B. Under § 300.504(b) of those regulations, a public agency may initiate procedures (described in that section) to challenge the parents' refusal to permit the evaluation to take place. If the agency is successful in its challenge, the evaluation may proceed.

Regulations under Part H require written parental consent before early intervention services described in the IFSP may be provided. See § 303.342(e). As a practical matter, the participation of parents is essential to the development of the IFSP.

*Changes:* Note 2 following § 303.404 has been revised to clarify that a public agency may initiate procedures to challenge a parent's refusal to consent to the child's initial evaluation, as discussed above.

*Section 303.460 Confidentiality of Information*

*Comment:* One commenter requested that the Department state that the phrase "consistent with Federal and State law" in paragraph (a) of this section means only that the written notice and consent provisions do not supersede existing child abuse and other relevant statutes protecting children or the public health that also provide for the sharing of information among agencies.

Second, commenters requested that the Department add a provision requiring that agencies or programs participating in the State's early intervention system obtain parental consent prior to making a referral to either the Part H program or the Part B program. These commenters stated that parental consent prior to referral is necessary to protect against the unauthorized disclosure of the child's identity to another agency or program.

Third, commenters requested that the Department define the term "agency" to mean the traditional administrative entity responsible for a defined function or activity (e.g., public health or mental health) so that parental consent would be required for the exchange of information within an umbrella agency that encompassed many functions.

Finally, one commenter requested that the Department add a note encouraging the lead agency and other agencies to pursue the

elimination of barriers to efforts by agencies to share information. This commenter expressed concern that confidentiality considerations may be read improperly to prohibit all interagency systems.

*Discussion:* The Secretary does not agree with the commenters' construction of the amendment to section 680(2) of the Act that is incorporated in proposed § 303.460(a). The Secretary interprets the amendment to permit the exchange of information consistent with the Family Educational Rights and Privacy Act of 1974 (FERPA) as implemented in 34 CFR part 99, as well as other Federal and State law. The exchange of personally identifiable information among the Part H lead agency and local service providers is governed by the FERPA regulations through the provisions of § 303.460(b), which applies Part B requirements on confidentiality of information, and § 300.571 of the Part B regulations. The FERPA regulations do not require prior written parental consent for the disclosure of information among appropriate State and local educational authorities within the Part H system when disclosure is "in connection with * * * compliance with Federal legal requirements which relate to" the Part H program, 34 CFR 99.35(a). Thus, for example, parental consent is not required for the disclosure of personally identifiable information as a part of the referral of a child for evaluation within two working days after the child is identified—a Part H requirement under § 303.321(d)(2)(ii). However, if such a disclosure is made, the information must be afforded special protection, as specified in 34 CFR 99.35(b). Under § 303.344(h)(2)(iii) of the current regulations, parental consent is required for the State lead agency's notification of the appropriate educational agency under § 303.148(b)(1) in order to prepare for a child's exiting the Part H program. In light of the detailed guidance on the confidentiality of information in current Federal regulations, the Secretary declines to adopt the commenters' suggestions.

*Changes:* None.

**Subpart F—State Administration**

*Section 303.501 Supervision and Monitoring of Programs*

*Comment:* Commenters addressed the requirement in paragraph (a)(2) of this section that the lead agency monitor programs used by the State to carry out Part H, even if those programs are not receiving Part H funding. Commenters requested that the Department provide direction on how the lead agency would monitor an activity in another agency if the activity is not receiving Part H funding.

*Discussion:* The purpose of the monitoring requirement under this section is to ensure that Part H requirements are met. The scope of the lead agency's monitoring responsibilities is the extent to which the program or activity in question receives Part H assistance or is used by the State to carry out the Part H program. If another agency, not funded by Part H, conducts some activities that carry out the Part H program and other activities that do not, the lead agency must monitor only the former.

Commenters are advised that § 303.523 requires the Part H lead agency to enter into formal interagency agreements with other State-level agencies involved in the State's early intervention program. These agreements could serve as the vehicle for the lead agency's implementation of its monitoring responsibilities. The Secretary believes it is the responsibility of the lead agency to determine how it will meet the monitoring requirement.

*Changes:* None.

*Section 303.510 Adopting Complaint Procedures*

*Comment:* Commenters requested that the Department clarify and simplify the procedures in this section. In particular, commenters requested clarification of the scope of the complaints addressed and the nature of a public agency's administrative process leading to an appeal to the lead agency. One commenter requested that the lead agency not be required to hear appeals from decisions of another public agency. Another commenter objected to requiring any new administrative complaint procedures.

*Discussion:* The purpose of the revisions of § 303.510 in the May 1, 1992 notice of proposed rulemaking was to provide complaint procedures for the Part H program that reflected procedures proposed for the Part B program on August 19, 1991 (56 FR 41266). Both sets of proposed procedures provided that the responsible State agency—the SEA for Part B and the lead agency for Part H—would review appeals from decisions of public agencies on complaints relating to the State's compliance with the respective program requirements. The SEA's responsibility to hear Part B appeals already existed under general administrative regulations of the Department, 34 CFR 76.780(a)(2)(1991). The Part H lead agency had no comparable responsibility to hear appeals on Part H complaints.

Final regulations for the Part B program, including State complaint procedures, were adopted on September 29, 1992 (57 CFR 44794). The Secretary believes that those regulations contain provisions that respond to concerns that parallel commenters' concerns about the proposed Part H procedures. Therefore, the Secretary has revised the Part H regulations along the same lines. The revised regulations: (1) Require the lead agency to provide for the filing of a complaint with the lead agency and (2) permit the lead agency also to provide for the filing of complaints with another public agency and the right to have the lead agency review the public agency's decision. The minimum State complaint procedures in § 303.512 apply whether the lead agency adopts a one-tier or a two-tier system. Under either system, the complaints addressed by this section are those that allege that the State has violated a Part H statutory or regulatory requirement.

*Changes:* Section 303.510 has been revised to allow the lead agency to determine whether to adopt a one-tier or a two-tier system, as described above. Conforming changes have been made to the note following the section, to § 303.511, and to § 303.512(a). In addition, the reference to an independent on-site investigation in § 303.512(a)(1) has been expanded to include the material in proposed § 303.510(c) concerning such an investigation. Finally, § 303.512 has been revised to provide clarifications that parallel those adopted in the Part B regulations.

*Section 303.520 Policies Related to Payment of Services*

*Comment.* The Department received many comments on the subject of sliding fee scales. Some addressed the desirability of sliding fee scales themselves. Others addressed the requirement in proposed § 303.520(b)(4)(ii) that States explain determinations not to charge fees. One commenter who supported the use of sliding fee scales stated that charging fees would properly place the burden of paying for Part H services on the recipients or their insurers, rather than on the Federal or State governments that are the "payors of last resort" under the statute. This commenter also stated that families with children with disabilities would feel a sense of commitment if they paid for services according to their ability.

One commenter supported the concept of sliding fee scales, but with limitations: (1) A base family income below which no fees would be required; (2) no required use of insurance; and (3) a cap for the sliding scale.

The majority of commenters who addressed the policy of encouraging sliding fee scales expressed in the preamble to the proposed regulations were opposed to the concept. First, these commenters stated that the costs and income disclosure requirements of a sliding fee scale system would deter families from seeking out Part H services. Second, commenters stated that the concept of a sliding fee scale system runs counter to the cooperation between families with children with disabilities and State agencies that the Part H program has sought to cultivate. Third, commenters stated that the administrative costs of collecting information on family income under a sliding fee scale system would not be recouped by the fees received. Fourth, commenters expressed concern that establishing a sliding fee scale system would place at risk funds under the program for children with disabilities authorized by Chapter 1 of the Elementary and Secondary Education Act. Fifth, commenters expressed the view that introducing a sliding fee scale system for the Part H program would conflict with other programs that do not include a sliding fee scale system and would confuse many families. Finally, commenters objected to sliding fee scales on the ground that the many hidden costs associated with raising a child with a disability would not be factored into a sliding fee scale system. According to the commenters, these hidden costs include a variety of neonatal expenses and ongoing expenses such as the costs of treating a child's disability, satisfying the special dietary requirements of the child, child care, and lost wages to care for the child.

One commenter who opposed sliding fee scales suggested as an alternative that parents provide a few hours of community service in the Part H program. Another commenter recommended a thorough examination of the effect of the scales on service delivery before the adoption of any fees. Other commenters

who were opposed to the concept of sliding fee scales urged the Department not to retain the requirement, relocated from § 303.19 of the current regulations to § 303.520(b)(4)(i) of the proposed regulations, that a State's policies set out any fees that will be charged for early intervention services and the basis for those fees.

Commenters who addressed the proposed requirement that States that decide not to charge fees for Part H services provide an explanation of the determination not to charge fees were uniformly opposed to it. These commenters expressed the view that the requirement would place undue burdens on States, would not enhance the ability of States to decide the merits of sliding fee scales, and would improperly interfere with the discretion of States to determine whether to charge fees for Part H services. Commenters suggested that the Department gather more information on sliding fee scales before adopting a policy in favor of such a system. No comments were received on the elements of useful analyses of sliding fee scales that States might undertake.

*Discussion:* The Secretary has determined not to adopt the requirement in proposed § 303.520(b)(4)(ii) that a State that determines not to charge fees for early intervention services include an explanation for this determination in its policies. The purpose of this proposed requirement was to encourage States to establish sliding fee scales for direct services based on a family's ability to pay, as authorized by section 672(2)(B) of the Act. However, the Secretary is persuaded that the proposed requirement could impose unnecessary burdens on States and presents other problems noted in the comments summarized above. The Secretary has determined to adhere to the policy on sliding fee scales for early intervention services that is contained in current regulations and that the legislative history of the 1991 Amendments expressly endorses. See S. REP. No. 84, 102d Cong. 1st Sess. 20 (1991) and H.R. REP. No. 198, 102d Cong., 1st Sess. 13 (1991). That policy requires that a State provide information about any system of payments it adopts but does not require an explanation for the decision not to adopt a system of payments.

*Changes:* The requirement in proposed paragraph (b)(4)(ii), described above, has been deleted. The requirement in proposed paragraph (b)(4)(i), which is taken from current § 303.19, is retained with conforming editorial changes.

**Subpart G—State Interagency Coordinating Council**

*Section 303.602 Use of Funds by the Council*

*Comment:* One commenter requested that the regulations provide that Council members be reimbursed for only extraordinary—and not normal—child care expenses incurred while attending Council meetings and performing Council duties.

*Discussion:* The proposed regulations incorporate statutory language from the 1991 Amendments. See section 682(d) of the Act. Under this language, the use of funds for child care expenses of parent representatives is permitted, but not required, if those expenses are "reasonable and necessary." The Secretary declines to provide more specific guidance on this topic.

*Changes:* None.

*Section 303.650 General*

*Comment:* Commenters expressed concern about the revision of the Council's functions that permits it to advise and assist the SEA regarding the provision of appropriate services for children. Commenters pointed out that the SEA is required to establish its own statewide advisory panel under Part B. They expressed concern that the new function of the Part H Council would be duplicative and confusing. One commenter asked that the regulations provide that the SEA has the discretion to arrange to obtain the Council's advice and assistance. Another commenter requested that paragraph (b) of this section emphasize advice and assistance on transition matters.

*Discussion:* Proposed § 303.650 incorporates the language in section 682(e)(2) of the Act, as added by the 1991 Amendments. The Secretary declines to prescribe the procedure by which advice may be sought or given, or to expand upon the statutory language in other respects. However, the Secretary encourages the use of advisory bodies to facilitate better communication on matters of mutual concern. The Secretary also offers the observations that the Council's advice and assistance on the provision of services under paragraph (b) is permitted but not required, and that the SEA is not bound by any advice it receives.

*Changes: None.*

*Section 303.653 Transitional Services*

*Comment:* One commenter expressed concern that the added requirement that the Council advise and assist the SEA regarding the transition of children with disabilities to Part B services may prove duplicative and confusing. Another commenter requested that the regulations require the Council to advise and assist the State lead agency as well as the SEA on transition matters.

*Discussion:* The proposed regulations incorporate the statutory requirement in section 682(e)(1)(C), as added by the 1991 Amendments. The Secretary declines to prescribe how the new role of the Part H Council regarding transition issues should be performed or to expand that role by regulation.

*Changes: None.*

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Part IV

# Department of Education

**Office of Educational Research and Improvement—Library Programs; Notice Inviting Applications for New Awards for Fiscal Year 1994**

VOL 58 ISS 145 JL 30 1993 UMI

## DEPARTMENT OF EDUCATION

### Office of Educational Research and Improvement—Library Programs

### Invitation To Apply for New Awards for Fiscal Year 1994

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year 1994.

**SUMMARY:** The Secretary invites applications for new awards for fiscal year 1994 and announces closing dates for the transmittal of applications under six discretionary grant programs for libraries: The Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants, Improving Access to Research Library Resources Program, Library Literacy Program, College Library Technology and Cooperation Grants Program, Foreign Language Materials Acquisition Program, and Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants.

The invitation for applications for new awards under the Library Education and Human Resource Development Program (CFDA No. 84.036) is scheduled to be announced in the **Federal Register** at a later date.

These programs support the National Education Goals by seeking to improve library services, to enhance the skills of library staff, to increase the quality and availability of library holdings, and other activities. The National Education Goals specifically call for:

- Children to start school ready to learn (Goal 1);
- The high school graduation rate to increase to at least 90 percent (Goal 2);
- Students to demonstrate competency in challenging subject matter and to learn to use their minds well (Goal 3);
- U. S. students to be first in the world in science and mathematics achievement (Goal 4);
- Adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship (Goal 5); and
- Every school to be free of drugs and violence and to offer a disciplined environment conducive to learning (Goal 6).

**DATES:** The closing dates for transmitting applications under this notice are listed in Section I of this notice.

**ADDRESSES:** The addresses for obtaining applications for, or further information about, individual programs or competitions are in the respective announcements for those programs contained in Section II of this notice.

To contact any persons named in this announcement, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** All programs announced in this notice, with the exception of the Library Services to Indian Tribes and Hawaiian Natives Program, including both Basic Grants and Special Projects Grants, are subject to the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs. Information regarding applicable procedures under this order will be included in the application packages.

### Organization of Notice

This notice contains two sections. Section I includes a chart listing closing dates in chronological order, and other pertinent information about programs covered by this notice. Section II consists of the individual application announcement for each program.

SECTION I.—PROGRAMS AND CLOSING DATES FOR LIBRARY PROGRAMS

| Title of program and CFDA number | Applications available | Application deadline date | Deadline for intergovernmental review | Tentative award date | Estimated available funds [1] | Estimated range of awards [1] | Estimated avg. size of awards [1] | Estimated number of awards [1] |
|---|---|---|---|---|---|---|---|---|
| Library Services to Indian Tribes and Hawaiian Natives Program-Basic Grants (84.163A). | 8/24/93 | 10/15/93 | NA | 02/23/94 | [3] $897,000<br>[4] 598,000 | NA | [3] $5,000 | 210 |
| Improving Access to Research Library Resources Program (84.091A).. | 08/24/93 | 10/12/93<br>[2] 12/09/93 | 02/7/94 | 05/16/94 | 5,808,000 | 35,000<br>550,000 | 165,000 | 35 |
| Library Literacy Program (84.167A). | 09/17/93 | 11/19/93 | [5] 01/19/94 | 05/29/94 | 8,098,000 | 5,000<br>35,000 | 32,000 | 250 |
| College Library Technology and Cooperation Grants Program (84.197A–D). | 10/01/93 | 12/13/93 | 02/13/94 | 09/12/94 | 3,873,000 | 25,000<br>300,000 | A 50,000<br>B 180,000<br>C 100,000<br>D 125,000 | 35 |
| Foreign Language Materials Acquisition Program (84.239A). | 10/15/93 | 01/07/94 | [5] 03/07/94 | 06/17/94 | 968,000 | 10,000<br>103,000 | [6] A 97,000<br>[6] B 26,000 | 31 |
| Library Services to Indian Tribes and Hawaiian Natives Program-Special Projects Grants (84.163B). | 02/03/94 | 04/04/94 | NA | 09/12/94 | [3] 897,000 | 17,000<br>160,000 | 62,000 | 15 |

[1] The Department is not bound by any estimates in this notice. The estimated available funds reflect fiscal year 1993 appropriation amounts; however, the Administration's budget request for fiscal year 1994 does not include funds for these programs, other than set asides for Indian Tribes and Hawaiian Natives. Applications are being invited to allow sufficient time for evaluation and completion of the grant process before the end of fiscal year 1994 should the Congress appropriate funds for these programs.

[2] 10/12/93 for eligibility information for institutions needing to establish eligibility (Part I only); 12/09/93 for all project descriptions (Part II).

[3] Indian Tribes

[4] Hawaiian Natives

[5] This deadline also applies to comments from State Library Administrative agencies.

[6] By law, (A) up to 30 percent of the funds available may be used to make grants in amounts between $35,000–$125,000; (B) of the remaining funds, no grant may exceed $35,000.

**Section II—Application Notices**

CFDA No. 84.163A—Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (Library Services and Construction Act, Title IV).

*Purpose of Program:*

Provides noncompetitive basic grants to eligible Indian tribes and to eligible Hawaiian native organizations to establish or improve public library services for Indian tribes and Hawaiian natives.

*Eligible Applicants:*

(a) Indian tribes recognized by the Secretary of the Interior to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(b) Alaska Native villages or regional or village corporations as defined in or established under the Alaska Native Claims Settlement Act; however, two or more Alaska Native villages, regional corporations, or village corporations may not receive basic grant allocations to serve the same population; and

(c) Organizations primarily serving and representing Hawaiian natives and recognized by the Governor of Hawaii.

*Applicable Regulations:*

(a) The Basic Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 771; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74 and 82 (for grants to Hawaiian native organizations); 80 (for grants to Indian tribes); and 75, 77, 81, and 85 (for grants to both Hawaiian natives and Indian tribes).

*For Applications or Information Contact*

Beth Fine, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

**Program Authority:** 20 U.S.C. 351, 361(c), 363.

**CFDA No. 84.091A—Improving Access to Research Library Resources Program (Higher Education Act, Title II, Part C)**

*Purpose of Program*

Provides grants to the Nation's major research libraries to maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

*Eligible Applicants*

Institutions with major research libraries as defined in 34 CFR 778.2.

*Applicable Regulations*

(a) The Improving Access to Research Library Resources Program Regulations in 34 CFR part 778; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

*Supplementary Information*

The application procedure contains two parts: Part I covers the Status as a Major Research Library and Part II covers the Description of the Project. These parts must be submitted separately as follows: Those applicants who need to establish status as a major research library must submit Part I (Program Regulations, § 778.21) by 10/12/93; applicants who established status in fiscal year 1990 or later need not submit Part I. All applicants must submit Part II (Program Regulations, § 778.22) by 12/9/93. Applicants submitting Part I may not be notified of status as a major research library prior to the Part II deadline. Therefore, these applicants should prepare and submit both Parts I and II by the deadlines listed.

*For Applications or Information Contact*

Linda Loeb, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

**Program Authority** 20 U.S.C. 1021, 1041.

**CFDA No. 84.167A—Library Literacy Program (Library Services and Construction Act, Title VI)**

*Purpose of Program*

Provides grants to State and local public libraries to support adult literacy projects. Grants may not exceed $35,000.

*Eligible Applicants*

State and local public libraries.

*Length of Application*

The applicant must limit the application narrative to no more than 25 double-spaced, 8 1/2 x 11" pages (on one side only) with one-inch margins, including the abstract, charts, and graphs. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

*Applicable Regulations*

(a) The Library Literacy Program Regulations in 34 CFR part 769; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, and 85.

*For Applications or Information Contact*

Carol Cameron Lyons or Barbara Humes, Program Officers, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 404, Washington, DC 20208–5571. Telephone: (202) 219–1315.

**Program Authority:** 20 U.S.C. 375.

**CFDA No. 84.197A–D—College Library Technology and Cooperation Grants Program (Higher Education Act, Title II, Part A)**

*Purpose of Program*

To assist college and university libraries in acquiring technological equipment, participating in networks, and conducting research and demonstration projects that utilize technology to enhance library and information services. The four types of discretionary grants and their purposes are:

(a) Networking Grants—for the planning, development, acquisition, maintenance, or upgrading of technological equipment necessary to organize, access, or utilize material in electronic formats and to participate in networks for the accessing and sharing of library and information resources;

(b) Combination Grants—for establishing and strengthening joint-use library facilities, resources, or equipment for the accessing and sharing of library and information resources;

(c) Services to Institutions Grants—for establishing, developing, or expanding programs or projects that improve the services provided by public and nonprofit organizations to institutions of higher education; and

(d) Research and Demonstration Grants—for improving information services to meet special national or regional needs by utilizing technology to enhance library and information services, such as through the National Research and Education Network.

*Eligible Applicants*

The following are eligible to receive awards under this program:

(a) For Networking Grants—institutions of higher education.

(b) For Combination Grants—combinations of institutions of higher education.

(c) For Services to Institutions Grants—public or nonprofit private organizations (other than institutions of higher education) that provide library and information services to institutions of higher education on a formal cooperative basis.

(d) For Research and Demonstration Grants—institutions of higher education.

*Absolute Priority*

The Secretary gives priority to institutions of higher education seeking assistance for projects that assist developing institutions of higher education in linking one or more institutions of higher education to resource-sharing networks. In accordance with 34 CFR 75.105(c)(3), the Secretary reserves up to 40 percent of all program funds solely for applications that meet this priority in a particularly effective way.

*Applicable Regulations*

(a) The College Library Technology and Cooperation Grants Program Regulations in 34 CFR part 779; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80 (for Services to Institutions Grants, to State or local public organizations), 82, 85 and 86.

*For Applications or Information Contact*

Neal Kaske, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

**Program Authority:** 20 U.S.C. 1029, 1047.

**CFDA No. 84.239A—Foreign Language Materials Acquisition Program (Library Services and Construction Act, Title V)**

*Purpose of Program*

This program makes grants to State and local public libraries for the acquisition of foreign language materials. By law, up to 30 percent of the funds available may be used to make grants in amounts between $35,000 and $125,000; and, of the remaining funds, no grant may exceed $35,000. The law also provides that no recipient may receive more than one grant under this program in the same fiscal year.

*Eligible Applicants*

State and local public libraries.

*Applicable Regulations*

(a) The Foreign Language Materials Acquisition Program Regulations in 34 CFR part 768; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, and 85.

*For Applications or Information Contact*

Nancy Cavanaugh, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

**Program Authority** 20 U.S.C. 371.

**CFDA No. 84.163B—Library Services to Indian Tribes and Hawaiian Natives Program—Special Projects Grants (Library Services and Construction Act, Title IV)**

*Purpose of Program*

This program makes competitive awards to eligible Indian tribes to establish or improve public library services. All available funds for library services to Hawaiian natives are awarded through the Library Services to Indian Tribes and Hawaiian Natives Program—Basic Grants (CFDA No. 84.163A).

*Eligible Applicants*

Indian Tribes and Alaska Native villages or regional or village corporations that have met eligibility requirements for the Library Services to Indian Tribes Program—Basic Grants (CFDA No. 84.163A) and received such Basic Grants in the same fiscal year as the year of application.

*Priorities*

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preferance over other applications.

*Invitational Priority 1*: To assess and plan for tribal library needs.

*Invitational Priority 2*: To train or retrain Indians as library personnel.

*Invitational Priority 3*: To purchase library materials.

*Invitational Priority 4*: To conduct special library programs for Indians such as summer reading programs for children, outreach programs for elders, literacy tutoring, and training in computer use.

*Applicable Regulations*

(a) The Special Projects Grants to Indian Tribes and Hawaiian Natives Program Regulations in 34 CFR part 772; and

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, and 85.

*For Applications or Information Contact*

Beth Fine, Program Officer, Discretionary Library Programs Division, Library Programs, U.S. Department of Education, 555 New Jersey Avenue, NW., room 404, Washington, DC 20208–5571. Telephone (202) 219–1315.

**Program Authority:** 20 U.S.C. 351, 361(d), 364.

Dated: July 26, 1993.

**Dick W. Hays,**

*Acting Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 93–18170 Filed 7–29–93; 8:45 am]

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Friday
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Part V

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Housing-Federal Housing Commissioner**

**24 CFR Part 200, et al.**
**Single Family and Manufactured Home FHA Insurance—Miscellaneous Amendments; Final Rule**

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 200, 201, 203, 204, 220, 221, 222, 226, 234 and 240

[Docket No. R-93-1647; FR-3445-F-01]

RIN 2502-AF93

# Single Family and Manufactured Home FHA Insurance-Miscellaneous Amendments

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements various provisions in the Housing and Community Development Act of 1992 relating to FHA single family and manufactured home loan limits, veterans exemption from certain equity requirements, establishment of mortgage insurance premiums, and the correction of defects in certain FHA insured homes. In addition, the rule makes final three earlier proposed or interim rules relating to FHA: minimum mortgagor equity requirements; limitations on the insuring of secondary homes; and Mortgage Insurance Premiums (MIP) for 15-year mortgages.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT:
*For Single Family Housing issues:* Morris Carter, Director, Single Family Development Division, room 9272, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2700. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

*For manufactured home loan issues:* Robert J. Coyle, Director, Title I Insurance Division, room 9160, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–2880. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Any additional information collection requirements contained in a final rule must be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). This final rule does not contain additional information collection requirements.

This rule implements various provisions in the Housing and Community Development Act of 1992 (Pub. L. 102–550 approved October 28, 1992) relating to (1) FHA single family and manufactured home loan limits, (2) veterans exemption from certain minimum equity requirements, (3) Secretarial discretion in setting mortgage insurance premiums and (4) the correction of defects in certain types of homes with FHA-insured financing. In addition, the rule makes final two interim and one proposed rule published earlier in the Federal Register. One of these, a proposed rule relating to limitations on FHA insurance for secondary homes (56 FR 55855) was published on October 30, 1991. A second, revising HUD's mortgage insurance premium for 15-year mortgages, (57 FR 46980) was published on October 14, 1992. The third, an interim rule relating to minimum mortgagor equity, was published on May 30, 1991 at 56 FR 24628.

## Single Family Mortgage Amounts

Section 503(a) of the Housing and Community Development Act of 1992 (the 1992 Act) amended section 203(b)(2) of the National Housing Act (NHA) (12 U.S.C. 1709(b)(2)) by eliminating its then-current dollar limits on maximum mortgage amount. Section 503 also made an amendment to the loan-to-value limits set forth in the NHA.

The effect of the amendment is to eliminate the earlier dollar cap of $124,875 ($124,850 for condominiums) and to provide, as a general matter, that a mortgage may be insured by FHA if it does not exceed the lesser of 95 percent of the median area house price or 75 percent of the dollar amount limitation for the Federal Home Loan Mortgage Corporation (FHLMC) as in effect on September 30, 1992. A provision ensuring that no area experiences a reduction, by virtue of the statutory change, in its maximum mortgage amount applicable as of May 12, 1992 is also included. The amendment also increases the downpayment on the amount of any FHA insured loan in excess of $125,000—from 5 to 10 percent for the amount above $125,000.

The FHLMC maximum mortgage amounts in effect on September 30, 1992 were $202,300 for a one unit dwelling, $258,800 for a two unit dwelling, $312,800 for a three unit dwelling and $388,800 for four unit dwelling. The FHA maximum mortgage limits can be increased to $151,725 for a one unit dwelling and $194,100, $234,600 and $291,600 for two, three and four unit dwellings, respectively. FHA's latest annual update listing the areas with high cost mortgage limits was published in the Federal Register on March 15, 1993 (58 FR 13950). This publication did not reduce any high cost limits in any areas below the limits in effect on May 12, 1992.

In this final rule, 24 CFR 203.18 (a) and (g), 203.18b, and 234.27 are revised to reflect these amendments.

In addition, a new paragraph (h) in 24 CFR 203.18 explains a change in the method for announcing updated area maximum mortgage amounts. HUD will continue its practice of issuing periodic comprehensive Federal Register notices listing the current maximum mortgage amount for each area. HUD will discontinue using Federal Register notices to announce interim changes in maximum mortgage amounts that occur between comprehensive notices. Instead, HUD will use administrative issuances such as mortgagee letters to inform affected mortgagees that the maximum mortgage amounts have been updated in one or more areas. This will permit more timely implementation of interim changes affecting smaller portions of the country.

## Manufactured Home Loan Limits

Section 503(c) of the 1992 Act amends section 2(b)(1) of the NHA to increase the maximum loan amount on certain title I loans by 20 percent. The maximum loan amount would be increased from $40,500 to $48,500 if the loan is for the purpose of financing the purchase of manufactured home; from $54,000 to $64,800 if made for purchasing a manufactured home and a suitably developed lot; and from $13,500 to $16,200 if made to a manufactured home owner for purchasing a suitably developed lot.

The rule revises 24 CFR 201.10 (b), (c) and (d) to effect these changes in maximum dollar amounts. In addition, the rule revises 24 CFR 201.10(e) to implement a provision of the 1993 HUD Appropriations Act which caps high-cost area limits for manufactured home lot loans and combination home-and-lot loans at 185 percent of the maximum dollar amounts in §§ 201.10(c) and 201.10(d), respectively.

## Veterans Exemption

Section 505 of the 1992 Act amends provisions in section 203(b) of the NHA relating to the establishment of a generally applicable maximum loan-to-value ratio on FHA single family mortgages. The amendment restores an exemption for veterans from this otherwise applicable minimum equity requirement. In revising the NHA in 1990, the Congress inadvertently

deleted this veterans' exemption. This final rule revises 24 CFR 203.18(g) and 234.27(f) to reflect this restoration of the veterans' exemption.

**Secretarial Discretion in Establishing Single Family Mortgage Insurance Premiums**

Section 507 of the 1992 Act amends section 203(c)(2) of the NHA to make clear that the Secretary of HUD retains authority to charge lower single family up-front and annual mortgage insurance premiums than those specified in the statute. The section authorizes the Secretary to charge a premium "not exceeding" rather than "equal to" a specified percentage amount.

This final rule revises 24 CFR 203.284 (promulgated as an interim rule on May 30, 1991 (56 FR 24622) and as a final rule on April 24, 1992 (57 FR 15208) to make this change. In the future, adjustments to up-front or annual MIP, within the maximums set forth in the regulation, will be made through administrative instructions rather than a change in the regulations.

**Correction of Defects**

Section 518(a) of the NHA gives discretion to the Secretary, under specified circumstances, to make expenditures to cure structural defects in newly constructed FHA insured homes that qualified for high-ratio mortgages because of approval by FHA or the Department of Veterans Affairs before the beginning of construction. Section 515 of the 1992 Act amends this provision to make eligible for such assistance (1) newly constructed FHA insured homes that qualify for a high-ratio mortgage because they were covered by a consumer protection or warranty plan acceptable to the Secretary; and (2) newly constructed condominium units (including common areas) that qualified for high-ratio mortgages for any reason. The Department will be issuing administrative instructions describing the processing procedure to be used with respect to these newly covered properties.

This final rule amends 24 CFR part 200 to implement section 515.

**Promulgation as Final Certain Proposed and Interim Rules**

*Secondary Homes—Proposed Rule*

On October 30, 1991, the Department published a proposed rule (56 FR 55855) entitled Single Family FHA Mortgage Insurance—Secondary Homes. The rule proposed to implement section 326 of the Cranston-Gonzalez National Affordable Housing Act. That section prohibits HUD from insuring a mortgage for a secondary residence unless HUD determines that it is necessary to do so to avoid undue hardship to the mortgagor, or unless the mortgage is a type exempt from the investor prohibitions set forth in section 203 of the National Housing Act. In no event may HUD insure a vacation house, as that term is defined by the Secretary.

The proposed rule would permit a mortgagor to obtain a mortgage for a secondary residence only if affordable housing which meets the needs of the mortgagor is not available for lease in the area or within reasonable commuting distance from the mortgagor's place of employment. For example, if the mortgagor has a large family and must obtain a secondary residence because of seasonal employment or employment relocation, and no rental housing is available to accommodate the family, the mortgagor may submit a request to HUD for an "undue hardship" exception. (It would not be HUD's policy to grant exceptions to the restriction on secondary residences when affordable rental housing is available.)

Where the purchase of a secondary home is involved, the Department will require that the direct endorsement lender obtain a certification from the real estate agent that rental housing, affordable to the purchaser, is not available within a 50 mile radius of the purchaser's place of employment. For purposes of this certification, housing having a rent at or below 30 percent of area median income will be considered rental housing affordable to the purchaser.

Under the proposed rule, a written request for a hardship exception was to be submitted by the lender to the local HUD office. The request would state the basis for the exception and would include a written explanation from the applicant stating that rental housing that meets the needs of the mortgagor is not available. Documentation from local real estate professionals supporting the unavailability of rental housing must also be submitted with the applicant's request.

Further, under the proposed rule, a secondary residence was to be considered a vacation home if the dwelling were used primarily for recreational purposes. (The need for a secondary residence must be related to the need for seasonal employment, relocation for employment reasons, or other circumstances not related to recreational uses of the property.)

Finally, under the proposed rule, a section in the current regulations, 24 CFR 203.43b, relating to eligibility of mortgages covering housing intended for seasonal occupancy, was proposed to be removed. The statutory basis for this regulation, section 203(m) of the National Housing Act, was repealed at section 406(c) of the Housing and Community Development Act of 1987 (Pub. L. 100–242 approved Feb. 5, 1988).

One public comment was received concerning the above-described proposed rule. The National Association of Realtors in its written comments expressed the following concerns:

1. * * * the proposed rule will weaken or eliminate affordable housing opportunities for low- and moderate-income renters because it unfairly compels prospective creditworthy mortgagors seeking single family housing opportunities to lease rental housing. We believe the requirement will create competition for moderately priced rental units and encourage landlords to escalate rents that will hasten the decline of low-cost apartments to the detriment of low- and moderate-income families who have no other housing options. The Association anticipates the upgrade of lower cost apartment units and condominium conversions to meet these higher income renters which will exacerbate the dwindling supply of low-cost housing for low- and moderate-income families.

*HUD Response:* The Department believes that the above-quoted argument overstates the effect this rule will have in the marketplace. Historically, HUD has insured very few second homes, and second homes represent only a small fraction of HUD's single family insurance business. Additionally, as the National Association of Realtors spells out later in its comments, the prime purchasers of second homes will be individuals reaching their peak earning years with substantial income to spend. This client group does not include the low- and moderate-income individuals that HUD is mandated to serve. These purchasers have the capacity to obtain financing by means other than HUD mortgage insurance, and may be expected to be purchasing second homes as a convenience—not as a necessity.

2. The National Association or Realtors is concerned with the provision requiring documentation from local real estate professionals whose experience and expertise involves single family residential sales and not rental properties and their market conditions. Additionally, the proposed rule's statement concerning documentation is vague; it does not specify what documentation is needed. HUD should be specific about what documentation will be required and whether penalties will be imposed because of inaccurate information.

*HUD Response:* It is HUD's option that real estate professionals are aware

of rental market conditions because of their impact on the demand for homeownership. Information regarding market conditions could come from local newspapers, the local Chamber of Commerce, various econometric studies, and from other entities that collect, analyze, and disseminate information on local real estate markets. As to inaccurate information, HUD would only pursue sanctions against individuals who provided information knowing it to be false.

3. The National Association of Realtors is concerned with the process involved in obtaining a hardship exception for mortgage insurance on secondary residences. The Association anticipates lengthy delays in the application process because of the information collection requirements necessary to obtain a hardship exception. We believe worthy buyers' interested in purchasing a second home will be greatly discouraged, exacerbating their hardship circumstances.

*HUD Response.* The Department believes the process for obtaining a hardship exception will not add appreciably to the processing time for loan approval.

The Realtors conclude their comments with a general statement strongly opposing the existing statutory restriction on secondary homes and expressing their intention to seek a change in the existing law.

Accordingly, in this final rule, the Department is adopting as final the provisions contained in the October 30, 1991 proposed rule. Revisions to appropriate sections in 24 CFR parts 203, 220, 221 and 234 are republished as a part of this rule.

*Fifteen year MIP—Interim Rule.* On October 14, 1992 the Department published an interim rule (57 FR 46980) providing for a reduced premium structure for 15-year FHA mortgages that are liabilities of the Mutual Mortgage Insurance Fund. The purpose of the rule was to provide for a more equitable premium structure for these lower risk mortgages. The Department received two written comments from the public on this rule. Both were limited to expressing support for the rule. This rule adopts as final the October 14, 1992 interim rule. Appropriate sections of 24 CFR parts 203 and 204 are republished as a part of this rule. In conjunction with promulgation of the October 14, 1992 interim rule, the Department issued Mortgagee Letter 92–43. The premium levels announced in that Mortgagee letter remain in effect.

*Minimum Mortgagor Equity—Interim Rule.* Section 2101 of the Omnibus Budget Reconciliation Act of 1990 amended section 203(b)(2) of the NHA to prohibit FHA-insured single family mortgages from involving a principal obligation (including such initial service charges, appraisal, inspection, and other fees as the Secretary shall approve) that exceeds 98.75% of the appraised value of the property (97.75% where the appraised value exceeds $50,000), plus the amount of the mortgage insurance premium paid at the time of insurance. The section defines "appraised value" as the amount set forth in the written statement required under section 226 of the National Housing Act, or a similar amount determined by HUD, if section 226 does not apply. (Section 226 requires the seller of a single family home approved for mortgage insurance to deliver to the buyer, prior to sale, a written statement setting forth the FHA appraised value of the property. A statement of FHA replacement cost may be substituted where applicable.) The amount does not include any closing costs. This rule revises 24 CFR 203.18 and 234.27 to reflect this new requirement.

The effect of section 2101 is to establish a maximum loan-to-value ratio that is generally applicable to FHA single family housing. The maximum 98.75 percent (and 97.75 percent) loan-to-value ratio must be applied to mortgages insured under the following sections of the National Housing Act: 203(b) (Basic Program), 203(i) (Outlying Areas), 203(n) (Cooperative Units), 222 (Service members), 223(e) (Miscellaneous Housing Insurance), 234(c) (Condominiums), 238(c) (Military Impact Areas), 240 (Fee Simple Purchase), 244 (Coinsurance), 245 (GPM/GEM), 251 (Adjustable Rate) and 809 (Armed Services Housing—Civilian Employees). This rule revises 24 CFR 203.18 and 234.27 to reflect this new loan to value requirement. There are, however, additional specific maximum loan-to-value ratios in the law which also must be met. These old loan-to-value ratios are set forth in 24 CFR 203.18 and 234.27.

**Interim Rule**

On May 30, 1991, the Department published an interim rule implementing section 2101 at 56 FR 24628. The rule became effective on July 1, 1991. In the rule, the Department announced that it was ending its practice of permitting mortgagees to include 100% of allowable closing costs as part of appraised value, when applying the old loan-to-value ratios that would continue to apply in addition to the new requirements in section 2101. The interim rule permitted HUD to adjust the percentage of closing costs to be financed as HUD gained further experience regarding the overall effect of the statutory reforms. Until HUD has such experience, the preamble stated, HUD would apply a maximum of 57% for closing costs includable in appraised value for the old loan-to-value calculation set forth at 24 CFR 203.18(a) through (f) and at 234.27(a) through (d). (With respect to the overall loan to value ratio set forth in Section 2101, 0% would be included for calculations to be carried out under the rule.)

**Public Comments on Interim Rule**

A total of 481 public comments were received in connection with the interim rule. Almost all of the comments (474) voiced strong opposition to the basic legislation. Letters were addressed to members of Congress, with copies to HUD, as well as to the Department directly.

In addition to these letters directed at the basic legislation, the Department also received seven letters from State or national trade associations, one from a mortgage company and one from an individual which addressed issues raised by provisions in the interim rule. The overriding question raised in these comments was the desirability of HUD administratively limiting the financing of closing costs.

*57 Percent limitation on financing closing costs.* Five State or national organizations commented on the 57 percent limitation. One, Mortgage Insurance Company of America, favored the limitation. The other four—Mortgage Bankers Association of America, National Council of State Housing Agencies, National Association of Realtors and California Association of Realtors, strongly opposed the limitation, as did the single individual correspondent. Detailed and comprehensive arguments were raised against the 57 percent limitation.

These arguments also were addressed to the Congress, which subsequently included a provision in the Department of Veterans Affairs, Housing and Urban Development and Independent Agencies Appropriation Act for FY 1993 (Pub. L. 102–389, approved October 6, 1992) which provides that the Secretary may not (by regulation or otherwise) limit the percentage or amount of any approved charges and fees that may be included in the principal obligation of a mortgage.

In light of this Congressional mandate, the Department does not find it necessary either to set forth the various arguments raised against its 57 percent limitation, or HUD's responses to them. In compliance with the mandate, the interim rule is being revised in this final rule to allow

borrowers to include up to 100 percent of their reasonable and customary closing costs in the specific loan to value calculations used to determine the maximum mortgage amount. (It should be noted however, that HUD still retains authority to approve the acceptability of any charge, including appraisal, inspection, and other fees.)

Before publishing this final rule, the Department issued administrative instructions—Mortgagee Letter 92–39, issued October 16, 1992 recognizing the legislative repeal of the 57 percent limitation and authorizing borrowers, as of that date, to include up to 100 percent of reasonable and customary closing costs in the calculation used to determine the maximum mortgage amount.

Under both Mortgagee Letter 92–39 and this final rule, to calculate the maximum mortgage amount, add 100 percent of borrower-paid closing costs to the lesser of the sales price or appraised value, then multiply the result by the appropriate loan-to-value ratio. The closing cost total to be added will be the amount remaining of total borrower closing costs after subtracting any closing costs paid by the seller. Seller concessions remain limited to six percent of the contract sales price (as described in HUD Handbook 4155.1 Rev-4), and seller-paid prepaid items, personal property items, etc., result in dollar-for-dollar reductions to the sales price. Note that the 97.75 percent (or 98.75 percent if $50,000 or less) limits set forth in this final rule and applied to the appraised value, excluding closing costs, remain in effect and may further limit the maximum mortgage amount. The mortgage credit analysis worksheet (HUD–92900WS) has been revised to reflect these changes.

Illustrative examples of how maximum mortgage amounts should be calculated can be found in Mortgagee Letter 92–39, October 16, 1992. The method of calculation set out in the Mortgagee Letter will continue in effect under this final rule.

In addition to written comments relating to the 57 percent limitation, one National association also objected strongly to HUD's continued policy of deducting any seller-paid contributions to closing costs, stating:

> Supplementary information provided with the rule makes it clear that HUD will continue its policy of deducting any seller-paid contributions to closing costs from the lesser of sales price or appraised value when computing the mortgage amount based on the 97/95 percent rule. We strongly object to the continuation of this policy and urge HUD to examine an alternative.

The concerns we have about this policy can be summarized as follows:

(a) In states with high closing costs, the statutory Loan-to-Value limit, when combined with the 57% limitation on closing costs, requires FHA borrowers to come up with significantly more cash than was discussed during the debate on how to improve the financial viability of FHA's Mutual Mortgage Insurance Fund; and

(b) Trying to help a borrower meet this significantly higher cash requirement by paying all or part of a buyer's closing costs is effectively precluded if the sales price is reduced by an amount equal to the seller contribution to closing costs when determining the maximum mortgage amount.

NAHB believes that HUD should alter its policy and permit some portion of a buyer's closing costs to be paid by a seller *without* a consequent deduction when applying the 97/95% rule.

*HUD Response:* The removal of the 57% limit on financed closing costs, and the Department's practice of allowing only buyer-paid closing costs to be financed in the mortgage, should alleviate the concerns expressed by the NAHB. HUD expects to make no further changes in its policies concerning the seller payment of buyer closing costs, and the six percent limit on sales concessions will remain in effect to prevent sellers from inflating the sales prices of properties in order to offer concessions to homebuyers.

**Technical Provisions in Interim Rule**

There are a number of cross-references, either to or within the new § 203.18(g) set forth in the rule, which operate either to apply or not to apply the new mortgagor equity requirements to various mortgage insurance programs. In order to include National Housing Act programs under section 203(n) (insurance of units in cooperatives), section 222 (serviceperson's mortgage insurance), section 240 (loans for fee title purchase), and section 809 (armed services housing-civilian employees), amendments are made in 24 CFR parts 203, 222, 240 and 226, cross-referencing the new § 203.18(g). Within § 203.18(g) itself, reference is made to §§ 203.18(e) (disaster housing) and to 203.50(f) (rehabilitation loans), expressly to exclude those programs from coverage.

In addition, the rule corrects some existing errors in certain sections relating to calculation of maximum mortgage amounts.

Under current regulations in §§ 204.1 (coinsurance) and 203.45(g) (graduated payment mortgages), § 203.18(f) is excluded from incorporation by reference. This made sense when the subject matter in § 203.18(f) related to seasonal homes. The old seasonal home language was removed in 1988, however, and new language on definitions was substituted. The new definition language should apply to coinsurance and GPM's. Therefore, §§ 204.1 and 203.45(g) have been revised to incorporate § 203.18(f) by reference.

Finally, §§ 203.15 and 234.14 (certification of appraisal amount) are revised to extend their coverage by removing references to 1- and 2-family dwellings. The effect of this revision is to apply the requirement that a certification of FHA appraisal amount be delivered to the purchaser before the sale in connection with all FHA single family properties—3- and 4- as well as 1- and 2-family. The expansion makes the coverage of § 203.15 consistent with the coverage of the new mortgagor minimum equity requirement established by this rule.

**Technical Provisions in This Final Rule**

Finally, this final rule contains several strictly technical amendments designed to (1) update certain provisions relating to fair housing and equal opportunity to reflect current statutes and Executive Orders and (2) correct an omission in the listing of acceptable closing costs for condominiums in § 234.48(a).

Section 200.300 is revised to add, to the list of authorities under which HUD's nondiscrimination and fair housing regulations are issued, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, section 3 of the Housing and Urban Development Act of 1968, and Executive Order 11246.

Section 200.300 is revised to add, to the definition of a "discriminatory practice", discrimination because of sex, handicap or familial status.

Section 200.415 is revised to add the requirement that applicants for HUD assistance must agree not to discriminate based upon handicap or age.

Section 234.48(a) is revised to conform that section to § 203.27 and make clear that, for condominium-unit mortgages, the mortgagee may collect prepaid interest at closing to cover the period until amortization of the loan begins. (Although this charge has been allowed by HUD, the charge has not been mentioned specifically in this section on allowable fees and charges.)

**Procedural Matters**

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not, as defined in that order,

have an annual effect on the economy of $100 million or more.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements specific congressional mandates revising various aspects of FHA single family mortgage insurance programs. The effects of the rule are the result of legislation, and to the extent there may be an impact on small entities, the Department has no authority to alter that impact.

This rule was listed in sequence number 1453 under Office of Housing in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24411) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

**Executive Order 12612, Federalism**

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order. The rule is limited to revising certain specific program requirements in connection with FHA mortgage insurance. The revisions are mandated by statute and do not alter the established roles of HUD, the states and local governments.

**Executive Order 12606, The Family**

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule makes specific revisions, mandated by the Congress, in FHA mortgage insurance programs. The rule reflects efforts by the Congress and the Department to ensure the financial soundness of the Mutual Mortgage Insurance Fund while, to the maximum extent feasible, continuing FHA program affordability for first-time homebuyers.

Portions of this final rule are being promulgated without prior public comment. Public comment has been determined, in these instances, to be unnecessary because the changes are solely conforming or technical in nature, or because they carry out direct and unambiguous statutory directions. The Department believes it is in the public interest to implement these changes in this final rule.

The Catalog of Federal Domestic Assistance program numbers are 14.117, 14.112, 14.121, 14.122, 14.132, and 14.133.

**List of Subjects**

*24 CFR Part 200*

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

*24 CFR Part 201*

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 203*

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

*24 CFR Part 204*

Mortgage insurance.

*24 CFR Part 220*

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

*24 CFR Part 221*

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 222*

Condominiums, Military personnel, Mortgage insurance.

*24 CFR Part 226*

Government employees, Mortgage insurance.

*24 CFR Part 234*

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

*24 CFR Part 240*

Mortgage insurance.

Accordingly, 24 CFR parts 200, 201, 203, 204, 220, 221, 222, 226, 234 and 240 are amended to read as follows:

## PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1701–1715z–18; 12 U.S.C. 3535(d); 42 U.S.C. 3543; 42 U.S.C. 3544; 12 U.S.C. 1701s and 12 U.S.C. 1715z–11.

Section 200.300 is revised to read as follows:

**§ 200.300 Nondiscrimination and fair housing policy.**

The regulations in this subpart are prescribed pursuant to the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 109 and 110; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; and the affirmative fair housing marketing requirements in 24 CFR part 200, subpart M and part 108.

3. The introductory paragraph of § 200.310 is revised to read as follows:

**§ 200.310 Definition of "discriminatory practice".**

As used in this subpart, the term *discriminatory practice* shall mean any discrimination because of race, color, religion, sex, handicap, familial status, or national origin in lending practices or in the sale, rental, or other disposition of residential property or related facilities and group practice facilities, or in the use or occupancy thereof, if:

* * * * *

4. Section 200.415 is revised to read as follows:

**§ 200.415 Agreement of applicant.**

An applicant, prior to the Commissioner's issuance of any commitment or other loan approval, shall agree (in a form prescribed by the Commissioner) that there shall be no discrimination against anyone who is

employed in carrying out work receiving assistance pursuant to this chapter, or against an applicant for such employment, because of race, color, religion, sex, handicap, age, or national origin.

5. Section 200.507 is revised to read as follows:

**§ 200.507 Eligibility requirements.**

To be eligible for consideration by the Commissioner for receiving assistance in the correction of structural defects, the mortgagor must establish that:

(a) The property is (1) a 1- to 4-family dwelling; or (2) a condominium unit (including common areas) covered by an individual mortgage.

(b) The dwelling was approved for mortgage insurance, or for guaranty, insurance or a direct loan under chapter 37 of title 38 U.S.C. (38 U.S.C. 1801–1827) by the Secretary of Veterans Affairs before the beginning of construction, or was less than a year old at the time of insurance of the mortgage and was covered by a consumer protection or warranty plan meeting the requirement of §§ 203.200–203.209 of this chapter.

(c) The mortgagor has made reasonable efforts to obtain a correction of a structural defect in his or her property by the builder, seller, or other persons, and that defect has not been corrected.

## PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

6. The authority citation for 24 CFR part 201 is revised to read as follows:

**Authority:** 12 U.S.C. 1703; 42 U.S.C. 3535(d).

7. In § 201.10, paragraph (b)(1) is amended by substituting $48,600 for $40,500; paragraph (b)(2) is amended by substituting $48,600 for $40,500; paragraph (c) is amended by substituting $16,200 for $13,500; paragraph (d)(1) is amended by substituting $64,800 for $54,000; paragraph (d)(2) is amended by substituting $64,800 for $54,000; and paragraph (e) is revised to read as follows:

**§ 201.10 Loan amounts.**

* * * * *

(e) *Manufactured home loan limits in high-cost areas.* (1) The maximum loan amounts otherwise applicable under paragraphs (b), (c) and (d) of this section may be increased by an amount not to exceed 40 percent where the manufactured home and/or lot is purchased and located in Alaska, Guam or Hawaii.

(2) The maximum loan amounts otherwise applicable under paragraphs (c) and (d) of this section may be increased for any geographical area except Alaska, Guam or Hawaii to the extent deemed necessary by the Secretary; however, any increased loan amount may not exceed the lesser of (i) 185 percent of the dollar amounts specified in paragraphs (c) and (d) of this section; or (ii) the dollar amounts specified in paragraphs (c) and (d) of this section, as increased by the same percentage by which 95 percent of the median 1-family house price in the area (as determined by the Secretary for purposes of § 203.18) exceeds $67,500.

* * * * *

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

8. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u)).

9. Section 203.15 is revised to read as follows:

**§ 203.15 Certification of appraisal amount.**

An application with respect to insurance of mortgages must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner, whereby the person agrees that before any sale of the dwelling, the person will deliver to the purchaser of the property a written statement, in a form satisfactory to the Commissioner, setting forth the amount of the appraised value of the property as determined by the Commissioner.

10. In § 203.18, paragraphs (a), (e), (f)(2), (f)(4) and (g) are revised, and new paragraphs (f)(5), (f)(6), and (h) are added, to read as follows:

**§ 203.18 Maximum mortgage amounts.**

(a) *Mortgagors of principal or secondary residences.* A mortgage executed by a mortgagor who is to occupy the property as a principal residence or as a secondary residence (as these terms are defined in paragraph (f) of this section) may not exceed the lesser of the amounts specified in paragraphs (a)(1) and (2), (a)(1) and (3), or (a)(1) and (4) of this section (whichever applies), as follows:

(1)(i) In the case of a 1-family residence, 95 percent of the median 1-family house price in the area, as determined by the Secretary; in the case of a 2-family residence, 107 percent of the median price; in the case of a 3-family residence, 130 percent of the median price, or in the case of a 4-family residence, 150 percent of the median price; or

(ii) 75 percent of the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (as in effect on September 30, 1992) for a residence of the applicable size; except that the applicable dollar amount limitation in effect for any area under this paragraph (a)(1) may not be less than the dollar amount limitation in effect under paragraph (a) of this section for the area on May 12, 1992.

(2) *Loan-to-value limitation—principal residence—no approval before construction.* If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (f)(1) of this section) and the dwelling was not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling:

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary that meets the requirements of §§ 203.200—203.209.

(3) *Loan-to-value limitation—principal residences—approval before construction.* If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (f)(1) of this section) and the dwelling is approved for mortgage insurance before the beginning of construction, or the dwelling meets one of the alternative conditions listed in paragraph (a)(2) of this section, the following loan-to-value ratios apply:

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, and 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000, and 90 percent of the value in excess of $125,000.

(iii) If the mortgagor qualifies as a veteran (see paragraph (b) of this section), the loan-to-value limitation is the lesser of (A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000, and 90% of the value in excess of $125,000; or (B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner, minus $200, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000, and 90% of the value in excess of $125,000.

(4) *Loan-to-value limitation—secondary residences.* If the mortgage covers a dwelling that is to be occupied as a secondary residence (as defined in paragraph (f)(2) of this section), the loan-to-value ratio may not exceed 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

* * * * *

(e) *Disaster victims.* A mortgage covering a single family dwelling, in an amount not in excess of the maximum dollar limitation specified in paragraph (a)(1) of this section (unless a higher maximum mortgage amount is authorized under § 203.29), and not in excess of the less of 100 percent of the appraised value of the property or the cost of acquisition as the date the mortgage is accepted for insurance, shall be eligible for insurance if:

(1) The mortgage is executed by a mortgagor who is to occupy the dwelling as a principal residence (as defined in paragraph (f)(1) of this section);

(2) The mortgagor establishes that the home which he or she previously occupied as owner or tenant was destroyed or damaged to such an extent that reconstruction or replacement is required as a result of a flood, fire, hurricane, earthquake, storm, riot or civil disorder or other catastrophe which the President has determined to be a major disaster; and

(3) The application for insurance is filed within one year from the date of such presidential determination, or within such additional period of time as the period of federal assistance with respect to such disaster may be extended.

(f) * * *

(2) Secondary residence means a dwelling: (i) Where the mortgagor maintains or will maintain a part-time place of abode and typically spends (or will spend) less than a majority of the calendar year; (ii) which is not a vacation home; and (iii) which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at a time.

* * * * *

(4) *Appraised value* means the sum of:

(i) The lesser of sales price (with any adjustments required by the Secretary) or the amount set forth in the written statement required under § 203.15; and

(ii) Borrower-paid closing costs allowed under § 203.27(a)(1)–(3), except that neither sales price nor closing costs shall apply for purposes of paragraph (g) of this section.

(5) *Undue hardship* means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from the mortgagor's home to his or her work place.

(6) *Vacation home* means a dwelling that is used primarily for recreational purposes and enjoyment, and that is not a primary or secondary residence.

(g) *Maximum principal obligation.* Except for mortgages meeting the requirements of § 203.18(b), § 203.18(e) or § 203.50(f), and notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

(h) *Announcement of maximum mortgage amounts.* The Secretary will announce maximum mortgage amounts based on paragraph (a)(1) of this section. From time to time, the Secretary will update the maximum mortgage amounts for all areas by publishing a notice in the **Federal Register**. Before publication in the **Federal Register**, the Secretary may make updated mortgage amounts effective in one or more areas by providing notice to affected mortgagees by means of a mortgagee letter or other administrative issuance.

11. Paragraphs (a) and (b) of § 203.18b are revised to read as follows:

**§ 203.18b Increased mortgage amount.**

(a) If any party believes that a mortgage limit established by the Secretary under § 203.18(a)(1) does not accurately reflect the median house prices in an area, the party may submit documentation in support of an alternative mortgage limit. For purposes of this section, an area (1) must be at least the size of a county, whether or not the area is located within a metropolitan statistical area, as established by the Office of Management and Budget; and (2) may be an area for which the mortgage limits established under § 203.18(b)(1) apply.

(b)(1) The documentation referred to in paragraph (a) of this section consist of sufficient housing sales price data for the entire geographic area for which the request is made to justify an alternative mortgage limit. The documentation should include a listing of actual sales prices in the area for all or nearly all new and existing 1-family homes and condominiums, over a period of time varies with sales volume, as follows:

(i) For 500 or more sales per month, a one-month reporting period;

(ii) For 250 through 499 sales per month, a two-month reporting period.

(iii) For less than 250 sales per month, a three-month reporting period.

The listing should contain a brief address for each property, its county location, its sale price, the month and year of its sale, and whether it is new or existing. In areas where the ratio of existing sales to new sales is three-to-one or greater, an increase in the mortgage limit may be based on 95 percent of the average of the new and the existing median sales prices. In these areas, the documentation referred to in this paragraph may also include separate median sales prices for both the new and existing homes.

(2) Requests for an increased mortgage limit based upon documentation of median house prices for the area should be sent to the appropriate HUD field office. The field office will forward the request and supporting material, with the field office's recommendation, to the Commissioner for determination.

* * * * *

12. Paragraphs (a) and (g) of § 203.43c are revised to read as follows:

**§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.**

* * * * *

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43h, 203.43i, 203.43j, 203.44, 203.49, and 203.50 of this part do not apply to mortgages insured under section 203(n) of the National Housing Act.

* * * * *

(g) The mortgage shall not exceed the balance remaining after subtracting, from the amount determined under §§ 203.18(a), 203.18(g) and 203.18a of this part, an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative

development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the mortgage is accepted for insurance.

* * * * *

13. Paragraph (g) of § 203.44 is revised to read as follows:

**§ 203.44 Eligibility of open-end advances.**

* * * * *

(g) The amount of any such advance (computed in even dollar amounts), when added to the unpaid balance of the original principal obligation of the mortgage, shall not exceed the original principal obligation of the mortgage: *Provided,* That if the mortgagor certifies that the proceeds of the open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amount prescribed by the limitations of § 203.18, 203.18a, or § 203.43.

* * * * *

14. Paragraph (c) of § 203.45 is revised to read as follows:

**§ 203.45 Eligibility of graduated payment mortgages.**

* * * * *

(c) The mortgage amount shall not exceed the lesser of:

(1) The limits prescribed by §§ 203.18, 203.18a, and 203.29; or,

(2) An amount which, when added to all accrued mortgage interest which will be unpaid under a financing plan approved by the Secretary, shall not exceed 97 percent of the appraised value of the property covered by the mortgage as of the date the mortgage is accepted for insurance. However, if the mortgagor is a veteran, the mortgage amount, when added to all accrued mortgage interest which will be unpaid under a financing plan approved by the Secretary, shall not exceed the applicable limits prescribed for veterans in § 203.18(a).

* * * * *

15. Paragraph (e) of § 203.47 is revised to read as follows:

**§ 203.47 Eligibility of growing equity mortgages.**

* * * * *

(e) The mortgage amount shall not exceed the limits prescribed by § 203.18, 203.18a, or 203.29.

* * * * *

16. Paragraph (f)(1) of § 203.50 is revised to read as follows:

**§ 203.50 Eligibility of rehabilitation loans.**

* * * * *

(f) * * *

(1)(i) The limits prescribed in §§ 203.18(a) (1) and (3) (in the case of a dwelling to be occupied as a principal residence, as defined in § 203.18(f)(1)); (ii) the limits prescribed in §§ 203.18(a) (1) and (4) (in the case of a dwelling to be occupied as a secondary residence, as defined in § 203.18(f)(2)); (iii) 85 percent of the limits prescribed in § 203.18(c), or such higher limit, not to exceed the limits set forth in §§ 203.18(a) (1) and (3), as the Secretary may prescribe (in the case of an eligible (a)(1) non-occupant mortgagor as defined in § 203.18(f)(3)); (iy) the limits prescribed in § 203.18a, based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation; or

* * * * *

17. In § 203.259a, paragraphs (b) and (c) are revised to read as follows:

**§ 203.259a Scope.**

* * * * *

(b) Except as provided in § 203.284(h) or § 203.285(d), the Commissioner shall charge an up-front MIP pursuant to § 203.284 for mortgages executed on or after July 1, 1991 that are obligations of the Mutual Mortgage Insurance Fund.

(c) The periodic MIP provision of §§ 203.260 through 203.268 shall not apply to mortgages referred to in paragraph (a) of this section, nor shall they apply to mortgages to which the provision of § 203.284 or § 203.285 apply.

18. The first sentence in paragraph (c) of § 203.270 is revised to read as follows:

**§ 203.270 Open-end insurance charges.**

* * * * *

(c) *Payment of charge for mortgages with one-time or up-front MIP.* In the case of a mortgage with a one-time or up-front MIP pursuant to § 203.280, § 203.284, or § 203.285 of this part, the insurance charge shall be in an amount equal to ½ percent per annum of the outstanding principal obligation of the open-end advance.* * *

* * * * *

19. In § 203.284, an introductory paragraph is added and paragraphs (a) and (b) are revised to read as follows:

**§ 203.284 Calculation of up-front MIP after July 1, 1991.**

Except for insured mortgages with a term of 15 or fewer years executed on or after December 26, 1992, (see § 203.285 of this part), up-front and annual MIP will be calculated in accordance with this section.

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994 that is an obligation of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(1) *Up-Front.* The Commissioner shall establish and collect a single premium payment in an amount not exceeding 2.25 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage before its maturity date, or upon termination of insurance by voluntary agreement, the Commissioner shall refund all the unearned premium charges, as determined by the Commissioner, paid on the mortgage under this paragraph (a)(1).

(2) *Annual.* In addition to the premium under paragraph (a)(1) of this section, the Commissioner shall establish and collect annual premium payments in an amount not exceeding .50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)(1) of this section) for the following periods:

(i) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is less than 90 percent of the appraised value of the property (as of the date of the mortgage is accepted for insurance), for the first 11 years of the mortgage term.

(ii) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than or equal to 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the lesser of the mortgage term or the first 30 years of the mortgage term; except that, for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a)(1) of this section) that is greater than 95 percent of the appraised value, the annual premium collected during the period determined under this clause shall be in an amount not exceeding 0.55 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a)(1) of this section).

(b) *Transition provisions.* Mortgage insurance premiums on mortgages executed during fiscal years 1991 through 1994 that are obligations of the Mutual Mortgage Insurance Fund shall

be subject to the following requirements:

(1) *1991 and 1992.* For mortgages executed during fiscal years 1991 and 1992, but after July 1, 1991, the Commissioner shall establish and collect the following premiums:

(i) *Up-Front.* A single premium payment in an amount equal to 3.80 percent of the amount of the original insured principal obligation of the mortgage.

(ii) *Annual.* In addition to the premium under paragraph (b)(1)(i) of this section, annual premium payments in an amount equal to 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (b)(1)(i) of this section) for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (b)(1)(i) of this section) that is:

(A) Less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first five years of the mortgage term;

(B) Greater than or equal to 90 percent of such value, but equal to or less than 95 percent of such value, for the first eight years of the mortgage term; and

(C) Greater than 95 percent of such value, for the first 10 years of the mortgage term.

(2) *1993 and 1994.* For mortgages executed during fiscal years 1993 and 1994, the Commissioner shall establish and collect the following premiums:

(i) *Up-Front.* A single premium payment in an amount not exceeding 3.00 percent of the amount of the original insured principal obligation of the mortgage.

(ii) *Annual.* In addition to the premium under paragraph (b)(2)(i) of this section, annual premium payments in an amount not exceeding 0.50 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (b)(2)(i) of this section) for any mortgage involving an original principal obligation (excluding any premium collected under paragraph (b)(2)(i) of this section) that is:

(A) Less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), for the first seven years of the mortgage term;

(B) Greater than or equal to 90 percent of such value, but equal to or less than 95 percent of such value, for the first 12 years of the mortgage term; and

(C) Greater than 95 percent of such value, for the lesser of the mortgage term or the first 30 years of the mortgage term.

20. A new § 203.285 is added, to read as follows:

**§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.**

(a) *Up Front.* Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992 that is an obligation of the Mutual Mortgage Insurance Fund shall be subject to a single up-front premium payment, established and collected by the Commissioner in an amount not exceeding 2.0 percent of the amount of the original insured principal obligation of the mortgage. Upon termination of insurance by voluntary agreement, or upon payment in full of the principal obligation of the mortgage before the maturity date, the Commissioner shall refund all of the unearned premium charges paid on the mortgage pursuant to this paragraph (a).

(b) *Annual.* In addition to the premium under paragraph (a) of this section, the Commissioner shall establish and collect annual premium payments in amounts not exceeding the following percentages of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under paragraph (a) of this section) for the following periods:

(1) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is less than 90 percent of the appraised value of the property (as of the date the mortgage is accepted for insurance), no annual premium will be charged.

(2) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is greater than or equal to 90 percent of such value, but less than or equal to 95 percent of such value, an annual premium not exceeding .25 percent shall be collected for the first four years of the mortgage term.

(3) For any mortgage involving an original principal obligation (excluding any premium collected under paragraph (a) of this section) that is greater than 95 percent of such value, an annual premium not exceeding .25 percent shall be collected for the first eight years of the mortgage term.

(c) *Applicability of certain provisions.* The provisions of §§ 203.261, 203.266, 203.267, 203.268, 203.280 and 203.282 are applicable to mortgages subject to premiums under this section. The provisions of paragraphs (d), (e), and (g) of § 203.284 also shall be applicable to mortgages subject to premiums under this section.

(d) *Exception for streamline refinance.* This section shall not apply to any mortgage insured pursuant to § 203.43(c) if the mortgage to be refinanced was executed before July 1, 1991 and the new mortgage is executed on or after December 26, 1992.

## PART 204—COINSURANCE

21. The authority citation for 24 CFR part 204 continues to read as follows:

**Authority:** 12 U.S.C. 1715z–9, 1715(b); 42 U.S.C. 3535(d).

22. Section 204.1 is revised to read as follows:

**§ 204.1 Cross-reference.**

All of the provisions of subpart A, part 203 of this chapter concerning eligibility requirements of mortgages under section 203(b) of the National Housing Act apply to mortgages covering 1- to 4-family dwellings to be insured under section 203(b) pursuant to the coinsurance authority of section 244 of the National Housing Act except the following provisions:

Sec.
203.18(c), (d), and (e) Maximum mortgage amounts.
203.43 Eligibility of miscellaneous-type mortgages.
203.43a Eligibility of mortgages covering housing in certain neighborhoods.
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43h Eligibility of mortgages on Indian land insured pursuant to section 248 of the National Housing Act.
203.43i Eligibility of mortgages on Hawaiian home lands insured pursuant to section 247 of the National Housing Act.
203.43j Eligibility of mortgages on Allegany Reservation of Seneca Nation of Indians.
203.44 Eligibility of open-end advances.
203.50 Eligibility of rehabilitation loans.

23. Section 204.260 is revised to read as follows:

**§ 204.260 Mortgage insurance premiums for coinsured mortgages.**

The provisions of §§ 203.260 through 203.268, or the provisions of § 203.284 or § 203.285 (as appropriate), concerning mortgage insurance premiums with respect to mortgages insured under section 203(b) of the National Housing Act apply to mortgages covering one- to four-family dwellings to be insured under this part.

24. Section 204.276 is revised to read as follows:

**§ 204.276 Up-front premiums.**

The full amount of all up-front premiums collected pursuant to the provisions of §§ 203.284 and 203.285 on mortgages insured under this part shall be credited to the Mutual Mortgage Insurance Fund. No portion of the amount shall be credited to the Annual Coinsurance Reserve established by § 204.270.

## PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

25. The authority citation for part 220 continues to read as follows:

**Authority:** 12 U.S.C. 1713, 1715b, 1715k; 12 U.S.C. 3535(d).

26. Section 220.30 is amended by revising paragraph (d)(2), adding and reserving paragraph (d)(4), and adding paragraphs (d)(5) and (d)(6), to read as follows:

**§ 220.30 Maximum mortgage amount—loan to value limitation.**

* * * * *

(d) *Definitions.* As used in this section:

* * * * *

(2) *Secondary residence* means a dwelling: (i) Where the mortgagor maintains or will maintain a part-time place of abode and typically spends (or will spend) less than a majority of the calendar year; (ii) which is not a vacation home; and (iii) which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at a time.

* * * * *

(4) [Reserved]

(5) *Undue hardship* means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from place of residence to place of employment.

(6) *Vacation home* means a dwelling that is used primarily for recreational purposes and enjoyment, and that is not a primary or secondary residence.

* * * * *

## PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

27. The authority citation for part 221 continues to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715l; sec. 7(d), 42 U.S.C. 3535(d).

28. Section 221.20 is amended by revising paragraph (c)(2), adding and reserving paragraph (c)(4), and adding paragraphs (c)(5) and (c)(6), to read as follows:

**§ 221.20 Maximum mortgage amount—loan to value limitation.**

(c) *Definitions.* As used in this section:

* * * * *

(2) *Secondary residence* means a dwelling: (i) Where the mortgagor maintains or will maintain a part-time place of abode and typically spends (or will spend) less than a majority of the calendar year; (ii) which is not a vacation home; and (iii) which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at a time.

* * * * *

(4) [Reserved]

(5) *Undue hardship* means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from place of residence to place of employment.

(6) *Vacation home* means a dwelling that is used primarily for recreational purposes and enjoyment, and that is not a primary or secondary residence.

## PART 222—SERVICEPERSON'S MORTGAGE INSURANCE

29. The authority citation for 24 CFR part 222 continues to read as follows:

**Authority:** 12 U.S.C. 1715b, 12 U.S.C. 1715m, and 42 U.S.C. 3535(d).

30. Section 222.3 is revised to read as follows:

**§ 222.3 Maximum mortgage amounts—dollar limitation.**

The mortgage shall involve a principal obligation not in excess of the dollar limitation for a 1–family residence set forth in § 203.18(a)(1) of this chapter, or for a 1–family unit in a condominium project set forth in § 23427 of this chapter, except that a mortgage meeting the requirements of §§ 203.18(d), 221.10 or § 221.11 of this chapter shall not exceed the dollar limitation provided in the applicable section.

31. Section 222.4 is amended by revising a new paragraph (c) to read as follows:

**§ 222.4 Maximum mortgage amount; ratio of loan-to-value limitation.**

* * * * *

(c) Notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

## PART 226—ARMED SERVICES HOUSING-CIVILIAN EMPLOYEES [SEC. 809]

32. The authority citation for 24 CFR part 226 continues to read as follows:

**Authority:** 12 U.S.C. 1748(b), 1748(f).

33. Section 226.4 is revised to read as follows:

**§ 226.4 Maximum mortgage amount—dollar limitation.**

The mortgage shall involve a principal obligation not in excess of the dollar limitation set forth in § 203.18(a)(1) of this chapter.

34. Section 226.5 is amended by revising a new paragraph (c) to read as follows:

**§ 226.5 Maximum mortgage amount; loan-to-value limitation.**

* * * * *

(c) Notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

## PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

35. The authority citation for part 234 continues to read as follows:

**Authority:** 12 U.S.C. 1715b, 1715y; 42 U.S.C. 3535(d).

36. Section 234.14 is revised to read as follows:

**§ 234.14 Certification of appraisal amount.**

An application with respect to insurance of mortgages must be accompanied by an agreement satisfactory to the Commissioner, executed by the seller, builder or such other person as may be required by the Commissioner, in which the person executing the agreement declares that before any sale of the dwelling, he or she will deliver to the purchaser of the property a written statement, in a form satisfactory to the Commissioner, setting forth the amount of the appraised value of the property as determined by the Commissioner.

37. Section 234.27 is revised to read as follows:

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**§ 234.27 Maximum mortgage amounts.**

(a) *Mortgagors of principal or secondary residences.* A mortgage executed by a mortgagor who is to occupy the property as a principal residence or as a secondary residence (as these terms are defined in paragraph (d) of this section) may not exceed the lesser of the amounts specified in paragraphs (a) (1) and (2), (a) (1) and (3), or (a) (1) and (4) of this section (whichever applies), as follows:

(1)(i) 95 percent of the median 1-family house price in the area, as determined by the Secretary; or

(ii) 75 percent of the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (as in effect on September 30, 1992) for a 1-family residence; except that the applicable dollar amount limitation in effect for any area under this paragraph (a)(1) may not be less than the dollar amount limitation in effect under paragraph (a) of this section for the area on May 12, 1992.

(2) *Loan-to-value Limitation—principal residences—no approval before construction.* If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (d) of this section), and the dwelling was not approved for mortgage insurance before the beginning of construction, the loan-to-value ratio may not exceed 90 percent of the appraised value of the property as of the date the mortgage is accepted for insurance, unless the dwelling:

(i) Was completed more than one year before the date of the mortgage insurance application; or

(ii) Was approved for guaranty, insurance, or a direct loan by the Secretary of Veterans Affairs before the beginning of construction; or

(iii) Is covered by a consumer protection or warranty plan acceptable to the Secretary that meets the requirements of §§ 203.200–203.209 of this chapter.

(3) *Loan-to-value limitation—principal residences—approval before construction.* If the mortgage covers a dwelling that is to be occupied as a principal residence (as defined in paragraph (d) of this section) and the dwelling is approved for mortgage insurance before the beginning of construction, or the dwelling meets one of the alternative conditions listed in paragraph (a)(2) of this section, the following loan-to-value ratios apply:

(i) If the appraised value of the property does not exceed $50,000, the loan-to-value limitation is 97 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(ii) If the appraised value of the property exceeds $50,000, the loan-to-value limitation is 97 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance and 95 percent of the appraised value in excess of $25,000 but not in excess of $125,000, and 90 percent of such value in excess of $125,000.

(iii) If the mortgagor qualifies as a veteran (under § 203.18(b) of this chapter), the loan-to-value limitation is the lesser of:

(A) 100 percent of the first $25,000 of the appraised value of the property as of the date the mortgage is accepted for insurance, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000; and 90 percent of the value in excess of $125,000; or

(B) the sum of the appraised value not in excess of $25,000 and the items of pre-paid expense approved by the Commissioner, minus $200, plus 95 percent of the appraised value in excess of $25,000, but not in excess of $125,000; and 90 percent of the value in excess of $125,000.

(4) *Loan-to-value limitation—secondary residences.* If the mortgage covers a dwelling that is to be occupied as a secondary residence (as defined in paragraph (d) of this section), the loan-to-value ratio may not exceed 85 percent of the appraised value of the property as of the date the mortgage is accepted for insurance.

(b) *Increased mortgage amount.* If any party believes that a mortgage limit established by the Secretary under this section does not accurately reflect the median house prices in an area, the party may submit documentation in support of an alternative mortgage limit. Such documentation shall be submitted in accordance with the provisions of § 203.18b of this chapter.

(c) *Mortgagors of dwellings that are not principal or secondary residences.* A mortgage may be executed by an eligible non-occupant mortgagor (as defined in paragraph (d) of this section) for up to an amount authorized for the appropriate loan type under paragraph (a) of this section, except where a lesser amount is expressly provided for in this part.

(d) *Definitions.* As used in this section:

(1) *Principal residence* means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at a time.

(2) *Secondary residence* means a dwelling: (i) Where the mortgagor maintains (or will maintain) a part-time place of abode, and typically spends (or will spend) less than a majority of the calendar year; (ii) which is not a vacation home; and (iii) which the Commissioner has determined to be eligible for insurance in order to avoid undue hardship to the mortgagor. A person may have only one secondary residence at any one time.

(3) *Eligible non-occupant mortgagor* means a mortgagor (or co-mortgagor, as appropriate) who is not to occupy the dwelling as a principal residence or a secondary residence and who is—

(i) A public entity, as provided in section 214 or 247 of the National Housing Act; or any other State or local government or an agency thereof;

(ii) A private nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 and intends to sell or lease the mortgaged property to low- or moderate-income persons, as determined by the Secretary;

(iii) A serviceperson who is unable to meet such requirement because of his or her duty assignment, as provided in section 216, or in subsection (b)(4) or (f) of section 222;

(iv) A mortgagor that, pursuant to § 234.52, is refinancing an existing mortgage insured under the National Housing Act for not more than the outstanding balance of the existing mortgage, if the amount of the monthly payment due under the refinancing mortgage is less than the amount due under the existing mortgage for the month in which the refinancing mortgage is executed.

(4) *Appraised value* means the sum of:

(i) The lesser of sales price (with any adjustments required by the Secretary) or the amount set forth in the written statement required under § 234.14; and

(ii) Borrower paid closing costs allowed under § 234.47(a)(1)–(2), except that neither sales price nor closing costs shall apply for purposes of paragraph (e) of this section.

(5) *Undue hardship* means that affordable housing which meets the needs of the mortgagor is not available for lease, or within reasonable commuting distance from home to work place.

(6) *Vacation home* means a dwelling that is used primarily for recreational purposes and enjoyment, and that is not a primary or secondary residence.

(e) *Maximum principal obligation.* Except for mortgages meeting the requirements of § 234.27(a)(3)(iii), and

notwithstanding any other provision of this section, a mortgage may not involve a principal obligation in excess of 98.75 percent of the appraised value of the property (97.75 percent, in the case of a mortgage with an appraised value in excess of $50,000), plus the amount of the mortgage insurance premium paid at the time the mortgage is insured.

(f) *Announcement of maximum mortgage amounts.* The Secretary will announce maximum mortgage amounts based on paragraph (a) of this section. From time to time, the Secretary will update the maximum mortgage amounts for all areas by publishing a notice in the **Federal Register**. Before publication in the **Federal Register**, the Secretary may make updated mortgage amounts effective in one or more areas by providing notice to all affected mortgagees by mortgagee letter or other administrative issuance.

38. Paragraph (a) of § 234.48 is revised to read as follows:

**§ 234.48 Charges, fees or discounts.**

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the loan, the charge not to exceed $20, or 1 percent of the original principal amount of the mortgage, whichever is the greater;

(2) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes or other charges incident to the recordation;

(ii) Credit report;

(iii) Survey, if required by mortgagee or mortgagor;

(iv) Title examination; title insurance, if any;

(v) Such other reasonable and customary charges as may be authorized by the Commissioner.

(3) Reasonable and customary charges in the nature of discounts.

(4) Interest from the date of closing or the date on which the mortgagee disburses the mortgage proceeds to the account of the mortgagor or the mortgagor's creditor, whichever is later, to the beginning of amortization.

* * * * *

## PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

39. The authority citation for 24 CFR part 240 continues to read as follows:

**Authority:** 12 U.S.C. 1715(b), 1715 2–5; and 42 U.S.C. 3535(d).

40. Paragraph (b) of § 240.5 is revised to read as follows:

**§ 240.5 Maximum loan amounts.**

* * * * *

(b) An amount which, when added to any outstanding indebtedness related to the property, as determined by the Commissioner, creates a total outstanding indebtedness which does not exceed the limits prescribed in § § 203.18(a)(1), (b), (c), and (g), and 203.18a, of this chapter, as applicable.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 93–16038 Filed 7–29–93; 8:45 am]

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Part VI

# Department of Education

## National Institute on Disability and Rehabilitation Research; Notice of Proposed Funding Priority for FY 1994–1995 for a Rehabilitation Engineering Research Center

VOL 58 ISS 145 JL 30 1993 UMI

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed funding priority for Fiscal Years 1994–1995 for a Rehabilitation Engineering Research Center.

**SUMMARY:** The Secretary proposes a funding priority for a new Rehabilitation Engineering Research Center (RERC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on areas of national need consistent with NIDRR's long-range planning process. This priority is intended to improve rehabilitation services and outcomes for individuals with disabilities.

**DATES:** Comments must be received on or before August 30, 1993.

**ADDRESSES:** All comments concerning this proposed priority should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3424, Washington, DC 20202–2601.

**FOR FURTHER INFORMATION CONTACT:** David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

**SUPPLEMENTARY INFORMATION:** This notice contains a proposed priority under the RERC program for research on housing and home automation for individuals with disabilities.

Authority for the RERC program of NIDRR is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

This proposed priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 351.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priority proposed in this notice is consistent with the long-range planning process.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

**Note:** This notice of a proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the notice of a final priority.

### Description of the Rehabilitation Engineering Research Center Program

RERCs develop and disseminate innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers; study new or emerging technologies, products, or environments; demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation technology services; and conduct other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities. RERCs facilitate service delivery systems change through the development of consumer-responsive models for the delivery of rehabilitation technology services.

The statute requires that each applicant for a grant, including an RERC, demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. NIDRR encourages the RERC to involve individuals with disabilities and minorities as recipients in research training, as well as in clinical training.

Each RERC provides training in the applications of new technology to service providers and to individuals with disabilities and their families. Any Center funded under these priorities must coordinate activities and share information with other NIDRR-funded Centers and will be required to work closely with the RERC on Technology Evaluation and Transfer that will be established by NIDRR in fiscal year 1993 in response to a priority announced in the **Federal Register** on December 4, 1992 (57 FR 57482).

*General*

The Secretary proposes that the following requirements apply to the RERC pursuant to this absolute priority:

The RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to the marketplace. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must conduct coordinated programs of research and development that will contribute to the desired outcomes specified in the priority. Applicants have considerable latitude in proposing specific research approaches. However, the selection criteria in the regulations (34 CFR 353.31) require applicants to justify their choice of projects in terms of relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The RERC must provide graduate-level research training to build capacity for engineering research in the rehabilitation field and to provide training in the applications of new technology to service providers and to individuals with disabilities and their families.

The RERC must develop all training materials in formats that will be accessible to individuals with various types of disabilities and communication modes, and widely disseminate findings and products to individuals with disabilities and their families and representatives, service providers, manufacturers and distributors, and other appropriate target populations.

The RERC must involve individuals with disabilities and, if appropriate, their family members in planning and implementing the research, development, and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

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*Priority*

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority.

**Proposed Priority—Housing and Home Automation for Individuals With Disabilities**

*Background*

The general purpose of the proposed Center is to reduce the dependence of persons with disabilities who are limited in their activities of daily living and increase the likelihood that they will be able to live, and, if appropriate, learn, and work in their own homes. Contemporary technology is already making it possible for persons to communicate interactively with information sources, business establishments and work centers, learning environments, health support centers, security services, and entertainment centers from their own homes. Other forms of technology are making the activities of daily living, including personal care, food preparation and waste disposal, more and more accessible to persons with disabilities while improvements in security systems, furniture, plumbing and electrical fixtures, and home hardware design are also increasing accessibility. Much of this new technology is designed for the general population, with ancillary benefits accruing to persons with disabilities, while other applications, designed to improve accessibility to persons with disabilities, are found useful by all people. The application of new technology in these ways and for these purposes may be termed "Universal Design" because it enhances the lives of all people and can be used both by individuals with disabilities and the able-bodied persons with whom they may share a home. In this sense, Universal Design is the central focus of this priority.

There are an estimated 43 million persons with disabilities in the United States. Of these, 9.5 million persons experience difficulty in performing basic life activities such as walking, self-care (including feeding, bathing, dressing, and toileting), and community and home management activities, due to physical or mental health problems (LaPlante, "National Medical Expenditure Survey," National Center for Health Statistics, 1987). In 1990, more than 13.1 million Americans, or about 5.3 percent of the population, used assistive technology devices to accommodate physical impairments. In 1990, 7.1 million persons, or nearly 3 percent of all Americans, lived in homes that were specially adapted to accommodate impairments (Adams and Benson, "National Health Interview Survey," National Center for Health Statistics, 1991). An appropriate home environment for the lifetime of a person with disabilities is, in many cases, a major undertaking, involving accommodating to various combinations of physical, sensory and mental impairments.

There have been several efforts to develop accessible housing models. For example, a Universal Home Series was developed as a joint venture between Excel Homes, Inc. and the Center for Accessible Housing at North Carolina State University, a Rehabilitation Research and Training Center (RRTC) supported by NIDRR. These homes incorporate Universal Design principles, resulting in a living space that can be readily adapted for long-term comfort, safety, and ease of use (Mace, "Quarterly Report," Center for Accessible Housing, North Carolina State University, Raleigh, NC, October, 1992). The Electronics Industry Association has established a home automation standard known as the Consumer Electronic Bus (CEBus) Standard, which promises to facilitate communication between persons with disabilities and their home environments.

An RERC on housing and home automation would have two purposes. Its primary purpose would be to develop a variety of housing options and innovative approaches to designing, financing, and managing models of affordable adaptive housing. This will require a convergence of knowledge from the fields of architecture, engineering, construction, computer sciences, rehabilitation, independent living, ecology, telecommunications, energy conservation, and cost engineering in order to develop appropriate home environments in which persons with disabilities can live independently or with families and other household members.

The second purpose of the Center would be to improve the utilization of available research-based information on accessibility and independent living, including data on human performance and models of accessible building designs based on field and laboratory research tested in regular use by persons with disabilities.

A Center to be funded in response to this priority is expected to maintain liaison with the Architectural and Transportation Barriers Compliance Board, the Department of Housing and Urban Development, and NIDRR-supported research projects and Centers in such areas as technology transfer, independent living, aging, families and community integration.

*Proposed Priority*

An RERC on housing and home automation shall—

- Evaluate the adequacy of existing universal design for persons with disabilities for home management appliances and systems, such as those for food preparation, laundry, home maintenance, waste disposal, cleaning, communications, entertainment, security, and information, and, based on that evaluation, identify needs for modifications and additional designs;
- Develop integrated architectural and electronic designs for persons with disabilities that provide maximum accessibility and affordability;
- Develop and disseminate validated universal designs for persons with disabilities for home environments, including the home management appliances and systems to be used in those environments;
- Evaluate the potential for home accessibility and automation to prevent accidents and promote security for persons with disabilities;
- Evaluate the potential for advances in computer, communication, and robotics technologies to lead to new products and services that address the needs for home accessibility and automation among persons with disabilities;
- Identify or develop and evaluate low-cost, access-oriented designs that enable parents with disabilities to provide home-based child care;
- Analyze the effects of relevant laws and business and financial policies and practices on the development of suitable living environments for individuals with disabilities and develop strategies to address problems in these areas;
- Develop, acquire, maintain, and disseminate both graphic and text database on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing and home automation, and serve as a national information resource;
- Design training materials to increase awareness of the housing needs of persons with disabilities, concepts of accessibility and home automation, and techniques to increase the availability of accessible housing and related technology advances;
- Conduct training for a range of involved populations, including persons

with disabilities and their families, architects, builders, engineers, service providers, educators, designers, manufacturers, housing managers, city planners, and other appropriate audiences; and

• Disseminate research results, if appropriate, and be prepared to disseminate technical documentation and user instructions to manufacturers, providers, distributors, information centers and to the persons with disabilities and their families for whom the devices and systems are intended, ensuring that materials are provided in a variety of accessible formats and media.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3424, Switzer Building, 330 C Street SW., Washington, DC., between the hours of 9 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

*Applicable Program Regulations*

34 CFR Parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers)

Dated: June 18, 1993.

Richard W. Riley,

*Secretary of Education.*

[FR Doc. 93–18191 Filed 7–29–93; 8:45 am]

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July 30, 1993

Part VII

# Office of Management and Budget

**Financial Management Systems; Notice of Final Revision of Circular No. A–127**

VOL 58 ISS 145 JL 30 1993 UMI

## OFFICE OF MANAGEMENT AND BUDGET

### Financial Management Systems

**AGENCY:** Executive Office of the President, Office of Management and Budget.

**ACTION:** Final revision of OMB Circular No. A–127.

**SUMMARY:** This notice revises OMB Circular No. A–127 which prescribes requirements for executive branch agency financial management systems.

**DATES:** This Circular is effective July 23, 1993.

**FOR FURTHER INFORMATION CONTACT:** Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, room 10236, New Executive Office Building, Washington, DC 20503, (202) 395–6903.

**SUPPLEMENTARY INFORMATION:**

**Background**

Circular No. A–127 was originally issued on December 19, 1984, to provide policies and procedures for developing, operating, evaluating, and reporting on financial management systems. This Circular requires establishment of a single, integrated financial management system at each executive branch agency to provide complete, reliable, consistent, and timely financial information supporting Federal government operations. OMB's objectives in this revision are to eliminate unnecessary overlap between Circular No. A–127 and Circulars A–123, "Internal Control Systems"/A–130, "Management of Federal Information Resources", clarify terminology and definitions, update the Circular for statutory and policy changes, clarify certain agency responsibilities and eliminate outdated guidance.

(1) *Eliminate unnecessary overlap with Circular No. A–123 involving policies for management control and Federal Managers' Financial Integrity Act (FMFIA) reporting and Circular No. A–130 involving policies for information systems.* The revised Circular focuses specifically on requirements for financial management systems. Policies and guidance pertaining to reviews of financial management systems for FMFIA will be covered under a subsequent revision to Circular No. A–123. In the interim, reference is made to the statutory requirement of the FMFIA that a separate report on the conformance of the agency's accounting systems be included in the annual FMFIA report. Circular No. A–130 focuses on information systems and information technology management policy for the management of information resources. The revised Circular No. A–127 clarifies that financial management systems are a subset of information systems and, therefore, subject to the policies established in Circular No. A–130. Some policy statements in the revised Circular No. A–127 duplicate existing policy in Circular No. A–130 in order to provide added emphasis to certain financial management system requirements. OMB also plans to provide periodic supplemental guidance for areas with more dynamic requirements, such as financial management plan preparation and FMFIA report guidance.

(2) *Clarify terminology and definitions which caused confusion on the interpretation of data on financial management systems.* These changes are consistent with definitions and terminology used in Circular No. A–11 involving preparation and submission of budget estimates and in OMB guidance for developing CFO Financial Management 5-Year Plans and for preparing FMFIA reports. This revision specifically clarifies what constitutes a single, integrated financial management system. This definition has not been clear in past publications.

(3) *Update the Circular for statutory and policy changes.* Since the Circular was first issued in 1984, there have been numerous statutory and policy changes substantially affecting financial management systems. The Circular provides for the impact of these changes by establishing sections on financial management system requirements and financial management system improvements.

The financial management system requirements section establishes specific financial management system requirements and identifies authoritative sources for standards covering information, reporting, functional, and accounting standards. Specifically, the Circular recognizes the core financial system requirements published by the Joint Financial Management Improvement Program (JFMIP) and the U.S. Government Standard General Ledger (SGL) published by the Department of the Treasury as financial management system requirements. It also requires financial management systems to be able to provide the data required to prepare financial statements in accordance with the accounting standards recommended by the Federal Accounting Standards Advisory Board (FASAB) and reporting policies and requirements prescribed by OMB and the Department of the Treasury.

The financial management system improvements section was added to highlight requirements for the implementation of financial management systems. This section covers general financial management system development and operating requirements and includes guidance on cross-servicing, use of "off-the-shelf" software, and developing custom financial system software. This section also places a strong emphasis on the need for system designs to support improvement in agency work processes.

(4) *Clarify agency responsibilities for financial management systems.* The revised Circular makes reference to the Chief Financial Officers Act where responsibilities for financial management systems were clearly defined. The revised Circular also refers to responsibilities outlined in other OMB circulars.

(5) *Eliminate outdated guidance.* The revised Circular rescinds OMB Circular No. A–127 issued December 19, 1984 and OMB Publications M–85–10 "Financial Management and Accounting Objectives" and M–85–16 "Guidelines for Evaluating Financial Management/Accounting Systems."

This Circular reflects changes made as a result of comments received on the proposed revision published on January 22, 1993.

**Analysis of Comments**

Comments were received from four Federal agencies, the Small Agency Council representing smaller executive agencies of the Federal Government, and two private firms.

*Comments Accepted:* Comments were received which indicated guidance on implementing the SGL in instances where the existing accounts do not meet agency-unique needs was inadequate in the Circular. To clarify, a statement was included to recognize that the agencies may supplement their application of the SGL to meet agency specific information requirements in accordance with guidance provided in the U.S. Government Standard General Ledger supplement to the Treasury Financial Manual. Other clarifications were made to section 7 revisions to the references on required documentation which may have been incorrectly interpreted as requiring agencies, even in cases of vendor supplied software, to have in-house the capability to perform detailed software maintenance.

Several comments were received from the Federal sector expressing concerns over timely incorporation of new Federal financial system requirements

in vendor packages on the GSA Financial Management System Software (FMSS) Multiple Award Schedule. This revision includes requirements that such software packages meet the Core Financial System Requirements and other applicable accounting principles, standards and related requirements specified by OMB for government-wide use. Such requirements will be incorporated into the recertification process for inclusion on the FMSS multiple award schedule and the benchmark testing process for software certification.

GSA also requested that the Circular outline the various responsibilities of OMB and other agencies for the FMSS multiple award schedule technical review process. OMB will issue and maintain such guidance separately after appropriate discussions with the parties involved.

The Small Agency Council commented that more guidance is needed for agencies not included in the Chief Financial Officers Act. Specific needs were not identified but OMB is committed to providing additional guidance needed for the small agencies and will issue supplemental guidance as necessary.

*Comments Not Accepted:* Two agencies commented that "grace periods" should be allowed for meeting the requirements of the Circular. OMB does not feel this is necessary as this Circular is not modifying basic financial management policy. Many comments received stated that certain requirements of the Circular should be implemented as systems become obsolete and need replacement. OMB believes that agencies should begin to plan for implementation of the requirements of this revision now. The Federal government currently operates systems that are 10, 20 or in some cases close to 30 years old. Therefore, awaiting replacement of obsolete systems could delay desperately needed financial system improvements.

Two agencies commented that the Circular should include requirements of the FMFIA process and Information Resources Management (IRM) responsibilities as they relate to financial management systems. One of the objectives of this revision is to eliminate or at least reduce redundant or overlapping guidance. Therefore, such requirements and responsibilities are properly reflected in Circulars A–123 and A–130.

One private firm commented on the description of an integrated financial management system, stating that "it does not clearly state that agencies are required to implement a single, integrated data base, where technically feasible, to achieve systems integration." OMB feels that implementing a single, integrated financial management system does not necessarily require the implementation of a single, integrated data base. Therefore, the requirements included in this Circular are believed appropriate, given the complexity and diversity of the Federal Government operations.

Several agencies commented on the absence of references to requirements of the Comptroller General in the Circular. The Director of OMB and the Comptroller General work cooperatively to develop principles, standards, and related requirements, which are incorporated in the Core Financial System Requirements and other documents referenced in this revision.

One Federal agency commented that some of the practices outlined under Section 8, *Financial Management System Improvements*, may be unnecessarily restrictive and duplicate practices under standard system development life cycle (SDLC) methodologies required of all systems. OMB feels these practices are significant and should be included in this revision to emphasize their importance.

One private firm commented that duplicative entry of transactions should never be permitted. OMB recognizes that there may be a few isolated situations, such as where extremely low transaction volumes are involved, where it may not be cost-effective to design and operate systems with complex electronic interfaces to avoid duplicative transaction entry. The Circular, therefore, requires that unnecessary duplicative entry be avoided where the benefit does not justify the cost.

One agency commented that "the common data element standard requirement for storage could be extremely costly for some bureaus" and suggested wording to allow bureaus with existing systems to maintain the database and applications environment which best supports its mission, as long as it meets the common data element reporting requirements. OMB's position is that common agencywide data elements should be maintained and that they should be incorporated in the agency's financial management systems to be used for collection, storage and retrieval of financial management to eliminate inconsistency in agency financial information. Comments were also received as to the need for governmentwide standard data elements on which departmental elements would be based. OMB recognizes that governmentwide data elements should be established and plans to pursue such efforts in the future.

Some comments expressed concern that requirements for using "off-the-shelf" software packages could prevent agencies from obtaining systems developed and in use in the Federal government from other Federal agencies. OMB provides guidance in Section 8f. of this revision for transfer of agency financial management software.

**Philip Lader,**

*Deputy Director for Management, Office of Management and Budget.*

Circular No. A–127—Revised Transmittal Memorandum No. 1

To the Heads of Executive Departments and Establishments.

*Subject:* Financial Management Systems.

Circular No. A–127 prescribes policies and standards for executive departments and agencies to follow in developing, operating, evaluating, and reporting on financial management systems. This Transmittal Memorandum contains updated guidance which eliminates unnecessary overlap between Circular No. A–127 and Circular A–123, "Internal Control Systems"; eliminates unnecessary overlap between Circular No. A–127 and with Circular A–130, "Management of Federal Information Resources"; clarifies terminology and definitions; updates the Circular for statutory and policy changes; clarifies certain agency responsibilities; and eliminates outdated guidance.

This Circular replaces and rescinds OMB Circular No. A–127 dated December 19, 1984. This Circular also rescinds OMB memorandum M–85–10, "Financial Management and Accounting Objectives" and M–85–16, "Guidelines for Evaluating Financial Management/ Accounting Systems."

**Leon E. Panetta,**

*Director.*

1. *Purpose.* OMB Circular No. A–127 (hereafter referred to as Circular A–127) prescribes policies and standards for executive departments and agencies to follow in developing, operating, evaluating, and reporting on financial management systems.

2. *Rescission.* This Circular replaces and rescinds Circular A–127 dated December 19, 1984. This Circular also rescinds OMB memorandum M–85–10, "Financial Management and Accounting Objectives" and M–85–16, "Guidelines for Evaluating Financial Management/ Accounting Systems."

3. *Authorities.* This Circular is issued pursuant to the Chief Financial Officers Act (CFOs Act) of 1990, Pub. L. 101–576 and the Federal Managers' Financial

Integrity Act of 1982, Pub. L. 97–255 (31 U.S.C. 3512 et seq.); and 31 U.S.C. chapter 11.

4. *Applicability and Scope.*

a. The policies in this Circular apply to the financial management systems of all agencies as defined in section 5 of this Circular. Agencies not included in the CFOs Act are exempted from certain requirements as noted in section 9 of this Circular.

b. The policies contained in OMB Circular No. A–130, "Management of Federal Information Resources" (hereafter referred to as Circular A–130) govern agency management of information systems. The policies contained in Circular A–130 apply to all agency information resources, including financial management systems as defined in this Circular.

c. The policies and procedures contained in OMB Circular No. A–123, "Internal Control Systems," (hereafter referred to as Circular A–123) govern executive departments and agencies in establishing, maintaining, evaluating, improving, and reporting on internal controls in their program and administrative activities. Policies and references pertaining to internal controls contained in this Circular serve to amplify policies contained in Circular A–123 or highlight requirements unique to financial management systems.

5. *Definitions.* For the purposes of this Circular, the following definitions apply:

The term "agency" means any executive department, military department, independent agency, government corporation, government controlled corporation, or other establishment in the executive branch of the government.

The term "information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual. Information systems include non-financial, financial, and mixed systems as defined in this Circular.

The term "financial system" means an information system, comprised of one or more applications, that is used for any of the following:

—Collecting, processing, maintaining, transmitting, and reporting data about financial events;
—Supporting financial planning or budgeting activities;
—Accumulating and reporting cost information; or
—Supporting the preparation of financial statements.

A financial system supports the financial functions required to track financial events, provide financial information significant to the financial management of the agency, and/or required for the preparation of financial statements.

A financial system encompasses automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operation and maintenance of system functions. A financial system may include multiple applications that are integrated through a common database or are electronically interfaced, as necessary, to meet defined data and processing requirements.

The term "non-financial system" means an information system that supports non-financial functions of the Federal government or components thereof and any financial data included in the system are insignificant to agency financial management and/or not required for the preparation of financial statements.

The term "mixed system" means an information system that supports both financial and non-financial functions of the Federal government or components thereof.

The term "financial management systems" means the financial systems and the financial portions of mixed systems necessary to support financial management.

The term "single, integrated financial management system" means a unified set of financial systems and the financial portions of mixed systems encompassing the software, hardware, personnel, processes (manual and automated), procedures, controls and data necessary to carry out financial management functions, manage financial operations of the agency and report on the agency's financial status to central agencies, Congress and the public. Unified means that the systems are planned for and managed together, operated in an integrated fashion, and linked together electronically in an efficient and effective manner to provide agency-wide financial system support necessary to carry out the agency's mission and support the agency's financial management needs.

The term "application (financial or mixed system)" means a group of interrelated components of financial or mixed systems which supports one or more functions and has the following characteristics:

—A common data base.
—Common data element definitions.
—Standardized processing for similar types of transactions.
—Common version control over software.

The term "financial event" means any occurrence having financial consequences to the Federal government related to the receipt of appropriations or other financial resources; acquisition of goods or services; payments or collections; recognition of guarantees, benefits to be provided, or other potential liabilities; or other reportable financial activities.

The term "work process" means a series of activities operating together to achieve an end or desired result (mission, goal or objective). A work process is a workflow or series of steps necessary for the initiation, tracking and delivery of services or outputs. The process reflects how resources are managed to deliver the services or outputs and may cut across existing or future organizational boundaries.

6. *Policy.* Financial management in the Federal government requires accountability of financial and program managers for financial results of actions taken, control over the Federal government's financial resources and protection of Federal assets. To enable these requirements to be met, financial management systems must be in place to process and record financial events effectively and efficiently, and to provide complete, timely, reliable and consistent information for decision makers and the public.

The Federal government's financial management system policy is to establish government-wide financial systems and compatible agency systems, with standardized information and electronic data exchange between central management agency and individual operating agency systems, to meet the requirements of good financial management. These systems shall provide complete, reliable, consistent, timely and useful financial management information on Federal government operations to enable central management agencies, individual operating agencies, divisions, bureaus and other subunits to carry out their fiduciary responsibilities; deter fraud, waste, and abuse of Federal government resources; and facilitate efficient and effective delivery of programs through relating financial consequences to program performance.

In support of this objective, each agency shall establish and maintain a single, integrated financial management system that complies with:

—Applicable accounting principles, standards, and related requirements as defined by OMB and the Department of the Treasury;
—Internal control standards as defined in Circular A–123 and/or successor documents;

—Information resource management policy as defined in Circular A–130 and/or successor documents; and

—Operating policies and related requirements prescribed by OMB, the Department of the Treasury and the agency.

An agency's single, integrated financial management system shall comply with the characteristics outlined in section 7 of this Circular.

7. *Financial Management System Requirements.* Agency financial management systems shall comply with the following requirements:

a. *Agency-wide Financial Information Classification Structure.* The design of the financial management systems shall reflect an agency-wide financial information classification structure that is consistent with the U.S. Government Standard General Ledger, provides for tracking of specific program expenditures, and covers financial and financially related information. This structure will minimize data redundancy, ensure that consistent information is collected for similar transactions throughout the agency, encourage consistent formats for entering data directly into the financial management systems, and ensure that consistent information is readily available and provided to internal managers at all levels within the organization. Financial management systems' designs shall support agency budget, accounting and financial management reporting processes by providing consistent information for budget formulation, budget execution, programmatic and financial management, performance measurement and financial statement preparation.

b. *Integrated Financial Management Systems.* Financial management systems shall be designed to provide for effective and efficient interrelationships between software, hardware, personnel, procedures, controls, and data contained within the systems. In doing so, they shall have the following characteristics:

—*Common Data Elements.* Standard data classifications (definitions and formats) shall be established and used for recording financial events. Common data elements shall be used to meet reporting requirements and, to the extent possible, used throughout the agency for collection, storage and retrieval of financial information. Government-wide information standards (e.g., the U.S. Government Standard General Ledger) and other external reporting requirements shall be incorporated into the agency's standard data classification requirements.

—*Common Transaction Processing.* Common processes shall be used for processing similar kinds of transactions throughout the system to enable these transactions to be reported in a consistent manner.

—*Consistent Internal Controls.* Internal controls over data entry, transaction processing and reporting shall be applied consistently throughout the system to ensure the validity of information and protection of Federal government resources.

—*Efficient Transaction Entry.* Financial system designs shall eliminate unnecessary duplication of transaction entry. Wherever appropriate, data needed by the systems to support financial functions shall be entered only once and other parts of the system shall be updated through electronic means consistent with the timing requirements of normal business/transaction cycles.

c. *Application of the U.S. Government Standard General Ledger at the Transaction Level.* Financial events shall be recorded by agencies throughout the financial management system applying the requirements of the U.S. Government Standard General Ledger (SGL) at the transaction level. Application of the SGL at the transaction level means that the financial management systems will process transactions following the definitions and defined uses of the general ledger accounts as described in the SGL. Compliance with this standard requires:

—*Data in Financial Reports Consistent with the SGL.* Reports produced by the systems that provide financial information, whether used internally or externally, shall provide financial data that can be traced directly to the SGL accounts.

—*Transactions Recorded Consistent with SGL Rules.* The criteria (e.g., timing, processing rules/conditions) for recording financial events in all financial management systems shall be consistent with accounting transaction definitions and processing rules defined in the SGL.

—*Supporting Transaction Detail for SGL Accounts Readily Available.* Transaction detail supporting SGL accounts shall be available in the financial management systems and directly traceable to specific SGL account codes.

Agencies may supplement their application of the SGL to meet agency specific information requirements in accordance with guidance provided in the U.S. Government Standard General Ledger supplement to the Treasury Financial Manual.

d. *Federal Accounting Standards.* Agency financial management systems shall maintain accounting data to permit reporting in accordance with accounting standards recommended by the Federal Accounting Standards Advisory Board (FASAB) and issued by the Director of OMB, and reporting requirements issued by the Director of OMB and/or the Secretary of the Treasury. Where no accounting standards have been recommended by FASAB and issued by the Director of OMB, the systems shall maintain data in accordance with the applicable accounting standards used by the agency for preparation of its financial statements. Agency financial management systems shall be designed flexibly to adapt to changes in accounting standards.

e. *Financial Reporting.* The agency financial management system shall meet the following agency reporting requirements:

—*Agency Financial Management Reporting.* The agency financial management system shall be able to provide financial information in a timely and useful fashion to (1) support management's fiduciary role; (2) support the legal, regulatory and other special management requirements of the agency; (3) support budget formulation and execution functions; (4) support fiscal management of program delivery and program decision making, (5) comply with internal and external reporting requirements, including, as necessary, the requirements for financial statements prepared in accordance with the form and content prescribed by OMB and reporting requirements prescribed by Treasury; and (6) monitor the financial management system to ensure the integrity of financial data.

—*Performance Measures.* Agency financial management systems shall be able to capture and produce financial information required to measure program performance, financial performance, and financial management performance as needed to support budgeting, program management and financial statement presentation. As new performance measures are established, agencies shall incorporate the necessary information and reporting requirements, as appropriate and feasible, into their financial management systems.

f. *Budget Reporting.* Agency financial management systems shall enable the

agency to prepare, execute and report on the agency's budget in accordance with the requirements of OMB Circular No. A–11 (Preparation and Submission of Budget Estimates), OMB Circular No. A–34 (Instructions on Budget Execution) and other circulars and bulletins issued by the Office of Management and Budget.

g. *Functional Requirements.* Agency financial management systems shall conform to existing applicable functional requirements for the design, development, operation, and maintenance of financial management systems. Functional requirements are defined in a series of publications entitled Federal Financial Management Systems Requirements issued by the Joint Financial Management Improvement Program (JFMIP). Additional functional requirements may be established through OMB circulars and bulletins and the Treasury Financial Manual. Agencies are expected to implement expeditiously new functional requirements as they are established and/or made effective.

h. *Computer Security Act Requirements.* Agencies shall plan for and incorporate security controls in accordance with the Computer Security Act of 1987 and Circular A–130 for those financial management systems that contain "sensitive information" as defined by the Computer Security Act.

i. *Documentation.* Agency financial management systems and processing instructions shall be clearly documented in hard copy or electronically in accordance with (a) the requirements contained in the Federal Financial Management Systems Requirements documents published by JFMIP or (b) other applicable requirements. All documentation (software, system, operations, user manuals, operating procedures, etc.) shall be kept up-to-date and be readily available for examination. System user documentation shall be in sufficient detail to permit a person, knowledgeable of the agency's programs and of systems generally, to obtain a comprehensive understanding of the entire operation of each system. Technical systems documentation such as requirements documents, systems specifications and operating instructions shall be adequate to enable technical personnel to operate the system in an effective and efficient manner.

j. *Internal Controls.* The financial management systems shall include a system of internal controls that ensure resource use is consistent with laws, regulations, and policies; resources are safeguarded against waste, loss, and misuse; and reliable data are obtained, maintained, and disclosed in reports. Appropriate internal controls shall be applied to all system inputs, processing, and outputs. Such system related controls form a portion of the management control structure required by Circular A–123.

k. *Training and User Support.* Adequate training and appropriate user support shall be provided to the users of the financial management systems, based on the level, responsibility and roles of individual users, to enable the users of the systems at all levels to understand, operate and maintain the system.

l. *Maintenance.* On-going maintenance of the financial management systems shall be performed to enable the systems to continue to operate in an effective and efficient manner. The agency shall periodically evaluate how effectively and efficiently the financial management systems support the agency's changing business practices and make appropriate modifications.

8. *Financial Management System Improvements.* In improving financial management systems, agencies shall follow the information technology management policies presented in Circular A–130. In addition, agencies shall comply with the following policies in designing, developing, implementing, operating and maintaining financial management systems:

a. *Improvement in Agency Work Processes.* Designs for financial systems and mixed systems shall be based on the financial and programmatic information and processing needs of the agency. As part of any financial management system design effort, agencies are to analyze how system improvements, new technology supporting financial management systems, and modifications to work processes can together enhance agency operations and improve program and financial management. The reassessment of information and processing needs shall be an integral part of the determination of system's requirements. Process redesign shall be considered an essential step towards meeting user needs in program management, financial management, and budgeting. Concurrent with developing and implementing integrated financial management systems, agencies shall consider program operations, roles and responsibilities, and policies/practices to identify related changes necessary to facilitate financial management systems operational efficiency and effectiveness.

b. *Cost Effective and Efficient Development and Operation of Financial Management Systems.* Financial management system development and implementation efforts shall seek cost effective and efficient solutions as required by Circular A–130. A custom software development approach for financial management systems shall be used as a last resort and only after consideration of all appropriate software options, including the following:

—Use of the agency's existing system with enhancements/upgrades,
—Use of another system within the department/agency,
—Use of an existing system at another department/agency,
—Use of a commercial "off-the-shelf" software package,
—Use of a system under development at another department, or
—Use of a private vendor's service.

The cost effectiveness of developing custom software shall be clear and documented in a benefit/cost analysis that includes the justification of the unique nature of the system's functions that preclude the use of alternative approaches. This analysis shall be made available to OMB for review upon request.

c. *Cross or Private Servicing.* Cross servicing of financial system support, where one agency or a division within an agency provides financial management software and processing support to another agency or division within an agency, or private servicing through commercial vendors shall be used whenever feasible and cost effective, as a solution to meet Federal government financial management system needs. Agencies providing cross-servicing support shall ensure that systems are maintained appropriately; fees for service are reasonable; adequate conversion support is provided; procedures, training and documentation are available and periodic service reviews are conducted. Small agencies are particularly encouraged to use cross-servicing to meet fundamental core financial and payroll/personnel processing and reporting requirements.

d. *Use of "Off-the-Shelf" Software.* GSA shall maintain the Financial Management System Software (FMSS) Multiple Award Schedule for vendors providing acceptable software which meets the core financial system requirements as defined in the Core Financial System Requirements document published by JFMIP and other applicable accounting principles, standards, and related requirements as defined by OMB for governmentwide use. Such software packages will be "benchmarked," as appropriate, by an

independent team approved by the OMB Office of Federal Financial Management (OFFM) or its designee to assure the software complies with such requirements. Periodic recertification will be required to ensure that software continues to support financial system requirements.

Agencies replacing software to meet core financial system requirements must use "off-the-shelf" software from the GSA FMSS Multiple Award Schedule unless a waiver is granted under the Federal Information Resources Management Regulations (FIRMR). Agencies obtaining such a waiver must ensure the system, whether resulting from a custom software development approach or from software existing within or external to the agency, is "benchmarked" by an independent team approved by OFFM or its designee.

Financial management system software meeting requirements beyond the scope of the Core Financial System Requirements document may also be made available under the GSA FMSS Multiple Award Schedule as agreed to by the OFFM or its designee.

e. *Joint Development of Software.* Agencies with similar financial management functions, after considering "off-the-shelf" software solutions, are encouraged to undertake joint development efforts by pooling resources and developing common approaches for meeting similar financial functions. The designs for jointly developed software shall contain the flexibility and other features needed for transportability of the system to other agencies and/or cross-servicing.

f. *Transfer of Agency Financial Management Software.* In cases where an agency determines it is more efficient and effective to use or adopt the software of another agency to meet its financial management system requirements, the agency shall ensure the following:

(1) The software meets the financial management system requirements in section 7 of this Circular.

(2) A formal written agreement on the transfer of software is prepared and approved by all parties. The agreement shall cover the full scope of support services to be provided including system modifications, maintenance and related costs;

(3) Any necessary support requirements not covered in the agreement shall be provided by the agency and such support, including implementation support and training, shall be assessed and determined to be adequate.

(4) An ongoing relationship for determining future enhancements shall be established between the parties involved.

Any compensation arrangements for the transfer of the software shall conform to Circular A–130 policies.

9. *Assignment of Responsibilities.*

a. *Agency Responsibilities.* Agencies shall perform the financial management system responsibilities prescribed by legislation referenced in Section 3 "Authorities" of this Circular. In addition, each agency shall take the following actions:

(1) *Develop and Maintain an Agency-wide Inventory of Financial Management Systems.*

Agencies are required to maintain an inventory of existing and proposed financial management systems. Annually CFOs Act agencies will provide OMB with financial management system information in compliance with the financial system planning guidance issued by OMB for the Agency CFO 5-Year Financial Management Plan. Financial management systems shall be included in the agency information systems inventory following the information system inventory policies established in OMB Circular A–130.

(2) *Develop and Maintain Agency-wide Financial Management System Plans.*

Agencies are required to prepare annual financial management systems plans. These plans shall be developed in accordance with OMB guidance issued annually. Financial management system planning guidance for CFOs Act agencies shall be included in the guidance for developing CFO Financial Management 5-Year Plans.

The financial management systems strategies and tactical initiatives included in the CFO Financial Management 5-Year Plan shall be incorporated into the agency's five year information systems plan prepared in compliance with Circular A–130.

Agencies not covered by the CFOs Act shall prepare plans following the CFO Financial Management 5-Year Plan guidance but are not required to submit the plans to OMB. Financial management system plans shall be an integral part of the agency's overall planning process and updated for significant events that result in material changes to the plan as they occur.

(3) *Review of Agency Financial Management Systems.*

Each agency shall ensure appropriate reviews are conducted of its financial management systems. The results of these reviews shall be considered when developing financial management systems plans. OMB encourages agencies to coordinate and, where appropriate, combine required reviews. Reviews must comply with policies for (1) reviews of internal controls undertaken and reported on in accordance with the guidance issued by OMB for compliance with the requirements of the Federal Managers' Financial Integrity Act (FMFIA) and Circular A–123, (2) reviews of conformance of financial management systems with the principles, standards and related requirements in Section 7 of this Circular undertaken in accordance with the guidance issued by OMB for compliance with requirements of the FMFIA, and (3) reviews of systems and security as required under provisions of Circular A–130.

(4) *Develop and Maintain Agency Financial Management System Directives.*

Agencies shall issue, update, and maintain agency-wide financial management system directives to reflect policies defined in this Circular.

b. *GSA Responsibilities.* GSA is responsible for maintaining the FMSS Multiple Award Schedule for Federal financial management software and related services in accordance with guidance provided by OMB.

10. *Information Contact.* All questions or inquiries should be addressed to the Office of Federal Financial Management, Federal Financial Systems Branch, telephone number 202/395–6903.

11. *Review Date.* This Circular shall be reviewed three years from the date of issuance to ascertain its effectiveness.

12. *Effective Date.* This Circular is effective July 23, 1993.

[FR Doc. 93–18181 Filed 7–29–93; 8:45 am]
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Part VIII

# Department of the Interior

## Bureau of Indian Affairs

## Integration of Employment; Notice

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Integration of Employment, Training and Related Services Provided by Indian Tribes**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Program announcement.

**SUMMARY:** Public Law 102–477 authorizes the integration of employment, training and related services provided by Indian tribes. A Memorandum of Understanding among the Department of the Interior, Department of Health and Human Services and the Department of Labor is being developed which provides for the implementation of the Act. Tribes will be afforded the opportunity to demonstrate how Indian tribes can integrate these services in order to improve the effectiveness of those services, reduce joblessness and serve tribally-determined goals. This program announcement invites tribes, by tribal resolution, to apply for participation in the demonstration project beginning October 1, 1993. Tribes submitting resolutions will receive guidance in preparing tribal proposals.

**DATES:** Tribal resolutions for participation may be submitted at any time. However, for participation beginning October 1, 1993, tribal resolutions should be submitted within 30 days from the date of this notice being published in the **Federal Register**.

**ADDRESSES:** Tribal resolution, must be submitted to: Division of Job Placement and Training, Office of Economic Development, Bureau of Indian Affairs, 1849 C. Street NW., Washington, DC 20240 Mail Stop 2528/B–MIB.

**FOR FURTHER INFORMATION CONTACT:** Lynn Forcia, Chief, Division of Job Placement and Training (202) 208–2570.

**SUPPLEMENTARY INFORMATION:** Public Law 102–477, "Indian Employment, Training and Related Services Demonstration Act of 1992."

Dated: July 23, 1993.

**Ron Eden,**

*Assistant Secretary-Indian Affairs.*

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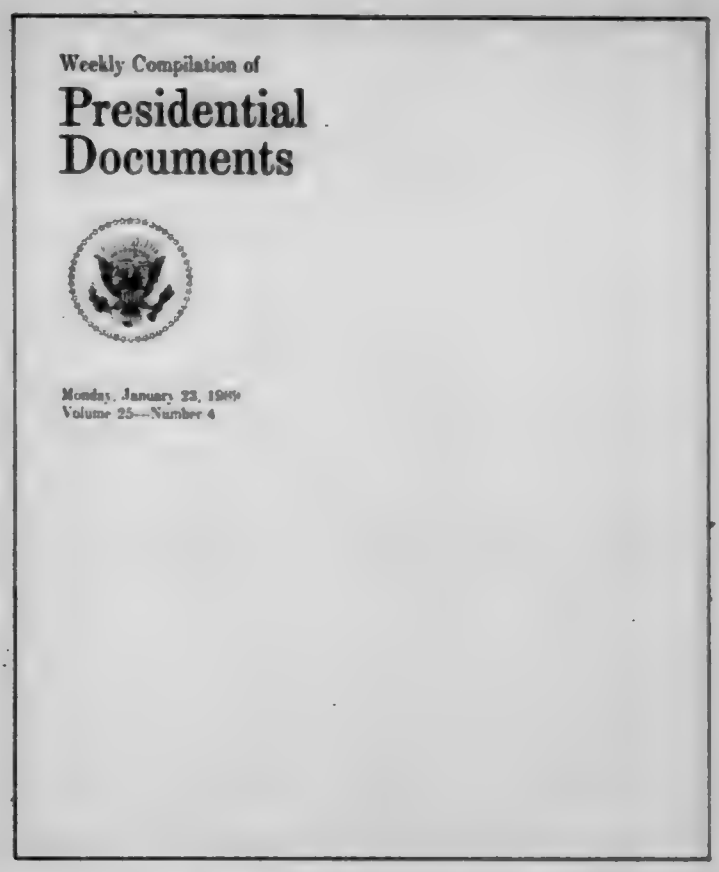


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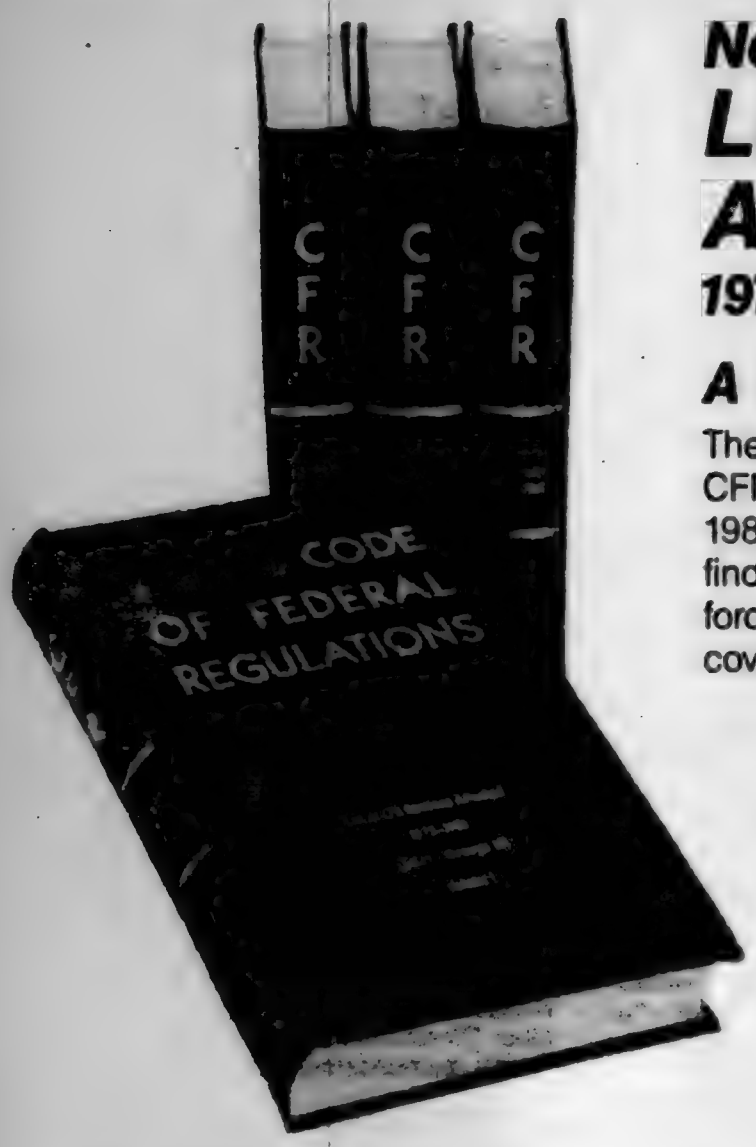


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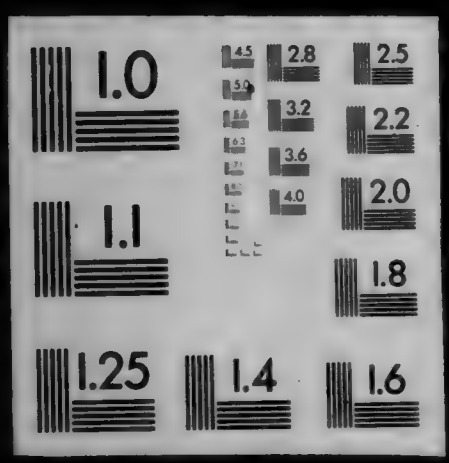
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1211

[FV-93-702]

RIN 0581-AA50

## Pecan Promotion and Research Plan; Temporary Suspension of Late Payment Charges and Interest

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule; suspension of rule.

**SUMMARY:** This interim final rule suspends the paragraph of the Pecan Promotion and Research Plan (Plan) which requires the Pecan Marketing Board (Board) to levy late payment charges and interest on late assessment payments. This action will allow the Board to cease levying late charges and interest on past due assessments remitted by first handlers and grower-shellers during the remainder of the 1992–93 season and refund late charges and interest which have been collected earlier in the 1992–93 season. This action was recommended by the Board and is needed to provide time for first handlers and grower-shellers to comply with this new program's regulations during the program's initial year of operation.

**DATES:** The suspension is effective from September 1, 1992 through October 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Arthur Pease, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535–S, Washington, DC 20090–6456, telephone (202) 720–6930.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under the Pecan Promotion and Research Plan (7 CFR part 1211). The Plan is effective pursuant to the Pecan Promotion and Research Act of 1990 (Act) (7 U.S.C. 6001 *et seq.*).

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order No. 12291 and has been determined to be a "non-major" rule.

### Civil Justice Reform

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is intended to suspend late payment charges and interest for the period September 1, 1992, through October 31, 1993. This interim rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1913 of the Act, a person subject to a plan may file a petition with the Secretary stating that such plan, a provision of such plan or an obligation imposed in connection with such plan is not in accordance with law; and requesting a modification of the plan or an exemption from the plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person resides or carries on business has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after the date of entry of a ruling by the Secretary.

### Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

The most recent available census of agricultural producers indicates that over 21,000 farms in the United States reported having pecan trees. The majority of these producers are subject to the provisions under the Plan and are classified as small businesses. Producers or growers engaged in the production and sale of pecans are subject to assessments under the Plan. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms, which include pecan handlers, shellers, grower-shellers, and importers, have been defined as those having annual receipts of less than $3,500,000. There are approximately 2,000 pecan handlers, 115 shellers, and 25 importers who are subject to the provisions of the Plan, the majority of whom are also classified as small entities.

Under the Plan first handlers and grower-shellers are responsible for collecting and remitting assessments to the Board, reporting their handling of pecans, and maintaining records necessary to verify their reports. Importers are required to pay assessments through the U.S. Customs Service at the time the pecans are entered or withdrawn for consumption. Importers are also required to submit monthly reports to the Board covering imported pecans. Assessments are used by the Board to conduct market research and promote pecans.

This action will not have a significant impact on growers and importers. It is likely to benefit first handlers and grower-shellers who made their assessment payments late during the 1992–93 marketing year.

### Suspension of Late Payment Charges and Interest

Sections 1910(c)(2) of the Act and § 1211.38(b) of the Plan authorize the Board to recommend to the Secretary such rules and regulations as are necessary to effectuate the terms and conditions of the Plan.

The Board has recommended the suspension of paragraph (g) of § 1211.51 of the Plan for the period from September 1, 1992, through October 31, 1993. The Board has learned that some first handlers and grower-shellers are unfamiliar with the provisions of the Plan and have not remitted their assessments in a timely fashion. These first handlers and grower-shellers have been charged late fees and interest. Some of these individuals have paid the charges while the charges are still accruing for others.

The Board believes that the imposition of the late payment charges and interest during the initial year of operation of the program does not serve the intended purpose of encouraging timely payment. In fact, suspending these charges for the 1992–93 season may encourage first handlers and grower-shellers who have not yet paid their assessments to do so.

Suspension of paragraph (g) of § 1211.51 of the Plan permits the Board to cease levying late charges and interest on past due assessments remitted by first handlers and grower-shellers and to refund those late charges and interest which have been collected since September 1, 1992.

This suspension is intended only for the designated period to allow first handlers and grower-shellers of pecans to come into compliance with the Plan's provisions without accruing late payment charges and interest on the late remittance of assessments. Late payment charges and interest applicable to assessments due after October 31, 1993, will be levied in accordance with § 1211.51(g) of the Plan.

The Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

For the reasons set forth herein, the provisions of paragraph (g) of § 1211.51 are suspended for the period from September 1, 1992, through October 31, 1993.

After consideration of all relevant material, it is found that the Plan's provision subject to this action does not tend to effectuate the declared policy of the Act and is suspended for the period provided for in this action.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) It removes an economic burden from first handlers and grower-shellers; (2) it encourages first handlers and grower-shellers to comply with timely payment of assessments in the future; (3) it imposes no additional requirements on the pecan industry; and (4) no time is needed by the industry to prepare for this action.

**List of Subjects in 7 CFR Part 1211**

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, title 7 part 1211 is amended by suspending paragraph (g) of § 1211.51 of the Plan for the period from September 1, 1992, through October 31, 1993.

## PART 1211—PECAN PROMOTION AND RESEARCH PLAN

1. The authority citation for 7 CFR part 1211 is revised to read as follows:

**Authority:** 7 U.S.C. 6001 *et seq.*

**§ 1211.51(g) [Suspended]**

2. Paragraph (g) of § 1211.51 is suspended for the period from September 1, 1992 through October 31, 1993.

Dated: July 28, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18342 Filed 7–30–93; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**21 CFR Part 73**

**[Docket No. 88C–0336]**

### Listing of Color Additives for Coloring Contact Lenses; Poly(Hydroxyethyl Methacrylate)-C.I. Reactive Red 180 Copolymer; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of March 25, 1993, for the final rule that amended the color additive regulations to provide for the safe use of the reaction product formed by chemically bonding the dye C.I. Reactive Red 180 [5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfooxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, tetrasodium salt] (CAS Reg. No. 98114–32–0) and the poly(hydroxyethyl methacrylate) copolymeric lens material for coloring contact lenses.

**DATES:** Effective date confirmed: March 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 22, 1993 (58 FR 9539), FDA amended 21 CFR 73.3121 to provide for the safe use of the reaction product formed by chemically bonding the dye C.I. Reactive Red 180 [5-(benzoylamino)-4-hydroxy-3-((1-sulfo-6-((2-(sulfooxy)ethyl)sulfonyl)-2-naphthalenyl)azo)-2,7-naphthalenedisulfonic acid, tetrasodium salt] (CAS Reg. No. 98114–32–0) and the poly(hydroxyethyl methacrylate) copolymeric lens material for coloring contact lenses.

FDA gave interested persons until March 24, 1993, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA concludes that the final rule published in the **Federal Register** of February 22, 1993, should be confirmed.

**List of Subjects in 21 CFR Part 73**

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the February 22, 1993, final rule. Accordingly, the amendments promulgated thereby became effective March 25, 1993.

Dated: July 28, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–18326 Filed 7–30–93; 8:45 am]

BILLING CODE 4160-01-F

**21 CFR Parts 520 and 524**

### Animal Drugs, Feeds, and Related Products; Butonate Liquid, Dichlorophene/Toluene Capsules, Selenium Disulfide Shampoo

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of three new animal drug applications (NADA's) held by Zoecon Corp. One NADA provides for use of butonate liquid, another for dichlorophene/toluene

capsules, and the third for selenium disulfide shampoo. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

**EFFECTIVE DATE:** August 12, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

**SUPPLEMENTARY INFORMATION:** In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 41–587 for Vet-Kem T–113 (butonate liquid), NADA 94–777 for Zodiac 3 in 1 Worm Capsules (dichlorophene/toluene), and NADA 103–434 for Vet-Kem Selenium Disulfide Shampoo, all held by Zoecon Corp., 12200 Denton Dr., Dallas, TX 75234. The sponsor requested withdrawal of approval of the NADA's. This document removes 21 CFR 520.240 and amends 21 CFR 520.580(b)(1) and 524.2101(c) to reflect the withdrawal of approval of these NADA's.

**List of Subjects in 21 CFR Parts 520 and 524**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 524 are amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 520.240 [Removed]**

2. Section 520.240 *Butonate liquid* is removed.

**§ 520.580 [Amended]**

3. Section 520.580 *Dichlorophene and toluene capsules* is amended in paragraph (b)(1) by removing "011536,".

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

4. The authority citation for 21 CFR part 524 continues to read as follows:

**Authority:** Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

**§ 524.2101 [Amended]**

5. Section 524.2101 *Selenium disulfide suspension* is amended in paragraph (c) by removing "011536,".

Dated: July 26, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–18278 Filed 7–30–93; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### National Highway Traffic Safety Administration

### 23 CFR Parts 1200, 1204, and 1205

**[NHTSA Docket No. 93–55, Notice 2]**

**RIN 2127–AD55**

## Uniform Procedures for State Highway Safety Programs

**AGENCY:** Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a system of uniform procedures governing approval, implementation, and management of State highway safety programs. It implements the Department's rule concerning the administration of grants with State and local governments as it applies to highway safety programs, updates and codifies existing procedures, and deletes obsolete provisions.

**EFFECTIVE DATE:** September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA, Adele Derby, Associate Administrator for Regional Operations, 202–366–2121; John Donaldson, Office of the Chief Counsel, 202–366–1834. In FHWA, Mila Plosky, Office of Highway Safety, 202–366–6902; Wilbert Baccus, Office of the Chief Counsel, 202–366–0780.

**SUPPLEMENTARY INFORMATION:**

### Background

On September 9, 1966, the Highway Safety Act of 1966 (the Act) (23 U.S.C. 401 *et seq.*) was enacted into law. Section 402 of the Act establishes a formula grant program to improve highway safety in the States. As a condition of the grant, the States must meet certain requirements. Section 402(a) of the Act requires each State to have a highway safety program approved by the Secretary of Transportation, which is designed to reduce traffic accidents and the deaths, injuries, and property damage resulting from those accidents. Section 402(b) of the Act sets forth the minimum requirements with which the State's highway safety program must comply. For example, the Secretary may not approve a program unless it provides that the Governor of the State is responsible for its administration, through a State highway safety agency which has adequate powers and is suitably equipped and organized to carry out the program to the satisfaction of the Secretary. Additionally, the program must authorize political subdivisions of the State to carry out local highway safety programs and provide a certain minimum level of funding for these local programs each fiscal year. The enforcement of these and other requirements is entrusted to the Secretary.

The Secretary's authority under section 402 of the Act has been delegated to the Administrators of the National Highway Traffic Safety Administration and the Federal Highway Administration ("the agencies") for highway safety programs within their respective jurisdictions. In carrying out their delegated duties, the agencies have, over time, issued regulations, orders, program manuals, and guidance memoranda implementing the requirements of section 402 and establishing procedures for the Administration of State highway safety programs. The issuance of guidance materials had continued as the concept of the State highway safety program has evolved, with the result that guidance or procedures governing the section 402 program appear in a variety of different documents, many of which are now obsolete. The continuing presence of potentially conflicting guidance has led to confusion among some States as to current procedures.

On March 11, 1988, Federal grant-making agencies issued a common rule requiring consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments. The Department of Transportation's codification of that rule, with specific exceptions applicable to its programs (49 CFR part 18, "the Common Rule"), became effective, in part on March 12, 1988, and in full on October 1, 1988. The Common Rule directed some fundamental changes in the administration of grants and cooperative agreements with State, local, and Indian tribal governments. Embodying the

principle of Federalism, it provided that in the areas of financial management, equipment, procurement, and administration of subgrants, States would expend and account for grant funds in accordance with their own laws and procedures. On July 14, 1988, a Departmental Order (DOT Order 4600.9C) directed each of the modal administrations to implement the Common Rule, as it applies to agency grant programs.

The agencies appointed a task force to explore options for achieving greater regional uniformity in the procedural implementation of the program. The task force also considered the effects of the Common Rule on the agencies' then current program management procedures and determined that some changes in those procedures would be necessary. The task force recommended that uniform procedures for the approval, procedural implementation, and administration of the section 402 program, consistent with both section 402 of the Act and the provisions of the Common Rule, be codified in a rule and that inconsistent or obsolete materials be rescinded.

To implement the recommendations of the task force and the provisions of DOT Order 4600.9C, the agencies published a joint notice of proposed rulemaking (NPRM) (56 FR 29593) on June 28, 1991. The notice included procedures for the submission, content, and approval of the State highway safety plan (the HSP) (the document in which the State describes its proposed highway safety program and applies for Federal funds), and general requirements for implementation of the program. The notice also proposed to delete supplements A through I to 23 CFR 1204.4, which contain inconsistent and outdated information, intending that the applicable provisions of the proposed rule supersede these supplements. Finally, the notice proposed revisions to 23 CFR 1205 that would not affect existing procedures, but would permit reorganization of some of its provisions under appropriate sections of proposed part 1200.

A significant goal of the proposed rule was to achieve uniformity in the procedural implementation of the section 402 program. The agencies also hoped to clarify the application of certain sections of the Common Rule to the section 402 program's unique administrative requirements. However, no attempt was made to impose procedures which vary significantly from those that are currently being followed by the States and the agencies' field offices. With these guidelines in mind, the agencies solicited comments from interested parties on all aspects of the proposed rule. States were especially encouraged to submit comments on those portions that would implement the Federalism provisions of the Common Rule.

**Discussion of Comments**

The agencies received 16 responses to the NPRM—fourteen from states, through their cognizant highway safety offices, and two from safety organizations (Advocates for Highway and Auto Safety and the National Association of Governors' Highway Safety Representatives). In general, commenters expressed support for the effort to codify uniform procedures for administration of the section 402 program. Some commenters exhorted the agencies to continue the process by updating or rescinding inconsistent materials. The agencies have begun rescinding inconsistent or outdated agency orders, program manuals, and other materials. The process will be completed following publication of a final rule. The agencies will also review any guidance materials that should be updated rather than rescinded at that time.

The discussion of comments is organized under topic headings below. In the interest of brevity, State entities that submitted comments (e.g., the Governor's Office or Representative for Highway Safety, the State highway safety office) will be identified simply by the State name. The agencies appreciate the time taken by the commenters to share their thoughts and provide suggestions and recommendations.

*Regional Uniformity (General)*

South Carolina commented that the proposed procedures do not provide adequate guidance for program implementation. It argued that the original 18 Highway Safety Standards and NHTSA Order 462–13A provided some standard guidance as to what could be funded, without which the Regional Administrators would wield "complete approval authority," resulting in great disparity among regions with respect to funding decisions. Citing the Highway Safety Act's requirement for programs established in accordance with uniform standards expressed in terms of performance criteria, South Carolina asked whether the Highway Safety Standards would remain in effect if the proposal is approved as written. Kentucky voiced essentially identical concerns. Both States urged the establishment of standardized funding criteria applicable to all regions. Similarly, the National Association of Governors' Highway Safety Representatives (NAGHSR) urged that management guidance from old orders and manuals be updated and combined, along with the regulations concerning National Priority Program Areas, in this document for ease of reference.

Congress amended the Highway Safety Act in 1987 (Pub. L. 100–17, 101 Stat. 218), substituting the term "guidelines" for the term "standards." In so doing, Congress recognized the need for broader flexibility in program implementation to accommodate the varying needs of different States. The original 18 Highway Safety Standards now serve as guidelines that the States may draw upon in fashioning their highway safety programs (see 23 CFR part 1204). The Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, 105 Stat. 1914) adds several new guidelines, and permits their designation by the Secretary of Transportation as priority programs. The 18 guidelines, and any others that may be established from time to time, are unaffected by this rule, and remain an integral part of the section 402 program.

Similarly, this rule does not purport to change the effect of NHTSA Order 462–13A, Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments. The NHTSA order implements OMB Circular A–87, which is cited by the Common Rule as the applicable guidance for determining allowable costs for State, local, and Indian tribal governments. Some portions of NHTSA Order 462–13A may be updated, as necessary, but it, too, remains fully applicable to the section 402 program.

It is worth reemphasizing what this rule seeks to achieve, as set forth in the preamble to the NPRM. It establishes uniform procedures governing approval, implementation, and management of State highway safety programs. As a predominantly procedural document, it generally does not specify what items or programs are to be approved, implemented, or managed, but merely designates how these actions are to be accomplished. Hence, the comments that standardized funding criteria and updated guidelines applicable to all regions (i.e., uniform criteria governing what can be funded) should be developed are beyond the scope of this rule. In any event, substantive or programmatic guidance for the section 402 program is to be found in other readily available materials, including adjacent parts of 23 CFR chapter II and OMB and agency directives. Upon

publication in the Code of Federal Regulations, this rule will be located in close proximity to the provisions concerning National Priority Program Areas.

Even with existing substantive guidance, the agencies acknowledge that variations in approved programs or funding exist among regions. This is to be expected, as guidance providing that an item or program is fundable does not guarantee approval for the requester. The approving officials consider many extenuating factors, based on differing State or regional circumstances. In the context of the section 402 program, where approving officials strive to ensure the most efficient use of limited resources on a State-by-State basis, we do not view these variations as undesirable.

Nor do we believe that regional variations are symptomatic of an abuse of discretion by Regional Administrators, as is implied by South Carolina's comment that a program approved in one region and denied in another might be based "solely upon the Regional Administrator's personality or whims." The section 402 program has been characterized, in large measure, by a close and cooperative working relationship between dedicated Federal and State officials. Nevertheless, in the event that a State feels aggrieved by a Regional Administrator's decision, it may avail itself of the appeal rights provided in this rule.

*Definitions (Section 1200.3)*

Maryland requested that the term "funded in whole or in part from 402 funds" be inserted after the word "project" in the definition of "Highway Safety Plan or HSP" and in the definition of "Highway Safety Program." According to Maryland, adding this limitation would maintain consistency with prior NHTSA/FHWA directives and current practice. The existing broad language already reflects current practice, under which States are encouraged to consider the "big picture" and plan on the basis of comprehensive countermeasures, by including activities associated with the programs of sections 153, 403, 408, and 410 in the HSP. The proposed change would reduce the likelihood of such comprehensive planning. Consequently, the comment has not been adopted.

*Three-year HSP (Section 1200.10(a))*

There was general support for the provision allowing States to submit a three-year HSP in lieu of the traditional one-year HSP. Several commenters thought it would enhance the State's long range planning efforts. Others had more specific concerns or recommendations.

Texas and Virginia emphasized that the three-year HSP should be optional, not required. The agencies intend for the submission of a three-year HSP to be solely at the State's election. If the State does not choose to submit a three-year HSP, it must submit a one-year HSP. Because the existing language is clear on this point, no change has been made. However, we have added a parenthetical provision in paragraph (a)(2) encouraging the States to give at least ninety days' notice to the approving officials if they intend to submit a three-year HSP.

Oregon urged flexibility in the three-year HSP option to accommodate States needing a one-year or two-year HSP. As explained above, complete flexibility exists for a State to select between a one-year and a three-year HSP. The agencies have not adopted the suggestion that States be allowed to submit a two-year HSP. We believe that the option for either a one-year or three-year HSP strikes the proper balance between flexibility for the States and the need to maintain some standardization in the submission and review process.

Massachusetts was concerned that subgrantees operating under a three-year HSP would rely upon funds being committed for the full three-year time period, notwithstanding the annual Federal appropriation and obligation cycle. In its view, a reduction in the appropriation or change in the focus in any year would cause program changes to occur. The agencies appreciate the concern that program adjustments may be necessary in the face of changes in the yearly appropriation. This has been the case from the inception of the section 402 program, as Federal funds have never been available for commitment in advance of the year of authorization. An extra measure of effort by the States to educate subgrantees about the funding process should resolve any misplaced reliance by subgrantees. The agencies are available to assist in the education process, as needed.

*Supporting Financial Documentation (Section 1200.10(b)(6))*

An ambiguity in the NPRM left it unclear what information was required of a State on HS Form 217, the Highway Safety Program Cost Summary, if it elected to submit a three-year HSP. Because section 402 funds are made available by the Congress on a fiscal year basis, a year-by-year breakdown of proposed program expenditures is required. Language has been added to clarify that an HS Form 217 is required for each year of proposed program expenditures under a three-year HSP.

*Project Length (Section 1200.10(c)(2))*

Louisiana expressed support for the project length provision, stating that it would provide clear and concise direction and support to State program staff when negotiating a project.

Texas disagreed with the prohibition against federally funding a project for more than six years, and recommended allowing continuation subject to NHTSA approval. For many years, the NHTSA has operated under the policy that Federal participation in a project under the section 402 program generally should be limited to three years. After that time period, the State should accept full financial responsibility for the continuation of meritorious projects. However, the NHTSA recognizes that certain projects demonstrating long range potential might deserve approval for Federal funding beyond three years. To more fully accommodate this concern, we have deleted the absolute six-year limitation. Approval will continue to be required, on a yearly basis, for extending projects beyond three years, and we have retained the requirement for an increase in the cost contribution by the State in subsequent years. The NHTSA anticipates that approval for extending a project beyond six years will occur only on rare occasions.

Ohio commented that a three-year project period might terminate prior to meeting the initial training needs of communities across the State. The existing language provides that training projects supporting activities within an identified program area are not subject to the project length requirements. Consequently, such projects may continue to be funded for as long as a bona fide need can be shown to exist for the training under the program area.

Oregon was concerned that the project length and approval requirements might be misconstrued to apply to section 408 projects or other projects not under the section 402 program. It requested that projects not subject to these limitations be clearly identified. State highway safety offices are encouraged to engage in comprehensive planning, by outlining all of their highway safety objectives in the HSP, including those falling within the purview of section 408 and other sections. However, the project length requirements of this rule are not intended to apply outside of the section 402 program. The language has been changed to clarify this point.

*Review and Approval (Section 1200.11); Appointment and Obligation (Section 1200.12)*

In general, commenters were pleased to learn of the agencies' contract authority, which enables a continuation of HSP activities despite Congressional appropriation delays. Maryland, however, was concerned that language in the prescribed HSP approval letter subjects the authorization to incur costs to the availability of funds, which seems to negate the assurances of program continuity provided in the preamble to the NPRM. The HSP approval letter does not constitute the vehicle by which Federal funds are obligated, because the approval occurs prior to the fiscal year during which the funds become available. Rather, the HSP approval letter serves to inform the State that its proposed program (i.e., the activities for which it plans to spend Federal funds when they become available) has been approved. Such advance approval is necessary to ensure that the State is free to proceed with its highway safety program when Federal funds become available at the beginning of the new fiscal year. The Federal obligation is completed, as provided by § 1200.12(c), only when the NHTSA or the FHWA Administrator distributes the funds under § 1200.12 (a) or (b) against approved program amounts. The standardized statement that is to appear in all HSP approvals and conditional approvals (§ 1200.11(b)(4)) has been modified to clarify that both HSP approval and distribution of funds are necessary to effect the obligation.

In further clarification of § 1200.12, the language setting forth the requirement for submission of HS Form 217 as a precondition for reimbursement has been moved from paragraph (c) to a new paragraph (d), and amplified to correct ambiguities in the NPRM. (The requirement for submission of HS Form 62, the Federal Aid Agreement, has been removed, and HS Form 217, The Highway Safety Program Cost Summary, has been revised, as explained below.) New paragraph (d) makes it clear that reimbursement is contingent upon the submission of an updated HS Form 217, containing information based on the funds actually available and distributed. Previously, it was possible to interpret the requirement as being satisfied by the first submission of HS Form 217, which accompanies the HSP and contains only estimated figures. A cross-reference to this clarifying language has also been added to the standardized language which is to appear in all HSP approvals (§ 1200.11(b)(4)).

In order to better accommodate the expedited obligation process prescribed under this rule, the updated HS Form 217 is now required to be submitted within 30 days (instead of 60 days) after the start of the fiscal year or the date of the HSP approval letter, whichever is later. The agencies believe that the very small added burden, if any, associated with the 30-day time frame is more than compensated by the advantages it confers in program implementation. We note, also, that the net burden to the States is reduced by the deletion of the requirement for submission of HS Form 62, as discussed below. New paragraph (d) of § 1200.12 provides that the updated HS Form 217 may not reflect a change from the approved HSP (except that it may reflect decreases across program areas to accommodate funding limitations) without requiring approval by the approving officials. This clarification does not impose any new approval requirements beyond those intended in the NPRM.

Because the Federal obligation occurs when the funds are distributed for use under the approved HSP on October 1, HS Form 62 is no longer needed for the section 402 program. The written HSP approval required under § 1200.11(b), the distribution of Federal funds under § 1200.12, and the requirement that HS Form 217 be submitted by the State when it seeks HSP approval (§ 1200.10(b)(6)), after distribution of Federal funds (new § 1200.12(d), and to document or request approval for program changes (§ 1200.13(b) and (c)), accomplish all the purposes for which HS Form 62 was designed. Moreover, in light of the expedited obligation process prescribed under this rule, the continued use of the form can lead only to confusion. It implies, wrongly, that additional approval is required after the distribution of Federal section 402 funds to obligate the funds against approved program amounts. Consequently, the submission of HS Form 62 will no longer be required of the States in the implementation of the section 402 program. Its use in any other programs under title 23, United States Code, is also no longer required. The agencies have made minor changes to HS Form 217 (e.g., the addition of signature blocks and updated instructions) to accomodate this change in procedures. HS Form 217 has been further revised to delete the requirement for continuous tracking of carry-forward funds. (See discussion under the heading Disposition of Unexpended Balances.)

*Changes (Section 1200.13)*

This section elicited the greatest number of comments. Some commenters thought that the provisions were unclear, too restrictive, burdensome to State and Federal program officials, that they would lead to regional inconsistencies in interpretation, or that they interfered with the State's discretion to run its own program. Comments are discussed by paragraph.

*Section 1200.13(a)(1)—(Prior Written Approval Required for Any Revision Resulting in the Need for Additional Federal Funding)*

Maryland questioned the usefulness of this provision, unless additional section 402 funds could be made available to a State through the HSP change process. A State may, in fact, obtain additional section 402 funds through the HSP change process. For example, a State might initially receive only partial approval of its HSP and, hence, only a partial obligation of funds, because distributed funds constitute a Federal obligation only to the extent of approved program amounts. Or, Congress might make available special earmarked funds not initially available when the HSP was submitted and approved. In these and other cases, changes in the HSP would likely be required to place the funds under obligation. The provision codifies a similar requirement in the Common Rule, and seeks only to make clear that Federal approval is always required for the use of Federal funds not already under obligation. To further clarify this point, the language of paragraph (a)(1) has been changed to make reference to "obligated" funds.

*Section 1200.13(a)(2)—(Prior Written Approval Required for Any Extension of the Period During Which Costs May Be Incurred)*

Pennsylvania questioned whether this provision's reference to § 1200.31 (extension of the HSP) applied to projects as well as to the HSP, and disagreed with any interpretation that would require all active projects to be terminated and restarted due to the expiration of the HSP. A request for extension of the HSP necessarily is a request for extension of projects subsumed under the HSP. Specifically, the State is requesting approval to continue incurring costs for projects under the HSP. However, there is no requirement that the State must terminate and restart a grantee's project, from a State-level approval perspective. If an extension is obtained or the

project's continuation is rolled into the following year's HSP, such action should be unnecessary. The termination of one year's HSP and the beginning of another year's HSP is an artifice imposed by the Common Rule for Federal accounting purposes, and need not affect the State's project approval process. This point is further discussed under the heading Extension of the HSP. No substantive change has been made to the paragraph, though an editorial change has been made to ensure parallelism with adjacent clauses.

Ohio thought the purpose of this provision was unclear. Recognizing that the typical HSP covers an annual period, it believed it to be understood that movement of activity from one grant year to another requires Federal approval, whereas movement within a single grant year does not. Ohio's comment is only partially correct. It is correct that movement of activity from one grant year to another requires prior approval under this rule. However, Ohio should note that movement within a single grant year may also require prior approval, as provided elsewhere in this section. The provision at issue merely cross-references § 1200.31, which requires prior approval for extensions of the HSP, and is included so that all changes are referenced conveniently under one section. To that end, a new paragraph (a)(3) has been inserted to cross-reference § 1200.10(c)(2), which requires prior approval for funding NHTSA projects beyond three years.

*Section 1200.13(a)(3)—(Prior Written Approval Required for Contracting Out, Subgranting, or Otherwise Obtaining Third Party Services Central to the Purposes of the HSP)*

Ohio, Texas, Pennsylvania, and Maryland objected to or requested clarification of the proposed provision, which they viewed as unnecessarily intrusive and burdensome. Ohio agreed, however, that any work authorized by State agreements must appear in the HSP prior to its performance. Maryland criticized the provision for apparently requiring specific additional approval prior to each subgrant being awarded. The provision has been deleted as unnecessary, because appropriate Federal oversight is afforded by the restrictions of § 1200.13(a)(5).

*Section 1200.13(a)(4)—(Prior Written Approval Required for Changes in Key Persons Specified in the HSP)*

Ohio and Maryland questioned the need for this requirement, and Texas sought clarification. The agencies recognize that the requirement is confusing, because specific persons are not generally identified in the HSP. The requirement was intended to cover those rare occasions on which an activity might be approved precisely because of the participation of uniquely qualified named personnel. However, such cases may be accommodated under the conditional approval procedures of § 1200.11(b). Consequently, the provision has been deleted as superfluous.

*Section 1200.13(a)(5)—(Prior Written Permission for any Change in the Scope or Objectives of a Project)*

In the NPRM, the word "of" was inadvertently substituted for the word "or" in two places in the introductory paragraph. The provision should have read: "(5) Any change in the scope or objectives of a project. For the purposes of this paragraph, each of the following shall be considered a change in scope or objectives: * * *"

Pennsylvania thought the provision was ambiguous, due to the appearance of both the terms "project" and "program area," and asked whether the ten percent rule for changes applied at the project level or only at the program area level. The ten percent threshold is intended to apply at the program area level (i.e., the movement of funds between program areas requires prior approval when the ten percent threshold is exceeded for either the gaining or losing program area). The agencies agree with Pennsylvania that the choice of terminology does not make this result clear. Consequently, we have streamlined the provision concerning the ten percent threshold and it now appears as new paragraph (a)(4), without the introductory text concerning changes in scope or objectives of a project. This should greatly simplify the provision's application. We have also clarified that the threshold is based on the level of Federal funding, based on the amounts identified in the updated HS Form 217 required under new § 1200.12(d). The "scope or objectives" language, concerning approval of changes at the project level, appears in a subsequent paragraph, as discussed below.

Texas thought the ten percent threshold was more restrictive than required by law. In 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, 95 Stat. 357), which directed the agencies to conduct a rulemaking process to determine those State and local highway safety programs most effective in reducing accidents, injuries, and fatalities. As a result of that rulemaking process, the so-called "national priority program areas" have been identified in part 1205 of this chapter. Congress contemplates that careful attention and oversight will be devoted to program areas. The agencies view cumulative changes affecting over ten percent of the funding of a program area as a sufficiently major change to the HSP to require prior Federal approval. We believe this requirement strikes the proper balance between State flexibility and adequate stewardship of Federal funds.

Maryland commented that the use of absolute rather than net values to determine the threshold for requiring approval of changes did not make sense. The use of absolute values was intended to trigger prior approval for changes on the basis of frequency of fund movements as well as absolute magnitude. The agencies reasoned that frequent small changes in a program area's funding (regardless of direction) could have as significant an impact as net changes in magnitude, and were therefore equally appropriate for Federal approval. However, in the interest of simplification and in order to afford the States wider latitude, we have removed the absolute value method of calculating changes. The amended language in new paragraph (a)(4) requires prior approval of changes which, when cumulated by simple addition, result in a net movement of funds (increase or decrease) exceeding ten percent of the approved Federal funding for the program area. Once the threshold is reached, all subsequent fund movements require prior approval (even if subsequent cumulation causes a dip below the threshold).

Ohio questioned the meaning of paragraphs (a)(5)(i) and (ii), in light of the existing requirement to document all obligations of funds to and/or movement of funds between program areas by submission of HS Forms 62 and 217. (As previously noted, there is no longer a requirement to submit HS Form 62 for the section 402 program.) The documentation, as distinguished from prior approval, of fund movements between program areas is an independent accounting requirement which applies whether or not the ten percent threshold has been reached. Paragraph (a)(5)(i) (now (a)(4)) would, in addition, require Federal approval before funds are moved when the ten percent threshold has been exceeded. As discussed below, paragraph (a)(5)(ii) has been deleted.

Maryland was unsure of the meaning of the term "training allowance" in paragraph (a)(5)(ii) and asked for clarification. The provision was intended to apply the ten percent threshold to changes in budgeted

training funds supporting a program area. However, it has been deleted as superfluous, since such changes would be captured under the procedures of the ten percent threshold (new paragraph (a)(4)).

The NAGHSR thought that paragraph (a)(5)(iii), which concerns approval of project-level changes, was written far too broadly, and would create the potential for tremendous variation in program implementation by different Regional Administrators. NAGHSR strongly recommended that changes in project scope requiring prior approval be limited to those triggering the ten percent threshold. Pennsylvania, Maryland, and California urged that all Federal review be limited to the program area level, arguing that written approval at the project level would be unnecessarily burdensome and would curtail the State's flexibility. Maryland observed that projects often are refined at the time a project agreement is prepared, and sometimes scaled back if insufficient funds are available. Maryland also thought project level approval would deter adoption of multi-year HSPs, discourage specificity in the HSP, and encourage inconsistencies across regions.

As explained above, the ten percent threshold does not apply at the project level. However, the agencies believe that a redirection of the basic goals or effort underlying a Federally-funded project, irrespective of fund movements, is an important Federal concern, because it changes the assumptions upon which the grant agreement is based. The Federal Government must have the means to ensure that its funds are not being expended for purposes other than those under agreement. Consequently, the requirement for prior approval of project-level changes that alter the very nature of the project has been retained. However, we have restated it in terms of "scope or objectives," as it appears in the Common Rule and in the introductory text of paragraph (a)(5) in the NPRM. We have also included the parenthetical remark that appears in the Common Rule to clarify that the provision's application is independent of fund movement restrictions. The requirement appears as new paragraph (a)(5), and old paragraph (a)(5)(iii) has been deleted.

Maryland's specific concerns ignore the need for balance between the States' flexibility and the Federal Government's oversight. The fact that projects sometimes need refinement or must be scaled back by the State because of insufficient funds has no relevance to the determination of what level of prior approval is necessary for Federal oversight purposes. Moreover, we are not persuaded that the prior approval requirements would deter adoption of multi-year HSPs, because the choice of HSP document does not affect the level of review to which a highway safety program is subject. Similarly, we do not see how the level of review of changes would influence the level of specificity in the HSP. An HSP with insufficient specificity would normally trigger certain remedial requirements under the review and approval procedures of § 1200.11; it has little to do, in the first instance, with the "Changes" provisions.

In response to the NAGHSR's and Maryland's concerns about regional variations in program implementation, we reiterate that reasonable variations are to be expected and are desirable in light of differing State needs. We do not anticipate that the provision will be abused by regional officials, but remind NAGHSR that appeal rights are afforded elsewhere under this rule.

*Changes (General)*

South Carolina commented that the rule should authorize the Governor's Representative to make programmatic changes involving a subgrantee (presumably without prior Federal approval), provided there is no conflict with § 1200.13(a) or § 1200.31 and no change in the type of equipment needed. There is no need for such a provision in the rule. The Governor's Representative is free to make any programmatic changes in the State's highway safety program, provided they do not conflict with this rule or other applicable law.

*Equipment (Section 1200.21)*

South Carolina, Kentucky, and Oregon were concerned that there were no criteria governing what equipment is eligible for funding. As discussed under the heading Regional Uniformity, substantive funding criteria are beyond the scope of this rule. The equipment provisions speak only to title, use, management, and disposition. However, cost principles and other funding criteria appear in other documents, including Office of Management and Budget circulars and Federal regulations. These criteria apply according to the identity of the particular grantee, subgrantee, or contractor, and are referenced in the Common Rule at 49 CFR 18.22. Additional criteria are contained in applicable agency Orders. To clarify that these provisions remain fully applicable, a sentence has been added to § 1200.20.

Oregon sought clarification of "equipment inventory." Ohio viewed the equipment provisions as reasonable, but reserved the right to track the use of non-major equipment and to adopt the $5,000 threshold. In accordance with the provisions of this section, the $5,000 threshold as the distinction between major and non-major equipment. The rule does not impose any restriction on or otherwise interfere with State inventory procedures. To the contrary, it subjects the management and disposition of equipment (except Federally-owned equipment and equipment for which the Government has reserved the right to transfer title—see below) to State law. Consequently, a State is free to track equipment under its own procedures. Ohio does not need to elect to adopt the $5,000 threshold. In accordance with the provisions of this section, the $5,000 threshold is assumed unless a State elects to use a stricter threshold under applicable State laws.

To clarify that Federal procedures apply to the management and disposition of all Federally-owned equipment and to the disposition of all equipment for which the Government has reserved the right to transfer title, these provisions have been restated outside the paragraph concerning major equipment, where they appeared in the NPRM. As originally set forth, they conveyed, inaccurately, that Federal procedures applied in such cases only if the items constituted major equipment.

Virginia commented that allowing States to use their own thresholds to define equipment would result in a lack of uniformity in inventory procedures, and recommended a universal application of the $5,000 threshold. The agencies recognize that the use of varying State thresholds makes uniformity unattainable in this area. However, we are bound by the Federalism provisions of the Common Rule, which this rule implements. Under those principles, the Federal Government defers to State law concerning the management and disposition of equipment (except Federally-owned equipment and equipment for which the right to transfer title has been reserved), and allows a State the option to use its own definition of equipment, provided such definition would at least include all items falling within the Federal definition. Absent a written election to use the State definition, however, the $5,000 threshold would apply under the provisions of this section.

*Vouchers and Project Agreements (Section 1200.22)*

Texas requested clarification as to which project agreements would be required to accompany each voucher under § 1200.22. Maryland, Massachusetts, and Virginia believed that the requirement to submit project agreements was unnecessary and burdensome. Massachusetts noted that project agreements are available for review at the State highway safety office. To alleviate the potential for undue burden, the agencies have decided to delete the requirement that project agreements accompany each voucher. However, we have substituted new language requiring each State to make project agreements available for review upon request. Access to this information is needed to insure that Federal funds are being expended for approved purposes, and to track other restrictions, such as the project length limitation and the requirement for prior approval of changes in scope or objectives. In response to Texas' request for clarification, the term "project agreement" has been added to the definitions under § 1200.22.

*Program Income (Section 1200.23)*

Oregon requested clarification of program income, as it relates to subgrants awarded by the State highway safety office to State and local agencies. It believes that fiscal records for those subgrants should clearly show amount and source of program income and now it is expended. The agencies agree that States and their subgrantees must be accountable for program income. To that end, a requirement has been added to the Annual Evaluation Report, as discussed under that heading, for the State to identify any program income generated under a project and how such income was used.

*Appeals (Section 1200.25)*

Several commenters expressed support for the NHTSA appeals provision. Texas urged that similar provisions be added for the FHWA and for appeals needing joint resolution. The recommendation for an FHWA appeals provision has been adopted, and the section has been modified accordingly. The NHTSA appeals official has been changed from the Deputy Administrator to the Associate Administrator for Regional Operations. We do not adopt the recommendation for a joint appeals process, as the NHTSA and the FHWA bear independent responsibility for approving activities, depending on which agency's funds are involved.

*Extension of the HSP (Section 1200.31)*

Kentucky and South Carolina requested that a provision be included allowing the Governor's Representative to extend grants, provided extension do not exceed the Federal fiscal year or any extension granted by the approving authority. No such provision is needed, as the Governor's Representative is free to extend grants under an active HSP, provided the extension would not violate the NHTSA project length restrictions or any conditions imposed incident to the extension of an HSP.

Maryland stated that implementation of the HSP would be facilitated if project periods were allowed to correspond with the calendar year and closeout deadlines were revised accordingly. However, Maryland provided no explanation as to why it thought HSP implementation would be facilitated. The rule anticipates that projects will be closed out "fiscally" at the end of the grant period, unless an extension is granted. Work on a project may continue beyond one grant period under an extension or if the project is carried forward into the next grant period, but "fiscal" closeout must still take place to separate one grant period's activity from the next for Federal accounting purposes. Where projects are carried forward, States will need to obtain the concurrence of grantees to abide by the terms of the original grant in the new grant period. The procedure remains the same whether the grant period is the Federal fiscal year or any other accounting period. Consequently, we are aware of no facilitation that would occur from a change to calendar year accounting. We do not adopt the comment, as section 402 program funds are made available by Congress on a Federal fiscal year basis.

*Final Voucher and Project Reports (Section 1200.32)*

Maryland questioned the need for submission of individual project reports with the final voucher under § 1200.32. In order to streamline the closeout process and reduce the burden to the States, the agencies have decided to delete the requirement for the submission of project reports. Instead, the States will provide the relevant information in their Annual Evaluation Reports. The language of § 1200.32 has been changed to remove the project report requirement, and the language of § 1200.33 now includes certain additions to the Annual Evaluation Report, as discussed under that heading.

New Jersey argued that ninety days is insufficient time to process, audit, and compile final vouchers, due to limitations imposed by its own fiscal year, its accounting system, and its staff size. It cited examples of bills that, under State procedures, would not be received from its subgrantees in time to process for closeout. New Jersey also stated that the requirement that closeout of the prior year's HSP coincide with the start-up of the new fiscal year would be impossible to accomplish in an acceptable manner, because of staff limitations and the ninety-day time frame. The agencies do not believe that three months is an unreasonable amount of time to allow for closeout of a grant with a duration of only one year. Moreover, the workloads associated with the closeout of a prior year's HSP and the start-up of a new fiscal year do not, in fact, coincide. The HSP for the new fiscal year is required to be submitted by August 1 prior to the commencement of the fiscal year, whereas closeout activities for the prior fiscal year need not be completed until the following December 31, a span of five full months. The agencies recommend that New Jersey explore various options that would allow it to comply with these requirements. There are other States whose fiscal year differs from the Federal fiscal year, and we suggest that New Jersey consult with them.

*Annual Evaluation Report (Section 1200.33)*

Advocates for Highway and Auto Safety (Advocates) urged the agencies to retain the requirement for States to include statistical evidence of recent trends in fatal, injury, and property damage crashes in their Annual Evaluation Report. Advocates believes that imposing the requirement for its submission only in the subsequent HSP is not a sufficient substitute, because programs might be closed out and therefore escape statistical evaluation at that time, and because such evaluation would be less frequent in a three-year HSP. The proposed Annual Evaluation Report is an attempt to balance a legitimate Federal need for program information with the limited staff resources of the States. Other avenues exist for obtaining the statistical information. For example, the States must provide trend data in the HSP and cooperate with NHTSA in collecting data for the Fatal Accident Reporting System. The agencies believe this is sufficient. We do agree with Advocates that States submitting a three-year HSP should still be required to provide trend data on a yearly basis. Language has been added to §§ 1200.10(a)(2) and (b)(2) to clarify the requirement for submission of trend data in the HSP, or

separately if the State has elected a three-year HSP cycle. We have also changed the language of paragraph (b) of this section to provide for the submission of project information in the Annual Evaluation Report, because of the deletion of the project report requirement. Finally, we have inserted a provision requiring the reporting of program income information, as previously discussed. These requirements fully meet the agencies' informational needs.

Maryland argued that the proposed submission date does not allow time for accident data analysis, which it collects on a calendar year basis. It recommended that the Annual Evaluation Report be submitted with the subsequent year HSP or by each August 1 for States submitting a three-year HSP. New Jersey commented that ninety days is insufficient time to accomplish both fiscal closeout and evaluation reporting. The Annual Evaluation Report is a measure of performance and, therefore, a significant part of the closeout process. For this reason, the agencies decline to move the deadline for its submission outside of the closeout process. Moreover, early submission of the report will assist the agencies in their reporting duties to the Congress. Much of what Maryland is seeking has been accommodated, since trend data need only be submitted with the subsequent year HSP. New Jersey is urged to explore all possible avenues for compliance.

*Disposition of Unexpended Balances (Section 1200.34)*

In the NPRM, the NHTSA proposed to relax the requirement that unexpended funds from previous years could only be carried forward into program areas that existed in the HSP from which the funds were reprogrammed. Ohio assumed the HS Form 217, the Highway Safety Program Cost Summary, would therefore no longer require a distinction to be maintained between current year and prior year funds. The requirement for States to continuously track prior year funds has been removed. However, all carry-forward funds must be identified by the program area from which they are removed on a one-time basis, as they are brought forward from the previous fiscal year. This is necessary for Federal accounting purposes. (Thereafter, the carry-forward funds need not continue to be so identified, unless they were specially earmarked by the Congress. HS Form 217 has been revised to delete the requirement for continuous tracking of carry-forward funds.) In the NPRM, this requirement was inadvertently included only in the preamble. It has been added to § 1200.34 to clarify that it is a necessary incident to the closeout process.

New Jersey requested a clear statement that any unexpended balances that are carried forward may be reprogrammed, at the discretion of the State, under program areas of a new HSP or the next year of a continuing three-year HSP. The comment has not been adopted. Reprogramming of unexpended balances is subject to the approval requirements of § 1200.11(b), as stated in the rule.

*Miscellaneous*

South Carolina commented that, because many States have delegated implementation of the section 402 program to lower levels of State government, "it is not the Governor's program and the Governor's Representative does not truly represent the Governor." The statute governing the section 402 program requires the Governor of the State to be responsible for administration of the program, and a certification to that effect is made by each State in the HSP. Delegation of the day-to-day responsibility for the program to a lower level does not affect the Governor's overall responsibility for the program, and the agencies will continue to look to the Governor as the individual with ultimate State authority.

In § 1200.3 of the NPRM, the term "carry-forward funds" was defined as "those funds which a State has obligated but not expended in the fiscal year in which they were apportioned, that are being reprogrammed to complete ongoing activities."

The agencies have deleted the phrase "to complete ongoing activities" from the definition, because carry-forward funds are not so limited.

**Rulemaking Analyses and Notices**

*Federalism Assessment*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. Highway safety is a national concern, and for this reason, Congress directed the Secretary of Transportation to ensure the implementation of effective State highway safety programs. In this rule, we increase the flexibility of the States by implementing the procedures of a Common Rule for the administration of grants to State and local governments which has as its basis the principles of Federalism. The latter rule recognizes that States possess unique constitutional authority, resources, and competence to administer national grant programs, and provides for the application of State laws and procedures to many aspects of grant administration.

*Economic Impacts*

The agencies have analyzed the effect of this action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The rule will not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact, so that neither a Regulatory Impact Analysis nor a full Regulatory Evaluation is required.

*Impacts on Small Entities*

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant economic impact on a substantial number of small entities. States will be the recipients of any funds awarded under the regulation and, accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

*Environmental Impacts*

The agencies have analyzed this action for the purpose of compliance with the National Environmental Policy Act and have determined that it will not have a significant effect on the human environment.

*Paperwork Reduction Act*

The requirement relating to this rule, that each State must submit a Highway Safety Plan and related materials to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Accordingly, this information collection requirement has been submitted to and approved by OMB, pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The requirement has been approved through July 31, 1995; OMB Control No. 2127–0003. The agencies are currently seeking approval for an amended information collection requirement, with a consolidated form that would be less burdensome.

*Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Parts 1200, 1204, and 1205**

Grant programs—transportation, Highway safety.

For the reasons set out in the preamble, title 23, chapter II of the Code of Federal Regulations is amended as set forth below.

1. Subchapter A, part 1200, is added to read as follows:

## SUBCHAPTER A—PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

## PART 1200—UNIFORM PROCEDURES FOR STATE HIGHWAY SAFETY PROGRAMS

### Subpart A—General

Sec.

1200.1 Purpose.
1200.2 Applicability.
1200.3 Definitions.

### Subpart B—The Highway Safety Plan

1200.10 Preparation and submission.
1200.11 Review and approval.
1200.12 Apportionment and obligation of Federal funds.
1200.13 Changes.

### Subpart C—Implementation and Management of the Highway Safety Program

1200.20 General.
1200.21 Equipment.
1200.22 Vouchers and project agreements.
1200.23 Program income.
1200.24 Compliance.
1200.25 Appeals.

### Subpart D—Closeout

1200.30 Expiration of the HSP.
1200.31 Extension of the HSP.
1200.32 Final voucher.
1200.33 Annual evaluation report.
1200.34 Disposition of unexpended balances.
1200.35 Post-grant adjustments.
1200.36 Continuing requirements.

**Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.**

### Subpart A—General

**§ 1200.1 Purpose.**

This part establishes the requirements governing submission and approval of State Highway Safety Plans and prescribes uniform procedures for the implementation and management of State highway safety programs.

**§ 1200.2 Applicability.**

The provisions of this part apply to States conducting highway safety programs in accordance with 23 U.S.C. 402, beginning with Highway Safety Plans for Fiscal Year 1994.

**§ 1200.3 Definitions.**

As used in this subchapter—

*Annual evaluation report* means the report submitted each year by each State which describes the accomplishments of its highway safety program for the preceding fiscal year.

*Approving official* means a Regional Administrator of the National Highway Traffic Safety Administration for issues concerning NHTSA funds or program areas and a Division Administrator of the Federal Highway Administration for issues concerning FHWA funds or program areas.

*Carry-forward funds* means those funds which a State has obligated but not expended in the fiscal year in which they were apportioned, that are being reprogrammed.

*Contract authority* means the statutory language which authorizes the agencies to enter into an obligation without the need for a prior appropriation or further action from Congress. When exercised, contract authority creates a binding obligation on the United States for which Congress must make subsequent appropriations in order to liquidate the obligations incurred pursuant to this authority.

*Contractor* means the recipient of a contract or subcontract under the HSP.

*FHWA* means the Federal Highway Administration.

*Fiscal year* means the Federal fiscal year, consisting of twelve months beginning each October 1 and ending the following September 30.

*Governor* means the Governor of any of the fifty States, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Mayor of the District of Columbia, or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

*Governor's Representative* means the Governor's Representative for Highway Safety, the official appointed by the Governor to implement the State's highway safety program or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), an official of the Bureau of Indian Affairs who is duly designated by the Secretary of the Interior to implement the Indian highway safety program.

*Highway Safety Plan* or *HSP* means the section 402 grant application document consisting of the plan submitted by a State describing the State's highway safety problems, identifying countermeasures, and detailing the projects the State plans to undertake which implement those countermeasures.

*Highway safety program* includes all of the projects planned or undertaken by a State or its subgrantees or contractors to address highway safety problems in the State.

*Major equipment* means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit, or such other definition as a State may elect in accordance with the procedures in § 1200.21(c)(1) of this part.

*National Priority Program Area* means a program area identified in § 1205.3 of this chapter as eligible for Federal funding pursuant to 23 U.S.C. 402 because it encompasses a major highway safety problem which is of national concern and for which effective countermeasures have been identified.

*NHTSA* means the National Highway Traffic Safety Administration.

*Non-major equipment* means all tangible, personal property which does not meet the definition of major equipment, including supplies.

*Program area* means any area, including but not limited to a National Priority Program Area, which is eligible or approved for Federal funding pursuant to 23 U.S.C. 402.

*Program income* means gross income received by the State or any of its subgrantees or contractors which is directly or indirectly generated by a Federally-supported project during the project performance period.

*Project* means any of the activities proposed or implemented under an HSP to address discrete or localized highway safety problems falling within one or more program areas.

*Project agreement* means the written agreement between a State and a subgrantee or contractor under which the State agrees to provide section 402 funds in exchange for the subgrantee's or contractor's performance of one or more projects supporting the section 402 program.

*Reprogramming* means applying carry-forward funds to projects in a fiscal year subsequent to the one for which the funds were originally apportioned to the State.

*Section 402* means section 402 of title 23 of the United States Code.

*State* means any of the fifty States of the United States, the District of

Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or, for the application of this part to Indians as provided in 23 U.S.C. 402(i), the Secretary of the Interior.

*Subgrantee* means a recipient of an award of financial assistance by a State in the form of money, or equipment in lieu of money, under an HSP.

## Subpart B—The Highway Safety Plan

### § 1200.10 Preparation and submission.

(a) *Time period covered by the HSP.* (1) Except as provided in paragraph (a)(2) of this section, a State shall submit an HSP for each fiscal year. The time period for which the State shall identify activities to address highway safety problems under each such HSP shall be one fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part.

(2) A State may elect to submit an HSP once every three fiscal years, provided advance notice is given to the approving officials. (States are encouraged to provide notice of at least 90 days.) The time period for which the State shall identify activities to address highway safety problems under each such HSP shall be three consecutive fiscal years, unless extended in accordance with the provisions of § 1200.31 of this part. Obligation of Federal funds and authority to incur costs, however, shall be based on each fiscal year. A State submitting a three-year HSP shall, nevertheless, submit the trend data required by paragraph (b)(2) of this section on August 1 of each year.

(b) *Content of the HSP.* Each State's HSP shall contain the following elements: (1) *Certifications and assurances.* A statement containing certifications and assurances shall be signed by the Governor's Representative and shall satisfy the requirements of 49 CFR part 18 and other applicable law. A sample statement, which may from time to time be amended to reflect changes in applicable law, shall be made available by each approving official.

(2) *Problem identification summary.* The problem identification summary will highlight highway safety problems throughout the State and briefly describe the countermeasures the State will employ to address these problems. It shall be supported by statistical evidence of recent trends in fatal, injury, and property damage crashes.

(3) *Description of and justification for program areas to be funded.* A State may identify and seek funding for projects, and related equipment purchases, within any National Priority Program Area or any other program area. National Priority Program Areas are identified in § 1205.3 of this chapter. Other program areas may, from time to time, be identified by statute, by rule, or by a State. For each program area for which Federal funding is sought, the following procedures shall apply:

(i) For National Priority Program Areas, the funding procedures at § 1205.4 of this chapter.

(ii) For program areas identified by statute, the funding procedures prescribed by the statute and implementing regulations or, in the absence of prescribed procedures, the funding procedures at § 1205.4 of this chapter.

(iii) For program areas identified by a State and not falling within paragraphs (b)(3)(i) or (b)(3)(ii) of this section, the funding procedures at § 1205.5 of this chapter.

(4) *Discussion of planning and administration needs.* Planning and administration needs shall be discussed in sufficient detail to justify proposed expenditures. Proposed and actual expenditures shall comply with the Federal contribution and State matching requirements of part 1252 of this chapter.

(5) *Description of training needs.* Training needed to support or further the objectives of the HSP should be described in adequate detail to justify proposed expenditures. Only training that supports or furthers the objectives of the HSP shall be eligible for funding.

(6) *Supporting financial documentation.* Financial documentation to be submitted with the HSP shall include the Highway Safety Program Cost Summary (HS Form 217) reflecting the State's proposed allocation of funds (including estimated carry-forward funds) among program areas and for planning and administration needs, completed in accordance with the form's written instructions, and such other financial documentation as may be required by law. A State electing to submit a three-year HSP shall include with the HSP, one completed HS Form 217 for each of the fiscal years covered by the three-year HSP.

(c) *Special funding conditions.* The planning and contents of an HSP shall reflect the following funding requirements:

(1) *Political subdivision participation.* Proposed expenditures under the HSP shall comply with the requirements for political subdivision participation contained in part 1250 of this chapter.

(2) *NHTSA project length.* NHTSA funding support under the section 402 program for a specific project under an HSP shall ordinarily not exceed three years. However, a funding extension beyond three years may be approved in writing by the NHTSA approving official on a year-by-year basis, provided the project has demonstrated great merit or the potential for significant long-range benefits and includes a cost assumption plan requiring, at a minimum, 35 percent non-Federal support for the fourth year and 50 percent non-Federal support for each year thereafter. A denial of a project funding extension shall be in writing by the NHTSA approving official and shall be subject to the appeal procedures of § 1200.25 of this part. The project length requirements are not applicable to planning and administration activities; program management (e.g., program area coordinators' or managers' oversight of the continuing development, implementation and evaluation of 402 or related State/locally supported activities); mandatory (earmarked) programs; training projects which support activities within an identified program area; or other activities which are required by Federal statute.

(d) *Due date.* The completed HSP must be received by the approving officials no later than August 1 preceding the fiscal year to which it applies or, in the case of a 3-year HSP, no later than August 1 preceding the first year to which it applies. For a State operating under a 3-year HSP, the trend data identified in § 1200.10(a)(2) and (b)(2) must be received by the approving officials on a yearly basis on August 1, and any other HSP updates for the second and third years which the State elects to submit must be received by the approving officials no later than August 1 preceding the fiscal year for which the updates apply. The State shall furnish three copies of its HSP (or trend data or HSP update, as appropriate) to each of its NHTSA and FHWA approving officials. Failure to meet these deadlines may result in delayed approvals.

(Approved by the Office of Management and Budget under Control Number 2127–0003)

### § 1200.11 Review and approval.

(a) *Review.* (1) Each approving official shall verify that each HSP complies with the basic requirements of § 1200.10 (b) and (c) of this part. Where an HSP is found not in compliance, the approving official will advise the State to take such action as is necessary to bring the HSP into compliance.

(2) An HSP determined to satisfy the basic requirements of § 1200.10 (b) and (c) of this part shall be further reviewed to ensure that the State has proposed a highway safety program which justifies the commitment of Federal funds. Each approving official shall have the

discretion to require further clarification or amendment of any portion of an HSP which does not adequately establish the existence of a bona fide highway safety problem, the selection of countermeasures and projects reasonably calculated to address the problem, and the efficient proposed use of Federal funds.

(3) Each approving official shall provide States with reasonable notice and opportunity to amend portions of HSPs which are found inadequate. Such notice and opportunity to amend shall facilitate the informal resolution of problems in the HSP, to the maximum extent practicable, before the time by which the approving official must render a written decision under paragraph (b)(2) of this section.

(b) *Approval/conditional approval/disapproval.* (1) If after reasonable notice and opportunity to amend pursuant to paragraph (a)(3) of this section, the approving official determines that a State has provided information in the HSP which is inadequate to justify a proposed use of Federal funds, or has failed to comply with other requirements of this part or applicable law, the approving official shall conditionally approve or disapprove the relevant portion(s) of the HSP, as appropriate. Otherwise, the approving official shall approve the HSP, except that in no case shall the approving official approve an HSP which is submitted without the statement required by § 1200.10(b)(1) of this part until receipt of such statement.

(2) Approval, conditional approval, or disapproval of the HSP, in whole or in part, shall be in writing, dated, and signed by the approving official(s), and shall be sent to the Governor, with a copy to the Governor's Representative, within 30 days after receipt of the HSP by the agency, unless extended by mutual agreement of the approving official(s) and the Governor's Representative.

(3) For any portion of the HSP which is conditionally approved or disapproved, a detailed explanation of conditions or reasons for disapproval shall be provided in writing by the approving official to the Governor's Representative. Conditional approval may include a requirement for project by project approval of federally funded activities.

(4) All approvals and conditional approvals sent to the Governor's Representative shall state the total Federal dollar amount of the program approved or conditionally approved and shall contain the following statement:

By this letter, (STATE)'s _____ fiscal year 19___Highway Safety Plan, as submitted on (DATE) _____, is hereby approved, subject to any conditions or limitations set forth below. This approval does not constitute an obligation of Federal funds for the fiscal year identified above or an authorization to incur costs against those funds. The obligation of section 402 program funds against the approved HSP will be effected in writing by the NHTSA/FHWA Administrator, as appropriate, at the commencement of the fiscal year identified above. However, Federal funds reprogrammed from a prior-year HSP will be available for immediate use by the State under the approved HSP on October 1. Reimbursement will be contingent upon the submission of an updated HS Form 217, consistent with the requirements of 23 CFR 1200.12(d), within 30 days after either the beginning of the fiscal year identified above or the date of this letter, whichever is later.

### § 1200.12 Apportionment and obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, on October 1 of each fiscal year covered by an HSP, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, distribute funds available for obligation under section 402 to the States and provide a statement of any conditions or limitations imposed by law on the use of the funds.

(b) In the event that authorizations exist but no applicable appropriation act has been enacted by October 1 of a fiscal year covered by an HSP, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, distribute a part of the funds authorized under section 402 contract authority to ensure program continuity and shall provide a statement of any conditions or limitations imposed by law on the use of the funds. Upon appropriation of section 402 funds, the NHTSA/FHWA Administrator, as appropriate, shall, in writing, promptly adjust the apportionment, in accordance with law.

(c) The funds distributed under paragraph (a) or (b) of this section shall be available for expenditure by the states to satisfy the Federal share of expenses under an approved HSP, and shall constitute a contractual obligation of the Federal Government, subject to any conditions or limitations identified in the distributing document or in the written explanation of conditions required under § 1200.11(b)(3) of this part, and not exceeding the total dollar amount of the approved or conditionally approved program identified in § 1200.11(b)(4) of this part.

(d)(1) Notwithstanding the provisions of paragraph (c) of this section, reimbursement of State expenses shall be contingent upon the submission of an updated HS Form 217, within 30 days after either the beginning of the fiscal year or the date of the written approval required under § 1200.11(b) of this part, whichever is later. A State submitting a three-year HSP shall, nevertheless, submit the updated HS Form 217 on a yearly basis.

(2) The updated HS Form 217 required under paragraph (d)(1) of this section shall reflect the State's allocation of section 402 funds made available for expenditure during the fiscal year, including known carry-forward funds, except that—

(i) The total of the Federal funds reflected on the form shall not exceed the total Federal dollar amount of the approved program identified in § 1200.11(b)(4) of this part; and

(ii) None of the federally funded amounts identified under any of the program areas on the form shall exceed the federally funded amounts identified under the same program areas on the HS Form 217 submitted under § 1200.10(b)(6) of this part.

(3) An updated HS Form 217 not meeting the requirements of paragraph (d)(2)(i) or (d)(2)(ii) of this section shall be accompanied by such information as is necessary to explain the deviation and shall require approval, in writing, by the approving officials.

### § 1200.13 Changes.

(a) *Changes requiring prior approval.* Each State shall obtain the written approval of the approving official prior to implementing or allowing subgrantees or contractors to implement any of the following changes:

(1) Any revision which would result in the need for additional Federal funding beyond that which is already obligated or approved for reprogramming under the current HSP;

(2) Any extension of the period during which costs may be incurred under an HSP, as provided in § 1200.31 of this part;

(3) Any extension of the length of a NHTSA project beyond three years, as provided in § 1200.10(c)(2) of this part;

(4) Any movement of funds into or out of a program area which, either singly or netted with all past movements of funds, exceeds ten percent of the Federal funding for the program area (e.g., 8% in+3% out+7% in=12% net fund movement), provided that—

(i) For the duration of the HSP, the ten percent threshold for each program area shall be based on the total federally funded program amounts identified on the updated HS Form 217 required under § 1200.12(d) of this part, without regard to amounts contained on any later submitted or approved HS Form 217; and

(ii) Once the ten percent threshold is exceeded with respect to a given program area, all fund movements made thereafter with respect to that program area require prior approval; or

(5) Any change in the scope or objectives of a project (regardless of whether there is an associated fund movement requiring prior approval).

(b) *Approval procedures.* (1) States shall request prior approval for changes by submitting a written request to the approving official, accompanied by HS Form 217 and such other information as is necessary to explain the proposed change.

(2) The approving official shall indicate approval in writing to the Governor's representative, normally within 10 working days after receipt of the request.

(3) Subject to the appeal provisions of § 1200.25 of this part, the approving official may disapprove a change in writing, with a brief explanation of the reasons therefor. Any such disapproval shall normally be made within 10 working days after receipt of the request.

(c) *Procedures for changes not requiring prior approval.* States shall provide documentary evidence of changes not requiring prior approval to the approving official by submitting an amended HS Form 217 and such other information as is necessary to explain the change.

## Subpart C—Implementation and Management of the Highway Safety Program

### § 1200.20 General.

Except as otherwise provided in this subpart and subject to the provisions herein, the requirements of 49 CFR part 18 and applicable cost principles govern the implementation and management of State highway safety programs carried out under 23 U.S.C. 402. Cost principles include those referenced in 49 CFR 18.22 and those set forth in applicable Department of Transportation, NHTSA, or FHWA Orders.

### § 1200.21 Equipment.

(a) *All equipment.* (1) *Title.* Except as provided in paragraphs (a)(3) and (b)(1) of this section, title to equipment acquired under the HSP will vest upon acquisition in the State or its subgrantee, as appropriate.

(2) *Use.* All equipment shall be used for the originally authorized grant purposes for as long as needed for those purposes, as determined by the approving officials, and neither the State nor any of its subgrantees or contractors shall encumber the title or interest while such need exists.

(3) *Right to transfer title.* The NHTSA or the FHWA may reserve the right to transfer title to equipment acquired under the HSP to the Federal Government or to a third party when such third party is otherwise eligible under existing statutes. Any such transfer shall be subject to the following requirements:

(i) The property shall be identified in the grant or otherwise made known to the State in writing;

(ii) The NHTSA or the FHWA, as applicable, shall issue disposition instructions within 120 calendar days after the end of the project for which the property was acquired, in the absence of which the State shall follow the applicable procedures in 49 CFR part 18.

(b) *Federally-owned equipment.* In the event a State or its subgrantee is provided federally-owned equipment:

(1) Title shall remain vested in the Federal Government;

(2) Management shall be in accordance with Federal rules and procedures, and an annual inventory listing shall be submitted;

(3) The State or its subgrantee shall request disposition instructions from NHTSA or FHWA, as appropriate, when the item is no longer needed in the program.

(c) *Major equipment.* (1) *Choice of definition.* A State may elect to use its own definition of major equipment, provided such definition would at least include all items captured by the definition appearing in § 1200.3 of this part. Such election shall be made in writing by the Governor's Representative to the approving official, in the absence of which the definition in § 1200.3 of this part shall apply.

(2) *Management and disposition.* Subject to the requirements of paragraphs (a)(2), (b)(2), and (b)(3) of this section, States and their subgrantees and contractors shall manage and dispose of major equipment acquired under the HSP in accordance with State laws and procedures.

(d) *Non-major equipment.* Subject to the requirements of paragraphs (a)(2), (b)(2), and (b)(3) of this section and except as otherwise provided in 49 CFR 18.33, States and their subgrantees and contractors shall manage and dispose of non-major equipment acquired under the HSP in accordance with State laws and procedures.

### § 1200.22 Vouchers and project agreements.

Each State shall submit to the approving official vouchers for total expenses incurred, regardless of whether the State receives advance payments or is reimbursed for expenditures under the HSP. Copies of the project agreement(s) and supporting documentation for the vouchers, and any amendments thereto, shall be made available for review by the approving official upon request.

(a) *Content of vouchers.* At a minimum, each voucher shall provide the following information for expenses claimed in each program area:

(1) Program Area/Project Number;

(2) Federal funds obligated;

(3) Amount of Federal funds allocated to local benefit (provided mid-year (by March 31) and with the final voucher);

(4) Cumulative Total Cost to Date;

(5) Cumulative Federal Funds Expended;

(6) Previous Amount Claimed;

(7) Amount Claimed this Period;

(8) Special matching rate (i.e., sliding scale rate) authorized under 23 U.S.C. 120(a), if used, determined in accordance with the applicable NHTSA Order.

(b) *Submission requirements.* At a minimum, vouchers shall be submitted to the approving official on a quarterly basis, no later than 15 working days after the end of each quarter, except that where a state receives funds by electronic transfer at an annualized rate of one million dollars or more, vouchers shall be submitted on a monthly basis, no later than 15 working days after the end of each month. Failure to meet these deadlines may result in delayed reimbursement.

### § 1200.23 Program income.

(a) *Inclusions.* Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under the grant agreement, and from payments of principal and interest on loans made with grant funds.

(b) *Exclusions.* Program income does not include interest on grant funds, rebates, credits, discounts, refunds, taxes, special assessments, levies, fines, proceeds from the sale of real property or equipment, income from royalties and license fees for copyrighted material, patents, and inventions, or interest on any of these.

(c) *Use of program income.* (1) *Addition.* Program income shall ordinarily be added to the funds committed to the HSP. Such program income shall be used to further the objectives of the project under which it was generated.

(2) *Cost sharing or matching.* Program income may be used to meet cost sharing or matching requirements only

upon written approval of the approving official. Such use shall not increase the commitment of Federal funds.

**§ 1200.24 Compliance.**

Where a State is found to be in noncompliance with the terms of the HSP or applicable law, the approving official may apply the special conditions for high-risk grantees or the enforcement procedures of 49 CFR part 18, as appropriate and in accordance with their terms.

**§ 1200.25 Appeals.**

Review of any written decision by an approving official under this part, including a denial of a funding extension under § 1200.10(c)(2) of this part, a disapproval or conditional approval of any part of an HSP under § 1200.11(b) of this part, a disapproval of a request for a change under § 1200.13(b)(3) of this part, and a decision to impose special conditions or restrictions or to seek remedies under § 1200.24 of this part, may be obtained by submitting a written appeal of such decision, signed by the Governor's Representative, to the approving official. Such appeal shall be forwarded promptly to the NHTSA Associate Administrator for Regional Operations or the FHWA Regional Administrator with jurisdiction over the specific division, as appropriate. The decision of the NHTSA Associate Administrator or the FHWA Regional Administrator shall be final and shall be transmitted to the Governor's Representative through the cognizant approving official.

**Subpart D—Closeout**

**§ 1200.30 Expiration of the HSP.**

Unless extended in accordance with the provisions of § 1200.31 of this part, a one-year HSP shall expire on the last day of the fiscal year to which it pertains and a three-year HSP shall expire on the last day of the third fiscal year to which it pertains. The State and its subgrantees and contractors may not incur costs past the expiration date.

**§ 1200.31 Extension of the HSP.**

Upon written request by the State, specifying the reasons therefor, the approving official may extend the expiration date for some portion of an HSP by a maximum of 90 days. The approval of any such request for extension shall be in writing, shall specify the new expiration date, and shall be signed by the approving official. If an extension is granted, the State and its subgrantees and contractors may continue to incur costs under the HSP until the new expiration date, and the due dates for other submissions covered by this subpart shall be based upon the new expiration date. However, in no case shall any extension be deemed to authorize the obligation of additional Federal funds beyond those already obligated to the State by the Federal Government, nor shall any extension be deemed to extend the due date for submission of the annual evaluation report. Only one extension shall be allowed for each HSP.

**§ 1200.32 Final voucher.**

Each State shall submit a final voucher which satisfies the requirements of § 1200.22(a) of this part within 90 days after the expiration of each fiscal year, unless extended in accordance with the provisions of § 1200.31 of this part. The final voucher constitutes the final financial reconciliation for each one-year HSP or for each year of a three-year HSP.

**§ 1200.33 Annual evaluation report.**

Within 90 days after the expiration of the fiscal year, each State, whether operating under a one-year or a three-year HSP, shall submit to the approving official an annual evaluation report describing the accomplishments of the highway safety program under the HSP for that fiscal year. The report shall include the following information:

(a) *Statewide overview.* A three to five page overview of statewide accomplishments in highway safety, regardless of funding source;

(b) *Report by program area.* For each funded program area, a description of individual projects conducted thereunder, detailing costs and accomplishments (and status if a project has not been completed), identifying progress toward self-sustainment and contributions of independent groups, and including an accounting for any program income earned or used under the project;

(c) *Legislative and administrative accomplishments.* A discussion of significant legislative and administrative accomplishments which promoted the goals of highway safety; and

(d) *Status of remedial actions.* An evaluation of the progress the State is making in correcting deficiencies identified through program and financial management reviews conducted by the approving officials or by the State.

**§ 1200.34 Disposition of unexpended balances.**

Any funds which remain unexpended after reconciliation of the final voucher shall be carried forward, credited to the State's highway safety account for the new fiscal year, and made immediately available for reprogramming under a new HSP or under the next year of a continuing three-year HSP, subject to the approval requirements of § 1200.11(b) of this part. Carry-forward funds must be identified by the program area from which they are removed when they are reprogrammed from the previous fiscal year. Once so identified, such funds are available for use without regard to the program area from which they were carried forward, unless specially earmarked by the Congress.

**§ 1200.35 Post-grant adjustments.**

The closeout of an HSP does not affect the ability of NHTSA or FHWA to disallow costs and recover funds on the basis of a later audit or other review or the State's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

**§ 1200.36 Continuing requirements.**

The following provisions shall have continuing applicability, notwithstanding the closeout of an HSP:

(a) The requirement to use all equipment for the originally authorized grant purposes for as long as needed for those purposes, as provided in § 1200.21(a)(2) of this part;

(b) The management and disposition requirements for equipment, as provided in § 1200.21 of this part;

(c) The audit requirements and records retention and access requirements of 49 CFR part 18.

## PART 1204—UNIFORM GUIDELINES FOR STATE HIGHWAY SAFETY PROGRAMS

2. The authority citation for part 1204 continues to read as follows:

**Authority:** 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

**§ 1204.4 [Amended]**

3. In § 1204.4, supplements A through I, are removed.

## PART 1205—HIGHWAY SAFETY PROGRAMS; DETERMINATIONS OF EFFECTIVENESS

4. The authority citation for part 1205 continues to read as follows:

**Authority:** 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

5. In § 1205.4, the introductory text and paragraph (a) are revised, paragraphs (c) and (e) are removed, and paragraph (d) is redesignated as paragraph (c) and revised to read as follows:

§ 1225.4 Funding procedures for National Priority Program Areas.

A State planning to use funds under 23 U.S.C. 402 to support a program that is within a National Highway Safety Priority Program Area shall be subject to the following procedures:

(a) The State shall describe each highway safety problem within such Priority Area and any countermeasure proposed to decrease or stabilize the problem, and provide recent statistical trend data concerning injury, fatal, and property damage crashes to support the problem and countermeasure identifications.

* * * * *

(c) The NHTSA and/or the FHWA, as applicable, shall review the information provided under paragraphs (a) and (b) of this section in accordance with the procedures of § 1200.11 of this chapter.

Issued on: July 27, 1993.

**Jane F. Garvey,**

*Deputy Administrator, Federal Highway Administration.*

**Howard M. Smolkin,**

*Executive Director, National Highway Traffic Safety Administration.*

[FR Doc. 93-18302 Filed 7-30-93; 8:45 am]

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## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

[AAG/A Order No. 78-93]

### Exemption of Records System Under the Privacy Act

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is exempting a system of records from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4)(I); (e) (5) and (8); and (g) of the Privacy Act, 5 U.S.C. 552a. This system of records is the "National Drug Intelligence Center Data Base (JUSTICE/NDIC-001)." Information in this system relates to the mission of the National Drug Intelligence Center (NDIC), as set forth in section 9076 of Pub. L. 102-396, to coordinate and consolidate drug intelligence from all national security and law enforcement agencies and to produce information regarding the structure, membership, finances, communications, and activities of drug trafficking organizations and their memberships. The exemptions are necessary to avoid interference with the law enforcement-related functions of NDIC and of those agencies that provide information to, or receive information from, NDIC. Specifically, the exemptions are necessary to preserve the safety of law enforcement personnel and of confidential informants and other witnesses, to prevent disclosure of investigative techniques, to prevent persons suspected of illegal activities related to narcotics trafficking from frustrating law enforcement activities (for example, by flight or destruction of evidence), and to protect the privacy of third parties. The exemptions may also be necessary, in some cases, to safeguard information properly classified, pursuant to Executive Order, in the interest of national defense or foreign policy.

**EFFECTIVE DATE:** This rule is effective on August 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patricia E. Neely, (202) 616-0176.

**SUPPLEMENTARY INFORMATION:** A proposed rule with invitation to comment was published in the **Federal Register** on April 26, 1993 (58 FR 21963). The public was given 30 days in which to comment. No comments were received.

This Order relates to individuals rather than small businesses. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the Order will not have "a significant impact on a substantial number of small entities."

**List of Subjects in Part 16**

Administrative practices and procedure, Courts, Freedom of Information Act, Privacy Act and Government in the Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR part 16 is amended by adding a new section, § 16.82, as set forth below.

Dated: July 19, 1993.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

### PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR part 16 is amended by adding § 16.82 to read as follows:

§ 16.82 Exemption of the National Drug Intelligence Center Data Base—limited access.

(a) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4)(I); (e) (5) and (8); and (g) of 5 U.S.C. 552a. In addition, the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k)(1) and (k)(2) from subsections (c)(3), (d), and (e)(1) and (e)(4)(I) of 5 U.S.C. 552a:

(1) National Drug Intelligence Center Data Base (JUSTICE/NDIC-001).

(b) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g., public source materials, the applicable exemption may be waived, either partially or totally, by the National Drug Intelligence Center (NDIC). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) for the same reasons that the system is exempted from the provisions of subsection (d).

(2) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j)(2) of the Privacy Act.

(3) From subsection (d) because disclosure to the subject could alert the subject of an investigation pertaining to narcotic trafficking or related activity of the fact and nature of the investigation, and/or of the investigative interest of NDIC and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking); lead to the destruction of evidence, improper influencing of witnesses, fabrication of testimony, and/or flight of the subject; reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life and safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Finally, access to records could result in the release of properly classified information that could compromise the national defense or foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised.

(4) From subsection (e)(1) because, in the course of its acquisition, collation, and analysis of information, NDIC will need to retain information not immediately shown to be relevant to counterdrug law enforcement to establish patterns of activity and to assist other agencies charged with the enforcement of laws and regulations regarding drug trafficking and charged with the acquisition of intelligence related to international aspects of drug trafficking. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community.

(5) From subsection (e)(2) because application of this provision could present a serious impediment to law enforcement in that it would put the subject of an investigation, study or analysis on notice of the fact of such investigation, study, or analysis, thereby permitting the subject to engage in conduct intended to frustrate the activity; because, in some circumstances, the subject of an investigation may not be required to provide to investigators certain information; and because thorough analysis and investigation may require seeking information from a number of different sources.

(6) From subsection (e)(3) (to the extent applicable) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation and reveal the identity of confidential informants and endanger their lives and safety.

(7) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than have been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and other law enforcement information and to protect the privacy and physical safety of witnesses and informants. Furthermore, greater specificity concerning the sources of properly classified records could compromise national defense or foreign policy.

(8) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes does not permit advance determination whether such information is accurate or relevant, nor can such information be limited to that which is complete or apparently timely. Information of this type often requires further analysis and investigation to develop into a comprehensive whole that which is otherwise incomplete or even fragmentary. Moreover, its accuracy is continually subject to analysis and review, and, upon careful examination, seemingly irrelevant or untimely information may acquire added significance as additional information brings new details to light. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in collating and analyzing information and would impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement by revealing investigative techniques, procedures, or evidence.

(10) From subsection (g) to the extent that the system is exempt from subsection (d).

[FR Doc. 93-18317 Filed 7-30-93; 8:45 am]
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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 914

### Indiana Regulatory Program Amendment

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 93-1) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules under 310 IAC 12 concerning performance standards for restoring soil productivity for surface coal mining and reclamation operations under IC 13-4.1, Indiana's Surface Coal Mining and Reclamation Statute. The amendment is submitted in response to required program amendments codified at 30 CFR 914.16. The proposed changes are intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** August 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Indiana Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

### I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

### II. Submission of the Amendment

By letter dated May 22, 1991 (Administrative Record Number IN-D-0872), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment (#91-4) to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 12-5. The amendment repealed 310 IAC 12-5-64 and added sections 310 IAC 12-5-64.1, 64.2, and 64.3. The added sections concern surface coal mining operations and establish standards for: Revegetation success for nonprime farmlands; revegetation sampling techniques for nonprime farmland; and statistical methodology to evaluate the success of revegetation. By letter dated May 23, 1991 (Administrative Record Number IND-0874), the IDNR submitted similar amendments (#91-6) to the Indiana rules which govern the surface impacts of underground coal mining operations. Specifically, Indiana repealed sections 310 IAC 12-5-65, 12-5-128 and 12-5-129, and added sections 310 IAC 12-5-128.1, 128.2 and 128.3. The program amendments submitted under amendments 91-4 and 91-6 were reviewed and approved, in part, by the Director on May 29, 1992 (57 FR 22653). In addition, in the same **Federal Register** notice, certain required

program amendments were codified at 30 CFR 914.16(i), (j), and (k) which are intended to require Indiana to revise the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated May 23, 1991 (Administrative Record Number IND–0873), the IDNR submitted program amendment number 91–5 to the Indiana program. The amendment revised 310 IAC 12–5–145, 146, and 148, repealed 310 IAC 12–5–147, and added new 310 IAC 12–5–148.5. The amendments revised the performance standards for restoring soil productivity on prime farmland. The amendments were reviewed and approved, in part, by the Director on September 14, 1992 (57 FR 41869). In the same Federal Register notice, the Director codified required amendments at 30 CFR 914.16 (l) and (m) which are intended to require revision of the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated January 4, 1993 (Administrative Record Number IND–1193), Indiana submitted proposed amendments intended to address the required program amendments codified at 30 CFR 914.16(i), (j), (k), (l), and (m).

OSM announced receipt of the proposed amendment in the March 26, 1993, Federal Register (58 FR 16379), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on April 26, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indian program.

### *1. 310 IAC 12–5–64.1 and 12–5–128.1 Revegetation—Nonprime Farmland Standards for Success*

a. In subsections 64.1/128.1(c)(3)(C) and 64.1/128.1(c)(6)(C), Indiana is deleting the words "alone or." In effect, deletion of the words "alone or" means that average county yields recognized by the U.S. Department of Agriculture (USDA) may not be used alone as a standard for revegetation success. The Federal regulations at 30 CFR 816/817.116(a)(2) provide that standards for revegetation success shall include criteria representative of unmined lands in the area being reclaimed. Indiana's average county yield data contain data of yields from previously mined lands. Therefore, the use of average county yield data alone as a revegetation success standard is less effective than the Federal regulations. By deleting the words "alone or," Indiana is eliminating the possibility that average county yields could be used as a sole success standard. Therefore, the Director finds that the deletion of the words "alone or" satisfies the required program amendment codified at 30 CFR 914.16(i) and that the provisions at 310 IAC 12–5–64.1/128.1(c)(3)(C) and 64.1/128.1(c)(6)(C) are no less effective than the Federal regulations at 30 CFR 816/817.116(a)(2).

b. In subsections 64.1/128.1(g), Indiana is deleting the sentence which reads "Small areas which are repaired under this section may be exempted from the success standards if the grading and vegetation blends with the contiguous area which meets the success standards." In effect, deletion of the sentence means that no areas may be exempted from the revegetation success standards and that "small areas" will be repaired in the same fashion as the rest of the permitted area. The Federal revegetation regulations at 30 CFR 816/817.116 do not authorize that areas of any size may be exempted from the revegetation success standards. Therefore, the Director finds that Indiana's deletion of the language quoted above satisfies the required program amendment codified at 30 CFR 914.16(j) and that the provisions at 310 IAC 12–5–64.1/128.1(g) are no less effective than the Federal regulations at 30 CFR 816/817.116(c)(2).

### *2. 310 IAC 12–5–64.2(a) Revegetation—Sampling Techniques for Nonprime Farmland*

Indiana is amending subsection 64.2(a) by adding the words "approved by the director" at the end of the main paragraph, and also by deleting subsections 64.2(a) (1) and (2). In effect, this amendment clarifies that the standards for determining success of revegetation must be approved by the director of the Indiana Department of Natural Resources (IDNR). Subsection 64.2(a) is being amended because the Indiana Natural Resources Commission (NRC) no longer approves the plan of reclamation since these responsibilities have been delegated to the director of IDNR. Subsection 64.2(a)(1), which is being deleted, provided that the NRC could approve the standards for success of revegetation. Therefore, the Director finds that the proposed amendment to 310 IAC 12–5–64.2(a) satisfies the required program amendment codified at 30 CFR 914.16(k), and that the provisions at 310 IAC 12–5–64.2(a) are no less effective than the Federal regulations at 30 CFR 816.116.

### *3. 310 IAC 12–5–64.3(c)(4) and 12–5–128.3(c)(4) Revegetation—Statistical Methodology*

Indiana is amending these subsections by changing the formula for sample standard deviation to read: $s = \sqrt{M \div N}$. In this formula, s = the sample standard deviation; M = the mean deviation squared; and N = the number of observations. The standard deviation formula which is being amended currently reads: $s = \sqrt{M \div d}$, where d = degrees of freedom (N–1).

In response to a request by OSM, Indiana submitted a detailed explanation for the proposed change by letter dated May 6, 1993 (Administrative Record Number IND–1252). OSM reviewed the detailed explanation and supporting documentation submitted by Indiana and concurs with its technical adequacy.

The Director finds, therefore, the proposed change does not render the Indiana program less effective than the Federal regulations and is approved.

### *4. 310 IAC 12–5–145 Prime Farmland—Special Performance Standards*

Indiana is amending this section by adding a new subsection 145(c). The new language in subsection 145(c) provides that soil reconstruction shall be carried out in accordance with the specifications of the Soil Conservation Service (SCS) of the U.S. Department of Agriculture establishing prime farmland soil reconstruction specifications for Indiana. The Federal regulations at 30 CFR 823.4(b) provide that the regulatory authority within each State shall use the soil-reconstruction specifications established by the SCS to carry out the State's responsibilities concerning prime farmland. Prior to this amendment, the Indiana program had no counterpart to the Federal regulations at 30 CFR 823.4(b). The Director finds that the proposed language is substantively identical to and no less effective than the Federal regulations at 30 CFR 823.4(b). The Director also finds that the proposed amendment satisfies the required program amendment codified at 30 CFR 914.16(l).

### *5. 310 IAC 12–5–148.5 Prime Farmland—Revegetation and Restoration of Soil Productivity*

Indiana is amending this section by adding a new subsection 148.5(b)(11). The new language in this subsection provides that the selection of reference areas shall be guided by 310 IAC 12–5–64.1. Further, the selection of an

approved reference area must be accomplished with concurrence by the SCS of the U.S. Department of Agriculture.

In the September 14, 1992, **Federal Register** notice which approved Indiana amendments concerning prime farmland, the Director noted that the Indiana rules at 310 IAC 12–5–148.5 do not require, by reference, the use of the Indiana rules at 310 IAC 12–5–64.1 (c)(3), (c)(6), and (d) which concern nonprime farmland (57 FR 41872). Without such a reference, the Indiana rules at 310 IAC 12–5–148.5 are less effective than the Federal regulations at 30 CFR 823.15(b)(7) which provide that reference crop yields must be representative of local farms in the surrounding areas. With the proposed language, the Indiana rules regarding prime farmland provide that the selection of reference areas will be guided by the rules at 310 IAC 12–5–64.1 (c)(3), (c)(6), and (d) and that the selection of a reference area will be accomplished with concurrence of the SCS. The Director finds that the proposed rule is substantively identical to the Federal requirements at 30 CFR 823.15(b)(7) and that the proposed language satisfies the required program amendment codified at 30 CFR 914.16(m).

## IV. Summary and Disposition of Comments

### *Agency Comments*

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. No comments were received concerning the proposed amendments to the Indiana program.

### *Public Comments*

The public comment period and opportunity to request a public hearing was announced in the March 26, 1993, **Federal Register** (58 FR 16379). The comment period closed on April 26, 1993. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. The Indiana Coal Council (ICC) commented that 30 CFR 823.4(a) requires that "the U.S. Soil Conservation Service within each state shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction." ICC stated that the U.S. District Court for the District of Columbia has held that the SCS's specifications for prime farmland reconstruction would be considered "rules" under the Federal Administrative Procedure Act, 5 U.S.C. 551 *et seq.* and must be subject to public comment prior to becoming effective. *In re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. October 1, 1984), slip op. pp. 23–24. ICC further stated that the SCS "specifications" must be adopted by SCS as rules.

In response, the Director concurs that the court has held that the SCS specifications for prime farmland must be subject to public review. Specifically, the court found that the specifications must be published in the **Federal Register** for comment by the public.

The existing SCS Indiana specifications for prime farmland soil reconstruction under SMCRA were subject to technical peer review when developed but not public review. The SCS is currently in the process of updating the prime farmland specifications and has scheduled a review for September 1993. SCS has stated that the new specifications will be subjected to public comment (Administrative Record Number IND–1262). Parties interested in reviewing and commenting on the prime farmland specifications should contact the SCS state soil scientist, 6013 Lakeside Boulevard, Indianapolis, Indiana 46278; Phone (317) 290–3203 for further information.

## V. Director's Decision

Based on the findings above, the Director is approving Indiana's program amendment number 93–1 as submitted by Indiana on January 4, 1993. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the States to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

### *EPA Concurrence*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, by letter dated February 8, 1993 (Administrative Record Number IND–1211), EPA concurred without comment.

## VI. Procedural Determinations

### *Executive Order 12291*

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

### *Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 23, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 914—INDIANA**

1. The authority citation for part 914 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In § 914.15, paragraph (uu) is added to read as follows:

**§ 914.15 Approval of regulatory program amendments.**

* * * * *

(uu) The following amendment (Program Amendment Number 93–1) to the Indiana program as submitted to OSM on January 4, 1993, is approved, effective on August 2, 1993: 310 IAC 12–5–64.1 and 310 IAC 12–5–128.1 concerning standards for revegetation success for nonprime farmland; 310 IAC 12–5–64.2 concerning sampling techniques for revegetation success for nonprime farmland; 310 IAC 12–5–64.3 and 310 IAC 12–5–128.3 concerning statistical methodology for revegetation success for nonprime farmland; 310 IAC 12–5–145 concerning special performance standards for prime farmland; and 310 IAC 12–5–148.5 concerning revegetation and restoration of soil productivity on prime farmland.

3. In § 914.16 paragraphs (i), (j), (k), (l), and (m) are removed and reserved to read as follows:

**§ 914.16 Required program amendments.**

* * * * *

(i) (removed and reserved)
(j) (removed and reserved)
(k) (removed and reserved)
(l) (removed and reserved)
(m) (removed and reserved)

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[FR Doc. 93–18294 Filed 7–30–93; 8:45 am]
BILLING CODE 4310–05–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 0 and 76**

**[MM Docket No. 92–266; FCC No. 93–372]**

**Cable TV Act of 1992**

**AGENCY:** Federal Communications Commission.

**ACTION:** Moving forward effective date of final rules; preemption of state and local notice requirements; waiver of FCC notice requirements; temporary extension of response date to initial notices of regulation and to rate complaints.

**SUMMARY:** In accordance with the Conference Report approving the supplemental appropriation authorized by Congress, the Commission has adopted an order moving forward from October 1, 1993 to September 1, 1993 the effective date of cable service rate regulation. The order also (1) preempts until September 1, 1993, any state or local requirements that cable operators provide notice of rate changes intended to effectuate compliance with the Commission's rate regulations; (2) waives FCC requirements that cable operators provide notice of rate changes intended to effectuate compliance with the Commission's rate regulations; and (3) extends until November 15, 1993, the time period for cable operators to respond to an initial notice of regulation of the basic tier by local franchising authorities and to an initial complaint concerning a cable programming service tier filed at the Commission received during September 1, 1993 through October 15, 1993. This action will provide that regulations adopted pursuant to the Cable Act of 1992 on April 1, 1993, governing cable service rates, will become effective on September 1, 1993.

**DATES:** The effective date of the amendments to parts 76 and O, published at 58 FR 29737 (May 21, 1993), and extended to October 1, 1993, by an order, published at 58 FR 33560 (June 18, 1993), is moved to September 1, 1993.

The effective date of the preemption of state and local notice requirements is August 2, 1993. The termination date of the preemption of state and local notice requirements is September 1, 1993.

The effective date of the waiver of §§ 76.932, 76.964 and 76.309(c)(3)(i) is July 27, 1993. The termination date of the waiver of §§ 76.932, 76.964 and 76.309(c)(3)(i) is September 1, 1993.

The time period in §§ 76.930, 76.945(a), and 76.956(a) for cable operators to respond to an initial notice of regulation of the basic tier and an initial complaint concerning the cable programming service tier received during September 1, 1993 until October 15, 1993, is extended until November 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pat Donovan, (202) 632–1295; Jennifer A. Manner, (202) 653–5940.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order in MM Docket No. 92–266, FCC No. 93–372, adopted July 27, 1993 and released July 27, 1993.

### I. Introduction

1. In this Order, we move from October 1, 1993 to September 1, 1993 the effective date of cable service rate regulation.[1] To support the transition to this new effective date, we additionally: (1) Preempt state and local, and waive our own, notice requirements to permit cable operators to restructure rates and service offerings up until September 1, 1993 without prior notice to subscribers; (2) provide that cable operators unable to conform subscriber bills to reflect

[1] In this Order, we reconsider, on our own motion, certain decisions made in the Report and Order, the Preemption Order, and the Deferral Order issued in this docket. Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92–266, Report and Order and Further Notice of Proposed Rulemaking, FCC 93–177 (released May 3, 1993) ("Report and Order"); Order, FCC 93–264, 8 FCC Rcd 3652 (1993) ("Preemption Order"); Order, FCC 93–304 (released June 15, 1993) 58 FR 33560 (June 18, 1993) ("Deferral Order"). In light of the pending petitions for reconsideration and clarification of the Report and Order, the Preemption Order, and the Deferral Order, the Commission retains jurisdiction to grant reconsideration on its own motion. See 47 U.S.C. 405; 47 CFR 1.108; *Central Florida Enterprises* v. *FCC*, 598 F.2d 37, 48, n. 51 (D.C. Cir. 1978), *cert. dismissed* 441 U.S. 957 (1979); Rebecca Radio of Marco, 5 FCC Rcd 2913, 2914, n. 8 (1990). In the alternative, we note that the matters addressed herein are inherently time-sensitive and the exigencies of the situation require them to be decided now in order to ensure a prompt and smooth transition to cable rate regulation. Accordingly, we find for good cause that further notice and comment on these matters would be impracticable, unnecessary and contrary to the public interest. See 5 U.S.C. 553(b)(B).

For further background information on cable rate regulation, see also Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, sections 3, 9, 14, 106 Stat. 1460 (1992), amending sections 623, 612 and 622(c) of the Communications Act, *as codified at* 47 U.S.C. 543, 532 and 542(c) ("Cable Act of 1992").

restructured rates and services effective September 1, 1993, must do so as soon as practically possible, but no later than October 1, 1993; and (3) extend to November 15, 1993, the time period for cable operators to respond to an initial notice of regulation of the basic tier by local franchising authorities, and to an initial complaint concerning a cable programming service tier filed at the Commission, received between September 1, 1993 and October 15, 1993.[2]

## II. Background

2. In the Report and Order, we established rules for implementing cable service rate regulation as required by the Cable Act of 1992. In so doing, we selected June 21, 1993 as the effective date of regulation. At the same time, in order to assure that rates for cable service did not rise pending implementation of rate regulation, we froze rates for regulated cable service in effect on April 5, 1993 until August 3, 1993.[3] Subsequently, we examined the feasibility of implementing cable service rate regulation in light of the Commission's funding shortfall for Fiscal Year 1993.[4] We observed that the Cable Act of 1992 imposes significant new responsibilities on the Commission including the establishment and implementation of, and continuing oversight over, a comprehensive national regulatory framework for regulation of cable service rates. We determined that, at a time when the Commission was already experiencing a severe funding shortfall probably necessitating furloughs of all employees, it would not be possible, as a practical matter, for the Commission to implement cable service rate regulation by the June 21, 1993 effective date. We stated that a deferral of rate regulation until October 1, 1993 would provide an opportunity for the Commission to obtain a supplemental appropriation and would afford cable operators and franchise authorities additional time to take steps necessary to implement rate regulation. We thus deferred the effective date of rate regulation from June 21, 1993 until October 1, 1993.[5] We also extended the rate freeze until November 15, 1993.[6]

3. On June 30, 1993, however, Congress authorized a supplemental appropriation of $11.5 million for the Commission's implementation of the Cable Act of 1992 during Fiscal Year 1993.[7] The Conference Report accompanying the appropriation expressed the intent of Congress that the Commission set September 1, 1993 as the new effective date of cable rate regulations, including refund liability.[8] Specifically, the Conference Report stated: [T]he conferees intend that the Commission shall establish a date as soon as possible after enactment of this Act, but that date shall be no later than September 1, 1993, as the date from which consumers may obtain refunds of excessive rates for the basic service tier of cable television service and for cable programming services.[9]

## III. Effective Date of Cable Service Rate Regulation

4. In view of the supplemental funding we have now received, and in accordance with the Conference Report approving the appropriation, we are today establishing September 1, 1993 as the effective date for cable rate regulation, including potential refund liability. On balance, we believe that the June 30 supplemental appropriation has reduced the necessary period for deferral of cable service rate regulation. An earlier effective date will also bring the benefits of rate regulation, including substantial savings, to consumers at an earlier time, which was a central purpose of the legislation. We also believe that the transition mechanisms that we are adopting today will sufficiently enable franchising authorities and the Commission to begin rate regulation in advance of October 1, 1993.[10]

5. Under this effective date, cable operators will be subject to potential refund liability as of September 1, 1993 for the basic service tier. Refund liability for the cable programming service tier will begin running from the date a valid complaint is filed with the FCC.[11] Such complaints may be filed on or after September 1, 1993. In addition, effective September 1, 1993, the initial date of regulation of the basic service tier will be the date of notice of regulation of the tier by local franchising authorities. The initial date of regulation of a cable programming service tier will be the date on which a valid complaint is filed with the Commission concerning rates for the tier.[12] These dates are significant because rates in effect on the initial date of regulation are the rates that are compared to the benchmark for purposes of assessing whether such rates are above permitted levels.[13] Moreover, rates below the benchmark on the initial date of regulation are capped at that level.[14]

## IV. Transition Mechanisms

### *A. Preemption and Waiver of Notice Requirements*

6. We have previously expressed concern that notice requirements contained in some franchise agreements or in state or local laws or regulations could make it practically impossible for cable operators to meet such notice obligations, while at the same time implementing required rate adjustments.[15] Specifically, in the June Preemption Order, we concluded that operators could not, as a practical matter, react to the new regulatory scheme and fully implement responsive rate adjustments within the allotted time and still give subscribers one or more months notice of those rate

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[2] This Order does not effect the November 15, 1993 termination date of the rate freeze. See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Order, FCC 93–176, 8 FCC Rcd 2921 (1993) ("Freeze Order"), *clarified*, 8 FCC Rcd 2917 (1993), and extended to November 15, 1993, in the Deferral Order. Continuing the rate freeze will assure that local franchising authorities have sufficient time to become certified and to adopt and implement regulations in response to the regulations we adopted in the Report and Order. We believe that we should maintain the current termination date of the freeze because local authorities may have established implementation plans based on an effective date of October 1, 1993.

[3] Freeze Order, at para. 8.

[4] Deferral Order, at para. 2.

[5] Deferral Order, at para. 4.

[6] Deferral Order, at para. 8., *see* n.2, *supra*.

[7] Public Law 10350 (passed by Congress June 30, 1993, signed into law July 2, 1993).

[8] 139 Cong. Rec. H4377 (June 30, 1993).

[9] *Id.*

[10] Consumer Federation of American, et. al. ("CFA") has filed a petition requesting that we permit immediate implementation of rate regulation by cable subscribers by permitting subscribers to pay the current billed amount reduced by 15%. Emergency Petition for Immediate Implementation of Emergency Rule Permitting Immediate Rate Regulation, filed by Consumer Federation of America, Media Access Project and Public Citizen and Center for Media Education (filed July 21, 1993) ("CFA Petition"). The CFA proposal is inconsistent with the benchmark approach the Commission adopted, and cannot be reconciled with the Act's design which vests local authorities with regulation of basic rates, and the FCC with regulation of the upper tier rates. Moreover, we do not believe that CFA's suggestion presents a practical alternative for immediate implementation of cable rate regulation because it would require supervision and evaluation of potentially millions of individual consumer-effectuated rate reductions. For example, if we were to adopt CFA's proposal, extraordinarily difficult administrative problems in the future would occur in fashioning and authorizing refunds for overcharges and rebillings for undercharges if either the Commission or local franchising authorities determined that such a 15% offset was not warranted, either in whole or part. We believe that the requirements and procedures established in the Report and Order are preferable to the CFA approach for achieving reasonable rates for cable service. In addition, there is no record support in this proceeding for the CFA proposal. Accordingly, we deny the CFA Petition.

[11] *See Report and Order*, at paras. 371–381.

[12] *See id.* at para. 352–356.

[13] See *id.* at paras. 223–232.

[14] See *id.*

[15] Preemption Order, at para. 3.

adjustments, although we encouraged operators to notify subscribers and proper authorities in advance of rate adjustments as soon as possible.[16] We therefore preempted state and local notice requirements to the extent that they required notice of such adjustments before June 21, 1993.

7. We believe the same circumstances exist in view of the September 1 effective date that we are establishing in this *Order*. Accordingly, consistent with our prior action, we hereby preempt local and state notice requirements until September 1, 1993.[17] We do not preempt any local or state notice requirements to the extent they apply on or after September 1, 1993. In addition, for the same reasons, we are waiving our own notice requirements until September 1, 1993.[18] These actions are within the scope of our authority under the Cable Act of 1992 and are necessary to achieve prompt and smooth transition to rate regulation as of the new effective date.[19] Indeed, the notice requirements are inconsistent with the federal interests in such a transition.

8. Accordingly, cable operators may establish new rates, rate structures, and service offerings by taking reasonable steps, such as public notices in newspapers and on-screen messages over the cable system, to announce such new offerings at any time prior to 12:01 a.m., September 1, 1993. Such new offerings will be deemed to be "in effect" at that time, or at such time specified in the announcement, but in no event later than September 1, 1993.

### *B. Billing Cycle Requirements*

9. We also hereby establish procedures for dealing with billing cycle issues raised by the September 1 effective date. We believe that cable systems, where possible, should begin billing subscribers for new rates beginning on or before the new effective date. However, as we noted in earlier orders concerning implementation of cable service rate regulation, we are aware that the centralized billing practices used by most of the cable industry may make it difficult for consumers to receive bills for service provided on, or shortly after September 1, 1993, that reflect new rates and service offers established shortly before that date.[20] Accordingly, operators who are able to conform their bills to reflect new rates effective September 1 should do so. Operators unable to conform their bills to reflect new rates and services beginning September 1 will be required to make those changes as soon as it is practically possible to do so, but in no event later than October 1, 1993, in order to have unbilled rates deemed "in effect."[21] Only in these circumstances, will we look to the rate in effect on September 1, 1993 rather than the rate actually billed on that date for purposes of evaluating the reasonableness of rates so long as the cable operator makes necessary corrections to subscriber bills promptly.

### *C. Extension of Response Period*

10. Under our rules, cable operators must respond to the initial notice of regulation of the basic service tier by local franchise authorities, and to a complaint filed at the Commission concerning a cable programming services tier, within 30 days.[22] By virtue of this change in the effective date, cable operators will now have significant new obligations to accelerate rate and service adjustments originally planned for October 1, 1993. Similarly, franchising authorities that intend to assert jurisdiction over cable systems may need additional time to prepare for initial regulation. Accordingly, we will extend until November 15, 1993 the time period for cable operators to respond to an initial notice of regulation of the basic tier, and to an initial complaint concerning a cable programming service tier, received between September 1, 1993 and October 15, 1993.[23] This modification will neither delay the introduction of rate regulation nor permit rate increases, but will provide operators and regulators sufficient time to adjust to the new effective date. In addition, this action will not harm consumers because refund liability will be preserved as of the new effective date of our regulations.[24]

## V. Ordering Clauses

11. Accordingly, *it is ordered*, pursuant to sections 4 (i), (j) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), (j) and 405, and Section 1.108 of the Commission's rules, 47 CFR 1.108, that the Commission's rules adopted in Implementation of the Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking,

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[16] *Id.*

[17] Several petitions have been filed seeking similar relief. See Petition for Clarification of June 15, Order, filed by Continental Cablevision, Inc. (filed June 22, 1993); Petition in Support of Petition for Clarification, filed by Cablevision Industries Corporation, Comcast Cable Communications and Cox Cable Communications (filed July 2, 1993); and Comments in Support of Petition for Clarification or, Alternatively, Petition for Reconsideration, filed by Tele-Communications, Inc. (filed July 19, 1993); Emergency Request for Declaratory Ruling or Clarification, filed by Media General Cable of Fairfax (filed June 22, 1993). Based on the actions we are taking in this Order, we hereby dismiss these petitions, without prejudice as moot.

[18] Cable operators must provide written notice to subscribers at least 30 days before any proposed rate increase takes effect for the basic service tier or associated equipment, and franchising authorities must be informed, in writing, at least 30 days before any proposed rate increase of any changes in rates for cable programming service or associated equipment. 47 CFR 76.932 and 76.964. Additionally, our customer service standards require that consumers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the cable system and in writing. Section 76.309(c)(3)(i)(B) of our rules requires that notice must be given to subscribers a minimum of 30 days in advance of such changes if they are within the control of the cable operator. Additionally, under the customer service provisions, cable operators are under an obligation to notify subscribers 30 days in advance of any significant changes in other information regarding products and services offered; prices and options for programming services and conditions of subscription to programming and other services; installation and service maintenance policies; instructions on how to use the cable service; channel positions of programming carried on the system; and billing and complaint procedures. 47 CFR 76.309(c)(3)(i)(B). For the reasons discussed above, we waive these 30 day notice provisions in conjunction with the September 1 effective date for cable operators who are unable to comply with the provisions and still retier or restructure their offering up until September 1, 1993. Our waiver and preemption do not extend to operators who adjust their rates prior to 30 days before September 1, 1993, since these operators can and must, comply with the 30 day notice requirements and still effectuate rate changes and changes in billing practices.

[19] See *City of New York* v. *FCC*, 486 U.S. 57 (1988); *Fidelity Federal Savings and Loan Assoc.* v. *de la Cuesta*, 458 U.S. 141 (1982).

[20] Deferral Order, at n. 6.

[21] We require that where the announced rate is different from the rate actually billed before the cable operator is able to revise bills to reflect new rates and the cable operator seeks to have this rate deemed to be "in effect" for rate regulation purposes, the cable operator must make prospective billing adjustments to refund overcharges (and offset any undercharges) in a reasonable manner. Where possible, such adjustments should be made for the actual subscribers affected. However, they may also appropriately be made as billing adjustments to the class of tier subscribers or to all subscribers of the regulated cable service. See Report and Order, at n. 378.

Several petitions have been filed seeking clarification of adjustments to the billing cycle after regulation begins. See Petition for Clarification or for Reconsideration of Order of May 14, 1993, filed by Continental Cablevision on May 20, 1993 (requesting clarification of billing cycles); Joint Comments in Support of Petition for Clarification, filed by Colony Communications, Inc. King Videocable Company, Multivision Cable TV Corp., and ParCable Inc. (filed June 25, 1993). Based upon the actions we take in this Order, we dismiss these petitions without prejudice as moot.

[22] 47 CFR 76.930, 76.945(a), and 76.956(a).

[23] This will provide a more reasonable transition period for implementation of rate regulation. Responses to notices of regulation of the basic service tier and to complaints concerning a cable programming service tier received after 12:01 a.m., October 16, 1993, must be filed within 30 days. 47 CFR 76.930(a), 76.945(a), and 76.956(a).

[24] See para. 5, *supra*.

MM Docket 92–266, FCC 93–177 (released May 3, 1993), shall be effective September 1, 1993.[25]

12. *It is further ordered,* That, effective upon publication in the **Federal Register**,[26] any state or local requirements that cable operators give notice, prior to September 1, 1993, of rate changes intended to effectuate compliance with our rate regulations are preempted as described herein.

13. *It is further ordered,* That, effective upon release of this Order, §§ 76.932, 76.964, and 76.309(c)(3)(i)(B) of the Commission's rules ARE WAIVED until September 1, 1993.

14. *It is further ordered,* That, effective September 1, 1993, the time period for filing responses to the initial notice of regulation of the basic service tier, and to an initial complaint for a cable programming services tier received between September 1, 1993 through October 15, 1993, SHALL BE extended until November 15, 1993.

15. *It is further ordered,* That, effective September 1, 1993, cable operators unable to conform subscriber bills to reflect restructured rates and service effective September 1, 1993, are permitted to make those changes as soon as it is practically possible, but no later than October 1, 1993.

16. *It is further ordered,* That the Emergency Petition for Immediate Implementation of Emergency Rule Permitting Immediate Rate Regulation filed by Consumer Federation of America, Media Access Project and Public Citizen and Center for Media Education, is denied.

17. *It is further ordered,* That the Petition for Clarification of June 15, Order, filed by Continental Cablevision, Inc. (filed June 22, 1993); Petition in Support of Petition for Clarification, filed by Cablevision Industries Corporation, Comcast Cable Communications and Cox Cable Communications (filed July 2, 1993); and Comments in Support of Petition for Clarification or, Alternatively, Petition for Reconsideration, filed by Tele-Communications, Inc. (filed July 19, 1993); Emergency Request for Declaratory Ruling or Clarification, filed by Media General Cable of Fairfax (filed June 22, 1993); Petition for Clarification or for Reconsideration of Order of May 14, 1993, filed by Continental Cablevision (filed May 20, 1993); and Joint Comments In Support of Petition for Clarification, filed by Colony Communications, Inc., King Videocable Company, Multivision Cable TV Corp., and ParCable Inc. (filed June 25, 1993), are dismissed without prejudice as moot.

**List of Subjects in 47 CFR Parts 0 and 76**

Cable television.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–18311 Filed 7–30–93; 8:45 am]

BILLING CODE 6712–01–M

[25] In the event a summary of this Order is not published in the **Federal Register** 30 days in advance of September 1, 1993, we find good cause for making the rule changes discussed herein on less then 30 days' notice. *See* 5 U.S.C. 553(d)(3). This action is necessary to ensure a prompt and smooth transition to cable rate regulation consistent with congressional intent.

[26] To the extent necessary, for the reasons set forth in n.1, *supra*, we find good cause for making our preemption effective upon publication in the **Federal Register**. 5 U.S.C. 553(d)(3).

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**47 CFR Part 73**

**[MM Docket No. 93–27; RM–8178]**

**Radio Broadcasting Services; Bentonville, AR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 239A to Bentonville, Arkansas, as that community's second local FM service, in response to a petition for rule making filed by JEM Broadcasting Company, Incorporated. See 58 FR 13435, March 11, 1993. Coordinates used for Channel 239A at Bentonville are 36–20–09 and 94–13–36. With this action, the proceeding is terminated.

**DATES:** Effective September 10, 1993. The window period for filing applications on Channel 239A at Bentonville, Arkansas, will open on September 11, 1993, and close on October 12, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–27, adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Channel 239A at Bentonville.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18289 Filed 7–30–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 92–176; RM–8038; RM–8116]**

**Radio Broadcasting Services; Bentonville, Mountain Home and Yellville, AR**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 252C2 for Channel 252C3 at Bentonville, Arkansas, and modifies the license for Station KOLZ(FM) to specify operation on the higher powered channel, in response to a petition filed by Demaree Media, Inc. Additionally, Channel 250C2 is substituted for Channel 252A at Mountain Home, Arkansas, and the license for Station KTLO–FM is modified accordingly, as requested by Mountain Home Broadcasting Corp. Also, Channel 269A is substituted for Channel 249C2 at Yellville, Arkansas, and the license for Station KCTT–FM is modified to specify operation on the lower-powered channel to accommodate the modification at Mountain Home. See 57 FR 39382, published August 31, 1992. Coordinates for Channel 252C2 at Bentonville are 36–11–00 and 94–00–00. Coordinates for Channel 250C2 at Mountain Home are 36–10–00 and 92–15–00. Coordinates for Channel 269A at Yellville are 36–15–39 and 92–41–41. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** September 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 92–176,

adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transportation Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** [47 U.S.C. 154, 303.]

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 252C3 and adding Channel 252C2 at Bentonville; by removing Channel 252A and adding Channel 250C2 at Mountain Home; and by removing Channel 249C2 and adding Channel 269A at Yellville.

Federal Communications Commission.

Michael C. Ruger,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18286 Filed 7–30–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–34; RM–8100]**

**Radio Broadcasting Services; Glenwood Springs, CO**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots FM Channel 224A to Glenwood Springs, Colorado, as that community's second local FM service, in response to a petition for rulemaking filed on behalf of Gardiner Broadcast Partners, Ltd. See 58 FR 12916, March 8, 1993. Coordinates used for Channel 224A at Glenwood Springs are 39–32–36 and 107–19–18. With this action, the proceeding is terminated.

**DATES:** Effective September 10, 1993. The window period for filing applications on Channel 224A at Glenwood Springs, Colorado, will open on September 11, 1993, and close on October 12, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–34, adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 224A at Glenwood Springs.

Federal Communications Commission.

Michael C. Ruger,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18288 Filed 7–30–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–62; RM–8205]**

**Radio Broadcasting Services; Howe, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Maple Communications Limited Partnership, permittee of Station KHYI–FM, Channel 237A, Howe, Texas, substitutes Channel 237C3 for Channel 237A at Howe and modifies Station KHYI–FM's construction permit to specify operation on the higher powered channel. See 58 FR 25593, April 27, 1993. Channel 237C3 can be allotted to Howe in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) south to accommodate Maple's desired site. The coordinates for Channel 237C3 at Howe are 33–23–58 and 96–35–51. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–92, adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 237A and adding Channel 237C3 at Howe.

Federal Communications Commission.

Michael C. Ruger,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18287 Filed 7–30–93; 8:45 am]

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**47 CFR Part 73**

**[MM Docket No. 93–39; RM–8157]**

**Radio Broadcasting Services; Temple, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Progressive Communications, Inc., permittee of Channel 269A, Temple, Texas, substitutes Channel 269C3 for Channel 269A at Temple and modifies Progressive's authorization to specify operation on the higher powered channel. See 58 FR 25593, April 27, 1993. Channel 269C3 can be allotted to Temple in compliance with the Commission's minimum distance

separation requirements with a site restriction of 20.1 kilometers (12.5 miles) northwest to avoid a short-spacing to vacant but applied for Channel 270A, Lometa, Texas. The coordinates for Channel 269C3 are 31–16–24 and 97–23–33. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–29, adopted July 9, 1993, and released July 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**Part 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 269A and adding Channel 269C3 at Temple.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18290 Filed 7–30–93; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 58, No. 146
Monday, August 2, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

**Animal and Plant Health Inspection Service**

**9 CFR Part 82**

**[Docket No. 91-016-1]**

**RIN 0579-AA48**

## Chicken Disease Caused by Salmonella enteritidis

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to revise our regulations concerning chicken infection caused by *Salmonella enteritidis* serotype *enteritidis* (SE) by making the following major changes: (1) Exempting certain flocks from the testing requirements of the regulations, if the flocks are participating in certain voluntary *Salmonella* testing; (2) removing requirements for testing blood and internal organ samples from Test Flocks; (3) adding requirements to test Study Flocks for SE by testing egg samples; (4) adding requirements to trap and test rodents; (5) substituting the terms SE-Positive status (Environment) and SE-Positive status (Eggs) for the terms Test status and Infected status, and (6) allowing SE-Positive houses and flocks to be released from regulation only through depopulation, cleaning, and disinfection, not through negative testing.

We are proposing these major changes and other minor changes to better control the spread of SE in commercial egg-type chicken flocks. These changes would affect persons in control of chicken flocks that have been determined to be Study, Test, or Infected Flocks or to contain Test or Infected Poultry Houses, and persons transporting and receiving restricted articles.

**DATES:** Consideration will be given only to comments received on or before October 1, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-162-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Mason, Director, Salmonella Enteritidis Control Program, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, 301-436-4363.

**SUPPLEMENTARY INFORMATION:**

### Background

In a final rule published in the **Federal Register** on January 30, 1991 (56 FR 3730-3743, Docket No. 90-134), we promulgated regulations to address the problem of disease caused by *Salmonella enteritidis* serotype *enteritidis* (SE) in egg-type chickens. At that time we imposed two sets of regulatory requirements: one to address the spread of SE in egg-type chicken breeding flocks, and one to address the spread of SE in egg production flocks. These requirements were incorporated into 9 CFR part 82 (referred to below as the regulations).

First, the regulations require that all hatching eggs and newly-hatched chicks moved interstate from egg-type chicken breeding flocks must be from flocks classified as U.S. Sanitation Monitored under the National Poultry Improvement Plan (NPIP), or must meet the requirements of a State classification plan determined by the Administrator to be equivalent to the U.S. Sanitation Monitored program (USSMP) under the NPIP. Such flocks are called Certified *Salmonella enteritidis* serotype *enteritidis* Tested Free Flocks for the purpose of the regulations. Hatching eggs and newly-hatched chicks may be moved interstate from such flocks without further restriction under the regulations. The purpose of this requirement was to prevent the spread of SE associated with movement of hatching eggs and chicks from breeding flocks. This approach relies on NPIP testing, sanitation, and flock management techniques to exclude SE from breeding flocks.

Second, the regulations provide a system to test egg production flocks and separate poultry houses in such flocks, in order to identify those containing chickens infected with SE. The regulations focus on those flocks and houses that have been implicated as the most probable source of outbreaks of SE in chickens or humans. This system involves classification of egg production flocks in the categories of Study, Test, or Infected flocks or houses, and includes requirements for testing of environmental, blood, and internal organ samples for evidence of SE under certain circumstances. The interstate movement of articles from Test and Infected flocks and houses is restricted. Restricted articles include live chickens, eggs, manure, cages, coops, containers, troughs, and other equipment. Some of these articles are prohibited from moving, and some are allowed movement under a permit and special conditions. Eggs may be moved interstate from Infected and Test flocks or houses only for pasteurization, hard cooking, or directly to a port for export from the United States.

After evaluating the progress to date of our SE program, and consulting with industry and other involved Federal and State agencies, we have determined that a number of changes could be made in our regulations to increase the effectiveness of the program. These proposed changes are discussed below.

#### *Identification of Study Flocks*

Under the current regulations, if a human or poultry disease outbreak of SE is traced back to an egg production flock, that flock is designated a Study Flock and must undergo testing in accordance with the regulations. The Animal and Plant Health Inspection Service (APHIS) is currently working with industry to develop voluntary testing programs for *Salmonella*, which many egg production flocks could soon be using. Various alternatives for voluntary SE testing and control programs are currently undergoing evaluation by APHIS. We believe that if a flock that was involved in a disease outbreak is already being tested under an adequate voluntary program, there is

no need to also test it as a Study Flock. Doing so would require duplication of testing without improving *Salmonella* control.

Therefore, we propose to add the following paragraph (iv) to § 82.32(a)(1), which deals with how Study Flocks are designated:

> (iv) No flock will be determined to be a Study Flock if the flock is participating in a voluntary testing and control program for *Salmonella enteritidis* serotype *enteritidis* that the Administrator has determined imposes testing requirements identical or equivalent to those required by this subpart. Testing requirements will be deemed equivalent to those required by this subpart if the Administrator reviews scientific studies of the effectiveness of the tests in identifying *Salmonella enteritidis* serotype *enteritidis* and finds that the reliability of the proposed tests meets or exceeds the reliability of the tests required by this subpart.

We have had some difficulty with § 82.32(a)(1)(iii) of the current regulations, which states that we will determine a flock to be a Study Flock when, among other things, "Shipping records or other evidence reveal that the probable source of the eggs was the flock determined to be a study flock." During investigations of SE outbreaks in which eggs are implicated, we study the records of egg packers and shippers to determine the source of eggs. Often these facilities pack and ship eggs from several flocks on the same day, and intermix the eggs in such a way that any of several flocks could be the source of the eggs implicated in an SE outbreak. In a number of investigations of human and poultry SE outbreaks over the past year, it was not possible to confirm that the eggs causing the outbreak came from a single source. In these instances, more than one producer could have supplied the eggs implicated. When it is determined that a limited number of producers could have supplied the eggs, it would be preferable to test the flocks of all the major suppliers to find those responsible for the SE outbreak, rather than to not test any of the suppliers because they cannot be narrowed down to a single source, as has been the practice under the current regulations.

Therefore, we are proposing new language to provide some flexibility to identify more than one flock as the probable source of eggs causing an SE outbreak. Proposed § 82.32(a)(1)(iii) would state that in determining whether to designate a Study Flock, the Administrator would consider whether:

> (iii) Shipping records or other evidence reveal that a flock was a probable source of the eggs. If the shipping records or other evidence identify more than one flock as a probable source of the eggs, the Administrator may classify all such flocks as study flocks . . .

*Pullets*

"Pullet" is a term used in the poultry industry to describe a young chicken, from shortly after the time it is hatched until it is old enough to be an effective layer (about 5 months of age). Movement of pullets may spread SE, since pullets may be infected with SE when they are used as replacements for laying hens, and could introduce SE infection into commercial flocks. The regulations address the interstate movement of hatching eggs and newly-hatched chicks, and address laying hens in egg production flocks, but do not establish any specific requirements for pullets, i.e., chickens between the time they are hatched and the time they enter an egg production flock.

The only provision of the regulations that has significant implications for pullets is § 82.32(a)(2). That paragraph allows APHIS to determine an egg production flock to be a Study Flock if it has received progeny (i.e., pullets):

> from an egg–type chicken breeding flock that has had *Salmonella enteritidis* serotype *enteritidis* recovered from the internal organs of one or more chickens through testing in accordance with § 145.23(d) of this chapter, at any time since the last negative environmental sample tested for that egg–type chicken breeding house in accordance with § 145.23(d) of this chapter.

Basically, this provision states that an egg production flock could be determined to be a Study Flock if it receives pullets from a breeding flock that has tested positive for SE in accordance with the NPIP standards for SE testing, contained in 9 CFR part 145.

Upon further consideration, we propose to eliminate this provision from the regulations. No particular provisions were specified in the regulations as to how pullet flocks that are classified as Study Flocks would be further tested, nor did the regulations make clear what action would follow if the environment of the pullet flock and/or the chicks themselves were found to be positive. We do not believe that restricting pullet flocks based on tests that were really designed for egg production flocks is justified. Therefore, we propose to eliminate the provision for classifying flocks as Study Flocks if they have received progeny from SE-Positive breeder flocks (pullet flocks). To encourage the use of nonregulatory market forces to control the risk of transmitting SE in breeding flocks, we propose to require that the owner of a primary or multiplier breeder flock that tests positive for SE under the NPIP must notify all subsequent purchasers of chicks from the flock that the chicks are progeny of a breeder flock that tested positive for SE under the NPIP. Given this information, the purchaser of the chicks will decide on a voluntary basis what testing and disposition to make of the chicks. (See proposed § 82.35(b).) Due to extensive industry concern about SE, flocks containing chickens purchased from a breeder flock found positive for SE through NPIP testing face a reduced market and lower prices for their products. We believe these market forces will induce purchasers of such chickens to take steps to control the risk of SE in their flocks, by actions such as voluntary testing or segregation of the chickens purchased from breeder flocks that tested positive for SE under the NPIP.

APHIS is continuing to gather data to determine whether additional regulatory restrictions should be developed for pullets. Although we have not yet determined whether or how to regulate pullet movement, we are currently engaged in educational efforts to inform members of the poultry industry about SE risks associated with pullets and methods to reduce these risks. We are also encouraging pullet growers to test the environment of their premises for SE and to move pullets in equipment and vehicles that have been cleaned and disinfected to prevent possible contamination by SE.

*Eliminating Test and Infected Categories and Adding SE-Positive Categories*

Under the current regulations, a flock or poultry house is required to be tested for SE if it falls into one of three statuses: Study, Test, or Infected. A flock is a Study Flock if it is implicated in an outbreak of SE (or as discussed above regarding a provision we propose to remove, if the flock receives progeny from a breeding flock that tests positive for SE under the NPIP). If the environment of a flock or separate poultry house in the flock tests positive for SE, the flock or house enters Test status. If internal organs from chickens in a flock or separate poultry house test positive for SE, the flock or house enters Infected status.

To simplify the regulations and make our terminology more informative, we propose to eliminate the terms Test and Infected, and to substitute a new term, SE-Positive.

As discussed below, we propose to change the pattern of SE testing of flocks identified through trace-back from SE outbreaks, by adding a requirement to test their eggs for SE. Flocks or houses with SE-positive eggs would be subjected to the most severe restrictions

on interstate movement of their eggs and other articles. Flocks or houses that have SE in the environment, but not in eggs, would be subjected to less severe restrictions.

To facilitate this, we will continue to collect environmental samples, and will also collect egg samples, from chicken houses in Study Flocks. Flocks or separate poultry houses that test positive for SE in the environment but negative for SE in eggs would be classified as SE-Positive (Environment). Flocks or separate poultry houses that test positive for SE in both the environment and eggs would be classified as SE-Positive (Eggs).

*Eliminating Blood and Internal Organ Tests For Test Flocks and Houses*

The current regulations provide that chickens in Test Flocks and Test Houses must undergo both blood and internal organ tests with no recovery of SE to be released from Test status. If SE is recovered from the internal organs, the flock or house is placed in Infected status (see current § 82.32(c)).

A stained–antigen, rapid, whole blood test (the pullorum test) is used as an indicative test, and to help identify particular banks of cages and chickens from which internal organ samples should be selected. Our experience implementing the regulations has shown that the blood tests are not sufficiently specific to be of much assistance in determining whether chickens in a house or flock are infected with SE.

The current regulations use internal organ tests to establish whether chickens are infected with SE. We continue to believe that internal organ tests are an accurate indication of whether chickens in a flock are infected with SE, and that the potential exists for SE-infected chickens to transovarianally transmit SE to eggs of the chickens, which could subsequently infect people or poultry with SE. However, recent research indicates that SE-infected chickens may shed SE into eggs intermittently, and during some periods a chicken infected with SE may lay eggs free from SE. Therefore, while internal organ tests would accurately identify SE-infected chickens, they may not be a good indicator that SE-infected eggs are being laid by the chickens.

Since the goals of the regulations are to control the spread of SE and to reduce the risk to poultry and public health, this suggests two complementary strategies for controlling the means of SE spread. An SE-positive environment means articles from the environment (including chickens) could spread SE; therefore, we should restrict movement of articles from flocks with positive manure and egg transport machinery tests. However, eggs from an environmentally positive flock may either contain SE or be free from SE; therefore, we should test eggs from environmentally positive flocks, and restrict their movement only if they test positive for SE. When the current program started in February, 1990, the testing of eggs was not considered practical or economically feasible. Since that time, work by various researchers and by the Salmonella Enteritidis Task Force has developed methods to culture eggs which are practical and economical.

We propose to abandon use of blood tests because our experience has shown them to be of limited use, and we propose to abandon internal organ tests because egg tests are more useful in identifying flocks where SE is actually present in eggs.

Additionally, a program that relies on environmental and egg testing would impose less of a financial burden on regulated persons than the current program of environment, blood, and internal organ tests. Egg tests are cheaper for flock owners, because sampling eggs is less expensive and disruptive to flock operations than drawing blood and sacrificing poultry for tests. Since studies and operational experience now indicate that an egg testing program is an acceptable substitute for blood and internal organ testing, we are proposing this less costly alternative.

*Adding Rodent Testing for Study Flocks*

Recent studies have indicated that rodents, and particularly mice, in hen houses serve as a reservoir for SE, and play an important role in its transmission. If SE is present in a flock environment, rodents may spread it among the poultry and from house to house. Therefore, we intend to require trapping and testing of rodents in flocks where manure or egg transport machinery samples collected from the environment have tested positive for SE. Flocks with a rodent population infected with SE pose a risk for house-to-house transmission of SE. Therefore, inspectors would determine that such flocks do not achieve the level of biosecurity needed for poultry houses in the flock to qualify as "separate poultry houses" under the definitions in § 82.30, unless the flock or house is under an adequate rodent control program.

We propose to add provisions for collecting and testing rodents to § 82.32, discussed below, and to add the following sentence to the definition of "separate poultry house" in § 82.30: "No poultry house that had positive results for its most recent rodent tests conducted in accordance with § 82.32 shall be classified as a separate poultry house, unless an adequate rodent control program is in operation."

*Testing Manure, Egg Transport Machinery, Rodents, and Eggs For SE*

We propose to test for SE using the following methods. After a flock is determined to be a Study Flock, a Federal or State representative will collect manure samples, egg transport machinery samples, and rodent samples from all houses in the flock. The manure and egg transport machinery samples will be collected using drag swabs as described in § 82.32(b)(1)(i) and (ii) of the proposed regulations. The Federal or State representative will attempt to obtain rodent samples by placing 12 repeating rodent traps in each house and checking them regularly, as described in § 82.32(b)(1)(iii) of the proposed regulations.

The manure and egg transport machinery samples from a Study Flock will be cultured first. If none of these samples yield positive test results for SE, the Study Flock will be released from regulation and no further tests will occur. If any of the manure or egg transport machinery samples test positive for SE, the flock or house enters SE-Positive (Environment) status, and interstate movement of articles, including eggs, from the flock is restricted pending testing of eggs from the house or flock for SE (see proposed § 82.34(a)). Egg samples will be collected at random from each row of cages in an SE-Positive (Environment) flock or house, as described in § 82.32(b)(1)(iv) of this proposal, and will be cultured for SE. If the egg samples from any houses test positive for SE, the positive houses will be classified as SE-Positive Houses (Eggs). If the flock does not consist of separate poultry houses as defined by § 82.30, the entire flock will be classified as an SE-Positive Flock (Eggs).

Classification in SE-Positive (Eggs) status would trigger immediate restrictions on the interstate movement of eggs and other articles from the flock, in accordance with § 82.34. On the other hand, if egg samples from an SE-Positive (Environment) flock or house test negative for SE, as discussed below, interstate movement restrictions on eggs from the flock or house would be dropped, but would continue for other articles from the flock or house (live chickens, cages, coops, containers, troughs, and other equipment). In the case of an SE-Positive (Environment)

flock or house, movement of these articles should be restricted because they may be contaminated with SE from the environment that tested positive for SE; but the eggs should be permitted unrestricted movement because they tested negative for SE.

If a house or flock tests positive for manure or egg transport machinery samples but negative on the test of egg samples, three more sets of egg samples will be collected and tested, to ensure that the negative results are not due to intermittent contamination of eggs or failure of the tests to detect positive eggs. These three additional sets of egg samples will be collected and tested at 2 week intervals. Those houses which yield positive results for manure or egg transport machinery samples and negative results for all four sets of egg samples would be classified as SE-Positive Houses (Environment). Such houses would have subsequent samples of 1,000 eggs collected for SE culture every 3 months during the life of the flock. Our experience enforcing the regulations and studies of the epidemiology of SE in poultry indicate that an interval of 3 months between tests is an effective timeframe for testing[1]. Sampling of 1,000 eggs will provide a 99 percent confidence level of detecting positive eggs if they are present at a 0.5 percent level. If any SE is found in any of these samples, the house or flock would be reclassified as SE-Positive (Eggs) and interstate movement of eggs and other articles would be restricted accordingly.

There is one situation in which we would not wait 3 months before retesting an SE-Positive House (Environment). If an SE-Positive House (Environment) is identified as the probable source of eggs implicated in a new SE outbreak, in accordance with § 82.32(a), the house would be retested immediately.

Proposed § 82.32(e) states that houses or flocks that test positive for the egg samples and are classified as SE-Positive (Eggs) may continue to have egg samples collected and tested every 2 weeks, at the discretion of the owner. If a flock or house that is SE-Positive (Eggs) tests negative for four consecutive sets of egg samples, the status of the flock or house will be changed to SE-Positive (Environment), because the tests indicate that the chickens are not likely to be currently shedding SE into eggs. Although a flock whose chickens once shed SE into eggs may experience such shedding again in the future, our experience enforcing the regulations indicates that testing of samples of eggs from such flocks every 3 months should detect further shedding of SE into the eggs.

We propose that these egg samples be collected and tested as follows. These procedures are based on standard microbiological procedures and scientific studies[2] of identification methods for SE that indicate that SE can be effectively identified through culturing of pooled egg samples:

*Egg sample collection.* A Federal representative or State representative shall randomly collect a total of 1,000 eggs from each egg layer house, or the total daily production of the house if the daily egg production totals less than 1,000. In order to acquire a representative sample, an equal proportion of eggs will be sampled at random from each bank in the poultry house. No cracked or dirty eggs shall be collected. Any visible adherent material shall be removed from the shell surface and the eggs disinfected, either by a 5 second dip in boiling water, or with a 3:1 solution consisting of 3 parts 70% alcohol (ethyl or isopropyl) to 1 part 10% iodine (Lugol's). The eggs will then be allowed to air dry. Eggs with chipped, cracked, or broken shells shall not be included in a sample. Each sample shall consist of 20 eggs cracked aseptically into a sterile whirl-pak bag, for a total of 50 samples per house. While cracking the eggs, the Federal or State representative must wear sterile gloves, which must be changed between samples. (Proposed § 82.32(b)(1)(iv))

*Egg sample testing.* Each sample shall be thoroughly mixed by hand, or using a stomacher, until all yolks are completely mixed with the albumen. Samples shall then be held at room temperature (68–75°F) for at least 72 hours. Each sample shall be used to inoculate two selective differential media plates (for example, brilliant green (BG) and xylose-lysine-deoxycholate (XLD) plates). Plates shall be incubated at 37°C and observed for salmonellae-like colonies for up to 42 hours. If initial inoculum is heavily contaminated, selectively enrich samples in Hajna tetrathionate or tetrathionate-brilliant green broth or subculture to xylose-lysine-tergitol-4 (XLT4) or brilliant green with novobiocin (BGN). If salmonella-like colonies are present in a sample, three such colonies shall be characterized by inoculating each into triple sugar iron (TSI) and lysine iron (LI) agar, and by subculturing each to nonselective medium and serogrouping with group specific antisera. Additional testing is optional. Those colonies that are biochemically and serologically characterized as salmonellae shall be sent to NVSL for serotyping. (Proposed § 82.32(d)(3))

The manure and egg transport machinery samples required by this proposed rule would be the same as those required by the current regulations. The procedure for the placement of traps, collection of captured rodents, and laboratory testing of the rodents for SE were developed based on APHIS review of existing rodent control programs in poultry houses and laboratory testing protocols currently employed in research laboratories for isolating and identifying SE from rodents.

The rodent samples required by this proposed rule would be collected and tested as follows:

*Rodent sample collection.* At the time that manure or egg transport machinery samples are collected in accordance with § 82.32(b)(1) and tested in accordance with § 82.32(d), a Federal representative or State representative shall place 12 repeating metal rodent traps baited with chicken feed in each poultry house. The traps shall be placed in any areas showing visible signs of rodent activity or rodent travel. A Federal representative or State representative shall check the traps at 24 to 48 hour intervals during the period that sample collection is underway, and shall collect all rodents trapped, euthanize them, and submit them to a laboratory authorized in accordance with § 82.39 for testing. A Federal representative or State representative shall clean and sanitize the traps between uses. (Proposed § 82.32(b)(1)(iii))

*Rodent sample testing.* Internal organs, and a portion of the intestinal tract, shall be aseptically collected from each rodent submitted. A sample will consist of the liver, spleen, and intestinal tissues collected from one or more rodents, in pool sizes up to five rodents per pool. Each sample shall be placed in approximately 10 times its volume of Hajna tetrathionate or tetrathionate-brilliant green selective enrichment broth, and incubated at 41°C for 24 hours. Each sample shall be used to inoculate two different selective media agar plates (consult NVSL for recommended media) and incubated at 37°C for 24 hours. Up to five Salmonella-suspect colonies from each sample shall be inoculated in TSI and LI media, and incubated at 37°C for 24 hours. If after 24 hours no Salmonella-suspect colonies are present, the plates shall be incubated for an additional 24 hours. Cultures showing typical reactions on TSI or LI or both shall be screened with Group D antisera. All Group D isolates shall be sent to the National Veterinary Services

[1] Further information concerning studies of the epidemiology of SE in poultry can be obtained by writing to the Salmonella Enteritidis Control Program, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782.

[2] See, e.g., Gask and Board, "Detection and Enumeration of Salmonella Enteritidis in Fresh and Stored Eggs Laid by Experimentally Infected Hens," *Journal of Food Protection* 55:3, March 1992. Further information concerning studies of the effectiveness of egg tests can be obtained by writing to the Salmonella Enteritidis Control Program, VS, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782.

Laboratories for species identification. (Proposed § 82.32(d)(2))

*Interstate Movement Restrictions*

We intend to use the results of egg culture for SE to determine how much of a risk eggs from SE-Positive Houses or Flocks constitute for transmission of SE, by actually testing samples of eggs from these chickens. We believe the actual culturing of the eggs is a direct and efficient indication of SE contamination of eggs and a good basis for determining whether to restrict interstate movement of eggs.

Therefore, we propose to restrict the interstate movement of live chickens, cages, coops, containers, troughs, other equipment, and manure from an SE-Positive House or Flock (Environment). We propose to restrict the interstate movement of all these articles, and eggs, from an SE-Positive House or Flock (Eggs). (We also propose to restrict movement of eggs from SE-Positive Houses and Flocks until required egg tests are conducted; i.e., until it is determined that the correct status of the house or flock is SE-Positive (Environment) and not SE-Positive (Eggs).) We propose to restrict the movement of all regulated articles, including eggs, from SE-Positive Houses (Eggs), because the eggs from these houses, as well as articles in the environment, have tested positive for SE. (See proposed § 82.34.)

We do not believe this decision would significantly increase the risk of spreading SE, because in all cases where the house environment has tested positive for SE, movement of articles, including eggs, would be at least temporarily restricted. The only difference between this proposal and the current regulations related to interstate movement restrictions is that eggs from a house or flock whose environment has tested positive for SE would be allowed to move after eggs from the house or flock test negative for SE according to standards proposed in this document. Because they could spread SE to other flocks, regulated articles other than eggs would continue to be subject to movement restrictions, whether they come from an SE-Positive House (Environment) or an SE-Positive House (Eggs).

The proposed interstate movement restrictions in concert with the proposal to use egg testing in lieu of blood and internal organ testing might allow interstate movement of eggs from some flocks containing chickens infected with SE, if the chickens are not actively shedding SE into eggs at the time the egg tests are conducted. It is important to address the intermittent nature of SE shedding by layer hens, and to guard against the possibility that a flock could be classified as SE-Positive (Environment) and allowed unrestricted movement of eggs, and then begin shedding SE into the eggs. There are two provisions in the proposal to address this risk.

The first provision is that SE-Positive (Environment) flocks and houses must undergo four separate sets of egg tests at 2 week intervals, in accordance with proposed § 82.32(c)(1) and (c)(2). The available epidemiological evidence suggests that if SE shedding is going to occur in a flock, it is likely to occur sometime during the 8 week period of testing, and would be detected. (Once shedding begins in a flock it usually lasts for longer than 2 weeks, so if one egg test occurs prior to shedding, the next would occur during shedding.)

The second provision to guard against flocks that begin shedding after negative egg tests is the requirement in proposed § 82.32(c)(3) that a flock that completes four sets of negative egg tests must undergo an additional egg test every 3 months for the life of the flock. This requirement is proposed to address the slight possibility that a flock would not shed SE into eggs during the initial 8 weeks of egg testing, but could begin shedding SE into eggs after that point. We considered the alternative of requiring that egg tests be conducted every two weeks for the life of each flock in SE-Positive (Environment) status, but decided that requiring so many egg tests would significantly drain agency resources and impose substantial economic burdens on producers without achieving a proportional gain in terms of reducing risks of SE spread.

*Interim Rule Allowing Post-Release Testing of Flocks and Houses*

On January 9, 1992, we published an interim rule in the **Federal Register** that was effective on January 6, 1992 (57 FR 776-779, Docket No. 91-193). This rule allows APHIS to test flocks and houses for SE for a period of 18 months following the time the flock or house is released from test or infected status. If the flock or house is released due to depopulation, the 18-month period commences at the time the flock is repopulated.

We took this action because we believe there is a significant possibility that released flocks may become reinfected through such avenues as contaminated feed or rodent problems. We continue to have concerns about post-release reinfection. Therefore, we are re-proposing our current post-release testing provisions, with changes to conform with other changes contained in this proposal. These post-release testing provisions are set out in proposed § 82.33(d).

*Release From SE-Positive Status*

According to current § 82.32(e) of the regulations, a flock or house may be released from Infected status if internal organ samples from the chickens test negative for SE, or if the flock or house is depopulated, cleaned, washed, and disinfected in accordance with the regulations.

Upon further consideration, APHIS has determined that the *Salmonella* control program would be more effective if we allow SE-Positive Houses and Flocks (Environment) and SE-Positive Houses and Flocks (Eggs) to be released from SE-Positive status only after depopulation and cleaning and disinfection.

It is only fair to allow Study Flocks, which may not be infected, to be released either through negative testing or depopulation and cleaning and disinfection, whichever the owner chooses. For houses or flocks that have tested positive for SE, we do not believe that subsequent negative tests alone provide sufficient assurance of risk reduction to justify releasing them from regulation. For example, our experience has shown that it is nearly impossible to eliminate SE from the house environment without depopulation, cleaning, and disinfection, but a house will sometimes test negative on one or several tests for environmental SE even though the pathogen is still present.

Therefore, we propose to allow release of SE-Positive Houses and Flocks (Environment) and SE-Positive Houses and Flocks (Eggs) only after depopulation and cleaning and disinfection. As discussed above, an SE-Positive House or Flock (Eggs) could have its status changed to SE-Positive (Environment) if it tests negative for SE in its eggs four consecutive times; however, the house or flock would have to be depopulated, cleaned, and disinfected before it could be released from SE-Positive (Environment) status. We are proposing these changes in a new § 82.33, which consolidates provisions concerning release from regulation of flocks and houses.

*Use of Monitoring Tests*

Currently, all premises which include an Infected House must have other houses on the premises tested for SE according to a schedule in the regulations. This requirement was designed to protect against the possibility that SE could spread from an Infected House to another house on the same premises.

However, one of the bases of the regulations was that it is possible to regulate on an individual poultry house basis, rather than a whole flock basis, when the individual poultry houses are sufficiently separated to minimize the spread of disease between them. Criteria for determining when poultry houses have sufficient biosecurity to allow them to be separately regulated were the basis for the following definition in § 82.30 of the regulations:

> *Separate poultry house.* A poultry house that has been evaluated by a Federal or State representative and found to have biosecurity to prevent the transmission of communicable disease to other poultry houses. Biosecurity means that flock management procedures are in place to ensure that there is minimal contact between poultry houses through exposure to chickens, feed, water, manure, equipment, rodents, or personnel from other poultry houses, and that an effective rodent control program is being carried out. No poultry house that had positive results for its most recent rodent tests conducted in accordance with § 82.32 shall be classified as a separate poultry house.

We propose to amend this definition to acknowledge that there is no such thing as absolute biosecurity, and that judgment of a Federal or State representative is necessary to determine whether the biosecurity that exists in a flock is sufficient to designate separate poultry houses in the flock. We also propose to add a sentence to this definition addressing separate poultry house status for flocks that have positive rodent tests, as discussed above. Therefore, we propose to change this definition to read as follows:

> *Separate poultry house.* A poultry house that has been evaluated by a Federal or State representative and found to have biosecurity to prevent the transmission of communicable disease to other poultry houses. Biosecurity means that flock management procedures are in place to ensure that there is minimal contact between poultry houses through exposure to chickens, feed, water, manure, equipment, rodents, or personnel from other poultry houses, and that an effective rodent control program is being carried out. No poultry house that had positive results for its most recent rodent tests conducted in accordance with § 82.32 shall be classified as a separate poultry house, unless an adequate rodent control program is in operation.

If a flock consists of poultry houses that meet this definition, we believe the risk that SE could spread from one house to another within the flock is low, and consequently there is no need for monitoring tests under these circumstances. Therefore, we also propose to remove § 82.38, Monitoring Tests.

*Supervision of Hard Cooking Operations*

In the current regulations, paragraph (a) of § 82.33 states that eggs may be moved interstate from test poultry houses, test flocks, infected poultry houses, and infected flocks:

> only for pasteurization at an egg products plant inspected by the Agricultural Marketing Service in accordance with 7 CFR part 59, or for hard cooking at an egg products plant operating under the Agricultural Marketing Service Voluntary Egg Products Inspection Service in accordance with 7 CFR part 55, * * *

The intent of this provision was to ensure that the eggs were pasteurized or hard cooked in a manner that effectively destroyed any SE present in the eggs. To ensure this, we allowed egg movements only to egg product plants operating under existing Agricultural Marketing Service (AMS) regulatory programs that would ensure proper pasteurization or cooking of the eggs.

However, eggs that are properly hard cooked (cooked until the yolk and white have solidified) will not spread SE, even if they are cooked at a location other than an egg products plant operating in accordance with AMS regulations in 7 CFR part 59. Our desire is to allow eggs to be hard cooked at any facility that is supervised by AMS and found to perform this process effectively. Upon request and on a user fee basis, AMS is prepared to supervise hard cooking operations. Such supervision will be provided to assure the eggs are properly hard cooked. The supervision will be provided under the AMS voluntary egg products inspection program in accordance with 7 CFR part 55.

This change would provide an option for additional firms to receive eggs for hard cooking under AMS supervision, thus increasing the number of plants which may be eligible to process eggs from SE-Positive (Eggs) Flocks and Houses.

Therefore, we propose to change the language regarding pasteurization and hard cooking quoted above to state that eggs may be moved interstate from an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs):

> only for pasteurization at an egg products plant operating under the mandatory egg products inspection program administered by the Agricultural Marketing Service in accordance with 7 CFR part 59, or for hard cooking (cooked until the yolk and white have solidified) and processing under Agricultural Marketing Service supervision in accordance with the provisions of 7 CFR part 55. * * * (proposed § 82.34(a))

*Flocks That are the Probable Source of Disease in Two or More Outbreaks*

The current regulations, in § 82.32(b), state that a flock can be directly classified as a Test Flock before any testing, if the flock "is the probable source of disease in three or more outbreaks of disease in humans caused by *Salmonella enteritidis* serotype *enteritidis*." We propose to reduce this threshold number from three to two outbreaks, to place more timely interstate movement restrictions on flocks that may present a health risk. Therefore proposed § 82.32(b) states that "If a Federal representative determines on the basis of epidemiologic investigation that any flock is a probable source of disease in two or more outbreaks of disease in humans caused by *Salmonella enteritidis* serotype *enteritidis*, that flock shall be determined to be an SE-Positive Flock (Environment) * * *."

*Miscellaneous*

This document also proposes editorial changes for purposes of clarity, and to assimilate the new proposed amendments discussed above with material already contained in the regulations. We propose to move the requirements concerning authorized laboratories from the definitions section, § 82.30, to a new § 82.39, since these are substantive requirements, not a definition. The requirements for authorized laboratories are also edited to make them consistent with procedures employed by the National Veterinary Services Laboratories (NVSL). In addition, we propose that the approval of authorized laboratories will be considered only when the Director, NVSL determines that the NVSL's capacity for conducting tests under these regulations has been exceeded. We also propose that the Area Veterinarian in Charge (AVIC) be consulted prior to approval of an authorized laboratory in the AVIC's state. We are adding these requirements because we believe that NVSL should be the preferred source for such testing because we have direct control over the quality of testing at NVSL, and because results of tests conducted at NVSL are readily available to other APHIS offices engaged in Salmonella activities. It is more difficult to collect and organize test data from a variety of outside laboratories. The AVIC would be involved in approval of laboratories because the AVIC may be able to provide information regarding local laboratories' ability to reliably perform the required tests.

In addition, we propose minor changes to the laboratory test methods

for samples, to employ our current best knowledge of effective test techniques for *Salmonella*. Specifically we propose to (1) substitute tetrathionate-brilliant green selective enrichment broth for Mueller-Kauffman tetrathionate selective enrichment broth; (2) make it clearer that each sample shall be used to inoculate an XLT4 agar plate and a brilliant green novobiocin agar plate; (3) change the requirement to "inoculate at least 5 *Salmonella*-suspect colonies from each sample" to a requirement to inoculate "up to 5 *Salmonella*-suspect colonies," and (4) add a requirement that if, after 24 hours, no *Salmonella*-suspect colonies are present, the plates will be incubated for an additional 24 hours.

We also have made changes to proposed § 82.38, which deals with cleaning and disinfection of Study and SE-Positive flocks and houses, to specify that manure and litter removed from houses must be placed in an isolated area where poultry or livestock will not come in contact with the manure or litter. We propose this change to ensure that poultry or livestock will not come in contact with and spread SE organisms that may be present in the manure and litter.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As an alternative to the provisions of this rule, we have considered taking no action, and enforcing the current SE regulations. This alternative was rejected in favor of adopting a system of testing which would permit a more direct and efficient evaluation of the actual risk presented by eggs from a flock implicated in a human or poultry SE outbreak.

The provisions of this rule would not have significant economic impacts on large or small entities. The chief businesses affected would be a small number of egg production flocks that are determined to be in Study or SE-Positive status. If this proposed rule is adopted, these flocks would continue to suffer the economic impacts imposed by the final rule published in the **Federal Register** on January 30, 1991 (56 FR 3730–3743, Docket No. 90–134).

There are two provisions of that final rule that would continue to have economic impacts on some small entities if this proposal is adopted: (1) the prohibition on interstate movement of hatching eggs and newly-hatched chicks unless they are classified "U.S. Sanitation Monitored" under the NPIP or meet a State plan determined to be equivalent by the Administrator (the Certified *Salmonella enteritidis* serotype *enteritidis* Tested Free Flocks), and (2) the testing requirements and restrictions on interstate movement of restricted articles.

Breeders affected by the hatching eggs and newly-hatched chicks classification requirement fall into two groups; approximately 275 large commercial breeders (including 26 primary breeders) of egg-type chickens engaged in interstate movements, and a larger number (estimated at several thousand) of smaller breeders, most of which are small entities, that may occasionally or frequently wish to sell hatching eggs and newly-hatched chicks interstate.

Almost all large commercial breeders participate in the U.S. Sanitation Monitored program of the NPIP, and these breeders should feel little or no additional impact from the regulations, since they are already meeting its classification requirements by participating in this program of the NPIP.

Smaller breeders of egg-production chickens who wish to engage in interstate sales or other interstate distribution of hatching eggs and newly-hatched chicks will be required to participate in the U.S. Sanitation Monitored program of the NPIP or a State program determined to be equivalent by the Administrator, at an annual cost of approximately $750 per chicken house. In some cases, this testing cost could be partially or wholly subsidized by State governments or the Federal government. While this annual cost could be a significant expense for a small breeder, the data available to us indicate that a majority of small breeders engaged in interstate movements are already members of the NPIP or a State program, and therefore are already bearing the cost. Therefore, we do not believe this requirement will have a significant economic impact on a substantial number of small entities.

Egg production flocks containing houses that are identified as SE-Positive (Eggs) or SE-Positive (Environment) will suffer economic impacts as a result of this rule, in the form of revenue loss due to the restrictions on interstate movement of chickens, eggs and other articles for the period they are restricted. The total number of egg production flocks that will be identified as containing SE-Positive houses, and the number of these which are small entities, cannot be estimated until we acquire further data on the extent and rate of spread of SE in egg production flocks. In 1988, 40 egg production flocks were implicated, none of which were small entities. However, approximately 93 percent of egg production flocks are small entities (80,210 of 86,005 producers of poultry products for sale), and it is likely that some egg production flocks that are small entities will be implicated in the future.

The revenue loss will depend on the length of time the flock is determined to contain an SE-Positive house, the percentage of the flock's houses that are determined to be SE-Positive (eggs) versus SE-Positive (Environment), the availability of interstate markets for pasteurized and boiled eggs, and other variables. Flocks that are determined to contain a large percentage of SE-Positive (Eggs) houses could suffer severe financial losses during the period of interstate movement restrictions. It is also possible that flocks identified as Study Flocks, or flocks that formerly contained SE-Positive houses and were later released from that status, could suffer indirect economic losses caused by adverse publicity. The owners of such flocks could face loss of markets or reduced prices for their products, even after interstate movement restrictions no longer apply to the flock. However, some producers would suffer such indirect economic impacts even if this rule were not adopted. Flocks are frequently suspected of contamination by *Salmonella*, and suffer financial losses as a result, without being formally identified as suspect by a government program.

Based on the number of egg production flocks found to contain houses infected with SE over the past few years, we estimate that on the order of 80 egg production flocks per year will be determined to contain SE-Positive (Eggs) or SE-Positive (Environment) houses and will thus be subjected to interstate movement restrictions. This number is less than 0.1 percent of the total number of egg production flocks that are also small entities. Therefore, while those small entities that are affected may suffer significant economic

impacts, we do not believe the total number of small entities affected will be substantial.

For flocks and houses that are SE-Positive (Eggs), the chief economic impact consists of revenue loss due to the prohibition against interstate sale of their eggs (except for breaking and pasteurization) for the period they are considered to be SE-Positive (Eggs). For flocks and houses that are SE-Positive (Environment), there would be lesser economic impacts associated with restrictions on moving articles other than eggs interstate.

For flocks that must be tested under the Salmonella regulations, there is no significant difference between the cost of conducting blood and organ tests under the current regulations and the cost of instead conducting egg tests under the proposed regulations. Both the current and the proposed test procedures require about six person-days of work to collect and process samples up to the point where the samples are submitted to a laboratory for bacteriological culture. The current regulations result in 60 organ samples from each house being cultured, and the proposed regulations would result in 50 pooled egg samples being cultured. The costs of culturing an organ sample or an egg sample in a lab are similar, so the smaller number of egg samples tested means a smaller total laboratory test cost for each house tested if egg tests are used. However, since the major cost for both blood/organ tests and egg tests lies in the six person-days spent collecting and processing samples before they get to the lab, switching to egg tests would reduce total sample collection and testing costs by no more than a few percent.

The proposed use of egg tests would allow flocks that test negative on the egg tests to continue to sell eggs without restriction. Under the current regulations, some of these flocks would probably be restricted to selling their eggs to breaker plants for pasteurization or hard cooking, due to positive organ tests. The price paid for breaker eggs varies widely from place to place and over time, and on occasion the price for breaker eggs even exceeds the price for fresh shell eggs. However, long-term nationwide price data indicate that breaker plants pay an average of 5 to 10 cents per dozen less for eggs than other markets pay. Using egg tests would allow flocks whose eggs test negative to forego egg sale restrictions that would otherwise be applied to them based on positive organ tests, and that would have significant costs for them.

We estimated above that on the order of 80 flocks or houses per year might have their egg sales restricted. For a typical flock, this might mean 800,000 dozen eggs sold at an unrestricted price 5 to 10 cents higher than the restricted price, or increased revenue of $40,000 to $80,000 per flock. We do not have reliable data yet on the number of flocks that might have egg sales restricted under the current regulations but would be allowed unrestricted egg sales under the proposed regulations. Based on the limited data available from flocks that have been subjected to both organ and egg tests, we estimate that up to half of the flocks or houses that would have been restricted under the current regulations would not have egg sales restricted if the proposed egg tests are used. Under this assumption, the maximum savings would be on the order of $1.6 million to $3.2 million per year for 40 flocks that would otherwise have egg sales restricted.

The proposal to use egg tests would cause a very small, probably negligible increase in the risk that humans could become sick by consuming SE-contaminated eggs from a flock tested under the regulations. The current regulations restrict egg sales when the organs of chickens test positive, theoretically controlling any risk that SE-contaminated eggs could be laid in that flock throughout its production cycle. Since the proposed regulations do not attempt to restrict egg sales based on organ tests, there is a small theoretical risk that a flock could contain infected chickens that produce contaminated eggs only outside the time period covered by the four consecutive egg testing periods. We estimate a probability of less than 1 in 10,000 that this could occur.

The proposal would also allow restricted eggs to be sold for hard cooking at facilities that operate under Agricultural Marketing Service (AMS) supervision, but are not egg products plants formally approved under AMS regulations in 7 CFR part 59. Such hard cooking facilities would incur expenses equivalent to those borne by formally approved egg products plants during the periods they actually hard cook eggs under the proposed regulations, because they would have to pay for inspectors to be present during arrival of restricted eggs and their hard cooking, and would have to maintain records and meet other AMS requirements. However, for a facility that only hard cooks eggs under the proposed regulations on an intermittent basis, costs associated with AMS supervision would be proportionally less (i.e., proportional to the percentage of time the facility process restricted eggs) than the costs incurred by an egg products plant that continuously operates under 7 CFR part 59.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects in 9 CFR Part 82**

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 82, Subpart B, would be revised to read as follows:

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## PART 82—EXOTIC NEWCASTLE DISEASE IN ALL BIRDS AND POULTRY; PSITTACOSIS AND ORNITHOSIS IN POULTRY; CHICKEN DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

### Subpart B—Chicken Disease Caused by Salmonella enteritidis Serotype enteritidis

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82.39 Approval of authorized laboratories.

**Authority:** 21 U.S.C. 111-113, 115, 117, 120, 123-126, 134a, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

### Subpart B—Chicken Disease Caused by Salmonella enteritidis Serotype enteritidis

#### § 82.30 Definitions.

As used in connection with this subpart, the following terms shall have the meaning set forth in this section.

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Authorized laboratory.* A laboratory approved to conduct tests for *Salmonella enteritidis* serotype *enteritidis* in accordance with § 82.39 of this subpart.

*Certified Salmonella enteritidis serotype enteritidis Tested Free Flocks.* Egg-type chicken breeding flocks that are classified "U.S. Sanitation Monitored" under the National Poultry Improvement Plan (NPIP), or meet the requirements of a State classification plan determined by the Administrator to be equivalent to the NPIP, in accordance with § 145.23(d) of this chapter.

*Egg production flock.* A flock maintained for the purpose of producing eggs for human consumption.

*Federal representative.* An individual employed and authorized by the Federal government to perform the tasks required by this subpart.

*Flock.* All of the poultry on one premises.

*Hatching eggs.* Eggs in which young chickens are allowed to develop.

*Internal organs.* All internal organs except for the lungs and organs of the gastrointestinal tract.

*Interstate.* From one State into or through any other State.

*Move (moving, moved, movement).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

*Multiplier breeding flock.* A flock that is intended for the production of hatching eggs used for the purpose of producing progeny for commercial egg production.

*Newly-hatched chicks.* Chicks that have not been fed or watered for the first time.

*Poultry.* Chickens of all ages, including eggs for hatching.

*Poultry house.* A building or other structure used to house poultry.

*Primary breeding flock.* A flock composed of one or more generations that is maintained for the purpose of establishing or continuing multiplier breeding flocks for the ultimate purpose of commercial egg production.

*Pullet.* A young chicken, from the time it is hatched until the time it is old enough to be an effective layer.

*Separate poultry house.* A poultry house that has been evaluated by a Federal or State representative and found to have biosecurity to prevent the transmission of communicable disease to other poultry houses. Biosecurity means that flock management procedures are in place to ensure that there is minimal contact between poultry houses through exposure to chickens, feed, water, manure, equipment, rodents, or personnel from other poultry houses, and that an effective rodent control program is being carried out. No poultry house that had positive results for its most recent rodent tests conducted in accordance with § 82.32 shall be classified as a separate poultry house, unless an adequate rodent control program is in operation.

*SE-Positive Flock (Eggs).* A flock that does not contain separate poultry houses as defined by this section, and in which any egg sample has tested positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with the egg tests of § 82.32(c) and (d)(3).

*SE-Positive Flock (Environment).* A flock that does not contain separate poultry houses as defined by this section, and in which any manure or egg transport machinery samples have tested positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with § § 82.32(b) and (d)(1).

*SE-Positive House (Eggs).* A poultry house in which any egg sample has tested positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with the egg tests of § § 82.32(c) and (d)(3).

*SE-Positive House (Environment).* A poultry house in which any manure or egg transport machinery samples have tested positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with § § 82.32(b) and (d)(1).

*State.* Any State, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and any other territory or possession of the United States.

*State representative.* An individual employed in animal health work and authorized by a State or political subdivision of a State to perform the tasks required by this subpart.

*Study Flock.* A flock determined in accordance with § 82.32(a) to be a Study Flock, based on a determination by a Federal representative or State representative through epidemiologic investigation that the flock is a probable source of disease in an outbreak of disease in poultry or humans caused by *Salmonella enteritidis* serotype *enteritidis.*

#### § 82.31 Applicability.

The regulations in this subpart apply only to primary and multiplier breeding flocks used for the purpose of producing progeny for commercial egg production, and to egg production flocks used for the purpose of producing table eggs for sale or other distribution in interstate commerce or for export.

#### § 82.32 Identification of Study Flocks, SE-Positive Flocks, and SE-Positive Houses.

Only a Federal or State representative[1] may make a determination in accordance with this subpart that an egg production flock is a Study Flock or an SE-Positive Flock, or that a poultry house is an SE-Positive House. The Federal or State representative shall also determine which subunits of a flock meet the definition of a separate poultry house in § 82.30 of this subpart. Immediately after a Study Flock, SE-Positive Flock, or SE-Positive House is identified, a Federal or State representative shall notify in writing the person in control

[1] The location of Federal or State representatives may be obtained by writing to the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

of the flock that his or her flock has been determined to be a Study Flock or SE-Positive Flock, or that specified poultry houses in the flock have been determined to be SE-Positive Houses. At any time after the notification, the person in control of the flock or house, upon request of a Federal or State representative, shall make available for review and copying all records maintained in accordance with 7 CFR 59.200[2] and all other records of the shipment of poultry and poultry products to and from the flock.

(a) *Study Flocks.* An egg production flock shall be determined to be a Study Flock when:

(1) The Administrator determines that the flock has been implicated as the probable source of disease in an outbreak of disease in humans or poultry caused by *Salmonella enteritidis* serotype *enteritidis*. The Administrator shall make such a determination after he or she determines that:

(i) Laboratory reports from Federal or State health agencies identify the cause of the outbreak as *Salmonella enteritidis* serotype *enteritidis*;

(ii) There is a significant epidemiologic association showing that eggs were the most probable source of the *Salmonella enteritidis* serotype *enteritidis* organisms that caused the outbreak; and

(iii) Shipping records or other evidence reveal that a flock was a probable source of the eggs. If the shipping records or other evidence identify more than one flock as a probable source of the eggs, the Administrator may classify all such flocks as study flocks; *provided:* that

(iv) No flock will be determined to be a Study Flock if the flock is participating in a voluntary testing and control program for *Salmonella enteritidis* serotype *enteritidis* that the Administrator has determined imposes testing and interstate movement restrictions identical or equivalent to those required by this subpart. Testing requirements will be deemed equivalent to those required by this subpart if the Administrator reviews scientific studies of the effectivenes of the tests in identifying *Salmonella enteritidis* serotype *enteritidis* and finds that the reliability of the proposed tests meets or exceeds the reliability of the tests required by this subpart.

(b) *SE-Positive Houses (Environment) and SE-Positive Flocks (Environment).* A separate poultry house in a Study Flock shall be determined to be an SE-Positive House (Environment) if manure and egg transport machinery samples from the house are collected and tested in accordance with this paragraph, and one or more of the samples from the house tests positive for *Salmonella enteritidis* serotype *enteritidis*. The entire flock shall be determined to be an SE-Positive Flock (Environment) if the flock does not contain separate poultry houses as defined in § 82.30, and if manure and egg transport machinery samples from any poultry house in the flock test positive for *Salmonella enteritidis* serotype *enteritidis* in accordance with this paragraph. If a Federal representative determines on the basis of epidemiologic investigation that any flock is a probable source of disease in two or more outbreaks of disease in humans caused by *Salmonella enteritidis* serotype *enteritidis*, that flock shall be determined to be an SE-Positive Flock (Environment); however, such flocks shall have manure and egg transport machinery samples collected and tested in accordance with paragraphs (b)(1) and (d) of this section, and any separate poultry houses from such flock that test negative in accordance with paragraph (d) of this section shall be released from SE-Positive House (Environment) status. A Study Flock shall be determined to be in SE-Positive (Environment) status if the person in control of the flock has refused to schedule collection of samples in accordance with paragraph (b)(1) of this section within 48 hours of the time the person in control of the flock was notified in writing by a Federal or State representative that the flock was determined to be a Study Flock, or if the actions of the person in control of the flock prevent completion of collection of samples within 15 days of the time the person in control of the flock was notified in writing by a Federal or State representative that the flock was determined to be a Study Flock.

(1) *Sample collection.* A Federal representative or State representative shall initiate testing of each Study Flock by collecting the following samples for testing:

(i) *Manure sample collection.* A Federal representative or State representative shall collect manure samples from each row of cages, or from the floor area if there are no cages, using a sterile 4-inch by 4-inch gauze sponge premoistened with double strength skim milk or canned skim milk for each sample. The manure samples shall be collected by fastening the gauze sponges to the scraper frame and running the scraper the full length of the row of cages, if a manure scraper is used on the row; otherwise, the manure sample shall be collected by dragging the swab along the manure pile beneath the cages, or once along the full length of the floor if there are no cages. The gauze sponges used to collect manure samples from each bank of cages shall be placed in an 18-ounce whirl-pak plastic bag containing double strength skim milk or canned skim milk, and the bag shall be marked with the location of the bank or floor area from which the sample is taken.

(ii) *Egg transport machinery samples.* The Federal representative or State representative shall collect one egg transport machinery sample from each row of cages by vigorously wiping the egg transport belt and egg escalator, using a sterile 4-inch by 4-inch gauze sponge for each sample. The gauze sponge used to collect egg transport machinery samples from each row shall be placed in an 18-ounce whirl-pak plastic bag containing double strength skim milk or canned skim milk, and the bag shall be marked with the location of the row from which the sample is taken.

(iii) *Rodent sample collection.* At the time that manure or egg transport machinery samples are collected in accordance with § 82.32(b)(1) and tested in accordance with § 82.32(d), a Federal representative or State representative shall place 12 repeating metal rodent traps baited with chicken feed in each poultry house. The traps shall be placed in any areas showing visible signs of rodent activity or rodent travel. A Federal representative or State representative shall check the traps at 24 to 48 hour intervals during the period that sample collection is underway, and shall collect all rodents trapped, euthanize them, and submit them to a laboratory authorized in accordance with § 82.39 for testing. A Federal representative or State representative shall clean and sanitize the traps between uses.

(iv) *Egg sample collection.* A Federal representative or State representative shall randomly collect a total of 1,000 eggs from each egg layer house, or the total daily production of the house if the daily egg production totals less than 1,000. In order to acquire a representative sample, an equal proportion of eggs will be sampled at random from each bank in the poultry house. No cracked or dirty eggs shall be collected. Any visible adherent material shall be removed from the shell surface

[2] In accordance with 7 CFR 59.200, persons engaged in the business of transporting, shipping, receiving, holding, or handling eggs or egg products in commerce shall maintain records for 2 years showing the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of an authorized representative of the Secretary, permit the representative, at reasonable times, to have access to and to copy all such records.

and the eggs disinfected, either by a 5 second dip in boiling water, or with a 3:1 solution consisting of 3 parts 70% alcohol (ethyl or isopropyl) to 1 part 10% iodine (Lugol's). The eggs will then be allowed to air dry. Eggs with chipped, cracked, or broken shells shall not be included in a sample. Each sample shall consist of 20 eggs cracked aseptically into a sterile whirl-pak bag, for a total of 50 samples per house. While cracking the eggs, the Federal or State representative must wear sterile gloves, which must be changed between samples.

(c) *SE-Positive Houses (Eggs) and SE-Positive Flocks (Eggs).* (1) A separate poultry house shall be determined to be an SE-Positive House (Eggs) if the house is tested in accordance with this paragraph and *Salmonella enteritidis* serotype *enteritidis* is recovered from the eggs of one or more chickens in the house. A flock that does not contain separate poultry houses as defined in § 82.30 shall be determined to be an SE-Positive Flock (Eggs) if the flock is tested in accordance with this paragraph and *Salmonella enteritidis* serotype *enteritidis* is recovered from the eggs of one or more chickens in the flock.

(2) If *Salmonella enteritidis* serotype *enteritidis* is not recovered from the eggs, a second, third, and fourth set of egg samples from poultry in that house or flock shall be collected and tested in accordance with this paragraph at 14 day intervals beginning 14 days after the date the first egg samples are collected.

(3) If none of these four tests yield positive results for SE, the flock or house shall remain in SE-Positive (Environment) status, and a random sample of 1,000 eggs from each house shall be collected every 3 months for the life of the flock and tested in accordance with this paragraph. If any such egg tects yield positive results for *Salmonella enteritidis* serotype *enteritidis* the house or flock shall be reclassified as SE-Positive (Eggs) status, and interstate movement restrictions on eggs from the flock or house shall be applied in accordance with § 82.34.

(4) An SE-Positive (Environment) House or Flock shall be determined to be in SE-Positive (Eggs) status if the person in control of the flock has refused to schedule collection of samples in accordance with paragraph (b)(1) of this section within 48 hours of the time the person in control of the flock was notified in writing by a Federal or State representative that the flock was determined to be SE-Positive (Environment), or if the actions of the person in control of the flock prevent completion of collection of samples within 15 days of the time the person in control of the flock was notified in writing by a Federal or State representative that the flock was determined to be SE-Positive (Environment).

(d) *Test methods for samples.* Manure, egg transport machinery, rodent, and egg samples shall be sent for testing to an authorized laboratory, where they shall be cultured for isolation and identification of *Salmonella enteritidis* serotype *enteritidis* as follows:

(1) *Manure and egg transport machinery sample testing.* Each sample shall be placed in approximately 10 times its volume of Hajna tetrathionate or tetrathionate-brilliant green selective enrichment broth, and incubated at 41°C for 24 hours. Each sample shall be used to inoculate an XLT4 agar plate and a brilliant green novobiocin agar plate, and incubated at 41°C for 24 hours. Up to five *Salmonella*-suspect colonies from each sample shall be inoculated in triple-sugar iron (TSI) and lysine-iron (LI) media, and incubated at 41°C for 24 hours. If after 24 hours no Salmonella-suspect colonies are present, the plates shall be incubated for an additional 24 hours. Cultures showing typical reactions on TSI or LI or both shall be screened with Group D antiserum. All Group D isolates shall be sent to the National Veterinary Services Laboratories for further characterization.

(2) *Rodent sample testing.* Internal organs, and a portion of the intestinal tract, shall be aseptically collected from each rodent submitted. A sample will consist of the liver, spleen, and intestinal tissues collected from one or more rodents, in pool sizes up to five rodents per pool. Each sample shall be placed in approximately 10 times its volume of Hajna tetrathionate or tetrathionate-brilliant green selective enrichment broth, and incubated at 41°C for 24 hours. Each sample shall be used to inoculate two different selective media agar plates (consult NVSL for recommended media) and incubated at 37°C for 24 hours. Up to five Salmonella-suspect colonies from each sample shall be inoculated in TSI and LI media, and incubated at 37°C for 24 hours. If after 24 hours no Salmonella-suspect colonies are present, the plates shall be incubated for an additional 24 hours. Cultures showing typical reactions on TSI or LI or both shall be screened with Group D antisera. All Group D isolates shall be sent to the National Veterinary Services Laboratories for species identification.

(3) *Egg sample testing.* Each sample shall be thoroughly mixed by hand, or using a stomacher, until all yolks are completely mixed with the albumen. Samples shall then be held at room temperature (68–75°F) for at least 72 hours. Each sample shall be used to inoculate two selective differential media plates (for example, brilliant green (BG) and xylose-lysine-deoxycholate (XLD) plates). Plates shall be incubated at 37°C and observed for salmonellae-like colonies for up to 42 hours. If initial inoculum is heavily contaminated, selectively enrich samples in Hajna tetrathionate or tetrathionate-brilliant green broth or subculture to xylose-lysine-tergitol-4 (XLT4) or brilliant green with novobiocin (BGN). If salmonella-like colonies are present in a sample, three such colonies shall be characterized by inoculating each into triple sugar iron (TSI) and lysine iron (LI) agar, and by subculturing each to nonselective medium and serogrouping with group specific antisera. Additional testing is optional. Those colonies that are biochemically and serologically characterized as salmonellae shall be sent to NVSL for serotyping.

(e) *Continued egg testing of SE-Positive Houses (Eggs) and SE-Positive Flocks (Eggs).* The owner of an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs) may request a Federal or State representative to continue testing the eggs of the house or flock after the house or flock is placed in SE-Positive (Eggs) status. Any such egg testing will be conducted in accordance with §§ 82.32(b)(1)(iv) and (d)(3), at 14 day intervals, until the owner requests the tests be discontinued or until the house or flock is reclassified to SE-Positive (Environment) status in accordance with § 82.33(c)(2).

(Approved by the Office of Management and Budget under control number 0581–0113.)

**§ 82.33 Release from Study Flock, SE-Positive Flock, and SE-Positive House status; post-release sampling and testing.**

(a) *Release from Study Flock status.* A flock shall be released from Study Flock status after a Federal or State representative determines that manure and egg transport machinery samples have been collected from the flock and tested in accordance with §§ 82.32(b)(1) and (d)(1), with no recovery of *Salmonella enteritidis* serotype *enteritidis*, or determines that the flock has been depopulated (either prior to or after any testing in accordance with this subpart), and its houses have been cleaned, washed, and disinfected in accordance with § 82.38 of this subpart.

(b) *Release from SE-Positive House (Environment) or SE-Positive Flock (Environment) status.* A Federal or State representative shall determine that a separate poultry house is no longer an

SE-Positive House (Environment), or that a flock is no longer an SE-Positive Flock (Environment), and shall notify in writing the person in control of the house or flock of that determination, after determining that the house or flock has been depopulated, cleaned, washed, and disinfected in accordance with § 82.38 of this subpart.

(c) *Release from SE-Positive House (Eggs) or SE-Positive Flock (Eggs) status.*

(1) A Federal or State representative shall determine that a house or flock is no longer an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs), and shall notify in writing the person in control of the house or flock of that determination, after determining that the house or flock has been depopulated and cleaned, washed, and disinfected in accordance with § 82.38 of this subpart.

(2) *Reclassification to SE-Positive House (Environment) or SE-Positive Flock (Environment) status.* An SE–Positive House (Eggs) or an SE–Positive Flock (Eggs) that undergoes four consecutive sets of egg tests with negative results in accordance with § 82.32(e) will be reclassified as an SE–Positive House (Environment) or an SE–Positive Flock (Environment).

(d) *Post-release sampling and testing.* For 18 months following the repopulation of a flock or house released from SE-Positive (Environment) or SE-Positive (Eggs) status due to depopulation, cleaning, washing, and disinfection pursuant to paragraphs (b) or (c) of this section and § 82.38, the Administrator may make such periodic collection and testing of samples from the flock or house as he or she determines to be necessary to ensure that the house or flock is free of *Salmonella enteritidis* serotype *enteritidis*; *provided:* that such sample collection and testing will not be performed if the flock or house is participating in a voluntary program approved by the Administrator to control *Salmonella enteritidis* serotype *enteritidis*. If one or more manure or egg transport machinery samples collected and tested in accordance with the provisions of § § 82.32(b)(1) and (d)(1) test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be placed in SE-Positive (Environment) status. If one or more egg samples collected and tested in accordance with the provisions of § § 82.32(c) and (d)(3) test positive for *Salmonella enteritidis* serotype *enteritidis*, the flock or house from which the sample was taken shall be placed in SE-Positive (Eggs) status. If the person in control of the flock or poultry house has refused to schedule sample collection within 48 hours of the time a Federal or State representative requests such sample collection, or has refused to allow completion of sample collection according to the schedule set by the Federal or State representative, the flock or poultry house shall be placed in SE-Positive (Environment) status.

**§ 82.34 Interstate movement of articles from SE-Positive Houses and SE-Positive Flocks.**

Eggs, live chickens, cages, coops, containers, troughs, and other equipment, and manure may be moved interstate from an SE-Positive House or SE-Positive Flock only in accordance with this section. These articles may be moved interstate from a Study Flock without restriction by this section.

(a) *Eggs from an SE-Positive House (Environment) or an SE-Positive Flock (Environment).* (1) Eggs from an SE-Positive House (Environment) or an SE-Positive Flock (Environment) that has completed four sets of egg tests in accordance with § 82.32(c) with negative results may be moved interstate without restriction by this section. Until the SE-Positive House (Environment) or an SE-Positive Flock (Environment) has completed four sets of egg tests in accordance with § 82.32(c), interstate movement of eggs from the house or flock will be restricted in accordance with paragraph (a)(2) of this section.

(2) Eggs from an SE-Positive House (Environment) or an SE-Positive Flock (Environment) that has completed at least one set of egg tests in accordance with § 82.32(c) with negative results may be moved interstate without restriction, pending completion of the remaining three sets of egg tests. Until the first of the four sets of egg tests are completed in accordance with § 82.32(c) with negative results, eggs from an SE-Positive House (Environment) or an SE-Positive Flock (Environment) may be moved interstate only under the following conditions. Eggs that are crushed and denatured or otherwise denatured to deter their use as human food in accordance with 7 CFR part 59 may be moved interstate without further restriction under this subpart; *except that*, if the restricted eggs are destined for use as a protein or mineral supplement in animal feed, the eggs may be moved interstate only for pasteurization. Other eggs may be moved interstate only for pasteurization at an egg products plant operating under the mandatory egg products inspection program administered by the Agricultural Marketing Service in accordance with 7 CFR part 59, or for hard cooking (cooked until the yolk and white have solidified) and processing under Agricultural Marketing Service supervision in accordance with the provisions of 7 CFR part 55. Such eggs may only be moved if:

(i) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart, and

(ii) The eggs are moved in a completely enclosed compartment of a vehicle that has had a seal applied to it by a Federal or State representative[3] immediately prior to movement. Such eggs may not be unloaded during transit. For eggs moved to an egg products plant, a Federal or State representative shall break the vehicle's seal at the plant. After the eggs are unloaded, the operator of the vehicle shall clean and disinfect the compartment in accordance with § 71.7 of this chapter prior to the time the vehicle leaves the premises of the egg products plant or other location approved to receive the eggs.

(b) *Eggs from an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs).* Eggs from an SE-Positive House (Eggs) or an SE-Positive Flock (Eggs) may be moved interstate only under the following conditions. Eggs that are crushed and denatured or otherwise denatured to deter their use as human food in accordance with 7 CFR part 59 may be moved interstate without further restriction under this subpart; *except that*, if the restricted eggs are destined for use as a protein or mineral supplement in animal feed, the eggs may be moved interstate only for pasteurization. Other eggs may be moved interstate only for pasteurization at an egg products plant operating under the mandatory egg products inspection program administered by the Agricultural Marketing Service in accordance with the provisions of 7 CFR part 55. Such eggs may only be moved if:

(1) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart, and

(2) The eggs are moved in a completely enclosed compartment of a vehicle that has had a seal applied to it by a Federal or State representative[3] immediately prior to movement. Such eggs may not be unloaded during transit. For eggs moved to an egg products plant, a Federal or State representative shall break the vehicle's

[3]The location of Federal or State representatives may be obtained by writing to the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

seal at the plant. After the eggs are unloaded, the operator of the vehicle shall clean and disinfect the compartment in accordance with § 71.7 of this chapter prior to the time the vehicle leaves the premises of the egg products plant or other location approved to receive the eggs.

(c) Live chickens may be moved interstate from an SE-Positive House (Eggs), an SE-Positive House (Environment), an SE-Positive Flock (Eggs), or an SE-Positive Flock (Environment) only if:

(1) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart;

(2) The chickens are moved interstate to a Federally inspected slaughtering establishment;

(3) The chickens are slaughtered within 24 hours of arrival at the Federally inspected slaughtering establishment; and

(4) The wheels and exposed surfaces of the vehicle used to move the chickens are free of manure at the time the vehicle leaves the premises of the SE-Positive house or flock and are cleaned and disinfected in accordance with § 71.7 of this chapter after the chickens are unloaded and prior to the time the vehicle leaves the premises of the slaughtering establishment. Trucks can be sealed by a Federal or State representative after unloading, in lieu of cleaning and disinfection, and unsealed by a Federal or State representative upon return to the SE-Positive house or flock, to allow multiple trips during depopulation of a flock or house.

(d) Cages, coops, containers, troughs, and other equipment may be moved interstate from an SE-Positive House (Eggs), an SE-Positive House (Environment), an SE-Positive Flock (Eggs), or an SE-Positive Flock (Environment) only if:

(1) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart;

(2) The equipment is made of hard plastic or metal;

(3) The equipment has been cleaned and disinfected in accordance with § 71.7 of this chapter;

(4) The equipment was inspected by a Federal or State representative after it was cleaned but before it was disinfected, and then was disinfected in the presence of a Federal or State representative; and

(5) The wheels and exposed surfaces of the vehicle used to move the equipment are free of manure at the time the equipment leaves the premises of the flock.

(e) Manure may be moved interstate from an SE-Positive House (Eggs), an SE-Positive House (Environment), an SE-Positive Flock (Eggs), or an SE-Positive Flock (Environment) only if:

(1) A permit has been obtained for the interstate movement in accordance with § 82.36 of this subpart;

(2) The wheels and exposed surfaces of the vehicle used to move the manure are free of manure at the time the manure leaves the premises of the flock;

(3) The manure is moved interstate for one of the following purposes:

(i) Burial;

(ii) Spreading and turning under on fields not used for grazing or poultry production; or

(iii) Composting in a covered compost heap for a period of at least 1 month. Compost derived from an SE-Positive House or Flock may not be used for animal feed; and,

(4) The manure will be in an isolated area such that no poultry or livestock will come in contact with the manure.

(Approved by the Office of Management and Budget under control number 0581–0113.)

### § 82.35 Interstate movement of hatching eggs, newly-hatched chicks, and pullets.

(a) *Hatching eggs and newly-hatched chicks.* No hatching eggs or newly-hatched chicks from egg-type chicken breeding flocks may be moved interstate unless they are classified "U.S. Sanitation Monitored" under the National Poultry Improvement Plan (NPIP), or meet the requirements of a State classification plan determined by the Administrator to be equivalent to the NPIP, in accordance with § 145.23(d) of this chapter. Flocks which meet this requirement are designated Certified *Salmonella enteritidis* serotype *enteritidis* Tested Free Flocks.

(b) *Pullets.* This paragraph applies to any primary or multiplier breeding flock that has had SE recovered from the internal organs of one or more chickens through testing in accordance with § 145.23(d) of this chapter, at any time since the last negative environmental sample for that house or flock in accordance with § 145.23(d) of this chapter. The owner of any such flock must give written notice to all persons who purchased chicks from the flock at any time after the last negative test in accordance with § 145.23(d). The written notice must state that the primary or multiplier breeding flock has tested positive for SE through testing conducted in accordance with § 145.23(d) of the NPIP.

### § 82.36 Issuance of permits.

(a) Permits required by this part may be obtained by the owner of poultry or other items, or the agent of the owner, by applying in writing to a Federal representative.[4] The application shall specify the following:

(1) The name and mailing address of the owner of the poultry or other items to be moved; or

(2) The name and address of the agent of the owner;

(3) The name and mailing address of the person who will receive the poultry or other items;

(4) The street addresses of both the origin and destination of the shipment;

(5) The number and types of poultry and other items to be moved; and

(6) The reason for their movement.

(b) [Reserved]

### § 82.37 Denial and withdrawal of permits.

(a) *Denial.* If a Federal representative denies a request for a permit, he or she will send the applicant a written notice of the denial, explaining why the permit was denied.

(b) *Withdrawal.* If a Federal representative determines that the holder of a permit is violating either the regulations or a condition specified in the permit, he or she may withdraw the permit by notifying the holder of the permit of its withdrawal, orally or in writing. If the notice was oral, a written notice of the withdrawal, explaining why the permit was withdrawn, will follow.

(c) *Appeals.* Denial or withdrawal of a permit may be appealed in writing to the Administrator within 10 days after receipt of the written notice of denial or withdrawal. The appeal must tell the Administrator what material facts are in dispute. A hearing will be held with respect to any disputed material facts, in accordance with rules of practice which shall be adopted by the Administrator for the proceeding; however, the withdrawal or denial shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

### § 82.38 Cleaning, washing, and disinfection of depopulated flocks and houses.

In order to be released from Study Flock, SE-Positive Flock, or SE-Positive House status, in accordance with § 82.33, when any Study Flock, SE-Positive House or SE-Positive Flock is depopulated[5], each poultry house shall be cleaned, washed, and disinfected using the following methods, or alternate methods approved by the Administrator, between the time the

[4] See Footnote 3 to § 82.34 of this part.

[5] Upon request of the flock owner, APHIS will conduct environmental testing for *Salmonella* of depopulated poultry houses between the time they are disinfected and the time they are restocked.

poultry house is depopulated and the time the new chickens arrive at the premises. All manure and litter must be removed from the house to an isolated area where no poultry or livestock will come in contact with the manure or litter; all surfaces in the house (except dirt floors) must be scrubbed with hot, soapy water and rinsed; and all surfaces in the house must be sprayed in accordance with the label directions with a disinfectant which is registered by the U.S. Environmental Protection Agency as germicidal, and which is effective against *Salmonella enteritidis* serotype *enteritidis*. The owner or person in control of the Study Flock or SE-Positive Flock or House must request a Federal or State representative to inspect each poultry house after it is disinfected but before it is restocked with new chickens, and cleaning, washing, and disinfection shall not be considered completed until a Federal or State representative determines the procedures have been properly performed.

**§ 82.30 Approval of authorized laboratories.**

(a) Application for authorized laboratory status shall be made in writing by the owner or operator of the laboratory and sent to the Administrator, Animal and Plant Health Inspection Service, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Veterinary Services, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. The applying laboratory will bear all costs associated with its application process. The Administrator will consider a laboratory for approval only after consulting with the Director, National Veterinary Services Laboratories (NVSL), and determining that NVSL's capacity for conducting tests under this subpart has been exceeded.

(b) The Administrator will approve an authorized laboratory only after consulting with the Area Veterinarian in Charge and the State animal health official in the State in which the laboratory is located and after determining that the laboratory:

(1) Is supervised by a person holding, as a minimum, a bachelor's degree in either chemistry, microbiology, or a related field and having 1 year's experience in diagnostic microbiology;

(2) Maintains laboratory quality control records for the most recent 3 years that samples have been analyzed in accordance with this subpart;

(3) Passes annual check test proficiency studies conducted by NVSL;

(4) Maintains complete records of the receipt, analysis, and disposition of official samples for the most recent 3 years that samples have been analyzed in accordance with this subpart;

(5) Reports all positive results of all tests ordered in accordance with this subpart or in accordance with § 145.23(d) of this chapter to the State animal health official and APHIS.[e];

(6) Analyzes NVSL check test proficiency samples and returns the results to NVSL within 3 weeks of sample receipt. This must be done whenever requested by NVSL and at no cost to USDA;

(7) Informs the Administrator by certified or registered mail, within 30 days, when there is any change in the laboratory's ownership, officers, directors, supervisory personnel, or other responsibly connected individual or entity; and

(8) Permits any duly authorized representative of the Administrator to perform both announced and unannounced on-site laboratory reviews of facilities and records during normal business hours and to copy all such records.

(c) The Administrator may revoke the authorized status of a laboratory after determining that the laboratory fails to meet any requirement of this section. The revocation will be effective on the date written notice of revocation is given to the owner or operator of the laboratory. A laboratory whose accreditation has been revoked may reapply for authorized laboratory status no sooner than 6 months after the effective date of revocation, and must provide written documentation specifying what corrections were made.

Done in Washington, DC, this 27th day of July, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

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BILLING CODE 3410–34–F

[e] Training requirements, standard test protocols, and check test proficiency requirements prescribed by the National Veterinary Services Laboratories and the names and addresses of authorized laboratories can be obtained by writing to the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

## NUCLEAR REGULATORY COMMISSION

**10 CFR Part 12**

**[RIN 3150–AE61]**

## Equal Access to Justice Act: Implementation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by adding new provisions designed to implement the Equal Access to Justice Act (EAJA). The EAJA provides for the award of fees and expenses to certain individuals and businesses that prevail in agency formal adjudicatory proceedings in which the agency's position is determined not to have been substantially justified. A proposed rule to implement the EAJA was issued by the Commission in 1981, but no further action was taken on it. Because of the considerable period that has transpired since then, the Commission is withdrawing the 1981 proposed rule and replacing it with the rule now being proposed.

**DATES:** The comment period expires September 1, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John Cho, Special Counsel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–1585.

**SUPPLEMENTARY INFORMATION:** The Equal Access to Justice Act (EAJA) first became law on October 21, 1981 (5 U.S.C. 504). The EAJA authorizes agencies to award attorney fees and other expenses to parties that prevail over an agency in certain agency proceedings under specified circumstances. For an award to be made, the proceeding must be one that is "required by statute to be determined on the record." See *Ardestani* v. *U.S.*,

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_____U.S._____, 112 S.Ct. 515 (1991). A proceeding for the purpose of "granting or renewing" a license is not covered by the EAJA, but a proceeding "suspending, revoking, or amending" a license may be covered provided other requirements are met (5 U.S.C. 504(b)(1)(C)).

On October 28, 1981 (46 FR 53189), the NRC published a proposed rule designed to implement the EAJA in the Federal Register. The proposed rule was essentially patterned after a model rule issued by the Administrative Conference of the United States (ACUS). At the time of the NRC's publication, it was thought that the EAJA might have applicability to NRC proceedings relating to modification, suspension, or revocation of reactor licenses and that agency regulations governing awards authorized by the EAJA should be in place for use in the event the need for them arose. From comments received on the proposed rule and upon further consideration by the NRC's Office of the General Counsel, serious doubt developed as to the need for these regulations. A significant consideration in this regard was the impact of a statutory bar against the use of funds appropriated to the NRC "to pay the expenses of, or otherwise compensate, parties intervening in regulatory or adjudicatory proceedings." This provision first appeared in the Energy and Water Development Appropriations Act of 1981 (Pub. L. No. 966–367, Sec. 502, 94 Stat. 1344, 1345 (1980)), and has continued to appear each year in subsequent NRC appropriation acts.

The question of the NRC's authority to compensate intervenors under the EAJA for participation in agency adjudications was not judicially answered until 1986 by a decision of the United States Court of Appeals for the District of Columbia Circuit in *Business and Professional People for the Public Interest* v. *NRC*, 793 F.2d 1366 (D.C. Cir. 1986). The court held that NRC's 1982 Appropriations Act, section 502, precluded EAJA awards from the agency to parties intervening in NRC adjudications. At about the time of the Court's decision, the ACUS issued its revised model rule (May 6, 1986; 51 FR 16665) (codified at 1 CFR part 315). That action followed the expiration of the original EAJA on September 30, 1984 and its reenactment, with amendments, on August 5, 1985 (Pub. L. No. 99–80, 99 Stat. 193 (1985)).

Resolution of the funding question, eliminating intervenors as potential claimants for awards, largely removed the earlier perceived need for EAJA regulations. In addition, the Office of the General Counsel began to have serious reservations whether any NRC proceeding "suspending, revoking, or amending" a license, particularly that for a nuclear reactor, was a proceeding "required by statute to be determined on the record." In 1983, a materials license amendment proceeding had been judicially held as not being required by statute; i.e., section 189(a) of the Atomic Energy Act, to be conducted "on the record." *West Chicago, Ill.* v. *U.S. Nuclear Regulatory Commission*, 701 F.2d 632, 641–45 (1983). There, the court had declined to read section 189(a) as requiring "on-the-record" hearing, in the absence of clear Congressional "intent to trigger the formal on-the-record hearing provisions of the APA." *Id.* at 641. Because a similar observation appeared applicable as well to reactor license proceedings, it appeared that no license proceeding of any kind conducted by the agency was covered by the EAJA. Later, judicial decisions such as *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843 (1984) and *Chemical Waste Management Inc.* v. *Environmental Protection Agency*, 873 F.2d 1477, 1482 (D.C. Cir. 1989) gave greater confidence that an interpretation of section 189(a) to that effect would find judicial support. (The Commission since has gone on record that it interprets section 189a as not requiring formal hearings in reactor licensing proceedings. *En Banc* Brief for Respondents dated August 30, 1991 (filed in the U.S. Court of Appeals for the District of Columbia Circuit, No. 89–1381, *Nuclear Information and Resource Service* v. *NRC*, at pp. 32–38). Consequently, no further action was taken on the proposed EAJA rule.

With the enactment of the Inspector General Act Amendments of 1988 (Pub. L. 100–504, 1102 Stat. 2515) establishing, *inter alia*, an Office of the Inspector General in the NRC, the NRC became subject to the Program Fraud Civil Remedies Act (5 U.S.C. Appendix 3). That act at section 3803(f) specifically requires any hearing under it to be "conducted by the presiding officer on the record." Those hearings are therefore covered by the EAJA. Following notice and comment rulemaking, the NRC published its final rule under the Program Fraud Civil Remedies Act which became effective on October 18, 1991. (September 18, 1991; 56 FR 47132.) As a result, there is good reason for the Commission to proceed with implementation of the EAJA.

Because of the length of time that has gone by since the October 28, 1981 proposed rule was issued, the Commission is withdrawing it and replacing it with the rule that is now being proposed. This new proposed rule is essentially similar to the final model rule suggested by the ACUS for agency adoption. (May 6, 1986; 51 FR 16665.) Any differences in wording are generally minor, consisting mainly of the substitution of words such as "this agency" in the model rule to "the Commission" in this proposed rule. In § 12.103, relating to NRC proceedings that are covered by the EAJA, only one type of proceeding is listed: proceedings under the Program Fraud Civil Remedies Act. Whether any other type of agency proceeding is covered is left for case-by-case determination. Under the final ACUS model as well as the proposed rule, failure to identify a particular type of proceeding as being covered does not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA.

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22(c). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

**Paperwork Reduction Act Statement**

The collection of information this proposed rule contains is exempt from the Paperwork Reduction Act of 1980 (44 U.S.C. 3518(c)(1)) because the information is being gathered in support of a civil action to which the United States or an agency or an official of the United States is a party (i.e., a court action) or an administrative action or investigation involving an agency against a specific individual or entity (e.g., an agency hearing) (44 U.S.C. 3518(c)(1)(B)).

**Regulatory Analysis**

The EAJA provides that individuals and businesses that meet certain net worth and other requirements and prevail over the NRC in an adversary adjudication in which the NRC's position is not substantially justified may be awarded fees and expenses incurred in connection with the proceeding. Recent events, most notably the NRC's publication of a final rule implementing the Program Fraud Civil Remedies Act and actions thereunder, suggest that it is necessary for the NRC to have in place procedures to govern the receipt and determination of applications for EAJA fees. Codifying these procedures is preferable to the only other alternative, which would be to establish procedures on a case-by-

case basis. Moreover, the procedures adopted mirror in all important respects the model rule promulgated by the ACUS as an aid to facilitating the statutorily mandated process of consultation between the Chairman of the ACUS and the agency with respect to EAJA implementing procedures. See 5 U.S.C. 504(c)(1). These procedures are preferable to other procedural requirements that might be imposed. The foregoing discussion constitutes the regulatory analysis for this final rule.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. The rule merely will establish a procedural framework for the submission and determination of applications for fees and expenses incurred in participating in NRC adjudications and will not itself impose significant economic benefits or burdens.

**Backfit Analysis**

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

**List of Subjects in 10 CFR Part 12**

Adversary adjudications, Award, Equal Access to Justice Act, Final disposition, Net worth, Party.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt a new 10 CFR part 12.

1. A new part 12 is added to 10 CFR chapter I to read as follows:

## PART 12—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

**Subpart A—General Provisions**

Sec.

12.101 Purpose.
12.102 When the EAJA applies.
12.103 Proceedings covered.
12.104 Eligibility of applicants.
12.105 Standards for awards.
12.106 Allowable fees and expenses.
12.107 Rulemaking on maximum rates for attorney fees.
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12.109 Decisionmaking authority.

**Subpart B—Information Required From Applicants**

12.201 Contents of application.
12.202 Net worth exhibit.
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**Subpart C—Procedures for Considering Applications**

12.301 Filing and service of documents.
12.302 Answer to application.
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12.305 Settlement.
12.306 Further proceedings.
12.307 Decision.
12.308 Agency review.
12.309 Judicial review
12.310 Payment of award.

**Authority:** Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1); Pub. L. 99–80, 99 Stat. 183.

**Subpart A—General Provisions**

**§ 12.101 Purpose.**

The Equal Access to Justice Act, 5 U.S.C. 504 (EAJA), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Nuclear Regulatory Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The regulations in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

**§ 12.102 When the EAJA applies.**

The EAJA applies to any adversary adjudication pending or commenced before the Commission on or after August 5, 1985.

**§ 12.103 Proceedings covered.**

(a)(1) The EAJA applies to adversary adjudications conducted by the Commission. These are:

(i) Adjudications under 5 U.S.C. 554 in which the position of the NRC or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding; and

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals, as provided in section 8 of that Act (41 U.S.C. 607).

(2) Any proceeding in which the NRC may prescribe a lawful present or future rate is not covered by the EAJA. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise "adversary adjudications." Proceedings under the Program Fraud Civil Remedies Act (31 U.S.C. 3801–12), are covered by the EAJA.

(b) The NRC's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

**§ 12.104 Eligibility of applicants.**

(a) To be eligible for an award of attorney fees and other expenses under the EAJA, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the

applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

**§ 12.105 Standards for awards.**

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding or a significant and discrete substantive portion of the proceeding, unless the position of the Commission over which the applicant has prevailed was substantially justified. The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the Commission upon which the adversary adjudication is based. The burden of proof that an award should not be made to a prevailing applicant because the Commission's position was substantially justified is on the Commission counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

**§ 12.106 Allowable fees and expenses.**

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under the regulations in this part may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for these expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Other factors that bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of applicant's case.

**§ 12.107 Rulemaking on maximum rates for attorney fees.**

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some, or all of the types of proceedings covered by this part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees, in accordance with the requirements of 10 CFR 2.802. The petition should identify the rate the petitioner believes the Commission should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Commission will act on the petition in accordance with 10 CFR 2.803.

**§ 12.108 Awards against other agencies.**

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Commission and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

**§ 12.109 Decisionmaking authority.**

Unless otherwise ordered by the Commission in a particular proceeding, each application under this part shall be assigned for decision to the official or decisionmaking body that entered the decision in the adversary adjudication. That official or decisionmaking body is referred to in this part as the "adjudicative officer."

## Subpart B—Information Required From Applicants

**§ 12.201 Contents of application.**

(a) An application for an award of fees and expenses under the EAJA shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agency that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) The applicant attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under this section; or

(2) The applicant states that it is a cooperative association as defined in

section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

**§ 12.202 Net worth exhibit.**

(a) Each applicant, except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 12.104(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure, may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act, 10 CFR part 9, subpart A.

**§ 12.203 Documentation of fees and expenses.**

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed, pursuant to § 12.306 of this part.

**§ 12.204 When an application may be filed.**

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Commission's final disposition of the proceeding.

(b) For purposes of the regulations in this part, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the NRC and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

## Subpart C—Procedures for Considering Applications

**§ 12.301 Filing and service of documents.**

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 12.202(b) for confidential financial information.

**§ 12.302 Answer to application.**

(a) Within 30 days after service of an application, counsel representing the NRC against which an award is sought may file an answer to the application. Unless the NRC counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the NRC counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by the NRC counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the NRC counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, the NRC counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 12.306.

**§ 12.303 Reply.**

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 12.306.

**§ 12.304 Comments by other parties.**

Any party to a proceeding other than the applicant and the NRC counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires participation in order to permit full exploration of matters raised in the comments.

**§ 12.306 Settlement.**

The applicant and the NRC counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the NRC's standard settlement procedure. If a prevailing party and the NRC's counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

**§ 12.308 Further proceedings.**

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the NRC counsel, or on the adjudicative officer's own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

**§ 12.307 Decision.**

The adjudicative officer shall promptly issue an initial decision on the application after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the NRC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

**§ 12.308 Agency review.**

Either the applicant or the NRC counsel may seek review of the initial decision on the fee application, or the NRC may decide to review the decision on its own initiative, in accordance with the Commission's regular review procedures set out in 10 CFR 2.786. If neither the applicant nor NRC counsel seeks review and the Commission does not take review on its own initiative, the initial decision on the application shall become a final decision of the NRC forty (40) days after it is issued. Whether to review a decision is a matter within the discretion of the Commission. If review is taken, the Commission will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

**§ 12.309 Judicial review.**

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

**§ 12.310 Payment of award.**

An applicant seeking payment of an award shall submit to the appropriate official of the paying agency a copy of the Commission's final decision granting the award, accompanied by a certification that the applicant will not seek review of the decision in the United States courts. Where the award is granted against the Commission, the applicant shall make the submission to the Director, Division of Accounting and Finance, Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The NRC will pay the amount awarded to the applicant within 60 days.

Dated at Rockville, Maryland, this 27th day of July, 1993.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 93-18348 Filed 7-30-93; 8:45 am]

BILLING CODE 7590-01-P

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 93-NM-70-AD]**

**Airworthiness Directives; Corporate Jets, Limited (Formerly British Aerospace), Model BAe 125-1000A Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Corporate Jets, Limited, Model BAe 125-1000A series airplanes. This proposal would require a visual inspection to detect chafing or other damage of the oxygen pipe located next to the nose wheel steering control chain, and to ensure minimum clearance between the pipe and chain; and reposition or replacement of damaged parts. This proposal is prompted by reports of chafing between the nose wheel steering control chain and the adjacent oxygen pipe. The actions specified by the proposed AD are intended to prevent chafing or other damage of the passenger oxygen pipe, which could result in a fire and/or loss of emergency oxygen for the passengers.

**DATES:** Comments must be received by September 27, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-70-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–70–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–70–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Corporate Jets, Limited, Model BAe 125–1000A series airplanes. The CAA advises that recent reports have been received of chafing between the nose wheel steering control chain and the adjacent oxygen pipe located inside the left-hand cockpit console on two in-service Model BAe 125–1000A series airplanes. This chafing has been attributed to inadequate clearance between the chain and pipe. Chafing or other damage to the oxygen pipe could result in a fire and/or loss of emergency oxygen for the passengers.

Corporate Jets, Limited, has issued Service Bulletin S.B. 35–36, dated January 7, 1993, that describes procedures for performing a one-time visual inspection to detect chafing or other damage of the oxygen pipe located next to the nose wheel steering control chain inside the left-hand cockpit console and to ensure that at least 0.25 inch minimum clearance exists between the pipe and the chain. It also contains instructions for repositioning or replacing damaged parts. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time visual inspection to detect chafing or other damage of the oxygen pipe located next to the nose wheel steering control chain inside the left-hand cockpit console and to ensure that at least 0.25 inch minimum clearance exists between the pipe and the chain, and reposition or replacement of damaged parts. Oxygen pipes having clearance of less than 0.25 inches that are not chafed or otherwise damaged would be required to be repositioned prior to further flight. Chafed or otherwise damaged oxygen pipe assemblies would be required to be replaced with new parts prior to further flight. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $660, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Corporate Jets, Limited (Formerly British Aerospace):** Docket 93–NM–70–AD.

*Applicability:* Model BAe 125–1000A series airplanes, having serial numbers 258151, 258159, and 259003 through 259027, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing or other damage of the passenger oxygen pipe and a potential fire and/or loss of emergency oxygen for the passengers, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to detect chafing or other damage of the oxygen pipe located next to the nose wheel steering control chain within the left-hand cockpit console and to ensure that a minimum of 0.25 inch clearance exists between the

oxygen pipe and the nose wheel steering control chain, in accordance with Corporate Jets, Limited, Service Bulletin S.B. 35–36, dated January 7, 1993.

(1) If clearance of 0.25 inch or greater exists, accomplish the requirements of paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) If no chafing or other damage is detected: No further action is required by this AD.

(ii) If any chafing or other damage is detected: Prior to further flight, replace the currently-installed oxygen pipe with a new oxygen pipe, ensure that a minimum clearance of 0.25 inch or greater exists, and repeat the visual inspection in accordance with the service bulletin.

(2) If clearance of less than 0.25 inch exists, accomplish the requirements of paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) If no chafing or other damage is detected: Within 30 days after accomplishing the visual inspection, reposition the oxygen pipe to obtain minimum clearance of at least 0.25 inch and maximum ovality not to exceed 0.03 inch, in accordance with the service bulletin; and if a minimum clearance of 0.25 inch cannot be achieved utilizing the methods described in the service bulletin, reposition in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(ii) If any chafing or other damage is detected: Prior to further flight, replace the currently-installed oxygen pipe with a new oxygen pipe, ensure that minimum clearance of 0.25 inch or greater exists, and repeat the visual inspection in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 26, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18341 Filed 7–30–93; 8:45 am]

BILLING CODE 4910–13–P

## Office of the Secretary

## 14 CFR Part 255

[Docket No. 48808]

## Computer Reservations System (CRS) Regulations (Part 255)

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Request for comments, petition for rulemaking on rules governing computer reservations systems.

**SUMMARY:** The Department is inviting interested persons to comment on a petition for rulemaking filed by the American Society of Travel Agents (ASTA) that asks the Department to amend its rules on computer reservations systems (CRSs). ASTA asks the Department to amend its CRS rules (14 CFR part 255) to include a prohibition against the inclusion of lost booking fees in the damages recoverable by a CRS vendor when a travel agency breaches its contract for CRS services before the end of the contract's term.

**DATES:** Comments must be submitted on or before October 1, 1993. Reply comments must be submitted on or before November 1, 1993.

**ADDRESSES:** Comments must be filed in room 4107, Docket 48808, U.S. Department of Transportation, 400 7th St. SW., Washington , DC 20590. Late filed comments will be considered to the extent possible. To facilitate consideration of comments, each commentor should file twelve copies of its comments.

**FOR FURTHER INFORMATION CONTACT:** Thomas Ray, Office of the General Counsel, 400 Seventh St. S.W., Washington, D.C. 20590, (202) 366–4731.

**SUPPLEMENTARY INFORMATION:** Travel agencies, who sell the great majority of all airline tickets in the United States, largely rely on computer reservations systems to learn what airline services and fares are available for their customers, to make bookings, and to issue tickets. Each of the CRSs operating in the United States is owned by one or more airlines or airline holding companies. The nature of the CRS and the airline businesses gives the owners of the CRSs ("the vendors") some power to distort airline competition and to deny travel agency customers accurate information on airline services. The Civil Aeronautics Board, the agency that formerly administered the economic regulatory provisions of the Federal Aviation Act ("the Act"), therefore adopted rules regulating CRS operations under section 411 of the Act, 49 U.S.C. 1381. After reexamining the need for rules, we readopted the Board's rules with changes designed to further protect airline competition. 14 CFR part 255, adopted by 57 FR 43780 (September 22, 1992).

One of the major issues in our rulemaking concerned the contractual restrictions imposed on travel agencies using a CRS ("subscribers") by CRS vendors that can restrict the subscribers' ability to add or switch systems. We determined to prohibit certain subscriber contract clauses that appeared to unreasonably interfere with a travel agency's ability to use more than one system, but we determined not to adopt other proposals for regulating subscriber contracts, such as a proposed ban on productivity pricing.

A number of parties in the rulemaking had complained that vendors made it difficult for subscribers to switch systems before the end of the term of their CRS contract by making subscribers liable for onerous liquidated damages if they breached the contract. The liquidated damages formulas used by the vendors typically included an element for "lost booking fees". Booking fees—the fees paid by airlines and other travel suppliers whenever an agency uses a system to book a travel service—provide most of each vendor's CRS revenues. Lost booking fees are the amount of booking fees the vendor would have received if the subscriber had continued to use its system during the remaining term of the contract. In calculating lost booking fees the vendor typically assumed that the subscriber would have used its system for most of its bookings. The inclusion of lost booking fees in the damages due a vendor on a subscriber's breach of contract substantially increases the subscriber's liability. As a result, the inclusion of lost booking fees makes it much more costly for an agency to breach its CRS contract.

We determined not to adopt a prohibition against the inclusion of lost booking fees in liquidated damages. However, we stated that our rules were intended to give travel agencies the ability to use more than one system and that therefore no vendor should expect a subscriber to use its system for most of the agency's bookings during the term of the contract. No vendor could therefore reasonably expect that a subscriber contract would produce a substantial flow of booking fees. As a result, we concluded that the contract law principles governing liquidated damages would make unenforceable any contract that required a subscriber to pay damages based on lost booking fees. 57 FR 43827–43828.

ASTA, the nation's largest travel agency trade association, has filed a petition for rulemaking to amend our rules to expressly prohibit the inclusion of lost booking fees in liquidated damages clauses. ASTA alleges that American Airlines' SABRE system is continuing to use such contract clauses and is claiming it may do so because our rules did not prohibit them. ASTA proposes that § 255.8 of our rules be amended by adding the following subsection:

> No subscriber contract shall contain any provision requiring the subscriber to pay damages in a liquidated amount when the effect of the provision is to recover from the subscriber booking fees that would have been charged to participating airlines by a system.

Two vendors, Worldspan and System One Direct Access, filed answers supporting ASTA's petition. American, on the other hand, filed an answer opposing the petition. American asserts that its contract provision is merely a means of enforcing its productivity pricing formula, that the Department determined in the rulemaking that productivity pricing was a permissible form of pricing, and that the American contract provision as a practical matter cannot deter an agency from using a different system.

The Department invites other persons to file comments on ASTA's petition. After reviewing the comments the Department will consider whether any amendment to our rules should be proposed.

Issued in Washington, DC, on July 27, 1993.

**Patrick V. Murphy,**

*Acting Assistant Secretary of Transportation for Policy and International Affairs.*

[FR Doc. 93–18332 Filed 7–30–93; 8:45 am]

BILLING CODE 4910-62-P

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## DEPARTMENT OF COMMERCE

### Technology Administration

### 15 CFR Part 295

[Docket No. 930242–3042]

RIN 0693–AA83

### Advanced Technology Program

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The National Institute of Standards and Technology requests comments on the proposed revisions contained in this notice to the regulations which implement the Advanced Technology Program (ATP). A number of the proposed revisions are the result of enactment of the American Technology Preeminence Act of 1991, which changed the statutory authority for ATP. Additions to the regulations required by the Act include provisions concerning: Participation by foreign companies in ATP; the establishment of a patent policy different from the government-wide policy set out by the Bayh-Dole Act; and a new requirement that "joint research and development ventures" be industry-led. Further, requirement for royalty-sharing by ATP recipients with the Federal government for inventions funded under ATP have been repealed by the Act, and are thus proposed to be removed from the regulations. Similarly, ATP authority to provide direct funding to independent research organizations has been repealed, and therefore NIST has no other than to make the proposed revisions to the regulations. Also, changes not required by the Act are proposed, including changes to simplify and clarify the selection criteria. Finally, a number of proposals are made to streamline the internal operations of ATP, including the selection process.

**DATES:** Comments on the proposed program must be received no later than September 1, 1993.

**ADDRESSES:** Comments on the proposed program must be submitted in writing to: Advanced Technology Program Rule Comments, Technology Administration, U.S. Department of Commerce, room A402 Administration Building, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** To receive additional program information, contact George A. Uriano at (301) 975–5187. For additional information on revisions to the intellectual property provisions of the regulations, contact Michael R. Rubin at (301) 975–2803.

**SUPPLEMENTARY INFORMATION:** The National Institute of Standards and Technology requests comments regarding proposed changes to the operating procedures of the Advanced Technology Program found at part 295 of title 15 of the Code of Federal Regulations. The Advanced Technology Program assists United States businesses to carry out research and development on pre-competitive generic technologies. The program focuses on improving the competitive position of the United States and its businesses by accelerating the development of pre-competitive generic technologies that have significant potential to accelerate economic growth, and raise productivity. ATP enters into cooperative agreements with United States joint research and development ventures and United States businesses, especially small businesses, and involves Federal laboratories in the program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980.

Changes proposed to part 295 include revisions on the following topics:

- The eligibility of foreign firms to participate in ATP is addressed in a new § 295.3 of the regulations, and a related definition of "United States owned company" is added in § 295.2(r). These revisions follow the requirements of section 201(c)(6) of the American Technology Preeminence Act of 1991 (15 U.S.C. 278n(d)(9)).
- The establishment of a patent policy different from the government-wide policy set out by the Bayh-Dole Act is set out at § 295.8(a). These revisions follow the requirements of section 201(c)(6) of the American Technology Preeminence Act of 1991 (15 U.S.C. 278n(d)(11)). That statute requires that title to inventions made in whole or part with program funds reside with for-profit companies that have been incorporated in the United States. Entities that are not for-profit organizations incorporated in this country are not eligible to obtain title to inventions made under the program. NIST is interested in comments on the draft regulation, and also upon the need for possible changes to the underlying statute.
- A new requirement that "joint research and development ventures" be industry-led, set out at §§ 295.2(i) and 295.21, and the repeal of ATP authority to provide direct funding to independent research organizations, set out at § 295.30. These revisions follow the requirements of section 201(c)(2) and section 201(c)(4), respectively, of the American Technology Preeminence Act of 1991 (15 U.S.C. 278n (b)(1) and (b)(2)).
- Requirements for royalty-sharing by ATP recipients with the Federal government for inventions funded under ATP have been repealed, and are thus proposed to be removed from existing § 295.7(c) of the regulations. This revision follows the requirements of section 201(c)(6) of the American Technology Preeminence Act of 1991.
- Finally, changes not required by the Act are proposed, including changes to the selection criteria, and a number of proposals are made to streamline the internal operations of ATP, including the selection process. These changes

particularly include revisions to the remaining definitions in § 295.2, changes to the selection process described in §§ 295.4 and 295.5, changes to the selection criteria as set out in § 295.6, and changes to program administration found in §§ 295.7 and 295.14.

**Request for Comments**

The National Institute of Standards and Technology requests comments on the draft revisions to regulations found at 15 CFR part 295 implementing the Advanced Technology Program which are included in this notice.

Persons interested in commenting on the proposed program should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying in the Commerce Department's Central Reference and Records Inspection Facility, Herbert Hoover Building, room 6020, 14th Street between E Street and Constitution Avenue NW., Washington, DC 20230.

**Classification**

This document is not a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because there are only a small number of awardees and thus only a small number of awards will be given to small businesses. The program is entirely voluntary for the participants that seek funding. It is not a major federal action requiring an environmental assessment under the National Environment Policy Act. This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act approved by OMB under control number 0693–0009. The Advanced Technology Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program. This notice does not contain policies with Federalism implications sufficient to warrant preperation of a Federalism assessment under Executive Order 12612.

**List of Subjects in 15 CFR Part 295**

Inventions and patents, Laboratories, Research, Science and technology, Scientists.

Dated: July 26, 1993.

**Arati Prabhakar,**

*Director.*

For reasons set forth in the preamble, it is proposed that title 15, part 295 of the Code of Federal Regulations be amended as follows:

## PART 295—ADVANCED TECHNOLOGY PROGRAM

1. The authority citation for part 295 is revised to read as follows:

**Authority:** 15 U.S.C. 278n.

2. Section 295.1 is revised to read as follows:

**§ 295.1 Purpose.**

(a) The purpose of the Advanced Technology Program (ATP) is to assist United States businesses to carry out research and development on pre-competitive generic technologies. These technologies are: Enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications; and high value, because when applied, they offer significant benefits to the U.S. economy. Precompetitive technology is defined in § 295.2(n) and generic technology is defined in § 295.2(e).

(b) In the case of joint research and development ventures involving potential competitors, the willingness of firms to commit significant amounts of corporate resources to the venture is evidence that the proposed research and development is pre-competitive. For joint ventures that involve firms and their customers or suppliers or for single firms not proposing cooperative research and development, a quantified description of the expected broad applicability of the technology and adequate assurances that the technology being developed will be utilized widely can provide evidence that the proposed research and development is pre-competitive.

(c) This part prescribes policies and procedures for the award of cooperative agreements under the Advanced Technology Program in order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, these rules address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.

3. Section 295.2 is amended by revising paragraph (a), redesignating paragraph (b) as paragraph (e), redesignating paragraph (c) as paragraph (h), redesignating paragraphs (d) through (i) as paragraphs (k) through (p), and adding new paragraphs (b), (c), (d), (f), (g), (i), and (j) to read as follows:

**§ 295.2 Definitions.**

(a) For the purposes of the ATP, the term "award" means Federal financial assistance made under a grant or cooperative agreement.

(b) The term *cooperative agreement* refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, or services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(c) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel assigned to the ATP project and associated normal fringe benefits such as medical insurance.

Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project.

(d) The term *foreign-owned company* means a company other than a United

States-owned company as defined in § 295.2(r).

* * * * *

(f) The term *grant* means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter of property of services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(g) The term *independent research organization* (IRO) means a nonprofit research and development corporation or association organized under the laws of any state for the purpose of carrying out research and development on behalf of other organizations.

* * * * *

(i) The term *industry-led joint research and development venture* means a joint research and development venture that consists of at least two separately-owned businesses that contribute matching funds to the project, perform research and development in the project, and control the venture's membership, research directions and funding priorities. The venture may include additional companies, independent research organizations, universities, and/or government laboratories which may or may not contribute funds to the project and perform research and development. An independent research organization may perform administrative tasks on behalf of an industry-led joint research and development venture, such as handling receipts and disbursements of funds and making antitrust filings.

(j) The term *intellectual property* means an invention patentable under title 35, United States Code, or any patent on such an invention.

* * * * *

4. The newly designated § 295.2(h) is revised to read as follows:

**§ 295.2 Definitions.**

* * * * *

(h) The term *indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting.

5. The newly designated § 295.2(k)(1)(v) is revised and (k)(1)(vi) is added, to read as follows:

**§ 295.2 Definitions**

* * * * *

(k)(1) * * *

(v) The production of any product, process, or service; or

(vi) Any combination of the purposes specified in paragraphs (k)(1) (i), (ii), (iii), (iv), (v), and (vi) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in paragraph (k)(2) of this section.

* * * * *

6. The newly designated § 295.2(l) is revised to read as follows:

**§ 295.2 Definitions.**

* * * * *

(l) The term *matching funds* includes the following: Dollar contributions from state, county, city, company, or other non-Federal sources; in-kind contributions of full-time personnel (i.e., persons employed full time by the joint venture or one of the joint venture members); in-kind contributions of a prorata share of part-time personnel that the Program deems essential to carrying out the proposed experimental work program and who devote at least 50% of their time to the program; and in-kind value of equipment that the Program deems essential to carrying out the proposed experimental work program, which may include either the purchase cost of new equipment or the depreciated value of previously purchased equipment. The depreciation method to be used for the matching fund determination shall be the internal depreciation accounting method used by the applicant for that equipment prior to the award. The value of equipment will be further pro-rated according to the share of total use dedicated to carrying out the proposed ATP work program. The total value of equipment expenditures allowable under the match may be applied in the award year expended or pro-rated over the duration of award years. The total in-kind value of equipment expenditures can not exceed 30% of the applicant's total annual share of matching funds. The total in-kind value of part-time personnel can not exceed 20% of the applicant's total annual share of matching funds.

* * * * *

7. The newly designated § 295.2(p) is revised to read as follows:

**§ 295.2 Definitions.**

* * * * *

(p) The term *Secretary* means the Secretary of Commerce or the Secretary's designee.

8. Section 295.2 is amended by adding paragraphs (q) through (r) to read as follows:

**§ 295.2 Definitions.**

* * * * *

(q) The term *small business* means a business that is independently owned and operated, is organized for profit, and is not dominant in the field of operation in which it is proposing, and meets the other requirements found in 13 CFR part 121.

(r) The term *United States-owned company* means a for-profit organization, including sole proprietors, partnerships, or corporations, that has a majority ownership or control by individuals who are citizens of the United States.

9. Sections 295.3 through 295.10 are redesignated as §§ 295.6 through 295.13, and §§ 295.3 through 295.5 are added to read as follows:

**§ 295.3 Eligibility of United States- and foreign-owned businesses.**

(a) A company shall be eligible to receive an award from the Program only if:

(1) The Program finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the

competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(2) Either the company is a United States-owned company, or the Program finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Program; affords the United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(b) The Program may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under the Program if the Program determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.

**§ 295.4 The selection process.**

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. In the first step, called "preliminary screening," proposals are eliminated that do not meet the requirements of this part or the program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage is that the proposal: is deemed to have serious deficiencies in either the technical or business plan; or does not meet the definition of pre-competitive, generic technology; or, is not industry-led; or is significantly overpriced or underpriced given the scope of the work; or does not meet the requirements set out in the Notice of Availability of Funds issued pursuant to § 295.7; or in the case of joint ventures, requests more than a minority share of funding. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and if not, may reject the proposal or forward it to a later stage in the review process based upon the earlier review.

(b) In the second step, referred to as the "technical and business review," proposals are evaluated under the criteria found in § 295.6. Proposals are rated as "not recommended" or "recommended." Proposals must have high scientific and technical merit to be recommended. Only those proposals rated as "recommended" are considered further. These applicants are referred to as "semifinalists."

(c) In the third step, referred to as "selection of finalists," the Program prepares a final scoring and ranking of semifinalist proposals. During this step, the semifinalist proposers may be asked to make oral presentations on their proposals at NIST, and in some cases site visits may be required. Subject to the provisions of § 295.8, a list of ranked finalists is submitted to the selecting official.

(d) In the final step, referred to as "selection of awardees," the Selecting Official selects funding recipients from among the finalists, based upon the rank order of the applications on the basis of all selection criteria (§ 295.6); assuring an appropriate distribution of funds among technologies and activities; and the availability of funds. The Program reserves the right to withhold awards in any case where a search of Federal records discloses information that raises a reasonable doubt as to the responsibility of the applicant. The decision of the Selecting Official is final.

(e) If a joint venture is ranked as a finalist, but the Program determines that the joint venture contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being completed successfully, the Program may inform the applicant of the deficiencies and enter into negotiations with the applicant in an effort to remedy the deficiencies. If appropriate, funding up to 10 percent of the amount originally requested by the applicant may be awarded by the Program to the applicant to assist in overcoming the organizational deficiencies. If the Program determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the applicant to that applicant.

(f) NIST reserves that right to negotiate with applicants selected to receive awards the cost and scope of the proposed work, e.g., to add or delete a task to improve the probability of success.

**§ 295.5 Use of abbreviated proposals in the selection process.**

To reduce proposal preparation costs incurred by applicants and to make the selection process more efficient, NIST may use a preliminary qualification process based on abbreviated proposals. Announcements requesting abbreviated proposals will be published as indicated in § 295.7, seeking proposals that address all of the selection criteria, but in considerably less detail than full proposals. The Program will review the abbreviated proposals and select those that best meet the selection criteria. Submitters of abbreviated proposals will be notified in writing whether their proposals are recommended for full proposal, or, not recommended for full proposal. Those whose proposals are recommended for full proposal submission will be invited to prepare and submit full proposals. Those not invited to submit proposals may nonetheless elect to do so, and will have an equal opportunity for selection. When the full proposals are received, the review and selection process will continue as described in § 295.4.

10. Newly designated § 295.6 is revised to read as follows:

**§ 295.6 Criteria for selection.**

The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are listed below. No proposal will be funded unless the Program determines via the technical review that it has high scientific and technical merit, no matter how meritorious the proposal might be with respect to the other selection criteria.

(a) *Scientific and technical merit of the proposal* (30 percent).

(1) Quality, innovativeness, and cost-effectiveness of the proposed technical program, i.e. uniqueness with respect to current industry practice. Applicants shall compare and contrast their approaches with those taken by other domestic and foreign companies working in the same field.

(2) Appropriateness of the technical risk and feasibility of the project; that is, is there a sufficient knowledge base to justify the level of technical risk involved, and is the risk commensurate with the potential payoff. Projects should press the state of the art while still demonstrating feasibility.

(3) Coherency of technical plan and clarity of vision of technical objectives, and the degree the technical plan meets Program goals.

(4) Adequacy of systems-integration and multi-disciplinary planning including integration of appropriate downstream or upstream production, manufacturing, quality assurance, and customer service requirements.

(5) Potential broad impact on U.S. technology and knowledge base.

(b) *Potential broad-based economic benefits of the proposal* (20 percent).

(1) Potential to improve U.S. economic growth.

(2) Timeliness of proposal; that is, the potential project results will not occur too late or too early to be competitively useful.

(3) Degree to which ATP support is essential for the achievement of the broad-based benefits from the proposed R&D and appropriateness of proposed R&D for ATP support. This factor takes into consideration the likelihood of the results being achieved in the same general time frame by the applicant or by other U.S. researchers without ATP support, and whether other Federal agencies or other sponsors are already funding very similar kinds of work.

(4) Cost-effectiveness of proposal.

(c) *Adequacy of plans for eventual commercialization* (20 percent).

(1) Evidence that if the project is successful, the applicants will pursue further development of the technology toward commercial application, either through their own organization(s) or through others.

(2) Degree to which proposal identifies potential applications of the technology and provides evidence that the applicant has credible plans to assure prompt and widespread use of the technology if the R&D is successful and to ensure adequate protection of the intellectual property by the participant(s) and, as appropriate, by other U.S. businesses.

(d) *Experience and qualifications of the proposing organization* (15 percent).

(1) Adequacy of proposer's facilities, equipment, and other technical, financial, and administrative resources to accomplish the proposed program objectives. This factor includes consideration of resources possessed by subcontractors to the applicant or other collaborators.

(2) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome barriers to meeting project objectives.

(3) Past performance of the company or joint venture members in carrying out similar kinds of efforts successfully, including technology application. Consideration of this factor in the case of a start-up company or new joint venture, will take into account the past performance of the key people in carrying out similar kinds of efforts.

(e) *Proposer's level of commitment and organizational structure* (15 percent).

(1) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and cost-sharing. Extent to which the proposer assigns the company's best people to the project. Priority given to this work vis-a-vis other projects.

(2) For joint ventures, the extent to which the joint venture has been structured (vertical integration, horizontal integration, or both) so as to include sufficient participants possessing all of the skills required to complete successfully the proposed work.

(3) For joint ventures, appropriate participation by small businesses. "Small business" is defined in § 295.2(q).

(4) Appropriateness of subcontractor/supplier/collaborator participation and relationships (where applicable).

(5) Clarity and appropriateness of management plan. Extent to which the proposers have clarified who is responsible for each task, and the chain of command. Extent to which those responsible for the work have adequate authority and access to higher level management.

11. Newly designated § 295.7 is revised to read as follows:

**§ 295.7 Notice of availability of funds.**

(a) The Program shall publish at least annually a **Federal Register** notice inviting interested parties to submit proposals, and may more frequently publish invitations for proposals in the Commerce Business Daily, based upon the annual notice. Potential applicants must request a proposal preparation kit from the Program. Applications will only be considered for funding when submitted in response to an invitation published in the **Federal Register**, or a related announcement in the Commerce Business Daily.

(b) All notices published in accord with § 295.7(a) shall include the amount of funds available, the approximate number of awards, types of awards, closing dates, the name, address and telephone number of the contact person, a requirement that proposals be submitted with a NIST Form 1262 (for single applicants, or NIST Form 1263 (for joint ventures), and any other appropriate guidance.

(c) Notices issued under § 295.7(a) shall also state that awards under the Program shall be subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards, and shall require that funds awarded by the Program under subpart C (single applicants) shall be used only for direct costs and not for indirect costs, profits, or management fees of the funding recipient. Notices shall also include the notification that section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan.

12. Newly designated § 295.8 is revised to read as follows:

**§ 295.8 Intellectual property rights; publication of research results.**

(a) (1) *Patent rights:* Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. The United States may reserve a non-exclusive, nontransferable, irrevocable paid-up license to practice or have practiced for or on behalf of the United States any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(2) *Patent procedures:* Each award by the Program will contain procedures regarding reporting of inventions by the funding recipient to the Program; determinations by the Program as to whether it will retain a governmental use license; march-in rights, and other matters.

(b) *Copyrights:* Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. The funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, perform publicly and display publicly, and for data other than computer software to distribute to the public by or on behalf of the Government.

(c) *Publication of research results:* The decision on whether or not to publish research results will be made by the funding recipient(s). Unpublished

intellectual property owned and developed by any business or joint research and development venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under § 295.8(b) shall not be considered a waiver of this requirement.

13. Section 295.14 is added to read as follows:

**§ 295.14 Special financial reporting requirements.**

Each award by the Program shall contain procedures regarding financial reporting to ensure that awards are being used in accordance with office of Management and Budget Circular A–122—"Cost Principles for Non-Profit Organizations", Federal Acquisition Regulation (FAR) Part 31—"Contract Cost Principles and Procedures", or other sound accounting practices to be specified in the Cooperative Agreement. Each award will be subject to an Attestation Engagement (i.e., providing assurance on representations of compliance with statutory, regulatory, and contractual requirements) or an audit in conjunction with the recipient's annual audit at least every two years. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these services. The Department of Commerce's Office of Inspector General (OIG) reserves the right to determine the time frame and/or level of service of financial audit reports that are to be delivered and to determine how the close-out audit is to be conducted. The use of an independent CPA firm does not preclude the OIG's right to conduct its own audit.

14. The heading for Subpart B is revised to read as follows:

**Subpart B—Assistance to United States Industry-Led Joint Research and Development Ventures**

15. Section 295.21 is revised to read as follows:

**§ 295.21 Qualification of applicants.**

(a) Assistance under this subpart is available to industry-led joint research and development ventures only, subject to the limitations set out in § 295.3 of these regulations. These ventures may include universities, independent research organizations, and governmental entities; however, the Program will not provide funding directly to any university or governmental organization.

(b) Applications for funding under this subpart may be submitted on behalf of an industry-led joint research and development venture by one or more businesses or independent research organizations that are members of the venture. Applications must, however, include letters of commitment from all proposed members of the venture, verifying the availability of matching funds, and authorizing the party or parties submitting the proposal to act on behalf of the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal.

16. Section 295.22 is revised to read as follows:

**§ 295.22 Limitations on assistance.**

An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

17. Section 295.24 is revised to read as follows:

**§ 295.24 Registration.**

Joint research and development ventures selected for funding must notify the Department of Justice or the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

18. The heading for subpart C is revised to read as follows:

**Subpart C—Assistance to Single-Applicant U.S. Businesses**

19. Section 295.30 is revised to read as follows:

**§ 295.30 Types of assistance available.**

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses.

20. Section 295.31 is revised to read as follows:

**§ 295.31 Qualification of applicants.**

Awards under this subpart will be available to all businesses, subject to the limitations set out in § 295.3 of these regulations. The Program will not directly provide funding under this subpart to any governmental entity, academic institution or independent research organization.

[FR Doc. 93–18262 Filed 7–30–93; 8:45 am]
BILLING CODE 3510–13–M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 36**

**[Docket No. RM93–22–000]**

**Provisions for Applications for Transmission Services Under Section 211 of the Federal Power Act**

Issued July 27, 1993.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to govern the procedures for applications for transmission services under section 211 of the Federal Power Act. Since the enactment of the Energy Policy Act of 1992, such applications have increased and the Commission expects to receive additional applications. The proposed regulations address the statutory provision requiring public notice of an application and notice to each affected State regulatory agency, electric utility, and Federal power marketing agency.

**DATES:** Written comments must be received by the Commission by September 1, 1993.

**ADDRESSES:** Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Hadas Z. Kozlowski, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Telephone: (202) 208–0231.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal document issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available

on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

## I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this notice of proposed rulemaking (NOPR) to address the notice requirement for applications for transmission services under section 211 of the Federal Power Act (FPA),[1] as amended by the Energy Policy Act of 1992 (Energy Policy Act).[2]

Since its enactment in 1978 as part of the Public Utility Regulatory Policies Act (PURPA),[3] section 211 has authorized the Commission to order transmission in certain circumstances. Section 211, as initially enacted, permitted electric utilities, geothermal power producers, and Federal power marketing agencies to apply to the Commission for an order requiring any other electric utility to provide transmission services to the applicant. Also as initially enacted, section 211 precluded the Commission from ordering transmission services unless such action would reasonably preserve existing competitive relationships. This requirement severely limited the situations in which the Commission could order transmission.[4] In fact, the Commission only received six applications pursuant to the original version of section 211, and only ordered transmission under section 211 on one occasion (pursuant to a settlement agreement among the parties.[5]

Congress enacted the Energy Policy Act on October 24, 1992. The Energy Policy Act revised section 211 of the FPA and expanded the Commission's authority to order transmission services. Under the revised section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would meet the requirements of amended section 212.[6] The Commission no longer must find that an order mandating transmission services would reasonably preserve existing competitive relationships. Section 211, as amended, also allows any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale to apply for an order requiring a "transmitting utility" to provide transmission services to the applicant.[7]

The Commission has already received four applications pursuant to section 211 since the passage of the Energy Policy Act, two-thirds as many as it received during the entire fourteen-year period during which the original version was in place. The Commission expects to receive more such applications.

Section 211(a) provides that upon receipt of an application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency, and after affording an opportunity for an evidentiary hearing, the Commission may issue an order on the application.[8] The Commission in this order is proposing regulations to govern this notice provision.

Accordingly, the Commission is proposing to amend chapter I, title 18 of the Code of Federal Regulations, to add part 36. The Commission seeks comments on this proposal.

## II. Public Reporting Burden

The proposed rule would establish the notice procedures to be followed when an application under section 211 is filed. The proposed rule would require the applicant to provide to the Commission a form of notice suitable for publication in the **Federal Register**, as well as to notify affected entities, as specified in section 211(a), of the filing.

The public reporting burden for the new information collection requirements contained in the proposed rule is estimated to average five hours per response. This estimate includes time for reviewing the requirements of the Commission's regulations, searching existing data sources, gathering and maintaining the necessary data, completing and reviewing the collection of information, and filing the required information.

The Commission estimates that approximately twenty applications for transmission services will be received each year. Accordingly, the public reporting burden is estimated to be no more than 100 hours.

Send comments regarding this burden estimate or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

## III. Discussion

The Commission is proposing to amend title 18 of the Code of Federal Regulations, by adding a part 36, to specify the notice procures for applications for transmission services under section 211 of the FPA.

The proposed rule would require an applicant for a transmission order under section 211 to include in its filing a form of notice suitable for publication in the **Federal Register**. The proposed rule would also require the applicant to give actual notice, pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure,[9] to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency.

As explained in the Conference Report on PURPA,[10] affected electric utilities under section 211(a) are the electric utilities that have made the arrangements for the sale of power and the utility being requested to transmit the power. Affected State regulatory authorities would be State regulatory authorities, as defined in FPA section 3(21), 16 U.S.C. 796(21), regulating the rates and charges of any affected electric utility. An affected Federal power marketing agency would be any such agency that operates in the service areas of any of the affected electric utilities.

## IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[11] requires that rulemakings contain either a description and analysis of the effect the proposed rule will have on small entities or a certification that the rule will not have a substantial

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[1] 16 U.S.C. 824j.

[2] Pub. L. 102–486, 106 Stat. 2776 (1992).

[3] 16 U.S.C. 2601 *et seq.*

[4] *See Southeastern Power Administration* versus *Kentucky Utilities Company*, Opinion No. 198, 25 FERC ¶ 61,204 (1983), *order on reh'g*, Opinion No. 198–A, 26 FERC ¶ 61,127 (1984).

[5] *See Central Power & Light Co., et al.*, 17 FERC ¶ 61,078 (1981).

[6] 16 U.S.C. 824k.

[7] Section 3(23) of the FPA, as amended by the Energy Policy Act, 16 U.S.C. 796(23), defines a "transmitting utility" as any electric utility, qualifying cogeneration facility, or Federal power marketing agency that owns or operates electric power transmission facilities that are used for the sale of electric energy at wholesale.

[8] This notice requirement in this provision of section 211 was not amended by the Energy Policy Act.

[9] 18 CFR 385.2010.

[10] *Joint Explanatory Statement of the Committee of Conference* (Conference Report), H.R. Rep. No. 95–1750, 95th Cong., 2d Sess. 91 (1978).

[11] 5 U.S.C. 601–612.

economic effect on a substantial number of small entities. Because the entities that would be required to comply with the proposed rule are electric utilities, Federal power marketing agencies, or persons generating electric energy for sale for resale that do not fall within the RFA's definition of small entities,[12] the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

### V. Environmental Statement

Commission regulations require the preparation of an environmental assessment or an environmental impact statement for any Commission action that may have a significant effect on the human environment.[13] The Commission has categorically excluded certain actions from this requirement as presumed not to have a significant effect on the human environment.[14] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantively change the effect of legislation or regulations being amended.[15] The proposed rule would not substantively alter the Commission's policy concerning applications under section 211. The proposed rule would merely specify the procedures that must be used to provide notice of such applications. Because the proposed rule is merely procedural, no environmental consideration is necessary.

### VI. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[16] require that OMB approve certain information and recordkeeping requirements imposed by an agency.

The information collection requirements in the proposed rule are contained in FERC–716A, "Notice of Application for Order Requesting Transmission Services". The Commission would use the data collected to carry out its responsibilities under Part II of the Federal Power Act.

The Commission is notifying OMB of this proposed rule. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of the proposed rule can also be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

### VII. Public Comment Procedures

The Commission invites comments on the proposed rule from interested persons. An original and 14 copies of written comments on the proposed rule must be filed with the Commission no later than September 1, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM93–22–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's public reference room at 941 North Capitol Street, NE., Washington, DC, 20426, during regular business hours.

### List of Subjects in 18 CFR Part 36

Administrative practice and procedure, Electric power.

In consideration of the foregoing, the Commission proposes to add part 36, chapter I, title 18 of the Code of Federal Regulations, as set forth below.

By direction of the Commission.

**Lois D. Cashell,**

*Secretary.*

1. Part 36 is added to read as follows:

## PART 36—RULES CONCERNING APPLICATIONS FOR TRANSMISSION SERVICE UNDER SECTION 211 OF THE FEDERAL POWER ACT

Sec.

36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

**Authority:** 5 U.S.C. 551–557; 16 U.S.C. 791a–825r; 31 U.S.C. 9701; 49 U.S.C. 1–27.

### § 36.1 Notice provisions applicable to applications for transmission services under section 211 of the Federal Power Act.

(a) *Additional filing requirements.* Any person filing an application pursuant to section 211 of the Federal Power Act, 16 U.S.C. 824j, shall include the following:

(1) A statement of public notice, suitable for publication in the Federal Register. The notice shall state the applicant's name, the date of the application, the names of the affected parties, and a brief description of the transmission services sought. The notice shall be in the following form:

United States of America Federal Energy Regulatory Commission

(Name of Applicant)—Docket No. TX–

Notice of Application for Order Requesting Transmission Services

On (date application was filed), (name and address of applicant) filed with the Federal Energy Regulatory Commission an application for transmission services pursuant to section 211 of the Federal Power Act.

[Brief description of the transmission services sought].

Any person desiring to be heard or objecting to the granting of the requested transmission services should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 209 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.209, 385.214). All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

and

(2) A sworn statement that actual notice, pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, § 385.2010 of this chapter, has been served on each affected electric utility, each affected State regulatory authority, and each affected Federal power marketing agency. Such statement shall enumerate each person so served.

(b) *Other filing requirements.* All other filing requirements of the Commission's Rules of Practice and Procedure remain in effect for applications under this section.

(c) *Definitions.* (1) *Affected electric utility* means any electric utility that has made the arrangements for the sale of electric energy to the applicant and any transmitting utility being requested to transmit the electric energy.

(2) *Affected State regulatory authority* means a State regulatory authority, as defined in section 3(21) of the Federal Power Act, 16 U.S.C. 796(21), regulating the rates and charges of any affected electric utility.

(3) *Affected Federal power marketing agency* means a Federal power marketing agency that operates in the

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[12] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a "small-business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632(a).

[13] Regulations Implementing National Environmental Policy Act, FERC Statutes & Regulations ¶ 30,783 (1987), 52 FR 47897 (Dec. 17, 1987).

[14] 18 CFR 380.4.

[15] 18 CFR 380.4(a)(2)(ii).

[16] 5 CFR 1320.13.

service area of any affected electric utility.

[FR Doc. 93–18361 Filed 7–30–93; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 552

### Air Brake Systems; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition for rulemaking submitted by the American Trucking Associations requesting that the agency delay the October 7, 1992 effective date of a final rule that amended Standard No. 121, Air Brake Systems, to include, among other things, a requirement that the pressure in a trailer's supply line be not less than 70 psi. Since the agency was unable to respond to the petition prior to the effective date, it treated the petition as a petition to suspend the requirement and establish a new effective date. The agency believes that the one year leadtime period provided a sufficient time to ensure that trailer manufacturers and purchasers could comply with the new requirements. In addition, the agency has concluded that granting the petitioner's request would delay an important safety measure that helps prevent problems caused by brake drag. Based on the above consideration, the agency is denying the petition because there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, (202) 366–5274.

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standard No. 121, Air Brake Systems, establishes performance requirements for braking systems on vehicles equipped with air brake systems. The purpose of the standard is to ensure safe braking performance under normal and emergency braking conditions. The standard applies to vehicles equipped with air brake systems, but does not apply to motor vehicle equipment.

On October 8, 1991, NHTSA published a final rule that amended Standard No. 121 in several ways. (56 FR 50666). First, the final rule deleted the requirement for a separate reservoir capable of releasing the parking brakes. Second, the final rule added requirements for a minimum compressor cut-in pressure for trucks and buses, for the retention of a minimum level of pressure in a trailer's supply line of at least 70 psi, and for the prevention of automatic application of trailer parking brakes while the minimum trailer supply line pressure is maintained. The amendments were intended to encourage the use of more effective trailer braking systems and to simplify the maintenance of those systems. The final rule provided a leadtime of one year for the amendments and took effect on October 7, 1992.

The final rule requested that petitions for reconsideration be submitted on or before November 7, 1991. No petitions for reconsideration were submitted.

On August 24, 1992, six weeks before the October 7, 1992 effective date, the American Trucking Associations (ATA) submitted a rulemaking petition requesting a one year delay in the effective date. ATA contended that some trailer purchasers did not have sufficient time to assure compatibility between old and new systems in fleets with multiple trailer operations. The petitioner stated that all trailer fleets should be given an additional year to satisfy themselves about the performance of the new air brake systems. The additional time would permit service and operational personnel to adjust to the higher supply line pressures which trailers must meet, according to ATA. The petitioner also believed that trailers built to comply with the previous requirements were as safe as those built to comply with the new requirements.

NHTSA notes that the petitioner did not file a petition for reconsideration of the final rule and delayed submitting its petition requesting an extension until almost the end of the one year period provided for leadtime. In the short time remaining before the October 7, 1992 effective date, the agency was unable to complete its analysis and reach a decision on the petition. The agency therefore decided to treat the petition as a request for a suspension of the supply line pressure requirement.

Subsequent to the supply line pressure requirement's taking effect, representatives of ATA have contacted the agency and reiterated their concerns about the requirement.

After reviewing ATA's petition in light of the available information, NHTSA has decided not to grant the petition. The agency's decision is based in part on the fact that suspending the effective date for the new requirements would not be in the interests of motor vehicle safety. In particular, granting the petitioner's request would delay an important safety measure that helps prevent problems caused by brake drag, according to testing conducted at the agency's Vehicle Research Test Center (VRTC). In addition, other than general statements and anecdotal accounts, the petitioner did not provide information to convince the agency either that the one year leadtime was an insufficient period of time to ensure that trailer manufacturers could comply with the new requirements, or that there are any current problems of sufficient magnitude to warrant a suspension. Even though some vehicle users may have experienced problems as a result of the final rule, the agency believes that the requirements which took effect in October are necessary for vehicle safety. The agency has received only one correspondence from a trucking firm having trouble mixing the old and new trailers that could be directly related to the new requirements. In that situation, the fleet owners problem is relatively simple and could be easily resolved by raising the compressor cut-in pressure on the old trailer. The agency further notes that no vehicle manufacturer requested a delay in the effective date. Based on the above considerations, NHTSA has determined that there is no reason to justify suspending the requirement.

In accordance with 49 CFR part 552, the agency has completed its technical review of the petition and determined that there is no reasonable possibility that the requested amendment would be issued at the conclusion of a rulemaking proceeding. Accordingly, the agency is denying the petition.

**Authority:** 15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–18275 Filed 7–30–93; 8:45 am]
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49 CFR Part 571

[Docket No. 93-64, Notice 1]

RIN 2127-AE54

# Federal Motor Vehicle Safety Standards; Air Brake Systems; Long-Stroke Brake Chambers

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** Consistent with a recommendation by the National Transportation Safety Board and in response to a petition for rulemaking from the American Trucking Associations (ATA), this notice proposes to amend the reservoir requirements in Standard No. 121, Air Brake Systems, for trucks, buses, and trailers equipped with air brakes. The agency believes that the proposed amendments would improve the braking efficiency of such vehicles and reduce the number of brakes found to be out of adjustment during inspections. It would do this by removing a design restriction that tends to discourage the use of long-stroke brake chambers, a technology with potentially significant safety benefits. The agency does not anticipate adverse safety consequences resulting from modifying the reservoir requirements.

**DATES:** *Comments.* Comments must be received on or before October 1, 1993.

**PROPOSED EFFECTIVE DATE:** The proposed amendments in this notice would become effective 30 days after publication of a final rule in the Federal Register.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5274).

**SUPPLEMENTARY INFORMATION:**

## *I. Background*

Standard No. 121, Air Brake Systems, specifies performance requirements applicable to vehicles equipped with air brakes. The Standard also requires air-braked vehicles to be equipped with various types of equipment, including an air compressor, reservoirs, and a pressure gauge. (See section S5.1) Standard No. 121 does not specify the length of brake chambers, but it establishes a ratio between the volume of the service reservoirs and the volume of the brake chambers. The effect of this ratio is that if the brake chamber is lengthened, thereby increasing its volume, it may be necessary to enlarge the service reservoirs.

With respect to trucks and buses, Section S5.1.2.1 currently specifies that

> The combined volume of all service reservoirs and supply reservoirs shall be at least 12 times the combined volume of all service brake chambers at maximum travel of pistons or diaphragms. However, the reservoirs on the truck portion of an auto transporter need not meet this requirement.

Similarly, with respect to trailers, section S5.2.1.2 specifies

> Total service reservoir volume shall be at least eight times the combined volume of all service brake chambers at maximum travel of pistons or diaphragms. However, the reservoirs on a heavy hauler trailer and on the trailer portion of an auto transporter need not meet this requirement.

These provisions are intended to ensure that a vehicle's braking system has sufficient compressed air to provide adequate brake pressure after a number of brake applications. Longer brake chambers, commonly known as "long-stroke" chambers, in reference to the longer piston or pushrod they require, have been mentioned in reports by NHTSA (Automatic Slack Adjusters for Heavy Vehicle Brake Systems, February 1991, DOT HS 724), and the National Transportation Safety Board (Heavy Vehicle Airbrake Performance, 1992, PB92-917003/NTSB/SS-92/01) as a technology that can help improve brake adjustment on heavy trucks. However, the reports also note that the reservoir requirements in Standard No. 121 would necessitate much larger reservoirs to accommodate the long-stroke chambers. Thus, while the current requirements do not prohibit long-stroke brake chambers, the requirements for reservoir size significantly discourage the use of long-stroke chambers.

## II. Petition

On March 17, 1992, the American Trucking Associations (ATA) petitioned the agency to amend the reservoir requirements in S5.1.2.1 and S5.2.1.2. to facilitate the installation of long-stroke brake chambers, a technology that the petitioner states will improve the performance of air-braked vehicles. With respect to trucks and buses equipped with long-stroke chambers, ATA recommended that the combined volume of all the reservoirs be based on the "rated volume" of the service brake chambers, rather than on the volume of the chambers at the maximum travel of the piston. The "rated volume" of each brake chamber would be determined pursuant to a table of specified values according to the area of the brake diaphragm and the length of the stroke. In other words, under ATA's recommended amendment, if a "type 30" brake chamber (with a diaphragm of approximately 30 square inches) had a full stroke of at least 2.50 inches, then the rated volume of the brake chamber would have to be at least 84 cubic inches. As a practical matter, the use of long stroke chambers should result in an equivalent increase in air brake chamber reservoir capacity of approximately 17 to 20 percent, depending on the manufacturer's choice of brake chambers. For other types of brake chambers not presented on the table, the rated volume would be the volume of the brake chamber at maximum travel of the brake pistons or pushrods. With respect to trailers, ATA requested that the total service reservoir volume be at least eight times the combined rated volume of all service brake chambers.

In support of its petition, ATA argued that manufacturers would have to incur unnecessary costs associated with increasing the size of the reservoirs if standard brake chambers were replaced with long-stroke chambers. Along with these additional costs, some vehicle configurations would have to be redesigned due to lack of adequate locations with sufficient space to accommodate large reservoirs. The lack of space is especially significant with short wheel base single unit trucks equipped with extensive accessories (e.g., power-take-off units (PTOs), tail gate lifts, refrigeration units, larger brakes) which compete for undercarriage space.

## III. Agency's Determination

### *A. General Considerations*

After reviewing the petition in light of the available information, NHTSA has decided to propose amending Standard No. 121's reservoir requirements for trucks, buses, and trailers to facilitate the introduction of long-stroke brake chambers. Specifically, the method for calculating air reservoir requirements would be based on the "rated volume" of the brake chambers rather than on the volume of the brake chambers at the maximum travel of the brake pistons or push rods. The agency tentatively agrees with the petitioner that the proposed amendments would make it easier for vehicle manufacturers to install long-

stroke brake chambers on air-braked vehicles, because extremely large reservoirs would no longer be required.

NHTSA believes that these long-stroke chambers would help improve the braking efficiency of vehicles, significantly increase the reserve stroke, reduce the number of brakes found to be out of adjustment during inspections, and reduce the incidence of dragging brakes. NHTSA notes that the Safety Board report concluded that "* * * combining a properly installed and maintained automatic slack adjuster with a long-stroke chamber could reduce the percentage of brakes at or past the limit or adjustment from the 26 percent figure for the manual slack adjusters on a regular stroke chamber to the 4 percent figure for the automatic adjusters installed on a long-stroke chamber." The agency requests comments on the proposed amendments.

In its petition, ATA argued that modifying the reservoir requirements to accommodate long-stroke chambers would not adversely affect safety. Specifically, the petitioner stated that there would be adequate reserve capacities, even for vehicles equipped with antilock brakes. Historically, antilock equipped vehicles have required the largest amount of reservoir capacity.

In analyzing ATA's petition, NHTSA considered the safety implications of amending the reservoir requirements to facilitate the installation of long-stroke brake chambers. After reviewing the use of air-braked vehicles in worst-case situations, the agency has tentatively determined that there would be no safety problem with the amended reservoir requirements. Tests conducted at NHTSA's Vehicle Research and Test Center (VRTC) indicate that there is sufficient reserve volume to stop an air-braked vehicle equipped with antilock brakes even under the worst-case conditions (i.e., the engine was stalled, the compressor was not adding replacement air to the system, and the vehicle was equipped with long-stroke brake chambers). The VRTC tests further indicated that while multiple combination vehicles would experience an additional 10 psi of air loss because the compressor needs to fill a greater volume when the vehicle is equipped with long-stroke chambers, there would still be adequate air pressure to safely stop a triple combination, which only needs about 30 psi to lock the brakes on a wet Jennite surface. Therefore, the agency tentatively concludes that it would be permissible to relax the current reservoir volume requirements. Notwithstanding these tentative findings, NHTSA requests comment about any potential safety problems that might result from amending the reservoir requirements to facilitate the introduction of long-stroke brake chambers.

ATA stated that NHTSA should modify the requirements about reservoirs before requiring the use of automatic brake adjusters on air-braked vehicles, as proposed in Docket 91–21. The petitioner contended that it was difficult for air-braked vehicles to maintain efficient brake adjustments when used with standard brake chambers. According to the petitioner, this is so because the short difference between the stroke to which a brake is manually adjusted and the limit permitted by Federal and state motor carrier safety regulations makes it very difficult for automatic slack adjusters to protect against over-adjusting under some conditions while at the same time assuring efficient and legal brake adjustments under other conditions. While the agency appreciates the advantages provided by long-stroke brake chambers, the agency nevertheless decided to publish the final rule requiring automatic brake adjusters and adjustment indicators, given the significant benefits obtainable through requiring automatic brake adjusters and adjuster indicators. (57 FR 47793, October 20, 1992). The agency again notes that the amendments to the reservoir requirements would not require air-braked vehicles to be equipped with long-stroke brake chambers. Instead, the proposed amendments would merely facilitate the introduction of such equipment.

ATA further stated that the requested amendments to the reservoir requirements are a short-term solution to facilitate the introduction of long-stroke brake chambers. In the long term, the petitioner favored adopting performance requirements based on the pending Society of Automotive Engineers (SAE) Recommended Practice J1911 "Test Procedure for Air Reservoir Capacity—Highway Type Vehicles." It commented that performance requirements would be preferable because some brake configurations with the same type brake chambers may nevertheless consume different amounts of air in brake applications. For instance, a Type 30 brake chamber in combination with a five-inch slack adjuster requires less air than one in combination with a six-inch slack adjuster. ATA further stated its belief that NHTSA could not adopt the new SAE method for determining reservoir capacity until either the SAE completed its development of a recommended practice for reservoir system performance when tested in accordance with J1911 or NHTSA developed its own performance criteria. Accordingly, until such time, ATA recommended that the agency adopt ATA's recommendation to amend the reservoir requirements.

NHTSA notes that SAE is evaluating the air consumption issue in two ways. The first approach, embodied in SAE J1911, involves a performance-oriented recommended practice that would require a specified number of stops under test conditions designed to exhaust the reserve air supply while still requiring acceptable vehicle performance. Under this approach, a brake system would have to be capable of achieving the specified number of stops without exhausting the air supply. The second approach, embodied in a draft recommended practice J1609X, Air Reservoir Capacity Performance Guide—Commercial Vehicles, is based on air consumption requirements for antilock equipped air brake systems. While it would be premature for the agency to include these incomplete recommendations in this rulemaking, the agency will consider the performance criteria in SAE J1911 and the work of the Antilock Brake Committee as a possible basis for an amendment to Standard No. 121.

ATA requested that the agency solicit comments about the possible misuse of the extra pushrod travel afforded by long-stroke brake chambers. Specifically, the petitioner was concerned about the use of inferior products (e.g., lighter, more flexible components, and less sensitive automatic slack adjusters) that would not properly effectuate the use of long-stroke chambers. ATA also stated that to assure safety, it may be necessary to specify a maximum pushrod travel for a brake when manually adjusted and the maximum travel its automatic slack adjusters will permit without an automatic brake adjustment. The agency requests comments about these concerns raised by the petitioner and any other issues about the anticipated effectiveness of and potential problems with long-stroke brake chambers.

*B. Benefits*

The agency has tentatively determined that the proposal would facilitate the introduction of long-stroke brake chambers by removing a design restriction related to reservoir size that tends to discourage the use of a developing technology. Accordingly, this amendment should yield a significant improvement in heavy truck braking, especially when used with

automatic brake adjusters. As explained in NHTSA's Report to Congress and the Safety Board Report, the increased use of long-stroke brake chambers would significantly reduce the number of out of adjustment truck brakes, reduce brake drag, and improve braking effectiveness. Reducing crashes involving out of adjustment air brakes would result in a corresponding reduction in fatalities, injuries, and property damage.

The agency anticipates that a large percentage of long-stroke chambers will be installed on air-braked vehicles in the next few years for two reasons: First, this equipment should reduce the amount of vehicle down time because more vehicles would pass inspection; and second, it should noticeably reduce the crash rate, thus reducing insurance costs. The agency notes that the actual size of the benefits is difficult to quantify because it depends upon the rate at which the fleet owners decide to have long-stroke chambers installed on their vehicles. In addition, brake-related crashes typically involve a number of factors, which makes determining the cause difficult. The agency requests comments, especially quantified estimates, about the anticipated benefits from the proposal.

*C. Costs*

NHTSA notes that amending the reservoir requirements to facilitate the introduction of long-stroke brake chambers would not result in any mandatory costs because it would allow manufacturers the flexibility to incorporate a new design. In other words, this proposal would not impose any special requirements or costs on manufacturers that decide to equip systems with long-stroke chambers. The agency nevertheless investigated the costs associated with modifying a brake system to be equipped with a long-stroke chamber to assess more fully this proposal's effect. These costs would involve those associated with increasing the stamped metal housing length, longer parking brake spring, longer pushrod, and a deeper cup in the diaphragm. NHTSA estimates that the increased cost would range between $5.00 to $9.00 per long-stroke brake chamber. The agency notes that the additional cost depends upon several factors, including the system design and volume discounts. The agency welcomes comments addressing the costs associated with installing a long-stroke brake chamber on a vehicle.

*D. Leadtime*

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless good cause is shown that an earlier effective date is in the public interest. NHTSA has tentatively concluded that there would be good cause not to provide the 180 day lead-in period given that this amendment provides regulatory relief by facilitating the introduction of a new type of brake chamber without imposing any mandatory requirements on manufacturers. The public interest would be further served by not delaying the introduction of a brake component that should provide better brake performance without having any negative impact on safety. Based on the above, the agency has tentatively determined that there is good cause for an effective date 30 days after publication of the final rule.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**Rulemaking Analyses and Notices**

*Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would not impose any special requirements on manufacturers if it is introduced. Instead, the proposal would facilitate the introduction of a new brake design by removing a design restriction. Therefore, the agency does not believe that this rulemaking would result in significant additional costs or cost savings.

*Regulatory Flexibility Act*

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendments would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. This amendment would affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles equipped with long-stroke chambers. As discussed above, the agency's assessment is that this amendment would have no cost impact to the industry. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be affected by the proposed requirements. Accordingly, no regulatory flexibility analysis has been prepared.

*Executive Order 12612 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

*National Environmental Policy Act*

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

**Public Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 571**

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.121 would be amended by revising S5.1.2.1 and S5.2.1.2 to read as follows:

**§ 571.121 Standard No. 121, air brake systems.**

* * * * *

S5.1.2.1 The combined volume of all service reservoirs and supply reservoirs shall be at least 12 times the combined rated volume of all service brake chambers at maximum travel of pistons or pushrods. The rated volume of each brake chamber, for purposes of calculating the combined volume of all service reservoirs and supply reservoirs, is the number specified in Column 2 of Table V for brakes with brake chambers having a full stroke at least as long as those specified in Column 1 of Table V. The rated volume of other types of brake chambers is the volume of the brake chamber at maximum travel of the brake piston(s) or pushrod(s). The reservoirs of the truck portion of an auto transporter need not meet this requirement for reservoir volume.

* * * * *

S5.2.1.2 Total combined service reservoir volume shall be at least eight times the combined rated volume of all service brake chambers at maximum travel of pistons or pushrods. The rated volume of each brake chamber, for purposes of calculating the total combined service reservoir volume, is the number specified in Column 2 of Table V for brakes with brake chambers having a full stroke at least as long as those specified in Column 1 of Table V. The rated volume of other types of brake chambers is the volume of the brake chamber at maximum travel of the brake piston or pushrod. The reservoirs on a heavy hauler trailer and the trailer portion of an auto transporter need not meet this requirement for reservoir volume.

* * * * *

3. Section 571.121 would be amended to include the following table to be placed after Figure 3.

TABLE V.—BRAKE CHAMBER RATED VOLUMES ON CAM BRAKES

| Brake type (nominal piston area in square inches) | Column 1 full stroke (inches) | Column 2 rated volume (cubic inches) |
|---|---|---|
| Type 9 | 1.75 | 17 |
| Type 12 | 1.75 | 23 |
| Type 14 | 2.25 | 35 |
| Type 16 | 2.25 | 40 |
| Type 18 | 2.25 | 45 |
| Type 20 | 2.25 | 50 |
| Type 24 | 2.25 | 61 |
| Type 30 | 2.50 | 84 |
| Type 36 | 3.00 | 121 |

Issued on: July 27, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93-18276 Filed 7-30-93; 8:45 am]

BILLING CODE 4910-59-M

# Notices

Federal Register
Vol. 58, No. 146
Monday, August 2, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### Designation of the Central Iowa (IA) Agency and the States of Maine and Montana

**AGENCY:** Federal Grain Inspection Service (FGIS).

**ACTION:** Notice.

**SUMMARY:** FGIS announces the designation of Central Iowa Grain Inspection Service, Inc. (Central Iowa), the Maine Department of Agriculture, Food and Rural Resources (Maine), and the Montana Department of Agriculture (Montana).

**EFFECTIVE DATE:** September 1, 1993.

**ADDRESSES:** Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

**FOR FURTHER INFORMATION CONTACT:** Homer E. Dunn, telephone 202–720–8525.

**SUPPLEMENTARY INFORMATION:**

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 2, 1993, **Federal Register** (58 FR 12022), FGIS announced that the designations of Central Iowa, Maine, and Montana end on August 31, 1993, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by April 1, 1993.

Central Iowa, Maine, and Montana each applied for the entire area currently assigned to them. D. R. Schaal Agency, Inc. (Schaal), applied for the three exceptions in their geographic area currently served by Central Iowa. These three exceptions are: Farmers Co-op Elevator Company, Chapin, Franklin County; Hampton Farmers Co-op Company, Hampton, Franklin County; and Farmers Community Co-op, Inc. (now CENEX Land O'Lakes, Inc.), Rockwell, Cerro Gordo County.

FGIS named and requested comments on the applicants for designation in the April 29, 1993, **Federal Register** (58 FR 25965). Comments were due by May 31, 1993. FGIS received four comments by the deadline. Three grain firms currently served by Central Iowa supported their redesignation. One grain firm currently served by Schaal supported their designation.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that: Maine and Montana are able to provide official services in the geographic areas for which they applied; and Central Iowa is better able to provide official services in the area for which they applied.

Effective September 1, 1993, and ending August 31, 1996, Central Iowa, Maine, and Montana are designated to provide official inspection services under the United States Grain Standards Act, as amended (Act) in the geographic areas specified in the March **Federal Register**. Interested persons may obtain official services by contacting Central Iowa at 515–266–1101, Maine at 207–289–2161, and Montana at 406–452–9561.

**AUTHORITY:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: July 26, 1993.

**Neil E. Porter,**

*Director, Compliance Division.*

[FR Doc. 93–18214 Filed 7–30–93; 8:45 am]

BILLING CODE 3410–EN–F

### Forest Service

### Advisory Council Meeting, Allegheny Wild and Scenic River; Allegheny National Forest, PA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meetings.

**SUMMARY:** The Southern Advisory Council for the Allegheny National Wild and Scenic River will meet at 7 p.m., Tuesday, August 17, 1993 at the Emlenton Civic Club, Emlenton, PA. The Northern Advisory Council will meet at 7 p.m., Wednesday, August 18, 1993, at the Harmony Township Community Building, West Hickory, PA.

The Southern Council will discuss its recommendations for recreational activities in the river corridor from Franklin to Emlenton.

The Northern Council will discuss progress on recommendations for maintaining and enhancing scenic quality in the river corridor from Kinzua Dam to Oil City.

Meetings are open to the public. A sign language interpreter will be provided if requested by August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, PA 16365, 814/723–5150 or 814/726–2710 (TTY).

Dated: July 27, 1993.

**Lionel A. Lemery,**

*Wild and Scenic River Coordinator.*

[FR Doc. 93–18310 Filed 7–30–93; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Organization

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency* Bureau of Export Administration.

*Title:* Quarterly Report on Export of Parts to Service Equipment Shipped Against a Validated Export License.

*Agency Form Number:* None but requirements can be found at Section 776.4 of the Export Administration Regulations.

*OMB Approval Number:* 0694–0003.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 5 reporting/recordkeeping hours.

*Number of Respondents:* 2 (respondents report quarterly); 8 recordkeepers (total 1 hour burden).

*Avg Hours Per Response:* .5 hours.

*Needs and Uses:* This reporting requirements allows U.S. exporters to export parts to service U.S. equipment

to certain restricted destinations (Country Groups Q, W, and Y) provided that the equipment was previously exported from the U.S. under a validated license.

*Affected Public:* Businesses or other for-profit institutions; small businesses or organizations.

*Frequency:* Quarterly and recordkeeping.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Gary Waxman, (202) 395-7340, Room 3208 New Executive Office Building, Washington, D.C. 20503.

*Agency:* National Oceanic and Atmospheric Administration.

*Title:* Fish Tagging Report.

*Agency Form Number:* NOAA 88-162.

*OMB Approval Number:* 0648-0009.

*Type of Request:* Extension of the expiration date of a currently approved collection.

*Burden:* 45 reporting hours.

*Number of Respondents:* 1,500.

*Avg Hours Per Response:* .03 hours.

*Needs and Uses:* The Fish Tagging program attempts to determine the migratory patterns and other biological information of billfishes, tunas, and sharks by having anglers tag and release their catch. Anglers volunteer to participate in the program. Resulting analyses is used in developing fishery management plans.

Affected Public: Individuals.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ron Minsk, (202) 395-3084, room 3019, New Executive Office Building, Washington, DC 20230.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: July 26, 1993.

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 93-18368 Filed 7-30-93; 8:45 am]

BILLING CODE 3510-CW-F

## International Trade Administration

### Sanctions for Violation of Administrative Protective Order

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the status of an investigation into charges of violations of an administrative protective order in an antidumping duty investigation.

**EFFECTIVE DATE:** August 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. Powell, Chief Counsel for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1434.

**SUPPLEMENTARY INFORMATION:** The International Trade Administration (ITA), United States Department of Commerce, wishes to remind those members of the bar who appear before it in antidumping and countervailing duty proceedings of the extreme importance of protecting the confidentiality of business proprietary information obtained pursuant to administrative protective order (APO) during the course of those proceedings. In order that the gravity with which the ITA views violations of its APOs might be better appreciated, ITA is publishing the following report on a recent allegation that the provisions of an ITA APO have been violated.

An individual employed by a firm caused proprietary information of two interested parties to be served on counsel for a third interested party, which counsel had not been granted access under an APO to such information. Following an investigation by the ITA, the subject individual was held responsible for this violation of the APO.

In this case, the individual involved was (1) required to send a letter of apology to counsel for the companies whose information was improperly disclosed; and (2) required to attend a training session conducted by ITA on procedures for protecting proprietary data. The individual also was issued a private reprimand which warned that future violations could be treated more severely.

We consider the sanctions to be appropriate for the following reasons: First, the violation appears to have been inadvertent; second, after having the violation brought to his attention, the named individual took prompt action to avoid harm to the submitters; third, the named individual cooperated fully with the ITA's investigation; and, fourth, no apparent harm resulted from the violation.

Serious harm can result from the failure to properly safeguard proprietary information obtained under APO. The ITA will continue to investigate vigorously allegations that the provisions of APOs have not been faithfully observed, and is prepared to impose sanctions commensurate with the nature of the violations, including letters of reprimand, denial of access to proprietary information, or disbarment from practice before the ITA.

This notice is published pursuant to 19 CFR 354.15(e) of the Department's regulations.

Dated: July 15, 1993.

**Timothy J. Hauser,**

*Acting Under Secretary for International Trade.*

[FR Doc. 93-18369 Filed 7-30-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-814, A-580-815, A-580-816, A-580-817]

### Amendment of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce .

**EFFECTIVE DATE:** August 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** G. Leon McNeill or Brock Richardson, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482-4733.

**SUMMARY:** We are amending our final determinations of sales at less than fair value on certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate from Korea to correct for ministerial errors. The amended estimated weighted-average margins for the above-mentioned investigations are shown in the SUSPENSION OF LIQUIDATION section of this notice.

**AMENDED FINAL DETERMINATIONS:** In accordance with section 773(b) of the Tariff Act of 1930, as amended, (the Tariff Act), on July 9, 1993, the Department of Commerce (the

Department) published in the Federal Register (58 FR 37176) its final determinations that certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Korea are being, or are likely to be, sold in the United States at less than fair value. After our final determinations, the petitioners in the investigations of hot-rolled steel and steel plate and the respondent in the investigation of steel plate, Dongkuk Steel Mill Company, Ltd. (Dongkuk), alleged that the Department committed certain ministerial errors in calculating the final margins. We have reviewed these allegations and have amended our final determinations on hot-rolled steel and steel plate for certain of these ministerial errors. The specific analyses of the allegations are included in the July 23, 1993 memorandum from Holly A. Kuga to Joseph A. Spetrini which is contained in the relevant case files in the Central Records Unit, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Additionally, the Department has corrected an error in the programming language for the sales below cost test in the investigations of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate.

**CRITICAL CIRCUMSTANCES:** In its final determination on hot-rolled steel, the Department determined in accordance with 19 CFR 353.16(f) that exports of hot-rolled steel by Pohang Iron and Steel Company, Ltd. (POSCO) have been massive over a short period of time. However, since there is no history of dumping of the same class or kind of merchandise and since the final determination margins did not indicate that importers should have known that hot-rolled steel was being sold at less than fair value, the Department did not find that critical circumstances exist with respect to hot-rolled steel from Korea.

The weighted-average margin for the amended final determination on hot-rolled steel from Korea indicates that importers should have known that hot-rolled steel was being sold at less than fair value. Therefore, we have amended our final determination and find that critical circumstances exist with respect to hot-rolled steel from Korea.

**Suspension of Liquidation:**

The final estimated weighted-average margins and the All Others rates have changed in these investigations as indicated below. In accordance with section 733(d)(2) of the Tariff Act, the Department will direct Customs to continue to require a cash deposit or posting of a bond on all entries equal to the corrected estimated amounts by which foreign market value exceeds the United States price as shown below. The corrected margins are as follows:

| Producer/manufacturer/exporter | Weighted-average margin percentage |
|---|---|
| Certain Hot-Rolled Carbon Steel Flat Products | |
| Pohang Iron and Steel Company, Ltd | 24.95 |
| All Others | 24.95 |
| Certain Cold-Rolled Carbon Steel Flat Products: | |
| Pohang Iron and Steel Company, Ltd | 14.44 |
| All Others | 14.44 |
| Certain Corrosion-Resistant Carbon Steel Flat Products: | |
| Pohang Iron and Steel Company, Ltd | 17.70 |
| All Others | 17.70 |
| Certain Cut-to-Length Carbon Steel Plate: | |
| Dongkuk Steel Mill Company, Ltd | 8.88 |
| All Others | 8.88 |

Dated: July 23, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93-18370 Filed 7-30-93; 8:45 am]

BILLING CODE 3510-DS-P

[C-557-806]

## Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** Gary Bettger or Vincent Kane, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2239 or 482-2815, respectively.

On August 25, 1992, we published a final affirmative countervailing duty determination and countervailing duty order on extruded rubber thread from Malaysia (57 FR 38472). In that determination, we agreed that, absent an injury determination, countervailing duties could not be levied on subject merchandise that entered prior to March 31, 1992, the effective date of revocation of Malaysia's GSP status. However, we determined that it would be appropriate to continue suspension of liquidation of pre-March 31st entries of subject merchandise until we were able to determine how they should be treated in light of the termination of the ITC injury investigation.

Pursuant to the Court of International Trade's Order of Dismissal dated July 13, 1993, we have now instructed Customs to liquidate entries of subject merchandise entered, or withdrawn from warehouse, for consumption prior to March 31, 1992, without the imposition of countervailing duties.

Dated: July 23, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93-18371 Filed 7-30-93; 8:45 am]

BILLING CODE 3510-DS-P

## Export Trade Certificate of Review

**ACTION:** Notice of application to amend certificate.

**SUMMARY:** The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

*Request for Public Comments*

Interested parties may submit written comments relevant to the determination

whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89–4A016."

National Geothermal Association's original Certificate was issued on February 5, 1990 (55 FR 4647, February 9, 1990). Previous amendments to the Certificate were issued on November 7, 1990 (55 FR 47784, November 15, 1990), April 17, 1991 (56 FR 16328, April 22, 1991), and on September 11, 1991 (56 FR 47068, September 17, 1991). A summary of the application for an amendment follows.

*Summary of the Application:*

*Applicant:* National Geothermal Association, P.O. Box 1350, Davis, California 95617.

*Contact:* Arthur John Armstrong, Counsel, Telephone: (703) 356–3100.

*Application No.:* 89–4A016.

*Date Deemed Submitted:* July 26, 1993.

*Proposed Amendment:* The National Geothermal Association seeks to amend its Certificate to delete "Eastman Christensen of Santa Rosa, California, a wholly-owned subsidiary of Baker Hughes Incorporated" as a "Member"; and add "Baker Hughes INTEQ, Inc. of Houston, Texas, a wholly-owned subsidiary of Baker Hughes, Incorporated" as a Certificate "Member" within the meaning of § 325.21 of the Regulations (15 CFR 325.2(1)).

Dated: July 27, 1993.

**Jude Kearney,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 93–18366 Filed 7–30–93; 8:45 am]

BILLING CODE 3510–DR–M

## Massachusetts Institute of Technology et al.; Consolidated Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number:* 93–037. *Applicant:* Massachusetts Institute of Technology, Cambridge, MA 02139. *Instrument:* Two Crystal Wavelength Dispersive Spectrometer, Model XM-86ADSXCE. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 58 FR 27266, May 7, 1993.

*Docket Number:* 93–040. *Applicant:* University of Rhode Island, Narragansett, RI 02882-1197. *Instrument:* Susceptibility Sensor and Electronics. *Manufacturer:* GEOTEK, United Kingdom. *Intended Use:* See notice at 58 FR 27267, May 7, 1993.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for existing instruments. In each case, the instrument and accessory were made by the same manufacturer.

The accessories are pertinent to the intended uses and we know of no domestic accessories which can be readily adapted to the instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 93–18372 Filed 7–30–93; 8:45 am]

BILLING CODE 3510–DS–F

## National Oceanic and Atmospheric Administration

[I.D. 072693D]

## Caribbean Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Caribbean Fishery Management Council (Council) and its Administrative Committee (Committee) will hold separate meetings on August 17–19, 1993. The meetings will be held at the Conference Room, Carabelle Hotel, Christiansted, St. Croix, U.S. Virgin Islands.

The Council will hold its 79th regular public meeting to discuss the Coral Fishery Management Plan, as well as other topics. The Council will meet on August 18 from 9 a.m. until 5 p.m. and on August 19 from 9 a.m. until approximately 12 noon.

The Committee will meet on August 17 from 2 p.m. until 5 p.m. to discuss administrative matters regarding Council operation. The meetings will be conducted in the English language. Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda items.

**FOR FURTHER INFORMATION CONTACT:** The Caribbean Fishery Management Council, 268 Muñoz Rivera, suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: (809) 766–5926.

Dated: July 26, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–18292 Filed 7–30–93; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072693B]

## New England Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council will hold a public meeting on August 10–11, 1993, at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA; telephone: 508–774–6800. The meeting will begin at 10 a.m. on August 10 and at 8:30 a.m. on August 11.

On August 10, the meeting will begin with reports from: The Council Chairman, the Executive Director, the National Marine Fisheries Service Regional Director, the Northeast Fisheries Science Center liaison, and representatives from the Department of State, the Coast Guard, the Fish and Wildlife Service, and the Atlantic States Marine Fisheries Commission.

Following the reports, there will be a brief presentation on the newly designated Stellwagen Bank Marine Sanctuary by sanctuary manager Brad Barr. The chair of the Scallop Committee will update the Council on the submission of Amendment #4 to the Sea Scallop Fishery Management Plan (FMP). The last portion of the day will be reserved for a final review of the contents of Amendment #5 to the Northeast Multispecies (Groundfish) FMP. The Council also may recommend a 90-day continuation of the current emergency action which prohibits pair trawling and limits the possession of haddock to 2,500 pounds.

On August 11, the Election of 1993 Council officers will take place. Also, the Lobster Committee will report on the most recent lobster stock assessment relative to management considerations and the industry's draft amendment to the Lobster Plan. If information is

available, the Marine Mammal Committee will update the Council on the development of harbor porpoise management measures for the Gulf of Maine sink gillnet fishery. At the conclusion of that discussion, the Habitat Committee will report on its efforts to formulate habitat recommendations for inclusion in Groundfish Amendment #5.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: July 26, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–18291 Filed 7–30–93; 8:45 am]

BILLING CODE 3510-22-F

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[I.D. 072893C]

## North Pacific Fishery Management Council; Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (Committee), will meet on August 10, 1993, at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., room 2079, Building 4, Seattle, WA. The meeting will begin at 8:30 a.m. and last until 12 noon.

The Committee will discuss management of the Bering Sea/Aleutian Islands King and Tanner Crab Fisheries and possible proposals to amend the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan.

**FOR FURTHER INFORMATION CONTACT:** Arni Thomson, Alaska Crab Coalition, telephone (206) 547–7560.

Dated: July 26, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–18293 Filed 7–30–93; 8:45 am]

BILLING CODE 3510-22-F

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

## USAF Scientific Advisory Board; Meeting

The Study Panel Chairs of the USAF Scientific Advisory Board's Ad Hoc Committee on Options for Theater Air Defense will meet on 20 August 1993 at The Aerospace Corporation, 2350 E. El Segundo Blvd, El Segundo, CA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to discuss completion of the Theater Air Defense Study Briefing and final report.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 93–18319 Filed 7–30–93; 8:45 am]

BILLING CODE 3910-01-M

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## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before September 1, 1993.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: July 27, 1993.

**Cary Green,**

*Director, Information Resources Management Service.*

*Office of Elementary and Secondary Education*

*Type of Review:* Extension
*Title:* New and Continuation Application for Grants under the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP)
*Frequency:* Annually
*Affected Public:* Non-profit institutions
*Reporting Burden:*
Responses: 90
Burden Hours: 1,710
*Recordkeeping Burden:*
Recordkeepers: 90
Burden Hours: 450
*Abstract:* This form will be used by State Educational agencies to apply for funding under the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP). The Department will use the information to make grant awards.

*Office of Postsecondary Education*

*Type of Review:* New
*Title:* Student Release of Scores for the National Academy of Science, Space and Technology
*Frequency:* Annually
*Affected Public:* Individuals or households
*Reporting Burden:*
Responses: 8,840
Burden Hours: 2,205
*Recordkeeping Burden:*

Recordkeepers: 0

Burden Hours: 0

*Abstract:* The National Academy of Science, Space, and Technology will provide scholarships, up to $5,000 a year, to the top student in each Congressional district who majors in the physical, life, or computer sciences, mathematics or engineering. The student agrees to four years of service and/or postgraduate education in those fields of work or study.

[FR Doc. 93–16327 Filed 7–30–93; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. JD93–12753T Oklahoma–46]

### State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 27, 1993.

Take notice that on July 15, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Medrano Common Source, underlying a portion of Grady County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 2, 3, 4, and 5, Township 5 North, Range 7 West, and Sections 32 and 33, Township 6 North, Range 7 West, Grady County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18296 Filed 7–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–6–000, et al.; RS92–6–000, et al.]

### Columbia Gas Transmission Corp. Columbia Gulf Transmission Co.; Technical Conference

July 27, 1993.

Take notice that Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company have requested that a technical conference be convened in these proceedings to discuss with the parties certain tariff compliance issues identified in the Commission's July 14, 1993 order on their Order No. 636 compliance filings. In order to facilitate the discussion, Commission Staff will convene a technical conference on August 4, 1993, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The pipeline companies intend to distribute an agenda prior to the conference.

Any interested party, as defined by 18 CFR 385.102(c), is invited to attend.

For additional information, contact Donald A. Heydt at (202) 208–0740, or Sandra Delude at (202) 208–0738.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18297 Filed 7–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL92–6–000]

### Kentucky Utilities Co.; Filing

July 27, 1993.

Take notice that on July 8, 1993, Kentucky Utilities Company (KU) submitted on behalf of itself and PSI Energy, Inc., an amendment to the Settlement Agreement previously submitted on December 22, 1992, in this proceeding. The amendment responds in part to concerns expressed by Staff relating to the Interconnection Agreement between KU and PSI which formed part of the Settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18295 Filed 7–30–93; 8:45 am]

BILLING CODE 6717–01–M

### Office of Arms Control and Nonproliferation

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Indonesia concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: FTD/IE(EU)–0, for the transfer of 32.1 kilograms of uranium containing 6.404 kilograms of the isotope uranium-235 (19.35 percent enrichment) from the Federal Republic of Germany to Indonesia for use as fuel for the MPR research reactor, Serpong, Indonesia.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 27, 1993.

**Edward T. Fei,**

*Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.*

[FR Doc. 93–18354 Filed 7–30–93; 8:45 am]

BILLING CODE 6450–01–M

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community

(EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/KO(EU)–3, for the transfer of 1,350 elements containing 2,300 kilograms of uranium and 41.8 kilograms of the isotope uranium–235 (1.82 percent enrichment) for use as fuel in various Korea Nuclear Fuel Company power reactors.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on July 27, 1993.

**Edward T. Fei,**

*Acting Director, Office of Nonproliferation Policy.*

[FR Doc. 93–18355 Filed 7–30–93; 8:45 am]

BILLING CODE 6450–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–997–DR]**

### Illinois; Amendment to Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Illinois, dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Alexander, Jackson, Randolph, and Union Counties for Public Assistance. (Already designated for Individual Assistance).

Greene County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18358 Filed 7–30–93; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–996–DR]**

### Iowa; Amendment To Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993.

The counties of Allamakee, Audubon, Boone, Cedar, Clarke, Clinton, Decatur, Emmett, Guthrie, Henry, Iowa, Jasper, Jones, Lee, Linn, Louisa, Lyon, Madison, Monona, Page, Palo Alto, Ringgold, Story, Tama, Warren, and Woodbury for Public Assistance. (Already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18359 Filed 7–30–93; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–1000–DR]**

### Kansas; Amendment to Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

**EFFECTIVE DATE:** July 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The counties of Dickinson, Doniphan, Geary, Ottawa, and Saline for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18356 Filed 7–30–93; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–1000–DR]**

### Kansas; Amendment to Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

**EFFECTIVE DATE:** July 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The country of Riley for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18357 Filed 7–30–93; 8:45 am]

BILLING CODE 6718–02–M

## Fee Schedule for Processing Map Changes Beginning in Fiscal Year 1994

**AGENCY:** Federal Insurance Administration, FEMA.

**ACTION:** Notice.

**SUMMARY:** This notice contains the fee schedule for processing certain changes to the National Flood Insurance Program (NFIP) maps, effective October 1, 1993. The fee procedure is undertaken to reduce expenses to the NFIP by allowing for a partial recovery of certain costs associated with reviewing projects intended to support changes in NFIP maps.

**EFFECTIVE DATE:** October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** John L. Matticks, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** This action revises the fees for processing map changes published as a Notice in 57 FR 29078–079 on June 30, 1992. FEMA publishes a revised fee schedule periodically as a notice in the Federal Register. The procedures for calculating the initial fees, pre-authorized spending limits, and hourly rate for engineering review, administrative and cartographic processing of conditional Letters of Map Amendment (CLOMAs), conditional Letters of Map Revision (CLOMRs), Letters of Map Revision (LOMRs) and map revisions listed in this notice are published at 44 CFR part 72.

The fee procedure is undertaken to reduce expenses to the NFIP by allowing for a partial recovery of certain costs associated with reviewing projects to support changes in NFIP maps. These projects involve man-made changes in the flood-plain, such as the placement of fill, stream channelizations, or construction of bridges, culverts, or levees. In addition, these projects are typically limited in scope and are often undertaken solely to reduce flood risk to a limited area of the floodplain proposed for development so as to offer relief from flood insurance purchase requirements of 42 U.S.C. 4012a, or to secure financing or other benefits.

The fees collected under this activity are deposited into the National Flood Insurance Fund which is the source of funding for this service. Cost recovery helps maintain the NFIP as a self-supporting program.

In the fee schedule the initial fees are listed according to the type of floodplain modification project involved. The appropriate initial fee is required to be paid by those seeking a CLOMA, CLOMA, LOMR or map revision prior to FEMA's initiation of the review. The initial fee represents the minimum engineering review and administrative processing costs for a CLOMA, CLOMR, LOMR or map revision based on the type of project. The initial fee does not include for labor and materials associated with the cartographic processing and preparation of a map revision. The cartographic costs are based on the number of map panels affected by the request.

When it is determined that the actual cost associated with the review and processing of a LOMR or map revision will exceed the amount remitted for the initial fee, the requestor will be billed and will be required to remit payment prior to receiving FEMA's final determination.

The pre-authorized spending limits listed in the fee schedule below denote the amount at which FEMA will suspend review of a given case and seek written authorization from the requestor prior to proceeding with the review. This limitation gives the requestor the option of discontinuing the review at that time. This affords the requestor protection against the possibility of a given review becoming more costly than anticipated by the requestor. If the requestor decides to discontinue the review there will be no refund of initial fees paid.

*Initial fee schedule.* The hourly rate upon which the following fees and pre-authorized spending limits are based, is $40 per hour.

(a) For CLOMAs and for CLOMRs, the initial fees, subject to the provisions of § 72.4, shall be paid by the requestor in the following amounts:

| | |
|---|---|
| (1) Single lot CLOMA | $200 |
| (2) Single lot CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway) | 200 |
| (3) Multi-lot/Subdivision CLOMA | 280 |
| (4) Multi-lot/Subdivision CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway) | 280 |
| (5) Review of new hydrology | 280 |
| (6) New bridge or culvert (no channelization) | 560 |
| (7) Channel modifications only | 640 |
| (8) Channel modification and new bridge or culvert | 840 |
| (9) Levees, berms, or other structural measures | 1,080 |
| (10) Structural measures on alluvial fans | 2,800 |

(b) For LOMRs or map revisions that follow a CLOMR issued by FEMA, the initial fee, subject to the provisions of § 72.4, for all categories listed under paragraph (c) below will be $225, so long as the as-built conditions are the same as the proposed conditions upon which FEMA based the issuance of the CLOMR. These are no fees for LOMAs. There are no fees for single lot LOMRs, which meet the requirements set forth in § 72.5(b), and are based strictly on the placement of fill outside of the regulatory floodway, regardless of whether they are issued following a CLOMA or CLOMR.

(c) For LOMRs or map revisions which do not follow a CLOMR issued by FEMA, the initial fee, subject to the provisions of § 72.4, shall be paid by the requestor in the following amounts:

| | |
|---|---|
| (1) Single lot LOMR not meeting the requirements of § 72.5(b) (based strictly on the placement of fill outside the regulatory floodway) | $425 |
| (2) Multi-lot/Subdivision LOMR (based strictly on the proposed placement of fill outside the regulatory floodway) | 505 |
| (3) New bridge or culvert (no channelization) | 785 |
| (4) Channel modifications only | 865 |
| (5) Channel modification and new bridge or culvert | 1,065 |
| (6) Levees, berms, or other structural measures | 1,305 |
| (7) Structural measures on alluvial fans | 3,025 |

(d) For projects involving combinations of the actions listed under paragraphs (a), (b), or (c) above, the initial fee shall be that charged for the most expensive action of those that compose the combination.

(e) Following completion of FEMA's review for any CLOMA, CLOMR, LOMR, or map revision, the requestor will be billed at the established hourly rate for any actual costs exceeding the initial fee incurred during the review. The hourly rate is currently $40 per hour.

In the event that the revision request results in a change which can be shown on a subsequent map revision, the requestor will be notified and billed for costs of cartographic preparation and processing of the revised map. The fee for this activity is $410 per map panel affected by the revision. This work will not be initiated until FEMA has received payment. The cost of printing and distributing the revised Flood Insurance Rate Map (FIRM) or Flood Boundary Floodway Map (FBFM), or both, will be borne by FEMA.

(f) Requestors of CLOMAs, CLOMRs, LOMRs and map revisions will be notified of the anticipated total cost if the total cost of processing the request, including estimated costs for cartographic preparation and processing of a map revision, will exceed the pre-authorized spending limits listed in (1) through (4) below. The pre-authorized

spending limits vary according to the type of review performed and are based on the established hourly rate.

| | |
|---|---|
| (1) CLOMAs, CLOMRs based on fill outside the regulatory floodway and single-lot LOMRs based on fill outside the regulatory floodway | $500 |
| (2) Multi-lot/Subdivision LOMRs based on fill outside the regulatory floodway | 1,200 |
| (3) CLOMRs for the review of new hydrology, CLOMRs, LOMRs and map revisions based on channel modifications, bridges and culverts, levees, berms or other structural measures or a combination of these | 3,500 |
| (4) CLOMRs, LOMRs and map revisions based on structural measures on alluvial fans | 6,500 |

(g) If processing costs are anticipated to exceed the pre-authorized spending limits listed in (f)(1) through (f)(4) above, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed. The requestor is not entitled to a refund of initial fees paid should processing of the case not be continued.

(h) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation for fees under the reimbursement procedures of 44 CFR part 72 as a result of transmitting the application of another party to FEMA.

(i) Payment of both the initial fee and final cost shall be by check or money order payable in United States funds to the National Flood Insurance Program, or by credit card payment, and must be received by FEMA before the CLOMA, CLOMR or LOMR will be issued, or before the cartographic processing will begin for a map revision.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 27, 1993.

**Francis V. Reilly,**

*Deputy Administrator, Federal Insurance Administration.*

[FR Doc. 93–18343 Filed 9–30–93; 8:45 am]

BILLING CODE 6718–03–M

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Dolphin Cruises, Inc., Ulysses Cruises, Inc. and Masefield Company Limited, 901 South America Way, Miami, Florida 33132–2073, Vessel: Dolphin IV.

Dated: July 27, 1993.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–18281 Filed 7–30–93; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 26, 1993.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Banc One Corporation*, Columbus, Ohio, and Banc One Illinois Corporation, Springfield, Illinois; to acquire Mid States Bancshares, Inc., Moline, Illinois, and thereby indirectly acquire The First National Bank of Moline, Moline, Illinois.

*2. Mid Am, Inc.*, Bowling Green, Ohio; to acquire 100 percent of the voting shares of American Bank, National Association, Xenia, Ohio.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. BB&T Financial Corporation*, Wilson, North Carolina; to acquire 100 percent of the voting shares of Scotland Savings Bank, SSB, Laurinburg, North Carolina.

*2. CCB Financial Corporation*, Durham, North Carolina; to acquire 100 percent of the voting shares of Central Carolina Savings Bank, Inc., SSB, successor to Citizens Savings, SSB, Lenoir, North Carolina.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. First Golden Bancorporation*, Golden, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Goldenbank, Applewood, Wheat Ridge, Colorado, a *de novo* bank that will be formed by the purchase of assets and assumption of liabilities of Bank of Applewood, d/b/a Citywide Bank of Applewood, Wheat Ridge, Colorado.

**D. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. BancWest Bancorp, Inc.*, Austin, Texas; to acquire 100 percent of the voting shares of Community State Bank, Boling, Texas.

Board of Governors of the Federal Reserve System, July 27, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18320 Filed 7-30-93; 8:45 am]

BILLING CODE 6210-01-F

### Columbus Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 1993.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Columbus Bancorp, Inc.*, Indianapolis, Indiana; to engage *de novo* through a captive Arizona credit life insurance company in underwriting and acting as a principal for credit insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Indiana.

*2. Salin Bancshares, Inc.*, Indianapolis, Indiana; to engage *de novo* through a captive Arizona credit life insurance company in underwriting and acting as a principal for credit insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Indiana.

**B. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. The Sumitomo Bank, Limited*, Osaka, Japan; to engage *de novo* through its subsidiary, Sumitomo Bank Capital Markets, Inc., New York, New York, in acting as investment or financial adviser to the extent of furnishing portfolio investment advice to any person pursuant to § 225.25(b)(4)(iii); acting as investment or financial adviser to the extent of furnishing general economic information and advice, general economic statistical forecasting services and industry studies pursuant to § 225.25(b)(4)(iv); and acting as investment or financial adviser to the extent of providing financial advice to State and local governments (including foreign municipalities and agencies of foreign governments) pursuant to § 225.25(b)(4)(v); and providing, by any means, general information and statistical forecasting with respect to foreign exchange markets as well as providing assistance to customers in monitoring, evaluating, and managing their foreign exchange exposures pursuant to § 225.25(b)(17) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18321 Filed 7-30-93; 8:45 am]

BILLING CODE 6210-01-F

## First Union Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 1993.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. First Union Corporation*, Charlotte, North Carolina; to acquire Dominion Bankshares Mortgage Corporation, Roanoke, Virginia, and thereby engage in servicing residential mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 27, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18322 Filed 7-30-93; 8:45 am]

BILLING CODE 6210-01-F

## Irwin Financial Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 23, 1993.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Irwin Financial Corporation*, Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Securities, Inc., Columbus, Indiana, in buying and selling all types of securities on the orders of investors as a "riskless principal" pursuant to *J.P. Morgan & Company*, 76 Federal Reserve Bulletin 26 (1990) and *Bankers Trust*, 75 Federal Reserve Bulletin 829 (1989).

Board of Governors of the Federal Reserve System, July 27, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18323 Filed 7-30-93; 8:45 am]

BILLING CODE 6210-01-F

## Jimmie Michael Luecke; Change in Bank Control Notice

## Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 19, 1993.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Jimmie Michael Luecke*, Giddings, Texas; to acquire an additional 9.19 percent of the voting shares of Giddings Bancshares, Inc., Giddings, Texas, for a total of 19.19 percent, and thereby indirectly acquire First National Bank of Giddings, Giddings, Texas.

Board of Governors of the Federal Reserve System, July 27, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18324 Filed 7-30-93; 8:45 am]

BILLING CODE 6210-01-F

## NationsBank Corporation, Charlotte, North Carolina; Application To Engage De Novo in Inventory Inspection Services

NationsBank Corporation, Charlotte, North Carolina, has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8))(BHC Act) and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)) to engage *de novo* through its subsidiary, NationsCredit Commercial Corporation, Allentown, Pennsylvania (Company), in inventory inspection services. These services would be offered to customers in connection with loans made by such customers and secured by inventory where Company is not engaging in any other loan servicing activities for such customers. These services would include identifying inventory and determining its general condition, protection, and level of use, as appropriate; identifying missing inventory and potential credit exposure as a result thereof; facilitating the orderly payment of loans upon the aging or sale of inventory; and supporting claims for purchase money security interests in inventory under the Uniform Commercial Code. These services would not include the appraisal, repossession, or resale of inventory. Customers of Company would include manufacturers or multi-state distributors of goods that provide the financing for the purchase of the goods; finance companies that provide purchase money inventory financing on a multi-state basis; and large regional banks that provide purchase money inventory financing to retailers on a multi-state basis. These services would be provided throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly and indirectly in any activities "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or to managing or controlling banks. "Board Statement Regarding Regulation Y," 49 FR 794, 806 (1984).

Applicant maintains that banks routinely perform inventory inspection services, as well as other operationally and functionally similar services, in connection with loans they make and loans they service. Applicant believes that, as a result, banking organizations are particularly well equipped to provide inventory inspection services. Accordingly, Applicant considers the proposed activities to be closely related to banking.

In order to satisfy the "proper incident" test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by increasing the range of services offered by Applicant to companies that provide inventory financing to the public, thereby increasing the availability of such financing to the public; by increasing competition in the provision of inventory inspection services; and by introducing Applicant and Company to a new range of customers. Moreover, Applicant believes that approval of the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing this proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the

proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 31, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the office of the Board of Governors or of the Federal Reserve Bank of Richmond.

Board of Governors of the Federal Reserve System, July 27, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18325 Filed 7-30-93; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL TRADE COMMISSION

**[Docket No. C-3442]**

### Abbott Laboratories; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent Order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Illinois-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, weight loss, or weight loss maintenance; and requires certain disclosures in conjunction with safety and weight loss maintenance claims.

**DATES:** Complaint and Order issued June 24, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:** Brinley Williams or David Plottner, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Avenue, suite 520-A, Cleveland, Ohio 44114, (216) 522-4210.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On Friday, April 9, 1993, there was published in the **Federal Register**, 58 FR 18397, a proposed consent agreement with analysis In the Matter of Abbott Laboratories, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93-18336 Filed 7-30-93; 8:45 am]

BILLING CODE 6750-01-M

**[File No. 922-3319]**

### G.C. Thorsen, Inc., d/b/a G.C. Electronics, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Illinois manufacturer of aerosol cleaning products from making environmental benefit claims for any product unless the respondent possesses competent and reliable evidence to substantiate the claims.

**DATES:** Comments must be received on or before October 1, 1993.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Klurfeld or Ralph Stone, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA 94103. (415) 744-7920.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

### Agreement Containing Consent Order To Cease and Desist

In the matter of G.C. Thorsen, Inc., a corporation, also trading and doing business as G.C. Electronics, Inc.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of G.C. Thorsen, Inc., a corporation, also trading and doing business as G.C. Electronics, Inc., hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between the respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent G.C. Thorsen, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 1801 Morgan Street, Rockford, Illinois 61102-1209.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this

agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (a) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*Definitions*

For the purposes of this Order, the following definitions shall apply:

"Class I ozone-depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Public Law 101–549, and any other substance which may in the future be added to the list pursuant to title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1,1,1-trichloroethane.

"Class II ozone-depleting substance" means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in title 6 of the Clean Air Act Amendments of 1990, Public Law 101–549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I

*It is ordered* That respondent, G.C. Thorsen, Inc., a corporation, also trading and doing business as G.C. Electronics, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any such product containing any Class I or Class II ozone-depleting substance is "ozone friendly," "environmentally responsible," "does not contain CFCs" or "does not contain ozone damaging components," or, by words, depictions, or symbols representing directly or by implication, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II

*It is further ordered* That respondent G.C. Thorsen, Inc., a corporation, also trading and doing business as G.C. Electronics, Inc., its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For the purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

*It is further ordered* That for three (3) years from the date that the respondent makes any representation covered by this Order, the respondent shall maintain and upon written request make available to the Federal Trade Commission for inspection and copying:

A. All materials that the respondent relied upon in disseminating any representation covered by this Order.

B. All tests, reports, studies or surveys, analyses, or other materials in the possession or control of the respondent that contradict, qualify, or call into question any representation covered by this Order or the basis on which the respondent relied for such representation.

IV

*It is further ordered* That the respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

V

*It is further ordered* That the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements, promotional materials, product labels, or other sales materials covered by this Order.

VI

*It is further ordered* That the respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in

detail the manner and form in which it has complied with this Order.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent G.C. Thorsen, Inc., also trading and doing business as G.C. Electronics, Inc., a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns labeling and advertising of "Air-Duster," and "Airjet II," computer and office equipment care and maintenance products. The Commission's complaint in this matter charges that the respondent's labeling and point-of-sale materials contain false and misleading representations that these products are "ozone friendly," "environmentally responsible," do "not contain CFCs (chlorofluorocarbons)," and do not "contain other ozone damaging components." The compliant also charges that the respondent falsely represented that the chemical used in its products is approved by the Environmental Protection Agency ("EPA") and contains an EPA-approved substitute for CFCs that complies with the Montreal Protocol. The complaint alleges that the respondent represented that there are no ingredients in its product that will deplete the earth's ozone layer or harm or damage the environment. The complaint further alleges that the respondent represented that the hydrochlorofluorocarbon (HCFC) known as chlorodifluoromethane (HCFC-22) is EPA-approved or an EPA-approved substitute for CFCs that complies with the Montreal Protocol, and does not contribute to the depletion of the earth's ozone layer. In fact, the complaint alleges, these representations are false and misleading, because respondent's products contain HCFC-22, a known ozone-depleting chemical. Furthermore, HCFC–22 is not an EPA-approved chemical or an EPA-approved substitute for CFCs that complies with the Montreal Protocol.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

The proposed other defines Class I and Class II ozone-depleting substances, incorporating the definitions established in the Clean Air Act Amendments of 1990. Class I substances currently listed under the Act are CFCs, halons, carbon tetrachloride, and 1,1,1-trichloroethane. Class II substances currently consist of HCFCs.

Part I of the proposed order requires the respondent, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, to cease representing that products containing any Class I or Class II ozone-depleting substances are "ozone friendly," "environmentally responsible," "does not contain CFCs" or "does not contain ozone damaging components," or, by words, depictions, or symbols representing that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

Under the Clean Air Act Amendments, the EPA has authority to add new chemicals to the Class I and Class II lists. Thus, the order's definitions of Class I and Class II ozone-depleting substance specifically include substances that may be added to these lists. If additional substances are added to the Class I and Class II lists, Part I of the order becomes applicable to claims made for products containing those substances after the substances are added to the lists.

Part II of the proposed order requires the respondent to cease representing that any of its products offer any environmental benefit, unless the respondent possesses and relies upon competent and reliable evidence that substantiates the representation.

Parts III, IV, V, and VI of the proposed order are standard order provisions requiring the respondent to retain substantiation materials, to notify the Commission of changes in corporate identity, to distribute a copy of the order to officers, agents, representatives, or employees, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–18338 Filed 7–30–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3441]

**National Media Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Pennsylvania-based corporations from disseminating the infomercials for Cosmetique Francais or for Crystal Power and from making false claims regarding the efficacy or safety of any similar cellulite treatment product, similar crystalline stone or any product. The consent order requires that a disclosure statement be placed in certain video advertisements, and that the respondents pay $275,000 into a fund for consumer redress to be administered by the Commission.

**DATES:** Complaint and Order issued June 24, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:**

Patricia Hensley, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA. 98174. (206) 220–6350.

**SUPPLEMENTARY INFORMATION:** On Wednesday, April 14, 1993, there was published in the **Federal Register**, 58 FR 19446, a proposed consent agreement with analysis In the Matter of National Media Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–18335 Filed 7–30–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[Dkt. C-3440]

**Service Corporation International; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Texas corporation to divest, to a Commission-approved acquirer, five funeral homes, and to obtain prior Commission approval, for a period of ten years, before acquiring any additional funeral homes in certain Georgia and Tennessee areas.

**DATES:** Complaint and Order issued June 15, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:** Daniel Ducore, FTC/S-2115, Washington, DC 20580. (202) 326-2526.

**SUPPLEMENTARY INFORMATION:** On Tuesday, August 6, 1991, there was published in the **Federal Register** 56 FR 37359, revision, 57 FR 14720, a proposed consent agreement with analysis In the Matter of Service Corporation Internaitonal, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

*Secretary.*

[FR Doc. 93-18334 Filed 7-30-93; 8:45 am]

BILLING CODE 6750-01-M

[File No. 922 3232]

**Texwipe Company; Proposed Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New Jersey-based manufacturer of aerosol cleaning products from making environmental benefit claims for any product unless the respondent possesses competent and reliable evidence to substantiate the claims.

**DATES:** Comments must be received on or before October 1, 1993.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Klurfeld or Ralph Stone, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103 (415) 744-7920.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order to Cease and Desist**

In the matter of The Texwipe Company, a corporation.

The Federal Trade Commission, having initiated an investigation of certain acts and practices of The Texwipe Company, a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between the respondent, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Texwipe Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business at 650 East Crescent Avenue, Upper Saddle River, New Jersey 07458.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint here attached.

6. This agreement contemplates that if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (a) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the proposed respondent's address as stated in this

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the term of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the attached draft complaint and the following order. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*Definitions*

For the purposes of this Order, the following definitions shall apply:

Class I ozone-depleting substance means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class I substances currently include chlorofluorocarbons, halons, carbon tetrachloride and 1,1,1-trichloroethane.

Class II ozone-depleting substance means a substance that harms the environment by destroying ozone in the upper atmosphere and is listed as such in Title 6 of the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, and any other substance which may in the future be added to the list pursuant to Title 6 of the Act. Class II substances currently include hydrochlorofluorocarbons.

I

*It is ordered* That respondent, The Texwipe Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any such product containing any Class I or Class II ozone-depleting substance is "ozone safe," "environmentally safe," or, by words, depictions, or symbols representing directly or by implication, that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

II

*It is further ordered* That respondent The Texwipe Company, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation. For purposes of this Order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III

*It is further ordered* That for three (3) years from the date that the respondent makes any representation covered by this Order, the respondent shall maintain and upon written request make available to the Federal Trade Commission for inspection and copying:

A. All materials that the respondent relied upon in disseminating any representation covered by this Order.

B. All tests, reports, studies or surveys, analyses, or other materials in the possession or control of the respondent that contradict, qualify, or call into question any representation covered by this Order or the basis on which the respondent relied for such representation.

IV

*It is further ordered* That the respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this Order.

V

*It is further ordered* That the respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation or placement of advertisements, promotional materials, product labels, or other sales materials covered by this Order.

VI

*It is further ordered* That the respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent The Texwipe Company, a New Jersey corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns labeling and advertising of various Texwipe computer and office equipment care and maintenance products, including MicroDuster, PC Duster, and OfficeDuster. The Commission's complaint in this matter charges that the respondent's labeling and advertising contain false and misleading representations that these products are "ozone safe" and "environmentally safe." The complaint alleges that, through the statement "ozone safe," the respondent represented that there are no ingredients in its products that will deplete the ozone layer. Through the statement "environmentally safe," the respondent represented that there are no ingredients in its products that harm or damage the environment. In fact, the complaint alleges, these representations are false and misleading, because respondent's products contain the hydrochlorofluorocarbon (HCFC) known as chlorodifluoromethane (HCFC–22), a known ozone-depleting chemical.

The proposed consent order contains provisions designed to remedy the

violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

The proposed order defines Class I and Class II ozone-depleting substances, incorporating the definitions established in the Clean Air Act Amendments of 1990. Class I substances currently listed under the Act are chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and 1,1,1-trichloroethane. Class II substances currently consist of HCFCs.

Part I of the proposed order requires the respondent, in connection with the advertising, labeling, offering for sale, sale, or distribution of any product, to cease representing that products containing any Class I or Class II ozone-depleting substances are "ozone safe" or "environmentally safe," or, by words, depictions, or symbols representing that any such product will not deplete, destroy, or otherwise adversely affect ozone in the upper atmosphere.

Under the Clean Air Act Amendments, the Environmental Protection Agency has authority to add new chemicals to the Class I and Class II lists. Thus, the order's definitions of Class I and Class II ozone-depleting substances specifically include substances that may be added to these lists. If additional substances are added to the Class I and Class II lists, Part I of the order becomes applicable to claims made for products containing those substances after the substances are added to the lists.

Part II of the proposed order requires the respondent to cease representing that any of its products offer any environmental benefit, unless respondent possesses and relies upon competent and reliable evidence that substantiates such representation

Parts III, IV, V, and VI of the proposed order are standard order provisions requiring the respondent to retain substantiation materials, to notify the Commission of changes in corporate identity, to distribute a copy of the order to officers, agents, representatives, or employees, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93-18337 Filed 7-30-93; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of information collection requirements previously approved by OMB under Control Number 0970–0033. This request, titled: "Annual Survey of Refugees" is required by the Refugee Act of 1980 and the Refugee Assistance Amendments of 1982 and 1986. This request for approval is submitted by the Office of Refugee Resettlement (ORR) of the Administration for Children and Families (ACF).

**ADDRESSES:** Copies of the information collection request may be obtained from Steve R. Smith, Office of Information Systems Management, (ACF), by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503 (202) 395–7316.

*Information on Document*

*Title: Annual Survey of Refugee (Form ORR–9)*

*OMB No.:* 0970–0033

*Description:* The Office of Refugee Resettlement, (ORR), ACF, uses the Annual Survey of Refugees (Form ORR–9) to collect information on refugees to satisfy the reporting requirements contained in the Immigration and Nationality Act. Section 413(b)(1) of the Act (as added by the Refugee Act of 1980), requires ORR to report annually to the Congress an updated profile of employment and labor force statistics for refugees who have entered the U.S. within the previous five years.

In 1992, ORR completed its 21st annual telephone survey of a national sample of Southeast Asian refugees on the employment, labor force statistics and economic adjustments factors of refugees to the United States. ORR converted and the annual survey to a longitudinal survey beginning with the 1994 interviews. Thus, the survey continuously tracks the progress of a randomly sampled group of refugees over their initial five years in this country. ORR will further expand the survey to include non-Southeast Asian refugees in the current national sample.

Effective utilization of this information by ORR is absolutely essential because this information will be used as basis in determining and managing admissions levels for refugees to the United States. This information will also be analyzed by ORR officials and used in the preparation of testimony for Congressional Hearings on appropriations, reauthorization of the Refugee Act, and used as resource information for the Congress, the general public and special interests groups. A summary of the survey finding will be included as part ORR's Annual Report to Congress. ORR officials will also use this information to formulate policy options and in program development.

*Annual Number of Respondents*: 2,500
*Annual Frequency*: 1
*Average Burden Hours Per Response*: 45 min.
*Total Burden Hours*: 1,875

Dated: June 24, 1993.

**Larry Guerrero,**

*Deputy Director, Office of Information Systems Management.*

[FR Doc. 93–18313 Filed 7–30–93; 8:45 am]

BILLING CODE 4184–01–M

### Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a previously approved Congressionally mandated information collection titled: "The Third National Study of the Incidence of Child Abuse and Neglect (NIS–3). The NIS–3 will include two major studies and five sub-studies. The First major study, the Basic NIS–3 Sentinel Study, and one of the five sub-studies, the New Sentinel Agency Categories Study, are currently under OMB review. This request for OMB review applies to the second major study, the Court Referral Study, and the remaining four sub-studies, the Analysis of Hidden Duplication Bias, the Sentinel Questionnaire Follow-up Study, the Annualization Basis Study, and the Child Protective Services Screening Study.

**ADDRESSES:** Copies of the information collection request may be obtained from Steve R. Smith, Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503. (202) 395–7316.

**Information on Document**

*Title:* The Third National Study of the Incidence of Child Abuse and Neglect (NIS–3)

*OMB No.:* New Request

*Description:* With the enactment of the Child Abuse Prevention and Treatment Act of 1974 and reauthorization by the enactment of the Child Abuse Prevention, Adoption, and Family Services Act of 1988 (Pub. L. 100–294), Congress directed the National Center on Child Abuse and Neglect (NCCAN) of the Administration for Children and Families to "make a complete and full study and investigation of the national incidence of child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglect are increasing in number or severity." The 1974 Congressional mandate was met with completion of the first National Study of the Incidence and Severity of Child Abuse and Neglect (NIS–1). In 1984, the Congress broadened its requirements and instructed NCCAN to "study and investigate the national incidence of child abuse and neglect and make findings about any relationships between non-payment of child support and between various other factors and child abuse and neglect, and the extent to which incidents of child abuse and neglect are increasing in number and severity".

The purposes of NIS–3 are to study the national incidence of child abuse and neglect, including (i) the extent to which incidents of child abuse are increasing or decreasing in number and severity; and (ii) the incidence of substantiated reported child abuse cases that result in civil protection proceedings or criminal proceedings, including the number of such cases with respect to which court makes a finding that abuse or neglect exists and the disposition of such cases.

The data collection instruments and procedures of this study will be used by NCCAN to respond to its Congressional mandate (Pub. L. 100–294 as amended) to estimate the total number of children who are abused or neglected in the United States and to indicate the degree to which this number has changed since the data collected for earlier studies in 1979 and 1986, and to determine the incidence of substantiated child abuse and neglect cases that result in civil and criminal court proceedings and characteristics of such cases.

*Annual Number of respondents:* 6,160
*Annual Frequency:* 1
*Average Burden Per Response:* 20 min.
*Total Burden Hours:* 2,080

**Naomi B. Marr,**

*Director, Office of Information Systems Management.*

[FR Doc. 93–18314 Filed 7–30–93; 8:45 am]

BILLING CODE 4184–01–M

## Food and Drug Administration

**[Docket No. 93N–0217]**

## Zoecon Corp.; Withdrawal of Approval of NADA's

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by Zoecon Corp. One NADA provides for using butonate liquid, another for dichlorophene/toluene capsules, and the third for selenium disulfide shampoo. The sponsor requested the withdrawal of approval of the NADA's. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries which reflect approval of the NADA's.

**EFFECTIVE DATE:** August 12, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

**SUPPLEMENTARY INFORMATION:** Zoecon Corp., 12200 Denton Dr., Dallas, TX 75234, is the sponsor of NADA 41–587 which provides for use of Vet-Kem T–113 (butonate liquid), NADA 94–777 for Zodiac 3 in 1 Worm Capsules (dichlorophene/toluene), and NADA 103–434 for Vet-Kem Selenium Disulfide Shampoo. Zoecon requested that FDA withdraw approval of NADA 94–777 in its letter of February 10, 1993, and NADA's 41–587 and 103–434 in its letters of March 3, 1993, because it no longer manufactures or distributes the products.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 41–587, 94–777, and 103–434, and all supplements and amendments thereto is hereby withdrawn, effective August 12, 1993.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is removing 21 CFR 520.240 and amending 21 CFR 520.580(b)(1) and 524.2101(c) to reflect the withdrawal of approval of these NADA's.

Dated: July 26, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–18277 Filed 7–30–93; 8:45 am]

BILLING CODE 4160–01–F

**[Docket No. 93N–0274]**

## Miles Inc.; Withdrawal of Approval of 14 New Drug Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 14 new drug applications (NDA's) held by Miles Inc., 4th and Parker Sts., P.O. Box 1986, Berkeley, CA 94701 (Miles). Miles notified the agency in writing that the drug products were no longer being marketed under the NDA's and requested that the approval of the applications be withdrawn.

**EFFECTIVE DATE:** September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy Maizel, Center for Drug Evaluation and Research (HFD–53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4320.

**SUPPLEMENTARY INFORMATION:** Miles has informed FDA that these drug products listed in the table are no longer being marketed under the NDA's and requested that FDA withdraw approval of the applications. Miles has also, by request, waived its opportunity for a hearing.

| NDA No. | Drug name |
|---|---|
| 6–412 .... | Cytal Irrigation Solution and Diluted Cytal Urethral Solution. |
| 16–472 .. | Mannitol 10% in Half Normal Saline Injection, Mannitol 10% Injection, Mannitol 20% Injection, Mannitol 15% Injection, and Mannitol 15% in 0.45% Sodium Chloride Injection. |
| 18–246 .. | Sterile Water for Irrigation in Plastic Container. |
| 18–247 .. | Sodium Chloride for Irrigation in Plastic Container. |

| NDA No. | Drug name |
|---|---|
| 18-372 .. | Dextrose 5% Injection in Plastic Container. |
| 18-399 .. | Dextrose 5% and Sodium Chloride 0.2% Injection in Plastic Container. |
| 18-400 .. | Dextrose 5% and Sodium Chloride 0.45% Injection in Plastic Container. |
| 18-417 .. | Lactated Ringer's Injection in Plastic Container. |
| 18-500 .. | Dextrose 5% and Sodium Chloride 0.9% Injection in Plastic Container. |
| 18-501 .. | Dextrose 5% and Sodium Chloride 0.3% Injection in Plastic Container. |
| 18-502 .. | Sodium Chloride 0.9% Injection in Plastic Container. |
| 18-503 .. | Sodium Chloride 0.45% Injection in Plastic Container. |
| 18-504 .. | Dextrose 10% Injection in Plastic Container. |
| 18-505 .. | Sterile Water for Injection in Plastic Container. |

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA's listed above, and all amendments and supplements thereto, is hereby withdrawn, effective September 1, 1993.

Dated: July 21, 1993.

**Carl C. Peck,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 93-18279 Filed 7-30-93; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ES 940-03-4120-14-241A; KYES 45088]

### Competitive Coal Lease Offering by Sealed Bid; Leslie County, KY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Competitive coal lease offering by sealed bid.

**SUMMARY:** Notice is hereby given that as a result of an application filed by Leeco, Incorporated, for coal resources located in the Daniel Boone National Forest, Redbird Ranger District in Leslie County, Kentucky, U.S. Forest Service Tract 88 and Partial Tract 420 will be offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1947 (61 Stat. 913, 30 U.S.C. 351-359), as amended. The land in the application is as follows: U.S. Forest Service Tract 88 and U.S. Forest Service Partial Tract 420 which is described as:

All that certain parcel or tract of land lying and being in Leslie County, Kentucky situated on the water's of Mott's Hollow of White Oak Creek of Greasy Creek of the Middle Fork of the Kentucky River. More particularly bounded and described as follows:

All bearings are based on True North and all distances are expressed in feet.

*Beginning at Corner 2*, which is a 12" Pine located in the head of a small drain about 1600 feet northwest of the Mouth of Mott's Hollow. Thence,

North 06°33' West 107.47 feet to *Corner 3*, a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 3, Tr. 420, L.S. 608, 1972, located on top of spur at head of small drain 1600 feet west of Mott's Hollow. Thence,

North 47°46' West 86.87 feet to *Corner 4*, a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 4, Tr. 420, L.S. 608, 1972, located on top of spur between Mott's Hollow and a small drain of White Oak Creek. Thence,

North 66°39' East 1.191.24 feet to *Corner 5*, a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 5, Tr. 420, L.S. 608, 1972, located in the Left Hand Fork of Mott's Hollow. Thence, southeasterly with the Left Hand Fork of Mott's Hollow, the following meander calls:

a—South 28°30' East 106.04 feet to meander point 1.

b—South 44°37' East 192.82 feet to meander point 2.

c—South 58°20' East 190.55 feet to *Corner 6*, a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 6, Tr. 420, L.S. 608, 1972, located about 1,300 feet north of the Mouth of Mott's Hollow. Thence.

South 67°26' East 61.10 feet to *Corner 7*, a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 7, Tr. 420, L.S. 608, 1972, located about 1,200 feet north of the Mouth of Mott's Hollow. Thence,

North 54°23' East 248.44 feet to *Corner 8*, a 20" Poplar marked as corner. Thence,

South 59°18' East 70.68 feet to *Corner 9*, unable to set corner at this location but set Reference Monuments to this corner: (1) 1¾" × 30" aluminum pipe with a 3" cap stamped Ref. Mon. A, Cor. 9, L.S. 608, 1972, N 59°18' W 7.60 ft., (2) used Cor. 8 of said tract for Ref. Mon. Located about 1,400 feet north of the Mouth of Mott's Hollow in the Right Hand Fork. Thence, southwesterly with the Right Hand Fork of Mott's Hollow and seven (7) lines with the George Turner parcel, the following meander calls:

a—South 05°06' East 55.24 feet to meander point 1.

b—South 22°18' West 167.12 feet to meander point 2.

c—South 28°51' West 121.65 feet to meander point 3.

d—South 16°46' West 99.90 feet to *Corner 10*, a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 10, Tr. 420, L.S. 608, 1972, located in the center of Mott's Hollow and at it's forks and about 1,100 feet north of the Mouth of Mott's Hollow. Thence,

North 69°45' West 143.95 feet to *Corner 11*, a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 11, Tr. 420, L.S. 608, 1972, located approximately 150 feet northwest of the forks of Mott's Hollow. Thence,

South 86°02' West 133.96 feet to *Corner 12*, a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 12, Tr. 420, L.S. 608, 1972, located about 275 feet west of Mott's Hollow. Thence, southwesterly with the spur between Mott's Hollow and White Oak Creek, the following meander calls:

a—South 74°27' West 173.99 feet to meander point 1.

b—South 61°26' West 145.40 feet to meander point 2.

c—South 75°58' West 298.90 feet to *Corner 13*, a marked Red Oak and a 1¾" × 30" aluminum pipe with a 3" cap stamped Cor. 13, Tr. 420, L.S. 608, 1972, located on the spur between Mott's Hollow and White Oak Creek. Thence,

Down the ridge approximately 225 feet to a small red oak; thence down the hill to the head of the small drain to a 12" Pine, the place of beginning, containing 17.74 acres, more or less, being part of the same tract described in a certain deed conveyed to the United States of America, dated January 15, 1973, in Deed Book 75, pages 454-458, in the records of Leslie County, Kentucky.

U.S. Forest Service Tract 88 and Partial Tract 420, will be offered as one parcel, combined, total 162.67 acres. These tracts will be leased to the qualified bidder of the highest cash amount, provided that the high bid for the tracts equals or exceeds the fair market value (FMV) of the tracts as determined by the authorized officer after the sale. The Department has established a minimum bid of $100 per acre for the tracts. The minimum bid is not to be considered as representing the amount for which the tracts may actually be leased, since FMV will be determined in a separate postsale analysis. If identical high sealed bids are received, the tying high bidders will be asked to submit follow-up sealed bids until a high bid is received. All tie-breaking bids must be submitted within the 15 minutes following the authorized officers' announcement at the sale that identical high bids have been received.

**DATE:** The sale will be held at 10 a.m., Tuesday, August 31, 1993, in the Public Room of the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Each bid must be clearly identified by the serial number on the outside of the sealed envelope containing the bid. The bids should be sent by certified mail, return receipt or be hand delivered on or before 5 p.m., Monday, August 30, 1993. Any bids received after 5 p.m., August 30, 1993 will not be considered.

**SUPPLEMENTARY INFORMATION:** The coal resource being offered is underground mineable, potentially bypass, coal. The coal resource being offered is the Hazard Number 4 Coal Seam, also known as the

Fireclay Seam, only. The proximate analysis of the coal within the proposed lease is as follows:

*Proximate Analysis As Received for Hazard No. 4*

| | |
|---|---|
| % Ash | 20.01 |
| % Moisture | 2.04 |
| % Volatile | 32.25 |
| % Fixed Carbon | 45.70 |
| Btu./lb. | 11,299 |
| % Sulfur | .92 |

The coal contained in Tract 88 and Partial Tract 420 is estimated at 543,291 tons of recoverable reserves.

**RENTAL AND ROYALTY:** Any lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre and a royalty payable to the United States of 8% of the value of the coal mined by underground methods and shall be determined in accordance with 43 CFR 3485.2.

**NOTICE OF AVAILABILITY:** Bidding instructions and bidder qualifications are included in the Detailed Statement of Lease Sale. Copies of the Detailed Statement and of the proposed coal lease are available at the Bureau of Land Management, Eastern States. Case file documents are also available for public inspection at the Eastern States Office.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pearl F. Tillman at (703) 440–1511 or Mr. Ian J. Senio at (703) 440–1526 at the Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

Dated: July 27, 1993.

**Larry Hamilton,**

*Acting State Director.*

[FR Doc. 93–18367 Filed 7–30–93; 8:45 am]

BILLING CODE 4310–GJ–M

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**[AD–967–4230–05; AA–8447–A2]**

## Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Eyak Corporation for 5349.72 acres. The lands involved are in the vicinities of the Rude River area and Cordova, Alaska.

**Copper River Meridian, Alaska**

Tps. 13 S., Rs. 1 and 2 W.
T. 16 S., R. 1 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 1, 1993, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Terry R. Hassett,**

*Chief, Branch of KCS Adjudication.*

[FR Doc. 93–18308 Filed 7–30–93; 8:45 am]

BILLING CODE 4310–JA–M

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**[CO–050–4210–04; COC53601 and COC55406]**

## Realty Action; Exchange of Public Lands in Conejos, Rio Grande, Alamosa, and Huerfano Counties, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, exchange of public lands for State of Colorado lands in Conejos, Rio Grande, Alamosa, and Huerfano Counties, Colorado.

**SUMMARY:** The following described land has been examined and found suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for land of equal value belonging to the Colorado State Land Board:

**New Mexico Principal Meridian, Colorado**

T. 35 N., R. 5 E.,
Sec. 25: Lots 1–8.
T. 35 N., R. 6 E.
Sec. 21: SW¼NE¼, NW¼, NW¼SE¼;
Sec. 22: S½SW¼;
Sec. 26: Lots 1 and 2, W½W½;
Sec. 27: E½, E½W½.
Containing 1,408.87 acres in CO–53601.

**Sixth Principal Meridian, Colorado**

T. 26 S., R. 70 W.,
Sec. 26: NE¼NE¼, S½NE¼, S½NW¼, S½;
Sec. 27: SE¼;
Sec. 33: E½SW¼, W½SE¼, SE¼SE¼;
Sec. 34: N½, SW¼;
Sec. 35: N½.
Containing 1,680 acres in COC–55406.

In exchange for these public lands, the United States would acquire the following State land from the Colorado State Land Board:

T. 38 N., R. 6 E., NMPM,
Sec. 36: All.
T. 28 S., R. 3 W., 6th P.M.,
Sec 16: All Except M.S.16694.
T. 28 S., R. 69 W.,
Sec. 16: All;
Sec. 17: SE¼SE¼;
Sec. 20: NE¼, NE¼NW¼;
Sec. 21: NE¼, N½NW¼, SE¼NW¼, NE¼SE¼;
Sec. 22: W½SW¼, SE¼SW¼, SW¼SE¼;
Sec. 27: NW¼NE¼, NE¼NW¼.
Containing 2,700 acres.

**DATES:** Comments must be received by September 13, 1993.

**ADDRESSES:** Submit comments to the District Manager, Bureau of Land Management, Canon City District Office, P.O. Box 2200, Canon City, CO 81215–2200.

**FOR FURTHER INFORMATION CONTACT:** Stu Parker at the above address or phone (719) 275–0631.

**SUPPLEMENTARY INFORMATION:** The purpose of these exchanges is for the United States to acquire important public recreation sites and important elk habitat; the State will acquire public lands adjacent to other State land which will enhance management potential. Differences in land values will be equalized by acreage adjustments following appraisal. Mineral rights will be included where possible, as determined by the mineral report.

Publication of this notice segregates the public lands from entry under the public land laws including the mining laws, except for exchange, for a period of two years from publication of this notice.

Dated: July 22, 1993.

**Stuart L. Freer,**

*Associate District Manager.*

[FR Doc. 93–18273 Filed 7–30–93; 8:45 am]

BILLING CODE 4310–JB–M

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**[CO–050–4210–04; COC–44110]**

## Realty Action; Supplement; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Realty action; exchange of public land in Park and Custer counties, Colorado.

**SUMMARY:** The following described land has been found suitable for disposal by exchange under sec. 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

T. 13 S., R. 73 W., 6th P.M.,
Sec. 8: SE¼NW¼.
T. 22 S., R. 71 W.,
Sec. 10: SW¼NE¼.

Containing a total of 80 acres.

**DATES:** Comments on this proposal can be submitted to the District Manager until August 16, 1993.

**ADDRESSES:** District Manager, Bureau of Land Management, P.O. Box 2200, Cañon City, CO 81215–2200.

**FOR FURTHER INFORMATION CONTACT:** Contact Stuart Parker at (719) 275–0631

**SUPPLEMENTARY INFORMATION:** Notices have been previously issued for nearby lands to be included in various "land pool" exchanges with Shepard and Associates. These two parcels are needed to equalize values in the Stirrup Ranch Exchange in Fremont County. Adjoining landowners will acquire these parcels through this land pool exchange.

Publication of this notice will segregate the public land from entry under the public land laws, including the mining laws for 2 years or until patent issues.

Dated: July 16, 1993.

**Roger Underwood,**

*Acting District Manager.*

[FR Doc. 93–18272 Filed 7–30–93; 8:45 am]

BILLING CODE 4310–JB–M

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**[CO–060–4210–06; COC–53415]**

## Realty Action; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Direct sale of public land COC–53415, Gilpin County, CO; conveyance of federally-owned mineral interests.

**SUMMARY:** The following described public land has been examined and found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value, which has been determined to be $7,700:

T. 2 S., R. 73 W., Sixth P.M., CO
Sec. 36: Lot 39.
Containing 4.01 acres.

This parcel will be offered by direct sale to Eloy and Sharon Perea. Mineral rights will be available for simultaneous purchase upon payment of filing fees and purchase price.

If the parcel is not purchased by the Pereas within the time allowed, the parcel will be available for purchase by the general public by sealed bid.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until the land is sold or 2 years from publication of this notice. Detailed information concerning this sale, including patent reservations, sale procedures, etc., will be available upon request.

**ADDRESSES:** Bureau of Land Management, Canon City District, Box 2200, Canon City, CO 81215–2200.

**DATES:** Interested parties may submit comments until September 8, 1993, to the District Manager at the address shown above.

**FOR FURTHER INFORMATION CONTACT:** Stu Parker at (719) 275–0631.

Dated: July 22, 1993.

**Stuart L. Freer,**

*Associate District Manager.*

[FR Doc. 93–18269 Filed 7–30–93; 8:45 am]

BILLING CODE 4310–JB–M

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**[ID–010–03–4210–05; IDI–28091]**

## Sale of Public Land in Owyhee County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action—IDI–29238.

**SUMMARY:** The following-described public land has been examined and through the public-supported land use planning process has been determined to be suitable for disposal by direct sale pursuant to section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

**Boise Meridian, Idaho**

T. 2 N., R. 4 W.,
Sec. 31: Tract 37.

The area described contains 19.45 acres in Owyhee County.

**DATES:** On or before September 16, 1993, interested parties may submit comments to the District Manager, Boise District, at the address below. Objections will be reviewed by the State Director, who may sustain, modify or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

**ADDRESSES:** Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

**FOR FURTHER INFORMATION CONTACT:** Blackie Bruegman, Realty Specialist, at the address shown above or (208) 384–3437.

**SUPPLEMENTARY INFORMATION:** This land is being offered by direct sale to the Idaho Transportation Department for construction and use as a weigh station and Port of Entry. Acceptance of a sale offer will constitute an application for conveyance of that portion of the mineral estate of no known value. A separate non-refundable fee of $50.00 will be required from the purchasers for conveyance of the mineral interests.

The reservations, terms, and conditions applicable to the sale are:

Excepting and reserving to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

2. All oil, gas, and geothermal resources thereon together with the right to prospect for, mine, and remove the minerals.

3. Those rights for highway purposes granted to the Idaho Department of Transportation, its successors or assigns, by Right-of-Way IDBL–048385, under the Act of November 9, 1921 (42 Stat. 0216).

4. Those rights for road purposes granted to the Gem Highway District, its successors or assigns, by Right-of-Way IDI–22579, under the Act of August 27, 1958 (23 U.S.C. 107(d) and 317);

Subject to:

4. Those rights for underground telephone line purposes granted to Contel (dba GTE West), its successors or assigns, by Right-of-Way No. IDI–29239, under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

5. Those rights for electric powerline purposes granted to Idaho Power, its successors or assigns, by Right-of-Way No. IDI–29013, under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

6. Those rights for a 500 KV powerline purposes granted to Pacific Power and Light, its successors or assigns, by Right-of-Way IDI–8875, under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Dated: July 16, 1993.

**Rodger E. Schmitt,**

*Acting District Manager.*

[FR Doc. 93–18274 Filed 7–30–93; 8:45 am]

BILLING CODE 4310–GG–M

## Geological Survey

### Technology Transfer Act of 1986

**AGENCY:** United States Geological Survey, Interior.

**ACTION:** Notice of proposed cooperative research and development Agreement (CRADA) negotiations.

**SUMMARY:** The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with the Environmental Systems Research Institute (ESRI). The purpose of the CRADA is to research methods to improve software for USGS map revision and product generation (RevPG), and subsequently expand availability of the RevPG software via distribution through both the U.S. Government and the ESRI user network. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

**ADDRESSES:** Inquiries may be addressed to the Deputy Assistant Division Chief, Office of Research, U.S. Geological Survey, 519 National Center, Reston, Virginia 22092; Telephone 703–648–4637, FAX 703–648–5542.

**FOR FURTHER INFORMATION CONTACT:** David A. Nystrom, address above.

**SUPPLEMENTARY INFORMATION:** This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: July 22, 1993.

**Roy R. Mullen,**

*Associate Chief, National Mapping Division.*

[FR Doc. 93–18271 Filed 7–30–93; 8:45 am]

BILLING CODE 4310–31–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32312]**

### Connecticut Central Railroad Company—Trackage Rights Exemption—Connecticut Rail Systems, Inc.

July 23, 1993.

Notice To The Parties

A notice of exemption in the above proceeding, served and published in the **Federal Register** (58 FR 37504) on July 12, 1993, indicated that the grant of trackage rights became effective on June 29, 1993. Counsel for the parties has established that the notice was actually filed with the Commission on June 18, 1993, rather than June 22, 1993, as indicated in our decision. Therefore, please correct your copies to show that the transaction was effective June 25, 1993, and eliminate corresponding footnote No. 2.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18346 Filed 7–30–93; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether section 3504(h) of Pub. L. 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

### Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Capital Punishment Report of Inmates Under Sentence of Death
(2) NPS–8, NPS–8A, NPS–8B, NPS–8C, NPS–8(L). Bureau of Justice Statistics
(3) Annually
(4) State or Local Governments, Federal agencies or employees. This program is concerned with a study of capital punishment statutes and persons under sentence of death in state and Federal correctional institutions. Data from this program will form the basis for historical trend analysis and will be used by BJS, Congress, journalists, researchers, and others as a source of comparative data.
(5) 2,932 annual responses at .254 hours per response
(6) 746 annual burden hours
(7) Not applicable under 3504(h)
(1) Performance Report
(2) No form number. Office of Juvenile Justice and Delinquency Prevention
(3) Annually
(4) State or Local Governments. The information obtained through this collection will be used to determine the progress of grantees toward the goals stated in their Formula Grant Plans, to ensure compliance with JJDP Act requirements, and to respond to public inquiries about the grant program.
(5) 57 annual responses at 152 hours per response
(6) 8,664 annual burden hours
(7) Not applicable under 3504(h)
(1) Juvenile Justice and Delinquency Prevention Act Formula Grant Program Application Kit: Fiscal Years 1994–1996
(2) No form number. Office of Juvenile Justice and Delinquency Prevention
(3) Annually
(4) State or Local Governments. This documentation package provides appropriate state agencies with the instructions and forms necessary to apply for formula grants under the JJDP Act. It provides guidance in developing the three-year comprehensive plan, annual plan updates, and the annual plan application for FY 1994–1996.
(5) 57 annual responses at 432 hours per response
(6) 24,624 annual burden hours
(7) Not applicable under 3504(h)
(1) Juvenile Justice and Delinquency Prevention Act Formula Grant Program Individual Project Report
(2) No form number. Office of Juvenile Justice and Delinquency Prevention
(3) One-time.

(4) State or Local Governments. This information collection will provide basic data from public and private subgrant project participants receiving JJDP Act formula grant funds. The information will permit the analysis of grants and provide documentation which will aid in reporting the impact of the Federal funds.
(5) 1,240 annual responses at .5 hours per response
(6) 620 annual burden hours
(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: July 27, 1993.

**Lewis Arnold,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 93-18333 Filed 7-30-93; 8:45 am]

BILLING CODE 4410-18-M

## Lodging of Modified Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on July 13, 1993, a proposed modified consent decree in *United States* v. *City and County of Denver*, Civil Action No. 84-JM-1507, was lodged with the United States District Court for the District of Colorado.

The proposed modified consent decree amends a 1986 consent decree and incorporates a 1991 Administration Order on Consent upgrading a ground and surface water collection system at the Lowry Landfill Superfund Site in Arapahoe County, Colorado. The modified decree also provides for the payment by Denver of $15,000 for violations of the existing consent decree and requires Denver to undertake a household hazardous waste recycling plan.

The Department of Justice will receive comments relating to the proposed modified consent decree with the City and County of Denver for a period of thirty (30) days from the date of this publication. Comments on the decree should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City and County of Denver*, DOJ Ref. 90-11-2-93A.

A copy of the proposed modified consent decree may be examined at the Office of the United States Attorney, District of Colorado, 633 17th Street, Suite 1600, Denver, Colorado 80202; the Region VIII office of the Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005,(202-624-0892). A copy of the proposed modified decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. When requesting a copy of the proposed modified consent decree, please enclose a check in the amount of $5.50 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

**Myles E. Flint,**

*Acting Assistant Attorney General, Environment & Natural Resources Division.*

[FR Doc. 93-18316 Filed 7-30-93; 8:45 am]

BILLING CODE 4410-01-M

## Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 16, 1993, a proposed Consent Decree in *United States* versus *Otto Skipper, et al.*, Civil Action No. 89-102-Civ-7-F, was lodged with the United States District Court for the Eastern District of North Carolina. The complaint, brought pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9607, seeks the recovery of response costs incurred or to be incurred by the United States in connection with the Potter's Pits Superfund Site, Maco, North Carolina (the "Site"). The Site is situated in the town of Sandy Creek, Brunswick County, North Carolina, and occupies approximately 5 acres. The Site was used from 1960 until at least the late 1970's for disposal of waste oil, oil sludges, creosote and other hazardous substances. These hazardous wastes were disposed of in shallow, unlined pits at the Site.

The amount paid by these defendants is based on their financial inability to pay for the entire clean up of the Site. The consent decree provides that the Settling Defendants will pay $230,000 in settlement of the United States' claims.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. Comments should refer to *United States* versus *Otto Skipper, et al.*, D.O.J. REf. 90-11-3-120A.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of North Carolina, Princess and Water Streets, Wilmington, North Carolina 28401; Office of the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, 202-624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Myles E. Flint,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93-18315 Filed 7-30-93; 8:45 am]

BILLING CODE 4410-01-M

# Antitrust Division

## Notice Pursuant to the National Cooperative Research Act of 1984—PDES, Inc.

Notice is hereby given that, on April 30, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), PDES, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes to its membership. The notifications were filed for the purpose of extending Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following have become members of PDES: Hughes Aircraft, Los Angeles, CA; SDRC, Milford, OH; and Ford Motor Company, Dearborn, MI. Computervision Corporation; FMC Corporation; Honeywell, Inc.; TRW, Inc.; United Technologies Corporation; and Westinghouse Electric Corporation are no longer members of PDES.

No other changes have been made in either the membership or planned activity of the group development project. Membership in this group

development project remains open, and PDES intends to file additional written notifications disclosing all changes in membership.

On September 20, 1988, PDES filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 14, 1988 (53 FR 40282).

The last notification was filed with the Department on January 24, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 14, 1991, (56 FR 6036).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93-18318 Filed 7-30-93; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

## OFFICE OF THE SECRETARY

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**BACKGROUND:** The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

**LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW:** As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.

The title of the recordkeeping/ reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/ reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

**COMMENTS AND QUESTIONS:** Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

**New**

Employment and Training Administration
Alternative Schools Random Assignment Evaluation, Student Follow-up Survey
Annually
Individuals or households
993 respondents; 1 hour per response; 2 responses 1,986 total hours

This project will examine the effects of alternative school programs on educational outcomes of at-risk students. Information gathered will help to validate alternative school approaches to dropout prevention. Respondents are students who have applied for admission to participating alternative schools.

**New**

Employment and Training Administration
Unemployment Insurance (UI) Revenue Quality Control Employer Compliance Pilot Project
On occasion
State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations
8,000 respondents; 8 hours and 18 minutes per response; 66,750 total hours

This pilot is intended to determine the feasibility of regularly measuring the accuracy of registered UI employers' filing of UI contributions (tax) returns. It will draw a random sample of firms and audit their returns, and compare these results with audits of forms with large 1099 amounts or blocked UI benefits claims.

**Reinstatement**

Employment and Training Administration
Job Corps Enrollee Allotment Determination
1205-0030; ETA 658
On occasion
Individuals or households; Federal agencies or employees
30,000 respondents; 10-12 minutes per response; 6,000 total hours; 1 form

Job Corps enrollees may elect to have a portion of their readjustment allowance sent to a dependent monthly. This form provides the information necessary to administer those allotments.

**Extension**

Employment Standards Administration
Certificate of Medical Necessity
1215-0113; CM-893; 1 form
Annually
Businesses or other for profit; Non-profit institutions; Small businesses or organizations

| Form No. | Respondents | Average time per response | Burden hours |
|---|---|---|---|
| CM 893 (pulmonary) function test). | 1,900 | 40 min . | 1,267 |
| CM 893 (Blood gas study). | 7,600 | 20 min . | 2,533 |
| Total hours | ..... | ..... | 3,800 |

This form is completed by the miner's doctor and is used by the Employment Standards Administration to determine if the miner beneficiary meets the specific impairment standards to qualify for durable medical equipment, home nursing care and/or pulmonary rehabilitation.

**Extension**

Employment Standards Administration
Health Insurance Claim Form; Notification of Denial
1215-0055; OWCP-1500; 1 Form
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

| Form No. | Respondents | Average time per response | Burden hours |
|---|---|---|---|
| OWCP 1500(DFEC) | 540,000 | 15 min | 135,000 |
| OWCP 1500 (DCMWC) | 86,000 | 15 min | 21,500 |
| OWCP 1500 (DCMWC) | 9,000 | 5 min | 666.67 |
| Total hours | | | 157,168 |

**Extension**

Employment and Training Administration

Quarterly Determinations, Allowance Activities and Employability

Services Under the Trade Act and Training Waivers Issued and Revoked
1205–0016; ETA 563 and 9027
State or local governments

| Form No. | Respondents | Frequency | Average time per response |
|---|---|---|---|
| ETA 563 | 45 | 63 per quarter. | 12 min. |
| ETA 9027 | 52 | Quarterly | 15 min. |
| 2,320 total hours. | | | |

Quarterly data on Trade Adjustment Assistance activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated reports to the Congress on the Trade Adjustment Assistance Program. Quarterly number of waivers of training issued and revoked by reason are needed for proper administration and to provide statutorily required reports to the Congress.

**Extension**

Employment and Training Administration
ETA Summaries of Unemployment Insurance Trust Fund Activities
1205–0154; ETA 2112, 8401, 8403, 8405, 8413, 8414
State or local governments
Monthly

| Form No. | Respondents | Average time per response |
|---|---|---|
| ETA 2112 | 53 | 30 min. |
| ETA 8401 | 53 | 30 min. |
| ETA 8405 | 53 | 30 min. |
| ETA 8413 | 53 | 30 min. |
| ETA 8414 | 53 | 30 min. |
| ETA 8403 | 53 | 30 min. |
| 1,696 total hours. | | |

ETA report 8403 monitors Read Act funds. ETA reports 2112, 8401, 8405, 8413 and 8414 are used to monitor unemployment trust fund cash flow, disbursement, measures cash management performance and regulates balances pertaining to unemployment benefits paid from Federal sources. These activities are coordinated with State government accounting systems.

**Extension**

Employment and Training Administration
Producers/Purchasers Survey Data Request
1025–0191; ETA 8566
On occasion
Businesses or other for-profit; Small businesses or organizations
30 respondents; 1.75 hours per response; 53 total hours; 1 form

The Secretary of Labor is required by statute to certify groups of workers as eligible to apply for workers trade adjustment assistance (TAA). ETA conducts a survey to determine to what extent, if any, aggregate imports of the products made by the petitioning workers are increasing, either absolutely or relatively to domestic production, and thus help to determine whether the statutory criteria for certification of eligibility to apply for TAA have been met.

**Extension**

Employment and Training Administration
Business Confidential Data Request
1205–0197, ETA 9014
On occasion
Small businesses or organizations
1,500 respondents; 1 to 10 hours per response; 11,625 total hours; 1 form

Statutory requirements under the Trade Act of 1974, as amended, require complete and accurate business confidential data in order to make determinations as to whether imports have contributed to worker separations. The Secretary of Labor's determinations decide if petitioning workers are eligible to apply for worker adjustment assistance.

**Extension**

Employment and Training Administration
Disaster Payment Activities Under the Disaster Relief Act of 1974
1205–0234; ETA 90–2
Monthly
State or local governments
50 respondents; 15 minutes per response; 75 total hours; 1 form

Unemployment compensation claims, financial management and data on disaster unemployment assistance (DUA) activity are needed for timely program evaluation necessary for competent administration of section 401 and 423 of the Act. Workload items are also used with fiscal reports to estimate the cost of administering the Act.

**Revision**

Bureau of Labor Statistics
Labor Force Portion of CPS Questionnaire
OMB No. 1220–0100
Monthly
Individuals and households
57,000 respondents; 7 minutes per response; 79,055 total hours

The labor force portion of the CPS contains all the questions used to obtain the monthly information on employment status of the population. The survey is the primary source of data on the growth of the labor force and on the trends in total employment and unemployment. The data are widely used, both inside and outside the government, as indicators of the economic health of the Nation and of the various groups which make up the Nation's population.

**Revision**

Employment and Training Administration
Customer Survey Data Request
1205–0190, ETA 8562
On occasion
Businesses or other for-profit; Small businesses or organizations
19,251 respondents; 1 hour per response; 19,251 total hours; 1 form

This information is needed for the Secretary of Labor to make determinations of eligibility for petitioning workers to apply for trade adjustment assistance in accordance with section 222, 223 and 249 of the Trade Act of 1974 as amended, affecting manufacturers, wholesalers, retailers and distributors.

**Revision**

Employment and Training Administration
Job Training Partnership Act (JTPA) Migrant and Seasonal Farmworkers Reporting Revisions for Program Years 1993 and 1994
1205–0215; ETA 8595, 8596, 8597, 8598, 8599, SF 424, SF 70
State or local governments

| Form No. | Respondents | Frequency | Average time per response |
|---|---|---|---|
| Master Agreement. | 56 | One-time | 3 minutes. |
| Narrative .... | 56 | One-time | 22 hours. |
| ETA 8595 .. | 56 | Annual .... | 15 hours. |
| ETA 8596 .. | 56 | Annual .... | 16 hours. |
| ETA 8597 .. | 56 | 3 times ... | 7 hours. |
| ETA 8598 .. | 56 | 3 times ... | 7 hours. |
| ETA 8599 .. | 56 | Annual .... | 29 hours. |
| Record-keeping. | 56 | Annual .... | 6 hours. |
| | | | 20 minutes. |
| 7,302 total hours. | – | | |

These forms are used to manage the national programs authorized under section 402 of the JTPA. These documents are the principal sources of program funds and performance data. They form the basis for the award of funds, Federal oversight and reports to the Congress.

**Revision**

Pension and Welfare Benefits Administration
Adoption of ERISA Class Exemptions for Purposes of FERSA (PTE T88–1)
Businesses or other for-profit

As the result of the February 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, PWBA is no longer seeking Office of Management and Budget (OMB) clearance for those paperwork activities involving employer and third party (employee) disclosure provisions contained in the Employee Retirement Income Security Act (ERISA) section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986 (FERSA).

Signed at Washington, DC this 27th day of July 1993.

**Kenneth A. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 93–18280 Filed 7–30–93; 8:45 am]

BILLING CODE 4510–23–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by August 28, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by August 25, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (2020395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. The entry is not subject to 44 U.S.C. 3504(h).

*Title:* FY 95/96 Museum Program Application Guidelines.

*Frequency of collection:* One time.

*Respondents:* Individuals, nonprofit organizations, state and local arts agencies.

*Use:* Guidelines instructions and applications elicit relevant information from individuals, nonprofit arts organizations, and state and local arts agencies that apply under specific Museum Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

*Estimated number of respondents:* 446.

*Average burden hours per response:* 20.

*Total estimated burden:* 21,512.

**Judith E. O'Brien,**

*Management Analyst, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 93–18283 Filed 7–30–93; 8:45 am]

BILLING CODE 7537–01–M

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by September 1, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (2020395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202–682–5401).

**SUPPLEMENTARY INFORMATION:** The Endowment request the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* FY 94 International Program Fellowships and Residencies Application Guidelines.

*Frequency of collection:* One-time.

*Respondents:* Individuals.

*Use:* Guideline instructions and applications elicit relevant information from individual artists that apply for funding under specific program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposal in the review process.

*Estimated number of respondents:* 500.

*Average burden hours per response:* 10.

*Total estimated burden:* 5,000.

**Judith E. O'Brien,**

*Management Analyst, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 93–18282 Filed 7–30–93; 8:45 am]

BILLING CODE 7537–01–M

## Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by August 30, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by August 25, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (2020395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (60 the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Fellowship and Individual Project Final Report Form.

*Frequency of collection:* One time.

*Respondents:* Individuals Receiving Fellowship Grants.

*Use:* The requested information is needed to enable Endowment fellowship grant recipients to comply with Agency and OMB final report requirements and for the Endowment to comply with its legislative requirement to conduct post-award evaluations.

*Estimated number of respondents:* 700.

*Average burden hours per response:* .2.

*Total estimated burden:* 140.

**Judith E. O'Brien,**

*Management Analyst, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 93–18284 Filed 7–30–93; 8:45 am]

BILLING CODE 7537–01–M

## Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by August 30, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted by August 25, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–682–5401). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Fellowship and Individual Project Payment Request Form.

*Frequency of Collection:* One Time.

*Respondents:* Individuals Receiving Fellowship Grants.

*Use:* The requested information is needed to enable Arts Endowment to pay fellowship and individual grant recipients their grant funds.

*Estimated Number of Respondents:* 700.

*Average Burden Hours Per Response:* .2.

*Total Estimated Burden:* 140.

**Judith E. O'Brien,**

*Management Analyst, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 93–18285 Filed 7–30–93; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

### Whistleblower Protection; Request for Comment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) requests public comment on whether it has taken

sufficient steps within its authority to create an atmosphere within the regulated community where individuals with safety concerns feel free to engage in protected activities without fear of retaliation. The NRC is soliciting comments from interested persons including persons who have made safety allegations, other employees and the regulated industry. This action is intended to assist the NRC in evaluating current activities and making recommendations for improvements in the regulatory process.

**DATES:** The comment period expires September 1, 1993. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. In view of the need to provide a report to the Commission by mid October, requests to extend the comment period will not be considered.

**ADDRESSES:** Submit written comments to: The Chief, Rules Review and Directives Branch, Mail Stop: P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 7920 Norfolk Avenue, Bethesda, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2741.

**SUPPLEMENTARY INFORMATION:** On July 6, 1993, the Executive Director for Operations established a Review Team for Reassessment of the NRC Program for Protecting Allegers Against Retaliation. The Review Team is to determine whether the Commission has taken sufficient steps within its authority to create an atmosphere within the regulated community where individuals with safety concerns feel free to engage in protected activities without fear of retaliation. The Review Team is soliciting comments from interested persons, including persons who have made safety allegations, other employees, and the regulated industry. Comments from reactor and materials licensees and their employees are of interest.

From a practical point of view the NRC, even with its many inspectors, can observe only a fraction of licensed activities. Although the NRC's program for ensuring adequate protection is not structured to be dependent upon allegations of safety deficiencies, the NRC will never have the knowledge possessed by the thousands of employees in the nuclear industry. The NRC, therefore, expects employees in the nuclear industry to be free to raise potential safety issues.

Recognizing that it is not the NRC, but licensees who have the first responsibility for safety, it is not enough for employees to feel free to come directly to the NRC. Employees must feel free to raise potential safety issues to their management. Over the years the NRC, the regulated industry, and the public have benefitted from the issues raised by employees of licensees and their contractors.

The current regulatory process seeks to provide protection against retaliation for employees engaged in protected activities, e.g., raising of safety concerns to a licensee or the NRC. Discrimination against an employee for engaging in protected activities is prohibited by the Commission's regulations (e.g., 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10). Discrimination for purposes of this notice and the Commission's regulations includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. A licensee is subject to enforcement action under the Atomic Energy Act of 1954, as amended, for violations of these prohibitions by the licensee or its contractors and subcontractors.

The Atomic Energy Act does not provide the NRC with the authority to provide a personal remedy, such as reinstatement or back pay to an employee who has been subject to discrimination. An employee who believes that discrimination has occurred may seek a personal remedy by filing a complaint with the Department of Labor (DOL) in accordance with Section 211 of the Energy Reorganization Act of 1974, as amended. However, the DOL process for providing personal remedies for those retaliated against, and the NRC process for taking enforcement action against the licensees who have retaliated, is time consuming.

The NRC responds to technical aspects of allegations. However, to a large degree, the NRC relies on the DOL for investigating allegations of discrimination. The NRC Inspector General, in a report issued July 9, 1993, has found dissatisfaction with the current procedures and efforts. The Inspector General, after interviewing various whistleblowers and NRC staff members, concluded that the NRC process for handling allegations of retaliation does not provide an adequate level of protection for whistleblowers. The Inspector General report is available for public inspection and copying at the Commission's Public Document Room, Accession Number 9307260199.

In order to assess the NRC's performance, the Commission has directed that a Review Team be established to determine if NRC has taken sufficient steps to establish working environments within licensees' organizations where the great majority of employees feel free to raise issues without fear of retaliation. Because Section 211 of the Energy Reorganization Act was recently amended as part of the Energy Policy Act of 1992, Pub. L. 102–486, this review is to focus primarily on the existing statutory framework, i.e., the DOL provides the personal remedy to the employee, and NRC is responsible for regulating licensees such that licensees will foster an atmosphere where individuals will be encouraged to come forward with safety information without fear of retaliation.

In accordance with its charter, the Review Team is to consider:

(a) Whether the NRC has taken sufficient action through issuance of regulations, policy statements, and inspections to assure that NRC licensees encourage their employees and contractors to raise safety concerns without fear of reprisal;

(b) Whether the current NRC process for handling allegations is appropriate from the perspective of allegers feeling free to bring safety concerns to the NRC; and

(c) Where discrimination may have occurred—

(1) Whether there are NRC actions that can assist in a speedier resolution of issues within the DOL process;

(2) Whether NRC should be more proactive in conducting investigations during the pendency of DOL proceedings;

(3) Whether the NRC takes sufficient follow up action to determine if the licensee has taken action to remove the potential chilling effect arising from the discrimination;

(4) Whether the NRC can and should use civil penalties and orders more vigorously to emphasize the need for licensees actively to encourage employees to raise safety concerns without fear of discrimination; and

(5) Whether the NRC can and should use orders and demands for information more vigorously, where individuals are found to have caused discrimination; and

(d) Whether the NRC is sufficiently proactive in cases where employees raise concerns with the NRC and express fear that they may become

subject to retaliation for raising safety concerns.

Public comments from employees as well as licensees are requested on these issues. In addition, to focus comment on issues of interest to the Review Team, the following areas are highlighted for specific comments. Please key your comments to the numbering system used to present the following issues.

**A. Responsiveness and Receptiveness of Licensees to Employee Concerns so That Employees Will Feel Free To Raise Safety Issues Without Fear of Retaliation**

1. Many licensees have adopted employee concern type programs. These programs provide a recourse for employees who believe that raising safety concerns within the normal organizational processes may result in retaliation or that the normal processes may not be responsive to safety issues. These programs provide a method for employees to raise concerns outside their supervisory chain. These programs frequently provide for confidentiality or anonymity to encourage employees to raise issues without fear of retaliation.

a. What are the characteristics of these programs? Please provide a brief descriptions of such programs (including resources required; skills and qualifications of personnel involved; methodology for receiving, investigating, and resolving issues; actions taken to protect the identity of employees; number of concerns received per year; and degree of independence from line management).

b. To what degree are independent third parties or ombudsmen used in this type of program?

c. What organizational attributes encourage employees to use the licensee's employee concern type programs but at the same time do not discourage employees from bringing concerns to the NRC?

d. How do licensees measure the effectiveness of these programs in encouraging employees to raise concerns and in dealing with the concerns raised effectively (e.g., auditors, mail surveys)? What is the frequency of the measurements used?

e. What lessons have been learned from the implementation of this type of program? What attributes make the program effective? Please provide examples of where employees used an employee concern type program and actions were taken to improve safety as a result of the program. What program characteristics contributed to the success of these cases? What efforts are used to remove the potential for negative peer pressure that may cause employees not to raise issues?

f. What actions does management take to let employees know, in addition to the program description itself and training provided, that management in fact desires to receive safety concerns and appreciates it when valid concerns are provided? Does management use awards, promotions, publication of ideas, or other concrete actions to show that management appreciates concerns being raised?

g. Do employees have confidence in employee concern type programs? The response should provide the basis for the position taken. From an employee perspective, are there characteristics of these programs which cause them not to be used? Do employees perceive them as effective? If not, why not? What positive comments or negative concerns do employees have about such programs?

h. Would employees use this type of program? If not, why not? What program attributes would encourage employees to raise safety issues without fear of retaliation?

i. Should the NRC adopt a policy statement on the use of this type of program to express the Commission's desire for major licensees (Reactor and Fuel Cycle licensees) to establish programs to allow employees to raise safety issues outside their normal management chain in order to encourage employees to come forward without fear of retaliation? If not, why not?

j. Should a regulation be adopted instead of a policy statement? If not, why not?

k. Should the NRC order the adoption of an employee concern type program including third party or an independent ombudsman when the normal organizational processes are not adequate to encourage employees to raise safety issues without fear of retaliation?

2. An underlying principle of NRC regulation is that licensees have the primary and fundamental responsibility for assuring that their activities are carried out in a safe manner. This principle clearly applies in the area of raising, dealing with, and learning from safety issues. The Review Team is, therefore, interested in comments on those licensee and NRC actions and processes which are most likely to result in licensees addressing safety issues as a part of their normal course of business.

a. What are the organizational characteristics that encourage employees to raise safety issues and that effectively deal with these within the normal organizational processes? What efforts are made to remove the potential for negative peer pressure that may cause employees not to raise issues?

b. What measures could the industry or NRC take to encourage licensee organizations to establish and maintain these characteristics?

c. How do licensees measure the effectiveness of the normal organization with respect to encouraging employees to raise concerns and effectively dealing with the concerns raised (e.g., auditors, mail surveys)? What is the frequency of these measurements?

d. What organizational attributes encourage employees to use the licensee's normal organizational processes but do not discourage employees from bringing concerns to the NRC?

**B. Responsiveness and Receptiveness of the NRC to Allegations**

Allegations are an important source of information to the NRC. Employees may contact NRC inspectors directly or may call NRC collect. Under current NRC procedures, the NRC staff reviews each allegation for technical safety significance and makes determinations as to the appropriate method to resolve the safety issue. Allegations are often referred to licensees for resolution because the licensees have the primary responsibility for the safe operation of their facilities. In making referrals to licensees, precautions are taken so that the alleger is not identified. The Staff recognizes that even if it does the follow up on the allegation, NRC action on a matter may risk identifying the source because of the relatively few people that may know of an issue and the fact the individual may have raised the issue previously with the licensee.

1. What can the NRC do to be more responsive and receptive to allegations?

2. Comments are sought on the NRC policy to refer safety issues to licensees and actions the NRC can take to minimize compromising the identity of allegers in the referral process.

3. What NRC actions can be taken to minimize the potential for inadvertently identifying allegers when the NRC conducts the follow up inspection or investigation?

4. Would the establishment of a toll free 800 number for workers to call during the day or after hours be more conducive to having concerns raised to the NRC?

5. Are NRC inspections based on interviewing employees effective in measuring employee views on whether they feel free to raise safety issues without fear of retaliation? If not, why not? Comments are sought as to more effective ways such as using a survey

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questionnaire that can be returned directly to NRC.

**C. Potential for Discrimination**

The NRC at times receives information that employees are concerned that they may be retaliated against if they raise safety issues but that discrimination has not yet occurred.

1. What action should the NRC take when employees indicate a concern for potential retaliation about raising safety issues before the retaliation occurs?

2. In such cases, should the NRC formally advise the licensee that they have employees who are concerned about raising safety issues and that the NRC will be monitoring employment actions associated with those employees? If NRC should provide such notice, what mechanisms should be used? If NRC should not provide such notice, why not?

**D. NRC Investigations During DOL Process**

In order to avoid the duplication of efforts, the NRC and DOL entered into a Memorandum of Understanding (47 FR 54585; December 3, 1982). While the NRC investigations of allegations of discrimination are normally held in abeyance pending the DOL process, there are times, because of the significance of the issues to public health and safety, that investigations are conducted notwithstanding the ongoing DOL process. The Review Team is reconsidering whether the NRC should be conducting investigations during the DOL process. In that regard, individuals can file promptly with the NRC a concern that discrimination has occurred but then can wait six months before going to the DOL.

1. Should the NRC reconsider the MOU with the DOL and conduct investigations during the DOL process? In that regard, comments are sought on the impact of parallel investigations on remedial actions by licensees (including disciplinary actions), settlements (including both substance and timeliness of settlements), and adjudications.

2. If NRC should not conduct parallel investigations, should NRC conduct an investigation after the DOL process ends without a finding on the merits after the Area Office decision, after the Administrative Law Judge decision, or after the decision of the Secretary of Labor? If not, how should the NRC get the evidentiary record to develop an appropriate regulatory response and obtain remedial action by licensees to avoid the potential for a chilling effect on others that may have been created because of the licensee's actions?

3. Should the NRC await initiating an investigation until the 180 day statutory period for filing a complaint with the DOL has passed?

**E. Earlier NRC Enforcement Action**

The NRC currently initiates enforcement action after findings by the DOL Administrative Law Judges. They are normally issued more than a year after the Area Office decision. It is also recognized that the Area Office Directors are required to complete their investigations and reach decisions within tight statutory time frames.

1. Should NRC initiate enforcement action following a decision of an Area Office Director? If not, why not?

2. Will this approach tend to encourage licensees to cooperate more with the DOL investigators, encourage more settlements to resolve issues without an adjudicatory record, or increase litigation because of the impact of a penalty from NRC?

**F. Chilling Effect Letters**

In each case where the DOL initial investigation finds discrimination, the NRC issues a letter to request from the licensee (1) its basis for the employment action against the individual and (2) the actions taken or planned to ensure that the alleged discriminatory actions, whether actual or perceived, do not have a chilling effect on other employees who could raise safety concerns. These letters, known as "chilling effect letters," are not substitutes for enforcement action. They are issued to make NRC's interest known to the licensee, to encourage the licensee to initiate corrective action in advance of a finding by the Secretary of Labor of a violation, and to assure that the licensee knows of the DOL complaint in those cases where the complaint is filed against a contractor of the licensee.

1. Do these letters encourage corrective action? In their absence would licensees develop remedial action in advance of a final DOL ruling?

2. Should they be issued earlier in the process; for example, when a complaint is filed with the DOL?

3. Should the NRC provide DOL with the licensees' responses and make them part of the public record to assist DOL in resolving discrimination issues and avoiding suggestions that the NRC and DOL may be getting different explanations?

4. Should licensees' responses to chilling effect letters be made mandatory and submitted under oath and affirmation?

5. Should the NRC routinely follow up on the actions taken or planned described in the responses to chilling effect letters?

**F. NRC Civil Penalties**

1. Do NRC civil penalties for violations for discrimination provide deterrence? If not, what actions should the NRC take to increase their deterrence value?

2. Should the Severity Levels be increased for discrimination violations? Should penalties be assessed at the maximum statutory amount without consideration of the normal mitigation factors under the NRC Enforcement Policy, 10 CFR Part 2, Appendix C?

3. Should the NRC seek an amendment to Section 234 of the Atomic Energy Act to provide for higher civil penalties for violations involving discrimination? If so, how much and why?

**H. Use of Deliberate Misconduct Rule**

On August 15, 1991 (56 FR 40664), the Commission enacted a series of regulations entitled "Deliberate Misconduct" (e.g. 10 CFR 50.5), providing for taking enforcement action directly against licensee's employees who engage in deliberate misconduct, including discrimination.

1. Under what circumstances should the Deliberate Misconduct rule be used for violations involving discrimination?

2. What sanctions should be used against supervisors involved in discrimination? Comments are sought on the period of time individuals might be removed from licensed activities for engaging in deliberate discriminatory conduct and whether civil penalties should be assessed against individuals who deliberately retaliate and the amounts of such penalties.

In addition to those specific issues, commenters are invited to provide any other views on NRC activities to prevent discrimination from occurring and, where it does occur, for taking action to remove any related potential chilling effect and whether NRC actions have established the desired deterrent effect and achieved their remedial purposes.

SUBJECT: Whistleblower Protection; Request for Comment.

Dated at Rockville, Maryland, this 28th day of July 1993.

For the Nuclear Regulatory Commission.

**James Lieberman,**

*Director, Office of Enforcement*

[FR Doc. 93-18345 Filed 7-30-93; 8:45 am]

BILLING CODE 7590-01-P

**Advisory Committee on Reactor Safeguards, Subcommittee on Materials and Metallurgy; Meeting**

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on August 18, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Monday, August 18, 1993—12 Noon Until the Conclusion of Business*

The Subcommittee will review proposed rulemaking on fracture toughness requirements for reactor pressure vessels—revisions to 10 CFR 50.61, Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events, Appendix G, Fracture Toughness Requirements, Appendix H, Reactor Vessel Material Surveillance Program Requirements, and a new rule on Reactor Vessel Thermal Annealing (10 CFR 50.66). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: July 26, 1993.

**Sam Duraiswamy,**

*Chief, Nuclear Reactors Branch.*

[FR Doc. 93–18349 Filed 7–30–93; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 030–19747, License No. 52–21082–01 EA 93–078]

**Guillermo Velasquez, M.D., San Juan, Puerto, Rico; Order To Transfer Licensed Materials (Effective Immediately) and Demand for Information**

I

Guillermo Velasquez, M.D. (Licensee) is the holder of expired Byproduct Materials License No. 52–21082–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35 on September 3, 1982. The License authorized the use of strontium–90 for ophthalmic radiotherapy in accordance with the conditions specified therein. The License was renewed in its entirety on August 21, 1987, and expired on August 31, 1992. Since the expiration of the License, the byproduct material has remained in the possession of the Licensee, who does not have a license for possession of this material.

II

The Licensee did not submit an application for renewal of the License under 10 CFR 30.37 prior to its expiration, nor did the Licensee notify the Commission, in writing under 10 CFR 30.36, of a decision not to renew the License. Therefore, on September 11, 1992, NRC Region II issued a Notice of Violation (NOV) to the Licensee for failure to request renewal prior to expiration of the License or file a notice of non-renewal or transfer of the byproduct material. The letter forwarding the NOV directed the Licensee to place the strontium–90 in storage and not to use the material until the Licensee obtained a new NRC license, or to transfer the material to an authorized recipient if adequate storage was not available, or to submit an NRC Form 314 to the NRC if the Licensee chose to dispose of the byproduct material. The Licensee responded on December 4, 1992, requesting renewal of this License; however, the Licensee did not provide the appropriate licensing fee. Thus, no action was taken by NRC to renew the license and the Licensee was notified to submit the renewal fee.

The NRC performed a routine inspection at Licensee's facility in Rio Piedras, Puerto Rico on February 24, 1993, one purpose of which was to determine the status of the strontium–90 source. This inspection revealed that the Licensee had continued to use the material after expiration of the License and after receipt of the NRC letter and NOV dated September 11, 1992, which directed the Licensee to place the material in storage and not use the material until a new license was obtained.

As a result of the inspection, a Confirmation of Action Letter (CAL) was issued to the Licensee by NRC Region II on February 26, 1993. The CAL confirmed the Licensee's voluntary agreement to:

1. Immediately discontinue the use of the strontium–90 eye applicator and place it in locked storage until further notice by NRC Region II.

2. Prior to transfer of the source to another person or any future use of the source, have the source tested for leakage by a person authorized to perform the test, and send the results of the test to NRC Region II immediately after they are received by the Licensee.

In April and May 1993, the NRC Office of Investigations conducted an investigation of the circumstances regarding the Licensee's use of the source after the License expired and after receiving notification from the NRC to discontinue use of the material until a new NRC license was obtained. As a result of this investigation, it was determined that on at least 19 occasions, between September 11, 1992, and February 19, 1993, the Licensee, with the understanding that it was not to use the source, willfully used the strontium–90 source for ophthalmic radiotherapy. In addition, the investigation confirmed that the Licensee deliberately provided false information to the NRC inspector during the routine inspection conducted at the Licensee's facility on February 24, 1993. The Licensee told the inspector that the Licensee had not used the strontium–90 for ophthalmic radiotherapy since receiving the Notice of Violation issued September 11, 1992, when in fact the Licensee had used it at least 19 times as recently as five days prior to the inspection.

III

Based on the above, it appears that the Licensee has willfully violated NRC requirements and provided false information to NRC inspectors. The Commission must be able to rely on its licensees to provide complete and accurate information. Willful violations are of particular concern to the Commission because they undermine the Commission's reasonable assurance that licensed activities are being conducted in accordance with NRC requirements and with the utmost integrity. Strontium–90 eye applicators are designed to deliver intense doses of beta radiation for the treatment of certain eye diseases. A sealed source of approximately 100 millicuries delivers a contact dose rate on the order of 60 rad per second. Improper handling can result quickly in a radiation dose in excess of NRC limits. The Atomic Energy Act and the Commission's regulations require that material possessed by the Licensee be under a regulated system of licensing and inspection. The Licensee, by continuing to use material after being notified of the expiration of the License, and by deliberately providing false information, has demonstrated that the Licensee is not willing to comply with Commission requirements.

Consequently, the public health and safety and interest require the imposition of the requirements set forth in Section IV below. Furthermore, pursuant to 10 CFR 2.202, I have determined that the significance of the Licensee's actions described above, specifically, the willful use of licensed material after expiration of the License and after NRC notification to discontinue use of the material and the Licensee's deliberate false statements to Commission officials regarding that use are such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to section 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations at 10 CFR 2.202 and 10 CFR parts 30 and 35, It is hereby ordered, effective immediately, that:

A. No use of the strontium 90 source is authorized, except for performance of the pre-transfer leak test and transfer to an authorized recipient.

B. The Licensee continue to maintain safe control over the strontium-90 source, by keeping the source in locked storage and not allowing any person access to the source until the source is leak tested and transferred to a person authorized to receive and possess the source.

C. The strontium-90 source shall be transferred to a person authorized to receive and possess the source within 45 days of the date of this Order. If the Licensee believes it does not have sufficient funds to complete the transfer, it must provide, within 30 days of this Order, evidence supporting such a claim by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555: (1) An estimate of the cost of the transfer and the basis for the estimate, including the license number and identity of the person who would perform the transfer, (2) written statements from at least two banks stating that Dr. Velasquez or the Licensee could not qualify for a loan to pay for the transfer, (3) copies of Federal income tax returns for the years ending 1992, 1991, and 1990, for Dr. Velasquez and the Licensee's business practice, (4) copies of profit and loss statements for the business practice for those same years, and (5) a signed agreement to allow the NRC to receive the Licensee's credit information from a credit agency. A submittal of evidence of lack of sufficient funds does not excuse compliance with this order unless this order is relaxed.

D. Unless the source already has been transferred, the Licensee shall provide a written update within 30 days of receipt of this Order to the Regional Administrator, Region II, and the Director, Office of Enforcement, on Licensee's progress in finding an authorized person to receive and possess the source.

E. The strontium-90 source shall be tested for leakage by a person authorized to perform the test prior to transfer of the source to another person, if a leak test has not been performed within the last six months prior to transfer.

F. The Licensee shall notify the NRC by telephone at least two working days prior to the date of the transfer of the source so that the NRC may, if it elects, observe the transfer of the source to the authorized recipient.

G. The Licensee, within seven days following completion of the transfer, shall provide to the Regional Administrator, Region II: (1) Confirmation in writing and under oath (NRC Form 314) that the strontium-90 source has been transferred, (2) a copy of the leak test performed prior to the transfer, and (3) a copy of the certification from the authorized recipient that the source has been received.

The Regional Administrator, NRC Region II, may, in writing, relax or rescind any of the above conditions upon a showing by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order, may, submit an answer to this Order, and may request a hearing on this Order within 20 days of the date of this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street, NW., suite 2900, Atlanta, Georgia 30323, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. An answer

or request for hearing shall not stay the immediate effectiveness of this order.

VI

In addition to issuance of this Order, the Commission requires further information from the Licensee in order to determine whether the Commission can have reasonable assurance that in the future, should the Licensee perform licensed activities under any other NRC license, the Licensee will conduct any NRC licensed activity in accordance with NRC requirements.

Accordingly, pursuant to sections 161c, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 30.32(b), you are hereby required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of this Order, a statement in writing, under oath or affirmation, of:

Why the NRC should have confidence that you will comply with NRC requirements in the event that you perform licensed activities under another NRC license, and that you will provide complete and accurate information to the NRC concerning any licensed activities.

This information is needed in light of the willful violations of Commission requirements and the false information deliberately provided. Copies of the response to this Demand for Information also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region II, 101 Marietta Street, NW., suite 2900, Atlanta, GA 30323. After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

Dated at Rockville, Maryland this 21st day of July 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

*Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.*

[FR Doc. 93–18347 Filed 7–30–93; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 6, 1993 (58 FR 36224). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1 and June 30, 1993, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, 1993, will also be published.

### Schedule A

No Schedule A authorities were established or revoked during June 1993.

### Schedule B

No Schedule B authorities were established or revoked during June 1993.

### Schedule C

*Action*

Special Assistant to the Director of Action. Effective June 1, 1993.

**Department of Agriculture**

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective June 1, 1993.

Confidential Assistant to the Director, Intergovernmental Affairs. Effective June 1, 1993.

Confidential Assistant to the Assistant Secretary for Marketing and Inspection Services. Effective June 9, 1993.

Private Secretary to the Assistant Secretary for Natural Resources and Environment. Effective June 9, 1993.

Confidential Assistant to the Director, Office of Public Affairs. Effective June 9, 1993.

Confidential Assistant to the Secretary of Agriculture. Effective June 14, 1993.

Confidential Assistant to the Administrator, Farmers Home Administration. Effective June 18, 1993.

Confidential Assistant to the Manager, Federal Crop Insurance Corporation. Effective June 18, 1993.

Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective June 18, 1993.

Confidential Assistant to the Administrator, Farmers Home Administration. Effective June 21, 1993.

Special Assistant to the Administrator, Farmers Home Administration. Effective June 21, 1993.

Confidential Assistant to the Administrator, Food and Nutrition Service. Effective June 25, 1993.

Confidential Assistant to the Assistant Secretary for Food and Consumer Services. Effective June 30, 1993.

Confidential Assistant to the Executive Assistant to the Secretary. Effective June 30, 1993.

*Department of the Air Force (DOD)*

Staff Assistant (Typing) to the Assistant to the Vice President for National Security Affairs. Effective June 16, 1993.

*Department of Commerce*

Confidential Assistant to the Deputy Under Secretary for International Trade, International Trade Administration, Effective June 3, 1993.

Confidential Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration. Effective June 3, 1993.

Confidential Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration. Effective June 3, 1993.

Congressional Liaison Specialist to the Director, Office of Legislative and Intergovernmental Affairs. Effective June 3, 1993.

Confidential Assistant to the Deputy Assistant Secretary for International Economic Policy, International Trade Administration. Effective June 3, 1993.

Confidential Assistant to the Deputy Assistant Secretary for Import Administration, International Trade Administration. Effective June 3, 1993.

Confidential Assistant to the Under Secretary for International Trade, International Trade Administration. Effective June 3, 1993.

Special Assistant to the Under Secretary for International Trade, International Trade Administration. Effective June 3, 1993.

Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration. Effective June 3, 1993.

Special Assistant to the Director, Minority Business Development Agency. Effective June 4, 1993.

Confidential Assistant to the Deputy Assistant Secretary for Administration. Effective June 4, 1993.

Special Assistant to the Director General of the United States and Foreign Commercial Service, International Trade Administration. Effective June 4, 1993.

Special Assistant to the General Counsel. Effective June 9, 1993.

Director, Secretariat Staff to the Deputy Executive Secretary. Effective June 9, 1993.

Confidential Assistant to the Deputy Executive Secretary. Effective June 18, 1993.

Confidential Assistant to the Deputy Under Secretary, International Trade Administration. Effective June 18, 1993.

Confidential Assistant to the Director of Public Affairs. Effective June 30, 1993.

Congressional Affairs Specialist to the Director, Congressional Affairs Division, Effective June 30, 1993.

*Department of Defense*

Special Assistant for Production and Logistics and Energy to the Assistant Secretary of Defense, Legislative Affairs. Effective June 4, 1993.

Paralegal Specialist to the Chief Judge. Effective June 4, 1993.

Personal and Confidential Assistant to the Assistant Secretary of Defense (Democracy and Peacekeeping). Effective June 10, 1993.

Confidential Assistant to the Special Assistant to the Secretary. Effective June 25, 1993.

Confidential Assistant to the Special Assistant to the Secretary of Defense for Public Affairs. Effective June 30, 1993.

*Department of Education*

Deputy Secretary's Regional Representative, Region IV (Atlanta, GA) to the Secretary's Regional Representative, Region IV, Office of Intergovernmental and Interagency Affairs. Effective June 3, 1993.

Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective June 4, 1993.

Special Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective June 18, 1993.

Confidential Assistant to the Chief of Staff. Effective June 18, 1993.

Special Assistant to the Secretary of Education. Effective June 18, 1993.

Confidential Assistant to the Special Assistant, Office of the Secretary. Effective June 18, 1993.

Special Assistant to the Assistant Secretary, Office of Civil Rights. Effective June 21, 1993.

Special Assistant to the Assistant Secretary, Office of Educational Research and Improvement. Effective June 21, 1993.

Confidential Assistant to the Director of Scheduling and Briefing Staff. Effective June 29, 1993.

Assistant to the Director, Office of Public Affairs. Effective June 29, 1993.

*Department of Energy*

Staff Assistant to the Assistant Secretary for Policy, Planning and Program Evaluation. Effective June 3, 1993.

Speech Writer to the Director of Public Affairs. Effective June 3, 1993.

Deputy Press Secretary to the Director of Public Affairs. Effective June 3, 1993.

Attorney-Adviser (Public Utilities) to the Member. Effective June 23, 1993.

*Department of Health and Human Services*

Special Assistant to the Chief of Staff. Effective June 8, 1993.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective June 10, 1993.

Special Assistant to the Administrator, Health Care Financing Administration. Effective June 10, 1993.

Special Assistant to the General Counsel. Effective June 10, 1993.

Executive Assistant to the Assistant Secretary for Public Affairs. Effective June 10, 1993.

Special Assistant (Speechwriting) to the Director of Speechwriting. Effective June 10, 1993.

Confidential Assistant to the Executive Secretary. Effective June 18, 1993.

Deputy Director of Communications to the Director of Communication, Office of The Assistant Secretary for Public Affairs. Effective June 18, 1993.

Special Assistant to the Deputy Secretary. Effective June 18, 1993.

Speechwriter to the Deputy Assistant Secretary for Public Affairs (Media). Effective June 25, 1993.

Special Initiatives Coordinator to the Assistant Secretary for Public Affairs. Effective June 30, 1993.

Executive Assistant to the Deputy Assistant Secretary for Aging (Operations). Effective June 30, 1993.

*Department of Housing and Urban Development*

Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective June 18, 1993.

Director, Office of Executive Scheduling to the Assistant Secretary for Administration. Effective June 18, 1993.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective June 18, 1993.

Special Assistant to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective June 18, 1993.

Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations. Effective June 18, 1993.

Special Assistant to the Secretary of Housing and Urban Development. Effective June 18, 1993.

Staff Assistant to the Assistant Secretary for Public Affairs. Effective June 18, 1993.

Staff Assistant to the Director, Office of Executive Scheduling. Effective June 18, 1993.

Staff Assistant to the Assistant Secretary for Community Planning and Development. Effective June 18, 1993.

Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations. Effective June 18, 1993.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective June 18, 1993.

Special Assistant (Speech Writer) to the Assistant Secretary for Public Affairs. Effective June 18, 1993.

Special Assistant to the Assistant Secretary for Administration. Effective June 18, 1993.

Special Assistant to the Deputy Assistant Secretary for Federal Relief-South Dade County (Miami, FL). Effective June 18, 1993.

Special Assistant for Labor Relations to the Secretary of Housing and Urban Development. Effective June 18, 1993.

Legislative Assistant to the Deputy Assistant Secretary for Legislation. Effective June 18, 1993.

*Department of the Interior*

Special Assistant to the Director, National Park Service. Effective June 18, 1993.

Deputy Director for Legislative and Intergovernmental Affairs to the Assistant Secretary, Office of Congressional and Legislative Affairs. Effective June 18, 1993.

Special Assistant to the Assistant Secretary—Water and Science. Effective June 21, 1993.

Special Assistant to the Director, Bureau of Land Management. Effective June 21, 1993.

Special Assistant to the Assistant to the Secretary. Effective June 25, 1993.

Special Assistant to the Commissioner of Reclamation. Effective June 30, 1993.

Special Assistant to the Director, United States Fish & Wildlife Service. Effective June 30, 1993.

Special Assistant to the Director, United States Fish & Wildlife Service. Effective June 30, 1993.

*Department of Justice*

Special Assistant to the Assistant Attorney General. Effective June 23, 1993.

*Department of Labor*

Special Assistant to the Secretary Chief of Staff. Effective June 3, 1993.

Staff Assistant to the Chief of Staff. Effective June 3, 1993.

Special Assistant to the Chief of Staff. Effective June 3, 1993.

*Department of the Navy (DOD)*

Special Assistant to the Vice President and Chief of Staff to Mrs. Gore. Effective June 16, 1993.

*Department of State*

Special Assistant to the Assistant Secretary, Bureau of Public Affairs. Effective June 22, 1993.

Staff Assistant to the Assistant Secretary, Bureau of Public Affairs Effective June 22, 1993.

*Department of Transportation*

Special Assistant to the Associate Director for Media Relations and Special Projects. Effective June 29, 1993.

Associate Director of Media Relations and Special Projects to the Assistant to the Secretary and Director of Public Affairs. Effective June 29, 1993.

*Department of the Treasury*

Confidential Staff Assistant to the Under Secretary for International Affairs. Effective June 1, 1993.

Deputy to the Assistant Secretary (Legislative Affairs). Effective June 18, 1993.

Staff Assistant (Correspondence Review) to the Executive Secretary and Senior Adviser. Effective June 21, 1993.

*Department of Veterans Affairs*

Special Assistant to the Director, National Cemetery System. Effective June 21, 1993.

*Export-Import Bank of the United States*

Assistant to the Chairman and President. Effective June 4, 1993.

Assistant to the Chairman and President. Effective June 4, 1993.

Assistant to the Chairman and President. Effective June 4, 1993.

Confidential Assistant to President and Chairman. Effective June 15, 1993.

*General Services Administration*

Congressional Relations Officer to the Associate Administrator, Office of Congressional and Intergovernmental Affairs. Effective June 10, 1993.

Special Assistant to the Associate Administrator for Public Affairs. Effective June 10, 1993.

*National Aeronautics and Space Administration*

Special Assistant to the Associate Administrator for Legislative Affairs. Effective June 4, 1993.

Public Affairs Specialist to the NASA Administrator. Effective June 29, 1993.

*Occupational Safety and Health Review Commission*

Confidential Assistant to the Member (Commissioner). Effective June 30, 1993.

*Office of Management and Budget*

Confidential Assistant to the Associate Director for Economics and Government. Effective June 9, 1993.

Legislative Assistant to the Director, Office of Management and Budget. Effective June 9, 1993.

Confidential Assistant to the Associate Director for Human Resources. Effective June 15, 1993.

Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs. Effective June 15, 1993.

*Office of Personnel Management*

Confidential Assistant to the Director, Office of Congressional Relations. Effective June 22, 1993.

Deputy Directory to the Director, Office of Congressional Relations. Effective June 22, 1993.

*Office of Science and Technology Policy*

Confidential Assistant to the Associate Director Technology Division. Effective June 29, 1993.

*Office of the United States Trade Representative*

Confidential Assistant to the U.S. Trade Representative. Effective June 25, 1993.

Confidential Assistant to the Deputy U.S. Trade Representative. Effective June 25, 1993.

*Pension Benefit Guaranty Corporation*

Special Assistant to the Deputy Executive Director and Chief Financial Officer. Effective June 3, 1993.

Special Assistant to the Deputy Executive Director and Chief Financial Officer. Effective June 3, 1993.

*Small Business Administration*

Confidential Assistant to the Administrator of the Small Business Administration. Effective June 1, 1993.

Deputy Director of Intergovernmental Affairs to the Chief of Staff. Effective June 4, 1993.

Deputy Assistant Administrator for Public Communications to the Administrator. Effective June 4, 1993.

Special Assistant to the Assistant Administrator for Public Communications. Effective June 4, 1993.

Special Assistant to the Associate Deputy Administrator for Business Development. Effective June 4, 1993.

Special Assistant to the Chief of Staff. Effective June 9, 1993.

Special Assistant to the Administrator. Effective June 9, 1993.

Special Assistant to the Administrator for District Operations. Effective June 9, 1993.

Staff Assistant to the Chief of Staff. Effective June 9, 1993.

Special Assistant to the Administrator. Effective June 9, 1993.

Director of External Affairs to the Administrator. Effective June 9, 1993.

*United States Information Agency*

Senior Advisor to the Director, United States Information Agency. Effective June 4, 1993.

Special Assistant to the Director, Office of Program Coordination and Development, Bureau of Policy and Programs. Effective June 18, 1993.

Special Projects Officer to the Director, Office of Special Projects. Effective June 18, 1993.

Special Advisor to the Director, Office of Public Liaison. Effective June 21, 1993.

Special Assistant to the Associate Director, Bureau of Policy and Programs. Effective June 23, 1993.

Program Officer to the Deputy Director, Office of European Affairs. Effective June 23, 1993.

Special Assistant to the Associate Director for Programs, Bureau of Policy and Programs. Effective June 25, 1993.

Special Assistant to the Associate Director, Bureau of Policy. Effective June 30, 1993.

*United States Tax Court*

Trial Clerk to the Judge. Effective June 18, 1993.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

[FR Doc. 93–18298 Filed 7–30–93; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–19594; 812–7844]**

## Daily Money Fund, et al.; Application for Exemption

July 26, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act")

**APPLICANTS:** Daily Money Fund, Daily Money Fund II, Beacon Street Trust, Fidelity Broad Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity

Capital Trust, Fidelity Cash Reserves, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Corporate Recovery Fund, Fidelity Court Street Trust, Fidelity Destiny Portfolios, Fidelity Deutsche Mark Performance Portfolio, L.P., Fidelity Devonshire Trust, Fidelity Diversified Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Franklin Street Trust, Fidelity Fund, Fidelity Government Securities Fund, Fidelity Income Fund, Fidelity Institutional Cash Portfolios, Fidelity Institutional Tax-Exempt Cash Portfolios, Fidelity Institutional Trust, Fidelity Investment Series, Fidelity Investment Trust, Fidelity Limited Term Municipals, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Money Market Trust II, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust II, Fidelity Oliver Street Trust, Fidelity Puritan Trust, Fidelity Securities Fund, Fidelity Securities Trust, Fidelity Select Portfolios, Fidelity Special Situations Fund, Fidelity Sterling Performance Portfolio, L.P., Fidelity Summer Street Trust, Fidelity Trend Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Fidelity U.S. Investments-Bond Fund, L.P., Fidelity U.S. Investments-Government Securities Fund, L.P., Fidelity Yen Performance Portfolio, L.P., Income Trust, Institutional Investors Trust, North Carolina Cash Management Trust, Spartan U.S. Treasury Money Market Fund, Variable Insurance Products Fund, Zero Coupon Bond Fund (collectively the "Trusts"); Fidelity International U.S. Treasury Portfolio; Fidelity Management & Research Company ("FMR"); Fidelity Management Trust Company ("FMTC"); Fidelity Group Trust For Employee Benefit Plans ("Fidelity Group Trust"); Fidelity Investments Institutional Operations Company ("FIIOC"); Fidelity Service Co. ("FSC"); and FMR Texas Inc.

**RELEVANT ACT SECTIONS:** Order requested under rule 17d–1 to permit certain joint transactions otherwise prohibited by section 17(d) and rule 17d-1.

**SUMMARY OF APPLICATION:** Applicants seek to amend an existing order that permits the Trusts to operate a joint trading account that invests solely in repurchase agreements, with maturities not exceeding seven days, collateralized by U.S. government securities. The amended order would permit: (1) The establishment of one or more new joint accounts, in addition to the existing joint account (collectively, the "Joint Accounts"); (2) the Joint Accounts to invest in various short-term money market instruments and tax-exempt variable rate demand notes, in addition to repurchase agreements; (3) repurchase agreements held by the Joint Accounts to have maturities of up to 60 days, rather than the current limit of seven days; (4) the use of First Tier Securities (as defined below), in addition to U.S. government securities, as collateral for the repurchase agreements; (5) the Trusts' shareholder servicing and dividend disbursing agents, certain off-shore funds and state and local entities or accounts advised by the Adviser (as defined below), and certain employee benefit plans for which FMTC acts as trustee, to participate in the Joint Accounts.

**FILING DATE:** The application was filed on December 31, 1991, and amended and restated on November 25, 1992, and March 10, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by SEC by 5:30 p.m. on August 20, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, MA 02109.

**FOR FURTHER INFORMATION CONTACT:** Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. Each of the Trusts is a registered investment company. FMR, a wholly-owned subsidiary of FMR Corp., is the investment adviser for each of the Trusts. As used herein, the term "Adviser" refers to FMR and any other company controlled by or under common control with FMR that in the future acts as investment adviser to one or more of the Funds (as that term is defined below). FMR Texas, a wholly-owned subsidiary of FMR, supplies sub-advisory services to FMR in connection with certain Trusts advised by FMR. In addition, personnel of FMR Texas manage the repurchase agreement investments, including the repurchase agreement investments executed through the Joint Account, on behalf of the Trusts. FSC serves as the shareholder servicing and dividend disbursing agent for the retail Trusts, while FIIOC serves in the same capacities for the institutional Trusts. FSC and FIIOC are operating divisions of FMR Corp. Hereafter, the terms "FSC" and "FIIOC" will include, in addition to the companies themselves, any other company controlled by or under common control with FMR that acts in the future as shareholder servicing and dividend disbursing agent for one or more of the Trusts.

2. The application has been filed by the above-named applicants for themselves and on behalf of (a) all other investment companies and series thereof, whether currently existing[1] or to be created, that in the future are advised by the Adviser (such other investment companies and series thereof, together with the Trusts, shall hereafter be referred to as the "Fidelity Funds"); (b) pooled investment funds currently or in the future advised by the Adviser and offered exclusively outside the United States to non-U.S. residents (the "Off-Shore Funds"); (c) state and local entities or accounts thereof currently or in the future advised by the Adviser that are exempt from regulation under the Act pursuant to section 2(b) (the "2(b) Entities"); and (d) current or future collective trust funds of the Fidelity Group Trust, the trustee for which is FMTC, that are excepted from the definition of investment company by section 3(c)(11) of the Act (the "3(c)(11) Entities"). The Fidelity Funds, Off-Shore Funds, 2(b) Entities, and 3(c)(11) Entities are collectively referred to herein as the "Funds."

3. The only Off-Shore Fund that currently proposes to participate in the Joint Accounts is Fidelity International U.S. Treasury Portfolio, which has been

[1] Certain currently existing Funds (as that term is defined in this paragraph) do not presently intend to participate in the proposed Joint Accounts, and thus have not executed the application and have not been included in the list of applicants. Such Funds will be covered by the requested order if they hereafter determine to participate in the Joint Accounts.

named as an applicant. This Fund, a portfolio of an investment company established under the laws of Bermuda, is advised by FMR Texas.

4. FMR is the investment adviser for several 2(b) Entities. Before participating in the Joint Accounts, each 2(b) Entity will have to determine that proposed investment in instruments through the Joint Accounts is consistent with state laws or administrative rules regulating such entities. Applicants do not know at this time whether any 2(b) Entities will be able or willing to participate in the Joint Accounts.

5. The 3(c)(11) Entities are not separately organized trusts. Rather, each is organized as a separate pooled account under the Fidelity Group Trust, for which FMTC acts as trustee. The Fidelity Group Trust accepts deposits for each pooled account only from qualified employee benefit plans. FMTC, as trustee, is authorized under the declaration of trust to join in this application on behalf of the Fidelity Group Trust and its individual pooled accounts.

6. The Fidelity Funds currently are authorized to invest in repurchase agreements through the existing Joint Account pursuant to an order (the "Order") granted under section 17(d) of the Act and rule 17d–1 thereunder. See Investment Company Act Release Nos. 11962 (Sept. 29, 1981) (notice) and 12061 (Nov. 27, 1981) (order). The Order permits the Fidelity Funds to deposit uninvested cash into the existing Joint Account for the purpose of collective investment in repurchase agreements that do not exceed seven days in duration. Morgan Guaranty Trust Company of New York is the custodian for the existing Joint Account.

7. Applicants seek to amend the Order to permit (1) the establishment of one or more new Joint Accounts, in addition to the existing Joint Account; (2) the Joint Accounts to invest in various short-term money market instruments and tax-exempt variable rate demand notes, in addition to repurchase agreements; (3) repurchase agreements held by the Joint Accounts to have maturities of up to 60 days, rather than the current limit of seven days; (4) the use of First Tier Securities (as defined below), in addition to U.S. government securities, as collateral for the repurchase agreements; (5) FSC and FIIOC (in their capacities as the Trusts' shareholder servicing and dividend disbursing agents), the Off-Shore Funds, the 2(b) Entities, and the 3(c)(11) Entities, in addition to the Fidelity Funds, to participate in the Joint Accounts.

8. New Joint Accounts could be established at any of the Funds' custodian banks. More than one Joint Account could be established at a custodian bank. A Fund may participate in Joint Accounts at more than one custodian bank. Establishing Joint Accounts at various custodian banks will significantly improve the Funds' ability to reduce or eliminate cash balances at one Custodian or subcustodian bank that unexpectedly may pose increased credit risk, by allowing cash flows to be rerouted on short notice around that bank.

9. The Joint Accounts will consist of one or more separate pools of securities. "Repo Pools" will contain exclusively repurchase agreements. "Short-Term Money Market Pools" will contain various short-term money market instruments that, at the time of purchase, are "First-Tier Securities" (as defined below) that have overnight, over-the-weekend, or over-the-holiday maturities, or that have demand features that have the same effective maturities ("Short-Term Money Market Instruments"). "Short-Term Tax Exempt Pools" will contain tax-exempt variable rate demand notes that have demand features providing for overnight, over-the-weekend, or over-the-holiday maturities ("Short-Term Tax Exempt Obligations").

10. To the Adviser's knowledge, the only instruments currently available with maturities short enough to be Short-Term Money Market Instruments are overnight commercial paper, variable rate demand obligations, certain U.S. government agency certificates, and bank time deposits. However, the Joint Accounts will be permitted to invest in such additional Short-Term Money Market Instruments that are First Tier Securities as may become available. First Tier Securities are securities that are rated in the highest rating category by any two nationally recognized statistical rating organizations ("NRSROs"), or by one NRSRO if only one NRSRO has issued a rating with respect to such security. By permitting Joint Accounts to invest in Short-Term Money Market Instruments, applicants submit that Joint Account participants will obtain greater diversification and potentially higher yields than repurchase agreements alone could offer.

11. Short-Term Tax Exempt Obligations include short-term tax exempt municipal demand obligations that have a variable or floating interest rate and an unconditional right to demand payment of the unpaid principal and accrued interest each business day. All Short-Term Tax Exempt Obligations held through a Joint Account will qualify for purchase by a money market fund under rule 2a–7. Applicants note that the highest quality tax-exempt obligations are sold in denominations of $100,000 or more, and thus that Joint Accounts, through the use of Short-Term Tax Exempt Pools, may be able to obtain investment opportunities not otherwise available to certain participating tax-exempt Fidelity Funds individually.

12. Repo Polls will be permitted to hold repurchase agreements with varying maturities not exceeding 60 days. These "term" repurchase agreements (i.e., repurchase agreements with a maturity in excess of one business day) will reduce transaction costs and allow the Funds to diversify their cash positions and invest cash at potentially higher yields than overnight repurchase agreements offer. In addition, term repurchase agreements reduce the amount of cash subject to risk of loss through the insolvency of a Funds' custodian bank. Since each Fund's deposit account is federally insured up to 100,000 only, the cash may be subject to risk if the custodian bank were placed in receivership. Term repurchase agreements reduce this risk by allowing more cash to be invested, as opposed to being in the custodian bank's deposit account intra-day awaiting reinvestment in an overnight repurchase agreement. Finally, by reducing intra-day cash and securities movements, the Funds may avoid fees assessed by the Federal Reserve Board for intra-day Fed-wire and book-entry security overdrafts.

13. Applicants anticipate that most Repo Pools will have maturities of 30 days or less and that few Repo Pools will have a maturity in excess of 45 days. Applicants, however, have proposed a 60 day maximum term by balancing the benefits of pooled term repurchase agreement transactions against the need to make individually tailored liquidity and maturity decisions for longer term repurchase agreements. Although a shorter or longer maximum maturity could have been selected, applicants believe that 60 days provides adequate flexibility, and that term repurchase agreements with maturities in excess of 60 days might better be executed on an individual Fund basis. Applicants also note that the amortized cost method of valuation could be used to value the investment of any type of Fund in a repurchase agreement with a maturity of up to 60 days, while only money market funds could so value an investment with a maturity in excess of 60 days.

14. Repurchase agreements may not be transferred. For this reason, term repurchase agreements that do not

provide for payment within seven days will be considered illiquid investments for purposes of each Fidelity Fund's percentage restriction on investments in illiquid securities.

15. Repurchase agreements, whether term or overnight, will be held to maturity except in the case of default by the counterparty or where the Funds and the counterparty agree to early termination. The only practical way for a Fund to terminate its fractional interest in a term repurchase agreement jointly held with other Funds prior to its scheduled maturity would be to attempt to renegotiate with the counterparty. Such an early termination would normally require the withdrawing Fund to accept the current market value of its interest and to compensate the counterparty in full satisfaction of any cost incurred. The cost of such transaction would be borne solely by the Fund liquidating its fractional interest. In no case would an early termination by less than all participating Funds be permitted if it would reduce the principal amount or yield received by other Funds participating in a particular Repo Pool or otherwise adversely affect the other participating Funds.

16. Applicants' proposal will permit the Funds to accept as collateral for repurchase agreements, in addition to U.S. government securities, First Tier Securities.

17. FSC and FIIOC, as shareholder servicing and dividend paying agents of the Fidelity Funds, maintain certain accounts with a variety of bank custodians. These accounts are established in the name of FSC or FIIOC as nominee for the Fidelity Funds. FSC and FIIOC will be permitted to invest the cash balances from these accounts in the Joint Accounts. FSC, FIIOC, the Off-Shore Funds, 2(b) Entities, and 3(c)(11) Entities will be permitted to participate in the Joint Accounts on the same terms as the Fidelity Funds, except that FSC and FIIOC will be allowed to participate in Repo Pools only if such pools exclusively contain repurchase agreements with overnight, over-the-weekend, or over-the-holiday maturities ("Short-Term Repo Pools"). Short-Term Repo Pools, Short-Term Money Market Pools, and Short-Term Tax Exempt Pools are referred to collectively as "Short-Term Pools."

18. The participation by FSC and FIIOC through nominee accounts of the Fidelity Funds in Short-Term Pools of the Joint Accounts will benefit the Funds because it will enable the accounts to earn income that will help offset the Funds' bank and shareholder servicing expenses. Participation in the Joint Account by FSC, FIIOC, the Off-Shore Funds, 2(b) Entities, and 3(c)(11) Entities presents no conflict of interest with the Fidelity Fund participants because all entities participating in the Joint Accounts will do so on the same basis as all other participants.

19. It is anticipated that the Joint Accounts will operate essentially in the same manner as the existing Joint Account presently operates pursuant to the Order. The application contains a detailed description of the procedures employed to operate the Joint Account. The proposed method of operating the Joint Accounts will not result in any conflicts of interest between any of the participating entities, including between the Funds and the Adviser.

20. Each of the Fidelity Funds has established the same systems and standards regarding investments in repurchase agreements. These systems and standards, adopted in compliance with Investment Company Act Release No. 13005 (Feb. 2, 1983), include quality standards for issuers of the repurchase agreements, and require that the repurchase agreements be at least 100% collateralized at all times. The Fidelity Funds will monitor and comply with any future SEC releases regarding investments in repurchase agreements by investment companies.

21. The Joint Accounts will not be distinguishable from any other custodian account maintained by a Fund except that monies from the Fund will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not be legally cognizable entities. The sole function of the Joint Accounts will be to provide a convenient way of aggregating what otherwise would be one or more transactions for each individual Fund necessary to manage the Funds' cash balances.

22. A Fund's investment in any Pool of a Joint Account will not be subject to the claims of creditors of another participating Fund.

**Applicants' Legal Analysis**

1. Section 17(d) and rule 17d–1(a), taken together, prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from participating in any joint enterprise or arrangement in which such investment company is a participant, without an SEC order. Rule 17d–1(b) provides that in passing upon applications under section 17(d) and rule 17d–1, the SEC will consider whether each party's participation in the proposed joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. The participants, by participating in the Joint Accounts, and the Adviser, by managing the Joint Accounts, could be deemed to be joint participants in a transaction within the meaning of section 17(d)(1). In addition, each Joint Account could be deemed to be a joint enterprise or arrangement within the meaning of rule 17d–1.

3. Applicants submit that the operation of the Joint Accounts will be free of any inherent bias favoring the Adviser over the participants, or one participant over another participant. They further submit that there does not appear to be a basis upon which to predict greater proportional benefits to one participant than to another, since all participants will participate on the same basis in the income of any pool in which they choose to invest. For these reasons, applicants submit that the criteria of rule 17d–1 for issuance of an order permitting joint transactions have been met.

**Applicants' Conditions**

As an expense condition to obtaining an exemptive order, Applicants agree that each Joint Account will operate according to the following procedures:

1. One or more separate cash accounts will be established at one or more custodian banks into which each Participant will be permitted to deposit daily all or a portion of its cash balances that it wishes to invest in the Joint Accounts.

2. The Joint Accounts will invest in repurchase agreements only if they are collateralized either by (i) securities issued by or guaranteed as to principal or interest by the United States government or any of its agencies or instrumentalities, or (ii) First Tier Securities. Joint Accounts may invest either in repurchase agreements collateralized as set forth above, Short-Term Money Market Instruments that are First Tier Securities, and Short-Term Tax Exempt Obligations.

3. Each participating Fund's cash deposited in the Joint Accounts will be invested consistent with its investment objectives, policies, and restrictions. FSC and FIIOC will only participate in a Joint Account by investing in one or more of its Short-Term Pools.

4. All investments held by the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable Commission release, rule or order.

5. In order to assure that there will be no opportunity for one Fund or other participant to use any part of a balance of a Joint Account credited to another

participant, no participant will be allowed to create a negative balance in a Joint Account for any reason.

6. Not every participant in a Joint Account will necessarily have its cash invested in every instrument held through the account. However, to the extent a participant's funds are used to acquire a particular instrument or pool of instruments for the account, the participant will participate in and own a proportionate share of such instrument(s), and the income earned or accrued thereon, based upon the percentage of such instrument(s) purchased with the participant's cash.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The Adviser will manage the Joint Accounts as part of its duties under its existing or any future investment advisory contracts with the Funds. The Adviser will not collect an additional fee from any Participant for managing the Joint Accounts. 9. Each Participant's investment in the Joint Accounts will be documented daily on the books of each Participant and on the books of its custodian. Each of the Fidelity Funds will maintain, in conformity with section 31 of the Act and the rules and regulations thereunder, all books and records directly or indirectly related to its participation in the Joint Accounts. Each participant that is not a registered investment company or registered investment adviser will maintain and make available to the SEC, upon request, books and records containing information related to its participation in the Joint Accounts.

10. All repurchase agreements of a Repo Pool entered into through the Joint Accounts will have a duration of no more than 60 days.

11. Each participating Fund valuing its assets in reliance upon rule 2a–7 under the Act will use the average maturity of the instrument(s) in the Joint Accounts in which such Fund has an interest for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such Joint Accounts on that day.

12. Each Fund's Board of Trustees will evaluate the Joint Accounts annually, and will only permit a Fund to continue to participate therein if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the continued participation.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18301 Filed 7–30–93; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF TRANSPORTATION

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 23, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49044
*Date filed:* July 20, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 17, 1993
*Description:* Application of Grand Airways, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing interstate and oversees scheduled air transportation. The proposed markets to be served are Oakland, Palm Springs, Las Vegas and Grand Canyon.

*Docket Number:* 49046
Date filed: July 22, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 19, 1993
*Description:* Application of Patriot Airlines, Inc., pursuant to section 401(d)(3), and subpart Q of the Regulations, for issuance of an amended certificate of public convenience and necessity so as to authorize Patriot to provide foreign charter air transportation of persons, in addition to its existing authority to perform foreign charter air transportation of property and mail, between points in the United States and points in various foreign countries.

*Docket Number:* 49047
*Date filed:* July 22, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 19, 1993
*Description:* Application of Patriot Airlines, Inc., pursuant to section 401(d)(3) of the Act and subpart Q of the Regulations, applies for issuance of an amended certificate of public convenience and necessity so as to authorize Patriot to provide interstate and oversees charter air transportation of persons, in addition to its existing authority to perform interstate and oversees charter air transportation of property and mail, between various points in the United States.

*Docket Number:* 48022
*Date filed:* July 19, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 16, 1993
*Description:* First Amendment to the Application of Aerolineas Centrales De Colombia, S.A. d/b/a ACES for a foreign air carrier permit, pursuant to section 402 of the Act and subpart Q of the Regulations, moves to amend in order to serve San Juan, Puerto Rico, U.S.A., pursuant to the U.S.-Colombia bilateral.

*Docket Number:* 48658
*Date filed:* July 19, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 16, 1993
*Description:* Application of Southern Air Transport, Inc. d/b/a Polar Air Cargo, pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations, requests an amended certificate of public convenience and necessity to the extent necessary to authorize it to provide foreign scheduled air transportation of property between the United States and the United Kingdom.

*Docket Number:* 48203
*Date filed:* July 22, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 19, 1993
*Description:* Application of American Trans Air, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests amendment of its pending certificate application to enable it to operate scheduled foreign air transportation of persons, property and mail between a point or points in the United States and Lisbon, Portugal as an intermediate point (with traffic rights) as part of its current operations to Lagos, Nigeria.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 93–18304 Filed 7–30–93; 8:45 am]

BILLING CODE 4910–62–P

**Aviation Proceedings; Agreements Filed During the Week Ended July 23, 1993**

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 49048
*Date filed:* July 23, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC12 Reso/C 0919 dated May 18, 1993 r1-r9; North Atlantic USA/UST Cargo Resps
*Proposed Effective Date: October 1, 1993*

*Docket Number:* 49049
*Date filed:* July 23, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC31 Reso/C 0240 dated May 18, 1993 r1-r6; TC31 Southeast Asia-USA/UST Cargo Resos; Table—TC31 Rates 0160 dated July 6, 1993
TC31 Reso/C 0243 dated May 18, 1993 r7-r12; TC31 Japan/Korea-USA/UST cargo Resos; TABLESTC31 Rates 0158 dated July 6, 1993
TC31 Reso/C 0245 dated May 18, 1993 r13-r17; TC31 South Pacific-USA/UST Cargo Resos; Tables—TC31 Rates 0162 dated July 6, 1993
*Proposed Effective Date:* October 1, 1993

*Docket Number:* 49050
*Date filed:* July 23, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC23 Reso/C 0217 dated May 2, 1993 r1-r5; TC23 to/from USA/UST Cargo Resos
*Proposed Effective Date:* October 1, 1993

*Docket Number:* 49051
*Date filed:* July 23, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC3 Reso/C 0082 dated May 18, 1993 r1-r5; TC3 to/from USA/UST Cargo Resos; Tables—TC3 Rates 0082 dated June 15, 1993
*Proposed Effective Date:* October 1, 1993

*Docket Number:* 49053
*Date filed:* July 23, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* Comp Telex Mail Vote 643; Rescission of Reso 025 Surcharge
*Proposed Effective Date:* August 15, 1993

*Docket Number:* 49054
*Date filed:* July 23, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* TC12 Fares 0408 dated July 23, 1993; USA–UK Add-On Amounts
*Proposed Effective Date:* October 1, 1993

Phyllis T. Kaylor,
*Chief, Documentary Services Division.*

[FR Doc. 93–18303 Filed 7–30–93; 8:45 am]
BILLING CODE 4910-62-P

## DEPARTMENT OF VETERANS AFFAIRS

**Information Collection Under OMB Review**

**AGENCY:** Department of Veterans Affairs.
**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;
(2) A description of the need and its use;
(3) Who will be required or asked to respond;
(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;
(5) The estimated average burden hours per respondent;
(6) The frequency of responses; and
(7) An estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316, Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by September 1, 1993.

Dated: July 27, 1993.
By direction of the Secretary.

B. Michael Berger,
*Director, Records Management Service.*

**Extension**

1. Request for and Consent to Release of Information from Claimant's Records, VA Form 3288 (formerly, 70–3288).
2. The form is completed by veterans or beneficiaries to provide VA with a written consent to release records or information and a third party. Use of the form ensures that an individual has given written consent for the release of records or information about himself/herself.
3. Individuals or households.
4. 23,875 hours.
5. 7.5 minutes.
6. On occasion.
7. 191,000 respondents.

[FR Doc. 93–18364 Filed 7–30–93; 8:45 am]
BILLING CODE 8320-01-M

**Information Collection Under OMB Review**

**AGENCY:** Department of Veterans Affairs.
**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;
(2) A description of the need and its use;
(3) Who will be required or asked to respond;
(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;
(5) The estimated average burden hours per respondent;
(6) The frequency of response; and
(7) An estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer by September 1, 1993.

Dated: July 27, 1993.
By direction of the Secretary.

B. Michael Berger,
*Director, Records Management Service.*

**Extension**

1. Application for Education Loan, VA Form 22–8725.

2. The form is used to request information relating to an applicant's financial resources and education-related expenses to determine eligibility for an education loan.

3. Individuals or households.

4. 100 hours.

5. 40 minutes.

6. On occasion.

7. 150 respondents.

[FR Doc. 93-18363 Filed 7-30-93; 8:45 am]

BILLING CODE 6320-01-M

VOL 58 ISS 146 AG 2 1993 UMI

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 146
Monday, August 2, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

## FCC To Hold Open Commission Meeting, Tuesday August 3, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Tuesday, August 3, 1993, which is scheduled to commence at 9: 30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

*Item No., Bureau, and Subject*

1—Common Carrier—Title: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91-141). Summary: The Commission will consider adoption of a *Second Memorandum Opinion and Order on Reconsideration* regarding certain issues concerning expanded interconnection for special access.

2—Common Carrier—Title: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91-141, Transport Phase I), and Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board (CC Docket No. 80-286). Summary: The Commission will consider adoption of a *Second Report and Order and Third Notice of Proposed Rulemaking* regarding issues concerning expanded interconnection for switched transport.

3—Common Carrier—Title: Intelligent Networks (CC Docket No. 91-346). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the third party access and network reliability issues raised in the Notice of Inquiry.

4—Private Radio—Title: Capitol Radiotelephone, Inc., d.b.a. Capitol Paging. Summary: The Commission will consider adoption of a *Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing* against Capitol Radiotelephone, Inc. (d.b.a. Capitol Paging).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Dated: July 28, 1993.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 93-18442 Filed 7-29-93; 11:41 am]

BILLING CODE 6712-01-M

# Corrections

Federal Register
Vol. 58, No. 146
Monday, August 2, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**7 CFR Part 944**

**[Docket No. FV-91-245 FR]**

### Fruits; Import Regulations (Grapefruit); Reinstatement of Grapefruit Import Requirements

*Correction*

In rule document 93-17504 beginning on page 39428 in the issue of Friday, July 23, 1993, make the following correction:

**§ 944.106 [Corrected]**

On page 39430, in § 944.106(a), in the table, under the heading Regulation period, the first entry for Seedless, red should read "1–08/22/93".

BILLING CODE 1505-01-D

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**7 CFR Part 319**

**[Docket No. 91-033-2]**

### Postentry Quarantine of Plants

*Correction*

In rule document 93-16903 beginning on page 38263 in the issue of Friday, July 16, 1993, make the following corrections:

1. On page 38266:

a. In the first column, in the first full paragraph (*Comment*), in the seventh line from the bottom, after "material" insert "already in the State, and for all postentry quarantine material".

b. In the second column, in the third full paragraph, in the second line, after "we" insert "will"; and in the tenth line, "(c)91)(i)" should read "(c)(1)(i)".

**§ 319.37-7 [Corrected]**

2. On page 38268, in the first column, in § 319.37-7(c)(4), in the third line, after "quarantine" insert "agreement".

3. On the same page, in the third column, in § 319.37-7(f)(3), in the fifth line, after "quarantine" insert "growing".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER 93-777-000, et al.]**

### Commonwealth Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

*Correction*

In notice document 93-17621 beginning on page 39802 in the issue of Monday, July 26, 1993, make the following correction:

On page 39804, in the second column, in **15. Southwestern Public Service Co.**, the Docket No. should read "[Docket No. EL93-53-000]".

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. JD93-12842T Oklahoma-50]**

### State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

*Correction*

In notice document 93-17627 appearing on page 39805 in the issue of Monday, July 26, 1993, in the heading, the Docket No. should have appeared as set forth above.

BILLING CODE 1505-01-D

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11258-001 Washington]**

### Lewis Basin 6 Limited Partnership; Surrender of Preliminary Permit

*Correction*

In notice document 93-17632 appearing on page 39806 in the issue of Monday, July 26, 1993, in the heading, the Project No. should have appeared as set forth above.

BILLING CODE 1505-01-D

federal register

Monday
August 2, 1993

Part II

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Public and Indian Housing**

**Funding Availability for HOPE for Public and Indian Housing Homeownership Program (HOPE 1); Notice**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3536; FR-3501-N-01]

### Notice of Fund Availability for HOPE for Public and Indian Housing Homeownership Program (HOPE 1)

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of Fund Availability for FY 1993.

**SUMMARY:** This NOFA announces the availability of $182,047,160 in funds for implementation grants for the HOPE for Public and Indian Housing Homeownership Program (HOPE 1). The NOFA contains information on the location for obtaining application packages; the time and place for submitting completed applications; the selection process, including the ranking criteria; and other appropriate information and guidance. The NOFA is issued under the Program Guidelines published on January 14, 1992 (57 FR 1522) (24 CFR subtitle A, appendix A). Grants awarded under the NOFA will be governed by those Guidelines, and amendments to the program made by the Housing and Community Development Act of 1992, which are announced in the NOFA. It is critical that applicants for HOPE 1 implementation grants read and comply with the requirements of the Program Guidelines, since many of the requirements of the HOPE 1 program are not repeated in this NOFA, and failure to follow the Guidelines will result in applications being rejected by HUD.

**DATES:** Applications for implementation grants under HOPE 1 must be received in the appropriate HUD Field Office by 4:30 p.m. local time on November 19, 1993. Applications may also be hand delivered to the appropriate HUD Field Office at or before the deadline. Applications sent by facsimile (FAX) will not be accepted. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applications should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought abut by any unanticipated or delivery-related problems. However, no applications may be submitted prior to 30 calendar days before the deadline. Applications submitted more than 30 calendar days before the deadline will be returned to applicants.

**ADDRESSES:** An original and two copies of the completed application must be submitted to the HUD Field Office responsible for the jurisdiction in which the proposed project is located. The applications should be addressed to the attention of the Public Housing Division Director or the Office of Indian Programs Director. A list of HUD's Field Offices appears at the end of this NOFA. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Applicants are advised to contact their local office to confirm the appropriate place for submission. Failure to submit an application to the correct Field Office by 4:30 pm on the due date will result in disqualification of the application.

**FOR FURTHER INFORMATION CONTACT:** Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4233. To provide service for person who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2577-0132.

### I. Purpose and Substantive Description

*A. Authority*

The funding made available under this NOFA is authorized by title III of the U.S. Housing Act of 1937 (42 U.S.C. 1437aaa), which was added by section 411 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990) (NAHA). The law was subsequently amended by the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (1992 Act). The amendments are discussed in section II of this NOFA.

$182,047,160 in funds, which were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Acts for fiscal year 1992 (Pub. L. 102-139, approved October 28, 1991) and fiscal year 1993 (Pub. L. 102-389, approved October 6, 1992), are available under this NOFA. Under the 1992 Act, Congress authorized up to $40 million but not less than 5 percent of the combined appropriations for the HOPE 1, 2, and 3 programs to be made available for activities under the HOPE for Youthbuild program. On the basis of the 1992 Act authorization, the Department has allocated $25 million originally appropriated for fiscal year 1993 to fund HOPE 1 implementation grants to partially fund the HOPE for Youthbuild program in fiscal year 1993.

The 1992 Act authorized up to $4.5 million to be made available for technical assistance to potential applicants, applicants, and recipients of assistance in the HOPE 1 program. This amount is not included in the funding being made available under this NOFA.

*B. Type of Grant*

An applicant may submit an application for an implementation grant, in accordance with Section 415 of the Program Guidelines and the application package, for the purpose of carrying out a homeownership program. Although there is no cap on the overall amount of an implementation grant, there are specific cost caps on eligible activities, as described in the Program Guidelines and application package. (See section II of this NOFA for changes to the program regarding eligible activities and limitations on the use of grant funds.)

Funds for planning grants (mini or full) are not available under this NOFA.

*C. Matching Requirements*

Implementation grants require a local match of not less than 25 percent of the grant amount (exclusive of funding for operating costs) from non-Federal sources. Under a change made by the 1992 Act, the matching requirement may be reduced for jurisdictions experiencing fiscal distress or severe fiscal distress, as those terms are defined in this NOFA. In addition, the 1992 Act eliminates the need to match HOPE 1 grant funds that are to be used to fund a replacement housing plan. Section II of this NOFA contains a discussion of these changes.

*D. Eligible Applicants*

An eligible applicant is one of the following entities that represents the residents of the eligible property: an RMC (resident management corporation); an incorporated RC (resident council); a cooperative association; a public or private nonprofit organization; a public body, including an agency or instrumentality thereof; a PHA (public housing agency);

or an IHA (Indian housing authority). The Program Guidelines contain detailed definitions of the entities that are eligible as applicants.

*E. Eligible Property*

Eligible property under the HOPE 1 program is a public or Indian housing development. Section 181(g)(1)(A) of the 1992 Act removes the prohibition on the use of HOPE 1 grant funds for a PHA's scattered-site, single-family properties. In addition, section 181(g)(2) of the 1992 Act amends the definition of eligible property in the HOPE 3 program by excluding scattered-site, single-family public or Indian housing. Because of these amendments, the scattered-site, single-family public and Indian housing units that were formerly only eligible to be assisted under the HOPE 3 program are now only eligible to be assisted under the HOPE 1 program. In addition, section 181(g)(1)(B) prohibits the use of implementation grant funds to pay for operating expenses for such housing acquired under a homeownership program. Section II of this NOFA contains a discussion of these changes.

The Department is also amending the definitions of public housing development and Indian housing development for greater clarification. "Public housing development" is being revised to mean "lower income housing and all necessary appurtenances developed, acquired, or assisted by a PHA under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings identified in the Annual Contributions Contract (ACC) that is executed between HUD and the PHA." Likewise, "Indian housing development" is being revised to mean "lower income housing and all necessary appurtenances developed, acquired, or assisted by an IHA under the United States Housing Act of 1937 (other than under section 8). A project encompasses those buildings identified in the Annual Contributions Contract (ACC) that is executed between HUD and the IHA."

## II. Amendments to HOPE 1 by 1992 Act

The following changes were made to the HOPE 1 program by section 181 of the 1992 Act:

*A. Matching Funding*

1. The 25 percent matching requirement will be reduced by 50 percent for a homeownership site within a jurisdiction that is determined to be in fiscal distress, and by 100 percent for a homeownership site within a jurisdiction that is determined to be in severe fiscal distress. (See section 410 of the Guidelines for matching requirements in general. This section adds a new provision to the matching requirements outlined in section 410 of the Guidelines by providing for a match reduction under the circumstances set forth in this NOFA.) For the purpose of determining the jurisdiction to which the match reduction shall apply, the Department shall accept participating jurisdictions under the HOME program including jurisdictions created through the formation of a HOME program consortium, or alternatively, if the proposed homeownership site does not lie within the confines of a participating jurisdiction under the HOME program, the lowest level of a unit of general local government for which Bureau of the Census data are available (*e.g.*, a city, county, etc.). If an application encompasses more than one proposed homeownership site and the sites are in multiple jurisdictions, the applicant shall designate the amount of HOPE 1 funds to be used in each respective jurisdiction. In such an instance the match reduction will be applied proportionately based upon the amount of HOPE 1 grant funds that are to be used in the jurisdiction to which the match reduction applies. Except with respect to participating jurisdictions under the HOME program for which the match reduction has already been determined, applicants must provide data verifying any match reduction claimed and a certification that it is in fiscal distress or severe fiscal distress, as appropriate, and attesting to the accuracy of the data. The Secretary may declare a 100 percent match reduction for areas in which a declaration of a disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is in effect for any part of a fiscal year. For purposes of this program, "fiscal distress" means a jurisdiction other than a State that meets one of the two following criteria, and "severe fiscal distress" means a jurisdiction, other than a State, that meets both of the following criteria:

(a) *Poverty rate.* The average poverty rate in the jurisdiction for the calendar year immediately preceding the year in which its fiscal year begins was equal to or greater than 125 percent of the average national poverty rate during such calendar year (as determined according to information of the Bureau of the Census).

(b) *Per capita income.* The average per capita income in the jurisdiction for the calendar year immediately preceding the year in which its fiscal year begins was less than 75 percent of the average national per capita income during such calendar year (as determined according to information of the Bureau of the Census).

The application kit shall contain a listing of participating jurisdictions under the HOME program which have been determined to be eligible for a partial or full match reduction.

2. Any implementation grant funding provided a recipient to be used for replacement housing is excluded from the matching requirement. (See Guidelines sections 405(b)(11) and 415(b)(8) in general. This section modifies the matching requirements outlined in section 405(b)(11) and 415(b)(8) of the Guidelines.) This reduction of the match requirement is in addition to the existing exclusion from matching requirements for HOPE 1 grant funds used to pay for operating assistance. (See section 410 of the Guidelines.)

*B. Eligible Property*

Scattered-site, single family public and Indian housing units which were formerly eligible property only under the HOPE 3 program are now eligible property under a HOPE 1 homeownership program. Thus, the definition of "eligible property" contained in section II of the Guidelines is revised to mean a public or Indian housing development. Planning grantees funded under the HOPE 3 program that were planning to sell scattered site single family public or Indian housing under the HOPE 3 program are eligible to apply for implementation grant funding pursuant to this NOFA and the requirements of the HOPE 1 program. Public and Indian housing is no longer eligible property under the HOPE 3 program, and anyone planning to sell public or Indian housing by means of a HOPE grant must use the HOPE 1 program.

*C. Eligible Activities*

1. Implementation grants may not be used to fund operating expenses for scattered-site public housing acquired under a homeownership program. (This section modifies the eligible activities outlined in Section 405(b)(9) of the Guidelines.) For the purpose of determining the units which are not eligible to receive operating assistance, scattered-site is defined as public or Indian housing properties that are not contiguous to other public or Indian housing properties.

2. Section 1012(h) of the 1992 Act added abatement of lead-based paint hazards, as required by section 302(a) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822), as an eligible activity for funding by an implementation grant. (This section

adds to the eligible activities outlined in Section 405(b) of the Guidelines.)

*D. Selection Criteria*

The statutory criterion that measures the extent to which a sufficient supply of affordable rental housing exists in the locality (section 303(e)(8) of the 1937 Act) was amended by section 181(c) of the 1992 Act to remove the requirement that the housing be "of the type assisted under this title" (*i.e.*, public or Indian housing), as well as to remove the reference to "appreciably reducing the supply of rental housing. Therefore, the Department has eliminated the selection criterion under which points were deducted for applications that would appreciably reduce the public or Indian housing stock in a locality under the jurisdiction of the PHA for the eligible property. The requirement that the proposed homeownership plan not result in reducing the supply of affordable rental housing has been restored as a threshold requirement, as it was in the original program Guidelines published on February 4, 1991. See section IV.F. of this NOFA. (This section deletes the selection criterion found in section 425(a)(9) of the Guidelines.)

**III. Certification of Consistency with the Comprehensive Housing Affordability Strategy**

Applicants (with certain exceptions for programs operated on reservations of an Indian tribe or in the Insular Areas) must submit a certification of consistency with their approved State or local government's Comprehensive Housing Affordability Strategy (CHAS) or abbreviated housing strategy from the public official responsible for submitting the CHAS, or his or her authorized representative. The CHAS is a "master plan" that each State or local government submits to HUD to explain its housing needs, what HUD funding it will be seeking, what it intends to do with the funding, and what funding by other applicants it will support. A State or local government should have held at least one public hearing during its CHAS development process. For further information concerning the CHAS certification of consistency, see 24 CFR 91.80. The CHAS requirements are more fully explained as follows:

*Applicants that are jurisdictions (States or units of general local government).* The applicant must have a HUD-approved CHAS for FY 1994 and must submit a certification that the proposed activities are consistent with the HUD-approved CHAS for FY 1994.

Applicants that are not jurisdictions. The applicant must submit a certification by the jurisdiction or jurisdictions in which the proposed program will be located that the applicant's proposed activities are consistent with the jurisdiction's HUD-approved CHAS. A required certification must be made by the unit of general local government if it is required to have, or has, a complete CHAS, or if it is authorized to use an abbreviated CHAS and is applying for the same program under this NOFA (and therefore has, or will have, an abbreviated CHAS for fiscal year 1993 for that program). Otherwise, the certification may be made by the State, or if the program will be located in part in a unit of general local government authorized to use an abbreviated CHAS, by the unit of general local government if it is willing to prepare such a CHAS.

Certain entities (Indian tribes, and the Insular Areas of Guam, the Virgin Islands, American Samoa and the Northern Mariana Islands) are not required to have a CHAS. An application for a program that will be located on a reservation of an Indian tribe or in the Insular Areas does not require a certification of consistency. However, where an Indian tribe or IHA is the applicant for a program that will not be located on a reservation, the requirement for a certification by the jurisdiction or jurisdictions in which the program will be located under the preceding paragraph applies.

*All applicants.* All CHAS certifications must be made by the public official responsible for submitting the CHAS to HUD, or his or her authorized representative. All CHAS certifications must be submitted as part of the application by the application submission deadline set forth in the NOFA, except as specifically provided below. The two alternative procedures for providing CHAS certification are as follows:

1. Because the deadline for the submission of HOPE 1 implementation grant applications falls after the start of the FY 94 fiscal year, the applicant may submit a certification of consistency with the jurisdiction's FY 93 CHAS, provided that the jurisdiction has not yet submitted to HUD its FY 94 CHAS; or

2. The applicant may obtain a certification of consistency with the FY 94 CHAS from the jurisdiction if the jurisdiction in which the proposed program is to be located has already submitted to HUD a CHAS for FY 94, but the CHAS has not yet been approved. In such case, the application submission deadline will not be applied to the certification of consistency. Instead, the application must include a written statement from an authorized public official for the CHAS that the jurisdiction has submitted a CHAS for FY 1994 for HUD approval and that the proposed activities in the application are consistent with it. If HUD approves the CHAS, the required certification of consistency with a HUD-approved CHAS for FY 1994 must be submitted as soon as possible thereafter, but not later than execution of the grant agreement. The grant agreement will not be executed unless the CHAS is approved and the required certification is made.

3. Failure to submit a CHAS by the application submission deadline is not a correctable deficiency during application screening.

**IV. Implementation Grant Applications**

*A. Application Process*

Application packages for implementation grants, including instructions for preparing applications, and information regarding application training workshops, are available from the appropriate HUD Field Office or the Office of Indian Programs (see the list of HUD Offices at the end of this NOFA) or by calling HUD's Resident Initiatives Clearinghouse at 1–800–955–2232. Additional information regarding the submission of applications is included in the package.

Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the appropriate HUD Field Office or, in the case of IHAs, in the appropriate HUD Office of Indian Programs, with jurisdiction over the applicant, Attention: Public Housing Division Director or Office of Indian Programs Director. It is not sufficient for an application to bear a postmark date within the deadline. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems.

Applications submitted by facsimile (FAX) will not be accepted.

*B. Application Submission Requirements*

Complete application submission requirements are contained in the application package. Applicants are advised that they must consult the program Guidelines in order to prepare

an application. Many of the requirements of the HOPE 1 program are not repeated in this NOFA, such as certifications, eligible activities, and cost limitations. Failure to follow the Guidelines will result in applications being rejected by HUD. All potential applicants are urged to contact their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction. Recipients of Fiscal Year 1992 Planning Grants are not required to complete all the activities of their planning grant to be eligible to apply for an implementation grant provided that they comply with all of the requirements that apply to implementation grant applicants.

The Department is adding a new exhibit to the application kit that will have to be submitted by any applicants that do not include as either the lead or a co-applicant the PHA or IHA that operates the public or Indian housing units to be sold under the proposed HOPE implementation program. The exhibit requires the applicant to obtain the PHA's or IHA's agreement to the proposed HOPE implementation program. The exhibit must be signed by either the executive director or other authorized representative of the PHA or IHA.

*C. Multiple Applications for Site*

If a resident organization provides a resolution in support of more than one application for a proposed homeownership site, all such resolutions will be disregarded; and, if the resolution is required for an application, the disregarded resolution will be noted as a deficiency. In such case, the applicant must submit during the cure period a certification from the resident organization indicating that it supports the applicant and specifically rescinds its support of the other applicant. Where both an RMC and an incorporated RC submit applications for the same proposed homeownership site, HUD shall consider only the application of the RMC.

If there is no incorporated RMC for the proposed homeownership site, HUD shall award funding only to the highest scoring applicant. If the two applications receive the same score, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for efficiency shall be selected.

If a planning grant was awarded under a Fiscal Year 1992 NOFA to an applicant for a proposed homeownership site and a different application applies for another HOPE 1 grant for the same proposed homeownership site, HUD shall consider the later applicant's application only if HUD concludes that adequate justification has been provided to establish that funding a second grant for the same proposed homeownership site will not result in duplication, the exceeding of cost caps, or the inefficient utilization of grant funds. For example, HUD may consider as adequate justification a certification provided by the HOPE 1 planning grant recipient, on behalf of the implementation grant applicant, indicating that it will provide to the applicant the work product resulting from its HOPE 1 planning grant (*e.g.*, feasibility studies, preliminary architectural and engineering work, or other activities).

*D. Selection Process*

The selection process for implementation grants under the HOPE 1 Program consists of a screening, a threshold review, and then, for those applications meeting all threshold requirements, rating and ranking under nine substantive selection criteria. HUD staff will review for compliance with threshold requirements, rate and rank the applications. Review sites will be determined based on the distribution of submitted applications. HUD headquarters will make selections based on the scores and procedures outlined in this NOFA.

*E. Screening Process/Corrections to Deficient Applications*

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another proposed homeownership site or applicant or changing other fundamental features of the program.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than 4:30 p.m. local time on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

*F. Threshold Review*

HUD shall review each application that qualifies for additional consideration after the screening process to determine if it meets certain threshold criteria, which are described in section 420 of the program guidelines. In addition to the threshold criteria described in section 420, applications will also be reviewed for compliance with the following criterion (see discussion in section II.D. of this NOFA):

The proposed program may not result in reducing in the locality the number of affordable rental housing units that would be available to residents currently residing in the property or to families who would be eligible to reside in the property. Any application that HUD determines contains a feasible replacement housing plan, as described in section 415(b)(8) of the guidelines, meets this threshold criterion.

*G. Selection Criteria*

1. *Selection criteria.* All applications that pass the threshold review will be rated and ranked under the following nine substantive selection criteria, the first eight of which are described more fully in section 425 of the guidelines:

(a) *Capability* (up to 30 points). The ability of the applicant to develop and carry out the proposed homeownership program, taking into account the quality of any related ongoing program of the applicant.

(b) *Local Support* (up to 5 points). The extent to which funds for activities that do not qualify as eligible activities will be provided in support of the homeownership program.

(c) *Resident and Homebuyer Interest and Marketability* (up to 10 points). The extent of resident and homebuyer interest in, and marketability of, the development of a homeownership program for the proposed homeownership site.

(d) *Quality and Feasibility of Program* (up to 25 points). The quality and feasibility of the proposed homeownership program, including the viability of the economic self-sufficiency plan.

(e) *Relationship to CHAS* (up to 5 points). Whether the approved CHAS for the jurisdiction within which the proposed homeownership site is located includes homeownership as one of the general priorities identified pursuant to section 105(b)(7) of NAHA. (This

criterion shall not be used to rate an application for a homeownership program to be carried out on an Indian reservations or in the Insular Areas.)

(f) *Efficient Use of Grant* (up to 10 points). The extent to which the proposed program will result in the lowest total cost per unit in comparison to other applications based on the number of units to be covered by the homeownership program prior to any rehabilitation taking place under the proposed homeownership program.

(g) *Suitability of the Property* (up to 10 points). The suitability of the proposed homeownership site for homeownership.

(h) *Minority Business Enterprise/ Women's Business Enterprise Goals* (up to 5 points). The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses.

2. *Bonus Points for Previously Funded Planning Grant.* HUD will award up to 5 bonus points to applications from recipients of previously funded planning grants, based on the extent to which the applicant is successfully completing a planning grant measured by the degree to which it is adhering to its proposed schedule and is complying with program requirements.

*H. Ranking and Selection*

1. *Environmental Review.* HUD shall conduct an environmental review of the applications to assess the environmental effects of each application, as described in Section 425(b) of the Guidelines.

2. *Ranking and Selection to Assure National Geographic Diversity.* After assigning points under the selection criteria, HUD shall rank the implementation grant applications. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. HUD shall then select the highest ranking application from each of the 10 HUD Regions. If none of the 10 applications involves an Indian housing development and sufficient funds are available, the highest ranking application involving an Indian housing development shall also be approved.

HUD shall then select the next highest ranking remaining applications, without regard to their location.

If two or more applications have the same number of points and there are insufficient funds to approve both or all applications, the application submitted by an RMC shall be selected. If there is still a tie, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for efficiency shall be selected.

When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine if it is feasible to fund part of the application, with the remainder to be funded "off the top" from possible future funding rounds. If so, that application shall be funded. If not, HUD shall make the same determination for the next highest application or applications. Any remaining amounts shall be used in accordance with paragraph 6 of section IV of this NOFA.

Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for implementation grants in the next funding round.

3. *Reduction in Requested Grant Amounts.* HUD shall approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

4. *Notification of Approval or Disapproval.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount.

5. *Conditional Approval of Section 8 Applications.* HUD may approve the HOPE grant application with a statement that the application for the section 8 certificate or housing voucher assistance (or both) is conditionally approved, subject to the availability of appropriations in subsequent fiscal years. This will permit HUD to use section 8 authority for other purposes until it is needed for the HOPE 1 program for nonpurchasing residents or for replacement housing.

6. *Insufficient Approvable Applications.* If funds remain after HUD approves all approvable applications, HUD may publish a NOFA inviting implementation grant applications, or invite applicants who submitted applications that could not be funded to submit amended applications in accordance with this notice within a deadline specified in the invitation. Any remaining amounts shall be added to amounts available for subsequent funding rounds.

## V. Program Administration

Payments to recipients under the HOPE 1 programs will be made utilizing the Line of Credit Control System (LOCCS)/Voice Response System (VRS) payment method. Grant procedures for the HOPE 1 program are covered in the Resident Initiatives Grants Management Handbook, 7490.01.

## VI. Other Matters

*A. Paperwork Reduction Act*

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3540(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2577–0132.

*B. Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is avaialble for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*C. Federalism Executive Order*

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

*D. Family Executive Order*

The General Counsel, as the designated official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

*E. Section 102 of the HUD Reform Act*

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will publish a **Federal Register** notice of all recipients awarded assistance under this NOFA. (See 24 CFR 12.14(a) and 12.16(b), and the Notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentations and public access requirements.)

*F. Section 103 of the HUD Reform Act*

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulations implementing section 103 are at 24 CFR part 4. In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics at the address or telephone number in the following paragraph.

*G. Section 112 of the HUD Reform Act*

Section 112 of the Housing and Urban Development Reform Act of 1989 (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented at 24 CFR part 86. Appendix A of the rule contains examples of activities covered by the rule. Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–3815 TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

*H. Prohibition Against Lobbying Activities*

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (Byrd Amendment) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from coverage.

Dated: July 26, 1993.

**Joseph Shuldiner,**

*Assistant Secretary for Public and Indian Housing.*

**HUD Field Offices**

*Alabama*

Birmingham Office, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209; (205) 731–1617, (TDD) (205) 731–1617

*Alaska*

Anchorage Office, Federal Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513; (907) 271–4170, (TDD) (907) 271–4328

*Arizona*

Phoenix Office, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461

*Arkansas*

Little Rock Office, Lafayette Bldg., Suite 200, 523 Louisiana, Little Rock, AR 72201; (501) 324–5931, (TDD) (501) 324–5405

*California*

Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, CA 90015; (213) 251–7122, (TDD) (213) 251–7038

San Francisco Regional Office, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102; (415) 556–4752, (TDD) (415) 556–8357

Sacramento Office, 777 12th St., Suite 200, Sacramento, CA 95814; (916) 551–1351, (TDD) (916) 551–5971

*Colorado*

Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513, (TDD) (303) 844–6158

*Connecticut*

Hartford Office, 330 Main Street, First Floor, Hartford, CT 06106; (203) 240–4523, (TDD) (203) 240–4522

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*District of Columbia*

Washington, DC Office, 820 First St., NE, Washington, DC 20002; (202) 275–9206, (TDD) (202) 275–0967

*Florida*

Jacksonville Office, 325 W. Adams St., Jacksonville, FL 32202; (904) 791–2626, (TDD) (904) 791–1241

*Georgia*

Atlanta Regional Office, Richard B. Russell Fed. Bldg., 75 Spring St., SW, Atlanta, GA 30303; (404) 331–5136, (TDD) (404) 730–2654

*Hawaii*

Honolulu Office, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI

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96813–4918; (808) 541–1327, (TDD) (808) 551–1356

*Idaho*
Portland Office, 520 SW 6th Ave., Portland, OR 97204; (503) 326–2561, (TDD) (503) 326–3656

*Illinois*
Chicago Regional Office, 77 W. Jackson Blvd., 26th Floor, Chicago, IL 60604–3507; (312) 353–5680, (TDD) (312) 353–7143

*Indiana*
Indianapolis Office, 151 N. Delaware St., Indianapolis, IN 46204; (317) 226–6303

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Des Moines Office, Fed. Bldg., 210 Walnut St., Room 239, Des Moines, IA 50309; (515) 284–4512, (TDD) (515) 284–4706

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Louisville Office, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201; (502) 582–5251, (TDD) (502) 582–5139

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Grand Rapids Office, 2922 Fuller Ave., NE, Grand Rapids, MI 49505; (616) 456–2100

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*Mississippi*
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*Missouri*
(Eastern)—St. Louis Office, 1222 Spruce St., St. Louis, MO 63103; (314) 539–6560, (TDD) (314) 539–6331
(Western)—Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101; (913) 236–2162, (TDD) (913) 236–3972

*Montana*
Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513, (TDD) (303) 844–6158

*Nebraska*
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*Nevada*
(Las Vegas, Clark Cnty.) Phoenix Office, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461
(Remainder of state) San Francisco Regional Office, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102; (415) 556–4752, (TDD) (415) 556–8357

*New Hampshire*
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Newark Office, Military Park Bldg., 60 Park Pl., Newark, NJ 07102; (201) 877–1662, (TDD) (201) 877–6649

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*New York*
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(Downstate)—New York Regional Office, 26 Federal Plaza, New York, NY 10278; (212) 264–6500, (TDD) (212) 264–0927

*North Carolina*
Greensboro Office, 415 N. Edgeworth St., Greensboro, NC 27401; (919) 333–5361, (TDD) (919) 333–5518

*North Dakota*
Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513, (TDD) (303) 844–6158

*Ohio*
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Columbus Office, 200 N. High St., Columbus, OH 43215; (614) 469–5737

*Oklahoma*
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(Eastern)—Philadelphia Regional Office, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106; (215) 597–2560, (TDD) (215) 597–5564

*Puerto Rico*
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*Rhode Island*
Providence Office, 330 John O. Pastore Fed. Bldg., & U.S. Post Office—Kennedy Plaza, Providence, RI 02903; (401) 528–5351, (TDD) (401) 528–5364

*South Carolina*
Columbia Office, Strom Thurmond Fed. Bldg., 1835 Assembly St., Columbia, SC 29201; (803) 765–5592

*South Dakota*
Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513, (TDD) (303) 844–6158

*Tennessee*
Knoxville Office, 710 Locust St., Third Floor, Knoxville, TN 37902; (615) 549–9384, (TDD) (615) 549–9372
Nashville Office, 251 Cumberland Bend Dr., Suite 200, Nashville, TN 37228; (615) 736–5213, (TDD) (615) 736–2886

*Texas*
Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth TX; 76113; (817) 885–5401, (TDD) (817) 728–5447
Houston Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, TX 77098; (713) 653–3274
San Antonio Office, Washington Sq., 800 Dolorosa, San Antonio, TX 78207; (512) 229–6800, (TDD) (512) 229–6885

*Utah*
Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513, (TDD) (303) 844–6158

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*Washington*
Seattle Regional Office, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101; (206) 553–5414, (TDD) (206) 553–4351

*West Virginia*
Charleston Office, 405 Capitol St., Suite 708, Charleston, WV 25301; (304) 347–7000, (TDD) (304) 347–7044

*Wisconsin*
Milwaukee Office, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Milwaukee, WI 53203; (414) 297–3214

*Wyoming*
Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513 (TDD) (303) 844–6158

**Indian Housing Offices**

*Alaska*
Indian Housing Division, Anchorage Office, 222 W. 8th Ave., #64, Anchorage, AK 99513; (907) 271–4633 (TDD) (907) 271–4382

*Arizona*
Office of Indian Programs, Phoenix Office, 400 N. 5th St., Suite 1650, 2 Arizona Center, Phoenix, AZ 85004; (602) 261–4156 (TDD) (602) 379–4461

*Colorado*
Office of Indian Programs, Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver CO 80202; (303) 844–2963 (TDD) (303) 844–6158

*Illinois*
Office of Indian Programs, Chicago Regional Office, 77 W. Jackson Blvd.,

Chicago, IL 60604–3507; (312) 886–4532, or (800) 735–3239 (TDD) (312) 353–7143

*Oklahoma*

Indian Programs Division, Oklahoma City Office, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102; (405) 736–4101 (TDD) (405) 231–4181

*Washington*

Office of Indian Programs, Seattle Regional Office, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101; (206) 553–4633 (TDD) (206) 553–4351

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Part III

# Department of Education

**Reporting of Cash Expenditures and Submission of Payment Requests for Federal Funds Expiring on September 30, 1993; Notice**

VOL 58 ISS 146 AG 2 1993 UMI

## DEPARTMENT OF EDUCATION

### Reporting of Cash Expenditures and Submission of Payment Requests for Federal Funds

**AGENCY:** Department of Education.

**ACTION:** Notice of deadline.

**SUMMARY:** The Secretary advises the public that the unexpended portions of contracts, grants, and cooperative agreements awarded by the Department of Education (ED) from appropriation funds that expired on or before September 30, 1988, will be deobligated and the unexpended funds canceled on September 30, 1993. This action is required by an amendment to title 31 of the United States Code that establishes procedures for closing appropriation accounts. This notice is intended to remind ED's recipients of the deadline and thereby minimize any financial difficulties they may encounter.

**DATES:** The deadlines for submitting reports of cumulative cash expenditures or requesting payments appear elsewhere in this notice.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the contracts, grants, and cooperative agreements affected by the September 30, 1993, deadline, contact Peggy Lindsay, U.S. Department of Education, 400 Maryland, SW., room 3083, FOB–6, Washington, DC 20202–4331. Telephone: (202) 401–1160. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Department of Education makes most payments for contracts, grants, and cooperative agreements through either the Department of Education Payment Management System (EDPMS) or the National Finance Center (NFC). ED requires recipients paid through EDPMS to report—via a Federal Cash Transaction Report, PMS 272—total cumulative cash expenditures in the period (monthly or quarterly, depending on the recipient's reporting status) in which the expenditures were incurred. This report is prepared by ED and sent to each recipient for completion and return to ED by a specified date.

Administrative payments by ED are made through the NFC. These include, but are not limited to, contracts, purchase orders, and travel payments. Requests for payment from the NFC must be submitted to the address indicated on the document that the recipient received from ED when it requested the services. For contract payments, the recipient must send a bill for services to the appropriate ED contracting officer. The requests must be made in a timely manner to receive payment.

Until enactment of Public Law 101–510 on November 5, 1990, appropriated funds generally remained available indefinitely to make payments of valid obligations. Public Law 101–510 established limits on the time during which payments could be made from appropriations available for only a limited period of time. Appropriations for most of ED's programs and administrative activities are included in this category.

As a result of Public Law 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose. The funds to be canceled on September 30, 1993, are those for appropriations that ceased to be available for obligation on or before September 30, 1988. These include nearly all funds obligated by ED for contracts, grants, or cooperative agreements on or before that date.

If recipients do not report, on a timely basis, that all funds obligated by ED from an appropriation expiring on or before September 30, 1988, have been fully expended, the unexpended balance of the award will be deobligated and the funds canceled and returned to the Treasury Department.

To prevent the cancellation on September 30, 1993, of the unliquidated portions of obligations for which payments will be required, recipients of ED's contracts, grants, and cooperative agreements that were made from appropriations expiring on or before September 30, 1988, must submit cash expenditure reports or bills according to the following schedule:

*EDPMS*: For those contracts, grants, or cooperative agreements for which total cumulative cash expenditures have not been reported and recorded in EDPMS or its predecessor payment systems, the recipient must report the total cumulative cash expenditures to ED by August 31, 1993. The letter accompanying each PMS 272 report provides information to recipients regarding the process for recording cash expenditures.

*NFC*: For those recipients who receive payments through NFC, requests for payments must be received by ED for contracts, and by NFC for other types of payments, by August 16, 1993, so that payments can be made by September 30, 1993.

After September 30, 1993, any requests for payment associated with the obligations will be handled on a case-by-case basis; that is, any portion of obligations referred to in this notice for contracts, grants or cooperative agreements that was canceled may, within limits established in Public Law 101–510, be paid from funds currently available for award for the same purpose. If current funds are not available, the payment of canceled balances would require a new appropriation from Congress.

**Authority:** Pub. L. 101–510.

Dated: July 27, 1993.

**Richard W. Riley,**

*Secretary of Education.*

[FR Doc. 93–18360 Filed 7–30–93; 8:45 am]

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federal register

Monday
August 2, 1993

Part IV

# Department of Agriculture

**Food Safety and Inspection Service**

**9 CFR Parts 318 and 320**

**Heat Processing, Cooking, and Cooling, Handling and Storage Requirements for Uncured Meat Patties; Rule**

VOL 58 ISS 146 AG 2 1993 UMI

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 320

[Docket No. 86-041 F]

RIN 0583-AA81

# Heat-Processing Procedures, Cooking Instructions, and Cooling, Handling and Storage Requirements for Uncured Meat Patties

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to specify heat-processing, cooling, handling, labeling, and storage requirements for certain uncured meat products, such as hamburgers, Salisbury steaks, breaded and battered chopped veal steaks, beef patties, and pork sausage patties. The amendment provides for the safe processing and handling and informative labeling of heat-processed (fully-cooked, partially-cooked, and char-marked) uncured meat patties to assist in assuring that such products are wholesome and not adulterated or mislabeled when distributed to consumers.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse W. Majkowski, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

## Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. It does not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

This rule reduces the risk of foodborne illness associated with partially- and fully-cooked meat patties prepared in federally inspected establishments. Reduced risk will lead to public health benefits that are measured in terms of reduced medical costs, reduced time loss from work, and reduced pain and suffering and loss of life. While the information does not exist to conduct a comprehensive risk-benefit analysis, the available data on the risk of salmonellosis and *E. coli* 0157:H7 from heat-treated patties show that the potential benefits are substantial and are likely to exceed the estimated costs. A comprehensive benefit assessment would include other meat products such as pork patties and other foodborne illnesses such as listeriosis.

## Risk Analysis

The likelihood of foodborne illness is not the same in all beef products or all hamburger-type products. Ground meat presents a different risk than whole cuts such as steaks, roasts, or chops for two reasons. First, the starting materials for ground meat are trimmings that tend to have a higher probability of contamination because a high percentage of trimmings come from the surface of the carcass. Second, the production process for ground meat assures that any present pathogens will be distributed throughout the product, including the interior, while bacteria tend to remain on the surface of steaks, roasts, and chops. This factor has major implications for the cooking process. Because a rare steak is thoroughly cooked at the surface, one can presume that any pathogenic bacteria that are present are killed. The fact that a rare patty is thoroughly cooked at the surface, does not provide such assurance.

The production of heat-treated patties introduces two additional factors that increase the probability of foodborne illness. Cooking at lower temperatures can provide an environment where any present bacteria multiply rapidly. The practice of partial cooking also introduces the possibility that partially-cooked patties will be mistaken for fully-cooked patties. The production and distribution of raw patties does not introduce the possibility for this type of human error.

According to data supplied by the Centers for Disease Control (CDC), there have been at least seven and possibly nine outbreaks of *E. coli* 0157:H7 associated with ground beef from February 1982 through April 1993. One of these outbreaks has been attributed to pre-cooked (i.e., heat-treated) hamburger patties. Heat-treated beef patties comprise an extremely small proportion of ground beef. After applying a generally accepted statistical hypothesis test on these data, FSIS has concluded that the likelihood of an outbreak of foodborne illness from *E. coli* is greater for heat-treated beef patties than for raw ground beef.

The relevant statistical test is a test of two probabilities where each is defined as the probability of an outbreak per unit of ground beef. Under the null hypothesis, heat-treated beef patties have the same probability of an outbreak as raw ground beef. The alternative hypothesis is that the probability of an outbreak in heat-treated patties is in fact greater.

For this test to be valid certain assumptions of statistical independence must hold. First, each event that is classified as an outbreak must be independent of each other such event. For example, if 100,000 pound lots are used as the quantity "unit", then it is implicitly assumed that any outbreak which does occur in different 100,000 pound lots is independent of one another. Second, the quantity unit used to estimate the probability must be consistent with the amount of ground beef associated with an outbreak.

FSIS is satisfied that these assumptions are valid. First, the CDC data have been carefully reviewed to ensure that outbreaks are not double counted, thus increasing FSIS's confidence that each outbreak identified is indeed independent from all others. Second, FSIS has performed a sensitivity analysis which reveals that the results of the statistical test are robust with respect to the number of pounds used as the size of each "unit" of ground beef. The larger the size of this "unit," the more confidant one can be that the outbreaks would be wholly contained within individual "units." This analysis shows that the statistical results change very little even if the size of each unit of heat-treated beef patties reaches 10 million pounds. Thus, the results of this hypothesis test are highly robust. The calculations below are based on 100,000 pound lots to enable comfortable use of an infinite number of degrees of freedom in the hypothesis test.

Table 1 below lists the data and assumptions FSIS used in the statistical test. Equation 1 is a standard Student's t test of two proportions:

$$t = \frac{f_1 - f_2}{\sqrt{s^2(f_1 - f_2)}} \qquad (1)$$

where:

$x_1$=number of outbreaks associated with heat-treated beef patties;

$x_2$=number of outbreaks associated with raw ground beef;

$q_1$=the quantity of heat-treated patties, in pounds;

$q_2$=the quantity of raw ground beef, in pound

L=the lot size assumed for statistical independence, in pounds, such that $q_1/L$ and $q_2/L$ are both integers;
$f_1=x_1/(q_1/L)$;
$f_2=x_2/(q_2/L)$;
$f=(x_1+x_2)/(q_1+q_2)$; and
$s^2(f_1-f_2)$ = the estimated variance of the difference between the sample fractions $f_1$ and $f_2$, defined as:

$$s^2_{f_1-f_2} = f(1-f)\left(\frac{1}{q_1/L}+\frac{1}{q_2/L}\right) \quad (2)$$

Because there is uncertainty concerning the total number of outbreaks attributable to ground beef and beef patties, we performed two separate hypothesis tests. The first used the number of CDC-confirmed outbreaks attributed to ground beef (7); the second used the number of CDC-confirmed or suspected outbreaks (9). In both cases, there was one outbreak attributed to heat-treated beef patties. These results are reported in Table 2.

In both cases, the null hypothesis that the probability of an outbreak of *E. coli* is equal for both product categories can be safely rejected. There is less than one chance in 2000 ($t_{.0005,\infty} = 3.29$) that the probability of an outbreak attributable to heat-treated patties is as low as it is for foods prepared from raw ground beef. FSIS therefore has concluded that the outbreak risk associated with heat-treated patties is greater than the outbreak risk associated with foods prepared from raw ground beef.

FSIS performed two sensitivity analyses to provide an indication of the robustness of these results. First, as indicated earlier, tests were performed on the underlying statistical independence assumption. These tests revealed that the results presented above (which implicitly assume that an outbreak in any 100,000 pound lot of ground beef is independent of an outbreak in any other 100,000 pound lot) are insensitive to the assumed lot size as long as the number of lots of heat-treated patties does not fall below 2, which would imply two lots of size equal to 10 million pounds each. (That is, the null hypothesis can be rejected at the five percent level as long as there are two or more degrees of freedom.) Given the important role of food preparation at the consumer or food-service level as a risk factor in foodborne illness, there is no basis for expecting the typical lot size to be anywhere near this large.

In the second sensitivity analysis, FSIS determined the proportion of total ground beef consumption which heat-treated patties must comprise before the null hypothesis described above cannot be rejected at the five percent significance level. The purpose of this test is to ensure that any errors FSIS has made in estimating heat-treated products' share of the ground beef market do not substantially weaken the statistical basis for concluding that these products pose a significantly higher risk. In short, the greater is the market share of the ground beef market acquired by heat-treated products, the less unusual it is to observe an outbreak associated with these products. The results of this sensitivity analysis are reported in Table 3. Heat-treated patties' actual market share would have to be about 15 times greater than FSIS' estimate before the null hypothesis of equal risk would not be rejected at the five percent significance level.

### Net Benefits Analysis

This rule requires establishments producing heat-treated patties to prepare such products in accordance with specified standards and to add specific cooking information to product labels. The purpose of these requirements is to reduce the likelihood of foodborne disease outbreaks attributable to heat-treated patties.

FSIS has estimated that the annual costs of complying with this rule will range from $1.6 million to $3.4 million, depending on how affected establishments respond. Elsewhere, USDA has estimated the medical costs and productivity losses associated with certain bacteria-related foodborne diseases commonly (although by no means exclusively) attributable to ground beef. These estimates are summarized in Table 4.

Cost estimates reflect the medical costs and productivity losses caused by foodborne illnesses associated with specific pathogens. Total losses for the four pathogens listed in Table 4 are estimated at $2.5 billion to $3.4 billion per year. Ground beef is believed to be responsible for about half of all *E. coli* 0157:H7 outbreaks, and probably one percent of *Salmonella* outbreaks. Estimates are not available for the share of *Listeria monocytogenes* outbreaks associated with ground beef. Thus the estimated totals at the bottom of the table represent lower bounds based on the (probably incorrect) assumption that ground beef is not a vehicle for transmitting *Listeria*. The Table 4 totals do not include costs associated with foodborne illness related to protozoan or helminthic parasites. A ground beef regulation is not considered an appropriate vehicle for combatting these illnesses.

Based on these estimates, about $224 million of annual costs are believed to be associated with ground beef. If heat-treated beef patties posed the same probability of outbreak as raw ground beef, then the annual cost of illness associated with these products would be about $940,000.

As the statistical analysis described above makes clear, however, the probability of foodborne illness outbreaks due to heat-treated beef patties exceeds the probability associated with raw ground beef. Thus the estimated cost of illness associated with these products exceeds $940,000 per year. Based on the outbreak and quantity data provided in Table 1, the probability of such an outbreak is between 30 and 40 times greater for heat-treated products relative to ground beef. The estimated benefits associated with this regulation are thus expected to be higher by a similar multiple.

Table 5 shows the estimated net social benefits under alternate assumptions. The columns express the outbreak probability associated with heat-treated patties as various multiples of the outbreak probability associated with raw ground beef. If actual compliance costs equal the low estimate of $1.6 million per year, then the outbreak probability associated with heat-treated products need be only 1.7 times the outbreak probability associated with raw ground beef to generate benefits equal to costs. Similarly, if actual compliance costs equal the high estimate of $3.4 million per year, then the outbreak probability associated with heat-treated products need be only 3.6 times the outbreak probability associated with raw ground beef to achieve this break-even point. Both of these values are approximately one-tenth of the best estimates of this ratio (i.e., 30 to 40). Table 5 shows that if the true ratio of probabilities equalled the estimated ratios, then the rule would generate annual estimated net benefits ranging from $24.4 million to $35.5 million.

TABLE 1.—ASSUMPTIONS AND DATA USED TO TEST HYPOTHESIS OF EQUAL RISK

| Parameter | Value |
|---|---|
| Fed cattle slaughtered, per year. | 25.6 million. |
| Beef yield, lbs. per carcass | 600. |
| Percent used as ground beef. | 11.5%. |
| Cow, bulls, and stags slaughtered, per year. | 6.4 million. |
| Beef yield, lbs. per carcass | 600. |
| Percent used as ground beef. | 50.0%. |
| Lbs. domestic beef, carcass weight. | 19.2 billion. |
| Lbs. domestic ground beef .... | 3,700 million. |

TABLE 1.—ASSUMPTIONS AND DATA USED TO TEST HYPOTHESIS OF EQUAL RISK—Continued

| Parameter | Value |
|---|---|
| Imported manufacturing beef, (90% lean), per year. | 1,300 million. |
| Percent used as ground beef. | 50.0%. |
| Lbs. of domestic fat added to reach 70% lean standard per year. | 240 million. |
| Lbs. total ground beef, per year. | 4,700 million. |

TABLE 1.—ASSUMPTIONS AND DATA USED TO TEST HYPOTHESIS OF EQUAL RISK—Continued

| Parameter | Value |
|---|---|
| Lbs. heat-treated patties, per year. | 20 million. |
| Heat-treated market share | 0.42%. |
| Confirmed outbreaks of *E. coli* 0157:H7 in ground beef: | |
| Raw | 6. |
| Heat-treated | 1. |

TABLE 1.—ASSUMPTIONS AND DATA USED TO TEST HYPOTHESIS OF EQUAL RISK—Continued

| Parameter | Value |
|---|---|
| Confirmed plus suspected outbreaks of *E. coli* 0157:H7 in ground beef: | |
| Raw | 8. |
| Heat-treated | 1. |

TABLE 2.—RESULTS OF HYPOTHESIS TESTS FOR THE DIFFERENCE OF TWO PROPORTIONS

| Total outbreaks | t-Ratio | Significance level |
|---|---|---|
| 7 | 5.67 | <0.005 |
| 9 | 4.96 | <0.005 |

TABLE 3.—MINIMUM MARKET SHARE FOR HEAT-TREATED BEEF PATTIES NECESSARY TO SUSTAIN NULL HYPOTHESIS

| Number of outbreaks | Minimum market share |
|---|---|
| 7 | 7.5% |
| 9 | 6.0% |

TABLE 4.—ANNUAL MEDICAL AND PRODUCTIVITY COSTS ESTIMATED FOR FOODBORNE PATHOGENS

[1992: Millions of dollars]

| Pathogen | Low estimate [1] | High estimate [1] | Estimated percentage/ ground beef | Ground beef share [2] | Heat-treated patty share [3] |
|---|---|---|---|---|---|
| Salmonella | $1188 | $1586 | 1% | $14 | $0.06 |
| Campylobacter | 907 | 1016 | 0% | 0 | 0 |
| E. coli 0157 | 229 | 610 | 50% | 210 | .88 |
| Listeria | ..... | ..... | ..... | ..... | ..... |
| Monocytogenes | 209 | 233 | (4) | (4) | (4) |
| Total | 2533 | 3447 | ..... | 224 | .94 |

[1] Cost estimate published in "Food Safety Issues' Modernizing Meat Inspection", USDA, ERS, Agricultural Outlook, June 1993, pp. 32–36.
[2] Based on average of the high and low cost estimates.
[3] Estimated share of cost if heat-treated patties posed the same probability of outbreak as raw ground beef.
[4] Unknown.

TABLE 5.—ESTIMATED BENEFITS AND COSTS

[Millions of dollars per year]

| Assumed risk multiple heat-treated patties | Estimated benefits | Estimated costs | | Estimated net benefits | |
|---|---|---|---|---|---|
| | | Low cost | High cost | Low cost | High cost |
| 1 | $0.04 | $1.60 | $3.40 | (0.66) | ($2.46) |
| 1.7 | 1.60 | 3.40 | 3.40 | 0 | ($1.80) |
| 2.0 | 1.88 | 1.60 | 3.40 | $0.28 | ($1.52) |
| 3.5 | 3.40 | 1.60 | 3.40 | 1.80 | 0 |
| 5.0 | 4.70 | 1.60 | 3.40 | 3.10 | $1.30 |
| 10 | 9.40 | 1.60 | 3.40 | 7.80 | 6.00 |
| 30 | 27.81 | 1.60 | 3.40 | 26.21 | 26.91 |
| 40 | 37.11 | 1.60 | 3.40 | 35.51 | 33.71 |

The above calculations will over estimate benefits because they assume the regulatory interventions are 100 percent effective. Improved labeling should reduce the incidence of undercooking but cannot be expected to be 100 percent effective. Establishing time and temperature requirements does not address equipment failures. Readily available cooking instructions will not eliminate human error.

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. State and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing any ingredient requirements or requirements with respect to the operations of any establishment at which inspection is provided under title I of the FMIA which are in addition to, or different than, the requirements of the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles which are not at such establishments, after their entry into the United States. Under the FMIA, states that maintain meat inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect, and there are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule.

**Effect on Small Entities**

The Administrator had determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Approximately 225 establishments produce heat-processed, uncured meat patties (such as hamburgers, Salisbury steaks, breaded and battered chopped veal steaks, beef patties, and pork sausage patties). Virtually all of these establishments are small entities; however, the economic impact will not be significant for the reasons cited below.

This rule has a potential benefit that extends beyond reducing the costs of foodborne illness. During periods when public concern for foodborne illness is high, this rule can help protect the markets for small companies producing heat-treated patties. While this protection may not be significant, it will exist and should be noted.

To estimate costs for the 225 establishments, the Department assumed that each company produces two different products and uses at least three different labels. The Department has estimated that the 225 establishments produce an estimated 20 million pounds of heat-treated patties, less than 100,000 pounds per establishment. A high percentage of these products are produced for the HRI market. Many of the current specifications are probably demand driven, i.e., the customers are specifying partially-cooked patties at a specific size and temperature.

Based on an examination of processing procedures from 10 establishments collected in the process of performing two surveys of heat-processed uncured meat patties, FSIS estimates that half (or 113) of the establishments are already complying with the requirements of this rule; that is, they produce only patties that meet the new requirements for fully-cooked patties.[1] These 113 establishments will not experience any costs and may receive some benefit from increased protection of the markets.

An estimated 20 percent (45) establishments are currently preparing partially-cooked patties at temperature ranges where it can be reasonably assumed that they will continue to produce partially-cooked patties. There are firms currently producing product cooked to about 130 °F. These products are obviously intended to be partially-cooked. The specifications may be set by the customer. Under the new rules, these products must be cooked to at least 140 °F and labelled as partially-cooked. The Department has concluded that cooking to ranges of 130 °F, a temperature dangerously near the growth range of some pathogens, is not acceptable, even if specifically requested by a customer.

The 45 companies in this category will have to change processing procedures to increase temperature. Such a change to the processing line could possibly be achieved by merely turning up the heat, but could also call for a lengthened line, a one-time cost estimated at $30,000 each. If all 45 firms have to lengthen lines, the cost would be $1.35 million.

The 45 companies have an estimated 135 labels that would have to be modified. Data collected during the Department's nutrition labeling initiative showed that the average cost of a labeling modification for a small firm was approximately $660 per label when the change had to be implemented within 6 months. Using that estimate, the cost of revising 135 labels would be $89,100. The actual cost should be lower, since many affected labels are the simple low-cost labels used for the HRI trade. In addition, the Department will allow add-on stickers until all existing inventories are used up.

The total equipment and labeling costs for 45 establishments cooking below 140 °F would be $1.44 million. The remaining 30 percent (67 establishments) are currently using temperatures in the 145 °F to 148 °F range. The minimum temperature for fully-cooked will be 151 °F. These firms could either (1) continue with current processing procedures and label products as partially-cooked, or (2) increase their time and temperature requirements to comply with fully-cooked patties. For HRI products, the firm's decision would presumably be driven by the customer's preference. It seems unlikely that any institutional customer would object to a label identifying a safe cooking temperature.

A labelling change for 201 labels (67 establishments × 3 labels per establishment) would cost $132,660. If all 67 firms modified production lines at $30,000 per line, the cost would be $2,010,000. The Department views the $30,000 cost as unlikely unless customers specify that patties meet the requirements for fully-cooked.

For retail products, the Department expects to see labelling changes. There is a growing acceptance for safe handling instructions. No comment has suggested that a "partially-cooked" label has any potential for adverse affect on sales. The Department is not aware of any information suggesting that such labelling could be viewed as pejorative.

Based on the above analysis, half of the 225 firms could see increased one-time costs ranging from $1.6 to $3.4 million. The most substantial impact will be on the firms that currently cook products at temperatures below 140 °F. They will have to change their processing procedures. The Department has concluded that such practices present too high a potential hazard to be allowed. In other cases, compliance can

[1] Copies of the survey are available from the FSIS hearing Clerk, room 3171, South Agriculture Building, FSIS USDA, Washington, DC 20250.

be achieved by labelling products as partially cooked. The Department views this as a minimum regulatory requirement, considering that product samples cooked at ranges of 145 °F to 148 °F have been found to still contain pathogenic bacteria and these products have all the appearance of a fully-cooked product.

The above costs are all one-time costs. Public comments identified a potential recurring cost of lost revenue because higher temperature cooking requirements reduce the finished product yield. As patties are cooked, juices drain out and the new weight decreases. The Department agrees that firms producing a product cooked below 140 °F will have to increase the cooking temperature, resulting in increased shrink. However, two factors should minimize lost revenue. First, all suppliers will have the same requirements, so that no one firm will have an unfair competitive advantage. Second, these are products that have obviously undergone a second thorough cooking phase. After the rule is implemented, the shrink from the secondary cooking should decrease to balance the increased shrink from the initial cooking. If the end product as consumed remains relatively constant, the market should adjust for the changes. A more thoroughly cooked patty is a different product and should command a higher price to account for the increased shrink.

For the other products, the Department expects to see labelling changes unless the customers request the change in processing requirements. Those customers that specify a fully-cooked product will be aware of the changes in cooking requirements and resultant changes in yield. Because of market effects, the Department does not see any real cost associated with the yield issue beyond some minimal cost during the initial adjustment phase.

**Paperwork Requirements**

This rule requires each establishment which deviates from the specified heating or cooling requirements to create and maintain a written record of the nature of the deviation, as well as the steps that will be taken to prevent a recurrence. This written record is to be placed on file in the establishment and available for review, upon request, by any duly authorized representative of the Secretary.

In addition, establishments are required to label partially-cooked and char-marked patties appropriately and ultimately will need to resubmit label applications to reflect these new label requirements.

These recordkeeping requirements were approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501), and identified as OMB #0583–0056.

**Background**

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) requires the Secretary of Agriculture to administer an inspection program that assures consumers that meat products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. Consistent with that requirement, on June 5, 1990, the Department published in the **Federal Register** (55 FR 23030) a reproposal similar to the regulation first proposed on December 27, 1988 (53 FR 52179), titled, "Heat-Processing Procedures, Cooking Instructions, and Cooling, Handling, and Storage Requirements for Uncured Meat Patties." The primary purpose of the 1988 proposal was to set forth specific manufacturing, handling, labeling, and storage requirements for cooked (heat-processed), uncured meat patties. The provisions of that proposal for fully-cooked patties were designed to ensure the destruction of food-borne pathogens, such as *E. coli* 0157:H7 and *Salmonella*, before the patties leave the establishment; the provisions for partially-cooked or char-marked patties were designed to reduce the number of potential pathogens surviving the heat process. In addition, informative labeling of these partially-cooked and char-marked patty products was designed to assist consumers in the safe cooking of these products.

The 1988 proposal was based on evidence of food-borne microbiological hazards in heat-processed patties that included data showing 54 Minnesota school children became ill due to 0157:H7, a pathogenic strain of *E. coli*. The illness was epidemiologically linked to consumption of beef patties which were considered fully-cooked. Also, in a 1985 incident, *Salmonella* was detected in beef patties destined for a large public school system. These patties were also considered fully-cooked. However, *Salmonella* was detected before the patties were consumed.

After publication of the 1988 proposal, a case of listerial meningitis was reported to the Centers for Disease Control (CDC) in April, 1989, involving an elderly woman who had cancer. The illness was epidemiologically linked to turkey frankfurters which were later found to contain *L. monocytogenes*. The company voluntarily recalled the turkey frankfurters in commerce.

Elderly people with underlying health problems, pregnant women, and patients with suppressed immune systems are at greatest risk from listeriosis, the disease cause by *L. monocytogenes*. Typically, in this population of immune-impaired people, listeriosis is manifested as meningitis or meningo-encephalitis, which affects tissues around the brain or spine; it is also associated with septicemia (blood poisoning); and it can cause spontaneous abortions and stillbirths.

*L. monocytogenes* is often an environmental contaminant. It is capable of slow growth in raw and processed meat products at refrigeration temperature (40 °F); whereas neither *E. coli* 0157:H7 nor *Salmonella* can grow at this low temperature. *L. monocytogenes* is also more resistant to heat than *E. coli* 0157:H7 or *Salmonella*. Two studies on heat lethality of *E. coli* 0157:H7, *L. monocytogenes* Scott A and *Salmonella* confirm this resistance: The *Salmonella* study, contracted by the Agency and reported by Goodfellow, S.J. and Brown, W.L., entitled "Fate of *Salmonella* inoculated into beef for cooking" Journal of Food Protection (1978) 41:586–606 (here further referenced as the Goodfellow and Brown study), and the Agency-contracted study reported by ABC Research (1988) unpublished, entitled "Lethality of Heat to *Listeria monocytogenes* Scott A and *Escherichia coli* 0157:H7, Part I: D-Value Determinations in Ground Beef and Turkey" (here further referenced as the ABC study).

Because the organism is ubiquitous, without careful processing controls, *L. monocytogenes* may contaminate heat-processed, ready-to-eat meat or poultry products after processing, both prior to and during product packaging. The American Meat Institute (AMI), in its *L. monocytogenes* monitoring program of ready-to-eat meats (frankfurters, luncheon meats, and ham), stated that post-process contamination of these products appears to account for most of the listerial presence in finished products. (George D. Wilson "*Listeria monocytogenes*—1988" Reciprocal Meat Conference Proceedings 41:11–13.) In February, 1989, the Agency issued FSIS Directive 10,240.1, "*Listeria monocytogenes*; Testing Procedures and Sanitation Information." This directive provided information on the Agency's microbiological sampling and testing program, and guidelines for establishments in cleaning and sanitizing equipment and facilities for the prevention of microbiological contamination. Similar sanitation

requirements are included in this proposal.

While addressing comments on the 1988 proposal, the Agency conducted a survey for *L. monocytogenes* and for the presence of catalase in samples of heat-processed meat patties. Catalase is an enzyme found in meat. Because heat processing at a temperature above 142 °F destroys the enzyme, a positive test indicates the product was not sufficiently heat-processed to destroy the enzyme, thus indicating that *L. monocytogenes*, if present, could survive. To prevent post-heat-process contamination of the samples, the patties were collected aseptically immediately after leaving the heating medium. Samples were collected from 33 establishments. Of the 33 patty samples, one beef and one pork sample were positive for *L. monocytogenes*. In addition, eight of the 33 patty samples were positive for catalase, one of which was also positive for *L. monocytogenes*. A review of the processing procedures submitted on label applications for the affected kinds of products, both from establishments generally and from the establishments with positive results for *L. monocytogenes* and/or catalase, revealed heat-processing temperature/time combinations ranging from 130 °F with no stated holding time at that temperature to 160 °F for 2 minutes. Most establishments, however, indicated they heat-processed the patties to at least 145 °F with no prescribing holding time.

The Agency conducted a second survey of heat-processed patties, similar to the first. However, samples were collected from frozen storage if freshly manufactured patties were not available. Samples were collected from 31 establishments. Of the 31 patty samples, three beef samples, one pork sample, and one veal sample were positive for *L. monocytogenes*. In addition, seven of the 31 patty samples were positive for catalase, two of which were also positive for *L. monocytogenes*. A review of the processing procedures as submitted on label applications, as well as the processing procedures submitted by the establishments with positive results for *L. monocytogenes* and/or catalase, revealed heat-processing temperatures ranging from 130 °F with no stated holding time to 156 °F with no stated holding time. Most establishments, however, indicated they heated the patties to at least 145 °F with no prescribed holding time.

These two surveys indicate that *L. monocytogenes* survived the heat process in seven of 64 samples for 63 different establishments. Because all samples positive for *L. monocytogenes* were collected immediately after heat-processing, the presence of the organism could not be attributed to post-heat-process contamination. Catalase was present in 15 of the 64 samples. The Agency reviewed processing information from establishments with positive results for *L. monocytogenes* and/or catalase. The majority had heat-processing temperature/time combinations which should have been sufficient to destroy catalase, but apparently were not. This implies a lack of processing control.

This information further supports the need for a rule to govern the processing of uncured, heat-processed meat patties.

**Recent Events**

Recently, FSIS received information about a foodborne disease outbreak which was initially confined to the State of Washington. Similar cases have now been reported in Idaho, California, and Nevada. More than 200 people became ill after consuming hamburgers from a fast food restaurant chain. Preliminary reports indicate that the raw frozen ground beef patties contained *Escherichia coli* O157:H7 It is believed that the raw product was not cooked sufficiently in the restaurants to eliminate the microbe.

**Discussion of Comments on the June Proposal**

FSIS received 24 comments in response to the June proposal. Eleven were from meat processors, eleven were from meat industry associations, one was from an academic, and one was from a privately funded organization which monitors government actions. Also, several requests were received asking for an extension of the comment period.

*Basis for Proceeding With Rulemaking*

1. Several commenters questioned the Agency's statement that a public health threat in fully-cooked patties is presented by *E. coli, Salmonella,* and *L. monocytogenes*. They contend that there are no documented cases of food-borne illness from fully-cooked, uncured meat patties. The commenters also stated that in the *E. coli* and *Salmonella* incidents cited in the proposal, the patties were not fully-cooked, which they defined as heat processed to at least 145 °F. Further, the commenters stated that in the *L. monocytogenes* incident a cooked, cured poultry product—not a cooked, uncured patty—was implicated, and, therefore, the incident was not relevant. In addition, in the *E. coli, Salmonella,* and *L. monocytogenes* incidents cited in the proposal, there were no confirmations that the pathogens survived the heat process; contamination after the heat process could have been responsible.

The Agency has determined that a significant potential public health hazard exists given the fact that pathogens have been found in finished product. Therefore, the Agency is proceeding with rulemaking.

According to the Goodfellow and Brown study and the Agency-contracted ABC Research study, achieving an internal temperature of 145 °F, without sufficient holding time, is not sufficient to destroy food-borne pathogens such as *E. coli* O157:H7 or *Salmonella,* as well as *L. monocytogenes*. Holding times, although brief, contribute important need lethality to patty processing if the industry does not use a relatively high temperature. Patties will continue to cook for a short time after removal from the heat medium due to latent heat. Except for only a few instances, as reported in the Agency's *L. monocytogenes* surveys, the Agency has not received any information from the industry which would indicate that processors are monitoring the holding time. Therefore, the Agency does not know if the patties in the incidents cited were "fully-cooked," i.e., received the equivalent of 145 °F with appropriate holding time, or not.

The Agency considers the poultry frankfurter/*L. monocytogenes* incident reported in the June proposal to be relevant to cooked, uncured patties since this was the first time Listerial meningistic was epidemiologically linked to a meat or poultry product. The Agency reported in the June proposal that *L. monocytogenes* survived the heat process in seven of 64 meat samples from 63 different establishments. From the Agency's *L. monocytogenes* monitoring program, conducted between July 30, 1989 and July 31, 1990, 82 out of 4344 samples of ready-to-eat meat product have been confirmed positive for *L. monocytogenes*. Although no illnesses from this microorganism have been epidemiologically proven to be caused by a meat product, and in particular cooked, uncured meat patties, it is now evident that the consumption of food containing *L. monocytogenes* may cause illness and even death. The Agency must protect the public from such a health threat. As stated above, there is documented evidence that *L. monocytogenes* may be present in uncured, cooked patties.

Although the Agency has evidence that some organisms are surviving some processes, the Agency agrees that the organisms of concern could also be present as a result of post-heat-processing contamination. The

proposed rule addressed this possibility. Regardless of the source of organisms present in the finished product, ready-to-eat product—such as fully-cooked, uncured meat patties—must be free of pathogenic bacteria. The Agency has determined that this regulation is necessary to assure the public that the product is safe.

2. A commenter stated the rulemaking is not warranted since the present regulations—as the commenter interprets them—are adequate.

The Agency has no specific regulations which provide safe processing procedures for uncured, cooked meat patties. As a result, the industry has been operating with individually established manufacturing practices. The Agency has concluded that some of these practices are not sufficient to assure the uniformly safe production of uncured, cooked meat patties and that rulemaking is necessary.

*Limited Comment Period*

3. Several commenters requested an additional 30 to 90 days for the comment period. They stated that additional time was needed in order for them to further study the economic impact of the rule and to analyze the Agency's responses to a set of specific questions submitted to the Agency regarding the rule.

The industry has had sufficient time since the December, 1988, proposal to evaluate the impact rulemaking would have on uncured, cooked meat patties. The Agency has clearly informed the industry of its concern about the potential health threat and that the Agency will be proceeding with rulemaking.

4. A commenter stated that the comment period was too short, considering the Agency delayed the June, 1990, reproposal by approximately 18 months.

The June reproposal was delayed, in part, due to the gathering of additional information regarding the presence of *L. monocytogenes* in uncured, cooked meat patties. Nevertheless, the Agency, in the December, 1988, proposal, alerted the industry to the fact that there are food-borne risks with uncured, cooked meat patties. During this interim period, the industry had an opportunity to react to the December, 1988, proposal and the comments by the National Advisory Committee on Microbiological Criteria for Foods by voluntarily modifying the preparation practices for uncured, cooked meat patties. The Agency considered a 30-day comment period to be sufficient because the contents of the June, 1990, proposal were familiar to interested parties.

*Impact of the Proposed Rule on Other Agencies and on Implementation*

5. A commenter expressed concern that the FSIS proposed rule, if adopted, would cause confusion in other non-FSIS regulated industries—such as food-service operators preparing foods other than meat and poultry products—which are regulated by the Food and Drug Administration (FDA). Specifically, the commenter stated that the proposal would add to the "non-uniformity of regulations governing the food industry."

It is true that FSIS only regulates meat and poultry products and mandates time and temperature combinations appropriate to those products. Other agencies which regulate food other than meat and poultry, such as fruits, vegetables, and fish, may use other times and temperatures. The non-uniformity is perhaps regrettable, but necessary, and is mitigated by the fact that the rules frequently affect different sections of the food industry.

6. Two commenters suggested that a final rule should become effective no sooner than 90 to 120 days after it is published. They stated this time period would be necessary in order to amend contracts with other Federal agencies to reflect lower product yields due to higher temperature and longer cooking time requirements.

The Agency realizes that an implementation procedure for a final regulation would have to be carefully designed, appropriately allowing "under-cooked" product into the marketplace without the safeguards provided by this rule. Realizing that other Federal agencies, such as the Food and Nutrition Service (FNS) of USDA, rely on meat purchase specifications which have specific cooking temperature/yield requirements, the Agency will assure the earliest possible notification to such agencies so that they can plan accordingly.

7. A commenter stated that a 2-year implementation would be necessary in order to conduct an economic impact analysis of the rulemaking and to educate consumers regarding the decrease in yield and loss of palatability of the patties.

The Agency considers the need for a rule essential to reduce the potential foodborne hazard in uncured, cooked meat patties. The Agency does not consider the economic impact to be major, as explained earlier in this document (and as discussed further below), nor the effect on patty palatability to warrant delay in publishing the rule. As a palatability alternative, the rulemaking provides for the partial cooking of uncured, cooked meat patties. The safety of this product relies upon sufficient cooking by the consumer, and thus, upon proper cooking instructions prescribed on the label.

*Economic Impact*

8. Several commenters disagreed with the Agency's assertion that the proposed rule would not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Public Law 96–354 (5 U.S.C. 601). They cited the following reasons:

(A) A decrease in product yield (of approximately one percent for each one degree increase in temperature above 145 °F) due to loss of moisture and fat which would consequently increase the cost of the cooked patties.

Approximately 225 establishments produce heat-processed, uncured meat patties (such as hamburgers, Salisbury steaks, breaded and battered chopped veal steaks, beef patties, and pork sausage patties). Virtually all of these establishments are considered to be small entities; however, the Agency has determined that the economic impact would not be significant for a substantial number of them. (See, Effect on Small Entities Section above)

For establishments producing fully-cooked, uncured meat patties, this rule provides some choice in the heat-processing procedure used to produce a wholesome product.

A new category of partially-cooked, uncured meat patties is included in this rule which provides establishments an opportunity to develop an alternative market for patties not meeting the fully-cooked criteria of this rule. In addition, this new category of product provides establishments an alternative to changing their heat-processing procedures.

Currently, labels for heat-processed patties do not distinguish between partially-cooked and fully-cooked, which may lead consumers to believe that heat-processed patties are all fully-cooked (ready-to-eat) patties. This rule requires partially-cooked patties to be produced according to heating and cooling performance standards, to be labeled as partially-cooked, and to bear cooking instructions on the label.

The heat-processing requirements for char-marked, uncured meat patties is fully in accord with current manufacturing practices and is not expected to affect establishments, except that increased monitoring may be required to assure compliance with the specified heating and cooling requirements.

(B) An additional cost for support of research and development for making the fully-cooked patties attractive to the consumer.

The Agency did not consider the impact the cost of research for marketing fully-cooked patties would have on the cost for producing fully-cooked patties. This is a traditional marketing decision, not an unavoidable economic input attributable to this regulation.

(C) An additional cost for purchasing temperature/time monitoring equipment.

The Agency did consider whether establishments would have to purchase new recording devices for monitoring temperature and time and concluded that this factor would not affect the economic impact of the rule since establishments already measure the temperature of the cooked patties. The Agency has concluded that the commonly used temperature measuring devices are accurate to 1 °F and this requirement is consistent with other regulations affecting cooked meat products, including that for cooked beef (9 CFR 318.17), which requires temperature measuring devices to be accurate within 1 °F.

Regarding the time measuring devices, most modern chronometers measure the time to the nearest second, and are accurate to this degree of time. The Agency does not anticipate that new or special equipment would have to be purchased to measure this factor nor would monitoring for accuracy be required. Therefore, since a number of the commenters complained about economic impact, the requirement that the time measuring devices be accurate within one second, which implies establishment monitoring, has been eliminated as an unnecessary economic impact.

(D) An additional cost for purchasing new heat-processing equipment.

The Agency did consider whether new heat-processing equipment would be required in order to comply with the heat-processing requirements. The Agency concluded that equipment currently used in most establishments should be adequate. However, some manufacturers would probably have to purchase new equipment and this cost has been estimated. (See, Effect on Small Entities Section above).

(E) An additional cost due to a decrease in production volume (due to longer processing times as a result of the need for longer holding times).

The Agency estimated that some establishments may incur additional costs due to a decrease in production volume. However, the Agency estimated the cost in another way by estimating the cost of adding equipment to the line to maintain the same volume. The Agency felt that this was another way of arriving at the same cost.

9. One commenter estimated that the overall cost of the proposed rule would amount to as much as 2 cents per pound of product; for 225 manufacturers, this exceeds $100 million he stated. However, the commenter offered no data to support this estimate.

As set forth in the proposal and in the earlier economic impact statement in this document, the Agency has determined that this rule will not result in an annual effect on the economy of $100 million or more.

*Temperature/Time Monitoring Equipment*

10. Several commenters questioned the availability of temperature/time monitoring devices capable of accurately measuring the temperature and holding time of cooked patties.

As explained by the Agency in response to Comment 8 (C) above, such monitoring equipment is available.

11. A commenter asked whether temperature/time monitoring equipment capable of recording the time to the nearest second is available.

The Agency has determined that it is available but it may not physically record the data (such as a print-out device.) The Agency will not require physically recording of the data.

*Scope of the Proposal*

12. Two commenters claimed they were not sure what types of product would be affected by the proposed rule. They asked why nuggets, fritters, and meatballs were excluded by the "patty" definition, "a shaped and formed comminuted meat food product for individual servings, which may or may not be breaded."

The Agency admits that the definition needs clarification and has redefined the term "patty" as "a shaped and formed, comminuted, flattened cake of meat food product". This specific type of meat food product—patties, not nuggets, fritters, meatballs, or Jamaican style patties—has been the greatest immediate risk and, therefore, is the subject of initial rulemaking. Similar other products will be addressed in a different rulemaking. Unlike patties, the Agency has not had any reported illnesses in which these other products have been implicated. The definition of patties, as contained in this rule, is consistent with the prior labeling history of the product affected. The other products listed above were not intended to be affected by this specific rule and strain the common meaning of the term "patty". However, these other products do have the potential for foodborne illness and are therefore considered as a subject for rulemaking. In the June 5, 1990, Advanced Notice of Proposed Rulemaking (ANPR) (55 FR 22921–22923) the Agency solicited information relative to broadening the scope and methods of reducing the risk of food-borne related illnesses in all cooked, uncured, comminuted meat or poultry products.

13. A commenter was concerned that, once implemented, the proposed rule would be expanded to cover fresh meat products. The scope of this rulemaking does not include fresh, uncooked meat products. The Agency does not intend to expand this rulemaking to consider their inclusion at this time.

*HACCP-Based System Concept*

14. Several commenters contended that it would be inappropriate to incorporate the HACCP-based system concept into the proposed rule until after the Agency's 2-year HACCP study and public hearings on HACCP are completed. A commenter stated that the HACCP-based system concept of the proposed rule is a patchwork of hypothetical thoughts and is not science-based. Two commenters contended that the HACCP-based system concept should be restricted to microbiological concerns until the Agency's 2-year study is completed. A commenter stated that the HACCP-based system concept of the proposed rule is too strict, and that a HACCP system implies flexibility in the processing procedure. Another objected to the requiring of unscheduled inspections by plant management personnel of the sanitary handling and storage practices. Several commenters applauded the Agency's effort to integrate the concepts of the HACCP system into the proposed rule. However, these same commenters noted deficiencies in the Agency's approach, including:

(A) The Agency should have coordinated HACCP efforts with the FDA to avoid creation of multiple parameters.

(B) The proposed system for production of pathogen-free product is accomplished by controlling only the raw material and heat-processing without consideration being given to post-heat-processing contamination and proper freezing.

(C) The proposed HACCP system lacks required training of plant employees to assure HACCP is working.

(D) The proposed HACCP system lacks documentation of monitoring activity observations—recordkeeping.

A commenter stated that the proposed rule should be based upon safety, and, therefore, requirements should only be specified for the heat-processing and cooling steps. Two commenters stated that the Agency misidentified the critical control points in the proposal; that the critical control points were more like control points or quality control points which, as they explained, should be in-plant controls—not regulated limits. A commenter stated the proposal's definitions for critical control points and hazards were at odds with other Agency-issued definitions for these same terms. A commenter felt the monitoring activity frequency for the critical control points should be specified in the proposed regulation. The processor should not be allowed to establish this frequency.

The Agency, upon reflection, finds some merit in the comments. Because the Agency has not yet formulated or implemented HACCP, this regulation has been revised to distinguish it from the Agency's ongoing HACCP initiative. As previously explained, there is immediate need to regulate the safety of heat-processed, uncured meat patties, and that portion of the proposed rule has been retained in this rule. The science-based process control limits reflect either good practices already adhered to by some segments of the industry or new, practical controls which can be uniformly applied to all segments of the industry. The rule, of course, is restricted to microbiological concerns. The system, both as proposed and as finalized here, does include controls for post-heat-processing and cooling of the product. These controls are adequate to control the safety of the product and to prevent recontamination. Several comments indicated that proper freezing could be required and used in lieu of controlling heat processing. Although freezing does deter the growth of vegetative spoilage organisms and pathogens, it doesn't result in a kill step, as proper heating does, and is also unnecessarily burdensome as a requirement and inadequate as a replacement for proper heating. The rule does require a specific frequency for monitoring fully-heat-processed product. Documentation of monitoring activity may be useful to the establishment; however, it is not a requirement of this rule. Written recording of all heating and cooling deviations and the steps taken to prevent their recurrence, used in conjunction with the Agency inspection activities will assure the production of safe product. The rule is now based on controls for heating and cooling and the prevention of cross contamination. Additionally, a label qualifier requirement is included for the less-than-fully-cooked product to inform consumers and, thereby reduce the risk of food-borne illness. For greater clarity, the Agency has returned to the specific internal temperature requirements to indicate doneness used in the first proposal.

*Definitions*

15. A commenter took exception to the Agency's definitions for the terms "critical control point" and "hazard," stating that the definitions established by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) are more acceptable and recognized.

Another commenter suggested that the term "control point" be included in the rulemaking. The commenter did not include a specific definition for the term. However, it was suggested that such a point be considered "along the line of a good manufacturing practice guideline" or "point which may require control but for which loss of control will not lead to an unacceptable health risk."

The comments on terms related to HACCP are no longer relevant, since in response to other comments, the HACCP terms and format have been removed.

*Raw Material Handling*

16. Several commenters stated that the Agency's present controls or raw materials—presumably for wholesomeness—are sufficient and that new requirements are not necessary.

Two commenters stated that nonconformance with the temperature/time requirements for raw material would be unlikely to result in a health hazard and that these requirements are not science-based. Thus, they said, raw material handling requirements are not needed.

Another commenter stated that unless raw material is controlled from the time of slaughter until it is heat-processed, the processing procedure is ineffective for pathogen control.

A commenter stated that microbiological testing of the raw material for *L. monocytogenes* is an essential part of a HACCP system. In addition, the commenter suggested only FSIS certified laboratories be permitted to conduct the analyses.

Several commenters suggested alternatives to the 72 hour/40 °F requirements, including: (A) Storing raw meat at 32 °F for no more than 72 hours and heat-processing to at least 145 °F; (B) adding the option to store raw meat at 32 or 34 °F and store longer than 72 hours (to account for the longer expected shelf life of the raw material); and (C) allowing storage up to 96 or even 120 hours (to account for Thursday shipments/Monday processing).

A commenter stated that small processors would be at a disadvantage since they may not be able to process the raw material within the 72-hour limit.

A commenter stated that the wording of the raw meat storage provision could be better stated.

The Agency has considered these comments and now agrees that, at least for the purpose of this regulation, new raw material handling controls are not appropriate. In the context of a process control regulation, such as HACCP, the need can be reexamined. For the best pathogen control, the sooner in the process one can start controlling pathogens in the meat, the better. However, since safety can be established by assuring the product is adequately heated, the raw material controls are not appropriate here. Testing raw materials for the presence of pathogens, however, is not sufficiently useful in any type of control program. Raw meat contains microorganisms, including pathogens. The purpose of control is to assure the limited growth and ultimate destruction of these pathogens.

*Nonrefrigerated Temperature Exposure*

17. A commenter did not understand the rationale for a 2-hour holding period above 40 °F prior to processing for fully-cooked products while partially-cooked and char-marked products had a 1-hour holding period.

Another commenter stated that the 2-hour limit for holding raw material at temperatures above 40 °F would seriously affect processors who routinely thaw frozen meat at room temperature (above 40 °F) for 24 to 48 hours.

A commenter did not understand the rationale for the 1-hour time limit during equipment failure for leaving product unrefrigerated. The commenter stated this requirement was not necessary since a 2-hour time limit is already imposed for holding raw material at temperatures above 40 °F. One commenter suggested the 2-hour time limit in instances of equipment failure, after which equipment must be cleaned and sanitized before production is resumed, be increased to 3 hours. During equipment failures of up to 3 hours at the commenter's facility, the commenter stated that no *L. monocytogenes* had been detected.

One commenter stated that, with respect to the equipment washing requirements, improper use of water while washing and cleaning belts and

equipment during equipment failure could spread *L. monocytogenes* throughout the establishment.

One commenter fully supported the requirement of a time limitation on nonrefrigerated temperature exposure. The commenter cited the reasonableness of refrigerating the raw material if further processing is not timely to prevent the growth of pathogenic microbes.

The exposure time permitted at nonrefrigerated temperatures prior to processing is another area of requirements that has been removed from this rule in response to the comments. Since the product can be made safe by adequate heat treatment, the Agency has decided that this is another area of total process control that must await HACCP. One of the comments above addresses the difficulty of thawing meat at room temperature under the restrictions of the proposal. Although not addressed by this final rule, thawing meat at room temperature is undesirable. Thawing occurs too slowly, providing a possible environment for growth of microorganisms. This is becoming well known in the industry and far fewer processors currently are thawing at room temperature than in the past.

*Heat-Processing Temperature and Time Requirements*

18. Several commenters stated there was no justification (such as data supporting food-borne illnesses) in the proposal for a 5–D process. These commenters, however, did express support for a 4–D process as was recommended by the National Advisory Committee for Microbiological Criteria for Foods (NACMCF).

The Agency has no foodborne illness data to support either the 4–D or the 5–D process. The historically recommended cook for shelf-stable product is a 7–D cook. The 5–D requirement in this rule is based on the resistance of the pathogens of concern, the expected numbers of pathogens and an appropriate and conventional safety margin, which was ultimately supported by FDA and NACMCF and was examined and adopted by FSIS on advice of its microbiologists.

19. Several commenters stated that, in the alternative to prescribed temperature/time combinations, some type of provision should be made to allow an integrated or accumulated lethality process. These same commenters also expressed that this alternative provision should be equivalent in lethality to a 4–D process.

The reason for not using a 4–D approach is explained above. The Agency agrees that integrated and accumulated lethality are appropriate concepts for use in determining the total lethality of a process and this rule permits them.

20. A commenter suggested that processing authority-approved procedures, such as in canning processes, should be allowed as an alternative to prescribed temperature/time combinations.

The Agency sees some merit in the commenter's statement and has asked for comments in the ANPR (55 FR 22921, published June 5, 1990) on the related rule. However, for now, time considerations prescribe establishing the range of temperature/time combinations proposed and allowing future expansion later if it appears warranted.

21. One commenter objected to a 5–D process and suggested that for safety only a 3–D process need be prescribed. The commenter's justification for the 3–D process was based upon the fact that the consumer would be re-heating the product before consumption and that the re-heating by the consumer, in conjunction with a 3–D heat process by the processor, would be sufficient to make the product safe.

The Agency disagrees. A consumer who purchases a product labeled "fully cooked" may well elect to merely warm the product. This warming could have virtually no effect in reducing further any pathogens which had survived the 3–D process.

22. A couple of commenters supported the need for a regulation containing only a 4–D heat process and controls for cooling the product. The commenters were opposed to any other regulatory controls. They stated that the roast beef regulation contained controls only for heat-processing and cooling.

The Agency has patterned this regulation on the roast beef regulation. The roast beef regulation (9 CFR 318.17), in addition to heat-processing and cooling provisions, also contains post-processing provisions aimed at preventing cross-contamination and instructions on the handling of cooking and cooling deviations. The 4–D rule has already been discussed above.

23. One commenter questioned the Agency's assertion in the June, 1990 proposal that some processors currently produce patties which are cooked to a temperature/time combination as rigorous as those stated in the proposal.

The Agency's assertion was based on a survey of establishments cooking uncured, comminuted products. The survey reveals that about half of the processors do use procedures as rigorous as those required in this rule.

24. One commenter appreciated the change from the 7–D process of the 1988 proposal to the 5–D process of the 1990 proposal. However, this same commenter was concerned that the proposed temperature/time combinations were still in conflict with guidelines issued by the Food and Drug Administration (FDA) and that processors would be confused about safe heat-processing practices.

This Agency and FDA have a consultative relationship and keep abreast of each other's activities. However, because FSIS is frequently dealing with similar, but different issues, or regulating different populations, FSIS rules sometimes differ somewhat from FDA's. In this case, however, the same time/temperature chart is being adopted by both agencies.

25. One commenter, who heat-processes patties at 145 °F to 148 °F, stated that a minimum temperature of 145 °F, is sufficient for safety. The commenter also stated that, after thousands of microbiological analyses on his own product, the percentage of samples with surviving pathogens was not near the percentage the Agency suggested would be present.

The fact that the commenter had surviving pathogens is revealing; fully-cooked product should not contain any pathogens. It is because *Salmonella* and particularly *Listeria monocytogenes* are so heat resistant, that FSIS established the temperatures specified in this rule.

26. One commenter suggested that the Agency should issue a directive stating that fully-cooked patties should be cooked to a minimum of 148 °F, and that a partial quality control (PQC) program be mandatory to assure this.

FSIS has determined that an internal temperature of at least 151 °F in addition to some associated holding time is needed to control the pathogens in fully cooked patties. Once the establishment selects one of the time/temperature relationships identified in Table A under § 318.23 of the rule, it could propose a PQC program for control of this time/temperature relationship if it wishes.

27. One commenter did not agree with the Agency's rationale for disallowing heat-processing temperature/time combinations for temperatures less than 151 °F. The commenter submitted extrapolated data (temperature/time combinations) of a 5–D process for temperatures between 145 °F and 151 °F.

It is indeed possible that other time and temperature combinations could be used to protect product from these pathogens. However, the Agency is

providing these at this time to offer only a reasonable range of safe, effective time/temperature combinations that are most practical to most patty processors. The combinations the commenter refers to would require longer holding times than are practical for most patty processors who use continuous processes. However, if the June 5, 1990, ANPR becomes a regulation, comments and data such as this will be considered and if adopted, a processing authority could select one of those combinations if it were useful to the processor being serviced.

28. One commenter objected to the concept of making cooked patties safe by increasing the temperature/time combination and thereby affecting the yield and palatability of the patties. Instead, the commenter favored "biological controls and testing as the preferred method of insuring the safety of cooked meats."

Biological controls, such as the rearing of pathogen-free and pathogen-reduced animals, do offer some hope for the future, and the Agency remains open to offers of evidence that such an alternate process could be implemented. However, at present, the cooked patty processor typically purchases meat on the open market and has little or no control over the suppliers. Again, if the Agency permits alternate processes in the future, biological controls could be submitted for consideration. Testing, on the other hand, does not by itself offer an alternative to sufficient processing. Without some special handling, such as that discussed above, the Agency assumes, based on prior experience and surveys of the scientific literature, that raw meat is likely to contain some pathogens.

29. One commenter recommended that the Agency identify the numbers and types of bacteria to be affected by the processing procedure rather than defining the process.

If one were to identify the numbers and types of bacteria to be killed and the degree of safety to be added, then one has in effect defined the process. The Agency took the step of supplying the times and temperatures because they are more useful and more meaningful to people who are not accustomed to calculating processes.

30. One commenter recommended that the phrase "minimum holding time" be used instead of "minimum processing time." The commenter stated that the recommended phrase was more clear.

The time the Agency intended to reference was the entire time that the product was receiving heat treatment. Upon investigation and reflection, the Agency agrees that the recommended term is more descriptive, since it also includes the time immediately after removing the product from the heat source. This change has been made in the rule as a point of clarification.

31. Several commenters asked how the processor and the Agency would determine compliance with the 5–D heat process requirements. One of the commenters asked the following about the Agency's determination of compliance. Would the Inspector-In-Charge (IIC) remove product from the processing line; and, if the product were removed from the processing line, how would the IIC account for the decline in temperature which would immediately occur; and how would the IIC measure temperature and/or holding time?

The processor is required to assure compliance with temperature and time requirements. As guidance in performing this activity, the processor is instructed to measure the temperature of at least one patty per processing line per hour, and to use temperature measuring devices accurate within 1 °F The rest of the development of the monitoring procedure is up to the processor, and many standard procedures are available. This final rule is based on the roast beef regulation and provides flexibility in measuring the patty temperature.

As to how the inspector is to determine compliance with the requirement, the Agency will issue instructions to inspectors on monitoring temperature.

32. One commenter stated that further study is required before a rule on heat-processed patties is implemented. The commenter suggested the study should include: Research on end-user reheating procedures; calculation of the combined lethality of the processing procedure (by the processor and the consumer); determination of the appropriateness of the label advisory (for partially-cooked and char-marked products); and an assessment of the holding temperature and times for raw materials.

Further study and the gathering of more information can always be useful, but the Agency has determined that it has sufficient information to provide regulatory guidance in an area of demonstrated need that concerns the public health. That being so, in the absence of convincing information to the contrary, the Agency has an obligation to the public to promulgate this rule.

33. One commenter stated that the effectiveness of the heat-processing procedure should be based not only upon the D-value but also upon the z-value. The commenter further stated, however, that the data to establish the z-value is not presently available but should be developed. The commenter stated that such data would include: Humidity, medium (meat type and species), temperature/time combinations, come-up and come-down times, and different organisms.

A z-value is a value expressed in °F which estimates the rate of thermal death of a particular organism. All the data here, as is true of that in the last question, would be useful in the development of alternative cooking schedules. However, it is not necessary to the publication of this rule.

34. Two commenters stated the monitoring frequency for temperature and time, established as at least one patty from each production line each hour of production, is inadequate and scientifically unfounded. Both commenters recommended more frequent monitoring. One commenter said the monitoring should be continuous.

The Agency considers one patty per hour per line to be continuous monitoring, which will quickly establish the safety of the process.

35. One commenter characterized the 5–D heat process of the 1990 proposal as being more lenient than the 7–D heat process of the 1988 proposal and strongly objected to this change. The commenter specifically criticized the meat industry's reasons for not supporting the 7–D heat process—their concern for the affects on the yield, palatability, and cost of the cooking.

It is true that some in the meat industry criticized the proposed rule for the reasons stated. However, by and large, the food industry and academic microbiologists agreed that the prosed rule was unnecessarily stringent. The Agency has reconsidered the need, after conferring with microbiologists inside and outside of the Agency, and has determined that a 5–D process is sufficient to protect the public health.

36. One commenter said the use of quantitative data to support or to not support the appropriate D-value (such as 5–D versus 7–D) was inappropriate since very small numbers of pathogenic bacteria could cause serious illness or death.

The Agency agrees that the use of incidence data is not appropriate for developing the heat process. The heat process recommendations are based on thermal death curve requirements determined sufficient to kill the highest number of pathogenic bacteria in these products by the National Advisory Committee.

These incidence data were only useful for estimating how often insufficient processing occurred, and did not

provide information about how many bacteria may be present in a given product.

37. One commenter stated the temperature/time combinations which are sufficient for safety should be based upon the most heat-resistant, vegetative, pathogenic organism and upon a worst case scenario. The commenter identified *L. monocytogenes*, not *Salmonella* or *E. coli*, as the target organism.

All three of these organisms were considered in developing the process requirements. As stated earlier, the time/temperature combinations selected were based on the results of experiments conducted for USDA, and on the expertise of microbiologists and other scientists, and the review of other scientific literature.

38. One commenter recommended that an additional criterion should be patty thickness.

Patty thickness is already considered in the heating requirement and therefore is not an independent criterion.

The next five comments consists of requests for information, which in the opinion of the Agency, is not required by the rulemaking. However, where possible, it is supplied as a matter of interest and in the hope that it will be of some use to the commenter.

39. With regard to the Minnesota food-borne illness incident involving *E. coli* 0157:H7 (referenced in both the 1988 and 1990 proposals), one commenter asked at what levels and occurrences were *E. coli* 0157:H7 found in the processing plant and in the product of the company from whom the patties originated.

*E. coli* was found in the plant from which the patties originated, both in the environment and in the finished product. However, the specific serotype 0157:H7 was not found. This was still a serious finding, however, because *E. coli* should not be found in ready-to-eat product. None of the original product was available for sampling, a rather common situation.

40. With regard to the incident involving *L. monocytogenes* in a turkey frankfurter (referenced in the 1990 proposal), one commenter asked for a copy of the report by the Centers for Disease Control (CDC) characterizing the illness as listerial meningitis.

The Agency does not have any copies of this report for distribution, and suggests the writer contact CDC for a copy of their report by writing to CDC, Meningitis and Special Pathogens Branch (C09) DBND, NCID, 1600 Clifton Rd., NE, Atlanta, Georgia 30333.

41. With regard to the Agency's two surveys for *L. monocytogenes* and presence of catalase in samples of heat-processed meat patties, one commenter asked the following questions:

(A) What were the serotypes and levels of *L. monocytogenes* in each of the positive samples?

The examination for *Listeria monocytogenes* was a species-specific, non-quantified analysis which either did reveal or didn't the presence of *Listeria*; no serotyping was performed.

(B) What protocol and instructions were sent to the inspector-in-charge?

The instructions were printed on the survey form concerning how to collect the sample and what additional information to send along with it. The protocol was to collect the sample in an aseptic manner as quickly after cooking as possible.

(C) What regulatory action was taken when a positive result for *L. monocytogenes* was identified in a sample?

The samples were not part of the regular *Listeria* monitoring program, and, because they were for information only, no action was taken.

(D) Was the processor identified as "E" the same processor in both surveys?

Yes.

(E) What was the technique for measuring the processing temperature and time for each sample and was this technique consistent from sample to sample?

The technique consisted of the inspector personally measuring the temperature and time in the establishment and is reasonably consistent from sample to sample.

(F) Were some of the same establishments sampled in both surveys and, if so, what was the total number of establishments sampled?

As indicated by the sample letters, only one plant was in both surveys. Therefore, the total number of establishments sampled was 63.

(G) What was the type of product and what were the processing requirements for samples from processors, D, H, J through GG, and QQ through KKK?

As indicated in the reports, that information was not included in the sample. In most cases with surveys by Agency inspectors, the decision must be made between securing the maximum amount of information and allowing time for the other duties that require the attention of Agency inspectors.

42. One commenter asked to review the Agency's analytical data comparing its 5–D heat process to either the integrated lethality approach previously recommended by the American Meat Institute in response to the 1988 proposal or the 4–D heat process previously recommended by the National Advisory Committee on Microbiological Criteria for Foods in response to the 1988 proposal.

The two studies used by the Agency were cited in the proposal and placed on file in the Office of the FSIS Hearing Clerk. They did use integrated lethality. The 4–D heat process was considered inadequate based on the resistance of the pathogens of concern, the expected numbers, and an appropriate and conventional safety margin.

43. One commenter asked:

(A) What types of equipment would FSIS presently recognize for recording temperature and holding time?

FSIS recognizes any equipment that reliably measure the product within the required degree of accuracy.

(B) At what point in the process would the temperature and holding time measurements be taken?

Clearly the measurement should be performed very near the cooksite, but FSIS leaves this methodology to the establishment to permit maximum flexibility.

(C) How would other testing equipment be approved and recognized for use?

The establishment must submit it to the Agency facilities group to have it examined for safety and suitability of purpose.

*Cooling Requirements*

44. One commenter stated that the cooling requirements of the 1990 proposal are too rigorous and that they should have remained as they were in the 1988 proposal. The commenter stated the requirements of the 1988 proposal were consistent with other Agency guidelines on proper cooling practices.

The Agency agrees that more rapid cooling after completion of heat-processing is a necessary performance standard and has tightened that requirement in the 1990 proposal and in this final rule. The Agency is now requiring the fully-cooked patties to be cooled to 40 °F within two hours after heat processing. The Agency has determined that common industry practice for cooling these types of products is consistent with this new cooling requirement.

45. One commenter stated the cooling temperature/time requirements were in conflict with FDA guidelines for proper cooling practices of non-FSIS regulated food operations.

The cooling temperature and time requirements, and some other provisions as well, do differ somewhat from the FDA regulations. However, the two agencies are regulating some different products and operations.

46. One commenter objected to the cooling requirements, stating that they would curtail the commenter's practice of incorporating some of the heat-processed patties (broken or malformed ones) as raw material in new production lots. The commenter contended that the 2-hour limit for cooling the heat-processed patties to 40 °F or below is too short and that some patties do not attain 40 °F before being reused.

The patties do not need to be cooled to 40 °F if the reuse consists of continuous heat processing so that the unsatisfactory patties are immediately reused. Otherwise, the standard cooling performance standard would dictate that the product for reuse be cooled to 40 °F.

47. Two commenters characterized the cooling requirements as deficient for the following reasons:

(A) The heat processed patties should be cooled to 32 °F or below, rather than 40 °F or below.

(B) The heat-processed patties should be cooled to 30 °F or below within 24 hours, citing the vulnerability of the hot patties (at 157 °F) to bacterial growth if the patties are not immediately frozen.

The lower temperatures, which can result in freezing the product, are considerably cooler than temperatures required by either USDA or FDA for storage of refrigerated product. They are not needed for product safety, and therefore constitute unwarranted interference with the legitimate business interests of the establishment.

Although the proposal addressed deviations generically and heating deviations specifically, it did not state how the establishment could determine the permitted disposition of the product involved in a cooling deviation. This rule clarifies the point that the contact person is the Regional Director.

*Cooking Instructions and Labeling Requirements*

48. One commenter suggested that an evaluation should be made as to whether the label advisory for partially-cooked and char-marked patties—"For Safety, Cook Until Well Done (Until Juices Run Clear)"—is appropriate.

Another commenter was concerned that the label instruction "For Safety * * *" may mislead the consumer into thinking uncooked patties are a health risk.

Perishable, packaged products requiring special handling to maintain their condition are presently required to have handling statements displayed on the principal display panels of the labels (9 CFR 317.2(k)). Statements presently used include "Keep Refrigerated," "Perishable, Keep Under Refrigeration," and "Previously Handled Frozen for Your Protection, Refreeze or Keep Refrigerated." As a handling statement, the proposed labeling requirement further informs the consumer of the nature of this perishable product. Upon reconsideration of the label clarity, however, the Agency has returned to the specific internal temperature labeling requirement of the first proposal and has further clarified the term "easily readable style."

49. One commenter agreed that the label requirement was necessary and beneficial, but stated that the Agency should enforce such a labeling distinction between fully-cooked and less-than-fully-cooked products as the only rule before making other changes.

Certainly this change is important, especially if the Agency is going to allow the production of less-than-fully-cooked products, but the Agency has determined it is also important to specify cooking, cooling, storing and handling requirements as well.

*Sanitary Handling Practices*

50. A couple of commenters stated that the proposed rule does not address cross-contamination. They said the proposal deals strictly with pathogen control by heat-processing.

Section 318.23(b)(4) of this regulation (9 CFR 318.23(b)(4)), covers cross-contamination. It is patterned after the provision in the roast beef regulation, 318.17, which has been very effective in that regard. The Agency agrees that control of cross-contamination is an important part of the prevention of adulteration in all food processing.

51. Two commenters stated that the present controls regarding facilities and sanitation are sufficient to control cross contamination and that there is no need for further regulation.

The Agency, based on reports of illnesses and findings of pathogens in finished products, disagrees.

52. One commenter stated that the IIC should be given the latitude to determine the acceptability of processing operations which do not have solid, impervious floor-to-ceiling walls but have sufficient space between fully-cooked and less-than-fully-cooked operations.

Although the proposal does not contain the requested provision, it seems important to provide the additional latitude requested by the commenter, that of determining the acceptability of processing operations on the basis of space between fully-cooked and less-than-fully-cooked operations. The approval authority was provided to the Regional Director, in accordance with Agency practice. If any such approval develops into a general rule of applicability, it will be published and promulgated in accordance with 5 U.S.C. 552 and 553.

53. One commenter asked if an "E2-rated soap" could be substituted for the employee washing/sanitizing step required whenever the employee enters the fully-cooked patty area or before handling unpackaged, fully-cooked patties. The sanitizer, as stated in the proposal, shall be germicidally equivalent to 50 parts per million (ppm) chlorine.

The term "E2-rated" refers to a designation in the "List of Proprietary Substances and Nonfood Compounds," a publication issued by the Agency. These E2 handwashing and sanitizing compounds have been accepted on the basis of their equivalency to 50 parts per million chlorine and are the very type of compound intended here.

In addition the term "thoroughly" to describe cleaning and sanitizing has been removed as vague and unnecessary. Further, the requirement for hand washing during operations has been clarified.

54. One commenter stated that FSIS Directive 11520.2, Revision 1, dated July 17, 1986, "Exposed Heat-Processed Product; Employee Dress" provides sufficient guidance for handling employee garments. The commenter stated that the requirements in the 1990 proposal were more restrictive than those in the Directive and were, therefore, not necessary.

This regulation is in accord with § 318.17 of the meat inspection regulations and the provisions are more appropriate for this type of product.

55. One commenter suggested removing the requirement that the product be "tightly" covered (contained in § 318.23(b)(6)(iv) of the 1990 proposal), because it was unnecessary to accomplish the desired objective.

The wording was intended to assure that finished product is not contaminated by aerosol, splash, or otherwise from raw product stored nearby. The Agency has decided the word "tightly" is unnecessary to accomplish the desired objective and it has been removed.

56. One commenter suggested removing the requirement that product be stored at 40 °F or below (contained in § 318.23(b)(6)(vi) of the 1990 proposal), since transient fluctuations in chamber temperature would not affect product safety.

Chamber temperature ultimately affects internal product temperature and, more importantly, continued transient fluctuations show inability to

maintain product at a safe temperature. Safety is a major goal of this regulation.

57. One commenter was concerned about how the Agency would interpret the requirements for providing physical separation of unpackaged fully-cooked and less-than-fully-cooked products (as proposed in § 318.23(b)(6)(i) of the 1990 proposal), because, he stated, in many cases it is not necessary to have a complete wall separation to achieve the desired end result of preventing cross-contamination. The commenter also did not like the lack of alternatives.

The two methods of preventing cross-contamination while processing both cooked and raw product in relatively close physical proximity are the presence of a complete wall separation or conducting the two operations in virtually the same area, but at different times with a proper cleanup in between. The Regional Director, as has been explained above, has the authority in this regulation to approve any other effective means of preventing cross contamination.

58. One commenter suggested, as alternatives to providing a solid, impervious floor-to-ceiling wall for prevention of cross-contamination (as proposed in § 318.23(b)((6)(i)), that the Agency permit the following:

(A) A distance requirement between exposed fully-cooked product and other product (the commenter did not suggest an appropriate distance).

The required distance method doesn't prevent workers on one line from crossing to the other line, carrying contamination from the raw product area.

(B) Plastic-type curtains or some other type of separation material.

Plastic-type curtains and other separation materials are less permanent and are too easily torn, which results in the spread of contamination.

*Requirements for Handling Heating and Cooling Deviations*

59. One commenter said that the paperwork required to report and correct heating and cooling deviation is excessive. The commenter suggested the Agency should consider other formats which would minimize the necessary paperwork.

The referenced paperwork consists of (a) a report of the investigation, needed to create a record; (b) the cause of the deviation as determined by the investigation; and (c) the steps taken to prevent recurrence. The Agency has determined that documentation of these factors is necessary to provide evidence that the deviation has been corrected and the plant is again producing safe product.

60. One commenter understood that product would have to be reprocessed or relabeled if during storage the chamber temperature exceeded 40 °F. The commenter stated that minor fluctuations (such as a chamber temperature of 41 °F) would have no effect on the safety of the finished product and that such situations should not be treated as heating or cooling deviations.

The rule as proposed requires the establishment to take immediate steps to correct the deviation or stop the process; investigate and identify the cause; assure the deviation will not recur; and place on file in the establishment a report of the investigation, the cause of the deviation, and the steps taken to prevent recurrence. However this final rule has been changed to only specify controls for deviations concerning heating and cooling, not storage. The Department has long used 40 °F as the appropriate storage temperature and deviations from this temperature are acted upon today by the inspector when the effect of the deviation is perceived in the product condition. This activity will continue and it is sufficient to protect the safety of the product.

**List of Subjects**

*9 CFR Part 318*

Food packaging, Meat inspection.

*9 CFR Part 320*

Meat inspection, Reporting and recordkeeping requirements.

## PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

**Authority:** 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Part 318 is amended by adding a new § 318.23 which reads as follows:

**§ 318.23 Heat-processing procedures, cooking instructions, and cooling, handling, and storage requirements for uncured meat patties.**

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Comminuted.* A processing term describing the reduction in size of pieces of meat, including chopping, flaking, grinding, or mincing, but not including chunking or sectioning.

(2) *Heat-processed.* Treatment by a heat source, including, but not limited to, frying, broiling, baking, or roasting, which results in a fully-cooked, partially-cooked, or char-marked product.

(3) *Patty.* A shaped and formed, comminuted, flattened cake of meat food product.

(b) *Processing procedures for heat-processed patties.* Fully-cooked, partially-cooked, or char-marked patties shall be processed as follows:

(1) *Heat processing.* (i) Official establishments which manufacture fully-cooked patties shall utilize one of the heat-processing procedures in Table A of this paragraph:

TABLE A.—PERMITTED HEAT-PROCESSING TEMPERATURE/TIME COMBINATIONS FOR FULLY-COOKED PATTIES

| Minimum internal temperature at the center of each patty | | Minimum holding time after minimum temperature is reached | |
|---|---|---|---|
| Degrees | | Time | |
| Fahrenheit | or Centigrade | (Minutes) | or (Seconds) |
| 151 | 66.1 | 0.68 | 41 |
| 152 | 66.7 | .54 | 32 |
| 153 | 67.2 | .43 | 26 |
| 154 | 67.8 | .34 | 20 |
| 155 | 68.3 | .27 | 16 |
| 156 | 68.9 | .22 | 13 |
| 157 (and up). | 69.4 (and up). | .17 | 10 |

(ii) Official establishments which manufacture partially-cooked patties shall raise the internal temperature at the center of each patty to a minimum internal temperature of 140 °F. and then cool it to a maximum internal temperature of 40 °F within 2 hours.

(iii) Official establishments which manufacture char-marked patties (if marked by a heat source) may raise the temperature at the center of each patty, but not above 70 °F, when the char-marks are applied to the patty. The process of char-marking the patty and cooling the patty to a maximum internal temperature of 40 °F shall be completed within 2 hours or less.

(iv) The official establishment shall measure the holding time and temperature of at least one heat-processed patty from each production line each hour of production to assure control of the heat process. The temperature measuring device shall be accurate within 1 °F.

(2) *Cooling.* (i) Fully-cooked patties shall be cooled to an internal temperature of 40 °F or below within 2 hours after heat-processing.

(ii) Cooling requirements for partially-cooked and char-marked patties are combined with those for heat-processing and are contained in paragraph (b)(1)(ii) and (iii) of this section.

(iii) The internal temperature measuring device shall be accurate within 1 °F.

(3) *Cooking instruction label requirement.* (i) Partially-cooked patties shall bear the labeling statement "Partially-cooked: For Safety Cook Until Well Done (Internal Meat Temperature 160 °F)". The labeling statement shall be adjacent to the product name, at least one-half the size of the largest letter in the product name, and prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(ii) Char-marked patties. Product shall bear the labeling statement "Uncooked, Char-marked: For Safety, Cook Until Well Done (Internal Meat Temperature 160 °F)". The labeling statement shall be adjacent to the product name, at least one-half the size of the largest letter in the product name, and prominently placed with such conspicuousness (as compared with other words, statements, designs or devices in the labeling) as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(4) *Sanitary handling and storage practices.* Fully-cooked patties shall be handled in accordance with the following provisions so as to assure that the patties are not recontaminated.

(i) To prevent direct contamination of fully-cooked patties, official establishments shall:

(A) Physically separate areas where unpackaged, fully-cooked patties are handled from areas where less-than-fully-cooked products are handled using a solid impervious floor to ceiling wall; or

(B) Handle unpackaged, fully-cooked patties and less-than-fully-cooked product at different times, and cleaning the entire area after handling other products before handling unpackaged, fully-cooked patties; or

(C) Submit a written procedure through the inspector-in-charge to the Regional Director detailing the steps to be taken which would avoid recontamination of fully-cooked patties by less-than-fully-cooked cooked product during processing.

(ii) To prevent indirect contamination of fully-cooked patties:

(A) Any work surface, machine, or tool which contacts other product shall be cleaned and sanitized before it contacts unpackaged fully-cooked patties. The sanitizer shall be germicidally equivalent to 50 ppm chlorine.

(B) Employees shall wash their hands with soap and water and sanitize their hands whenever they enter the fully-cooked patty area or before handling unpackaged, fully-cooked patties. They must also wash and sanitize their hands whenever they become contaminated during operations to avoid contamination of fully-cooked patties. The sanitizer shall be germicidally equivalent to 50 ppm chlorine.

(C) All employee outer garments, including aprons, smocks, and gloves shall be identified as restricted for use in the fully-cooked area only. The employee shall change garments at least daily. The garments shall be hung in a designated location before the employee leaves the area.

(iii) Fully-cooked patties stored in the same room with other product, shall first be packaged or covered to prevent microbial contamination.

(iv) Fully-cooked, partially-cooked, and char-marked patties shall be stored at a chamber temperature of 40 °F or below.

(c) *Requirements for handling heating or cooling deviations.* (1) If for any reason a heating or cooling deviation has occurred, the official establishment shall investigate and identify the cause; take steps to assure that the deviation will not recur; and place on file in the official establishment, available to any duly authorized representative of the Secretary, a report of the investigation, the cause of the deviation, and the steps taken to prevent recurrence; and

(2) In addition, in the case of a heating deviation, the official establishment may (i) reprocess the affected product, by a method in paragraph (b)(1)(i) in this section, or (ii) use the affected product as an ingredient in another product processed to one of the temperature and time combinations in paragraph (b)(1)(i) in this section, provided this does not violate the final product's standard of composition, upset the order of predominance of ingredients, or perceptibly affect the normal product characteristics, or (iii) relabel the affected product as a partially-cooked patty product, if it meets the partially-cooked requirements in paragraph (b)(1)(ii) of this section.

(3) In addition, in the case of a cooling deviation, contact the Regional Director to determine the disposition of the product.

## PART 320—RECORDS, REGISTRATION, AND REPORTS

3. The authority citation for part 320 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 320.1 is amended by adding a new paragraph (b)(7) which reads as follows:

**§ 320.1 Records required to be kept.**

* * * * *

(b) * * *

(7) Records as required in § 318.23(b) and (c).

* * * * *

Done at Washington, DC, on July 28, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

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Part V

# Federal Emergency Management Agency

**44 CFR Part 351**
**Radiological Emergency Planning and Preparedness; Proposed Rule**

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 351

RIN 3067-AA77

## Radiological Emergency Planning and Preparedness

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the policies, procedures and framework for the coordination and provision of technical assistance in radiological emergency planning and preparedness to State and local governments for all types of peacetime radiological emergencies. It would also establish a Federal Radiological Preparedness Coordinating Committee (FRPCC) and Regional Assistance Committees (RAC) as the mechanisms for coordinating the provision of Federal assistance. The proposed rule would add new members to the FRPCC, modify the functions of the FRPCC and RACs to include Federal response planning and preparedness, and would update the present rule.

DATES: Comments on the proposed rule should be sent on or before November 1, 1993.

ADDRESSES: Comments on the proposed rule are requested and should be sent to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Vernon L. Wingert, Chief, Policy Development Branch, Radiological Preparedness Division, Office of Technological Hazards, Federal Emergency Management Agency, Washington, DC 20472, (202) 644–2872.

SUPPLEMENTARY INFORMATION: The Radiological Emergency Preparedness (REP) program was established after the March 1979 accident at the Three Mile Island nuclear power plant. The program's purpose is to enhance integrated planning and response for all types of peacetime radiological emergencies by State, local and Federal governments for emergencies associated with the following:

- Commercial nuclear power plants;
- Commercial nuclear fuel cycle facilities and material license holders;
- Departments of Defense and Energy (DOD/DOE) nuclear weapons production, storage and operational facilities as well as nuclear fuel cycle facilities; and
- Transportation accidents.

Federal agency capabilities, responsibilities and coordination procedures for emergency response by Federal agencies are included in the Federal Radiological Emergency Response Plan (FRERP), the Federal Response Plan (FRP), and in Federal agency implementing plans. The FRERP was developed in response to section 304 of the Public Law 96–295 (Nuclear Regulatory Commission's Appropriation Act in 1980) and Executive Order 12241 (September 29, 1980). Although the FRPCC and RACs are not response entities per se, they have responsibility to address Federal response policy and program issues as they relate to emergency planning and preparedness. [Section on "Comments and FEMA's Response" published as a preamble to the Final Rule on March 11, 1982, is deleted for this proposed amendment to final rule.]

### Regulatory Flexibility Act

The Director certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule will not apply to a substantial number of small entities as defined by the Small Business Size Standards, 13 CFR 121.601, Division E, Major Group 49, as amended 57 FR 62520, December 31, 1992, and is not expected (1) to have significant secondary or incidental effects on a substantial number of small entities, nor (2) to create any additional burden on a substantial number of small entities.

### National Environmental Policy Act

The Director has determined under the National Environmental Policy Act of 1969 and FEMA Regulation, 44 CFR Part 10, Environmental Considerations, that this rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

### Regulatory Analysis

This proposed rule is not a "major rule" as the term is used in Executive Order 12291 and implementing OMB guidance. It will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies or geographic regions and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. Therefore, no regulatory analysis is required.

### Paperwork Reduction Act

This rule does not contain collection of information requirements and is not subject to the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 et seq.).

### Executive Order 12612, Federalism

A Federalism assessment under E.O. 12612 has been prepared and a copy is available for inspection and copying for a fee from the Rules Docket Clerk, above.

### List of Subjects in 44 CFR Part 351

Disaster assistance, Hazardous materials transportation, Intergovernmental relations, Nuclear power plants and reactors, and Radiation protection.

Accordingly, 44 CFR part 351 is proposed to be revised as follows:

## PART 351—RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS

### Subpart A—General

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351.2 Scope.
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### Subpart B—Federal Radiological Preparedness Coordinating Committee and Regional Assistance Committees

351.10 Mission and Function.
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351.32 The General Services Administration (GSA)
351.33 The National Communications System (NCS)
351.34 The National Aeronautics and Space Administration (NASA)

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978, 5 U.S.C. App. 1;

Executive Order 12127 of March 31, 1979, 3 CFR, 1979 Comp., p. 376; Executive Order 12148 of July 20, 1979, 3 CFR, 1979 Comp., p. 412, 50 U.S.C. App. § 2251 note; Executive Order 12241 of September 29, 1980, 3 CFR, 1980 Comp., p. 282; and the President's Directive of December 7, 1979.

## Subpart A—General

### § 351.1 Purpose.

This part assigns Federal agency roles and responsibilities for assisting State and local governments in their radiological emergency planning and preparedness activities. Assignments in this part are applicable to radiological emergencies at fixed nuclear facilities, transportation accidents involving radioactive materials, and other types of peacetime radiological emergencies. This part also sets forth Federal agency roles and responsibilities for assisting FEMA in developing Federal response planning and response.

### § 351.2 Scope.

The emergency preparedness and response planning responsibilities covered by this part relate to the consequences of activities that extend beyond the boundaries of any fixed nuclear facility with a potential for serious consequences, including the area affected by a transportation accident involving radioactive materials and other types of peacetime radiological emergencies.

### § 351.3 Limitation of scope.

(a) This part covers Federal agency assignments and responsibilities in connection with State and local emergency plans and preparedness measures. It does not set forth criteria used in the review and approval of these plans and does not include any of the requirements associated with FEMA findings and determinations on the adequacy of State and local government radiological emergency preparedness. FEMA has separate procedures and criteria for reviewing and approving these plans and preparedness capabilities (44 CFR 350). Furthermore, while this part addresses Federal response planning and preparedness, it does not address the use of the Federal Radiological Preparedness Coordinating Committee (FRPCC) and Regional Assistance Committees (RACs) for actual radiological emergencies. However, because response activities are and should be an integral part in emergency planning and preparedness activity, it is appropriate to address Federal response planning and preparedness within the context of this part. These responsibilities are addressed in the Federal Radiological Emergency Response Plan (FRERP) published on November 8, 1985 (50 FR 46542), with the concurrence of 12 Federal agencies, and the Federal Response Plan later published in April 1992 with the concurrence of 27 Federal agencies.

(b) Nothing in this part authorizes access to or disclosure of classified information required to be protected in accordance with Federal law or regulation in the interest of national security.

## Subpart B—Federal Radiological Preparedness Coordinating Committee and Regional Assistance Committees

### § 351.10 Mission and function of committee.

(a) The FRPCC is established to coordinate all Federal responsibilities for assisting State and local governments in emergency planning and preparedness for peacetime radiological emergencies and to enhance Federal response planning and preparedness for such emergencies.

(b) The FRPCC will assist FEMA in providing policy and program direction for the provision of Federal assistance to State and local governments in their radiological emergency preparedness and response planning activities. The FRPCC will establish subcommittees to assist in carrying out its functions (e.g., research, training, emergency instrumentation, transportation, education and Federal response). The FRPCC will assist FEMA in resolving issues relating to granting of final FEMA approval of State plans. The FRPCC will coordinate, research and study efforts of its member agencies related to State and local government radiological emergency preparedness to assure minimum duplication and maximum benefits to State and local governments. The FRPCC will assure that the research efforts of its member agencies are coordinated with the Committee on Interagency Radiation Research and Policy Coordination. The FRPCC will also coordinate national Federal response planning and preparedness activities.

(c) The RACs will assist State and local government officials in the development of radiological emergency plans and will review these plans and observe exercises to evaluate adequacy of the plans. Each Federal agency member of the RACs will support the functions of these committees by becoming knowledgeable about Federal planning and guidance related to State and local radiological emergency plans, their counterpart State organizations and personnel, where their agency can assist in improving the preparedness, by supporting exercise evaluation, and by participating in RAC meetings. The RACs will also coordinate Regional Federal response planning and preparedness activities.

### § 351.11 Committee membership.

(a) The FRPCC consists of FEMA, which chairs the Committee, the Nuclear Regulatory Commission (NRC), the Environmental Protection Agency (EPA), the Department of Health and Human Services (DHHS), the Department of Energy (DOE), the Department of Transportation (DOT), the Department of Defense (DOD), the Department of Agriculture (USDA), the Department of Commerce (DOC), the Department of the Interior (DOI), the Department of State (DOS), the Department of Veterans Affairs (DVA), the General Services Administration (GSA), the National Communications System (NCS), the National Aeronautics and Space Administration (NASA) and, where appropriate and on an ad hoc basis, other Federal departments and agencies. As Chair of the committee, FEMA is responsible for assuring that all agency assignments described in this rule are coordinated through the Committee and carried out with or on behalf of State and local governments.

(b) The RACs, one in each of 10 standard Federal regions,[1] consist of a FEMA Regional Representative who chairs the Committee and representatives from the NRC, EPA, DHHS, DOE, DOT, USDA, DOC, DOI and other Federal departments and agencies, as appropriate. The FEMA Chairperson of the RACs will provide guidance and orientation to other agency members to assist them in carrying out their functions.

### § 351.12 Common responsibilities.

Federal agency assignments are made on the basis of both common and unique responsibilities inherent in the mission and expertise of each agency which support FEMA's implementation of the REP Program and other agencies on an ad hoc basis. While FEMA's REP Program encompasses all types of peacetime radiological emergencies, emphasis is placed on planning and preparedness for commercial nuclear power plant accidents. To the extent that agency resources permit, the common responsibilities of each participating agency are listed in subpart C according to available staff and resources. The Federal agencies involved in the specific responsibilities

[1] I (Boston); II (New York); III (Philadelphia); IV (Atlanta); V (Chicago); VI (Dallas); VII (Kansas City); VIII (Denver); IX (San Francisco) and X (Seattle).

listed in subpart C may vary according to site-specific activities. Also, other Federal agencies (e.g., DOD, NASA) not listed may be involved with these common responsibilities on an ad hoc basis.

(a) Develop and issue appropriate planning and preparedness guidance to assist State and local governments. (FEMA, NRC, EPA, DHHS, DOE, DOT, USDA, DOC and DOI)

(b) Review and evaluate preparedness plans of State and local governments. (FEMA, NRC, EPA, DHHS, DOE, DOT, USDA, DOC and DOI)

(c) Observe and evaluate exercises. (FEMA, NRC, EPA, DHHS, DOE, DOT, USDA, DOC and DOI)

(d) Provide technical assistance to State and local governments, as appropriate. (FEMA, NRC, EPA, DHHS, DOE, DOT, USDA, DOC, and DOI)

(e) Assist FEMA in developing, implementing or participating in training programs. (FEMA, NRC, EPA, DOE, and USDA)

(f) Assist FEMA in developing policies to support Federal response planning and preparedness for radiological emergencies. (FEMA, NRC, EPA, DHHS, DOE, DOT, USDA, DOD, DOC, DOI, DOS, DVA, GSA, NCS and NASA)

(g) Provide support to the FRPCC and RACs. (FEMA, NRC, EPA, DHHS, DOE, DOT, USDA, DOD, DOC, DOI, DOS, DVA, GSA, NCS and NASA)

The interagency assignments listed in subpart C have been coordinated with and concurred in by those Federal agencies. [This concurrence process is currently being undertaken.]

## Supart C—Interagency Assignments

### § 351.20 The Federal Emergency Management Agency.

(a) Establish policy and provide leadership via the FRPCC and RACs in the coordination of all Federal assistance to State and local governments.

(b) Foster cooperation of industry, technical societies, Federal agencies and other constituencies in the radiological emergency planning and preparedness of State and local governments.

(c) Assess, with the assistance of other Federal agencies, the adequacy of State and local government emergency plans and the capability of the State and local government officials to implement them (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications) and report the findings and determinations to NRC.

(d) Review and approve State radiological emergency plans and preparedness in accordance with FEMA procedures in 44 CFR part 350.

(e) Develop, implement and maintain a program of public education and information to support State and local radiological emergency plans and preparedness.

(f) Develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. Develop and field test exercise materials and coordinate the Federal assistance required by States and localities in conducting exercises, including guidance for Federal observers.

(g) Institute procedures, with NRC, to enhance the review of the objectives and scenarios for joint exercises. This review is to assure that both the onsite considerations of NRC and the offsite considerations of FEMA are adequately addressed and integrated in a manner that will provide for a technically sound exercise upon which an assessment of preparedness capabilities can be based. The NRC/FEMA procedures will provide for the submission of exercise objectives and scenarios by State and local governments and licensees sufficiently in advance of scheduled exercises to allow enough time for adequate review by NRC and FEMA, and correction of identified problems.

(h) Issue guidance for establishment of State and local emergency instrumentation systems for radiation detection and measurement.

(i) Provide guidance and assistance, in coordination with NRC and DHHS, to State and local governments concerning the storage and distribution of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs as a result of radiological emergencies. A policy statement on potassium iodide was published by FEMA in the Federal Register on July 24, 1985, (50 FR 30258) on behalf of the FRPCC.

### § 351.21 The Nuclear Regulatory Commission.

(a) Assess NRC nuclear facility (e.g., commercial power plants, fuel processing centers and research reactors) licensee emergency plans for adequacy to protect the health and safety of the public.

(b) Verify that nuclear facility licensee emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment procedures, training, resources, staffing levels and qualifications).

(c) Review FEMA's findings and determinations of State and local radiological emergency plans for areas surrounding NRC licensed nuclear facilities.

(d) Consider the overall state of emergency preparedness in making decisions to issue operating licenses or shut down licensed operating reactors, including the integration of assessments of emergency preparedness onsite by the NRC and offsite by FEMA.

(e) Determine, in cooperation with other Federal agencies, the appropriate planning bases for NRC licensed nuclear facilities including distances, times and radiological characteristics.

(f) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(g) Assist FEMA and DOT in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans.

(h) Assist FEMA in the development, implementation and maintenance of public information and education programs.

(i) Assist FEMA in reviewing exercise objectives and scenarios for joint exercises at commercial nuclear power plants.

(j) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(k) Assist FEMA in providing guidance and assistance to State and local governments concerning the storage and distribution of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs as a result of radiological emergencies.

### § 351.22 The Environmental Protection Agency.

(a) Establish protective action guides (PAGs) for all aspects of radiological emergency planning in coordination with appropriate Federal agencies.

(b) Prepare guidance for State and local governments on implementing PAGs, including recommendations on protective actions that can be taken to mitigate the potential radiation dose to the population. This guidance was published in the EPA "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents," as EPA 400–R–92–001 in May 1992. [The preparation of PAGs related to human food and animal feed will be carried out

in coordination with DHHS/Food and Drug Administration.]

(c) Assist FEMA with the development, implementation and presentation to the extent that resources permit of technical training for State and local officials regarding PAGs and protective actions, radiation dose assessment and decision making.

(d) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(e) Assist FEMA in the development, implementation and maintenance of public information and education programs.

**§ 351.23 The Department of Health and Human Services.**

(a) Develop and specify protective actions and associated guidance to State and local governments for human food and animal feed (in cooperation with the EPA). PAGs for the "Accidental Radioactive Contamination of Human Food and Animal Feeds; Recommendations for State and Local Agencies" were published by FDA in the **Federal Register** (47 FR 47073, October 22, 1982). These PAGs are currently being reexamined and revised.

(b) Provide guidance and assistance to State and local governments in preparing programs related to mental health, behavioral disturbances and epidemiology associated with radiological emergencies.

(c) Assist FEMA in the development, implementation and maintenance of public information and education programs to support State and local government radiological emergency plans and preparedness.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of a radiological emergency training program to support State and local government personnel in accident assessment, protective actions and decision making.

(e) Provide guidance to State and local governments on the use of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs including dosage and projected radiation exposures at which such drugs should be used.

(f) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(g) Assist, in cooperation with the USDA, State and local governments in the planning for the safe production, during radiological emergencies, of human food and animal feed in the emergency planning zones around fixed nuclear facilities.

(h) Assist FEMA, through the Committee for Interagency Radiation Research and Policy Coordination, in the coordination of Federal research efforts, primarily in areas related to the bioeffects of radiation, applicable to State and local plans and preparedness.

**§ 351.24 The Department of Energy.**

(a) Determine the appropriate planning bases for DOE-owned and contractor-operated nuclear facilities (e.g., research and weapon production facilities) including distances, time and radiological characteristics.

(b) Assess DOE nuclear facility emergency plans for adequacy in contributing to the health and safety of the public.

(c) Verify that DOE nuclear facility emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(d) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the preparation of those portions of their radiological emergency plans related to DOE-owned and contractor-operated nuclear facilities and radioactive materials in transit.

(e) Serve as the lead agency for coordinating the development and issuance of interagency instructions and guidance to implement the Federal Radiological Monitoring and Assessment Plan (FRMAP), which is part of the Federal Radiological Emergency Response Plan (FRERP). [The FRMAP was published in the **Federal Register** as Section C of the FRERP at 50 FR 46542, November 8, 1985]. The FRMAP provides the framework through which participating Federal agencies will coordinate their emergency radiological monitoring and assessment activities with those of State and local governments.

(f) Develop, maintain and improve capability to detect and assess hazardous levels of radiation.

(g) Review, with FEMA, scenarios from which DOE facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(h) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

**§ 351.25 The Department of Transportation.**

(a) Assist FEMA, along with NRC, in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans.

(b) Provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials and participate in interagency planning for such training.

**§ 351.26 The Department of Agriculture.**

(a) Assist State and local governments in preparing to implement protective actions in food ingestion pathway emergency planning zones around fixed nuclear facilities.

(b) Develop, in coordination with FEMA, the DHHS and other Federal agencies, guidance for assisting State and local governments in the production, processing and distribution of food resources under radiological emergency conditions.

**§ 351.27 The Department of Defense.**

(a) Determine appropriate planning bases for DOD nuclear facilities and installations (e.g., missile bases, nuclear submarine facilities and weapon storage sites) including distances, time and radiological characteristics.

(b) Review, with FEMA, scenarios from which DOD nuclear facility commanders and State and local governments may select for use in testing and exercising radiological emergency plans.

(c) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the development, review and assessment of those portions of their radiological emergency plans related to DOD nuclear facilities and assist State officials with planning for response to accidents involving DOD controlled radioactive materials in transit.

**§ 351.28 The Department of Commerce.**

(a) Assist State and local governments in determining their requirements for meteorological and hydrological services for radiological emergencies and assist State and local governments in preparing to meet these requirements.

(b) Assist FEMA with the development, implementation and presentation of technical training for State and local officials in the use of meteorological information in responding to radiological emergencies.

(c) Assist FEMA in the development of guidance for State and local

governments on the exposure and location of emergency instrumentation systems for radiation detection and measurement.

(d) The Federal Coordinator for Meteorological Services and Supporting Research will, consistent with the provisions of the Office of Management and Budget Circular A–62, serve as the coordinating agent for any multi-agency meteorological aspects of assisting State and local governments in their radiological emergency planning and preparedness.

**§ 351.29 The Department of Interior.**

(a) Assist State and local governments in assessing radiological effects on natural resources.

(b) Assist State and local governments in determining their requirements for hydrological services for radiological emergencies and in preparing to meet these requirements.

(c) The Office of Water Data Coordination, U.S. Geological Survey, consistent with the provisions of the Office of Management and Budget Circular A–67, will serve as the coordinating agent for any multi-agency hydrological aspects of assisting State and local governments in radiological emergency planning and preparedness.

(d) Assist State and local governments in preparing emergency plans in order to achieve cooperation and coordination with similar Interior plans for the operation and management of Interior facilities and lands.

(e) Assist FEMA, State and local governments in preparing emergency plans that reflect consultation/and coordination with affected Indian tribal governments and any plans they may develop.

**§ 351.30 The Department of State.**

(a) Provide assistance to State and local governments in developing joint emergency plans or coordinating joint exercises with United States border countries.

(b) Assist FEMA and FRPCC in evaluating exercises that have international implications.

(c) Gather and make available to the FRPCC information on radiological emergencies outside the United States.

**§ 351.31 The Department of Veterans Affairs.**

(a) Assist State and local governments in addressing medical, first-aid and mass care planning and preparedness activities.

(b) Assist FEMA and the FRPCC in providing guidance to State and local governments regarding medical and first-aid operations.

**§ 351.32 The General Services Administration.**

(a) Assist FEMA in developing telecommunications, planning and preparedness in accordance with the National Plan for telecommunications support during peacetime emergencies.

(b) Assist FEMA in identifying specific logistical support requirements for Federal response planning and preparedness.

**§ 351.33 The National Communications System.**

(a) Provide expertise and authority to assist State and local governments in meeting their communications needs.

(b) Assist FEMA and the FRPCC in developing telecommunications planning and preparedness for Federal response and recovery operations.

**§ 351.34 The National Aeronautics and Space Administration.**

(a) Assist FEMA and the FRPCC in providing guidance to State and local governments and the Federal Government on radiological issues arising out of space launch activities involving those that employ radioactive materials. This assistance could include emergency planning and preparedness functions related to radiological monitoring, emergency response and launch vehicle tracking.

Dated: July 26, 1993.

James L. Witt,

*Director.*

[FR Doc. 93–18344 Filed 7–30–93; 8:45 am]

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Part VI

# Department of Energy

10 CFR Part 766
Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities; Final Rule and Proposed Rule

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DEPARTMENT OF ENERGY

10 CFR Part 766

**Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities**

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Interim final rule and request for public comment.

SUMMARY: The Department of Energy (DOE), Office of Environmental Restoration and Waste Management, proposes to add a new Part 766, Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities, pursuant to sections 1801 and 1802 of the Atomic Energy Act of 1954 (Act), as amended. This rule sets forth the procedures and methods for calculating the amount to be paid into the Uranium Enrichment Decontamination and Decommissioning Fund (Fund) by domestic utilities. This Fund is to be used for the decontamination and decommissioning (D&D) of DOE's uranium enrichment facilities as specified in title XI of the Energy Policy Act of 1992 (EPACT), and reimbursement of uranium and thorium licensees under their Remedial Action Programs as specified in title X of the EPACT. The interim final rule covers procedures, interpretations, and other policies which the Act does not leave to DOE discretion. DOE has issued the rule as an interim final rule to allow for public comment while facilitating timely administrative action to comply with the obligation to collect the Fiscal Year 1993 Special Assessment from utilities by no later than September 30, 1993.

DATES: Effective date: September 1, 1993.

Written comments must be submitted to DOE on or before September 1, 1993.

ADDRESSES: Comments should be addressed to: Ross Bradley, U.S. Department of Energy, Uranium Enrichment Decontamination and Decommissioning Fund Manager, Mail Stop EM–42, 1000 Independence Ave., SW., Washington, DC, 20585, (301) 903–7646. All comments received will be available for public review in the Freedom of Information Public Reading Room, Monday through Friday, 9 a.m. to 4 p.m., 1000 Independence Avenue., Washington, DC 20585. (202) 568–6025.

FOR FURTHER INFORMATION CONTACT: Ross Bradley, U.S. Department of Energy, Uranium Enrichment Decontamination and Decommissioning Fund Manager, Mail Stop EM–42, 1000 Independence Ave., SW., Washington, DC, 20585, (301) 903–7646; Edward Le Duc, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–11, 1000 Independence Ave., SW., Washington, DC, 20585, (202) 586–6947; or Lawrence Leiken, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–31, 1000 Independence Ave., SW., Washington, DC, 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. Section by Section Analysis
A. Section 766.101 Data Utilization
B. Section 766.102 Calculation Methodology
C. Section 766.103 Special Assessment Invoices
D. Section 766.104 Reconciliation and Adjustments
E. Section 766.105 Payment Procedures
III. Comment Procedures
IV. Review Under Executive Order 12291
V. Review Under the Regulatory Flexibility Act
VI. Review Under the Paperwork Reduction Act.
VII. Review Under the National Environmental Policy Act
VIII. Review Under Executive Order 12612
IX. Review Under Executive Order 12778

## I. Background

Sections 1801 and 1802 were added to the Act by title XI of the Energy Policy Act of 1992 (Pub. L. No. 102-486, 42 U.S.C. 2296a). Section 1801 establishes the Fund in the Treasury of the United States. Subject to appropriations, amounts on deposit in the Fund are available to the Secretary of Energy for the purpose of D&D of DOE's uranium enrichment facilities. The Act requires that amounts in the Fund be invested by the Secretary of the Treasury in obligations of the United States. The Act also requires the Secretary of the Treasury, after consultation with the Secretary of Energy, to annually report to Congress on the financial condition and operations of the Fund.

Section 1802 provides that the Fund shall consist of annual deposits of $480 million per fiscal year, to be annually adjusted for inflation using the Department of Labor's Consumer Price Index for all-urban consumers (CPI-U). Deposits to the Fund are required to include a Special Assessment on domestic utilities (not to exceed $150 million per fiscal year, adjusted for inflation using the CPI-U). Section 1802 also authorizes appropriations to be deposited into the Fund in the amount necessary to ensure that the total annual amount is deposited. The amount collected from each domestic utility for the Special Assessment shall be in the same ratio to the total amount to be deposited in the Fund, for each fiscal year, as the total amount of separative work units (SWUs) the utility has purchased from DOE for the purpose of commercial electricity generation, prior to the date of enactment of the Energy Policy Act of 1992 (October 24, 1992), bears to the total amount of SWUs purchased from DOE for all purposes, including units purchased or produced for defense purposes, prior to October 24, 1992.

Collection of the Special Assessment and appropriations to the Fund are authorized as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992), and shall continue for a period of the earlier of 15 years or when $2.25 billion (adjusted for inflation using the CPI-U) has been collected. The Special Assessment levied on domestic utilities is deemed by the Act to be a necessary and reasonable current cost of fuel, fully recoverable in rates in all jurisdictions in the same manner as other utility fuel costs.

To implement sections 1801 and 1802 of the Act, this interim final rule adds a new part 766 to chapter III, title 10 of the Code of Federal Regulations. This new part will initially consist of procedures and interpretive policies for the Special Assessment, as well as procedures for reconciliation of records of SWU transactions in connection with the calculation of the Special Assessment. Additional provisions will be added to part 766 after the Department of Energy reviews public comments on proposed substantive amendments which DOE is also publishing today.

## II. Section-by-Section Analysis

Subpart A states the purpose and applicability of part 766 as well as general definitions. Subpart B begins with § 766.100, which describes the scope of the subpart as setting forth the procedures for the Special Assessment.

### *A. Section 766.101 Data Utilization*

Section 766.101 identifies the records upon which the determination of the SWUs purchased for domestic, foreign, and defense purposes shall be based. DOE will have these records audited by an independent accounting firm prior to initial billing. These records include all SWUs produced and delivered by DOE (or DOE's predecessor agencies) from 1945 to October 23, 1992. These records reflect initial production and delivery of SWUs, and do not reflect subsequent transactions involving DOE SWUs by domestic utilities. Accordingly, DOE may use privately held, reliable, and probative records of SWU transactions

with other domestic utilities. Access to DOE records is subject to generally applicable laws and regulations governing classified and sensitive unclassified information and materials. Requests for confidential treatment of business records submitted to DOE are subject to 10 CFR part 1004. There is no apparent need for special regulations in part 766 regarding access to records.

*B. Section 766.102 Calculation Methodology*

Section 766.102 describes the method for calculating Special Assessments. It is largely interpretive of the formula in the text of the Act.

*C. Section 766.103 Special Assessment Invoices*

Section 766.103 addresses the billing of the Special Assessments. DOE anticipates issuing Fiscal Year 1993 invoices in the fourth quarter with a summary of supporting information described in paragraph (b) of § 766.103. Under paragraph (c), DOE will issue similar invoices in future fiscal years and update supporting information as appropriate.

*D. Section 766.104 Reconciliation and Adjustments*

Section 766.104 outlines procedures that must be followed by domestic utilities when seeking adjustments of invoices. DOE anticipates that this procedure will be used most often with respect to the Fiscal Year 1993 Special Assessment as domestic utilities present records of SWU transactions, in the nature of resales, for reconciliation of the allocation of SWUs. Following reconciliation of records, DOE will provide, in appropriate cases, credits or additional assessments against the Special Assessment for the next fiscal year. Determinations under § 766.104 will serve as precedents, and may be the basis for summary determinations for repetitious claims filed in the years following Fiscal Year 1993.

During the administrative reconciliation process, each domestic utility will have the opportunity to question the allocation of SWUs that was the basis of the Special Assessment. In most instances, documentary evidence of SWU transactions, in the nature of resales, is in the possession of domestic utilities. Domestic utilities will be responsible for raising the issue of resales and should be prepared to respond to any questions regarding their records of resales. DOE may rely on such records, if they are reliable and adequately probative of the transactions documented. DOE shall attempt to verify all claims with corroborating documentation provided by purchasing utilities. In order to obtain corroborating evidence, DOE may rely on its subpoena authority pursuant to Section 161.c of the Atomic Energy Act. DOE may also seek relevant data from the Nuclear Regulatory Commission's Nuclear Materials Management and Safeguards System (NMMSS). DOE may give greater weight to documents that were prepared contemporaneously with the purchase or sale of SWUs, although other documentation will be considered.

The procedure of crediting the accounts of domestic utilities as the method for making adjustments as a result of reconciliation of records is based on the experience of DOE in administering the Nuclear Waste Fund under the Nuclear Waste Policy Act, where the procedure has proved effective and equitable (See 10 CFR part 961). Account Crediting has the virtues of greater certainty and speed in comparison to the alternative, which involves obtaining an appropriation. DOE considered the possibility of delaying the requirement to pay until reconciliation of records is complete, but rejected such a procedure. Because the data regarding SWU transactions, amounting to resales between domestic utilities is so uncertain, the time required to reconcile records in Fiscal Year 1993 may be so lengthy that the program could be unduly delayed. This would frustrate Congress's intentions to establish the Fund expeditiously, and domestic utilities would encounter delays in obtaining appropriate rate relief. DOE does not intend to pay interest on credits unless required by statute or contract.

*E. Section 766.105 Payment Procedures*

Section 766.105 addresses the procedures that shall be followed by domestic utilities in payment of their apportioned share of the Special Assessment. Wire transfer is identified as the preferred method.

*III. Comment Procedures*

Interested persons are invited to respond to this rulemaking by submitting seven (7) copies of written comments, within 30 days of its publication, to the address specified in the "ADDRESSES" section of the preamble. The comments and the envelope in which they are enclosed should be clearly marked with the designation: "Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for the Special Assessment of Domestic Utilities."

All comments received shall be available for public inspection at the Freedom of Information Public Reading Room, Monday through Friday, 9 a.m. to 4 p.m. 1000 Independence Avenue., Washington, DC 20585, (202) 568-6025.

Any information or data considered confidential by the person furnishing it must be so identified. DOE reserves the right to determine the confidential status of the information or data and to treat the information or data in accordance with its determination. DOE procedures regarding confidential information are set forth in 10 CFR part 1004.

*IV. Review Under Executive Order 12291*

Under Executive Order 12291, agencies are required to determine whether rules are major rules as defined in the Order. DOE has reviewed this interim final rule and, after consultation with the Office of Management and Budget (OMB), determined that it is not a major rule because: it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumer, individual industries, federal, state, or local government agencies or geographic regions; and, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises.

*V. Review Under the Regulatory Flexibility Act*

This interim final rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." This regulation involves a Special Assessment against domestic utilities that is considered a necessary and reasonable current cost of fuel, fully recoverable in rates in all jurisdictions. DOE therefore certifies that this regulation will not have significant impact on a substantial number of small entities.

*VI. Review Under the Paperwork Reduction Act*

This interim final rule imposes no additional paperwork burden on the public.

*VII. Review Under the National Environmental Policy Act*

DOE has determined that this interim final rule is covered under the Categorical Exclusion found at 10 CFR Part 1021 that applies to establishment

of regulatory procedures. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

*VIII. Review Under Executive Order 12612*

This interim final rule does not have a substantial direct effect on the states, the relationship between the states and the federal Government, or the distribution of power and responsibilities among various levels of Government. No Federalism assessment under Executive Order 12612 is required.

*IX. Review Under Executive Order 12778*

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12991 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to insure that the regulation clearly specifies any preemptive effect, effect on existing Federal law or regulation, and retroactive effect, describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's interim final rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

**List of Subjects in 10 CFR Part 766**

Confidential business information, Electric power rates, Electric utilities, Nuclear materials, Radioactive materials, Reclamation, Reporting and recordkeeping requirements, Uranium, Waste treatment and disposal.

Issued in Washington, DC, on this 16th day of July 1993.

**Thomas P. Grumbly**

*Assistant Secretary for Environmental Restoration and Waste Management.*

For the reasons set forth in the preamble, chapter III of title 10 of the Code of Federal Regulations is amended by adding a new part 766, to read as follows:

## PART 766—URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND; PROCEDURES FOR SPECIAL ASSESSMENT OF DOMESTIC UTILITIES

### Subpart A—General

Sec.

766.1 Purpose.
766.2 Applicability.
766.3 Definitions.

### Subpart B—Procedures for Special Assessment

766.100 Scope.
766.101 Data utilization.
766.102 Calculation methodology.
766.103 Special Assessment invoices.
766.104 Reconciliation and adjustments.
766.105 Payment procedures.

**Authority:** 42 U.S.C. 2201, 2297g, 2297g–1, 7254.

### Subpart A—General

**§ 766.1 Purpose.**

The provisions of this part establish policies applicable to administration of the Fund established by section 1801 of the Atomic Energy Act of 1954, as amended.

**§ 766.2 Applicability.**

This part applies to all domestic utilities in the United States that purchased separative work units from the DOE between 1945 and October 23, 1992.

**§ 766.3 Definitions.**

For the purposes of this part, the following terms shall be defined as follows:

*CPI-U* means the Consumer Price Index for all-urban consumers published by the Department of Labor.

*DOE* means the United States Department of Energy and its predecessor agencies.

*Domestic* utility means any utility in the United States that has purchased SWUs from DOE for the purpose of electrical generation, during the period beginning in 1945 to October 23, 1992.

*Fund* means an account in the U.S. Treasury referred to as the Uranium Enrichment Decontamination and Decommissioning Fund, established by section 1801 of the Atomic Energy Act of 1954, as amended.

*Oak Ridge Operations Office* means the Oak Ridge Operations Office of the Department of Energy in Oak Ridge, Tennessee.

*OHA* means the DOE's Office of Hearings and Appeals.

*Special Assessment* means the special assessment levied on domestic utilities for payments into the Fund.

*SWU* means a separative work unit, the common measure by which uranium enrichment services are sold.

*TESS* means the Toll Enrichment Services System, which is the database that tracks uranium enrichment services transactions of the DOE Oak Ridge, Tennessee Operations Office. TESS serves four primary functions: planning, toll transaction processing, customer invoicing and historical tracking of SWU deliveries.

### Subpart B—Procedures for Special Assessment

**§ 766.100 Scope.**

This subpart sets forth the procedures for the Special Assessment of domestic utilities for funds to be deposited in the Fund.

**§ 766.101 Data utilization.**

DOE shall use the records from the Toll Enrichment Services System (TESS) and other records maintained by the Oak Ridge Operations Office in order to determine the total SWUs purchased from DOE for all purposes. DOE shall use records from TESS, relevant records of domestic utilities, and such other information as DOE deems to be reliable and probative in determining the number of SWUs that were purchased by each utility prior to October 24, 1992. A domestic utility shall be considered to have purchased an SWU from DOE if the SWU was produced by DOE but purchased by the domestic utility from another source. DOE shall consider a purchase to have occurred upon the delivery of an SWU to the domestic utility purchasing the SWU. A domestic utility shall not be considered to have purchased an SWU from DOE if the SWU was purchased by the domestic utility but subsequently sold to another source.

**§ 766.102 Calculation Methodology.**

(a) *Calculation of Domestic Utilities' Annual Assessment Ratio to the Fund.* Domestic utilities shall be assessed annually for their share of the Fund. The amount of the assessment shall be determined by the ratio of SWUs produced by DOE and purchased by domestic utilities prior to October 24, 1992, to the total number of SWUs produced and purchased from DOE for all purposes (including SWUs produced for defense purposes). This ratio is expressed by the following hypothetical example:

| SWUs purchased by all domestic utilities | | Total SWUs produced—all purposes | | Special assessment ratio |
|---|---|---|---|---|
| 12345 | + | 45678 | = | .27 |

(b) *Calculation of the Baseline Total Annual Special Assessment for Domestic Utilities.* The Special Assessment (SA) ratio calculated in paragraph (a) of this section shall be multiplied by $480 million, yielding the total amount of the annual Special Assessment as of October 1992. In the event that this amount is in excess of $150 million, the annual Special Assessment shall be capped at $150 million. The baseline total annual Special Assessment is determined as shown in the following hypothetical example:

| Total fund | | SA ratio | | Annual special assessment |
|---|---|---|---|---|
| $480,000,000 | × | 0.27 | = | $129,600,000 |

(c) *Calculation of Baseline Special Assessment per Utility.* The ratio of the total number of SWUs purchased by an individual domestic utility for electrical generation, to the total number of SWUs purchased by all domestic utilities for electrical generation; multiplied by the Special Assessment calculated in paragraph (b) of this section, determines an individual utility's share of the baseline total annual Special Assessment. A hypothetical example of such a calculation follows:

| Single utility SWUs | | All utility SWUs | | Utility ratio | | Annual special assessment | Individual utility assessment |
|---|---|---|---|---|---|---|---|
| 300 | + | 12345 | = | .02 | × | $129,600,000 | $2,592,000 |

(d) *Calculation of Inflation Adjustment After October 24, 1992.* The Special Assessment billed to domestic utilities shall be adjusted for inflation each year using the most recently published monthly CPI-U data and the CPI-U for October 1992. A hypothetical example of such a calculation follows:

| CPI-U (Mar 93) | | CPI-U (Oct 92) | | Adjustment multiplier |
|---|---|---|---|---|
| 150 | + | 141.8 | = | 1.06 |

| Utility assessment | | Adjustment multiplier | | Adjusted utility assessment |
|---|---|---|---|---|
| $2,592,000 | X | 1.06 | = | $2,747,520 |

**§ 766.103 Special assessment invoices**

(a) DOE shall issue annually a Special Assessment invoice to each domestic utility. In each Special Assessment invoice, DOE shall require payment, on or before 30 days from the date of each invoice, of that utility's prorated share of the total baseline Special Assessment as adjusted for inflation using the most recently published monthly CPI-U data.

(b) DOE shall enclose with the Fiscal Year 1993 Special Assessment invoice a sealed, business confidential, summary SWU transaction statement including:

(1) TESS information which documents the basis of the utility's assessment;

(2) A list of domestic utilities subject to the Special Assessment;

(3) The total number of SWUs purchased by all domestic utilities for all purposes prior to October 24, 1992.

(4) The total number of SWUs purchased for all purposes prior to October 24, 1992, including SWUs purchased or produced for defense purposes; and

(5) Such other information as may be appropriate.

(c) With regard to any fiscal year after Fiscal Year 1993, DOE shall enclose a summary SWU transaction statement with Special Assessment invoices which includes any significant updated information under paragraph (b) of this section.

**§ 766.104 Reconciliation and adjustments.**

(a) A domestic utility that wishes to request an adjustment has 30 days from the date of a Special Assessment invoice to file a notice requesting an adjustment. Such notice shall include an explanation of the basis for the adjustment and any supporting documents, and may include a request for a meeting with DOE to discuss its invoice. Such notice shall be filed at the address set forth in the Special Assessment invoice, and filing of the notice is complete only upon receipt by DOE. In no event should the filing of a notice for an adjustment stay the obligation to pay.

(b) DOE may request additional information.

(c) After its review of any notice submitted under paragraph (a) of this section and other relevant information, and after making any necessary adjustment to its records in light of reliable and adequately probative records submitted by a domestic utility, DOE shall make a written determination granting or denying the requested adjustment and, if appropriate, may provide for a credit against the Special Assessment invoice for the next fiscal year.

**§ 766.105 Payment procedures.**

DOE shall specify payment details and instructions in all Special Assessment invoices. The preferred method of payment is wire transfer to an account for the Fund in the Department of the Treasury.

[FR Doc. 93–18396 Filed 7–29–93; 1:12 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 766

**Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities**

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Notice of proposed rulemaking, public hearing, and request for public comment.

SUMMARY: The Department of Energy (DOE), Office of Environmental Restoration and Waste Management, proposes to amend Part 766, Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities. Part 766, which is being established by a separate interim final rule published simultaneously with this proposed rule, implements sections 1801 and 1802 of the Atomic Energy Act of 1954 (Act), as amended by the Energy Policy Act of 1992. The Act creates the Uranium Enrichment Decontamination and Decommissioning Fund (Fund), and provides for a Special Assessment of domestic utilities for payment into the Fund. DOE plans to submit invoices subsequent to Fiscal Year 1993, at the beginning of each fiscal year, to each domestic utility for its respective share of the Special Assessment to the Fund. Fiscal Year 1994 invoicing will be postponed two quarters to accommodate the reconciliation of records. This proposed rule would expand the interim final rule by adding new sections addressing substantive matters left by the Act to DOE discretion, such as a required method of payment, late payment fees, and administrative appeals.

DATES: Written comments must be submitted to DOE on or before September 1, 1993. DOE has scheduled a public hearing beginning at 9 a.m., on Thursday, August 19, 1993.

ADDRESSES: Comments and requests to attend the hearing in Germantown, Maryland, in the main auditorium, should be addressed to: Ross Bradley, U.S. Department of Energy, Uranium Enrichment Decontamination and Decommissioning Fund Manager, Mail Stop EM–42, 1000 Independence Ave., SW., Washington, DC, 20585, (301) 903–7646. All comments received will be available for public review in the Freedom of Information Public Reading Room, Monday through Friday, 9 a.m. to 4 p.m. 1000 Independence Avenue., Washington, DC 20585, (202) 568–6025.

FOR FURTHER INFORMATION CONTACT: Ross Bradley, U.S. Department of Energy, Uranium Enrichment Decontamination and Decommissioning Fund Manager, Mail Stop EM–42, 1000 Independence Ave., SW., Washington, DC, 20585, (301) 903–7646; Edward Le Duc, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–11, 1000 Independence Ave., SW., Washington, DC, 20585, (202) 586–6947; or Lawrence Leiken, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–31, 1000 Independence Ave., SW., Washington, DC, 20585, (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. Analysis of Proposed Amendments
A. Section 766.104 Reconciliation and Adjustments
B. Section 766.105 Payment Procedures
C. Section 766.106 Late Payment Fees
III. Opportunity for Public Comment
A. Written Comments
B. Public Hearing Procedures
IV. Review Under Executive Order 12291
V. Review Under the Regulatory Flexibility Act
VI. Review Under the Paperwork Reduction Act
VII. Review Under the National Environmental Policy Act
VIII. Review Under Executive Order 12612
IX. Review Under Executive Order 12778

## I. Background

Section 1801 of the Act, 42 U.S.C. 2297g, requires DOE to establish and administer the Fund for the purpose of decontamination and decommissioning of DOE's uranium enrichment facilities. The Fund is required to be invested by the Secretary of the Treasury in obligations of the United States. The Secretary of the Treasury is to report annually to Congress on the financial condition and operations of the Fund. After consultation with the Secretary of Energy.

Section 1802 of the Act, 42 U.S.C. 2297g–1, provides that the Fund shall consist of annual deposits of $480 million per fiscal year to be annually adjusted for inflation using the Consumer Price Index for all-urban consumers (CPI–U). The source of the Fund shall be a Special Assessment on domestic utilities (not to exceed $150 million annually, adjusted for inflation using the CPI–U) and, as authorized under section 1802, such appropriations as are necessary to ensure that the total annual amount is deposited. The amount collected for the Special Assessment shall be in the same ratio to the total amount to be deposited in the Fund, for each fiscal year, as the total amount of separative work units (SWUs) purchased from DOE by domestic utilities, prior to the date of enactment of the Energy Policy Act of 1992 (October 24, 1992), bears to the total amount of SWUs purchased from DOE for all purposes, including units purchased or produced for defense purposes, prior to October 24, 1992.

Collection of the Special Assessment and appropriations to the Fund are authorized as of the date of enactment of the Energy Policy Act of 1992 (October 24, 1992), and shall continue for a period of the earlier of 15 years or when $2.25 billion (adjusted for inflation using the CPI–U) has been collected. The Special Assessment levied on domestic utilities is deemed by the Act to be a necessary and reasonable current cost of fuel and fully recoverable in rates in all jurisdictions in the same manner as other utility fuel costs.

This proposed rule would amend, title 10, part 766 of the Code of Federal Regulations, by amending § 766.104 "Reconciliation and Adjustments", and § 766.105, "Payment Procedures", and by adding § 766.106, "Late Payment Fees".

## II. Analysis of Proposed Amendments

As set forth below, the purpose of this proposed rule is to amend Part 766, "Uranium Enrichment Decontamination and Decommissioning Fund; Procedures for Special Assessment of Domestic Utilities", by adding substantive policies regarding a right of administrative appeal, wire transfers, and late payment charges.

### *A. Section 766.104 Reconciliation and Adjustments*

Section 766.104 would be amended to provide for a right for domestic utilities to appeal administratively an adverse determination by DOE on a challenge to a Special Assessment. Appeals would be filed with the Office of Hearings and Appeals (OHA), a quasi-judicial body that reports to the Secretary of Energy. The OHA is responsible for conducting many of the informal adjudicative proceedings of DOE involving separation of functions. DOE chose OHA to conduct the appeals process because of its expertise in developing administrative records regarding economic issues. In connection with these duties, OHA holds hearings, receives evidence, develops a record, and issues a final determination, which is subject to review in federal courts. The procedures of OHA are set forth in 10 CFR part 205, subpart H.

### *B. Section 766.105 Payment Procedures*

Section 766.105 would be amended to require wire transfers as the only means

of payment of the Special Assessment. This is the most expedient and cost efficient method of payment known to DOE. Domestic utilities utilize this method for payment into the Nuclear Waste Fund, which is administered by DOE (See 10 CFR part 961).

*C. Section 766.106 Late Payment Fees*

A new § 766.106 would set forth the provisions that are triggered by a domestic utility's failure to submit payment to the account set up in the Treasury by the specified due date. The late payment provisions proposed in this section are consistent with standard provisions contained in SWU purchase contracts between utilities and DOE, as detailed in 10 CFR part 763 (Uranium Enrichment Late Payment Charges).

**III. Opportunity for Public Comment**

*A. Written Comments*

Interested persons are invited to respond to this rulemaking by submitting seven (7) copies of written comments, within 30 days of its publication, to the address specified in the "ADDRESSES" section of the Preamble. The comments and the envelope in which they are enclosed should be clearly marked with the designation: "Uranium Enrichment Decontamination and Decommissioning Fund; Proposed Procedures for Special Assessment of Domestic Utilities."

All comments received shall be available for public inspection at the Freedom of Information Public Reading Room, Monday through Friday, 9 a.m. to 4 p.m., 1000 Independence Avenue, Washington, DC 20585, (202) 568–6025.

Any information or data considered confidential by the person furnishing it must be so identified. DOE reserves the right to determine the confidential status of the information or data and to treat the information or data in accordance with its determination. DOE procedures regarding confidential information are set forth in 10 CFR part 1004.11.

*B. Public Hearing Procedures*

DOE will hold a public hearing on today's proposed regulations in Washington, DC, at the location and time indicated at the beginning of this notice.

Any person who has an interest in the proposed regulation or who is a representative of a group of a class of persons which has an interest in them may request an opportunity to make an oral presentation. A request to speak at the public hearing should be addressed in the manner described in the "ADDRESSES" section at the beginning of this notice.

The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of a group. The person should also provide a telephone number where he or she may be reached during the normal business day. Persons scheduled to be heard at the public hearing will be so notified. They should bring seven (7) copies of their statement to the hearing. In the event any person wishing to present oral comments cannot meet this requirement, alternative arrangements can be made in advance with the information contact identified at the beginning of this notice.

DOE reserves the right to select persons to be heard at the public hearing, to schedule their presentation, and to establish procedures governing the conduct of the hearing. The length of each presentation will be limited to 10 minutes. The public hearing will be a legislative-type hearing conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191.

Any further procedures needed for the proper conduct of the public hearing may be announced by the presiding officer. To the extent that time allows, the presiding official and other DOE officials on the hearing panel selected by DOE to receive oral statements may ask questions of speakers.

A transcript of the public hearing will be made by DOE and will be made available for inspection at the DOE Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the hearing reporter.

If DOE does not receive any timely requests to speak, DOE reserves the right to cancel the public hearing. In such an event, DOE will publish a notice of cancellation in the **Federal Register**.

**IV. Review Under Executive Order 12291**

Under Executive Order 12291, agencies are required to determine whether rules are major rules as defined in the Order. DOE has reviewed this proposed rule and, after consultation with the Office of Management and Budget (OMB), determined that it is not a major rule because: It will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumer, individual industries, federal, state, or local government agencies or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises.

**V. Review Under the Regulatory Flexibility Act**

This proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The Regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." This regulation involves a Special Assessment against domestic utilities that is considered a necessary and reasonable current cost of fuel, fully recoverable in rates in all jurisdictions. DOE therefore certifies that this regulation will not have significant impact on a substantial number of small entities.

**VI. Review Under the Paperwork Reduction Act**

This proposed rule imposes no additional paperwork burden on the public.

**VII. Review Under the National Environmental Policy Act**

DOE has determined that this proposed rule is covered under the Categorical Exclusion codified at 10 CFR part 1021 that applies to establishment of regulatory procedures. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

**VIII. Review Under Executive Order 12612**

This proposed rule does not have a substantial direct effect on the States, the relationship between the states and the federal government, or the distribution of power and responsibilities among various levels of Government. No Federalism assessment under Executive Order 12612 is required.

**IX. Review Under Executive Order 12778**

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12991 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to insure that the regulation clearly specifies any preemptive effect,

effect on existing federal law or regulation, and retroactive effect, describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings, and defines key terms. DOE certifies that today's proposed rule meets the requirements of sections 2(a) and (b) of Executive Order 12778.

**List of Subjects in 10 CFR Part 766**

Confidential Business Information, Electric Power Rates, Electric Utilities, Nuclear Materials, Radioactive Materials, Reclamation, Reporting & Recordkeeping Requirements, Uranium, Waste Treatment & Disposal.

Issued in Washington, D.C., on this 16th day of July 1993

Thomas P. Grumbly,

*Assistant Secretary for Environmental Restoration and Waste Management.*

For the reasons set out in the preamble, part 766 of title 10, of the Code of Federal Regulations is proposed to be amended as set forth below:

**PART 766—URANIUM ENRICHMENT DECONTAMINATION AND DECOMMISSIONING FUND; PROCEDURES FOR THE SPECIAL ASSESSMENT OF DOMESTIC UTILITIES**

1. The authority citation for part 766 continues to read as follows:

**Authority:** 42 U.S.C. 2201, 2297g, 2297g-1, 7254.

2. Section 766.104 is amended by revising the section heading and adding a new paragraph (d) to read as follows:

**§ 766.104 Reconciliation, adjustments, and appeals.**

* * * * *

(d) Any domestic utility that wishes to dispute a written determination under paragraph (c) of this section shall have the right to file an appeal with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Except for the Fiscal Year 1993 Special Assessment, any appeal must be filed on or before 30 days from the date of the written determination and should contain information of the type described in 10 CFR part 205, subpart H. With regard to a written determination under paragraph (c) of this section concerning a Fiscal Year 1993 Special Assessment, a domestic utility must file an appeal on or before 30 days from the effective date of this paragraph or from the date of such written determination, whichever is later. The decision of the Office of Hearings and Appeals shall be the final decision of the Department.

3. Section 766.105 is revised to read as follows:

**§ 766.105 Payment procedures.**

Consistent with instructions set forth in the Special Assessment invoice requiring payment under § 766.103, each domestic utility shall make payment to the Fund by wire transfer to the Department of the Treasury.

4. Section 766.106 is added as follows:

**§ 766.106 Late payment fees.**

In the case of a late payment by a domestic utility to the Treasury account for the Fund, the utility shall pay interest at the per annum rate (365-day basis) established by DOE for general application to monies due DOE and not received by DOE on or before a designated due date. Interest shall accrue beginning the date of the designated payment except that, whenever the due date falls on a Saturday, Sunday, or United States legal holiday, interest shall commence on the next day immediately following which is not a Saturday, Sunday, or United States legal holiday. Late payment provisions for the Special Assessment to the Fund shall be based on the Treasury Current Value of Funds Rate (which is published annually by the Treasury and used in assessing interest charges for outstanding debts on claims owed to the United States Government), plus six (6) percent pro rata on a daily basis. The additional six (6) percent charge will not go into effect until five (5) business days after payment was originally due. Late payment fees will be invoiced immediately following receipt of the annual assessment. Late payment fees will be due 30 days from the date of invoice.

[FR Doc. 93–18307 Filed 7–29–93; 1:12 pm]
BILLING CODE 6450-01-P

federal register

Monday
August 2, 1993

Part VII

# The President

Proclamation 6583—Death of General Matthew B. Ridgway

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Title 3—

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Filed 7-30-
Billing code

Federal Register
Vol. 58, No. 146
Monday, August 2, 1993

# Presidential Documents

Title 3—

## The President

**Proclamation 6583 of July 29, 1993**

## Death of General Matthew B. Ridgway

**By the President of the United States of America**

**A Proclamation**

As a mark of respect for the memory of General Matthew B. Ridgway, one of our Nation's most venerated military leaders, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that on Friday, July 30, 1993, the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions. I also direct that the flag shall be flown at half-staff on the same day at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of July, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J Clinton

[FR Doc. 93–18580
Filed 7–30–93; 11:23 am]
Billing code 3195–01–P

**Editorial note:** For the President's statement on the death of General Ridgway, see issue 30 of the *Weekly Compilation of Presidential Documents*.

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# Reader Aids

**Federal Register**

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Monday, August 2, 1993

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## FEDERAL REGISTER PAGES AND DATES, AUGUST

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## CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

## LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 27, 1993

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 1, 2 (2 Reserved) | (869-019-00001-1) | $15.00 | Jan. 1, 1993 |
| 3 (1992 Compilation and Parts 100 and 101) | (869-019-00002-0) | 17.00 | [1] Jan. 1, 1993 |
| 4 | (869-019-00003-8) | 5.50 | Jan. 1, 1993 |
| **5 Parts:** | | | |
| 1-699 | (869-019-00004-6) | 21.00 | Jan. 1, 1993 |
| 700-1199 | (869-019-00005-4) | 17.00 | Jan. 1, 1993 |
| 1200-End, 6 (6 Reserved) | (869-019-00006-2) | 21.00 | Jan. 1, 1993 |
| **7 Parts:** | | | |
| 0-26 | (869-019-00007-1) | 20.00 | Jan. 1, 1993 |
| 27-45 | (869-019-00008-9) | 13.00 | Jan. 1, 1993 |
| 46-51 | (869-019-00009-7) | 20.00 | Jan. 1, 1993 |
| 52 | (869-019-00010-1) | 28.00 | Jan. 1, 1993 |
| 53-209 | (869-019-00011-9) | 21.00 | Jan. 1, 1993 |
| 210-299 | (869-019-00012-7) | 30.00 | Jan. 1, 1993 |
| 300-399 | (869-019-00013-5) | 15.00 | Jan. 1, 1993 |
| 400-699 | (869-019-00014-3) | 17.00 | Jan. 1, 1993 |
| 700-899 | (869-019-00015-1) | 21.00 | Jan. 1, 1993 |
| 900-999 | (869-019-00016-0) | 33.00 | Jan. 1, 1993 |
| 1000-1059 | (869-019-00017-8) | 20.00 | Jan. 1, 1993 |
| 1060-1119 | (869-019-00018-6) | 13.00 | Jan. 1, 1993 |
| 1120-1199 | (869-019-00019-4) | 11.00 | Jan. 1, 1993 |
| 1200-1499 | (869-019-00020-8) | 27.00 | Jan. 1, 1993 |
| 1500-1899 | (869-019-00021-6) | 17.00 | Jan. 1, 1993 |
| 1900-1939 | (869-019-00022-4) | 13.00 | Jan. 1, 1993 |
| 1940-1949 | (869-019-00023-2) | 27.00 | Jan. 1, 1993 |
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| 2000-End | (869-019-00025-9) | 12.00 | Jan. 1, 1993 |
| 8 | (869-019-00026-7) | 20.00 | Jan. 1, 1993 |
| **9 Parts:** | | | |
| 1-199 | (869-019-00027-5) | 27.00 | Jan. 1, 1993 |
| 200-End | (869-019-00028-3) | 21.00 | Jan. 1, 1993 |
| **10 Parts:** | | | |
| 0-50 | (869-019-00029-1) | 29.00 | Jan. 1, 1993 |
| 51-199 | (869-019-00030-5) | 21.00 | Jan. 1, 1993 |
| 200-399 | (869-019-00031-3) | 15.00 | Jan. 1, 1993 |
| 400-499 | (869-019-00032-1) | 20.00 | Jan. 1, 1993 |
| 500-End | (869-019-00033-0) | 33.00 | Jan. 1, 1993 |
| 11 | (869-019-00034-8) | 13.00 | Jan. 1, 1993 |
| **12 Parts:** | | | |
| 1-199 | (869-019-00035-6) | 11.00 | Jan. 1, 1993 |
| 200-219 | (869-019-00036-4) | 15.00 | Jan. 1, 1993 |
| 220-299 | (869-019-00037-2) | 26.00 | Jan. 1, 1993 |
| 300-499 | (869-019-00038-1) | 21.00 | Jan. 1, 1993 |
| 500-599 | (869-019-00039-9) | 19.00 | Jan. 1, 1993 |
| 600-End | (869-019-00040-2) | 28.00 | Jan. 1, 1993 |
| 13 | (869-019-00041-1) | 28.00 | Jan. 1, 1993 |
| **14 Parts:** | | | |
| 1-59 | (869-019-00042-9) | 29.00 | Jan. 1, 1993 |
| 60-139 | (869-019-00043-7) | 26.00 | Jan. 1, 1993 |
| 140-199 | (869-019-00044-5) | 12.00 | Jan. 1, 1993 |
| 200-1199 | (869-019-00045-3) | 22.00 | Jan. 1, 1993 |
| 1200-End | (869-019-00046-1) | 16.00 | Jan. 1, 1993 |
| **15 Parts:** | | | |
| 0-299 | (869-019-00047-0) | 14.00 | Jan. 1, 1993 |
| 300-799 | (869-019-00048-8) | 25.00 | Jan. 1, 1993 |
| 800-End | (869-019-00049-6) | 19.00 | Jan. 1, 1993 |
| **16 Parts:** | | | |
| 0-149 | (869-019-00050-0) | 7.00 | Jan. 1, 1993 |
| 150-999 | (869-019-00051-8) | 17.00 | Jan. 1, 1993 |
| 1000-End | (869-019-00052-6) | 24.00 | Jan. 1, 1993 |
| **17 Parts:** | | | |
| 1-199 | (869-019-00054-2) | 18.00 | Apr. 1, 1993 |
| 200-239 | (869-017-00055-8) | 17.00 | Apr. 1, 1992 |
| 240-End | (869-017-00056-6) | 24.00 | Apr. 1, 1992 |
| **18 Parts:** | | | |
| 1-149 | (869-017-00057-4) | 16.00 | Apr. 1, 1992 |
| 150-279 | (869-019-00058-5) | 19.00 | Apr. 1, 1993 |
| 280-399 | (869-019-00059-3) | 15.00 | Apr. 1, 1993 |
| 400-End | (869-019-00060-7) | 10.00 | Apr. 1, 1993 |
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| 1-199 | (869-019-00061-5) | 35.00 | Apr. 1, 1993 |
| 200-End | (869-019-00062-3) | 11.00 | Apr. 1, 1993 |
| **20 Parts:** | | | |
| 1-399 | (869-019-00063-1) | 19.00 | Apr. 1, 1993 |
| 400-499 | (869-019-00064-0) | 31.00 | Apr. 1, 1993 |
| 500-End | (869-019-00065-8) | 30.00 | Apr. 1, 1993 |
| **21 Parts:** | | | |
| 1-99 | (869-019-00066-6) | 15.00 | Apr. 1, 1993 |
| 100-169 | (869-017-00067-1) | 14.00 | Apr. 1, 1992 |
| 170-199 | (869-019-00068-2) | 20.00 | Apr. 1, 1993 |
| 200-299 | (869-019-00069-1) | 6.00 | Apr. 1, 1993 |
| 300-499 | (869-019-00070-4) | 34.00 | Apr. 1, 1993 |
| 500-599 | (869-019-00071-2) | 21.00 | Apr. 1, 1993 |
| 600-799 | (869-019-00072-1) | 8.00 | Apr. 1, 1993 |
| 800-1299 | (869-019-00073-9) | 22.00 | Apr. 1, 1993 |
| 1300-End | (869-019-00074-7) | 12.00 | Apr. 1, 1993 |
| **22 Parts:** | | | |
| 1-299 | (869-019-00075-5) | 30.00 | Apr. 1, 1993 |
| 300-End | (869-019-00076-3) | 22.00 | Apr. 1, 1993 |
| 23 | (869-019-00077-1) | 21.00 | Apr. 1, 1993 |
| **24 Parts:** | | | |
| 0-199 | (869-017-00078-7) | 34.00 | Apr. 1, 1992 |
| 200-499 | (869-017-00079-5) | 32.00 | Apr. 1, 1992 |
| 500-699 | (869-019-00080-1) | 17.00 | Apr. 1, 1993 |
| 700-1699 | (869-017-00081-7) | 34.00 | Apr. 1, 1992 |
| 1700-End | (869-019-00082-8) | 15.00 | Apr. 1, 1993 |
| *25 | (869-019-00083-6) | 31.00 | Apr. 1, 1993 |
| **26 Parts:** | | | |
| §§ 1.0-1-1.60 | (869-019-00084-4) | 21.00 | Apr. 1, 1993 |
| §§ 1.61-1.169 | (869-019-00085-2) | 37.00 | Apr. 1, 1993 |
| §§ 1.170-1.300 | (869-019-00086-1) | 23.00 | Apr. 1, 1993 |
| §§ 1.301-1.400 | (869-017-00087-6) | 17.00 | Apr. 1, 1992 |
| §§ 1.401-1.440 | (869-019-00088-7) | 31.00 | Apr. 1, 1993 |
| *§§ 1.441-1.500 | (869-019-00089-5) | 23.00 | Apr. 1, 1993 |
| §§ 1.501-1.640 | (869-019-00090-9) | 20.00 | Apr. 1, 1993 |
| §§ 1.641-1.850 | (869-019-00091-7) | 24.00 | Apr. 1, 1993 |
| *§§ 1.851-1.907 | (869-019-00092-5) | 27.00 | Apr. 1, 1993 |
| §§ 1.908-1.1000 | (869-019-00093-3) | 36.00 | Apr. 1, 1993 |
| §§ 1.1001-1.1400 | (869-019-00094-1) | 22.00 | Apr. 1, 1993 |
| §§ 1.1401-End | (869-019-00095-0) | 31.00 | Apr. 1, 1993 |
| 2-29 | (869-019-00096-8) | 23.00 | Apr. 1, 1993 |
| 30-39 | (869-019-00097-6) | 18.00 | Apr. 1, 1993 |
| 40-49 | (869-019-00098-4) | 13.00 | Apr. 1, 1993 |
| 50-299 | (869-019-00099-2) | 13.00 | Apr. 1, 1993 |
| 300-499 | (869-017-00100-0) | 23.00 | Apr. 1, 1993 |
| 500-599 | (869-019-00101-8) | 6.00 | [4] Apr. 1, 1990 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 600-End | (869-019-00102-6) | 8.00 | Apr. 1, 1993 |
| **27 Parts:** | | | |
| 1-199 | (869-017-00102-3) | 34.00 | Apr. 1, 1992 |
| 200-End | (869-019-00104-2) | 11.00 | [5] Apr. 1, 1991 |
| 28 | (869-017-00104-0) | 37.00 | July 1, 1992 |
| **29 Parts:** | | | |
| 0-99 | (869-017-00105-8) | 19.00 | July 1, 1992 |
| 100-499 | (869-013-00106-6) | 9.00 | July 1, 1992 |
| 500-899 | (869-017-00107-4) | 32.00 | July 1, 1992 |
| 900-1899 | (869-017-00108-2) | 16.00 | July 1, 1992 |
| 1900-1910 (§§ 1901.1 to 1910.999) | (869-017-00109-1) | 29.00 | July 1, 1992 |
| 1910 (§§ 1910.1000 to end) | (869-017-00110-4) | 16.00 | July 1, 1992 |
| 1911-1925 | (869-017-00111-2) | 9.00 | [6] July 1, 1989 |
| 1926 | (869-017-00112-1) | 14.00 | July 1, 1992 |
| 1927-End | (869-017-00113-9) | 30.00 | July 1, 1992 |
| **30 Parts:** | | | |
| 1-199 | (869-017-00114-7) | 25.00 | July 1, 1992 |
| 200-699 | (869-017-00115-5) | 19.00 | July 1, 1992 |
| 700-End | (869-017-00116-3) | 25.00 | July 1, 1992 |
| **31 Parts:** | | | |
| 0-199 | (869-017-00117-1) | 17.00 | July 1, 1992 |
| 200-End | (869-017-00118-0) | 25.00 | July 1, 1992 |
| **32 Parts:** | | | |
| 1-39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1-39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1-39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1-189 | (869-017-00119-8) | 30.00 | July 1, 1992 |
| 190-399 | (869-017-00120-1) | 33.00 | July 1, 1992 |
| 400-629 | (869-017-00121-0) | 29.00 | July 1, 1992 |
| 630-699 | (869-017-00122-8) | 14.00 | [7] July 1, 1991 |
| 700-799 | (869-017-00123-6) | 20.00 | July 1, 1992 |
| 800-End | (869-017-00124-4) | 20.00 | July 1, 1992 |
| **33 Parts:** | | | |
| 1-124 | (869-017-00125-2) | 18.00 | July 1, 1992 |
| 125-199 | (869-017-00126-1) | 21.00 | July 1, 1992 |
| 200-End | (869-017-00127-9) | 23.00 | July 1, 1992 |
| **34 Parts:** | | | |
| 1-299 | (869-017-00128-7) | 27.00 | July 1, 1992 |
| 300-399 | (869-017-00129-5) | 19.00 | July 1, 1992 |
| 400-End | (869-017-00130-9) | 32.00 | July 1, 1992 |
| 35 | (869-017-00131-7) | 12.00 | July 1, 1992 |
| **36 Parts:** | | | |
| 1-199 | (869-017-00132-5) | 15.00 | July 1, 1992 |
| 200-End | (869-017-00133-3) | 32.00 | July 1, 1992 |
| 37 | (869-017-00134-1) | 17.00 | July 1, 1992 |
| **38 Parts:** | | | |
| 0-17 | (869-017-00135-0) | 28.00 | Sept 1, 1992 |
| 18-End | (869-017-00136-8) | 28.00 | Sept. 1, 1992 |
| 39 | (869-017-00137-6) | 16.00 | July 1, 1992 |
| **40 Parts:** | | | |
| 1-51 | (869-017-00138-4) | 31.00 | July 1, 1992 |
| 52 | (869-017-00139-2) | 33.00 | July 1, 1992 |
| 53-60 | (869-017-00140-6) | 36.00 | July 1, 1992 |
| 61-80 | (869-017-00141-4) | 16.00 | July 1, 1992 |
| 81-85 | (869-017-00142-2) | 17.00 | July 1, 1992 |
| 86-99 | (869-017-00143-1) | 33.00 | July 1, 1992 |
| 100-149 | (869-017-00144-9) | 34.00 | July 1, 1992 |
| 150-189 | (869-017-00145-7) | 21.00 | July 1, 1992 |
| 190-259 | (869-017-00146-5) | 16.00 | July 1, 1992 |
| 260-299 | (869-017-00147-3) | 36.00 | July 1, 1992 |
| 300-399 | (869-017-00148-1) | 15.00 | July 1, 1992 |
| 400-424 | (869-017-00149-0) | 26.00 | July 1, 1992 |
| 425-699 | (869-017-00150-3) | 26.00 | July 1, 1992 |
| 700-789 | (869-017-00151-1) | 23.00 | July 1, 1992 |
| 790-End | (869-017-00152-0) | 25.00 | July 1, 1992 |
| **41 Chapters:** | | | |
| 1, 1-1 to 1-10 | | 13.00 | [3] July 1, 1984 |
| 1, 1-11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3-6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10-17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1-5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6-19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20-52 | | 13.00 | [3] July 1, 1984 |
| 19-100 | | 13.00 | [3] July 1, 1984 |
| 1-100 | (869-017-00153-8) | 9.50 | July 1, 1992 |
| 101 | (869-017-00154-6) | 28.00 | July 1, 1992 |
| 102-200 | (869-017-00155-4) | 11.00 | [7] July 1, 1991 |
| 201-End | (869-017-00156-2) | 11.00 | July 1, 1992 |
| **42 Parts:** | | | |
| 1-399 | (869-017-00157-1) | 23.00 | Oct. 1, 1992 |
| 400-429 | (869-017-00158-9) | 23.00 | Oct. 1, 1992 |
| 430-End | (869-017-00159-7) | 31.00 | Oct. 1, 1992 |
| **43 Parts:** | | | |
| 1-999 | (869-017-00160-1) | 22.00 | Oct. 1, 1992 |
| 1000-3999 | (869-017-00161-9) | 30.00 | Oct. 1, 1992 |
| 4000-End | (869-017-00162-7) | 13.00 | Oct. 1, 1992 |
| 44 | (869-017-00163-5) | 26.00 | Oct. 1, 1992 |
| **45 Parts:** | | | |
| 1-199 | (869-017-00164-3) | 20.00 | Oct. 1, 1992 |
| 200-499 | (869-017-00165-1) | 14.00 | Oct. 1, 1992 |
| 500-1199 | (869-017-00166-0) | 30.00 | Oct. 1, 1992 |
| 1200-End | (869-017-00167-8) | 20.00 | Oct. 1, 1992 |
| **46 Parts:** | | | |
| 1-40 | (869-017-00168-6) | 17.00 | Oct. 1, 1992 |
| 41-69 | (869-017-00169-4) | 16.00 | Oct. 1, 1992 |
| 70-89 | (869-017-00170-8) | 8.00 | Oct. 1, 1992 |
| 90-139 | (869-017-00171-6) | 14.00 | Oct. 1, 1992 |
| 140-155 | (869-017-00172-4) | 12.00 | Oct. 1, 1992 |
| 156-165 | (869-017-00173-2) | 14.00 | [8] Oct. 1, 1991 |
| 166-199 | (869-017-00174-1) | 17.00 | Oct. 1, 1992 |
| 200-499 | (869-017-00175-9) | 22.00 | Oct. 1, 1992 |
| 500-End | (869-017-00176-7) | 14.00 | Oct. 1, 1992 |
| **47 Parts:** | | | |
| 0-19 | (869-017-00177-5) | 22.00 | Oct. 1, 1992 |
| 20-39 | (869-017-00178-3) | 22.00 | Oct. 1, 1992 |
| 40-69 | (869-017-00179-1) | 12.00 | Oct. 1, 1992 |
| 70-79 | (869-017-00180-5) | 21.00 | Oct. 1, 1992 |
| 80-End | (869-017-00181-3) | 24.00 | Oct. 1, 1992 |
| **48 Chapters:** | | | |
| 1 (Parts 1-51) | (869-017-00182-1) | 34.00 | Oct. 1, 1992 |
| 1 (Parts 52-99) | (869-017-00183-0) | 22.00 | Oct. 1, 1992 |
| 2 (Parts 201-251) | (869-017-00184-8) | 15.00 | Oct. 1, 1992 |
| 2 (Parts 252-299) | (869-017-00185-6) | 12.00 | Oct. 1, 1992 |
| 3-6 | (869-017-00186-4) | 22.00 | Oct. 1, 1992 |
| 7-14 | (869-017-00187-2) | 30.00 | Oct. 1, 1992 |
| 15-28 | (869-017-00188-1) | 26.00 | Oct. 1, 1992 |
| 29-End | (869-017-00189-9) | 16.00 | Oct. 1, 1992 |
| **49 Parts:** | | | |
| 1-99 | (869-017-00190-2) | 22.00 | Oct. 1, 1992 |
| 100-177 | (869-017-00191-1) | 27.00 | Oct. 1, 1992 |
| 178-199 | (869-017-00192-9) | 19.00 | Oct. 1, 1992 |
| 200-399 | (869-017-00193-7) | 27.00 | Oct. 1, 1992 |
| 400-999 | (869-017-00194-5) | 31.00 | Oct. 1, 1992 |
| 1000-1199 | (869-017-00195-3) | 19.00 | Oct. 1, 1992 |
| 1200-End | (869-017-00196-1) | 21.00 | Oct. 1, 1992 |
| **50 Parts:** | | | |
| 1-199 | (869-017-00197-0) | 23.00 | Oct. 1, 1992 |
| 200-599 | (869-017-00198-8) | 20.00 | Oct. 1, 1992 |
| 600-End | (869-017-00199-6) | 20.00 | Oct. 1, 1992 |
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| Microfiche CFR Edition: Complete set (one-time mailing) | | 188.00 | 1990 |

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| Complete set (one-time mailing) | | 188.00 | 1992 |
| Subscription (mailed as issued) | | 223.00 | 1993 |
| Individual copies | | 2.00 | 1993 |

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained.

[8] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

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## TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 1993

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

| DATE OF FR PUBLICATION | 15 DAYS AFTER PUBLICATION | 30 DAYS AFTER PUBLICATION | 45 DAYS AFTER PUBLICATION | 60 DAYS AFTER PUBLICATION | 90 DAYS AFTER PUBLICATION |
|---|---|---|---|---|---|
| August 2 | August 17 | September 1 | September 16 | October 1 | November 1 |
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| August 5 | August 20 | September 7 | September 20 | October 4 | November 3 |
| August 6 | August 23 | September 7 | September 20 | October 5 | November 4 |
| August 9 | August 24 | September 8 | September 23 | October 8 | November 8 |
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| August 17 | September 1 | September 16 | October 1 | October 18 | November 15 |
| August 18 | September 2 | September 17 | October 4 | October 18 | November 16 |
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| August 23 | September 7 | September 22 | October 7 | October 22 | November 22 |
| August 24 | September 8 | September 23 | October 8 | October 25 | November 22 |
| August 25 | September 9 | September 24 | October 12 | October 25 | November 23 |
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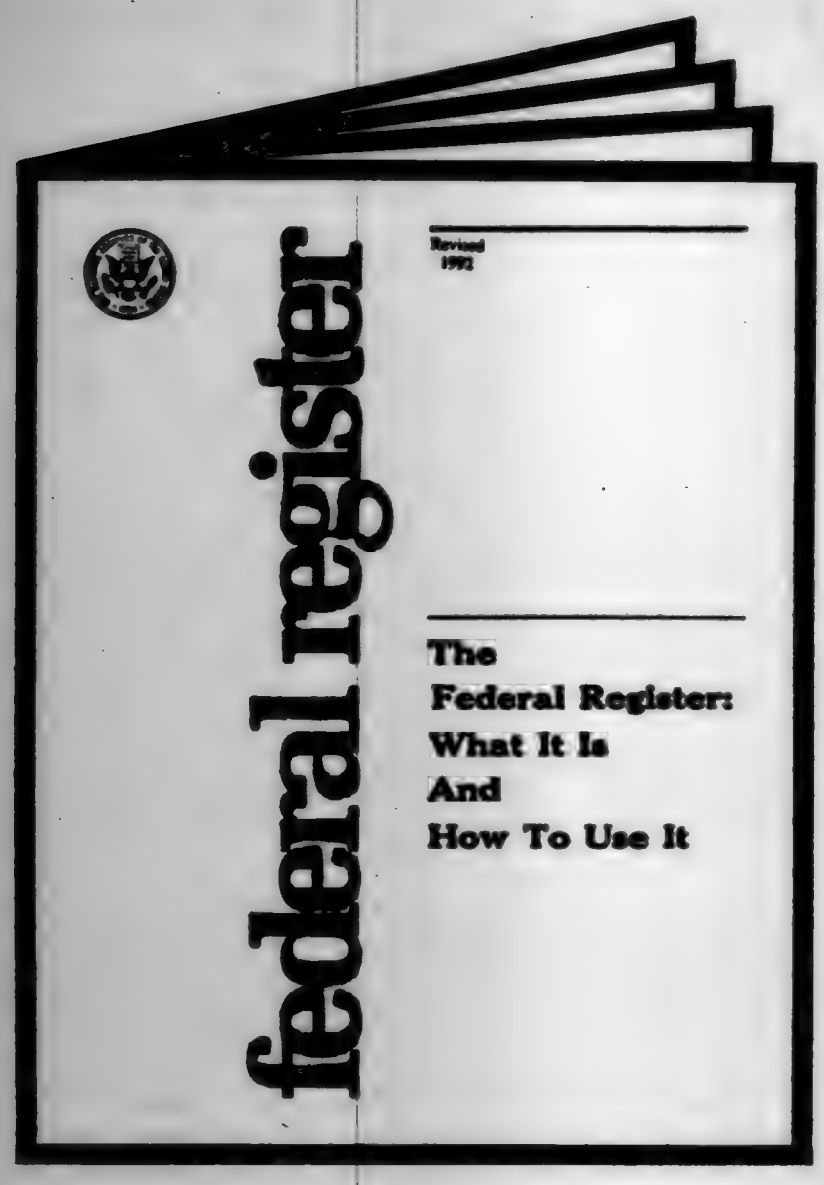


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# Rules and Regulations

Federal Register
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Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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**DEPARTMENT OF AGRICULTURE**

**Farmers Home Administration**

**7 CFR Part 1980**

**RIN 0575–AB67**

## Business and Industrial Loan Program

**AGENCY:** Farmers Home Administration and Rural Development Administration, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Farmers Home Administration (FmHA) and Rural Development Administration (RDA) amend their guaranteed loan program regulations to revise procedures for guaranteeing loans to businesses impacted by certain natural disasters. This action is needed to allow additional time to file applications for loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. The intended effect is to remove the regulatory deadline for filing applications.

**DATES:** Interim rule effective August 3, 1993. Written comments must be received on or before September 2, 1993.

**ADDRESSES:** Submit written comments in duplicate to the Chief, Regulations, Analysis, and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, 14th and Independence SW., Washington, DC 20250. All written comments will be available for public inspection during regular work hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, room 6327, 14th & Independence Avenue SW., Washington, DC 20250, Telephone (202) 720–6819.

**SUPPLEMENTARY INFORMATION:**

### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.768, Business and Industrial Loans.

### Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and has been assigned OMB control number 0575–0029 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The interim final rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

### Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

### Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of RDA and FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

### Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

### Discussion of the Rule

Business and Industry Disaster (BID) loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. The regulations implementing BID loans were published as a final rule with comment period in 57 FR 45968 on September 5, 1992. Since the legislative authority to issue guaranteed loans under BID expires on September 30, 1993, a deadline of July 31, 1993, to file applications was placed in the regulation. This was intended to give RDA staff time to process any applications before the guarantee authority expires. Due to additional disasters that have occurred recently, the application deadline is being removed to allow additional time to apply for assistance.

### Interim Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 533 with respect to such rules. However, RDA and FmHA are making this action effective upon publication in the **Federal Register** without securing prior public comment. This action removes the July 31, 1993, deadline for filing applications for BID loan guarantees to allow recent disaster victims additional time to apply. However, any applications received must be processed and approved prior to September 30, 1993, when the guarantee authority

expires. Immediate action is needed to provide assistance to disaster victims. Comments will be accepted for 30 days after publication and, if necessary, adjustments will be made in the regulations based on the comments.

**List of Subjects in 7 CFR Part 1980**

Loan programs—Business and Industry—Rural development assistance, Rural areas.

Accordingly, part 1980, chapter XVIII, title 7 of the Code of Federal Regulations is amended as follows:

**PART 1980—GENERAL**

1. The authority citation for part 1980 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 42 U.S.C. 1480; 7 U.S.C. 301; 7 CFR 2.23 and 2.70.

**Subpart E—Business and Industrial Loan Program**

2. Section 1980.498 is amended by revising paragraph (a) to read as follows:

**§ 1980.498 Business and Industry Disaster Loans.**

(a) *Introduction.* This section contains regulations for the Business and Industry Disaster (BID) loan program. The purpose of the program is to provide loan guarantees under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992. No BID loan guarantee will be approved after September 30, 1993. All provisions of subparts A and E of part 1980 of this chapter apply to BID loans, except as provided in this section. All forms used in connection with a BID loan will be those used with other Business and Industry (B&I) loans, except as provided in paragraph (m) of this section.

* * * * *

Dated: July 22, 1993.

**Bob J. Nash,**

*Under Secretary, Small Community and Rural Development.*

[FR Doc. 93–18544 Filed 7–30–93; 10:07 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 93–NM–118–AD; Amendment 39–8652; AD 93–15–06]**

**Airworthiness Directives; Airbus Industrie Model A300, A310 and A300–600 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Airbus Industrie Model A300, A310 and A300–600 series airplanes. This action requires an inspection to verify correct installation of certain bolts in the nose landing gear (NLG) uplock box, and correction, if necessary. This amendment is prompted by a recent report that the NLG did not extend when the NLG doors opened during a scheduled landing gear free fall extension test. The actions specified in this AD are intended to prevent jamming of the free fall mechanical control mechanism, which could result in the failure of the NLG to extend during a gravity free fall.

**DATES:** Effective August 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–118–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Industrie Model A300, A310 and A300–600 series airplanes. The DGAC advises that it has received a recent report that the nose landing gear (NLG) did not extend when the NLG doors opened during a scheduled landing gear free fall extension test on a Model A310 series airplane. Subsequent investigation revealed reverse installation of the bolts that attach one of the two NLG door uplock assemblies to the support fittings. The operator has confirmed other cases of reverse bolt installation in its fleet. Further investigations and tests revealed that interference between the bolt end and the bolt, which may have been installed in reverse, caused jamming of the free fall mechanical control mechanism. Consequently, the jammed control mechanism prevented release of the NLG uplock assembly. The NLG uplock assembly for Model A300 and A300–600 series airplanes is similar in design to that of Model A310 series airplanes. This condition, if not corrected, could result in jamming of the free fall mechanical control mechanism, and subsequent failure of the NLG to extend during a gravity free fall.

Airbus Industrie has issued Airbus Industrie All Operator Telex (AOT) 32–06, dated March 3, 1993, that describes procedures for a one-time visual inspection to verify correct installation of the bolts that attach the left- and right-hand NLG door uplock assemblies to the support fittings, and of the bolt that connects the free fall rod to its lever; correction of incorrectly installed bolts; a functional test; and submission of an inspection report. The DGAC classified this AOT as mandatory and issued French Airworthiness Directive 93–063–145(B), dated May 12, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent jamming of the free fall mechanical control mechanism, which could result in the failure of the NLG to extend during a gravity free fall. This AD requires a one-time detailed visual inspection to verify correct installation of the bolts that attach the left- and right-hand NLG door uplock assemblies to the support fittings, and of the bolt that connects the free fall rod to its lever; correction of incorrectly installed bolts, and a functional test. Finally, operators are required to submit a report to Airbus of the results of any inspection findings. The actions are required to be accomplished in accordance with the AOT described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket Number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–118–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–15–08 Airbus Industrie:** Amendment 39–8652. Docket 93–NM–118–AD.

*Applicability:* All Airbus Industrie Model A300, A310 and A300–600 series airplanes; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent jamming of the free fall mechanical control mechanism, which could result in the failure of the nose landing gear (NLG) to extend during a gravity free fall, accomplish the following:

(a) Within 30 landings after the effective date of this AD, perform a detailed visual inspection to verify correct installation of the bolts that attach the left- and right-hand NLG door uplock assemblies to the support fittings, and of the bolt connecting the free fall rod to its lever in accordance with Airbus Industrie All Operator Telex (AOT) 32–06, dated March 3, 1993.

(1) If the bolts are installed correctly, no further action is required by paragraph (a) of this AD.

(2) If any bolt is found to have been incorrectly installed, prior to further flight, correct its installation and perform a functional test of the landing gear free fall control and emergency extension systems in accordance with the AOT.

(b) Within 7 days after accomplishing the detailed visual inspection required by paragraph (a) of this AD, submit a report of any inspection findings to Airbus Industrie, in accordance with Airbus Industrie AOT 32–06, dated March 3, 1993. Report all findings, including nil defects to: Airbus Industrie, Product Support Directorate, Attention: Technical Support, AI/ST41, 1 Rond Point Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The detailed visual inspection, correction, reporting requirement, and functional test shall be done in accordance

with Airbus Industrie All Operator Telex (AOT) 32-06, dated March 3, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 18, 1993.

Issued in Renton, Washington, on July 26, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-18391 Filed 8-2-93; 8:45 am]

BILLING CODE 4910-13-P

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**14 CFR Part 39**

**[Docket No. 93-NM-117-AD; Amendment 39-8651; AD 93-15-05]**

## Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes equipped with BFGoodrich carbon brakes. This action requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to make allowances for the additional accelerate-stop distances necessary to compensate for reduced braking performance. This amendment is prompted by a report that certain carbon brakes were manufactured with a flexural strength that is outside specified limits. The actions specified in this AD are intended to compensate for reduced braking performance.

**DATES:** Effective August 18, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 7, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-117-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** The Direction Générale de l Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes equipped with BFGoodrich carbon brakes. The DGAC advises that BFGoodrich has manufactured certain carbon brakes with a flexural strength that is outside specified limits. These carbon brakes are installed on certain Model A320 series airplanes. This condition, if not corrected, could result in reduced braking performance.

Airbus Industrie has issued A320 Flight Manual Temporary Revision 9.99.99/89, Issue 2, dated December 16, 1992, that describes procedures for making allowances for the additional accelerate-stop distances necessary to compensate for reduced braking performance for airplanes on which Airbus Industrie Modification 20856 or Airbus Industrie Service Bulletin A320-32-1090 has been installed. Airbus Industrie has also issued Issue 3 of Temporary Revision 9.99.99/89, dated February 8, 1993, which specifies that braking performance is recovered once Airbus Industrie Modification 23597 or Airbus Industrie Service Bulletin A320-32-1114 has been installed on these airplanes. The DGAC classified these temporary flight manual revisions as mandatory and issued French Airworthiness Directive 93-056-040(B), dated April 28, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent reduced brake performance. This AD requires revisions to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to correct reduced braking performance. The actions are required to be accomplished in accordance with Issue 2 of the A320 Flight Manual Temporary Revision described previously. This AD also provides an optional terminating action, which involves the accomplishment of Airbus Industrie Modification 23597 or Airbus Industrie Service Bulletin A320-32-1114 and replacement of Issue 2 of the A320 Flight Manual Temporary Revision with Issue 3 of that temporary revision in the AFM.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–117–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93-15-05 Airbus Industrie:** Amendment 39-8651. Docket 93-NM-117-AD.

**Applicability:** Model A320 series airplanes on which Airbus Industrie Modification 20856 or Airbus Industrie Service Bulletin A320-32-1090 has been accomplished, and on which Airbus Industrie Modification 23597 or Airbus Industrie Service Bulletin A320-32-1114 has not been accomplished; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent reduced braking performance, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Airbus Industrie A320 Flight Manual Temporary Revision 9.99.99/89, Issue 2, dated December 16, 1992, in the AFM.

(b) Accomplishment of Airbus Industrie Modification 23597 or Airbus Industrie Service Bulletin A320-32-1114 and replacement of Airbus Industrie A320 Flight Manual Temporary Revision 9.99.99/89, Issue 2, dated December 16, 1992, with Airbus Industrie A320 Flight Manual Temporary Revision 9.99.99/89, Issue 3, dated February 8, 1993, in the AFM constitutes terminating action for the requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The AFM revision shall be accomplished in accordance with Airbus Industrie A320 Flight Manual Temporary Revision 9.99.99/89, Issue 2, dated December 16, 1992, which contains the following list of effective pages:

| Page No. | Issue level shown on page | Date shown on page |
|---|---|---|
| 1 ..... | 2 ..... | December 16, 1992. |
| 2 ..... | Original ..... | November 3, 1992. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 18, 1993.

Issued in Renton, Washington, on July 26, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-18392 Filed 8-2-93; 8:45 am]

BILLING CODE 4910-13-P

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**14 CFR Part 39**

**[Docket No. 92-ANE-10; Amendment 39-8643; AD 93-14-16]**

## Airworthiness Directives; General Electric Co. CF6 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6 series turbofan engines, that requires a one-time inspection of high pressure turbine (HPT) thermal shields, removal from service of certain HPT thermal shields, and replacement with serviceable parts. This amendment is prompted by a report of an HPT thermal shield separation. The actions specified by this AD are intended to prevent an uncontained engine failure.

**DATES:** Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7138, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6 series turbofan engines was published in the Federal Register on August 27, 1992 (57 FR 38795). That action proposed to require a one-time inspection of high pressure turbine (HPT) thermal shields, removal from service of certain HPT thermal shields, and replacement with serviceable parts in accordance with GE CF6–6 Service Bulletin (SB) No. 72–983, Revision 1, dated October 10, 1991, applicable to CF6–6 engines; GE CF6–50 SB No. 72–1021, Revision 1, dated October 10, 1991, applicable to CF6–45 and CF6–50 engines; GE CF6–80A SB No. 72–596, Revision 1, dated October 10, 1991, applicable to CF6–80A engines; and GE CF6–80C2 SB No. 72–565, Revision 1, dated October 10, 1991, applicable to CF6–80C2 engines.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One comment supports the rule as proposed.

One comment recommends that compliance paragraph (a) of this AD be revised to require inspection "at the first opportunity not to interfere with revenue service, but no later than the next HPT shop visit." The comment further states that requiring an inspection within these time parameters would make the AD consistent with the applicable SB. The Federal Aviation Administration (FAA) concurs in part with the comment. To clarify the compliance time for the required inspection, paragraph (a) of this AD has been revised to require inspection at the "next HPT shop visit." Compliance paragraph (c) of this AD has also been revised to define shop visit as when the HPT module is removed from the engine for any reason.

One comment states that the applicable SB's do not incorporate a compliance end date, and if one is required, that it be changed from December 12, 1995, to December 12, 1996, to avoid unscheduled removals. The FAA does not concur. The manufacturer has advised the FAA that the original compliance end date will allow 99% of all GE CF6–50 engines to have a planned shop visit, thus alleviating unscheduled removals. The FAA has therefore not revised the original compliance end date.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 560 GE CF6 series engines of the affected design in the worldwide fleet. The FAA estimates that 100 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 100 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $50,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,550,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–14–18 General Electric Company:** Amendment 39–8643. Docket 92–ANE–10.

Applicability: General Electric Company (GE) CF6–6/–45/–50/–80A/–80C2 series turbofan engines that contain high pressure turbine (HPT) thermal shields as listed in the applicable service bulletins that are referenced in this AD, installed on but not limited to Airbus A300 and A310 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained engine failure, accomplish the following:

(a) Perform either an impression and optical comparitor inspection or an ultrasonic inspection of the HPT thermal shield at the next HPT shop visit, or by December 12, 1995, whichever occurs first, as follows:

(1) For GE CF6–6 engines, in accordance with GE CF6–6 Service Bulletin (SB) No. 72–983, Revision 1, dated October 10, 1991.

(2) For CF6–45/–50 engines, in accordance with GE CF6–50 SB No. 72–1021, Revision 1, dated October 10, 1991.

(3) For CF6–80A engines, in accordance with GE CF6–80A SB No. 72–596, Revision 1, dated October 10, 1991.

(4) For CF6–80C2 engines, in accordance with GE CF6–80C2 SB No. 72–565, Revision 1, dated October 10, 1991.

(b) Remove from service prior to further flight, and replace with a serviceable part, HPT thermal shields that do not meet the service criteria contained in the applicable service bulletins as specified in paragraph (a) of this AD.

(c) For the purpose of this AD, a shop visit is defined as the removal of the HPT module from the engine for any reason.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with the following service bulletins:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| GE CF6–6 SB | 1–3 | 1 | October 10, 1991. |
| No. 72–983 | 4–30 | Original | September 19, 1991. |
| Total Pages: 30 | | | |
| GE CF6–50 SB | 1–3 | 1 | October 10, 1991. |
| No. 72–1021 | 4–30 | Original | September 19, 1991. |
| Total Pages: 30 | | | |
| GE CF6–80A SB | 1–3 | 1 | October 10, 1991. |
| No. 72–596 | 4–31 | Original | September 19, 1991. |
| Total Pages: 31 | | | |
| GE CF6–80C2 SB | 1–3 | 1 | October 10, 1991. |
| No. 72–565 | 4–31 | Original | September 19, 1991. |
| Total Pages: 30 | | | |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, Room 132, 111 Merchant Street, Cincinnati, OH 45246. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 4, 1993.

Issued in Burlington, Massachusetts, on July 16, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–18393 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 39

**[Docket No. 92–NM–65–AD; Amendment 39–8644; AD 93–14–19]**

## Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes, that requires inspections to detect disbonding of the trailing edge wedges on the leading edge slats, and repair, if necessary. This amendment is prompted by numerous reports of wedge damage or disbonding; in two cases, the damage resulted in loss of a portion of the slat wedges. The actions specified by this AD are intended to prevent loss of slat wedges, which could result in reduced maneuver margins, reduced speed margins to stall, and unexpected roll before stall warning, all of which would adversely affect the controllability of the airplane.

**DATES:** Effective September 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767–200 and –300 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 2, 1993 (58 FR 11997). That action proposed to require inspections to detect disbonding of the trailing edge wedges on the leading edge slats, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters request that the proposed compliance time for accomplishing the initial inspection be extended. One commenter requests that, for airplanes that have accumulated 12,000 or more total flight hours, the compliance time be extended from the proposed 1,000 flight hours to 2,000 flight hours; the other commenter requests that it be extended to 5,000 flight hours or 15 months, whichever occurs later. These commenters state that adoption of an extended compliance time would allow sufficient time for a phase-in of the proposed inspections with existing maintenance programs. Both commenters note that their fleets of Model 767 series airplanes have accumulated many flight hours and have not experienced any incidents of disbonding, wedge damage, or core corrosion such as that addressed by the proposed AD. The FAA does not concur with the commenters' requests to extend the compliance time for the initial inspections. The FAA has determined that the compliance time, as proposed, provides ample time within which affected operators can schedule time for a maintenance base visit. The selected compliance period also represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspection without compromising safety.

Two commenters request that the compliance time for the repetitive inspections specified in proposed paragraphs (b) and (d) be extended from the proposed 4,000 flight hours to 5,000 flight hours. Both commenters state that an interval of 5,000 flight hours would coincide with regularly scheduled "C" checks. One commenter notes that a repetitive inspection interval of 5,000 flight hours also would match the repetitive inspection interval recommended by the manufacturer in Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992. The FAA concurs with the commenters' requests. Extending the compliance time for the repetitive inspections by 1,000 additional flight hours will not adversely affect safety, and will allow the inspection to be performed at a main base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available. Paragraphs (b) and (d) of the final rule have been revised to

specify a repetitive inspection interval of 5,000 flight hours.

Two commenters request that the rule specify a minimum time period over which the two consecutive repeat inspections proposed in paragraphs (b) and (d) must be accomplished before those inspections can be terminated due to negative findings (i.e., when no disbonding is found). Although the proposal specifies a maximum period for the repeat interval (now changed to 5,000 flight hours), it does not specify a minimum period. The commenters point out that, as written, the proposal would allow an operator to terminate these inspections over a very short period of time; during that short period of time, disbonding may not yet have grown to a detectable size, but may continue to grow once the two consecutive inspections have been completed. The commenters note that, in a worst case scenario, an operator could perform the initial and two successful repeat inspections all on the same day and still be within the letter of the law. Obviously, this would not satisfy the desired safety objective of the AD. These commenters request that the FAA clarify this point. Upon further review of the wording of paragraphs (b) and (d) of the proposal, the FAA concurs that the requirements could be misconstrued; therefore, clarification is warranted. It was the FAA's intent that the two repeat inspections be accomplished over a period of time during which disbonding, if not detectable during the initial inspection, would grow to be detectable by the first or second subsequent inspection. Since the addressed unsafe condition is a time-related phenomenon, it is vital that sufficient time be allowed between inspections for potential development of disbonding, so that it can be detected during the subsequent inspection and corrected in a timely manner. The FAA has revised paragraphs (b) and (d) of the final rule to specify that the two repeat inspections must be accomplished during an elapsed period of time not less than 6,000 flight hours after the initial inspections or repair. Based on disbond growth rates, this 6,000-flight hour interval should allow for any disbonding to grow to a detectable size, so that it can be identified at the subsequent inspection and repaired.

Two commenters request that the FAA withdraw the proposal. One commenter states that all of the Model 767 series airplanes in its fleet have accumulated more than 35,000 flight hours and, during this extensive amount of operating experience, none have experienced excessive wedge damage or corrosion as addressed by the proposal. This commenter further states that its existing maintenance inspections, conducted during regularly scheduled "C" checks, have been sufficient to detect any minor damage which may exist. Another commenter states that it operates some of the oldest Model 767 series airplanes in service and has not detected disbonding in the leading edge slats trailing edge wedges. Both commenters consider that the concern of leading edge slat corrosion is addressed adequately in the Model 767 Corrosion Prevention and Control Program (CPCP) and, therefore, the proposed AD would be redundant. The FAA does not concur with the request to withdraw this AD. The Model 767 CPCP is not a mandatory document, that is, it is not mandated by any rulemaking action; therefore, there is no assurance that all, if any, operators have implemented and are following the program. Furthermore, the inspections called out in the Model 767 CPCP are meant to be general and visual in nature; they do not include any provisions for coin-tap inspections, as is required by this final rule. The FAA has determined that the inspections called out in the CPCP would not be sufficiently detailed to detect the type of disbonding addressed by this AD action. Further, the inspection intervals called out in the CPCP are at "4C" checks; the FAA does not consider this interval to be frequent enough to address the type of disbonding that is the subject of this AD action. The FAA has determined that the procedures required by this AD action are the most effective actions that must be taken in order to prevent separation of the slat wedges due to the consequences of disbonding, a condition which could adversely affect the controllability of the airplane. Further, the appropriate vehicle for mandating such inspections and additional actions to correct the identified unsafe condition is the airworthiness directive.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 487 Boeing Model 767–200 and -300 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 180 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $79,200, or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–14–19 Boeing:** Amendment 39–8644. Docket 92–NM–65–AD.

*Applicability:* Model 767 series airplanes, line numbers 1 through 488, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent separation of the trailing edge wedges of the leading edge slats from the airplane, accomplish the following:

(a) Perform either a visual and a "Coin-Tap" inspection, or a visual and an ultrasonic inspection, of the trailing edge wedges of the leading edge slats in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, and in accordance with the schedule specified in paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes that have accumulated less than 12,000 total flight hours as of the effective date of this AD, accomplish the initial inspections at the earlier of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 13,000 flight hours; or

(ii) Within 5,000 flight hours or 15 months after the effective date of this AD, whichever occurs first.

(2) For airplanes that have accumulated 12,000 or more total flight hours as of the effective date of this AD, accomplish the initial inspections within 1,000 flight hours after the effective date of this AD.

(b) If no disbonding is detected during the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 5,000 flight hours. After 2 consecutive repetitive inspections of the slat wedge are accomplished during an elapsed period of time not less than 6,000 flight hours since the performance of the inspections required by paragraph (a) of this AD, and during which no damage is found, the inspections required by this paragraph may be discontinued for that slat wedge.

**Note:** Inspections finding no slat wedge damage but accomplished sooner than the specified period of 6,000 flight hours will not be accepted as terminating action.

(c) If disbonding is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, repair the disbonded area in accordance with paragraph (c)(1) or (c)(2) of this AD, as applicable:

(1) Repair the disbonded area using the "permanent" repair method in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this AD, as applicable.

(i) Repair using the "permanent" repair method specified in the 767 Structural Repair Manual (SRM), Section 57–43–02.

(ii) If damage goes into the dense core area, or if there is no applicable SRM repair, repair the disbonded area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If the disbonded area is within the limits specified in paragraph J., Section III, "Accomplishment Instructions," of Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, operators may repair the disbonded area using the time-limited repair method in accordance with that paragraph of the Service Bulletin.

(i) Within 500 flight hours after accomplishing the time-limited repair, and thereafter at intervals not to exceed 500 flight hours until the permanent repair specified in paragraph (c)(1) of this AD is accomplished, inspect the repaired area in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992.

(ii) The permanent repair must be installed within 5,000 flight hours after installation of the time-limited repair, or prior to further flight if the disbond grows beyond the doubler edges of the slat wedge, whichever occurs first.

(d) After accomplishment of any permanent repair in accordance with paragraph (c) of this AD, continue the inspections required by paragraph (a) of this AD at intervals not to exceed 5,000 flight hours. After 2 consecutive repetitive inspections of the slat wedge are accomplished during an elapsed period of time not less than 6,000 flight hours since accomplishment of the permanent repair, and during which no damage is found, the inspections required by this paragraph may be discontinued for that slat wedge.

**Note:** Inspections finding no slat wedge damage but accomplished sooner than the specified period of 6,000 flight hours will not be accepted as terminating action.

(e) Replacement of the slat wedge with a new more corrosion-resistant slat wedge, in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992, constitutes terminating action for the inspection requirements of this AD for that slat wedge.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections, repair, and replacement shall be done in accordance with Boeing Service Bulletin 767–57A0039, Revision 1, dated October 15, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 2, 1993.

Issued in Renton, Washington, on July 20, 1993.

**Suzanne E. Stevens,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18389 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

**14 CFR Part 39**

**[Docket No. 92–ANE–14; Amendment 39–8636; AD 93–14–12]**

## Airworthiness Directives; Essex PB&R Corporation (Formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model 4566M37B Crewmember Protective Breathing Equipment

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model 4566M37B crewmember protective breathing equipment (PBE). This rule requires that PBE units with certain serial numbers be removed from service and replaced with serviceable PBE units. This amendment is prompted by the discovery, during a functional audit, of failed neck seal adhesive bonds and the subsequent determination that 2,757 PBE units were produced with adhesive that exceeded the shelf life date. The actions specified by this AD are intended to prevent leakage of the PBE neck seal, which could compromise the crew's ability to combat an aircraft fire.

**DATES:** Effective September 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Essex PB&R Corporation, P.O. Box 791, Elkton, Maryland 21921. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Constantine Kallis, Aerospace Engineer, New York Aircraft Certification Office, ANE–173, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 181 South Franklin Avenue, room 202, Valley Stream, NY 11581–1145; telephone (516) 791–6428; fax (516) 791–9024.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive (AD) that is applicable to Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model

4566M37B crewmember protective breathing equipment (PBE) was published in the **Federal Register** on July 20, 1992 (57 FR 31989). That action proposed to require removal of certain serial numbered PBE units, in accordance with Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that the AD include an examination of the effort required to open the packaging of the equipment and don the units. The FAA does not concur with the commenter's request to include such examinations in this rulemaking action, at this point. However, after additional data is obtained and analyzed, the FAA may consider further rulemaking to expand the scope of this AD to include such examination requirements, if warranted.

Two commenters request that the compliance time of 90 days be extended to allow sufficient time for retrofit and delivery of parts from the manufacturer. One commenter requests 180 days (6 months) after the effective date of the AD, to allow for proper notification and production of parts; the other requests 15 months after the effective date of the rule, to allow the modification to be accomplished during the time of a regularly scheduled "C" check. This same commenter considers that the adoption of the proposed compliance time of 90 days would require operators to schedule special times for the acomplishment of the modification, at additional expense. The FAA concurs with the commenters' requests to extend the compliance time for the modification requirements. Extending the complaince time will not adversely affect safety, and will allow the manufacturer sufficient time to produce and deliver the parts; and the operators sufficient time to perform the modification at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. Paragraph 2(a) of the final rule has been revised to specify a compliance time of 15 months.

The manufacturer requests altering the language of the rule to indicate that the responsible party on the referenced service bulletin is E.I. DuPont and not Essex PB&R Corp. The affected equipment was made by E.I. DuPont in 1989, and the original service bulletin was issued by them in April 1990. The FAA disagrees. At the time Essex Corp. purchased E.I. DuPont in December 1990, they acquired full responsibility for the product(s); and, in that respect, issued the revised service bulletin in October 1991.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

The FAA estimates that 2,757 PBE units, installed in aircraft of U.S. registry, will be affected by this AD; that it will take approximately 1 work hour per PBE unit to accomplish the required actions; and that the average labor rate is $55 per work hour. The replacement PBE unit will cost approximately $400 per unit. The FAA has been advised by the manufacturer that they will exchange, at no cost, certain PBE units that are returned. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,254,435. This total figure may be reduced by the operators electing to participate in the exchange program.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93-14-12 Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated):** Amendment 39-8636. Docket No. 92-ANE-14:

*Applicability:* Essex PB&R Corporation (formerly E.I. DuPont de Nemours and Company Incorporated) PELS Model 4566M37B crewmember protective breathing equipment (PBE) units, as listed in Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991, installed on but not limited to transport category aircraft manufactured by Boeing, McDonnell Douglas, Airbus, and Lockheed.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent leakage of the PBE neck seal, which could compromise the crew's ability to combat an aircraft fire, accomplish the following:

(a) Within the next 15 months after the effective date of this AD, remove the affected PBE unit, in accordance with the accomplishment instructions of Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991, and replace with a serviceable unit.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from New York Aircraft Certification Office.

(c) Special flight permits may be issued, in accordance with FAR 21.197 and 21.199, to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Essex PB&R Corporation Service Bulletin (SB) No. 001, Revision 1, dated October 3, 1991. This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Essex PB&R Corp., P.O. Box 791, 505 Blue Ball Road, Elkton, MD 21921. Copies may be inspected at the FAA, New

England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(c) This amendment becomes effective on September 2, 1993.

Issued in Burlington, Massachusetts, on July 14, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–18390 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 71**

**[Airspace Docket No. 93–ASO–3]**

## Designation of Class E Airspace, Boca Raton, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Boca Raton, Florida. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) has been developed to serve the Boca Raton Airport based on the Palm Beach VORTAC. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

**EFFECTIVE DATE:** 0901 UTC, November 11, 1993.

**FOR FURTHER INFORMATION CONTACT:** Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

**SUPPLEMENTARY INFORMATION:**

### History

On March 15, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Boca Raton, Florida. (48 FR 29881). The proposal was to add controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the en route and terminal environments. The operating status of the airport is changed to include IFR (51 FR 11455). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and replace it with the designation "Class E airspace" for airspace extending upward from 700 feet above the surface. Other than the change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Designation for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993 (58 F.R. 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Boca Raton, Florida, to provide controlled airspace extending upward from 700 feet above the surface for aircraft executing the VOR/DME–A SIAP into the Boca Raton Airport, at Boca Raton, Florida.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 in effect as of September 16, 1993, as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 in effect as of September 16, 1993, of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO FL E5 Boca Raton, FL [New]
Boca Raton Airport, FL
(lat. 26° 22'44" N., long. 80° 06'26" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Boca Raton Airport, excluding that portion that coincides with the Pompano Beach, FL, Class E airspace.

* * * * *

Issued in East Point, Georgia, on June 23, 1993.

**Walter E. Denley,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 93–18454 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

**20 CFR Part 416**

**[Regulations No. 16]**

**RIN 0960–AD55**

## Supplemental Security Income for the Aged, Blind and Disabled; Residence and Citizenship; Temporary Protected Status

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule incorporates into the supplemental security income regulations a provision of the Immigration and Nationality Act (INA) concerning the ineligibility of certain aliens for federal assistance programs. Specifically, this regulation provides that an alien granted temporary protected status (TPS) by the Attorney General of the United States pursuant to section 244A of the INA will not be considered to be permanently residing

in the United States under color of law during that period for the purpose of eligibility for Supplemental Security Income (SSI) benefits.

**EFFECTIVE DATE:** August 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Short, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–6243.

**SUPPLEMENTARY INFORMATION:** The SSI program provides cash assistance to persons who are aged, blind, or disabled and whose income and resources are below specified amounts. A person may be eligible for SSI benefits if he or she meets all of the eligibility requirements of title XVI of the Social Security Act (the Act) and implementing regulations. Section 1614(a)(1)(B) of the Act provides that an aged, blind or disabled individual, for purposes of the application of title XVI, must be a resident of the United States, and either a citizen or an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

Section 302 of the Immigration Act of 1990, Public Law 101–649, amended the INA on November 29, 1990, by adding a new section 244A entitled "Temporary Protected Status." TPS is an alien status which may be granted temporarily to qualified nationals of designated foreign states. Such designation of a foreign state is based on the existence of an ongoing armed conflict, natural disaster, or other extraordinary and temporary condition which prevents aliens who are nationals of such state from returning safely. Aliens granted TPS may not be deported during the period in which such status is in effect and may work throughout its duration. However, paragraph (f)(1) of section 244A provides that during a period in which an alien is granted TPS, he or she shall not be considered to be permanently residing in the United States under color of law. One effect of this amendment is that individuals will not be eligible for SSI benefits while in TPS, because they have not been admitted for permanent residence and cannot be considered to be permanently residing in the United States under color of law while in TPS.

This final regulation adds a new § 416.1619 to subpart P of our regulations to incorporate the provision of section 244A of the INA which states that aliens granted TPS are not considered to be permanently residing in the United States under color of law.

**Regulatory Procedures**

*Justification for Final Rule*

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

We have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this regulation, because such procedures are unnecessary in this case. This rule merely reflects, without exercise of discretion, section 244A(f)(1) of the INA, 8 U.S.C. 1254a(f)(1), as amended by section 302(a) of Public Law 101–649.

*Executive Order No. 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 since the program and administrative impact of the legislation, which this regulation implements, is insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

*Paperwork Reduction Act*

This final regulation imposes no additional reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

*Regulatory Flexibility Act*

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807—Supplemental Security Income)

**List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: April 30, 1993.

**Louis D. Enoff,**

*Principal Deputy Commissioner of Social Security.*

Approved: June 15, 1993.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart P of part 416 is revised to read as follows:

**Authority:** Secs. 1102, 1614(a)(1)(B) and (e), and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382c(a)(1)(B) and (e), and 1383; sec. 502 of Pub. L. 94–241, 90 Stat. 268; sec. 302 of Pub. L. 101–649, 104 Stat. 4978.

2. A new § 416.1619 is added to read as follows:

**§ 416.1619 When you cannot be considered permanently residing in the United States under color of law.**

We will not consider you to be permanently residing in the United States under color of law and you are not eligible for SSI benefits during a period in which you have been granted temporary protected status by the Immigration and Naturalization Service under section 244A of the Immigration and Nationality Act.

[FR Doc. 93–18384 Filed 8–2–93; 8:45 am]
BILLING CODE 4190–29–P

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**Food and Drug Administration**

**21 CFR Part 73**

**[Docket No. 90C–0406]**

## Listing of Color Additives for Coloring Contact Lenses; 1,4-Bis [4-(2-Methacryloxyethyl) Phenylamino]Anthraquinone Copolymers; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1993, of the final rule that appeared in the Federal Register of April 5, 1993 (58 FR 17506), that amended the color additive regulations to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino] anthraquinone (C.I. Reactive Blue 246) with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone to form contact lenses.

**DATES:** Effective date confirmed: May 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 5, 1993 (58 FR 17506), FDA published a final rule that amended the color additive regulations in 21 CFR 73.3106 to provide for the safe use of the colored reaction product formed by copolymerizing 1,4-bis[4-(2-methacryloxyethyl) phenylamino]anthraquinone (C.I. Reactive Blue 246) with hydroxyethyl methacrylate and *N*-vinyl pyrrolidone to form contact lenses. FDA also amended the regulation to clearly identify the color additive as the reaction product of 1,4-bis [4-(2-methacryloxyethyl) phenylamino] anthraquinone copolymerized with other monomers.

FDA gave interested persons until May 5, 1993, to file written objections or requests for a hearing. No objections or requests for a hearing were received in response to the final rule. Therefore, FDA finds that the final rule that published in the **Federal Register** of April 5, 1993, should be confirmed.

**List of Subjects in 21 CFR Part 73**

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 5, 1993, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1993.

Dated: July 28, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–18471 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–01–F

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**21 CFR Part 73**

**[Docket No. 89C–0480]**

## Listing of Color Additives for Coloring Contact Lenses; Vinyl Alcohol/Methyl Methacrylate-Dye Reaction Products; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1993, for the final rule that amended the color additive regulations to provide for the safe use in coloring contact lenses of the reaction products formed by chemically bonding five reactive dyes, alone or in combination, to the vinyl alcohol/methyl methacrylate copolymeric lens material.

**DATES:** Effective date confirmed: May 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 5, 1993 (58 FR 17508), FDA amended 21 CFR 73.3127 of the color additive regulations to provide for the safe use in coloring contact lenses of the reaction product formed by chemically bonding the following reactive dyes, alone or in combination, to the vinyl alcohol/methyl methacrylate copolymeric lens material:

(1) C.I. Reactive Black 5 [2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-3,6-bis((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-, tetrasodium salt] (CAS Reg. No. 17095–24–8);

(2) C.I. Reactive Orange 78 [2-naphthalenesulfonic acid, 7-(acetylamino)-4-hydroxy-3-((4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-] (CAS Reg. No. 68189–39–9);

(3) C.I. Reactive Yellow 15 [benzenesulfonic acid, 4-(4,5-dihydro-4-((2-methoxy-5-methyl-4-((2-(sulfooxy)ethyl)sulfonyl)phenyl)azo)-3-methyl-5-oxo-1*H*-pyrazol-1-yl)-] (CAS Reg. No. 60958–41–0);

(4) C.I. Reactive Blue No. 19 [2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-((3-((2-(sulfooxy)ethyl)sulfonyl)phenyl)amino)-, disodium salt] (CAS Reg. No. 2580–78–1); and

(5) C.I. Reactive Blue 21 [copper, (29*H*,31*H*-phthalocyaninato(2-)-$N^{29}$,$N^{30}$,$N^{31}$,$N^{32}$)-, sulfo[(4-((2-(sulfooxy)ethyl) sulfonyl)phenyl)amino)sulfonyl derivatives] (CAS Reg. No. 73049–92–0).

FDA gave interested persons until May 5, 1993, to file written objections or requests for a hearing. No objections or requests for a hearing were received in response to the final rule. Therefore, FDA finds that the final rule that published in the **Federal Register** of April 5, 1993, should be confirmed.

**List of Subjects in 21 CFR Part 73**

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 5, 1993, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1993.

Dated: July 28, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–18470 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–01–F

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**21 CFR Part 74**

**[Docket No. 91C–0033]**

## Listing of Color Additives Subject to Certification; FD&C Blue No. 1; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of May 6, 1993, for the final rule that amended the color additive regulations to provide for the safe use of manganese dioxide as an oxidizing agent in the manufacture of FD&C Blue No. 1.

**DATES:** Effective date confirmed: May 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Wes Long, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of April 5, 1993 (58 FR 17510), FDA amended 21 CFR 74.101 and 21 CFR 74.2101 of the color additive regulations to provide for the safe use of manganese dioxide as an oxidizing agent in the manufacture of FD&C Blue No. 1.

FDA gave interested persons until May 5, 1993, to file objections or requests for a hearing. No objections or requests for a hearing were received in response to the final rule. Therefore, FDA finds that the final rule that

published in the Federal Register of April 5, 1993, should be confirmed.

**List of Subjects in 21 CFR Part 74**

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sections 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 5, 1993, final rule. Accordingly, the amendments promulgated thereby became effective May 6, 1993.

Dated: July 28, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93-18472 Filed 8-2-93; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**43 CFR Parts 3730, 3820, 3830, and 3850**

**[WO-660-4191-02-24-1A; Circular No. 2648]**

**RIN 1004-AC07**

### Rental Fees, Mining Claim Recordation, and Assessment Work

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final rule that was published Thursday, July 15, 1993 (58 FR 38186). The regulations promulgated by the rule related to the imposition of a $100.00 annual rental fee on unpatented mining claims on Federal lands.

**EFFECTIVE DATE:** July 15, 1993.

**FOR FURTHER INFORMATION CONTACT:** Roger Haskins (702) 785-6576, or Frank Bruno (202) 653-5182.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final rule that is the subject of this correction implemented provisions of the Interior Department and Related Agencies Appropriations Act of 1993 (the Act) that requires an annual rental fee of $100 for each mining claim and site located and held under the General Mining Law of 1872 for fiscal years 1993 and 1994. The final rule established the procedures for paying and administering the required annual rental fee, put into regulation the statute's mandatory payment deadlines and its mandatory provisions that failure to pay the rental fee on time constitutes abandonment of the claim or site, amended the recording and assessment work regulations to conform to the requirements of the Act, and established procedures by which small miners may obtain an exemption.

**Need for Correction**

As published, the final rule at § 3833.1-6(a)(4)(ii) did not account for the fact that mining activities are carried out on National Forest System lands under Notices of Intent as well as under Plans of Operations. Section 3833.1-6(a)(5) of the proposed rule published March 5, 1993, allowed a small miner to claim an exemption from the requirement to pay the annual rental fee based on a Notice of Intent to conduct operations on National Forest System lands (58 FR 12885). The reference to such notice was inadvertently omitted as a result of the amendment of the proposed section and the redesignation of part of the text of proposed § 3833.1-6(a)(5) as § 3833.1-6(a)(4)(ii) in the final rule. This correction notice, by adding the phrase "Notice or a" in § 3833.1-6(a)(4)(ii), captures the original intent of the proposed rule. Moreover, it is consistent with the requirements of the Act, which allows small miners to claim exemption from the payment of the annual rental fee on the basis of notices as well as on plans of operations.

**Correction of Publication**

Accordingly, the publication on July 15, 1993, of the final rule on Rental Fees, Mining Claim Recordation, and Assessment Work is corrected as follows:

Section 3833.1-6 is corrected by revising paragraph (a)(4)(ii) to read as follows:

**§ 3833.1-6 Rental fee exemption qualifications.**

* * * * *

(a) * * *

(4) * * *

(ii) A Notice or a Plan of Operations issued under parts 9 and 228 of title 36 of the Code of Federal Regulations for National Park System lands and National Forest System lands respectively; or

* * * * *

Dated: July 28, 1993.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 93-18438 Filed 8-2-93; 8:45 am]

BILLING CODE 4310-84-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR PART 69**

**[CC Docket No. 91-213, FCC 93-366]**

### Transport Rate Structure and Pricing

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission adopted interim rules to govern the rate structure and pricing of the transport component of interstate switched access provided by local exchange carriers (LECs) to enable interexchange carriers (IXCs) to originate and terminate interstate traffic. We now reconsider and clarify certain issues on which guidance is needed before the LECs file their initial transport rates. Specifically, we address: (1) Application of the interim rate structure to certain configurations; (2) issues relating to the derivation of initial transport rates; and (3) clarification of implementation procedures. In addition, we are changing the date on which LECs are required to file tariff revisions incorporating the new transport rate structure and pricing rules from August 2, 1993 to September 1, 1993.

**EFFECTIVE DATE:** September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** David L. Sieradzki, Common Carrier Bureau, Policy & Program Planning Division, 202-632-1304.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's First Memorandum Opinion and Order on Reconsideration in CC Docket No. 91-213, adopted and released on July 21, 1993. This item reconsiders and clarifies matters addressed in Transport Rate Structure and Pricing, Report and Order CC Docket No. 91-213, 7 FCC Rcd 7006 (1992) (Transport Order or Order), 57 FR 54717 (Nov. 20, 1992).

The complete text of this First Memorandum Opinion and Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street NW., room 230, Washington, DC 20554.

**Synopsis of First Memorandum Opinion and Order on Reconsideration**

*I. Rate Structure*

A. Intermediate Hubbing

1. Hubbing permits access customers to use the network efficiently and increases opportunities for interexchange competition. Permitting hubbing is in the public interest. Accordingly, we are revising the rules to

clarify that intermediate hubbing is permitted.

2. As a corollary to our hubbing clarification, we modify our rules to enable access customers to order direct-trunked transport between serving wire centers (SWCs) and access tandems, and tandem-switched transport between access tandems and end offices. This option, which many parties support, and no commenting party opposes, should enable parties to use the LEC network more efficiently, and will be more consistent with local access competition. We do not, however, modify our requirement that LECs make available tandem-switched transport between SWCs and end offices on a per-minute basis, with mileage measured between the SWC and the end office.

B. Host-Remote Configurations

3. In the Order, we did not address how to apply the interim transport rate structure to host-remote switching configurations, under which all IXC traffic is routed through a host office, which performs all measurement and recording for the remote office. Direct-trunked transport cannot be provided all the way from SWCs to remote offices because facilities between host offices and remote offices are shared. We conclude that customers should be able to purchase direct-trunked transport from a SWC to a host office, and to pay a per-minute rate for the shared facilities between the host office and remote offices. This per-minute rate should be based on tandem-switched transport rates, but with no tandem charge, with mileage measured between the host office and remote offices.

4. We also conclude that the LECs should treat tandem-switched transport and direct-trunked transport in an equivalent manner in the context of host-remote configurations. We conclude that the LECs should offer tandem-switched transport between the SWC and the host office, based on the airline mileage between those offices. As with direct-trunked transport, LECs should offer host-to-remote transport under a per-minute rate (based on tandem-switched transport rates, but with no tandem charge) for the shared facilities between the host office and remote offices, with mileage measured between the host office and remote offices.

C. Featured Group A

5. In the Order, we did not address the application of the interim transport rate structure and pricing rules to Feature Group A. Feature Group A is similar to a local exchange service, but is used to provide interstate access. IXCs use Feature Group A as a form of switched access to originate and terminate calls by their end user customers. In such circumstances, the end user dials a seven digit number to reach the LEC's "dial tone office" serving the IXC, where the LEC switches the call to the IXC's POP via a dedicated, loop-side connection. In many cases, the dial tone office is the SWC; in some cases, dial tone is provided from a different office, in which case there will be a separate SWC between the dial tone office and the POP.

6. Under Feature Group A, dedicated LEC facilities provide the connection between the IXC POP and the dial tone office. Common facilities are used to connect the dial tone office with the end office serving users. In general, originating Feature Group A transport is billed using mileage measured from the dial tone office to the SWC. Terminating Feature Group A is frequently billed using mileage measured from the SWC to the end office. In general, the difference in mileage measurement is necessitated by the inability of most LEC end office switches to differentiate between originating Feature Group A traffic and local traffic.

7. The manner in which LECs provide Feature Group A service requires that we adjust the interim transport rate structure in order to permit its application to Feature Group A. Entrance facility rates should apply to transport between the POP and the SWC. If the SWC is not the dial tone office, direct-trunked transport rates should apply to transport between the SWC and the dial tone office. Tandem-switched transport rates, excluding the tandem charge, should apply to transport between the dial tone office and the end office. If a LEC's dial tone office switches are incapable of distinguishing between originating Feature Group A access traffic and local exchange traffic, the LEC may forego billing Feature Group A customers for originating transport from end offices to dial tone offices. Unlike customers of tandem-switched transport under Feature Groups B, or D, who have the option of buying direct-trunked transport between SWCs and end offices, Feature Group A customers have no control over whether their traffic between dial tone offices and end offices is switched at LEC tandems. Accordingly, Feature Group A customers should not be required to pay the tandem charge.

D. 800 Service

8. LECs must deliver originating 800 traffic through access tandems from end offices that do not have a service switching point (SSP) deployed. We clarify that this tandem-switched traffic should be assessed rates for tandem-switched transport.

*II. Initial Pricing*

A. General Issues

1. September 1992 versus July 1993 special access rates as baseline. 9. We retain our conclusion that initial transport rates will be presumed reasonable if they are based on special access rates effective on September 1, 1992. We believe that retaining September 1992 special access rates as the baseline for deriving initial transport rates strikes a better balance of our objectives than the alternatives that parties suggest. The September 1992 special access rates will form the basis of only initial switched transport rates. The LECs have argued that, given the similarities between the facilities used for special access and those used for transport entrance facilities and direct-trunked interoffice transport, substantial benefits will flow from allowing LECs to price transport and special access at the same levels. Even if we accepted this argument, many of the LECs have submitted zone density plans for pricing special access in the near future, so special access and transport rates are likely to diverge at least in the short term. Moreover, price cap LECs have some flexibility, subsequent to the implementation of the initial rates, to change their transport rates and bring them closer to current special access rate levels. Thus, there is little to be gained from using July 1993 rates.

10. We are concerned, however, that using July 1992 rates would impose additional costs for little or no gain. For many LECs, the use of July 1993 rates rather than September 1992 rates would cause the percentage of revenue recovered through the interconnection charge to increase. A proportionally higher interconnection charge could impede local access competition, and weaken the incentives in the new transport rate structure for efficient use of LEC networks because it results in transport prices more similar to pricing under the equal charge rule. In the absence of substantial public interest benefits, we are unwilling to make changes that could cause a proportionally higher interconnection charge. Ameritech, AT&T, and MCI have suggested that the LECs be allowed to use July 1993 rates if they can demonstrate that the percentage of transport revenue recovered through the interconnection charge is no higher than it would have been if September 1992

rates had been used. Although this exercise would alleviate concerns about a higher inter-connection charge, it would create additional administrative complexity. In addition, it is unlikely to result in a transport rate restructure that is revenue-neutral. We conclude that the costs of using July 1993 rates outweigh whatever minimal benefits this change might bring.

11. Accordingly, we conclude that initial transport rates will be presumed reasonable if based on September 1992 special access rates. Price cap LECs' transport rates will be presumed reasonable if based on September 1, 1992 special access rates adjusted for changes in the price cap index calculated for the July 1, 1993 annual filing. Changes in the price cap index include the exogenous change reflecting our reallocation of general support facility (GSF) costs. Rate-of-return LECs' transport rates will be presumed reasonable if based on September 1, 1992 special access rates adjusted to reflect the reallocation of GSF costs. See Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order, CC Docket No. 92–222, 8 FCC Rcd 3697, 3700, ¶ 16 n. 53 (1993), 58 FR 30994 (May 28, 1993).

2. *Rate derivation.* 12. We now clarify how initial transport rates are to be set. First, LECs' initial rates for direct-trunked transport and entrance facilities will be presumed reasonable only if the rate for each transport service component is set equal to the corresponding special access service component. For this purpose, transport service components include: (1) The non-distance sensitive component of interoffice transport rates, (2) the distance sensitive components of interoffice transport rates (i.e., rates applicable to each mileage band), (3) the non-distance sensitive component of entrance facility rates, (4) the distance sensitive components of entrance facility rates (if any), (5) multiplexing charges, (6) charges for other features and functions, and (7) non-recurring charges.

13. Second, LECs' initial rates for tandem-switched transport will be presumed reasonable only if rates for tandem-switched transport service components (other than the tandem charge) are set on the basis of the rates for corresponding direct-trunked transport service components. We also clarify that initial charges for multiplexing and other features and functions that are needed for switched transport, but not for special access, will be presumed reasonable if they are set equal to rates for comparable multiplexing and other features and functions in the special access tariffs.

14. We find these clarifications to be consistent with our general approach of using special access rates as the basis for initial switched transport rates. These clarifications should ensure that initial transport rates reflect the same degree of distance sensitivity as special access rates. They should also enable LECs to charge users of specific features and functions for the use of such services, rather than including the cost of such services in the interconnection charge.

### B. Initial Direct-Trunked Transport and Entrance Facility Rates

15. We conclude that LECs that cannot satisfy the criteria in the Order because they lacked generally tariffed special access rates at certain capacities (e.g., DS3 or DS1) in September 1992 may propose rates based on reasonable criteria, for which the LEC must provide justification. For example, initial transport rates based on special access rates filed subsequent to September 1992 could well be demonstrated to be reasonable, as could rates set pursuant to the proposal in the Public Notice, or rates justified by cost support. These rates, however, will not be accorded a presumption of reasonableness; we will review their reasonableness in the tariff process.

### C. Initial Tandem-Switched Transport Rates

*1. Circuit mix used to derive rates.* 16. On reconsideration, we find that is may be impractical for the LECs to base their tandem-switched transport rates on the actual number of DS3s and DS1s in the tandem-to-end office link. First, the LECs generally have not measured the number of DS3s and DS1s in their interoffice network, and to do so now would be burdensome, raising difficult measurement questions. Second, it appears that most LECs do not account for tandem-to-end office links separately from interoffice facilities generally. No party has identified any alternative surrogate that better serves our objectives of accuracy, verifiability, and administrative ease than the fiber/copper mix, which is objectively verifiable through Tier 1 LECs' reports to the ARMIS database. Accordingly, we clarify that LECs' initial tandem-switched transport rates will be presumed reasonable if they are derived using the fiber/copper mix of interoffice switched transport facilities reported through ARMIS as a surrogate for the actual mix of DS3s and DS1s.

17. In general, we believe that the detriments of using the fiber/copper surrogate are outweighed by other advantages, including administrative simplicity. Rochester, however, is technically correct that many LECs' current DS1 rates reflect a mix of copper and fiber interoffice facilities. We will not preclude LECs from using actual DS3 and DS1 circuit counts as long as when they file their initial transport tariffs, they provide adequate support to enable us to verify their DS3 and DS1 circuit counts, including an explanation of the methodology used to develop these counts.

18. With respect to small LECs that file direct-trunked transport rates, we reaffirm that initial tandem-switched transport rates will be presumed reasonable if based on DS1 and DS3 direct-trunked transport rates. Non-Tier 1 LECs, however, do not report, and may not track, the relative use of fiber and copper in their interoffice networks. For such LECs, and for LECs that do not provide DS3 service, initial tandem-switched transport rates will generally be presumed reasonable if they are based on those LECs' DS1 direct-trunked transport rates. We conclude that this starting point for the interim transport rate structure is reasonable, given that most LECs that provide DS1 (but not DS3) service are likely to use DS1 facilities to provide interoffice services. Incorporating voice grade rates into tandem-switched transport rates does not appear to create significant benefits, and would reduce the ability to verify the basis for initial rates. For LECs with neither DS1 and DS3 direct-trunked transport rates that file direct-trunked transport rates, tandem-switched transport rates will be presumed reasonable if based on voice grade direct-trunked transport rates.

*2. 9000 minutes per circuit per month loading factor.* 19. The record contains no information to support a specified loading factor lower than 9,000 minutes of use per circuit per month for small LECs. We decline to grant a presumption of reasonableness to LECs' actual loading factors because of the difficulty of verification and the potential for manipulation. We conclude that the benefits to be obtained from use of more individualized loading factors are outweighed by the benefits of the administrative convenience of a uniform loading factor and of avoiding verification difficulties. This conclusion applies with equal force to LECs that use only voice grade circuits. The 9000 minutes per circuit per month standard serves as a convenient starting point in the context of a short-term, interim rate structure.

*3. Tandem revenue requirement.* 20. The Commission's part 36 separations and Part 69 access charge rules

incorporate fully distributed costing approaches. Part 69 and other Commission rules do not explicitly define a methodology for a tandem revenue requirement, but such a revenue requirement can be computed in a straightforward manner by adding the same proportion of overhead to tandem investment and associated expenses as the amount of overhead loaded on the transport category as a whole. The tandem charge initially will recover only 20% of the tandem revenue requirement, in order to ease the impact of the rate structure change on IXCs that use tandem-switched transport. We clarify that, for purposes of calculating the tandem charge in the interim transport plan, the Transport Order contemplated the use of the Part 69 tandem revenue requirement, which embodies fully distributed costs.

D. Initial Rates for the Interconnection Charge

21. In the Order, we permitted the LECs to set the interconnection charge based on projected demand after IXC reconfigurations have occurred, but required them to take into account other demand for the same facilities in order to prevent double recovery. Because of the risk that errors in projection could lead to an interconnection charge that is too high or too low, we also required the LECs to file on August 1, 1994 a report comparing the projected demand used to calculate the interconnection charge with actual demand during the first six months after the implementation of the interim transport rules. We delegated to the Chief, Common Carrier Bureau, authority to examine these reports and to require any LEC to adjust its interconnection charge if there is a significant disparity between projected and actual demand.

22. In the Order, we directed the LECs to calculate the initial interconnection charge using the following method. First, the LECs compute the revenue they will receive from facilities-based transport charges by projecting the total amount of usage of facility-based transport elements under the new rate structure (including entrance facilities, direct-trunked transport, tandem-switched transport, and dedicated signalling transport), and multiplying by the rates for those elements. Second, the LECs subtract this revenue amount from (in the case of price cap LECs) their total revenue from transport under pre-existing rate and demand levels, or (in the case of rate-of-return LECs) their total transport revenue requirement established under the part 69 rules, to obtain the interconnection charge revenue requirement. Third, the LECs divide the interconnection charge revenue requirement by the expected total number of minutes of use of the LEC interstate switched access network to derive a per-minute interconnection charge. Under this formula, erroneous LEC projections of IXC reconfigurations in response to the interim structure could cause the interconnection charge to be too high (or too low).

23. The transport rate restructure was intended in part to encourage more efficient IXC network reconfigurations. We did not intend that the LECs would lose substantial amounts of revenue as a result of these reconfigurations. Indeed, the initial interconnection charge is to be calculated on a residual basis. The question is how best to implement that decision. Because of LEC incentives to project reconfigurations in a manner that would maximize the interconnection charge, and because of the difficulty of evaluating those projections, we conclude that the LECs should be required to use historical facility demand in computing the initial interconnection charge. In order to ensure that the transport rate restructure results in an interconnection charge that is neither inadequate nor excessive, however, we are permitting LECs to seek mid-course adjustments to the interconnection charge, based in part on reports on actual demand results. In addition, in order to achieve revenue neutrality with a minimum of rate churn, we require the LECs to use projections of the number of switched minutes by which the interconnection charge revenue requirement will be divided in computing the initial interconnection charge.

24. Two major variables will affect the magnitude of the interconnection charge: The amount of transport facilities (direct trunks, entrance facilities, and tandem-switched minutes) to which the facility-based transport rates will apply, and the total number of switched minutes by which the interconnection charge revenue requirement will be divided. The amount of facilities is relatively difficult to project because of the possibility that IXCs will reconfigure to use fewer trunks once the interim transport rate structure is implemented. In the Transport Order, we decided to allow the LECs to use projections, but to require them to report on the reuse of facilities that IXCs have stopped using due to network reconfigurations resulting from the transport rate restructure, in order to avoid double recovery. If LECs can reuse facilities that are no longer needed for interstate switched transport once IXCs reconfigure their network usage, the LECs should not be allowed to recover the costs of these facilities through the interconnection charge, because they can recover such costs from the new uses.

25. After considering the arguments in the record and analyzing further the process that would be necessary to assure that use of projected facility demand did not result in a windfall for the LECs, we conclude that it is in the public interest to require the LECs to use historical facility demand to set the initial interconnection charge, combined with an opportunity to adjust the charge later if actual facilities demand is significantly less than historical demand. In such cases, by assuming that LECs would immediately reuse all facilities freed due to IXC network reconfiguration, this approach will place the burden on LECs to produce the information necessary to demonstrate the extent to which they have not been able to reuse such facilities. In addition, because the LECs would not be guaranteed recovery of such costs through the interconnection charge, this approach provides the LECs with incentives to reuse facilities efficiently. The opportunity to true up later, if carriers can demonstrate that their actual experience is significantly less than the historical levels on which the rate is based, should protect carriers from unreasonable under-recovery.

26. In addition, we require that the tandem charge be calculated based on historical demand. In the Transport Order, we directed LECs to calculate the tandem charge using projected demand after IXC reconfigurations have taken place, just as they were to use projected demand for the interconnection charge. As we now conclude that the LECs should use historical demand to set the interconnection charge, we also conclude that the tandem charge should be calculated based on the historical number of minutes of access tandem use. We delegate authority to the Chief, Common Carrier Bureau, to require an adjustment to the tandem charge if the actual number of minutes of access tandem use is significantly different from the historical number of minutes, and if this results in a substantial difference in the level of the charge.

27. For these reasons, we modify the Order's provisions, and require the LECs to set the interconnection charge in their initial transport tariffs based on historical demand for transport facilities, expressed in units (i.e., numbers of entrance facilities, direct trunks, and tandem-switched minutes) reflecting the new transport rate structure. We retain our conclusion that

the transport rate restructure should be revenue neutral, however. Thus, we will permit a mid-course adjustment to the interconnection charge to ensure revenue neutrality if a LEC can demonstrate that: (1) Actual demand for interstate transport facilities is significantly less than from the historical demand used to set the interconnection charge due to IXC network reconfigurations resulting from the transport rate restructure; and (2) the LEC has not been able to put its facilities to alternative uses. Thus, the LEC must show that the loss of demand is not due to competition from other access providers. The interconnection charge should not compensate LECs for the loss of demand for facility-based transport services due to competition, particularly if we adopt our proposal to require switched expanded interconnection. In the newly competitive transport market that we proposed to facilitate in the Expanded Interconnection Second Notice, the LECs would not be shielded from the risks of revenue loss due to the growth of competition.

28. Unlike the difficult process of forecasting IXC facility reconfigurations due to the transport rate restructure, we conclude that projecting the number of interstate switched minutes based on historical trends in minute growth is a relatively straightforward process with which the LECs and Commission staff have ample experience. The historical trend of increased annual growth in minutes is unlikely to be affected significantly by the transport rate restructure. Moreover, given the historical growth trends, requiring the LECs to use historical minutes would almost certainly understate the minutes of use LECs can reasonably expect and thereby overstate the interconnection charge, followed by rate churn if the charge were lowered to achieve revenue neutrality. We therefore retain our requirement that the LECs use projections of the number of minutes in computing the initial interconnection charge. We also retain our requirement that the LECs file reports on actual demand results. We are imposing the reporting requirement on all LECs, because of the possible need for adjustments to the interconnection charge due to erroneous projections of the number of minutes. If a LEC's projection of the number of minutes is substantially below actual minutes, we would require the LEC to reduce the interconnection charge. We would also permit appropriate increases in the interconnection charge if a LEC's projection of the number of minutes is substantially greater than actual minutes.

29. We believe that the reports can be provided—and the necessary showings to justify any mid-course adjustments to ensure revenue neutrality can be made—as soon as valid information is available regarding the extent of IXC reconfigurations. Thus, instead of requiring the LECs to submit such reports in August 1994 (as provided in the Order), we delegate authority to the Chief, Common Carrier Bureau, to specify the timing, as well as the format, of the reports. LECs seeking an increase in the interconnection charge will bear the burden of showing that their actual facility use is significantly lower than the historical levels on which the charge is based, and that they have not been able to put their facilities to alternative uses. LECs may submit justifications based on surrogates or studies, provided that they use reasonable methodologies.

30. Such LECs should also provide information to verify that the interconnection charge does not compensate them for losses of demand due to competition. We would consider the demand for cross-connect elements under switched expanded interconnection to be a reasonable starting point for determining loss of demand for LEC switched transport facilities due to competition, because competitive providers of the transport component of switched access cannot bypass the LEC network entirely, but must use LEC switched expanded interconnection.

## *III. Implementation Procedures*

### A. Ratcheting Procedures

31. We conclude that when a customer uses a given facility for both special access and switched transport traffic, it should pay a mix of the rates from the special access and transport tariffs for facilities at that level of capacity. For example, when a customer uses a given DS3 for both special access and switched transport traffic, it should pay a mix of the DS3 rates from the special access and transport tariffs. In addition to the facility-based rates, the customer would pay the interconnection charge applicable to the switched transport minutes traversing such a facility. We decline at this time to require LECs to implement a specific pricing plan for ratcheting. In the tariff review process, we will assess LEC proposals for pricing dedicated facilities carrying both switched and special access traffic of a single customer.

### B. Implementation by Small LECs

32. Requiring all non-Tier 1 LECs to implement the interim transport rate structure appears to generate more costs than benefits. Small LECs are likely to face little demand for direct-trunked transport. On the other hand, IXCs that wish to buy direct-trunked transport from small LECs should be able to do so. Accordingly, we reconsider the requirement in the Order that all LECs implement the interim rate structure, and instead require that non-Tier 1 LECs file tariffs for direct-trunked transport upon receipt of a *bona fide* request for direct-trunked transport. We retain our requirement that all LECs providing entrance facilities must do so on a flat-rate basis. We also clarify that the Order requires those LECs that provide entrance facilities to do so on a flat rate basis, but does not apply to carriers that do not provide entrance facilities, such as centralized equal access providers.

### C. Jurisdictional Allocation

33. We clarify that percentages of interstate use (PIUs) should continue to be used to allocate transport facilities between the interstate and state jurisdictions.

### D. Resale of Transport

34. We affirm that LECs may not impose resale restrictions on any access services subject to our jurisdiction, including interstate switched transport.

### E. Rule Changes

35. In addition to the rule changes discussed elsewhere in this Order, we are correcting § 69.111(e) to clarify that the tandem charge should recover 20% of the current tandem revenue requirement, and we are revising § 69.125(b)(1) to clarify that LECs with tariffs in place for dedicated signalling transport need not modify the rates in those tariffs. Moreover, we are correcting § 69.1(c) (and making conforming changes in certain other rules) to clarify that LECs subject to the price cap rules may adjust their rates pursuant to the price cap guidelines adopted in the Order.

### F. Impact Estimates

36. We require each of the BOCs and GTE to submit revised impact estimates, as well as estimates of the proportion of transport revenue to be recovered through the interconnection charge. These revised estimates should be based on the same modeling methodologies and assumptions that were used to derive the impact estimates considered in the 1992 Order, except that they should reflect customers' most up-to-date network configurations, the decisions in this Order, and the recent Commission decisions on general support facilities costs and the price cap

index for 1993. Such modeling methodologies and assumptions forming the basis of each carrier's impact analysis should be clearly stated. This information should be provided in the same format as the data provided in 1992, within 14 days after the LECs file their initial transport tariffs. Since this requirement applies to fewer than 10 entities, it is not subject to the requirements of the Paperwork Reduction Act.

G. Information for Planning Purposes

37. Some IXCs have requested information so that they can better assess the impact of the transport restructure and plan for any reconfiguration. We believe that provision of information specific to individual IXCs by the largest LECs would be useful in enabling IXCs to make plans regarding their network configurations in light of the new transport rate structure. Accordingly, we require each of the BOCs and GTE to provide to each switched access customer information on the bill the customer would have paid for a sample recent month (e.g., July 1993) had the interim transport rate structure and pricing system been in effect, as well as the customer's actual bill for that month for comparison purposes. If any of these LECs is unable to provide such comparative billing information, it must present convincing evidence to the Common Carrier Bureau demonstrating why it is unable to do so, and must provide to each switched access customer information that will enable the customer to predict how its bills are likely to change. In addition, LECs providing comparative billing information must either file with the Commission aggregate data summarizing the information provided to individual IXCs, broken down by large, medium, and small IXCs, or present convincing evidence to the Common Carrier Bureau demonstrating why it is unable to do so. All of the information discussed in this paragraph should be provided within 21 days after the LECs file their initial transport tariffs. Since this requirement applies to fewer than 10 entities, it is not subject to the requirements of the Paperwork Reduction Act.

*IV. Ordering Clauses*

38. Accordingly, *it is ordered*, That pursuant to authority contained in sections 1, 4(i) and (j), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–205, 218, 220, and 403, part 69 is amended as set forth below.

39. *It is further ordered*, That the petitions for reconsideration and clarification concerning the rate structure and pricing of local transport are granted to the extent discussed herein.

40. *It is further ordered*, That the decisions and rules adopted herein shall be effective on September 1, 1993.[1]

41. *It is further ordered*, That the date on which local exchange carriers are required to file tariff revisions incorporating the new transport rate structure and pricing rules is revised from August 2, 1993 to September 1, 1993. The effective date of these tariff revisions should be December 1, 1993.

**List of Subjects in 47 CFR Part 69**

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Amendatory Text**

Part 69 of title 47, Code of Federal Regulations, is amended as follows:

**PART 69—ACCESS CHARGES**

1. The authority citation for part 69 continues to read as follows:

**Authority:** Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.1 is amended by revising paragraph (c) to read as follows:

**§ 69.1 Application of access charges.**

* * * * *

(c) The following provisions of this part shall apply to telephone companies subject to price cap regulation only to the extent that application of such provisions is necessary to develop the nationwide average carrier common line charge, for purposes of reporting pursuant to §§ 43.21 and 43.22 of this chapter, and for computing initial transport rates: §§ 69.3(f), 69.105(b)(4), 69.105(b)(5), 69.106(b), 69.107(b), 69.107(c), 69.109(b), 69.110(d), 69.111(c), 69.111(g), 69.112(d), 69.114(b), 69.114(d), 69.125(b)(2), 69.205(e), 69.301 through 69.310, and 69.401 through 69.412. The computation of rates pursuant to these provisions by telephone companies subject to price cap regulation shall be governed by the price cap rules set forth in part 61 of this chapter and other applicable Commission Rules and orders.

3. Section 69.2 is amended by revising paragraphs (oo) and (ss), and adding paragraphs (tt) and (uu), to read as follows:

**§ 69.2 Definitions.**

* * * * *

(oo) *Direct-trunked transport* means transport on circuits dedicated to the use of a single interexchange carrier or other person, without switching at the tandem,

(1) Between the serving wire center and the end office, or

(2) Between two customer-designated telephone company offices.

* * * * *

(ss) *Tandem-switched transport* means transport of traffic that is switched at a tandem switch—

(1) Between the serving wire center and the end office, or

(2) Between the telephone company office containing the tandem switching equipment, as described in § 36.124 of this chapter, and the end office.

Tandem-switched transport between a serving wire center and an end office consists of circuits dedicated to the use of a single interexchange carrier or other person from the serving wire center to the tandem (although this dedicated link will not exist if the serving wire center and the tandem are located in the same place) and circuits used in common by multiple interexchange carriers or other persons from the tandem to the end office.

(tt) *Initial transport rates* means rates for entrance facilities, direct-trunked transport, tandem-switched transport, dedicated signalling transport, and the interconnection charge in tariffs filed on September 1, 1993 pursuant to the Report and Order in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7006 (1992).

(uu) *Price cap regulation* means the method of regulation of dominant carriers provided in §§ 61.41 through 61.49 of this chapter.

4. Section 69.108 is revised to read as follows:

**§ 69.108 Transport rate benchmark.**

(a) For transport charges computed in accordance with this subpart, the DS3-to-DS1 benchmark ratio shall be calculated as follows: the telephone company shall calculate the ratio of:

(1) The total charge for a one mile channel termination, ten miles of interoffice transmission, and one DS3

[1] This effective date is necessary because the LECs are required to file initial transport tariffs, to which the provisions in this Order apply, by that date. We therefore conclude that good cause exists to make the requirements in this Order effective less than 30 days from publication of this Order in the Federal Register.

multiplexer using the telephone company's DS3 special access rates, to

(2) The total charge for a one mile channel termination plus ten miles of interoffice transmission using the telephone company's DS1 special access rates.

(b) Initial transport rates will generally be presumed reasonable if they are based on special access rates with a DS3-to-DS1 benchmark ratio of 9.6 to 1 or higher.

(c) If a telephone company's initial transport rates are based on special access rates with a DS3-to-DS1 benchmark ratio of less than 9.6 to 1, those initial transport rates will generally be suspended and investigated absent a substantial cause showing by the telephone company. Alternatively, the telephone company may adjust its initial transport rates so that the DS3-to-DS1 ratio calculated as described in paragraph (a) of this section is 9.6 or higher. In that case, initial transport rates that depart from existing special access rates effective on September 1, 1992 so as to be consistent with the benchmark will be presumed reasonable only so long as the ratio of projected revenue recovered through the interconnection charge to the projected revenue recovered through facilities-based charges is the same as it would be if the telephone company's existing special access rates effective on September 1, 1992 were used.

5. Section 69.110 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

**§ 69.110 Entrance facilities.**

* * * * *

(d) Telephone companies shall apply only their shortest term special access rates in setting entrance facilities charges.

(e) Telephone companies shall not offer entrance facilities based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

6. Section 69.111 is amended by redesignating paragraphs (c), (d), (e), and (f), as paragraphs (e), (f), (g), and (h), respectively; revising paragraph (b) and newly redesignated paragraphs (e), (g), and (h); and adding paragraphs (c) and (d), to read as follows:

**§ 69.111 Tandem-switched transport and tandem charge.**

* * * * *

(b) A tandem-switched transmission charge expressed in dollars and cents per access minute shall be assessed upon all interexchange carriers and other persons that use telephone company tandem-switched transport facilities through October 31, 1995.

(c) Tandem-switched transport transmission charges generally shall be presumed reasonable if the telephone company bases the charges on a weighted per-minute equivalent of direct-trunked transport DS1 and DS3 rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using a loading factor of 9000 minutes per month per voice-grade circuit. Tandem-switched transport transmission charges that are not presumed reasonable generally shall be suspended and investigated absent a substantial cause showing by the telephone company.

(d) Tandem-switched transport transmission charges may be distance-sensitive. Mileage shall be measured as airline mileage between the serving wire center and the end office, unless the customer has ordered tandem-switched transport between the tandem office and the end office, in which case mileage shall be measured as airline mileage between the tandem office and the end office.

(e) If the telephone company employs distance-sensitive rates:

(1) A distance-sensitive component shall be assessed for use of the transmission facilities, including intermediate transmission circuit equipment between the end points of the interoffice circuit; and

(2) A nondistance-sensitive component shall be assessed for use of the circuit equipment at the ends of the interoffice transmission links.

* * * * *

(g) Through October 31, 1985, the tandem charge shall be set to recover twenty percent of the annual part 69 interstate tandem revenue requirement.

(h) All telephone companies shall provide tandem-switched transport service.

7. Section 69.112 is amended by redesignating paragraph (e) as paragraph (f), and by revising paragraphs (b), (c), (d), and newly redesignated paragraph (f), and adding paragraph (e) to read as follows:

**§ 69.112 Direct-trunked transport.**

* * * * *

(b)(1) For telephone companies subject to price cap regulation, initial direct-trunked transport charges based on the interoffice charges for equivalent voice grade, DS1, and DS3 special access services as of September 1, 1992, adjusted for changes in the price cap index calculated for the July 1, 1993 annual filing for telephone companies subject to price cap regulation, generally shall be presumed reasonable if the benchmark defined in § 69.108 is satisfied. Direct-trunked transport charges may be distance-sensitive. Mileage shall be measured as airline mileage between customer-designated points.

(2) For telephone companies not subject to price cap regulation, initial direct-trunked transport charges based on the interoffice charges for equivalent voice grade, DS1, and DS3 special access services generally shall be presumed reasonable if the benchmark defined in § 69.108 is satisfied. Direct-trunked transport charges may be distance-sensitive. Mileage shall be measured as airline mileage between customer-designated points.

(c) If the telephone company employs distance-sensitive rates:

(1) A distance-sensitive component shall be assessed for use of the transmission facilities, including intermediate transmission circuit equipment, between the end points of the circuit; and

(2) A nondistance-sensitive component shall be assessed for use of the circuit equipment at the ends of the transmission links.

(d) Telephone companies shall apply only their shortest term special access rates in setting direct-trunked transport rates.

(e) Telephone companies shall not offer direct-trunked transport rates based on term discounts or volume discounts for multiple DS3s or any other service with higher volume than DS3 through October 31, 1995.

(f) Centralized equal access providers as described in Transport Rate Structure and Pricing, CC Docket No. 91–213, FCC 92–442, 7 FCC Rcd 7002 (1992), are not required to provide direct-trunked transport service. Telephone companies that do not have measurement and billing capabilities at their end offices are not required to provide direct-trunked transport services at those end offices without measurement and billing capabilities. Telephone companies that are not classified as Class A companies under § 32.11 of this chapter are required to provide direct-trunked transport service upon request. All other telephone companies shall provide a direct-trunked transport service.

8. Section 69.124 is amended by redesignating paragraphs (a)(1) and (a)(2) as paragraphs (b)(1) and (b)(2), respectively; removing paragraph (c); in paragraph (a), removing the words "except as provided in paragraph (c) of this section"; and revising newly

redesignated paragraph (b)(1) to read as follows:

**§ 69.124 Interconnection charge.**

* * * * *

(b)(1) For telephone companies not subject to price cap regulation, the interconnection charge shall be computed by subtracting entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport revenues from the 47 CFR part 69 transport revenue requirement, and dividing by the projected total interstate local switching minutes.

* * * * *

9. Section 69.125 is amended by revising paragraph (b) to read as follows:

**§ 69.125 Dedicated signalling transport.**

* * * * *

(b)(1) A flat-rated signalling link charge expressed in dollars and cents per unit of capacity shall be assessed upon all interexchange carriers and other persons that use facilities between an interexchange carrier or other person's common channel signalling network and a telephone company signalling transfer point or equivalent facilities offered by a telephone company. Signalling link charges may be distance-sensitive. Mileage shall be measured as airline mileage between the signalling point of interconnection of the interexchange carrier's or other person's common channel signalling network and the telephone company's signalling transfer point.

(2) Signalling link rates will generally be presumed reasonable if they are based on the interoffice charges for equivalent special access services. Telephone companies that have, before February 18, 1993, tariffed a signalling link service for signalling transport between the interexchange carrier's or other person's common channel signalling network and the telephone company's STP are permitted to use the rates that are in place.

* * * * *

10. Section 69.110(b)(1) is amended by removing, in two places in the first sentence, the words "carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter" and adding, in their place, the words "telephone companies subject to price cap regulation".

11. Section 69.124(b)(2) is amended by removing the words "carriers subject to price cap regulation as that term is defined in § 61.3(v) of this chapter" and adding, in their place, the words "telephone companies subject to price cap regulation".

12. Section 69.110(b)(2) is amended by removing the words "rate of return carriers" and adding, in their place, the words "telephone companies not subject to price cap regulation".

[FR Doc. 93-18435 Filed 7-30-93; 10:24 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 625

**[Docket No. 921230-3020; I.D. 072793A]**

### Summer Flounder Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notification of commercial quota harvest.

**SUMMARY:** NMFS issues this notification to announce that the summer flounder commercial quota available to the State of Delaware has been harvested. Vessels issued a Federal fisheries permit for the summer flounder fishery may no longer land summer flounder in the State of Delaware for the remainder of calendar year 1993. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware that its quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in the State.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Hannah Goodale, 508-281-9101.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 625 (December 4, 1992, 57 FR 57358). The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1993 calendar year is set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). The quota allocated to vessels landing summer flounder in Delaware is 2,197 pounds (997 kg) as described in the emergency interim rule that revised state shares of commercial quota specified in the summer flounder fishery published on May 7, 1993 (58 FR 27214). This emergency interim rule was also extended, effective from August 6 through November 3, 1993 (58 FR 39680; July 26, 1993).

Section 625.21(c) requires the Director, Northeast Region, NMFS (Regional Director) to monitor state commercial quotas based on dealer reports and other available information, and to determine the date when a state commercial quota will be harvested. The Regional Director is further required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state.

The Regional Director has determined, based on dealer reports and other available information, that the Delaware commercial quota will be harvested by July 30, 1993. The regulations at § 625.4(a)(3) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Director has determined no longer has commercial quota available. Therefore, further landings in that state by Federally permitted vessels are prohibited for the remainder of the 1993 calendar year, effective 0001 hours July 30, 1993. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware, for the remainder of the calendar year.

### Classification

This action is required by 50 CFR Part 625 and complies with E.O. 12291.

**Authority:** 16 U.S.C. 1801 *et seq.*

### List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: July 29, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93-18482 Filed 7-29-93; 3:20 pm]

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### 50 CFR Part 672

**[Docket No. 921107-3068; I.D. 072993A]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner

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as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the northern rockfish total allowable catch (TAC) in this area has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), July 29, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Western Regulatory Area was established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 1000 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for northern rockfish in the Western Regulatory Area has been reached. Therefore, NMFS is requiring that further catches of northern rockfish in the Western Regulatory Area be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t., July 29, 1993, through 12 midnight, A.l.t., December 31, 1993.

## Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

## List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** July 29, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–18481 Filed 7–29–93; 3:20 pm]

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# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

**5 CFR Chapter XXI**

**RIN 3209–AA04, 3209–AA15**

## Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury

**AGENCY:** Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Treasury (Department), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for the officers and employees of the Department that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Department. The proposed rule establishes regulations relating to: the designation of agency components for purposes of the gift rules; prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; prohibitions on recommendations concerning certain securities and services of certain types of professionals; limitations on purchases of assets controlled by the Department or related to Department operations; and restrictions on outside employment and business activities.

**DATES:** Comments are invited and must be received on or before September 2, 1993.

**ADDRESSES:** Send comments to the Office of the Assistant General Counsel (Administrative and General Law), Department of the Treasury, room 1410, Washington, DC 20220, Attention: Mr. Henry H. Booth.

**FOR FURTHER INFORMATION CONTACT:** Stephen J. McHale, Henry H. Booth, or R. Peter Rittling, Office of the Assistant General Counsel (Administrative and General Law), Department of the Treasury, telephone (202) 622–0450, FAX (202) 622–1176.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 57 FR 52583. The Executive Branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department and OGE have determined that the following supplemental regulations contained in the proposed rule are necessary to implement the Department's ethics program successfully, in light of the Department's unique programs and operations.

### II. Analysis of the Regulations

The following regulations will appear in new 5 CFR chapter XXI.

*Section 3101.101 General*

(a) *Purpose.* Proposed § 3101.101(a) explains that the regulations contained in the proposed rule would apply to all Department of the Treasury employees and are supplemental to the Executive Branch-wide Standards. Further, all Department employees must comply with the Executive Branch-wide Standards, the supplemental regulations in the proposed rule, once final, and bureau instructions issued pursuant to proposed § 3101.101(b). In addition, the Treasury rules of conduct, published at 31 CFR part 0, will be revised and republished. The revision will delete rules superseded by the Executive Branch-wide Standards and modify some of the remaining rules. Department employees will be required to follow the revised rules republished under part 0, and any related rules of conduct bureaus may be authorized to issue.

(b) *Bureau Instructions.* Proposed § 3101.101(b) would authorize the Department's bureaus, with the concurrence of the Designated Agency Ethics Official (DAEO), to issue instructions and manual issuance providing explanatory guidance and implementing procedures to assist employees in understanding and complying with the Executive Branch-wide Standards and these supplemental regulations.

(c) *Agency Designee.* Proposed § 3101.101(c) would delegate to bureaus the authority, by instruction or manual issuance, to designate agency designees to make determinations, give approvals, or take actions required or permitted by the supplemental regulations or Executive Branch-wide Standards.

*Section 3101.102 Designation of Separate Agency Components*

Section 2635.202(a) of the Executive Branch-wide Standards prohibits an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined, in part, as a person who has a specific relationship with an employee's agency, as prescribed in 5 CFR 2635.203(d). For the purpose of identifying an employee's agency, § 2635.203(a) of the Executive Branch-wide Standards authorizes an executive department, by supplemental regulation, to designate as a separate agency a component of the department that exercises a distinct and separate function. Designations made pursuant to § 2635.203(a) are used also to identify an employee's agency for purposes of applying the prohibition in 5 CFR 2635.807 concerning the receipt of compensation for teaching, speaking and writing that relates to an employee's official duties.

Section 3101.102 of the proposed rule would designate 13 of the Department's bureaus and offices as separate agencies. The Department has determined that these bureaus and offices exercise distinct and separate functions. The Legal Division would not be designated as a separate agency. Instead, Legal Division employees would be treated as part of the bureaus or offices in which they serve. Department employees not employed in one of the 13 designated bureaus or offices would be deemed employees of an agency that consists of all parts of the Department other than the 13 designated components and that is separate and distinct from each of the 13 designated components. Thus, for example, a bank regulated by the Office

of the Comptroller of the Currency would be a prohibited source for all employees of that Office, but would not be a prohibited source as to all employees of the Departmental Offices unless that bank was seeking official action from or otherwise had a matter pending before the Departmental offices or an office not designated as a separate component.

This section of the proposed rule would apply Department-wide and is only for the purpose of defining an employee's agency as that term is used in subpart B of 5 CFR part 2635 and 5 CFR 2635.807.

*Section 3101.103 Prohibition on Purchase of Certain Assets*

(a) *General Prohibition.* Proposed § 3101.103(a) would prohibit all Department employees from purchasing property that is either owned by the Government and under the control of an employee's bureau, or sold under the direction of or incident to the functions of an employee's bureau. This prohibition is not intended to apply to assets under the control of or sold incident to the functions of an agency other than Treasury with which a Treasury official is affiliated in an ex officio capacity (e.g., the Secretary of the Treasury is a member of the Board of the Pension Benefit Guaranty Corporation). The purchase of such assets would be subject to the regulations of the agency controlling or disposing of the assets and not subject to the Department regulations.

(b) *Exceptions.* Section 3101.103(b) excepts from the prohibition in § 3101.103(a) Government securities, items sold to the public at a fixed price, and foreign gifts purchased pursuant to 41 CFR parts 101–49.

(c) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel, would be authorized under § 3101.103(c) to grant a written waiver of the prohibition in proposed § 3101.103(a) based upon a determination that the waiver is lawful, and meets the waiver standard established in that subsection. This waiver is similar to other waivers proposed throughout these supplemental regulations. The waiver provisions are intended, in appropriate cases, to ease the burden that the supplemental regulations may impose on the private lives of employees of the Department, while ensuring that employees do not engage in actions that may interfere with the objective and impartial execution of their official duties or raise questions about possible misuse of their official positions.

The general prohibition and waiver provisions included in proposed § 3101.103 would apply to all Department employees. As set forth in a note to that section, the employees of the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) would be subject to additional limitations on their purchase of certain assets pursuant to the bureau-specific rules contained later in this part.

Section 3101.103 is proposed as a supplement to § 2635.702 of the Executive Branch-wide Standards, prohibiting generally the use of public office for private gain. The Department exercises broad powers to seize, hold and forfeit private property. It is therefore important to preserve the public's confidence that these powers will not be misused to benefit the private interests of a Department employee. Prohibiting employees from engaging in certain purchases that may appear improper is essential to achieve this objective.

*Section 3101.104 Outside Employment*

(a) *General Requirement for Prior Approval.* Proposed § 3101.104(a) would require all employees of the Department to obtain prior written approval before engaging in any outside employment or business activity. This requirement would apply to any outside employment or business activity regardless of whether it is compensated. The regulation would establish a Department-wide standard allowing approval of outside employment or business activity upon a determination that the outside employment or business activity is not prohibited by law, the Executive Branch-wide Standards, or these supplemental regulations. As would be evident from this standard, § 3101.104 would not itself provide a basis to deny any Department employee's request for approval of outside employment. The basis must be found in applicable statutes, the Executive Branch-wide Standards, or another provision of these supplemental regulations. Bureau-specific regulations that would restrict the outside employment and activities of employees of the Bureau of Alcohol, Tobacco and Firearms, the Internal Revenue Service, the Legal Division, the OCC, the United States Customs Service and the United States Secret Service appear later in this part as proposed.

(b) *Bureau Responsibilities.* Under proposed § 3101.104(b), the bureaus would be required to issue instructions or manual issuances; (1) Establishing procedures for the submission of requests for approval of outside employment or business activity, and (2) designating bureau officials responsible for processing the requests. The bureaus could include examples of permissible and impermissible employment and activities in their instructions or manual issuances. Further, the bureaus would be required to retain all requests for approval to engage in outside employment or business activity in the requesting employee's Official Personnel Folder (temporary side), whether a request is granted or not. Categories of outside employment or activities could be exempted by the bureaus from the prior written approval requirement provided the employment or activities exempted are not prohibited by law, the Executive Branch-wide Standards, or these supplemental regulations, and would normally be approved if subject to the case-by-case requirement for prior approval.

For the purposes of this section, the Departmental Offices and the Office of the Inspector General are considered bureaus.

The regulation in § 3101.104, requiring prior written approval, is proposed pursuant to § 2635.803 of the Executive Branch-wide Standards. Given the breadth of the Department's responsibilities, requiring prior written approval of outside employment and business activities provides a necessary control to ensure that employees do not engage in outside employment or activities in violation of applicable laws and regulations.

*Section 3101.105 Additional Rules for Bureau of Alcohol, Tobacco and Firearms Employees*

The regulations contained in proposed § 3101.105 apply only to employees of the Bureau of Alcohol, Tobacco and Firearms (ATF), and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Financial Interests.* Proposed § 3101.105(a) would regulate the financial interests of ATF employees. More specifically, ATF employees and their spouses or minor children would generally be prohibited from having any financial interest in the alcohol, tobacco, firearms or explosives industries.

(b) *Waiver.* Under proposed § 3101.105(b), an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, would be authorized to grant a written waiver of the prohibition in proposed § 3101.105(a) based upon a determination that the financial interest

is not prohibited by 26 U.S.C. 7214(b), proscribing investment in the alcohol or tobacco industries, and meets the waiver standard established in that subsection of the regulations. Further action may be required under a waiver, including a written disqualification.

Section 3101.105 is proposed as a supplement to § 2635.403 of the Executive Branch-wide Standards, which deals with prohibited financial interests. Accordingly, the term "financial interest" as used in this section is intended to have the same meaning as that term is given in § 2635.403(c) of the Executive Branch-wide Standards. Under that definition, a financial interest includes, for example, an employee's current or contingent ownership or equity or security interest in real or personal property or a business, or a compensated employment relationship. And, consistent with that definition and the authority in 5 CFR 2635.403(a), proposed § 3101.105(a) would make it clear that the prohibition extends to the financial interests of spouses and minor children of ATF employees.

The prohibition proposed in § 3101.105 is based in part on the statutory prohibition at 26 U.S.C. 7214(b), proscribing employee investment in the alcohol or tobacco industries, and is intended in part to ensure that ATF employees do not violate that statute. However, under the authority in 5 CFR 2635.403(a), the section would extend a similar prohibition (unless waived) to interests in two additional industries regulated by the ATF: The firearms and explosives industries. Prohibiting ATF employees from having financial interests in entities that are regulated by or closely connected to the work of their bureau is important for three reasons: (1) To maintain the ATF's appearance of impartiality and objectivity in the execution of its regulatory functions; (2) to eliminate a regulated entity's concern that sensitive information provided to the bureau might be misused for private gain; and (3) to avoid the large-scale recusal of employees from official matters resulting in an inability of the bureau to fulfill its mission.

*Section 3101.106 Additional Rules for Internal Revenue Service Employees*

The regulations contained in § 3101.106 of the proposed rule apply only to employees of the Internal Revenue Service (IRS), and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Recommendations.* Proposed § 3101.106(a) would prohibit all IRS employees from recommending or suggesting the services of a specific attorney or accountant or firm of attorneys or accountants to any individual in connection with a matter involving or that may involve the IRS. This prohibition supplements § 2635.702(c) of the Executive Branch-wide Standards, prohibiting a Government employee from using public office to endorse any product, service or enterprise. It is, in part, the purpose of this proposed supplemental prohibition to eliminate any misunderstanding or harm that could result from such a recommendation. An IRS employee's recommendation of an attorney or accountant may mislead a taxpayer into believing that the IRS endorses that individual or accords the opinion of that individual special weight. This rule, however, would not prohibit IRS offices from providing to taxpayers in need of professional assistance the names of independent referral agencies, such as bar associations.

(b) *Outside Employment.* Proposed § 3101.106(b) would establish regulations concerning the outside employment of IRS employees. The proposed regulations would supplement § 2635.802 of the Executive Branch-Wide Standards by prohibiting certain tax-related outside activities that, if engaged in by IRS employees, would cause reasonable persons to question the objectivity and impartiality with which IRS programs are administered, or would otherwise conflict with IRS employees' official duties. More specifically, the rule would prohibit IRS employees from engaging in any outside employment that would involve performing certain legal services; appearing on behalf of taxpayers regarding tax matters; accounting or bookkeeping regarding tax matters; or preparing tax returns for any compensation, monetary or otherwise. Regulations on outside employment specific to IRS employees are necessary to address situations and issues unique to IRS employees in light of the IRS's specialized tax administration duties.

(c) *Seasonal Employees.* Proposed § 3101.106(c) would address the special circumstances of seasonal employees at the IRS. While in non-duty status, seasonal employees would be able to engage in outside employment or activities, other than those prohibited by § 3101.106(b), without obtaining the prior written approval that would otherwise be required of all Department employees by § 3101.104 of these supplemental regulations.

*Section 3101.107 Additional Rules for Legal Division Employees*

The regulations contained in § 3101.107 of the proposed rule apply only to employees of the Legal Division, and are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Application of Rules of Other Bureaus.* The Legal Division includes the attorneys responsible for providing legal advice to officials in all of the Department's bureaus or offices, as well as the staff assigned to support those attorneys. While the Legal Division is a separate bureau of the Department, each member of the Division is assigned to serve in a particular bureau or office. Under proposed § 3101.107(a), employees of the Legal Division would be required to follow any bureau-specific rules contained in these supplemental regulations that are applicable to the employees of the bureaus or offices in which the Legal Division employees serve, subject to any instruction issued by the General Counsel or appropriate Chief of Legal Counsel, pursuant to proposed § 3101.101.

(b) *Outside Employment.* Proposed § 3101.107(b) would prohibit attorneys in the Legal Division from practicing law outside their official positions where they may in fact or in appearance take a legal position in conflict with the interests of the Department. Further, Legal Division attorneys would be prohibited from interpreting a statute, regulation or rule administered by the Department as part of the outside practice of law. The proposed regulation in this section is consistent with the rules of professional conduct governing the attorney-client relationship. It is a necessary supplement to the general Executive Branch-wide Standards at § 2635.802(a) because it specifically addresses the unique and sensitive relationship between an attorney and a client, which, for the attorneys in the Legal Division, is the Department of the Treasury.

*Section 3101.108 Additional Rules for Office of the Comptroller of the Currency Employees*

Section 3101.108 of the proposed rule contains several regulations specific to the employees of the Office of the Comptroller of the Currency; they are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibited Financial Interests.* As proposed, § 3101.108(a)(1) would

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prohibit an OCC employee, or a spouse of minor child of an OCC employee, from owning securities issued by a commercial bank or commercial bank affiliate, including a bank holding company.

The Department has determined that in light of the OCC's sensitive bank regulatory functions this restriction is necessary to: (1) Maintain public confidence in the impartiality and objectivity with which the OCC executes its regulatory functions; (2) eliminate any reason for regulated entities to be concerned that sensitive information provided to the OCC might be misused for private gain; and (3) avoid the widespread disqualification of employees from official matters that might result in the OCC's inability to fulfill its mission.

The term "commercial bank," as used in this section, includes both national and State-chartered banks. The scope of this prohibition is expanded to cover both national and State-chartered commercial banks for the purposes of easing administration and minimizing inadvertent violations, even though the OCC's regulatory jurisdiction includes only national banks and their affiliates. Whether a financial interest is held indirectly by a national bank may be difficult for an ethics official and employee to determine in today's financial services industry where financial institutions frequently merge, consolidate or change their charters. A prohibition on the ownership of all commercial bank securities establishes a bright-line test, enabling employees easily to identify prohibited interests. The utility of this bright-line test outweighs any incremental restriction on an employee's ability to invest that may result from the extension of the prohibition to State-chartered bank securities.

Proposed § 3101.108(a)(2) contains a comprehensive definition of the term "securities." It includes any "interest in debt or equity instruments" such as, for example, stocks, bonds and commercial paper. However, the term securities as used in these supplemental regulations does not include deposit accounts. Finally, proposed § 3101.108(a)(3) (i)–(iii) includes several exceptions to the prohibition in § 3101.108(a)(1) on financial interests. The exceptions are intended to ease the restrictions on the financial interests of OCC employees, their spouses and their minor children, and to permit interests of a character unlikely to raise questions regarding the objective and impartial performance of OCC employees' official duties or the possible misuse of their positions. Subsection § 3101.108(a)(3)(iv) is included as a specific cross reference to the proposed waiver authority at § 3101.108(g) which would be used on a case-by-case basis.

(b) *Prohibited Borrowing.* The proposed rules on borrowing contained in § 3101.108 (b)(1) and (b)(2) would apply only to "covered OCC employees," their spouses and minor children. For the purposes of this subsection, the term covered OCC employee would be defined in proposed § 3101.108(b)(3) to mean all OCC bank examiners and any other OCC employee specified in an OCC instruction or manual issuance who the Comptroller of the Currency or a designee determines should be subject to the borrowing prohibition pursuant to the standard established in this subsection.

A covered OCC employee would be prohibited from seeking or obtaining a loan or extension of credit from a national bank or an officer, director, employee, or subsidiary of a national bank. For the purposes of this section, an extension of credit includes any credit obtained by use of a credit card. The borrowing prohibition applies equally to spouses and minor children of covered OCC employees unless the loan or extension of credit is supported exclusively by the income or means of the spouse or minor child and is obtained on the same terms and conditions as those offered to the public, and the covered OCC employee does not participate in the negotiations for the loan or serve as co-maker, endorser or guarantor of the loan.

In contrast to the proposed prohibition of holding securities set forth in § 3101.108(a), the rule in this subsection would regulate borrowing from only national banks, and not from State-chartered banks. While some of the same concerns resulting from the integration of the banking industry apply here, permitting employees to have access to adequate sources of credit outweighs any incremental benefit that may be gained by extending the rule to cover loans from State-chartered banks.

Exceptions to the prohibition on borrowing are set forth in proposed § 3101.108(b)(4). Under the exceptions, a covered OCC employee or spouse or minor child of a covered OCC employee would be permitted to obtain a loan or extension of credit from a national bank provided the loan or extension of credit is obtained under one of the conditions indicated in subsections (b)(4) (i)–(iii), and provided: (1) The terms and conditions of the transaction are not more favorable than for the general public; (2) the employee is not assigned to examine the bank at the time of the transaction; and (3) the employee is disqualified from examining or participating in the supervision of the bank. As with the exceptions to the financial interests prohibitions in proposed § 3101.108(a)(3), the exceptions in § 3101.108(b)(4) are intended to minimize the burden on covered OCC employees, and their spouses and minor children, in obtaining loans or extensions of credit that are unlikely to raise issues regarding the motivation of the lender or the objective and impartial performance of official duties by OCC employees.

Proposed § 3101.108(b)(5) addresses pre-existing credit and serves to clarify that § 3101.108 (b)(1) and (b)(2) would impose prohibitions only on seeking or obtaining loans or extensions of credit. Thus, there would be no prohibition on a covered OCC employee, or a spouse or minor child of a covered OCC employee, retaining a loan from a national bank provided the loan was obtained either: (1) Prior to the covered employee's employment at the OCC; or (2) as a result of the sale or transfer of the loan to a national bank, or a conversion or merger of the lender into a national bank. The renewal or renegotiation of a pre-existing loan or extension of credit, however, would be treated as a new loan subject to the prohibitions in § 3101.108 (b)(1) and (b)(2).

The proposed prohibition on borrowing contained in § 3101.108(b) is necessary for several reasons. First, it is necessary to prevent covered OCC employees from obtaining or appearing to obtain loans or extensions of credit on preferential terms, or from benefiting or appearing to benefit from their official positions through possible forbearance by the lender in collecting on the indebtedness. Second, public confidence in the integrity of the OCC will be strengthened by prohibiting OCC employees from engaging in financial transactions with institutions regulated by the OCC. Third, the borrowing prohibition implements, in part, 18 U.S.C. 212 and 213, regulating the offer and acceptance of certain loans to and by bank examiners. Finally, limitations on OCC employees' borrowing from regulated institutions will avoid a high number of employee disqualifications that would have a detrimental effect on the OCC's administration of its supervisory responsibilities.

(c) *Restrictions Arising from Third Party Relationships.* Proposed § 3101.108(c) would attribute to an OCC employee certain securities and loans, or extensions of credit, that are held by the entities described in that subsection (e.g., trusts, partnerships, closely-held corporations). An employee with an

attributed interest would be required to report the interest to the Chief Counsel or designee, and could be required to terminate the relationship with the entity, disqualify himself or herself from a matter or take other appropriate action as determined by the Chief Counsel or designee to avoid a violation of the conflict of interest statutes, the Executive Branch-wide Standards or these supplemental regulations.

(d) *Prohibited Recommendations.* As proposed, § 3101.108(d) would prohibit OCC employees from making any recommendation or suggestion regarding a security issued by a commercial bank or commercial bank affiliate, including a bank holding company. This rule is intended in part to eliminate any misunderstanding or harm that could result from such a recommendation. For example, an investor should not be misled into believing, pursuant to the recommendation of an OCC employee, that the securities of a particular institution regulated by the OCC are a sound buy because the investor believes that the employee may have access to inside information. Rules addressing similar concerns apply to the employees of the OTS and IRS.

(e) *Prohibited Purchase of Assets.* Section 3101.108(e) is proposed as a further supplement to the proposed prohibitions in § 3101.103, regarding the purchase of assets by all Department employees. It would specifically prohibit an OCC employee, or a spouse or minor child of an OCC employee, from purchasing assets from a national bank or national bank affiliate, including a bank holding company. An asset sold by public auction or by a method that ensures that the asset is sold at its fair market value would be exempt from this prohibition.

(f) *Outside Employment.* Proposed § 3101.108(f) would supplement § 2635.802 of the Executive Branch-wide Standards by prohibiting certain OCC employees from engaging in specified outside employment and activities. The prohibition in this section would apply only to covered OCC employees. For the purpose of this subsection, the term covered OCC employee would mean all OCC bank examiners and any other employee specified in an OCC instruction or manual issuance who the Comptroller of the Currency or designee determines should be covered by the rule pursuant to the standard established in the subsection. Employees of the OCC covered by this rule would be prohibited from performing compensated services for any bank, banking or loan association or national bank affiliate or any officer, director, employee or person connected in any way with any of the foregoing entities. This regulation, based in part on 18 U.S.C. 1909, addresses situations unique to OCC bank examiners and OCC employees involved in the regulation of national banks, and prohibits activity that, if engaged in, may interfere with the objective and impartial performance of an employee's official duties.

(g) *Waivers.* Proposed § 3101.108(g) would give an agency designee authority, with the advice and legal clearance of the DAEO or the Office of the Chief Counsel, to grant a written waiver of any prohibition in proposed § 3101.108 based upon a determination that the waiver is consistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in the subsection. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

*Section 3101.109 Additional Rules for Office of Thrift Supervision Employees*

Section 3101.109 of the proposed rule contains several rules applicable solely to the employees of the Office of Thrift Supervision; they are in addition to the regulations in proposed § 3101.101 through § 3101.104 which would apply to all Department employees. These rules are very similar to the rules that would apply to OCC employees under proposed § 3101.108. They differ in scope primarily in that § 3101.109 would impose no specific prohibition on the outside employment and business activities of OTS employees. This is due in part to the fact that OTS employees are not subject to 18 U.S.C. 1909. Nevertheless, OTS employees, like all other Department employees, would be required to obtain prior approval for outside employment pursuant to proposed § 3101.104.

(a) *Covered OTS Employees.* Several of the rules in proposed § 3101.109 would apply only to "covered OTS employees." Covered OTS employees as the term is used in this section would mean all OTS grade 17 positions or above, and any OTS employees specified in an OTS instruction or manual issuance who the Director of the OTS or a designee determines should be covered by the prohibitions contained in this section pursuant to the standard established in § 3101.109(a).

(b) *Prohibited Financial Interests.* The proposed financial interest provisions of § 3101.109(b) are similar to those proposed for application to OCC employees. Specifically, the subsection would prohibit covered OTS employees, and their spouses or minor children from owning securities issued by an OTS-regulated savings association or savings association holding company. As with the OCC rule, this prohibition is intended to ensure public confidence in the manner in which the OTS fulfills its regulatory responsibilities, eliminate potential concerns over use of nonpublic information and avoid widespread disqualification of OCC employees.

(c) *Prohibited Borrowing.* Proposed § 3101.109(c) would prohibit covered OTS employees from seeking or obtaining loans or extensions of credit from and OTS-regulated savings association or an officer, director, employee, or subsidiary of an OTS-regulated savings association. For the purpose of this subsection, and extension of credit includes credit obtained through the use of credit cards. The prohibition on borrowing in § 3101.109(c) is required in part by 18 U.S.C. 212 and 213, and is similar in scope and purpose to the borrowing prohibition proposed for application to OCC employees. The proposed exceptions in § 3101.109(c)(3) are similar to those in the OCC borrowing rule.

(d) *Restrictions Arising from Third Party Relationships.* Proposed § 3101.109(d) is identical to the rule proposed for the purpose of regulating OCC employees' relationships with certain entities.

(e) *Prohibited Recommendations.* Proposed § 3101.109(e) is substantially the same as the prohibition on making recommendations concerning regulated entities that is proposed for application to OCC employees.

(f) *Prohibited Purchase of Assets.* Proposed § 3101.109(f) is substantially the same as the prohibition on purchasing the assets of certain regulated proposed for application to OCC employees.

(g) *Waivers.* Proposed § 3101.109(g) would give an agency designee authority, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, to grant a written waiver of any prohibition in proposed § 3101.109 upon a determination that the waiver is consistent with law and the Executive Branch-wide Standards, and meets the waiver standard established in the subsection. An employee may be required under the waiver to disqualify himself or herself from a particular matter or take other appropriate action.

*Section 3101.110 Additional Rules for United States Customs Service Employees*

Section § 3101.110 of the proposed rule contains regulations applicable only to employees of the United States Customs Service; they are in addition to the regulation in proposed § 3101.101 through § 3101.104 which would apply to all Department employees.

(a) *Prohibition on Employment.* Under proposed § 3101.110(a), Customs Service employees would be prohibited from working for specified types of entities that are regulated by or have a business relationship with the Custom Service.

(b) *Restrictions Arising from Employment of Relatives.* Under proposed § 3101.110(b), a Customs Service employees would be required to file a report of family member employment with his or her supervisor if the employee's spouse or a relative who is dependent on or resides with the employee is employed with an entity specified in proposed § 3101.110(a). The report would be forwarded to the appropriate regional counsel for transmittal to the Chief Counsel. The employee would be disqualified from participating in any matter involving the employee's spouse or relative, or their employer, unless the employee received the appropriate authorization pursuant to the standard in section 2635.502(d) of the Executive Branch-wide Standards. In effect, proposed § 3101.110(b) supplements § 2635.502 of the Executive Branch-wide Standards.

The regulations in proposed § 3101.110(a) are necessitated by the frequent contact Customs Service employees have with importers at the local level, and are designed to assure that the Customs Service and its employees maintain the highest level of integrity while minimally restricting the employees' personal activities and associations. Customs Service employees at all levels carry out many types of duties that can have a major impact on the business of an importer, broker, or carrier. For example, Customs Service inspectors enforce customs laws and make determinations involving the financial interests of importers at every port or entry in the United States. In addition, Customs Service employees audit and investigate numerous companies to determine potential violations of the customs laws. The regulations in this section will prevent the outside employment interests of Customs Service employees and their family members from interfering with the objective and impartial execution of the employees' official duties and will help to ensure public confidence in the Customs Service's execution of its mission.

*Section 3101.111 Additional Rules for United States Secret Service Employees*

Proposed § 3101.111 explains that Secret Service regulations regarding compensated outside the employment in effect on February 2, 1993, will remain in effect until February 3, 1994, or until superseded by a new supplemental regulation substituted for § 3101.111. This temporary preservation of existing rules is consistent with the note following § 2635.403(a) of the Executive Branch-wide Standards and recognizes the need for further study of the extent to which the outside activities of law enforcement personnel should be restricted because of their special responsibilities. During the next year the Department, in consultation with OGE, will be working with other law enforcement agencies to determine whether special rules are needed in this area.

## III. Matters of Regulatory Procedure

*Executive Order 12291, Federal Regulation*

Because this rule relates to agency organization, management and personnel, it is not subject to Executive Order 12291.

*Regulatory Flexibility Act*

It is hereby certified that this proposed rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

**List of Subjects in 5 CFR Part 3101**

Conflict of interests, Government employees.

Dated: July 9, 1993.

**Jean E. Hanson,**

*General Counsel, Department of the Treasury.*

Approved: July 27, 1993.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Department of the Treasury, in concurrence with the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter XXI, consisting of part 3101, to read as follows:

## CHAPTER XXI—DEPARTMENT OF THE TREASURY

## PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

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3101.101 General.
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**Authority:** 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 7214(b); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

**§ 3101.101 General.**

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue.

(b) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures necessary to implement this part and part 2635 of this title. See 5 CFR 2635.105(c).

(c) *Definition of "agency designee".* As used in this part and part 2635 of this title, the term "agency designee" refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to

make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. See 5 CFR 2635.102(b).

**§ 3101.102 Designation of separate agency components.**

Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking or writing:

(a) Bureau of Alcohol, Tobacco and Firearms (ATF);
(b) Bureau of Engraving and Printing;
(c) Bureau of the Public Debt;
(d) Federal Law Enforcement Training Center;
(e) Financial Management Service;
(f) Internal Revenue Service (IRS);
(g) Office of the Comptroller of the Currency (OCC);
(h) Office of the Inspector General;
(i) Office of Thrift Supervision (OTS);
(j) United States Customs Service (USCS);
(k) United States Mint;
(l) United States Savings Bonds Division; and
(m) United States Secret Service.

For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

**Note:** As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices, including the Financial Crimes Enforcement Network) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying an employee's "agency" under 5 CFR 2635.807 governing teaching, speaking and writing.

**§ 3101.103 Prohibition on purchase of certain assets.**

(a) *General prohibition.* Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

(1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or

(2) Sold under the direction or incident to the functions of the employee's bureau.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint, or foreign gifts deposited with the Department pursuant to 5 U.S.C. 7342 that an employee may purchase pursuant to 41 CFR parts 101–49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

**Note:** Employees of the OCC and OTS are subject to additional limitations on the purchase of assets that are set out in bureau-specific rules contained in §§ 3101.108 and 3101.109.

**§ 3101.104 Outside employment.**

(a) *General requirement for prior approval.* All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title or any provision of this part.

**Note:** Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities that are set in out in bureau-specific rules contained in this part.

(b) *Bureau responsibilities.* Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

**§ 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.**

The following rules apply to the employees of the Bureau of Alcohol, Tobacco and Firearms and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited financial interests.* Except as provided in this section, no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which the ATF's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

**§ 3101.106 Additional rules for Internal Revenue Service employees.**

The following rules apply to the employees of the Internal Revenue Service and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited recommendations.* Employees of the IRS shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) *Prohibited outside employment.* Involvement by an employee of the IRS

in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 CFR 2635.802:

(1) Performance of legal services involving Federal, State or local tax matters;

(2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue;

(3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;

(4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and

(5) Engaging in the preparation of tax returns for compensation, gift or favor.

(c) *Seasonal employees.* Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities, other than those prohibited by paragraph (b) of this section, without obtaining prior written permission.

**§ 3101.107 Additional rules for Legal Division employees.**

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101–3101.104:

(a) *Application of rules of other bureaus.* In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) *Prohibited outside employment.* Pursuant to 5 CFR 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or

(2) Interpret any statute, regulation or rule administered or issued by the Department.

**§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.**

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited financial interests*—(1) *Prohibition.* Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own, directly or indirectly, securities of any commercial bank (including both national and State-chartered banks) or commercial bank affiliate, including a bank holding company.

(2) *Definition of "securities".* For purposes of paragraphs (a)(1) and (a)(3) of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions.* Nothing in this section prohibits an OCC employee, or spouse or minor child or an OCC employee, from:

(i) Investing in a publicly traded or publicly available investment fund, provided that the investment fund does not invest more than 20 percent of its funds in securities of commercial banks (including both national and State-chartered banks) and commercial bank affiliates (including bank holding companies) nor more than 5 percent of its funds in the securities of any one such bank or affiliate, and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in the publicly traded securities of a holding company of a nonbank bank or of a retailing firm that owns or sponsors a credit card bank as defined by the Competitive Equality Banking Act of 1987, except that an employee who owns such an interest must be disqualified from participating in the regulation or supervision of the nonbank bank or the credit card bank;

(iii) Using a commercial bank or commercial bank affiliate as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(b) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OCC employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any national bank or from an officer, director, employee, or subsidiary of any national bank.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (b)(1) of this section shall apply to the spouse or minor child of a covered OCC employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OCC employee does not participate in the negotiation for the loan or serve as co-maker, endorser or guarantor of the loan.

(3) *Covered OCC employee.* For purposes of the prohibitions on borrowing contained in paragraphs (b)(1) and (b)(2) of this section, "covered OCC employee" means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on borrowing contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(4) *Exceptions.* Nothing in this section prohibits a covered OCC employee, or the spouse or minor child of a covered OCC employee, from obtaining a loan or extension of credit described in paragraphs (b)(4)(i) through (b)(4)(iii) of this section from a national bank if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the bank at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the bank. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a national bank where:

(A) The employee is assigned to a district office and the bank is not

headquartered in the employee's district;

(B) The employee is assigned to the Multinational Division and the bank is not supervised by that Division; or

(C) The employee is assigned to the Washington office (other than the Multinational Division);

(ii) Through use of a national bank credit card sponsored by a retailing firm (e.g., Nordstrom, Lord and Taylor, Amoco Oil Company); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation.

(5) *Pre-existing credit.* This section does not prohibit a covered OCC employee, or spouse or minor child of a covered OCC employee, from retaining a loan from a national bank on its original terms if the loan was incurred prior to employment by the OCC, or as a result of the sale or transfer of a loan to a national bank or the conversion or merger of the lender into a national bank. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibitions in paragraphs (b)(1) and (b)(2) of this section.

(c) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (c)(1) through (c)(7) of this section have securities that an OCC employee would be prohibited from having by paragraph (a) of this section, or loans or extensions of credit that a covered OCC employee would be prohibited from obtaining under paragraph (b) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title, or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(d) *Prohibited recommendations.* Employees of the OCC shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition, or sale or other divestiture of securities of any commercial bank or commercial bank affiliate, including a bank holding company.

(e) *Prohibited purchase of assets.* No employee of the OCC, or spouse or minor child of an OCC employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a national bank or national bank affiliate, including a bank holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(f) *Outside employment*—(1) *Prohibition on outside employment.* No covered OCC employee shall perform services for compensation for any bank, banking or loan association, or national bank affiliate, or for any officer, director or employee of, or for any person connected in any capacity with a bank, banking or loan association or national bank affiliate.

(2) *Covered OCC employee.* For purposes of the prohibitions on outside employment contained in paragraph (f)(1) of this section, "covered OCC employee" means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on outside employment contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

**§ 3101.109 Additional rules for Office of Thrift Supervision employees.**

The following rules apply to the employees of the Office of Thrift Supervision and are in addition to §§ 3101.101–3101.104:

(a) *Covered OTS employee.* For purposes of this section, the term "covered OTS employee" means:

(1) An OTS examiner;

(2) An employee in a position at OTS grade 17 or above; and

(3) Any other OTS employee specified in an OTS instruction or manual issuance whose duties and responsibilities, as determined by the Director of the OTS or his or her designee, require application of the prohibitions contained in this section to ensure public confidence that the OTS's programs are conducted impartially and objectively.

(b) *Prohibited financial interests*—(1) *Prohibition.* Except as provided in paragraphs (b)(3) and (g) of this section, no covered OTS employee, or spouse or minor child of a covered OTS employee, shall own, directly or indirectly, securities of any OTS-regulated savings association or savings association holding company.

(2) *Definition of "securities".* For purposes of paragraphs (b)(1) and (b)(3) of this section, the term "securities" includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or spouse or minor child of a covered OTS employee, from:

(i) Investing in a publicly traded or publicly available investment funds, provided that the investment fund does not invest more than 20 percent of its funds in securities of OTS-regulated savings associations or savings association holding companies nor more than 5 percent of its funds in the securities of any one such savings association or holding company, and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in certain non-financial holding companies whose principal business is unrelated to the financial services industry and which are identified as such on a list maintained by the Chief Counsel of the OTS;

(iii) Using a savings association as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(c) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OTS employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any OTS-regulated savings association or an officer, director, employee, or subsidiary of any such association.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (c)(1) of this section shall apply to the spouse or minor child of a covered OTS employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OTS employee does not participate in the negotiation for the loan or serve as co-maker, endorser or guarantor of the loan.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or the spouse or minor child of a covered OTS employee, from obtaining a loan or extension of credit described in paragraphs (c)(3)(i) through (c)(3)(iii) of this section from an OTS-regulated savings association if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the savings association at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the savings association. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a savings association where:

(A) The employee is assigned to a district office and the savings association is not headquartered in the employee's district; or

(B) The employee is assigned to the Washington office;

(ii) Through use of a savings association credit card sponsored by a retailing firm (e.g., Sears); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation.

(4) *Pre-existing credit.* This section does not prohibit a covered OTS employee, or spouse or minor child of a covered OTS employee, from retaining a loan from an OTS-regulated savings association on its original terms if the loan was incurred prior to employment by the OTS or as a result of the sale or transfer of the loan to a savings association or the conversion or merger of the lender into an OTS-regulated savings association. Any renewal or renegotiation of a pre-existing loan or extension of credit is covered by paragraphs (c)(1) and (c)(2) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (d)(1) through (d)(7) of this section have securities that a covered OTS employee would be prohibited from having by paragraph (b) of this section, or loans or extensions of credit that a covered OTS employee would be prohibited from obtaining under paragraph (c) of this section, the employee shall promptly report such interests to the Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee; and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(e) *Prohibited recommendations.* Employees of the OTS shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale, or other divestiture of securities of any OTS-regulated savings association or savings association holding company.

(f) *Prohibited purchase of assets.* No employee of the OTS, or spouse or minor child of an OTS employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a savings association or savings association affiliate, including a savings association holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

**§ 3101.110 Additional rules for United States Customs Service employees.**

The following rules apply to the employees of the United States Customs Service and are in addition to §§ 3101.101–3101.104:

(a) *Prohibition on outside employment.* No employee of the USCS

shall work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise.

(b) *Restrictions arising from employment of relatives.* If the spouse of a USCS employee, or other relative who is dependent on or resides with a USCS employee, is employed in a position that the employee would be prohibited from occupying by paragraph (a) of this section, the employee shall file a report of family member employment with his supervisor. Supervisors shall forward such reports to the appropriate Regional Counsel for transmittal to the Chief Counsel. The employee shall be disqualified from participation in any matter involving the relative or the relative's employer unless an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, authorizes the employee to participate in the matter using the standard in § 2635.502(d) of this title.

**§ 3101.111 Additional rules for United States Secret Service employees.**

In addition to the rules contained in §§ 3101.101–3101.104, United States Secret Service Administrative Manual Section PER–5(2) prohibiting compensated outside employment in effect on February 2, 1993, will remain in effect until February 3, 1994, or until superseded by a new supplemental regulation published in this part, whichever occurs first. Administrative Manual Section PER–5(2) may be obtained from the Office of the Chief Counsel, United States Secret Service, 1800 G Street, NW., Washington, DC 20223.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1211

[Docket No. FV–93–703]

RIN 0581–AA 50

## Pecan Promotion and Research Plan; Order Directing That a Referendum Be Conducted; Determination of Representative Period for Voter Eligibility; and Designation of a Referendum Agent to Conduct the Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Order for referendum.

**SUMMARY:** The order directs that a referendum be conducted among eligible pecan growers, grower-shellers, and importers to determine whether they favor continuance, termination, or suspension of the Pecan Promotion and Research Plan (Plan).

**DATES:** In order to be eligible to vote, growers, grower-shellers, and importers must have produced or imported pecans during the period from September 1, 1991, to August 31, 1993 (representative period). Registration to vote will be in person from September 27 through October 1 at local Agricultural Stabilization and Conservation Service (ASCS) offices, except that importers may register by mail to the Research and Promotion Branch at the address listed below. Mail registrations must be received by the Department on or before October 1, 1993. Voting will be conducted on October 4, 5, and 6, 1993, by mail ballot.

**FOR FURTHER INFORMATION CONTACT:** Arthur L. Pease, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, room 2535–S, P.O. Box 96456, Washington, DC 20090–6456. Telephone (202) 720–6930.

**SUPPLEMENTARY INFORMATION:** This order directs that a referendum be conducted among pecan growers, grower-shellers, and importers to determine if the Pecan Promotion and Research Plan (Plan) (7 CFR part 1211) should be continued, terminated, or suspended. The Plan is effective under the Pecan Promotion and Research Act of 1990 (Act) (7 U.S.C. 6001 et seq.). The referendum is to be conducted among the growers, grower-shellers, and importers of pecans who during the period September 1, 1991, through August 31, 1993 (which period is hereby determined to be the representative period for purposes of this referendum), were engaged in the growing, growing-shelling or importation of pecans to ascertain whether growers, grower-shellers and importers favor continuance, termination or suspension of the Plan.

The Act provides that the Secretary shall conduct a referendum not later than 24 months after the effective date of the Plan to determine if pecan growers, grower-shellers, and importers favor the continuation, termination, or suspension of the Plan. The Plan became effective May 1, 1992. The Pecan Marketing Board, which administers the Plan, requested that the referendum be conducted prior to the 1993 pecan harvest season.

The Act requires the Secretary to suspend or terminate the Plan if its continuance is not favored by a majority of those growers, grower-shellers, and importers voting in the referendum.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the ballot materials that will be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0093. It is estimated that there are approximately 21,000 growers and grower-shellers and approximately 25 importers of pecans who will be eligible to vote in this referendum. It will take an average of 1 minute for each grower, grower-sheller, or importer to complete the registration form and 5 minutes to complete the referendum ballot.

Arthur L. Pease, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, is hereby designated the referendum agent of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection with the Pecan Promotion and Research Plan" (7 CFR part 1211.300). Pecan growers and grower-shellers must register in person at local ASCS offices. Importers may either register at the local ASCS offices or by mail to the Department. Mail registrations must be received by the Department on or before October 1, 1993. Registration to vote will be conducted at the ASCS offices from September 27 through October 1, 1993. Voters registering at the ASCS offices will be given a ballot which will be returned to the Research and Promotion Branch in Washington, DC. Importers registering by mail will be sent, via overnight delivery, a ballot to complete and return by mail. The voting period is October 4 through October 6, 1993. Ballots must be postmarked no later than October 6, 1993, to be counted. Importers will be notified of

the referendum well in advance of the registration and voting periods.

**List of Subjects in 7 CFR Part 1211**

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Promotion, Reporting and recordkeeping requirements.

**Authority:** 7 U.S.C. 6001 et seq.

Dated: July 28, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-18463 Filed 8-2-93; 8:45 am]

BILLING CODE 3410-02-P

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**Animal and Plant Health Inspection Service**

**9 CFR Part 92**

**[Docket No. 92-162-1]**

**RIN 0579-AA57**

**Quarantine Facilities for Birds**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to revise the bird importation regulations to allow imported birds to be quarantined upon arrival in the United States at any privately owned bird quarantine facility located near an international airport or land-border port served by U.S. Customs, provided the facility meets the standards of the Animal and Plant Health Inspection Service. The current importation system, which allows bird importations through a limited number of "approved quarantine facilities," no longer appears necessary.

We are also proposing standards for incubator/hatcher areas and bird holding areas in quarantine facilities for hatching eggs of ratites. These standards would protect U.S. birds and poultry from disease without requiring importers of hatching eggs of ratites to comply with the more stringent standards appropriate for imported birds.

**DATES:** Consideration will be given only to comments received on or before October 4, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-162-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202-690-2817) to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Keith A. Hand, Senior Staff Veterinarian, National Center for Import-Export, VS, APHIS, USDA, room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5097.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR 92.100 through 92.107, "Subpart A—Birds" (referred to below as the regulations), regulate the importation of birds to prevent the introduction of communicable diseases of poultry and other domestic livestock into the United States. As a condition of importation, all imported birds must be quarantined for a minimum of 30 days upon their arrival in the United States. The birds must be quarantined in either a U.S. Department of Agriculture (USDA) quarantine facility or in a privately owned facility approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS).

To qualify for designation as an "approved quarantine facility," and to retain that designation, a privately owned facility and its maintenance and operation must meet the minimum requirements of § 92.106(c)(1) through (c)(4) of the regulations. Those minimum requirements concern: (1) The supervision of the facility; (2) physical plant requirements; (3) operational procedures; and (4) additional requirements as to location, security, physical plant and facilities, sanitation, and other items that may be imposed by the Administrator. The approval of any facility is contingent upon the Administrator's determination that adequate APHIS personnel are available to provide the services required by the facility if approved. A facility designated as an "approved quarantine facility" retains that approval indefinitely; § 92.106(c)(6) provides for the refusal or withdrawal of approval. When more quarantine facility operators seek "approval" than APHIS personnel can accommodate, selection is based on a lottery system, set out in § 92.106(c)(5).

We are proposing to eliminate the current system of "allocating" and "approving" private quarantine facilities for the importation of birds, including the lottery system for adding such new facilities. Until now, this system has been necessary to ensure that APHIS personnel, whose services at bird quarantine facilities were in greater demand than we could deliver, were allocated according to a system that was both practical and fair. As a result of the Wild Bird Conservation Act of 1992 (Pub. L. 102-440; the Act), however, the conditions under which this system was designed to operate will no longer exist after October 22, 1993.

Effective October 23, 1993, in the interest of restoring bird populations to sustainable levels in their countries of origin, the Act sharply reduces the number of birds eligible for importation into the United States. The reduced supply of importable birds will cause an immediate and sharp drop in the number of bird import permit applications received by APHIS. Consequently, APHIS expects to have adequate personnel available to provide bird importation-related services upon request.

With the deliberate rationing of APHIS's limited resources no longer necessary, we have no reason to limit the number of quarantine facilities available for bird importations. We are therefore proposing to allow imported birds to be quarantined upon arrival in the United States at any privately owned bird quarantine facility located near an international airport or land-border port served by U.S. Customs, provided the facility meets the standards of the Animal and Plant Health Inspection Service (APHIS), as provided in the proposed regulations. The proposed regulations should enable all qualified persons interested in operating bird quarantine facilities to do so, and would allow importers access to privately owned quarantine facilities nationwide.

Further, the proposed regulations would specify standards, and handling procedures, for incubator/hatcher areas and chick holding areas in privately owned quarantine facilities for hatching eggs of ratites.

The proposed regulations would supersede all APHIS memoranda and policy statements concerning the importation of birds into the United States, through privately owned quarantine facilities.

A discussion of the proposed changes follows.

**Bird Import Permit Issuance**

As stated above, the primary purpose of this proposal is to relieve unnecessary restrictions on bird importers by removing the requirement that birds be imported through

"approved" quarantine facilities. Current standards for quarantine facilities and the handling of birds in quarantine, contained in §§ 92.106 (c)(1) through (c)(4), would not change substantively.

We propose to dismantle the current system by removing from §§ 92.106 (a), (b), and (c) all provisions for, and references to, "approved" quarantine facilities. Section 92.106(c)(5), which sets forth the supplementary procedures for selecting applicants for consideration for approval of bird quarantine facilities, including provisions for the lottery, would be removed.

Under the proposed regulations, if the quarantine facility named on the import permit application is found to comply with the standards for quarantine facilities and the handling procedures set forth in proposed §§ 92.106(c)(1) through (c)(4); if the Administrator determines that adequate APHIS personnel are available to provide the services required by the facility; and if the importer (permit applicant) satisfies the import permit requirements in proposed § 92.103, APHIS will, upon receipt of a $10,000 deposit and the Cooperative and Trust Fund Agreement completed by the importer, issue the import permit. If more qualified importers (permit applicants) apply to import birds through a specified port of entry than APHIS personnel can accommodate during the period requested, and all other conditions are met, APHIS will issue the permit on a first-come, first-served basis, based on time of receipt of the $10,000 deposit.

Currently, the regulations provide that APHIS will enter into a Cooperative and Trust Fund Agreement with the operator of the "approved" quarantine facility (upon receipt of a deposit approximately equal to the costs APHIS incurs during two quarantine periods). This arrangement, appropriate when APHIS regularly provides services to "approved" facilities only, would serve no purpose under the proposed regulations. Therefore, we propose to delete references to approved quarantine facilities, allowing importers to quarantine birds in any facility that meets the standards for quarantine facilities. In other words, we would provide services at the convenience of the importer, not the facility operator. Our sole contractual agreement would be with the importer. Responsibility for compliance with the quarantine standards, bird handling procedures, and other provisions of proposed §§ 92.106(c)(5), 92.106(d), and 92.106(e) would shift from the facility operator to the importer. Accordingly, we would enter into the Cooperative and Trust Fund Agreement directly with the importer. Proposed § 92.106(c)(5)(i) would require that the Cooperative and Trust Fund Agreement, signed by the importer, be accompanied by a deposit (money order or cashier's check) in the amount of $10,000, an amount equal to the approximate cost of services to be provided by APHIS during the quarantine period, factoring in the possibility of an extended quarantine or other contingency. For some time, APHIS has required a deposit of $10,000, to cover the cost of services provided during two 30-day bird quarantine periods ($5,000 each). This amount allows no margin for costs incurred when, for example, a schedule change unexpectedly occurs or the quarantine period is extended. The cost of services provided during a ratite hatching egg quarantine is approximately $7,500; a $10,000 deposit would cover the cost of services provided during one 72-day quarantine, plus costs incurred when, for example, the quarantine period is extended. The proposed deposit amount would enable APHIS to offset the effect of increased operating expenses, factoring in the possibility of an extended quarantine, while maintaining the amount of the required deposit at $10,000.

All responsibilities currently assumed by the "operator of the facility," would devolve to the importer. Proposed §§ 92.103(a) and 106(c), in particular, reflect this change. With the removal of all references to the "operator of the facility," the definition of "operator" would be unnecessary, and therefore removed from § 92.100.

**Ports of Entry**

Section 92.105(a) currently lists the 15 Customs ports of entry through which commercial birds, zoological birds, and research birds, including ratite hatching eggs, but excluding other ratites, may enter the United States to undergo mandatory inspection by an APHIS veterinary inspector. Proposed § 92.105(a) would allow these birds to be imported into the United States through any Customs port of entry that is an international airport (as are the 15 currently allowed ports) or, for convenience, a land-border port within 20 miles of an international airport serviced by Customs. (APHIS personnel would not be available to provide required services at other ports of entry.) In conjunction with the proposed elimination of quarantine facility "approvals," this easing of restrictions would allow privately owned quarantine facilities for birds to be located in every State.

Because of the minimal disease risk associated with hatching eggs of ratites, proposed § 92.105(a) would allow these hatching eggs to be shipped, in bond, from the initial Customs port of entry to the Customs port of entry at which they will be quarantined, for inspection at that port.

**Special Provisions for Facilities for Ratite Hatching Eggs**

We are proposing to establish standards for quarantine facilities for hatching eggs of ratites.

We would continue to require that each quarantine facility be located at least one-half mile from any other concentration of birds, as provided in § 92.106(c)(2)(i)(B), because of the disease risk separate lots of birds (including ratite chicks) pose to one another. To remove ambiguity on this point, we would remove the current reference to "multiple units for handling separate lots of birds," and would specify in proposed § 92.106(c)(2)(ii) that each quarantine facility would consist of a single, self-contained building. That is, no facility could consist of multiple units or buildings. However, we would allow hatching eggs from one lot to be placed in the cleaned and disinfected incubator/hatching area of a facility before the hatched chicks from the previous lot have been released from the bird holding area of the same unit, provided the quarantine facility complies with the proposed standards, discussed below. Cross-contamination between birds and hatching eggs is unlikely, and the proposed standards would ensure the biosecurity of the separate areas on both sides of the wall or wall with locked door that would be required to separate them. Section 92.106(b)(2) provides that each lot of hatching eggs of ratites be incubated for approximately 42 days, after which the hatched chicks must be held for approximately 30 days. The time required for cleaning and disinfecting the incubator/hatching area after the hatched chicks' move into the bird holding area, plus the shorter quarantine period for chicks, should ensure that all birds from one lot would be released from quarantine before the hatch of any chicks from the lot in the incubator/hatcher area. Live birds (hatched chicks) from different lots should at no time coexist in the same building. However, if a quarantine of hatched chicks is for any reason extended to the point that chicks from the second simultaneously quarantined lot have begun to hatch, all live birds in the building would assume the regulatory status of a single lot and, in

accordance with § 92.106(c)(3)(ii)(A), be released from quarantine on an all-in, all-out basis.

Specifically, proposed § 92.106(c)(2)(ii)(L) would prevent hatched chicks from one imported lot from contaminating, or being contaminated by, hatching eggs from a second imported lot, by requiring that each quarantine facility in which ratite hatching eggs from one lot are to be quarantined before the ratite chicks hatched from the previous lot have been released from quarantine have the following:

- A solid wall or wall with a lockable door to serve as an airtight seal separating the incubator/hatcher area from the chick holding area. The solid wall or wall-and-door must be impervious to water and able to withstand continued cleaning and disinfection.
- A necropsy or sample collection area in both the incubator/hatcher area and the chick holding area.
- Separate entrance, shower, toilet, and dressing room facilities for the exclusive use of personnel working with each separate lot. In accordance with proposed § 92.106(c)(2)(i)(B), personnel could work as handlers with only one lot of ratite hatching eggs (including hatched chicks), for the duration of the quarantine of that lot.

Further, proposed § 92.106(c)(2)(ii)(M) would provide for an optional sun room attached to the chick holding area in a quarantine facility for hatching eggs of ratites. At the request of importers who are convinced that a sun room would enhance the health, and improve the life expectancy, of hatched chicks, we have established the following requirements for any such sun room: A roof, such as double-mesh screening or glass, would be required to prevent free-flying birds from entering the chicks' enclosure or otherwise coming into contact with the chicks. The sun room would be required to have a wall with a lockable door connecting it to the chick holding area. As elsewhere in the quarantine areas, this wall, and any other walls used to enclose the sun room, as well as the flooring, would be required to be impervious to water and able to withstand continued cleaning and disinfection. However, the sun room would not be required to be separated from the outside by walls, if it were enclosed by double-mesh screening, or its equivalent, in a concrete or concrete-block curb, at least 12 inches high, that forms the base for the screening and is impermeable to water and able to prevent the escape of water, manure, and debris to the surrounding area. A 6-foot high, chain-link perimeter fence or its equivalent must be located at least 10 feet from all portions of any screened sun room, and, to ensure that no ticks are within range of the sun room, the area between the sun room and the fence must be vegetation-free. Additionally, to prevent entry by trespassers, the perimeter fence must be topped with barbed wire or equipped with an equivalent security system. Also for security, personnel from the chick holding area would be required to be in attendance at all times chicks are in the sun room, whether it is walled or screened.

Proposed § 92.106(c)(3)(i)(A)(*3*) would require personnel to shower when entering and leaving the ratite hatching egg unit. Personnel would not have to shower before moving between the incubator/hatcher area and the chick holding area within one unit, if the eggs and chicks belonged to the same lot.

Finally, proposed § 92.106(c)(3)(ii)(A)(*1*) would allow ratite hatching eggs comprising a single lot to be placed in the quarantine facility in stages for 15 days, beginning on the date the first shipment reaches the facility and ending with receipt of the last shipment 15 days later. Incremental shipments would afford importers the flexibility necessary to collect and transport eggs comprising one lot within a 15-day period experience has shown to be realistic.

The proposed regulations would incorporate a number of miscellaneous editorial changes occasioned by the substantive changes discussed above. An unrelated editorial change would clarify references to the Administrator in § 92.106(a), by removing the term "Veterinary Services," after the word "Administrator."

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

While the proposed regulations would promote competition in the bird importation industry in the United States, the Wild Bird Conservation Act of 1992 provides for the immediate prohibition of importations into the United States of certain exotic bird. Specifically, from October 23, 1992 through October 22, 1993, an importation quota, set at Fiscal Year 1991 import levels, applies to all species of exotic birds listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). After October 22, 1993, the importation of all wild-caught exotic birds (species listed in the Appendices to CITES) will be prohibited.

Cockatiels and budgerigars are among the few exotic birds that are not listed in the Appendices to CITES and are imported into the United States. Because these birds breed well in captivity, and are therefore readily available in the United States, they are imported in very low volumes.

Hatching eggs of ostriches and other ratites are unaffected by the Wild Bird Conservation Act of 1992. Therefore, potential importers of these eggs are likely to benefit from easier access to privately operated quarantine facilities. Our records indicate that entities involved in the hatching egg industry concentrate on ostrich eggs; we therefore expect the proposed rule to affect primarily the ostrich egg industry. Because ratites other than hatching eggs are not allowed to be quarantined in privately operated facilities, importers of ratites other than hatching eggs would not be affected by the proposed rule.

Of the approximately 45 USDA-approved bird quarantine facilities now operating, fewer than 20 are equipped with hatcheries able to facilitate the importation and incubation of ratite hatching eggs. The proposed rule could double, or possibly triple, this number. However, because the number of eggs available for import is limited, not least by the export restrictions of other countries, a significant increase in the total number of ostrich egg importations appears unlikely. Further limiting the domestic effects of increased importations is the poor success rate of imported hatching eggs. Of ratite hatching eggs imported into the United States since 1991, no more than 14.2 percent have been released as live chicks.

Domestic ratite production has grown rapidly in recent years. Between 2,000 and 3,000 ostrich farmers own between 2 and 200 adult ostriches each. The average flock size is four adult ostriches;

fewer than 12 farms are estimated to own large flocks with 50 to 200 ostriches each. All ostrich producers would be considered small entities.

In the short run, domestic ostrich producers could experience a minor adverse economic impact if more ostrich hatching eggs are imported and domestic prices decline as a result. This will depend on whether demand continues to increase faster than supply, and on the corresponding effect on prices. In the long run, the domestic ratite industry is expected to benefit from increased imports. An expanded domestic supply will cause U.S. prices for ratites and ratite products to drop, allowing more people access to the industry. It is anticipated that reduced prices will lead to larger domestic populations of ostriches, a change that would benefit consumers and at the same time enhance the economic viability of commercial ratite breeding, slaughter, feather, and leather markets.

While easing access to quarantine facilities could, in the short term, increase the number of ostrich egg importations, the effect on the U.S. supply of ostriches is not expected to be significant, based on the current success rate for hatching imported ratite eggs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects in 9 CFR Part 92**

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would be revised to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 92.100 [Amended]**

2. In § 92.100, the definition of "Operator" would be removed.

**§ 92.103 [Amended]**

3. Section 92.103 would be amended as follows:

a. In the heading, the footnote would be removed.

b. In paragraph (a)(1), in the middle of the first sentence, the phrase "from any part of the world" would be removed and the phrase "into the United States" would be added in its place.

c. In paragraph (a)(1), the second and third sentences would be revised, to read as set forth below.

d. In paragraph (a)(1), the fourth and fifth sentences would be designated as new paragraph (a)(1)(xiii), and new paragraphs (a)(1)(i) through (xii) would be added, to read as set forth below.

e. Paragraph (a)(2)(i) would be amended by removing the word "also" from the introductory clause; by adding the phrase "the lack of APHIS personnel;" immediately after the fourth semicolon; by removing the final period and adding a comma and the term "such as if:" in its place; and by adding new paragraphs (a)(2)(i)(A), (B), (C), and (a)(3), to read as set forth below.

**§ 92.103 Application permits for birds; and reservation fees for space at quarantine facilities maintained by APHIS.**

(a) * * *

(1) * * * The importer (permit applicant) shall submit a completed VS form 17–128 for ratites or hatching eggs of ratites; or, for other birds, a completed VS form 17–129; or shall submit a document that states that it is an application for a permit to import ratites, hatching eggs of ratites, or birds other than ratites or hatching eggs of ratites. The application [7] must include the following information:

(i) The name, address, and telephone number of the importer;

(ii) The status of the importer, such as individual, partnership, or corporation (if incorporated, include State where incorporated and date of incorporation);

(iii) Name and address of the quarantine facility;

(iv) Date of intended quarantine;

(v) The purpose of the importation;

(vi) The country of origin;

(vii) The name and address of the exporter;

(viii) The port of embarkation in the foreign country;

(ix) The mode of transportation, route of travel, and port of entry in the United States;

(x) The name and location of the quarantine facility in the United States to which delivery will be made from the port of entry, in accordance with § 92.106(c)(5); and

(xi) A drawing of the floor plan for the facility showing the location of the bird holding area; equipment storage areas; office areas; clothes storage and change areas; feed storage areas; necropsy areas (showing entry and refrigeration); washing areas for equipment; shower areas; ventilation arrangements; and entries and exits; and, for a facility for hatching eggs of ratites in which the hatching eggs of one lot may be quarantined at the same time as the hatched chicks from the previously quarantined lot, the incubation/hatcher and bird (chick) holding areas;

(xii) Date and certification, by signature of the importer (permit applicant), after the following language:

"I certify that the information provided herein is true and correct to the best of my knowledge and belief, and agree to comply with the applicable regulations in title 9, Code of Federal Regulations, §§ 92.100 through 92.107."

* * * * *

(2) * * *

(i) * * *

(A) Any requirement of this subpart is not complied with; or

(B) The importer (permit applicant) or any person responsibly connected with the importation has been convicted of

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[7] VS import permit application forms are available from local offices of Veterinary Services, which are listed in telephone directories, or from the Administrator, c/o National Center for Import-Export, VS, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (title 50, Code of Federal Regulations, parts 14 and 17) should be consulted.

any crime under any law regarding the importation or quarantine of any animal or bird; or

(C) The importer (permit applicant) or any person responsibly connected with the importation has been convicted of any crime involving fraud, bribery, extortion, or any other crime indicating he or she lacks the integrity needed for the conduct of operations affecting the importation of commercial birds, research birds, or zoological birds.

* * * * *

(3) If APHIS receives more than one application for a permit to import birds through a specified port of entry at approximately the same time, such that APHIS personnel could provide services to only one importer (permit applicant) who requests them, APHIS will issue the permit to the first importer who meets the requirements of this subpart to deposit, with the Administrator, the completed cooperative and trust fund agreement, accompanied by the required deposit.

* * * * *

4. In § 92.105, paragraph (a) would be revised to read as follows:

**§ 92.105 Inspection at the port of entry.**

(a) All commercial birds, zoological birds, and research birds, including hatching eggs of ratites, but excluding other ratites, imported into the United States, must be inspected by the port veterinarian at the Customs port of entry, which may be any international airport, or any land-border port within 20 miles of an international airport, serviced by Customs. However, hatching eggs of ratites may be shipped, in bond, from the port of first arrival to the Customs port of entry at which they will be quarantined, for inspection at that port.

* * * * *

**§ 92.106 [Amended]**

5. Section 92.106 would be amended as follows:

a. Paragraph (a), in the first sentence, the phrase "from any part of the world" would be removed and the phrase "into the United States" would be added in its place; the phrase "at one of the ports of entry specified in § 92.105(a)," would be removed and the phrase "at a Customs port of entry, as provided in § 92.105(a)," would be added in its place; and at the end of the first sentence, the phrase "which have been approved by the Administrator as provided in paragraph (c) of this section." would be removed and the phrase "that meet the requirements of paragraph (c) of this section." would be added in its place.

b. Paragraph (a), in the first and third sentences, the term "Veterinary Services," would be removed.

c. Paragraph (a), in the sixth sentence, the term "an approved quarantine facility" would be removed and the term "a privately owned quarantine facility" would be added in its place, and the words "operator of the facility" would be removed and the word "importer" would be added in its place.

d. Paragraph (a), in the seventh sentence, the term "the operator of the facility and" would be removed.

e. Paragraph (b)(2), the second sentence would be amended by removing the words "approved by the Administrator in accordance with" and adding the words "that meets the requirements of" in their place.

f. Paragraph (b)(4), the first sentence would be amended by adding the word "of" after the word "free".

g. Paragraph (c), the heading and introductory text would be revised to read as set forth below.

h. Paragraph (c)(1) would be amended by removing the words "one of the ports listed in § 92.105(a)" and adding the words "the Customs port of entry" in their place.

i. Paragraph (c)(2)(i), the introductory text would be amended by removing the word "The" and adding the words "Each privately owned bird" in its place.

j. Paragraph (c)(2)(i)(A) would be amended by adding the word "metropolitan" after the word "immediate".

k. Paragraph (c)(2)(i)(B), the first sentence would be amended by removing the word "approved" and adding the word "bird" in its place; the second sentence would be amended by adding the term "the efficiency of the air filtration system of the quarantine facility," after the term "winds," and the third sentence would be removed.

l. Paragraph (c)(2)(ii), the introductory text would be revised to read as set forth below.

m. Paragraph (c)(2)(ii)(K) would be amended by removing the period at the end of the sentence and adding a semicolon in its place.

n. New paragraphs (c)(2)(ii)(L) and (M) would be added to read as set forth below.

o. Paragraph (c)(3), the heading would be italicized and the introductory text would be amended by removing the phrase "To retain designation as an approved quarantine facility, the" and adding in its place the word "The".

p. Paragraphs (c)(3)(i)(A) and (A)(1), the term "or the incubator/hatcher area" would be added after the term "bird holding area" both times it appears.

q. Paragraph (c)(3)(i)(A)(3) would be revised to read as set forth below.

r. A new paragraph (c)(3)(i)(A)(4) would be added to read as set forth below.

s. Paragraph (c)(3)(i)(B), the term "operator of the facility" would be removed and the term "importer" would be added in its place.

t. New paragraphs (c)(3)(ii)(A)(1) and (A)(2) would be added to read as set forth below.

u. Paragraphs (c)(3)(ii)(D) and (E), the term "facility operator" would be removed each time it appears, and the term "importer" would be added in its place.

v. Paragraph (c)(3)(iii), the term "operator of the facility" would be removed both times it appears, and the term "importer" would be added in its place.

w. Paragraph (c)(5) and (c)(6) would be removed, and paragraph (c)(7) would be redesignated as paragraph (c)(5).

x. Newly redesignated Paragraph (c)(5), the introductory text would be amended by removing the term "operator of approved quarantine facilities" and adding "importer at a privately owned quarantine facility" in its place.

y. Newly redesignated Paragraphs (c)(5)(i) and (c)(5)(ii) would be revised to read as set forth below.

z. Newly redesignated Paragraph (c)(5)(iii), in the heading of the Cooperative and Trust Fund Agreement, the word "OPERATOR" would be removed and the word "IMPORTER" would be added in its place, and the word "Services" would be removed and the word "Service" would be added in its place.

aa. Newly redesignated Paragraph (c)(5)(iii), the word "approved" would be removed in the following places:

i. First undesignated paragraph.

ii. Paragraphs (A)(1), (A)(3), (A)(5), (A)(6), and (A)(8).

iii. Paragraph (A)(20) both times it appears.

iv. Paragraph (B)(6).

v. Paragraph (C)(1) both times it appears.

bb. Newly redesignated Paragraph (c)(5)(iii), in the second undesignated paragraph, the term "Cooperator represents parties" would be removed and the term "Importer is" would be added in its place.

cc. Newly redesignated Paragraph (c)(5)(iii), the word "Cooperator" would be removed and the word "Importer" would be added in its place, in the following places:

i. In the third and fourth undesignated paragraphs.

ii. Paragraphs (A), (A)(2), (A)(3), and (A)(4) twice.

iii. Paragraph (A)(14) both times it appears.

iv. Paragraph (A)(18) both times it appears.

v. Paragraph (B)(2) three times it appears.

vi. Paragraph (B)(4).

vii. Paragraph (B)(6) three times it appears.

viii. Paragraph (B)(7) three times it appears.

ix. Paragraph (C)(3).

x. After paragraph (C)(5), below the first signature line.

dd. Newly redesignated Paragraph (c)(5)(iii)(A)(2), at the end of the first sentence, the word "a" would be removed and the word "the" would be added in its place.

ee. Newly redesignated Paragraph (c)(5)(iii)(A)(3), the last sentence would be revised to read as set forth below.

ff. Newly redesignated Paragraph (c)(5)(iii), at the end of paragraph (A)(5), the reference "92.109(c)" would be removed and the reference "92.106(c)" would be added in its place.

gg. Newly redesignated Paragraph (c)(5)(iii)(A)(19) would be revised to read as set forth below.

hh. Newly redesignated Paragraph (c)(5)(iii), at the end of paragraph (A)(20), the words "as provided in part 92 of 9 CFR." would be removed and the words "contained in title 9, Code of Federal Regulations, § 92.106(c)." would be added in their place.

ii. Newly redesignated Paragraph (c)(5)(iii)(B)(2) would be amended by removing the words "on a quarterly basis, or".

jj. Newly redesignated Paragraph (c)(5)(iii)(B)(3) would be removed and paragraphs (B)(4), (B)(5), (B)(6), and (B)(7) would be redesignated as paragraphs (B)(3), (B)(4), (B)(5), and (B)(6).

kk. Newly redesignated Paragraph (c)(5)(iii), in the third sentence of newly redesignated paragraph (B)(5), the words "the designated shall" would be removed and the words "the designated employee shall" would be added in their place.

ll. Newly redesignated Paragraph (c)(5)(iii)(C)(2), the reference "(c)(7)(iii)(A)(16)" would be removed and the reference"(c)(5)(iii)(A)(16)" would be added in its place.

mm. Newly redesignated Paragraph (c)(5)(iii), in footnote 13 to paragraph (C)(3), the term "operator of a bird quarantine facility" would be removed and the word "importer" would be added in its place.

nn. Newly redesignated Paragraph (c)(5)(iii)(C)(5), the first sentence would be amended by removing the word "indefinitely." and adding the words "until the permitted lot of birds is released from quarantine." in its place.

oo. Paragraph (d), the introductory language would be amended by removing the word "operator" and adding the word "importer" in its place, and by removing the reference "paragraph (d)" and adding the reference "paragraph (c)" in its place.

**§ 92.106 Quarantine requirements.**

* * * * *

(c) *Standards for privately owned quarantine facilities and handling procedures for importation of birds.* Before the Administrator will issue an import permit for a lot of birds, the Administrator must determine that the privately owned quarantine facility to be used to quarantine birds imported into the United States (the facility) and its maintenance and operation meet the minimum requirements of paragraphs (c)(1) through (c)(5) of this section, that adequate APHIS personnel are available to provide services required by the facility, and that a Cooperative and Trust Fund Agreement between the importer and the Department has been executed, and the required funds have been deposited, in accordance with that agreement. The cost of the facility and all costs associated with its maintenance and operation must be borne by the importer, in accordance with the provisions of paragraph (e) of this section.

* * * * *

(2) * * *

(ii) *Construction.* Each quarantine facility shall consist of a single, self-contained building, which shall:

* * * * *

(L) In addition, a facility for hatching eggs of ratites, in which the hatching eggs of one lot may be quarantined at the same time as the hatched chicks from the previously quarantined lot, shall:

(*1*) Have a wall or a wall with a lockable door separating the incubator/hatcher area from the bird (chick) holding area, and this wall or wall-with-door shall provide an airtight seal between the two areas, shall be impervious to water, and shall be able to withstand continued cleaning and disinfection;

(*2*) Have a necropsy or sample collection area in both the incubator/hatcher area and the bird (chick) holding area; and

(*3*) Have separate entrances, showers, toilets, and dressing room facilities for the exclusive use of personnel working in the incubator/hatcher area and the bird (chick) holding area.

(*M*) If a facility for hatching eggs of ratites has a sun room, the sun room shall be connected to the chick holding area by a wall with a lockable door. This wall; the other walls, if any; and the flooring, must be impervious to water and able to withstand continued cleaning and disinfection.

(*1*) Double-mesh screening or its equivalent set in a concrete or concrete block curb may replace any of the three exterior walls, provided this curb is at least 12 inches high, impermeable to water, and able to prevent the escape of water, manure, and debris to the surrounding area. A 6-foot-high, chain-link fence with barbed wire at the top, or equivalent security system, must be located at least 10 feet from the double-mesh screening; this peripheral area must be vegetation-free.

(*2*) The sun room shall have a roof, such as a double-mesh-screened roof or a glass roof, that is both impervious to free-flying birds and capable of preventing contact between chicks and free-flying birds.

(*3*) Be attended by personnel working in the bird (chick) holding area whenever chicks are in the sun room.

* * * * *

(3) * * *

(i) * * *

(A) * * *

(*3*) Shower when entering and leaving any bird holding area, any incubator/hatcher area, and any necropsy area. Showering when moving between the incubator/hatcher area and the bird holding area is not required when the eggs in the hatching area and the chicks in the holding area are part of the same lot;

(*4*) Work exclusively with one lot of birds until the lot's release from quarantine, and have no contact with other birds or poultry until 3 days after the release date.

* * * * *

(ii) * * *

(A) * * *

(*1*) Hatching eggs of ratites comprising a single lot may be added to the facility in stages, provided the entire lot has been placed in the facility no later than 15 days after the arrival of the first shipment.

(*2*) If hatching eggs of ratites begin to hatch in the incubator/hatcher area while ratite chicks from the previously quarantined lot remain in the bird (chick) holding area, then the separate lots assume the status of a single lot, and will be released from quarantine in accordance with paragraph (c)(3)(ii)(A) of this section.

* * * * *

(5) * * *

(i) When the Administrator determines that a privately owned

quarantine facility meets the requirements set forth in paragraph (c) of this section, the Department and the importer shall execute a Cooperative and Trust Fund Agreement, as specified in paragraph (c)(6)(iii) of this section. In conjunction with the Cooperative and Trust Fund Agreement, the importer shall deposit with the Administrator a money order or cashier's check in the amount of $10,000, to cover all costs incurred by the Department in providing services in accordance with the provisions of the Cooperative and Trust Fund Agreement. Any unobligated funds will, upon request, be returned to the importer, after the birds' release from quarantine.

(ii) The Administrator may provide services required by the importer at a privately owned quarantine facility for the importation of birds on a first come, first served basis, if adequate APHIS personnel are available to provide those services, upon determining that the importer has executed a Cooperative and Trust Fund Agreement, and has deposited funds in the amount of $10,000 in connection with that agreement, as specified in paragraph (c)(6)(iii) of this section.

(iii) * * *

(A) * * *

(3) * * * This restriction ceases to apply 3 days after the date the birds with which the designated personnel have been in contact are released from quarantine.

* * * * *

(19) To deposit with the Service, upon execution of this agreement, a money order or cashier's check, in the amount of $10,000, to be used by the Service to defray all expenses incurred by the Service in providing services required.

* * * * *

Done in Washington, DC, this 27th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-18215 Filed 8-2-93; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 93-NM-8-AD]

## Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the bottom joint fittings and modification of these new bottom joint fittings, the main landing gear (MLG) rear spar fittings, and the rear spar webs by cold-expanding the bolt holes. This proposal is prompted by full-scale fatigue testing of a Fokker Model F28 Mark 0100 series airplane, which revealed cracks in the MLG rear spar fitting. The actions specified by the proposed AD are intended to prevent loss of the structural integrity of the MLG attachments.

**DATES:** Comments must be received by September 27, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-28-D, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-13, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-28-D." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-03, Attention: Rules Docket No. 93-NM-28-D, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that during full-scale fatigue testing of a Fokker Model F28 Mark 0100 series airplane, cracks were found in the main landing gear (MLG) rear spar fitting at wing STA.2800 and in the rear spar web at STA.2900. Cracks in these areas, if not detected and corrected, could result in loss of the structural integrity of the MLG attachments.

Fokker has issued Service Bulletin SBF100-57-020, dated April 27, 1992, that describes procedures for replacement of the bottom joint fittings and modification of these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes. Fokker has also issued Service Bulletin Change Notification (SBCN) SBF100-57-020/02, dated April 20, 1993, that corrects the hole positions in Figure 2 of the service bulletin. The RLD classified these service documents as mandatory and issued Netherlands Airworthiness Directive BLA No. 92-075, dated July 10, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has

examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the bottom joint fittings and modification of these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 52 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 27 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $186,420, or $3,585 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Fokker:** Docket 93–NM–8–D.

*Applicability:* Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11390 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the main landing gear (MLG) attachments, accomplish the following:

(a) Prior to the accumulation of 13,500 total landings, or within one year after the effective date of this AD, whichever occurs later, replace the bottom joint fittings and modify these new bottom joint fittings, the MLG rear spar fittings, and the rear spar webs by cold-expanding the bolt holes in accordance with Fokker Service Bulletin SBF100–57–20, dated April 27, 1992, as revised by Fokker Service Bulletin Change Notification (SBCN) SBF100–57–20/02, dated April 20, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–13, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–13.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–13.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 28, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18419 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 71

**[Airspace Docket No. 93–ASO–11]**

## Proposed Establishment of Class E Airspace; Dunnellon, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Dunnellon, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 23 at the Dunnellon Airport has recently been developed and controlled airspace extending upward from 700 feet above the surface of the earth, is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and in its place use the term "Class E airspace" for airspace extending upward from 700 feet or more AGL. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP.

**DATES:** Comments must be received on or before September 19, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–11, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7204.

**FOR FURTHER INFORMATION CONTACT:** Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be

submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E airspace at Dunnellon, Florida. A Runway 23 SIAP to serve the Dunnellon Airport based on the Ocala VORTAC has been developed. Controlled airspace extending upward from 700 feet above the surface of the earth, a transition area, is needed to contain IFR operations when utilizing this SIAP. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "transition area" and in its place use the term "Class E airspace". The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the developed SIAP.

The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order. If approved, the operating status of the airport would change from VFR operations only to include IFR operations concurrent with publication of the SIAP.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993, as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 in effect as of September 16, 1993 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASO FL E5 Dunnellon, FL [New]
Dunnellon Airport, FL
(lat. 29° 03'45" N, long. 82° 22'38" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Dunnellon Airport, excluding that portion that coincides with the Ocala, FL, Class E airspace.

* * * * *

Issued in East Point, Georgia, on June 23, 1993.

**Walter E. Denley,**
*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 93–18452 Filed 8–2–93; 8:45 am]
BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 93–ASO–9]**

## Proposed Establishment of Class E Airspace; Fort Pierce, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Fort Pierce, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 27 at the St. Lucie County international airport has recently been developed and controlled airspace to the surface, a control zone arrival extension, is needed to contain instrument flight rules (IFR) operations when utilizing this SIAP. Airspace Reclassification which becomes effective September 16, 1993, will discontinue the use of the term "control zone arrival extension" and in its place use the term "Class E airspace". The intended effect of this proposal is to provide adequate Class E airspace to contain instrument approach procedures in an area outside the existing Class D and Class E surface areas.

**DATES:** Comments must be received on or before September 15, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–9, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a Class E arrival extension at Fort Pierce, Florida. A Runway 27 SIAP to serve the St. Lucie County International Airport based on the Fort Pierce Non-directional Beacon (NDB) has been developed. Controlled airspace to the surface, a control zone arrival extension, is needed to contain IFR operations when utilizing this SIAP. Airspace Reclassification which becomes effective September 16, 1993, will discontinue the use of the term "control zone arrival extension" and in its place use the term "Class E airspace". The intended effect of this proposal is to provide adequate Class E airspace to contain instrument approach procedures in an area outside the existing Class D and Class E surface areas.

The existing Class D and Class E surface areas would not completely contain the developed SIAP. Because the northeast arrival extension is greater than two miles, the FAA is proposing to establish the northeast arrival corridor beyond the Class D surface area as Class E airspace. This Class E airspace would contain the instrument approach procedure in controlled airspace without imposing a requirement on aircraft operating under visual flight rules within the Class E area to communicate with the Fort Pierce air traffic control tower.

The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace designated as an extension to a Class D surface are published in Paragraph 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 effective September 16, 1993 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 in effect as of September 16, 1993 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 in effect as of September 16, 1993 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 6004 Class E airspace designated as an extension to a Class D surface.

ASO FL E4 Fort Pierce, FL [New]

Fort Pierce, St. Lucie County International Airport, FL
(lat. 27°29'42"N, long. 80°22'07" W)
Vero Beach VORTAC
(lat. 27°40'42"N, long. 80°29'23" W
Fort Pierce NDB
(lat. 27°29'13" N, long. 80°22'23" W)

That airspace extending upward from the surface within 1.7 miles each side of the Vero Beach VORTAC 150 radial extending from the 4.2-mile radius to 7 miles southeast of the Vero Beach VORTAC, within 2 miles each side of the 300 bearing from the Fort Pierce NDB, extending from the 4.2-mile radius to 7 miles

* * * * *

Issued in East Point, Georgia, on June 23, 1993.

**Walter E. Denley,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 93–18453 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–M

VOL 58 ISS 147 AG 3 1993 UMI

14 CFR Part 73

[Airspace Docket No. 93-ASO-2]

## Proposed Establishment of Restricted Area R-3008D, and Amendment of Restricted Areas R-3008A, R-3008B, and R-3008C; Grand Bay Weapons Range, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would establish a new Restricted Area R-3008D above the existing Restricted Areas R-3008A, R-3008B, and R-3008C at the Grand Bay Weapons Range, Moody Air Force Base (AFB), GA. The proposed R-3008D is required to accommodate high altitude/high angle weapons delivery training at the Grand Bay Weapons Range. In addition, the designated controlling agency for Restricted Areas R-3008A, R-3008B, and R-3008C would be changed from Jacksonville Air Route Traffic Control Center (ARTCC) to Valdosta Approach Control.

**DATES:** Comments must be received on or before September 23, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 93-ASO-2, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Military Operations Program Office, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9361.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ASO-2." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: 347 CES/DEEV, Moody AFB, GA 31699-5000, telephone: (912) 333-3069. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish a new Restricted Area R-3008D above the existing Grand Bay Weapons Range Restricted Areas R-3008A, R-3008B, and R-3008C, located at Moody AFB, GA. The proposed new restricted area would coincide with the existing lateral boundary of the range and would extend from 10,000 feet mean sea level (MSL) to but not including FL 230. The maximum altitude of the existing Grand Bay Weapons Range is 10,000 feet MSL. In the past, this altitude provided adequate airspace for aircrew training, which had focused on low and medium altitude weapons delivery tactics. However, during Operation Desert Storm, it was discovered that training in high altitude deliveries is also required. The existing Grand Bay Weapons Range lacks sufficient vertical airspace to accomplish this required training. The proposed R-3008D would raise the upper limit of the Grand Bay Weapons Range to FL 230, thus providing the airspace needed for high altitude/high angle delivery training. The proposed R-3008D would be a joint use restricted area, activated on a "real-time" basis. The airspace would be returned to the controlling agency when it is not required for hazardous military activities. The U.S. Air Force does not expect any increase in the total annual usage of the Grand Bay Weapons Range as a result of this proposal.

In addition, this notice proposes to change the designated controlling agency for the existing Restricted Areas R-3008A, R-3008B, and R-3008C from Jacksonville ARTCC to Valdosta Approach Control. This amendment is consistent with a Letter of Agreement between Jacksonville ARTCC and Valdosta Approach Control wherein the airspace within the Grand Bay Weapons Range is delegated to Valdosta Approach Control during the time that the restricted areas are activated. The coordinates for this airspace docket are based on North American Datum 83. Section 73.30 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Impact

An environmental review of this proposal will be completed prior to an FAA final decision.

### List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

**PART 73—[AMENDED]**

1. The authority citation for 14 CFR part 73 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

**§ 73.30 [Amended]**

2. In each of the designations in § 73.30 listed below, remove the words "FAA, Jacksonville ARTCC" for the controlling agency and insert, in their place, the words "FAA, Valdosta Approach Control":

R–3008A Grand Bay Weapons Range, GA
R–3008B Grand Bay Weapons Range, GA
R–3008C Grand Bay Weapons Range, GA

3. Add the following designation in § 73.30 to read as follows:

**R–3008D Grand Bay Weapons Range, GA [New]**

Boundaries. Beginning
at lat. 31°04'01" N., long. 83°01' 00" W.;
to lat. 30°51'01" N., long. 83°01' 00" W.;
to lat. 30°51'01" N., long. 83°08' 00" W.;
to lat. 30°53'31" N., long. 83°09' 00" W.;
to lat. 30°56'51" N., long. 83°10' 00" W.;
to lat. 30°57'36" N., long. 83°11' 05" W.;
to lat. 30°59'13" N., long. 83°10' 00" W.;
to lat. 31°02'01" N., long. 83°09' 00" W.;
to lat. 31°04'01" N., long. 83°08' 00" W.;
to the point of beginning.

Designated altitudes. 10, 000 feet MSL to but not including FL 230.

Time of designation. 0700–1900 local time, Monday–Friday, other times by NOTAM six hours in advance.

Controlling agency. FAA, Valdosta Approach Control. Using agency. U.S. Air Force, 347th Fighter Wing, Moody AFB, GA.

Issued in Washington, DC, on July 26, 1993.

**Harold W. Becker,**

*Manager, Airspace—Rules and Aeronautical Information Division.*

[FR Doc. 93–18448 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–13–M

**COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**

**15 CFR Part 500**

**[Docket No. 930788–3188]**

**Appeal Procedures for Violation of the Special Access and Special Regime Program Requirements**

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This document sets forth proposed procedures to be followed in order for a company participating in the Special Access Program (SAP) or Special Regime Program (SRP) to appeal a finding for suspension from further participation in the programs for violating program requirements. In the summer of 1992, a number of SAP and SRP participants approached CITA to discuss amending the rules of the SAP and SRP to provide for some type of review of suspension decisions. In order to meet this request, CITA is proposing to establish an appeal procedure. Guidelines that will be developed by CITA to be used in determining whether and how long to suspend a company from further participation in the SAP and SRP will be published at the same time that these procedures are published in a final rule.

**DATES:** Comments must be received on or before September 2, 1993.

**ADDRESSES:** Comments may be mailed to the Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, United States Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:** On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products assembled from fabric formed and cut in the United States. Since the 1986 announcement, Caribbean countries have entered into bilateral agreements with the United States under which guaranteed levels of access are permitted for the products made of U.S. formed and cut fabric. In June of 1986, CITA established the SAP to implement the bilateral agreements and to monitor companies' compliance with program requirements. On February 17, 1988, the United States and Mexico entered into a similar arrangement pursuant to a textile agreement which established the SRP. The SRP assures specific limits for goods assembled in Mexico from U.S. formed and cut fabric. As with the SAP, the SRP was established by CITA to implement the terms of the U.S.-Mexico textile agreement and to monitor companies' compliance with program requirements.

Although compliance with SAP and SRP requirements has generally been excellent, violations have been detected through periodic compliance reviews conducted by the United States Customs Service. Upon discovery of violations, CITA may take action to suspend companies from participation in the SAP and SRP. In the Summer of 1992, a number of SAP and SRP participants approached CITA to discuss amending the rules of the SAP and SRP to provide for some type of review of suspension decisions. In order to meet this request, CITA is proposing an appeal procedure.

**Classification**

1. The Provisions of the Administrative Procedures Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable because (i) this rule is procedural, and (ii) the SAP and SRP were established by CITA to implement the terms of the bilateral textile agreements with certain Caribbean countries and Mexico and accordingly, it involves a foreign affairs function of the United States. However, comments on this proposed rule will be considered in the context of this foreign affairs function of the United States.

2. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law, no initial or final Regulatory Flexibility Analysis has to be or will be prepared 95 U.S.C. 603(a), 604(a)).

3. This rule does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

4. The requirements of E.O. 12291 do not apply to this rule because it is being issued with respect to a foreign affairs function of the United States.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

**List of Subjects in 15 CFR Part 500**

Textiles, Imports, Trade Agreements—Committee for the Implementation of Textile Agreements (CITA) Special Access and Special Regime Programs

For the reasons set out in the preamble, 15 CFR part 500 is proposed to be added to read as follows.

## PART 500—APPEAL PROCEDURES FOR VIOLATION OF THE SPECIAL ACCESS AND SPECIAL REGIME PROGRAM REQUIREMENTS

Sec.


500.1 Purpose.
500.2 Applicability and Scope.
500.3 Definitions.
500.4 Compliance Review.
500.5 Director's Review.
500.6 Compliance Letter.
500.7 Charging Letter.
500.8 Answer.
500.9 Deadline for Submissions and Loss of Right to Appeal.
500.10 Director's Decision.
500.11 Decision Letter for Violation of Program Requirements
500.12 Hearing and Burden of Proof.
500.13 Judge's Decision.
500.14 Appeal to CITA.
500.15 CITA's Decision.
500.16 Ex Parte Contacts.
500.17 Separation of Functions.
500.18 Service of Charging Letter, Decision Letter and Judge's Decision.


**Authority:** Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), as amended, and Executive Order 11651 (March 3, 1972) as amended.

### § 500.1 Purpose.

To provide a mechanism by which a company participating in the SAP or SRP may appeal a finding for suspension from further participation in the programs for violating program requirements.

### § 500.2 Applicability and scope.

This part applies to all importers participating in the Special Access Program or Special Regime Program.

### § 500.3 Definitions.

(a) *Program* means the Special Access and Special Regime Programs.

(b) *Participant* means any corporation, company, association, partnership, organization or other legal entity or natural person importing under the Program.

(c) *Judge* means an administrative law judge, appointed pursuant to 5 U.S.C. 3105 or detailed pursuant to 5 U.S.C. 3344, or an administrative judge from the Office of Administrative Law Judge, U.S. Department of Commerce.

(d) *Director* means Director or Acting Director of the Trade Data Division under the Director for the Office of Textiles and Apparel, U.S. Department of Commerce.

(e) *CITA* means the Committee for the Implementation of Textile Agreements.

(f) *Customs* means the U.S. Customs Service.

(g) *Compliance Review* means a post-entry review conducted by Customs at the Participant's place of business of documents proving that all goods entered under the Program were made from U.S. formed and cut fabric.

(h) *Compliance Letter* means a letter from the Director to a Participant stating that the Participant complied with Program requirements.

(i) *Charging Letter* means a letter from the Director to a Participant stating that the Participant failed to provide Customs with the requisite documentation during a Compliance Review or that it was evident based upon the review that foreign fabric was used.

(j) *Guidelines* means the set of criteria developed by CITA for the Director to use in determining whether and how long to suspend a Participant from further participation in the Program.

(k) *Decision Letter* means a letter from the Director to a Participant stating that the participant failed the Compliance Review, may be suspended from further participation in the Program for a specific period of time, and has the right to appeal this decision.

(l) *Days* means calendar days, except that a deadline that falls on a weekend or holiday shall be extended to the next working day.

### § 500.4 Compliance review.

Customs will conduct periodic Compliance Reviews of Participants participating in the Program to access information indicating whether Participants are complying with Program requirements as set forth in the **Federal Register** 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987), 53 FR 15274 (May 3, 1988), 53 FR 32421 (August 25, 1988) and 54 FR 50425 (Dec. 6, 1989). Customs will report its findings in writing to the Director.

### § 500.5 Director's review.

The Director will review Customs' report and determine whether

(a) The Participant is in compliance with Program requirements or

(b) The Participant has violated the Program for

(1) Failure to comply with Program document requirements, or

(2) Using foreign fabric.

### § 500.6 Compliance letter.

If the Director determines after reviewing Customs' report or as set forth in § 500.10(a)(3)(i), that the Participant is in compliance with all Program requirements, the Director will issue a letter informing the Participant of such compliance.

### § 500.7 Charging letter.

If the Customs' report indicates that

(a) The Participant did not provide the requisite documents to enable Customs to perform a complete review, or

(b) The Participant used foreign fabric, the Director will issue a Charging Letter by registered mail, return receipt requested, to the Participant:

(1) Requesting that the missing documentation be provided to Customs; or

(2) Setting forth each entry violation and requesting the Participant to submit to the Director an explanation of why foreign fabric was used.

### § 500.8 Answer.

The Participant shall have not more than fifteen (15) days after the date of receipt of the Charging Letter to provide Customs with the documentation requested or to provide the Director with the explanation requested, whichever is the case, unless the Participant provides a written request for an extension to the Director within that time period.

### § 500.9 Deadline for submissions and loss of right to appeal.

(a) If the Participant fails to file a timely answer to the Charging Letter or to request an extension of the time period to answer, it shall lose its right to appeal the Director's decision to the Judge and the Director's decision shall be deemed a final agency action.

(b) Notwithstanding paragraph (a) of this section, if within fifteen (15) days after the last date the answer was to be filed with the Director or Customs, the Participant provides the Director with a written explanation of its reasons for missing the deadline and provides the documentation or explanation requested in the Charging Letter, the Director may, in his discretion and considering the circumstances of the case, determine that the right to appeal is preserved.

(c) If the Participant seeks and is granted an extension of the time period to file an answer and fails to provide the documentation or explanation requested in the Charging Letter within the extended time period, it shall lose its right to appeal the Director's decision to the Judge and the Director's decision shall be deemed a final agency action.

(d) Notwithstanding paragraph (c) of this section, if within fifteen (15) days after the deadline date established by

the extension the Participant provides the Director with a written explanation of its reasons for missing the deadline and provides the documentation or explanation requested in the Charging Letter, the Director may, in his discretion and considering the circumstances of the case, determine that the right to appeal is preserved.

**§ 500.10 Director's decision.**

(a) If the Director concludes after reviewing

(1) Customs' report;

(2) The Participant's answer to the Charging Letter, if any; and

(3) Any other relevant information available:

(i) That no action is necessary, the Director will issue a Compliance Letter informing the Participant of the decision and the reasons therefor; or

(ii) That the Participant has violated the Program requirements and that action is necessary based on the Guidelines, the Director will issue a Decision Letter as set forth in § 500.11 and take steps, if appropriate, to implement suspension from further participation in the Program no earlier than forty-five [45] Days after Participant's receipt of the Charging Letter. The Director may suspend the Participant from further participation in the Program for up to three years.

(b) An assessment by Customs of liquidated damages against a bond posted by Participants does not prohibit the Director from suspending the Participant from further participation in the Program.

(c) The Director will not take into consideration any independent action taken by Customs regarding assessment or mitigation of liquidated damages against a bond in making a determination to suspend the Participant from further participation in the Program.

**§ 500.11 Decision letter for violation of program requirements.**

The Director will issue a Decision Letter to a Participant by registered mail, return receipt requested.

(a) *Contents of letter:*

(1) A statement of the precise violation(s) and the basis thereof;

(2) A statement of reasons for the decision and the date suspension from further participation in the Program, if any, it is to take effect;

(3) A statement that the Participant is entitled to appeal the Director's decision to a Judge unless the Participant is in default;

(4) A statement that the Participant is entitled to review the documents or other physical evidence upon which the charge is based and a description of the method for requesting access to, or copies of, such documents.

Excluded from such documents would be language relating to any impending or ongoing investigation of Participant by Customs; and

(5) A statement that the Participant has a right to retain counsel at the Participant's own expense for purposes of representation.

(b) Reserved.

**§ 500.12 Hearing and burden of proof.**

(a) *Request for hearing.* A Participant may request a formal oral (in-person presentation or telephone conference) or non-oral hearing on the Director's decision by submitting a written request to the Judge and one copy of the request to the Director not later than twenty [20] days after receipt of the Decision Letter, unless extended by the Judge for good cause shown upon a written motion by the Participant to the Judge and a copy to the Director, at the following addresses:

Office of Administrative Law Judge, Suite 4017, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

Director, Office of Trade Data Division, Office of Textiles and Apparel, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

(b) If the Participant fails to make a timely written request for an appeal of the Director's decision, then the Director's decision shall be deemed a final agency action.

(c) *Burden of proof.*

(1) The Director shall have the burden of proving that the Participant violated Program requirements and any aggravating factors by a preponderance of the evidence.

(2) The Participant shall have the burden of proving any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) *Authority of the Judge.* The Judge has the authority to:

(1) Set and change the date, time and place of the hearing upon reasonable notice to the Participant and the Director;

(2) Hold conferences to identify or simplify the issues or to consider other matters that might aid in the expeditious disposition of the proceeding;

(3) Regulate the course of the hearings and the conduct of the Participant and Director and their respective representatives;

(4) Rule on motions and other procedural matters;

(5) Examine witnesses;

(6) Receive, rule on, exclude or limit evidence;

(7) Conduct any conference, argument, or hearing in person or by telephone; and

(8) Exercise such authority as necessary to carry out the responsibilities of the Judge for the Program.

(e) *Non-oral hearing.* The Participant and the Director may each file written submissions for consideration with the Judge no later than thirty [30] days after the date of the deadline for filing the request for a hearing, unless extended by the Judge for good cause shown upon a motion by either party to the Judge.

(f) *Oral hearing.* The Participant and the Director may each file written submissions for consideration with the Judge no later than five [5] days before the date of the scheduled hearing, unless extended by the Judge for good cause shown upon a motion by either party to the Judge.

(g) *Oral hearing procedures.*

(1) *Generally.* Hearings shall be conducted by the Judge. The Federal Rules of Evidence and the Federal Rules of Civil Procedure shall not apply. All evidentiary materials deemed by the Judge to be relevant and material to the hearing and not unduly repetitious will be received and given appropriate weight.

(2) *Scheduling a hearing.* The Judge shall set the date of the hearing and shall notify the Participant and the Director of the hearing date. All hearings will be held in Washington, D.C. unless the Judge determines, based upon good cause shown, that another location would better serve the interests of justice.

(3) *Rights of the parties.* At a hearing, each party will have the right to:

(i) Be represented by counsel;

(ii) Present oral argument;

(iii) Introduce and examine witnesses and submit physical evidence;

(iv) Confront and cross-examine adverse witnesses;

(v) Receive a transcript of the proceedings, at each party's own expense.

(4) *Testimony and record.* Persons testifying at the hearing will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by a certified court reporter, transcribed and filed with the Judge. The Participant and the Director may obtain a copy of the transcript upon payment of proper costs. Upon such terms as the Judge deems just, he/she may direct that the testimony of any person be taken by deposition and may admit an affidavit as evidence, provided that the affidavit

shall have been filed and provided to the other party sufficiently in advance of the hearing to permit the other party to file and serve an objection thereto on the grounds that it is necessary that the affiant testify at the hearing and be subject to cross examination.

(5) *Failure to appear.* If the Participant or the Director fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed and a party's failure to appear will not affect the validity of the hearing or any proceedings or actions taken thereafter.

**§ 500.13 Judge's decision.**

(a) In making his/her determination in an oral or non-oral hearing, the Judge will take into consideration:

(1) The Customs' report;

(2) The criteria set forth in the Guidelines;

(3) The Charging Letter;

(4) The Answer;

(5) The Decision Letter;

(6) Written submissions;

(7) The oral presentations, transcript (if applicable) and exhibits (if any); and

(8) Any other information the Judge deems relevant.

(b) The Judge will notify the parties in writing by registered mail, return receipt requested, of the decision including a statement of reasons for the decision. Such notice shall also include a statement that the Participant and the Director are entitled to an appeal of the Judge's decision to CITA.

(c) The Director may not provide, and the Judge may not consider, information to support additional charges not included in the original Charging Letter. Based on the information and documentation presented, the Judge may determine that:

(1) Suspension is warranted for a given period of time;

(2) Suspension is not warranted; or

(3) (i) A period of suspension is warranted, but a waiver of part or all of the period of suspension is appropriate.

(ii) If, however, within three [3] years of the date of issuance of the Judge's determination to waive all or part of the suspension, Customs determines, pursuant to a subsequent compliance review, that either the Participant has used foreign fabric or failed to maintain proper records, then the Judge's determination under paragraph (c)(3)(i) of this section to suspend the Participant may be immediately imposed by the Director. Results of the subsequent compliance review will be treated in the normal course and a decision by the Director to suspend the participant for the subsequent violation will not affect the reinstated term of suspension for violation pursuant to paragraph (c)(3)(i) of this section.

**§ 500.14 Appeal to CITA.**

The Participant or the Director may appeal the Judge's decision by submitting a written request for appeal to Chairman, Committee for the Implementation, of Textile Agreements, Room 3001, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230, and one copy of the request to the other party, no later than twenty [20] days after receipt of the Judge's decision, unless extended by the Chairman of CITA for good cause shown upon a motion by either party to the Chairman of CITA and one copy to the other party. The decision of the Judge shall be deemed a final agency action if a timely written request for an appeal to CITA is not submitted.

**§ 500.15 CITA's decision.**

CITA will make a decision based solely on the record of the administrative hearing and will not consider evidence not previously submitted to the Judge. CITA may adopt the Judge's decision in whole or in part, or may reject or modify it. The Chairman of CITA shall notify the Participant and the Director in writing of CITA's decision, and the reasons therefor. CITA's decision shall constitute a final agency action.

**§ 500.16 Ex parte contacts.**

No party or representative of a party shall communicate in any manner with the Judge or with CITA on any matter at issue in a case when the case is before them, unless on notice and opportunity for each party to participate. This provision does not prohibit a party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

**§ 500.17 Separation of functions.**

(a) Neither Customs officials nor CITA shall be permitted to participate or advise in the initial decision by the Director or the decision made upon appeal to the Judge.

(b) The Judge shall not be responsible or subject to the supervision or direction by the Director or CITA.

**§ 500.18 Service of charging letter, decision letter and Judge's decision.**

Service shall be made by mailing a copy:

(a) Registered mail, return receipt requested, to the Participant at the Participant's last known address; or

(b) Registered mail, return receipt requested, on the registered agent authorized by appointment or by law to receive service of process for the Participant.

Dated: July 28, 1993.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93-18424 Filed 8-2-93; 8:45 am]

BILLING CODE 3510-DR-F

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[OH29-1-5396; FRL-4605-1]**

## Approval and Promulgation of Implementation Plans; Ohio

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** On November 14, 1991, the State of Ohio submitted proposed revisions to its State Implementation Plan (SIP) for particulate matter. On December 4, 1991, and January 8, 1992, the State submitted supplemental material including additional regulations. These SIP revisions were submitted by the State of Ohio for two purposes:

Pursuant to section 110 of the Clean Air Act (Act), to provide for a federally enforceable SIP based on Statewide regulations that will continue to achieve attainment in most parts of the State, and

Pursuant to part D of title I of the Act, to bring about the attainment of the national ambient air quality standards (NAAQS) for particulate matter and meet certain other requirements for the Cuyahoga County and Steubenville nonattainment areas. In this action, USEPA is proposing limited approval of the State's submittal. With the exception of one pair of paragraphs, USEPA is proposing to approve all of the submitted regulations. However, USEPA is simultaneously proposing a limited disapproval of the State's plans for Cuyahoga and Jefferson Counties. Specifically, USEPA is proposing to disapprove the Cuyahoga County plan for failure to satisfy the section 189(a)(1)(C) and section 172(c)(1) requirement for reasonably available control technology as it applies to a Ford Motor Company facility, and USEPA is proposing to disapprove Ohio's Steubenville area plan for failure to satisfy the attainment demonstration requirements of sections 189(a)(1)(B) and 172(c).

**DATES:** Comments on these SIP revisions and on the proposed USEPA action

must be received by September 17, 1993.

**ADDRESSES:** Copies of the State's submittals and USEPA's technical support document of November 17, 1992 are available for inspection at the following address: (It is recommended that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AE–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067.

**SUPPLEMENTARY INFORMATION:**

## I. History of Requirements and State Submittals

The original air quality standard for particulate matter was published on April 30, 1971, at 36 FR 8186. Under the Clean Air Act of 1970, States were required to submit plans to achieve attainment of this air quality standard. Ohio submitted its plan on January 31, 1972, and submitted major revisions on August 4, 1972. USEPA approved the plan and the revisions, most notably including several regulations in chapter AP–3 (Particulate Matter Standards), on April 15, 1974, at 39 FR 13539. Revisions to AP–3–04, submitted on January 25, 1974, were approved on September 23, 1976, at 41 FR 41692. On August 10, 1976, Ohio submitted EP–12 (Open Burning), which USEPA approved on February 3, 1978, at 43 FR 4611.

The Clean Air Act Amendments of 1977 established designations regarding whether areas were attaining the existing air quality standards, and required States to submit State Implementation Plan (SIP) revisions for areas designated nonattainment. Several areas in Ohio were designated nonattainment for particulate matter. The State submitted some final regulations and some draft regulations for particulate matter several times between June 1980 and March 1985, and USEPA proposed rulemaking to approve these revisions on January 2, 1987 (52 FR 91). However, the State did not complete adoption of the draft regulations, and, as a result, USEPA never received an approvable revision satisfying the requirements under the 1977 amendments. Thus, with the exception of a small number of source-specific limitations, the current Ohio SIP for particulate matter reflects the rules approved in 1974 and 1976, i.e. the 1972 version of the rules now codified in Ohio Administrative Code (OAC) chapter 3745–17 (Particulate Matter Standards) and the 1976 version of the rules now codified in OAC chapter 3745–19 (Open Burning Standards).

On July 1, 1987, USEPA revised the National Ambient Air Quality Standards (NAAQS) for particulate matter, refocussing the standard on smaller particles. The Clean Air Act Amendments of 1990 [1] subsequently established nonattainment designations for this revised standard, provided that certain areas were designated nonattainment and classified as moderate, and required States to submit revisions to their SIPs for areas thus designated nonattainment (see sections 107(d)(4)(B) and 188(a) of the amended Clean Air Act, 56 FR 56694 (November 6, 1991) and 57 FR 13498, 13537 (April 16, 1992)). The amended Act requires that States make SIP submittals by November 15, 1991, for such areas to satisfy specified planning requirements of the amended Act.

## II. Description of Ohio's Submittal

On November 14, 1991, Ohio submitted major revisions to its particulate matter SIP, consisting of two principal elements:

(1) Statewide regulations, and

(2) Additional regulations, emissions, and modeling information for Cuyahoga County and the Steubenville area. The Statewide regulations, submitted pursuant to section 110, reflect substantial revisions to the 1974 regulations presently in the SIP, and consititute the regulations that are presently maintaining the air quality standards in much of the State. The materials relating to the Cuyahoga County and Steubenville nonattainment areas were submitted pursuant to part D of title I of the Act, and include the more stringent regulations that Ohio identified as needed to attain the standards in these areas. The State's submittals of December 4, 1991, and January 8, 1992, included additional regulations (Rule 3745–17–09 and the six regulations in chapter 3745–75), and included supplemental administrative material relating to the rule adoption process.

The regulations submitted by Ohio include all of the rules in OAC chapter 3745–17 except rule 3745–17–05 ("Nondegradation policy") and all rules in OAC chapter 3745–75. (Rule 3745–17–06 contains no language and is reserved.) The specific submitted rules in chapter 3745–17 (Particulate Matter Standards) and associated titles are as follows:

- Rule 3745–17–01—Definitions
- Rule 3745–17–02—Ambient air quality standards
- Rule 3745–17–03—Measurement methods and procedures
- Rule 3745–17–04—Compliance time schedules
- Rule 3745–17–07—Control of visible particulate emissions from stationary sources
- Rule 3745–17–08—Restriction of emission of fugitive dust
- Rule 3745–17–09—Restrictions on particulate emissions and odors from incinerators
- Rule 3745–17–10—Restrictions on particulate emissions from fuel burning equipment
- Rule 3745–17–11—Restrictions on particulate emissions from industrial processes
- Rule 3745–17–12—Additional restrictions on particulate emissions from specific air contaminant sources in Cuyahoga County
- Rule 3745–17–13—Additional restrictions on particulate emissions from specific air contaminant sources in Jefferson County
- Rule 3745–17–14—Contingency plan requirements for Cuyahoga and Jefferson Counties

The specific submitted rules in chapter 3745–75 (Infectious Waste Incinerator Limitations) and associated titles are as follows:

- Rule 3745–75–01—Applicability and definitions
- Rule 3745–75–02—Emission limits
- Rule 3745–75–03—Design parameters and operating restrictions
- Rule 3745–75–04—Monitoring requirements
- Rule 3745–75–05—Recordkeeping
- Rule 3745–75–06—Certification and compliance time schedules

Rules 3745–17–01 through 3745–17–11 and Rules 3745–75–01 through 3745–75–06 apply Statewide. Rule 3745–17–12 applies only to identified sources in Cuyahoga County. Rule 3745–17–13 applies only to identified sources in Jefferson County. Rule 3745–17–14 applies only to identified sources in Cuyahoga and Jefferson Counties. The rules in chapter 3745–75 apply Statewide.

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[1] The 1990 Amendments to the Clean Air Act made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not meet) the particulate matter national ambient air quality standards (see Pub. L. 101–549, 104 Stat. 2399). References herein are to the Clean Air Act, as amended, 42 U.S.C. sections 7401 *et seq.*

The Steubenville nonattainment area includes not only portions of Jefferson County in Ohio, but also includes portions of Brooke County in West Virginia. Ohio's submittal provides copies of the administrative orders adopted by West Virginia to limit emissions from sources in that State's portion of the Steubenville nonattainment area. These administrative orders are addressed in a separate USEPA rulemaking.

A second group of elements of Ohio's submittal is the documentation of the State's demonstration that the regulations provide for attainment in Cuyahoga County and in the Steubenville area, including a comprehensive emissions inventory and documentation of a dispersion modeling analysis. A third group of elements in Ohio's submittal is administrative and regulatory material including material relating to public comments on the State's proposed rules, documentation of the legislative committee approval as required for State rule adoption, and materials addressing the adequacy of the State's program for implementing the particulate matter regulations.

### III. Review of Regulations

Ohio submitted 12 rules within OAC chapter 3745–17 for USEPA rulemaking and all 6 rules in OAC chapter 3745–75. The following discussion reviews each of these regulations individually. This discussion highlights the major issues associated with the regulation, compares the regulation to the previously approved SIP, and concludes with a recommendation on whether the regulation is approvable.

Several criteria were used in evaluating the submitted regulations. These criteria include the enforceability of the regulations, the clarity and specificity of the limitations contained in the regulations, the stringency of the regulations relative to the previously approved SIP, and, more generally, whether the submittal satisfies section 110. As indicated above, the previously approved SIP for particulate matter in most respects is the material submitted in 1972 as approved by USEPA on April 15, 1972. The open burning regulations approved by USEPA on February 3, 1978, are also a relevant part of the particulate matter SIP but are not affected by Ohio's November 1991 submittal.

A criterion for approvability of the submitted regulations is that the State must have followed appropriate procedures for adopting the regulations. For the Statewide and Cuyahoga County regulations, public notices of a comment period and hearing were published on December 8, 1990, a public hearing was held on January 11, 1991, and the rules were formally adopted on May 28, 1991. For the Jefferson County regulations, the regulation requiring contingency measures, and revisions to selected other regulations, public notices of a comment period and hearing were published on June 30, 1991, a public hearing was held on August 9, 1991, and the rules were formally adopted on November 14, 1991. For the infectious waste incineration regulations, public hearings were held on December 5, December 10, and December 17, 1990, and the rules were formally adopted on June 18, 1991.

Rule 3745–17–01 provides a variety of definitions, and replaces rule AP–3–01 in the previously approved SIP. Rule 3745–17–01 provides clear definitions for many terms which were not previously defined. The most significant definition is in paragraph (B)(11), which in defining "particulate matter" specifies the test methods which are to be used to measure particulate matter emissions from stacks, i.e. the "applicable test methods in appendix A of 40 CFR part 60." This definition is acceptable to USEPA. Rule 3745–17–01 is approvable.

Rule 3745–17–02 specifies particulate matter air quality standards modified to conform to the federal standards for fine particles that USEPA promulgated July 1, 1987 (52 FR 24634). The State rule that this rule replaces was not an approved part of the SIP. Rule 3745–17–02 is unambiguous, helps assure that violations of the fine particle NAAQS are addressed, and is approvable.

Rule 3745–17–03 provides test methods for the limits imposed in other rules. No previously approved rule is replaced by rule 3745–17–03. This rule specifies clearly identified methods for evaluating compliance with each limit in other rules, generally using methods defined in appendix A of 40 CFR 60. These methods include the applicable stack test methods (as specified in Rule 3745–17–01(B)(11), typically meaning method 5 and several variations of this method), Method 9 for observing opacity of plumes, and method 22 for observing the time that emissions are visible. Other methods cited in this rule are American Society for Testing Materials (ASTM) and the reference "Standard Methods for the Examination of Water and Wastewater." USEPA's technical support document discusses further details of this rule, including several recent modifications of the State rule intended to address USEPA concerns.

USEPA has a remaining concern relating to the test method for quench water specified in rule 3745–17–03. Air emissions from coke quenching operations are limited by a surrogate limit on quench water quality specified in rule 3745–17–12. The test method for this limit, provided in rule 3745–17–03(B)(10)(c), provides for monthly average water quality values, based on grab samples of quench water taken once each of four weeks. Monthly averaging is an inappropriately long averaging time, due to the fact that it provides insufficient limitation on 24 hour average emissions levels and allows noncompliance with the limit for a majority of the time. Therefore, this paragraph of rule 3745–17–03 is not approvable. Except for this paragraph, this rule provides clear, appropriate test methods and is approvable.

Rule 3745–17–04 provides compliance deadlines by which limits provided elsewhere in chapter 3745–17 must be met. This rule replaces a previously approved but now outdated rule providing only a single compliance date of April 15, 1977. For the limits that have been added recently to chapter 3745–17, this rule requires compliance for some sources immediately (the effective date of the State rules), for most other sources by December 31, 1993, and for selected sources at Ford Motor Cleveland Casting Plant by December 31, 1994. Even though rule 3745–17–04 raises issues discussed below concerning the requirement in nonattainment areas that reasonably available control technology be implemented by December 10, 1993, this rule is unambiguous and approvable.

Neither rule 3745–17–05 (Nondegradation policy) nor rule 3745–17–06 (an empty rule at the State level) were submitted. Rule 3745–17–06 reflects the repeal of rule AP–3–06, which was approved as part of the SIP and contained criteria for specifying the stringency level of emissions limits for regions in the State. However, this rule has been superseded by a clearer specification of which counties are subject to which limits. Therefore, rule AP–3–06 may be removed from the SIP.

Rule 3745–17–07 provides Statewide opacity limits. Stack emissions must meet a limit of 20 percent opacity as a 6-minute average, except that one 6-minute average is permitted to be up to 27 percent. Fugitive emissions from industrial processes must meet a limit of 20 percent opacity as a 3 minute average. Visible emissions limits are specified for the various operations involved in coke production. Roadways, parking areas, and storage piles are required to have no visible emissions except for specified numbers of minutes

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per hour. Unpaved roadways and parking areas are allowed to exhibit 13 minutes of visible emissions per hour, paved roadways and parking areas are allowed to exhibit 6 minutes of visible emissions per hour, and storage piles are allowed to exhibit 13 minutes of visible emissions. Supplementing this rule is a summary of a study conducted by Ohio EPA demonstrating that these roadway, parking area, and storage pile limits can reasonably be achieved.

Rule 3745–17–07 also provides various exemptions from these opacity limits. Limited exemptions from the stack opacity limit are provided for start-up, shutdown, intermittent soot-blowing, and intermittent ash removal for fuel burning sources, and limited exemptions are also provided for rare malfunctions and for selected other source types. In correspondence to Ohio EPA dated October 26, 1983, and February 17, 1984, USEPA made recommendations on how to define limited, reasonable exemptions in a clear manner. Ohio has adopted regulations that reflect the USEPA recommendations. Ohio has also addressed various provisions of "director's discretion" in its rules, stating in paragraph (D): "Any revision approved by the director in accordance with [the several paragraphs in the rule that involve judgmental, nonreplicable decisions] shall not revise the federally enforceable requirements of the state implementation plan until approved by the U.S. environmental protection agency." Thus, in most cases, specific criteria in the rule establish limited exemptions for probably unavoidable exceedances of the general opacity limit, and the remainder of cases will be subject to USEPA evaluation as a SIP submittal. Finally, the rule provides that sources meeting an applicable mass emission limit but unable to meet the opacity limit may obtain an alternate opacity limit, which like other discretionary revisions does not change the federally enforceable opacity limit until USEPA approval.

Rule 3745–17–07 replaces the previously approved rule AP–3–07, and is considerably more stringent, more enforceable, and limits several significant source categories which were not effectively limited by rule AP–3–07. Rule 3745–17–07 is fully approvable.

Rule 3745–17–08 provides that sources in specified significant source areas in the State must take or install "reasonably available control measures to prevent fugitive dust from becoming airborne." The rule continues that "Such reasonably available control measures shall include * * * one or more of" a listing of nine control measures. For example, one listed measure is "installation and use * * * of equipment to * * * capture, vent and control" emissions, meeting a particulate matter concentration limit in the control equipment outlet of ".030 grain per dry standard cubic foot of exhaust gases or * * * no visible particulate emissions from the exhaust stack(s), whichever is less stringent."

Rule 3745–17–08 is a replacement for and is more stringent than the previously approved rule AP–3–09. Rule 3745–17–08 exempts emissions from tilling and wind erosion of farm land and from selected other source types but specifies additional measures applicable to certain source types and slightly enhances the stringency of other measures. Many States have "reasonably available control measure regulations," and some courts have overturned enforcement cases based on such regulations because the applicable regulations were unclear as to what extent of control was required. However, Ohio's rule 3745–17–08 is clearer than many of its counterpart regulations in other States. The nine control measures are written to apply to nine different kinds of sources, such that it is clear for most sources which requirement applies. Further, each of the nine control measures are clearly defined. Thus, this rule is found to be enforceable. For these reasons, rule 3745–17–08 is approvable.

Rule 3745–17–09 specifies particulate matter emissions limits and odor requirements for incinerators. Medical waste incinerators are exempted from this rule but are regulated under chapter 3745–75 of Ohio's regulations. Rule 3745–17–09 is similar to but more clear than the previously approved AP–3–10. The six Rules in chapter 3745–75 provide clear, enforceable, more stringent requirements for medical waste incinerators. Thus, rule 3745–17–09 and the six rules in chapter 3745–75 are approvable.

Rule 3745–17–10 provides particulate matter emissions limits from combustion sources. A key portion of this rule is a graph specifying emissions limits for combustion of solid fuels and liquid fuels other than number two fuel oil. These graphical limits are identical to the graphical limits in the previously approved rule AP–3–11. Compared to this previously approved rule, rule 3745–17–10 reflects revised emission limits for three individual facilities in the State, provides a procedure for derating of fuel burning equipment, provides an alternative set of limits for small coal-fired space heating equipment which are more work practice oriented, and specifies a significantly more stringent limit for combustion of gaseous fuels and number two fuel oil. Rule 3745–17–10 also specifies which counties and subcounty areas are subject to each set of limits, and thus is less ambiguous than rule AP–3–06 in the current SIP. Overall, rule 3745–17–10 is clearly more enforceable and more stringent than the previously approved rule and is fully approvable.

Rule 3745–17–11 provides emissions limits for stack emissions from industrial sources other than combustion sources. The key element of this rule is known as a "process weight rate limit," which specifies the allowable quantity of emissions as a function of the weight of material processed by the source per hour. This rule also provides an emission limit calculated as a function of uncontrolled emissions. Both sets of limits are essentially identical to the sets of limits in the previously approved rule AP–3–12. Rule 3745–17–11 was also modified to specify limited exemptions for two source types, to remove inappropriate testing provisions, to clarify geographic applicability of different limits (as discussed with rule 3745–17–10), and to specify clear limits for stationary gas turbines and stationary internal combustion engines. Overall, rule 3745–17–11 is clearly more enforceable and more stringent than the previously approved rule and is fully approvable.

Rule 3745–17–12 is a new rule providing limits for specified sources in Cuyahoga County. These limits are intended to reduce allowable emissions in this nonattainment area sufficiently to assure attainment, to implement reasonably available control technology, and to meet other Part D requirements for Cuyahoga County. The sections of this notice that follow discuss whether rule 3745–17–12, in conjunction with Ohio's other particulate matter rules, suffice to meet applicable part D requirements, or whether additional limitations are necessary.

Previous discussion has noted that the quench water test method in rule 3745–17–03 is not approvable. As a result of inseparability from this test method, the quench water quality limit in paragraph (P)(6)(a) of rule 3745–17–12 also may not be approved. Otherwise, the limits in rule 3745–17–12 are clear and enforceable, all limits are more stringent than the limits resulting from other rules. All portions of this rule except paragraph (P)(6)(a) are fully approvable.

Similarly, rule 3745–17–13 is a new rule providing limits for specified sources in Jefferson County, for the purpose of assuring attainment in the Steubenville nonattainment area. Again,

discussion below addresses whether the proposed SIP is sufficient to meet part D requirements. In any case, these limits too are clear and enforceable, more stringent than other rules, and so rule 3745–17–13 is fully approvable.

Rule 3745–17–14 requires selected companies in Cuyahoga and Jefferson Counties to identify control strategies for Ohio to submit as contingency plans. The requirement for contingency plans is a new requirement in section 172(c)(9) of the Clean Air Act as amended in 1990. Rule 3745–17–14 does not provide specific, enforceable contingency measures satisfying the requirements of paragraph 172(c)(9). Nevertheless, it would be appropriate to approve rule 3745–17–14. This rule strengthens the SIP, insofar as it requires companies to develop contingency strategies and insofar as it provides a mechanism for the implementation of those measures. A more thorough discussion of this rule is provided below.

## IV. Requirements of Section 189

The air quality planning requirements for moderate particulate matter nonattainment areas are set out in title I of the Act. The USEPA has issued a "General Preamble" describing the Agency's preliminary views on how it intends to review SIP's and SIP revisions submitted under title I of the Act, including those State submittals addressing moderate particulate matter nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992)). Interested parties should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on revisions to the Ohio's moderate particulate matter SIP, USEPA is applying its interpretations to the specific factual situation presented in Ohio. USEPA will consider timely submitted comments before taking final action on today's proposal.

Part D of title I contains provisions applicable to nonattainment areas. Moderate particulate matter nonattainment areas must meet the applicable requirements set out in subparts 1 and 4 of part D. Subpart 1 (especially section 172(c)) contains provisions generally applicable to all nonattainment areas, and subpart 4 (especially section 189) contains provisions specifically applicable to particulate matter nonattainment areas. At times, certain requirements of subparts 1 and 4 seem to overlap or conflict. USEPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in today's notice.

Section 189, found in subpart 4 of part D of title I of the Act, provides the principal requirements applicable to particulate matter nonattainment area plans. Of particular importance for moderate area nonattainment plans are the requirements in section 189(a)(1). This section includes the requirement in section 189(a)(1)(B) for States either to demonstrate attainment or to demonstrate that attainment is infeasible by the applicable attainment deadline, and includes the requirement in section 189(a)(1)(C) to provide for reasonably available control measures (RACM). (The requirement in section 189(a)(1)(A) for a new source permitting program will be addressed in a separate State submittal and separate USEPA rulemaking.) Also relevant is the requirement in section 189(e) for States to control sources of particulate matter precursor emissions, unless the USEPA determines that such sources do not contribute significantly to violations of the particulate matter standards. Review of Ohio's submittals with respect to each of these three provisions is provided in the subsections that follow.

### *A. Attainment Demonstration*

As noted, for initial moderate particulate matter nonattainment areas, the State must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. In the General Preamble, USEPA indicated that the attainment demonstrations for the initial moderate areas must generally follow existing modeling guidelines for particulate matter (see 57 FR 13539).

Ohio provided analyses concluding that both Cuyahoga County and the Steubenville area would attain the standards by December 31, 1994. These analyses have two components:

(1) An emissions inventory, and

(2) A dispersion modeling analysis of the concentrations resulting from those emissions. The discussion that follows summarizes the more detailed discussion contained in the USEPA technical support document.

The principal causes of nonattainment in the two nonattainment areas are industrial sources. Therefore, in accordance with the "Guideline on Air Quality Models," the attainment analyses submitted by Ohio are based on dispersion modeling using an inventory of allowable emissions from industrial sources in each area, supplemented by modeling using actual emissions for the relatively minor nonindustrial sources ("area sources"). The concentration estimate at each analyzed location reflects the sum of the impact of industrial sources plus the impact of area sources plus a background concentration.

The significant emission points in the two nonattainment areas are of three types:

(1) Stack sources,

(2) Process fugitive emissions, and

(3) Area sources such as roadways and storage piles. Stack sources are generally subject to an hourly emission limit, typically established either as a point-specific limit in rule 3745–17–12 and rule 3745–17–13, as a result of the generic process weight rate limit in rule 3745–17–11, or as a result of an applicable control measure from rule 3745–17–08. These limits are expressed in terms of total suspended particulate matter, which is used as a surrogate for limiting the particulate that are of a nominal aerodynamic diameter of 10 microns or less. Process fugitive emissions are generally limited by rule 3745–17–07, which specifies a general 3-minute average opacity limit for fugitive sources of 20 percent opacity, as well as specifying a stack opacity limit and specifying particular opacity limits for particular coke oven operations. Finally, emissions from roadways and other area source types are limited by Statewide limits on the allowable number of minutes of visible emissions specified in rule 3745–17–07 and for many Cuyahoga and Jefferson County facilities by tighter limits on the allowable number of minutes of visible emissions specified in rule 3745–17–12 and 3745–17–13.

For stack sources, the estimation of allowable emissions is relatively straightforward. This estimation is complicated by Ohio's use of emission limits expressed in terms of total suspended particulate matter, which requires an estimation of the portion of those emissions consisting of particles nominally 10 microns and smaller. Nevertheless, Ohio has used appropriate procedures and made appropriate estimates of the fine particle emission rates allowed by the applicable total particle limits. USEPA review of stack emissions estimates identified only a few relatively minor errors, generally from the use of actual rather than allowable emissions.

For process fugitive sources, the estimation of emissions allowed by an applicable opacity limit is much more difficult. In many cases, Ohio has made appropriate judgements of the quantity

of allowable emissions from these sources. However, for selected emission points in the Steubenville area, USEPA believes that Ohio has significantly underestimated the emissions permitted by the applicable regulation.

One emission point for which emissions are judged to be significantly underestimated is the roof monitor for the basic oxygen furnaces at Wheeling-Pittsburgh Steel. The emissions estimate is documented in a report provided by the company and included in the State's submittal. Two features of this estimate warrant discussion. First, the company estimated that its emission capture system captures 99.5 percent of the emissions generated during the oxygen blowing operation, so that fugitive emissions are only 0.5 percent of generated emissions. Second, the company assumed that only a fraction of emissions generated by a basic oxygen furnace but escaping the primary emissions capture system are actually emitted into the atmosphere.

Wheeling-Pittsburgh Steel argued for its capture efficiency estimate by presenting data that the mass of solids captured by the basic oxygen furnace emission control system were 104.2 percent of the generated emissions as estimated according to AP–42. However, given the uncertainties in AP–42 emission factors, it is USEPA's position that these data cannot distinguish between 99.5 percent capture and for example 95 percent capture, and in fact better support an argument that AP–42 understates the emissions generated by this source.

Wheeling-Pittsburgh Steel did not justify its assumption that some uncaptured emissions are not actually emitted, but the emissions calculation reflects an implied rationale. This implied rationale reflects a comparison of the "at building monitor" emission factors to the "at source" emission factors for tapping and for charging given in AP–42. This implied rationale treats the "at source" emission factor as indicative of the rate of emissions generation and treats the "at building monitor" emission factor as indicative of the quantity of emissions actually reaching the atmosphere. (Both "at building monitor" emission factors are lower than the corresponding "at source" emission factors given in AP–42; otherwise, the company would be implying that emissions are self-generated within the building.) The implied rationale rests on the further assumptions that the AP–42 emission factor for basic oxygen furnace (BOF) melting and refining is an "at source" rather than an "at building monitor" emission factor, and that the same settling or emissions disappearance that the company apparently believes occurs with charging and tapping also occurs with melting and refining.

USEPA does not agree that the "at source" and "at building monitor" emission factors for charging and tapping imply that emissions from these operations or emissions from melting and refining will either settle within the building or otherwise disappear. More generally, USEPA finds that the BOF emissions estimates developed by the company are not justified and significantly underestimate the full atmospheric emissions from this source.

A second set of emission points of concern are coke ovens. In order to estimate emissions permitted by the visible emissions limits that apply to the various coke-making operations, Ohio used information provided in "Coke Oven Emissions from Wet-Coal Charged By-Product Coke Oven Batteries—Background Information for Proposed Standards" (USEPA Report Number EPA–450/3–85–028a, April 1987). Although this report provides data to support a reasonable estimate of these emissions, selected aspects of Ohio's estimation procedure are inappropriate. Most significantly, the emission factors are based on an actual leak rate rather than on the allowable leak rate permitted by the applicable limitation. In addition, minor errors were identified in the calculations of the relationship between benzene soluble organic emissions and fine particulate matter emissions.

In the case of Cuyahoga County, Ohio's estimates are not significantly different from more appropriately derived estimates, particularly given that Ohio included a coke oven battery which by a federally enforceable permit has been shut down. However, emissions for the coke ovens in the Steubenville area (in Brooke County, West Virginia) are significantly underestimated.

The final type of source in Ohio's inventory was open dust sources such as roadways and storage piles. Equations in AP–42 and "Control of Open Fugitive Dust Sources" were used to estimate uncontrolled emissions from these sources. The State assumed that the applicable limits on the allowable number of minutes of visible emissions would require emissions from these sources to be reduced by 95 percent. Ohio also provided a study demonstrating that its limits are strict but achievable. Although the relationship between emissions rates and the number of minutes of visible emissions has not been clearly established, USEPA finds that Ohio has made a plausible estimate of the reductions that its regulations require, particularly for the most significant sources.

Another inventory issue pertains to condensible particulate matter emissions, i.e., material which is emitted in gaseous form (and is in gaseous form at the temperature used in the applicable stack test method) but condenses into particulate form at ambient temperature. The State provided condensible particulate matter emissions estimates for Cuyahoga County, based on numerous stack tests that have been conducted on sources in the County. However, the emissions inventory for the Steubenville area was found to include no emissions of condensible particulate matter other than from coke oven leaks. Several sources in the area have the potential for significant condensible particulate matter emissions which could affect whether the plan provides for attainment or adequately requires reasonably available control technology.

Full assurance of attainment requires that the emissions limits which are necessary to assure attainment are fully enforceable. One set of limits of special concern govern emissions from coke pushing and vented emissions from material handling operations. These sources are regulated under rule 3745–17–08(B), which requires "one or more" of the nine measures specified in the paragraph. Since paragraph (B)(3) of this rule is clearly appropriate for these sources, the requirement in this paragraph for achieving .03 grain of particulate emissions per dry standard cubic foot of exhaust gases (or no visible stack emissions, whichever is less stringent) applies to these sources. For these and other sources, with the exception of the quench water test method issue identified above, Ohio's regulations are clearly written and provide that the limitations assumed in deriving the allowable emissions inventory are fully enforceable.

The second main element of the State's attainment demonstrations is a dispersion modeling analysis. The attainment demonstration utilized the most recent version of the Industrial Source Complex, Short Term, (ISCST), model dated 90346, and (ISCLT), model dated 90008 available at the time the State prepared its plan. The model was run in the regulatory default mode. The Complex I model, dated 90095, was used in conjunction with ISCST to evaluate intermediate terrain. The Gaussian-Plume Multiple Source Air Quality Algorithm (RAM) was also used to model regional area particulate matter emissions. Total concentrations were

estimated by adding the ISCST estimates, the RAM estimates, and a monitor-based background concentration.

The modeling for each of the two areas used a substantial grid of receptors. The receptors for Cuyahoga County initially contained 922 receptors and extended across the County. The receptor resolution ranged from 1.0 kilometer in the remote areas to 0.25 kilometers in the immediate vicinity of the highest receptors. The final model runs were performed on a grid of 258 receptors focussing on the peak impact areas in the County. The receptor grid for the Jefferson County, Ohio/Follansbee, West Virginia area, covered an 8×13 kilometer rectangular area and used 382 receptors. Receptor resolution ranged from 1.0 kilometer at the edge of the grid, to 0.2 kilometers at the property lines of three major facilities.

The Cuyahoga County study utilized five years of National Weather Service (NWS) data (1983–1987). The surface observations were collected at the Cleveland-Hopkins NWS site while the upper air data, used to determine mixing heights, was collected at the Buffalo NWS site. The sites were chosen because they are most representative of the meteorology in the study area, taking into account Lake Erie effects on wind, temperature, and mixing heights.

The Jefferson County study utilized one year of on-site meteorological data. A tower with instruments at both 10 meter and 30 meter levels was used to collect data on wind speed, wind direction, wind direction variability (sigma theta), and temperature. The tower is located in the Ohio River valley, adjacent to the Wheeling Pittsburgh Steel facility in Follansbee, West Virginia. Upper air data from the Pittsburgh, Pennsylvania NWS site was used to determine mixing heights. USEPA believes that one year of local data better represents both typical and worst case meteorology in the Steubenville area than five years of NWS data, and that these data are appropriate for all major sources and receptors in the area.

In order to account for unmodeled sources, Ohio determined a background concentration that was representative of rural/non-industrial air quality. Based on monitoring in Adams County, Ohio, the State used a 24-hour background concentration of 28.0 microgram per cubic meter (μg/m³) (reflecting a second-high value) and an annual background concentration of 18.4 μg/m³ (reflecting an annual average).

The 24 hour average National Primary and Secondary Ambient Air Quality Standards for particulate matter are attained when the concentration exceeds the standard less than or equal to one day per year. Therefore, for any given location, the critical 24 hour average concentration for particulate matter modeling with five years of meteorological data is the sixth highest concentration. In Cuyahoga County, among receptors near Ford's Cleveland Casting Plant, the highest critical concentration (i.e., the highest sixth highest concentration) was 147.7 μg/m3. The highest critical concentration near LTV was 143.2 μg/m³. These concentrations represent the sum of the total point source impacts, the background concentration, and the RAM area source contribution.

In Jefferson County, the use of one year of on-site meteorological data led to a different means of identifying the critical concentration. In accordance with the "$PM_{10}$ SIP Development Guideline," the critical concentration is the second high concentration at a given location. The highest critical concentration in the Steubenville nonattainment area and its immediate vicinity as modeled by Ohio was 144.06 μg/m³. The modeling predicted very high concentrations at receptors placed near Weirton, West Virginia. An analysis of the concentrations modeled at these receptors showed that sources in the Weirton area contributed over 99% of the highest second-highest 24-hour concentration. Sources in the Steubenville-Follansbee nonattainment area contributed 11 μg/m³ to the highest second highest concentration. The City of Weirton, including the portion of the city in Brooke County and the portion in Hancock County, West Virginia, has been proposed to be designated nonattainment. This area includes all the sources that contribute significantly to these modeled violations. Therefore, USEPA proposes to rely on the SIP which will be required for Weirton to address these modeled violations.

USEPA has conducted further modeling runs to assess the significance of various issues. These modeling runs are documented in USEPA's November 17, 1992 technical support document for this rulemaking. These modeling runs utilized the current version of the Industrial Source Complex model, known as ISC2, and were conducted with and without corrections to the emissions inventory problems identified in USEPA's review.

One finding from USEPA's modeling was that ISC2 predicted concentrations very similar to those of ISC in both Cuyahoga County and the Steubenville area. At almost all locations, ISC2 predicted slightly lower concentrations than ISC. At no location did ISC2 predict exceedances of the NAAQS not predicted by ISC.

A second finding from USEPA's modeling was that correction of emissions inventory errors in Cuyahoga County did not change the conclusion that the State's plan provides for attainment. (This analysis, like Ohio's analysis, assumed that the quench water limit will be fully enforceable.) Consequently, USEPA believes that the emissions inventory for this area is adequate to satisfy requirements for an accurate inventory, and believes that the State plan provides for attainment in Cuyahoga County, provided that the quench water limit is made fully enforceable.

A third finding from USEPA's analysis is that correction of errors in the Steubenville area emissions inventory led to prediction of substantial violations of the NAAQS in the area. Particularly significant are the emissions estimates for fugitive emissions from Wheeling-Pittsburgh Steel's basic oxygen furnace shop and coke ovens, which USEPA believes underestimate these emissions substantially. Other less significant issues relating to the emissions inventory and modeling analysis for this area are discussed in the technical support documents for this rulemaking. Consequently, the plan for the Steubenville area is judged not to provide for attainment (nor did the plan demonstrate that attainment is infeasible), and thus does not satisfy section 189(a)(1)(B).

*B. Reasonably Available Control Measures (RACM)*

Section 189(a)(1)(C) requires particulate matter plans to include "[p]rovisions to assure that reasonably available control measures for the control of PM–10 shall be implemented no later than December 10, 1993. . . ." Guidance in the General Preamble clarifies that attainment needs are a significant factor in judging whether this requirement for reasonably available control measures (RACM) is met, since "some available control measures may not be 'reasonably' available because their implementation would not expedite attainment." (See 57 FR 13543.) As noted in section 172(c)(1), RACM includes reasonably available control technology (RACT).

Most of the sources in Cuyahoga County are subject to emission limitations providing for attainment that are effective by or well before the end of 1993. Although a few compliance deadlines are December 31, 1993, rather than the December 10, 1993, deadline in section 189(a)(1)(C), the three week

difference is considered *de minimis*. In addition, sources which can be rapidly controlled, most notably roadways and storage piles, are subject to stringent control requirements which are already in effect. For this majority of sources, USEPA believes that no additional control measures beyond those already required could be implemented sufficiently rapidly to expedite attainment.

On the other hand, for one facility in Cuyahoga County, the Ford Motor Cleveland Casting Plant, the State plan permits three of the control measures included in the attainment demonstration to be implemented as late as December 31, 1994, well after the December 10, 1993, RACM deadline. As indicated above, USEPA interprets that the RACM requirement may be met either:

(1) By implementation of sufficient measures to provide for attainment by December 1993, along with a demonstration that no additional reasonably available measures would expedite attainment; or

(2) By implementing all RACM by December 1993. The State has not demonstrated that either criterion is met. This issue was further evaluated by reviewing whether additional measures are available at this facility which would be considered to be RACM. First, the emission levels achievable at cupolas are similar to the emission levels achievable at many iron and steel sources. Nevertheless, the cupola emission limits imposed by the State appear to allow much more emissions than those normally considered to be RACM for analogous iron and steel sources. (See the discussion of RACM and RACT in the General Preamble (57 FR 13540), the supplement to the General Preamble (57 FR 18074), an August 20, 1991, memorandum entitled "Questions and Answers (Q&A's) for Particulate Matter, Sulfur Dioxide ($SO_2$), and Lead (Pb)," an August 7, 1980, memorandum entitled "Steel Technical Support Options and Documents," and the attached table entitled "Particulate Emission Limitations Generally Achievable on a Retrofit Basis.") Second, the cupola emission limitations adopted by the State are less stringent than another of the three strategies recommended by Ford Motor Company and included in the State's proposed rules (the "Cupola Dust Collection Upgrade Plan"). Accordingly, the available evidence indicates that the limitations on the cupolas in this alternate strategy do appear to represent RACT for these sources. Thus, the State plan is judged not to require full RACT for these sources. In addition, the State has not demonstrated that no controls are reasonably available for the Number 7 induction furnace, nor has the State demonstrated that the three sources for which final controls are due December 31, 1994, are required to have RACT prior to that date. Consequently, the State's plan has not satisfied the RACM requirement in section 189(a)(1)(C) as applied to Ford's facility in Cuyahoga County.

For Jefferson County, as with Cuyahoga County, the State did not provide documentation specifically addressing whether its regulations require RACM. Therefore, a further evaluation was conducted for Jefferson County in order to review whether additional measures are available which would be considered to be RACM. (Separate rulemaking addresses a similar evaluation for the West Virginia plan.) The starting point for this review was the four guidance documents cited above. All of the requirements identified in the August 7, 1980, memorandum as being normally achievable for iron and steel sources are in fact required by Ohio. USEPA has not developed such specific RACM guidance for other sources, but Ohio's plan was found to require RACM for other Ohio sources in the area. In addition, Ohio's plan requires RACM in all cases by December 31, 1993, and in most cases much earlier. Consequently, Ohio's plan is judged to satisfy the RACM requirement in section 189(a)(1)(C) for Jefferson County.

*C. Particulate Matter Precursors*

Section 189(e) specifies that "control requirements . . . for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area." Particulate matter precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates.

USEPA's technical support document provides a detailed discussion of precursor impacts in Ohio. Ohio provided information on precursor impacts as part of its receptor modeling analysis for Jefferson County. This analysis was based on measurements of the composition of filter catches of ambient monitors and a chemical mass balance study comparing these compositions to the compositions of potentially significant source types. The average of the available measurements of sulfate plus nitrate concentrations was 7.5 $\mu g/m^3$. A comparison of this concentration to the annual average background concentration used in Ohio's attainment demonstration, 18.4 $\mu g/m^3$, illustrates the relative insignificance of the impact of particulate matter precursors. With respect to 24 hour average concentrations, the results of the chemical mass balance study indicate that the average secondary particulate matter contribution on days in Jefferson County measuring above 100 $\mu g/m^3$ was 14 $\mu g/m^3$. The highest directly measured sulfate plus nitrate concentration was 13 $\mu g/m^3$. A comparison to the 24 hour average background concentration used in Ohio's attainment demonstration, 28 $\mu g/m^3$, again illustrates the relative insignificance of the impact of particulate matter precursors. More generally, the receptor modeling study supported representing secondary particulate matter impacts as part of the background concentration.

Further considerations also argue against applying the same control requirements for precursor sources as for direct emission sources. The climatology throughout Ohio is such that precursor emission control for a particular source would not have a significant effect until far downwind. Title IV of the Act mandates significant particulate precursor emission reductions in Ohio, after which the impacts of these sources on particulate matter concentrations will be even less significant. Consequently, USEPA proposes to determine that precursor emission sources do not contribute significantly to particulate matter concentrations which exceed the standard in the area.

**V. Other Requirements**

In addition to the requirements in section 189, particulate matter nonattainment area plans must also meet the requirements of subpart 1 of part D of title I of the Clean Air Act, particularly section 172(c). Section 172(c)(1) mandates that these plans require RACM (including RACT). The discussion above addresses RACM issues and concludes that Ohio's plan requires RACM in Jefferson County and most of Cuyahoga but does not require RACM at Ford Motor's Cleveland Casting Plant.

Section 172(c)(2) requires that nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress (RFP), as defined in section 171(1), toward attainment by December 31,

1994 (see section 189(c) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For the initial moderate particulate matter nonattainment areas (i.e., areas designated nonattainment by the Clean Air Act Amendments of 1990), the emissions reductions progress made between the SIP submittal (due date of November 15, 1991) and the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement. The *de minimis* timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

Ohio's submitted regulations provide a range of compliance dates. In Cuyahoga and Jefferson Counties, the final compliance dates in most cases were the effective dates of the rules (i.e., June 14, 1991, for Cuyahoga County, and December 6, 1991, for Jefferson County); a small number of sources for which control equipment installation was required were subject to compliance deadlines ranging from August 1, 1992 to December 31, 1994. (As discussed previously, only sources at Ford Motor's Cleveland Casting Plant have compliance deadlines beyond December 31, 1993.) Thus, the State's plan for Cuyahoga County satisfies section 172(c)(2), provided (as with the attainment demonstration) that the quench water quality limit is made fully enforceable. The State's plan for the Steubenville area does not currently satisfy section 172(c)(2) because the plan is judged not to provide for timely attainment, but the plan would satisfy section 172(c)(2) if the plan were revised to provide for timely attainment.

Section 172(c)(3) requires a suitable emissions inventory. The State has provided thorough documentation of both actual and allowable emissions estimates. For reasons discussed above, this requirement has been met for Cuyahoga County and not met for the Steubenville area.

Section 172(c)(4) mandates that any stationary source growth margin included in the SIP be expressly identified and quantified. Ohio did not include any such growth margin in its SIP.

Section 172(c)(5) mandates a suitable permit program. This requirement is also specified in section 189(a)(1)(A). This requirement is expected to be addressed in a separate State submittal, and will be addressed in separate USEPA rulemaking.

Section 172(c)(6), along with section 110(a)(2)(A), requires that limitations sufficient to provide for attainment be enforceable by the State and USEPA (see 57 FR 13556). The USEPA criteria addressing the enforceability of SIP's and SIP revisions were discussed in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). The criteria include, for example, applicability to sources, compliance date(s), compliance periods, test methods, record keeping requirements, and any exemptions or variances. In addition to providing enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

A concern with the enforceability of the quench water limit has already been discussed. For all of the other limits, Ohio's submitted regulations are found to be fully enforceable. First, Ohio's regulations provide specific quantitative emissions limits applicable to clearly specified sources. Second, Ohio's rule 3745–17–04 specifies clear compliance deadlines, including deadlines for interim steps toward compliance where appropriate. Third, rule 3745–17–03 provides clearly defined test methods with clearly specified applicability. Fourth, Ohio's regulations provide specific recordkeeping requirements for a subset of source limitations which are enforceable only through review of records, and the State has authority through its approved permitting regulations and uses that authority to require appropriate reporting and recordkeeping requirements for other sources. Fifth, Ohio's regulations provide clear and appropriate limitations on equipment malfunctions that increase emissions.

Ohio's regulations also utilize a well designed approach to "director's discretion." In particular, for the few remaining provisions of State discretion in Ohio's regulations, the regulations specifically provide that authorized revisions do not change the SIP without USEPA approval.

In summary, for Cuyahoga County, except for the quench water test method in rule 3745–17–03(B)(10)(c), the State's plan is found to satisfy section 172(c)(6). For the Steubenville area, the plan does not now satisfy section 172(c)(6) because the plan does not provide for attainment, but the plan would satisfy the requirements of this section if sufficient additional enforceable measures to assure attainment were submitted.

Section 172(c)(7) mandates that SIP provisions satisfy section 110(a)(2). Principal among the requirements of section 110(a)(2) are requirements that the State adopt its SIP limitations following reasonable notice and public hearing. Section 110(d) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. As discussed previously, Ohio is judged to have satisfied these requirements.

The requirements of section 172(c)(8) are not applicable to this submittal, because Ohio did not utilize this paragraph's authorization to apply to use equivalent procedures.

Finally, section 172(c)(9) mandates that SIPs contain contingency measures (see generally 57 FR 13543–44). These measures must be submitted by November 15, 1993, for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the control strategy for an area. These measures must take effect without further action by the State or USEPA, upon a determination by USEPA that the area has failed to make RFP or attain the particulate matter NAAQS by the applicable statutory deadline.

Ohio has partially addressed the contingency plan requirement by submitting rule 3745–17–14. This rule requires selected sources in its nonattainment areas to identify two control strategies, to reduce emissions by 15 percent and 25 percent respectively of the actual emissions reductions required by the recent State rule revisions. This rule provides that control strategies satisfying these requirements would then be adopted by the State as source-specific findings and orders, which would be submitted to USEPA as SIP revisions. This rule identifies the precise quantity of emissions reductions to be achieved by each control strategy, defines how the emissions reductions achieved by a proposed strategy will be calculated, and defines a mechanism for initiating implementation of the requisite control strategies should an area fail to attain the air quality standard by the attainment deadline. This mechanism provides that "[u]pon a formal determination and notification by [Ohio EPA] or the [USEPA]" of failure to attain the air quality standards, the strategies achieving 15 percent reductions will be implemented if the violations are less than 15 percent above the standard, and

the strategies achieving 25 percent reductions will be implemented if the violations are more than 15 percent above the standard. Rule 3745–17–14 also provides that if the failure to attain is occurring in only a portion of the nonattainment area, Ohio EPA has the discretion to limit the requirement for implementation of the contingency measures to a subcounty area. Specifically, under these circumstances this requirement may be limited to sources within a three kilometer radius of the violating monitor in the case of Cuyahoga County or within a two kilometer radius of the violating monitor in the case of Jefferson County.

As noted in the General Preamble, at 57 FR 13543, the deadline for submittal of contingency measures for "initial" particulate matter nonattainment areas is November 15, 1993. Rule 3745–17–14 does not provide specific, enforceable contingency measures satisfying the requirements of paragraph 172(c)(9). Nevertheless, it would be appropriate to approve Rule 3745–17–14. This rule strengthens the SIP, insofar as it requires companies to develop contingency strategies and insofar as it provides a mechanism for the implementation of those measures. In addition, the rule provides a reasonable framework for the development and implementation of contingency measures. The provisions for two magnitudes of control strategies, and for authority to reduce the area where implementation is required, provide clear and reasonable flexibility to tailor the contingency measure implementation to the magnitude and geographic extent of any continued nonattainment.

Clearly, the requirement in section 172(c)(9) for actual, enforceable contingency measures has not yet been satisfied. If Ohio submits enforceable contingency measures satisfying the requirements in rule 3745–17–14, these measures in conjunction with the implementation mechanism specified in the rule should satisfy the contingency measure requirements of paragraph 172(c)(9). Ohio has until November 15, 1993, to submit suitable, enforceable contingency measures. In the meantime, USEPA's belief that section 172(c)(9) has not yet been satisfied does not constitute grounds for disapproval of the SIP submittals in whole or in part.

## VI. Today's Action

For the reasons discussed above, USEPA is today proposing limited approval and limited disapproval of Ohio's proposed particulate matter plan, including submittals of November 14, 1991, December 4, 1991, and January 8, 1992. With the exception of rule 3745–17–03(B)(10)(c) and the associated rule 3745–17–12(P)(6)(a), USEPA proposes to approve all of the regulations submitted by the State. Specifically, USEPA proposes to approve the following regulations: rule 3745–17–01, rule 3745–17–02, rule 3745–17–03 except for paragraph (B)(10)(c), rule 3745–17–04, rule 3745–17–07, rule 3745–17–08, rule 3745–17–09, rule 3745–17–10, rule 3745–17–11, rule 3745–17–12 except for paragraph (P)(6)(a), rule 3745–17–13, and rule 3745–17–14. USEPA also proposes to approve the rules in chapter 3745–75, including rule 3745–75–01, rule 3745–75–02, rule 3745–75–03, rule 3745–75–04, rule 3745–75–05, and rule 3745–75–06. USEPA proposes to disapprove paragraph (B)(10)(c) of rule 3745–17–03 and paragraph (P)(6)(a) of rule 3745–17–12, but also proposes to approve these paragraphs if the test method is revised to provide either a single day limit or weekly averaging of 5 days' samples.

USEPA proposes to find that the State's submittal satisfies selected requirements that apply to particulate matter nonattainment area plans. For Cuyahoga County, USEPA proposes to find that the State's plan demonstrates attainment in Cuyahoga County (see section 189(a)(1)(B)) and meets associated requirements in sections 172(c)(2), 172(c)(3), 172(c)(6), provided that the limitation on coke quench water quality is made properly enforceable. For the Steubenville area, USEPA proposes to find that the State's plan satisfies the requirement for RACM (see section 189(a)(1)(C) and the associated requirement in 172(c)(1)). For both areas, USEPA proposes to find:

(1) That the State's plan satisfies sections 172(c)(4) and 172(c)(7);

(2) that the requirements of section 172(c)(8) are inapplicable; and

(3) that separate rulemaking is to be conducted with respect to the requirements of sections 189(a)(1)(A), 172(c)(5), and 172(c)(9). Also for both areas, USEPA proposes to determine that sources of particulate matter precursors do not contribute significantly to violations of the particulate matter standard.

At the same time, USEPA proposes to find that the State's plans fail to meet significant other requirements that all SIPs must meet. USEPA proposes to find that the plan for Cuyahoga County does not satisfy the requirement in section 189(a)(1)(C) and section 172(c)(1) to provide for RACM. USEPA proposes to find that the plan for the Steubenville area does not satisfy the requirement in section 189(a)(1)(B) for demonstrating attainment and does not satisfy the related requirements in sections 172(c)(2), 172(c)(3) and 172(c)(6). For these reasons, USEPA is proposing to disapprove in part the SIP revisions submitted by the State of Ohio on November 14, 1991, December 4, 1991, and January 8, 1992 for the Cuyahoga County and Steubenville moderate PM–10 nonattainment area.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements reuired by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin to run at the time USEPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c).

Public comment is solicited on this proposed rulemaking action. Comments received by September 17, 1993 will be considered in the development of USEPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I of part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval would not impose any new requirements, I certify that it would not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

In addition, USEPA's limited disapproval of the State request under

section 110 and Subchapter I, part D of the CAA also would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements not affected by rules subject to limited approval remain in place after this disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new Federal requirements. Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: December 31, 1992.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 93–18468 Filed 8–2–93; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 531**

**[Docket No. LVM 89–01; Notice 13]**

## Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Proposed decision.

**SUMMARY:** This proposal is being issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for its model year (MY) 1995 and 1996 passenger automobiles, and that lower alternative standards be established for it. This document proposes that the requested exemption be granted and that an alternative standard of 14.6 mpg be established for each of MYs 1995 and 1996 for Rolls-Royce.

**DATES:** Comments on this proposal must be received on or before September 17, 1993.

**ADDRESSES:** Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section; room 5109, National Highway Traffic Safety Administration, 400 Seventh Street. SW., Washington DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Yolene Young, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Young's telephone number is: (202) 366–4802.

**SUPPLEMENTARY INFORMATION:**

### Statutory Background

Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards for passenger automobiles if NHTSA concludes that those standards are more stringent then the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second MY before the MY for which the exemption is sought (the affected MY) and that will manufacture fewer than 10,000 passenger automobiles in the affected MY. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacture; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

### Petition

On October 23, 1992, Rolls-Royce petitioned NHTSA for an exemption from the generally applicable fuel economy standards for MYs 1995 and 1996. Rolls-Royce's current petition is the latest in a series of exemption petitions which that company has submitted since MY 1978. The most recent previous petition, dated November 8, 1989, requested an alternative standard of 13.8 mpg for MYs 1992 through 1994, was granted by NHTSA in a **Federal Register** notice of September 11, 1990 (See 55 FR 37325). In the current petition, Rolls-Royce states that its maximum feasible fuel economy for MYs 1995 and 1996 has increased to 14.6 mpg for each year.

### Background Information on Rolls-Royce

Rolls-Royce is a small company that concentrates wholly on the production of high quality prestigious cars. Rolls-Royce markets cars under two separate nameplates; Rolls-Royce and Bentley. Rolls-Royce seeks an exemption for both Rolls-Royce and Bentley cars. It annual production rate is 2,000–3,000 automobiles, about one third of which is sole in the U.S. market. Rolls-Royce's corporate philosophy is that concentrating on this limited range and volume is the only way to maintain its reputation for producing cars that it says are widely perceived as the best in the world.

The corporate financial limitations of this small company and its unique market sector preclude Rolls-Royce from improving fuel economy by any means involving significant changes to the basic concept of a Rolls-Royce car. Fuel economy improvements are particularly difficult in the short run. Rolls-Royce manufactures its on engines and bodies. Because of this integration of component manufacturing and low volume of production, model changes are much less frequent than with larger manufacturers. Its long model runs (as much as 15 years between major changes) make even small changes difficult. There is also little opportunity in the short term for improving fuel economy by changing the model mix because it makes only one basic model in various configurations, and all have similarly low fuel economy.

In the long term, Rolls-Royce's ability to make fuel economy improvements is similarly limited. A change in the basic concept of its cars to reduce size or downgrade the specifications would not, according to the petitioner, be acceptable to its customers.

Nevertheless, Rolls-Royce states that it is making every effort to achieve the lowest possible fuel consumption consistent with meeting emission, safety, and other standards while maintaining customer expectations of its product. In the 15-year period from 1978, when Federal fuel economy standards were introduced, Rolls-Royce has achieved a fuel economy improvement of approximately 28 percent by optimizing and tuning its powertrain while leaving basic features of the vehicles unchanged.

Rolls-Royce states that technical innovation and switching to lighter weight materials should result in worthwhile improvements in its vehicles. The company believes that it has been conscious of the need for weight saving for many years, and since the introduction of the Silver Shadow, has made many parts of aluminum. These include the engine block and cylinder heads, transmission and axle casings, doors, hood and deck lid.

In addition to discussing opportunities for weight reduction, Rolls-Royce also included in its petition discussions of improving its fuel economy through mix shifts, engine improvements, and drive train and transmission improvements.

**Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Rolls-Royce**

*Baseline Fuel Economy*

To project the level of fuel economy which could be achieved by Rolls-Royce in MYs 1995 and 1996, the agency considered whether there were technical or other improvements that would be feasible for these Rolls-Royce vehicles, whether or not the company currently plans to incorporate such improvements in those vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Rolls-Royce for use on its MY 1995 and 1996 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets "economic practicability" as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its MY 1995 and 1996 automobiles. In assessing that capability, the agency has always considered market demand since it is an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Rolls-Royce automobiles. NHTSA assumes that Rolls-Royce will continue to produce a five-passenger luxury car. Hence, design changes that would make the cars unsuitable for five adult passengers with luggage or would remove items traditionally offered on luxury cars, such as air conditioning, automatic transmission, power steering, and powtr windows, were not examined. Such changes to the basic design could be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

*Mix Shift*

Rolls-Royce has little opportunity for improving fuel economy by changing the model mix since it makes only one basic model in various configurations, all with similarly low fuel economy. The differences in fuel economy values among the different models available in MYs 1995 and 1996 will likewise be small. For MYs 1995 and 1996, Rolls-Royce and Bentley cars will fall into five fuel economy configurations, three from the naturally aspirated engine family and two from the turbocharged engine family with a range of curb weights, the lowest being a little over 2,430 kilograms (5,360 lbs). The differences in fuel economy values between the different models are relatively small (total difference 0.9 mpg), and the models with the lower projected fuel economies have significantly lower projected volumes. The Rolls-Royce model mix is essentially fixed by market demand, and variations in sales percentages among the vehicles would produce negligible improvement in fuel economy.

Producing additional models or making some of the configurations significantly more fuel efficient is not possible since both corporate financial limitations and the unique market sector served by Rolls-Royce preclude significant changes to the basic concept of a Rolls-Royce car.

*Weight Reduction*

Rolls-Royce had begun work to design a lighter and more fuel efficient model which included new features such as a lighter bodyshell, engine, transmission, and suspension. However, economic considerations resulted in the delay of a new model.

As stated previously, Rolls-Royce has used aluminum for many of its unstressed components for some time. An in-house program has been conducted by the company to evaluate the effect of further weight reduction by removing items from the vehicle with no changes to engine or transmission. Dynamometer tests indicated that emissions as well as fuel economy improvements would result from reduced weight, but the tests were conducted simply by removing components from the vehicle. An 11 percent reduction in weight resulted in a 4 percent improvement in fuel economy. To achieve an equal or greater weight reduction through design changes would require complete redesign and retooling, which is not practicable, as Rolls-Royce states that it does not, for the foreseeable future, have the capital to undertake such an expensive effort.

*Engine Improvements*

Rolls-Royce's petition for MYs 1995 and 1996 restates past efforts to improve fuel economy in addressing engine improvements. Developmental activities within the past ten years include test and evaluation of various technologies applied to the Rolls-Royce engine. These include diesel engines, cylinder disablement, increased engine displacement (to reduce nitrous oxide emissions and permit timing for improved fuel economy), the May "Fireball" combustion chamber, and overall downsizing of the engine and car incorporating all new features including bodyshell, engine, transmission, and suspension. Each of these approaches was discarded in turn as failing to provide a feasible option for simultaneously meeting fuel economy and emission requirements, and exacting customer expectations. For MYs 1995 and 1996, Rolls-Royce plans a series of improvements in the engine and emissions systems that are of a confidential nature. The agency agrees with Rolls-Royce that these improvements will result in better fuel economy for Rolls-Royce's MYs 1995 and 1996 vehicles.

*Transmission and Drive Train Improvements*

Rolls-Royce uses the General Motors 4L80–E four-speed automatic transmission with torque converter lockup clutch on all models beginning in MY 1992. Use of the fourth gear as

an overdrive ratio has shown the capability of improving fuel economy by approximately 14 percent under highway driving conditions. Rolls-Royce states that on one of its models, other transmission and drive train improvements, of a confidential nature, that will be made, will result in a slightly improved highway fuel economy for that model. The agency agrees with Rolls-Royce's assessment.

*The Effect of Other Motor Vehicle Standards*

The Rolls-Royce petition cites exhaust emission standards as having the greatest effect on fuel economy, and for this reason, the company considers the fuel economy program to be an integral part of its emission control program. It states that, historically, emission standards have placed a severe strain on its limited technical resources. According to Rolls-Royce, only with the introduction of new emission control techniques such as oxidation and three-way catalysts has the trend to higher fuel consumption been reversed.

As a small volume manufacturer, the recently enacted stringent California emission standards will not apply to Rolls-Royce until MY 1995. The more stringent Federal Clean Air Act amendments will not apply until MY 1996. Rolls-Royce does not mention a fuel economy penalty for meeting the California emission standards for MY 1995 and Federal standards for MY 1996. Nevertheless, Rolls-Royce will have to expend some of its limited engineering resources to comply with the new standards.

Of the Federal safety regulations it believes have an adverse effect on fuel economy, Rolls-Royce considers the most significant ones to be 49 CFR part 581 energy absorbing bumpers, Federal motor vehicle safety standard (FMVSS) 214 (side intrusion beam in doors), and FMVSS 208 (automatic restraints). The addition of automatic restraint systems (air bags) had the effect of moving some models into the 6,000 lbs and 6,500 lbs inertia weight classes. The effect of these regulations increased vehicle weight despite efforts to reduce weight. Rolls-Royce stated that it is a small company with limited engineering resources, necessitating it to give priority to meeting mandatory safety standards over attaining better fuel economy in order to remain in the market.

The effect of complying with safety standards is to increase vehicle weight notwithstanding other efforts to reduce weight, including application of other materials. The weight increases attributable to these standards are reflected in Rolls-Royce's weight projections for MYs 1995 and 1996 and in requested alternative standards.

*The Need of the Nation to Conserve Energy*

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Rolls-Royce to achieve an average fuel economy in MYs 1995 and 1996 above 14.6 mpg. Granting an exemption to Rolls-Royce and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the Nation to conserve energy. In fact, there would not be any increase since Rolls-Royce cannot attain those generally applicable standards. Nevertheless, for illustrative purposes only, the agency estimates that the additional fuel consumed by operating the MY 1995 and 1996 cars at the company's projected CAFE of 14.6 mpg (compared to a hypothetical 27.5 mpg fleet) over 106,952 miles would be 128,982 bbls. of fuel. This translates to an average of about 29 bbls. of fuel per day over the 12 year period that these cars would be an active part of the fleet. This is insignificant compared to the daily fuel used by the entire motor vehicle fleet which amounted to some 4.6 million bbls. per day for passenger cars in the U.S. in 1991.

*Maximum Feasible Average Fuel Economy for Rolls Royce*

This agency has tentatively concluded that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its MY 1995 and 1996 automobiles above an average of 14.6 mpg, that compliance with other Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into Rolls-Royce's projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard. Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for Rolls-Royce in MYs 1995 to 1996 is 14.6 mpg.

**Proposed Level and Type of Alternative Standard**

The agency proposes to exempt Rolls-Royce from the generally applicable standard of 27.5 mpg and to establish an alternative standard for Rolls-Royce for each of MYs 1995 and 1996 at its maximum feasible average fuel economy of 14.6 mpg. NHTSA tentatively concludes that it would be appropriate to establish a separate standard for Rolls-Royce for the following reasons. The agency has already granted a petition for an alternate standard for Dutcher Motors, Inc. for MY 1995, establishing an alternate standard for that company of 17.0 mpg (see 56 FR 37478; August 7, 1991). The agency has not yet received a petition from other low volume manufacturer for MY 1996. Therefore, the agency cannot use the second (class standards) or third (single standard for all exempted manufacturers) approaches for MYs 1995 and 1996.

**Regulatory Impact Analyses**

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply. Under Executive Order 12291, the proposal would not establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Rolls-Royce Motors, Inc., as discussed in this notice. Under DOT regulatory policies and procedures, the proposed exemption would not be a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible level for MYs 1995 and 1996, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on "The Need of the Nation to Conserve Energy" that because of the small size of the Rolls-Royce fleet, that incremental usage of gasoline by Rolls-Royce customers would not affect the nation's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the National Environmental Policy Act and determined that this proposed

exemption, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential business information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 531**

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 531 be amended as follows:

**PART 531—[AMENDED]**

1. The authority citation for part 531 would continue to read as follows:

**Authority:** 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) would be republished and paragraph (b)(2) would be revised to read as follows:

**§ 531.5 Fuel economy standards.**

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

| Model year | Average fuel economy standard (miles per gallon) |
|---|---|
| 1978 | 10.7 |
| 1979 | 10.6 |
| 1980 | 11.1 |
| 1981 | 10.7 |
| 1982 | 10.6 |
| 1983 | 9.9 |
| 1984 | 10.0 |
| 1985 | 10.0 |
| 1986 | 11.0 |
| 1987 | 11.2 |
| 1988 | 11.2 |
| 1989 | 11.2 |
| 1990 | 12.7 |
| 1991 | 12.7 |
| 1992 | 13.8 |
| 1993 | 13.8 |
| 1994 | 13.6 |
| 1995 | 14.6 |
| 1996 | 14.6 |

* * * * *

Issued on: July 28, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–18382 Filed 8–2–93; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AB97**

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Arroyo Southwestern Toad

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to list the arroyo southwestern toad (Bufo microscaphus californicus) as an endangered species pursuant to the provisions of the Endangered Species Act of 1973, as amended (Act). The arroyo southwestern toad occurs exclusively in streams in southern California and northwestern Baja California, Mexico. The arroyo southwestern toad has been extirpated from an estimated 75 percent of its former range (Sweet 1992). Threats to the survival of this species include: habitat degradation, drought, predation, and small population sizes. Only 2 of the 15 extant populations south of Ventura are known to contain more than a dozen adults. Critical habitat is not being proposed at this time. If made final, this action would extend the Act's protection to the arroyo southwestern toad. The Service seeks information, data and comments from the public regarding this proposal.

**DATES:** Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 17, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Field Supervisor, Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (telephone 805/644–1766). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cathy R. Brown at the Ventura Field Office (see **ADDRESSES** section).

**SUPPLEMENTARY INFORMATION:**

**Background**

The arroyo southwestern toad (*Bufo microscaphus californicus*) is a small toad in the family Bufonidae. This taxon was originally described as *Bufo cognatus californicus* from a specimen collected at Santa Paula, Ventura

County (Camp 1915 as cited in Price and Sullivan 1988). Camp's specimen was later shown to differ in several respects from *Bufo cognatus* and was afforded separate status as *Bufo californicus* (Myers 1930). In the following two decades, this toad was considered a subspecies of *Bufo compactilis* (Linsdale 1940) and of *B. woodhousei* (Shannon 1949). The currently accepted taxonomy of the arroyo southwestern toad as a subspecies of *Bufo microscaphus* is based on morphological similarities (Stebbins 1951, Price and Sullivan 1988). The arroyo southwestern toad (*B. m. californicus*) is geographically isolated from the Arizona southwestern toad (*B. m. microscaphus*) by the Mojave Desert. Work is now in progress to determine if the arroyo southwestern toad is genetically distinct at the species level (S. Sweet, Univ. of Calif., Santa Barbara, pers. comm., 1991).

The arroyo southwestern toad is a small (5–8 centimeters or 2–3 inches) light greenish gray or tan toad with warty skin and dark spots. Its underside is buff colored and often without spots. A light-colored stripe crosses the head and eyelids, and a light area usually occurs on each sacral hump and in the middle of the back. Its movement consists of hopping more often than walking. Its courtship vocalization is a high trill, usually lasting 8 to 10 seconds.

Arroyo southwestern toads were historically found along the length of drainages in southern California from San Luis Obispo County to San Diego County, but now they survive only in the headwaters as small isolated populations, primarily on National Forest lands (Sweet 1992). Urbanization and dam construction beginning in the early 1900's in southern California caused most of the extensive habitat degradation.

At least 90 percent of the known extant populations of arroyo southwestern toad occur in areas owned or managed by the Forest Service (Los Padres, Angeles, San Bernardino, and Cleveland National Forests) (Sweet 1992). Most other remaining populations occur on privately owned lands. Due mostly to habitat destruction, only five drainages remain where populations of this species may be viable. In 1990, only seven pairs of arroyo southwestern toads are known to have bred anywhere within the toad's range (Sweet 1992). Due to the isolation and the small sizes, each population is at great risk of extinction.

The arroyo southwestern toad is restricted to rivers that have shallow, gravelly pools adjacent to sandy terraces. Breeding occurs on large streams with persistent water from late March until mid-June (Sweet 1989). Eggs are deposited and larvae develop in shallow pools with minimal current and little or no emergent vegetation and with sand or pea gravel substrate overlain with flocculent silt. After metamorphosis (June-July), the juvenile toads remain on the bordering gravel bars until the pool no longer persists (3 to 8 weeks, depending on site and year) (Sweet 1992). Juveniles and adults forage for insects on sandy stream terraces that have nearly complete closure of cottonwoods (*Populus* spp.), oaks (*Quercus* spp.), or willows (*Salix* spp.), and almost no grass and herbaceous cover at ground level. Adult toads excavate shallow burrows on the terraces where they shelter during the day when the surface is damp, or during longer intervals in the dry season (Sweet 1989).

## Previous Federal Action

The arroyo southwestern toad was first included by the Service as a Category 2 candidate species in the September 18, 1985, Notice of Review of Vertebrate Wildlife (50 FR 37958). Category 2 applies to taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The subspecies also was included as a Category 2 candidate in the January 6, 1989, and November 21, 1991, Animal Notices of Review (54 FR 554 and 56 FR 58804 respectively). Since the toad was first listed as a Category 2 candidate, the Service has obtained substantial information on the biological vulnerability and the environmental threats to elevate this species to Category 1. Category 1 species are those for which the Service possesses sufficient data to support proposals for listing. Most of the new information and analyses came from Samuel Sweet of the University of California, Santa Barbara; Mark Jennings of the University of Arizona; and staff of the Los Padres National Forest.

On January 12, 1993, the Service received a petition from Dr. Sam Sweet, Associate Professor of Biology at the University of California, Santa Barbara, and Dr. Mark Jennings, Research Associate in the Department of Herpetology, California Academy of Sciences, to list the arroyo southwestern toad as endangered (Sweet and Jennings 1992). Section 4(b)(3)(A) of the Endangered Species Act (Act), as amended, requires to the maximum extent practicable, that the Secretary make a finding within 90 days of receipt of a petition, as to whether or not substantial information indicates the requested action may be warranted. If such a finding is made, the Service is directed to commence a review of the status of the species. Within 12 months of receipt of a petition found to present substantial information, the Secretary is further directed to make a finding that the petitioned action is warranted, not warranted, or warranted but precluded. In this instance the preparation of this proposed rule was nearly complete at the time the petition was received, and therefore alleviates the need to commence the status review that the Service would typically commence in response to a petition.

This proposed rule constitutes the Service's 12 month finding that listing of the arroyo southwestern toad is warranted. The petition, status surveys, and reference data (Sweet 1992) describe the arroyo southwestern toad as endangered due to past and continuing wide-ranging losses and degradation of riparian habitat within its historic range.

## Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the arroyo southwestern toad (*Bufo microscaphus californicus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat destruction and alteration constitutes the most severe threat facing the arroyo southwestern toad. This toad is now confined to the headwaters of streams it occupied historically along their entire lengths. Of 475 river-kilometers (km)(295 river-miles) once known (from museum records circa 1915) to support populations of arroyo southwestern toads in the State, populations currently exist on only 120 km (73.5 miles); thus, arroyo southwestern toads have been extirpated from 75.1 percent of their former range in the United States (Sweet 1992).

The arroyo southwestern toad was formerly found on rivers with near-

perennial flow throughout southern California from San Luis Obispo County to San Diego County. It is believed to be extirpated in San Luis Obispo County (S. Sweet, pers. comm., 1991). Populations persist in Santa Barbara, Ventura, Los Angeles, and San Diego Counties. Recent sightings of scattered individuals have been reported from Orange, Riverside, San Bernardino, and southwest Imperial Counties.

Most of the remaining populations exist on Forest Service land. The Los Padres National Forest in Santa Barbara, Ventura, and Los Angeles Counties supports the majority of southern California's remaining intact large river systems, and probably maintains the only extant viable populations of arroyo southwestern toads. Sespe Creek in Ventura County has the largest known population (Sweet 1992). Other populations are found on the Sisquoc, Santa Ynez, and upper and lower Piru drainages (Sweet 1992). In San Diego County, arroyo southwestern toads are found on the Santa Margarita, Guejito, Sweetwater, Vallecito, San Luis Rey, Santa Ysabel, Witch, and Cottonwood Rivers (S. Sweet, pers. comm., 1991).

Several factors presently threaten the remaining 25 percent of the habitat of the arroyo southwestern toad including: (1) Short- and long-term changes in river hydrology, including construction of dams and water diversions; (2) alteration of riparian wetland habitats by agriculture and urbanization; (3) construction of roads; (4) site-specific damage by off-highway vehicle use; (5) development of campgrounds and other recreational activities; (6) over-grazing; and (7) mining activities.

Dam construction was responsible for the loss of approximately 40 percent of the estimated original range of the arroyo southwestern toad. Twenty-six large impoundments are currently located within the range of this species, inundating over 190 km (120 miles) of suitable habitat. Additional areas have been identified as potential dam sites, and if constructed would destroy 25 percent of the current range (6–7 percent of the original range) of the arroyo southwestern toad (Sweet 1991a).

In addition to habitat loss through direct inundation, dams can have significant effects on habitat quality downstream. Artificial flow regulation disrupts the natural processes that produce the terrace and pool habitats required by arroyo southwestern toads. Unseasonal water releases may prevent arroyo southwestern toads from breeding due to habitat changes (Sweet 1992).

Another consequence of sustained unnatural perennial flows below dams is an adverse affect on the habitat of this species by encouraging vegetative growth in a riparian corridor, which increases ground stability and hence confines and deepens the creek channel. Water temperatures are reduced below the temperatures needed for larval development (Sweet 1991a).

The arroyo southwestern toad is also sensitive to stream diversions as they cause the riparian areas to dry. Water diversions that alter normal flows have degraded habitats and adversely affected arroyo southwestern toads by leading to: (1) The early drying of breeding pools, causing breeding failures or loss of the larval population; (2) restriction of the period essential for rapid growth when newly-metamorphosed toads can forage on damp gravel bars; and (3) loss of damp subsurface soil, which may result in high adult mortality during late summer and early fall (Sweet 1992).

Development projects in riparian wetlands have caused permanent losses of riparian habitats, and are the most conspicuous factor in the decline of the arroyo southwestern toad (S. Sweet, pers. comm., 1991). Agriculture and urbanization have already destroyed much of the suitable arroyo southwestern toad habitat south of the Santa Clara River in Ventura County (S. Sweet, pers. comm., 1991). Stream terraces have been converted to farming, road corridors, and residential and commercial uses, while the streams themselves have been channelized for flood control. Large stretches of riparian corridor habitat has also been degraded or destroyed by cattle and feral pigs (S. Sweet, pers. comm., 1991).

Recreational activities in riparian wetlands have had substantial negative affects to arroyo southwestern toad habitat and individuals, as discussed in Factor E. Off-highway vehicles cause extensive damage to the shallow pools in which arroyo southwestern toads breed (Sweet 1992).

Streamside campgrounds in southern California National Forests have frequently been located adjacent to arroyo southwestern toad habitat (Sweet 1992). In the Los Padres National Forest, each of the three campgrounds on Piru and Sespe Creeks were developed on terraces used by arroyo southwestern toads, within 50–100 meters (150–300 feet) of their breeding pools. On the upper Santa Ynez River, also on Los Padres National Forest, three of four campgrounds are also located in arroyo southwestern toad habitat (Sweet 1991a, 1991b). The placement of campgrounds is similar in the Cleveland National Forest in San Diego County.

The use of heavy equipment in yearly reconstruction of roads and stream crossings in the National Forests has had significant and repeated impacts to arroyo southwestern toads and toad habitat. Maintenance of the road to Ogilvy Ranch, a private inholding in the Los Padres National Forest, is likely responsible for a depressed population of arroyo southwestern toads on Mono Creek. The Ogilvy Ranch road makes 18 crossings of Mono Creek, many directly through or near arroyo southwestern toad breeding pools. In summer 1992, the Los Padres National Forest declined to open the Ogilvy Ranch road in order to protect populations of arroyo southwestern toads and other candidate amphibians and reptiles. However, the road was opened with a bulldozer in the fall. As juvenile arroyo southwestern toads were likely burrowed into the soft sand adjacent to the creek, grading the road up the creek killed individuals, and destroyed habitat. Regular maintenance of roads in the Los Padres National Forest negatively affects arroyo southwestern toad individuals and toad habitat on the Santa Ynez River, Piru and Sespe Creeks, as well.

An additional threat to this species is mining activities. Recreational suction dredging for gold adversely affects toad habitat and individuals. Dredging destroys breeding pools used by arroyo southwestern toads and causes excessive siltation downstream, which asphyxiates eggs and small larvae. For example, during the Memorial Day weekend of 1991, four small dredges operating on Piru Creek (of Los Padres National Forest) produced sedimentation visible more than 1 kilometer (0.6 mile) downstream, and adversely affected 40,000–60,000 arroyo southwestern toad larvae. Subsequent surveys revealed nearly total destruction of the species in this stream section; fewer than 100 larvae survived, and only 4 juvenile toads were located (Sweet 1992).

Several rivers in the Los Padres National Forest were recently temporarily closed to gold mining, and it is uncertain whether the ban will be made permanent. In December 1992, a group of miners challenged the Forest Service's authority to close Piru Creek to mining. These individuals practiced various methods of gold extraction until cited by the Forest Service. It seems likely that future challenges will occur and, if successful, will threaten the population of arroyo southwestern toads on Piru Creek.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Populations of the arroyo southwestern toad are becoming so small and confined that even limited taking by campers, recreationists, and

scientific researchers could adversely affect this species' viability. These toads are threatened by children near the campgrounds as it is commonplace for children to capture and keep organisms while at play. No data exists on the extent of such collection activities, but it is very likely that it has occurred or is occurring.

C. *Disease or predation.* Over the past 20 years, at least 60 species of fishes have been introduced to the western U.S. states, 59 percent of which are predatory (Hayes and Jennings 1986; Jennings 1988). The introduction of exotic predators to southern California waters has been facilitated by the interbasin transport of water (e.g., California Aqueduct). Introduced predators had substantial impacts on the sizes of extant populations of arroyo southwestern toads, and may have contributed to regional extinctions (Hayes and Jennings 1986).

Virtually all rivers that contain or once contained arroyo southwestern toads support populations of introduced predatory fish, such as green sunfish (*Lepomis cyanellus*), largemouth bass (*Micropterous salmoides*), mosquitofish (*Gambusia affinis*), black bullhead (*Ictalurus nebulosus*), arroyo chub (*Gila orcutti*), prickly sculpin (*Cottus asper*), stocked trout (*Oncorhynchus mykiss*), oriental gobies (*Tridentiger* sp.), and red shiners (*Neotropis lutrensis*) (Sweet 1992). All of these introduced fish prey on tadpoles, and have been observed inducing high arroyo southwestern toad larval mortality in breeding pools on the Piru, Sespe, and Santa Ynez drainages, and it is likely to have occurred elsewhere (Sweet 1992).

Most streams with populations of arroyo southwestern toads also have populations of introduced bullfrogs (*Rana catesbeiana*). Adult bullfrogs are highly predatory and are believed to prey on adult arroyo southwestern toads (Sweet 1992). Artificially maintained perennial flows below dams provide permanent water and enhance the habitat for bullfrogs to the detriment of arroyo southwestern toads.

D. *The inadequacy of existing regulatory mechanisms.* The U.S. Army Corps of Engineers (Corps), responsible for administering section 404 of the Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act), has authority to regulate the placement of dredged and fill materials into waters of the United States. Individual actions under nationwide permits undergo minimal outside agency review. Individual permits, which are subject to more extensive review, are required for projects that affect greater than 10 acres. The Corps cannot issue a nationwide or individual permit where a federally listed species may be affected, without first consulting with the Service under section 7 of the Endangered Species Act. The Service, as part of the section 404 review process, provides comments on both pre-discharge notices for nationwide permits and public notices for individual permits. The Service's comments are only advisory, although procedures exist for elevation when disagreements between the two agencies arise.

Most construction projects in or near arroyo southwestern toad habitat would require a permit from the Corps pursuant to section 404 of the Clean Water Act. In practice, the Corps' actions under section 404 has not adequately protected arroyo southwestern toads, as the Corps has rarely required individual permits where impacts to the toad would occur. The Corps has either approved the projects under nationwide permits, or there have been repeated unauthorized activities. Federal listing of this species would ensure greater consideration of the effects of permitted actions during the review process, as well as provide the protection of section 7 of the Act.

The National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) require an intensive environmental review of projects that may adversely affect Federal candidate species. However, project proponents are not required to avoid impacts to these species, and proposed mitigation measures are frequently not adequately implemented. As with section 404 permits, the Service's comments through these environmental review processes are only advisory.

Forest Service policy as described in the National Forest Management Act states "Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species in the planning area" (36 CFR 219.19). The Los Padres National Forest recently funded a study on the ecology of arroyo southwestern toads (Sweet 1992). The results of this study will be used to develop sound management recommendations for protection of arroyo southwestern toads on the Forest. Despite this positive step, the southern California National Forests have not been able to successfully implement the protection of the arroyo southwestern toad. Activities such as road maintenance, off-highway vehicle use, and the issuance of special use permits for dam and water diversion construction have contributed to the decline of the arroyo southwestern toad.

Alteration of the natural intermittent flow regimes by dams has had significant adverse impacts to arroyo southwestern toads. The State Department of Water Resources, which operates Pyramid Dam on Piru Creek in the Los Padres and Angeles National Forests, frequently discharges excess flows from the reservoir with inadequate consideration by the State for downstream consequences to fish and wildlife. The depressed population of arroyo southwestern toads on lower Piru Creek below Pyramid Dam is probably a result of unscheduled timing of water releases since the 1970's (Sweet 1992). Although the dam is located on National Forest land and each release or each release program should be subject to a Forest Service special use permit, inadequate protection has been given by the Forest Service to aquatic and riparian-dependant wildlife below the dam.

Although the arroyo southwestern toad is classified as a "Species of Special Concern" by the State of California (Steinhart 1990) and may not be taken within a scientific collecting permit, this designation provides no special, legally mandated protection of the species and its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Several other factors have also contributed to the decline of the species including drought, fire, and light and noise pollution. Additionally there has been direct mortality of the toads due to road construction and maintenance, water inundation or drainage from dams and diversions, off-highway vehicle use, cattle and pig trampling, mining, and recreational activities.

By far, the most significant natural factor adversely affecting the arroyo southwestern toad is drought, and resultant deterioration of riparian habitats. Southern California recently experienced 5 consecutive years of lower than average rainfall. These drought conditions, when combined with human induced water reductions (i.e., diversions of water from streams), have degraded riparian ecosystems and have created extremely stressful conditions for most aquatic species.

Drought also affects arroyo southwestern toads in another manner. Female arroyo southwestern toads must feed for at least 2 months in order to develop the fat reserves needed to produce a clutch of eggs (Sweet 1992). In drought years, females may find insufficient insect prey to produce eggs before males cease their courtship behavior of calling, resulting in no reproduction in that year. The extremely low reproduction of 1990 was likely due

to 4 years of severe drought (Sweet 1992).

Periodic fires may adversely affect arroyo southwestern toads by causing direct mortality, destroying streamside vegetation, or eliminating vegetation that sustains the watershed. Recent natural and human-induced wildfires had devastating effects on populations of arroyo southwestern toads. The 1991 Lions Fire on upper Sespe Creek in the Los Padres National Forest destroyed habitat containing the largest known extant population of arroyo southwestern toads, including 15 known breeding pools and over 50 percent of the known adult population on the Sespe drainage (Sweet 1991c). Even more significantly, the wildfire heavily affected the only section of river where these toads were known to reproduce successfully in 1989, 1990, and 1991 (S. Sweet, pers. comm., 1991). It is likely that populations of adults or juvenile toads concentrated in areas sustaining high-intensity burns were decimated due to the subsequent sedimentation that occurred in the drainages (Sweet 1991c). Following the effects of the preceding series of drought years, the impact of this fire has been intense and will likely be long-term.

The vocalizations of male toads are crucial to the breeding success of this species, as their calls are the key factor to finding mates. Light and noise pollution from adjacent developments or campgrounds may also reduce arroyo southwestern toad reproductive success by disrupting the vocalization behavior of males during the breeding season. Generally, the local population of arroyo southwestern toads declines as campground use increases (Sweet 1992).

Unseasonal water releases from dams may prevent arroyo southwestern toads from breeding altogether, as discussed in Factor A, or may wash away eggs and larvae if releases are made after breeding has occurred (Sweet 1992). Service advisory input may be sought by the California Department of Water Resources prior to scheduled water releases to avoid negative impacts to the toad. However, unscheduled releases do occur, whereby the Department of Water Resources does not seek advisory input from the Service. For example, large unscheduled releases from Pyramid Lake in May 1991 virtually eliminated all reproduction by arroyo southwestern toads below the dam in Piru Creek, in what would have been the best year for reproduction following 5 years of drought (Sweet 1992). A proposal to convey State Water Project water from Pyramid Lake to Piru Lake via Piru Creek would also threaten arroyo southwestern toad survival on Piru Creek if releases substantially alter natural flow regimes.

Grazing brings another potential source of mortality to this species. Horses and cattle graze in riparian areas and may trample eggs and larvae of arroyo southwestern toads (S. Sweet, pers. comm., 1991).

Off-highway vehicle use is believed to be the primary factor responsible for the decimation of the Mojave River population of the arroyo southwestern toad (Jennings 1991). On Memorial Day weekend in 1991, a fence protecting a breeding pool on Piru Creek was cut, and off-highway vehicles had access to the creek. The disturbance destroyed a small sand bar that maintained a shallow pool, resulting in the loss of 12,000 to 16,000 arroyo southwestern tadpoles (Sweet 1992).

Recreational use of campgrounds is heaviest in early summer, when arroyo southwestern toad larvae and juveniles are present and most vulnerable. As the young toads are diurnal, immobile, and live on the sand bars, they are often crushed. Recreational use has resulted in the alteration of stream and breeding pool morphology, and trampling of juvenile toads (Sweet 1992). Adult arroyo southwestern toads, which forage in open areas in the campgrounds, are frequently killed on campground roads at night (Sweet 1992).

Habitat loss, high mortality, and low reproduction from all of the sources discussed above also result in the fragmentation of surviving populations into isolated subpopulations. While these subpopulations may continue to survive and reproduce over the short term, their long-term survival is not secure, because little opportunity exists for natural dispersal and recolonization following local extirpations (Sweet 1991a). Habitat fragmentation increases the probability of local extirpation due to stochastic events, and also likely results in reduction of genetic variability within the small, isolated subpopulations.

The recent years of extremely low reproductive success have likely been a bottleneck in the remaining populations of arroyo southwestern toads, in which few, if any, individuals will reach sexual maturity until 1995 (Sweet 1992). As mature adults age and die in the next 2 years, no recruitment into the breeding population is likely, and numerous local extinctions of already small populations are probable. As individuals may not survive and reproduce due to traumatic events such as drought or road maintenance, for example, and as the population numbers are low and the range is restricted, such events could cause the extinction of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the arroyo southwestern toad in determining to propose this rule. The arroyo southwestern toad has been extirpated from a substantial portion of its historic range. Virtually all remaining populations are small, and face a variety of immediate threats to their continued viability. This toad lives in highly specialized habitats that have been and will continue to be targeted for development and degradation by human activities, and is extremely vulnerable to habitat modification and water quality changes. Based on this evaluation, the preferred action is to list the arroyo southwestern toad as endangered. For the reasons discussed below, critical habitat is not being proposed at this time.

### Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the arroyo southwestern toad.

As discussed under Factor B in the "Summary of Factors Affecting the Species," the arroyo southwestern toad is threatened by taking, an activity difficult to control. Remaining populations of the arroyo southwestern toad are small and geographically restricted, so that they are now vulnerable to unrestricted collection. Publication of specific localities, which would be required in proposing critical habitat, would reveal precise locality data and thereby make the species more vulnerable to additional collection and acts of vandalism, and increase the difficulties of enforcement.

The principal landowner, the Forest Service, has been notified of the locations and importance of protecting this species' habitat. Protection of this species' habitat will be addressed in the recovery process and through the section 7 consultation process. Therefore it would not now be prudent to determine the critical habitat of the arroyo southwestern toad.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered

Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Forest Service (Department of Agriculture) and the Army Corps of Engineers (Department of Defense) are the main Federal agencies that will be required to protect this species if it is listed. Federal agencies must confer with the Service, as described in section 7 of the Act, on any project that might jeopardize the continued existence of this proposed species. The Forest Service harbors the majority of known arroyo southwestern toad populations; hence, authorization of Forest Service actions within the species' habitat may be affected. Forest Service activities, such as the construction and maintenance of roads, and the issuance of special use permits for dam and bridge construction, mining, and water diversion projects would be subject to the Act's section 7 requirements. Army Corps of Engineers activities or issuances of permits subject to section 404 of the Clean Water Act would be subject to the Endangered Species Act section 7 requirements. Any Federal actions that are subject to environmental review under the National Environmental Policy Act may be subject to the requirements of section 7 of the Act.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and economic hardship under certain circumstances. Requests for copies of the regulations on listed wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203–3507 (703/358–2104).

## Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor at the Ventura Field Office (see **ADDRESSES** section).

## National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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for additional research. Unpublished report. 23 pp.
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Sweet, S. 1991b. Biological issues underlying the need to maintain natural flow regimes in the Piru Creek drainage. Unpublished report. 6 pp.
Sweet, S. 1991c. Riparian habitat damage assessment, Lion Fire, Sespe Creek, 20–21 October 1991. Unpublished report. 6 pp.
Sweet, S. 1992. Initial report on the ecology and status of the arroyo toad (*Bufo microscaphus californicus*) on the Los Padres National Forest of southern California, with management recommendations. Contract report to USDA Forest Service, Los Padres National Forest. 198 pp.
Sweet, S. and M. Jennings. 1992. Letter to the U.S. Fish and Wildlife Service, December 30, 1992: Petition to list the arroyo southwestern toad as an endangered species. 4 pp. + appendix.

## Author

The primary author of this proposed rule is Cathy R. Brown of the Venture Field Office (see **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Amphibians, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common Name | Scientific Name | | | | | | |
| • | • | • | • | • | • | | • |
| **Amphibians** | | | | | | | |
| • | • | • | • | • | • | | • |
| Toad, arroyo southwestern. | *Bufo microscaphus californicus.* | U.S.A. (CA); Mexico ... | NA ..... | E | ..... | NA | NA |
| • | • | • | • | • | • | | • |

Dated: June 21, 1993

**Richard N. Smith,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93–18434 Filed 8–2–93; 8:45 am]

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**50 CFR Part 17]**

**RIN 1018–AB94**

## Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposal To List the Kootenai River Population of the White Sturgeon as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of public hearings..

**SUMMARY:** The U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), gives notice that three public hearings will be held on the proposal to list the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) as endangered. This fish is found in the Kootenai River in Idaho, Montana, and British Columbia, Canada. The Service will receive oral testimony or written comments at these hearings.

**DATES:** Three public hearings will be held: from 5 to 8 p.m. on Tuesday, August 24, 1993, in Bonners Ferry, Idaho; from 5 to 8 p.m. on Wednesday, August 25, 1993, in Libby, Montana; and from 1 to 4 p.m. and 6 to 8 p.m. on August 26, 1993, in Sand Point, Idaho. Comments from all interested parties must be received by November 4, 1993.

**ADDRESSES:** The public hearings will be held at the following locations:

Tuesday, August 24, 1993—Kootenai River Inn, Kootenai River Plaza, Bonners Ferry, Idaho

Wednesday, August 25, 1993—Memorial Gymnasium, 101 East Lincoln Boulevard, Libby, Montana

Thursday, August 26, 1993—Schweitzer Mountain Resort, Headquarters Day Lodge Caribou Room, 1000 Schweitzer Mountain Road, Sand Point, Idaho

Written comments and materials may be submitted at the hearings or may be sent directly to Mr. Charles Lobdell, Field Supervisor, U.S. Fish and Wildlife Service, Boise Field Office, 4696 Overland Road, room 576, Boise, Idaho, 83705. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Charles H. Lobdell, Field Supervisor, at the above address or (208) 334–1931

**SUPPLEMENTARY INFORMATION:**

## Background

The Kootenai River population of the white sturgeon (*Acipenser transmontanus*) is restricted to approximately 168 miles (270 kilometers) of the Kootenai river, in Idaho, Montana, and British Columbia, Canada, primarily upstream from Cora Linn Dam at the outflow from Kootenay Lake, British Columbia. A natural barrier at Bonnington Falls downstream of Kootenay Lake has isolated the Kootenai River sturgeon from other white sturgeaon populations in the Columbia River basin. The free-flowing river habitat for this fish has been adversely affected from development of the Kootenai River basin. Construction of Libby Dam for hydropower and flood control has reduced river flows critical to successful reproduction during the May to July sturgeon spawning season, and reduces the availability of nutrients in the river system. The Kootenai River population of white sturgeon has declined to an estimated 880 individuals, with approximately 80 percent of the sturgeon over 20 years old. In addition to the lack of recruitment of juveniles into the population, this fish is threatened by disease and poor water quality.

On July 7, 1993, the Kootenai River population of the white sturgeon was

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proposed for listing as an endangered species (58 FR 36379). Section 4(b)(5)(E) of the Act requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. In anticipation of requests for a hearing on the proposal, the Service announced in the proposed rule that a public hearing would be held on August 26, 1993, in Sand Point, Idaho. Because of the level of interest in this proposed action the Service has decided to schedule two additional hearings to receive comments from the public. The three public hearings will be held at the following locations:

Tuesday, August 24, 1993, from 5 to 8 p.m. at the Kootenai River Inn, Kootenai River Plaza, Bonners Ferry, Idaho

Wednesday, August 25, 1993, from 5 to 8 p.m. to the Memorial Gymnasium, 101 East Lincoln Boulevard, Libby, Montana

Thursday, August 26, 1993, from 1 to 4 p.m. and 6 to 8 p.m. at the Schweitzer Mountain Resort, Headquarters Day Lodge Caribou Room, 10000 Schweitzer Mountain Road, Sand Point, Idaho

Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Time limits may be placed on oral statements to accommodate many people wishing to testify. Written comments or materials presented at the hearing or mailed to the Service may be of any length. Written comments will be given the same weight as oral comments. Written comments may be submitted at the hearing or mailed to the U.S. Fish and Wildlife Service, Boise Field Office (see ADDRESSES section). Comments must be received by November 4, 1993.

## Author

The primary author of this notice is Leslie J. Propp, U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE. 11th Avenue, Portland, Oregon 97232 (telephone 503/231–6131 or 206/753–9440).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: July 27, 1993.

**William E. Martin,**

*Acting Regional Director, Region 1, U S. Fish and Wildlife Service.*

[FR Doc. 93–18418 Filed 8–2–93; 8:45 am]

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# Notices

Federal Register
Vol. 58, No. 147
Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 93-025-3]

### Public Meeting; Veterinary Biologics

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of postponement of public meeting.

**SUMMARY:** We are advising producers of veterinary biologics and other interested persons that the fifth annual public meeting on veterinary biologics previously scheduled to be held on Tuesday, August 10, and Wednesday, August 11, 1993, is postponed and will be rescheduled at a later date.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lorie Lykins, Veterinary Biologics Field Operations, BBEP, APHIS, USDA, 223 South Walnut Avenue, Ames, IA 50010, telephone (515) 232-5785, fax (515) 232-7120.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on July 16, 1993 (58 FR 38354-38355, Docket Number 93-025-2), we gave notice that we would be holding a public meeting on Tuesday, August 10, and Wednesday, August 11, 1993, at the Iowa State Center in Ames, IA. The purpose of the meeting was to discuss current regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. Due to the extensive flooding in the areas of Ames and Des Moines, IA, we are being forced to reschedule the meeting to a later date. A notice announcing the new date, time, and place will appear in the **Federal Register**. We regret any inconvenience caused by the rescheduling.

Done in Washington, DC, this 29th day of July 1993.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 93-18480 Filed 8-2-93; 8:45 am]

BILLING CODE 3410-34-P

## Forest Service

### Establishment of Ouachita Purchase Unit

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of establishment of ouachita purchase unit.

**SUMMARY:** On July 8, 1993, the Secretary of Agriculture created the Ouachita Purchase Unit. This purchase unit comprises 188 acres, more or less, within Polk County, Arkansas. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

**EFFECTIVE DATE:** The effective date of this purchase unit was July 8, 1993.

**ADDRESSES:** A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW, Washington, DC 20090-6090.

**FOR FURTHER INFORMATION CONTACT:** Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090 (202) 205-1248.

Dated: July 27, 1993.

**George M. Leonard,**

*Associate Chief.*

**Establishment of Ouachita Purchase Unit Polk County, Arkansas**

Pursuant to the Secretary of Agriculture's authority under the Act of March 1, 1911, as amended, the Ouachita Purchase Unit is being created and is described as follows:

**Township 3 South, Range 29 West, Fifth Principal Meridian, Arkansas, More Particularly Described as**

*Section 7:* fractional SE¼NW¼ containing 40.18 acres;

All of the NE¼SW¼ EXCEPT a tract of land more particularly described as follows: Beginning at the Southwest corner of said NE¼SW¼, run East 190 yards; thence Northwesterly to a point on the North line of said NE¼SW¼ which is 30 yards east of the Northwest corner of said NE¼SW¼; thence West 30 yards to said Northwest corner; thence South 440 yards to the Point of Beginning of said excepted tract, conveying herein 30.00 acres, more or less;

E½SE¼ containing 80.00 acres;

SW¼SE¼ Less and Except a tract of land containing 2.65 acres more particularly described as follows:

Beginning at a 2" iron pipe with a 2" cap set for the southwest corner of said SW¼SE¼; thence N0°23'01"E 1285.17 feet along the west line of said SW¼SE¼ to a 1" rebar with a 2" aluminum cap at a wire fence; thence S73°24'29"E 40.62 feet along said wire fence to a 1" rebar with a 2" aluminum cap; thence leaving said wire fence S4°50'06"E 866.30 feet to a 1" rebar with a 2" aluminum cap; thence S1°06'58"W 411.73 feet to a 1" rebar with a 2" aluminum cap on the south line of said SW¼SE¼ (at a wire fence); thence N89°19'28"W 112.53 feet along the south line of said SW¼SE¼ to the Point of Beginning, conveying 37.35 acres, more or less.

containing 187.53 acres, more or less, and being adjacent to the present Ouachita National Forest boundary.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: July 8, 1993.

**Mike Espy,**

*Secretary of Agriculture.*

[FR Doc. 93-18426 Filed 8-2-93; 8:45 am]

BILLING CODE 3410-1-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

**BACKGROUND:** Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the

Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

**OPPORTUNITY TO REQUEST A REVIEW:** Not later than August 31, 1993, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

| | Period |
|---|---|
| *Antidumping Duty Proceedings:* | |
| Armenia: Titanium Sponge, (A–831–803) | 08/01/92–07/31/93 |
| Azerbaijan: Titanium Sponge, (A–832–803) | 08/01/92–07/31/93 |
| Belarus-Baltic: Titanium Sponge, (A–822–803) | 08/01/92–07/31/93 |
| Belgium: Industrial Phosphoric Acid, (A–423–602) | 08/01/92–07/31/93 |
| Canada: Pure Magnesium, (A–122–814) | 11/20/91–07/31/93 |
| Estonia-Baltic: Titanium Sponge, (A–447–803) | 08/01/92–07/31/93 |
| France: Industrial Nitrocellulose, (A–427–009) | 08/01/92–07/31/93 |
| Georgia: Titanium Sponge, (A–833–803) | 08/01/92–07/31/93 |
| Israel: Industrial Phosphoric Acid, (A–508–604) | 08/01/92–07/31/93 |
| Italy: Granular Polytetrafluoro-ethylene Resin, (A–475–703) | 08/01/92–07/31/93 |
| Italy: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished, (A–475–603) | 08/01/92–07/31/93 |
| Japan: Acrylic Sheet, (A–588–055) | 08/01/92–07/31/93 |
| Japan: Brass Sheet and Strip, (A–588–704) | 08/01/92–07/31/93 |
| Japan: Cadmium, (A–588–035) | 08/01/92–07/31/93 |
| Japan: Certain High-Capacity Pagers, (A–588–007) | 08/01/92–07/31/93 |
| Japan: Granular Polytetrafluoro-ethylene Resin, (A–588–707) | 08/01/92–07/31/93 |
| Japan: Personal Word Processors, (A–588–818) | 08/01/92–07/31/93 |
| Kazakhstan: Titanium Sponge, (A–834–803) | 08/01/92–07/31/93 |
| Kyrgyzstan: Titanium Sponge, (A–835–803) | 08/01/92–07/31/93 |
| Latvia-Baltic: Titanium Sponge, (A–449–803) | 08/01/92–07/31/93 |
| Lithuania: Titanium Sponge, (A–451–803) | 08/01/92–07/31/93 |
| Mexico: Gray Portland Cement and Clinker, (A–201–802) | 08/01/92–07/31/93 |
| Moldova: Titanium Sponge, (A–841–803) | 08/01/92–07/31/93 |
| Netherlands: Brass Sheet and Strip, (A–421–701) | 08/01/92–07/31/93 |
| Russia: Titanium Sponge, (A–821–803) | 08/01/92–07/31/93 |
| Taiwan: Clear Sheet Glass, (A–583–023) | 08/01/92–07/31/93 |
| Tajikistan: Titanium Sponge, (A–842–803) | 08/01/92–07/31/93 |
| Thailand: Malleable Cast Iron Pipe Fittings, (A–549–601) | 08/01/92–07/31/93 |
| The People's Republic of China: Petroleum Wax Candles, (A–570–504) | 08/01/92–07/31/93 |
| The People's Republic of China: Sulfanilic Acid, (A–570–815) | 03/16/92–07/31/93 |
| Turkey: Acetylsalicylic Acid (Aspirin) (A–489–602) | 08/01/92–07/31/93 |
| Turkmenistan: Titanium Sponge, (A–843–803) | 08/01/92–07/31/93 |
| Ukraine: Titanium Sponge, (A–823–803) | 08/01/92–07/31/93 |
| Uzbekistan: Titanium Sponge, (A–844–803) | 08/01/92–07/31/93 |
| Venezuela: Certain Electrical Conductor Aluminum Redraw Rod, (A–307–701) | 08/01/92–07/31/93 |
| Yugoslavia: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished, (A–479–601) | 08/01/92–07/31/93 |
| *Suspension Agreements:* | |
| Japan: Erasable Programmable Read Only Memories (EPROMs), (A–588–505) | 08/01/92–07/31/93 |
| *Countervailing Duty Proceedings:* | |
| Canada: Alloy Magnesium, (C–122–815) | 12/06/91–12/31/92 |
| Canada: Live Swine, (C–122–404) | 04/01/92–03/31/93 |
| Canada: Pure Magnesium, (C–122–815) | 12/06/91–12/31/92 |
| Israel: Industrial Phosphoric Acid, (C–508–605) | 01/01/92–12/31/92 |
| Malaysia: Extruded Rubber Thread, (C–557–806) | 10/01/91–12/31/92 |
| New Zealand: Low-Fuming Brazing Copper Rod and Wire, (C–614–501) | 08/01/92–07/31/93 |
| Thailand: Certain Circular Welded Carbon Steel Pipes and Tubes, (C–549–501) | 01/01/92–12/31/92 |
| Venezuela: Certain Electrical Conductor Aluminum Redraw Rod, (C–307–702) | 01/01/92–12/31/92 |
| Zimbabwe: Carbon Steel Wire Rod, (C–796–601) | 01/01/92–12/31/92 |

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3069–A of the main Commerce building. Further, in accordance with § 353.31 or 355.31 of the Commerce regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty

Administrative Review" for requests received by August 31, 1993. If the Department does not receive, by August 31, 1993, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assitant Secretary for Compliance.*

[FR Doc. 93–18487 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–412–602]**

## Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3464.

**PRELIMINARY RESULTS:**

### Background

On September 21, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 35467) an antidumping order on certain forged steel crankshafts (crankshafts) from the United Kingdom.

This third administrative review was requested by United Engineering & Forging (UEF), the respondent in the investigation and two prior reviews, on September 12, 1990, in accordance with 19 CFR 353.22(a). On September 21, 1990 (52 FR 35467), the Department published an initiation of this review for UEF. This review covers the period from September 1, 1989, to August 31, 1990. The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### Case History

The Department sent a questionnaire to UEF on May 8, 1991. On June 21, 1991, UEF stated that some of its U.S. sales had no contemporaneous home market sales and requested the constructed value section of the questionnaire. The Department issued this section on June 25, 1991. UEF submitted a response to the main questionnaire on July 8, 1991 and a response to the constructed value section of the questionnaire on July 26, 1991. On August 22, 1991, the Department issued a deficiency letter to UEF for all sections of the questionnaire. UEF submitted a response to this deficiency letter on September 25, 1991.

On October 1, 1991, the Wyman-Gordon Company, petitioner in the investigation, notified the Department that it had completed the sale of its Danville, Illinois crankshaft manufacturing facility to Krupp Gerlach Crankshaft Co., a subsidiary of Krupp Stahl AG of Germany. The Wyman-Gordon Company stated that by virtue of this sale, it was no longer a domestic producer of forged steel crankshafts and therefore had no further interest in the order or the 1989–90 review. Pursuant to this notification, UEF requested on October 18, 1991, that the Department revoke the outstanding antidumping duty order on crankshafts from the United Kingdom.

On July 16, 1992, (57 FR 1898) the Department published the initiation and preliminary results of a changed circumstances antidumping duty administrative review, consideration of revocation, intent to revoke the antidumping duty order, and preliminary termination of the administrative review.

On June 2, 1992, the Department published the final results of the changed circumstances antidumping duty administrative review, determination not to revoke the antidumping duty order, and continuation of the administrative review (57 FR 23202) based on the fact that Louisville Forge and Gear Works, Inc., a domestic interested party, expressed interest in the antidumping duty order.

On June 4, 1992, the Department issued a second deficiency letter to UEF. UEF submitted a response to this deficiency letter on June 29, 1992.

On May 24–28, 1993, the Department conducted a verification of UEF's questionnaire response at UEF's Smith-Clayton Forge facility in Lincoln, England.

On July 21, 1993, the Department received comments from UEF regarding the sales verification report. However, these comments were submitted too late to be considered for purposes of these preliminary results but will be considered for the final results.

### Scope of the Review

Imports covered by this review are shipments of certain forged steel crankshafts. The term "crankshafts", as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. The products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review. Although the HTSUS subheadings are provided for convenience and Customs purposes, or written description of the scope of this proceeding is dispositive.

This review covers the period September 1, 1989, through August 31, 1990.

### Use of Best Information Available

During the verification of UEF, the Department discovered serious flaws in the respondent's submissions, e.g.:

- Problems with the product matching criteria;
- Missing documentation and unexplainable discrepancies in the verification of quantity and value;
- Support documentation for home market and U.S. sales not prepared in time to be reviewed at verification;
- Discrepancies with the home market dates of shipment and receipt of payment;
- Discrepancies with the home market prices;
- Discrepancies with and missing documentation for the home market and U.S. charges and adjustments; and
- Discrepancies with the terms of sale to U.S. customers.

The nature and amount of these discrepancies make it necessary for the Department to use best information available (BIA) in calculating the relevant margin. For a detailed analysis of the Department's decision to use BIA, see the July 19, 1993 memo from Richard W. Moreland to Barbara R. Stafford.

Under section 776(b) of the Tariff Act of 1930, as amended (the Act), if the Department is unable to verify the accuracy of information submitted in an administrative review where such

verification is conducted, the Department "shall use the best information available to it as the basis for its action." Moreover § 353.37(a) (1) and (2) of the Department's regulations requires the Department to use BIA whenever it does not receive a complete, accurate, and timely response to its request for factual information or is unable to verify, within the time specified, the accuracy and completeness of the factual information submitted.

In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information. 19 CFR 353.37(b). Thus, the Department may determine, on a case-by-case basis, what constitutes BIA. In past administrative reviews, the Department has applied the following two tiers of BIA in situations where it was unable to use a company's response for purposes of determining that company's dumping margin.

1. When a company refuses to cooperate with the Department or otherwise significantly impeded these proceedings, we use as BIA the higher of: (1) The highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation or prior administrative review; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperates with our requests for information including, in some cases, participation in verification, but fails to provide the information requested in a timely manner or in the form required, we use as BIA the higher of: (1) The highest rate (including the "all others" rate) ever applicable to the firm for the same class or kind of merchandise from either the less than fair value investigation or a prior administrative review; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

Due to the fact that there is just one respondent in this administrative review, and it substantially cooperated with the Department, we are using as BIA the highest calculated margin for UEF from all past administrative reviews. The amount calculated for UEF in the second administrative review, 9.77 percent, is the highest such margin. Therefore, we are using 9.77 percent as the margin for the preliminary results.

**Preliminary Results of the Review**

As a result of our review, we preliminarily determine the margin to be:

| Producer/exporter | Margin (percent) |
|---|---|
| United Engineering and Forging | 9.77 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, the Department will issue appraisement instructions concerning this rate directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of crankshafts entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be that established in the final results of this review period; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the final determination from the LTFV investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this review and who are unrelated to the reviewed firm or any other firms investigated in the original investigation, will be the "all others" rate.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 16, 1993, and rebuttal briefs no later than August 23, 1993. We request that parties in this case provide an executive summary of no more than two pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on August 25, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 1412, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 27, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18488 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DS–M

**[C–796–601]**

## Carbon Steel Wire Rod From Zimbabwe; Intent To Revoke Countervailing Duty Order

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of Intent to Revoke Countervailing Duty Order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

**EFFECTIVE DATE:** August 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Stroup or Cameron Cardozo, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–6071.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 15, 1986, the Department of Commerce ("the Department") published a countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

### Opportunity to Object

Not later than thirty days after the publication date of this notice, interested parties, as defined in § 355.2 (i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: July 27, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–18486 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DS–P

**[C–614–501]**

## Low Fuming Brazing Copper Rod and Wire From New Zealand; Intent To Revoke Countervailing Duty Order

**AGENCY:** International Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of Intent to Revoke Countervailing Duty Order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on low fuming brazing copper rod and wire from New Zealand. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

**EFFECTIVE DATE:** August 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Stroup or Lorenza Olivas, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 5, 1985, the Department of Commerce ("the Department") published a countervailing duty order on low fuming brazing copper rod and wire from New Zealand (50 FR 31638). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

### Opportunity to Object

Not later than thirty days after the publication date of this notice, interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: July 27, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–18485 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DS–P

## National Oceanic and Atmospheric Administration

**[I.D. 072893A]**

## Gulf of Mexico Fishery Management Council; Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) and its Florida/Alabama, Mississippi/Louisiana, and Texas Habitat Protection Advisory Panels will hold a public meeting on August 18–19, 1993, at the

Houston Hobby Airport Hilton, 8181 Airport Boulevard, Houston, TX; telephone: 713–645–3000. On August 18 the meeting will begin at 8:30 a.m. and continue until 5 p.m. On August 19 the meeting will begin at 8:30 a.m. and continue until 3 p.m.

The following topics will be discussed:
(1) The current direction of the Gulf of Mexico program;
(2) Conserving sensitive wetlands for the future;
(3) The Marsh Management program in Louisiana;
(4) Public attitudes towards environmental quality in a time of economic recession;
(5) Mercury contamination in the environment;
(6) Problems in Florida Bay;
(7) How various State and Federal agencies are addressing Florida Bay problems;
(8) Habitat related research in National Marine Fisheries Service; (9) Current proposed legislation potentially affecting Gulf of Mexico Fisheries;
(9) Current proposed legislation potentially affecting Gulf of Mexico Fisheries;
(10) Description and mission of the Department of Interior's new National Biological survey;
(11) Mitigation banking;
(12) Water banking;
(13) Coal combustion by-products and their use as offshore reef creation;
(14) Section 216 studies on the Gulf Intracoastal Waterway (Texas); and
(15) The Corps of Engineers Galveston District's section 216 activities.

Upon conclusion of the presentation and discussion, the panels will develop recommendations for later presentation to the Council.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: 813–228–2815.

Dated: July 28, 1993.

David S. Crestin,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–18457 Filed 8–2–93; 8:45 am]

BILLING CODE 3510-22-F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment and Amendment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

July 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting and amending limits.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340/640 and 433 are being increased by application of swing, reducing the limit for Categories 342/642 to account for the increases. Also, the U.S. Government agreed to increase the current guaranteed access level for Category 633.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

### Committee for the Implementation of Textile Agreements

July 28, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 4, 1993, you are directed to adjust the current limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

| Category | Adjusted twelve-month limit[1] |
|---|---|
| 340/640 | 583,328 dozen. |
| 342/642 | 422,824 dozen. |
| 433 | 21,842 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

Also, you are directed to increase the current Guaranteed Access Level (GAL) for Category 633 to 60,000 dozen. The GALs for Categories 340/640, 342/642 and 433 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–18491 Filed 8–2–93; 8:45 am]

BILLING CODE 3510-DR-F

### Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

July 28, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6711. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The U.S. Government has agreed to increase the Special Regime limit for Categories 352/652.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 88, published on January 4, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 28, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 28, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on July 30, 1993, you are directed to amend the directive dated December 28, 1992 to increase the Special Regime limit for Categories 352/652 to 3,850,000 dozen [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the United Mexican States. The Normal Regime limit for Categories 352/652 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93-18492 Filed 8-2-93; 8:45 am]

BILLING CODE 3510-DR-F

## Changes in Harmonized Tariff Schedule Classification Numbers for Cotton and Man-Made Fiber Floor Coverings from India

July 28, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs amending Harmonized Tariff Schedule numbers for certain floor coverings from India.

**EFFECTIVE DATE:** August 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:** To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, and the existing export visa requirements between the Governments of the United States and India based on the Harmonized Tariff Schedule (HTS), certain HTS classification numbers for floor coverings in Categories 369 and 665, which are exempt from existing quota and visa requirements, are being amended for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after August 1, 1993, regardless of the date of export. These changes are being published in a supplement to the 1993 Correlation.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 44 FR 68504, published on November 29, 1979; and 57 FR 56329, published on November 27, 1992.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 28, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 20, 1992, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in India.

Also, this directive amends, but does not cancel, the directive issued to you on November 26, 1979, as amended, which concerns visa requirements for certain textiles and textile products, produced or manufactured in India.

Effective on August 1, 1993, you are directed to make the changes shown below in the aforementioned directives for floor coverings entered in the United States for consumption or withdrawn from warehouse for consumption on and after August 1, 1993, regardless of the date of export:

| Category | Obsolete number | New number |
|---|---|---|
| 369-O ..... | 5702.49.1010 | 5702.49.1020 |
| 665-O (for visa purposes 665) | 5702.42.2010 | 5702.42.2020 |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93-18489 Filed 8-2-93; 8:45 am]

BILLING CODE 3510-DR-F

[Docket No. 930787-3187]

## Special Access and Special Regime Programs; Bond Requirement for Participants

July 28, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Notice and comment.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) issued to the Commissioner of Customs a directive to require Customs to establish a bond that all companies importing under the Special Access Program (SAP) or Special Regime Program (SRP) would be required to post with Customs. Users of the SAP and SRP requested that CITA take some type of action for violators other than suspension. In order to meet this request and to provide more flexibility in enforcing the requirements of the SAP and SRP, CITA is requiring all companies importing under either the SAP or SRP to post a bond with Customs. If an importer is found to be in violation of SAP or SRP requirements, liquidated damages would be assessed against the bond in the amount of three times the value of the released merchandise.

**DATES:** Comments must be submitted on or before September 2, 1993.

**ADDRESSES:** Chairman, Committee for the Implementation of Textile Agreements, room 3001, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, United States Department of Commerce, (202) 482-3400.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

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SUPPLEMENTARY INFORMATION:

**Authority**

Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), as amended, and Executive Order 11651 (March 3, 1972), as amended.

**Background**

The United States has entered into a number of bilateral textile agreements (Agreements) with other sovereign countries that provide for quantitative limits on imports to the United States for certain categories of textile and apparel products. These limits are typically called Specific Limits (SL) or Designated Consultation Levels (DCL). In addition to SLs and DCLs, certain Agreements also provide for quantitative limits on imports of apparel that are assembled from U.S. formed and cut fabric. When this arrangement is reached with certain Caribbean countries, the limit is called a Guaranteed Access Level (GAL). In the Agreement with Mexico, limits can be either SLs or DCLs under the Special Regime. The Program implements the Agreements by setting forth the administrative guidelines that importers must follow to import apparel that will be charged to a country's GAL or Special Regime SL or DCL rather than its regular SL or DCL.

The proper implementation and enforcement of the Program is important to both the United States and the other sovereign countries with which the U.S. has Agreements because: (1) The United States must be able to accurately gauge the level of imports of textiles and apparel to avoid causing market disruption in the U.S. and to determine whether the quantitative limits (DCLs, SLs, or GALs) are set at appropriate levels, and (2) the other sovereign countries must carefully count the volume of exports that are charged to its SLs, DCLs and GALs.

Since the negotiation and subsequent implementation of these Agreements is a foreign affairs function, the requirements of E.O. 12291 do not apply to this amendment to the requirements of the Program (Amendment) because it is being issued with respect to a foreign affairs function of the United States. Furthermore, this Amendment does not contain collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), nor does it contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612. Finally, because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this Amendment by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, no initial or final Regulatory Flexibility Analysis has to be or will be prepared (5 U.S.C. 603(a) and 604(a)). The request for comment does not constitute a waiver of exceptions to rule making under the Administrative Procedures Act 5 U.S.C. 553(a)(1) or 553(b).

On February 20, 1986, the President announced a special program to guarantee access to the U.S. market for Caribbean-produced textile products assembled from fabric formed and cut in the United States. Since the 1986 announcement, certain Caribbean countries have entered into bilateral agreements with the United States under which guaranteed levels of access are permitted for the products made of U.S. formed and cut fabric. The Committee for the Implementation of Textile Agreements (CITA) established the SAP to implement the bilateral agreements and to monitor companies' compliance with SAP requirements. (See 51 FR 21208, June 11, 1986)

On February 17, 1988, the United States and Mexico entered into a similar arrangement pursuant to a textile agreement which established the Special Regime. The Special Regime assures preferential access for goods assembled in Mexico from U.S. formed and cut fabric. As with the SAP, the SRP was established by CITA to implement the terms of the U.S.-Mexico textile agreement and to monitor companies' compliance with SRP requirements. (See 53 FR 15724, May 3, 1988).

Although compliance has generally been excellent, some violations of the SAP and SRP (collectively referred to as the "Program") have been detected through periodic compliance reviews conducted by the United States Customs Service (Customs). Upon discovery of violations, CITA may currently only take action to suspend companies from participation in the Program. In the summer of 1992, the users of the Program approached CITA to discuss an amendment to the Program rules that would provide some type of action, other than suspension, for violations of the Program.

In order to meet this industry request and to provide more flexibility in enforcing the requirements of the Program, CITA is proposing an amendment to the requirements of the Program that would require all companies importing under either the SAP or SRP to post a Bond with Customs. If an importer is found to be in violation of either the SAP or SRP requirements, liquidated damages would be assessed against the Bond by Customs in the amount of three times the value of the released merchandise. Pursuant to mitigation guidelines that will be published by Customs, the liquidated damages may be diminished. However, whether and how much a violation shall be mitigated is solely within the discretion of Customs.

Although CITA is not required to solicit formal comments, it will receive comments up to 30 days after the publication of this notice. The comments will be considered in the context of possible amendments to the bond requirement for the Program prior to final implementation by Customs.

The directive to the Commissioner of Customs published at the end of this notice requires Customs to establish a bond for the Special Access and Special Regime Programs based upon the specifications set forth in this notice within 45 days of publication of this notice.

*1. Definitions*

"Intermediate Importer" means a company that has been importing under either the SAP or SRP for less than 12 months.

"New Importer" means a company that has never imported products under either the SAP or SRP.

"Established Importer" means a company that has been importing under either the SAP or SRP for 12 months or longer.

"Program" means both the Special Access Program and Special Regime Program.

"Importer" means all Established, Intermediate and New Importers.

"Bond" means the Customs Bond that Importers importing under the Program will be required to post.

"CITA" means the Committee for the Implementation of Textile Agreements.

"United States" or "U.S." means the customs territory of the United States including the fifty States of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

"Value" means value as defined in 19 U.S.C. 1401a.

*2. Customs Bond Provisions*

The following is the Bond that CITA proposes to require for release of goods under the Program.

Special Access and Special Regime Textile Programs Bond

A bond to comply with requirements and procedures for participation in the Special Access Program for Certain Caribbean Basin Countries and the Mexico Special Regime Program as established by the Committee for the Implementation of Textile Agreements

(CITA), shall contain the conditions listed below and shall be a continuous bond.

Special Access Program for Certain Caribbean Basin Countries and the Mexico Special Regime Program Bond

(a) The effective date of this bond is _____.

(b) The limit of liability is _____.

(c) This bond remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amount listed above for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the time period and in the manner prescribed in the Customs Regulations (19 CFR 113.27).

(d) If the principal obtains release from Customs custody of any textile or apparel product (hereinafter merchandise) that is subject to the provisions of the Special Access Program for Caribbean Basin Countries, published on June 11, 1986 (51 FR 21208), July 10, 1987 (52 FR 26057) and December 6, 1989 (54 FR 50425), or the Mexico Special Regime Program, published on May 3, 1988 (53 FR 15724), August 25, 1988 (53 FR 32421) and December 6, 1989 (54 FR 50425), the principal guarantees that the merchandise complies with every provision of the applicable Program and that all necessary recordkeeping requirements have been met.

(e) If any of the released merchandise does not comply with each applicable provision of the Special Access Program or Special Regime Program or if the recordkeeping requirements of either Program have not been met, the obligors (principal or surety, jointly and severally) agree to pay liquidated damages equal to three times the value of the merchandise involved in the default (not to exceed the limit of liability stated above.) It is understood and agreed that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

Principal _____
Surety _____
Principal's Address _____
Surety's Address _____

*3. Limit of Liability on the Bond*

a. General Rule

The limit of liability on the Bond will be based upon a sliding scale with a minimum of $25,000 and a maximum of $250,000. The United States Customs Service will determine the exact limit of liability by taking 10% of the value of the Importer's shipments under the Program for the most recent 12 month period.

b. Established Importers

Established Importers that have shipped goods worth $250,000 or less under the Program during the most recent 12 month period will post a Bond of $25,000. Similarly, Established Importers that have shipped goods worth $2,500,000 or more under the Program during the most recent 12 month period will post a Bond of $250,000. Established Importers that have shipped goods worth more than $250,000 but less than $2,500,000 under the Program will post a Bond equal to 10% of the value of their shipments for the most recent 12 moth period.

c. New Importers

The limit of liability on the Bond for New Importers will be calculated in the same manner as it is for Established Importers. However, in order to determine an exact limit of liability, the New Importer will provide the United States Customs Service with an estimate of the value of the shipments it expects to import under the Program during the next twelve months and a limit of liability will be based upon this figure. Then, at the end of the first twelve month period that the New Importer has been importing goods under the Program, a new Bond will be posted with a limit of liability based upon the actual shipments during that twelve month period.

d. Intermediate Importers

The limit of liability on the Bond for Intermediate Importers will be calculated in the same manner as it is for Established Importers. However, in order to determine an exact limit of liability, the value of shipments under the Program will be annualized under the following formula:

value of actual shipments under the Program + [(12 − # of months of actual shipping) × Average monthly value of actual shipments]

For example, if Importer X has shipped goods under the Program for 4 months with a total value of $400,000, then its monthly average shipment would be $100,000. The annualized value of its shipments would be

$400,000 + [(12 − 4) × $100,000]=$1,200,000

which would require Importer X to post a Bond of $120,000 (10% of $1,200,000 is $120,000). At the end of 8 months, (the amount of time needed to obtain 12 months of actual shipment data) Importer X would post a new Bond with a limit of liability based upon the actual value of its shipments under the Program during the 12 month period

*4. Posting the Bond and Certifying the Bond Upon Entry*

The Bond may be posted at any United States Customs Service port of entry in the United States. Upon release of apparel under either the SAP or SRP, the Importer will be required to provide a certification that it posted a Bond for a specific amount at a specific customs port on a certain date. This document will *not* be a new form, but rather, the Importer will sign a statement certifying where the Bond was posted and its value.

a. Established Importers

Except as otherwise provided, Established Importers will only need to post the Bond one time and thereafter, it will continue in force with no further action by the Importer.

b. Intermediate and New Importers

Intermediate Importers and New Importers shall post a Bond based upon an estimate of their shipments under the Program. Once Customs can establish a limit of liability based on actual shipments under the Program, the Importer will post a new Bond and it shall then continue in force just as those posted by Established Importers.

c. Periodic Review and Adjustment of Bond Limit of Liability

CITA reserves the right to direct Customs (under Customs' authority contained in 19 U.S.C. 1623 and 19 CFR 113.13) to review some or all Importers' Bonds and to require an adjustment to a Bond that was originally posted to reflect the most recent 12 months of shipments under the Program. CITA will publish notice of such review in the **Federal Register** at least 30 days prior to the review except when Customs is recalculating the limit of liability for a New or Intermediate Importer pursuant to sections 2(c) & (d) of this notice.

*5. Assessing Liquidated Damages Against the Bond*

Customs will assess liquidated damages against the Bond if the Importer is found to have (1) imported goods that did not comply with the fabric content requirements of either the SAP or SRP or (2) if the Importer has not complied with the record keeping requirements under either the SAP or SRP. Customs will only impose liquidated damages for a Record Keeping Violation after: (1) The Participant responds to the Director's

request for documents and an explanation and the documentation does not meet Program requirements; or (2) the Participant has failed to respond to the Director's request for documents and an explanation.

The amount of the liquidated damages assessed by Customs shall be three times the value of the merchandise involved in the default, but shall not exceed the limit of liability stated in the Bond.

If Customs assesses liquidated damages against the Bond and the Importer believes that the action taken was not equitable or correct, then its recourse shall be solely through the Customs procedures set forth in 19 CFR part 172 (1992). In addition to these procedures, Customs will publish in a separate **Federal Register** notice mitigation guidelines that may be used to cancel claims for liquidated damages upon payment of lesser amounts.

The Importer shall not have any recourse to CITA or to the administrative procedures of any of the agencies that comprise CITA to adjudicate any action taken by Customs against the Bond, except for the Department of the Treasury, but only through Customs as set forth above. In addition, Customs will not consult CITA if and when it assesses liquidated damages against an Importer's Bond or mitigates the liquidated damages.

*6. CITA's Authority to Suspend an Importer*

Nothing in this notice modifies or changes CITA's authority to suspend an Importer from participation in the Program.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**July 28, 1993.**

**Commissioner of Customs,**

*Department of the Treasury, Washington, DC 20229*

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you implementing the Special Access and Special Regime Programs, by the Chairman, Committee for the Implementation of Textile Agreements. This directive requires Customs to implement a bond for the Special Access and Special Regime Programs consistent with the terms set forth in the notice above within 45 days of the publication of the notice. Customs may, however, provide importers with a 30 day grace period to post the bond.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. § 553(a).

Sincerely,

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–18425 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–25–F

## Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1993 Correlation

July 28, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Changes to the 1993 Correlation.

**EFFECTIVE DATE:** August 1, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:** The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1993) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The Correlation should be amended to reflect the following administrative changes, effective on August 1, 1993:

Changes in the 1993 Correlation

Delete 5702.42.2010 (665).

Add 5702.42.2020 (665)-Textile carpet woven not made on a power-driven loom.

Delete 5702.42.2090 (665).

Add 5702.42.2080 (665)—Definition remains unchanged.

Delete 5702.49.1010 (369).

Add 5702.49.1020 (369)—Carpets and floor covering woven cotton pile, made-up not made on a power-driven loom.

Delete 5702.49.1090 (369).

Add 5702.49.1080 (369)—Definition remains unchanged.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–18490 Filed 8–2–93; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; DoD Privacy Systems of Records Notices

**AGENCY:** Department of the Defense.

**ACTION:** DoD Privacy systems of records notices.

**SUMMARY:** The Department of the Army and the United States Marine Corps have identified systems of records that were inadvertently omitted from the DOD Reissuance of Privacy Act systems of records notices published February 22, 1993, at 58 FR 10002. These systems remain current and are being republished and incorporated into the reissuance of DoD Privacy Act systems of records.

In addition, the Department of the Army is revising the preamble to its systems of records notices.

**DATES:** This action will be effective August 3, 1993.

**ADDRESSES:** If you have any comments, send them to the Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 607–2943 or DSN 327–2943.

**SUPPLEMENTARY INFORMATION:** The Department of the Army and the United States Marine Corps have identified systems of records notices that were inadvertently omitted from the DoD Reissuance published on February 22, 1993, at 58 FR 10002. These systems of records remain current and are being republished to be incorporated in the DoD Reissuance.

**Dated: July 27, 1993.**

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### UNITED STATES ARMY

*HOW SYSTEMS OF RECORDS ARE ARRANGED*

Department of the Army records are identified by the directive number which prescribes the records created, maintained and used, and are published in numerical sequence by identification number. For example, a system of records about assignment of military personnel may be found in the 614 series; "assignments, details and transfers". Some subjects, such as investigations, are treated as sub-elements of a series, e.g., "criminal investigations", "security", and "military intelligence".

*HOW TO USE THE INDEX GUIDE*

To locate a particular system of records, follow this general guide. The series subject corresponds to the system identification number. For example: pay records for military and civilian personnel are in the 37 series. The first letter, 'A', represents the Army, the number (37-104-3) is the prescribing directive, and the suffix letters are internal management devices.

For more information, contact Ms. Patricia A. Turner at (602) 538–6856 or DSN 879–6856.

SUBJECT SERIES
SYSTEM IDENTIFICATION SERIES

A0001
Office Administration Housekeeping Files

A0015
Boards, Commissions, and Committees Files

A0020
Inspector General Assistance, Inspections Investigation, and Follow-up Files

A0025
Information Management Files

A0027
Legal Services Files

A0030
Food Taste Test Files

A0037
Financial Administration/ Management Files

A0040
Medical Services Files

A0055
Transportation and Travel Files

A0056
Marine Qualification Board Files

A0060
Ration/Blackmarket Monitoring Files

A0065
Postal Services Files

A0070
Research, Development, and Acquisition Files

A0095
Aviation Files

A0140
General Army Reserve Files

A0145
Senior/Junior ROTC Files

A0165
Religious Activity Files

A0190
Military Police Files

A0195
Criminal Investigation Files

A0210
Army Installations Files

A0215
Morale, Welfare, and Recreation/NAF Files

A0220
Military Personnel Data Files

A0340
Official Mail/Army Privacy Program Files

A0350
Training and Evaluation Files

A0351
Army Schools Files

A0352
Dependent Children School Program Files

A0360
Army and Public Information Files

A0380
Security Information Files

A0381
Intelligence/Counterintelligence Files

A0385
Accident and Incident Case Files

A0405
Homeowners Assistance/Real Estate Files

A0570
Human Resources Information Files

A0600
General/Military Personnel Mgt Files

A0601
Military Personnel Procurement Files

A0602
Behavioral and Social Sciences Files

A0608
Personal Affairs Files

A0614
Assignments, Details, and Transfers Files

A0621
Army/Civilian Personnel Education Files

A0635
Officer/Enlisted Personnel Separation Files

A0640
Personnel Management and Identification of Individuals Files

A0672
Decorations, Awards, and Honors

A0680
Officer/Enlisted Personnel Management Information System Files

A0690
Civilian Personnel Files

A0710
Inventory Management Files

A0715
Procurement Misconduct Files

A0725
Small Arms Sales Files

A0735
Library Borrowers'/Users Files

A0870
Army History Files

A0920
Civilian Marksmanship Program Files

A0930
Army Emergency Relief Transaction Files

A1105
COE Recreational Use Files

A1145
COE Reservoir/General Permit Files

In addition, the Department of the Army maintains systems of records in accordance with government-wide Privacy Act systems of records.

**Equal Employment Opportunity Commission**

EEOC/GOVT-1
Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

**Federal Emergency Management Association**

FEMA/GOVT-1
National Defense Executive Reserve System.

**General Services Administration**

GSA/GOVT-2
Employment Under Commercial Activities Contracts.

GSA/GOVT-3
Travel Charge Card Program.

GSA/GOVT-4
Contracted Travel Service Program.

**Department of Labor**

DOL/ESA 13
Employment Standards Administration, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File.

DOL/ETA 14
Employment Training Administration.

**Merit Systems Protection Board**

MSPB/GOVT-1
Appeal and Case Records.

**Office of Government Ethics**

OGE/GOVT-1
Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records.

OGE/GOVT-2
Confidential Statements of Employment and Financial Interests.

**Office of Personnel Management Government**

OPM/GOVT-1
General Personnel Records.

OPM/GOVT-2
Employee Performance File System Records.

OPM/GOVT-3
Records of Adverse Actions, Performance Base Reduction in Grade and Removal Actions, and Termination of Probationers.

OPM/GOVT-4
[Reserved.] Formerly Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records [Replaced by OGE/GOVT-1].

OPM/GOVT-5
Recruiting, Examining, and Placement Records.

OPM/GOVT-6
Personnel Research and Test Validation Records.

OPM/GOVT-7
Applicant Race, Sex, National Origin, and Disability Status Report.

OPM/GOVT-8
[Reserved.] Formerly Confidential Statement of Employment and Financial Interest [Replaced by OGE/GOVT-2].

OPM/GOVT-9
File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.

OPM/GOVT-10
Employee Medical File System Records.

**DEPARTMENT OF THE ARMY SYSTEMS OF RECORDS**

**A0020–1bSAIG**

**SYSTEM NAME:**

Inspector General Action Request/ Assistance Files.

**SYSTEM LOCATION:**

Primary location is at the U.S. Army Inspector General Agency, Department of the Army, The Pentagon, Washington, DC 20310–1700.

Secondary location is at the Offices of Inspectors General at major Army commands, field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any person who submits a request for assistance to an Inspector General.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's request/complaint, all related reports of inquiry, studies, memoranda, and reference material; name, component, and functional relationship or complainant to military; correspondence reflecting disposition of request.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013 and 3020.

**PURPOSE(S):**

To record complaints of wrongdoing and requests for assistance, to document inquiries, research facts and circumstances, sources of information, impressions and conclusions; to record action taken and notification of interested parties and agencies.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in binders/file folders and computer data base.

**RETRIEVABILITY:**

By requester's surname or by other descriptive name cross-referenced to case number.

**SAFEGUARDS:**

Files are stored in locked containers accessible only to authorized persons with an official need to know. Computer data base access is limited by terminal control and a password system to authorized persons with an official need to know.

**RETENTION AND DISPOSAL:**

Requests for assistance and/or complaints acted on by The Inspector General, Headquarters, Department of the Army, are retained for 2 years following completion and closing of case.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of the Inspector General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1700.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, address, nature of request for assistance or complaint, and identification of the Inspector General's Office to which the request was submitted.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, address, nature of request for assistance or complaint, and identification of the Inspector General's Office to which the request was submitted.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual, Army records and reports, and other sources providing or containing pertinent information.

**EXEMPTIONS CLAIMED FOR THIS SYSTEM:**

Portions of this system may be exempt under 5 U.S.C. 552a(k)(2) or (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager

**A0025–55SAIS**

**SYSTEM NAME:**

Request for Information Files.

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to E.O. 12356. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to E.O. 12356.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, Freedom of Information Act, as amended by Pub. L. 93–502; and E.O. 12356.

PURPOSE(S):

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to E.O. 12356, including appeals from denials.

ROUTINE USES OF RECORDS, MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly trained and have official need therefor.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 5 years; and if appealed, records are retained 4 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310–0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide enough information to permit locating the record.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The majority of records in this system are not exempted. Copies of documents residing in the office of an Initial Denial Authority having a law enforcement mission which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

Copies of documents maintained by other Initial Denial Authorities not having a law enforcement mission which fall within 5 U.S.C. 552a(k)(1) through (k)(7) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3),(d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0025–5USAISC

SYSTEM NAME:

Military Affiliate Radio System.

SYSTEM LOCATION:

U.S. Army Information Systems Command, Fort Huachuca, AZ 85613–5000 for individuals on whom an investigation or inquiry has been received. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having a valid amateur radio station license issued by the Federal Communications Commission who apply for membership in the Army Military Affiliate Radio System (MARS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, home address and telephone number, licensing data and call-sign provided by Federal Communications Commission, Army MARS call-sign, relevant inquiries/records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; DOD Directive 4650.2; and E.O. 9397.

PURPOSE(S):

To provide a potential reserve of trained radio communications personnel for military duty when needed and/or to provide auxiliary communications for military, civil, and/or disaster officials during periods of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System (MARS) Program and to federal supply agencies in connection with individual's participation in the Army MARS Equipment Program.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper in file folders, computer tapes, discs, listings.

RETRIEVABILITY:

By member's name.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor to perform their duties. Automated records are further protected by a product control number assigned to designated persons.

RETENTION AND DISPOSAL:

Retained 1 year beyond the time individual is active in the program, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Information Systems Command, ATTN: ASOP-D, Fort Huachuca, AZ 85613–5000.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Information Systems Command, ATTN: ASOP-D, Fort Huachuca, AZ 85613–5000.

Individual should provide the name under which licensed is the Army MARS program, Social Security Number, present address, call sign, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Information Systems Command, ATTN: ASOP-D, Fort Huachuca, AZ 85613–5000.

Individual should provide the name under which licensed is the Army MARS program, Social Security Number, present address, call sign, and signature.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and the Federal Communications Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027DAJA

SYSTEM NAME:

Civil Process Case Files.

SYSTEM LOCATION:

Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, APO New York 09403–5000; segments exist at other Army Judge Advocate Offices in the Federal Republic of Germany. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Armed Forces, civilian employees of the U.S. Government, and their dependents upon whom service is made of documents issued by German civil courts, customs and taxing agencies, and other administrative agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish civil liability, customs and tax demands, assessing fines and penalties, demands for court costs or for costs for administrative proceedings summonses and subpoenas, paternity notices, complaints, judgments, briefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administrative writs; correspondence between U.S. Government authorities and the Federal Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (NATO Status of Forces Supplementary Agreement).

PURPOSE(S):

To ensure that U.S. Forces obligations under the North Atlantic Treaty Organization Status of Forces Agreement are honored and the rights of U.S. Government employees are protected by making legal assistance available.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to foreign law enforcement or investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements regulating the stationing and status in Federal Republic of Germany of Defense military and civilian personnel.

Information disclosed to authorities of the Federal Republic of Germany may be further disclosed by them to claimants, creditors or their attorneys.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and cards in steel filing cabinets; computer disk-packs and computerized database.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

All information is maintained in areas accessible only to designated individuals having official need therefor in the performance of their duties. Records are housed in buildings protected by military police or security guards.

RETENTION AND DISPOSAL:

Paper records are destroyed 2 years after completion of case; card files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, ATTN: Chief, International Affairs Division, APO New York 09403–5000.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to record about themselves contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, ATTN: Chief, International Affairs Division, APO New York 09403–5000.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; German authorities; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027-1DAJA

SYSTEM NAME:

General Legal Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army; Offices of Staff Judge Advocates; Judge Advocates; and Legal Counsels of Washington, DC 20310–2200; subordinate commands, installations, and organizations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of civil or criminal matters referred to the Office of the Judge Advocate General or to legal offices of subordinate commands, installations, and organizations for legal opinion, legal review, or other action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries with substantiating documents, personnel actions, investigations, petitions, complaints, correspondence and responses thereto.

Examples of records include: Elimination and separation proceedings; questions pertaining to entitlement to pay; allowances, or other benefits; flying evaluation boards, line of duty investigations; reports of survey; other boards of investigating officers; DA Suitability Evaluation Board cases; DA Special Review Board efficiency report appeals; petitions to the Army Board for the Correction of Military Records; matters pertaining to on-post solicitation, revocation of privileges, and bars to entry on military installations; matters pertaining to appointments, promotions, enlistments, and discharges; matters pertaining to prohibited activities and conflicts of interest for Army personnel and employees; Article 138, UCMJ complaints; private relief legislation; military justice matters including requests for delivery of service members for trial by civilian authorities; appeals from nonjudicial punishment imposed under Article 15, UCMJ; appeals under Article 69, UCMJ; Secretarial review of officer dismissal cases; petitions for clemency, requests for pardons and requests for grants of immunity for civilian witnesses; matters pertaining to civilian employees and employees of non-appropriated fund instrumentalities including employment, pay, allowances, benefits, separations, discipline and adverse actions, grievances, equal opportunity complaints, awards, and claims processed by other agencies; and matters pertaining to attorney professional responsibility inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3037 and 3072.

PURPOSE(S):

To ensure legal sufficiency of Army operations, policies, procedures, and personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to the Department of Justice for grants of immunity and requests for pardons.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

Retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in locked file cabinets and/or in locked offices in buildings employing security guards or on military installations protected by military police patrols.

RETENTION AND DISPOSAL:

Records at the Office of the Judge Advocate General and Office of the Chief Counsel, Office, Chief of Engineers are permanent; at all other locations, records are destroyed upon obsolescence.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in the record system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifics concerning the incident or event believed to be the basis for legal review.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifics concerning the incident or event believed to be the basis for legal review.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7), as applicable.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0027-3DAJA

SYSTEM NAME:

Legal Assistance Files.

SYSTEM LOCATION:

Army Legal Assistance, Office of the Judge Advocate General, Headquarters,

Department of the Army, Washington, DC 20310–2200; Staff Judge Advocate offices at Army commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty or retired military personnel and/or their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, grade/rank, Social Security Number, organization, and details of problem/incident/matter on which legal assistance is sought. Records may be in the form of correspondence, memoranda, opinions of legal assistance officers, and may include interviews, summary of problems considered, advice rendered, referrals made, and documents created as a result of assistance provided.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To respond to inquiries and settle issues; for management and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By client's surname.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to designated authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Destroyed 1 year from the closing date of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Army Legal Assistance, Office of the Judge Advocate General, HQDA (DAJA-LA), Washington, DC 20310–2200; and the Staff Judge Advocates of organizations listed in the address directory published as an appendix to the Army's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system may inquire of the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, Social Security Number, and any details that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system may inquire of the Staff Judge Advocate of the installation or command where legal assistance was sought.

Individual should provide full name, Social Security Number, and any details that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her attorney, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## UNITED STATES MARINE CORPS SYSTEMS

### MJA00010

SYSTEM NAME:

Unit Punishment Book.

SYSTEM LOCATION:

All U.S. Marine Corps and U.S. Marine Corps Reserve units, whose commander has non-judicial punishment authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any enlisted Marine who is charged with a violation of the Uniform Code of Military Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, rank, Social Security Number, military occupational specialty and unit of the individual, brief summary of the alleged offense including date, time and place. Acknowledgement of rights under Article 31, Uniform Code of Military Justice, and right to demand trial by courts-martial by the individual, record of specific punishment awarded or remarks as to disposition of charge.

If punishment was awarded the individual will also acknowledge, in writing, his right to appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 815; and E.O. 9397.

PURPOSE(S):

To provide a record of nonjudicial punishments at Marine Corps commands used in the evaluation of conduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in loose leaf binder.

RETRIEVABILITY:

Alphabetically by last name and by year.

SAFEGUARDS:

Access limited to those with a need to know. Records kept in a locked cabinet or in a room which is locked.

RETENTION AND DISPOSAL:

Records are kept 3 years, and then destroyed by burning at end of period.

SYSTEM MANAGER(S) AND ADDRESS:

Unit Commanders of U.S. Marine Corps or U.S. Marine Corps Reserve units authorized to administer non-judicial punishment.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Unit Commanders of U.S. Marine Corps or U.S. Marine Corps Reserve units authorized to administer non-judicial punishment.

If unit imposing punishment cannot be determined, information may be sought from Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD Form 214 and driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained

in this system should address written inquiries to the Unit Commanders of U.S. Marine Corps or U.S. Marine Corps Reserve units authorized to administer non-judicial punishment.

If unit imposing punishment cannot be determined, information may be sought from Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD–214 and driver's license.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Verbal or written charge from individual subject to Uniform Code of Military Justice, Service record book of individual, nonjudicial punishment hearing.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00012

SYSTEM NAME:

Individual Accounts of Mail Order Clothing (bill file).

SYSTEM LOCATION:

Clothing Section (MAU), Direct Support Stock Control Branch, Materiel Division, Marine Corps Logistics Support Base, Albany, GA 31704–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

File pertains to all Marine Corps personnel, active, reserve and retired who have a requirement and are authorized clothing, textiles and other related supplies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record includes individual's name, rank, Social Security Number, military address, bill number, dollar amount of the shipment, shipping date and ZIP code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

NAVCOMPT Manual, Part C, Collection and Reporting of Debts Due the United States; 10, U.S.C. 5031.

PURPOSE(S):

To provide a record of debts owed through clothing mail order accounts for use in follow-up to such accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored on magnetic tapes and computer paper printouts.

RETRIEVABILITY:

Data can be retrieved by account number, name and Social Security Number.

SAFEGUARDS:

Computer printouts and source documents are retained in a single office accessible only to authorized personnel. Employees are properly trained in safeguarding information of a personal nature.

RETENTION AND DISPOSAL:

Computer records are retained until the bills are satisfied. Computer printouts and source documents are retained for a period of five years. Destruction of records is by mutilation.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding General, Marine Corps Logistics Support Base, Albany, GA 31704–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Clothing Section (MAU), Direct Support Stock Control Branch, Materiel Division, Marine Corps Logistics Support Base, Albany, GA 31704–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Clothing Section (MAU), Direct Stock Control Branch, Material Division, Marine Corps Logistics Support Base, Albany, GA 31704–5000.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Accounting records of the Clothing Section, Direct Support Stock Control Branch, Marine Corps Logistics Support Base, Albany, GA, supplemented with information from the employing activity of the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00013

SYSTEM NAME:

Bad Checks/Withdrawal of Check Cashing Privileges Lists.

SYSTEM LOCATION:

Each Appropriated and Non-Appropriated Fund Activity having authority to accept personal checks from authorized patrons. Located at Headquarters, U.S. Marine Corps and each major Marine Corps installation listed in MCO P5400.6G.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel, active and retired; their authorized dependents an deceased military retirees; Marine Corps Exchange employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

File bulletins containing name, rank, Social Security Number and expiration date of restriction of privileges and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 801, et. seq.; 18 U.S.C. 13 and E.O. 9397.

PURPOSE(S):

To provide a record of individuals who have issued bad checks at Appropriated and Nonappropriated Fund Activities having authority to accept personal checks from authorized patrons. The records are used to protect activities from unnecessary losses and to initiate administrative or criminal actions due to bad check offenses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in Rolodex or other appropriate file in check cashing area. Published bulletin is stored in directive system of organizations.

RETRIEVABILITY:

Alphabetical by name and Social Security Number.

SAFEGUARDS:

Access limited. Secured in locked building during nonworking hours.

RETENTION AND DISPOSAL:

Destroyed when privileges are restored at the expiration of specified periods made known to the individual at the time privileges are revoked.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Bad checks returned from the bank; notification from other commands, Federal Bureau of Investigation, Naval Investigative Service or other state, local or Federal investigative agencies or Treasury Department.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00014

SYSTEM NAME:

Confidential Statements of Employment/Financial Interests.

SYSTEM LOCATION:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps officers whose fitness reports are written by the Commandant of the Marine Corps and who are required to file confidential statements of 'Employment and Financial Interests' (DD Form 1555) in accordance with DOD Directive 5500.7.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains copies of the 'Confidential Statements of Employment and Financial Interests' (DD Form 1555), reviews thereof, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of employment and financial interests of certain Marine Corps Officers for use by the Commandant of the Marine Corps or his designee to ensure there is no conflict of interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder.

RETRIEVABILITY:

Alphabetically by last name of member.

SAFEGUARDS:

The access to the files is limited. The files are kept in a locked safe during non-business hours.

RETENTION AND DISPOSAL:

Records are maintained 6 years within the command, after which they are destroyed.

If an investigation is initiated prior to end of 6 years and records are needed, they are held until completion of investigation, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

Written requests for information should contain the full name and grade of the individual concerned.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

DD Form 1555 submitted by individual concerned and correspondence from and to system manager.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00016

SYSTEM NAME:

Judge Advocate Division 'D' Files.

SYSTEM LOCATION:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marine Corps Judge Advocates currently on active duty, in a reserve capacity and those individuals who have been selected for accession into the Marine Corps as Judge Advocates or who are in the training cycle to become Judge Advocates.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains correspondence from the Judge Advocates and prospective Judge Advocates regarding requests for personnel actions such as transfer, school assignment, etc. Additionally, the file contains information pertaining to judge advocate qualifications such as schooling results, commendatory matters and derogatory matter which bears on the assignment and other

personnel matters relating to judge advocates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of qualified judge advocates for use in transfer, school assignment and other personnel matters relating to judge advocates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetically by last name of member.

SAFEGUARDS:

Access is limited. The records are kept in file cabinets within a locked room.

RETENTION AND DISPOSAL:

Retained for 2 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U. S. Marine Corps (Code JA), Washington, DC 20380–1775.

Written requests should contain the full name and grade of the individual.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals. Service records of the individuals involved. Judge Advocates and Commanders of the individuals involved. Schools from which the individuals have obtained their graduate or undergraduate degrees or currently in residence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00017

SYSTEM NAME:

JA Division, HQMC Correspondence Control Files.

SYSTEM LOCATION:

The Commandant of the Marine Corps (Code JAC), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marines or former Marines who have been the subject of correspondence from a member of Congress, a high level Official in the Federal executive branch, parents of such an individual, individual Marines or members of the general public which correspondence concerns legal matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains the incoming correspondence, backup material used to respond to the correspondence, notes of the action officer and reply correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of action taken on all correspondence received by the Judge Advocate Division, Headquarters, Marine Corps on individual inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Alphabetical by name of correspondent or name of Marine or former Marine who is the subject of the correspondence.

SAFEGUARDS:

Limited access on a need to know basis. Maintained in a locked room.

RETENTION AND DISPOSAL:

Retained for 2 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JAC), Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JAC), Washington, DC 20380–1775.

Written requests for information should contain the full name and grade of the individual.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Drafter of incoming correspondence.

Service records of the Marine concerning whom correspondence is written. Information furnished from the command of the Marine concerned. Information furnished from other involved Marine Commands or individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00018

SYSTEM NAME:

Performance File.

SYSTEM LOCATION:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The file pertains to all members and former members of the Marine Corps, who, while on active duty or in a reserve status, become the subject of investigation, indictment, or criminal proceedings by military or civilian authorities, whether or not such investigation, indictment or proceedings

result in a final adjudication of guilt of innocence.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains information pertaining to civilian and military criminal matters including investigative reports, documents indicating court proceedings have begun and/or in progress, and post trial or investigative matters, as well as records of any resultant administrative action or proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record on individuals from the initiation of investigation or indictment until the procedure is final, whether by conviction, acquittal, dismissal or by the matter being dropped, and any resultant administrative action or proceedings, for use in determining assignments, whether an individual selected for promotion should be promoted while the matter is pending.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Access is limited. The file folders are stored in the file cabinets which are stored in a locked room during nonbusiness hours.

RETENTION AND DISPOSAL:

Files are maintained for 50 years and then destroyed. Files maintained in Judge Advocate Division at Headquarters are transferred to Federal Records Center, Suitland, MD, after three years.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

Written requests for information should contain the full name and grade of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (JA), Washington, DC 20380–1775.

Written requests for information should contain the full name and grade of the individual.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigative records of arrest from civilian law enforcement sources; records of indictment of conviction from civilian law enforcement or judicial agencies; records of appellate and other post trial procedures received from civilian law enforcement and judicial agencies.

Records indicating apprehension or investigation by military authorities received from individual's command or other military agencies, law enforcement or command.

Records of nonjudicial punishment, courts-martial, pre courts-martial and post courts-martial activities relating to the individual received from the individual's command.

Records of administrative eliminative processes conducted by military authorities received from the individual's command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00002

SYSTEM NAME:

Working Files, Inspection Division.

SYSTEM LOCATION:

Headquarters, U.S. Marine Corps; Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Marine Corps and Marine Corps Reserve; former members of the Marine Corps and Marine Corps Reserve; retired and temporarily retired members of the Marine Corps and Marine Corps Reserve; and members of the Fleet Marine Corps Reserve; military personnel.

Dependents of Marines and other family members with respect to matters pertaining to the individual Marine or former Marine.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information pertaining to identification, recruitment, enlistment, prior service, assignment, location addresses, promotions, reductions in rank, performance of duty, discipline, offenses and punishments under the Uniform Code of Military Justice, courts-martial, personal history, investigations, police and court records, civil arrests and convictions, Official correspondence (includes internal Marine Corps and Department of the Navy correspondence, as well as correspondence with the Executive and Legislative branches of the federal government) and other correspondence (includes correspondence from Marines, their dependents and families, attorneys, doctors, educators, clergymen and members of the general public whether addressed directly to the Marine Corps or via third parties (president, congressmen, etc.)).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of investigations, allegations pertaining to request mast, maltreatment and harassment for use by Officials of the Headquarters Inspection Division concerning inquiries on such matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

Congress of the U.S. - By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of the files of the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files as represented by card files and file folders. Files are stored in five drawer filing cabinets.

RETRIEVABILITY:

Files are accessed and retrieved by the name and card file number.

SAFEGUARDS:

Building where files are stored and maintained employs 24 hour security guards. Records are further stored in areas of controlled access and handled by personnel with a need to know in the execution of their official duties.

RETENTION AND DISPOSAL:

Congressional, military and civilian inquiry files are retained three years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code IGA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (Code IGA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775. However, final determination as to whether any information will be released or made available will be controlled by the system manager.

Written requests for information should contain the full name of the individual and his Social Security Number or former military service number. The following information will also be helpful in locating some records; military rank and occupational specialty, dates and places of service, and any special correspondence previously received or sent.

For personal visits, an individual may visit the Inspection Division, Headquarters, U.S. Marine Corps, Federal Building t2, Washington, DC 20380–1775. However, final determination as to whether any information will be released or made available will be controlled by the System manager.

For personal visits, the individual should be able to provide personal identification to include valid military or dependent identification card or two valid civilian items of identification, such as driver's license, social security card, medicare, etc.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the Marine Corps Manpower Management System; the Joint Uniform Military Pay System; Marine Corps Military Personnel Records to include the Service Record Book and Officer Qualification Record; Military Medical Records; Staff elements and subdivisions of Headquarters, U.S. Marine Corps; Marine Corps field commands, organizations and activities; other components of the Department of Defense; Agencies of Federal, State and local government; private citizens provided as character references by the individual; investigations related to disciplinary proceedings; and correspondence of private citizens addressed directly to the Marine Corps or via third parties such as members of Congress and other government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00003

SYSTEM NAME:

Activity Check In/Check Out File.

SYSTEM LOCATION:

May be located at any U.S. Marine Corps or U.S. Marine Corps Reserve activity. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Date reported and verification of check-in - check-out procedure.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; and E.O. 9397.

PURPOSE(S):

To provide a record of members reporting to or leaving a unit for use in tracking property belonging to the unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On paper in files or on clipboard.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

Access limited to activity personnel in the performance of their official duties.

After working hours, the office and building are locked. A guard is located in the general vicinity.

RETENTION AND DISPOSAL:

Retained for 6 months after action has been completed.

SYSTEM MANAGER(S) AND ADDRESS:

Activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD–214 and driver's license.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the activity commander. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Provide full name, Social Security Number, and military status. Proof of identity may be established by military identification card or DD–214 and driver's license.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

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RECORD SOURCE CATEGORIES:

Service records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00004

SYSTEM NAME:

Adjutant Services Section Discharge Working Files.

SYSTEM LOCATION:

Adjutant Services Section, Marine Corps activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members and former members of the Marine Corps and Marine Corps Reserve. Some information about dependents and other members of families or former families of Marine Corps personnel may be included in files pertaining to the Marine. Inquiries from the general public, whether addressed directly to Base or received via a third party, may be retained together with information obtained in the course of completing required action or in prepering a response.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain information pertaining to identification; prior service; location and addressees; prior and present marital status, dissolution of prior marriages, birth and death status, adoption of children, financial responsibility, child support, medical information, personal financial records, residence, basic allowance for quarters, leave and liberty, financial assistance, extensions of emergency leave, medical bills and determinations of dependency status as pertain to discharges; investigative reports, prior and present disciplinary status, financial responsibility, conduct and personal history, police reports, correction of naval records, veterans rights, benefits and privileges, preseparation counseling and civil readjustment as they pertain to unsuitability, unfitness and misconduct discharges; financial status, college acceptance and residence as they pertain to early separation to attend college or trade school; religious beliefs and practices pertaining to applications for conscientious objector status; official correspondence (including correspondence from Marines, their families, attorneys, doctors, clergymen, administrators/executors/guardians of estates, American Red Cross and other welfare agencies and the general public, whether addressed directly to the Marine Corps or via third parties); internal routing and processing of matters; and records of interviews and telephone conversations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide records for use in the discharge or separation of Marines, correction of records, determination of veterans rights, benefits and privileges, welfare and family assistance and preseparation and counseling.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and card files stored in filing cabinets, shelves, tables and desks.

RETRIEVABILITY:

Files are accessed and retrieved by individual. Identification of individual is by name and Social Security Number.

SAFEGUARDS:

Building is located in base area with area guard. Outside and inside doors locked after working hours and patrolled by Duty NCO. Access to information contained in the files is limited to officials and employees of Base Headquarters acting in their official capacity upon demonstration of a need-to-know.

RETENTION AND DISPOSAL:

Files are retained two years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Correspondence should contain the full name, Social Security Numbers and signature of the requester. The individual may visit the above location for review of files. Proof of identification may consist of the active, reserve, retired or dependent identification card, the Armed Forces Report of Transfer or Discharge (DD–214), discharge certificate, driver's license, social security card or by providing such other data sufficient to ensure the individual is the subject of the inquiry.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of activity concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Marine Corps Manpower Management System; Joint Uniform Military Pay System; Marine Corps Military Personnel Records System.

Marine Corps Deserter Inquiry File; Staff agencies and subdivisions of Headquarters, U.S. Marine Corps; Marine Corps commands and organizations.

Other agencies of Federal, state and local governments; Educational institutions; Medical reports and psychiatric evaluations; Financial institutions and other commercial; Civil courts and law enforcement agencies.

Correspondence and telephone calls from private citizens initiated to the Marine Corps or via the U.S. Congress and other agencies; Investigative Reports; American Red Cross and similar welfare agencies;

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00005

SYSTEM NAME:

Insurance Files.

SYSTEM LOCATION:

Marine Corps Activities. U.S. Marine Corps official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Insurance salesman requesting authority to do business at Marine Corps Activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

A record of the certification of authority to solicit insurance mutual funds, investment plans, and securities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide a record of insurance agents who have requested authority to do business at Marine Corps activities and the disposition of such requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Files in alphabetical order by company name. Conventional indices are required for retrieval.

SAFEGUARDS:

Maintained in locked building.

RETENTION AND DISPOSAL:

Maintained as long as active. If inactive, disposed of after two years by discard into military trash system. Not transferred.

SYSTEM MANAGER(S) AND ADDRESS:

Local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is supplied by the insurance companies and salesman involved.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00007

SYSTEM NAME:

Inspection of Government Property Assigned to Individual.

SYSTEM LOCATION:

Organizational elements of the U.S. Marine Corps. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices. the Directory of Department of the Navy activities mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Marine Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, badge number, and government property assigned to individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide a record of loss or deterioration of clothing and equipment assignment to each individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Building locked at night - locked cabinet.

RETENTION AND DISPOSAL:

Until separation.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding officer of the activity in question. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

Written requests for information should contain the full name of the individual and his Social Security Number or former military service number. The following information will also be helpful in locating some records: Military rank and occupational specialty, dates and places of service, and any special correspondence and previously received or sent.

For personal visits, the individual should be able to provide personal identification to include valid military or dependent identification card or two valid civilian items of identification such as driver's license, social security card, medicare, etc.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

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RECORD SOURCE CATEGORIES:

Inspection of property and clothing.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00008

SYSTEM NAME:

Message Release/Pickup Authorization File.

SYSTEM LOCATION:

Marine Corps activities. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel authorized to release/pickup message traffic.

CATEGORIES OF RECORDS IN THE SYSTEM:

OPNAV Form 2160–5 (Message Release/Pickup Authorization).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide a record of personnel authorized to release/pickup messages at command Communication Centers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear to the beginning of the Marine Corps compilation apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards are filed in a card file within the Communication Center.

RETRIEVABILITY:

Alphabetically by name.

SAFEGUARDS:

Located in a secure space within the Command Center, which is manned on a 24–hour basis.

RETENTION AND DISPOSAL:

Retained until individual is replaced or authorization is revoked by proper authority; then destroyed by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Local commanding officers. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commanding officer. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the local commanding officer. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Organizations, departments, sections authorized to release/pickup messages for the command.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00009

SYSTEM NAME:

Narrative Biographical Data with Photos.

SYSTEM LOCATION:

Primary System - Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Secondary System - At all Marine Corps commands and districts maintain derivative files. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps active duty, reserve, and retired general officers and active duty colonels who submit biographical data with photographs in accordance with existing directives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain standard biographical information as listed on NAVMC Form 10573 to include: personal identification, personal data, education background, military history, medals and decorations, combat, and chronology of Marine Corps service. A current photograph accompanies the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5031; E.O. 9397.

PURPOSE(S):

To provide a record of news releases, responses to news media queries, and information on officers scheduled for speaking engagements or public appearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps compilation apply to this system.

Congress of the U.S. - By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee of Congress or subcommittee of joint committee on matters within their jurisdiction requiring disclosure of the files.

News Media - To provide biographical information response to query.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of officer.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Biographical information is maintained on all general officers while on active duty. When a general officer retires, the biographical data is retained for five years after the date of the individual officer's retirement and retained by the Historical Division (Code HD), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Biographical files are maintained on colonels while on active duty. Upon retirement of the officer, colonel biographical files are retained by Historical Division (Code HD),

Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775, or commander of unit holding file.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code PA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Written requests to determine whether or not the system contains a record about an individual should contain the full name of the general officer or colonel concerned.

Visits are limited to Division of Information (Code PA), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

For personal visits, the individual should be able to provide some acceptable identification, such as a military identification card, and give some verbal information that could be verified with his 'case' folder.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps and the commander of the unit holding the file.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Biographical data provided by the individual general/colonel and from personnel files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMC00010

SYSTEM NAME:

Marine Corps Marathon Automated Support System.

SYSTEM LOCATION:

Marine Corps Marathon Office, Quantico, VA 22134–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All participants in the Marine Corps Marathon.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains information as provided on the Marine Corps Marathon Liability and Publicity Release form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947 as amended by DoD Reorganization Act of 1958, 10 U.S.C. 133; 10 U.S.C. 136; 32 CFR part 237 (1982).

PURPOSE(S):

To provide a record of all participates in the annual Marine Corps Marathon for use in organizing the event.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The 'Blanket Routine Uses' at the head of the published Marine Corps system notices in the Federal Register. Additionally, the following routine uses apply:

Electronic and print media - To provide publicity on the marathon event.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape and disks as well as in paper files.

RETRIEVABILITY:

Records are retrieved by name, runner number, or telephone number.

SAFEGUARDS:

Records are maintained in an area accessible only to authorized personnel. The terminals are in a room with windows protected by bars and the room is locked when not being used by authorized personnel. User identification codes and passwords known only by the data input operators and their supervisors are required for access to the terminals.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Marathon Coordinator, Marine Corps Marathon, PO Box 188, Quantico, VA 22134–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Marathon Coordinator, Marine Corps Marathon, PO Box 188, Quantico, VA 22134–5000.

Written requests for information should contain the full name, runner number, and telephone number. For personal visits, the individual should be able to provide identification bearing picture and signature or sufficient verbal data to ensure that the individual is the subject of inquiry.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Marathon Coordinator, Marine Corps Marathon, PO Box 188, Quantico, VA 22134–5000.

CONTESTING RECORD PROCEDURES:

The USMC rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order L5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–18394 Filed 8–2–93; 8:45 am]

BILLING CODE 5000–04–F

## Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Application for a Department of the Army Permit; ENG Form 4345–R; OMB No. 0710–0003.

*Type of Request:* Reinstatement.

*Average Burden Hours/Minutes Per Response:* 5 hours.

*Responses per Respondent:* 1.

*Number of Respondents:* 16,500.

*Annual Burden Hours:* 82,500.

*Annual Responses:* 16,500.

*Needs and Uses:* This program regulates the alteration and quality of U.S. waters. The public submits application to obtain permission to undertake construction related to activities that would affect navigation channels and other U.S. waters. The impact on navigation, water quality, the environment, and other factors are considered in the Corps review.

*Affected Public:* Individuals or households; State or local governments; Farms; Businesses or other for-profit;

Federal agencies or employees; Non-profit institutions; and Small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: July 28, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-18395 Filed 8-2-93; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### United States of America Federal Energy Regulatory Commission

[Docket Nos. ER93-606-000, et al.]

### Portland General Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Portland General Electric Company**

[Docket No. ER93-606-000]

July 26, 1993.

Take notice that on July 22, 1993, Portland General Electric Company (PGE) tendered for filing an amendment to the Grizzly Trust Agreement between the Bonneville Power Administration (BPA) and Portland General Electric Company (PGE).

PGE has served copies of this filing on:

Bonneville Power Administration, Lower Columbia Area, P.O. Box 3621, Portland, Oregon 97208-3621

Oregon Public Utility Commission, 550 Capitol Street NE., Salem, Oregon 97310-1380

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

**2. Midwest Power Systems, Inc.**

[Docket No. ER93-560-000]

July 26, 1993.

Take notice that on July 12, 1993, Midwest Power Systems, Inc. tendered for filing Amendment No. 2 to the filing of an executed Service Schedule Agreement for wholesale electric power and energy between Midwest Power Systems, Inc. (MPSI) and the City of Wall Lake, Iowa (City), whereby MPSI will provide wholesale electric power and energy as required by the City above the amount provided by the Western Area Power Administration (Western). MPSI is filing this Agreement pursuant to the established Electric Tariff Volume No. 1, Original Issue Sheets Nos. 7, 8, and 9. Amendment No. 1 contains additional support data and information describing the relationship between MPSI and the City since 1983.

Notice of this filing has been served upon the following:

Mr. Raymond K. Vawler, Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319

Mr. H.F. Schroeder, Mayor, City of Wall Lake, 418 2nd Street, Wall Lake, Iowa 51466

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

**3. Northeast Utilities Service Company**

[Docket Nos. ER93-403-000, ER93-307-000]

July 26, 1993.

Take notice that on July 21, 1993, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Revised First Amendment to Transmission Service Agreement and a First Amendment to Distribution and Transformation Agreement for service to New England Power Company (NEP). NUSCO requests consolidation of the two dockets.

NUSCO states that the filing is in accordance with part 35 of the Commission's regulations. Copies of the filing have been sent to NEP.

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

**4. Citizens Utilities Company**

[Docket No. ES93-44-000]

July 26, 1993.

Take notice that on July 20, 1993, Citizens Utilities Company (Citizens) filed an application under section 204 of the Federal Power Act requesting an order authorizing the issuance of:

(a) Not more than 3,500,000 shares of common stock pursuant to the provisions of Citizens Management Equity Incentive Plan, and

(b) Not more than 750,000 shares of common stock pursuant to the provisions of Citizens 401(k) Employee Benefit Plan.

Also, Citizens requests exemption from the competitive bidding requirements.

*Comment date:* August 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

**5. PSI Energy, Inc.**

[Docket No. ER93-606-000]

July 26, 1993.

Take notice that on July 20, 1993, PSI Energy, Inc. (PSI), tendered for filing an Interchange Agreement, dated June 1, 1993, between PSI and The City of Piqua, Ohio (Piqua).

The Interchange Agreement provides for the following service between PSI and Piqua:

1. Service Schedule A—Emergency Service.

2. Service Schedule B—Short-Term Power and Energy.

3. Service Schedule C—Economy Energy.

4. Service Schedule D—Non-Displacement Energy.

5. Service Schedule E—Limited Term Power and Energy.

PSI and Piqua have requested an effective date of September 20, 1993.

Copies of the filing were served on The City of Piqua, Ohio, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

**6. Northern States Power Company (Minnesota Company)**

[Docket No. ER93-607-000]

July 26, 1993.

Take notice that on July 21, 1993, Northern States Power Company (Minnesota) (NSP) tendered for filing an Interconnection and Interchange Agreement dated March 17, 1992, and a Construction Agreement dated April 6, 1993, both agreements between NSP and the City of Blue Earth, Minnesota.

NSP requests that the Interconnection and Interchange Agreement be accepted for filing effective on the date of energization of the interconnection, approximately July 23, 1993. NSP requests waiver of Commission's notice requirements in order for the Agreement

to be accepted for filing on that date. The parties intend to establish and energize a direct transmission interconnection between their respective systems to enable the City of Blue Earth to realize a reduction in transmission service costs.

NSP also requests that the Commission determine whether or not the Construction Agreement is required to be filed with the Commission. In the event the Commission determines that such filing is required, NSP requests that the Construction Agreement be accepted for filing effective April 6, 1993. NSP requests waiver of Commission's notice requirements in order for the Agreement to be accepted for filing on that date.

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

**7. Florida Power Corporation**

[Docket No. ER93–809–000]

July 26, 1993.

Take notice that on July 22, 1993, Florida Power Corporation (Florida Power) filed a Contract For Interchange Service Between Florida Power Corporation and Big Rivers Electric Corporation. Florida Power requests that the contract become effective as a rate schedule on October 1, 1993, which is more than 60 days after the date of this filing. The contract allows for service under Schedule C, Economy Interchange Service.

Florida Power states that a copy of the filing has been mailed to the affected customer.

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

**8. PacifiCorp**

[Docket No. EL93–57–000]

July 26, 1993.

Take notice that on July 20, 1993, PacifiCorp, tendered for filing in accordance 18 CFR part 33 of the Commission's Rules and Regulations, an application seeking an order authorizing PacifiCorp to sell to the Public Utility District No. 1 of Klickitat County (Klickitat PUD) 23.45 miles of 69 kilovolt transmission line located in Klickitat County, Washington.

PacifiCorp requests that, pursuant to § 33.10 of the Commission's Regulations, the Commission accept this application for filing, to be effective forty-five (45) days after the date of filing.

Copies of the filing were supplied to Klickitat PUD and the Washington Utilities and Transmission Commission.

*Comment date:* August 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

**9. Northeast Utilities Service Company (Re North Atlantic Energy Corporation and Vermont Electric Generation and Transmission Cooperative, Inc.)**

[Docket Nos. EL93–56–000; EC93–21–000]

July 26, 1993.

Take notice that on July 19, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing on behalf of North Atlantic Energy Corporation (NAEC) and Vermont Electric Generation and Transmission Cooperative, Inc. (VEGT) a Petition for Declaratory Order Disclaiming Jurisdiction, or Alternatively, Application for Approval of the Acquisition By North Atlantic Energy Corporation of Jurisdictional Facilities. The transaction that is the subject of the Petition and Application stems from a settlement reached between VEGT and Public Service Company of New Hampshire (PSNH) in PSNH's bankruptcy proceedings under Chapter 11 of the Bankruptcy Code, which was approved by the United States Bankruptcy Court for the District of New Hampshire (Bankruptcy Court).

NUSCO states that VEGT is a rural electric cooperative that owns a 0.41259 percent interest in a nuclear-fueled generating plant and related pertinent facilities at a site located in Seabrook, New Hampshire (the Seabrook Project). During the PSNH bankruptcy proceeding, VEGT filed claims against PSNH relating to the construction of the Seabrook Project. In settlement of those claims, PSNH and VEGT entered into a Stipulation which was approved by the Bankruptcy Court. The Stipulation provided that VEGT was allowed a claim in the bankruptcy proceeding of $2.5 million in full settlement of its claims against PSNH and that VEGT would sell to PSNH (or to a successor designated by PSNH), free of all claims, VEGT's interest in the Seabrook Project for $6.4 million, less amounts VEGT owes PSNH and PSNH's affiliates. VEGT and PSNH agreed to cooperate in seeking approval of the sale by the Rural Electrification Administration and other necessary regulatory approvals. NUSCO states that PSNH subsequently assigned its purchase right under the Stipulation to NAEC.

NUSCO requests that the Commission either disclaim jurisdiction over the proposed transaction or, alternatively, approve the transaction without a hearing.

*Comment date:* August 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

**10. Gulf Power Company**

[Docket No. ER93–792–000]

July 27,1993.

Take notice that on July 15, 1993, Gulf Power Company (Gulf Power) tendered for filing a revised tariff sheet to its FERC Electric Tariff, Original Volume No. 1 (full requirements service) and a petition for waiver of the Commission's fuel adjustment clause regulations. The purpose of this filing is to permit Gulf Power to recover from its full requirements wholesale customers and appropriate share of the cost of an interim buyout of a long-term coal supply agreement. The purchase of replacement coal at more favorable prices will produce cumulative savings to its customers in excess of the cumulative amortization of buyout costs. Gulf Power also seeks waiver of the Commission's notice requirement to permit an effective date of July 15, 1993 for the revised tariff sheet.

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

**11. Milford Power Limited Partnership**

[Docket No. ER93–493–000]

July 27, 1993.

Take notice that on July 20, 1993, Milford Power Limited Partnership tendered for filing additional information to its March 26, 1993, filing in this docket.

*Comment date:* Agust 11, 1993, in accordance with Standard Paragraph E at the end of this notice.

**12. Central Illinois Public Service Company**

[Docket No. ER93–664–000]

July 27, 1993.

Take notice that on July 21, 1993, Central Illinois Public Service Company (CIPS) tendered for filing a letter clarifying certain aspects of the Supplemental Agreement for the purchase of power by Norris Electric Cooperative (Norris) submitted for filing on May 24, 1993 in Docket No. ER93–664–000.

Copies of the filing were served on Norris and the Illinois Commerce Commission.

*Comment date:* August 11, 1993, in accordance with Standard Paragraph E at the end of this notice.

**13. Great Bay Power Corporation**

[Docket No. ER93-789-000]

July 27, 1993.

Take notice that on July 6, 1993, Great Bay Power Corporation (Great Bay) tendered for filing and unexecuted copy of an Agreement for Short-Term Sales to the Vermont Marble Power Division of OMYA, Inc. and a separate Agreement for Short-Term Sales to the Burlington Electric Light Department.

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E end of this notice.

**14. Central Illinois Public Service Company**

[Docket No. ER93-418-000]

July 27, 1993.

Take notice that on July 9, 1993, Central Illinois Public Service Company (CIPS) tendered for filing a letter clarifying certain aspects of both of the First Amendment to the Power Supply Agreement between CIPS and Illinois Municipal Electric Agency (IMEA) and of the Power Supply Agreement itself.

Copies of the filing were served on IMEA and the Illinois Commerce Commission.

*Comment date:* August 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93-18400 Filed 8-2-93; 8:45 am]

BILLING CODE 6717-01-M

## Federal Energy Regulatory Commission

[Docket Nos. CP93-576-000, et al.]

**Black Marlin Pipeline Co., et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

**1. Black Marlin Pipeline Company**

[Docket No. CP93-576-000]

July 26, 1993.

Take notice that on July 21, 1993, Black Marlin Pipeline Company (Black Marlin), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP93-576-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon firm transportation service to Union Carbide Corporation (UCC), under Black Marlin's Rate Schedule T-1 of its Gas Tariff, which was authorized in Docket No. CP66-333-000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Black Marlin proposes to abandon 5,136 Mcf per day of natural gas effective, July 31, 1993, as UCC has requested termination of the related transportation agreement.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

**2. Great Lakes Gas Transmission Limited Partnership**

[Docket No. CP93-553-000]

July 26, 1993.

Take notice that on July 15, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed an application pursuant to section 7(b) of the Natural Gas Act, for authority to abandon natural gas firm transportation service provided to TransCanada PipeLines Limited (TransCanada) under Great Lakes' Rate Schedule T-4, all as more fully set forth in the application that is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

Great Lakes states that TransCanada has requested that 75,000 Mcf per day of transportation service be terminated effective April 1, 1993. Great Lakes advises that no facilities are being abandoned; that no injury will occur as a result of its partial abandonment of service to TransCanada because that capacity abandoned is being and will continue to be delivered for the account of ProGas U.S.A., Inc. (ProGas); and that, since ProGas has paid all charges related to the capacity, and not TransCanada, abandonment retroactive to April 1, 1993 will not produce injury to TransCanada.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

**3. Texas Eastern Transmission Corporation**

[Docket No. CP93-565-000]

July 27, 1993.

Take notice that on July 19, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056-5310, filed an application in Docket No. CP93-565-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to provide firm transportation service for Rate Schedule FTS-7 and FTS-8 customers and to construct and operate additional pipeline facilities required to render such services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern requests the subject authorization to provide firm transportation service for The Brooklyn Union Gas Company (Brooklyn Union), Elizabethtown Gas Company (Elizabethtown), Philadelphia Electric Company (PECO) and UGI Utilities, Inc (UGI), collectively referred to as the Customers. Texas Eastern proposes to render the firm transportation service for the Customers to and from the interconnection of Texas Eastern's and CNG Transmission Corporation's (CNG) facilities at the Oakford storage field at Meter Station No. 082 in Westmoreland County, Pennsylvania. Texas Eastern states that it will deliver the requested volumes of natural gas on a firm basis for Brooklyn Union at Meter Station No. 275 in Middlesex County, New Jersey; PECO at Meter Station Nos. 035 and 036 in Delaware and Montgomery Counties, Pennsylvania, and UGI at Meter Station No. 322, in Bucks County, Pennsylvania.

Texas Eastern indicates that pursuant to Rate Schedules SS-2 and SS-3, as provided for prior to enactment of Texas Eastern's Order No. 636 restructuring order, made effective June 1, 1993, an SS-2 and/or SS-3 customer could request firm-up of all or a portion of the delivery component of their service. It is further stated that Rate Schedules SS-2 and SS-3 also provided that if Texas Eastern went forward with such request, received required authorizations and expanded its system, the costs

associated with the expansion would be borne by all Rate Schedule SS–2 and SS–3 customers with firm service. Texas Eastern notes the Rate Schedule SS–2 and SS–3 include in the firm service provisions that:

"The annual cost associated with all facilities which must be added to Seller's system to enable the establishment of and increases in the FDDQ's of Buyers hereunder shall be borne by those Buyers which have FDDQ's hereunder by means of the Firm Demand Charge."

As shown in the following table, Texas Eastern states that it has requested and received Commission approval six times previously for firm-up of Rate Schedules SS–2 and SS–3.

| Docket No. | Issue date/citation | Volumes DTH/D |
|---|---|---|
| CP81–4–000 SS–2 Phase 1. | 03/20/81 14 FERC ¶ 61,263. | 89,172 |
| CP81–291–000 SS–2 Phase 2. | 07/24/81 16 FERC ¶ 61,053. | 63,177 |
| CP82–2–000 SS–2 Phase 3. | 05/10/82 19 FERC ¶ 61,128. | 77,055 |
| CP85–605–000 SS–2 Phase 4. | 06/04/85 35 FERC ¶ 61,291. | 27,915 |
| CP87–28–002 SS–2 Phase 5. | 02/24/89 44 FERC ¶ 61,152. | 23,115 |
| CP85–803–000 SS–3 Phase 1. | 06/03/86 35 FERC ¶ 61,271. | 131,079 |

In compliance with Order 636 and the Commission's restructuring orders in Docket No. RS92–11, Texas Eastern explains that it unbundled the formerly bundled firm storage and transportation services under Rate Schedules SS–2 and SS–3. As a part of that restructuring, Texas Eastern assigned its Rate Schedule GSS storage agreement to its Rate Schedule SS–2 and SS–3 customers. The firm transportation delivery services under Rate Schedules SS–2 and SS–3 were redesignated as Rate Schedules FTS–7 and FTS–8, respectively, and these rate schedules are included in Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern requests the authorization described herein to provide firm, additional transportation service to the Customers pursuant to Rate Schedules FTS–7 and FTS–8 and to construct, own and operate certain facilities necessary to provide this service.

Specifically, Texas Eastern requests authorization to:

(1) Provide firm, additional, long-term, incremental transportation service of natural gas under Rate Schedules FTS–7 and/or FTS–8 for the quantities identified for the Customers as follows:

| | FTS–7 DTH/d | FTS–8 DTH/d |
|---|---|---|
| Brooklyn Union | 871 | – |
| Elizabethtown | 583 | – |
| PECo | 987 | 9,850 |
| UGI | 5,880 | – |
| Total | 8,321 | 9,850 |

(2) Construct, install, own and operate facilities necessary to provide the proposed services which consist of approximately 9.34 miles of 36-inch pipeline looping in three separate segments within the state of Pennsylvania; and

(3) Adjust, effective with the commencement of service, the firm demand charges for Rate Schedules FTS–7 and FTS–8 service to reflect the cost of service for this service increase.

Texas Eastern proposes to complete the construction and installation of the incremental facilities on or about November 1, 1994, the proposed date of in-service for the firm transportation service proposed herein. The estimated total capital cost of the proposed facilities is stated to be $18,129,000. Texas Eastern states that it will finance the facilities with funds on hand and borrowings under Texas Eastern's short term financing arrangements.

Based on the annual cost of service for the facilities proposed herein, Texas Eastern proposes for Rate Schedule FTS–7, a revised reservation charge of $6.890 per dth. For Rate Schedule FTS–8, Texas Eastern estimates a revised reservation charge of $6.970 per dth. Texas Eastern asserts that provision of this service will, therefore, have no impact on the rate or services of Texas Eastern's other customers.

*Comment date:* August 17, 1993, in accordance with Standard Paragraph F at the end of this notice.

### 4. Nora Transmission Company

[Docket No. CP93–569–000]

July 27, 1993.

Take notice that on July 19, 1993, Nora Transmission Company (Nora), 3500 Park Lane, Pittsburgh, Pennsylvania 15275–1102, filed in Docket No. CP93–569–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) requesting a blanket certificate of public convenience and necessity authorizing Nora to engage in any of the activities specified in subpart F of part 157 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that Nora is a "natural gas company" within the meaning of the NGA and as determined by the Commission in Docket No. CP88–28–000. It is explained that Nora is a non major interstate pipeline providing transportation service to two customers under special rate schedules. It is asserted that Nora does not have any currently effective sales or storage rate schedules or outstanding budget-type certificates.

*Comment date:* August 17, 1993, in accordance with Standard Paragraph F at the end of this notice.

### 5. Nora Transmission Company

[Docket No. CP93–568–000]

July 27, 1993.

Take notice that on July 19, 1993, Nora Transmission Company (Nora), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed an application with the Commission Docket No. CP93–568–000 pursuant to section 7(c) of the Natural Gas Act (NGA) for a blanket certificate under § 284.224 of the Commission's Regulations under the NGA, all as more fully set forth in the application which is open to the public for inspection.

Nora requests a part 284 blanket certificate which would allow Nora to engage in the sale, transportation, and assignment of natural gas as permitted for intrastate pipelines under subparts C, D, and E of part 284 of the Regulations. Nora states that its filing includes transportation rates for firm service under Rate Schedule FTS and interruptible service under Rate Schedule ITS, and General terms and Conditions governing open access transportation. No new facilities are proposed herein.

Nora states that it intends shortly to file its Order No. 636 compliance filing. Nora, however, requests that the Commission approve its request for a blanket certificate without delay.

*Comment date:* August 17, 1993, in accordance with standard Paragraph F at the end of this notice.

### 6. United Gas Pipe Line Company

[Docket No. CP93–570–000]

July 26, 1993.

Take notice that on July 19, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–570–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install

measurement facilities for the transportation of natural gas for Allied Resources USA, Inc. (Allied), under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to install the facilities at an existing meter station to enable United to transport approximately 262 MMBtu per day of gas for Trade and Development Corporation (Trade) to serve Allied.

United also states that upon execution of an open-access transportation agreement, it would be able to provide transportation service to Trade without any impact on United's curtailment plan and without any adverse impact on United's ability to serve its other existing customers.

*Comment date:* September 9, 1993, in accordance with Standard Paragraph G at the end of this notice.

**7. East Tennessee Natural Gas Company**

[Docket No. CP93–573–000]

July 27, 1993.

Take notice that on July 21, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–573–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery tap to Virginia Gas Company (Virginia Gas) under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, East Tennessee proposes to construct and operate a new delivery tap to Virginia Gas in Russell County, Virginia, to deliver gas transported by East Tennessee, to Virginia Gas. East Tennessee states that the new delivery point is required to enable Virginia Gas to provide natural gas service to additional customers in the area of Russell County, Virginia.

East Tennessee asserts that the establishment of the proposed new delivery point is not prohibited by East Tennessee's currently effective tariff and that the new delivery point will have no impact on East Tennessee's peak day and annual deliveries.

*Comment date:* September 10, 1993, in accordance with Standard Paragraph G at the end of this notice.

**8. Southern Natural Gas Company**

[Docket No. CP93–580–000]

July 27, 1993.

Take notice that on July 26, 1993, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–580–000 a request pursuant to § § 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization to abandon in part and rebuild two existing meter stations and to construct and operate an additional meter under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to abandon in part and rebuild the Rome No. 2 and Carrollton Meter Stations serving Atlanta Gas Light Company because they are obsolete. Southern States that it will abandon and replace its two 6-inch orifice meter runs with three 6-inch orifice meter runs at the Rome No. 2 Meter Station and its three 4-inch orifice meter runs with dual 6-inch meter runs at Carrollton.

Southern also proposes to construct, install and operate an additional meter run of Southern's Ensley Meter Station which serves Alabama Gas Corporation to more accurately measure the volumes of gas currently being delivered at this location.

*Comment date:* September 10, 1993, in accordance with Standard Paragraph G at the end of this notice.

**9. Southern Natural Gas Company**

[Docket No. CP93–578–000]

July 27, 1993.

Take notice that on July 23, 1993, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP93–578–000 a request for authorization pursuant to § § 157.205, 157.208 and 157.212 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205, 157.208 and 157.212). Herein Southern proposes to modify certain measurement facilities and change the operation of an existing delivery point by altering the contract delivery pressure pursuant to Southern's blanket certificate of public convenience and necessity issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver natural gas to the City of Summerville, the Town of Trion and the City of Lafayette, Georgia (Summerville-Trion-Lafayette) at the Summerville-Trion-Lafayette point of delivery (meter station) under the Exhibit A's to the service agreements between Southern and Summerville-Trion-Lafayette dated September 17, 1991.

The Municipal Gas Authority of Georgia (MGAG) has requested additional firm transportation service from Southern on behalf of Trion under Southern's part 284 blanket certificate. Further it is stated that MGAG has requested the Southern deliver gas to Summerville-Trion-Lafayette at the meter station at a contract delivery pressure of 299 psig. Southern states that it currently delivers gas supplies to Summerville-Trion-Lafayette at the meter station at a contract delivery pressure of 200 psig. Southern has stated that in order to provide the additional firm transportation and the increased delivery pressure, Southern requests authorization to add one 4-inch meter tube and auxiliary facilities at the meter station. The cost of said modifications at the meter station are estimated to be $45,582.

Southern states that the modification and increase in delivery pressure proposed in the application (1) will detriment disadvantage its other customers; (2) will have no significant impact on Southern's peak day and annual deliveries; and (3) are not prohibited by any existing tariff of Southern.

*Comment date:* September 10, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**10. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP93–303–001]

July 26, 1993.

Take notice that on July 23, 1993, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–303–001 an amendment to its pending application filed in Docket No. CP93–303–000 requesting authorization to move a 1,000 horsepower compressor unit from one offshore platform owned by Arco Oil and Gas Company (Arco) to a nearby platform, all as more set forth in the amendment which is on file with the Commission and open to public inspection.

Transco stated in its original application that due to declining gas production in the area, there are no longer sufficient natural gas reserves from the High Island Block A–466 and

A–467 fields to operate compressors on platforms in each block. Transco, in its original application, requested authorization to abandon by removal a 3,500 horsepower compressor from a production platform located in High Island Area Block A–467 and then move a 1,000 horsepower compressor from the production platform located in High Island Block A–466 to the production platform in Block A–467. Transco advised that it planned to move the smaller compressor from one platform to another under § 157.208 of the Commission's Regulations as a miscellaneous rearrangement. Transco states that it has been advised that the movement of the 1,000 horsepower unit from one compressor to another cannot be implemented as a miscellaneous rearrangement and that Transco must receive specific authorization under section 7 of the Natural Gas Act to move the unit. Transco now is filing for that specific authority.

*Comment date:* August 16, 1993, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18401 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. JD93–13456T Colorado–60]**

## Department of the Interior; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 28, 1993.

Take notice that on July 28, 1993, the United States Department of the Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Pictured Cliffs Formation in the Ignacio Blanco Pictured Cliffs Field within the Southern Ute Indian Reservation in La Plata County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Act of 1978 (NGPA). The recommended area encompasses approximately 1,280 acres and consists of Sections 1 and 2, Township 32 North, Range 9 West, La Plata County, Colorado.

The notice of determination also contains BLM's findings that the referenced portion of the Pictured Cliffs Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18409 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER93–454–000]**

## Northeast Utilities Service Co.; Notice of Filing

July 28, 1993.

Take notice that on July 2, 1993, Northeast Utilities Service Company (Northeast) tendered for filing, on behalf of The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), borderline sales tariffs and associated service agreements. According to Northeast, these tariffs govern sales by and between CL&P and WMECO and their neighboring utility, Massachusetts Electric Company, for resale to individual customers. Northeast requests that the tariffs and agreements be made effective in accordance with their terms.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18398 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

VOL 58 ISS 147 AG 3 1993 UMI



[Docket No. CP93-566-000]

**ANR Pipeline Co.; Application for a Presidential Permit for the Construction, Operation, Maintenance, and Connection at the United States/Canada International Boundary, of Facilities for the Transportation of Natural Gas**

July 28, 1993.

Take notice that on July 19, 1993, ANR Pipeline Company ("ANR" or "Applicant"), 500 Renaissance Center, Detroit, Michigan 48243, filed, in Docket No. CP93-566-000, an application pursuant to section 3 of the Natural Gas Act ("NGA"), §§ 153.1 and 153.10 through 153.12 of the Commission's Regulations, and Executive Order No. 10485, as amended by Executive Order No. 12038 and Secretary of Energy Delegation Order No. 0204-112. In that application, ANR requested an order authorizing the siting, construction, operation and maintenance of pipeline facilities at the United States-Canada International Boundary proximate to St. Clair, Michigan, all as more fully set forth in the applications which is on file with the Commission and open for public inspection.

ANR proposes here to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Canada. ANR states that these facilities will be on the United States side of the International Boundary and that its proposal is part of an international project between ANR and InterCoastal Pipe Line Inc. ("ICP"), a Canadian corporation. At the border, ANR's facilities will interconnect with ICP's new one hundred and fifty-five mile natural gas transmission system in Canada.

ANR states that it will construct approximately twelve miles of new 24-inch O.D. pipeline, commencing at a proposed point of interconnection with the northern end of an existing 7.8 mile pipeline ("Muttonville Lateral") owned and operated by ANR in St. Clair County, Michigan. The proposed pipeline ("ANR Link") would traverse in an easterly direction and terminate at a point on the International Boundary proximate to St. Clair, Michigan, on the St. Clair River. In addition, a tap assembly will be provided on the ANR Link to facilitate a proposed interconnection to the facilities of Michigan Consolidated Gas Company ("MichCon") proximate to MichCon's Columbus Storage Field. At the border, ANR's proposed facilities will connect to ICP's new natural gas transmission system. ANR states that the ICP system will consist of an existing one hundred and thirty mile oil pipeline, which will be converted to natural gas service, and the construction of approximately 25-miles of new pipeline. ANR described the cost and financing of the "ANR Link" in Docket No. CP93-564-000. ANR states it will finance the project with internally generated funds. ANR estimates that the cost of the proposal will be $15 million. ANR states that the revenues from services performed for Consumers Gas will exceed the costs associated with the proposed facilities over the next ten years.

ANR states that firm transportation service across the ANR Link will initially consist of natural gas purchased and shipped by The Consumers' Gas Company Ltd. ("Consumers Gas"). ANR understands that the natural gas to be transported for Consumers Gas will first be transported through ANR's mainline facilities from the Gulf Coast and Anadarko production basins to Michigan for delivery into the pipeline facilities of Great Lakes Gas Transmission Limited Partnership ("GLGT") or MichCon. GLGT and/or MichCon will redeliver the natural gas to the ANR Link at the interconnections proposed in the application. ANR states that the gas will then be transported through the ANR Link to ICP. ICP will then transport the gas for ultimate redelivery to Consumers Gas at points near Sarnia or Toronto, Ontario.

In addition, ANR states that the proposed facilities will be made available to any other shipper that has executed a transportation service agreement with ANR and made intermediate transportation arrangements, as required. ANR also submits that the shippers who execute transportation service agreements with ANR will be required to obtain the necessary export authorization from the U.S. Department of Energy ("DOE") prior to the commencement of service.

ANR proposes to charge rates under its part 284 Tariff provisions for firm and interruptible service to all shippers. Transportation services will be provided pursuant to ANR's blanket transportation certificate authority up to the design capacity of the new facilities.

Concurrent with this application, ANR has filed an application under section 7(c) of the NGA to construct, own and operate the ANR Link. ANR states that Consumers Gas is contemporaneously applying for authority from DOE to export on the proposed facilities and that ICP has filed with Canada's National Energy Board for authority to operate the new one hundred and fifty-five mile transmission system.

Applicant has requested expedited approval of its applications and the related application filed by Consumers Gas such that all related facilities and services may be in place in time for service to commence on ANR's proposed facilities no later than November 1, 1994. ANR has requested that a preliminary determination, approving all aspects of these applications be issued by November 1, 1993, with a final determination and all appropriate certificate authorizations to follow no later than April 1, 1994.

Any person desiring to be heard or to make protest with reference to said application should on or before August 18, 1993, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18402 Filed 8-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-564-000]

## ANR Pipeline Co.; Application

July 28, 1993.

Take notice that on July 19, 1993, ANR Pipeline Company ("ANR" or "Applicant"), 500 Renaissance Center, Detroit, Michigan 48243, filed, in Docket No. CP93-564-000, an application pursuant to section 7(c) the Natural Gas Act ("NGA") for a certificate of public convenience and necessity requesting authorization to construct, own, and operate certain pipeline and related facilities at the United States-Canada International Boundary proximate to St. Clair, Michigan, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

ANR proposes here to site, construct, operate, maintain, and connect pipeline facilities at the International Boundary between the United States and Canada. ANR states that these facilities will be on the United States side of the International Boundary and that its proposal is part of an international project between ANR and InterCoastal Pipe Line Inc. ("ICP"), a Canadian corporation. At the border, ANR's facilities will interconnect with ICP's new one hundred and fifty-five mile natural gas transmission system in Canada.

ANR states that it will construct approximately twelve miles of new 24-inch O.D. pipeline, commencing at a proposed point of interconnection with the northern end of an existing 7.8 mile pipeline ("Muttonville Lateral") owned and operated by ANR in St. Clair County, Michigan. The proposed pipeline ("ANR Link") would traverse in an easterly direction and terminate at a point on the International Boundary proximate to St. Clair, Michigan, on the St. Clair River. In addition, a tap assembly will be provided on the ANR Link to facilitate a proposed interconnection to the facilities of Michigan Consolidated Gas Company ("MichCon") proximate to MichCon's Columbus Storage Field. At the border, ANR's proposed facilities will connect to ICP's new natural gas transmission system. ANR states that the ICP system will consist of an existing one hundred and thirty mile oil pipeline, which will be approximately 25 miles of new pipeline.

ANR states that firm transportation service across the ANR Link will initially consist of natural gas purchased and shipped by The Consumers' Gas Company Ltd. ("Consumers Gas"). ANR understands that the natural gas to be transported for Consumers Gas will first be transported through ANR's mainline facilities from the Gulf Coast and Anadarko production basins to Michigan for delivery into the pipeline facilities of Great Lakes Gas Transmission Limited Partnership ("GLGT") or MichCon. GLGT and/or MichCon will redeliver the natural gas to ANR at the interconnections proposed in the application. ANR states that the gas will then be transported through the ANR Link to ICP. ICP will then transport the gas for ultimate redelivery to Consumers Gas at points near Sarnia or Toronto, Ontario.

In addition, ANR states that the proposed facilities will be made available to any other shipper that has executed a transportation service agreement with ANR and made intermediate transportation arrangements, as required. ANR also submits that the shippers who execute transportation service agreements with ANR will be required to obtain the necessary export authorization from the U.S. Department of Energy ("DOE") prior to the commencement of service.

ANR proposes to charge rates under its part 284 Tariff provisions for firm and interruptible service to all shippers. Transportation services will be provided pursuant to ANR's blanket transportation certificate authority up to the design capacity of the new facilities.

ANR will finance the project with internally generated funds. ANR estimates that the cost of the proposal will be $15 million. ANR states that the revenues from services performed for Consumers Gas will exceed the costs associated with the proposed facilities over the next ten years.

Concurrent with this application, ANR has filed applications under Section 3 of the NGA and for a Presidential Permit to site, construct, own and operate ANR Link. ANR states that Consumers Gas is contemporaneously applying for authority from DOE to export on the proposed facilities and that ICP has filed with Canada's National Energy Board for authority to operate the new one hundred and fifty-five mile transmission system.

Applicant has requested expedited approval of its applications and the related application filed by Consumers Gas that all related facilities and services may be in place in time for service to commence on ANR's proposed facilities no later than November 1, 1994. ANR has requested that a preliminary determination, approving all aspects of these applications be issued by November 1, 1993, with a final determination and all appropriate certificate authorizations to follow no later than May 1, 1994.

Any person desiring to be heard or to make protest with reference to said application should on or before August 18, 1993, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18405 Filed 8-2-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP93-127-001]

## Columbia Gas Transmission Corp.; Compliance Filing

July 28, 1993.

Take notice that on July 15, 1993, Columbia Gas Transmission Corporation (Columbia) filed a response to The Columbia Gas Distribution Companies' (Columbia Distribution) and Washington Gas Light Company's (Washington Gas) protests as directed by

the Commission in order issued June 30, 1993, Docket No. RP93–127–000.[1]

By order issued June 30, 1993, the Commission approved a tariff filing by which Columbia sought to flow through to its customers certain amounts paid to Panhandle Eastern Pipeline Company (Panhandle) relating to Order Nos. 94 and 473 costs, and tariff language to recover Order No. 94 costs from other upstream pipeline suppliers. Columbia allocated costs based on the percent of each customer's firm sales entitlements under Rate Schedules Contract Demand Service (CDS), Winter Service (WS), and Small General Service (SGS), and firm transportation entitlements under Rates Schedule FTS.

Washington Gas and Columbia Distribution argued WS entitlements should not be included in the calculation of the allocation factors. They stated inclusion resulted in double recovery of costs, and utilization of WS did not appropriately track the methodology by which Panhandle allocated its Order No. 94 costs, among other things.

The Commission directed Columbia to file additional information and, if necessary, revised rates to respond to the Rate Schedule WS customers' concerns regarding allocation of costs. Columbia avers inclusion of WS entitlements does not result in double counting of costs, because WS entitlements are in addition to, and not part of, CDS entitlements. Columbia asserts the use of Total Daily Entitlements and converted transportation demand to arrive at its allocation factors represents more precisely the daily entitlement Panhandle used to establish Columbia's liability.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 4, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18407 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[1] 63 FERC ¶ 61,352.

[Docket No. CP93–575–000]

## Florida Gas Transmission Co.; Request Under Blanket Authorization

July 28, 1993.

Take notice that on July 21, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–575–000 a request pursuant to § 157.205 of 157.205) for authorization to construct and operate a small volume metering facility for Florida Power and Light Company (FPL) and to upgrade the existing regulators to accommodate the proposed metering facility under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct a small volume metering facility in Putnam County, Florida; consisting of one meter, two valves, electronic flow equipment, approximately 80 feet of connecting pipe, minor bypass piping and appurtenant facilities. The proposed metering facility, it is said, would be connected to the city of Crescent City meter station and would require the upgrading of the existing regulators. It is further said that there would be no impact on FGT's capacity to serve the city of Crescent City.

FGT states that FPL would reimburse FGT for all construction costs which are estimated to be $60,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18403 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–579–000]

## National Fuel Gas Supply Corp.; Request Under Blanket Authorization

July 18, 1993.

Take notice that on July 26, 1993, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP93–579–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate 5 sales taps for service to National Fuel Distribution Corporation (Distribution), an existing wholesale customer, under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate facilities for the taps for 5 residential customers of Distribution located in Jefferson, Mercer and Clarion Counties, Pennsylvania. It is stated that National would deliver a total of 750 Mcf of gas on an annual basis, with each customer receiving 150 Mcf per year. National states that it was authorized to serve Distribution by Commission authorization in Docket No. CP73–294. It is asserted that National would make sales under its Rate Schedule RQ, or, following National's restructuring proposed in Docket No. RS92–21–000, under Rate Schedule EFT.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18404 Filed 8–2–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93-803-000]

**North Atlantic Energy Corp.; Filing**

July 27, 1993.

Take notice that on July 19, 1993, North Atlantic Energy Corporation (North Atlantic) tendered for filing a unit contract between North Atlantic and Public Service Company of New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18399 Filed 8-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF93-3011-000]

**United States Department of Energy—Southeastern Power Administration (Georgia-Alabama-South Carolina System of Projects; Filing**

July 28, 1993.

Take notice that on July 23, 1993, the Acting Assistant Secretary of Energy for Efficiency and Renewable Energy (Acting Assistant Secretary) tendered for filing on behalf of the Southeastern Power Administration a request for final approval of rates for power from the Georgia-Alabama-South Carolina System of Projects for the period October 1, 1993 through September 30, 1998. The Acting Assistant Secretary stated that he had previously approved the rates on an interim basis.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18406 Filed 8-2-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-18-29-000]

**Transcontinental Gas Pipe Line Corp. Proposed Changes in FERC Gas Tariff**

July 28, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on July 22, 1993 certain revised tariff sheets to Third Revised Volume No. 1 to its FERC Gas Tariff included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to (1) transportation services purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X-42 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS, (2) transportation services purchased from National Fuel under its Rate Schedule X-54 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS-2, (3) storage services purchased from Penn-York Energy Corporation (Penn York) under its Rate Schedule SS-1 the costs of which are included in the rates and charges payable under TGPL's Rate Schedules LSS and SS-2, (4) storage services purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS and (5) transportation services purchased from National Fuel under its Rate Schedule X-58 the costs of which are included in the rates and charges payable under TGPL's Niagara Import Point Project—System Expansion (NIPPs-SE). The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule LSS, Section 4 of TGPL's Rate Schedule SS-2 and Section 8.01(i) of TGPL's NIPPs-SE Rate Schedules X-314, X-315, and X-317.

Included in Appendices B through D attached to the filing are the explanations of the rate changes and details regarding the computation of the revised LSS, SS-2 and NIPPs-SE rates.

Also included therein for filing are revised tariff sheets which incorporate the Rate Schedule LSS and SS-2 rate changes proposed therein into subsequent intervening rate filings which have been accepted or are currently pending Commission acceptance on the effective dates reflected thereon.

TGPL states that copies of the filing are being mailed to each of its LSS, SS-2 and NIPPs-SE customers, interested state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 4, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18408 Filed 8-2-93; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-4686-8]

**Workshop Report on Developmental Neurotoxic Effects Associated With Exposure to PCBs**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a report entitled "Workshop Report on Developmental Neurotoxic Effects Associated With Exposure to PCBs" (EPA/630/R-92/004). This report compiles discussions and presentations from a 1992 workshop sponsored by EPA's Risk Assessment Forum.

**ADDRESSES:** To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569-7562. Please provide your name

and mailing address, and request the document by the title and EPA number (EPA/630/R-92/004).

The summary report will also be available for public inspection at the ORD Public Information Shelf, EPA Headquarters Library, Waterside Mall, 401 M Street, SW., Washington, DC 20460, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Clare Stine, U.S. Environmental Protection Agency, Risk Assessment Forum (RD-672), 401 M Street, SW., Washington, DC 20460, Tel: (202) 260-5743.

**SUPPLEMENTARY INFORMATION:** On September 14 and 15, 1992, EPA's Risk Assessment Forum sponsored a workshop to explore the current state of the science on neurotoxic effects associated with prenatal and perinatal exposure to polychlorinated biphenyls (PCBs) (57 FR 39200; 28 August 1992) for risk assessment purposes.

This report collects workshop papers and discussion on principles and methods for evaluating PCB data from animal and human studies. The report also summarizes data and other information discussed at the workshop for characterizing risk to human development, growth, survival, and function following exposure to PCBs prenatally or to infants and children.

Dated: July 22, 1993.

**Gary J. Foley,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 93-18466 Filed 8-2-93; 8:45 am]

BILLING CODE 6560-50-M

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**[EPA 530-Z-93-007; FRL-4618-5]**

## Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim Final Guidance; extension of comment period.

**SUMMARY:** In response to a request for an extension of the public comment period for the Interim Final Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program, the Environmental Protection Agency (EPA) is granting a 30-day extension to the comment period for the interim final guidance that was published in the **Federal Register** on May 28, 1993 (58 FR 31114).

**DATES:** Comments on the May 28, 1993 interim final guidance must be submitted on or before August 26, 1993.

**ADDRESSES:** Persons who wish to comment on the May 28, 1993 notice must provide an original and two copies of their comments, include the docket number (F-93-WMIF-FFFFF), and send them to: RCRA Information Center (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Commenters who wish to submit any information they wish to claim as Confidential Business Information must submit an original and two copies, under separate cover, to: Document Control Officer (OS-312), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

The Public docket for this interim final guidance is located at the RCRA Information Center, room M2616, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Public comments that are not Confidential Business Information are available for viewing at the RCRA Information Center, which is open from 9 a.m. to 4 p.m. Monday through Friday, except for federal holidays. To review docket materials, the public must make an appointment by calling (202) 260-9327. Copies of docket materials cost $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346. In the Washington, DC metropolitan area, call (703) 412-9810. For information regarding specific aspects of this notice, contact Becky Cuthbertson, Office of Solid Waste (OS-32OW), U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone (703) 308-8447.

**SUPPLEMENTARY INFORMATION:** The Sierra Club has requested an extension of the 60-day public comment period on the interim final guidance to hazardous waste generators on the elements of a waste minimization program. Since there is no statutory, legislative, or court-ordered deadline for finalizing the May 28, 1993 interim final guidance, and additional time could allow more parties to submit comments, EPA is granting the request. Thus, the comment period on the interim final guidance is extended for 30 days, to August 26, 1993.

Dated: July 23, 1993.

**Walter W. Kovalick, Jr.,**

*Acting Assistant Administrator.*

[FR Doc. 93-18469 Filed 8-2-93; 8:45 am]

BILLING CODE 6560-50-M

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**[FRL-4686-3]**

## South Carolina: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of tentative determination to fully approve the adequacy of the state of South Carolina's Municipal Solid Waste Permitting Program, public hearing, and public comment period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

South Carolina has applied for a determination of adequacy under

section 4005 of RCRA. Region IV of EPA has reviewed South Carolina's MSWLF application and has made a tentative determination that South Carolina's MSWLF permit program meets the requirements for full program approval and ensures compliance with the revised MSWLF Criteria. South Carolina's application for program adequacy determination is available from EPA Region IV and the State for public review and comment. Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it is determined that a hearing is necessary. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

**DATES:** All comments on South Carolina's application for a determination of adequacy and requests for a public hearing must be received by the close of business on September 2, 1993. If there is sufficient interest, a public hearing will be held on September 20, 1993 at 7 p.m., at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina, in the G.S.T. Peeples Auditorium on the third floor of the Sims Building. The State will participate in the public hearing held by the EPA.

**ADDRESSES:** Copies of South Carolina's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201, Attn: Mr. William W. Culler, telephone 803–734–5200; and U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia, 30365, Attn: Ms. Priscilla Pride, telephone 404–347–4216. Written comments should be submitted to Ms. Patricia S. Zweig, mail code 4WD–RCRA, EPA Region IV, Office of Solid Waste, 345 Courtland Street, NE., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** EPA Region IV, 345 Courtland St. NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD–RCRA, telephone 404–347–2091.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

Region IV of EPA will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

**B. State of South Carolina**

On June 22, 1993, the EPA, Region IV received South Carolina's final MSWLF permit program application for adequacy determination. Region IV has reviewed South Carolina's application and has tentatively determined that all portions of South Carolina's subtitle D program meet the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 2, 1993. Copies of South Carolina's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice. If a public hearing is held, comments may be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

The application includes new MSWLF regulations that were developed by the State of South Carolina to be technically comparable to the federal criteria. The format and portions of the text used by South Carolina are similar to that used in the federal regulations. The State's regulations became effective on June 25, 1993, and have been determined to be technically comparable to the federal criteria.

EPA will consider all public comments received on its tentative determination during the public comment period and during the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for South Carolina's program. The EPA will make a final decision on whether or not to approve South Carolina's program by October 9, 1993, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

**Compliance With Executive Order 12291**

The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. § 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 23, 1993.

**Donald Guinyard,**

*Acting Regional Administrator.*

[FR Doc. 93-18249 Filed 8-2-93; 8:45 am]

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[FRL-4685?]

**A Review of Ecological Assessment Case Studies From a Risk Assessment Perspective**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a report entitled "A Review of Ecological Assessment Case Studies from a Risk Assessment Perspective" (EPA/630/R-92/005), which uses case studies to explore the relationship between the process of ecological risk assessment and common approaches used by EPA (and others) to evaluate ecological change. The cases focus on risk science issues only, and do not represent regulatory decisions.

**ADDRESSES:** To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569-7562. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R-92/005).

The case studies report also will be available for public inspection at the ORD Publication Shelf, EPA Headquarters Library, Waterside Mall, 401 M Street SW., Washington, DC 20460, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except for federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Clare Stine, U.S. Environmental Protection Agency, Risk Assessment Forum (RD-672), 401 M Street SW., Washington, DC 20460, Tel: (202) 260-5743.

**SUPPLEMENTARY INFORMATION:** To gain insight into the use of scientific information for ecological risk assessment, EPA scientists have analyzed a series of 12 case studies that describe a variety of ecosystems, ecological endpoints, chemical and nonchemical stressors, and programmatic practices within the Agency.

This report uses case studies to explore the relationship between the process of ecological risk assessment and common approaches used by EPA (and others) to evaluate adverse ecological effects. The report does not address regulatory decisions.

Dated: July 22, 1993.

**Gary J. Foley,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 93-18467 Filed 8-2-93; 8:45 am]

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[ECAO-RTP-0225; FRL-4686-9]

**Urban Soil Lead Abatement Demonstration Project Integrated Report**

**AGENCY:** Enviromental Protection Agency.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment will convene a workshop to review a draft of the Urban Soil Lead Abatement Demonstration Project (USLADP) Integrated Report.

**DATES:** The workshop will be held on August 25-27, 1993, in Arlington, Virginia, at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202, telephone 703-920-3230, FAX 703-979-6332. The meeting will begin at approximately 9 a.m., on Wednesday, August 25, and will recess at approximately 5 p.m. On Thursday and Friday, August 26-27, the meeting will reconvene at approximately 8:30 a.m. and adjourn at approximately 5 p.m. Members of the public are welcome to attend as observers and will be given an opportunity to make brief oral comments at the end of each day. Copies of the integrated report will be available for public observers at the meeting site on August 25, 1993. Prior to the meeting, interested parties may obtain a copy of the four-volume draft integrated report from the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, telephone 513-569-7562, FAX 513-569-7566. Please provide your name, mailing address, document title, Urban Soil Lead Abatement Demonstration Project (USLADP) Integrated Report, and the EPA document number EPA/600/AP-93/001a to d. The document will be available on or about August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Research and Evaluation Associates, 100 Europa Drive, Suite 590, Chapel Hill, NC 27514, telephone 919-986-4961. Members of the public wishing to attend this meeting as observers should contact Research and Evaluation Associates in advance of the meeting to register. Space is limited, and registrations will be taken on a first-come, first-served basis. Lodging arrangements should be made directly with the hotel, the Crystal Gateway Marriott, at the address given previously.

**SUPPLEMENTARY INFORMATION:** This report summarizes the results of EPA's analyses of data provided from individual research teams that conducted urban soil lead abatement demonstration projects in each of three U.S. cities: Boston, Baltimore, and Cincinnati. Previously, the individual reports from the participating cities were reviewed and submitted to the Agency. The purpose of this meeting is to seek guidance on the validity and appropriateness of the analyses performed on the data and of the conclusions drawn from those analyses. Comments received from the reviewers will be taken into account in revising the integrated report prior to final release.

Dated: July 27, 1993.

**Carl R. Gerber,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 93-18464 Filed 8-2-93; 8:45 am]

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[FRL-4685-6]

**42 U.S.C. Section 122(h); Proposed Administrative Agreement; Schmidt Hole 2, Wisconsin**

**AGENCY:** Environmental Protection Agency (U.S. EPA).

**ACTION:** Proposed settlement.

**SUMMARY:** U.S. EPA is proposing to settle a claim under section 107 of CERCLA for response costs incurred during removal activities at Schmidt Hole #2 in Germantown, Wisconsin. Respondent has agreed to reimburse U.S. EPA in the amount of $18,000. U.S. EPA today is proposing to approve this settlement offer because it reimburses U.S. EPA, in part, for costs incurred during U.S. EPA's removal action.

**DATES:** Comments on this proposed settlement must be received on or before September 2, 1993.

**ADDRESSES:** Copies of the proposed settlement are available at the following addresses for review: (It is recommended that you telephone Philip Schutte at (312) 353–8685 before visiting the Region V Office). U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Philip Schutte, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604. (312) 353–8685

**FOR FURTHER INFORMATION CONTACT:** Philip Schutte, Office of Public Affairs, at (312) 353–8685.

**SUPPLEMENTARY INFORMATION:** Schmidt Hole #2 is not on the National Priorities List. After receiving reports of leaking hazardous materials and possible soil contamination, U.S. EPA and contractor personnel undertook response actions designed to minimize the immediate threat, test the materials involved and stabilize the threat. (The final stage of the removal was ultimately performed by the owner of the property, a Potentially Responsible Party).

Respondent is an international corporation that generated hazardous waste while operating in an area near Schmidt Hole #2 site. A 30-day period, beginning on the date of publication is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

**Thomas P. Turner,**

*Assistant Regional Counsel, United States Environmental Protection Agency.*

[FR Doc. 93–18465 Filed 8–2–93; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 90–571]**

### Telecommunications Relay Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the states listed below applied to the Commission for State Telecommunications Relay (TRS) Certification for a period of five years, subject to renewal, as prescribed by the Commission's Report and Order and Request for Comments (R&O) in the matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571, FCC 91–213, adopted July 11, 1991 and released July 26, 1991; 6 FCC Rcd 4657 (1991) [56 FR 36729, 8/1/91]), and that these state TRS applications have been granted.

**FOR FURTHER INFORMATION CONTACT:** Linda B. Dubroof, (202) 634–1808.

**SUPPLEMENTARY INFORMATION:** Pursuant to the R&O, parts 0 and 64 of the Commission's rules have been amended to implement the provisions of title IV of the Americans with Disabilities Act of 1990 (ADA). The R&O provides that the Commission shall give public notice of each state's TRS certification filing, including notification in the **Federal Register**, in order to inform the public of the states seeking certification.

**PUBLIC NOTICES:** During the period July 14, 1993, through July 28, 1993, the Domestic Facilities Division, Common Carrier Bureau, announced by public notice those state applications for TRS certification that have been granted. Copies of certification grant letters are available for public inspection at the Commission's Common Carrier Bureau, Domestic Facilities Division, room 6220, 2025 M Street, NW., Washington, DC, Monday through Thursday, 8:30 a.m. to 3 p.m. (closed 12:30 p.m. to 1:30 p.m.). Information pertinent to each state's application, as contained in the public notices, is as follows:

**Public Notice Dated July 8, 1993**

File No.: TRS–01–92
Applicant: Alabama Public Service Commission
State of: Alabama
File No.: TRS–02–92
Applicant: Georgia Public Service Commission
State of: Georgia
File No.: TRS–03–92
Applicant: Kentucky Public Service Commission
State of: Kentucky
File No.: TRS–04–92
Applicant: Kansas Relay Service, Inc.
State of: Kansas
File No.: TRS–05–92
Applicant: Michigan Public Service Commission
State of: Michigan
File No.: TRS–06–92
Applicant: Tennessee Public Service Commission
State of: Tennessee
File No.: TRS–07–92
Applicant: Department of Human Resources, Commission on the Deaf and Hearing Impaired
State of: Connecticut
File No.: TRS–08–92
Applicant: Colorado Public Utilities Commission
State of: Colorado
File No.: TRS–09–92
Applicant: Arizona Council for the Hearing Impaired
State of: Arizona
File No.: TRS–10–92
Applicant: California Public Utilities Commission
State of: California
File No.: TRS–11–92
Applicant: State of Wisconsin, Department of Administration
State of: Wisconsin
File No.: TRS–12–92
Applicant: Public Utilities Commission of Ohio
State of: Ohio
File No.: TRS–13–92
Applicant: Office of Management and Budget, Information Services Division
State of: North Dakota
File No.: TRS–14–92
Applicant: Oregon Public Utility Commission
State of: Oregon
File No.: TRS–16–92
Applicant: Indiana Telephone Relay Access Corporation for the Hearing Impaired
State of: Indiana
File No.: TRS–17–92
Applicant: Virginia Department for the Deaf and Hard of Hearing
State of: Virginia
File No.: TRS–18–92
Applicant: Wyoming Division of Vocational Rehabilitation
State of: Wyoming
File No.: TRS–19–92
Applicant: Department of Human Resources, Division of Services for the Deaf and the Hard of Hearing
State of: North Carolina
File No.: TRS–20–92
Applicant: Idaho Public Utilities Commission
State of: Idaho
File No.: TRS–21–92
Applicant: Nebraska Public Service Commission
State of: Nebraska
File No.: TRS–23–92
Applicant: West Virginia Public Service Commission
State of: West Virginia
File No.: TRS–24–92
Applicant: South Carolina Public

Service Commission
State of: South Carolina
File No.: TRS–25–92
Applicant: Department of General Services
State of: Maryland
File No.: TRS–26–92
Applicant: Arkansas Public Service Commission
State of: Arkansas
File No.: TRS–27–92
Applicant: Alaska Public Utilities Commission
State of: Alaska
File No.: TRS–28–92
Applicant: Telecommunications Access for Communication-Impaired Persons Board
State of: Minnesota
File No.: TRS–29–92
Applicant: Public Service Commission
State of: District of Columbia
File No.: TRS–30–92
Applicant: Puerto Rico Telecommunications Regulatory Commission
State of: Puerto Rico
File No.: TRS–31–92
Applicant: New Hampshire Public Utilities Commission
State of: New Hampshire
File No.: TRS–32–92
Applicant: Mississippi Public Service Commission
State of: Mississippi
File No.: TRS–33–92
Applicant: Public Utility Commission of Texas
State of: Texas
File No.: TRS–34–92
Applicant: Public Service Commission of Delaware
State of: Delaware
File No.: TRS–35–92
Applicant: State of New York, Department of Public Service
State of: New York
File No.: TRS–36–92
Applicant: Missouri Public Service Commission
State of: Missouri
File No.: TRS–37–92
Applicant: Governor's Committee on Telecommunication Services for the Telephone Handicapped
State of: Montana
File No.: TRS–38–92
Applicant: State of New Jersey Board of Regulatory Commissioners
State of: New Jersey
File No.: TRS–39–92
Applicant: Iowa Utilities Board
State of: Iowa
File No.: TRS–41–92
Applicant: Department of Human Services
State of: South Dakota
File No.: TRS–42–92
Applicant: Public Utilities Commission
State of: Maine
File No.: TRS–43–92
Applicant: Department of Public Service
State of: Vermont
File No.: TRS–44–92
Applicant: Louisiana Public Service Commission
State of: Louisiana
File No.: TRS–46–92
Applicant: Florida Public Service Commission
State of: Florida
File No.: TRS–48–92
Applicant: Department of Human Resources, Rehabilitation Division
State of: Nevada
File No.: TRS–49–92
Applicant: Department of Public Utilities
State of: Massachusetts
File No.: TRS–50–92
Applicant: Public Service Commission of Utah
State of: Utah

**Public Notice Dated July 21, 1993**

File No.: TRS–22–92
Applicant: Illinois Commerce Commission
State of: Illinois
File No.: TRS–40–92
Applicant: Pennsylvania Public Utility Commission
State of: Pennsylvania
File No.: TRS–45–92
Applicant: Public Utilities Commission
State of: Hawaii
File No.: TRS–47–92
Applicant: Public Utilities Commission
State of: Rhode Island
File No.: TRS–52–92
Applicant: General Services Department
State of: New Mexico

**Public Notice Dated July 28, 1993**

File No.: TRS–51–92
Applicant: Department of Social and Health Services
State of: Washington

Federal Communications Commission.
**William F. Caton,**
*Acting Secretary.*
[FR Doc. 93–18375 Filed 8–2–93; 8:45 am]
BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1000–DR]**

### Kansas; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.
**EFFECTIVE DATE:** July 27, 1993.
**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993.

The county of Pottawatomie for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**
*Deputy Associate Director, State and Local Programs and Support.*
[FR Doc. 93–18461 Filed 8–2–93; 8:45 am]
BILLING CODE 6718–03–M

**[FEMA–998–DR]**

### Nebraska; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.
**EFFECTIVE DATE:** July 27, 1993.
**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to included the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993.

The counties of Dawson, Gage, and Jefferson for Individual Assistance Only.

The counties of Dodge, Franklin, Frontier, Gosper, and Sherman for Individual Assistance and Public Assistance.

The counties of Adams, Butler, Clay, Colfax, Cuming, Fillmore, Hamilton, Kearney, Nemaha, Pawnee, Platte, Polk, Richardson, and Stanton for Individual

Assistance. (Already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18460 Filed 8–2–93; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–1001–DR]**

## North Dakota; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1001–DR), dated July 26, 1993, and related determinations.

**EFFECTIVE DATE:** July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated July 26, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms and flooding on June 22, 1993, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steve L. Olsen of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Dakota to have been affected adversely by this declared major disaster:

Barnes, Burleigh, Cass, Dickey, Emmons, Grant, Hettinger, Kidder, LaMoure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, and Stutsman for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**James Lee Witt,**

*Director.*

[FR Doc. 93–18458 Filed 8–2–93; 8:45 am]

BILLING CODE 6718–02–M

**[FEMA–999–DR]**

## South Dakota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–999–DR), dated July 19, 1993, an related determinations.

**EFFECTIVE DATE:** July 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of South Dakota dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993.

The counties of Brown, Charles Mix, Codington, Day, Deuel, Douglas, Grant, Hamlin, Marshall, Roberts, and Spink for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18462 Filed 8–2–93; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

## Agreement(s) Filed; Lykes/Linabol Cooperative Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 232–011425.

*Title:* Lykes/Linabol Cooperative Agreement.

*Parties:* Lykes Bros. Steamship Co., Inc. Lineas Navieras Bolivianas S.A.M.

*Synopsis:* The proposed Agreement would authorize the parties to charter space on each other's vessels and to rationalize sailings in the trade between U.S. Atlantic and Gulf of Mexico ports and inland and coastal points (including Canadian inland and coastal points) via such ports, and ports of Mexico, Colombia, Panama, Eucaudor, Peru, and Chile, and inland and coastal points (including Bolivian inland points) via such points. The parties have requested a short review period.

Dated: July 28, 1993.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–18374 Filed 8–2–93; 8:45 am]

BILLING CODE 6730–01–M

**[Petition No. SP45–93; P46–93]**

## Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; World Tariff Services, Inc., Finn Container Cargo Services, Inc.; Filing

Notice is hereby given of the filing of petitions by World Tariff Services, Inc. and Finn Container Cargo Services, Inc., pursuant to 46 CFR 514.8(a), on behalf of certain common carriers for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than August 6, 1993. Replies shall be directed to the Secretary, Federal

Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served on the following:

P45-93—Martin Panko, President, World Tariff Services, Inc., 14 Commerce Drive, Cranford, New Jersey 07016.

P46-93—J. Arturo Castellanos, Vice President, Finn Container Cargo Services, Inc., 2020 Southwest Freeway, Suite 200, Houston, Texas 77098

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93-18373 Filed 8-2-93; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Amboy-Madison National Bank Employee Stock Ownership Plan; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 93-14001) published at page 33097 of the issue for Tuesday, June 15, 1993.

Under the Federal Reserve Bank of New York heading, the entry for Amboy-Madison National Bank Employee Stock Ownership Plan is revised to read as follows:

**A. Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

*1. Amboy-Madison National Bank Employee Stock Ownership Plan*, Old Bridge, New Jersey; to acquire 15 percent of the voting shares of Amboy Bancorporation, Inc., Old Bridge, New Jersey, and thereby indirectly acquire Amboy National Bank, Old Bridge, New Jersey.

Comments on this application must be received by August 17, 1993.

Board of Governors of the Federal Reserve System, July 28, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18428 Filed 8-2-93; 8:45 am]

BILLING CODE 6210-01-F

### Central Bancshares of the South, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 27, 1993.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Central Bancshares of the South, Inc.*, Birmingham, Alabama; to acquire Central Bank of the South, FSB, Birmingham, Alabama, which will be an interim thrift formed to facilitate Central Banchsares of the South's acquisition of First Federal Savings Bank of Northwest Florida, Fort Walton Beach, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 28, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18429 Filed 8-2-93; 8:45 am]

BILLING CODE 6210-01-F

### John W. Jay; Change in Bank Control Notice

### Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 1993.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. John W. Jay*, Abilene, Texas; to acquire an additional 0.75 percent of the voting shares of Roscoe Financial Corporation, Roscoe, Texas, for a total of 36.5 percent, and thereby indirectly acquire Roscoe State Bank, Roscoe, Texas.

Board of Governors of the Federal Reserve System, July 28, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18430 Filed 8-2-93; 8:45 am]

BILLING CODE 6210-01-F

### Orion Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the

Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 27, 1993.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Orion Bancorporation, Inc.*, Orion, Illinois; to acquire 100 percent of the voting shares of Henry County Bancorp, Inc., Cambridge, Illinois, and thereby indirectly acquire 88 percent of the voting shares of Peoples Bank of Cambridge, Cambridge, Illinois.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. CNB Bancshares, Inc.*, Evansville, Indiana; to acquire 100 percent of the voting shares of Valley Bank, Federal Savings Bank, Terre Haute, Indiana.

Board of Governors of the Federal Reserve System, July 28, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18431 Filed 8-2-93; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement Number 335]**

### National Organizational Strategies for Early Detection and Control of Breast and Cervical Cancer Program

#### Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of funds in fiscal year (FY) 1993 for competing cooperative agreements to support the development of strategies by national organizations with access to special populations (e.g., Native Americans, Hispanics, African-Americans, older Americans, low-literacy audiences, etc.) to improve the delivery of comprehensive breast and cervical cancer early detection and control programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of early detection and control of breast and cervical cancer. (To order a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

#### Authority

This program is authorized by section 1507 (42 U.S.C. 300n-3) of the Public Health Service Act, as amended. Applications program regulations are found in 42 CFR part 51b, Project Grants for Preventive Health Service.

#### Eligible Applicants

Assistance will be provided to private, public, non-profit, and for profit national organizations that have established and conducted nationwide programs and advocacy activities related to health promotion and disease prevention and which represent or have access to special populations (e.g., Native Americans, Hispanics, African-Americans, older Americans, low-literacy audiences, etc.) nationwide. National organizations and their regional, state, and local constituents provide a unique opportunity to develop and conduct strategies to address barriers to screening and improve the target population's access to early cancer detection and control programs. National organizations that have established credible working relationships with special populations can identify appropriate recruitment strategies, interpersonal channels, educational messages, resources and organizational linkages, learning modules, and instructional tools that will assist increasing participation in CDC screening programs nationwide. Low-income women with limited access to health care (including health promotion activities) can be reached through national organizations having previous health promotion experience and linkages with special populations.

#### Availability of Funds

Approximately $400,000 is available in FY 1993 to fund approximately three awards. It is expected that the average award will be $133,000 ranging from $100,000 to $200,000. It is expected that the awards will begin on or about September 30, 1993, and are for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the approved project period will be made on the basis of an acceptable application, satisfactory program performance, and the availability of funds. Funds may not be expended for the purchase or lease of land or buildings, construction of facilities, renovation of existing space, or the delivery of clinical and therapeutic services. The purchase of equipment is discouraged but will be considered for approval if justified on the basis of being essential to the program and not available from any other source.

#### Purpose

The purpose of this program is to assist national organizations to educate their constituents about breast and cervical cancer; increase access to breast and cervical screening programs to identified target populations; and develop strategies for reaching identified target populations nationwide. Options for program outcomes may include generating publications; assisting state and local health agencies to implement model educational interventions; developing technical assistance and training tools; and adopting early cancer detection and control objectives as a part of the national organization's priorities.

#### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., and CDC shall be responsible for conducting activities under B.

A. Recipient Activities

1. Develop, evaluate, and disseminate programs designed to improve breast and cervical cancer early detection and control among the applicant's target population. (Year 01)

2. Develop outreach strategies for targeted populations. (Year 01)

3. Establish specific, measurable, and realistic program objectives at national, state, and local levels for the accomplishment of program activities. (Year 01)

4. Identify and select appropriate staff. (Year 01)

5. Educate constituents concerning breast and cervical cancer prevention. (Year 02)

6. Establish partnerships with CDC-funded state health departments for breast and cervical cancer early detection and control programs. (Year 01–03)

7. Participate in a minimum of two meetings with CDC to facilitate the implementation of program objectives. (Year 01–03)

8. Evaluate achievement through a well-designed evaluation plan that

assesses each objective component of the program. (Year 01–03)

9. Disseminate information nationally regarding program activities and achievements. (Year 02–03)

10. Participate in the dissemination and sharing of pertinent program information through a computerized database for health information and health promotion resources, for example the Combined Health Information Database (CHID). (Year 02–03)

B. CDC Activities

1. Collaborate with recipients in the development, implementation, and dissemination of breast and cervical cancer early detection education programs.

2. Periodically update information about public knowledge, attitudes, and practices regarding early detection and control of breast and cervical cancer.

3. Collaborate with recipients to develop meeting agendas and convene personnel from all recipient organizations and funded state health departments for regular meetings to review program activities.

4. Collaborate with recipients to evaluate program activities that include the analysis of program results and the redirection of program activities as necessary.

5. Collaborate with recipients to develop publications, manuals, modules, etc., that relate to this award.

**Evaluation Criteria**

The initial application will be reviewed and evaluated according to the following criteria:

A. The extent to which the applicant demonstrates an understanding of the program purpose and objectives. (10 points)

B. The extent to which the applicant identifies the target population(s) and why they should focus on innovative and unique strategies. (20 points)

C. The degree to which specific, time-related and measurable objectives and process and outcome measures are consistent with the stated purposes of the cooperative agreement. (20 points)

D. The quality and feasibility of the proposed program activities for achieving the objectives. (15 points)

E. The adequacy of proposed personnel time allocations and the extent to which proposed staff exhibit appropriate qualifications and experience to accomplish the program activities. (15 points)

F. The extent to which the applicant demonstrates the ability to access its constituents and the target populations on a national basis and to disseminate programs nationally. (10 points)

G. The quality of the evaluation plan for monitoring progress that relates to program activities and objectives. (10 points)

H. The extent to which the budget is reasonable and consistent with the purpose and objectives of the cooperative agreement. (Not Weighted)

**Funding Priorities**

Applicants who demonstrate and document experience in the area of breast and cervical cancer early detection and control will receive priority consideration for funding.

Comments are not being solicited regarding the Funding Priority as time does not permit solicitation and review prior to the funding date.

**Recipient Financial Participation**

This program has no statutory formula. No specific matching funds are required.

**Executive Order 12372 Review**

Applications are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirement.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 93.283.

**Other Requirements**

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1 (Rev. 7/92) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before August 30, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date.

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Leonard Jack, Jr., Ph.D., Health Promotion and Training Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4740 Buford Highway, NE., Mailstop K–56, Atlanta, Georgia 30341–3724, telephone (404) 488–4744.

Please refer to Announcement Number 335 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No., 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No., 017–001–00473–1)

referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC. 20402–9325, telephone (202) 783–3238.

Dated: July 26, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18421 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–18–P

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**[CDC–316]**

## Announcement of Cooperative Agreement to the Association of State and Territorial Health Officials

### Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement with the Association of State and Territorial Health Officials (ASTHO) to identify and track emerging HIV-related developments and issues. Approximately $200,000 is available in FY 1993 to support this project. It is expected that the award will begin on or about September 28, 1993, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The purpose of this cooperative agreement addresses, collaboratively with ASTHO, the need to identify and track emerging HIV-related developments and issues and facilitates the rapid exchange of critical information at the state and local levels. The CDC will provide technical advice in the development of systems to identify state HIV/AIDS policy issues; provide technical advice in the development of systems to facilitate critical HIV/AIDS policy information sharing among state and local health officials in the decision making process; and provide information, legislative and policy determination for rapid dissemination and/or coordination and implementation.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas listed in Healthy People 2000, HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information).

### Authority

This program is authorized under the Public Health Service Act: section 317(k)(3), (42 U.S.C. 247b).

### Eligible Applicants

Assistance will be provided only to ASTHO for this project. No other applications are solicited. The Program Announcement and application kit have been sent to ASTHO.

ASTHO is the most appropriate and qualified agency to provide the services specified under this cooperative agreement because:

A. ASTHO is the officially established organization representing the state health officers in all 50 states and all U.S. territories. As such it represents the officials from throughout the U.S. who have legal responsibility for protecting the health of U.S. citizens, including health threats such as human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) which results from HIV infection.

B. Health threats such as HIV are not limited by geographic boundaries, ASTHO was formed to promote coordination of health efforts between the states and territories and as an instrument to monitor and assess health issues that pose threats to the public health. HIV/AIDS is, and likely will continue to be, a major health threat to the Nation for the foreseeable future.

C. It is critical that the health officials of this country monitor the potential impact of not only the medical and economic issues that HIV/AIDS presents to them, but also the legislative and policy issues which it poses to them in protecting the public health of the Nation. As such, ASTHO needs to maintain a system to monitor the potential impact of both state and national HIV/AIDS legislation and emerging HIV-related policy issues, and a system of communicating this information with all states and territories, as well as the local health organizations that carry out the day-to-day public health programs of the country.

D. It is critical that ASTHO conduct these services since it represents the officials who will have to enforce HIV-related policies and legislation. Since ASTHO represents health officials who have ultimate responsibility for public health within their jurisdictions, it is the only organization that can reasonably evaluate the potential impact of Federal and state HIV/AIDS legislation and policy in terms of actual implementation within the states.

E. ASTHO has already established mechanisms for communicating certain types of information to the states and the political subdivisions of the states that carry out the Nation's public health programs.

### Executive Order 12372 Review

This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

### Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

### Catalog of Federal Domestic Assistance Number

The catalog number to be used for this cooperative agreement is 93.118.

### Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 316 and contact Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–15, Atlanta, Georgia 30305, (404) 842–6872.

A copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0), Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1), referenced in the Summary, may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 28, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18422 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–18–P

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**[Program Announcement No. 344]**

## Development of State Health Promotion and Chronic Disease Prevention Databases/Clearinghouses

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program for the development of state

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health promotion and chronic disease prevention databases/clearinghouses that are compatible with the Combined Health Information Database (CHID). CHID links health information and education resources into a national network of information on programs, interventions, and methods, and acts as a central mechanism for collecting, sharing, and distributing information, bibliographies, literature, and health promotion and chronic disease prevention information to professionals responsible for planning, developing, conducting, and evaluating health promotion and chronic disease prevention programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of physical activity and fitness, reproductive health, nutrition, tobacco, educational and community-based programs, heart disease and stroke, cancer, and diabetes and chronic disabling conditions. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

**Authority**

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended. Applicable program regulations are found in 42 CFR part 52—Grants for Research Projects.

**Eligible Applicants**

Eligible applicants are the official public health departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

Funding is limited to one three-year project period to provide start-up costs for establishing a state database/clearinghouse. Therefore, Colorado, Minnesota, and Missouri are not eligible applicants because they were funded September 1, 1991, for a three-year project period, under Program Announcement Number: 940, entitled "Assistance Program for Chronic Disease Prevention and Control" for the activities described in this program announcement.

**Availability of Funds**

Approximately $90,000 is available in FY 1993 to fund approximately three awards. It is expected that the average award will be $30,000. It is expected that the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

**Purpose**

The purpose of this cooperative agreement is to assist states in designing databases/clearinghouses to promote and provide access to programmatic health promotion and chronic disease prevention information.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and the CDC shall be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Establish and maintain a database/clearinghouse compatible with CHID.
2. Establish a database/clearinghouse advisory committee.
3. Design and carry out a systematic needs assessment to determine specific needs, current resources, and communication networks of state and local health professionals.
4. Establish and implement an information acquisitions system.
5. Develop and implement a marketing plan targeting identified needs and specific audiences.
6. Provide hard copy or computer access to state and local health promotion and chronic disease prevention program staff and other identified audiences.
7. Develop and conduct an evaluation and tracking system to monitor program activity and the quality of the information placed in the database.
8. Develop a plan for continuing database/clearinghouse activities beyond the project period and for institutionalizing into the agency organizational structure.

*B. CDC Activities*

1. Collaborate in the design of the database/clearinghouse to ensure compatibility with CHID.
2. Collaborate in developing an information collection strategy.
3. Collaborate in developing plans for quality assurance, tracking, evaluation, and institutionalization.
4. Collaborate in the training of database/clearinghouse staff.
5. Assist in promoting the state and national information systems.
6. Coordinate with other Federal agencies, states, and organizations to ensure a coordinated, cooperative effort to build a comprehensive information sharing system.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

A. *Background and Need*: The extent to which a database/clearinghouse currently exists, the degree of need and administrative commitment to the project. (20 Points)

B. *Database/Clearinghouse Development Plan*: The appropriateness of the methodologies for developing a database/clearinghouse that is compatible with CHID and the adequacy of the plan for continuing activities beyond the project period. (20 Points)

C. Objectives: The degree to which the proposed objectives are appropriate to the need and the objectives and activities are likely to produce the projected outcomes. (15 Points)

D. Management: The extent to which the applicant demonstrates the capacity to provide adequate and appropriate staff and equipment resources. (15 Points)

E. Evaluation: The extent to which the evaluation plan determines the effectiveness of the database/clearinghouse activities. (15 Points)

F. Quality Assurance: The extent to which the quality assurance plan is adequate and appropriate. (15 Points)

G. Budget: The extent to which the budget is reasonable and consistent with the intended use of the program funds. (Not Weighted)

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each

affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, GA 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirement.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 93.283.

**Other Requirements**

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The program announcement and application kit were sent to all eligible applicants in May 1993.

**Where to Obtain Additional Information**

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Atlanta, GA 30305, telephone (404) 842–6508. Programmatic technical assistance may be obtained from Kathryn Sunnarborg, Technical Information Specialist, Technical Information Services Branch, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mailstop K–13, 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone (404) 488–5080.

Please refer to Announcement Number 344 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325, telephone (202) 783–3238.

Dated: July 26, 1993.

**Ladene H. Newton,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.*

[FR Doc. 93–18423 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–18–P

## CDC Advisory Committee on the Prevention of HIV Infection (CDC ACPHI): Subcommittee on Monitoring the HIV/AIDS Epidemic Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

*Name:* CDC ACPHI Subcommittee on Monitoring the HIV/AIDS Epidemic.

*Time and Dates:* 8:30 a.m.–4:30 p.m., September 14–15, 1993.

*Place:* Swissôtel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

*Status:* Open to the public, limited only by the space available.

*Purpose:* The purpose of this meeting is to continue to review current behavioral, exposure, infection, and disease surveillance systems and address information needs for monitoring behaviors and exposures to HIV.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Connie Granoff, Committee Assistant, Office of the Associate Director for HIV/AIDS, CDC, 1660 Clifton Road, NE., Mailstop E–40, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: July 27, 1993.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18417 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–18–M

## Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

**FOR FURTHER INFORMATION CONTACT:** Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

**SUPPLEMENTARY INFORMATION:** Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its

letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–7777

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, Georgia 31604, 912–244–4468

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 1215–1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200, (name change: formerly Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373, (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92)

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191, (address, phone, and name changed on 5/17/93: formerly MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (Formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburg, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE., Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 NW. 79th Avenue, Miami, FL 33166, 305–593–2260

No laboratories withdrew from the National Laboratory Certification Program during July 1993.

**Richard Kopanda,**

*Acting Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 93–18383 Filed 8–2–93; 8:45 am]

BILLING CODE 4160–20–U

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. N–93–3495; FR–3161–N–01]**

### Federally Mandated Exclusions From Income

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice.

**SUMMARY:** Under several HUD programs (Rent Supplement under part 215; Mortgage Insurance and Interest Reduction Payment for Rental Projects under part 236; section 8 Housing Assistance programs; and the Public and Indian Housing programs), the definition of income does not include amounts of other benefits specifically exempted by Federal law. Periodically, HUD announces the list of benefits so excluded. This notice reports that, (1) earned income tax credit refunds; (2) student financial assistance under title IV of the Higher Education Act of 1965; and (3) the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 are not to be considered as income for purposes of the programs mentioned above.

**DATES:** *Effective Date for Earned Income Tax Credit:* January 1, 1991.

*Effective Date for Student Financial Assistance:* October 1, 1992.

*Effective Date for Child Care and Development Block Grant Assistance:* November 4, 1992.

**FOR FURTHER INFORMATION CONTACT:** For Rent Supplement (section 215), section 236, and section 8 programs administered under 24 CFR parts 880, 881, and 883 through 886: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3944. A telecommunications device for hearing impaired persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

For section 8 programs administered under 24 CFR part 882 (Rental Certificates, Moderate Rehabilitation) and under part 887 (Rental Vouchers), and for Public Housing programs; Edward Whipple, Director, Occupancy Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone: (202) 708–0744, or TDD: (202) 708–0850. (These are not toll-free telephone numbers.)

For Indian Housing programs: Dominic Nessi, Director, Office of Indian Housing, room 4140, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410, telephone: (202) 708–1015, TDD: (202) 708–0850. (These are not toll-free telephone numbers.)

Any member of the public who becomes aware of any other Federal statute that requires any other benefit to be excluded from consideration as income in these programs should submit information about the statute and the benefit program to one of the persons listed as contact or to the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

**SUPPLEMENTARY INFORMATION:** Under certain HUD subsidized housing programs, annual income is a factor in determining eligibility and level of benefits. Annual income is broadly defined as the anticipated total income from all sources received by every family member. Traditionally, HUD excludes certain types of benefits from applicants' and participants' annual income. In addition, under 24 CFR 215.21(c)(11), 236.3(c)(11), 813.106(c)(11), 905.102, and 913.106(c)(11), the definition of annual income excludes amounts specifically excluded by any other Federal statute from consideration for purposes of determining eligibility for or level of benefits to be received under the HUD programs in question. HUD programs other than those specifically listed in this notice may be affected by changes in the definition of annual income. This is because some programs, for example, the sections 202 and 811 Capital Advance Programs, reference either part

813 or 913 for their definition of income.

Section 11111(b) (26 U.S.C. 32(j)) of the Omnibus Budget Reconciliation Act of 1990 (1990 OBR Act) (Pub. L. 101–508, approved November 5, 1990) excludes, for taxable years beginning after December 31, 1990, the earned income tax credit (EITC) refund from being considered as income for purposes of HUD's assisted housing programs. The earned income tax credit refund is a payment from the Internal Revenue Service to low income workers with children. Eligible workers must apply for this credit. The refund may be received over the year as a regular addition to a worker's pay, or as a single sum after filing a tax return, at the option of the worker. Under either option, no EITC refund payment received on or after January 1, 1991 is considered as income for the Department's assisted housing programs. This exclusion is added as paragraph (xiv) to the list.

Because HUD regulations promulgated before the 1990 OBR Act specifically include in annual income any earned income tax credit to the extent it exceeds income tax liability, they are being amended, in a separate rulemaking document, to remove this requirement.

Section 471 of the Higher Education Act Amendments of 1992 (HEAA 1992) (Pub. L. 102–325, approved July 23, 1992) amended section 479B of the Higher Education Act of 1965 to provide:

> Notwithstanding any other provision of law, student financial assistance received under this title, or under Bureau of Indian Affairs student assistance programs, shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local program financed in whole or in part with Federal funds.

Section 2 of HEAA 1992 establishes an effective date for its amendments of October 1, 1992, "Except as otherwise provided in this Act * * *". Although section 480(b), entitled, "Effective Date For Amendments To Part F" (and section 471 appears in part F), states an effective date of July 1, 1993, this effective date applies only "with respect to determinations of need under such part F * * *". The effective date, thus, for this exclusion from income is October 1, 1992.

The Department had, under paragraph (ix) in the previous published notice of Federally mandated exclusions from income, excluded, "Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student Assistant programs, that are made available to cover the cost of tuition, fees, books, equipment, materials, supplies, transportation, and miscellaneous personal expenses of a student at an educational institution (20 U.S.C. 1087uu)". Paragraph (ix) is being amended in this notice to reflect the current status of the law, which places no limits on the types of scholarship costs under title IV eligible for exclusion.

Section 8(b) (42 U.S.C. 9858q) of the Juvenile Justice and Delinquency Prevention Amendments Act of 1992 (Pub. L. 102–586, approved November 4, 1992) provides that the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need. The effective date of this provision is the effective date of the statute, November 4, 1992. This exclusion is added to the list as paragraph (xiii).

The Department published its last updated list of federally mandated exclusions from income on July 23, 1990 (55 FR 29905). This notice supersedes that announcement.

The following list of program benefits is the comprehensive list of benefits that currently qualify for the income exclusion stated in 24 CFR 215.21(c)(11), 236.3(c)(11), 813.106(c)(11), 905.102, and 913.106(c)(11):

(i) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017(b));

(ii) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);

(iii) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(iv) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

(v) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(vi) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b));

(vii) Income derived from the disposition of funds of the Grand River Band of Ottawa Indians (Pub. L. 94–540, 90 Stat. 2503–04;

(viii) The first $2,000.00 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims (25 U.S.C. 1407–08) or from funds held in trust for an Indian tribe by the Secretary of the Interior (25 U.S.C. 117b, 1407);

(ix) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(x) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)); and

(xi) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(xii) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420, 94 Stat. 1785);

(xiii) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q).

(xiii) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)).

Dated: June 1, 1993.

**Henry G. Cisneros,**

*Secretary.*

[FR Doc. 93–18474 Filed 8–2–93; 8:45 am]

BILLING CODE 4210–32–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–960–9800–02; ES–046168, Group 193, Florida]**

### Notice of Filing of Plat of the Dependent Resurvey, Subdivision of Section 2 And Metes-And-Bounds Survey

The plat of the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and the survey of the subdivision of section 2, and the metes-and-bounds survey of certain parcels in section 2, Township 29 South, Range 19 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 7, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 7, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 23, 1993.

**Larry Hamilton,**

*Acting State Director.*

[FR Doc. 93–18436 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–GJ–

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**[ES–960–9800–02; ES–046165, Group 188, Florida]**

## Notice of Filing of Plat of the Dependent Resurvey and Subdivision of Section 15

The plat of the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 15, and the survey of a portion of Levee L–60 right-of-way, Township 39 South, Range 33 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on September 7, 1993.

The survey was made upon request submitted by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., September 7, 1993.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: July 13, 1993.

**Larry Hamilton,**

*Acting State Director.*

[FR Doc. 93–18437 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–GJ

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**[CO–930–4920–10–4329; COC–55373]**

## Proposed Withdrawal and Opportunity for Public Meeting; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Department of Energy has requested the withdrawal of three separate sites comprised of 847 acres of public lands in Colorado for a period of 5 years. These three sites are proposed as permanent disposal sites for radioactive uranium mill tailings. If these sites are designated for permanent disposal, administrative jurisdiction will be transferred to the Department of Energy for management. This notice will segregate these lands from operation of the public land laws, including location and entry under the mining laws for up to 2 years. The lands will continue to be open to mineral leasing.

**DATES:** Comments on the proposed withdrawal or request for public meeting must be received on or before November 1, 1993.

**ADDRESSES:** Comments and meeting requests should be sent to the Colorado State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, (303) 239–3706.

**SUPPLEMENTARY INFORMATION:** On July 6, 1993, the Department of Energy filed application to withdraw the following described public lands from settlement, sale location, or entry under the public land laws, including the mining laws, subject to valid existing rights, pursuant to the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714:

**New Mexico Principal Meridian**

*Site A*

T. 46 N., R. 16 W.,
Sec. 25, SE¼SW¼SE¼SW¼, S½SE¼SE¼SW¼, S½SW¼SW¼SE¼, and SW¼SE¼SW¼SE¼;
Sec. 36, W½E½NW¼NE¼, W½NW¼NE¼, W½NE¼SW¼NE¼, NW¼SW¼NE¼, E½W½NE¼NW¼, E½NE¼NW¼, E½NW¼SE¼NW¼, and NE¼SE¼NW¼.

**New Mexico Principal Meridian**

*Site B*

T. 46 N., R. 18 W.,
Sec. 21, S½SW¼;
Sec. 28, NW¼NE¼, S½NE¼, N½NW¼, SE¼NW¼, and N½SE¼.

**6th Principal Meridian**

*Site C*

T. 7 N., R. 94 W.,
Sec. 19, Lots 5, 6, and 7, E½NW¼, NE¼SW¼, and W½E½.

The lands described aggregate approximately 847 acres of public land.

The purpose of requesting these withdrawals is to segregate the lands and provide protection until requirements are completed for a permanent transfer of jurisdiction to the Department of Energy, under the authority of the Uranium Mill Tailings Radiation Control Act of 1978; 42 U.S.C. 7801, as amended.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The lands remain open to mineral leasing, subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission, and the Department of Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed withdrawal. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with Bureau of Land Management 43 CFR 2310.3–1(c)(2).

All persons who desire to submit comments, suggestions, or objections or who desire public meeting for the purpose of being heard on this proposed action must submit a written request with the Colorado State Director within 90 days of the date of publication of this notice.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from operation of the public land laws, as specified above, unless the application is denied or cancelled or the transfer of administrative jurisdiction takes place prior to that date.

The temporary segregation of the lands in connection with the application shall not affect the administrative jurisdiction over the lands and will not authorize any use of the land by the Department of Energy.

**Robert S. Schmidt,**

*Chief, Branch of Realty Programs.*

[FR Doc. 93–18380 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–JB–M

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**[MT–930–4210–06; MTM 82330]**

## Proposed Withdrawal and Opportunity for Public Meeting; Montana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 19,684.74 acres of public mineral estate for protection of the unique resources

within the Sweet Grass Hills (SGH) Area of Critical Environmental Concern. This notice closes the lands for up to 2 years from location and entry under the mining laws. The lands will remain open to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by November 1, 1993.

**ADDRESSES:** Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

**FOR FURTHER INFORMATION CONTACT:** James Binando, BLM Montana State Office, 406–255–2935.

**SUPPLEMENTARY INFORMATION:** On July 28, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands from location and entry under the mining laws, but not from the public land laws or mineral leasing laws, subject to valid existing rights:

**Principal Meridian**

T. 37 N., R. 1 E.,
Sec. 1, lots 5 to 8, inclusive;
Sec. 2, lots 5 to 8, and S½SE¼;
Sec. 11, E½E½;
Sec. 12, lots 1 to 8, inclusive, and S½N½;
Sec. 13, lots 1 to 5, inclusive, W½NE¼, NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Sec. 14, lots 1 to 3, inclusive, N½, SW¼, and N½SE¼;
Sec. 15, E½E½;
Sec. 22, E½NE¼;
Sec. 23, lot 1, E½NE¼, SW¼NE¼, NW¼, S½SW¼, and SE¼;
Sec. 24, lots 1 to 4, inclusive, W½E½, and W½;
Sec. 25, lots 1 to 10, inclusive, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼;
Sec. 26, E½NE¼, N½NW¼, and S½;
Sec. 27, NE¼NE¼, S½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 34, NE¼NE¼;
Sec. 35, NE¼, E½NW¼, and SW¼NW¼.

T. 36 N., R. 2 E.,
Sec. 5, lot 4;
Sec. 6, lots 1 and 2, and SW¼NE¼;
Sec. 23, E½NE¼ and N½SE¼;
Sec. 24, SW¼NW¼ and W½SW¼;
Sec. 25, SE¼NE¼ and E½SE¼.

T. 37 N., R. 2 E.,
Sec. 5,
Lot 8;
Sec. 6, lots 6, 7, 8, 9, and 10;
Sec. 7, lots 1 to 4, inclusive, and E½SW¼;
Sec. 17, W½SW¼;
Sec. 18, SW¼NE¼, E½SE¼, and NW¼SE¼;
Sec. 19, lots 2, 3, and 4, NE¼NE¼, SE¼NW¼, and NE¼SW¼;
Sec. 20, NW¼NE¼ and N½NW¼;
Sec. 30, lots 1 to 4, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 31, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.

T. 35 N., R. 3 E.,
Sec. 3, lot 4 and SW¼NW¼;
Sec. 4, lots 1 and 2, S½NE¼.

T. 36 N., R. 3 E.,
Sec. 7, lot 2, SW¼NE¼, SE¼NW¼, E½SW¼, and NW¼SE¼;
Sec. 9, NE¼SW¼ and SE¼SE¼;
Sec. 10, S½SW¼ and SW¼SE¼;
Sec. 11, NW¼SW¼;
Sec. 15, NW¼, W½SW¼, and SE¼SW¼;
Sec. 17, lots 1 and 2, E½SW¼, and SE¼;
Sec. 18, lots 5, 6, 11, and 12, and NW¼NE¼;
Sec. 19, lots 3 and 4, E½SW¼, and S½SE¼;
Sec. 20, E½NE¼, NW¼NE¼, NE¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 21, NE¼, N½NW¼, and S½SW¼;
Sec. 22, NW¼;
Sec. 28, W½NE¼, E½NW¼, NW¼NW¼, and SW¼SW¼;
Sec. 29, W½NE¼, W½, and SE¼;
Sec. 30, lots 1 and 2, N½NE¼, SW¼NE¼, E½NW¼, and SE¼SE¼;
Sec. 31, lots 2 and 3, NE¼NE¼, and SW¼SE¼;
Sec. 32, N½N½, SE¼NE¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 33, S½NE¼, N½SE¼, and SE¼SE¼;
Sec. 34, NW¼NE¼, N½NW¼, and SW¼SW¼.

T. 35 N., R. 4 E.,
Sec. 2, lot 2, SW¼NE¼, E½SW¼, and NW¼SE¼.

T. 36 N., R. 4 E.,
Sec. 1, lots 1, 2, and 3, S½NE¼, and NE¼SE¼;
Sec. 9, SE¼;
Sec. 10, lots 3 and 4, and E½SW¼;
Sec. 24, lots 1 to 4, inclusive, N½NE¼, SW¼NE¼, and NW¼NW¼;
Sec. 25, lots 1 to 6, inclusive, NE¼, SE¼NW¼, and N½SW¼;
Sec. 26, SE¼NE¼, E½SE¼, and SW¼SE¼;
Sec. 34, E½NE¼ and SW¼NE¼;
Sec. 35, E½NE¼;
Sec. 36, lots 1, 2, 3, and 5.

T. 37 N., R. 4 E.,
Sec. 34, N½N½ and SW¼NE¼;
Sec. 35, NW¼NW¼.

T. 35 N., R. 5 E.,
Sec. 5, lot 4, SW¼NW¼, and NE¼SW¼;
Sec. 6, lots 1, 2 and 5, and SW¼NE¼.

T. 36 N., R. 5 E.,
Sec. 3, lot 1 and NE¼SE¼;
Sec. 4, W½SW¼;
Sec. 5, SW¼SW¼;
Sec. 6, lot 6, NE¼SW¼, and SE¼SE¼;
Sec. 7, lot 1, N½NE¼, and NE¼NW¼;
Sec. 8, E½NE¼, NW¼NE¼, and W½NW¼;
Sec. 9, NW¼NW¼;
Sec. 14, S½SW¼;
Sec. 18, N½NE¼;
Sec. 19, lots 1 to 9, inclusive, N½NE¼, NE¼NW¼, SE¼SW¼, and SW¼SE¼;
Sec. 20, lots 1 to 5, inclusive, N½, N½SE¼;
Sec. 21, N½N½, SE¼NE¼, N½SW¼, and SE¼SE¼;
Sec. 22, W½NW¼, and E½SE¼;
Sec. 23, W½NE¼, SE¼NE¼, NE¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 26, NW¼NW¼;
Sec. 27, W½W½, SE¼SW¼, and SW¼SE¼;
Sec. 28, SE¼NE¼ and SE¼;
Sec. 29, lots 1 to 5, inclusive, lots 7 to 10, inclusive, SW¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, MS 3418, E½, NE¼NW¼, and SE¼SW¼;
Sec. 32, lots 1 to 5, inclusive, E½NE¼, SW¼NE¼;
Sec. 34, N½NE¼.

T. 37 N., R. 5 E.,
Sec. 29, SE¼SE¼;
Sec. 30, SE¼SW¼.

The areas described aggregate approximately 19,684.74 acres in Toole and Liberty Counties.

The purpose of the proposed withdrawal is to protect high value potential habitat for reintroduction of endangered peregrine falcons, areas of traditional religious importance to Native Americans, aquifers that currently provide the only potable water in the area, and seasonally important elk and deer habitat.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director at the address specified above.

Notice is hereby given that a public meeting will be held in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. A notice of the time and place of the public meeting will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to the date.

The temporary uses which may be permitted during this segregative period are: Maintenance of existing communication sites, acceptance of applications for new communication sites on East Butte, and activities which will not disturb the surface (such as hunting, hiking, camping, Native American religious practices, water sampling and vegetation inventories). The existing road closure that is in effect for the SGH will be continued. Limited motorized use is available by permit only to livestock ranchers with

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leases and selected state and federal government activities. Exploration and development on existing oil and gas leases, minor forest product sales, such as post and pole sales, livestock grazing on existing leases, maintenance and repair of livestock facilities, and collection of mineral data by the United States necessary to determine the validity of existing claims are allowed. Applications will also be accepted for supporting rights-of-way for local ranching and domestic needs.

Dated: July 29, 1993.

**Robert H. Lawton,**

*State Director.*

[FR Doc. 93-18447 Filed 8-2-93; 8:45 am]

BILLING CODE 4310-DN-M

## Fish and Wildlife Service

### Availability of Finding of No Significant Impact and Final Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Timber Management Practices in Conecuh and Monroe Counties, AL

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** International Paper Timberlands Operating Company, Ltd. (Applicant), a publicly traded partnership, has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(b) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of a threatened species, the Red Hills salamander (*Phaeognathus hubrichti*), known to occupy lands owned by the applicant in Conecuh and Monroe Counties, south-central Alabama.

The Service also announces the availability of a final environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. The Service is soliciting data on the Red Hills salamander to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

**DATES:** Written comments on the permit application, EA, and HCP should be received on or before 30 days after publication of this notice.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA or HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT 780914 in such comments.

Assistant Regional Director, U.S. Fish and Wildlife Service, Suite 1276, 75 Spring Street, SW., Atlanta, GA 30303, (telephone 404/331-3580, fax 404/730-3419).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965-4900, fax 601/965-4340).

**FOR FURTHER INFORMATION CONTACT:** Wendell Neal at the Jackson, Mississippi, Field Office.

**SUPPLEMENTARY INFORMATION:** The Red Hills salamander is a plethodontid salamander and the sole member of its genus. Its range is confined to a small area of southern Alabama. Portions of the applicant's lands in the Red Hills physiographic province of south-central Alabama are occupied by this species. The applicant owns 29,463 acres of timberland within the Red Hills salamander's historic range in Conecuh and Monroe Counties. Approximately 6,400 acres are considered as occupied range. Optimal and suboptimal salamander habitat occurs in 4,514 acres of the occupied range. The two best habitat classifications (optimal and suitable but suboptimal) contain 92 percent of the occupied Red Hills salamander sites observed during the population survey conducted on the applicant's land. These habitats are characterized as having steep slopes (>30 percent), are within the Tallahatta and/or Hatchetigbee geologic formations, have moist loamy topsoils, and are forested with naturally occurring mixed hardwood/pine and pine/hardwood trees. The applicant's land with moderately steep slopes (15-30 percent), contains only 8 percent of the occupied salamander sites observed.

While the applicant proposes to conduct normal forest management practices in Red Hills salamander habitat with moderately steep slopes (15-30 percent), only 40 percent of the approximately 1,900 acres is occupied by salamanders. Should all individuals be taken as a result of normal forestry management practices, a most unlikely event, the maximum numbers that could be lost would be the salamanders associated with 754 acres of marginal habitat. The total number of salamanders associated with this marginal habitat is highly speculative. Dodd 1988, estimated an average of 5.05 burrows per 100m$^2$ (.025 acres) in optimal habitat. However, how salamander density is related to burrow density is not known, nor is their pattern of distribution. Accordingly, an estimate of the possible take would have little basis.

The EA considers the environmental consequences of three alternatives. The no action alternative would probably result in continued insidious and direct habitat loss for the Red Hills salamander resulting in further loss to the species and continued exposure of the applicant under Section 9 of the Act. This action is inconsistent with the purposes and intent of section 10 of the Act. The delisting of the Red Hills salamander as an alternative was rejected as biologically unjustifiable. Modification of the HCP as an alternative was in part accommodated during the pre-application phase through negotiations between the applicant and the Service. The proposed action alternative is issuance of the incidental take permit. This provides for long term preservation of 4,514 acres of the best available salamander habitat as mitigation to the possible loss of salamanders associated with 754 acres of marginal habitat on the applicant's lands.

Dated: July 19, 1993.

**Nancy C. Coon,**

*Acting Assistant Regional Director, Ecological Services.*

[FR Doc. 93-18378 Filed 8-2-93; 8:45 am]

BILLING CODE 4310-55-M

### Availability of Draft Recovery Plan for the Wahiawa Plant Cluster Cyanea Undulata, Dubautia Paucifloruia, Hesperomannia Lydgatei, Labordia Lydgatei and Viola Helenae for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Wahiawa Plant Cluster *(Cyanea undulata, Dubautia pauciflorula, Hesperomannia lydgatei, Labordia lydgatei* and *Viola helenae).* All of these except *H. lydgatei* occur only in the Wahiawa Drainage basin on the island of Kauai, Hawaii. *H. lydgatei* also occurs in the Waioli Stream valley on Kauai.

**DATES:** Comments on the draft recovery plan must be received on or before October 4, 1993 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (Building Address: 300 Ala Moana Boulevard, Honolulu, Hawaii 96813) (telephone 808–541–2749). Copies of the draft recovery plan are available for review at the Kauai Public Library, 4344 Hardy Street, Lihue, Kauai 96766. Written comments and materials regarding this plan should be addressed to Robert P. Smith, Field Supervisor, at the above Honolulu address. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours, at the above Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen W. Rosa, Fish and Wildlife Biologist, at the Honolulu address given above.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan are *Cyanea undulata, Dubautia pauciflorula, Hesperomannia lydgatei, Labordia lydgatei* and *Viola helenae.* The areas of emphasis for recovery actions for these species are the wet forests of the Wahiawa Drainage area and the Waioli Stream valley on the island of Kauai, Hawaii. Recovery efforts will focus on securing habitat, managing it to remove threats by alien plants, insect infestations, seed predators and feral ungulates, augmenting current populations and establishing new populations.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 27, 1993.

**William E. Martin,**

*Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 93–18420 Filed 8–2–93; 8:45 am]

BILLING CODE 4310–55–M

## National Park Service

### National Register of Historic Places

### Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 24, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 18, 1993.

**Beth M. Boland,**

*Acting Chief of Registration, National Register.*

**ILLINOIS**

**Cook County**

*Garfield Park (Chicago Park District MPS),* 100 N. Central Park Ave., Chicago, 93000837

*Mandel Brothers Warehouse Building,* 3254 N. Halsted St., Chicago, 93000841

**Fulton County**

*Chicago, Burlington & Quincy Railroad Station,* Along 4th Ave. between E. Elm St. and E. Chestnut St., Canton, 93000842

**McHenry County**

*Memorial Hall,* 10308 Main St., Richmond, 93000839

**Peoria County**

*Wear, Washington C., House,* 1 mi. S and 0.4 mi. W of jct. of IL 90 and IL 91, Princeville, 93000838

**Winnebago County**

*Chicago & North Western Railway Stone Arch Bridge,* 0.6 mi. E of IL 251. 0.6 mi. W of I-90 and 0.2 mi. S of Burr Oak Rd., Roscoe vicinity, 93000840

**KANSAS**

**Butler County**

*Beaumont St. Louis and San Francisco Railroad Water Tank,* Jct. of Third and D Sts., Beaumont, 93000843

**MISSISSIPPI**

**Warren County**

*Uptown Vicksburg Historic District (Vicksburg MPS),* Roughly bounded by Locust, South, Washington and Clay Sts., Vicksburg, 93000850

**NEW YORK**

**Dutchess County**

*Bard Infant School and St. James Chapel,* East Market St., Hyde Park, 93000848

*Howard Mansion and Carriage House,* Howard Blvd., Hyde Park, 93000862

*Hyde Park Elementary School,* Post Rd. N of jct. with Fuller Ln., Hyde Park, 93000860

*Hyde Park Firehouse,* Post Rd. S of jct. with Market St., Hyde Park, 93000859

*Langdon Estate Gatehouse,* US N of jct. with Market St., Hyde Park, 93000865

*Main Street—Albertson Street—Park Place Historic District,* Roughly, Main St. Between Park Pl. and US 9, Park between Main and Albertson St. and Albertson adjacent to Park, Hyde Park, 93000856

*Reformed Dutch Church, Parsonage and Lecture Hall,* US 9 N of jct. with Market St., Hyde Park, 93000861

*Rogers, Archibald, Estate,* Jct. of Mansion and Garden Sts., Hyde Park, 93000864

*Roosevelt Point Cottage and Boathouse,* River Point Rd. at the Hudson R., Hyde Park, 93000851

*Roosevelt, Isaac, House,* Riverview Cir., E side, Hyde Park, 93000857

*Rymph, George, House*, US 9 S of Jct. with S. Cross Rd., Hyde Park, 93000863
*Vanderbilt Lane Historic District*, Jct. of Vanderbilt Ln. and US 9, Hyde Park, 93000855
*Hales House*, 23 W. Market St., Hyde Park, 93000858

**Oswego County**

*Riverside Cemetery*, E. River Rd. S of Jct. with NY 57, Oswego Vicinity, 93000854

**Putnam County**

*Indian Brook Road Historic District*, Jct. of Indian Brook Rd. and US 9, Garrison, 93000853

**Rockland County**

*DeBaun, John A., Mill*, NY 59, N Side, opposite Highview Ave., Tallman, 93000852

**PENNSYLVANIA**

**Pike County**

*Nearpass House (Upper Delaware Valley, New York and Pennsylvania, MPS)*, Cemetery Rd., Westfall Township, Mill Rift, 93000849

**SOUTH CAROLINA**

**Sumter County**

*Orange Grove*, Jct. of SC 43 (Black River Rd.) and SC 441, Dalzell Vicinity, 93000845

**TEXAS**

**Harris County**

*Wray, Andrew Jackson and Margaret Cullinan, House*, 3 Remington Ln., Houston, 93000844

[FR Doc. 93-18416 Filed 8-2-93; 8:45 am]
BILLING CODE 4310-70-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA-W-28,460; TA-W-28,460A]**

### Wichita, KS and Portland, OR; Negative Determination Regarding Application for Reconsideration

By an application dated July 16, 1993, the International Association of Machinists (IAM) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 18, 1993 and published in the **Federal Register** on July 9, 1993 (58 FR 37028).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers produce aircraft fuselages exclusively for the Boeing Company. The components (fuselages) are integrated into the final product (airplanes) of the Boeing Company. The findings show that Boeing does not import fuselages.

The union claims that the worker separation are the result of foreign competition especially from the European "Airbus".

The investigation files shows that the commercial market for airplanes declined in 1992 compared to 1991 as a result of the downsizing in the U.S. airline industry. The downsizing was the result of mergers and liquidations reducing the number of major carriers from 21 to 9 by mid-1992. Coupled with this reorganization were a number of large discounted airfare sales which crippled some of the weaker airline carriers.

Company officials stated that while the market is shrinking and domestic and foreign airlines are experiencing financial difficulties and placing fewer orders, nevertheless, Boeing increased its production and share of the domestic market to over 50 percent in 1992.

Other findings show that the government market for airplanes declined in 1992 compared to 1991 as a result of cuts in the military and space spending.

Further, imports of finished articles (airplanes) cannot be considered like or directly competitive with their component parts (fuselages). Only increased imports of articles that are like or directly competitive with those produced at the workers' firm (fuselages) can be considered as contributing importantly to worker separations and declines in sales or production.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of July 1993.

**Stephen A. Wandner,**

*Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.*

[FR Doc. 93-18476 Filed 8-2-93; 8:45 am]
BILLING CODE 4510-30-M

**[TA-W-28,528, TA-W-28,528A]**

### Hilti Steel Industry Division and SISCO, Inc., Tulsa, Oklahoma; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Hilti Steel Industry Division and SISCO, Incorporated, Tulsa, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-28,528 and TA-W-28,528A; Hilti Steel Industry Division and SISCO, Incorporated, Tulsa, Oklahoma (July 21, 1993).

Signed at Washington, DC, this 22nd day of July, 1993.

**Violet Thompson,**

*Deputy Director, Office of Adjustment Assistance.*

[FR Doc. 93-18478 Filed 8-2-93; 8:45 am]
BILLING CODE 4510-30-M

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such

request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 13, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 13, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of July, 1993.

**Violet Thompson,**

*Deputy Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (union/workers/firm) | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| I.C. Rainbows (wkrs) | Homestead, PA | 07/19/93 | 07/07/93 | 28,863 | Ladies' sweaters. |
| CompaAdd Computer Corp. (wkrs) | Houston, TX | 07/19/93 | 07/01/93 | 28,864 | Retail sales. |
| Commonwealth Tobacco Co. (wkrs) | Kenbridge, VA | 07/19/93 | 07/01/93 | 28,865 | Processed tobacco. |
| Eastern Stainless Steel (USWA) | Baltimore, MD | 07/19/93 | 07/01/93 | 28,866 | Stainless steel plates, sheets, slabs. |
| Frenchtown Ceramics | Frenchtown, NJ | 07/19/93 | 07/06/93 | 28,867 | Industrial ceramics. |
| G.E.C. Marconi Electronic Systems (IAM) | San Marcos, CA | 07/19/93 | 07/06/93 | 28,868 | Radar systems. |
| Gould, Inc. (IBEW) | Newburyport, MA | 07/19/93 | 06/30/93 | 28,869 | Electric fuses. |
| Great Land Directional Drilling (Co.) | Houston, TX | 07/19/93 | 07/09/93 | 28,870 | Oil equipment rental and services. |
| Hondo Oil & Gas Co. (Co.) | Calabasa, CA | 07/19/93 | 07/09/93 | 28,871 | Crude oil and natural gas. |
| Essex Garment Mfg. Corp. (ILGWU) | Newark, NJ | 07/19/93 | 07/06/93 | 28,872 | Ladies' undergarments. |
| Ivory International, Inc. (wkrs) | Miami, FL | 07/19/93 | 07/02/93 | 28,873 | Knit apparel. |
| Hecla Mining Co. (wkrs) | Coeur D'Alene, ID | 07/19/93 | 07/07/93 | 28,874 | Corporate office. |
| Seatt Corp. (wkrs) | El Paso, TX | 07/19/93 | 06/18/93 | 28,875 | Smoke detectors, alarms etc. |
| Sheldahl Co. (ACTWU) | Northfield, MN | 07/19/93 | 06/30/93 | 28,876 | Electronic circuitry. |
| Aluminum Co. of America (USWA) | Rockdale, TX | 07/19/93 | 07/06/93 | 28,877 | Primary aluminum. |
| X'Int Diskette Products, Inc. (Co.) | Allen, TX | 07/19/93 | 07/07/93 | 28,878 | Computer disks. |
| Ingersoll-Dresser Pump Co. (USWA) | Allentown, PA | 07/19/93 | 07/01/93 | 28,879 | Centrifugal pumps. |
| Elkay Mining Co. (UMWA) | Lyburn, WV | 07/19/93 | 07/06/93 | 28,880 | Metallurgical coal. |
| Rogge Forest Products (wkrs) | Bandon, OR | 07/19/93 | 07/07/93 | 28,881 | Softwood dimensional lumber. |

[FR Doc. 93-18477 Filed 8-2-93; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Clinchfield Coal Company**

[Docket No. M-93-157-C]

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710-1(a) to its McClure No. 2 Mine (I.D. No. 44-04946) located in Dickenson County, Virginia. The petitioner requests that the standard be modified so that the use of canopies is not required on the Joy 21SC center-driven shuttle cars in heights less than 48 inches, and the Joy 10SC-22 end-driven shuttle cars in heights less than 54 inches. The petitioner asserts that the use of canopies in less mining heights would result in a diminution of safety to the operator.

**2. Mountain Coal Company**

[Docket No. M-93-158-C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.350, previously 30 CFR 75.326, to its West Elk Mine (I.D. No. 05-03672) located in Gunnison County, Colorado. The petitioner requests that condition number 16 of docket number M-90-061-C be deleted from the Decision and Order. Condition number 16 required sections to be designed by entry location, by number of entries, or by pressure differential to enhance the protection of the intake escapeway from contamination by fires in adjacent entries. It also required that such design be approved in the Ventilation System and Methane and Dust Control Plan for the mine.

**3. Nowacki Coal Company**

[Docket No. M-93-159-C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its Nowacki Coal Company Slope (I.D. No. 36-07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**4. Nowacki Coal Company**

[Docket No. M-93-160-C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Nowacki Coal Company Slope (I.D. No. 36-07592) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the

proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**5. Nowacki Coal Company**

[Docket No. M–93–161–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**6. Nowacki Coal Company**

[Docket No. M–93–162–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**7. Nowacki Coal Company**

[Docket No. M–93–163–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**8. Nowacki Coal Company**

[Docket No. M–93–164–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**9. Nowacki Coal Company**

[Docket No. M–93–165–C]

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Nowacki Coal Company Slope (I.D. No. 36–07592) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**10. TITO Coal**

[Docket No. M–93–166–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**11. TITO Coal**

[Docket No. M–93–167–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**12. TITO Coal**

[Docket No. M–93–168–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1002–1 (location of other electric equipment; requirements for permissibility) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**13. TITO Coal**

[Docket No. M–93–169–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable

fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**14. TITO Coal**

[Docket No. M–93–170–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**15. TITO Coal**

[Docket No. M–93–171–C]

TITO Coal, RD 1, Box 67A2, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**16. Little Buck Coal Company**

[Docket No. M–93–172–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**17. Little Buck Coal Company**

[Docket No. M–93–173–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**18. Little Buck Coal Company**

[Docket No. M–93–174–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**19. Little Buck Coal Company**

[Docket No. M–93–175–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**20. Little Buck Coal Company**

[Docket No. M–93–176–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**21. Little Buck Coal Company**

[Docket No. M–93–177–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**22. Little Buck Coal Company**

[Docket No. M–93–178–C]

Little Buck Coal Company, Box 395, RD #4, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and

supplements) to its No. 2 Slope (I.D. No. 36–08299) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**23. Primrose Coal Company**

[Docket No. M–93–179–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**24. Primrose Coal Company**

[Docket No. M–93–180–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**25. Primrose Coal Company**

[Docket No. M–93–181–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**26. Primrose Coal Company**

[Docket No. M–93–182–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken inby the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**27. Primrose Coal Company**

[Docket No. M–93–183–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**28. Primrose Coal Company**

[Docket No. M–93–184–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1002–1 (location of other electric equipment; requirements for permissibility) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**29. Primrose Coal Company**

[Docket No. M–93–185–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**30. Primrose Coal Company**

[Docket No. M–93–186–C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its Primrose Slope (I.D. No. 36–04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

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**31. Primrose Coal Company**

[Docket No. M-93-187-C]

Primrose Coal Company, 214 Vaux Avenue, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1202-1(a) (temporary notations, revisions, and supplements) to its Primrose Slope (I.D. No. 36-04629) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**32. Brookside Coal Company**

[Docket No. M-93-188-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its 4 Ft Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**33. Brookside Coal Company**

[Docket No. M-93-189-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its 4 Ft Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criteria in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**34. Brookside Coal Company**

[Docket No. M-93-190-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its 4 Ft Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have intake air used to ventilate the charging station to continue through the normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**35. Brookside Coal Company**

[Docket No. M-93-191-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its 4 Ft Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**36. Brookside Coal Company**

[Docket No. M-93-192-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.364(b)(1), (4), and (5) (weekly examination) to its 4 Ft Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. Due to hazardous conditions and roof falls, certain areas of the intake air course cannot be traveled safely. The petitioner proposes to examine the intake haulage slope and primary escapeway from the gunboat/slope car with an alternative air quality evaluation at the section's intake level, and to travel and thoroughly examine these areas for hazardous conditions once a month. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**37. Brookside Coal Company**

[Docket No. M-93-193-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1002-1(a) (location of other electric equipment; requirements for permissibility) to its 4 Ft Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**38. Brookside Coal Company**

[Docket No. M-93-194-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1100-2(a)(2) (quantity and location of firefighting equipment) to its 4 Ft Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**39. Brookside Coal Company**

[Docket No. M-93-195-C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its 4 Ft Slope (I.D. No. 36-08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least

the same measure of protection as would the mandatory standard.

**40. Brookside Coal Company**

[Docket No. M–93–196–C]

Brookside Coal Company, Church Street, Spring Glen, Pennsylvania 17978 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its 4 Ft Slope (I.D. No. 36–08218) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before [September 2, 1993.] Copies of these petitions are available for inspection at that address.

Dated: July 26, 1993.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 93–18484 Filed 8–2–93; 8:45 am]

BILLING CODE 4510–43–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–063)]

**NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

**DATES:** August 18, 1993, 8:30 a.m. to 4:30 p.m.; and August 19, 1993, 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** Figgo Corporation, Crystal Square 3, suite 703, 1735 Jefferson Davis Highway, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864–8686).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Facility Working Group Reports
—Facility Study Office Report
—Near Term Activities

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 28, 1993.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer.*

[FR Doc. 93–18479 Filed 8–2–93; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

**Regulatory Guide; Issuance, Availability**

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 to Regulatory Guide 1.9, "Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plants," provides guidance acceptable to the NRC staff for complying with the Commission's requirements that diesel generator units intended for use as onsite emergency power sources in nuclear power plants be selected with sufficient capacity, be qualified, and have the necessary reliability and availability for station blackout and design basis accidents.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 6th day of July 1993.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 93–18430 Filed 8–2–93; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

**Notice of Request for Extension of OPM Form 1495 Submitted to OMB for Clearance**

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension to a form which collects information from the public. OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs, is completed by students applying for Federal positions in the Stay-in-School, Summer Aid and Federal Junior Fellowship Programs. Federal agencies use the information to determine if applications meet the financial needs criteria required by these programs. There are 10,000 individuals who respond annually for a total public burden of 2,500 hours. For copies of this proposal, call C. Ronald Trueworthy on (703) 908–8550.

**DATES:** Comments on this proposal should be received within thirty days from the date of this publication.

**ADDRESSES:** Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, CHP 500, 1900 E Street, NW., Washington, DC 20415
and
Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Paul Robinson, (202) 606–0870.

U.S. Office of Personnel Management.
**Patricia W. Lattimore,**
*Acting Deputy Director.*

[FR Doc. 93–18388 Filed 8–2–93; 8:45 am]
BILLING CODE 6325–01–M

## Privacy Act of 1974: Routine Uses

AGENCY: Office of Personnel Management (OPM).

ACTION: Publication of notice of new routine uses for OPM system of records OPM/CENTRAL–1, Civil Service Retirement and Insurance Records.

SUMMARY: OPM proposes to add two new routine uses to its system of records entitled OPM/CENTRAL–1 to enable it to participate in the governmentwide Federal Salary Offset program.

DATES: The proposed new routine uses will become effective without further notice on August 1, 1993, unless comments dictate otherwise.

ADDRESSES: Send comments to Mary M. Sugar, Deputy Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joy Anderson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management has decided to participate in separate debt collection agreements with the Department of Defense and the U.S. Postal Service. Under these agreements, the Office of Personnel Management would furnish data on individuals who are delinquent in debts owed to the Civil Service Retirement and Disability Fund to central facilities at the Department of Defense and the U.S. Postal Service. These facilities would match the data against active and retired civilian and military employee files of the Office of Personnel Management, the Department of Defense, other Executive, Legislative and Judicial agencies and the U.S. Postal Service. The Debt Collection Act of 1982 provides authority to offset salary payments to current and former Federal employees who are delinquent in debts owed to the Federal government. Government regulations issued under that Act provide for strict due process procedures that must be followed prior to making any offset against current payments. The Government must certify that a debt cannot currently be collected under the salary offset provisions of 5 U.S.C. 5514(a)(1) prior to referring past-due legally enforceable debts to the IRS for offset against Federal income tax refunds of persons owing debts to OPM.

Office of Personnel Management.
**Patricia W. Lattimore,**
*Acting Deputy Director.*

**OPM/Central–1**

SYSTEM NAME:

OPM/CENTRAL–1, Civil Service Retirement and Insurance Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

The following two routine uses are to be added:

pp. To the Defense Manpower Data Center, Department of Defense, and the U.S. Postal Service to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the Office of Personnel Management in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

qq. To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency or receiving or eligible to receive some benefit payments from the agency when the Office of Personnel Management as a creditor has a claim against that person.

[FR Doc. 93–18386 Filed 8–2–93; 8:45 am]
BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32679; International Series No. 565; File No. SR–CBOE–93–05]

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Reduced-Value Long-Term Index Options on the Financial Times-Stock Exchange 100 Index

July 27, 1993.

### I. Introduction

On January 21, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 24.9, "Terms of Index Option Contracts," to allow the Exchange to list and trade cash-settled, European-style long-term index option series ("LEAPS")[3] on a reduced-value Financial Times-Stock Exchange 100 Index ("FT–SE 100" or "Index").[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 32089 (April 1, 1993), 58 FR 18289. No comments were received on the proposed rule change.

### II. Description of Proposal

*A. General*

The Exchange is proposing to list reduced-value FT–SE 100 LEAPS. In addition, the Exchange is also proposing certain clarifying changes that amend Exchange Rule 24.1(g), "Current and Closing Index Value," to provide that the current index value of a reduced-value LEAP is one-tenth (1/10th) of the current index value of the related index option, and to amend Exchange Rule 24.9, Interpretation and Policy .08, to provide that the current index value of the FT–SE 100 Index options shall be

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 248.19b–4 (1992).

[3] LEAPS is an acronym for Long-Term Equity Anticipation Securities.

[4] On June 8, 1993, the Exchange submitted a letter describing, among other things, the CBOE Rules applicable to the listing of expiration months for the proposed reduced-value Index LEAPS, strike price intervals, the calculation of the settlement value for the proposed reduced-value Index LEAPS, and the surveillance procedures which the Exchange plans to use to conduct surveillance of trading relating to the Index. *See* Letter from Kenneth M. Rosenzweig, Schiff Hardin & Waite, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated June 7, 1993 ("CBOE Letter").

one-tenth (1/10th) the value of the underlying index reported by the reporting authority.[6]

The proposed options will be cash-settled reduced-value European-style[6] LEAPS based on the Index. As noted above, the current index value of the proposed reduced-value FT–SE 100 LEAPS will be one-tenth of the current index value of the related FT–SE 100 option. Because the current index value of the full-value FT–SE 100 options traded on the CBOE is one-tenth of the value of the Index as reported by the reporting authority, the current index value for reduced-value Index LEAPS will be 1/100th of the value of the Index as reported.

*B. Composition of the Index*

The FT–SE 100 is an internationally recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized British stocks traded on the London Stock Exchange ("LSE"). All of the Index's component stocks are traded on the LSE by means of the LSE's Stock Exchange Automated Quotation System ("SEAQ"), an electronic information and communications system which provides competing market maker prices for securities traded over the system. SEAQ's quotations of the stocks traded on the LSE are available to all exchanges listing those stocks. Currently, the London International Financial Futures and Options Exchange ("LIFFE") trades futures and options on the Index, and the American Stock Exchange ("Amex"), the CBOE, the Midwest Stock Exchange ("MSE"), the New York Stock Exchange ("NYSE"), and the Pacific Stock Exchange ("PSE") are authorized to trade warrants on the Index.[7] In addition, the Commission approved the listing of options on a reduced-value FT–SE 100 Index on the CBOE.[8]

*C. Index Construction and Calculation*

The FT–SE 100 was created at the end of 1983 by the LSE in conjunction with the Financial Times and a committee of U.K. financial institutions. To qualify for inclusion in the Index, a company must satisfy the following conditions: (1) It must not be regarded as an overseas resident company for U.K. tax purposes; (2) it must not be a subsidiary of another Index constituent; (3) it must pay a dividend (except for existing constituents); and (4) at least 25% of its shares must be publicly held. The Index is calculated by taking the summation of the multiple of the market price for each stock in the Index times the number of shares of that stock outstanding. This sum total is then divided by another number, termed the "divisor," to produce the Index value.[9]

The Index is updated each minute the LSE is open for trading by taking the mid-point between the best bid and best offer prices currently available for each stock. The Index and the prices of the constituent stocks are disseminated by the LSE over SEAQ both in Europe and the U.S. The normal SEAQ trading hours are 9:45 a.m. to 3:30 p.m. London time (3:45 a.m. to 9:30 a.m. Chicago time).

The Index is reviewed on a quarterly basis. Newly eligible stocks and companies which have risen or fallen significantly (according to pre-defined Index criteria) are appropriately inserted or deleted. If a new issue has more than 1.5% of the Index's total market capitalization, it enters the Index at the start of the next business day.

*C. Exercise*

The exercise settlement values for the reduced-value Index LEAPS will be calculated in accordance with Exchange Rule 24.9(g)(5), "Other Methods of Determining Exercise Settlement Value." Under Exchange Rule 24.9(a)(5), the CBOE determines the current index value of the Index at expiration by dividing by ten the value of the Exchange Delivery Settlement Price ("EDSP") used to settle the Index options traded on the LIFFE that expire on the same date.[10] Exchange Rule 24.9(g)(5) states that the EDSP is determined on the last date preceding expiration for which Index values are published, and that the last day of trading for Index options traded on the CBOE shall be the trading day on the CBOE immediately preceding the day on which the EDSP used to calculate the current index value at the expiration of such options is determined. Under proposed Rule 24.1(g), the reduced-value Index LEAPS will be 1/10th of the current index value of the related Index option. As noted above, the current value of a FT–SE Index option is 1/10th the value of the underlying index. Accordingly, the current and closing value for the reduced-value FT–SE 100 LEAPS will be 1/100th of the reported index value and such values will be rounded to the nearest one-hundredth.[11]

*D. Contract Specifications*

Under CBOE Rule 24.9(b)(1)(A), the proposed Index LEAPS will expire from 12 to 36 months from listing, and there may be up to six expiration months. Other than the reduced value, all other specifications and calculations for the reduced-value Index LEAPS will remain the same. For example, the CBOE may list reduced-value LEAPS at six-month intervals and new strike prices may either be near or bracketing the current reduced index value.[12] Additional series may be added when the value of the underlying index increases or decreases by ten to fifteen percent. Under CBOE Rule 24.9, Interpretation .01(a), the strike price interval for the reduced-value Index LEAPS will be no less than $2.50.

*E. Exchange Rules Applicable to Stock Index Options*

The reduced-value Index options will trade independently of and in addition to the full-size Index options traded on the CBOE and will be subject to the same rules that presently govern the trading of CBOE index options, including sales practice rules, margin requirements, and position and exercise limits. CBOE Rule 24.9(b)(1)(A) provides that strike price interval, bid/ask differential and continuity rules shall not apply to index LEAPS until the time to expiration is less than 12 months.

Under CBOE Rule 24.4(e), positions in the reduced-value Index options will be aggregated with positions in full-value Index options, with ten reduced-value

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[6] Exchange Rule 24.1(h), "Reporting Authority," provides that the "term 'reporting authority' in respect of a particular index means the institution or reporting service designated by the Exchange as the official source for calculating and disseminating the current value of the index."

[6] A European-style option can be exercised only during a limited period of time before the option expires.

[7] *See* Securities Exchange Act Release Nos. 27769 (March 6, 1990), 55 FR 9380 (order approving File No. SR–Amex–90–03); 28634 (November 20, 1990), 55 FR 49729 (order approving File No. SR–MSE–90–12); 28399 (August 30, 1990), 55 FR 37390 (order approving File No. SR–NYSE–90–37); and 28106 (June 11, 1990), 55 FR 24955 (order approving File No. SR–PSE–90–15).

[8] *See* Securities Exchange Act Release No. 29722 (September 23, 1991), 56 FR 49997 (order approving File No. SR–CBOE–91–07) ("Reduced-Value FT–SE 100 Approval Order").

[9] The divisor of the Index represents the total capitalization of the Index on its base date of December 30, 1983. The divisor is adjusted to reflect changes in market capitalization, such as stock splits and stock dividends, in order to maintain the continuity of the Index.

[10] Exchange Rule 24.9, Interpretation and Policy .04 explains that the EDSP used to settle Index options traded on the LIFFE is determined currently by calculating the average (excluding the three highest and three lowest) of the Index values for each minute in the interval from 10:10 a.m. through 10:30 a.m. (London time) on the date on which the EDSP is determined. Interpretation and Policy .04 also states that if the LIFFE changes the method it uses to determine the EDSP, the CBOE will use the modified EDSP to determine the current index value at expiration for Index options.

[11] *See* CBOE Letter, *supra* note 4.

[12] *See* CBOE Rule 24.9(b)(2)(B).

contracts equal to one full-size Index option contract for purposes of aggregating the positions. The position limit for FT-SE 100 Index options is 25,000 contracts on each side of the market, provided that no more than 15,000 of the contracts are in series in the nearest expiration month.[15]

*F. Surveillance Agreements*

The Exchange will apply its existing index options surveillance procedures to the reduced-value Index LEAPS. The CBOE has market surveillance agreements with both the former Securities Association ("TSA") in the U.K. and with the LSE.[16] Although TSA has been succeeded by the Securities and Futures Autho9rity, the CBOE's agreement with the organization remains in effect. The CBOE continues to believe that these agreements will enable the Exchange to fulfill its regulatory responsibilities regarding surveillance of trading relating to the Index.[18]

**III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5).[16] Specifically, the Commission believes that the reduced-value Index LEAPS will benefit U.S. investors by providing them with a valuable hedging vehicle that should reflect accurately the overall movement of the U.K. equity market and provide investors with additional means to hedge portfolios against long-term market risk at a reduced cost. The Index options also will act as a performance measure and evaluation guide for stock portfolios with exposure to the U.K. market and will provide a surrogate instrument for trading in the U.K. equities market. In addition, the reduced-value Index LEAPS will offer investors a relatively low-cost means of altering the composition of an international portfolio of stocks without incurring substantial transaction costs.

Because the FT-SE 100 is a broad-based index of actively-traded, well-capitalized stocks, the trading of reduced-value Index LEAPS on the CBOE does not raise unique regulatory concerns.[17] Accordingly, the Commission believes that trading in the reduced-value Index LEAPS will not have an adverse impact on U.S. financial markets. Because the reduced-value Index LEAPS will be trading under the CBOE's existing regulatory regime for index options, which includes position and exercise limits, position reporting requirements, margin requirements, market maker obligations, and disclosure requirements, the Commission believes that the market for reduced-value Index LEAPS should not raise new regulatory concerns.

Specifically, the Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. According, because the reduced-value Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in reduced-value Index LEAPS.

Further, the Commission believes, as it found in the Reduced-Value FT-SE 100 Approval Order, that the Memorandum between the CBOE and the former TSA (which is recognized by the successor organization, the Securities and Futures Authority)[18] is adequate to provide an oversight framework regarding potential manipulation or other trading abuses between the markets with respect to the trading of the reduced-value FT-SE 100 LEAPS and is sufficient to detect as well as deter manipulation.

The Commission believes that the proposal to amend CBOE Rules 24.1(g) and 24.9, Interpretation and Policy .08, to indicate that the current index value of a reduced-value LEAP is ⅒th of the current index value of the related index option should help to clarify the CBOE's rules by specifying the value of reduced-value index options in relation to full-value index options, which in the case of FT-SE 100 Index options is ⅒th the value of the reported Index value.

Finally, the Commission believes that it is reasonable for the CBOE to delete Exchange Rule 24.9(b)(2)[19] because the CBOE's proposal includes the definition of reduced-value LEAPS in Exchange Rule 24.1(g), and because Exchange Rule 24.9, Interpretation and Policy .01(a) states that the strike price interval for reduced-value LEAPS will be no less than $2.50. Because Exchange Rule 24.9(b)(2)(B) repeats other provisions of the CBOE's rules, the Commission believes that the deletion of CBOE Rule 24.9(b)(2)(B) should clarify the CBOE's rules by eliminating a redundant provision.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act[20] that the proposed rule change (SR-CBOE-93-05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-18410 Filed 8-2-93; 8:45 am]

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**[Release No. 34-32681; File No. SR-OCC-92-24]**

## Self-Regulatory Organizations; The Options Clearing Corp. Order Approving a Proposed Rule Change To Expand the Cross-Margin Program Between The Options Clearing Corp. and the Board of Trade Clearing Corporation to Include Non-proprietary Positions of Market Professionals

On September 8, 1992, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR-OCC-92-24) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the Federal Register on December 7, 1992, to solicit comments from interested persons.[2] No comments

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[15] *See* Reduced-Value FT-SE 100 Approval Order, *supra* note 8.

[16] *See* Memorandum of Understanding Concerning the Provision of Information for the Purpose of Regulation and Enforcement between the CBOE and The Securities Association ("TSA") dated August 1, 1990 ("Memorandum"). The Memorandum provides for the exchange of information concerning any security traded through the facilities of the CBOE, any security underlying a derivative instrument traded through the facilities of the CBOE, and any derivative instrument based upon or including a security traded through the facilities of the CBOE. Accordingly, the Memorandum allows for the provision of information relating to the FT-SE 100 options or any securities underlying the FT-SE 100 options.

[17] *See* CBOE Letter, *supra* note 4.

[18] 15 U.S.C. 78f(b)(5) (1994).

[17] As noted above, the Commission has approved the trading of reduced-value FT-SE 100 options on the CBOE. *See* Reduced-Value FT-SE 100 Approval Order, *supra* note 8.

[18] *See* Memorandum, *supra* note 14.

[19] Exchange Rule 24.9(b)(2)(B) currently provides: "Exercise Prices. Reduced-value LEAPS will be computed at one-tenth (⅒th) the value of the underlying index. The interval between strike prices shall be no less than $2.50."

[20] 15 U.S.C. 78s(b)(2) (1982).

[21] 17 CFR 200.30-3(a)(12) (1992).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31537 (November 30, 1992), 57 FR 57854 (File No. SR-OCC-92-24).

were received. As discussed below, this order approves the proposal.

## I. Description

OCC's rule change expands the cross-margining program between OCC and the Board of Trade Clearing Corporation ("BOTCC") to include non-proprietary positions carried by partipating clearing members on behalf of market professionals.[3] When OCC originally filed the OCC/BOTCC cross-margining program, it requested that the Commission approve both a proprietary and a non-proprietary cross-margining program.[4] Because BOTCC's Board of Governors had not approved at that time a non-proprietary cross-margining program, OCC amended the filing and requested that the Commission consider only the proprietary portion of the filing.[5] On October 31, 1991, the Commission approved the OCC/BOTCC proprietary cross-margining program.[6] OCC has now been advised that BOTCC's Board of Governors has approved the non-proprietary cross-margining program and that BOTCC has submitted a filing to the Commodity Futures Trading Commission ("CFTC") for formal approval.

The proposed OCC/BOTCC non-proprietary cross-margining program parallels the existing non-proprietary cross-margining program between OCC and the Chicago Mercantile Exchange ("CME"), and the Amended and Restated Cross-Margining Agreement between OCC and BOTCC ("OCC/BOTCC XM Agreement") is substantially similar to the Amend and Restated Cross-Margining Agreement between OCC and CME ("OCC/CME XM Agreement").[7] The differences between the two programs and agreements are set forth below.

First, the List of Eligible Contracts, which is set forth as Exhibit A to the OCC/BOTCC XM Agreement, is tailored for the OCC/BOTCC cross-margining program.[8] Second, section 3 of the OCC/BOTCC XM Agreement intentionally has been left blank because participating clearing members are not permitted to designate any cross-margin account as a cross-margin pledge account.[9] Third, the term affiliate has been defined in the OCC/BOTCC XM Agreement to conform to the definition set forth in the OCC/ICC/CME Cross-Margining Agreement.[10] The Definition in the OCC/BOTCC XM Agreement focuses on the relationship between the affiliates as opposed to the status of accounts carried by affiliates for one another.[11] Fourth, the language in section 6 of the OCC/BOTCC XM Agreement, Forms of Initial Margin and Method of Holding Initial Margin, provides that securities deposited as initial margin in the OCC/BOTCC cross-margining program shall be valued in accordance with OCC's Rule 604(d). Rule 604(d) now requires common stock deposited as margin to be valued at 50% of current market value. The language of section 6 allows the valuation rate used in OCC Rule 604(d) always to be used as the valuation rate for common stock deposited as initial margin for a cross-margin account without the need for an amendment to the OCC/BOTCC XM Agreement should the Rule 604(d) valuation rate change.[12]

## II. Discussion

The Commission believes that the proposal is consistent with the purposes and requirements of section 17A of the Act.[13] Sections 17A(b)(3) (A) and (F) require that a clearing agency be structured and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities in its custody and control or for which it is responsible.[14] Furthermore, in section 17A(a)(2)(A)(ii) Congress called for the establishment of linked or coordinated facilities for the clearance and settlement of transactions in securities, securities options, futures contracts, and options on futures and commodities.[15] For the reasons set forth below the Commission finds that OCC's proposal is consistent with these statutory directives.[16]

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[3] Under the non-proprietary cross-margining program between OCC and BOTCC, market professionals are defined as (1) any market-maker, specialist, or registered trader as defined in the OCC Rules and (2) any BOTCC member or affiliated exchange member to the extent he or it is trading for his or its own account and not for others provided that such market-marker, specialist, registered trader, BOTCC member, or affiliated exchange member actively trades for his or its own account eligible contracts cleared by each clearing organization.

[4] Securities Exchange Act Release No. 29142 (April 30, 1991), 56 FR 20034 [File No. SR–OCC–91–07] (notice of filing of proposed rule change to establish cross-margining program).

[5] Letter from James C. Yong, Deputy General Counsel, OCC to Jonathan Kallman, Esq., Assistant Director, Division of Market Regulation, Commission (August 27, 1991).

[6] Securities Exchange Act Release No. 29686 (October 31, 1991), 56 FR 56680 [File No. SR–OCC–91–07] (order approving the OCC/BOTCC proprietary cross-margining program).

[7] For a description of the OCC/CME cross-margining program and the OCC/CME XM Agreement, refer to Securities Exchange Act Release Nos. 27296 (September 28, 1989), 54 FR 41195 [File No. SR–OCC–89–01] (order approving OCC/CME proprietary cross-margining) and 29991 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–01] (order approving OCC/CME non-proprietary, market professional cross-margining).

[8] The eligible contracts cleared through OCC are put and call options on the S & P 100 Index, S & P 500 Index, Major Market Index, New York Stock Exchange Composite Index, Financial News Composite Index, Institutional Index, and the Wilshire Small Cap Index. The eligible contracts cleared through BOTCC are futures on the Major Market Index, put and call options on the Major Market Index futures, futures on the Wilshire Small Cap Index, and options on the Wilshire Small Cap Index futures. The inclusion of options, futures, and options on the futures on the Wilshire Small Cap Index in the List of Eligible Contracts was approved by the Commission in Securities Act Release No. 31725 (January 11, 1993), 58 FR 5041 [File No. SR–OCC–92–23]. OCC has filed a proposed rule change to include certain options and futures on foreign currencies in the List of Eligible Contracts [File No. SR–OCC–92–12].

[9] Although section 3 of the OCC/CME XM Agreement, Establishment of Pledge Accounts, provides for the designation of XM accounts as XM pledge accounts, XM pledge accounts currently are not permitted in the OCC/CME XM program.

[10] Securities Exchange Act Release No. 32534 (June 28, 1993), 58 FR 36234 [File Nos. SR–OCC–92–28 and SR–ICC–92–05] (order approving the trilateral cross-margining agreement between OCC, ICC, and CME).

[11] The definition of affiliate as set forth in the original OCC/CME Amended Agreement stated that each entity must be a person whose account with the other entity would not be the account of a customer. This definition was originally adopted in the context of proprietary cross-margining and was intended to insure the appropriateness under Commission and CFTC rules and regulations of commingling funds beneficially owned by each of the pair of affiliates in a proprietary cross-margining account. However, there is no legal necessity for this definition to focus on the status of an account (i.e., proprietary or customer) carried by one affiliate for the other. Therefore, in order to eliminate confusion, the definition of affiliate is based on the relationship of the entities (i.e., control of one entity over the other or the entities being under under common control). The OCC/BOTCC XM Agreement defines affiliate, when used with respect to an OCC clearing member or BOTCC clearing member, as a person or entity that directly or indirectly controls such clearing member or that is directly or indirectly controlled by or under common control with such clearing member. Ownership of 10% or more of the common stock of the relevant entity will be deemed prima facie to give control of that entity. OCC/BOTCC XM Agreement, Section 1(a) and letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (July 7, 1992).

[12] OCC has filed a proposed rule change with the Commission whereby OCC would be permitted to value debt and equity securities deposited as margin at 70% of their current market values rather than at 50%. Securities Exchange Act Release No. 31169 (September 17, 1992), 57 FR 43041 [File No. SR–OCC–92–13] (notice of filing of a proposed rule change).

[13] 15 U.S.C. 78q–1 (1988).

[14] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[15] 15 U.S.C. 78q–1 (a)(2)(A)(ii) (1990). Congress added this section to Section 17A of the Act by enacting the Market Reform Act of 1990. Pub. L. 101–432, 104 Stat. 963 (1990). For a detailed discussion of the progress toward coordination or linkage in the national clearance and settlement system, refer to Commission, Report on Progress Toward Establishing Linked or Coordinated Facilities for Clearance and Settlement of Transactions in Securities, Options, and Futures (March 5, 1993).

[16] For a general discussion of the benefits of cross-margining, refer to Securities Exchange Act Release Nos. 27296 and 29991, supra note 7.

Since it granted approval of the first cross-margining program in 1988,[17] the Commission repeatedly has found that cross-margining programs are consistent with clearing agency responsibilities under section 17A of the Act. As the Commission has previously noted, cross-margining programs, among other things, tend to enhance clearing number and systemic liquidity both in times of normal trading and in times of stress.[18] Under routine trading, clearing members who participate in a cross-margining program have lower initial margin deposits. Reduced margin requirements help clearing members manage their cash flow by increasing available cash to be used for other purposes. In times of market stress and high volatility, lower initial margin requirements could prove crucial in maintaining the liquidity of clearing members and thus would enhance liquidity in the market as a whole. By enhancing market liquidity, cross-margining arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[19]

In addition, the Commission consistently has indicated that by more accurately reflecting a clearing member's portfolio risk, cross-margining arrangements enhance clearing member liquidity and thereby reduce the risk that clearing members will become insolvent in times of extreme market stress. Enhancing clearing member liquidity thus promotes the safety of the entire clearance and settlement system by increasing the liquidity of individual participants and thereby decreasing the threat of a ripple effect of insolvencies caused by the demise of a major market participant.

Cross-margining also enhances the security of the clearing system because when one position is hedged[20] by another position based on the same underlying asset, any decrease in the value of one position will be offset by a corresponding increase in the value of the other position. The main difference between the previously approved OCC/BOTCC proprietary cross-margin program and the non-proprietary cross-margin program being approved in this order is that under the non-proprietary cross margin program the clearing members receive margin benefits for not only the clearing members' own positions but also for the positions of market professionals that the clearing members carry in the non-proprietary cross-margining account.

Unlike a clearing member's proprietary positions, where the clearing member controls the establishment and liquidation of the position, a non-proprietary position presents the risk that a market professional can affect the clearing member adversely by liquidating one side of the combined position. To reduce OCC's risk exposure, OCC has a series of safeguards, which have been subject to Commission review,[21] designed to reduce the risk that a clearing member poses to the system. These procedural safeguards, in conjunction with minimum capital qualifications established by OCC and BOTCC, provide a basis for approval of the proposed non-proprietary cross-margining program.[22]

The Commission believes that the interrelationships between the financial markets and the need for a system of margining which reflects the true risk of combined portfolios justifies cross-margining of futures and options positions. Because the non-proprietary cross-margining program being approved by this order both helps to further such a system of margining and is open to all OCC and BOTCC members that choose to participate, the Commission believes the non-proprietary cross-margining program is fully consistent with Section 17A of the Act and, therefore, is approving OCC's proposed rule change.

## III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.[23]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (File No. SR–OCC–92–24) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[25]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[17] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 (approving non-proprietary cross-margining program between OCC and ICC).

[18] E.g., Securities Exchange Act Release Nos. 30413 (February 28, 1992), 57 FR 7830 (order approving OCC/Kansas City Board of Trade Clearing Corporation cross-margining program for proprietary positions); 29991 (November 28, 1991), 56 FR 61458 (order approving expansion of OCC/CME cross-margining program to include positions held for market professionals); 29568 (October 31, 1991), 56 FR 56680 (order approving OCC/Board of Trade Clearing Corporation cross-margining program for proprietary positions); 27296 (September 28, 1989), 54 FR 41196 (order approving OCC/CME cross-margining program for proprietary positions).

[19] Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by cross-margining arrangements, would "help ensure that a securities market failure does not become a credit market failure." The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury.

[20] In this order, the terms hedge and offset refer to futures and options positions that closely correlate so that possible losses in one instrument can be reduced by possible gains in another instrument (e.g., a long futures contract on the Standard and Poor's 500 Index with a long put option contract on the Standard and Poor's 500 Index). Use of the terms hedge and offset in this order should not be read as necessarily defining or interpreting hedge or offset as those terms are defined in the Act, The Commodity Exchange Act, Bankruptcy Code, or any of the rules and regulations thereunder.

[21] Among others, these safeguards include (1) Stock Clearing Fund and Non-Equity Securities Clearing Fund (Securities Exchange Act Release No. 27410 (October 31, 1989), 54 FR 46666 [File No. SR–OCC–89–06]); (2) the Theoretical Intermarket Margining System ("TIMS") which employs option price theory to identify and measure market risk and to calculate margin requirements (Securities Exchange Act Release No. 32388 (May 28, 1993), 58 FR 31989 [File No. SR–OCC–93–06]); (3) the Concentration Monitoring System which enables OCC to analyze and address risks resulting from concentrated, undiversified options portfolios (Division, Commission, *Market Analysis of October 13, and 16, 1989*, at 137–42 (December 1989)); (4) the Risk Management System which generally allows OCC to evaluate the risks associated with the entire stock, options, and futures portfolios held by its clearing members (Securities Exchange Act Release No. 30348 (February 6, 1992), 57 FR 5105 [File No. SR–OCC–91–17]); (5) the valued securities program eligibility standards for stock and corporate debt which help to ensure that a clearing member's stocks deposited as margin will have an active, liquid market to permit their sale or pledge in the event of a member default (Securities Exchange Act Release No. 29576 (August 16, 1991), 56 FR 41873 [File No. SR–OCC–88–03]) and (6) the valued securities program concentration ratio which limits the account of stock of any one issuer that can be held in an account to ten percent of the margin requirement for the account (*id.*).

[22] OCC requires that each clearing member shall have an initial net capital of not less than $1,000,000 and that the aggregate principal amount of the clearing member's satisfactory subordination agreements, other than such agreements which qualify as equity capital under Commission Rule 15c3–1(d) [17 CFR 240.15c3–1(d) (1992)], shall not initially exceed 70% of the clearing member's debt-equity total. OCC Rule 301(a).

BOTCC's By-Laws require that BOTCC members be CBOT members, which are approved by the CBOT board of directors. The BOTCC membership requirements include, but are not limited to, such things as financial and operational requirements and financial reporting requirements. BOTCC By-Law 401.

[23] 15 U.S.C. 78q–1 (1988).

[24] 14 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–32574; File No. SR–PSE–93–14]

## Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Its Schedule of Rates for Exchange Services

July 26, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 6, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to make certain changes to its rates as set forth in its Schedule of Rates for Exchange Services ("Schedule of Rates"). The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange is proposing to make certain changes to its rates for services on the Exchange's options floor ("Options Floor") and equities floor ("Equities Floor") as set forth in its Schedule of Rates. First, the Exchange is proposing to modify certain of its transaction charges for manual transactions involving market-maker and firm orders, ticket data entry charges, on-line trade comparison charges, and charges for monthly reports.

Second, the Exchange proposes to amend its charges for certain transactions on the Pacific Options Exchange Trading System ("POETS"). These amendments relate to charges for market and marketable limit orders and to clearing fees.

Third, the Exchange is proposing to amend the following Options Floor and market-maker fees and charges: (i) Market-maker fee; (ii) agency stock execution fee; (iii) market-maker give-up charge; (iv) independent broker fee; (v) monthly booth charge; (vi) Quotron rental charge; (vii) general access phone charge; (viii) drop phone charge; (ix) badge fee; (x) trade match terminal fee; (xi) trade match table fee; (xii) POETS workstation fee; and (xiii) printer fee.

Finally, the Exchange is proposing a new $40.00 per month card access fee for a card to permit access through a new security system on the Equities Floor. The fee will be required for employees of member firms who need access to the Equities Floor but who do not now pay a floor privilege fee.

The Exchange believes that the proposed changes will result in charges that are more consistent with the services that the Exchange provides to its members.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–14 and should be submitted by July 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,
*Deputy Secretary.*

[FR Doc. 93–18413 Filed 8–2–93; 8:45 am]
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[Release No. 34–32678; File No. SR–PHLX–93–28]

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Three-Year Rolling Cycle for Certain Minor Rule Plan Fines

July 27, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 28, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX") or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 17 CFR 200.30–3(a)(12) (1992).

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Pursuant to the PHLX's current minor rule violation enforcement and reporting plan ("minor rule plan")[1] and the Floor Procedure Advices ("Advices") thereunder, fines accrue on a one-year rolling calendar basis, so that a second violation of the same provision within one year is subject to the next highest fine (i.e., the second violation within that calendar year is treated as a second occurrence). If the violation is not repeated in that calendar year, then a subsequent violation of that provision is treated as the person's first violation. Pursuant to Rule 19b–4 under the Act, the PHLX proposes to amend its minor rule plan to establish a three-year rolling cycle for nine Advices.[2] Under the three-year rolling cycle, a violation of one of the nine Advices which occurs within three years of the first violation of that Advice will be treated as a second occurrence, and any violation of an Advice within three years of the previous violation of that Advice will be subject to the next highest fine. Thus, a third Advice violation within less than three years after a fine for a second Advice violation will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of that Advice.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Pursuant to the PHLX's current minor rule violation enforcement and reporting plan and the Advices thereunder, fines currently accrue on a one-year rolling calendar basis, so that a second violation of the same provision within one year is subject to the next highest fine (i.e., the second violation within that calendar year is treated as a second occurrence). If the violation is not repeated in that calendar year, then a subsequent violation of that provision is treated as the person's first violation. In order to further discourage the frequency of repeat violations, the PHLX proposes to place nine Advices[3] on a three-year rolling cycle.

Under the three-year rolling cycle, a violation of one of the nine Advices which occurs within three years of the first violation of that Advice will be treated as a second occurrence, and any violation of an Advice within three years of the previous violation of that Advice will be subject to the next highest fine. Thus, a third Advice violation within less than three years after a fine for a second Advice violation will be treated as a third violation of that Advice, even though more than three years may have elapsed since the first violation of that Advice.

The PHLX believes that these nine Advices are appropriate for a three-year cycle because the violations and situations addressed by these Advices are particularly important to discourage in the interest of maintaining a fair and orderly market in PHLX-traded securities. For example, Advice B–1, "Responsibility to Make Markets," requires ROTs to make a two-sided market for any option series trading in the same crowd at which the ROT is trading, when requested by a Floor Official, Specialist, or Floor Broker. The PHLX states that this requirement has been in place since the inception of the PHLX's minor rule plain in 1986 and is important to the functioning of the auction market.

The PHLX believes that the proposal is consistent with section 6 of the Act, in general, and in particular, with section 6(b)(5), in that it is designed to promote just and equitable principles of trade, and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest. The PHLX believes that the proposed three-year rolling schedule should capture repeat violators of the nine Advices to which the proposal applies and should subject those violators to higher fines, which should, in turn, discourage further violations, in the interest of maintaining a fair and orderly market, consistent with section 6(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions

[1] The Exchange's minor rule plan is administered pursuant to PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures."

[2] The following Advices will be subject to the proposed three-year rolling cycle: B–1, "Responsibility to Make Markets;" B–4, PHLX Registered Options Traders ("ROTs") Entering Orders from On-Floor and Off-Floor for Execution on the Exchange; B–8, "Use of Floor Brokers;" C–3, "Handling ROTs' Orders;" C–4, "Floor Brokers Handling Orders for Same Firm;" C–6, "Floor Brokers and Clerks Trading in Their Customer Accounts;" F–6, "Failure to Comply with an Exchange Inquiry;" F–9, "Dual Affiliations;" and F–13, "Supervisory Procedures Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988" ("ITSFEA")."

[3] See note 2, supra.

should refer to File No. SR–PHLX–93–28 and should be submitted by July 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[FR Doc. 93–18414 Filed 8–2–93; 8:45 am]
BILLING CODE 8010–01–M

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[Rel. No. IC–19595; 812–8476]

## Great Hall Value Ten Trust, Series 1, et al.; Application

July 26, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Great Hall Value Ten Trust, Series 1 and subsequent series (the "Trust"), and Insight Investment Management, Inc. or a sponsor controlled by or under common control with Insight Investment Management (the "Sponsor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order that would exempt the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust, and permit the Trust to distribute capital gains dividends within a reasonable time after receipt.

**FILING DATE:** The application was filed on June 28, 1993 and amended on July 26, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 20, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 60 South 6th Street, Minneapolis, Minnesota 55402–4422.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. The Trust will consist of a series of unit investment trusts, each of which will be similar but separate and designated by a different series number ("Trust Series"). Each Trust Series will invest exclusively in equity securities (including common and preferred stocks) or in equity securities and zero coupon obligations. The objective of the Trust Service will vary in accordance with the nature of their respective portfolios. Each Trust Series will be registered under the Act, and under the Securities Act of 1933 by a registration statement on Form S–6.

2. Each Trust Series will be created pursuant to a trust agreement that will contain information specific to that Trust Series and that will incorporate by reference a master trust indenture between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria of section 26(a) of the Act (the "Trustee"). The trust agreement and master trust indenture are collectively referred to as the "Trust Agreement."

3. The Sponsor will perform the normal functions of a unit investment trust sponsor. The Sponsor will deposit zero coupon obligations, if any, and equity securities (collectively, "Securities") in the Trust Series at a price determined by an independent evaluator. The Sponsor expects to deposit in each Trust Series substantially more than $100,000 aggregate value of Securities. All zero coupon obligations in any one Trust Series will have essentially identical maturities, and the Sponsor will purchase all Securities from third parties.

4. Simultaneously with the deposit of Securities in a Trust Series, the Trustee will deliver to the Sponsor registered certificates for units representing undivided interests in the Trust (the "Units") that will represent the entire ownership of the Trust Series (owners of the Units are referred to as "Unitholders"). The Units in turn will be offered for sale to the public by the Sponsor following the effectiveness of the registration statement relating to the Trust Series, and clearance by the securities authorities of the various states. Applicants intend to offer each Trust Series to the public initially at prices based on the closing sale prices of listed equity securities and the ask prices of over-the-counter traded equity securities selected for deposit in the Trust Series, plus the offering side value of the zero coupon obligations contained therein, plus a sales charge.

5. With the deposit of the Securities in the Trust Series containing zero coupon obligations on the initial date of deposit, the Sponsor will have established a proportionate relationship between the zero coupon obligations and equity securities in the Trust Series. The Sponsor will be permitted to deposit additional Securities, which may result in a potential corresponding increasing in the number of Units outstanding. These Units may be continuously offered for sale to the public by means of the prospectus. The Sponsor anticipates that any additional Securities deposited in the Trust Series after the initial date of deposit will maintain the proportionate relationship between the zero coupon obligations and equity securities in the Trust Series. The original percentage relationships between zero coupon obligations and equity securities will be set forth in the prospectus and in each Trust Agreement.

6. Each Trust Series that contains zero coupon obligations will be structured so that, on the specified maturity date for each Trust Series, the initial Unitholders who purchased Units on the first date they were offered for sale will receive back at least the total amount of their original investment in the Trust Series, including the sales charge. To that end, the principal value of the maturing zero coupon obligations in each Trust Series will at least equal the original purchase price of the Units. Zero coupon obligations deposited in the Trust will be non-callable or callable at par.

7. The Trust will redeem Units at prices based on the aggregate bid side evaluation of the zero coupon obligations, if any, and the closing sale prices of listed equity securities, and the bid prices of over-the-counter traded equity securities.

8. Although not obligated to do so, the Sponsor intends to maintain a secondary market for the Units. The secondary market will reduce the number of Units tendered to the Trustee for redemption and alleviate the need to sell portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not

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[4] 17 CFR 200.30–3(a)(12) (1992).

maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series that contains zero coupon obligations until equity securities have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportional relationship to Unit value. The Sponsor also will instruct the Trustee that zero coupon obligations may not be sold to meet Trust expenses.

**Applicants' Legal Analysis**

1. Section 14(a) of the Act generally requires that investment companies have $100,000 of net worth prior to making a public offering. Rule 14a–3 under the Act exempts unit investment trusts from the provisions of section 14(a) if certain conditions are complied with, one of which is that the trust invest only in "eligible trust securities" as defined in the rule. The Trust may not rely on this rule because equity securities are not eligible trust securities.

2. The Sponsor will deposit substantially more than $100,000 of Securities in each Trust Series. However, applicants acknowledge that the SEC has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Under this interpretation, a Trust Series would not satisfy section 14(a) because of the Sponsor's intention to sell all the Units. Accordingly, applicants request an exemption from section 14(a). Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

3. Section 19(b) of the Act and rule 19b–1 thereunder provide that no registered investment company may distribute long-term capital gains more than once every twelve months. Applicants state that these provisions were designed to remove the temptation to realize capital gains on a frequent and regular basis, and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Applicants also state that there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income.

4. Rule 19b–1(c), under certain circumstances, excepts a unit investment trust investing in "eligible trust securities," as defined in rule 14a–3(b), from the requirements of rule 19b–1. Applicants believe that this exception recognizes that the danger of making manipulative capital gains distributions that are detrimental to Unitholders is largely eliminated for unit investment trusts. For these trusts, the conditions under which capital gains are realized are beyond the Sponsor's control, and the capital gains are identified clearly. However, the exception provided by rule 19b–1(c) does not apply to the Trust because the Trust does not intend to invest in "eligible trust securities." Applicants request an exemption from rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio equity securities to be distributed to Unitholders along with the Trust's regular distributions.

5. Applicants submit that the dangers that section 19(b) and rule 19b–1 are designed to prevent do not exist in the Trust. Any gains from the sale of equity securities would be triggered by the need to meet Trust expenses or by requests to redeem Units, events over which the Sponsor and Trust have no control. Applicants state that the Sponsor has control over the actual redemption of Units to the extent it makes a market in Units. However, applicants further state that the Sponsor has no incentive to redeem or to permit the redemption of Units to generate capital gains for the purpose section 19(b) and rule 19b–1 were designed to protect against. Aside from the fact that the Sponsor intends to maintain a secondary market and that the current realization and distribution of gains is not an objective of the Trust, applicants believe that cash generated from the sale of equity securities will be used to pay expenses and to meet redemptions and will not generate distributions to Unitholders. Moreover, applicants believe that because principal distributions are indicated clearly in accompanying reports to Unitholders as a return of principal and are relatively small in comparison to normal distributions, there is little danger of confusion from failure to differentiate among distributions.

6. Applicants believe that the requested exemption is consistent with the purposes and policies of the Act, and would be in the best interests of the Unitholders.

**Applicants' Condition**

Applicants agree to the following condition to the granting of the requested relief:

Applicants will comply in all respects with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18412 Filed 8–2–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Rel. No. 19596; 812–8410]**

## LTV Aerospace Creditors Liquidating Trust; Application

July 26, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

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**APPLICANT:** Official Committee of Unsecured Creditors of the LTV Aerospace and Defense Company (the "Aerospace Committee"), on behalf of the LTV Aerospace Creditors Liquidating Trust (the "Trust").

**RELEVANT ACT SECTIONS:** Order requested under sections 6(c) and 6(e) exempting the Trust from all provisions of the Act except sections 9, 17(a) (as modified), 17(d), 17(e), 17(f), 30(d), 31, and 36 through 53, and the applicable rules thereunder.

**SUMMARY OF APPLICATION:** Applicant seeks an order on behalf of the Trust, which will be formed in connection with the LTV Corporation bankruptcy reorganization to liquidate certain assets assigned by LTV to the unsecured creditors of LTV Aerospace and Defense Company ("Aerospace"). The order would exempt the Trust from provisions of the Act.

**FILING DATE:** The application was filed on May 21, 1993, and amended on June 2, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the

request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Wilmer, Cutler & Pickering, 2445 M Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Staff Attorney, at (202) 272–5287, or Robert A. Robertson, Branch Chief, at (202) 504–2283 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**Applicant's Representations**

1. In 1986, the LTV Corporation ("LTV") and sixty-six of its subsidiaries filed for Chapter 11 protection in the United States Bankruptcy Court for the Southern District of New York. The case is captioned *In re Chateaugay Corp., Reomar, Inc., The LTV Corp., et al., Debtors,* Case Nos. 86 B 11270–11334 inclusive, 86 B 11402, and 86 B 11464 (BRL). Among the LTV subsidiaries filing for Chapter 11 protection was Aerospace, which, prior to bankruptcy, had been engaged in the aerospace and defense business. Applicant was appointed by the United States Trustee for the Southern District of New York on July 30, 1991 to represent the interests of the unsecured creditors of Aerospace.

2. In February 1993, the Bankruptcy Court approved the Second Modified Disclosure Statement pursuant to section 1125 of the Bankruptcy Code for LTV and its subsidiaries and authorized its distribution to claimants and equity security holders. The confirmation hearings on the proposed plans of reorganization of LTV and its subsidiaries (collectively, the "Plan") were held on May 26, 1993, and the confirmation order was signed on that day. One element of the Plan is LTV's assignment of certain illiquid Aerospace assets to the unsecured creditors of Aerospace (the "Aerospace Creditors") through the formation of the Trust.[1] The sole purpose of the Trust, which will be subject to the continuing jurisdiction of the Bankruptcy Court, will be to liquidate the Trust assets in an orderly manner and distribute the proceeds.

3. The Aerospace Assets consist of assets received as consideration for the sale to Ren Acquisition Corporation ("Ren") of the assets of AM General, a debtor subsidiary of Aerospace (the "Ren Obligation"),[2] and certain litigation claims.[3] Due to the nature of the Aerospace Assets, it was impossible to make cash or in kind distributions of the Aerospace Assets to the Aerospace Creditors.

4. The Trust will issue certificates of beneficial interest ("CBIs") to certain Aerospace Creditors in proportion to the amount of their allowed claims. Other Aerospace Creditors will have the right, during the period ending ten days after the effective date for the Plan, to transfer to the Trust certain specified portions of their LTV stock distributions under the Plan in exchange for CBIs. Applicant anticipates that the CBIs, which will be freely transferable, will be listed on a national securities exchange or traded in the over-the-counter market. The CBIs will be subject to registration under the Securities Exchange Act of 1934, and the Trust will file quarterly, annual and current reports with the Commission on Forms 10–Q, 10–K and 8–K.

5. To ensure that the Trust will be operated in the manner contemplated as its sole purpose, the trust agreement will, among other things: (a) Preclude, with certain limited exceptions, the trustees of the Trust from issuing or selling any additional interests in the Trust once the distribution of CBIs to claimants is completed; (b) preclude the Trust from acquiring additional assets, except to the extent such assets are acquired in settlement of the two litigation matters or as a result of future negotiations with Ren to restructure the Ren Obligations; (c) provide that the proceeds of the Aerospace Assets shall be invested, pending distribution to CBI holders, in (i) interest-bearing deposits or short-term repurchase obligations or certificates of deposit of federally insured banks, or (ii) marketable direct obligations of, or guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof; and (d) provide that the trustees shall establish an expense reserve to fund the operating expenses of the Trust. The Trust will have a ten-year duration unless (i) all of the assets are distributed prior to the expiration of the ten-year period, (ii) an earlier termination is required by applicable state laws, or (iii) the holders of at least eighty percent of the interests in the Trust vote to terminate the Trust.

6. Based upon the present portfolio of assets to be held and liquidated by the Trust, the Trust may be an "investment company" within the meaning of sections 3(a)(1) and 3(a)(3) of the Act. To resolve any doubts about the Trust's status under the Act, applicant requests an order exempting the Trust from most provisions of the Act.

**Applicant's Legal Conclusions**

1. Section 3(a)(1) provides that an investment company includes an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Section 3(a)(3) provides that an investment company includes an issuer that engages or proposes to engage in the business of investing, reinvesting, or trading in securities, and owns (or proposes to acquire) investment securities exceeding forty percent of the value of its assets on an unconsolidated basis. Based upon the nature of the Trust's present assets, the Trust may be an investment company under sections 3(a)(1) and 3(a)(3).

2. Applicant requests an order under sections 6(c) and 6(e) of the Act exempting the Trust from all provisions of the Act except sections 9, 17 (as modified), 30(d), 31, and 36 through 53, and the applicable rules thereunder. Section 6(c) provides that the SEC may by order upon application exempt any person or persons, or any transaction or transactions, from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes of the Act. Section 6(e) provides that, if the SEC considers it necessary, certain provisions of the Act shall apply to an investment company that is exempt from any provision of section 7 as if

[1] Under the Plan, the Aerospace Creditors also are entitled to approximately 1.3 million shares of LTV stock and $52 million in cash. These securities and the cash will be distributed directly to the Aerospace Creditors and will not be subject to the Trust. The Trustees may, however, set aside a portion of the $52 million to establish an expense reserve to fund the operating expenses incurred by the Trust.

[2] The Ren Obligations consist of (1) a $15.2 million three-year secured promissory note bearing interest at prime to be paid at maturity (April 30, 1995); (2) up to $30 million in "earn-out" payments, payable in ten annual installments ending no later than 2002 in an amount set at the greater of (a) $3 million or (b) 25 percent of the excess of certain profits of the business acquired from AM General over $15 million; (3) $14 million in confidentiality and non-competition payments, payable in seven equal annual installments ending in 2000; and (4) a beneficial interest in a 10 percent stock interest issued by Ren, consisting of the right to put the stock back to Ren for $5 million in cash on April 30, 1996, $7.5 million in cash on April 30, 1996, or $10 million in cash or a promissory note on April 30, 1997.

[3] The litigation claims consist of (1) the first $10 million in net proceeds actually received pursuant to the claims of Aerospace in the action entitled *LTV Aerospace and Defense Co.* v. *Thomson-CSF S.A.*, Case No. 92–9531A (S.D.N.Y.); and (2) all net proceeds received as a result of the claims against McDonnell Douglas Corporation in *LTV Aerospace and Defense Co.* v. *McDonnell Douglas Corp.*, Case No. 92–11360 (Dist. Ct. Dallas County).

such company were a registered investment company.

3. Applicant believes that, in light of the Trust's limited scope of permissible activities and other circumstances and conditions, the granting of the requested order would provide appropriate protection for investors and would achieve the purposes otherwise intended by the policies and provisions of the Act.

4. Applicant also believes that it is important to recognize that the order confirming the Plan will provide that, during the pendency of the Trust, the activities of the Trust will be subject to the continuing jurisdiction of the Bankruptcy Court. Thus, many activities that might be subject to regulation under the Act also will be subject to the Bankruptcy Court's continuing jurisdiction. That concurrent jurisdiction creates the potential for regulatory duplication, and the delays and costs that would be associated therewith, as well as for conflicts between the Bankruptcy Court and the SEC.

5. Section 17(a)(2) of the Act generally makes it unlawful for any "affiliated person" of a registered investment company, or "affiliated person" of such person, to acquire any security or other property from such investment company. Under the requested exemption, applicant proposes that the Trust be allowed to sell certain assets to its affiliated persons if such sale is approved in advance by the Bankruptcy Court.

6. Accordingly, applicant believes that the issuance of the requested order pursuant to sections 6(c) and 6(e) is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicant's Conditions**

Applicant agrees that the order granting the requested relief shall be subject to the following conditions:

1. The Trust will not hold itself out as being an investment company, but instead will hold itself out as a trust in the process of liquidating and distributing its assets to CBI holders.

2. The Trust will be limited to making temporary investments in (a) interest-bearing deposits or short-term repurchase obligations or certificates of deposit of federally insured banking institutions, or (b) marketable direct obligations of, or guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof.

3. Notwithstanding section 17(a)(2) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust may engage in a transaction of the type described in section 17(a)(2) with the Trust:

(i) If such proposed transaction is first approved by the Bankruptcy Court on the basis that (a) the terms thereof, including the consideration to be paid or received, are reasonable and fair to the Trust, and (b) the transaction is consistent with the Plan; and

(ii) In connection with each such transaction, the Trust shall inform the Bankruptcy Court of (a) the identity of all of its known affiliated persons who are parties to, or have a direct or indirect financial interest in, the known financial interests of such persons in the transaction.[4]

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-18411 Filed 8-2-93; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

### Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 1841]

### United States Man and the Biosphere Program: Request for Proposals for the Tropical Ecosystems Directorate

The Tropical Ecosystems Directorate (TED) of the U.S. Man and the Biosphere Program (U.S. MAB) announces a call for research and activity proposals addressing the theme of sustainable use of tropical forest resources. A small number of research and activity grants, in the range of $5,000 to $12,000, will be awarded in the Spring of 1994. Preference will be given to proposals focusing on the Maya Tri-National Region of Belize, Guatemala and/or Mexico and should complement the core project activities of the TED. Persons interested in applying for these grants are encouraged to first obtain a copy of the TED core project description from the U.S. MAB Secretariat.

**Funding Objectives**

U.S. MAB/TED funding should assist research teams and/or activity projects to: Add a national researcher to their effort; better integrate conservation and sustainable development; add a particular discipline to an ongoing research project; or explore the application of ongoing site-specific research to an additional site in the Maya Tri-National region; or to carry out activities complementary to the TED project in the region. U.S. MAB/TED funding will not be provided for planning purposes.

**Focal Issues**

Within the broad thematic focus of sustainable use of tropical forest resources in the Maya Tri-National Region, U.S. MAB/TED encourages research projects and activities addressing focal issues such as community-based production systems, tropical forest management for timber and/or non-timber forest products, economic valuation and accounting of tropical forest products and services, benefits and costs of low impact uses such as ecotourism, or integration of biodiversity conservation with production forestry.

**Proposal Content**

Each proposal should have a title page, a one page synopsis of the existing research project, up to five pages detailing the proposed use of U.S. MAB/TED funds that would be complementary to the TED core program, and a one-page budget, with justification. No funds are available for institutional overhead; only direct costs can be supported.

**Evaulation and Review Process**

Because of limited available funding, U.S. MAB/TED will give the greatest preference to those proposals that directly complement the objective of the directorate's core program. Proposals will be evaluated for the intrinsic merit of the research or activity, its policy relevance, applicability to promoting sustainable use of tropical forest resources in the Maya Tri-National Region, and the quality and demonstrated productivity of the principals. All potential proposers are encouraged to contact the Secretariat of the U.S. Man and the Biosphere Program, OES/EGC/MAB, U.S. Department of State, Washington DC, 20522-3706. Tel. (703) 235-2946 to request a description of the TED core program.

Persons interested should first submit a one- to two-page project prospectus by November 1, 1993. The U.S. MAB/TED will review the prospectuses and invite full proposals by December 31, 1993. Invitees to submit full proposals will

[4] The word "known" is utilized because there may be situations in which, notwithstanding due inquiry, the Trust will be unable to determine the identity and the extent of the financial interests of all affiliated persons due to the complexity of relationships and holdings, or due to its inability to obtain information necessary to such determination from persons it does not control.

have until March 1994 to submit a full proposal. The U.S. MAB/TED will evaluate all proposals and make final decisions by April 6, 1994. Funds will be committed to the managing institutions identified in the proposals during May 1994. Principals will receive from the U.S. MAB/TED Secretariat copies of all U.S. MAB/TED review evaluations of their proposal and a written notification of the directorate's decision on their project.

**Submission of Proposals**

Mail proposals to U.S. MAB/TED Secretariat, OES/EGC/MAB, room 608, SA–37, U.S. Department of State, Washington, DC 20522–3706.

Individuals choosing to submit their proposals by Express Mail, Federal Express, UPS, etc. must use the following address: U.S. MAB Secretariat, room 608, 1555 Wilson Boulevard, Rosslyn, Virginia 22209.

The Deadline for pre-proposals is November 1, 1993. The Deadline for invited proposals is March 1, 1994.

Dated: July 23, 1993.

**Roger E. Soles,**

*Executive Director, U.S. Man and the Biosphere Program, Office of Global Change.*

[FR Doc. 93–18379 Filed 8–2–93; 8:45 am]

BILLING CODE 4710-09-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–93–33]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of disposition of prior petition.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before October 4, 1993.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 27, 1993.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* 26101.

*Petitioner:* America West Airlines, Inc.

*Sections of the FAR Affected:* 14 CFR 93.123.

*Description of Relief Sought:* To extend Exemption No. 5133 to allow America West Airlines to operate four special slots at Washington National Airport formerly operated by Braniff Airlines under Federal Aviation Administration Exemption No. 3927.

[FR Doc. 93–18449 Filed 8–2–93; 8:45 am]

BILLING CODE 4910-13-M

**[Summary Notice No. PE–93–34]**

### Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions; Correction.

**SUMMARY:** This action nullifies the Petition for Exemption, Docket No. 21780, published on July 22, 1993 (58 FR 39273).

**DATES:** Comments on petitions received must identify the petition docket number involved, and must be received on or before August 23, 1993.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, attn: Rules Docket (AGC–10), Petition Docket no. 21780, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3939.

**SUPPLEMENTARY INFORMATION:** The Civil Air Patrol, Inc., petition for exemption, Docket No. 21780, was inadvertently double-published in the **Federal Register** on July 8, 1993 (58 FR 36731) and July 22, 1993 (58 FR 39273). For the purposes of announcement and public comment solicitation, only the initial publication (58 FR 36731) and comment period applies. The announcement and comment period published on July 22, 1993 (58 FR 39273) is hereby nullified.

Issued in Washington, DC., on July 27, 1993.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

[FR Doc. 93–18450 Filed 8–2–93; 8:45 am]

BILLING CODE 4910-13-M

**[Summary Notice No. PE–93–35]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket

number involved and must be received on or before August 23, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on July 27, 1993.

Donald P. Byrne,

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* 19634.
*Petitioner:* Douglas Aircraft Company.
*Sections of the FAR Affected:* 14 CFR 121.310(d)(4).
*Description of Relief Sought:* To extend Exemption No. 3056, as amended, to allow operators of McDonnell Douglas Model DC-8 series aircraft to operate these aircraft in passenger-carrying operations without a cockpit control device for each emergency light.

*Docket No.:* 26532.
*Petitioner:* McCall Air Taxi, Inc.
*Sections of the FAR Affected:* 14 CFR 43.3(g).
*Description of Relief Sought:* To amend Exemption No. 5381 by deleting Cessna 320-B aircraft and adding Cessna 210 and Britten Norman Islander BN-2A aircraft and to extend Exemption No. 5381 to continue to allow properly trained pilots employed by McCall Air Taxi, Inc. to remove and reinstall cabin seats in company aircraft when certified mechanics are not available.

*Docket No.:* 27313.
*Petitioner:* Business Express.
*Sections of the FAR Affected:* 14 CFR 91.203(a)(b) and 47.49.
*Description of Relief Sought:* To allow unrestricted operation of Business Express (BE) aircraft that carry photocopies vice originals of the registration and airworthiness certificates.

*Docket No.:* 27315.
*Petitioner:* Mr. Thomas T. Gaeta.
*Sections of the FAR Affected:* 14 CFR 135.236(b).
*Description of Relief Sought:* To allow petitioner to perform reserve or standby duty, and thus to perform flight duty if called, during required rest periods.

*Docket No.:* 27336.
*Petitioner:* Newport Aeronautical Development.
*Sections of the FAR Affected:* 14 CFR 36 and Subpart I of Part 91.
*Description of Relief Sought:* To allow the Lockeed L-1011, Serial No. 193E-1067, Registration No. N140SC, to exceed certified noise levels when operating under a Restrictive Category Type Certificate.

**Dispositions of Petitions**

*Docket No.:* 23858.
*Petitioner:* Allison Gas Turbine Division, GMC.
*Sections of the FAR Affected:* 14 CFR 34.21.
*Description of Relief Sought/ Disposition:* To amend and extend Exemption No. 5383 to allow petitioner to continue to produce very low-production engines covered by amended Type Certificate No. 282 for installation on aircraft to be exported from the United States and allow flights for short duration at infrequent intervals, to facilitate the delivery of these aircraft to be exported from the United States.
*GRANT, July 16, 1993, Exemption No. 5680.*

*Docket No.:* 25089.
*Petitioner:* Hawkins & Powers Aviation, Inc.
*Sections of the FAR Affected:* 14 CFR 137.53(c)(2).
*Description of Relief Sought/ Disposition:* To extend Exemption No. 5075 to continue to allow Hawkins & Powers Aviation, Inc. to conduct aerial applications of insecticide from C-118A (DC-6) aircraft, without the aircraft being equipped with a device capable of jettisoning within 45 seconds at least one-half of the aircraft's maximum authorized load of agricultural materials when operated over congested areas.
*GRANT, July 12, 1993, Exemption No. 5075B.*

*Docket No.:* 26101.
*Petitioner:* America West Airlines, Inc.
*Sections of the FAR Affected:* 14 CFR 93.123.
*Description of Relief Sought/ Disposition:* To extend Exemption No. 5133 to allow America West Airlines to operate four special slots at Washington National Airport formerly operated by Braniff Airlines under Federal Aviation Administration Exemption No. 3927.

*GRANT, July 15, 1993, Exemption No. 5133D.*

*Docket No.:* 26176.
*Petitioner:* AMR Combs.
*Sections of the FAR Affected:* 14 CFR 135.165(a)(1) and (6); 135.165(b)(6) and (7).
*Description of Relief Sought/ Disposition:* To extend Exemption No. 5334 to permit AMR Combs, Inc. (AMRC) to operate turbojet airplanes in extended overwater operations with one high-frequency (HF) communication system within certain named areas subject to certain conditions and limitations.

*GRANT, July 13, 1993, Exemption No. 5334A.*

*Docket No.:* 27050.
*Petitioner:* RADEAIR Servicios Aeros.
*Sections of the FAR Affected:* 14 CFR 91.609(e).
*Description of Relief Sought/ Disposition:* To permit RADEAIR to operate its Jet Commander IAI 1121B without an approved cockpit voice recorder (CVR) installed.
*Denial, July 20, 1993, Exemption No. 5692.*

*Docket No.:* 27113.
*Petitioner:* Mr. Mark Heath.
*Sections of the FAR Affected:* 14 CFR 65.71(a)(2).
*Description of Relief Sought/ Disposition:* To enable the petitioner to become eligible for a mechanic certificate and associated ratings although he cannot speak the English language.

*GRANT, July 13, 1993, Exemption No. 5679.*

*Docket No.:* 27135.
*Petitioner:* Joe Brigham Inc.
*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).
*Description of Relief Sought:* To allow Joe Brigham Inc. (JBI) to operate without a TSO-C112 (Mode S) transponder installed on JBI's aircraft operating under the provisions of Part 135.

*GRANT, July 20, 1993, Exemption No. 5681.*

*Docket No.:* 27276.

*Petitioner:* Haines Airways, Inc.
*Sections of the FAR Affected:* 14 CFR 43.3(g).
*Description of Relief Sought:* To allow pilots employed by Haines Airways, Inc. (Haines Airways) to remove and install aircraft seats as required for a particular flight.
*GRANT, July 15, 1993, Exemption No. 5678.*

*Docket No.:* 27354.
*Petitioner:* A.J. Blake, Inc.
*Sections of the FAR Affected:* 14 CFR 137.53(c)(2).
*Description of Relief Sought:* To allow the petitioner to conduct aerial applications of insecticide materials from a PA–23–250 aircraft, without the aircraft being equipped with a device capable of jettisoning within 45 seconds at least one-half of the aircraft's maximum authorized load of agricultural materials when operating over a congested area.
*PARTIAL GRANT, July 12, 1993, Exemption No. 5676.*

[FR Doc. 93–18451 Filed 8–2–93; 8:45 am]
BILLING CODE 4910–13–M

## Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Seattle-Tacoma International Airport, Seattle, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.
**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Seattle-Takoma International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 2, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William E. Brougher; Acting Managing Director, Aviation Division, at the following address: Port of Seattle, Seattle-Takoma International Airport, P.O. Box 68727, Seattle, Washington 98168–0727.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Seattle, under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Renee M. Hall, (206) 227–2662; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW; suite 250, Renton, Washington 98055–4656. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Seattle-Tacoma International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 23, 1993, the FAA determined that the application to impose and use a PFC submitted by the Port of Seattle was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 28, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: January 1, 1994
Proposed charge expiration date: December 31, 1995
Total estimated PFC revenue: $47,500,500.00.

Brief description of proposed projects (Impose and Use): Interconnecting taxiways; runway incursion/electrical upgrade; Runway 16R/34L rehabilitation; Runway 16L/34R safety area expansion; taxiway stop bar system; residential sound insulation; passenger terminal apron replacement; airport comprehensive development plan/3rd runway EIS; Aircraft Rescue and Fire Fighting (ARFF) vehicle; Des Moines Creek relocation design; vacuum style runway sweeper; and additional STS elevators.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Seattle-Tacoma International Airport.

Issued in Renton, Washington on July 23, 1993.

**David A. Field,**
*Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 93–18456 Filed 8–2–93; 8:45 am]
BILLING CODE 4910–13–M

## Federal Railroad Administration

### Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS–93–17) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before August 31, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The waiver petitions are as follows:

**New Jersey Transit Railroad Operation (NJTO)**

**FRA Waiver Petition Docket No. HS–93–17**

The NJTO seeks a permanent exemption from the record keeping requirements of 49 CFR 228.17(a)(5) (identification of enginemen and conductors and their times on duty). The NJTO states that due to its operation of several hundred trains a day and the dispatchers workload this requirement is very burdensome and they should be allowed to record the information electronically. The NJTO is presently implementing a computer assisted train dispatching system which will automatically perform all record keeping requirements. The NJTO provides service throughout the state of New Jersey and parts of New York. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

**Northeast Illinois Regional Commuter Railroad Corporation (METRA)**

**FRA Waiver Petition Docket No. RSOP–93–1**

METRA seeks an exemption from the torpedo requirements of 49 CFR 218.37(a)(1)(i) (iii) and (iv). METRA states that it opposes the use of torpedoes for flag protection, because METRA railroad lines are protected by block signal system on all but a 6.6 mile subdivision. The "1–A" subdivision is 6.6 miles of non-block signal territory and due to the residential and commercial areas adjacent to the right-of-way, the use of torpedoes is not feasible. METRA also states that the South Chicago Branch of the Metra Electric District also prohibits the use of torpedoes due to the same reasons. Flag protection against following trains is performed by the use of fusees but not torpedoes. METRA records indicate no use of torpedoes for flag protection in the past five years. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

**Elgin, Joliet and Eastern Railway Company (EJE)**

**FRA Waiver Petition Docket No. RSOP–92–2**

EJE seeks an exemption from the torpedo requirements of 49 CFR 218.5(1), 49 CFR 218.37(a) (iii) and (iv). EJE states that it operates automatic block signal system over approximately 200 miles of trackage, which is signalled in both directions on single track and with the current of traffic on double track territory. The railroad states that in non-signalled territory, including operating against the current of traffic, a computer assisted track warrant system automatically provides absolute block protection, which relieves the crews from providing flag protection. On-track equipment is operated in accordance with the flagging rules. The railroad states that the use of torpedoes is a potential hazard to employees and the general public. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

**Chicago and Illinois Midland Railway Company (CIM)**

**FRA Waiver Petition Docket No. HS–93–18**

The CIM seeks an exemption so it may permit certain employees to remain on duty not more than 12 hours in any 24-hour period. The CIM states that it is not its intention to employ a dispatcher over 12 hours per day in a two or more shift office under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The CIM provides service over 121 miles of track, (18.2 miles of single track is operated over Illinois Central (IC) and 6.4 miles of double track is operated over the Peoria and Pekin Union Railway Company (PPU)). The CIM operates primarily within the State of Illinois. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**Beech Mountain Railroad Company (BMRR)**

**FRA Waiver Petition Docket No. HS–93–19**

The BMRR seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The BMRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The BMRR provides freight service over 8.2 miles of trackage within Upshur County, West Virginia. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

**The Atchison Topeka and Santa Fe Railway Company (ATSF)**

**FRA Waiver Petition Docket No. RST–93–1**

The Atchison Topeka and Santa Fe Railway Company (ATSF) has petitioned the Federal Railroad Administrator for relief from compliance with the requirements of section 213.241 of the Federal Track Safety Standards (49 CFR 213.241) to the extent that ATSF be permitted to file electronic reports of track inspections instead of reporting track inspections on paper forms signed by the employee making the inspection.

ATSF employs approximately 110 track supervisors who perform various regular inspections of the railroad tracks owned by ATSF as required by the Federal Track Safety Standards (49 CFR Part 213). These inspection reports are currently written on paper forms, and mailed daily to company officers who are responsible for supervising track inspection and maintenance.

The reports are reviewed by successive levels of supervision and forwarded to the next higher level until they reach the cognizant ATSF region headquarters. There they are filed and made available to the Federal Railroad Administrator for inspection and copying when necessary. Approximately 600 such forms are processed by ATSF each week.

ATSF proposes to adopt a reporting procedure by which the track inspection reports will be entered by the inspector into an electronic mail system and transmitted in succession to the roadmaster and then to the regional office. Persons authorized access to the report would be assigned an identification code to protect the security of the report. Copies of reports could either be reviewed on a terminal screen, or printed on paper, at any location on the ATSF electronic mail system. Elimination of original paper inspection reports would render it impracticable for the reporting inspector to place a traditional personal signature on the report.

Issued in Washington, DC on July 27, 1993.

**Phil Olekszyk,**

*Deputy Associate Administrator for Safety.*

[FR Doc. 93–18446 Filed 8–2–93; 8:45 am]

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**Order Adjusting International Cargo Rate Flexibility Level**

Policy Statement PS–109, implemented by Regulation ER–1322 of the Civil Aeronautics Board and adopted by the Department, established

geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 93–5–40, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning August 1, 1993, we have projected non-fuel costs based on the year ended March 31, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 93–7–41 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic—1.2151
Western Hemisphere—1.1048
Pacific—1.4528

For further information contact: Keith A. Shangraw (202) 366- 2439.

By the Department of Transportation: July 27, 1993.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Policy and International Affairs.*

[FR Doc. 93–18444 Filed 8–2–93; 8:45 am]
BILLING CODE 4910–62–P

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[Docket No. 37554]

## Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 93–5–39 established the first interim SFFL, and Order 93–5–39 established the currently effective two-month SFFL applicable through July 31, 1993.

In establishing the SFFL for the two-month period beginning August 1, 1993, we have projected non-fuel costs based on the year ended March 31, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 93–7–43 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic—1.5047
Latin America—1.3432
Pacific—1.8634
Canada—1.4415

For further information contact: Keith A. Shangraw, (202) 366–2439.

By the Department of Transportation: July 27, 1993.

**Patrick V. Murphy,**

*Acting Assistant Secretary for Policy and International Affairs.*

[FR Doc. 93–18445 Filed 8–2–93; 8:45 am]
BILLING CODE 4910–62–P

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## NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[Docket No. 93–44; No. 1]

## Chrysler Corp.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 108 and 111

Chrysler Corporation of Sterling Heights, Michigan, has petitioned for a temporary exemption from several requirements of Motor Vehicle Safety Standards Nos. 108 *Lamps, Reflective Devices, and Associated Equipment,* and 111 *Rearview Mirrors.* The basis of the petition is that requiring compliance would prevent it from selling a motor vehicle whose overall level of safety is equivalent to or exceeds the overall level of safety of nonexempted motor vehicles.

Notice of receipt of the petition is published in accordance with the regulations of the National Highway Traffic Safety Administration on this subject (49 CFR part 555) and does not represent any agency decision of exercise of judgment concerning the merits of the petition.

Chrysler wishes to institute a factory delivery program for two of its passenger cars, similar to programs established by European manufacturers where Americans purchase vehicles in Europe meeting the Federal motor vehicle safety standards, drive them there on holiday, and then return with them to the U.S. The purchasers of the vehicles for which exemptions are sought would be "European citizens who are either visiting or temporarily assigned to work in the U.S.", who would drive them in the U.S., and export them to their home countries. Chrysler notes that these vehicles would have to be built to European safety specifications, and that this necessitates a noncompliance with two Federal motor vehicle safety standards which, absent an exemption, precludes sale and use of the cars in the United States.

The petitioner seeks a 2-year exemption to cover, as limited by 15 U.S.C. 1410, not more than 2500 vehicles each year. These vehicles (some of them sold under different names abroad) are the Eagle Vision, Chrysler New Yorker, Plymouth/Dodge Neon, and Jeep Wrangler, Cherokee, and Grand Cherokee. The vehicles would comply with all Federal motor vehicle safety standards with the exception of portions of the standards on lighting and rearview mirrors. Specifically, the headlamps will meet European (ECE R20) photometrics rather than those of Standard No. 108, the side marker lamps and reflectors will be eliminated, and the turn signals and stop lamps will meet the photometrics of ECE R7 and R6 respectively. The outside driver's side rearview mirror will be convex, and the passenger side convex mirror will not have the words "Objects in mirror are closer than they appear" etched on them."

Chrysler argues that the noncomplying vehicles will nevertheless have an equivalent overall level of safety for the following reasons. The vehicles will be equipped with lamps not required by Standards No. 108, such as rear fog lamps and "side repeater (turn signal) lamps," which "will serve to improve the conspicuity of the vehicle, and in the aggregate should compensate for the photometric variances." It notes that the center highmounted stop lamps will be supplied but will not be wired for use while the vehicles are in the U.S. Vehicles intended for use in Norway and Sweden may be equipped with daytime running lamps. With respect to headlamp photometrics, Chrysler states that safety evaluation of U.S. and European specifications tends to be subjective, that each has trade offs, and that a number of countries "including Sweden, Switzerland, Canada, Japan, and the Persian Gulf States permit headlamps with either European or U.S. beam patterns." More specifically, it discusses beam pattern differences. On the upper beam, minimum values for test points at 9 and 12 degrees left and right of H–V will not be met (Chrysler does not specify the shortfall) but since "the primary purpose of the high beam is to provide illumination down the road, we do not believe that providing illumination below the minimum value at these wide test points poses a safety concern." As for the lower beam, the lamp provides only 80% of the minimum value at test point 2D 15R, and 67% at 1½ D 2R. But since the drivers of the cars "will be Europeans who are accustomed to the forward illumination characteristics of these vehicles" the noncompliant lighting "should provide 'equivalent safety' for

these drivers compared to vehicles with headlights complying with FMVSS 108 photometrics."

As for the noncompliance with Standard No. 111 Chrysler submits that right hand mirrors without legends are used throughout Europe. Further, many European vehicles also use convex mirrors on the driver's side. In sum, "since Europeans are more accustomed to convex mirrors than U.S. drivers, there is no safety value added by providing flat mirrors on the driver's side or the passenger side etched explanation to the users of the subject vehicles."

In addition to the supplemental lighting equipment heretofore described, the vehicles will be equipped with safety equipment not required under U.S. standards. This equipment includes "vehicle sensitive and webbing sensitive seatbelt retractors", ECE requirements for more rounded surfaces on the inside and exterior of the vehicle, and ECE requirements for antiskid braking systems. Further, the mirrors that are required by the ECE have an added safety feature in that they fold-way rearward and upward.

According to the petitioner, Volvo Cars of North America, Volkswagen of America, and Mercedes-Benz of North America have argued that European lighting and mirror requirements do not compromise the safety provided by the Federal motor vehicle safety standards.

Chrysler submits that an exemption will be in the public interest in "improving the severe trade deficit currently being suffered by the U.S.", albeit in a small way. Further, the potential exists "for this type of export activity to expand in the future to include additional car models, and perhaps make a more significant contribution to reducing the deficit, provided regulatory constraints do not preclude such activity." Finally, Chrysler believes that the program has the potential to increase tourism due to the incentive of buying a vehicle in the United States.

Interested persons are invited to submit comments on the petition of Chrysler Corporation described above. Comments should refer to the docket number and be submitted to Docket Section. Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received are available for examination in the docket both before and after the closing date. Comments received after the closing date will be considered to the extend practicable. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date:

**Authority:** 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: July 27, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–18381 Filed 8–2–93; 8:45 am]

BILLING CODE 4910–59–M

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## National Highway Traffic Safety Administration

**[Docket No. 9351, Notice No. 1]**

## Criteria for the Use of the "Star of Life" Symbol by State and Federal Agencies Involved With Emergency Medical Services

**AGENCY:** National Highway Traffic Safety Administration, (NHTSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** This Notice requests public comments on NHTSA's guidelines for the authorized use of the blue "Star of Life" symbol for emergency medical services.

**DATES:** Comments on this notice are due no later than September 2, 1993.

**ADDRESSES:** Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m.).

**FOR FURTHER INFORMATION CONTACT:** Susan D. Ryan Chief, Emergency Medical Service Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; phone (202) 366–5440.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. NHTSA's Authority*

The Secretary of Transportation approved the use of the blue "Star of Life" as a Departmental program symbol in a memorandum dated November 18, 1976. On February 1, 1977, the Commissioner of Patents and Trademarks issued to NHTSA a certificate of registration for the "Star of Life" symbol.

The registration of the blue "Star of Life" gives NHTSA exclusive legal authority to control the use of the mark throughout the United States. This registration remains in effect for 20 years and may be renewed for an additional 10 years in accordance with 15 U.S.C. 1059.

*B. Current Guidelines*

In accordance with its registration as a certification mark, the "Star of Life" may be used on emergency medical care vehicles to certify that they meet DOT standards, by emergency medical care personnel to certify that they are trained to meet DOT standards, and on road maps and highway signs to indicate the location of or access to qualified emergency medical care services.

In a memorandum dated September 14, 1977, the Administrator of NHTSA authorized the States and the Federal agencies that are involved with emergency medical services to permit use of the "Star of Life" certification mark according to several criteria and specifications outlined in the memorandum. These criteria and specifications are listed in Appendix A of this Notice.

*C. Request for Modification of Guidelines*

In July 1992, a State requested an advisory opinion from NHTSA on the use of the "Star of Life" symbol in the State's Emergency Medical Services Do Not Resuscitate (EMS–DNR) program. The State proposed to use the mark to alert State certified prehospital emergency medical care providers that a person wearing a bracelet which displays the "Star of Life" and the letters "EMS–DNR" does not wish to be resuscitated. NHTSA determined that this use does not meet the criteria outlined in the September 14, 1977 memorandum. Accordingly, NHTSA denied the State's request to use the "Star of Life" in connection with the EMS–DNR program.

Since July 1992, the National Association of EMS Physicians (NAEMSP), the National Association of State Emergency Medical Services Directors (NASEMSD), and the American College of Emergency Physicians (ACEP) have contacted NHTSA regarding their support for the use of the "Star of Life" by the State's EMS–DNR program. These organizations make four primary arguments in support of the proposed use of the "Star of Life" in EMS–DNR programs. First, they contend that the proposed use would provide EMS personnel with a consistent location to look for EMS orders on terminally ill persons who desire not to undergo resuscitation. The organizations consider the proposed use appropriate

because the DNR bracelet is intended to alert EMS personnel of a medical condition or appropriate medical treatment.

Second, the organizations argue that the "Star of Life" is a unique symbol widely recognized by EMS personnel. They assert that the "Star of Life" has come to symbolize the entire EMS system rather than the limited criteria in the NHTSA Memorandum of September 14, 1977.

Third, the organizations contend that NHTSA has "historically" granted State EMS offices some discretionary authority regarding the use of the "Star of Life" within their respective States. Thus, NHTSA should allow the respective State EMS offices to determine the use of the "Star of Life" on EMS/DNR bracelets.

Finally, at the time the guidelines were developed, the possibilities for the use of the "Star of Life" on a DNR bracelet were not considered. The organizations urge NHTSA to reexamine the appropriate use of the symbol and either rescind or reissue the guidelines to permit such use.

NHTSA continues to have concerns about expanding the authorized uses of the blue "Star of Life." The agency recognizes that permitting the use of the "Star of Life" symbol for purposes other than to certify may result in cancellation of the symbol's registration as a certification mark. Lanham Act 14(e), 15 U.S.C. 1064(5). In addition, permitting the use of the "Star of Life" for too many disparate purposes may result in the symbol becoming a generic mark and hence, subject to cancellation of its registration.

NHTSA registered the "Star of Life" as a certification mark to assist the general public in identifying whether EMS personnel and equipment are certified in accordance with DOT standards and to assist the public in locating and accessing these qualified EMS personnel and equipment. The agency is concerned that the proposed DNR bracelet with the "Star of Life" symbol will confuse the general public because the public will not be able to identify clearly qualified EMS personnel. For example, a member of the general public may see a person wearing the proposed bracelet, mistakenly assume that person is a qualified EMS personnel, and spend vital moments seeking assistance from the wearer rather than from qualified EMS personnel. In addition, NHTSA questions whether authorization of the symbol for EMS–DNR bracelets will expand the use of the symbol to other personal items and alert EMS personnel to other medical conditions and treatment. NHTSA is concerned that such expansion may create not only public confusion but also dilute the symbol's strength as a certification mark.

Furthermore, there are symbols currently being used, such as the Medic Alert symbol, for the specific purpose of alerting EMS personnel to a patient's condition and the particular manner to administer treatment. NHTSA did not and does not intend for the "Star of Life" to compete with these symbols. NHTSA's experience with EMS providers leads us to believe that they have no difficulty recognizing individuals whose specific needs are identified by a Medic Alert or other private symbol.

NHTSA recognizes that its current guidelines for the use of the "Star of Life" certification mark have not been revised since their publication in September 1977. Since that time, NHTSA occasionally has been asked to and has authorized various uses of the "Star of Life" that were not originally contemplated in the guidelines. However, such uses have been and must be consistent with the purposes for which the symbol was registered and have been authorized by the agency on rare occasions only. For example, NHTSA has authorized the use of the symbol on an EMT videotape concerning prehospital management of the Alzheimer's disease patient. The agency also has authorized a toy manufacturer's use of the "Star of Life" on a toy ambulance for the educational value of teaching children to identify the "Star of Life" and to equate the symbol with qualified EMS providers.

No one could have predicted in 1977 that the agency would receive such varied requests to use the "Star of Life" certification mark or that the mark would achieve widespread recognition among the EMS community and the general public. The EMS community and the States have devoted a great deal of effort in developing the recognition of the "Star of Life" mark across the county. Therefore, it is appropriate that NHTSA reevaluates its guidelines in view of the current trends and possibilities for the symbol's use. This reevaluation also includes an examination of the symbol's purpose and whether that purpose should be expanded further at this time.

## II. Written Comments

NHTSA requests public comment on whether the agency should authorize the use of the "Star of Life" symbol in EMS–DNR programs, particularly its use on personal items, such as bracelets, necklaces, etc. to identify individuals who are DNR candidates. Commenters should include the following in their discussion of this issue:

1. The benefits and disadvantages of using the "Star of Life" to identify persons requesting a particular treatment or withholding of treatment from qualified EMS personnel;

2. Examples of State EMS programs which have developed or are developing EMS–DNR identification programs and the identification symbols used in those programs;

3. In States with established EMS–DNR programs, explain the difficulties, if any, that EMS personnel are encountering with the identification symbols used for EMS–DNR candidates.

4. To what extend the proposed use of the "Star of Life" symbol will confuse the general public as to the identification and location of qualified EMS personnel and equipment;

5. The competitive effect of the proposed "EMS–DNR" bracelet/"Star of Life" symbol on private organizations that offer services which alert EMS personnel to a patient's condition; and

6. Should the agency authorize the use of the "Star of Life" symbol for services or programs that would alert EMS personnel to other medical conditions of a patient, i.e., diabetes, heart diseases, high blood pressure.

NHTSA also requests comments on whether the agency should make other revisions to its guidelines that describe the authorized uses of the "Star of Life." See Appendix A of this Notice for the criteria and specifications for the authorized use of the "Star of Life."

Commenters are requested to address the following:

1. Which criteria and specifications should be revised and why;

2. Discuss the current trends and uses of the "Star of Life" symbol;

3. Discuss other possible uses of the "Star of Life" symbol by the EMS community and whether these uses are within the current guidelines and the purpose for the symbol's registration as a certification mark;

4. Propose criteria and specifications that would reflect the current trends and uses of the "Star of Life" symbol; and

5. Discuss whether the purpose of the "Star of Life" symbol has expanded since its inception and how the agency can best reflect this purpose in its guidelines.

Interested persons are invited to submit comments on this proposal. It is requested, but not required, that ten copies be submitted.

Comments should not exceed 15 pages in length. Necessary attachments may be added to the submission without regard to the 15-page limit. This

limitation is intended to encourage commenters to detail their primary arguments in a concise manner. All comments received before the closing date indicated above will be considered and will be available for examination in the document at the above address. To the extent possible, comments filed after the closing date will also be considered. However, the issuance of new guidelines may occur at any time after that date. The agency will continue to file relevant material in the document as it becomes available after the closing date. It is recommended that interested persons continue to examine the docket for new material.

Persons who wish to be notified upon receipt of their comments in the docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receipt of the comments, the docket supervisor will return the postcard by mail.

Issued on: July 26, 1993.

**Michael Brownlee,**

*Associate Administrator for Traffic Safety Programs.*

## Appendix A—Criteria and Specifications for the Use of the "Star of Life" Symbol [1]

*Criteria*

a. To identify Emergency Medical Care Vehicles-Ambulances that meet DOT type and equipment criteria.

b. To identify medical equipment and supplies for installation and use in the Emergency Medical Care Vehicle-Ambulance.

c. To indicate the location of qualified emergency medical services.

d. To indicate access to qualified emergency medical services.

e. On shoulder patches to be worn only by personnel having satisfactorily completed any of the DOT training courses or an approved equivalent and those personal who by title and function administer, directly supervise, or otherwise participate in all or a specific part of a National, State, or community EMS program or service in accordance with DOT criteria for Standard 11.

f. On EMS personal items such as badges, lapel pins, plaques, buckles, name plates, etc.

g. On printed material having direct EMS application such as books, pamphlets, letterheads, plans, manuals, reports, publications, etc.

The following additional provisions apply to the use of the "Star of Life":

h. Administrative personnel who may wear the "Star of Life" include program coordinators and staff, project directors and staff, permanent EMS' committees, councils, and advisory groups.

i. Shoulder patches should be a plain blue "Star of Life" on a white square or round background. Function-identifying letters or words are to be printed on bars and attached across the bottom separately. Edges of the basic patch and functional bars are to be embroidered. National Registry patches should be awarded precedence for the Emergency Medical Technician-Ambulance (EMT-A) and Paramedic (EMT-P) when personnel become eligible.

j. In application of the "Star of Life" to personal items, functional identification and physical characteristics shall be as follows: For Administrative and dispatcher personnel the "Star of Life" is to have a silver colored edge and the staff of Aesculapius, a silver colored serpent. For EMT's and other EMS patches, the edge shall be gold in color with a gold-colored serpent. A white background for the "Star of Life" is not necessary for those items.

k. The shoulder patches, and other EMS patches, may be displayed on uniform pockets. The symbol may also be displayed on collars and headwear. Appropriate dimensions, in addition to those provided under the heading, Specifications, are as follows: For shoulder patches the "Star of Life" bars should be 3 9/16" by 1 3/16". Functional bars and lettering as indicated.
Lapel pin and collar symbol dimensions:
Length of "Star of Life" bar—3/4"
Width of "Star of Life" bar—3/8"
Length of Staff—9/16"
Uniform headwear dimensions:
Overall dimensions w/white background 2" by 2"
Length of "Star of Life" bar—1 3/4"
Width of "Star of Life" bar—7/8"
Length of Staff—1 9/16"

When displayed on headwear, functional bar should be 2" by 3/8" width, 1/8" lettering.

For other uses, dimensions may be optional.

Entrepreneurs engaged in the production of goods or publication of printed material are authorized to employ the symbol in accordance with this memorandum. Its registered status must be indicated as set forth above [2]

m. Lettering is not to be superimposed on the "Star of Life."

n. The Staff of Aesculapius is to be white at all times except as indicated in subparagraph j above. When used for highway signing, colors shall be reversed.

Those concerned should be prepared to provide evidence of eligibility to procure, distribute, or display the "Star of Life" as provided for in this memorandum. Authenticated documents, such as certificates, cards, licenses, and official correspondence are examples of such evidence of eligibility.

*Specifications*

BILLING CODE 4910-22-M

[1] Source: NHTSA Memorandum of September 14, 1977.

[2] As a registered certification mark, the "Star of Life" must always be accompanied by the symbol consisting of a capital letter R surrounded by a circle, i.e. ®. This marking shall appear immediately adjacent to the "Star of Life" on all decals, uniform patches, printed material, plaques, pins, buckles, name plates, etc. Where the item consists solely of the "Star of Life" and does not have an adjacent surface of surrounding area (e.g., a lapel pin), the ® shall appear on the reverse side of the item. *See* NHTSA Memorandum of September 14, 1977.

## Specifications

**COLOR:** Pure Primary Blue (approximate). Above print may be used as sample. Detailed color range data will be provided.

**DIMENSIONS:**

| | SIZES | | |
|---|---|---|---|
| | A | B | C |
| Length of bar | 3" | 12" | 16" |
| Width of bar | 3/4" | 3" | 4" |
| Length of staff | 2 1/2" | 9 1/2" | 12 1/2" |
| White background (if required) | 4" sq. | 14" sq. | 18" sq. |

All angles 60°. Deviations in size must be proportionate.

The registration mark R should be centered in the manner indicated above. The diameter of the circle should be 1/4 of the width of the bar. The letter R should not touch the circle.

Location: For appropriate location on the ambulance see the Federal Specifications for Ambulance-Emergency Care Vehicle * KKK-A-1822 GSA-FSS.[1]

Note: "Star of Life" symbols are not available from the Department of Transportation. Stencils or decals for applying the symbol must be purchased locally.

[1]Available from: General Services Administration (3FRS13S), Bldg. 197, Washington Navy Yard, Washington, D.C. 20407.

**EMS Patches**

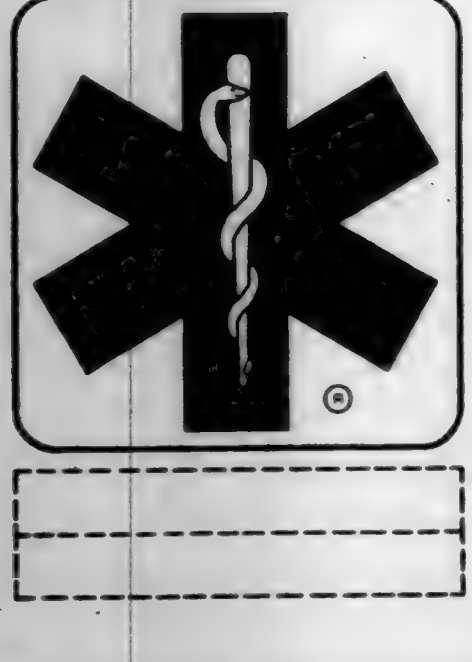

| | |
|---|---|
| EMT-A | EMT-P |
| EMC-FR | EXTRICATION |
| DISPATCHER | ADMINISTRATION |

**Legend**

EMT-A —Emergency Medical Technician-Ambulance
EMT-P —Emergency Medical Technician-Paramedic
EMC-FR—Emergency Medical Care-First Responder

**Overall Patch Dimension 3 1/2" by 3 1/2"**

| | |
|---|---|
| Length of staff | 2 5/8" |
| Length of bar | 3 1/2" |
| Width of bar | 1/2" |
| Width of border | 1/16" |
| Height of letters (Ex. EMT-P) | 5/16" |
| Height of words (Ex. DISPATCHER) | 1/4" |

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[FR Doc. 93-18186 Filed 8-2-93; 8:45 am]
BILLING CODE 4910-60-C

[Docket No. 93–56; Notice 1]

## Porsche Cars North America, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Porsche Cars North America, Inc. (Porsche) of Reno, Nevada, has petitioned the agency on behalf of Dr. Ing. h.c.F. Porsche AG of Stuttgart, Germany. Porsche has determined that some of its replacement seat belts fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 573. Porsche has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Between 1967 and June 1993, Porsche manufactured approximately 14,000 replacement seat belts which did not include the installation, usage, and maintenance instructions required by Standard No. 209.

Standard No. 209, section S4.1(k) requires that "[a] seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles * * *." In addition, section S4.1(l) requires that "[a] seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened." The instructions pertaining to threading and nonlocking retractors do not apply to Porsche's belt designs. Porsche supports its petition for inconsequential noncompliance with the following:

Porsche has been supplying replacement seat belts since 1967 and is not aware of any complaints, incidents, or injuries attributable to the lack of installation, use, or maintenance instructions during this period of time. Like other vehicle manufacturers, Porsche maintains a detailed system of part numbers and information which is utilized by its dealer network to select and order replacement parts. The replacement seat belts are specified by location (i.e., left front seat), model type, and model year in the parts fiche or catalogs. Applicability of a seat belt is thus specified by the part number in the parts system.

Installation instructions for seat belts are provided in Porsche workshop manuals which are supplied to every Porsche dealer and which are also available for purchase [by] any customer. In addition, anyone replacing a seat belt is likely to be able to reverse the removal steps for the belt being replaced. Any concerns that the replacement belt may be incorrect can be addressed by comparison with the old belt, or if it is not available, checking for the logical fitment of the new belt. In most cases, it will be obvious to the installer whether or not the belt fits properly in the available location.

Instructions for use and maintenance are supplied in Porsche's Owner's Manuals. These instructions follow industry norms and contain no special requirements. [Porsche believes that d]ue to the small number of Porsche vehicles on the road and the very small number of replacement belts sold by Porsche, the probability of a customer needing this information and not having access to it in an owner's manual would be slight.

Porsche notes that NHTSA recently granted similar petitions from Nissan and other manufacturers on the same issue. For all the above reasons, Porsche believes that the noncompliance is inconsequential as it relates to motor vehicle safety and therefore NHTSA should grant this petition.

Interested persons are invited to submit written data, views, and arguments on the petition of Porsche, described above.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 2, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 29, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93–18441 Filed 8–2–93; 8:45 am]

BILLING CODE 4910-59-M

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## Research and Special Programs Administration

## Advisory Bulletin Number ADB–93–03

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation.

**ACTION:** Advisory to owners and operators of hazardous liquid and natural gas pipeline facilities in areas of flooding.

**SUMMARY:** Extended periods of rain and flooding in Midwestern states have resulted in the potential for conditions that threaten the safety of pipelines. The Office of Pipeline Safety (OPS), RSPA, has issued this advisory bulletin to pipeline operators in those flood areas to advise them of measures they should consider to assure the safety of those pipelines. In particular, pipeline operators should review emergency plans to assure that they adequately cover conditions possible in the current severe flooding.

### Advisory

For compliance with 49 CFR 192.615(a)(3)(iv) Emergency Plans and 195.402(e)(2) Emergencies, pipeline operators must develop procedures for a prompt and effective response to natural disasters including flooding. In developing and reviewing emergency plans and procedures for natural disasters, operators should consider, as applicable to their pipeline systems, each of the actions outlined below:

*Preventive Actions*

Operators need to be alert to conditions that may adversely affect their pipelines and should consider the following actions:

- Be alert to areas of flooding and have personnel available for emergency response actions such as shutdown, isolation, and containment.
- Consider extending regulator vents and relief stacks above the level of anticipated flooding as appropriate.
- Evaluate the accessibility of pipeline facilities, such as valve settings needed to isolate water crossings or other sections of pipeline that might be jeopardized.
- Perform frequent patrols to evaluate right-of-way conditions at water crossings during flooding and after waters subside. Determine if flooding

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has exposed and/or undermined pipelines as a result of forming new channels or erosion of riverbeds.

• Coordinate with other pipeline companies in the flood area and provide personnel to emergency response centers to act as a liaison for pipeline issues. Provide maps and information on pipeline location and condition to emergency responders.

• Determine if normally aboveground facilities (valves, regulator and relief sets, etc.) that have become submerged could be struck by craft operating in flooded areas and supply maps to emergency response centers and mark with buoys as appropriate.

• Perform surveys to determine the depth of cover over pipelines and notify landowners of reduced cover. Agricultural agencies may be helpful in reminding farmers of the potential hazard of reduced cover over pipelines.

• Assure that line markers are still in place and remind contractors, highway departments, and others involved in excavation and clearing activities associated with flood clean-up of the presence of pipelines and the operating hazards that could occur due to reduced pipeline cover.

*Background*

Damage to a pipeline may occur as a result of additional stresses imposed on piping by undermining of the support structure and by impact and/or waterborne forces. Washouts and erosion may result in loss of support for both buried and exposed pipelines. The flow of water against an exposed pipeline may also result in forces sufficient to cause a failure. These forces are increased by the accumulation of debris against the pipeline. Reduction of cover over pipelines in farmland may also result in the pipeline being struck by equipment used in farming or clean-up operations.

Additionally, the safety of valves, regulator and relief sets, and other facilities normally aboveground, or above-water, is jeopardized when covered by water. This threat is posed, not only by operational factors, but also by the possibility of damage by outside forces, floating debris, current, and craft operating on the water. Boaters involved in rescue operations, emergency support functions, sightseeing, and other activities, are generally not aware of the seriousness of an incident that could result from their craft damaging a pipeline facility that is unseen beneath the surface of the water. Depending on the size of the craft and the pipeline facility struck, significant pipeline damage may result. Pipeline failure could occur immediately or in the future.

Issued in Washington, DC, on July 29, 1993.

George W. Tenley, Jr.,

*Associate Administrator for Pipeline Safety.*

[FR Doc. 93-18443 Filed 8-2-93; 8:45 am]

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COMMODITY

TIME AND D August 10,

PLACE: 203 DC, 8th Fl

STATUS: Cl

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CONTACT P Jean A. We

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—Considera business

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 147
Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Tuesday, August 10, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–18539 Filed 7–30–93; 10:02 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, August 13, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–18540 Filed 7–30–93; 10:02 am]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, August 10, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Proposed rule to include an additional exemption from the prohibition contained in Rule 1.19 and an associated amendment to Rule 1.17 regarding capital requirements

—Applications for designation as a contract market in the Rolling Spot Australian Dollar futures contract and options on that futures contract/Chicago Mercantile Exchange

—Section 4(c) petitions of the Chicago Board of Trade for a "Professional Trading Market" exemption and of the Chicago Mercantile Exchange for an exemption for certain Rolling Spot futures and options contracts, and request for comment

—Consideration of upcoming Commission business

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–18607 Filed 7–30–93; 2:43 pm]

BILLING CODE 6351–01–M

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COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, August 17, 1993.

PLACE: 2033 K St., NW., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–18608 Filed 7–30–93; 2:43 pm]

BILLING CODE 6351–01–M

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 40859, July 30, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, August 4, 1993.

CHANGES IN THE MEETING: Addition of the following open item to the meeting:

*Discussion Agenda*

1. Proposals regarding Financial Accounting Standards Board (FASB) Statement No. 115 concerning regulatory treatment of securities portfolios.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: July 30, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–18579 Filed 7–30–93; 2:40 pm]

BILLING CODE 6210–01–P

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BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, August 9, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 30, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–18653 Filed 7–30–93; 3:58 pm]

BILLING CODE 6210–01–P

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UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–23]

TIME AND DATE: August 11, 1993 at 10 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–652 (Preliminary) Aramid Fiber Formed of Poly Para-phenylene Terephthalamide (PPD–T) from the Netherlands—briefing and vote
5. Inv. No. 731–TA–621 (Final) Compact Ductile Iron Waterworks Fittings and Accessories Thereof from China—briefing and vote
6. Outstanding action jackets
   1. ID–93–11; Final Report on Inv. No. 332–332 (Global Competitiveness of U.S. Advanced Technology Manufacturing Industries: Large Civil Aircraft
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: July 29, 1993.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–18580 Filed 7–30–93; 2:41 pm]

BILLING CODE 7020–02–P

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 2, 9, 16, and 23, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of August 2**

*Monday, August 2*

3:00 p.m.
Briefing on Status of Part 100 Rule Change and Proposed Update on Source Term and Related Issues (Public Meeting)
(Contact: Leonard Soffer, 301–492–3916)

*Tuesday, August 3*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Amendments to 10 CFR Part 73, to Require Annual Physical Fitness Performance Testing and Updated Day Firing Qualifications for Tactical Response Team Members, Armed Response Personnel, and Guards at Fuel Cycle Facilities Possessing Formula Quantities of Special Nuclear Material (Tentative)
(Contact: Harry Tovmassian, 301–492–3634)

**Week of August 9—Tentative**

*Wednesday, August 11*

2:00 p.m.
Briefing on Strategic Information Technology Plan (Public Meeting)
(Contact: Fran Goldberg, 301–492–7216)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 16—Tentative**

*Thursday, August 19*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 23—Tentative**

There are no Commission meetings for the Week of August 23.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meeting call (recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill, (301) 504–1661.

Dated: July 29, 1993.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 93–18593 Filed 7–30–93; 2:42 pm]

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*Correction*

In rule d
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July 13, 19
corrections

1. On pa
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2. On the
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"Figure 2"
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# Corrections

Federal Register
Vol. 58, No. 147
Tuesday, August 3, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 675

[Docket No. 930487-3161; I.D. 040593A]

### Groundfish of the Bering Sea and Aleutian Islands Area

*Correction*

In rule document 93-16523 beginning on page 37660 in the issue of Tuesday, July 13, 1993, make the following corrections:

1. On page 37662, in the second column "**PART 657**" should read "**PART 675**".

2. On the same page, in the same column, in amendatory instruction 2, in the fifth line, "Figure 5" should read "Figure 2", in the sixth and seventh lines "Figure 2" should read "Figure 1", and after "Figure 1" remove "and adding in their place the words "Figure 1".

**§ 675.2 [Corrected]**

3. On the same page, in the third column, in § 675.2 (12), in the first line after "541" add double dashes.

**§§ 675.2, 675.20, and 675.27 [Corrected]**

4. On page 37663, in the third column, in amendatory instruction 5, in the third line, "work" should read "word".

**§ 675.22 [Corrected]**

5. On the same page, in the same column, in amendatory instruction 6, in the second and third lines, "figure 1" should read "figure 2".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Part 3833

[WO-660-4191-02-24 1A; Circular No. 2548]
RIN 1004-AC07

### Rental Fees, Mining Claim Recordation, and Assessment Work

*Correction*

In rule document 93-16689 beginning on page 38186 in the issue of Thursday, July 15, 1993, make the following correction:

**§ 3833.1-7 [Corrected]**

On page 38200, in § 3833.1-7(c), in the second line, "before October 6, 1992," should read "after October 6, 1992,".

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

[RIN 2900-AF30]

### Veterans Benefits; Eligibility or the Montgomery GI Bill—Active Duty

*Correction*

In proposed rule document 93-17455 beginning on page 39488 in the issue of Friday, July 23, 1993, make the following corrections:

**§ 21.7972 [Corrected]**

1. On page 39492, in the second column, in amendatory instruction 7, the first two lines should read "Sections 21.7073 and 21.7074 are redesignated as §§ 21.7074 and 21.7075 and".

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Part II

# Department of Housing and Urban Development

**Office of the Secretary**

**24 CFR Part 50 et al.**

**HUD Systems for Approval of Single Family Housing in Subdivisions; Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 200, 203, 204

[Docket No. R-93-1584; FR-3695-F-02]

RIN 2501-AB25

## HUD Systems for Approval of Single Family Housing in Subdivisions

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends parts 200 and 203 (and makes conforming amendments elsewhere in HUD's environmental and single-family coinsurance regulations) to eliminate the process of prior HUD review of new residential subdivision developments when HUD is providing mortgage insurance on home loans on newly constructed individual dwellings in a subdivision, and the loans are being processed under the Direct Endorsement program. Because almost all applications for mortgage insurance are now processed by Direct Endorsement lenders, and because most local governments have adequate subdivision development regulations and land use controls, HUD believes that it is no longer necessary to perform subdivision reviews.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Concerning 24 CFR parts 200, 203, and 204, Morris Carter, Director, Single Family Development Division, Room 9272, Telephone (202) 708–2700, TDD: (202) 708–4594. Concerning 24 CFR part 50, Richard H. Broun, Director, Office of Environment and Energy, Room 7240, Telephone (202) 708–2894, TDD: (202) 708–2565, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

### I. Paperwork Reduction Act

The information collection requirements contained in this rule, including the revisions to information collection requirements contained in the final rule, have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD.

### II. The Proposed Rule

On April 16, 1992, the Department published the proposed rule in this proceeding (57 FR 13592). The rule proposed to amend the Department's regulations to eliminate prior HUD review of new residential subdivision developments when HUD is providing FHA mortgage insurance on home loans on newly constructed dwellings in the subdivision, and the loans are being processed under the Direct Endorsement program.

Because HUD, under the proposed rule, would perform no prior review of subdivisions, HUD proposed to require that the Direct Endorsement mortgagee and the appraiser sign and submit, for each mortgage, at the time HUD's endorsement is requested, an Appraiser/Underwriter Checksheet addressing flood hazards, noise levels, explosion and flammable materials storage hazards, airport runway clear zones and toxic waste hazards.

To assure continuing appropriate attention to federal fair housing requirements associated with affirmative marketing of multiple-unit housing by individual builders and developers, the proposed rule also required that any initial submission by a lender of an application for mortgage insurance on a property located in a new subdivision, where the builder or developer intends to sell five or more properties, must include an Affirmative Fair Housing Marketing Plan (AFHMP) meeting the requirements of 24 CFR part 200, subpart M.

### III. The Public Comments

Twenty timely public comments were received on the proposed rule, and these and several additional late comments were considered by the Department. Commenters included a state and a national homebuilders association, four mortgage lenders, a state and a national mortgage bankers association, an organization representing manufactured housing producers, a state environmental council, two organizations representing appraisers, three builders, a consultant, an appraiser, and an individual commenter who did not identify his professional interest. Comments also were received from the U.S. Environmental Protection Agency and from the Council on Environment Quality, and the U.S. Army Corps of Engineers.

In general, the builders and builders' organizations were supportive of the rule as proposed, agreeing that there was considerable duplication of effort involved in FHA and local government subdivision approval processes. There were, however, a number of strong criticisms voiced in the public comments, including those from the organizations expressing support for the rule:

#### *A. Criticisms of the Rule's Reliance on Appraisers and Underwriters*

The Mortgage Bankers Association of America (MBA) commented that it was "encouraged" at the Department's willingness to streamline its subdivision approval process, but asserted that the proposed rule did not eliminate HUD's prior review requirements or its duplicative standards—it merely shifted the burden for compliance with existing standards from HUD field personnel to lenders and appraisers. MBA said that most lenders and appraisers would not have the necessary expert knowledge correctly to evaluate subdivisions and complete the required checksheet. Because of these concerns, MBA said it "cannot support the proposal as written."

If HUD truly intends to relinquish responsibility to state and local governments, MBA said, it should do so, as the Department of Veterans has done, instead of continuing to claim that HUD must impose "minimum requirements" of its own. By continuing to maintain specific minimum environmental requirements, the Department continues to duplicate the efforts of states and localities to the detriment of builders and developers, lenders and homebuyers. To the extent HUD retains its environmental requirements in the rule, MBA expressed concern that the

Department is making lenders—rather than itself—liable for the health and safety conditions of subdivisions. MBA found this "simply unacceptable." Lenders, in addition to being possibly subject to Mortgagee Review Board sanctions or uninsurable loans, might also be subject to civil suits brought by property owners. Singled out for objection was the Appraiser/Underwriter Checksheet described in the rule. While appraisers and underwriters may be equipped to offer an opinion concerning these conditions, MBA said, the specific questions they must answer (and certify to) are "impossible to adequately address without a high degree of technical skill." The underwriter or appraiser, by virtue of the certifications, could be held liable for faulty certifications based on inadequate or inaccurate data.

MBA suggested that if HUD must retain the "checksheet" requirement, HUD should consider modifying the language used, better to reflect the abilities of appraisers and underwriters. One such modification would be (on checksheet questions three and five) to ask whether the appraiser "observed adverse conditions, as opposed to asking whether adverse conditions exist." MBA also suggested that the required certification be modified, so that it became a certification "to the best of my knowledge and belief".

MBA stated that it would "very much like to support the proposed rule," but that there were too many liability concerns. While the Association expressed sympathy with HUD's desire to see that its environmental concerns are met, MBA said that it believes, "as HUD says it does," that the subdivision approval process is largely duplicative and should be eliminated. Finally, MBA stated that if HUD does go forward with the proposal, it would consider a limited implementation, involving HUD's retention of its local subdivision approval staff. "This way, lenders who are willing to undertake the additional responsibility will be free to do so without jeopardizing the ability of other lenders to do HUD new construction business."

The National Association of Homebuilders (NAHB) joined the MBA and several other commenters in arguing that the rule attributed expert knowledge to appraisers that they do not have, claiming that appraisers are not qualified to make highly technical and expert judgments on health and safety matters. The same argument, the commenter asserted, applies to direct endorsement underwriters.

A mortgage company echoed the observations of MBA and NAHB, stating that the rule places "entirely too much responsibility and potential liability for subdivision approval on the lender, and will have a substantial negative impact on new construction business being directed to FHA." Lenders are not experts in making environmental and architectural judgments, the commenter said. Many lenders will be reluctant to undertake new FHA construction business because of potential liability. Additionally, because each lender in a new subdivision will probably want "to perform its own due diligence," builders will ultimately pass on multiple costs to borrowers, the commenter said. Summarizing, the commenter claimed that the proposed rule "has no positive impact and ultimately is a disservice to the lending and homebuying community." It was urged that HUD not go forward with the rule.

The U.S. Army Corps of Engineers agreed, in its comments, that the rule placed an "extraordinary burden" on appraisers. The Corps of Engineers said that the rule appears to require an additional level of investigation in areas well outside an appraiser's expert knowledge. Who assures the measurements included in the proposed Checksheet? Should the measurements be taken from the physical road, railroad, or airfield—or from the right-of-way limits? What is the extent of the appraiser's responsibility? How is he/she, for example, to recognize a container storing explosive or fireprone materials? How much investigation is expected? The Corps of Engineers suggested that it might be prudent to have the developer submit a signed and certified engineering report, identifying these conditions or concerns on the checklist—rather than relying on an appraiser.

The National Association of Realtors (NAR) believed that the Checksheet would "imply an expertise in other professions beyond that of the typical appraiser" and could mislead users of the appraisal report, unless some form of disclaimer notice were included in the document. NAR also expressed concern about the "vagueness" of several checksheet questions, notably "noise" and "major road". Where easement maps are unavailable, "runway clear zones" and "toxic wastes" sites may not be evident, NAR claimed. It was suggested that the checksheet leave room for more than "yes" or "no" responses.

*HUD Response*

The Department understands the concerns that the commenters have expressed concerning the liability that an appraiser and underwriter might be assuming by completing the Appraiser/Underwriter Checksheet. While these concerns might have been addressed by setting out clarifications and limitations in the final rule aimed at the liability issue, the Department has instead decided to deal with the question in a more fundamental manner. The final rule has been revised substantially with reference to the site analysis requirements set out in the checksheet. In lieu of seeking completion of the checksheet by the appraiser and underwriter, the final rule adapts and expands an existing form—the HUD 92541 Builder's Certification—so that the form solicits site analysis information of the kind originally proposed for completion by an appraiser.[1]

The form would be prepared by the builder of a subdivision. As explained in the preamble to the proposed rule, a central reason for the changes that the Department proposed was "that local [subdivision] processing meets the Department's significant concerns, and that much of FHA's [subdivision] processing was redundant." The preamble noted that "[l]and development * * * is controlled primarily by city, county, township, and parish level governments." The subdivision builder is the party that must deal with these local governmental bodies to obtain needed approvals. In order to do so, and as part of the development process even in the absence of local requirements, it is the party that is most familiar with the features of the subdivision site and thus best equipped to provide site information for consideration by the appraisers and mortgages concerned with individual lots within the subdivision.

In circumstances that call for specialized professional studies of site features, builders are likely to have obtained such studies as part of seeking required local approvals and there would be little gain in requiring a different party such as the appraiser to also obtain such studies. In further response to commenters' expressed concerns, the adjustment of the final rule to provide for certification by the builder makes implicit that the site analysis information, or portions of it, may be delegated to a licensed professional—for example, an engineer—if necessary to assure accurate reportage.

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[1] (The revised form HUD–92541 is to be known as the "Builder's Certification of Plans, Specifications and Site," but will be referred to in this preamble as the "Builder's Certification".)

The described changes should lessen lenders' (or appraisers') concerns about potential liability. Additionally, HUD intends to permit Direct Endorsement lenders to use either the Improved Area Process (IAP) or the new process set out in this rule. DE lenders who remain uncomfortable with the new process may use the IAP, which has been in place since 1985, and which many lenders have used without difficulty.

The Department doesn't believe that the new Builder's Certification process will result in additional costs to homebuyers. On the contrary, the new process should speed loan approvals, reduce costs to homebuyers, and reduce the cost of compliance with the requirement being imposed for site analysis information, since builders have this information more readily available to them than would appraisers.

In essence, the Department has accepted the commenters' principal concerns and has acted upon them. HUD expects builders to report, in the Builder's Certification, only those conditions that directly affect the property and that are observable on (or from) the property, and those that, while not observable, are known to the builder or should be known, based upon the builder's (or an appropriate agent of the builder's) superior knowledge of the building site. Builders should have little difficulty in completing the site analysis questions. The Builder's Certification will afford opportunity for more than a "yes or no" response to the several questions. If the builder (or other professional) completing the certification needs more room to explain the conditions or to elaborate on his or her observations, HUD will not object to the use of an addendum to the certification. It should be noted, nonetheless, that the rule does require, in addition to any volunteered elaborations of the responses contained in comments, a direct answer to the "yes" or "no" questions.

Responding generally to the numerous concerns commenters expressed about the Checksheet, the Department notes that the Builder's Certification, successor to the proposed rule's Checksheet, is being required for the limited purpose of alerting the lender and the Department to the possible existence of environmental and other problems that might warrant further exploration as part of the underwriting process. Unlike the statement of appraised value that is prepared on the basis of the appraiser's work, the Builder's Certification will not routinely be provided to the homebuyer as part of the mortgage processing, and is not prepared for the purpose of guiding the homebuyer. In any event, the change in procedure made in this final rule relative to the preparation of site analysis information by the builder should lessen the concerns expressed by many that the liability of appraisers might be increased because of the information requested in the checksheet.

Note, however, that the rule, as revised, provides explicitly that the Builder's Certification is to be furnished to the appraiser for reference in performing the property appraisal. At that point, the appraiser's only added responsibility is to conduct the appraisal and to provide comment on any apparent discrepancy between the site conditions observed and the statements included in the Builder's Certification.

In its comments, NAHB agreed that most local governments have adequate subdivision development regulations and that HUD's review duplicates that performed by local governments. However, NAHB complained that HUD has substituted an entirely new, "lot-by-lot environmental review process for the current project-wide subdivision review." NAHB objected, first, to the creation of a "new review process imbedded in a new form," because, NAHB believed, the process would eliminate reciprocity between VA and FHA. (Because the appraiser is called upon to provide a CHUMS identification number, the NAHB assumed that VA appraisers would be precluded from doing an appraisal unless they were also FHA-approved.)

*HUD Response:* The Department has resolved the appraiser-related concern by the earlier-discussed change in the rule to provide instead for a Builder's Certification, to include site-analysis information. These procedures will not eliminate reciprocity with the Veterans Administration. However, the Department will require that the Builder's Certification accompany the VA Certificate of Reasonable Value when VA case is submitted for HUD endorsement.

NAHB also argued that the process set out in the proposed rule would discriminate against new construction. Only two of the five concerns on the checksheet (flood hazards and runway clear zones/clear zones), NAHB said, pertain to both existing and new construction. The other three (noise, storage hazards, toxic waste hazards) apply only to new construction. "If health, safety and future marketability are the driving force behind this proposed rule, it would seem appropriate to have the checksheet apply to existing housing as well."

*HUD Response:* HUD's current subdivision analysis procedures are applied only to new construction in new subdivisions, so the Checksheet featured in the proposed rule was prepared for that purpose. It was not the Department's intention to implement the Checksheet for existing construction, and the Builder's Certification substituted for the Checksheet in this final rule also is inapplicable to existing construction. The commenter is incorrect, however, in its assertion that toxic waste hazards are examined only in connection with new construction. Paragraph 4–20 of HUD Handbook 4150.1, REV–1 instructs appraisers to reject a property if a toxic waste hazard endangers or seriously affects the livability of the property, its marketability, or the health and safety of occupants. Paragraph 4–20 applies to any property—proposed or existing.

NAHB also asserted that the proposed checksheet is significantly flawed in design. Question 3 asked an appraiser to determine whether a property was located "within view of any container storing explosive or fire-prone materials?" There could be instances where trees completely shield the presence of a dangerously close storage container, or, conversely, instances where a storage container is "within view" but far enough away to represent no danger.

A similar comment from the Appraisal Standards Board of the Appraisal Foundation (ASB) opposed the inclusion in the proposal of the Appraiser/Review Appraiser Checksheet, on grounds that use of this checksheet "will mislead the reader to believe that the typical appraiser has the expertise and training to identify toxic or hazardous substances." ASB also asserted that the checksheet contains redundant information and is too vague to be an effective tool. Vague items were said to include the lack of definition of terms like "major road, highway, or freeway", "within view of" and "fireprone materials". Obtaining the information included on the checksheet from qualified professionals or existing public sources is preferable to asking an appraiser to observe these items in the field, ASB concluded.

*HUD Response:* The Department believes that both the change from appraiser-prepared to builder-prepared site analysis and several clarifications of language employed in the site-related questions on the Builder's Certification form are responsive to the commenters' concerns. This change is expected greatly to improve the reliability of the

information provided, and should eliminate questions of "qualifications" to perform the analysis. Some adjustments have been made in the language of the site analysis questions in response to commenter criticisms. The question on "noise" has been revised, to become an inquiry whether the property is located within 1000 feet of a "highway, freeway, or heavily traveled road". Language relying on sightlines has been eliminated in favor of objective measures of distance.

NAHB argued, generally, that HUD's proposed process "second-guesses" local controls. While the preamble claims that HUD has concluded that local government subdivision processing "meets the Department's significant concerns * * *" the rule features continued examination of a series of health and safety issues, contradicting the preamble's conclusion that localities are adequately discharging their responsibility to protect citizens.

Concluding, the NAHB urged that the proposed checksheet system be abandoned in favor of reliance on local zoning and subdivision controls as well as on state and local environmental reviews to ensure safe and healthy land development. A simple certification by the developer that a lot complies with all departmental requirements should be adequate to satisfy HUD's concerns, the commenter asserted.

*HUD Response:* HUD's site analysis questions are focused on a limited array of health, safety and marketability concerns that the Department believes it must continue to address, either because statutes so require, or because the Department's underwriting experience has shown that particular conditions present a high insurance risk if they are not given adequate consideration in the underwriting of the mortgage. The Department has a responsibility to the insurance fund to continue to examine those factors that will affect insurance risk and the future marketability of a property. The revised final rule, relying as it does on an improved site analysis data-gathering system and calling upon the builder (instead of the appraiser) to furnish the needed data, is appropriately responsive to NAHB's suggestion and those of other commenters.

Another commenter, a major bank, supported the intent of the proposal to reduce redundant efforts by HUD and individual cities, and to reduce paperwork. However, the commenter expressed its concern that, by removing the requirement that HUD approve certain new subdivisions, the responsibility is being shifted to parties "not truly qualified to assess all of the potential hazards addressed by the required checklist." The commenter suggested that other experts might have to be consulted, requiring time and money, and (possibly) "leading back to the redundancies encountered in the current system." The commenter recommended, as an alternative, reliance on the local municipality's record. The municipality's issuance of a building permit and certificate of occupancy should be accepted as evidence that the property is habitable.

*HUD Response:* The revised rule's Builder's Certification process provides a greater degree of assurance to a lender, concerning underwriting considerations, than did the appraiser-dependent proposed rule, by shifting the responsibility for site analysis to the party best-qualified to provide the needed information—the builder. Based on the site analysis information included in the Builder's Certification, an experienced mortgage underwriter can make proper judgments about marketability and health and safety of the property. HUD believes that DE underwriters, after becoming familiar with this new process (especially as it has been modified in this final rule) will be able to underwrite cases without difficulty. Moreover, it is HUD's belief that in the overwhelming majority of cases, the property will not be affected by any of the conditions listed on the Builder's Certification because of adequate subdivision controls at the local or state level, and that the builder will be able to render a judgment without difficulty. By not encountering the delays often associated with HUD subdivision processing, the lender will be able to speed case processing and provide better service both to the homebuilder and the homebuyer under this new process.

The builder will be able to call upon a licensed professional (e.g., an engineer) if necessary for completion of the site analysis information included in the certification, and costs can be minimized by having the engineer inspect all of the lots in the subdivision during one site visit, since the certification process can be completed for multiple lots.

All HUD Field Offices routinely provide training for Direct Endorsement (DE) mortgagees, appraisers and builders on new program requirements and procedures. Accordingly, HUD Field Offices will provide training to DE mortgagees, appraisers and builders on the new procedures applicable to new subdivisions and the use of the revised Builder Certification form (HUD 92451).

HUD has adequate quality control procedures to assure mortgagee compliance with the new program requirements. Currently, approximately 15% of all DE cases are reviewed by HUD after the mortgage has been endorsed for insurance to assure compliance with HUD requirements. This post-endorsement review will include a desk review of the appraisal and the revised Builder Certification form 92541. In addition to these desk reviews, HUD will field review approximately 10% of all appraisals. This involves a visit to the site. These desk and field reviews will assure compliance with program requirements by the mortagee, appraiser and builder.

The Department, for the reasons stated earlier in this preamble, chooses not to rely solely on the local municipality's issuance of building and occupancy permits to assure that the property meets HUD's underwriting requirements.

*B. Criticism of Environmental Features*

The Council on Environmental Quality (CEQ) stated that the proposed rule would authorize HUD to eliminate from NEPA and other environmental statutes HUD approval of federal mortgage insurance for new single family subdivision processing. The rule also would permit HUD to forego consideration of practicable alternatives to construction of new developments in floodplains and wetlands.

HUD bases the exemptions, CEQ stated, on its claims that these actions have no potential for effects on the human environment, and that most local governments have adequate subdivision development and land use controls. CEQ said it strongly opposed the proposed exemptions. NEPA does not exempt any federal agency from its requirements, CEQ said. NEPA requires compliance unless there is a clear conflict of statutory authority. CEQ observed that HUD had cited several reasons for exempting these actions from NEPA, including the determination that the actions "have no potential effects on the human environment." If HUD, implementing its NEPA regulations, has found that the actions "do not individually or cumulatively have a significant effect on the human environment, then HUD should categorically exclude these actions, CEQ advised. A NEPA exemption is not the proper outlet for the actions delineated in the proposed rule.

*HUD Response:* HUD believes that CEQ has misconstrued the nature of the action that the rule proposed to indicate was exempt from NEPA and related

environmental laws. While the comment suggests that the proposed rule would authorize HUD to eliminate "HUD approval of federal mortgage insurance for new single family subdivision processing" from NEPA and other environmental statutes, the rule in fact proposed to eliminate HUD subdivision processing itself. Under the rule, there will *be* no Federal action involving subdivision approval. Accordingly, the only Federal action to which NEPA and related laws could apply will be HUD's endorsement of FHA insurance on an individual one- to four-family mortgage loan submitted by a DE mortgagee. The DE mortgagee would submit a request for HUD endorsement after a dwelling already has been built, and, indeed, after the dwelling has been sold to a homebuyer. HUD does believe that the proposed elimination of HUD subdivision review will not have a significant effect on the environment. However, the regulatory exemption from NEPA and related laws was proposed with respect to the remaining HUD action, *i.e.*, HUD's endorsement of mortgage insurance on an individual dwelling. Since these endorsements would be requested and processed after completion of construction, HUD believes, as stated in the proposed rule's preamble, that these actions would have no potential effects on the human environment.

In response to CEQ's comment that a categorical exclusion (rather than an exemption from NEPA) is the proper outlet for actions with no significant environmental effects, HUD has revised the final rule to remove the proposed language referencing an "exemption" from NEPA for HUD insurance endorsement of mortgage loans submitted by a DE mortgagee under this rule. HUD endorsement of insurance on these DE-processed loans will be categorically excluded from NEPA review. This categorical exclusion requires no further regulatory action, since these endorsement actions fall within the categorical exclusion that is currently provided for "[a]n individual action on a one- to four-family dwelling" (see 24 CFR 50.20(a)). In this final rule, however, HUD has included additional language in § 50.20(a) to specifically identify HUD endorsement of insurance, including endorsement under the DE program, as an example of an individual action on a one- to four-family dwelling. As discussed below in response to the comment from the Environmental Protection Agency, the final rule does retain, in modified form, a provision regarding the inapplicability of environmental laws other than NEPA.

With regard to the consideration of practical alternatives to construction of new developments in floodplains and wetlands, HUD again believes there is an apparent misunderstanding of what the rule proposed. As the preamble to the proposed rule noted, the action proposed to be exempted, through an amendment to HUD's previously proposed 24 CFR part 55, was HUD's endorsement of mortgage insurance on one- to four-family properties that are located in a wetland and have already been processed through construction and loan closing by a DE lender without HUD review. (With regard to floodplain sites, an exemption from part 55 for HUD approval of financial assistance for actions in non-wetland floodplain sites that have received a Federal Emergency Management Agency Letter of Map Approval (LOMA) or Letter of Map Revision (LOMR) had already been proposed in the original proposed rulemaking for part 55; when that rule is published for effect, it will require, consonant with the amendment in today's rule, that a LOMA or LOMR be obtained for DE-processed sites in a floodplain.) HUD continues to believe that since a dwelling would already have been built and sold to a mortgagor at the time the Department receives a request for endorsement, it is clear that there would be no practicable alternative to the action outside the Wetland and no practicable means further to minimize the impact of the action. Accordingly, it would be academic and unnecessary to subject these endorsement actions to the eight-step decisionmaking process embodied in HUD's proposed part 55, implementing the requirements of Executive Order 11990 (Protection of Wetlands). For that reason, HUD is not withdrawing the amendment to the proposed part 55, which remains pending, and which will be published as a part of the pending rulemaking entitled "HUD Procedures for Protection of Floodplains and Wetlands" (FR–865, proposed rule published at 55 FR 396, January 4, 1990).

The Environmental Protection Agency's (EPA) comment stated that EPA did not believe that HUD's "federal action" of endorsing a mortgage insurance transaction could be exempted from compliance with the federal environmental statutes, including NEPA, without specific statutory language authorizing that exemption. HUD cannot, by regulation, exempt these proposed actions based solely on the Department's determination that these actions have no potential for effects on the environment, or the fact that most local governments have adequate subdivision and land use controls. In the absence of a statutory authority, EPA objected to HUD's proceeding with this rule as proposed. If the purpose of the proposed rule is to determine that the approval actions are of the type that experience had shown do not otherwise have significant environmental impacts, EPA recommended that the rule be revised to include approval actions under 24 CFR 50.20 (NEPA categorical exclusions). Placing of these actions in 24 CFR 50.20 would satisfy NEPA requirements, but would not relieve HUD of the requirements of other appropriate environmental control statutes and regulations.

EPA also stated that the rule should contain additional information on HUD's plans for program oversight procedures to be used for direct endorsement lenders and appraisers who would be performing the environmental analyses, because final responsibility for compliance with a number of laws, regulations and executive orders will continue to rest with HUD.

*HUD Response:* HUD has in place control procedures for the monitoring and oversight of DE-approved lenders and appraisers. These procedures include the technical review, on a post-insurance-endorsement basis, of approximately 20 percent of all cases insured. This technical review includes a desk review of the appraisal and all documents related to the valuation of the property, along with a review of the mortgage credit of the borrower. In addition, at least 10 percent of all appraisals are field-reviewed to assess the quality of the appraisal and compliance with HUD appraisal policies. The cases that are insured under the procedures set forth in this final rule will be subject to these same technical reviews and field reviews. When post-endorsement technical reviews or field reviews reveal noncompliance with HUD requirements, appropriate sanctions are imposed upon builders, lenders or appraisers.

EPA's concerns with regard to the proposed exemption from NEPA parallel those of CEQ, and are addressed in the preceding response to the CEQ comments. EPA's comments, however, also more directly address the issue of the applicability of environmental laws and authorities other than NEPA that are listed in HUD's environmental regulations at 24 CFR 50.4. With respect to these laws and authorities, HUD published, on July 20, 1992, an interim rule that implements the Housing Opportunities for Persons with AIDS

program (57 FR 32106). That rule contains an amendment to § 50.19 that clarifies HUD's intent by revising the title of that section to read "Activities not subject to § 50.4". As the section title indicates, HUD's intention was not to attempt to create exemptions from the related laws in § 50.19, but merely to publish its finding that the actions listed in that section would not constitute the type of federal action that would trigger compliance with the requirements of any of the related laws and authorities listed in § 50.4. In the Department's view, HUD endorsement of insurance on a previously built and sold one- to four-family dwelling similarly would not trigger compliance, except that the Flood Disaster Protection Act of 1973 (FDPA) and § 51.303(a)(3) of HUD's airport siting regulation (24 CFR 51.303(a)(3)) do apply to such endorsements. EPA did not cite any specific environmental law (other than NEPA) that it believed might be triggered by HUD insurance endorsements on individual one- to four-family properties. Accordingly, in the final rule, HUD has modified § 50.19 to adopt the title contained in the current interim § 50.19. Like the proposed rule, this final rule indicates that HUD insurance endorsements are subject to the FDPA and to 24 CFR 51.303(a)(3).

An individual commenter who did not disclose his interest made three assertions:

1. The proposed rule doesn't meet NEPA requirements.

2. The rule would have negative adverse environmental impacts.

3. The rule would be detrimental to the homebuilding industry.

Enlarging on his first point, the commenter asserted that NEPA imposes an environmental review component on all federal agency decision making. NEPA, he said, has been interpreted to require environmental review not only for actions easily recognized as exceeding the threshold for an environmental impact statement, but for almost all agency actions, in order to ensure that none of them exceeds the threshold for an environmental impact statement.

HUD's proposed regulation contends that "NEPA does not mandate subdivision review where the construction has been completed before submission of the application of insurance." HUD argues that the lender is not applying for mortgage insurance until after the loan has been closed. In this case (the argument goes) the transaction would have proceeded independently of HUD, and how can a mortgage endorsement have an environmental impact?

The commenter asserted, however, that FHA mortgage insurance for new construction does not lose its federal identity, even when most of the processing has been farmed out to the private sector. "If it were this easy to avoid NEPA, then whenever an agency wished it could merely have a private party process the action and have the federal agency endorse it." The commenter stated that HUD's argument is misleading, in that the FHA mortgage insurance program "is not one where federal involvement is tacked onto a real estate transaction as an afterthought, as the proposed rule [implies]." The commenter also suggests that the Direct Endorsement program has "always been run as a federal program," with lenders specially trained, certified and monitored by HUD to insure that specific program requirements are met. The availability of federal mortgage insurance in association with the Direct Endorsement program, the commenter stated, makes clear that this is not a private mortgage insurance program.

*HUD Response:* HUD does not disagree with the commenter's contention that almost all agency actions require review under NEPA; however, under implementing regulations of the Council on Environmental Quality, it is clear that an environmental assessment need not be performed on classes of actions that would not have a significant effect on the environment, i.e., on "categorical exclusions" from NEPA requirements (see 40 CFR 1508.4). As discussed earlier in this preamble, HUD believes that its endorsement of mortgage insurance on one- to four-family dwellings processed by DE lenders under the proposed rule will not have such a significant effect. Accordingly, these mortgage insurance endorsements will be categorically excluded from NEPA review under HUD's environmental regulations.

However, the principal issue raised by the commenter here relates to the timing of NEPA applicability. HUD continues to believe that where the Department, *i.e.*, a federal agency, does not participate in the processing of specific properties on which mortgage insurance may later be requested until an insurance application actually is made, there is no federal action to which NEPA applies until that request has been made. While the property must meet certain HUD standards if a property is to be approved for insurance once submitted to HUD, and while lenders are trained, approved and monitored by HUD, DE lenders are not agents of HUD. In this situation, HUD does not believe that the possibility of a later submission to a federal agency converts privately contracted construction on a specific piece of private land into a "federal" action subject to pre-construction NEPA review. HUD believes that, under the Supreme Court's decision in *Kleppe* v. *Sierra Club*, 427 U.S. 390 (1976), mere contemplation of a federal action does not trigger the applicability of the environmental review requirements under NEPA.

Arguing his second point, that the proposed rule would have negative environmental impacts, the commenter asserted that many view FHA mortgage insurance, along with the Federal highway program, as one of the key sources of "Post World War II urban sprawl." The environmental impact of this sprawl, the commenter said, cannot be minimized. The proposed rule, by eliminating an environmental review that could be used to disapprove subdivisions proposed for areas not ripe for development, but which have been approved by small local governments, will promote "sprawful development" and will thus result in significant adverse impacts on the environment. The commenter then stated what he characterized as a "micro" argument that the rule itself has negative adverse impacts: He argued that the proliferation of local governments makes it possible for developers to "play one local government against the other, offering the commercial/industrial boost (tax base) in return for favorable concessions."

More specifically, the commenter listed the following requirements as examples where local requirements typically do not meet federal requirements in the subject area:

1. Floodplains and wetlands;
2. Water/sewers;
3. Landfills
4. Noise
5. Historic preservation.

*HUD Response:* The Department notes that whatever may have been the FHA's relative contribution to post-World War II "sprawl," the issue of environmental impact raised by the commenter is relevant only to prospective HUD activity under the rule published today. The Department estimates that, in fiscal year 1991, HUD-processed one- to four-family residential new construction cases represented less than five percent of the construction starts in the nation. Moreover, it is likely that this five percent of new construction—or much of it—would still have been built, absent FHA mortgage insurance. Thus, there is

no indication that the elimination of HUD environmental review of subdivisions will contribute significantly to preventable "sprawl" development.

The "micro" argument has not been applicable to HUD since 1974, when the CDBG program replaced several categorical grant programs which had featured areawide planning requirements. The FHA mortgage insurance program never included planning requirements. Of the five specific issues raised by the commenter, landfills and noise were addressed on the proposed rule's Checksheet, and continue to be addressed in the Builder's Certification. Regarding historic preservation, HUD's experience under the Improved Area Procedure, which employs a checksheet that covers historic and archaeological resources, has been that IAP-processed areas have not involved significant effects on those resources. Water and sewer requirements are covered by the Minimum Property Standards, as well as by local codes. Floodplains are covered by local controls required of all jurisdictions participating in the federal flood insurance program, and development in wetlands in subject to Corps of Engineers 404 permits.

The commenter argued that the rule would have a negative impact on the homebuilding industry. The primary motivation of the homebuilding industry is profit, the commenter stated. Environmental requirements will not interfere with this motivation, as long as there is a "level playing field" and all developers must deal with roughly equivalent requirements. Leaving the subdivision approval field to local government will lead to short-cutting by builders and, ultimately, to defective construction associated with poor soils that are often associated with wetlands and landfill areas. It was suggested that local approval will not always protect the builder from legal liability, and that the builder is better off financially if he or she is compelled, by federal regulation, to adhere to environmental standards.

Concluding, the commenter called the proposed rule "the last straw in a long progression of NEPA avoidance." HUD should finally recognize, he said, that compliance with NEPA is in the best interests of the Department, the public, homebuyers and the industry.

*HUD Response*

HUD's view is that the goals of NEPA and the related environmental laws must be balanced against the various program mandates imposed by the Congress. For the single family mortgage insurance program, this regulation presents an appropriate balance of these competing needs in light of the current practices associated with local planning, building, and financing in the United States.

HUD agrees with the commenter's observation concern about poor soils, and the Builder's Certification site analysis data has been modified to include that topic. Other potential concerns of the homebuilding industry have been raised by their major national organization and are addressed elsewhere in this preamble.

*C. Miscellaneous Comments*

A commenter stated that the proposed rule contained an unduly cumbersome requirement: It would require full building plans and specifications and lot grading plans relating to the building plans to be submitted at the time of endorsement. The commenter, a mortgage company, asserted that these documents are submitted at the time of the appraisal request, and that submitting them at endorsement would be redundant.

HUD Response: The Department will require only one submission of building plans and specifications and lot grading plans—at the time of the appraisal request.

A consultant commented that the proposed checklist appeared not to address the number one cause of property damage—expansive soil. The commenter strongly suggested that this issue be addressed.

*HUD Response:* HUD agrees with the commenters who raised this point. A question concerning expansive soil has been added to the Builder's Certification.

A state home builder's association stated its support for the rule, declaring that sufficient regulatory mechanisms are available at the local government level to preclude the need for HUD to perform what are generally duplicative and non-cost-effective subdivision reviews. However, the commenter cautioned that HUD should make clear to direct endorsement lenders that the rule is not intended to be a source of new fee-generating requirements on developers.

*HUD Response:* The purpose of this rule is to reduce costs to builders, developers, lenders and homebuyers, not to increase them. Accordingly, HUD will continue to control the allowable fees in these transactions.

Another commenter, a developer, stated that banks have requested FHA subdivision approval before closing on development loans. With the proposed rule, this would no longer be possible.

In the past, the commenter observed, FHA or direct endorsement approval of the subdivision made it easy to utilize many mortgage companies in a given subdivision. This created competition and helped builders to control costs. The proposed change will tend to limit a project to one lender who has taken the time fully to educate itself to the situation. While the subdivision approval process has been time-consuming and detailed, the commenter said, the changes proposed create problems of their own. The commenter advocated a more limited "desk review" subdivision approval process by HUD, based on a joint effort between the developer and the direct endorsement lender to provide HUD an information "package".

*HUD Response:* The Department believes that well-planned, marketable projects will be able to find development financing even though the FHA subdivision approval process has been terminated.

Another builder commented that, because of the high percentage of presale activity, it is critical that a system for fast-track approval based on development plans and specifications be identified and utilized. To avoid problems with rule interpretation, it should be spelled out that projects located closer than the specified distance to railroads and freeways are acceptable, provided that the 65db limit is met, as described in the HUD Noise Guidelines Handbook.

The commenter suggested that a change in the five-lot maximum for FHA approval for existing subdivisions, to a "75% built" standard would be more realistic, and would not create any adverse effect on existing market values.

*HUD Response*

The Department did not intend that the HUD Noise Guidelines handbook be employed in the circumstances set out in the Checklist. The noise standard, for purposes of the Builder's Certification, is expressed in terms of distance from the source of the noise. (Distance to noise-producing facilities is not a rejection factor, but is merely to be considered by the appraiser in assigning value.) While it would be acceptable for the builder to note mitigating circumstances with reference to the source of the noise, presence of noise barriers, and the like (including, where applicable, the fact that the Noise Guidelines decibel limit has not been surpassed), the principal inquiry in the site analysis information is directed to the specific site-related questions asked: "Are the improvements in a flood

hazard area?" "Is the property within 1000 feet of a freeway * * *."

With reference to the commenter's remarks concerning the five-lot maximum, the Department believes, (if HUD is correctly understanding the comment) that the observation reflects a misreading of § 203.12(b)(1). That provision applies the subdivision rule's requirements to new subdivisions containing five or more lots. Existing homes (homes at least one year old) are excluded from the reach of the rule, regardless of subdivision size.

The Manufactured Housing Institute (MHI) supported the rule and said that "HUD's commitment to the elimination of barriers to affordable housing is evident in this proposal."

MHI then stated that exclusionary zoning practices were widely used to prevent compatible HUD code homes from being permanently sited anywhere other than in specifically designated manufactured home parks or subdivisions. MHI suggested that HUD include questions concerning whether the subdivision in which a particular property was located allowed manufactured homes. While the response would not have an affect on the application itself, MHI believed that it would, over time, provide HUD with information that would help to determine the extent to which local jurisdictions and developers are eliminating barriers to affordable housing.

*HUD Response:* Zoning regulations are administered by local governments and HUD does not intend to amend the Builder's Certification form to address local zoning.

A commenter who identified himself as an FHA fee appraiser in Houston, Texas provided several examples of inappropriate construction practices, and stated that the proposed rule would aggravate an already-inadequate regulatory environment. In his area, the commenter, said, there were no zoning regulations, and environmental problems were already "out of control." It would be unwise to do away with government management in the housing industry, the commenter said.

*HUD response:* The final rule has been revised to provide that in areas where the local HUD field office determines that local subdivision standards do not exist, or are inadequate to protect HUD's underwriting risk, HUD may require lenders to use the Improved Area Process (IAP) and may require HUD appraisal review of the Appraiser/Review Appraiser Checksheet (Form HUD 54891) associated with the IAP before the endorsement of any cases involving properties in new subdivisions in the identified area. This procedure will provide HUD with a level of prior review that will serve as a safety valve to protect the insurance fund when a new subdivision is proposed in a jurisdiction that lacks effective local standards.

*D. Expressions of Support, Suggested Expansion of Rule*

A mortgage corporation expressed support for the rule, calling the current subdivision approval process a "tremendous hurdle" to providing affordable housing. The commenter suggested that the rule be expanded to allow qualified, approved HUD mortgagees to approve Planned Unit Developments under HUD guidelines. The direct endorsement underwriter, the commenter said, should be allowed to approve a subdivision with private streets, provided it meets certain HUD-required conditions. Under current procedure, the commenter said, PUD projects are submitted to the field office and, in many cases, to HUD's legal office. They also are approved by city, county and state governments. HUD should streamline its procedures for PUDs and for the approval of condominiums. A state bankers association provided comments identical to those of the mortgage corporation.

*HUD Response:* This rule does not address PUDs directly, because PUD requirements are distinct from the Department's subdivision requirements—although the same development may be subject to both. Subdivision approval by HUD focuses on the physical features of a new subdivision. PUD approval focuses on the financial and organizational aspects of a mandatory homeowners' association with power to enforce its assessments through liens. PUD approval procedures apply to existing as well as to new PUDs.

HUD's condominium processing procedures are unrelated to subdivision approval concerns and are not addressed in this rule.

The Florida Environmental Property Assessment Council supported the rule, but expressed its concern that the proposed underwriter checksheet was limited to only newly-constructed homes submitted under Direct Endorsement. The commenter stated its support for the use of an expanded checksheet to include all new and existing construction.

*HUD Response:* The Department does not plan to use the Builder's Certification process in connection with the insurance of existing properties, since subdivision processing is only applicable to new subdivision developments.

A builder provided comments "wholeheartedly endorsing" the proposed rule. The commenter agreed that local codes and requirements associated with development are generally more restrictive than those FHA requires for subdivision approval, and applauded HUD's decision to eliminate the duplication of effort.

## IV. Amendments to Part 200

In addition to the several revisions contained in the final rule in response to public comments, the Department has also added additional changes to 24 CFR part 200, subpart M, the Affirmative Fair Housing Marketing regulations, designed to bring these provisions into conformity with the Fair Housing Act as it was amended by the Fair Housing Amendments Act of 1989. These amendments add references to "handicap and familial status" as newly added protected classes under the Fair Housing Act, as amended, thus adding them to the Department's affirmative marketing regulations in part 200, subpart M. The amendments in the proposed rule involving part 200 were intended to conform the affirmative marketing requirements relating to subdivision approval to the new procedures included in this rulemaking proceeding. These amendments are included in today's final rule without change. The additional amendments to subpart M are housekeeping changes involving statutory implementation only.

## V. Other Matters

*A Public Reporting Burden*

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The Department has determined that the following provisions contain information collection requirements.

| Information collection requirement | Section of CFR affected | Number of respondents | Number of responses per respondent | Total annual response | Hours per response |
|---|---|---|---|---|---|
| Completion of Builder's Certification of Plans, Specifications and Site. | 203.12(c)(2) | 800 | 82 | 65,600 | 0.25 |
| Total hours: | | | | | 16,400 |

*B. Executive Order 12291*

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department believes, however, that one effect of the rule will be significantly to reduce barriers to affordable housing and that, accordingly, significant cost savings for housing developers and housing purchasers will be realized as a result of the rule.

*C. NEPA*

An environmental assessment of the effects of this rule has been conducted by the Department and a Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

*D. Regulatory Flexibility Act*

The Secretary, in approving this rule for publication, has certified under 5 U.S.C. 605(b) (the Regulatory Flexibility Act) that this rule will not have a significant economic impact on a substantial number of small entities. The rule will relieve regulatory burdens on small and large businesses alike, and is expected to yield measurable cost savings to lenders.

*E. Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule alters the administrative procedures associated with subdivision approval, but it has no direct impact on family-related concerns.

*F. Executive Order 12612, Federalism*

The General Counsel, as the designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and State or local governments, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects are on individuals and businesses. To the extent that the rule relies on state and local law for the supervision of subdivision development concerns, its Federalism impact is in accord with the concept of redistributing authority to local government.

*G. Semiannual Agenda*

This rule was listed as sequence number 1386 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24397) in accordance with the requirements of Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects**

*24 CFR Part 50*

Environmental assessments, Environmental impact statements, Environmental policies and review procedures, Categorical exclusions.

*24 CFR Part 200*

Administrative practice and procedure, Claims equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and record keeping requirements, Social security.

*24 CFR Part 203*

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and record keeping requirements.

*24 CFR Part 204*

Mortgage insurance.

Accordingly, 24 CFR parts 50, 200, 203 and 204 are amended as follows:

## PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 is revised to read as follows:

**Authority:** 42 U.S.C. 3535(d); 42 U.S.C. 4332; Executive Order 11991, 42 FR 26967 (May 24, 1977).

2. In § 50.1, paragraph (c) is revised to read as follows:

**§ 50.1 Purpose and authority.**

* * * * *

(c) These regulations apply to all HUD policy level actions (as defined in § 50.16), and to all HUD project level actions. For programs, activities or actions not specifically identified, or when there are questions regarding the applicability of this part, the Assistant Secretary for Community Planning and Development should be consulted.

* * * * *

3. In § 50.17, the introductory paragraph and paragraph (a) are revised to read as follows:

**§ 50.17 Projects.**

Either an environmental assessment and a FONSI or an environmental impact statement (EIS) for individual projects shall be completed before the applicable program decision points below for projects not meeting the criteria of § 50.20, and shall be reevaluated and updated as required by § 50.37.

(a) *New Construction.* (1) Mortgage insurance or other financial assistance for multifamily housing projects,

nursing homes, hospitals, group practice facilities and manufactured home parks: Issuance of SAMA Letter, or equivalent indication of site specific HUD approval, whichever comes first;

(2) Public Housing: Notification of tentative site approval (1977 procedures) or PHA proposal approval (1980 procedures);

(3) Section 8 HAP Program: Notification of selection of preliminary proposal.

* * * * *

4. In § 50.19, the introductory paragraph is revised, and a new paragraph (i) is added, to read as follows:

**§ 50.19 Activities not subject to 24 CFR 50.4.**

Because certain activities assisted under HUD programs would not alter any conditions that would require review or compliance under the other Federal laws and authorities cited in § 50.4 of this part, the laws and authorities listed in § 50.4 do not apply to these activities, except to the extent that any specific law or authority remains applicable as indicated below. These activities are the following:

* * * * *

(i) HUD's endorsement of FHA insurance on mortgage loans submitted by a Direct Endorsement (DE) mortgagee, without HUD review before the completion of construction and loan closing, for newly constructed homes under the mortgage insurance programs for one- to four-family housing, except that the Flood Disaster Protection Act of 1973 and § 51.303(a)(3) of this chapter shall apply.

5. In § 50.20, paragraph (a) is revised to read as follows:

**§ 50.20 Categorical exclusions.**

* * * * *

(a) An individual action on a one-to-four family dwelling, including endorsement for insurance of a mortgage covering such a dwelling either through the Direct Endorsement program described in 24 CFR 203.5 or otherwise, or an individual action on a project of five-or-more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site;

* * * * *

**§ 50.21 [Amended]**

6. In § 50.21, paragraph (b) is removed, existing paragraph (a) introductory text becomes an undesignated introductory paragraph, and paragraphs (a) (1) and (2) are redesignated as paragraphs (a) and (b), respectively.

**§§ 50.22, 50.36, 50.43 [Removed]**

7a. Sections 50.22, 50.36 and 50.43 are removed.

**PART 200—INTRODUCTION**

10. The authority citation for part 200 is revised to read as follows:

**Authority:** 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d). Subparts T and U are also issued under 42 U.S.C. 3543, and subpart T also is issued under 12 U.S.C. 1701s and 1715z–11.

**Subpart M—Affirmative Fair Housing Marketing Regulations**

**§ 200.610 [Amended]**

11. In § 200.610, after the word "sex," the words "handicap, familial status" are inserted.

12. Section 200.615(a) is revised to read as follows:

**§ 200.615 Applicability.**

* * * * *

(a) Multifamily projects and manufactured home parks of five or more lots, units or spaces, and initial submissions by a lender for an application for mortgage insurance on a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision; or

* * * * *

**§ 200.620 [Amended]**

13. Section 200.620 is amended by inserting "handicap or familial status," after the word "sex," the first time it appears in paragraph (a) of that section; to insert ", handicap or familial status" after the word "sex" the second time it appears in paragraph (a) of that section; and to insert "and the handicapped" after the word "sexes" in paragraph (b) of that section.

14. Section 200.630 is revised to read as follows:

**§ 200.630 Notice of housing opportunities.**

The Director of each Field Office shall prepare monthly a list of all projects covered by this subpart, and of all initial submissions by lenders for single family mortgage insurance where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision, on which commitments have been issued during the preceding 30 days. The Director shall maintain a roster of interested organizations and individuals (including public agencies responsible for providing relocation assistance and local housing authorities) who have expressed a wish to receive the monthly list, and shall provide the list to these organizations and individuals.

15. Section 200.635 is amended by adding at the end of the section a new sentence, to read as follows:

**§ 200.635 Compliance.**

* * * The Department will enforce compliance through the procedures outlined in 24 CFR part 108.

16. Section 200.640 is revised to read as follows:

**§ 200.640 Effect on other requirements.**

The requirement for compliance with this part is in addition to, and not in substitution for, any other requirements imposed by or under Executive Order 11063 or the Fair Housing Act.

**Subpart S—Minimum Property Standards**

17. In § 200.926, paragraph (a)(1) is revised to read as follows:

**§ 200.926 Minimum property standards for property which is not multifamily or care-type property.**

(a) *Construction standards*—(1) *Applicable structures.* The standards identified or contained in this section and in §§ 200.926a–200.926e shall apply to single family detached homes, duplexes, three-unit homes, and to living units in a structure where the units are located side-by-side in town house fashion. Section 200.926d(c)(4)(iv) also shall apply to four-unit homes.

* * * * *

18. In § 200.926d, paragraph (c)(1)(ii) is revised, and a new paragraph (c)(4)(iv) is added, to read as follows:

**§ 200.926d Construction requirements.**

* * * * *

(c) *Site design*—(1) *General.* (i) * * *

(ii) With the exception of paragraph (c)(4)(iv) of this section, these site design standards are applicable only in communities that have not adopted criteria for site development applicable to one and two family dwellings.

* * * * *

(4) *Drainage and flood hazard exposure.* * * *

(iv) In all cases in which a Direct Endorsement (DE) mortgagee submits to HUD for endorsement for insurance a mortgage on a newly constructed one- to four-family dwelling (including a newly erected manufactured home) which was processed by the DE mortgagee, the DE mortgagee shall determine whether the property is located in a 100-year floodplain as designated on maps of the Federal Emergency Management Agency and, if so, shall obtain a final Letter of Map Amendment (LOMA) or final Letter

of Map Revision (LOMR) before submitting the application for insurance to HUD. Such mortgages shall not be eligible for insurance unless the DE mortgagee submits the LOMA or LOMR to HUD with the mortgagee's request for endorsement.

* * * * *

**PART 203—SINGLE-FAMILY MORTGAGE INSURANCE**

19. The authority citation for part 203 is revised to read as follows:

**Authority:** 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d). Subpart C also is issued under 12 U.S.C. 1715u.

20. Section 203.12 is revised to read as follows:

**§ 203.12 Mortgage insurance on proposed or new construction in a new subdivision.**

(a) *Applicability.* This section applies to an application for insurance of a mortgage on a one- to four-family dwelling constructed in a new subdivision, unless the mortgage will be secured by a dwelling that:

(1) Was completed more than one year before the date of the application for insurance or, under the Direct Endorsement Program, was completed more than one year before the date of the appraisal;

(2) Is in a subdivision in which all development construction has been completed and accepted by the local jurisdiction and most dwellings have been completed, or which was approved under paragraph (e) or (f) of this section as in effect prior to [insert effective date of rule]; or

(3) Is being sold to a second or subsequent purchaser.

(b) *Definitions.* For purposes of this section:

(1) *Subdivision* means the total area containing all of the proposed land development activities, building or construction operations which are under centralized control, and planned principal development elements to support the creation of five or more dwelling lots (or a lesser number of lots that HUD determines to be appropriate to require applicability of this section in individual cases).

(2) *Improved area* means an area that is all or part of a subdivision and is at least the minimum size for which the local government is willing to accept the streets, or the water and sewage systems for maintenance, as appropriate.

(3) *Partially completed,* with respect to an improved area, means that:

(i) The local government has accepted the plat of a subdivision or of an improved area, and the plan for its principal development elements and rights-of-way;

(ii) All government approvals to begin development and construction in the improved area have been secured;

(iii) All development or construction of the improved area's streets, water and sewage systems and utilities has proceeded to a point that precludes any major changes; and

(iv) Provisions are in place for continuous maintenance of the streets and water and sewage systems once the improved area is substantially completed.

(4) *Substantially completed,* with respect to an improved area, means that:

(i) With the exception of delays approved by the local government and the Secretary, the improved area's principal development elements have been completed;

(ii) The local government has issued occupancy permits or their equivalent on those new dwellings being processed for conditional commitments; and

(iii) The local government accepts, or will accept, for continuous maintenance the streets and the water and sewage systems. Where local acceptance for maintenance is not available, adequate provision for private maintenance must be demonstrated. However, with respect to private water and sewer systems, the local government also must certify that public systems are economically infeasible, or that the property is served by a system approved by the Secretary under Title X of the National Housing Act.

(5) *Principal development elements* include, without being limited to, necessary grading, streets, water and sewage systems, utilities, storm drainage, and community facilities, as well as measures and devices for the abatement of nuisances and hazards.

(c) *Procedures.* (1) Applications for insurance to which this section applies will be processed in accordance with procedures prescribed by the Secretary. These procedures may only provide for endorsement for insurance of a mortgage covering a dwelling that is:

(i) located in an improved area in accordance with terms of a conditional commitment, or approval under the Direct Endorsement Program, issued as described in paragraph (d) of this section;

(ii) approved under the Direct Endorsement Program and included in a Master Appraisal Report, or in a Certificate of Reasonable Value or in a Master Certificate of Reasonable Value issued by the Department of Veterans Affairs; or

(iii) located in a subdivision approved by the Farmers Home Administration.

(2) Unless paragraph (d) of this section applies, or unless the property is located in a subdivision approved by the Farmers Home Administration, the mortgagee must submit a signed Builder's Certification of Plans, Specifications and Site (Builder's Certification). The Builder's Certification shall be in a form prescribed by the Secretary and shall cover:

(i) Flood hazards;

(ii) Noise;

(iii) Explosive and flammable materials storage hazards;

(iv) Runway clear zones/clear zones;

(v) Toxic waste hazards;

(vi) Other foreseeable hazards or adverse conditions (i.e., rock formations, unstable soils or slopes, high ground water levels, inadequate surface drainage, springs, etc.) that may affect the health and safety of the occupants or the structural soundness of the improvements. The Builder's Certification shall be provided to the appraiser for reference before the performance of an appraisal on the property.

(3) If a builder (or developer) intends to sell five or more properties in a subdivision, an Affirmative Fair Housing Marketing Plan (AFHMP) that meets the requirements of 24 CFR part 200, subpart M must be submitted and approved by HUD no later than the date of the first application for mortgage insurance in that subdivision. Thereafter, applications for insurance on other properties sold by the same builder (or developer) in the same subdivision may make reference to the existing previously approved AFHMP.

(d) *Improved areas.* (1) The conditional commitment or approval of the appraisal by the Direct Endorsement underwriter shall require that the improved area be at least substantially completed before endorsement for insurance. The conditional commitment may be issued or the appraisal may be approved for a dwelling located in an improved area when:

(i) The improved area is at least partially completed;

(ii) There is vehicular access to the finished lot at least to a line beyond the subject site or sites, and the lot and block grading are sufficiently finished to permit the appraiser to analyze the influence of adjacent areas on the subject site or sites;

(iii) Compliance with applicable requirements of the local government and the Secretary can be demonstrated; and

(iv) The mortgagee has submitted an Appraiser/Review Appraiser Checksheet, in a form prescribed by

HUD, that contains information on floodplains, site and soil suitability, proximity to natural and manmade hazards including flammable and explosive materials, historic preservation sites or areas, wetlands, coastal zones, proximity to highways or railroads, toxic waste sites, airport hazards, and other field conditions that would affect acceptability for mortgage insurance of the lots covered by the Appraiser/Review Appraiser Checksheet.

(2) If HUD determines, based upon an assessment of the adequacy of local subdivision standards and their enforcement, that the certification process described in paragraph (c)(2) of this section is inadequate to protect HUD's underwriting risk in an area, HUD may limit the endorsement of mortgages in the area to those mortgages processed in accordance with the procedures set forth in this paragraph (d). HUD will review all Appraiser/Review Appraiser Checksheets submitted in areas subject to a determination made under this paragraph (d)(2).

## PART 204—COINSURANCE

21. The authority citation for part 204 continues to read as follows:

**Authority:** Secs. 244, 211, National Housing Act (12 U.S.C. 1715z–9, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

22. Section 204.3 is revised to read as follows:

### § 204.3 Authority to determine eligibility.

(a) A mortgagee approved for coinsurance is authorized to make determinations relating to the eligibility of the mortgage, the mortgagor, and the property, in accordance with instructions and standards issued by the Commissioner, for insurance of a mortgage with respect to any mortgage to be coinsured by the Commissioner and the mortgagee, except for mortgages financing the sale of a property by a non-occupant seller who acquired title to the property during the period beginning two years before the date of application for insurance, and ending on the date of the application for insurance.

(b) * * *

Dated: March 26, 1993.

**Henry G. Cisneros,**

*Secretary.*

[FR Doc. 93–17351 Filed 8–2–93; 8:45 am]

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Part III

# Department of the Interior

**Bureau of Indian Affairs**

**Indian Fishing, Yurok Indian Reservation; Notice**

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

**Indian Fishing—Yurok Indian Reservation (Subsistence Gill Net Fishing)**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The Sacramento Area Director of the Bureau of Indian Affairs is making pre-season changes to the fishing regulations to assure proper management of the fisheries resources of the Klamath River.

**DATES:** 25 CFR Part 250.9 is amended as follows: The Fall Chinook Management Season shall be during the period of July 14, 1993, 7:01 pm through midnight December 31, 1993. The season is expected to consist of an early season and a late season. The early season is from July 14 through September 1 or 65% of the subarea quota. Fishing during the early season is permitted from Wednesday at 7 pm through Sunday at 7 pm. The late season will begin on September 1 at 7 pm and continue until December 31, 1993, or the remainder of the subarea quotas. Fishing during the late season would be permitted 24 hours a day, 7 days a week, except for a closure on Monday from 9 am to 5 pm. Any subarea allocations that are not harvested during the early season will be added to the late season allocations.

Prior to this season, the River will be closed to all fishing, and all nets must be out of the water between July 12, 1993, 9 am until July 14, 1993, 7 pm.

**FOR FURTHER INFORMATION CONTACT:** Ronald M. Jaeger, Area Director, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, CA 95825.

**SUPPLEMENTARY INFORMATION:** As authorized by 25 CFR 250.12 Indian Fishing: Hoopa Valley Indian Reservation, the Area Director of the Bureau of Indian Affairs is making the following pre-season changes to the regulations to assure proper management of the fisheries resources of the Klamath River. The total Indian allocation level will be 18,500 adult fall chinook salmon. Of this number, 14,800 will be allocated to be taken on the Yurok Indian Reservation. Subsequently, the subarea adult chinook quota would be 8,900 fish in the Management Area 1 (estuary) and 5,900 fish for Management Area 2 (U.S. 101 Bridge to Weitchpec).

Area 1 is from the confluence of the Klamath River and the ocean upstream to the Highway 101 Bridge. A quota of 5,800 adult fall chinook salmon has been established for the early season. A quota of 3,100 adult fall chinook salmon has been established for the late season.

Area 2 is the remainder of the mainstream Klamath River within the exterior boundaries of the Yurok Reservation. A quota of 3,800 adult fall chinook salmon has been established for the early season. A quota of 2,100 adult fall chinook salmon has been established for the late season.

The Blue Creek conservation zone will be closed to gill net fishing ⅛ mile above the upper portion of the Blue Creek delta (bedrock wall) and ½ mile below the lower portion of the Blue Creek delta from September 14 until December 31, 1993.

Dated: July 27, 1993.

**Ada E. Deer,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 93-18387 Filed 8-2-93; 8:45 am]

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Part IV

# Environmental Protection Agency

**40 CFR Part 141**

**National Primary Drinking Water Regulations; Analytical Techniques (Trihalomethanes); Final Rule**

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH-FRL-4642-5]

RIN 2040-AB87

# National Primary Drinking Water Regulations; Analytical Techniques; Trihalomethanes.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving two additional methods in 40 CFR 141.30 for monitoring total trihalomethanes (TTHMs) in drinking water for compliance with the maximum contaminant level (MCL). These two EPA methods, Methods 502.2 and 524.2, are capillary column methods and are already approved for the compliance monitoring of eight volatile organic chemicals (VOCs) under 40 CFR 141.24(g)(10)(iv) and (v) and unregulated VOCs under 40 CFR 141.40(g).

DATES: This rule is effective and the methods herein may be used on September 2, 1993. For the purposes of judicial review only (consistent with 40 CFR 23.7), this rule is considered issued at 1 p.m. Eastern Time on August 14, 1993.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time. For technical questions, contact Baldev Bathija, Ph.D., Office of Ground Water and Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 260–3040.

SUPPLEMENTARY INFORMATION: On November 29, 1979 (44 FR 68642), EPA published a National Interim Primary Drinking Water Regulation for TTHMs in drinking water. This rule became a National Primary Drinking Water Regulation (NPDWR) on June 19, 1986, when the Safe Drinking Water Act (SDWA) was amended. This rule requires community water systems that disinfect and serve 10,000 persons or more to comply with an MCL of 0.1 mg/l for TTHMs. The concentration of TTHMs is the sum of the concentrations of four individual trihalomethanes (trichloromethane, dichlorobromomethane, chlorodibromomethane and tribromomethane). In 40 CFR 141.30(e), EPA approved two methods (501.1 and 501.2) for the analysis of TTHMs in drinking water and for determination of compliance with the MCL for TTHMs.

Only July 8, 1987 (52 FR 25690), the Agency published regulations that required monitoring for certain unregulated contaminants by all community water systems and non-transient, non-community water systems. EPA had proposed these regulations pursuant to Section 1445 of the SDWA on April 17, 1987 (52 FR 12876). The rule provided for use of the two capillary column methods for detecting a list of VOCs, but the rule did not establish MCLs for the individual chemicals on the list. This list, at § 141.40(e), includes the four individual trihalomethanes. Section 141.40(g) describes several methods available to monitor for these compounds, including EPA Methods 502.2, "Volatile Organic Compounds in Water by Purge and Trap Capillary Gas Chromatography with Photoionization and Electrolytic Conductivity Detector in Series," and EPA Method 524.2, "Volatile Organic Chemicals in Water by Purge and Trap Capillary Gas Chromatography/Mass Spectrometry." In today's action, EPA is approving use of 502.2 and 524.2 for monitoring compliance with the MCL for TTHMs under § 141.30.

EPA is promulgating today's rule without providing notice and opportunity for public comment pursuant to section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)). EPA did provide notice and an opportunity for public comment on the methods in today's rule when the methods were approved for compliance monitoring for VOCs and the detection of unregulated contaminants under SDWA section 1445 (52 FR 12876, 12879, proposed April 17, 1987; and 52 FR 25690, 25702, final July 8, 1987). In the section 1445 rule, the two capillary column methods (524.2 and 502.2) were approved for the detection of the four individual trihalomethanes that are included in the definition of total trihalomethanes—trichloromethane (chloroform), dichlorobromomethane, chlorodibromomethane, and tribromomethane (bromoform). These capillary column methods were approved for determination of compliance with the MCLs for eight VOCs at 40 CFR 141.40(g) on July 8, 1987 (52 FR 25690, 25702). Today's rule approves the use of the two capillary column methods as alternate methods for determination of compliance with the MCL for TTHMs found at 40 CFR 141.30.

Because EPA has already provided an opportunity for public comment on the use of the capillary column methods for monitoring VOCs, including the four trihalomethanes, EPA finds that notice and public comment at this time is unnecessary and therefore good cause exists not to provide for notice and opportunity for public comment (5 U.S.C. 553(b)(B)). Systems may use the two capillary column methods approved in today's rule for determining compliance with the MCL for TTHMs on the effective date of today's rule.

The protocols for the two capillary column methods (502.2 and 524.2) being approved are contained in Methods for the Determination of Organic Compounds in Drinking Water, EPA/600/4–88/039 (revised July 1991). This document is available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. The NTIS toll-free number is 800–553–6847 and the NTIS order number is PB91–231480.

EPA is encouraging the use of the above methods for all TTHM monitoring. The Agency intends to discontinue technical support for packed column methodology for the analysis of TTHMs and other VOCs (EPA Methods 501.1, 501.2, and 501.3). This means that the Agency will no longer provide technical advice, keep copies of the method after the current stock is exhausted, or resolve technical problems that may develop. However, the Agency will continue to accept data generated with these methods.

## Regulation Assessment Requirements

### *Executive Order 12291*

Executive Order 12291 requires EPA to judge whether a regulation is "major" and, if so, to prepare a regulatory impact analysis. A rule is considered major if it has an economic impact of $100 million or more, causes a significant increase in cost or prices, or any of the other adverse effects described in the Executive Order. The objective of this rule is merely to allow the use of additional alternate methods. This does not require purchase of any new equipment by the regulated community or impose any new requirements. As such, this rule is expected to reduce the cost of monitoring by allowing the use of a single method for monitoring both VOCs and total trihalomethanes. In view of this, EPA believes that this action will either have no economic impact or have positive economic impact. Hence it is not a major rule within the meaning of the Executive Order. This notice has been reviewed by the Office of Management and Budget under Executive Order 12291

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of regulations on small entities. If there is a significant effect on a substantial number of small entities, EPA must seek to minimize the effect.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides laboratories with two additional alternatives for THM testing. Because these methods are optional, and because EPA is not promulgating any new requirement, the Agency believes that this notice will not have any significant effect on a substantial number of small entities.

*Paperwork Reduction Act*

Today's rule places no additional information collection or record-keeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 40 CFR Part 141**

Administrative practice and procedure, Chemicals, Intergovernmental relations, Reporting and Recordkeeping requirements, Water supply.

Dated: July 22, 1993.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, part 141 of title 40 of the Code of Federal Regulations is amended as follows:

## PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. In § 141.30, paragraphs (e)(3) and (e)(4) are added, and two new sentences are added at the beginning of the concluding text of paragraph(e) to read as follows:

**§ 141.30 Total trihalomethanes sampling, analytical and other requirements.**

* * * * *

(e) * * *

(3) "Volatile Organic Compounds in Water by Purge and Trap Capillary Gas Chromatography with Photoionization and Electrolytic Conductivity Detector in Series," Method 502.2, EMSL, EPA, Cincinnati, Ohio. EPA Method 502.2 is contained in Methods for the Determination of Organic Compounds in Drinking Water, EPA/600/4–88/039 (revised July 1991).

(4) "Volatile Organic Chemicals in Water by Purge and Trap Capillary Gas Chromatography/Mass Spectrometry," Method 524.2, EMSL, EPA, Cincinnati, Ohio. EPA Method 524.2 is contained in Methods for the Determination of Organic Compounds in Drinking Water, EPA/600/4–88/039 (revised July 1991).

For the methods cited in paragraphs (e)(1) and (e)(2) of this section, see appendix C to this subpart C. The methods cited in paragraphs (e)(3) and (e)(4) of this section are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (order number PB91–231480.) * * *

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[FR Doc. 93–18226 Filed 8–2–93; 8:45 am]

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Part V

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Parts 210 and 211**

**Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Revision of Labeling Controls; Rule**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 210 and 211**

**[Docket No. 88N–0320]**

## Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Revision of Certain Labeling Controls

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the current good manufacturing practice (CGMP) regulations for human and veterinary drug products to revise certain labeling control provisions. Specifically, the final rule defines the term "gang-printed labeling," specifies conditions for the use of gang-printed or cut labeling, exempts manufacturers that employ automated 100-percent labeling inspection systems from CGMP labeling reconciliation requirements, and requires manufacturers to identify filled drug product containers that are set aside and held in an unlabeled condition for future labeling operations. These changes are intended to reduce the frequency of drug product mislabeling and associated drug product recalls.

**EFFECTIVE DATE:** August 3, 1994.

**FOR FURTHER INFORMATION CONTACT:** Tom Kuchenberg, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8046. or Paul J. Motise, Center for Drug Evaluation and Research (HFD–323), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8089.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In the **Federal Register** of June 23, 1989 (54 FR 26394), FDA published a proposed rule to amend the packaging and labeling control provisions of the CGMP regulations. The proposal: (1) Specified conditions for the use of gang-printed or cut labeling, (2) exempted manufacturers that employ 100 percent labeling inspection systems from CGMP labeling reconciliation requirements, and (3) required manufacturers to identify filled drug product containers that are not immediately labeled.

The proposed amendments were based on an agency study of drug product recalls that identified label mixups as the leading cause of recalls involving mislabeled products. An agency analysis of the recalls attributed to label mixups showed that the use of cut labels, labels of similar size, shape, or color, and deviations from existing CGMP labeling requirements were the leading causes of such mixups. In contrast, three label control practices were not involved in any of the recalls attributed to label mixups: (1) the use of labels differentiated by size, shape, or color; (2) the use of dedicated packaging lines; and (3) the use of electronic 100-percent label inspection systems that validate the labeling of each drug product during finishing operations.

The proposed rule was intended to encourage desirable labeling operations and to contribute significantly to preventing drug product mislabeling and associated drug product recalls. The proposal gave interested persons an opportunity to submit written comments by August 22, 1989.

In response to a request for an extension of the comment period, in the **Federal Register** of September 8, 1989 (54 FR 37342), FDA published a notice extending the comment period for submissions to October 20, 1989.

FDA is now issuing a final rule based upon the proposal with changes made in response to public comments. These changes are discussed in the preamble to this final rule.

FDA is continuing to monitor recalls related to mislabeling, and FDA notes that the total number of these recalls for each of 3 fiscal years, 1988 to 1990, exceeded the number of these recalls in any of the 5 fiscal years, 1983 to 1987, that were covered by the agency's recall study. FDA notes also that recalls related to mislabeling are the primary cause of recalls classified by FDA as presenting a significant risk of serious health consequences or death (Class I). In many cases, mislabeled drug products subject to a Class I recall are detected by health care professionals before they are dispensed or by consumers before use. Unfortunately, mislabeled drug products continue to cause consumer injuries.

For example, a 41-year-old woman was hospitalized after becoming comatose from a medication used to lower blood sugar in diabetics that had been mislabeled as a medication to treat a bacterial infection. In another instance, a 6-year-old child was hospitalized after being given a potent liquid tranquilizer that had been mislabeled as a medication used for the treatment of cough and cold symptoms. For 3 fiscal years, 1988 to 1990, recalls related to mislabeling have accounted for almost 50 percent of Class I recalls. Further, for fiscal year 1990, mislabeling-related recalls have accounted for almost 60 percent of Class I recalls. FDA remains convinced that the CGMP regulations must address effectively this disturbing and persistent trend.

### II. Comments

FDA received 44 comments on the proposed rule. These comments represented many interests—29 human drug manufacturers, 6 biological drug manufacturers, 2 veterinary drug manufacturers, 2 drug equipment suppliers, and 5 trade organizations representing manufacturers, repackers, and distributors. In general, the comments supported the agency's initiative to modify the CGMP labeling control requirements to reduce the frequency of drug product mislabeling. However, many comments suggested modifications. FDA has carefully considered all comments and suggested alternatives and has adopted those comments that would reduce the burden on manufacturers while at the same time achieving the goal of significantly reducing mislabeling-related recalls. A section-by-section summary of the comments and the agency's responses to them are set out below.

#### *A. General Comments*

1. Several comments objected to specifying a "how to" approach instead of an "objective" approach with respect to labeling control requirements. The comments argued that requiring specific labeling systems or procedures would unduly restrict innovative approaches and technological advances. The comments recommended that the regulations state the objective that is sought and leave the method of attaining that objective to the reasonable discretion and ingenuity of the manufacturer. In contrast, two comments urged that FDA adopt a "how to" approach, stating that the revised requirements should specify acceptable types of "electronic or electromechanical equipment."

The agency agrees with the view that, with few exceptions, it should generally describe "what" is to be accomplished and provide great latitude in "how" a requirement is to be achieved by manufacturers. Indeed, in many instances the CGMP regulations expressly provide manufacturers with considerable latitude to determine the manner in which requirements are to be accomplished. In this instance, because of the continuingand serious problems experienced by the industry in maintaining adequate control over cut labeling, the agency has concluded that somewhat greater labeling control is

needed. While the regulation reflects the agency's view that somewhat greater control over cut labeling is needed to reduce the incidence of drug product mislabeling, the final rule permits manufacturers considerable latitude under § 211.122(g)(1), (g)(2), and (g)(3) of these final regulations in achieving the greater degree of control.

The agency is aware that these regulations apply to a wide variety of drug products, but believes that the regulations are sufficiently flexible to permit technological innovation. Indeed, the rate of technological improvements of automated labeling inspection systems will likely accelerate with the increased use of such systems to comply with these regulations. Therefore, the agency concludes that the proposed regulations are specific enough to address a serious problem effectively while offering regulated industry sufficient flexibility to accommodate a great variety of present and future technologies.

2. Several comments addressed the scope of the proposed regulations. One comment stated that the regulations should not apply to preparation of bulk pharmaceutical chemicals. Another comment claimed that, because clinical supplies (i.e., investigational new drug products) are produced in small lots, there is less chance of labeling errors. The comment urged that such products be exempt from the regulations. Another comment suggested that medicinal oxygen repackers who handle no other compressed medical gases are not likely to experience labeling errors and, therefore, should be exempt from these regulations.

While the good manufacturing practice provisions under section 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351(a)(2)(B)) apply to both bulk and finished drugs, the CGMP regulations set forth in 21 CFR part 211, including the provisions governing labeling controls, apply solely to finished dosage forms, whether or not in packaged form. (See 21 CFR 211.1.) Although the revised labeling control provisions in the CGMP regulations do not apply to the preparation of bulk pharmaceutical chemicals, FDA may use these provisions as a guide in its inspections of the labeling practices of manufacturers of bulk pharmaceutical chemicals.

The revised labeling control provisions apply to the preparation of dosage forms that are under clinical investigation, whatever the size of the product lot. The small size of a product lot does not reduce the need for labeling controls. In fact, in some cases, the manufacture of many small lots may increase the opportunities for mixups and the need for label controls. Furthermore, in cases where firms label both investigational and noninvestigational products, the suggested exemption for investigational lots could create additional difficulties in labeling control for all products on the line. Therefore, the agency does not accept the suggested exemption for clinical supplies.

Finally, the agency rejects the suggested exemption for oxygen repackers who handle no other compressed medical gas. The agency notes that mixups can occur in a facility dedicated to repacking a single product among different lots or different private label distributors for the same product. Such mixups may have considerable public health significance.

3. Two comments addressed the effective date of the final rule. One comment suggested that at least 1 year would be needed, after the date of publication in the **Federal Register**, to acquire and start up new equipment. Another comment requested an 18- to 24-month time period to adopt new electronic systems or to convert from cut to roll labels.

This rule becomes effective August 3, 1994. The agency believes that the 12 months provided gives firms sufficient time to exhaust noncomplying labeling stocks and to make necessary changes to labeling control systems. The period given for compliance in this rule is the same as the period given firms to comply with the final rule requiring tamper-resistant packaging for over-the-counter drug products, a rule which, like these revisions to labeling controls, may have required some firms to install new equipment.

4. Several comments addressed the economic impact of complying with the proposed regulations. The comments argued that costs for new equipment and specially coded labeling could be especially significant for small firms that perform short labeling runs. The comments claimed that compliance would be costly if required for all labeling instead of being restricted to immediate-container labels.

As discussed in comment 13, the agency is adopting as part of the final rule a cut labeling control procedure for hand labeling operations that involves the use of visual inspection to conduct a 100-percent examination for correct labeling during or after completion of finishing operations. Because this alternative can be implemented without new equipment or specially coded labeling, small firms should be able to comply with the new requirements without incurring significant incremental costs.

The agency believes that it is crucial to apply these regulations to package inserts and other pieces of labeling in addition to immediate-container labels. Recalls involving incorrect package inserts and outer/shipping cartons continue to be a problem. The agency does not believe that it is in the public interest to disregard this part of the overall problem of drug product mislabeling. Indeed, some manufacturers already recognize the need to improve controls on all labeling and have instituted bar code control systems for all labeling.

The agency believes that this final rule will bring the regulated drug industry up to the minimum level of current good manufacturing practice necessary for the prevention of drug product mislabeling. The agency agrees that some firms may incur costs in order to adopt suitable labeling control systems, but has determined that the overall cost impact of this final rule is minimal. For those manufacturers that choose to acquire an automated labeling verification system to inspect labeling, estimated cost based on bar-coded or keyhole-coded labeling is between $10,000 and $20,000, an expense that is comparable to the cost of general purpose manufacturing equipment. A more elaborate automated machine vision system for labeling verification may cost approximately $40,000. These equipment expenses will be offset for many manufacturers by the annual cost savings realized by the exemption from the requirement to perform label reconciliation. Further, these costs are considerably less than the costs to manufacturers and the public of label mixups, including the costs of product recalls that may follow a label mixup. Such costs include potential consumer injury and death, the expense of conducting product recalls, loss of goodwill, lost sales, and product liability claims.

*B. Materials Examination and Usage Criteria*

5. Nearly all comments supported the proposed revision under § 211.122(f) to the provisions governing the use of gang-printed labeling. One comment favored retaining the existing regulations, contending that the existing regulations already prohibit gang printing. The comment claimed that the proposal would relax existing requirements and fail to reduce the rate of mislabeling.

FDA does not agree. Existing regulations do not prohibit use of gang printing labeling for dissimilar items.

Rather, the existing regulations require that gang printing of labeling to be used for dissimilar items "be minimized," and that gang printing in such cases take place under special control procedures for labeling and packaging operations. As revised, the regulations prohibit use of gang-printed labeling for dissimilar items unless the labeling from gang-printed sheets is adequately differentiated by size, shape, or color. As stated in the preamble to the proposed rule, the agency views the change as a positive measure that will contribute significantly to preventing drug product mislabeling.

6. Three comments recommended that the regulations define the term "gang-printed labeling." One comment described a system for label printing that prints labels two to four across on a continuous roll on a sequential basis for dozens of different lots. Identical lots of labels are then separated from the roll for final container labeling. This comment sought to distinguish this printing method from conventional gang printing methods and, thus, exclude it from the proposed restrictions on gang printing. One comment suggested a definition for gang-printed labeling that would exclude sequentially generated computer printed labels. One comment requested the agency to distinguish between sheet-printed and gang-printed labeling.

After considering these and related comments, the agency concludes that a definition of the term "gang-printed labeling" is warranted. Accordingly, the agency is revising 21 CFR 210.3 to define gang-printed labeling as labeling derived from a sheet of material on which more than one item of labeling is printed.

As discussed in the preamble to the proposed rule, the agency has found that labeling mixups related to gang printing frequently arise when the multiple items of gang-printed labeling are insufficiently differentiated by size, shape, or color. Under these conditions, the proximity of the different labeling items to each other is problematic because the items, when cut and separated from gang-printed sheets into individual stacks, are easily mixed up. These proximity-derived mixups may go undetected at the printer, or at the drug manufacturer. Thus, the agency regards even a single sheet of gang-printed labeling (when printed by a manufacturer's computer, for example) to be prone to proximity-derived mixups because separation of similar labeling items may mistakenly include adjacent different labeling items. Likewise, similar labels for different items may be gang printed across roll stock sheets that are subsequently cut into individual rolls. These rolls may be inadvertently spliced onto adjacent rolls of labeling for different items where lack of adequate differentiation can mask the splicing error. The agency considers the continuous roll labeling printing method as gang-printed labeling, and the provisions of § 211.122(f) are intended to apply to roll stock sheets as well as individual stock sheets.

7. Two comments recommended that sequentially generated computer-printed labels, i.e., similar labels for different items that are printed by computer on rolls or flat sheets and separated before application to containers, not be considered gang printing within the meaning of proposed § 211.122(f). One comment asked about the acceptability of printing incomplete identical labels on a single sheet, subsequently separating these labels, and then filling in the blanks with information unique to each different item, as appropriate.

The agency considers the printing system described by the comment to be a type of gang printing within the meaning of § 211.122(f) (see comment 6). The fact that the printing process is controlled by computers is not relevant to the problems attendant to removing individual labels from a roll or sheet, nor does the use of computerized processes reduce the need for special control and handling of individual labels to prevent mixups. At the same time, the agency notes that the use of computer-controlled labeling procedures may make differentiation of labeling by size, shape, or color easier.

Preprinting incomplete identical stock labels on a single sheet or roll is not prohibited under these regulations. The agency advises, however, that labels that have been separated from a roll or sheet are considered cut labels and are subject to the special control procedures for labeling and packaging operations under § 211.122(g) of these regulations.

8. Two comments requested that the regulations allow gang printing of labeling for different items that are not differentiated by size, shape, or color, provided special control procedures are used to separate and control each unique set of labels. One comment argued that, where a firm handles many different products, the printing of distinctive labels for each product is not practical.

The previous regulation under § 211.122(f) permitted gang printing of labeling of the same size and identical or similar format and/or color schemes with the use of special control procedures in packaging and labeling operations, taking into account sheet layout, stacking, cutting, and handling during and after printing. The agency has concluded, through its analysis of product labeling recalls and inspectional findings, that the use of special controls during and after printing cannot be relied on to prevent mixups of cut labeling derived from such gang printing. Therefore, use of undifferentiated labeling derived from such gang printing is prohibited by these final regulations. However, it should be emphasized that the regulation does not require a firm to use labeling that is differentiated by size, shape, or color for each product in a firm's entire line. Differentiation is only required when a single sheet is used for the gang printing of labeling for different drug products, or different strengths or net contents of the same drug product.

9. One comment recommended that the regulations governing the labeling of insulin products be revised to permit product differentiation by the use of color coded labels. The comment claimed that color coding would not only help manufacturers control labeling, but also help consumers distinguish between insulin products.

Color coding of labeling for insulin products is already prescribed by regulation (21 CFR 429.12). The use of color coding to differentiate insulin products is beyond the scope of this final rule. Any person who believes that the color coding of insulin products should be changed may, of course, petition the agency under the provisions of 21 CFR 10.30 to amend 21 CFR 429.12.

10. One comment recommended that the agency not apply § 211.122(f) to the use of gang-printed labeling for small labeling lots, e.g., lots fewer than 100 in number.

The agency disagrees. Mixups involving gang-printed labeling can occur in small lots. As noted above, the small size of a lot does not reduce the need for labeling controls. Therefore, the agency declines to accept this recommendation.

11. Two comments requested the agency to define cut labels. One comment asked that cut labels be restricted to "traditional print shop operations." The second comment asked whether labels removed from a roll are considered to be cut labels.

"Cut labels" and "cut labeling" are items of labeling that have been detached from printed stock material prior to being brought to a labeling line. The agency advises that labels printed on a roll but not directly applied to packaging from the roll (i.e., where the labels are removed from the roll for

subsequent storage and handling prior to actual labeling) are cut labels.

12. Two comments recommended that the proposed special control procedures for cut labeling in § 211.122(g) also apply to roll labeling. One comment noted the potential for mixups involving roll labeling when a single roll has items of labeling of similar size, shape, or color.

Although use of roll labels, in itself, does not prevent mixups, the agency has determined that the use of cut labels is much more likely to cause labeling mixups and recalls and that special labeling control procedures for cut labels are justified. Specifically, FDA has found that 76 percent of recalls due to label mixups involved the use of cut labels; only 24 percent of recalls involved the use of roll labels. The agency has determined that individual cut labeling is more liable to result in mixups than labeling that is securely affixed to a roll from the time of printing until immediate application to containers. Therefore, the agency declines to extend special labeling controls to roll labeling at this time.

13. Several comments expressed concerns about the applicability of the proposed requirement regarding cut labels under § 211.122(g) to low volume labeling operations for such products as clinical supplies, bulk pharmaceutical substances, allergenic extracts, veterinary products, and compressed medical gases, and products produced in small lots such as radiopharmaceuticals or orphan drug products. The comments stated that, in low volume labeling operations, labeling is typically applied by hand and claimed that adequate labeling control can be attained by documented 100-percent visual examination by two persons in conjunction with labeling reconciliation. The comments contended that the use of electronic or electromechanical equipment for low volume operations is unwarranted.

The agency has concluded that, for labeling runs of a low enough volume to make hand application of cut labeling practical, visual examination performed by one person with independent verification by a second person of all labeling, in conjunction with labeling reconciliation, provides reasonable assurance of labeling control. Although visual examination is somewhat less effective than electronic or electromechanical examination, differences in effectiveness are insignificant in low volume situations where operators have sufficient time to check the labeling. The agency believes that, by limiting the provision to labeling applied by hand, the labeling control procedure will be confined to reasonably low volume labeling operations where visual checks of all labeling can be both practical and effective. Accordingly, the final regulation is amended to permit as an alternative control for cut labeling the use of visual inspection to conduct a 100-percent examination for correct labeling during or after completion of finishing operations for hand-applied labeling. Documentation that all products were visually examined for correct labeling must be made a part of the batch production record (see 21 CFR 211.188(b)).

14. Several comments asked whether proposed §§ 211.122(g) and 211.125(c) would apply to labeling other than the immediate container label.

As previously noted, the regulations are intended to apply to all labeling, not just immediate-container labels, and the agency has revised the final regulations accordingly. The agency's experience with product mislabeling recalls continues to show that use of incorrect cartons or inserts constitutes a significant portion of labeling control problems.

15. Several comments requested clarification of the term "dedication" as used in § 211.122(g)(1). Specifically, the comments asked whether "dedication" meant "permanent" or "per job" dedication of labeling and packaging lines. Some comments suggested that a packaging line should be considered to be dedicated if it is physically separated from other lines and if labeling runs for different products on a given line are not conducted concurrently.

For purposes of § 211.122(g)(1), the agency considers "dedication" of a labeling or packaging line to be the exclusive use of a line for a given strength of a given product for as long as that product and its labeling are in a firm's physical inventory or catalog of marketed products. A line may only be rededicated after exhaustion of the product and its labeling from the firm's physical inventory and removal of the product from the firm's catalog of marketed products. Physical or spatial separation of different packaging and labeling lines is already required under § 211.130(a) of the CGMP regulations and is not relevant to whether those lines are considered to be dedicated. Further, the agency has decided that exclusive use for a prescribed period of time as a measure of line dedication would not assure that incorrect labeling is not brought to a labeling or packaging line.

16. One comment recommended that FDA not adopt line dedication as an alternative control for cut labeling because line dedication will not prevent mixups where cut labels are mixed up before delivery to the line.

The agency acknowledges that line dedication alone will not prevent mistakes involving the delivery of labeling to a labeling or packaging line. Compliance with the other pertinent labeling control provisions on the receiving, sampling, inspection, and acceptance of labeling, as well as subsequent storage, issuance, and use of labeling, is still necessary to reduce the risk of mixups before delivery to the line. Line dedication is intended to provide additional assurance that correct labeling is used in labeling and repackaging operations. The agency, therefore, rejects this recommendation.

17. Several comments complained that line dedication is not feasible for firms making many different products, especially where lot sizes are small. Several comments requested that the agency accept as dedicated use of a given labeling and packaging line for different products when sequential packaging/labeling runs are distinguished by a variety of conditions, such as: (1) changes in mechanical equipment on the line; (2) shut down intervals of at least 4 working hours; (3) runs of distinctively different products or identical products having distinctively different net contents; and (4) use of labeling differentiated by size, shape, and color.

The agency considers that the effectiveness of using dedicated lines to prevent cut labeling mixups can be achieved only when a given line is used solely for one strength of one drug product, thus minimizing the chance that incorrect labeling would ever be brought to that line. The schemes suggested by the comments would not be, in the agency's view, effective labeling control methods. The agency notes that, under this final rule, use of dedicated lines is not the only option open to manufacturers. Firms may use nondedicated lines if: (1) an automated examination of 100 percent of the labeling is conducted, (2) roll labeling is used; or (3) labeling is applied by hand, if a visual examination of 100 percent of the labeling is conducted. The agency notes that the latter labeling control procedure should be a viable option for small lot sizes. Thus, the agency does not believe it appropriate to delete or qualify § 211.122(g)(1).

18. One comment asked whether a line may be considered dedicated under § 211.122(g)(1) if it is used for the labeling or packaging of several strengths of a single product.

The agency has revised this provision in the final rule to make clear that a

labeling or packaging line may be dedicated only to a single strength of a drug product.

19. Several comments recommended that the differentiation of cut labels by size, shape, or color be included as a special control procedure under proposed § 211.122(g).

Although there is value as a labeling control in differentiation of cut labeling by size, shape, or color, the agency believes that the use of differentiation of cut labeling, in itself, does not adequately assure that a product has been appropriately labeled. Therefore, the agency declines to accept this recommendation.

20. Three comments objected to proposed § 211.122(g)(2) because it requires the use of appropriate electronic or electromechanical equipment to conduct a 100-percent examination for correct labeling. These comments asserted that such equipment is insufficiently reliable and does not guarantee that the correct label will be applied to the correct container.

The agency acknowledges that electronic and electromechanical inspection systems do not completely assure that the correct labeling will be applied to the correct product container. Automated labeling inspection systems are only one part of a total labeling control system. Additional labeling control procedures, including preacceptance inspection, and appropriate storage and handling, are also needed to reduce the risk of labeling mixups. However, the agency thinks that automated labeling inspection systems can serve as a significant safeguard to reduce the chance that cut labeling will be mixed up. The agency is confident that the performance characteristics of automated systems will improve greatly as demand for such systems increases.

The agency is keenly aware of the need to accommodate a wide variety of new technologies in various areas, including technologies applied to labeling controls. The agency is committed to facilitating appropriate use of technologies, consistent with the agency's mandate to protect consumers. Accordingly, any party claiming knowledge of a technology or method of assuring that correct cut labeling is used and which provides at least the same degree of protection against label mixup as the methods specifically stated in the final rule, may submit a citizen petition under 21 CFR 10.30. In addition to the requirements under 21 CFR 10.30, such a petition should be clearly identified as a "Request for Exemption from § 211.122(g) Cut Labeling Control Provisions." The petition shall provide FDA with evidence that the technology or method of labeling control advanced by the petitioner provides protection against labeling mixup either equal or superior to the methods provided for in § 211.122(g)(1), (2), or (3). If FDA agrees with the petitioner, FDA will approve the petition and may propose to amend § 211.122 to add the new control methods.

21. One comment recommended that the term "finishing operations" as used in proposed § 211.122(g)(2) be defined.

Finishing operations include all steps taken by a drug manufacturer to complete packaging and labeling of a drug product. Finishing operations for a solid oral dosage form might include, for example, placing the dosage form in an immediate container; placing a cotton fill and labeling insert in such container; applying a label, cap liner, and cap; placing the immediate container in a carton; applying a labeling outsert; and placing unit cartons in labeled shipping containers. The agency thinks that the term is well understood in the pharmaceutical industry and sees no need for the suggested revision in the definition section.

22. One comment asked whether the process of preparing labeling in an area specifically designed for control of labeling, but separate from the actual packaging operations, is a process that takes place "during or after completion of finishing operations" within the meaning of proposed § 211.122(g)(2).

Although some firms label and package products on contiguous lines, the agency notes that packaging operations may be conducted in areas separate from labeling operations. Section 211.122(g)(2) is intended to cover examination of labeling applied during or after completion of finishing operations. The provision does not pertain to the process of preparing labeling. Thus, labeling preparation is not a finishing operation within the meaning of § 211.122(g)(2).

*C. Labeling Issuance*

23. Many comments argued that the labeling reconciliation requirement under proposed § 211.125(c) be deleted because labeling reconciliation is not an effective means of label control, either alone or as an adjunct to other procedures. Several comments recommended that the proposed waiver for label reconciliation be expanded to the use of any labeling control procedures, such as dedicated labeling and packaging lines, 100-percent visual examination of hand applied labeling, 100-percent examination of roll labeling by automated systems, or differentiation of cut labels by size, shape, or color. Several comments supported labeling reconciliation as a cost-effective and practical alternative to automated 100-percent labeling examination, especially in low volume situations where labeling is applied by hand and visually examined.

The agency agrees that the proposed waiver of labeling reconciliation should extend to roll labeling which undergoes 100-percent automated inspection, and has revised § 211.125(c) accordingly. The agency does not believe that the other alternative labeling controls suggested by the comments are sufficiently effective labeling control measures to warrant waiver of labeling reconciliation. The agency is convinced that labeling reconciliation has prevented a number of mislabeling incidents. The agency wishes to stress, however, that reconciliation alone will not prevent labeling mixups. Compliance with other pertinent provisions of the CGMP regulations (e.g., on receiving, sampling, inspecting, accepting, storing, issuing, and using labeling) is also required.

*D. Packaging and Labeling Operations*

24. Several comments recommended that the word "immediately" be deleted from the phrase "not immediately labeled" under proposed § 211.130(b) because it does not take into consideration reasonable holding times between filling and labeling operations. Additionally, these comments stated that this requirement should not apply to situations where there are normal processing delays, such as employee rest breaks and product flow holding times between filling and labeling operations.

The intent of the proposed requirement was to require manufacturers to identify unlabeled filled containers that are set aside and held for future labeling operations. The proposed identification provision was not intended to apply to situations where there are reasonable delays between filling and labeling and where containers are otherwise identified during the production process by their phase of processing, as currently required under § 211.105 of the CGMP regulations. The final regulation has been revised accordingly.

25. Several comments argued that identification of unlabeled drug product containers under proposed § 211.130(b) need not include the expiration date because the inclusion of this information will not help the manufacturer identify the product. Several comments also stated that, for certain biological drug products, the

expiration date is based upon potency assays, which are not always available when containers are filled.

The agency agrees and has revised the final regulation accordingly.

26. Many comments stated that proposed § 211.130(b) would be unreasonable if the intention of this provision is to require that each unlabeled filled drug product container be uniquely identified with its name, strength, quantity of contents, lot or control number, and expiration date. These comments recommended that only groupings of such unlabeled containers need to be identified and that instead of including these specific identifiers, a system of identification, such as use of lot numbers or color coding traceable to each drug product's name, strength, quantity of contents, lot or control number, and expiration date, would suffice to prevent mixups.

The agency did not intend to require that the identifying information be affixed to each unlabeled filled drug product container. The agency's intention was to require manufacturers to incorporate into their written procedures provisions for the proper handling and identification of unlabeled containers so as to preclude mislabeling. Any identification system that permits the manufacturer to determine all of the required information is acceptable. This identification system may apply to secure groupings of containers provided that there is no question as to the correct identity of each container in the group. The final regulation has been revised to clarify the agency's intention.

Therefore, the agency is amending the CGMP regulations for human and veterinary drug products to revise certain labeling control provisions by amending § 210.3 by adding new paragraph (b)(22), by amending § 211.122 by revising paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding new paragraph (g), and by amending § 211.125 by revising paragraph (c).

## III. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Economic Impact

The agency has analyzed the potential economic impact of the final rule and has determined that it requires neither a regulatory impact analysis as specified in Executive Order 12291, nor a regulatory flexibility analysis as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the final rule establishes additional conditions for the use of certain types of labeling and for the control of packaged drug products that will be labeled at a later date. In addition, the final rule provides an exemption from an existing label control requirement when certain conditions are met. The agency believes that the overall cost effect of this final rule is minimal.

As stated in both the 1989 proposal and the agency's economic assessment of this final rule, a significant number of firms already take advantage of electronic or electromechanical equipment to inspect all labeling. This final rule would result in cost reductions to those firms by exempting them from the current label reconciliation requirement. Also, most firms that choose to install automated, 100-percent labeling verification systems would achieve annual cost reductions that exceed the annualized acquisition costs of new equipment. Finally, the final rule provides for a cut-labeling control procedure for hand labeling operations that many small firms already use. Therefore, the agency believes that most firms, both large and small, will experience either unchanged or reduced regulatory costs because of these requirements. The 1989 proposal and the agency's economic assessment of this final rule are on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

In summary, the agency concludes that the final rule is not a major rule because the labeling control revisions do not result in a significant overall cost to manufacturers. Moreover, the final rule is intended to reduce the likelihood of mislabeling-related recalls and in many cases will reduce the industry's regulatory burden by relieving industry from certain CGMP labeling reconciliation requirements. For these reasons, therefore, the agency has determined that this final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that this final rule does not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

## V. Effective Date

To allow for sufficient time for necessary changes to labeling control operations and the consumption of existing labeling stocks made obsolete by labeling conversions, manufacturers are given until August 3, 1994 to comply with the new requirements.

### List of Subjects

*21 CFR Part 210*

Drugs, Packaging and containers.

*21 CFR Part 211*

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 210 and 211 are amended as follows:

## PART 210—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PROCESSING, PACKING, OR HOLDING OF DRUGS;GENERAL

1. The authority citation for 21 CFR part 210 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

2. Section 210.3 is amended by adding new paragraph (b)(22) to read as follows:

**§ 210.3 Definitions.**

* * * * *

(b) * * *

(22) Gang-printed labeling means labeling derived from a sheet of material on which more than one item of labeling is printed.

## PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

3. The authority citation for 21 CFR part 211 continues to read as follows:

**Authority:** Secs. 201, 501, 502, 505, 506, 507, 512, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, 356, 357, 360b, 371, 374).

4. Section 211.122 is amended by revising paragraph (f), by redesignating paragraph (g) as paragraph (h), and by adding new paragraph (g) to read as follows:

**§ 211.122 Materials examination and usage criteria.**

* * * * *

(f) Use of gang-printed labeling for different drug products, or different strengths or net contents of the same drug product, is prohibited unless the labeling from gang-printed sheets is adequately differentiated by size, shape, or color.

(g) If cut labeling is used, packaging and labeling operations shall include

one of the following special control procedures:

(1) Dedication of labeling and packaging lines to each different strength of each different drug product;

(2) Use of appropriate electronic or electromechanical equipment to conduct a 100-percent examination for correct labeling during or after completion of finishing operations; or

(3) Use of visual inspection to conduct a 100-percent examination for correct labeling during or after completion of finishing operations for hand-applied labeling. Such examination shall be performed by one person and independently verified by a second person.

* * * * *

5. Section 211.125 is amended by revising paragraph (c) to read as follows:

**§ 211.125 Labeling issuance.**

* * * * *

(c) Procedures shall be used to reconcile the quantities of labeling issued, used, and returned, and shall require evaluation of discrepancies found between the quantity of drug product finished and the quantity of labeling issued when such discrepancies are outside narrow preset limits based on historical operating data. Such discrepancies shall be investigated in accordance with § 211.192. Labeling reconciliation is waived for cut or roll labeling if a 100-percent examination for correct labeling is performed in accordance with § 211.122(g)(2).

* * * * *

6. Section 211.130 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and by adding new paragraph (b) to read as follows:

**§ 211.130 Packaging and labeling operations.**

* * * * *

(b) Identification and handling of filled drug product containers that are set aside and held in unlabeled condition for future labeling operations to preclude mislabeling of individual containers, lots, or portions of lots. Identification need not be applied to each individual container but shall be sufficient to determine name, strength, quantity of contents, and lot or control number of each container.

* * * * *

Dated: March 30, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

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Part VI

# Federal Trade Commission

**16 CFR Part 306**

**Automotive Fuel Ratings, Certification and Posting; Rule**

VOL 58 ISS 147 AG 3 1993 UMI



**FEDERAL TRADE COMMISSION**

**16 CFR Part 306**

**Automotive Fuel Ratings, Certification and Posting**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission ("Commission") amends its Octane Certification and Posting Rule ("Octane Rule") to include alternative liquid automotive fuels, including methanol, denatured ethanol, and other alcohols; blends of methanol, denatured ethanol and other alcohols with gasoline or other fuels; liquefied natural gas; and, liquefied petroleum gas. The amendments require that marketers of these fuels certify and post an automotive fuel rating that describes the fuel being marketed in terms of a minimum percentage, by volume, of its principal component. This action is being taken to comply with the Petroleum Marketing Practices Act ("PMPA"), as amended. The Commission has decided to defer a decision on whether to prescribe disclosure requirements for diesel fuel oil. The title of the rule is amended to be Automotive Fuel Ratings, Certification and Posting ("Fuel Rating Rule").

**EFFECTIVE DATE:** The amendments are effective October 25, 1993. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 25, 1993.

**FOR FURTHER INFORMATION CONTACT:** Neil Blickman, Attorney, 202–326–3038, or James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## Statement of Basis and Purpose

### *I. Introduction*

Section 1501 of the Energy Policy Act of 1992 ("EPA 92")[1] requires the Commission, within 270 days of enactment, to amend[2] the Commission's Octane Rule.[3] Specifically, the Commission must issue automotive fuel[4] certification and posting requirements, like those that exist now for gasoline, for all liquid alternative fuels[5] for vehicular use. These alternative liquid automotive fuels include such existing automotive fuels as methanol, denatured ethanol, liquefied petroleum gas, and liquefied natural gas. The Commission has the authority to require certification and posting of octane or other ratings for alternative liquid automotive fuels after consultation with the American Society for Testing and Materials ("ASTM").[6] For diesel fuel oil, the Commission has the discretionary authority to require certification and posting of cetane (a rating similar to octane), if the Commission finds this would be appropriate after a rulemaking proceeding.[7]

The purpose of PMPA's requirements for the certification and posting of octane ratings for gasoline sold at retail was to ensure that purchasers have the information they need to purchase gasolines with sufficient octane to prevent engine knocking while avoiding wasteful octane overbuying.[8] The purpose of the EPA 92 amendments to PMPA is to extend the Octane Rule's certification and posting requirements to alternative liquid automotive fuels to allow purchasers to compare posted octane or other fuel ratings with their engines' requirements. Thus, the amendments attempt to increase consumer confidence in and information about motor fuels. The amendments recognize "that motorists have a right to know what they pay for, and that dealers have a right to know that their competitors are not cheating."[9] Simply stated, the purpose is to give purchasers information they need to choose the correct type or grade of fuel for their vehicles.

In accordance with section 203(d)(1) of PMPA,[10] this proceeding was conducted pursuant to section 553 of the Administrative Procedure Act ("APA"),[11] except that interested persons were afforded the opportunity to present oral, as well as written, data, views and arguments. On March 26, 1993, the Commission published a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** that sought comment on four proposed certification and posting options for certain alternative liquid automotive fuels and certification and posting requirements for diesel fuel oil for vehicular use.[12] (A hearing was not requested, so one was not held.) The options and the comments received are discussed in Part III, below. The final amendments appear in Part VIII.B., below. Additional technical amendments, e.g., new § 306.0—Definitions, are discussed in Part VIII.A., below.

The Commission tentatively concluded in the NPR that the proposed amendments would not have a significant economic impact on a substantial number of small entities in the alternative liquid automotive fuel industry and the diesel fuel oil industry, as defined in the Regulatory Flexibility Act.[13] The Commission, however, sought comments about these industries and the impact of the proposed amendments on small entities in them. Under the requirements of the Paperwork Reduction Act,[14] the Commission also tentatively concluded that the recordkeeping burden associated with the proposed amendments would be minimal. To ensure the accuracy of its burden estimates, however, the Commission solicited comments on the paperwork burden that the proposed amendments would impose. Lastly, in accordance with the Commission's modified ten-year regulatory schedule, the Commission sought comments about the

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[1] Pub. L. 102–486, 106 Stat. 2776. Title XV of EPA 92, Pub. L. 102–486, 106 Stat. 2776, 2996–99, amends title II of PMPA, 15 U.S.C. 2821–25.

[2] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821).

[3] Final Rule Governing Certification and Posting of Octane Numbers Under Title II of PMPA, 44 FR 19160 (Mar. 30, 1979), codified at 16 CFR part 306.

[4] Section 1501(a)(6) of EPA 92 defines the term "automotive fuel" to mean liquid fuel of a type distributed for use as a fuel in any motor vehicle. Section 1501(a)(6) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(6)).

[5] Section 301(2) of EPA 92 defines the term "alternative fuel" as: Methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary (of the Department of Energy), by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits. Pub. L. 102–486, 106 Stat. 2776, 2866 (codified at 42 U.S.C. 13211).

[6] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(17)(C)).

[7] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(1)(B)).

[8] S. Rept. No. 731, 95th Cong., 1st Sess. 15–16, 19–21, reprinted 1978 U.S. Code Cong. and Adm. News 873–75, 877–79.

[9] H. Rept. No. 474 (I), 102nd Cong., 1st Sess. 151, reprinted in 1992 U.S. Code Cong. and Adm. News 1953, 1974.

[10] 15 U.S.C. 2823(d)(1).

[11] 5 U.S.C. 553.

[12] 58 FR 16464. The alternative liquid automotive fuels that the Commission identified in the NPR as currently being distributed in the marketplace are methanol; denatured ethanol; M–85 (a mixture of 85% methanol and 15% gasoline); E–85 (a mixture of 85% denatured ethanol and 15% gasoline); liquefied propane gas (LPG); and liquefied natural gas (LNG). See Part III.A., *infra*.

[13] 5 U.S.C. 605.

[14] 44 U.S.C. 3501–3520.

costs and benefits of the Octane Rule and its regulatory and economic impact.

The Commission has additional rulemaking responsibilities regarding alternative fuels under section 406 of EPA 92.[15] Although the Commission will address the requirements of section 406 in a subsequent proceeding, in the NPR the Commission invited suggestions on how to meet the requirements of both sections 406 and 1501 of EPA 92.[16] The Commission received limited comments concerning the section 406 proceeding. Those comments have been considered and will be taken into account when the Commission publishes its NPR in that proceeding.

## II. Background

### *A. Overview of the Octane Rule*

In this notice, the Commission amends the Octane Rule to include for alternative liquid automotive fuels certification and posting requirements like those now required by the Octane Rule for gasoline. On March 30, 1979, the Commission issued the Octane Rule, under section 203(c)(1) of title II of PMPA.[17] The Octane Rule, which took effect on June 1, 1979, establishes standard procedures for determining, certifying, and posting (by means of a label on the fuel dispenser) the octane rating of automotive gasoline intended for sale to consumers. The Octane Rule covers refiners, producers, importers, distributors, and retailers.[18]

Refiners, producers, and importers must determine the octane rating of the gasoline they distribute in accordance with the PMPA-prescribed formula.[19] For purposes of certification and posting, if distributors and retailers do not blend gasoline, they have the option of using the octane rating certified to them or of determining the octane rating by testing in accordance with the (R+M)/2 method.[20] If distributors or retailers blend different gasolines, they must either: (1) Test in accordance with the (R+M)/2 method; (2) use the weighted-average formula prescribed by section 202(f)(1) of PMPA; or (3) use the lowest octane rating certified to them for any of the gasolines in a mixture.[21]

The Octane Rule requires that refiners, producers, importers, and distributors certify the octane rating of gasoline that they distribute in commerce for resale. Refiners, producers and importers must certify consistent with their determination of the gasoline's octane rating. Distributors must certify consistent with the certification they received or, optionally, the octane rating determined by them. Certification can be accomplished in either of two ways: On a delivery ticket with each transfer of gasoline or by a letter of certification or other written statement. A letter or other written statement constituting certification is valid until gasoline with a lesser octane rating is shipped.[22]

Retailers must post the octane rating of all gasoline they sell to consumers. They must post a whole or half number, which must be equal to or less than the octane rating certified to them or determined by them. They must post at least one label on each face of each gasoline dispenser and, if more than one kind of gasoline is sold from a single dispenser, separate disclosures for each kind of gasoline must be put on each face of the dispenser. The label must show the octane rating preceded by the words "MINIMUM OCTANE RATING" and (R+M)/2 METHOD."[23]

Refiners, producers, importers, distributors, and retailers must keep for one year records of any delivery tickets, letters of certification, or tests upon which they based the octane ratings that they certified or posted. These records must be open for inspection by Commission and Environmental Protection Agency ("EPA") staff members or by persons authorized by the Commission or EPA.[24]

### *B. Amendments to the Octane Rule Required by EPA 92*

Section 1501 of EPA 92 amends Title II of PMPA to extend automotive fuel certification and posting requirements to all liquid automotive fuels.[25] Specifically, under this section, the term "gasoline" is deleted from PMPA and replaced with the term "automotive fuel."[26] The term "automotive fuel" means liquid fuel of a type distributed for use in any motor vehicle.[27] For vehicular use, such fuels include the following fuels: Gasoline (including gasohol, and oxygenated and reformulated gasolines),[28] diesel fuel oil, and alternative fuels. "Alternative fuel" is defined in section 301(2) of EPA 92 as including: methanol, denatured ethanol and other alcohols (including mixtures containing 70 percent to 85 percent or more by volume of methanol, denatured ethanol and other alcohols with gasoline or other fuels), liquefied petroleum gas and liquefied natural gas.[29]

This means that all liquid automotive fuels (with the exception of diesel fuel oil), including alternative liquid automotive fuels, must post either an octane rating or another rating specified by the Commission on fuel dispensers. As delineated in EPA 92, the alternative liquid automotive fuels identified during this proceeding as being currently distributed are methanol, denatured ethanol, blends of methanol or denatured ethanol with gasoline,

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[15] Specifically, section 406 of EPA 92 requires the Commission to propose labeling requirements for alternative fuels and alternative fuel vehicles, including requirements for information about their costs and benefits to enable consumers to make choices and comparisons. The Commission has authority to consolidate this required labeling with other labels. Sec. 406, Pub. L. 102–486, 106 Stat. 2778, 2880–81 (codified at 42 U.S.C. 13232).

[16] Under section 406 of EPA 92, the Commission must issue a Notice of Proposed Rulemaking by April 24, 1994. *Id.* Section 406 requires the Commission to establish labeling requirements for alternative fuels such as compressed natural gas (CNG), hydrogen and electricity, as well as the liquid alternative fuels.

[17] 15 U.S.C. 2821.

[18] 16 CFR 306.1. This coverage parallels the coverage in PMPA's definitions of "refiner," "gasoline retailer" and "distributor."

[19] 16 CFR 306.4, .7(a), .9(c). The formula is the sum, divided by two, of the Research Method and the Motor Method, two accepted laboratory test methods for evaluating the antiknock performance of automotive gasoline. Tests using the (R+M)/2 formula must be conducted in accordance with ASTM procedures. 16 CFR 306.4(b).

[20] 16 CFR 306.7(a)(1), .9(c).

[21] *Id.*

[22] 16 CFR 306.8, .7.

[23] 16 CFR 306.9. The octane label must be put on the face of the dispenser as near as possible to the price per gallon of the gasoline and placed so it is in full view of consumers. Octane labels for gasoline must be printed in black ink on a yellow background and conform to the Octane Rule's size, type style, and dimensional requirements. No marks or information other than that called for by the Rule may appear on the label. The Commission has granted several conditional exemptions to the Octane Rule's specific posting requirements to allow use of other labels under certain conditions.

[24] 16 CFR 306.6, .8, .10.

[25] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(17)–(18)).

[26] Section 1501(c) of Pub. L. 102–486, 106 Stat. 2776, 2996–7 (codified at 15 U.S.C. 2821).

[27] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821(6)).

[28] "Gasohol" is generally recognized as being a blend of approximately 90% unleaded gasoline and 10% denatured ethanol. The Commission considers gasohol to be gasoline in the traditional sense, and already covered by the Octane Rule. See Commission advisory opinion concerning gasohol dated January 8, 1993, issued to the Nebraska Gasohol Committee. Further, because gasohol is substantially gasoline, it does not fall within the definition of "alternative fuel" in EPA 92. Sec. 301(2), Pub. L. 102–486, 106 Stat. 2778, 2868 (codified at 42 U.S.C. 13211). See note 5, *supra*. Similarly, for "reformulated gasoline," which will be required to be available by the Clean Air Act in 1995, 42 U.S.C. 7545(k), and for current "oxygenated gasoline," the reformulations (to reduce emissions) will not otherwise change the inherent properties of the fuels. Because reformulated and oxygenated gasolines are not specified as alternative fuels and they are substantially gasoline, they are not alternative liquid fuels. Thus, as with other gasolines, octane ratings can and should be derived and posted for reformulated and oxygenated gasolines.

[29] Pub. L. 102–486, 106 Stat. 2778, 2868 (codified at 42 U.S.C. 13211). See note 5, *supra*.

liquefied petroleum gas ("LPG"), and liquefied natural gas ("LNG").[30] These fuels are described briefly below. The Fuel Rating Rule, however, applies to all present and future alternative liquid automotive fuels. If new types of alternative liquid automotive fuels are developed in the future, sellers can petition the Commission for further rulemaking if they believe that different or additional disclosures are necessary, or they can seek an exemption from specific certification and posting requirements if they believe those requirements are unnecessary for such new fuels.

Methanol, or wood alcohol, is commonly used in the U.S. as a raw material source (feedstock) for producing methyl tertiary butyl ether ("MTBE"), an octane-enhancing gasoline additive, and as a chemical feedstock, extractant, or solvent. It can be used in neat (100%) form as a gasoline substitute or in a blend with gasoline, most commonly as M–85 (85% methanol, 15% gasoline). The majority of methanol produced in the U.S. is from natural gas resources, but it also can be produced from coal, residual oil, and biomass.[31]

Ethanol, or grain alcohol, is also produced from biomass sources.[32] Once denatured, it can be used as a pure fuel or as a blend with gasoline, such as E–85 (85% denatured ethanol, 15% gasoline).[33]

LPG is composed primarily of propane and butanes, with smaller amounts of propylene and butylenes. About two-thirds of the LPG available today is a by-product of natural gas processing. It is supplied in four grades of different composition, with HD–5 being the grade usually recommended for automotive use. HD–5 is approximately 95% propane. The terms "LPG" and "propane" are often used interchangeably.[34]

Natural gas is a fossil fuel composed primarily of methane, along with other hydrocarbons such as ethane, propane, butane, and inert gases such as carbon dioxide, nitrogen, and helium. It is produced both in compressed ("CNG") and liquefied ("LNG") forms.[35] LNG is natural gas that has been liquefied at temperatures as low as −259°F. The amendment adopted by the Commission today covers only LNG.

### C. Identification of Comments Received

Below is an alphabetical list of the comments submitted in response to the NPR. The list includes the document number assigned to the comment on the public record and a general description of the commenter and its interests relating to this proceeding (for those comments that included a description).[36] The Commission received a total of 29 comments.[37] In the remainder of this notice, each comment is referred to by its acronym or the abbreviation given in parentheses.

1. American Automobile Manufacturers Association ("AAMA")—D–7. AAMA represents producers of approximately 81% of all U.S.-built motor vehicles.

2. Advanced Business Development, Inc. ("ABDI")—E–6. ABDI is a private consulting firm.

3. Atmos Energy Corp. ("AEC")—D–20. AEC is a natural gas distribution company with operations in Kentucky, Louisiana and Texas.

4. American Gas Association ("AGA") and Natural Gas Vehicle Coalition ("NGVC")—D–11. AGA represents 250 natural gas distribution and transmission companies, which account for approximately 85% of the nation's total annual natural gas utility sales. NGVC has over 200 members, including vehicle manufacturers, natural gas vehicle component manufacturers, natural gas distribution, transmission, and production companies, natural gas development organizations, environmental and non-profit advocacy organizations, state and local government agencies, and fleet operators. NGVC is dedicated to developing long-term markets for natural gas vehicles (NGVs) and building an NGV infrastructure.

5. Association of International Automobile Manufacturers ("AIAM")—D–17. AIAM is a non-profit trade association that represents U.S. importers, distributors and manufacturers of passenger cars and light trucks produced both here and abroad.

6. American Methanol Institute ("AMI")—D–23. AMI represents the majority of the methanol industry.

7. American Petroleum Institute ("API")—D–10. API represents approximately 300 companies involved in all aspects of the oil and gas industry.

8. American Trucking Associations, Inc. ("ATAI")—D–2. ATAI is a federation with associations in every state and the District of Columbia that represents every type and class of motor carrier in the country, for-hire and private. ATAI's members collectively consume 24 billion gallons of diesel fuel oil annually.

9. Alternative Transportation Fuels Inc. ("ATFI")—D–15. ATFI is a wholly-owned subsidiary of Skelgas Propane, Inc., a propane marketer.

10. CENEX ("CENEX")—D–21. CENEX is a regional agricultural cooperative, serving 320,000 farmers and ranchers through more than 1,800 local cooperatives in 15 states from the Great Lakes across the Midwest to the Pacific Northwest. Through a joint venture, CENEX sells refined petroleum products, including gasoline and diesel fuel oil, and propane, with annual sales of up to 36 million gallons of petroleum products.

11. Clean Fuels Development Coalition ("CFDC")—D–14. CFDC promotes the use of fuels such as ethanol as a means of achieving clean air. It is a non-profit coalition comprised of ethanol producers, ethanol marketers, ETBE [ethyl tertiary butyl ether]

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[30] Sec. 301(2), Pub. L. 102–486, 106 Stat. 2776, 2866 (codified at 42 U.S.C. 13211).

[31] Fact sheet on methanol, developed by Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4315, DE91002157, Rev. Feb. 1992. "Biomass" is a renewable, virtually inexhaustible domestic resource that can be used to produce methanol and ethanol. Corn is a major biomass feedstock being used today. Other biomass sources currently being used, or subject to research as potential feedstocks, include crop residues, forage (grass) crops, wood resources (forest residues and short-rotation wood energy crops), and the cellulosic components of municipal solid waste.

[32] "Denatured ethanol," also known as "fuel ethanol," is ethanol made non-potable by being blended with unleaded gasoline or other unleaded hydrocarbons according to specific regulations of the Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury. 27 CFR 19.966, .1005. Because of denaturing, an E–100 fuel would contain less than 100% ethanol.

[33] Fact sheet on ethanol, developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–3587, DE91002129, Rev. Feb. 1992.

[34] Fact sheet on liquefied petroleum gas and propane, developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4066, DE 91002114, Rev. Feb. 1992.

[35] Fact sheet on compressed and liquefied natural gas, developed by the Development and Communications Office, Technical Information Program, for the U.S. Department of Energy, NREL SP–220–4005, DE 90000388, Rev. Feb. 1992. The Commission cannot include CNG in this rulemaking, because PMPA, as amended, limits the Commission's jurisdiction in the proceeding to liquid fuels. Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821). However, CNG will be included in the rulemaking proceeding the Commission conducts under sec. 406 of EPA 92. See note 16, *supra*.

[36] All public documents are filed in the Commission's Rulemaking Record No. R811005. Industry comments are filed in category "D. Industry comments." Other comments are filed in category "E. Comments from other sources." Documents are numbered sequentially in the order received, such as Document No. D–1, Document No. D–2. In this notice, comments are cited by an identification of the commenter, the comment number and the relevant page number(s), e.g., "RFA, D–1, 1–3."

[37] The Commission originally set April 26, 1993, as the deadline for submitting written comments in response to the NPR. In response to a petition, the Commission extended the comment period to May 10, 1993. 58 FR 25582 (April 27, 1993).

manufacturers, agriculture organizations, automobile manufacturers, design and engineering firms, and other related industries and interest groups.

12. Chevron U.S.A. Products Company ("Chevron")—D–5. Chevron is a multinational oil company participating in exploration, production, and refining of crude oil and marketing of petroleum products. Within the United States, Chevron's activities in these functional areas are conducted by divisions of Chevron U.S.A. Inc., a wholly owned subsidiary of Chevron.

13. U.S. Department of Energy ("DOE")—E–5. DOE coordinates and administers the energy functions of the Federal Government.

14. Engine Manufacturers Association ("EMA")—D–6. EMA represents worldwide manufacturers of internal combustion engines for all applications except passenger cars and airplanes. EMA's 31 members produce diesel engines for on-highway truck and bus applications, as well as off-highway construction and agricultural equipment.

15. Marathon Oil Company ("Marathon")—D–9. Marathon, an integrated petroleum company, represents that it is the seventh largest U.S. refiner. The company supplies over 3,800 Marathon and subsidiary-brand retail motor fuel outlets located throughout the Midwest and Southeast, and is one of the refining industry's largest suppliers of petroleum products to independent, private-brand jobbers and wholesalers.

16. Mobil Oil Corporation ("Mobil")—D–4. Mobil is a major, integrated, international petroleum company, with five domestic refiners, more than 50 marketing terminals that distribute gasoline and diesel fuel oil, and over 8,500 branded retail outlets in 29 states. Mobil currently is testing several alternative fuels at selected stations.

17. North Carolina Department of Agriculture ("NCDA")—E–1. NCDA regulates the quality specifications for motor vehicle fuels offered for sale in North Carolina.

18. National Propane Gas Association ("NPGA")—D–19. NPGA represents the LP-gas (principally propane) industry with 3,400 to 3,500 members, including affiliated state and regional associations in 46 states, which represent members in all 50 states. The largest group of members are retail marketers of propane gas. The membership also includes propane producers, transporters, and wholesalers, and manufacturers and distributors of associated equipment, containers and appliances.

19. National Soydiesel Development Board ("NSDB")—D–16. NSDB is a non-profit organization established to develop a market for biodiesel fuels in the U.S. Its members are primarily soybean growers in the U.S. and their various organizations. NSDB seeks greater use of fuels derived from biological materials as an addition to conventional diesel fuels or as replacements for them in certain applications.

20. New York Department of Agriculture and Markets ("NYDAM")—E–4. NYDAM enforces state requirements for certification and labeling of gasoline octane ratings and diesel fuel oil cetane ratings. Pending state legislation would expand NYDAM's authority to other fuels, particularly those affected by the Clean Air Act.

21. Propane Consumers Coalition ("PCC")—E–3. PCC represents residential, agricultural, and industrial propane users.

22. Phillips 66 Company ("Phillips 66")—D–3. Phillips 66 produces and markets gasoline, diesel fuel oil and alternative fuels. It has an active interest in alternative fuels and programs, including a propane evaluation and emissions test fleet of 12 vehicles operating since 1990; emission test data for a variety of vehicles and fuel combinations on LPG; full service bulk propane plants in three states; approximately 200 company vehicles operating on LPG; more than 600 customer vehicles operating on LPG; over 100 LPG vehicle refueling dispensers; and 2 CNG dispenser stations.

23. Petroleum Marketers Association of America ("PMAA")—D–18. PMAA is a federation of 44 state and regional trade associations representing more than 11,000 independent petroleum marketers throughout the U.S. These marketers sell in excess of 40% of the gasoline, 75% of the home heating oil, and 60% of the diesel fuel oil consumed in this country.

24. Railroad Commission of Texas ("RCT")—E–2. RCT regulates energy and transportation industries in Texas. It operates under statutory mandates to support technical and market research and to educate the public about propane and other alternative fuels.

25. Renewable Fuels Association ("RFA")—D–1. RFA represents the domestic fuel industry in the U.S. Its membership includes ethanol producers that represent approximately 90% of operable U.S. ethanol capacity, as well as fuel blenders, providers of equipment, supplies, and services to the industry, and other interested parties.

26. Society of Independent Gasoline Marketers of America ("SIGMA")—D–13. SIGMA represents approximately 285 private brand marketers and chain retailers who market motor fuels in all 50 states, the District of Columbia, and Puerto Rico. In 1991, SIGMA members marketed approximately 22.75 billion gallons of motor fuel, or about 17% of all motor fuels sold in the U.S. that year. Diesel fuel oil sales accounted for 4.6 billion gallons.

27. Sun Company, Inc. ("Sun")—D–8. Sun produces diesel fuel oil at five U.S. refineries and sells automotive diesel fuel oil at some service stations. Sun is evaluating alternative fuels through in-house research, through participation in alternative fuel industry programs, and through installation of alternative fuel refueling facilities in selected Sun service stations for LPG, M–85, and E–85. It is planning a CNG facility.

28. Texaco Inc. ("Texaco")—D–22. Texaco Inc. is a vertically integrated enterprise, which is directly, or through ownership in affiliated operating companies, engaged in the worldwide exploration, production, transportation, and refining and marketing of crude oil and its products, including petrochemicals.

29. Wagner & Brown, Ltd. ("W&B")—D–12. W&B produces oil and gas.

*D. Comment Suggestions Beyond Commission's Authority Under PMPA*

Several comments suggested that the Commission amend the Octane Rule in ways that are beyond the Commission's authority under PMPA, as amended by EPA 92. Specifically: (1) NCDA suggested the Commission address pump nozzle size and require a nozzle on all diesel fuel oil dispensers with a sufficient diameter to prevent fueling a gasoline powered vehicle with diesel fuel oil;[38] (2) AGA/NGVC[39] and PCC[40] urged the Commission to require posting based on a unit pricing concept to compare the cost of alternative fuels to that of gasoline; (3) RCT suggested that the Commission require labeling that educates consumers about alternative and conventional fuels' emissions of toxins and other pollutants;[41] (4) RCT also recommended that the Commission conduct consumer education (at least as to the advantages of HD–5 propane over other mixtures of propane) instead of requiring the posting of information;[42]

[38] NCDA, E–1, 1, 3.
[39] AGA/NGVC, D–11, 3–4, 6–8.
[40] PCC, E–3, 1–3.
[41] RCT, E–2, 3.
[42] *Id.* at 4.

and (5) AAMA,[43] AGA/NGVC,[44] Chevron,[45] Phillips 66,[46] and Sun[47] urged the Commission to include CNG in any posting requirements at this time.[48]

PMPA, as amended by EPA 92, requires the Commission to amend the Octane Rule to require posting for liquid alternative fuels of each fuel's octane rating, or of another form of rating that the Commission, after consultation with ASTM, determines to be more appropriate to carry out the purposes of PMPA's testing, certification and posting requirements.[49] Because this is a statutorily mandated rulemaking proceeding, the Commission's authority is limited to that granted by the mandating legislation.

First, PMPA does not authorize the Commission to specify nozzle sizes for pumps dispensing different types of automotive fuels. Second, although comparative unit pricing would give information to purchasers about different types of fuels, it does not constitute an alternative rating more appropriate than an octane rating. Third, labeling that educates consumers about alternative and conventional fuels' emissions of toxins and other pollutants goes beyond assisting purchasers in identifying the specific type(s) of fuel required for their vehicles and therefore is not an alternative rating more appropriate to carry out PMPA's requirements.[50] Fourth, PMPA, as amended, also does not allow the Commission discretion to require consumer education in lieu of testing, certification, and posting of ratings. Lastly, the Commission is not free to include compressed natural gas (CNG) in this rulemaking, because PMPA, as amended, limits the Commission's jurisdiction in this proceeding to liquid fuels.[51] Accordingly, the Commission does not adopt any of these suggestions.

## III. Ratings Proposed in the NPR

### A. Alternative Liquid Automotive Fuels

In the NPR, the Commission proposed that the Octane Rule be amended to require the certification and posting of the octane rating of alternative liquid automotive fuels. Because of information that became available to the Commission during the course of its investigation into the alternative liquid automotive fuels area, however, the Commission tentatively concluded that it may not be practical or workable to require the disclosure of octane ratings for these fuels. Consequently, after consultation with ASTM and others, the Commission also proposed three other "rating" options for alternative liquid automotive fuels in the NPR. The four options are summarized below.

Option One, as already mentioned, proposed requiring the octane rating to be certified and posted for the alternative liquid automotive fuels. Option Two proposed requiring fuel composition ratings, such as, the range of hydrocarbon content of the alcohol fuels (which relates to the cold start capability of alcohol fuels) or a minimum percentage of the principal component of the fuel. Option Three proposed requiring the posting of labels that would compare the alternative fuel to gasoline in terms of the approximate mileage one would obtain by using an equivalent volume of each fuel. The proposed labels for Option Three were based on the heating values, or energy contents, of the alternative fuels and gasoline. Option Four proposed establishing fuel descriptors based on certain material specifications such as those developed by the California Air Resources Board. This option would require certification and posting of the identity of the fuels using these descriptors and minimum specifications for each fuel. In the NPR, the Commission sought comment on whether any of the four proposed ratings or combination of ratings, or ratings not yet proposed, would be appropriate. This section contains a review and analysis of the comments on each option and a detailed discussion of the automotive fuel rating that the Commission is prescribing today.

#### 1. Octane Rating Option

In the NPR, the Commission proposed requiring octane ratings for alternative liquid automotive fuels, but noted that other options may better implement the purposes of section 1501 of EPA 92.[52] The Commission explained that the octane rating currently required for gasoline is a measure of how well the gasoline resists engine knocking. The octane rating needed to prevent knocking varies with the engine's compression ratio, and different engines may require grades of gasoline with different octane ratings. The Octane Rule is designed to enable consumers to buy gasoline with an octane rating high enough to prevent engine knock, and to help consumers avoid "octane overbuying" or buying gasoline with an octane higher than needed to prevent engine knock.[53]

In requesting comments on its proposal to require octane ratings for alternative liquid automotive fuels, the Commission noted that, unlike gasoline, the physical and chemical properties of each such fuel may not vary much.[54] The Commission also observed that it expected that engines designed for alternative fueled vehicles would be designed to use fixed-octane alternative fuels without engine knock. The Commission further stated that there might be practical problems in implementing a reliable octane certification and posting program for alternative liquid automotive fuels, because of the lack of a standardized, such as an ASTM-approved, test method for determining octane ratings of such fuels.[55] Finally, the Commission expressed concern that the posting of high octane ratings associated with alternative liquid automotive fuels may contribute to the misperception that high-octane gasoline always is best for vehicles, and thereby aggravate existing gasoline octane overbuying.[56]

To account for the lack of significant variations in octane levels within classes of alternative liquid automotive fuels, and the lack of a standardized test method, the Commission proposed an option of assigning specified octane ratings to alternative liquid automotive fuels and requiring that these assigned octane ratings be posted at the pump and certified by suppliers through the chain of distribution.[57] The Commission proposed the following octane ratings for alternative liquid automotive fuels,

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[43] AAMA, D–7, cover letter, 1, Att. A, 1.

[44] AGA/NGVC, D–11, 4–5. AGA/NGVC stated more broadly that the current rulemaking proceeding should apply to all fuels, not just to liquid fuels.

[45] Chevron, D–5, 1.

[46] Phillips 66, D–3, 1.

[47] Sun, D–8, 1.

[48] W&B stated that it understands that PMPA limits the current proceeding to liquid fuels, but urged the Commission to include in the current amendment a statement that the Commission did not overlook the significance of CNG as an alternative fuel and that CNG will be addressed in a later proceeding. W&B, D–12, 1–2.

[49] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2998 (codified at 15 U.S.C. 2821).

[50] Although disclosures concerning fuel costs and emissions are not viewed as appropriate ratings for purposes of this proceeding, the Commission will consider labeling requirements about costs and benefits of alternative fuels, including gaseous, liquid and other alternative fuels, and alternative fueled vehicles in the proceeding it conducts under section 406 of EPA 92. See notes 15–18, *supra*.

[51] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2998 (codified at 15 U.S.C. 2821). However, CNG and other alternative non-liquid automotive fuels will be included in the rulemaking proceeding the Commission conducts under sec. 405 of EPA 92. See note 50, *supra*.

[52] 58 FR 16464, 16465.

[53] *Id.*

[54] *Id.* at 16469.

[55] *Id.*

[56] *Id.* at 16470.

[57] *Id.* at 16469.

which are based on tests conducted by DOE's National Renewable Energy Laboratory in Golden, Colorado.

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|---|---|
| Methanol | 96 |
| Ethanol | 99 |
| M–85 | 95 |
| E–85 | 96 |
| LPG | 104 |
| LNG | 120 |

Eighteen of the 24 comments that addressed the octane rating option for alternative liquid automotive fuels opposed it.[58] Opponents included major industry trade associations representing refiners, distributors, and retailers of automotive fuels, and U.S. manufacturers of motor vehicles.[59] The most common criticisms were that octane ratings for alternative liquid automotive fuels (1) do not provide useful information to consumers,[60] and (2) may mislead consumers either by implying that fuels are interchangeable or that higher octane is always better.[61]

In particular, several commenters stated that the octane ratings of a given type of alternative liquid automotive fuel tend not to vary.[62] Others said that posted ratings also have little value, because dedicated alternative fueled vehicles, as well as alternative fueled vehicles capable of using both gasoline and a alternative liquid automotive fuel,[63] use only one type of liquid alternative fuel.[64] Moreover, four commenters stated all alternative liquid automotive fuels have high enough octane ratings to prevent engine knock in vehicles designed to use alternative fuels.[65] Four commenters said that engines are not designed to take advantage of the high octane content of alternative liquid automotive fuels.[66] One stated that there also is no correlation between octane ratings for alternative liquid automotive fuels and vehicle performance criteria such as mileage, cleanliness, and vehicle life.[67]

Additionally, four commenters opposed adopting the proposed octane ratings assigned to each alternative liquid automotive fuel without ASTM review of the test procedure and proof that the test results could be duplicated.[68] Four noted that there currently is no reliable, standard test method for determining the octane ratings of alternative liquid automotive fuels.[69]

Six comments supported requiring octane ratings for alternative liquid automotive fuels.[70] DOE recommended that the Commission require certification and posting of specific octane ratings for alternative liquid automotive fuels as a way of meeting the Commission's statutory obligations under EPA 92 pending consideration of additional labeling requirements in the rulemaking to be concluded by April 23, 1995, under section 406 of the EPA 92.[71] Two trade associations representing producers and sellers of natural gas and manufacturers of natural gas fueled vehicles also supported the use of octane ratings until a more satisfactory method of labeling could be developed.[72]

After considering all comments received in this proceeding, the Commission has determined not to require the posting of octane ratings for alternative liquid automotive fuels. Unlike disclosing octane ratings for gasoline, there appears to be little or no benefit to disclosing octane ratings for alternative liquid automotive fuels. Octane ratings for all alternative liquid automotive fuels are high enough to avoid engine knock problems, and such ratings do not provide information relevant to vehicle performance of alternative fueled vehicles. In addition, octane ratings for alternative liquid automotive fuels of a given composition would not vary significantly.

In contrast, there are significant disadvantages to requiring octane posting and certification for alternative liquid automotive fuels. In particular, the Commission is reluctant to require a disclosure that may mislead consumers about the significance of the high octane ratings of alternative liquid automotive fuels, all of which far exceed the minimum octane requirements of vehicles that can use such fuels. Such a disclosure may cause consumers to believe that gasoline and alternative liquid automotive fuels are interchangeable, or that different alternative liquid automotive fuels are interchangeable with one another. It also may foster consumer misperceptions that higher octane necessarily signifies higher quality and better performance. Accordingly, as authorized by EPA 92, the Commission determines that another form of rating is more appropriate, as discussed in detail below in Part III.A.5.

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[58] ATFI, D–15, 2; AAMA, D–7, 1–2; API, D–10, 3–4; CENEX, D–21, 2–3; Chevron, D–5, 1–2; CFDC, D–14, 2–3; Marathon, D–9, 2; Mobil, D–4, 1; NPGA, D–19, 2; NSDB, D–16, 5; NYDAM, E–4, 1; PMAA, D–18, 1–2; Phillips 66, D–3, 2–3; RCT, E–2, 2; RFA, D–1, 3; SIGMA, D–13, 1–2; Sun, D–8, 2, 4; Texaco, D–22, 1.

[59] See comments of API, D–10, 3–4; SIGMA, D–13, 1–2; AAMA, D–7, 1–2. But see discussion of other comments supporting interim or limited posting of the octane ratings of alternative liquid fuels, notes 70–72, *infra*.

[60] See specific reasons cited, notes 62–67, *infra*.

[61] API, D–10, 3–4 (octane ratings for liquid alternative fuels falsely will imply fuel interchangeability); Mobil, D–4, 1 (posting octane ratings for alternative fuels may lead consumers to believe higher octane alternative fuels obtain higher miles per gallon); RFA, D–1, 3 (availability of higher octane ratings on alternative fuel labels may create consumer perception that higher octane fuels are more beneficial); Marathon, D–9, 2 (octane ratings for liquid alternative fuels will confuse consumers and diminish the potential value of information relating directly to performance); SIGMA, D–13, 1–2 (octane ratings for liquid alternative fuels may deceive consumers into thinking that a particular fuel is superior because of its higher octane rating); CFDC, D–14, 2–3 (octane ratings for liquid alternative fuels may confuse consumers whose vehicles function only on one fuel); PMAA, D–18, 1–2 (consumers may be deceived into believing that higher octane for liquid alternative fuels indicate better fuel quality and performance); CENEX, D–21, 2–3 (octane ratings for liquid alternative fuels may mislead consumers to believe the fuels are interchangeable with gasoline; unduly emphasizes perhaps the least important factor in the performance of such fuels; and will not help consumers choose among fuels); Chevron, D–5, 2 (octane posting inherently implies that a higher rating is better, and may cause consumers to think that a liquid alternative fuel is interchangeable with gasoline).

[62] AAMA, D–7, 1–2; RFA, D–1, 3; Phillips 66, D–3, 2–3; NYDAM, E–4, 1; Sun, D–8, 2; Marathon, D–9, 2; CFDC, D–14, 2–3; CENEX, D–21, 2–3; Texaco, D–22, 1.

[63] Single-fuel or dedicated fuel vehicles are those that can operate only on one type of fuel. Dual-fuel vehicles can operate on two different types of fuels, but most have separate fuel tanks for the different fuels. Flexible-fuel vehicles can operate on various blends of fuel from a single tank. For example, a flexible-fuel vehicle might operate on any percentage of methanol from zero to 85 percent or more.

[64] Marathon, D–9, 2; Chevron, D–5, 2; CFDC, D–14, 2–3; PMAA, D–18, 1–2. See also Texaco, D–22, 1 (consumers choose fuel when they purchase or retrofit a vehicle for that fuel).

[65] ATFI, D–15, 2; Chevron, D–5, 1 (recommended that, if an octane label is adopted, it state that the octane rating of the fuel exceeds the octane ratings recommended by all motor vehicle manufacturers); RCT, E–2, 1 (addressed propane only); NPGA, D–19, 2 (same); Sun, D–8, 2.

[66] Phillips 66, D–3, 2–3; NYDAM, E–4, 1; Mobile, D–4, 1; Sun, D–8, 2.

[67] API, D–10, 3–4.

[68] API, D–10, 3; Phillips 66, D–3, 2; Chevron, D–5, 1–2; Mobil, D–4, 1.

[69] API, D–10, 3; Phillips 66, D–3, 2; Chevron, D–5, 1–2; ATFI, D–15, 2.

[70] Only three of these comments clearly supported requiring posting of octane ratings for all alternative liquid automotive fuels, as other than an interim measure. See ABDI, E–6, 1 (stated, without providing supporting information, that octane is a measure of performance for alternative liquid automotive fuels and that significant differences in octane could occur); AMI, D–23, 1 (suggested that erroneous perceptions about octane could be addressed through education); PCC, E–3, 3 (recommended providing octane ratings with information on energy content, driving ranges, and unit pricing per BTU). One trade association supported posting of octane ratings for oxygenated fuels, but not for LPG or LNG. AIAM, D–17, 2. See text for discussion of comments filed by DOE, and comments jointly filed by AGA and NGVC, recommending octane ratings as an interim measure.

[71] DOE, E–5, 2–3. The Commission considers section 406 to require disclosures different than the certification and posting of a fuel rating.

[72] AGA/NGVC, D–11, 3, 8.

2. Fuel Composition: Hydrocarbon, Propane and Methane Content Option

As a second option, the Commission proposed requiring the disclosure of fuel composition.[73] Specifically, for the liquefied gas fuels, the Commission proposed a requirement that the minimum propane content of LPG and the minimum methane content of LNG be certified and posted.[74] The NPR estimated that the LPG most often used in automotive applications is 95% propane and 5% butane and that the LNG most often used in automotive applications is composed of several gases—methane, ethane, propane, and nitrogen, but with methane typically accounting for 88–99% of the fuel's composition.[75] Disclosure of the minimum propane content of LPG and the minimum methane content of LNG might, in conjunction with information from the vehicle manufacturer or converter, provide consumers with comparative quality information needed for fuel purchase decisions. Under this option, consumers would be able to compare like fuels. For example, for LNG, one station may post a methane content of 90. Another station may post 95. Depending on their vehicle's requirements, consumers could then determine which fuel is better for their purposes.

For the alcohol fuels, the Commission proposed requiring certification and posting of the hydrocarbon content of each fuel.[76] The alcohol fuels are either composed entirely of methanol or fuel ethanol or are blends of methanol or fuel ethanol with up to 15% or more hydrocarbons, usually in the form of gasoline. The NPR explained that hydrocarbon content relates to the cold start property of alcohol fuels, which differs significantly from that of gasoline. Alcohol is more difficult to vaporize than gasoline and therefore more difficult to ignite in a cold engine. The addition of hydrocarbons to the alcohol fuels improves their cold start characteristics. For example, cold starts are significantly improved by using M–85 and E–85 instead of M–100 and E–100. The NPR suggested that, for each alcohol fuel, hydrocarbon content disclosures might give consumers some information about the fuel's cold starting ability. For example, consumers might want to select a fuel with a higher or lower hydrocarbon content, depending on climatic conditions or geographic region.

[73] 58 FR 16464, 16470.
[74] *Id.*
[75] *Id.*
[76] *Id.*

The Commission proposed that the hydrocarbon content of these fuels be certified and posted in terms of a range, rather than a fixed number.[77] Hydrocarbon content of alcohol fuels can vary, primarily because some varieties of these fuels can at different times of the year also contain hydrocarbon-containing oxygenates (basically, other alcohols and ethers) in varying amounts. The Commission reasoned that disclosure of a range could eliminate the need for changing labels at various times of the year to accommodate seasonal changes in the hydrocarbon contents of the alcohol fuels.

The Commission sought comment on the following labels, each of which is pertinent to a particular alternative fuel, and asked whether they would satisfy EPA 92's intent:

1. "Liquefied Propane Gas/Minimum _____% Propane"
2. "Liquefied Natural Gas/Minimum _____ % Methane"
3. "M–100 Fuel Methanol/X%–Y% Hydrocarbons"
4. "E–100 Fuel Ethanol/X%–Y% Hydrocarbons"
5. "M–85 Fuel Methanol/X%–Y% Hydrocarbons"
6. "E–85 Fuel Ethanol/X%–Y% Hydrocarbons"

The Commission sought comment on the advantages and disadvantages of requiring such disclosures. The Commission also sought comment on whether the Commission should specify a methodology or methodologies for determining the propane, methane, and hydrocarbon contents and, if it did so, what methodology or methodologies should be specified.[78] For alcohol fuels, the Commission asked whether requiring the disclosure of any factor(s) other than the hydrocarbon content of the fuels would better assist consumers in avoiding cold-start problems.[79]

Twelve comments discussed the Commission's proposal to require composition disclosures for LPG and LNG.[80] Two contended that the petroleum gas fuel that is now used in automobiles should be classified as a gas rather than a liquid and therefore should not be regulated in this proceeding.[81] Two others urged the Commission to make clear that the P in LPG (and CPG) stands not for propane, but for petroleum, because butane, another petroleum gas, is often also used along with propane as an ingredient in these fuels.[82] RCT, however, asked the Commission to use the term 'propane' instead of 'LPG' because propane is always the principal component of the fuel and consumers are already familiar with that term.[83]

Six of the twelve comments making recommendations on this option for LPG and LNG opposed the Commission's proposed requirement for composition disclosures. Four contended that such information would not benefit consumers in any meaningful way,[84] and two argued for alternative approaches.[85] Four comments approved of the proposal to require composition disclosures for liquefied gas fuels, contending such disclosures would help consumers in making fueling choices.[86]

Two comments made other suggestions. AGA/NGVC said they were not opposed to requiring fuels to be labeled according to their composition, but preferred a disclosure requirement that "will have the greatest ability to convey the most pertinent information," which would be "the testing of energy content in the form of gasoline equivalent gallon."[87] NPGA believed the proposed rulemaking will not achieve the Commission's objectives in the most efficient and cost-effective manner possible and argued that all consideration of comparison labeling for liquefied gas fuels should be deferred until the section 406 rulemaking.[88]

Five comments addressed what items should be included when disclosing

[77] *Id.*
[78] *Id.*
[79] *Id.* at 16473.
[80] Phillips 66, D–3, 3; AAMA, D–7, 2; Sun, D–8, 2; Marathon, D–9, 2–3; AGA/NGVC, D–11, 7; W&B, D–12, 2–3, 6; ATFI, D–15, 3–4; AIAM, D–17, 3–4; NPGA, D–19, 2–3; CENEX, D–21, 3; Texaco, D–22, 1–2; RCT, E–2, 2.
[81] NPGA, D–19, 1–2; RCT, E–2, 1–3.
[82] Phillips 66, D–3, 2; W&B, D–12, 2–3.
[83] RCT, E–2, 4.
[84] AAMA, D–7, Att. A, 2 (does not provide meaningful information to the consumer); Sun, D–8, 2 (would not provide useful information to the consumer and would be confusing to most consumers); Marathon, D–9, 3 (probably too complex for most consumers); CENEX, D–21, 3 (average consumer lacks the technical expertise needed to make an informed purchasing decision on the basis of posted fuel content.)
[85] Texaco, D–22, 1 (suggested requiring a statement that the fuel meets commonly accepted industry standards); RCT, E–2, 3 (recommended that the Commission adopt a market approach by providing consumer education on the advantages that have been identified for LPG, rather than regulations).
[86] Phillips 66, D–3, 3 (the minimum fuel composition option provides the most valuable public information for making a refueling choice); W&B, D–12, 3 (supported the proposal to disclose fully the possible range of contents in alternative fuels); ATFI, D–15, 2 (fuel composition information is the most relevant to vehicle manufacturers, fuel suppliers, and the consuming public); AIAM, D–17, 2–3 (fully supported this proposal because such information would certainly be beneficial to the vehicle operator).
[87] AGA/NGVC, D–11, 7.
[88] NPGA, D–19, 2–3.

propane gas content, i.e., whether the posting and certification requirement for LPG should specify that the propane component be disclosed as all "special duty grade" propane (i.e., suitable for all automobiles using petroleum gas) or only commercial grade propane (which may not be suitable for most automobiles) or as a mixture of the two.[90] No comments addressed the issue of whether the Commission should require certain methods for determining the methane or propane/butane gas contents of the liquefied gas fuels.

With respect to the alcohol fuels, 20 comments discussed the proposal to require hydrocarbon range disclosures for methanol and fuel ethanol. Five approved of such a requirement.[90] Fifteen opposed such a requirement.[91]

Some opposing comments said that consumers lacked the technical competence to utilize the information,[92] others said that factors other than hydrocarbon content are more relevant to predicting cold start performance,[93] and still others said they would prefer different approaches.[94] NYDAM emphasized that the costs of testing and labeling necessitated by the seasonal variations in the hydrocarbon content of the alcohol fuels designed to forestall cold-starting problems would make a hydrocarbon content disclosure requirement too burdensome.[95] Two other comments said that, until there is more empirical data on cold start problems and their solutions, it would be premature to require disclosure of any factors relating to cold-start performance.[96] CENEX also urged having disclosures that simply advise consumers to follow the instructions from their vehicles' manufacturers.[97] Three comments preferred a disclosure that the fuels meet all relevant industry standards.[98] Mobil argued that requiring disclosures of ranges of hydrocarbons might give incentives to manufacturers to aim for the lowest percentage of hydrocarbons because consumers might think that fuels with the highest alcohol fuel content are always best for their vehicles.[99] Two comments approved of principal ingredient disclosures, but not hydrocarbon content disclosures.[100] Only one comment addressed the issue of whether the Commission should prescribe certain methods for determining the composition of the alcohol fuels. ATFI supported the designation of an appropriate methodology to determine fuel composition, but did not recommend any specific methodology.[101]

Based on all the comments received in this proceeding, the Commission has determined to require a modified version of the fuel composition option proposed in the NPR. As discussed in detail in Part III.A.5, below, the Commission is requiring for each alternative liquid automotive fuel the disclosure of the principal fuel ingredient by percentage of volume. The Commission has determined not to require disclosures of ranges of hydrocarbon content for alcohol fuels because the record does not show sufficiently that knowledge of hydrocarbon content would provide consumers benefits in avoiding cold-start problems or even that most consumers would understand the reason for such disclosures.

The Commission has included in the Fuel Rating Rule as an alternative liquid automotive fuel the petroleum gas fuel now used by automotive vehicles because the fuel is stored and dispensed to consumers at least substantially in a liquefied state.[102] In the NPR, the Commission proposed describing this fuel with the term "Liquified Propane Gas."[103] As explained above, several comments raised concerns about proposed disclosure requirements for LPG in light of this designation. The Commission now uses the term "Liquified Petroleum Gas" because that is the term used in the definition of "alternative fuel" in section 301 of EPA 92. The certification and posting provisions of the Fuel Rating Rule, however, as explained in Part III.A.5., below, do not require choosing between the terms "Liquified Petroleum Gas" and "Liquefied Propane Gas." Either of those designations or just the expression "LPG" or any other commonly accepted designation may be used to describe the fuel so long as the minimum percentage by volume of the propane content (*i.e.*, the principal component of the fuel) is disclosed. Finally, because the Fuel Rating Rule does not require adherence to particular fuel specifications, it is unnecessary to require that marketers specify whether LPG contains special duty grade propane or commercial grade propane, as was suggested by some of the comments.[104]

### 3. Heating Value (Energy Content) Option

As another option, the Commission proposed requiring a label comparing each alternative liquid automotive fuel to gasoline in terms of the approximate mileage a car would get by using an equivalent volume of each fuel.[105] The comparison would be based on the heating value, or energy content, of each fuel. The Commission proposed two alternative labels for this option: the first compared how many gallons of a given alternative liquid automotive fuel were needed to drive as far as one could drive on a gallon of gasoline, and the second compared how far one could drive on a gallon of a given alternative liquid automotive fuel as compared to how far one could drive on a gallon of gasoline. The Commission stated that the advantage of this type of label was that the disclosed information, coupled with the price of the fuel, would give consumers with flexible fuel vehicles the ability to make choices among different fuels.

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[90] W&B, D–12, ATFI, D–15, 2–3, NPGA, D–19, 2; Texaco, D–22, 2; RCT, E–2, 3.

[90] RFA, D–1, 4 (the suggested labeling format provides sufficient information for the consumer); W&B, D–12, 5 (supported fully disclosing the possible range of contents in alternative fuels); CFDC, D–14, 3–5 (a label with the type and percentage of the fuel composition has merit); ATFI, D–15, 2–3 (supported using fuel composition labeling to inform consumers about the quality of each alternative fuel); AIAM, D–17, 2–3 (fully supported this proposal because such information is beneficial to the vehicle operator).

[91] Mobil, D–4, 2–3; Chevron, D–5, 2–3; AAMA, D–7, 3–4 and Att. A, 2–3; Sun, D–8, 2–3; Marathon, D–9, 2–3; API, D–10; 4; AGA/NGVC, D–11, 7–8; SIGMA, D–13, 2–3, NSDB, D–16, 6; CENEX, D–21, 3; Texaco, D–22, 1–2; AMI, D–23, 1–2; NYDAM, E–4, 2; DOE, E–5, 3; ABDI, E–6, 1.

[92] Mobil, D–4, 2–3; Marathon, D–9, 2–3; API, D–10, 4; CENEX, D–21, 3, NYDAM, E–4, 2.

[93] Chevron, D–5, 2–3; Sun, D–8, 2–3; AMI, D–23, 1–2.

[94] AAMA D–7, 3–4 (contended there are no agreed upon methods of measuring fuel compositions); AGA/NGVC, D–11, 7–8 (not opposed to this option, but would prefer listing of energy content in the form of gasoline equivalent gallon); SIGMA, D–13, 2–3 (urged Commission to require only the posting of the type of alternative liquid fuel dispensed); NSDB, D–16, 6 (recommended the fuel descripter option); Texaco, D–22, 1–2 (suggested simply requiring a statement that the fuel meets commonly accepted industry specifications); DOE, E–5, 3 (recommended the option of requiring posting of octane ratings for all alternative fuels); ABDI, E–6, 1 (recommended the octane posting option for all fuels).

[95] NYDAM, E–4, 2.

[96] SIGMA, D–13, 3; CENEX, D–21, 3.

[97] CENEX, D–21, 3.

[98] AAMA, D–7, 1–2; Marathon, D–9, 2; Texaco, D–22, 1.

[99] Mobil, D–4, 2.

[100] Marathon, D–9, 2–3; SIGMA, D–13, 2–3.

[101] ATFI, D–15, 2.

[102] Some comments urged the Commission to wait until the section 406 rulemaking to address the liquefied petroleum gas fuels at the same time the compressed natural gas fuels are considered. Others urged the Commission to treat the compressed natural gas fuels now along with the liquefied petroleum fuels. The Commission, however, lacks the discretion to alter the provisions of EPA 92 in this regard.

[103] For LPG, The California Air Resources Board uses the term "Liquefied Petroleum Gas." However, based on discussions the Commission's staff had with Department of Energy staff and staff at the National Propane Gas Association, in the NPR the Commission proposed using the term "Liquefied Propane Gas."

[104] See note 89, *supra*.

[105] 58 FR 16464, 16470–71.

The Commission received 24 comments regarding this option,[106] all of which opposed or criticized it.[107] Some comments stated that the heating values in the Commission's proposed Heating Values Chart (based on information obtained from the Interagency Commission on Alternative Motor Fuels and the Department of Energy) were incorrect.[108] Chevron stated that the chart did not account for the fact that heating values vary with fuel composition.[109] Two comments contended that the Heating Values Chart should list a range of values for LPG (to reflect its composition),[110] while three others contended that measuring Btu content was expensive and not appropriate for a particular batch of any of the fuels.[111] AMI commented that "a simple means of clarifying the different energy densities of the fuels is needed."[112]

Some comments stated that the proposal would not provide consumers with useful information. PMAA stated that the purported benefits to consumers were speculative and not worth the costs to industry.[113] RFA stated that posting a label declaring that ethanol has a lesser fuel economy than gasoline would incorrectly lead gasohol purchasers into believing they would suffer fuel economy penalties.[114] Other comments stated that the information was useful to consumers only when choosing a new vehicle or deciding whether to convert an existing vehicle to an alternative fuel, and not when refueling.[115]

Numerous comments stated that labels based on heating values would be confusing or misleading to consumers, for various reasons. First, they argued that driving range and fuel economy (miles per gallon) are the function of many variables (e.g., engine design, engine efficiency, driving habits) and not simply the volumetric energy content of a fuel. As a result, Btu ratings do not always accurately reflect actual fuel economy.[116] Second, three comments stated that the volumetric comparisons ignored fuel cost, and that price comparisons were the most important factors driving which fuel a consumer would purchase.[117] Finally, six comments concluded that labels based on heating values would encourage consumers to purchase gasoline (leading to engine damage if used in engines not designed for gasoline), because this labeling option makes the alternative liquid automotive fuels appear less efficient than gasoline.[118]

Some comments raised concerns with the proposed labeling formats. Mobil commented that the proposed labeling formats were flawed because they were long and cumbersome.[119] AAMA noted that both labeling options incorrectly assume that vehicle efficiencies are the same for gasoline and alternative liquid automotive fuels.[120] AGA/NGVC stated that the fuels should be rated and compared in terms of price, either by Btu's per gasoline equivalent gallon or fuel cost per fixed Btu.[121] RFA and Phillips 66 favored posting the actual heat content of the fuels in Btu's rather than comparing the fuels to gasoline.[122] Two other comments proposed disclosing the reduction in toxins and other pollutants expected by using a particular fuel.[123]

After considering the record, the Commission has decided not to require labels based on heating values. Instead of helping consumers make informed purchasing decisions, the comments indicate that this option would not benefit consumers and might instead be confusing or misleading. This is because the volumetric energy content of a fuel, as measured by its Btu rating, is an imprecise gauge of that fuel's actual fuel economy. In light of this and the other concerns and objections noted, the Commission has decided not to adopt this option.

4. Fuel Descriptor Option

As another option, the Commission proposed requiring that the alternative liquid automotive fuel pumps identify the fuels for consumers.[124] The fuel descriptors the Commission proposed were based on the terms developed by and included in the California Air Resources Board's proposed specifications for the alternative fuels. Those terms are:

"M–100 fuel methanol;"
"M–85 fuel methanol;"
"E–100 fuel ethanol;"
"E–85 fuel ethanol;"
"Liquefied Propane Gas;"[125] and,
"Liquefied Natural Gas."

The Commission proposed that the fuels would have to meet certain technical specifications, such as those proposed by the State of California, as a condition to the descriptor posting. The Commission noted that additional specifications are likely to be developed by alternative vehicle manufacturers and fuel suppliers in conjunction with ASTM (as has been done for gasoline). Noting that ASTM and DOE specifications for the alternative liquid automotive fuels may not be completed within the time allotted for this rulemaking, the Commission asked whether, as an alternative to the ASTM specifications, it should adopt specifications analogous to California's as interim specifications until ASTM or others develop and approve specifications.[126]

The Commission noted in the NPR that descriptor labeling in conjunction with fuel specifications could direct consumers to the correct fuel dispenser and assure consumers that they are purchasing a product that satisfies automobile engine minimum content

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[106] RFA, D–1; Phillips 66, D–3; Mobil, D–4; Chevron, D–5; AAMA, D–7; Sun, D–8; Marathon, D–9; API, D–10; AGA/NGVC, D–11; W&B, D–12; SIGMA, D–13; CFDC, D–14; ATFI, D–15; AIAM, D–17; PMAA, D–18; NPGA, D–19; AEC, D–20; CENEX, D–21; AMI, D–23; RCT, E–2; PPC, E–3; NYDAM, E–4; DOE, E–5; ABDI, E–6.

[107] Mobil opposed additional labeling generally but concluded that this option has "the most meaning to the public" and "has the most merit." Mobil, D–4, 2.

[108] AAMA, D–7, Att. A, 3, (heating values for LPG and LNG are incorrect; values in chart should be based on net, not gross, heating values); API, D–10, 6 (same); W&B, D–12, 4 (heating value for LPG is incorrect); AEC, D–20, 1 (same); CENEX, D–21, 3 (heating value of LNG may very widely); ABDI, E–6, 2 (chart should be based on lower, not higher, heating values).

[109] Chevron also stated that reporting heating values to the nearest one Btu/gallon "far exceeds the accuracy of the determinations." Chevron, D–5, 3.

[110] W&B, D–12, 5; AEC, D–20, 1.

[111] Chevron, D–5, 3; AAMA, D–7, Att. A, 3; API, D–10, 5.

[112] AMI further stated that the average volume of fuel required to drive the same distance as gasoline is "commonly accepted," and that the Commission should adopt "the same approach and values as California." AMI, D–23, 1. AMI did not further explain its reasons for supporting for this option.

[113] PMAA, D–18, 2.

[114] RFA, D–1, 5.

[115] Phillips 66, D–3, 3–4; Sun, D–8, 2–4; Marathon, D–9, 3; API, D–10, 5; SIGMA, D–13, 3; CFDC, D–14 4; CENEX D–21, 3; NYDAM, E–4, 2. See also AIAM, D–17, 3 (stating generally that the information would not be useful to consumers in comparing which fuel to purchase).

[116] RFA, D–1, 5; Chevron, D–5, 3; Sun, D–8, 3–4; Marathon, D–9, 3; API, D–10, 5; AGA/NGVC, D–11, 7; CFDC, D–14, 4; NPGA, D–19, 2; CENEX, D–21, 3; RCT, E–2, 3–4; NYDAM, E–4, 2; ABDI, E–6, 1.

[117] AGA/NGVC, D–11, 5–6 (labels should disclose the cost per set amount of Btu's for all fuels); PCC, E–3, 1–2 (same); NYDAM, E–4, 2 (consumers will measure each fuel's performance to make valid price comparisons).

[118] Phillips 66, D–3, 4; API, D–10, 5; CFDC, D–14, 4; ATFI, D–15, 3; NPGA, D–19, 2; RCT, E–2, 3.

[119] Mobil, D–4, 2.

[120] AAMA, D–7, 23.

[121] AGA/NGVC, D–11, 4, 6.

[122] RFA, D–1, 5 (opposed this option generally but favored posting minimum Btu content only "if the [C]ommission finds it necessary to post some sort of information relative to energy content"); Phillips 66, D–3, 4 (same).

[123] NPGA, D–19, 2; RCT, E–2, 4. See also discussion in Part II. D., above.

[124] 58 FR 10464, 10471.

[125] See note 103 and accompanying text, *supra*.

[126] 58 FR 10464, 10471.

requirements, which may be specified in their owner's manuals. Thus, the descriptors and accompanying specifications could constitute a "rating" for the alternative liquid automotive fuels pursuant to section 1501(b) of EPA 92.[127] Under this option, the Commission suggested that it could require certification and posting of the descriptors and develop and publish in the final rule minimum specifications for the alternative fuels. The Commission specifically asked for comments on what specifications would be appropriate for each fuel.

Fifteen comments discussed the fuel descriptor option.[128] Three generally opposed the option, stating it provided little or no benefit to consumers.[129] Nine generally supported the descriptor approach, but only if use of the descriptor were based on consensus fuel standards or specifications.[130] Two comments supported the descriptor approach if the dispenser label also included a disclosure of the minimum percentage of the principal component of the fuel.[131]

Another commenter, SGMA, suggested requiring the disclosure only of a fuel descriptor, without accompanying specifications. SGMA stated that the most important information for consumers of an alternative fuel is that their vehicles will function properly using the fuel dispensed. SIGMA contended, therefore, that the pump need only be labeled to disclose that it dispenses the fuel identified by the automobile manufacturer as being appropriate for operating the consumer's vehicle.[132]

Six comments suggested that, in selecting standards on which to base use of the descriptors, the Commission should adopt ASTM or other consensus standards.[133] Under this approach, disclosure of a particular fuel descriptor would indicate that the fuel meets technical specifications established by a recognized standards-setting organization. Standards established under this process would have the advantage of being developed with input from and approval of engine manufacturers, fuel suppliers, users, and regulators. Such an approach would benefit consumers, because they could determine easily whether alternative liquid automotive fuels marketed under these descriptors are compatible with the original vehicle equipment manufacturer's requirements. In addition, this approach would allow an alternative liquid automotive fuel supplier to improve the fuel beyond the minimum specifications and promote the improved fuel over those of its competitors.[134]

As anticipated by the Commission, however, the primary objection to this option was that neither ASTM nor any other consensus standards-setting organization has developed and adopted specifications and standards for most of the alternative liquid automotive fuels.[135] Commenters noted that ASTM has developed a standard for LPG (D 1835) and has proposed a standard for M–85 (ASTM proposed specification P232).[136] ASTM's LPPG specifications may change, however, as data are collected on LPG mixtures with higher butane contents.[137] ASTM has not proposed or developed fuel specifications for E–100, M–100, E–85 or LNG. With respect to E–85, commenters noted that General Motors ("GM") has developed a standard for use with its E–85/Flexible Fuel vehicles (GM standard GM 4729M).[138] AAMA also indicated that GM has developed a standard for use with its M–85/Flexible Fuel vehicles. AAMA's comment, which incorporates comments from GM, recommended that the Commission adopt GM's E–85 and M–85 specifications on an interim basis until ASTM standards for E–85 and M–85 are accepted by the industry.[139]

Four comments also opposed Commission adoption of the alternative liquid automotive fuel specifications proposed by the California Air Resources Board, because they were not developed by a consensus process, are technically flawed, and were developed for California's particular needs and therefore could be overly restrictive for other parts of the country.[140] For example, AAMA commented that because California has a moderate climate, its specifications do not fully address the low temperature starting requirements for M–85 and E–85 in the rest of the country.[141] Also, AAMA stated that California's specifications fail to control contaminants for these fuels at a sufficiently low level to ensure good vehicle fuel system durability. AAMA states that, for example, experience with M–85 in California shows that vehicle problems, such as filter plugging, were encountered due to contaminants introduced into the alternative fuel by the dispensing system.[142]

Disclosure of a fuel descriptor based on accepted and approved fuel specifications and standards could provide meaningful information to consumers relating to the quality of the fuel they are purchasing. After considering the aforementioned comments, however, the Commission finds that adequate, generally accepted standards and specifications suitable for nationwide use do not presently exist for most alternative liquid automotive fuels. Further, the Commission has an insufficient record and basis on which to establish specifications for alternative liquid automotive fuels. Therefore, the Commission has determined not to require the certification and posting of uniform fuel descriptors, as originally proposed.

The Commission favors the development of specifications and standards that define alternative liquid automotive fuels by a consensus standards-setting organization, such as ASTM, or by a government agency with appropriate engineering and technical expertise to set such specifications and standards for nationwide use. This would permit participation by affected parties such as alternative fuel producers and providers, engine manufacturers, regulators, and consumers, among others. It would provide opportunities for review by individuals and organizations with acknowledged technical expertise, and would provide a mechanism for evaluation of any proposed test methods and procedures necessary to determine compliance with the standards. Although the Commission is not adopting the fuel descriptor option as proposed, it is adopting a variation of the fuel description and composition proposals, as discussed in detail in Part III.A.5., below.

### 5. Final Rule

After considering all the comments received in light of the purposes of EPA

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[127] Section 1501(b) of Pub. L. 102–486, 106 Stat. 2776, 2998 (codified at 15 U.S.C. 2021).

[128] RFA, D–1, 5; Phillips 66, D–3, 4; Mobil, D–4, 2; Chevron, D–5, 2; AAMA, D–7, 2, 4; Sun, D–8, 4; Marathon, D–9, 3; API, D–10, 1, 6; SIGMA, D–13, 2; CFDC, D–14, 4; ATFI, D–15, 3; NPGA, D–19, 3; CENEX, D–21, 3; BCT, E–2, 4; NYDAM, E–4, 1.

[129] Mobile, D–4, 2; NPGA, D–19, 3, BCT, E–2, 1.

[130] RFA, D–1, 5; Chevron, D–5, 4; AAMA, D–7 4; Sun, D–8, 2; Marathon, D–9, 2; API, D–10, 6; ATFI, D–15, 3; CENEX, D–21, 3; NYDAM, E–4, 1.

[131] Phillips 66, D–3, 3 CFDC, D–14, 5.

[132] SIGMA, D–13,2.

[133] Chevron, D–5, 4; AAMA, D–7, 4; Marathon, D–9, 2; API, D–10, 2; CENEX, D–21, 2–5; Tesoro, D–22, 1.

[134] API, D–10, 6; RFA, D–1, 6.

[135] Chevron, D–5, 2; AAMA, D–7, 4; CFDC, D–14, 1.

[136] Chevron, D–5, 4; AAMA, D–7, 4; Sun, D–8, 2; API, D–10, 4–7; NPGA, D–19, 2.

[137] Sun, D–8, 4.

[138] RFA, D–1, 6; Chevron, D–5, 4; AAMA, D–7, 4; Sun, D–8, 4.

[139] AAMA, D–7, 2.

[140] Chevron, D–5, 4; AAMA, D–7, 4; Sun, D–8, 5; API, D–10, 6.

[141] AAMA, D–7, 2.

[142] *Id.*

92 and of PMPA, as amended, the Commission has determined that the automotive fuel rating for alternative liquid automotive fuels should be the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. Those covered by the Fuel Rating Rule also may include a disclosure of other components as a minimum percentage by volume, if desired. To simplify the labels, however, the Commission is not requiring that the words "by volume" appear on the label. Those who determine the automotive fuel rating for an alternative liquid automotive fuel must have a reasonable basis, consisting of competent and reliable evidence, for the claimed percentage by volume of the principal component and any other component, of the alternative liquid automotive fuel that they certify or post.

This rating approach for the alternative liquid automotive fuels will provide consumers with information necessary to make informed fuel purchasing decisions. It also will provide fuel producers and marketers with the flexibility to develop and blend fuels appropriate for location and climate, consistent with U.S. Environmental Protection Agency and original equipment manufacturer requirements. The Commission's action, therefore, will assist in the development and use of alternative liquid automotive fuels and alternative fueled vehicles.

The Commission recognizes that the selection process between competing alternative liquid automotive fuels essentially is concluded when the alternative fueled vehicle is acquired, because the vast majority of such vehicles will not have the capability to operate on more than one fuel. Thus, efforts to provide consumers with extensive information comparing various different types of alternative fuels is best done prior to the time the vehicle is acquired, not at the refueling station. Once the alternative fueled vehicle has been purchased, the vehicle owner primarily needs information indicating that the fuel available from a particular dispenser is suitable for that vehicle.[143]

The rating requirement adopted today is consistent with many comments the Commission received on the four options proposed in the NPR, in particular comments relating to the "fuel descriptor" option. But, not all comments favor the automotive fuel rating approach the Commission is taking. Three commenters generally opposed a fuel composition label, two stating that the average consumer lacks the technical expertise needed to make an informed fuel selection decision on the basis of posted fuel content,[144] and the other stating that it does not provide meaningful information to consumers.[145]

Many of the comments, however, stressed that consumers of alternative fuels need information that directs them to the correct fuel dispenser by clearly identifying the type of fuel being dispensed, and providing information that can help them determine whether the fuel satisfies their automobile engine's minimum requirements.[146] These comments stated that such a disclosure approach, used in conjunction with the owner's manual containing the vehicle manufacturer's fuel recommendations, would provide consumers with the information necessary to select the fuel on which their vehicle has been designed to perform optimally. By allowing consumers to choose among different blends of fuels (e.g., LNG with a methane content of 90 versus 95), the Commission's approach provides a "rating" measure consistent with the purpose of the statute.[147]

W&B, for example, in its discussion of a proposed label for LPG and LNG, stated that it generally supported a requirement to disclose fully the possible range of contents in alternative fuels.[148] ATFI supported the use of fuel composition labeling to inform consumers about the quality of each alternative fuel they are purchasing. ATFI commented further that fuel composition is the most relevant information for vehicle manufacturers, fuel suppliers, and the consuming public.[149] AIAM commented that it fully supported the Commission's proposal to require a disclosure of the minimum percentage by volume of the principal component of LPG and LNG.[150] CFDC stated that requiring that a label be posted by type and percentage of fuel composition has merit. It said that a label that simply discloses what the type of fuel is, accompanied by a disclosure of the minimum percentage of the main component of the fuel, would provide assurances to consumers that the fuel purchased meets certain requirements relating to vehicle performance.[151] Phillips 66 stated that consumers of alternative fuels will pay particular attention to the fueling recommendations of the owner's manual or the directions provided by the fuel conversion center. Phillips 66 concluded, therefore, that a minimum fuel composition disclosure requirement would provide the most valuable public information for making a refueling choice. Phillips 66 further concluded that since the alternative fuels being considered are principally compounds, in contrast to gasoline and diesel fuels, which are blends, a consumer benefit could be gained by the posting of a minimum percentage of the principal compound.[152]

The fuel composition disclosure required by the Fuel Rating Rule has the further advantage of being easily applied to fuels that may be offered in the future (within the limits of the definition of "alternative fuel") that are not specifically discussed in this Notice. For example, fuel producers may market various blends of alcohols and gasoline, such as M–80 or M–90, or various combinations of liquefied petroleum gases. The Fuel Rating Rule will provide the framework for proper disclosure of the automotive fuel rating of such fuels, blends, or combinations. Because the disclosure requirements of the Fuel Rating Rule are generic and easily complied with, and because the labels are standardized for alternative liquid fuels, the Rule should assist in advising consumers about the availability of alternative liquid fuels and thus help promote development of these fuels. Further, the Fuel Rating Rule requirement that marketers disclose the principal component of each fuel should encourage the industry to develop uniform consensus specifications for all alternative liquid automotive fuels both to provide a standardized "reasonable basis" for required disclosures and to ensure the uniform quality of the fuels sold.

In addition, market forces should operate to keep any differences among sellers offering the same type of fuel, but using different test methods, within reasonable bounds. Cooperation between fuel producers and engine manufacturers is necessary to ensure that new engine developments and new fuels can be accommodated. In this respect, fuel quality and engine design depend on each other.[153] Engine

[143] Marathon, D–9, 1.

[144] API, D–10, 4; CENEX, D–21, 3.

[145] AAMA, D–7, 2.

[146] Sun, D–8, 4; Marathon, D–9, 1–3; SIGMA, D–13, 1; CFDC, D–14, 5; AIAM, D–17, 1.

[147] Section 1961(b) of Pub. L. 102–486, 106 Stat. 2776, 2906 (codified at 15 U.S.C. 2821(17)).

[148] W&B, D–12, 5.

[149] ATFI, D–15, 2.

[150] AIAM, D–17, 2.

[151] CFDC, D–14, 3–5.

[152] Phillips 66, D–3, 3–4.

[153] See AAMA, D–7, 1 (acceptance of alternative fueled vehicles depends on availability of high quality fuels). Those involved with the production and marketing of these fuels understand that fuel quality aspects can influence market share and

designers must be aware of what fuels will be available in a particular market and the fuel producers must know the fuel requirements of vehicles on the road. In any event, the use of alternative fuels and their acceptance will depend on the development of and adherence to fuel quality standards. Such standards also would include standard test methods for determining all the necessary specified properties.

Two comments stated, however, that a required fuel composition label will increase testing costs and labeling problems for the industry. One comment stated that labels for the alcohol fuels will have to be changed on a seasonal basis as the fuels' contents change to address cold-start problems.[154] The other stated that seasonal LPG labels might be necessary due to varying butane/propane concentrations.[155] The Commission's requirement that the disclosure of the amount of the principal component of the fuel be expressed as a *minimum* percentage by volume should obviate the need for frequent label changes, yet allow for seasonal label changes, if desired.

While some commenters preferred having fuel specifications set in the rule, the Commission has determined that there is not now a sufficient basis for imposing single, nationwide specifications for most of these fuels. Neither ASTM nor any other standards-setting entity has developed and adopted consensus specifications and test methods for most of the liquid alternative fuels. Nor do federal specifications currently exist. ASTM has developed a standard for LPG and has proposed a standard for M–85, but has not developed or proposed fuel specifications for E–100, M–100, E–85, or LNG. GM has developed specifications for M–85 and E–85[156] and the State of California has issued final alternative liquid automotive fuel specifications. However, there are definitional inconsistencies among these standards with respect to the contents of the alternative liquid automotive fuels. For example, ASTM's proposed specification for M–85 fuel methanol requires a minimum 85% methanol by volume, California's proposed specification requires a minimum 84% methanol, and GM's proposed specification suggests a range of minimum methanol content from 74–84%, depending on the average temperature. Although the Commission could adopt one of these specifications, there is an insufficient basis on the record for determining which is preferable. Further, in the absence of more extensive information, which may not yet exist, mandating the use of any individual proposed alternative liquid automotive fuel specifications could have unforeseen adverse effects on competition, the environment, or vehicle performance.[157]

For the same reasons, the Commission is not requiring that sellers use specific standards as their "reasonable basis" for determining the percentage by volume of each component of the fuel that they certify or post.[158] Consensus specifications that define alternative liquid automotive fuels, and that include the test methods used to determine whether fuel samples comply with the specifications, have not been developed, except for liquefied petroleum gas.[159] Further, at least one cementer suggested that ASTM's specification for LP gases may change.[160]

Nevertheless, sellers may rely upon existing standards to determine and verify the ratings for alternative liquid automotive fuels, where such standards are appropriate. For example, ASTM's proposed specification for M–85 fuel methanol contains a proposed test method for determining methanol content in fuel methanol M–85 by gas chromatography.[161] ASTM's standard specification for liquefied petroleum gases also contains a test method for analysis of liquefied petroleum gases and propane concentrates by gas chromatography. Other test methods or calculations also may constitute competent and reliable evidence to satisfy the reasonable basis requirement for determining the ratings for alternative fuels.

If test methods for determining ratings for alternative liquid automotive fuels or fuel specifications are developed in the future by consensus or are issued by an appropriate Federal agency, the Commission will consider whether they constitute a reasonable basis. The Commission expects that industry compliance with the Fuel Rating Rule, in conjunction with the need to avoid uncertainty about whether particular test methods or calculations constitute a reasonable basis, will encourage development of standardized test methods and specifications. The development of standardized test methods and standard specifications for alternative liquid automotive fuels should help facilitate widespread acceptance of these fuels.

The Fuel Rating Rule also gives sellers the discretion to disclose information about more than one component of the fuel, if this is deemed relevant. The comments suggested that liquefied petroleum gas fuels, in particular, could be developed with higher butane concentrations and that future LPG fuels may have different ranges of propane/butant compositions than current LPG fuels.[162] The Rule allows industry the flexibility necessary to develop such variations.

The specifications and layout for the automotive fuel rating label for alternative liquid automotive fuels appear in § 306.12 of the Fuel Rating Rule. The alternative liquid automotive fuels labels will be subject to many of the same specifications that are required for current octane labels. The automotive fuel ratings for the alternative fuels, however, must be lettered in black type on an orange background. The Commission chose the different color to help consumers distinguish the octane rating for gasoline (black type on a yellow background) from the ratings for the alternative liquid automotive fuels to assist consumers in making the proper fuel choice for their alternative fueled vehicles and to help them avoid misfueling.[163] In designing the label requirements, the Commission decided that requiring a different color label for each different type of alternative fuel

affect the performance of the vehicles that are designed to use them.

[154] NYDAM, E–4, 2.

[155] Sun, D–8, 2.

[156] AAMA, D–7, 4.

[157] An analysis of the proposed specifications also indicates that, to ensure fuel quality and proper automobile performance, disclosing fuel composition in terms of the minimum percentage by volume of the principal component of the fuel is important and helpful. For example, Annex A1.5 of ASTM's Proposed Specification for Fuel Methanol (M–85) for Automotive Spark-Ignition Engines states that the production of fuel methanol (M–85) requires knowledge of the methanol content to ensure acceptable commercial fuel quality. The methanol content of M–85 affects the performance of an automobile designed to run on M–85.

[158] In its comment, Chevron stated that proven standard test methods are not available for determining all of the properties necessary for alternative fuels to perform properly. Chevron commented further that this is one of the reasons that ASTM cannot develop specifications for the various fuels. Chevron, D–5, 2.

[159] RFA, D–1, 6; Chevron, D–5, 2; API, D–10, 2; CFDC, D–14, 3.

[160] Sun, D–8, 4.

[161] The proposed specification states, however, that verification of the appropriateness of this test method is underway.

[162] Phillips 66, D–3, 3; Sun, D–8, 2–4.

[163] Phillips 66, D–3, 5 (alternative fuel labels should be a distinctive color such as blue); API, D–10, 7 (alternative fuel labels should use same style and background color and should use color other than yellow to distinguish from gasoline labels); CENEX, D–21, 4 (alternative fuel labels should use format that clearly differentiates them from gasoline).

would confuse consumers and make compliance unnecessarily burdensome.

To encourage standardization in alternative liquid automotive fuel labels, the Commission is specifying a width and length for the labels. There are two sets of specifications; one is for when only the principal component is disclosed, and the other is for the principal and one additional component. However, to accommodate those desiring to disclose more information than will fit on the specified labels, the Commission has included language in § 306.12(a) (ii) and (iii), explaining that those wishing to use labels with different dimensions may petition the Commission for a variance from the Fuel Rating Rule's label specifications.[164]

*B. Cetane Ratings of Diesel Fuel Oil*

Section 1501 of EPA 92 amended PMPA to include a definition for "automotive fuel rating" that includes the "cetane rating" of diesel fuel oils "if provided for by the Federal Trade Commission."[165] "Cetane rating" is defined as a measure, as indicated by a cetane index or a cetane number, of the ignition quality of diesel fuel oil and of the influence of the diesel fuel oil on combustion roughness.[166] This amendment gives the Commission the discretionary authority under PMPA to add the disclosure of cetane ratings of diesel fuel oils to the requirements of the Octane Rule.

A significant quantity of diesel fuel oil is sold for vehicle use nationally, and preliminary information available to the Commission suggested that the posting of cetane ratings for the diesel fuel oil used for vehicle applications might be helpful. Further, because information suggested that higher cetane fuels can make engines start better in cold weather and run more quietly with reduced emissions, the Commission considered that there might be market incentives to produce higher cetane fuels and to make available a variety of fuels with different cetane levels. The Commission's preliminary analysis also suggested, however, that accurate posting of cetane levels nationwide at retail outlets could be difficult to achieve, and that the costs of posting might outweigh the benefits.

To obtain information about whether to amend the Octane Rule to require the certification and posting of minimum cetane ratings, the Commission in the NPR proposed amendments that would require cetane certification and posting for diesel fuel oil intended for vehicle use. The NPR asked whether the proposed regulation would have benefits and costs corresponding to those of the Octane Rule. The NPR also solicited information about the marketing, classifications, and characteristics of diesel fuel oil distributed in the United States. In addition, the NPR solicited information on the extent of the burden the proposed amendments would place on the industry if they were promulgated.

Seventeen comments addressed the cetane disclosure issue. Ten were from members of the petroleum industry,[167] four were from members of the automobile manufacturing industry,[168] two were from state agencies involved with the regulation of petroleum products marketing,[169] and one was from an organization involved in the promotion of diesel fuel from biomass.[170] Seven comments favored the proposed amendments.[171] Ten opposed their adoption.[172]

The comments that favored the proposed amendments generally stated that because there is a range of diesel fuel oil with different cetane ratings, a posting requirement would enable consumers to determine which fuels have higher cetane ratings. EMA and AAMA both commented that the higher cetane diesel fuels would start better in cold weather, run more quietly, and produce fewer emissions, although AAMA noted that consumers may have to be educated about these facts.[173]

Several commenters stated that different engines may require different, higher cetane ratings, and noted that, for those engines, diesel fuel oil with higher cetane ratings will perform better.[174] EMA and Sun said that engine manufacturers often recommend fuels with higher cetane levels because of the improvement in engine performance associated with those fuels.[175] Sun also noted that there is a range of cetane ratings of between 40 and 50 available at retail stations.[176] EMA commented that, to the extent consumers can identify the relative cetane number of diesel fuels, they will be in a better position to improve engine performance and to decide whether the more expensive high-cetane fuels are cost effective.[177]

On the other hand, four of the oil companies stated that cetane levels in excess of 40 are not necessary for diesel engines to run well.[178] Marathon distinguished between the effect of cetane rating changes in diesel fuel on diesel engines and the effects of octane changes in gasoline on gasoline engines, noting that, in general, diesel engines are not nearly as sensitive to differences in cetane quality as gasoline engines are to differences in octane.[179]

Generally, the ten comments that opposed a requirement to certify and post cetane ratings stated that the posting at retail of cetane level information is not needed, that accurate disclosure of cetane ratings at retail outlets would be very difficult to achieve, and that the requirement would, therefore, be unduly burdensome. Eight comments contended that cetane posting will be unnecessary as of October 1, 1993, when U.S. Environmental Protection Agency regulations that restrict the sulfur content of diesel fuel and establish a mandatory minimum cetane level of 40

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[164] See § 1.25 of the Commission's rules of practice, 16 CFR 1.25.

[165] Section 1501(b), Pub. L. 102–486, 106 Stat. 2776, 2998 (codified at 15 U.S.C. 2821(17)).

[166] A cetane number is a cetane rating derived by testing the fuel directly. Cetane index is a cetane rating derived through calculation. See ASTM Standard Specification for Diesel Fuel Oils, D975–91, ASTM Standard Test Methods for Calculating Cetane Index of Distillate Fuels, D976–91 and D4737–89, and ASTM Standard Test Method of Ignition Quality of Diesel Fuels by the Cetane Method, D613–86.

[167] Phillips 66, D–3; Mobil, D–4; Chevron, D–5; Sun, D–8; Marathon, D–9; API, D–10; SIGMA, D–13, PMAA, D–18; CENEX, D–21; Texaco, D–22.

[168] ATAI, D–2, EMA, D–6; AAMA, D–7; AIAM, D–17.

[169] NCDA, E–1; NYDAM, E–4.

[170] NSDB, D–16.

[171] EMA, D–6, 1–3; AAMA, D–7, 2–3; Sun, D–8, 3, 5–6; NSDB, D–16, 3–4, 5; AIAM, D–17, 3; NC, E–1, 1–3; NYDAM, E–4, 3.

[172] ATAI, D–2, 2–3; Phillips 66, D–3, 6; Mobil, D–4, 3; Chevron, D5, 1, 5–6; Marathon, D–9, 3–4; API, D–10, 1, 7–8; SIGMA, D–13, 3–5; PMAA, D–18, 2–7; CENEX, D–21, 4; Texaco, D–22, 1–2.

[173] EMA, D–6, 1; AAMA, D–7, 3. These higher cetane level benefits were noted also by two other commenters who opposed the Commission's adoption of the proposed amendments. PMAA, D–18, 2; SIGMA, D–13, 4. The potential benefits that diesel fuel with higher cetane ratings can contribute were articulated by EMA as including control of white smoke emissions, reduction of engine noise, improvement of cold-starting capabilities and assistance in the reduction of emissions of nitrogen oxides, particulate matter, hydrocarbons and carbon monoxide. EMA, D–6, 1.

[174] AAMA, D–7, 3; Sun, D–8, 5; EMA noted that its 31 member internal combustion engine manufacturers are concerned with the quality of fuel used in the engines they produce and with consumers' ability to identify the differences in cetane ratings so they can improve engine performance. EMA, D–6, 1.

[175] EMA, D–6, 2; Sun, D–8, 5.

[176] Sun, D–8, 5.

[177] EMA, D–6, 1.

[178] Phillips 66, D–3, 6; Mobil, D–4, 3 ("cetane in excess of 40 is not commonly required by motor vehicles."); Chevron, D–5, 1 ("Diesel engines are designed to run on 40 cetane number."); Marathon, D–9, 3–4.

[179] Marathon stated that while a minimum cetane rating is necessary for cold starting and warm-up, most diesel fuels marketed today meet the ASTM D–975 minimum cetane of 40, which provides adequate cold-starting performance in modern diesel engines. Marathon, D–9, 3–4.

become effective.[180] These comments indicated that the Environmental Protection Agency's regulations will result in consumer benefits (reduced emissions and a minimum cetane standard) regardless of the Commission's Fuel Rating Rule.[181]

Further, several commenters said that diesel fuel consumers (who were usually identified in the comments as truck drivers) are now and have been for years more familiar with diesel fuel than gasoline consumers are with gasoline. Because of this knowledge, diesel fuel oil consumers do not need cetane information.[182] Three associates said that diesel fuel customers (whom they identify as primarily truck drivers) generally purchase their fuel at private facilities throughout contractual arrangements that specify such items as cetane. According to the comments, these customers are often not aware of the cetane level of the fuel, do not appear interested in knowing it, and would not be likely to go "cetane shopping."[183]

According to four comments, cetane information alone could confuse or even mislead consumers as to the relative importance of cetane as a quality of diesel fuel oil.[184] Most indicated that such qualities as detergency, cold flow properties, specific gravity, cloud point, viscosity, sulfur, and additives are of at least equal significance to cetane. Phillips 66 noted that two major diesel engine suppliers reference ASTM for the fuel recommendations, which encompasses many more aspects of the fuel than just cetane, and further suggested that either viscosity, sulfur, or additives may be important considerations for consumers.[185]

In addition, SIGMA pointed out that higher cetane ratings means lower energy content, which could result in lower mileage. SIGMA speculated that consumers unaware of this fact could mistakenly think that use of more expensive, higher cetane diesel fuel oil will result in greater engine efficiency.[186] SIGMA also noted that, to the extent diesel fuel marketers sell fuel with higher cetane ratings, they are already informing their customers of this fact as a marketing tool.[187] SIGMA concluded that the number of consumers that would find cetane ratings useful is very small, and that the Commission should weigh the benefits to this small group of consumers against the costs of a posting requirement.[188]

PMAA and Chevron commented that the way diesel fuel is distributed and subjected to cetane-enhancing additives will render it extremely burdensome for distributors to determine the cetane of diesel fuel from delivery to delivery.[189] Sun noted that cetane levels at retail could change because of many factors, such as refiner capability, co-mingling of product, marketing decisions, and use of additives, and could change as frequently as each shipment, by as much as 10 points, but usually only by 2 to 4 points.[190]

As noted earlier, the authority Congress granted the Commission in section 1501(b) of EPA 92 to regulate diesel fuel oil is discretionary, and is not tied to the mandate to amend the Octane Rule to require automotive fuel ratings for alternative liquid automotive fuels.[191] Further, the time limitations in section 1502(d)(2) of EPA 92 pertaining to the alternative liquid automotive fuels proceeding do not apply to the Commission's discretionary authority to regulate diesel fuel oil.[192]

The Commission has considered whether the record supports the conclusion that the burdens on the diesel fuel oil marketing industry that would result from cetane rating certification and posting requirements for diesel fuel oil would outweigh the benefits that would accrue to diesel fuel oil consumers as a result of the requirements. The Commission has decided that it would be premature to make this cost-benefit decision at this time given current regulatory developments in the industry. In particular, the Commission is interested in how, if at all, the maximum sulfur/minimum cetane regulations of the U.S. Environmental Protection Agency will affect the marketing, use, and cetane levels of diesel fuel oil after October 1, 1993. Consequently, the Commission has decided to postpone its decision on the cetane rating proposal contained in the NPR, and to solicit further information in a second Notice of Proposal Rulemaking to be published after the public has had significant experience with the Environmental Protection Agency regulations.

## IV. Regulatory Flexibility Act

The Commission stated in the NPR that the provisions of the Regulatory Flexibility Act[193] requiring a regulatory analysis were not applicable to the proposed amendments because they did not appear to have a significant economic impact on a substantial number of small entities.[194] Based on available information, the Commission stated that the amendments it proposed would have a minimal effect on all business entities within the affected industries, regardless of their size. It stated that very few companies produce and distribute these alternative liquid automotive fuels or diesel fuel oil, and that, of those that do, most are not "small entities" as that term is defined in section 601 of the Regulatory Flexibility Act and in the regulations of the Small Business Administration, found in 13 CFR part 121.

The Commission further explained that although there are some "small entities" in the retailer sectors of those industries, the proposed amendments would likely have only a minimal impact on these small entities. It also stated that any such impact would likely consist of some additional recordkeeping and of retailers placing labels on dispensers (to the extent this is not done by distributors for their retailer customers). Therefore, the Commission stated that the impact on small entities appeared to be *de minimus* and not, therefore, significant.

The Commission requested information about these industries,

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[180] The regulations will require a reduction of the maximum permissible level of sulphur in Grade 1–D diesel and Grade 2–D diesel. This will result in lower cetane levels than would otherwise be obtained. To compensate for this, the regulation will set a minimum cetane level of 40. 55 FR 34120, 34130–31 (Aug. 21, 1990). See comments of ATAI, D–2, 3; Phillips 66, D–3, 6; Mobil, D–4, 3; Marathon, D–9, 4; API, D–10, 8; SIGMA, D–13, 4; PMAA, D–18, 2–3; CENEX, D–21, 4. Several commenters also noted that ASTM Standard D975 requires Grade 2–D diesel to have a minimum cetane number of 40. See ATAI, D–2, 2; Phillips 66, D–3, 6; Chevron, D–5, 1, 6; AAMA, D–7, 2; Marathon, D–9, 4.

[181] See Phillips 66, D–3, 6.

[182] Phillips 66, D–3, 6; API, D–10, 8; CENEX, D–21, 4. None of these comments, however, discusses whether the EPA sulfur restriction regulations will change the characteristics of diesel fuel enough to have an effect on the familiarity these consumers have with the fuel.

[183] ATAI, D–2, 2 (ATAI's comment is based on "a survey of the maintenance executives of 25 trucking fleets, including the 5 largest running approximately 84,000 trucks and tractors"); SIGMA, D–13, 5; PMAA, D–18, 3.

[184] Phillips 66, D3, 6; API, D–10, 7–8; SIGMA, D–13, 2, 3–4; PMAA, D–18, 2, 5. See also AAMA, D–7, Att. A, 5 (AAMA supported the proposal, but noted the possibility that a cetane posting requirement could mislead customers).

[185] Phillips 66, D–3, 6.

[186] SIGMA, D–13, 4.

[187] "Some marketers currently market 'premium' grade diesel fuel that contains some additives and has a slightly higher cetane level. These marketers tend to inform consumers as a marketing tool about the higher cetane levels without a posting requirement. Therefore, it is unclear whether any benefits would result from a rule formulated to require them to post cetane ratings." SIGMA, D–13, 4–5.

[188] SIGMA, D–13, 5.

[189] PMAA, D–18, 4–6; Chevron, D–5, 6.

[190] Sun, D–8, 5–6.

[191] Section 1501(b), Pub. L. 102–486, 106 Stat. 2776, 2907 (codified at 15 U.S.C. 2821(17)).

[192] Section 1501(d)(2), Pub. L. 102–486, 106 Stat. 2776, 2907 (codified at 15 U.S.C. 2821 (notes)).

[193] 5 U.S.C. 603, 604.

[194] 58 FR 16484, 16473.

including the number and size of companies that produce, import and/or market (including the retail level) alternative liquid automotive fuels or diesel fuel oil. It asked whether the proposed amendments, if promulgated, would have a significant economic impact on a substantial number of small entities in these industries.

Most of the comments that discussed cost or burden addressed rating options for alternative liquid automotive fuels (octane and heating value options) the Commission has decided not to adopt, or addressed cetane posting for diesel fuel oil, on which the Commission has deferred a decision. Only Marathon, API, CFDC, NPGA, and RCT commented about the costs or burdens on small businesses of the existing Octane Rule or of other amendments the Commission proposed in the NPR.

Marathon and API addressed the costs and burden imposed by the existing Octane Rule. According to Marathon: "As it is currently implemented, we do not believe the Octane Rule places an undue economic burden on any segment of the petroleum industry, including operators of small businesses. Consequently, Marathon recommends the Octane Rule be continued in its current form."[195] API concurred, stating: "While the Octane Rule has an impact on a significant number of entities, the impact on each of those individual entities is not unreasonable, particularly in light of the consumer benefits achieved."[196] Neither Marathon nor API cited any specific figures.

CFDC, NPGA and RCT addressed the benefits and burdens of the proposed fuel composition or fuel descriptor options, which are similar to the option adopted today by the Commission. CFDC stated that posting a fuel descriptor "would provide assurances to consumers that the fuel purchased meets certain requirements, especially since the octane rating of the fuels indicated by type will not vary to any significant degree. Such a rating system would cost-effectively meet the requirements for alternative fuels of section 1501(b) of the Energy Policy Act of 1992."[197]

NPGA and RCT specifically addressed the impact on propane sellers of the four proposed amendment options. NPGA claimed: "Some 3,100 of our 3,400 member companies would classify as small businesses; these 3,100 members operate about 3,400 retail outlets for propane. Another 3,400 outlets are operated by 12 multistate corporations who are also member companies of this association. The proposed regulations would have a direct and adverse (e)ffect upon the ability of all these member companies to sell propane at retail as an alternative engine fuel."[198] RCT stated that it is: "Deeply concerned about the proposed changes. In our judgment, they would impose heavy costs on a fledgling [propane] industry while providing little or no benefit to consumers."[199] RCT further stated: "FTC's proposed rules would adversely affect 1,100 retail propane dealers in Texas alone. The proposed amendments could also adversely affect propane suppliers and consumers without providing commensurate benefits."[200] However, because the comments submitted by NPGA and RCT discussed primarily the octane and heating value posting options, and other issues not raised by the Commission, it appears that their general comments about the burdens of the options proposed in the NPR are not relevant to the amendments the Commission has adopted.

RCT also stated that a fuel composition posting requirement would require separate storage tanks and separate delivery systems to keep automotive grade HD–5 propane segregated from propane destined for residential and commercial customers, thus imposing costs on small businesses because of unnecessary duplication that "could cause some of them to turn away from the motor fuel market."[201] NPGA concurred with RCT's position.[202]

The statements by NPGA and RCT do not persuade the Commission that the posting option it has adopted will impose a significant economic impact on a substantial number of small entities. First, neither NPGA nor RCT cited specific cost or burden estimates or submitted supporting data. Second, the conclusions about cost and burden expressed by NPGA and RCT apply primarily to options (octane and heating value posting) the Commission has now rejected. Further, their comments about the burden of certification and posting fuel composition presume the Commission will require the posting of fuel composition of LPG based on tests to ensure the fuel meets test specifications for grade HD–5. For example, NPGA stated that the Commission should leave to other agencies the task of setting the specifications that fuels must meet, and recommended that the Commission limit its involvement to requiring posting the grade of the fuel being sold, or the specification it meets.[203]

The amendment adopted by the Commission requires only the certification and posting of the type of fuel and the minimum composition of its principal component, based on a reasonable basis standard. Retail outlets merely have to post consistent with the certifications they receive, so their burden is minimal. Retailers need not make the actual determinations unless they alter the fuel they receive before reselling it. Therefore, the Commission believes the certification and posting requirements it has adopted will minimize burdens on even small businesses.

On the basis of all the information now before it, including the written comments submitted in response to the NPR, the Commission has determined that the amendments will not have a significant impact on a substantial number of small entities. Consequently, the Commission concludes that a regulatory flexibility analysis is not required. In light of the above, the Commission certifies, under section 605 of the Regulatory Flexibility Act,[204] that the amendments it has adopted will not have a significant impact on a substantial number of small entities.

## V. Paperwork Reduction Act

The Commission noted in the NPR that the proposed amendments contain provisions that constitute information collection requirements under the Paperwork Reduction Act.[205] The Commission explained that the proposed amendments would require refiners, producers, importers, distributors and retailers of alternative liquid automotive fuels to keep, for one year, records of any delivery tickets, letters of certification or tests upon which they based the automotive fuel ratings that they certify or post. It explained that these records would have to be open for inspection by Commission and Environmental Protection Agency staff members or by persons authorized by the Commission or the Environmental Protection Agency.

On the basis of available industry figures, the Commission estimated that, under the amendments proposed in the NPR, a total of approximately 85,000 refiners, producers, importers, distributors and retailers could possibly be affected by the recordkeeping

[195] Marathon, D–9, 4.
[196] API, D–10, 8.
[197] D–14, 8.
[198] NPGA, D–19, 3.
[199] RCT, E–2, 1.
[200] *Id.* at 4.
[201] RCT, E–2, 3.
[202] NPGA, D–19, 3.
[203] NPGA, D–19, 2–3.
[204] 5 U.S.C. 605(b).
[205] 44 U.S.C. 3501–3520.

requirements described above. It stated that certifications are usually noted on documents (shipping receipts, etc.) already in use, or are accomplished with a one-time letter of certification. It further stated that, in the case of refiners and importers, test records are typically retained for a period of one year.

The Commission noted that, in the past, the Commission estimated that the information collection burden associated with the Octane Rule's recordkeeping requirements was 20,000 hours per year (six minutes per year times 200,000 industry members).[206] This estimate was small because the records at issue were likely to be retained by the industry during the normal course of business, and the "burden," for OMB purposes, is defined to exclude effort that would be expended in any event.[207]

In the NPR the Commission stated that it believed that approximately 165,000 industry members currently were covered by the Octane Rule as it was in effect at that time (the drop in total industry members primarily being the result of closings by retail stations over the intervening years). The Commission estimated that approximately 85,000 industry members would be affected by the proposed amendments. Of these, the Commission concluded that approximately 60,000 currently sell gasoline (as well as diesel and some alternative fuels) and thus were already covered by the existing Octane Rule. For these 60,000 industry members, the Commission estimated that two additional burden minutes per member per year would cover the effort associated with coverage of the additional fuels (primarily diesel fuel oil). Further, approximately 25,000 additional industry members not currently covered by the Octane Rule would be covered by the proposed amendments because they sell only alternative liquid automotive fuels. These 25,000 would be affected by the Fuel Rating Rule's recordkeeping requirements for the first time under the proposed amendments. The Commission stated that it believed that the original estimate of six minutes per year each would be valid for these 25,000 additional industry members.

Based on these figures, the Commission estimated that the revised current total yearly burden of the existing Octane Rule's requirements would be 16,500 hours (six minutes per year times 165,000 industry members). The Commission estimated that the total additional yearly burden that would be imposed by the proposed amendments would be 4,500 hours (two minutes per year times 60,000 industry members, plus six minutes per year times 25,000 industry members). Consequently, the Commission estimated that the total burden associated with complying with the Rule's recordkeeping requirements, if amended as proposed, would be a total of approximately 21,000 hours per year for all affected industry members.

The Commission concluded that the recordkeeping burden associated with these proposed amendments is minimal. However, to ensure that no additional burden had been overlooked, the Commission requested public comment on the extent of the paperwork burden that the proposed requirements applying to alternative liquid automotive fuels and diesel fuel oil might impose, especially in terms of how many hours per year would be expended by industry members. None of the commenters challenged or specifically addressed the paperwork burden projections the Commission made in the NPR. Therefore, the Commission sees no reason to revise its projections of burden per year per covered industry member. However, because the Commission has deferred a decision about cetane posting for diesel fuel oil, the total yearly burden for all affected industry members due to the amendments adopted today will be less than the Commission estimated in the NPR.

Because the Commission is deferring a decision on certification and posting of cetane ratings for diesel fuel oil until further information has been obtained, the Commission revises its estimated total additional yearly burden imposed by today's amendments to be 2,500 hours (six minutes per year times 25,000 newly covered industry members), rather than 4,500 hours, as initially estimated. The Commission estimates the total yearly burden on gasoline sellers who already were covered by the Octane Rule to be approximately 16,500 hours (six minutes per year times 165,000 industry members). Thus, the Commission estimates the total yearly burden imposed by the Fuel Rating Rule to be approximately 19,000 hours.

Because these requirements would involve the "collection of information" as defined by the regulations of the Office of Management and Budget ("OMB"), 5 CFR 1320.7(c)(1) (1992), the Commission was required to submit the proposed requirements to OMB for clearance. 5 CFR 1320.13. The Commission did so as part of this proceeding. OMB approved the request, and assigned control number 3084–0068 to the information collection requirements.[208] This approval will expire on February 28, 1996, unless it has been extended before that date.

## VI. Regulatory Review

As part of the Commission's ten-year regulatory-review plan for existing rules and guides, the Commission also specifically solicited comments in the NPR on the costs and benefits of the existing Octane Rule.[209] Based on the discussion in Parts IV and V, above, the Commission concludes that the Fuel Rating Rule will not have a significant economic impact on covered parties, and that there is a need for the Fuel Rating Rule. As explained in Parts III–V, above, the Commission has designed the amendments to minimize burdens imposed on covered industry members, including small businesses.

## VII. Metric Measurements

In accordance with the Omnibus Trade and Competitiveness Act ("OTCA"), 15 U.S.C. 205b, and Executive Order 12770 ("Metric Usage in Federal Government Programs"), 56 FR 35801 (July 25, 1991), the Commission must consider metric measurements in addition to inch-pound measurements in measurement sensitive regulations. Only API addressed metric measurement issues. API recommended that the Commission specify label dimensions in both inches/picas and appropriate soft-conversion (calculated) metric units.[210] However, API stated that, because the average consumer's awareness of metric is minimal at this time, providing alternative fuel information to the consumer in metric units would not significantly benefit consumers.[211] Neither the original Octane Rule nor the amendments adopted today require disclosures to consumers of inch/pound measurement ratings. However, in accordance with OTCA and Executive Order 12770, § 306.12 of the Fuel Rating Rule includes both inch-pound and

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[206] See, e.g., Request for OMB Review of January, 1984, and Accompanying Supporting Statement for Information Collection Provisions of the Octane Certification and Posting Rule.

[207] Section 1320.7(b)(1) of the regulations implementing the Paperwork Reduction Act, 5 CFR 1320.7(b)(1), states:

> The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary.

[208] Notice of Office of Management and Budget Action to Carl Hevener, Federal Trade Commission, dated May 13, 1993.

[209] 58 FR 16464, 16477.

[210] API, D–10, 8.

[211] *Id.*

metric measurements in the specifications for label size.

## VIII. Amendments to the Rule

### A. Discussion of Amendments

The certification and posting requirements for alternative liquid automotive fuels have been discussed in Part III.A5. As indicated in the NPR, many of the amendments to the Octane Rule involve substituting "automotive fuel" for "gasoline" and "automotive fuel rating" for "octane rating." In this section, several additional amendments to the Rule are discussed. Pursuant to EPA 92, these amendments become effective at the end of the one-year period beginning on the date of the enactment of the Act, which was on October 24, 1992.[212] However, October 24, 1993 falls on a Sunday. When an effective date falls on a weekend or holiday, the next Federal business day is used as the effective date.[213] Therefore, these amendments are effective on Monday, October 25, 1993.

Section 306.0 Definitions

The Octane Rule currently does not have a section containing definitions. Because these amendments result in an expanded and more complex regulation, the Commission is including definitions in the Fuel Rating Rule. Most of the definitions that the Commission has adopted are definitions from PMPA that are pertinent to the Fuel Rating Rule. A few other definitions were adopted from other sources (principally, EPA 92), as explained below.

Section 306.0(2) contains references to the applicable ASTM standards that contain the methodologies for determining the research octane number and motor octane number. These references to the ASTM standards are different from the references in the prior version of the Rule because they are to current versions of the standards. The ASTM references are from the "Conforming Amendments" section of section 1501 of EPA 92,[214] with the addition of the suffix that ASTM uses to indicate the year of the standard's promulgation. This suffix is part of the reference to the standard in the Fuel Rating Rule to conform with the procedures for incorporation by reference in 5 U.S.C. 552(a)(1) and 1 CFR part 51.

In § 306.0, the definitions of refiner, distributor and retailer are based on the PMPA definitions of these terms. In § 306.0(4), the Commission has added a definition for "producer" that the Commission developed from language in the PMPA definition of "refiner" and the Commission's description of "producers" that was published with the announcement of the final Octane Rule.[215]

In § 306.0(9), the Commission uses the PMPA definition for "automotive fuel." As amended by EPA 92, PMPA currently defines "automotive fuel" as "liquid fuel of a type distributed for use as a fuel in any motor vehicle." To provide more guidance to industry, the Commission has supplemented this definition by drawing on the definition for "alternative fuel" contained in section 301(2) of EPA 92[216] and specifically listing (without limiting coverage) the liquid fuels that are presently covered. The Commission also has added in this section a definition for gasoline that lists (without limiting coverage) the fuels that are presently considered "gasoline," including gasohol and reformulated and oxygenated gasolines.[217]

Section 306.4 Preemption

Section 1502(a) of EPA 92 amends section 204 of PMPA to authorize the states to use whatever investigative and enforcement action they find necessary to enforce state laws that require the certification and posting of automotive fuel ratings.[218] The purpose of this amendment is to facilitate state enforcement of any state or local regulation pertaining to automotive fuel rating disclosure by permitting the use of any remedy or penalty authorized by law. The Commission has inserted new language in § 306.4 of the Fuel Rating Rule to conform with EPA 92's amendment of section 204 of PMPA.

Section 306.5 Automotive Fuel Rating

The references to the ASTM standards have been changed in § 306.(0)(2)—Definitions to reflect the current versions of the standards, as contained in section 1501(c)(1)(B) of EPA 92.[219] The Octane Rule contained language (§ 306.4(b)(2)) detailing a procedure for updating the Rule whenever ASTM modifies the octane determination standards referenced in this section. The amendments announced today delete this section. If there are subsequent amendments to the standards that are pertinent to the Rule, any person may petition the Commission to adopt the amended version or the Commission on its own motion may initiate a proceeding to adopt the revision.

List of Subjects in 16 CFR Part 306

Energy conservation, Gasoline, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 16 of the Code of Federal Regulations will be amended as follows:

## PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

1. The authority citation for part 306 of 16 CFR is revised to read as follows:

Authority: 15 U.S.C. 2801 *et seq.*

2. Part 306 of 16 CFR is amended by revising the heading to read as set forth above.

§§ 306.0 through 306.11 [Redesignated as §§ 306.1 through 306.12]

3. Sections 306.0 through 306.11 of 16 CFR are redesignated as §§ 306.1 through 306.12, respectively.

4. Part 306 of 16 CFR is amended by adding a new § 306.0, to read as follows:

§ 306.0 Definitions.

As used in this part:

(a) *Octane rating* means the rating of the anti-knock characteristics of a grade or type of gasoline as determined by dividing by 2 the sum of the research octane number plus the motor octane number.

(b) *Research octane number* and *motor octane number* have the meanings given such terms in the specifications of the American Society for Testing and Materials ("ASTM") entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel" designated D4814–92c and, with respect to any grade or type of gasoline, are determined in accordance with test methods set forth in ASTM D2699–92, "Standard Test Method for Knock Characteristics of Motor Fuels by the Research Method" and ASTM D2700–

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[212] Section 1501(d)(1) of Pub. L. 102–486, 106 Stat. 2997 (codified at 15 U.S.C. 2821 (notes)).

[213] 1 CFR 18.17.

[214] Section 1501(c)(1)(B) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821).

[215] See 44 FR 19172 (March 30, 1979). The original proceeding to promulgate the Octane Rule revealed that there is a sector of the petroleum industry that combines component elements of gasoline into the finished product. Producers are a small group within the petroleum industry who are the originating sellers of automotive gasoline but who do not import or receive gasoline or refine it from crude oil. Rather, they purchase component parts and combine them to produce finished gasoline.

[216] Sec. 301(2), Pub. L. 102–486, 106 Stat. 2776, 2866 (codified at 42 U.S.C. 13211).

[217] Reformulated and oxygenated gasolines are produced to comply with the requirements of the Clean Air Act, 42 U.S.C. 7545 (k), (m). These fuels and gasohol were specifically discussed as gasoline in the NPR. 58 FR 10464, 10466.

[218] Section 1502(a) of Pub. L. 102–486, 106 Stat. 2776, 2997–98 (codified at 15 U.S.C. 2824).

[219] Section 1501(c)(1)(B) of Pub. L. 102–486, 106 Stat. 2776, 2996 (codified at 15 U.S.C. 2821).

92, "Standard Test Method for Knock Characteristics of Motor and Aviation Fuels by the Motor Method." These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D4814–92c, ASTM D2699–92, and ASTM D2700–92 may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA, 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW., Washington, DC., or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(c) *Refiner* means any person engaged in the production or importation of automotive fuel.

(d) *Producer* means any person who purchases component elements and combines them to produce and market automotive fuel.

(e) *Distributor* means any person who receives automotive fuel and distributes such automotive fuel to another person other than the ultimate purchaser.

(f) *Retailer* means any person who markets automotive fuel to the general public for ultimate consumption.

(g) *Ultimate purchaser* means, with respect to any item, the first person who purchases such item for purposes other than resale.

(h) *Person*, for purposes of applying any provision of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, with respect to any provision of this Part, includes a partnership and a corporation.

(i) *Automotive fuel* means liquid fuel of a type distributed for use as a fuel in any motor vehicle, and the term includes, but is not limited to:

(1) Gasoline, an automotive spark-ignition engine fuel, which includes, but is not limited to, gasohol (generally a mixture of approximately 90% unleaded gasoline and 10% denatured ethanol) and fuels developed to comply with the Clean Air Act, 42 U.S.C. 7401 *et seq.*, such as reformulated gasoline and oxygenated gasoline; and

(2) alternative liquid automotive fuels, including, but not limited to:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary of the United States Department of Energy, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(iii) Liquefied natural gas;

(iv) Liquefied petroleum gas;

(v) Coal-derived liquid fuels.

(j) *Automotive fuel rating* means—

(1) For gasoline, the octane rating; or

(2) For an alternative liquid automotive fuel, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

5. Section 306.1 of 16 CFR is revised to read as follows:

**§ 306.1 What this rule does.**

This rule deals with the certification and posting of automotive fuel ratings in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* It applies to persons, partnerships, and corporations. If you are covered by this regulation, breaking any of its rules is an unfair or deceptive act or practice under section 5 of that Act. You can be fined up to ten thousand dollars each time you break a rule.

6. Section 306.2 of 16 CFR is revised to read as follows:

**§ 306.2 Who is covered.**

You are covered by this rule if you are a refiner, importer, producer, distributor, or retailer of automotive fuel.

7. Section 306.4 of 16 CFR is revised to read as follows:

**§ 306.4 Preemption.**

The Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. 2801 *et seq.*, as amended, is the law that directs the FTC to enact this rule. Section 204 of PMPA, 15 U.S.C. 2824, provides:

(a) To the extent that any provision of this title applies to any act or omission, no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title.

(b) A State or political subdivision thereof may provide for any investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a).

8. Section 306.5 of 16 CFR is revised to read as follows:

**§ 306.5 Automotive fuel rating.**

If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by the American Society for Testing and Materials ("ASTM") in ASTM D4814–92c, entitled "Standard Specifications for Automotive Spark-Ignition Engine Fuel." To determine the research octane number, use ASTM standard test method D2699–92, and to determine the motor octane number, use ASTM standard test method D2700–92.

(b) To determine automotive fuel ratings for alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

9. Section 306.6 of 16 CFR is revised to read as follows:

**§ 306.6 Certification**

In each transfer you make to anyone who is not a consumer, you must certify the automotive fuel rating of the automotive fuel consistent with your determination. You can do this in either of two ways:

(a) Include a delivery ticket or other paper with each transfer or automotive fuel. It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

(1) Your name;

(2) The name of the person to whom the automotive fuel is transferred;

(3) The date of the transfer;

(4) The automotive fuel rating. Octane rating numbers may be rounded off to a whole or half number equal to or less than the number determined by you.

(b) Give the person a letter or written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower

automotive fuel rating. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

(c) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper.

10. Section 306.7 of 16 CFR is revised to read as follows:

**§ 306.7 Recordkeeping.**

You must keep records of how you determined automotive fuel ratings for one year. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by people authorized by FTC or EPA.

11. Section 306.8 of 16 CFR is revised to read as follows:

**§ 306.8 Certification.**

If you are a distributor, you must certify the automotive fuel rating of the automotive fuel in each transfer you make to anyone who is not a consumer.

(a) In the case of gasoline, if you do not blend the gasoline with other gasoline, you must certify the gasoline's octane rating consistent with the octane rating certified to your. If you blend the gasoline with other gasoline, you must certify consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to certify the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.5. In cases involving gasoline, the octane rating may be rounded to a whole or half number equal to or less than the number certified to you or determined by you.

(b) If you do not blend alternative liquid automotive fuels, you must certify consistent with the automotive fuel rating certified to you. If you blend alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the automotive fuel rating that you certify for the blend.

(c) You may certify either by using a delivery ticket with each transfer of automotive fuel, as outlined in § 306.6(a), or by using a letter of certification, as outlined in § 306.6(b).

(d) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper. When you receive automotive fuel from a common carrier, you also must receive from the common carrier a certification of the automotive fuel rating of the automotive fuel, either by letter or on the delivery ticket or other paper.

12. Section 306.9 of 16 CFR is revised to read as follows:

**§ 306.9 Recordkeeping**

You must keep for one year any delivery tickets or letters of certification on which you based your automotive fuel rating certifications. You must also keep for one year records of any automotive fuel rating determinations you made according to § 306.5. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by persons authorized by FTC or EPA.

13. Section 306.10 of 16 CFR is revised to read as follows:

**§ 306.10 Automotive fuel rating posting.**

(a) If you are a retailer, you must post the automotive fuel rating of all automotive fuel you sell to consumers. You must do this by putting at least one label on each face of each dispenser through which you sell automotive fuel. If you are selling two or more kinds of automotive fuel with different automotive fuel ratings from a single dispenser, you must put separate labels for each kind of automotive fuel on each face of the dispenser.

(b) (1) The label, or labels, must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per unit of the automotive fuel.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20480. You must state the reasons that you want the exemption.

(c) In the case of gasoline, if you do not blend the gasoline with other gasoline, you must post the octane rating of the gasoline consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must post consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to post the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.5. In cases involving gasoline, the octane rating must be shown as a whole or half number equal to or less than the number certified to you or determined by you.

(d) If you do not blend alternative liquid automotive fuels, you must post consistent with the automotive fuel rating certified to you. If you blend alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the automotive fuel rating that you post for the blend.

(e)(1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you can satisfy the law by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(f) The following examples of automotive fuel rating disclosures for some presently available alternative liquid automotive fuels are meant to serve as illustrations of compliance with this part, but do not limit the Rule's coverage to only the mentioned fuels:

(1) "Methanol/Minimum _____% Methanol"
(2) "Ethanol/Minimum _____% Ethanol"
(3) "M–85/Minimum _____% Methanol"
(4) "E–85/Minimum _____% Ethanol"
(5) "LPG/Minimum _____% Propane" or "LPG/Minimum _____% Propane and _____% Butane"
(6) "LNG/Minimum _____% Methane"

(g) When you receive automotive fuel from a common carrier, you also must receive from the common carrier a certification of the automotive fuel rating of the automotive fuel, either by letter or on the delivery ticket or other paper.

14. Section 306.11 of 16 CFR is revised to read as follows:

**§ 306.11 Recordkeeping.**

You must keep for one year any delivery tickets or letters of certification on which you based your posting of automotive fuel ratings. You also must keep for one year records of any automotive fuel rating determinations you made according to § 306.5. These records may be kept at the retail outlet or at another, reasonably close location. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members or by persons authorized by FTC or EPA.

15. Section 306.12 is revised to read as follows:

**§ 306.12 Labels.**

All labels must meet the following specifications:

*(a) Layout.—(1) For gasoline labels.* The label is 3" (7.62 cm) wide x 2½" (6.35 cm) long. The illustrations appearing at the end of this rule are prototype labels that demonstrate the proper layout. "Helvetica Black" type is used throughout except for the octane rating number on octane labels, which is in Franklin gothic type. All type is centered. Spacing of the label is ¼" (.64 cm) between the top border and the first line of text, ⅛" (.32 cm) between the first and second line of text, ¼" (.64 cm) between the octane rating and the line of text above it. All text and numerals are centered within the interior borders.

*(2) For alternative liquid automotive fuel labels (one principal component).* The label is 3" (7.62 cm) wide × 2½" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is ¼" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is ⅛" (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛" (.32 cm) between each line. The bottom line of type is 3/16" (.48 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the dimensions of this single component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

*(3) For alternative liquid automotive fuel labels (two components).* The label is 3" (7.62 cm) wide × 2½" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is ¼" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16" (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛" (.32 cm) between each line. The bottom line of type is ¼" (.64 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the dimensions of this two component label to accommodate additional fuel components, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(b) *Type size and setting*—(1) *For gasoline labels.* The Helvetica series is used for all numbers and letters with the exception of the octane rating number. Helvetica is available in a variety of phototype setting systems, by linotype, and in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The line "Minimum Octane Rating" is set in 12 point Helvetica Bold, all capitals, with letterspace set at 12½ points. The line "(R+M)/2 METHOD" is set in 10 point Helvetica Bold, all capitals, with letterspace set at 10½ points. The octane number is set in 96 point Franklin gothic condensed with ⅛" (.32 cm) space between the numbers.

(2) *For alternative liquid automotive fuel lables (one principal component).* All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½" (1.27 cm) cap height) "Helvetica Black," knocked out of a 1" (2.54 cm) deep band. The type for the words "MINIMUM" and the principal component is 24 pt. (¼" (.64 cm) cap height.) The type for percentage is 36 pt. (⅜" (.96 cm) cap height).

(3) *For alternative liquid automotive fuel labels (two components).* All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½" (1.27 cm) cap height) "Helvetica Black," knocked out of a 1" (2.54 cm) deep band. All other type is 24 pt. (¼" (.64 cm) cap height.)

(c) *Colors*—(1) *For gasoline labels.* The basic color on all octane labels is process yellow. All type is process black. All borders are process black. All colors must be non-fade.

(2) *For alternative liquid automotive fuel labels.* The background color on all the labels is Orange: PMS 1495. The knock-out type within the black band is orange PMS 1495. All other type is process black. All borders are process black. All colors must be non-fade.

(d) *Contents.* Examples of the contents are shown in the sample labels. The proper octane rating for each gasoline must be shown. The proper automotive fuel rating for each alternative liquid automotive fuel must be shown. No marks or information other than that called for by this rule may appear on the labels.

(e) *Special label protection.* All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to automotive fuel, oil, grease, solvents, detergents, and water.

(f) *Illustrations of labels.* Labels should meet the specifications in this section, and should look like these examples, except the black print should be on the appropriately colored background.

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**M-85**

**MINIMUM 85% METHANOL**

**LPG**

**MINIMUM 90% PROPANE 2% BUTANE**

**LPG**

**MINIMUM 90% PROPANE**

**E-100**

**MINIMUM 95% ETHANOL**

BILLING CODE 6750-01-C

By direction of the Commission.
Donald S. Clark,
*Secretary.*
[FR Doc. 93-18339 Filed 8-2-93; 8:45 am]
BILLING CODE 6750-01-M

federal register

Tuesday
August 3, 1993

Part VII

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife and Plants; Determinations of Endangered Status; Final Rules**

VOL 58 ISS 147 AG 3 1993 UMI

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Two Plants, Arenaria Paludicola (Marsh Sandwort) and Rorippa Gambellii (Gambel's Watercress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for two plants: *Arenaria paludicola* (marsh sandwort) and *Rorippa gambellii* (Gambel's watercress). *Arenaria paludicala* was historically known from swamps and freshwater marshes in four counties in California, as well as Washington State. The sole extant population occurs at Black Lake Canyon in San Luis Obispo County, California. *Rorippa gambellii* once occurred in five California counties, as well as Mexico; today only three populations remain, all in San Luis Obispo County, California. These two species and their coastal wetland habitats are threatened primarily by urban development, alteration in hydrology, competition with alien plant species, and stochastic (random) extinction by virtue of the small number of individuals and populations that remain. This rule implements the protection and recovery provisions afforded by the Act for these plants.

EFFECTIVE DATE: August 3, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz at the above address (telephone 805/644–1766 or 818/904–6040).

SUPPLEMENTARY INFORMATION:

### Background

*Arenaria paludicola* and *Rorippa gambellii* are both historically known from swamps and freshwater marsh habitats primarily along the Pacific Coast of North America. *Arenaria paludicola* once ranged from Washington to San Bernardino County, California, and *Rorippa gambellii* from San Luis Obispo County to San Diego, California, and near Mexico City. The wetland habitats upon which they depend have been vanishing at a rapid rate due primarily to urbanization and conversion to agriculture.

In San Luis Obispo County, a series of small freshwater marshes associated with active to partially stabilized beach dunes extends a distance of 5 miles from Oceano south to the Oso Flaco Lakes area. Just inland from this "dune lakes" area lies the Nipomo Mesa, a broad mesa comprised of old Oceano sands deposited 40,000 years ago, and bisected by Black Lake Canyon. Pockets of freshwater marsh habitat in Black Lake Canyon and the dune lakes area harbor a unique flora that includes remnant populations of *Arenaria paludicola* and *Rorippa gambellii*.

*Arenaria paludicola* (marsh sandwort) was first described by A. Kellogg in 1863 under the name *Alsine palustre*, based on a specimen collected near Fort Point, San Francisco (Kellogg 1863). In 1876, Sereno Watson made the new combination *Arenaria palustris*, not realizing that the name had been published by Gay in 1845 in reference to a different species (Abrams 1944). Robinson noticed the duplication of names and, in his treatment of Alsineae (one of three tribes recognized within Caryophyllaceae at the time), renamed the plant *Arenaria paludicola* (Robinson 1894).

This slender perennial herb of the pink family (Caryophyllaceae) roots at the nodes of procumbent stems. The species bears small inconspicuous flowers from May through August. The singularly borne flowers in the axils of narrow opposite leaves and the smooth and angled stem separate this species from others in the genus.

Historically, the species was known from four counties of coastal California, as well as in the State of Washington, from sea level to 1,476 feet (0 to 450 meters) (Morey 1990). The Service recently contracted the Natural Heritage Program in the State of Washington to conduct a status survey for *Arenaria paludicola* in that State. The review of historical specimens revealed that all but one of the specimens had been misidentified. Field surveys conducted in 1990 focused on the area from which the one historical specimen of *A. paludicola* was located, as well as from other potential sites along the coast of Washington. No extant sites of this plant were found as a result of the surveys (Gamon 1991).

In California, historical locations were known from the Counties of San Francisco, Santa Cruz, San Luis Obispo, and San Bernardino. These populations have been eliminated due to urbanization and associated impacts such as encroachment by non-native plants and off-road vehicle activity. The only known extant location is in a small marshy area of Black Lake Canyon on the Nipomo Dunes Mesa in southwestern San Luis Obispo County. Associated species include *Epipactis gigantea* (stream orchis), *Sparganium* sp. (bur-reed), *Carex* sp. (sedges), *Juncus* sp. (rushes), and *Rorippa gambellii*. The site is in private ownership. This population was first reported in 1947 and rediscovered in 1984. Surveys done between 1988 and 1992 indicate that the location of the plants may shift over time, perhaps illustrating the dependence of the species on specific microhabitat conditions for successful germination and propagation. In 1988, only 10 plants were found in the Canyon, occupying an area less than 55 square feet (5 square meters) (Morey 1990). Although only three plants were located at the site in 1992, the existence of other pockets of suitable habitat in Black Lake Canyon and the adjacent dune lakes area holds promise that other populations may still be found.

*Rorippa gambellii* (Gambel's watercress) was first described by Sereno Watson as *Cardamine gambellii* in 1876, using specimens collected by Gambel near Santa Barbara, Santa Barbara County. O. E. Schulz placed the plant in the genus *Nasturtium* in 1933. However, Munz chose to recognize the placement of the taxon in the former genus in his publication on California flora (Munz 1959). Recent work by Al-Shehbaz and Rollins (1988) pointed out the inconsistency in the features historically used to distinguish the genera *Cardamine* and *Rorippa*, including flower color, presence of median nectaries, and seed coat pattern. They consequently combined several species of *Cardamine* into *Rorippa*, including *Rorippa gambellii*.

*Rorippa gambellii*, a member of the mustard family (Brassicaceae), is an herbaceous perennial that characteristically roots from the stem nodes of a horizontal rootstock. The species produces dense inflorescences of white flowers from April through June. The narrow fruits with seeds arranged in one row (rather than two) and the more angular and sharply toothed leaflets distinguish this species from the more common non-native *Rorippa nasturtium-aquaticum*.

*Rorippa gambellii* is found in freshwater or brackish marsh habitats at the margins of lakes or along slow-flowing streams, from 20 to 60 feet (6 to 18 meters) in elevation. The species requires a permanent water source.

Associated species include *Typha* sp. (cattail), *Sparganium* sp., and *Scirpus* sp. (bulrush). At the Black Lake Canyon site, *R. gambellii* co-occurs with *Arenaria paludicola* (Wickenheiser 1989).

The species was reported historically from about a dozen locations in southern California, including interior wetland areas of San Diego, San Bernardino, and Los Angeles Counties, as well as coastal wetland areas of San Luis Obispo and Santa Barbara Counties (Wickenheiser and Morey 1990) and from near Mexico City in the Valley of Mexico (Wickenheiser 1989). Historic populations in San Bernardino and San Diego Counties have been extirpated due to habitat alteration. Apparently two individuals were observed in Barka Slough on Vandenberg Air Force Base, Santa Barbara County, in 1980 (Dial 1980). However, surveys by Price (1989) were unsuccessful in relocating the plant. In San Luis Obispo County, populations near Small Twin Lake and Oceano Beach have been extirpated.

The three known extant populations of *Rorippa gambellii* occur in San Luis Obispo County at Black Lake Canyon, Oso Flaco Lake, and Little Oso Flaco Lake. Oso Flaco Lake and Little Oso Flaco Lake are on lands owned by the California Department of Parks and Recreation (DPR) (Pismo Beach State Vehicle Recreation Area); the portion of the Recreation Area containing the lakes is closed to recreational vehicles and is being managed by The Nature Conservancy. These three sites are within four aerial miles of each other. The total number of individuals counted during surveys in 1989 resulted in a total count of fewer than 1,000 individuals (Wickenheiser and Morey 1990). In 1992, the number of individuals in Black Lake Canyon had increased to approximately 1,000, up from the 100 individuals observed in 1989 surveys (CNDDB 1992). The other two populations at Oso Flaco Lake and Little Oso Flaco Lake could not be relocated, but difficulties in surveying the thickly vegetated lake margins may have obscured the populations.

*Arenaria paludicola* and *Rorippa gambelli* face threats from alteration of hydrology, competition with encroaching eucalyptus trees (*Eucalyptus globulus*), urban development, and stochastic extinction due to the small number of individuals and populations that remain.

**Previous Federal Action**

Federal government actions on one of these two plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975.

The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Arenaria paludicola* was included in the July 1, 1975, **Federal Register** document as a threatened species. General comments received in response to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 6, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Rorippa gambellii* as a Category 1 species, and *Arenaria paludicola* as a Category 2 species. Category 1 species are those taxa for which the Service has in its possession enough information on biological vulnerability and threats to support a proposal to list; whereas, Category 2 species are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640); the plant notice was again revised on September 27, 1985 (50 FR 39526). *Arenaria paludicola* and *Rorippa gambellii* were included in both of these revisions as Category 2 species. On February 21, 1990 (55 FR 6184), the plant notice was again revised, and *Arenaria paludicola* and *Rorippa gambellii* were both included as Category 1 species.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. That was the case for *Arenaria paludicola* because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petitioned listing of *Arenaria paludicola* was warranted but precluded by other higher priority listing actions.

On September 30, 1991, the Service published in the **Federal Register** (56 FR 49446) a proposal to list *Arenaria paludicola* and *Rorippa gambellii* as endangered. This proposal was based primarily on information supplied by reports from the Natural Diversity Data Base and observations of botanists. The comment period originally closed on November 29, 1991. A **Federal Register** notice reopening the comment period for 30 days was published on June 8, 1992 (57 FR 24221), to receive additional information. That comment period closed on July 8, 1992.

**Summary of Comments and Recommendations**

In the September 30, 1991, proposed rule (56 FR 49446) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A 60-day comment period closed on November 29, 1991. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Comments were received from three California State agencies (The Resources Agency, California Department of Parks and Recreation, and California Department of Fish and Game), and from the County of San Luis Obispo during and prior to the opening of the comment period.

A **Federal Register** notice reopening the comment period from June 8 to July 8, 1992, was published on June 8, 1992 (57 FR 24221), to receive additional information. A newspaper notice was published in the San Luis Obispo County Telegram-Tribune on June 17, 1992, inviting general public comment on the proposed rule. Six comments were received subsequent to the June 8, 1992, publication, including three from the general public and three from conservation organizations. A total of 11 comments from 10 parties were received. Seven commenters, including the California Department of Fish and

Game, The Resources Agency, California Native Plant Society, The Nature Conservancy, Center for Plant Conservation, and two other commenters supported the listing of the species. The California Department of Parks and Recreation and the County of San Luis Obispo provided additional information that has been incorporated into this rule. One commenter opposed the proposed listing; the four issues raised and the Service's response to each are summarized as follows:

*Issue 1:* The commenter felt that little benefit would be derived from listing species whose extinction appeared imminent.

*Service Response:* The Endangered Species Act of 1973, as amended, directs the Service to list species that are in danger of extinction throughout all or a significant portion of their ranges. *Arenaria paludicola* and *Rorippa gambellii* are both in danger of extinction throughout their range and, therefore, meet the definition of endangered species under the Act. Benefits to listing under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. The likelihood of imminent extinction is a reason to list a species, rather than a reason against such a decision.

*Issue 2:* The commenter felt that the property rights of private landowners would be compromised by a Federal listing since this would lead to land confiscation.

Service Response: Listing of *Arenaria paludicola* and *Rorippa gambellii* under the Endangered Species Act will trigger the protective measures under section 9 of the Act, prohibiting the collection, destruction or damaging of these species on any area if it is in violation of any State law (see the "Available Conservation Measures" section of this rule for a complete discussion). In addition, the Act requires that Federal agencies insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species, or destroy or adversely modify its critical habitat, if any is designated. Any activity on private land that requires Federal involvement (such as a section 404 permit under the Clean Water Act) and that may affect these species would have to be reviewed by the Service to ensure that the continued existence of the species would not be jeopardized.

Listing under the Act does not imply that private land would be "confiscated" without compensation. Recovery planning for the two subject plants may include recommendations for land acquisition or easements involving private landowners. These efforts would be undertaken with the cooperation of the landowner. In the majority of cases, private landowners are not precluded from utilizing their land in the manner originally intended.

*Issue 3:* The commenter believed Vandenberg Air Force Base may harbor suitable habitat for *Arenaria paludicola*, and wanted to know why a survey for the plant has not been conducted there.

Service Response: Although a focused search for *Arenaria paludicola* has never been done on Vandenberg Air Force Base, in Santa Barbara County, a number of rare plant surveys and resource inventories have been conducted (NASA 1988, Smith 1981). Two individuals of the plant were purportedly found in Barka Slough (on the base) in 1980, but no voucher was made to confirm identification (Dial 1980). It is not certain whether suitable habitat still exists in the area. Rapid succession may be eliminating the marsh habitat there, making conditions unsuitable for the plant. In the event that *Arenaria paludicola* is found from Barka Slough or from other localities (such as the dune lakes area) in the future, it is likely that any new populations would be imperiled by the same kinds of threats that the plant faces at Black Lake Canyon, and the status of the species would not be changed.

*Issue 4:* The commenter included excerpts from the Black Lake Canyon Enhancement Plan (Land Conservancy of San Luis Obispo County 1992) to indicate that water drawdown from development surrounding the Canyon is not a threat because in fact the water level is rising.

Service Response: The Enhancement Plan stated that the upper and lower portions of Black Lake Canyon are supplied by two different aquifers separated by an impermeable layer called an aquitard (Land Conservancy of San Luis Obispo County 1992). Thus, while the water level in the upper half of the canyon has risen in recent years, apparently from golf course and agricultural runoff, the water levels in the lower half of the canyon, where the plant occurs, continue to drop. The dropping water levels in this portion of the canyon are probably being accelerated by the presence of planted Eucalyptus trees and from well-water drawdown. Further, any change in water level (i.e., rising or dropping) could affect the ability of *Arenaria paludicola* to survive. As indicated in the "Summary of Factors Affecting the Species" section of the rule, however, alteration of hydrology is only one of several factors that threatens this plant with extinction.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that *Arenaria paludicola* and *Rorippa gambellii* should be classified as endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application of *Arenaria paludicola* Rob. (marsh sandwort) and *Rorippa gambellii* (S. Wats.) Roll. & Al-Shehbaz (Gambel's watercress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The only known occurrence of *Arenaria paludicola* is threatened with habitat modification by the conversion of marsh habitat to more mesic habitats that support grass and shrub-dominated plant communities. The natural rate of succession from marsh habitat to more mesic upland habitat would normally occur over hundreds or thousands of years, but in Black Lake Canyon, the conversion is so rapid that it has been measurable over the past few decades. Aerial photographs from 1949 show the lower portion of the canyon as one wetland with open water and freshwater marsh or bog vegetation along its margins. By 1956, however, aerial photographs showed that willows had encroached into the wetlands and 30 percent of the area was covered with trees (Holland and McLeod 1992). Causes for the conversion are not entirely understood, but probably involve both short-term and long-term processes. The recently released Enhancement Plan for Black Lake Canyon discusses several of these processes, including the probable drop in the water table due to high water intake by planted eucalyptus trees, which were originally planted on adjacent Nipomo Mesa in the late 1800's and have spread throughout the lower half of the canyon. The eucalyptus has an extensive root system that can draw out soil moisture; that, coupled with the large evaporative surface of its foliage, has probably resulted in a significant drawdown of the water table compared to that which the surrounding native vegetation would have accomplished. It is uncertain to what degree the current

use of groundwater by agriculture and existing development has drawn down the water table, and, if so, which portions of the canyon have been affected. An increase in development and concomitant drilling of additional wells could potentially draw down the water table in at least portions of the canyon. At the same time, a recently approved golf course may contribute additional runoff into the upper portion of the canyon. While the complex relationship between the geology, groundwater table, and existing and future land uses of the surrounding watershed merits additional study, habitat for *Arenaria paludicola* has been greatly altered and diminished.

Another factor contributing to the accelerated rate of succession is an increase in sedimentation due to various human activities within the Black Lake Canyon watershed. Of 1,555 acres that were included in the Black Lake Canyon Enhancement Plan, over two-thirds have been developed, are in agriculture, or are covered with eucalyptus, with only one-third remaining in native vegetation. Approximately 200 ownership parcels exist within the watershed; a few larger parcels support orchards (avocado or citrus) or greenhouses and nurseries, but most are smaller parcels supporting individual homesites. A development proposal that includes 515 residential units and a golf course was recently approved for the upper portion of the watershed, and other parcels are currently being subdivided in preparation for development (Land Conservancy of San Luis Obispo County 1992). The sandy soils surrounding the canyon are susceptible to erosion, and trails created by motorcycles, off-road vehicles, horses, and pipeline easements have already created erosion channels that hasten the deposition of sediments from slopes to the bottomlands. Eucalyptus trees may also contribute to increased sedimentation in bog and pond areas by inhibiting the decay of debris because of acid tannins contained in the tree's leaves. Also, large or old trees that topple tend to destabilize the sandy slopes of the canyon, exposing unconsolidated patches of loose soil (Holland and McLeod 1992).

A series of below average rainfall years has resulted in a reduced base flow within Black Lake Canyon, which may already have altered the hydrological regime for the plant. It is probable that the drilling of new water wells will also have an effect on the hydrology of the canyon. One occurrence of *Rorippa gambellii* co-occurs with *Arenaria paludicola* at Black Lake Canyon and is threatened by the same alteration of hydrologic regime discussed above.

The habitat for *Rorippa gambellii* at Oso Flaco Lake is threatened with modification of habitat due to encroachment of sand from adjacent dunes. Efforts to revegetate dunes that had been previously denuded by off-road vehicle activity have been marginally successful, but are continuing (Wickenheiser 1989; DPR in litt. 1992). At Little Oso Flaco Lake, habitat for *Rorippa gambellii* is threatened by the lack of a permanent water source. This site's water source is made available in party by agricultural activities in adjacent farmlands, and may fluctuate on a seasonal and annual basis.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although these species are not presently sought after by collectors, they are vulnerable to taking, because of their limited distribution. The increased public attention that may be brought to bear as a result of this rule could potentially increase the desirability of these species, thereby increasing the threat of collection.

C. *Disease or predation.* Not known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* Under the California Endangered Species Act (Division 3, Chapter 1.5, sec. 2050 *et seq.*), the California Fish and Game Commission has listed *Arenaria paludicola* as endangered and *Rorippa gambellii* as threatened (14 California Code of Regulations sec. 670.2). Although this statute prohibits the "take" of State-listed plants (chapter 1.5 sec. 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Chapter 10 sec. 1913). State law requires State agencies to consult with the Service on projects that may potentially affect federally listed plants, thereby conferring a certain measure of protection for populations located on State Parks property.

The County of San Luis Obispo has designated a portion of Black Lake Canyon as a Sensitive Resource Area (SRA), thereby restricting land use in the area. However, the boundaries of the SRA have been a subject of discussion between the County, local landowners, and environmentalists for several years, and an amendment to the County General Plan altering the boundaries has been on hold for several years. The Black Lake Canyon Enhancement Plan was developed by the Land Conservancy of San Luis Obispo County with funds from the Coastal Conservancy in an attempt to resolve land management and planning issues surrounding Black Lake Canyon. The Plan includes recommendations to remove Eucalyptus and restore native vegetation to certain portions of the canyon. Such activities would theoretically be of benefit to *Arenaria paludicola* and *Rorippa gambellii*, but the plan has not yet been adopted by the County. The County is aware that development pressures in the Black Lake Canyon area may have adverse effects on the two plants, and have indicated that they continue to receive development applications from that part of the county (County of San Luis Obispo, in litt. 1991).

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into waters of the United States, including wetlands. However, no permit is necessary if the fill is less than 1 acre in size, and if the fill is between 1 and 10 acres in size, a Nationwide Permit Number 26 is issue by default within 20 days unless it is determined that an individual permit is required. Ongoing activities related to urban and agricultural use of the area that may result in fill within Black Lake Canyon may, therefore, have little to no regulation by the Corps, since these areas are typically less than 10 acres in size.

E. *Other natural or manmade factors affecting its continued existence.* Eucalyptus trees were planted at Black Lake Canyon several decades ago. These non-native trees are altering the habitat of *Arenaria paludicola* by increasing the amount of shade, reducing the local water availability, and possibly introducing organic compounds that inhibit growth of other species into the surrounding substrate (Morey 1990, Holland and McLeod 1992). Eucalyptus removal is scheduled to begin on a limited basis in 1993, and on an expanded basis in future years.

Because of the limited numbers of individuals and populations, and the limited amount of remaining marsh habitat for both species, *Arenaria paludicola* and *Rorippa gambellii* are subject to several types of stochastic extinction. Genetic viability is reduced in small populations, resulting in inbreeding depression and the inability to adapt to changing environmental conditions. Limited number of

individuals and populations also leave these species vulnerable to extinction and potentially unable to recover from a single human-caused or random natural event, such as flood, drought, disease, or predation.

*Arenaria paludicola* is known from only one location, and only three individuals were found during recent surveys. *Rorippa gambellii* is known from only three locations, with an approximate total of 1,000 individuals. The historic range of each of these two species has been much reduced by urban development, changes in the hydrology of the watershed and ensuing rapid succession, and competition with exotic species. Because of the small number of populations and individuals remaining, and the limited amount of remaining marsh habitat, any single human-caused, or random natural event, such as flood, drought, or disease, could cause the extinction of these species. *Arenaria paludicola*, with only three individuals known to be extant, is particularly vulnerable; any disturbance event could cause the extinction of the species. Because so few individuals and/or populations remain for these two species, making them extremely vulnerable to any human-caused or random natural event, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Arenaria paludicola* (marsh sandwort) and *Rorippa gambellii* (Gambel's watercress) as endangered, because of their limited numbers and distribution, loss of freshwater marsh habitat due to changes in the hydrological regime, competition from non-native species, and encroachment of sand from adjacent coastal dunes. Because these two plants are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. For reasons discussed below, the Service is not proposing to designate critical habitat for these plant species at this time.

### Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, these plants are vulnerable to taking. The publication of precise descriptions and maps required when designating critical habitat would increase the degree of threat to these plants from possible take or vandalism, and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants, and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and principal landowners have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities.

Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Corps of Engineers, through its permitting authority under section 404 of the Clean Water Act, may become involved as a result of this listing.

Listing of these two plants as endangered will provide for the development of a recovery plan. Such a plan will bring together both State and Federal efforts for their conservation. The plan will establish a framework for cooperation and coordination among agencies in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also will describe site-specific management actions necessary to achieve conservation and survival of the two plants.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Arenaria paludicola* and *Rorippa gambellii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut up, dig up, damage or destroy any such endangered plants species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. The Service anticipates that few trade permits would ever by sought or issued for either of the two species, because they are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington Virginia 22203–3507 (703/358–2104).

### National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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### Author

The primary author of this final rule is Constance Rutherford, Ventura Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section); telephone 805/644–1766 or 818/904–6040.

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

### Regulation Promulgation

Accordingly part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) for plants by adding the following species, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| * | * | * | * | * | | * |
| Brassicaceae—Mustard family: | | | | | | |
| * | * | * | * | * | | * |
| *Rorippa gambellii* | Gambel's watercress | U.S.A. (CA), Mexico | E | 511 | NA | NA |
| * | * | * | * | * | | * |
| Caryophyllaceae—Pink family: | | | | | | |
| * | * | * | * | * | | * |
| *Arenaria paludicola* | Marsh sandwort | U.S.A. (CA, WA) | E | 511 | NA | NA |
| * | * | * | * | * | | * |

Dated: July 16, 1993.
Richard N. Smith,
*Acting Director, U.S. Fish and Wildlife Service.*
[FR Doc. 93–18432 Filed 8–2–93; 8:45 am]
BILLING CODE 4310–55–M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AB73**

## Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Three Vernal Pool Plants and the Riverside Fairy Shrimp

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines three plants (*Pogogyne nudiuscula* (Otay Mesa mint), *Orcuttia californica* (California Orcutt grass), and *Eryngium aristulatum* var. *parishii* (San Diego button-celery)) and the Riverside fairy shrimp (*Streptocephalus woottoni*) to be endangered species throughout their respective ranges. These species collectively occur in vernal pools from southwestern Riverside County and western San Diego County, California, to northwestern Baja California, Mexico. One population of *Orcuttia californica* is known from Ventura County. One population of Riverside fairy shrimp is known from Orange County. Habitat loss and degradation due to urban and agricultural development, livestock grazing, off-road vehicle use, trampling, invasion from weedy non-native plants, and other factors threaten the continued existence of these species. This rule implements the protective provisions of the Endangered Species Act (Act) of 1973, as amended, for these four taxa.

**EFFECTIVE DATE:** August 3, 1993.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California, 92008.

**FOR FURTHER INFORMATION CONTACT:** Nancy Gilbert or Ellen Berryman at the above address (619/431–9440).

**SUPPLEMENTARY INFORMATION:**

### Background

The three plants and the fairy shrimp occur in vernal pools, a habitat that forms in areas with Mediterranean climates where slight depressions become seasonally wet or inundated following fall and winter rains. Water remains in these pools for a few months at a time, due to an impervious layer such as hard pan, clay, or basalt beneath the soil surface. Gradual drying occurs during the spring (Holland 1976). The pools form on mesa tops or valley floors and are interspersed among very low hills usually referred to as mima mounds (Zedler 1987).

*Pogogyne nudiuscula* is a member of the mint family (Lamiaceae), typically blooming from May through June (Munz 1974). This aromatic plant was originally described by Gray (1876), as cited by Howell (1931). *P. nudiuscula* Gray is an erect annual reaching 12 inches (in) (3 decimeters (dm)) in height. The bright green, spatulate leaves have few hairs. Bright purple flowers occur in whorls on spikes. The lack of hairs on the calyx and bracts of this plant differentiate the species from *Pogogyne abramsii*. A large population, originally identified as *P. nudiuscula*, was recently found in Valle de las Palmas, in Baja California, Mexico, 17 miles (28 kilometers (km)) south of the international border (Howard Weir, Dudek and Associates, pers. comm., 1992). However, enough evidence was gathered to describe the Mexican population as a distinct species, and a description of this taxon was expected to be published in the spring of 1993 (Scott McMillan, Department of Biology, San Diego State University, *in litt.*, 1992).

*Orcuttia californica* Vasey is a member of the grass family (Poaceae). It is associated with deeper pools of water than is *Pogogyne nudiuscula* and *Eryngium aristulatum* var. *parishii*. *O. californica* was first collected by Orcutt and was described by Vasey (1886). Subsequently, this plant was considered the nominate variety of *O. californica*, and several other varieties were also recognized. Reeder (1982) raised the varieties of *O. californica* to species status. This small annual grass reaches 4 in (1 dm) in height, is bright green, and secretes sticky droplets that taste bitter. Inflorescences, borne from May through June, consist of seven spikelets arranged in two ranks, with the upper spikelets overlapping on a somewhat twisted axis. *O. californica* is differentiated from other species in the genus by the following characteristics: teeth of lemma (bract enclosing the floret) 0.2 in (5 millimeters (mm)) long or less, the teeth sharp-pointed or with awns (terminal bristles) 0.2 in (0.5 mm) long or less; culms (stems) usually prostrate, caryopsis (fruit) 0.06–0.07 in (1.5–1.8 mm) long; plants sparingly pilose (bearing soft and straight spreading hairs); and spikelets remote on the axis below, crowded toward the apex.

*Eryngium aristulatum* Jepson var. *parishii* (Coulter and Rose, 1990) Mathias and Constance (San Diego button-celery) is a member of the parsley family (Apiaceae). It is associated with white clay bottom pools devoid of hard pans. This plant was originally described as *E. parishii* by Coulter and Rose (1900). The plant was reclassified by Jepson (1923) as *E. jepsonii* var. *parishii*. Jepson (1936) returned to the Coulter and Rose (1900) classification. Mathias and Constance (1941) separated *E. aristulatum* from *E. jepsoni* due to morphological characteristics and treated this plant as a variety of *E. aristulatum* (var. *parishii*). *E. aristulatum* var. *parishii* blooms from May through June (Constance 1977). This plant is usually an annual; however, under favorable conditions it facultatively becomes a perennial herb with a perennial tap root. The plant has spreading or ascending shape and reaches a height of 16 in (4 dm). The stems and lanceolate leaves are gray green with spinose lobes giving the plant a prickly appearance. Inflorescences form on short stalks with few-flowered greenish heads at the ends of branches. Its greenish heads, fruits with unequal scales, and bractlets without calloused margins separate *E. aristulatum* var. *parishii* from other varieties.

The Riverside fairy shrimp (*Streptocephalus woottoni*) is a small freshwater crustacean of the Order Anostraca, Family Streptocephalidae. The species was first collected in 1979 by Dr. Clyde Erickson and was identified as a new species in 1985 (Eng *et al.* 1990). The discoverers of this taxon described this animal in the Journal of Crustacean Biology as a new species, and named it *Streptocephalus woottoni* (Eng *et al.* 1990). The species most similar to *S. woottoni* is *S. seali*, discovered by Ryder in 1879. Plumose setae edge the cercopods of mature male *S. woottoni*, whereas spines replace the setae on the distal half of the cercopods in mature *S. seali*. The last abdominal segment is short in both species; however, *S. woottoni* lacks the confluent inner margins of the cercopods characteristic for male *S. seali* and *S. similis*, which was discovered by Baird in 1852. Both males and females of *S. woottoni* have the red color of the cercopods covering all of the ninth and 30 to 40 percent of the eighth abdominal segments; no red extends onto the

abdominal segments of either sex in *S. seali*.

Mature males are between 0.56 in (14 mm) and 0.92 in (23 mm) in length. The frontal appendage is cylindrical, bilobed at the tip, and extends only part way to the distal end of the basal segment of the antenna. The spur of the thumb is a simple bladelike process. The finger has two teeth; the proximal tooth is shorter than the distal tooth. The distal tooth has a lateral shoulder that is equal to about half the tooth's total length measured along the proximal edge. The cercopods are separate with plumose setae along the medial and lateral borders. Mature females are between 0.56 in (14 mm) and 0.84 in (21 mm) in total length. The brood pouch extends to abdominal segments 7, 8, or 9. The cercopods are as in the male.

The conditions that create suitable habitat for these four species are seasonal (vernal) pools of shallow freshwater, which were probably never common. However, agricultural and, more recently, urban development have eliminated the majority of suitable habitat.

A number of studies were conducted on vernal pools in San Diego County. For mapping and description purposes, a standardized system was developed for the designation of these vernal pools (Beauchamp 1979). A series letter is used to denote vernal pools in a general region, and numbers are used to designate several pool groups within the series. Examples include: *Pogogyne nudiuscula* and *Orcuttia californica* are both found in the pools of the "J" series on Otay Mesa (these two species are not known to occur in the same pool), *Eryngium aristulatum* var. *parishii* occurs in several pool series, and the Riverside fairy shrimp is known to occur within two pool series (J and U) in San Diego (the "U" series occurs on the Miramar Naval Air Station).

Historically, *Pogogyne nudiuscula* was known to exist from Otay Mesa of San Diego County (Bauder 1986) to immediately south of the international border in Baja California, Mexico (Moran 1981). The historic range of this species may have extended to the mesas east of Balboa Park and south of Mission Valley in San Diego where vernal pools contain *P. abramsii*, another endangered vernal pool plant (Bauder 1986). The sites in extreme northern Baja California, Mexico, were very likely extirpated (Moran 1981). The current known distribution of *P. nudiuscula* is restricted to some of the remaining vernal pools on Otay Mesa.

*Orcuttia californica* once occurred in vernal pools from San Quintin, Baja California, Mexico (Moran 1981), northward to Riverside, Los Angeles, and San Diego Counties in southern California. Historically known populations from near Downey and Lakewood in Los Angeles County and near Murietta Hot Springs in Riverside County were extirpated. This species prefers deeper water than *Pogogyne nudiuscula* or *Eryngium aristulatum* var. *parishii*. *O. californica* still occurs in vernal pools on The Nature Conservancy's Santa Rosa Plateau Preserve, in a vernal pool within Salt Creek drainage near Hemet (Dave Bramlet, botanist, *in litt.*, 1992), and in the Skunk Hollow pool in Riverside County (Lathrop 1976). In San Diego County, this species is present in pools on Otay Mesa (Bauder 1986). One population of *O. californica* is present in a vernal pool in Woodland Hills of Ventura County. The current population status of *O. californica* in Baja California, Mexico, is unknown. Agricultural development is widespread and increasing in areas where vernal pool habitat is typically found (Moran 1981).

*Eryngium aristulatum* var. *parishii* once occurred from Riverside County, California, south to northern Baja California, Mexico (Constance 1977). This species currently occurs on the Santa Rosa Plateau in Riverside County; on Otay Mesa, Kearny Mesa, Del Mar Mesa, Miramar Naval Station, and Camp Pendleton in San Diego County; and in northern Baja California, Mexico. A number of sites were eliminated in recent years. Although this species remains comparatively widespread within and adjacent to remaining vernal pools, vernal pool habitat has greatly declined, and most of the remaining pools face one or more threats. Additionally, the distribution of *E. aristulatum* var. *parishii* is patchy, which makes it more vulnerable to local extinction than more evenly distributed species (Bauder 1986).

The Riverside fairy shrimp is known from four vernal pools in a 37 square mile (91 square km) area near Temecula in southwestern Riverside County (Eng *et al.* 1990), and from one population in Orange County. In San Diego County in the fall of 1989, this species was discovered within vernal pools on Miramar Naval Air Station and Otay Mesa (Marie Simovich, University of San Diego, *in litt.*, 1989). However, since the 1989 discovery of the species in San Diego County, numerous vernal pool complexes in the county have been surveyed by Simovitch, but no additional populations of Riverside fairy shrimp have been found. This species was also found at two locations in Baja California, Mexico: Valle de las Palmas, 28 kilometers south of the Mexican border; and approximately 37 kilometers south of El Rosario (H. Weir, and J. Brown, Dudek and Associates, pers. comm., 1992). Urban and agricultural development currently threaten all four remaining pools supporting the fairy shrimp in Riverside County. The distribution of these three plant and one crustacean vernal pool species among pool group sites is summarized in the following table.

DISTRIBUTION OF SPECIES AMONG POOL GROUP SITES

| Pool group sites | *Pogogyne nudiuscula* | *Orcuttia californica* | *Eryngium aristulatum* var. *parishii* | Riverside fairy shrimp |
|---|---|---|---|---|
| San Diego County: | | | | |
| Otay Mesa | X | X | X | X |
| Kearny Mesa | | | X | |
| Miramar Naval Station | | | X | X |
| Camp Pendleton | | | X | |
| San Marcos | | | X | |
| Penasquitos | | | X | |

DISTRIBUTION OF SPECIES AMONG POOL GROUP SITES—Continued

| Pool group sites | Pogogyne nudiuscula | Orcuttia californica | Eryngium aristulatum var. parishii | Riverside fairy shrimp |
|---|---|---|---|---|
| Riverside County: | | | | |
| Santa Rosa Plateau | | x | x | |
| Skunk Hollow | | x | | x |
| Salt Creek | | x | | |
| Pechanga Indian Res | | | | x |
| Murrieta Golf Course | | | | x |
| Ventura County | | x | | |
| Orange County | | | | x |
| Baja California, Mexico | x | | | x |

**Previous Federal Action**

Federal action on two of the plant species began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act (Act) of 1973, prepared a report on those native plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *Pogogyne nudiuscula* and *Orcuttia californica*, but not *Eryngium aristulatum* var. *parishii*. On July 1, 1975, the Service published a notice accepting the report as a petition under section 4(c)(2) (now section 4(b)(3)(A)) of the Act (40 FR 27823), and gave notice of the status review of *P. nudiuscula* and *O. californica*. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including *O. californica* and *E. aristulatum* var. *parishii*, but not *P. nudiuscula*, to be endangered species pursuant to section 4 of the Act. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. A summary of general comments received by the Service on the 1976 proposal was published in the **Federal Register** on April 26, 1978 (43 FR 17909).

In 1978, the amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already more than 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** withdrawing the portion of the June 16, 1976, proposal that was not made final, including *Orcuttia californica* and *Eryngium aristulatum* var. *parishii*.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Eryngium aristulatum* var. *parishii*, *Orcuttia californica*, and *Pogogyne nudiuscula* as category 1 candidates (species for which the Service has sufficient data in its possession to support a Federal listing proposal as endangered or threatened). On February 15, 1983, the Service published a notice (48 FR 6752) of its prior finding that the listing of these species may be warranted in accordance with section 4(b)(3)(A) of the Act. On October 13, 1983, the Service found that listing of these plant species was warranted but precluded in accordance with section 4(b)(3)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991.

Because it was not identified until 1985, and its existence remained known only to a few scientists until 1988, the proposed rule represented the first Federal action on the Riverside fairy shrimp. The proposed rule to list the three vernal pool plants and the Riverside fairy shrimp as endangered was published in the **Federal Register** on November 12, 1991 (56 FR 57503). A notice that the proposed rule was published in the **Federal Register**, was printed on October 14, 1992 in the Riverside "Press Enterprise" and the "San Diego Union Tribune".

**Summary of Comments and Recommendations**

The proposed rule and associated notifications solicited all interested parties to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Four letters were received in support of listing the Riverside fairy shrimp, and two of these letters contributed additional information that is incorporated into the Summary of Factors Affecting the Species section presented below. One of the four letters, from the California Department of Fish and Game, also supported listing of the three proposed plants. No other comments were received regarding the Service's position, the proposed action, or data on the proposed species.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service has determined that *Orcuttia californica* Vasey (California Orcutt grass), *Pogogyne nudiuscula* Gray (Otay mesa mint), *Eryngium aristulatum* var. *parishii* (Coulter and Rose, 1990) Mathias and Constance (San Diego button-celery), and the Riverside fairy shrimp (*Streptocephalus wootoni*) should be classified as endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Orcuttia californica*, *Pogogyne nudiuscula*, *Eryngium aristulatum* var. *parishii*, and the Riverside fairy shrimp are as follows:

*A. The Present or Threatened Destruction, Modification or Curtailment of Its Habitat or Range*

The habitat and range of these four species has been greatly reduced. Vernal pools, existing as slight depressions on flat mesas, are found in locations that are especially vulnerable to one or more of the following habitat disturbances: Urban and agricultural development, off-road vehicle use, cattle trampling, human trampling, road development, military activities, and water management activities. Many pool groups were entirely eliminated and replaced with urban or agricultural developments.

Vernal pool habitat in San Diego County has declined by 97 percent (T. Oberbauer, Department of Planning and Land Use, San Diego County, pers. comm., 1990), and most of the remaining pools face one or more threats. Similar declines in habitat have occurred in Riverside and Ventura Counties, and to a lesser degree in Baja California, Mexico. Vernal pool habitat in Los Angeles County has been destroyed. In Orange County, 90 to 98 percent of the historical vernal pool habitat has been eliminated (F. Roberts, Service, pers. comm., 1993). Vernal pool flora in Orange County has not been well documented. Most of the remaining vernal pools face one or more threats in the rapidly growing southern California area.

The vernal pool habitat upon which these four species depend is also vulnerable to destruction due to alteration of the watershed. In some cases, an increase in pool water volume due to urban run-off has led to more prolonged periods of inundation, and at the other extreme, some pools have been drained or blocked from their source of water. *Orcuttia californica* usually occurs in the deepest portion of vernal pools and occurs in some pools with marshy elements. Hence, it is more likely to be adversely affected by the latter type of drainage alterations.

Pools have also been degraded due to the use of off-road vehicles, which have impacted the habitats of all four species. These vehicles compact soils, crush plants when water is in the pools, cause turbidity, and leave deep ruts. The damage may alter the microhydrology of the pools. Dirt roads that go through or adjacent to pools are widened as motorists try to avoid the inevitable mud puddles. Thus, pools are gradually destroyed by vehicles traveling on dirt roads. Vehicle access and damage has occurred on virtually all remaining vernal pool complexes.

Otay Mesa, where all four species occur, has the most threats of habitat damage of all the sites. The Service is aware of 37 separate proposed precise development plans and tentative maps that have been filed for Otay Mesa, as required by the California Environmental Quality Act. These plans encompass approximately 80 percent of the undeveloped portion of the mesa within the jurisdiction of the City of San Diego and virtually all but four of the remaining vernal pool complexes. Of the four remaining pool complexes, three are adversely affected by other activities or development proposals.

Preliminary designs by the California Department of Transportation for State Route 125 include alignments that sever the existing natural connection between two of the largest remaining vernal pool complexes on Otay Mesa. The construction of this new major highway access route into Otay Mesa would further facilitate its development.

The existing Brown Field Airport is presently being evaluated as a potential site for an international airport servicing San Diego. This proposal includes alternative runway alignments that would destroy portions of one of the two largest remaining vernal pool complexes. A binational airport is also being considered for Otay Mesa, although these plans are too preliminary to allow assessment of potential impacts to vernal pools. An increase in the number of vehicle trips in this area would occur as a result of the airport, and this increased traffic would likely lead to a demand for more roads, which could directly impact the pools.

Habitat trampling, and in some cases trampling of the organisms, due to livestock grazing occurs on Otay Mesa in areas where several vernal pool complexes collectively contain all four of the proposed species. Organisms within the pools may be trampled and killed by livestock prior to reproduction. Soil may become compacted or eroded, and water may be impacted with sediment. *Eryngium aristulatum* var. *parishii* is sometimes able to withstand light trampling because of the buffering effect of its perennial tap root.

Otay Mesa is a common area for travel from Mexico to the United States; hence, habitat and plants are threatened with trampling by humans. Also, the Immigration and Naturalization Service has proposed several projects at the international border, including border lighting, that could result in direct adverse impacts to vernal pools on Otay Mesa, due to construction activities.

In 1979, *Pogogyne nudiuscula* was limited to 10 pool groups on Otay Mesa containing some 170 individual vernal pools. By 1986, this species was extirpated from all but 3 pool groups encompassing about 38 pools. In two groups, the plant was limited to a single pool each and was noticeably declining in the third group. Vehicular activity was occurring in two of the remaining groups and partially explained one of the extirpations. Only one of the pool groups was described as having dense populations of *P. nudiuscula* (Bauder 1986). This site is on protected private land. In the 1990 survey of Otay Ranch, four *P. nudiuscula* populations were confirmed (California Department of Fish and Game 1991).

*Pogogyne nudiuscula* now only remains in four populations, all located on Otay Mesa. These pools are threatened by various activities; for example, one of the alternatives for a proposed development project would eliminate 80 of 97 of the remaining vernal pools on Otay Mesa containing *P. nudiuscula* (S. McMillan, *in litt.*, 1992). However, proposed mitigation measures for the project would preserve a minimum of 95 percent of the vernal pool habitat (no less than 330 acres south of the Otay River) within the project area. Although the developer's proposed vernal pool preservation plan would include soil stabilization, hydrologic functions could change, and adversely affect vernal pool plants. Final approval of the proposed project and mitigation measures are pending before the City of Chula Vista and County of San Diego (Otay Ranch Joint Planning Project 1992).

In 1979, *Orcuttia californica* occurred on Otay Mesa in 7 pool groups containing 34 vernal pools. By 1986, agricultural plowing had destroyed 11 of these vernal pools. *O. californica* on Otay Mesa presently occurs in only 2 vernal pool groups, which contain 10 vernal pools. All of the remaining 10 pools supporting *O. californica* on Otay Mesa are grazed by livestock; hence, the habitat and plants are impacted by trampling. Five pools were adversely affected by trampling associated with immigrants attempting to cross the Mexico—United States border (Bauder 1986).

Three vernal pool groups in southwestern Riverside County also contain *Orcuttia californica*. One of these complexes is partially preserved within The Nature Conservancy's Santa Rosa Plateau Reserve. Another complex is located within the 14-acre Skunk Hollow pool, the last remaining valley type vernal pool in Riverside County. This pool is often plowed and is within the general locale of a conditionally approved residential development. A

proposed project in the Skunk Hollow area includes major improvements to roads and utility crossings that would directly impact 0.2 acres of the Skunk Hollow watershed. Proposed mitigation consists of experimental watershed creation. Soil sedimentation could still occur as well as impacts to hydrologic function. Several tract projects, already approved within the watershed, would alter the pool hydrology and adversely impact the species therein (Trans-Pacific Consultants 1992). The Service and California Department of Fish and Game are working to find a buyer for the Skunk Hollow site.

A third population of *Orcuttia californica* exists on private unprotected land, southwest of Hemet in the Old Salt Creek drainage area. One pool near the road was disced. These pools are also potentially threatened by widening of an adjacent road.

*Eryngium aristulatum* var. *parishii* has the largest remaining distribution of the three plant species under consideration herein. In 1979, this species was known from 65 pool groups; by 1986, this plant remained in 61 pool groups. Although several sites receive some protection, the remaining pool groups are threatened by one or more of the following: Urban development, off-road vehicular traffic, habitat trampling associated with cattle, mowing or plowing, highway construction, drainage or watershed alterations (often due to adjacent urban development), military activities (e.g., driving equipment), and trampling associated with migrant workers illegally entering the United States (Bauder 1986).

Two pool groups in Kearny Mesa contain *Eryngium aristulatum* var. *parishii*. The first group is composed of only 5 pools and is a remnant of a broad expanse that once stretched over approximately 15 miles (Bauder 1986). These pools are surrounded by industrial development and have been invaded by weedy species. The second group is composed of 213 pools, but *E. aristulatum* var. *parishii* is only present in less than half of these pools. The southern portion of this pool group was eliminated by State Route 52.

Vernal pools in the Penasquitos area contain *Eryngium aristulatum* var. *parishii*. Two-thirds of these pools were purchased and preserved by the California Department of Transportation to mitigate impacts from highway projects. However, fences surrounding the preserve were broken, and there is evidence of damage by off-road vehicles in the pools. The remaining one-third of this pool group is on privately owned land, and development is proposed for the property.

Three pool groups in the San Marcos area contain *Eryngium aristulatum* var. *parishii*. Each group is on private property, surrounded by development. In 1991, one of these pool groups was vandalized; ditches were created in early spring thereby draining the pools and destroying vernal pool plants. It is unknown whether these pools have recovered from the disturbance.

Two pool groups on Camp Pendleton Marine Corps Base contain *Eryngium aristulatum* var. *parishii*. This species was once believed to be more common on the Base, but most of the plants have since been determined to belong to a different species currently under study (S. Blitz, San Diego State University, pers. comm., 1993). The two populations on the military base are near the unfenced boundary with a housing development. The potential exists that civilians would enter and trample the pools in the area, and that military operations such as tank activity could damage the pools.

The Riverside fairy shrimp has very narrow habitat requirements. This species is only found in deep lowland pools that retain water through the warmer weather of late spring (Clyde Eriksen, Claremont College, *in litt.*, 1992; Jamie King, University of California—Davis, *in litt.*, 1992). Riverside fairy shrimp will not hatch in pools that receive cool waters from early winter rains (Eriksen *in litt.*, 1992), such as those pools on the Santa Rosa Plateau, nor will they hatch in shallow pools.

The Riverside fairy shrimp is vulnerable to land use changes affecting the small number of pools that meet the species' strict habitat requirements. Of the four remaining pools supporting the fairy shrimp in Riverside County, only the Skunk Hollow vernal pool is greater than 1 acre in size. The Skunk Hollow vernal pool, as previously discussed, is within a planned development. Other sites supporting the fairy shrimp may lack some of the typical vegetation of vernal pools, but that condition probably reflects impacts from past agricultural activities. One pool is located within an approved tract for a housing development.

A third pool is on a parcel that is currently proposed for a housing development, adjacent to the Murrieta Golf Course and Highway 79. This pool is in an agricultural field near the Skunk Hollow pool and was disced. The Environmental Impact Report prepared by a consultant for the developer of this project failed to acknowledge the existence of the Riverside fairy shrimp on the site. Representatives of the landowner expressed a willingness to offer some protection for this site. However, as discussed above, a currently proposed road project would impact the pool.

A fourth pool that contains the Riverside fairy shrimp is located partially on private land and partially on the Pechanga Indian Reservation. The portion on private land was cultivated during 1990. The region's drought conditions over the last 2 to 3 years may have rendered the pool dry enough to be plowed. A fifth pool, located on the Pechanga Indian Reservation within a mile of the fourth pool mentioned above, was recently converted into a gravel pit (L. Dobson, Riverside County Transportation and Land Management Agency, pers. comm., 1992). Only one documented Riverside fairy shrimp population occurs in Orange County.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Overutilization is not known to be a factor for these four species; however, unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare species can potentially impact these species as a result of increased publicity associated with listing under the Act.

*C. Disease or Predation*

*Orcuttia californica* is consumed by cattle in areas where vernal pools are within pastures, as discussed in Factor A. Grazing may occur prior to the setting of seed, that could affect reproductive success. The other three species are not known to be affected by disease or predation.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Existing regulatory mechanisms are not sufficient to reduce the losses of *Orcuttia californica, Pogogyne nudiuscula, Eryngium aristulatum* var. *parishii*, or the Riverside fairy shrimp. Vernal pools, as isolated wetlands and waters of the United States, are regulated by the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. The Corps generally does not require individual permits for impacts on less than 1 acre of wetlands or isolated waters of the United States above their headwaters. Most individual vernal pools are less than 1 acre in size.

Section 404 of the Clean Water Act has not historically provided adequate protection to these species from grading or fill activities for most pools. However, in October 1987, the Corps released a Public Notice proposing to

exercise its jurisdiction over vernal pools regardless of size or the lack of sensitive or endangered species in the pools. Since then, the Corps requires individual permits for the discharge of fill into vernal pools.

Section 404 regulates the discharge of fill material, but it does not regulate other activities such as grazing, off-road activity, and seeding with non-native species. Moreover, section 404 of the Clean Water Act does not regulate activities within the watershed (i.e., adjacent upland) of vernal pools. The watershed is an essential component of the vernal pool ecosystem. The disturbance and/or loss of watersheds can result in a greatly reduced volume and duration of water supply in vernal pools and thereby adversely affect all four of the proposed species.

Pools containing the federally listed *Pogogyne abramsii* are subject to individual permit actions under section 404 of the Clean Water Act because of the presence of an endangered species. In the past, *Pogogyne nudiuscula* may have occurred in the same pools as *P. abramsii*, east of Balboa Park and south of Mission Valley in San Diego; however, these pools were lost (Bauder 1986). *Orcuttia californica* and *P. abramsii* are not sympatric. *Eryngium aristulatum* var. *parishii* and *P. abramsii* occur in the same pool group areas in some cases, but do not share the same individual pools. The Riverside fairy shrimp and *P. abramsii* occur in the same pool group area in one case, but may not share the same individual pools. Thus, the listing of *P. abramsii* has not reduced the degree of threat to *P. nudiuscula, O. californica, E. aristulatum* var. *parishii*, or the Riverside fairy shrimp.

*Pogogyne nudiuscula, Orcuttia californica*, and *Eryngium aristulatum* var. *parishii* are listed as endangered by the California Fish and Game Commission (Commission). Listing by the Commission requires that individuals who wish to possess listed species obtain a memorandum of understanding from the California Department of Fish and Game. Under the California Endangered Species Act of 1985, State lead agencies are required to consult with the California Department of Fish and Game when their projects would affect State listed species. The prohibition against possession does not reduce the degree of threat resulting from adverse modification of vernal pool habitat incidental to other activities such as grading.

No formal programs currently exist to protect the Riverside fairy shrimp. In response to concerns expressed by conservation organizations, the California Department of Fish and Game, the Fish and Wildlife Service, and the County of Riverside conditioned one project to set one pool aside as an area for further study to provide temporary protection for the Riverside fairy shrimp. However, several proposed projects surrounding the pool are expected to adversely impact the pool watershed (Trans-Pacific Consultants 1992). On another site, the Riverside County Planning Director indicated that the County would attempt to prevent grading where an approved development would eliminate one pool. This site, however, was recently cleared. No Federal or State laws protect the Riverside fairy shrimp, and minimal protection given to the species was the result of local planning decisions.

In 1980, the City of San Diego instituted a vernal pool preservation program wherein developers pay a fee to a preservation fund when a project would destroy vernal pools. The amount of the fee required, $4,000.00 per vernal pool acre (usually only a small fraction of a typical acre of land containing vernal pools), is not sufficient to replace the lost habitat that, in some cases, sells for in excess of $100,000 per acre. The City of San Diego has accumulated approximately $700,000 (from collections and interest) through this program for the loss of over 800 pools, and has used this fund to purchase three sites consisting of a total of 21 acres, containing several vernal pools. The remaining small amount of the vernal pool preservation fund will be used for maintenance.

A study on San Diego County vernal pools conducted in 1986 revealed that little protection was afforded vernal pools (Bauder 1986). Vernal pool losses reported since 1979 indicate that 97 percent of pools covered under the City of San Diego's plan and the California Environmental Quality Act were lost. Those pool groups where permits pursuant to section 404 of the Clean Water Act were required showed a 26 percent reduction in the number of pools. Eight percent of the pools on federally-owned lands were lost (Bauder 1986).

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Other factors have greatly impacted the existence of these four vernal pool species, including introduction of non-native plant species, competition with invading species, trash dumping, fire, fire suppression activities, and drought. The low numbers of vernal pool habitats remaining and their scattered distributions make these species vulnerable to extinction due to stochastic events as well.

Many vernal pools on Otay Mesa are dominated by non-native plants such as the common grass *Lolium perenne*. This species is tolerant of inundation and crowds out the native vernal pool species such as *Pogogyne nudiuscula, Orcuttia californica*, and *Eryngium aristulatum* var. *parishii*. Ranchers introduced non-native species into some areas to increase the amount of forage available to livestock. Excessive cover of weedy non-native grasses was noted in six of the pool groups that contained *P. nudiuscula* and partially explained two extirpations of this species. The invasion of non-native plants and livestock grazing (as discussed in Factor C) apparently caused the extirpation of *O. californica* from 13 pools. Unprotected pool groups that contain *E. aristulatum* var. *parishii* are also threatened by invasion of weedy non-native plants.

These vernal pool plant species are also vulnerable to competition with marsh species as a result of urban water run-off, and with upland species as a result of a lack of water in pools, as discussed under Factor A. An increased domination of these marsh or upland species results in decreased abundance of obligate vernal pool taxa.

Trash dumping also degrades vernal pools. Chunks of concrete, tires, refrigerators, sofas, and other pieces of garbage or debris were found in pools containing these four species. This trash crushes or shades vernal pool plants, disrupts the hydrologic functions of the pool, and in some cases may release toxic substances. Trash dumping threatens the remaining pool groups of *Eryngium aristulatum* var. *parishii*.

During a fire in the summer of 1992, one-fourth of the *Pogogyne nudiuscula* population was burned, and extensive seed damage may have resulted. A fire break made during this fire isolated pools that were formerly connected during heavy rains, and very likely impaired the dispersal of seeds from the unburned pools to burned pools (S. McMillan, pers. comm., 1992).

In the drought year of 1989, *Pogogyne nudiuscula* was only found within 1 pool complex made up of 30 pools with a pool surface area totaling less than 1 acre (Ellen Bauder, San Diego State University, pers. comm., 1989). *P. nudiuscula* remains on a few sites on Otay Mesa in San Diego County.

The geographically restricted range and distribution of these species increases the possibility that agricultural activity, urban development, or other activities in or near these remnant vernal pool

ecosystems could destroy a significant portion of the species' remaining population and habitat. Unpredictable natural events, such as drought or fire, would be devastating to these species due to their fragmented and restricted range. This is especially important for *Orcuttia californica, Pogogyne nudiuscula,* and the Riverside fairy shrimp, as these species are restricted to a few sites.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Pogogyne nudiuscula, Orcuttia californica, Eryngium aristulatum* var. *parishii,* and the Riverside fairy shrimp as endangered. For the reasons discussed below, the Service is not designating critical habitat for these species.

As provided by 5 U.S.C. 553(d), the Service has determined that good cause exists to make the effective date of this rule immediate. Delay in implementation of the effective date would place the habitat of the species at risk.

**Critical Habitat**

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat for these three plant species and the Riverside fairy shrimp is not prudent at this time. As discussed under Factor A in the "Summary of Factors Affecting the Species," these plant species are vulnerable to trampling. Curiosity seekers may investigate vernal pools and inadvertently further degrade the habitat of these three plants and the Riverside fairy shrimp by trampling. Publication of precise maps and descriptions of critical habitat for the three plants would increase the degree of threat to these plants from take or vandalism as discussed in Factor B and, therefore, could contribute to their decline and increase enforcement problems. The listing of the plants as endangered publicizes their rarity and, thus, can make these plants more attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and landowners will be notified of the general location and importance of protecting the habitat of these species. Protection of the habitat of these species will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that it would not be prudent to determine critical habitat for *Pogogyne nudiuscula, Orcuttia californica, Eryngium aristulatum* var. *parishii,* and the Riverside fairy shrimp at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated following listing. The protection required from Federal agencies, the prohibitions against taking and harm of the Riverside fairy shrimp, and certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with these species include the Army Corps of Engineers and the Environmental Protection Agency due to their permit authority under section 404 of the Clean Water Act. Federal Aviation Administration jurisdiction would apply to vernal pools near Montgomery Field within the city limits of San Diego and at Brown Air Field on Otay Mesa. Miramar Naval Air Station contains vernal pools with not only the Riverside fairy shrimp and *Eryngium aristulatum* var. *parishii,* but also *Pogogyne abramsii,* which is presently listed as endangered. Camp Pendleton Marine Corps Base contains some vernal pools with *E. aristulatum* var. *parishii.* The Veterans Administration will be required to consider the consequences of funding housing loans where these species or their habitat occur. The Immigration and Naturalization Service will need to evaluate its activities and its effects on these species. This agency may be able to offer some help where trampling associated with Mexican citizens entering the United States is occurring. The Federal Highway Administration will likely be involved through potentially funding a portion of future highway construction that could affect these species. The Bureau of Indian Affairs may need to evaluate future proposals that may affect the Riverside fairy shrimp.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the three plants considered herein, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction. In addition, the 1988 amendments (Pub. L. 100–478) to the Act makes it illegal to maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. It is anticipated that few trade permits would ever be sought or issued for the three plant species since these species are not common in cultivation or in the wild. Additionally, these species have

specific germination and growth requirements including seasonal inundation, which would be difficult to recreate in cultivation.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed wildlife. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits to carry out otherwise prohibited activities involving endangered wildlife are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. The Riverside fairy shrimp is not involved in trade, and such permit requests are not expected.

Requests for copies of the regulations on listed wildlife and plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

### References Cited

A complete list of all references cited herein is available upon request from the Carlsbad Field Office (see ADDRESSES section).

### Author(s)

The primary author of this final rule is Ellen Berryman, U.S. Fish and Wildlife Service, Carlsbad Field Office (see ADDRESSES section). This rule was adapted from the proposed rule, the primary authors of which were Mr. Peter A. Stine and Ms. Nancy Gilbert, Carlsbad Field Office, and Ms. Karla Kramer, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232–4181.

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

### Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Crustaceans, to the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| • | • | • | • | • | • | | |
| Crustaceans: | | | | | | | |
| • | • | • | • | • | • | | • |
| Shrimp, Riverside fairy | *Streptocephalus woottoni.* | U.S.A. (CA), Mexico .. | NA ..... | E | 512 | NA | NA |
| • | • | • | • | • | • | | • |

3. Amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| • | • | • | • | • | | • |
| Apiaceae—Parsley family: | | | | | | |

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| • • | • | • • | • | • | | • |
| *Eryngium aristulatum* var. *parishii* | San Diego—button-celery | U.S.A. (CA) | E | 512 | NA | NA |
| Lamiaceae—Mint family: | | | | | | |
| • • | • | • • | • | • | | • |
| *Pogogyne nudiuscula* | Otay Mesa mint | U.S.A. (CA), Mexico | E | 512 | NA | NA |
| • • | • | • • | • | • | | • |
| Poaceae—Grass family: | | | | | | |
| • • | • | • • | • | • | | • |
| *Orcuttia californica* | California—Orcutt grass | U.S.A. (CA) | E | 512 | NA | NA |
| • • | • | • • | • | • | | • |

Dated: July 15, 1993.

Richard N. Smith,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93-18433 Filed 8-2-93; 8:45 am]

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Part VIII

# Department of Agriculture

**Rural Electrification Administration**

**7 CFR Parts 1728 and 1755**

## Standards and Specifications for Timber Products for REA-Financed Electric and Telephone Systems; Rule

VOL 58 ISS 147 AG 3 1993 UMI



DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1728 and 1755

**Standards and Specifications for Timber Products Acceptable for Use on REA-Financed Electric and Telephone Systems**

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its regulations on Electric and Telecommunications Standards and Specifications for Materials, Equipment and Construction by incorporation by reference of Wood Poles, Stubs and Anchor Logs and by codifying REA Specification for Quality Control and Inspection of Timber Products, and REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys.

This final rule provides REA electric and telephone borrowers, manufacturers of timber products, and the public with the rules and procedures the manufacturers of timber products must follow, and the standards and specifications the finished products must meet in order to be eligible for use on REA borrowers' systems. This final rule also sets forth the plans of procurement under which the finished timber products may be purchased by or for REA financed borrowers.

EFFECTIVE DATE: This final rule is effective September 2, 1993. Pole and crossarm suppliers will be allowed until February 3, 1994 to supply borrowers with products already produced or currently in the process of manufacturing under previous Bulletins 50–17 or 50–18. Incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of September 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. H. Robert Lash, Transmission and Timber Specialist, Transmission Branch, Electric Staff Division, Rural Electrification Administration, room 1250-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, or telephone (202) 720–9098.

SUPPLEMENTARY INFORMATION:

**Executive Order 12291**

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

**Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule will not:

(1) preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) have any retroactive effect; or

(3) require administrative proceedings before parties may file suit challenging the provisions of this rule.

**Information Collection and Recordkeeping Requirements**

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of the Act, the information collection and recordkeeping requirements contained in this final rule have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

**National Environmental Policy Act Certification**

The Administrator of REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

**Catalog of Federal Domestic Assistance**

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank (RTB) Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402, telephone: (202) 720–3238.

**Executive Order 12372**

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans and loan guarantees and RTB bank loans from coverage under this Order.

**Regulatory Flexibility Act Certification**

The Administrator of REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule involves standards and specifications, which may increase the direct short-term costs to the REA borrower. However, the long-term direct economic costs are reduced through greater durability and lower maintenance costs over time.

**Background**

The Rural Electrification Administration (REA) maintains a system of bulletins containing construction standards and specifications for materials and equipment. In accordance with the REA loan contract, these standards and specifications apply to facilities constructed by REA electric and telephone borrowers and contain standard construction units, material items, and equipment units commonly used in REA electric and telephone borrowers' systems.

Presently, REA Bulletins 50–17(DT-5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys; 50–18(DT-5C), REA Specification for Wood Poles, Stubs and Anchor Logs; and 50–24(DT-19), REA Specification for Quality Control and Inspection of Timber Products are incorporated by reference in 7 CFR 1728.97. These three publications contain the REA specifications for timber products to be purchased by or for REA borrowers. By letter dated January 14, 1992, the Director of the Federal Register informed REA that DT-5B(50–17) and DT-19(50–24) are no longer eligible for incorporation by reference in 7 CFR 1728.97 and 1755.97 and that REA Bulletin DT-5C is reapproved for incorporation by reference in 7 CFR 1728.97 and 1755.97.

This final rule amends 7 CFR 1728.97, Incorporation by Reference of Electric Standards and Specifications by removing REA Bulletins 50–17(DT-5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys and 50–24(DT-19), REA Specification for Quality Control and Inspection of Timber Products. These specifications are codified in §§ 1728.201 and 1728.202,

respectively, and are updated to include industry changes.

Bulletin 50–18(DT-5C), REA Specification for Wood Poles, Stubs and Anchor Logs, remains incorporated by reference and is updated to include industry changes.

This final rule redesignates REA Bulletin 50–17(DT-5B) as REA Bulletin 1728H-701; REA Bulletin 50–24(DT-19) as REA Bulletin 1728H-702; REA Bulletin 50–18(DT-5C) as REA Bulletin 1728F-700.

This final rule amends 7 CFR Part 1755, Telecommunications Standards and Specifications for Materials, Equipment and Construction, by reflecting the revisions of Bulletins 1728F-700 and 1728H-702. This rule assists REA electric and telephone borrowers in their efforts to provide electric cooperative members and telephone company subscribers with the most modern and efficient electric and telephone service at the lowest reasonable cost.

This rule primarily changes the specifications and bulletins in the following ways:

(1) The addition of Copper Naphthenate (CuN) as an acceptable preservative system;

(2) Inclusion of the revisions from American National Standards Institute (ANSI) 05.1–1987 into Bulletin 1728F-700;

(3) Revision of usage areas and required retentions for poles;

(4) Removal of carrier types B, D, and E for preservatives; and

(5) Revision of the crossarm specification to include numerous changes brought about in the ANSI crossarm specification.

The addition of CuN to the specifications was requested following final approval by the American Wood-Preservers' Association (AWPA). The Environmental Protection Agency label registration for CuN is "non-restricted use" and does not require special handling or disposal. Newly redesignated REA Bulletin 1728H-701 and REA Bulletin 1728F-700 are revised to include industry changes brought about by revisions of the respective ANSI specifications. The issuance of these bulletins makes CuN treated products available for use by borrowers. REA discovered that an alarming number of cooperatives in the severe decay zone were using standard retention levels, although the heavy retention level is recommended. REA is requiring borrowers in *Use Area 1* to use the heavy retention value for poles. The additional cost of upgrading to the heavy retention level is under $10 per pole in most cases and may increase the service life of the pole by one-third. Due to lack of use by REA financed borrowers, preservative carrier types B and D have been removed from the list of REA acceptable preservatives. Since AWPA has not given preservative carrier type E full approval, REA is removing this preservative from the list of REA acceptable preservatives. Section 1728.202 covers the material that was previously set forth in Bulletin 50–24.

**Comments**

A notice of proposed rulemaking was published in the **Federal Register** on April 8, 1991, Vol. 56, No. 67 at 14217–14219. Interested parties were given 30 days in which to comment on the proposed rule. However, comments received after the date were considered. Written comments were received from seven wood treaters, inspection agencies, and other wood treating related organizations. The following relevant comments were received:

*Comment*

One comment stated that a number of laminating companies were in the process of withdrawing from American Institute of Timber Construction (AITC) for inspection and certification.

*Response*

REA has added the American Plywood Association (APA) to the list of acceptable organizations for qualifying inspection and testing of laminates. APA has been inspecting and qualifying wood products plants for many years and REA has determined that APA has a qualified staff to perform the work as required.

*Comment*

Two comments suggested the allowance for alternative wood crossarms was too vague; one suggested that it should not be included.

*Response*

REA intentionally made these requirements generic, to leave room for future advances in technology. Each product will be reviewed individually for durability, material qualifications, manufacture, quality control, and inspection. Acceptable material will appear in REA Bulletin 1728C-100, List of Materials Acceptable for Use on Systems of REA Electrification Borrowers.

*Comment*

One comment recommended that the Type 04 crossarm drawing not be removed from the crossarm specification.

*Response*

REA proposed the removal of this crossarm drawing due to lack of use by borrowers. Since it is still being requested for use by borrowers, REA will keep the crossarm drawing in the specification.

*Comment*

One comment suggested that borrowers between the 34th and 40th parallels be allowed the option to use either the 0.060 pounds per cubic foot (pcf) or the 0.080 pcf retention of CuN.

*Response*

Until more service data is obtained from users of CuN, REA is requiring that the 0.080 pcf retention be specified when purchasing poles for this area.

*Comment*

One comment stated that the AWPA recently approved the use of Ponderosa Pine, Red Pine, Jack Pine, and Lodgepole Pine poles treated with CuN and recommended that REA include these species of poles for treatment with CuN.

*Response*

While it is true these species of poles, Ponderosa Pine, Red Pine, Jack Pine, and Lodgepole Pine, have been approved by AWPA, no treaters have gone into commercial production, and the poles are not readily available to borrowers. Species of poles that prove to be treatable and are requested for use by borrowers over the next few years may be added to REA's list of acceptable species for CuN treatment.

*Comment*

One comment questioned the timing of the effective date of this final rule, asking that REA allow treaters in *Use Area 1* to reduce present inventories of poles with "standard retention" prior to implementing the requirements of this rule.

*Response*

As stated in the effective date section of this rule, producers endeavoring to eliminate their inventory of "standard retention" poles treated before the effective date of this regulation will be allowed to supply REA borrowers in *Use Area 1* with these poles for 6 months.

*Comment*

One crossarm supplier felt that the requirement to kiln dry all crossarms was an unnecessary burden on the industry. After the close of the comment period, REA received several requests to

continue the current practice of allowing air drying of crossarms.

*Response*

REA believes the benefits of kiln drying outweigh the negative aspects. Therefore, REA requires all crossarms to be kiln dried.

**List of Subjects**

*7 CFR Part 1728*

Electric power, Incorporation by reference, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

*7 CFR Part 1755*

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

Chapter XVII of title 7 of the Code of Federal Regulations is amended as follows:

## PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

1. The authority citation for part 1728 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1728.97(b) is amended by removing the entries for Bulletins 50–17, 50–18, and 50–24, and adding to the list of bulletins approved for incorporation by reference, in numerical order, Bulletin 1728F-700 to read as follows:

**§ 1728.97 Incorporation by reference of electric standards and specifications.**

* * * * *

(b) *List of Bulletins.*

* * * * *

Bulletin 1728F-700, "REA Specification for Wood Poles, Stubs and Anchor Logs" (August 1993).

3. Sections 1728.201 and 1728.202 are added to read as follows:

**§ 1728.201 REA Bulletin 1728H-701, REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys.**

(a) *General provisions.* (1) This section implements contractual provisions between REA and borrowers receiving financial assistance from REA. The contractual agreement between REA and its borrowers requires the borrower's system to be constructed in accordance with REA accepted plans and specifications. Each REA electric borrower must purchase only wood crossarms produced in accordance with the specification in this section.

(2) Each REA electric borrower shall require each contractor to agree in writing to furnish only materials produced in accordance with the specification in this section.

(3) This specification describes the minimum acceptable quality of wood distribution crossarms and transmission crossarms (hereinafter called crossarms) that are purchased by or for REA borrowers. Where there is conflict between this specification and any other specification referred to in this section, this specification shall govern.

(4) Various requirements relating to quality control and inspection are contained in § 1728.202 of this part, REA Specification for Quality Control and Inspection of Timber Products. Section 1728.201 of this part and the American National Standards Institute (ANSI) 05.2, 1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, shall be followed exactly and shall not be interpreted or subjected to judgment by the quality control person or an independent inspector.

(5) The borrower shall purchase from producers only material that meets the requirements of this specification. Each purchaser shall use a written purchase order to purchase material for use in REA financed systems in order to insure compliance with the standards and specifications of this part. The written purchase order shall contain a provision that specifically requires the producer to comply with the provisions of this part. The purchase order shall contain a provision that specifically requires the producer to make the treating plant, and storage areas available, during normal business hours, in order for representatives of either the purchaser or REA to inspect such to determine compliance with the standards and specifications of this part.

(6) The borrower shall insure that the producer provides the inspectors with full information (drawings, etc.) relating to the requirements contained in purchase order which is supplementary to this specification.

(7) The borrower shall insure that the producer maintains, or has access to, adequate laboratory facilities at or very near the treating plant. All chemical tests, assays or analyses associated with the treatment shall be independently performed in this laboratory by both the quality control designee and the borrower's inspector. If acceptable to REA on a case-by-case basis, the producer may use a central laboratory.

(8) Inspection and treatment of all timber products produced under this specification should be performed after receipt of the order from the purchaser, except as provided for reserve treated stock.

(9) The borrower shall insure that each inspection agency maintains its own central laboratory with qualified staff capable of completely analyzing the preservative and treatments. If acceptable to REA, this central laboratory may be used for the independent inspector's routine assays, with results made available the next working day.

(10) The testing and inspection of the lamination process shall be in accordance with American Institute of Timber Construction (AITC) 200–83, Inspection Manual.

(11) With the exception of reserve treated stock, all invoices for treated timber products shall be accompanied, in duplicate, by a copy of the producer's Certificate of Compliance and a copy of either the Independent Inspection Report or a Quality Assurance Plan Certificate. The certificate shall be presented to the purchaser with the invoice. For reserve treated stock, inspection reports shall be available from the inspection agency. When shipped from reserve stock, the invoice shall bear an endorsement and a further certification by the producer that the material meets the requirements of this specification and any supplementary requirements cited in the purchase order under which it is purchased.

(12) Crossarms shall be warranted to conform to this specification. If any crossarm is determined to be defective or does not conform to this specification within 1 year after shipment to the borrower, it shall be replaced as promptly as possible by the producer. In the event of failure to do so, the purchaser may make such replacement and the cost of the crossarm, at destination, recoverable from the producer.

(b) *Definitions.*

*Arm* refers to structural wood member used to support electrical conductors.

*Certificate of compliance* is a certification by an authorized employee of the producer that the material shipped meets the requirements of this specification and any supplementary requirements specified in a purchase order from a borrower or the borrower's contractor.

*Crossarm* is a term used interchangeably with arm.

*Independent inspection* relates to examination of material by an independent inspector employed by a commercial inspection agency.

*Inspection* means an examination of material in sufficient detail to insure conformity to all phases of the specification under which it was purchased.

*Lot* is a quantity of crossarms of like size, conditioning, and fabrication, usually making up one treating charge.

*Producer* is used to describe the party who manufactures and treats crossarms.

*Purchaser* refers to either the REA borrower or contractors acting as the borrower's agent, except where a part of the specification specifically refers to only the REA borrower or the contractor.

*Quality control designee* refers to an individual designated by the producer to be responsible for quality control.

*Reserve treated stock* consists of timber products treated in accordance with this specification, prior to and in anticipation of the receipt of specific orders, and held in storage ready for immediate shipment.

*Supplier* is a term used interchangeably with producer, or in some cases, may be the distributor selling crossarms to the borrower.

*Treating plant* is the organization that applies the preservative treatment to the crossarms.

(c) *Related specifications and standards incorporated by reference.*

The following specifications and standards are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of each reference are available for inspection during normal business hours at REA, room 1250-S, U.S. Department of Agriculture, Washington, DC 20250 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of these standards and specifications may be purchased from the addresses shown below.

(1) West Coast Lumber Inspection Bureau, Standard No. 17, Grading Rules for West Coast Lumber, September 1, 1991, available from West Coast Lumber Inspection Bureau, P.O. Box 23145, Portland, Oregon 97223, telephone (503) 639–0651, Fax (503) 684–8928.

(2) Southern Pine Inspection Bureau, Standard Grading Rules for Southern Pine Lumber, October 15, 1991, available from Southern Pine Inspection Bureau, 4709 Scenic Highway, Pensacola, Florida 32504, telephone (904) 434–2611.

(i) Southern Pine Inspection Bureau, Special Product Rules for Structural, Industrial, and Railroad-Freight Car Lumber, October 15, 1991, available from Southern Pine Inspection Bureau, 4709 Scenic Highway, Pensacola, Florida 32504, telephone (904) 434–2611.

(ii) Reserved.

(3) American Wood Preservers' Association (AWPA), Book of Standards, 1991 edition, available from AWPA, P.O. Box 286, Woodstock, Maryland 21163–0286.

(i) A1–91, Standard Methods for Analysis of Creosote and Oil-Type Preservatives.

(ii) A2–91, Standard Methods for Analysis of Waterborne Preservatives and Fire-Retardant Formulations.

(iii) A3–91, Standard Methods for Determining Penetration of Preservatives and Fire Retardants.

(iv) A5–91, Standard Methods for Analysis of Oil-Borne Preservatives.

(v) A6–89, Method for the Determination of Oil-Type Preservatives and Water in Wood.

(vi) A7–75, Standard Wet Ashing Procedure for Preparing Wood for Chemical Analysis.

(vii) A9–90, Standard Method for Analysis of Treated Wood and Treating Solutions by X-Ray Spectroscopy.

(viii) A11–83, Standard Method for Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy.

(ix) C1–91, All Timber Products—Preservative Treatment by Pressure Processes.

(x) C4–91, Poles—Preservative Treatment by Pressure Processes.

(xi) C8–91, Western Red Cedar and Alaska Yellow Cedar Poles—Preservative Treatment by the Full-Length Thermal Process.

(xii) C10–91, Lodgepole Pine Poles—Preservative Treatment by the Full-Length Thermal Process.

(xiii) C12–90, Western Larch Poles—Full-Length Preservative Treatment by Thermal Process.

(xiv) M1–90, Standard for the Purchase of Treated Wood Products.

(xv) M2–91, Standard for Inspection of Treated Timber Products.

(xvi) M3–81, Standard Quality Control Procedures for Wood Preserving Plants.

(xvii) M4–91, Standard for the Care of Preservative-Treated Wood Products.

(xviii) P1/P13–91, Standard for Coal Tar Creosote for Land and, Fresh Water and Marine (Coastal Water Use).

(xix) P5–91, Standards for Waterborne Preservatives.

(xx) P8–91, Standards for Oil-Borne Preservatives.

(xxi) P9–91, Standards for Solvents and Formulations for Organic Preservative Systems.

(4) American Institute of Timber Construction (AITC) 200–83, Inspection Manual, 1987 edition, available from AITC, 333 West Hampden Avenue, Englewood, Colorado 80110, telephone (303) 761–3212.

(5) American National Standards Institute (ANSI) 05.2–1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, available from ANSI, 1430 Broadway, New York, New York 10018.

(6) American Society for Testing and Materials (ASTM) D9–87 (1992), Standard Terminology Relating to Wood, available from ASTM, 1916 Race Street, Philadelphia, PA 19103–1187, telephone number (215) 299–5585.

(d) *Independent inspection plan.*

This plan or a Quality Assurance Plan, as described in paragraph (e) of this section, is acceptable for supplying crossarms. All crossarms produced under the independent inspection plan for use on an REA financed system shall be inspected by a qualified independent inspector in accordance with § 1728.202 of this part.

(1) The borrower has the prerogative to contract directly with the inspection agency for service. The borrower should, where practical, select the inspection agency so that continual employment is dependent only on performance acceptable to the borrower and in accordance with this specification. The selected inspection agency shall not subcontract the service to any other inspection agency without the prior written consent by the borrower.

(2) The producer shall not be a party to the selection of the inspection agency by the borrower and shall not interfere with the work of the inspector, except to provide notification of the readiness of material for inspection. To obtain the inspection services for reserve stock, the producer may deal directly with the inspection agency. Under the Independent Inspection Plan, the producer shall not treat material before it has been properly inspected in the white, as evidenced by the inspector's hammer mark.

(3) The methods of inspection described in this section and in § 1728.202 of this part shall be used no matter which plan crossarms are produced under, i.e., Independent Inspection Plan, or Quality Assurance Plans, as described in this section. The number of crossarms actually inspected by monitors of quality control under a Quality Assurance Plan may vary from the number of crossarms inspected under the Independent Inspection Plan.

(e) *Quality assurance plans.*

The producer shall furnish crossarms conforming to this specification as monitored by a Quality Assurance Plan acceptable to REA. REA borrower groups or agents for borrower groups endeavoring to operate Quality

Assurance Plans shall submit their plan for assuring quality control to the Director, Electric Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, for specific approval prior to contracting with REA borrowers under such plans.

(f) *Material requirements.* (1) *Material and grade.* All crossarms furnished under this specification shall be free of brashy wood, decay, and insect holes larger than 3/32 of an inch (0.24 cm), and shall meet additional requirements as shown on specific drawings. They shall be made of one of the following:

(i) Douglas-fir which conforms to the applicable crossarm provisions of paragraphs 170 and 170a, or the applicable transmission arm provisions of paragraphs 169 and 169a of the 1991 Standard Grading Rules for West Coast Lumber No. 17. All references to Douglas-fir shall be of coastal origin;

(ii) Southern Yellow Pine which conforms to the provisions of Dense Industrial Crossarm 65, as described in paragraph 31.2 in Southern Pine Inspection Bureau 1991 Special Product Rules for Southern Pine; or

(iii) Laminated wood crossarms shall conform to ANSI 05.2–1983, and have at least the same load carrying capacity as the solid sawn arm it replaces. The load carrying capacity of the laminated arms shall be determined by one of the procedures outlined in ANSI 05.2.

(2) Borrowers may use alternative wood crossarms that are listed in REA Bulletin 1728C-100, List of Materials Acceptable for Use on Systems of REA Electrification Borrowers.

(3) *Knots.* Sound, firm, and tight knots, if well spaced, are allowed.

(i) Slightly decayed knots are permitted, except on the top face, provided the decay extends no more than 3/4 of an inch (1.91 cm) into the knot and provided the cavities will drain water when the arm is installed. For knots to be considered well spaced, the sum of the sizes of all knots in any 6 inches (15.24 cm) of length of a piece shall not exceed twice the size of the largest knot permitted. More than one knot of maximum permissible size shall not be in the same 6 inches (15.24 cm) of length. Slightly decayed, firm, or sound "Pin knots" (3/8 of an inch (0.95 cm) or less) are not considered in size, spacing, or zone considerations.

(ii) Knots are subject to the following limits on size and location:

**Knot Limits For Distribution Arms**

DRAWING M-19 (SEE FIGURE 1, EXHIBIT A)

ALL DIMENSIONS IN INCHES

| Class of Knot and Location | Maximum Knot Diameter | |
|---|---|---|
| | Close Grain | Dense Grain |
| Round Knots | | |
| Single Knot: Maximum Diameter | | |
| Center Section* | | |
| Upper Half | 3/4 | 1 |
| Lower Half | 1 | 1–1/4 |
| Elsewhere | 1–1/4 | 1–1/2 |
| Sum of Diameters in a 6-Inch Length: Maximum | | |
| Center Section | | |
| Upper Half | 1–1/2 | 2 |
| Lower Half | 2 | 2–1/2 |
| Elsewhere | 2–1/2 | 3 |

| Inch | Cm |
|---|---|
| 3/4 | 1.91 |
| 1 | 2.54 |
| 1–1/4 | 3.18 |
| 1–3/8 | 3.49 |
| 1–1/2 | 3.81 |
| 1–3/4 | 4.45 |
| 1–7/8 | 4.76 |
| 2 | 5.08 |
| 2–1/4 | 5.72 |
| 2–1/2 | 6.35 |
| 3–1/4 | 8.26 |
| 3–1/2 | 8.89 |
| 3–5/8 | 9.21 |
| 4–5/8 | 11.75 |
| 5–5/8 | 14.29 |
| 7–3/8 | 18.73 |
| 9–3/8 | 23.81 |

**Knot Limits For Transmission Arms**

(SEE FIGURE 2, EXHIBIT A)

ALL DIMENSIONS IN INCHES

| Pole Mounting Hole Zone* | Maximum Diameter For Single Knot |
|---|---|
| Upper Half (inner zone) | 3/4 |
| Upper Half (outer zone) | 1 for close grain<br>1–1/4 dense grain |

| Other Locations Transmission Arm Size** | Narrow Face | Wide Face (Two Sides) | |
|---|---|---|---|
| | | Edge | Along Centerline |
| 4–5/8 x 5–5/8 or less | 1 | 1–1/4 | 1–1/4 |
| 5–5/8 x 7–3/8 | 1–1/4 | 1–3/8 | 1–7/8 |
| 3–5/8 x 9–3/8 | 3/4 | 1–3/4 | 2–1/4 |

*No knot will be closer than its diameter to the pole mounting hole.

**For cross sections not shown, refer to grading rules.

(iii) Knot clusters shall be prohibited unless the entire cluster, measured on the worst face, is equal to or less than the round knot allowed at the specific location.

(iv) Spike knots shall be prohibited in deadend arms. Any spike knot across the top face shall be limited to the equivalent displacement of a knot 3/8 of an inch (0.95 cm) deep on one face and the maximum round knot for its particular location on the worst face, with a maximum width of 1 inch (2.54 cm) measured at the midpoint of the spiked section. Elsewhere across the bottom or side faces, spike knots shall not exceed 1/2 the equivalent displacement of a round knot permitted at that location, provided that the depth of the knot on the worst face shall not exceed the maximum round knot allowed at that location.

(v) Loose knots and knot holes shall drain water when the arm is normally installed. In the center section, upper half, they shall not be greater than 1/2 the dimensions of round knots. Elsewhere, they shall not be greater than the round knot dimension. They shall be prohibited in deadend arms.

(vi) All knots except those "spike" knots intersecting a corner shall be measured on the least diameter of the knot.

(vii) A knot shall be considered to occupy a specific zone or section if the center of the knot (i.e. pith of knot) is within the zone or on the zone's boundary.

(viii) If a round or oval knot appears on two faces and is in two zones, each face shall be judged independently. When this does not occur, average the least dimension showing on both faces. Knots which occur on only one face of a free of heart center (FOHC) arm shall be permitted to be 25 percent larger than the stated size.

(ix) *Knot spacing.* Two or more knots opposite each other on any face shall be limited by a sum not to exceed the size of a maximum single knot permitted for the location. On all four faces, all knots shall be well spaced.

(x) Knots which have a maximum of 5/8 inch (1.59 cm) diameter may intersect pin holes in the center section. One inch (2.54 cm) diameter knots may intersect pin holes elsewhere.

(4) *Miscellaneous characteristics, features and requirements.*

(i) The top face of distribution crossarms shall not have more than four medium pitch and bark pockets in 8 foot (2.4 m) arms, and not more than five pitch and bark pockets in 10 foot (3.0 m) arms. Elsewhere a maximum of six medium pockets in 8 foot (2.4 m) arms and eight in 10 foot (3.0 m) arms shall

be permitted. Equivalent smaller pockets shall be permissible. An occasional large pocket is permissible.

(ii) Shakes shall be prohibited.

(iii) *Checks.* Prior to treatment on properly seasoned arms, single face checks shall not exceed an average penetration of 1/4 the depth from any face and shall be limited to 10 inches (25.40 cm) long on the top face, and 1/3 the arm length on the other faces. Checks shall not be repeated in the same line of grain in adjacent pin holes. The sum of the average depths of checks occurring in the same plane on opposite faces shall be limited to 1/4 the face depth.

(iv) Compression wood shall be prohibited on any face. It is permitted if wholly enclosed in the arm, more than six annual rings from the surface, and not over 3/8 of an inch (0.95 cm) in width.

(v) Insect holes larger than 3/32 of an inch (0.24 cm) shall be prohibited. Pin holes (i.e. holes not over 1/16 of an inch (0.16 cm) diameter) shall be allowed if scattered and not exceeding 10 percent of the arm girth.

(vi) Wane shall be allowed on one edge, limited to approximately 1 inch (2.54 cm), measured across the corner. Outside of the top center section, an aggregate length not to exceed 2 feet may have wane up to 1–1/2 inches (3.81 cm) on an occasional piece on one or both edges. Bark shall be removed.

(vii) Prior to preservative treatment, crook, bow, or twist shall not exceed 1/2 of an inch (1.27 cm) in 8 foot arms (2.4 m) and 5/8 of an inch (1.59 cm) in 10 foot (3.0 m) arms.

(g) *Manufacture.* (1) All dimensions and tolerances shall conform to those shown on the drawings in this section or drawings supplied with the purchase order. Drawings supplied shall meet or exceed minimum dimensions and tolerances shown on the drawings in this section. Cross-sectional dimensions shall be measured and judged at about 1/4 the arm length, except when the defects of "skip dressing" or "machine bite or offset" are involved.

(2) Lamination techniques shall comply with ANSI 05.2–1983.

(3) Pin and bolt holes shall be smoothly bored without undue splintering where drill bits break through the surface. The center of any hole shall be within 1/8 of an inch (0.32 cm) of the center-line locations on the face in which it appears. The holes shall be perpendicular to the starting and finishing faces.

(4) *Shape.* The shape of the arms at any cross section, except for permissible wane, shall be as shown on the respective drawings in this section or supplied with the order. The two top edges may be either chamfered or rounded 3/8 of an inch (0.95 cm) radius. The two bottom edges may be slightly eased 1/8 of an inch (0.32 cm) radius for the entire length.

(5) *Incising.* The lengthwise surfaces of Douglas-fir crossarms shall be incised approximately 1/4 of an inch (0.64 cm) deep. The incision shall be reasonably clean cut with a spacing pattern that insures uniform penetration of preservative.

(6) *Workmanship.* All crossarms shall be first quality workmanship. Crossarms shall be dressed on four sides, although "hit and miss skips" may occur on two adjacent faces on occasional pieces. Five (5) percent of a lot or shipment may be 1/8 of an inch (0.32 cm) scant in thickness or width at the ends for a length not exceeding 6 inches (15.24 cm), or may have 1/8 of an inch (0.32 cm) machine bite on offset.

(h) *Conditioning prior to treatment.* (1) All solid sawn crossarms shall be made of lumber which has been kiln-dried. Douglas-fir arms shall have an average moisture content of 19 percent or less, with a maximum not to exceed 22 percent. Southern Yellow Pine arms shall have an average moisture content of 22 percent or less, with a maximum not to exceed 30 percent.

(2) Moisture content levels shall be measured at about 1/4 the length and at a depth of about 1/5 the crossarm's thickness. Additionally, the moisture content gradient between the shell (i.e. 1/4 of an inch (0.64 cm) deep) and the core (i.e. about 1 inch (2.54 cm) deep) shall not exceed 5 percentage points.

(3) A minimum of at least 20 solid sawn crossarms per treating charge shall be measured to verify moisture content and shall be duly recorded by the quality control designee or independent inspector.

(4) The moisture content of lumber used in laminating shall, at the time of gluing, be within the range of 8 to 12 percent, inclusive.

(i) *Preservatives.* (1) The preservatives shall be:

(i) Creosote which conforms to the requirements of AWPA Standard P1 when analyzed in accordance with the methods in AWPA Standard A1, sections 2, 3, 4, either 5 or 9, and 6;

(ii) Pentachlorophenol which contains not less than 95 percent chlorinated phenols and conforms to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5 or A9. The hydrocarbon solvents for introducing the preservative into the wood shall meet the requirements of AWPA Standard P9 Type A; or

(iii) Waterborne preservatives, which may only be one of the following:

(A) Ammoniacal Copper Arsenates (ACA) and Ammoniacal Copper Zinc Arsenate (ACZA) which shall meet the requirements of AWPA Standard P5, when analyzed in accordance with methods in AWPA Standards A2, A9, or A11; and

(B) Chromated Copper Arsenates (CCA) which shall meet the requirements of one of the formulations given in AWPA Standard P5, sections 4, 5 or 6, and 10. Tests to establish conformity shall be made in accordance with AWPA Standards A2, A9, or A11.

(1) The pH of treating solutions of the waterborne preservatives shown in AWPA Standard P5, section 10, shall be determined in accordance with AWPA Standard A2, section 8.

(2) Waterborne preservatives are available either as oxides, which form non-ionizing chemical compounds in the wood, or as salts, which leave ionizing compounds as well as non-ionizing compounds in the wood. Salt formulations of a waterborne preservative are more corrosive to metal than the oxide formulation and may cause surface deposits. Unless otherwise specified in the purchase order, the oxide formulations of waterborne preservatives shall be supplied.

(3) Douglas-fir crossarms shall not be treated with CCA preservatives.

(4) Materials treated with waterborne preservatives shall be free of visible surface deposits.

(iv) Copper Naphthenate (CuN) concentrate used to prepare wood preserving solutions shall contain not less than 6 percent nor more than 8 percent copper in the form of Copper Naphthenate and shall conform to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5. The hydrocarbon solvents for introducing the preservative into the wood shall meet the requirements of AWPA Standard P9 Type A.

(2) Reserved.

(j) *Preservative treatment.* (1) All timber products treated under this specification shall be treated by either a pressure or a thermal (nonpressure) process.

(2) These materials may be further conditioned by steaming, or by heating in hot oil (Douglas-fir), within the following limits:

| | Time Hours (max.) | Temperature Deg. F (max.) |
|---|---|---|
| Steam | 3 | 220 (104.4C) |
| Heating in Preservative | 3 | 210 (98.9C) |

(3) A final steam or hot oil bath may be used only to meet cleanliness requirements of paragraph (k) of this section. Total duration of the final steam bath shall not exceed 2 hours and the temperature shall not exceed 240 degrees Fahrenheit (115.6C).

(k) *Results of treatments.* (1) The quality control designee shall test or supervise the testing of each treated charge for penetration and retention.

(2) *Method of sampling.* When testing penetration and retention, a borer core shall be taken from not less than 20 crossarms in each treating charge. The borings shall be taken from any face except the top face at a point as close to the end as possible, being at least 3 inches (7.62 cm) from the end of the arm and no closer than 3 inches (7.62 cm) from the edge of the holes. The bored holes shall be plugged with preservative-treated plugs driven into the arm. Borings from laminated arms shall not be taken from the same laminate unless there is an end joint separation.

(3) Penetration by the preservative, as determined in accordance with AWPA Standard A3, shall be 100 percent of the sapwood in crossarms. In the heartwood of Douglas-fir crossarms, the penetration shall be not less than 3 inches (7.62 cm) longitudinally from the edge of holes and ends, and at least 3/16 inch (0.45 cm) from the surface of any face.

(4) Retention of preservative in the outer 6/10 of an inch (1.52 cm) for Douglas-fir and one inch (2.54 cm) for Southern Yellow Pine assay zones at the treating plant shall be not less than:

| Preservative | Retention (pcf) | AWPA Analysis Method |
|---|---|---|
| Creosote | 8 | A6 |
| Pentachlorophenol | 0.4* | A5 |
| ACA, ACZA, or CCA | 0.4 | A2, A7, A9, or A11 |
| Copper Naphthenate | 0.04 | A5, A9, or A11 |

*This retention is for the lime ignition method. The copper pyridine method, retention 0.36 pcf, is required when timbers may have been in contact with salt water, and for all species native to the Pacific coast region. It is not required when it specifically states on the rough sawn material invoice that the material has not been in contact with salt water or is shown by analysis to have no additional chlorides present in the wood before treating.

(5) Cleanliness of lengthwise surfaces of all crossarms shall be free from tarry, greasy, or sticky material, and from oil exudation and pentachlorophenol crystallization (blooming).

(6) Re-treatment of materials which do not meet the penetration and retention requirements of this specification may be done only twice. Initial treatment steaming time plus re-treatment steaming time, combined, shall not exceed time allowed in paragraph (j) of this section.

(l) *Marks and brands.* (1) All crossarms shall be branded (hot brand) or die-stamped legibly and to a depth of approximately 1/16 of an inch (0.16 cm) before treatment.

(2) The letters and figures shall be not less than 1/2 of an inch (1.27 cm) in height. The top of the brand shall be oriented to the top of the arm.

(3) The brand or die-stamp shall include:

(i) The manufacturer's identification symbol;

(ii) Month and year of manufacture;

(iii) Species of timber such as DF for Douglas-fir and SP for Southern Yellow Pine; and

(iv) The preservative notated with a C for creosote, P for penta, S for salts, or N for Copper Naphthenate.

(4) An example is:

M-6-72 Manufacturer—Month—Year

DF-P Douglas-fir—penta treated

(5) The brand or stamp shall be placed on either of the wide surfaces of the arms, oriented with letters right side up towards the top of the arm and preferably about 1 foot (30.48 cm) from the midpoint of the arm.

(6) The mark should be approximately the same location on each type of crossarm of each producer.

(7) Brands, inspection marks, or quality assurance marks shall be removed from arms that do not meet these specifications.

(m) *Storage.* (1) Producers may treat crossarms for reserve stock under any of the REA approved plans. Prior to treating reserve stock, and annually thereafter, producers shall notify the Director of the Electric Staff Division of their intent to treat reserve stock. The letter of notification shall be addressed to the Director, Electric Staff Division, Rural Electrification Administration, Washington, DC 20250–1500.

(2) REA shall acknowledge, by letter, each notification of intent to treat material for reserve stock under the REA specification.

(3) REA's letter acknowledging the plant's advance notice of intent to treat material for reserve treated stock for the calendar year in question shall be evidence of compliance with the notification requirements.

(4) Producers shall notify REA of:

(i) The locations of all storage or distribution yards where reserve treated stock will be maintained;

(ii) The designation of the REA-approved plan;

(iii) The name of the selected inspection agency, where applicable; and

(iv) Any changes that occur during the year.

(5) Crossarms treated with oil-borne preservatives which have been held in storage for more than 1 year before shipment to the borrower, shall be reassayed before shipment and shall be re-treated if found nonconforming for retention on orders placed in accordance with this section.

(6) The crossarms shall meet the assay after re-treatment in accordance with paragraph (k) of this section.

(7) Crossarms which are held in storage after final acceptance shall be stacked in piles or on skids in such a manner as to assure good ventilation. The stacks shall be covered or stored indoors for protection from the sun and weather to reduce checking, bending, and loss of preservative.

(8) Borrowers or their contractors shall not purchase reserve treated stock from plants that fail to comply with the notification requirements.

(n) *Drawings.* (1) The drawings of Exhibit B of this section, Crossarm Drilling Guide, have a type number and show in detail the hole size, shape, and pattern desired for crossarms ordered under this specification.

(2) Purchase orders shall indicate the type required.

(3) Crossarms shall be furnished in accordance with the details of these drawings or in accordance with drawings attached to the purchase order.

(4) Technical drawings for transmission crossarms are published in REA Bulletin 1728F-T805B (formerly 50–1), Electric Transmission Specifications and Drawings, 115kV through 230kV, and REA Bulletin 1728F-T805A (formerly 50–2), Electric Transmission Specification and Drawings, 34.5kV through 69kV.

(5) Appropriate drawings for transmission arms are to be specified and included with purchase orders.

(o) *Destination inspection.* (1) When cross-sectional tolerances are measured at destination, average shrinkage allowance shall be considered using the arm's current moisture content and actual size.

(2) Using the average shrinkage allowances for Douglas-fir and Southern Yellow Pine as 1 percent size change for each four point moisture content change below the fiber saturation point, calculations can be made to determine if the arm met the minimum size at time

of manufacture, when the arm was to meet the average moisture content.

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Exhibit A to § 1728.201—Distribution and Transmission Arms

## DISTRIBUTION ARMS

Figure 1

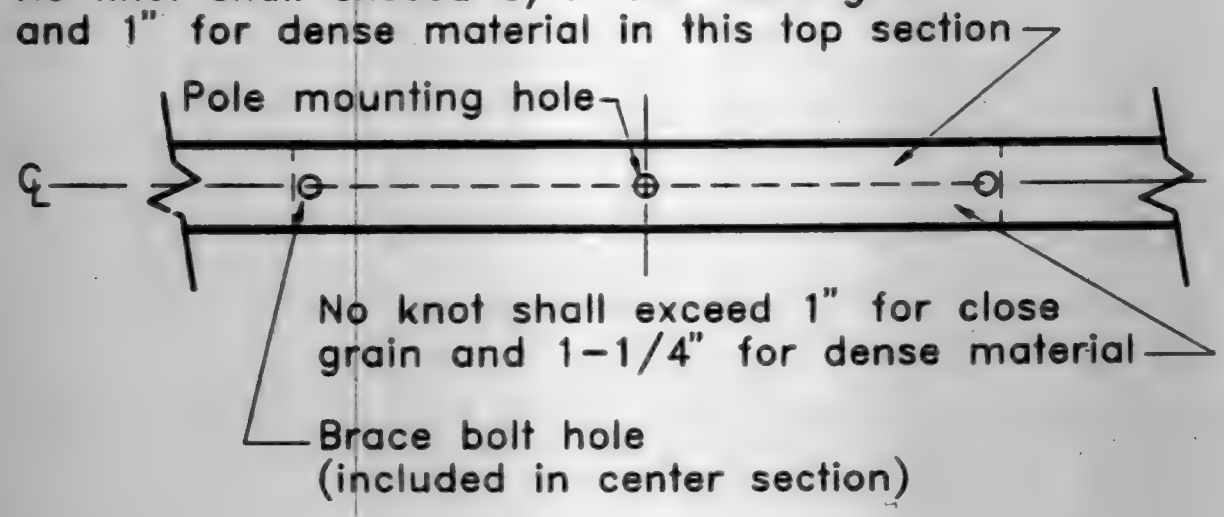


## TRANSMISSION ARMS

POLE MOUNTING HOLE ZONE

Figure 2

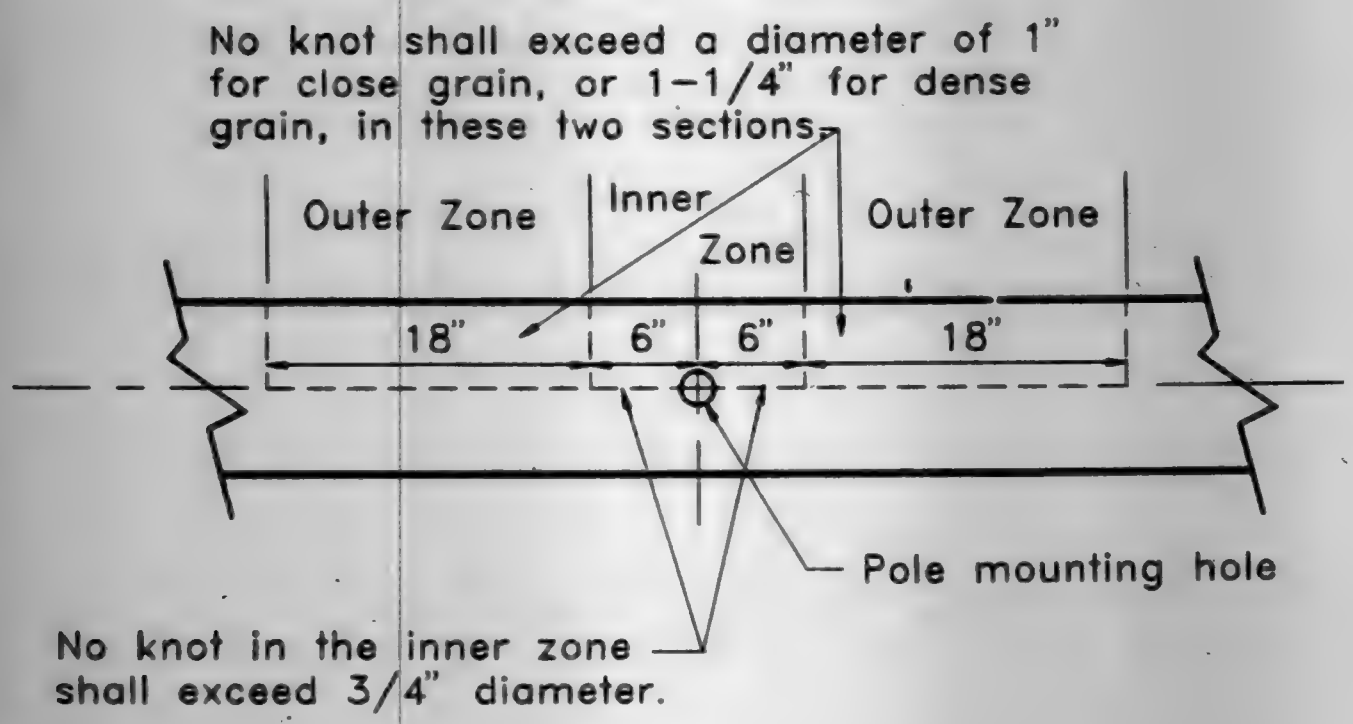


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**Exhibit B to § 1728.201—Crossarm Drilling Guide**

| TOLERANCES AND SIZES OF HOLES | | | |
|---|---|---|---|
| NOMINAL | | GO | NO GO |
| (A) | 11/16" | 5/8" | 3/4" |
| (B) | 7/16" | 3/8" | 1/2" |
| (C) | 9/16" | 1/2" | 5/8" |

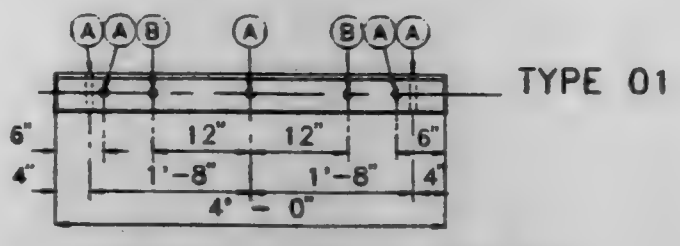


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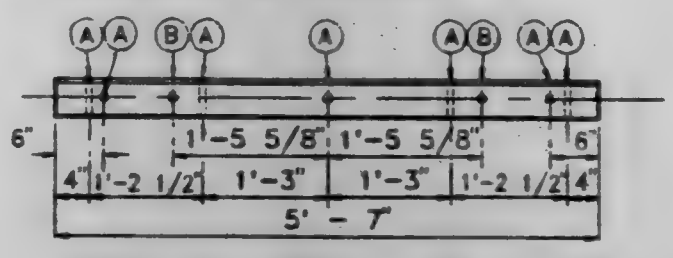


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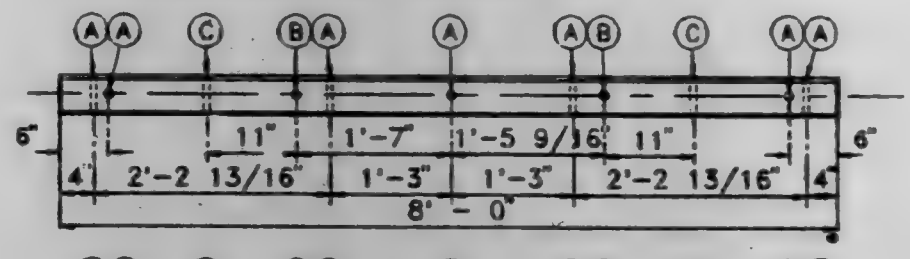


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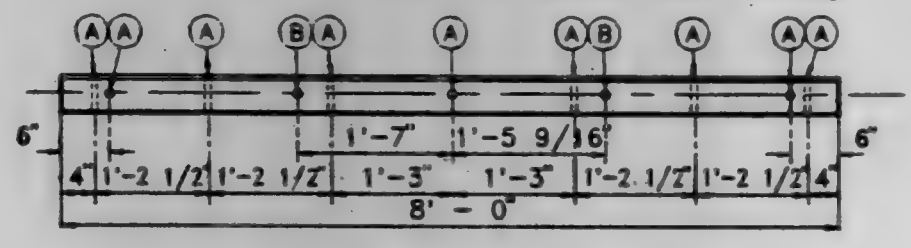


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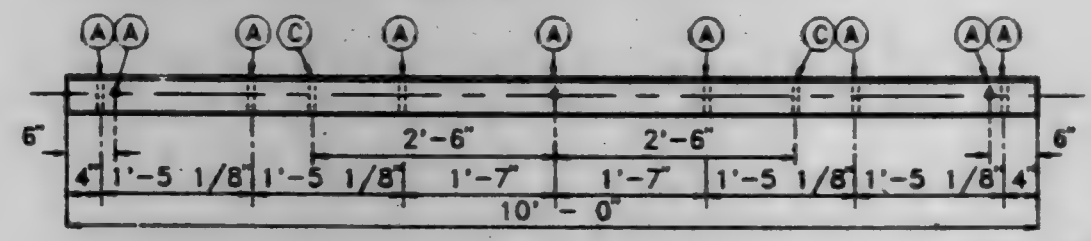


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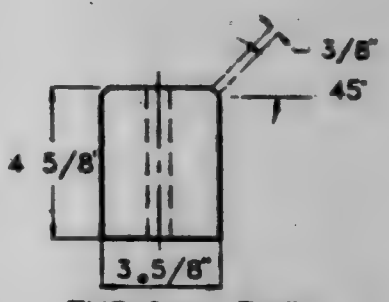


TYPICAL END SECTION

NOTES:

1. Holes are to be located within ±1/8".
2. Length of the crossarm is to be within ±1/4"
3. The tolerance of the cross section is +1/8" and −0" at time of manufacture.
4. All holes are to be drilled on centerlines of crossarm faces.

CROSSARM DRILLING GUIDE

| SCALE: | | M-19 |
|---|---|---|
| N.T.S. | | |

**§ 1728.202 REA Bulletin 1728H-702, REA Specification for Quality Control and Inspection of Timber Products.**

(a) *Scope.*

This specification describes in more detail the responsibilities and procedures pertaining to quality control for crossarms, as specified in § 1728.201 of this part, and poles, covered in REA Bulletin 1728F-700, incorporated by reference in § 1728.97 of this part and in § 1755.97 of 7 CFR part 1755.

(b) *Related specifications and standards incorporated by reference.*

The following specifications and standards referenced throughout this section are incorporated by reference. This incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of each are available for inspection during normal business hours at REA, room 1250-S, U.S. Department of Agriculture, Washington, DC 20250 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies of these standards and specifications may be purchased from the addresses shown below.

(1) American Wood-Preservers' Association (AWPA), Book of Standards, 1991 edition, available from AWPA, P.O. Box 286, Woodstock, Maryland 21163–0286.

(i) A1–91, Standard for Coal Tar Creosote for Land and Fresh Water Use.

(ii) A2–91, Standard Methods for Analysis of Waterborne Preservatives and Fire-Retardant Formulations.

(iii) A3–91, Standard Methods for Determining Penetration of Preservatives and Fire Retardants.

(iv) A5–91, Standard Methods for Analysis of Oil-Borne Preservatives.

(v) A6–89, Method for the Determination of Water and Oil-Type Preservatives in Wood.

(vi) A7–75, Wet ashing Procedure for Preparing Wood for Chemical Analysis.

(vii) A9–90, Standard Method for Analysis of Treated Wood and Treating Solutions by X-Ray Emission Spectroscopy.

(viii) A11–83, Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy.

(ix) C1–91, Standard for Preservative Treatment by Pressure Processes All Timber Products.

(x) C4–91, Standard for the Preservative Treatment of Poles by Pressure Processes.

(xi) C8–91, Standard for the Full-Length Thermal Process Treatment of Western Red Cedar Poles.

(xii) C10–91, Lodgepole Pine Poles—Preservative Treatment by the Full-Length Thermal Process.

(xiii) C12–90, Western Larch Poles—Full-Length preservative Treatment by Thermal Process.

(xiv) M1–90, Standard for the Purchase and Preservation of Forest Products.

(xv) M2–91, Standard Instructions for the Inspection of Preservative Treatment of Wood.

(xvi) M3–81, Standard Quality Control Procedures for Wood Preserving Plants.

(xvii) M4–91, Standard for the Care of Preservative-Treated Wood Products.

(xviii) P1/P13–91, Standard for Coal Tar Creosote for Land and, Fresh Water and Marine (Coastal Water Use).

(xix) P5–91, Standards for Water-Borne Preservatives.

(xx) P8–91, Standards for Oil-Borne Preservatives.

(xxi) P9–91, Standards for Solvents for Organic Preservative Systems.

(2) American Institute of Timber Construction (AITC) 200–83, Inspection Manual, 1987 edition, available from AITC, 333 West Hampden Avenue, Englewood, Colorado 80110.

(3) American National Standards Institute (ANSI) 05.2–1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, available from ANSI, 1430 Broadway, New York, New York 10018.

(4) American National Standards Institute/American Institute of Timber Construction (ANSI/AITC) A190.1–1983, American National Standard for Wood Products—Structural Glued Laminated Timber, available from ANSI, 1430 Broadway, New York, New York 10018.

(5) American Society for Testing and Materials (ASTM) D9–87 (1992), Standard Terminology Relating to Wood, available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

(c) *General stipulations.* (1) Each REA electric borrower shall submit to the Director, Electric Staff Division, Rural Electrification Administration, room 1250-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500, in January of each year a list of plants from which it obtained poles or crossarms during the preceding calendar year.

(2) Ultimate quality control is the responsibility of the producer's management; however, a member of the producer's staff shall be designated quality control designee and charged with the responsibility for the exercise of proper quality control procedures. The requirements in American Wood Preservers' Association (AWPA) Standard M3, covering records, adequate laboratory, plant gauges, and other plant facilities including proper storage, shall be followed.

(3) The methods of inspection described in this section shall be used no matter which plan timber products are purchased under, i.e., Insured Warranty Plan, Independent Inspection Plan, or Quality Assurance Plans as described in § 1728.201 of this part or REA Bulletin 1728F-700. The number of poles and crossarms actually inspected by monitors for quality control under a Quality Assurance Plan or the Insured Warranty Plan may vary from the number of poles and crossarms inspected under the Independent Inspection Plan. Under the Independent Inspection Plan, each pole and a sample number of crossarms shall be inspected.

(4) Under the Independent Inspection Plan, the REA borrower should designate in the purchase order which inspection agency it has selected. Unless the REA borrower contracts for inspection as a separate transaction, the treating company shall obtain the services of the REA borrower's designated inspection agency. For reserve treated stock for purchase under the Independent Inspection Plan, the treating company shall obtain the services of an inspection agency. Selection of and changes in inspection agencies for reserve treated stock shall be promptly reported to the Director, Electric Staff Division, Rural Electrification Administration, Washington, DC 20250–1500, in accordance with REA Bulletin 1728F-700, and § 1728.201.

(5) Individual inspectors in the employ of Independent Inspection Agencies shall be experienced and competent. The inspector shall perform all phases of the inspection personally and in the proper sequence. The primary responsibility of the inspector is to determine, for the borrower, by careful inspection and verification, that the timber products, preservative, and treatment meet the requirements of REA Bulletin 1728F-700 and Bulletin 1728H-701 and that the methods, storage facilities, and production equipment conform to applicable REA specifications. For details of the recommended inspector's qualifications see Appendix A of this section.

(6) Laminated materials for use on REA borrower systems shall follow manufacturing and quality control requirements as specified in ANSI 05.2—1983, American National Standard for Wood Products—Structural Glued Laminated Timber for Utility Structures, and ANSI/AITC A190.1–1983, American National Standard for Wood Products—Structural Glued

Laminated Timber. The product shall be marked and certified.

(i) Laminated material shall be inspected by a qualified inspection and testing agency.

(ii) Quality control of material shall be performed to determine conformance with § 1728.201 of this part and AITC 200–83, Inspection Manual.

(d) *Quality control and inspection procedures for product acceptance.* It is the responsibility of the plant quality control designee to perform the following procedures to insure that a particular lot of material conforms to the requirements of the applicable REA specification prior to treatment. After the plant quality control designee has performed these procedures, a particular lot of material shall be released to the inspector for verification of conformance.

(1) Poles can be purchased under any of the three purchase plans. These plans are Insured Warranty Plan, Independent Inspection Plan, or a Quality Assurance Plan. Under the Independent Inspection Plan, all poles in a lot shall be inspected. Under the Insured Warranty Plan and a Quality Assurance Plan, the number of poles in a lot actually inspected may be less than every pole, depending on the terms of the plans.

(i) Ample space and assistance shall be provided by the treating plant for handling and turning to insure that the surfaces of all items can be adequately inspected.

(ii) Under the Independent Inspection Plan, all poles shall be inspected for conformance to the requirements of REA Bulletin 1728F-700. If a pole is rejected and the cause of rejection is corrected, the rejected pole may be offered again for inspection as new material.

(iii) Dimensions, length, and circumference shall be measured by a standard steel pole tape to determine that they are in agreement with the details for class and length in the brand and butt stamp. If it is obvious by visual comparison with a measured pole that the brand information is correct, individual poles need not be measured. Pole circumference dimensions made prior to treatment shall govern acceptance. Reduction in dimension due to treatment and shipping shall be not more than 2 percent below the minimum for the pole class.

(iv) If 15 percent of the poles in a lot offered for inspection are defective, the inspector shall terminate the inspection. Re-examination of an entire lot by plant quality control shall be required when the number of rejected poles equals or exceeds 15 percent of the lot inspected. All defective or nonconforming poles either shall be removed from the lot or marked out.

(v) Poles in a lot inspected for decay shall be of the same seasoning condition. If the independent inspector suspects that decay has occurred, he shall cut a slice from both ends for closer examination. If 5 percent of the inspected poles in a lot shows evidence of decay, the entire lot shall be unconditionally rejected without further sorting.

(vi) Moisture content, when limited by the purchaser, as stated on the borrower's purchase order, shall be measured by calibrated electric moisture meter. Calibration of the meter shall include not only the zero settings for the X and Y readings, but also two resistance standards for 12 and 22 percent moisture content.

(vii) Material failing to conform for moisture content may be retested upon request after a recalibration of the instrument. The results of the second test shall govern disposition of the lot.

(viii) Re-examination for any mechanical damage or deterioration and for original acceptance shall be conducted on timber products not treated within 10 days after original inspection.

(2) Crossarms can be purchased only under either of two purchase plans. These plans are the Independent Inspection Plan or Quality Assurance Plans. Under the Independent Inspection Plan, crossarms are to be inspected prior to manufacture, during manufacture, and after treatment. Under a Quality Assurance Plan, crossarms are monitored according to the terms of the quality assurance program acceptable to REA.

(i) Inspection prior to treatment shall include:

(A) Surface inspection of all ends of all arms. This is usually done on the stacks of arms prior to manufacture. Particular attention shall be paid to defects commonly found in the ends, such as compression wood, red heart and other forms of decay, shakes, splits, through checks, scantiness, honeycomb, and low density, determined by rings per inch (centimeter) and percent of summerwood. Whenever the number of nonconforming arms is found to exceed 0.5 percent of the lot or one arm, whichever is greater, the entire lot shall be rejected for excess number of defective ends. After the producer has removed or marked out the defective material, the arms may be resubmitted for inspection.

(B) Surface inspection of the lengthwise sides performed on a random representative sample. The sample size shall equal 20 percent of a lot size or 200 arms, whichever is smaller. The inspector shall examine side surfaces as they are slowly rotated. When necessary, the rotation may be stopped for closer inspection. Whenever the number of nonconforming arms is found to exceed 2 percent of the sample size, the entire lot shall be rejected. After the producer has removed or marked out the defective material, the arms may be resubmitted for inspection.

(C) Check of moisture content of the random sample by a calibrated moisture meter.

(D) Check of crossarm dimensions of the random sample measured after surfacing.

(ii) Inspection during manufacture shall consist of:

(A) Checking bolt and insulator pin holes for squareness and excessive splintering;

(B) Checking brands for completeness, location, and legibility; and

(C) Checking arms for conformance.

(iii) Under the Independent Inspection Plan, there shall be a final inspection during and after treatment for preservative retention and penetration and for damage.

(3) Structural glued laminated timber shall be tested and inspected in accordance with AITC 200–83, Inspection Manual. Grade of lumber shall be inspected by a qualified grader for specified quality, and so marked, in accordance with grading rules of the American Lumber Standards. Adhesives used for all structural arms shall meet requirements of ANSI 05.2–83, paragraph 5.2. Melamine urea adhesives shall not be used. End joint specings and limitations shall be in accordance with ANSI 05.2–83.

(e) *Preservatives.* (1) Creosote shall conform to the requirements of AWPA Standard P1 when analyzed by AWPA Standard A1, sections 2, 3, 4, either 5 or 9, and 6.

(i) Each occasional charge, all material treated in a cylinder at one time, shall be analyzed.

(ii) The first charge and one of every five charges randomly selected in consecutive charges shall be analyzed.

(2) Solutions of waterborne preservatives shall be analyzed for components in accordance with AWPA Standards A2, A9, or A11, and shall meet the requirements of P5 for composition. AWPA A2 shall be used as a referee method.

(3) Pentachlorophenol shall contain not less than 95 percent chlorinated phenols and conform to AWPA Standard P8 in hydrocarbon solvent AWPA P9 Type A.

(4) Copper Naphthenate in hydrocarbon solvent (AWPA P9 Type A)

shall contain not less than 6 percent nor more than 8 percent copper in the form of Copper Naphthenate and conform to AWPA Standard P8 when analyzed in accordance with AWPA Standard A5.

(f) *Plant facilities and inspection during treatment.* (1) Manufacturing and treating plant facilities shall conform to AWPA Standard M3, paragraph 3. Pressure plants shall be equipped with recording instruments to register time, pressure, temperature and vacuum during each cycle of treatment. They shall also be equipped with indicating thermometers and pressure and vacuum gauges to check the accuracy of the recorders. Work tanks shall be equipped with a thermometer. Thermal treating vats shall be equipped with a time and temperature recorder and with an indicating thermometer. Temperature recording devices are not mandatory for plants treating exclusively with waterborne preservatives.

(2) Under the Independent Inspection Plan, the inspector shall be present during the treatment procedure, except at times when it may be impractical, such as during late night or early morning treatments. At such times, temperature, pressure, and vacuum data shall be taken from the recording charts.

(3) Recording instruments shall be checked with indicating gauges and thermometers. Inaccuracies shall be referred to the treating company for prompt correction. In the event of an inaccuracy, indicating possible damage to the material, the inspector shall reject the charge.

(g) *Results of treatment.* (1) Poles shall be tested for retention and penetration by means of a calibrated increment borer 0.2 inches (0.51 cm) ± 0.02 inches (0.05 cm) in diameter in accordance with procedures in AWPA Standard M2, paragraph 5.22. Under the Independent Inspection Plan, all treating charges shall be tested for retention and penetration. Plant quality control and independent inspection shall do their analyses separately. Under the Insured Warranty Plan and Quality Assurance Plans, the frequency of testing retention and penetration may vary according to the plan.

(i) Western red and northern white cedars and western larch poles shall be bored at any point of the periphery approximately 6–12 inches (15.24–30.48 cm) above ground line and all other species approximately 1 foot (30.48 cm) above or below the brand.

(ii) Penetration shall be determined in accordance with AWPA Standard A3. Chrome Azurol S and Penta-Check shall be used to determine penetration of copper containing preservatives and penta, respectively.

(iii) *Retention sampling.*

(A) When there are 20 or more poles in the treating charge, the retention sample for creosote shall consist of 20 assay zones from southern pine and Douglas-fir poles. All poles in charges with fewer than 20 poles shall be bored once. Charges with less than 15 poles shall be bored once and bored again on a random basis to obtain a minimum of 15 assay zones.

(B) Retention samples shall be taken from 20 poles in charges of 20 or more poles.

(C) Retention samples for Alaska yellow, western red, and northern white cedars shall be comprised of a minimum of 30 assay zones for creosote and waterborne preservatives. For penta charges of fewer than 30 poles, the sample shall contain the assay zone from each pole in the lot.

(D) Retention samples shall be comprised of borings, representative of pole volumes for each class and length in the charge. Further selection and marking of poles of mixed seasoning, volume, and location on the tram shall be made as illustrated in the following table:

| Number of Poles | Class/Length | Vol. in cu. ft. | Total Volume | Number of Borings |
|---|---|---|---|---|
| 27 | 7/30(09.1 m) | 232 | 15 | 3 |
| 26 | 4/35(10.7 m) | 447 | 29 | 6 |
| 11 | 5/35(10.7 m) | 163 | 10 | 2 |
| 55* | 6/35(10.7 m) | 704 | 46 | 9 |
| Total . | | 1,545 | | |

*If a portion of these poles were green and some partially seasoned, then the number of borings should reflect the approximate percentage of each.

(iv) When material in a lot consists of fewer pieces than the designated minimum number of samples for assay, additional borings shall be taken so as to make up at least the minimum sample, and in such manner that the sample is representative of the lot of material with respect to any variations in size, seasoning condition, or other features that might affect the results of treatment.

(v) Analyses for preservative retention shall be performed.

(A) Creosote shall be analyzed by AWPA Standard A6.

(B) Penta shall be analyzed by AWPA Standard A5 or A9. Copper pyridine method is required when timber may have been in contact with salt water and for all species native to the Pacific coast region, unless the raw material invoice specifically states that the material either has not been in contact with salt water or has been shown by analysis to have contained no additional chlorides before treating.

(C) Copper Naphthenate shall be analyzed by tests in accordance with AWPA Standards A5 or A9.

(D) Waterborne preservatives shall be analyzed by tests in accordance with AWPA Standards A2, A7, A9, or A11.

(E) Prior to unloading a tram, the inspectors may take their own samples and analyze them concurrently with the quality control designee, but each shall work independently, and quality control data shall be presented before acceptance of the charge.

(vi) *Penetration sampling of poles.*

(A) Group A poles consist of poles with a circumference of 37.5 inches (95.25 cm) or less at 6 feet (1.8 m) from butt.

(1) Bore 20 Group A poles or 20 percent of the poles, whichever is greater. Accept if 100 percent of the sample conform; otherwise, bore all poles.

(2) Re-treat the charge if more than 15 percent of the borings are found to be nonconforming.

(3) Re-treat all nonconforming poles if 15 percent or fewer fail the requirement.

(B) Group B poles consist of poles with circumference greater than 37.5 inches (95.25 cm) at 6 feet (1.8 m) from the butt.

(1) For Group B poles 50 feet (15.2 m) and shorter, bore each pole and re-treat only those found to be nonconforming, unless more than 15 percent fail; in that case, re-treat the entire lot.

(2) For Group B poles longer than 50 feet (15.2 m), bore each pole twice at 90 degrees apart around the pole and accept only those poles conforming to the penetration requirement in both borings. All nonconforming poles may be re-treated only twice.

(vii) All holes (nominal 0.2 of an inch (0.05 cm) diam. bit) shall be promptly filled with treated, tight-fitting wood plugs.

(2) Under the Independent Inspection Plan, all treating charges of crossarms shall be tested for retention and penetration. Plant quality control inspectors and independent inspectors shall do their analyses *independently.* Under the Quality Assurance Plans, the frequency of testing retention and penetration may vary according to the plan.

(i) The penetration and retention sample shall consist of 20 (48 for creosote) outer 6/10 of an inch (1.52 cm) for Douglas-fir and 1 inch (2.54 cm) for Southern Yellow Pine zones from borings taken from any face except the top face at a location as close to the end as possible being at least 3 inches (7.62

cm) from the end of the arm and no closer than 3 inches from the edge of any holes. For laminated material, borings shall be taken from laminates on a random basis.

(ii) Penetration shall be tested by taking not less than 20 borings from 20 crossarms in each charge, determined in accordance with AWPA Standard A3. Chrome Azurol S and Penta-Check shall be used to determine penetration of copper containing preservatives and penta, respectively.

(3) Laminated material shall be checked for any evidence of delamination due to treatment and for the identifying quality stamp of AITC or American Plywood Association (APA).

(4) When x-ray fluorescence (XRF) instruments are used to analyze preservative or retention, Periodic Instrument Checks (PIC) shall be made by the treating plant and any outside inspection agency using the treating plant's instrument or its own. Appendix B of this section outlines a recommended procedure.

(5) At a minimum, treating plants shall perform the PIC weekly and record the results in the instrument's log, which shall be stored with the instrument. Independent inspection agencies shall use their own samples to perform the PIC on treater's instrument once per visit, not to exceed one PIC per week. Inspection agencies shall record their results in the instrument's log and state the date of its latest PIC on all treating reports.

(6) XRF instruments shall be accurate and reliable, and they shall generate reproducible results. Instruments shall have thorough instructions which should include recommendations on drying techniques, equipment, and density calculations. These drying recommendations shall be followed when using these instruments.

(h) *Product acceptance.* Under the Independent Inspection Plan, the inspector shall signify acceptance by marking each piece of accepted material with a clear, legible hammer stamp in one end prior to treatment and in the other end after treatment. The inspector shall personally mark each piece, and shall not delegate this responsibility to another person.

(i) *Charge inspection reports.*

(1) Inspection Reports shall cover the following:

(i) The total pieces in the lot, number of and causes for rejection;

(ii) The conditioning of the material prior to treatment;

(iii) The analyses of preservative identified by the analyst's signature or certification;

(iv) The details of treatment; and

(v) The results of treatment. These results shall include the following:

(A) The depth of penetration for retention sample and a summary of all poles rejected for insufficient penetration;

(B) Worksheets for retention analyses, each identified by quality control designee and independent inspector;

(C) The number of pieces offered and rejected, together with the cause(s) for rejection;

(D) The date of latest Periodic Instrument Check.

(2) On each inspection report the independent inspector and the plant quality control designee shall certify, in writing, that the material listed on the report has been inspected before, during, and after treatment, and that the preservative used was analyzed in accordance with the requirements of this section.

(3) Each inspector or inspection agency shall retain for a period of 1 year a copy or transcript of each report of inspection, together with laboratory worksheets covering retention by assay and preservative analyses for the purchaser, and on request shall furnish a copy or transcript of any of these reports to the Director, Electric Staff Division, Rural Electrification Administration, Washington, DC 20250–1500.

(j) *Charge numbers on re-treat poles.* The letter "R" shall be added to the original charge number in the butts of all poles that are re-treated for insufficient penetration or retention of preservative. All poles that fail to meet treatment requirements after two re-treatments shall be permanently rejected.

(k) *Safety provisions.* Poles intended for REA borrowers shall not be inspected when, in the opinion of the inspector, unsafe conditions are present.

## Appendix A to § 1728.202—Recommended Inspectors' Qualifications

(a) Inspection agencies should see that inspectors assigned to the inspection of timber products and treatment for REA borrowers are competent and experienced.

(b) *Recommended experience.* In general, any of the following examples are recommended as minimum qualifying experience before a new inspector may be permitted to inspect timber products for REA borrowers:

(1) Three years' experience as an inspector of timber and the preservative treatment of timber.

(2) Three years' experience in timber treating plant quality control work.

(3) Under the direct supervision of an experienced, well-qualified inspector, who has performed the following:

(i) Inspected at least 2,500 poles and/or crossarms "in the white."

(ii) Checked preservative penetration results on at least 500 poles and crossarms.

(iii) Made at least 35 wood assays for preservative retention.

(iv) Made at least 25 analyses of each type preservative used on material the person is assigned to inspect.

(v) In both (b)(1) and (b)(2) of this Appendix A, the experience should be not less than that required in (b)(3)(i), (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv).

(4) Inspectors experienced in the inspections of one product, such as poles, should not be qualified to inspect another product, such as crossarms, until the above experience is gained.

(5) The inspector should be especially well informed in wood preservation and the operation of a timber treating plant, and be competent in preservative analysis and other laboratory work.

(6) In all cases, an inspector should be thoroughly instructed in the application of REA specifications and the standards pertaining thereto before being permitted to independently inspect timber products and the treatments applied to them. Knowledge of these specifications and standards, as well as the inspector's proficiency, may be checked routinely by members of the REA staff.

## Appendix B to § 1728.202—Periodic Instrument Check X-ray Fluorescence

(a) *General.* The following sample calibration standards and procedures may be used in lieu of comparison with analysis by wet ash or lime ignition methods.

(b) *Penta.* Until such time as AWPA approves calibration standards for penta, the following method should be used to run a salt water solution to measure Cl (chloride).

(1) *Standard Solution.* Dry approximately 15 grams of reagent grade NaCl at 105°C for 1 hour. Weigh 10.00 grams into a tared beaker. Add distilled water until the total weight is 100.00 grams. Stir until completely dissolved. This will give a 10 percent weight to weight solution of NaCl.

(2) *Baseline Check.* (i) Insure that the instrument is in good agreement with lime ignition.

(ii) Record any user correction factors.

(iii) Stabilize and standardize the instrument.

(iv) Run the salt solution five times using the PENTA-CHL calibration mode.

(v) Record the average and standard deviation of the values for percent penta. The average value will now be considered the nominal value.

(3) *Periodic Instrument Check.* Run the salt solution two times and average the results. If the value is more than ± 5 percent of the nominal value, the instrument needs further calibration, following manufacturer's recommendation.

(c) *Waterborne preservatives.* Treaters and inspection agencies should purchase AWPA Committee P-5 Standard Reference Materials to analyze on their instruments. Reference materials should be in the retention range of the material being produced at the plants. If the value is more than ± 5 percent of the nominal value, the instrument needs further

calibration. AWPA Committee P-5 Standard Reference Materials may be purchased from:

American Wood Preservers' Association, P.O. Box 286, Woodstock, Maryland 21163, Phone: (410) 456-3159.

## PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

4. The authority citation for part 1755 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

5. The table in § 1755.97 is amended by adding in numerical order the entry for Bulletin 1728F-700 to read as follows:

**§ 1755.97 Incorporation by reference of telephone standards and specifications.**

* * * * *

| REA Bulletin | Spec. No. | Date Last Issued | Title |
|---|---|---|---|
| 1728F-700 | — | 9-2-93 | REA Specification for Wood Poles, Stubs and Anchor Logs |

6. Section 1755.98 is amended by revising the section and its section heading to read as follows:

**§ 1755.98 List of telephone standards and specifications included in other 7 CFR parts.**

The following standards and specifications are included throughout 7 CFR chapter XVII. These standards and specifications are not incorporated by reference elsewhere in the chapter.

| Section | Issue date | Title |
|---|---|---|
| 1728.202 | 9-2-93 | REA Specification for Quality Control and Inspection of Timber Products |
| 1755.370 | 1-19-90 | REA Specification for Seven Wire Galvanized Steel Strand |
| 1755.397 | 3-6-90 | REA Design Specification for Digital Lightwave Transmission Systems, REA Form 397h. |

Dated: July 21, 1993.

**Bob J. Nash,**

*Under Secretary, Small Community and Rural Development.*

[FR Doc 93-18427 Filed 8-2-93; 8:45 am]

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Part IX

# Department of Agriculture

**Office of Finance and Management**

**7 CFR Parts 3015 and 3051**

## Audits of Institutions of Higher Education and Other Nonprofit Institutions; Rule

VOL 58 ISS 147 AG 3 1993 UMI

DEPARTMENT OF AGRICULTURE

Office of Finance and Management

7 CFR Parts 3015 and 3051

**Audits of Institutions of Higher Education and Other Nonprofit Institutions**

AGENCY: Office of Finance and Management, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule implements the Office of Management and Budget (OMB) Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions."

OMB Circular A–133 supersedes Attachment F, subparagraph 2.h., of OMB Circular A–110, "Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations."

This final rule establishes USDA audit requirements and defines USDA responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving USDA awards of Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government.

EFFECTIVE DATE: August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine Cronin on (202) 720–4949.

SUPPLEMENTARY INFORMATION:

**Executive Order 12291**

This final rule was reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and it was determined that it is not a "major rule." This final rule will not have an annual effect on the national economy of $100 million or more; nor will it result in a major increase in costs or prices to consumers, individual industries, government agencies, or geographic regions. This rule will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Executive Order 12612**

USDA evaluated this final rule under Executive Order 12612, pertaining to Federalism. This final rule affects institutions of higher education and other nonprofit institutions receiving Federal awards. The rule increases their administrative discretion with regard to the conduct of audits. For this reason, USDA determined that this final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

**Executive Order 12778**

The following information is given in compliance with Executive Order 12778. All state and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

**Regulatory Flexibility Act**

This final rule was reviewed with regard to the requirements of Public Law 96–354. The Department certifies that this rule will not, under the criteria of the Regulatory Flexibility Act, have a significant economic impact on a substantial number of small entities because it does not affect the amount of funds provided in the covered programs, but rather modifies and consolidates administrative and procedural requirements.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), any applicable reporting and recordkeeping provisions required by this final rule must be submitted to OMB and would not be effective until OMB approves them. USDA certifies that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

**Background**

The provisions of OMB Circular A–133 apply to:

(a) Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit institutions.

(b) Institutions of higher education and other nonprofit institutions whether they receive awards directly from Federal agencies or receive awards indirectly through other recipients.

This final rule adopts OMB Circular A–133 and applies the principles to institutions of higher education and other nonprofit institutions. This final rule deletes the audit requirements for institutions of higher education and other nonprofit institutions from 7 CFR 3015.77, subpart I, and establishes 7 CFR part 3051.

On April 11, 1991, USDA published a proposed rule in the Federal Register (56 FR 14654) for public comment. As a result, comments were received from five USDA agencies, one university, two nonprofit organizations and seven State agencies.

Most commenters expressed concern about § 3051.5(b) (listed in the proposed rule as § 3051.4(b)) which implements OMB Circular A–133 provisions for nonprofit organizations receiving $100,000 or more in Federal financial assistance (FFA). Under this provision, an organization whose FFA consists of awards under only one program may elect to obtain organization-wide audits as described in OMB Circular A–133 or audits of only that one program, but if the organization conducts more than one program, then an organization-wide audit is required. The commenters were concerned that applying this passage too literally may create unreasonable situations for many nonprofit organizations operating food assistance programs under grants from the Department's Food and Nutrition Service (FNS).

Many nonprofit organizations operate just one FNS food assistance program; many others, however, operate a cluster of assistance but receive no other FFA. For example, many private schools operate different combinations of the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Special Milk Program for Children (SMP), the Summer Food Service Program for Children (SFSPC), and the Nutrition Education and Training Program (NET). Soup kitchens and food banks may receive USDA food commodities donated not only under the Food Commodities for Soup Kitchens/Food Banks Program (SKFB) but also under The Emergency Food Assistance Program (TEFAP); some distribute commodities under the Commodity Supplemental Food Program (CSFP) as well.

Such clustering of categorical programs is fundamental to the mission of FNS, which is to provide food assistance benefits to as many members of these programs' target populations as can be reached. This intent is understood by recent legislation. For example, section 121(2)(D) of the Child Nutrition and Women, Infants and Children (WIC) Reauthorizations Act of 1989 (Pub. L. 101–147) requires FNS to promote the expansion of the SBP. This legislative mandate reflects Congressional concern that less than half the schools operating NSLP also offer SBP, with the result that benefits under SBP are not available to large numbers of needy children. In addition, the Hunger Prevention Act of 1988 (Pub. L. 100–435) amended TEFAP

authorizing legislation to permit local program operators to use TEFAP administrative funds for the costs of storing and distributing not only TEFAP commodities but also commodities donated under SKFB. These statutes demonstrate Congressional intent that the Department encourage eligible organizations to offer benefits under its food assistance programs.

Commenters were concerned that organization-wide audits, as described in OMB Circular A–133, may not be appropriate for nonprofit organizations operating such clusters of food assistance programs, even when FFA received under them aggregates $100,000 or more. Although the Catalog of Federal Domestic Assistance (CFDA) identifies each of these programs as a categorical Federal program, they are all the same type of FFA—food assistance. If there is no FFA other than these programs, there is no Federal interest in any part of the organization other than its food assistance activity. Further, only FNS is involved; therefore, no commingling of funds from different Federal sources takes place. For these reasons, the conditions that the organization-wide audit was conceived to address are not present.

The Department thus encourages eligible nonprofits to operate clusters of categorical food assistance programs, and does not necessarily need organization-wide audits of such organizations to obtain the necessary assurances. However, the language of the proposed rule may not have provided sufficient flexibility to require alternative types of audit coverage. For example, a literal reading of the proposed rule would have required a private school receiving $150,000 from FNS under NSLP and SBP collectively to obtain an organization-wide audit while permitting a school receiving the same amount but serving only lunch to obtain an audit of only its food service activity. NSLP and SBP offer the same benefit (meal service) to the same individuals; the school determines these individuals' eligibility for both meal services according to the same criteria; both programs are covered by the same agreement between the school and either FNS or a State administering agency; the administering agency pays the school its FFA for both programs in the same transaction; and the OMB Circular A–128 Audit Compliance Supplement treats these two programs as one item. Consequently, requiring one type of audit if the school serves only lunch but another type if it serves both lunch and breakfast is unreasonable.

Such an application of the rule might create other problems as well. Organization-wide audits are generally more expensive than program-specific audits. The rule as proposed might therefore have operated as a disincentive for nonprofits to accept more than one categorical food assistance program, thus denying the benefits of additional programs to eligible persons. It also would be difficult to apply. To illustrate, CFDA treats TEFAP administrative funds and TEFAP commodities as separate categorical programs. This would have raised the question whether "one program" meant "TEFAP," or each of TEFAP's administrative funding and program benefits components (CFDA Nos. 10.568 and 10.569, respectively). An organization cannot have one without the other.

The solution adopted by the Department is to define the "one program" as a cluster of closely related categorical food assistance programs, and to consider the categorical programs themselves as "awards" under that one program. The Department recognizes two such "programs:" the Child Nutrition Cluster and the Food Distribution Cluster. The categorical programs subsumed under each of these clusters are identified below, with their CFDA numbers given in parentheses.

### Child Nutrition Cluster

The Child Nutrition Cluster includes SBP (10.553), the NSLP (10.555), SMP (10.556), the Child and Adult Care Food Program (CACFP) (10.558), SFSPC (10.559) and the NET Program (10.564). Food commodities distributed to schools and child care institutions by virtue of their participation in the Child Nutrition Programs are an integral part of FFA furnished under those programs, and are therefore included in the Child Nutrition Cluster.

A nonprofit organization receiving $100,000 or more under the Child Nutrition Cluster, but receiving no other FFA, has the option to obtain an organization-wide audit or an audit of that cluster of food assistance programs.

### Food Distribution Cluster

The Food Distribution cluster includes TEFAP (10.568 and 10.569), CSFP (10.565), and SKFB (10.571). As with the Child Nutrition Cluster, a nonprofit organization receiving FFA of $100,000 or more that consists solely of awards within this cluster may elect to obtain either an organization-wide audit as described in OMB Circular A–133 or a program audit of just the cluster.

This cluster differs from the Child Nutrition Cluster in that FFA consists predominately of USDA donated commodities rather than cash grants. Many small organizations operating different combinations of programs within this cluster, but receiving no other FFA, may receive assistance consisting entirely or almost entirely of commodities. Commenters expressed concern that audit costs may drive large numbers of such organizations from these programs if the Department can offer no alternative relief from audit costs. Such a development would severely handicap the Department in its efforts to carry out its Congressional mandate to supplement the nutritional intake of low income and homeless persons through these programs. The following paragraphs describe the solution adopted by the Department for certain nonprofits that receive at least $25,000 but less than $100,000 under the Food Distribution Cluster.

Under TEFAP, State agencies execute agreements with subrecipients called "emergency feeding organizations" (EFO) for the distribution of commodities within their States. An EFO, in turn, may execute agreements with nonprofit organizations (called distribution sites) to carry out the actual distribution, or may function as both EFO and distribution site. In addition to the commodities, the State agencies receive some Federal funds for administrative costs; the program's authorizing statute requires that at least 40 percent of these funds be used for local level costs. The program's authorizing statute and regulations allow the State to disburse these "pass-through funds" directly for costs that benefit the local level, and/or to literally pass them through to EFOs. Administrative funds passed through to EFOs may or may not reach the distribution sites. Nevertheless, the vast majority of FFA made available under TEFAP is in the form of commodities; this may be the only FFA that reaches the distribution sites.

Distribution sites are typically responsible for determining the income eligibility of applicants for TEFAP benefits; issuing commodities to them; and reporting to EFO on the disposition of the commodities. Many of these sites operate no other Federal program. They tend to be staffed largely or entirely by volunteers, and thus have no formal payroll or administrative structure. They may make distributions as infrequently as once every calendar quarter. EFOs typically deliver commodities to the sites the night before, or early on the morning of, scheduled distributions. Since demand exceeds supply, commodities usually are gone by the end of the day. Thus, the

typical site does not maintain inventories of commodities; indeed, many lack the storage facilities necessary to do so.

Notwithstanding these characteristics, most distribution sites are nonprofit organizations within the meaning of OMB Circular A–133, and many of them do receive FFA valued at $25,000 or more. As noted above, however, most FFA consists of commodities; there is little—sometimes no—cash assistance for administrative costs such as audits. Since the cost of a TEFAP "food package" issued to a household averages $7.66, a site will make "Federal expenditures" of $25,000 if it issues 3,400 food packages per year. Many sites do not have reliable sources of non-Federal funds upon which they could draw to pay for the required audit.

The CSFP operates much like TEFAP in that State agencies engage subrecipient organizations called local agencies to deliver program benefits. Of the 67 local agencies participating in the program, some are large and receive FFA from multiple sources; others, however, serve small caseloads and receive correspondingly small amounts of administrative funding.

Under the SKFB Program, State agencies furnish USDA donated commodities to food banks for distribution to soup kitchens. Where a network of food banks does not exist, the State agency may deliver the commodities directly to the soup kitchens to prepare meals.

The Congress has not appropriated any funds expressly for administrative costs in the SKFB Program. State agencies are authorized by statute to use TEFAP administrative funds for this purpose, but such funds are generally needed for TEFAP administration. Like TEFAP distribution sites, a soup kitchen may receive commodities whose aggregate value exceeds the $25,000 FFA threshold while serving a small clientele.

Given the foregoing, any EFO or distribution site participating in TEFAP, any local agency operating CSFP, and any soup kitchen or food pantry participating in SKFB that meet certain criteria would be treated for OMB Circular A–133 purposes as an integral part of the organization from which it received its FFA under these programs. It would, therefore, be included in such organization's OMB Circular A–128 or OMB Circular A–133 audit. For example, a TEFAP distribution site meeting the criteria would be included in its EFO audit; and a soup kitchen or food pantry meeting the criteria would be included in the audit of its State agency or participating food bank, as applicable. The "parent organization" would be expected to have at least one-third of the qualifying organizations under its oversight examined in each of its audits. Distribution sites, soup kitchens, etc., that do not meet the criteria would be required to comply with OMB Circular A–133 in their own right.

The criteria would include the following:

(1) The organization receives FFA solely under TEFAP, CSFP and/or SKFB;

(2) The total FFA amounts to at least $25,000 but less than $100,000 (cash and commodities combined) in a fiscal year; and

(3) Any cash assistance included in the FFA under TEFAP and/or CSFP does not exceed $25,000 in a fiscal year.

An organization would have to meet all three criteria in order to qualify for the treatment described above. We believe this formula represents a reasonable reconciliation of the need for accountability with the need to accomplish the Department's mission. In our opinion, adopting this interpretation of OMB Circular A–133 would not entail seeking a formal exception to the Circular because it would not excuse any nonprofit organization from audit coverage.

The Department reserves the prerogative to grant exceptions on a case-by-case basis where a nonprofit organization has received FFA from FNS outside its primary cluster but can, nevertheless, demonstrate that an audit of only those categorical programs is appropriate. For example, there may be a few isolated cases of nonprofit organizations that operate both the Supplemental Food Program for WIC and CSFP. While WIC would be outside such an organization's primary cluster (Food Distribution), the services provided under WIC and CSFP are similar enough that the organization's circumstances may justify an exception. Such exceptions would apply only to the audit cycle for which they are granted.

The solutions to OMB Circular A–133 implementation problems described in this preamble comprise a reasonable audit requirement for the majority of nonprofits whose FFA consists solely of FNS food assistance programs. The Department considers this approach the most practicable way to apply OMB Circular A–133 to these programs in a manner consistent with the intent of the authorizing statutes.

Two respondents disagreed with § 3051.6(b)(1) (listed in the proposed rule as § 3051.5(b)(1)) as it pertains to submission of an audit to the cognizant or oversight agency. Since this section is identical to the provisions of OMB Circular A–133, no change is made in this rule. Additionally, respondents requested that if a provision is included in OMB Circular A–133, it should be deleted from USDA's rule. This has been done. In addition, language was added to the rule to clarify that federal cost type contracts are included within the coverage of OMB Circular A–133 and the implementing regulation.

**List of Subjects**

*7 CFR Part 3015*

Grant programs, Agriculture, Intergovernmental Relations.

*7 CFR Part 3051*

Accounting, Auditing, Colleges and Universities, Grant Programs, Nonprofit Organizations.

Issued at Washington, DC.

Approved: July 7, 1993.

**Mike Espy,**

*Secretary.*

Accordingly, Title 7, Chapter XXX of the Code of Federal Regulations is amended as set forth below:

## PART 3015—UNIFORM FEDERAL ASSISTANCE REGULATIONS

A. Part 3015 is amended as follows:

1. The authority citation for Part 3015 continues to read as follows:

**Authority:** 5 U.S.C. 301.

**§ 3015.77 (Removed and Reserved)**

2. Section 3015.77 is removed and reserved.

B. Part 3051 is added to read as follows:

## PART 3051—AUDITS OF INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT INSTITUTIONS

Sec.

3051.1 Purpose.
3051.2 Policy.
3051.3 Scope.
3051.4 Definitions.
3051.5 Basic Requirements.
3051.6 Assignment of Responsibilities.
Appendix A

**Authority:** 5 U.S.C. 301.

**§ 3051.1 Purpose.**

This part establishes audit requirements for institutions of higher education and other nonprofit institutions receiving Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, from the United States Department of Agriculture

(USDA) and assigns USDA agency responsibilities for implementing and monitoring those responsibilities. Additionally, this part implements the Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions.

**§ 3051.2 Policy.**

USDA requires audits from institutions of higher education and other nonprofit institutions that receive Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, from USDA directly or indirectly as a subrecipient which are subject to the requirements of OMB Circular A–133, included herein as Appendix A of this part.

**§ 3051.3 Scope.**

This part applies whenever USDA provides Federal financial assistance or Federal cost-type contracts used to buy services or goods for the use of the Federal Government, directly or indirectly to institutions of higher education and other nonprofit institutions. The USDA Office of Finance and Management (OFM) must approve any proposed exception to or deviation from the regulations in this part. Any approved exceptions to this part based on statute, or other approved deviations, will be promulgated through USDA agency-specific program regulations. Audits shall be made by an independent auditor, as defined in OMB Circular A–133, in accordance with Government Auditing Standards covering financial audits issued by the Comptroller General of the United States and the requirements of OMB Circular A–133.

**§ 3051.4 Definitions.**

(a) *One program* is defined as:

(1) One categorical Federal assistance program; or

(2) A cluster of closely related categorical food assistance programs and the categorical food assistance programs are awards under the Child Nutrition Cluster or the Food Distribution Cluster; or

(3) One cost-reimbursement contract to buy services or goods for the use of the Federal Government as described in the definition of "award" in OMB Circular A–133.

(b) *Program-specific audit* is defined as:

(1) An audit of one program; and

(2) Under the Food Distribution Cluster, a program-specific audit of a parent organization includes the nonprofit organizations that operate as distribution sites or congregate meal service sites if they receive assistance through the parent organization consisting of or almost entirely of commodities, if the following criteria are met:

(i) The organization that operates the distribution site or congregate meal site receives Federal financial assistance solely under The Emergency Food Assistance Program (TEFAP), the Commodity Supplemental Food Program (CSFP), and/or the Food Commodities for Soup Kitchens/Food Banks Program (SKFB);

(ii) The total Federal financial assistance received is at least $25,000 but less than $100,000 (cash and commodities combined) in a fiscal year; and

(iii) Any cash assistance included in the Federal financial assistance under TEFAP and/or CSFP does not exceed $25,000 in a fiscal year.

**§ 3051.5 Basic requirements.**

(a) If not included within the scope of a single audit obtained in accordance with the Single Audit Act of 1984 and OMB Circular A–128, institutions of higher education and other nonprofit institutions that receive $100,000 or more a year in USDA Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, shall have an audit conducted in accordance with the requirements of OMB Circular A–133. However, nonprofit institutions and organizations meeting the above criteria but participating in only one program have the option of having an audit in accordance with the provisions of OMB Circular A–133 or a program-specific audit. Such program-specific financial audits shall be performed in accordance with the Government Auditing Standards covering financial audits issued by the Comptroller General of the United States. In addition, the program-specific audit shall be performed in accordance with

(1) Any applicable USDA audit guide,

(2) Any applicable compliance tests contained in the OMB Compliance Supplement for the specific program involved, or

(3) any program-specific audit regulations.

(4) If the program is not covered by paragraphs (a)(1) through (3) of this section, the auditor shall design appropriate compliance tests in accordance with the Government Auditing Standards.

(b) Nonprofit institutions and organizations that receive $25,000 or more but less than $100,000 in Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, may opt for an audit of each Federal award or a program-specific audit. Otherwise, an audit prepared in accordance with the provisions of appendix A of this part prevails.

(c) Nonprofit institutions and organizations that receive direct or indirect USDA Federal financial assistance or Federal cost-type contracts used to buy services and goods for the use of the Federal Government, totalling less than $25,000 are exempt from Federal audit requirements. However, records must be available for review by appropriate officials of USDA, the General Accounting Office (GAO) or a subgranting entity.

(d) USDA OFM may authorize an exception on a case-by-case basis to the requirements of this section for an organizational audit when requested by a nonprofit organization that receives Federal financial assistance under two or more programs that are substantially similar and the requesting organization can demonstrate that a more limited audit would satisfy the purposes of OMB Circular A–133.

**§ 3051.6 Assignment of responsibilities.**

(a) USDA OFM shall:

(1) Have lead responsibility for assuring implementation and compliance with the regulations in this part; and

(2) Coordinate, consolidate, and prepare any reports concerning the effectiveness of implementation of the regulations in this part.

(b) Each USDA awarding agency shall:

(1) Require as a term of their Federal financial assistance provided to, or cost-reimbursement contract awarded to institutions of higher education and other nonprofit institutions that an audit be conducted and report submitted in a timely manner to a designated official in the awarding agency and the OMB assigned cognizant agency, if one has been assigned. In a timely manner means the audit report shall be due within 30 days after the completion of the audit. The audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or awarding agency.

(2) Require that the recipient maintain records identifying the source and amounts of Federal awards received by using the Catalogue of Federal Domestic Assistance (CFDA) Numbers. CFDA numbers are not required for Research and Development and Student Financial Aid.

(3) Provide a copy of the regulations in this part to recipients or subrecipients, upon request.

(4) Ensure required audit reports are received from recipients to which awards have been made.

(5) Determine if an audit report adequately addresses the agency's needs or, if not, determine if a followup audit is necessary. Advise the Office of Inspector General (OIG) of any problem audits.

(6) Ensure that appropriate action is taken on all audit findings and recommendations pursuant to the Supplemental Appropriations and Rescission Act of 1980 (Pub. L. 96–304); OMB Circular A–50, Audit Followup; and Departmental Regulation 1720–1 which prescribes USDA's internal process for audit followup, management decisions and final action.

(7) Coordinate with the recipient to seek corrective action on system deficiencies and resolution of other issues identified in the audit. Seek the views of affected awarding agencies before entering into negotiations and obtain their concurrences before entering into a final agreement.

(8) Take appropriate action when the recipient neglects to obtain an audit or provide a report or take action to resolve findings and/or recommendations, and/or when the report does not meet the requirements of OMB Circular A–133, including the imposition of sanctions. If a cognizant Federal agency determines the audit is unacceptable, the cost of the audit shall not be reimbursed and other sanctions shall be considered if the recipient fails to obtain an acceptable audit.

(9) Establish and maintain appropriate records as to the effectiveness of institutions of higher education and other nonprofit organizations in carrying out the provisions of OMB Circular A–133.

(10) Coordinate the responses on audit reports from other USDA agencies when assigned as the lead agency.

(c) OIG shall:

(1) Follow the requirements set forth in OMB Circular A–133 when USDA is assigned as the cognizant agency or has general oversight responsibility.

(2) Provide or arrange for additional audit coverage, as appropriate, or when requested by an awarding agency.

(3) Designate the USDA lead agency for coordinating audit followup for cross-cutting audit findings that affect the programs of more than one USDA or non-USDA awarding agency. OIG will also coordinate the responses from other Federal agencies.

(4) Upon request or when required, if OMB has not designated a cognizant agency, OIG shall coordinate with other Federal Departments to determine which Department has general oversight responsibility.

(d) Institutions of higher education and other nonprofit institutions shall:

(1) Follow the audit arrangements and requirements set forth in appendix A to this part and the following:

(i) Use their own procedures to arrange for and prescribe the scope of independent audits, provided that such audits comply with the requirements set forth in this part.

(ii) Include provisions in audit contracts requiring the audit organization to retain audit working papers and reports in accordance with OMB Circular A–133.

(iii) Ensure that their independent auditor is responsible for:

(A) Reviewing their system for monitoring subrecipients as well as obtaining and considering the impact of the subrecipient's audit reports.

(B) Testing to determine whether these systems are functioning in accordance with prescribed procedures.

(C) Commenting on their monitoring procedure, if warranted by the circumstances.

(D) Considering whether subrecipient audits require adjustment of their financial statements, footnote disclosure, or modification of the auditor's report.

(iv) Failure of recipients to arrange for the required audits set forth in appendix A of this part, or failure to assure that acceptable audits are performed, will result in OIG coordinating with the USDA awarding agency to arrange for the necessary audit work. Recipients or subrecipients shall not charge USDA any portion of the cost of an audit not meeting USDA requirements. If a cognizant Federal agency determines the audit is unacceptable, the cost of the audit shall not be reimbursed and other sanctions shall be considered if the recipient fails to obtain an acceptable audit.

(v) Recipients are responsible for imposing like requirements upon subrecipients and may not pass on the cost of an audit that does not meet the requirements of OMB Circular A–133. However, if there is an indirect cost allocation plan with audit costs included, the following year's indirect cost allocation plan will offset the cost. In addition to sanctions, the USDA awarding agency may incorporate into the agreement that reimbursement for the additional audit costs incurred by the agency will either be withheld from future Federal financial assistance awards or by other means.

(2) Recipients must establish a system for:

(i) Assuring that subrecipients meet the requirements of the regulations in this part.

(ii) Evaluating the acceptability of subrecipient audits.

(iii) Following up on results of subrecipient audits.

(3) Recipients must ensure that subrecipient reports are transmitted by the subrecipient to the recipient. These reports shall not be routinely transmitted to USDA. Instead, the recipient shall retain all subrecipient audit reports on file as required by appendix A of this part and make them available to the awarding agency, OIG, GAO officials, or their designees, upon request.

(4) Take appropriate action on subrecipient audits and incorporate the results of these audits into their financial records and related reports. Questioned costs at the subrecipient level may be contingent liabilities as far as the recipient is concerned and should be reported as such, when appropriate.

(5) Each recipient shall establish a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

## Appendix A to Part 3051—OMB Circular A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions

[OBM Circular No. A–133]

To the Heads of Executive Departments and Establishments

Subject: Audits of Institutions of Higher Education and Other Nonprofit Institutions

1. *Purpose.* Circular A–133 establishes audit requirements and defines Federal responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit institutions receiving Federal awards.

2. *Authority.* Circular A–133 is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541.

3. *Supersession.* Circular A–133 supersedes Attachment F, subparagraph 2h, of Circular A–110, "Uniform Administrative Requirements for Grants and other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

4. *Applicability.* The provisions of Circular A–133 apply to:

a. Federal departments and agencies responsible for administering programs that involve grants, cost-type contracts and other agreements with institutions of higher education and other nonprofit recipients.

b. Nonprofit institutions, whether they are recipients, receiving awards directly from

Federal agencies, or are sub-recipients, receiving awards indirectly through other recipients.

These principles, to the extent permitted by law, constitute guidance to be applied by agencies consistent with and within the discretion, conferred by the statutes governing agency action.

5. *Requirements and Responsibilities.* The specific requirements and responsibilities of Federal departments and agencies and institutions of higher education and other nonprofit institutions are set forth in the attachment.

6. *Effective Date.* The provisions of Circular A–133 are effective upon publication and shall apply to audits of nonprofit institutions for fiscal years that begin on or after January 1, 1990. Earlier implementation is encouraged. However, until this Circular is implemented, the audit provisions of Attachment F to Circular A–110 shall continue to be observed.

7. *Policy Review (Sunset) Date.* Circular A–133 will have a policy review three years from the date of issuance.

8. *Inquiries.* Further information concerning Circular A–133 may be obtained by contacting the Financial Management Division, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993.

Richard G. Darman,

*Director.*

[OMB Circular A–133]

**Audits of Institutions of Higher Education and Other Nonprofit Institutions**

*Attachment*

1. *Definitions.* For the purposes of this Circular, the following definitions apply:

a. "Award" means financial assistance, and Federal cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or services. Audits of such vendors shall be covered by the terms and conditions of the contract.

b. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 3 of this Attachment.

c. "Coordinated audit approach" means an audit wherein the independent auditor, and other Federal and non-federal auditors consider each other's work, in determining the nature, timing, and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with *Government Auditing Standards* and meet the objectives and reporting requirements set forth in paragraph 12(b) and 15, respectively, of this Attachment. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in paragraph 12(b) or issuing the reports required in paragraph 15 in a timely manner.

d. "Federal agency" has the same meaning as the term 'agency' in Section 551(1) of Title 5, United States Code.

e. "Federal Financial Assistance."

(1) "Federal financial assistance" means assistance provided by a Federal agency to a recipient or sub-recipient to carry out a program. Such assistance may be in the form of:

—grants;
—contracts;
—cooperative agreements;
—loans;
—loan guarantees;
—property;
—interest subsidies;
—insurance;
—direct appropriations;
—other non-cash assistance.

(2) Such assistance does not include direct Federal cash assistance to individuals.

(3) Such assistance includes awards received directly from Federal agencies, or indirectly when sub-recipients receive funds identified as Federal funds by recipients.

(4) The granting agency is responsible for identifying the source of funds awarded to recipients; the recipient is responsible for identifying the source of funds awarded to sub-recipients.

f. "Generally accepted accounting principles" has the meaning specified in the *Government Auditing Standards.*

g. "Independent auditor" means:

(1) A Federal, State, or local government auditor who meets the standards specified in the *Government Auditing Standards;* or

(2) A public accountant who meets such standards.

h. "Internal control structure" means the policies and procedures established to provide reasonable assurance that:

(1) Resource use is consistent with laws, regulations, and award terms;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

i. "Major program" means an individual award or a number of awards in a category of Federal assistance or support for which total expenditures are the larger of three percent of total Federal funds expended or $100,000, on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations.

Each of the following categories of Federal awards shall constitute a major program where total expenditures are the larger of three percent of total Federal funds expended or $100,000:

—Research and Development.
—Student Financial Aid.
—Individual awards not in the student aid or research and development category.

j. "Management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

k. "Nonprofit institution" means any corporation, trust, association, cooperative or other organization which 1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; 2) is not organized primarily for profit; and 3) uses its net proceeds to maintain, improve, and/or expand its operations. The term "nonprofit institutions" includes institutions of higher education, except those institutions that are audited as part of single audits in accordance with Circular A–128 "Audits of State and Local Governments." The term does not include hospitals which are not affiliated with an institution of higher education, or State and local governments and Indian tribes covered by Circular A–128 "Audits of State and Local Governments."

l. "Oversight" agency means the Federal agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency, unless no direct funding is received. Where there is no direct funding, the Federal agency with the predominant indirect funding will assume the general oversight responsibilities. The duties of the oversight agency are described in paragraph 4 of this Attachment.

m. "Recipient" means an organization receiving financial assistance to carry out a program directly from Federal agencies.

n. "Research and development" includes all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

o. "Student Financial Aid" includes those programs of general student assistance in which institutions participate, such as those authorized by Title IV of the Higher Education Act of 1965 which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to students on a competitive basis, or for specified studies or research.

p. "Sub-recipient" means any person or government department, agency, establishment, or nonprofit organization that receives financial assistance to carry out a program through a primary recipient or other sub-recipient, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a direct recipient of Federal awards under other agreements.

q. "Vendor" means an organization providing a recipient or sub-recipient with generally required goods or services that are related to the administrative support of the Federal assistance program.

2. *Audit of Nonprofit Institutions.*

a. *Requirements Based on Awards Received.*

(1) Nonprofit institutions that receive $100,000 or more a year in Federal awards shall have an audit made in accordance with

the provisions of this Circular. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(2) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal awards shall have an audit made in accordance with this Circular or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which they participate.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity.

b. *Oversight by Federal Agencies.*

(1) To each of the larger nonprofit institutions the Office of Management and Budget (OMB) will assign a Federal agency as the cognizant agency for monitoring audits and ensuring the resolution of audit findings that affect the programs of more than one agency.

(2) Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(3) Assignments to Federal cognizant agencies for carrying out responsibilities in this section are set forth in a separate supplement to this Circular.

(4) Federal Government-owned, contractor-operated facilities at institutions or laboratories operated primarily for the Government are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this Circular unless otherwise indicated. The Office of Management and Budget will coordinate changes in agency assignments.

3. *Cognizant Agency Responsibilities.* A cognizant agency shall:

a. Ensure that audit are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

b. Provide technical advice and liaison to institutions and independent auditors.

c. Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

d. Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. A cognizant agency should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

e. Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

f. Coordinate, to the extent practicable, audits or reviews made for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits or reviews build upon audits performed in accordance with the Circular.

g. Ensure the resolution of audit findings that affect the programs of more than one agency.

h. Seek the views of other interested agencies before completing a coordinated program.

i. Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

4. *Oversight Agency Responsibilities.* An oversight agency shall provide technical advice and counsel to institutions and independent auditors when requested by the recipient. The oversight agency may assume all or some of the responsibilities normally performed by a cognizant agency.

5. *Recipient Responsibilities.* A recipient that receives a Federal award and provides $25,000 or more of it during its fiscal year to a sub-recipient shall:

a. Ensure that the nonprofit institution sub-recipients that receive $25,000 or more have met the audit requirements of this Circular, and that sub-recipients subject to OMB Circular A–128 have met the audit requirements of that Circular;

b. Ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

c. Consider whether sub-recipient audits necessitate adjustment of the recipient's own records; and

d. Require each sub-recipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this Circular.

6. *Relation to Other Audit Requirements.*

a. An audit made in accordance with this Circular shall be in lieu of any financial audit required under individual Federal awards. To the extent that an audit made in accordance with this Circular provides Federal agencies with the information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulation. Any additional Federal audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

b. Audit planning by Federal audit agencies should consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include State, local, Federal, and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with *Government Auditing Standards.*

c. The provisions of this Circular do not limit the authority of Federal agencies to make or contract for audits and evaluations of Federal awards, nor do they limit the authority of any Federal agency Inspector General or other Federal official.

d. The provisions of this Circular do not authorize any institution or sub-recipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits, evaluations or reviews.

e. A Federal agency that makes or contracts for audits, in addition to the audits made by recipients pursuant to this Circular, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial, performance audits and program evaluations.

7. *Frequency of Audit.* Audits shall usually be performed annually but not less frequently than every two years.

8. *Sanctions.* No audit costs may be charged to Federal awards when audits required by this Circular have not been made or have been made but not in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit in accordance with the Circular, Federal agencies must consider appropriate sanctions including:

—withholding a percentage of awards until the audit is completed satisfactorily;
—withholding or disallowing overhead costs; or
—suspending Federal awards until the audit is made.

9. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A–21, "Cost Principles for Universities" or Circular A–122, "Cost Principles for Nonprofit Organizations," FAR subpart 31, or other applicable cost principles or regulations.

10. *Auditor Selection.* In arranging for audit services institutions shall follow the procurement standards prescribed by Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations."

11. *Small and Minority Audit Firms.*

a. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular.

b. Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in section (1), above, when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

12. *Scope of Audit and Audit Objectives.*

a. The audit shall be made by an independent auditor in accordance with *Government Auditing Standards* developed by the Comptroller General of the United States covering financial audits. An audit under this Circular should be an organization-wide audit of the institution. However, there may be instances where Federal auditors are performing audits or are planning to perform audits at nonprofit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by paragraph 15 should follow guidance set forth in *Government Auditing Standards* in using work performed by others.

b. The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing Federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major Federal program.

13. *Internal Controls Over Federal Awards; Compliance Reviews.*

a. *General.* The independent auditor shall determine and report on whether the recipient has an internal control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws, regulations, and contract terms, and that it safeguards Federal funds. In performing these reviews, independent auditors should rely upon work performed by a recipient's internal auditors to the maximum extent possible. The extent of such reliance should be based upon the *Government Auditing Standards.*

b. *Internal Control Review.*

(1) In order to provide this assurance on internal controls, the auditor must obtain an understanding of the internal control structure and assess levels of internal control risk. After obtaining an understanding of the controls, the assessment must be made whether or not the auditor intends to place reliance on the internal control structure.

(2) As part of this review, the auditor shall:

(a) Perform tests of controls to evaluate the effectiveness of the design and operation of the policies and procedures in preventing or detecting material noncompliance. Tests of controls will not be required for those areas where the internal control structure policies and procedures are likely to be ineffective in preventing or detecting noncompliance, in which case a reportable condition or a material weakness should be reported in accordance with paragraph 15 c(2) of this Circular.

(b) Review the recipient's system for monitoring sub-recipients and obtaining and acting on sub-recipient audit reports.

(c) Determine whether controls are in effect to ensure direct and indirect costs were computed and billed in accordance with the guidance provided in the general requirements section of the compliance supplement to this Circular.

c. *Compliance Review.*

(1) The auditor shall determine whether the recipient has complied with laws and regulations that may have a direct and material effect on any of its major Federal programs. In addition, transactions selected for non-major programs shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(2) In order to determine which major programs are to be tested for compliance, recipients shall identify, in their accounts, all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other recipients. To assist recipients in identifying Federal awards, Federal agencies and primary recipients shall provide the *Catalog of Federal Domestic Assistance* (CFDA) numbers to the recipients when making the awards.

(3) The review must include the selection of an adequate number of transactions from each major Federal financial assistance program so that the auditor obtains sufficient evidence to support the opinion on compliance required by paragraph 15c(3) of this Attachment. The selection and testing of transactions shall be based on the auditors' professional judgment considering such factors as the amount of expenditures for the program; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (*e.g.*, inspections, program reviews, or system reviews required by Federal Acquisition Regulations); the extent to which the program is carried out through sub-recipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(4) In making the test of transactions, the auditor shall determine whether:

—the amounts reported as expenditures were for allowable services, and

—the records show that those who received services or benefits were eligible to receive them.

(5) In addition to transaction testing, the auditor shall determine whether:

—matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursement contain information that is supported by books and records from which the basic financial statements have been prepared, and

—amounts claimed or used for matching were determined in accordance with 1) OMB Circular A–21, "Cost Principles for Educational Institutions"; 2) matching or cost sharing requirements in Circular A–110, "Uniform Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations"; 3) Circular A–122, "Cost Principles for Nonprofit Organizations"; 4) FAR subpart 31 cost principles; and 5) other applicable cost principles or regulations.

(6) The principal compliance requirements of the largest Federal programs may be ascertained by referring to the "*Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations,*" and the "*Compliance Supplement for Single Audits of State and Local Governments,*" issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplements, the auditor should ascertain compliance requirements by reviewing the statutes, regulations, and agreements governing individual programs.

(7) Transactions related to other awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

14. *Illegal Acts.* If, during or in connection with the audit of a nonprofit institution, the auditor becomes aware of illegal acts, such acts shall be reported in accordance with the provisions of the *Government Auditing Standards.*

15. *Audit Reports.*

a. Audit reports must be prepared at the completion of the audit.

b. The audit report shall state that the audit was made in accordance with the provisions of this Circular.

c. The report shall be made up of at least the following three parts:

(1) The financial statements and a schedule of Federal awards and the auditor's report on the statements and the schedule. The schedule of Federal awards should identify major programs and show the total expenditures for each program. Individual major programs other than Research and Development and Student Aid should be listed by catalog number as identified in the *Catalog of Federal Domestic Assistance*. Expenditures for Federal programs other than major programs shall be shown under the caption "other Federal assistance." Also, the value of non-cash assistance such as loan guarantees, food commodities or donated surplus properties or the outstanding balance of loans should be disclosed in the schedule.

(2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk. The auditor's report should include as a minimum: 1) The scope of the work in obtaining understanding of the internal control structure and in assessing the control risk, 2) the nonprofit institution's significant internal controls or control structure including the controls established to ensure compliance with laws and regulations that have a material impact on the financial statements and those that provide reasonable assurance that Federal awards are being managed in compliance with applicable laws and regulations, and 3) the reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits his/her consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

—An opinion as to whether each major Federal program was being administered in compliance with laws and regulations applicable to the matters described in paragraph 13(c)(3) of this Attachment, including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;

—A statement of positive assurance on those items that were tested for compliance and negative assurance on those items not tested;

—Material findings of noncompliance presented in their proper perspective:

• The size of the universe in number of items and dollars,

• The number and dollar amount of transactions tested by the auditors,

• The number and corresponding dollar amount of instances of noncompliance;

—Where findings are specific to a particular Federal award, an identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance and the auditor's recommendations for necessary corrective action.

c. The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

d. Nonmaterial findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the Federal grantor agencies or subgrantor sources.

e. All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with the *Government Auditing Standards*.

f. The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the *Government Auditing Standards*.

g. In additional to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

h. Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the *Government Auditing Standards*. Subrecipient auditors shall submit copies to recipients that provided Federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

i. Recipients of more than $100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audit reports on file.

j. Recipients shall keep audit reports, including subrecipient reports, on file for three years from their issuance.

16. *Audit Resolution.*

a. As provided in paragraph 3, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and the agency. Alternative arrangements may be made on case-by-case basis by agreement among the agencies concerned.

b. A management decision shall be made within six months after receipt of the report by the Federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

17. *Audit Workpapers and Reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

[FR Doc. 93–18200 Filed 8–2–93; 8:45 am]
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Vol. 58, No. 147

Tuesday, August 3, 1993

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

**H.R. 2561/P.L. 103–54**

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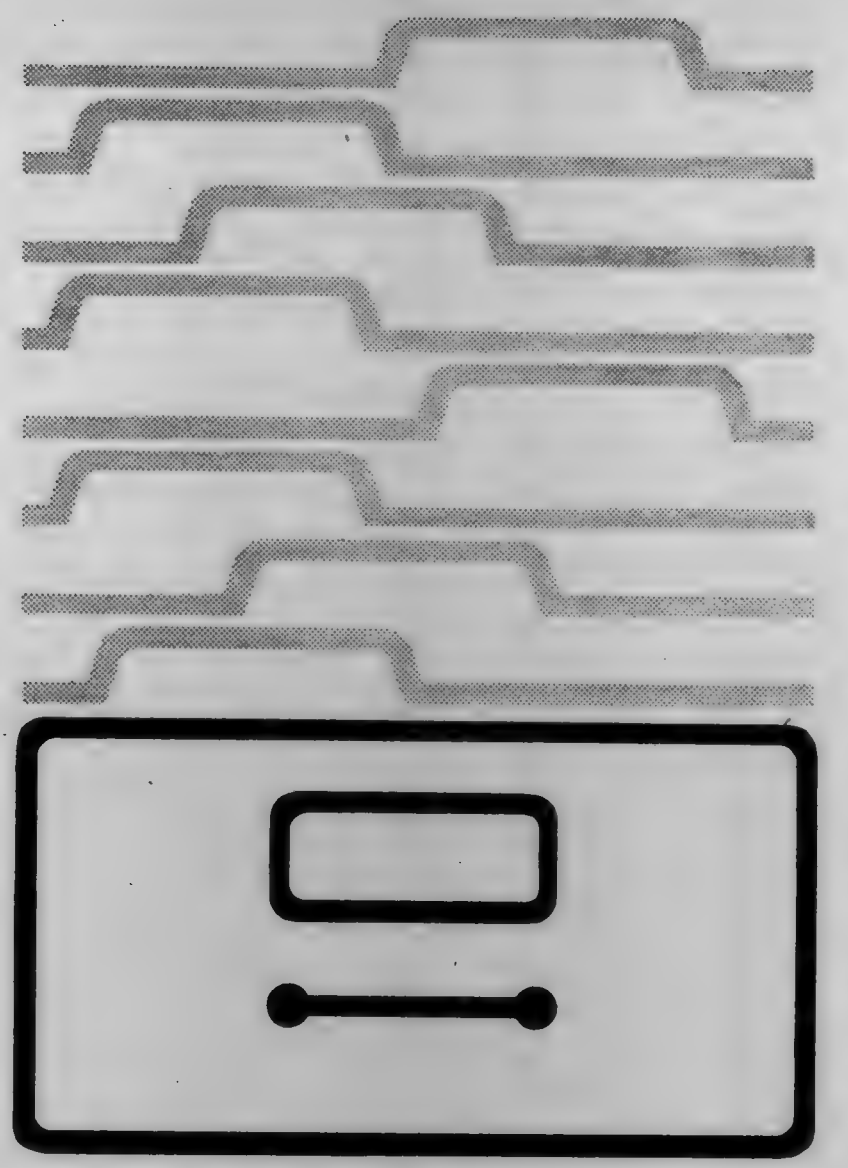

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## in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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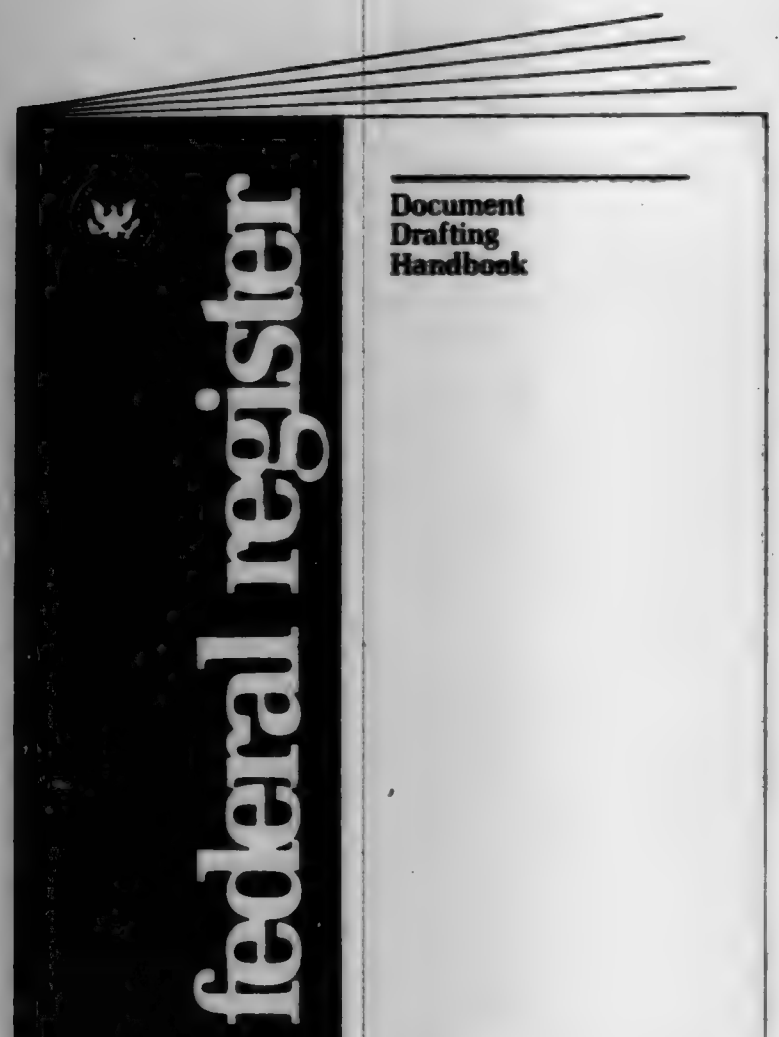


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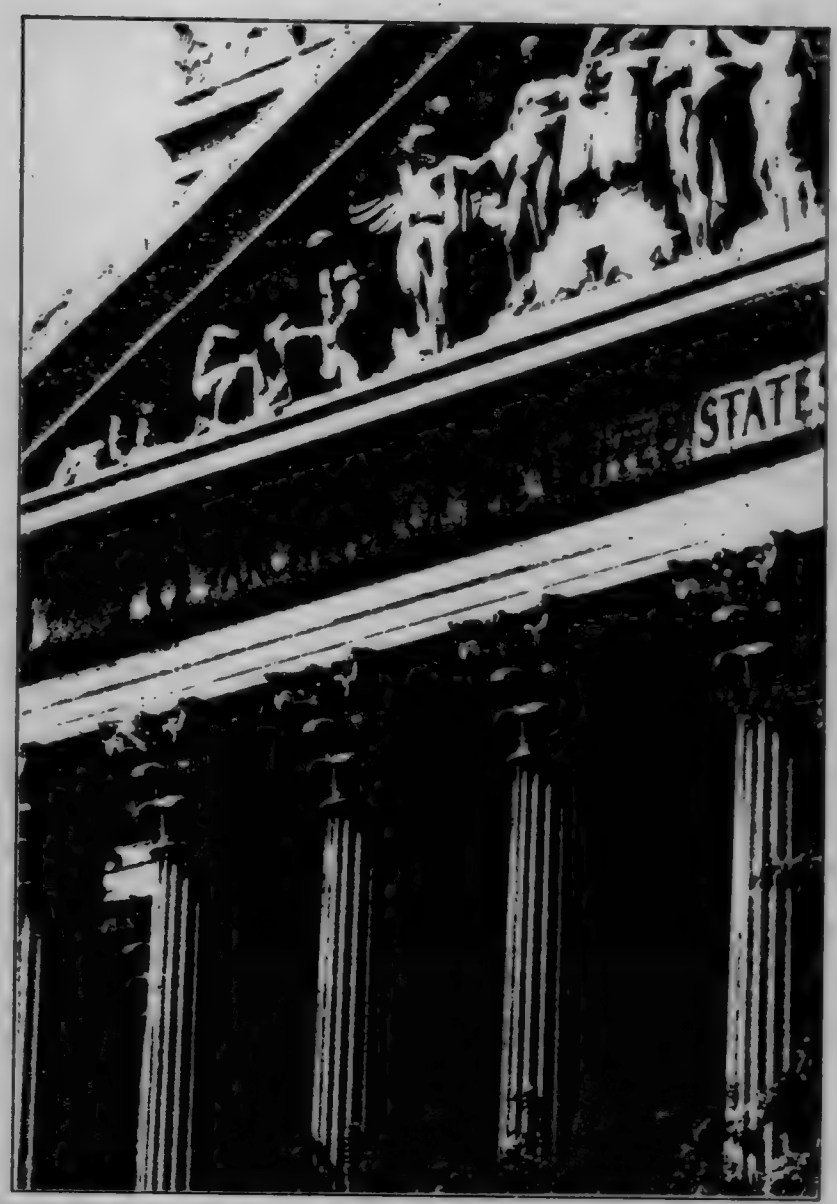


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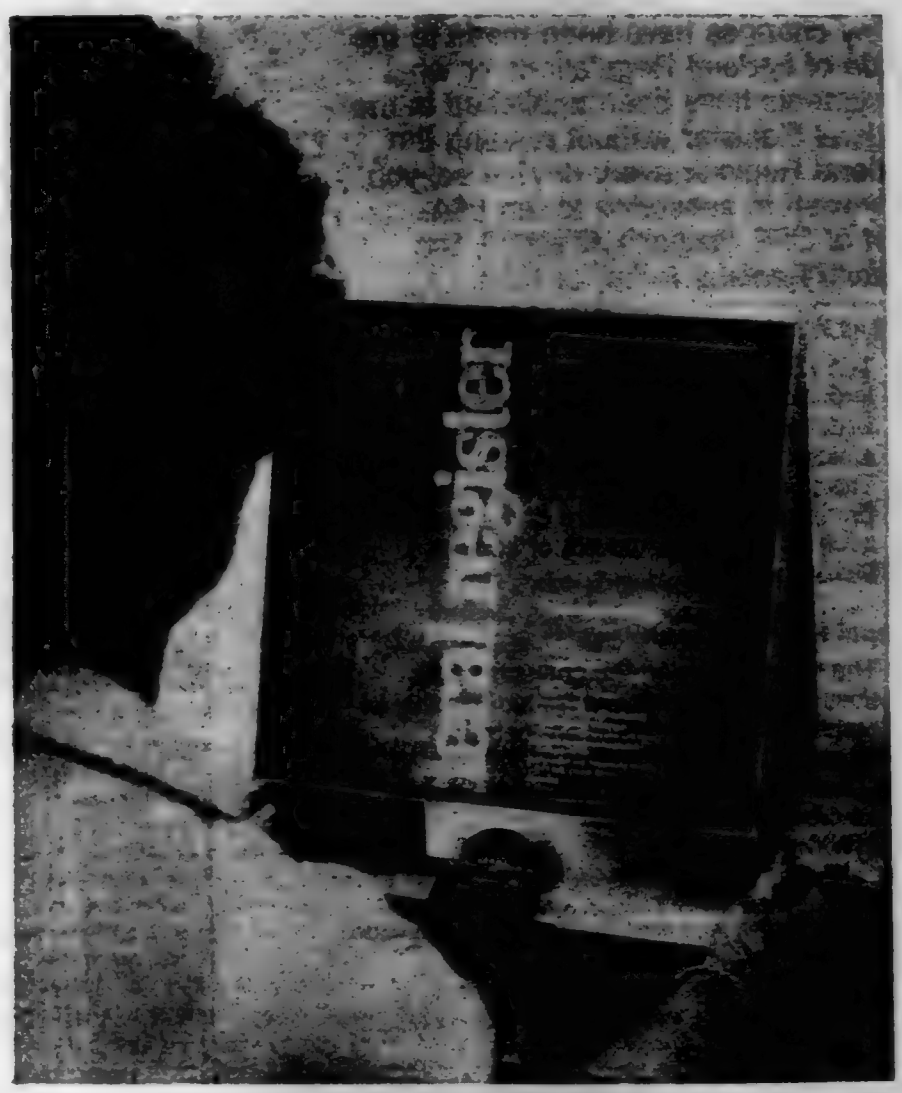


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# Rules and Regulations

Federal Register
Vol. 58, No. 148
Wednesday, August 4, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 703

### Investment and Deposit Activities

**AGENCY:** National Credit Union Administration.
**ACTION:** Final rule; corrections.

**SUMMARY:** In the Federal Register of June 30, 1993, beginning on page 34868 a final rule concerning part 703 (investment and deposit activities) of the NCUA Regulations was published. Inadvertent errors were made in the SUMMARY and SUPPLEMENTARY INFORMATION sections of the document and in the regulatory language. This document makes the corrections.

**EFFECTIVE DATE:** August 4, 1993.

**ADDRESSES:** National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

**FOR FURTHER INFORMATION CONTACT:** Dan Gordon, Investment Officer, Office of Examination and Insurance, (800) 755–5999, or Lisa Henderson, Staff Attorney, (202) 682–9630, at the above address.

By the National Credit Union Administration Board on July 20, 1993.

**Becky Baker,**
*Secretary of the Board.*

In final rule document 93–15221, beginning on page 34868, in the issue of June 30, 1993, the following corrections are made:

1. On page 34868, in the **SUMMARY** section, third column, first paragraph, remove the third sentence, which begins with, "A floating rate CMO or REMIC * * *"

2. On page 34869, first column, first full paragraph, remove the second sentence which begins with, "The price sensitivity test must be applied * * *"

**§ 703.5 [Amended]**

3. On page 34870, first column, § 703.5(g)(1)(ii)(A), add the word "sustained" before the word "parallel."

4. On page 34870, first column, § 703.5(g)(2), substitute the words "this paragraph (g)" for the words "paragraph (g) of this section."

5. On page 34870, second column, § 703.5(j)(2), add the word "the" before the word "contractual."

[FR Doc. 93–18573 Filed 8–3–93; 8:45 am]
BILLING CODE 7535–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 91–ANE–55; Amendment 39–8637; AD 93–14–13]**

### Airworthiness Directives; Textron Lycoming ALF502R and ALF502L Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.
**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Textron Lycoming ALF502R and ALF502L series turbofan engines, that requires rework of the third stage turbine disk blade slot, and marking the third stage turbine rotor shaft assembly to show compliance with this AD. This amendment is prompted by reports of cracks found at the base of the blade retention rivet slot on 48 turbine disks. The actions specified by this AD are intended to prevent third stage turbine disk failure that can result in inflight engine shutdown.

**DATES:** Effective October 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 4, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mark Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 273–7087, fax (617) 270–2412.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Textron Lycoming ALF502R and ALF502L series turbofan engines was published in the Federal Register on August 19, 1992 (57 FR 37488). That action proposed to require rework of the third stage rotor turbine disk blade slot to eliminate stress concentrations in the blade retention rivet slot. That action also proposed to require marking the third stage turbine rotor shaft assembly.

The FAA referred in the NPRM to Textron Lycoming SB No. ALF502R 72–270, and ALF502L 72–720, both dated May 21, 1991. Textron Lycoming has issued Service Bulletin (SB) No. ALF502R 72–270, Revision 1, dated March 31, 1992, and SB No. ALF502L 72–270, dated April 30, 1993. This final rule has been modified accordingly to reflect the updated versions of these service bulletins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA received one comment which expressed no objection to the proposal or the FAA's determination of the cost to the public. After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 900 ALF502R and ALF502L turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $30 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $174,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93-14-13 Textron Lycoming:** Amendment 39-8637. Docket 91-ANE-55.

*Applicability:* Textron Lycoming ALF502R and ALF502L turbofan engines installed on but not limited to British Aerospace BAe-146 and Canadair Challenger CL600 aircraft.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent third stage turbine disk failure, which could result in engine shutdown, accomplish the following:

(a) For ALF502R series engines with installed third stage turbine rotor shaft assemblies, Part Number (P/N) 2-143-040-12, P/N 2-143-040-15, or P/N 2-143-040-16, rework the third stage turbine disk blade slots and mark the third stage turbine assembly with a new part number in accordance with the Accomplishment Instructions of Textron Lycoming Service Bulletin (SB) No. ALF502R 72-270, dated March 31, 1992, or replace with a serviceable part as follows:

(1) For third stage turbine disks with 15,000 or more cycles in service (CIS) on the effective date of this AD, within 1,000 CIS after the effective date of this AD.

(2) For third stage turbine disks with 10,000 or more CIS but less than 15,000 CIS on the effective date of this AD, within 1,000 CIS, after the effective date of this AD, or at the next shop visit, whichever occurs later, but prior to accumulating 16,000 CIS since new.

(3) For third stage turbine disks with less than 10,000 CIS on the effective date of this AD, at the next blade removal, but prior to accumulating 13,000 CIS since new.

(4) For third stage turbine disks not reworked in accordance with the requirements of this AD and installed on Textron ALF-502R engines as replacement disks when complying with this paragraph, accomplish the requirements of this paragraph as to that replacement disk.

(b) For ALF502L series engines with installed third stage turbine rotor shaft assemblies, Part Number (P/N) 2-143-040-10, P/N 2-143-040-11, P/N 2-143-040-12, P/N 2-143-040-15, or P/N 2-143-040-16, rework the third stage turbine disk blade slots and mark the third stage turbine assembly with a new part number in accordance with the Accomplishment Instructions of Textron Lycoming SB ALF502L 72-270, dated April 30, 1993, or replace with a serviceable part as follows:

(1) For third stage turbine disks with 15,000 or more CIS on the effective date of this AD, within 1,000 CIS after the effective date of this AD.

(2) For third stage turbine disks with 10,000 or more CIS but less than 15,000 CIS on the effective date of this AD, within 1,000 CIS after the effective date of this AD or at the next shop visit, whichever occurs later, but prior to accumulating 16,000 CIS since new.

(3) For third stage turbine disks with less than 10,000 CIS on the effective date of this AD, at the next blade removal, but prior to accumulating 13,000 CIS since new.

(4) For third stage turbine disks not reworked in accordance with the requirements of this AD and installed on Textron Lycoming ALF-502L engines as replacement disks when complying with this paragraph, accomplish the requirements of this paragraph as to that replacement disk.

(c) For the purpose of this AD, a shop visit is defined as the induction of an engine into a shop for maintenance.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The rework and reidentification shall be done in accordance with the following Textron Lycoming service bulletins:

| Document No. | Pages | Revision | Date |
|---|---|---|---|
| ALF502R 72-270 | 1-4 | 1 | March 31, 1992. |
| | 5 | Original | June 28, 1991. |
| | 6-7 | 1 | March 31, 1992. |
| | 8-10 | Original | June 28, 1991. |
| Total pages: 10 | | | |
| ALF502L 72-270 | 1-13 | Original | April 30, 1993. |
| Total pages: 13 | | | |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 4, 1993.

Issued in Burlington, Massachusetts, on July 15, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93-18514 Filed 8-3-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93–NM–114–AD; Amendment 39–8649; AD 93–15–03]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires installing a retainer assembly on the upper pedestal flap/slat control module quadrant in the flight compartment. This amendment is prompted by several incidents of inadvertent slat deployment during flight at cruise altitude. The actions specified in this AD are intended to prevent inadvertent slat deployment during flight at cruise altitude, which could result in abrupt pitch up and consequent injury to crew and passengers. Inadvertent slat deployment also could create significant vibrations and cause damage to the elevators.

DATES: Effective August 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 4, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: There have been several incidents of inadvertent slat deployment on certain Model MD–11 series airplanes during flight at cruise altitude. In some cases, inadvertent slat deployment has been attributed to the flightcrew members inadvertently bumping the slat/flap handle. Testing by the manufacturer indicates that bumping the flap/slat handle forward and upward can cause the handle to come out of the up/retract detent. Subsequently, the handle can move aft and extend the slats. If the slats are inadvertently deployed during flight at cruise altitude, an abrupt pitch up could occur, which could cause injury to crew and passengers. Inadvertent slat deployment also could cause the airplane to enter the stall buffet flight regime, which could cause vibration in the horizontal stabilizer and subsequent damage to the elevators.

The FAA has reviewed and approved McDonnell Douglas MD–11 Alert Service Bulletin A27–38, dated July 8, 1993, that describes procedures for installing a retainer assembly on the upper pedestal flap/slat control module quadrant in the flight compartment. Installing the retainer assembly will provide a means for locking the flap/slat handle in the up/retract position, thus preventing inadvertent slat deployment.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent inadvertent slat deployment during flight at cruise altitude. This AD requires installing a retainer assembly on the upper pedestal flap/slat control module quadrant in the flight compartment. The action is required to be accomplished in accordance with the service bulletin described previously.

Operators should note that the FAA previously issued AD 92–26–03, Amendment 39–8430 (57 FR 57906, December 8, 1992), to require installing a cover on the flap/slat control module quadrant in the flight compartment. That AD also was prompted by an incident of inadvertent slat deployment during flight at cruise altitude. Installing the protective cover prevents inadvertent depressing of the zero degree detent gate while the flap/slat handle is stowed, which could lead to uncommanded slat extension. Installing a retainer assembly, as is required by this amendment, is in addition to the installation of the cover required by AD 92–26–03, and provides additional protection against inadvertent slat deployment.

This action (as well as AD 92–26–03) is considered to be interim action until final action is identified. The manufacturer is currently redesigning the MD–11 slat system. The FAA may consider further rulemaking upon completion of the redesign.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–114–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93-15-02 McDonnell Douglas:** Amendment 39-8649. Docket 93-NM-114-AD.

*Applicability:* Model MD-11 series airplanes; fuselage numbers 447 through 545 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent inadvertent slat deployment during flight at cruise altitude, accomplish the following:

(a) Within 15 days after the effective date of this AD, install a retainer assembly on the upper pedestal flap/slat control module quadrant in the flight compartment, in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A27-38, dated July 8, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with McDonnell Douglas MD-11 Alert Service Bulletin A27-38, dated July 8, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 4, 1993.

Issued in Renton, Washington, on July 23, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-18498 Filed 8-3-93; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE**

**Bureau of the Census**

**15 CFR Part 30**

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 4 and 122**

**[T.D. 93-61]**
**[Docket No. 921057-3155]**

**RIN 0607-AA15**

## Amendments to the Foreign Trade Statistics, Vessels in Foreign and Domestic Trades, and Air Commerce Regulations

**AGENCIES:** Bureau of the Census, Commerce and U.S. Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This rule amends both the Foreign Trade Statistics Regulations (FTSR) of the Census Bureau and the U.S. Customs Regulations to change the procedure for carriers submitting Shipper's Export Declarations (SEDs) and outward cargo manifests for shipments from the United States to Puerto Rico. Effective October 1, 1993, exporting carriers will submit the SEDs and outward cargo manifest for such shipments to the District Director of Customs in Puerto Rico rather than at the port of departure. Furthermore, aircraft carrying merchandise on direct flights between the United States and Puerto Rico will be required to file modified manifests. This action will improve the accuracy and coverage of the statistics on shipments from the United States to Puerto Rico.

**EFFECTIVE DATE:** October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Harold L. Blyweiss, Chief, Regulations Branch, Foreign Trade Division, Bureau of the Census, (301) 763-5310.

**SUPPLEMENTARY INFORMATION:** Trade between the United States and Puerto Rico is significant. In 1992, two-way trade amounted to $28.4 billion. If Puerto Rico were an independent country, it would rank tenth in U.S. exports ($10.8 billion) and eighth in U.S. imports ($17.8 billion) with total trade slightly less than U.S. trade with France. The quality of such data is in question because some exporters and carriers treat such shipments as "domestic" and are unfamiliar with the requirements for SEDs and manifests. Also, since Puerto Rico is inside the Customs Territory of the United States, such shipments do not receive the same

scrutiny by the Customs Service as a shipment to a foreign country. Over the past five years increased scrutiny of documentation requirements for shipments from Puerto Rico to the United States, by both the Census Bureau and the Customs Service, resulted in a marked improvement in the accuracy and completeness of the northbound data. Applying this experience to southbound shipments, these amendments will allow better scrutiny for compliance, at lower cost, by both the Census Bureau and the Customs Service by providing for filing these SEDs and manifests in Puerto Rico rather than at the various ports of departure in the United States. Additionally, the Census Bureau established an office in Puerto Rico to process SEDs for all shipments to and from the United States. This rule affects only carriers transporting merchandise between the United States and Puerto Rico. It does not change any requirements for exporters. The Notice of Proposed Rulemaking published in the **Federal Register** on November 30, 1992 (57 FR 56531), proposed amending both the FTSR and the Customs Regulations to require carriers transporting merchandise from the United States to Puerto Rico to submit their SEDs and outward cargo manifests for such shipments to the District Director of Customs in Puerto Rico rather than at the port of departure. Interested parties were given 60 days from the date of publication in the **Federal Register** (November 30, 1992 to January 29, 1993) to submit their comments regarding the notice.

**Discussion of Major Comments**

The Census Bureau and the U.S. Customs Service received eight comments regarding the proposed amendments. One of the comments was not germane to the proposal. One comment favored the proposal on the basis that it will provide improved accuracy and coverage of the statistics. The comments of one vessel carrier consisted of a request for permission to continue a practice, initiated in 1978, that allowed them to file SEDs in weekly batches rather than by individual ship. While this procedure simplifies document handling by the carrier, it does not allow for any governmental verification or check against the manifest that we are, in fact, receiving all required SEDs. Moving the collection of both the manifest and SEDs to Puerto Rico will provide for such scrutiny. Therefore, we are eliminating this special batch filing procedure at such time as this rule becomes effective. Another vessel carrier suggested that we clarify the regulations by adding new subsections relating only to shipments between the United States and Puerto Rico rather than integrating them in the present provisions. To do so would require duplicating most of the provisions of §§ 30.20 through 30.24. This carrier also raised questions relating to the possible introduction of Customs' automated export system for filing both manifests and SEDs. Any carrier, exporter, or freight forwarder participating in either the Customs' or Census Bureau's automated program for reporting manifests and/or SEDs electronically will not be required to file duplicate information in hard copy form. Furthermore, participants in the Census Bureau's Automated Export Reporting Program will continue to file their reports directly with the Census Bureau. Two air express carriers and two associations of air carriers raised objections based on potential cost and burden as well as declaring the proposed rule unnecessary. They proposed alternatives including:

(1) Enforcing current regulations in the U.S. ports of export,

(2) Obtaining the data from the carrier's manifest, or

(3) Obtaining the data from the Puerto Rican Tax Authority. In response, the government determined that: (1) Enforcing current regulations in each of the over 200 ports would be much more costly to the government as well as the carriers and providing one location for filing of all documentation will ensure equal and consistent enforcement in all cases, (2) the carrier's manifest simply does not provide sufficient information to produce quality statistics (neither the Schedule B commodity number nor the value are reported on the manifest), and (3) the Puerto Rican Tax Authority does not obtain information in such detail to produce similar statistics—the Puerto Rican Tax Authority does not share information with the Census Bureau. Because most shipments transported to Puerto Rico by air are low valued and do not require SEDs, we are modifying the proposal. Rather than requiring a complete manifest (§ 30.21(b)), we will allow air carriers transporting merchandise between the United States and Puerto Rico to report, in addition to those items requiring SEDs, a single line of information on their Customs' manifests summarizing all shipments exempt from SED reporting requirements. This summary information will include the number of packages and a total weight in kilograms for such exempt shipments. Furthermore, the air waybills for all cargo must be available, in the port of entry or departure in Puerto Rico, for inspection by Customs and/or the Census Bureau.

**Regulatory Impact Analysis and Information Collection**

These amendments do not meet the criteria of a major rule as set forth in section 1(b) of Executive Order 12291; therefore, no Regulatory Impact Analysis is required. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612. Pursuant to the provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), the General Counsel of the Department of Commerce and the Commissioner of Customs certified to the Small Business Administration that these amendments will not have a significant economic effect on a substantial number of small entities because they only change the place of filing shipping documents by exporting carriers. The Census Bureau's information collection requirements involved in this rule are cleared under OMB Control Nos. 0607–0001, –0018, and –0152 pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

**List of Subjects**

*15 CFR Part 30*

Economic statistics, Foreign trade, Reporting and recordkeeping requirements.

*19 CFR Part 4*

Customs duties and inspection, Exports, Freight, Harbors, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

*19 CFR Part 122*

Administrative practice and procedure, Air carriers, Aircraft, Airports, Customs duties and inspection, Freight, Penalties, Reporting and recordkeeping requirements.

To effect these changes, the Foreign Trade Statistics Regulations (15 CFR part 30) and the Customs Regulations (19 CFR parts 4 and 122) are amended as set forth below:

**Title 15—Commerce and Foreign Trade**

## PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR part 30 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., p. 1004); Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765.

2. Section 30.20 is amended by revising the first sentence of paragraph

(a), redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding new paragraph (b) to read as follows:

**§ 30.20 General statement of requirement for the filing of manifests and Shipper's Export Declarations by carriers.**

(a) Carriers transporting merchandise from the United States, Puerto Rico, or U.S. Possessions to foreign countries; from the United States or Puerto Rico to the Virgin Islands of the United States; or from Puerto Rico to the United States shall not be granted clearance, where clearance is required, and shall not depart, where clearance is not required, until manifests (for vessels, aircraft, and rail carriers) and Shipper's Export Declarations have been filed with the Customs Director as specified in paragraphs (b) through (d) of this section, except as provided in § 30.24.

* * *

(b) For carriers transporting merchandise from the United States to Puerto Rico, the complete manifest, as required, and all required Shipper's Export Declarations shall be filed within one business day after arrival, as defined in 19 CFR 4.2(b), with the Customs Director in Puerto Rico, except as provided in § 30.24.

* * * * *

3. Section 30.21 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 30.21 Requirements for the filing of manifests.**

(a) *Vessels.* Vessels transporting merchandise as specified in § 30.20 (except vessels exempted by paragraph (d) of this section) shall file a complete Cargo Declaration, Customs Form 1302, or a Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A, either form with copies of bills of lading or equivalent commercial forms relating to all cargo encompassed by the manifest attached thereto. The manifest shall be filed with the Customs Director at the respective ports where the merchandise is laden (for shipments from the United States to Puerto Rico, the manifest shall be filed with the Customs Director in the port where the merchandise is unladen in Puerto Rico), and shall show the destination of the vessel and list all the cargo so laden. For each item of cargo, the manifest shall show a description of the articles, contents, quantities, and values; however, a notation on the Cargo Declaration that values are as stated on the Shipper's Export Declarations, copies of which are attached to such manifest, will be accepted. There shall also be shown for each item of cargo the bill of lading number on the Shipper's Export Declaration covering the item, except that bill of lading numbers are not required on manifests covering cargo destined for Canada or a nonforeign area. If an item on a Cargo Declaration is one for which a Shipper's Export Declaration is not required, a notation shall be inserted on the Cargo Declaration as to the basis for the exemption with a reference to the number of the section in the regulations where the particular exemption is provided. The bills of lading, cargo lists, or other commercial forms must be securely attached to the Cargo Declaration in such manner as to constitute one document; that they are incorporated by suitable reference on the face of the form such as "Cargo as per bills of lading attached," or "Cargo as per commercial forms attached," and that there is shown on the face of each bill the information required by the Cargo Declaration for the cargo covered by that document. The manifest of vessels (including vessels taking bunker fuel to be laden aboard vessels on the high seas) clearing for foreign countries shall also show the quantities and values of bunker fuel taken aboard at that port for fueling use of the vessel, apart from such quantities as may have been laden on vessels as cargo. The quantity of coal shall be reported in metric tons (2240 pounds), and the quantity of fuel oil shall be reported in barrels of 158.98 liters (42 gallons). Fuel oil shall be described in such manner as to identify diesel oil as distinguished from other types of fuel oil.

(b) *Aircraft.* Aircraft transporting merchandise as specified in § 30.20 shall file a complete manifest on Customs Form 7509. Such manifest shall be filed with the Customs Director at the respective ports where the merchandise is laden (for shipments from the United States to Puerto Rico, the manifests shall be filed with the Customs Director in the port where the merchandise is unladen in Puerto Rico) aboard the aircraft that is to carry the merchandise to the foreign country or to its ultimate destination in a nonforeign area, and shall list all the cargo so laden and show, for each item, the air waybill number or marks and numbers on packages, the number of packages, and the nature of the goods, except as otherwise provided in this paragraph (b). In addition, for any item for which a Shipper's Export Declaration is not required under the regulations in this part, a notation as to the basis for the exemption with a reference to the number of the section in this part where the particular exemption is provided, shall be inserted on the manifest, or on the waybill filed in lieu of listing on the manifest. In the case of shipments on an air waybill, a copy of each document may be attached to the cargo manifest, the numbers of such air waybills listed in the body of the manifest, and the statement "Cargo as per Air Waybills Attached" noted on the manifest. On direct departures only, for shipments requiring a Shipper's Export Declaration a copy of each declaration may be attached to the cargo manifest. In such case the air waybill numbers of such declarations shall be listed on the cargo manifest in the column for air waybill numbers, and the statement "Cargo as per SEDs Attached" noted on the manifest. Under this alternative procedure, any shipments not requiring a Shipper's Export Declaration shall be listed on the manifest, and a notation as to the basis for the exemption with a reference to the number of the section in this part where the particular exemption is provided, shall be shown. For aircraft transporting merchandise between the United States and Puerto Rico, the manifest shall consist of full detail for cargo requiring Shipper's Export Declarations and summary information for cargo exempt for Shipper's Export Declaration requirements. This summary information will include, on a single line, the total number of packages and the total weight, in kilograms, of such exempt shipments. Additionally, the air waybills for all shipments must be available, in the port of arrival or departure in Puerto Rico, for inspection by Customs and/or the Census Bureau.

* * * * *

4. Section 30.22 is amended by revising paragraph (a) to read as follows:

**§ 30.22 Requirements for the filing of Shipper's Export Declarations by departing carriers.**

(a) To meet the requirements of § 30.20 for the filing of Shipper's Export Declarations, every departing carrier transporting merchandise as specified in § 30.20, including vessels, aircraft, rail carriers, trucks and other vehicles, ferries, and every other carrier shall deliver to the Customs Director at the port of exportation (for shipments from the United States to Puerto Rico, at the port of arrival in Puerto Rico), with the manifest of the carrier, if a manifest is required by the regulations in this part, Shipper's Export Declarations prepared and signed by the exporters, or their agents, covering all the cargo for which such Shipper's Export Declarations are required by the regulations in this part.

* * * * *

5. Section 30.24 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 30.24 Clearance or departure of carriers under bond on incomplete manifest or Shipper's Export Declarations.**

(a) For purposes of the regulations in this part, except when carriers are transporting merchandise from the United States to Puerto Rico, clearance (where clearance is required) or permission to depart (where clearance is not required) may be granted to any carrier by the Customs Director prior to the filing of a complete manifest as required under the regulations in this part, or prior to the filing by the carrier of all required Shipper's Export Declarations, provided that a bond as specified in paragraph (b) of this section is filed with the Customs Director. The condition of the bond shall be that a complete manifest, where a manifest is required by the regulations in this part and all required Shipper's Export Declarations, shall be filed by the carrier not later than the fourth business day after clearance (where clearance is required) or departure (where clearance is not required) of the carrier except as otherwise specifically provided in paragraphs (a) (1) and (2) of this section. For carriers transporting merchandise from the United States to Puerto Rico, if the complete manifest, as required, and all required Shipper's Export Declarations are not available for filing with the Customs Director in Puerto Rico within one business day after arrival, a bond, as specified in paragraph (b) of this section shall be filed with the Customs Director in Puerto Rico.

(1) For shipments aboard a U.S. flag carrier between the United States and Puerto Rico, or from the United States or Puerto Rico to the Virgin Islands of the United States, the condition of the bond shall be that a complete manifest (where a manifest is required) and all required Shipper's Export Declarations shall be filed by the carrier not later than the seventh business day after departure or in the case of shipments from the United States to Puerto Rico, the seventh business day after arrival.

* * * * *

**Title 19—Customs Duties**

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

6. The general authority citation for 19 CFR part 4 and the specific authority for § 4.84 would continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 2103 and 46 U.S.C. App. 3;

* * * * *

Section 4.84 also issued under 13 U.S.C. 303; 19 U.S.C. 1433, 1435, 1437; 46 U.S.C. App. 91, 313, 314, 883–1;

* * * * *

7. Section 4.84 is amended by revising paragraph (c) to read as follows:

**§ 4.84 Trade with noncontiguous territory.**

* * * * *

(c)(1) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to any noncontiguous territory of the United States (excluding Puerto Rico), or from Puerto Rico to any State or the District of Columbia, or any other noncontiguous territory, shall not be permitted to depart without filing a complete manifest, when required by regulations of the Bureau of the Census (15 CFR part 30), and all required Shipper's Export Declarations, unless before the vessel departs an approved bond is filed for the timely production of the required documents, as specified in 15 CFR 30.24. Requests for permission to depart may be written or oral and permission to depart shall be granted orally by the appropriate Customs officer. However, if the request is to depart prior to the filing of the required manifest and export declarations, permission shall not be granted unless the appropriate bond is on file. In the latter case, the Customs officer shall keep a simplified record of the necessary information in order to assure that the manifest and export declarations are filed within the required time period. The Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300 (see § 4.63(a)), required at the time of clearance is not required to be taken to obtain permission to depart.

(2) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to Puerto Rico shall file a complete manifest, when required by the regulations of the Bureau of the Census (15 CFR part 30), and all required Shipper's Export Declarations within one business day after arrival, as defined in § 4.2(b) of this part, with the appropriate Customs officer in Puerto Rico. If the complete manifest and all required Shipper's Export Declarations are not filed with the appropriate Customs officer within that time frame, an appropriate bond shall be filed with the Customs officer for the timely production of the required documents as specified in 15 CFR 30.24. In these instances when a bond is filed, the Customs officer shall keep a simplified record of the necessary information in order to ensure that the manifest and export declarations are filed not later than the seventh business day after arrival in Puerto Rico.

* * * * *

## PART 122—AIR COMMERCE REGULATIONS

8. The authority for 19 CFR part 122 continues to read as follows:

**Authority:** 5 U.S.C. 301; 13 U.S.C. 303; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644; 49 U.S.C. App. 1509.

9. Section 122.62 is amended by revising paragraph (a) to read as follows:

**§ 122.62 Aircraft not otherwise required to clear.**

(a) *Bureau of the Census.* Under Bureau of the Census Regulations (15 CFR part 30), aircraft not required to clear by § 122.61 shall obtain permission to depart if carrying merchandise from the U.S. to Puerto Rico or from Puerto Rico to the U.S.

* * * * *

10. Section 122.74 is amended by revising paragraphs (a) and (c)(2) to read as follows:

**§ 122.74 Incomplete (pro forma) manifest.**

(a) *Application*—(1) *Shipments to foreign countries.* Except for aircraft bound for foreign locations referred to in paragraph (b) of this section, clearance, or permission to depart may be given to an aircraft bound for a foreign location by the district director in the port of departure before a complete manifest or all required Shipper's Export Declarations have been filed, if a proper bond is filed on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(2) *Shipments to Puerto Rico.* As provided in § 122.79 (b), any required air cargo manifest or Shipper's Export Declarations for direct flights between the U.S. and Puerto Rico shall be filed with the appropriate Customs officer upon arrival in Puerto Rico. If any required manifest or Shipper's Export Declarations are not filed with the appropriate Customs officer within one business day after arrival in Puerto Rico, a proper bond shall be filed at that time on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

* * * * *

(c) * * *

(2) *Shipments to and from Puerto Rico.* For shipments from the U.S. to Puerto Rico, the complete manifest (when required) and all required

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Shipper's Export Declarations shall be filed not later than the seventh business day after arrival into Puerto Rico. For shipments from Puerto Rico to the U.S., the complete manifest (when required) and all required Shipper's Export Declarations shall be filed not later than the seventh business day after departure from Puerto Rico.

* * * * *

11. Section 122.76 is revised to read as follows:

**§ 122.76 Shipper's Export Declarations and inspection certificates.**

(a) *Shipper's Export Declarations—*(1) *Other than shipments to Puerto Rico.* For shipments other than to Puerto Rico, at the time of clearance, the aircraft commander or agent shall file with the district director at the departure airport any Shipper's Export Declarations required by the Bureau of the Census (see 15 CFR part 30).

(2) *Shipments to Puerto Rico.* For flights carrying shipments to Puerto Rico from the U.S., the aircraft commander or agent shall file any Shipper's Export Declarations required by the Bureau of the Census (see 15 CFR part 30) upon arrival in Puerto Rico with the district director there.

(b) *Inspection certificates.* The aircraft commander or authorized agent shall deliver a proper export inspection certificate issued by the Veterinary Service, Animal and Plant Inspection Service, Department of Agriculture (9 CFR part 91), to the Customs officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine, or goats.

12. Section 122.79 is amended by revising paragraph (b) and removing the undesignated paragraph following (b)(2) to read as follows:

**§ 122.79 Shipments to U.S. possessions.**

* * * * *

(b) *Puerto Rico.* When an aircraft carries merchandise on a direct flight from the U.S. to Puerto Rico, any required air cargo manifest or Shipper's Export Declarations shall be filed with the district director at Puerto Rico.

**Harry A. Scarr,**

*Acting Director, Bureau of the Census.*

**Michael H. Lane,**

*Acting Commissioner, U.S. Customs Service.*

Approved and concurred:

**Ronald K. Noble,**

*Assistant Secretary for Enforcement, Department of the Treasury.*

[FR Doc. 93–18502 Filed 8–3–93; 8:45 am]

BILLING CODE 3810–07–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

### 24 CFR Part 791

[Docket No. R–93–1637; FR–3446–01]

RIN 2501–AB52

## Allocation of Budget Authority for Housing Assistance

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends the regulations governing allocation of budget authority for housing assistance by adding two subcategories of budget authority for uses that the Secretary determines are incapable of geographic allocation by formula. This change is necessary because some housing assistance is incapable of geographic allocation by formula, but does not fall within the current regulatory exceptions.

**DATES:** *Effective Date:* This interim rule is effective on September 3, 1993, and expires on February 1, 1995 if there are no set asides in the operating plan submitted to Congress in January 1995. *Comment Due Date:* October 4, 1993.

**FOR FURTHER INFORMATION CONTACT:** For the Public and Indian Housing program, and section 8 voucher, certificate, and moderate rehabilitation programs, William R. Minning, Director, Policy Division, room 4234, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500, telephone (202) 708–0713. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–0850. For other assisted housing programs, Joel Balsham, Program Advisor, Office of the Deputy Assistant Secretary for Multifamily Housing, room 6124, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 708–4135. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755–4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

This interim rule further implements section 213(d) of the Housing and Community Development Act of 1974, as most recently amended by the Department of Housing and Urban Development Reform Act of 1989, which was incorporated into 24 CFR part 791, subpart D, on March 7, 1991 (56 FR 9822). Under § 791.403, the Department "fair shares" by formula housing assistance described in section 213 of the legislation, except for budget authority which the Secretary determines is for uses incapable of geographic allocation by formula.

The current regulation identifies four such categories of uses incapable of geographic allocation by formula. Three of these categories are program-specific; the fourth consists of "assistance which is the subject of a line item identification in the HUD appropriations law, or in the table customarily included in the Conference Report on the appropriation for the Fiscal Year in which the funds are to be allocated." The purpose of the quoted provision is to enable the Department to allocate assistance expressly identified by the Congress in a particular year for specific purposes where it may not be feasible to allocate that assistance geographically by formula. Such assistance frequently is enacted as a line item in the appropriations statutory text or is identified in the Conference Report on a given appropriation, as a specific set-aside under a program.

The Department can sometimes experience difficulty in meeting Congressional intent where such intent is not reflected in either the enacted statute or the Conference Report table. For example, in its reporting out of the appropriations bill for FY 1993, the House Committee on Appropriations stated that "within the 1993 voucher funds, the Department is directed to make available a sufficient amount for 750 units to continue the joint VA-HUD project to provide housing and treatment services to homeless, mentally ill veterans." H.R. Rep. 102–710 (July 23, 1992), at 25.

The current regulation provides some tolerance for shifting allocation levels by providing at § 791.403(b)(2) that "if the budget authority for a particular program is insufficient to fund feasible projects, or to promote meaningful competition, at the Field Office level, authority may be allocated to the Regional Office with no requirement for suballocation." However, HUD's flexibility under this provision is limited. In this case the "particular program" is the section 8 voucher program and it cannot be said that the budget authority for this particular program is insufficient to fund feasible projects, or to promote meaningful competition, at the Field Office level. Moreover, the regulation implements a statutory requirement enacted in the Reform Act which amended section 213(d)(1)(C) to require that allocations of assistance "be made to the smallest practicable area, consistent with the

delivery of assistance through a meaningful competitive process designed to serve areas with greater needs." The problem with the example described above is that the assistance for homeless, mentally ill veterans is not a "particular program" or a "program of housing assistance" (the term used in section 213(d))—it is a small set-aside under that "particular" section 8 voucher program.

The Department intends to address this problem by adding a further refinement to the listing of uses of budget authority which the Secretary determines not to be geographically allocable by formula. Specifically, the rule is amended to include along with the appropriations statute and the Appropriations Conference Report table, such uses of budget authority as are identified in the Operating Plan submitted to the Appropriations Committees.

The "Operating Plan" is presented annually to these Committees to reflect changes from the budget originally submitted to the Congress by the Administration. Its history dates back to 1987 when the Conference Report accompanying H.J. Res. 395, "Making Further Continuing Appropriations for the Fiscal Year Ending September 30, 1988," stated that "because of the substantial changes in many accounts from the budget estimates (including a number of general reductions), the conferees direct that [HUD and the Independent Agencies covered in the same appropriation] submit a fiscal year 1988 operating plan by February 1, 1988." H.R. Rep. 100–498 (Dec. 22, 1987), at 837. The statement added that "the conferees expect such operating plans to include recommended changes from the budget estimates except that no reductions may be proposed in programs, projects, or activities for which funding has been added by the Congress." Even since that time, the Department has furnished the Committees an Operating Plan annually which identifies changes from published estimates, including reprogramming within amounts set out in the Conference Report table. This year the Department intends to identify in the Operating Plan, for example, the 750 voucher units for homeless, mentally ill veterans.

Tying flexibility in the allocation of budget authority to matters identified in the Operating Plan preserves the mutual comity between Executive and Legislative Branches that has characterized the allocation process. Furthermore, the Department notes that although a set-aside identified in the Operating Plan is to be treated as described in the interim rule, the objectives of fairness in allocation and competition in distribution of assistance will not be ignored. Where feasible, the Department intends to fair share section 8 certificate and voucher set-asides down to the Regional Office level and to provide for subsequent distribution by competition.

A second change in the regulation regarding assistance incapable of geographic allocation by formula involves recently enacted legislation which prescribes that a portion of program assistance be set aside or otherwise mandated for other than general use. Recent HUD authorization statutory amendments contain provisions which have the effect of specifically targeting appropriated funds. For example, section 101(b) of the Housing and Community Development Act of 1992, Pub. L. 102–550 (Oct. 28, 1992), amended the United States Housing Act of 1937 to require funding of $20 million in both FY 1993 and FY 1994 for section 8 15 year contracts for project-based assistance to be used for a multicultural tenant empowerment and homeownership project located in the District of Columbia. This assistance obviously is incapable of geographic allocation by formula because it is expressly authorized for one city only.

In the first year following enactment of set-asides like the one described immediately above, the Operating Plan could be expected to address these newly established purposes. In subsequent years, however, they would have been incorporated in the Department's budget. For that reason, this interim rule also adds to § 791.403(b)(ii) the subcategory of assistance included in an authorization statute, such as set-asides, where the Secretary determines that such assistance is incapable of geographic allocation by formula.

## II. Other Matters

### *A. Regulatory Impact—Executive Order 12291*

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### *B. Regulatory Flexibility Act*

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule revises existing procedures for the allocation of housing assistance funds and for local government and HUD review of applications for housing assistance, but will make no change in the economic impact of these procedures on small entities.

### *C. Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

### *D. Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule will not substantially alter the established roles of HUD and the States and local governments, including PHAs, in administering the affected programs. As a result, the rule is not subject to review under the order.

### *E. Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being and, thus, is not subject to review under Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those

policies and programs relate to family concerns.

*F. Regulatory Agenda*

This rule was listed as item number 1401 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24401) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

G. The Catalog of Federal Domestic Assistance program numbers are as follows:

14.103 Interest Reduction Payments—Rental and Cooperative Housing for Lower Income Families
14.149 Rent Supplements—Rental Housing for Lower Income Families
14.156 Lower Income Housing Assistance Program (Section 8)
14.157 Housing for the Elderly or Handicapped
14.177 Housing Voucher Program
14.850 Public and Indian Housing
14.851 Low Income Housing—Homeownership Opportunities for Low Income Families

*H. Justification for Interim Rulemaking*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1)

The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public comment is contrary to public interest because immediate effectiveness of this rule will permit the Department to assign the great bulk of section 8 voucher and certificate budget authority under the fair share formula to Field Office jurisdictions now for timely competition among Public Housing authorities. At the same time, HUD will not have to run the risk of a specific set-aside, such as the FY 1993 voucher set-aside for homeless, mentally ill veterans, or the section 8 set-asides a multicultural tenant empowerment and homeownership project, being hamstrung by a requirement to allocate below the Regional Office level in an inefficient, infeasible manner.

Moreover, this rule does not involve major changes in the allocation scheme under part 791. Rather, it makes two minor but necessary modifications to facilitate recognition of Congressional intent and agreement on the allocation of housing assistance.

**List of Subjects in 24 CFR Part 791**

Grant programs—housing and community development, Intergovernmental relations, Public housing, Rent subsidies.

Accordingly, 24 CFR part 791 is amended as follows:

## PART 791—REVIEW OF APPLICATIONS FOR HOUSING ASSISTANCE AND ALLOCATION OF HOUSING ASSISTANCE FUNDS

1. The authority citation for 24 CFR part 791 is revised to read as follows:

**Authority:** 42 U.S.C. 1439; 42 U.S.C. 3535(d).

2. Section 791.403 is amended by revising paragraph (b)(1)(ii) to read as follows:

**§ 791.403 Allocation of housing assistance.**

* * * * *

(b) * * *

(1) * * *

(ii) Assistance which is—

(A) The subject of a line item identification in the HUD appropriations law, or in the table customarily included in the Conference Report on the appropriation for the Fiscal Year in which the funds are to be allocated;

(B) Reported in the Operating Plan submitted by HUD to the Committees on Appropriations; or

(C) Included in an authorization statute where the nature of the assistance, such as a prescribed set-aside, is, in the determination of the Secretary, incapable of geographic allocation by formula,

* * * * *

Dated: July 30, 1993.

**Henry G. Cisneros,**

*Secretary.*

[FR Doc. 93–18597 Filed 8–3–93; 8:45 am]

BILLING CODE 4210-33-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

**[CGD 05–93–058]**

### Special Local Regulations for Marine Events; Virginia Beach Offshore Grand Prix, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** Special Local Regulations are being adopted for the Virginia Beach Offshore Grand Prix to be held in the Atlantic Ocean off Virginia Beach on September 5, 1993. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

**EFFECTIVE DATES:** The regulations are effective from 7 a.m. to 7 p.m., September 5, 1993. If inclement weather is forecast for September 5, the regulations will then be in effect from 7 a.m. to 7 p.m., on September 4, 1993. If inclement weather causes the postponement of the event, the regulations are effective from 7 a.m. to 7 p.m., September 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204, or Commander, Coast Guard Group Hampton Roads (Operations) (804) 483–8559.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until July 2, 1993, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

**Drafting Information**

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

**Background and Purpose**

The race will consist of approximately 100 powerboats, from 22 to 50 feet in length, racing over a closed course off the beachfront at Virginia Beach, Virginia. As part of the application, it was requested that the Coast Guard provide control of spectator and commercial traffic along the beachfront and Rudee Inlet areas during portions of the race.

**Discussion of Regulations**

These regulations will regulate the area surrounding the Virginia Beach Offshore Grand Prix. The race course is generally oval shaped, running parallel to the shoreline. The Rudee Inlet/Lake Rudee area will include the wet pits and

dockage for patrol boats at the Riverhouse boat docks, and the Owl Creek boat ramp will serve as the put in area for the race participants.

The Cape Henry Precautionary Area and the Dam Neck Danger Area are located to the north and south of the race course, respectively. While the race course does not encroach on either of these areas, the regulated area includes the southwest corner of the Cape Henry Precautionary Area and the northeast corner of the Dam Neck Danger Area. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area and has established a temporary spectator anchorage for what is expected to be a large spectator fleet, Coast Guard patrol vessels will be positioned at Rudee Inlet to direct vessels to the temporary spectator anchorage. The sponsor will provide approximately 44 vessels, including 15 medical boats with paramedics on board to assist the Coast Guard and local government agencies in patrolling this event. All vessels will display Official Regatta Patrol signs and identity numbers. Representatives of the sponsors and members of the Coast Guard will be present in the vicinity of the race site to inform vessel operators of these regulations and other applicable laws.

**Regulatory Evaluation**

This final rule is considered non-major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this regulation is actually expected to be beneficial to the local business community on a small scale, therefore, a full regulatory evaluation is unnecessary. This regulation will only be in effect for twelve hours, and the impacts on routine navigation are expected to be minimal as Rudee Inlet will only close for short periods of time as the racers transit to and from the actual race areas.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Most small entities located in the regulated area will be involved with providing services to the sponsor, the race participants, and race spectators. This should have a favorable impact, and only a few small businesses will not be involved. Since the impact of this rule on non-participating small entities will be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0558 is added to read as follows:

**§ 100.35–T0558 Rudee Inlet, Lake Rudee, Atlantic Ocean, Virginia Beach, Virginia.**

(a) Definitions: (1) Regulated area. The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 36°54'23.0" North, longitude 75°59'26.0" West; thence east northeast to latitude 36°54'38" North, longitude 75°56'55" West; thence south southeast parallel to the Virginia Beach shoreline to latitude 36°49'06" North, longitude 75°55'58" West; thence west southwest to the shoreline at latitude 36°48'53" North, longitude 75°57'58" West, and the waters of Rudee Inlet and Lake Rudee including the Owl Creek Boat Ramp.

(2) Coast Guard Patrol Commander. The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Hampton Roads.

(3) Spectator Anchorage Area. The waters of the Virginia seacoast bounded by a line connecting the following points:

| *Latitude* | *Longitude* |
|---|---|
| 36°51'23.0" N | 75°56'47.0" W. |
| 36°51'27.0" N | 75°56'23.0" W. |
| 36°50'26.0" N | 75°56'13.0" W. |
| 36°50'23.0" N | 75°56'36.0" W. |

(b) Special Local Regulations. (1) Except for participants in the Virginia Beach Offshore Grand Prix and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Spectator vessels may anchor in the spectator anchorage area specified in paragraph (a)(3) of these regulations.

(4) The Coast Guard Patrol Commander may allow vessels to transit the regulated area whenever a race heat is not being run.

(5) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) Effective periods: The regulations are effective from 7 a.m. to 7 p.m., September 5, 1993. If inclement weather is forecast for September 5, the regulations will then be in effect from 7 a.m. to 7 p.m., on September 4, 1993. If inclement weather causes the postponement of the event, the regulations are effective from 7 a.m. to 7 p.m., September 6, 1993.

Dated: July 23, 1993.

**W.T. Leland,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 93–18550 Filed 8–3–93; 8:45 am]

BILLING CODE 4910–14–M

VOL 58 ISS 148 AG 4 1993 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-4667-1]

## Approval and Promulgation of State Implementation Plans; Call for Sulfur Dioxide SIP Revisions for Billings/Laurel, MT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: EPA hereby gives notice that it notified the Governor of Montana on March 4, 1993, that the Montana State Implementation Plan (SIP) for the Billings-Laurel area is substantially inadequate to attain and maintain the sulfur dioxide ($SO_2$) National Ambient Air Quality Standards (NAAQS) and must be revised.

DATES: A SIP revision for the Billings-Laurel area is due September 4, 1994.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, 999 18th Street, suite 500, Denver, Colorado 80202-2466, (303) 293-1757

SUPPLEMENTARY INFORMATION:

### I. Background

On April 30, 1971, EPA promulgated primary and secondary NAAQS for $SO_2$ under section 109 of the Act (36 FR 8186). The existing primary standards for sulfur oxides, measured as $SO_2$, are 0.14 ppm (365 $\mu g/m^3$), averaged over a period of 24 hours and not to be exceeded more than once per year, and 0.03 ppm (80 $\mu g/m^3$) annual arithmetic mean. The current secondary standard is 0.5 ppm (1300 $\mu g/m^3$), averaged over a period of 3 hours and not to be exceeded more than once per year.

### II. Finding of Inadequacy

On September 6, 1979 (44 FR 51977), EPA approved revisions to the Montana SIP which were submitted to meet part of the part D nonattainment area requirements. These revisions included a stipulation between the Montana Department of Health and Environmental Sciences and several sources in the Billings-Laurel area. The remaining nonattainment area requirements were approved by EPA on January 10, 1980 (45 FR 2034).

EPA now finds[1] the SIP inadequate based on predicted violations of the $SO_2$ NAAQS that have been modeled in the Billings-Laurel area. These predicted violations were shown in modeling used by Billings Generation Inc. (BGI) to obtain a permit to construct, in a GeoResearch, Inc. (GRI) modeling study commissioned by the Billings City Council, and in the State's refined analysis of the GRI modeling. The results of the GRI study and the State's further analysis indicate that there are violations of the $SO_2$ NAAQS outside the current nonattainment area of Laurel, in the Billings area, and at sites not represented by the existing $SO_2$ monitoring network.

### III. Call for SIP Revision

This finding of SIP inadequacy requires Montana to submit a SIP revision no later than 18 months from the date of EPA's letter to the Governor. To ensure that the SIP deadline is met, EPA requested the State to submit an action plan for the development of the SIP revision within 60 days from receipt of EPA's letter to the Governor. Any control strategies adopted and implemented as part of this SIP revision must provide for attainment and maintenance of the $SO_2$ NAAQS within 5 years from from the date of EPA's letter to the Governor. (See, e.g., section 110(n)(2) of the Act.)

### IV. Final Action

This finding of inadequacy does not constitute a final agency action that is ripe for judicial review. EPA's action is a first step in an administrative process that will not be sufficiently concrete for judicial resolution until additional action is taken by EPA on a plan submittal by the State of Montana.

The 60-day time period for filing a petition for review under section 307(b) of the CAA is tolled until EPA makes the finding ripe by taking additional action in reliance on it, such as imposing sanctions on the State of Montana for failure to submit a SIP revision or promulgating approval of a SIP revision. A time limitation on petitions for judicial review can only run against challenges ripe for review.

A technical support document (TSD) is available from the contact person listed above. The TSD discusses in more detail the ambient standard and its health effects, the SIP call and legal authority, modeling studies, and the SIP revision schedule.

### List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur dioxide.

Authority: Sections 101, 107, 110, 116 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7401, 7407, 7410, 7416 and 7610(a)).

Dated: July 13, 1993.

Jack W. McGraw,

*Acting Regional Administrator.*

[FR Doc. 93-18496 Filed 8-3-93; 8:45 am]

BILLING CODE: 6560-50-P

[1] The finding is made pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) and 7410(k)(5).

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40 CFR Part 186

[OPP-300199A; FRL-4073-3]

RIN 2070-AB78

## Captan; Revocation of Feed Additive Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the feed additive tolerance listed in 40 CFR 186.500 for residues of the fungicide captan (*N*-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) in or on corn seed at 100 parts per million (ppm), remaining after detreatment to reduce captan residues resulting from the intended use of captan as a seed protectant. This action is being taken by EPA because data required and requested by EPA to support the continuation of the feed additive regulation have not been submitted.

EFFECTIVE DATE: Effective on August 4, 1993.

ADDRESSES: Written objections and/or requests for a hearing, identified by the document control number, [OPP-300199A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (H7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, North Tower, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-7066.

SUPPLEMENTARY INFORMATION: This document announces the revocation of the feed additive regulation established under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, permitting residues of the fungicide captan at 100 ppm remaining in or on corn seed from its intended use as a seed protectant, after detreatment. This feed additive tolerance is listed in 40 CFR 186.500.

In the **Federal Register** of August 30, 1989 (54 FR 35897), EPA issued a proposed rule to revoke the feed additive regulation in 40 CFR 186.500 for residues of the fungicide captan in or on corn seed remaining after

detreatment to reduce captan residues resulting from the intended use of captan as a seed protectant. The basis for revoking the feed additive regulation was that certain information required by the March 1986 Captan Registration Standard to support the regulation had not been submitted.

In March 1986, EPA issued a Registration Standard which stated, among other things, that the Agency had reevaluated the use of treated seed corn for feed use for cattle and hogs and expected to take action, in approximately a year, to revoke the feed additive regulation that permits the feed use of detreated captan-treated seed corn, unless certain concerns were resolved, as follows:

1. Residue chemistry data were needed for detreated captan-treated corn seed which had been treated at maximum label dosage and held in storage for various time periods ranging from 3 to 18 months.

2. An acceptable method for informing corn seed treaters and corn seed distributors of acceptable methods for detreating captan-treated corn seed must be proposed.

3. An acceptable handling procedure for captan-treated seed corn (to be detreated) to assure that there are no other pesticides on the seed must be proposed.

The captan feed additive regulation does not identify permitted methods for detreating the captan-treated corn seed although the **Federal Register** notice which established this regulation mentioned washing and roasting, thereby implying that these were acceptable methods. However, the Agency has inadequate data to support either washing or roasting when the maximum registered dosage of captan has been applied, and has no acceptable residue data to support the roasting detreatment method at any dosage or period of storage.

Three comments were received in response to the notice of proposed rulemaking to revoke the captan feed additive regulation for residues in detreated corn seed. Comments were received from the American Seed Trade Association (ASTA); Ken Hunt of Ken's Roasting Service in Arcadia, NE; and Robert York of Johnston, IA.

1. *York.* Mr. York questioned EPA's need for the residue chemistry data and other information which was requested in the March 1986 Captan Registration Standard and discussed in the August 30, 1989 proposed rule.

Mr. York argued against the request for residue data for detreated captan-treated corn seed treated at maximum label dosage and held in storage for periods ranging from 3 to 18 months. He asked whether EPA had any indication that storage of treated seed over an extended period would result in any change in the chemical composition of the treatment or, even if that did occur, whether there would be any effect on the feeding trial and resultant conclusions.

Mr. York countered EPA's request for an acceptable way to inform corn seed treaters and distributors of acceptable methods for detreating captan-treated corn seed by claiming that "vast experience in the field" with the roasting method to detreat captan-treated corn seed and then feeding such detreated corn seed to animals under the existing procedure has not resulted in illegal residues of captan in the meat from such animals. He contended that such treated seed would have been treated at least 18 months or more before the detreating and feeding date and that most seed companies treat at the maximum recommended rate; therefore, the experience referred to would have been based on such rates.

Mr. York argued against EPA's request for an acceptable procedure for handling captan-treated corn seed (to be detreated) to assure that there are no other pesticides in the seed. He said there is enough field experience with roaster operation and quality control of such operation to permit a simple writeup of the procedure for distribution to those who need it. Further, he said there is an appropriate residue analysis procedure to test the detreatment process to be sure that the established tolerance of 100 ppm is not exceeded. Mr. York argued that satisfying this EPA request would be simple, and it is not a valid reason to revoke the tolerance.

Mr. York also said all seed corn that is pesticide treated must be labeled with the pesticide that has been applied, in order to comply with Federal and State seed laws. Therefore, a simple auditing procedure for checking seed tags should immediately indicate what is on the seed and should prevent any illegal residues on the detreated seed. According to Mr. York, the current procedures permitting roasting of treated seed so long as it contains only captan and other materials at rates below existing tolerances, prior to the detreating procedure, has been working quite well and has not resulted in illegal residues of any material, provided the roaster and the feeder have abided by the law in effect at the time.

Finally, Mr. York posits that the "real" reason for this tolerance revocation is EPA concern about illegal use of treated seed. Mr. York argues that revoking the tolerance will not control illegal activity.

*EPA's Response*: In response to Mr. York's objections to the revocation and to EPA's several bases for the revocation action, EPA reiterates that the residue chemistry data and other information under discussion were requested in March 1986 and that interested parties were given another opportunity to submit the data in response to the August 1989 proposed rule to revoke the tolerance. However, the information has not been submitted. Undocumented "experience" and unsubstantiated conclusions cannot be accepted in lieu of scientific data from properly controlled studies.

Regarding Mr. York's question about whether EPA had an indication that storage of treated seed over an extended period would result in any change in the chemical composition of the treatment or have effect on the feeding trial, EPA points out that it is the lack of data that is the problem. EPA does not have sufficient data to characterize residues, whether or not the treated seed is stored for long periods.

EPA does not dispute that an acceptable handling procedure could be developed. Further, EPA has no objections to Mr. York's suggestion to have a procedure for auditing seed tags in order to determine what pesticides have been used for seed treatments. However, the problem remains that no one has indicated a willingness to initiate and be responsible for such a program.

EPA agrees with Mr. York that illegal use of treated seed can be a problem and that revoking the tolerance for detreated seed will not stop individuals intent on such illegal uses. EPA would simply reiterate, however, that the basis for revoking this tolerance is insufficient data and not a concern with illegal residues.

2. *American Seed Trade Association (ASTA).* ASTA pointed out that, after EPA issued a Registration Standard for captan in March 1986 requiring additional metabolite information on captan as a result of roasting, ASTA developed and submitted to EPA a protocol for a study to generate the required data. However, late in 1986, ASTA decided not to pursue the studies needed to develop the data. Although ASTA was confident that the information needed to support the tolerance could be developed, and the process of detreating was more than adequate to reduce the levels of captan below the tolerance, ASTA felt it could not be responsible for the detreating activities that were happening in many

different locations and by persons over which ASTA had no control.

ASTA is not opposed to the revocation action but has serious concerns about what can or will be done to dispose of the usual huge quantities of obsolete seed. ASTA is continuing to look for a solution to the problem for the disposal of obsolete treated corn seed and will continue to solicit EPA's assistance in the search to find such a solution.

*EPA's response*: EPA is also concerned about the disposal problem, but does not believe that continuing the tolerance without the required data is justified or an appropriate means to solve the disposal problem.

3. *Hunt*. Mr. Hunt is in favor of EPA continuing the feed additive tolerance or, alternatively, having EPA institute a permit system for roasting firms like his. Mr. Hunt states that he regularly has his roasted corn analyzed and it is well below tolerance levels for captan. Mr. Hunt maintains that roasting captan-treated corn seed and subsequently feeding the detreated seed to hogs and cattle is the safest way to dispose of the obsolete or excess treated corn seed.

*EPA's response*: The Agency understands and sympathizes with Mr. Hunt's position. However, since EPA's data requirements for this tolerance have not been met, EPA must take steps to revoke the tolerance. As noted above, anecdotal evidence is no substitute for scientifically conducted studies. Moreover, on the subject of permits, EPA would note that such a system depends on an otherwise valid and scientifically based tolerance level.

Based on the information considered by EPA and discussed in the proposal and in this document, EPA is hereby revoking the feed additive tolerance for residues of captan remaining in corn seed which has been treated with captan seed protectant and subsequently subjected to a detreatment process to remove excess residues.

Any person adversely affected by this regulation revoking the feed additive regulation in 40 CFR 186.500 for residues of captan in detreated corn seed may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

This rule has been reviewed by the Office of Management and Budget as required by Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of this proposal. This analysis is available for public inspection in Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

### Executive Order 12291

As explained in the proposal published August 30, 1989, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of the feed additive regulation discussed herein will not cause adverse economic impacts on significant portions of U.S. enterprises.

### Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the August 30, 1989 proposal.

### List of Subjects in 40 CFR Part 186

Animal feeds, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 22, 1993.

**Susan H. Wayland,**

*Acting, Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*

Therefore, 40 CFR part 186 is amended as follows:

1. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 348.

**§ 186.500 [Removed]**

2. By removing § 186.500 *Captan*.

[FR Doc. 93-18555 Filed 8-3-93; 8:45 am]

BILLING CODE 6560-50-F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Child Support Enforcement

### 45 CFR Parts 301 and 303

RIN 0970-AA58

## Safeguarding Information; Federal Income Tax Refund Offset

**AGENCY:** Office of Child Support Enforcement (OCSE), ACF, HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements sections 5011 (a) and (b) of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), by extending indefinitely the availability of the Federal income tax refund offset process to qualified non-AFDC IV-D cases and extending use of this process to non-AFDC IV-D cases in which support is due: (1) On behalf of certain adult disabled children with a current support order; and (2) on behalf of a parent when the parent is living with the child and spousal support and child support are included in the same support order. In addition, the final rule amends the safeguarding of information requirements to permit disclosure to the appropriate agency or official of information regarding an applicant or recipient of IV-D services that involves known or suspected instances of mental or physical injury, sexual abuse or exploitation, or negligent treatment of a child.

**DATES:** These regulations are effective on and after August 4, 1993.

**FOR FURTHER INFORMATION CONTACT:** Susuan Notar, OCSE Division of Policy and Planning, (202) 401-4606.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

These regulations contain no information collection requirements that are subject to OMB review under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

### Statutory Authority

These regulations are published under the authority of the following provisions of the Social Security Act (the Act): (1) Section 464(a)(2)(B), as amended by section 5011(a) of Public Law 101-508, which deleted the January 1, 1991 cut-off date for use of the Federal income

tax refund offset process in non-AFDC IV–D cases; (2) section 464(c), as amended by section 5011(b) of Public Law 101–508, to permit the use of the Federal income tax refund offset process in non-AFDC cases for the collection of past-due support on behalf of adult disabled children and for the collection of certain spousal support; and (3) section 1102 which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

**Background and Description of Regulatory Provisions**

*1. Safeguarding of Information*

In the course of performing their duties, child support practitioners may become aware that a child has been or potentially could be the victim of child abuse or neglect. Although they may feel compelled to report their suspicions, nondisclosure laws and rules such as the provisions in 45 CFR 303.21 may impose restrictions prohibiting them from doing so. Furthermore, all States have laws governing mandatory reporting of suspected child abuse or neglect. These laws define such elements as reportable conditions, persons required to report, and sanctions for failure to report. The mutual existence of Federal non-disclosure laws and Federally required State laws mandating reporting of child abuse and neglect may cause dilemmas for professionals subject to the provisions of both types of laws.

Formerly, Federal regulations at 45 CFR 303.21 limited the use or disclosure of information concerning applicants or recipients of support enforcement services to purposes directly connected with the administration of the plan or program approved under parts A, B, C, or D of title IV, or under titles II, X, XIV, XVI, XIX or XX or the supplemental security income program established under title XVI; any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of any such plan or program; and the administration of any other Federal or Federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need. Those regulations prohibited the disclosure of any information that identified by name or address any such applicant or recipient to any committee or legislative body (Federal, State or local).

Section 5054 of Public Law 101–508 of the Omnibus Budget Reconciliation Act of 1990, amended section 402(a)(9) of the Act to allow disclosure to appropriate authorities of information on known or suspected child abuse or neglect. Section 5054 also amended section 402(a)(16) of the Act to require the disclosure to an appropriate agency or official of information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving AFDC. Because reporting of known or suspected child abuse or neglect is now required as part of a State's plan for administering its title IV–A program, we believe that authority exists for amending OCSE regulations at 45 CFR 303.21 to permit similar disclosure in the case of title IV–D applicants and recipients. We further believe that the amendment helps eliminate the dilemma often faced by child support practitioners in determining whether to report suspected instances of child abuse or neglect. Therefore, we have amended § 303.21 by adding a new paragraph (a)(4) which adds an additional limited exception to disclosure restrictions and allows reporting to an appropriate agency or official, information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child who is the subject of a child support enforcement activity under circumstances which indicate that the child's health or welfare is threatened thereby.

We have also made other technical amendments to the regulation to conform with section 402(a)(9) of the Act. Section 202(b)(2)(A) of the Family Support Act of 1988 (Public Law 100–485) inserted "including activities under part F" into 402(a)(9) of the Act. Therefore, we have added this language to § 303.21(a)(1). In addition, section 202(b)(2)(B) of the FSA repealed part C of title IV of the Act. Therefore, we deleted the reference to part C from § 303.21(a)(1). Section 5055(a) of Public Law 101–508 added reference to title IV–D to 402(a)(9). To conform, we have added such a reference to § 303.21. Finally, we have corrected § 303.21(a)(1) by changing title II to title I in conformity with 402(a)(9).

*2. Requests for Collection of Past-Due Support by Federal Income Tax Refund Offset*

Former 45 CFR 303.72(a)(3)(i) allowed the use of the Federal income tax refund offset to collect past-due support in non-AFDC IV–D cases if the support was owed to or on behalf of a minor child. Referral for this process of spousal support and support due an individual who is no longer a minor in non-AFDC IV–D cases was prohibited For non-AFDC referrals, the State had to differentiate between spousal and child support and only submit amounts owed on behalf of a minor child as defined by State law. Furthermore, the Federal statute and regulations did not allow non-AFDC referrals on behalf of an individual who was no longer a minor on the last day of the current tax year even if the arrearage accrued while the person was a minor. Section 5011(b) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), (OBRA), amended section 464(c) of the Act by: (1) Extending use of the Federal tax refund offset process to non-AFDC IV–D cases in which past-due support is due on behalf of adult disabled children for whom there is a support order in effect, and where the child, while a minor, was determined to be disabled under title II (Federal Old-Age, Survivors, and Disability Insurance Benefits program), or title XVI (Supplemental Security Income for the Aged, Blind and Disabled program) of the Act, and to non-AFDC IV–D cases in which spousal support is past due when spousal support and child support are included in the same support order and the spouse, or ex-spouse lives with the child for whom support is due; and (2) adding the term "qualified child" which means a child who is a minor, or who, while a minor, was determined to be disabled under title II or XVI of the Act, and for whom an order for support is in effect. This extension of the Federal income tax refund offset process did not extend the availability of the process to collection of arrearages in non-AFDC IV–D cases for adult non-disabled individuals even if those arrearages accrued while the person was a minor

To implement these statutory changes, we revised 45 CFR 303.72(a)(3)(i) to require States to certify cases for collection through Federal income tax refund offset including cases in which past-due support is owed in non-AFDC IV–D cases to a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent). As a parallel change, we amended § 301.1 by revising the definition of "past-due support" to specify that, for purposes of Federal income tax refund offset of support due an individual who is receiving services under § 302.33, "past-due support" means support owed to or on behalf of a qualified child, or a qualified child and the parent with whom the child is living if the same support order includes support for the

child. We also added to § 301.1 the definition of "qualified child."

"Qualified child" is defined as "a child who is a minor or who, while a minor, was determined to be disabled under Title II or XVI and for whom an order for support is in effect."

In addition, section 5011(a) amended section 464(a)(2)(B) of the Act by deleting the January 1, 1991 cut-off date for use of the Federal income tax refund offset process in non-AFDC IV–D cases.

Therefore, we deleted § 303.72(k) which limited offset of Federal income tax refunds to satisfy past-due support in non-AFDC cases to refunds payable after December 31, 1985 and before January 1, 1991.

**Response to Comments**

In response to the Notice of Proposed Rulemaking published November 18, 1991, in the Federal Register (56 FR 58205) we received comments from 13 commenters, representing national organizations, Federal agencies, State and local IV–D agencies, and advocacy groups. The comments and our responses are as follows:

*General Definitions—Section 301.1*

*1. Comment:* One commenter stated that the proposed amendments to definitions at § 301.1 accurately reflect the requirements of Public Law 101–508 with regard to the Federal income tax refund offset. Another commenter proposed that a Federal statutory change be pursued and the regulations be revised to eliminate the age restriction and provide the Federal income tax refund offset process to all non-AFDC IV–D cases. The commenter opined that the language "qualified child * * * who is a minor or who, while a minor, was determined to be disabled * * *" continues the age restriction on non-AFDC cases, and may discriminate against non-disabled individuals for whom arrearages accrued while the person was a minor.

*Response:* Section 5011(b) of OBRA 1990 amended section 464(c) of the Act to expand the availability of the Federal income tax refund offset to non-AFDC recipients of IV–D services in several situations: (1) When past-due support is due on behalf of minor children and adult disabled children for whom a support order is in effect and who, while minor children, were determined to be disabled under title II, title IV, or title XVI of the Act, (2) cases in which spousal support is past-due when spousal support and child support are included in the same support order and the spouse, or ex-spouse lives with the child. The amendment to OBRA 1990 did not extend the process to allow collection of arrearages through the Federal income tax refund offset in non-AFDC IV–D cases in which there is not a "qualified child" even if those arrearages accrued while the person was a minor. Therefore, we may not, by regulation, exceed the statutory authority to allow States to include every non-AFDC IV–D case in which past-due support is owed with those certified for submittal to the Federal income tax refund offset process.

*Collection of Past-Due Support by Federal Income Tax Refund Offset—Section 303.72*

*1. Comment:* Most commenters supported the amendment to the Federal income tax refund offset regulation. One commenter stated that its language merely formalizes new operational requirements which were expressed in OBRA 1990 and in implementing instructions which were provided to the States in July, 1991. The commenter declared that "[t]he regulations will further the goal of improving collection of established child support obligations, and will ensure the improved effectiveness of the child support enforcement program." Another commenter concurred with the amendments to the Federal income tax refund offset process, especially where adult disabled children and certain spousal support are concerned. A third commenter favored the expansion of the tax intercept program to allow arrearages owed for disabled children to be submitted for Federal income tax refund offset, even if they are adults. Another commenter was pleased that the extension of the non-AFDC portion of the Federal tax intercept program includes spousal as well as child support. An additional commenter indicated that the amendments to the Federal income tax refund offset regulation will help to ensure that those custodial parents who are responsible for their qualified children's special needs will receive support from the obligor. Another commenter urged that the Federal income tax refund offset process be applied to non-AFDC IV–D cases indefinitely.

*Response:* We appreciate commenters sharing their reactions to proposed changes. OBRA 1990 extended indefinitely the availability of the Federal income tax refund offset process to qualified non-AFDC IV–D cases. We believe that the extension of the Federal income tax refund offset program will produce increased collections of past-due support due to obligees and will thus improve the effectiveness of the IV–D program as well as the lives of children. One of the most successful collection techniques in child support enforcement has been the Federal Income Tax Refund Offset program. For example, in 1991, collections obtained by the States in cases submitted to the Federal income tax refund offset process totalled over $515 million. Since its inception in 1982, over $2.7 billion has been collected through the Federal income tax refund offset program.

*Limited Applicability of Amendment to AFDC Recipients*

*1. Comment:* Several commenters expressed concern that the current amendment to the Federal income tax refund offset regulation would have limited applicability, and stated that the Federal income tax refund offset program should be extended to apply to non-AFDC IV–D cases where the child is emancipated, but arrears accumulated while the child was a minor. Two commenters contended that the change to the existing law constitutes unequal treatment of AFDC and non-AFDC recipients of IV–D services, and a violation of equal protection because referral of support due an individual who is no longer a minor in non-AFDC cases is prohibited, yet a similar case may be referred in an AFDC arrearage situation. One commenter opined that this distinction gives unequal treatment to clients according to economic status.

*Response:* As we stated above, OBRA 1990 did not extend the Federal income tax refund offset process to non-AFDC cases on behalf of an individual who is no longer a minor even if the arrearage accrued while the individual was a minor, with the exception of certain adult disabled children. For this reason we do not have the statutory authority to extend, by regulation, the availability of the Federal income tax refund offset process to those non-AFDC recipients whose cases do not meet the qualifying criteria or definition of "qualified child".

*Automated System Program Change*

*1. Comment:* One commenter noted that extending the Federal income tax refund offset process to adult disabled children will at a minimum require an automated system program change to identify children who become "qualified" after the effective date of the final rule. The commenter encouraged limiting applicability of the rule to such children. The commenter noted further that if the rule is to apply to children who are qualified on its effective date, income tax refund offset should only be required upon the request of the adult child or caretaker. If further initiative on the part of the IV–D agency is envisioned, the commenter proposed

that the IV–D agency notify all non-AFDC families with a child who has reached the age of majority of the potential availability of the offset process upon request to the IV–D agency. The commenter objected to imposition of any requirement to identify all qualified children absent a request by the family either with or without notice. According to the commenter, such a requirement would entail a substantial investment of scarce staff resources at a time when they are at a premium.

*Response*: The amendment to the Federal income tax offset regulation applies to children on whose behalf IV–D services are being provided under § 302.33 who qualify on its effective date as well as after the change has gone into effect. However, a child's caretaker or relative need not request the extension of services. The State is responsible for identifying those individuals who are eligible for the Federal income tax refund offset. A IV–D agency may send a notice to the family indicating the extension of services has gone into effect. While we are aware that the implementation of this rule may require some changes to State automated case tracking and monitoring systems, it will ultimately benefit the IV–D agencies and those needing support by enhancing States' ability to enforce more difficult cases.

*Provisions of OBRA on Tax Offset Self-Executing*

*1. Comment*: One commenter was concerned that while the amendment to the regulation would implement the changes OBRA 1990 made on the Federal income tax refund intercept program in a straightforward manner, to the extent that the law is self-executing, the provisions should already be operable. The commenter urged that OCSE makes certain that States understand and submit Federal tax intercept requests accordingly.

*Response*: To alert State IV–D agencies and other interested individuals of changes to the Federal tax refund offset program for non-AFDC cases as a result of enactment of OBRA 1990, OCSE issued an Action Transmittal (OCSE–91–05, July 26, 1991). This document notified child support practitioners of changes that went into effect January 1, 1991, and specified instructions for submittal of eligible cases, including those covered by OBRA 1990.

Nevertheless, changes to the existing regulations were needed to remove the inconsistencies in the former regulations such as the "sunset provision" for the Federal income tax refund offset process for past-due support owed in non-AFDC cases.

*Safeguarding of Information—Section 303.21*

*1. Comment*: Three commenters supported the revisions to the safeguarding regulation and indicated that they were grateful for the amendment. One commented that the clarification was long overdue, and was pleased that the regulation does not distinguish between AFDC and non-AFDC IV–D recipients where public disclosure is at issue. Another noted that the amendments to the safeguarding regulation would reduce dissonance in the application of public disclosure and child abuse/neglect laws.

*Response*: The amendment to the safeguarding regulation should help to reduce possible conflicts for IV–D practitioners between Federal nondisclosure laws and Federally-required State laws mandating reporting of child abuse and neglect. We appreciate your comments.

*Statutory Authority*

*1. Comment*: One commenter contended that the proposed revision exceeds the statutory authority to disclose found in 42 U.S.C. 602(a) (9) and (16) because it gives the IV–D agency the authority to disclose information about possible abuse, and extends this to non-AFDC families as well as AFDC applicants or recipients. Another commenter requested clarification of an apparent discrepancy between the Action Transmittal (OCSE–AT–91–11) and the background information in the **Federal Register** (56 FR 58205) and the proposed regulation itself. The commenter noted that the amendment to 45 CFR 303.21 covers all IV–D cases; it mentions "applicants or recipients of support enforcement services" and "a child who is the subject of a child support enforcement activity," while the Action Transmittal and background information in the **Federal Register** seem to limit disclosure of known or suspected abuse to only cases involving children receiving AFDC.

*Response*: It is longstanding OCSE policy that the safeguarding requirements of § 303.21 apply to all recipients of IV–D services, regardless of whether they receive AFDC. As used in § 303.21(a), the phrase "concerning applicants and recipients" denotes both those individuals entitled to IV–D services by virtue of receipt of AFDC, title IV–E foster care, and/or Medicaid and individuals who apply for IV–D services under § 302.33.

When final regulations implementing the Child Support Enforcement Program were published on June 26, 1975 (40 FR 27154), the State plan requirements for safeguarding information about applicants and recipients for the financial assistance and social services programs were also made applicable to title IV–D State plans. This was not a statutory requirement. The intent was to extend the same protection afforded information obtained under the title IV–A program to information obtained under the title IV–D program. The Secretary's decision to extend the safeguards to the IV–D program was based on three factors: The fact that the two programs serve essentially the same applicants and recipients, the fact that statutory provisions require continuous exchange of information between the two programs, and the desire to fully comply with the spirit as well as the letter of the Privacy Act of 1974.

Section 451 of the Act mandates that child support services (e.g., locating absent parents, establishing paternity, obtaining child and spousal support, and enforcing child and spousal support orders) are available to all children, regardless of whether they are eligible for assistance under title IV–A of the Act. It would clearly be incongruous for a IV–D worker who suspects or knows that a child is being abused, to have to first determine whether such child was receiving AFDC before reporting the suspected abuse to the proper State authorities.

While we included a reference to children receiving AFDC in OCSE–AT–91–11, and in the **Federal Register** in the notice of proposed rulemaking (56 FR 58205), we did not intend to limit the scope of the safeguarding regulation to only child(ren) receiving AFDC. The language of the amendment to the safeguarding regulation, "a child who is the subject of a child support enforcement activity", is indicative of the fact that we mean for the regulation to apply to all applicants or recipients of child support enforcement services, regardless of whether they are AFDC recipients.

*Notice to Parents of Disclosure*

*1. Comment*: One commenter urged IV–D agencies to alert custodial parents to the fact that information about abuse or neglect "will not be held confidential."

*Response*: States may require IV–D personnel to alert custodial parents to the fact that information about abuse or neglect will not be held confidential, and will be reported to an appropriate agency or official. However, such notification is not required under

Federal laws or regulations governing the IV–D program.

*Referrals to Other Agencies/Guidelines for Identifying Abuse/Citizens Requests*

*1. Comment:* One commenter, while generally supporting the amendment to the safeguarding regulation, questioned the possibility of sharing information with law enforcement agencies conducting criminal investigations unrelated to child abuse. The commenter recommended extending the authorization to share information with law enforcement agencies regarding *any* (their emphasis) criminal investigation, rather than limiting the authorization to reporting known or suspected child abuse and neglect.

*Response:* Section 402(a)(9) of the Act restricts the disclosure of information concerning AFDC applicants and recipients to purposes directly connected with (A) the administration of the State's plan approved under parts A, B, D, or E of title IV, and title I, X, XIV, XVI, XIX, or XX or the supplemental security income program established by title XVI, (B) any investigation prosecution, or civil or criminal proceeding conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or Federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit, or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such activity, and, (E) reporting to appropriate authorities with respect to known or suspected abuse and neglect. Because the language of the statute limits disclosure by IV–D agencies to cases involving known or suspected child abuse or neglect, it would be inappropriate for IV–D practitioners to share information with law enforcement officials that is unrelated to administration of one of the plans enumerated in, or permitted by § 303.21(a)(1)–(3).

*2. Comment:* One commenter requested a clarification of whether the statutory amendment would require child support enforcement agencies to report child abuse or neglect directly, and fill out the necessary reports, or if they may make referrals to other State agencies under existing State law.

*Response:* State law and procedures would govern whether child support enforcement agencies should report known or suspected child abuse or neglect directly, or whether they should notify other appropriate State agencies of their findings of abuse or neglect. The language of the amendment "[r]eporting to an appropriate agency or official" indicates that designation of the particular agency or official to whom reports should be made is a matter left to the determination of each individual State in accordance with State law.

*3. Comment:* Another commenter noted that while the amendments to the safeguarding regulation will allow child support agencies to provide important child protection services to those who need them, specific guidelines should be developed to assist child support practitioners (who may be untrained in identifying victims of child abuse) with filing appropriate child abuse reports. The commenter added that the amendment to the safeguarding regulation should be well-defined to prevent child support practitioners from becoming responsible for initiating child abuse reports at the request of concerned citizens. The commenter conjectured that, as the proposed rule is currently written, it provides no distinction between the reporting responsibilities of the child support agency and child protective services. The commenter urged that the final rule specifically state that a child support practitioner may report child abuse only as a result of actually witnessing either known or suspected child abuse. Further, the commenter suggested that the regulation also require practitioners to refer citizens who wish to report child abuse to the appropriate child protection agency. This will enable IV–D agencies to help protect children against child abuse while allowing IV–D workers to remain focused on maintaining child support cases. The commenter expressed concern that, otherwise, the potential exists for a significant amount of time to be diverted from fulfilling the mission of the IV–D program to child abuse concerns.

*Response:* States may develop guidelines to assist child support practitioners with filing appropriate child abuse reports. It is not the intent of the statute or this regulation that IV–D workers initiate child abuse reports at the request of concerned citizens, or serve an intake function for such reporting. In such instances, it would be appropriate for IV–D personnel to inform the concerned citizens making such reports of the appropriate State agency to contact which normally handles or investigates child abuse. Pursuant to the safeguarding regulation, IV–D workers should report physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement activity when the IV–D worker either knows or suspects that the above have occurred. However, the IV–D worker need not actually have witnessed such abuse, and it would be unlikely for such abuse to occur in the presence of the worker. It is therefore sufficient if such abuse, injury, or exploitation is suspected or known based on personal observation or information supplied by a parent or other caretaker.

*Circumstances Indicating Threats to Child's Health or Welfare*

*1. Comment:* While generally supporting the amendment to the safeguarding regulation, one commenter expressed his concern that the language leaves unclear the extent of mistreatment which would warrant a report of potential abuse. The commenter remarked that the phrase "under circumstances which indicate that the child's health or welfare is threatened thereby" appears to mean that a report would be made only where a child has been abused or maltreated and remains at risk of future abuse and maltreatment. The commenter proposed that the regulation authorize disclosure of information where a child support practitioner suspects that a child has been abused or maltreated without conditioning that disclosure on the potential for future abuse or maltreatment.

*Response:* The use of the phrase "under circumstances which indicate that the child's health or welfare is threatened thereby" of section 402(a)(16) of the Act is in no way meant to condition the disclosure on either the actual abuse of a child or some hypothetical degree of potential for future abuse or maltreatment. Rather, the focus is on whether the IV–D practitioner either suspects, or knows, of the physical, or sexual abuse, exploitation, negligent treatment or maltreatment, or mental injury of a child at the present time under circumstances which indicate that the child's health or welfare is threatened thereby. Presumably, if a child is being subjected to any of the above, it is axiomatic that the child's health or welfare is threatened; however, we do not mean to condition or restrict the IV–D practitioner's disclosure responsibilities to only the potential for future abuse.

*2. Comment:* Another commenter questioned whether the language "under circumstances which indicate that the child's health or welfare is threatened thereby" of section 402(a)(16) of the Act requires a judgment call on the part of the IV–D

worker which would conflict with State law requiring that suspected abuse or neglect be reported by social workers. The commenter suggested that we omit "under circumstances which indicate that the child's health or welfare is threatened thereby" so that known or suspected abuse or neglect would be reported and the determination of whether a child's health or welfare is threatened would be made by workers trained to make that determination. The commenter noted that the language of Public Law 101–508 pertains to known or suspected child abuse or neglect in AFDC cases.

*Response:* We have included the language "under circumstances which indicate that the child's health or welfare is threatened thereby" to be consistent with section 402(a)(16) of the Act. Further, because the amendment to § 303.21(a) requires the IV–D agency to report information to an appropriate agency or official, and because that official might be a social worker depending on State law, we do not feel that the amended regulation would require an improper judgment call on the part of IV–D workers. While it is true that some judgment call on the part of the IV–D worker is needed before a referral is made to an appropriate State agency or official, that is a necessary first step to alerting the proper authorities.

*Possible Linkage of Safeguarding and Tax Offset Regulations*

*1. Comment:* One commenter expressed concern that the amendments to the safeguarding regulation and the Federal income tax refund offset regulation are linked and might involve a requirement for disclosure of Internal Revenue Service (IRS) information protected under 26 U.S.C. 6103(l)(11).

*Response:* Although the amendments to the tax offset and safeguarding regulation were set forth in the same notice of proposed rulemaking, we did not intend to imply that they are related, nor that they should be interpreted together so as to alter the explicit restrictions governing disclosure of IRS information. The addition to the limited disclosure provisions of § 303.21(a) pertains to disclosure of information concerning child abuse or neglect, not safeguarded Federal tax return information.

**Executive Order 12291**

The Secretary has determined, in accordance with Executive Order 12291, that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is expected to have an insignificant impact on State expenditures because the costs of implementing these changes will be minimal. We believe that increased collections will far exceed increased administrative costs.

**Regulatory Flexibility Analysis**

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the Act.

**List of Subjects in 45 CFR Parts 301 and 303**

Child support, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program No. 93.023 Child Support Enforcement Program)

Dated: April 13, 1993.

**Laurence J. Love,**

*Acting Assistant Secretary for Children and Families.*

Dated: May 18, 1993.

**Donna E. Shalala,**

*Secretary.*

For the reasons set forth in the preamble, we amend 45 CFR chapter III as follows:

## PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 664, 666, 667 and 1302.

2. Section 301.1 is amended by revising the last sentence in the definition of "Past-due support" and by adding a definition of "Qualified child" in alphabetical order to read as follows:

**§ 301.1 General definitions.**

* * * * *

*Past-due support* * * * For purposes of referral for Federal income tax refund offset of support due an individual who is receiving services under § 302.33 of this chapter, *past-due support* means support owed to or on behalf of a qualified child, or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent.

* * * * *

*Qualified child* means a child who is a minor or who, while a minor, was determined to be disabled under title II or XVI of the Act, and for whom a support order is in effect.

* * * * *

## PART 303—STANDARDS FOR PROGRAM OPERATIONS

3. The authority citation for part 303 continues to read as follows:

**Authority:** 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396(b)(o), 1396b(p), and 1396(k).

4. Section 303.21 is amended by removing the letter "C" and the word "or", and by adding "E, or F" after "D" in paragraph (a)(1); replacing "title II" with "title I" in paragraph (a)(1); removing the word "and" after the semicolon at the end of paragraph (a)(2); adding a semicolon and the word "and" after the end of paragraph (a)(3); and adding a new paragraph (a)(4) to read as follows:

**§ 303.21 Safeguarding information.**

(a) * * * (1)

(4) Reporting to an appropriate agency or official, information on known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child who is the subject of a child support enforcement activity under circumstances which indicate that the child's health or welfare is threatened thereby.

* * * *

5. Section 303.72 is amended by revising paragraph (a)(3)(i) and by removing paragraph (k) to read as follows:

**§ 303.72 Requests for collection of past-due support by Federal tax refund offset.**

(a) * * *

(3) * * *

(i) The support is owed to or on behalf of a qualified child, or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent.

* * * * *

[FR Doc. 93–18497 Filed 8–3–93; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 930787-3197; I.D. 072393C]

## Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this technical amendment to correct a reference in the permits and fees section of the vessel identification requirements and to make other technical changes in prohibitions. The intended effect of this rule is to correct and clarify the regulations and to conform them to current practice.

EFFECTIVE DATE: August 4, 1993.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813-893-3722.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region, prepared by the South Atlantic Fishery Management Council, and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act.

The regulations at 50 CFR 646.4(i) contain an incorrect reference for the vessel identification requirements applicable to permitted vessels. This final rule corrects that reference.

The regulations at 50 CFR 646.7 (o), (w), (gg), and (ii) are punctuated in a manner that subjects the prohibitions in those paragraphs to interpretation as to the applicability of paragraphs referenced in the prohibitions. This final rule modifies the punctuation for clarity.

### Classification

This technical amendment is issued as a final rule under 50 CFR part 646 and complies with E.O. 12291.

This rule is minor and technical and, therefore, is not a "major rule" under E.O. 12291. There is no change in the regulatory impacts that were previously reviewed and analyzed.

Because this rule (1) makes non-substantive corrections and clarifications to the regulations and (2) does not change operating practices in the snapper-grouper fishery, the Assistant Administrator for Fisheries, NOAA, under section 553 (b)(B) and (d) of the Administrative Procedure Act (5 U.S.C. 553) for good cause finds that it is unnecessary and contrary to the public interest to provide notice and public comment on this rule or to delay for 30 days its effective date.

### List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 29, 1993.

**Samuel W. McKeen,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

## PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

**Authority:** 16 U.S.C. 1801 et seq.

**§ 646.4 [Revised]**

2. In § 646.4, in paragraph (i), the reference to "§ 630.6" is revised to read "§ 646.6".

**§ 646.7 [Revised]**

3. In § 646.7, in paragraph (o), the comma before "as specified in § 646.10(c)(7)" is revised to a semicolon; in paragraph (w), the semicolon after "EEZ" is revised to a comma; in paragraph (gg), the semicolon after "EEZ" is revised to a comma; and in paragraph (ii), the semicolon after "longline" is revised to a comma.

[FR Doc. 93-18494 Filed 8-3-93; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 921107-3068; I.D. 073093A]

## Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing in the directed fishery for the 'other rockfish' species group in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the "other rockfish" species category total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 31, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the "other rockfish" species category TAC for the Central Regulatory Area was established by the final 1993 initial specifications (58 FR 1678), March 31, 1993) as 1,064 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), established in accordance with § 672.20(C)(2)(ii), a directed fishing allowance for the "other rockfish" species category of 964 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in this area. The regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the "other rockfish" species category in the Central Regulatory Area effective from 12 noon, A.l.t., July 31, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 30, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93-18609 Filed 7-30-93; 3:32 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 58, No. 146
Wednesday, August 4, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### 7 CFR Part 800

RIN 0580–AA25

### Prohibition on Adding Water to Grain

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) is proposing to revise the regulations under the United States Grain Standards Act (USGSA) to prohibit the application of water to grain. This prohibition would be applicable to all persons handling grain, not just those receiving official inspection and weighing services under the USGSA. FGIS has determined that water, which is sometimes applied as a dust suppressant, can be too easily misused to increase the weight of grain. Additionally, externally-applied water has a significant potential for degrading the quality of grain. This action would foster the marketing of grain of high quality to both domestic and foreign buyers and promote fair and honest weighing practices.

**DATES:** Comments must be received on or before December 2, 1993.

**ADDRESSES:** Written comments must be submitted to George Wollam, FGIS, USDA, room 0619 South Building, P.O. Box 96454, Washington, DC, 20090–6454; telemail users may respond to IRSTAFF/FGIS/USDA; telex users may respond to 7607351, ANS:FGIS UC; and telecopy users may respond to the automatic telecopier machine at (202) 720–4628.

All comments received will be made available for public inspection in room 0632 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** George Wollam, address as above, telephone (202) 720–0292.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

#### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Most users of the official inspection and weighing services and those persons that perform those services do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Information Collection Requirements

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in the rule to be amended have been previously approved by OMB under control number 0580–0013.

#### Background

In the March 4, 1987, **Federal Register** (52 FR 6493), FGIS amended the regulations under the United States Grain Standards Act (USGSA) to establish provisions for officially inspecting and weighing additive-treated grain. These provisions were established to offer the grain industry the opportunity to utilize available dust suppression technology, apply insect and fungi controls, and mark grain for identification purposes with Food and Drug Administration (FDA) approved additives.

Industry comments received during the rulemaking process supported the new provisions, but also expressed concern over the possible misuse of additives. A total of 15 comments were received. Three commenters were in favor of the then proposed regulations without any reservations. Two commenters were opposed to the proposed additive provisions, as related to dust-suppressing agents. They asserted, in part, that water may be added just to increase the weight of the grain. Additionally, three of the commenters who were in favor of the proposed provisions expressed concern about the potential for improper addition of additives for the purpose of adding weight to the grain. Applying any substance for the purpose of increasing weight is prohibited by the Food, Drug, and Cosmetic Act (see 21 U.S.C. 342(b)).

The final rule specified that if additives are applied during loading to outbound grain after sampling of weighing, or during unloading to inbound grain before sampling or weighing for the purpose of insect of fungi control, dust suppression, or identification, the inspection and/or weight certificate must show a statement that describes the type and purpose of the additive application. A statement was not required to be shown when additives are applied prior to sampling and weighing out-bound grain or after sampling and weighing inbound grain. But, all incidents or suspected incidents of unapproved additive usage or improper additive application were required to be reported to the appropriate Federal, State, or local authorities for action.

Even after establishing the labeling provisions for officially inspected and weighed additive-treated grain, FGIS continued to receive complaints about high moisture grain and improper use of additives. In 1992, several foreign and domestic grain merchants expressed concern over potential quality degradation due to water application and emphasized that alternative dust control techniques are available that are practical and effective. They also contended that the primary purpose of

applying water is to increase the weight of the grain, and, hereby, gain a market advantage. Furthermore, they expressed deep concern about possible negative market reaction by both domestic and foreign buyers; i.e., buyer confidence in U.S. grain will decline if concerns develop over potential quality degradation caused by water and "paying grain prices for water." Those who support allowing the application of water to grain contend that it is an effective method for reducing dust emissions.

In response to these concerns, FGIS recently amended sections 800.88 and 800.96 of the regulations under the USGSA to require a statement on official export inspection and weight certificates whenever water is applied to export grain at export port locations (58 FR 3211). The purpose of this action was to ensure that foreign buyers of U.S. grain are informed when additives have been applied to grain exported from export port locations. This action did not address non-export grain.

During and since development of the regulations requiring a statement on export grain certificates, numerous grain industry groups, including exporters, importers, millers, processors, and producers, have voiced their growing concern about the effect that the application of water has upon all U.S. grain, whether or not such grain is exported from the U.S. or even offered for official inspection and weighing services. They have stated—and available information confirms—that applying water to grain poses a risk to grain quality and can provide a strong incentive to improperly increase weight.

FGIS believes that the practice of adding water to grain indiscriminately may be occurring and that this practice not only adds weight but creates favorable conditions for microbial-contamination of grain. Section 13(e)(1) of the USGGA (7 U.S.C. 87b) authorizes the Administrator of FGIS to prohibit the contamination of sound and pure grain as a result of the introduction of nongrain substances. Even though kernels of grain contain moisture, externally-applied water is a "nongrain substance." Therefore, FGIS proposes to prohibit the application of water to grain. This prohibition would apply to all persons handling grain—not just those receiving official services under the USGSA.

FGIS recognizes, however, that the amount of moisture in grain may increase due to natural environmental reasons during handling and storage. FGIS also realizes that water must be applied to grain during certain end-use processes. The proposed action does not restrict either naturally-occurring moisture changes or the addition of water during milling, malting, or similar processing operations.

Although studies including research initiated by the National Grain and Feed Association which was conducted by the Department (see for example, Lai, F.S., Martin, C.R., and Miller, B.S., 1982, "Examining the Use of Additives to Control Grain Dust" and "Control of Grain Dust with a Water Spray") and industry experience indicates that applying water to grain can suppress dust, there are alternative dust control methods available and in use throughout the industry. Alternative methods such as pneumatic dust collection systems do not represent the same potential degradation of grain quality, and do not provide an equivalent incentive to increase weight.

Most elevators, including those that currently use water, already have pneumatic dust collection systems installed. Furthermore, many elevators that use water also have oil-based dust suppression systems in place that are more effective than water. These systems use either USP white mineral oil or food grade vegetable oil (e.g., soybean oil). Research has shown that water applied at a level of 0.3 percent to corn reduced the dust concentration by at least 80 percent on the gallery floor. At the same location, soybean oil or mineral oil applied at a level of 0.05 percent reduced dust by more than 90 percent.

Thus, even though water is more economical than mineral or vegetable oil (mineral oil costs over $2 a gallon), far less oil is needed to control the same amount of dust. More importantly, oil is adsorbed (adheres) on grain, thereby providing long-term dust suppression. Water, on the other hand, is either absorbed (soaked-in) into grain or evaporates, and therefore, must be repeatedly applied. Consequently, FGIS believes that prohibiting water as a dust control method would neither increase the risk of elevator dust explosions nor have a significant economic impact on elevators that currently use water.

Proponents for applying water to grain suggest that the problem is merely the lack of enforcement of current FDA restrictions on applying any substance for the purpose of increasing weight. They have recommended that a licensing/permit program be established to allow firms to continue to use water, with certain restrictions. FGIS has considered this recommendation, as well as several other alternatives (e.g., require water weight to be deducted from grain weight, limit the rate of water application, and restrict water applications to certain locations/conditions) and determined that any program for controlling or restricting water usage would be very difficult and expensive to administer. Testing and approving water application systems/equipment, controlling grain elevator inventories, monitoring the amount of water applied and the location of application, and prosecuting suspected violators would require a significant staff commitment and, even then, would be ineffective in preventing all abuses. Also, establishing any program that sanctions the use of water may create a perception of abuse that jeopardizes the reputation of all U.S. grain and undermines the grain industry's commitment to ensuring quality through good handling and storage practices.

FGIS believes that banning the use of water reflects current market needs and would have a positive economic impact on the U.S. grain industry. Furthermore, most of those that are currently applying water to grain are not small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, this proposed action should have little or no impact on small businesses.

Comment, including data and views on this analysis and suggestions regarding any less burdensome or more efficient alternative that would accomplish the purposes described in this proposal, are solicited from interested parties.

**Proposed Action**

FGIS proposes to revise:

1. Section 800.61(b) to prohibit the addition of water to grain.

2. Section 800.61(d)(4) to exclude water as a dust suppressant.

3. Section 800.88(d) to eliminate the provision for adding water to export grain.

4. Section 800.96(c)(2) to eliminate the provision for adding water to export grain.

**List of Subjects in 7 CFR Part 800**

Administrative practice and procedure, Grain, Export.

For reasons set out in the preamble, 7 CFR part 800 is proposed to be amended as follows:

## PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended, (7 U.S.C. 71 *et seq.*).

2. Section 800.61 is amended to add a new paragraph (b)(3) to read as follows:

**§ 800.61 Prohibited grain handling practices.**

* * * * *

(b) * * *

(3) Add water to grain for purposes other than milling, malting, or similar processing operations.

* * * * *

3. Section 800.61(d)(4) is revised to read as follows:

**§ 800.61 Prohibited grain handling practices.**

* * * * *

(d) * * *

(4) *Dust suppressants.* Grain may be treated with an additive, other than water, to suppress dust during handling. Elevators, other grain handlers, and their agents are responsible for the proper use and application of dust suppressants. Sections 800.88 and 800.96 include additional requirements for grain that is officially inspected and weighed.

4. Section 800.88(d) is revised to read as follows:

**§ 800.88 Loss of identity.**

* * * * *

(d) *Additives.*[1] If additives are applied during loading to outbound, including export, grain after sampling or during unloading to inbound grain before sampling for the purpose of insect or fungi control, dust suppression, or identification, the inspection certificate shall show a statement showing the type and purpose of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

5. Section 800.96(c)(2) is revised to read as follows:

**§ 800.96 Weighing procedures.**

* * * * *

(c) * * *

(2) *Additives.*[1] If additives are applied during loading to outbound, including export, grain after weighing or during unloading to inbound grain before weighing for the purpose of insect or fungi control, dust suppression, or identification, the weight certificate shall show the actual weight of the grain after the application of the additive for inbound grain or the actual weight of the grain prior to the application of the additive for outbound or export grain and a statement showing the type and purpose of the additive application, except that no statement is required to be shown when the additive is a fumigant applied for the purpose of insect control.

* * * * *

Dated: July 27, 1993.

**D. R. Galliani,**

*Acting Administrator.*

[FR Doc. 93-18300 Filed 8-3-93; 8:45 am]

BILLING CODE 3410-EN-M

[1] Elevators, other handlers of grain, and their agents are responsible for the additive's proper usage and application. Compliance with this section does not excuse compliance with applicable Federal, State, and local laws.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93-ANE-18]**

## Airworthiness Directives; EROS Series MF10-[ ]-[ ] Full Face Quick Donning Mask Regulators

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to EROS series MF10-[ ]-[ ] full face quick donning mask regulators. This proposal would require replacement of the face piece and the mask shell securing screw. This proposal is prompted by reports of the plastic pin breaking which secures the mask shell with the face piece. The actions specified by the proposed AD are intended to prevent the failure of the pin securing the mask shell to the face piece, which could result in a mask leaking oxygen and the crew losing consciousness.

**DATES:** Comments must be received by October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-18, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from EROS, P.O. Box 10, 78370 Plaisir, France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7155, fax (617) 238-7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-ANE-18." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-18, 12 New England Executive Park, Burlington, MA 01803-5299.

*Discussion:* The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on EROS series MF10-[ ]-[ ] full face quick donning mask regulators. The DGAC advised the FAA that during several flight training exercises the plastic pin which secures the mask shell with the face piece broke due to inadequate strength. This condition, if not corrected, could result in failure of the pin securing the mask shell to the face piece, which could result in a mask leaking oxygen and the crew losing consciousness.

EROS has issued Service Bulletin (SB) No. MF10-35-44, and SB No. MF10-

35–46, both dated June 11, 1991, that specify replacement of the face piece and the mask shell securing screw. The DGAC classified these service bulletins as mandatory and issued AD 91–175(AB) in order to assure the airworthiness of these full face quick donning mask regulators in France.

This full face quick donning mask regulator is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other full face quick donning mask regulators of the same type design installed on aircraft registered in the United States, the proposed AD would require replacement of the face piece and the mask shell securing screw. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 2500 regulators would be affected by this proposed AD, that it would take approximately 0.5 work hours per regulators to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $68,750. The manufacturer advises that required parts would be supplied at no cost to the operator.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Eros:** Docket No. 93–ANE–18.

*Applicability:* EROS series MF10-[]-[] full face quick donning mask regulators installed on but not limited to Airbus A320, Boeing 747–400, British Aerospace (BAe) 125–600 and Jetstream 41, Canadair RJ, Dassault Mystere Falcon 20, McDonnell Douglas MD11, and Piper PA31T and PA42 series aircraft.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the pin securing the mask shell to the face piece, which could result in a mask leaking oxygen and the crew losing consciousness, accomplish the following:

(a) For EROS Model MF10–05–01 full face quick donning mask regulators, within six months after the effective date of this AD, replace the face piece and mask shell securing screw in accordance with EROS Service Bulletin (SB) No. MF10–35–44, dated June 11, 1991.

(b) For all other EROS series MF10-[]-[] full face quick donning mask regulators, within six months after the effective date of this AD, replace the face piece and mask shell securing screw in accordance with EROS Service Bulletin (SB) No. MF10–35–46, dated June 11, 1991.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 27, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–18534 Filed 8–3–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–SW–13–AD]**

## Airworthiness Directives; Sikorsky Aircraft Model S–76A Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Sikorsky Aircraft Model S–76A series helicopters, that currently requires an initial and repetitive inspections of the tail rotor (T/R) blade spar elliptical centering plug (centering plug) for disbonding and adds a pressure pad between the T/R gearbox output shaft and the inboard T/R spar. This action would require the same design changes and procedures as the previous AD, except that it would eliminate the 500 hours' time-in-service repetitive inspections for centering plug debonding. This proposal is prompted by an improved bonding and repair procedure and the lack of reports concerning the movement or debonding of the centering plug. The actions specified by the proposed AD are intended to prevent the centering plug from debonding and moving out of position, which could result in loss of tail rotor control, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received by September 20, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–13–AD, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106. Comments may be inspected at this location

between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The service information referenced in the proposed rule may be obtained from Sikorsky Aircraft, Commercial Customer Support, 6900 Main Street, Stratford, Connecticut 06601–1381. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Donald F. Thompson, Aerospace Engineer, Airframe Section, ANE–152, FAA, Boston Aircraft Certification Office, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7113, fax (617) 270–2412.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–13–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–13–AD, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106.

**Discussion**

On March 7, 1984, the FAA issued AD 84–06–02, Amendment 39–4829, (49 FR 10922, March 23, 1984), to require an initial and repetitive inspections of the tail rotor (T/R) blade elliptical centering plug (centering plug) for disbonding, and to add a pressure pad between the gearbox output shaft and the inboard T/R spar. That action was prompted by three reports of the centering plug debonding from the T/R spar. One report was received of severe in-flight vibrations. An inspection revealed the debonding and lateral movement of the centering plug from the T/R spar, and displacement of the T/R. The requirements of that AD are intended to prevent the centering plug from debonding from the T/R spar and moving out of position, which could result in loss of tail rotor control and subsequent loss of control of the helicopter.

Since the issuance of that AD, Sikorsky Aircraft has developed improved bonding and repair techniques that have resolved the centering plug debonding problem. Also, the addition of the pressure pad between the T/R gearbox output shaft and the inboard T/R spar prevents movement of the centering plug in the event of debonding. Since the previous AD was issued, there have been no reports of centering plug debonding or movement. Also, the Airworthiness Limitations Section of the Sikorsky Model S–76A Maintenance Manual mandates an inspection of the tail rotor composite components, including the centering plug, at intervals not to exceed 750 hours' time-in-service. Therefore, the FAA proposes that the safety concerns precipitating the repetitive inspection at 500 hours' time-in-service intervals described in Sikorsky Aircraft Alert Service Bulletin No. 76–65–35 (ASB), and mandated by AD 84–06–02 have been alleviated by the installation of the pressure pad and by the mandatory T/R composite component inspections at intervals not to exceed 750 hours' time-in-service. Therefore, the repetition 500 hours' time-in-service inspections are no longer necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 84–06–02 to require the same initial inspection and the installation of a pressure pad, part number (P/N) 76102–05004–111, between the inboard T/R blade spar assembly and the T/R gearbox output shaft. However, the 500 hours' time-in-service repetitive inspections would be discontinued.

There are approximately 190 Sikorsky Aircraft Model S–76A series helicopters of the affected design in the worldwide fleet. The FAA estimates that 150 helicopters of U.S. registry would be affected by this proposed AD, that it would save approximately 4 work hours per helicopter by discontinuing the current 500 hours' time-in-service repetitive inspections, and that the average labor rate is $55 per work hour. Based on these figures, the annual cost savings of the proposed elimination of these AD inspections on U.S. operators is estimated to be $33,000 annually.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4829, (49 FR 10922, March 23, 1984) and by adding a new airworthiness directive (AD), to read as follows:

**Sikorsky Aircraft:** Docket No. 93–SW–13–AD. Supersedes AD 84–06–02, Amendment 39–4829, Docket No. 84–ASW–8.

*Applicability:* Model S–76A series helicopters, certificated in any category.

*Compliance:* Required within the next 25 hours' time-in-service after the effective date of this AD, unless accomplished previously.

To prevent the tail rotor blade (T/R) spar elliptical centering plug (centering plug) from debonding and moving out of position, which could result in loss of tail rotor control and loss of control of the helicopter, accomplish the following for blades, part numbers (P/N) 76101–05001 and 76101–05101 series, with more than 130 hours' total time-in-service.

(a) Remove the blades in accordance with the Maintenance Manual and inspect the centering plug for disbonding of the polyurethane filler that fills the space between the aluminum centering plug and the graphite T/R spar in accordance with Sikorsky Aircraft Alert Service Bulletin 76–65–35A, Revision A, dated February 29, 1984 (ASB).

(1) If the inspection of the centering plug shows no evidence of disbonding greater than one-half inch in length, install a pressure pad in accordance with paragraph 2.C. of the Accomplishment Instructions of the ASB.

(2) For disbonds greater than one-half inch, but less than 2 inches in length, repair the blade in accordance with paragraph 2.B.(1) of the Accomplishment Instructions of the ASB.

(3) For disbonds equal to or greater than 2 inches in length, but not complete disbonds, or for disbonded centering plugs with the polyurethane filler excessively cracked or deteriorated to the extent of breaking away from the T/R spar or the centering plug, remove the blade from service and replace with an airworthy blade.

(4) For T/R spars with complete T/R spar to centering plug disbond in which the polyurethane filler is intact and remains fully bonded to the centering plug, repair in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of the ASB.

(5) For T/R spars with complete polyurethane filler to centering plug disbond in which the polyurethane filler is intact and remains fully bonded to the T/R spar, repair in accordance with paragraph 2.B.(3) of the Accomplishment Instructions of the ASB.

(b) Install pressure pad, P/N 76102–05004–111, in accordance with paragraph 2.C. of the Accomplishment Instructions of the ASB.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Boston Aircraft Certification Office, Airframe Section, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished if a pressure pad has been installed.

Issued in Fort Worth, Texas, on July 16, 1993.

**Eric D. Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 93–18566 Filed 8–3–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–SW–09–AD]**

## Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A–1, 269B, 269C, and TH–55A series helicopters. This proposal would require mandatory replacement of all the clevis pins associated with the belt drive clutch control installation. This proposal is prompted by an accident involving the separation of the belt drive clutch control spring assembly (spring assembly) from the idler pulley assembly. The actions specified by the proposed AD are intended to prevent separation of the spring assembly from the idler pulley assembly, loss of power to the main rotor system, and a subsequent forced landing.

**DATES:** Comments must be received by October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–09–AD, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Raymond Reinhardt, Aerospace Engineer, New York Aircraft Certification Office, FAA, Propulsion Branch, ANE–174, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone (516) 791–7421, fax (516) 791–9024.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–09–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–09–AD, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas 76106.

### Discussion

On December 1, 1992, there was a reported in-flight failure of a clutch control spring assembly on a Model 269C helicopter. An investigation

revealed that the belt drive clutch control spring assembly (spring assembly) separated from the idler pulley assembly at the large clevis pin that secures the spring housing to the upper spring fitting. That condition, if not corrected, could result in separation of the spring assembly from the idler pulley assembly, loss of power to the main rotor system, and a subsequent forced landing.

The FAA has reviewed and approved Schweizer Aircraft Corporation Service Bulletin B–256.2, dated June 11, 1993 (SB), that describes procedures for replacing the four clevis pins associated with the belt drive clutch control installation with threaded fasteners. The location of the clevis pins and the replacement parts are described in Part II, Figure B–256.2–1, Notes 1 through 4 of the SB.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of the four clevis pins for the belt drive clutch control installation. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 1,100 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one-half work hour per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $10 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $41,250.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Schweizer Aircraft Corporation and Hughes Helicopters, Inc.:** Docket No. 93–SW–09–AD.

*Applicability:* Model 269A, 269A–1, 269B, and TH–55A series helicopters, and Model 269C series helicopters with serial numbers (S/N) prior to S/N 1632, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent separation of the belt drive clutch control spring assembly (spring assembly) from the idler pulley assembly, loss of power to the main rotor system, and a subsequent forced landing of the helicopter, accomplish the following:

(a) Within the next 400 hours' time-in-service, or on or before January 13, 1994, whichever comes first, replace the clevis pins in the spring assembly with bolts in accordance with Part II of Schweizer Aircraft Corporation Service Bulletin B–256.2, dated June 11, 1993 (SB).

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, Propulsion Branch, ANE–174, New England Region, 181 South Franklin Avenue, Valley Stream, New York 11581. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 12, 1993.

**James D. Erickson,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 93–18565 Filed 8–3–93; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner**

**24 CFR Part 200**

[Docket No. R–93–1623; FR–3028–P–01]

RIN 2502–AF26

**Changes to the Minimum Property Standards**

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S, to specify that seismic design is a mandatory standard for applicable housing. In addition, the rule would update a reference to a private sector seismic design standard currently incorporated into the MPS, and would substitute a new standard for swimming pools. These changes to the MPS are needed to comply with the requirements of Executive Order 12699, the National Earthquake Hazards Reduction Program Reauthorization Act, and the Cranston-Gonzalez National Affordable Housing Act, and to keep referenced industry standards current. These revisions would ensure the structural integrity of applicable housing, and would protect the Department's insurance fund.

**DATES:** Comment due date: October 4, 1993.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Donald R. Fairman, Chief, Standards and Products Branch, Department of Housing and Urban Development, 451 Seventh Street SW., Mail Room B133, Washington, DC 20410–8000, telephone (202) 755–7440, or (202) 708–4594 (voice/TDD). (These are not toll-free telephone numbers.).

SUPPLEMENTARY INFORMATION:

**Background**

All housing constructed under Department of Housing and Urban Development ("Department" or "HUD") mortgage insurance and low-rent public housing programs is required to meet or exceed HUD-established Minimum Property Standards. This proposed rule concerns those property standards applicable to multifamily and care-type housing and to one- and two-family dwellings. Because manufactured homes eligible for insurance are subject to different minimum standards, the Department will propose a separate rule to mandate seismic standards appropriate for that category of housing.

The National Housing Act, 12 U.S.C. 1701–1750g, authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of care-type facilities and one- and two-family and multifamily residential structures. See, e.g., 12 U.S.C. 1715*l*(f), concerning the acceptability of property for mortgage insurance. Accordingly, the Secretary prescribed minimum property standards in 24 CFR part 200, subpart S. Provisions governing the health and safety criteria applicable to multifamily housing were simplified in 1984 (49 FR 18690, May 1, 1984), to rely on criteria already established in State or local codes or nationally recognized model codes.

This simplification was extended to care-type housing insured under HUD programs by a final rule published August 11, 1986 (51 FR 28696). The change implemented by that rule consolidated the requirements applicable to multifamily and care-type housing, allowing the Department to rely on established codes that have been determined by HUD to be comparable to one of the national model codes.

By a separate rule (50 FR 39586, September 27, 1985), the minimum property standards applicable to one- and two-family dwelling also were simplified to rely on criteria already established in State or local codes or one of the nationally recognized model codes. This rule was described (50 FR 39586) as being similar in many respects to the 1984 rule amending the minimum property standards for multifamily housing.

**Executive and Legislative Mandates**

Recently, the Department has become subject to three separate directives that require it to address seismic safety issues in regulations governing programs operated by the Department. The first of these directives is an Executive Order issued by former President Bush. The other two directives are the National Earthquake Hazards Reduction Program Reauthorization Act, approved November 16, 1990 (Pub. L. 101–614) (NEHRP Reauthorization Act), and section 947 of the Cranston-Gonzalez National Affordable Housing Act, approved November 28, 1990 (Pub. L. 101–625) (NAHA).

On January 5, 1990, the President signed Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction" (Executive Order). In part, the purpose of this Executive Order is "to reduce risks to the lives of persons who would be affected by earthquake failures of federally assisted or regulated buildings, and to protect public investments, all in a cost-effective manner." The Executive Order applies only to new buildings being constructed with federal involvement. Each federal agency is made responsible for developing and implementing its own cost-effective seismic safety program commensurate with its specific program responsibilities. However, section 4(a) of the Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) to use consensus procedures in recommending cost-effective seismic design and construction standards that would satisfy the requirements of the Executive Order. The Department has been working with the ICSSC to identify and meet the Department's responsibilities under the Executive Order.

Although the Executive Order does not create rights that make it privately enforceable, its provisions are made mandatory by section 8(a) of the NEHRP Reauthorization Act. Under the NEHRP Reauthorization Act each federal agency is required to issue, by February 1, 1993, final regulations that comply with the Executive Order.

Finally, section 947 of NAHA requires the Secretary to develop seismic safety standards for properties assisted under HUD programs. The Secretary expressly is permitted to defer to local building codes that meet the seismic safety requirements established, and is authorized to utilize the resources of the National Earthquake Hazards Reduction Program (see 42 U.S.C. 7704).

The ICSSC was established as part of this Program in 1978, in response to the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701–7706). Since that time, the ICSSC has been working with federal agencies and the private sector to develop appropriate, generally recognized, seismic safety standards. As part of their efforts, the ICSSC is undertaking a wide-reaching analysis of State and local building codes to determine equivalency to accepted and evolving seismic safety standards incorporated in national model building codes. This proposed rule would permit the Department to benefit from the efforts of the ICSSC, by referencing private sector seismic design and construction standards, as intended under section 3(a) of the Executive Order.

The Department expects to follow the recommendations of the ICSSC in applying the requirements that would be established by the proposed rule, as long as those recommendations would promote the purposes of the Department's programs. For example, the seismic safety requirements would apply where HUD assistance is provided through loan or mortgage insurance programs, and the requirements will apply to additions and renovations to existing buildings.

Further, an addition or renovation should not decrease the seismic resistance of an existing building .

**Referenced Standard for Seismic Design**

Since 1984, most of the standards referenced in the MPS have been changed. One of the recent changes adopted by the American Society of Civil Engineers (ASCE) in 1988, but not published until July 1990, is referenced in the HUD MPS 4901.1 and 24 CFR part 200 as ANSI Standard A58.1–1982, Minimum Design Loads for Buildings and Other Structures. With the sponsorship change of this standard from the American National Standards Institute (ANSI) to the American Society of Civil Engineers (ASCE), and the revisions published by ASCE in 1990, the Department is proposing to revise its reference to this standard to be consistent with section 526 of the National Housing Act, OMB Circular A–119 and the goals of the Department. Specifically, the Department is proposing to adopt the current edition of the standard, known as ASCE 7–88, as published by the ASCE.

Adoption of this standard does not represent any substantive change in the standards applied by HUD, but merely

recognizes the change in sponsorship of the standard from ANSI to the ASCE. The ANSI Standard, A58.1–1982, is currently referenced in appendix B to 24 CFR part 200, and in part 200, subpart S.

In addition, the Department is proposing changes to update the address of ANSI, add the American Society of Civil Engineers to the list of recognized standards-development organizations, and correct minor typographical errors in the current regulatory text.

**Referenced Standard for Swimming Pools**

Similarly, the Department is proposing to replace the standard for swimming pools currently incorporated by reference in the minimum property standards for housing. The current standard, published in HUD Handbook 4940.1, is dated October 1972. The Department proposes to replace this outdated standard with the Standard for Public Swimming Pools approved on February 18, 1991, by the American National Standards Institute, known as ANSI/NSPI–1–1991. The Department believes this change also will be consistent with OMB Circular A–119 and the Department's policy of assuring quality construction for affected properties. Appendix A to 24 CFR part 200 would be amended to reflect the proposed change in swimming pool standards.

**Other Matters**

*Major Rule*

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The major portion of the rule is designed to effectuate statutory requirements broadly, so that affected parties are permitted to choose among reasonable alternatives in complying with the statutory requirements. Generally, these requirements are imposed separately—through State and local building codes that have been, or are being, updated to include the seismic safety standards. This rule would comply with the statutory requirements by specifically referencing existing standards, which have been reviewed and determined to be adequate. The remainder of the rule is limited to routine updating of material incorporated by reference, including titles and addresses, and to updating the minimum property standard applicable to swimming pools.

*Environmental Impact*

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule have federalism implications, and are subject to review under the order. Specifically, the rule provides for additional building design and construction standards to be applied to certain buildings in which federal assistance is provided. Because current building standards are met largely though compliance with existing State and local building codes, the additional requirement imposed by this rule may encourage States and local jurisdictions to adopt more stringent seismic design standards. This approach would allow local contractors to continue to rely upon the State and local codes in building to meet any federal requirements.

However, this rule is intended to implement statutory requirements that are broadly applicable to federal programs government-wide, and are not limited to HUD programs. In an effort for consistency and simplification, and as a result of information provided by the Interagency Committee on Seismic Safety in Construction, a great majority of State and local governments have already adopted acceptable seismic design and construction standards in their State and local codes. In large part, the movement to include seismic standards in building design and construction was led by national model code organizations, whose model codes are often adopted by State and local governments.

Therefore, while the Department recognizes the potential federalism implications of this rule, the Department believes any federalism impact on State and local governments would be a function of the government-wide federal requirements, rather than this discrete rule. Therefore, a more comprehensive review under Executive Order 12612 is not required, because the implementation of the statutes and Executive Order 12699 leaves little discretion with the Department to lessen these impacts.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

*Regulatory Agenda*

This rule was listed as Item No. 1420 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24404), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects in 24 CFR Part 200**

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social security.

For the reasons set out in the preamble, title 24, part 200 of the Code of Federal Regulations, is proposed to be amended as follows:

**PART 200—INTRODUCTION**

1. The authority citation for part 200 would continue to read as follows:

**Authority:** 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

Subpart S—Minimum Property Standards

2. Section 200.925a would be amended by revising paragraph (c)(2) to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate seismic design, or if it fails to regulate subareas in more than one of the following major areas; fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, electrical, and elevators. See § 200.925b.

* * * * *

3. Section 200.925b would be amended by revising the heading of paragraph (c) and paragraph (c)(5) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(c) *Structural loads and seismic design.* * * *

(5) Earthquake loads (in localities identified by ASCE–7–88 (formerly ANSI A58.1–82) as being in seismic zones 1, 2, 3, or 4, and Guam).

* * * * *

4. Section 200.925c would be amended by revising paragraph (c) to read as follows:

§ 200.925c Model codes.

* * * * *

(c) *Designation of model codes.* When a multifamily or care-type property is to comply with a mode code, it shall comply with one of the model codes designated in paragraphs (c)(1), (2), or (3) of this section, and with any other code or codes identified in the same paragraph. However, seismic design is a mandatory requirement. In addition, the property shall comply with all of the standards that are incorporated into the code or codes by reference. By the time of application for insurance or other benefits, the developer or other interested party shall notify the Department of the code or group of codes to which the developer intends to comply.

* * * * *

5. Section 200.926 would be amended by revising paragraph (c)(2) to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

* * * * *

(c) * * *

(2) A State or local building code will be partially accepted if it regulates most of the areas on the list. However, no code may be partially accepted if it fails to regulate seismic design, or if it fails to regulate subareas in more than one of the following major areas: Fire safety, light and ventilation, structural loads and seismic design, foundation systems, materials standards, construction components, glass, mechanical, plumbing, and electrical. See § 200.926a.

* * * * *

6. Section 200.926a would be amended by revising paragraphs (c)(3) and (5) to read as follows:

§ 200.926a Residential building code comparison items.

* * * * *

(c) *Structural loads and seismic design.*

* * * * *

(3) Snow loads (for jurisdictions with snow loading conditions identified in Section 7 of ASCE–7–88 (formerly ANSI A58.1–82);

* * * * *

(5) Earthquake loads (for jurisdictions in seismic zones 3 or 4, as identified in section 9 of ASCE–7–88 (formerly ANSI A58.1–82).

* * * * *

7. The table in § 200.926c would be amended by revising the first column heading to read "Deficient major items from § 200.926a as determined by field office review" and by revising item (c) in the first column to read "(c) Structural loads and seismic design".

8. Section 200.926e would be amended by revising paragraphs (b), (c) introductory text, (c)(2), and (d) to read as follows:

§ 200.926e Supplemental information for use with the CABO One and Two Family Dwelling Code.

* * * * *

(b) *Roof snow load.* The roof snow load shall be in accordance with Section 7 of ASCE–7–88 (formerly ANSI A58.1–82).

(c) *Wind pressures.* The minimum Design Wind Pressures (net pressures) set forth below apply to areas designated as experiencing basic wind speeds up to and including 80 mph, as shown in ASCE–7–88 (formerly ANSI A58.1–82), Figure 1, Basic Wind Speed Map. These pressures also apply to buildings not over 30 feet in height above finish grade, assuming exposure C as defined in ASCE–7–88.

* * * * *

(2) *Severe wind design pressures.* If the construction is higher than 30 feet, or if it is located in an area experiencing wind speeds greater than 80 mph, higher design wind pressures than shown above are required. Use Section 6 of ASCE–7–88 (formerly ANSI A58.1–82) for higher criteria and for determining where wind speeds greater than 80 mph occur. Pressures are assumed to act horizontally on the gross area of the vertical projection of the structure, except as noted for roof design.

(d) Seismic conditions shall be in accordance with Section 9 of ASCE–7–88 (formerly ANSI A58.1–82).

* * * * *

§§ 200.937, 200.938, 200.939 [Amended]

9. Sections 200.937(a)(2), 200.938(a)(2), and 200.939(a)(2) would be amended, respectively, by revising the address, "1430 Broadway, New York, NY 10018" to read as follows: "11 West 42nd Street, New York, NY 10036".

10. Appendix A to part 200 would be amended by revising the address of the American National Standards Institute; by adding a new standard in the American National Standards Institute list after ANSI A161.1–80; by adding in alphabetical order a new organization and its standard following the American National Standards Institute; and by removing "4940.1–10/72 Minimum Property Standards for Semi-private Swimming Pools and Wading Pools" listed under the Department of Housing and Urban Development, Handbooks, to read as follows:

**Appendix A to Part 200—Standards Incorporated By Reference in the Minimum Property Standards for Housing (HUD 4910.1)**

* * * * *

American National Standards Institute, 11 West 42nd Street, New York, NY 10036.

* * * * *

ANSI/NSPI–1–1991 Standard for Public Swimming Pools

* * * * *

American Society of Civil Engineers, 345 East 47th Street, New York, NY 10017.

ASCE–7–88 Minimum Design Loads for Buildings and Other Structures (formerly ANSI A58.1–82).

* * * * *

11. Appendix B to part 200 would be amended by removing the listing for the "American National Standards Institute" and its standard, and by adding in alphabetical order a new organization and its standard to read as follows:

**Appendix B to Part 200—Standards Incorporated By Reference in the Minimum Property Standards for One and Two Family Dwellings**

* * * * *

American Society of Civil Engineers, 345 East 47th Street, New York, NY 10017.
ASCE–7–88 Minimum Design Loads for Buildings and Other Structures (formerly ANSI A58.1–82).

* * * * *

Dated: June 1, 1993.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 93–18475 Filed 8–3–93; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF TREASURY

### Fiscal Service

### 31 CFR Part 209

RIN 1510–AA30

### Payment to Financial Institutions for Credit to Accounts of Employees and Beneficiaries

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Supplemental proposed rule.

**SUMMARY:** On December 4, 1992, the Financial Management Service (FMS) published a notice of proposed rulemaking revising 31 CFR part 209 (57 FR 57400). That notice invited comments for a 30 day period ending January 4, 1993. No comments were received. A review of part 209 conducted independently of the formal notice and comment procedure determined that an additional revision to the language of part 209, not included in the December 4, 1992, notice, is necessary. This supplemental proposed rule provides the opportunity for formal notice and comment on the additional change. The language of § 209.4(c) also was revised to enhance readability and clarify meaning.

**DATES:** Comments must be submitted by September 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Janelle W. Edgar, Program Analyst, 202–874–6844.

**SUPPLEMENTARY INFORMATION:** On December 4, 1992, a notice of proposed rulemaking to revise this regulation was published (57 FR 57400). The notice invited comments for a 30 day period ending January 4, 1993. No comments were received.

As a consequence of an agency review conducted independently from that formal notice and comment procedure, it has been determined that an additional revision to the language of 31 CFR 209.4(c) is necessary prior to publication of a final rule revising part 209. The revised language of part 209, as published on December 4, 1992, requires the head of an agency to authorize the appropriate disbursing officer to draw a check for the total amount in favor of a financial institution (including a financial institution that is not a participating Automated Clearing House receiver) if that financial institution has been designated by two or more employees under the procedures set out in § 209.4(b). That provision is inconsistent with the language of the underlying statute. The language of 31 U.S.C. 3332(c) provides that the head of an agency may authorize such a transfer. The intended effect of this notice is to revise the language of part 209 to comport with the discretionary language of 31 U.S.C. 3332(c). The language of 31 CFR 209.4(c) has also been revised to enhance readability and clarify meaning.

Treasury has determined that this is not a major rule as defined by Executive Order 12291. Accordingly, a regulatory impact analysis is not required. Any economic or other consequences resulting from this revision will be a direct result of harmonizing the language of the regulation with the language of the underlying statute, and, therefore, the implementation of that statute.

It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required. Any such impact flows directly from the implementation of the language of 31 U.S.C. 3332(c).

### List of Subjects in 31 CFR Part 209

Banks, banking, Government employees, wages.

For reasons set out in the preamble, 31 CFR part 209 is amended as set forth below.

1. The authority citation continues to read as follows:

**Authority:** 31 U.S.C. 321, 3322, and 3332.

2. Section 209.4 is amended by revising paragraph (c) to read as follows:

**§ 209.4 Payments of net pay for employees.**

* * * * *

(c) Whenever, under the procedures set out in paragraph (b) of this section, payments are made by an agency on the same regularly recurring dates to two or more employees who designate the same financial institution, the head of the agency may authorize the appropriate disbursing officer to draw a check for the total amount in favor of that institution for credit to the accounts of the employees. If directed by the head of an agency, the disbursing officer shall draw the check in that manner if the financial institution has agreed to such an arrangement.

**Russell D. Morris,**

*Commissioner.*

[FR Doc. 93–18531 Filed 8–3–93; 8:45 am]

BILLING CODE 4810–35–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

[CGD 05–93–053]

### Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish permanent special local regulations for the Blue Angels Airshow held annually over the Severn River in the vicinity of the U.S. Academy, Annapolis, Maryland. The effect of these regulations will be to restrict general navigation in the regulated area for the safety of spectators and participants. These regulations are needed to provide for the safety of life, limb, and property on the navigable waters during the event.

**DATES:** Comments must be received on or before September 20, 1993.

**ADDRESSES:** Comments should be mailed or hand carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments will be available for inspection and copying at room 209 of this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting

comments should include their names and addresses, identify this notice (CGD 05–93–053) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. The regulation may be changes in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

**Drafting Information**

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT Monica L. Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Proposed Regulation**

Each year, the U.S. Naval Academy submits an application to hold a Blue Angels Airshow during the last half of May. This is a regular yearly event in which the Coast Guard is asked to provide control of spectator and commercial traffic within a certain area. In the past, Coast Guard patrol was provided during practice sessions and the actual performance, which consists of six high performance jet aircraft flying at a low altitudes in various formations over the Severn River. The Federal Aviation Administration regulations require closing the waterway to vessel traffic as a prerequisite for this event. In order to satisfy the FAA as well as provide for the safety of the boating public, the Coast Guard proposes to create a special local regulation to close a portion of the Severn River to vessel traffic each year during the airshow and practice sessions. Historically, commercial traffic has not been severely disrupted, and the Coast Guard does not anticipate any problems in the future.

**Regulatory Evaluation**

This proposed regulation is considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for five hours each day, for three days each year, and the impacts on routine navigation are expected to be minimal.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this proposal on non-participating small entities is expected to be minimal, the Coast Guard will certify under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

**Federalism Assessment**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it is anticipated that this proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

This proposed rulemaking is being thoroughly reviewed by the Cost Guard and it is anticipated that it will be determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement will be prepared and placed in the rulemaking docket, and will be available for inspection or copying where indicated under "ADDRESSES".

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. New section 100.518 is added to read as follows:

**§ 100.518 Severn River, College Creek, and Weems Creek, Annapolis, Maryland.**

(a) *Definitions*: (1) *Regulated area.* The waters of the Severn River bounded on the southeast by a line drawn from the quick flashing privately maintained light at the U.S. Naval Academy in position latitude 38°58′49.0″ North, longitude 76°28′49.0″ West, east to latitude 38°58′33.0″ North, longitude 76°28′05.0″ West, thence northeast to Carr Point, and bounded on the northwest by the U.S. Route 50/301 fixed highway bridge (New Severn River Bridge) centerpoint at latitude 39°00′23″ North, longitude 76°30′15.0″ West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective period.* This section is effective during, and for one hour before any scheduled event starts. The Commander, Fifth Coast Guard District will publish a notice in the **Federal Register** and the Fifth Coast Guard District Local Notice to Mariners that announces the times and dates that this section is in effect.

Dated July 23, 1993.

**W.T. Leland,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 93–18551 Filed 8–3–93; 8:45 am]

BILLING CODE 4910–14–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[WI31-01-6762; FRL-4687-6]**

## Clean Air Act Approval and Promulgation of Commitment To Adopt a Rule for Reasonably Available Control Technology for Oxides of Nitrogen for Wisconsin

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The USEPA proposes approval of revisions to the State Implementation Plan (SIP) for ozone submitted by the State of Wisconsin. This portion of the implementation plan was submitted by the State to satisfy Clean Air Act (CAA or Act) requirements for adoption of rules for application of reasonably available control technology (RACT) for oxides of nitrogen (NOx) in the Milwaukee, Kewaunee, Manitowoc, and Sheboygan ozone nonattainment areas in Wisconsin. Under the CAA, USEPA must approve or disapprove SIPs or portions of SIPs within time frames specified in the CAA; failure to do so would render USEPA liable to citizen suits to rulemake on those SIPs and would delay making approvable rules federally enforceable. In this notice, USEPA is proposing action, not on the rules themselves, but on a commitment by the State to submit the $NO_x$ RACT rules at a later date.

**DATES:** Comments on this proposed action must be received in writing by September 3, 1993. Comments should be addressed to the contact indicated below.

**ADDRESSES:** Copies of the State's submittal and other information are available for inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

**FOR FURTHER INFORMATION CONTACT:** Daniel Meyer, U.S. Environmental Protection Agency (AT-18J), 77 W. Jackson Boulevard, Chicago, Illinois 60604-3590, (312) 886-9401.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The air quality planning requirements for the reduction of $NO_x$ emissions through RACT are set out in section 182(f) of the CAA. Section 182(f) requirements are described by USEPA in a notice, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992. 57 FR 55620 (hereinafter $NO_x$ Supplement to the General Preamble). The November 25, 1992, notice, which contains general information on the $NO_x$ provisions, is incorporated into this proposal by reference.

Section 182(f) of the CAA requires States within moderate or above ozone nonattainment areas or the ozone transport region to apply the same requirements to major stationary sources of $NO_x$ ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs). For more information on what constitutes a major source, see section 2 of the $NO_x$ Supplement to the General Preamble. 57 FR 55622.

Section 182(b)(2)(C) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no $NO_x$ CTGs issued before enactment and USEPA has not issued a CTG document for any $NO_x$ sources since enactment. States, in their RACT rules, are expected to require final installation of the actual $NO_x$ controls by May 31, 1995, for those sources for which installation by that date is practicable. See 57 FR 55623.

Under Section 110(k)(4), the Administrator may approve a plan revision based on a commitment from the State to adopt specific enforceable measures by a specified date, but not later than 1 year after the date of USEPA approval of the plan revision that incorporated that commitment. See 57 FR 55622-55623. The memoranda of July 22, 1992, entitled "Guidelines for State Implementation Plan Submittals Due November 15, 1992," and September 16, 1992, entitled "Correction of State Implementation Plan Submittals Table," from Deputy Assistant Administrator Michael Shapiro also outline general requirements for conditional approval actions.

### II. Today's Action; Analysis of State Submission

As noted above, section 110(k)(4) of the CAA allows USEPA to accept a commitment from States to adopt portions of SIPs rather than the SIP itself. For example, USEPA may, in certain cases, accept a commitment from States to adopt $NO_x$ RACT rules rather than the $NO_x$ RACT rule itself. The $NO_x$ Supplement to the General Preamble, the memoranda of July 22, 1992, and September 16, 1992, from Deputy Assistant Administrator Michael Shapiro, and a February 2, 1993, memorandum entitled "Questions and Answers on Nitrogen Oxides Emissions Policy," from G.T. Helms outline approvability criteria for a $NO_x$ RACT committal. Approvability criteria for this committal include:

1. A description of the reason for the committal SIP versus a full SIP submittal.
2. Documentation that credible photochemical grid modeling is not available or did not consider the effects of $NO_x$ reductions.
3. Identification of resources to complete such modeling.
4. A schedule outlining the milestones that have been and will be achieved toward completion of $NO_x$ RACT rules. The schedule must include a date for final submittal of rules to USEPA. The date for submitting the final rules to USEPA must be no later than 12 months after USEPA's final approval of the committal SIP.

USEPA is proposing to approve a commitment to adopt $NO_x$ RACT rules for the Milwaukee, Kewaunee, Manitowoc, and Sheboygan areas in Wisconsin because it meets the requirements of section 110(k)(4) of the CAA and conforms to the policy in the $NO_x$ Supplement to the General Preamble, the memoranda from Deputy Assistant Administrator Michael Shapiro of July 22, 1992, and September 16, 1992, and the February 2, 1993 memorandum from G.T. Helms. A detailed analysis of the submittal can be found in an April 28, 1993, Region 5 technical support document.

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to USEPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The State of Wisconsin held public hearings January 12-13, 1993, on their

[1] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

November 15, 1992, commitment to adopt $NO_x$ RACT rules for the Milwaukee, Kewaunee, Manitowoc, and Sheboygan ozone nonattainment areas. Following the public hearings, the commitment was adopted by the State and signed by the Governor's Designee, Donald F. Theiler, Director of Air Management, Wisconsin Department of Natural Resources. This commitment was submitted to USEPA on January 15, 1993, as a proposed revision to their SIP. The January 15, 1993, submittal supplements the State of Wisconsin's prior November 15, 1992, submittal.

*B. RACT Determination and Implementation*

States—including those for which USEPA approves a commitment to adopt a $NO_x$ RACT rule—are expected to require final installation of the actual $NO_x$ controls by May 31, 1995, for sources for which installation by that date is practicable. The $NO_x$ Supplement to the General Preamble, 57 FR 55623, discusses USEPA's interpretation of the RACT requirement.

By this notice, USEPA is proposing to approve the State's commitment to adopt $NO_x$ RACT rules.

**III. Implications of Today's Action**

USEPA is proposing to approve Wisconsin's November 15, 1992, commitment for adoption of $NO_x$ RACT rule(s) as a SIP revision submitted to USEPA for the Milwaukee, Kewaunee, Manitowoc, and Sheboygan ozone nonattainment areas in Wisconsin. Section 110(k)(4) of the Act provides that where USEPA takes final action to approve a commitment to submit a SIP or portion of a SIP, the State must fulfill that commitment (i.e., submit the required SIP or portion thereof) within 1 year following USEPA approval. If the State does not fulfill its commitment by submitting the SIP or revision to USEPA within that year, the Act requires that the SIP be disapproved. If USEPA disapproves the SIP for failing to meet the commitment, there are several additional consequences. As provided under section 179(a) of the Act, the State of Wisconsin would have up to 18 months after a final SIP disapproval to correct the deficiency[ies] that is[are] the subject of the disapproval before USEPA is required to impose one of the two sanctions set forth in section 179(b) of the Act: either highway sanctions or new source review offsets of 2 to 1. If the State has not corrected its deficiency[ies] within 6 months thereafter, USEPA must impose the second sanction. Any sanction USEPA imposes must remain in place until USEPA determines that the State has come into compliance. Note also that any final disapproval would trigger the requirement for USEPA to impose a Federal implementation plan as provided under section 110(c)(1) of the Act.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision of any SIP. USEPA shall consider each request for revision of the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**IV. Request For Public Comments**

USEPA is requesting comments on all aspects of today's proposal.

**V. Executive Order (EO) 12291**

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989. 54 FR 2214–2225. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions, 54 FR 2222, from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

**VI. Regulatory Flexibility**

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on affected small entities. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: June 2, 1993.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 93–18571 Filed 8–3–93; 8:45 am]

BILLING CODE 6560-50-P

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**40 CFR Part 180**

**[PP 1E4033/P565; FRL–4635–2]**

**RIN 2070–AC18**

## Pesticide Tolerance for Clopyralid

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for residues of the herbicide clopyralid in or on the raw agricultural commodity mint hay. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**DATES:** Comments, identified by the document control number [PP 1E4033/P565], must be received on or before September 3, 1993.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public

inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308-8783.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 1E4033 to EPA on behalf of the Agricultural Experiment Stations of Idaho, Oregon, Washington, and Wisconsin. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) propose the establishment of a tolerance for residues of the herbicide clopyralid (3,6-dichloro-2-pyridinecarboxylic acid) in or on the raw agricultural commodity mint hay at 3.0 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year feeding study in dogs fed diets containing 0, 100, 320, and 1,000 milligrams (mg)/kilogram (kg)/day with a no-observed-effect-level (NOEL) of 100 mg/kg/day. Increased liver weights and decreased erythrocyte counts and hemoglobin and hematocrit values were observed in dogs fed 320 mg/kg/day (lowest-effect level).

2. A developmental toxicity study in rats given gavage doses of 0, 15, 75, and 250 mg/kg with no developmental toxicity observed under the conditions of the study. The NOEL for maternal toxicity was established at 75 mg/kg based on decreased body weight, reduced food consumption, and the death of one test animal at the 250-mg/kg dose level (lowest-effect level).

3. A developmental toxicity study in rabbits given gavage doses of 110 and 250 mg/kg with no developmental toxicity observed under the conditions of the study.

4. A 2-year chronic feeding/carcinogenicity study in mice fed diets containing 0, 100, 500, and 2,000 mg/kg/day with a NOEL for systemic effects of 500 mg/kg. Decreased body weight was observed in male mice fed 2,000 mg/kg/day (lowest-effect level). No carcinogenic effects were observed under the conditions of the study.

5. A 2-year chronic feeding/carcinogenicity study in rats fed diets containing 0, 5, 15, 50, and 150 mg/kg/day with a NOEL for systemic effects of 50 mg/kg/day based on decreased body weight in females fed 150 mg/kg/day (lowest-effect level). No carcinogenic effects were observed under the conditions of the study.

6. A two-generation reproduction study in rats fed diets containing 0, 150, 500, and 1,500 mg/kg/day with no observed effect on reproductive performance. A systemic NOEL of 500 mg/kg/day was established for the study based on reduced terminal body weight in the F0 generation at 1,500 mg/kg/day.

7. Mutagenicity studies including dominant-lethal assay in rats, *in vivo* rat cytogenetic, *in vitro Salmonella* and *Saccharomyces* assays, *in vivo* mouse host-mediated assay, and an unscheduled DNA synthesis assay, which were all negative.

8. A metabolism study in rats indicates that clopyralid is readily absorbed after being ingested and that the majority of the radioactive dose is excreted within 24 hours of ingestion. Detectable levels of radioactivity were found in test animals 72 hours after ingestion.

The reference dose (RfD) for clopyralid is established at 0.5 mg/kg body weight(bwt)/day. The RfD is based on a NOEL of 50 mg/kg/bwt/day from the 2-year feeding study in rats and an uncertainty factor of 100. The theoretical maximum residue contribution from established tolerances utilizes 1.6 percent of the RfD for the overall U.S. population (3.5 percent of the RfD for the subgroup most highly exposed, children aged 1 to 6 years). Dietary exposure to residues of clopyralid in fresh mint and mint oil at 3.0 ppm would utilize less than 0.1 percent of the RfD for the U.S. population.

The nature of the residue in plants is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since the feeding of treated mint hay will be prohibited.

There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.431 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 1E4033/P565]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 23, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By amending § 180.431(a) by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.431 Clopyralid; tolerances for residues.

(a) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Mint, hay | 3.0 |
| * * * * * | |
| * * * * * | |

[FR Doc. 93–18239 Filed 8–3–93; 8:45 am]

BILLING CODE [illegible]

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 226

RIN 0648–AF06

### Designated Critical Habitat; Northern Right Whale

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of a public hearing on a proposal to designate critical habitat for the northern right whale.

**SUMMARY:** On May 19, 1993, (58 FR 29186) NMFS proposed regulations to designate critical habitat for the northern right whale. The areas proposed for designation are portions of Cape Cod Bay, Stellwagen Bank and waters adjacent to the coasts of Georgia and Florida.

NMFS has scheduled an additional public hearing on the proposal in Boston, Massachusetts. Hearings in Georgia and Florida were announced on July 19, 1993 (see **DATES**). Anyone wishing to make a presentation at a public hearing should register upon arrival and be prepared to provide a written copy of their testimony at the time of presentation. Depending on the number of persons wishing to speak a time limit may be imposed.

**DATES:** A public hearing is scheduled for August 25, 1993, from 7:30 to 9:30 p.m., at the Ramada Inn, 225 McClellan Highway, East Boston, Massachusetts. The public hearing for Florida is scheduled for August 24, 1993, beginning at 2 p.m. until all comments have been heard, at the Canaveral Port Authority, 200 George King Boulevard, Port Canaveral, Florida. The public hearing for Georgia is scheduled for August 25, 1993 beginning at 7 p.m. until all comments have been heard, at the Georgia Department of Natural Resources, 1 Conservation Way, Brunswick, Georgia.

The comment period on this proposed action will remain open until August 31, 1993, to allow commenters the opportunity to respond to concerns voiced at the public hearings.

**ADDRESSES:** Send written comments to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8238, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ziobro, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2322); or Thomas Bigford, Northeastern Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 (508–281–9209).

Dated: July 28, 1993.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources.*

[FR Doc. 93–18532 Filed 8–3–93; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 58, No. 148
Wednesday, August 4, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Revised Land and Resource Management Plan for the Kisatchie National Forest; Claiborne, Grant, Natchitoches, Rapides, Vernon, Webster, and Winn Parishes, Louisiana

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare an environmental impact statement.

**SUMMARY:** The Forest Service will prepare a draft and final environmental impact statement for a proposed action to revise the Kisatchie National Forest Land and Resource Management Plan Pursuant to 16 U.S.C. 1604(f)(5) and 36 CFR 219.12.

The agency invites written comments and suggestions within the scope of the analysis. In addition, the agency gives notice that a full environmental analysis and decision-making process will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

In accordance with 40 CFR 1501.6, the Bureau of Land Management will be a cooperating agency.

**DATES:** Comments concerning the analysis should be received by October 1, 1993, to insure timely consideration.

**ADDRESSES:** Submit written comments and suggestions to: Danny W. Britt, Forest Supervisor, Kisatchie National Forest, P.O. Box 5500, Pineville, LA 71361.

**FOR FURTHER INFORMATION CONTACT:** Cynthia A. Dancak, Planning Staff Officer, (318) 473–7160.

**SUPPLEMENTARY INFORMATION:** The Record of Decision for the current Kisatchie National Forest Land and Resource Management Plan (Forest Plan) was approved on November 4, 1985. Three appeals were received. One was dismissed as untimely; the other two were consolidated into one administrative appeal.

The Chief affirmed the Regional Forester's decision to implement the Plan, but directed the Regional Forester to make the changes he had proposed in his Responsive Statement. On March 30, 1987, the first amendment to the Forest Plan was made. Since that time the Forest Plan has had 15 additional non-significant amendments.

In 1990, the Kisatchie National Forest completed and distributed the 5-Year Review Report of the Forest Plan. As stated in 36 CFR 219.10(g), the Forest Supervisor is required to review the conditions on the land covered by the plan—at least every five years—to determine whether conditions or demands of the public have changed significantly. Based on the findings of that review and report, the Regional Forester, on November 5, 1990, requested approval from the Chief of the Forest Service to revise the Kisatchie Forest Plan. On February 7, 1991, the Chief approved the Regional Forester's request.

The scope of the revision and decisions to be made include:

(1) Establishment of multiple-use goals and objectives (36 CFR 219.11(b);

(2) Establishment of forest-wide management requirements (standards and guidelines) to fulfill the requirements of 16 U.S.C. 1604, applying to future activities (resource integration requirements of 36 CFR 219.13 to 219.27);

(3) Establishment of management areas and management area direction (management area prescriptions), which will include development of desired future condition statements for the management areas (36 CFR 219.11(c)). The Forest is presently divided into 24 management areas;

(4) Determination of land that is suitable for timber production (16 U.S.C. 1604(k) and 36 CFR 219.14). Presently there are 491,822 acres of suitable land for timber production out of 601,887 total Forest acres;

(5) Establishment of allowable sale quantity (ASQ) for timber (36 CFR 219.16). The current average annual ASQ is 145.6 MMBF, however the average annual sold volume has been 124 MMBF since the plan was approved.

(6) Recommendations of roadless areas as potential wilderness (36 CFR 219.17). Presently there are 2 roadless areas (Saline Bayou and Cunningham Brake) identified as potential wilderness;

(7) Recommendations for Wild and Scenic River designations. Presently there are 6 rivers (Castor Creek, Drakes Creek, Kisatchie Bayou, Whiskey Chitto Creek, Sixmile Creek East Fork, Sixmile Creek West Fork) identified as eligible for designation; Eligibility studies are complete, and this EIS will consider these rivers and their individual segments for suitability as wild and scenic rivers.

(8) Determination of lands that will be available for gas and oil leasing, specific lands for which consent to lease will be permitted, and stipulations for areas where surface occupancy will be restricted or prohibited (36 CFR 228.102); and

(9) Establishment of monitoring and evaluation requirements (36 CFR 219.11(d) and 219.12(k)).

Preliminary issues have been identified as a result of the findings of the 5-year Review of the Forest Plan; a review of the appeal of the Forest Plan; and ongoing monitoring and evaluation of implementation of the Forest Plan. These preliminary issues include:

(1) Examine how coordination with other resource activities affect timber harvest levels on the forest, and how changes in allowable sale quantity (ASQ) affect local economies. This issue includes items such as coordination with the Red-cockaded Woodpecker (RCW), streamside management zones (SMZ's), Southern Pine Beetle (SPB) infestations, the Louisiana pearlshell mussel; as well as what lands should not be designated as suitable for timber production;

(2) Determine what forest management policies, programs and practices should be implemented to maintain or improve biological diversity. Some facets of this issue include conservation and management of unique areas such as seepage bogs and glades, Louisiana Natural Areas Registry sites, Research Natural Areas (RNA's); as well as pinestraw raking, old growth, and the restoration of Longleaf pine and other naturally occurring forested landscapes and natural communities of central Louisiana;

(3) Analyze different options for implementation of the Regional Direction for the management of the

Red-cockaded Woodpecker and its habitat as will be described in a future decision by the Regional Forester;

(4) Analyze how much and what kind of outdoor recreation should be provided, and where it should occur. Facets to this issue include direction for the management of Off Road Vehicles (ORV's), and analysis to identify recreation development needs for recreation opportunities such as interpretive facilities; hiking, horseback, mountain bike, and all terrain vehicle (ATV) trails; public shooting ranges, etc.;

(5) Determine what silvicultural practices should be implemented to best achieve resource management goals while addressing public concerns. This issue will address the incorporation of ecosystem management and landscape ecology principles, analysis of even-aged and uneven-aged silvicultural systems, the appropriate mix of rotation ages and harvest cutting methods for various forest cover types, thinning and stocking guidelines, and site preparation and release methods;

(6) Analyze how much and what kinds of wildlife and fish habitats should the forest provide, for a diverse wildlife program. This issue will address management direction for the two National Wildlife Management Preserves, hunting and fishing opportunities throughout the forest, and management emphasis for neotropical migratory birds and other non-game wildlife species;

(7) And analyze other issues, including appropriate uses of national forest system lands, the range management program, riparian area management, forest access, and prescribed burning.

The Forest Service will consider public comments received on this Notice and from our other public participation efforts to develop other issues as needed.

In preparing the environmental impact statement, the Forest Service will develop, as a minimum, the following range of alternatives:

(1) A current direction (no action) alternative that reflects existing levels of outputs. It also estimates expected levels that would be possible if current allocations, direction, policies, and practices were to continue;

(2) An alternative that responds to the most recent RPA Program;

(3) Other alternatives necessary to respond to the full range of public issues, management concerns, and resource use and development opportunities, including Wild and Scenic River and Wilderness recommendations.

Public participation will be especially important at several points during the project analysis process. The first point in the analysis is the scoping process (40 CFR 1501.7). The scoping process includes:

(1) Identifying potential issues (other than those previously described),

(2) From these, identifying significant issues to be analyzed in depth,

(3) Eliminating from detailed study insignificant issues or those which have been covered by prior environmental review,

(4) Exploring additional alternatives, and

(5) Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

The Forest Service is seeking information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be utilized in the preparation of the draft environmental impact statement. Public participation will be solicited by notifying in person and/or by mail known interested and affected publics and key contacts, through news releases used to give the public general notice, and through a series of open houses. Each open house will begin at 4 pm and conclude at 7 pm and are scheduled for the following dates and locations:

- Caney Ranger District—Wednesday, September 22, 1993. Two concurrent sessions: Minden Chamber of Commerce Building, Minden, LA; and Caney Ranger District office, 324 Beardsley, Homer, LA.
- Catahoula Ranger District—Thursday, September 16, 1993. Catahoula Work Center, Bentley, LA.
- Evangeline Ranger District—Wednesday, September 15, 1993. Evangeline Work Center, Hwy. 488 (Twin Bridges Road), Gardner, LA.
- Kisatchie Ranger District—Friday, September 24, 1993. Kisatchie Ranger District office, Hwy. 6 West (west of I–49), Natchitoches, LA.
- Vernon Ranger District—Tuesday, September 21, 1993. Vernon Ranger District office, 3362 Lake Charles Hwy., Leesville, LA.
- Winn Ranger District—Friday, September 17, 1993. Winn Work Center, Hwy. 84 West, Winnfield, LA.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency and to be available for public review by March 1994. At that time, the Environmental Protection Agency will publish a notice of availability of the draft environmental impact statement in the Federal Register.

The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir.1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulation for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft environmental impact statement, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed by September 1994. The responsible official will consider the comments, responses, environmental consequences

discussed in the final environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding this revision. The responsible official will document the decision and reasons for the decision in the Record of Decision. The decision will be subject to appeal in accordance with 36 CFR part 217.

The responsible official is the Regional Forester, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

Dated: July 28, 1993.

**John L. Rich,**

*Acting Regional Forester.*

[FR Doc. 93–18536 Filed 8–3–93; 8:45 am]

BILLING CODE 3410–11–M

## Forms Under Review by Office of Management and Budget

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

**New Collection**

- National Agricultural Statistics Service

Farmer Information Survey

One-Time Survey

Farms; 5,400 responses; 900 hours

Larry Gambrell (202) 720–5778

**Donald E. Hulcher,**

*Deputy Department Clearance Officer.*

[FR Doc. 93–18513 Filed 8–3–93; 8:45 am]

BILLING CODE 3410–01–M

## Forest Service

### Exempt Decision for East End Salvage Sales and Restoration Projects From Appeal, Umatilla National Forest, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Noticer to exempt decision from administrative appeal.

**SUMMARY:** This is a notification that the Record of Decision for the final environmental impact statement (EIS) for the East End Salvage Sales and Restoration Projects in the eastern third of the Heppner Ranger District on the Umatilla National Forest (Oregon) is exempted from appeal. This is in conformance with provisions of 36 CFR Part 217.4 (a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

**EFFECTIVE DATE:** September 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Heppner Ranger District, David Kendrick, Project Leader, P.O. Box 7, Heppner, Oregon 97836, Phone (503) 676–9187.

**SUPPLEMENTARY INFORMATION:** For the past 11 years, an infestation of western spruce budworm have been affecting major portions of the Heppner Ranger District of the Umatilla National Forest. This defoliation has resulted in a loss of live timber and vegetative cover and a reduction in the overall quality of wildlife habitat, fish habitat, and water quality. Fuel loadings have also increased due to tree mortality, which has also created a hazardous situation that could result in moderate to high intensity wildfires. In 1989, the Zone Entomologist identified that considerable mortality was resulting in some fir stands, either directly attributed to the budwork or to secondary agents such as bark beetles. A district interdisciplinary team (IDT) surveyed the East End Analysis Area to assess what could be salvaged, and the effects of that on wildlife habitat, riparian and instream habitat, water quality, fuel loading.

The Forest Supervisor identified the need to salvage the dead or dying trees in as short a time as possible so the logs would remain merchantable. He also identified the desirability to complete the salvage quickly so that establishment of new forest stands and other restoration projects could take place promptly.

Public scoping for East End analysis began in June of 1992, with individuals, groups, state and federal agencies, the Yakima Indian Nation, and the Confederated Tribes of the Umatilla and Warm Springs Indian Reservations. The analysis of the proposed action continued throughout the year. It was determined that an EIS was required to better evaluate the cumulative effects of timer harvest over such a large area.

The IDT developed six alternatives to analyze, including the No Action Alternative and an alternative which contains only restoration projects (no harvest would occur). The effects of these alternatives were analyzed and documented in a draft EIS for the East End Salvage Sales and Restoration Projects. The draft EIS was released to the public on October 9, 1993. The Preferred Alternative (Alternative B) would harvest about 2,195 acres of heavily infested land. This alternative would produce approximately 25.3 million board feet of timber. Only dead or dying trees will be harvested. No permanent road construction would be required. Approximately 16.6 miles of existing system road would be reconstructed and 17 miles of temporary logging roads would be constructed and obliterated after harvest. Inventoried old growth would not be entered and 9,355 acres of security areas would be left to provide for elk hiding cover as mitigation for harvest. In some areas along the Blue Mountain Scenic Byway, timer harvest would occur to improve visual quality. Over 30 additional restoration projects are included as part of the preferred alternative. These projects will be implemented to improve riparian and instream habitat, water quality, forage, wildlife habitat, and reduce soil compaction and fuel loads.

The proposed action is not consistent with the Umatilla Land and Resource Management Plan Standards and Guidelines for elk habitat effectiveness and big game cover in Management Area E2 (Timber and Big Game and (Management Area C4) Wildlife Habitat. This is due to the large scale of western spruce budwork defoliation and would be inconsistent even if no entry occurred. The Forest Supervisor has decided to issue a site-specific, nonsignificant Forest Plan amendment for the East End Salvage Sales and Restoration Projects which will not alter the "desired future condition" in these management areas. In addition, the Forest Plan will be amended to change a one mile wide portion of management Area A1 (Semi-Primitive Nonmotorized Recreation) on either side of the Blue Mountain Scenic Byway to Management Area A4 (Viewshed 2) to facilitate visual management along this heavily travelled road.

A Biological Assessment was submitted to the U.S. Fish and Wildlife Service (USFWS) for the North American Bald Eagle and the Peregrine

Falcon, two federally listed threatened and endangered animals within the analysis area. USFWS concurred with a finding of "not likely to adversely affect" these species provided the recommendations contained within the Assessment are implemented. Biological Evaluations were also completed for all plant, wildlife, and fish Proposed, Endangered, Threatened, and Sensitive (PETS) species within the analysis area. There will be no direct effect on any PETS species or their critical habitat. There may be cumulative impacts on individual wolverines, but would not likely caused an uplisting of this species. Cultural resource surveys indicate that these projects will have no effect on native American religious sites, archaeological sites, or historic properties or areas.

These sales and accompanying work is designed to accomplish the objectives as quickly as possible and minimize salvage volume loss and resource damage. These salvage projects are crucial to forest rehabilitation and recovery in the East End Analysis Area and meeting Desired Future Conditions. The severity of damage to stands requires immediate action to initiate stand recovery, riparian recovery, streambank stabilization, re-establish vegetation, and reduce sediment and erosion. Based upon the draft EIS and subsequent final analyses for the East End Salvage Sales and Restoration Projects, I have determined that good cause exists to exempt the East End Salvage Sales and Restoration Projects form administrative appeal (36 CFR part 217). Under this regulation, the following are exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting form natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register** and at least 30 days after the Notice of Availability of the final EIS appears in the **Federal Register**, the Record of Decision for the East End Salvage Sales and Restoration Projects may be signed by the Forest Supervisor. Therefore, the East End Salvage Sales and Restoration Projects will not be subject to review under 36 CFR part 217.

Dated: July 28, 1993

**Neal Larsen,**

*Acting Regional Forester.*

[FR Doc. 93–18537 Filed 8–3–93; 8:45 am]

BILLING CODE 3410–11–M

## Grand Island Advisory Commission Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Grand Island Advisory Commission Meeting.

**SUMMARY:** The Grand Island Advisory Commission will meet on August 24, 1993 at 8 a.m. at the Comfort Inn on M–28 East in Munising, Michigan. An agenda for the one day meeting will consist of an update on the Draft Environmental Impact Statement from the Planning Team, a discussion by Dr. Cantrill on concensus building and a discussion of the feasibility study by the feasibility committee.

Interested members of the public are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about this meeting to Dennis Jones, Public Service Team Leader, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786–4062.

Dated: July 29, 1993.

**William F. Spinner,**

*Forest Supervisor.*

[FR Doc. 93–18598 Filed 8–3–93; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Marine Mammals; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Issuance of scientific research permit No. 873.

**SUMMARY:** On June 23, 1993, notice was published in the **Federal Register** (58 FR 34038) that a request for a scientific research permit to take marine mammals had been submitted by the National Marine Fisheries Service, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, CA 92038, to incidentally harass (through vessel approach, helicopter photogrammetry and photographic identification) and collect tissue biopsy samples from several marine mammal species during vessel surveys in the eastern Pacific Ocean. These surveys, which will be conducted off the coasts of Washington, Oregon, California and Mexico during 1993–95, will be used to assess the status of cetaceans and to address issues associated with defining population structures.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on July 26, 1993, as authorized by the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222), NMFS issued the requested permit for the above activities subject to special conditions set forth therein.

Dated: July 28, 1993.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–18533 Filed 8–3–93; 8:45 am]

BILLING CODE 3510–22–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, September 7, 1993; Tuesday, September 14, 1993; Tuesday, September 21, 1993; and Tuesday, September 28, 1993, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey

data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: July 30, 1993.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–18553 Filed 8–3–93; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. QF93–135–000]**

### Georgia-Pacific Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 29, 1993.

On July 22, 1993, Georgia-Pacific Corporation of 133 Peachtree Street, NE., Atlanta, Georgia 30303, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 52 MW small power production facility is located at State Road 216, Palatka, Florida. The facility consists of the #4 recovery boiler and the #4 combination boiler, and four steam turbine generators. The primary energy source of the recovery boiler is biomass in the form of black liquor, and the primary energy source of the combination boiler is biomass in the form of tree bark. Installation of the #4 recovery boiler was completed in 1976, and the #4 combination boiler was completed in 1965.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18526 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. QF93–136–000]**

### Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 29, 1993.

On July 22, 1993, Georgia-Pacific Corporation of 133 Peachtree Street, NE., Atlanta, Georgia 30303, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 33 MW small power production facility is located at West Ninth Street, Brunswick, Georgia. The facility consists of the #5 and #6 recovery boilers, and two associated steam turbine generators. The primary energy source of the facility is biomass in the form of black liquor. Installation of the #5 and #6 recovery boilers was completed in 1971 and 1990, respectively.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18527 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. QF93–137–000]**

### Georgia-Pacific Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

July 29, 1993.

On July 22, 1993, Georgia-Pacific Corporation of 133 Peachtree Street, NE., Atlanta, Georgia 30303, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the 34 MW small power production facility is located at Paper Mill Road, Crossett, Arkansas. The facility consists of one recovery boiler, and the #6 steam turbine generator. The primary energy source of the facility is biomass in the form of black liquor. Installation of the recovery boiler was completed in 1967.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and

must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18528 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. ER93–782–000]

## Allegheny Power Service Co.; Filing

July 29, 1993.

Take notice that on July 9, 1993, Allegheny Power Service Company (Allegheny) tendered for filing a Notice of Cancellation of Monongahela Power Company Rate Schedule FERC No. 37, the Potomac Edison Company Rate Schedule FERC No. 42 and West Penn Power Company Rate Schedule FERC No. 37.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18515 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. ER93–545–000]

## Connecticut Light & Power Co.; Filing

July 29, 1993.

Take notice that on July 20, 1993, Connecticut Light & Power Company (CL&P) tendered for filing an amendment to its original filing of April 6, 1993 in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18516 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. ER93–788–000]

## Hardee Power Partners Limited; Filing

July 29, 1993.

Take notice that on July 6, 1993, Hardee Power Partners Limited (Hardee Power) tendered for filing its adjustments to the monthly capacity charges payable to Seminole Electric Cooperative, Inc. and Tampa Electric Company to Hardee Power.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 11,1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18517 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP93–550–000]

## Michigan Gas Storage Co.; Application

July 29, 1993.

Take notice that on July 14, 1993, Michigan Gas Storage Company (Applicant) 212 West Michigan Avenue, Jackson, Mississippi 49201, filed in Docket No. CP93–550–000 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act to construct and operate about 4,600 feet of pipeline and permission and approval to abandon about 3,200 feet of pipeline, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate approximately 4,600 feet of 36-inch pipe which would replace approximately 3,200 feet of 22-inch pipe and a combination of 20-inch/16-inch pipe in Isabella County, Michigan. It is stated that the portions of pipeline being replaced would be abandoned in place as the proposed 36-inch line would be routed on a new right-of-way. There would be no increase in the certificated capacity.

Applicant states that Line 100 segment consists of parallel 22-inch, 26-inch and 20-inch/16-inch lines which are used to move volumes to and from storage fields behind the Muskegon River Compressor Station and to transport gas for Consumers Power Company and other transporters from Northern Michigan production areas to delivery points in Central and Southern Michigan. Applicant also states that due to changes in location class under DOT and Michigan Public Service Commission safety rules, the portions of Line 100 segment to be replaced are not allowed to be operated at their originally certificated MAOP. These pressure restrictions limit the amount of gas which can be transported during normal winter operating conditions as well as during peak operating conditions. Applicant avers that with normal operating conditions during the withdrawal season, the pressure restriction on the 20-inch/16-inch segment causes it to be shut-in most of the winter; during peak operating conditions, the 22-inch segment would be shut-in as well. The shut-in of both segments would cause a capacity reduction of about 180 MMcf/d at maximum operating conditions. Applicant states that the 22-inch segment is expected to be shut in more often once the 16-inch piping from the Muskegon River Compressor Station to the Herrick Road Valve Site is replaced with 36-inch pipe, as authorized in Docket No. CP93–11–000. Applicant further states that the proposed 36" segment would provide the equivalent capacity of the 22" and 20-inch/16-inch segments it replaces.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a

protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of a certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18523 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–577–000]**

## Natural Gas Pipeline Company of America; Application

July 29, 1993.

Take notice that on July 21, 1993, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93–577–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service for Southern Natural Gas Company (Southern), effective February 1, 1993, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it was authorized by Commission order issued January 31, 1983, in Docket No. CP82–156–000 to transport up to 3,900 Mcf of natural gas per day for Southern from the West Cameron area of offshore Louisiana. Natural further states that it transported the natural gas through its capacity in the U-T Offshore System and delivered the gas to ANR Pipeline Company for delivery to Southern. Natural provided this transportation service pursuant to its Rate Schedule X–132, it is stated.

Natural asserts that Southern, by letter dated June 26, 1992, requested that the transportation service provided under Natural's Rate Schedule X–132 be terminated effective February 1, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18522 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER93–680–000]**

## New York State Electric & Gas Co.; Filing

July 29, 1993.

Take notice that on July 16, 1993, New York State Electric & Gas Company (NYSEG) tendered for filing an amendment to its May 21, 1993 filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 11, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18518 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER93–764–000]**

## Northeast Utilities Service Co.; Filing

July 29, 1993.

Take notice that on July 19, 1993, Northeast Utilities Service Company (NUSCO), on behalf of its operating subsidiaries, The Connecticut Light and Power Company (CL&P) and Western Massachusetts Electric Company (WMECO), tendered for supplemental filing, pursuant to section 205 of the Federal Power Act and § 35.13 of the Commission's Regulations, its borderline sales tariffs and associated service agreements. These tariffs supplement NUSCO's July 2, 1993 filing and govern sales by and between CL&P and WMECO and their neighboring utility, Massachusetts Electric Company, for resale to individual customers. NUSCO request that the tariffs and agreements be made effective in accordance wit their terms.

NUSCO states that copies of its filing have been provided to each utility affected thereby.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.24). All such motions or protests should be filed on or before August 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18519 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. ER93–323–000]**

### Pepperell Power Associates Limited Partnership; Filing

July 29, 1993.

Take notice that on July 15, 1993, Pepperell Power Associates Limited Partnership (Pepperell) tendered for filing an amendment to its original filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18521 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–581–000]**

### Texas Gas Transmission Corp.; Request Under Blanket Authorization

July 29, 1993.

Take notice that on July 26, 1993, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP93–581–000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act for authorization to add a new delivery point for Mississippi Valley Gas Company (MVG) under the certificate issued in Docket No. CP82–407–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that MVG has requested that Texas Gas reestablish a delivery point at the location of the former Greenville #2 Delivery Point in Washington County, Mississippi to allow it to more efficiently supply the gas requirements of the Greenville, Mississippi area. Texas Gas proposes delivery of a maximum annual quantity of natural gas of 9,125,000 MMBtu and a maximum daily quantity of natural gas of 25,000 MMBtu to the proposed delivery point. Texas Gas indicates that service to MVG through the proposed delivery point can be accomplished without detriment to Texas Gas' other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18524 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. ER92–2–003, ER92–3–000, ER92–4–000, ER92–7–000, ER92–14–000, and ER92–443–000]**

### The United Illuminating Co.; Filing

July 29, 1993.

Take notice that on July 21, 1993, The United Illuminating Company (UI) submitted revised System Sales Agreements with Central Vermont Public Service Corporation, Connecticut Municipal Electric Energy Cooperative, UNITIL Power Corp., Massachusetts Municipal Wholesale Electric Company, Long Island Lighting Company, and Montaup Electric Company in compliance with the Commission's Order issued October 6, 1992.

Copies of the filing have been sent to the Connecticut Department of Public Utility Control and to the parties to the Agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18520 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–582–000]**

### Williams Natural Gas Co.; Request Under Blanket Authorization

July 29, 1993.

Take notice that on July 26, 1993, Williams Natural Gas Company (WNG), P.O. 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–582–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a lateral pipeline to provide pipeline quality gas to the Welda town border located in Anderson County, Kansas, under its blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, WNG states that it proposes to construct approximately 700 feet of 2-inch pipeline from the existing Grabham-Welda 30-inch pipeline. WNG further states that the Welda town border is currently served from the Welda storage field and the quality of storage gas has caused numerous moisture and freezing problems. WNG says that service from the 30-inch pipeline would insure pipeline quality gas for the Welda town border. The volume of gas delivered is not expected to change, it is stated.

WNG states that the estimated cost of construction would be approximately $11,587, which would be paid from funds on hand.

WNG indicates that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 835.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18525 Filed 8–3–93; 8:45 am]

BILLING CODE 6717–01–M

## Office of Fossil Energy

**[FE Docket No. 93–72–NG]**

### Conoco, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada, and To Import Liquefied Natural Gas From any Foreign Country

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Conoco, Inc., to import natural gas from and export natural gas to Canada, and to import liquefied natural gas (LNG) from any foreign country. These authorized transactions may not exceed a cumulative total of 50 Bcf of natural gas and LNG over a period of two years beginning on the date of the first delivery of either imports or exports after July 31, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on July 29, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

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## Western Area Power Administration

### Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) Notice of Rate Order No. WAPA–56

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Rate Order—AC Intertie Firm Transmission Service and Nonfirm Transmission Service Rate Adjustment.

**SUMMARY:** Notice is given of the confirmation and approval by the Acting Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of Rate Order No. WAPA–56 and Rate Schedules INT–FT1 and INT–NFT1, placing the proposed firm transmission service and nonfirm transmission service rates for the AC Intertie Project of the Western Area Power Administration (Western) into effect on an interim basis. These rates, hereafter called the provisional rates, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis for a 5-year period or until superseded.

The provisional rates for AC Intertie transmission service rates are based on a two-step firm transmission service rate effective August 1, 1993. Step one of the firm transmission service rate would remain at the existing rate of $4.46 per kilowatt per year through September 30, 1995. Step two of the firm transmission service rate would be increased to $8.01 per kilowatt per year, which is an increase of 80 percent above the $4.46 per kilowatt per year firm transmission service rate.

The Bureau of Reclamation, Department of the Interior, approved the existing rate charge on a final basis, effective May 1, 1976.

A comparison of existing and provisional rates follows:

COMPARISON OF EXISTING AND PROVISIONAL POWER RATES

| | Existing rates and step one of provisional rate Aug. 1, 1993–Sept. 30, 1995 | Provisional rates Oct. 1, 1995 |
|---|---|---|
| Rate Schedule .... | No Schedule | INT–FT1 |
| Firm Transmission Service ($/kW/year). | $4.46 ..... | $8.01 |
| Rate Schedule .... | No Schedule | INT–NFT1 |
| Nonfirm Transmission Service (mills/kWh). | 1.00 ..... | 1.52 |

**DATES:** Rate Schedules INT–FT1 and INT–NFT1 will become effective on an interim basis, beginning on August 1, 1993, and will be in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a 5-year period or until superseded.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453

Ms. Deborah M. Linke, Director, Division of Marketing and Rates, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1545

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581

**SUPPLEMENTARY INFORMATION:** By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Western has developed these rates for the AC Intertie pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); the Reclamation Act of 1902 (32 U.S.C. 388 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and section 8 of the Act of August 31, 1964

(16 U.S.C. 837g), Final Rule (General Regulations) (10 CFR part 904) published in the Federal Register at 51 FR 43124 on November 28, 1986, and the DOE financial reporting policies, procedures for public participation in rate adjustments and extensions found in 10 CFR part 903 published in the Federal Register at 50 FR 37835 on September 18, 1985.

As stated in the Federal Register notice published May 8, 1992 (57 FR 19903), Western proposed alternative rates for both firm transmission service and nonfirm transmission service that set a single rate for the use of either or both the Parker-Davis Project and the AC Intertie transmission systems. However, based on customers' comments and requests, Western decided not to propose the Alternative Transmission service rates at this time.

During the 143-day comment period, Western received 24 written comments. In addition, five persons commented during the September 11, 1992, public comment forum. All comments were reviewed, and responses are addressed in this rate order.

Rate Order No. WAPA–56, confirming, approving, and placing the proposed AC Intertie Project rate adjustment into effect on an interim basis, is issued, and Rate Schedules INT–FT1 and INT–NFT1 will be promptly submitted to the FERC for confirmation and approval on a final basis.

Issued in Washington, DC, July 14, 1993.

**Robert L. Sam Martin,**

*Acting Assistant Secretary for Energy Efficiency and Renewable Energy.*

In the matter of: Western Area Power Administration Rate Adjustment for Phoenix Area Office AC Intertie Project, Rate Order No. WAPA–56.

## Order Confirming, Approving, and Placing the AC Intertie Project Firm and Nonfirm Transmission Service Rate Into Effect on an Interim Basis

July 14, 1993.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101(a) *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 388 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 2 to Delegation Order No. 0204–108, published on August 23, 1991 (56 FR 41835), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary); and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). The Office of the Assistant Secretary for Conservation and Renewable Energy was subsequently redesignated as the Assistant Secretary for Energy Efficiency and Renewable Energy by the Secretary of Energy on March 3, 1993. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

### Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

AC Intertie: Pacific Northwest-Pacific Southwest Intertie Project.
Additions: A unit of property constructed or acquired which enhances or improves a project system.
Assistant Secretary for Energy Efficiency and Renewal Energy (Assistant Secretary): The approving authority to confirm, approve, and place rates into effect on an interim basis.
BCP: Boulder Canyon Project.
Cost Evaluation Period (CEP): The first 5 future years in the PRS, normally consistent with the budget period.
Crosswalk: A reconciliation between a project's PRS and Western financial statement.
CSRS: Civil Service Retirement System.
Current PRS: The PRS used in this rate order, which was used to test the adequacy of the existing rate.
Customer Brochure: A document prepared for public distribution explaining the background of the rate proposal contained in this rate order.
DOE: Department of Energy.
DOE Act: Department of Energy Organization Act, August 4, 1977 (42 U.S.C. 7101 *et seq.*)
DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting.
EIS: Environmental impact statement.
Engineering Ten Year Construction and Replacement Plan: A planning document prepared by Western for transmission system construction for a 10-year period. Also referred to as the "Engineering 10-Year Plan."
FERC: Federal Energy Regulatory Commission.
FDR: Facilities development report. A planning document prepared by Western for specific transmission system construction.
FY: Fiscal year.
IDC: Interest During Construction.
Interior: U.S. Department of the Interior.
kW: Kilowatt.
$/kW/year: Annual charge for capacity (usage—$ per kilowatt per year).
kWh: Kilowatthour.
Mills/kWh: Mills per kilowatthour.
Multiproject Costs: These are costs for facilities being charged to one project that benefits other projects.
MW: Megawatt.
NEPA: National Environmental Policy Act of 1969. (42 U.S.C. 4321 *et seq.*).
O&M: Operations and maintenance.
P-DP: Parker-Davis Project.
PAO: Phoenix Area Office.
Pinch-point: The FY in which the level of the rate is set as dictated by a revenue requirement in some future year to meet relatively large annual costs or to repay investments which come due.
PRS: Power repayment study.
Proposed rate: A rate revision that the Administrator of Western recommends to the Assistant Secretary for Energy Efficiency and Renewable Energy for approval.
Provisional rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Assistant Secretary for Energy Efficiency and Renewable Energy.
Ratesetting PRS: The PRS that utilizes, in whole or part, proposed or assumed rates. It is designed to demonstrate that potential revenue levels will satisfy the cost recovery criteria over the remainder of the power system's repayment period.
Reclamation: Bureau of Reclamation, U.S. Department of the Interior.
Replacement: A unit of property constructed or acquired as a substitute for an existing unit of property for the purpose of maintaining the power features of a project.
Replacement study: The cyclical analysis of replacement service lives. A high level of replacement activity for a few consecutive years will reoccur in future years at a similar high level with the years in between tending to be at a lesser level of replacement.
Secretary: Secretary of Energy.
Treasury: Secretary of the Department of the Treasury

Western: Western Area Power Administration, DOE.

**Effective Date**

The AC Intertie rates for firm transmission service and nonfirm transmission service will become effective on an interim basis beginning on August 1, 1993, and will be in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a 5-year period or until superseded. Western is implementing a two-step rate for firm transmission and nonfirm transmission service.

The first step is a continuation of the rate due to no additional revenues needed prior to 1996.

The reason for the second step increase is that the 500-kV Mead-Phoenix transmission line comes into service in FY 1996, along with its additional capacity. This will add significantly to the transmission capability available to the AC Intertie customers. Also, FY 1996 revenues are estimated on full transmission capability on a bilateral basis.

**Public Notice and Comment**

The Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of the firm transmission service and nonfirm transmission service rates. The provisional firm transmission service and nonfirm transmission service rates represent an increase of approximately 80 percent in the firm transmission service rate and 52 percent in the nonfirm transmission service rate; therefore, it is a major rate adjustment as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process:

1. A **Federal Register** notice was published on May 8, 1992 (57 FR 19903), officially announcing the proposed rate adjustment for firm transmission service and nonfirm transmission service rates; initiating the public consultation and comment period; announcing the June 19, 1992, public information forum and the June 30, 1992, public comment forum; and presenting procedures for public participation.

2. A letter was mailed to all AC Intertie customers and other interested parties on May 19, 1992, providing a copy of the AC Intertie Proposed Rate Adjustment Brochure and announcing the informal customer meeting. The informal customer meeting was held on June 3, 1992, in Phoenix, Arizona. At this informal meeting, Western representatives explained the need for the increase and answered questions from those attending.

3. At the public information forum held on June 19, 1992, Western explained the need for the proposed rate adjustments and answered questions from those attending. Western also announced the planned second public comment forum and the extension of the consultation and comment period for the AC Intertie.

4. At the public information forum and public comment forum held on June 30, 1992, Western explained the need for the proposed rate adjustments in greater detail and answered questions.

5. On August 6, 1992, a **Federal Register** notice was published (57 FR 33777) formally announcing that the consultation and comment period would be extended through September 28, 1992, for the proposed rate adjustments for the AC Intertie.

6. A public comment forum was held on September 11, 1992, to give the public an opportunity to comment for the record. Five people, who represent customers and customer groups, made oral comments.

7. Twenty-four comment letters were received during the 143-day consultation and comment period. The consultation and comment period ended on September 28, 1992.

**Project History**

The AC Intertie was authorized as part of a much larger alternating current (AC) and direct current (DC) combined transmission system (Pacific Intertie Project) by section 8 of the Act of August 31, 1964, 16 U.S.C. 837g. The basic purpose of the Pacific Intertie Project was to provide, through power transmission system interconnections, maximum utilization of the total power resources to meet the nation's growing demands. This purpose was to be accomplished through: (1) The exchange of summer-winter surplus peaking capacity between the Northwest and Southwest to reduce capital expenditures for new generating capacity, (2) the sale of Northwest secondary energy to the Southwest, (3) the sale of Southwest energy to the Northwest to "firm" peaking hydroelectric sources during critical water years, (4) conservation of significant amounts of fuel through the use of surplus hydroelectric energy, and (5) increased efficiency in the operation of hydroelectric and thermal resources. As authorized, the Pacific Intertie Project was to be a cooperative construction venture by Federal and non-Federal entities that incorporated the capability for both AC and DC transmission components and that provided an intertie among certain Federal and non-Federal power systems.

The Lower Colorado Region (LCR), Bureau of Reclamation, U.S. Department of the Interior, was assigned construction jurisdiction for (1) the Celilo-Mead 750-kV DC transmission line from the Oregon-Nevada border to Mead Substation, (2) Mead Substation, and (3) all facilities south of Mead Substation. Several delays in congressional construction funding for the DC line revised its estimated in-service date to the point that some of the potential users withdrew their interest. This, and the subsequent lack of congressional funding, resulted in the May 1969 indefinite postponement of the DC line construction. Consequently, the facilities constructed provide only AC transmission service.

Pursuant to section 302 of the DOE Organization Act, 42 U.S.C. 7152(a), dated August 4, 1977, these Reclamation constructed facilities were transferred to Western. Therefore, we are concerned only with those AC Intertie facilities which are administered by Western's Phoenix Area Office and which provide AC transmission service. To simplify identification, these facilities have been classified as the AC Intertie.

This is Western's first transmission service rate increase for the AC Intertie project being presented before FERC.

**Power Repayment Studies**

PRS's are prepared each fiscal year to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE Order RA 6120.2, section 12.b, states:

> In addition to the recovery of the above costs (operations and maintenance and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of

construction costs; plus (5) other costs such as payments to basin funds, participating projects, or States.

**Existing and Provisional Rates**

A comparison of the existing and provisional rates follows:

COMPARISON OF EXISTING AND STEP 1 PROVISIONAL RATES

| Type of Service | Existing rates May 1, 1976 | Provisional rates Aug. 1, 1993 | Percent change |
|---|---|---|---|
| Firm Transmission Service | $4.46/kW/yr | $4.46/kW/yr | 0.00 |
| Nonfirm Transmission Service | 1.00 mills/kWh | 1.00 mills/kWh | 0.00 |

COMPARISON OF EXISTING AND STEP 2 PROVISIONAL RATES

| Type of service | Existing rates Aug. 1, 1993 | Provisional rates Oct. 1, 1995 | Percent change |
|---|---|---|---|
| Firm Transmission Service | $4.46/kW/yr | $8.01/kW/yr | 80.0 |
| Nonfirm Transmission Service | 1.00 mills/kWh | 1.52 mills/kWh | 52.0 |

**Certification of Rates**

Western's Administrator has certified that the AC Intertie firm and nonfirm transmission service rates placed in effect on an interim basis herein, are the lowest possible consistent with sound business principles. The rates have been developed in accordance with administrative policies and applicable laws.

**Discussion**

*Background of Provisional Rates*

Based upon FY 1991 data, the PRS for the AC Intertie showed that the existing firm transmission service rate of $4.46/kW/year and nonfirm transmission service rate of 1.00 mills/kWh would not provide sufficient revenues to pay the project costs within the prescribed time periods. The ratesetting FY 1992 PRS indicates that a transmission service rate of $8.01/kW/year for firm transmission service and 1.52 mills/kWh for nonfirm transmission service is required to meet revenue requirements for FY 1996 through the end of the study. Western is implementing a two-step rate for firm transmission service and nonfirm transmission service. The reason for the second step increase is that the 500-kV Mead-Phoenix transmission line comes into service in FY 1996, along with its additional capability. This will also add significantly to the transmission capability available to the AC Intertie customers.

The provisional rates filed with FERC have been updated from the rate originally proposed in the customer brochure and Federal Register notice dated May 8, 1992. The changes to the FY 1992 PRS are as follows:

—Multiproject costs were updated through September 30, 1992.

—Replacement and addition projections in the cost evaluation period were changed to incorporate "The Engineering Ten Year Construction and Replacement Plan" dated July 1992.

—Future-year replacements, starting in FY 1993–2047, are projected at the most current interest rate of 7.875 percent as compared to FY 1991 interest of 8.50 percent.

—Projections used in FY 1992 for operation and maintenance, interest expense, and operating revenues were updated to FY 1992 actuals, as stated in Western's financial statements.

—The provisional rates for firm and nonfirm transmission service were initially proposed as single-step rates effective for a 5-year period beginning October 1, 1992. However, in response to customers' comments, Western will implement two-step rates. Step one rates of the provisional rates will become effective August 1, 1993. Step two rates will become effective October 1, 1995. The results of the FY 1992 adjustments decreased the previous step one rate originally proposed by 17.04 percent, reducing the rate from $5.22/kW/yr for firm transmission service to the current rate of $4.46/kW/yr. Step two of the proposed rate decreased by 2 percent, from $8.17/kW/yr to $8.01/kW/yr.

The existing and proposed revenue requirements for the AC Intertie are as follows:

| | Revenue requirements ($1,000's) | |
|---|---|---|
| | Existing and proposed step one FY 1993–95) | Proposed (FY 1996) [1] |
| Revenue Requirements | $5,076 | $24,884 |

[1] The step one provisional rates are in effect from August 1, 1993, through September 30, 1995, and are the same as existing rates. The step two provisional rates are in effect from October 1, 1995, through July 31, 1998.

The rate increase is necessary to satisfy the cost-recovery criteria set forth in DOE Order RA 6120.2.

**Replacement and Addition Activities**

The provisional rate adjustments are largely due to an increase in replacements and additions on the AC Intertie. The AC Intertie initial investment will not be fully paid until 2028. However, the AC Intertie is undergoing major additions, which will provide better service to the customers and additional transmission paths that are presently not available. This plan is outlined in "The Engineering Ten Year Construction and Replacement Plan," dated July 1992. The goal of the Engineering Ten Year Construction and Replacement Plan is to use and coordinate resources. This plan will help maintain the lowest rate possible without jeopardizing the crucial need for a safe and reliable AC Intertie transmission system. The FY 1992 PRS incorporates the first 5 years of this "Engineering Ten Year Construction and Replacement Plan."

The capitalized costs for future replacements and additions in the cost evaluation period includes IDC. The IDC calculation for each replacement is determined by the interest rate in the year construction begins. The annual interest expense for replacements and additions is also based on the interest rate in the year construction begins. The total replacement cost for the cost evaluation period through the end of the study is $16,900,482. The total additional cost of the 500-kV Mead-Phoenix transmission line for the cost evaluation period through the end of the study is $188,834,352.

**Statement of Revenue and Related Expenses**

The following table provides a summary of revenue and expense data for the 5-year proposed rate approval period.

AC INTERTIE PROJECT 5-YEAR RATE STUDY SUMMARY PERIOD REVENUES AND EXPENSES

[$1,000]

| | FY 1992 PRS 1993-97 |
|---|---|
| Revenues: | |
| Firm Transmission | 55,357 |
| Other Revenues | 18,658 |
| Total Revenues | 74,015 |
| Revenue Distribution: | |
| Operations & Maintenance | 17,260 |
| Other Deductions | 886 |
| Interest on Deferred Annual Cost | 0 |
| Interest | 43,510 |
| Investment Repayment | 12,349 |
| Capitalized Expenses | 0 |
| Study-Year Adjustments | 0 |
| Total | 74,015 |

**Basis for Rate Development**

*Comments Received*

During the 143-day comment period, Western received 24 written comments. In addition, five persons commented during the September 11, 1992, public comment forum. All comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following sources:

Aguila Irrigation District (Arizona)
Ak-Chin Indian Community (Arizona)
Arizona Municipal Power Users' Association (Arizona)
Arizona Power Pooling Association (Arizona)
Arizona Public Service Company (Arizona)
Buckeye Water Conservation & Drainage District (Arizona)
Central Arizona Water Conservation District (Arizona)
City of Safford (Arizona)
Colorado River Commission of Nevada (Nevada)
Electrical District No. 2, Pinal County (Arizona)
Electrical District No. 5, Pinal County (Arizona)
Electrical District No. 7, Maricopa County (Arizona)
Harquahala Valley Power District (Arizona)
Irrigation and Electrical Districts Association of Arizona (Arizona)
Maricopa Water District (Arizona)
McMullen Valley Water Conservation and Drainage District (Arizona) Meyer, Hendricks, Victor, Osborn & Maledon (5 Entities)
Overton Power District No. 5 & Valley Electric Association, Inc. (Nevada)
Roosevelt Irrigation District (Arizona)
Roosevelt Water Conservation District (Arizona)
Salt River Project (Arizona)
San Carlos Irrigation and Drainage District (Arizona)
Southern California Edison Company (California)
Tonopah Irrigation District (Arizona)

Representatives of the following organizations made oral comments:

Arizona Power Authority, Leroy Michael, Jr. (Arizona)
Colorado River Commission of Nevada, Thomas Cahill (Nevada)
Irrigation and Electrical Districts Association of Arizona, Robert S. Lynch (Arizona)
Jay I. Moyes (5 Hoover Customer Entities) (Arizona)
James T. McManus (Overton Power District No. 5 & Valley Electric Association, Inc.) (Nevada)

Most of the comments received at the public meetings and in correspondence were related to operation and maintenance expenses, capitalized investment costs, ratesetting, cost allocations to the AC Intertie, and working committee issues. All comments were considered in developing the provisional rates.

The comments and responses, paraphrased for brevity, are discussed below.

**Ratesetting Issues**

*Comment:* A customer requests the exclusion of the expenses and costs associated with the portions of the Intertie between Marketplace, Adelanto, and Lugo.

*Comment:* Customers support levelizing of the costs. Customers believe that a separate rate or rates for the Marketplace-Adelanto-Lugo segments should be required. Customers support the stepped-rate increase proposal and encourage Western to conduct further studies to determine the feasibility of the complete operational integration of all the transmission facilities in the Phoenix Area.

*Comment:* Customers renew their support for the alternative transmission rate and the Intertie rate adjustment process.

*Comment:* Customers are opposed to Western's proposed alternative transmission rate for the Parker-Davis and AC Intertie Projects.

*Response:* Western considered excluding costs for the Marketplace-Adelanto-Lugo transmission line segments. However, these segments will become an integral part of the AC Intertie transmission system and are, therefore, included in the PRS. Since Western and the customers agreed not to recommend the implementation of the alternative transmission service rates, Western plans to implement separate Parker-Davis Project and AC Intertie rates for firm transmission service and nonfirm transmission service. Operationally, the various Phoenix Area Office's power systems are integrated. Power marketing functions will continue to be performed separately for each individual project. Western will continue to work with the customers in conducting studies and evaluating other alternatives for developing a single transmission service rate for the various projects within the Phoenix Area Office.

*Comment:* Nonfirm transmission rates should be increased by the same percentage as firm transmission rates.

*Response:* Western believes the current method of calculating the nonfirm transmission service rate is the lowest rate consistent with sound business principles and in accordance with DOE Order RA 6120.2, which discusses transmission service and other costs. These costs, to be estimated for the cost evaluation period, include payments to others required by legislation, "wheeling" payments for use of transmission capacity, rental payments for the use of electrical facilities, payments for detriment caused by project facilities or operation, payments for increased benefits furnished by others, credit payments under certain contracts, and interconnection costs for which a payment is made based on contractual commitments. The formula used to determine the nonfirm transmission service rate is as follows: Firm transmission rate, divided by 8,760 hours, divided by load factor of .60, times 1,000. Increasing the cost of the nonfirm transmission service rate by the same percentage increase as the firm transmission rate would result in a higher rate. Western believes continued use of its current method is appropriate.

*Comment:* Customer believes that Western must re-examine its level of

participation in the last segment of the Adelanto-Lugo transmission facilities.

*Comment:* Interest and principal payment obligations due to participation in new 500-kV transmission facilities, as well as the level of investment in the new 500-kV transmission facilities, may not be justifiable.

*Comment:* Customer believes that no serious feasibility analysis has been performed on Mead-Adelanto or Adelanto-Lugo segments of this project.

*Response:* Western believes that the level of investment in the new facilities has been justified. Western has been authorized by Congress and is committed by written contract for the additional facilities of the AC Intertie Project. The terms and conditions are explained in the "Composite Development Agreement for the Mead-Phoenix Project and Mead-Adelanto Project." Therefore, excluding these facilities is not an option available to Western.

*Comment:* The pinch-point methodology needs to be re-examined.

*Comment:* Customer is concerned that the Intertie rate lacks the required audits, which make the proposed rates noncertifiable and not in compliance with the legal requirements. There is the same concern that the pinch-point methodology renders the rate noncertifiable and that this methodology does not render out the lowest possible rates.

*Comment:* Customer questions whether service is being provided at lowest possible cost consistent with sound business principles.

*Comment:* Customer believes it would be appropriate to postpone rate implementation at this time.

*Response:* Western has re-examined the pinch-point methodology. The pinch-point methodology is a rate determination process which computes/calculates the lowest possible single rate which will satisfy not only the annual revenue requirements for each year of the repayment study, but also the overall study revenue requirements for each year of the repayment study. This process continues throughout each year of the power repayment study until the lowest possible rate has been determined to meet the revenue requirements. The use of the pinch-point methodology and the overall requirements are justified and identified in DOE Order RA 6120.2. Section 12 of this order describes the guidelines for the cost recovery criteria which is what the pinch-point methodology accomplishes. Implementation of this rate through the pinch-point methodology incorporates audited financial data by KPMG Pete Marwick, which includes specific data for the AC Intertie Project. Western believes that the proposed rate increase has been proved to be the lowest possible rate, consistent with sound business principles, and that implementation of the proposed rates should be approved as scheduled.

*Comment:* Customer questions the marketability assumptions of the new capacity requirements and the impact on rates.

*Response:* Western assumed that all capacity in the new facilities could be fully marketed. While Western agreed with the Customers' concerns that this assumption may be optimistic, it is nonetheless achievable and results in the lowest possible rates to its customers. As contracts for the new capacity are finalized, the result of these changes will be reflected in the assumptions and the rate re-evaluated once contract commitments are better defined.

*Transmission Issues*

*Comment:* Customer urges Western to adopt a proposal which includes the alternative transmission rate and is based upon defining the Intertie as the Phoenix Area to Mead-Marketplace Intertie facilities and recognizes each of the contractor's rights to schedule their full contract amount over the P-DP and defined Intertie systems.

*Response:* Western and the customers agreed not to recommend the implementation of the alternative transmission rates. Western, however, will continue to consider this issue.

*O&M Issues*

*Comment:* Western is requested to examine its planning methods, replacement policy, and the rate impacts, as a result of shifting the in-service dates of planned construction projects.

*Comment:* Customer has a concern about the magnitude of projected expenditures for O&M. They urge Western to allow customer review and input into Western's work plans at an early enough stage of the planning cycle to have an influence on the rate impact.

*Response:* Western continues to examine its planning methods annually. Western develops a FDR for each major construction project activity. FDRs are used to determine the need for the construction of a new facility. In this report, rate impacts of a new facility are analyzed. The "Engineering Ten Year Construction and Replacement Plan" is designed to effectively plan, prioritize, schedule, and analyze rate impacts on all the construction and replacement activity for the Phoenix Area Projects. Western has recently taken steps to involve the customers in the development of this 10-year plan.

*Comment:* Customer believes the general Western allocation expense is excessive.

*Comment:* Customer believes indirect charges in the AC Intertie Project from the Phoenix Area Office and other Western offices should be limited to increases in indirect costs from these offices.

*Response:* Western's indirect costs are divided into three categories: associated direct expense (ADE), administrative and general expense (AGE), general Western allocation (GWA). ADE consists of undistributed costs and expenses for all types of direct costs which possess a clear relationship to benefiting activities and are recovered in the power rate base. AGE costs are general and administrative expenses benefiting ratepayers and reimbursable customers and represent primarily costs for nonmanagerial staff and support. GWA is a subset of AGE and includes ADP expenses, general office supplies, contracted administrative services, etc. Independent auditors determined that AGE and GWA exclusively benefit ratepayers and should be recovered as part of the costs included in the power rate base. The indirect cost distribution system was designed and endorsed by a major accounting firm and is consistent with industry standards. Western does not believe these costs are excessive in the manner in which they are distributed.

*Comment:* Customer feels environmental compliance expenses should not be forecasted in 1994 and through the end of the study.

*Response:* The cost forecasted for environmental compliance is due to conducting site investigations, cleanup of contaminated areas, disposal of waste material, and equipment needed to comply with the environmental regulations. Western's projections for these future years include all environmental costs related to the project. These costs are required by governmental regulations and need to be included in the rate study.

*Capitalized Investment Cost Issues*

*Comment:* There are Customers who are concerned with the need and magnitude of the projected replacements program.

*Response:* The need for projected replacements has been previously examined and justified through the O&M and engineering budget process. Projected replacements and additions have been identified in Western's

"Engineering Ten Year Construction and Replacement Plan," along with Western's FY 1993 budget documents. Because replacements activities are continuously changing, it is Western's intention to annually update and evaluate the "Engineering Ten Year Construction and Replacement Plan."

*Comment:* Contractor believes that Western did not conduct appropriate levels of planning and analysis before committing $183 million to new additions.

*Response:* Western believes that the appropriate levels of planning and analysis have been conducted for determining future additions. Western's decision to commit to the new investments were based on positive results of a completed study conducted jointly by Western and a consultant. Western's commitment to these new additions is supported by a copy of the report entitled "Resource and Transmission Study Final Report," dated May 18, 1990. This report presents the results of a joint study conducted by Western and Black & Veatch consultants. Western also develops Facility Development Reports, the "Engineering Ten Year Construction and Replacement Plan," and budget documents, which all reflect the estimated project cost and the contractual commitment associated with the project's additions.

*Comment:* Customer believes that Interest During Construction has been incorrectly calculated and needs to be revised.

*Comment:* Western's definition for the start of construction for charging Interest During Construction should be revised to reflect FERC policy.

*Response:* Western has examined the procedure for using the interest rate in effect at the beginning of the project. Western believes this procedure properly reflects FERC policy. IDC accumulates at the appropriate effective interest rate for a replacement or an addition when the first direct cost (FERC Accounts 350 and above) is incurred to initiate construction. IDC terminates at the end of the fiscal year in which the job is placed in service.

*Working Committee Issues*

*Comment:* Customer believes that lack of customer focus or orientation is prevalent throughout Phoenix Area Office.

*Comment:* Customer requests that Western adopt the alternative transmission rate on the basis of "establishing a proposed process for the contractors and Western to establish and empower an Engineering and Oversight Committee which would give the customers real participation in Western program needs, costs, and budgeting process before decisions are made."

*Response:* Western is committed to working closely with the customers in the development of a Customer/Agency Working Committee and has, in fact, initiated a procedure for allowing its customers more advance input to the planning process. Western has no objection to customer participation in the planning and budget process and is in process to initiate a working committee beginning June 16, 1993.

**Other Issues**

*Comment:* Western's estimated transmission costs from 2 years ago are significantly higher than the costs estimated in this rate adjustment process. Customer has some concerns about the significant reduction in the transmission service cost to new Mead-Phoenix contractors, which would come at a significant cost increase to existing Mead-Liberty contractors.

*Response:* A significant reduction to AC Intertie transmission costs has been due to reconciliation of the PRS to Western's financial statements, which represent adjustments made to reflect actual expenditures incurred rather than the estimates which were developed 2 years ago. Western has also developed more realistic projections which are derived from more current budget documents and the Engineering "Ten Year Construction and Replacement Plan" for future years. Western agrees that the added transmission line segments will cause an increase to transmission service costs to all Western customers and that under the current transmission rate this is equitable.

**Environmental Evaluation**

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.; Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of the environmental assessment or EIS.

**Executive Order 12291**

DOE has determined that this rate action is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order and therefore will not prepare a regulatory impact statement.

**Availability of Information**

Information regarding this rate adjustment, including PRS's, comments, letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Phoenix Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 615 South 43rd Avenue, Phoenix, Arizona 85009–5313; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401–3398; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

**Submission to Federal Energy Regulatory Commission**

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective August 1, 1993, the Rate Schedules INT–FT1 and INT–NFT1. The rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute rates on a final basis, through July 31, 1998.

Issued in Washington, DC, July 14, 1993.

**Robert L. San Martin,**

*Acting Assistant Secretary for Energy Efficiency and Renewable Energy.*

Rate Schedule INT–FT1

**Pacific Northwest-Pacific Southwest Intertie Project Schedule of Rates for Firm Transmission Service**

*Effective*

Step One: The first day of the first full billing period beginning on or after August 1, 1993.

Step Two: The first day of the first full billing period beginning on or after October 1, 1995, and will remain in effect through July 31, 1998, until superseded, whichever occurs first.

*Available*

Within the marketing area served by the Pacific Northwest-Pacific Southwest Intertie Project.

*Applicable*

To firm transmission service customers where capacity and energy are supplied to the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) system at points of interconnection with other systems and transmitted and delivered, on a bidirectional basis, less losses, to points of delivery on the AC Intertie system specified in the service contract.

*Character and Conditions of Service*

Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

*Rate*

Step One

Firm Transmission Service Charge: $4.46 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract: payable monthly at the rate of $0.372 per kilowatt.

Step Two

Firm Transmission Service Charge: $8.01 per kilowatt per year for each kilowatt delivered at the point of delivery, as established by contract: payable monthly at the rate of $0.6675 per kilowatt.

*Adjustments*

*For Reactive Power*

None. There shall be no entitlement to transfer of reactive kilovolt-amperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

*For Losses*

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

*Billing for Unauthorized Overruns:*

For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligation, such overrun shall be billed at 10 times the above rate.

Rate Schedule INT–NFT1

**Pacific Northwest-Pacific Southwest Intertie Project**

*Schedule of Rates for Nonfirm Transmission Service*

*Effective*

Step One: The first day of the first full billing period beginning on or after August 1, 1993.

Step Two: The first day of the first full billing period beginning on or after October 1, 1995, and will remain in effect through July 31, 1998, until superseded, whichever occurs first.

*Available*

Within the marketing area served by the Pacific Northwest-Pacific Southwest Intertie Project.

*Applicable*

To nonfirm transmission service customers where capacity and energy are supplied to the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie) system at points of interconnection with other systems and transmitted and delivered, on a bidirectional basis, less losses, to points of delivery on the AC Intertie system established by contract.

*Character and Conditions of Service*

Alternating current at 60 Hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

*Rate*

Step One

Nonfirm Transmission Service Charge: 1.00 mills per kilowatthour of the scheduled or delivered kilowatthours at the point of delivery, established by contract: payable monthly.

Step Two

Nonfirm Transmission Service Charge: 1.52 mills per kilowatthour of the scheduled or delivered kilowatthours at the point of delivery, established by contract: payable monthly.

*Adjustments*

*For Reactive power*

None. There shall be no entitlement to transfer of reactive kilovolt-amperes at points of delivery, except when such transfers may be mutually agreed upon by contractor and contracting officer or their authorized representatives.

*For Losses*

Capacity and energy losses incurred in connection with the transmission and delivery of capacity and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 93–18586 Filed 8–3–93; 8:45 am]
BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4687–4]

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before September 3, 1993.

**FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT:** Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Prevention, Pesticides and Toxic Substances**

*Title:* Compliance Requirement for the Child-Resistant Packaging–(EPA ICR No.: 0616.05; OMB No.: 2070–0052). This is a request for extension of the expiration date of a currently approved collection.

*Abstract:* Under section 25(c)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the EPA Child-Resistant Packaging (CRP) program, pesticide registrants must perform testing necessary to certify that packaging for pesticides and devices are child-resistant. They must review performance testing data to ensure that it will support their CRP certification. Registrants must obtain, and submit to EPA, production data necessary to support a claim that a product should be exempt from CRP compliance requirements. Registrants must submit to EPA the certification of compliance and they must keep records of all the information gathered in support of the certification. The Agency uses the information to ensure compliance with FIFRA.

*Burden Statement:* The public reporting burden for this collection of

information is estimated to average 1.5 hours per respondent for reporting and 30 minutes per recordkeeper annually. This estimate includes the time needed to review instructions, gather and maintain the data needed, and complete and review the collection of information.

*Respondents:* Chemical registrants.

*Estimated No. of Respondents:* 476.

*Estimated No. of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 952 hours.

*Frequency of Collection:* On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 18, 1993.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 93–18574 Filed 8–3–93; 8:45 am]

BILLING CODE 6560-50-F

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[FRL–4687–6]

## Public Water Supply Supervision Program; Program Revision for the State of Washington

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the State of Washington is revising its approved State Public Water Supply Supervision Primacy Program. Washington has adopted drinking water regulations for total coliforms and the treatment of surface water. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for public hearing must be submitted by September 3, 1993 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 3, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective September 3, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Department of Health (DOH), Division of Drinking Water, Airdustrial Center, Building #3, Olympia, Washington

DOH Northwest Regional Office, 1511 Third Avenue, #719, Seattle, Washington

DOH Eastern Regional Office, West 924 Sinto Avenue, Spokane, Washington

Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington

**FOR FURTHER INFORMATION CONTACT:** Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, at the EPA address given above, telephone (206) 553–1890.

Dated: July 27, 1993.

**Jane S. Moore,**

*Acting Regional Administrator.*

[FR Doc. 93–18576 Filed 8–3–93; 8:45 am]

BILLING CODE 6560-50-P

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[OPPE; FRL–4687–9]

## Enhancement of the Pesticide Residues Information System; Availability of Document

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability.

**SUMMARY:** The document "Enhancement of the Pesticide Residues Information System" is available to the public. This report contains an updated version of pesticide food residue data base published on June 18, 1991 (56 FR 27961). Hard copy and mircofiche copies of the report can be purchased through the National Technical Information Service (NTIS). Electronic searches of the data base may also be purchased. Ordering information is provided.

**DOCUMENT DESCRIPTION:** The Pesticide Residues Information System (PRIS) was developed by the U.S. Enviornmental Protection Agency's Office of Policy, Planning and Evaluation (OPPE) in 1989. The data base availability was announced in June, 1991. The document made available today is an updated version of the 1991 data base. The current data base contains more than 500,000 analyses for 329 distinct pesticides (and degradates) on over 100,000 food samples. Fresh agricultural commodities comprise approximately 76 percent of the samples, while processed foods comprise 24 percent. Data were obtained from four sources:

(1) Data compiled by Agriculture Canada from various Canadian agencies;

(2) State monitoring data compiled by the Food and Drug Administration's Food Contam program;

(3) Data from member companies compiled by National Food Processors Association; and

(4) Data for private laboratories of Scientific Certification Systems, Inc.

Volume 1 is a description of the data base and includes examples of different uses of PRIS. Volume 2 contains a listing of the data records which have been added to PRIS since the 1991 release. Information on the development of the Oracle software system and electronic searches of the data are available in NTIS publication PB91–154591.

**ORDERING INFORMATION:** Volume 1 has been assigned the NTIS number PB93–209013. The price is $17.95 ($9.00 for microfiche). Volume 2 has been assigned the NTIS number PB93–209021. The price is $44.50 ($17.50 for microfiche). Orders may be placed by telephone to the NTIS order desk and charged against American Express, VISA, Mastercard, or sent by mail with a check, money order or account number.

**ADDRESSES:** National Technical Information Services, Attn: Order Desk, 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650).

**DATA BASE SEARCHES:** For information on procedures for having electronic data base searches carried out, contact Dynamac Corporation (301–417–6126).

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Reinert, Waste and Chemical Policy Division (PM–220), Office of Policy, Planning and Evaluation, EPA, 401 M St., SW., Washington, DC 20460. Office location and telephone number:

Rm 3224 Waterside Mall, EPA. (202–260–7557).

Dated: July 29, 1993.

Richard Morgenstern,

*Director, Office of Policy Analysis.*

[FR Doc. 93–18589 Filed 8–3–93; 8:45 am]

BILLING CODE [illegible]

[OPP–00361; FRL–4638–1]

## FIFRA Scientific Advisory Panel Subpanel; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of open meeting.

**SUMMARY:** There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel to review and comment on the Agency's antimicrobial test methodology research initiatives. The meeting will be open to the public.

**DATES:** The meeting will be held on Tuesday, August 24, 1993, from 9 a.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at: Environmental Protection Agency, Office of Pesticide Programs, Rm. 1126, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 819B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5369.

**SUPPLEMENTARY INFORMATION:** The Agency wants the SAP Subpanel to focus on several specific issues which have arisen during the course of the EPA-funded research on the various test methods. EPA is seeking comments on the water purifier protocol, the tuberculocidal test method research, the sporicidal test method research, the virucidal test method research, the injured cells research, and the statistical analysis.

Copies of documents relating to this review process may be obtained by contacting: By mail: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5805.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Subpanel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advance notice to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Subpanel, but oral statements before the Subpanel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in Rm. 244 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made a part of the record and will be taken into consideration by the Subpanel.

Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 10 copies of a summary no later than August 16, 1993, in order to ensure appropriate consideration by the Subpanel. Copies of the Subpanel's report of their recommendations will be available 5 to 10 working days after the meeting and may be obtained by contacting the Public Docket and Freedom of Information Section at the address or telephone number given above.

Dated: July 26, 1993.

Douglas D. Campt,

*Director, Office of Pesticide Programs.*

[FR Doc. 93–18353 Filed 8–3–93; 8:45 am]

BILLING CODE [illegible]

[PF–574; FRL–4577–3]

## Biologic, Inc., et al.; Filing, Amendments, and a Withdrawal of Pesticide Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA announces the filing of a pesticide petition (Biologic, Inc.), the amendment of two pesticide petitions and a food additive petition (E.I. DuPont de Nemours & Co., Inc. and FMC Co.), and the withdrawal of one pesticide petition (American Cyanamid Co.).

**ADDRESSES:** By mail, submit written comments, identified by the document control number [PF-574], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

| Product Manager | Office location/telephone number | Address |
|---|---|---|
| Rita Kumar (PM 10) | Rm. 212, CM #2, 703-305-6502 | 1921 Jefferson Davis Hwy., Arlington, VA. |
| George LaRocca (PM 13) | Rm. 204, CM #2, 703-305-6100 | Do. |

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions and a food additive petition as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

**Initial Filing of Pesticide Petition**

1. *PP 3E4209.* Biologic, Inc., 11 Lake Ave. Extension, Danbury, CT 06811, has submitted to EPA a petition for teflubenzuron technical to establish an import tolerance for various agricultural commodities as follows: cabbage at .4 part per million (ppm); pome fruits at .7 ppm; potatoes at .05 ppm; meat, meat byproducts, fat, kidney, and liver of cattle, goats, hogs, horses, and sheep at .01 ppm; meat, meat byproducts, fat, kidney, and liver of poultry at .05 ppm; eggs at .05 ppm; and milk at .01 ppm. (PM 10)

**Amended Pesticide Petitions and Food Additive Petition**

2. *PP 4F3120.* E.I. DuPont de Nemours & Co., Inc., Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 29880-0038, has submitted to EPA a section F amendment to PP 4F3120, which appeared in the **Federal Register** of August 15, 1984 (49 FR 32678). The petition was originally filed by Shell Oil Co. and proposed a tolerance of 0.5 ppm on sugar beets and 10.0 ppm on sugar beet tops. Du Pont's amended petition proposes that tolerances be established for residues of the insecticide (S)-cyano (3-phenoxyphenyl)methyl (S)-4-chloro-alpha-(1-methylethyl)benzeneacetate, the principal isomer, and its enantiomer (R)-cyano(3-phenoxyphenyl)methyl (R)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and its diastereomers, (S)-cyano(3-phenoxyphenyl)methyl (R)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and (R)-cyano(3-phenoxyphenyl)methyl (S)-4-chloro-alpha-(1-methylethyl)benzeneacetate, in or on sugar beet tops at 5.0 parts per million (ppm) and sugar beet roots at 0.5 ppm. (PM 13)

3. *PP 7F3546.* In the **Federal Register** of November 25, 1987 (52 FR 45237), EPA issued notice of the petition filed by FMC Corp., Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103, proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide bifenthrin (2-methyl[1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) and its metabolite, 4'hydroxy in or on corn (field, seed, pop) grain at 0.05 ppm, silage (forage) at 2.0 ppm, stover (fodder) at 4.0 ppm; milk at 0.02 ppm; milk fat at 0.20 ppm; meat at 0.10 ppm, fat at 0.30 ppm, and meat byproducts at 0.10 ppm of goats, hogs, horses, and sheep. FMC Corp. has submitted an amended petition for the chemical that proposes that tolerances for it be established as follows: Corn (field, seed, pop) grain at 0.05 ppm (No detectable residues were found in grain at exaggerated rates, and the proposed tolerance is based on method sensitivity), silage (forage) combined residue of bifenthrin plus 4'-OH bifenthrin at 2.0 ppm, stover (fodder) combined residue of bifenthrin plus 4'-OH bifenthrin at 5.0 ppm; milk, fat at 1.0 ppm (reflecting 0.1 ppm in whole milk); meat of cattle, goats, hogs, horses, and sheep at 0.05 ppm; fat of cattle, goats, hogs, horses, and sheep at 1.0 ppm; and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.10 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 13)

4. *FAP 4H5437.* E.I. DuPont de Nemours & Co., Inc., Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 29880-0038, has submitted to EPA a section F amendment to food additive petition (FAP) 4H5437, which appeared in the **Federal Register** of August 15, 1984 (49 FR 32678). The petition was originally filed by Shell Oil Co. and proposed a tolerance of 5.0 ppm on sugar beet pulp, dehydrated. Du Pont's amended petition proposes that tolerances be established for residues of the insecticide (S)-cyano (3-phenoxyphenyl)methyl (S)-4-chloro-alpha-(1-methylethyl)benzeneacetate, the principal isomer, and its enantiomer (R)-cyano(3-phenoxyphenyl)methyl (R)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and its diastereomers, (S)-cyano(3-phenoxyphenyl)methyl (R)-4-chloro-alpha-(1-methylethyl)benzeneacetate, and (R)-cyano(3-phenoxyphenyl)methyl (S)-4-chloro-alpha-(1-methylethyl)benzeneacetate, in or on dehydrated sugar beet pulp at 2.5 ppm. (PM 13)

**Withdrawal of Pesticide Petition**

5. PP 2F2627. The American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400, has withdrawn without prejudice to future filing the tolerance petition, PP 2F2627, for all cropland for use of Amdro Technical Insecticide. Notice of filing of PP 2F2627 appeared in the **Federal Register** of February 24, 1982 (47 FR 8089). (PM 13)

**Authority:** 7 U.S.C. 346a and 371.

Dated: July 24, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93-18351; Filed 8-3-93; 8:45 am]

BILLING CODE 6560-50-F

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**[PP 2G4157/T648; FRL 4633-7]**

## Entomopathogen; Amendment to Establishment of Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces an amendment to an establishment of an exemption from the requirement of a tolerance for residues of the insecticide fungal entomopathogen *Beauvaria bassiana*, Naturalis-L strain, in or on certain raw agricultural commodities.

**DATES:** This temporary exemption from the requirement of a tolerance expires on January 18, 1994.

**FOR FURTHER INFORMATION CONTACT:** By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C) Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-7690.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 24, 1993 (58 FR 15872), EPA issued a notice that Fermone Corp., Inc., 2620, 37th Drive, Phoenix, AZ 85009, had requested in pesticide petition (PP) 2G4157 the establishment of an exemption from the requirement of a tolerance for residues of the insecticide fungal

entomopathogen *Beauvaria bassiana*, Naturalis-L strain, in or on the following raw agricultural commodities: Cotton seed; peanuts; peanut forage; peanut hay; tomatoes; lettuce; cantaloupe; and lettuce for control of boll weevil, whiteflies and leafhoppers. This document gives notice that Fermone Corp. has amended the petition, (PP) 2G4157, to add the following raw agricultural commodities: cabbage and peppers for control of whiteflies and leafhoppers.

This temporary exemption from the requirement of a tolerance will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permit 53871-EUP-1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Fermone Corporation, Incorporated, must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires on January 18, 1994. Residues remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**Authority:** 21 U.S.C. 346a(j).

**Dated:** July 24, 1993.

**Lawrence E. Culleen,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 93-18350 Filed 8-3-93; 8:45 am]

BILLING CODE 6560-50-F

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[FRL-4687-3]

## Proposed Settlement, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), notice is hereby given of a proposed partial consent order in the following cases: *Sierra Club* v. *Carol M. Browner*, No. 93-0124 (D.C.D.C.) and *Sierra Club et al.* v. *Carol M. Browner*, No. 93-0125 (D.C.D.C.).

These citizen suits were filed under section 304(a) of the Clean Air Act, 42 U.S.C. 7604, and allege that EPA failed to meet certain mandatory deadlines under title I of the Act, as well as deadlines under the Clean Air Act Amendments of 1990.

This partial consent decree, in conjunction with a partial decree lodged with the court on June 10, 1993 (see 58 FR 35451, July 1, 1993) will resolve all claims arising in these matters.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent order from persons who were not named as parties or intervenors to the litigation in questions. EPA or the Department of Justice may withhold or withdraw consent to the proposed order if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

A copy of the proposed order has been lodged with the clerk of the United States District Court for the District of Columbia. Copies are also available from Diane Weeks, Air and Radiation Division (LE-132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 260-7620. Written comments should be sent to John T. Hannon, Esq. at the above address and must be submitted on or before September 3, 1992.

**Dated:** July 28, 1993.

**Gerald H. Yamada,**

*Acting General Counsel.*

[FR Doc. 93-18572 Filed 8-3-93; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-4687-2]

## Proposed Modification of the NPDES General Permit for the Western Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG290000)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Proposed NPDES General Permit Modification.

**SUMMARY:** EPA Region 6 today proposes to modify the National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000) for discharges from existing and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). The existing permit, published at 57 FR 54642 on November 19, 1992 authorized discharges from exploration, development, and production facilities currently in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas off Louisiana and Texas. As proposed, the permit modification addresses recently promulgated Oil and Gas Offshore Subcategory guidelines, permit modification requests from the oil and gas industry, and monitoring requirements now unnecessary.

**DATES:** Comments must be received by September 3, 1993.

**ADDRESSES:** Comments should be sent to: Regional Administrator Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ellen Caldwell, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Telephone: (214) 655–77513. A draft permit including the proposed modifications and/or a fact sheet more fully explaining the proposal may be obtained from Ms. Caldwell. In addition, the Agency's current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Caldwell 24 hours advance notice.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 301(a) of the Clean Water Act "CWA", 33 USC 1311(a), discharges of pollutants to waters of the United States, the territorial seas, and the contiguous zone are unlawful except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued by EPA (or an approved state) in accordance with CWA section 402, 33 USC 1342. EPA Region 6 issued such a permit for western Gulf of Mexico facilities in the Offshore Subcategory of the Oil and Gas Extraction Category on November 19, 1992 at 57 FR 54642. EPA now proposes various modifications to that permit and solicits comment on them. Only comments on the proposed modifications are solicited.

**Offshore Subcategory Guidelines**

When it issued the current permit, EPA Region 6 was aware the Agency intended to publish Offshore Subcategory Guidelines (Guidelines) based on the Best Available Technology Economically Achievable (BAT) early in the term of the permit. Rather than delaying permit reissuance until promulgation of the Guidelines, Region 6 based the permit's BAT limitations on its best professional judgment and included a reopener provision in the permit allowing subsequent modification of BAT effluent limitations in the OCS permit that are less stringent than the new Guidelines. On March 4, 1993, EPA published the Guidelines at 58 FR 12453 and they are now effective.

In accordance with the Guidelines, EPA now proposes to decrease oil and grease limits on produced water, prohibit the discharge of produced sand, limit discharges of oil and grease in well treatment, completion and workover fluids to the same limits as exist for produced water, allow a partial toxicity test to measure compliance with the drilling fluid toxicity limit, and require the use of the static sheen test method for monitoring free oil in drilling fluids, drill cuttings, and well treatment, completion, and workover fluids.

**Industry Modification Request**

After the final permit was signed, oil and gas industry representatives contacted Region 6 contending that the model used by EPA to calculate critical dilution values, CORMIX1, rendered unduly stringent dilution values because it did not accurately account for various conditions under which some Offshore facilities discharge or could discharge produced water. They also provided the Region with new data on produced water discharges demonstrating the existing permit's dilution factors might have unnecessary adverse effects on a significant number of Offshore oil and gas operators.

After examination of the newly available data, EPA Region 6 believes that adjustments in its application of CORMIX1 may be appropriate. Based on changes in dispersion modeling and changes to model input parameters for the density gradient, current speed, discharge pipe orientation, and distance between discharge pipes and the sea floor, EPA Region 6 proposes to modify the permit's table of critical dilutions for compliance testing of produced water. Industry representatives have also requested a permit provision providing an option to use diffusers to achieve greater dilution when facilities are unable to meet the toxicity limits at the proposed critical dilutions. The specifics of such an option have not been included in the proposed permit; however, comments are requested on how a diffuser option might be added to the permit and the necessity of a diffuser option. EPA's preferred option for allowing the use of diffusers is to require permittees wishing to use a diffuser to design it using the CORMIX2 model with similar modifications and input parameters as used in developing the proposed dilution value modification. After installation of such a diffuser, those permittees would be required to demonstrate no chronic toxicity at the dilution modeled using CORMIX2.

In connection with its modification request, the oil and gas industry suggested that EPA should provide a short phase-in period for the modified produced water toxicity limits to enable operators requiring facility improvements for compliance time to make those improvements. EPA is considering issuing either a general administrative compliance order or a number of individual administrative compliance orders to cover such facilities. Each facility requesting coverage under such an order would have to demonstrate it was violating the produced water toxicity limit and describe its plans for coming into compliance with that limit as expeditiously as possible, but no later than within 6 months of the permit's modification. EPA solicits comments on this approach.

EPA also proposes other relatively minor changes to the existing permit's monitoring requirements in response to the modification request. If adopted, those modifications will delete monitoring requirements for gross alpha radiation and gross beta radiation, largely because of test interference caused by high dissolved solids concentrations in produced water. Discharges of source water, source sand, uncontaminated bilge water, and uncontaminated freshwater will be allowed without monitoring for free oil when platforms are unmanned. Also, miscellaneous discharges at the sea floor of blowout preventer fluids, muds, cuttings, and cement will be allowed during times of poor visibility without requiring operators to conduct a static sheen test which cannot be applied to those discharges.

**Informational Monitoring**

EPA Region 6 also proposes to delete various permit monitoring, record keeping, and reporting requirements intended solely for collecting data in anticipation of developing future permit limitations on a best professional judgment basis. They are volume estimates of well treatment, completion, and workover fluids, deck drainage, and drill cuttings; flow estimates for sanitary waste water; and oil content for muds and cuttings. Publication of the Offshore Guidelines eliminates the need for developing such permit limits.

The proposed produced water critical dilution tables and a summary of all permit limitations and monitoring requirements in the permit, including the proposed changes, are in appendix A of this **Federal Register** notice. As indicated above, additional information is available on request.

*Other Legal Requirements*

*Oil Spill Requirements*

Section 311 of the CWA, "the Act", prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are in compliance with NPDES permits are excluded from the provisions of section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

*Endangered Species Act*

The National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS) have

previously concurred in writing with an EPA finding that issuance of the OCS permit would not adversely affect any threatened or endangered species or its critical habitat. While the proposed changes to the produced water toxicity limits are less stringent at the end of pipe, they continue to prohibit toxicity as modeled at the edge of the mixing zone. Other proposed changes render the permit more stringent. Accordingly, the Region now finds that adoption of the proposed changes is unlikely to adversely affect any threatened or endangered species or its critical habitat. The Region will request written concurrence from NMFS and USFWS on its finding of no adverse affect.

*Ocean Discharge Criteria Evaluation*

For discharges into waters located seaward of the inner boundary of the territorial seas, CWA section 403 requires that NPDES permits consider guidelines for determining potential degradation of the marine environment. These Ocean Discharge Criteria (40 CFR part 125, subpart M) are intended to "prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal" (45 FR 65942, October 3, 1980).

When the Western Gulf of Mexico Outer Continental Shelf general permit was reissued (57 FR 54642 November 19, 1993) EPA determined that discharges in compliance with the permit would not cause unreasonable degradation of the marine environment. Proposed changes to the permit which will make it more stringent include: lower oil and grease limits for produced water, oil and grease limits for well treatment, completion and workover fluids, and prohibition on discharges of produced sand. The only major proposed modifications rendering the permit less stringent are the critical dilutions at which produced water must show no chronic toxicity. These proposed modifications are based on new and more accurate dispersion modeling and information on discharge conditions and will not render the toxicity limit insufficient for its purpose of ensuring no toxicity at the edge of the mixing zone. Because dispersion modeling shows that there will be no toxicity at the edge of the mixing zone, several permit requirements are more stringent than the existing permit, and none of the other permit limits are less stringent than the existing permit, discharges in compliance with this proposed permit modification will not cause unreasonable degradation of the marine environment.

*Coastal Zone Management Act*

The proposed modified permit is more stringent than the existing OCS General Permit due to the new limits for oil and grease in produced water, and well treatment, completion and workover fluids, the prohibition of discharge of produced sand, and the requirement that permittees use the static sheen test method for monitoring of free oil except deck drainage. The existing permit was determined to be consistent with local and state Coastal Zone Management Plans (CZMP). Since this proposed modified permit is more stringent, EPA has determined that the activities authorized by this proposed permit are consistent with local and state Coastal Zone Management Plans (CZMP). The proposed modified permit and consistency determinations will be submitted to the State of Louisiana for interagency review at the time of public notice.

*Marine Protection, Research, and Sanctuaries Act*

The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. The Flower Garden Banks has been determined to be a marine sanctuary and is within the area covered under this permit. The permit prohibits discharge in areas of biological concern, including marine sanctuaries, and none of the proposed modifications will affect that prohibition.

*State Water Quality Standards and State Certification*

Because state waters are not included in the area covered by this NPDES general permit, no state waters are affected by the discharges it authorizes. Thus, the state water quality certification provisions of CWA section 401 do not apply to the permit or proposed modification.

*Executive Order 12291*

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order. It should be noted, however, that EPA in fact prepared a regulatory impact analysis in connection with its promulgation of the Guidelines and submitted it to the OMB and included it in the public review. See 58 FR 12492. Each of the proposed permit modifications which will increase industry compliance costs was considered in that regulatory impact analysis and review.

*Paperwork Reduction Act*

The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

The existing Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000) requires regulated facilities to submit a notice of intent to be covered and submit discharge monitoring reports to EPA. When it issued the permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. The proposed modifications will not increase these burdens.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. In promulgating the Guidelines, EPA prepared an economic impact analysis showing they would directly impact no small entities. See 58 FR 12492. Based on those findings, EPA Region 6 certifies, pursuant to the provisions of 5 U.S.C. 605(b), that the permit modifications proposed today will not have a significant impact on a substantial number of small entities.

Dated: July 26, 1993.

**Myron O. Knudson,**

*Director, Water Management Division, Region 6.*

APPENDIX A.—TABLE 1 (SHEET 1 OF 5): PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEA FLOOR 0 TO 4 METERS

| Discharge rate (bbl/day) | Pipe diameter | | | | | | |
|---|---|---|---|---|---|---|---|
| | > 0" to 3" | > 3" to 5" | > 5" to 7" | > 7" to 9" | > 9" to 11" | > 11" to 16" | > 16" |
| 0 to 500 | 0.17 | 0.17 | 0.17 | 0.17 | 0.17 | 0.17 | 0.04 |
| 501 to 1,000 | 0.45 | 0.40 | 0.40 | 0.40 | 0.40 | 0.40 | 0.08 |
| 1,001 to 2,000 | 1.39 | 1.08 | 1.08 | 1.08 | 1.08 | 1.08 | 0.16 |
| 2,001 to 3,000 | 1.66 | 1.39 | 1.32 | 1.32 | 1.32 | 1.32 | 1.32 |
| 3,001 to 4,000 | 1.97 | 1.60 | 1.45 | 1.45 | 1.45 | 1.45 | 1.45 |
| 4,001 to 5,000 | 1.94 | 1.77 | 1.55 | 1.55 | 1.55 | 1.55 | 1.55 |
| 5,001 to 6,000 | 1.90 | 1.93 | 1.66 | 1.63 | 1.63 | 1.63 | 1.63 |
| 6,001 to 7,000 | 1.66 | 2.07 | 1.78 | 1.70 | 1.70 | 1.70 | 1.70 |
| 7,001 to 8,000 | 1.81 | 2.20 | 1.89 | 1.76 | 1.76 | 1.76 | 1.76 |
| 8,001 to 9,000 | 1.77 | 2.32 | 1.99 | 1.81 | 1.81 | 1.81 | 1.81 |
| 9,001 to 10,000 | 1.73 | 2.43 | 2.08 | 1.86 | 1.86 | 1.86 | 1.86 |
| 10,001 to 15,000 | 1.56 | 2.64 | 2.49 | 2.16 | 2.03 | 2.03 | 2.03 |
| 15,001 to 20,000 | 1.43 | 2.49 | 2.85 | 2.47 | 2.17 | 2.17 | 2.17 |
| 20,001 and above | 1.34 | 2.39 | 3.13 | 2.75 | 2.42 | 2.29 | 2.29 |

TABLE 1.—(SHEET 2 OF 5): PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEA FLOOR GREATER THAN 4 METERS TO 6 METERS

| Discharge rate (bbl/day) | Pipe diameter | | | | | | |
|---|---|---|---|---|---|---|---|
| | > 0" to 3" | > 3" to 5" | > 5" to 7" | > 7" to 9" | > 9" to 11" | > 11" to 16" | > 16" |
| 0 to 500 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 |
| 501 to 1,000 | 0.16 | 0.15 | 0.15 | 0.15 | 0.15 | 0.15 | 0.05 |
| 1,001 to 2,000 | 0.42 | 0.37 | 0.37 | 0.37 | 0.37 | 0.37 | 0.10 |
| 2,001 to 3,000 | 0.80 | 0.68 | 0.65 | 0.65 | 0.65 | 0.65 | 0.15 |
| 3,001 to 4,000 | 1.40 | 1.15 | 1.04 | 1.04 | 1.04 | 1.04 | 0.19 |
| 4,001 to 5,000 | 1.05 | 0.94 | 0.86 | 0.86 | 0.86 | 0.86 | 0.86 |
| 5,001 to 6,000 | 1.15 | 1.02 | 0.93 | 0.92 | 0.92 | 0.92 | 0.92 |
| 6,001 to 7,000 | 1.22 | 1.10 | 1.00 | 0.97 | 0.97 | 0.97 | 0.97 |
| 7,001 to 8,000 | 1.21 | 1.17 | 1.06 | 1.01 | 1.01 | 1.01 | 1.01 |
| 8,001 to 9,000 | 1.19 | 1.24 | 1.12 | 1.05 | 1.05 | 1.05 | 1.05 |
| 9,001 to 10,000 | 1.17 | 1.30 | 1.17 | 1.09 | 1.09 | 1.09 | 1.09 |
| 10,001 to 15,000 | 1.09 | 1.56 | 1.41 | 1.28 | 1.23 | 1.23 | 1.23 |
| 15,001 to 20,000 | 1.02 | 1.75 | 1.59 | 1.45 | 1.33 | 1.33 | 1.33 |
| 20,001 and above | 0.96 | 1.69 | 1.76 | 1.59 | 1.46 | 1.40 | 1.40 |

TABLE 1.—(SHEET 3 OF 5): PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEA FLOOR GREATER THAN 6 METERS TO 8 METERS

| Discharge rate (bbl/day) | Pipe diameter | | | | | | |
|---|---|---|---|---|---|---|---|
| | > 0" to 3" | > 3" to 5" | > 5" to 7" | > 7" to 9" | > 9" to 11" | > 11" to 16" | > 16" |
| 0 to 500 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 |
| 501 to 1,000 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 |
| 1,001 to 2,000 | 0.20 | 0.18 | 0.18 | 0.18 | 0.18 | 0.18 | 0.07 |
| 2,001 to 3,000 | 0.35 | 0.32 | 0.31 | 0.31 | 0.31 | 0.31 | 0.10 |
| 3,001 to 4,000 | 0.56 | 0.50 | 0.46 | 0.46 | 0.46 | 0.46 | 0.13 |
| 4,001 to 5,000 | 0.85 | 0.74 | 0.67 | 0.67 | 0.67 | 0.67 | 0.17 |
| 5,001 to 6,000 | 1.26 | 1.08 | 0.95 | 0.94 | 0.94 | 0.94 | 0.20 |
| 6,001 to 7,000 | 0.78 | 0.71 | 0.66 | 0.65 | 0.65 | 0.65 | 0.65 |
| 7,001 to 8,000 | 0.83 | 0.76 | 0.70 | 0.68 | 0.68 | 0.68 | 0.68 |
| 8,001 to 9,000 | 0.89 | 0.80 | 0.74 | 0.71 | 0.71 | 0.71 | 0.71 |
| 9,001 to 10,000 | 0.89 | 0.84 | 0.78 | 0.74 | 0.74 | 0.74 | 0.74 |
| 10,001 to 15,000 | 0.64 | 1.01 | 0.94 | 0.87 | 0.85 | 0.85 | 0.85 |
| 15,001 to 20,000 | 0.80 | 1.15 | 1.07 | 0.99 | 0.93 | 0.93 | 0.93 |
| 20,001 and above | 0.76 | 1.32 | 1.18 | 1.09 | 1.02 | 0.99 | 0.99 |

TABLE 1.—(SHEET 4 OF 5): PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEA FLOOR GREATER THAN 8 METERS TO 12 METERS

| Discharge rate (bbl/day) | Pipe diameter | | | | | | |
|---|---|---|---|---|---|---|---|
| | > 0" to 3" | > 3" to 5" | > 5" to 7" | > 7" to 9" | > 9" to 11" | > 11" to 16" | > 16" |
| 0 to 500 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 |
| 501 to 1,000 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 |
| 1,001 to 2,000 | 0.11 | 0.10 | 0.10 | 0.10 | 0.10 | 0.10 | 0.10 |
| 2,001 to 3,000 | 0.14 | 0.13 | 0.13 | 0.13 | 0.13 | 0.13 | 0.13 |
| 3,001 to 4,000 | 0.17 | 0.16 | 0.16 | 0.16 | 0.16 | 0.16 | 0.16 |
| 4,001 to 5,000 | 0.33 | 0.31 | 0.29 | 0.29 | 0.29 | 0.29 | 0.11 |
| 5,001 to 6,000 | 0.45 | 0.41 | 0.38 | 0.38 | 0.38 | 0.38 | 0.13 |
| 6,001 to 7,000 | 0.61 | 0.55 | 0.50 | 0.49 | 0.49 | 0.49 | 0.15 |
| 7,001 to 8,000 | 0.80 | 0.72 | 0.66 | 0.63 | 0.63 | 0.63 | 0.17 |
| 8,001 to 9,000 | 1.06 | 0.94 | 0.85 | 0.80 | 0.80 | 0.80 | 0.19 |
| 9,001 to 10,000 | 0.56 | 0.52 | 0.50 | 0.48 | 0.48 | 0.48 | 0.48 |
| 10,001 to 15,000 | 0.63 | 0.63 | 0.60 | 0.57 | 0.56 | 0.56 | 0.56 |
| 15,001 to 20,000 | 0.81 | 0.72 | 0.68 | 0.65 | 0.62 | 0.62 | 0.62 |
| 20,001 and above | 0.58 | 0.80 | 0.75 | 0.72 | 0.68 | 0.66 | 0.66 |

TABLE 1.—(SHEET 5 OF 5): PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEA FLOOR GREATER THAN 12 METERS

| Discharge rate (bbl/day) | Pipe diameter | | | | | | |
|---|---|---|---|---|---|---|---|
| | > 0" to 3" | > 3" to 5" | > 5" to 7" | > 7" to 9" | > 9" to 11" | > 11" to 16" | > 16" |
| to 500 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 | 0.04 |
| 501 to 1,000 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 | 0.07 |
| 1,001 to 2,000 | 0.11 | 0.10 | 0.10 | 0.10 | 0.10 | 0.10 | 0.10 |
| 2,001 to 3,000 | 0.14 | 0.13 | 0.13 | 0.13 | 0.13 | 0.13 | 0.13 |
| 3,001 to 4,000 | 0.17 | 0.16 | 0.16 | 0.16 | 0.16 | 0.16 | 0.16 |
| 4,001 to 5,000 | 0.21 | 0.20 | 0.19 | 0.19 | 0.19 | 0.19 | 0.19 |
| 5,001 to 6,000 | 0.24 | 0.23 | 0.22 | 0.22 | 0.22 | 0.22 | 0.22 |
| 6,001 to 7,000 | 0.28 | 0.26 | 0.25 | 0.25 | 0.25 | 0.25 | 0.25 |
| 7,001 to 8,000 | 0.32 | 0.30 | 0.29 | 0.28 | 0.28 | 0.28 | 0.28 |
| 8,001 to 9,000 | 0.36 | 0.34 | 0.32 | 0.31 | 0.31 | 0.31 | 0.31 |
| 9,001 to 10,000 | 0.41 | 0.38 | 0.36 | 0.35 | 0.35 | 0.35 | 0.35 |
| 10,001 to 15,000 | 0.28 | 0.84 | 0.83 | 0.81 | 0.80 | 0.80 | 0.80 |
| 15,001 to 20,000 | 0.31 | 1.01 | 0.99 | 0.97 | 0.67 | 0.67 | 0.67 |
| 20,001 and above | 1.07 | 1.15 | 1.13 | 1.11 | 1.09 | 1.08 | 1.08 |

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS

| Discharge | Regulated and monitored discharged parameter | Discharge limitation/prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/method | Recorded value(s) |
| Drilling Fluid | Free Oil | No free oil | Once week [1] | Static sheen | Number of days sheen observed. |
| | Toxicity [2] 96-hr LC50 | 30,000 ppm daily minimum. | Once/month | Grab | 96-hr LC50. |
| | | | Once/end of well [3]. | Grab | 96-hr LC50. |
| | | 30,000 ppm monthly average minimum. | Once/month | Grab | 96-hr LC50. |
| | Discharge Rate | 1,000 barrels/hour | Once/hour [1] | Estimate | Max. hourly rate. |
| | Discharge Rate for controlled discharge rate areas [4]. | (see Figure 1) | Once/hour [1] | Measure | Max. hourly rate. |
| | Mercury and cadmium | No discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight). | Once prior to drilling each well [4]. | Absorption Spectro-photometry | mg mercury/kg barite. mg cadmium/kg barite. |

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

| Discharge | Regulated and monitored discharged parameter | Discharge limitation/prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/ method | Recorded value(s) |
| | Oil Based or Inverse Emulsion Drilling Fluids. | No discharge. | | | |
| | Oil Contaminated Drilling Fluids. | No discharge. | | | |
| | Diesel Oil | No discharge of drilling fluids to which diesel oil has been added. | | | |
| | Mineral Oil | Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill. | | | |
| Drilling Cuttings | Free oil | No free oil | Once/week [1] | Static sheen | Number of days sheen observed. |
| | Toxicity [2] 96-hr LC50 | 30,000 ppm daily minimum. | Once/month | Grab | 96-hr LC50. |
| | | | Once/end of well [3]. | Grab | 96-hr LC50. |
| | | 30,000 ppm monthly average minimum. | Once/month | Grab | 96-hr LC50. |
| | Mercury and cadmium | No discharge of cuttings generated using drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight). | Once prior to drilling each well [4]. | Absorption Spectro-photometry | mg mercury/kg barite. mg cadmium/kg barite. |
| | Cuttings generated using Oil Based or Inverse Emulsion Drilling Fluids. | No discharge. | | | |
| | Cuttings generated using Oil Contaminated Drilling Fluids. | No discharge. | | | |
| | Cuttings generated using drilling fluids to which Diesel Oil has been added. | No discharge. | | | |
| | Cuttings generated using drilling fluids to which Mineral Oil has been added. | Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill. | | | |
| Deck Drainage | Free Oil | No free oil | Once/day [7] | Visual sheen | Number of days sheen observed. |
| Produced Water | Oil and grease | 42 mg/l daily max., 29 mg/l monthly average. | Once/month | Grab [8] | Daily max., monthly average. |
| | Toxicity | 7-day average min. NOEC [9] and monthly average min. NOEC [9]. | Rate Dependent [16]. | Grab | Lowest NOEC for either of the two species. |
| | Radium 226 and 228 | Monitor | Rate Dependent [16]. | Grab | pCi/liter. |
| | Bioaccumulation [18]. | | | | |
| | Flow (MGD) | | Once/month | Estimate | Monthly Average. |
| Produced Sand | No Discharge. | | | | |
| Well treatment fluids [10], completion fluids [10], and workover fluids [10] (includes packer fluids). | Free oil | No free oil | Once/day [1] | Static sheen | Number of days sheen observed. |
| | Oil & Grease | 42 mg/l daily max., 29 mg/l monthly avg | Once/month | Grab [8] | Daily max., monthly average. |

TABLE 2.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

| Discharge | Regulated and monitored discharged parameter | Discharge limitation/prohibition | Monitoring requirement | | |
|---|---|---|---|---|---|
| | | | Measurement frequency | Sample type/ method | Recorded value(s) |
| Sanitary waste [12] continuously manned by 10 or more persons. | Residual chlorine [13] ..... | 1 mg/l (minimum) ..... | Once/month ..... | Grab ..... | Concentration. |
| | Solids ..... | No Floating Solids ..... | Once/day ..... | Observation ..... | Number of days solids observed. |
| Sanitary waste [12] continuously manned by 9 or fewer persons or intermittently by any number. | Solids ..... | No floating solids ..... | Once/day ..... | Observation ..... | Number of days solids observed. |
| Domestic waste [14] ..... | Solids ..... | No floating solids or foam. | Once/day ..... | Observation [15] .. | Number of days observed. |
| Miscellaneous discharges: Desalinization unit discharge; blowout pre-venter fluid; uncontaminated ballast water; uncontaminated bilge water; uncontaminated freshwater; mud, cuttings and cement at seafloor; uncontaminated seawater; boilar blowdown; source water and sand; diatomaceous earth filter media; excess cement slurry. | Free oil ..... | No free oil ..... | Once/week [11] .... | Visual sheen .... | Number of days sheen observed. |

[1] When discharging.
[2] Suspended particulate phase (SPP) with *Mysidopsis bahia* following approved test method. The sample shall be taken beneath the shale shaker; or if there are no returns across the shaker then the sample must be taken from a location that is characteristic of the overall mud system to be discharged.
[3] Sample shall be taken after the final log run is completed and prior to bulk discharge.
[4] See Appendix A, Discharge Rate Graph.
[5] This information shall be recorded but not reported unless otherwise requested by EPA.
[6] Analyses shall be conducted on each new stock of barite used.
[7] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.
[8] May be based on the arithmetic average of four grab sample results in the 24 hr. period.
[9] See Table 1, Appendix A.
[10] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.
[11] When discharging for muds, cuttings, and cement at the seafloor and blowout preventer fluid. All other miscellaneous discharges: when discharging, discharge is authorized only during times when visual sheen observation is possible, unless the static sheen method is used. Uncontaminated seawater uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water from platforms on automatic purge systems may be discharged without monitoring from platforms which are not manned.
[12] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation, and test results maintained at the facility.
[13] Hach method CN–66 DPD approved. Minimum of 1 mg/l and maintained as close to this concentration as possible.
[14] The discharge of food waste is prohibited within 12 nautical miles from nearest land. Comminuted food waste able to pass through a 25 mm mesh screen (approximately 1 inch) may be discharged more than 12 nautical miles from nearest land.
[15] Monitoring shall be accomplished during daylight by visual observation of the surface of the receiving water in the vicinity of sanitary and domestic waste outfalls. Observations shall be made following either the morning or midday meals at a time of maximum estimated discharge.
[16] Once/year for discharges from 0 bbl/day to 499 bbl/day, once/quarter for discharges from 500 bbl/day to 4,599 bbl/day, and once/month for discharges of 4,600 bbl/day and greater.
[17] See Part I.B.4.(b) of this Permit

[FR Doc. 93–18570 Filed 8–3–93; 8:45 am]
BILLING CODE 6560-50-P

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

*License Number:* 3485
*Name:* John R. Soares & Co.
*Address:* 2227 So. Garnett, Ste. 109, Tulsa, OK 74129
*Date Revoked:* June 25, 1993
*Reason:* Surrendered license voluntarily.

*License Number:* 3284
*Name:* Sonco International Corporation
*Address:* 4920 S. Lewis, #110, Tulsa, OK 74105
*Date Revoked:* July 10, 1993
*Reason:* Failed to maintain a valid surety bond.

**Bryant L. VanBrakle,**
*Director, Bureau of Tariffs, Certification and Licensing.*

[FR Doc. 93–18529 Filed 8–3–93; 8:45 am]
BILLING CODE 6730-01-M

### Agreement(s) Filed; Trans-Atlantic Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202–011375–009.
*Title:* Trans-Atlantic Agreement
*Parties:*

Atlantic Container Line
Cho Yang Shipping Co.
Sea-Land Service, Co.
A.P. Moller-Maersk Line
Nedlloyd Lijnen BV
Hapag Lloyd AG
Mediterranean Shipping Co.
DSR-Senator Joint Service
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportation Maritima Mexicana, S.A. de C.V.
Tecomar S.A. de C.V.
P&O Container Limited
Nippon Yusen Kaisha
Neptune Orient Lines Ltd.

*Synopsis:* The proposed amendment would expand the functions of the Market Survey Committee.

Dated: July 30, 1993.

By Order of the Federal Maritime Commission.

**Ronald D. Murphy,**
*Assistant Secretary.*

[FR Doc. 93–18590 Filed 8–3–93; 8:45 am]
BILLING CODE 6730–01–M

## Agreement(s) Filed; Tampa Bay Port Authority/Tampa Bay International Terminals, Inc.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 75 Stat. 763, 46 U.S.C. § 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

*Agreement No.: 224–200792.*
*Title:* Tampa Bay Port Authority/Bay International Terminals, Inc. Domestic Inbound Incentive Iron or Steel Articles Wharfage Agreement
*Parties:*

Tampa Bay Port Authority ("Port")
Tampa Bay International Terminals, Inc.

*Filing Agent:* Harold E. Welch, Registered Practitioner, Tampa Port Authority, P.O. Box 2192, Tampa, Florida 3360.

*Synopsis:* The Agreement provides for the Port to assess an incentive wharfage rate of $1.00 per net ton on domestic inbound iron or steel articles subject to a minimum annual volume of 1,000 net tons.

Dated: July 30, 1993.

By Order of the Federal Maritime Commission.

**Ronald D. Murphy,**
*Assistant Secretary.*

[FR Doc. 93–18591 Filed 8–30–93; 8:45 am]
BILLING CODE 6730–01–M

[C.O. 1, Amdt. No. 23]

## Organization and Functions of the Federal Maritime Commission

The following delegation is made to the Director, Bureau of Tariffs, Certification and Licensing, by amending Commission Order 1, Section 9, as revised, Specific Authorities Delegated to the Director, Bureau of Tariffs, Certification and Licensing by adding subsection 9.19 to read as follows:

9.19 Authority contained in 46 CFR 514.8(d)(4)(ii) to approve minor changes and additions to transaction set data for the ATFI system. Such minor changes include additions to any of the following term and reference lists: Cities; States and provinces; Countries; Ports; Container sizes; Container types; Container temperatures; Hazard codes; Inland modes, Packaging types, Rate Bases; Service types; Stuffing mode; Stripping mode; and Currencies.

Dated: July 29, 1993.

**William D. Hathaway,**
*Chairman.*

[FR Doc. 93–18592 Filed 8–3–93; 8:45 am]
BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

## Griggsville Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 27, 1993.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Griggsville Bancshares, Inc.*, Griggsville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers National Bank of Griggsville, Griggsville, Illinois.

Board of Governors of the Federal Reserve System, July 29, 1993.

**Jennifer J. Johnson,**
*Associate Secretary of the Board.*

[FR Doc. 93–18545 Filed 8–3–93; 8:45 am]
BILLING CODE 6210–01

## Hallmark Capital Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's

Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 27, 1993.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Hallmark Capital Corp.*, West Allis, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of West Allis Savings Bank, West Allis, Wisconsin.

In connection with this application, Applicant also proposes to engage *de novo* in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–18546 Filed 8–3–93; 8:45 am]

BILLING CODE 6210–01–F

## Magnolia State Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 24, 1993.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Magnolia State Corporation*, Bay Springs, Mississippi; to engage *de novo* through its subsidiary, Jones County Finance Co., Laurel, Mississippi, in making, acquiring or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93–18547 Filed 8–3–93; 8:45 am]

BILLING CODE 6210–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement Number 358]**

### Occupationally Related Tuberculosis and Tuberculous Infection in Health-Care Workers; Notice of Availability of Funds for Fiscal Year 1993

#### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements with health-care facilities for developing model programs based on the most current CDC guidelines for the prevention of the transmission of tuberculosis to and among health-care workers.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000 see the section Where to Obtain Additional Information.)

#### Authority

This program is authorized under Section 20(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)] and the Public Health Service Act, sections 301(a) and 317, [42 U.S.C. 241(a) and 247b], as amended.

#### Eligible Applicants

Eligible applicants include health-care facilities treating patients with active tuberculosis, local and state health departments, or universities with close working relationships with full service hospitals treating patients with active tuberculosis. Because this cooperative agreement is directed at

preventing the transmission of tuberculosis to and among health-care workers and, in so doing, may require changes in their work procedures, applicants will be limited to those who may affect changes in work-practice policy.

**Availability of Funds**

Approximately $215,000 is available in FY 1993 to fund 2 to 4 awards. It is expected that the average award will be $53,000, ranging from $40,000 to $115,000. It is expected the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Purpose**

The purpose of these cooperative agreements is to assist recipient health-care organizations in developing model programs which will protect the health of affected workers through the identification of activities and procedures to prevent the transmission of tuberculosis in the workplace. The focus of those programs will be to increase the compliance of health-care facilities and health-care workers with the most current CDC guidelines for prevention of tuberculosis in health-care settings.

The specific objective of these cooperative agreements is to develop program models for the prevention of transmission of tuberculosis among health-care workers through the optimal and practical application of protective guidelines and related strategies.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC/NIOSH shall be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Determine the extent to which selected health-care facilities have adopted the 1990 (or most recent) guidelines and/or other approaches in their efforts to prevent TB transmission.
2. Monitor implementation of the 1990 guidelines and to define specific obstacles to full implementation encountered at these selected facilities.
3. Periodically monitor TB skin test conversion rates and new TB cases for various categories of health-care workers in these selected facilities over the anticipated 3- to 5-year period of this project.
4. Evaluate the change over time in TB skin test conversion rates and new TB cases for health-care workers in these selected facilities with respect to level of implementation of the 1990 guidelines over the anticipated 3- to 5-year period of the project.
5. Evaluate the effectiveness of various TB transmission control methods (or combinations of methods) in preventing the transmission of TB in health-care workers.
6. Develop, implement, and evaluate strategies to maximize compliance with the current CDC guidelines.
7. Document ability to affect changes in work-practice policies.

*B. CDC/NIOSH Activities*

1. Provide scientific, epidemiologic, engineering, environmental, and clinical technical assistance (as needed) to the recipient for successful completion of this project.
2. Collaborate with recipient on the methods for the collection, tabulation analysis, and publication of data related to the project.
3. Assist in the development of the overall plan or study design for this project.
4. Assist in the design and implementation of the evaluation plan for the project.
5. Coordinate the training of the appropriate grantee staff in technical and scientific procedures necessary for the successful completion of the project.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objective of the cooperative agreement including: (a) applicant's understanding of the objective of the proposed cooperative agreement and, (b) the relevance of the proposal to the objective. (20%)
2. Applicant's ability to provide the staff, knowledge, and other resources required to perform the applicant's responsibilities in this project, and to describe the approach to be used in carrying out those responsibilities. (20%)
3. Steps proposed in planning and implementing this project, and the respective responsibilities of the applicant for carrying out those steps. (20%)
4. Schedule proposed for accomplishing the activities to be carried out in this project and for evaluating the accomplishments. (20%)
5. Qualification and time allocation of the professional staff to be assigned to this project and the facilities, equipment, and other resources available for performance of this project. (20%)
6. The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

Executive Order 12372 Review

The applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on the applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the application deadline date. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before September 3, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and you will need to refer to Announcement Number 358. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, (404) 842–6546. Programmatic technical assistance may be obtained from John E. Parker, National Institute for Occupational Safety and Health, Division of Respiratory Disease Studies, 944 Chestnut Ridge Road, Mailstop 122, Morgantown, West Virginia 26505, (304) 291–4301.

Please refer to Announcement Number 358 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 29, 1993.

**Richard A. Lemen,**

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18535 Filed 8–3–93; 8:45 am]

BILLING CODE 4160–18–P

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## Food and Drug Administration

**[Docket No. 93N–0275]**

## Drug Export; Chiron® Riba™ HCV 3.0 SIA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Chiron Corp. has filed an application requesting approval for the export of the biological product CHIRON® RIBA™ HCV 3.0 SIA to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

**ADDRESSES:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9070.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Chiron Corp., 4560 Horton St., Emeryville, CA 94608, has filed an application requesting approval for the export of the biological product, CHIRON® RIBA™ HCV 3.0 SIA to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. CHIRON® RIBA™ HCV 3.0 SIA is an in vitro qualitative enzyme immunoassay for the detection of antibody to hepatitis C virus (anti-HCV) in human serum or plasma. The application was received and filed in the Center for Biologics Evaluation and Research on June 17, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 16, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 19, 1993.

**P. Michael Dubinsky,**

*Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.*

[FR Doc. 93–18495 Filed 8–3–93; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-030-03-4320-01]

### Grazing Advisory Board to Hold Meeting

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Rawlings district grazing advisory board meeting.

**SUMMARY:** Notice is hereby given in accordance with Public Law 92–463 and 94–5799 that a meeting of the Rawlings District Grazing Advisory Board will be held. This notice sets forth the schedule and proposed agenda for the meeting.

**DATES:** August 31, 1993.

**ADDRESSES:** Bureau of Land Management, Rawlins District Office, 1300 N. Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

**FOR FURTHER INFORMATION CONTACT:** John Spehar, District Range Conservationist, Rawlins District Office, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301, (307) 324–7171.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include:

1. Introduction and opening remarks.
2. Opportunity for the public present information or make statements.
3. Summary of the 1993 range improvement program to-date.
4. Review of the Grizzly-Daley Allotments grazing plan for 1993.
5. Wild Horse Program Update.
6. Tour of rangeland improvement projects constructed in Fiscal Year 1993 and projects proposed for Fiscal Year 1994.

The meeting and tour are open to the public. Individuals going on the tour must furnish their own 4-wheel-drive transportation and lunch. Anyone interested in attending the meeting or making an oral presentation to the Board must notify the District Manager by August 15, 1993. Written statements may also be filed for the Board's consideration. Summary minutes of this meeting will be on file in the Rawlins District Office and available for public inspection (during regular business hours) within 30 days of the meeting.

Dated: July 27, 1993.

**Al Pierson,**

*District Manager.*

[FR Doc. 93–18561 Filed 8–3–93; 8:45 am]

BILLING CODE 4310-22-M

[ID-942-03-4730-02]

### Idaho: Filing of Plats of Survey; ID

The plat of survey of the following described land will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., September 3, 1993.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and meanders of the right and left banks of the Salmon River, the subdivision of section 7, and the survey of the meanders of the left bank of the Salmon River, Township 20 North, Range 22 East, Boise Meridian, Idaho, Group No. 811, was accepted July 23, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: July 23, 1993.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 93–18506 Filed 8–3–93; 8:45 am]

BILLING CODE 4310-03-M

## Fish and Wildlife Service

### Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–776622

Applicant: Larry Johnson, Orange, CA

The applicant requests a permit to export three Indian guars (*Bos gaurus gaurus*) to Mexico for enhancement of propagation and survival of the species, and for education conservation.

PRT–769304

Applicant: Jeffrey Halstead, Clovis, CA

The applicant requests amendment of his current permit to live-trap and release Fresno kangaroo rats (*Dipodomys nitratoides exilis*) and Tipton kangaroo rats (*Dipodomys nitratoides nitratoides*) to include other locations within California for determining the presence and abundance of the species.

PRT–781346

Applicant: A. Clark Miller, Sarasota, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. R.M.P. Hockly, "Cullendale", Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT–778067

Applicant: PRBO, Stinson Beach, CA

Applicant requests a permit to take (capture, band and release) Hawaiian dark-rumped petrel (*Pterodroma phaeopygia sandwichensis*) to determine breeding biology of species colony on Kauai, Hawaii.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 30, 1993.

**Susan Jacobsen,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 93–18558 Filed 8–3–93; 8:45 am]

BILLING CODE 4310-55-M

### Issuance of Permit for Marine Mammals

On May 27, 1993, a notice was published in the **Federal Register**, Vol. 57, No. 127, Page 29331, that an application had been filed with the Fish and Wildlife Service by the Virginia Department of Game and Island Fisheries for a permit (PRT 776441) to import one hide of a polar bear (*Ursus maritimus*) for public display purposes.

Notice is hereby given that on July 12, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North

Fairfax Drive, rm. 420(c), Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: July 30, 1993.

**Susan Jacobsen,**

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 93–18559 Filed 8–3–93; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### Meetings

**AGENCY:** National Park Service, Interior.

**ACTION:** Subsistence Resource Commission meeting.

**SUMMARY:** The Superintendent of Cape Krusenstern National Monument and Kobuk Valley National Park and the Chairpersons of the Subsistence Resource Commissions for Cape Krusenstern National Monument and Kobuk Valley National Park announce a forthcoming joint meeting of the Cape Krusenstern National Monument and Kobuk Valley National Park Subsistence Resource Commissions.

The following agenda items will be discussed:

(1) Welcome.
(2) Review of agenda.
(3) Introduction of guests.
(4) Approval of minutes of last meeting.
(5) Election of chairperson and vice chair.
(6) Superintendent's report.
(7) Old business:
  (a) Resident zones.
  (b) Finalization of Hunting Plan.
(8) New business:
  (a) Federal Subsistence Coordinator's report.
  (b) Regional development impacts on subsistence.
  (c) Borough zoning.
  (d) Hunting concessions.
  (e) Harvest reports.
(9) Agency comments.
(10) Public comments.
(11) Date of next meeting.
(12) Adjournment.

**DATE:** The meeting will be held Wednesday, August 18, 1993. The meeting will begin at 9 a.m. and conclude around 5 p.m.

**LOCATION:** The meeting will be held at the National Guard Armory, Kotzebue, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Robert Gerhard, Superintendant, PO Box 1029, Kotzebue, Alaska 99752. Phone (907) 442–3890.

**SUPPLEMENTARY INFORMATION:** The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

**John M. Morehead,**

*Regional Director.*

[FR Doc. 93–18587 Filed 8–3–93; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the one hundred and seventeenth meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on September 9, 1993 from 8:30 a.m. to 3:30 p.m.

The purposes of the Meeting are: (1) To discuss hunger and poverty issues in developing countries; (2) to review the Deputy of State recommendations on foreign assistance; (3) to discuss A.I.D. proposed strategies on foreign assistance and (4) to hear a legislative report on foreign aid.

This meeting will be held in the Pan American Health Organization Building located at 525 23rd Street (between 23rd and Virginia Avenue), Washington, DC. At this address it will be held in Conference Room C. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the Meeting permits.

Jiryis S. Oweis, Chief BIFADEC Support Staff will be the A.I.D. Advisory Committee Representative at this Meeting. Those desiring further information may write to Jiryis S. Oweis in care of the Agency for International Development, room 900, SA–38, Washington, DC 20523–3801 or telephone him on (703) 816–0264.

Dated: July 28, 1993.

**Richard Fairley,**

*Acting Executive Director, Agency Center for University, Cooperation in Development.*

[FR Doc. 93–18503 Filed 8–3–93; 8:45 am]

BILLING CODE 6116-01-M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–352]**

### Commission Determination Not to Review an Initial Determination Granting Motion to Intervene

In the matter of Certain Personal Computers with Memory Management Information Stored in External Memory and Related Materials.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) in the above-captioned investigation granting the motion of Advanced Micro Devices, Inc. to intervene on the side of respondents in the investigation.

**FOR FURTHER INFORMATION CONTACT:** Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3108.

**SUPPLEMENTARY INFORMATION:** On June 16, 1993, Advanced Micro Devices, Inc. (AMD) filed a Motion to Intervene on the Side of Respondents. Complainant Intel Corp. filed an opposition to the motion and respondents Twinhead Int'l Corp. and Twinhead Corp. and the Commission investigative attorney filed responses in support of the motion. On July 2, 1993, the presiding administrative law judge issued an ID granting AMD's motion to intervene. No petitions for review or agency comments were filed regarding the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.53 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: July 27, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–18584 Filed 8–3–93; 8:45 am]

BILLING CODE 7020–02–P

**[Investigation No. 337–TA–350]**

## Commission Hearing

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

In the matter of certain sputtered carbon coated computer disks and products containing same, including disk drives.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to hold a public hearing in the above-captioned investigation to allow parties to present oral argument on the jurisdictional issues that are being reviewed by the Commission.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On May 28, 1993, the presiding administrative law judge (ALJ) issued an initial determination granting motions for summary determination or partial summary determination on the issue of jurisdiction filed by six respondents.

On June 30, 1993, the Commission determined to review this initial determination and to conduct oral argument in connection with its review.

On July 2, 1993, the ALJ issued an initial determination granting motions for partial summary determination on the issue of jurisdiction filed by two respondents. On July 21, 1993, the Commission determined to review this initial determination and to consolidate its review with review of the May 28, 1993, initial determination.

**COMMISSION HEARING:** The Commission will hold a public hearing on Wednesday, September 8, 1993, in its main hearing room, 500 E Street, SW., Washington, DC, beginning at 10 a.m. The hearing will be limited to the jurisdictional issues under review. The order and time limits for presentations shall be as follows:

Movants for summary determination—30 minutes collectively.

Opponents of summary determination—30 minutes collectively.

These time limits shall be exclusive of the time consumed by questioning by the Commission. The movants for summary determination may set aside part of their time for rebuttal. The hearing will be open to the public.

*Notice of appearance.* Written requests to appear at the Commission hearing must be filed with the Office of the Secretary no later than 10 days after publication of this notice in the **Federal Register**. The various parties on each side shall confer among themselves prior to the hearing to determine how their 30 minutes shall be apportioned among each party desiring to argue.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.56, 19 CFR 210.56.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Dated: July 27, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–18583 Filed 8–3–93; 8:45 am]

BILLING CODE 7020–02–P

**[Investigation No. 337–TA–350]**

## Decision not to Review an Initial Determination Granting Joint Motion to Terminate Investigation With Respect to Respondent Yamaha Corp. on The Basis of a License Agreement

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

In the matter of certain sputtered carbon coated computer disks and products containing same, including disk drives.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 47) issued on July 2, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and respondent Yamaha Corp. ("Yamaha") to terminate the investigation with respect to Yamaha on the basis of a license agreement.

**FOR FURTHER INFORMATION CONTACT:** Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3087.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On June 7, 1993, Aine and Yamaha filed a joint motion to terminate the investigation with respect to Yamaha on the basis of a licensing agreement. No party opposed the motion, and the Commission investigative attorney filed a response supporting it. On July 2, 1993, the ALJ issued an ID granting the joint motion and terminating the investigation as to Yamaha. No petitions for review of the ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Dated: July 27, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–18582 Filed 8–3–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 337–TA–350]

**Initial Determination Terminating Respondent on the Basis of Settlement Agreement**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Nippon Sheet Glass Company, Ltd.

In the matter of certain sputtered carbon coated computer disks and products containing same, including disk drives.

**SUPPLEMENTARY INFORMATION:** This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on July 29, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**WRITTEN COMMENTS:** Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

**FOR FURTHER INFORMATION CONTACT:** Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: July 29, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–18581 Filed 8–3–93; 8:45 am]

BILLING CODE 7020–02–P

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 468X)]

**CSX Transportation, Inc.—Abandonment Exemption—in Fannin County, GA**

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 2.89 miles of rail line between milepost OKG–393.47 at Murphy Junction, GA, and milepost OKG–396.36 at Mineral Bluff, GA, in Fannin County, GA.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 3, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 16, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 24, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 9, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 26, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18568 Filed 8–3–93; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1988). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

U.S. Department of Labor

Pension and Welfare Benefits Administration

**Withdrawal of Notice of Proposed Exemption Involving the Peoples National Bank of Lebanon Profit Sharing Plan (the Plan); Located in Lebanon, PA**

[Exemption Application No. D–8254]

In the **Federal Register** dated May 14, 1993 (58 FR 28626/28628), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the prospective cash sale of five residential mortgage notes by the Plan to Meridian Bank, a party in interest with respect to the Plan.

On July 19, 1993, the applicant informed the Department that it wished to withdraw the notice of proposed exemption.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 29th day of July, 1993.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U. S. Department of Labor.*

[FR Doc. 93–18541 Filed 8–3–93; 8:45 am]

BILLING CODE 4510–29–P

## DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–49; Exemption Application No. D–8510, et al.]

**Grant of Individual Exemptions; Metropolitan Life Insurance Company (MET), et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of Individual Exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

**Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Metropolitan Life Insurance Company (Met); Located in New York, New York [Prohibited Transaction Exemption 93–49; Application No. D–8510].

**Exemption**

Effective December 23, 1987, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The past cash sale by a pooled real estate separate account (Account RE), which was managed by Met and in which certain employee benefit plans (the Plans) participated, of the interests owned by Account RE in certain parcels of property (the Parcels) to Met Life International Real Estate Partners Limited Partnership (the LP), a party in interest with respect to the Plans; and (2) the reimbursement in cash by Met to Account RE of certain amounts in connection with the above sale; provided that: (a) the terms of the transaction were similar to those which could be obtained at arm's length between third parties in similar circumstances; (b) the price paid by the LP to Account RE, plus the amount reimbursed by Met to Account RE was not less than the fair market value of Account RE's interests in the Parcels on December 23, 1987, the date of the sale; and (c) the transaction was reviewed and approved by an independent fiduciary, acting on behalf of the Plans participating in Account RE.

**EFFECTIVE DATE:** The exemption will be effective December 23, 1987.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 9, 1993, at 58 FR 32365.

**FOR FURTHER INFORMATION CONTACT:** Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Memorex Telex Employees' Pension Plan (the Plan); Located in Tulsa, Oklahoma [Prohibited Transaction Exemption 93–50; Exemption Application No. D–8716]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The September 28, 1990 purchase by the Plan from Memorex Telex Holding, N.V. (MT-Holding), a party in interest with respect to the Plan, of 382,769 shares of stock (the Stock) of Memorex Telex Japan Limited (MT-Japan) for $5 million; (2) the Plan's holding of the Stock; and (3) the acquisition, holding and exercise by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to Memorex Telex N.V. (MTNV) on behalf of MT-Holding at a price per share equal to the Plan's acquisition price for the Stock, provided: (a) The Plan paid no more than the fair market value of the Stock on the date of the acquisition; (b) the transactions were approved on behalf of the Plan by a qualified, independent fiduciary; (c) the Plan's independent fiduciary will monitor the holding of the Stock by the Plan and take whatever action is necessary to protect the Plan's rights, including, but not limited to, the

exercising of the Put Option if the independent fiduciary, in his sole discretion, determines that such exercise is appropriate; and (d) an escrow agreement, as described in the notice of proposed exemption, was maintained as long as the Plan continued to hold any shares of the Stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 22, 1992 at 57 FR 48245.

**EFFECTIVE DATE:** This exemption is effective September 28, 1990.

**WRITTEN COMMENTS AND HEARING REQUESTS:** The Department received 21 written comments from interested persons with respect to the proposed exemption. Three of the comments stated that the interested person did not understand the proposed exemption. The remaining comments were submitted in opposition to the granting of the exemption. The interested persons expressed concerns over the conflict of interest; the failure to demonstrate that the investment by the Plan in the Stock was better than other investments available in the commercial market at the time, or other options; and their belief that the Plan's interests were not adequately protected by the Put Option or the escrow account (the Account) established by MTNV to safeguard the Plan's investment in the Stock.

The Plan's independent fiduciary, U.S. Trust (UST), has responded to the comments submitted. In its response, UST has described the procedures and analysis it undertook throughout its decision-making process, which UST believes reflects the basis for its determination that the terms of the purchase of the Stock by the Plan negotiated by UST made the Stock a sound investment for the Plan and provided adequate security.

UST represents that on September 20, 1990, it initiated its preliminary review of the transaction. UST represents that it followed extensive procedures regarding the purchase of employer securities by employee benefit plans that it has developed over the course of a number of similar transactions. UST first determined that it was permissible for the Plan to hold stock of a foreign issuer traded on a foreign exchange under the Department's regulation 29 CFR section 2550.404b–1.[1]

[1] The Department is providing no view herein with regard to whether the Plan's holding of the Stock met the conditions contained in section 2550.404b–1.

UST represents that it next considered the investment objectives of the Plan and determined that an equity security with the potential for capital appreciation was consistent with the investment objectives of the Plan. UST then began the process of collecting all pertinent historical financial information relating to MT-Japan, including detailed financial projections prepared by MT-Japan's management. UST also obtained publicly available financial information relating to companies of approximately the same size and in the same business field as MT-Japan. UST assigned certain of its internal financial experts with experience in international securities markets to review and analyze the financial information. Those individuals also conducted interviews with the management of MT-Japan in order to test the financial projections and evaluate the company's prospects. Finally, UST consulted with experts in the Japanese financial markets to obtain different opinions as to the financial prospects of MT-Japan.

UST represents that after completing its due diligence, it valued the Stock using a variety of generally accepted valuation methodologies. This produced a range of fair market values for the Stock. UST determined that if it could negotiate a purchase price for the Stock that was below the bottom of its range of fair market values, the Stock would represent a very good financial investment for the Plan.

In addition to fair market value, UST represents that it considered the potential volatility of the price of the Stock and its liquidity. It was determined that if UST could negotiate certain downside protections, as well as a favorable price, the Stock would be an excellent investment.

With those objectives, UST began negotiating possible terms with MT-Holding and obtained a number of terms that made the transaction much more favorable to the Plan than the customary purchase of an equity security. First, UST received a 15% discount from the closing bid price on the date of the transaction. On September 28, 1990, the closing bid price on the Tokyo Exchange was 2,120 yen, which converts to approximately $15.37 per share. The Plan actually paid approximately $13.06 per share for the Stock, representing a 15% discount from the fair market value. The discount lowered the price substantially below the bottom of the range of fair market values calculated by UST.

Additionally, UST represents that it entered into an escrow agreement with MTNV at the closing of the purchase, which required that MTNV transfer $1 million into the Account to be held by UST. The agreement provided that if the Plan were to sell any shares of the Stock for less than the price per share paid by UST, the Plan would be reimbursed from the Account for any losses resulting from the sale up to the balance of the Account. The fact that UST acted as the escrow agent ensured that the funds were immediately available to the Plan in the event of a sale of the Stock at a loss. In addition, MTNV provided a separate letter (the Side Letter) to UST dated September 28, 1990, wherein MTNV agreed that if the closing bid price of the Stock ever fell by more than 15% from the closing bid price on September 28, 1990, MTNV would negotiate in good faith with UST to implement additional measures to further protect the Plan's investment in the Stock. Pursuant to the Side Letter, UST did request and receive from MTNV an additional $1,300,000 to be added to the Account. As of July, 1993, the Account was valued at approximately $2.4 million.

UST represents that another important consideration was the fact that a relatively small portion of the Plan's assets was invested in the Stock. The Plan's actuarial report as of March 31, 1990, indicated that the Plan had assets with an aggregate fair market value of $55,027,000. Thus, the Plan's investment of $5 million in the Stock represented only 9.09% of the Plan's assets.

A final consideration by UST was the Put Option. UST considered the Put Option important in its determination of the prudence of the investment since UST would have the option to sell the Stock back to MTNV at a price no less than the purchase price.

UST further represents that it engaged Jones, Day, Reavis & Pogue (Jones) as its legal counsel at the time UST began its consideration of the transaction. UST represents that Jones has extensive experience in all matters relating to the Act and has special expertise in matters relating to employer securities. Attorneys from Jones actively participated in the due diligence and analysis carried out by UST. UST represents that it was advised by Jones that the procedures UST followed in determining whether to purchase the Stock were consistent with UST's fiduciary obligations under the Act.

Finally, UST represents that it exercised the Put Option on July 9, 1993, and sold 294,086 shares of the Stock to MTNV at the Put Option price of $13.0627 per share, for a total amount

of $3,841,557.19.[2] The Plan has now disposed of all the 382,769 shares of the Stock that it originally acquired, for a purchase price of $5 million, on September 28, 1990.[3] The Plan has received total proceeds of $5,205,171 from its sales of the 382,769 shares of the Stock.

Two of the interested persons who commented on the proposed exemption requested a public hearing, and three others suggested that a hearing might be helpful. The Department has considered the concerns expressed by these individuals and UST's written response addressing such concerns, and, on the basis of the materials provided, has determined not to hold a public hearing.

Accordingly, after careful consideration of the entire exemption record, including the written comments submitted by interested persons, the written response to the comments in which UST detailed its procedures for analyzing and approving the subject transactions, and the safeguards provided to the Plan in connection with the transactions, the Department has determined to grant the exemption as it was proposed.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Meister-Neiberg Defined Benefit Pension Plan (the Plan) Located in South Elgin, Illinois [Prohibited Transaction Exemption 93–51; Application No. D–9306].**

**Exemption**

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed series of loans (the Loans), originated within a five year period, by the Plan to Meister-Neiberg Company, Inc. (the Employer) and Kingsport Development, Inc. (Kingsport), an affiliate of the Employer, parties in interest with respect to the Plan; provided that the following conditions are met:

(a) The amount of the Plan's assets involved in the Loans does not exceed 25% of the Plan's total assets at any time during the transactions;

(b) All terms and conditions of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(c) An independent, qualified fiduciary determines on behalf of the Plan that each Loan is feasible, in the best interests of the Plan as an investment for the Plan's portfolio, and protective of the Plan and its participants and beneficiaries; and

(d) The independent, qualified fiduciary monitors compliance by the Employer and Kingsport with the terms and conditions of the Loans throughout the duration of the transactions, taking any action necessary to safeguard the Plan's interest, and monitors compliance by all parties with the terms and conditions of the exemption.

**Temporary Nature of Exemption**

The exemption will expire five years after the date the Final Grant of this exemption is published in the **Federal Register**. Subsequent to the expiration of this exemption, the Plan may hold Loans originated during this five year period until the Loans are repaid or otherwise terminated. Should the applicant wish to continue entering into any Loans beyond the five year period, the applicant may submit another application for exemption. At such time, the applicant must demonstrate: (i) whether and how compliance with the exemption has been achieved; (ii) the number of Loans engaged in under the exemption; and (iii) the particular decisions made by the independent fiduciary for the Plan regarding the Loans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 9, 1993 at 58 FR 32371.

**FOR FURTHER INFORMATION CONTACT:** Mr. E.F. Williams of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

**Main Urology Associates, P.C. Profit Sharing Plan and Main Urology Associates, P.C. Money Purchase Pension Plan (together, the Plans); Located in Buffalo, New York [Prohibited Transaction Exemption 93–52; Exemption Application Nos. D–9310 and D–9311].**

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a loan of $420,000 (the Loan) by the individual accounts of four participants in the Plans (the Accounts) to G.H.W.A. Realty Company (GHWA), a party in interest with respect to the Plans; provided the following conditions are satisfied:

(A) All terms of the Loan are at least as favorable to the Plans as those which the Plans could obtain in an arm's-length transaction with an unrelated party; (B) For the duration of the Loan, each Account's participation in the Loan does not exceed twenty-five percent of the net assets of the Account at any time; (C) For the duration of the Loan, the Plans' interests with respect to the Loan are represented by Mr. Franklin Pack, an independent fiduciary who will monitor and enforce GHWA's compliance with the Loan terms and the conditions of this exemption; and (D) Upon the making of the Loan and for its duration, the Loan is secured by a perfected lien on real property having a fair market value of no less than 150% of the sum of the outstanding principal balance of the Loan and the outstanding balance of any liens superior to the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 9, 1993 at 58 FR 32373.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the

[2] The Stock was trading on the open market for less than the Put Option price on July 9, 1993.

[3] The balance of the shares subject to the Put Option were previously sold on the open market for an average price of $15.50 per share, or a profit of $2.44 per share (see representation 11 of the Notice of Proposed Exemption).

transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of July, 1993.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 93–18542 Filed 8–3–93; 8:45 am]

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[Application No. D–8787 et al.]

## Proposed Exemptions; Standard Bank Employees Profit Sharing Plan et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of Proposed Exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Standard Bank Employees Profit Sharing Plan (the Plan); Located in Evergreen Park, Illinois [Application No. D–8787].**

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

*Part I. Purchases of Residential Mortgage Notes*

If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply for a period of five years to the prospective purchases by the Plan of certain residential mortgage notes (the Notes) from Standard Bank and Trust Company (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) The independent fiduciary will decide which Notes will be purchased for the Plan;

(2) Only first mortgage Notes will be purchased by the Plan;

(3) The Notes purchased by the Plan will have: (a) a borrower payment history with the Employer of at least three months; (b) a maximum 15 year maturity; and (c) the loan to value ratio of the collateral of at least 150% of the principal amount of the Note;

(4) If the mortgage loan is an original acquisition mortgage loan, the Note will not exceed two-thirds of the lower of the purchase price or of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(5) If the mortgage loan is a refinancing of the original acquisition mortgage loan, the Note will not exceed two-thirds of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(6) No more than twenty-five percent of the value of the Plan's total assets will be invested in the Notes;

(7) No more than ten percent of the value of the Plan's total assets will be invested in any one Note or Notes to any one borrower;

(8) The independent fiduciary states that the fees received by him for serving in the independent fiduciary capacity to the Plan with respect to the transactions described herein, combined with any other fees derived from the Employer or related parties will not exceed one percent (1%) of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein;

(9) With respect to past prohibited purchases of Notes (the Prohibited Notes) by the Plan from the Employer, the Employer has filed form 5330 (return of Initial Excise Taxes for Pension Plans and Profit Sharing Plans) with the Internal Revenue Service (the IRS) and has the paid the excise taxes for the period beginning in 1985 and including the year 1991; and

(10) The Employer will file form 5330 and pay excise taxes for the year 1992, with respect to the Prohibited Notes, thirty (30) days after publication of the final grant for this pending exemption in the **Federal Register**.

*Part II. Repurchases of Residential Mortgage Notes*

If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the possible repurchases of the Notes (the Repurchases) by the Employer: (a) in the event of default; (b) if the limitations set forth in Part I (6) and/or (7) are exceeded; and (c) at other times as determined by the independent fiduciary,[1] provided that the Repurchases will be at a price which is equal to the greater of the outstanding principal balance plus accrued interest through the date of repurchase or, the current fair market value as determined by the independent fiduciary.

**Temporary Nature of the Exemption**

The proposed exemption is temporary and, if granted, will expire five years after the date of the grant. The Employer may repurchase the Notes from the Plan after the five-year period so long as the Notes were purchased by the Plan during the five-year period.

**Summary of Facts and Representations**

The Plan is a profit sharing plan, which, as of December 31, 1990, had approximately 184 participants and $3,217,157 in total assets. The Plan is comprised of the employees of Standard Bank and Trust Company of Evergreen Park, Illinois, and Standard Bank and Trust Company of Hickory Hills, Illinois. The Plan trustee and administrator is Standard Bank and Trust Company located at 2400 West 95th Street, Evergreen Park, Illinois. The Plan is audited on an annual basis by Deloitte & Touche, a certified public accounting firm. The Employer is a licensed Illinois State bank, and is a recognized mortgage lender. The Employer is a member of the Federal Deposit Insurance Corporation (FDIC), and is examined annually by the Illinois Commissioner of Banks and every eighteen months by the FDIC.

2. Among its banking activities, the Employer is a mortgage lender wherein it makes loans to borrowers to purchase a residential dwelling unit (RDU) or to refinance mortgage loans on the RDU. The borrower signs or guarantees a mortgage note payable to the Employer secured with a mortgage or a trust deed and, if appropriate, an assignment of rents recorded against the RDU. In the case of a purchase or refinancing, an appraisal is obtained from a certified independent appraiser establishing the market value of the RDU being pledged as collateral for the mortgage note. A title insurance policy insuring the first and paramount lien of the mortgage on the RDU is obtained from a licensed title insurance company, and hazard insurance is also obtained naming the Employer as a mortgagee. In compiling its mortgage portfolio, the Employer reviews the following criteria:

(a) The credit record of the borrower showing that the borrower is a good credit risk and has a record of paying bills in a timely manner;

(b) A verification of the borrower's employment or source of income, indicating that the gross income is adequate to service the mortgage debt;

(c) The ratio of mortgage payments to borrower's income; and

(d) An appraisal by a certified independent appraiser establishing the market value of the RDU to be pledged as collateral for the mortgage note.

3. It is represented that during the years 1985 and 1986, the Employer sold five mortgage notes to the Plan (collectively, the Prohibited Notes). Two of the Prohibited Notes were paid off by the borrowers on August 2, 1991, and April 24, 1992, respectively. The other three Prohibited Notes were repurchased by the Employer on December 31, 1992. In this regard, the Employer paid the Plan the principal balance plus interest through the date of repurchase. The Employer has also filed form 5330 (return of Initial Excise Taxes for Pension Plans and Profit Sharing Plans) with the IRS and has paid excise taxes for the period beginning in 1985 and including the year 1991, with respect to the Prohibited Notes. It is represented that the Employer will file form 5330 and pay appropriate excise taxes for the year 1992, thirty days after the date the final grant for this pending exemption appears in the **Federal Register**.

4. The Employer now proposes to prospectively sell certain other Notes originated by the Employer to the Plan.[2] William J. Duffner (Mr. Duffner), CPA, of Evergreen Park, Illinois, will serve as an independent fiduciary with respect to the proposed transactions and will have discretion regarding any prospective purchases of the Notes by the Plan. Mr. Duffner is currently self-employed as a Certified Public Accountant as well as a real estate and financial consultant. Mr. Duffner and the accounting firm Duffner & Company, P.C. provide a wide range of services including, but not limited to, investment analysis of pension and profit sharing plans, Keoghs and individual retirement accounts, and assistance in residential mortgage and land title matters. Mr. Duffner represents that he is unrelated to the Plan and the Employer and that he is educated, trained and experienced in mortgage matters. Mr. Duffner represents that by virtue of his education and experience he is qualified to serve as an independent fiduciary for transactions described herein. Mr. Duffner has been advised by legal counsel as to the duties and responsibilities of an ERISA fiduciary and assumes those responsibilities in regard to the transactions described herein. Mr. Duffner also states that the fees received by him for serving in the independent fiduciary capacity to the Plan combined with any other fees derived from the Employer or related parties will not exceed one percent (1%) of his gross annual income for each fiscal year that he continues to serve as independent fiduciary.

5. As the independent fiduciary, Mr. Duffner will verify information, review documents and make computations as necessary for each proposed sale of a Note. The Notes will represent original acquisition mortgage loans or mortgage loan refinancing. The Notes will be first mortgage Notes and will be seasoned, that is, have a borrower payment history of at least three months with the Employer. The Notes to be offered to the Plan will be selected by the Employer. However, Mr. Duffner will have discretion with respect to whether a purchase of the Notes will be made by the Plan. Prior to any prospective purchase by the Plan, Mr. Duffner will review alternative Plan investments. Mr. Duffner will determine whether a specific Note is a good investment for the Plan. In this regard, he will review the Employer's credit and security files maintained on the specific mortgage loan evidenced by the Note to ascertain:

(a) The borrower's employment or source of income by reference to

[1] The Department notes that if a violation of any of the terms and conditions of Part I occurs, the exemptive relief provided by Part I for purchases of the Notes by the Plan will no longer be available. However, the Department further notes that the loss of exemption under Part I will not affect the use of Part II to dispose of the Notes previously acquired by the Plan pursuant to the exemption.

[2] The Department notes that the general standards of fiduciary conduct under section 404 of the Act require that a fiduciary discharge his duties regarding a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Specifically, section 404(a)(1)(C) provides that a fiduciary shall diversify the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, no relief is provided herein from any of the provisions of section 404 by virtue of the granting of this exemption.

borrower's financial statement, loan application and tax information;

(b) The ratio of mortgage payments to borrower's income;

(c) The credit worthiness and payment history of the borrower by reference to credit, employment and financial information;

(d) That the borrower is not an employee of the Employer and is independent of the Plan and the Employer[3]; and

(e) Any required guaranty or assignment of rents.

The fiduciary will also review any relevant documents to assure:

(f)(1) In cases where the mortgage loan is an original acquisition mortgage loan, that the Note does not exceed two-thirds of the lower of the purchase price or of the appraised value of the RDU mortgaged by the borrower to the Employer to secure the Note;

(2) In cases where the mortgage loan is a refinancing of the original acquisition mortgage loan, that the Note does not exceed two-thirds of the appraised value of the RDU mortgaged by the borrower to the Employer to secure the Note;

(g) That the Note has been seasoned for at least three months and is secured by a first mortgage on a single-family RDU and specifies a maximum fifteen (15) year maturity with a fixed interest rate per annum on the principal balance;

(h) That a title insurance policy has been issued to the Employer insuring the mortgage on the RDU as a first and paramount lien and designating the Employer, its successors and assigns as the named insured; and

(i) That a hazard insurance policy and flood insurance policy, if applicable, have been issued insuring the Employer and its successors and assigns as mortgagee of the RDU in an amount not less than the principal amount of the Note; and

(j) That the Employer, which will service the Notes, will charge the Plan only for direct costs as permitted by section 408(b)(2) of the Act.

Mr. Duffner can also require the Employer to repurchase any Notes from the Plan to meet liquidity needs of the Plan. Such Repurchases will be for the greater of the outstanding principal balance plus accrued interest through the date of repurchase or, the current fair market value. The fair market value will be determined based on computations described herein.

[3] The Department notes that no relief is provided herein for any prohibited transactions under section 406 of the Act which would result if such borrowers were parties in interest with respect to the Plan as defined in section 3(14) of the Act.

7. On the date of the sale, Mr. Duffner will also verify that the sale price of a Note is equal to the fair market value of the Note. In this regard, Mr. Duffner will rely on the following method in determining the fair market value of the Note:

(a) The average yield of comparable RDU mortgage loans will be determined based upon the interest rates offered by direct federally insured lenders in the Employer's market area. Such interest rate information will be obtained from independent published sources or the Employer's in-house survey of mortgage loan interest rates offered by other direct federally insured lenders in the Employer's market area;

(b) the fair market value of the Note will be determined by adjusting the principal amount of the Note to a sum which will result in a yield equal to the average yield computed by reference to the published sources or the Employer's in-house survey referred to in (a). Fair market value may result in a sale at a premium or a discount from the principal balance on the Note; and

(c) once the fair market value of the Note is determined, that amount will be increased to reflect accrued interest due the Employer from the borrower through the date of the sale of the Note to the Plan, to arrive at the sale price of the Note.[4]

The Plan will then pay the Employer the sale price in cash. Any Note being evaluated by Mr. Duffner would have been originated by the Employer for its own portfolio and not as an agent for the Plan. The Plan will pay no transfer charges or other costs in relation to these transactions. It is represented that any risks and burdens involved in the origination, closing, booking and servicing of the mortgage loans will be borne by the Employer at no cost to the Plan.

8. Mr. Duffner as the independent fiduciary will be responsible for reviewing the Plan's financial statements and the Employer's compliance with the terms of the exemption as set forth in this document. With respect to Prohibited Notes, he will ensure that all IRS 5330 forms for the years 1985 through and including 1991 have been filed and any and all excise taxes duly paid, and that for the year 1992, IRS 5330 forms will be filed and any excise taxes paid, thirty days after the publication of the final grant for this pending exemption in the **Federal Register**. Mr. Duffner will ensure that no more than twenty-five percent (25%) of the fair market value of the Plan's total assets will be invested in the Notes, and that no more than ten percent (10%) of the fair market value of the Plan's total assets will be invested in any one Note or Notes to any one borrower. In this regard, Mr. Duffner will conduct annual reviews of the total assets of the Plan in order to determine their fair market value. These reviews will take place on each anniversary date the final grant for this pending exemption is published in the **Federal Register**. If on those occasions, the fair market value of the Notes in the Plan's portfolio exceeds either the 25% or the 10% limitation as set forth herein, Mr. Duffner will require the Employer to repurchase any Notes pursuant to Part II of this exemption. Such Repurchases will be completed within thirty (30) days of each annual review and will be at a price which is equal to the greater of the outstanding principal balance plus accrued interest through the date of repurchase or, the fair market value of the Notes on the date of review. Furthermore, Mr. Duffner will monitor the Employer's mortgage loan servicing department to assure the receipt of monthly payments of principal and interest due on each Note purchased by the Plan, and the remission of such payments to the Plan.

9. Mr. Duffner will also monitor the Plan's rights in default situations. In this regard, the Employer has agreed to repurchase any Note which is delinquent for three consecutive monthly payments of principal and interest at a price equal to the unpaid principal balance on the Note plus accrued interest through the date of the Repurchase. Such Repurchase shall occur not later than the last business day of the third consecutive month of uncured principal and interest payment default. Also, the Employer will remit to the Plan any late fees assessed and collected from the borrower. Mr. Duffner represents that a Note in default always has a fair market value not greater than the unpaid principal balance plus accrued interest through the date of repurchase. As such, he will

[4] When determining the purchase price to the Plan of a Note originated by the Employer, the independent fiduciary will consider prepaid interest in the form of origination fees or points charged to the borrower by the Employer and retained by the Employer. Origination fees or points will be considered in the comparison of the nominal yield of the Note to the average yield in the Employer's market area for comparable residential dwelling unit mortgage loans offered by other federally insured lenders. The average yield figures from other federally insured lenders will include prepaid interest in the form of origination fees or points. By making this comparison, any prepaid interest in the form of origination fees or points retained by the Employer will be considered in the computation of the purchase price of the Note to the Plan when the purchase price of the Note is adjusted to reflect an average market yield.

not do any fair market value computations for the Repurchases in the event of default, however, he will verify the accuracy of the sums received by the Plan.

10. Mr. Duffner has determined that the purchase by the Plan of the Notes is administratively feasible, protective and in the interest of the Plan. He represents that due to market conditions Plan assets are invested in debt instruments and certificates of deposits returning substantially lower yields than the Notes. Traditionally, mortgage note investments have certain inherent risks. The Notes are not subject to those risks due to the Employer's obligation to Repurchase any Notes in default. Also, the independent fiduciary can require the Employer to Repurchase any Notes from the Plan in order to satisfy the Plan's liquidity needs and to maintain compliance with the 25% and 10% limitations as set forth in Part I of this exemption. Mr. Duffner therefore concludes that acquisition of the Notes by the Plan will result in higher earnings for the Plan. The Employer and Mr. Duffner understand that the effectiveness of the exemption, if granted, is dependent on the compliance with the terms of the exemption as set forth herein including any limitations, restrictions or other conditions imposed on such exemption. Furthermore, the Employer and Mr. Duffner understand that in the event that unanticipated circumstances reduce the assets of the Plan to the extent that a violation of any of the terms and conditions of the exemption results, the relief provided by the exemption will no longer be available.

11. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) The independent fiduciary will decide which Notes will be purchased for the Plan;

(2) Only first mortgage Notes will be purchased by the Plan;

(3) The Notes purchased by the Plan will have: (a) a borrower payment history with the Employer of at least three months; (b) a maximum 15 year maturity; and (c) the loan to value ratio of the collateral of at least 150% of the principal amount of the Note;

(4) In the case of an original acquisition mortgage loan, the Note will not exceed two-thirds of the lower of the purchase price or of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(5) In the case of a refinancing of the original acquisition mortgage loan, the Note will not exceed two-thirds of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(6) In the event of a default and/or if the limitations described in (7) and (8) below are exceeded, the independent fiduciary can require the Employer to repurchase any Notes sold to the Plan. Such Repurchases will be at a price which is equal to the greater of the outstanding principal balance plus accrued interest through the date of repurchase or, the current fair market value;

(7) No more than twenty-five percent of the value of the Plan's total assets will be invested in the Notes;

(8) No more than ten percent of the value of the Plan's total assets will be invested in any one Note or Notes to any one borrower; and

(9) The effectiveness of Part I or Part II of this exemption, if granted, is dependent on the compliance with the terms of the exemption as set forth herein, including any limitations, restrictions or conditions imposed on Part I or Part II of such exemption.

**FOR FURTHER INFORMATION CONTACT:** Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

**Atlanta Beverage Co. 401(k) Profit Sharing Plan (the Plan); Located in Atlanta, Georgia [Application No. D–9320]**

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash of certain mutual fund shares from the Plan to Atlanta Beverage Co. (the Employer), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The terms of the sale are at least as favorable as those the Plan could obtain in an arm's-length transaction with an unrelated party;

2. The price paid for the shares will be equal to the offer price for the shares as published in the Wall Street Journal on the date of the sale;

3. The Employer pays all cash for the shares; and

4. The Plan pays no expenses or transaction costs in regard to the sale.

**Summary of Facts and Representations**

1. The Employer, a Georgia general partnership, is a wholesale beer distributor. The Plan is a profit sharing plan which had 396 participants and total assets of $20,892,814 as of August 31, 1992. Two of the three managing partners of the Employer are also trustees of the Plan. IDS Trust is the asset manager for the Plan.

2. During 1991 and 1992, the Plan invested a portion of its assets in shares of three publicly traded mutual funds. As of August 31, 1992, the Plan had invested $1,317,818 in the Lord Abbett Government Fund, $1,851,470 in the Washington Mutual American Fund and $1,000,015 in the MFS Worldwide Governments Trust. The total cost to the Plan of purchasing the shares as of that date accordingly amounted to $4,169,303. All three funds are listed daily in the Mutual Fund Quotations section of the Wall Street Journal. The applicant represents that there is no relation between any of the mutual funds and either the Employer or the asset manager of the Plan. The shares were purchased through Shearson Lehman and Robinson-Humphrey.

3. The Plan now desires to become a section 404(c) plan within the meaning of regulation 29 CFR 2550.404c–1 of the Department and to comply with all the relevant requirements of that regulation. For example, each Plan participant is to be given the opportunity to choose from a broad range of investment alternatives. Toward this objective, the trustees of the Plan have been advised by various financial groups that certain assets of the Plan must be converted into cash.

Accordingly, the Plan proposes to sell the above named mutual fund shares to the Employer. The Employer will pay the offer price for the shares as published in the Wall Street Journal at the time of sale. The applicant represents that the Plan would otherwise have to redeem the shares at the net asset value, which is a lower amount. To illustrate, at the close of trading on May 11, 1993, the shares owned by the Plan (for the three funds combined) had a total net asset value of $4,498,133. The total offer price for the shares was $4,743,021. The difference is $244,888 which represents the amount the Plan would have saved on that date by not redeeming the shares at net asset value. The sale will be a one-time transaction for cash and the Plan will incur no expenses in regard to the transaction.

4. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1)

The sale of the mutual fund shares will be entirely for cash, allowing the Plan to further its objective of becoming a section 404(c) plan; (2) the prices of the shares for each of the three mutual funds are published daily in the Wall Street Journal; (3) the Employer will pay the offer price for the shares at the time of sale; and (4) the Plan would receive only the net asset value, a lower amount, in an ordinary redemption of the shares.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

IDS Financial Corporation (IDS); Located in Minneapolis, Minnesota [Application No. D–9152].

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the guarantee against loss (the Guarantee) by IDS or its affiliates (together, the Applicants) of money invested with the Applicants by employee benefit plans (the Plans), provided: (a) The fees paid by the Plans to the Applicants for the Guarantees are not more than reasonable compensation for such Guarantees; (b) the decision to purchase the Guarantees will be made for each Plan by a Plan fiduciary who is independent of the Applicants; (c) the individually managed portfolios and collective investment funds that will be subject to the Guarantee will be invested in products whose prices are quoted daily and thus can be objectively valued; and (d) all terms and conditions of the Guarantee will be fully disclosed in a written document which will be distributed to any Plan investing in the Guarantee.

**Summary of Facts and Representations**

1. IDS, a wholly owned subsidiary of American Express Company, is an investment adviser registered under the Investment Advisers Act of 1940, and a broker-dealer registered under the Securities Exchange Act of 1934. IDS serves as investment manager or investment adviser to 32 registered investment companies (Funds) and to IDS Certificate Company, a wholly owned subsidiary of IDS that is the largest issuer of face-amount certificates in the United States (i.e., securities representing obligations of the issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than 24 months after the security is issued). As of April 30, 1992, the 32 publicly-offered Funds advised by IDS had aggregate assets of over $26 billion, and IDS Certificate Company had approximately $3.9 billion in assets. As of May 8, 1992, IDS had over 2,100 employees.

2. IDS Financial Services, Inc. (IDSFS), a wholly owned subsidiary of IDS, has 176 division offices in 49 states and the District of Columbia. IDSFS is a registered broker-dealer and investment adviser that serves as principal underwriter for the 32 Funds advised by IDS and for life insurance and variable annuity contracts issued by IDS Life Insurance Company of New York (another IDS affiliate) and for IDS Certificate Company. As of May 8, 1992, IDSFS had 2,344 employees.

3. IDS Advisory Group, Inc. (IDS Advisory), is a registered investment adviser and a wholly owned subsidiary of IDS. IDS Advisory's principal line of business is providing investment advice to large tax-exempt institutions, including Plans. As of December 31, 1991, IDS Advisory served as investment adviser to Plans holding approximately $7.4 billion in assets. Since January 1, 1991, IDS Advisory has also provided investment management services for AMEX Life Assurance Company, AMEX Centurion Life and Accident Company and AMEX Assurance Company. As of March 31, 1992, IDS Advisory had 50 employees.

4. IDS Bank and Trust (IDS Bank), a trust company with banking powers and a wholly owned subsidiary of IDS, offers a variety of trust services and products. IDS Bank is regulated by the Minnesota Department of Commerce (Banking Division) and by the Federal Deposit Insurance Corporation. It is not a member of the Federal Reserve System. IDS Bank's banking division currently engages in making loans and accepting time deposits, but does not offer demand deposits. Through its trust division, IDS Bank maintains a series of 20 collective investment funds for the investment of Plan assets. As of December 31, 1991, the collective funds had approximately $2.38 billion in assets. Through its trust division, IDS Bank also offers trustee, custodial and record keeping services for Plans, as well as investment management services to its fiduciary clients and to the collective funds it maintains. As of December 31, 1991, IDS Bank had 291 employees, 267 of whom performed services for the trust division.

5. The Applicants, as described above, serve as investment managers to Plans, within the meaning of Act section 3(38), through investment management agreements, or through collective investment funds offered by IDS Bank. The Applicants are requesting an exemption to provide any of their client Plans the opportunity to invest in an individualized portfolio of investments that carries with it an option to purchase a Guarantee to give security to the Plan and its participants. IDS would, in addition, like to provide a Guarantee of the total value of amounts invested in one or more of IDS Bank's collective investment funds or group trusts. IDS Bank determines the composition of the portfolios subject to the Guarantee, regardless of whether they are individual portfolios or the collective investment funds.

6. The fees associated with the proposed IDS Guarantee would operate as follows. A Plan fiduciary would have the choice to invest either through an IDS collective investment trust (CIF) maintained by IDS Bank, or through an individually managed portfolio. The Applicants represent that in either event, the investment philosophy would be to minimize risk to the Plan's portfolio through hedging of investments. The fee for asset management and custodial services in the collective investment fund is 35 basis points annually, payable quarterly. The fee for individualized asset management is 40–50 basis points annually, also payable quarterly, which reflects the additional risk of the investment portfolio where a custodian other than IDS Bank settles all trades.

7. The CIF will invest primarily in securities issued or guaranteed as to principal and interest by the U.S. government or its agencies or instrumentalities. Allowable securities will include U.S. Treasury bonds, notes and bills, securities of the Government National Mortgage Association, and obligations of the Federal Home Loan Banks, Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. It is anticipated that a significant portion of the CIF's assets will consist of U.S. government securities representing part ownership in pools of mortgage loans. A portion of the CIF's assets will be maintained in cash and cash equivalents. In addition, the CIF may also invest in bank certificates of deposit, time deposits, banker's acceptances and letters of credit issued by banks, as well as highly rated commercial paper. The CIF may use financial futures contracts and

options on such contracts for purposes of hedging its investments.[5]

8. With respect to the individually managed portfolios, the Applicants represent that some or all of the cash therein may be invested in the IDS Trust Collective Short-Term U.S. Government Securities Fund or other short-term investment funds, provided such short-term funds invest primarily in the kinds of investment instruments which meet the portfolio's objectives and provided that such investments are authorized by the Plan fiduciary.

9. With respect to the individually managed portfolios, the Guarantee offered to the Plan will be purchasable in advance on a quarterly basis. Under the Guarantee, a Plan will not incur a negative aggregate total return on its investments in the portfolio during any quarter covered by the Guarantee, as measured against the value of the portfolio on the first day of that quarter. Total return is the sum of interest income and market appreciation less depreciation before payment of any fees. The Applicants represent that the individual portfolios and the CIFs that will be subject to the Guarantee will be invested in products whose prices are publicly quoted daily and thus can be objectively valued. A Plan's portfolio will be valued quarterly, and, at the close of business on the last day of each quarter, IDS will pay to the Plan an amount sufficient to restore the Plan's guaranteed investment to the fair market value of the investment as of the date the Guarantee commenced. There is no guaranteed rate of return under the proposed program. Plans will be allowed to increase or decrease the amount subject to the Guarantee only as of these quarterly valuation dates. A Plan can alter the investment instructions or terminate the investment management agreement with 90 days notice. While the Guarantee could, in theory, be canceled by the Plan prior to the end of the 90-day period, there would be no proration of the Guarantee fee. A Plan may purchase the Guarantee on all or a portion of the amount of its investment in the individual portfolio. If the Plan wishes to Guarantee only a portion of the individual portfolio, the Plan specifies the portion to be subject to the Guarantee. In such case, any losses in that portion would be guaranteed 100%, and no part of the rest of the portfolio would be guaranteed. All gains in the guaranteed portion of the portfolio would be used to offset losses in that portion of the portfolio; the Guarantee would only be paid if the total value of the Plan's guaranteed portfolio fell below the guaranteed level as of the valuation date.[6] If the performance of a portfolio during a quarter triggers the payment of the Guarantee, the portfolio is valued with the addition of the Guarantee for purposes of determining the value of the portfolio at the beginning of the next quarter. In other words, the Guarantee is added to the basis assigned to the guaranteed portfolio.

10. Regardless of whether the Plan fiduciary chooses the CIF as a vehicle or chooses individual asset management, the fee for the Guarantee is the same: 15 basis points of the amount guaranteed annually, payable quarterly. In the case of the CIF, the Guarantee fee cannot be netted against yield or taken out of the CIF, but must instead be paid separately, either by the Plan sponsor or through Plan assets. In the case of the individually managed portfolios, the Guarantee fee will be paid either directly by the Plan sponsor or from the portion of the portfolio that is not subject to the Guarantee. The Guarantee will, in the case of both the CIFs and the individual portfolios, be purchasable on a quarterly basis, and may be dropped effective at the beginning of any calendar quarter with 90 days prior notice.

11. Under the Guarantee, a Plan will not incur a negative total return on its guaranteed investment in the CIF during any quarter covered by the Guarantee. Total return, as in the case of the individually managed portfolios, is the sum of interest income and market appreciation less depreciation before the payment of any fees. The CIF will be valued quarterly, and, at the end of each quarter, IDS will pay to the investing Plan an amount sufficient to restore the Plan's guaranteed investment to the fair market value of the investment as of the date the Guarantee was purchased.[7] As in the case of the individually managed portfolios, the CIF would be valued with the addition of the Guarantee for purposes of determining the value of the CIF at the beginning of the next quarter. Plans will be allowed to invest additional amounts or withdraw from the CIF only as of these quarterly valuation dates. Thus, the Guarantee, once purchased, is effective until the end of the quarter. A Plan may purchase the Guarantee on all or a portion of the amount of its investment in the CIF. If the Plan wishes to Guarantee only a portion of the CIF, the Plan specifies the percentage to be subject to the Guarantee. The Guarantee would only be paid if the total value of the Plan's guaranteed portion of the CIF units fell below the guaranteed level as of the valuation date.[8]

12. In summary, the Applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: a) the Plan will be provided with the option of protecting the total value of its investment; b) the proposed exemption will not apply unless all fees paid by the Plans for the Guarantees constitute no more than reasonable compensation; and c) any decision to purchase a Guarantee will be made on behalf of a Plan by a fiduciary who is independent of the Applicants.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Anesthesia Associates of Kansas City, Inc. Profit Sharing Plan (the Plan); Located in Kansas City, Missouri [Application No. D–9401]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the

[5] The Applicants represent that financial futures contracts may be used for hedging purposes only and not for speculation. Futures contracts may be used to hedge portfolio positions, anticipated interest rate changes or other aspects of portfolio risk. The CIF may also use futures contracts as an anticipatory hedge. The Applicants represent that in buying and selling futures contracts, the CIF will at all times abide by the regulations of the Commodity Future Trading Commission defining hedging. The Applicants further represent that at no time will futures contracts be used to leverage the CIF's portfolio. In addition, the Applicants represent that they will use an unaffiliated broker for the purchase of any futures contracts.

[6] For example, if a Plan fiduciary decides to invest $100 million with IDS in an individually managed portfolio and desires a Guarantee with respect to 25% of that portfolio, IDS would segregate $25 million and invest those assets in investments suitable for the Guarantee. The Guarantee would run only to that part of the portfolio, and if the value of that part of the portfolio fell below $25 million, the Guarantee would be paid, regardless of whether the rest of the portfolio had increased or decreased in value.

[7] For example, if a Plan invested $5 million in a CIF on the first day of a quarter which was worth $4 million on the last day of the quarter, the CIF would credit the Plan's investment in the CIF with an additional $1 million as of the last day of the quarter, or apply such amount to other Plan investments, as directed by the Plan fiduciary.

[8] For example, a Plan fiduciary may decide to invest $10 million in a CIF, and to purchase a Guarantee for $4 million. The result of that decision would be that as of the evaluation date next following the investment, the $4 million investment would be valued, and if it had decreased in value below $4 million, the Guarantee would be paid. Thus, the guaranteed portion of the Plan's investment would be separately accounted for, and the value of the non-guaranteed portion of the Plan's investment in the CIF would have no bearing on whether the Guarantee would be paid.

exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed sale (the Sale) from Arthur P. Vogel, M.D.'s (Dr. Vogel) individually-directed account (the Account) in the Plan of certain stock (the Stock) to Dr. Vogel, a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) the Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Stock is appraised by a qualified, independent appraiser; and (4) the sales price for the Stock reflects its fair market value on the date of the Sale.

**Summary of Facts and Representations**

1. The Plan is a profit sharing plan sponsored by Anesthesia Associates of Kansas City, Inc. (the Employer), which as of April 2, 1993, had 108 participants. The Plan provides for individually-directed accounts by participants. As of December 31, 1991, the Plan had total assets of $17,631,603.70 and the Account had total assets of $863,483. The trustees of the Plan are Donald E. McIntosh, M.D., George A. Edwards, M.D. and Adrian J. Delaney, Jr. D.O., all of whom are shareholders of the Employer. The Employer provides anesthesia and other related services to hospital and ambulatory surgery centers in Kansas and Missouri.

2. The Stock consists of 50,000 shares of common stock of NetWorx, Inc. (NetWorx), a closely-held Washington corporation engaged in developing and marketing computer network management software products. The Stock was originally purchased by the Account from NetWorx on December 20, 1991 for $500 or one (1) cent per-share.

3. In order that the Plan may divest itself of illiquid assets, Dr. Vogel requests an administrative exemption from the Department to purchase the Stock for cash from the Account for its fair market value on the date of the Sale. Dr. Vogel represents that he does not currently own any NetWorx stock in an individual capacity and, therefore, will not have a controlling interest after the Sale. Because the Sale would be between Dr. Vogel and the Account, the accounts of the other Plan participants would not be affected. The Plan will not be required to pay any commissions, costs or other expenses in connection with these transactions.

4. Tony Leung (Mr. Leung), an accredited senior appraiser with Corporate Advisory Associates, Inc. (Corporate Advisory), valued the Stock. Mr. Leung represents that both he and Corporate Advisory Associates, Inc. are unrelated to and independent of the Employer. In an appraisal dated March 29, 1993, Mr. Leung states that the Stock represents a minority interest in NetWorx and, based upon this minority interest, the value of the Stock is $22,500 or forty-five (45) cents per share.

In letters dated May 20, 1993 and July 14, 1993, Mr. Leung describes certain factors he considered in determining the value per share of the Stock. Mr. Leung states that around the valuation date, NetWorx was in need of a capital infusion in order to continue its operations. Mr. Leung represents that such capital infusion was uncertain. Accordingly, Mr. Leung valued the Stock based on the two possible scenarios: with and without the necessary capital. Mr. Leung states that he utilized the discounted future cash flow and future values methods to value the Stock, assuming a capital infusion. Under these approaches, the value per share of the Stock was estimated at seventy-four (74) cents and $1.11, respectively. Mr. Leung averaged these two figures to arrive at an overall value of ninety-three (93) cents per share assuming a capital infusion. Mr. Leung represents that without the required capital infusion, the value of the Stock would be zero after the prior claims of the preferred stock. Because there were no definite prospects regarding the needed capital, Mr. Leung assigned a fifty (50) percent probability to each scenario. Therefore considering both scenarios, Mr. Leung utilized the probability weighted value of forty-five (45) cents per share. Based upon the aforementioned appraisal, the Account will sell the Stock to Dr. Vogel for $22,500.

5. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Sale will represent a one-time cash transaction; (b) the Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction; (c) the Stock has been appraised by a qualified, independent appraiser; and (d) the sales price for the Stock will reflect its fair market value on the date of the Sale.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of July, 1993.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 93–18543 Filed 8–3–93; 8:45 am]

BILLING CODE 4510-29-P

## NATIONAL SCIENCE FOUNDATION

### Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by August 31, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

*Title:* Survey of Innovation in Manufacturing.

*Affected Public:* Businesses or other for-profit and Small businesses or organizations.

*Respondents/Reporting Burden.* 1,000 respondents; One hour per response.

*Abstract:* This pilot survey of 1,000 companies is designed as a test for a full-scale measure survey on innovation activities in the manufacturing sector. The primary focus of the pilot study is to test procedures, operations, analytical methodology, and the validity of the questionnaire and the survey response.

Dated: July 30, 1993.

**Herman G. Fleming,**

*Reports Clearance Officer.*

[FR Doc. 93–18538 Filed 8–3–93; 8:45 am]

BILLING CODE 7555–01–M

### Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

**SUPPLEMENTARY INFORMATION:** On July 1, 1993 the National Science Foundation published a notice in the Federal Register of permit applications received. Permits for taking/importing and entering specially protected area, were issued to William R. Fraser on July 29, 1993.

**Guy G. Guthridge,**

*Permit Office, Office of Polar Programs.*

[FR Doc. 93–18530 Filed 8–3–93; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice

### Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 12, 1993, through July 23, 1993. The last biweekly notice was published on July 21, 1993 (58 FR 39046).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 3, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of amendment request:* July 16, 1993

*Description of amendment request:* The proposed amendment revises Technical Specifications 3/4.2.1, 3/4.2.2, 6.9.1.6, and associated Bases to incorporate references to the Siemens Power Corporation (SPC) methodologies that will support the transition from Westinghouse-supplied fuel to SPC-supplied fuel. Specifically:

1. Changes are proposed to Technical Specification 3/4.2.1, Axial Flux Difference, Technical Specification 3/4.2.2., Heat Flux Hot Channel Factor, and associated Bases to incorporate the use of the Siemens PDC-3 methodology for power distribution control. The specific Technical Specification changes reflect the manner in which target axial flux difference (AFD) will be controlled and how the associated penalties to the measured heat flux hot channel factor are applied.

2. Technical Specification 6.9.1.6 will be revised to update the Core Operating Limits Report (COLR) reference section to incorporate the appropriate SPC generic methodology used to establish the limits provided in the COLR. This revision incorporates references to three SPC methodologies that are currently under review by the NRC staff (EMF-92-081, EMF-92-153, and XN-NF-82-49).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

a. The accidents previously evaluated in the Final Safety Analysis Report (FSAR) are

unchanged by the proposed revisions to Technical Specifications 3/4.2.1 and 3/4.2.2. The plant systems, including excore and incore hardware and general methods of operation (i.e., axial power distribution control) are not affected by the proposed changes; plant procedures (except that Base Load is no longer an option) and allowed action times for limiting conditions for operation are unchanged.

b. The proposed incorporation of reference changes in the Core Operating Limits Report (COLR) does not involve changes or additions to plant equipment. The referenced methodologies are used to evaluate the consequences of the changes in fuel design according to NRC approved requirements. These consequences must satisfy the specified acceptable fuel design limits, the radiological limits, and the loss of coolant limits as defined by the NRC. These limits continue to be met.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. The proposed amendment replaces one approved methodology with another (PDC-3). These methodologies are designed to provide the same function, control of axial flux difference, so that existing analyses remain valid.

b. The incorporation of references in the COLR does not create precursors to a new kind of accident.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

a. The proposed changes to Technical Specifications 3/4.2.1, 3/4.2.2, and associated Bases do not affect parameters that relate to the margin of safety as defined in the Technical Specifications.

b. The incorporation of references in the Core Operating Limits Report (COLR) does not impact the parameters that relate to the margin of safety as defined in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602NRC Acting Project Director: S. Singh Bajwa

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* January 25, 1993, as supplemented May 12, 1993

*Description of amendment request:* The proposed amendments would revise the Technical Specifications (TS) to increase the surveillance test intervals (STI), allowed outage time (AOT), and channel bypass times for certain instrumentation in the Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS). The acceptability of these TS changes has previously been reviewed by the NRC staff in response to the Westinghouse Owners Group's submittal of a topical report, WCAP-10271, and supplements and revisions to that report. The NRC staff's first SER dated February 21, 1985, on WCAP-10271 through Supplement 1 addressed only analog channels for the RTS. The staff found that an acceptable basis had been provided to (a) increase the STI from once per month to once per quarter, (b) increase the time that an inoperable channel could be maintained in the untripped condition from 1 to 6 hours, (c) increased the time that an inoperable channel could be in bypass to facilitate surveillance testing of a channel from 2 hours to 4 hours, and (d) allow routine testing in a bypassed condition instead of in a tripped condition. Duke Power did not apply for condition (d) and it will not be considered further in this review.

The staff's next SER on WCAP-10271 through Supplement 2, Revision 1, dated February 22, 1989, found the following acceptable: (a) increase the STI for ESFAS analog channels from 1 to 3 months, (b) increase the AOTs for ESFAS analog channels from 2 to 4 hours, (c) increase the AOTs for testing all components in solid state systems to 4 hours, (d) increase the AOT for maintenance of all logic components to 12 hours and (e) other changes not applicable to Catawba.

The staff's SER of April 30, 1990, reported completion of the review of Appendix D of WCAP-10271, Supplement 2, Revision 1, and approval of a 4-hour AOT for testing and a 12-hour AOT for maintenance, instead of 2 and 6 hours respectively, for the RTS logic cabinets. RTS channel, STI, and AOT extensions similar to those given for ESFAS channels were also approved.

The NRC staff's evaluation letter of July 24, 1985, provided marked up TS pages to reflect implementation of these changes in a sample set of TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Operation of Catawba in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The determination that the results of the proposed changes are within all acceptable criteria was established in the SERs prepared for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2, and WCAP-10271 Supplement 2, Revision 1 issued by letters dated February 21, 1985, February 22, 1989, and April 30, 1990. Implementation of the proposed changes is expected to result in an acceptable increase in total RTS yearly unavailability. This increase, which is primarily due to less frequent surveillance, results in an increase of similar magnitude in the probability of an Anticipated Transient Without Scram (ATWS) and in the probability of core melt resulting from an ATWS and also results in a small increase in core damage frequency (CDF) due to ESFAS unavailability.

Implementation of the proposed changes is expected to result in a significant reduction in the probability of core melt from inadvertent reactor trips. This is a result of a reduction in the number of inadvertent reactor trips occuring [sic] during testing of RTS instrumentation. For Catawba, this reduction is primarily attributable to less frequent surveillance.

The reduction in core melt frequency from inadvertent reactor trips is sufficiently large to counter the increase in ATWS core melt probability resulting in an overall reduction in total core melt probability.

The values determined by the WOG [Westinghouse Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BNL) as part of an audit and sensitivity analysis for the NRC staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable.

Changes to surveillance test frequencies for the RTS interlocks do not represent a significant reduction in testing. The currently specified test interval for interlock channels allows the surveillance requirement to be satisfied by verifying that the permissive logic is in its required state using the annunciator status light. The surveillance as currently required only verifies the status of the permissive logic and does not address verification of channel setpoint or operability. The setpoint verification and channel operability are verified after a refueling shutdown. The definition of the channel check includes comparison of the channel -status with other channels for the same parameter. The requirement to routinely verify permissive status is a different consideration than the availability of trip or actuation channels which are required to change state on the occurrence of an event and for which the function availability is more dependent on the surveillance interval. The change in surveillance requirement to at least once every refueling does not therefore represent a significant change in channel surveillance and does not involve a significant increase in unavailability of the RTS.

The proposed changes do not result in an increase in the severity or consequences of an

accident previously evaluated.
Implementation of the proposed changes affects the probability of failure of the RTS but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RTS provides plant protection. No change is being made which alters the functioning of the RTS. Rather, the likelihood or probability of the RTS functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Since Duke Power Company is not proposing to conduct routine channel testing in bypass for Catawba, no hardware changes are necessary to support testing in the bypass mode.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The impact of reduced testing other than as addressed above is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Experience has shown that the initial uncertainty assumptions are valid for reduced testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety by:

1) Less frequent testing will result in fewer inadvertent reactor trips and actuation of Engineered Safety Features Actuation System components.

2) Higher quality repairs leading to improved equipment reliability due to longer allowable repair times.

3) Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation. This is due to less frequent distraction of the operator and shift supervisor to attend to instrumentation testing.

The foregoing analysis demonstrates that the proposed amendment to Catawba's Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident, and does not involve a significant reduction in a margin of safety.

Based upon the preceding analysis, Duke Power Company concludes that the proposed amendment does not involve a significant hazards consideration.

The staff notes that the licensee's analysis presented above addresses only the changes to the RTS for Criteria 1 and 2. In order to supplement this analysis, reference is made as follows to conclusions made in the referenced NRC staff SERs. The effect of changes in the RTS analog channel STI and AOTs was addressed in the SER of February 21, 1985, wherein the staff reached the following conclusion regarding the probability of an accident core damage frequency (CDF):

Overall, the staff concludes that the change in RTS unavailability is very small, as is the reduction in core damage frequency coming from inadvertent trips. Therefore, the staff agrees with the Westinghouse Owners Group conclusion for the proposals being considered. That is, the changes in core damage frequency and risk are quite small compared to the error in the probabilistic estimate and, therefore, insignificant. Therefore, the staff concludes that the proposed changes are acceptable.

The effect of changes in the ESFAS analog channels and the ESFAS actuation logic tests was addressed in the SER of February 22, 1989, wherein the staff reached the following conclusion regarding the probability of an accident:

The staff concludes, therefore, that an overall upper bound for the core damage frequency (CDF) increase due to the proposed STI/AOT change is less than 6% for Westinghouse PWR plants. The staff also concludes that actual CDF increases for individual plants are expected to be substantially less than 6%. The staff considers this CDF increase to be small compared to the range of uncertainty in the CDF analyses and therefore acceptable.

The effect of changes in the RTS actuation logic AOTs was addressed in the SER of April 30, 1990, wherein the staff reached the following conclusion regarding the probability of an accident CDF:

The amended results clearly indicate that in Cases 2 and 3, there is a net reduction in CDF. Based upon this agreement, the NRC staff concludes that the proposed longer AOTs for the RPS logic cabinets, 4 hours for test and 12 hours for maintenance, are acceptable.

On the bases cited above by the licensee relating to the RTS and the findings cited above from the staff's SERs on both the RTS and the ESFAS the staff finds that the effect on the probability of an accident (CDF) will range from a net decrease to an increase that is small and that is within acceptable values. The proposed changes do not alter the manner in which protection is afforded by the RTS or ESFAS, nor the manner in which limiting criteria are established, and accordingly, the consequences of an accident previously evaluated are not significantly increased. For the same reasons as stated above, including the licensee's discussions of Criterion 2 for the RTS, the proposed changes for the ESFAS instrumentation will not create the possibility of a new or different kind of accident.

The administrative changes to TS 3/4.3.1 and 3/4.3.2 to delete obsolete footnotes and information pertaining to the now completed modification of the nuclear service water system suction transfer logic, do not involve a significant increase in the probability or consequences of an accident previously evaluated. These footnotes refer to matters that were reviewed and approved prior to their inclusion in the TS. Their removal, upon completion of the subject action, is administrative as it improves the readibility of the TS. For the same reasons, their removal does not create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

On the bases stated above, it appears that the three standards of 10 CFR 50.92(c) are satisfied and the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* February 25, 1993, as supplemented May 20, 1993

*Description of amendment request:* The proposed amendments would revise the Technical Specifications (TS) to change the frequency of reporting the quantity of each of the principal radionuclides released from the plant site to unrestricted areas in liquid and in gaseous effluents from semiannual to annual. These changes would be implemented by modifying TS Sections 1.18, 6.9.1.7, 6.13.2.a, 6.14.2.a, 6.15.a, and 6.16 as proposed by the licensee in response to amendments to 10 CFR 50.36a as noticed in the **Federal Register** (57 FR 39353) on August 31, 1992. Specifically, the title "Annual Radioactive Effluent Release Report" would be used instead of "Semiannual Radioactive Effluent Release Report."

The proposed change for TS 6.9.1.7 would also require that the Annual Radioactive Effluent Release Report covering the operation of the unit

during the previous calendar year be submitted before May 1 of each year, and that the quantity of solid waste releases be reported on an annual, rather than a semiannual, basis.

*Basis for proposed no significant hazards consideration determination:* *As noticed in the* **Federal Register** on August 31, 1992 (57 FR 39353), the NRC has amended 10 CFR 50.36a to reduce the required frequency of reporting the quantity of each principal radionuclide released to unrestricted areas in liquid and gaseous effluents from semiannual to annual. The proposed amendments would revise the TS to be consistent with the revised regulation. The reporting requirement for solid wastes is not addressed by the revised 10 CFR 50.36a. However, to be consistent with the proposed changes for liquid and gaseous effluents, the licensee proposes that the quantity of solid waste releases also be reported on an annual basis.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision to the frequency of the Radiological Effluent Report will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

Implementation of the revised frequency for the Radiological Effluent Report will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released. By modifying the regulations to eliminate any unnecessary burden of duplicative or inconsistent regulatory reporting, the present margin of safety is not reduced. Accordingly, this proposed change does not involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* January 13, 1993, as supplemented January 28, February 17, and April 26, 1993

*Description of amendment request:* The proposed amendments would revise Technical Specifications (TS) Table 2.2.1, Sections 3/4.1.2.5, 3/4.1.2.6, 3/4.5.1.1, 3/4.5.5, and their associated Bases, and TS 6.9.1/9, to relocate the values of certain cycle-dependent limits from the TS to the Core Operating Limits Report (COLR). The NRC issued Generic Letter (GL) 88-16, dated October 4, 1988, that provided guidance to licensees on requests for relocation of the values of cycle-specific parameter limits from the TS to the COLR. The licensee's proposed amendment is its second response to the guidance of that GL. The licensee's first response to the GL was dealt with in Amendment Nos. 105 and 87 for McGuire Units 1 and 2 on May 15, 1990. Therefore, the COLR is already reflected in the Definitions Section of the TS. The licensee's second response to the GL, involving the TS listed above, addressed TS that are different from those addressed in its first response.

The proposed TS would require that the subject core operating limits be determined for each reload cycle in accordance with the referenced NRC approved methodology for these limits and be consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment will not increase the probability or consequences of an accident which has been previously evaluated. The cycle specific parameters which have been identified for relocation to the COLR will be calculated using NRC approved methodology and the Technical Specifications will continue to require operation within the cycle specific parameters. For the above reasons this amendment is considered administrative, and does not increase the probability or consequences of an accident previously evaluated.

Operation in accordance with this proposed amendment will not create any failure modes not bounded by previously evaluated accidents. Therefore, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

The Technical Specifications will continue to require operation within the bounds of the cycle-specific parameter limits. The cycle-specific parameter limits will be calculated using NRC approved methodology. In addition, each future reload will require a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle-specific limits will not involve a reduction in a margin of safety. Therefore, no margins of safety are affected by the relocation of cycle-specific parameter limits to the COLR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* May 6, 1993

*Description of amendment request:* The proposed amendments would correct an error in Technical Specification Table 3.3-2 that was made with License Amendments 128 and 110.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment is administrative in nature in that it only restores the time response for the Steam Generator Water Level--Low-Low for Unit 1 to the [less than or equal to] 3.5 seconds. Since this had been approved in Amendment[s] 43/24, the Nuclear Regulatory Commission had previously [proposed to conclude] that the proposed change did not involve a significant hazard. There have been no changes to any of the analyses that would change this conclusion.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of

North Carolina, Charlotte (UNCC Station), North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* May 13, 1993

*Description of amendment request:* The amendments would reduce the maximum allowable power range neutron flux high setpoints with inoperable steam line safety valves during four loop operation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

RESPONSE: No.

The MSSVs do not contribute to the initiation of any accident. Though improper operation and malfunction of MSSVs are considered in FSAR analyses as part of accident scenarios, no change in the operation or function of the MSSVs is affected by this proposed change. ASME Code requirements for MSSV setpoint, relief capacity and operability are maintained. The high flux trip setpoint does not contribute to the initiation of any accident.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

RESPONSE: No.

The proposed change does not create the possibility for a new or different kind of accident than previously evaluated because the function of the MSSVs or the RPS high flux trip is not affected. The new reduction limits put the reactor in a more conservative level of operation when MSSVs are inoperable.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

RESPONSE: No.

This proposed change will maintain the reactor in a more conservative operating power level when safety valves are inoperable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina**

*Date of amendment request:* February 25, 1993, as supplemented May 20, 1993

*Description of amendment request:* The proposed amendments would revise the Technical Specifications (TS) to change the frequency of reporting the quantity of each of the principal radionuclides released from the plant site to unrestricted areas in liquid and in gaseous effluents from semiannual to annual. These changes would be implemented by modifying TS Sections 1.8.2, 6.1.2.1, and 6.6.1.4 as proposed by the licensee in response to amendments to 10 CFR 50.36a as noticed in the Federal Register on August 31, 1992. Specifically, the title "Annual Radioactive Effluent Release Report" would be used instead of "Semiannual Radioactive Effluent Release Report."

The proposed change for TS 6.6.1.4 would also require that the Annual Radioactive Effluent Release Report covering the operation of the unit during the previous calendar year be submitted before May 1 of each year, and that the quantity of solid waste releases be reported on an annual, rather than a semiannual, basis.

*Basis for proposed no significant hazards consideration determination:* As noticed in the Federal Register on August 31, 1992 (57 FR 39353), the NRC has amended 10 CFR 50.36a to reduce the required frequency of reporting the quantity of each principal radionuclide released to unrestricted areas in liquid and gaseous effluents from semiannual to annual. The proposed amendments would revise the TS to be consistent with the revised regulation. The reporting requirement for solid wastes is not addressed by the revised 10 CFR 50.36a. However, to be consistent with the proposed changes for liquid and gaseous effluents, the licensee proposes that the quantity of solid waste releases also be reported on an annual basis.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed revision to the frequency of the Radiological Effluent Report will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

Implementation of the revised frequency for the Radiological Effluent Report will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released. By modifying the regulations to eliminate any unnecessary burden of duplicative or inconsistent regulatory reporting, the present margin of safety is not reduced.

Accordingly, this proposed change does not involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

*Attorney for licensee:* J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* David B. Matthews

**Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania**

*Date of amendment request:* June 17, 1993

*Description of amendment request:* The proposed amendment would relocate the radiological effluent technical specifications (RETS) and the solid radioactive wastes technical specifications (TS) to the offsite dose calculation manual (ODCM) or to the process control program (PCP) in accordance with the guidance provided in NRC Generic Letter 89-01 and NRC Report NUREG-1301. Programmatic controls would be incorporated into the Administrative Controls section of TS, and other editorial and definition changes would be made to facititate the relocation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not increase the probability or consequences of an accident previously evaluated since the level of radiological effluent control remains unchanged. The limiting conditions for operation and surveillance requirements for each specification, that is being relocated, will remain unchanged. Future changes to these specifications will be controlled by the Administrative Controls Section of the TS. The level of radiological effluent control will, therefore, remain unchanged from that previously assumed in offsite dose assumptions.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is no new or different kind of accident because this change does not modify the configuration of the facility or the manner in which plants are operated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not affect the operational requirements of the facility and does not modify any methods, analysis or limits used in radiological effluent control.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

*Attorney for licensee:* Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Walter R. Butler

**Gulf States Utilities Company, Docket No.50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana**

*Date of amendment request:* May 13, 1993

*Description of amendment request:* The proposed license amendment would remove Items 1, 2, 3, 4, 6, and 7 from Attachment 3 to NPF-47, "TDI Diesel Engines Requirements." These items contain requirements for maintenance and surveillance, crankshaft inspections, cylinder block inspections, air roll tests, turbocharger inspections, and operation beyond the first refueling outage.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The primary function of the emergency diesel generators is to provide emergency AC power to safety-related systems and components in the event of a loss of offsite power to mitigate the consequences of an accident. The conditions of the license require maintenance and inspection related activities on this equipment. These conditions were originally added to the license to compensate for the previously identified weaknesses in TDI supplied emergency diesel generators. These maintenance activities are not directly related to the safety-related operation of the emergency diesel generators; however, the current maintenance program can affect the reliability and does affect the availability of the emergency diesel generators. Maintaining high reliability and low unavailability is necessary to comply with 10 CFR 50.63, "Loss of all alternating current power," and 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants."

The current preventive maintenance program for TDI diesel generators combines time based physical inspections and condition monitoring. The time based physical inspections by far are the largest contributor to the significant out of service time experienced during refueling outages. In addition, the requirement to perform a complete overhaul every ten years adds to this unavailability and may actually reduce the reliability of the emergency diesel generator for up to two years after the overhaul is performed. Elimination of the license conditions identified by the licensee will actually reduce the unavailability and increase the reliability of emergency diesel generators through reduced inspections and teardowns. Monitoring of the performance of the emergency diesel generators will continue to assure that high reliability is maintained. Therefore, no significant increase in the probability or consequences of an accident will occur as a result of this change.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The requested change does not involve a change in any system's physical configuration, and no new operating modes or possible accident scenarios are introduced. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The operating history submitted to the NRC by the TDI Diesel Generator Owner's Group on December 8, 1992, documents the previous inspection results for all inspections conducted on TDI diesel generator systems. This document indicates that the TDI diesel generators have achieved a level of reliability that equals or exceeds that of emergency diesel generator systems supplied by other manufacturers. Operators of other manufacturer's emergency diesel generators do not have NRC imposed maintenance programs identified in special conditions of the plants' operating licenses. The reliability of emergency diesel generators will be maintained by the NRC through licensee conformance to 10 CFR 50.63 and 10 CFR 50.65 and as such, the risk to the health and safety of the public is not increased by this change. Therefore,the maintenance program and other activities identified in Attachment 3 to NPF-47 can be removed with no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

*Attorney for licensee:* Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

*NRC Project Director:* Suzanne C. Black

**Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan**

*Date of amendment request:* April 16, 1993

*Description of amendment request:* The proposed amendment would grant extensions for certain 18- and 36-month technical specification surveillances which are required to be performed beginning January 2, 1994. The licensee is requesting relief from these surveillances in order to extend the current cycle for Unit 2 and separate the refueling outages for Unit 1 and 2 by approximately 6 months.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c).

For the purposes of addressing the no significant hazards consideration determination the surveillances are categorized by groups. The licensee's amendment request dated April 16, 1993, contains a detailed list of the specific surveillances for which it is requesting extensions. The licensee's determination of no significant hazards is summarized below:Operation of D. C. Cook , Unit 2 in accordance with the proposed amendment does not:

*(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.*

The first group of surveillances includes reactor trip and ESF response testing, RTD calibrations, pressurizer pressure and level calibrations and PORV calibrations, reactor vessel level indication system, rod position indication system, RHR auto-closure interlock, intermediate range detector calibrations, reactor coolant flow transmitter calibrations and ESF manual actuations. The above surveillances are associated with equipment that is also subject to a surveillance program which includes channel checks and/or functional tests, which will continue to be performed during the extension period and should ensure that these systems will perform as designed. Based on the surveillance histories of these components, the licensee believes that the equipment will continue to remain operable during the extension period. For these reasons, the licensee believes the extension will not result in a significant increase in the probability or consequences of a previously evaluated accident, nor will it result in a significant reduction in a margin of safety.

The next group of surveillances are those dealing with auxiliary feedwater pump testing. Portions of the system have successfully undergone a challenge due to a recent actuation (during a unit trip). Prior testing experience with regard to these surveillances has indicated no significant problems when the surveillances were performed. For these reasons, the licensee believes the extension will not result in a significant increase in the probability or consequences of a previously evaluated accident, nor will it result in a significant reduction in a margin of safety.

The licensee is also requesting an extension of surveillance requirements related to diesel generator testing. For the diesel-generator machinery, the extension will result only in approximately 5 additional starts and 5 to 7 additional run hours. This is considered insignificant with regard to the wear history of each machine. For the diesel-associated circuitry, the ESW automatic valves, and the PORV emergency power supply, the licensee's review of previous test data has not indicated any reason to believe the equipment would not pass the required surveillance tests with the extended interval. For these reasons, the licensee believes the extension will not result in a significant increase in the probability or consequences of a previously evaluated accident, nor will it result in a significant reduction in a margin of safety.

Another group of surveillances the licensee is requesting extensions for is the visual inspections of inaccessible snubbers. The licensee's surveillance history of visual inspections of inaccessible snubbers has found only one inoperable snubber in the past 10 years. Also, if Generic Letter 90-09 guidance were to be applied, the surveillance interval would be 48 months. Based on the above, the licensee has no reason to believe the inaccessible snubbers will be inoperable during the extension period. For these reasons, the licensee believes the extension will not result in a significant increase in the probability or consequences of a previously evaluated accident, nor will it result in a significant reduction in a margin of safety.

An extension is also being requested for the visual inspection of the divider barrier seal and removal and testing of the coupons to ensure the physical properties are within specified limits. The divider barrier seal is a passive design feature which was entirely replaced in 1990. Subsequent inspection revealed no degradation to the seal and the physical properties of the test coupons were acceptable. For these reasons, the licensee believes the extension will not result in a significant increase in the probability or consequences of a previously evaluated accident, nor will it result in a significant reduction in a margin of safety.

The licensee is also requesting an extension of the functional test performed on the reactor coolant pump fire protection system. Based on the fire protection system surveillance record, the licensee states that there is no reason to believe that the system would not be capable of performing its intended safety function. Additionally, the licensee notes that the RCP oil collection system is designed to mitigate the effects of an RCP lube oil leak. For these reasons, the licensee believes the extension will not result in a significant increase in the probability or consequences of a previously evaluated accident, nor will it result in a significant reduction in a margin of safety.

Lastly, the licensee is requesting an extension of the containment water level instrumentation calibration and the visual inspection of the containment sump and its inlets. The past history on containment water level instrumentation has not shown any significant degradation of these instruments. Typically, there is no water on the containment floor for the instruments to measure; however, the instrumentation is calibrated to read a "live" zero level. Also, there are two redundant channels that are subjected to monthly channel checks, which would show if a drift existed. The likelihood of a significant amount of debris entering the sump is very low because there are strict requirements for material control inside containment, access into the containment sump area is restricted, and an inspection of containment is performed at the end of each outage. The licensee believes that it is unlikely that the sump or its inlets could become blocked during the extension period. For these reasons, the licensee believes the extension will not result in a significant increase in the probability or consequences of a previously evaluated accident, nor will it result in a significant reduction in a margin of safety.

*(2) Create the possibility of a new or different kind of accident from any previously evaluated.*

The extension of the surveillance intervals will not result in any changes in plant configuration or operation. Therefore, the extensions should not create the possibility of a new or different kind of accident from any previously evaluated or analyzed.

*(3) Involve a significant reduction in a margin of safety.*

For the reasons cited in Criterion 1 above, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

*NRC Project Director:* W. M. Dean, Acting

**North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Rockingham County, New Hampshire**

*Date of amendment request:* April 23, 1993

*Description of amendment request:* The proposed amendment would modify the Seabrook Station Technical Specifications to allow longer surveillance test intervals and allowed outage times for the reactor protection system and the engineered safety features actuation system. The amendment also proposes removing the requirement to perform the reactor trip system analog channel operational test on a staggered basis. The changes are line item improvements previously approved by the NRC and documented in Safety Evaluations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes have been evaluated in NRC Safety Evaluations for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2, and WCAP-10271 Supplement 2, Revision 1. The Safety Evaluations determined that the proposed changes are within acceptable limits.

Implementation of the proposed changes are expected to result in an acceptably low increase in total protection system unavailability.

The increase in system unavailability is primarily due to the longer time an undetected instrument drift or failure may exist. The increased system unavailability results in a small increase in core damage frequency. The change in core damage frequency was determined by the Westinghouse Owners Group and verified by Brookhaven National Laboratory for the NRC Staff. The small value of the increase compared to the range of uncertainty in the core damage frequency is considered acceptable.

The implementation of the proposed changes are also expected to result in a reduction in the number of reactor trips due to the less frequent testing of the protection system instrumentation. The reduction in the probability of reactor trips results in a small decrease in core damage frequency. The decrease in core damage frequency is similar in magnitude to and offsets the increase in core damage frequency resulting from longer surveillance intervals. The result is an insignificant change in total core damage probability.

The NRC approved the elimination of the requirement to perform analog channel operational tests on a staggered basis in the engineered safety features actuation systems Safety Evaluation Report dated February 22, 1989.

Therefore, it appears that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not involve hardware modifications or the method by which the protection systems are tested.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The adverse impact of reduced testing is to allow a longer time interval over which instrument uncertainties may act. Experience indicates that the initial uncertainty assumptions are valid for reduced testing.

Based on this review, it appears that the three criteria of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

*Local Public Document Room location:* Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

*Attorney for licensee:* Thomas Dignan, Esquire, Ropes & Grey, One International Place, Boston Massachusetts 02110-2624

*NRC Project Director:* John F. Stolz

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of amendment request:* July 7, 1993

*Description of amendment request:* The proposed amendment would make changes to Technical Specification 3.6.D, "Primary System Boundary, Coolant Leakage," and the corresponding surveillance requirements. Limiting Condition for Operation 3.6.D.5 specifies requirements for operability of leakage measurement instruments associated with floor and equipment drain sumps and operability of the drywell particulate radioactivity monitoring system. The limiting condition prescribes actions to be taken when those instruments are inoperable.

The proposed amendment would add a clause to make the operability requirement applicable only when irradiated fuel is in the reactor and reactor water temperature is above 212 degrees F. With regard to the leakage measurement instruments, the proposed amendment would add a requirement that manual leak rate measurements be made once per 12 hours. The proposed amendment would require that the instruments be restored to operable status within 30 days or else shutdown would be required. The existing specification permits indefinite operation with the instruments inoperable as long as the manual leak rate measurements are performed.

The proposed amendment would create a new section 3.6.D.6 to address operability requirements for the drywell particulate radioactivity monitoring system. The amendment would require an analysis of grab samples of the primary containment atmosphere once per 12 hours instead of every 4 hours.

The proposed amendment revises the requirements for monitoring reactor coolant system leakage per NRC guidance provided in Generic Letter 88-01, Supplement 1, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping," and NUREG-1433, "Standard Technical Specifications, General Electric Plants, BWR/4."

Surveillance requirement 4.6.D.1.a. for coolant leakage would be amended to require that unidentified and identified leakage rates be measured once per shift not to exceed 12 hours instead of once every 4 hours. The requirements to record primary containment atmosphere particulate radioactivity and drywell pressure and temperature would be eliminated.

Surveillance requirement 4.6.D.2.b. would be revised to require performance of a sensor check for the primary containment sump leakage measurement system once per shift instead of once per 4 hours as currently required.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 50.92(c). The NRC staff's review is presented below:

*a. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The systems affected by the amendment detect abnormal leakage which might be indicative of an impending break in the primary coolant system. The only accident previously analyzed to which this is relevant is a loss of coolant accident (LOCA). Since the concern is avoidance of the accident rather than mitigation, the proposed changes to monitoring could affect the probability of a LOCA but not the consequences.

The licensee has made a number of improvements in the coolant system to reduce the potential for a LOCA being caused by intergranular stress corrosion cracking of piping. The licensee has incorporated the guidance of Generic Letter 88-01, Supplement 1, and NUREG-1433, into the proposed Technical Specifications (TS) governing reactor coolant system leakage monitoring. Piping susceptible to intergranular stress corrosion cracking (IGSCC) in the recirculation system, the residual heat removal system, and the core spray system has been replaced with material resistant to IGSCC, or protected with a cladding of resistant weld metal. To further reduce susceptibility to IGSCC, a hydrogen water chemistry system was placed in operation in 1988. The above actions taken to minimize the potential for crack initiation in conjunction with the leakage rates allowed by the TS and the multiple leakage indication systems available, maintain a high level of confidence in the ability to monitor reactor coolant system integrity; thus, the proposed changes will not significantly affect the probability of an accident previously evaluated.

*b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

The monitoring systems affected by the proposed amendment were installed to address concerns with a LOCA. Furthermore, the proposed changes do not involve equipment modifications or changes in operational limits. Only the means and frequency for confirming compliance with the limits are affected. Since there are no hardware changes proposed by the amendment, no new or different kind of accident from any previously evaluated can be postulated.

*c. The proposed amendment will not involve a significant reduction in the margin of safety.*

The proposed changes do not involve any modification in operational limits. Alarm functions to alert the operator of reactor coolant system leakage, and operator monitoring of key parameters is maintained at a level to assure early detection of any significant leakage. It is therefore concluded that the proposed changes will not result in any reduction in the plant's margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

*NRC Project Director:* W. M. Dean, Acting

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of amendment request:* February 12, 1993 and March 22, 1993

*Description of amendment request:* The proposed amendment would make changes to Table 3.2.2, "Instrumentation That Initiates Emergency Core Cooling Systems," and Table 3.2.8, "Other Instrumentation," by correcting references to the required conditions when minimum conditions for operation are not satisfied. Surveillance Requirement 4.5.A.1, "Instrument and Containment Spray/Cooling Systems, ECCS Systems," would be changed to increase the minimum Core Spray pump flow from 2700 to 2800 gpm. The corresponding bases section would be changed to set forth the reason for the flow value. Limiting Condition for Operation 3.0.F.1.a.2, "Recirculation Systems," would be changed to refer to a table in the licensee's Core Operating Limits Report rather than to a table within the technical specifications.

The portion of the change related to increasing the required core spray pump flow from 2,700 gpm to 2,800 gpm is intended to account for the flow losses (bypass leakage paths) inherent to the emergency core cooling system (ECCS) design. Increasing the required flow rate for the core spray pumps would assure that the total flow entering the core (ECCS pump flow minus bypass leakage) during a loss of coolant accident (LOCA) is consistent with the value assumed in the analysis (SAFER/GESTR-LOCA Analysis) referenced in Chapter 14 of the Updated Safety Analysis Report for the Monticello Nuclear Generating Plant.

Technical Specification Sections 3.6 and 4.6, "Primary System Boundary," set forth limiting conditions for operation and surveillance requirements applicable to the reactor coolant system. Part E., "Safety Relief Valves," would be revised to clarify the intent of the specification with respect to automatic depressurization system (ADS) and low-low set system requirements. As presently written, Specifications 3.2.H, 3.5.A and 3.6.E cross reference each other in a manner that could lead to misinterpretation of the governing requirements for these systems. The corresponding 3.6/4.6.E Bases discussion would be further revised to clarify and correct existing statements that are both confusing and misleading. The current wording states, incorrectly, that coincident high drywell pressure and low-low water level signals initiate automatic actuation of the safety relief valves. This is no longer true because of a modification performed in response to NUREG 0737, Item II.K.3.18 (Reference: License

*Amendment No.* 62 dated March 31, 1989).

The remaining changes are editorial in nature and are intended primarily to correct errors that were introduced in previous License Amendments. Most of these errors resulted from License Amendment 79, dated April 9, 1991, in which Section 3.5/4.5 (Core and Containment Cooling Systems) was substantially rewritten and reorganized. Several specifications were either deleted or re-numbered at that time and related changes to associated cross-references were missed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 50.92(c). The NRC staff's review is presented below:

*a. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The core spray flow rate does not enter into the estimate of the probability of any accident previously evaluated. Core spray flow rate may affect the consequences of an accident. Increasing the required core spray pump flow rate to 2,800 gpm will make the Technical Specification consistent with the loss-of-coolant-accident analysis referenced in the Updated Safety Analysis Report for the Monticello Nuclear Generating Plant. The change is in the conservative

direction (increased emergency core cooling system flow) and should tend toward mitigation of the consequences a design basis loss of coolant accident. It should not affect the consequences of any other accident previously analyzed.

The remaining changes proposed are editorial or administrative in nature and have no impact on the probability or consequences of any accident previously evaluated.

*b. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

The quantity of flow delivered by the core spray system does not enter into the postulation of accident scenarios. The core spray system serves to mitigate the consequence of certain accidents. Increasing the minimum flow required for the core spray system does not create the possibility of a new or different kind of accident.

The other proposed changes are editorial or administrative in nature. No safety-related equipment, safety function, or plant operation will be altered as a result of the proposed changes. Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

*c. The proposed amendment will not involve a significant reduction in the margin of safety.*

The proposed amendment will not reduce the margin of safety because the required core spray pump flow is being conservatively increased so that the minimum total ECCS pump flow into the core is consistent with that utilized in the loss-of-coolant-accident analysis. The remaining changes are either editorial in nature or are based on previously reviewed and approved Technical Specifications and have no impact on the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

*Attorney for licensee:* Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

*NRC Project Director:* W. M. Dean, Acting

**Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska**

*Date of amendment request:* June 17, 1993

*Description of amendment request:* The proposed amendment to the Technical Specifications would implement administrative changes. Proposed changes include providing consistency with Combustion Engineering Standard Technical Specifications on refueling frequency, incorporating bases information on pressurizer safety valves, correcting typographical and grammatical problems, and correcting mistakes made in previous amendments.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve significant hazards considerations because operation of Fort Calhoun Station Unit No. 1 in accordance with these changes does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated,

The proposed changes include: administrative changes to correct typographical errors and references, make the specifications consistent, provide clarifications, make changes consistent with organizational changes, or with the CE Standard Technical Specifications.

The clarification to the basis of Specification 2.1.6 provides a discussion on: the presence of water filled loop seals, the potential effects the loop seal may have on the setpoint deviation of the safety valves, and that any effect is within the results of the Updated Safety Analysis Report.

The clarification to Specification 2.2(2)d1. provides an additional requirement to maintain valve LCV-218-3 operable which is consistent with the intent of the specification in that the valve must be operable to maintain the required flow path from the Safety Injection and Refueling Water (SIRW) tank.

The clarification to Specification 2.3(1) states which electrical buses the safety injection pumps are powered through and is consistent with the Updated Safety Analysis Report, Section 14.15, which assumes that only one full capacity high pressure pump and one full capacity low pressure pump are available during a Loss of Coolant Accident.

The clarification to the basis of Specification 2.14 only deletes the reference to the specific time for a valve to open.

The clarification to Specification 3.7(3) adds verbiage to state that the emergency lighting system required to be tested by this specification is the emergency lighting system required to achieve a plant safe shutdown.

The proposed changes are administrative in nature and are consistent with the assumptions or results stated in the Updated Safety Analysis Report; therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed administrative changes correct typographical errors and references, and implement changes to make the Specifications consistent. No new or different operation of plant equipment is proposed. No new or different action statements are proposed. Therefore, the proposed changes do not create the possibility of a new or different type of accident.

(3) Involve a significant reduction in a margin of safety.

The proposed administrative changes correct typographical errors and references, and implement changes to make the Specifications consistent. The clarifications being proposed are within the assumptions or results as stated in the Updated Safety Analysis Report; therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

*Attorney for licensee:* LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

*NRC Project Director:* Terence L. Chan, Acting Director

**Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania**

*Date of amendment request:* July 21, 1993

*Description of amendment request:* The amendment would revise the Technical Specifications to change the requirements for acquisition of baseline data on single-loop operation (SLO) from during startup following each refueling outage to at least once during the 18-month fuel cycle. The present Technical Specification 4.4.1.1.2.6 requires that the baseline data on SLO be taken during startup. The unit normally enters SLO 2 or 3 times during the 18-month fuel cycle for maintenance reasons, such as replacement of the brushes on one of the two motor-generator sets. The change to the Technical Specifications will permit the

baseline data to be taken during entry into and out of SLO at any time during the fuel cycle rather than specifically at startup. This change is consistent with General Electric Company recommendations and has been previously approved by the Commission for Susquehanna, Unit 2, by *Amendment No.* 91 issued on October 28, 1992.

*Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:*

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident nor alter the conditions or assumptions in any of the Final Safety Analysis Report (FSAR) accident analyses. The revised testing schedule eliminates unnecessary plant cycling while taking advantage of SLO which is typically scheduled 2 or 3 times per cycle for maintenance reasons. In addition, since the plant must be placed in SLO at low core flow to obtain the desired baseline data the revised testing schedule minimizes low core flow/power operation where reactor instability is a concern by eliminating the requirement to acquire single loop baseline data during startup following each refueling outage. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. There will be no change in the type of testing being done. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature. The same type of testing will be performed as before. It is intended that single loop data will be taken a[t] least once per 18 months (555 days) when SLO is scheduled for maintenance reasons rather than entering SLO for no reason other than to comply with Technical Specifications. Administrative controls will be established to ensure SLO baseline data will be recorded under the following conditions: 1) beginning of cycle when discharged bundles are replaced with bundles of a different mechanical or thermal-hydraulic design, 2) when reactor systems or core operating strategies which can affect the baseline data are modified, and 3) if it is determined that dual loop baseline data has changed significantly. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* Michael L. Boyle

**Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York**

*Date of amendment request:* May 21, 1993

*Description of amendment request:* The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with fuel cycle 9. Fuel cycle 9 started in August 1992. In order to accommodate operation on a 24-month cycle, the licensee requested an amendment to the Technical Specifications (TSs) to incorporate the Engineering Safety Features (ESF) changes listed below:

(1) The licensee proposed changing the safety injection system test frequency (specified in TS Section 4.5.A.1.a) to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the loss of normal AC in conjunction with a safety injection signal test frequency (specified in TS Section 4.6.A.3) to accommodate operation on a 24-month cycle. The licensee also proposed reformatting this section to improve clarity.

(3) The licensee proposed changing the auxiliary feedwater system undervoltage automatic start test frequency (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

(4) The licensee proposed changing the auxiliary feedwater system main feedwater pump trip automatic start test frequency (specified in TS Table 4.1-1) to accommodate operation on a 24-month cycle.

These proposed changes follow the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

In addition, the licensee proposed adding quarterly testing and 24-month calibration requirements to TS Table 4.1-1 for the main steam line flow instrumentation. These surveillances would be added to ensure operability of the main steam line flow circuits and to be consistent with the TS surveillance requirements for other ESF instruments.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated. The proposed changes extend the frequency for performing engineered safety features [ESF] simulated automatic actuation tests. These changes are being made to accommodate a 24 month operating cycle, and do not alter the system functions. The simulated automatic actuation tests verify operability of the complete actuation circuit by monitoring valve operation, pump starts, pump circuit breaker trips, diesel generator starting and automatic sequencing of ESF components. The bulk of the ESF equipment is tested monthly. The ESF relays and switches that are only tested during refueling outages are considered to be reliable, and their past performance has been acceptable (except for the Agastat time delay relays). The Authority plans to test the Agastats more frequently, and in no case will the Agastat test interval exceed the present interval of 18 months (+ 25%). Similarly, extending the AFW undervoltage test does not change the way the system functions, and on-line testing provides a level of assurance that the AFW system will function properly. The steam line flow surveillance requirements being added ensure the operability of the circuits, and are consistent with the surveillance requirements for other Engineered Safety Feature instruments. Reformatting specification 4.6.A.3 [the loss of all normal AC station service power supplies in conjunction with a simulated safety injection signal test] is an administrative change; it is meant to improve the sentence structure of the specification, and does not change any requirements.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes extend the frequency for performing engineered safety features simulated automatic actuation tests. These changes are being made to accommodate a 24 month operating cycle. The changes do not physically change the plant, or alter the way the ESF equipment functions. The tests verify operability of the complete actuation circuit by monitoring valve operation, pump starts, pump circuit breaker trips, diesel generator starting and automatic sequencing of ESF components. The bulk of the ESF equipment is tested monthly. The ESF relays and switches that are only tested during refueling outages are considered to be reliable, and their past performance has been acceptable (except for the Agastat time delay relays). The Authority plans to test the Agastats more frequently, and in no case will the Agastat test interval exceed the present interval of 18 months (+ 25%). Similarly, extending the AFW undervoltage test does not physically change the plant, or alter the way the system functions, and on-line testing provides a level of assurance that the AFW system will function properly. The steam line flow surveillance requirements being added ensure the operability of the circuits, and are consistent with the surveillance requirements for other Engineered Safety Feature instruments. Reformatting specification 4.6.A.3 is an administrative change; it is meant to improve the sentence structure of the specification, and does not change any requirements.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes extend the frequency for performing engineered safety features simulated automatic actuation tests. These changes are being made to accommodate a 24 month operating cycle. The changes will not physically change the plant, nor do they change any established system setpoints. These tests verify operability of the complete actuation circuit by monitoring valve operation, pump starts, pump circuit breaker trips, diesel generator starting and automatic sequencing of ESF components. The bulk of the ESF equipment is tested monthly. The ESF relays and switches that are only tested during refueling outages are considered to be reliable, and their past performance has been acceptable (except for the Agastat time delay relays). The Authority plans to test the Agastat more frequently, and in no case will the Agastat test interval exceed the present interval of 18 months (+ 25%). Similarly, extending the AFW undervoltage test does not physically change the plant, nor does it change any established system setpoints, and on-line testing provides a level of assurance that the AFW system will function properly. The steam line flow surveillance requirements are additional technical specification requirements that ensure the operability of the circuits. Reformatting specification 4.6.A.3 is an administrative change; it is meant to improve the sentence structure of the specification, and does not change any requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* June 17, 1993

*Description of amendment request:* The proposed changes would add requirements for remote/alternate shutdown equipment to the Technical Specifications (TSs) and include new limiting conditions for operation, surveillance requirements, and Bases sections. The remote/alternate shutdown capabilities are intended to provide the necessary instrumentation and controls to place and maintain the plant in a safe shutdown condition from a location other than the control room in the event that the control room becomes uninhabitable. Additional changes to the TSs have been proposed to provide operability and surveillance guidance for the remote/alternate shutdown panels.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The inclusion of remote/alternate shutdown panels is not considered in the original plant accident analyses. The proposed inclusion of the remote/alternate shutdown panels in the Technical Specifications will not affect the ability of these panels in performing their intended function. The use of a keylock and an anti-tampering switch to alarm in the control room provides security against unauthorized access to the panels. The probability of a fire requiring the use of these panels is not increased and the ability of plant personnel and fire protection equipment to detect and extinguish a fire is not affected. For a severe fire affecting the control room, the remote/alternate shutdown panels provide an enhanced capability to achieve and maintain a cold shutdown. The proposed inclusion of the remote/alternate shutdown panels in the Technical Specifications will not introduce any additional combustible materials or ignition sources into the plant.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed inclusion of the remote/alternate shutdown panels in the Technical Specifications does not create the possibility of a new or different kind of accident or fire. The use of keylocks and anti-tampering switches to control access to these panels reduces the possibility of a new or different kind of accident from inadvertent operation. The proposed changes to the Technical Specifications provides additional capability towards mitigating the consequences of a fire in the control room, relay room, or cable spreading room by allowing for the control and establishment of a safe condition for the reactor from an alternate location. Analyses have demonstrated that the plant can be safely shutdown and maintained in a shutdown condition assuming the loss of all equipment in any single fire area or zone.

3. involve a significant reduction in the margin of safety.

The proposed inclusion of the remote/alternate shutdown panels in the Technical Specifications provides additional protection against the possibility of a fire causing the loss of reactor control capability. The inclusion of limiting conditions for operation and surveillance requirements will not reduce any existing safety margins. These changes will increase the reactor operators confidence in their ability to control the reactor under conditions requiring the evacuation of the control room.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* June 24, 1993

*Description of amendment request:* The proposed changes would amend the Technical Specifications (TSs) to delete Surveillance Requirement 4.6.A.7 which contains the schedule for removing reactor vessel flux monitoring surveillance capsules. The proposed TS changes are consistent with the guidance in Generic Letter 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not increase the probability or consequences of an accident previously evaluated because the plant's accident analyses is not affected by the Technical Specification change. The proposed changes will not affect the Reactor Vessel Material Surveillance Program nor the requirements to update pressure and temperature operating limits resulting from reactor vessel flux monitoring surveillance capsule examination. Although the Surveillance Requirement and the withdrawal schedule will be removed, 10 CFR [Part] 50 Appendix H requires that reactor vessel flux monitoring surveillance capsules be periodically removed and examined to determine changes in their material properties. The NRC approved schedule will be in the updated FSAR [Final Safety Analysis Report]. Therefore, no reduction in the overall effectiveness of the Reactor Vessel Material Surveillance Program will result from the proposed changes.

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated because they will not require modification to any plant structures, systems, components or practices. 10 CFR [Part] 50, Appendix H, will continue to require reactor vessel flux monitoring surveillance capsules be periodically removed and examined to determine changes to pressure and temperature operating limits. The absence of any changes to plant hardware or to the withdrawal schedule ensures that accident initiators are unaffected.

3. involve a significant reduction in the margin of safety.

The proposed changes will not cause a reduction in the margin of safety. The results of the plant accident analyses continue to bound operation under the proposed changes so there is no reduction in the margin of safety. Removal of the Surveillance Requirement containing the withdrawal schedule for reactor vessel flux monitoring surveillance capsules from the Technical Specifications will not result in any loss of regulatory control. Changes to the withdrawal schedule are controlled by the requirements of Appendix H to 10 CFR Part 50. The actual withdrawal schedule will be added to the updated FSAR in the next revision made in accordance with 10 CFR 50.71(e). Removal of the Surveillance Requirement containing the withdrawal schedule for reactor vessel flux monitoring surveillance capsules will not result in any loss of clarity related to the regulatory requirements of Appendix H to 10 CFR Part 50. The Bases for Section 3.6 and 4.6 A provide background information on the use of the data obtained from material specimen examination.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* June 30, 1993

*Description of amendment request:* The application proposes four changes associated with the suppression chamber (torus) limiting conditions for operation (LCOs), surveillance requirements (SRs), and associated Bases. The first of these changes would revise Technical Specification LCO 3.7.A to specify minimum and maximum torus water levels in terms of level above the bottom of the torus with the intention of simplifying compliance verification by eliminating the need to translate water level. The second and third changes would revise SR 4.7.A to permit periodic torus inspections during each operating cycle instead of each refueling outage, and to clarify the responsibility of the operator to observe pool temperature and allow operator logging of temperature when the recorder is not available. The fourth change would correct editorial errors and clarify terminology.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

There are proposed changes in four areas. The first revises LCO [Limiting Condition for Operation] 3.7.A and its associated Bases to specify minimum and maximum torus water levels based on height from the torus bottom rather than downcomer submergence and corrects the LCO to identify that level is the parameter being monitored. It also corrects the Bases to indicate that the volume for the minimum water level is an approximate value. These changes make the LCO consistent with instrumentation scales without changing allowable water level, clarify the LCO by identifying level and not volume as the parameter monitored and make the Bases consistent with the LCO and the updated FSAR [Final Safety Analysis Report]. The second and third changes revise SR [Surveillance Requirement] 4.7.A. The second change eliminates a restriction that limits periodic torus inspections to refueling outages. The proposed change will allow inspections to be scheduled during non-refueling outages. This is expected to minimize interferences which can limit inspection work hours and reduce personnel radiation exposure. The third change clarifies the surveillance requirement for pool temperature monitoring. The proposed change will eliminate any implication that the operator is to continuously monitor temperature during periods of heat addition. The proposed change requires the operator to verify temperature every five minutes. If there is a failure of the recorder, the operator shall log temperature every 5 minutes. This interval and the verification requirement are consistent with the requirements of the improved Standard Technical Specifications. There are existing instrumentation and alarms to keep the operator aware of excessive temperature and to record temperature. The last change makes editorial corrections and clarifies terminology. None of the proposed changes make hardware or equipment modifications. A procedural change will be required to allow torus surveillance to be performed during non-refueling outages. These changes will not alter the probability or consequences of any previously evaluated accidents as documented in the FitzPatrick FSAR or the NRC staff SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve clarifications and improvements to the Technical Specifications. There are no hardware modifications or equipment

changes. There is a change to allow the torus surveillance procedure to be revised so that surveillances can be implemented during non-refueling outages. The revision to torus inspection requirements does not alter the surveillance requirements other than to add additional scheduling flexibility. Revising the reference point for specifying torus water level will not alter the allowable torus water levels, initiate an accident or otherwise affect postulated events. The surveillance clarification reflects current plant practice that the operator is not required to continuously monitor or log torus water temperature and is consistent with the improved Standard Technical Specifications.

3. involve a significant reduction in a margin of safety.

The proposed changes involve no hardware modifications or equipment changes. The revision to torus water level limits does not alter the water levels, just the measurement reference point to simplify compliance verification. This provides a positive safety benefit by avoiding the need for the operator to translate water level. The change to the torus inspection interval provides added flexibility in scheduling inspections. There is no reduction in safety since the length of the surveillance interval remains the same. The change to the surveillance of the water temperature monitoring requirement clarifies the wording of the surveillance requirement and removes the possibility of an unintended interpretation creating confusion in responsibilities.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* July 15, 1993

*Description of amendment request:* The proposed changes would revise the Technical Specifications to eliminate the reactor scram and Main Steam Line Isolation Valve (MSIV) closure requirements associated with the Main Steam Line Radiation Monitors (MSLRM). The proposed changes are consistent with Licensing Topical Report NEDO-31400, "Safety Evaluation for Eliminating the Boiling Water Reactor Main Steam Isolation Valve Closure Function and Scram Function of the Main Steam Line Radiation Monitor," dated May 1987.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the FitzPatrick design basis events takes credit for reactor scram initiated from the MSLRM. Therefore, elimination of the scram trip signal will not increase the probability or consequences of accidents previously evaluated.

The Control Rod Drop Accident (CRDA) is the only design basis event which assumes that the reactor vessel isolation comes from the MSLRM. The isolation trip will not prevent the CRDA from occurring, therefore its elimination will not increase the probability of the accident.

The MSLRM isolation of the MSIVs was intended to mitigate the consequences of a CRDA. The fission products transported to the main condenser before MSIV closure, results in a ground level release due to condenser leakage. However, NEDO-31400, and the plant specific analysis using the NEDO-31400 assumptions and methodology, demonstrates that the isolation is actually of little benefit in this regards. Without MSIV isolation, the steam jet air ejector remains operational, and the fission products are processed through the augmented offgas treatment system. The holdup time, charcoal adsorption and elevated release, provided by the offgas treatment system, limits the offsite exposure levels. The analysis shows the offsite thyroid doses for the CRDA reduced to zero without MSIV closure. There is a small increase in the whole body doses without MSIV closure; however, the conservatively calculated values are a small fraction of 10 CFR [Part] 100 and SRP [Standard Review Plan] 15.4.9 guidelines.

Therefore, the elimination of the MSLRM isolation trip will not increase the consequences of an accident previously evaluated.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The MSLRM scram and MSIV isolation, were originally intended to mitigate, not prevent an accident scenario. Other than the circuitry modifications required to accomplish the removal of the subject trips, no changes to the physical plant or to the manner in which the plant is operated are introduced by the requested change. The change does not affect the remaining scram or vessel isolation functions. Therefore, no new or different kind of accident is created.

3. involve a significant reduction in the margin of safety.

The Licensing Topical Report NEDO-31400, as approved by the NRC, provides the results of a reliability assessment of the elimination of the MSLRM scram function on reactivity control failure frequency and core damage frequency. The results of the analysis indicate a negligible increase, on a generic basis, in reactivity control failure frequency with the deletion of the MSLRM scram function (1.4 E-9 events/year). However, this increase in reactivity control failure frequency is offset by the reduction in the transient initiating events (inadvertent scrams). This reduction in transient initiating events represents a 0.3% reduction in the generic core damage frequency (Reference 1) [Licensing Topical Report NEDO-31400].

Safe operation of the plant is further enhanced by elimination of the unnecessary scram and subsequent isolation of the reactor vessel. With implementation of these changes, the primary heat sink (main condenser) remains available, a large transient on the vessel and safety-related actuation are avoided, and the Offgas Treatment System remains available to control the potential release pathway.

The existing MSLRM and offgas radiation monitoring instrumentation will remain in service to provide information and alarms to plant operations. In the event either or both of these monitors alarm, the reactor coolant will be promptly sampled to determine activity levels and the need for additional corrective actions. The offgas treatment system isolation trip function on high radiation remains unaffected by this change. The MSLRM isolation functions, other than for the MSIV's, also remain unaffected by this change.

For these reasons, the proposed changes will enhance the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* June 16, 1993 (TS 93-05)

*Description of amendment request:* The proposed change would revise Surveillance Requirement 4.6.5.3.2 associated with the ice condenser intermediate deck door to require less

restrictive lifting force requirements. This would be accomplished by removing some of the conservatism that was used to determine the present force requirements. The result would be a slight increase in the allowable force specified for each of the doors during the test.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change replaces the overly conservative ice condenser intermediate deck door lifting force surveillance requirement (SR) values presently in the SQN TS with the values assumed in the current Westinghouse Electric Corporation subcompartment analysis for SQN. There is no change to the functions of the intermediate deck doors by the proposed change. This revision will not change any accident analysis assumptions or results for SQN's design. The intermediate deck doors provide a barrier for maintaining ice bed temperature and ice mass and provide a flow path through the beds for design basis loss of coolant accidents. These doors are not considered to be the source of any accident. Therefore, this change will not increase the probability of an accident.

Since this change in lifting force is consistent with current SQN accident analysis assumptions, containment response for design basis events is not changed. Therefore, no change in the mitigation of accidents will result from the proposed revision and the consequences of an accident will remain unaffected in comparison with current SQN accident analyses.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The intermediate deck doors are passive devices that are not considered to be the source of an accident. Changing the lifting force requirements for these doors to be consistent with the current Westinghouse subcompartment analysis will not affect their design functions or their potential to create an accident. Therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in a margin of safety.

The proposed change is consistent with the current SQN accident analysis assumptions and only removes unnecessary conservatisms associated with intermediate deck door lifting force SRs in the TS. The effect of this revision will result in no change to the containment response associated with a design basis accident. Therefore, the margin of safety assumed in the accident analysis is maintained without change.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* June 16, 1993 (TS 93-06)

*Description of amendment request:* The proposed change would modify the Technical Specifications (TS) to incorporate the new requirements of 10 CFR 20 by (1) changing the liquid and gaseous release rate limits, (2) changing the reference from the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 reference, (3) revising the equation for the liquid holdup tank activity limit, (4) revising the references from the old 10 CFR 20 to conform with the corresponding sections of the new 10 CFR 20, and (5) providing an unrelated editorial change to remove the word "annual" when describing the Final Safety Analysis Report update frequency.

*Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:*

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes: (1) modify the liquid and gaseous release rate limits, (2) relocate the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302, (3) revise the equation for the liquid holdup tank activity limit, (4) revise references from the old 10 CFR 20 to conform to the corresponding sections of the new 10 CFR 20, and (5) provide an editorial change, unrelated to 10 CFR 20, that removes the word "annual" when describing Final Safety Analysis Report update frequency. These proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The proposed changes related to the new 10 CFR 20 requirements will not create the possibility of a new or different kind of accident from any previously evaluated because the revisions are administrative and will not affect the types and amounts of effluent that will be released. The proposed change to delete the word annual is editorial in nature and will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety. The proposed revisions will not reduce any margin of safety because, for the liquid effluent releases, the methodology that will be used in the control of radioactive effluents will result in the same effluent dose to a member of the public. This is acceptable since annual doses will be limited to the doses specified in 10 CFR 50, Appendix I, and 40 CFR 190. Also, for gaseous effluent releases, the limits associated with the gaseous release rate TSs will be maintained at the current dose rate limits. Compliance with the limits of the new 10 CFR 20.1301 will be demonstrated by operating within the limits of 10 CFR 50, Appendix I and 40 CFR 190. Because compliance with the regulatory requirements has not been compromised and because these changes did not alter the facility or its design, there is no reduction in a margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* June 17, 1993 (TS 93-08)

*Description of amendment request:* The amendments would revise the allowable values for the intermediate and source range neutron flux monitor

reactor trip setpoints. The present value for the intermediate range setpoint is less than or equal to 30 percent of rated thermal power (RTP), which would be increased to 45.20 percent RTP. The present value for the source range setpoint is less than or equal to $1.3 \times 10^5$ counts per second (cps), which would be increased to $1.45 \times 10^5$ cps. The proposed changes would affect the Allowable Values Column of Technical Specification Table 2.2-1, Items 5 and 6.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change increases the allowable value for the intermediate- and source-range neutron flux reactor trip functions. These trips are not taken credit for in the safety analysis, but do provide additional reliability for the reactor protection system. These trips are provided for accident mitigation purposes and are not considered to be the source of any accident. Therefore, there is no increase in the probability of an accident because no plant functions have been changed and the increase in the associated allowable values has no impact on accident generation. The mitigation functions for the intermediate- and source-range trips are not assumed in the analysis, but are backups to the power-range neutron flux low setpoint trip. The power-range low trip is assumed in the analysis for uncontrolled control rod withdrawal from a subcritical condition but is not affected by the proposed change. Therefore, mitigation functions assumed in the SQN safety analysis have not been affected by the proposed change and the consequences of an accident, including offsite dose levels, will not be increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The trip functions affected by the proposed change are utilized for accident mitigation purposes though not taken credit for in the safety analysis. No plant functions have been changed as a result of this change, only the allowable values for intermediate- and source-range reactor trip setpoints. Since previously analyzed trip functions remain unchanged and no new or different functions have been introduced, the possibility of a new or different kind of accident has not been created.

3. Involve a significant reduction in a margin of safety.

The trip functions affected by the proposed change are not assumed for any accident in the SQN safety analysis and therefore are not an input to the TS margin of safety. The TS margin of safety for the low-power excursion event is provided by the power-range low setpoint trip function in the safety analysis. As described in Enclosure 2 (justification analysis for the change), the overall reliability of the reactor protection system is not reduced because the source-range-allowable value remains well below the power range trip setpoint and the intermediate-range-allowable value, while higher, will still provide the same accident response because of the rapid increase in neutron flux for low-power excursion events. Therefore, the proposed change will not result in a reduction in the margin of safety or overall reactor protection system reliability.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* June 21, 1993 (TS 93-07)

*Description of amendment request:* The proposed change would: (1) allow relaxation of the end of life (EOL) moderator temperature coefficient (MTC) limit specified in the Core Operating Limits Report; (2) revise the Bases for Specification 3/4.1.1.3, "Moderator Temperature Coefficient," to describe the new methodology used to calculate EOL MTC; and (3) revise Administrative Section 6.9.1.14.a by inserting a reference to the Westinghouse Proprietary Information document that provides the new methodology used to calculate the new EOL MTC.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The more negative end of life (EOL) moderator temperature coefficient (MTC) does not significantly increase the probability of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). No new performance requirements are being imposed on any system or component such that any design criteria will be exceeded. The conservative moderator density coefficient (MDC) assumption in the current analyses of record has been confirmed to remain bounding for the more negative proposed TS value. Therefore, no change in the modeling of the accident analysis conditions or response is necessary in order to implement this change.

The consequences of an accident previously evaluated in the UFSAR are not significantly increased because of the more negative EOL MTC. The dose predictions presented in the UFSAR remain valid such that no more severe consequences will result.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The more negative EOL MTC does not create the possibility of an accident that is different than any already evaluated in the UFSAR. No new failure modes have been defined for any system or component nor has any new limiting single failure been identified. Conservative assumptions for MDC have already been modeled in the UFSAR analyses, and it has been determined that the more negative MTC values to be implemented in the TS will continue to be bounded by these assumptions.

3. Involve a significant reduction in a margin of safety.

The evaluation of the more negative EOL MTC has taken into account the applicable TSs and has bounded the conditions under which the specifications permit operation. The applicable TSs are the bases for TS 3/4.1.1.3 and Section 6.9.1.14.a that list methods approved by NRC for use in determining the core operating limits. The values of the limiting condition of operation and surveillance requirements are located in the Core Operating Limits Report. The analyses that support these TSs have been evaluated. The results as presented in the UFSAR remain bounding for the more negative EOL MTC. Therefore, the margin of safety, as defined in the bases to these TSs, is not significantly reduced.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority,

400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of amendment request:* November 13, 1992 supplemented July 15, 1993

*Description of amendment request:* The proposed amendment would revise Appendix A, TS 3/4.3.1, "Reactor Protection System (RPS) Instrumentation" and TS 3/4.3.2.3, "Anticipatory Reactor Trip System (ARTS) Instrumentation" to increase RPS and ARTS channel functional test surveillance test intervals and RPS allowed out of service times. These requests are made based on the NRC approved Babcock & Wilcox Topical Report, BAW-10167. Also, the addition of an action statement to permit continued operation for 48 hours with two RPS channels inoperable and to remove channel functional test surveillance requirements for source and intermediate range neutron flux instrumentation is requested. Finally, a revision to Table 4.3-1 to decrease the channel calibration surveillance test interval for the "High Flux Number of Reactor Coolant Pumps On" trip is proposed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Toledo Edison has revised the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit 1 in accordance with these changes would:

1a) Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes do not involve design modifications or changes in plant operation which adversely affect the probability of the initiation of previously evaluated accidents. The Reactor Protection System (RPS) and Anticipatory Reactor Trip System (ARTS) primarily function to limit fuel damage thereby mitigating the consequences of accidents and transients. However, spurious trips initiate plant transients. The proposed change to permit plant operation to continue indefinitely with an inoperable RPS instrument channel in bypass instead of tripped, reduces the susceptibility of the RPS to spurious reactor trips, thereby reducing their probability of occurrence. The proposed increase in RPS and ARTS channel functional test interval reduces the number of opportunities for the occurrence of spurious reactor trips during testing. The risk (probability and consequences) impacts of the proposed changes to the surveillance test intervals and allowable out of service times (AOTs) have previously been evaluated by the NRC-approved Babcock and Wilcox (B&W) Topical Report, BAW-10167, "Justification for Increasing the Reactor Trip System On-Line Test Intervals," and its supplements. The NRC review concluded that the proposed surveillance test intervals and AOTs do not contribute an unacceptable increase to overall risk. The proposed decrease in the channel calibration interval for the RPS High Flux/Number of Reactor Coolant Pumps On trip makes the calibration interval consistent with the RPS High Flux and Flux - delta - Flow trips and does not affect the probability of an accident.

1b) Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes in RPS and ARTS channel functional test intervals and AOTs continue to ensure high reliability of the RPS/ARTS in limiting fuel damage and, therefore, the consequences of previously evaluated accidents. The risk (probability and consequences) impacts of the proposed changes to the surveillance test intervals and AOTs have previously been evaluated by the NRC-approved Babcock and Wilcox (B&W) Topical Report, BAW-10167, "Justification for Increasing the Reactor System On-Line Test Intervals," and its supplements. The NRC review concluded that the proposed surveillance test intervals and AOTs do not make an unacceptable contribution to overall risk. The proposed decrease in the channel calibration interval for the RPS High Flux/Number of Reactor Coolant Pumps On trip makes the calibration interval consistent with the RPS High Flux and Flux - delta - Flux - Flow trips and continues to ensure high reliability of this RPS trip in performing its intended function. Therefore, the consequences of previously evaluated accidents are unaffected by this change.

2a) Not create the possibility of a new kind of accident from any accident previously evaluated because there are no design modifications or hardware changes proposed. Furthermore, there are no new equipment failure modes or mechanisms introduced by the proposed changes.

2b) Not create the possibility of a different kind of accident from any accident previously evaluated because there are no design modifications or hardware changes proposed. Furthermore, there are no different failure modes or mechanisms introduced by the proposed changes.

3) Not involve a significant reduction in a margin of safety since the revised Technical Specifications surveillance intervals and allowed out of service times will continue to ensure high reliability of RPS and ARTS in performing their intended functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

*NRC Project Director:* John N. Hannon

**Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio**

*Date of amendment request:* June 23, 1993

*Description of amendment request:* The proposed amendment would revise the Technical Specifications to allow storage of new and spent fuel assemblies with an initial nominal enrichment of uranium - 235 no greater than 5.0 weight percent.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated because the capability of the fuel to maintain a coolable geometry will not be impaired, the ability of the cladding to prevent fission product escape will not be degraded, and the criticality analyses meet acceptance criteria.

The proposed change will not create the possibility of a new or different kind of accident from any previously evaluated accident because no changes to plant systems are being made.

The proposed change will not involve a significant reduction in a margin of safety because the capability of the fuel to maintain a coolable geometry will not be impaired, the ability of the cladding to prevent fission product escape will not be degraded, and the criticality analyses meet acceptance criteria.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

*Attorney for licensee:* Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037

*NRC Project Director:* John N. Hannon

**Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont**

*Date of amendment request:* June 25, 1993

*Description of amendment request:* The proposed amendment would clarify the definition of "core alteration" in Technical Specification 1.O.B to include only those components which affect core reactivity.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Proposed Change will clarify the definition of "core alteration". This clarification will specify that replacement of neutron detectors is not defined as a CORE ALTERATION. Replacement of these components is not considered to be a core alteration and they may be moved (replaced) with the reactor mode switch in the "Shutdown" or "Refuel" positions.

This change will not affect any plant hardware, plant design, safety limit settings, or plant system operation, and therefore does not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident. Therefore, the Proposed Change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

As discussed above, the Proposed Change only clarifies the definition of "core alteration". The Proposed Change does not affect any equipment nor does it involve any potential initiating events that would create any new or different kind of accident. As such, the plant initial conditions utilized for the design basis accident analyses remain unchanged and valid. Therefore, the Proposed Change does not create the possibility of a new or different kind of accident from any previously analyzed.

As discussed above, the Proposed Change which clarifies the definition of "core alteration" does not affect any equipment involved in potential initiating events or safety limits settings. Therefore, the Proposed Change does not involve a significant reduction in the margin of safety.

Based on the above, we have determined that this change does not constitute a significant hazards consideration as defined in 10CFR50.92(c).

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

*Attorney for licensee:* John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

*NRC Project Director:* Walter R. Butler

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* July 2, 1993

*Description of amendment request:* The proposed changes would modify Technical Specification (TS) 3/4.6.1.2 by removing the schedular requirements for Type A tests to be performed specifically at 40 plus or minus 10 month intervals, and instead, reference Type A testing in accordance with Appendix J to 10 CFR Part 50. The proposed changes also include several editorial/administrative changes. The NA-1 TS 3/4.6.1.2 currently requires that a set of three containment integrated leakage rate (Type A) tests be performed specifically at 40 plus or minus 10 month intervals during each 10-year service period, with the third test of each set performed during the shutdown for the 10-year plant inservice inspection. Appendix J to 10 CFR Part 50 requires that a Type A test of the containment be performed periodically. These tests are required to be scheduled as a set of three tests, to be performed at approximately equal intervals during each 10-year service period with the third set to coincide with the shutdown for the 10-year plant inservice inspection. While the NA-1&2 TS leakage rate testing requirements essentially duplicate the requirements in Appendix J, the TS additionally require the Type A test be performed at 40 plus or minus 10 month intervals. The TS requirement to conduct Type A tests at 40 plus or minus 10 month intervals is too restrictive. Therefore, the licensee proposes to delete the detailed surveillance schedule for the Type A tests and, instead, reference performance of Type A testing in accordance with Appendix J to 10 CFR 50. The proposed changes to the TS do not involve modifications to any of the existing equipment or affect the operation of any existing systems. The reactor containment system reliability and operation are unchanged and, therefore, remain in accordance with the descriptions found in the Updated Final Safety Analysis Report (UFSAR). The proposed TS changes do not affect or change any other limiting conditions for operation (LCO) or surveillance requirements in the TS and the Basis for the TS remains unchanged. Periodic Type A tests will still be performed during the service life of each unit as required by Appendix J to 10 CFR 50. The proposed changes do not change the number of tests required -- only the specific schedule is requested to be removed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the Technical Specification changes will not:

(1) Affect the assumptions, design parameters, or results of any UFSAR accident analysis. The proposed amendment does not add or modify any existing equipment. The proposed Type A testing schedule will still be consistent with Appendix J to 10 CFR 50. Therefore, the proposed Technical Specifications changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Involve modifications to any of the existing equipment or affect the operation or design basis of the containment. The proposed changes do not modify the response of the containment during a design basis accident. The proposed changes only remove the restrictive schedule requirements for conducting Type A testing from the Technical Specifications. Therefore, the proposed Technical Specifications changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) [Involve a significant reduction in a margin of safety.] Although the changes allow more flexibility in scheduling Type A tests, the proposed amendment continues to ensure reactor containment system reliability by the periodic tests. Since equipment reliability will be maintained, the proposed Technical Specifications changes will not involve a signification reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of

Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Herbert N. Berkow

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* July 2, 1993

*Description of amendment request:* The proposed change would reduce from two to one the minimum number of steam generators (SGs) required to be opened for inspection during the first refueling outage following a steam generator replacement. The NA-1&2 Technical Specifications (TS) surveillance requirements 4.4.5.0 through 4.4.5.5 for inspection of the SG tubes ensure that the structural integrity of this portion of the Reactor Coolant System will be maintained. Accordingly, the purpose of TS 4.4.5.1 is to require periodic sample inspections of SG tubes. The initial inspection after SG replacement combined with the subsequent inservice inspections serve to provide reasonable assurance that structural degradation of SG tubes will be detected. The proposed TS change does not affect or change this basis. However, the requirement that two SGs be opened and inspected during the first refueling outage after steam generator replacement is considered unnecessary by the licensee.

The replacement SG components for NA-1&2 have been or are being manufactured using current codes and manufacturing techniques without compromising the requirements of the original code thus reflecting current technology in the areas of design, fabrication, and materials. Design changes and enhancements made to replacement SG components address the operating experience of the original SGs and enhance the overall reliability and maintainability of the repaired steam generators. These enhancements are incorporated as not to adversely affect the mechanical or thermal-hydraulic performance of the repaired SGs. Thus, the replacement SGs are considered superior to the original SGs in terms of design and materials. The proposed change to the TS does not involve modifications to any of the existing equipment or affect the operation of any existing systems. The reactor coolant system reliability and operation are unchanged and, therefore, remain in accordance with the descriptions found in the Updated Final Safety Analysis Report (UFSAR).

The proposed TS change would not affect or change any limiting conditions for operation (LCO) or any other surveillance requirements in the TS and the Basis for the surveillance requirement would remain unchanged. An inspection of the minimum required number of SG tubes would still be performed prior to returning the SGs to service. Although the proposed change would reduce the number of SGs required to be opened for inspection, the minimum number of tubes required to be examined during the inspection would not be changed. Thus, the inspected SG tube population size would not change.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have evaluated the proposed change against the criteria described in 10 CFR 50.92 and concluded that the proposed Technical Specifications change does not pose a significant hazards consideration.

1. The proposed Technical Specifications change does not affect the assumptions, design parameters, or results of any UFSAR accident analysis and the proposed amendment does not add or modify any existing equipment. Therefore, the proposed Technical Specifications change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change to the Technical Specifications does not involve modifications to any of the existing equipment or affect the operation of any existing systems. The absence of any hardware or software changes means that the accident initiators remain unaffected, so no unique accident possibility is created. Therefore, the proposed Technical Specifications change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Although the change allows the rescheduling of the steam generator tube inspections, the proposed amendment continues to ensure that the tube inspection sampling will be performed. Therefore, the operability of the steam generators will continue to be verified by the periodic inservice inspections. Since equipment reliability will be maintained, the proposed Technical Specifications change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Herbert N. Berkow

**Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia**

*Date of amendment request:* July 8, 1993

*Description of amendment request:* The proposed changes would delete from the NA-1&2 Technical Specifications (TS) the requirement to periodically review certain administrative and technical procedures. TS 6.8.2 specifies that the procedures prescribed in TS 6.8.1 "and changes thereto, shall be reviewed and approved by the SNSOC prior to implementation and reviewed periodically as set forth in administrative procedures." This provision applies to procedures which describe and are used for administrative controls, maintenance, surveillance testing, operations, calibration, chemistry control, health physics and radiological protection, and refueling operations. The periodic review of these procedures is intended to ensure that procedures are maintained adequate to control those activities, technically and philosophically accurate, and current as necessary to incorporate design modifications, technical bulletins, manufacturer updates, and industry experience. The proposed TS changes delete these periodic reviews because the established procedure upgrade/revision program effectively accomplishes these goals. Numerous checks and balances ensure that procedures are maintained adequate, accurate, and up-to-date including routine inputs from the design change process, day-to-day activities, reviews after any unplanned transient, operational experience review program, TS change packages, licensed Operator requalification program, and independent assessments/audits of the procedure review, revision, and upgrade program.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the Technical Specification changes will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The likelihood that an accident will occur is neither increased or decreased by eliminating the periodic reviews of routine administrative and technical procedures. Sufficient controls are established to ensure that procedures impacting safety-related structures, systems, and components are maintained current, accurate, and usable. This TS change will therefore not impact the function or method of operation of plant equipment. Thus, a significant increase in the probability of a previously analyzed accident does not result due to this change. No systems, equipment, or components are affected by the proposed changes. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the UFSAR [Updated Final Safety Analysis Report] are not increased by this change. The proposed changes do not affect equipment or its operation, and, thus, do not affect the probabilities or consequences of an accident. Therefore, we conclude that this change does not significantly increase the probabilities or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve changes to the physical plant or operations. Since periodic procedure reviews do not contribute to accident initiation, a change related to such an activity does not produce a new accident scenario or produce a new type of equipment malfunction. Also, this change does not alter any existing accident scenarios. The proposed changes do not affect equipment or its operation, and, thus, do not create the possibility of a new or different kind of accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Technical Specification 6.8.2 does not have a basis description. The proposed changes do not affect equipment or its operation, and, thus, do not involve any reduction in the margin of safety. Therefore, use of the proposed Technical Specification would not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Herbert N. Berkow

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment request:* July 2, 1993

*Description of amendment request:* The proposed amendment would modify the Technical Specifications to include a Core Operating Limits Report which presents reload-specific limits for key core operating parameters.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, which will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The removal of cycle-specific core operating limits from the Surry Technical Specifications has no influence or impact on the probability or consequences of any accident previously evaluated. The cycle-specific core operating limits, although not in Technical Specifications, will be followed in the operation of Surry. The proposed amendment still requires exactly the same actions to be taken when or if limits are exceeded as is required by the current Technical Specifications. Each accident analysis addressed in the Surry UFSAR [Updated Final Safety Analysis Report] will be examined with respect to changes in cycle-dependent parameters, which are determined by application of NRC-approved reload design methodologies. The impact of these parameter changes on transient results will be evaluated to ensure that the results remain bounded by respective transient analysis acceptance criteria. This examination, which will be performed per the requirements of 10 CFR 50.59, ensures that future reloads will not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. As stated earlier, the removal of the cycle-specific core operating limits has no influence or impact, nor does it contribute in any way to the probability or consequences of any accident previously evaluated. No safety-related equipment, safety function, or plant operating characteristic will be altered as a result of the proposed changes. The cycle-specific variables are calculated using NRC-approved methods, and are submitted to the NRC for information in accordance with Technical Specification 6.2. The Technical Specifications will continue to require operation within the required core operating limits, and appropriate actions will be taken when or if limits are exceeded.

Therefore, the proposed amendment does not in any way create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety. The margin of safety is not affected by the removal of cycle-specific core operating limits from the Technical Specifications. The margin of safety presently provided by current Technical Specifications remains unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed amendment continues to require operation within the core limits which were developed from the NRC-approved reload design methodologies. Further, the actions to be taken when or if limits are violated remain unchanged. Development of limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each reload requires a 10 CFR 50.59 safety review to assure that operation of the unit within the cycle-specific limits will not involve a reduction in any margin of safety. Therefore, the proposed changes are administrative in nature and do not impact the operation of Surry in a manner that involves a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Herbert N. Berkow

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment request:* July 16, 1993

*Description of amendment request:* The proposed amendments would revise the Technical Specifications for Surry Units 1 and 2 by permitting operation with a three degree increase in the service water temperature limit for containment air partial pressures of 9.1, 9.2, and 9.35 psia. Also, a typographical error from

*Amendment No.* 172 and 171, dated January 22, 1993, involving transposed numbers for reactor coolant temperature and pressure would be corrected.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

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Operation of Surry Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

Operating with increased service water temperature limits does not affect the frequency of accident initiating events. The increased service water temperature limit of 95°F has no effect on plant operations. Therefore the probability of an accident previously analyzed is not increased. Furthermore, other plant systems are designed for operation with 95°F service water.

Although the service water temperature limit is being increased, the containment will continue to meet its design basis acceptance criteria following a large-break loss of coolant accident as identified in the UFSAR [Updated Final Safety Analysis Report]. Likewise, the administrative changes have no impact on plant operations. Therefore, there is no increase in the consequences of any accident previously evaluated resulting from operation of Surry Units 1 and 2 with an increased service water temperature limit.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no new failure modes or mechanisms associated with operating Surry Units 1 and 2 with an increased service water temperature limit of 95°F. As noted above increased service water temperature limits do not affect plant operations. Furthermore, other plant systems are designed for operation with 95°F service water. Likewise, the administrative changes have no impact on plant operations. Therefore, there are no new or different kinds of accidents created by operation of Surry Units 1 and 2 with increased service water temperature limits.

3. Involve a significant reduction in a margin of safety.

The limiting containment analyses continue to be met when operating with the proposed increase to service water temperature limits. Containment integrity will not be challenged but continue to meet its design basis acceptance criteria following a large break loss of coolant accident. Likewise, the administrative changes have no impact on plant operations. Therefore, the existing margin of safety is not reduced by operation of Surry Units 1 and 2 with an increased service water temperature limit.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

*NRC Project Director:* Herbert N. Berkow

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of amendment request:* June 2, 1993

*Description of amendment request:* The amendment proposes to change Section 6 (Administrative Controls) section of the Technical Specifications (TS) to modify the reporting relationship of the Corporate Nuclear Safety Review Board (CNSRB) from the Managing Director to the Assistant Managing Director for Operations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff's evaluation of the licensee's analysis is presented below.

*1. Does the amendment involve a significant increase in the probability or consequences of an accident previously identified?*

The changes are administrative in nature and involve no physical alteration of the plant, or changes to setpoints, operating conditions, or operating parameters. The response of the plant to previously evaluated accidents thus is not affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?*

The administrative nature of the proposed changes does not affect the design, operation, maintenance, or testing of the plant. Thus no new failure modes are created. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

*3. Does the amendment involve a significant reduction in a margin of safety?*

The proposed changes are proposed to further implement a previously approved license amendment that modified the designation of the corporate official responsible for overall plant nuclear safety. The proposed change is administrative in nature, and does not affect the margins of safety in the current licensing basis. Therefore, these changes do not involve a significant reduction in a margin to safety.

The NRC staff has determined that it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352

*Attorney for licensee:* Nicholas S. Reynolds, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

*NRC Project Director:* Theodore R. Quay

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment request:* June 22, 1993

*Description of amendment request:* The proposed amendment would change the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) Section 1.0 to define frequency notations for surveillance requirements. Sections 3.2 and 3.3 would be revised to incorporate formatting changes and to correct minor typographical errors as part of converting the TS document to the WordPerfect software. In Section 3.10, "every shift" would be changed to "at least once per 8 hours" as applicable. Section 4.2 would be changed to revise an incorrect reference, and Section 6 would be revised to remove audit frequencies, define "vital areas," and extend the reporting period for the Radioactive Effluent Release Report from semiannual to annual.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change to incorporate frequency notations is similar to NUREG-0452, Westinghouse Standard Technical Specifications, which currently define a shift as being 12 hours. This proposed change would not affect the availability or reliability of safety-related equipment; therefore it would not have an affect on the probability of an accident previously evaluated.

The proposed change to eliminate the frequency requirements for the Nuclear

Safety Review and Audit Committee (NSRAC) audits is not a significant change and would not impact the daily operation of the plant. Because it would allow more flexibility in assigning resources to work on weak or poor performance areas, the plant safety performance may be improved. The other proposed changes are administrative in nature and would not change the intent of the Technical Specifications. Therefore, the probability or consequences of an accident previously evaluated would not be increased.

The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes would not alter the plant configuration, operating setpoints, or overall plant performance.

The proposed changes would not involve a significant reduction in the margin of safety. Changing the frequency of channel checks from once every 8 hours to once every 12 hours is consistent with NUREG-0452, Westinghouse Standard Technical Specifications, and would not significantly decrease safety due to the low probability of a failed channel going unnoticed during the extended (4 hour) time period. Eliminating the frequency requirements for the NSRAC audits is not a significant change and would not affect the operation of the plant; therefore, there would be no change in the margin of safety. The other proposed changes are administrative in nature and would not change the intent of the Technical Specifications. Therefore, they would not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

*NRC Project Director:* John N. Hannon.

**Previously Published Notices of Consideratin of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* July 13, 1993

*Description of amendment request:* The proposed amendments would revise the boron concentration limits within the refueling Water Storage Tank and within the Cold Leg Accumulators in order to support the safe operation of McGuire Unit 2 Cycle 9 and subsequent cycles.

*Date of publication of individual notice in* **Federal Register:** July 23, 1993 (58 FR 39581)

*Expiration date of individual notice:* August 23, 1993

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, MaineDate of Amendment: June 7, 1993**

*Description of amendment request:* The proposed amendment would delete the five-page list of safety-related shock suppressors (snubbers) from Technical Specification (TS) 3.20 and provide an additional Applicability statement. The additional Applicability statement clearly defines the safety-related scope of the snubber surveillance testing, and the recordkeeping requirements are changed to reflect the safety-related scope of the snubber program at Maine Yankee.

*Date of publication of individual notice in* **Federal Register:** July 14, 1993 (58 FR 37922)

*Expiration date of individual notice:* August 13, 1993

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

*Attorney for licensee:* Thomas G. Dignan, Jr., Esquire., Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

*NRC Project Director:* Walter R. Butler

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

**Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina**

*Date of application for amendments:* April 15, 1993

*Brief description of amendments:* The amendments to the Facility Operating Licenses supersede and rescind Confirmatory Order EA-82-106, dated December 22, 1982.

*Date of issuance:* July 19, 1993

*Effective date:* Effective immediately upon issuance.

*Amendment Nos.:* 163 and 194

*Facility Operating License Nos.* DPR-71 and DPR-62. Amendments revise the Facility Operating Licenses.

*Date of initial notice in* Federal Register: June 9, 1993 (58 FR 32378)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of North Caroline at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Caroline 28403-3297.

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois**

*Date of application for amendments:* May 26, 1993

*Brief description of amendments:* The amendments revise the Technical Specifications (TS) by deleting the requirement to perform a quarterly equalization charge of the DC battery from the TS and placing it under the licensee's control.

*Date of issuance:* July 12, 1993

*Effective date:* July 12, 1993

*Amendment Nos.:* 147 and 135

*Facility Operating License Nos.* DPR-39 and DPR-48. The amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 9, 1993 (58 FR 32380)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York**

*Date of application for amendment:* April 1, 1993

*Brief description of amendment:* The amendment revises the Administrative Controls section of the TS. Senior management functions related to the Nuclear Facilities Safety Committee (NFSC) are reassigned from the President of the Company to the Executive Vice President - Central Operations. The change also eliminates the requirement for the NFSC to review and concur in the administrative control procedure which describes the policy for changing, reviewing, and approving procedures. The Vice President, Nuclear Power, now concurs in place of the NFSC.

*Date of issuance:* July 13, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 164

*Facility Operating License No.* DPR-26: Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 9, 1993 (58 FR 32381)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of application for amendments:* January 27, 1993, as supplemented March 15 and June 4, 1993

*Brief description of amendments:* The amendments revise the frequency for the Radiological Effluents Report, and modify the requirements for "Fuel Assemblies" in the "Design Features" Section of the Technical Specification in accordance with Generic Letter 90-02, Supplement 1.

*Date of issuance:* July 19, 1993

*Effective date:* July 19, 1993

*Amendment Nos.:* 137 and 119

*Facility Operating License Nos.* NPF-9 and NPF-17: Amendments revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 9, 1993 (58 FR 32381)

The March 15 and June 4, 1993, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 19, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

**Duquesne Light Company, et al., Docket No. 50-412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania**

*Date of application for amendment:* October 1, 1990, as supplemented May 28 and December 30, 1992.

*Brief description of amendment:* The amendment revises the Appendix A Technical Specifications (TSs) relating to turbine valve testing. The amendment modifies Technical Specification 4.3.4.2 by revising the frequency of reheat stop and intercept valve testing to once per 18 months, makes certain terminology consistent with other plant documents, and relaxes the inspection cycle to a maximum of 60 months under certain conditions.

*Date of issuance:* July 13, 1993

*Effective date:* July 13, 1993

*Amendment No:* 53

*Facility Operating License No.* NPF-73. Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: May 26, 1993 (58 FR 30192)

The May 28 and December 30, 1992, supplements provided information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

**Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* April 24, 1992, as supplemented by letter dated February 25, 1993

*Brief description of amendment:* The amendment revised the Technical Specifications by removing the wall-cracking surveillance from the basemat cracking program. The amendment also changed the term "mapping" to "monitoring," as proposed by the licensee's February 25, 1993, letter.

*Date of issuance:* July 8, 1993

*Effective date:* July 8, 1993

*Amendment No.:* 82

*Facility Operating License No. NPF-38.* Amendment revised the Technical Specifications.

*Date of initial notice in* Federal Register: June 24, 1992 (57 FR 28200)

The additional information contained in the supplemental letter dated February 25, 1993, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

**GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania**

*Date of application for amendment:* March 17, 1992, as supplemented June 18 and December 23, 1992.

*Brief description of amendment:* The amendment revised the TMI-2 license by modifying the Appendix A and B Technical Specifications, relocating requirements related to radiological effluents to a new document called the Offsite Dose Calculation Manual (ODCM) which applies to both TMI-1 and TMI-2. The removal of these requirements from the TS are in accordance with the guidance in NRC staff issued Generic Letter 89-01 dated January 31, 1989.

*Date of issuance:* May 26, 1993

*Effective date:* May 26, 1993

*Amendment No.:* 43

*Facility Operating License No.* DPR-73. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 25, 1993 (58FR 16226) The NRC evaluation of this amendment is contained in a Safety Evaluation dated May 26, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

**GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania**

*Date of application for amendment:* August 1, 1991

*Brief description of amendment:* This amendment modifies the Appendix A Technical Specifications by substituting numerical criteria to limit Processed Water Disposal System (PWDS) operations and effluents in lieu of the current technical specification which requires NRC review and approval of operating procedures to limit PWDS operations and effluents.

*Date of issuance:* July 12, 1993

*Effective date:* July 12, 1993

*Amendment No.:* 44

*Facility Operating License No. DPR-73.* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 25, 1993 (58 FR 16225) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 12, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* August 18, 1992

*Brief description of amendment request:* The amendment revises Technical Specification (TS) 3.6.3, "Containment Isolation Valves," by changing the wording in the Action Statement to require at least one isolation barrier to be maintained operable, as opposed to at least one isolation valve. A footnote is also added to clarify that an isolation barrier may either be an isolation valve or a closed system as defined by General Design Criteria (GDC) 57 of Appendix A to 10 CFR Part 50.

*Date of issuance:* July 12, 1993

*Effective date:* July 12, 1993

*Amendment Nos.:* 53 and 42

*Facility Operating License Nos.* NPF-76 and NPF-80. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 9, 1993 (58 FR 32384) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1993

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488.

**Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* April 16, 1992

*Brief description of amendment:* The amendment changes Clinton Power Station Technical Specification Figure 3.1.5-1, "Weight Percent Sodium Pentaborate Solution as a Function of Net Tank Volume," to show the reduction in net tank volume that results from raising the Standby Liquid Control System storage tank level instrument zero to prevent potential air entrainment in the pump suction piping due to vortexing. Additionally the Technical Specification Bases which describe this curve have been revised to reflect the changes.

*Date of issuance:* July 15, 1993

*Effective date:* July 15, 1993

*Amendment No.:* 78

*Facility Operating License No. NPF-62.* The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 28, 1993 (58 FR 25856) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* August 31, 1990, and August 16, 1991, as supplemented on December 20, 1990, and October 17, 1991

*Brief description of amendment:* The amendment eliminates contradictory statements, allows adequate time to perform required surveillances without resulting in a violation of Technical Specification 4.0.4, clarifies startup surveillance requirements, and establishes plant conditions to perform surveillances associated with change of plant operational conditions.

*Date of issuance:* July 15, 1993

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment No.:* 79

*Facility Operating License No.* NPF-62. The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 3, 1990 (55 FR 40469) and December 11, 1991 (56 FR 64654). The December 20, 1990, and October 17, 1991, submittals consisted of revisions/clarifications whichdid not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* August 17, 1992

*Brief description of amendment:* The amendment modifies Clinton Power Station Technical Specification 3/4.8.1.1, "AC Sources - Operating," to update the testing requirements for the fuel oil used by the standby diesel generators.

*Date of issuance:* July 15, 1993

*Effective date:* July 15, 1993

*Amendment No.:* 80

*Facility Operating License No.* NPF-62. The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 28, 1992 (57 FR 48820) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* April 16, 1993

*Brief description of amendment:* The amendment changes Clinton Power Station Technical Specifications 3/4.1.3.2, "Control Rod Maximum Scram Insertion Times," 3/4.4.2.1, "Safety/Relief Valves," and 3/4.5.1, "Emergency Core Cooling Systems." The changes reduce, or mitigate, certain time restrictions associated with surveillance testing required during plant startup.

*Date of issuance:* July 15, 1993

*Effective date:* July 15, 1993

*Amendment No.:* 81

*Facility Operating License No.* NPF-62. The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30196) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* September 2, 1992, as supplemented by letter dated June 23, 1993.

*Brief description of amendment:* The amendment revised the technical specifications for the Cooper Nuclear Station to (1) increase the minimum amount of diesel fuel oil capacity required to be available in the on-site storage tanks, (2) update the standard to which the diesel fuel oil quality is tested to a more recent edition of the same standard, and (3) add additional testing requirements for particulates and water in the diesel fuel oil.

*Date of issuance:* July 16, 1993

*Effective date:* 30 days after its date of issuance

*Amendment No.:* 165

*Facility Operating License No.* DPR-46. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 23, 1992 (57 FR 61113) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 16, 1993.

No significant hazards consideration comments received:

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York**

*Date of application for amendment:* May 14, 1993, as supplemented June 30, 1993

*Brief description of amendment:* The amendment revises the Appendix A Technical Specifications (TSs) to correct obvious typographical errors, add temperature degree signs (°), add commas and periods for clarity, provide consistent page headings/titles, adjust line spacing (repagination), remove intentionally blank pages, renumber pages, remove outdated footnotes, and add the delta symbol in place of the word delta. In addition, the amendment deletes pertinent portions of the TSs that related to one-time only date extensions which have since expired, corrects references to revised regulations, deletes an outdated last paragraph in Bases Sections 3.3.7 and 4.3.7, adds clarifying headings of "Shutdown," "Refuel," "Startup," and "Run" to TS Tables 3.6.2f and 3.6.2h, and deletes footnotes and table notations referring to the completed Hydrogen Water Chemistry feasibility test. The changes are purely administrative and do not involve substantive changes to the TSs.

*Date of issuance:* July 14, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 142

*Facility Operating License No.* DPR-63: Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 9, 1993 (58 FR 32385) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York**

*Date of application for amendment:* May 18, 1993

*Brief description of amendment:* The amendment revises Technical Specification 4.6.1.2.a to provide a one-time extension of the required test interval for overall integrated containment leak rate tests (Type A tests). This extension allows the second Type A test of the first 10-year service period to be performed during the fourth refueling outage and expires upon completion of that refueling outage.

*Date of issuance:* July 12, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 43

*Facility Operating License No. NPF-69:* Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 9, 1993 (58 FR 32387) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York**

*Date of application for amendment:* December 30, 1992, as supplemented May 19, 1993.

*Brief description of amendment:* The amendment revises TS 3.4.3.1, 3.4.3.2, and 4.4.3.2.1.b. and association Bases to incorporate the NRC staff positions on reactor coolant system leakage detection delineated in Generic Letter 88-01, "NRC Position on IGSCC in BWR Austenitic Stainless Steel Piping."

*Date of issuance:* July 21, 1993

*Effective date:* July 21, 1993

*Amendment No.:* 44

*Facility Operating License No.* NPF-69: Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 17, 1993 (58 FR 8774) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 21, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut**

*Date of application for amendment:* March 19, 1993 (Partial)

*Brief description of amendment:* The amendment changes the allowed out of service time for a single low temperature overpressure protection channel from 7 days to 24 hours when in operating Modes 4, 5, and 6. The remainder of the changes requested in the March 19, 1993, submittal will be addressed separately.

*Date of issuance:* July 12, 1993

*Effective date:* July 12, 1993

*Amendment No.:* 80

*Facility Operating License No.* NPF-49. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 9, 1993 (58 FR 32388) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of application for amendment:* December 31, 1992.

*Brief description of amendment:* Amendment changes Limiting Condition for Operation 3.3.A.2, Reactivity Margin - Stuck Control Rods, and its corresponding Surveillance Requirement to eliminate an optional alternative to control rod drive testing requirements and rewrites the technical specification to clarify its intent.

*Date of issuance:* July 12, 1993

*Effective date:* July 12, 1993

*Amendment No.:* 86

*Facility Operating License No.* DPR-22. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 9, 1993 (58 FR 32388). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

**Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* February 26, 1993

*Brief description of amendments:* These amendments change the surveillance testing interval for the Logic System Functional Tests (LSFTs) for the 1) Primary Containment Isolation System (PCIS), 2) Core Standby Cooling System (CSCS), 3) Control Rod Block Actuation System and 4) Radiation Monitoring System actuations. The revised surveillance tests will require the performance of the LSFTs once-per-operating-cycle rather than once-per-6-months as was previously required. Currently, an operating cycle is defined in the Technical Specifications as at least once per 550 days, with an additional 25% grace period allowed.

*Date of issuance:* July 15, 1993

*Effective date:* July 15, 1993Amendments Nos.: 178 and 181

*Facility Operating License Nos.* DPR-44 and DPR-56: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 31, 1993 (58 FR 16868) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 15, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* February 25, 1993

*Brief description of amendment:* The amendment revises certain Technical Specifications Limiting Conditions for Operation (LCO) action statements to adopt consistent terminology for the action statements and to more clearly distinguish between the different actions associated with each LCO. The amendment also adds required completion times to action statements that previously did not specify completion times and revises the resulting mode to be achieved if the action specified in the LCO action statement cannot be maintained.

*Date of issuance:* July 12, 1993.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 192

*Facility Operating License No. DPR-59:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 9, 1993 (58 FR 32390) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 26th day of July 1993.

For the Nuclear Regulatory Commission

**John A. Zwolinski,**

*Acting Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation*

[FR Doc. 93-18440 Filed 8-3-93; 8:45 am]

BILLING CODE 7590-01-F

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**[Docket No. 50-443]**

**North Atlantic Energy Service Corp. et al., Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Facility Operating License No. NPF-86 issued to North Atlantic Energy Service Corporation (North Atlantic, the licensee) for operation of the Seabrook

Station, Unit No. 1, located in Rockingham County, New Hampshire.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed amendment would change the footnote on page 1 of Facility Operating License NPF–86 to reflect that EUA Power Corporation has changed its name to Great Bay Power Corporation. EUA Power Corporation has been under the protection of chapter 11 of title 11 of the United States Bankruptcy Code since February 28, 1991. Great Bay Power Corporation is the reorganized entity that emerges from bankruptcy pursuant to the Plan for Reorganization which has been confirmed by the United States Bankruptcy Court for the District of New Hampshire.

*The Need for the Proposed Action*

The amendment is a condition of a requirement for the Bankruptcy Court's Plan for Reorganization of EUA Power Corporation to become effective. Changing EUA Power Corporation's name will not affect the operation of the facility or the facility's Technical Specifications.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed change to the license. The proposed revision would allow EUA Power Corporation to change its name to Great Bay Power Corporation. There will be no changes to the operation and maintenance staff, or to the facility or the environment as a result of the license amendment. No changes are being made to the types or amounts of any effluents that may be released offsite, and there is no increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological or non-radiological environmental impact.

*Alternative to the Proposed Action*

As an alternative to the proposed action, the NRC staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Seabrook Station.

*Agencies and Persons Consulted*

The NRC staff consulted with the State of New Hampshire and the Commonwealth of Massachusetts regarding the environmental impact of the proposed action.

**Finding of No Significant Impact**

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 23, 1993 (58 FR 34083).

For further details with respect to this action, see the request for approval dated May 14, 1993, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 28th day of July, 1993.

For The Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–18594 Filed 8–3–93; 8:45 am]

BILLING CODE 7590–01–M

## Radiation Exposure Monitoring and Information Transmittal (REMIT) System; Availability

The Nuclear Regulatory Commission (NRC) announces the release of a new software package, REMIT, for electronically reporting radiation exposure measurements to the NRC. REMIT is designed to assist NRC licensees in meeting the reporting requirements of 10 CFR 20.1001 through 20.2401 as outlined in Regulatory Guide 8.7, Revision 1, "Instructions for Recording and Reporting Occupational Radiation Exposure Data."

REMIT is a personal computer (PC)-based, menu-driven system that facilitates the manipulation of data base files to record and report radiation exposure information. REMIT is designed to be user-friendly and contains the full text of Regulatory Guide 8.7, Revision 1, online as well as context sensitive help throughout the program. The user can enter data directly from NRC Form 4 or Form 5. REMIT allows the user to view the individual's exposure in relation to regulatory or administrative limits and will alert the user to exposures in excess of these limits. The system also provides for the calculation and summation of dose from intakes and the determination of the dose to the maximally exposed extremity for the monitoring year. REMIT can produce NRC Forms 4 and 5 in paper and electronic format. In addition, REMIT can import and export data from ASCII and data base files.

REMIT includes a user manual (NUREG/CR–6050) and two 3.5-inch, high density, double-sided, disks. The software has been beta tested, and telephone support will be provided for one year. Installation assistance will be available thereafter from the Energy Science and Technology Software Center. For additional information, inquiries should be directed to Jayne M. McCausland at (301) 492–3643.

The REMIT software package is available for a discounted price of $59.00 ($89.00 outside North America) until June 1994. To order, please send your name, company name and address, and day and evening telephone numbers where you may be reached, along with payment to the Energy Science and Technology Software Center, P.O. Box 1020, Oak Ridge, TN 37831. Payment may be in the form of check or money order out to the Energy Science and Technology Software Center. Credit card orders can be made by calling (615) 576–2606.

Dated at Rockville, Maryland, this 28th day of July, 1993.

For the Nuclear Regulatory Commission.

**Bill M. Morris,**

*Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.*

[FR Doc. 93–18596 Filed 8–3–93; 8:45 am]

BILLING CODE 7590–01–M

## Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and

data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 8.37, "ALARA Levels of Effluents from Materials Facilities," provides guidance on designing an acceptable program for establishing and maintaining radiation levels for gaseous and liquid effluents at materials facilities that are as low as is reasonably achievable. Materials facilities are facilities other than reactors licensed by the NRC for the possession or use of radioactive material.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 2 day of July 1993.

For the Nuclear Regulatory Commission.

C.J. Heltemes,

*Deputy Director for Generic Issues and Rulemaking, Office of Nuclear Regulatory Research.*

[FR Doc. 93–18595 Filed 8–3–93; 8:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32688; International Series Release No. 568; File No. SR–PHLX–93–12]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Margin Requirements for Cash/Spot Foreign Currency Option Contracts

July 28, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 6, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 722, "Margins," to establish margin levels for its proposed cash/spot foreign currency option contracts ("cash/spot FCOs").[1] Specifically, the PHLX proposes to amend Exchange Rule 722(c)(2)(B) to provide that, for cash/spot FCOs, the initial and/or maintenance margin requirement on any put or call issued, guaranteed or carried "short" in a customer's account shall be 100% of the current market value of the underlying cash/spot FCO plus 2.5% of the market value of the underlying contract less any out-of-the-money amount, with a minimum charge equal to the option premium plus ¾% of the market value of the underlying contract. In addition, the Exchange proposes to amend PHLX Rule 722(c)(6), "Time Within Which Margin or 'Mark-to-Market' Must be Obtained," to provide the amount of initial margin required with respect to short positions in the proposed cash/spot FCOs shall be obtained before the expiration of two full business days following the date on which the customer entered into the cash/spot FCO position. Additional margin required as a result of a mark-to-market must be posted as promptly as possibly, or within two business days from the date the deficiency occurred, unless the PHLX has specifically granted an extension of time.[2] The proposal also provides that any long position in a cash/spot FCO carried for a customer's account shall be paid for in full, in cash, within two full business days following the date on which the customer purchased the option. If the required margin or cash payment is not paid within the specified time period, the member carrying the position for the customer shall liquidate the position promptly.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The PHLX proposes to amend PHLX Rule 722(c)(2)(B) and (c)(6) to provide for the calculation of margin requirements for cash/spot FCOs and to establish time frames for both the payment of long option positions and for the deposit of initial or maintenance margin.

Currently, under PHLX Rule 722(c)(6), a customer is given up to seven business days to either pay for long FCO positions or to deposit initial or maintenance margin on short FCO positions. The PHLX believes that for cash/spot FCOs this time frame should be reduced due to the unique nature of the product, namely its one- and two-week expiration cycles. Without the proposed reduction in the time, the PHLX believes that it could become commonplace for the cash/spot FCO to expire before the customer is required under Exchange rules to either post margin or to pay for the option purchase. Accordingly, the PHLX proposes to amend its rules to require

[1] *See* File No. SR–PHLX–93–10.

[2] *See* Letter from Diane Anderson, Assistant Vice President, PHLX, and Murray L. Ross, Secretary, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), Commission, dated June 17, 1993.

that customers must pay for cash/spot FCO purchases or post margin for short cash/spot FCO positions within two business days of the transaction. The PHLX notes that a broker-dealer would be able to request an extension of this time frame under PHLX Rule 722(c)(8)(v) if the Exchange believes that the broker-dealer is acting in good faith.[3]

The PHLX states that its determination of the initial and maintenance margin requirement for the cash/spot FCO contract was made consistent with the uniform margin methodology approved by the Commission in 1983.[4] The uniform margin methodology established in the Margin Approval Order provides margin requirements for short option positions equal to 100% of the current option premium value, plus a fixed percentage of the underlying product value, with an adjustment for out-of-the-money options and a minimum charge of not less than 100% of the current premium, plus a fixed lesser percentage of the current value of the underlying product. As noted in the Margin Approval Order, the margin requirements were developed by relating margin to the annualized price volatility of the underlying security. The resulting percentages were then adjusted to provide for initial margin that would cover the underlying product's historical volatility over a seven-day period with a 95% confidence level.

The PHLX notes that the seven-day standard is used because the customer is given seven days by Regulation T under the Act in which to post margin.[5]

The PHLX proposes to reduce the time frame for posting margin deposits and options premiums for cash/spot FCOs due to the short duration of the cash/spot FCOs. The PHLX notes that Section 220.1(b)(2) of Regulation T states, in part, that "[t]his part does not preclude any exchange, national securities association or creditor from imposing additional requirements or taking action for its own protection."[6] The PHLX notes that the determination of the confidence levels for cash/spot FCOs was made using a historical two-day movement in the underlying currency. In this regard, the PHLX explains that over the previous one-year period, a 2.5% margin would provide a 95.63% confidence level. Based upon this two-day time frame, the PHLX proposes to establish initial and maintenance margin levels for cash/spot FCOs equal to the option premium plus 2.5% of the market value of the underlying contract less any out-of-money amount with a minimum charge equal to the option premium plus ¾% of the market value of the underlying contract. The PHLX believes that this proposal is a prudent regulatory response justified by the unique specifications of the cash/spot FCOs.

The PHLX believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange, and, in particular, with Section 6(b)(5) under the Act, which requires, in part, that exchange rules "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities."

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either received or requested.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, order than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 25, 1993.

For the Commission, by Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-18507 Filed 8-3-93; 8:45 am]

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[Release No. 34-32680; File No. SR-CBOE-93-25]

**Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Trading Hours for Certain Narrow-Based Index Options**

July 27, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 19, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission

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[3] PHLX Rule 722(c)(6)(v) states, in part, that "[i]f the Business Conduct Committee of the Exchange is satisfied that the member is acting in good faith in making the application, that the application relates to a bona fide purchase or writing transaction, as the case may be, and that exceptional circumstances warrant such action, such committee may extend the * * * time period * * * for one or more limited periods commensurate with the circumstances."

[4] *See* Securities Exchange Act Release No. 22469 (September 20, 1985), 50 FR 40633 (order approving File Nos. SR-Amex-84-29; SR-CBOE-84-27; SR-NASD-85-15; SR-NYSE-84-38; SR-PSE-84-30; SR-PHLX-84-32 and SR-PHLX-85-18) ("Margin Approval Order").

[5] *See* 12 CFR § 220.4(c)(3) (1992).

[6] The staff of the Board of Governors of the Federal Reserve System ("Board") has raised no objection to the PHLX's proposal to reduce the time for posting margin on the proposed cash/spot FCOs. *See Letter from Scott Holz, Senior Attorney, Board, to Richard Zack, Branch Chief, Options Regulation, Division, Commission, dated July 8, 1993.*

[7] 17 CFR 200.30-3(a)(12) (1992).

is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE is modifying the trading hours for options on certain narrow-based indices. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The CBOE states that the purpose of this rule change is to change the trading hours for certain narrow-based index options.[1] CBOE Rule 24.6 currently provides that the trading hours for domestic index options contracts shall be from 8:30 a.m. Chicago time to 3:15 p.m. Chicago time.[2] Trading in certain index futures contracts, including futures on the Standard & Poor's 500 Stock Index, also terminates at 3:15 p.m. Chicago time. By contrast, trading in equity options terminates at 3:10 p.m. Chicago time.

Market-makers in an option on a narrow-based index, such as the various sector (or "industry") indices that have been approved for trading on the CBOE, are exposed to undue risk during the five-minute interval between the closing of equity options at 3:10 p.m. and the closing of narrow-based index options at 3:15 p.m. Unlike market-makers in broad-based index options who can hedge their positions in the index futures market, market-makers in narrow based index options are best able to hedge their risks by taking or liquidating positions in options on the individual securities that comprise the index. Because trading in equity options terminates on the CBOE and on other option markets at 3:10 p.m. Chicago time, the Exchange believes that market-makers in narrow-based index options are exposed unnecessarily to market risk during the five-minute interval between the closings of equity options and options on narrow-based indices. The CBOE accordingly proposes to amend its Rule 24.6 to specify that trading shall cease at 3:10 p.m. Chicago time with respect to options on the specified narrow-based industry indices.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it will permit trading in certain index options to take place on the Exchange pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–25 and should be submitted by August 25, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18511 Filed 8–3–93; 8:45 am]

BILLING CODE 8010-01-M

[1] The trading hours change will affect all index options trading on the following indices: S&P Transportation Index; S&P Retail Index; S&P Health Care Index; S&P Banking Index; S&P Insurance Index; S&P Chemical Index; CBOE Software Index; and CBOE Environmental Index.

[2] The trading hours for options on foreign indices are determined on a case-by-case basis by a designee of CBOE's Board of Directors, with the additional requirement that the CBOE must submit a rule filing proposal to the Commission pursuant to Rule 19(b)(30(A) of the Act reflecting any alteration of the trading hours from the CBOE's normal trading hours of 8:30 a.m. to 3:15 p.m. Chicago time. See Letter from Kenneth M. Rosenzweig, Schiff, Hardin & Waite to Richard L. Zack, SEC, Branch Chief, dated June 1, 1993.

[3] 17 CFR 200.30–3(a)(12) (1993).

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**[Release No. 34–32685; International Series Release No. 567; File No. SR–PHLX–93–10]**

**Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing of Cash/Spot Foreign Currency Option Contracts**

July 28, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 12, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is

Continued

[1] The PHLX amended its filing on June 1, 1993 ("Amendment No. 1"), by letter dated July 7, 1993, and on July 16, 1993. See Letter from Murray L. Ross, Secretary, PHLX, to Richard L. Zack, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), Commission, dated July 7, 1993 ("July 7 Letter"); and Letter from Murray L.

publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PHLX proposes to amend its rules to allow the Exchange to list cash-settled European-style cash/spot foreign currency option contracts ("cash/spot FCOs"). The proposed contracts will be issued by the Options Clearing Corporation ("OCC") and will trade, initially, in one-week and two-week expirations, with new series listed each Sunday at 6:00 p.m. Eastern Standard Time ("EST") or 7 p.m. Eastern Daylight Time ("EDT"). The expiring cash/spot FCO will cease trading at 10:30 a.m. and expire at 11:59 p.m. on its expiration Monday. The closing settlement value of the proposed contracts, which will be disseminated through the Options Price Reporting Authority ("OPRA"), will be determined by a designated agent(s) of the Exchange under proposed PHLX Rule 1057, "Cash/Spot Foreign Currency Option Closing Settlement Value," which provides, in part, that:

> The Exchange shall contract with a market information vendor(s) which shall act as the Exchange's designated agent(s) to generate the closing settlement value utilizing the following methodology sanctioned by the Exchange as described below.
>
> The closing settlement price shall be determined by the Exchange's designated agent(s) as follows: On every expiration date for cash/spot contracts, at 10:30 a.m. (EST or EDT), the Exchange's designated agent(s) shall collect a bid and offer quotation for the current foreign exchange spot/price from at least fifteen (15) interbank foreign exchange participants, randomly selected from a list of twenty-five (25) active interbank foreign exchange market participants. After discarding the five (5) highest offers and five (5) lowest bids, the Exchange's designated agent(s) will arithmetically average the remaining ten (10) bids and ten (10) offers to arrive at a closing settlement value.

The proposed cash/spot FCOs will be cash-settled, meaning that U.S. dollars representing the differential between the exercise strike price and the closing settlement value will be delivered by OCC. Initially, the PHLX proposes to list and trade German mark ("DM") cash/spot FCOs, which will have the same contract size as the PHLX's current U.S. dollar/DM based options (62,500 German marks) and will trade in one-week and two-week expirations.[2]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Since 1982, the PHLX has traded FCOs with expirations in the March, June, September, December expiration cycle; since October 1985, the PHLX has traded FCOs with six expirations of up to one year in length with two consecutive month and four cycle month expirations.[3] In 1992, the Exchange amended PHLX Rule 1012(a)(ii) to provide for the listing of loner term FCOs, which are traded on a cycle month expiration basis for up to 36 months from the date of issuance.[4]

More recently, the PHLX introduced three additional short-term, month-end expirations for PHLX-listed FCOs.[5] The month-end expiration feature provides expirations which are approximately two weeks apart from other FCO expirations in the two nearest consecutive month expirations and the first cycle month expiration. The PHLX states that during the brief period since month-end FCOs have been trading, this product has been successful, with open interest building and volume averaging 7,000 contracts daily.

The PHLX now proposes to list and trade cash/spot FCOs. The Exchange believes hat this product, with the proposed amendments to PHLX options rules, is responsive to the continuing needs of market participants, particularly portfolio managers and other institutional currency market participants. The PHLX believes that the proposed cash/spot FCOs should provide protection from short-term market movements while offering an alternative to hedging currency portfolios with short duration futures, forward contracts, or off-exchange customized derivative instruments.

The PHLX notes that FCOs provide a strategic investment tool for sophisticated retail options customers, multi-national corporations, and proprietary traders who manage and hedge foreign currency exposure. Additionally, banking institutions trade short-term FCOs to hedge the risks of trading in the foreign currency forward and cash markets.

Responding to the demands of sophisticated foreign currency market participants, the PHLX recognizes that international financial markets are increasingly focusing on shorter term foreign currency options instruments. The PHLX notes that short term FCOs are not a new financial instrument, as an active over-the-counter ("OTC") market exists in such instruments in this country and worldwide. In order to remain competitive, the PHLX seeks to address this active market by listing the proposed cash/spot FCOs.

Accordingly, the PHLX seeks to extend the benefits and regulatory protection of a listed currency options market to short term contracts. These market attributes include, but are not limited to, a liquid auction market with transparency, such as real-time market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the contra party guarantee of the OCC.

Initially, the Exchange proposes to list and trade DM weekly cash/spot FCOs. The proposed contracts are European-style options with the same contract size as the PHLX's current U.S. dollar/DM based options, which is 62,500 German marks. The PHLX plans to designate a three-letter contract symbol, with the third letter presenting each expiration week of the month.[6] The PHLX proposes to list at least three exercise strike prices for each cash/spot FCO, including one at-the-money, one in-the-money, and one out-of-the-money strike

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Ross, Secretary, PHLX, to Richard L. Zack, Branch Chief, Options Regulation, Division, Commission, dated July 15, 1993 ("Amendment No. 2").

[2] The Commission notes that if the PHLX plans to list cash/spot FCOs based on other foreign currencies, the Exchange must submit a filing pursuant to section 19(b)(1) of the Act for Commission approval.

[3] See Securities Exchange Act Release No. 22478 (October 6, 1985), 50 FR 41277 (order approving File No. SR-PHLX-85-20).

[4] See Securities Exchange Act Release No. 29884 (October 11, 1991), 56 FR 52305 (order approving File No. SR-PHLX-91-30).

[5] See Securities Exchange Act Release No. 30973 (July 27, 1992), 57 FR 33388 (order approving File No. SR-PHLX-92-13).

[6] The PHLX plans to reserve five symbols, with the first two letters, XD, representing the DM cash/spot contract and the third letter representing the week of the month that the contract expires. Thus, the symbol XDA would represent weekly cash/spot German market contracts expiring on the first Monday of the month, and XDB would represent an expiration on the second Monday of the month.

price. These strike prices will be listed at half-cent intervals.[7]

In contrast to the consecutive and cycle month expirations of the PHLX's current FCO products, the cash/spot FCOs will trade with one-week and two-week expirations. New series will be listed each Sunday at 6 p.m. EST (or 7 p.m., EDT)[8] and will trade during the same hours as the current PHLX traded FCOs.[9]

The expiration date for cash/spot FCOs will be each Monday, unless such Monday is an Exchange holiday. The expiring cash/spot contract will cease trading at 10:30 a.m. and expire at 11:59 p.m. on its expiration Monday.[10]

Once an expiring cash/spot FCO has ceased trading, a closing settlement value will be calculated and disseminated pursuant to the procedures set forth in proposed PHLX Rule 1057. Specifically, the PHLX's market information vendor(s) which will act as the Exchange's designated agent(s) will have compiled a list of 25 active interbank market participants.[11] On Monday mornings at 10:00 a.m. (EST), the Exchange's designated agent(s) will randomly select fifteen interbank market participants from the aforementioned list. The designated agent(s)' program will discard the five highest offers and the five lowest bids, and average the remaining 20 bids and offers. This value will be calculated and sent to the PHLX every 30 seconds or every minute until 10:30 a.m., when the designated agent(s) will determine the final settlement value. At that time, the settlement value will be entered manually into the PHLX's systems, disseminated through OPRA and sent to the OCC for entry into the OCC clearing systems.[12]

The cash/spot FCOs will be cash-settled, meaning U.S. dollars representing the differential[13] between the exercise strike price and the closing settlement value will be delivered by the OCC. The PHLX notes that participants trading this product will not have to make the same arrangements with foreign banks that is required for physical settlement in other PHLX-traded FCOs. In addition, OCC will employ an automatic exercise feature for cash/spot FCOs.[14] This will be the first PHLX-traded FCO to utilize a feature which does not depend on any manual submission of exercise notices or the ability to opt out of exercise procedures.

The Exchange proposes that cash/spot FCOs will trade in accordance with the rules governing all PHLX FCOs. For example, cash/spot FCOs will be subject to sales practice rules and floor trading procedures. The PHLX believes that the position and exercise limits for cash/spot FCOs should not involve aggregation with other FCOs, because of the unique settlement feature of this product. Accordingly, the PHLX proposes to amend PHLX Rules 1001, "Position Limits," and 1002, "Exercise Limits," to allow a separate 100,000-contract limit for the cash/spot FCOs. Likewise, the PHLX has submitted a proposal to amend Exchange Rule 722, "Margin Accounts," to reflect separate margin requirements for the cash/spot FCOs, due to the short duration of the contracts.[15]

In order to accommodate the listing and trading of the proposed cash/spot FCOs, the PHLX proposes several amendments to Exchange rule 1001(b), "Definition," including modifications of the definition of "exercise strike price," which, for the proposed cash/spot FCOs, means "the stated price per unit which determines the cash/spot differential received"; and "expiration date," which provides that the proposed cash/spot FCOs "will expire at 11:59 p.m. Eastern Time on each Monday, unless such Monday is an Exchange holiday, whereby the cash/spot FCOs shall expire at 11:59 p.m. the preceding business day." To allow for a weekly expiration cycle, the PHLX proposes to amend PHLX Rule 1012, "Series of Options Open for Trading," to provide that for each class of cash/spot FCOs, series of options having up to three consecutive expirations may be opened for trading simultaneously. In addition, the PHLX proposes to amend PHLX Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," to provide that bid/ask differentials for cash/spot FCOs shall be determined by reference to the underlying foreign currency. For example, the DM cash/spot contract would be subject to the bid/ask differential for DM options.

The PHLX also proposes to amend PHLX Rule 1033, "Bids and Offers—Premium," to provide that bids and offers for cash/spot FCOs shall be expressed in terms of dollars per unit of the underlying foreign currency. Finally, the PHLX proposes to amend Exchange Rule 1034, "Minimum Fractional Changes," to include cash/spot FCOs.

The PHLX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the PHLX because the proposal is designed to provide investors with additional means to hedge foreign currency portfolios from short-term market risk, thereby facilitating transactions in FCOs and contributing to the protection of investors and the maintenance of fair and orderly markets. Further, the PHLX maintains that the proposed cash/spot FCOs will provide market participants with an alternative to hedging their risks with off-exchange customized options or forward contracts. The PHLX notes that market participants trading short-term FCOs in the OTC market have expressed a need for such a product.

For the above reasons, the PHLX believes that the proposal is also consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect the investing public.

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[7] The PHLX has represented that the Exchange's automated trading systems as well as those of OPRA have sufficient capacity to adequately process quotations and trades in the proposed cash/spot FCOs. See Letter from Murray L. Ross, Secretary, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division of Market Regulation ("Division"), Commission and Eugene Lopez, Assistant Director, Automation and International Markets, Office of Self-Regulatory Oversight and Market Structure, Division, Commission, dated April 28, 1993.

[8] Accordingly, from 6 p.m. on Sunday until 10:30 a.m. on expiration Monday, there will be three cash/spot FCOs trading: A newly listed two-week contract, a one-week contract, and one expiring that day at 10:30 a.m.

[9] FCOs currently trade Sunday through Thursday 6 p.m.–10 p.m. EST (7 p.m.–11 p.m. EDT) and Sunday through Friday 11:30 p.m.–2:30 p.m. EST (Monday–Friday 12:30 a.m.–2:30 p.m. EDT), pursuant to Exchange Rule 101. Trading hours for Canadian dollar, French franc and European Currency Unit ("ECU") options are 3:30 a.m.–2:30 p.m. EST/EDT.

[10] The following holidays are currently observed by the Exchange: New Years Day, President's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. In the event any of these days falls on a Monday, the expiration date for the affected cash/spot contract will be the preceding business day (i.e., Friday), and, accordingly, the expiring cash/spot FCO will cease trading at 10:30 a.m. on that day. In addition, a new two-week contract will be listed on the following Tuesday at 3 a.m. EST as opposed to the normal Sunday evening listing when Monday is an Exchange holiday.

[11] The interbank market participants will be selected by evaluating the number of times each contributor supplies DM spot quotes to the market information vendor(s) on Monday mornings between 10 a.m. and 10:30 a.m. The pool of quote contributors will be reviewed every six months based on these criteria and substitutions will be made, if necessary. If at any time an interbank market participant ceases to distribute DM spot quotes or is no longer in the business of making DM markets, that entity will be replaced before the end of the six-month period. See July 7 Letter.

[12] See July 7 Letter.

[13] To determine the number of dollars to be delivered, the differential must be multiplied by the number of contracts and the contract size of the cash/spot FCO.

[14] The PHLX explains that an automatic exercise feature results in the automatic exercise of any contract which is deemed to be in-the-money. See OCC File No. SR-OCC-93-10.

[15] See File No. SR-PHLX-93-12

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either received or requested.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 25, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

[16] 17 CFR 200.30-3(a)(12) (1993).

**Margaret H. McFarland,**
*Deputy Secretary.*
[FR Doc. 93-18508 Filed 8-3-93; 8:45 am]
BILLING CODE 8010-01-M

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**[Release No. 34-32688; File No. SR-Phlx-93-23]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Amending by-Law, Article X, Authorizing the Establishment of an Audit Committee

July 28, 1993

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 1, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend its By-Laws, Article X, Section 10-1(a); 10-9 (a), (b), (c); Section 10-14; and non-substantive renumbering amendments to various other By-Law provisions, authorizing the establishment of an Audit Committee as a Standing Committee of the Board of Governors ("Board").

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Presently, only the Exchange's clearing agency subsidiaries possess audit committees pursuant to their By-Laws.[1] The Exchange's Board has determined there are corresponding benefits to extend and establish an Audit Committee to the Phlx. The proposed Audit Committee will review reports from the management, internal audit staff, and independent auditors, regarding the internal financial controls of the Exchange. The Audit Committee also will be able to take appropriate action in response to these reports.[2] The management of the Exchange has decided to retain the internal audit staff to oversee Exchange departments and operations. The proposed Exchange Audit Committee will be a new standing committee of the Phlx Board and, accordingly, a By-Law change is required.[3]

The Exchange's Audit Committee will be separate from the subsidiaries' audit committees, but will consult with the latter prior to making a recommendation to the Board respecting selection of the Exchange and its subsidiaries' independent auditors. In this regard, the By-Law provision relating to the Phlx Finance Committee, By-Law X, Section 10-14 will be amended to remove this function from the Finance Committee. The internal audit staff that presently reports exclusively to the subsidiaries' audit committees will have the additional responsibility to report to the proposed Exchange Audit Committee.

The proposed Exchange Audit Committee will be comprised of at least five members, three of whom shall be Board members. Otherwise, any "qualified person" may be appointed to the Committee so long as he/she is deemed by the Board to be able to exercise independent judgment and is not affiliated with the management of the Exchange or its subsidiaries.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general, to protect investors and the public interest.

[1] See Article IV, Section 8(a), (i) of the Stock Clearing Corporation of Philadelphia By-Laws; and Article IV, Section 8(a), (i) of the Philadelphia Depository Trust Company By-Laws.

[2] Conversation between Murray L. Ross, Secretary, Phlx, and Elizabeth Cosgrove, Attorney, Commission, on July 8, 1993.

[3] The standing committees are appointed by the Chairman of the Board, subject to Board approval. See Article X, Section 10-1(b) of the Phlx By-Laws.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Board initially approved the proposed By-Law change on April 21, 1993. Thereafter, on April 26, 1993, the Exchange solicited comment from its membership through a notice of the proposed By-Law change.[4] No comments were received and after the expiration of the required 10 day period, the Board approved the proposed By-Law change on May 19, 1993.[5]

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments.**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–23 and should be submitted by August 25, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18510 Filed 8–3–93; 8:45 am]

BILLING CODE 8010-01-M

[4] Conversation between Murray L. Ross, Secretary, Phlx and Elizabeth Cosgrove, Attorney, Commission, on July 8, 1993.

[5] Article XXII, Section 22–2 of the Phlx By-Laws provides that any amendment to the By-Laws originating with the Board shall be proposed at a regular or special meeting of the Board. If twelve members of the Board approve the amendment, it shall be noticed to the members of the Exchange. After the expiration of the ten day notification period, the Board can consider the proposed amendment at any regular or special meeting and if the proposed amendment is adopted by a vote of 15 Board members, the amendment is considered part of the By-Laws, pending Commission approval.

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**[Investment Company Act Rel. No. 19601; International Series Rel. No. 566; 812–8468]**

## The Brazilian Equity Fund, Inc., et al.; Application for Exemption

July 28, 1993

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("Act").

**APPLICANTS:** The Brazilian Equity Fund, Inc., The Latin America Equity Fund, Inc., and The Latin America Investment Fund, Inc., on their own behalf, and on behalf of U.S. registered investment funds formed in the future for which BEA Associates serves as an investment adviser and that have a Brazilian investment adviser (the "Funds"); and BEA Associates ("BEA").

**RELEVANT ACT SECTION:** Order requested under section 10(f) exempting the Funds from that section.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order under section 10(f) that would permit the Funds to purchase securities of Brazilian issuers in underwritten public offerings in the Federative Republic of Brazil during the existence of an underwriting syndicate in which the Funds' sub-adviser, or an affiliated person thereof, is a principal underwriter.

**FILING DATE:** The application was filed on June 22, 1993, and amended on July 23, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Citicorp Center, 58th Floor, 153 East 53rd Street, New York, New York 10022–4669.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**Applicants' Representations**

1. The Funds are non-diversified, closed-end management investment companies organized as Maryland corporations. Each Fund invests a portion of its assets in securities of Brazilian issuers. At December 31, 1992, The Brazilian Equity Fund, Inc.'s aggregate net assets were approximately $43,708,867, of which 91% were invested in securities of Brazilian issuers; The Latin American Equity Fund, Inc.'s aggregate net assets were approximately $86,358,903, of which 14% was invested in securities of Brazilian issuers; and The Latin America Investment Fund, Inc.'s aggregate net assets were approximately $102,259,037, of which 15% was invested in securities of Brazilian issuers.

2. BEA acts as the Funds' investment adviser. As such, BEA selects investments for the Funds and places purchase and sale orders for them and monitors the services provided by each Fund's sub-adviser. The Funds' Brazilian sub-adviser is Patrimônio Planejamento Financeiro Ltda. ("Patrimônio "). Patrimônio provides a variety of services to each Fund, under the supervision of BEA, including: (a) Furnishing advice and making recommendations regarding the purchase and sale of securities traded in Brazil; (b) providing BEA with statistical, research, and other factual

data for its use in connection with the Funds' investment programs; (c) identifying regulatory and other governmental requirements applicable to the Funds in connection with the Funds' investment activities in Brazil; (d) monitoring the execution of transactions and the settlement and clearance of the Funds' securities transactions; and (e) providing information regarding corporate actions, repatriation restrictions, currency restrictions, and other matters as may be required by the Funds or BEA from time to time. Patrimonio is also a leading Brazilian investment banking advisory firm specializing in merger and acquisition transactions, corporate finance, and asset management.

3. Garantia Administracao de Recursos S.A. ("Garantia"), together with Patrimônio, acts as a sub-adviser to The Brazilian Equity Fund, Inc. (the "Brazilian Fund"), performing sub-advisory services as describe above. Garantia is a wholly-owned subsidiary of Garantia Administracao de Investimentos Gardi S.A., which in turn is a subsidiary of Banco de Investimentos Garantia S.A. ("Banco Garantia"). Banco Garantia serves as the Brazilian Fund's Brazilian administrator pursuant to an agreement under which it provides various services, including: (a) Furnishing local management services as required under Brazilian law; (b) processing remittance or earnings, capital gains, and return of invested capital; (c) paying applicable withholding tax on remittance abroad; (d) furnishing information about the Brazilian portfolio and remittances; (e) handling the bookkeeping for the Brazilian portfolio; and (f) effecting the registration of foreign capital with the Central Bank of Brazil.

4. The Funds wish to purchase securities of Brazilian issuers in underwritten public offerings in Brazil in which Batrimônio, or an affiliated person thereof, acts as principal underwriter. The Brazilian Fund also wishes to purchase securities of Brazilian issuers in underwritten public offerings in Brazil in which Garantia, or an affiliated person thereof, acts as principal underwriter.

**Applicants' Legal Analysis**

1. Section 10(f) of the Act prohibits an investment company from purchasing securities from any member of an underwriting syndicate in which its investment adviser or an affiliated person of its investment adviser participates as a principal underwriter, except in accordance with rules promulgated or orders issued by the SEC. Thus, the Funds are prohibited from purchasing securities from any member of an underwriting syndicate in which Patrimônio or an affiliated person of Patrimônio is a principal underwriter. The Brazilian Fund also is prohibited from purchasing securities from any member of an underwriting syndicate in which Garantia or an affiliated person of Garantia is a principal underwriter.

2. Rule 10f–3 exempts securities purchases from section 10(f) under specified circumstances. Under paragraph (a)(1) of rule 10f–3, the securities must be part of an issue registered under the Securities Act of 1933 ("Securities Act"). The Funds invest in securities of Brazilian companies. If such securities are not offered publicly in the United States, they are not required to be registered under the Securities Act, and thus do not satisfy paragraph (a)(1) of rule 10f–3. Applicants believe that, except for the registration requirement of paragraph (a)(1), the Funds' purchases of Brazilian securities in underwritten offerings can satisfy the conditions of rule 10f–3.

3. The public offering of equity securities in Brazil generally requires prior approval from the corporate issuer's shareholders. Resolutions approving issuance and public offering usually are adopted at a general meeting of shareholders. Such resolutions must contain the terms and conditions of the offering and the underwriting, including the issue price to the public and the justification therefor, the underwriting spread, the offering procedure, and any provisions relating to preemptive rights.

4. Brazilian law requires registration of equity securities being offered to the public. The Commissao de Valores Mobiliários (the "Brazilian Securities Commission") reviews and analyzes the offering document, and may deny registration if it considers the proposed issuance to be unfeasible or otherwise not advisable. The Brazilian Securities Commission may suspend a registration and public offering if it uncovers fraud or determines that the offering is not being conducted in compliance with Brazilian securities laws.

5. Brazilian law also requires that a corporation publicize an offering of equity securities for at least two days in the applicable state official gazette and in newspapers in prescribed locations. The Brazilian Securities Commission prescribes the contents of the published announcement, which must include the number, kind, and description of the securities, the price to the public, and the offering procedure. Such information may not differ from the information in the offering document filed as part of the registration process. All publications promoting a public offering must be approved by the Brazilian Securities Commission before use, and may be used only after the Brazilian Securities Commission has granted registration of the issue.

6. Brazilian law generally provides preemptive rights to existing shareholders unless a corporation's by-laws expressly waive them. When there are preemptive rights, existing shareholders must be informed of the details of the offering by publication as described above. Existing shareholders have a minimum of 30 days in which to subscribe for the securities in proportion to their holdings. Unsubscribed shares remaining at the end of the exercise period may be offered again to shareholders for a shorter period, generally five or ten days. At the end of the period for exercising preemptive rights or priorities, the unsubscribed shares are offered to the public for subscription, by again publishing the announcement described above.

7. Applicants assert that the publication requirement ensures that a public offering will be truly public. Further, applicants believe that the publication requirement, together with the general existence of preemptive rights, facilitates offerings to a wide group of offerees. There is only one public offering price for all offerees, including existing shareholders who may be affiliates of the issuing company, and the terms of the offering remain the same for all offerees throughout the offering.

8. The public offering of securities in Brazil can be made through a single intermediary or a consortium of intermediaries formed for the purpose of underwriting the issue. Applicants believe that most public offerings in Brazil are made through consortia of selling groups with designated representatives or lead underwriters. Such consortia must be governed by a contract or contracts that contain the conditions and limits for each participating institution and grant powers of representation by the consortium members to the leader or leaders of the distribution. The Brazilian Securities Commission has prescribed certain terms and provisions that all underwriting and distribution contracts must contain at a minimum. In the case of a firm commitment underwriting, any and all shares that are not subscribed by the public or existing shareholders by the end of the subscription period will be subscribed by the members of the underwriting consortium in the proportion established by the consortium agreement. As contemplated in clause (3) of paragraph (a) of rule 10f–

3, applicants are seeking relief only to the extent necessary to purchase securities that are the subject of an agreement or agreements (including any relating to assumption of market risk) under which the underwriters are committed to purchase all of the securities covered by such agreements, except those purchased by others pursuant to a rights offering, if the underwriters purchase any thereof.

**Applicant's Conditions**

Applicants agree that any order granting them an exemption from section 10(f) so that they may purchase securities of Brazilian issuers in underwritten offerings in Brazil in which Patrimônio, or any affiliated persons thereof, participate as a principal underwriter, and so that the Brazilian Fund also may purchase securities of Brazilian issuers in underwritten offerings in Brazil in which Garantia, or any affiliated persons thereof, participate as a principal underwriter, will be subject to the following conditions:

1. With the exception of paragraph (a)(1) of rule 19f–3, all other conditions set forth in rule 10f–3 will be satisfied.

2. Any securities purchased in Brazil under circumstances subject to section 10(f) of the Act will be purchased in a public offering conducted in accordance with the laws of Brazil.

3. The Funds will only participate in Brazilian public offerings where section 19(f) applies if the securities are to be listed on a Brazilian stock exchange.

4. All issuers whose securities are purchased in Brazil under circumstances subject to section 10(f) will have made available to the Funds financial statements, audited in accordance with the standards of Brazil, for the two years prior to the purchase.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18509 Filed 8–3–93; 8:45 am]

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**[Release No. 34–32692; File No. SR–Phlx–93–24]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Adoption of a Registration Requirement and Fee for Registered Representatives.

July 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On June 21, 1993, the Phlx submitted Amendment No. 1 to the proposed rule change in order to clarify the qualification standard for Registered Representatives.[3] On July 7, 1993, the Phlx submitted Amendment No. 2 to the proposed rule change to retitle Phlx Rule 604.[4] On July 27, 1993, the Phlx submitted Amendment No. 3 to the proposed rule change to clarify that the rule's qualification standard would be satisfied by an equivalent predecessor of the Series 7 examination/registration.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to adopt a new registration rule and implement a corresponding registration fee for qualified Registered Representatives ("RR").[6] Specifically, Phlx Rule 604 would be retitled "Registration and Termination of Registered Representatives" and would require RRs to register in the form prescribed by the Exchange. Proposed rule 604(a)(i) states that designating "PHLX" registration in section 10 of Form U–4, Uniform Application for Securities Industry Registration or Transfer, satisfies this registration requirement. Proposed rule 604(a)(ii) requires that such registrants maintain an effective Series 7 registration or an equivalent predecessor of this examination/registration.[7]

The registration fee will be payable by member organizations to apply for, maintain and transfer RR registrations. Specifically, the Exchange will adopt an $8.00 fee for all new RR registrants. Each year thereafter, an $8.00 maintenance fee will be imposed on each RR. In addition, there will be an $8.00 fee for transfers of RR registrations.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Phlx is proposing to adopt a new registration requirement similar to those of other exchanges. Proposed rule 604 would contain a registration requirement for RRs, as well as a basic qualification standard. The purpose of this requirement is to permit the Exchange to better monitor RRs for compliance with Exchange rules, as well as to expressly establish as qualification standard.

The Phlx also proposes to adopt an $8.00 fee for the new registration of RRs with the Exchange and for the maintenance and transfer of such RR registration. This fee is intended to offset Exchange regulatory costs in a manner which contemplates the number of such registrations maintained by member organizations. The cost associated with maintenance of a fair and orderly market in Exchange products has increased in recent years due to increased trade volume and the resultant need to adopt automation capabilities for the surveillance of an increasingly sophisticated trading environment. In addition to overall

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated June 15, 1993 ("Amendment No. 1").

[4] See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated June 23, 1993 ("Amendment No. 2")

[5] See letter from Edith Hallahan, Attorney, Market Surveillance, Phlx, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated July 27, 1993 ("Amendment No. 3").

[6] The Commission notes that Rule 604(a)(ii) would define a qualified RR as a person who maintains an effective Series 7 "Full Registration/General Securities Representative" registration or an equivalent predecessor of that examination/registration. See Amendment No. 3, *supra*, note 5. Only RRs associated with Phlx members who meet this qualification standard would be required to register with the Phlx and to pay registration fees.

[7] See Amendment No. 3, *supra*, note 5.

trading volume, the cost of regulating Exchange activities has risen in correlation to an increase in the number of listed products traded by the Exchange as "primary issues.[9]

Over the past five years, the Exchange has conducted over 1,000 surveillance investigations into trading activities on the Exchange. From these investigations, the Exchange has initiated approximately 120 "final" disciplinary actions[9] and 679 "minor" disciplinary actions.[10] A strong regulatory program is essential to an exchange's ability to maintain a fair and orderly market for the investment community.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act and, in particular, with section 6(b)(5) in that the registration rule is designed to protect investors and the public interest, as well as to promote just and equitable principles of trade. The proposed registration fee is consistent with section 6(b)(4) in that it provides for the equitable allocation of reasonable dues, fees or charges among the Exchange's members and issuers and other persons using its facilities. The Exchange notes that the fee is similar to a registration requirement and fee imposed by the Pacific Stock Exchange.[11] Registration fees are also imposed by the American Stock Exchange, Chicago Board Options Exchange, New York Stock Exchange and the National Association of Securities Dealers.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

[9] Phlx primary issues include 218 equity options, 114 stocks and bonds, 18 currency options and 5 index options.

[10] See Phlx Rule 960.

[10] See Phlx Rule 970 and the Floor Procedure Advices adopted pursuant to that rule.

[11] Securities Exchange Act Release Nos. 29954 (November 18, 1991), 56 FR 58318 (November 25, 1991) (Notice of Filing and Immediate Effectiveness of File NO. SR–PSE–91–37); and 31425 (November 9, 1992), 57 FR 54271 (November 17, 1992) (Notice of Filing and Immediate Effectiveness of File No. SR–PSE–92–31).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–24 and should be submitted by August 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18602 Filed 8–3 –93; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12) (1991).

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**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.**

July 29, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities.

Continental Airlines, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–10993)
Continental Airlines, Inc.
Class B Common Stock, $.01 Par Value (file No. 7–10994)
Corporate High Yield Fund
Common Stock, $.10 Par Value (File No. 7–10995)
YPF Sociedad Anonima
American Depositary Shares, $1.00 Par Value (File No. 7–10996)
Aegon, N.V.
Ordinary Shares, No Par Value (File No. 7–10997)
Tiphook, Plc
American Depositary Shares, 10 Pc (File No. 7–10998)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 19, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–18604 Filed 8–3–93; 8:45 am]

BILLING CODE 8010–01–M

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**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.**

July 29, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Corporate High Yield Fund, Inc.

Common Stock, $.10 Par Value (File No. 7–10999)
Grancare, Inc.
Common Stock, No Par Value (File No. 7–11000)
Marriot Corporation
Dep Shares (rep. 1/1000 PF A) No Par Value (File No. 7–11001)
Morgan Stanley Emerging Markets Debt Fund
Common Stock $.01 Par Value (File No. 7–11002)
Muniassets Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11003)
Post Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11004)
China Tire Holding Limited
Common Stock, $.10 Par Value (File No. 7–11005)
Van Kampen Merritt Municipal Opportunity Trust II
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11006)
Wang Labs
CV Class C Common Stock, $.50 Par Value (File No. 7–11007)
Southern California Water Company
Common Stock, $5.00 Par Value (File No. 7–11008)
Grupo Siemc, S.A. DE C.V.
American Depositary Shares (Each Rep. 20 shares of Series B Common Stock (File No. 7–11009)
Aztar Corp.
Common Stock, $.01 Par Value (File No. 7–11010)
Alliance World Dollar Government Fund II, Inc.
Common Stock, $.01 Par Value (File No. 7–11011)
Columbia Hospital Corp.
Common Stock, $.01 Par Value (File No. 7–11012)
Camden Property Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11013)
Massachusetts Health and Education Tax-Exempt Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11014)
Municipal Partners Fund II
Common Stock, $.001 Par Value (File No. 7–11015)
Nuveen Maryland Premium Income Municipal Fund 2
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11016)
Norwest Corp.
Dep. Shares (Rep. 1/4 CV Pfd-B) No Par Value (File No. 7–11017)
Nuveen Ohio Premium Income Municipal Fund 2
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11018)
Nuveen Insured Premium Income Municipal Fund 2
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11019)
Nuveen Virginia Premium Income Municipal Fund 2
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11020)
Shanghai Petrochemical Co. Ltd.
American Dep. Shares (rep. 100 Class H Shares, RMB 1.00 Par Value (File No. 7–11021)
United Meridian Corp.
Common Stock, $.01 Par Value (File No. 7–11022)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 19, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comment should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–18605 Filed 8–3–93; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 29, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

International Shipholding Corporation
Common Stock, $1 Par Value (File No. 7–11023)
British Telecommunications Plc
Class P First Interim American Depositary Shares each representing 10 interim ordinary share (File No. 7–11024)
Mueller Industries, Inc.
Common Stock, $0.01 Par Value (File No. 7–11025)
Texas Meridian Resources Ltd.
Common Stock, $0.01 Par Value (File No. 7–11026)
Morgan Stanley Emerging Markets Debt Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11027)
Corporate High Yield Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11028)
Muniassets Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11029)
Post Properties, Inc.
Common Stock, $0.01 Par Value (File No. 7–11030)
Reading and Bates Corporation
$1.625 Cv. Pfd Stock (File No. 7–11031)
Bear Sterns Companies, Inc.
Dep. Shares 1/6 of a Share of 7.60 Pc Cum. Pfd. Stock (File No. 7–11032)
Georgia Power Company
Adjustable Rate Class A Pfd Stock 1993 (File No. 7–11033)
Nuveen Virginia Premium Income Municipal Fund 2
Shares of Beneficial Interest, $.01 Par Value (File No. 7–11034)
Nuveen Premium Income Municipal Fund 2
Shares of Beneficial Interest, $.01 Par Value (File No. 7–11035)
Nuveen Maryland Premium Income Municipal Fund 2
Shares of Beneficial Interest, $.01 Par Value (File No. 7–11036)
Nuveen Ohio Premium Income Municipal Fund 2
Shares of Beneficial Interest, $.01 Par Value (File No. 7–11037)
Noise Com, Inc.
Common Stock, $.01 Par Value (File No. 7–11038)
Massachusetts Health and Education Tax-Exempt Trust
Common Stock, $.01 Par Value (File No. 7–11039)
AT&T Capital Corporation
Common Stock, $.01 Par Value (File No. 7–11040)
Southwestern Property Trust
Common Stock, $.01 Par Value (File No. 7–11041)
Camden Property Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11042)
Alliance Work Dollar Government Fund II
Common Stock, $.01 Par Value (File No. 7–11043)
Aztar Corporation
Common Stock, $.01 Par Value (File No. 7–11044)
Columbia Hospital Corporation
Common Stock, $.01 Par Value (File No. 7–11045)
China Tire Holding Ltd.
Common Stock, $.01 Par Value (File No. 7–11046)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 19, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 93-18603 Filed 8-3-93; 8:45 am]

BILLING CODE 8010-01-M

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[Release No. 34-32687; File No. SR-BSE-92-05]

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1, No. 2 and No. 3 to Proposed Rule Change Relating to Stop and Stop Limit Order Bans

July 29, 1993.

On June 29, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the implementation of stop and stop limit order[3] bans whenever such orders are banned in the primary market. The Exchange has amended the proposed rule change three times subsequent to its original filing. On December 2, 1992, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change[4] and on February 16, 1993, the BSE submitted to the Commission Amendment No. 2 to the proposal.[5] On May 11, 1993, the BSE submitted to the Commission Amendment No. 3 to the proposed rule change.[6]

The proposed rule change was published for comment in Securities Exchange Act Release No. 34-31119 (August 28, 1992), 57 FR 40704 (September 4, 1992). No comments were received on the proposal.

The BSE propose to establish a procedure to implement stop and stop limit order bans to parallel two situations in which the primary exchange implements such bans. The first situation arises when an individual specialist requests a stop and stop limit order ban due to an unusually large accumulation of such orders. The second situation arises automatically, pursuant to NYSE Rule 80A, Limitations on Trading During Significant Market Declines, when a 12 point decline is reached in the Standard and Poor ("S&P") 500.[7]

The BSE proposes to amend its rules to adopt Chapter II, Section 35, to address stop order bans on the Exchange. Section 35 would specify that whenever the primary market for a stock admitted to dealings on the BSE institutes a stop and stop limit order ban, the BSE will also ban such orders in the stock until such time as the ban in the primary market is lifted.[8] Section 35 also would provide that whenever the NYSE institutes a stop and stop limit order ban pursuant to NYSE Rule 80A,[9] the BSE will ban stop and stop limit orders for the remainder of the trading day, except that a member or member organization would be able to enter a stop or stop limit order for 2,099 shares or less, for the account of an individual investor,[10] pursuant to instructions received directly from the individual investor.[11]

The Exchange states that the purpose of the proposed rule is to prevent the BSE from becoming a haven for stop and stop limit orders that are otherwise banned on the primary exchange.[12] The Exchanger also states that the basis under the Act for the proposed rule is Section 6(b)(5) in that the rule is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(5) of the

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is represented at the specialist's post. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is represented at the specialist's post. A stop limit order to buy becomes a limit order executable at the limit price, or at a better price, if obtainable, when a transaction in the security occurs at or above the stop price after the order is represented at the specialist's post. A stop limit order to sell becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the security occurs at or below the stop price after the order is represented at the specialist's post. See Chapter I, ¶2003, of the BSE Rules.

[4] See letter from Karen A. Aluise, Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated November 23, 1992. Amendment No. 1 made a minor, technical correction to the proposed rule by replacing the word "institutional" with the word "individual" in proposed Chapter II, Section 35(b).

[5] See letter from Karen A. Aluise, Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated February 10, 1993. Amendment No. 2 modified the proposal to include the BSE's proposed procedures for the implementation of stop order bans. The BSE states that, upon approval by the Commission, the procedures, along with the actual rule, will be published to the membership in a memorandum.

[6] See letter from Karen A. Aluise, Attorney, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated May 5, 1993. Amendment No. 3 made minor technical corrections to the BSE's proposed procedures for the implementation of stop order bans contained in Amendment No. 2.

[7] See Securities Exchange Act Release No. 29884 (October 24, 1991), 56 FR 55963 (October 30, 1991) (File No. SR-NYSE-91-21) (order approving NYSE Rule 80A limitations on trading after significant market movements). Rule 80A applies certain trading limitations during significant market declines. The restrictions apply when the price of the primary S & P 500 futures contract traded on the Chicago Mercantile Exchange falls 12 points below the previous day's closing value.

[8] According to the BSE's stop order ban procedures, when the primary market implements a stop order ban in an individual stock due to an unusually large accumulation of stop and stop limit orders, any stop and stop limit orders on the specialist's book at the time the ban goes into effect would be cancelled. The entry of stop and stop limit orders would be banned until the ban is lifted in the primary market and that information is disseminated on the Consolidated Tape. See Amendment No. 3, *supra* note 6.

[9] NYSE Rule 80A, among other things, restricts the entry of new stop and stop limit orders for the remainder of the trading day when the 12 point trigger value has been reached. The only allowable stop and stop limit orders under NYSE Rule 80A are individual investor orders of 2,099 shares or less when and individual has made the investment decision.

[10] Proposed section 35 defines an account of an individual investor as an account covered by section 11(a)(1)(E) of the Act. Section 11(a)(1)(E) of the Act applies to accounts of a natural person, the estate of a natural person, or a trust (other than as investment company) created by a natural person for himself or another natural person. 15 U.S.C. 78k(a)(1)(E) (1988).

[11] According to the BSE's stop order ban procedures, when the NYSE implements a stop order ban pursuant to Rule 80A, any stop and stop limit orders on the specialist's books at the time the ban goes into effect would remain eligible for execution. The entry of stop and stop limit orders (other than orders up to 2099 shares for the account of individual investors) would be banned on the BSE for the remainder of the day. See Amendment No. 3, *supra* note 6.

[12] Conversation between Karen A. Aluise, Attorney, BSE, and Elizabeth M. Cosgrove, Attorney, Commission, on July 27, 1992 clarifying the purpose of the BSE proposed rule.

Act.[13] The Commission believes that the BSE's proposal is reasonably designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. For these reasons and the reasons set forth below, the Commission believes that approval of the proposal is consistent with the requirements of section 6(b)(5) of the Act.

The Commission believes that it is appropriate for the BSE to ban stop and stop limit orders on the Exchange when the primary exchange institutes such a ban due to an unusually large accumulation of such orders. In a volatile market, stop orders can accumulate at various prices and, if triggered by an electing transaction,[14] the stop orders may increase price fluctuations in a particular stock. Although the NYSE has adopted procedures to address large accumulations of such orders, there is nothing in the BSE's rules to prevent the Exchange from receiving a large number of stop and stop limit orders while such orders are banned on the NYSE. Accordingly, the Commission believes that allowing the BSE to ban stop and stop limit orders, which already have been banned in the primary market, may help to reduce market volatility by preventing stop and stop limit orders from being executed on the BSE.

The Commission also believes that it is appropriate for the BSE to ban stop and stop limit orders for the remainder of the trading day, whenever the NYSE institutes a stop and stop limit order ban pursuant to NYSE Rule 80A. As noted above, the NYSE institutes stop and stop limit order bans pursuant to NYSE Rule 80A during significant market declines. The Commission recognizes that banning stop and stop limit orders in a significant market decline may help to reduce market volatility related to increased selling pressure in the security. In this regard, the BSE proposal represents a reasonable effort by the BSE to arrive at a coordinated means to address potential strain on the market that may develop as a result of stop and stop limit order bans on the NYSE. Because the proposed rule change should prevent the BSE from becoming inundated with orders that have been banned pursuant to NYSE Rule 80A, the proposal should prevent the transfer of marketplace volatility from the NYSE to the BSE. Accordingly, the Commission believes that the proposed rule should protect investors and the public interest by helping to stabilize volatility in the marketplace.

Finally, as noted above, stop and stop limit orders on the specialist's book will remain eligible for execution and thus investors who have submitted orders will not be unduly disadvantaged or effected by any subsequent ban on such orders. The Commission also believes that allowing individual investors to enter stop or stop limit orders, for 2,099 shares or less, while restricting the professional use of such orders, when the NYSE institutes a ban pursuant to Rule 80A, represents a reasonable response to the problem presented by smaller, individual investors who may not be able to monitor market conditions on a continuous basis and who desire a measure of downside protection in a rapidly moving market. In contrast, market professionals are able to monitor the market on a continuous basis and have less of a need to enter such orders in a rapidly moving market. The Commission believes that this exception to the proposed rule should protect investors and the public interest by ensuring that individual investors' stop and stop limit orders will be handled in the BSE marketplace even during periods of market volatility.[15]

The Commission finds good cause for approving proposed Amendments No. 1, No. 2 and No. 3 to the proposed rule change prior to the thirtieth day after publication of notice of filing thereof. Amendment No. 1 makes a minor, technical change to the proposed rule which clarifies the application of the rule. Amendment No. 2 adds the procedures for the implementation of stop order bans to the supplementary material of the proposed rule change and Amendment No. 3 makes minor technical corrections to the BSE's proposed procedures. Accelerated approval of the amendments will enable the BSE to effectuate the proposal in a timely manner upon approval. In addition, the BSE's proposed rule change relating to stop and stop limit order bans was published in the Federal Register for the full statutory period and no comments were received.[16]

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, No. 2 and No. 3. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to SR–BSE–92–05 and should be submitted by August 25, 1993.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–BSE–92–05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18601 Filed 8–3–93; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78f(b)(5) (1988).

[14] See supra note 3.

[15] This exception to the proposal is consistent with the NYSE's exception to the restriction on stop and stop limit orders of 2,099 shares or less under Rule 80A. *See supra* note 9.

[16] See Securities Exchange Act Release No. 31119 (August 20, 1992), 57 FR 40704 (September 4, 1992).

[17] 15 U.S.C. 78s(b)(2) (1988).

[18] 17 CFR 200.30–3(a)(12) (1991).

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[Release No. 34–32698; File No. SR–NYSE–93–10]

## Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change

July 29, 1993.

In the matter of Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Interpretation to Rule 345 Establishing a New Category of Limited Registration for Floor Members, and the Content Outline for the Examination Module for Floor Members Engaged in Public Business with Professional Customers.

On February 10, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed interpretation to NYSE Rule 345 to establish a new category of limited registration for floor members engaged in public business

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

with professional customers[3] and to adopt the Content Outline for the Examination Module for Floor Members Engaged in Public Business with Professional Customers.[4]

Notice of the proposal appeared in the **Federal Register** on April 22, 1993.[5] No comments were received on the proposal.

## I. Proposal

The Exchange proposes the adoption of a Series 7A Examination as a module of the General Securities Registered Representative Examination ("Series 7") to test the knowledge of relevant securities laws and Exchange rules required of floor members who only accept orders from professional customers, as defined in the proposal, for execution on the trading floor.[6] The NYSE also proposes to amend its Interpretation to Rule 345.15 to establish, as a new category of registration, limited registration for floor members who have successfully completed the Series 7A Examination.

Currently, members located on the Floor of the NYSE who wish to transact business with the public are required to be Series 7 qualified registered representatives.[7] The Exchange states that such public business is often limited to accepting orders directly from professional investors for execution on the trading floor.[8] The Exchange believes that the level of knowledge, skills and abilities necessary to conduct such business is less than that needed to conduct a full service business with retail customers. Consequently, the NYSE developed the Series 7A Examination to test the knowledge of relevant securities laws and Exchange rules required of members whose business is limited to accepting public orders from professional customers for execution on the trading floor. A committee of floor member representatives in conjunction with the Exchange staff developed the Content Outline for the Series 7A Examination which details the coverage of the examination module.[9]

The NYSE believes that the proposal is consistent with section 6(c)(3)(B) of the Act. The Exchange states that, pursuant to this statutory obligation, it has developed examinations that are administered to establish that Exchange floor members performing specific functions have attained specified levels of competence and knowledge.

## II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of sections 6(b)(5) and 6(c)(3)(B) of the Act.[10] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule change is consistent with section 15(b)(7) of the Act[11] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer (and all natural persons associated with such broker or dealer) must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission believes that the Series 7A examination requirement should help to ensure that only those floor members with a comprehensive knowledge of Exchange rules, as well as an understanding of the Act, will be able to conduct a public business limited to accepting orders directly from professional customers for execution on the trading floor.[12] In this regard, the Commission carefully reviewed the format and the substantive areas tested on the Series 7A examination. In reviewing the examination, the Commission focused on the comprehensiveness and the choice of specific questions and their level of difficulty. The Commission believes that the examination questions cover the appropriate subject matter and include a sufficiently broad range of topics so as to require an appropriate level of expertise by floor members who conduct a public business limited to accepting orders directly from professional customers for execution on the trading floor.[13] By ensuring this requisite level of knowledge, the NYSE can remain confident that its limited registration floor members have

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[3] The NYSE deleted "generally limited to" from Rule 345, Interpretation .02 in order to clarify that the intent of the proposed interpretation is that the Series 7(a) Examination is applicable to floor members engaged solely in a public business with professional customers. Telephone conversation between Mary Ann Furlong, Director, Rule and Interpretive Standards, NYSE and Cheryl Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, July 28, 1993.

[4] As part of the proposed rule change, the NYSE is also seeking approval of the examination itself. *See* letter from Donald Van Weezel, Managing Director, Regulatory Affairs, NYSE, to Diana Luka-Hopcon, Branch Chief, Division of Market Regulation, Commission, dated February 26, 1993.

[5] See Securities Exchange Act Release No. 32158 (April 16, 1993), 58 FR 21617 (April 22, 1993).

[6] The proposal would define a professional customer to include: A bank, a trust company; an insurance company; an investment trust; a state or political subdivision thereof; a charitable or non-profit educational institution regulated under the laws of the United States or any state or pension or profit sharing plan subject to ERISA or of an agency of the United States, or of a state or a political subdivision thereof, or any person who has, or has under management, net tangible assets of at least sixteen million dollars.

For purposes of the definition of professional customer, the term "person" would mean the same as that term is defined in NYSE Rule 2, except that it would not include natural persons.

The Exchange states that the above definition is derived from the term "designated account" as used in NYSE Rule 431 (Margin Requirements) and interpretations thereof to describe a professional or sophisticated customer

[7] A Series 15 qualified floor member (an individual who passed the Series 15 Floor Member Examination) who today wishes to conduct business with the public would also have to pass the Series 7 Exam. Telephone conversation between Mary Ann Furlong, Director Rule and Interpretive Standards, NYSE and Cheryl Evans-Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, on July 15, 1993.

[8] Telephone conversation between Mary Ann Furlong, Director, Rule and Interpretive Standards, NYSE and Cheryl Evans-Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, on April 6, 1993.

[9] The Exchange will continue to require the successful completion of the Series 7 examination for any prospective member seeking to become a registered representative dealing with other than professional customers. In addition, any person who has successfully completed the Series 7 Examination will not be required to complete the Series 7A Examination Telephone conversation between Mary Ann Furlong, Director, Rule and Interpretive Standards, NYSE and Cheryl Evans-Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, on July 15, 1993.

[10] 15 U.S.C. 78f (b)(5) and (c)(3)(B) (1988).

[11] 15 U.S.C. 78o(b)(7) (1988).

[12] See *supra* note 8. The Exchange intends to send an Information Memorandum to members discussing the Series 7 and Series 7A Examinations. Telephone conversations between Mary Ann Furlong, Director, Rule and Interpretive Standards, NYSE and Cheryl Evans-Dunfee, Attorney, Exchange Branch, Division of Market Regulation, Commission, May 13, 1993, and June 21, 1993.

[13] Commission Staff reviewed both the proposed Interpretation to Rule 345 and the examination itself for form and content and concluded that both were appropriately drafted and organized.

demonstrated an acceptable level of securities knowledge to carry out their responsibilities.

The Commission also has determined that the Content Outline for the Series 7A Examination is sufficiently detailed and covers the appropriate information so as to provide an adequate basis for studying the topics covered on the examination. This outline should help to ensure that those persons taking the Series 7A fully understand the subject matter of the examination.

Finally, the Commission believes that the proposed limited registration requirement for floor members engaged in a public business with professional customers is reasonable and is consistent with the requirements of sections 6(b)(5) and 6(c)(3)(B) of the Act. This new category of registration would permit only those floor members who have demonstrated adequate skills and knowledge to conduct a public business which is generally limited to accepting orders directly from professional customers, as defined in the rule,[14] for execution on the trading floor. The NYSE has argued that the level of knowledge, skills and abilities necessary to conduct such business is less than that needed to conduct a full service business with retail customers. The Commission believes that, because the NYSE will ensure that floor members solely handling professional customer business are adequately qualified through the use of either the Series 7 or Series 7A exam,[15] it is consistent with the NYSE's regulatory responsibilities to establish this category of limited registration.

## IV. Conclusion

*It Is Therefore Ordered,* pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–93–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18600 Filed 8–3–93; 8:45 am]

BILLING CODE 8010–01–M

[14] See *supra* note 5.

[15] See *supra* note 8.

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

[Rel. No. IC–19303; Int'l Series Release No. 570; 812–8222]

## Berliner Handels- und Frankfurter Bank, et al.; Notice of Application

July 28, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Berliner Handels- und Frankfurter Bank (the "Bank") and BHF Finance (Delaware) Inc. ("Finance").

**RELEVANT ACT SECTIONS:** Exemption requested pursuant to section 6(c) from the provisions of subparagraphs (a)(1) and (a)(3) of rule 3a–5 under the Act.

**SUMMARY OF APPLICATION:** Applicants seek an amended, conditional order under section 6(c) from the provisions of subparagraphs (a)(1) and (a)(3) of rule 3a–5 to permit Finance to offer and sell an unlimited amount of its commercial paper in the United States to raise funds for the business operations of the Bank, its parent company, without registering as an investment company.

**FILING DATE:** The application was filed on December 30, 1992, and amended on May 20, 1993, and June 17, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants: Finance, 100 West Tenth Street, Wilmington, Delaware 19801; and the Bank, Bockenheimer Landstrasse 10, 600 Frankfurt am Main 1, Federal Republic of Germany; with copy to Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, New York 10022.

**FOR FURTHER INFORMATION CONTACT:** James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants' Representations

1. Finance currently offers and sells commercial paper issued by it in the United States without having registered as an investment company under the Act pursuant to a Commission order issued in 1986.[1] The application requesting the 1986 order limits the face value of such commercial paper outstanding at any one time to $100 million. Applicants seek to amend their existing relief to permit Finance to issue an unlimited amount of its commercial paper in the United States.

2. The Bank is a commercial bank organized as a corporation under the laws of the Federal Republic of Germany ("Germany"). As of December 31, 1991, the Bank was the eighth largest privately owned commercial bank in Germany in terms of consolidated total assets, excluding mortgage banks. The bank provides, directly or through its subsidiaries, a wide range of commercial and investment banking services to businesses, governments, financial institutions, and high net worth private customers throughout Germany and internationally. The Bank has a branch in New York that is licensed and regulated by New York State banking authorities. Through the New York branch, the Bank takes deposits and extends loans, offers acceptance credit facilities, issues letters of credit, participates in syndicated loan transactions, and engages generally in commercial banking.

3. As of December 31, 1992, the Bank had total assets of approximately $17,589,770,000. Deposits with the Bank, including demand, time and savings deposits and bonds and notes, totalled approximately 90% of the Bank's total assets. The aggregate principal amount of loans extended by the Bank constituted approximately 62% of the Bank's total assets.

4. The Bank is authorized to carry on a banking business under the Gesetz ueber das Kreditwesen (the "Federal Banking Law"). The Bank is subject to extensive supervision and regulation by the Bundesaufsichtsamt fuer das Kreditwesen (the "German Federal Banking Supervisory Authority"), whose main purpose is to protect the depositors and other creditors of

[1] Investment Company Act Release Nos. 15188 (July 2, 1986) (notice) and 15230 (July 29, 1986) (order).

banking institutions, and also to protect the integrity of the German banking system. The Bank is also supervised and regulated by the Deutssche Bundesbank (the "German Central Bank"), whose responsibility includes the regulation of the money and credit supply. Applicants represent that regulation by the German banking authorities is comparable in many respects to the supervision of United States commercial banks. In addition, pursuant to the International Banking Act of 1978 and the Foreign Bank Supervision Enhancement Act of 1991, the Bank is subject to supervision and regulation by the Board of Governors of the Federal Reserve System (the "Board of Governors"). Also, because the Bank has a branch in the United States, the Bank is subject to United States Federal regulation under the Bank Holding Company Act of 1956.

5. Finance is incorporated under Delaware law. All of Finance's outstanding capital stock is owned by the Bank. Finance proposes to issue and sell in the United States short-term negotiable promissory notes of the type exempt from the registration requirements of the Securities Act of 1933, as amended, by virtue of section 3(a)(3) thereof and generally referred to as commercial paper (the "Notes"), and to deposit the net proceeds from the sale thereof (the "Deposits") at the Grand Cayman branch of the Bank (the "Branch") pursuant to a deposit agreement (the "Deposit Agreement") to be entered into by Finance, the Branch, and the Bank.

6. The Notes will be sold in minimum denominations of $100,000, will have a maturity not exceeding nine months, and neither will be payable on demand prior to maturity nor eligible for any extension, renewal, or automatic "rollover" at the option of either Finance or the holders of the Notes (the "Noteholders").

7. Substantially all of Finance's assets will consist of a single evidence of indebtedness of the Branch issued to Finance evidencing the Deposits. As provided under the Deposit Agreement, the Branch unconditionally agrees to repay to Finance each Deposit made by Finance at the Branch, including accrued interest thereto, on the maturity date of the Deposit. In the Deposit Agreement, the Branch waives any and all right of set-off it may have in respect of the Deposits. Each Deposit shall mature and be payable on the maturity date of the corresponding Note, and shall bear interest at a rate per annum equal to or greater than the effective interest rate of the corresponding Note, taking into account the discount at which the Note is issued. Each Noteholder is assigned as security and granted a security interest in the Deposit and accrued interest corresponding to his Note. If Finance fails to pay a Note in accordance with its terms, the Deposit Agreement entitles the Noteholder to receive payment by the Branch of the Deposit and accrued interest.

8. Under German law and pursuant to the Deposit Agreement, the repayment obligation of the Branch in respect of the Deposits is an obligation of the bank. The Bank's obligations regarding its liabilities to Finance will rank at least *pari passu* among themselves and with all other unsecured and unsubordinated indebtedness, including deposit liabilities, of the Bank and will be superior to rights of shareholders; the Noteholders will have a direct cause of action against the Bank in the event of any default in payment on the Notes.

9. The Bank in the Deposit Agreement expressly waives any defenses available to it against performance of its obligations to the extent that such defenses exist under Caymen Islands law and are based on insolvency, moratorium, liquidation, or similar laws of the Cayman Islands affecting the Branch, or on currency or foreign exchange laws of the Caymen Islands or acts of state of the Cayman Islands government relating to expropriation, seizure, or moratorium of payment affecting the Branch as such or affecting the obligations of the Branch to repay its deposits in general.

10. To assure that the proceeds from the sale of the Notes will be deposited with the Branch, Finance and the Branch will enter into an agreement (the "Issuing and Paying Agency Agreement") with a commercial bank pursuant to which the Branch will have an operating account with such commercial bank. The payments of the proceeds of the sale of the Notes to the Branch will be made to this account, and the payments by Finance or the Branch to the Noteholders will be made from this account by appropriate debits or credits, respectively. The Issuing and Paying Agreement provides that payment by the Noteholders will be effected by wire transfer of funds to the commercial bank's account at the Federal Reserve Bank of New York or by delivery to the commercial bank of a check drawn to the commercial bank's order by another member bank of such Federal Reserve Bank. Finance is required to instruct the commercial bank to transfer the proceeds of the sale of the Notes to the Branch's account with the commercial bank. The Issuing and Paying Agreement states that the Branch will have exclusive control over the account, and the sole right of withdrawal of funds therefrom. Finance will have no opportunity to channel the investor's funds away from the investor, the commercial bank, and the Bank. Once the investor pays for the Notes, the funds are in the commercial bank's account with the Federal Reserve, and must flow from there into the Branch's account with the commercial bank as a Deposit. At that moment the investor has a right of action against the Bank pursuant to his security interest in the Deposit.

11. The Notes will be offered publicly, through one or more major dealers and/or by the Bank directly, only to the types of sophisticated and largely institutional investors that ordinarily participate in the United States commercial paper market. Each dealer or the Bank will furnish to each offeree a memorandum describing the businesses of the Bank and Finance, and providing the most recent annual audited financial statements for the Bank, together with a description of the material differences between the German accounting principles utilized in the preparation of the financial statements of the Bank and generally accepted accounting principles as applied in the United States. The memorandum will be updated as promptly as practicable to reflect material adverse changes in the financial status of Finance or the Bank which are material to investors, and will be at least as comprehensive as memoranda customarily used in offering commercial paper in the United States.

12. The Bank, in connection with the offering of the Notes, will submit to the jurisdiction of any state or Federal court in the Borough of Manhattan in the City of New York, and will appoint Finance as agent to accept any process which may be served in any action based upon the Bank's obligations to Finance as described in the application. Such consent to jurisdiction and such appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Deposits and all obligations of the Bank to Finance as described in the application have been paid. The authorized agent will not be, or be obligated to act as, a trustee for the Noteholders.

**Applicants' Legal Analysis**

1. Applicants assert that Finance meets the requirements of rule 3a–5 except that the Notes will not be guaranteed in a technical sense by the Bank, as required by subparagraphs (a)(3) and (a)(5). Instead, the Bank will

provide the functional equivalent of a guarantee. Applicants represent that the proceeds from the sale of Notes by Finance will be lent to or deposited with the Branch, and contend that the entitlement of the Noteholders to receive payment by the Branch of the Deposit corresponding to the Notes in case of failure of Finance to pay the Notes upon maturity will be even better for the Noteholders than the guarantee in a technical sense might be.

2. Applicants assert that, if the Bank were to issue the Notes directly, it would not be subject to the provisions of the Act pursuant to rule 3a–6. They further assert that, if the Bank chooses to use Finance as a financing vehicle, the policy considerations underlying rule 3a–6 should apply the Finance should be granted an exemption to issue its Notes. They state that the business and fiscal considerations behind the Bank's desire to use Finance as a financing vehicle to sell the Notes in the United States in no way impinge upon the public policy concerns, such as investor protection, that underlie the Act. Applicants believe that the policy concerns underlying rule 3a–6 are satisfied by the parent-subsidiary relationship between the Bank and Finance because, as a consequence thereof and as a result of the Deposit Agreement, the Noteholders may ultimately look to the Bank for satisfaction.

3. Applicants state that the Bank chose the proposed structure because, among other reasons, if the Bank or one of its branches were to have unconditionally guaranteed the obligations of Finance to pay the Notes, or to have issued a letter of credit supporting the Notes, the funding by the issuance of such Notes would be more costly for the Bank.

**Applicants Conditions**

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Finance and the Branch will enter into an Issuing and Paying Agency Agreement with a commercial bank pursuant to which the Branch will have an operating account with such commercial bank. To this account payments of the proceeds of the sale of the Notes to the Branch will be made, and from this account the payments by Finance or the Branch to the Noteholders will be made by appropriate debits or credits, respectively.

2. Finance will assign as security the Deposit corresponding to each Note to and in favor of the Noteholder. In the event Finance fails to pay a Note upon maturity, the Noteholder will be entitled to receive payment by the Branch of the Deposit corresponding to such Note. In the event of a default in payment of principal or interest (or any other payments provided for in the Notes) on any debt securities issued by Finance, the Noteholders will not only be entitled to receive payments by the Branch or the Bank of the Deposit corresponding to such Note but may also enforce such rights in the competent courts against the Branch or the Bank without first proceeding against Finance.

3. The Bank confirms expressly in the Deposit Agreement that the aforementioned obligations of the Branch to Finance and the Noteholders are the Bank's own obligations.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18606 Filed 8–3–93; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2659]**

### Kansas; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 22, 1993 and amendments dated July 25, I find the counties of Dickinson, Doniphan, Douglas, Geary, Harvey, Johnson, Leavenworth, Ottawa, Riley, Saline, and Wyandotte in the State of Kansas constitute a disaster area as a result of damages caused by flooding and severe storms beginning on June 28, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 20, 1993, and for loans for economic injury until the close of business on April 25, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, suite 102, Forth Worth, Texas 76155 or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Atchison, Brown, Butler, Clay, Cloud, Ellsworth, Franklin, Jefferson, Lincoln, Marion, Marshall, McPherson, Miami, Mitchell, Morris, Osage, Pottawatomie, Reno, Sedgwick, Shawnee, Wabaunsee, and Washington in Kansas.

Any contiguous counties not listed herein are covered under a separate declaration for the same occurrence.

The interest rates are:

| | Percent |
|---|---|
| For physical damage: | |
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 8.000 |
| Businesses and non-profit organizations without credit available elsewhere | 4.000 |
| Others (including non-profit organizations) with credit available elsewhere | 7.625 |
| For economic injury: | |
| Businesses and small agricultural cooperatives without credit available elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 266906 and for economic injury the number is 793500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 26, 1993.

**Bernard Kulik,**

*Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–18548 Filed 8–3–93; 8:45 am]

BILLING CODE 8025–01–M

### Action Subject to Intergovernmental Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of action subject to intergovernmental review under Executive Order 12372.

**SUMMARY:** This notice provides for public awareness of SBA's intention to refund thirty-three presently existent Small Business Development Centers (SBDCs) on January 1, 1994. Currently there are 57 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, and Wisconsin. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement

which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accordance with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: November 2, 1993.

ADDRESSES: Comments should be addressed to Ms. Johnnie L. Albertson, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416. (202) 205–6766.

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accordance with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of thirty-three presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published four months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Johnnie L. Albertson, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 120 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 120-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

**Description of the SBDC Program**

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties. SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Public Law 96–302, as amended by Public Law 98–395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

**Purpose and Scope**

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

**Program Objectives**

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

**SBDC Program Organization**

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

**SBDC Services**

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, argi-business, computer application, business law information, and referral (any legal services beyond basic legal information, and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small business located in rural areas.

The degree to which SBDC resources are directed towards specific areas of

assistance is determined by local community needs, SBA priorities and SBDC Program objectives, and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

**SBDC Program Requirements**

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subsenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

**Advance Understandings**

The lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: July 27, 1993.

**Erskine B. Bowles,**

*Administrator.*

**Addresses of Relevant SBDC State Directors**

Mr. Michael York, State Director, Maricopa Community College, 2411 West 14th Street, Tempe, AZ 85281–6941, (602) 731–8202

Ms. Barbara Hayes, State Director, California Trade & Comm. Agency, 801 K Street, suite 1700, Sacramento, CA 95814, (916) 322–2252

Ms. Nancy Flake, Director, Howard University, 6th & Fairmount Street, NW., Washington, D.C. 20059, (202) 806–1550

Mr. Hank Logan, State Director, University of Georgia, Chicopee Complex, Athens, GA 30602, (404) 542–5760

Mr. Ronald Hall, State Director, Boise State University, College of Business, 1910 University Drive, Boise, ID 83725, (208) 385–1640

Mr. Steve Thrash, State Director, Economic Development Council, One North Capitol, suite 420, Indianapolis, IN 46204, (317) 264–6871

Mr. Charles Davis, State Director, University of Southern Maine, 96 Falmouth Street, Portland, ME 04103, (207) 780–4420

Mr. Victor Redditt, Acting State Director, University of Arkansas, 100 South Main, suite 401, Little Rock, AR 72201, (501) 324–9043

Mr. Rick Garcia, State Director, Office of Business Development, 1625 Broadway, suite 1710, Denver, CO 80202, (303) 892–3809

Mr. Jerry Cartwright, State Director, University of West Florida, 19 West Garden Street, Pensacola, FL 32501, (904) 444–2060

Ms. Janet Nye, State Director, University of Hawaii/Hilo, 523 West Lanikaula Street, Hilo, HI 96720, (808) 933–3515

Mr. Jeffrey Mitchell, State Director, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, IL 62701, (217) 524–5856

Mr. Tom Hull, State Director, Wichita State University, 1845 Fairmont, Wichita, KS 67260–0148, (316) 689–3193

Mr. Randall Olson, State Director, Dept. of Trade and Economic Dev., 150 East Kellogg Boulevard, St. Paul, MN 55101–1421, (612) 297–5770

Mr. Gene Marcille, State Director, Department of Commerce, 1424 Ninth Avenue, Helana, MT 59620, (406) 444–4780

Mr. Sam Males, State Director, University of Nevada/Reno, College of Business Admin., room 411, Reno, NV 89557–0100, (702) 784–1717

Ms. Brenda B. Hopper, State Director, Rutgers University, 180 University Street, Newark, NJ 07102, (201) 648–5950

Mr. Scott Daugherty, State Director, University of North Carolina, 4509 Creedmoor Road, suite 201, Raleigh, NC 27612, (919) 571–4154

Dr. Grady Pennington, State Director, SE Oklahoma State University, 517 West University, Durant, OK 74701, (405) 924–0277

Mr. Greg Higgins, State Director, University of Pennsylvania, The Wharton School, 444 Vance Hall, Philadelphia, PA 19104, (215) 898–1219

Mr. John Lenti, State Director, University of South Carolina, College of Business Admin., 1710 College Street, Columbia, SC 29208, (803) 777–4907

Mr. Robert Bernier, State Director, University of Nebraska/Omaha, 60th & Dodge Sts., CBA room 407, Omaha, NE 68182, (402) 554–2521

Ms. Helen Goodman, State Director, University of New Hampshire, 108 McConnell Hall, Durham, NH 03824, (603) 862–2200

Mr. Randy Grissom, State Director, Santa Fe Community College, P.O. Box 4187, Santa Fe, NM 87502–4187, (505) 438–1362

Mr. Wally Kearns, State Director, University of North Dakota, Gamble Hall, University Station, Grand Forks, ND 58202–7308, (701) 777–3700

Mr. Sandy Cutler, State Director, Lane Community College, 99 West 10th Avenue, suite 216, Eugene, OR 97401, (503) 726–2250

Mr. Douglas Jobling, State Director, Bryant College, 1150 Douglas Pike, Smithfield, RI 02917, (401) 232–6111

Mr. Donald Greenfield, State Director, University of South Dakota, School of Business, 414 East Clark, Vermillion, SD 57069, (605) 677–5272

Dr. Kenneth J. Burns, State Director, Memphis State University, South Campus, building #1, Memphis, TN 38152, (901) 678–2500

Dr. Robert Smith, State Director, Department of Economic Development, 1021 East Cary Street, Richmond, VA 23206, (804) 371–8258

Mr. William Pinkovitz, State Director, University of Wisconsin, 432 North Lake Street, room 423, Madison, WI 53706, (608) 262–3878

Mr. David Nimkin, State Director, University of Utah, 102 West 500 South, Salt Lake City, UT 84101, (801) 581–7905

Mr. Lyle Anderson, State Director, Washington State University, College of Business and Economics, Pullman, WA 99164–4727, (509) 335–1576

[FR Doc. 93–18554 Filed 8–3–93; 8:45 am]

BILLING CODE 8250–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

**Approval of Noise Compatibility Program; St. Augustine/St. Johns County Airport, St. Augustine, FL**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the St. Augustine/St. Johns County Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act (ANSA) of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 13, 1993, the FAA determined that the noise exposure maps submitted by the St. Augustine/St. Johns County Airport Authority under part 150 were in compliance with applicable requirements. On July 12, 1993, the Administrator approved the St. Augustine/St. Johns County Airport Noise Compatibility Program. Most of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the St. Augustine/St. Johns County Airport Noise Compatibility Program is July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–3596, (407) 648–6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the St. Augustine/St. Johns County Airport, effective July 12, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties including local communities, government agencies airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The noise compactility program was developed in accordance with the provisions and procedures of FAR part 150.

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate agninst types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The St. Augustine/St. Johns County Airport Authority submitted to the FAA on December 9, 1992, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 1, 1990 through December 6, 1992. The St. Augustine/St. Johns County Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 13, 1993. Notice of this determination was published in the **Federal Register** on February 1, 1993.

The St. Augustine/St. Johns County Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1997. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 13, 1993, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eleven (11) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective July 12, 1993.

Outright approval was granted for seven (7) of the eleven (11) specific program elements. Two (2) elements were approved in part, no action was taken on one (1) element, and one (1) element was disapproved for the purposes of part 150. The approval action was for the following program elements:

Measure

Item 1

Item 2

Item 3

Item 4

Item 5

Item 6

Measure

Item 1

NOISE ABATEMENT CONTROL MEASURES

| Measure | Description | NCP pages |
|---|---|---|
| Item 1 | The Airport Authority recognizes FAA FAR part 36 requirements and the new national noise policy as it relates to the phase-out of operations by Stage 2 aircraft weighing over 75,000 pounds (14 CFR part 91). *FAA Action:* No action is needed on an individual airport basis to implement this measure. The phaseout of operations by Stage 2 aircraft weighing over 75,000 pounds is part of FAA's nationwide noise compatibility efforts. | Part II: pgs. 3–3, 4–1; and Table 4–3. |
| Item 2 | Aspart of its Master Plan Update, the Airport Authority will close Runway 2–20. This will eliminate flight tracks associated with this runway that place aircraft over residential areas.*FAA Action:* Disapproved for purposes of part 150 because Runway 2–20 is proposed to be closed for reasons other than noise. Furthermore, it is not clear, based on the NEM contours, that the shifting of traffic from Runway 2–20 to Runway 6–24 has an overall beneficial result. This disapproval does not affect the potential closure of Runway 2–20 for other reasons. | Part I: Exhibits 2–5, 2–6, and 2–7; Part II: pgs. 3–6, 4–1, 4–2, Table 4–3, Exhibits 5–3 and 5–4. |
| Item 3 | The Airport Authority will post FAR § 91.53 and NBAA approach and departure procedures and will request that pilots of turbo-jet and turboprop aircraft use these procedures. *FAA Action:* Approved as a voluntary measure.. | Part II: pgs. 3–4, 4–2; and Table 4–3 |
| Item 4 | Preferential arrival, departure, and touch-and-go, and special application flight tracks will be recommended on a voluntary basis. *FAA Action:* Approved. The proposed tracks will reduce the number of flights over residential areas as much as practicable.. | Part II: pgs. 4–2 and 4–6; Tables 4–1 and 4–2; and Exhibits 4–2, 4–3, and 4–4 |
| Item 5 | Jet maintenance run-up is the largest noise contributor at the airport and was frequently mentioned during public meetings. The Airport Authority has conducted a supplemental noise analysis using NOISEMAP to assess the runup-generated noise levels, since INM is not designed to do so. Grumman will finance a hush house that will be built in the northeast corner of the airport, far from noise sensitive areas to reduce this impact. *FAA Action:* Approved. This measure will be funded solely by the Grumman Corporation. | Part I: pg. 4–13; Part II: pgs. 3–7, 3–8, 4–7, Exhibit 4–1, and Table 4–3. |
| Item 6 | The Airport Authority intends to activate the air traffic control tower (ATCT) located at the Grumman Corporation facility as a non-federal tower to facilitate airport operations and safety. When the ATCT is activated, this measure will establish air traffic control tower procedures which will enable tower personnel, as a secondary duty to airport operations, to monitor a Fly Neighborly Program. The Authority will work with local pilots and tenants to develop Fly Neighborly Program. The Program is designed to direct aircraft away from noise sensitive areas, and request that pilots fly noise abatement procedures according to the Noise Compatibility Program. *FAA Action:* Approved. The control tower's primary function is to facilitate airport operations and aircraft safety. As weather and workload permit, tower personnel would monitor traffic and recommend preferential flight tracks to minimize overflights of noise-sensitive areas. This approval is limited to control tower monitoring of the noise abatement program and is not related to activation of the non-Federal tower. The Airport Authority retains full authority to activate the tower as a non-federal facility outside the part 150 program. | Part II: pg. 3–8, 4–7, and Table 4–3. |

LAND USE MEASURES

[Mitigating Noise Control Measures]

| Measure | Description | NCP pages |
|---|---|---|
| Item 1 | Land use compatibility strategies recommend that the Noise Exposure Maps developed under the part 150 Program be incorporated into St. Johns County's Comprehensive Plan and Land Development Code, and that the City of St. Augustine and St. Johns County establish an Intergovernmental Coordination Element to include a specific requirement that a representative from the Airport Authority be included in site review of development in proximity to the airport. *FAA Action:* Approved. | Part II: pgs. 3–9, 3–10, 4–14, 4–15, and Table 4–4. |

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LAND USE MEASURES—Continued
[Mitigating Noise Control Measures]

| Measure | Description | NCP pages |
|---|---|---|
| Item 2 | It is recommended that the St. Johns County zoning and noise ordinances be updated to change vacant developable property zoning within the airport environs or within the DNL 65 noise contour to a compatible land use, to not allow cumulative zoning around the airport, and to protect approaches from hazards to navigation by regulating heights of structures, the proliferation of objects that will emit electromagnetic interference, smoke or window glare due to architectural design. *FAA Action:* Approved in part. Approval with respect to the elimination of residential uses. This approval does not extend to approving the zoning of wetlands for commercial, industrial or manufacturing uses. Wetlands provide valuable, important ecological functions. The FAA encourages the County to establish zoning which protects both wetlands and noise compatibility. Furthermore, only those portions of the measure pertaining to noise compatibility are approved for part 150 purposes. Those segments of the measure pertaining to navigational hazards, electromagnetic emissions, and/or visual impacts are addressed under other FAA regulations such as part 77 (Imaginary Surfaces) and are not approvable for part 150 purposes. Disapproval of those recommendations pertaining to hazards, emissions, or impacts should not be construed as a determination regarding the benefits to aviation safety that these recommendations would provide. Local governments retain the right to implement these aviation safety measures outside of the part 150 program. | Part II: pgs. 3–10, 3–11, 4–15; Tables 3–2, 3–3, and 4–3 |
| Item 3 | Establish a noise disclosure program to record the noise exposure maps in the public records, to provide realtors with a copy of the noise exposure maps, and to require a noise disclosure statement for the sale of residential properties, for new residential construction, and/or for alterations to existing structures located within or in close proximity to the five-year noise exposure map. *FAA Action:* Approved. This measure is within the authority of local governments. The measure would alert potential occupants of homes in the vicinity to the existence of the airport and current and forecast noise exposure levels.. | Part II: pgs. 3–11, 3–12, 4–15, and Table 4–4 |

Measure

Item 4

Item 5

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AGENCY: Fe
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LAND USE MEASURES—Continued
[Mitigating Noise Control Measures]

| Measure | Description | NCP pages |
|---|---|---|
| Item 4 | Purchase developable undeveloped property located within the DNL 65 contour that is subject to local regulations that allow noncompatible land uses and which can be acquired without condemnation. If land acquisition cannot be accomplished for noncompatible vacant property within the DNL 65 Contour, avigation easements for noise will be pursued. The Airport Authority is enticipating Federal funding as a source of money to accomplish this measure. *FAA Action:* Approved in part. Approval with respect to the prevention of future noncompatible land uses. This approval does not extend to approving the conversion of wetlands to commercial, industrial or manufacturing uses. Any application for Federal assistance for land acquisition would be subject to an assessment of potential wetland impacts and a Federal finding that there is no practical alternative to construction in wetlands and that the proposal includes all practicable measures to minimize harm to wetlands. In addition, it must be shown that purchase is necessary to prevent imminent conversion of the property to uses incompatible with the airport.. | Part II: pgs. 3–12, 4–15, 4–16, Exhibit 4–7, and Table 4–4 |
| Item 5 | Purchase noncompatible residential property located within the DNL 65 contour. After purchase, property would be resold with avigation easements and deed restrictions that permit only noise compatible land uses. If noncompatible property cannot be acquired, avigation easements for noise will be pursued. *FAA Action:* Approved. FAA requires the Airport Authority to ensure that proceeds from the sale of this property are reimbursed to the FAA. In lieu of payment of money to the FAA, the Airport Authority should invest in other noise compatibility projects that are eligible under FAA's Airport Improvement Program. This approval does not extend to establishing commercial, industrial, or manufacturing activities in wetlands within the DNL 65 contour. FAA encourages local government to propose deed restrictions that protect the ecological integrity, function, and values of wetlands within the DNL 65 contour. | Part II: pgs. 3–12, 3–13, 4–16, Table 4–4, Exhibits 4–5 and 4–7. |

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on July 12, 1993. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and the administrative offices of the St. Augustine/St. Johns County Airport Authority.

Issued in Orlando, Florida on July 23, 1993.

**Charles E. Blair,**

*Manager, Orlando Airports District Office.*

[FR Doc. 93–18564 Filed 8–3–93; 8:45 am]

BILLING CODE 4910-13-M

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[Summary Notice No. PE–93–36]

## Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before August 24, 1993.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on July 28, 1993.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

Docket No.: 26302

Petitioner: FlightSafety International
Sections of the FAR Affected: 14 CFR 135.293; 135.297; 135.299; 135.303; 135.337; and part 121, Appendix H
Description of Relief Sought: To extend the termination date of Exemption No. 5241, which allows FlightSafety International to offer contract pilot training services to part 135 certificate holders who operate turbojet/turboprop aircraft, including turbine-powered rotorcraft.

Docket No.: 27307
Petitioner: Comair, Inc.
Sections of the FAR Affected: 14 CFR 61.57(e)(1)(i); 121.433(c)(1) (i) and (iii); 121.440(a); 121.441(a)(1) and (b)(1); and part 121, Appendix F
Description of Relief Sought: To allow Comair to restructure its recurrent training program, including its annual simulator/aircraft proficiency check program, transition into a Single Visit Recurrent Training or Single Visit Training, and eventually transition into the Advanced Qualification Program as described in AC 120–54.

Docket No.: 27323
Petitioner: Mr. Russel H. Rickard
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought. To allow Mr. Richard to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27337
Petitioner: Mr. Charles D. Scott
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow Mr. Scott to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27339
Petitioner: Mr. L. W. Rausch
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow Mr. Rausch to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27348
Petitioner: Northeast Express Regional Airlines
Section of the FAR Affected: 14 CFR 61.57(e)(1)(i); 121.433(c)(1)(iii); 121.440(a)(1) and (b)(1); 135.293(b); 135.297(a) and (c)(1); 135.299(a); part 61, Appendix A; and part 121, Appendix F
Description of Relief Sought: To allow Northeast Express Regional Airlines, dba Northwest Airlink, to transition into a single visit recurrent training program or a single visit training program, and eventually into the Advanced Qualification Program as described in AC 120.54.

Docket No.: 27350
Petitioner: Mr. Daniel Lawson
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow Mr. Lawson to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27351
Petitioner: Mr. James Hall
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow Mr. Hall to serve as a pilot in part 121 air carrier operations after his 60th birthday.

**Dispositions of Petitions**

Docket No.: 25501
Petitioner: Tridair Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 21.19(b)(1)
Description of Relief Sought/Disposition: To amend Exemption No. 5025, to include the installation of two Allison Model 250–C20R turbine engines, in lieu of the single Allison Model 250–C30P turbine engine in a Bell Model 206L–4 helicopters, subject to all conditions and limitations of Exemption No. 5025.
*Grant, July 23, 1993, Exemption No. 5025A*

Docket No.: 26645
Petitioner: Memphis Soaring Society, Inc.
Sections of the FAR Affected: 14 CFR 61.118
Description of Relief Sought/Disposition: To allow private pilots to log the flight time accumulated while towing gliders for Memphis chapter members.
*Grant, July 26, 1993, Exemption No. 5694*

[FR Doc. 93–18562 Filed 8–3–93; 8:45 am]
BILLING CODE 4910–13–M

## Devices That Prevent Blocked Channels Used in Two-Way Radio Communications Due to Simultaneous Transmissions

**AGENCY:** Federal Aviation Administration, DOT.
**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed technical standard order (TSO) pertaining to devices that prevent blocked channels used in two-way radio communications due to simultaneous transmissions. The proposed TSO prescribes the minimum performance standards that devices for preventing blocked channels use in two-way radio communications due to simultaneous transmissions must meet in order to be identified with the marking "TSO–C122."

**DATES:** Comments must be received on or before October 29, 1993.

**ADDRESSES:** Comments on the proposed technical standard order should identify the TSO file number and be sent to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C122, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, room 804, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9546.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interest persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 804, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

**Background**

The aviation communications system includes ground-based and airborne receiving and transmitting equipment that provide air-to-ground, ground-to-air, air-to-air, and ground-to-ground voice and data communications.

Disruption to voice communications in the ATC system presents the potential for degrading flight safety. Although these communication disruptions may occur in areas where traffic density is low, the growth of air traffic (and communications) has increased the number of disruption incidents. Equipment that would be approved under this TSO is intended to minimize communication disruptions

caused by simultaneous voice transmissions.

**How To Obtain Copies**

A copy of the proposed TSO–C122 may be obtained by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." TSO–C122 reference RTCA, Inc., RTCA/DO–209, dated April 25, 1992, for minimum performance standards; RTCA/DO–160C, dated December 4, 1989, for the environmental standard; And RTCA/DO–178B, dated December 1, 1992, for the computer software requirements. RTCA documents may be purchased from RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC. 20036.

Issued in Washington, DC on July 27, 1993.

**Abbas A. Rizvi,**

*Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 93–18563 Filed 8–3–93; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

### Environmental Impact Statement: Erie County, PA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Erie County, Pennsylvania

**FOR FUTURE INFORMATION CONTACT:** Mr. John Gerner, District Engineer, Federal Highway Administration, Courthouse and Federal Building, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone (717) 782–3411 or William G. Petit, P.E., Design Services Engineer, Pennsylvania Department of Transportation, 1140 Liberty Street, Franklin, PA 16323, Telephone (814) 437–4270.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will develop the Erie Area East-Side Access Study. The purpose of this study is to improve access, improve safety and reduce road network congestion between the Lake Erie waterfront and Interstate Route 90 on the east side of Erie. The length of the study area is approximately six miles. Transportation improvement alternatives will include (1) upgrade existing roadway facilities; (2) construction of a roadway alignment on a new location; (3) mass transit improvements (new facilities and/or upgrade existing facilities); and (4) multi-modal facilities. A "No-Action" alternative will also be evaluated. This study will be conducted in two phases. Phase I will include Public Coordination, Project Scoping, Summarizing Findings of the Needs Analyses, and Developing a Preliminary Alternatives Analysis. Phase II will include a road network and/or Corridor Location Design Study, Environmental Impact Statement, section 4(f) Evaluation, and Public and Agency Coordination. All work will be performed in accordance with the PennDOT Highway Project Development Process and all applicable and FHWA policies and procedures as set forth in PennDOT Design Manuals and Directives.

Proposed access improvements will be consistent with solving deficiencies that exist in capacity, safety and access as described in the previously completed Erie East Side Needs Analysis developed for the Erie County Department of Planning and will support County and local municipal Comprehensive Plans. The Transportation needs are:

- Improved capacity of existing transportation system to support existing and planned growth.
- Localized improvements to the existing street system to reduce high accident rates.
- Increased mass transit service in portions of the study area to serve existing and planned growth.

The area to be studied for improvements encompasses portions of the City of Erie, Lawrence Park Township, Millcreek Township, Wesleyville Borough and Harborcreek Township in Erie County, Pennsylvania. It is bounded to the north by Lake Erie, to the south by Interstate Route 90, to the east by Hannon Road and to the west by Pine Avenue and State Street.

The following environmental areas will be investigated for EIS preparation; traffic; air quality; noise and vibration; surface water resources; aquatic environments; floodplains, groundwater; soils and geology; wetlands; vegetation and wildlife; endangered species; agricultural lands assessment; visual; socioeconomics and land use; construction impacts; energy; municipal, industrial, and hazardous waste facilities; historic structures and archeological sites; section 4(f) evaluation; and wild and scenic rivers.

A series of public meetings will be held in the project area beginning in May, 1993. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to PennDOT or the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 22, 1993.

**George L. Hannon,**

*Assistant Division Administrator, Harrisburg, Pennsylvania.*

[FR Doc. 93–18504 Filed 8–3–93; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

July 28, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* 1545–0126.
*Form Number:* IRS Form 1120–F.
*Type of Review:* Revision.
*Title:* U.S. Income Tax Return of a Foreign Corporation.
*Description:* Form 1120–F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120–F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.
*Respondents:* Businesses or other for-profit.
*Estimated Number of Respondents/Recordkeepers:* 18,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:* Recordkeeping—103 hours, 47 minutes. Learning about the law or the form—39 hours, 53 minutes. Preparing the form—70 hours, 19 minutes. Copying, assembling, and sending the form to the IRS—7 hours, 47 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 3,991,860 hours.

*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports, Management Officer.*

[FR Doc. 93–18499 Filed 8–3–93; 8:45 am]

BILLING CODE 4830-01-P

## Public Information Collection Requirements Submitted to OMB for Review

July 28, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### U.S. Customs Service

*OMB Number:* 1515–0002.

*Form Number:* CF 7507.

*Type of Review:* Extension.

*Title:* General Declaration (Outward/Inward).

*Description:* CF 7507 allows the agent or pilot to make entry or exit of the aircraft as required by statute. The form is used to document clearance by the arriving aircraft at the required inspection facilities and inspections by appropriate regulatory staff.

*Respondents:* Businesses or other for-profit.

*Estimated Number of Respondents:* 500.

*Estimated Burden Hours Per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 124,950 hours.

*Clearance Officer:* Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports, Management Officer.*

[FR Doc. 93–18500 Filed 8–3–93; 8:45 am]

BILLING CODE 4830-01-P

## Public Information Collection Requirements Submitted to OMB for Review

July 28, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### U.S. Customs Service

*OMB Number:* New.

*Form Number:* None.

*Type of Review:* New collection.

*Title:* Trade Survey on Electronic Invoicing.

*Description:* Customs Service will survey the importing community to assist in identifying the state of the market, user needs and expectations, market potential, barriers and incentives, and necessary programming, training and equipment resources required for the expansion of the electronic invoicing program.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents:* 250.

*Estimated Burden Hours Per Respondent:* 5 minutes.

*Frequency of Response:* Other (One-Time).

*Estimated Total Reporting Burden:* 63 hours.

*Clearance Officer:* Ralph Meyer, (202) 927–1552,U.S. Customs Service, Paperwork Management Branch, Room 6316 1301 Constitution Avenue, NW., Washington, DC 20229.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports, Management Officer.*

[FR Doc. 93–18501 Filed 8–3–93; 8:45 am]

BILLING CODE 4830-00-P

## UNITED STATES COMMISSION ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS

### Meeting

**AGENCY:** United States Commission on Improving the Effectiveness of the United Nations.

**ACTION:** Notice of public meeting.

**SUMMARY:** The purpose of this meeting is to vote on the Commission's final report. The meeting is a continuation of the July 26, 1993 meeting. The Commission is unable to defer this meeting to provide the customary 15-day advance notice because of the press of deadlines.

**DATES:** August 5, 1993, 10 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held in room 2186 of the Rayburn House Office Building, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Kathleen O'Leary, Administrative Officer, 1825 Connecticut Avenue, Ste. 1011, Washington, DC 20009: (202) 673–5012; telefax: (202) 673–5007.

Dated: July 30, 1993.

Gregory Wierzynski,

*Executive Director.*

[FR Doc. 93–18599 Filed 8–3–93; 8:45 am]

BILLING CODE 6820-BB-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. 301–75]**

### Section 306 Review of the U.S.-Japan Supercomputer Agreement

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written comments by Friday, October 1, 1993 in connection with section 306 review of implementation of the U.S.-Japan Supercomputer Agreement.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is seeking the views of interested parties on the implementation by the Government of Japan of the U.S.-Japan Supercomputer Agreement (Agreement). The review will assess all factors relevant to the implementation of the Agreement by the Government of Japan. It will in particular assess whether

current and upcoming Japanese Government procurement of supercomputers is being carried out in accordance with the provisions of the Agreement. USTR is especially interested in the experience and views of those companies participating in Japanese Government supercomputer procurement under the supplementary budget of the current Japanese Fiscal Year (April 1, 1993–March 31, 1994).

**FURTHER INFORMATION CONTACT:** For information concerning the review, contact David A. Gutschmit, Office of Japan and China, USTR, (202) 395–5070 or Laura B. Sherman, Office of the General Counsel, USTR, (202) 395–3150. For information concerning filing procedures contact Dottie Balaban, Office of the General Counsel, USTR (202) 395–3432.

**SUPPLEMENTARY INFORMATION:** On June 16, 1989, USTR initiated an investigation under section 302(b)(1) of the Trade Act of 1994, as amended, concerning Japan's government procurement practices with respect to supercomputers (54 FR 26137). These practices had been identified on May 26, 1989 as "priority practices" of a "priority country" under section 310(a)(1) of the 1974 Trade Act, as amended. Subsequent to the initiation of the investigation, the United States sought to negotiate an agreement with Japan to replace a 1987 supercomputer agreement, under which no foreign supercomputers had been procured.

On June 15, 1990, USTR concluded with the Government of Japan and exchange of letters, with attachment (the 1990 Supercomputer Agreement), to replace the 1987 agreement. The 1990 Agreement specifies detailed procedures the Government of Japan agreed to use in government procurement of supercomputers. The Japanese Government committed that its purchasing entities would follow open, competitive and transparent procedures in acquisitions. These procedures include the establishment of a bid protest system. Copies of the 1990 Agreement are available in the USTR Reading Room (room 101).

Reflecting grave concern that Japan may not be adhering to the terms of the 1990 Supercomputer Agreement, the United States Trade Representative announced on April 30, 1993 that USTR would undertake a special review under section 306 of the Trade Act of 1974, as amended, of Japanese actions under the Agreement. In the course of the review, USTR will evaluate Japanese Government implementation of the Agreement to date, and will closely scrutinize Japan's conduct in each of the supercomputer procurements upcoming during the current Japanese fiscal year (April 1, 1993–March 31, 1994). Based on this review and the outcome of the current procurement cycle, USTR will determine whether or not Japan is in compliance with the terms of the Agreement.

USTR is requesting written comments on the implementation by the Government of Japan of the 1990 U.S.-Japan Supercomputer Agreement. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due no later than 12 noon, Friday, October 1, 1993. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 233, 600 Seventeenth Street, NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–75) open to public inspection pursuant to 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by the nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket, which is open to public inspection.

**Irving A. Williamson,**

*Chairman, Section 301 Committee.*

[FR Doc. 93–18505 Filed 8–3–93; 8:45 am]

BILLING CODE 3190–01–M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 148
Wednesday, August 4, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**UNITED STATES PAROLE COMMISSION**

**Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)**

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at approximately nine a.m. on Tuesday, July 27, 1993 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide nineteen appeals from National Commissioner's decisions pursuant to 28 C.F.R. § 2.27. Also discussed were personnel matters and one application for an exemption under 29 U.S.C. § 504(a). Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and John R. Simpson.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 28, 1993.

**Edward F. Reilly, Jr.,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 93–18660 Filed 7–30–93; 5:08 pm]

BILLING CODE 4410–01–M

**NATIONAL SCIENCE BOARD**

**DATE AND TIME:**

August 12, 1993, 2:30 p.m., Open Session
August 13, 1993, 9:30 a.m., Closed Session
August 13, 1993, 12:00 p.m., Open Session

**PLACE:** National Science Foundation, 1800 G Street, NW, Rm. 540, Washington, DC 20550.

**STATUS:**

Part of this meeting will be open to the public
Part of this meeting will be closed to the public

**MATTERS TO BE CONSIDERED:**

*Thursday, August 12, 1993*

*Open Session (2:30 p.m.–4:00 p.m.)*

1. Minutes of June 1993 Meeting
2. Chairman's Report
3. Acting Director's Report
4. Presentation on Civil Infrastructure

*Friday, August 13, 1993*

*Closed Session (9:30 a.m.–12:00 p.m.)*

5. Grants and Contracts
6. Minutes of June 1993 Meeting
7. FY 95 Budget

*Open Session (12:00 Noon–12:15 p.m.)*

8. Reports from Committees
9. Other Business

**Marta Cehelsky,**

*Executive Officer.*

[FR Doc. 93–18661 Filed 7–30–93; 5:09 pm]

BILLING CODE 7555–01–M

**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisons of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 2, 1993.

A closed meeting will be held on Tuesday, August 3, 1993, at 2:30 p.m. An open meeting will be held on Friday, August 6, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200,402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 3, 1993, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

**Opinions**

The subject matter of the open meeting scheduled for Friday, August 6, 1993, at 10:00 a.m., will be:

Consideration of whether to issue interpretive guidance regarding the executive compensation disclosure requirements and to clarify an issuer's obligation with respect to stock lists and mailing of shareholder soliciting material. The Commission also will consider whether to propose for comment several refining and technical amendments to the executive compensation disclosure rules. For further information, please contact Gregg W. Corso, Paula Dubberly, Brian L. Henry, or Thomas D. Twedt at (202) 272–3098.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Luparello at (202) 272–2100.

Dated: July 20, 1993.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–18706 Filed 8–2–93; 11:45 am]

BILLING CODE 8010–01–M

Federal Register

Wednesday
August 4, 1993

Part II

# Environmental Protection Agency

## Draft Report: Principles of Neurotoxicity Risk Assessment; Notice

VOL 58 ISS 148 AG 4 1993 UMI

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4577–5]

### Draft Report: Principles of Neurotoxicity Risk Assessment

**AGENCY:** Environmental Protection Agency.

**ACTION:** Request for comments on the Draft Report: Principles of Neurotoxicity Risk Assessment.

**SUMMARY:** The U.S. Environmental Protection Agency today is publishing and requesting comments on a document entitled Draft Report: Principles of Neurotoxicity Risk Assessment, which was prepared by the Working Party on Neurotoxicology under the auspices of the Subcommittee on Risk Assessment of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET). The purpose of this report is to articulate a view of neurotoxicology that scientists generally hold in common today and to draw on this understanding to generate a series of general principles that can be used to establish guidelines for assessing neurotoxicity risk. It is not the intent of this report to provide specific directives for how neurotoxicity risk assessment should be performed. The intent of this document is to provide the scientific basis for developing a cogent strategy for neurotoxicity risk assessment.

The public is invited to comment; public comments will be considered in revising the report. Commenters are asked to focus specifically on several issues: (1) Definitions of neurotoxicity and adverse effect, (2) general state of knowledge of the neurosciences relating to neurotoxicology, (3) appropriateness of methodologies to detect and characterize neurotoxic effects in humans, (4) appropriateness of methodologies to detect and characterize neurotoxic effects in animals, (5) adequacy of tier-testing approaches for chemical evaluations, and (6) adequacy of generic assumptions in quantitative and qualitative neurotoxicology risk assessment.

The complete text of the draft report is published as the last section of this notice.

**DATES:** The draft report is available for a 90-day public review and comment period. Comments must be in writing and postmarked by November 2, 1993.

**INSPECTION:** This notice, references, supporting documents, and other relevant materials are available for inspection at the ORD Public Information Shelf at the EPA Headquarters Library, 401 M Street, SW, Washington, DC; telephone: (202) 260–5926. The library is open daily from 10 a.m. to 4 p.m., except weekends and Federal holidays.

**ADDRESSES:** Comments should be sent to Dr. Hugh A. Tilson, Project Officer for Principles of Neurotoxicity Risk Assessment, Neurotoxicology Division (MD–74B), Health Effects Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; or fax (919) 541–4849.

Reprints of the Draft Report: Principles of Neurotoxicity Risk Assessment may be obtained from the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; fax (513) 569–7566. Please provide name, mailing address, and the EPA document number, EPA/600/–Z–93/001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Hugh A. Tilson, Neurotoxicology Division (MD–74B), Health Effects Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–2671; fax (919) 541–4849.

**SUPPLEMENTARY INFORMATION:** This document is the result of the combined efforts of senior scientists of 12 Federal agencies comprising the ad hoc Interagency Committee on Neurotoxicology, including the Agency for Toxic Substances and Disease Registry, Center for Food Safety and Applied Nutrition, Center for Biologics Evaluation and Research, Center for Drug Evaluation and Research, Consumer Product Safety Commission, Department of Agriculture, Department of Defense, Environmental Protection Agency, National Center for Toxicological Research, National Institutes of Health, National Institute for Occupational Safety and Health, and National Toxicology Program. Discussions were held under the auspices of the Working Party on Neurotoxicology of the Subcommittee on Risk Assessment of the Federal Coordinating Council for Science, Engineering, and Technology. The draft report, a product of the Working Party on Neurotoxicology, contains six chapters: an introduction, an overview of the discipline of neurotoxicology, a review of methods for assessing human neurotoxicity, a review of methods for assessing animal neurotoxicity, an overview of principles of neurotoxicity risk assessment, and a general summary.

The draft report was prepared in view of the decision-making processes currently used by many regulatory agencies relating to neurotoxicity risk assessment. It is intended that the principles reviewed in this document will serve as the basis for consistent regulatory neurotoxicity guidelines to be used by Federal agencies to meet their respective legislative mandates. This document is not meant to be used to perform risk assessment nor does it recommend one approach or strategy. The document reviews the science of neurotoxicology and attempts to formulate general assumptions and principles that could lead to such approaches or strategies.

The draft report has undergone preliminary interagency review under the auspices of the Subcommittee on Risk Assessment of FCCSET. Public comments and a concurrent external scientific peer review will contribute to the development of a final report by the Working Party on Neurotoxicology that will provide the scientific basis for neurotoxicology risk assessment strategies to be used by a broad segment of Federal agencies.

Dated: June 29, 1993.

**Carl R. Gerber,**

*Acting Assistant Administrator for Research and Development.*

### Draft Report: Principles of Neurotoxicology Risk Assessment

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## 1. Introduction

### *1.1. Background*

Over the years, agencies and programs have been established to deal with hazardous substances, with a focus on deleterious long-term effects, such as neurotoxicity (Reiter, 1987). Recent evidence indicates that exposure to neurotoxic agents may constitute a significant health problem (WHO, 1986; OTA, 1990; chapter 2). Table 1–1 lists the four Federal regulatory agencies with authority to regulate either exposure to or use of chemicals and that require data reporting on assessment of hazards. Regulatory bodies vary greatly in their mandate to require approval of chemicals prior to entering the marketplace and to regulate subsequent exposure (Fisher, 1980) (Table 1–2). The Occupational Safety and Health Administration (OSHA) cannot require chemical testing by the manufacturer whereas all other agencies can. Only the Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA) have authority for premarketing testing of chemicals (i.e., FDA for drugs and food additives and EPA for pesticides). EPA can, under some circumstances, require premarket testing of industrial and agricultural chemicals. The Consumer Product Safety Commission (CPSC) regulates a number of consumer products including household chemicals and fabric treatments. Laws administered by CPSC require cautionary labeling on all hazardous household products whether the hazard is based on acute or chronic effects. These laws also provide the authority to ban hazardous products and to ask for data in support of product labeling.

TABLE 1–1.—MAJOR REGULATORY AGENCIES

| Agency | Statute and sources covered |
|---|---|
| Food and Drug Administration (FDA). A unit of the Department of Health and Human Services with authority over the regulation of medical and veterinary drugs; foods and food additives; cosmetics. | Food, Drug, and Cosmetics Act for food additives; color in cosmetics; medical devices; animal drugs of medical and feed additives. |
| Occupational Safety and Health Administration (OSHA). A unit of the Department of Labor that regulates workplace conditions. | Occupational Safety and Health Act covers toxic chemicals in the workplace. |

TABLE 1–1.—MAJOR REGULATORY AGENCIES—Continued

| Agency | Statute and sources covered |
|---|---|
| Environmental Protection Agency (EPA). Independent agency (i.e., not part of a Cabinet department); administers a number of diverse laws concerned with human health and the environment. | Toxic Substances Control Act requires premanufacture evaluation of all new chemicals (other than foods, food additives, drugs, pesticides, alcohol, tobacco); allows EPA to regulate existing chemical hazards not sufficiently controlled under other laws.<br>Clean Air Act requires regulation of hazardous air pollutants.<br>Federal Water Pollution Control Act governs toxic water pollutants.<br>Safe Drinking Water Act covers drinking water contaminants.<br>Federal Insecticide, Fungicide, and Rodenticide Act covers pesticides.<br>Resource Conservation and Recovery Act covers hazardous wastes.<br>Marine Protection Research and Sanctuaries Act covers ocean dumping. |
| Consumer Product Safety Commission (CPSC). Regulates a variety of consumer products including household chemicals and fabric treatments. | Federal Hazardous Substances Act covers "toxic" household products.<br>Consumer Product Safety Act covers dangerous consumer products.<br>Poison Prevention Packaging Act covers packaging of dangerous children's products.<br>Lead-Based Paint Poison Prevention Act covers use of lead paint in federally assisted housing. |

TABLE 1–2.— AUTHORITIES FOR TOXICITY TESTING

| Agency | Law | Coverage | Authorities | | |
|---|---|---|---|---|---|
| | | | Premarketing approval | Testing by manufacturer | Reporting of data |
| FDA | Food, Drug, and Cosmetics Act | Drugs and foods | X | X | X |
| | | Food additives and cosmetics | X | X | |
| EPA | Federal Insecticide, Fungicide, and Rodenticide Act. | Pesticides | X | X | X |
| | Toxic Substances Control Act | Industrial chemicals | (X)[1] | X | X |
| | Clean Air Act | Air pollutants. | | | |
| | Resource Conservation and Recovery Act. | Industrial waste | | X | X |
| OSHA | Occupational Safety and Health Act | Occupational exposure | | | X |
| CPSC | Federal Hazardous Substances Act | Consumer products | | | X |
| | Consumer Product Safety Act | Consumer products | | | X |

[1] Can require testing based on available data.

*1.2. Purpose of This Report*

The purpose of this document is to: (1) Articulate a view of neurotoxicity that scientists generally hold in common today and (2) draw upon this understanding to compose, as was done here by senior scientists from a number of Federal agencies, a series of general principles that can be used to establish general guidelines for assessing neurotoxicity risk. It is not the intent of this report to provide specific directives to agencies with respect to their own approach for neurotoxicity risk assessment. This document is intended to provide the scientific basis for the development of a cogent strategy for neurotoxicology risk assessment as needed by each agency.

Because of present gaps in understanding, the principles contained in this document are based on the best judgment of those involved in writing this document, as well as statements of what is generally accepted as fact. There has been, however, an attempt to distinguish where possible between the different types of information presented.

The principles contained in this document can serve as the basis for consistent regulatory neurotoxicology guidelines that the Federal agencies can tailor to meet the requirements of the legislative acts they are charged to implement. This document should be viewed broadly as part of an ongoing process within the Federal Government to periodically update and review the current scientific understanding and regulatory utility of neurotoxicity risk assessment.

This document is the result of the combined efforts of senior scientists from the following Federal health-related units, operating under the direction of the Office of Science and Technology Policy (OSTP):

Agency for Toxic Substances and Disease Registry (ATSDR)
Center for Biologics Evaluation and Research (CBER), FDA
Center for Drug Evaluation and Research (CDER), FDA
Center for Food Safety and Applied Nutrition (CFSAN), FDA
Consumer Product Safety Commission
Department of Agriculture (USDA)
Department of Defense (DoD)
Environmental Protection Agency
National Center for Toxicological Research (NCTR), FDA
National Institutes of Health (NIH)
National Institute for Occupational Safety and Health
National Toxicology Program (NTP)

*1.3. Context of This Report*

This document was prepared in light of a decision-making process used by many regulatory agencies pertaining to the assessment of neurotoxicity risks posed by chemical agents. The scientific basis for such assessment can be best understood by examining the decision-making process in some detail.

Risk can be thought of as being composed of two aspects, each of which can be addressed by science, i.e., hazard and exposure assessment. Although other definitions have been used historically, this document conforms to

present usage. Hazard generally refers to the toxicity of a substance and is deduced from a wide array of data, including those from epidemiological studies or controlled clinical trials in humans, short- and long-term toxicological studies in animals, and studies of mechanistic information and structure-activity relationships. Exposure generally refers to the amount of a substance with which people come in contact. The risk in a quantitative risk assessment is estimated by considering the results of the exposure and hazard assessments. As either the hazard or exposure approaches zero, the risk also approaches zero.

As a first step in assessing the neurotoxic risk associated with the use of a particular chemical substance, the qualitative evidence that a given chemical substance is likely to be a human neurotoxicant must be evaluated. In this step, as in the whole process, a number of assumptions and approximations must be made in order to deal with inherent limitations found in the existing data bases. Then, estimates of human exposure and distribution of exposures likely to be encountered in the population are made. In the absence of dose-response relationships in humans, one or more methods for estimating the dose-response relationship including doses below those generally used experimentally must also be evaluated. Finally, the exposure assessment is combined with the dose-response relationship to generate an estimate of risk. The various ways in which these steps are conducted and combined and their attendant uncertainties constitute what is generally referred to as "neurotoxicity risk assessment."

Some legislation calls for action in the presence of any risk. Other forms of legislation use the concept of unreasonable risk, defined in some acts as a condition in which the risks outweigh the benefits. A spectrum of regulatory responses, from simply informing the public of a risk through restricted use to a complete ban, may be available to bring the risks and benefits into appropriate balance.

This document does not perform a risk assessment nor does it suggest that one method of neurotoxicology risk assessment is better than another. Rather, it attempts to review the science of chemical neurotoxicology and develops from this review a set of general principles. It is not a comprehensive review nor a document written for the lay public; this document is a semitechnical review that evaluates the impact of scientific findings of the last decade on general assumptions or principles important to risk assessment. This is based on the belief that elucidation of the basic mechanisms underlying neurotoxicity and the identification of neurotoxic agents and conditions, when coupled to research aimed at identifying and characterizing the problems caused by such agents, should provide the best scientific bases for making sound and reasonable judgments. These overlapping approaches to evaluating the problems of neurotoxicology should form a strong foundation for decision-making.

### *1.4. Content of This Report*

Including the Introduction (chapter 1), this document contains six chapters. Chapter 2 provides an overview of the discipline of neurotoxicology. It is important to understand the scope of the problem as it relates to neurotoxicology, including: (1) Definitions of neurotoxicity and adverse effect, (2) Examples of neurotoxicity and incidents of exposure, and (3) Federal response to neurotoxicology. Chapter 2 also discusses the basic principles of toxicology that apply generally to the evaluation of neurotoxicity. Issues such as dose, exposure, target site, and the intended use of the chemical are discussed, as are principles of pharmacodynamics, chemical interactions, and the concept of threshold. Chapter 2 also lays the neurobiological basis for understanding how and where chemicals can affect the nervous system and provides examples of such chemical types. Finally, chapter 2 discusses special considerations for neurotoxicology including the issue of susceptible populations, the blood brain barrier, and the limited capability of the nervous system to repair following chemical insult.

Chapter 3 examines methods for assessing human neurotoxicity. Neurologic evaluations, neuropsychological testing, and applicability of methods used in clinical evaluations and case studies are discussed in this chapter. Epidemiologic study designs, endpoints, and methods are also discussed, as well as problems of causal inference and applications and limitations of epidemiologic and field study methods for risk assessment. Chapter 3 also describes human laboratory exposure studies, including methods for assessing neurobehavioral function, self-report methods for assessing subjective states, and a number of other methodological issues. This chapter also discusses the comparability of human and animal laboratory methods and special considerations in human neurotoxicity assessments.

Chapter 4 assesses methods for evaluating animal neurotoxicity. Discussed in this chapter is the role that animal models play in the assessment of chemicals for neurotoxicity, the validity of animal models, and experimental design considerations in animal neurotoxicological studies. Also included in this chapter is a discussion of tier-testing approaches in chemical evaluations. Specific endpoints used in animal neurotoxicological studies are also discussed, including methods for neurobehavioral, neurophysiological, neuroanatomical, and neurochemical assessments. Developmental neurotoxicology and in vitro neurotoxicology are also described in this chapter.

Chapter 5 of this document discusses principles of neurotoxicity risk assessment. This chapter evaluates the generic assumptions in neurotoxicity risk assessment, ending with a discussion of uncertainty reduction and identification of knowledge gaps.

Chapter 6 is a general summary of the material presented in the first five chapters.

## 2. Overview of Neurotoxicology

### *2.1. Scope of the Problem*

#### 2.1.1. Introduction

Chemicals are an integral part of our lives, with the capacity to both improve as well as endanger our health. The general population is exposed to chemicals with neurotoxic properties in air, water, foods, cosmetics, household products, and drugs used therapeutically or illicitly. Naturally occurring neurotoxins, such as fish and plant toxins, present other hazards. During the daily life of an ordinary person, there is a multitude of exposures, both voluntary and unintentional, to neuroactive substances. Under conditions of multiple exposures, identifying the substance responsible for an adverse response may be difficult. The EPA's inventory of toxic chemicals is greater than 65,000 and increasing yearly. An overwhelming majority of the materials in commercial use have not been tested for their neurotoxic potential (NRC, 1984).

It is not known how many chemicals are neurotoxic to humans due to the limited number tested for adverse effects on the nervous system. However, estimates have been made for subsets of substances. A large percentage of the more than 500 registered active pesticide ingredients are neurotoxic to varying degrees. Of 588 chemicals listed by the American Conference of Government and Industrial Hygienists

(ACGIH), 167 affected the nervous system or behavior (Anger, 1984). Anger (1990a) estimated that of the approximately 200 chemicals to which one million or more American workers are exposed, more than one-third may have adverse effects on the nervous system. Anger (1984) also recognized neurotoxic effects as one of the ten leading workplace disorders. In addition, a number of therapeutic substances, including some anticancer and antiviral agents, and abused drugs can cause adverse or neurotoxicological side effects (OTA, 1990). It has been estimated that there is inadequate toxicological information available for more than three-fourths of the 12,860 chemicals with a production volume of one million pounds or more (NRC, 1984). Assuming that up to 25 percent of those chemicals are neurotoxic, approximately 2,500 high-volume agents may have unidentified neurotoxicity (Reiter, 1987).

2.1.2. Examples of Neurotoxicity and Incidents of Exposure

There is a long-standing history associating certain neurological and psychiatric disorders to exposure to a toxin or chemical of an environmental origin (OTA, 1990) (Table 2–1). Lead is one of the earliest examples of a neurotoxic chemical with widespread exposure. This metal is widely distributed with major sources of inorganic lead including industrial emissions, lead-based paints, food, beverages, and the burning of leaded gasolines. Organic lead compounds such as tetraethyl lead have been reported to produce a toxic psychosis (Cassells and Dodds, 1946). At relatively low levels, lead can cause a variety of neurobehavioral problems, learning disorders, and altered mental development (Bellinger et al., 1987; Needleman, 1990). Over the years, Federal government regulations have been developed to decrease human exposure to lead, and an intervention level of 10 µg/dcl while blood has been recommended (CDC, 1991).

TABLE 2–1.—HUMAN NEUROTOXIC EXPOSURES

| Year(s) | Location | Substance | Comments |
|---|---|---|---|
| 370 B.C. | Greece | Lead | Lead toxicity recognized in mining industry. |
| 1st century A.D. | Rome | Lead | Vapors recognized as toxic. |
| 1837 | Scotland | Manganese | Chronic manganese poisoning described |
| 1924 | United States (New Jersey). | Tetraethyl lead | Workers suffer neurologic symptoms. |
| 1930 | United States (Southeast). | Tri-o-cresyl-phosphate (TOCP). | Chemical contaminant added to Ginger Jake, an alcoholic beverage substitute; more than 5,000 paralyzed, 20,000 to 100,000 affected. |
| 1930's | Europe | Apiol | Drug containing TOCP causes 60 cases of neuropathy. |
| 1932 | United States (California). | Thallium | Contaminated barley laced with thallium sulfate poisons family, causing neurologic symptoms. |
| 1937 | South Africa | TOCP | Paralysis develops after use of contaminated cooking oil. |
| 1946 | England | Tetraethyl lead | Neurologic effects observed in people cleaning gasoline tanks. |
| 1950's | Japan (Minamata) | Methylmercury | Fish and shellfish contaminated with mercury are ingested, causing neurotoxicity. |
| 1950's | France | Organotin | Medication (Stalinon) containing diethyltin diiodide results in poisoning. |
| 1950's | Morocco | Manganese | Miners suffer chronic manganese intoxication. |
| 1956 | Turkey | Hexachlorobenzene | Hexachlorobenzene causes poisoning. |
| 1956 | Japan | Clioquinol | Drug causes neuropathy. |
| 1959 | Morocco | TOCP | Cooking oil contaminated with lubricating oil causes poisoning. |
| 1960 | Iraq | Methylmercury | Mercury-treated seed grain causes neurotoxicity. |
| 1964 | Japan | Methylmercury | Methylmercury neurotoxicity. |
| 1968 | Japan | PCBs | Polychlorinated biphenyls are leaked into rice oil, causing toxicity. |
| 1969 | Japan | n-Hexane | Neuropathy due to n-hexane exposure. |
| 1969 | United States (New Mexico). | Methylmercury | Fungicide-treated grain results in alkyl mercury poisoning. |
| 1971 | United States | Hexachlorophene | Hexachlorophene-containing disinfectant is found to be toxic to nervous system. |
| 1971 | Iraq | Methylmercury | Methylmercury used as fungicide to treat seed grain causes poisoning. |
| 1972 | France | Hexachlorophene | Hexachlorophene poisoning of children. |
| 1973 | United States (Ohio) | Methyl n-butylketone | Fabric production plant employees exposed to MnBK solvent suffer polyneuropathy. |
| 1974–1975 | United States (Virginia). | Chlordecone (Kepone) | Chemical plant employees exposed to insecticide suffer severe neurologic problems. |
| 1976 | United States (Texas) | Leptophos (Phosvel) | At least nine employees suffer serious neurologic problems after exposure to insecticide. |
| 1977 | United States (California). | Dichloro- propene (Telone II). | People hospitalized after exposure to pesticide. |
| 1979–1980 | United States (Texas) | 2-t-Butylazo-2-hydroxy-5-methyl-hexane (BHMH) (Lucel-7). | Employees of manufacturing plant experience serious neurologic problems. |
| 1980's | United States | Methyl- phenyl-tetrahy- dropyridine (MPTP). | Impurity in synthesis of illicit drug causes Parkinson's disease-like effects. |
| 1981 | Spain | Toxic oil | People ingesting toxic subetance in oil suffer severe neuropathy. |
| 1985 | United States and Canada. | Aldicarb | People experience neuromuscular deficits after ingestion of contaminated melons. |

TABLE 2–1.—HUMAN NEUROTOXIC EXPOSURES—Continued

| Year(s) | Location | Substance | Comments |
|---|---|---|---|
| 1987 | Canada | Domoic acid | Ingestion of mussels contaminated with domoic acid causes illnesses. |
| 1988 | India | TOCP | Ingestion of adulterated rapeseed oil causes polyneuritis. |
| 1989 | United States | L-tryptophan-containing products. | Ingestion of a chemical contaminant associated with the manufacture of L-tryptophan results in eosinophilia-myalgia syndrome. |

Mercury compounds are potent neurotoxic substances and have caused a number of human poisonings, with symptoms of vision, speech, and coordination impairments (Chang, 1980). Erethism, a syndrome with such neurologic features as tremor and behavioral symptoms as anxiety, irritability, and pathologic shyness, is seen in people exposed to elemental mercury (Bidstrup, 1964). One major incidence of human exposure occurred in the mid-1950's when a chemical plant near Minamata Bay, Japan, discharged mercury as part of waste sludge. An epidemic of mercury poisoning developed when the local inhabitants consumed contaminated fish and shellfish. Congenitally affected children displayed a progressive neurological disturbance resembling cerebral palsy and manifested other neurological problems as well. In 1971, an epidemic occurred in Iraq from methylmercury used as a fungicide to treat grain (OTA, 1990).

Manganese is used in metal alloys and has been proposed to replace lead in gasoline. It is an essential dietary substance for normal body functioning yet exposure to elevated levels of manganese is highly toxic and produces a dyskinetic motor syndrome similar to Parkinson's disease (Cook et al., 1974). Exposed miners in several countries have suffered from "manganese madness" characterized by hallucinations, emotional instability, and numerous neurological problems. Long-term manganese toxicity produces muscle rigidity and staggering gait similar to that seen in patients with Parkinson's disease (Politis et al., 1980).

A Parkinsonian-like syndrome was also observed in people who accidentally ingested 1-methyl-4-phenyl-1,2,3,6-tetrahydropyridine (MPTP) (Langston et al., 1983). MPTP was a byproduct of a meperidine derivative sold illicitly as "synthetic heroin."

Organic solvents are encountered frequently in occupational settings. Most solvents are volatile, i.e., they can be converted from a liquid to a gaseous state and readily inhaled by the worker. They are also lipid soluble and readily accumulate in the fat deposits of the exposed organism. An example of a solvent exposure in humans is carbon disulfide. Workers exposed to this solvent were found to have an increased frequency of depression and suicide (Seppalainen and Haltia, 1980). Furthermore, repeated exposure to organic solvents is suspected of producing chronic encephalopathy. Workers exposed to methyl-n-butyl ketone, a dye solvent and cleaning agent, displayed peripheral nervous system neuropathy involving degeneration of nerve fibers (Spencer and Schaumburg, 1980). Solvents including ether, ketones, alcohols, and various combinations are commonly used in glues, cements, and paints and when inhaled can be neurotoxic. Repeated abuse of such solvents can lead to permanent neurological effects due to severe and permanent loss of nerve cells (OTA, 1990).

Pesticides are one of the most commonly encountered classes of neurotoxic substances. These can include insecticides (used to control insects), fungicides (for blight and mildew), rodenticides (for rodents such as rats, mice, and gophers), and herbicides (to control weeds). Active ingredients are combined with so-called inert substances to make thousands of different pesticide formulations. Workers who are overexposed to pesticides may display obvious signs of poisoning, including tremors, weakness, ataxia, visual disturbances, and short-term memory loss (Ecobichon and Joy, 1982). Chlordecone exposure results in nervousness and tremors (Cannon et al., 1978). The organophosphorous insecticides have neurotoxic properties and account for approximately 40 percent of registered pesticides. A delayed neurotoxicity can be seen as a result of exposure to certain organophosphate pesticides, producing irreversible loss of motor function and an associated neuropathology (Ecobichon and Joy, 1982). Organophosphate and carbamate insecticides are known to interfere with a specific enzyme, acetylcholinesterase (AChE) (Davis and Richardson, 1980). Paralysis has also been reported following consumption of nonpesticide organophosphate products such as tri-o-cresylphosphate (TOCP).

Neurotoxicities in humans, domestic livestock, and poultry associated with fungal toxins (mycotoxins) have been well documented (Kurata, 1990; Aibara, 1986; Wyllie and Morehouse, 1978). Mycotoxins not only have a negative economic effect on animal production, but they also represent a definite threat to human health. Mycotoxins occur in forages, field crops, and grains used for livestock; they also are incorporated into cereals, grains, and grain-based products used for human consumption. Therefore, human exposure may occur either through direct consumption of these products or secondarily through consumption of meat, milk, or eggs. An example of human exposure to fungal toxins is *Claviceps purpurea*- or *C. paspali*-infected wheat, barley, and oats used for bread and as a dietary supplement for livestock. These fungal toxins are notorious for producing the gangrenous and convulsive forms of the disease known as "ergotism" (Bove, 1970). These fungi are in the family *Clavicipitaceae* and produce a group of compounds known as ergot alkaloids, which have neurotropic, uterotonic, and vasoconstrictive activities. They may act as dopamine agonists or serotonin antagonists, and also block alpha-adrenergic receptors. Since there are numerous naturally occurring ergot alkaloids, this represents only part of their pharmacopoeia (Berde and Schield, 1978). These alkaloids are highly toxic and cause both acute and chronic poisonings. Although guidelines now limit the amount of *Claviceps*-contaminated, or "ergot"-contaminated, grains, these compounds may enter human food sources through secondary mechanisms. Other fungi associated with ergot-like syndromes in livestock include *Acremonium lolii* (Gallagher et al., 1984) and *A. coenophialum* (Thompson and Porter, 1990).

Cyclopiazonic acid (CPA) is an indole tetramic acid produced by *Aspergillus flavus, A. oryzae, Penicillium cyclopium,* and *P. camemberti.* This mycotoxin is suspected of causing "kodua poisoning" in humans who consumed kodo millet seed in India

(Rao and Husain, 1985). *Fusarium moniliforme* is a common fungal infection in corn (Bacon et al., 1992) and directly related to neurotoxic syndrome in horses known as equine leukoencephalomalaisia (ELEM).

Natural plant toxins also represent a health risk to both livestock and humans. Movement toward limited uses of herbicides, fungicides, and no-till agricultural practices increases the possibility of noxious weeds and weed seeds being incorporated into food products. Ergot alkaloids also are produced by morning glories (*Ipomea violacea*) and may be incorporated into soybeans, corn, peas, etc., during harvest. Export regulations limit morning glory-contaminated soybeans because of the hallucinogenic and other effects produced by ergot alkaloids. Jimson weed (*Datura stramonium*), another weed incorporated into agricultural commodities, produced scopolamine, hyocyamine, and stropine, all of which have parasympatholytic (anticholinergic) activities.

Recently, an outbreak of toxic encephalopathy caused by eating mussels contaminated with domoic acid, an excitotoxin, was reported (Perl et al., 1990).

2.1.3. Federal Response

In the United States, several agencies, including EPA, FDA, OSHA, CPSC, and ATSDR, have been given the mandate to regulate or evaluate public exposure to toxic chemicals (Tilson, 1989).

2.1.3.1. *Food and Drug Administration.* The FDA has the authority to regulate the use of food and color additives as well as to determine whether or not various foods are unsafe for human consumption because of adulteration by environmental contaminants. The manufacturer must supply adequate data to establish the safety of the food additives. Before marketing approval, the potential toxicity of proposed food and color additives is established in a battery of animal toxicity studies. During all of these studies, clinical signs of toxicity, including abnormal behavior, are monitored and abnormalities recorded. At the termination of these studies, tissues from all organs, including the brain, are sectioned and evaluated for both gross and histopathological changes, in addition to being evaluated for their clinical chemistry and hematology. None of the routinely required tests is specifically designed to assess neurotoxicity. If neurotoxic effects are detected during any of the standard toxicity tests, however, they must be reported. Specific neurotoxicity testing may then be required. The FDA is currently revising its guidelines for the safety assessment of direct food and color additives to include neurotoxicity as a routine element in toxicological testing.

The FDA also is authorized to regulate substances in food considered to be poisonous or deleterious. Unavoidable environmental contaminants in food fall into this category. The FDA determines a level at which the risk of exposure to the contaminant is acceptable. Based on this risk assessment, an action level or tolerance is established. Once the action level or tolerance is formally established, the FDA may take appropriate action to restrict adulterated food from the market if these standards are exceeded.

The FDA is responsible for assessing the toxicity of human therapeutic products. Many products have been shown to produce adverse effects on the nervous system at standard therapeutic doses as well as at higher doses. Before marketing approval is given, the toxicity of potential new products is assessed. A battery of animal toxicity study parameters relevant to the nervous system, including gross behavioral observation and gross and histopathological examination of the nervous tissue, are evaluated. This information is used to help guide the surveillance of human subjects for adverse effects that are assessed during clinical trials.

2.1.3.2. *Occupational Safety and Health Administration.* OSHA has been given the responsibility to ensure that the working environment is a safe and healthy place of employment. In the early 1970's, OSHA adopted the existing Federal standards, most of which were developed under the Walsh-Healy Act (including the 1968 ACGIH Threshold Limit Values), and approximately 20 consensus standards of the American National Standards Institute (ANSI) as Permissible Exposure Limits (PELs). Of the 393 remaining original PELs, 145 were set in part to protect the individual from neurotoxic effects.

Since the adoption of the initial standards, OSHA has issued new or revised health standards or work practices for 23 substances. Of these, the one concerning lead was based on nervous system effects. Four other compounds, inorganic arsenic, acrylonitrile, ethylene oxide, and 1,2-dibromo-3-chloropropane, were cited as causing various disturbances in the nervous system, but the standards for these were based primarily on carcinogenic effects.

In 1989, OSHA updated 428 exposure limits for air contaminants. Of these, 25 substances were categorized by OSHA as "substances for which limits are based on avoidance of neuropathic effects." In addition, 24 substances were included in the category "substances for which limits are based on avoidance of narcosis." However, OSHA stated that the categorization was intended as a tool to manage the large number of substances being regulated and not to imply that the category selected identified the most sensitive or the exclusive adverse health effects of that substance.

2.1.3.3. *National Institute for Occupational Safety and Health.* The Occupational Safety and Health Act established NIOSH as a Public Health Service (PHS) agency to develop and recommend criteria for prevention of disease and hazardous conditions in the workplace. NIOSH also performs research on occupational health issues and conducts worksite evaluations of suspected hazards. OSHA and the Mine Safety and Health Administration (MSHA) use NIOSH recommendations in the promulgation of new or revised health and safety standards.

In establishing recommended exposure limits (RELs) for chemicals, NIOSH examines all relevant scientific information about a given compound and attempts to identify exposure limits that will protect all workers from adverse effects. NIOSH has recommended standards for approximately 644 chemicals or classes of chemicals. For 214 (33 percent) of these, neurotoxicity was cited as a health effect considered when formulating the REL (NIOSH, 1992).

2.1.3.4. *Environmental Protection Agency.* The Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provide the legislative authority for EPA to require data collection for premarket approval of chemicals. Under section 5 of TSCA, after a manufacturer has notified EPA of its plans to produce a "new" chemical that has not yet been listed on the inventory, EPA has the responsibility to assess possible health hazards. Potential neurotoxicity is included in the health hazards assessment. If there are reasons to suspect neurotoxicologic effects (e.g., from structure-activity analysis, information in the literature, or data submitted by the manufacturer), EPA can issue a test rule requiring the manufacturer to develop data directed toward these effects. At the same time, EPA can restrict the chemical or prohibit it entirely from entering commerce until the required data are submitted and reviewed. In addition, for "old" chemicals (under section 4 of TSCA), if EPA suspects neurotoxicity, a

test rule would be the mechanism used for obtaining the data. Many other statutes provide authority to regulate chemicals through the setting of standards, including the Clean Air Act, Clean Water Act, and Safe Drinking Water Act.

Neurotoxicity is recognized as a health effect of concern under FIFRA, and there are neurotoxicity testing requirements for premarketing submission of data to EPA for registration of a pesticide under FIFRA.

2.1.3.5. *Consumer Product Safety Commission.* The CPSC is an independent Federal regulatory agency with jurisdiction over most consumer products. Most chemical hazards are regulated under the Federal Hazardous Substances Act (FHSA) administered by CPSC. The FHSA requires appropriate cautionary labeling on all hazardous household products (hazards include chronic toxicity such as neurotoxicity). While the FHSA does not require premarket registration, a manufacturer is required to assess the hazards of a product prior to marketing and assure that it is labeled with all necessary cautionary information. The FHSA also bans children's products that are hazardous and provides the CPSC with the authority to ban other hazardous products.

2.1.3.6. *Agency for Toxic Substances and Disease Registry.* ATSDR has a mission to prevent or mitigate adverse effects to both human health and the quality of life resulting from exposure to hazardous substances in the environment. The ATSDR publishes a National Priority List (NPL) of hazardous substances that are found at National Priority Waste Sites. The order of priority is based on an algorithm, taking into consideration frequency with which substances are found at NPL sites, toxicity, and potential for human exposure; this list is reranked on a yearly basis. So far, 129 toxicological profiles have been developed for the priority hazardous substances, and 92 substances have a profile with a neurological health effect endpoint (HAZDAT, 1992). Neurotoxicity has been selected by the ATSDR to be one of the seven high-priority health conditions resulting from exposure to environmental toxicants.

*2.2. Basic Toxicological Considerations for Neurotoxicity*

2.2.1. Basic Toxicological Principles

A chemical must enter the body, reach the tissue target site(s), and be maintained at a sufficient concentration for a period of time in order for an adverse effect to occur. Not all chemicals have the same level of toxicity; some may be very toxic in small amounts while others may have little effect even at extremely high amounts. Thus, the dose-response relationship is a major concept in determining the toxicity of a specific substance. Other factors in determining toxicity include the physical and chemical properties of the substance, the route and level of exposure, the susceptibility of the target tissue, and the health, gender, and age of the exposed individual.

Once the toxic substance has entered the body, usually through the lungs (inhalation), the skin (absorption), or the gastrointestinal tract (ingestion), it is partitioned into various body tissues where it can act on its target sites. The substance is eliminated from the bloodstream by the process of accumulation into the various sites in the body, with the liver and kidney being major sites of accumulation of toxic substances. This is thought to be associated with these organs' large blood capacity and major role in elimination of substances from the body. Lipophilic chemicals accumulate in lipid-rich areas of the body and present a significant potential problem for the nervous system. The nervous system is unique in its high percentage content of lipid (50 percent of dry weight) and may be particularly vulnerable to such chemicals. The site or sites of accumulation for a specific toxic substance may or may not be the primary sites of action. Examples include two known neurotoxicants, carbon monoxide in the red blood cells and lead in the bone. It must be noted that some substances are not distributed throughout the body, partially as a function of their insolubility, polarity, or molecular weight.

The effect that a substance has will generally depend on the body burden or level in the tissue and duration of exposure. The time course of the levels is determined by several factors, including the amount at time of exposure, duration of exposure, and metabolic fate of the chemical. The study of such metabolic processes, pharmacokinetics, has demonstrated complex patterns in the absorption, distribution, possible biotransformation, and elimination of various substances (Klaassen, 1980).

Many substances are removed by the kidney and excreted through the urine. The liver can detoxify substances like organic lead, which are excreted from the liver into the bile and then the small intestines, bypassing the blood and kidney. Lipophilic toxic substances are primarily removed from the body through feces and bile, and water-soluble metabolites are removed in the urine, through the skin, and through expiration into the air.

Biotransformation is a biochemical process that converts a substance into a different chemical compound, allowing it to be excreted more easily. Substances are more easily removed if they are biotransformed into a more hydrophilic compound. Biotransformation can either aid in the detoxification of a substance or produce a more toxic metabolite. Therefore, the original substance may not be the substance that is producing the toxicity on the nervous system or any other system. Thus, several factors must be taken into consideration when evaluating the potential neurotoxicity of a chemical. They include the pharmacokinetics of the parent compound, the target tissue concentrations of the parent chemical or its bioactivated proximate toxicant, the uptake kinetics of the parent chemical or metabolite into the cell and/or membrane interactions, and the interaction of the chemical or metabolite with presumed receptor sites.

2.2.2. Basic Neurotoxicological Principles

Neurotoxicity can be manifest as a structural change or a functionally adverse response of the nervous system to a chemical, biological, or physical agent (Tilson, 1990b). It is a function of both the property of the agent and a property of the nervous system itself. Neurotoxicity refers broadly to the adverse neural responses following exposure to external, extragenetic factors (e.g., occupational exposures, lifestyle, exposure to pharmaceuticals, foods, radiation, and chemicals) (Tilson, 1990b). Adverse effects can include both unwanted effects and any alteration from baseline that diminishes the ability to survive, reproduce, or adapt to the environment. Neuroactive substances may also impair health indirectly by altering behavior in such a way that safety is decreased in the performance of numerous activities. Toxicity can occur at any time in the life cycle, from conception through senescence, and its manifestations can change with age. The range of responses can vary from temporary responses following acute exposures to delayed responses following acute or chronic exposure to persistent responses. Neurotoxicity may or may not be reversible following cessation of exposure. The responses may be graded from transient to fatal and there may be different responses to the same neurotoxicant at different dose levels but similar responses to exposure to different agents. Displays of a

neurotoxic response may be progressive in nature, with small deficits occurring early in exposure and developing to become more severe over time. Expression of neurotoxicity can encompass multiple levels of organization and complexity including structural, biochemical, physiological, and behavioral measurements.

Caution must be exercised in labeling a substance neurotoxic. The intended use and effect of the chemical, as well as the dose and exposure, must be taken into consideration. A substance that may be neurotoxic at a high concentration may be safe and beneficial at a lower concentration. For example, vitamin A, vitamin B6, and manganese are required in the diet in trace amounts, yet all result in neurotoxicity when consumed in large quantities. Pharmaceutical agents may also have adverse effects at high dose levels or where the beneficial effects outweigh the adverse side effects. For example, antipsychotic drugs have allowed many people suffering from schizophrenia to lead relatively normal lives; however, chronic prescribed use of some of these drugs may result in severe tardive dyskinesia characterized by involuntary movements of the face, tongue, and limbs. Other examples include toxic neuropathies induced by chemotherapeutic agents like cis-platinum, toxic anticholinergic effects of high doses of tricyclic antidepressants, disabling movement disorders in patients treated with anti-Parkinsonian agents and major tranquilizers, and hearing loss and balance disruption triggered by certain antibacterials (Sterman and Schaumburg, 1980). Drugs of abuse such as ethanol also have neurotoxic potential. Opiates such as heroin may lead to dependence, which is considered to be a long-term adverse alteration of nervous system functioning. Simultaneous exposure to drugs or toxic agents may produce toxic interactions either in the environment or occupational settings. For example, exposure to noise and certain antibiotics can exacerbate the loss of hearing function (Boettcher et al., 1987; Lim, 1986; Bhattacharyya and Dayal, 1984).

The nervous system is a highly complex and integrated organ. It is possible that nonlinear dose-response relationships or a threshold effect could exist for some chemicals. It has been hypothesized that the nervous system has a reserve capacity that masks subtle damage and any exposure that does not overcome this reserve capacity may not reach the threshold and no observable impairment will be evident (Tilson and Mitchell, 1983). However, the functional reserve may be depleted over time and the manifestations of toxicity may be delayed in relationship to the exposure. The reserve may be depleted by a number of factors including aging, stress, or chronic exposure to an environmental insult, in which case functioning will eventually be impaired and toxicity will become apparent. If a number of events occur simultaneously, the response is progressive in nature, or there is a long latency between exposure and manifestation of toxicity, the identification of a single cause of the functional impairment may not be possible.

### *2.3. Basic Neurobiological Principles*

#### 2.3.1. Structure of the Nervous System

The nervous system is composed of two parts: the central nervous system (CNS) and the peripheral nervous system (PNS) (Spencer and Schaumburg, 1980). Within the nervous system, there exist predominantly two general types of cells—nerve cells (neurons) and glial cells. Neurons have many of the same structures found in every cell of the body; they are unique, however, in that they have axons and dendrites, extensions of the neuron along which nerve impulses travel. The structure of the neuron consists of a cell body, 10 to 100 μm in diameter, containing a nucleus and organelles for the synthesis of various components necessary for the cell's functioning, e.g., proteins and lipids. There are numerous branch patterns of elongated processes, the dendrites, that emanate from the cell body and increase the neuronal surface area available to receive inputs from other sources. Neurons communicate with each other by releasing chemical signals onto specific surface regions, receptors, of the other neuron. The axon is a process specialized for the conduction of nerve impulses away from the cell toward the terminal synapses and eventually toward other cells (neurons, muscle cells, or gland cells).

Neurons are responsible for the reception, integration, transmission, and storage of information (Raine, 1989). Certain nerve cells are specialized to respond to particular stimuli. For example, chemoreceptors in the mouth and nose send information about taste and smell to the brain. Cutaneous receptors in the skin are involved in the sensation of heat, cold, and touch. In the retina, the rods and cones sense light. In general, the length of the axon is tens to thousands of times greater than the cell body diameter. For example, the cell body whose processes innervate the muscles in the human foot is found in the spinal cord at the level of the middle back. The axons of these cells are more than a meter in length. Many, but not all, axons are surrounded by the layers of membrane from the cytoplasmic process of glial cells. These layers are called myelin sheaths and are composed mostly of lipid. In the PNS, the myelin sheaths are formed by Schwann cells, while in the CNS the sheaths are formed by the oligodendroglia. The myelin sheath formed by one glial cell covers only a short length of the axon. The entire length of the axon is ensheathed in myelin by numerous glial cells. Between adjacent glial sheaths, a very short length of bare axon exists called the node of Ranvier. In unmyelinated axons, a nerve impulse must travel in a continuous fashion down the entire length of the nerve. The presence of myelin accelerates the nerve impulse by up to 100 times by allowing the impulse to jump from one node to the next in a process called "saltatory conduction."

The nerve cells of the PNS are generally found in aggregates called ganglia. The brain and spinal cord make up the CNS and the neurons are segregated into functionally related aggregates called nuclei. They synthesize and secrete neurotransmitters, which are specialized chemical messengers that interact with receptors of other neurons in the communication process. Various nuclei together with the interconnecting bundles of axonal fibers are functionally related to one another to form higher levels of organization called systems. For example, there is the motor system, the visual system, and the limbic system. At the base of the brain, several small nuclei in the hypothalamus form the neuroendocrine system, which plays a critical role in the control of the body's endocrine (hormone-secreting) glands. Nerve cells in the hypothalamus secrete chemical messengers into a short loop of blood vessels that carries the messengers to the pituitary gland which, in turn, releases chemical messengers into the general circulation. These pituitary messengers regulate other glands (e.g., the thymus and the gonads). The entire system maintains a state of optimal physiological function for all of the body's organ systems.

#### 2.3.2. Transport Processes

All types of cells must transport proteins and other molecular components from their site of production near the nucleus to the other sites in the cell (Hammerschlag and Brady, 1989). Neurons are unique in that the neuronal cell body must maintain not only the functions normally associated with its own support, but it must also provide

support to its various processes. This support may require transport of material over relatively vast distances. Delivery of necessary substances by intracellular transport down the axon (axonal transport) represents a supply line that is highly vulnerable to interruption by toxic chemicals. In addition, the integrity of the function of the neuronal cell body is often dependent on a supply of trophic factors from the cells that it innervates. These factors are continually supplied to the neural cells by the process of retrograde axonal transport, often as a process of normal exchange between two or more cells. They play a significant factor in the normal growth and maintenance of the neural cells, and a continual supply of certain trophic factors is necessary for cell functioning.

The majority of axonal transport occurs along longitudinally arranged fiber tracks called neurofilaments. This movement along neurofilaments requires energy in the form of oxidative metabolism. Toxicants that interfere with this metabolism or that disrupt the spatial arrangement or production of neurofilaments may block axonal transport and can produce neuropathy (Lowndes and Baker, 1980). This can been seen following exposure to many substances, such as n-hexane and methyl n-butyl ketone as well as the drugs vincristine, vinblastine, and taxol. Acrylamide produces a dying-back axonopathy but by an alternative mechanism involving altered axonal transport.

2.3.3. Ionic Balance

The axonal membrane is semipermeable to positively and negatively charged ions (mostly potassium, sodium, and chloride) within and outside of the axon. There are several enzyme systems that maintain an ionic balance that changes following depolarization of the membrane (Davies, 1968). This is maintained only by the continual active transport of ions across the membrane, which requires an expenditure of energy. The nerve impulse is a traveling wave of depolarization normally originating from the cell body; however, in sensory neurons it originates at the terminal receptive end of specialized axons (Davies, 1968). The wave is continued by openings in the membrane that allow ions to rush into the axon. This sudden change in the charge across the axon's membrane is the nerve impulse. It is an amplified depolarization that reaches the threshold value and spreads down the axon from one length to another until the next length of membrane reaches the threshold value. It continues in this fashion until it reaches the synaptic terminal regions. There are a number of varieties of membrane channels (e.g., calcium) that rapidly open and close during impulse generation; the common ones are the sodium and potassium channels. They are very small and allow only ions of a certain size to pass. Several classes of drugs (e.g., local anesthetics) and natural toxins (e.g., tetrodotoxin) inhibit nerve impulse conduction by blocking these channels.

2.3.4. Neurotransmission

The terminal branches of the axon end in small enlargements called synaptic "boutons." It is from these boutons that chemical messengers will be released in order to communicate with the target cell at the point of interaction, the synapse (Hammerschlag and Brady, 1989). When the nerve impulse reaches the terminal branches of the axon, it depolarizes the synaptic boutons. This depolarization causes the release of the chemical messengers (neurotransmitters and neuromodulators) stored in vesicles in the axon terminal (Willis and Grossman, 1973). Classical neurotransmitters include serotonin, dopamine, acetylcholine, and norepinephrine and are typically secreted by one neuron into the synaptic cleft where they are on the postsynaptic membrane. Neuropeptides, however, may travel long distances through the bloodstream to receptors on distant nerve cells or in other tissues. Following depolarization, the amount of secretion is dependent on the number of nerve impulses that reach the synaptic bouton, i.e., the degree of depolarization. The chemical messengers diffuse across the synaptic cleft or into the intraneuronal space and bind to receptors on adjacent nerve cells or effector organs, thus triggering biochemical events that lead to electrical excitation or inhibition.

When information is transmitted from nerves to muscle fibers, the point of interaction is called the neuromuscular junction and the interaction leads to contraction or relaxation of the muscle. When the target is a gland cell, the interaction leads to secretion. Synaptic transmission between neurons is slightly more complicated, but still dependent on the opening and closing of ion channels in the membrane. The binding of the messenger to the receptor of the receiving cell can lead to either the excitation or inhibition of the target cell. At an excitatory synapse, the neurotransmitter-receptor interaction leads to an opening in certain ion-specific channels. The charged ions that move through these opened chambers carry a current that serves to depolarize the cell membranes. At inhibitory synapses, the interaction leads to an opening in a different type of ion-specific channel that produces an increase in the level of polarization (hyperpolarization). The sum of all the depolarizing and hyperpolarizing currents determines the transmembrane potential and when a threshold level of depolarization is reached at the axon's initial segment, a nerve impulse is generated and begins to travel down the axon.

The duration of neurotransmitter action is primarily a function of the length of time it remains in the synaptic cleft. This duration is very short due to specialized enzymes that quickly remove the transmitter either by degrading it or by reuptake systems that transport it back into the synaptic bouton. A toxic substance may disrupt this process in several different ways. It is important that the duration of the effect of synaptically released chemical messengers be limited. Some neurotoxicants, e.g., cholinesterase-inhibiting organophosphorous pesticides, inhibit the enzyme (AChE), which serves to terminate the effect of the neurotransmitter (acetylcholine) on its target. The result is an overstimulation of the target cell. Other substances, particularly biological toxins, are able to interact with the receptor molecule and mimic the action of the neurotransmitter. Some toxic substances, like neuroactive pharmaceuticals, may interfere with the synthesis of a particular neurotransmitter, while others may block the neurotransmitter's access to its receptor molecule.

*2.4. Types of Effects on the Nervous System*

The normal activity of the nervous system can be altered by many toxic substances. A variety of adverse health effects can be seen ranging from impairment of muscular movement to disruption of vision and hearing to memory loss and hallucinations (WHO, 1986; Anger, 1984, 1990). Toxic substances can alter both the structure and the function of cells in the nervous system. Structural alterations include changes in the morphology of the cell and its subcellular structures. In some cases, agents produce neuropathic conditions that resemble naturally occurring neurodegenerative disorders in humans (Calne et al., 1986). Cellular alterations can include the accumulation, proliferation, or rearrangement of structural elements (e.g., intermediate filaments, microtubules) or organelles

(mitochondria) as well as the breakdown of cells. By affecting the biochemistry and/or physiology of a cell, a toxic substance can alter the internal environment of any neural cell. Intracellular changes can result from oxygen deprivation (anoxia) because neurons require relatively large quantities of oxygen due to their high metabolic rate.

Many times the response of the nervous system to a toxic substance can be a slow degeneration of the nerve cell body or axon that may result in permanent neuronal damage. Substances can act as a cytotoxicant after having been transported into the nerve terminal. A complete loss of nerve cells can occur following exposure to a number of toxic substances. Sensory nerve cells may be lost following treatment with megavitamin doses of vitamin B6; hippocampal neurons undergo degeneration with trimethyltin and trimethyl lead poisoning; motor nerve cells are affected in cycad toxicity, which has been loosely linked to Guam-ALS-Parkinsonism dementia. Acute carbon monoxide poisoning can produce a delayed, progressive deterioration over a period of weeks of portions of the nervous system that may lead to psychosis and death. Substances such as mercury and lead cause degeneration of the central nervous system. In children, mercury intoxication can cause degeneration of neurons in the cerebellum and can lead to tremors, difficulty in walking, visual impairment, and even blindness. Lead affects the cortex of the immature brain, resulting in mental retardation.

At the cellular level, a substance might interfere with cellular processes like protein synthesis, leading to a reduced production of neurotransmitters and brain dysfunction (Bondy, 1985). Nicotine and some insecticides mimic the effects of the neurotransmitter acetylcholine. Organophosphorous compounds, carbamate insecticides, and nerve gases act by inhibiting AChE, the enzyme that inactivates the neurotransmitter acetylcholine. This results in a buildup of acetylcholine and can lead to loss of appetite, anxiety, muscle twitching, and paralysis. Amphetamines stimulate the nervous system by releasing and blocking reuptake of the neurotransmitters norepinephrine and dopamine from nerve cells. Cocaine affects the release and reuptake of norepinephrine, dopamine, and serotonin. Both drugs can cause paranoia, hyperactivity, aggression, high blood pressure, and abnormal heart rhythms. Opium-related drugs such as morphine and heroin act at specific opioid receptors in the brain, producing sedation, euphoria, and analgesia. They also tend to slow the heart rate and cause nausea, convulsions, and slow breathing patterns. Other substances can alter the synthesis and release of specific neurotransmitters and activate their receptors in specific neuronal pathways. They may perturb the system by overstimulating receptors, blocking transmitter release and/or inhibiting transmitter degradation, or blocking reuptake of neurotransmitter precursors.

Also at the cellular level, the flow of ions such as calcium, sodium, and potassium across the cell membrane may be changed and the transmission of information between nerve cells altered. A substance may interfere with the ionic balance of a neuron. Organophosphate and carbamate insecticides produce autonomic dysfunction and organochlorine insecticides increase sensorimotor sensitivity, produce tremors and in some cases cause seizures and convulsions (Ecobichon and Joy, 1982). Lindane, DDT, pyrethroids, and trimethyltin also produce convulsions. Conversely, solvents act to raise the threshold for eliciting seizures or act to reduce the severity or duration of the elicited convulsions.

The role of excitatory amino acid (EAA)-mediated synaptic activation is critical for normal function of the CNS. Because endogenous EAA-mediated synaptic transmission is a widespread excitatory system in the brain and is involved in the process of learning and memory, the issue of the effects of endogenous and exogenous EAA-related toxicity has broad implications for both CNS morbidity and mortality in humans. Much of the injury and neuronal death associated with toxicity is mediated by receptors for excitatory amino acids, especially glutamic acid. When applied in sufficient excess from either endogenous or exogenous sources, EAAs have profound neurotoxic effects that can result in the destruction of neurons and, as a consequence, lead to acute phase confusion, seizures, and generalized weakness or to persistent impairments such as memory loss (Choi, 1988).

A final common path in the activation of these receptor classes is an increase in free cytosolic $Ca^{++}$ that can result in the release and activation of intracellular enzymes (which break down the cytoskeleton) and in further release of glutamate, both of which can be cytotoxic (Choi, 1988). Critical to an understanding of the etiopathology associated with at least some of the neurotoxic degeneration may be the link that impaired energy metabolism could have with excitotoxic neuronal death. It is likely that reduced oxidative metabolism results in the partial depolarization of resting membrane potential, the activation of ionotropic membrane receptor/channels, and the influx of $Ca^{++}$ or its release from intracellular stores.

The nervous system is dependent on an extensive system of blood vessels and capillaries to deliver large quantities of oxygen and nutrients as well as to remove toxic waste products. Damage to the capillaries in the brain can lead to the swelling characteristic of encephalopathy. This can be seen following exposure to lead. Other metals (e.g., cadmium, thallium, and mercury) and organotin (e.g., trimethyltin) cause rupturing of vessels that can also result in encephalopathy.

One large aspect of function that may be affected by neurotoxicants is behavior, which is the product of various sensory, motor, and associative functions of the nervous system. Neurotoxic substances can adversely affect sensory or motor functions, disrupt learning and memory processes, or cause detrimental behavioral effects; however, the underlying mechanisms for these effects have yet to be determined. Although changes may be subtle, the assessment of behavior may serve as a robust means of monitoring the well-being of the organism (Tilson and Cabe, 1978).

### *2.5. Special Considerations*

#### 2.5.1. Susceptible Populations

Everyone is at a certain level of risk of being adversely affected by neurotoxic substances. Individuals of certain age groups, health states, and occupations, however, may be at a greater level of risk. Fetuses, children, the elderly, workers in occupations involving exposure to relatively high levels of toxic chemicals, and persons who abuse drugs are among those in high-risk groups. Neurotoxic substances may exacerbate existing neurological or psychiatric disorders in a population. Confounded in all of these groups is the role that nutrition plays in the response of the organism to exposure. Both general nutritional status and specific nutritional deficiencies (for example, protein, iron, and calcium) can significantly influence the response to a toxic substance.

It is widely accepted that during development adverse effects can result from exposure to chemicals at lower levels than would be necessary for the average adult (Suzuki, 1980). The developing nervous system appears to be particularly vulnerable to some kinds

of damage (Cushner, 1981; Pearson and Dietrich, 1985; Annau and Eccles, 1986; Hill and Tennyson, 1986; Silbergeld, 1986). During the developmental period, the nervous system is actively growing and establishing intricate cellular networks. Both the blood-brain and blood-nerve barriers that will eventually protect much of the adult brain, spinal cord, and peripheral nerves are incomplete. The protective mechanisms by which the organism deals with toxic substances, such as the detoxification systems, are not fully developed. Exposure to chemicals during development can result in a range of effects. At the highest exposure, effects include death, gross structural abnormalities, or altered growth. Larger populations are generally exposed to more moderate levels resulting in more subtle functional impairments. The qualitative nature of some injuries during development may differ from those seen in the adult, such as changes in tissue volume, misplaced or misoriented neurons, or delays or acceleration of the appearance of functional or structural endpoints (Rodier, 1986). In many cases, the results of early injuries may become evident only as the nervous system matures and ages (Rodier, 1990). There are several instances in which functional alterations have resulted from exposure during the period between conception and sexual maturity (Riley and Vorhees, 1986; Vorhees, 1987).

Early exposure to relatively low levels of lead can result in reduced scores on tests of mental development (Bellinger et al., 1987; Needleman, 1990). Early gestational exposure to neurotoxicants such as cocaine can produce long-term neurobehavioral abnormalities (Anderson-Brown et al., 1990; Hutchings et al., 1989); heavy alcohol exposure produces craniofacial abnormalities and mental retardation (Jones and Smith, 1973), while moderate levels of alcohol consumption during gestation can delay motor development (Little et al., 1989).

With aging, the level of risk for a number of health-related factors increases as well as the risk for toxic perturbations to the nervous system (Weiss, 1990). With increasing age comes a decreased ability of the nervous system to respond to adverse events or to compensate for either biological, physical, or toxic effects. At the tissue and cellular level, the aging process results in nerve cell loss, neurofibrillary tangles (abnormal accumulation of certain filamentous proteins), and neuritic plaques (abnormal clusters of proteins and other substances near synapses). As the cells die, the complex neuronal circuitry of the brain becomes impaired. Neurotransmitter concentrations and the enzymes involved in their synthesis are altered. Some axons gradually lose their myelin sheath, resulting in a slowed conduction of nerve impulses along the axon. With age, not only might the nervous system become more susceptible to new insults, but the effects of previous exposures also may become evident, with a diminished capacity for compensation. The increased incidence of multiple drug-taking in the elderly population also can lead to interactions, either drug/drug or drug/chemical, which can adversely affect the nervous system. Nutritionally, the aged experience increased incidences of both general undernutrition and deficits of specific nutrients such as iron or calcium, which can influence the response to toxic substances.

In the geriatric population, the clinical manifestation of neurodegenerative disorders may have a contributing component of past exposures to environmental chemical agents. Calne et al. (1986) hypothesized that various agents contribute to Alzheimer's disease, Parkinson's disease, or amyotrophic lateral sclerosis (ALS, motoneurone disease, or Lou Gehrig's disease) by depleting neuronal reserves to an extent that perturbations become observable in the context of the natural aging process. B-N-methylamino-L-alanine, from the seed of the false sago palm (Cycas circinalis L.), has been reported to induce a form of amyotrophic lateral sclerosis (Spencer et al., 1987). The incidence of Parkinson's disease has been correlated with exposure to pesticides, especially pyridines such as the herbicide paraquat (Barbeau et al., 1987). Alzheimer-type syndromes have been reported in individuals occupationally exposed to organic solvents or metal vapors (Freed and Kandel, 1988). Similarities have been drawn between Alzheimer's disease and aluminum intoxication (Yokel et al., 1988).

At any age, preexisting physical as well as mental disorders of the individual may play a significant role in the manifestation of a toxic response following exposure to a potentially toxic substance. Both types of disorders compromise the system in some way so that either the defense mechanisms of the organism are not able to deal with the toxic substance or are not able to repair themselves quickly. In addition to the basic altered biology, for individuals with a physical or mental disorder who are under some form of medical intervention, the combination of therapeutic drugs and toxic substances may have an interactive effect on the nervous system. For example, due to the delicate electrochemical balance of the nervous system, mental disorders may be exacerbated by exposure to a toxic substance.

### 2.5.2. Blood-Brain and Blood-Nerve Barriers

The bioavailability of a specific chemical to the nervous system is a function of both the target tissue and the chemical. The brain, spinal cord, and peripheral nerves are surrounded by a series of semipermeable tissues referred to as the blood-brain and blood-nerve barriers (Katzman, 1976). In the central nervous system, the blood-brain barrier is composed of tight junctions formed by endothelial cells and astrocytes. These tight junctions and cellular interactions forming the barrier restrict the free passage of most bloodborne substances. By doing this, they create a finely controlled extracellular environment for the nerve cells. Certain regions of the brain and nerves are directly exposed to chemicals in the blood because the barrier is not present in some areas of the nervous system. For example, it is absent in the circumventricular area, around the dorsal root ganglion in the peripheral nervous system, and around the olfactory nerve, which may allow chemicals to penetrate directly from the nasal region to the frontal cortex.

The existence of these blood-brain and blood-nerve barriers suggests that proper functioning of the nervous system is dependent on control of the substances to which nerve cells are exposed. The term "barrier," however, is somewhat of a misnomer. Although water-soluble and polar compounds enter the brain poorly, lipophilic substances readily cross the barrier. In addition, a series of specific transport mechanisms exist through which required nutrients (hormones, amino acids, peptides, proteins, fatty acids, etc.) reach the brain (Pardridge, 1988). If toxicants are lipid soluble or if they are structurally similar to substances that are normally transported into the brain, they can achieve high concentrations in brain tissue. It has been proposed that the increased vulnerability of the developing nervous system to toxicant exposure may be due to a barrier that is less effective than that present in an adult in preventing passage of substances into the nervous system.

### 2.5.3. Metabolism

The central nervous system has a very high metabolic rate and, unlike other organs, the brain depends almost

entirely on glucose as a source of energy and raw material for the synthesis of other molecules (Damstra and Bondy, 1980). The absence of an alternative energy source makes the CNS critically dependent on an uninterrupted supply of oxygen as well as the proper functioning of enzymes that metabolize glucose. Substances can be toxic to the nervous system if they perturb neuronal metabolism. Without glucose, nerve cells usually begin to die within minutes. Despite its relatively small size, the energy demands of the brain require 14 percent of the heart's output and consumes about 18 percent of the oxygen absorbed by the lungs.

2.5.4. Limited Regenerative Ability

The nervous system has a combination of special features not found in other organ systems. It is composed of a variety of metabolically active neurons and supporting cell types that interact through a multitude of complex chemical mechanisms. Each cell type has its own functions and vulnerabilities. At the time of puberty, the system is fully developed and neurogenesis (the birth of new neurons from cell division of precursor cells called neuroblasts) ceases. This is in marked and significant contrast to all other tissues, where cell replacement is continual.

It is this loss of neurogenesis that limits the nervous system's ability to recover from damage and influences the plasticity of the system. Neurons are unable to regenerate following damage; therefore, they are no longer able to perform their normal functions. Toxic damage to the brain or spinal cord that results in cell loss is usually permanent. If nerve cell loss is concentrated in one of the CNS's functional subsystems, the outcome could be debilitating; for example, a relatively small loss of neurons that use acetylcholine as their neurotransmitter may produce a profound disturbance of memory. A relatively minor insult concentrated in a subsystem that relies on dopamine as its neurotransmitter may drastically impair motor coordination. However, in response to injury, neurons are able to show considerable plasticity both during development and after maturation. Damage to the nervous system alters connectivity between the surviving neurons, permitting functional adjustments to occur to compensate for the damage. Such responsiveness may, in and of itself, have profound consequences for neurological, behavioral, and related body functions.

After damage to axons in the peripheral nerves, if the neurons are not damaged, the axons have the ability to regenerate and to attempt to reach their original target site. This is the basis, for example, of the eventual return of sensation and muscle control in a surgically reattached limb. Neurons in the CNS also have the ability to regenerate interrupted axons; however, they have a much more difficult task in reaching their original targets due to both the presence of scar tissue formed by proliferating glia and to the increased complexity of the connectivity in the CNS.

## 3. Methods for Assessing Human Neurotoxicity

### *3.1. Introduction*

This chapter outlines and discusses current methods for detecting neurotoxicity in humans. In contrast to studies of neurotoxicity in animals where functional changes readily can be correlated with neuroanatomic and neurochemical alterations, there are ethical and technical barriers to the direct observation of neuronal damage in humans. Neurotoxicity in humans is most commonly measured by relatively noninvasive neurophysiologic and neurobehavioral methods that assess cognitive, affective, sensory, and motor function. The evaluation of human neurotoxicity and the relevance to risk assessment will be discussed within the context of clinical evaluation, epidemiologic/worksite studies, and human laboratory exposure studies.

### *3.2. Clinical Evaluation*

Neurobehavioral assessment methods are used extensively in clinical neurology and neuropsychology to evaluate patients suspected of having neurologic disease. An extensive array of examiner-administered and paper and pencil tasks are used to assess sensory, motor, cognitive, and affective functions and personality states/traits. Neurobehavioral data are synthesized with information from neurophysiologic studies, imaging techniques, medical history, etc., to derive a working diagnosis. Clinical diagnostic approaches have provided a rich conceptual framework for understanding the functions (and malfunctions) of the central and peripheral nervous systems and have formed the basis for the development of methods for measuring the behavioral expression of nervous system disorders. Human neurobehavioral toxicology has borrowed heavily from neurology and neuropsychology for concepts of nervous system impairment and functional assessment methods. Neurobehavioral toxicology has adopted the neurologic/neuropsychologic model, using adverse changes in behavioral function to assist in identifying chemically or drug-induced changes in nervous system processes.

3.2.1. Neurologic Evaluation

Assessment of neurobehavioral function by the clinical examination of a patient has long been used as a primary tool in neurologic diagnosis. The domains of cognitive function, motor function, sensation, reflexes, and cranial nerve function are a standard part of the clinical neurologic exam. Movement and gait, speech fluency and content, verbal memory, deep tendon reflexes, muscle strength, symmetry of movement and strength, ocular movements, sensory function (pressure, vibration, visual, auditory), motor coordination, and logical reasoning are only a few of the functions assessed by neurologists (Denny-Brown et al., 1982).

Trained and experienced clinicians gather these data by observation, verbal exchange, and direct examination. Neurologic exams are sensitive indicators of neurologic disease; the data have predictive value for the diagnosis of underlying nervous system disease, and the methods have been extensively validated against other diagnostic procedures (e.g., imaging, neurophysiologic testing), the course of the illness, and autopsy findings. Examination of the patient in a semistructured procedure can yield a wealth of information and insights about functional impairment and the underlying neuropathology.

3.2.2. Neuropsychological Testing

Neuropsychologists have developed quantitative methods to supplement clinical neurologic exam and laboratory data for the diagnosis of neurologic disease. Currently, two assessment batteries, the Luria-Nebraska and the Halstead-Reitan, and shorter versions are used in clinical practice. The batteries consist of subtests that quantify a wide spectrum of cognitive, motor, sensory, intellectual, affective, and personality functions. The pattern of relative performance on the subtests can be interpreted along with historical and medical data to suggest the presence or absence of neurologic disease and the possible anatomic location of any focal lesions or degeneration. Clinical interpretation of the data is enhanced by data on age-related population norms for many subtests and by the systematic observation of the patient during testing.

Several neurotoxicity assessment batteries use components of neuropsychological tests and have adapted and shortened analogs of some

subtests. Tests derived from the Wechsler Adult Intelligence Scale—Revised (WAIS–R) have been used frequently to assess neurobehavioral impairment from chemical agents, and other abbreviated variations of neuropsychological battery subtests have been incorporated into neurobehavioral toxicity batteries and used in field and laboratory studies.

3.2.3. Applicability of Clinical Methods to Neurotoxicology Risk Assessment

Neurologic and neuropsychologic methods have long been employed to identify the adverse health effects of environmental workplace exposures. Peripheral neuropathies (with sensory and motor disturbances), encephalopathies, organic brain syndromes, extrapyramidal syndromes, demyelination, autonomic changes, and dementia are well-characterized consequences of acute and chronic exposure to chemical agents. The range of exposure conditions that produce clinical signs of neurotoxicity also has been defined by using these clinical methods.

Aspects of the neurologic examination approach limit its usefulness for neurotoxicologic risk assessment. Information obtained from the neurologic exam is mostly qualitative and descriptive rather than quantitative. Estimates of the severity of functional impairment can be reliably placed into only three or four categories (for example, mild, moderate, severe). Much of the assessment depends on the subjective judgment of the examiner; the magnitude and symmetry of muscle strength are often judged by having the patient push against the resistance of the examiner's hands. The datum is therefore the absolute and relative amount of muscle load sensed by the examiner in his or her arms.

Compared with other methods, the neurologic exam may be less sensitive in detecting early neurotoxicity in peripheral sensory and motor nerves. While clinicians' judgments are equal in sensitivity to quantitative methods in assessing the amplitude of tremor, tremor frequency is poorly quantified by clinicians. Thus, important aspects of the clinical neurologic exam may be insufficiently quantified and lack sufficient sensitivity for detecting early neurobehavioral toxicity produced by environmental or workplace exposure conditions. However, a neurologic evaluation of persons with documented neurobehavioral impairment would be helpful for identifying nonchemical causes, such as brain disease, diabetes, and cardiovascular insufficiency.

Administration of a neuropsychological battery also requires a trained technician, and interpretation requires a trained and experienced neuropsychologist. Depending on the capabilities of the patient, 2 to 4 hours may be needed to administer a full battery; 1 hour may be needed for the shorter screening versions. These practical considerations may limit the usefulness of neuropsychological assessment in large field studies of suspected neurotoxicity.

In addition to logistical problems in administration and interpretation, neuropsychological batteries and neurologic exams share two disadvantages with respect to neurotoxicity risk assessment. First, neurologic exams and neuropsychological test batteries are designed to confirm and classify functional problems in individuals selected on the basis of signs and symptoms identified by the patient, family, or other health professionals. Their usefulness in detecting low-base rate impairment in workers or the general population is generally thought to be limited, decreasing the usefulness of clinical assessment approaches for epidemiologic risk assessment.

Second, neurologic exams and neuropsychologic test batteries were developed to assess the functional correlates of the most common forms of nervous system dysfunction: brain trauma, focal lesions, and degenerative conditions. The clinical tests were validated against these neurologic disease states. With a few notable exceptions, chemicals are not believed to produce impairment similar to that from trauma or lesions; neurotoxic effects are more similar to the effects of degenerative disease. There has been insufficient research to demonstrate which tests designed to assess functional expression of neurologic disease are useful in characterizing the modes of CNS impairment produced by chemical agents and drugs. More research is needed to validate the usefulness of neuropsychologic test methods in neurotoxicology.

*3.3. Current Neurotoxicity Testing Methods*

3.3.1. Neurobehavioral Methods

Chemical agents directly or indirectly affect a wide range of nervous system activities. Many of these chemical actions are expressed as alterations of behavior; Anger (1990a) lists 35 neurobehavioral effects of chemical exposure that illustrate alterations in sensory, motor, cognitive, affective, and personality function.

Dozens of tests of neurobehavioral function have been proposed or used in field or laboratory studies to assess the neurotoxicity of chemical agents. Table 3–1 lists some frequently used tests of motor, sensory, cognitive, and affective neurobehavioral function.

TABLE 3–1. NEUROBEHAVIORAL METHODS

| Neurobehavioral function | Test |
|---|---|
| Sensation | Flicker Fusion. |
| | Lanthony (color vision). |
| Motor/Dexterity | Pursuit Aiming. |
| | Finger Tapping. |
| | Postural Stability. |
| | Reaction Time. |
| | Santa Ana Peg Board. |
| Cognition | Benton Visual Retention. |
| | Continuous Performance Task. |
| | Digit-Symbol. |
| | Digit Span. |
| | Dual Tasks. |
| | Paired-Associate. |
| | Symbol-Digit Task. |
| | Wechsler Adult Intelligence Scale—Revised* (Components). |
| | Wechsler Memory Scale.* |
| Affect | Profile of Mood States* (POMS). |

In contrast to the individual focus in clinical evaluation, neurobehavioral tests primarily have been used to evaluate differences between groups, comparing unexposed groups with persons environmentally or occupationally exposed to a suspected neurotoxic agent. An ideal evaluation of groups for quantitative evidence of chemically induced neurobehavioral impairment would involve the assessment of a wide variety of functions, but testing all possible neurobehavioral functions that might be affected in a group of exposed workers, for example, would be impossible. Therefore, a testing strategy has been to use a limited number tests that sample representative neurobehavioral functional domains such as dexterity, visual memory, and reaction time.

3.3.1.1. *Test batteries.* Many field and laboratory studies have selected neurobehavioral methods according to available information about the spectrum of effects of the suspected neurotoxic agent(s). This focused strategy is useful for answering specific questions about known neurotoxins. To identify unspecified neurotoxic effects in groups of workers or to characterize the effects of less well-studied chemicals or mixtures of chemicals, several tests that sample a

representative range of functional domains have been grouped into test batteries. The advantage of a standardized battery is that data from different study populations and chemical classes can be compared, and similarities in effects observed (Johnson, 1987). Standardized batteries can be categorized into investigator-administered and computer-administered types.

3.3.1.2. *Investigator-administered test batteries.* The WHO-recommended Neurobehavioral Core Test Battery (NCTB) (Johnson, 1987), the Finnish Institute of Occupational Health (FIOH) (Hanninen, 1990), and the Pittsburgh Occupational Exposures Test Battery (POET) (Ryan et al., 1987) are three commonly used batteries. The NCTB is frequently used in field studies worldwide and can be fit inside a medium-sized suitcase for transport. The NCTB consists of the following tests: simple reaction time task, digit-symbol coding task, timed motor coordination test (Santa Ana pegboard), digit span memory test, Benton Visual Retention test, pursuit aiming test, and the Profile of Mood States (POMS). Based on factor-analytic studies (Hoozema et al., 1990), these tests are believed to measure the functional domains of immediate memory, attention, dexterity/hand-eye coordination, reaction time, and mood. Long-term memory, verbal and language functions, auditory sensation, judgment, and so forth are not assessed.

3.3.1.3. *Computerized test batteries.* Computerized tests and batteries have been developed for field and laboratory use. The Neurobehavioral Evaluation System (NES) (Baker et al., 1985), MicroTox (Eckerman et al., 1985), the SPES (Iregren et al., 1985), and the NCTR Operant Battery (Paule et al., 1990) are computerized systems developed for neurotoxicity assessment. Current versions of the NES, for example, consist of about 15 different neurobehavioral tests, and the battery has been used in epidemiologic studies of groups exposed to solvent, pesticide, and mercury, and in laboratory studies of $NO_2$, ethanol, and toluene (Letz, 1990).

Although many computerized tests appear to tap similar neurobehavioral domains as noncomputerized batteries, the visual mode of presentation, the manual mode of response, and the emphasis on speed of responding are believed to have led to significant differences in results obtained from computerized versus noncomputerized forms of similar tests. Attempts to clarify the differences between computerized and noncomputerized test batteries have met with difficulty. Although some tests are similar in each type of battery, size and duration of stimuli, presentation and response modality, number of trials, and scoring vary arbitrarily, preventing direct comparison. An example is the digit-symbol test on the NCTB and the symbol-digit test on the NES. Although almost identical in task requirements, procedural and scoring differences prevent direct comparison of the results from these two tests.

Postural stability is an aspect of integrated sensory and motor function that increasingly is being evaluated in clinical, epidemiologic, and laboratory investigations of effects of pesticides and solvent, and would be useful for assessing therapeutic drug-induced movement disorders such as neuroleptics. Measurement of postural stability requires a computer, special software, monitor, and a force transduction platform on which the subjects must stand (Dick et al., 1990). Mechanical and capacitive field methods for assessing the amplitude and frequency of tremor also are seeing more frequent use.

An advantage of computerized testing is the standardization of test presentation, but a disadvantage is the need for delicate, expensive computers and measurement devices that require transport for field studies. Noncomputerized test batteries are less costly to purchase and easier to transport, enhancing their desirability in field studies, but test administrators require training and small differences in test administration may affect the data.

3.3.2. Neurophysiologic Methods

With improvements in the capabilities and size of equipment, quantitative neurophysiologic measurement of sensory and motor function will be increasingly useful in human neurotoxicity evaluations. A major advantage of these methods for risk assessment is that they can be assessed in both human and animal subjects and the data can be interpreted in an homologous manner.

Electromyographic responses (EMG) and nerve conduction velocity (NCV) have been used in the assessment of peripheral nerve neurotoxicity. Some techniques require that needle electrodes be placed beneath the skin for stimulation and recording and are therefore somewhat uncomfortable for the subject. However, the methods are quantitative, provide multiple endpoints of PNS function, and have clinical relevance.

The adverse effects of solvents, pesticides, and metals have been identified with EMG/NCV neurophysiologic measures. Maximum nerve conduction velocity (MCV) has been shown to vary systematically with cumulative exposure to carbon disulfide (Johnson et al., 1983), suggesting that this measure may be particularly valuable for quantitative risk assessment of peripheral motor nerve toxicity.

Noninvasive neurophysiologic test methods used in neurotoxicity evaluations include the electroencephalogram (EEG), visually evoked response (VER), somatosensory evoked potential (SEP), and the brainstem auditory evoked response (BAER). The EEG is the summed electrical activity of neurons measured with scalp electrodes; voltage and frequency are primary measures. Evoked methods employ specific eliciting stimuli applied to the sense organs to measure nervous system electrical response. Visual patterns, sounds, and cutaneous stimuli are presented to the subject, and "evoked" voltage changes in the nervous system are measured with skin electrodes.

While EEGs were developed as a tool in the neurologic diagnosis of seizure disorders and other brain diseases, dose-related EEG changes in chemically exposed (especially solvents and styrene) individuals have been noted (Seppalainen and Harkonen, 1976). EEG measurement requires large recording devices that can be used in the laboratory or clinic, but are difficult to use in field studies. However, compact computerized recording equipment has been developed, and automated spectral analyses of EEGs have recently been applied to neurotoxicity evaluation (Piikivi and Tolonen, 1989).

In contrast to EEGs, evoked response technology is improving, and equipment, while expensive, is becoming more portable. VERs have been used to detect the sensory toxicity of solvents and carbon monoxide in human subjects, and a relationship has been found between BAER and blood lead levels in children exposed to lead-containing dust in the environment (Otto and Hudnell, 1990). Evoked potentials also may be conditioned, allowing the use of sensory methods to evaluate associative processes.

Dose-response functions have been found with evoked methods. A curvilinear relationship was found between BAER and blood lead concentrations in children (Otto and Hudnell, 1990), and a biphasic function described visual evoked potential (VEP) latency and visual contrast sensitivity and perchloroethylene exposure concentration in a laboratory study (Altmann et al., 1991). In the latter

study, the direction of the response was jointly dependent on dose and stimulus parameters. In addition, changes over time in the effect of the solvent on VEP were dose and stimulus parameter dependent.

Two important methodologic considerations are illustrated by BAER and VEP data. One is that low concentrations of some chemical agents may produce effects (shorter latencies in these examples) that could be interpreted as facilitation rather than impairment. Changes in neuronal latencies in either direction could be a result of the early stages of a neurotoxic process. The second is that the detection of neurotoxic effects is dependent on dose-time-testing parameter interactions. A thorough understanding of the effects of testing parameters on the dose-response relationship and the time course of chemical effect will be necessary for interpreting neurotoxicity studies.

The development of neurophysiologic methods, such as evoked and conditioned potentials, for neurotoxicity risk assessment should be encouraged. These methods provide relatively unambiguous quantitative data on sensory function that have clear implications for health, are influenced by fewer extraneous variables than are self-report and neurobehavioral performance tests, and allow relatively direct extrapolation of effects between animals and humans.

### 3.3.3. Neurochemical Methods

One of the major difficulties in risk assessment is estimating exposure parameters and the dose or body burden actually absorbed by the individual. In epidemiologic studies, the actual absorption and bioavailability of a chemical from an exposure are frequently unknown.

Measurement of chemical concentrations in biologic fluids or tissues is one way to measure more precisely the concentration at the site(s) of toxic effect. In epidemiologic studies, this has been possible only for chronic exposure and for acute exposure to chemicals with long biologic half-lives in the body, such as lead, other metals, and bromides. Blood lead levels show correlations with neurobehavioral impairment, but blood lead levels are representative correlates of toxicity only for relatively acute doses. In children, for example, the majority of lead-related impairment is the result of chronic, rather than acute, absorption. The cumulative amount of lead sequestered in tissues (such as deciduous teeth) may be a more representative indicator of the area under the time-concentration curve.

For chemicals with half-lives in the body too short for estimating absorbed dose, the biochemical products from the chemical or from the physiologic effects of the chemical may serve as an index of exposure. Serum enzyme concentrations (cholinesterase) and esterases in other tissues (lymphocyte target esterase) have been employed in field studies to detect pesticide exposure, while vanillylmandelic acid (product of catecholamine neurotransmitter biotransformation) and erythrocyte protoporphyrin concentrations have been used with varying success in differentiating between lead-exposed and control workers. The addition of similar "exposure biomarker" measures to laboratory studies may allow the development of quantitative estimates of absorbed dose under various exposure conditions.

The measurement of metabolic products of neurotoxic agents may be extremely useful in risk assessment; an example comes from cancer risk assessment. Human data from the early 1970s on saturation of microsomal methylene chloride biotransformation to carbon monoxide (Stewart et al., 1972), along with subsequent animal carcinogenesis data garnered in the 1980s, provided a quantitative basis for a physiologically based pharmacokinetic model of methylene chloride cancer risk assessment (Andersen et al., 1991). The information on human CO pathway kinetics provided the homologous key that allowed extrapolation of risk from animals to humans on a comparative physiologic basis rather than using default assumptions.

### 3.3.4. Imaging Techniques

A number of recently developed computerized imaging techniques for evaluating brain activity and cerebral/peripheral blood flow have added valuable information to the neurologic diagnostic process. These imaging methods include thermography, positron emission tomography, passive neuromagnetic imaging (magnetoencephalography), magnetic resonance imaging, magnetic resonance spectroscopy, computerized tomography, doppler ultrasonography, and computerized EEG recording/analysis (brain electrical activity mapping). The research application of these invasive and noninvasive quantitative methods has primarily been in neurology, schizophrenia research, drug abuse, and AIDS research. Although the equipment for brain imaging is expensive and not portable, neuroimaging techniques promise to be valuable clinical and laboratory research tools in human neurotoxicology.

### 3.3.5. Neuropathologic Methods

Neuropathologic examination of nervous system tissue has been used to confirm data from clinical testing and to contribute to the understanding of mechanisms of action of neurotoxicity. Peripheral nerve biopsies have confirmed chemically induced peripheral neuropathies and evaluated rates of recovery (Fullerton, 1969). Postmortem examination of nervous tissue also has elucidated the neuropathological effects of carbon disulfide, clioquinol, and doxorubicin (Spencer and Schaumburg, 1980).

### 3.3.6. Self-Report Assessment Methods

Self-report measures relevant to neurotoxicity risk assessment consist of histories of symptoms, events, behaviors, and environmental conditions. Information is obtained by face-to-face interviews, structured interviews (often conducted for diagnostic purposes), medical histories, questionnaires, and survey instruments.

Self-report instruments are the only means for measuring some symptoms and all interoceptive states, such as pain and nausea. Self-reports also are used to obtain information on behaviors and events (e.g., exposure conditions) especially when practical, legal, or ethical limitations prevent direct observation.

Subjective symptoms elucidated from self-report instruments are responsive to dose. Hanninen et al. (1979) found that subjective symptoms were positively correlated with blood lead levels in exposed workers. Subjective pain estimations are correlated with dose and type of centrally and peripherally acting analgesics, and anxiety scores on a variety of scales are responsive to the size of the anxiolytic dose.

Symptom checklists are used in epidemiologic research to identify the pattern of subjective complaints, which can be used to guide the selection of objective assessment methods. The distribution of symptoms can be correlated with indices of exposure to determine if particular symptoms are more prevalent in exposed persons (Sjogren et al., 1990).

Self-report data are notable for biases that may influence them; these biases are well known in epidemiology, clinical practice, and social science. Even in the most superficial of questions, respondents may consciously or unknowingly bias the answer to fit what they believe to be the examiner's

expectations. Details of objective events or subjective states are subject to alteration; recall and reporting of remembered occurrences may be biased to fit interpretations and expectations. The socioeconomic status, gender, and affiliation of the tester also have been identified as biasing variables. Bias occurs when information is requested about behaviors, beliefs, or feelings believed by the respondent to be socially undesirable or when reinforcement contingencies (e.g., litigation) strongly favor selective reporting.

Biases in self-report data can be reduced by making the questionnaire anonymous or highly confidential; objective data can be used to validate self-reports. Ethnographic observations, objective measurement of behavior, biologic samples, and the observations of significant others are employed to validate self-report data. Consistent descriptions of events by several persons lend credence to the reliability of the report. Many clinical interviews and self-report assessment instruments include some mechanisms for detecting self-report bias, either by looking for endorsement of improbable behaviors, or by examining the consistency of information gathered in several ways or from several sources. Concordance among biologic indices, observations, and physical examinations increases the judged validity of self-reports.

3.3.6.1. *Mood scales.* Changes in mood and emotionality are consequences of neurotoxicity. For example, case reports have identified mood changes from exposure to mercury, lead, solvents, and organophosphate insecticides. The Taylor Manifest Anxiety Scale and the Profile of Mood States (POMS) are standardized self-report assessment instruments for which there is some evidence of sensitivity to chemical insult.

The POMS, a component of the Neurobehavioral Core Test Battery, is a self-report measure that asks respondents to use a 5-point scale to rate the magnitude of 65 subjective states, such as "tense," "relaxed," "hopeless," "guilty," etc., that they have experienced within the past week. The responses are scored according to six mood factors, and a Total Mood Disturbance Score also may be calculated. Liang et al. (1990) used the POMS to evaluate lead-exposed workers' (mean blood lead concentration of 41 μg/dL) from a battery plant and a control group from a fabric-weaving manufacturer. Exposed workers were significantly higher on tension, depression, anger, fatigue, and confusion scales.

Mood scales were developed to aid in assessment of psychological disorders, such as depression, and to track treatment response. In addition, mood is modulated by metabolic and endocrine variables in health and disease and can change rapidly in response to interpersonal, workplace, and environmental events. The large number of nonchemical variables and the lability of mood make inclusion of carefully selected controls essential in using affect as an endpoint in neurotoxicity research.

The validity of mood scales may be limited to the specific populations in which the validity studies were performed. As characterizations of internal states, the meaning of the descriptors in the POMS established for one culture may not be the same as the meaning of that concept or term in other cultures or in other language systems. There may be variations in interpretation of the terms by respondents across English-speaking subcultures, perhaps as a function of education or the size of the verbal community. While these differences may not impede a global clinical interpretation, the reduction in generalizability across study populations may be sufficient to decrease the usefulness of subjective scales in quantitative neurotoxicity risk assessment.

3.3.6.2. *Personality scales.* The Minnesota Multiphasic Personality Inventory (MMPI), the Cattell 16 PF, and the Eysenck Personality Inventory have occasionally been used in neurotoxicity research. Exposed and nonexposed groups have differed on several scales derived from these standardized questionnaires. The diagnostic power of the MMPI, for example, is not in the individual scales but in the pattern of scores on the 10 clinical and 3 validity scales. Because interpretation of the MMPI requires a trained diagnostician with experience in the population of interest, it is less likely to be useful in quantitative neurotoxicity assessment.

### *3.4. Approaches to Neurotoxicity Assessment*

#### 3.4.1. Epidemiologic Studies

Epidemiology has been defined as "the study of the distributions and determinants of disease and injuries in human populations" (Mausner and Kramer, 1985). Knowing the frequency of illness in groups and the factors that influence the distribution is the tool of epidemiology that allows the evaluation of casual inference with the goal of prevention and cure of disease. Epidemiologic studies are a means of evaluating the effects of neurotoxic substances in human populations, but such studies are limited because they must be performed shortly after exposure if the effect is acute. Most often these effects are suspected to be a result of occupational exposures due to the increased opportunity for exposure to industrial and other chemicals.

3.4.1.1. *Case reports.* The first type of human study undertaken is the case report or case series, which can identify cases of a disease and are reported by clinicians or discerned through active or passive surveillance, usually in the workplace. For example, the neurological hazards of exposure to Kepone, dimethylaminopropionitrile, and methyl-n-butyl ketone were first reported as case studies by physicians who noted an unusual cluster of diseases in persons later found to have been exposed to these chemicals (Cone et al., 1987). However, case histories where exposure involved a single neurotoxic agent, though informative, are rare in the literature; for example, farmers are exposed to a wide variety of potentially neurotoxic pesticides. Careful case histories assist in identifying common risk factors, especially when the association between the exposure and disease is strong, the mode of action of the agent is biologically plausible, and clusters occur in a limited period of time.

Case reports are inexpensive compared with other types of epidemiologic studies and can be obtained more quickly than more complex studies. They provide little information about disease frequency or population at risk, but their importance has been clearly demonstrated, particularly in accidental poisoning or acute exposure to high levels of toxicant. They remain an important source of index cases of new diseases and for surveillance in occupational settings. These studies require confirmation by additional epidemiologic research employing other study design.

3.4.1.2. *Cross-sectional studies.* In cross-sectional studies or surveys, both the disease and suspected risk factors are ascertained at the same time and the findings are useful in generating hypotheses. A group of people is interviewed, examined, and tested at a single point in time to ascertain a relationship between a disease and a neurotoxic exposure. This study design does not allow the investigator to determine whether the disease or the exposure came first, rendering it less useful in estimating risk. These studies

are intermediate in cost and time required to complete compared with case reports and more complex analytical studies.

3.4.1.3. *Case-control (retrospective) studies.* Last (1986) defines a case-control study as one that "starts with the identification of persons with the disease (or other outcome variable) of interest, and a suitable control population (comparison, reference) group of persons without the disease." He states that the relationship of an "attribute" to the disease is measured by comparing the diseased with the nondiseased with regard to how frequently the attribute is present in each of the groups. The cases are assembled from a population of persons with and without exposure and the comparison group is selected from the same population; the relative distribution of the potential risk factor (exposure) in both groups is evaluated by computing an odds ratio that serves as an estimate of the strength of the association between the disease and the potential risk factor. The statistical significance of the ratio is determined by calculating a p-value and is used to approximate relative risk.

The case-control approach to the study of potential neurotoxins in the environment has provided a great deal of information. In his recent text, Valciukas (1991) notes that the case-control approach is the strategy of choice when no other environmental or biological indicator of neurotoxic exposure is available. He further states: "Considering the fact that for the vast majority of neurotoxic chemical compounds, no objective biological indicators of exposure are available (or if they are, their half-life is too short to be of any practical value), the case-control paradigm is a widely accepted strategy for the assessment of toxic causation." The case-control study design, however, can be very susceptible to bias. The potential sources of bias are numerous and can be specific to a particular study, and will be discussed only briefly here. Many of these biases also can be present in cross-sectional studies. For example, recall bias or faulty recall of information by study subjects in a questionnaire-based study can distort the results of the study. Analysis of the case-comparison study design assumes that the selected cases are representative persons with the disease—either all cases with the disease or a representative sample of them have been ascertained. It further assumes that the control or comparison group is representative of the nondiseased population (or that the prevalence of the characteristic under study is the same in the control group as in general population). Failure to satisfy these assumptions may result in selection bias, but violation of assumptions does not necessarily invalidate the study results.

An additional source of bias in case-control studies is the presence of confounding variables, i.e., factors known to be associated with the exposure and causally related to the disease under study. These must be controlled either in the design of the study by matching cases to controls on the basis of the confounding factor or in the analysis of the data by using statistical techniques such as stratification or regression. Matching requires time to identify an adequate number of potential controls to distinguish those with the proper characteristics, while statistical control of confounding requires a larger study.

The definition of exposure is critical in epidemiologic studies. In occupational settings, exposure assessment is based on the job assignment of the study subjects, but can be more precise if detailed company records allow the development of exposure profiles.

3.4.1.4. *Prospective (cohort, followup) studies.* In a prospective study design, a healthy group of people is assembled and followed forward in time and observed for the development of disease. Such studies are invaluable for determining the time course for development of disease (e.g., followup studies performed in various cities on the effects of lead on child development). This approach allows the direct estimate of risks attributed to a particular exposure since disease incidence rates in the cohort are determined and allows the study of chronic effects of exposure. One major strength of the cohort design is that it allows the calculation of rates to determine the excess risk associated with an exposure. Also, biases are reduced by obtaining information before the disease develops. This approach, however, can be very time-consuming and costly.

In cohort studies information bias can be introduced when individuals provide distorted information about their health because they know their exposure status and may have been told of the expected health effects of the exposure under study.

A special type of cohort study is the retrospective cohort study in which the investigator goes back in time to select the study groups and traces them over time, often to the present. The studies usually involve specially exposed groups and have provided much assistance in estimating risks due to occupational exposures. Occupational retrospective cohort studies rely on company records of past and current employees that include information on the dates of employment, age at employment, date of departure, and whether diseased (or dead in the case of mortality studies). Workers can then be classified by duration and degree of exposure. A retrospective cohort study was performed in which a cohort of 1,790 bricklayers and 2,601 men exposed to paint solvents was retrospectively identified and, if a disability pension had been awarded, the subjects were examined for evidence of presenile dementia. This study found a rate ratio of 3.4 for presenile dementia among the painters as compared with the bricklayers (Johnson, 1987).

### 3.4.2. Human Laboratory Exposure Studies

Neurotoxicity assessment has an advantage not afforded the evaluation of other toxic endpoints, such as cancer or reproductive toxicity, in that the effects of some chemicals are short in duration and reversible. This makes it ethically possible to perform human laboratory exposure studies and obtain data relevant to the risk assessment process. Information from experimental human exposure studies has been used to set occupational exposure limits, mostly for organic solvents that can be inhaled.

Laboratory exposure studies have contributed to risk assessment and the setting of exposure limits for several solvents and other chemicals with acute reversible effects. These chemicals include methylene chloride, perchloroethylene, trichloroethylene, and p-xylene (Dick and Johnson, 1986).

Human exposure studies offer advantages over epidemiologic field studies. Combined with appropriate sampling of biologic fluids (breath or blood), it is possible to calculate body concentrations, to examine toxicokinetics, and identify metabolites. Bioavailability, elimination, dose-related changes in metabolic pathways, individual variability, time course of effects, interactions between chemicals, interactions between chemical and environmental/biobehavioral factors (stressors, workload/respiratory rate) are some processes that can be evaluated in laboratory studies.

Other goals of laboratory studies include the indepth characterization of effects, the development of new assessment methods, and the examination of the sensitivity, specificity, and reliability of neurobehavioral assessment methods across chemical classes.

The laboratory is the most appropriate setting for the study of environmental and biobehavioral variables that affect the action of chemical agents. The effects of ambient temperature, task difficulty, the rate of ongoing behavior, conditioning variables, tolerance/sensitization, sleep deprivation, motivation, etc., can be studied.

3.4.2.1. *Methodologic aspects.* From a methodologic standpoint, human laboratory studies can be divided into two categories—between-subjects and within-subjects designs. In the former, the neurobehavioral performance of exposed volunteers is compared with that of nonexposed participants. In the latter, preexposure performance is compared with neurobehavioral function under the influence of the chemical or drug. Within-subjects designs have the advantage of requiring fewer participants, eliminating individual differences as a source of variability, and controlling for chronic mediating variables, such as caffeine use and educational achievement. A disadvantage of the within-subjects design is that neurobehavioral tests must be administered more than once. Practice on many neurobehavioral tests often leads to improved performance that may confound the effect of the chemical/drug. It is important to allow a sufficient number of test sessions in the preexposure phase of the study to allow performance on all tests to achieve a relatively stable baseline level.

3.4.2.2. *Human subject selection factors.* Participants in laboratory exposure studies may be recruited from populations of persons already exposed to the chemical/drug or from naive populations. Although the use of exposed volunteers has ethical advantages, can militate against novelty effects, and allows evaluation of tolerance/sensitization, finding an accessible exposed population in reasonable proximity to the laboratory is difficult. Naive participants are more easily recruited, but may differ significantly in important characteristics from a representative sample of exposed persons. Naive volunteers are often younger, healthier, and better educated than the populations exposed environmentally, in the workplace, or pharmacotherapeutically. For example, phase I drug trial data from relatively young and healthy volunteers may not adequately predict the incidence of neurotoxic side effects in older persons with chronic health problems.

3.4.2.3. *Exposure conditions and chemical classes.* Compared with workplace and environmental exposures, laboratory exposure conditions can be controlled more precisely, but exposure periods are much shorter. Generally only one or two relatively pure chemicals are studied for several hours while the population of interest may be exposed to multiple chemicals containing impurities for months or years. Laboratory studies are therefore better at identifying and characterizing effects with acute onset and the selective effects of pure agents.

Most laboratory studies of neurobehavioral function have employed individual solvents, combinations of two solvents, or very low concentrations of chemicals released from household and office materials (volatile organic compounds). This selection is primarily because solvent effects are reversible, because there are wide margins of safety for acute effects of solvents, because solvents can be administered via inhalation methods that allow calculation of body concentrations by breath sampling methods that do not require needle sticks, because over 1 million workers may have occupational solvent exposure, and because of the extensive use of solvents in household products. Chemicals studied in the laboratory over the past 40 years have included ozone, $NO_2$, CO, styrene, lead, anesthetic gases, pesticides, irritants, chlorofluorocarbon compounds, and propylene glycol dinitrite. Caffeine, diazepam, and ethanol have been used in laboratory studies as positive control substances.

3.4.2.4. *Test methods.* Neurobehavioral test methods may be selected according to several strategies. A test battery that examines multiple neurobehavioral functions may be more useful for screening and the initial characterization of acute effects. Selected neurobehavioral tests that measure a more limited number of functions in multiple ways may be more useful for elucidating mechanisms or validating specific effects.

3.4.2.5. *Controls.* Both chemical and behavioral control procedures are valuable for examining the specificity of the effects. A concordant effect among different measures of the same neurobehavioral function (e.g., reaction time) and a lack of effect on some other measures of psychomotor function (e.g., untimed manual dexterity) would increase the confidence in a selective effect on motor speed and not on attention or on nonspecific motor function. Likewise, finding concordant effects among similar chemical or drug classes along with different effects from dissimilar classes would support the specificity of chemical effect. For example, finding that the effects of a solvent were similar to those of ethanol but not caffeine would support the specificity of solvent effects on a given measure of neurotoxicity.

3.4.2.6. *Ethical issues.* Most human exposure studies in the laboratory have been justified on the basis of data indicating that the chemical or drug exposure produces only temporary and reversible functional effects. The use of occupationally, environmentally, or therapeutically exposed populations as a source of participants also makes the risks from research exposure small relative to nonlaboratory sources of risk. Protection of human subjects is also provided by the informed consent process; the health risks (known and unknown) and benefits of the research are thoroughly explained to each participant, who may terminate participation in the study at any time.

Despite safeguards, several chemicals and drugs thought at the time of the exposure study to produce only temporary neurobehavioral effects are now (20 years later) suspected of being potential human carcinogens on the basis of animal and human data (e.g., methylene chloride, perchloroethylene). Other chemicals, however, are now thought to be less carcinogenic or otherwise less toxic in humans than once believed. Rapid advances in all areas of toxicology make it difficult to communicate, to potential subjects, reliable information about the likelihood of long-term, latent, or delayed adverse effects on health subsequent to the study. The communication of uncertainty about potential long-term effects to research participants is essential if human exposure studies are to be conducted ethically and are to continue their contributions to neurotoxicology and risk assessment.

### *3.5. Assessment of Developmental Neurotoxicity*

#### 3.5.1. Developmental Deficits

While adult neurotoxicology evaluates the effects of chemical exposure on relatively stable nervous system structure and function, developmental neurotoxicology addresses the special vulnerabilities of the young and the old. Neurobehavioral assessment of chemical neurotoxicity is complicated by having to measure functional impairment within a sequential progression of emergence, maturation, and gradual decline of nervous system capabilities. Methods in developmental neurotoxicity assessment must reflect the diversity of neurobehavioral functions, from neonates to the elderly.

Exposure of pregnant women to alcohol, drugs of abuse, therapeutic drugs, nicotine, and environmental chemicals may result in the immediate or delayed appearance of neurobehavioral impairment in children (Kimmel, 1988; Nelson, 1991a). Postnatal exposure of children to chemical agents in the environment, such as lead, also may impair IQ and other indices of neurobehavioral function (Needleman et al., 1979). Neurotoxic effects may impair speech and language, attention, general intelligence, "state" regulation and responsiveness to external stimulation, learning and memory, sensory and motor skills, visuospatial processing, affect and temperament, and responsiveness to nonverbal social stimuli. Chemical neurotoxicity may be manifested as decreases in functional capabilities or delays in normative developmental progression.

Neurotoxic effects are not limited to direct exposure of the fetus or child to the chemical. Animal studies suggest that altered neurobehavioral development in offspring may result from exposure of males (Joffe and Soyka, 1981) and females to chemical substances prior to conception. In this case, altered postnatal development may reflect chemical influences on mechanisms of inheritance, copulatory behavior, nutritional status, hormonal status, or the uterine environment. In animals and humans, chemical exposure of parents may indirectly impair postnatal development through changes in milk composition, parenting behaviors, and other aspects of the environment.

In older adults the normal aging process alters the response to neurotoxicants. Both pharmacodynamic and pharmacokinetic changes may underlie altered sensitivities to the neurotoxic effects of drugs and chemicals. An example well known in geriatric medicine is the apparent increase in sensitivity of the elderly to the toxic effects of anxiolytics (Salzman, 1981). Decreases in biotransformation rate and renal elimination of parent drug and active metabolites, not related to disease processes, may partially account for the increased vulnerability (Friedel, 1978). Chronic disease states in older persons may result in decreased functional capabilities and increased vulnerability to neurotoxic effects. Chronic diseases also may prompt pharmacotherapy that may impair neurobehavioral function. Cardiovascular, psychopharmacologic, and antineoplastic medications may result in patterns of neurobehavioral impairment not typically seen in younger individuals.

3.5.2. Methodologic Considerations

Standardized methods are being developed for pediatric neurotoxicity assessment. Neurobehavioral functions emerge during developmental phases from neonatal stage through secondary school, and nervous system insult may be reflected not only in impairment of emergent functions, but also as delays in the appearance of new functions. Both the severity and type of deficit are affected by the dose and duration of exposure (Nelson, 1991b), and different sensitivities to chemical effects may be exhibited at different stages of nervous system development. Early episodes of exposure may produce structural damage to the nervous system that may not be developmentally expressed in behavior for several months or years.

The selection of appropriate testing methods and conditions is more important when assessing children because of shorter attention spans and increased dependence on parental and environmental supports. In addition, because of the increasing complexity of functional capabilities during early development, only a few tests appropriate for infants can be validly readministered to older children. Given the complexity of these variables, the task of devising sensitive, reliable, and valid assessment instruments or batteries for pediatric populations will be challenging.

Assessment methods in older adults must be capable of distinguishing chemical and drug effects from the effects of aging processes and chronic disease states (Crook et al., 1983). Assessment methods must be valid and reliable with repeated administration across a significant portion of the lifespan, and take into consideration the time (days, months, or years) that may intervene between exposure/insult and the expression of neurotoxicity as functional impairment. Research on nonexposed populations to develop age-appropriate normative scores for neurobehavioral functions will be important for the interpretation of assessment instruments.

Environmental exposure to neurotoxic chemicals and drugs is correlated with socioeconomic and ethnic status. Assessment methods will therefore have to be adapted to diverse ethnic, cultural, and language groups. While gender differences in early development have been noted, differential responses of males and females to neurotoxicants have been less well explored and should receive attention.

*3.6. Issues in Human Neurotoxicology Test Methods*

3.6.1. Risk Assessment Criteria for Neurobehavioral Test Methods

The value of human neurobehavioral test methods for quantitative risk assessment is related to the number of the following criteria that can be met:

a. Demonstrate sensitivity to the kinds of neurobehavioral impairment produced by chemicals; that is, able to detect a difference between exposed and nonexposed populations in field studies or between exposure and nonexposure periods in human laboratory research.

b. Show specificity for neurotoxic chemical effects and not be unduly responsive to a host of other nonchemical factors, and show specificity for the neurobehavioral function believed to be measured by the test method.

c. Demonstrate adequate reliability (consistency of measurement over time) and validity (concordance with other behavioral, physiologic, biochemical, or anatomic measures of neurotoxicity).

d. Show graded amounts of neurobehavioral change as a function of exposure parameter, absorbed dose, or body burden along some ordinal or continuous metric (dose response).

e. For representative classes or subclasses of CNS/PNS-active chemicals, identify single effects or patterns of impairment across several tests or functional domains that are reasonably consistent from study to study (structure-activity).

f. Be amenable to the development of a procedurally similar counterpart that can be used to assess homologous behaviors in animals.

3.6.1.1. *Sensitivity.* Individual neurobehavioral tests and test batteries have detected differences between exposed and nonexposed populations in epidemiologic studies and in laboratory studies. Effects have been detected by neurobehavioral methods at concentrations thought by other kinds of evaluation not to produce neurotoxicity. Workplace exposure limits to many chemicals have been set on the basis of neurobehavioral studies. While the overall sensitivity of neurobehavioral methods is sufficient to be useful in neurotoxicology risk assessment, some methods are notably insensitive across several chemical classes while the sensitivity of other neurobehavioral tests varies according to the spectrum of neurotoxic effects of the chemical or drug.

Sensitivity is sometimes negatively correlated with reliability; selecting for tests that show little change over time

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may also select for tests that are not sensitive to neurotoxic insult.

Having more control over the testing environment and using a repeated measures design may decrease variability and increase statistical power, but these tactics may introduce other problems. There is some suggestion that experience in highly structured laboratory environments with explicit stimulus conditions may reduce the sensitivity of humans and animals to the effects of drugs and chemicals, and the sensitivity of neurobehavioral measures to impairment by a chemical or drug may depend on neurobehavioral training history (Terrace, 1963; Brady and Barrett, 1986). Sensitivity may also be decreased if baseline behaviors are stable and well practiced or an escape/avoidance procedure is employed.

The systematic introduction of stimulus or response changes to induce transitional behaviors, such as in a transitional state or repeated learning paradigms, may be one way to retain the advantage of a stable baseline, have sufficient sensitivity, and avoid practice effects (Anger and Setzer, 1979).

3.6.1.2. *Specificity.* There are two kinds of specificity in neurobehavioral assessment of chemical or drug neurotoxicity. Chemical specificity refers to the ability of a test to reflect chemical or drug effects and to be relatively resistant to the influence of nonchemical variables. The second type of specificity refers to the ability of a test method to measure changes in a single neurobehavioral function (e.g., dexterity) or a restricted number of functions, rather than a broad range of functions (attention, reasoning, dexterity, and vision).

The neurobehavioral expression of neurotoxic chemical or drug effects is a function of the joint interaction of ongoing nervous system processes with the chemical substance and with biopsychosocial variables that also influence nervous system activity. In laboratory exposure studies numerous environmental, behavioral, and biologic variables can influence the type or magnitude of neurotoxic effects of chemical agents and drugs (MacPhail, 1990). These variables include ambient temperature, physical workload, task difficulty, the social and tangible reward characteristics of the laboratory setting, redundancy of stimuli, the rate and form of the behavioral response, conditioning factors, and the interoceptive stimulus properties of the chemicals.

The laboratory research participant's history and habits outside the laboratory also may affect chemical-neurobehavioral interactions by influencing the baseline level of performance on neurobehavioral tests or directly affecting the response of the CNS to the exposure. Age, gender, educational level, intellectual functioning, economic status, acute and chronic health conditions (including developmental or current neurologic conditions), alcohol/drug/tobacco effects or withdrawal, emotional status or significant life events, sleep deprivation, fatigue, and cultural factors are only a few of the variables that may affect performance in laboratory studies (Williamson, 1991; Cassitto et al., 1990).

The influence of these selection and biopsychosocial variables on the neurobehavioral effects of workplace chemicals is poorly understood, although their effects on drug-behavior interactions have been more thoroughly explored. Controlling or understanding chemical and nonchemical variables will be important for ensuring adequate specificity for risk assessment purposes.

3.6.1.3. *Reliability and validity.* Reliability refers to the ability of a given test to produce closely similar results when administered more than once over a period of time or in similar populations. Reliability is meaningful only with respect to the measurement of functions that would not be expected to change significantly over the time period. Test-retest reliability coefficients are between 0.6 and 0.9 (Beaumont, 1990) for most of the tests in the NCTB. With notable exceptions, other neurobehavioral tests have similar reliabilities. Reliabilities in the 0.8 to 0.9 range are usually thought acceptable. As reliability decreases, measurement error is more likely to mask neurotoxic chemical effects.

Validity has two aspects in neurotoxicity testing. A neurobehavioral test may be judged to be valid when it correlates highly with neurobehavioral and biologic measures of chemical or drug effects. A test method may also be termed valid if it correlates well with other tests believed to measure the same neurobehavioral function (e.g., attention) and does not correlate highly with tests that primarily measure other functions. Many tests purport to measure the same or similar cognitive, sensory, or motor functions, but the correlations between these tests under chemical exposure or under control conditions may not be very high. This is not surprising given that different tests of the same function may involve different presentation and response modalities, have differing numbers of trials or a different time limit, and have a different method of scoring the results. Many tests have such large procedural differences that comparison is difficult. Assessment of validity is further complicated in that all neurobehavioral tests require sensory input, attention, decisions, and motor responses.

3.6.1.4. *Dose response.* Dose-response relationships have been observed both in field and laboratory studies. Perhaps the best known examples are epidemiologic studies of lead- and mercury-exposed populations and selected solvents in laboratory studies. Dose-response relationships have been observed frequently in epidemiologic studies. Human laboratory studies also have provided data on the relationship between exposure concentration, plasma or breath concentrations, and the magnitude of neurobehavioral impairment. Defining the neurotoxic dose-response relationship in humans decreases the uncertainties of extrapolation from animal data and allows a more accurate risk assessment.

Recent human solvent exposure studies have employed low concentrations under which neurobehavioral impairment was not observed. Rather, these studies have primarily detected the effects of solvents on mucosal membranes reported by subjects as odors or irritation (Dick, unpublished observation). While these data may be relevant to setting workplace and environmental exposure limits, they can be expected to provide little information about the neurobehavioral impairment that occurs at higher concentrations. The relationship between irritant/odor concentration-effect functions and neurobehavioral impairment concentration-effect functions is not known, but it is probably not linear. Dose-dependent mechanisms of toxic effect can be expected to complicate risk extrapolation across the dose-response range in humans.

A further complication in dose-response extrapolation is that low concentrations of chemicals may appear to improve performance as measured by neurobehavioral tests, while higher doses are more likely to impair performance. Improved performance does not necessarily indicate the absence of neurotoxicity; both increases and decreases in neurobehavioral performance may result from deleterious chemical interactions with neurons. Dose-response extrapolation is further complicated by the observation that facilitative or impairment effects within a given dosage range may occur at some parameters of the test stimulus or aspects of the response (response rate-dependent) but not at others (Altmann et al., 1991). Therefore, dose extrapolations are more difficult when there is uncertainty about the shape of the dose-response function (biphasic,

linear, etc.) at the relevant test stimulus and response parameters.

The risk assessment process with animal data involves extrapolation from the effects of high doses in animals to predict the effects of chronic low-dose exposure in humans. With data from laboratory studies of humans in a risk assessment, however, the extrapolation is in the other direction, from very low-dose laboratory exposure to predict the effects of chronic exposure at higher (but still low) concentrations in the environment and workplace. Low- to high-dose extrapolation within the same species may require different assumptions and risk assessment procedures. Although high-dose human exposures have occurred in accidents, those data are primarily descriptive in nature and cannot easily be plugged into a quantitative risk extrapolation process. Low dose laboratory data may be combined with data from epidemiologic studies of persons exposed to higher concentrations.

3.6.1.5. *Structure-activity.* Structure-activity relationships for well-known chemicals have largely been established by clinical methods (and animal studies) and verified by neurobehavioral and neurophysiologic testing. Although an area of active research, neurobehavioral testing of humans has not yet been able to identify reliable patterns of impairment among chemical classes. This endeavor has been hampered by most laboratory research having been limited to the evaluation of low concentrations of solvents and a few other reversible toxicants and by the exposure uncertainties, biases, and confounding variables found in cross-sectional or cohort field studies.

3.6.2. Other Considerations in Risk Assessment

3.6.2.1. *Mechanisms of action.* Uncovering behavioral and neurophysiologic mechanisms of action is a potential contribution of human laboratory exposure studies to neurotoxicity risk assessment. For example, Stewart et al. (1972) demonstrated that methylene chloride was metabolized to carbon monoxide in humans, and further studies (Putz et al., 1979) found that CO production could account for some of the neurobehavioral impairment observed with that chemical. Recent human laboratory studies of solvents employed low concentrations that produced mucosal irritation and strong odor, but little neurobehavioral impairment (Dick, unpublished observation). The mechanisms of action that produce mucosal irritation and the neurotoxic mechanisms that are expressed in neurobehavioral impairment may be quite different. Data on mucosal irritation and odor may therefore provide limited information for a neurotoxicity risk assessment.

3.6.2.2. *Exposure duration.* A criticism of extrapolation from animal studies to human exposure conditions is that the effects of short-term exposure (months to 1–2 years) in animals may not accurately predict the effects of chronic exposure (>10 years) in humans. Laboratory studies rarely expose human subjects to solvents for more than 4–6 hours per day for 2–5 days while environmental and workplace exposures of concern involve 6–8 hours of exposure per day for years. The uncertainties of extrapolating from relatively acute exposures to predict the risks from chronic exposure will not be eliminated by using human laboratory exposure data in risk assessment.

3.6.2.3. *Time-dependent effects.* The acute exposures that are possible in human laboratory studies may provide little information on chronic time-dependent neurobehavioral effects. The effects of initial exposure may remain the same, decrease (tolerance), or increase (sensitization) with continued or repeated exposure to the chemical. All effects will not change in unison; tolerance and sensitization may be observed simultaneously on different measures of neurobehavioral function. The multiple toxicodynamic effects of chemical exposure (neurobehavioral and other) seem to follow individual time courses suggestive of multiple mechanisms of action. In addition, the processes of tolerance and sensitization can be influenced by testing conditions and the nature of the behavioral task.

One also must be concerned about latent effects that do not appear for some time after a brief exposure and "silent" cumulative neurotoxic effects that are not observable in acute human studies. Latent and silent effects not only bring up the possibility of unknown risks for human subjects, but also make more difficult the extrapolation of chronic neurotoxic risks on the basis of acute exposures.

Therefore, the acute exposure conditions possible in human laboratory studies may provide us with very limited information about the long-term effects of chronic exposure.

3.6.2.4. *Multiple exposures.* In the environment and the workplace, persons are seldom exposed to only a single chemical. Rather, they are most often exposed to complex mixtures of chemicals, the relative concentrations of which may vary over time. For example, one farmer had more than 50 different chemical products (pesticides, herbicides, solvents, metals, gases) with nervous system effects that he used, prepared, or stored in his work shed. Chemicals used in industrial processes may also contain impurities or contaminants that may produce neurotoxic effects or alter the neurotoxicity of the more abundant chemical species. Chemical mixtures may have additive or potentiating effects not predictable from studies of single chemicals (Strong and Garruto, 1991). Human laboratory exposure studies traditionally have employed one highly purified chemical or combinations of two chemicals (usually solvents) and thus may produce a spectrum of neurotoxic effects different from environmental and occupational exposures.

Recently volatile organic compounds (VOCs) have been used in human exposure studies (Otto and Hudnell, 1991). VOCs consist of multiple volatile compounds administered at concentrations commonly found in indoor air from emissions by laminates, carpet, plastics, and other building and decorating materials. Although VOCs are thought to produce primarily mucosal irritation and odors, reports of "sick building syndrome" and individual sensitivity to indoor air contaminants suggest that other neurobehavioral mechanisms also may be operating. Interactions between toxicologic and psychosocial variables may underlie some effects of VOCs.

3.6.2.5. *Generalizability and individual differences.* The results of field studies and laboratory exposure studies are most valuable when they can be extrapolated to the general population. Studies conducted in male workers or in young, healthy volunteers may have limited applicability to women or to people in other age ranges. It therefore is important to conduct studies that include males and females of different ages and ethnic heritage. Culture-sensitive neurobehavioral test methods are being developed and validated in the United States and other countries.

While it is important to increase the generalizability of results, it is equally important to know when results cannot be generalized. Studies should be specifically directed toward identifying subsets of individuals who are more or less sensitive to neurotoxic insult or differ in mode of expression. There are many examples of individual differences that alter response to chemicals and drugs: phenylketonurics are more sensitive to dietary tyramine and persons with variants of plasma pseudocholinesterase are more affected by some neuromuscular blocking agents.

3.6.2.6. *Veracity of neurobehavioral test results.* In most epidemiologic and human laboratory studies, research volunteers are highly motivated to perform well on tests of neurobehavioral function. Under voluntary conditions, actual neurobehavioral performance may serve as a reasonable index of nervous system capabilities. Some studies, however, are conducted in response to complaints of symptoms thought to be related to workplace, environmental, or therapeutic exposure to chemicals and drugs. The performance of research participants with symptoms and complaints may be significantly affected (consciously or unconsciously) by monetary rewards, emotional relief, or social gains from the validation of their complaints. Under these conditions, performance may or may not accurately reflect the capabilities of the nervous system and may lead to inaccurate conclusions about the magnitude of nervous system dysfunction or about putative chemical or drug etiologies.

In addition to suboptimal performance engendered by potential reinforcers or rewards, research participants involved in disputes over suspected neurotoxic exposures or in litigation for monetary damages are likely to be experiencing significant emotional and behavioral reactions from situational sources that can alter the outcome of neurobehavioral assessment. Anxiety, depression, sleep disturbances, fatigue, worry, obsessive thoughts, and distractibility may contribute to less than optimal performance on motor and cognitive neurobehavioral tasks, especially where speed and sustained concentration are important. Under stressful conditions, it may be extremely difficult to differentiate between neurotoxic and situational sources of observed functional impairment. Functional neurobehavioral tests are not well equipped to distinguish between impairment from neurotoxicity and from nonchemical variables. The use of functional tests in symptomatic populations requires great care in interpretation. The development of validity scales and other control procedures for assessing nonchemical influences on performance is greatly needed.

3.6.3. Cross-Species Extrapolation

Many neurobehavioral tests were developed according to constructs of human cognitive processes. The diverse measures of cognitive, sensory, and motor performance in humans are therefore not easily compared with neurobehavioral function in animals. While it may be possible to conceptually relate some animal and human neurobehavioral tests (e.g., grip strength or signal detection), many procedural differences prevent direct comparison between species.

A more direct extrapolation from animals to man might be possible if the tests were chosen on the basis of procedural similarity rather than on a conceptual basis (Anger, 1991). Stebbins and colleagues (1975) were successful in developing homologous procedures in nonhuman primates for the psychophysical evaluation of antibiotic ototoxicity. Efforts to develop comparable tests of memory and other neurobehavioral functions in animals and humans are under way (Stanton and Spear, 1990, Paule et al., 1990), and such efforts may aid in cross-species extrapolation. Other procedurally defined methods, such as Pavlovian conditioning (Solomon and Pendlebury, 1988), operant conditioning (Cory-Slechta, 1990), signal detection, and psychophysical scaling techniques (Stebbins and Coombs, 1975), could also be used to facilitate interspecies risk extrapolation. Deriving comparable neurobehavioral assessment methods in animals and humans that will allow a more straightforward extrapolation across species is of paramount importance for neurotoxicity risk assessment.

## 4. Methods to Assess Animal Neurotoxicity

### *4.1. Introduction*

#### 4.1.1. Role of Animal Models

Determining the risk posed to human health from chemicals requires information about the potential toxicological hazards and the expected levels of exposure. Some toxicological data can be derived directly from humans. Sources of such information include accidental exposures to industrial chemicals, cases of food-related poisoning, epidemiological studies, as well as clinical investigations. While human data are available from clinical trials for therapeutics and they provide the most direct means of determining effects of potentially toxic substances, for other categories of substances, it is generally difficult, expensive, and, in some cases, unethical to develop this type of information. Quite often, the nature and extent of available human toxicological data are too incomplete to serve as the basis for an adequate assessment of potential health hazards. Furthermore, for a majority of chemical substances human toxicological data are simply not available. Consequently, for most toxicological assessments it is necessary to rely on information derived from animal models, usually rats or mice. One of the primary functions of animal studies is to predict human toxicity prior to human exposure. In some cases, species phylogenetically more similar to human, such as monkeys or baboons, are used in neurotoxicological studies.

Biologically, animals resemble humans in many ways and can serve as adequate models for toxicity studies (Russell, 1991). This is particularly true with regard to the assessment of adverse effects to the nervous system, whereby animal models provide a variety of useful information that helps minimize exposure of humans to the risk of neurotoxicity. There are many approaches to testing for neurotoxicity, including whole animal (in vivo) testing and tissue/cell culture (in vitro) testing.

In vivo animal studies currently serve as the principal approach to detect and characterize neurotoxic hazard and to help identify factors affecting susceptibility to neurotoxicity. Data from animal studies are used to supplement or clarify limited information obtained from clinical or epidemiological studies in humans, as well as provide specific types of information not readily obtainable from humans due to ethical considerations. Frequently, results from animal studies are used to guide the design of toxicological studies in humans.

In vitro tests have been proposed as a means of complementing whole animal tests, which could ultimately reduce the number of animals used in routine toxicity testing. It also has been proposed that in vitro testing, when properly developed, may be less time-consuming and more cost-effective than in vivo assessments (Goldberg and Frazier, 1989; Atterwill and Walum, 1989). By understanding the biological structures or functions affected by toxic substances in vitro, it also may be possible to predict neurotoxicological effects in the whole animal. An added advantage of in vitro testing is the growing availability of human cell lines that could be used for directly assessing potential neurotoxic effects on human tissue. The currently available strategies for in vitro testing have certain limitations, including the inability to model neurobehavioral effects such as loss of memory or sensory dysfunction or to evaluate effectively the influence of organ system interactions (e.g., neuronal, endocrinological, and immunological) on the development and expression of neurotoxicity.

In using animal models to predict neurotoxic risk in humans, it is important to understand that the biochemical and physiological

mechanisms that underlie human biological processes, particularly those involving neurological and psychological functions, are very complex and are sometimes difficult, if not impossible, to model exactly in a lower species. While this caveat does not preclude extrapolating the results of animal studies to humans, it does highlight the importance of using valid animal models in well-designed experimental studies.

4.1.2. Validity of Animal Models

Whether animal tests or methods actually measure what they are intended to measure, whether the data from such tests can be obtained reliably, and whether such data can be logically extrapolated to humans are problems for most disciplines in toxicology. Various proposals have been made for the standardization and validation of methods used in neurotoxicological research. It is generally agreed that validation is an ongoing process that establishes the credibility of a test, building an increasing level of confidence in the effective utility of any model of evaluation. The credibility of a method, as it applies to testing, is usually discussed within several different contexts, including construct validity, criterion validity, predictive validity, and detection accuracy.

Construct validity concerns the ability of a method to measure selectively a particular biological function and not other dimensions. Construct validity is frequently established empirically. For example, sensory dysfunction such as hearing loss is reported by humans exposed to some chemicals, and tests are designed to detect and quantify those changes. Such tests are designed to measure changes in auditory function, while other sensations are unaffected (Tilson, 1987; Moser, 1990).

Criterion validity refers to the ability of a method to measure a characteristic relative to some standard. For example, Horvath and Frantik (1973) noted that the significance of a test measurement as an index of an actual treatment effect should be validated relative to the effects of a defined reference substance or positive control. Furthermore, each specific test or type of effect may require an appropriate reference substance for which the given type of effect is a determining factor of the toxicity. Use of reference agents has obvious advantages in the assessment of unknown chemicals.

Predictive validity refers to the ability of a method to predict effects from an incomplete or partial data set. An animal model of neurotoxicity with good predictive validity would reliably predict neurotoxicity in humans, i.e., the animal to human extrapolation would be good. There are several examples in neurotoxicology where animal models have been developed based on neurotoxicological reports from humans. Presumably, the predictive validity of such models would enable detecting similar kinds of effects produced by uncharacterized chemicals having a similar mechanism of action.

It has been proposed (Tilson and Cabe, 1978) that the most logical approach to validate animal methods in neurotoxicology is to evaluate chemicals known to be human neurotoxicants in tests designed for animals (predictive validity). By using such an approach, it is possible to generate a profile of effects characteristic of each type of neurotoxicant (criterion validity). This profile could then be used to assess the construct validity of various tests. That is, procedures assumed to measure the same neurobiological dimension should show similar effects; measures designed to detect changes in other functions should not be affected. This approach to test validation has been described as the multitrait-multimethod process of validation (Campbell and Fiske, 1959).

Of particular importance in establishing the credibility of a method is the accuracy of detecting a treatment-related effect (Gad, 1989). Accuracy is a function of two interacting elements, specificity and sensitivity. Specificity is the ability of a test to respond positively only when the toxic endpoint of interest is present. Sensitivity is the ability to detect a change when present. This aspect depends on the inherent design of the procedure and experiment. Increasing the specificity of a test may reduce the possibility of classifying a chemical as neurotoxic when, in fact, it is not (false positive), but it may increase the probability of missing a true neurotoxicant (false negative). Increasing sensitivity of a test may reduce the possibility of false negatives, but may increase the probability of false positives.

4.1.3. Special Considerations in Animal Models

4.1.3.1. *Susceptible populations.* Like most other measures of toxicological effect, neurotoxic endpoints are subject to a number of experimental variables that may affect susceptibility to the biological effects of toxicants. In this regard, genetic variation (Festing, 1991) is a particularly important issue in neurotoxicology. For example, most neurotoxicological assessments are carried out with only one or two species. This may pose problems, however, since species may differ in sensitivity to neurotoxicants. For example, nonhuman primates are more sensitive than rats (Boyce et al., 1984) or mice (Heikkila et al., 1984) to the neurodegenerative effects of MPTP, a byproduct in the illicit synthesis of a meperidine analog (Langston et al., 1983). In the assessment of delayed neuropathology produced by some cholinesterase inhibitors, it is well known that hens are much more sensitive than rodents (Cavanagh, 1954; Abou-Donia, 1981, 1983). In addition, rat strains also may be differentially sensitive to some neurotoxicants (Moser et al., 1991). Although it is preferred that more than one species be tested, the cost required for routine multispecies testing must be considered. Whenever possible, the choice of animal models should take into account differences in species with regard to pharmacodynamic, genetic composition and sensitivity to neurotoxic agents.

In addition to species, other factors such as gender of the test animal must be taken into consideration. Some toxic substances may have a greater neurotoxicological effect in one gender (McKeown-Eyssen et al., 1983; Matthews et al., 1990). Thus, screening evaluations frequently require both male and female animals. Another important variable is the age of the animal (Veronesi et al., 1990). Whether a chemical produces neurotoxicity may depend on the maturational stage of the organism (Rodier, 1986). Most preliminary assessments are designed to provide information on adults, which have the greatest probability of being exposed. However, populations undergoing rapid maturation or aged individuals may be especially vulnerable to neurotoxic agents. Longitudinal studies that assess both genders at any stage of development address many of the problems associated with differentially sensitive populations.

4.1.3.2. *Dosing scenario.* The dosing strategy used in experimental studies is an important variable in the development and expression of neurotoxicity (WHO, 1986). Some neurotoxicants can produce neurotoxicity following a single exposure, while others require repeated dosing. Repeated dosing represents the typical pattern of human exposure to many chemical substances. Significant differences in response may occur when an acutely toxic quantity of material is administered over different exposure periods. For some neurotoxicants the onset of neurotoxicity can occur immediately after dosing, while others may require time after exposure for the

toxicity to develop. Effects of repeated exposure may result in a progressive alteration in nervous system function or structure, while latent or residual effects may be discovered only in association with age-related changes or after suitable environmental or pharmacological challenge (Zenick, 1983; MacPhail et al., 1983). To ensure adequate assessment of neurotoxicity, study designs should include multiple dosing regimens, e.g., repeated exposure, with appropriate dose-to-response intervals of testing.

4.1.3.3. *Other factors.* There are a number of other factors that should be considered in the design and interpretation of studies using animal models (WHO, 1986). Design factors include such issues as using properly trained personnel to conduct the studies, the use of appropriate numbers of animals per group to achieve reliable statistical significance, and controlling the time-of-day variability. Time of testing relative to exposure is also important for assessing neurotoxic endpoints such as behavior, and experiments should be designed to generate a time course of effects, including recovery of function, if any. Housing is an important environmental design factor, because animals housed individually and animals housed in groups can respond differently to toxic agents. Temperature, as an experimental variable, may also affect the outcome of neurotoxicological studies. The responsiveness to some chemicals (e.g., triethyltin, methamphetamine) varies with ambient temperature (Dyer and Howell, 1982; Bowyer et al., 1992). Some neurobiological endpoints, such as sensory evoked potentials, can be influenced by the endogenous temperature of the animal (Dyer, 1987). Therefore, changes in body temperature, whether due to fluctuations in ambient temperature or to some chemically induced effect such as inhibition of sweating, can confound the interpretation of measures such as evoked responses unless proper controls are included in the experimental design.

Because a variety of other physiological changes can influence neuronal functions, it is important to recognize that chemical-related neurotoxicity could result from treatment-induced physiological changes, such as altered nutritional state (WHO, 1986). As part of a neurotoxicological profile, correlative measures, such as relative and absolute organ weights, food and water consumption, and body weight and weight gain, may be signs of physiological change associated with systemic toxicity and may be useful in determining the relative contribution of general toxicity.

4.1.3.4. *Statistical considerations.* Experimental designs for neurotoxicological studies are frequently complex, with two or more major variables (e.g., gender, time of testing) varying in any single experiment. In addition, such studies typically generate varying types of data, including continuous, dichotomous, and rank-order data. Knowledge and experience in experimental design and statistical analyses are important. There are several key statistical concepts that should be understood in neurotoxicological studies (WHO, 1986; Gad, 1989). The power, or probability, of a study to detect a true effect is dependent on the size of the study group, the frequency of the outcome variable in the general population, and the magnitude of effect to be identified. Statistical evaluation of a treatment-related effect involves the consideration of two factors or types of errors to be avoided. A Type I error refers to the attribution of an exposure-related neurotoxicological effect when none has occurred (false positive), while a Type II error refers to the failure to attribute an effect when an exposure-related effect has actually occurred (false negative). In general, the probability of a Type I error should not exceed 5 percent and the probability of a Type II error should not exceed 20 percent. Power is defined as one minus the probability of a Type II error.

Determination of power also requires knowledge of the difference in magnitude of outcome measures observed between exposed and control groups and the variability of the outcome measure among subjects. The sample size required to achieve a given level of statistical power increases as variability increases or the difference between groups decreases.

Continuous data (i.e., magnitude, rate, amplitude), if found to be normally distributed, can be analyzed with a general linear model using a grouping factor of dose and, if necessary, repeated measures across time. Post hoc comparisons between control and other treatment groups can be made following tests for overall significance. In the case of multiple endpoints within a series of evaluations, correction for multiple observations (e.g., Bonferroni's) might be necessary.

Descriptive data (categorical) and rank data can be analyzed using standard nonparametric techniques. In some cases, if it is believed that the data fit the linear model, the categorical data modeling procedure can be used for weighted least-squares estimation of parameters for a wide range of general linear models, including repeated measures analyses. The weighted least-squares approach to categorical and rank data allows computation of statistics for testing the significance of sources of variation as reflected by the model. In the case of studies assessing effects in the same animals at several time points univariate analyses can be carried out at each time point when the overall dose effect or dose-by-time interaction is significant.

### *4.2. Tiered Testing in Neurotoxicology*

The utility of tiered testing as an efficient and cost-effective approach to evaluate chemical toxicity, including neurotoxicity, has been recognized (NRC, 1975). Briefly, first-tier tests are designed to determine the presence or absence of neurotoxicity, while second-tier tests characterize the neurotoxic effect (NRC, 1992). There are at least two aspects of tiered testing, one involving the type of test used (Tilson, 1990a) and the other involving the dosing regimen (Goldberg and Frazier, 1989).

#### 4.2.1. Type of Test

Tests designed to measure the presence or absence of an effect are usually different from those used to assess the degree of toxicity or the lowest exposure level required to produce an effect (Tilson, 1990a). Screening procedures are first-tier tests that typically permit the testing of large numbers of animals. Such procedures may not require extensive resources and are usually simple to perform. However, these techniques may be labor intensive, provide subjective measures, yield semiquantitative data, and may not be as sensitive to subtle effects as those designed to characterize neurotoxic effects or second-tier tests. Specialized tests are usually more sensitive and employed in studies concerning mechanisms of action or the estimation of the lowest effective dose. Such testing procedures are usually referred to as secondary tests and may require special equipment and more extensive resources. Secondary tests are usually quantitative and yield graded or continuous data amenable to routine parametric statistical analyses.

Testing at the first tier is used to determine if a chemical might produce neurotoxicity following exposure, i.e., hazard detection. In this case, there may be little existing information concerning the neurotoxic potential of an agent. Examples of first-tier tests include functional observational batteries (FOB), including an evaluation of motor activity and routine

neurohistopathology. For some chemicals or types of chemicals, there may be a specific interest in screening for a particular presumed mechanism of toxicity (e.g., inhibition of cholinesterase or neurotoxic esterase) or neurobiological response (e.g., a site-specific neuronal degeneration). In these cases, specific neurochemical or neuropathological endpoints can be used in conjunction with first-tier tests. Recently, the Office of Pesticide Programs (OPP) of the U.S. EPA (1991) published testing guidelines for a neurotoxicity screening battery consisting of an FOB that consists of several measures that are relatively simple, noninvasive, and quick to perform, motor activity, and neuropathology to support testing requirements under the Federal Insecticide, Fungicide, and Rodenticide Act. Such procedures are intended for use in acute and repeated dosing studies.

A decision to test at the next tier is based on data suggesting that an agent produces neurotoxicity. The information used to make a decision to test a chemical at the secondary level can come from a variety of sources, including neurotoxicological data already in the literature, structure-activity relationships, data from first-tier testing, or following reports of specific neurotoxic effects in humans exposed to the agent. Testing at the secondary level includes detailed neuropathological evaluation as well as specific behavioral tests, e.g., procedures to assess learning and memory, or sensory function. Tests at the second tier usually measure the most sensitive endpoints of neurotoxicity, and are the most suitable for determining the no observable adverse effect level or benchmark dose. At this stage of testing, the use of a second species is considered to address the issue of cross-species extrapolation.

4.2.2. Dosing Regimen

Goldberg and Frazier (1989) have indicated that first-tier evaluations identify effects of substances following acute or repeated exposure over a wide range of doses. Measures are simple, focused on detection of effects, and results are used to help establish parameters for the second tier of testing. The subsequent stage(s) of tier testing are designed to characterize more fully the toxicity of repeated dosing. In this case, animals are exposed repeatedly or continuously to define the scope of toxicity, including latent or delayed effects, development of tolerance, and the reversibility of adverse effects. The subsequent stage(s) of testing also provide information about specific effects or study mechanisms of neurotoxicity. This tier uses methods appropriate to characterize the effects observed in the first tier of testing.

*4.3. Endpoints of Neurotoxicity*

4.3.1. Introduction

As applied to the safety assessment of chemical substances, neurotoxicity is any adverse change in the development, structure, or function of the central and peripheral nervous system following exposure to a chemical agent (Tilson, 1990b). Measures used in animal neurotoxicological studies are designed to assess these changes. Neurotoxicity can be described at multiple levels of organization, including chemical, anatomical, physiological, or behavioral. At the chemical level, for example, a neurotoxic substance might inhibit protein or transmitter synthesis, alter the flow of ions across cellular membranes, or prevent release of neurotransmitter from nerve terminals. Anatomical changes may include destruction of the neuron, axon, or myelin sheath. At the physiological level, neuronal responsiveness to stimulation might be enhanced by a decrease of inhibitory thresholds in the nervous system. Chemical-induced effects at the behavioral level can involve a variety of alterations in motor, sensory, or cognitive function, including increases or decreases in frequency or accuracy of responding. Although behavioral and neurophysiological endpoints may be very sensitive indicators of neurotoxicity, they can be influenced by other factors. The uncertainties associated with data from functional endpoints can be reduced if interpreted within the context of other neurotoxicological measures (neurochemical or neuropathological) and systemic toxicity endpoints, particularly if such measures are taken concurrently. Table 4–1 provides examples of potential endpoints of neurotoxicity at the behavioral, physiological, chemical, and structural levels.

TABLE 4–1.—EXAMPLES OF POTENTIAL ENDPOINTS OF NEUROTOXICITY

| |
|---|
| Behavioral endpoints: |
| Absence or altered occurrence, magnitude, or latency of sensorimotor reflex |
| Altered magnitude of neurological measurements, such as grip strength or hindlimb splay |
| Increases or decreases in motor activity |
| Changes in rate or temporal patterning of schedule-controlled behavior |
| Changes in motor coordination, weakness, paralysis, abnormal movement or posture, tremor, ongoing performance |
| Changes in touch, sight, sound, taste, or smell sensations |
| Changes in learning and memory |
| Occurrence of seizures |
| Altered temporal development of behaviors or reflex responses |
| Autonomic signs |
| Neurophysiological endpoints: |
| Change in velocity, amplitude, or refractory period of nerve conduction |
| Change in latency or amplitude of sensory-evoked potential |
| Change in EEG pattern or power spectrum |
| Neurochemical endpoints: |
| Alterations in synthesis, release, uptake, degradation of neurotransmitters |
| Alterations in second messenger associated signal transduction |
| Alterations in membrane-bound enzymes regulating neuronal activity |
| Decreases in brain AChE |
| Inhibition of NTE |
| Altered developmental patterns of neurochemical systems |
| Altered proteins (c fos, substance P) |
| Structural endpoints: |
| Accumulation, proliferation, or rearrangement of structural elements |
| Breakdown of cells |
| GFAP increases (adult) |
| Gross changes in morphology, including brain weight |
| Discoloration of nerve tissue |
| Hemorrhage in nerve tissue |

4.3.2. Behavioral Endpoints

Neurotoxicants produce a wide array of functional deficits, including motor, sensory, and learning or memory dysfunction (WHO, 1986; Tilson and Mitchell, 1984). Many procedures have been devised to assess overt as well as relatively subtle changes in those functions; hence their applicability to the detection of neurotoxicity and to hazard characterization. Many of the behavioral tests have been developed and validated with well-characterized neurotoxicants. Behavioral tests and agents that affect them have been reviewed recently (WHO, 1986; Cory-Slechta, 1989). Examples of such tests, the nervous system function being measured, and neurotoxicants known to affect these measures are listed in Table 4–2.

TABLE 4–2.—EXAMPLES OF SPECIALIZED TESTS TO MEASURE NEUROTOXICITY

| Function | Procedure | Representative agents |
|---|---|---|
| Neuromuscular: | | |
| Weakness | Grip strength; swimming endurance; suspension from rod; discriminative motor function; hindlimb splay. | N-hexane, Methyl butylketone, Carbaryl. |
| Incoordination | Rotorod, gait measurements | 3-Acetylpyridine, Ethanol. |
| Tremor | Rating scale, spectral analysis | Chlordecone, Type I Pyrethroids, DDT. |
| Myoclonia, spasms | Rating scale, spectral analysis | DDT, Type II Pyrethroids. |
| Sensory: | | |
| Auditory | Discriminated conditioning, reflex modification | Toluene, Trimethyltin. |
| Visual toxicity | Discriminated conditioning | Methyl mercury. |
| Somatosensory toxicity | Discriminated conditioning | Acrylamide. |
| Pain sensitivity | Discriminated conditioning (titration); functional observational battery | Parathion. |
| Olfactory toxicity | Discriminated conditioning | 3-Methylindole methylbromide. |
| Learning/Memory: | | |
| Habituation | Startle reflex | Diisopropyl-flurophosphate (DFP). |
| Classical conditioning | Nictitating membrane, conditioned flavor aversion, passive avoidance, olfactory conditioning. | Aluminum, Carbaryl, Trimethyltin, IDPN, Neonatal trimethyltin. |
| Operant or instrumental conditioning. | One-way avoidance, Two-way avoidance, Y-maze avoidance, Biel water maze, Morris water maze, Radial arm maze, Delayed matching to sample, Repeated acquisition, Visual discrimination learning. | Chlordecone, Neonatal lead, Hypervitaminosis A, Styrene, DFP, Trimethyltin, DFP, Carbaryl, Lead. |

4.3.2.1. *Functional observational batteries.* Functional observational batteries are first-tier tests designed to detect and quantify major overt behavioral, physiological, and other neurotoxic effects (Moser, 1989). A number of batteries have been used (Tilson and Moser, 1992), each consisting of tests generally intended to evaluate various aspects of sensorimotor function. Most FOB are similar to clinical neurological examinations that rate presence or absence and, in some cases, the relative degree of neurological signs. A typical FOB, as summarized in Table 4–3, evaluates several functional domains, including neuromuscular (i.e., weakness, incoordination, gait, and tremor), sensory (i.e., audition, vision, and somatosensory), and autonomic (i.e., pupil response and salivation) function.

TABLE 4–3.—SUMMARY OF MEASURES IN THE FUNCTIONAL OBSERVATIONAL BATTERY AND THE TYPE OF DATA PRODUCED BY EACH

| Home cage and open field | Manipulative | Physiologic |
|---|---|---|
| Posture (D) | Ease of removal (R). | Body temperature (I) |
| Convulsions, tremors (D). | Handling reactivity (R). | Body weight (I) |
| Palpebral closure (R). | | |
| Lacrimation (R) | Approach response (R). | |
| Piloerection (Q) | Click response (R). | |
| Vocalizations (Q). | Tail pinch response (R). | |
| Rearing (C) | Righting reflex (R). | |
| Urination (C) | Landing foot splay (I). | |
| Defecation (C) | Forelimb grip strength (I). | |
| Gait (D, R) | Hindlimb grip strength (I). | |
| Arousal (R) | Pupil response (Q). | |
| Mobility (R). | | |
| Stereotypy (D). | | |
| Bizarre behavior (D). | | |

D=descriptive data; R=rank order data; Q=quantal data; I=interval data; C=count data

The major advantages of FOB tests are that they can be administered within the context of other ongoing toxicological tests and provide some indication of the possible neurological alterations produced by exposure. Potential problems include insufficient interobserver reliability, difficulty in defining certain endpoints, and the tendency toward observer bias. The latter can be controlled by using observers unaware of the actual treatment of the subjects. FOB tests may not be very sensitive to agent-induced sensory loss (i.e., vision, audition) or alterations in cognitive or integrative processes such as learning and memory. For these reasons, data from FOB may not be suitable for determining no observable adverse effect levels. FOB data may be used to trigger experiments performed at the next tier of testing.

FOB data may be interval, ordinal, or continuous (Creason, 1989). The relevance of statistically significant test results from an FOB is judged according to the number of signs affected, the dose(s) at which neurotoxic signs are observed, and the nature, severity, and persistence of the effects. Data from the FOB may provide presumptive evidence of adverse effects and neurotoxicity. If only a few unrelated measures in the FOB are affected or the effects are unrelated to dose, there is less concern about neurotoxic potentials of a chemical. If dose is associated with other overt signs of toxicity, including systemic toxicity, large decreases in body weight, or debilitation, the data must be interpreted carefully. In cases where several related measures in a battery of tests are affected and the effects appear to be dose dependent, the level of concern about the potential of a chemical is higher.

4.3.2.2. *Motor activity.* Movement within a defined environment is a naturally occurring response and can be affected by environmental agents. Motor activity represents a broad class of behaviors involving coordinated participation of sensory, motor, and

integrative processes. Motor activity measurements are noninvasive and can be used to evaluate the effects of acute and repeated exposure to chemicals (MacPhail et al., 1989). Motor activity measurements have also been used in humans to evaluate disease states, including disorders of the nervous system (Goldstein and Stein, 1985). The assessment of motor activity is often included in first-tier evaluations, either as part of the FOB or as a separate quantitated measurement.

There are many different types of activity measurement devices, differing in size, shape, and method of movement detection (MacPhail et al., 1989). Because of the accuracy and ease of calibration, devices with photocells are widely used. In general, situating the apparatus to minimize extraneous noise, movements, or lights usually requires that the recording devices be placed in light- and sound-attenuating chambers during the testing period. A number of different factors, including age, gender, and time of day, can affect motor activity, and should be controlled or counterbalanced. Different strains of animals may have significantly different basal levels of activity, making comparisons across studies difficult. A major factor in activity studies is the duration of the testing session. Motor activity levels are generally highest at the beginning of the session and decrease to a low level throughout the session. The rate of decline during the test session is frequently termed "habituation."

Motor activity measurements are typically included as part of a battery of tests to detect or characterize neurotoxicity. Agent-induced alterations in motor activity associated with overt signs of toxicity (e.g., loss of body weight, systemic toxicity) or occurring in non-dose-related fashion are of less concern than changes that are dose dependent, related to structural or other functional changes in the nervous system, or occur in the absence of life-threatening toxicity and are generally convincing evidence of neurotoxicity.

4.3.2.3. *Neuromotor function.* Motor dysfunction is a common neurotoxic effect, and many different types of tests have been devised to measure time- and dose-dependent effects. Anger (1984) reported 14 motor effects of 89 substances, which could be classified into four categories: weakness, incoordination, tremor, and myoclonia or spasms. Chemical-induced changes in motor function can be determined with relatively simple techniques such as the FOB. More specialized tests to assess weakness include measures of grip strength, swimming endurance, suspension from a hanging rod, discriminative motor function, and hindlimb splay. Rotarod and gait assessments measure incoordination, while rating scales and spectral analysis techniques quantify tremor and other abnormal movements (Tilson and Mitchell, 1984).

An example of a second-tier procedure to assess motor function has been described by Newland (1988), who trained squirrel monkeys to hold a bar within specified limits (i.e., displacement) to receive positive reinforcement. The bar was also attached to a rotary device, which allowed measurement of chemical-induced tremor. Spectral analysis was used to characterize the tremor, which was found to be similar to that seen in humans exposed to neurotoxicants or with such neurologic diseases as Parkinson's disease.

Incoordination and performance changes can be assessed with procedures that measure chemical-induced alterations in force (Fowler, 1987). The accuracy of performance may reflect neuromotor function and is sensitive to the debilitating effects of many psychoactive drugs (Walker et al., 1981; Newland, 1988). Gait, an index of coordination, has been measured in rats under standardized conditions and can be a sensitive indication of specific damage to the basal ganglia and motor cortex (Hruska et al., 1979) as well as damage to the spinal cord and peripheral nervous system.

Procedures to characterize chemical-induced motor dysfunction have been used extensively in neurotoxicology. Most require preexposure training (including alterations of motivational state) of experimental animals, but such tests might be useful, in as much as similar procedures are often used in assessing humans.

4.3.2.4. *Sensory function.* Alterations in sensory processes (e.g., paresthesias and visual or auditory impairments) are frequently reported signs or symptoms in humans exposed to toxicants (Anger, 1984). Several approaches have been devised to measure sensory deficits. Data from tests of sensory function must be interpreted within the context of changes in body weight, body temperature, and other physiological endpoints. Furthermore, many tests assess the behavioral response of an animal to a specific sensory stimulus; such responses are usually motor movements that could be directly affected by chemical exposure. Thus, care must be taken to determine whether proper controls were included to eliminate the possibility that changes in response to a sensory stimulus may have been related to agent-induced motor dysfunction.

Several first-tier testing procedures have been devised to screen for overt sensory deficits. Many rely on orientation or the response of an animal to a stimulus. Such tests are usually included in the FOB used in screening (e.g., tail-pinch or click responses). Responses are usually recorded as being either present, absent, or changed in magnitude (Moser, 1989; O'Donoghue, 1989). Screening tests for sensory deficits are typically not suitable to characterize chemical-induced changes in acuity or fields of perception. The characterization of sensory deficits usually necessitates psychophysical methods that study the relationship between the physical dimensions of a stimulus and the behavioral response it generates (Maurissen, 1988).

One second-tier approach to the characterization of sensory function involves the use of reflex-modification techniques (Crofton, 1990). Chemical-induced changes in the stimulus frequency or threshold required to inhibit a reflex are taken as possible changes in sensory function. Prepulse inhibition has been used only recently in neurotoxicology (Fechter and Young, 1983) and can be used to assess sensory function in humans as well as in experimental animals.

Various behavioral procedures require that a learned response occur only in the presence of a specific stimulus (i.e., discriminated or conditioned responding). Chemical-induced changes in sensory function are determined by altering the physical characteristics of the stimulus (e.g., magnitude or frequency) and measuring the alteration in response rate or accuracy. In an example of the use of a discriminated conditional response to assess chemical-induced sensory dysfunction, Maurissen et al. (1983) trained monkeys to respond to the presence of a vibratory or electric stimulus applied to the fingertip. Repeated dosing with acrylamide produced a persistent decrease in vibration sensitivity; sensitivity to electric stimulation was unimpaired. That pattern of sensory dysfunction corresponded well to known sensory deficits in humans. Discriminated conditional response procedures have been used to assess the ototoxicity produced by toluene (Pryor et al., 1983) and the visual toxicity produced by methylmercury (Merigan, 1979).

Procedures to characterize chemical-induced sensory dysfunction have been used often in neurotoxicology. As in the case of most procedures designed to characterize nervous system dysfunction, training and motivational

factors can be confounding factors. Many tests designed to assess sensory function for laboratory animals can also be applied with some adaptation to humans.

4.3.2.5. *Learning and memory.* Learning and memory disorders are neurotoxic effects of particular importance. Impairment of memory is reported fairly often by adult humans as a consequence of toxic exposure. Behavioral deficits in children have been caused by lead exposure (Smith et al., 1989), and it is hypothesized (Calne et al., 1986) that chronic low-level exposure to toxic agents may have a role in the pathogenesis of senile dementia.

Learning can be defined as an enduring change in the mechanisms of behavior that results from experience with environmental events (Domjan and Burkhard, 1986). Memory is a change that can be either short-lasting or long-lasting (Eckerman and Bushnell, 1992). Alterations in learning and memory must be inferred from changes in behavior. However, changes in learning and memory must be separated from other changes in behavior that do not involve cognitive or associative processes (e.g., motor function, sensory capabilities, and motivational factors), and an apparent toxicant-induced change in learning or memory should be demonstrated over a range of stimuli and conditions. Before it is concluded that a toxicant alters learning and memory, effects should be confirmed in a second learning procedure. It is well known that lesions in the brain can inhibit learning. It is also known that some brain lesions can facilitate some types of learning by removing behavioral tendencies (e.g., inhibitory responses due to stress) that moderate the rate of learning under normal circumstances. A discussion of learning procedures and examples of chemicals that can affect learning and memory have appeared in recent reviews (Heise, 1984; WHO, 1986; Poole and Vincent, 1989).

One simple index of learning and memory, which can be measured as a first-tier endpoint, is habituation. Habituation is defined as a gradual decrease in the magnitude or frequency of a response after repeated presentations of a stimulus. A toxicant can affect habituation by increasing or decreasing the number of stimulus presentations needed to produce response decrements (Overstreet, 1977). Although habituation is a very simple form of learning, it can also be perturbed by a number of chemical effects not related to learning.

A more complicated approach to studying the effects of a chemical on learning and memory involves the pairing of a novel stimulus with a second stimulus that produces a known, observable, and quantifiable response (i.e., classical "Pavlovian" conditioning). The novel stimulus is known as the conditioned stimulus, and the second, eliciting stimulus is the unconditioned stimulus. With repeated pairings of the two stimuli, the conditioned stimulus comes to elicit a response similar to the response elicited by the unconditioned stimulus. The procedure has been used in behavioral pharmacology and, to a lesser extent, in neurotoxicology. Neurotoxicants that interfere with learning and memory would alter the number of presentations of the pair of stimuli required to produce conditioning or learning. Memory would be tested by determining how long after the last presentation of the two stimuli the conditioned stimulus would still elicit a response (Yokel, 1983). Other classically conditioned responses known to be affected by psychoactive or neurotoxic agents are conditioned taste aversion (Riley and Tuck, 1985) and conditioned suppression (Chiba and Ando, 1976).

Second-tier procedures to assess learning or memory typically involve the pairing of a response with a stimulus that increases the probability of future response through reinforcement. Response rate can be increased by using positive reinforcement or removing negative reinforcement. Learning is usually assessed by determining the number of presentations or trials needed to produce a defined frequency of response. Memory can be defined specifically as the maintenance of a stated frequency of response after initial training. Neurotoxicants may adversely affect learning by increasing or decreasing the number of presentations required to achieve the designated criterion. Decrements in memory may be indicated by a decrease in the probability or frequency of a response at some time after initial training. Toxicant-induced changes in learning and memory should be interpreted within the context of possible toxicant-induced changes in sensory, motor, and motivational factors. Examples of instrumental learning procedures used in neurotoxicology are repeated acquisition (Schrot et al., 1984), passive and active avoidance, Y-maze avoidance, spatial mazes (radial-arm maze), and delayed matching to sample (Heise, 1984; WHO, 1986; Tilson and Mitchell, 1984).

4.3.2.6. *Schedule-controlled behavior.* Another type of second-tier procedure is schedule-controlled operant behavior (SCOB), which involves the maintenance of behavior (performance) by response-dependent reinforcement (Rice, 1988). Different patterns of behavior and response rates are controlled by the relationship between response and later reinforcement. SCOB affords a measure of learned behavior and with appropriate experimental design may be useful for studying chemical-induced effects on motor, sensory, and cognitive function.

The primary endpoints for evaluation are agent-induced changes in response rate or frequency and the temporal pattern of responding. Response rate is usually related to an objective response, such as lever press or key peck, and differs according to the schedule of reinforcement. Response rates are expressed per unit of time. For some classes of chemicals, the direction of an effect on response rate can differ between low and high doses. Agent-induced changes in temporal pattern of responding can occur independently of changes in the rate and require analysis of the distribution of responses relative to reinforcement schedule.

SCOB has been used to study the effects of psychoactive drugs on behavior and is sensitive to many neurotoxicants, including methylmercury, solvents, pesticides, acrylamides, carbon monoxide, and organic and inorganic lead (Paule and McMillan, 1984; MacPhail 1985; Cory-Slechta, 1989; Rice, 1988). The experimental animal often serves as its own control, and the procedure provides an opportunity to study a few animals extensively over a relatively long period. SCOB typically requires motivational procedures, such as food deprivation, and training sessions are usually required to establish a stable baseline of responding. Because of its sensitivity to neuroactive chemicals, SCOB has great potential for use in second-tier assessments.

4.3.3. Neurophysiological Endpoints of Neurotoxicity

Neurophysiological studies are those that assess function either *directly* through measurements of the electrical activity of the nervous system (electrophysiology) or *indirectly* through measurements of peripheral organ functions controlled or modulated by the nervous system (general physiology) (Dyer, 1987). When performed properly, neurophysiological techniques provide information on the integrity of defined portions of the nervous system. Many of the endpoints used in animals have also been used in humans to determine chemical-induced alterations in neurophysiological function.

The term "electrophysiology" refers to the set of neurophysiological procedures that study neural function through the direct measurement of the electrical activity generated by the nervous system (Dyer, 1987). A variety of electrophysiological procedures are available for application to neurotoxicological problems, which range in scale from procedures that employ microelectrodes to study the function of single nerve cells or restricted portions of them, to procedures that employ macroelectrodes to perform simultaneous recordings of the summed activity of many cells. The latter types of procedures are more likely to be used in studies to detect or characterize the potential neurotoxicity of agents of regulatory interest. Several macroelectrode procedures are discussed below.

4.3.3.1. *Nerve conduction studies.* Nerve conduction studies are generally performed on peripheral nerves and can be useful in investigations of possible peripheral neuropathy. Most peripheral nerves contain mixtures of both individual sensory and motor nerve fibers, which may or may not be differentially sensitive to neurotoxicants. It is possible to distinguish sensory from motor effects in peripheral nerve studies by measuring activity in purely sensory nerves such as the sural to study sensory effects or by measuring the muscle response evoked by nerve stimulation to measure motor effects. While a number of endpoints can be recorded, the most commonly used variables are (1) nerve conduction velocity, (2) response amplitude, and (3) refractory period. In well-controlled studies, decreases in nerve conduction velocity typically are evidence of neurotoxicity (Dyer, 1987). While a decrease in nerve conduction velocity is a reliable measure of demyelination, it frequently occurs rather late in the course of axonal degradation because normal conduction velocity may be maintained for some time in the face of axonal degeneration. For this reason, a measurement of normal nerve conduction velocity does not necessarily rule out peripheral axonal degeneration if other signs of peripheral nerve dysfunction are present. Increases in conduction velocity of adult organisms following treatment with neurotoxic compounds, in the absence of hypothermia, are atypical responses and may, in fact, reflect experimental or statistical errors. Decreases in response amplitude reflect a loss of active nerve fibers, and may occur prior to decreases in conduction velocity in the course of peripheral neuropathy. Hence changes in response amplitude may be more sensitive measurements of axonal degeneration than conduction velocity. Measurements of response amplitude, however, are more variable and require careful experimental techniques, a larger sample size, and greater statistical power than measurements of velocity to detect changes. Alterations in peripheral nerve function are associated with abnormal peripheral sensations such as numbness, tingling, or burning or with motor impairments such as weakness. Examples of compounds that alter peripheral nerve function in humans or experimental animals include acrylamide, carbon disulfide, hexacarbons, lead, and some organophosphates.

4.3.3.2. *Sensory evoked potentials.* Sensory evoked potentials are electrophysiological procedures that involve measuring the response elicited by the presentation of a defined sensory stimulus such as a tone, a light, or a brief electrical pulse to the skin. Sensory evoked potentials reflect sensory function, and can be used to investigate visual, auditory, or somatosensory (body sensation) systems (Rebert, 1983; Mattsson and Albee, 1988). The data are in the form of a voltage record over time, which can be quantified in several ways. Commonly, the positive and negative voltage peaks are identified and measured as to their latency (time from stimulus onset) and amplitude (voltage).

Changes in peak amplitudes or equivalent measures reflect changes in the magnitude of the neural population that is responsive to stimulation. Both increases and decreases in amplitude are possible following exposure to neurotoxicants because (1) the brain normally operates in a careful balance between excitatory and inhibitory systems, and disruption of this balance can produce either positive or negative shifts in the voltages recorded in evoked potential experiments, and (2) excitatory or inhibitory neural activity is translated into a positive or negative deflection in the sensory evoked potential depending on the physical orientation of the electrode with respect to the tissue generating the response, which is frequently unknown. Within any given sensory system, the neural circuits that generate the different evoked potential peaks differ as a function of peak latency. In general, early latency peaks reflect the transmission of afferent sensory information, and changes in either the latency or amplitude of these peaks generally indicate a neurotoxic change that is likely to be reflected in deficits in sensory perception. The later latency peaks, in general, reflect not only the sensory input, but also the more nonspecific factors such as the behavioral state of the subject including such factors as arousal level, habituation, or sensitization. Thus, the neurotoxicological significance of changes in later latency evoked potential peaks must be interpreted in light of the behavioral status of the subject.

4.3.3.3. *Convulsions.* Observable behavioral convulsions in animals may be indicative of central nervous system seizure activity comparable to that of epilepsy in humans. However, behavioral convulsions that occur only at lethal or near lethal dose levels may reflect an indirect effect secondary to systemic toxicity and not directly on the nervous system. Convulsions occurring at dose levels that are clearly sublethal, and in the absence of apparent systemic toxicity, are more likely due to a direct effect on the nervous system. In such cases, neurophysiological recordings of electrical activity in the brain that are indicative of seizures may provide additional evidence of direct neurotoxicity. In addition to producing seizures, chemicals may also affect seizure susceptibility, altering the frequency, severity, duration, or threshold for eliciting seizures produced through other means. Such changes can occur after acute exposure or after repeated exposure to dose levels below the acute threshold, and are considered neurotoxic. Agents that produce convulsions include lindane, DDT, pyrethroids, and trimethyltin (WHO, 1986). Some agents, including many solvents, act to raise the threshold for eliciting seizures through other means or otherwise act to reduce the severity or duration of the elicited convulsions. These agents are difficult to classify as neurotoxic based on such data, but frequently have other effects on which a determination of neurotoxic potential can be based.

4.3.3.4. *Electroencephalography (EEG).* EEG analysis is used widely in clinical settings for the diagnosis of neurological disorders and less often for the detection of subtle toxicant-induced dysfunction (WHO, 1986; Eccles, 1988). The basis for the use of EEG in either setting is the relationship between specific patterns of EEG waveforms and specific behavioral states. Because states of alertness and the stages of sleep are associated with distinct patterns of electrical activity in the brain, it is generally thought that arousal level can be evaluated by monitoring the EEG. Dissociation of EEG activity and behavior can, however, occur after exposure to certain chemicals. Normal

patterns of transition between sleep stages or between sleeping and waking states are known to remain disturbed for prolonged periods of time following exposure to certain chemical classes (e.g., organophosphates). Changes in the pattern of the EEG can be elicited by stimuli producing arousal (e.g., lights, sounds) and neuroactive drugs. In studies with toxicants, changes in EEG pattern can sometimes precede alterations in other objective signs of neurotoxicity. EEG experiments must be done under highly controlled conditions, and the neurotoxicological significance of chemical-induced changes in the EEG in the absence of other signs of neurotoxicity must be considered on a case-by-case basis. Many chemicals, including metals, solvents, and pesticides, would be expected to affect the EEG.

4.3.3.5. *Electromyography (EMG).* EMG involves making electrical recordings from muscle and has been used extensively in human clinical studies in the diagnosis of certain diseases of the muscle (WHO, 1986). Changes in the EMG include amplitude and firing frequency of spontaneous firing; evoked muscle responses to nerve stimulation can be used to study alterations in the neuromuscular junction. EMG has been used to study toxicant-induced changes in neuromuscular function, including organophosphate insecticides, methyl n-butyl ketone, and botulinum and tetanus toxin.

4.3.3.6. *Spinal reflex excitability.* Segmental spinal monosynaptic and polysynaptic reflexes are relatively simple functions in the central nervous system that can be evaluated by quantitative techniques (WHO, 1986). Many of the procedures used in animals are similar to procedures used clinically to perform neurological tests in humans. One approach infers the functional state of a reflex arc from either the latency and magnitude of the reflex response evoked by stimuli of predetermined intensity or from the stimulus intensity required to elicit a detectable response (i.e., the threshold). This approach is used best in a screening context and the significance of effects in this test should be considered on a case-by-case basis. A second more involved approach records electrophysiologically the time required for a stimulus applied to a peripheral nerve to reach the spinal cord and return to the site of the original stimulation. Data from this procedure can indicate the excitability of the motoneuron pool, an effect seen with many volatile solvents. Although this approach is more invasive and time-consuming than the noninvasive procedure, it provides better data concerning the possible site of action. In addition, the manner in which the invasive procedure is carried out (i.e., in decerebrated animals) precludes repeated testing on the same animal. The significance of effects in this procedure should also be considered on a case-by-case basis.

4.3.4. Neurochemical Endpoints of Neurotoxicity

Neuronal function within the nervous system is dependent on synthesis and release of specific neurotransmitters and activation of their receptors in specific neuronal pathways. With few exceptions, neurochemical measurements are invasive and therefore used infrequently in human risk assessment. There are many different neurochemical endpoints that could be measured in neurotoxicological studies (Bondy, 1986; Mailman, 1987; Morell and Mailman, 1987). Neurotoxicants can interfere with the ionic balance of a neuron, act as a cytotoxicant after being transported into a nerve terminal, block uptake of neurotransmitter precursors, act as a metabolic poison, overstimulate receptors, block transmitter release, and inhibit transmitter degradation. Table 4–4 lists several chemicals with known neurochemical effects. Many neuroactive agents can increase or decrease neurotransmitter levels in the brain. Dose-related changes on these endpoints may indicate a chemical effect on the nervous system, but the neurotoxicological significance of such changes must be interpreted in the context of other signs of neurotoxicity.

TABLE 4–4. NEUROTOXICANTS WITH KNOWN NEUROCHEMICAL MECHANISMS

| Site of attack | Examples |
|---|---|
| 1. Neurotoxicants acting on ionic balance | |
| A. Inhibit sodium entry | Tetrodotoxin. |
| B. Block closing of sodium channal. | p,p'-DDT, pyrethroids (I). |
| C. Increase permeability to sodium. | Batrachotoxin. |
| D. Increase intracellular calcium. | Chlordecone. |
| 2. Cytotoxicants—depend on uptake into nerve terminal. | MPTP. |
| 3. Uptake blockers | Hemicholinium. |
| 4. Metabolic poisons | Cyanide. |
| 5. Receptor hyperactivators. | Domoic acid. |
| 6. Transmitter release (ACh) blockers. | Botulinum toxin. |
| 7. Transmitter degradation (ACh) inhibitors. | Organo- phosphates, carbamates. |
| 8. Microtubule disruptors | Vincristine. |

Some chemicals, such as the organophosphate and carbamate insecticides, are known to interfere with a specific enzyme, acetylcholinesterase (AChE) (Costa, 1988). Inhibition of this enzyme in brain may be considered evidence of neurotoxicity, whereas decreases in AChE in the blood, which can be easily determined in humans, are only suggestive of a neurotoxic effect. A subset of organophosphate agents produces organophosphate-induced delayed neuropathy (OPIDN) after acute or repeated exposure. Neurotoxic esterase (or neuropathy target enzyme, NTE) has been associated with agents that produce OPIDN (Johnson, 1990).

The ultimate functional significance of many biochemical changes is not known; therefore it may be difficult to determine if a specific biochemical change can be considered adverse or convincing evidence of neurotoxicity. Any such change, however, is potentially adverse and each determination of adversity requires a judgment to be made. Likewise, the absence of specific biochemical testing protocols does not mean biochemical changes are of no concern, but instead reflects a lack of understanding of the significance of changes at the biochemical level.

4.3.5. Structural Endpoints of Neurotoxicity

The central nervous system (brain and spinal cord) comprises nerve cells or neurons, which consist of a neuronal body, axon, and dendritic processes. Various types of neuropathological lesions may be classified according to the their nature or the site where they are found (WHO, 1986; Krinke, 1989; Griffin, 1990). Lesions may be classified as neuropathy (changes in the neuronal body), axonopathy (changes in the axons), myelinopathy (changes in the myelin sheaths), neurodegeneration (changes in the nerve terminals), and peripheral neuropathy (changes in the peripheral nerves). For axonopathies, a more precise location of the changes should be described (i.e., proximal, central, or distal axonopathy). In some cases, agents produce neuropathic conditions that resemble naturally occurring neurodegenerative disorders in humans (WHO, 1986). Table 4–5 lists examples of such chemicals, their known site of action, the type of neuropathology produced, and the disease or condition that each typifies.

TABLE 4–5. EXAMPLES OF KNOWN NEUROPATHIC AGENTS

| Site of attack | Neuropathology | Corresponding neurotoxicant | Disease or neurodegenerative condition |
|---|---|---|---|
| Neuron cell body | Neuronopathy | Methylmercury | Minamata disease |
| | | A.E.T.T. | Ceroid lipofuscinoses |
| | | Quinolinic acid | Huntington's disease |
| | | 3-acetylpridine | Cerebellar ataxia |
| | | Aluminum | Alzheimer's disease |
| Nerve terminal | Neurodegeneration | MPTP | Parkinson's disease |
| Schwann cell myelin | Myelinopathy | Lead Buckthorn toxin | Neuropathy of metachromatic leukodystrophy |
| Central-peripheral distal axon | Distal axonopathy | Acrylamide | Vitamin deficiency |
| | | Hexacarbons | |
| | | Carbon disulfide | |
| Central axons | Central axonopathy | Clioquinol | Subacute myelooptico-neuropathy |
| Proximal axon | Proximal axonopathy | B,B'-Imminodi-proprionitrile | Motor neuron disease |

In general, chemical effects lead to two types of primary cellular alteration: (1) the accumulation, proliferation, or rearrangement of structural elements (e.g., intermediate filaments, microtubules) or organelles (mitochondria) and (2) the breakdown of cells, in whole or in part. The latter can be associated with regenerative processes that may occur during chemical exposure. Such changes are considered to be neurotoxic.

While most neurotoxic damage is evident at the microscopic level, gross changes in morphology can be reflected by a significant change in the weight of the brain. Weight changes (absolute or relative to body weight), discoloration, discrete or massive cerebral hemorrhage, or obvious lesions in nerve tissue are generally considered neurotoxic effects.

Chemical-induced injury to the central nervous system is associated with astrocytic hypertrophy at the site of damage. Assays of glial fibrillary acidic protein (GFAP), the major intermediate filament protein of astrocytes, has been proposed as a biomarker of this response (O'Callaghan, 1988). A number of chemicals known to injure the central nervous system, including trimethyltin, methylmercury, cadmium, 3-acetylpyridine, and MPTP, have been shown to increase GFAP. In addition, increases in GFAP may be seen at dosages below those necessary to produce cytopathology as determined by Nissl-based stains used in standard neuropathological examinations. Because increases in GFAP may be an early indicator of neuronal injury in the adult, treatment-dependent increases in GFAP may be considered as a neurotoxic effect.

Chemical-induced alterations in the structure of the nervous system are generally considered neurotoxic effects. To ensure reliable data, it is important that neuropathological studies minimize fixation artifacts and potential differences in the section(s) of the nervous system sampled and control for variability due to the age, sex, and body weight of the subject (WHO, 1986).

4.3.6. Developmental Neurotoxicity

Exposure to chemicals during development can result in effects other than death, gross structural abnormality, or altered growth. There are several instances in which functional alterations have resulted from exposure during the period between conception and sexual maturity (Riley and Vorhees, 1986; Vorhees, 1987). Table 4–6 lists several examples of chemicals known to produce developmental neurotoxicity in experimental animals. Animal models of developmental neurotoxicity have been shown to be sensitive to several environmental chemicals known to produce developmental toxicity in humans, including lead, ethanol, methylmercury, and PCBs (Kimmel et al., 1990).

TABLE 4–6. PARTIAL LIST OF AGENTS BELIEVED TO HAVE DEVELOPMENTAL NEUROTOXICITY

| | |
|---|---|
| Alcohols | Methanol, ethanol. |
| Antimitotics | X-radiation, azacytidine. |
| Insecticides | DDT, kepone, organophosphates. |
| Metals | Lead, methylmercury, cadmium. |
| Polyhalogenated hydrocarbons | PCB, PBB. |
| Psychoactive drugs | Cocaine, phenytoin. |
| Solvents | Carbon disulfide, toluene. |
| Vitamins | Vitamin A. |

Sometimes functional defects are observed at dose levels below those at which other indicators of developmental toxicity are evident (Rodier, 1986). Such effects may be transient or reversible in nature, but generally are considered adverse effects. Data from postnatal studies, when available, are considered useful for further assessment of the relative importance and severity of findings in the fetus and neonate. Often, the long-term consequences of adverse developmental outcomes noted at birth are unknown and further data on postnatal development and function are necessary to determine the full spectrum of potential developmental effects. Useful data also can be derived from well-conducted multigeneration studies, although the dose levels used in these studies may be much lower than those in studies with shorter-term exposure.

Much of the early work in developmental neurotoxicology was related to behavioral evaluations. Recent advances in this area have been reviewed in several publications (Riley and Vorhees, 1986; Kimmel et al., 1990). Several expert groups have focused on the functions that should be included in a behavioral testing battery, including sensory systems, neuromotor development, locomotor activity, learning and memory, reactivity and habituation, and reproductive behavior. No testing battery has fully addressed all of these functions, but it is important to include as many as possible, and several testing batteries have been developed and evaluated for use in testing.

Direct extrapolation of functional developmental effects to humans is limited in the same way as for other endpoints of developmental toxicity, i.e., by the lack of knowledge about underlying toxicological mechanisms and their significance. It can be assumed that functional effects in animal studies indicate the potential for altered development in humans, although the types of developmental effects seen in experimental animal studies will not necessarily be the same as those that

may be produced in humans. Thus, when data from functional developmental toxicity studies are encountered for particular agents, they should be considered in the risk assessment process.

Agents that produce developmental neurotoxicity at a dose that is not toxic to the maternal animal are of special concern because the developing organism is affected but toxicity is not apparent in the adult. More commonly, however, adverse developmental effects are produced only at doses that cause minimal maternal toxicity; in these cases, the developmental effects are still considered to represent developmental toxicity and should not be discounted as secondary to maternal toxicity. At doses causing excessive maternal toxicity (that is, significantly greater than the minimal toxic dose), information on developmental effects may be difficult to interpret and of limited value. Current information is inadequate to assume that developmental effects at maternally toxic doses result only from maternal toxicity; it may be that the mother and developing organism are sensitive to that dose level. Moreover, whether developmental effects are secondary to maternal toxicity or not, the maternal effects may be reversible while effects on the offspring may be permanent. These are important considerations for agents to which humans may be exposed at minimally toxic levels either voluntarily or involuntarily, because several agents are known to produce adverse developmental effects at minimally toxic doses in adult humans (e.g., smoking, alcohol).

Although interpretation of functional developmental neurotoxicity data may be limited at present, it is clear that functional effects must be evaluated in light of other toxicity data, including other forms of developmental toxicity (e.g., structural abnormalities, perinatal death, and growth retardation). The level of confidence in an adverse effect may be as important as the type of change seen, and confidence may be increased by such factors as replicability of the effect either in another study of the same function or by convergence of data from tests that purport to measure similar functions. A dose-response relationship is considered an important measure of chemical effect; in the case of functional effects, both monotonic and biphasic dose-response curves are likely, depending on the function being tested.

4.3.7. Physiological and Neuroendocrine Endpoints

One of the key roles played by the nervous system is to orchestrate the general physiological functions of the body to help maintain homeostasis. To this end, the nervous system and many of the peripheral organ systems are integrated and functionally interdependent. For example, specific neuronal processes are intimately involved in maintaining or modulating respiration, cardiovascular function, body temperature, and gastrointestinal function. Because many peripheral organ functions involve neuronal components, changes in such physiological endpoints as blood pressure, heart rate, EKG, body temperature, respiration, lacrimation, or salivation may indirectly reflect possible treatment-related effects on the functional integrity of the nervous system. However, since physiological endpoints also depend on the integrity of the related peripheral organ itself, changes in physiological function also may reflect a systemic toxicity involving that organ. Consequently, the neurotoxicological significance of a physiological change must be interpreted within the context of other signs of toxicity. A variety of general physiological procedures can be applied to neurotoxicological problems. These procedures range in scale from simple measurements, for example, of body temperature, respiration, lacrimation, salivation, urination, and defecation, which may be included in routine functional observational batteries used for chemical screening, to more involved procedures involving measurements of blood pressure, endocrine responses, cardiac function, gastrointestinal function, etc. The latter would be more appropriate for second-level tests to characterize the scope of chemically related toxicity.

The central nervous system also regulates the outflow of the endocrine system, which together with the influence of the autonomic nervous system, can affect immunologic function (WHO, 1986). Hormonal balance results from the integrated action of the hypothalamus, located in the central nervous system, and the pituitary, which regulates activities of endocrine target organs. Each site is susceptible to disruption by neurotoxic agents. Neuroendocrine dysfunction may occur because of a disturbance in the regulation and modulation of the neuroendocrine feedback systems. One major indicator of neuroendocrine function is secretions of hormones from the pituitary. Hormones from the anterior pituitary are important for reproduction (follicle-stimulating hormone, luteinizing hormone), growth (thyroid-stimulating hormone), and response to stress (adrenocorticotropic hormone). Hypothalamic control of anterior pituitary secretions occurs through the release of hypothalamic-hypophysiotropic hormones. Hormones from the posterior hypothalamus (prolactin, melanocyte-stimulating hormone, and growth hormone) are also involved in a number of important bodily functions.

Many types of behaviors (e.g., reproductive behaviors, sexually dimorphic behaviors) are dependent on the integrity of the hypothalamic-pituitary system, which could represent an important site for neurotoxic action. Pituitary secretions arise from a number of different cell types in this gland and neurotoxicants could affect these cells either directly or indirectly. Morphological changes in follicular cells, chromophobe cells, somatotropic cells, prolactin cells, gonadotropic cells, follicle-stimulating hormone secreting cells, luteinizing hormone-containing cells, thyrotropic cells, and cortico cells might be associated with adverse effects on the pituitary, which could ultimately affect behavior and the functioning of the nervous system.

Biochemical changes in the hypothalamus also may be used as indices of potential changes in neuroendocrine function. However, the neuroendocrine significance of changes in hypothalamic neurotransmitters and neuropeptides is usually only inferential and data must be considered on a case-by-case basis.

Most anterior pituitary hormones are subject to negative feedback control by peripheral endocrine glands and, if neurotoxicants modify peripheral secretions, neuroendocrine changes can result from this altered feedback. Modifications in the functioning of these endocrine secretions could occur after toxic exposure; a number of agents have been shown to alter blood levels of glucocorticoids, thyroxine, estrogen, corticosterone, and testosterone. Although such changes are not necessarily due to direct neuroendocrine effects, target organ changes often can be a first indication of neuroendocrine changes.

4.3.8. Other Considerations

4.3.8.1. *Structure-activity relationship.* Because of a general lack of epidemiologic or toxicologic data on most chemical substances, attempts have been made in toxicology to predict activities based on chemical structure. The basis for inference from structure-

activity relationships (SARs) can be either comparison with structures known to have biologic activity or knowledge of structural requirements of a receptor or macromolecular site of action. However, given the complexity of the nervous system and the lack of information on biologic mechanisms of neurotoxic action, there are relatively few well-characterized SARs in neurotoxicology. Since SARs cannot be used to rule out all neurotoxic activity, it is not acceptable to use them as a basis for excluding potential neurotoxicity. Caution is warranted in interpreting SARs in anything other than the most preliminary analyses. Use of SARs requires detailed knowledge not only of structure, but also of each critical step in the pathogenetic mechanism of neurotoxic injury. Such knowledge is still generally unavailable.

SAR approaches are more successful when the range of possible sites of action or mechanisms of action is narrow. Thus, SARs have had more use in relation to carcinogenicity and mutagenicity than in other kinds of toxicity. The SAR approaches used in the development of novel neuropharmacologic structures deserve consideration in neurotoxicology, but their utility depends on a better understanding of neurotoxic mechanisms.

4.3.8.2. *In vitro methods.* In vitro procedures for testing have practical advantages, but studies must be done to correlate the results with responses in whole animals. One advantage of validated in vitro tests is that they minimize the use of live animals. Some of the more developed in vitro tests might be simple and might not have to be conducted by highly trained personnel, but, as with many in vivo tests, the analysis and interpretation of results are likely to require expertise. Experience with the Ames test for mutagenesis confirms the advantages of in vitro procedures, but also illustrates the problems that arise when an assay is used to predict an endpoint that is not exactly what it measures (e.g., carcinogenicity rather than specific aspects of genotoxicity).

A broad range of tissue-culture systems are available for assessing the neurologic impact of environmental agents, including cell lines, dissociated cell cultures, reaggregate cultures, explant cultures, and organ cultures (Veronesi, 1991).

Neuronal and glial cell lines are used extensively in neurobiology and have potential for neurotoxicological studies. They consist of populations of continuously dividing cells that, when treated appropriately, stop dividing and exhibit differentiated neuronal or glial properties. Neuronal lines can develop electric excitability, chemosensitivity, axon formation, neurotransmitter synthesis and secretion, and synapse formation. Large quantities of cells can be generated routinely to develop extensive dose-response or other quantitative data.

When neural tissue, typically from fetal animals, is dissociated into a suspension of single cells, and the suspension is inoculated into tissue-culture dishes, the neurons and glia survive, grow, and establish functional neuronal networks. Such preparations have been made from most regions of the CNS and exhibit highly differentiated, site-specific properties that constitute an in vitro model of different portions of the CNS. Most of the neuronal transmitter and receptor phenotypes can be demonstrated, and a variety of synaptic interactions can be studied. Glial cells are also present, and neuroglial interactions are a prominent feature of the cultures. A substantial battery of assays (neurochemical and neurophysiologic) is now available to assess the development of the cultures and to indicate toxic effects of test agents added to the culture medium. Relatively pure populations of different cell types can be isolated and cultured, so that effects on specific cell types can be assessed independently. Pure glial cells or neurons, or even specific neural categories, can be prepared in this way and studied separately, or interaction between neurons and glial cells can be studied at high resolution. The neurobiologic measures used to assess the effect of any agent can be very specific (for example, activity of neurotransmitter-related enzyme or binding of a receptor ligand) or global (for example, neuron survival or concentration of glial fibrillary acidic protein). The two-dimensional character of the preparations makes them particularly suited for morphologic evaluation, and detailed electrophysiologic studies are readily performed. The toxic effects and mechanisms of anticonvulsants, excitatory amino acids, and various metals and divalent cations have been assessed with these preparations. The cerebellar granular cell culture system, for example, has been exploited recently in studies of the mechanism of alkyllead toxicity (Verity et al., 1990).

A related preparation made from single-cell suspensions of neural tissue is the reaggregate culture. Instead of being placed in culture dishes and allowed to settle onto the surface of the dishes, the cells are kept in suspension by agitation; under appropriate conditions, they stick to one another and form aggregates of controllable size and composition. Typically, the cells in an aggregate organize and exhibit intercellular relations that are a function of, and bear some resemblance to, the brain region that was the source of the cells. The cells establish a three-dimensional, often laminated structure. Reaggregate cultures lend themselves to large-scale, quantitative experiments in which neurobiologic variables can be examined, although morphologic and ligand-binding studies are performed less readily than with surface cultures.

Organotypic explant cultures also are closely related to the intact nervous system. Small pieces or slices of neural tissue are placed in culture and can be maintained for long periods with substantial maintenance of structural and cell-cell relations of intact tissue. Specific synaptic relations develop and can be maintained and evaluated, both morphologically and electrophysiologically. Because all regions of the nervous system are amenable to this sort of preparation, it is possible to analyze toxic agents that are active only in specific regions of the central or peripheral nervous system. Explants can be made from relatively thin slices of neural tissue, so detailed morphologic and intracellular electrophysiologic studies are possible. Their anatomic integrity is such that they capture many of the cell-cell interactions characteristic of the intact nervous system while allowing a direct, continuing evaluation of the effects of a potentially neurotoxic compound added to the culture medium. The process of myelination has been studied extensively in explant cultures, and considerable neurotoxicologic information has been gained. A preparation similar to an explant culture is the organ culture, in which an entire organ, such as the inner ear or a ganglion, rather than slices or fragments, is grown in vitro. Obviously, only structures so small that their viability is not compromised can be treated in this way.

In general, the technical ease of maintaining a culture varies inversely with the degree to which it captures a spectrum of in vivo characteristics of nervous system behavior. The problem of biotransformation of potentially neurotoxic compounds is shared by all, although the more complete systems (explant or organ cultures) might alleviate this problem in specific instances. In many culture systems, complex and ill-defined additives—such as fetal calf serum, horse serum, and human placental serum—are used to promote cell survival. A number of

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thoroughly described synthetic media are now available, however, and such fully defined culture systems can be used where necessary.

## 5. Neurotoxicology Risk Assessment

### *5.1. Introduction*

Risk assessment is an empirically based process used to estimate the risk that exposure of an individual or population to a chemical, physical, or biological agent will be associated with an adverse effect. Generally, such effects can be quantified and the relative probability of their occurrence can be calculated. The risk assessment process usually involves four steps: Hazard identification, dose-response assessment, exposure assessment, and risk characterization (NRC, 1983). Risk management is the process that applies information obtained through the risk assessment process to determine whether the assessed risk should be reduced and, if so, to what extent (NRC, 1983). In some cases, risk is the only factor considered in a decision to regulate exposure to a substance. Alternatively, the risk posed by a substance is sometimes weighed against social, ethical, and medical benefits and economic and technological factors in formulating a risk management decision. The risk-balancing approach is used by some agencies to consider the benefits as well as the risks associated with unrestricted or partially restricted use of a substance. The purpose of this chapter is to describe the risk assessment process as it has currently evolved in neurotoxicology and present available options for quantitative risk assessment.

### *5.2. The Risk Assessment Process*

#### 5.2.1. Hazard Identification

Agents that adversely affect the neurophysiological, neurochemical, or structural integrity of the nervous system or the integration of nervous system function expressed as modified behavior may be classified as neurotoxicants (Tilson, 1990b). For hazard identification, the best or most generalizable studies to determine these endpoints would be measured in humans. With the exclusion of therapeutic agents, information on effects in humans is usually derived from case reports of accidental exposures and epidemiological studies. This type of data affords less certainty regarding generalizability as well as less specific exposure information. As discussed in chapter 4, a common alternative method of data generation for hazard identification is the use of animal models. Animal models that measure behavioral, neurophysiological, neurochemical, and structural effects have been developed and validated. Studies that employ these models to evaluate specific potential hazards are used to predict the outcome of exposure to the same hazard in humans.

5.2.1.1. *Human studies.* Information obtained through the evaluation of human exposure data provides direct identification of neurotoxic hazards. This type of information is generally available from clinical trials required for the approval of therapeutic products for human use. For the purposes of risk assessment of nontherapeutic substances, data on effects of exposure to humans come primarily from two types of studies, case reports and epidemiological (Friedlander and Hearn, 1980) (see chapter 3). Case studies can supply evidence of an agent's toxicity, but are often limited by both the qualitative nature of the signs and symptoms reported and the nature of the exposure data. Epidemiological studies can provide data on the types of neurotoxic effects and the possible susceptibilities of certain populations. Under appropriate considerations, they can generally provide convincing and reliable evidence of potential human neurotoxicity. As with case studies, however, often only qualitative estimates of exposure can be obtained. Controlled laboratory studies have the potential to provide adequate exposure and effects data for accurate hazard identification, but ethical considerations place moral and practical restrictions on such studies except in those instances where direct benefit to the subjects, as in the case of therapeutic agents, may be expected. Excluding instances of therapeutic product development, most studies are limited to measuring the effects of acute, rather than long-term, exposure. This limits their utility in risk assessment because the effect of long-term, low-level exposure to a potentially toxic agent is often the issue of concern.

Methods available to evaluate neurotoxicity in humans include examination of neurophysiological and behavioral parameters. Specific tests to measure neuromuscular strength and coordination, alterations in sensation, deficits in learning and memory, changes in mood and personality, and disruptions of autonomic function are frequently employed (see chapter 3).

5.2.1.2. *Animal studies.* As discussed in chapter 4, animal models for many endpoints of neurotoxicity are available and widely used for hazard identification. Data from animal studies are frequently extrapolated to humans. For example, if exposure to an agent produces neuropathology in an animal model, damage to a comparable structure in humans is predicted. Similarly, biochemical and physiological effects observed in animals are commonly extrapolated to humans. Agents that produce alterations in the levels of specific enzymes in one animal species generally have the same effect in other species, including humans. Neurophysiological endpoints also tend to be affected by the same manipulations across species. Thus, an agent interfering with nerve conduction in an animal study is often assumed to have the same effect in humans. Behavioral studies in animals are also applied to human hazard identification, although the correspondence between methods employed in animals and humans is sometimes not as obvious. For this reason, behavioral methods developed for neurotoxic hazard identification need to be considered on a case-by-case basis.

#### *5.2.1.3. Special Issues*

5.2.1.3.1. Animal-to-human extrapolation. The use of animal data to identify hazard to humans is not without controversy. Relative sensitivity across species as well as between sexes is a constant concern. Overly conservative risk assessments, based on the assumption that humans are always more sensitive than a tested animal species, can result in poor risk management decisions. Conversely, an assumption of equivalent sensitivity in a case where humans actually are more sensitive to a given agent can result in underregulation that might have a negative impact on human health.

5.2.1.3.2. Susceptible populations. A related controversy concerns the use of data collected from adult organisms, animal or human, to predict hazards in potentially more sensitive populations, such as the very young and the elderly, or in other groups, such as the chronically ill. In some cases, identification of neurotoxicity hazard does not generally include subjects from either end of the human life span or from other than healthy subjects. Uncertainty factors are used to adjust for more sensitive populations. In addition, single or multigeneration reproductive studies in animals may provide a source of information on neurological disorders, behavioral changes, autonomical dysfunction, neuroanatomical anomalies, and other signs of neurotoxicity in the developing animal (chapter 4).

5.2.1.3.3. Reversibility. For the most part, the basic principles of hazard identification are the same for neurotoxicity as for any adverse effect on health. One notable exception,

however, concerns the issue of reversibility and the special consideration that must be given to the inherent redundancy and plasticity of the nervous system.

Except for these instances where truly reversible effects are produced (e.g., enzyme down regulation, receptor or membrane transporter reversible blockade), the nervous system can be compared to a "trust fund" issued at birth. Assets can be drawn for various purposes over a lifetime, but none can be added. For many health effects, temporary, as opposed to permanent, effects are repaired during a true recovery. Damage to many organ systems, if not severe, can be spontaneously repaired. For example, damaged liver cells that may result in impaired liver function often can be replaced with new cells that function normally. The resulting restoration of liver function can be viewed as recovery. In the central nervous system, cells generally do not recover from severe damage and new cells do not replace them. When nervous system recovery is observed, it may represent compensation requiring activation of cells that were previously performing some other function, reactive synaptogenesis, or recovery of moderately injured cells. While a damaged liver may recover due to the addition of new cells, severe damage to nervous system cells results in a net loss of cells. This loss of compensatory capacity may not be noticed for many years and, when it does appear, it may be manifest in a way seemingly unrelated to the original neurotoxic event. Lack of ability to recover from a neurotoxic event later in life or premature onset of signs of normal aging may result. It is therefore important to consider the possibility that significant damage to the nervous system may have occurred in experiments where effects appear to be reversible.

5.2.1.3.4. Weight of evidence. A "weight of evidence" approach to identifying an agent as a neurotoxic hazard is almost always necessary. With the exception of therapeutic products, a single, complete, controlled study of an agent's effects on the nervous system, conducted in an appropriate representative sample of humans, is rarely, if ever, possible. Rather, those individuals charged with identifying hazard are usually confronted with a collection of imperfect studies, often providing conflicting data (Barnes and Dourson, 1988).

There are several possible approaches, depending on the quality of the evidence. Two examples are the use of data from only the most sensitive species tested and the use of data from only species responding most like the human for any given endpoint. In assessing neurotoxicity of therapeutic products, when human data are available and neurotoxic endpoints detected in animals can be clinically measured, the human findings supersede those of the nonclinical data base. Assuming that all available evidence is to be included, considerations necessary for formulating a conclusion include the relative weights that should be given tc positive and negative studies. Sometimes positive studies are given more weight than negative ones, even when the quality of the studies is comparable. Experimental design factors such as the species tested, the number and gender of subjects evaluated, and the duration of the test are given different weights when data from different studies are combined. The route of exposure in a given study and its relevance to expected routes of human exposure are often a weighted factor. The issue of statistical significance is frequently debated. Some argue that an effect occurring at a statistically insignificant level may nevertheless represent a biologically or toxicologically significant event, and should be afforded the same weight as if the finding were statistically significant. In general, however, only statistically significant measures should be considered in hazard identification. The power of various statistical measures is also considered.

5.2.2. Dose-Response Assessment

In the second step of the risk assessment process, the dose-response assessment, the relationship between the extent of damage or toxicity and dose of a toxic substance for various conditions of exposure is determined. Because several different kinds of responses may be elicited by a single agent, more than one dose-response relationship may need to be developed (e.g., neurochemical and morphological parameters).

When quantitative human dose-effect data are not available for a sufficient range of exposures, other methods must be used to estimate exposure levels likely to produce adverse effects in humans. In the absence of human data, the dose-response assessment may be based on tests performed in laboratory animals. Evidence for a dose-response relationship is an important criterion in assessing neurotoxicity, although this may be based on limited data from standard studies that often use only three dose groups and a control group (Barnes and Dourson, 1988).

The most frequently used approach for risk assessment of neurotoxicants and other noncancer endpoints is the uncertainty- or safety-factor approach (Barnes and Dourson, 1988; Kimmel, 1990). For example, within the EPA, this approach involves the determination of reference doses (RfDs) by dividing a no observed adverse effect level (NOAEL) by uncertainty factors that presumably account for interspecies differences in sensitivity (Barnes and Dourson, 1988). Generally, an uncertainty factor of 10 is used to allow for the potentially higher sensitivity in humans than in animals and another uncertainty factor of 10 is used to allow for variability in sensitivity among humans. Hence, the RfD is equal to the NOAEL divided by 100. If the NOAEL cannot be established, it is replaced by the lowest observed adverse effect level (LOAEL) in the RfD calculation and an additional uncertainty factor of 10 is introduced (i.e., the RfD equals the LOAEL divided by 1000).

If more than one effect is observed in the animal bioassays, the effect occurring at the lowest dose in the most sensitive animal species and gender is generally used as the basis for estimating the RfD (OTA, 1990). Sometimes, different RfDs can be calculated, depending on endpoint or species selected. Selection of safety factors may be influenced by several considerations, including data available from humans, weight of evidence, type of toxic insult, and probability of variations in responses among susceptible populations (e.g., very young or very old). Established guidelines have been accepted by several agencies that use the safety-factor approach to account for intraspecies variability, cross-species extrapolation, and exposure duration. In some instances, comparisons between these predicted values and experimental data have been conducted and the results appear comparable for some selected examples (Dourson and Stara, 1983; McMillan, 1987).

The uncertainty-factor approach is based on the assumption that a threshold does exist, that there is a dose below which an effect does not change in incidence or severity. The threshold concept is complicated and controversial. As described by Sette and MacPhail (1992), there are several different ways in which the term threshold is used. Thresholds are defined, in part, by the limit of detection of an assay. As the sensitivity of the analytical method or bioassay is improved, the threshold might be adjusted downward, indicating that the

true threshold had not been previously determined.

Another problem inherent with an observation of no discernible effects at low doses is that it is impossible to determine whether the risk is actually zero (i.e., the dose is below a threshold dose) or whether the statistical resolving power of a study is inadequate to detect small risks (Gaylor and Slikker, 1992). Every study has a statistical limit of detection that depends on the number of individuals or animals involved. For example, it would be relatively unusual to conduct an experiment on a neurotoxicant with as many as 100 animals per dose. If no deleterious effects were observed in 100 animals at a particular dose, it might be concluded that this dose level is below the threshold dose. However, we can only be 95 percent confident that the true risk is less than 0.03. That is, if 3 percent of the animals in a population actually develop a toxic effect at this dose, there is a 5 percent chance that a group of 100 animals would not show any effect. The observation of no toxic effects in an extremely large sample of 1,000 animals only indicates with 95 percent confidence that the true risk is less than 0.003, etc. Because thresholds cannot be realistically demonstrated, they are therefore assumed.

The notion of threshold may be useful in explaining mechanisms associated with specific types of toxicity. What little is known about mechanisms of neurotoxicity suggests that both threshold and nonthreshold scenarios are possible (Silbergeld, 1990). However, for one of the most studied neurotoxicants, lead, there has been a steady decline in exposure levels shown to have effects, suggesting to some that no threshold dose is apparent (Bondy, 1985). Sette and MacPhail (1992) also consider the threshold as a mathematical assumption and as a population sensitivity and conclude that "the idea of no threshold seems experimentally untestable * * *"

The RfD approach relies on single experimental observations (the NOAEL or LOAEL) instead of complete dose-response curve data to calculate risk estimations. Chemical interactions with biological systems are often specific, stereoselective, and saturable. Examples include enzyme-substrate binding leading to substrate metabolism, transport, and receptor-binding, any or all of which may be a requirement of an agent's effect or toxicity. Therefore, a chemical's dose-response curve may not be linear. The certainty of low-dose extrapolation has been determined to be markedly affected by the shape of the dose-response curve (Food and Drug Administration Advisory Committee on Protocols for Safety Evaluation, 1971). Therefore, the appropriate use of dose-response curve data should enhance the certainty of risk estimations when thresholds are not assumed or determined.

Dose-response models have generated considerable interest as more appropriate and quantitative alternatives to the safety-factor approach in risk assessment. Rather than routinely applying a "fixed" safety factor to the NOAEL (based on a single dose) to obtain a "safe" dose, another approach uses data from the entire dose-response curve.

Two fundamentally different approaches in the use of dose-response data to estimate risk have been developed. Dews and coworkers (Dews, 1986; Glowa and Dews, 1987; Glowa et al., 1983) and Crump (1984) demonstrated an approach in which they used information on the shape of the dose-response curve to estimate levels of exposure associated with relatively small effects (i.e., a 1, 5, or 10 percent change in a biological endpoint). Both Dews and Crump fit a mathematical function to the data and provided an estimate of the variability in exposure levels associated with a relatively small effect.

An alternative approach developed by Gaylor and Slikker (1990) first establishes a mathematical relationship between a biological effect and the dose of a given chemical. The second step determines the distribution (variability) of individual measurements of biological effects about the dose-response curve. The third step statistically defines an adverse or "abnormal" level of a biological effect in an untreated population. The fourth step estimates the probability of an adverse or abnormal level as a function of dose utilizing the information from the first three steps. The advantages of these dose-response models are that they encourage the generation and use of data needed to define a complete dose-response curve.

Although more quantitative dose-response assessment models have emerged in recent years, uncertainty remains as to what biological endpoints from which species with what dosing regimen should be analyzed. Within a species, a given agent may produce a variety of effects, including neurochemical, neuropathological, and behavioral effects. In other instances, a chemical may produce alterations of one endpoint but not others (Slikker et al., 1989). Species selection may also dramatically affect the outcome of risk assessments. The Parkinson-like syndrome produced by single doses of MPTP in the human or nonhuman primate is not observed in rats given comparable MPTP doses (Kopin and Markey, 1988). Although endpoint and species selection appear to have a tremendous effect on the outcome of an assessment, only a few studies have systematically investigated the effect on assessment outcome of varying either the species or the endpoint within a species (McMillan, 1987; Hattis and Shapiro, 1990; Gaylor and Slikker, 1992).

### 5.2.3. Exposure Assessment

This step of the risk assessment process determines the source, route, dose, and duration of human exposure to an agent. The results of the dose-response assessment are combined with an estimate of human exposure to obtain a quantitative estimate of risk. As either the effect of or the exposure to an agent approaches zero, the risk of neurotoxicity approaches zero.

Exposure can occur via many routes, including ingestion, inhalation, or contact with skin. Sources of exposure may include soil, food, air, water, or intended vehicle (e.g., drug formulation). The degree of exposure may be strongly influenced by a number of factors, for example, the occupation of the individual involved.

The duration of exposure (i.e., acute or chronic) and interval of exposure (i.e., episodic or continuous) are variables of exposure that are common to all types of risk assessments, including carcinogenicity (OSTP, 1985).

Although not routinely used, biological markers or biomarkers of exposure could theoretically improve the exposure assessment process and, thereby, improve the overall risk assessment of neurotoxicants. Exposure biomarkers may include either the quantitation of exogenous agents or the complex of endogenous substances and exogenous agents within the system (Committee on Biological Markers, 1987). A limited number of examples of biomarkers of exposure have been reviewed by Slikker (1991) and include blood or dentine lead concentrations (Needleman, 1987), cerebrospinal fluid concentrations of dopamine metabolites following MPTP administration (Kopin and Markey, 1988), cerebrospinal fluid concentrations of a serotonin metabolite following MDMA exposure (Ricaurte et al., 1986), and serum esterase concentrations following organophosphate exposure (Levine et al., 1986). The use of muscarinic receptor binding in peripheral plasma lymphocytes has also been described as a potential biomarker of exposure for

the organophosphates (Costa et al., 1990). These examples suggest that biomarkers of exposure are available for some agents, but more effort will be required to demonstrate that these biomarkers can routinely be used to improve the exposure assessment process.

5.2.4. Risk Characterization

The final step of the risk assessment process combines the hazard identification, the dose-response assessment, and the exposure assessment to produce the characterization of risk. As previously stated, the current practice is to divide the NOAEL by the appropriate safety factor to obtain the RfD. The magnitudes of the safety factors used to determine RfDs [interspecies extrapolation (10), intraspecies extrapolation (10), and acute vs. chronic exposure (10) = 1000] are based more on conservative estimates than on actual data (Sheehan et al., 1989; McMillan, 1987) and have been questioned for empirical reasons (Gaylor and Slikker, 1990). Along with this RfD numerical value, any uncertainties and assumptions inherent in the risk assessment should also be stated (OTA, 1990). Although the RfD provides a single numerical value, it does not provide information concerning the uncertainty of this number nor does the RfD approach attempt to estimate the potential risk as a function of dose or consider the potential risk at the NOAEL. The risk at the NOAEL generally is greater than zero and has been estimated to be as high as about 5 percent (Crump, 1984; Gaylor, 1989). Concern has been expressed that the application of the RfD approach to all neurotoxicants is unlikely to be biologically defensible in light of mechanistic data (NRC, 1992). Several other quantitative risk assessment procedures have recently emerged as alternatives to the RfD approach (Kimmel and Gaylor, 1988).

Quantitative risk assessment may be defined as a data-based process that uses dose-response information and measurements of human exposure to arrive at estimates of risk. Assumptions are required to extrapolate results from high to low doses, to extrapolate from animal results to humans, and to extrapolate across different routes and durations of exposure.

In a step toward quantitative risk assessment, Crump (1984) suggested the use of a benchmark dose defined as "a statistical lower confidence limit corresponding to a small increase in effect over the background level." The benchmark dose is determined with a mathematical model and is less affected by the particular shape of the dose-response curve. Although the benchmark approach avoids several problems inherent in the RfD approach (e.g., lack of precision in defining the LOAEL; Kimmel, 1990), the same final step of dividing by arbitrary safety factors is obligatory.

Another approach to quantitative risk assessment is the statistical or curve-fitting approach. If quantal information concerning the proportion of response at a given dose is available but mechanistic information is lacking, statistical models can be used to fit population data (Wyzga, 1990). This approach has been used to fit various models to data of lead toxicity. The data were sufficient to allow discrimination of several models in terms of goodness of fit; the nerve-conduction velocity data from children exposed to environmental lead as a function of blood lead concentration fit a "hockey-stick" type dose-response curve rather than a logistic or quadratic model (Schwartz et al., 1988). These statistical approaches not only provide a method to extrapolate data to lower exposure conditions but also can provide circumstantial evidence to support a proposed mechanism of action.

The development of quantitative risk assessment approaches depends, in part, on the availability of information on the mechanism of action and pharmacokinetics of the agent in question. In the development of a biologically based, dose-response model for MDMA neurotoxicity, Slikker and Gaylor (1990) considered several factors, including the pharmacokinetics of the parent chemical, the target tissue concentrations of the parent chemical or its bioactivated proximate toxicant, the uptake kinetics of the parent chemical or metabolite into the target cell and membrane interactions, and the interaction of the chemical or metabolite with presumed receptor site(s). Because these theoretical factors contain a saturable step due to limited amounts of required enzyme, reuptake, or receptor site(s), a nonlinear, saturable dose-response curve was predicted. In this case of neurochemical effects of MDMA in the rodent, saturation mechanisms were hypothesized and indeed saturation curves provided relatively good fits to the experimental results. The conclusion was that use of dose-response models based on plausible biological mechanisms provide more validity to prediction than purely empirical models. Concomitant with attempts to develop quantitative risk assessment procedures, it is imperative that regulatory policy or risk management procedures also be developed to use appropriately the type of data generated by quantitative risk assessment. However, until alternative risk assessment procedures have been validated, the available RfD approach with its limitations will most likely continue to be used.

*5.3. Generic Assumptions and Uncertainty Reduction*

The purpose of risk assessment is to determine the risk associated with human exposure to a hazard. The quality of the data from toxicological studies differs. In the case of therapeutic products where human effects information is available, risk assessments rely primarily on the result of controlled clinical trials. Even when clinical trial data are available, however, conducting a risk assessment is complicated by many uncertainties. In the face of these uncertainties, conservative assumptions are usually made at several steps in the risk assessment process. For example, unless adequate clinical data are available, the most sensitive experimental species is frequently used. While conservative assumptions may lead to a risk assessment that adequately protects the human population, this may result in an increased financial burden on the public (e.g., manufacturing costs or loss of jobs); even then it is impossible to be certain that the total population will be protected. Conversely, errors leading to allowable exposure levels that are too high reduce the safety margin for human health and increase health care costs. Thus, there are compelling public health and economic reasons to obtain more precise risk assessments; all assumptions cannot be completely eliminated, but the degree of uncertainty associated with certain specific assumptions can at least be reduced (Sheehan et al., 1989).

Risk assessment for neurotoxicity shares many common features with other noncancer toxicities such as developmental toxicity and immunotoxicity. As such, there are several generic assumptions that apply to all traditional, noncancer endpoint risk assessment procedures (Table 5–1).

TABLE 5–1.—GENERAL ASSUMPTIONS THAT UNDERLIE TRADITIONAL RISK ASSESSMENTS [a,b]

1. A threshold dose exists for noncancer endpoints.
2. NOAEL/LOAEL uncertainty- or safety-factor approaches are reasonable.
3. Variability in the toxic response to the chemical exposure is not due to a heterogeneous population response.
4. Average dose or total dose is a reasonable measure of exposure when doses are not equivalent in time, rate, or route of administration and the average (or total) dose is proportional to adverse effect.
5. Structure-activity correlations can be used to predict human toxicity.
6. The mechanism of action is the same at all doses for all species.

[a] This is not intended to be an exhaustive list.
[b] Modified from Sheehan et al., 1989.

One approach to reducing some of the uncertainties is to critically define and examine the assumptions made in the risk assessment process. Several of the more generic of these assumptions are listed in Table 5–1. Despite their diversity, these assumptions share the attribute of being partially replaceable by factual information. If, for example, the assumption of 100 percent absorption of a toxicant from a contaminated food source is replaced by data demonstrating that 90 percent of the toxicant is not biologically available under human exposure conditions, then a revised risk assessment could allow a 10-fold greater exposure from that source; i.e., the former risk assessment was too conservative by a factor of 10. As another example, many risk assessments employ data from two species.

If experimental animals and humans absorb or metabolize the same fraction of a dose, the potency estimate would not change when extrapolating from animals to humans. Therefore, it is necessary to have information on both human and animal rates before changes in potency estimates are made. If a toxicant acts via a reactive intermediate and humans produce 10-fold more of the intermediate than either of the test species under similar conditions, then allowable human exposure should be decreased 10-fold (i.e., the allowable exposure levels are 10-fold too high) or an increased danger to human health exists. These findings could then replace the "most sensitive species" principle with facts concerning relevant human exposure and susceptibility. In these examples, the identification of the assumption helps define research needs or knowledge gaps (Sheehan et al., 1989).

In general, the knowledge gaps are many and complex, but some can be filled with practical solutions. The combination of ample dose-response data and a quantitative risk assessment process can eliminate assumptions 1 (existence of a threshold) and 2 (reasonableness of safety factors) of the six generic assumptions (Table 5–1). The uncertainty of assumption 4 (exposure comparisons) could be at least reduced with the proper application of appropriate pharmacokinetic data. Likewise, the uncertainty of generic assumption 3 (variability of heterogeneous populations) can theoretically be reduced with the use of biomarkers of exposure to define more accurately exposure in a large population.

Many assumptions remain, however, and uncertainty reduction by filling knowledge gaps will ultimately require greater understanding of biological mechanisms underlying neurotoxicity. A single risk assessment model may not be adequate for all conditions of exposure, for all endpoints, or for all agents. Risk assessment models of the future may well include biomarkers of both effect and exposure as well as biologically based mechanistic considerations derived from both epidemiologic and experimental test system data.

### 6. General Summary

It is now generally accepted that some chemicals, including industrial agents, pesticides, therapeutic agents, drugs of abuse, food-related chemicals, and cosmetic ingredients, can have adverse effects on the structure and function of the nervous system. It has recently been proposed that exposure to neurotoxicants might also be associated with Parkinsonism and Alzheimer's disease. Several Federal agencies have initiated research programs in neurotoxicology, developed neurotoxicology testing guidelines, and used neurotoxic endpoints to regulate chemicals in the environment and workplace.

The scientific basis for identifying and characterizing chemical-induced neurotoxicity has advanced rapidly during the last several years. The manifestation of neurotoxicity depends on the relationship between exposure (applied dose) and the dose at the site of toxic action (delivered or target dose) and response. Chemical-induced changes in the structure or function of the nervous system at the cellular or molecular level can be observed as alterations in sensory, motor, or cognitive function at the level of the whole organism. Several important features about the nervous system make it particularly vulnerable to chemical insult, including differential susceptibilities at different stages of maturation, the presence of blood brain and nerve barriers that may be the target of toxic action, high metabolic rate, and limited regenerative capability following damage.

Methods devised to detect and quantify agent-induced changes in nervous system function in humans include clinical evaluations and neurotoxicity testing methods such as neurobehavioral, neurophysiological, neurochemical, imaging, and self-reporting procedures. Experimental approaches used in human neurotoxicology include epidemiological studies and, to a limited extent, human laboratory exposure studies. There are several important unresolved issues in human neurotoxicology, including the development of commonly accepted risk assessment criteria and animal-to-human extrapolation.

It is generally assumed that if physical or chemical-induced neurotoxicity is observed in animal models, then neurotoxicity will be produced in humans. Considerable research has been performed to demonstrate the validity of many animal models in an experimental context and to show predictive validity. Methods in animal neurotoxicology are frequently used in a tier-testing framework with simpler, more cost-effective tests to screen or identify neurotoxic potential. In hazard identification, the presence of neurotoxicity at the first tier is used to make decisions about subsequent development of a chemical or about the need to conduct additional experiments to define the level at which neurotoxicity will be observed. A number of methods have been devised for studies in animal neurotoxicology, including neurobehavioral, neurophysiological, neurochemical, and neuroanatomical techniques. It is known that the neuroendocrine system may be affected adversely by neurotoxicants and that there are populations that are differentially vulnerable to neurotoxic agents. Considerable research is in progress to employ structure-activity relationships to predict neurotoxicity and newly developed in vitro procedures are being used to augment or complement currently existing in vivo approaches.

Principles of risk assessment for neurotoxicity are evolving rapidly. At the present time, neurotoxicity risk assessment is generally limited to qualitative hazard identification. Neurotoxicological risk assessments

have been generally based on a no observed adverse effect level and uncertainty factors. As with other noncancer endpoints, there is a need to consider more information about the shape of the dose-response curve and mechanisms of effect in quantitative neurotoxicology risk assessment. Research is needed to develop dose-response models that incorporate biologic information and mechanistic hypotheses into quantitative extrapolation of dose-response relationships across species and from high to low dose exposures.

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Prepared by
Working Party on Neurotoxicology
Subcommittee on Risk Assessment
Federal Coordinating Council on Science, Engineering, and Technology
Lawrence W. Reiter, USEPA, Chair
Hugh A. Tilson, USEPA, Executive Secretary
John Dougherty, NIOSH
G. Jean Harry, NIEHS
Carol J. Jones, OSHA
Suzanne McMaster, USEPA
William Slikker, NCTR/FDA
Thomas J. Sobotka, FDA

**Ad Hoc Interagency Committee on Neurotoxicology**

William Boyes, U.S. Environmental Protection Agency
Joy Cavagnaro, Food and Drug Administration
Selene Chou, Agency for Toxic Substances and Disease Registry
Murray Cohn, U.S. Consumer Product Safety Commission
Joseph F. Contrera, Food and Drug Administration
Miriam Davis, National Institute of Environmental Health Sciences, National Institutes of Health
Joseph DeGeorge, Food and Drug Administration
Robert Dick, National Institute for Occupational Safety and Health
John Dougherty, National Institute for Occupational Safety and Health
Lynda Erinoff, National Institute on Drug Abuse
Joseph P. Hanig, Food and Drug Administration
G. Jean Harry, National Institute of Environmental Health Sciences
David G. Hattan, Food and Drug Administration
Norman A. Krasnegor, National Institutes of Health
Robert C. MacPhail, U.S. Environmental Protection Agency
Suzanne McMaster, U.S. Environmental Protection Agency
Lakshmi C. Mishra, U.S. Consumer Product Safety Commission
Andres Negro-Vilar, National Institute of Environmental Health Sciences
James K. Porter, U.S. Department of Agriculture/Agricultural Research Service
Lawrence W. Reiter, U.S. Environmental Protection Agency
Jane Robens, U.S. Department of Agriculture/Agricultural Research Service
Barry Rosloff, Food and Drug Administration
Harry Salem, U.S. Army Chemical Research, Development, and Engineering Center
Bernard A. Schwetz, National Institute of Environmental Health Sciences
William F. Sette, U.S. Environmental Protection Agency
William Slikker, Jr., National Center for Toxicological Research
D. Stephen Snyder, National Institute on Aging
Thomas J. Sobotka, Food and Drug Administration
Hugh A. Tilson, U.S. Environmental Protection Agency
Mildred Williams-Johnson, Agency for Toxic Substances and Disease Registry

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Part III

# Department of Transportation

**Coast Guard**

**33 CFR Parts 175 and 181**
**46 CFR Part 160**
**Recreational Boating Safety Equipment; Rule**

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175 and 181

46 CFR Part 160

[CGD 92-045]

RIN 2115-AE26

## Recreational Boating Safety Equipment Requirements

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing a number of Federal requirements and exemptions for carriage of personal flotation devices (PFDs) on recreational vessels. The designs and uses of recreational vessels and safety equipment have changed since the rules were first issued or last revised, and some of the requirements and exemptions are no longer appropriate. This rule provides the recreational boating public with clearer and more appropriate requirements for carrying personal flotation devices and promotes a safer recreational boating environment. This rule also provides for necessary temporary exemptions from certain PFD carriage, labeling and information pamphlet requirements affected by this rulemaking.

EFFECTIVE DATE: This rule is effective on September 3, 1993, except for § 175.15(a) which will be effective on May 1, 1995.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Auxiliary, Boating, and Consumer Affairs Division, (202) 267-0979. A copy of this final rule may be obtained by calling the Coast Guard's toll-free Boating Safety Hotline, 1-800-368-5647. In Washington, DC, call 267-0780.

SUPPLEMENTARY INFORMATION:

### Drafting Information

The principal persons involved in drafting this document are Mr. Carlton Perry, Project Manager, and LT Ralph Hetzel, Project Counsel, Office of Chief Counsel.

### Regulatory History

On November 9, 1992, the Coast Guard published a notice of proposed rulemaking entitled "Recreational Boating Safety Equipment Requirements" in the **Federal Register** (57 FR 53410). The 60-day comment period ended on January 8, 1993. By that time, the Coast Guard received 400 individual letters commenting on the proposal and an additional two petition-type letters bearing 110 signatures. Another 85 individual letters were received after the close of the comment period. The individual comments received by the close of the comment period came from the following categories in the numbers noted.

| | |
|---|---|
| 260 | Recreational boating interests or owners. |
| 93 | Recreational boat outfitters, liveries, or guides. |
| 15 | Recreational boat/equipment manufacturers/dealers. |
| 3 | Commercial boating interests. |
| 8 | National recreational boating interests. |
| 3 | Federal government agencies. |
| 18 | State or local government agencies. |
| 400 | |

Eight comments requested that a public hearing be held to better inform the affected public, especially concerning impact on canoes, kayaks and boats under 16 feet in length. Two additional comments requested hearings be held for all boaters, particularly for rowers and paddlers, at ten cities around the country. Two other comments requested the comment period be extended to make the proposal more available to the boating public, to allow obtaining additional statistical information from the Coast Guard, and to have more time to comment. Another comment suggested postponing the rulemaking project until further study could be conducted. Most of the written comments received came from the affected public, especially canoe and kayak enthusiasts, and the rowing/paddling racing vessel community. The Coast Guard considered the requests for public hearings but determined that, although receiving oral presentations at public hearings would increase the number of comments, it would probably not raise new issues or otherwise materially assist in drafting the final rule. For the same reasons, the Coast Guard decided that additional time for comment on its proposal would not aid the rulemaking process.

### Background and Purpose

The designs and uses of vessels and safety equipment have changed since the Federal regulations for carriage of personal flotation devices (PFDs) on recreational vessels were first issued or last revised. Some of the requirements and exemptions are no longer appropriate. After a comprehensive review of recreational boating safety regulations conducted at its May 1992 meeting, the National Boating Safety Advisory Council (NBSAC) recommended a number of changes to the safety equipment carriage requirements for recreational vessels (33 CFR part 175). Prior to that meeting, the Coast Guard received additional related suggestions from the National Association of State Boating Law Administrators (NASBLA) and from the general public.

This rulemaking changes the existing regulations on PFD carriage requirements. These changes will provide the boating public with clearer and more appropriate requirements for carrying personal flotation devices, and will promote a safer recreational boating environment.

### Discussion of Comments and Changes

Four comments opposed any requirement to carry extra Type IV PFDs (cusions or throwables) on commercial white water rafts. Another comment suggested requiring the same PFDs on recreational vessels, uninspected passenger vessels, and small passenger vessels.

PFD carriage requirements for commercial uninspected passenger vessels and small passenger vessels are contained in 46 CFR subchapter C, and are not the subject of this rulemaking project.

A number of comments recommended increased Coast Guard efforts in the areas of boater education and enforcement of regulations related to operation of a vessel while intoxicated.

The Coast Guard agrees and will continue to emphasize the benefits of boating safety education and enforcement of U.S. laws and regulations, including those related to operating a vessel while intoxicated.

A number of comments suggested various requirements or exemptions related to USCG approval or design restrictions of PFDs for carriage or wearing requirements.

The procedures and requirements for USCG approval of PFDs are contained in 46 CFR part 160, and are not the subject of this rulemaking. A copy of these comments has been submitted to the Coast Guard's Survival Systems Branch, which is responsible for those requirements, for consideration as a potential regulatory project.

A number of comments questioned the statistics used to support the proposed rulemaking generally, or a specific provision of the rulemaking that affected a particular boating segment, such as racing shells, whitewater canoes, or sailboards. Some comments supported the statistics used along with additional statistics, or confirmed the statistics by providing information, such as U.S. Army Corps of Engineers (COE) statistics on boating fatalities at COE projects during 1986–1990. Others requested additional statistics related to recent research to substantiate the need for a requirement to wear PFDs. Still others were interested in statistics regarding powered vs. nonpowered vessel fatalities or fatalities for boaters who had been consuming alcohol. Additional information was requested on the 19 States requiring children to wear PFDs on boats.

The Coast Guard has reviewed its recreational boating statistical data on fatalities for the years 1988 through 1991 in view of the above concerns. There were 3,631 fatalities during that 4-year time period for all recreational boat types. Almost 23% (830) of the 4-year total number of reported fatalities involved canoes, kayaks, rowboats, inflatables, and other manually-propelled boats. The statistics indicate that about 70% (585) of the 4-year total (830) reported fatality victims on manually-propelled boats were not using a PFD, compared to about 59% for the total (3,631) for all recreational boat fatalities reported over the same 4-year time period. The statistics also indicate that of the 4-year total reported fatalities (830) involving manually-propelled boats, only 9% (78) occurred on boats known to be rented. In addition, the statistics indicate that of the 4-year total (830) reported fatalities involving manually-propelled boats, about 62% (512) of the boats known to be rented were under 16 feet in length.

Regarding alcohol involvement in boating accidents, the statistics indicate that less than 17% (603) of the total fatalities reported during the 4-year period 1988 through 1991 involved use of alcohol.

Additional information on the 19 States referred to in the NPRM regarding requirements for children under a specified age to wear PFDs may be obtained from Balistreria Consulting, Inc., 5713 Twenty-Third Street, Zephyrhills, FL 33540–4726; the telephone number is (813) 783–3996.

**Specific Comments on Changes Proposed in the NPRM**

*Subpart A—General*

Section 175.1 Applicability

Nine comments supported excepting seaplanes from applicability of Coast Guard PFD carriage requirements. No comments opposed the proposal and the Coast Guard has adopted the exception as proposed.

Section 175.3 Definitions

The Coast Guard does not consider surfboards, swim boards or "boogie" boards to be vessels and has not adopted suggestions to include them in this rulemaking. The Coast Guard agrees with the suggestion to add a definition of the term "recreational submersible", but intends to publish it in a future rulemaking project to allow time to develop a suitable definition.

*Boat.* No comments objected to this term and the Coast Guard has adopted the definition as proposed.

*Passenger.* One comment suggested redefining the term "passenger" to agree with a proposed Congressional resolution. The Coast Guard is aware of this pending legislation to change the statutory definition of the term "passenger" and has decided to delay any revision of the current published definition until such legislation is enacted.

*Personal watercraft.* One comment suggested revising the definition length, limiting the number of persons on board, limiting the definition to vessels "propelled by jet pump", and separating non-jet pump propelled craft. Another comment suggested deferring the final definition until after a Coast Guard sponsored NBSAC Subcommittee on Personal Watercraft Definition and Requirements formally submits its findings to the Coast Guard through the full Council.

The Coast Guard will delay making a decision on this definition until after considering the NBSAC Subcommittee on Personal Watercraft Definition and Requirements Report. The Coast Guard intends to publish this definition in a future rulemaking project.

*Racing shell, rowing scull, and racing kayak.* There was a suggestion to revise the definition to be more specific about racing kayaks, to include racing canoes, and to include poles as a means of propulsion. Also, carefully defining racing canoes and racing kayaks and developing a method of clearly marking racing craft was recommended.

The Coast Guard agrees that this definition should include racing canoes recognized by national or international racing associations and should include poles as a means of propulsion, and has revised the definition accordingly. The Coast Guard has decided not to redefine the term "racing kayaks" to be more specific.

*Recreational vessel.* One comment requested clarification of what the phrase "six or fewer passengers" means, while another suggested removing the phrase from the definition.

The key to the meaning of this phrase is in the definition of the term "passenger" which the Coast Guard uses to separate recreational from commercial operation and to determine application of operator licensing and PFD carriage requirements. Commercial PFD requirements are contained in 46 CFR 25.25. They specifically exempt vessels used or leased, rented or chartered to another for the latter's noncommercial use. Thus, the sentence, "It does not include a vessel engaged in the carrying of six or fewer passengers." clarifies the applicability of commercial or recreational PFD carriage requirements and has been retained.

*Sailboard.* Ten comments supported the proposed definition of a sailboard as a vessel. No comments objected to the proposed definition of sailboard as a vessel. The Coast Guard has decided to adopt this definition as proposed.

*Use.* No comments objected to this definition and the Coast Guard has adopted it as proposed.

*Vessel.* No comments objected to this definition and the Coast Guard has decided to adopt the definition of the term "vessel" as proposed.

Section 175.5 Exemption From Preemption

*Exemption from preemption.* Over 36 comments supported the proposed exemption to allow States discretion to set PFD requirements on specified types of boats based on local conditions. Another comment suggested expanding the proposed preemption exemption to allow States to set PFD requirements for additional types of boats on designated whitewater streams or other waterways that a State finds to be inherently dangerous. An additional 3 comments supported the proposal, if States were only allowed to set stricter requirements than Federal requirements. Another comment supported the proposal, if States adopted uniform State requirements. Yet another comment suggested that States separate canoes and kayaks from boats with mechanical propulsion when setting local PFD requirements. Over 14 comments opposed the proposal, emphasizing that only the Federal Government or Coast Guard should set these requirements

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because the States are too diverse. Another 4 comments opposed any changes. Over 175 comments opposed any requirement to wear PFDs on canoes and kayaks or on racing canoes, racing and rowing sculls for recreational use or competition practice.

The Coast Guard did not propose Federal requirements to wear PFDs at all times on recreational vessels. Although the exemption from preemption for States would allow a State to determine whether certain persons on certain vessels should wear PFDs under certain circumstances, including carriage requirements in the absence of a Federal requirement to carry a wearable PFD, it was not intended to encourage States to establish across-the-board wearing requirements on all watercraft at all times. The Coast Guard believes that most objections to PFD wearing requirements were based on this misunderstanding of the proposal. At the same time, the Coast Guard may reconsider the exemption from preemption provisions in the future in response to substantiated complaints of unnecessarily burdensome State PFD wearing requirements.

The Coast Guard has decided that a reasonable balance should be struck between uniform national PFD carriage requirements and State discretion to set local PFD requirements different from the national requirements. Consideration should be given to the difference in each State's (1) difficulty of navigation on its boating waterways; (2) severity of its climate and weather conditions during its boating season; and (3) public support within a State for an increased level of safety for its boating public, including children. In setting local PFD requirements, States likely will base such requirements on perceived need, obtain public comment, allow an appropriate level of reciprocity to out-of-State transient vessels, and not attempt to reduce the applicability of Federal PFD carriage requirements.

*Children.* Many comments supported allowing States to set PFD wearing requirements for children as was proposed in the NPRM. Additional comments supported the proposal only for children under 6 years old. Some comments opposed allowing States to set PFD wearing requirements for children, while others suggested setting a national requirement to wear a PFD for all children, or for a specific age group.

The Coast Guard agrees that a State should be able to set PFD wearing requirements and to determine the age of applicability for children on vessels within its boundaries. It is the Coast Guard's position that it is appropriate to establish national requirements to carry PFDs on certain recreational vessels, without imposing an additional Federal requirement to wear them on those vessels. It is appropriate for an individual State to establish PFD wearing requirements, and associated carriage requirements in the absence of Federal carriage requirements, for its boaters because of the previously mentioned factors applicable to each State. However, each State is encouraged to provide appropriate reciprocity for children on out-of-State transient vessels that are in compliance with the PFD requirements of the State which issued their vessel number.

*Racing shells, rowing sculls, and racing kayaks.* The comments were about evenly split between support of and opposition to the proposal allowing States to set PFD wearing requirements for recreational operation of racing vessels. Some objections emphasized the difficulty that law enforcement officers would have in discerning any difference between recreational use and competition practice. Another emphasized the need for a single national requirement instead of the potential for 50 State interpretations. One additional comment suggested using a better definition of "competitive racing" and "competition practice" in the rule.

Also suggested was deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed.

The Coast Guard agrees with the comments pointing out the difficulty in discerning recreational from competition practice and the lack of a Coast Guard approved PFD suitable for wearing on this class of racing vessels without risk of overheating and chafing. Further, the Coast Guard cannot confirm recreational fatalities for this class of vessel beyond a single rowing scull fatality that occurred in Pennsylvania. There is no indication of a need for the individual States to regulate these vessels. Therefore, the Coast Guard has removed the exemption from preemption for the States to regulate this racing class of recreational vessels.

*Canoes and kayaks.* A number of comments supported allowing States to set PFD wearing requirements for operation of canoes and kayaks as proposed. Additional comments supported the proposed exemption if State requirements were made on an area-wide basis, while another suggested that requiring whitewater kayakers to wear a PFD while descending rivers and requiring open water kayakers to wear PFDs under Small Craft Advisory conditions would achieve the desired increased safety. A similar number of comments opposed the proposed exemption, with one specifically opposing States setting blanket PFD wearing requirements. Several objected to either Federal or State wearing requirements for currently available PFDs on canoes or kayaks under strenuous paddling, marathon voyage or racing conditions in warm weather due to likely overheating. One comment suggested deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed.

The Coast Guard has adopted this exemption as proposed. The Coast Guard is allowing each State to set PFD wearing requirements on canoes and kayaks as it deems appropriate due to climate or weather conditions within its boundaries, specific waterway characteristics or difficulty of navigation, and other conditions, which may be specific to each State's waterways. This rule does not impose any Federal requirement on the States to establish PFD wearing requirements. At the same time, the Coast Guard may reconsider the exemption from preemption provisions in the future in response to substantiated complaints of unnecessarily burdensome State PFD wearing requirements.

*Sailboards.* Two comments opposed exempting sailboards from Federal PFD carriage requirements. Two other comments addressed a requirement to wear a PFD while operating a sailboard, one in favor and one opposed.

The Coast Guard has adopted this exemption as proposed. Although the Coast Guard is not setting a Federal requirement that a PFD be carried or worn while operating a sailboard, a State should be allowed to do so in consideration of climate and waterway navigation conditions within its boundaries. This rule does not impose any Federal requirements on the States to establish PFD wearing requirements. Operators of sailboards continue to be subject to Federal and State regulations regarding vessel navigation and intoxicated operation of a vessel.

*Personal watercraft.* Eight comments supported allowing States to set PFD wearing requirements for operation of personal watercraft as proposed, with one comment supporting Federal, State or local requirements. One comment opposed any exemption to PFD carriage requirements for personal watercraft. Another comment suggested deferring the proposed exemption from preemption until a more complete, universal and broadly acceptable definition for these craft is developed.

The Coast Guard has adopted this exemption as proposed. Personal watercraft are still subject to requirements applicable to "recreational vessels" and a State will be allowed to establish PFD wearing requirements for personal watercraft in consideration of climate and waterway navigation conditions within its boundaries. This rule does not impose any Federal requirement on the States to establish PFD wearing requirements. Although the Coast Guard is delaying selection of a national definition of "personal watercraft", a State establishing requirements for personal watercraft likely will sufficiently describe the watercraft subject to any such requirements.

*Subpart B—Personal Flotation Devices*

Section 175.11 Applicability

No comments opposed this section and the Coast Guard has adopted it as proposed.

Section 175.15 Personal Flotation Devices Required

*Elimination of Type IV PFD as a primary device on vessels under 16'.* Over 100 comments supported the proposed requirement to carry a wearable PFD for each person on board a recreational vessel under 16 feet in length. Another 70 comments opposed the proposal, with three of the comments emphasizing that a Type IV PFD (cushion) is better than a wearable PFD if the wearable PFD is not worn. Eighteen of the comments requested that canoe or kayak livery and rental businesses be allowed to continue using the Type IV as a primary personal flotation device on their vessels. One of the comments also recommended granting a special exemption to allow livery and rental businesses one or two seasons to phase-in compliance. Several of the comments indicated that replacing hundreds of PFDs costing $15–$60 would create a financial burden of $1,000–$10,000 for livery or rental businesses. Several additional comments suggested exempting various types and sizes of vessels from carrying wearable PFDs, including: Inflatables, canoes and kayaks, sailboats, vessels 10 feet in length and under, and hand-powered vessel tenders or boats used within designated harbors or anchorages. Several comments suggested a requirement to wear PFDs on boats under 16 feet in length. A number of comments suggested applying the PFD wearing requirements to boats 18 feet (vs. 16 feet) and over; treating boats over and under 16 feet the same; or opposed setting Federal requirements to use PFDs based on vessel length at all.

Other comments suggested using vessel waterline width instead of vessel length to apply the rules, or status as rented recreational vessels. Other comments opposed any national requirement to wear PFDs on recreational boats under 16 feet in length.

The Coast Guard has adopted the new PFD carriage requirement as proposed. The effective date of § 175.15(a) is May 1, 1995, in order to provide the boating public sufficient notice of the new wearable PFD requirement, allow PFD manufacturers to produce a sufficient quantity of wearable PFDs available for sale, and provide adequate opportunity for the boating public to comply. However, in consideration of the larger numbers of vessels and associated PFDs maintained by livery and rental businesses, some of which may be considered small entities, a special temporary exemption has been added to § 175.17. This will allow these businesses an additional boating season, until May 1, 1996, to phase-in compliance and reduce the annual economic impact of the new requirement on them. While it is allowing extra time for these businesses to obtain needed wearable PFDs for their vessels, the Coast Guard urges them to comply as soon as is practicable.

The separation of safety equipment carriage requirements for vessels under 16 feet in length, and vessels 16 feet in length and over has been in effect since 1973. Safety would not likely be improved by changing the separation reference point in this rulemaking. The Coast Guard also emphasizes that the new requirement to carry wearable PFDs on boats 16 feet in length and under does not prohibit boaters from also carrying Type IV PFDs voluntarily.

The Coast Guard is also mindful that current USCG approved PFD labels and PFD information pamphlets indicate that Type IV PFDs are approved for use as primary devices on recreational vessels under 16 feet in length. The Coast Guard intends to work with Underwriters Laboratories, Inc., to revise the current UL standard 1123 to reflect these changes and to initiate a regulatory project to incorporate the revised UL standard 1123 by reference for PFD information pamphlet requirements in 33 CFR 181.703 and revise the USCG approved Type IV PFD labelling requirements in 46 CFR subpart 160. In the interim, PFD manufacturers are encouraged to provide alternate PFD information pamphlets and text on Type IV PFD labels that reflect the current revised PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length. To facilitate the efforts of cooperating PFD manufacturers in providing accurate information on PFD requirements on recreational vessels, the Coast Guard has included exemptions from 33 CFR 181.703 and 46 CFR 160.048–6, 160.049–6, 160.050–6, and 160.064–4 for PFD manufactuerers. This will give them time to revise their information pamphlets and PFD labels to reflect this change in PFD carriage requirements for recreational vessels under 16 feet in length.

*Vessels 16 feet in length and over.* Two comments supported the proposed removal of the existing exemption for canoes and kayaks 16 feet in length and over from the requirement to carry a Type IV PFD in addition to the wearable PFDs for persons on board. Over 261 comments opposed the proposal. Many of the objections described the lack of stowage area on kayaks and the instability of a canoe as a platform for throwing a Type IV PFD to a person in the water. Many comments expressed concern over the added cost impact of hundreds to thousands of dollars that the proposed requirements could have on over 3,000 liveries, canoe rentals and outfitters to purchase enough new PFDs to equip their rental vessels. A few of the comments incorrectly believed they must provide an additional Type IV PFD for each person in a canoe or kayak 16 feet in length and over, or that only a Type V PFD or only a Type III PFD would be allowed to meet USCG PFD carriage requirements.

The Coast Guard agrees with the comments regarding canoes and kayaks in support of retaining the existing exemption for canoes and kayaks 16 feet in length and over (currently in § 175.15(b)) as one of several exemption provisions listed in § 175.17. Further, by continuing the exemption for canoes and kayaks from the additional PFD carriage requirements for vessels 16 feet in length and over and by allowing the additional boating season for liveries and canoe rental businesses to phase-in compliance, the financial impact on these small businesses will be reduced by apportioning the costs over almost three years. Section 175.17 Exemptions (Formerly Exceptions)

The heading of this section has been revised from the term "Exceptions" to the term "Exemptions" for clarity and consistent use in this part.

Four comments supported all the proposed exemptions. One comment suggested adding additional specific exemptions from carrying wearable PFDs for surfboards, windsailers, inner

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tubes, lounge rafts, etc. Two comments opposed making any of the proposed changes. Two other comments suggested setting a national PFD wearing requirement for operators of personal watercraft. Other comments suggested various exemptions, such as exempting small sailing craft (sea kayaks) from carrying an extra Type IV PFD if a Type III or V PFD is being worn; exempting kayaks, catamarans and racing sailboats from carrying an extra Type IV PFD if a Type III PFD is being worn; and exempting marathon racing canoes, kayaks, and Oriental Long Boats exceeding 45 feet in length during training sessions and during competition from wearing lifejackets if the craft is carrying a readily available, throwable Type IV PFD or a Type II PFD for each occupant. Several comments suggested requiring carriage of a Type IV PFD in addition to the wearable PFDs for each person; that any Federal or State PFD wearing requirements adopt the phrase, "Unapproved devices, including inflatables, may be used."; clarifying whether the exemption also applies to shore boats and dinghies used to transport boaters to and from shore and their boats (vessel tenders); and that more effective enforcement of existing requirements to carry Type I, II, III, or IV PFDs on all boats under 16 feet in length would achieve better results.

Regarding additional specific exemptions for surfboards, inner tubes, lounge rafts, etc., the Coast Guard does not issue exemptions for watercraft that it does not consider to be vessels. Windsailers are included in the exemption for sailboards. Further, unless subject to a specific State requirement a personal watercraft is subject to the same Federal requirements as other recreational vessels of the same size.

*Racing, shells, rowing, sculls, and racing kayaks.* Some comments supported the exemption as proposed. Additional comments supported the proposed exemption if it only applied during competition or if it imposed a requirement to carry PFDs on racing shells. More comments suggested adding racing canoes to the exemption for racing class vessels or basing the exemption on the competitor status of the operator instead of the vessel class. A similar number of comments opposed a requirement to carry PFDs on racing shells, racing canoes, racing kayaks or rowing sculls or on a tender during competition practice. Another comment opposed limiting the exemption to only when the tender vessel is close enough to assist if needed. Many of the objecting comments discussed the lack of a safe and accessible place on these racing craft to carry a PFD or the impracticality of having a tender carrying PFDs accompany these racing craft during competition practice. They also pointed out the lack of a suitable design of wearable USCG approved PFD that would not increase the likelihood of overheating on warm days, or that would not interfere with rowing or paddling motions, or that would otherwise increase the safety of operators of these racing craft.

The Coast Guard agrees with the suggestion to include racing canoes in this exemption, along with racing kayaks and has revised the exemption, in § 175.17 and the definition in § 175.3 to reflect this. The Coast Guard also agrees with the comments opposing the proposal because of difficulties in operating these racing craft while wearing or carrying USCG approved PFDs and for having tenders carry USCG approved PFDs for all racing craft and their occupants. Further, the Coast Guard agrees with the comments regarding difficulty discerning recreational rowing from competition practice rowing. For these reasons, the Coast Guard has retained the existing exemption for racing shells, rowing sculls, and racing kayaks, and added racing canoes, in § 175.17.

*Recreational submersibles.* Nine comments supported the exemption as proposed. One comment opposed exempting submersibles from surface vessel PFD carriage requirements. Another suggested requiring that PFDs be worn on submersibles. One comment dealt with adding a definition of "recreational submersible."

The Coast Guard has adopted a revised exemption and intends to develop a definition for the term "recreational submersible" in a future rulemaking project to describe these vessels that are designed to operate on the surface or submerged. The revision will not exempt recreational submersibles from all PFD carriage requirements, but will allow use of USCG approved inflatable PFDs for commercial submersibles to meet the requirements. Recreational submersibles may alternatively carry a PFD that provides a minimum of 22 pounds of buoyancy inflated, has a means of manual inflation that can be activated with one quick and positive motion, and has an inflation chamber that is free from any leaks that can be visually detected by holding the device under water. This exemption will terminate on April 30, 1995, unless sooner superseded, rescinded or otherwise terminated.

*Sailboards.* Eight comments supported the exemption as proposed. One additional comment stated that a sailboard is "a pretty good flotation device" in itself. Another suggested requiring that PFDs be worn on sailboards. Three opposed exempting sailboards from carrying PFDs.

The Coast Guard acknowledges that sailboards float, just as do surfboards, inner tubes, and motorboats meeting the level flotation requirements. However, none of these items are U.S. Coast Guard approved PFDs and, despite level flotation, such motorboats are not exempt from PFD carriage requirements. The Coast Guard has decided to formally exempt sailboards from Federal PFD carriage requirements, thus allowing each State to decide whether or not PFDs should be worn and/or carried on sailboards based on climate and navigation conditions within its boundaries.

*Foreign competitors.* Ten comments supported the exemption as proposed. One additional comment suggested requiring use of the foreign country's approved PFD instead of a blanket exemption from Coast Guard requirements. Two comments opposed exempting foreign competitors due to the unfair advantage they would have over U.S. competitors wearing PFDs.

The Coast Guard agrees with the concerns expressed and has revised the exemption to include the competitor's use of the sponsoring foreign country's accepted flotation devices.

**Regulatory Evaluation**

This rule is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The total effect of this rule on the economy will not result in annual costs of $100 million or more, therefore, a full Regulatory Impact Analysis is not required. A Regulatory Evaluation has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.**

The Coast Guard has not compiled its own statistics on the number of vessels carrying only Type IV PFDs to meet the Federal PFD carriage requirements. However, based on the results of a national boating survey conducted by the American Red Cross under a Coast Guard grant and published in 1991, at least 60 percent of the individuals operating vessels under 16 feet in length reported wearing a PFD all or some of the time. This indicates that perhaps 40 percent of those surveyed carry either a Type IV PFD or no PFD at all, or carry but choose not to wear a Type I, II, or III PFD.

Type IV PFDs (cushions) and Type II PFDs are available at many boating supply stores at a cost of about $8.00 and $6.00, respectively. A few comments emphasized that the true costs of purchasing "more comfortable to wear" Type III PFDs ranged from $35 to $120 at many boating supply stores. If 40 percent of the owners of the estimated 10 million vessels under 16 feet in length (51% of the estimated 19.5 million total number of recreational vessels) were each required to purchase 3 wearable Type II PFDs as a result of this rulemaking, the one-time cumulative cost to the public may be as high as $72 million. Voluntary purchases of the more expensive types of PFDs would increase the total cost. The actual cost may be less. It may be that many owners will only need to purchase 1 or 2 PFDs, or that the Type II PFDs purchased will be less expensive than the Type IV PFDs and other wearable type PFDs currently allowed. Furthermore, the cost of subsequent replacement of unserviceable wearable PFDs should not exceed the current cost of replacement of Type IV PFDs. Therefore, the Coast Guard has not included a recurring cost in this analysis.

Statistics compiled by the Coast Guard for 1990 indicate that of 865 boating fatalities, there were 300 drowning fatalities where PFDs were not used, or where there were insufficient or no PFDs on board vessels under 16 feet in length, the category of vessels directly affected by this rulemaking. Economic research indicates that $2.5 million per statistical life saved is a reasonable estimate of people's willingness to pay for safety. This figure is used to help quantify benefits of a rulemaking and in no way implies that the Coast Guard has actually attempted to set a value on a human life. Taking this into account, if as few as 6 of the estimated 300 drowning fatalities on vessels under 16 feet in length are prevented annually, the benefits of requiring the carriage of wearable Type I, II, or III PFDs on all recreational vessels will exceed the estimated one-time $72 million cost within five years. The Coast Guard anticipates the annual saving of lives to continue indefinitely.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The overall impact of this rule will be to provide clearer and more appropriate requirements for carrying personal flotation devices on recreational vessels, leading to a safer recreational boating environment. To minimize the potential economic impact, the Coast Guard has chosen to tier the effective date of the wearable PFD carriage requirements by allowing two years for the boating public until May 1, 1995, (two boating seasons) and an additional year for boat rental and livery businesses until May 1, 1996 (three boating seasons), to comply with the requirements of § 175.15(a). It may have a one-time financial benefit as high as $72 million to PFD manufacturers and retailers, some of which may be small entities. It will primarily impact individual recreational boaters, and boat rental or livery businesses, which also may be small entities, to a lesser extent. To the extent that small businesses are affected, the effect will be spread out over a two- to three-year period.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rules contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a further Federalism Assessment. This rule is intended to preempt State regulation and law on the same subject matter where they are not identical with it because recreational boating is a national activity and this rule provides uniform requirements for PFD carriage. However, portions of this rule are designed to provide for additional regulatory discretion by the States, where appropriate, because of special local conditions. Additionally, the National Association of State Boating Law Administrators (NASBLA) has been consulted regarding the exemption from preemption portion of this rule. A copy of the NPRM was provided to all NASBLA members and 18 responses were received from the States.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under sections 2.B.2(c) and (1) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule governs regulation of PFD carriage and use, and has no environmental consequences. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects**

*33 CFR Part 175*

Marine Safety.

*33 CFR Part 181*

Labeling, Marine safety, Reporting and recordkeeping requirements.

*46 CFR Part 160*

Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR parts 175 and 181, and 46 CFR part 160 as follows:

**Title 33, Code of Federal Regulations**

**PART 175—EQUIPMENT REQUIREMENTS**

1. The authority citation for part 175 continues to read as follows:

**Authority:** 46 U.S.C. 4302; 49 CFR 1.46.

2. In § 175.1, paragraph (e) is added to read as follows:

**§ 175.1 Applicability**

* * * * *

(e) Seaplanes on the water.

3. Section 175.3 is revised to read as follows:

**§ 175.3 Definitions.**

As used in this part:

*Boat* means any vessel manufactured or used primarily for noncommercial use; leased, rented, or chartered to another for the latter's noncommercial use; or engaged in the carrying of six or fewer passengers.

*Passenger* means every person carried on board a vessel other than:

(1) The owner or his representative;

(2) The operator;

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any

consideration, directly or indirectly, for his carriage.

*Racing shell, rowing scull, racing canoe, and racing kayak* means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.

*Recreational vessel* means any vessel being manufactured or operated primarily for pleasure; or leased, rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carrying of six or fewer passengers.

*Sailboard* means a sail propelled vessel with no freeboard and equipped with a swivel mounted mast not secured to a hull by guys or stays.

*Use* means operate, navigate, or employ.

*Vessel* includes every description of watercraft used or capable of being used as a means of transportation on the water.

3. A new § 175.5 is added to read as follows:

**§ 175.5 Exemption from preemption.**

The States are exempted from preemption by Federal regulations when establishing, continuing in effect, or enforcing State laws and regulations on the wearing or the carriage of personal flotation devices directly related to the following subject areas within the jurisdictional boundaries of the State:

(a) Children on board any vessel;
(b) Operating a canoe or kayak;
(c) Operating a sailboard; and
(d) Operating a personal watercraft.

4. Section 175.11 is revised to read as follows:

**§ 175.11 Applicability.**

This subpart applies to all recreational vessels that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel.

5. Section 175.15 is revised to read as follows:

**§ 175.15 Personal flotation devices required.**

Except as provided in § 175.17:

(a) No person may use a recreational vessel unless at least one PFD of the following types is on board for each person:

(1) Type I PFD;
(2) Type II PFD; or
(3) Type III PFD.

(b) No person may use a recreational vessel 16 feet or more in length unless one Type IV PFD is on board in addition to the total number of PFD's required in paragraph (a) of this section.

6. Section 175.17 is revised to read as follows:

**§ 175.17 Exemptions.**

(a) A Type V PFD may be carried in lieu of any PFD required under § 175.15, provided:

(1) The approval label on the Type V PFD indicates that the device is approved.

(i) For the activity in which the vessel is being used; or

(ii) As a substitute for a PFD of the Type required on the vessel in use;

(2) The PFD is used in accordance with any requirements on the approval label; and

(3) The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.

(b) Canoes and kayaks 16 feet in length and over are exempted from the requirements for carriage of the additional Type IV PFD required under § 175.15(b).

(c) Racing shells, rowing sculls, racing canoes and racing kayaks are exempted from the requirements for carriage of any Type PFD required under § 175.15.

(d) Sailboards are exempted from the requirements for carriage of any Type PFD required under § 175.15.

(e) Recreational submersibles are exempted from the requirements for carriage of any Type PFD required under § 175.15, provided the vessel carries for each person on board:

(1) A USCG approved inflatable PDG for commercial submersibles; or

(2) A flotation device that provides:

(i) A minimum of 22 pounds of buoyancy inflated;

(ii) Has a means of manual inflation that can be activated with one quick and positive motion; and

(iii) Has an inflation chamber that is free from any leaks that can be visually detected by holding the device under water.

This exemption will terminate on April 30, 1995, unless sooner superseded, rescinded or otherwise terminated.

(f) Vessels of the United States used by foreign competitors while practicing for or racing in competition are exempted from the carriage of any PFD required under § 175.15, provided the vessel carries one of the sponsoring foreign country's acceptable flotation devices for each foreign competitor on board.

(g) Prior to May 1, 1996, a Type IV PFD may be carried in lieu of any Type PFD required under § 175.15(a) for each person on the vessel, provided the recreational vessel is:

(1) Leased or rented to another for the latter's pleasure as part of a livery or rental business; and

(2) Manually-propelled.

## PART 181—MANUFACTURER REQUIREMENTS

7. Section 181.703 is amended by adding a new paragraph (c) to read as follows:

**§ 181.703 PFD information pamphlet requirements.**

* * * * *

(c) A manufacturer of personal flotation devices may deviate from UL standard 1123 required text, as required under paragraph (a) of this section, to provide an alternate PFD information pamphlet that reflects the PFD carriage requirements in § 175.15 for recreational vessels under 16 feet in length.

**Title 46, Code of Federal Regulations**

## PART 160—LIFESAVING EQUIPMENT

8. Section 160.048–6 is amended by adding a new paragraph (c) to read as follows:

**§ 160.048–6 Marking.**

* * * * *

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a)(1) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

9. Section 160.049–6 is amended by adding a new paragraph (c) to read as follows:

**§ 160.049–6 Marking.**

* * * * *

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a)(1) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

10. Section 160.050–6 is amended by adding a new paragraph (c) to read as follows:

**§ 160.050–6 Marking.**

* * * * *

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

1. Section 160.064–4 is amended by adding a new paragraph (c) to read as follows:

**§ 160.064–4 Marking.**

* * * * *

(c) A manufacturer of personal flotation devices may deviate from the marking requirements of paragraph (a)(2) of this section in order to display information that reflects the PFD carriage requirements in 33 CFR 175.15 for recreational vessels under 16 feet in length.

Dated: July 28, 1993.

W. J. Ecker,

*Rear Admiral, Coast Guard, Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 93–18552 Filed 8–3–93; 8:45 am]

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Part IV

# Department of Health and Human Services

**Food and Drug Administration**

**21 CFR Part 103**

**Quality Standards for Foods With No Identity Standards; Bottled Water; Proposed Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 103

[Docket No. 93N-0065]

## Quality Standard for Foods With No Identity Standards; Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its bottled water quality standard to establish or modify the allowable levels for 5 inorganic chemicals (IOC's) and 18 synthetic organic chemicals (SOC's), including 3 synthetic volatile organic chemicals (VOC's), 9 pesticide chemicals, and 6 nonpesticide chemicals. FDA is also not proposing any change in the existing allowable level for sulfate in the bottled water quality standard. These actions are in response to a rulemaking by the Environmental Protection Agency (EPA) that established maximum contaminant levels (MCL's) for the 5 IOC's and 18 SOC's and deferred establishing an MCL for sulfate in public drinking water.

DATES: Written comments by October 4, 1993. The agency is proposing that any final rule that it may issue based upon this proposal become effective 180 days after the date of publication of the final rule in the Federal Register.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION:

### I. Background

EPA promulgates National Primary Drinking Water Regulations (NPDWR's) to protect the public health from the adverse effects of contaminants in drinking water. EPA promulgates National Secondary Drinking Water Regulations (NSDWR's), consisting of secondary maximum contaminant levels (SMCL's), to protect the public welfare from adverse aesthetic effects, such as water color, odor, appearance, and taste. In addition, at the time that it promulgates NPDWR's, EPA promulgates maximum contaminant level goals (MCLG's), which are health goals that are based solely on considerations of protecting the public from adverse effects of drinking water contamination.

NPDWR's are enforceable standards that consist of either an MCL or a required treatment technique for each contaminant. EPA sets the MCL for a contaminant as close as feasible (with the use of the best technology or other means available, taking cost into consideration) to the MCLG, the level at which no known or anticipated adverse health effects occur and that provides an adequate margin of safety. When it is not feasible to establish an MCL for a specific contaminant, EPA can establish a treatment technique requirement for removal or reduction of that contaminant from drinking water to protect the public health from the adverse effects of that contaminant.

In the Federal Register of July 17, 1992 (57 FR 31776) (hereinafter referred to as the July 17, 1992, final rule), EPA published a final rule promulgating NPDWR's consisting of MCL's for 18 SOC's and 5 IOC's. Furthermore, in that final rule, EPA deferred establishing an MCL for sulfate in public drinking water. EPA had initiated this rulemaking with a proposal that it published in the Federal Register of July 25, 1990 (55 FR 30370) (hereinafter referred to as the July 25, 1990, proposal).

Under section 410 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349), whenever EPA prescribes interim or revised NPDWR's under section 1412 of Title XIV of the Public Health Service Act (The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f through 300j-9)), FDA is required to consult with EPA and, within 180 days after the promulgation of such drinking water regulations, "* * * either promulgate amendments to regulations under this chapter applicable to bottled drinking water or publish in the Federal Register * * * reasons for not making such amendments." In accordance with section 410 of the act, FDA has consulted with EPA and is proposing to adopt as allowable levels in the quality standard for bottled water the MCL's that EPA established in the July 17, 1992, final rule. FDA is also not proposing any change in the existing allowable level for sulfate in bottled water.

### II. The EPA Standards

Section 1412(b) of the SDWA, as amended in 1986, requires EPA to promulgate NPDWR's for 83 contaminants, including 22 of the 23 contaminants that were the subject of the July 17, 1992, final rule. Although the remaining contaminant, hexachlorobenzene, was not on the list of 83 contaminants, EPA established an MCL for it because this chemical has been found in drinking water and may cause adverse human health effects (57 FR 31776 at 31781).

#### *A. MCL's for 23 Contaminants*

In its July 17, 1992, final rule, EPA promulgated NPDWR's for 5 IOC's and 18 SOC's by establishing MCL's for these chemical contaminants in public drinking water, as shown in Tables 1 and 2.

TABLE 1—MAXIMUM CONTAMINANT LEVELS ESTABLISHED BY EPA FOR INORGANIC CHEMICALS IN DRINKING WATER

| Chemical | Maximum Contaminant Level (milligram per liter, mg/L) |
|---|---|
| Antimony | 0.006 |
| Beryllium | 0.004 |
| Cyanide | 0.2 |
| Nickel | 0.1 |
| Thallium | 0.002 |

TABLE 2—MAXIMUM CONTAMINANT LEVELS ESTABLISHED BY EPA FOR SYNTHETIC ORGANIC CHEMICALS IN DRINKING WATER

| Chemicals | Maximum Contaminant Level (milligram per liter, mg/L) |
|---|---|
| Volatile Organic Chemicals: | |
| Dichloromethane | 0.005 |
| 1,2,4-Trichlorobenzene | 0.07 |
| 1,1,2-Trichloroethane | 0.005 |
| Pesticides: | |
| Dalapon | 0.2 |
| Dinoseb | 0.007 |
| Diquat | 0.02 |
| Endothall | 0.1 |
| Endrin | 0.002 |
| Glyphosate | 0.7 |
| Oxamyl | 0.2 |
| Picloram | 0.5 |
| Simazine | 0.004 |
| Nonpesticide Chemicals: | |
| Benzo(a)pyrene | 0.0002 |
| Di(2-ethylhexyl)adipate | 0.4 |
| Di(2-ethylhexyl)phthalate | 0.006 |
| Hexachlorobenzene | 0.001 |
| Hexachloro-cyclopentadiene | 0.05 |
| 2,3,7,8-TCDD (Dioxin) | $3 \times 10^{-8}$ |

#### *B. Deferral of an MCL for Sulfate*

In its July 25, 1990, proposal (55 FR 30370 at 30383), based on available health information, EPA proposed two alternative MCLG's of 400 and 500 mg/

L for sulfate in public drinking water. In addition, because the available technology (i.e., reverse osmosis and ion exchange) can remove sulfate from drinking water to achieve levels of sulfate below the proposed MCLG's, EPA proposed two alternative MCL's for sulfate of 400 and 500 mg/L. EPA stated that no evidence of adverse chronic health effects in animals or humans exists from exposure to sulfate, and that the only adverse effects observed from acute exposure to sulfate were diarrhea and dehydration, particularly to unacclimated populations (e.g., travelers and infants).

The proposed option to set the MCLG for sulfate at 400 mg/L was based on the recommendation of EPA's Science Advisory Board and on the recognition that the World Health Organization has established a standard guideline level of not more than 400 mg/L of sulfate in drinking water. In proposing a second option to set the sulfate MCLG at 500 mg/L, EPA considered studies that showed an increased laxative effect from exposure to sulfate concentrations above 500 mg/L. In addition, EPA noted that for adequate protection against adverse physiological effects, the Canadian guideline for the maximum acceptable level of sulfate in drinking water is set at 500 mg/L (55 FR 30370 at 30383).

However, after further review of issues regarding sulfate regulation, such as the high cost of the best available technology for sulfate removal from drinking water (i.e., reverse osmosis and ion exchange), its relatively low risk, and the primary impact of high sulfate levels on the transient consumer, EPA deferred establishing an MCLG or an MCL for sulfate until several sulfate issues were resolved (57 FR 31776 at 31815). These issues include: (1) Whether further studies are needed to determine the time required for infants to acclimate to high sulfate-containing water, (2) whether new approaches are needed to regulate sulfate that primarily affects transient populations, and (3) whether EPA should revise its definition of "best available technology" for small water systems based on a determination of what should be considered affordable for such systems. EPA stated that, in the interim, it would issue a health advisory for sulfate, encourage the States to conduct additional monitoring of systems that may have high sulfate levels, and encourage the use of alternate water supplies where appropriate.

## III. Reorganization and Proposed Recodification of 21 CFR 103.35

FDA anticipates that it will add numerous allowable levels to the quality standard regulations for bottled water in § 103.35 (21 CFR 103.35) in response to EPA actions under the SDWA. To accommodate these new allowable levels, FDA reorganized § 103.35(d) (the paragraph that contains allowable levels for individual chemical contaminants) as part of a final rule establishing allowable levels for 7 VOC's (58 FR 378, January 5, 1993). As a result, § 103.35(d)(3) is now divided to reflect the basic categories of chemical contaminants. The allowable levels for IOC's are in § 103.35(d)(3)(i); the allowable levels for VOC's are in § 103.35(d)(3)(ii); the allowable levels for pesticides and other SOC's are in § 103.35(d)(3)(iii); and the allowable levels for chemicals for which EPA has established SMCL's are in paragraph § 103.35(d)(3)(iv). In addition, § 103.35(d)(3)(v), (d)(3)(vi), and (d)(3)(vii) list the analytical methods that FDA has incorporated by reference for use in determining compliance with the allowable levels. The amendments to the bottled water quality standard that FDA is proposing in this document reflect the reorganized format of § 103.35(d).

In the Federal Register of January 5, 1993 (58 FR 393), FDA published a proposal to establish a standard of identity for bottled water in proposed 21 CFR 165.110(a) (hereinafter called the January 5, 1993, proposal). In addition, FDA proposed to move the standard of quality for bottled water from § 103.35 to proposed § 165.110 because 21 CFR 103.5(c) states that, should a standard of identity be established for any of the foods defined by a standard of quality in 21 CFR part 103, the standard of quality will be recodified to appear in the same part of the regulations as the standard of identity. Therefore, if the January 5, 1993, proposal to establish an identity standard for bottled water becomes a final rule, the chemical quality standard for bottled water contained in the reorganized § 103.35(d) will be recodified as § 165.110(b)(4).

## IV. The FDA Proposal

### *A. The Agency's Approach to the Bottled Water Quality Standard Established Under Section 410 of the Act*

Under section 401 of the act (21 U.S.C. 341), FDA may promulgate a regulation establishing a standard of quality for a food under its common or usual name when, in the judgment of the agency, such action will promote honesty and fair dealing in the interest of consumers. FDA established a quality standard for bottled water on November 26, 1973 (38 FR 32558). As stated above, the quality standard for bottled water is set forth in § 103.35.

Producers of bottled water are responsible for ensuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard. Bottled water that is of a quality that is below the prescribed standard is required by § 103.35(f) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402 of the act (21 U.S.C. 342) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWR's by amending the quality standard for bottled water to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, the EPA standards for contaminants in drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the contaminants at issue. FDA has generally not duplicated the efforts of EPA in judging the adequacy of NPDWR's for the protection of the public health, nor has it duplicated EPA's efforts in judging the adequacy of NSDWR's for control of aesthetic characteristics affecting consumer acceptance of drinking water. It would be inappropriate and redundant for FDA to reevaluate or revise the drinking water standards prescribed by EPA, the agency with primary responsibility for these standards. Further, because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as a conservative estimate for the maximum expected consumption of bottled water. Therefore, FDA's view is that in cases where bottled water is subject to the same source contaminants as tap water (e.g., when bottled water is produced with the same source waters used by public water systems), allowable levels for contaminants set to ensure the safety of bottled water, and levels set to ensure its aesthetic quality, should normally correspond to the

levels set by EPA as the NPDWR's and NSDWR's for tap water.

*B. Quality Standard for Chemical Contaminants*

FDA has evaluated the MCL's that EPA has established based on available health effects information for the 5 IOC's and 18 SOC's in public drinking water and tentatively concludes that the MCL's, which are set as close as feasible to the MCLG's, are adequate for the protection of the public from adverse health effects from these contaminants in drinking water. Further, FDA tentatively concludes that the EPA's MCL's for these 23 chemical contaminants are appropriate as allowable levels in the quality standard for bottled water. Some sources for bottled water may be expected to contain these contaminants, and thus adopting allowable levels for these contaminants will ensure that the quality of bottled water is comparable to the quality of public drinking water that meets EPA standards. Therefore, FDA is proposing to adopt EPA's MCL's for the 23 chemical contaminants as allowable levels in bottled water.

1. Inorganic Chemicals Contaminants

FDA is proposing to establish in § 103.35(d)(3)(i) allowable levels in bottled water for the following five IOC contaminants: antimony at 0.006 mg/L, beryllium at 0.004 mg/L, cyanide at 0.2 mg/L, nickel at 0.1 mg/L, and thallium at 0.002 mg/L. For the reasons explained above, the levels reflect the MCL's that EPA established in the July 17, 1992, final rule. In § 103.35(d)(3)(v), FDA is proposing to incorporate by reference the analytical methods that EPA cited for determining the levels of these IOC contaminants in drinking water.

EPA deferred establishing an MCL for sulfate in the July 17, 1992, final rule and did not revise the existing SMCL of 250 mg/L for sulfate (40 CFR 143.3) in drinking water. As discussed above, EPA plans to establish an MCL for sulfate when it resolves several issues concerning the regulation of this chemical. Therefore, until EPA establishes an MCL for sulfate in public drinking water, FDA is not proposing any change in the existing allowable level of 250 mg/L for sulfate in the bottled water quality standard. FDA established this level in the Federal Register of November 26, 1973 (38 FR 32558), based on the drinking water standard for sulfate established by the Public Health Service on March 6, 1962 (27 FR 2152). FDA is, however, transferring the listing for sulfate from § 103.35(d)(1) to proposed § 103.35(d)(3)(iv), which lists the allowable levels for chemical contaminants for which EPA has established SMCL's. In proposed § 103.35(d)(3)(vii), FDA is proposing to incorporate by reference the analytical methods that EPA cited in its July 25, 1990, proposal (55 FR 30370 at 30438) for determining the level of sulfate in drinking water. Although FDA is not proposing to change the allowable level for sulfate in bottled water, it is addressing the status of this chemical in the bottled water quality standard because EPA has addressed the issue of regulating sulfate in drinking water.

2. Volatile Organic Chemical Contaminants

FDA is proposing to establish in § 103.35(d)(3)(ii) allowable levels in bottled water for the following three VOC's: dichloromethane at 0.005 mg/L, 1,2,4-trichlorobenzene at 0.07 mg/L, and 1,1,2-trichloroethane at 0.005 mg/L. For the reasons explained above, these levels reflect the MCL's that EPA has established. In § 103.35(d)(3)(vi), FDA is proposing to incorporate by reference the analytical methods that EPA has cited for determining the levels of these VOC contaminants in drinking water.

3. Synthetic Organic Chemical Contaminants

In the Federal Register of March 6, 1979 (44 FR 12169), FDA established an allowable level for endrin (one of the 9 pesticides addressed in this proposal) at 0.0002 mg/L in bottled water in response to EPA's promulgation of an MCL for endrin at that level in the National Interim Primary Drinking Water Regulations (40 FR 59566 at 59570, December 24, 1975). Thus, in § 103.35(d)(1), the allowable level for endrin is listed at 0.0002 mg/L. However, in the July 17, 1992, final rule, EPA promulgated NPDWR's that established an MCL of 0.002 mg/L for endrin. Based on EPA's decision to set the MCL for endrin at 0.002 mg/L, FDA tentatively concludes that 0.002 mg/L for endrin is adequately protective of public health and is appropriate as an allowable level in bottled water. Therefore, to maintain compatibility with EPA's NPDWR's, FDA is proposing to revise the allowable level for endrin from 0.0002 mg/L to 0.002 mg/L in bottled water. In addition, FDA intends to remove the current entry for endrin in § 103.35(d)(1) and list the revised allowable level for this chemical contaminant in § 103.35(d)(3)(iii). In § 103.35(d)(3)(vi), FDA is proposing to incorporate by reference the analytical methods that EPA cited for determining the level of endrin in drinking water.

FDA is also proposing to establish in § 103.35(d)(3)(iii) allowable levels in bottled water for the following 14 SOC's: 8 pesticides—dalapon at 0.2 mg/L, dinoseb at 0.007 mg/L, diquat at 0.02 mg/L, endothall at 0.1 mg/L, glyphosate at 0.7 mg/L, oxamyl at 0.2 mg/L, picloram at 0.5 mg/L, and simazine at 0.004 mg/L, and 6 nonpesticides—benzo(a)pyrene at 0.0002 mg/L, di(2-ethylhexyl)adipate at 0.4 mg/L, di(2-ethylhexyl)phthalate at 0.006 mg/L, hexachlorobenzene at 0.001 mg/L, hexachlorocyclopentadiene at 0.05 mg/L, and 2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD; dioxin) at $3 \times 10^{-8}$ mg/L. The proposed allowable levels reflect the MCL's that EPA has established for these chemicals in public drinking water (July 17, 1992, 57 FR 31776). In § 103.35(d)(3)(vi), FDA is proposing to incorporate by reference the analytical methods that EPA has cited for determining the levels of these SOC contaminants.

*C. Analytical Methods*

In listing appropriate analytical methods for determining the five IOC's in its July 17, 1992, final rule and for sulfate in its July 25, 1990, proposal, EPA frequently cited its own developed version, and equivalent versions published by other organizations, of a specific method. For example, for determining beryllium by the atomic absorption furnace method, EPA cited its own developed version, the version published by the American Society for Testing Materials, and the version published jointly by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation. To minimize the resource burden on FDA associated with periodic updating of methods incorporated by reference (as is required by 5 U.S.C 552(a) and 1 CFR part 51), where an EPA version of a method exists for an IOC, FDA is proposing to incorporate by reference in § 103.35(d)(3)(v) only that version of the method. When conducting analyses for these IOC's in bottled water for compliance purposes, FDA will use the methods incorporated by reference (i.e., the EPA version).

For determining the levels of the chemical contaminants addressed in this proposal, FDA is proposing to incorporate by reference the most recent versions of the analytical methods that EPA cited in its July 17, 1992, final rule. Furthermore, because some of these methods are also applicable to contaminants addressed in two recent proposals to amend the bottled water quality standard (58 FR 382 and 389, January 5, 1993) and a recent final rule

amending the bottled water quality standard (58 FR 378, January 5, 1993), incorporation of the methods in this proposal will add to the lists of analytical methods that FDA has cited in those documents. Therefore, in this document, FDA is consolidating and relisting in alphabetical order all of the appropriate analytical methods in proposed § 103.35(d)(3)(v), (d)(3)(vi), and (d)(3)(vii).

### V. Related Provisions of Current Good Manufacturing Practice for Bottled Water

FDA has established current good manufacturing practice (CGMP) regulations for bottled water, including mineral water, in part 129 (21 CFR part 129). In § 129.35(a)(3)(i), the CGMP regulations require analysis of source water as often as necessary, but at least once each year, for chemical contaminants. Further, to ensure that a plant's production complies with applicable standards, § 129.80(g)(2) requires analysis, at least annually, of a representative sample from a batch or segment of a continuous production run for each type of bottled drinking water produced during a day's production. The CGMP regulations also require in § 129.80(a) sampling and analysis, as often as necessary, of source water taken after processing but before bottling, to ensure the uniformity and effectiveness of the processes performed by the plant.

If this proposal becomes a final rule, these sampling and testing requirements will continue to apply for sulfate and endrin and will apply to the other 22 chemical contaminants that FDA is proposing to add to the list of chemical contaminants in § 103.35. However, each lot of bottled water must comply with the quality standard for chemical contaminants, and compliance with the minimum annual CGMP testing requirements of part 129 does not exempt a firm from regulatory action if any lot of bottled water products does not meet the chemical quality standard for bottled water.

### VI. Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### VII. Economic Impact

FDA has examined the economic implications of this proposed rule amending part 103 as required by the Regulatory Flexibility Act and Executive Orders 12291 and 12612. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Executive Order 12291 compels Federal agencies to use cost-benefit analysis as a component of decisionmaking, and Executive Order 12612 requires Federal agencies to ensure that Federal solutions, rather than State or local solutions, are necessary. The agency finds that this proposed rule is not a major rule as defined by Executive Order 12291. In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA intends to certify that the proposed rule will not have a significant impact on a substantial number of small businesses. Finally, because this regulation applies to food that is in interstate commerce, FDA finds that there is no substantial federalism issue which would require an analysis under Executive Order 12612.

Because FDA does not believe that any of the 23 chemicals are found in bottled water above the levels of the proposed standards, the benefits of this proposed rule are expected to be zero. The costs of this regulation will only be for testing for these chemicals. Each bottled water plant will be required to conduct analytical tests at least once per year for compliance with each of the standards for the 23 chemicals, according to the CGMP regulations for bottled water. Analyses for many chemicals are now performed using methods in which a single test is used simultaneously for a number of chemicals. These tests cost up to $3,000. However, to the extent that tests currently being performed can be used to test for any of the 23 chemicals, there would be no additional costs imposed by this proposal. Any new tests required by this proposed regulation will place the greatest financial burden on firms with a low volume of output. At this time FDA does not have adequate information to determine whether the analytical tests that are currently performed for bottled water plants could be used to test for any or all of the 23 chemicals listed in this proposal. The agency requests comments on the additional costs, if any, that plants may have to incur for analytical tests if the proposed rule becomes final. Additional comments are requested regarding the frequency that plants will test for purposes of compliance and the financial burden of such tests on small business.

### VIII. Request for Comments

Interested persons may, on or before October 4, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

### IX. Effective Date

The agency intends to make any final rule that it may issue based upon this proposal effective 180 days following the date of publication of the final rule in the **Federal Register**. The agency is providing this time period to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule. The agency is requesting comments on the proposed effective date. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

### List of Subjects in 21 CFR Part 103

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 103 be amended as follows:

## PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

1. The authority citation for 21 CFR part 103 is revised to read as follows:

**Authority:** Secs. 201, 401, 403, 409, 410, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 349, 371, 379e).

2. Section 103.35 is amended in the table in paragraph (d)(1)(i) by removing the entry for "Sulfate", and under the subheading "Organics", by removing the entry for "Endrin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-1,4-endo,endo-5,8-dimethano naphthalene)"; by adding new paragraph (d)(3)(i); by alphabetically adding new entries to the table in paragraph (d)(3)(ii); by adding new paragraphs (d)(3)(iii), (d)(3)(iv), (d)(3)(v); by revising paragraph (d)(3)(vi); and by adding new paragraph (d)(3)(vii) to read as follows:

**§ 103.35 Bottled water.**

* * * * *

(d) * * *

(3) * * *

(i) The allowable levels for inorganic substances are as follows:

| Contaminant | Concentration in milligrams per liter (or as specified) |
|---|---|
| Antimony | 0.006 |
| Beryllium | 0.004 |
| Cyanide | 0.2 |
| Nickel | 0.1 |
| Thallium | 0.002 |

(ii) • • •

| Contaminant (CAS Reg. No.) | Concentration in milligrams per liter |
|---|---|
| • • • • • | |
| Dichloromethane (75–09–2) | 0.005 |
| • • • • • | |
| 1,2,4-Trichlorobenzene (120–82–1) | 0.07 |
| • • • • • | |
| 1,1,2-Trichloroethane (79–00–5) | 0.005 |
| • • • • • | |

(iii) The allowable levels for pesticides and other synthetic organic chemicals are as follows:

| Contaminant (CAS Reg. No.) | Concentration in milligrams per liter |
|---|---|
| Benzo(a)pyrene (50–32–8) | 0.0002 |
| Dalapon (75–99–0) | 0.2 |
| Di(2-ethylhexyl)adipate (103–23–1) | 0.4 |
| Di(2-ethylhexyl)phthalate (117–81–7) | 0.006 |
| Dinoseb (88–85–7) | 0.007 |
| Diquat (85–00–7) | 0.02 |
| Endothall (145–73–3) | 0.1 |
| Endrin (72–20–8) | 0.002 |
| Glyphosate (1071–53–6) | 0.7 |
| Hexachlorobenzene (118–74–1) | 0.001 |
| Hexachlorocyclopentadiene (77–47–4) | 0.05 |
| Oxamyl (23135–22–0) | 0.2 |
| Picloram (1918–02–1) | 0.5 |
| Simazine (122–34–9) | 0.004 |
| 2,3,7,8–TCDD (Dioxin) (1746–01–6) | $3 \times 10^{-8}$ |

(iv) The allowable levels for certain chemicals for which EPA has established secondary maximum contaminant levels in its drinking water regulations are as follows:

| Contaminant | Concentration in milligrams per liter |
|---|---|
| Sulfate | 250.0 |

(v) Analyses to determine compliance with the requirements of paragraph (d)(3)(i) of this section shall be conducted in accordance with an applicable method or applicable revisions to the methods listed in paragraphs (d)(3)(v)(A) through (d)(3)(v)(N) of this section and described (unless otherwise noted) in "Methods of Chemical Analysis of Water and Wastes," EPA Environmental Monitoring and Support Laboratory (EMSL), Cincinnati, OH 45268 (EPA–600/4–79–020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated, copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Applicable revisions to methods 200.7, 200.8, and 200.9, as cited in paragraphs (d)(3)(v)(A) through (d)(3)(v)(N) of this section (unless otherwise noted), are contained in "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated, copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(A) *Antimony*—(*1*) Method 204.2—Atomic absorption; furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 204.2, March 1983, U.S. EPA, EMSL.

(*2*) Method 200.8—Inductively coupled plasma; mass spectrometry technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Mass Spectrometry," Method 200.8, April 1991, Revision 4.4, U.S. EPA, EMSL.

(*3*) Method 200.9—Atomic absorption; platform technique, entitled "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," April 1991, Revision 1.2, U.S. EPA, EMSL.

(*4*) Method D–3697–87—Hydride-atomic absorption technique, contained in the Annual Book of ASTM Standards, vols. 11.01 and 11.02, 1991, American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(B) *Asbestos*—(*1*) Transmission electron microscopy technique, entitled "Analytical Method for Determination of Asbestos Fibers in Water," EPA–600/4–83–043, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the EPA Environmental Research Laboratory, Athens, GA 30613, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*2*) [Reserved]

(C) *Barium*—(*1*) Method 208.1—Atomic absorption; direct aspiration technique, in "Methods of Chemical Analysis of Water and Waste," Method 208.1, March 1983, U.S. EPA, EMSL.

(*2*) Method 208.2—Atomic absorption; furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 208.2, March 1983, U.S. EPA, EMSL.

(*3*) Method 200.7—Inductively coupled plasma technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Atomic Emission Spectrometry," April 1991, Revision 3.3, U.S. EPA, EMSL.

(D) *Beryllium*—(*1*) Method 210.2—Atomic absorption; furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 210.2, March 1983, U.S. EPA, EMSL.

(*2*) Method 200.7—Inductively coupled plasma technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Atomic Emission Spectrometry," April 1991, Revision 3.3, U.S. EPA, EMSL.

(*3*) Method 200.8—Inductively coupled plasma; mass spectrometry technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Mass Spectrometry," April 1991, Revision 4.4, U.S. EPA, EMSL.

(*4*) Method 200.9—Atomic absorption; platform technique, entitled "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," April 1991, Revision 1.2, U.S. EPA, EMSL.

(E) *Cadmium*—(*1*) Method 213.2—Atomic absorption; furnace technique,

in "Methods of Chemical Analysis of Water and Waste," Method 213.2, March 1983, U.S. EPA, EMSL.

(*2*) Method 200.7—Inductively coupled plasma technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Atomic Emission Spectrometry," April 1991, Revision 3.3, U.S. EPA, EMSL.

(F) *Chromium*—(*1*) Method 218.2—Atomic Absorption; furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 213.2, March 1983, U.S. EPA, EMSL.

(*2*) Method 200.7—Inductively coupled plasma technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Atomic Emission Spectrometry," April 1991, Revision 3.3, U.S. EPA, EMSL.

(G) *Copper*—Copper shall be measured as total recoverable metal without filtration using the following methods:

(*1*) Method 220.1—Atomic absorption; direct aspiration technique, in "Methods of Chemical Analysis of Water and Waste," Method 220.1, March 1983, U.S. EPA, EMSL.

(*2*) Method 220.2—Atomic absorption; furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 220.2, March 1983, U.S. EPA, EMSL.

(*3*) Method 200.7—Inductively coupled plasma technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Atomic Emission Spectrometry," April 1991, Revision 3.3, U.S. EPA, EMSL.

(*4*) Method 200.8—Inductively coupled plasma; mass spectrometry technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Mass Spectrometry," April 1991, Revision 4.4, U.S. EPA, EMSL.

(*5*) Method 200.9—Atomic absorption; platform technique, entitled "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," April 1991, Revision 1.2, U.S. EPA, EMSL.

(H) *Cyanide*—(*1*) Method 335.1—Distillation, amenable, spectrophotometric technique, in "Methods of Chemical Analysis of Water and Waste," Method 335.1, March 1983, U.S. EPA, EMSL.

(*2*) Method 335.2—Distillation, spectrophotometric technique, in "Methods of Chemical Analysis of Water and Waste," Method 335.2, March 1983, U.S. EPA, EMSL.

(*3*) Method 335.3—Distillation, automated, spectrophotometric technique, in "Methods of Chemical Analysis of Water and Waste," Method 335.3, March 1983, U.S. EPA, EMSL.

(*4*) Method D–2036–89A—Distillation, selective electrode technique, contained in the Annual Book of ASTM Standards, vols. 11.01 and 11.02, 1991, American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*5*) Method 4500–CN–F—Distillation, selective electrode technique, contained in "Standard Methods for the Examination of Water and Wastewater," 17th ed., American Public Health Association, American Water Works Association, Water Pollution Control Federation, 1989, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the Publication Office, American Public Health Association, 1051 15th St. NW., Washington, DC 20005, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(I) *Lead*—Lead shall be measured as total recoverable metal without filtration using the following methods:

(*1*) Method 239.2—Atomic absorption; furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 239.2, March 1983, U.S. EPA, EMSL.

(*2*) Method 200.8—Inductively coupled plasma; mass spectrometry technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Mass Spectrometry," April 1991, Revision 4.4, U.S. EPA, EMSL.

(*3*) Method 200.9—Atomic absorption; platform technique, entitled "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," April 1991, Revision 1.2, U.S. EPA, EMSL.

(J) *Mercury*—(*1*) Method 245.1—Manual cold vapor technique, in "Methods of Chemical Analysis of Water and Waste," Method 245.1, March 1983, U.S. EPA, EMSL.

(*2*) Method 245.2—Automated cold vapor technique, in "Methods of Chemical Analysis of Water and Waste," Method 245.2, March 1983, U.S. EPA, EMSL.

(K) *Nickel*—(*1*) Method 249.1—Atomic absorption; direction aspiration technique, in "Methods of Chemical Analysis of Water and Waste," Method 249.1, March 1983, U.S. EPA, EMSL.

(*2*) Method 249.2—Atomic absorption; furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 249.2, March 1983, U.S. EPA, EMSL.

(*3*) Method 200.7—Inductively coupled plasma technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Atomic Emission Spectrometry," April 1991, Revision 3.3, U.S. EPA, EMSL.

(*4*) Method 200.8—Inductively coupled plasma; mass spectrometry technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Mass Spectrometry," April 1991, Revision 4.4, U.S, EPA, EMSL.

(*5*) Method 200.9—Atomic absorption; platform technique, entitled "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," April 1991, Revision 1.2, U.S. EPA, EMSL.

(L) *Nitrate and/or nitrite*—(*1*) Method 300.0—Ion chromatography technique, for both nitrate and nitrite, in "Methods of Chemical Analysis of Water and Waste," Method 300.0, March 1983, U.S. EPA, EMSL.

(*2*) Method 353.1—Automated hydrazine reduction technique, for nitrate only, in "Methods of Chemical Analysis of Water and Waste," Method 353.1, March 1983, U.S. EPA, EMSL.

(*3*) Method 353.2—Automated cadmium reduction technique, for both nitrate and nitrite, in "Methods of Chemical Analysis of Water and Waste," Method 353.2, March 1983, U.S. EPA, EMSL.

(*4*) Method 353.3—Manual cadmium reduction technique, for both nitrate and nitrite, in "Methods of Chemical Analysis of Water and Waste," Method 353.3, March 1983, U.S. EPA, EMSL.

(*5*) Method 354.1—Spectrophotometric technique, for nitrite only, in "Methods of Chemical Analysis of Water and Waste," Method 354.1, March 1983, U.S. EPA, EMSL.

(*6*) Method WeWWG/5880—Ion selective electrode technique, entitled "Orion Guide to Water and Wastewater Analysis," Form WeWWG/5880, p. 5, 1985, Orion Research, Inc., Cambridge, MA, for nitrate only, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication may be

obtained from Orion Research, Inc., Cambridge, MA, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(M) *Selenium*—(*1*) Method 270.2—Atomic absorption; furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 270.2, March 1983, U.S. EPA, EMSL.

(*2*) Method D3859–84A—Hydride-atomic absorption technique, contained in the Annual Book of ASTM Standards, vols. 11.01 and 11.02, 1991, American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*3*) Method 3114B—Hydride-atomic absorption technique, contained in "Standard Methods for the Examination of Water and Wastewater," 17th ed., American Public Health Association, American Water Works Association, Water Pollution control Federation, 1989, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the Publication Office, American Public Health Association, 1051 15th St. NW., Washington, DC 20005, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(N) *Thallium*—(*1*) Method 279.2—Atomic absorption, furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 279.2, March 1983, U.S. EPA, EMSL.

(*2*) Method 200.8—Inductively coupled plasma; mass spectrometry technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Mass Spectrometry," April 1991, Revision 4.4, U.S. EPA, EMSL.

(*3*) Method 200.9—Atomic absorption; platform technique, entitled "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," April 1991, Revision 1.2, U.S. EPA, EMSL.

(vi) Analyses conducted to determine compliance with paragraphs (d)(3)(ii) and (d)(3)(iii) of this section shall, unless otherwise noted, be conducted in accordance with a relevant method contained in "Methods for the Determination of Organic Compounds in Drinking Water," Environmental Monitoring Systems Laboratory, EPA/600–4–88/039, 1988, and "Methods for the Determination of Organic Compounds in Drinking Water," Supplement One, Environmental Monitoring Systems Laboratory, EPA/600–4–90/020, 1990, and listed separately in paragraphs (d)(3)(vi)(A) through (d)(3)(vi)(S) of this section, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(A) Method 502.1—"Volatile Halogenated Organic Compounds in Water by Purge and Trap Gas Chromatography" (applicable to VOC's).

(B) Method 502.2—"Volatile Organic Compounds in Water by Purge and Trap Capillary Column Gas Chromatography with Photoionization and Electrolytic Conductivity Detectors in Series" (applicable to VOC's).

(C) Method 503.1—"Volatile Aromatic and Unsaturated Organic Compounds in Water by Purge and Trap Gas Chromatography" (applicable to VOC's).

(D) Method 524.1—"Measurement of Purgeable Organic Compounds in Water by Packed Column Gas Chromatography/Mass Spectrometry" (applicable to VOC's).

(E) Method 524.2—"Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry" (applicable to VOC's).

(F) Method 504—"1,2-Dibromoethane (DBE) and 1,2-Dibromo-3-Chloropropane (DBCP) in Water by Microextraction and Gas Chromatography" (applicable to dibromochloropropane (DBCP) and ethylene dibromide (EDB)).

(G) Method 505—"Analysis of Organohalide Pesticides and Commercial Polychlorinated Biphenyl Products in Water by Micro-Extraction and Gas Chromatography" (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene, endrin, hexachlorobenzene, hexachlorocyclopentadiene, simazine, and as a screen for PCB's).

(H) Method 506—"Determination of Phthalate and Adipate Esters in Drinking Water by Liquid-Liquid Extraction or Liquid-Solid Extraction and Gas Chromatography with Photoionization Detection" (applicable to di(2-ethylhexyl) adipate and di(2-ethylhexyl) phthalate).

(I) Method 507—"Determination of Nitrogen- and Phosphorus-Containing Pesticides in Water by Gas Chromatography with a Nitrogen-Phosphorus Detector" (applicable to alachlor, atrazine, and simazine).

(J) Method 508—"Determination of Chlorinated Pesticides in Water by Gas Chromatography with an Electron Capture Detector" (applicable to chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, toxaphene, endrin, hexachlorobenzene, and as a screen for PCB's).

(K) Method 508A—"Screening for Polychlorinated Biphenyls by Perchlorination and Gas Chromatography" (used to quantitate PCB's as decachlorobiphenyl if detected in methods 505 or 508).

(L) Method 515.1, Revision 5.0—"Determination of Chlorinated Acids in Water by Gas Chromatography with an Electron Capture Detector" as revised May 1991 (applicable to 2,4-D, 2,4,5-TP (Silvex), pentachlorophenol, dalapon, dinoseb, and picloram).

(M) Method 525.1, Revision 3.0—"Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry" as revised May 1991 (applicable to alachlor, atrazine, chlordane, heptachlor, heptachlor epoxide, lindane, methoxychlor, pentachlorophenol, benzo(a)pyrene, di(2-ethylhexyl) adipate, di(2-ethylhexyl) phthalate, endrin, hexachlorobenzene, hexachlorocyclopentadiene, and simazine).

(N) Method 531.1—"Measurement of N-Methylcarbamoyloximes and N-Methylcarbamates in Water by Direct Aqueous Injection HPLC with Post Column Derivatization" (applicable to aldicarb, aldicarb sulfoxide, aldicarb sulfone, carbofuran, and oxamyl (vydate)).

(O) Method 547—"Determination of Glyphosate in Drinking Water by Direct-Aqueous-Injection HPLC, Post-Column Derivatization, and Fluorescence Detection" (applicable to glyphosate).

(P) Method 548—"Determination of Endothall in Drinking Water by Aqueous Derivatization, Liquid-Solid Extraction, and Gas Chromatography with Electron-Capture Detection" (applicable to endothall).

(Q) Method 549—"Determination of Diquat and Paraquat in Drinking Water by Liquid-Solid Extraction and HPLC with Ultraviolet Detection" (applicable to diquat).

(R) Method 550—"Determination of Polycyclic Aromatic Hydrocarbons in Drinking Water by Liquid-Liquid Extraction and HPLC with Coupled Ultraviolet and Fluorescence Detection" (applicable to benzo(a)pyrene and other polynuclear aromatic hydrocarbons).

(S) Method 550.1—"Determination of Polycyclic Aromatic Hydrocarbons in Drinking Water by Liquid-Solid Extraction and HPLC with Coupled Ultraviolet and Fluorescence Detection" (applicable to benzo(a)pyrene and other polynuclear aromatic hydrocarbons).

(T) Method 1613—"Tetra- through Octa- Chlorinated Dioxins and Furans by Isotope Dilution HRGC/HRMS," U.S. EPA, Office of Water Regulations and Standards, Industrial Technology Division (April 1990) (applicable to 2,3,7,8-TCDD (Dioxin)), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from USEPA–OST, Sample Control Center, P.O. Box 1407, Alexandria, VA 22313, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(vii) Analyses to determine compliance with the requirements of paragraph (d)(3)(iv) of this section shall be conducted in accordance with an applicable method listed in this paragraph (d)(3)(vii) and described (unless otherwise noted) in "Methods of Chemical Analysis of Water and Wastes," U.S. EPA EMSL, Cincinnati, OH 45268 (EPA–600/4–79–020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated, copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or are available at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Applicable revisions to methods 200.7, 200.8, and 200.9 listed in paragraph (d)(3)(iv) of this section (unless otherwise noted) are contained in "Methods for the Determination of Metals in Environmental Samples," Office of Research and Development, Washington, DC 20460, (EPA/600/4–91/010), June 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Except as otherwise indicated, copies of this publication are available from the National Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or are available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(A) *Aluminum*—(*1*) Method 202.1—Atomic absorption technique; direct aspiration, in "Methods of Chemical Analysis of Water and Waste," Method 202.1, March 1983, U.S. EPA, EMSL.

(*2*) Method 202.2—Atomic absorption; graphite furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 202.2, March 1983, U.S. EPA, EMSL.

(*3*) Method 200.7—Inductively coupled plasma technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Atomic Emission Spectrometry," April 1991, Revision 3.3, U.S. EPA, EMSL.

(*4*) Method 200.8—Inductively coupled plasma; mass spectrometry technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Mass Spectrometry," April 1991, Revision 4.4, U.S. EPA, EMSL.

(*5*) Method 200.9—Atomic absorption; platform technique, entitled "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," April 1991, Revision 1.2, U.S. EPA, EMSL.

(B) *Silver*—(*1*) Method 272.1—Atomic absorption technique; direct aspiration, in "Methods of Chemical Analysis of Water and Waste," Method 272.1, March 1983, U.S. EPA, EMSL.

(*2*) Method 272.2—Atomic absorption; graphite furnace technique, in "Methods of Chemical Analysis of Water and Waste," Method 272.2, March 1983, U.S. EPA, EMSL.

(*3*) Method 200.7—Inductively coupled plasma technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Atomic Emission Spectrometry," April 1991, Revision 3.3, U.S. EPA, EMSL.

(*4*) Method 200.8—Inductively coupled plasma; mass spectrometry technique, entitled "Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma—Mass Spectrometry," April 1991, Revision 4.4, U.S. EPA, EMSL.

(*5*) Method 200.9—Atomic absorption; platform technique, entitled "Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption Spectrometry," April 1991, Revision 1.2, U.S. EPA, EMSL.

(C) *Sulfate*—(*1*) Method 300.0—Ion chromatography technique, in "Methods of Chemical Analysis of Water and Waste," Method 300.0, March 1983, U.S. EPA, EMSL.

(*2*) Method 375.1—Automated, chloranilate technique, in "Methods of Chemical Analysis of Water and Waste," Method 375.1, March 1983, U.S. EPA, EMSL.

(*3*) Method 375.3—Gravimetric technique, in "Methods of Chemical Analysis of Water and Waste," Method 375.3, March 1983, U.S. EPA, EMSL.

(*4*) Method 375.4—Turbidimetric technique, in "Methods of Chemical Analysis of Water and Waste," Method 375.4, March 1983, U.S. EPA, EMSL.

* * * * *

Dated: April 29, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–18556 Filed 8–3–93; 8:45 am]

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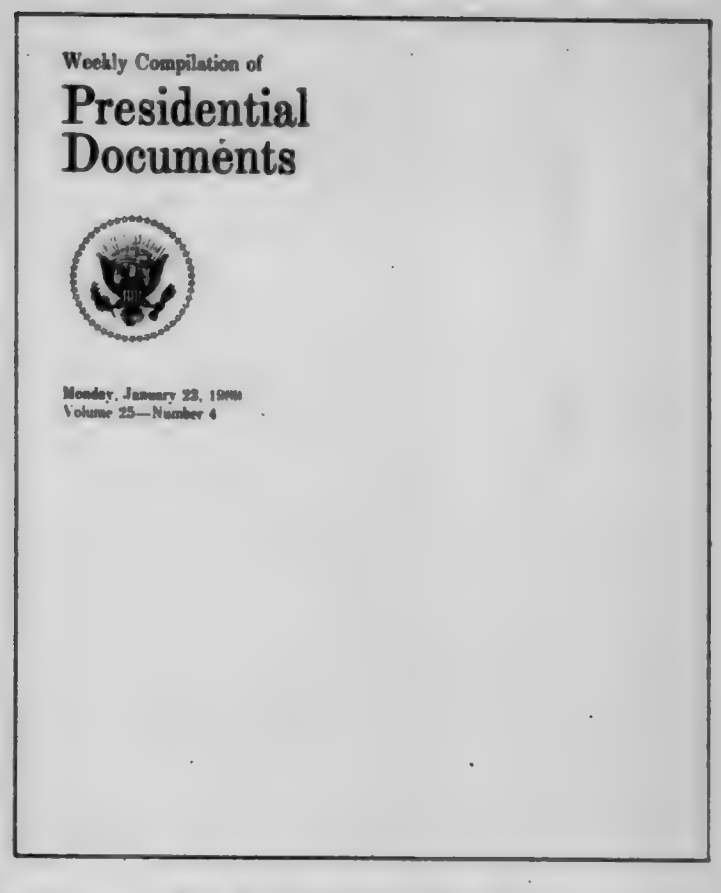


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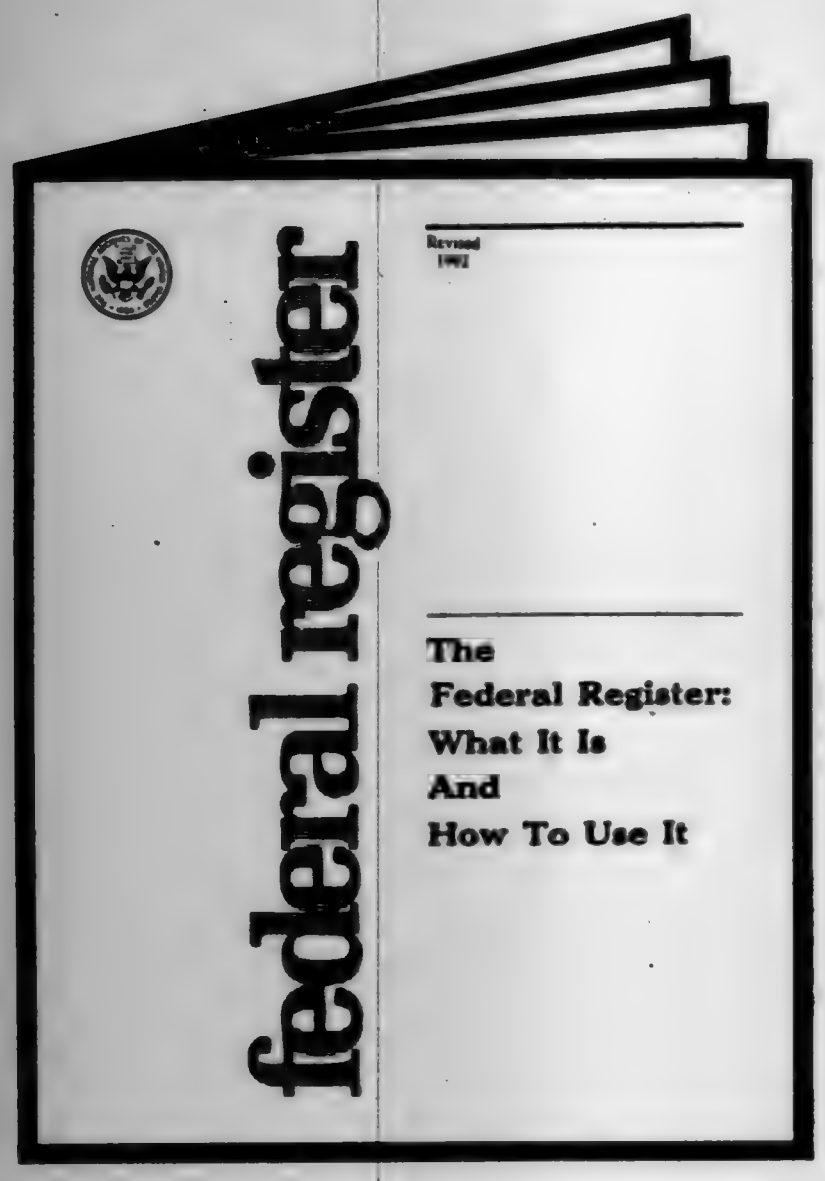


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# Presidential Documents

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## The President

**Proclamation 6584 of August 1, 1993**

## Helsinki Human Rights Day, 1993

**By the President of the United States of America**

**A Proclamation**

Since its inception in the 1970's, the Conference on Security and Cooperation in Europe (CSCE) has been the premier forum in which the ongoing struggle for human rights and the dignity and worth of individuals in European nations has been waged. In the wake of the instability created by the outbreak of war in the former Yugoslavia, the CSCE states have embraced a strategy of preventive diplomacy as a way of resolving differences before they lead to conflict. The CSCE's approach of combining a strong emphasis on human rights, preventive diplomacy, and multilateral action is an example of the kind of foreign policy I seek to pursue.

Yet, the dire situation in the former Yugoslavia gives pause to those who want to believe that the CSCE's principles will be respected in nations emerging from totalitarian rule. We must work with these nations in order to guide them toward the principles we hold dear.

The CSCE has made a major contribution even in areas of instability and conflict. Through conflict-prevention missions, monitoring of sanctions, sponsorship of the Nagorno-Karabakh negotiations, activities of the High Commissioner on National Minorities, and the energetic program of the Office for Democratic Institutions and Human Rights, participating states have demonstrated their collective political commitment to transform CSCE principles into reality.

As we grapple with the great challenges the CSCE faces, we reaffirm our belief that security cannot be divorced from respect for human rights and the democratic process. We also reaffirm our commitment to the advancement of the rights of individuals, for it was individuals who stood in front of tanks and tore down the walls that split East from West. Individuals braved the wrath of repressive regimes in order to call on them to live up to their CSCE commitments. And individuals today continue to struggle to build democratic societies at peace with their neighbors. The groundbreaking work of the CSCE in establishing human rights and other standards to which all CSCE states have committed themselves has permanently strengthened European security.

In recognition of the contributions of the CSCE toward the expansion of human rights, the Congress, by Senate Joint Resolution 111, has designated August 1, 1993, as "Helsinki Human Rights Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim August 1, 1993, as Helsinki Human Rights Day and reaffirm the American commitment to upholding human dignity and freedom—principles that are enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs and activities, let us remember our courageous citizens who have made sacrifices to secure the freedoms that we enjoy. Let us work together to encourage respect for human rights and democratic values in all CSCE states.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-18850
Filed 8-3-93; 3:39 pm]
Billing code 3195-01-P

VOL 58 ISS 149 AG 5 1993 UMI

# Rules and Regulations

Federal Register
Vol. 58, No. 149
Thursday, August 5, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 550**

**RIN 3206–AE30**

## Pay Administration (General); Advances in Pay

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations on advances in pay for newly hired employees, as authorized by section 107 of the Federal Employees Pay Comparability Act of 1990 and E.O. 12748 of February 1, 1991. The head of an agency may provide an advance in pay, covering not more than 2 pay periods, to a newly appointed employee.

**EFFECTIVE DATE:** The final rule is effective on September 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** JoAnn Perrini, (202) 606–1413.

**SUPPLEMENTARY INFORMATION:** On March 28, 1991, OPM published interim regulations to implement section 107 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509, November 5, 1990), codified at 5 U.S.C. 5524a, which provides that the head of an agency may make advance payments of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency. (See 56 FR 12833.)

The 60-day public comment period ended on May 28, 1991. Comments were received from six Federal agencies and one labor organization. Comments, as well as certain modifications and clarifications of the interim regulations, are summarized below.

### General Comments

One agency commented that the time period during which an advance payment may be made should be extended to the first 60 days following appointment. The agency believes the additional time would allow an employee more time to assess his or her financial needs and would be more consistent with the military personnel system, which generally permits 1 month's advance pay to members in receipt of orders to a permanent change of station (including reserve forces members ordered to active duty) within the first 60 days of arrival at the new/first duty station. Another agency recommended that the time period for authorizing an advance payment be extended to at least 30 days following appointment and that the time limit for issuing payment be tied to the date the authorization for payment is granted, rather than the date the employee receives the first regular paycheck. The agency believes new employees may not realize they need the advance payment until a week or more after entering on duty and that many agencies cannot process payments before the date of the first regular paycheck.

The law does not provide a maximum time limit for authorizing an advance payment. The purpose of an advance payment under 5 U.S.C. 5524a is to provide a newly appointed employee payment prior to, or in addition to, his or her first regular paycheck to assist in paying immediate expenses that are normally incurred as a result of starting a new job and/or relocating to a new geographic area. After an employee receives his or her first regular paycheck, the need for an advance payment is less critical. However, OPM realizes that in some cases, agencies may need additional time to process advance payments and newly appointed employees may need additional time to evaluate their financial needs. As a result of the agencies' concerns, OPM has amended the regulations to extend the maximum time limit for making an advance payment. An advance payment may be made to a newly appointed employee no earlier than the date of appointment with the agency and no later than 60 days after appointment. To ensure that employees receive an advance payment when it is most needed, OPM encourages agencies to make an advance payment as soon as practicable after the employee is appointed to the agency.

### Estimated Deductions

The interim regulations state that the maximum amount that may be advanced is the amount of basic pay to which the employee is entitled on the date of appointment, reduced by the amount of any applicable allotments or deductions from pay. An agency recommended that the regulations be revised to clarify that the maximum amount that may be advanced should not exceed the amount estimated to be available after normal deductions. The agency noted that the actual amount of allotments or deductions may not be known until normal payroll processing for the first 2 pay periods. Allowing the use of estimates would greatly expedite payment of the advance to the employee and reduce processing costs.

The regulations have been amended so that an advance payment will more closely reflect the net amount of pay the employee will receive in his or her first regular paycheck. Agencies are instructed to reduce the gross amount of an advance payment by the exact amount of each applicable deduction wherever practicable. In some cases, actual deductions are required. The Internal Revenue Service (IRS) has determined that an advance payment is considered to be income at the time of payment and is subject to deductions for Federal Insurance Contributions Act (FICA) tax and Federal income tax withholdings. Agencies must determine the exact amounts of FICA tax and Federal income tax withholdings to be subtracted from the advance payment. In a memorandum to Federal Personnel Directors dated August 3, 1992, OPM provided agencies with additional information on the tax consequences of receiving an advance payment.

In most cases, actual deductions will not be made. Estimates may be used for deductions or allotments for which the agency does not yet know the employee's preferences—e.g., life and health insurance premiums and Thrift Savings Plan contributions. In addition, since OPM accepts deductions for retirement contributions, health benefits, and life insurance premiums only as of the date of each regular paycheck, these deductions will not actually be paid to OPM. Rather, the gross advance payment will be reduced

as though such deductions were actually made so that the computation of the advance payment approximates the computation of the employee's first regular paycheck to the maximum extent practicable.

**Use of Imprest Funds**

An agency asked OPM to consult with the Department of the Treasury to obtain authorization for use of imprest funds by Federal agencies to make advance payments. We contacted the Department of the Treasury's Financial Management Service in Kansas City, Kansas, and learned that a revision of the Treasury Financial Manual has been drafted to allow agencies to use imprest funds for advance payments, as long as the advance payment is consistent with 5 U.S.C. 5524a. The revised Treasury Financial Manual is expected to be published at the end of June 1993. Agencies should contact the Kansas City Financial Management Service for additional guidance on this matter.

**Definition of "Newly Appointed" Employee**

An agency requested that excepted service positions be included under this provision. Section 5524a of title 5, United States Code, provides authority to the head of each agency to make an advance payment of basic pay to any "individual who is newly appointed to a position in the agency." This broad authority includes employees appointed to the excepted service.

**Waiver of Repayment**

An agency asked whether an agency head may waive any dollar amount of repayment of an advance payment if the agency head determines that recovery would be against equity and good conscience or against the public interest criteria established by the agency. Neither the statute nor the final regulations place any limit on the dollar amount an agency head may waive under 5 U.S.C. 5524a.

**Definition of "Rate of Basic Pay"**

In the interim regulations, the definition of "rate of basic pay" included annual premium pay for standby duty under 5 U.S.C. 5545(c)(1). The labor organization commented that the rate of basic pay should also include annual premium pay for administratively uncontrollable overtime (AUO) work, as authorized by 5 U.S.C. 5545(c)(2). The intent of an advance payment is to provide an amount that reflects the pay the employee will receive in his or her first regular paycheck. If annual premium pay has been authorized for a specific position, the employee will receive the appropriate amount in his or her first regular paycheck. OPM has modified the definition of "rate of basic pay" to include annual premium pay for AUO work.

**Prepayment of Balance Due**

Section 550.204(c)(3) of the interim regulations requires agencies to notify an employee that he or she may prepay all or part of the balance of an advance in pay at any time before the money is due. The labor organization recommended that this section be supplemented to require agencies to instruct employees on where and how such prepayments can be made. OPM agrees and has amended the regulations to include this requirement.

**Payroll Allotments**

The labor organization commented that § 550.204(d) of the regulations should eliminate agency discretion in establishing procedures for payroll allotments from an advance payment. The labor organization believes that agencies should be required to establish procedures that allow allotments from an advance payment on the same basis as regular pay. Section 550.204(d) is consistent with 5 U.S.C. 5525, which authorizes the head of an agency to establish procedures under which an employee is permitted to make allotments and assignments of amounts out of his or her pay for such purpose as the head of the agency considers appropriate. OPM believes modification of § 550.204(d) is unwarranted.

**Recovery Period**

The interim regulations authorize an agency to establish a recovery period of no longer than 13 pay periods for each employee to repay an advance payment. The labor organization commented that a maximum term of 13 pay periods for repaying an advance payment is far too short, since it may result in deductions of more than 15 percent of an employee's disposable pay. The labor organization commented that under these circumstances, employees would be well advised to invoke the salary offset provisions in 5 CFR part 500, subpart K, which limits deductions to no more than 15 percent of disposable pay per pay period, unless a larger deduction is requested by the employee. The labor organization recommended that the regulations be amended to include a requirement that agencies notify an employee in writing of his or her right to: (1) Cap a payroll deduction installment at 15 percent of disposable pay, and (2) voluntarily request any payroll deductions in excess of this amount. The labor organization commented that the length of recovery periods could be left to agency discretion and be a subject of bargaining between agencies and their exclusive representatives.

OPM calculated that, in most cases, it would take slightly more than 13 pay periods to repay the maximum payable net advance payment if no more than 15 percent of disposable pay is deducted. Limiting the deduction to a maximum of 15 percent of disposable pay is consistent with the salary offset provisions in 5 CFR part 550, subpart K. Therefore, OPM has amended the interim regulations to allow an agency to establish a recovery period of no more than 14 pay periods to repay an advance payment. In addition, the recovery period has been amended to begin on the date the advance payment is made to the employee, rather than on the date of appointment. Shorter recovery periods may be established upon written request by an employee. OPM does not believe a longer recovery period is warranted, since the intent of an advance payment is to provide a "loan" to an employee to assist in meeting immediate financial obligations. Under § 550.204(c)(1), employees will be notified of their rights under the salary offset provisions, since before making an advance payment, the agency must provide each employee a statement indicating how the advance payment will be recovered, either in installments under agency procedures for payroll deductions or by salary offset procedures under 5 CFR part 550, subpart K.

**Miscellaneous**

A new paragraph has been added to § 550.203 to clarify that the head of an agency, or an employee appointed to a position in the expectation of receiving an appointment as the head of an agency, may not receive an advance payment under 5 U.S.C. 5524a.

The definition of "newly appointed" in § 550.202 was expanded to allow cooperative education (co-op) students who are on leave without pay for at least 90 days pending conversion to the competitive service to receive an advance payment when they receive their first permanent appointment in the competitive service. A co-op student may receive the advance payment only if he or she has repaid any former advance in pay that may have been received upon his or her first appointment in the Federal service—i.e., an appointment to his or her first work session.

Finally, it should be noted that OPM is amending § 550.202, which was

adopted as final with changes on January 22, 1992 (57 FR 2431).

**E.O. 12291, Federal Regulation**

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

**List of Subjects in 5 CFR Part 550**

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

**Patricia W. Lattimore,**

*Acting Deputy Director.*

Accordingly, the interim regulations in 5 CFR part 550, subpart B, published on March 28, 1991, at 56 FR 12833, as amended by final rules published on January 22, 1992, at 57 FR 2431, are adopted as final with the following changes:

## PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for part 550, subpart B continues to read as follows:

### Subpart B—Advances in Pay

**Authority:** 5 U.S.C. 5524a; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748.

2. In § 550.202, the definitions of *newly appointed* and *rate of basic pay* are revised to read as follows:

**§ 550.202 Definitions.**

* * * * *

*Newly appointed* means—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) A new appointment following a break in service of at least 90 days; or

(c) A permanent appointment in the competitive service following a period of leave without pay for at least 90 days received after termination of employment in a cooperative work-study program under a Schedule B appointment made in accordance with § 213.3202 of this chapter, provided such employee has fully repaid any former advance in pay under § 550.205 of this part.

* * * * *

*Rate of basic pay* means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay under 5 U.S.C. 5545(c); night differential for prevailing rate employees under 5 U.S.C. 5343(f); a special rate established under 5 U.S.C. 5305, § 532.231 of this chapter, or other legal authority; and locality-based comparability payments under 5 U.S.C. 5304, any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees pay Comparability Act of 1990 (Pub. L. 101–509), respectively; but not including additional pay of any other kind.

3. In § 550.203, paragraphs (a), (b), and (c) are revised and paragraph (e) is added to read as follows:

**§ 550.203 Advances in pay.**

(a) The head of an agency may provide for the advance payment of basic pay, in one or more installments covering not more than 2 pay periods, to an employee who is newly appointed to a position in the agency.

(b) The maximum amount of pay that may be advanced to an employee shall be based on the rate of basic pay to which the employee is entitled on the date of his or her new appointment with the agency, reduced by the amount of any allotments or deductions that would normally be deducted from the employee's first regular paycheck.

(c) An advance in pay may be made to an employee no earlier than the date of appointment with the agency and no later than 60 days after the date of appointment.

* * * * *

(e) An advance in pay may not be made to the head of an agency or to an employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

4. In § 550.204, paragraph (c)(3) is revised to read as follows:

**§ 550.204 Agency procedures.**

* * * * *

(c) * * *

(3) A statement indicating that the employee may prepay all or part of the balance of the advance payment at any time before the money is due, including instructions as to where and how such prepayments may be made.

* * * * *

5. In section 550.205, paragraph (b) is revised to read as follows:

**§ 550.205 Recovery of advances in pay.**

* * * * *

(b) An agency shall establish a recovery period for each employee to repay an advance in pay, but no agency may establish a recovery period of longer than 14 pay periods beginning on the date the advance in pay is made to the employee under § 550.203 of this part. If a longer period for recovery is necessary to avoid exceeding the limitation on deductions described in § 550.1104(i) of this part, recovery may be accomplished under salary offset procedures established under subpart K of this part. Upon written request, an employee may elect a recover period of less than 14 pay periods.

* * * * *

[FR Doc. 93–18567 Filed 8–4–93; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1446

RIN 0560–AG32

### Peanuts

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends the peanut program regulations to raise to $2.00 per net ton of peanuts the maximum deduction from producer price support advances that may be made by the area marketing association for the Southwest marketing area, as defined in the regulations, for related activities of the association outside the price support program. Such deductions are made only upon prior agreement of the producer and have no effect on the amount of public outlay for the peanut program. This action is necessary to provide applicable rules for 1993 through 1995 crops of peanuts with respect to the request by the area marketing association for the Southwest area, the Southwestern Peanut Growers' Association (SWPGA), that the Commodity Credit Corporation (CCC) amend the regulations to increase the deduction.

**DATES:** This interim rule is effective August 5, 1993. Comments must be received on or before September 7, 1993 in order to be assured of consideration.

**ADDRESSES:** Send comments to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, or deliver to room 5750, South Building, 14th Street and Independence Avenue, SW., Washington, DC. All written

comments received in response to this request will be made available for public inspection in room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., on regular workdays.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–0152.

SUPPLEMENTARY INFORMATION:

**Executive Order 12291**

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Federal Assistance Program**

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases—10.051.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Executive Order 12372**

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Paperwork Reduction Act**

The information collection requirements contained in the regulations at 7 CFR part 1446 for the peanut price support program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control numbers 0560–0006, 0560–0014, and 0560–0033. This interim rule does not change the information collection as approved by OMB. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to USDA, Clearance Officer, OIRM, room 404W, Washington, DC 20250; and to the OMB Paperwork Reduction Project (OMB 0560–0006, 0560–0014, or 0560–0033), Washington, DC 20503.

**Background**

Regulations at 7 CFR 1446.303(g)(5) permit the SWPGA, for peanuts produced in the Southwest area, to take a deduction from producer price support proceeds to fund SWPGA's activities not related to price support. Such deductions, which have previously been permitted up to a maximum of $1.00 per net ton, are allowed only upon prior agreement of the producers. Due to increased operating costs and increased activities, the SWPGA Board of Directors directed the association management to petition CCC to allow the deduction to be increased to not more than $2.00 per net ton. As granting the request will not affect public outlays for the program and there does not appear to be any reason to deny the request, it has been determined, pending public comment, to amend the regulations accordingly.

Some producers in the Southwest area traditionally have peanuts ready to deliver for price support on August 1, the first day of the marketing year and the first day price support is available. Delaying the amendment for prior public comment would likely result in the final rule being issued after the beginning of the crop year and possibly after some producers delivered peanuts for price support. For that reason and since the deduction is made only with prior producer approval, it has been determined that such delay is contrary to the public interest and that this interim rule should be issued in order to permit the higher deduction for all 1993-crop price support advances.

Accordingly, this amendment to the peanut regulations is issued as an interim rule with a 30-day comment period.

**List of Subjects in 7 CFR Part 1446**

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR part 1446 is amended as follows:

**PART 1446—PEANUTS**

1. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 1359a, 1375, 1421 *et seq.*; 15 U.S.C. 714b and 714c.

2. In 7 CFR 1446.303(g)(5), remove the term "$1.00" and add in its place, the term "$2.00".

Signed at Washington, DC, on August 2, 1993.

Bruce R. Weber,

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 93–18782 Filed 8–2–93; 4:29 pm]

BILLING CODE 3410–05–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 2

[Docket No. RM93–3–000]

## Policy Statement Regarding Regional Transmission Groups; Policy Statement

Issued July 30, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Rule; policy statement.

SUMMARY: The Federal Energy Regulatory Commission is announcing a general policy of encouraging the development of Regional Transmission Groups (RTGs), and providing guidance regarding the basic components that should be included in RTG agreements filed with the Commission.

DATES: This Policy Statement is effective on July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Janice G. Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Telephone: (202) 208–0921.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the tests of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a

modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

**Policy Statement Regarding Regional Transmission Groups**

**I. Background**

When Congress enacted the Federal Power Act (FPA) in 1935, it declared in FPA section 201(a) that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest and that Federal regulation of matters relating, inter alia, to the transmission of electric energy in interstate commerce is necessary in the public interest. 16 U.S.C. 824(a). Congress in FPA sections 205 and 206 gave the Federal Power Commission, and later the Federal Energy Regulatory Commission (Commission),[1] the responsibility for regulating the rates, terms and conditions of transmission of electric energy in interstate commerce by public utilities. 16 U.S.C. 824d and e. However, with the exception of certain authority to address war and emergency conditions (now the responsibility of the Department of Energy), 16 U.S.C. 824a (c) and (d), Congress did not give the Commission the explicit authority to order transmission.

This changed in 1978 when Congress, as part of the Public Utility Regulatory Policies Act (PURPA), added section 211 to the FPA, which gave the Commission general authority to order electric utilities to provide transmission to, inter alia, other electric utilities.[2] However, section 211 of the FPA, as enacted in PURPA, was largely unused because the Commission could only order transmission if the Commission determined that the order "would reasonably preserve existing competitive relationships."

The Energy Policy Act of 1992 (Energy Policy Act) has significantly expanded the Commission's authority to order transmission services under section 211.[3] As amended by the Energy Policy Act, section 211 now gives the Commission authority, upon application, to order transmitting utilities, as defined in section 3(23) of the FPA, to provide transmission to electric utilities, Federal power marketing agencies, or any other person generating electric energy for sale for resale, if such action will not unreasonably impair reliability and will be in the public interest. Section 211 allows the Commission to order entities that are not subject to section 205 jurisdiction to provide transmission, and the Commission has authority to review the rate charged by such an entity pursuant to a section 211 order under the standards of section 212.

During the final stages of Congress' consideration of the Energy Policy Act, which, as noted above, significantly expanded the Commission's authority to order transmission upon application, representatives of the electric utility industry and other interest groups presented "consensus" Regional Transmission Group (RTG)[4] legislation for consideration. The consensus proposal would have explicitly required the Commission to "certify" RTGs meeting certain statutory criteria. Included among the criteria were requirements for: Broad membership; an obligation for a member transmission-owning utility to wheel power for others, including an obligation to upgrade its system or build new facilities; coordinated regional transmission planning and information sharing; and fair procedures for decision-making and for dispute resolution. Under the proposal, an RTG that met these (and other) standards for Commission certification would have been entitled to have its decisions receive some degree of deference from the Commission (consistent with the FPA). Moreover, the Commission would have been required to afford some degree of deference to the decisions reached through dispute resolution procedures contained in an RTG agreement. The rates charged for transmission by non-public utilities (i.e., entities not otherwise subject to Commission rate jurisdiction) would have had to meet the substantive FPA rate-making standards and would have been subject to suspension and refund as if they were subject to sections 205 and 206 of the FPA. The consensus proposal set forth procedures for the Commission to impose conditions on certification of RTGs, if necessary, and to exercise continuing oversight. Certification was to be denied if all the affected state commissions unanimously objected to certification. The consensus proposal was presented after the conferees had voted on the provisions of the H.R. 776 Conference Report affecting electric power regulation and was not included in the bill.[5]

On November 10, 1992, the Commission issued a Request for Public Comments on the consensus proposal and solicited comments on how the consensus proposal could be adapted into a proposed rulemaking that would address Commission consideration of RTG agreements affecting matters subject to Commission jurisdiction.[6] We received 100 comments from a wide variety of commenters. Most of the commenters supported the concept of RTGs. However, the comments presented differing views of exactly what an RTG should be and do.[7]

The Commission believes that RTGs can be alternative vehicles for attaining the same goals inherent in the new section 211: Promoting competition in generation, improving efficiency in both short-term and long-term trading in bulk power markets, and reducing the cost of electricity to consumers. RTGs can provide mechanisms for encouraging negotiated agreements and resolving transmission issues without resorting to the procedures under sections 211 and 213 of the FPA.[8] As such, RTGs should reduce the need for potentially time-consuming and expensive litigation before the Commission. To that end, the Commission is announcing a general policy of encouraging the development of RTGs, and providing guidance regarding the basic components that should be included in RTG agreements filed with the Commission.

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[1] *See* Department of Energy Organization Act, 42 U.S.C. 7171.

[2] All public utilities, as defined in the FPA, are electric utilities as defined in the FPA. However, electric utilities include entities that are not public utilities, such as cooperative and municipal utilities.

[3] Pub. L. 102–486, 106 Stat. 2776 (1992).

[4] The Commission defines an RTG as a voluntary organization of transmission owners, transmission users, and other entities interested in coordinating transmission planning (and expansion), operation and use on a regional (and interregional) basis.

[5] See 138 Cong. Rec. S.17,816 and S.17,820–22 (daily ed. Oct. 8, 1992).

[6] 61 FERC ¶ 61,232 (1992).

[7] As discussed infra, the Commission is adopting a general statement of policy rather than a detailed rule. The comments submitted in this docket have provided a very thorough discussion of the issues. However, we discuss below only those comments that are relevant to this Policy Statement.

[8] As the Commission stated in its recent Policy Statement regarding good faith requests for transmission services and responses by transmitting utilities under sections 211 and 213: "we believe that as a policy matter sections 211(a) and 213(a) should be implemented in a manner which encourages negotiation." The Commission also stated that its "guidelines are broad enough to encourage individual initiative and negotiation within a flexible framework, leading to accommodations that will encourage optimum access to this country's transmission system." 58 FR 38984, 38985–86 (July 21, 1993).

## II. Discussion

### A. The Expected Benefits of RTGs

A primary purpose of RTGs is to facilitate the provision of transmission services to potential users and voluntarily to resolve disputes over the provision of such services. We believe that RTGs can address disputes over transmission issues in a manner that satisfies the statutory standards of the FPA, and can minimize applications seeking Commission orders for mandatory transmission services under section 211.

Properly functioning RTGs will serve the public interest by enabling the market for electric power to operate in a more competitive, and thus more efficient manner, and by providing coordinated regional planning of the transmission system to assure that system capabilities are adequate to meet system demands. They will decrease the delays that are inherent in the regulatory process, resulting in a more market-responsive industry. RTGs may also significantly enhance regional transmission planning by providing a mechanism for cooperation among state commissions and the utilities they regulate.

Regional transmission needs will change as the generation sector becomes more competitive, thereby affecting many more companies than in the past. Since RTGs bring together both transmitting utilities and their customers (and potential customers) in a region, they can provide a means for companies to coordinate their transmission planning more effectively, avoid costly duplication of facilities, and, in conjunction with their respective state commissions, find more efficient solutions to region-wide problems. This is critical because the transmission network is highly interconnected; thus, the actions of one party often affect many others.

Many transmission issues (e.g., loop flow) are highly technical. As far as possible, those with technical expertise should resolve such issues directly. RTGs can bring together the technical experts from all interested parties to address technical issues directly. This promises to be more productive than using traditional regulatory approaches, which tend to force parties to polarize their positions, as the primary mechanisms for resolving disputes.

As the generation sector continues to become more competitive, the industry will have many new opportunities to trade power. RTGs can provide a forum in which planning data and other useful information can be compiled and exchanged.[9] They can also provide a forum for parties to find workable ways to conduct business with each other. RTGs can develop procedures that make transactions efficient for all—for example, through region-wide trading systems based on electronic bulletin boards. In short, RTGs promise efficient and expeditious solutions to problems that may stem from expanded transmission access.

### B. Recent Developments—Why the Time Is Ripe for Commission Action

During the time since the Commission issued the request for public comment on the consensus RTG proposal, there has been considerable activity in various regions of the country concerning the development of RTGs. For example, utilities in New England, California, the upper Midwest, and the Southwest and Northwest regions of the United States have been actively negotiating RTG agreements.[10] Utilities in other regions also may be considering such agreements. All of these regions differ with regard to generating resource mix, transmission system integration, and existing institutional frameworks.[11] These factors, among others, can affect the resolution of planning, access, and operational issues important to RTG agreements. Differences in important regional characteristics support the view, expressed by many in written comments on the consensus proposal, that considerable flexibility is needed in forming RTGs.

Although considerable activity is already underway in various parts of the country toward creating regional transmission organizations, recent events in some of the more advanced negotiations indicate difficulties in reaching final agreements. Recent public reports from both California and New England indicate that negotiations in both of these regions have failed to come to closure. The impasse may be due, in part, to parties' decisions to delay commitment to the RTG process pending action by the Commission. The issuance of this Policy Statement is intended to provide assurance that the Commission encourages these collaborative efforts and to provide guidance as to the basic components that should be included in jurisdictional RTG agreements.

In issuing this Policy Statement, the Commission emphasizes that it intends to use its new transmission authority to ensure that electric generation markets can become fully competitive. However, there are several reasons why we believe that RTGs, as opposed to case-by-case determinations by this Commission, offer the potential to be more effective and efficient in dealing with the complex issues that arise as result of expanded transmission access. First, by including and addressing the needs of all transmission users in a region, RTGs can use the technical expertise of the industry to the benefit of all parties. RTGs can provide a forum for resolving difficult technical issues relating to transmission system operation and planning in a fair and non-discriminatory manner that will benefit all participants. Second, RTGs can provide a practical means for collaboration between the industry and its regulators at both the state and Federal levels. As discussed below, consultation and cooperation with state regulatory authorities are critical to the timely and efficient provision of transmission services. Third, consensual resolution of issues involving transmission in interstate commerce, consistent with the FPA, can lead to enhanced efficiency in both transmission and generation and can reduce expensive and time-consuming litigation before the Commission and possibly state regulatory authorities.

It is important to recognize the Commission's limited authority in the development and success of RTGs. RTGs are purely voluntary associations of transmission owners, users, and others with differing interests. Therefore, the formation of an RTG, by itself, does not insulate its transmitting utility members from proceedings under FPA section 211. However, RTGs that succeed in accommodating all parties' interests, so that members do not feel the need to resort to section 211, will meet the goals intended by the Commission in issuing this Policy Statement. In addition, the Commission will afford an appropriate degree of deference to decisions under an RTG, depending on the degree to which an

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[9] As the Commission noted in its Notice of Proposed Rulemaking proposing to implement the information-collection requirement in section 213, making more information available will improve efficiency, expedite negotiations, and reduce the number of section 211 applications. New Reporting Requirements Under the Federal Power Act and Changes to Form No. FERC-714, Proposed Rulemaking, IV FERC Stats. & Regs. ¶32,493 (1993), 58 FR 17,544 (April 5, 1993).

[10] For example, the Southwest Power Pool is considering RTG-like reforms in its Vision Statement of November 1992. The Western Association for Transmission Systems Coordination and the New England Power Pool are also attempting to form RTGs.

[11] For example, in New England, NEPOOL, a centrally dispatched pool, and in the upper Midwest, MAPP, a non-centrally dispatched but highly coordinated pool, both already provide for significant sharing of installed and operating reserves of generation resources. Any RTG in these regions may develop as a complement to these power pools.

RTG agreement mitigates the market power of transmission owners and provides for fair decision-making. The success of RTGs will be determined less by the Commission's approval of RTG agreements than by the consensual resolutions negotiated by the members.

*C. Minimum Components for RTG Agreements*

The Commission does not have authority to "certify" RTGs. However, under section 205(c) of the FPA, public utilities must file with the Commission the classifications, practices, and regulations affecting rates and charges for any transmission or sale subject to the Commission's jurisdiction, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. Thus, a governing agreement or other RTG-related agreement that in any manner affects or relates to jurisdictional transmission rates or services must be approved or accepted by this Commission as just, reasonable, and not unduly discriminatory or preferential under the FPA.[12] Accordingly, in addition to adopting a general policy of encouraging the development of RTGs, we believe it is also important to provide guidance regarding the basic components that should be included in RTG agreements in order to satisfy FPA requirements.

The experience drawn from the RTGs developing in various areas of the country indicates that there is a need for flexibility in forming these voluntary associations and the agreements that govern them, in order to reflect specific geographic, operational, historical, or other circumstances of the parties. RTG governing agreements may differ substantially both substantively and in terms of the level of detail. For example, an RTG governing agreement may contain only general criteria for determining the rates that will be charged for transmission services, detailed rate formulations, or no price provisions at all.[13] Likewise, a governing agreement may contain only general criteria regarding terms and conditions of service, or it may specify detailed terms and conditions. We believe it is crucial to RTG development to permit considerable flexibility regarding the formation of RTGs and RTG agreements, particularly at this early stage and in light of the desire to encourage voluntary participation in RTGs. Therefore, parties may file any RTG agreement that they believe satisfies their contractual needs and complies with the substantive standards of the FPA. Still, the Commission believes that RTG agreements should, at a minimum, contain the following basic components:

1. (§ 2.21(b)(1)) An RTG agreement should provide for broad membership and, at a minimum, allow any entity that is subject to, or eligible to apply for, an order under section 211 of the FPA to be a member. An RTG agreement should encompass an area of sufficient size and contiguity to enable members to provide transmission services in a reliable, efficient, and competitive manner.

Component No. 1 allows for the broadest possible membership for RTGs, including foreign utilities that are interconnected with the national grid.[14] Numerous commenters emphasized the importance of the broadest possible membership.[15] Broad membership will extend the benefits of RTGs to the greatest number of market participants, thereby leading to greater efficiency.

In regard to participation by foreign utilities, such entities currently participate in existing reliability councils and power pools. Domestic and foreign utilities' current participation in reliability councils, power pools and commercial transactions over the existing international boundary facilities should be taken as models to draw from in order to structure continuing, viable working relationships in newly forming RTGs. Furthermore, the history of international cooperation on transmission issues (such as resolution of the Lake Erie loop flow problem)[16] provides evidence that inclusion of foreign utilities in RTG associations will be beneficial.

Component No. 1 also provides that the geographic area covered by an RTG agreement should be sufficiently large and contiguous. It is implicit in section 202(a) (which concerns "regional districts" for voluntary coordination and interconnection) that there should be coordinated operation in areas large enough and contiguous enough for economic efficiency.[17] Many commenters also made this point.[18]

2. (§ 2.21(b)(2)) An RTG agreement should provide a means of adequate consultation and coordination with relevant state regulatory, siting, and other authorities.

Component No. 2 provides for adequate consultation and coordination with states. Many commenters,[19] representing transmission-owning utilities and transmission-dependent entities as well as the states themselves, pointed out the need for involvement of the states in RTGs. We agree that consultation and coordination with the states are critical to the successful implementation of RTGs, especially in view of the fact that states have authority over retail rates which recover transmission costs, integrated resource planning, and siting of transmission facilities. In addition, state involvement in RTGs can allow state agencies to improve communications with utilities and with each other in dealing with transmission concerns, and can facilitate coordinated treatment of siting issues among the states.

It will be our policy to encourage RTGs to involve the states in whatever way is most effective. State participation is important particularly in the formative stages of RTGs. RTGs are encouraged to seek state participation during formation to ensure that the RTG's governing agreement recognizes that actions taken by RTG members under an RTG agreement must be consistent with state and local law.

3. (§ 2.21(c)(1)) An RTG agreement should impose on member transmitting utilities an obligation to provide transmission services

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[12] Any jurisdictional entity seeking to invoke any other basis for jurisdiction over an RTG should set forth its arguments that such other basis exists.

[13] The Commission recently issued an inquiry on transmission pricing. Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Notice of Technical Conference and Request for Comments, 64 FERC ¶ 61,109 (1993), 58 FR 36400 (July 7, 1993). Since the FPA does not mandate the use of a particular method in setting rates, the Commission may decide, for example, that in certain circumstances either "postage stamp" rates or distance-sensitive rates would be just and reasonable. The Commission envisions that an RTG may propose a particular pricing method for its region, which the Commission will accept if it finds the method is just, reasonable, and not unduly discriminatory or preferential. Ultimately, however, the Commission must ensure that any rate developed using the method is just, reasonable, and not unduly discriminatory or preferential. If RTG participants are able to reach agreement with regard to specific rates, the RTG agreement should specify the type of rate (e.g., tariff, individual rate schedules, formula), the underlying pricing method, and any necessary cost support.

[14] The term "foreign utilities," as used in this document, means electric utilities that are not located in the United States but are interconnected with the United States transmission grid.

[15] See, e.g., Comments of Ohio Edison Company at 3, Edison Electric Institute at 3, the National Independent Energy Producers at 4, Electric Consumers at 15–16, the Electric Generation Association at 5.

[16] See The Transmission Task Force's Report to the Commission, October, 1989 at 62–66.

[17] FPA section 202(a) was transferred to the Department of Energy in the DOE Organization Act. See 42 U.S.C. 7151, 7172.

[18] See, e.g., Comments of Utilicorp United, Inc. at 4–5, American Public Power Association at 13, Cajun Electric Power Cooperative, Inc. at 11, and Department of Energy at 8–9.

[19] See e.g., Comments of National Association of Regulatory Utility Commissioners (joint comments with, among others, Electricity Consumers) at 6–7, the National Regulatory Research Institute at 1, Municipal Electric Utilities of Wisconsin at 2–6, Missouri Public Service Commission at 1–3, and the Large Public Power Council at 18–19.

for other members, including the obligation to enlarge facilities, on a basis that is consistent with sections 205, 206, 211, 212 and 213 of the FPA. To the extent practicable and known, the RTG agreement should specify the terms and conditions under which transmission services will be offered.

Component No. 3 provides for an affirmative obligation to provide transmission services. Many commenters [20] argued that this is essential to an RTG. An inability to obtain service on reasonable terms and conditions will likely result in filings with the Commission under sections 211 and 212 of the FPA. Section 211 does not place a limit on the meaning of the term "transmission services" and provides that the Commission can order facilities to be enlarged, if needed, to provide requested service. Accordingly, the service obligation of RTG members should extend to all types of transmission services and should include a commitment to expand or upgrade facilities when needed to meet service requirements. Such a commitment by RTG transmitting utilities will assure members that they can obtain transmission services similar to those that the Commission could order upon application under sections 211 and 212. RTGs thus may help to secure the benefits of expanded transmission access, such as facilitating competitive generation markets, without the additional costs of lengthy regulatory proceedings.

4. (§ 2.21(c)(2)) An RTG agreement should require, at a minimum, the development of a coordinated transmission plan on a regional basis and the sharing of transmission planning information, with the goal of efficient use, expansion, and coordination of the interconnected electric system on a grid-wide basis. An RTG agreement should provide mechanisms to incorporate the transmission needs of non-members into regional plans. AN RTG agreement should include as much detail as possible with regard to operational and planning procedures.

Component No. 4 provides for coordinated transmission planning and sharing of transmission planning information.[21] The coordinated planning process should be open to participation by all members and should address the transmission needs of members as well as non-members. The term "coordinated planning" is a broad term that should encompass the goal of efficient use and expansion of the nation's transmission system. The term "efficient expansion" goes beyond planning needed for reliability purposes. It also includes planning to make expansions that are economically justified from a regional perspective. This component assures that the economic trade-offs between generation and transmission expansion will be weighed appropriately.

Another key aspect of coordinated planning, in our view, is that it addresses the needs not only of the region encompassed by the RTG, but also of the surrounding areas that have transmission assets that interact with those of the RTG. Transmission upgrades in one part of a regional network can affect the operations in another part because power flows freely within the larger grid. RTGs should not only plan for efficient expansion within their own boundaries, but also should coordinate with one another to assure that bottlenecks do not develop on the boundaries between RTGs and that existing bottlenecks are appropriately eliminated. We believe that the development of coordinated plans can assist in removing impediments to power transfers within and among the RTGs that share a larger grid.

5. (§ 2.21(b)(3)) An RTG agreement should include fair and non-discriminatory governance and decisionmaking procedures, including voting procedures.

Component No. 5 provides for fair and non-discriminatory governance and decisionmaking procedures. No commenter opposed such a standard, and transmission-dependent entities expressed particular concern that they not be powerless within an RTG. The Commission will not specify in this Policy Statement what specific governance rules or features would be acceptable. In general, we think an RTG should have rules or procedures to protect the rights of entities that are more susceptible to the exercise of market power, such as transmission dependent utilities (TDUs). If the voting rules permit transmission owners to dominate the RTG, for example, this would disadvantage weaker users and would be unfair.[22] An RTG may wish to strive for consensus when dealing with regional grid issues that affect most members. Accordingly, super-majority voting rules may be appropriate in some circumstances. Different regions and organizations may wish to address these issues in their own manner. The Commission believes that RTGs must have substantial flexibility in designing governance procedures to deal with the difficulties that will be encountered. The procedures must be fair and non-discriminatory if an RTG is to meet the objectives discussed above.

6. (§ 2.12(c)(3)) An RTG agreement should include voluntary dispute resolution procedures that provide a fair alternative to resorting in the first instance to section 206 complaints or section 211 proceedings.

Component No. 6 provides for voluntary dispute resolution procedures. The Commission particularly encourages RTGs to develop high quality alternative dispute resolution procedures [23] for resolving technical and reliability issues. As discussed in detail infra, we encourage proposals under which we would afford substantial deference to outcomes resulting from appropriate alternative dispute resolution (ADR) procedures that are specified in the RTG agreement.

7. (§ 2.21(c)(4)) An RTG agreement should include an exit provision for RTG members that leave the RTG, specifying the obligations of a departing member.

Component No. 7 provides for an exit provision for RTG members who wish to leave the RTG. If a party has accepted a responsibility under an RTG agreement and then decides to leave the RTG, the obligation of such departing party to comply with its prior commitments should be set forth in the RTG agreement.[24]

*D. Other Issues*

(1) Adoption of Policy Statement Rather Than Rule

In the comments on the consensus legislative proposal, EEI and many others, including several TDUs, argued that the Commission should issue a general statement of policy rather than a rule with specific requirements. These commenters argued that the Commission should review RTG agreements on a case-by-case basis as they are filed. Several reliability councils and power pools, as well as others, are concerned that a rule would stifle the developing RTGs by imposing uniform, detailed requirements. A policy statement would allow flexibility for individual RTGs to form in ways that are suited to accommodate unique

[20] See e.g., Comments of Edison Electric Institute at 3, 16–17, National Independent Energy Producers at 3, Electricity Consumers at 17–19, and Cajun Electric Power Cooperative at 11–12.

[21] Several commenters supported a coordination role for RTGs. See e.g., comments of American Public Power Association at 11–13, Electrical Generation Associated at 4–5, Iowa Association of Municipal Utilities at 5–6.

[22] See, e.g., Comments of the Electricity Consumers Resource Council at 21–22, American Public Power Association at 14, Missouri Basin Municipal Power Agency at 26–27, and Northeast Texas Electric Cooperative at 3.

[23] See Comments of the Electric Generation Association at 6, Southern Maryland Electric Cooperative at 11–12.

[24] For example, under Article II of the Mid-Continent Area Power Pool Agreement, any participant may withdraw by giving four years' written notice.

circumstances in different regions of the country.

Many other commenters, particularly certain TDUs, supported issuance of a rule that would adopt the "consensus proposal;" some suggested various changes, and others argued that it should be adopted unchanged to preserve the consensus of support.

We have decided to adopt a policy statement rather than a rule because, as discussed above, the ongoing development of RTGs clearly indicates a need for flexibility to adapt to specific geographic, operational, historical or other circumstances. A rule with specific, detailed requirements might stifle the development that is already taking place and discourage the evolution of different types of RTGs that respond to the needs of particular regions of the country. This Policy Statement is designed to allow sufficient flexibility for various creative solutions, while at the same time ensuring that RTG agreements are just, reasonable, and not unduly discriminatory or preferential.

(2) State Issues

A general concern was raised in the comments on the consensus proposal concerning Federal preemption of state rights and authorities as a result of the Energy Policy Act. These concerns stem in large part from the provisions in the Energy Policy Act which expand the Commission's authority to order transmission services upon application, including any enlargement of transmission capacity necessary to provide such services, and the possible adverse impacts on retail customers that may result from such orders.

In reference to concerns regarding enlargement of facilities, Congress was clear in its intention to preserve state authorities.[25] RTGs that deal with enlargement of capacity must obtain necessary state approvals for the construction of transmission facilities.

The ultimate resolution of concerns regarding the impact of RTGs on retail customers will be largely driven by any changes in transmission pricing that result from the implementation of the Energy Policy Act. However, the creation of RTGs may also substantially influence these concerns.

Some see a need to improve collaboration between state and Federal authorities as a result of the Energy Policy Act provisions. The creation of RTGs pursuant to this Policy Statement could help to meet this perceived need. RTGs by their very nature are collaborative mechanisms. In order for an RTG to reach successful outcomes, it must simultaneously satisfy not only the needs of the transacting parties but the requirements of state and Federal regulatory authorities as well. This collaborative effect would also reach to possible conflicts between the various state interests involved. In sum, properly designed and functioning RTGs will inherently provide effective, close collaboration among all parties necessary to assure an efficient transmission system. The extent of collaboration and coordination with states would be one factor influencing the degree of deference the Commission would give to consensual resolutions reached under an RTG.

3. Deference to RTG Alternative Dispute Resolutions

Some commenters argued that the Commission cannot afford any deference to an alternative dispute resolution technique such as arbitration. Several referred to the Commission's lack of authority to "delegate" its authority to private organizations. Others argued that while parties to contracts may agree to arbitration, states must be able to challenge these contracts before the Commission without being hampered by a deference standard.

On the other hand, many commenters argued that alternative dispute resolution proceedings, with some degree of Commission deference, are critical to RTGs. These commenters argued that the Commission has authority to allow parties to a contract to bind themselves to reasonable arbitration procedures with limited Commission review; in other words, a party may contract away its statutory right to Commission review under the normal "just and reasonable" standard.

Another argument raised is that the RTGs' alternative dispute resolution procedures should be used only for technical issues, such as reliability and the adequacy of existing transmission; RTG members could go directly to the Commission with disputes over policy matters (such as cost allocation or the terms and conditions of access).

Whether consensual resolutions are reached by direct negotiation among the parties or by various methods of ADR,[26] the Commission has the authority and is willing to give appropriate deference to outcomes produced by agreement of the parties. In either case, the Commission must ensure that the resolution is not unjust, unreasonable, or unduly discriminatory or preferential, as required by the FPA, which we are bound to enforce, and that it does not result from the exercise of market power by one party over another.

Voluntary resolution of disputes is consistent with the statutory scheme under the FPA that relies on contracts between the parties in the first instance.[27] It is also consistent with the Alternative Dispute Resolution Act.[28] We believe that an RTG agreement that assures that transmission owners cannot exert significant market power or control over non-owners can provide the Commission the assurance it needs to give appropriate deference to voluntary resolutions or resolutions reached as a result of ADR. While the Commission cannot "delegate" its authority, it can give deference to resolutions which meet the standards of the FPA.

One type of ADR is arbitration. We note that arbitration of certain FPA-related matters is not a new concept at the Commission.[29] We have long recognized the value of parties agreeing to attempt to resolve matters through other means before coming to the Commission. We have pointed out that it is "desirable and appropriate, if otherwise consistent with the public interest, to attempt to adhere to the results of a binding arbitration award" because arbitration is a valuable way to avoid time-consuming and expensive administrative proceedings.[30] Moreover, where parties have agreed to submit disputes to fair arbitration procedures before resorting to the Commission, the Commission will insist that they do

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[25] Under section 211(d)(1)(C) of the FPA, added by the Energy Policy Act, the Commission must modify or terminate an order requiring enlargement of transmission facilities if it finds, upon application and after notice and opportunity for hearing, that the transmitting utility after making a good faith effort, failed to obtain necessary approvals or property rights under applicable Federal, State, and local laws.

[26] ADR can include, but is not limited to, conciliation, facilitation, mediation, early neutral evaluation, fact-finding, mini-trials, and non-binding or binding arbitration. See Administrative Dispute Resolution, Notice of Inquiry, IV FERC Stats. & Regs. ¶ 35,823.

[27] *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 337–9 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[28] 5 U.S.C. 581–593.

[29] The Commission has accepted arbitration provisions for non-rate matters such as determining what is a reasonable amount of time for new transmission facilities to be built. Public Service Co. of Indiana, Opinion No. 348, 51 FERC ¶ 61,367, dismissed No. 90–1528 (D.C. Cir. January 21, 1992). The Commission has also allowed arbitration of rate disputes. Kansas Gas and Electric Co., 28 FERC ¶ 61,112 (1984).

[30] Kansas Gas and Electric Co., 28 FERC ¶ 61,112 at 61,195 (1984); accord, Madison Gas and Electric Co., 56 FERC ¶ 61,447 at 62,579 (1991); North Carolina Eastern Municipal Power Agency v. Carolina Power and Light Co., 45 FERC ¶ 61,487 at 62,518 (1988), rehearing denied, 48 FERC ¶ 61,181 (1989); Pacific Gas and Electric Co., 43 FERC ¶ 61,403 at 62,036–8 (1988).

so.[31] There are a variety of other ADR procedures, in addition to arbitration, that RTGs could use.

The Commission encourages RTGs to develop alternative dispute resolution procedures for resolving transmission issues, particularly those involving technical and reliability issues. We are also willing to entertain proposals for the Commission to give some degree of deference to decisions rendered pursuant to an ADR process, pursuant to procedures that are specified in the RTG agreement and that assure due process for all participants.

We will not attempt to decide in this Policy Statement exactly what degree of deference we will be willing to afford. This may depend on a number of factors including, but not limited to, the type of issue to be resolved, the degree of specificity in the RTG agreement, the ability of any party to exercise market power, and type of ADR being used. We will make that decision based on the particular facts of the proposals presented to us.

For example, it may be appropriate to give considerable deference to an arbitrator's finding on a purely factual issue, such as how much an improvement to the system will cost. This is somewhat analogous to factual decisions of administrative law judges, to which we afford considerable deference. However, just as we would not defer to an administrative law judge's decision that is directly contrary to Commission policy, we would not defer to an arbitrator's decision that is directly contrary to Commission policy. Other factors that might influence the degree of deference we would afford to the outcome of a dispute resolution process include, for example, whether a party can or does object to the decision, the degree to which the decision was reached under procedures that maximize fairness, and the degree to which the decision is based on a well-developed record.

4. Antitrust Concerns

Several commenters expressed concern that RTGs may raise antitrust concerns. Some argued that the Commission cannot guarantee immunity from antitrust proceedings.[32] While the Commission can provide no guarantees, we agree with other commenters[33] that RTGs need not violate the antitrust laws. As the Department of Justice pointed out in its comments,[34] the purpose of RTGs is to encourage competition in generation, not to discourage it, by making transmission more easily available to a wider spectrum of generating entities and by increasing the efficiency of the transmission system. More easily available wheeling should make the market work better and should lead to greater economic efficiency.

In this regard, we note that RTGs are in many ways analogous to power pools, which have been found not to violate the antitrust laws. In *Central Iowa Power Cooperative* v. *FERC*,[35] the court rejected arguments that the Mid-Continent Area Power Pool (MAPP) violated the antitrust laws or policies. The court pointed out that FPA section 202 expresses Congress' view that coordination is in the public interest. It specifically rejected arguments that MAPP constituted price fixing under the Sherman Act because of the pool's service schedules, which set forth rates.

5. Filing Procedures

The Commission expects that most RTGs will contain public utilities. As such, RTG agreements must, at a minimum, be filed under section 205(c) as contracts affecting or relating to transmission services provided by public utilities. We anticipate that most such filings will be made by one or more public utility members, on behalf of all public utilities in the RTG.[36] If the filing entity believes that the filing will become effective automatically if the Commission does not act on the filing within 60 days,[37] it should so state in the first paragraph of the cover letter in bold-faced type and should explain the arguments on which that view is based.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 2, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

*Secretary.*

## PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7353.

2. Part 2 is amended by adding § 2.21 to read as follows:

**§ 2.21 Regional Transmission Groups.**

(a) *General policy.* The Commission encourages Regional Transmission Groups (RTGs) as a means of enabling the market for electric power to operate in a more competitive and efficient way. The Commission believes that RTGs can provide a means of coordinating regional planning of the transmission system and assuring that system capabilities are always adequate to meet system demands. RTG agreements that contain components that satisfy paragraphs (b) and (c) of this section generally will be considered to be just, reasonable, and not unduly discriminatory or preferential under the Federal Power Act (FPA). The Commission encourages RTG agreements that contain as much detail as possible in all of the components listed, particularly if the RTG participants will be seeking Commission deference to decisions reached under an RTG agreement.

(b) *Organizational components.* (1) An RTG agreement should provide for broad membership and, at a minimum, allow any entity that is subject to, or eligible to apply for, an order under section 211 of the FPA to be a member. An RTG agreement should encompass an area of sufficient size and contiguity to enable members to provide transmission services in a reliable, efficient, and competitive manner.

(2) An RTG agreement should provide a means of adequate consultation and coordination with relevant state regulatory, siting, and other authorities.

(3) An RTG agreement should include fair and nondiscriminatory governance and decisionmaking procedures, including voting procedures.

(c) *Other components.* (1) An RTG agreement should impose on member transmitting utilities an obligation to provide transmission services for other members, including the obligation to enlarge facilities, on a basis that is consistent with sections 205, 206, 211, 212 and 213 of the FPA. To the extent practicable and known, the RTG agreement should specify the terms and

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[31] Pacific Gas and Electric Co., 44 FERC ¶ 61,010 at 61,053 (1988).

[32] See Comments of American Public Power Association at 9, Old Dominion Electric Cooperative at 1, Central Power and Light Company at 10.

[33] See, e.g., Comments of Edison Electric Institute at 31–32, Public Generating Pool at 10, Southern California Edison Co. at 5.

[34] DOJ Comments at 1–7.

[35] 606 F.2d 1156 (D.C. Cir. 1979).

[36] See Western Systems Power Pool, 55 FERC ¶ 61,099, 61,301 (1991), reh'g den'd, 55 FERC ¶ 61,495 (1991), aff'd sub nom. *Environmental Action, et al.* v. *FERC*, No. 91–1404 (D.C. Cir. July 2, 1993).

[37] As with all section 205 filings, the Commission intends to notice RTG filings in the Federal Register and to provide and opportunity for comment prior to Commission action on the filing.

conditions under which transmission services will be offered.

(2) An RTG agreement should require, at a minimum, the development of a coordinated transmission plan on a regional basis and the sharing of transmission planning information, with the goal of efficient use, expansion, and coordination of the interconnected electric system on a grid-wide basis. An RTG agreement should provide mechanisms to incorporate the transmission needs of non-members into regional plans. An RTG agreement should include as much detail as possible with regard to operational and planning procedures.

(3) An RTG agreement should include voluntary dispute resolution procedures that provide a fair alternative to resorting in the first instance to section 206 complaints or section 211 proceedings.

(4) An RTG agreement should include an exit provision for RTG members that leave the RTG, specifying the obligations of a departing member.

(d) *Filing procedures.* Any proposed RTG agreement that in any manner affects or relates to the transmission of electric energy in interstate commerce by a public utility, or rates or charges for such transmission, must be filed with the Commission. Any public utility member of a proposed RTG may file the RTG agreement with the Commission on behalf of the other public utility members under section 205 of the FPA.

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BILLING CODE 6717–01–M

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## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 101

[T.D. 93–60]

## Consolidation of Norfolk and Newport News, and Richmond-Petersburg, VA, as Customs Ports for Marine Purposes

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by consolidating the ports of entry of Norfolk and Newport News, and Richmond-Petersburg, Virginia for marine purposes only. This change enables Customs to obtain more efficient use of its personnel, facilities and resources. It eliminates duplication of port functions and permits better control of staffing resources without impairing services to area businesses or the general public. This amendment does not change any individual port's status, and will not reduce staffing levels. It is designed to simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

**EFFECTIVE DATE:** September 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Robert Jones, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 927–0456.

**SUPPLEMENTARY INFORMATION:**

### Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs is amending § 101.3, Customs regulations (19 CFR 101.3), by consolidating, for marine purposes only, the port of entry of Norfolk and Newport News, and the port of entry of Richmond-Petersburg, Virginia, located in the Norfolk District in the Southeast Region.

Inasmuch as these two ports are located within approximately 75 miles of one another on the James and Elizabeth Rivers and perform similar services, it is estimated that the consolidation will significantly reduce expenses without impairing Customs ability to provide services to area businesses or to the general public.

Under this amendment, the laws and regulations administered and enforced by Customs relating to the entry of merchandise would continue to apply at Norfolk and Newport News and at Richmond-Petersburg, with both of the ports retaining their port code as well as their current geographical limits. However, the two ports are now to be considered to be one port for the purposes of the navigation laws. Accordingly, all reports of arrival and entry and clearance requirements prescribed by the Customs and navigation laws administered and enforced by Customs, such as reporting arrival when entering a port and making formal entry when arriving at a Customs port from foreign or another U.S. port (if a foreign-registered vessel), will only have to be complied with once when a vessel is moving in the waters of Norfolk and Newport News and Richmond-Petersburg. Further, a vessel required to obtain a permit to proceed to move between one U.S. port and another will no longer have to receive such a permit to proceed between Norfolk and Newport News and Richmond-Petersburg.

It is anticipated that the consolidation also will result in reducing penalties incurred under the Customs and navigation laws. Penalties were assessed in the past when carriers failed to enter and properly clear merchandise being shipped in a residue cargo movement between the ports of Norfolk and Newport News, and Richmond-Petersburg. This will no longer be considered a violation of the laws as a carrier will no longer be required to enter and clear merchandise when moving from one of these ports to the other. The reduction of penalty cases will reduce paperwork for carriers, importers and Customs.

### Analysis of Comments

Customs published a notice of proposed rulemaking in the **Federal Register** on August 10, 1992 (57 FR 35530), and invited public comment on the proposed amendment. In response to this invitation, Customs received approximately 10 comments.

All the comments which addressed the scope of the proposal—the consolidation of the ports for marine purposes—supported it.

Several comments were addressed to an issue which was outside the scope of the notice, but which is apparently one of concern to the Norfolk and Newport News areas. These comments believed the Notice announced Customs intention to either consolidate Norfolk and Newport News into one port of entry or to reduce the present level of Customs Service activity at either location.

Customs is planning neither of those actions. The Notice specifically stated that the adoption of the amendment would have no effect on the current geographical boundaries of the ports involved. The basis for the misunderstanding was that some people were unaware that, for Customs purposes, the ports of Norfolk and Newport News had already been consolidated. This consolidation had occurred when the Customs Service was reorganized by the President's message dated March 3, 1913, which was published as T.D. 33249. That message states, in pertinent part, that the Customs District of Virginia would include "* * * all of the State of Virginia, except the county of Alexandria, with district headquarters at Norfolk, in which Norfolk and Newport News, Richmond, Petersburg, Cape Charles City, Chincoteague, and Reedville shall be ports of entry. The port of Norfolk shall include both of said cities and the waters and shores of

Hampton Roads." Later in the message, the collectors of Customs (now known as District Directors) are instructed to maintain their offices at the headquarters of their districts "with the exception of the collectors for the districts of Virginia, * * * who shall maintain a principal office at both Newport News and Norfolk, * * *" The ports of Richmond and Petersburg were similarly consolidated for Customs purposes in T.D. 68–179.

As stated earlier, adoption of this amendment will result in no change in the current geographical limits of either port. However, it is necessary to amend the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 1011.3(b)), to reflect the consolidation of these ports for the purposes of the navigation laws.

**Regulatory Flexibility Act and Executive Order 12291**

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued after notice and comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

**Drafting Information**

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 101**

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

**Amendment to the Regulations**

Part 101 Customs Regulations (19 CFR part 101) is amended as set forth below:

**PART 101—GENERAL PROVISIONS**

1. The authority citation for part 101 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 2, 58(c), 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

**§ 101.3 [Amended]**

2. Section 101.3 (b) is amended by adding the following phrase in the listing of Customs regions, districts and ports of entry, in the Southeast Region, under the column headed "Name and headquarters", under the listing "Norfolk, Va.":

"(The ports of Norfolk and Newport News and Richmond-Petersburg, consolidated for purposes of the navigation laws. See T.D. 93–60.)"

George J. Weise,

*Commissioner of Customs.*

Approved: July 12, 1993.

Ronald K. Noble,

*Assistant Secretary of the Treasury.*

[FR Doc. 93–18659 Filed 8–4–93; 8:45 am]

BILLING CODE 4820–02–P

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 5**

**Delegations of Authority and Organization; Center for Drug Evaluation and Research**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority for the Center for Drug Evaluation and Research (CDER) to reflect the current structure of the Office of Over-the-Counter (OTC) Drug Evaluation after the recent CDER reorganization. In addition, with the objective of achieving a more expeditious process, FDA is also amending the regulations regarding the authority to grant or deny certain citizen petitions that request exemption from a general overdose warning and exemption from OTC drug administrative procedures.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

**SUPPLEMENTARY INFORMATION:** FDA is amending § 5.31 *Petitions under part 10* (21 CFR 5.31) by adding to § 5.31(d) the authority to grant or deny citizen petitions under § 10.30 (21 CFR 10.30) requesting exemption from a general overdose warning required under § 330.1(g) (21 CFR 330.1(g)) and petitions requesting exemption from OTC drug administrative procedures under § 330.10 (21 CFR 330.10). Section 5.31(d)(2) is further amended by removing the Director and Deputy Director, Office of Drug Standards, CDER, and by adding the Director and Deputy Director, Office of OTC Drug Evaluation, CDER, to reflect a change brought about by the recent CDER reorganization.

The additional delegations will allow the center to be more expeditious in processing such citizens' petitions.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

**List of Subjects in 21 CFR Part 5**

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

**PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION**

1. The authority citation for 21 CFR part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.31 is amended by revising the introductory text of paragraph (d) and paragraph (d)(2) to read as follows:

**§ 5.31 Petitions under part 10.**

* * * * *

(d) The following officials are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter requesting exemption from the general pregnancy-nursing warning for over-the-counter (OTC) drugs required under § 201.63 of this chapter, requesting exemption from a general overdose warning required under

§ 330.1(g) of this chapter, and requesting exemption from OTC drug administrative procedures under § 330.10 of this chapter:

(1) * * *

(2) The Director and Deputy Director, Office of OTC Drug Evaluation, CDER.

* * * * *

Dated: July 30, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–18686 Filed 8–4–93; 8:45 am]

BILLING CODE 4160–01–F

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**21 CFR Part 14**

**Advisory Committees; National Mammography Quality Assurance Advisory Committee; Establishment**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the establishment by the Commissioner of Food and Drugs of the National Mammography Quality Assurance Advisory Committee in FDA's Center for Devices and Radiological Health. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice requesting nominations for membership on this committee. This document adds the National Mammography Quality Assurance Advisory Committee to the agency's list of standing advisory committees.

**DATES:** This rule becomes effective August 5, 1993. Authority for the committee being established will end on July 6, 1995, unless the Commissioner of Food and Drugs formally determines that renewal is in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

**SUPPLEMENTARY INFORMATION:** Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), the Mammography Quality Standards Act of 1992 (section 354(n), part F, subpart 3 of Title III of the Public Health Service Act (Pub. L. 102–539)), section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 394) as amended by the Food and Drug Administration Revitalization Act (Pub. L. 101–635), and 21 CFR 14.40(b), FDA is announcing the establishment by the Commissioner of Food and Drugs of the National Mammography Quality Assurance Advisory Committee to the Food and Drug Administration.

The committee shall advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3). developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; and (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities. The committee will also determine: (1) Whether there exists a shortage of mammography facilities in rural and health professional shortage areas and the effects of personnel or other requirements on access to the services of such facilities in such areas; (2) whether there will exist a sufficient number of medical physicists after October 1, 1999; and (3) the costs and benefits of compliance with these requirements.

Because this is a technical amendment to 21 CFR part 14, the Commissioner of Food and Drugs finds, under 21 CFR 10.40(c), (d), and (e), that notice and public procedure in § 10.40(b) are unnecessary and contrary to the public interest. Therefore, the agency is revising the authority citation for 21 CFR part 14 and adding new paragraph (d)(4) to 21 CFR 14.100 as set forth below.

**List of Subjects in 21 CFR Part 14**

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

**PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE**

1. The authority citation for 21 CFR part 14 is revised to read as follows:

**Authority:** Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394; 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by adding new paragraph (d)(4) to read as follows:

**§ 14.100 List of standing advisory committees.**

* * * * *

(d) * * *

(4) *National Mammography Quality Assurance Advisory Committee.*

(i) Date established: July 6, 1993.

(ii) Function: Advises on developing appropriate quality standards and regulations for the use of mammography facilities.

* * * * *

Dated: July 28, 1993.

**Jane E. Henney,**

*Deputy Commissioner for Operations.*

[FR Doc. 93–18630 Filed 8–4–93; 8:45 am]

BILLING CODE 4160–01–F

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 3**

**Disease Subject to Presumptive Service Connection**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to the regulations of the Department of Veterans Affairs (VA) that govern presumptive service connection for certain diseases resulting from exposure to ionizing radiation during military service. This correction is required in order to amend a cross-reference in the regulation. No substantive change to the content of the regulations is being made by this correcting amendment.

**EFFECTIVE DATE:** This correcting amendment is effective October 1, 1992, the date provided by Public Law 102–578.

**FOR FURTHER INFORMATION CONTACT:** John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

**SUPPLEMENTARY INFORMATION:** VA published a final rule in the **Federal Register** on April 27, 1993 (See 58 FR 25563–64), to implement section 2 of the Veterans' Radiation Exposure Amendments of 1992, Public Law 102–578, which amended 38 U.S.C. 1112(c) to repeal the requirement that, to be presumed service connected, specified diseases of veterans who participated in a radiation-risk activity become at least 10 percent disabling within 40 years after the veterans' last exposure to radiation. Accordingly, VA removed 38 CFR 3.309(d)(3) and redesignated § 3.309(d)(4) as the new § 3.309(d)(3). However, VA neglected to amend the reference to the redesignated

§ 3.309(d)(3) that appears at § 3.309(d)(1). This document corrects that omission.

**List of Subjects in 38 CFR Part 3**

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

**PART 3—ADJUDICATION**

**Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation**

1. The authority citation for part 3, subpart A, continues to read as follows:

**Authority:** 38 U.S.C. 501(a), unless otherwise noted.

**§ 3.309 [Corrected]**

2. In § 3.309(d)(1), remove the words "paragraph (d)(4)" and insert, in their place, the words "paragraph (d)(3)".

Approved July 27, 1993.

**B. Michael Berger,**

*Director, Records Management Service.*

[FR Doc. 93-18473 Filed 8-4-93; 8:45 am]

BILLING CODE 8320-01-U

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**38 CFR Part 21**

**RIN 2900-AG34**

**Extension of Training and Rehabilitation Programs**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs is amending current regulations in order to extend the termination date for the program of vocational training for certain pensioners and the special counseling and employment services program for veterans with total disability ratings because of individual unemployability. These programs are extended through December 31, 1992. In addition, the law ratifies actions which VA took to furnish certain services under these programs during the period beginning February 1, 1992, and ending May 20, 1992.

**DATES:** These amendments are effective retroactively to January 31, 1992, except for amendments to § 21.6042. The amendments to § 21.6042 are effective May 20, 1992, the date of enactment.

**FOR FURTHER INFORMATION CONTACT:** Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6496.

**SUPPLEMENTARY INFORMATION:** The Department of Veterans Affairs provides programs of training and rehabilitation services to eligible disabled veterans in receipt of VA pension benefits and service-disabled veterans in receipt of total disability benefits because of individual unemployability. The revisions contained in these regulatory changes implement certain provisions of Public Law 102-291, extending certain authorities relating to the administration of Veterans' laws. The provisions include:

1. Extension of the termination date of the program for trial work periods and employment services for veterans with total disability ratings because of individual unemployability from January 31, 1992, to December 31, 1992. Under the program's provisions, the veteran's total disability rating may not be reduced if the veteran obtains substantially gainful employment unless the veteran maintains such employment for 12 consecutive months. Public Law 102-291 ratifies VA action during the lapsed period not to reduce the disability rating of a veteran who obtained substantially gainful employment during the period beginning February 1, 1992 and ending May 20, 1992.

2. Extension of the termination date of the program of vocational training for certain veterans in receipt of VA pension from January 31, 1992, to December 31, 1992. Under the program of vocational training, VA provides programs of vocational training and employment to veterans awarded VA pension benefits if it is determined that employment is a reasonably feasible goal. Governing regulations authorized the continuation of vocational training programs for all veterans who were participating in such programs on January 31, 1992, and the entry into training of veterans awarded pension before that date under certain conditions. Public Law 102-291 ratifies these actions and other actions which VA took during the lapsed period beginning February 1, 1992 and ending May 20, 1992 to continue vocational services to provide a vocational training program (including related evaluations and other related services) under this program.

VA has determined that these final rules do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. These rules will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

Publication of these changes for public notice and comment is unnecessary because these changes simply implement provisions of law. The regulatory amendment to §§ 21.6005, 21.6042(a), (b), (c) and (d), 21.6503 and 21.6523 are retroactively effective to January 31, 1992, and the amendments to § 21.6042(e) are effective May 20, 1992, the date of enactment. Moreover, VA finds that good cause exists for making these rules retroactively effective. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

Since a notice of proposed rulemaking is unnecessary and will not be published, these changes are not subject to the requirements of the Regulatory Flexibility Act, (RFA). In any case these rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the RFA. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the rule only affects the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 24, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 21 is amended as set forth below:

**PART 21—VOCATIONAL REHABILITATION AND EDUCATION**

**Subpart I—Temporary Program of Vocational Training for Certain New Pension Recipients**

1. The authority citation for part 21, subpart I continues to read as follows:

**Authority:** Pub. L. 98-543, 38 U.S.C. 501 and chapter 15, sections specifically cited.

2. In § 21.6005, paragraph (b) is amended by removing the date "January 31, 1992", and in its place add the date "December 31, 1992; the authority citation in paragraph (b) is revised to read as follows:

**§ 21.6005 Definitions.**

* * * * *

(b) *Program period.* * * *

(Authority: 38 U.S.C. 1524(a)(4); Pub. L. 102–291)

* * * * *

3. In § 21.6042, at the end of the introductory text in paragraph (a), remove the words "which make timely entry impracticable"; in paragraphs (a) introductory text and (a)(1), remove the date "January 31, 1992", and in its place add the date "December 31, 1992"; the authority citation for paragraph (a) is revised; in paragraph (b) remove the date "August 1, 1992", and in its place add the date "August 1, 1993", and its authority citation is revised; the authority citation for (c) is revised; in paragraph (d) remove the date "January 31, 1997", and in its place add the date "January 31, 1998", and its authority citation is revised; paragraph (e) is added to read as follows:

**§ 21.6042 Entry, reentry and completion.**

(a) *Dates of entry.* * * *

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 102–291)

(b) *Entry precluded.* * * *

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 100–687; Pub. L. 102–291)

(c) *Reentry.* * * *

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 102–291)

(d) *Final termination of services.* * * *

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 100–687; Pub. L. 102–291)

(e) *Provision of vocational training and services during the period beginning February 1, 1992 and ending May 20, 1992.* The provision of a vocational training program (including related evaluations and other related services) to a veteran under the provisions of subpart I of this part, and related determinations during the period beginning February 1, 1992, and ending May 20, 1992, is ratified.

(Authority: Pub. L. 102–291)

**Subpart J—Temporary Program of Vocational Training and Rehabilitation**

4. The authority citation for part 21, subpart J continues to read as follows:

Authority: Pub. L. 98–543, section 111; 38 U.S.C. 1163; Pub. L 100–687, sec. 1301.

5. In § 21.6503, paragraph (a) remove the date "January 31, 1992", and add in its place the date "December 31, 1992"; the authority citation for paragraph (a) is revised to read as follows:

**§ 21.6503 Definitions.**

(a) *Program period.* * * *

(Authority: 38 U.S.C. 1163(a)(2)(B); Pub. L. 102–291)

* * * * *

6. In § 21.6523, paragraph (a), remove the date "January 31, 1992", and add in its place the date "December 31, 1992"; the authority citation is revised; the authority citation for paragraph (b) is revised to read as follows:

* * *

**§ 21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 3104(a)(2) and (5).**

(a) *Dates of entry.* * * *

(Authority: 38 U.S.C. 1163; Pub. L. 100–687; Pub. L. 102–291)

(b) *Reentry.* * * *

(Authority: 38 U.S.C. 1163; Pub. L. 100–687; Pub. L. 102–291)

[FR Doc. 93–18483 Filed 8–4–93; 8:45 am]

BILLING CODE 8320–01–U

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## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 101–26**

**[FPMR Amendment E–274]**

## Priorities for Use of Supply Sources

**AGENCY:** Federal Supply Service, GSA.

**ACTION:** Final rule.

**SUMMARY:** This regulation revises the section on priorities for use of supply sources to add references to the regulatory authorities which relate to the priorities and to reflect a change in the name of a committee. The regulation is necessary to maintain the list of priorities on a current basis and to minimize uncertainties in determining the appropriate supply source to be used.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** John M. Boughton, Regulations Management Staff (703–305–7525).

**SUPPLEMENTARY INFORMATION:** The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

**Regulatory Flexibility Act**

This final rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

**List of Subjects in 41 CFR Part 101–26**

Government property management.

For the reasons set forth in the preamble, 41 CFR part 101–26 is amended as follows:

1. The authority citation for part 101–26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

## PART 101–26—PROCUREMENT SOURCES AND PROGRAM

**Subpart 101–26.1—General**

2. Section 101–26.107 is revised to read as follows:

**§ 101–26.107 Priorities for use of supply sources.**

(a) Executive agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority:

(1) *Supplies.* (i) Agency inventories;

(ii) Excess for other agencies (see part 101–43 and 48 CFR subpart 8.1);

(iii) Federal Prison Industries, Inc. (UNICOR) (see § 101–26.702 and 48 CFR subpart 8.6);

(iv) Procurement lists of products available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see § 101.26.701 and 48 CFR subpart 8.7);

(v) Central supply sources, such as the stock, special order, or customer supply center programs of the General Services Administration (GSA) (see subpart 101–26.3, § 101–26.102, and subpart 101–28.3), the Defense Logistics Agency (see subpart 101–26.6), the Department of Veterans Affairs (see § 101–26.704), and military inventory control points (see § 101–26.606);

(vi) Mandatory Federal Supply Schedules (see subpart 101–26.4 and 48 CFR subpart 8.4);

(vii) Optional use Federal Supply Schedules (see subpart 101–26.4 and 48 CFR subpart 8.4); and

(viii) Commercial sources (including educational and nonprofit institutions).

(2) *Services.* (i) Procurement lists of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see § 101–26.701 and 48 CFR subpart 8.7);

(ii) Mandatory Federal Supply Schedules (see subpart 101–26.4 and 48 CFR subpart 8.4);

(iii) Optional use Federal Supply Schedules (see subpart 101–26.4 and 48 CFR subpart 8.4); and

(iv) Federal Prison Industries, Inc. (UNICOR) (see § 101–26.702 and 48 CFR subpart 8.6) or other commercial sources (including educational and nonprofit institutions).

(b) Sources other than those listed in paragraph (a) of this section may be used as prescribed in § 101–26.301 and in an unusual and compelling urgency as prescribed in § 101–25.101–5 and 48 CFR 8.302–2.

Dated: June 11, 1993.

**Dennis J. Fischer,**

*Acting Administrator of General Services.*

[FR Doc. 93–18611 Filed 8–4–93; 8:45 am]

BILLING CODE 6820–34–M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 93–10; RM–8150]

### Radio Broadcasting Services; Paris, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Benton-Weatherford Broadcasting, Inc. of Tennessee, permittee of Station WMUF–FM, Channel 231A, Paris, Tennessee, substitutes Channel 231C3 for Channel 231A at Paris and modifies Station WMUF–FM's authorization to specify operation on the higher powered channel. See 58 FR 07874, February 10, 1993. Channel 231C3 can be allotted to Paris in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.2 kilometers (10.7 miles) northeast to accommodate Benton-Weatherford's desired site. The coordinates for Channel 231C3 are 36–22–40 and 88–09–20. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–10, adopted July 13, 1993, and released July 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 231A and adding Channel 231C3 at Paris.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18647 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

[MM Docket No. 93–31; RM–8162]

### Radio Broadcasting Services; Crescent North, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 250C2 for Channel 250C3 at Crescent North, California, and modifies the license for Station KPOD–FM to specify operation on the higher powered channel, as requested by William E. Stamps, Sr. and Patricia R. Stamps, d/b/a Let's Talk Radio. See 58 FR 13436, March 11, 1993. Coordinates for Channel 250C2 at Crescent North, are 41–48–25 and 124–10–16. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** September 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–31, adopted July 9, 1993, and released July 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 250C3 and adding Channel 250C2 at Crescent North.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18648 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

[Docket No. 92–48; Notice 2]

RIN 2127–AE55

### Federal Motor Vehicle Safety Standards; New Pneumatic Tires

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice amends Standard No. 109, New Pneumatic Tires—Passenger Cars, to permit the testing of 18 inch and 19 inch tires. Currently, Standard No. 109 does not permit tires of these sizes since the standard requires each tire to meet all of its requirements but provides no way to conduct certification tests of these sized tires to the bead unseating requirements.

**DATES:** The amendments made in this rule are effective on September 7, 1993.

Any petitions for reconsideration must be received by NHTSA no later than September 7, 1993.

**ADDRESSES:** Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.—4 p.m., Monday through Friday.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Cook, NRM–11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4803.

**SUPPLEMENTARY INFORMATION:** On September 14, 1992, NHTSA proposed to amend Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires*, (49 CFR 571.109) to allow the testing of 18 and 19 inch tires. The proposed amendment was in response to a petition submitted by the European Tire and Rim Technical Organization (ETRTO). The ETRTO petitioned the agency to amend the dimensions in the bead unseating fixture in Figure 1 of Standard No. 109. ETRTO requested that the figure include, for tires other than 60 lbs./in.$^2$, a 12.5 inch dimension A for 18 inch tires and a 13.0 inch dimension A for 19 inch tires. For 60 lbs./in.$^2$ tires, it requested a 12.0 inch dimension A for 19 inch tires. After reviewing the petition, the agency proposed the petitioned-for changes.

Two comments were received to the proposal. Both Chrysler Corporation and ETRTO concurred with the proposed changes. Since commenters did not object to the changes, they are promulgated as proposed.

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Since this amendment would facilitate the introduction of certain tires without imposing additional requirements on manufacturers and since the public interest would be served by not delaying the introduction of these alternative tire designs, the agency has determined that there is good cause to have an effective date 30 days after publication of the final rule.

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

## Rulemaking Analyses and Notices

### *Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

NHTSA has examined the impact of this rulemaking action and determined that it is neither major within the meaning of Executive Order 12291, nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has found that its effect will be so minimal as not to warrant preparation of a full regulatory evaluation. NHTSA has evaluated this rule and believes that it will impose no mandatory costs on manufacturers. This amendment will merely permit manufacturers to introduce tires of larger dimensions. For those manufacturers, the costs will be minimal. It will not have an impact on the economy in excess of $100 million. Similarly, it will not result in a major change in costs or prices for consumers, individuals, industries, government, or any geographic region. Nor will this action significantly affect competition.

### *Regulatory Flexibility Act*

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The agency believes that few, if any, tire manufacturers qualify as small businesses. Small businesses, small organizations and small governmental units will be affected by the amendment only to the extent that they purchase vehicles for which the tires in question are specifically designed.

### *National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

### *Executive Order 12612 (Federalism)*

NHTSA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612. The agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking.

### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

**Authority:** 15 U.S.C. 1392, 1401, 1403 and 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.109 is amended by adding a heading preceding Figure 1 and revising the table in Figure 1, as follows:

**§ 571.109 Standard 109, New pneumatic tires.**

* * * * *

FIGURES TO STANDARD 109

* * * * *

| Wheel sizes | Dimension "A" for tires with maximum inflation pressure | |
|---|---|---|
| | Other than 60 lbs/in$^2$ | 60 lbs/in$^2$ |
| 19 | 13.00 | 12.00 |
| 18 | 12.50 | 11.40 |
| 17 | 12.00 | 10.80 |
| 16 | 11.50 | 9.90 |
| 15 | 11.00 | 9.40 |
| 14 | 10.50 | 8.90 |
| 13 | 10.00 | 8.40 |
| 12 | 9.50 | ..... |
| 11 | 9.00 | ..... |
| 10 | 8.50 | ..... |
| 320mm | 8.50 | ..... |
| 340mm | 9.00 | ..... |
| 345mm | 9.25 | ..... |
| 365mm | 9.75 | ..... |
| 370mm | 10.00 | ..... |
| 390mm | 11.00 | ..... |
| 415mm | 11.50 | ..... |
| 400mm(1) | 10.25 | ..... |
| 425mm(1) | 10.75 | ..... |
| 450mm(1) | 11.25 | ..... |
| 475mm(1) | 11.75 | ..... |

FIGURES TO STANDARD 109—Continued

. . . . .

| Wheel sizes | Dimension "A" for tires with maximum inflation pressure | |
|---|---|---|
| | Other than 60 lbs/in² | 60 lbs/in² |
| 500mm(1) ..... | 12.25 | ..... |

(1) for CT tires only.

Figure 1.—Bead Unseating Fixture—Dimensions in Inches

Issued: July 30, 1993.

Howard M. Smolkin,

*Acting Administrator.*

[FR Doc. 93-18634 Filed 8-4-93; 8:45 am]

BILLING CODE 4910-09-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

[Docket No. 921107-3068; I.D. 080293B]

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This action is necessary because the third seasonal apportionment of prohibited species catch (PSC) of Pacific halibut to trawl gear in the GOA has been caught.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), August 3, 1993, through 12 noon, A.l.t., October 4, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Alaska Region, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Gorundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final 1993 initial specifications for the GOA (58 FR 16787, March 31, 1993) established the 1993 Pacific halibut PSC limit for trawl gear at 2,000 metric tons (mt). In accordance with § 672.20(f)(2), 600 mt was apportioned to the third season, the period June 28, 1993, through October 3, 1993.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the third seasonal apportionment of Pacific halibut PSC. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This closure is effective from 12 noon, A.l.t., August 3, 1993, through 12 noon, A.l.t., October 4, 1993.

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 2, 1993.

David S. Crestin,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93-18733 Filed 8-2-93; 2:32 pm]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 58, No. 149
Thursday, August 5, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1413

RIN 0560–AD02

### 1994 Feed Grain Acreage Reduction Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the regulations to set forth the acreage reduction percentage for each of the 1994 feed grain crops and whether producers of malting barley should be exempt from complying with acreage reduction requirements to maintain eligibility for feed grain loans, purchases and payments. Producers who participate in the Feed Grain Acreage Reduction Program would be eligible for benefits such as price support loans and deficiency payments. This action is required by section 105B of the Agricultural Act of 1949, as amended (the 1949 Act).

**DATES:** Comments must be received on or before September 20, 1993 in order to be assured of consideration.

**ADDRESSES:** Comments must be mailed to Director, Grains Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3742–S, Washington, DC 20013–2415.

**FOR FURTHER INFORMATION CONTACT:** Philip W. Sronce, Director, Grains Analysis Division, ASCS, USDA, room 3742–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–4418.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 105B(o) of the 1949 Act to request comments with respect to the subject matter of this rule. A Preliminary Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular acreage reduction percentages considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. CCC thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

#### Environmental Assessment or Impact Statement

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Feed Grain Production Stabilization—10.055.

#### Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws; are not retroactive; and do not require the exhaustion of any administrative appeal remedies.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

#### Public Comments

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

#### Statutory Background

In accordance with section 105B of the 1949 Act, an acreage reduction program (ARP) is required to be implemented for the 1994 crops of corn, grain sorghum, or barley if it is determined that the total supply of each respective feed grain would otherwise be excessive.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of feed grains to desirable goals. A paid land diversion program is not being considered because, given the allowed ARP percentages, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction to the respective feed grain acreage base for the farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce feed grains in excess of the respective permitted acreage for the farm plus any respective feed grain acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm. If an ARP program for the 1994 crop is in effect, the program must be announced no later than September 30, 1993. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of feed grains since the program was first announced. These

adjustments must be made no later than November 15, 1993.

In accordance with section 105B of the 1949 Act, not less than 60 days before the program is announced for a crop of feed grains, proposals for public comment on various program options for the crop of feed grains are required to be set forth. Each option must be accompanied by an analysis that includes the estimated planted acreage, production, domestic and export use, ending stocks, season average producer price, program participation rate, and cost to the Federal Government that would likely result from each option.

In determining the 1994 corn ARP, the Secretary will choose a specific ARP reduction percentage from within a range established by the estimated ending stocks-to-use (S/U) ratio for the 1993 corn marketing year. If it is estimated that the 1993 ending S/U ratio in percentage terms will be:

(1) More than 25 percent, the ARP shall not be less than 10 percent nor more than 20 percent; or

(2) Equal to or less than 25 percent, the ARP may not be more than 12.5 percent.

The S/U for the 1993 marketing year is estimated to be 24.9 percent. Based on this estimate, the 1994 ARP may be not more than 12.5 percent. In the case of grain sorghum and barley, the Secretary may choose a 1994 ARP percentage in the range from 0 to 20 percent. For oats, the 1994 ARP is statutorily mandated not to exceed 0 percent.

Section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1994 crops of corn, grain sorghum, and barley may not be less than 7.5 percent. This provision does not apply if the estimated corn S/U for the 1993 crop is less than 20 percent. Section 1302 of the Agricultural Reconciliation Act of 1990 also provides that minimum ARP requirements may be waived if an agreement resulting from the General Agreement on Tariffs and Trade (GATT) negotiations is not entered into by June 30, 1992.

Currently the S/U for the 1993 corn crop is greater than 20 percent. Thus, the minimum 7.5-percent-ARP provision is not currently applicable and an ARP less than 7.5 percentage for corn, grain sorghum, or barley cannot be announced unless minimum ARP levels are waived. ARP's lower than 7.5 percent for corn, grain sorghum, and barley will be included as options because (1) small changes in supply and demand estimates could result in a revised corn S/U estimate that is less than 20 percent, which would allow for consideration of an ARP below 7.5 percent, and (2) a GATT agreement was not entered into by June 30, 1992.

Conversely, the final ARP decision process could consider higher ARP's between 10 and 20 percent if the S/U ratio exceeds 25 percent, and such an outcome is possible. The ARP options included in this analysis are the most likely possibilities, based on June 1993 data. If ending stocks increase, due to weaker demand or higher than expected yields, and raise the S/U ratio to 25 percent or higher, ARP levels between 12.5 and 20 percent may be considered before a final decision is made. The 1994 ARP options considered are shown in table 1.

TABLE 1.—PROPOSED 1994 FEED GRAIN ARP OPTIONS

| Item | Option | | |
|---|---|---|---|
| | 1 | 2 | 3 |
| Percent | | | |
| Corn | 5 | 10 | 15 |
| Grain Sorghum | 0 | 5 | 10 |
| Barley | 0 | 0 | 5 |
| Oats | 0 | 0 | 0 |

For grain sorghum and barley, ARP percentages higher than 7.5 percent are not considered because expected sorghum and barley S/U's are low compared with historical levels. The 1993 grain sorghum S/U is forecast at 18.6, which with the exception of 1991, the lowest level since 1976 (17.3 percent). The 1993 barley S/U is forecast at 33.8, a level reached only two other times since 1982. ARP levels above 5 percent would limit supplies of barley and grain sorghum to the point of not allowing export and domestic needs to be met. However, ARP levels above 5 percent will be considered when making the final ARP decision if feed grain supply and demand changes are large enough to warrant their consideration.

The estimated impacts of the ARP options are shown in tables 2 through 4.

TABLE 2.—CORN SUPPLY AND DEMAND ESTIMATES

| Item | 1994 Program options | | |
|---|---|---|---|
| | 1 | 2 | 3 |
| Percent | | | |
| ARP | 5 | 10 | 15 |
| Participation | 80 | 77 | 72 |
| Million acres | | | |
| Planted acreage | 76.8 | 75.0 | 73.5 |
| Million bushels | | | |
| Production | 8,615 | 8,405 | 8,235 |
| Domestic use | 7,195 | 7,155 | 7,125 |
| Exports | 1,590 | 1,575 | 1,560 |
| Ending stocks, 8/31 | 1,953 | 1,798 | 1,673 |
| Dollars per bushel | | | |
| Season average producer price | 2.14 | 2.20 | 2.26 |
| Million dollars | | | |
| Deficiency payments | 3,195 | 2,600 | 2,022 |

TABLE 3.—GRAIN SORGHUM SUPPLY AND DEMAND ESTIMATES

| Item | 1994 Program options | | |
|---|---|---|---|
| | 1 | 2 | 3 |
| Percent | | | |
| ARP | 0 | 5 | 10 |
| Participation | 82 | 79 | 76 |
| Million acres | | | |
| Planted acreage | 11.5 | 11.3 | 11.1 |
| Million bushels | | | |
| Production | 685 | 670 | 660 |
| Domestic use | 413 | 408 | 403 |
| Exports | 292 | 290 | 288 |
| Ending stocks, 8/31 | 112 | 104 | 101 |
| Dollars per bushel | | | |
| Season average producer price | 2.00 | 2.05 | 2.10 |
| Million dollars | | | |
| Deficiency payments | 304 | 252 | 206 |

TABLE 4.—BARLEY SUPPLY AND DEMAND ESTIMATES

| Item | 1994 Program options | | |
|---|---|---|---|
| | 1 | 2 | 3 |
| Percent | | | |
| ARP | 0 | 0 | 5 |
| Participation | 79 | 78 | 76 |
| Million acres | | | |
| Planted acreage | 7.8 | 7.0 | 7.6 |

TABLE 4.—BARLEY SUPPLY AND DEMAND ESTIMATES—Continued

| Item | 1994 Program options | | |
|---|---|---|---|
| | 1 | 2 | 3 |
| Million bushels | | | |
| Production .. | 415 | 415 | 405 |
| Domestic use ..... | 353 | 355 | 350 |
| Exports ..... | 80 | 80 | 79 |
| Ending stocks, 5/ 31 ..... | 154 | 152 | 148 |
| Dollars per bushel | | | |
| Season average producer price ..... | 2.11 | 2.15 | 2.20 |
| Million dollars | | | |
| Deficiency payments | 143 | 132 | 110 |

Accordingly, comments are requested as to whether the 1994 acreage reduction percentage for: (1) Corn should be 5, 10, or 15 percent or any percentage less than 12.5 percent; (2) Grain sorghum should be 0, 5, or 10 percent or any percentage in the range of 0 to 20 percent; and (3) Barley should be 0 or 5 percent or any percentage in the range of 0 to 20 percent. The final determination of these percentages will be set forth at 7 CFR part 1413.

In accordance with section 105B(e)(2)(G) of the 1949 Act, with respect to feed grains, the Secretary may exempt producers of malting barley, as a condition of eligibility for feed grain loans, purchases, and payments, from complying with the acreage reduction requirements. It is proposed that malting barley not be exempted from the feed grain acreage reduction requirements for the 1994 crop.

**List of Subjects in 7 CFR Part 1413**

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

**PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS**

1. The authority citation for 7 CFR part 1413 continues to read as follows:

**Authority:** 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b-3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Removing the word "and" at the end of paragraph (a)(2)(ii)(B),

B. Removing the period at the end of paragraph (a) (2)(iii)(C) and adding a semicolon and the word "and",

C. Adding a new paragraph (a)(2)(iv),

D. Removing the word "and" at the end of paragraph (d)(3)(iii),

E. Removing the period at the end of paragraph (d)(3)(v) and adding a semicolon and the word "and";

F. Adding a new paragraph (d)(4); and

G. Revising paragraph (e) to read as follows:

**§ 1413.54 Acreage reduction program provisions.**

(a) * * *

(2) * * *

(iv) For the 1994 crop:

(A) Corn, grain sorghum, and barley shall be no more than 12.5 percent, as determined and announced by CCC; and

(B) Oats shall be 0 percent.

* * * * *

(d) * * *

(4) For the 1994 crop, shall not be made available to producers of feed grains, as determined and announced by CCC.

(e) With respect to the 1991, 1992, 1993, and 1994 crop years, in order to receive feed grain loans, purchases and payments in accordance with this part and part 1421 of this title, producers of malting barley must comply with the acreage reduction requirements of this part.

Signed this August 2 day of 1993 at Washington, DC.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 93–18774 Filed 8–2–93; 4:35 pm]

BILLING CODE 3410-05-P

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**Animal and Plant Health Inspection Service**

**9 CFR Parts 92 and 94**

**[Docket No. 92–107–1]**

**Llamas and Alpacas**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to remove certain health certification requirements and requirements concerning quarantine upon arrival in the United States for llamas and alpacas from Chile, Poland, and The Netherlands. This action appears warranted to relieve excessively burdensome restrictions.

**DATES:** Consideration will be given only to comments received on or before October 4, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–107–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael David, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7511.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR parts 92 and 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of specified animals and animal products to prevent the introduction of various livestock diseases.

The regulations in § 92.435 were published in the **Federal Register** (55 FR 39601–39608, Docket Number 89–216) as a final rule on September 28, 1990, the date Chile was declared free of foot-and-mouth disease (FMD). This section (referred to below as the "Llamas and alpacas regulations") sets forth health-certification and quarantine requirements for llamas and alpacas imported into the United States from any country where FMD or rinderpest has been known to exist and that was declared free of those diseases on or after September 28, 1990. Section 94.1(d) lists such countries: Chile, Poland, and The Netherlands. Poland and The Netherlands were added to the list on June 14, 1993. Therefore, from 1990 until June 14, 1993, the llamas and alpacas regulations (§ 92.435) applied only to importations of llamas and alpacas from Chile. Section 92.435 includes the requirement that llamas and alpacas from countries listed in § 94.1(d)(1) undergo quarantine-upon-arrival for at least 40 days at the high-security Harry S Truman Animal Import Center (HSTAIC).

The "Llamas and alpacas regulations" were considered a necessary precaution when Chile was declared free of FMD in September 1990. While it was true that few cases of FMD in llamas or alpacas had ever been documented, it was also

true that FMD in llamas and alpacas had not been the object of focused scientific study. We were concerned about the possible existence of a "silent carrier" state, in which apparently healthy llamas or alpacas could harbor FMD and spread that disease to other animals. We were also concerned about a lack of data about the behavior of the FMD virus in llamas and alpacas.

In the final rule published on September 28, 1990, we stated our plans to conduct research on FMD in llamas and alpacas. We further stated that we would revisit the need for § 92.435 when research results were available, so that we could scientifically evaluate the possible "silent carrier" status of llamas and alpacas. The research project mentioned in the final rule published September 28, 1990, was completed earlier this year. The results are consistent with previously available empirical data and confirm that, when considered as potential FMD hosts, llamas and alpacas need not be treated differently from other ruminants. The results obtained from both the clinical trial and the serological survey demonstrate that llamas are very resistant to FMD infection, even when exposed to domestic livestock actively shedding the virus. Furthermore, such exposed llamas failed to transmit the virus to other llamas and to susceptible domestic livestock. These results are dispositive of all camelids, including alpacas.

No llamas or alpacas from an FMD-free country listed in § 94.1(d) have been imported into the United States since 1988, in part because of the logistical difficulty of arranging for them to be quarantined at HSTAIC, as § 92.435(b)(1) requires. Even so, four importations of llamas and alpacas from countries in which FMD exists have taken place through HSTAIC during the past decade; most recently, in October 1991. FMD virus was never isolated from any of the imported llamas and alpacas.

Additional evidence discounting the "silent carrier" theory has come from New Zealand, a country where FMD does not exist, which has imported more than 2,000 llamas and alpacas from Chile since it was recognized as FMD-free by the Office of International Epizootics in 1988. The FMD virus has never been isolated from tissue samples obtained from these llamas and alpacas, all of which have been tested. Further, the Pan American Foot-and-Mouth Disease Center in Rio de Janeiro, Brazil, which routinely receives samples from laboratories throughout South America for diagnostic testing, has never detected serological or virological evidence of FMD in serum or tissue samples examined from llamas and alpacas.

Given that the results from the research show that llamas and alpacas are not silent carriers of FMD, confirming the empirical data previously available, we no longer believe § 92.435 is necessary to prevent the introduction of FMD into the United States.

We are therefore proposing to remove § 92.435, "Llamas and alpacas," and to delete the related cross-references in § 92.405(a), § 92.411(b)(1) and (2), § 92.430(b)(3)(i)(B)(*2*), § 92.522(b)(3)(i)(B)(*2*), and § 94.1(d). Any llamas and alpacas imported into the United States from Chile or any other country listed in § 94.1(a)(2) would be governed by the regulations in part 92, subpart D.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Current regulations require llamas and alpacas from Chile, Poland, and The Netherlands to enter the United States through HSTAIC, where they must remain quarantined for at least 40 days. Costs depend on the size of the shipment, but are generally $1092 per head. Competition for the quarantine space in HSTAIC is intense. Import requests are awarded on a lottery basis, with cattle, sheep, goats, and swine required to be imported through HSTAIC and swine from countries in which African swine fever, hog cholera, or swine vesicular disease exists receiving higher priority than llamas and alpacas. Since 1990, when this lottery system became effective, only one importation of llamas and alpacas has occurred.

The greater ease of importing could attract persons into the business of importing llamas and alpacas from Chile into the United States. (We are not aware of any llamas and alpacas in Poland or The Netherlands that are available for export.) Based on past requests for the use of HSTAIC, imports could reach 900 llamas and alpacas per year, although we would consider half that number more realistic. The proposed rule would save importers of Chilean llamas and alpacas at least $592,488 for a shipment of 900 animals and $296,244 for a shipment of 450. For purposes of this analysis, savings are calculated using shipments of 450 animals because HSTAIC can accommodate no more than 450 llamas and alpacas per shipment. The proposed rule would be beneficial to importers of Chilean llamas and alpacas, who would save approximately $700 per llama or alpaca imported through an animal import center other than HSTAIC. The decreases in price and quarantine time, along with greater access to quarantine facilities, would remove some barriers to entry into the import market. We estimate between 15 and 20 importers, all small entities, could be affected by this proposed rule.

The potential effect on breeders of llamas and alpacas in the United States depends on the demand elasticity of the market. Independent of this rulemaking, the domestic price for llamas and alpacas has been decreasing during the past few years; we would expect prices to continue to fall if this proposed rule is adopted. Current market values for females range from $5000 to $8000, but have gone as low as $2000. These prices are down from the 1989 values of $7500 to $10,000. Prices for males used as pets or pack animals have remained relatively steady at $500 to $1500. Prices for stud-quality males were not available. Current figures are not available, but in 1989 approximately 99 percent of the llama and alpaca breeders in the United States were believed to be small entities. With prices decreasing and llama and alpaca births rising annually in the United States as a result of forces unrelated to the regulatory changes we propose, we would not expect our proposed rule to significantly affect a substantial number of breeders.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12778**

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no

retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging its provisions.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

**List of Subjects**

*9 CFR Part 92*

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

*9 CFR Part 94*

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 92 and 94 would be amended as follows:

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would be revised to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136e; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 92.405 [Amended]**

2. In § 92.405, paragraph (a), the term ", and 92.435" would be removed.

**§ 92.411 [Amended]**

3. In § 92.411, paragraph (b)(1), the first sentence, the phrase "other than llamas and alpacas from countries listed in § 94.1(d) of this chapter, and" would be removed.

4. In paragraph (b)(2) of § 92.411, the last sentence would be removed.

**§ 92.430 [Amended]**

5. In § 92.430, paragraph (b)(3)(i)(B)(*2*), the words "Llamas, alpacas, water" would be removed and "Water" added in their place.

**§ 92.435 [Removed]**

6. Section 92.435 would be removed.

**§ 92.522 [Amended]**

7. In § 92.522, paragraph (b)(3)(i)(B)(*2*), the words "Llamas, alpacas, water" would be removed and "Water" added in their place.

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

8. The authority citation for part 94 would be revised to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 94.1 [Amended]**

9. In § 94.1, paragraph (d) would be removed.

Done in Washington, DC, this 2nd day of August 1993.

**Eugene Brenstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18731 Filed 8–4–93; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 93–ANE–33]**

## Airworthiness Directives; Teledyne Continental Motors IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 Series Reciprocating Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Teledyne Continental Motors (TCM) IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 series reciprocating engines. This proposal would require inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings. This proposal is prompted by reports of seven incidents where the fuel pump drive shaft disengaged from the fuel pump drive coupling. The actions specified by the proposed AD are intended to prevent possible fuel pump drive shaft disengagement, which could result in a loss of engine power.

**DATES:** Comments must be received by October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–23, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991–3810; fax (404) 991–3606.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–23." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules docket No. 93–ANE–23, 12 New England Executive Park, Burlington, MA 01803–5299.

**Discussion:**

The Federal Aviation Administration (FAA) has received reports of seven incidents where the fuel pump drive shaft disengaged from the fuel pump drive coupling on Teledyne Continental Motors (TCM) IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 series reciprocating engines. This condition was caused by a fuel pump drive coupling, Part Number (P/N) 631263, that had less than the required minimum engagement with drive shaft, P/N 646176, due to the tolerance range in the fuel pump drive train. If the fuel pump drive shaft disengages in flight, engine power will be lost, and this loss of power could be critical depending on the phase of flight. This condition, if not corrected, could result in possible fuel pump drive shaft disengagement, which could result in a loss of engine power.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. M93–9, Revision 1, dated March 10, 1993, that describes procedures for inspecting fuel pumps to determine which combination of fuel pump drive shafts and fuel pump drive couplings is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings. TCM has replaced fuel pump drive coupling, P/N 631263, with a longer fuel pump drive coupling, P/N 653359. This new fuel pump drive coupling is compatible with both of the fuel pump drive shafts, P/N 643689 and 646176, used in early and current fuel pump assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 15,000 engines with the affected design fuel pumps installed in the worldwide fleet. The FAA estimates that 10,500 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $30 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,625,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Teledyne Continental Motors:** Docket No. 93–ANE–23.

*Applicability:* Teledyne Continental Motors (TCM) Model IO–520B, IO–520BA, IO–520BB, IO–520C, IO–520CB, IO–520M, IO–520MB; IO–550A, IO–550B, IO–550C, IO–550G; TSIO–520B, TSIO–520BB, TSIO–520D, TSIO–520DB, TSIO–520E, TSIO–520EB, TSIO–520J, TSIO–520JB, TSIO–520K, TSIO–520KB, TSIO–520L, TSIO–520LB, TSIO–520N, TSIO–520NB, TSIO–520UB, TSIO–520VB, TSIO–520WB; TSIO–550B; and TSIOL–550A and TSIOL–550B reciprocating engines, with serial numbers lower than those listed in TCM Mandatory Service Bulletin (MSB) No. M93–9, Revision 1, dated March 10, 1993; which are equipped with the following fuel pumps: Part Numbers (P/N) 646210–1, –2, –8, –10, –11; P/N 646212–2, –5, –16, –17; P/N 646758–5, –7, –8, –9; P/N 646765–6 and –7; P/N 646766–1 and –2; 646767–1; 649368–19; or engines equipped with any fuel pump, regardless of part number that have had the fuel pump replaced in the field prior to the effective date of this AD with fuel pump drive shaft, P/N 646176, installed. These engines are installed on but not limited to the following aircraft: Beech Bonanza 35–C33A, E33A/C, F33A/C, S35, V35/A/B, A36/TC, B36TC; Beech Baron 95–C55/A, D55/A, E55/A, 58/A/P/PA/TC/TCA; Cessna 310R, T310P/Q/R, 320 D/E/F, 335 series, 340 series, 401 series, 402 series, 414 series; Cirrus VK–30; Lancaire IV; Navion Model H; and Questair.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent possible fuel pump drive shaft disengagement, which could result in a loss of engine power, accomplish the following:

(a) At the next 100 hour, annual, or progressive maintenance inspection after the effective date of this AD, whichever occurs first, visually inspect the fuel pump to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replace, if necessary, fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings, in accordance with Figure 1 of TCM MSB No. M93–9, Revision 1, dated March 10, 1993, as follows:

(1) If fuel pump drive shaft, P/N 646176, is installed with fuel pump drive coupling, P/N 631263, replace the fuel pump drive coupling with a serviceable fuel pump drive coupling, P/N 653359.

(2) If fuel pump drive shaft, P/N 643689, is installed with either fuel pump drive coupling, P/N 631263 or 653359, no further action is required.

(3) If fuel pump drive shaft, P/N 646176, is installed with fuel pump drive coupling, P/N 653359, no further action is required.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate

FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 26, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–18665 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 284

[Docket No. RM93–4–000]

### Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations; Proposed Rulemaking

July 29, 1993.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing changes in its regulations to standardize the content of, and procedures for accessing, information relevant to the availability of service on interstate pipelines. The Commission's proposed standards will require pipelines to make this information available on Electronic Bulletin Boards and through downloadable files and will detail procedures and protocols for EBB operation and file transfers.

**DATES:** Comments are due on or before August 30, 1993.

**ADDRESSES:** An original and 14 copies of the written comments on this proposed rule must be filed in Docket No. RM93–4–000. All filings should refer to Docket No. RM93–4–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

#### I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its open access regulations to standardize the content of, and procedures for accessing, information provided through Electronic Bulletin Boards (EBBs) maintained by interstate pipelines. The Commission proposes to adopt the consensus agreements reached by the major segments of the gas industry through informal conferences on standardization initiated by the Commission and some additional elements on which consensus was not reached.

#### II. Reporting Requirements

The Commission estimates the public burden for this information requirement under the proposed rule—including the one-time start-up burden related to pipeline EBBs—will average 6,250 hours per company. The burden estimate includes the time required to implement the standards proposed in this rule, review the standards, develop the necessary software, search existing data sources, gather and maintain the data needed, and complete and review the information. The information/data elements required to be maintained on pipeline EBBs will be under a new information requirement, FERC–549(B), Gas Pipeline Rates: Capacity Release Information. The annual burden associated with the new FERC–549(B) information requirement will be 487,500 hours based on the estimated initial EBB development burden and daily EBB informational updates by an anticipated 78 pipeline respondents.

Send comments regarding these burden estimates or any other aspect of this information requirement, including suggestions for reductions of the burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

#### III. Background

In Order No. 636,[1] the Commission established a capacity releasing mechanism under which shippers can release firm transportation and storage capacity on either a short or long term basis to other shippers wanting to obtain capacity. The Commission further required pipelines to establish EBBs to provide shippers with equal and timely access to relevant information about the availability of service on their systems, including capacity available through release transactions and firm and interruptible capacity available directly from the pipeline.[2]

In Order No. 636–A, the Commission concluded the efficiency of the capacity release mechanism would be enhanced by standardizing both the content of capacity release information and the methods by which shippers could access that information.[3] The Commission found it did not have sufficient information to prescribe such standards and strongly encouraged the gas industry to develop its own uniform standards and conventions. The Commission committed to hold a technical conference to assess the progress in developing such standards.

On February 26, 1993, the Commission held the technical

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); *order on reh'g*, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), *appeal pending sub nom., Atlanta Gas Light Co. and Chattanooga Gas Co. v. FERC*, No. 92–8782 (11th Cir. Aug. 13, 1992).

[2] 18 CFR 284.8(b)(3)(4), 284.9(3)(4).

[3] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,540.

must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–23." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules docket No. 93–ANE–23, 12 New England Executive Park, Burlington, MA 01803–5299.

**Discussion:**

The Federal Aviation Administration (FAA) has received reports of seven incidents where the fuel pump drive shaft disengaged from the fuel pump drive coupling on Teledyne Continental Motors (TCM) IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 series reciprocating engines. This condition was caused by a fuel pump drive coupling, Part Number (P/N) 631263, that had less than the required minimum engagement with drive shaft, P/N 646176, due to the tolerance range in the fuel pump drive train. If the fuel pump drive shaft disengages in flight, engine power will be lost, and this loss of power could be critical depending on the phase of flight. This condition, if not corrected, could result in possible fuel pump drive shaft disengagement, which could result in a loss of engine power.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. M93–9, Revision 1, dated March 10, 1993, that describes procedures for inspecting fuel pumps to determine which combination of fuel pump drive shafts and fuel pump drive couplings is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings. TCM has replaced fuel pump drive coupling, P/N 631263, with a longer fuel pump drive coupling, P/N 653359. This new fuel pump drive coupling is compatible with both of the fuel pump drive shafts, P/N 643689 and 646176, used in early and current fuel pump assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 15,000 engines with the affected design fuel pumps installed in the worldwide fleet. The FAA estimates that 10,500 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $30 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,625,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Teledyne Continental Motors:** Docket No. 93–ANE–23.

*Applicability:* Teledyne Continental Motors (TCM) Model IO–520B, IO–520BA, IO–520BB, IO–520C, IO–520CB, IO–520M, IO–520MB; IO–550A, IO–550B, IO–550C, IO–550G; TSIO–520B, TSIO–520BB, TSIO–520D, TSIO–520DB, TSIO–520E, TSIO–520EB, TSIO–520J, TSIO–520JB, TSIO–520K, TSIO–520KB, TSIO–520L, TSIO–520LB, TSIO–520N, TSIO–520NB, TSIO–520UB, TSIO–520VB, TSIO–520WB; TSIO–550B; and TSIOL–550A and TSIOL–550B reciprocating engines, with serial numbers lower than those listed in TCM Mandatory Service Bulletin (MSB) No. M93–9, Revision 1, dated March 10, 1993; which are equipped with the following fuel pumps: Part Numbers (P/N) 646210–1, –2, –8, –10, –11; P/N 646212–2, –5, –16, –17; P/N 646758–5, –7, –8, –9; P/N 646765–6 and –7; P/N 646766–1 and –2; 646767–1; 649368–19; or engines equipped with any fuel pump, regardless of part number that have had the fuel pump replaced in the field prior to the effective date of this AD with fuel pump drive shaft, P/N 646176, installed. These engines are installed on but not limited to the following aircraft: Beech Bonanza 35–C33A, E33A/C, F33A/C, S35, V35/A/B, A36/TC, B36TC; Beech Baron 95–C55/A, D55/A, E55/A, 58/A/P/PA/TC/TCA; Cessna 310R, T310P/Q/R, 320 D/E/F, 335 series, 340 series, 401 series, 402 series, 414 series; Cirrus VK–30; Lancaire IV; Navion Model H; and Questair.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent possible fuel pump drive shaft disengagement, which could result in a loss of engine power, accomplish the following:

(a) At the next 100 hour, annual, or progressive maintenance inspection after the effective date of this AD, whichever occurs first, visually inspect the fuel pump to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replace, if necessary, fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings, in accordance with Figure 1 of TCM MSB No. M93–9, Revision 1, dated March 10, 1993, as follows:

(1) If fuel pump drive shaft, P/N 646176, is installed with fuel pump drive coupling, P/N 631263, replace the fuel pump drive coupling with a serviceable fuel pump drive coupling, P/N 653359.

(2) If fuel pump drive shaft, P/N 643689, is installed with either fuel pump drive coupling, P/N 631263 or 653359, no further action is required.

(3) If fuel pump drive shaft, P/N 646176, is installed with fuel pump drive coupling, P/N 653359, no further action is required.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate

FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 26, 1993.

**Jack A. Sain,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 93–18665 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 284

**[Docket No. RM93–4–000]**

## Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations; Proposed Rulemaking

July 29, 1993.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing changes in its regulations to standardize the content of, and procedures for accessing, information relevant to the availability of service on interstate pipelines. The Commission's proposed standards will require pipelines to make this information available on Electronic Bulletin Boards and through downloadable files and will detail procedures and protocols for EBB operation and file transfers.

**DATES:** Comments are due on or before August 30, 1993.

**ADDRESSES:** An original and 14 copies of the written comments on this proposed rule must be filed in Docket No. RM93–4–000. All filings should refer to Docket No. RM93–4–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its open access regulations to standardize the content of, and procedures for accessing, information provided through Electronic Bulletin Boards (EBBs) maintained by interstate pipelines. The Commission proposes to adopt the consensus agreements reached by the major segments of the gas industry through informal conferences on standardization initiated by the Commission and some additional elements on which consensus was not reached.

### II. Reporting Requirements

The Commission estimates the public burden for this information requirement under the proposed rule—including the one-time start-up burden related to pipeline EBBs—will average 6,250 hours per company. The burden estimate includes the time required to implement the standards proposed in this rule, review the standards, develop the necessary software, search existing data sources, gather and maintain the data needed, and complete and review the information. The information/data elements required to be maintained on pipeline EBBs will be under a new information requirement, FERC–549(B), Gas Pipeline Rates: Capacity Release Information. The annual burden associated with the new FERC–549(B) information requirement will be 487,500 hours based on the estimated initial EBB development burden and daily EBB informational updates by an anticipated 78 pipeline respondents.

Send comments regarding these burden estimates or any other aspect of this information requirement, including suggestions for reductions of the burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

### III. Background

In Order No. 636,[1] the Commission established a capacity releasing mechanism under which shippers can release firm transportation and storage capacity on either a short or long term basis to other shippers wanting to obtain capacity. The Commission further required pipelines to establish EBBs to provide shippers with equal and timely access to relevant information about the availability of service on their systems, including capacity available through release transactions and firm and interruptible capacity available directly from the pipeline.[2]

In Order No. 636–A, the Commission concluded the efficiency of the capacity release mechanism would be enhanced by standardizing both the content of capacity release information and the methods by which shippers could access that information.[3] The Commission found it did not have sufficient information to prescribe such standards and strongly encouraged the gas industry to develop its own uniform standards and conventions. The Commission committed to hold a technical conference to assess the progress in developing such standards.

On February 26, 1993, the Commission held the technical

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[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); *order on reh'g*, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), *appeal pending sub nom., Atlanta Gas Light Co. and Chattanooga Gas Co. v. FERC*, No. 92–8762 (11th Cir. Aug. 13, 1992).

[2] 18 CFR 284.8(b)(3)(4), 284.9(3)(4).

[3] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,549.

conference at which it received presentations by a number of industry groups. The participants at the conference expressed a willingness to establish a broad industry-wide working group to reach consensus on standards governing capacity release transactions.

Based on that commitment, the Commission, on March 10, 1993, issued a Notice (March 10 Notice) beginning the process of standardizing EBBS by setting up procedures to develop standards for capacity release transactions.[4] The Commission preferred the industry to reach consensus on the proposed standards and established informal conferences with Commission staff and all interested members of the gas industry to facilitate the development of consensus standards. The Commission directed the participants in the conferences to develop:

(1) Standards for the information and common terminology needed to ensure a viable capacity release market;

(2) Standards for files with common data formats, which could be "downloaded" by customers;[5] and

(3) Communication protocols that would enable users to transfer information using readily available, off-the-shelf communication programs.

The Commission requested a report on the outcome of the conferences by July 1, 1993. On July 1 and July 6, 1993, the Commission received reports from five Working Groups (identified by numbers) that had been established by the participants at the conferences. A broad spectrum of firms and organizations participated in these Working Groups, including representatives from the major segments of the gas industry and other interested parties, such as computer and software firms.

Working Groups 1 and 2[6] proposed the standardized information (data sets) for capacity release transactions and for firm and interruptible capacity available from pipelines. The data sets include fields for offers to sell firm capacity (either by the pipeline or releasing shippers), bids for capacity, awards of capacity, withdrawals of capacity offers and bids, and operationally available (i.e., interruptible) capacity. The Working Groups also proposed standards governing posting of system-wide notices. Working Groups 1 and 2 reached consensus on 158 data elements, with 21 left for future resolution. The Working Group report also included minority reports on several issues on which agreement could not be reached.

Working Group 3 was established to consider the development of standards applying to business practices, other than capacity release, in the business environment created by the restructuring of pipeline operations under Order No. 636. Its main goals were to establish a dialogue between the pipelines and their customers and to establish a process for developing appropriate standards which would extend beyond July 1, 1993. It, therefore, has submitted no proposed standards at this time.

Working Group 4 reached consensus on proposed standards and principles relating to the procedures and protocols needed for the efficient transfer of the data sets specified by Working Groups 1 and 2. The key agreement reached by Working Group 4 was to provide for the downloading of files through Electronic Data Interchange (EDI) as an alternative to using on-line EBBs to obtain access to the standardized data sets.[7] The EDI transactions would comply with standards developed by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12. Working Group 4 failed to reach agreement on two issues: Uploading files (the transfer of files from customers to the pipelines) and downloading subsets of files; for example, a user wishing to download only recent capacity release information would not need to download an entire data file.

Working Group 5 was responsible for developing common codes. Although it identified proposed methods for determining common company codes and common codes for gas transaction points, it did not finalize these proposals.

All the Working Groups recognized that the standards and principles they have adopted may need to be modified once the industry has more experience with the operation of capacity release. They all recommended that the process of developing these standards through industry-wide efforts should be continued.

Public notice of the filing of the Working Group reports was issued on July 7, 1993, requesting any comments to be filed by July 14, 1993.[8] Twenty-one comments were received. In addition, a number of letters on issues in this proceeding have been received and added to the record.

## IV. Discussion

### *A. General Description of Commission Proposal*

The Commission is very pleased by the results of the conferences. The significant consensus among all industry segments on such a significant range of issues is testament to the industry's commitment to this project and should result in a more efficient capacity release market redounding to the benefit of all. In the nationwide market for gas and pipeline capacity fostered by Order No. 636, efficient capacity allocation can take place only when all pipelines adhere to a common set of standards so shippers can obtain and process information from multiple pipelines.

Because the benefits of standardization can be realized only through implementation of the standards by all pipelines, the Commission is proposing to require interstate pipelines to follow the consensus agreements reached by the Working Groups, with a few additions. The Commission is proposing a general regulation that would require pipelines to provide standardized information relevant to the availability of service on their systems and the ability to download the standardized information in compliance with standardized procedures and protocols. The required information, procedures, and protocols would be made available in a document which could be obtained from the Commission.[9] In summary, the standards and protocols the Commission is proposing to adopt would require pipelines to: provide the information contained in the capacity data sets developed by Working Groups 1 and 2 (with certain modifications); make this information available on their on-line EBBs and through downloadable files using EDI, in accordance with the ASC X12 standards, and using ASCII

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[4] 58 FR 14530 (March 18, 1993).

[5] In developing standards for file downloads, the Notice identified several issues for the participants to address: standardized identifiers to facilitate the comparison of capacity releases among pipelines, such as standard codes to identify pipeline receipt and delivery points; standard methods to access these files independent of the display format of the EBB; and standard procedures for notifying EBB users of files and bulletins added to the EBB since the user was last "logged" onto the EBB.

[6] These two Working Groups eventually were consolidated due to their overlapping membership.

[7] On-line EBB refers to a continuous computer connection between a pipeline EBB and a user's computer in which the information from the pipeline's computer is displayed visually on the user's computer and the user can enter data directly to the pipeline's computer. File downloading refers to the transfer in computerized format of an entire file from the pipeline's computer to the user's computer. The user would then be able to use its own internal computer programs to manipulate the data. EDI is a standardized method used to transfer computerized information between parties and is described in more detail later.

[8] 58 FR 37447 (July 12, 1993).

[9] The proposed document is attached as Appendix A.

format [10]; and adhere to the protocols developed by Working Group 4 for EBB operation and file transfers.

The Commission recognizes the Working Groups were unable to reach agreement on certain issues and, due to time limitations, were unable to finalize agreements in certain areas, which they agreed to explore later. The Commission also realizes experience with capacity release may dictate changes or modifications to these standards. Nonetheless, the Commission concludes promulgation of this rule should not wait for final resolution of these matters, but should proceed based on the agreements already reached. These agreements cover a significant proportion of the most significant issues and their early implementation will significantly improve capacity releasing.

Some commenters support the commission's issuance of a rule to ensure compliance with the requirements. Others suggest a policy statement would be preferable because it would permit modifications to the standards to be made more easily. The Commission has determined to proceed through rulemaking because, to achieve the benefits of standardization, the minimal informational content and downloading procedures need to be mandatory for all pipeline EBBs.

Some commenters contend the proposed standards need to be implemented by November 1, 1993. Pipelines and others contend such an implementation schedule is far too ambitious and fails to provide sufficient time for some pipelines to test and implement their proposed EBBs, much less complete the programming and testing required to implement the proposed standards and EDI.[11]

The Commission agrees that setting a November 1, 1993 implementation date may be impractical on many systems. The Commission expects pipelines to implement these standards as soon as is practical and proposes to establish April 1, 1994 as the date for compliance with these requirements. Pipelines should have sufficient time to program their computers by April 1 and implementation by that date will enable them to conduct final testing of their systems in operation during the off-peak summer season, so the systems will be fully operational by the 1994 winter heating season.

All the Working Groups found the informal conferences were exceedingly beneficial in developing these standards and support a continuation of this process. Working Group 3 proposed to continue its efforts to develop standards required by the post-restructuring business environment and most commenters support the continuation of these efforts.[12] Many comments also endorse the development of a Gas Industry Standards Board (GISB) to replace the Working Groups and continue the development and maintenance of standards.

To facilitate resolution of the unresolved issues and other issues discussed in this Notice of Proposed Rulemaking (NOPR), the Commission is proposing to direct staff to continue the informal conferences established by the March 10 Notice. Given the level of support for developing standards governing post-restructuring business transactions other than capacity release, the Commission concludes the participants in the conferences should continue their efforts to develop such standards. The Commission expects reports on the outcome of these conferences by February 1, 1994. Amendments and modifications to reflect these further deliberations can then be made prior to the 1994 winter heating season. The Commission is interested in the GISB concept and invites the submission of detailed proposals as to how it would operate.

### *B. Capacity Release and Available Capacity Data Sets (Working Groups 1 and 2)*

The Commission proposes to require all pipelines to adopt the data elements on which Working Groups 1 and 2 reached consensus with two additional elements, relating to contingent bidding and date and time stamps as discussed below. His information would be made available through the pipelines' on-line EBBs as well as through standardized downloadable files. The standardization of the downloadable file formats is necessary to permit shippers to download the same information from all pipelines.[13]

The non-consensus issues in Working Groups 1 and 2 report are discussed below.

#### 1. Contingency Bidding Fields

The contingency bidding fields apply when releasing shippers provide in their terms and conditions that they will accept bids contingent on events taking place after the close of the pipeline bidding period. For instance, a releasing shipper may wish to permit bidders to make bids contingent on their ability to obtain downstream or upstream capacity on other pipelines. Some members of the Working Groups wanted the Commission to reconsider allowing releasing shippers this flexibility, because they contend contingent bidding introduces too much confusion in the offer/bid process.

The Commission's general policy has been to provide releasing shippers with the flexibility to structure their capacity release offers in ways that will enhance the value of their offers and, consistent with this philosophy, the Commission permitted shippers the flexibility to accept contingent bids.[14] Consideration of contingent bidding is not appropriate in this proceeding since such substantive policy issues are beyond the scope of the proceeding, which is limited to developing standardization policies for EBBs. Moreover, the industry has not had experience with capacity release and any decision to eliminate contingent bidding would be premature.

#### 2. Date and Time Fields

Working Groups 1 and 2 agreed on identifying the date and time when release offers, bids, withdrawals of bids or offers, and capacity awards are placed on the EBBs. They disagreed over whether date and time fields also are needed to identify when pipelines actually received the offers, bids, and withdrawals or made the determination to award capacity. On some pipelines, for example, offers to release capacity and bids may not be posted on EBBs immediately upon receipt because the pipeline needs to verify and check the information.

Those supporting inclusion of the additional date and time fields argue they will permit monitoring of the pipeline's handling of capacity release transactions and prevent discrimination.[15] Those opposing inclusion contend this information is not needed in the ordinary course of business and would be available from the pipelines when needed.[16]

The Commission concludes the standardized data sets should include only the date and time fields identifying when a pipeline has received a bid.

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[10] ASCII refers to the American Standard Code for Information Interchange, a code for character representation.

[11] Comments by Interstate Natural Gas Association (INGAA); Texas Eastern Transmission Corporation, *et al.*

[12] Southern California Gas Company, however, asserts Working Group 3 should be disbanded because pipelines and their customers are working out these arrangements and federal standards are unnecessary.

[13] While the on-line EBB and the downloadable files must include the same information, the Commission is not addressing the form in which the information is displayed on on-line EBBs.

[14] See El Paso Natural Gas Company, 61 FERC ¶ 61,333 at 62,298 (1992); Transwestern Pipeline Company, 61 FERC ¶ 61,332 at 62,243–44 (1992).

[15] Working Groups 1 & 2 Report at 67.

[16] See Comments by INGAA.

Since pipelines and releasing shippers can specify first-come, first-served as the method for breaking ties, information on the time bids are received will enable shippers to verify the determination of the winning bid without having to contact the pipeline. The date and time information about offers, withdrawals, and capacity awards does not appear as important to capacity release transactions as the bid information, so questions about these items should be less frequent. For example, the time at which one offer is posted relative to another ordinarily should have little effect on the bidding process. Pipelines must maintain records of the date and time they receive offers and withdrawals and make their capacity awards, and the Commission considers a shipper's ability to obtain such information upon request to be sufficient.

3. Operationally Available Capacity

The Commission is accepting the recommendation by Working Groups 1 and 2 to include a field for operationally available capacity, which is defined as the amount of unscheduled capacity available at a location. This information would identify capacity which is available on an interruptible basis from the pipeline. Working Groups 1 and 2 have identified a variety of possible locations at which such information can be provided, such as receipt or delivery points, mainline, or segments, and the Commission expects a pipeline to provide this information for as many of these locations as is feasible for its system.

The major issue of disagreement is over the inclusion of fields for aggregate confirmed firm and interruptible nominations and the use of a no-notice indicator (which shows whether no-notice service is available at a location).[17] Those supporting this information contend it is needed so releasing shippers can evaluate the value of available capacity, particularly when the confirmed nominations on a day are close to the full capacity of the pipeline at that location. For example, if almost all scheduled capacity is interruptible, they assert the value of released firm capacity would be similar to the value of interruptible capacity. But if almost all scheduled capacity is firm, they maintain the value of released firm will be greater than interruptible since firm service can displace interruptible service.[18]

Those opposing inclusion of this information maintain the information is not needed to buy capacity, but only will be used to lower bids for capacity. They assert inclusion of the information will unfairly tilt the capacity release market in favor of bidders and against firm capacity holders. They argue this type of information is not normally provided by the free market because sellers do not inform buyers of their inventories.

The two sides also disagree on the ability and expense of providing the information. Those opposing provision of the information assert the quantity of data being requested is enormous and would be burdensome to provide because it would have to be verified, tabulated, and posted within a few hours every day.[19] They also contend many pipelines cannot always distinguish between the amount of firm and interruptible gas flowing on mainlines or segments due to the configuration and operational characteristics of the pipelines. Those supporting disclosure respond that pipelines, regardless of configuration, have to distinguish between interruptible and firm nominations to determine if additional interruptible capacity can be sold and to implement curtailment plans or maximize gas flows in situations when the pipelines are unable to serve all the demands for service.[20]

The National Registry of Capacity Rights (National Registry) suggested an alternative definition of operationally available capacity as being the capacity a firm shipper can nominate at a point. This definition would include capacity that is nominated as interruptible, but could be displaced by a firm shipper.[21]

Although the Commission, as a general matter, finds relevant information improves the functioning of markets, the Commission cannot resolve this issue at this time. The information available in this proceeding does not permit a full evaluation of the operational issues, and the Commission also is not sure exactly how the information will affect the markets for released firm and interruptible capacity. Actual experience with capacity release transactions may provide further insight into the need for the information.

Moreover, the industry only had a short time frame in which to consider this issue. The Commission, therefore, strongly encourages the parties to continue their discussions of this issue at the conferences and to explore alternatives for providing information relevant to the purchasing of capacity that is operationally feasible to provide at reasonable cost.

4. Index of Purchasers

The National Registry has requested the inclusion of an Index of Purchasers (Index), which is a series of data elements establishing baseline contractual capacity rights held by current holders of capacity on pipelines, including, for example, characterization of releasable rights as to whether partial path or segment releases are permitted.[22] It asserts such information is needed so potential purchasers of capacity can determine the releasable rights of a firm capacity holder. It contends no distinction should be made between customers purchasing released capacity, whose contractual rights will be posted on EBBs, and customers holding existing capacity.

Comments on the Index are mixed. Those supporting the Index assert it is needed so small customers can determine what releasable contract rights are available, information which large marketers, pipelines, and LDCs already know.[23] Those opposing it contend such an index is not needed for capacity release to function efficiently and the cost of supplying the information outweighs the benefit.[24] Some also point out information regarding shipper name, transmission capacity, receipt and delivery points, and storage already is in the public domain.[25]

The Commission is not proposing to require the inclusion of the Index at this time.[26] Providing the quantity of information requested by the National Registry appears too burdensome and costly. However, the Commission considers a more limited electronic index of current capacity holders to have value in identifying shippers with releasable capacity. The continuing

[17] Working Groups 1 and 2 Report at 12–42.

[18] The no-notice flag would reveal whether interruptible service might be interrupted if the pipeline is required to provide no-notice service.

[19] Working Groups 1 and 2 Report at 37–42; comments by INGAA.

[20] Working Groups 1 and 2 Report at 28; comments by Natural Gas Supply Association (NGSA). The supporters of disclosure further assert pipelines can develop computer algorithms to deal with complex flow situations, such as backhauls.

[21] Working Groups 1 and 2 Report at 53.

[22] Working Groups 1 & 2 Report at 49. The posting of contract number and replacement contract number (two other disputed items) are tied to the Index.

[23] See, e.g., Letters by Interstate Marketing Inc., GasLantic Corporation, Advantage Energy Marketing, Inc; comments by Peoples Gas System, Inc.

[24] Comments by Columbia Distribution Companies; INGAA; Texas Eastern Transmission Corporation, et al.

[25] Working Groups 1 and 2 Report at 75; comments by INGAA.

[26] Since the provision of contract number and replacement contract number are tied to the Index, the Commission also is not proposing to include these items at this time.

conferences should focus on developing a consensus on a cost-effective method of presentation.

*C. Communications Protocols and Logistics (Working Group 4)*

The Commission is proposing to adopt the substance of the consensus standards developed by Working Group 4. These standards would apply to the use of EDI to download files and would establish protocols relating to EBB operations, including standards governing the software used to access EBBs, the modem speeds EBBs must support, and the procedures for logging-on to EBBs.[27] The pivotal standards are those requiring EBB operators to provide for downloading of files through EDI transactions complying with the ASC X12 standards. By establishing a standardized method for downloading information, shippers will not have to view information visually on EBBs, but will be able to obtain capacity information electronically from multiple pipelines. They can then manipulate those data using their own computers to determine the packages of capacity and capacity paths best fitting their needs.

EDI essentially is an electronic data submission capability that allows computers to exchange information using standardized formats over telephone lines. To facilitate these transfers, the ASC X12 standards provide standardized transaction sets for different types of transactions, such as requests for quotations and responses to such requests. Because the ASC X12 transaction sets have been standardized, commercial software and consulting services are available to assist users in translating data from standard program files to the standardized ASC X12 formats and *vice versa*.

Working Group 4 states the adoption of ASC X12 standards for EDI would provide a number of benefits when compared with downloading files in other forms, such as ASCII flat files. Among these benefits are cross-industry compatibility with other EDI business documents, receipt acknowledgements, audit trails, and date and time stamping of files. Adoption of the already-standardized ASC X12 standards would avoid the need to rebuild these capabilities and would conform the gas industry to other industries relying upon ASC X12 standards for electronic business transactions.

The ASC X12 transaction sets provide generic data groups applicable to a range of potential applications. These transaction sets must be customized to individual applications by correlating or "mapping" the specific information to an ASC X12 transaction set through an implementation guide. Working Group 4 states the Gas*Flow Group[28] will provide the required "map" correlating the standardized information fields developed by Working Groups 1 and 2 to the relevant ASC X12 transaction sets. Gas*Flow has agreed to provide the implementation guide and make the guide available to the industry. The Commission proposes that, after issuance of the final standards setting forth the information pipelines will be required to provide, Gas*Flow would develop a draft implementation guide, circulate it for comments under its normal procedures, and prepare a final document. The Commission expects this process to take no more than a month. The Commission would then review the final implementation guide and, if acceptable, would incorporate it into its proposed standards by reference, with an appropriate version number or other means of identifying the implementation guide being adopted.

The Commission also is adopting the Working Group's proposal that data in ASC X12 format should be made available to any person, including a Value Added Network (VAN). A VAN is a communications or information system operated by an independent firm, which provides an aggregation, routing, and delivery service. In effect, a subscriber to a VAN is provided with an electronic mailbox for receipt of information.

Working Group 4 stated it assumed an EBB operator will make the capacity data sets available in standardized downloadable ASCII files in addition to EDI, but it considered the provision of ASCII downloads to be an option.[29] Order No. 636 required pipelines to provide for downloading of files. To permit users without ASC X12 capability to download files, the Commission is proposing to require pipelines to provide for downloading in an ASCII format with a standardized file structure. Gas*Flow has agreed to provide the documentation for the ASCII file structures, and the Commission is proposing to incorporate this documentation in the same manner as the ASC X12 implementation guide. Comments should focus on the benefits and detriments of requiring downloading of files in ASCII format in addition to the ASC X12 files.

*D. Downloading Subsets of Files*

Working Group 4 reached a general agreement that all industry participants would benefit from the ability to reduce the size of the data sets transmitted by permitting users to eliminate unneeded information; for example, a user looking only to supplement its data with recent capacity information would not need to download capacity information it previously obtained. But the Working Group was unable to work out technical details for permitting this capability. The development of standardized procedures in this area was one of the issues addressed in the March 10 Notice and should be considered a priority in the continuing conferences.

*E. Uploading Files*

Given the time available, Working Groups 1 and 2 and Working Group 4 were not able to resolve issues relating to the ability of customers, releasers or bidders, to upload files directly to the pipeline's computer and have scheduled meetings in September to consider this issue. Without a file upload capability bidders, for example, cannot submit bids electronically, but would have to use EBBs in an on-line mode. The Commission considers file uploading capability to be important to producing a maximally efficient computerized capacity release mechanism. Indeed, one of the benefits of adopting EDI and ASC X12 standards is that these standards provide for two way communications which should ease the difficulty of providing for upload capability. This topic also should be a high priority for the conference participants to consider.

*F. Common Codes (Working Group 5)*

The March 10 Notice set the development of necessary common codes as a task for the conferences. Working Group 5 recommends the development of common codes only for company identification and transaction points (such as receipt and delivery points). It has identified a process for developing common codes in these areas, but has not finalized the details for developing these codes.

1. Company Codes

Common company codes refer to specific codes to identify business entities, which may include separate numbers for each location at which a

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[27] The Commission is adopting the phrase "EBB operator" to apply to pipelines or third-party vendors providing EBB services to pipelines. Pipelines relying on third-party vendors must ensure they comply with these requirements.

[28] Gas*Flow was organized to promote the acceptance of ASC X12 EDI in the gas industry. It is composed of representatives from the gas industry, including local distribution companies, marketers, producers, shippers, and pipelines, and operates under guidance from the Natural Gas Review Committee.

[29] Working Group 4 Report at 10.

corporation does business. Working Group 5 recommended the adoption of DUNS numbers[30] to identify companies. The Working Group, however, has not finalized its choice of DUNS numbers because it was concerned about problems created by a single company having multiple DUNS numbers. The Working Group is still exploring whether Dun and Bradstreet (D&B) will permit an industry representative to share or license D&B's "Family Tree" service which relates DUNS members within a corporate family so a legal entity at a location will be associated with one number.

The adoption of common company codes will enhance the efficiency of electronic data transfer and the Commission expects the participants at the conferences to finalize the details of its proposal by the February 1, 1994 date for submission of final reports.

2. Common Transaction Point Codes

At present, pipelines use different codes to identify transaction points, such as receipt and delivery points, on their systems. In the restructured environment created by Order No. 636, shippers need to move gas efficiently across multiple pipelines. To effectively use computer technology to track gas movement across pipelines, shippers need a common nomenclature for identifying pipeline points, such as interconnect points between pipelines.

Working Group 5 considered a number of potential common code systems, including PI–GRID developed by the Petroleum Information Corporation and Gas*Code developed by INGAA. Instead of adopting one of these approaches, Working Group 5 proposed to have a third-party or industry group assign and maintain a computerized cross-reference table to relate the pipelines' proprietary location codes to common codes.[31] The pipelines would provide sufficient information to the third-party to enable it to establish the cross-reference between the common codes and the proprietary codes used by pipelines. The pipelines would ensure that this information is kept current and that new points are added quickly. Working Group 5, however, has not finalized the implementation details, such as, how to select the Code Assignor, pay the costs for assignment and maintenance, and distribute the code.

A number of commenters express concerns about the concept of using a third-party to provide the cross-reference, contending it would be too cumbersome and might be too expensive.[32] They maintain the entire industry would be better served over the long term if pipelines are required to agree now on a common transaction point code. Others contend Working Group 5 simply did not have enough time to finish the process. They maintain no immediate action is needed because common codes are not required for implementation of the capacity data sets.[33] Other commenters preferred the adoption of a single common code, but, recognizing the strong opposition by some industry participants, endorsed the Working Group 5 approach as a reasonable compromise in the interests of obtaining industry consensus.[34]

The National Registry contends Working Group 5 failed to provide data fields that would permit shippers electronically to locate a transaction point in relation to other transaction points. Knowing how points relate to each other (through the use of line numbers and mile markers), it contends is necessary for shippers to determine whether they could use alternate points within the path of a capacity release offer to satisfy their capacity requirements.

The Commission considers the establishment of common transaction point codes to be extremely important to the development of more efficient gas and capacity markets. Like many of the commenters, the Commission has serious misgivings about whether the code assignor procedure ultimately will be workable or whether a preferable approach for the long-run would be to have the pipelines provide the translation to an existing common code, rather than each customer having to do the translation itselves. For example, the PI–GRID code is already in use and selection of this code should not entail significant additional investment.

Nevertheless, given the short time frame in which the industry was operating and the level of support for the code assignor procedure as a compromise, the Commission is willing to give Working Group 5 and the conference participants until October 1, 1993, to reach a consensus approach. A final proposal should be submitted to the Commission by that date. If no consensus is reached, the Commission will select a common code. In case the participants do not reach consensus, the Commission requests comments on whether to adopt PI–GRID or another common transaction point code.

*G. Policy Considerations*

Several minority reports raise policy issues relating to EBBs, including pipeline disclaimers of liability of EBB operation, the method of recovering the costs of standardization, and the disclosure of non-price considerations underlying capacity release transactions. As a general matter, these are substantive policy issues that are largely beyond the scope of this proceeding. They are more appropriately considered in individual pipeline-specific cases.

1. Liability

Several minority reports request the Commission to clarify the extent of pipeline liability for incorrect information posted on EBBs.[35] Some support the Commission's policy that pipeline EBB liability should be the same as for other pipeline operations, but claim pipeline contracts do not comply with the pipeline's tariff. New York State Electric & Gas, et al., contend the Commission's standard is not sufficient and submitted a more detailed proposal.[36] In their proposal, they suggest pipelines should be required to include in their EBB standard agreement a provision requiring subscribers (i.e., releasing shippers or bidders) to warrant the accuracy of the information they provide.

The comments on this issue are split. Some, for example, oppose the requirement that users warrant the accuracy of their data.[37] Pipelines oppose any suggestion that they should be responsible for the accuracy of information provided by others.[38] NGSA opposes severe liability provisions, arguing most if not all data errors are inadvertent and pipelines have demonstrated "good faith" in the past to correct such errors.

In restructuring orders, the Commission has required pipelines' liability for EBB operations to be the same as for their other operations and continues to find this standard sufficient.[39] Specific issues regarding liability standards or changes in such standards should be addressed in individual rate cases in which pipelines

[30] Data Universal Numbering System, maintained by Dun and Bradstreet.

[31] Working Group 5 did not provide data sets containing the information to be provided about each location, but did provide an example of data element definitions. Working Group 5 Report at 19.

[32] See Comments by Vesta Energy Company; Columbia Gas Distribution Companies; Process Gas Consumers Group, *et al.*

[33] See Comments by INGAA.

[34] Comments by NGSA.

[35] Working Groups 1 & 2 Report at 45, 77–86.

[36] Working Groups 1 & 2 Report at 79–81.

[37] Comment by Process Gas Consumers Group.

[38] Comments by INGAA; Texas Eastern Transmission Corporation, et al.

[39] See Texas Eastern Transmission Corporation, 62 FERC ¶ 61,015 at 61,107 (1993).

or others may propose changes to a pipeline's tariff standard. The Commission emphasizes that pipeline contracts must reflect the liability provisions in their tariffs.

2. Costs of Standardization

In proposing the use of EDI, Working Group 4 adopted the principle that the implementation and costs of obtaining data through EDI should be treated in accordance with agreements reached by the parties. The Working Group explained that this principle referred to special costs resulting from an agreement to facilitate a particular EDI transaction, such as a special leased phone line. Working Group 4 envisioned that generic costs related to implementation of EDI would be handled in individual pipeline rate proceedings.

Holders of pipeline firm capacity are concerned about their responsibility for paying the cost of providing information which they believe is of value only to certain groups. For this reason, Northern Illinois Gas Company *et al.*, suggest that no information should be required beyond what is needed for scheduling, nomination, and capacity release. Others suggest this issue be set as a priority for the task force.

The Commission is sympathetic to firm shippers' concerns that they not be solely responsible for paying the costs for providing information benefitting others. Although proposals to recover the costs of implementing these standards and EDI will be addressed in individual rate cases, the Commission encourages the industry to consider a policy for a fair sharing of such costs through methods such as user or access fees.

3. Non-Price Considerations

American Natural Gas Corporation, et al., suggest standards are needed to guard against capacity releases involving deals for indirect consideration, such as deals tieing capacity releases to gas supply arrangements.[40] They maintain all consideration underlying a capacity release transaction should be posted on the EBB. This issue is better addressed in individual restructuring proceedings in which specific circumstances can be evaluated rather than in a generic proceeding.[41]

[40] Working Groups 1 & 2 Report at 89.

[41] Compare Northwest Pipeline Corporation, 63 FERC ¶ 61,124 at 61,803 (1993) (posting of competitively significant gas supply relationships not required) with Pacific Gas Transmission Company, 64 FERC ¶ 052, slip op. at 33–37 (1993) (requirement for non-discriminatory terms and conditions precludes tieing released capacity to side deals for unrelated consideration).

## V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[42] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[43] The action taken here falls within categorical exclusions provided in the Commission's regulations.[44] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

## VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[45] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities.

## VII. Information Collection Requirement

Office of Management and Budget (OMB) regulations require OMB approval of certain information collection requirements imposed by agency rules. Because the proposed rule contains new information and EBB requirements, many of which are one-time start-up costs, the FERC–549(B) burden will be reduced by 2,250 hours per respondent the year following initial implementation of the respondent's EBB.

The data and communication standards on EBBs required under new FERC–549(B), Gas Pipeline Rates: Capacity Release Information, (OMB Control No. to be assigned by OMB) is necessary to ensure a viable capacity release market under Commission Order No. 636.

Because of the proposed EBB standards/development and new data requirements under FERC–549(B), the Commission is submitting a copy of the proposed rule to OMB for its review and approval. Interested persons may obtain information on these EBB standards/information requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

[42] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[43] 18 CFR 380.4.

[44] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

[45] 5 U.S.C. 601–612.

## VIII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments to this notice must be filed with the Commission no later than August 30, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, and should refer to Docket No. RM93–4–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street, NE, Washington, DC 20426, during regular business hours.

**List of Subjects in 18 CFR Part 284**

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

**Lois D. Cashell,**

*Secretary.*

## PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.8, paragraph (b)(5) is redesignated (b)(6) and new paragraph (b)(5) is added to read as follows:

**§ 284.8 Firm transportation service.**

* * * * *

(b) * * *

(5) *Standardization of information provided on Electronic Bulletin Boards.* (i) An interstate pipeline must provide access on its electric Bulletin Board to

standardize information relevant to the availability of service on its system and the ability to download the standardized information in compliance with standardized procedures and protocols. The standardized information and the procedures and protocols are found in "Standardized Data Sets And Communication Protocols," which can be obtained from the Office of Public Information, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426.

(ii) An interstate pipeline must implement these standards, procedures, and protocols by April 1, 1994.

* * * * *

The following Appendix will not appear in the Code of Federal Regulations.

**Appendix A**

**Docket No. RM93–4–000**

***Standardized Data Sets and Communication Protocols***

Standardized Data Sets.....34
Communication Protocols.....85

## STANDARDIZED DATA SETS

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| I.1. Firm Transportation Capacity Offer | | | | |
| I.1.1. Header Record: Firm Transportation Capacity Offer Data Sets | | | | |
| 1 | Pipeline Code | The code for the pipeline to which nominations for use of the released capacity would be made. | M | A number field which is an industry standard. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts standardized coding system. |
| 2 | Pipeline Name | The name that the pipeline wants to be known by. | O | A text field of a standard mnemonic specified by the pipeline. |
| 3 | Offer No. | A unique identifier within each pipeline identifying the capacity being offered. It can also be described as package, parcel, or release of capacity. | M | A number field containing a unique number assigned by pipeline. Pipelines may use numbers which are: alpha-numeric with monthly identifiers, sequentially numbered with annual identifiers, or otherwise numbered to distinguish among offers. |
| 4 | Releaser Name | The legal name of the offeror of the firm capacity. | O | A text field containing the name of the shipper as listed in the recitals and/or the signature line (as appropriate) of the contract with the pipeline. Note: Where the offeror is the pipeline offering unsubscribed capacity or "new" capacity this field would have the pipeline's name in it the same as that contained above. |
| 5 | Releaser's Company Code No.. | The unique company code number for the legal entity which signed the contract with the pipeline. | M | A number field containing the unique company code of the legal entity which signed the contract with the pipeline. |
| 6 | Time Zone | The Time Zone in which all time on this pipeline is denominated. | M | An alpha-numeric field of no more than 3 characters containing one of the following time zone abbreviations: EST, DT, ET, CST, CDT, CT, MST, MDT, MT, PST, PDT, or PT. |
| 7. | Term begin date | The year/month/day which marks the beginning date of the offer's term. | M | A date field in a format that is machine-processable. Releases are presumed to be effective at the start of the gas day corresponding to the start date. Note: A "gas day" is a 24 hour period (*e.g.*, 8:00 am to 8 a.m. beginning and ending at the same time on two consecutive days and may not be the same as a calendar day. |
| 8 | Term end date | The year/month/day which marks the end date of the offer's term. | M | A date field in a format that is machine-processable. |
| 9 | Shorter term indicator | An indicator which tells bidders whether the offeror will accept bids for less than the full term. (Y or N). | M | A (yes/no) indicator field. |
| 10 | Term minimum | The minimum acceptable term in a contiguous time period. | C | A number field which will be filled on the condition that the shorter term indicator is "Y" (yes). |
| 11 | Offer Quantity | The amount of capacity in whole MMBtu or Mcf per day which is the total quantity of capacity of the type indicated below (in the Quantity indicator field). | M | A number field in whole numbers containing the quantity of capacity in MMBtu or Mcf per day in this offer. Note: Those wishing to seasonally or otherwise "shape" their releases can list the "base or minimum" quantity as one offer, list the differing monthly or weekly quantities as other offers, and place a reference in the bid evaluation method that only bids on all offers will be considered by the offeror. |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 12 | Offer type indicator | A number field indicating the type of capacity being referred to in the Offer Quantity field.<br>1=Primary Receipt Pt(s) Quantity<br>2=Primary Delivery Pt(s) Quantity<br>3=Segment(s) Quantity<br>4=Storage Quantity<br>5=Mainline Quantity<br>6=Storage Injection Quantity<br>7=Storage Withdrawal Quantity | M | This is a number field which is designed to alert the bidder as to the type of capacity referred to in the Quantity field. The purpose of this indicator is to make it possible to identify which rights are being referred to. Depending on the pipeline, the offeror may list receipt point rights in total which exceed the mainline rights and seek to accentuate this fact by listing these rights in this space. Likewise a shipper may seek to accentuate their mainline, segment, storage, injection or withdrawal rights that are being released. |
| 13 | Measurement basis | Measurement basis (by tariff) of the contract rights being released, *i.e.*, whether capacity is being released on a thermal (MMBtu/d) of volumetric (Mcf/d) base. | M | A number field which is a default field on a by-pipeline basis. The shipper may not select a measurement basis other than that in the tariff. This field simply identifies to the bidder the units of measurement in use on this pipeline; it does not create a choice where none exists.<br>1=MMBtu or Dth<br>2=Mcf |
| 14 | Pressure base indicator. | To be filled in if measurement basis is volumetric (*i.e.*, Mcf). | C | A number field to be populated if Measurement Basis is 2 (Mcf) and is a default field on a by-pipeline basis. It indicates whether measurement is in pounds per square inch: gauge (PSIG) or pounds per square inch: absolute (PSIA). In other words, the shipper may not select a measurement basis other than in the tariff. This field simply identifies the basis; it does not create a choice where none exists.<br>1=PSIA<br>2=PSIG |
| 15 | Pressure base | To be filled in if measurement basis is volumetric (*i.e.*, Mcf). | C | A number field to be completed if Measurement Basis is 2 (Mcf) and is up to three (3) decimal places listing the pressure basis in pounds per square inch (gauge or absolute). |
| 16 | Lesser quantity indicator. | An indicator which tells bidders whether the offeror will accept bids for less than the full daily quantity listed in the Offer quantity field above. (Y or N). | M | A (yes/no) indicator field. |
| 17 | Quantity minimum | The minimum daily quantity (of the Offer type listed above) acceptable to the offeror from a bidder. | C | A number field which will be filled in only if lesser quantity indicator is "Y" (yes). |
| 18 | Rate schedule | The pipeline's rate schedule applicable to this offer, (*e.g.*, GS, FT1, etc). | M | An alpha-numeric field of at least 12 characters in length which contains a representation of the rate schedule which is the same as the pipeline's tariff abbreviation (if any) for the rate schedule under which service for the offer is being provided. This is where offers for different types of services can be made, *e.g.*, no-notice. |
| 19 | Maximum Reservation Rate. | The pipeline's maximum tariff rate for service provided by the pipeline to the holder of the rights contained in the offer. | M | A number field, 12 characters in length, with five decimal places The rate is in the units of measurement stated in the tariff (*e.g.*, $/MMBtu/Month). Note: This maximum rate includes all applicable surcharges, GRI, Transition costs, etc. |
| 20 | Rate Form/Type Code | A code indicating the form or type of rate which the offeror will accept bids.<br>1=Reservation Charge only<br>2=Volumetric Charge only<br>3=Blended Rate | M | A number field. The purpose of this field is to indicate to bidders whether the offeror will entertain bids which are a) only in reservation charge form; b) only in volumetric form; or c) in a form which is a blend of reservation and volumetric rates. |
| 21 | Lesser rate indicator | An indicator telling bidders whether offeror will accept any bids at less than the maximum tariff rate. (Y or N). | M | A (yes/no) indicator field. For use by offerors as a way to inform bidders that bids below the maximum rate will be evaluated. |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 22 | Minimum acceptable rate. | The minimum rate per unit of the rate form specified above which the offeror will entertain. | C | A number field, 12 characters in length, with five decimal places. The rate is intended to apply to the units stated above in the "Rate Form/Type Code" field which is acceptable to the offeror (*i.e.*, reservation, volumetric, or blended). To be filled in if a "Lesser rate" indicator is "Y." |
| 23 | Percentage or dollar denominated bids indicator. | An indicator which tells bidders the basis upon which the offeror is accepting bids. (*i.e.*, on a percentage of maximum rate (P), absolute dollars and cents per unit basis (A) or either (E)). | M | A (percentage/absolute/either) "P," "A" or "E" indicator field. For use by offerors as a way to inform bidders of the type of bid they must make. |
| 24 | Contingency indicator | An indicator which tells bidders whether the offeror will accept bids which are contingent from the bidder's point of view (*i.e.*, bid not binding at the time of the bid closing time). (Y or N). | M | A (yes/no) indicator field. |
| 25 | Contingency end date | The year/month/day which marks the end date of the period by which the bidder must revise its bid to remove the contingency. | C | A date field in a format that is machine-processable. Would be filled in if contingency indicator is "Y." |
| 25 | Contingency end date—hour. | The hour of the end date which marks the end of the period by which the bidder must revise its bid to remove the contingency. | C | A time field in a machine-processable format. Where necessary, this is a defaulted field on a by-pipeline basis. In other words, the offeror may not select a Contingency end date which conflicts with that allowed in the tariff. However, if allowed, and if the offeror wishes to have contingent bids be counted as though non-contingent, then the end date and time would be after the close of bids. Likewise if there are restrictions as to how far in advance of a bid close time a contingency must be removed or the bid will be deemed invalid, then the tariff will determine. This field is intended to identify the time by which contingencies would be removed, not to create a choice where none exists. |
| 27 | Posting date | The year/month/day in which the pipeline posted this offer. | M | A date field in a format that is machine-processable. Postings will be date and time stamped by the pipeline when they are posted to both the bulletin board and the downloadable files. This is that date and time. |
| 28 | Posting date—hour | The hour/min/sec during which the pipeline posted this offer. | M | A time field in a machine-processable format. |
| 29 | Bid start date | The year/month/day in which the bidding on this offer may commence. | M | A date field in a format that may be downloaded and ranked in a machine-processable manner for the purposes of time sensitive review. The start date may or may not be pre-determined by tariff. This entry, as well as the one below, is intended to inform bidders of the bid start day and time. These fields will not create a choice where the tariff prescribes a start time and date. Where the tariff is specific, this field is a default field. |
| 30 | Bid start date—hour | The hour/min/sec during which the bidding on this offer may commence. | M | A time field in a machine-processable format. (See also explanatory note above.) |
| 31 | Bid end date | The year/month/day in which the end date for bidding on this offer is found. | M | A date field in a format that may be downloaded and ranked in a machine-processable manner for the purposes of time sensitive bidding. The end date may or may not be pre-determined by tariff. This entry, as well as the one below, are intended to inform bidders of the bid end day and time. These fields will not create a choice for the offerors where the tariff prescribes a end time and date. Where the tariff is specific, this field is a default field. |

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STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 32 ..... | Bid end date—hour .... | The hour/min/sec after which no bids will be accepted/acceptable on this offer. | M ..... | A time field in a machine-processable format. (See also explanatory note above.) |
| 33 ..... | Pipeline or Releaser bid evaluation method indicator. | An indicator which tells bidders whether the bids will be evaluated according to one of the pipeline's methods ("P") or according to the releaser's method ("R"). | M ..... | An indicator field which is used by the offeror where it has the option of choosing to use a pipeline method or a method of its own description. Where the option to choose is not open to the offeror, this field is defaulted to the "P" or pipeline method. |
| 34 ..... | Bid evaluation method description. | A description or reference to tariff section specifying the choice of the offeror as to ranking bids in order to award capacity to bidders. | M ..... | A text field which describes either (a) the section(s) of the pipeline's tariff where the bid evaluation method to be employed for this offer is located, or (b) the releaser's bid evaluation method to be employed by the pipeline for this offer. |
| 35 ..... | Bid tie-breaking method description. | A description or reference to tariff section describing method for awarding capacity in case of tied bids. | M ..... | A text field which describes either (a) the section(s) of the pipeline's tariff where the tie-breaking method to be employed for this offer is located, or (b) the releaser's tie-breaking method to be employed by the pipeline for this offer. |
| 36 ..... | Prearranged deal indicator. | An indicator which tells bidders whether there is a bidder which has the right to match the winning bid(s) of others owing to their having made a pre-arranged deal with the releaser/offeror. (Y or N). | M ..... | A (yes/no) indicator field which is used by the releaser (offeror) to signify that this offer is subject to another bidder's right to match the highest bid. |
| 37 ..... | Prearranged deal at maximum rate indicator. | An indicator which tells bidders whether there is a prearranged bidder which has bid the maximum rate for this offer of capacity. (Y or N). | C ..... | A (yes/no) indicator field which is used by the offeror to signify that this offer is being posted for information purposes only. Conditioned on "Y" for "Prearranged deal indicator." |
| 38 ..... | Prearranged deal match date. | The end date for matching prearranged deals by a higher bid on this offer. | C ..... | A date field in a format (*e.g.*, year/month/day) that allows ranking in a machine-processable manner for the purposes of time sensitive bidding, or to aid bidders on multiple pipelines with varying end date/times. This match date/time may or may not be predetermined by tariff. This entry, as well as the one below, are intended to inform bidders of the bid match day and time. These fields will not create a choice for the offerors where the tariff prescribes a match time and date. Where the tariff is specific, this field is a default field to the tariff specified value. Conditioned on "Y" for "Prearranged deal indicator." |
| 39 ..... | Prearranged deal match hour. | The hour/min/sec prior to which the prearranged bidder must match the otherwise highest bid(s) on this offer. | C ..... | A time field in machine-processable format. (See also explanatory note above.) Conditioned on "Y" for "Prearranged deal indicator." |
| 40 ..... | Prearranged deal bidder name. | The legal name of the shipper acquiring the offer of capacity. | O ..... | A text field containing the name of the shipper as listed in the recitals and/or the signature line (as appropriate) of the contract with the pipeline. This field is optional because some pipelines are not required to provide the name. |
| 41 ..... | Prearranged deal bidder's Company Code No. | The common code for the legal entity which signed the contract with the pipeline. | O ..... | A number field containing the common code of the legal entity which will sign the contract for the offered capacity. This field is optional because some pipelines are not required to provide the name. Filled in only if bidder name is provided. |
| 42 ..... | Re-release indicator ... | An indicator which tells bidders whether this offer contains capacity that was previously released. (Y or N). | M ..... | A (yes/no) indicator field which is used by the offeror. "Yes" signifies this offer contains in total or in part capacity which was previously released. |
| 43 ..... | Permanent release indicator. | An indicator for bidders as to whether this offer is being permanently released. (Y or N). | M ..... | A (yes/no) indicator field which is used by the offeror to signify this offer is being made available for permanent release. |
| 44 ..... | Recall indicator ..... | An indicator which tells bidders whether this offer can be recalled subsequent to award of capacity to the winning bidder. (Y or N). | M ..... | A (yes/no) indicator field which is used by the offeror to signify this offer is subject to being recalled. |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 45 | Recall terms | A description of the terms and conditions under which the offer can be recalled by the offeror subsequent to the acquisition by the winning bidder. | C | A very long text field which is used by the releasing shipper to set or reflect the terms and conditions under which they may (or a previous offeror may) recall the capacity so released. This field must contain the terms in sufficient detail to enable the pipeline to enforce the recall and is conditional on the recall indicator being Y. |
| 46 | Award date | The year/month/day of posting of the award of this offer. | M | A date field in a machine-processable format for the purposes of time sensitive confirmation of whether one has won a bid. Especially needed by those bidding on multiple offers or multiple pipelines with varying end date/times. This award date/time may or may not be pre-determined by tariff. This entry, as well as the one below, is intended to inform bidders of the bid award day and time. These fields will not create a choice for the offerors where the tariff prescribes an award data and time. Where the tariff is specific, this field is a default to the tariff specified value. |
| 47 | Award date—hour | The hour/min/sec of the posting of the award of this offer. | M | A time field in machine-processable format (*i.e.*, not in text format). (See also explanatory note above.) |
| 48 | Special terms and miscellaneous notes. | Other required or desired and applicable terms which are either offered or required pursuant to the pipeline's tariff. | O | A very long text field containing any pertinent or relevant material, terms, conditions or provisions relating to the offer, its enforceability, or use. |
| I.1.2. Receipt Point or Storage Injection Information | | | | |
| 1 | Pipeline code | The code for the pipeline to which nominations for use of this receipt point contained in this offer would be made. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Offer No | The same unique identifier as contained in the header. | M | A number field. The purpose of repeating this header field is to associate this and other receipt or storage injection points to this offer. An offer must have at least one of either a receipt point, injection point, delivery point, withdrawal point, mainline or segment right, but may be comprised of more than one such point. The "Offer No." provides the link between these points. |
| 3 | Receipt/injection point code. | The code which uniquely identifies this point | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. |
| 4 | Receipt/injection point description. | The name/description/or other identifier generally in use on the pipeline to describe this point. | O | A text field. This is to aid in recognition of the point. Note: only primary points are listed in this data set because only primary point capacity rights can be released. This record is used when releasers are offering capacity at a particular point, or are required to release point capacity as part of a release. |
| 5 | Receipt/injection point quantity. | The uniform daily quantity of capacity being made available by the offeror at this point. The units of capacity (*i.e.*, MMBtu or Mcf) are determined in the header and apply to all capacity in the offer. | M | A number field, in whole numbers, stating the quantity of contractual capacity offered at this point. Note: In cases where pipelines make all their receipt or injection points available in an offer, there would not be specific quantities associated with each point. |
| 6 | OBA indicator | An indicator which tells bidders whether there is an Operational Balancing Agreement ("OBA") which is in effect and which will govern allocation of actual quantities of gas flowing at the point. (Y, N or U). | M | A (yes/no/unknown) indicator field. For use by offerors as a way to inform bidders that an OBA governing allocations of actual gas flows is in effect at the point. |
| I.1.3. Delivery Point or Storage Withdrawal Information | | | | |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 1 | Pipeline code | The code for the pipeline to which nominations for use of this delivery point contained in this offer would be made. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Offer No | The same unique identifier as contained in the header.. | M | A number field. The purpose of repeating this header field is to associate this and other delivery points or storage withdrawal to this offer. An offer must have at least one of either a receipt point, injection point, delivery point, withdrawal point, mainline or segment right, but may be comprised of more than one such point. This "Offer No." provides a link between these points. |
| 3 | Delivery/withdrawal point code. | The code which uniquely identifies this point | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. |
| 4 | Delivery/withdrawal point description. | The name/description/or other identifier generally in use on the pipeline to describe this point. | O | A text field. This is to aid in recognition of the point. Note: only primary points are listed because only primary point capacity rights can be released. |
| 5 | Delivery/withdrawal point quantity. | The uniform daily quantity of capacity being made available by the offeror at this point. | M | A number field, in whole numbers, stating the quantity of contractual capacity offered at this point. Note: some pipelines might make all delivery or storage withdrawal points available in an offer, in which case there may not be specific quantities associated with each point. |
| 6 | OBA Indicator | An indicator which tells bidders whether there is an Operational Balancing Agreement ("OBA") which is in effect and which will govern allocation of actual quantities of gas flowing at the point. (Y, N or U). | M | A (yes/no/unknown) indicator field. For use by offerors as a way to inform bidders that an OBA governing allocations of actual gas flows is in effect at the point. |

I.1.4. Segment Capacity, Mainline Capacity or Storage Quantity Information

| | | | | |
|---|---|---|---|---|
| 1 | Pipeline Code | The code for the pipeline to which nominations for use of this Capacity Segment contained in this offer would be made. | M | A number field in an industry standard format. (See header definition for this field) |
| 2 | Offer No | The same unique identifier as contained in the header. | M | A number field. See description in receipt point information section above for explanation of the purpose behind repeating this field. |
| 3 | Location Code 1 | The code uniquely identifying one of the two points defining segment capacity, storage or mainline capacity being offered. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify one of the two "points" defining the end-points of the segment capacity, mainline capacity or storage quantity being offered. In the case of storage quantity, only one location code is needed. |
| 4 | Location Code 2 | The code uniquely identifying the other of the two points defining the boundaries of the segment capacity mainline capacity being offered. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify the other of the two "points" defining the end-points of the segment capacity or mainline capacity being offered by the offeror. |
| 5 | Segment, mainline or storage identifier. | The unique code of the pipeline (if any) which uniquely identifies this capacity. | O | An alpha-numeric field containing the unique code specified by the pipeline as corresponding to this capacity. |
| 6 | Segment, mainline or storage description. | The name/ description/ or other identifier either generally in use on the pipeline or as specified by the offeror to describe this capacity. | O | A text field. This is to aid in recognition of the capacity segment. Note: Depending on the pipeline, this description may be predefined or it may be dynamic (*i.e.*, defined by the offeror). |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status 1 | Data type and explanation |
|---|---|---|---|---|
| 7 | Segment, mainline or storage quantity. | The uniform daily quantity of capacity being made available by the offeror for movement between location codes 1 and 2 (or vice versa) or for keeping in storage. | M | A number field, in whole numbers, stating the quantity of contractual capacity offered (segment or mainline capacity is defined by the two location code points listed above). |
| 8 | Location Code 1 OBA Indicator. | 1 An indicator which tells bidders whether there is an Operational Balancing Agreement ("OBA") which is in effect and which will govern allocation of actual quantities of gas flowing at the point identified as location code 1. (Y, N or U). | M | A (yes/no/unknown) indicator field. For use by offerors as a way to inform bidders that an OBA governing allocations of actual gas flows is in effect at the point. Where this point is a pooling point or other in-line transfer point, the existence of an OBA may not be applicable. |
| 9 | Location Code 2 OBA Indicator. | An indicator which tells bidders whether there is an OBA in effect and governing allocations of actual quantities of gas flowing at location code 2. (Y, N or U). | M | A (yes/no/unknown) indicator field. (See explanation above as to applicability and purpose of this field) |
| I.2. Downloadable Firm Transportation Capacity Bid Review Information | | | | |
| I.2.1 Header Record: Firm Transportation Capacity Bid Review Information Data Sets | | | | |
| 1 | Pipeline Code | The code for the pipeline to which nominations would be made by the winning bidder. | M | A number field. (See Capacity Release Header I.1.1 above.) |
| 2 | Pipeline Name | The name that the pipeline wants to be known by. | 0 | A text of a standard mnemonic specified by the pipeline. |
| 3 | Offer No | The offer to which this bid applies | M | A number field. The unique number on a by-pipeline basis. (see Officer description in Section I.1.1.) |
| 4 | Bid No | A unique identifier within each pipeline identifying the bid being made. | M | A number field. The unique number on a by-pipeline basis. (See Offer description in Section I.1.1.) |
| 5 | Bid term begin date | The year/month/day which marks the first gas day ("beginning date") for which the bidder is willing to assume payment responsibility for the Bid quantity. | M | A date field in a format that is machine-processable. Availability of Acquired Capacity is presumed to be effective at the start of the gas day corresponding to the start date. |
| 6 | Bid term end date | The year/month/day which marks the last day ("end date") for which the bidder is willing to assume payment responsibility for the Bid quantity. | M | A date field in a format that is machine-processable. |
| 7 | Bid quantity | The amount of capacity in a whole number of MMBtu or Mcf per day which is the total quantity of capacity sought by the bidder pursuant to this Bid. The "Measurement Basis" item in the Header record defines the units for this entry. | M | A number field in whole numbers containing the quantity of capacity in MMBtu or Mcf per day which is bid for by the bidder during each day of the term of this bid. Note: Those wishing to seasonally or otherwise "shape" their Bids for capacity can do the following: list the "base or minimum" quantity as one bid, list the differing monthly or weekly quantities as other bids, and place a reference in the contingent bid field that the bid is contingent unless all bids are awarded capacity by the pipeline. Also of note: a bidder bidding a pure volumetric rate would place a zero "0" in this field and might place a quantity in the "Minimum Total Period Volumetric Bid Quantity" field below. |
| 8 | Bid type indicator | A number field indicating the type of capacity being referred to above in the Bid Quantity field..<br>1=Primary Receipt Pt(s) Quantity<br>2=Primary delivery Pt(s) Quantity<br>3=Segment (s) Quantity<br>4=Storage Quantity<br>5=Mainline Quantity<br>6=Storage Injection Quantity<br>7=Storage Withdrawal Quantity | M | This is a number field which is designed to identify the quantity that the bidder is bidding on and the Bid Quantity refers to. The purpose of this field is to identify just which rights are being referred to in this "header" section. |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 9 ..... | Lesser quantity indicator. | An indicator which tells the pipeline whether the bidder will accept award of capacity for less than the full daily quantity listed in the Bid quantity field above. (Y or N). | M ..... | A (yes/no) indicator field. This field is used to identify whether, in the case of ties, the bidder will accept a proration of the capacity sought. Some bidders can not use less than the total quantity that they desire. This field enables them to communicate that they will not accept less than the full Bid Quantity. |
| 10 ..... | Quantity minimum ..... | The minimum daily quantity (of the Bid type listed above) which would be acceptable to the bidder if less than the total bid quantity were awarded by the pipeline. | C ..... | A number field which would be blank if the Lesser quantity indicator field above is "N" (no); and would be filled-in if lesser quantity indicator is "Y" (yes). |
| 11 ..... | Contingency Indicator | An indicator which tells offerors that the bid is not a firm bid from the bidder's point of view (*i.e.*, not binding at the time of the bid). (Y or N). | M ..... | A (yes/no) indicator field. Where "Y" or yes signifies that the bid is contingent (*i.e.*, not firm). An "N" or no signifies that the bid is firm as made. |
| 12 ..... | Bid Receipt date ..... | The year/month/day which marks the date on which this Bid was received for posting by the pipeline. | M ..... | A date field in a machine-processable format. Bids will be date and time stamped by the pipeline when they are received from the releasing shipper. |
| 13 ..... | Bid Receipt date–hour | The hour/min/sec during which the pipeline received this Bid. | M ..... | A time field in (hh/mm/ss) format. |
| 14 ..... | Posting date ..... | The year/month/day in which the pipeline posted this Bid. | M ..... | A date field in machine-processable format. Postings will be date and time stamped by the pipeline when they are posted to both the bulletin board and the downloadable files. This is that date and time. |
| 15 ..... | Posting date-hour ..... | The hour/min/sec during which the pipeline posted this Bid. | M ..... | A time field in a machine-processable (hh/mm/ss) format. |
| 16 ..... | Prearranged deal indicator. | An indicator which tells bidders that this bidder has the right to match the winning bid(s) of others owing to this bidder having made a pre-arranged deal with the offeror for the Offer referred to above. (Y or N). | M ..... | A (yes/no) indicator field which is used by the bidder to signify this bidder has a right of first refusal/right to match the highest bid(s) of other bidder(s) bidding for this Offer. |
| 17 ..... | Prearranged deal at maximum rate indicator. | An indicator which tells bidders whether this is a prearranged bid which has bid the maximum rate for this Offer. (Y or N). | M ..... | A (yes/no) indicator field which is used by the bidder to signify that this parcel is being posted for information purposes only. |
| 18 ..... | Rate Form/Type Code | A code indicating the form or type of rate which the bidder is bidding.<br>1=Reservation Charge only .....<br>2=Volumetric Charge only .....<br>3=Blended Rate ..... | M ..... | A number field. The purpose of this field is to indicate to bidders, the pipeline, and the offeror of the offer whether the bidder is bidding the bid quantity a) only in reservation charge form; b) only in volumetric form; or c) in a form which is a blend of reservation and volumetric rates. |
| 19 ..... | Reservation Rate Bid . | The amount of the bid for the Bid Quantity ... | M ..... | A number field, 12 characters in length, with five decimal places. The field is mandatory but the value could be zero dollars and cents ("0.00000") where the bidder is not bidding a reservation charge rate. |
| 20 ..... | Volumetric Rate Bid ... | The rate per unit bid by the Bidder for the Total Period Bid Quantity listed below. | C ..... | A number field, 12 characters in length, with five decimal places. The value could be zero dollars and cents ("0.00000") where the bidder is not bidding a volumetric or blended rate. This field is conditional on "Rate Form/Type Code" being either "2" or "3." |
| 21 ..... | Minimum Total Volumetric Bid Quantity. | The minimum quantity the bidder agrees to pay for on a volumetric basis in order that the pipeline and the Offeror may evaluate the bidder's volumetric bid, or the volumetric component of the blended rate bid. | C ..... | A number field, 12 characters in length, in whole numbers. The amount could be zero ("0") where the bidder is not bidding a volumetric or blended rate. This field is conditional on "Rate Form/Type Code" being either "2" or "3." |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 22 | Percentage or dollar denominated bid indicator. | An indicator which tells the pipeline and the offeror the basis upon which the bid is made (*i.e.*, on a percentage of maximum tariff or absolute dollars and cents per unit basis) (P or A). | M | A (percentage/absolute) "P" or "A" indicator field. For use by bidders as a confirming check as to the denomination of their bid. Note: This field is not intended to provide a choice where none exists. If bidders are allowed to bid in denominations other than what the offeror has specified then this field will provide a choice, otherwise, it is intended solely to confirm the denomination of the rate(s) contained in the fields listed above. |
| 23 | Bid for full quantity of offer. | An indicator for whether this bid quantity is for the full Offer quantity of the offer (Y or N). | M | An indicator (yes/no) to inform potential participants whether this bid encompassed the full quantity of capacity in the offer. |
| 24 | Notes | Any notes or special conditions pertaining to this bid. | O | A text field. |
| I.2. Downloadable Firm Transportation Capacity Bid Review Information | | | | |
| I.2.2. Receipt Point or Storage Injection Information | | | | |
| 1 | Pipeline Code | The code for the pipeline to which nominations for use of this receipt point contained in this bid would be made. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Offer No | The same unique identifier as contained in the header of the offer to which this bid applies. | M | A number field. The purpose of repeating this field is to associate this and other receipt point or storage injection bids to this offer. |
| 3 | Bid No | A unique identifier within each pipeline identifying the bid being made. | M | A number field. The purpose of repeating this field is to associate all listed receipt points or storage injection points in this Bid to the appropriate offeror. A Bid must have at least one primary point but could be comprised of several. |
| 4 | Receipt point description. | The name/description/or other identifier generally in use on the pipeline to describe this point. | O | A text field. This is to aid in recognition of the point. Note: only primary points are listed in this data set known as Receipt point information. |
| 5 | Receipt point code | The code which uniquely identifies this point | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. |
| 6 | Receipt point quantity | The uniform daily quantity of capacity being bid for by the bidder at this point. | M | A number field, in whole numbers, stating the quantity of capacity bid for at this point. |
| I.2.3. Delivery Point or Storage Withdrawal Information | | | | |
| 1 | Pipeline Code | The code for the pipeline to which nominations for use of this delivery point contained in this bid would be made. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Offer No | The same unique identifier as contained in the header of the offer to which this bid applies. | M | A number field. The purpose of repeating this field is to associate bids containing this and other delivery or storage withdrawal points to the appropriate offer. |
| 3 | Bid No | A unique identifier within each pipeline identifying the bid being made. | M | A number field. The purpose of repeating this field is to associate this and other points to this Bid. |
| 4 | Delivery/storage withdrawal point description. | The name/description/or other identifier generally in use on the pipeline to describe this point. | O | A text field. This is to aid in recognition of the point. Note: only primary points are listed in this data set. |
| 5 | Delivery/storage withdrawal point code. | The code which uniquely identifies this point | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. |
| 6 | Delivery/storage withdrawal point quantity. | The uniform daily quantity of capacity being bid for at this point. | M | A number field, in whole numbers, stating the quantity of capacity bid for at this point. |
| I.2.4 Segment Capacity Mainline Capacity or Storage Quantity Information | | | | |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 1 | Pipeline Code | The code for the pipeline to which nominations for use of this Capacity Segment contained in this bid would be made. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Offer No. | The same unique identifier as contained in the header of the offer to which this bid applies. | M | A number field. See description in receipt point information section above for explanation of the purpose behind repeating this field. |
| 3 | Bid No. | A unique identifier within each pipeline identifying the bid being made. | M | A number field. The purpose of repeating this field is to associate this and other Segment bids to this Bid. |
| 4 | Location Code 1 | The code uniquely identifying one of the two points defining segment capacity, mainline capacity or storage quantity bid. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify one of the two "points" defining the end-points of the segment capacity or mainline capacity being bid. In the case of storage quantity, only one location code is needed. |
| 5 | Location Code 2 | The code uniquely identifying the other of the two points defining the boundaries of the segment capacity or mainline capacity bid for by the bidder. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify the other of the two "points" defining the end-points of the capacity segment being bid. |
| 6 | Segment, mainline or storage identifier. | The unique code (if any) assigned by the pipeline which uniquely identifies this capacity. | O | An alpha-numeric field containing the unique code specified by the pipeline as corresponding to this capacity. |
| 7 | Segment, mainline or storage description. | The name/description or other identifier either generally in use on the pipeline or as specified by the offeror to describe this capacity. | O | A text field. This is to aid in recognition of the capacity. Note: Depending on the pipeline, this description may be predefined or it may be dynamically defined by the offeror. |
| 8 | Segment, mainline or storage quantity. | The uniform daily quantity of capacity being bid between location codes 1 and 2 (or vice versa). | M | A number field, in whole numbers, stating the quantity of contractual capacity (segment or mainline capacity is defined by the two location code points listed above) which is being bid for by the bidder. |

I.3. Award Parcel Posting

I.3.1. Header: Bid Award Posting Data Sets

| | | | | |
|---|---|---|---|---|
| 1 | Pipeline Code | The code for the pipeline to which nominations for use of the awarded capacity would be made. | M | A number field. (See Section I.1.1: Header for Capacity Release Data Set, for discussion of Code.) |
| 2 | Pipeline Name | The name that the pipeline wants to be known by. | O | A text field of a standard mnemonic specified by the pipeline. |
| 3 | Offer No. | The unique identifier within each pipeline identifying the parcel from which this bid was awarded. | M | A number field. Corresponds to the Offer from which the capacity comprising this award is removed. |
| 4 | Bid No. | The unique identifier within each pipeline identifying the bid that is being awarded/identified with this posting. | M | A number field. The unique number on a by-pipeline basis. (See Offer Description in Section I.1.1 or Bid description in Section I.2.1.) |
| 5 | Bidder Name | The legal name of the Bidder awarded the firm capacity. | M | A text field containing the name of the shipper as listed in the recitals and/or the signature line (as appropriate) of the new contract with the pipeline. |
| 6 | Bidder's Company Code No.. | The unique company code number for the legal entity which signed the contract with the pipeline. | M | A number field containing the unique company code number of the legal entity which signed the new contract with the pipeline. |
| 7 | Releaser's Company Code No.. | The unique company code number for the legal entity which signed the contract with the pipeline. | M | A number field containing the unique company code number of the legal entity which signed the contract with the pipeline. |
| 8 | Term begin date | The year/month/day which marks the beginning day of the Award term. | M | A date field in a format that is machine-processable. Awards are presumed to be effective at the start of the gas day corresponding to the start date. |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 9 | Term begin date-hour | The hour of the term begin day which marks the beginning of the of the offer's term. | M | A time field in a machine processable format (see above). This field is intended to simply identify the start of the appropriate gas day not create a choice where none exists. |
| 10 | Term end date | The year/month/day which marks the end date of the Award term. | M | A date field in a machine-processable format. |
| 11 | Term end date-hour | The hour of the term end day which marks the end of the Award term. | M | A time field in a machine-processable format. (See gas day and time discussion above.) |
| 12 | Award quantity | The amount of capacity in a whole number of MMBtu or Mcf per day which is the total quantity of capacity of the capacity type indicated below (in the Quantity Indicator field) award to the Bidder pursuant to this Award parcel. | M | A number field in whole numbers containing the quantity of capacity in MMBtu or MCf per day each day of the term of this offer. |
| 13 | Award type indicator | A number field indicating the type capacity being referred to above in the Offer Quantity field.<br>1=Primary Receipt Pt(s) Quantity<br>2=Primary Delivery Pt(s) Quantity<br>3=Segment(s) Quantity<br>4=Storage Quantity<br>5=Mainline Quantity<br>6=Storage Injection Quantity<br>7=Storage Withdrawal Quantity | M | This is a number field which is designed to alert reviewers as to the type of capacity referred to in the Award Quantity field. |
| 14 | Rate schedule | The pipeline's rate schedule under which service pursuant to this award is performed, (*e.g.*, GS, FT1, etc). | M | An alpha-numeric field of at least 12 characters in length which contains a representation of the pipeline's rate schedule. |
| 15 | Tariff Maximum Reservation Rate. | The pipeline's maximum tariff rate for service provided by the pipeline to the holder of the rights contained in this award parcel. | M | A number field, 12 characters in length, with five decimal places. The rate is in the units of measurement stated in the tariff (*i.e.*, $/MMBtu/Month). Note: This maximum rate includes all applicable surcharges, GRI,Transition costs, etc. |
| 16 | Award rate form/type indicator. | A code indicating the form or type of rate which the bidder was awarded.<br>1=Reservation Charge only<br>2=Volumetric Charge only<br>3=Blended Rate | M | A number field. The purpose of this field is to indicate whether the rate form awarded the bidder is a) only in reservation charge form; b) only in volumetric form; or c) in a form which is a blend of reservation and volumetric rates. |
| 17 | Award reservation charge. | The rate ($) applicable to the Award Parcel Quantity. | C | A number field, 12 characters in length, with five decimal places. The value could be zero dollars and cents ("0.00000") where the Award has no reservation charge component. This field is conditional on the "Award Rate Form/Type Indicator" above being "1". |
| 18 | Award volumetric charge. | The rate per unit awarded by the pipeline to the Bidder for all quantities shipped by the bidder during the Award period. | C | A number field, 12 characters in length, with five decimal places. The value could be zero dollars and cents ("0.00000") where the bidder is not bidding a volumetric or blended rate. This field is conditional on item #16 "Award Rate Form/Type Indicator" being either "2" or "3." |
| 19 | Award minimum total period quantity. | The minimum quantity the bidder is obligated to pay for on a volumetric basis pursuant to the bid and award. | M | A number field, 12 characters in length, in whole numbers. The field is mandatory but the amount could be zero ("0") where the bidder is not bidding a volumetric or blended rate. |
| 20 | Capacity award date | The year/month/day which marks the date on which this award was received/acknowledged by the pipeline. | M | A date field in a machine-processable format. Awards are date/time stamped by the pipeline when they are granted. This is that date and time. The purpose of this field is to prevent discriminatory award and or posting practices by the pipeline. |
| 21 | Capacity award hour | The hour/min/sec during which the pipeline awarded this award. | M | A time field in the (hh/mm/ss) format. |
| 22 | Award posting date | The year/month/day in which the pipeline posted this award. | M | A date field for postings which are date/time stamped by the pipeline when they are posted to both the bulletin board and the downloadable files. This is that date and time. |

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STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 23 | Award posting hour | The hour/min/sec during which the pipeline posted this award. | M | A time field in machine-processable format (hh/mm/ss). |
| 24 | Prearranged deal indicator. | An indicator for whether this is a pre-arranged deal between the offeror and the bidder. (Y or N). | M | A (yes/no) indicator field which is used to signify this award was a pre-arranged deal. |
| 25 | Prearranged deal at maximum rate indicator. | An indicator for whether this prearranged deal was at maximum rate for this offer of capacity. (Y or N). | M | A (yes/no) indicator field which is used to signify that this award is being posted for information purposes only. |
| 26 | Re-release indicator | An indicator for whether this award contains capacity that was previously released. (Y or N). | M | A (yes/no) indicator field which is used to signify that this award contains capacity which was previously released. |
| 27 | Permanent release indicator. | An indicator for whether this award is made up of capacity which is being contracted to the bidder for the remainder of the primary term. (Y or N). | M | A (yes/no) indicator field which is used to signify that this award is being made available to the bidder for the balance of the primary term of the contract. |
| 28 | Special terms and Miscellaneous notes. | Other required or desired and applicable terms which are part of the offer/bid or award as appropriate or required pursuant to the pipeline's tariff. | O | A very long text field containing any pertinent or relevant material, terms, conditions or provisions relating to the release, the bid, the award and the respective enforceability, or use. |
| I.3.2. Receipt Point or Storage Injection Information | | | | |
| 1 | Pipeline Code | The code for the pipeline to which nominations for use of this receipt point contained in this award would be made. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Offer No. | The unique identifier within each pipeline identifying the parcel from which this bid was awarded. | M | A number field. Corresponds to the Offer from which the capacity comprising this award is removed. |
| 3 | Bid No. | The unique identifier within each pipeline identifying the bid that is being awarded/identified with this posting. | M | A number field. The unique number on a by-pipeline basis. (See offer description in Section I.1.1 or Bid description in Section I.2.1.) |
| 4 | Receipt/injection point description. | The name/description/or other identifier generally in use on the pipeline to describe this point. | O | A text Field. This is to aid in recognition of the point. Note: Only primary point capacity rights are listed as only primary rights can be awarded. |
| 5 | Receipt/injection point quantity. | The uniform daily quantity of capacity being made available to the bidder at this point. | M | A number field, in whole numbers, stating the quantity of contractual capacity awarded to the bidder at this point. |
| 6 | Receipt/injection point code. | The common code which uniquely identifies this point. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. |
| I.3.3. Delivery Point or Storage Withdrawal Information | | | | |
| 1 | Pipeline Code | The code for the pipeline to which nominations to use this delivery point contained in this award parcel would be made. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Offer No. | The unique identifier within each pipeline identifying the parcel from which this bid was awarded. | M | A number field. Corresponds to the Offer from which the capacity comprising this award is removed. |
| 3 | Bid No. | The unique identifier within each pipeline identifying the bid that is being awarded/identified with this posting. | M | A number field. The unique number on a by-pipeline basis. (See Offer description in Section I.1.1 or Bid description in Section I.2.1.) |
| 4 | Delivery/withdrawal point description. | The name/ description/ or other identifier generally in use on the pipeline to describe this point. | O | A text field. This is to aid in recognition of the point. Note: Only primary points are listed as only primary point capacity rights can be awarded. |
| 5 | Delivery/withdrawal point code. | The common code which uniquely identifies this point. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. |
| 6 | Delivery/withdrawal point quantity. | The uniform daily quantity of capacity being made available to the bidder at this point. | M | A number field, in whole numbers, stating the quantity of contractual capacity awarded to the bidder at this point. |
| I.3.4. Segment, Mainline or Storage Capacity Information | | | | |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 1 | Pipeline Code | The code for the pipeline to which nominations for use of this Capacity Segment contained in this award parcel would be made. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Offer No. | The unique identifier within each pipeline identifying the parcel from which this bid was awarded. | M | A number field. Corresponds to the Offer from which the capacity comprising this award is removed. |
| 3 | Award No. | The same unique identifier as contained in the header. | M | A number field. (See description in receipt point information section above for explanation of the purpose behind repeating this field.) |
| 4 | Location Code | The code uniquely identifying one of the two points defining the boundaries of the capacity offered. In the case of storage quantity, only one code is needed. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify end-points of segment or mainline capacity being offered. |
| 5 | Location Code 2 | The code uniquely identifying the other of the two points defining the boundaries of the capacity segment offered. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify end-points of segment or mainline capacity being offered. |
| 6 | Segment, mainline or storage identifier. | The unique code of the pipeline (if any) which uniquely identifies this segment. | O | An alpha-numeric field containing the unique code specified by the pipeline as corresponding to this segment. |
| 7 | Segment, mainline or storage description. | The name/description/or other identifier either generally in use on the pipeline or as specified by the offeror to describe this capacity. | O | A text field. This is to aid in recognition of the capacity. Note: Depending on the pipeline, this description may be predefined and it may be dynamically defined by the offeror. |
| 8 | Segement, mainline or storage quantity. | The uniform daily quantity of capacity awarded to the bidder. | M | A number field, in whole numbers, stating the quantity of capacity awarded to the bidder. |

I.4. Withdrawal Notice

I.4.1. Header: Withdrawal Posting Data Sets

| | | | | |
|---|---|---|---|---|
| 1 | Pipeline Code | The code for the pipeline which received notice to withdraw this package from its bulletin board. | M | A number field in an industry standard format. (See header definition for this field.) |
| 2 | Pipeline Name | The name that the pipeline wants to be known by. | O | A text field of a standard mnemonic specified by the pipeline. |
| 3 | Withdrawal Type Indicator. | An indicator for whether this is a posting of a shipper's notice of withdrawal of an Offer ("O"), or, a Bid ("B"), or a pipeline's notice of withdrawal of an Award ("A"). Note: Not to be confused with an Operational Balancing Agreement or "OBA"). | M | An indicator field (indicator O/B/A) of one character in size which is used to signify that this Withdrawal Posting is the posting of a notice of withdrawal of either a bid, an offer or an award. Note: An indicator to signify that a pipeline withdrew an award is needed in order to allow shippers and others to clean up their records in the event a pipeline posts a mistaken award. |
| 4 | Offer No | The unique identifier within each pipeline identifying the Offer No. to which this Withdrawal Posting pertains. | M | A number field. Where the notice of withdrawal to which this posting pertains is a withdrawal of an offer of release (*i.e.*, the indicator is "O") this field contains the same number as the Offer No. which is being withdrawn by the offeror. (See "Offer No" in capacity release dataset, Line 3.) Note: All notices of withdrawal will have this field populated with an Offer No. This is due to the fact that all bids are only uniquely identifiable when they are coupled with the Offer No. to which the bid applies, and, that all Awards are also only identifiable from the unique combination of Offer No. and Bid No. This field will always be populated even where an Offer may still be in effect and only a bid is withdrawn. |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 5 | Bid No. | The unique identifier within each pipeline identifying either the bid that is being withdrawn or the winning bid award which is withdrawn with this posting. | C | A number field. The unique number on a by-pipeline basis. (See Bid No. description in Section I.2.1 or Award No. description in Section I.3.1) This field is a conditional field and is only populated when the notice of withdrawal which is being posted is a notice of withdrawal of Bid or Award. (See discussion above.) |
| 6 | Posting date | The year/month/day in which the pipeline posted this Withdrawal Notice. | M | A date field in a machine-processable format. Postings are date/time stamped by the pipeline when they are posted to both the bulletin board and the down-loadable files. This is that date and time. |
| 7 | Posting date hour | The hour/min/sec during which the pipeline posted this Withdrawal Notice. | M | A time field in a machine-processable format. |
| 8 | Explanatory and Miscellaneous notes. | Where withdrawing party is required to provide a reason or explanation for the withdrawal, this is the place where that is done. | C | A very long text field containing any pertinent or relevant material relating to the Withdrawal Notice of the withdrawing party. Note: Most Offerors will be required to explain the circumstances of their withdrawal of offers to release. |
| | | **Operationally Available Capacity and Notices** | | |
| Record 1: Operationally Available Capacity Data Sets | | | | |
| 1 | Pipeline Code | Pipeline (name and number), on which capacity can be nominated and booked. | M | A number field which is an industry standard. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding system. |
| 2 | Location Type | Type of location for which capacity information is provided (*e.g.*, receipt point, delivery point, bi-directional, mainline, pooling point, segment, injection, withdrawal). | M | Should be a recognized code: we suggest (R) receipt, (D) delivery, (B) bi-directional, (M) mainline, (P) pooling, (S) segment, (I) storage injection, (W) storage withdrawal. |
| 3 | Location Code 1 | A code for the location for which capacity information is being provided. Could be a location or a segment. | M | An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. |
| 4 | Location Code 2 | A code for a location to define a segment or mainline. Conditional on location type being S or M. | C | An alpha-numeric field. Pipelines may use the system of codes the currently use in common business practice until the Commission adopts a standardized coding procedure. This element applies only if Location Type is S or M and capacity is defined by two points. |
| 5 | Location Description | The description for the location for which capacity is being provided. | O | Text field. Will use the pipeline name for this location (pipeline designated name—not a standard). |
| 6 | Effective Date | The beginning date for which the capacity is available. | M | A date field in a format that is machine-processable. |
| 7. | End date | The ending date for which the capacity is available. | O | A date field in a format that is machine-processable; optional, and only to be used if capacity is available for more than one day. |
| 8. | Quantity available | The amount of capacity available at the location in whole MMBtu or Mcf/d. | M | A number field indicating the amount of unscheduled capacity available at this location. |
| 9. | Measurement basis | The unit of measure for the capacity | M | A number field indicating the units of measure on the pipeline:<br>1=MMBtu or Dth; 2=Mcf/d. |
| 10 | Pressure base indicator. | To be filled in if the measurement basis is Mcf/d. | C | A number field indicating the pressure basis for the pipeline:<br>1=PSIA; 2=PSIG. Conditional on "Measurement Basis" being "2." |
| *1 | Pressure base | To be filled in if the measurement basis is volumetric—either PSIA or PSIG. | C | A number field up to three decimal places listing the pressure basis. Conditional on "Measurement Basis" being "2." |
| 12 | Posted date | The date the information was posted | M | A date field in a format that is machine-processable. |
| 13 | Posted time | The time the information was posted | M | A time stamp that is machine-processable. |

STANDARDIZED DATA SETS—Continued

| Line No. | Field name | Description of field | Status [1] | Data type and explanation |
|---|---|---|---|---|
| 14 | Time Zone Indicator | The time zone in which the pipeline operates | M | Should be standard code: (E) Eastern, (C) Central, (M) Mountain, (P) Pacific |
| 15 | Comments & notes | A short text field for any special considerations. | O | Text field. |
| Record 2: System-wide Notices | | | | |
| 1 | Pipeline Code | Pipeline (name and number) on which capacity can be nominated and booked.. | M | A number field which is an industry standard. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding system. |
| 2 | System-wide critical notices. | General notices applicable to all shippers in a given area (may not be applicable 100% system-wide). Notices would include operational flow orders, force majeure notices, and notice of intent to impose curtailment, maintenance notices and other notices. These are not notices specific customers.. | M | Large text field. These general, system-wide notices back up the current practice of informing customers by phone and/or fax. |
| 3 | Type of notice | Indicator to identify type and urgency of notice. | M | Select one of the following codes for use in record to identify the type of notice.<br>*Description and Code*<br>1. Operational action (change in physical flow and/or scheduled flow) may be required by impacted customers. Code should be selected based on how much time the customer may have to respond.<br>a. Immediate response required—<br>b. Response required in twelve hours or less—OT<br>c. Response required in twenty-four hours or less—OD<br>2. "Critical Period" is in, or will be placed into, effect—CP<br>3. Maintenance on system or system segment is planned or is in process—SM<br>4. "Curtailment" situation exists or will be placed into effect—CS<br>5. "System or segment-wide" operational flow order has been, or is expected to be issued—OF<br>6. "Force Majeure" situation exists or will be placed into effect—FM |
| 4 | Effective dates—maintenance notices. | Start date information regarding maintenance notices. | M | A date field in a format that is machine-processable. |
| 5 | End date—maintenance notices. | End date information regarding maintenance information. | M | A date field in a format that is machine-processable. |
| 6 | Effective time—maintenance notices. | Start time regarding maintenance information | O | Text field. Effective time for start of maintenance in machine-processable format. |
| 7 | End time—maintenance notices. | End time regarding maintenance information | O | Effective time for end of maintenance in machine-processable format |
| 8 | Posted date | The date the information was posted | M | A date field in a format that is machine-processable. |
| 9 | Posted time | The time the information was posted | M | A time stamp that is machine-processable. |

[1] Status refers to the obligation to populate each data item and can be: M = mandatory field and should be populated by the reporting entity; O optional, filled at the discretion of the entity providing the data or if the data element is as applicable/available; C = conditional, to be filled pending on the condition in another data element in the data set, *e.g.*, if an indicator is (Y), then the field could be relevant and populated.

*Communication Protocols*

I. Electronic Data Interchange

A. Electronic Bulletin Board (EBB) operators must provide for file downloading of the standardized data sets using Electronic Data Interchange in accordance with American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12 standards and the implementation guide developed by Gas*Flow.

B. EBB operators must make the ASC X12 data sets available to any party, including a Value Added Network (VAN).

C. Access to the standardized data sets for EDI must be comparable to access provided for on-line EBB users.

D. EBB operators must provide EDI access to the standardized data sets at all hours, subject to reasonable downtime requirements for maintenance.

E. EBB operators must transmit data sets that are current as of the time of a customer's request for EDI download is processed.

F. EBB operators must provide for file downloading of the capacity data sets in the American Standard Code for Information Interchange (ASCII) in accordance with the documentation developed by Gas*Flow.

II. Communications Software and Hardware.

A. EBB operators must provide access to EBBs through a commercially available software package specified by the EBB operator or through a customized software package provided by the EBB operator at no cost.

B. EBB operators must support Consultative Committee for International Telephone and Telephony (CCITT) V.22 bis (Hayes 2400 baud modem speed), but may support others modem speeds. EBB operators supporting 9600 baud modem speeds must support CCITT V.32.

III. Access Requirements

A. EBB operators must permit access to commercially sensitive customer data by third parties when the EBB Operator has received advance authorization.

B. EBB operators must design their EBBs to handle their projected number of peak concurrent users.

C. EBB operators must provide easy and efficient access to the file transfer option(s) for the standardized data sets.

IV. Log-On Procedures

A. EBB operators must simplify or automate their procedures for logging-on to their computer to the maximum extent practicable, consistent with security requirements.

B. EBB operators must provide a log-on script that details its log-on procedures, which is compatible with the commercial software package specified by the EBB operator or the customized software package provided by the EBB operator.

C. EBB operators may place reasonable limits on EBB users' periods of inactivity during an EBB session, on individual session time, and on total daily connect time, but such limits will not apply when the user pays the costs for dedicated service.

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BILLING CODE 4717–01–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 914

## Indiana Permanent Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** OSM is announcing the receipt of a proposed program amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated July 2, 1993 (Administrative Record No. IND–1272), Indiana submitted proposed Program Amendment Number 93–5 containing modifications to the Indiana Administrative Code (IAC) rules at 310 IAC 12. The proposed program amendment pertains to definitions of terms used in the Indiana program. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

**DATES:** Written comments must be received on or before 4 p.m. on September 7, 1993. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on August 30, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 20, 1993.

**ADDRESSES:** Written comments and requests to testify at the hearing should be mailed or hand delivered to: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public meetings, and all written comments received in response to this document will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Telephone (317) 226–6166.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

### II. Discussion of Proposed Amendment

By letter dated July 2, 1993 (Administrative Record No. IND–1272), the Indiana Department of Natural Resources (IDNR) submitted proposed program amendment number 93–5. Program amendment 93–5 consists of proposed changes to the Indiana program definitions at 310 IAC 12.

The proposed amendments are summarized below.

*1. 310 IAC 12–0.5–6 Affected Area*

The proposed language provides that the affected area includes any of seven specified examples of "affected area." Prior to this change, the rule language used the term "each" rather than "any." The proposed change is intended to clarify that any of the specified examples alone or together with one or more of the listed examples is sufficient to be an affected area.

*2. 310 IAC 12–0.5–23 Coal Mine Waste*

The term "coal mine waste" is defined to mean coal processing waste and underground development waste.

*3. 310 IAC 12–0.5–53 Ground Cover*

The term "ground cover" is defined to mean the area of ground which is covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement. At least ninety-five percent (95%) of the species present must be species listed in the revegetation plan.

*4. 310 IAC 12–0.5–55 Half-shrub*

The term "half-shrub" is defined to mean a perennial plant with a woody base whose annually produced stems die each year.

*5. 310 IAC 12–0.5–64 Impounding Structure*

The term "impounding structure" is defined to mean a dam, embankment, or other structure used to impound water, slurry, or another liquid or semi-liquid material.

*6. 310 IAC 12–0.5–72 Litter*

The term "litter" is defined to mean the detached recognizable portions of the plants under evaluation that cover the ground surface.

*7. 310 IAC 12–0.5–104 Refetence Area*

The term "reference area" is defined to mean a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods. A reference area must be representative of geology, soil, slope, and vegetation in the permit area.

*8. 310 IAC 12–0.5–111 Shelter Belt*

Ther term "shelter belt" is defined to mean an area used for protection from wind or snow and which is subject to proof-of-productivity standards for fish and wildlife habitat.

*9. 310 IAC 12–0.5–116 Soil Productivity*

The term "soil productivity" means the capacity of a soil for producing a specified plant or sequence of plants under a physically defined set of management practices.

*10. 310 IAC 12–0.5–139 Valid Existing Rights*

(a) "Valid existing rights" means, for the purposes of 310 IAC 12–1–1, 310 IAC 12–2–1, and 310 IAC 12–2–5 the following:

(1) Except for haul roads: (A) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorized the applicant to conduct surface coal mining operations; and

(B) The person proposing to conduct surface coal mining operations on such lands:

(i) Had been validly issued or exercised good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct operations on those lands;

(ii) Can demonstrate to the director that the coal is both needed for and immediately adjecent to, an ongoing surface mining operation for which all permits were obtained prior to August 3, 1977; or

(iii) Can demonstrate that the operation was in existence or operation at the time an area became protected under IC 13–4.1–14–1 or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 13–4.1–14–1.

(2) For haul roads: (A) A recorded right-of-way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977;

(B) Any other road in existence as of August 3, 1977; or

(C) Any haul road that was in existence or operating at the time an area became protected under IC 13–4.1–14–1, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 13–4.1–14–1.

(b) The interpretation of the terms of a document used to establish a valid existing right is based upon the common law concerning the interpretation of documents conveying mineral rights. If there is no applicable common law, the interpretation is based upon the following:

(1) The usage and custom at the time and place where a document came into existence.

(2) A showing by the applicant that the parties to the document contemplated the right to conduct the same underground or surface activities for which the applicant claims a valid existing right.

(c) "Valid existing rights" does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a federal or state permit.

(d) If an area comes under the protection of IC 13–4.1–14–1 after August 3, 1977, valid existing rights are present if a validly authorized surface coal mining operation exists on that area on the date the protection comes into existence.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on August 20, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

*Public Meeting*

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM Indianapolis Field Office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in

advance at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

**Executive Order No. 12291**

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

**Executive Order 12778**

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

**National Environmental Policy Act**

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

**Paperwork Reduction Act**

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

**Regulatory Flexibility Act**

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 914**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1993.

**Carl C. Close,**

*Assistant Director, Eastern Support Center.*

[FR Doc. 93–18629 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–05–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 246

**[DoD Directive 5120.aa]**

### Stars and Stripes (S&S) Newspaper and Business Operations

**AGENCY:** American Forces Information Service, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule revises and supersedes portions of DoD Instruction 5120.4 concerning the Stars and Stripes newspapers and business operations. The proposed revisions are intended to promote efficiency and economy by updating procedures to meet changed circumstances, and to accommodate recommendations made by the General Accounting Office in a Congressionally-mandated examination of Stars and Stripes operations. The proposed rule is not expected to have an impact upon the general public.

**DATES:** Written comments on this proposed rule must be received on or before September 7, 1993.

**ADDRESSES:** Forward comments to the American Forces Information Service, Plans & Policy Office, 601 North Fairfax Street (EFC Plaza), Alexandria, VA 22314.

**FOR FURTHER INFORMATION CONTACT:** Richard Oleszewski, (703) 274–4868.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291, "Federal Regulation"**

The Special Assistant to the Secretary of Defense (Public Affairs), has determined that 32 CFR part 246 is not a major rule. The rule does not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

**Public Law 96–354, "Regulatory Flexibility Act"**

The Special Assistant to the Secretary of Defense (Public Affairs), has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601). This rule is a revision of an existing instruction that establishes policy, assigns responsibilities and prescribes procedures within the Department of Defense with regard to the activities of the Stars and Stripes' newspapers and business operations. Its primary effect will be to promote efficiency and economy in the Stars and Stripes organizations. The rule will have minimal, if any, effect upon small businesses.

**Public Law 96–511, "Paperwork Reduction Act"**

The Special Assistant to the Secretary of Defense (Public Affairs), has certified that 32 CFR part 246 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

**List of Subjects in 32 CFR Part 246**

Government publications, Newspapers and magazines.

Accordingly, title 32, subchapter M, is proposed to be amended to add part 246 to read as follows:

## PART 246—STARS AND STRIPES (S&S) NEWSPAPER AND BUSINESS OPERATIONS

Sec.

246.1 Purpose.
246.2 Applicability.
246.3 Definitions.
246.4 Policy.
246.5 Responsibilities.
246.6 Procedures.
246.7 Information requirements.
Appendix A to part 246—Mission.

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Appendix B to part 246—Business and Financial Operations.
Appendix C to part 246—Personnel Policies, and Procedures.
Appendix D to part 246—Editorial Operations.
Appendix E to part 246—Stars and Stripes (S&S) Board of Directors.

Authority: 10 U.S.C. 136.

**§ 246.1 Purpose.**

This part:

(a) Establishes policy, assigns responsibilities, and prescribes procedures for the S&S organizations owned by designated Unified Commands consistent with 32 CFR part 372.

(b) Supersedes policies and procedures in 32 CFR part 247 about the S&S newspapers.

(c) Authorizes the establishment, management, operation, and oversight of the Stars and Stripes, including the resale of commercial publications necessary to support the overall S&S mission, production, distribution authority, and business operations as mission-essential activities of the Department of Defense and the designated Unified Commands.

(d) Designates the Secretary of the Army as the DoD Executive Agent for providing administrative and logistical support to the American Forces Information Service (AFIS), designated Unified Commands, and the S&S.

(e) Authorizes the Commander in Chief, U.S. European Command, and the Commander in Chief (CINC), U.S. Pacific Command, to establish and maintain a S&S board of directors to address S&S business operations in their Unified Commands.

**§ 246.2 Applicability.**

This part applies to the Office of the Secretary of Defense, the Military Departments (including their National Guard and Reserve components), the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "the Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

**§ 246.3 Definitions.**

(a) *Adverse conditions.* Conditions that may adversely affect the survival of the newspapers such as troop drawdown, increase in troop population, currency fluctuations, inflation, armed conflict, national contingency deployment, and others.

(b) *S&S Commander/publisher.* The senior position in each S&S responsible for simultaneously performing dual functions. This military officer commands the S&S to which assigned, while also serving as the publisher of the Stars and Stripes produced by that organization.

(c) *S&S Management Action Group (MAG) and S&S Steering Committee.* These are ad hoc joint committees between the Office of the Assistant Secretary of Defense (Public Affairs) [OASD(PA)] and the Office of the Assistant Secretary of Defense (Force Management and Personnel) [OASD (FM&P)] that address S&S personnel and business policies. The S&S MAG is chaired by the senior OASD (PA) AFIS member and includes members from the OASD (FM&P) and other DoD offices with the authority and expertise to address various S&S problems. The Director of the AFIS, and the Deputy Assistant Secretary, OASD(FM&P), served as co-chairmen of the S&S Steering Committee that addresses DoD-level S&S issues. Neither the DoD S&S Steering Committee, nor the S&S MAG, involve themselves in Stars and Stripes editorial policies.

(d) *S&S ombudsman.* A highly qualified journalist hired from outside the Department of Defense for a term of 3 years who independently advises the Unified Command CINCs, the S&S commander/publisher, the Stars and Stripes editor, the Director of the AFIS, and the Congress on matters of readership interest in the Stars and Stripes.

(e) *Stars and Stripes.* The title of one, or both, depending on the context of usage, of the newspapers produced by the S&S.

(f) *Stars and Stripes Editor.* The senior civilian position on the newspaper editorial staff of the S&S to which he or she is assigned. All mention of "the editor" in this part refers exclusively to this position, unless otherwise specified.

(g) *Stars and Stripes (S&S).* The organizations that perform the administrative, editorial, and business operations, which include newspapers, bookstores, job-printing plants, etc. necessary to do their mission.

**§ 246.4 Policy.**

It is DoD policy that:

(a) The U.S. European Command and the U.S. Pacific Command are authorized to publish the Stars and Stripes and provide support to the S&S. The Unified Command component commanders and their public affairs staffs shall provide the Stars and Stripes editorial staffs the same help provided to commercial newspapers, in compliance with the principles governing the release of information to media in 32 CFR part 375.

(b) Editorial policies and practices of the Stars and Stripes shall be in accordance with journalistic standards governing U.S. daily commercial newspapers of the highest quality, with emphasis on matters of interest to the Stars and Stripes readership. Except as provided in paragraph (e) of this section, the DoD policy for the Stars and Stripes is that there shall be a free flow of news and information to its readership without news management or censorship. The calculated withholding of unfavorable news is prohibited.

(c) The S&S are basically self-sustaining operations. Each S&S shall be administered in accordance with DoD Directive 1015.1[1] as a joint Service nonappropriated fund (NAF) instrumentality (NAFI) in its Unified Command, except where different procedures are specified in this part. Funding shall be provided through newspaper sales, resale of commercial publications, authorized advertising, job printing, and appropriated fund (APF) support as authorized by this part, DoD Directive 1015.6[2] and DoD Instruction 1330.18.[3] The S&S shall conduct bookstore operations similar to business operations of commercial bookstores in the United States. The Stars and Stripes and the S&S bookstores provide important news and information to U.S. personnel and their families stationed overseas while generating NAF revenues.

(d) The Stars and Stripes personnel procedures shall differ from commercial newspapers only because the S&S are U.S. Government organizations that are required to operate in accordance with the following:

(1) 32 CFR part 40, other Federal laws and DoD Directives that affect all DoD employees, and the Manual for Courts Martial (MCM), 1984,[4] for S&S military personnel on active duty.

(2) National security constraints prescribed by E.O. 12356 (47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166).

(3) Overseas status of forces agreements (SOFAs), where applicable.

(e)(1) The only circumstances under which news or information that is not in the public domain may be directed to be withheld from publication in the

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 246.4(c).

[3] See footnote 1 to § 246.4(c).

[4] See footnote 1 to § 246.4(c).

Stars and Stripes by a Unified Command CINC are when such publication:

(i) Involves disclosure of classified national security information.

(ii) Would adversely affect national security.

(iii) Clearly endangers the lives of U.S. personnel.

(2) Those circumstances in paragraphs (e)(1) (i) through (iii) may not be construed to permit the calculated withholding of news unfavorable to the Department of Defense, the Military Services, or the U.S. Government. Only the Unified Command CINC may authorize withholding of news or information from the Stars and Stripes. When the CINC directs withholding of publication, the Unified Command shall immediately inform the ASD(PA) by telephone and then forward an immediate precedence, appropriately classified, message to the following: SECDEF Washington DC/OASD–PA, with information copies to the Director, AFIS, and the Special Assistant for Public Affairs to the Chairman of the Joint Chiefs of Staff. The CINC may include the appropriate "AMEMBASSY" as an information addressee.

(f) Sensitivities of host nations shall not be a reason to withhold any story from publication in the Stars and Stripes. The Unified Command theater host-nation sensitivity lists prepared for the armed forces Radio and Television Service (AFRTS) shall not be used to restrict the content of the Stars and Stripes. If representatives of other governments show an interest in, or concern about, the content of the Stars and Stripes, they shall be informed that:

(1) The Stars and Stripes does not represent the official position of the U.S. Government, including the Department of Defense or the Unified Command.

(2) The Stars and Stripes is an unofficial, abstracted collection of commercial news and opinion available to commercial newspapers in the United States, along with Stars and Stripes editorial staff-generated DoD, command, and local news and information. The Stars and Stripes provides this information to the members of the Department of Defense and their family members serving overseas, as do commercial daily newspapers that are published and sold throughout the United States in keeping with the principles of the First Amendment to the U.S. Constitution.

(g) The Department of the Army shall be the DoD Executive Agency to provide APF and NAF support to the S&S. APFs shall be provided, when required by adverse conditions or special circumstances as defined in § 246.3, by the Military Services, as agreed on through a memorandum of understanding (MOA) detailing the shared responsibilities, and approved by the OSD and the Unified Commands.

### § 246.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Public Affairs)*, under 32 CFR part 375, as the principal staff assistant to the Secretary of Defense for internal information policy and programs, including S&S matters, shall:

(1) Provide policy and broad operational guidance to the Director of the AFIS.

(2) Monitor and evaluate the overall effectiveness of the policies in § 246.6, and procedures in § 246.6.

(b) The *Director, American Forces Information Service*, under 32 CFR part 372 shall:

(1) Develop, issue, and oversee the implementation of policies and procedures for the Unified Commands and the Military Departments for the operation of the S&S.

(2) Provide business and policy counsel on the mission performance and financial operations of the S&S.

(3) Serve as the DoD point of contact with the Congressional Joint Committee on Printing (JCP) for S&S matters.

(4) In coordination with the Chairman of the Joint Chiefs of Staff and the ASD(PA), provide broad and overall planning guidelines to the Unified Commands for S&S wartime operations that involve more than one area of responsibilities.

(5) Chair, as required, at the Deputy Assistant Secretary of Defense level, or above, the steering committee providing guidance to the S&S MAG.

(6) Select and employ the S&S Ombudsman.

(c) The *Secretaries of the Military Departments* shall:

(1) Nominate the most highly-qualified military personnel for positions in the S&S in accordance with appendix C to this part.

(2) Enter into appropriate MOAs, as approved by the Unified Commands and, as required by the Office of the Secretary of Defense (OSD), to provide APF and/or NAF support when required by adverse conditions as defined in § 246.3(a).

(d) The *Secretary of the Army* shall:

(1) Provide administrative and logistic support, as the DoD Executive agent, to the S&S organizations.

(2) Support NAF and APF accounting and reporting procedures required by DoD Instruction 7000.12,[5] in coordination with the Unified Commands and the Director of the AFIS

(3) Designate the successor-in-interest to the S&S, as agreed upon by the applicable Unified Command and the Director of the AFIS.

(e) The *Commander in Chief, U.S. European Command*, and the *Commander in Chief, U.S Pacific Command*, shall:

(1) Authorize a Stars and Stripes newspaper, provide operational direction to the S&S commander/publisher, and support the S&S throughout the Unified Command area of responsibility, consistent with each organization's status as a category B NAFI.

(2) Provide Unified Command regulations and guidance, as needed, to carry out this part.

(3) Establish procedures to resolve situations wherein a U.S. Ambassador (or, if so designated, the chief of mission) believes a specific issue in his or her nation of responsibility, not already in the public domain through other news sources, would violate national security or endanger the safety of American citizens, or other persons under their jurisdiction, if it were to be published in the Stars and Stripes.

(4) Select the S&S commander/publisher and other military officers in S&S positions.

(5) Aid the S&S commander/publisher to educate the Stars and Stripes editorial staff about the missions of the Unified Command and Military Service component commands.

(6) Approve the selection of the Stars and Stripes editor.

(7) Establish and maintain a S&S board of directors to address S&S business operations. (See appendix E to this part)

(8) Establish and maintain Stars and Stripes readership forums, which may take many forms, to address Stars and Stripes matters of interest and S&S bookstore operations. Those forums are to provide community feedback to the S&S. This will enable the S&S commander/publisher and the Stars and Stripes editor to better understand and, thereby, better serve the interests and needs of the readers and bookstore customers.

(9) At the discretion of the Unified Command CINC, provide for meetings between the S&S commander/publisher and the Stars and Stripes editor, the Unified Command public affairs office, and the Unified Command component commands, represented by their directors of public affairs, to discuss the performance of the Stars and Stripes and the performance of related public affairs operations. The Unified

[5] See footnote 1 to § 246.4(c).

Commands, their component commands, and the S&S may invite any attendees they choose. Representatives from the AFIS may attend. These meetings may not serve as editorial advisory boards. The Unified Command and component commands represent the principal source, and a prominent subject, of Stars and Stripes staff-generated news coverage. Consequently, any involvement or appearance of involvement by component command staff in the Stars and Stripes editorial policy creates an unacceptable conflict of interest damaging to the editorial integrity and credibility of the Stars and Stripes.

(10) Ensure that the S&S Commander/Publisher:

(i) Assumes the duties and responsibilities of command, leadership, management, and training for the S&S.

(ii) Executes DoD and Unified Command policy.

(iii) Is responsible to the Unified Command CINC for S&S operations to include the newspaper publication and timely circulation, the operation of the S&S resale and job printing activities, and associated distribution systems in the relevant Unified Command area of responsibility.

(iv) Provides planning and execution of initiatives to ensure support of U.S. Armed Forces during contingency operations and armed conflict. The S&S commander/publisher shall identify wartime and contingency S&S personnel asset requirements to the Unified Command CINC to fulfill the Unified Command force responsibilities during armed conflict.

(v) Selects the Stars and Stripes editor.

(vi) Approves, in coordination with the Stars and Stripes editor, military personnel selectees for the Stars and Stripes editorial staff. (See appendix C to this part)

(vii) Provides a current status briefing and 2-year financial forecast to the Director of the AFIS at the annual AFIS S&S meeting. Provides support to the S&S board of directors as required in appendix E to this part.

(viii) Conducts frequent independent readership surveys, in accordance with DoD Instruction 1100.13[6], and readership focus groups to gather information.

(f) The *Other Unified Commanders in Chief* shall ensure that their deployment exercise, contingency, and war time planning documents reflect the S&S transportation, funding or reimbursement and in-theater distribution requirements, as applicable. Information copies of such planning documents or annexes shall be furnished to the following:

(1) U.S. European Command (ATTN: Director, Public Affairs).

(2) U.S. Pacific Command (ATTN: Director, Public Affairs).

(3) The AFIS (ATTN: Assistant Director for Plans and Policy).

**§ 246.6 Procedures.**

(a) *General.*

(1) Authority to establish or disestablish S&S operations is from the Secretary of Defense through the ASD(PA) and the Director of the AFIS. The Unified Commands shall forward such requests to the Director of the AFIS, as required.

(2) Classified information shall be protected in accordance with 32 CFR parts 159 and 159a.

(3) The Stars and Stripes and the S&S business operations shall conform to applicable regulations and laws involving libel, copyright, U.S. Government printing and postal regulations, and DoD personnel policies and procedures.

(4) With the concurrence of the Unified Command, the S&S is authorized direct communication with the Military Services on S&S personnel matters and with the Department of the Army on S&S financial matters. The S&S shall keep the Unified Command and the AFIS informed of all actions.

(b) *Management review and evaluation.*

(1) The Director of the AFIS provides business counsel, assistance, and policy oversight for the S&S. The Director of the AFIS shall meet annually with the Unified Command representatives, to include the S&S commander/publisher, and senior DoD officials who have S&S responsibilities, such as the S&S MAG.

(2) The Director of the AFIS shall be assisted by a S&S MAG composed of senior representatives from the AFIS, the OASD(FM&P), and the other DoD offices with the authority and expertise to aid in solving S&S problems. As needed, the Director of the AFIS may organize a DoD steering committee to oversee and aid the S&S MAG to address specific concerns identified by the Director of the AFIS and the Unified Command CINCs.

(3) In accordance with DoD Instruction 7600.6,[7] and Army implementation thereof, the S&S shall be audited on an annual basis, either by the Army Audit Agency (AAA) or by an AAA-approved audit contractor. NAF funds of the S&S shall be used for such contracts. The audits will be performance audits and may be financial in nature as prescribed by the Comptroller General of the United States Government Auditing Standards. Each annual audit will determine whether prior audit recommendations have been implemented and the reasons any have not been implemented. When the Inspector General, DoD, elects to perform an audit of the S&S organization, such audit may substitute for the required annual audit. The S&S organizations shall coordinate their audit requirements with each other and the Army Community and Family Support Center to the maximum extent practicable to avoid duplication of costs and to increase the efficiency and effectiveness of these audits. Information copies of the audit contractor reports shall be forwarded by the S&S to the Unified Commands, AFIS and the AAA. The S&S shall provide a response to the audit to the Unified Command CINC within 60 days of receiving the completed report. The S&S response to the audit must indicate a concurrence or nonconcurrence for each finding and recommendation. For each concurrence the corrective actions taken or planned should be described and completion dates for actions already taken, as well as the estimated dates for completion of planned actions, should be provided. For each nonconcurrence, specific reasons must be stated. If appropriate, alternative methods for accomplishing desired improvements may be proposed. If nonconcurrences in the findings and recommendations cannot be resolved between the S&S management and the auditors or AAA endorses the contractors' findings and recommendations, then the resolution procedures established by DoD Directive 7650.3,[8] and Army Regulations should be followed. The Unified Command shall forward the response to the Director of the AFIS and the AAA.

**§ 246.7 Information requirements.**

The reporting requirements in § 246.6, and appendix B to this part shall be submitted in accordance with DoD Instruction 7000.12, and 7600.6, unless specifically excepted by this part.

**Appendix A to Part 246—Mission**

*A. General*

The Stars and Stripes (S&S) organizations shall contribute to the overall U.S. joint-defense mission overseas by providing news and information for the Armed Forces internal audiences serving in a Unified Command area of responsibility, or deployed in support of designated joint-Service

[6] See footnote 1 to § 246.4(c).

[7] See footnote 1 to § 246.4(c).

[8] See footnote 1 to § 246.4(c).

exercises, contingency operations, or situations of armed conflict. That shall be done through the operation of a daily newspaper and resale activities of commercial publications (primarily through the S&S bookstores).

*B. Newspapers*

The Stars and Stripes coverage of news and information makes possible the continued exercise of the responsibilities of citizenship by DoD personnel and their families overseas. The Stars and Stripes are to be published overseas during peacetime, contingency operations, and armed conflicts. They shall provide the same range of international, national, and regional news and opinion from commercial sources, as is provided by newspapers in the United States. Additionally, to better serve their readers, the Stars and Stripes shall pay special attention to news of local, host-country conditions relevant to their audiences. They shall provide, through their reporters and bureaus, news of local military communities within the theater and news of the U.S. Government, the Department of Defense, the Military Services, and theater operations not usually available to readers from outside commercial sources. The Stars and Stripes are to serve the interests of their overseas DoD readership as do prominent commercial daily newspapers through the United States.

*C. S&S Bookstores and Retail Operations*

The S&S shall serve readers' needs for contemporary news and information by providing a broad selection of resale commercial publications of interest to their customers at the most reasonable prices, either directly in the S&S bookstores or through other authorized sales outlets at their discretion throughout the Unified Command designated geographic area. The S&S shall have the same authorities and rights for resale commercial publications that the military exchange services have for other nonsubsistence goods and services.

*D. S&S Job Shop Printing*

The S&S are authorized to operate job shop printing to include book publishing and/or printing, within the Unified Commands for U.S. military community newspapers, military organizations, nonappropriated fund (NAF) instrumentalities (NAFI), Morale, Welfare, and Recreation (MWR) activities, private organizations of interest and concern to the Department of Defense, as designated by 32 CFR part 212, DoD employees and their immediate families, and others designated by the Unified Command.

*E. War-Time Mission and Contingency Operations*

The S&S shall provide the Stars and Stripes on a daily basis for transportation to, and distribution in, the designated area of operations, as requested and funded by the responsible Unified Command Commander-in-Chief (CINC), and supported by the respective Unified Command owning the S&S organization. The Unified Command shall plan for required airlift on a timely basis and intratheater distribution of daily Stars and Stripes shall be the responsibility of the supported Unified Command CINC and respective component commands, who shall reimburse the S&S for nonresale issues on a per issue basis. When deployed to an area of operations, the Stars and Stripes reporters shall operate in the same manner as commercial media representatives. The deployed Stars and Stripes reporters shall be eligible for participation in DoD and command-sponsored regional and local media pools.

## Appendix B to Part 246—Business and Financial Operations

*A. General Financial Operations*

1. For financial management purposes, the Unified Command shall administer the Stars and Stripes (S&S), with policy oversight exercised by the Director of the American Forces Information Service (AFIS), as nonappropriated fund instrumentalities (NAFIs) in accordance with § 246.4(c), except where procedures differ as defined in this part. The S&S shall report as prescribed in DoD Instruction 7000.12,[1] providing information copies to the Unified Commands and the Director of the AFIS.

a. The S&S shall be authorized nonappropriated fund (NAF) and appropriated fund (APF) support as category B NAFIs as provided under DoD Instruction 1015.6.[2]

b. The S&S shall be funded to the maximum extent possible through the sale and distribution of the newspaper, news magazines, books, periodicals, and similar products; job printing; authorized advertising revenues; and other authorized sources of revenues, as approved by the Department of Defense and the Congress.

c. APF support shall be kept to a minimum, consistent with the S&S mission.

2. The Secretary of the Army shall be the DoD Executive Agent for APF and NAF support to the S&S. If adverse conditions occur, the other Military Services shall provide proportionate funding support through a memorandum of agreement (MOA) containing funding procedures coordinated with the affected Unified Commands and the AFIS. Copies of the agreement shall be provided to all concerned parties.

3. The Stars and Stripes and other S&S commercial resale publications may be made available within the Unified Command to other U.S. Government Agency members, and U.S. Government contractors, as approved by the Unified Command.

4. The S&S system of accounting and internal control shall conform with the requirements of DoD Instruction 7000.12, Army regulations on Morale, Welfare and Recreation (MWR) activities and NAFIs, and NAF accounting policies and procedures, except as authorized by the S&S Comptroller's Manual to meet business and consolidation requirements. The S&S shall ensure that quarterly reports are furnished to the Unified Commands, the S&S Board of Directors, and the Director of the AFIS.

*B. Appropriated Funds*

In addition to DoD Directive 1015.6, the S&S shall be authorized APF support:

1. As provided by the U.S. Army for direct funding support when adverse conditions make such funding necessary to ensure the survival of the newspaper without impairment of mission capability. The Secretary of the Army shall provide such funding when requested by the affected Unified Command Commander-in-Chief (CINC), through the Director of the AFIS.

2. For regional air transportation of the newspaper, overseas "transportation of things" as authorized to joint-Service NAFIs; and electronic, optical, or satellite transmission to the newspaper when long distances require these modes to ensure timely and economical delivery.

3. As required, to transport Stars and Stripes to officially designated "remote and isolated" locations. The Unified Command may authorize DoD official postage to remote and isolated locations, if that action is required to ensure timely delivery. Each S&S shall annually review its mailing support to minimize APF expenditures. The U.S. postal regulations apply to the S&S.

a. The S&S shall use in-house or other non-postal means of transportation to distribute the newspaper to areas that are not designated as remote and isolated.

b. The S&S are authorized to use official managerial and administrative mail related exclusively to the business of the U.S. Government in accordance with DoD 4525.6–M,[3] Chapter 3, Subsection O.6. Such official mail is also authorized to support archive responsibilities in the United States, as designated by the AFIS. Official mail may forward the Stars and Stripes through the Department of Defense to the Congress. Official mail is not authorized to provide the Stars and Stripes to general readership or to support in-theater distribution of S&S resale commercial publications.

4. For transportation of military personnel incident to mission-essential travel, required military training, participation in contingency operations, in military field exercises, such as "Reforger" or "Team Spirit," or to areas of armed conflict.

5. In times of armed conflict or national contingency deployment, as directed by the Chairman of the Joint Chiefs of Staff for production and free distribution of the Stars and Stripes to forces as designated. The other Military Services shall reimburse the Department of the Army for services as authorized in the MOA. The Unified Commands shall endeavor to provide the Stars and Stripes and other S&S services for DoD personnel engaged in military operations, contingency operations, and exercises in the most expeditious manner possible as requested by the participating commands. The requesting Unified Command shall be responsible for distribution of the Stars and Stripes within its theater of operations. These services shall be provided on a reimbursable basis to the S&S.

6. In other agreements as made with the Unified Commands, the Department of

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to A.1. of this Appendix.

[3] See footnote 1 to A.1. of this Appendix.

Defense, and the U.S. Army as the DoD Executive Agency.

*C. Nonappropriated Funds*

1. So that the Department of the Army may perform its duties as the DoD Executive Agency, the S&S NAFs shall be invested in the Army's Banking and Investment Program and insured with the Army's Risk Management Insurance Program in accordance with DoD Instruction 7000.12 and the implementing Army regulations.

2. Excess NAFs belonging to the S&S may be declared excess by the Unified Command CINC, upon the recommendation of the S&S board of directors, under the guidelines in section C.3. of this Appendix. Disposition of excess NAFs shall be as directed by the Unified Command CINC. The S&S NAFs declared in excess in one theater may be allocated or loaned to the other Unified Command for S&S-related activities.

3. The NAFs may be declared in excess only if the following conditions are met:

a. The S&S working capital is at a level to continue prudent operations.

b. The local national S&S employee retirement and severance accounts are fully funded. The other S&S employment agreements required by applicable NAF regulations must also be fully funded.

c. Sufficient capital is available from an investment and/or contingency fund to complete all planned and projected capital expenditure projects, and to fulfill the other legitimate S&S business obligations.

d. Additional sinking funds are available to sustain the S&S through foreseeable periods of financial crisis created by adverse conditions. The sinking fund level shall be determined by the S&S board of directors and recommended to the Unified Command CINC for approval.

e. The retail price of the Stars and Stripes is at, or below, the most prevalent charge for similar U.S. newspapers. That shall be determined by the S&S board of directors and recommended to the Unified Command CINC for approval. The Director of the AFIS will be informed of any decision to raise the retail sales price of Stars and Stripes and will provide the Unified Command CINC an assessment of average commercial newspaper sales prices throughout the United States. The availability of the Stars and Stripes at reasonable cost to overseas personnel, commensurate with the retail sales price of comparable commercial newspapers throughout the United States, is a major quality-of-life consideration. A reasonable retail sales price is critical to ensure the greatest access for all overseas personnel and their family members to current print news and information so that they may remain informed U.S. citizens.

f. The S&S books, periodicals, magazines, and similar products are to be sold at no more than cover price and should be discounted to an appropriate level that still sustains full S&S operations, as determined by the S&S board of directors and recommended to the Unified Command CINC for approval.

4. Under adverse conditions, the S&S commander/publisher may apply for NAF support through the Unified Commands to the Director of the AFIS. Following approval by the Unified Command, the Director of the AFIS shall forward the request to the Secretary of the Army for appropriate action. Such NAF requests must first be recommended by the S&S board of directors and approved by the Unified Command CINC. In these cases, the S&S NAFs in either Unified Command may be considered as the first source before forwarding a request to the Department of the Army. The Unified Commands may lend NAFs from one S&S to the other through an MOA.

*D. Bookstores and Related Resale Activities*

1. The S&S shall endeavor to provide the same selection of resale commercial publications that would be available in quality bookstores in the United States through its bookstores, or, at the discretion of the S&S management, other authorized sales outlets. The S&S has the same authorities and rights for resale and distribution of commercial publications that the military exchange services have on military installations for other nonsubsistence goods and services. The assortment of commercial books, periodicals, magazines, and similar products shall approximate publications commercially available in United States bookstore chains of similar size. Decisions on which publications to include shall be made by the S&S on the basis of marketability and service, not content. As an exception to the Army NAF procurement regulations, contracting authority limitations applicable to U.S. Army and joint-Service NAFIs do not apply to the S&S procurement of resale commercial publications. Limitations will be as recommended by the S&S board of directors and approved by the Unified Command.

2. The Unified Command CINC shall adjudicate publications resale issues within the theater that cannot be resolved by the S&S at the operating level.

3. Both S&S shall consolidate their wholesale purchases of commercial publications to the maximum extent, consistent with Unified Command distribution criteria, actual economies of scale, and cost-efficiencies. Consolidation initiatives shall be worked in concert with the Unified Commands, the AFIS, and the S&S board of directors. As recommended by the S&S board of directors and approved by the Unified Command CINC, the S&S bookstores shall offer discounts similar to commercial United States bookstore franchises. The offering of discounts should not endanger the financial viability of the S&S.

4. The S&S bookstores shall be audited by the S&S management at least annually. Where bookstores are operating at a consistent financial loss, the S&S may consider servicing readers through arrangements with exchanges, other military outlets, or consider consolidation at central points.

a. Bookstore inventory levels shall be verified internally on a semiannual basis. Inventory levels shall be held to cost-effective levels that still consider the servicing needs of overseas customers.

b. The S&S shall establish affidavit-return procedures to vendors and/or publishers, where possible, to return damaged merchandise, overstock, or out-of-date publications to reduce APF expenditures necessary for "over-the-water" transportation.

5. The S&S shall conduct local "market-penetration" surveys. The S&S shall also operate a "customer-complaint" feedback system to monitor its service and provide the best possible service to its customers. The results of those surveys shall be provided to the Unified Command with recommendations to the S&S board of directors, as required.

*E. Advertising*

1. As U.S. Government publications, the Stars and Stripes operate under the authority of the "Government Printing & Binding Regulations"[4] issued by the Joint Committee on Printing (JCP) of the U.S. Congress. To serve the readership, the JCP has granted an exemption to Title III of the "Government Printing and Binding Regulations", authorizing the Stars and Stripes to carry limited advertising so that they may provide information to overseas DoD personnel and their families on commercial goods and services. The Stars and Stripes are authorized to solicit, sell, publish, and circulate display advertising, paid classified ads, and supplement section advertising, to include price and brand names of products or services and related coupons that are available through authorized Government outlets, their concessionaires, NAF activities, or private organizations operating on DoD installations under 32 CFR part 212. The Stars and Stripes may have run-of-the-paper display advertising not to exceed 25 percent of the newspaper over a period of 1 month. In addition, the Stars and Stripes are authorized to sell, publish, and circulate display advertising, and supplement section advertising for consumer goods and services not available through authorized Government outlets, their concessionaires, NAF activities or private organizations operating on DoD installations under 32 CFR part 212 when sponsored by MWR activities, NAFIs, or Type I (Federally Sanctioned) private organizations as defined by 32 CFR part 212. Implementation of the advertising authority shall be as specified by the Director of the AFIS, who shall coordinate with the JCP.

2. The Stars and Stripes may sell, through commercial advertising agencies, run-of-the-paper advertising of DoD recruiting and retention programs or activities.

3. The S&S has the right to refuse any advertising.

4. The Stars and Stripes may publish news stories on special DoD-affiliated tours or entertainment opportunities for DoD personnel and their dependents in accordance with DoD Instructions 1015.2[5] and 1330.13.[6]

5. The S&S may promote the Stars and Stripes, books, periodicals, magazines and similar products; authorized advertising; and

[4] Copies may be obtained from the Joint Committee on Printing of the U.S. Congress. [illegible] Hart Senate Office Building, Washington, DC 20510

[5] See footnote 1 to A.1. of this Appendix.

[6] See footnote 1 to A.1. of this Appendix.

[7] See foot

job printing services (except APF) in the Stars and Stripes. Books, periodicals, magazines, and similar product promotions may include publications by name, title, author, and price. The Stars and Stripes also may promote literacy, health, safety, and other community service issues.

8. The S&S may promote AFRTS schedules, programs, and services in their newspapers and bookstores. The S&S shall cooperate with AFRTS outlets to promote each others' programs and services as authorized by DoD Directive 5120.20.[7]

7. As a newspaper operated by the Department of Defense, the Stars and Stripes may not:

a. Contain any material that implies that the DoD Components or their subordinate levels endorse or favor a specific commercial and/or individually-owned product, commodity, or service.

b. Subscribe, even at no cost, to a commercial, feature wire, or other service whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

c. Carry any advertisement that implies discrimination as to race, age, origin, gender, politics, religion, or physical characteristics that include health.

*F. Trademark*

The S&S shall trademark the Stars and Stripes in overseas areas where it is distributed.

## Appendix C to Part 248—Personnel Policies and Procedures

*A. General Nonappropriated Fund (NAF) Employment Policies*

1. The Stars and Stripes (S&S) shall have a personnel system that is business oriented in terms of personnel management concepts. The system shall provide maximum authority and accountability to the S&S managers at all levels and shall endeavor to improve productivity through a system of awards and bonuses for high-performing employees. The S&S NAF employees shall be governed in accordance with the U.S. Army NAF regulations, except where exceptions to general policy have been granted by the Unified Commands, the American Forces Information Service (AFIS), and the U.S. Army to the S&S.

2. As DoD employees, the S&S civilian personnel shall abide by 32 CFR part 40, the Department of Defense, the Unified Command, and the U.S. Army regulations, U.S. laws governing Government employees, the applicable host-nation laws, and the applicable status of forces agreements (SOFA) requirements. The S&S commander/publisher shall ensure that the S&S employees are made aware of those provisions before being hired and that employees receive adequate personnel training.

3. The S&S shall endeavor to recruit civilian personnel with solid experience, education, and performance credentials in the required business, publishing, or editorial disciplines. The S&S, as part of its hiring practices, shall specify terms of Government employment and include responsibilities, such as those in 32 CFR part 40, so that the S&S civilian employees are fully aware of their obligations as DoD employees.

*B. Appropriated Fund (APF) Personnel Assignment Authority*

Appropriated-funded manpower staffing to operate, manage, or support the S&S is authorized under DoD Directive 1015.4[8]

*C. Military Officer Personnel Procedures*

1. Candidates for the S&S military officer positions shall be nominated by the Military Services, through the Director of the AFIS, to the Unified Command Commander-in-Chief (CINC), who shall make the final selection. The S&S military officer positions consider for nomination shall be the S&S commander/publisher and deputy commander(s).

a. The S&S commander/publisher should have military public affairs and joint-Service experience, and a journalism degree.

b. The S&S officers supervising business operations should have experience in DoD Comptroller functions and be familiar with laws and regulations applicable to DoD and NAFI business operations. A master's degree in business administration is desirable, but not mandatory.

c. Instead of an advanced degree or military public affairs experience, nominees may be authorized, by the Unified Command CINC and the AFIS, to substitute a DoD-funded "training-with-industry" program with comparable newspaper operations in the United States.

d. The Unified Commands shall forecast military vacancies in the S&S to allow time for the Military Services' nomination processes to be completed and provide for education before the S&S assignment.

a. The Military Services shall provide highly qualified officers for all S&S assignments at the required grade levels.

2. Military officers selected for duty as S&S commander/publisher shall undergo a "training-with-industry" program to provide real-world training with a commercial newspaper. That program shall be administered by the Director of the AFIS, in coordination with the Military Services and the Unified Commands.

*D. Enlisted Members of the Stars and Stripes Editorial Staff*

1. Enlisted military personnel shall be assigned to the Stars and Stripes editorial staff, as reflected in the designated Unified Command Joint Manpower Program (JMP) documents, on a nominative basis. The Military Services shall nominate the most mature and professional personnel for assignment to the Stars and Stripes editorial staff at the required JMP grade- and experience-level, coordinating with the Unified Commands and the Director of the AFIS. Nominations shall be considered on a competitive basis by the S&S commander/publisher and the Stars and Stripes editor. The S&S shall request nominations 18 months before projected billet vacancies. The Military Services shall forward nominations 6–10 months in advance to the S&S, (ATTN: S&S Commander/Publisher). The Military Services shall provide the S&S with reasonable overlap of military enlisted members serving on the Stars and Stripes editorial staff.

2. The S&S commander/publisher shall coordinate with the Unified Commands to ensure that there is an appropriate mixture of Military Service billets and/or assignments represented in the S&S to preserve the tradition of the Stars and Stripes as joint-Service newspapers.

## Appendix D to Part 248—Editorial Operations

*A. General*

1. The Stars and Stripes shall serve the interests of their overseas DoD readership, as commercial daily newspapers serve their readers throughout the United States. However, as a Government organization, the Stars and Stripes news staff may not take an independent editorial position. The Stars and Stripes editorial practices and policies shall be in accordance with the highest standards of American journalism.

2. The Stars and Stripes editor, with the concurrence of the S&S commander/publisher, and the Unified Command Commander-in-Chief (CINC), as the owner of the newspaper, may establish a standard code of personal and professional ethics and general editorial principles similar to those developed at major metropolitan newspapers or by professional journalists in organizations such as the Society of Professional Journalists. Those codes usually stress the following:

a. Responsibility of the newspaper to fully inform its readership.

b. Freedom of the press.

c. Commitment to personal and professional ethics.

d. Emphasis on content accuracy, objectivity, and fair representation of all sides of an issue.

When developed, copies of the code and style guides shall be provided to the Unified Command CINC and the Director of the American Forces Information Service (AFIS).

3. The Stars and Stripes editor shall be responsible for developing editorial procedures and, if required, a style guide that mirrors daily U.S. commercial newspapers.

4. The editorial content of the Stars and Stripes shall be governed by the general principles applicable to quality commercial press as follows:

a. Presentation of News

A major purpose of the Stars and Stripes is to provide news and information from varied sources. This aids DoD members and their families stationed overseas to exercise their democratic citizenship responsibilities.

b. Commercially-Contracted News, Feature, and Opinion Columns

The Stars and Stripes purchases (or contracts for) and carry news stories, features, syndicated columns, comic strips, and editorial cartoons from commercial services or sources. Wire-service news, information, and feature material may be edited in accordance with source contracts and for

[7] See footnote 1 to A.1. of this Appendix.

[8] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

space requirements. The Stars and Stripes reflect the news of the day being carried in comparable U.S. commercial daily newspapers. They should reflect different sides of issues over a reasonable amount of time.

c. Staff-Generated Copy

In keeping with the standards established for major daily commercial newspapers in the United States, staff-generated news and features in the Stars and Stripes shall be accurate, factual, impartial, and objective. News stories and feature material shall distinguish between fact and opinion. Every effort should be made to attribute quotations and facts to identified sources. In the case of controversial or sensitive stories, the Stars and Stripes editor, or his or her designee, shall ascertain the identity of confidential sources, as required by normal journalistic practices that ensure that sources are credible. The Stars and Stripes may use the normal range of journalistic techniques including "people-on-the-street" interviews if that technique does not constitute a political poll.

d. Political Campaign News

(1) The Stars and Stripes shall publish coverage of the U.S. political campaigns from commercial news sources. Presentation of such political campaign news shall be made on an impartial, unbiased, and nonpartisan basis reflecting DoD policies of non-endorsement of any specific candidates for an elected office. Every effort should be made to ensure that the Stars and Stripes reflect the full spectrum of campaign news being published in the United States on national candidates and issues.

(2) The Stars and Stripes shall support the Federal Voting Assistance Program by carrying factual information about registration and voting laws.

e. The Stars and Stripes shall provide balance in commercial syndicated columns. Since the Stars and Stripes may not take an independent editorial position, a balanced selection of syndicated opinion columns shall be published over a reasonable time period. The presentation of syndicated editorial cartoons should reflect the full spectrum of topical editorial cartoons being published throughout the United States. The S&S commander/publisher shall provide the Unified Commands annual assurance that the required balance for syndicated opinion columns has been met.

*B. Administrative*

1. The Stars and Stripes shall comply with DoD Instruction 1100.13 [1] on polls, surveys, and straw votes. The Stars and Stripes may not conduct a poll, a survey, exit polls, or a straw vote on any political campaign. The Stars and Stripes may publish polls, surveys, and/or straw votes furnished to the newspaper through its contracted wire-services. The Stars and Stripes may not conduct lottery games.

2. The Stars and Stripes shall have the following disclaimer placed in the masthead or at the extreme bottom of one of the prominent pages, segregated from copy in a box:

This newspaper is authorized for publication by the Department of Defense for members of the Military Services overseas. However, the contents of the Stars and Stripes are unofficial, and are not to be considered as the official views of, or endorsed by, the U.S. Government, including the Department of Defense or the (name of the appropriate Unified Command). As a DoD newspaper, the Stars and Stripes may be distributed through official channels and use appropriated funds for distribution to remote and isolated locations where overseas DoD personnel are located.

The appearance of advertising in this publication, including inserts or supplements, does not constitute endorsement by the Department of Defense or the Stars and Stripes of the products or services advertised.

Products or services advertised in this publication shall be made available for purchase, use, or patronage without regard to race, color, religion, sex, national origin, age, marital status, physical handicap, political affiliation or any other nonmerit factor of the purchaser, user, or patron.

*C. Editorial*

1. The Stars and Stripes news staffs are authorized to gather and report news, good and bad, on the Department of Defense and its subordinate commands. All reporting necessarily requires some investigation and, as with journalists on commercial newspapers, the Stars and Stripes news staff members have the right and need to ask questions and expect responses to fulfill the S&S mission. However, the Stars and Stripes is not an authorized investigative agency, such as military law enforcement agencies, investigative bodies, or an Inspector General, and shall not function in that capacity. As DoD employees, the Stars and Stripes news staff members must adhere to the DoD personnel policies that may not usually apply to journalists employed by commercial newspapers and must comply with 32 CFR part 40 and, as applicable, the Manual for Courts Marshall, 1984.[2]

a. Since most journalistic reporting is investigative by nature, "investigative reporting," as such, is not banned. The Stars and Stripes reporters have the same need to ask questions of sources, and expect responses, as do commercial newspaper journalists. While the Stars and Stripes staff cannot conduct independent investigations that fall under the jurisdiction of various military law enforcement of designated investigative agencies, the Stars and Stripes may report on open or completed investigations by agencies authorized to perform investigative functions. If the Stars and Stripes employees note unlawful or criminal actions in their performance of duty, they must report such incidents immediately to the S&S commander/publisher or to their immediate supervisor, in accordance with 32 CFR part 40, who shall also comply with 32 CFR part 40 and, as applicable, DoD Directive 7050.1 [3] and DoD Instruction 5240.4.[4] If there is an authorized investigation, a Stars and Stripes reporter or editor cannot protect a source as confidential when the information may be required to complete the investigation. Coverage of an investigation, from a news perspective, should be based on case progress or the resolution provided by the investigative agency if considered newsworthy by the Stars and Stripes. The Stars and Stripes editorial procedures shall not prohibit publishing news of independent investigations furnished by commercial media and, therefore, in the public domain.

b. The Stars and Stripes staff may not knowingly place classified information in Stars and Stripes staff-generated material. That does not apply to public domain information attributed to commercially contracted news, features, or opinion columns.

2. The Stars and Strips editorial staffs shall receive the same treatment as commercial media.

a. The Stars and Stripes reporters shall have the same right to ask questions, to gain help, to have access, and to attend gatherings available to reporters from the commercial media. Commanders or public affairs staffs may not use the U.S. Government status of Stars and Stripes reporters to block the release of, or access to, otherwise releasable news, information, or events. Under the same circumstances, the Stars and Stripes reporters may not use their U.S. Government status or credentials to gain special treatment, access to restricted areas or gatherings, or other advantages that are not given equally to civilian media.

b. In keeping with the "Principles of Information" in 32 CFR part 375 governing release of information to commercial media, the DoD Components are expected to make available timely and accurate information so that the Stars and Stripes news staffs and readers may assess and understand the facts about their military organizations, the national defense, and defense strategy. Consistent with statutory requirements, information shall be made fully and readily available under the principles for the release of information to the media issued by the Secretary of Defense. A Government organization may not file a request for information against another Government organization under 32 CFR part 285, which implements the Freedom of Information Act (FOIA) in the Department of Defense, but it is the responsibility of all commands to honor the DoD Principles of Information, particularly regarding the intent of open access as described in 32 CFR part 285 when responding to queries from Stars and Stripes reporters.

3. To meet organizational responsibilities, the Stars and Stripes editor, the S&S commander/publisher, and the Stars and Stripes staff members they select, should meet frequently with area commanders and public affairs officers and staffs to confer, as their counterparts in U.S. commercial daily newspapers do with local government and community interest representatives.

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to B.1 of this Appendix.

[3] See footnote 1 to B.1 of this Appendix.

[4] See footnote 1 to B.1 of this Appendix.

4. When matters of interest to the Stars and Stripes readership cut across the Unified Command component command responsibilities, the Stars and Stripes editor may use "special project reporting teams" to examine such concerns. Whether the areas of Stars and Stripes interest are military exercises, fast-breaking news affecting the entire Unified command community, or policies that require a greater-than-individual-reporter effort, the Stars and Stripes editor, through the S&S commander/publisher, can gain help by keeping the Unified Command and its component command public affairs offices informed of the need for theater-wide assistance. Such aid could help dispel morale-damaging rumors.

5. The Stars and Stripes shall conduct readership surveys at least once every 3 years in the Unified Commands where the Stars and Stripes are distributed. Such formal surveys shall be conducted in accordance with DoD Instruction 1100.13. The S&S may make shorter market surveys through its bookstore operations to determine changing readership interests. The Stars and Stripes is also encouraged to make frequent use of readership focus groups throughout the Unified Command.

6. The Stars and Stripes may review commercial entertainment where relevant and where it supports readership interest.

7. All bureau personnel and field reporters shall have Stars and Stripes newsroom experience before being given independent assignments. The Stars and Stripes military reporters may wear military or civilian clothes at the discretion of the S&S commander/publisher. If authorized by the S&S commander/publisher, Stars and Stripes military members may be authorized a clothing allowance in accordance with individual Service directives.

8. The Stars and Stripes are both authorized to maintain a Washington, DC, bureau located with other correspondent bureaus in the OASD(PA) Correspondents' Corridor. A desk will be provided for each Stars and Stripes. The S&S shall select the most qualified reporters possible for assignment to the bureau. A joint memorandum of understanding on personnel support shall be established between the two newspapers and approved by the Unified Commands, with a copy provided to the Director of the AFIS.

## Appendix E to Part 248—Stars and Stripes (S&S) Board of Directors

*A. Organization and Management*

1. The S&S board of directors of each Unified Command shall provide advice to the S&S management, and recommend guidance to its Commander-in-Chief (CINC) on all business operations. Attendance is at the direction of the Unified Command CINC.

2. Each Unified Command CINC shall designate the chairman of its S&S board of directors.

3. Each S&S board of directors shall include a member from the Unified Command Offices of Public Affairs and the Comptroller, and at least one member from each of the Unified Command Service components. Members shall be appointed by the Unified Command CINC for 2 years to ensure continuity. They shall be the best qualified personnel available in business-related disciplines. Members should be at the grade of O–5, GS–12, or higher. Other than the Unified Command and the S&S senior representatives, the S&S board members should not be members of any other S&S forums or councils. Representatives from the American Forces Information Service (AFIS) and one S&S may attend the meetings of the other S&S board of directors and have their observations included in the minutes, but they are not voting members. Recommendations approved by the S&S board of directors may be incorporated by the Unified Command CINC into the Unified Command S&S instruction or directive, as applicable.

4. The S&S board of directors should meet at least three times each year. The minutes of each meeting shall be approved by the Unified Command CINC. The approved S&S board recommendations shall be incorporated, as permanent policy, into the Unified Command S&S implementing instructions or directives. Where such recommendations affect DoD policy, the Unified Commands shall ask the Director of the AFIS for resolution. The S&S commander/publisher shall provide sufficient documentation to the S&S board members between meetings to inform them of on-going business operations and the execution of financial actions.

*B. Functions*

1. The S&S board of directors shall monitor planning and execution of the S&S business activities.

2. The S&S board of directors shall aid the S&S commander/publisher with evaluation of external factors that impact the S&S, such as adverse conditions, as recommended by the S&S commander/publisher, the S&S board of directors, or the Unified Command CINC.

3. Annually, the S&S commander/publisher shall provide a financial plan that shall include a capital expenditure budget and a 2-year forecast for the S&S board of directors' evaluation and recommendation to the Unified Command CINC. The S&S shall also forecast and get approval for building and/or construction projects through the S&S board of directors.

4. The S&S shall maintain a 5-year business strategic and corporate plan that shall be forwarded to the S&S board of directors. The Unified Commands shall forward the on-going strategic and corporate plan to the Director of the AFIS for overall DoD strategic goals.

Dated: August 2, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–18683 Filed 8–4–93; 8:45 am]

BILLING CODE 5000–04–M

## Office of the Secretary

## 32 CFR Part 296

## National Reconnaissance Office Freedom of Information Act Program Regulation

**AGENCY:** National Reconnaissance Office, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule establishes the National Reconnaissance Office (NRO) regulation governing the disclosure of information under the Freedom of Information Act. This regulation is published pursuant to the Department of Defense rule which implements the Freedom of Information Act and it conforms to the Department's rule and schedule. As a component of the Department of Defense, the Department rules and schedules with respect to the Freedom of Information Act, as amended, will also be the policy of the NRO.

**DATES:** Comments must be received on or before September 7, 1993.

**ADDRESSES:** Comments may be mailed to: Michael P. Healy, Director, External Relations, National Reconnaissance Office, 1040 Defense Pentagon, Washington, DC 20301–1040.

**FOR FURTHER INFORMATION CONTACT:** Michael Healy, (703) 892–0147.

**SUPPLEMENTARY INFORMATION:** This regulation is issued pursuant to the Department of Defense rule, 32 CFR part 285, which implements the Freedom of Information Act and it conforms to the Department's rule and schedule contained in 32 CFR part 286. This rule does not constitute a major rule within the meaning of Executive Order 12291. Neither the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), nor the reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511, as amended) apply. It is hereby certified that this proposed rule does not exert a significant economic impact on a significant number of small entities. This determination is made based upon the fact that the rule merely codifies the procedural aspects of the NRO Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the NRO; imposes no new requirements, rights, or benefits on small entities; will have neither a beneficial nor an adverse effect on small entities, and is not a major rule under the Regulatory Flexibility Act.

**List of Subjects in 32 CFR Part 296**

Freedom of information.

Accordingly, title 32, chapter 1, subchapter N is proposed to be amended to add part 296 to read as follows:

## PART 296—NATIONAL RECONNAISSANCE OFFICE FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.
296.1 Purpose.
296.2 Definitions.
296.3 Indexes.
296.4 Procedures for request of records.
296.5 Appeals.

**Authority:** 5 U.S.C. 552.

### § 296.1 Purpose.

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (FOIA), and to promote uniformity in the NRO FOIA program.

### § 296.2 Definitions.

The terms used in this part, with the exception of the following, are defined in 32 CFR part 286.

(a) *Freedom Of Information Act Appellate Authority.* The Deputy Director, NRO.

(b) *Initial Denial Authority.* The Director, External Relations, NRO, or the Acting Director.

### § 296.3 Indexes.

The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552.

### § 296.4 Procedures for request of records.

(a) *Requests.* Requests for access to records of the National Reconnaissance Office may be filed by mail addressed to the Director, External Relations, National Reconnaissance Office, 1040 Defense Pentagon, Washington, D.C. 20301–1040. Requests need not be made on any special form but must be by letter or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record. All requests should contain a willingness to pay assessable FOIA fees.

(b) *Determination and notification.* When the requested record has been located and identified, the Initial Denial Authority shall determine whether the record is one which, consistent with statutory requirements, executive orders and appropriate directives, may be released or should be exempted under the provisions of 5 U.S.C. 552. Normally, the Initial Denial Authority, shall notify the requester of the determination within 10 working days of the receipt of the request.

(c) *Extension of response time.* In unusual circumstances, when additional time is needed to respond, normally the Initial Denial Authority shall notify the requester in writing within the initial response period of the delay, the reasons therefore, and if specified, a date, not to exceed 10 working days, on which a determination is expected to be dispatched. When a significant number of requests have been received, e.g., 10 or more, the requests shall be initially processed in order of receipt. However, this does not preclude the Initial Denial Authority from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt.

(d) *Fees*—(1) *General.* As a component of the Department of Defense, the applicable published Department rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NRO. See 32 CFR 286.33.

(2) *Advance payments.* (i) Where a total fee to be assessed is estimated to exceed $250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requester with a history of prompt payment. Where a requester has previously failed to pay a fee within 30 calendar days of the date of the billing, the requester will be required to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, as well as make an advance payment of the full amount of any estimated fee before processing a new or pending request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment owed for work already completed is not an advance payment; however, responses will not be held pending receipt of fees from requesters with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Director, External Relations, and made payable to the Treasurer of the United States.

### § 296.5 Appeals.

Any person denied access to records, denied a fee waiver, or who considers a no record determination to be adverse in nature, may, within 60 days after notification of such denial, file an appeal to the Freedom of Information Act Appellate authority, National Reconnaissance Office. Such an appeal shall be in writing addressed to the Freedom of Information Act Appellate Authority, National Reconnaissance Office, 1040 Defense Pentagon, Washington, DC 20301–1040, shall reference the initial denial, and shall contain in sufficient detail and particularity, the grounds upon which the requester believes release of the information, or granting of the fee waiver, is required. The Freedom of Information Act Appellate Authority shall normally make a final determination on an appeal within 20 working days after receipt of the appeal.

Dated: August 2, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–18682 Filed 8–4–93; 8:45 am]

BILLING CODE 5000–04–M

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 93–217; RM–8286]**

### Radio Broadcasting Services; Grand Gorge, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Sound of Life, Inc., seeking the allotment of Channel 287A to Grand Gorge, New York, as the community's first local service. Petitioner is requested to provide further information demonstrating that Grand Gorge is a community for allotment purposes. Channel 287A can be allotted to Grand Gorge in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (6.9 miles) northeast, at coordinates North Latitude 42–26–39 and West Longitude 74–24–54, to avoid a short-spacing to Station WYCY, Channel 287A, Hawley, Pennsylvania. Canadian concurrence is required since Grand Gorge is located within 320 within 320 kilometers (200 miles) of the U.S.-Canadian border.

**DATES:** Comments must be filed on or before September 20, 1993, and reply comments on or before October 5, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Russell C. Powell, Esq., Taylor Thiemann & Aitkin, 908 King Street, suite 300, Alexandria, Virginia 22314 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–217, adopted July 13, 1993, and released July 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18649 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 91–252; RM–7650]**

## Radio Broadcasting Services; Opelousas and Berwick, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; denial.

**SUMMARY:** This document denies the petition for rule making filed by Cavaness Broadcasting, Inc., licensee of Station KVOL–FM, Channel 290A, Opelousas, Louisiana, requesting the substitution of Channel 290C3 for Channel 290A at Opelousas and modification of Station KVOL–FM's license to specify operation on the higher powered channel. To accommodate the upgrade at Opelousas, Cavaness also requested the substitution of Channel 295A for Channel 290A at Berwick, Louisiana, and the modification of Station KVPO–FM's license accordingly. See 56 FR 43576, August 3, 1991. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 91–252, adopted July 9, 1993, and released July 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18650 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**49 CFR Part 594**

**[Docket No. 89–8; Notice 7]**

**RIN 2127–AC98**

## Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice reviews and proposes adjustments in the fees authorized by the Imported Vehicle Safety Compliance Act of 1988 relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). The proposed adjustments would become effective as of October 1, 1993.

The agency has tentatively concluded that the annual fee for the registration of a new importer should be increased from $255 to $456, and that the annual fee for renewal of registration should be reduced from $255 to $240. The fee required to reimburse the U.S. Customs Service for bond processing costs would increase by $0.40, from $4.55 to $4.95 per bond.

With respect to fees payable for determinations that nonconforming vehicles are capable of conversion to meet the FMVSS, the agency proposes an increase from $100 to $104 for petitions that are based on the argument that the vehicle petitioned for is substantially similar to conforming vehicles. With respect to vehicles that have no substantially similar counterpart, the fee would rise from $500 to $520. In benefits by a determination would be $93, regardless of whether the determination is made pursuant to a petition or by NHTSA on its own initiative.

**DATES:** The comment closing date for the proposal is August 27, 1993. The anticipated effective date of the final rule will be October 1, 1993.

**ADDRESSES:** Comments should refer to Docket No. 89–8; Notice 7, and be submitted to: Docket Section, room 5109 400 Seventh Street, SW, Washington, DC 20590 [Docket hours are from 9:30 a.m. to 4 p.m.].

**FOR FURTHER INFORMATION CONTACT:** Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

**SUPPLEMENTARY INFORMATION:**

### Introduction

On September 29, 1989, NHTSA adopted 49 CFR part 594, establishing the initial fees authorized by section 108 of the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100–562 (54 FR 40100). These fees were applicable in Fiscal Year 1990 (FY90). Section 108(c)(3)(B) of the Vehicle Safety Act (15 U.S.C. 1397(c)(3)(B)) provides that the amount or rate of fees shall be reviewed and, if appropriate, adjusted at least every 2 years. Further, the fees applicable in any fiscal year shall be established before the beginning of such year.

In accordance with these requirements, NHTSA reviewed and adjusted fees for FY91 (55 FR 40664) and for FY92 and FY93 (56 FR 49427).

The statute authorizes an annual fee to cover the costs of the importer registration program, an annual fee or fees to cover the cost of making import eligibility determinations, and an annual fee or fees to cover the cost of processing the bond furnished to the

Customs Service. The purpose of this notice is to propose appropriate fees that would apply in FY94 and thereafter, until further changes are deemed required. As a general statement applicable to consideration of all fees, there has been a slight increase in hourly costs in FY92 and FY93 attributable to the 4.2 percent raise in salaries of employees on the General Schedule that became effective January 1, 1992, and 3.7 percent on January 1, 1993.

**Requirements of the Fee Regulation**

*Section 594.6—Annual Fee for Administration of the Importer Registration Program*

Section 108(c)(3)(A)(iii) of the Vehicle Safety Act provides that registered importers must pay "such annual fee as the secretary establishes to cover the cost of administering the registration program. * * *." The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registration. The reader is referred to the notice of September 29, 1989, for a fuller discussion of the fee and its components.

In accordance with the statutory directive, NHTSA has reviewed the existing fees and their bases in an attempt to establish appropriate fees for the next two fiscal years at least which would be sufficient to recover the costs of administering the importation program. The initial component of the Registration Program Fee is the portion of the fee attributable to processing and action upon registration applications. The agency estimates that this portion of the fee should be increased from $86 to $356 for new applications, and from $86 to $140 for renewals. Agency experience has shown that the average cost of handling a new application is almost three times that of its renewal.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement and verifying the continuing validity of information already submitted. These costs also include costs attributable to revocation or suspension or a registration.

The total portion of the fee attributable to maintenance of the registration program as estimated by NHTSA is approximately $100, a reduction of $69. This reflects the fact that, to date, costs have not been incurred for processing suspensions or revocations. When added to the $356 representing the registration application component, the cost to an applicant equals $456. This fee is proposed by NHTSA. It represents an increase of $201. When the $100 is added to the $140 representing the renewal component, the cost to a renewing registered importer is $240. This fee is also proposed. It represents a decrease of $15.

*Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Determinations*

Section 108(c)(3)(A)(iii)(II) also requires registered importers to pay "such other annual fee or fees as the Secretary reasonably establishes to cover the cost of * * * making the determinations under this section." Pursuant to part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily modified to meet those standards. Alternatively, where there is no substantially similar U.S. motor vehicle, the determination is whether the safety features of the vehicle comply with or are capable of being modified to comply with the FMVSS. These determinations are made in response to petitions submitted by registered importers or pursuant to determinations made upon the Administrator's initiative. Because a substantially different procedure was adopted for the second year of this program, FY91, the reader is referred to the notice appearing at 55 FR 40664 for a fuller discussion of the cost factors of such determinations.

For FY 92 and FY93, NHTSA continued the restructured fee schedule that was adopted for FY91. Under the restructuring, the fee for a vehicle imported under a determination made on the agency's initiative is payable by the importer of any vehicle covered by any determination made on the agency's initiative. The fee for a vehicle imported under a determination pursuant to a petition is payable in part by the petitioner and in part by importers. However, the fee to be charged for a vehicle is a pro rata share of the costs in making all the eligibility determinations in the fiscal year.

The fees that were adopted in FY91 were retained unchanged for FY92 and FY93. They were based upon NHTSA's best estimates of the number of petitions that would be filed, and the number of vehicles that would be imported pursuant to determination of eligibility made upon granting those petitions. As NHTSA noted in the preamble to the final rule establishing the FY92 fees (56 FR at 49428), the agency would proceed to compare the accuracy of its estimates with the compliance data that in fact appear, so as to formulate a basis upon which to propose appropriate future fees.

NHTSA's review showed that fees collected from importers of cars covered by determinations on the agency's own initiative exceeded the agency's actual costs, while fees related to petitions did not. This was due principally to the agency's overestimation of the quantity of vehicles that would be entered under each petition. Experience has shown that an average of only one vehicle a year enters under each granted petition. The average cost of processing a "substantially similar" petition was $1,256 in 1992, but declined to $550 in the first quarter of 1993 because of elimination of unnecessary steps in the petition process. Since only one petition has been granted to date for a vehicle which is not "substantially similar" to a certified model, there is not yet an average cost figure for this category. NHTSA has decided that costs for both types must be studied over a further period of time before it can determine with a greater deal of assurance the fees required to cover the importation program. To account for inflation and the small raises under the General Schedule, NHTSA is therefore proposing that there be an increase from $100 to $104 in the fee required to accompany a "substantially similar" petition, and from $500 to $520 for other petitions.

The importer of each vehicle covered by a petition must pay $83 upon its importation, while those whose vehicles are covered by a determination on the agency's initiative must pay $156 (other than Canadian vehicles covered by code VSA–1). The agency proposes that a fee of $93 be paid by both categories of importer. At this time, NHTSA has tentatively decided that an increase for petitioners from $83 to $93 is warranted to recover costs associated with publishing notices in the Federal Register. On the other hand, a decrease from $156 to $93 for vehicles subject to a determination made on the agency's initiative appears warranted by the agency's tentative conclusion that such a sum is more representative of the actual costs incurred by NHTSA in this type of determination.

*Section 594.9—Fee To Recover the Costs of Processing the Bond*

Section 108(c)(3)(A)(iii)(II) also requires a registered importer to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the

importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost for the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS 9 Step 5 employee spends on each entry, which was judged to be 20 minutes. For a fuller discussion of these costs, the reader is again referred to prior notices of Docket 89–8.

Because of the 4.2 percent and 3.7 percent salary raises in the General Schedule that were effective at the beginning of 1992 and 1993, NHTSA proposes that the current processing fee be increased by $0.40, from $4.55 per bond to $4.95.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition or reconsideration for other administrative proceedings before parties may file suit in court.

*Anticipated Effective Date*

The anticipated effective date of the final rule is October 1, 1993.

**Rulemaking Analyses**

*A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

After considering the impacts of this rulemaking action, NHTSA has determined that the action is not major within the meaning of Executive Order 12291 "Federal Regulation". It further implements Public Law 100–562 under which fees may be established to cover the costs of administering the program for registration of vehicles not originally manufactured to conform to the FMVSS, of determinations that nonconforming vehicles are capable of conformity to the FMVSS, and of reimbursing or advancing the U.S. Customs Service its costs in processing safety standards conformance bonds. It is not significant under Department of Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon State and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small, and the number of vehicles to be imported by or through such importers in coming fiscal years is estimated to be 600 per year. Nevertheless, a regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

*B. Regulatory Flexibility Act*

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. I certify that this action would not have a substantial economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies could not pay the fees proposed by this action. The cost to owners or purchasers of modifying nonconforming vehicles to conform with the FMVSS may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of administering the registration program and making eligibility determinations, and to compensate Customs for its bond processing costs. Governmental jurisdictions would not be affected at all since they are generally neither importers or purchasers of nonconforming motor vehicles.

*C. Executive Order 12612 (Federalism)*

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*D. National Environmental Policy Act*

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers would not vary significantly from that existing before promulgation of the rule.

**Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 594**

Imports, Motor vehicle safety, Motor vehicles.

PART 594—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR part 594 be amended as follows:

1. The authority citation for part 594 would continue to read as follows:

**Authority:** Pub. L. 100–562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50

§ 594.6 [Amended]

2. In § 594.6(a) introductory, (b), (d), (h), and (i), the year "1991" would be revised to read to "1993".

3. Section 594.9(c) would be revised to read:

**§ 594.9 Fee for reimbursement of bond processing costs.**

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 1993, for which a certificate of conformity is furnished, is $4.95.

Issued on: July 30, 1993.

**William A. Boehly,**

*Associate Administrator for Enforcement.*

[FR Doc. 93–18635 Filed 8–4–93; 8:45 am]

BILLING CODE 4910-59-M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1312**

**[Ex Parte No. MC–180 (Sub-No. 2)]**

**Rulemaking-Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking; extension of comment due date.

**SUMMARY:** By notice served June 4, 1993 (58 FR 32340, June 9, 1993), the Commission instituted a proceeding to determine whether off-bill discounting does or may result in a misrepresentation of shipping charges that should be found to be an unreasonable practice or unlawful. Written comments were sought by August 9, 1993.

By letters filed July 27, 1993, the National Small Shipments Traffic Conference and the National Industrial Transportation League requested an extension of the comment due date until after Congress has completed its legislative agenda on a pending undercharge bill. The request is reasonable and will be granted.

**DATES:** Comments must be received by October 15, 1993.

**ADDRESSES:** Send an original and 10 copies of comments referring to Ex Parte No. 180 (Sub-No. 2) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Langyher III, (202) 927–5160 or Ronald A. Hall, (202) 927–5595. [TDD for the hearing impaired: (202) 927–5721].

Decided: July 30, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18729 Filed 8–4–93; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**50 CFR Part 17**

**RIN 1018–AB88**

## Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Hawaiian Hawk From Endangered to Threatened Status

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes to reclassify the Hawaiian hawk (*Buteo solitarius*) from endangered to threatened status. This action is the result of information gained during recovery activities, such as conducting censuses, which resulted in substantial improvement in the knowledge of the distribution of this species, indicating that the bird was more numerous than reported when it was listed in 1967. Islandwide surveys estimate the total population size has remained at the minimum recovery goal for threatened status identified in the Hawaiian Hawk Recovery Plan. In addition, whereas the species was once thought to be restricted to undisturbed native habitat, it is now known to occupy disturbed habitat and also exploit alien prey species as a food resource. This rule is proposed under the Endangered Species Act of 1973, as amended (Act), and is based on a thorough review of all information currently available for the species. The proposed change in classification reflects an improvement in status and will not significantly alter the protection of this species under the Act. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Smith at the above address (808/541–2749).

**SUPPLEMENTARY INFORMATION:**

### Background

The Hawaiian hawk or io (*Buteo solitarius*) is the only member of the family Accipitridae found in the Hawaiian Islands (Berger 1981). This endemic hawk is restricted to the island of Hawaii, although vagrant individuals have been recorded from the other Hawaiian Islands (Banko 1980), and fossil remains have been found on the island of Molokai (Olson and James 1982). The Hawaiian hawk occupies a variety of habitats, including lowland agricultural areas and forests dominated by alien plant species to mid-elevation pasture lands and native rain forests (Griffin 1985). The species is generally solitary except in the breeding season, when pairs build nests and lay eggs. Although this species was first described in the late 1800's, until recently the breeding biology and habitat use of this species was very poorly understood.

The Hawaiian hawk was added to the List of Endangered and Threatened Wildlife on March 11, 1967 (32 FR 4001). At the time of listing, the population was believed to number in the low hundreds (Berger 1981). Extensive habitat modification caused by logging and grazing of nonnative ungulates was assumed to be a direct threat to the existence of the species. Shooting was also reported to be a factor contributing to the low number of individuals.

Population records of the Hawaiian hawk are nonexistent prior to European exploration of the Hawaiian Islands that began in 1778. Between the late 1700's and the early 1900's, records from five naturalists indicate that the species was a resident in all major districts on the island of Hawaii and occupied a broad range of elevations (Banko 1980). In an attempt to establish population trends, Banko (1980) compiled all historical records of the hawk and compared them

to recent records. Although the hawk had been recorded recently in all districts where it had been present 80 or more years ago, close examination of the data, according to Banko (1980), suggested a long-term population decline. Other authors also depict the hawk as declining in numbers during recent times (Berger 1981, Munro 1944). However, Banko (1980) indicated that conclusions based on these relatively scattered records and the lack of complete knowledge on the breeding biology must be considered tentative. In fact, Morrison (1969), who compiled site records for 1967 and 1968 in Volcanoes National Park, concluded that the hawk could be found in woody vegetation anywhere in the park. Although the data compiled by Morrison (1969) documented a relatively small but stable population in a protected habitat and was based mostly on incidental observations, this was one of the first surveys that had been completed for this species at that time. Tomich (Banko 1980) suggested that in the late 1960's and early 1970's the population in one of the districts in Hawaii was more numerous than in earlier years. Tomich (Banko 1980) and Morrison's (1969) surveys may have been the first indications that the Hawaiian hawk was indeed more numerous than previously reported.

Beginning in 1980 and continuing though 1982, a study was initiated to determine the distribution, habitat, reproductive biology, and breeding and foraging behaviors of the Hawaiian hawk (Griffin 1985). Griffin's study represents the first comprehensive work on the hawk. The authors of the Hawaiian Hawk Recovery Plan relied extensively on the data that Griffin collected (USFWS 1984).

Prior to Griffin's (1985) study, the hawk population was believed to be severely reduced in numbers due to habitat encroachment by humans. Both urban development and agricultural practices of land-clearing for grazing and logging were determined to be the factors leading to the hawk's decline (Berger 1981). As with many other native species of Hawaiian birds, the hawk was presumed to rely exclusively on native habitats so that loss of habitat would naturally lead to decline. Moreover, the introduction and proliferation of alien mammals (e.g., rats (*Rattus sp.*), mongooses (*Herpestes auropunctatus*), feral domestic cats (*Felis catus*)) that prey upon many native species' nests were assumed to be a factor in the hawk's reproductive success.

According to Griffin (1985), the Hawaiian hawk has adapted adequately to increased habitat modification and the introduced predators. The hawk has been found in a variety of habitats including lowland agricultural areas and forests dominated by alien plants to mid-elevation pasture land and native rainforests (Griffin 1985). Although all habitats were not sampled, nest sites were equally divided among all habitats with no differences in nest success reported (Griffin 1985). A wide variety of nest tree species were reported, with the native *Metrosideros polymorpha* ('ohi'a) being the most common, but several types of large alien tree species were also used for nesting.

When the Hawaiian hawk first colonized the Hawaiian Islands, it undoubtedly specialized on bird prey since no native land mammals (with the exception of the Hawaiian hoary bat (*Lasiurus cinereus semotus*)), reptiles, or amphibians were present. After the introduction of small mammals (e.g., rats, house mice (*Mus musculus*)) and some alien bird species (e.g., common myna (*Acridotheres tristis*), Japanese white-eye (*Zosterops japonicus*)) to Hawaii, the variety of available prey increased dramatically. However, it was not known until recently that the introduced species of mammals and birds were actually exploited by the hawk as prey. Griffin (1985) reports that the hawk is very adaptable and versatile in its feeding habits and exploits introduced species as food items. Prey selection varies with habitat type, with the hawk feeding on birds in the forested and agricultural areas that it frequents and primarily on mammals in pasture lands.

The Hawaiian Hawk Recovery Plan (1984) includes the following prime objective:

"To ensure a self-sustaining 'io population in the range of 1,500 to 2,500 adult birds in the wild, as distributed in 1983, and maintained in stable, secure habitat. For purposes of tracking the progress of recovery, 2,000 will be used as a target to reclassify to threatened status. Criteria for complete delisting will be further developed."

Based on the best current estimates available, the Service believes that the breeding population on the island of Hawaii numbers between 1,400 and 2,500 individuals distributed as in 1983 (Griffin 1985, Scott *et al.* 1986). With regard to securing habitat, the recovery plan includes a goal to maintain optimum or suitable habitat for feeding/nesting, which includes the conservation of forest habitat and the protection of occupied territories in nonnative forests and agricultural areas. The Service believes that enough secure habitat is presently available for reclassification of the species to threatened status, but not enough for delisting.

**Summary of Factors Affecting the Species**

The Service proposes to reclassify the Hawaiian hawk (*Buteo solitarius*) from endangered to threatened status. The Service's listing regulations (50 CFR part 424) provide for a review of five factors when reclassifying (or listing or delisting) a species (§ 424.11). The Service has studied the relevant information available for the Hawaiian hawk in Hawaii and summarizes this information for each of these five factors below:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Historically, the Hawaiian hawk was probably more widespread than it is today and habitat loss or modification certainly contributed to the decline. Colonization of the Hawaiian Islands by both Polynesian and European settlers undoubtedly contributed to at least partial curtailment of its range. The species may have occurred on other islands, certainly on the island of Molokai (Olson and James 1982); however, the distribution of the hawk is currently limited to the island of Hawaii. At the time of listing, the species was estimated to number somewhere in the low hundreds, although that figure may have been an underestimate.

The Hawaiian hawk population seems to have undergone periods of fluctuation; perturbation by humans may have had a particularly negative effect during the last two or three centuries. Habitat modification from logging and the grazing by nonnative ungulates reduced the quantity and quality of nesting habitat at least in terms of native forest reduction and modification. However, the hawk appears to have adapted to human colonization and at least some native habitat alteration (Scott *et al.* 1986). Recent studies have shown that the hawk will occupy nonnative areas (e.g., pasture lands, agricultural fields, forests dominated by alien plants) as nesting habitat. As these modified areas expand with an increasing human population, the hawk may be one of the few native Hawaiian birds with the versatility to adapt to a changing landscape.

Currently, the range of the hawk extends partially over private property that is used for grazing, logging, or agriculture. In some modified areas, densities of hawks are similar to native habitats, and the birds are able to

exploit introduced mammals as prey. However, these areas are not managed specifically for the hawk and the current land use could change to a habitat that is entirely unsuitable for the hawk (e.g., areas with no or few trees). In addition to habitat change, the prey densities or species could change and the hawk may not adapt quickly. Therefore, although modified habitat can be occupied by the hawk, managed native habitat is also a key to the recovery of the species. Hakalau National Wildlife Refuge, Hawaii Volcanoes National Park, and State of Hawaii Puu Waawaa Wildlife Sanctuary are sites that are managed for native bird populations. Given that the hawk shows site fidelity and maintains territories year-round, the importance of maintaining the necessary habitat requirements is significant.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Historically, some specimens of the hawk were taken for scientific collection and also may have been taken by the early Hawaiians for either food or feathers. Neither of these factors are considered to have had a significant impact on the hawk population. Currently, the species is not known to be taken or used for commercial, recreational, scientific, or educational purposes.

*C. Disease or Predation*

Prior to human colonization of the Hawaiian Islands, predation on the hawk population would have been relatively insignificant. With few co-existing native predators, the hawk was probably only vulnerable during the nesting season, when some eggs or young may have been taken by native Hawaiian crow (*Corvus hawaiiensis*) or Hawaiian owl (*Asio flammeus*).

With the introduction of nonnative potential predators, such as rats, mongooses, and domestic cats, many native Hawaiian forest birds have been virtually decimated by predation. However, there has been no evidence that the hawk has been significantly affected by any introduced mammals. Undoubtedly chicks or fledglings that fall out of the nest could succumb to one of the predators, but the number would be very small each breeding season.

Disease is a relatively unknown factor in the survival of the hawk. Recent studies have suggested that the hawk is probably somewhat resistant to diseases introduced to the Hawaiian Islands that have devastated many other endemic forest birds. Griffin (1985) has suggested that the hawk's immunogenetic capability for avian malaria is sufficient to be unaffected by the disease. However, the testing methods in Griffin's study may not have been sensitive enough to detect either chronic low levels or to determine whether malaria was being actively transmitted in the sample area. Avian pox-like lesions have been reported for the hawk (Griffin 1985), but no studies have been conducted to determine whether this disease is common. Compared to other endemic forest birds that are extremely vulnerable to the two introduced avian diseases, neither disease appears to be a significant factor affecting the hawk population. However, further study of the effects of disease is recommended.

*D. The Inadequacy of Existing Regulatory Mechanisms*

This species is protected by the Endangered Species Act of 1973, as amended, and the Migratory Bird Treaty Act. It is also currently designated as endangered by the State of Hawaii. If the proposed reclassification to threatened status becomes final, no substantive change in the protection afforded this species under these regulatory mechanisms is anticipated. Existing regulatory mechanisms determined necessary to protect this species and its essential habitat will remain in effect.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Any endemic insular species is vulnerable to a variety of environmental and human-caused factors that could affect the species' survival. Because the hawk is found on only a single island, potential threats from disease or environmental catastrophes are such that there is no true source pool of individuals (at the species' range extremes for example) that would escape such threats. The island of Hawaii is relatively large, as is the hawk's range on the island, so the species is unlikely to suffer greatly from natural environmental catastrophes, although hurricanes can be considered potential threats.

Shooting by people who considered the hawk to be a threat to small farm animals may have been a significant factor to the population in the past. Human disturbance at the nest site is also considered to reduce reproductive success where the disturbances occur. Nest site disturbance may increase with increased urbanization and modification of native habitat. Shooting is probably insignificant, given greater exposure of endangered species issues and public education.

Based on a careful assessment of the best scientific and commercial information available regarding past, present, and future threats faced by this species, the preferred action is to reclassify the Hawaiian hawk from endangered to threatened status. The Service will recommend that this species be delisted when recovery criteria as outlined in the recovery plan are reached (see **SUPPLEMENTARY INFORMATION** (Background) section). For reasons discussed below, critical habitat is not being proposed at this time..

If made final, this rule would change the status of the Hawaiian hawk at 50 CFR 17.11 from endangered to threatened. This rule would formally recognize the relative security of this species from no longer being in imminent danger of extinction throughout a significant portion of its range. This proposed change in classification would not significantly alter the protection for this species under the Endangered Species Act. Anyone taking, attempting to take, or otherwise possessing a Hawaiian hawk in an illegal manner would still be subject to penalty under section 11 of the Act. There would be no difference in penalties for the illegal take of an endangered species versus a threatened species. Section 7 of the Act would also continue to protect this species from Federal actions that would jeopardize the continued existence of the species.

**Critical Habitat**

Section 4(a)(3) of the Act requires critical habitat to be designated to the maximum extent prudent and determinable at the time a species is listed as endangered or threatened. The Service has concluded that designation of critical habitat for the Hawaiian hawk is not prudent at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when such designation would not be beneficial to the species. As discussed below, very few, if any, Federal agencies are involved with activities that would adversely affect the Hawaiian hawk. Consequently, critical habitat designation would offer little if any additional protection to the Hawaiian hawk. Furthermore, the Hawaiian hawk occupies a number of habitat types, including agricultural areas (where some trees remain) and forests dominated by alien plant species. Thus, a designation of critical habitat would not very likely offer additional benefits to the species. Landowners can be notified of the presence of the species and of the importance of maintaining certain habitat features. The recovery process will continue to be used to provide

protection to the Hawaiian hawk and its habitat.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such activities would continue to be practiced for the Hawaiian hawk. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. If a proposed Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Hawaiian hawk occurs on Federal land owned by the U.S. Fish and Wildlife Service and National Park Service. The Forest Service provides technical assistance to private landowners on Hawaii.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and economic hardship in certain circumstances.

Requests for copies of the regulations on listed wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358–2104).

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Hawaiian hawk;

(2) The location of any additional populations of this species; and the reasons why any habitat should be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Hearing requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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U.S. Fish and Wildlife Service. 1984. Hawaiian Hawk Recovery Plan. U.S. Fish and Wildlife Service, Honolulu. 48 pp.


### Author


The primary author of this proposed rule is Mr. Scott Johnston, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).


### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

**§ 17.11 [Amended]**

It is proposed to amend § 17.11(h) by revising the entry under BIRDS for "Hawk, Hawaiian" to read as "T" under "Status".

Dated: July 8, 1993.

Richard N. Smith,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93-18638 Filed 8-4-93; 8:45 am]

BILLING CODE 4310-55-P

**50 CFR Part 17**

**RIN 1018—AB87**

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Dugong in the Trust Territory of the Pacific Islands, the Republic of Palau

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposed to extend endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the dugong (*Dugong dugon*) throughout its range. Due to an inadvertent oversight, individuals of the dugong that occur in the United States, specifically those that occur in the Trust Territory of the Pacific Islands (Republic of Palau), are not officially listed as endangered; however, all individuals that occur in foreign countries are listed as endangered. The dugong population in the Republic of Palau currently numbers fewer than 200 individuals and is the most isolated dugong population in the world. The Palauan population is seriously threatened by poaching. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited from the public.

**DATES:** Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Karen W. Rosa at the above address (808/541-2749).

**SUPPLEMENTARY INFORMATION:**

### Background

The dugong (*Dugong dugon*) (Muller 1776, as cited by Eldredge 1991) is the only species in the genus *Dugong* and one of only four extant species in the order Sirenia. The dugong is a strictly marine species that inhabits shallow, coastal waters in tropical seas. It was once distributed from the east coast of Africa to Australia and the Western Pacific. It has been exterminated throughout much of this range, mostly from hunting by humans, and few insular populations remain. One remnant population is found in the coastal waters of the Trust Territory of the Pacific Islands (the Republic of Palau). Surveys were conducted by the Service in 1977, 1978, 1983, and 1991. Results from these surveys indicate that fewer than 200 dugongs remain in Palau, and their numbers are decreasing (Marsh et al. 1991). The decrease in dugong numbers is mainly attributable to illegal hunting for meat, jewelry, and sport. Poaching, coupled with the dugong's naturally low reproductive potential (about one calf every 3 years) (Brownell et al. 1988), may lead to the extinction of the Palauan population by the end of this century (Brownell et al. 1979).

### Previous Federal Action

Currently, the dugong is listed as endangered throughout its range, except in the United States (50 CFR 17.11). The exclusion of protection in the United States stems from the Service's former practice of preparing a "Native" list and a "Foreign" list under the Endangered Species Conservation Act of 1969 (Pub. L. 91-135; 83 Stat. 275). Under this former Act, the Service listed the dugong on the "Foreign" list of protected species (35 FR 18320; December 2, 1970). When the Endangered Species Act of 1973 (Pub. L. 93-205; 87 Stat. 884) became effective on December 28, 1973, it supplanted the Endangered Species Conservation Act of 1969, and the "Native" and "Foreign" lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). When the lists were combined, the dugong was listed as endangered wherever found, including within the United States. This inclusion of the United States, however, was made without prior notice to the affected State (i.e., the Republic of Palau), which is required under section 4(b)(5) of the Act. When this oversight was discovered in 1988, the Service amended the Code of Federal Regulations (50 CFR 17.11), deleting the United States from the range within which the dugong receives protection. Hence, the dugong population in Palau has been afforded no protection under the Act since 1988. Since the Republic of Palau has now been formally notified of this proposed action, the Service proposes to extend the Act's protection to the dugong within the United States.

### Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the (*dugong dugon*) are as follows:

*A. The Present or Threatened Destruction Modification or Curtailment of Its Habitat or Range*

Habitat degradation associated with increased development and water projects in Palau could develop into a more serious threat as tourism and development in Palau continue to increase. Since the dugong is dependent on limited, near-shore waters with abundant sea grasses, any destruction or modification of these areas in Palau could have a serious effect on the already stressed dugong population.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Poaching of the dugong is the most serious threat to the species' survival. The animals are killed for their meat and hides and for creation of jewelry items crafted from the animal's ribs. Traditionally, the dugong was effectively conserved by the local chiefs of Palau. A bracelet made from the atlas vertebra of a dugong was worn only by chiefs. Now that the traditional role of chiefs in Palau has diminished, the species is afforded little protection from poaching, and people using speed boats, explosives, spear guns, and other items, are able to take much larger numbers of the animal than was possible in the past. Since the animals' habits are so well known and they stay in such close proximity to the shoreline to feed, they are easily located and hunted.

*C. Disease or Predation*

It is not known whether disease has been a factor in the decline of the dugong. However, given their low numbers and seclusion in the waters of Palau, any outbreak of disease could

foreseeably lead to the extirpation of that population. The most likely natural predator of dugong is the tiger shark (*Galeocerdo curvieri*) (John Naughtin, National Marine Fisheries Service, pers. comm., 1993). An attack by killer whales on a group of 40 dugongs has also been documented (Novak 1991).

*D. The Inadequacy of Existing Regulatory Mechanisms*

The purpose of this proposed rulemaking is to extend the protective status afforded by the Endangered Species Act of 1973, as amended, to the dugong population of Palau, since this population is not currently protected by the Act. Although Palauan law provides protection to the dugong, it is inadequately enforced, due to limited personnel and resources. As a marine mammal, the dugong should be afforded full protection under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), under which it should bear the designation of "depleted." However, the definition of "United States" in section 3 of that Act does not include the Trust Territory of the Pacific Islands. As a result, it is difficult to extend the protection of the Marine Mammal Protection Act as it is currently worded to the dugong population in Palau.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The dugong population of Palau numbers fewer than 200 individuals and has a very low reproductive potential (about one calf every 3 years) (Brownell et al. 1988). The combination of these two factors leads to the risk of genetic inbreeding and makes the population extremely vulnerable to extinction from catastrophic events, such as floods, hurricanes, pollution, and disease.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to propose the dugong (*Dugong dugon*) as endangered throughout its range. The lack of protection under the Act for the Palauan population of the dugong since 1988 is due to an uncorrected technicality, rather than biological data. The dugong is endangered throughout its range, especially in the secluded archipelago of the Republic of Palau, where it numbers fewer than 200 and is seriously threatened by poaching activities. Critical habitat is not being proposed at this time for the dugong for reasons discussed in the "Critical Habitat" section of this proposal.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to the dugong. The population is small and localized and is highly threatened by poaching. Publication of detailed critical habitat maps and descriptions in the **Federal Register** would very likely lead to increased poaching, and could, therefore, increase enforcement problems. Protection of habitat will be addressed through the recovery process. The Service, therefore, finds that designation of critical habitat for the dugong is not prudent at this time, because such a designation would increase the degree of threat from poaching or other human activities, and because it is unlikely to aid in the conservation of the species.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following a listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal action or involvement in the Republic of Palau that would affect the dugong is expected or known at this time.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered species of wildlife. All prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. It is anticipated that few trade permits would ever be sought or issued because the species is not common in captivity or in the wild.

On July 1, 1975, the dugong (*Dugong dugon*) was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), except the Australian population which was included in Appendix II. The effect of this listing is that both export and import permits are generally required before international shipment may occur. Requests for copies of the regulations on protected wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104).

**Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

**References Cited**


Brownell, R.L., P.K. Anderson, R.P. Owen, and K. Ralls. 1979. The status of dugongs at Palau, an isolated island group. Pp. 11–23 *in* Proceedings of a Seminar/Workshop on the Dugong, 8–13 May 1979. Department of Zoology, James Cook University of North Queensland.

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Nowak, R.M. 1991. Walker's mammals of the world, fifth edition. The Johns Hopkins University Press, Baltimore and London, pp. 1294–1296.


**Author**

The primary author of this proposed rule is Karen W. Rose, Pacific Islands Office (see ADDRESSES section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry for the Dugong (*Dugong dugon*) under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| • | • | • | • | • | • | | • |
| Dugong | Dugon, dugon | East Africa to southern Japan, including U.S.A. (Trust Territories). | Entire | 4,___ | NA | NA | |
| • | • | • | • | • | • | | • |

Dated: July 7, 1993.

**Richard N. Smith,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 93–18536 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–M

**50 CFR Part 17**

**RIN 1018–AC01**

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Royal Snail and Anthony's Riversnail

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.


**SUMMARY:** The Fish and Wildlife Service (Service) proposes to list the royal snail (*Pyrgulopsis* (=*Marstonia*) *ogmorhaphe*) and Anthony's riversnail (*Athearnia anthonyi*) as endangered species under the Endangered Species Act of 1973, as amended (Act). The royal snail is known from only two spring runs on public and private lands in the Sequatchie River system, Marion County, Tennessee. The extremely limited distribution of the royal snail and the limited amount of occupied habitat make this species extremely vulnerable to extirpation. Anthony's riversnail is known from two small populations—one in the Sequatchie River, Marion County, Tennessee, and

one in Limestone Creek, Limestone County, Alabama. These populations are threatened by the general water quality deterioration that has resulted from siltation and other pollutants contributed by such factors as coal mining, poor land use practices, and waste discharges. Comments and information are sought from the public on this proposal.

**DATES:** Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

**ADDRESSES:** Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Allen Ratzlaff or Mr. Richard G. Biggins at the above address (704/665–1195, Ext. 229 or 228, respectively).

**SUPPLEMENTARY INFORMATION:**

## Background

### *Royal Snail*

The royal snail (*Marstonia ogmorhaphe*) was described by Thompson in 1977 and was later reassigned to the genus *Pyrgulopsis* by Hershler and Thompson (1987). The royal snail is usually less than 5 millimeters (0.25 inches) in length. It is a short-lived (annual) species, distinguished from other closely related species by (1) relatively large size; (2) large number of whorls (5.2 to 5.8); (3) deeply incised, suture-producing, strongly shouldered whorls, which are almost flat above; (4) complete aperture, which is broadly ovate in shape with a rounded posterior corner; (5) outer lip that is slightly arched forward in lateral profile; (6) thin shell; (7) conical-terete shape; and (8) enlarged bursa copulatrix with a completely exposed duct (Thompson 1977).

The royal snail is known from only two spring runs in the Sequatchie River system in Marion County, Tennessee. Royal snails are generally found in the diatomaceous "ooze" and on leaves and twigs in the quieter pools downstream from the spring source.

While no populations of the royal snail are known to have been lost, the general deterioration of the water quality that has resulted from siltation and other pollutants contributed by coal mining, poor land use practices (e.g., lack of erosion control, improper application of pesticides, etc.), and waste discharges likely are impacting the species. This could result in serious, irreversible threats. Additionally, because both existing populations inhabit extremely limited areas, they are very vulnerable to extirpation from accidental toxic chemical spills or vandalism.

On December 17, 1992, the Service notified by mail (28 letters) the potentially affected Federal and State agencies, local governments, and interested individuals within the species' present range that a status review of the royal snail was being conducted. Three agencies and one private organization responded. The Tennessee Valley Authority supported proposing the species for listing. The Tennessee Wildlife Resources Agency, U.S. Soil Conservation Service, and the one responding private organization did not take a position on the potential listing.

### *Anthony's Riversnail*

Anthony's riversnail was originally described from specimens collected in the "Holstein" (=Holston) River, near Knoxville, Tennessee ("Budd," in Redfield 1854). This relatively large freshwater snail, which grows to about 2.5 centimeters (1 inch) in length, is ovate and olive green to yellowish brown in color. Anthony's riversnail is listed by the Tennessee Department of Environment and Conservation as a threatened species (Bogan and Parmalee 1983). This rare aquatic snail, which coexists in the Sequatchie River with several federally listed species, was once fairly widespread in the Tennessee River system.

Anthony's riversnail is primarily a big-river species that was historically associated with shoal areas in the main stem of the Tennessee River and the lower reaches of some of its tributaries. There are historical records of the species from the lower French Broad River, Knox County, Tennessee; Nolichucky River, Green County, Tennessee; Clinch River, Jefferson County, Tennessee; Beaver Creek, Knox County, Tennessee; Little Tennessee River, Monroe and Loudon Counties, Tennessee; Tellico River, Monroe County, Tennessee; Sequatchie and Little Sequatchie River and Battle Creek, Marion County, Tennessee; South Chickamauga and Tiger Creeks, Catoosa County, Georgia; Limestone Creek, Limestone County, Alabama; and Tennessee River, Knox and Loudon Counties, Tennessee, and Jackson, Limestone, and Lauderdale Counties, Alabama (Bogan and Parmalee 1983; Gordon 1991; F. Thompson, Florida Museum of Natural History, personal communication, 1991). Presently, only two small populations are known to survive—one in the Sequatchie River, Marion County, Tennessee (M. Gordon, Tennessee Technological University, and S. Ahlstedt, Tennessee Valley Authority, personal communications 1991), and one in Limestone Creek, Limestone County, Alabama (Thompson, personal communication, 1991; Garner 1992). Many populations were lost when much of the Tennessee River and the lower reaches of its tributaries were impounded. The general deterioration of the water quality that has resulted from siltation and other pollutants contributed by coa mining, poor land use practices (e.g., lack of erosion control, improper application of pesticides, etc.), and waste discharges was likely responsible for the species' further decline. These factors continue to impact the Sequatchie River and Limestone Creek populations.

Both existing populations inhabit short river reaches; thus, they are very vulnerable to extirpation from accidental toxic chemical spills. Additionally, because these populations are isolated, their long-term genetic viability is questionable. As the Sequatchie River and Limestone Creel are isolated by impoundments from other Tennessee River tributaries, recolonization of any extirpated populations would be unlikely withou: human intervention.

Anthony's riversnail (*Athearnia anthonyi*) first appeared as a candidate species (category 2) on May 22, 1984, in the Invertebrate Notice or Review (49 FR 21664–21675). This taxon was reclassified from category 2 to category 3B on January 6, 1989, in the Animal Notice of Review (54 FR 554–579). The reclassification was based on information that Anthony's riversnail was not a distinct species, but that it was instead the same as another category 2 species, the boulder snail (*Leptoxis* (=*Athearnia*) *crassa*). Gordo (1991) examined juveniles of both species and concluded that the two snails are distinct species. However, as the boulder snail is apparently extinct (Bogan and Parmalee 1983, Gordon 1991), recognition of the snail as a separate species is irrelevant.

On June 12, 1992, the Service notifiea by mail (37 letters) the potentially affected Federal and State agencies, local governments, and interested individuals within the species' present range that a status review of the Anthony's riversnail was being conducted. Four agencies responded.

The Tennessee Department of Environment and Conservation supported proposing the species for listing. The Tennessee Valley Authority, U.S. Soil Conservation Service, and Tennessee State Planning Office responded to the notification letter but did not take a position on the potential listing.

On October 27, 1992, based on available information, the Service concluded that each of these snails qualified as a category 1 candidate species. The royal snail was assigned a listing priority of 5, and the Anthony's riversnail was assigned a listing priority of 2 (see Federal Register for September 21, 1983, (48 FR 43098) for a discussion of the Service's listing priority system).

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the royal snail (Pyrgulopsis (=Marstonia) ogmorhapha) and Anthony's riversnail (Athearnia anthonyi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The royal snail is known from only two spring runs in the Sequatchie River system in Marion County, Tennessee, and has never been found outside these areas. This extremely limited distribution, the limited amount of occupied habitat, the ease of accessibility, and the species' annual life cycle make the royal snail extremely vulnerable to extirpation. Threats to the species include siltation; road construction; logging; agricultural, municipal, industrial, and mining runoff (both direct and from subsurface flows); cattle grazing; vandalism; and pollution from trash thrown in the springs. Further, timber harvesting for wood chip mills proposed for southeastern Tennessee and northeastern Alabama could impact this species.

Anthony's riversnail was once rather widespread in the Tennessee River system. (See "Background" section for a discussion of the species' historic range.) Presently, only two small populations are known to survive—one in the Sequatchie River, Marion County, Tennessee (Gordon and Ahlstedt, personal communications, 1991), and one in Limestone Creek, Limestone County, Alabama (Thompson, personal communication, 1991; Garner 1992).

Anthony's riversnail is primarily a big-river species that was historically associated with shoal areas in the main stem of the Tennessee River and the lower reaches of some of its tributaries. When the Tennessee River impoundments were constructed, most of the Tennessee River's riverine habitat was lost, and the lower reaches of its tributaries were also inundated. Populations that were able to survive in the remaining, limited free-flowing habitat were apparently lost due the general deterioration of water quality that has resulted from siltation and other pollutants contributed by coal mining, poor land use practices (e.g., lack of erosion control, improper application of pesticides, etc.), and waste discharges. These factors continue to impact the Sequatchie River and Limestone Creek populations. Additionally, timber harvesting for wood chip mills proposed for southeastern Tennessee and northeastern Alabama could impact the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that overutilization has been a problem for the royal snail or Anthony's riversnail. The specific areas inhabited by these species are presently not known by the general public; until a proposed rule is published, they will likely be unaware of the presence of these rare snails. If the specific areas inhabited by these two species were revealed, it would be extremely easy for vandals to seriously impact them. Therefore, the present range of these species has been described only in general terms. Although scientific collecting is not presently identified as a threat to these species, take by private and institutional collectors could pose a threat. Federal protection could help to minimize the negative impact of illegal or inappropriate take.

C. *Disease or predation.* Although the royal snail and Anthony's riversnail are consumed by predatory animals, there is no evidence that predation or disease are serious threats to the species.

D. *The inadequacy of existing regulatory mechanisms.* The State of Tennessee prohibits taking fish and wildlife, including freshwater snails, for scientific purposes without a State collecting permit. However, the royal snail and Anthony's riversnail are generally not protected from other threats. Federal listing will provide additional protection for these species from collectors by requiring Federal endangered species permits to take these species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Because the royal snail is presently restricted to two small spring runs, it is very vulnerable to extirpation from accidental toxic chemical spills; and because the populations are physically isolated from each other, recolonization of any extirpated population would not be possible without human intervention. Additionally, because natural gene flow among populations is not possible, the long-term genetic viability of these remaining, isolated populations is questionable.

Both existing Anthony's riversnail populations inhabit short river reaches; thus, they are very vulnerable to extirpation from accidental toxic chemical spills. Additionally, because these populations are isolated, their long-term genetic viability is questionable. As the Sequatchie River and Limestone Creek are isolated by impoundments from other Tennessee River tributaries, recolonization of any extirpated populations would be unlikely without human intervention.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose these rules. Based on this evaluation, the preferred action is to list the royal snail and Anthony's riversnail as endangered species. The royal snail is known from only two populations in spring runs in Marion County, Tennessee. Anthony's riversnail is currently known from two small populations—one in the Sequatchie River, Marion County, Tennessee, and one in Limestone Creek, Limestone County, Alabama. These snails and their habitat have been and continue to be threatened, and Anthony's riversnail has undergone a significant range reduction. Their limited distribution also makes them very vulnerable to toxic chemical spills. Because of their restricted distributions and both snails' vulnerability to extinction, endangered status appears to be the most appropriate classification for these species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for these snails.)

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the

Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) the designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for these species, as both of the above situations are applicable.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify its critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of Section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the snails' general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the two species. No specific projects were identified. Should any future projects be proposed in areas inhabited by these snails, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action; if needed, more specific distributional information would be provided.

The Section 7 regulations referenced above provide for both a "jeopardy" standard, based on the listing of a species, and a "destruction or adverse modification" standard, for cases where there is a designation of critical habitat. Each of the snails occupies very restricted stream reaches, making their future existence highly precarious. Any significant adverse modification or destruction of these species' habitat would also likely jeopardize their continued existence. Under these conditions, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing the species. Therefore, when listed, habitat protection for these species will be accomplished through the Section 7 jeopardy standard and Section 9 prohibitions against take.

In addition, because these species are very rare, with populations restricted to extremely short stream reaches, unregulated taking for any purpose could threaten their continued existence. The publication of critical habitat maps in the **Federal Register** and local newspapers and any other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism, especially during the often controversial critical habitat designation process (see "Summary of Factors Affecting the Species" section for a further discussion of threats to these species from vandals). The locations of populations of these species have consequently been described only in general terms in this proposed rule. Precise locality data is available to appropriate Federal, State, and local government agencies and individuals from the Service office described in the "ADDRESSES" section and from the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that could have programs affecting these species. No specific proposed Federal actions were identified that would likely affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are also met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and such permit requests are not expected.

**Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other

concerned government agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the royal snail or Anthony's riversnail;

(2) The location of any additional populations of the royal snail or Anthony's riversnail and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on the royal snail or Anthony's riversnail.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

## National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

## References Cited


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Redfield, J. H. 1854. Descriptions of new species of shells. Ann. Lyc. Nat. Hist. New York 6:130–132.

Thompson, Fred G. 1977. The Hydrobiid snail genus *Marstonia*. Bull. Florida State. Mus., Biol. Sci., Vol. 21, No. 3, pp. 113–156.


## Author

The primary authors of this proposed rule are Mr. J. Allen Ratzlaff and Mr. Richard G. Biggins (see "ADDRESSES" section) (704/665–1195, Ext. 229 and 228, respectively).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under snails, to the List of Endangered and Threatened Wildlife, to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| • | • | • | • | • | • | | |
| SNAILS | | | | | | | |
| • | • | • | • | • | • | | |
| Riversnail, Anthony's | *Athearnia anthonyi* | U.S.A. (TN, AL) | NA | E | NA | NA | |
| • | • | • | • | • | • | | |
| Snail, royal | *Pyrgulopsis (=Marstonia) ogmorhapha.* | U.S.A. (TN) | NA | E | NA | NA | |
| • | • | • | • | • | • | | |

Dated: July 12, 1993.

Richard N. Smith,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93–18640 Filed 8–4–93; 8:45am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC01

## Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Plants Ayenia limitaris (Texas Ayenia) and Ambrosia cheiranthifolia (South Texas Ambrosia) as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to list the plants *Ayenia limitaris* (Texas ayenia) and *Ambrosia cheiranthifolia* (South Texas ambrosia) as endangered species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). This proposal, if made final, will implement Federal protection provided by the Act for Texas ayenia and South Texas ambrosia. Critical habitat is not being proposed.

Texas ayenia is known from a single site in Hidalgo County, Texas. South Texas ambrosia has been verified recently from seven sites, four in Nueces County and three in Kleberg County, Texas. These species are threatened by habitat destruction and fragmentation through alteration and conversion of native plant communities to agricultural fields, improved pastures, and urban areas. They are also threatened with displacement by invasive non-native grasses, and possible vulnerability from lowered genetic diversity due to their present low population numbers.

**DATES:** Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Angela Brooks, at the above address (Telephone 512/994–9005).

**SUPPLEMENTARY INFORMATION:**

### Background

Texas ayenia, a member of the cacao family, was first collected in Hidalgo County, Texas, by C.G. Pringle in 1888, and was named *Nephropetalum pringlei* by B.L. Robinson and J.M. Greenman in 1896. In 1960, Carmen Cristóbal revised the genus *Ayenia* and described *Ayenia limitaris* as a new species. The previously described *Nephropetalum pringlei* was not mentioned in the revision. Prior to Cristóbal's description of *Ayenia limitaris* in 1960, South Texas specimens of this species had been identified as *A. berlandieri*, a species of tropical Mexico. In 1986, Laurence Dorr and Lisa Barnett transferred *Nephropetalum pringlei* to the genus *Ayenia* and reduced it to synonymy with *Ayenia limitaris*.

Texas ayenia is a pubescent, suffrutescent shrub approximately 60–150 cm (2–5 ft) tall, with alternate, simple leaves. The cordate-based leaves are approximately 8 cm (3 in.) long and 3.5 cm (1.4 in.) wide. The inflorescences are axillary, up to 4 per node, with each inflorescence supporting two or more perfect flowers. Flower color has been reported as green, pink, or cream. The fruit is a 5-celled, pubescent capsule approximately 8 mm (0.3 in.) long, with short, curved prickles (Damude and Poole 1990).

Texas ayenia occurs at low elevations in dense subtropical woodland communities that are found on alluvial sandy clay-loam soils of Rio Grande floodplains and terraces. Although the present population occurs in the shaded understory of a remnant brush tract, previous collectors have found the plant in openings within chaparral and along the edges of thickets (Correll and Johnston 1979). The present site is a Texas Ebony-Anacua (*Pithocellobium flexicaule-Ehretia anacua*) plant community located within the Arroyo Colorado drainage. This area was once an active floodplain; however, the extent to which past flooding affected Texas ayenia is unknown.

The Texas Ebony-Anacua plant community once covered much of the Rio Grande delta. The community occurs on well drained, but heavy, soils on riparian terraces (Diamond 1990). The canopy cover in this climax community type is close to 95 percent (Damude and Poole 1990). Associated species within the community include la coma (*Bumelia celastrina*), brasil (*Condalia hookeri*), granjeno (*Celtis pallida*), and snake-eyes (*Phaulothamnus spinescens*). The Texas Ebony-Anacua community grades into the Texas Ebony-Snake-eyes community in the drier portions of the woodland habitat (Diamond 1990). Both plant communities have been reduced to discontinuous fragments, often surrounded by agricultural fields, pastures, or urban development, and now cover less than 5 percent of their original area (Jahrsdoerfer and Leslie 1988).

Texas ayenia occurred historically in Cameron and Hidalgo counties in the U.S., and the states of Coahuila, Nuevo Leon, and Tamaulipas in Mexico. The only recent collection in Mexico was from a Tamaulipan population in 1981; however, the present status of this population is unknown (Damude and Poole 1990). Texas ayenia has not been relocated at any of the historic Cameron County locations since the early 1960's. The status report by Damude and Poole (1990) noted an observation in 1988 of six spindly individuals at the Hidalgo County site. The following year this population was noted as being reduced to one individual. Searches were undertaken in 1990 and 1991 by a number of personnel from the Service and the Texas Parks and Wildlife Department; however, no Texas ayenia individuals were relocated. In 1992, Jim Everitt of the U.S. Department of Agriculture and Service personnel relocated the remaining individual at the Hidalgo County site. This location on private property is the only recently verified site for the species.

South Texas ambrosia was first collected in San Fernando, Tamaulipas, Mexico, by Luis Berlandier in 1835, and was named *Ambrosia cheiranthifolia* by A. Gray in 1859. The first U.S. collection was made in 1932 by Robert Runyon from an area near Barreda (now Russelltown) in Cameron County, Texas (Turner 1983).

South Texas ambrosia, a member of the aster family, is a herbaceous, erect, silvery to grayish-green, rhizomatous perennial, 10–30 cm (0.3–1.0 ft) tall. Its simple leaves are usually opposite on the lower portion of the plant and alternate above. The male flower heads are arranged in inconspicuous terminal racemes 5–10 cm (2–4 in.) long. The female flower heads are in small clusters in the leaf axils just below the male racemes (Turner 1983). Due to its rhizomatous growth, a single plant may be represented by hundreds of clonal stems.

South Texas ambrosia grows at low elevations in open prairies and savannas of South Texas on soils varying from clay-loams to sandy-loams. Much of the original native habitat for South Texas ambrosia has been converted to agricultural fields, improved pastures, or urban areas. Many savanna areas

have been cleared and planted to non-native grasses, such as buffelgrass (*Cenchrus ciliaris*), which outcompete the native vegetation. South Texas ambrosia does not appear to survive plowing, blading, or disking. Other potential prairie habitat may now be invaded by thorny shrub and tree species as a result of fire suppression or overgrazing. Associated native grasses found at the existing sites include Texas grama (*Bouteloua rigidiseta*), buffalo grass (*Buchloe dactyloides*), Texas speargrass (*Stipa leucotricha*), and tobosa (*Hilaria mutica*). Invading non-native grasses found at the sites include buffelgrass, King Ranch bluestem (*Bothriochloa ischaemum* var. *songarica*), bermuda grass (*Cynodon dactylon*), and St. Augustine grass (*Stenotaphrum secundatum*) (U.S. Fish and Wildlife Service 1988). Associated native woody species found scattered throughout the existing sites include mesquite (*Prosopis glandulosa*), huisache (*Acacia smallii*), huisachillo (*Acacia schaffneri*), brasil (*Condalia hookeri*), granjeno (*Celtis pallida*), and lotebush (*Ziziphus obtusifolia*).

Historically, South Texas ambrosia occurred in Cameron, Jim Wells, Kleberg, and Nueces counties in South Texas, and the state of Tamaulipas in Mexico. The current status of any Mexican populations is unknown. The historic populations in Cameron and Jim Wells counties have not been relocated. Only one location noted in the status report (Turner 1983) is known to still be extant. Three populations, two in Nueces County, and one in Kleberg County, were discovered by Ruth O'Brien (Corpus Christi State University, Corpus Christi, Texas, pers. comm. 1993). Two Nueces County populations were discovered in 1992 and 1993 by William Carr (Texas Parks and Wildlife Department, Austin, Texas, pers. comm. 1993). The extant populations occur on private land, highway and railroad rights-of-way, and the Kingsville Naval Air Station. Four known locations for South Texas ambrosia, one extirpated and three extant, also support the endangered slender rush-pea (*Hoffmannseggia tenella*), which was federally listed as endangered (50 CFR 45624; November 1, 1985) because of threats similar to those affecting South Texas ambrosia.

Federal action involving these species began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and of its intention thereby to review the status of the plants named therein. *Ambrosia cheiranthifolia* was included as endangered, and *Ayenia limitaris*, then under the name *Nephropetalum pringlei*, was included as extinct in the Smithsonian report and Service notice.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered. *Ambrosia cheiranthifolia* was included in the June 16, 1976, proposal.

The 1978 amendments to the Act required that all proposals over two years old be withdrawn, although a one year grace period was given to proposals already over two years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice withdrawing the June 16, 1976 proposal, along with four other proposals which had expired.

A list of plants under review for listing as endangered or threatened species was published in the December 15, 1980, **Federal Register** (45 FR 82523). *Ambrosia cheiranthifolia* was included in Category 2 of the candidate list and *Nephropetalum pringlei* was included in Category 1*. Category 2 candidate species are those for which available information indicates listing as endangered or threatened may be appropriate, but for which substantial data are not currently available to support the immediate preparation of proposed rules. Category 1 candidate species are those for which the Service currently has on file substantial biological information to support the appropriateness of proposing to list them as endangered or threatened species, but the immediate publication of proposed rules is precluded by work on other listing actions of higher priority. Category 1* species also include those whose status in the recent past is known to support listing, but that may have already become extinct.

Section 4(b)(3)(B) of the Act, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments to the Act further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all of the plants contained therein, including *Nephropetalum pringlei* (=*Ayenia limitaris*) and *Ambrosia cheiranthifolia*, were treated as being newly petitioned on October 13, 1982. In each year from 1983 through 1992, the Service found that the petitioned action was warranted, but listing of *Ayenia limitaris* and *Ambrosia cheiranthifolia* was precluded by other listing actions of higher priority, and that additional data on vulnerability and threats were still being gathered.

A status report on South Texas ambrosia was completed May 20, 1983 (Turner 1983). This report provided sufficient information on biological vulnerability and threats to support preparation of a proposed rule to list South Texas ambrosia as endangered.

Notices revising the 1980 list of plants under review for listing as endangered or threatened species were published in the **Federal Register** on September 27, 1985 (50 FR 39626), and February 21, 1990 (55 FR 6184). *Nephropetalum pringlei* (=*Ayenia limitaris*) was included in Category 2 and *Ambrosia cheiranthifolia* was included in Category 1 of these notices.

A status report on Texas ayenia was completed December 1, 1990 (Damude and Poole 1990). This report provided sufficient information on biological vulnerability and threats to support preparation of a proposed rule to list Texas ayenia as endangered.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be an endangered or threatened species based on the best scientific and commercial information available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Ayenia limitaris* Cristóbal (Texas ayenia) and *Ambrosia cheiranthifolia* Gray (South Texas ambrosia) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Habitat destruction is the primary threat to Texas ayenia and South Texas ambrosia. The past and current practice of converting native South Texas brush and woodlands to agricultural fields, improved pastures, and urban areas, or clearing brush and woodlands for urban water development or flood control has destroyed 95 percent of this native vegetation (Jahrsdoerfer and Leslie 1988). Most native Texas Gulf Coast

prairies have been converted to agricultural fields or improved pastures. The amount of conversion of these plant communities in Mexico is similar though not quantified. The remaining remnant native prairie, brush, and woodland tracts are often surrounded by agricultural fields, pastures, or urban development. These modified habitats pose potential threats to the native areas through agricultural chemical drift from aerial spraying, chemical runoff following rains, invasion of non-native grasses such as buffelgrass, guineagrass (*Panicum maximum*), King Ranch bluestem, and Angleton bluestem (*Dichanthium aristatum*), and trampling and possible collection pressures due to easy accessibility from nearby urban areas. The few remaining populations of these species are vulnerable to extinction if any of their remaining habitat is modified.

Even roadside remnants of native vegetation in South Texas are often bladed, or plowed and seeded with exotic grasses such as buffelgrass and King Ranch bluestem. Herbicides are often used to control vegetation around signs, guard rails, and bridge abutments, and to kill shrubby vegetation encroaching on the right-of-way. Due to the rarity of Texas ayenia and South Texas ambrosia, the likelihood of their being directly impacted by roadway maintenance is small, but almost any impact could lead to the extinction of either species.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

No commercial trade is known to exist for either of these species; however, the potential exists for vandalism and collection. Listing these species, with the resulting publicity, will highlight their rarity and may increase their attractiveness to some collectors. Excessive recreational or scientific use is not known or anticipated for either species.

*C. Disease or Predation*

Although the Texas ayenia population has shown no evidence of disease or predation, Cristóbal (1960) notes the floral buds of *Ayenia* species are often deformed by Hymenopteran larvae. Cristóbal also notes *Ayenia* fruits can be deformed by Dipteran larvae thus inhibiting seed release. No evidence of grazing or browsing has been observed for Texas ayenia.

No threats of disease or predation are known for South Texas ambrosia; however, damage to stems and rhizomes is possible in situations of severe trampling or grazing.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Presently, neither species is protected by Federal or state law.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

With only one known verified population, Texas ayenia may have low genetic variability, which could limit its ability to adapt to environmental changes. It is unknown whether past flooding created or maintained habitat for Texas ayenia. However, since the present population occurs within a previously active drainage of the Arroyo Colorado (Damude and Poole 1990), a flood could negatively impact the species. Observers have noted that the population declined during the recent drought in the Lower Rio Grande Valley (J. Everitt, U.S.D.A. Agricultural Research Station, Weslaco, Texas, pers. comm. 1992). The extreme rareness of this species makes it vulnerable to extinction from any number of chance events.

South Texas ambrosia may also be vulnerable to extinction due to lowered genetic variability. Populations are clonal, so despite having many stems, the populations may actually represent very few genetically different individuals. It has been noted that species like South Texas ambrosia that were once more widespread, but are now reduced to low numbers, may be more vulnerable to the detrimental effects of lowered genetic diversity than species that were always rare (Huenneke 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list Texas ayenia and South Texas ambrosia as endangered. The status of endangered is appropriate because of these species' limited distribution, low population numbers, and imminent threats of habitat destruction.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Pursuant to 50 CFR 424.12(a)(1), designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the "Summary of Factors Affecting the Species" section of this rule, Texas ayenia and South Texas ambrosia are potentially threatened by taking or vandalism. These activities are difficult to enforce against and are only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any state law or regulation, including state criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make Texas ayenia and South Texas ambrosia more vulnerable to collecting or vandalism and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting the habitat of these species. Protection of the habitat for these species will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for Texas ayenia and South Texas ambrosia.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, state, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the states and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the

Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some Federal actions that may affect Texas ayenia or South Texas ambrosia include brush clearing for flood control by the International Boundary and Water Commission, management recommendations to landowners by the Soil Conservation Service for activities funded by the Agricultural Stabilization and Conservation Service, and agricultural pesticide registration by the Environmental Protection Agency. Additionally, a population of South Texas ambrosia occurs on Kingsville Naval Air Station and may be affected by maintenance or construction activities at this facility.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because these species are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 420C, Arlington, Virginia 22203 (703/358–2104).

## Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received by 45 days from the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

## National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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## Author

The primary author of this proposed rule is Angela Brooks, U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office (see **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

## Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the plant families indicated, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| • • | • | • | • | • | | |
| Asteraceae—Aster family: | | | | | | |
| • • | • | • | • | • | | |
| *Ambrosia chenopodiifolia* | South Texas ambrosia | U.S.A. (TX), Mexico | E | — | NA | NA |
| • • | • | • | • | • | | |
| Sterculiaceae—Cacao family: | | | | | | |
| • • | • | • | • | • | | |
| *Ayenia limitaris* | Texas ayenia | U.S.A. (TX), Mexico | E | — | NA | NA |
| • • | • | • | • | • | | |

Dated: July 12, 1993.

Richard N. Smith,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93–18639 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–P

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**50 CFR Part 17**

**RIN 1018–AC00**

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Plants and Proposed Threatened Status for Four Plants From Vernal Pools in the Central Valley of California

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) proposes to list *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), and *Tuctoria greenei* (Green's tuctoria) as endangered and *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover), *Chamaesyce hooveri* (Hoover's spurge), *Neostapfia colusana* (Colusa grass), and *Orcuttia tenuis* (slender Orcutt grass) as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). These species grow in the basins and margins of vernal pools of the Central Valley of California. Habitat loss and degradation due to urbanization, agricultural land conversion, livestock overgrazing, off-highway vehicle use, flood control projects, highway projects, landfills, and competition from weedy nonnative plants imperil the continued existence of these species. This proposal, if made final, would extend the Act's protection to these plants. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by November 3, 1993. Public hearing requests must be received by September 20, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ken Fuller at the above address or at 916–978–4866.

**SUPPLEMENTARY INFORMATION:**

### Background

Vernal pools in the Central Valley of California were a common and widespread feature in pre-European times (Holland and Jain 1977). Holland (1978 and *in litt.*, September 18, 1992) estimated that urbanization and other factors have eliminated up to 90 percent of the vernal pools in the Central Valley. Since the plants discussed herein grow only in vernal pools in California, they have experienced minor to major population reductions via the loss of vernal pool habitat throughout their respective ranges. California vernal pools are generally small, seasonally aquatic ecosystems that are inundated in the winter and dry slowly in the spring and summer. Cyclical wetting and drying create an unusual ecological situation supporting a unique biota. Many plants and animals are specifically adapted to this environment and cannot survive outside these temporary pools.

The Central Valley of California consists of the Sacramento Valley in the north and the San Joaquin Valley in the southern half of the State. Within the Central Valley, vernal pools are found in four physiographic settings, each possessing an impervious soil layer relatively close to the surface. These four settings include high terraces with iron-silicate or volcanic substrates, old alluvial terraces, basin rims with claypan soils, and low valley terraces supporting silica-carbonate hardpans. Vernal pool habitats and the eight plants discussed herein are found over a very limited, discontinuous, fragmented area within the Central Valley.

*Orcuttia*, *Neostapfia*, and *Tuctoria* are the three genera of the grass tribe Orcuttieae, within the subfamily Chloridoideae, in the grass family (Poaceae). All three genera consist of small-statured annual grasses that produces a viscid (sticky), odoriferous, acid-tasting exudate and are covered with small glandular hairs. Plants typically have few to many slender stems terminating in a spike-like inflorescence. The leaves lack ligules (small membranous flaps at the base of the leaf blade), and little or no distinction exists between the leaf blade and the leaf sheath. Members of *Orcuttia* have long, thin, floating, juvenile leaves, two vertical rows of ranks of spikelets on the axis of the inflorescence, and five-toothed lemmas (the lower bract enclosing the grass floret). Spikelets are retained when the plants mature. Members of *Neostapfia* lack the ribbon-like, juvenile leaves of the *Orcuttia* species. In addition, spikelets are spirally arranged on the axis of the

inflorescence and have entire (undivided) lemmas. These plants do not retain their spikelets when mature. Members of *Tuctoria* also lack ribbon-like, juvenile leaves. Spikelets are spirally arranged on the axis of the inflorescence, and lemmas are entire or finely toothed. *Tuctoria* retains its spikelets when mature.

*Neostapfia colusana*, (Colusa grass) is a robust, tufted annual that grows 7 to 30 centimeters (cm) (3 to 12 inches (in)) in height. The stems are decumbent toward the base with the upper portion erect and terminating in spike-like inflorescences that are cylindrical, dense, and resemble small ears of corn. Because of its unique inflorescence, this species is not easily confused with any others.

Burtt-Davy (1898) collected and first described *Neostapfia colusana* as a member of the genus *Stapfia*. However, since the name *Stapfia* was already used pending subsequent revisions, Burtt-Davy (1899) later renamed this genus *Neostapfia*. Shortly thereafter, Scribner (1899) submerged *Neostapfia* within the genus *Anthochloa*. Hoover (1940) placed this species in the resurrected monotypic genus *Neostaphia*. *Neostaphia colusana* has been extirpated from its type locality in Colusa County. Five occurrences in Merced and Stanislaus Counties have been lost as well. The 36 remaining occurrences are concentrated along a 200-kilometer (km) (98-mile) stretch of the eastern edge of the San Joaquin Valley in Stanislaus and Merced Counties. One disjunct population exists in Solano County in the Sacramento Valley. All populations exist on private lands. In addition to the population on The Nature Conservancy's (TNC) Jepson Prairie Preserve in Solano County, this plant is afforded some protection via a 970-hectare (ha) (2,400-acre) conservation easement purchased by TNC at the Flying M Ranch in Merced County.

*Orcuttia inaequalis*, (San Joaquin Valley Orcutt grass) is a tufted annual that reaches 5 to 15 cm (2 to 6 in) in height. The grayish, pilose (bearing soft, straight hairs) plants have several spreading to erect stems, each terminating in a spike-like inflorescence. At maturity, the spikelets of the plant are aggregated into a dense, hat-shaped cluster, which separates them from other members of the genus *Orcuttia*. Additionally, the lemmas are deeply cleft into five prominent teeth, which may be sharp-pointed or have awns that are up to 0.5 millimeter (mm) (0.2 in) long. The middle tooth is conspicuously longer than the four laterals. *Orcuttia inadequalis* does not occur with any other species of *Ocruttia*. The species most closely resembles *O. californica* and *O. viscida*. The former does not have the long central lemma tooth and lacks the grayish appearance; whereas, the spikelets of the latter are more congested toward the apex of the inflorescence, but not as much as in *O. inaequalis*. *Orcuttia inaequalis* also has smaller lemmas, noncurving lemma teeth, and smaller seeds. *Orcuttia inaequalis* grows with *Neostapfia colusana* at five sites in the San Joaquin Valley.

Klyver first collected and identified *O. inaequalis* as *Orcuttia californica* near Lane's Bridge in Fresno County in 1927 (Klyver 1931). Hoover (1936a) described *O. inadqualis* as a distinct species, but reduced it to varietal status under *O. californica* in 1941 (Hoover 1941). Reeder (1982) determined *O. inaequalis* to be a distinct species based on seed proteins, chromosome numbers, and other morphological characteristics. *Orcuttia inaequalis* has 12 occurrences, mostly in the southeastern San Joaquin Valley in Fresno, Merced, and Madera Counties, over a 79-km (36-mile) range. Only one population is on Federal land, managed by the Bureau of Land Management (Bureau), while the remaining 11 populations are found on private lands. Three populations of *O. inaequalis* are protected by a conservation easement with TNC at the Flying M Ranch in Merced County.

*Orcuttia pilosa* (hairy Orcutt grass) is a densely-tufted, usually densely-pilose annual reaching about 5 to 20 cm (2 to 8 in) in height. The stems are erect or decumbent at the base. The inflorescence is spike-like and rather elognate, with the spiklets remote on the axis below and usually strongly congested above. The equal-length lemmas are deeply cleft into fine teeth that are sharp-pointed or short-awned. *Orcuttia pilosa* and *O. tenuis* grow together over a portion of their respective ranges but are readily distinguished, as the stems of *O. pilosa* are simple, tiller freely from the base and never branch from the upper nodes. Additionally, the spikelets of *O. pilosa* are strongly congested at the apex of the inflorescence and the stems and leaves are larger. *Orcuttia pilosa* occurs infrequently with *Tuctoria greenei* but these two grasses can be readily distinguished.

Hoover collected *O. pilosa* in 1938 from a single locality in eastern Stanislaus County, at the time considering this material to be a more robust form of *O. tenuis*. He used one of these specimens as the type for a new species, *O. pilosa*, which he described after examining additional collections from Merced and Madera Counties (Hoover 1941). *Orcuttia pilosa* occurs along a 490-km (223-mile) stretch on the eastern margin of the San Joaquin and Sacramento Valleys from Tehama County south to Stanislaus County and through Merced and Mariposa Counties. Previously, 30 occurrences of O. pilosa were known, although this number has been reduced to 19 extant populations, all occurring on private lands. Of these 19 extant populations, only 6 occurrences are considered to be stable (Stone *et al.* 1988). In recent years, the once widespread plant has become extirpated in Merced County, and has been reduced to only four populations in Stanislaus and Madera Counties. Ten populations occur in Tehama County, four of which are located on TNC's Vina Plains Preserve. However, only one of these sites is excluded from an agreement allowing continued cattle grazing by the previous landowner (Stone *et al.* 1988).

*Orcuttia viscida* (Sacramento Orcutt grass) is a densely tufted, pilose annual that reaches 2 to 10 cm (1 to 4 in) in height. The erect stems terminate in spike-like inflorescences that are congested at the apex. The plants are viscid even when young and more so at maturity. *Orcuttia viscida* develops five-toothed lemmas 6 to 7 mm (0.24 to 0.28 in) long with the middle tooth conspicuously longer than the four laterals. The lemma teeth curve outward at maturity, giving the inflorescence a distinct bristly appearance. Although *O. viscida* is geographically isolated from all other congeners, it most closely resembles *O. inaequalis*, but can be separated as described above under the discussion of *O. inaequalis*.

Hoover collected *O. viscida* in 1941 from a vernal pool near Folsom in Sacramento County and described it as a variety of *O. Californica* (Hoover 1941). Reeder (1980) elevated *O. viscida* to specific status based on differences in chromosome number, seed size, and other morphological characteristics (Reeder 1982). *Orcuttia viscida* has the narrowest range of the eight species proposed for listing herein. It occurs within a 350 square Km (135 square mi) area in eastern Sacramento County. Only 40 km (16 mi) separates the northern from the southernmost population. Two of the nine known populations of *O. viscida* have been extirpated. Presently, three populations are found on private lands and four are located on non-Federal public lands (one area owned by a public municipality, one owned by the Country, one by the City of Fair Oaks,

and one by the California Department of Fish and Game).

*Tuctoria greenei* (Greene's tuctoria) is a tufted, more or less pilose, annual grass that grows 5 to 15 cm (2 to 6 in) tall. The plant develops several to many erect stems, the outermost decumbent to spreading at the base, each terminating in a spike-like inflorescence that may be partially enveloped by the uppermost leaf. The lemmas are strongly curved and more or less truncate at the apex.

Vasey (1891) described *Tuctoria greenei* as *Orcuttia greenei* from specimens collected by Greene near Chico in Butte County in 1890. It remained in the genus *Orcuttia* until Reeder (1982) described the genus *Tuctoria* and placed the former *O. greenei* into the new genus *Tuctoria*. The 17 remaining occurrences of *T. greenei* occur in Merced, Stanislaus, Butte, Tehama, and Shasta Counties. The plant has been extirpated in Fresno, Madera, and Tulare Counties. The range of this species extends 567 km (258 miles). All populations are on private lands, including four on TNC's Vina Plains Preserve.

*Orcuttia tenuis* (slender Orcutt grass) is a weekly-tufted and sparsely-pilose annual grass. It grows about 5 to 15 cm (2 to 6 in) in height, producing one to several erect stems that often branch from the upper nodes. The inflorescence of this plant is elongate, with the spikelets usually remote along the axis and slightly, if at all, congested toward the apex. The lemmas are deeply cleft into fine, equal-length, prominent teeth that are sharp-pointed or short-awned. *Orcuttia tenuis* and *O. pilosa* are found growing together over a portion of their respective ranges but are readily distinguished as described in the discussion of *O. pilosa*.

Eastwood first collected *Orcuttia tenuis* in 1912 in Shasta County. These specimens were considered to be *O. californica* prior to the designation of *O. tenuis* as a new species in 1934, based upon spikelet arrangement as well as lemma tooth morphology (Hitchcock 1934). *Orcuttia tenuis* has been extirpated from its type locality in Shasta County and four other sites in the vicinity of the Redding Municipal Airport. Disjunct populations occur in vernal pools on remant alluvial fans and high stream terraces and recent basalt flows across 440 km (220 miles) (Stone et al. 1988). *Orcuttia tenuis* is restricted to northern California, with one population in Sacramento County, two in Lake County, 27 in Tehama County, 13 in Shasta County, and 2 in Siskiyou County. The Forest Service and the Bureau have jointly prepared a management guide for the eight populations on lands administered by the Bureau and the four populations on those lands administrated by the Lassen National Forest. All other populations are on private lands. In addition to the populations on TNC's Vina Plains Preserve in Tehama County, The Trust for Public Lands has purchased a conservation easement on the Inks Creek Ranch in Shasta County to protect one population of this plant.

*Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover) is a glabrous (hairless), hemiparasitic (partly parasitic) annual herb belonging to the snapdragon family (Scrophulariaceae). The stems are simple or branched, generally 5 to 25 cm (2 to 10 in) tall with brittle-succulent, entire, alternate leaves. The branches end in dense, short, green inflorescences with bracts equaling or exceeding the bright yellow to white flowers that appear in May. *Castilleja campestris* ssp. *succelenta* occurs with *C. campestris* ssp. *campestris* in Stanislaus County, but the latter can be distinguished by its usually more brittle leaves, shorter bracts, larger corollas, and longer stigmata. Hoover (1936b) described the plant as *Orthocarpus campestris* var. *succulentus*. He subsequently elevated it to a full species, *O. succulentus*, distinguishing it from *O. campestris* on the basis of leaf and bract shape and flexibility, corolla color and morphology, and anther cell length (Hoover 1968). Chuang and Heckard (1991) significantly revised the concept of *Orthocarpus*, subsuming most of what had been called *Orthocarpus* into the genus *Castilleja*. They also proposed the new combination *C. campestris* ssp. *succulenta*. This small annual plant was formerly more widespread in the Central Valley and is now extirpated from its type locality near Ryer in Merced County. It occurs in the San Joaquin Valley over a range of 145 km (66 miles) extending through eastern Merced, southeastern Stanislaus, Madera, and northern Fresno Counties. One population occurs on lands managed by the Bureau of Reclamation, and one population on land managed by the Bureau of Land Management. The remaining 31 populations occur on private lands. Of these 31 populations, 7 occur at the Flying M Ranch, where TNC has a conservation easement.

*Chamaesyce hooveri* (Hoover's spurge), a member of the spurge family (Euphorbiaceae), is a prostrate, glabrous annual herb. The leaves are gray-green, asymmetric at the base, rounded to kidney-shaped and have small, narrow white teeth around the margins. The small flowers occur singly in the leaf axils. *Chamaesyce ocellata* can occur with *C. hooveri* but is readily distinguished by its spreading rather than prostrate habit, yellowish-green color, and entire leaf margins. *Chamaesyce serpyllifolia* can occur with *C. hooveri* in San Joaquin County. Both species have a gray-green color and may be prostrate, but *C. serpyllifolia* has less rounded leaves, and the marginal teeth are shorter and are usually limited to the leaf apex.

Hoover first collected this plant in Tulare County in 1937. Wheeler (1940) described it as *Euphorbia hooveri*. Koutnik (1985) places this species in the genus *Chamaesyce* based on the presence of a sheath around the vascular bundle, its sympodial (lateral branching) growth habit, and its photosynthetic pathway. *Chamaesyce hooveri* is found in vernal pools on remnant alluvial fans and related depositional stream terraces for a stretch of 528 km (240 miles) along the eastern margin of the Central Valley. Of the 23 extant occurrences, four populations are known from Stanislaus and Tulare Counties. Two populations occur at the northern end of Butte County, and the remainder are located in Tehama County. Four of the Tehama County populations occur on TNC's Vina Plains Preserve. All populations are on privately owned lands.

**Previous Federal Action**

Federal actions on seven of these eight species began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those species considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Castilleja campestris* ssp. *succulenta* (as *Orthocarpus succulentis* [sic]), *Neostapfia colusana*, *Orcuttia inaequalis* (as *O. californica* var. *inaequalis*), *O. pilosa*, *O. tenuis*, and *O. viscia* (as *O. californica* var. *viscida*) as endangered, and *Chamaesyce hooveri* (as *Euphorbia hooveri*) as threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention to review the status of the species named therein. The seven plants above were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant

species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Castilleja campestris* ssp. *succulenta*, *Chamaesyce hooveri*, *Neostapfia colusana*, *Orcuttia inaequalis*, *O. pilosa*, *O. tenuis*, and *O. viscida*, were included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Castilleja campestris* ssp. *succulenta*, *Chamaesyce hooveri*, *Neostapfia colusana*, *Orcuttia inaequalis*, *O. pilosa*, *O. tenuis*, *O. viscida*, and *Tuctoria greenei* as Category 1 candidates. Category 1 candidates are those for which the Service has on file substantial information on biological vulnerability and threats to support a proposal to list. On November 28, 1983, the Service published in the **Federal Register** a supplemental to the notice of review (48 FR 53640), which changed *Castilleja campestris* ssp. *succulentus* and *Neostapfia colusana* to Category 2 candidates. Category 2 species are those for which data in the Service's possession indicate that listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. The plant notice was again revised on September 27, 1985 (50 FR 39526), and the status of the eight plants remained unchanged from the 1983 supplement. In the revision of the plant notice published on February 21, 1990 (55 FR 6184), *Neostapfia colusana* was returned to Category 1 status. In 1991 and 1992, the Service received additional information regarding the status and threats to *Castilleja campestris* ssp. *succulenta*, and has therefore returned this species to Category 1 status.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Castilleja campestris* ssp. *succulenta*, *Chamaesyce hooveri*, Neostapfia colusana, Orcuttia inaequalis, O. pilosa, O. tenuis, and *O. viscida*, because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991, the Service found that the petitioned listing of the above seven plant taxa was warranted but precluded by other higher priority listing actions. Publication of this proposal constitutes the final finding for the petitioned action.

**Summary of Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one of more of the five factors described in section 4(a)(1). These factors and their application to *Castilleja campestris* (Benth.) Chuang and Heckard ssp. *succulenta* (Hoover) Chuang and Heckard, *Chamaesyce hooveri* (Wheeler) Koutnik, *Neostapfia colusana* (Davy) Davy, *Orcuttia inaequalis* Hoover, *Orcuttia pilosa* Hoover, *Orcuttia tenuis* Hitch., *Orcuttia viscida* (Hoover) J. Reeder, and *Tuctoria greenei* (Vasey) J. Reeder are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range*

The habitat of these eight species has been reduced and fragmented throughout their respective ranges as vernal pools continue to be eliminated by urbanization, flood control projects, landfill projects, overgrazing, highway development, and agricultural conversion. Lands on the floor of the Central Valley are closer to existing, expanding cities and farms than the valley rim, which is steeper, less fertile, and more removed from cities. As a result, valley floor vernal pools, along with open rangeland, have been and continue to be favored for urban and agricultural development. Within the last 20 years, agricultural land conversion is known to have extirpated one population of *Chamaesyce hooveri* in Tulare County; four populations of *Neostapfia colusana* in Stanislaus County and one in Merced County; five populations of *Orcuttia inaequalis* in Stanislaus County, four in Madera County, three in Merced County, and one in Fresno County; four populations of *O. pilosa* in Stanislaus County and one in Merced County; one population of *O. tenuis* in Shasta County; and one population of *Tuctoria greenei* in Tulare County, three in Fresno County, one in Madera County, and four in San Joequin County (Stone et al. 1988). Agricultural conversion threatens 8 extant populations of *O. pilosa* in Madera and Stanislaus Counties, 2 populations of *Chamaesyce hooveri* in Stanislaus County, 1 population of *castilleja campestris* ssp. *succulenta* in Madera County and 1 in Fresno County, 14 populations of *Neostapfia colusana* in southeastern Stanislaus County, 7 populations of *T. greenei* in Merced County, and 2 populations of *O. inaequalis* in Madera County (Stone et al. 1988).

Additionally, numerous activities associated with agricultural development have caused habitat degradation severe enough that many populations of the species proposed for listing herein have not been seen for 2 consecutive years and are presumed to be extirpated (Stone et al. 1988). For example, livestock pond construction has inundated one population of *Neostaphia colusana* in Merced County. Irrigated agriculture and associated run-off have likely eliminated one population of *N. colusana* in Merced County, and one population each of *Orcuttia inaequalis* and *Tuctoria greenei* in Madera County. Overgrazing and hay production likely have destroyed one population of *O. inaequalis* in Tehama County. Discing combined with grazing presumably has destroyed one population of *t. greenei* in Merced County. Discing also has destroyed one population of *N. colusana* in Tulare County. Discing has likely eliminated one population of *Castilleja campestris* ssp. *succulenta* in Fresno County (Stone et al. 1988, RareFind 1992). In addition, five of the eight remaining populations of *Orcuttia pilosa* in Stanislaus, Merced, and Madera Counties have been damaged by discing or discing combined with grazing (Stone et al. 1988).

Human activities that alter the hydrology of vernal pools, including changes in the amount of water or the length of inundation, directly and indirectly affect vernal pool plants. for example, a vernal pool known to contain *Orcuttia tenuis* was channelized for mosquito abatement. It is likely that the population was extirpated as a result

(Stone et al. 1988, RareFind 1992). Pond construction for recreational waterfowl hunting in Colusa County presumably has eliminated one population of *Neostapfia colusana*. Additionally, hydrological modifications have destroyed two Merced County and one Fresno County population of *O. inaequalis*, and three populations of *O. tenuis* in Shasta County (Stone et al. 1988). The Merced County Stream Channel Project of the U.S. Army Corps of Engineers (Corps) threatens three populations of *O. inaequalis*, and four populations each of *N. colusana* and *Castilleja campestris* ssp. *succulenta* in Merced County (R. Keck, U.S. Fish and Wildlife Service, pers. comm., 1992).

Because the human population of the Central Valley is rapidly expanding, numerous populations of these eight vernal pool plants have been extirpated and continue to be threatened by urban development projects. For example, two major proposed urban developments are likely to adversely affect significant amounts of vernal pool habitat in the Central Valley, one of 80,000 people in southwest Placer County and one of 40,000 people in southeastern Yolo County. In El Dorado County, a 728-ha (1,800-acre) community near Georgetown is proposed as the first of 15 more large-scale urban developments. Four new cities, projected to house 142,000 people, are proposed for Sutter County in the Sacramento Valley (Weigand 1991). Urbanization has extirpated one population of *Orcuttia inaequalis* in Fresno County, three populations of *o. pilosa* in Madera County, and one population of *Tuctoria greenei* in Tehama County (Stone et al. 1988). In the Sacramento Valley, eight populations of *o. tenuis* are considered threatened by urbanization around Redding in Shasta County (Stone et al. 1988). Numerous proposed housing developments in Sacramento County threaten vernal pool areas that may provide habitat for *o. tenuis* and *o. viscida*, including Aspen VI, County Creek Estates, Granite, Laguna Commons, Laguna Creek, Laguna Palms, Laguna Springs, Laguna Vista, Roseville 150, and Strawberry Creek (M. Littlefield, U.S. Fish and Wildlife Service, pers. comm., 1992).

In addition to the numerous housing developments discussed above, increasing urbanization of the Central Valley can affect vernal pool habitats via landfills, highway projects, and recreational and industrial developments. For example, of the seven Sacramento County populations of *Orcuttia viscida*, one population is threatened by a public landfill expansion, one by an industrial park development, and one by a frisbee golf course (Stone *et al.* 1988). A proposed expansion of State Highway 168, housing tract developments, and a proposed landfill imperil four populations of *Castilleja campestris* ssp. *succulenta* in Fresno County (RareFind 1992). An additional population is threatened by proposed expansion of State Highway 41 in Madera County.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Overutilization is not currently known to be a factor for these species, although some taxa have become vulnerable to collecting by curiosity seekers as a result of increased publicity following publication of a listing proposal.

*C. Disease or Predation*

All eight taxa occur mostly on private land and some Federal rangelands managed by the Forest Service and the Bureau that are subject to livestock grazing. The intensity and, more importantly, the timing of this activity affect how livestock grazing impacts vernal pool plants (Stone *et al.* 1988). Overgrazing can occur as a result of inappropriate timing or intensity of grazing or both. Of the eight plants, overgrazing is a serious threat to *Neostapfia colusana, Orcuttia inaequalis, O. pilosa, O. tenuis, O. viscida*, and *Tuctoria greenei*. These vernal pool plants mature later in the growing season than the California upland annual grasses. When early season forage dries up, these plants are still green, making them more attractive for consumption by grazing animals. Although *N. colusana* tends to be avoided by livestock because its high exudate content decreases its palatability and it continues tillering after grazing, this species has been extirpated from two sites due to overgrazing (Stone *et al.* 1988). *Orcuttia inaequalis, O. pilosa*, and *T. greenei* are especially vulnerable to grazing impacts. One population of *O. pilosa* in Merced County and a population of *T. greenei* in San Joaquin County have been extirpated by overgrazing (Stone *et al.* 1988). One population of *O. inaequalis* in Madera County, one population of *O. pilosa* in Tehama County, and six populations of *T. greenei* (one in Stanislaus County, two in Tehama County, and three in Merced County) are presumed extirpated due to overgrazing (Stone *et al* 1988) In addition, grazing adversely affects two populations of *O. inaequalis* in Merced County and one in Madera County, two populations of *O. tenuis* in Madera County and one in Shasta County, two populations of *Castilleja campestris* ssp. *succulenta* in Fresno County and seven in Stanislaus County, and four populations of *N. colusana* in Merced County (Stone *et al.* 1988, RareFind 1992). In Tehama County on the TNC Vina Plains Preserve, three of the four populations of *Tuctoria greenei* and three of the four populations of *O. pilosa* are damaged and possibly declining due to grazing (Stone *et al.* 1988). The effects of grazing on *T. greenei* are discussed further under Factor E in this section. Grazing practices used on private lands that support the vernal pool plant populations proposed for listing herein are not known.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into waters of the United States, which includes navigable and isolated water, headwaters, and adjacent wetlands. The section 404 Regulations require that applicants obtain an individual permit to place fill for projects affecting greater than 10 acres (4 ha) of waters of the United States.

Nationwide Permit (NWP) No. 26 (33 CFR part 330) was established by the Corps to facilitate authorization of discharges of fill into isolated waters (such as vernal pools) that cause the loss of less than 10 acres (4 ha) of waters of the United States, and that cause only minimal individual and cumulative environmental impacts. Projects that qualify for authorization under NWP 26 and that affect less than 1 acre of isolated waters or headwaters may proceed without notifying the Corps. Evaluation of impacts of such projects through the section 404 permit process is thus precluded.

Corps District and Division Engineers may require that an individual section 404 permit be obtained if projects otherwise qualifying under NWP 26 would have greater than minimal individual or cumulative environmental impacts. However, the Corps has been reluctant to withhold authorization under NWP 26 unless the existence of a listed threatened or endangered species would be jeopardized, regardless of the significance of the affected wetland resources.

Regardless of the type of permit deemed necessary under section 404, candidate species receive no special consideration

Additionally and equally important, the upland watersheds of vernal pools

are not provided any protection. Disturbance or loss of watersheds have extirpated several populations of these species as discussed previously in Factor A. Thus, as a consequence of the small scale of many vernal pools (most are less than 1 acre in size) and the lack of protection of associated upland watersheds, these vernal pool plants currently receive insufficient protection under section 404 of the Clean Water Act.

The *Orcuttia tenuis* Species Management Guide written by the Lassen National Forest and the Susanville District of the Bureau (Corbin and Schoolcraft 1990a) gives long-term management direction for those Forest Service and Bureau populations in Shasta and Siskiyou Counties in northern California. However, the extent to which these management recommendations are being implemented is questionable since the sites are not fenced to exclude livestock, for example, and no enforcement exists to protect the plants.

The California Department of Fish and Game has listed *Castilleja campestris* ssp. *succulenta*, *Neostapfia colusana*, *Orcuttia inaequalis*, *O. pilosa*, *O. tenuis*, and *O. viscida* as endangered, and *Tuctoria greenei* as rare under the California Endangered Species Act (Chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). *Chamaesyce hooveri* is not State-listed. Though the "take" of State-listed plants is prohibited (California Native Plant Protection Act, Chapter 10 sec. 1908 and California Endangered Species Act, Chapter 1.5 sec. 2080), State law appears to exempt the taking of such plants via habitat modification or land use changes by the owner. After the Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Native Plant Protection Act, Chapter 1.5 sec. 1913).

Part of the environmental review under the California Environmental Quality Act (CEQA) for projects that result in the loss of sites supporting these species sometimes includes the development of mitigation plans. Such plans usually involve the transplantation of the plant species to another existing vernal pool, or the artificial creation of vernal pool habitat. Transplantation and habitat creation efforts are experimental in nature, and are generally not successful (Fiedler 1991, Hall-Cather 1984). Following development of the transplantation plan the original site is destroyed. Therefore, when the mitigation effort fails, the resource has already been lost.

The public agency with primary authority over a project (the lead agency) is responsible for conducting an environmental review and consulting with other agencies concerned with the resources affected by the project. However, the lead agency may approve projects that cause significant environmental damage, such as the destruction of State-listed endangered species, and does not always require adequate mitigation for the replacement or protection of the affected resources. The protection of listed species under CEQA is therefore dependent upon the discretion of the lead agency.

Conservation easements do not currently insure adequate protection for these vulnerable plant species. For example, although four populations of *Orcuttia pilosa* are located on TNC's Vina Plains Preserve, only one of these sites is excluded from an agreement allowing continued cattle grazing by the previous landowner, and the other populations have all been damaged by grazing (Stone *et al.* 1988). Fewer than 8 percent of the populations of these eight taxa are within existing conservation easements.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Native and exotic plant species have invaded many vernal pools of the Central Valley, thus limiting the amount of habitat available to these eight taxa. For example, at six of the seven extant sites, the distribution and abundance of *Orcuttia viscida* is significantly restricted by *Eleocharis macrostachya* (pale spike-rush), a species that inhabits ponds and marshes (Stone *et al.* 1988). At least 13 populations of *O. tenuis* are similarly affected (Stone *et al.* 1987, 1988). In the Sacramento Valley, potentially significant weed problems were observed at several sites on the Vina Plains, involving *Xanthium strumarium*, *Convolvulus arvensis*, *Proboscidea louisianica*, and *Asclepias fascicularis* in large vernal pools that provide habitat for *O. pilosa* and *Chamaesyce hooveri*.

In addition, soil disturbance from cattle grazing combined with competition from introduced species adversely affects several populations of *Tuctoria greenei* in the Sacramento and San Joaquin Valleys (Stone *et al.* 1987, 1988). Although *Neostaphia colusana* can withstand some degree of trampling associated with grazing, this species has been extirpated from two areas that were heavily grazed (Stone *et al.* 1988). *Tuctoria greenei* appears to be the most susceptible to negative grazing impacts of the eight plants in this listing proposal because its preference for marginal sites in vernal pools (e.g. along the outer edges of the pool) makes it more susceptible to livestock trampling damage and competition from nonnative weeds such as *Lolium multiflorum*, *Polypogon monspeliensis*, and *Phalaris paradoxa* (Stone *et al.* 1987). All populations of *T. greenei* are subject to grazing. Several populations of *T. greenei* are damaged and declining, and at least eight sites have been extirpated or are presumed extirpated from grazing impacts (Stone *et al.* 1988). It is therefore likely that all remaining populations of *T. greenei* are threatened by grazing (Stone *et al.* 1988).

Since vernal pools are fairly localized habitats in close proximity to urban and agricultural areas, uncontrolled visits by groups or individuals could result in trampling of vernal pool plants.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these eight taxa in determining to issue this rule. Based on this evaluation, the preferred action is to list *Orcuttia inaequalis*, *Orcuttia pilosa*, *Orcuttia viscida*, and *Tuctoria greenei* as endangered and to list *Castilleja campestris* ssp. *succulenta*, *Chamaesyce hooveri*, *Neostapfia colusana*, and *Orcuttia tenuis* as threatened. Large-scale human population increases and attendant urban growth, as well as agricultural land uses in adjacent areas, have destroyed significant quantities of the plants' vernal pool habitat and continue to eliminate many plant populations. As a result, all eight species have fragmented, highly restricted habitats within the Central Valley, most of which are vulnerable to on-going and future threats. Relatively few populations of these plants are afforded permanent protection.

The plants proposed for listing as endangered face numerous threats and have been reduced to fewer than 20 populations each. Of the 12 extant populations of *Orcuttia inaequalis*, 7 are threatened by overgrazing, competition with nonnative weeds, urbanization, agriculture, and a flood control project. Twelve of the 19 extant populations of *O. pilosa* are variously threatened by overgrazing, urbanization, irrigated agriculture, a highway expansion project, discing, and competition from nonnative weeds. Of the seven extant populations of *O. viscida*, five populations are threatened by one or more of the following factors: overgrazing, landfill projects, urban

developments, a frisbee golf course, off-highway vehicle use, and competition from nonnative weeds. All 17 extant populations of *Tuctoria greenei* are threatened by overgrazing and/or irrigated agriculture. Because these plants are in danger of extinction throughout all or a significant part of their ranges, they fit the definition of endangered as defined in the Act.

The four taxa proposed to be listed as threatened face fewer existing threats but are likely to become increasingly imperiled in the foreseeable future unless current trends of urban development and agricultural conversion are reversed. Of the 33 extant populations of *Castilleja campestris* ssp. *succulenta*, nearly half are threatened by one or more of the following: discing, grazing, flood control projects, urbanization, agriculture, a proposed highway expansion project, and a proposed landfill. About one-third of the 23 populations of *Chamaesyce hooveri* are threatened by a combination of irrigated agriculture, overgrazing, and competition with nonnative weeds. Of the 36 populations of *Neostapfia colusana*, 19 are damaged and declining due to one or more of the following factors: overgrazing, discing, flood control projects, competition with exotic plants, and agricultural activities. Fifteen of the 40 extant populations of *Orcuttia tenuis* are threatened either by overgrazing and competition from introduced species, or by urbanization. For the reasons discussed below, the Service is not proposing to designate critical habitat for these plant species at this time.

**Critical Habitat**

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for these species at this time. Since vernal pool habitats are small and easily identified, it is likely that the publication of precise maps and descriptions of critical habitat in the **Federal Register** would increase the vulnerability of these plant species to incidents of collection and general vandalism. The listing of these plants as endangered or threatened elevates awareness of their rarity and makes them more sought after by curiosity seekers, researchers, and rare plant collectors. Such increased visits to vernal pools could contribute to the decline of existing populations through vandalism. Protection of the habitats of the eight taxa will be addressed through the recovery process and through the section 7 consultation process. The Service believes that Federal involvement in areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these eight plants is not prudent at this time, because such designation would likely increase the degree of threat from vandalism, collecting, and other human activities.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Corps will become involved with these species through its permitting authority under section 404 of the Clean Water Act, as well as water projects in the Central Valley such as the Merced County Streams Project. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by the proposed project without first completing formal consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. In addition, insurance of housing loans by the Department of Housing and Urban Development in areas that presently support these eight species would be subject to review by the Service under section 7 of the Act. The Bureau of Reclamation will become involved under its Friant water contract renewal program to the extent that these species may occur within the 404,700 ha (1 million acre) water delivery area (M. Kohl, U.S. Fish and Wildlife Service, pers. comm., 1992). Other future Bureau of Reclamation contract renewals will provide additional potential for section 7 involvement. The Bureau and the Forest Service will become involved as they are responsible for authorizing grazing and other land uses of areas containing vernal pools. Highway construction and maintenance projects that receive funding from the Department of Transportation (Federal Highways Administration) will be subject to review under section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the eight vernal pool plants, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71 would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; remove and reduce to possession such species from areas under Federal jurisdiction; maliciously damage or destroy any such species from any such area; or to remove, cut, dig, damage or destroy these plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a state criminal trespass law; deliver, receive, carry, transport, or ship these species in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale these species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "of cultivated origin" appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also

provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Since none of these eight plants are common in the wild or in cultivation, trade permits likely would not be sought. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, rm. 432; Arlington, Virginia 22203–3507 (703/358–2092).

**Public Comments Solicited**

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these agencies;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846.

**National Environmental Policy Act**

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 94244).

**References Cited**

A complete list of all references cited herein is available upon request from the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

**Author**

The primary author of this proposed rule is Kenneth W. Fuller, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulations Promulgation**

Accordingly, it is hereby proposed to amend part 17 subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| * * | * | * | * | * | * | * |
| Euphorbiaceae—Spurge family: | | | | | | |
| * * | * | * | * | * | * | * |
| *Chamaesyce hooveri* ... | Hoover's spurge ..... | U.S.A. (CA) ..... | T | ..... | NA | NA |
| * * | * | * | * | * | * | * |
| Poaceae—Grass family: | | | | | | |
| * * | * | * | * | * | * | * |
| *Neostapfia colusana* .... | Colusa grass ..... | U.S.A. (CA) ..... | T | ..... | NA | NA |
| * * | * | * | * | * | * | * |
| *Orcuttia inaequalis* ..... | San Joaquin Valley Orcutt grass. | U.S.A. (CA) ..... | E | ..... | NA | NA |
| * * | * | * | * | * | * | * |
| *Orcuttia pilosa* ..... | Hairy Orcutt grass ..... | U.S.A. (CA) ..... | E | ..... | NA | NA |
| * * | * | * | * | * | * | * |
| *Orcuttia tenuis* ..... | Slender Orcutt grass ..... | U.S.A. (CA) ..... | T | ..... | NA | NA |
| * * | * | * | * | * | * | * |
| *Orcuttia viscida* ..... | Sacramento Orcutt ..... | U.S.A. (CA) ..... | E | ..... | NA | NA |
| * * | * | * | * | | | |
| *Tuctoria greenei* ..... | ..... | U.S.A. (CA) ..... | E | ..... | NA | NA |

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| Species | | Historic range | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | |
| • • | • | • | • | • | • | • |
| Scrophulariaceae—Snapdragon family: | | | | | | |
| • • | • | • | • | • | • | • |
| *Castilleja campestris* ssp. *succulenta* | Fleshy owl's-clover | U.S.A. (CA) | T | | NA | NA |
| • • | • | • | • | • | • | • |

Dated: July 13, 1993.

Richard N. Smith,

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 93-18637 Filed 8-4-93; 8:45 am]

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# Notices

Federal Register
Vol. 58, No. 149
Thursday, August 5, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee will be convened on Thursday, August 19, 1993, 10 a.m. to 2 p.m., Council Chambers, City Hall, 15 Loocherman Street Plaza, Dover, Delaware 19901.

The purpose of the meeting is to announce new appointments, including newly appointed Chairperson Emily G. Morris of Dover, conduct an administrative orientation, plan program areas, and review project activity on the recent factfinding meeting regarding implementation of the Americans With Disabilities Act in Delaware.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Emily G. Morris at 302–674–0839, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1993.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93–18620 Filed 8–4–93; 8:45 am]

BILLING CODE 6335–01–P

### Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 8 p.m., on August 26, 1993, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana 70130. The purpose of the meeting is to discuss current projects and to plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TDD 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1993.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93–18619 Filed 8–4–93; 8:45 am]

BILLING CODE 6335–01–P

## U.S. COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will be held on September 9, 1993, from 6 p.m. until 8 p.m. at the Doubletree Hotel, 616 West 7th Street, Tulsa, Oklahoma 74217. The purpose of the meeting is to plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 20, 1993.

**Carol-Lee Hurley,**

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 93–18700 Filed 8–4–93; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket 35–93]

### Foreign-Trade Zone 79—Tampa, Florida, Application for Subzone, Group Technologies Corporation Plant, (Electronic/Computer/Communication Equipment), Tampa, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tampa, Florida, grantee of FTZ 79, requesting special-purpose subzone status for the electronic/computer/telecommunication equipment manufacturing facility of Group Technologies Corporation (GTC) in Tampa, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 26, 1993.

The GTC facility (38 acres) is located at 10901 Malcolm McKinley Drive, Tampa, Florida. The facility (850 employees) is used to produce a range of electronic equipment, including printed circuit board assemblies, power supplies, computers and components, telecommunication and communication security equipment, avionics, medical equipment, and testing equipment. While GTC has been a supplier primarily to U.S. government agencies, it is shifting towards commercial markets to compensate for reductions in defense-related contractors.

The company purchases or will purchase certain parts and materials from abroad, including telephones, computer cathode ray tubes, monitors, liquid crystal displays, flat panel displays, disc drives, tape drives, modems, circuit boards, capacitors, resistors, transistors, integrated circuits, diodes, and aluminum housings.

Zone procedures would exempt GTC from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (3.9 to 8.5%). The duty rates on foreign-source components range from duty-free to 10 percent. The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 4, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 19, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 2203 N. Lois Avenue, Tampa, FL 33601.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 28, 1993.

Dennis Puccinelli,

*Acting Executive Secretary.*

[FR Doc. 93–18751 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

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[Docket No. 33–93]

## Proposed Foreign-Trade Subzone; Chevron U.S.A. Products Co., (Oil Refinery), Pascagoula, Mississippi

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, requesting special-purpose subzone status for the oil refinery of Chevron U.S.A. Products Company (Chevron), located in Pascagoula, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 21, 1993.

The facility (3,100 acres) is located on the Mississippi Sound, east of Pascagoula, some 35 miles east of Gulfport, in Jackson County, Mississippi. The refinery (approx. 295,000 BPD; 1,195 employees) is used to produce fuel and chemical products. Fuels produced include gasoline, jet fuel, fuel oil, diesel fuel, and light naphtha. Chemical products produced include refinery gases such as liquified petroleum gas, propane, and butane; petrochemical feedstocks, such as paraxylene and propylene; and refinery byproducts, such as asphalt, sulfur, and petroleum coke. The company also has plans to add a processing plant to produce benzene for petrochemical use. All of the petroleum coke and 9 percent of the fuels are exported. Up to 90 percent of the crude oil (95 percent of imputs) is sourced abroad.

The application requests authority to use zone procedures primarily for export activity at this time and indicates that Chevron will accept approval subject to the standard oil refinery restrictions (privileged foreign status on incoming foreign merchandise and full duties on fuel consumed). At the outset, one of the main uses of zone procedures would involve the refining of foreign crude oil for jet fuel that is sold for international flights, which could displace foreign-sourced jet fuel that is imported duty- and tax-free under the bonded fuel program.

Zone procedures would exempt Chevron from Customs duty payments on the foreign products used in its exports, including jet fuel sold for international flights. The company would be able to defer Customs duties on finished products shipped to U.S. markets. (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.) Jet fuel sold for international flights also would be exempt from state sales and excise taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 4, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 19, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations.

Port Director's Office, Port of Pascagoula, U.S. Customs Service, Suite 402, Pascagoula-Moss Point Bank Bldg., Pascagoula, Mississippi 39568.
Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 28, 1993.

Dennis Puccinelli,

*Acting Executive Secretary.*

[FR Doc. 93–18750 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

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## International Trade Administration

[A–588–055]

## Acrylic Sheet From Japan; Intent To Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on acrylic sheet from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sheila Forbes or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 31, 1976, the Treasury Department published an antidumping finding on acrylic sheet from Japan (41 FR 36497). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

### Opportunity to Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to

the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–18757 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–307–701]**

## Aluminum Rod From Venezuela; Intent To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on aluminum rod from Venezuela. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Gail Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 22, 1988, the Department of Commerce (the Department) published an antidumping duty order on aluminum rod from Venezuela (53 FR 31903). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

### Opportunity To Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–18760 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–427–098]**

## Anhydrous Sodium Metasilicate From France; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request by the petitioner, the PQ Corporation, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. This review covers Rhone Poulenc Chime deBase, a manufacturer/exporter of this merchandise to the United States, and the period January 1, 1992 through December 31, 1992. The firm failed to respond to our questionnaire. As a result, we have determined to use best information available for cash deposit and appraisement purposes.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 13, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 4148) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. On January 26, 1993, the petitioner, the PQ Corporation, requested an administrative review of Rhone Poulenc Chime DeBase (Rhone Poulenc), a manufacturer/exporter of this merchandise to the United States. We initiated the review, covering January 1, 1992 through December 31, 1992, on March 8, 1993 (58 FR 12931). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930 as amended (the Tariff Act).

### Scope of the Review

Imports covered by the review are shipments of ASM, a crystallized silicate ($Na_2SiO_3$) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Rhone Poulenc and the period January 1, 1992 through December 31, 1992.

### Use of Best Information Available

We mailed the antidumping questionnaire to Rhone Poulenc, the only manufacturer/exporter of this merchandise to the United States. Rhone Poulenc failed to respond to our questionnaire. The Department has therefore decided to use the best

information available (BIA) in determining the rate for this firm.

When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department considers the company uncooperative and generally assigns to that company the higher of: (a) The highest rate assigned to any company in a previous review or the investigation or (b) the highest rate for a responding company with shipments during the review period. See 19 CFR 353.37(b) and Final Results of Antidumping Duty Administrative Review Portable Electric Typewriters from Japan (November 4, 1991, 56 FR 56393). In this case, for BIA, we used 60 percent, the highest rate from a prior review. See Final Results of Antidumping Duty Administrative Review, Anhydrous Sodium Metasilicate from France (52 FR 33856, September 8, 1987).

**Preliminary Results of the Review**

As a result of our review, we preliminarily determine that a margin of 60 percent exists for Rhone Poulenc during the period January 1, 1992 through December 31, 1992.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of ASM from France, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping order, the "all others" rate for the purposes of this review will be 60 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements when imposed shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 23, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18762 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–588–704]**

## Brass Sheet and Strip From Japan; Intent to Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on brass sheet and strip from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Chip Hayes, Thomas Killiam, or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 12, 1988, the Department of Commerce (the Department) published an antidumping duty order on brass sheet and strip from Japan (53 FR 38454). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25 (d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

**Opportunity To Object**

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant

Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–18758 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–588–035]**

## Cadmium From Japan; Intent To Revoke Antidumping Finding

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping finding.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on cadmium from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 4, 1972, the Treasury Department published an antidumping finding on cadmium from Japan (37 FR 15700). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

### Opportunity To Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–18756 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–570–504]**

## Candles From the People's Republic of China; Intent To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on candles from the People's Republic of China (the PRC). Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Valerie Turoscy, or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 28, 1986, the Department of Commerce (the Department) published an antidumping duty order on candles from the PRC (51 FR 30686). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

### Opportunity to Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.20(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

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**[A–533–809]**

## Preliminary Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel Flanges From India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mary Jenkins or Brian Smith, Office of Antidumping Investigations, Import

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Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1756 or 482–1766, respectively.

**Preliminary Determination**

The Department of Commerce (the Department) preliminarily determines that certain forged stainless steel flanges (flanges) from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the notice of initiation on January 21, 1993 (58 FR 6619, February 1, 1993), the following events have occurred.

On February 16, 1993, the International Trade Commission (ITC) notified us of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of subject merchandise that is allegedly sold in the United States at less than fair value.

On March 9, 1993, the American Consulate in Bombay informed us of the names and relevant history of the firms producing flanges in India. On March 11 and 27, 1993, we sent mini-Section A questionnaires that requested volume and value of shipments to the United States to Indian producers named by the petitioners and by the American Consulate. We received responses to the Department's mini-Section A questionnaires from March 16 through April 26, 1993. However, two of the respondents, Bombay Forgings Pvt., Ltd. and Dynaforge, did not respond to our mini-Section A questionnaire. Consequently, we have assigned a rate to Bombay Forgings Pvt., Ltd. and Dynaforge using best information available (BIA). For further discussion, see the "Best Information Available" section of this notice.

Based on our analysis of the responses to the mini-Section A responses and information received from the American Consulate in Bombay, we determined that sales by Mukand Ltd. (Mukand) and Akai Impex Ltd. (Akai) represented a significant percentage of exports of subject merchandise from India. These companies, Mukand and Akai, together accounted for at least 60 percent of known sales to the United States during the period of investigation (POI). (See, 19 CFR 353.42(b)). Accordingly, on March 18, and 19, 1993, respectively, we sent Mukand and Akai antidumping questionnaires. On March 25, 1993, the Department met, with counsel for Mukand, at its request, to discuss Mukand's date of sale methodology. On March 29, 1993, Mukand submitted a description of its sales process. Also on March 29, 1993, the Department requested that Mukand provide clarification of information submitted on purchase orders relating to sales of subject merchandise. On March 31, 1993, the Department contacted Mukand and requested that it describe the relationship between Mukand and its trading company, Sunstar Metals, Ltd. (Sunstar).

On April 1, 1993, Mukand responded to Section A of the Department's antidumping questionnaire requesting information concerning organizational structure, accounting practices, merchandise, and total sales of subject merchandise in all markets. On April 2, 1993, Akai informed the Department that it had no home market or third country sales. Therefore, we forwarded to Akai Section D of the Department's antidumping questionnaire, (the section regarding constructed value). On April 7, 1993, Mukand informed the Department that it had no home market sales and asked if it should report third country sales or constructed value. On April 8, 1993, Mukand submitted clarification of the sales information provided on March 29, 1993. On April 8, 1993, Mukand also submitted a supplement to its submission earlier that day. On April 15, 1993, Mukand submitted a response to questions concerning the date of sale issue. Also on April 15, 1993, Echjay Forgings Private Ltd. (Echjay) requested that it be treated as a voluntary respondent in this investigation.

On April 16, 1993, we notified parties that we were modifying the scope of this investigation by inserting the term "forged" and adding a statement that forged flanges sold in the United States are generally made to specification ASTM A–182. We also added a statement that cast stainless steel flanges were specifically excluded from the scope of the investigation. Petitioners agreed that the intended scope of this investigation was stainless steel flanges made to specification ASTM A–182. We informed petitioners and respondents of the modification. (See, Memorandum to Richard W. Moreland, Acting Deputy Assistant Secretary for Investigations (April 16, 1993).)

On April 19, 1993, we received Akai's response to section A of the Department's questionnaire. Because the Department needed to determine whether Mukand or its trading company, Sunstar, was the possible price discriminator, the Department served its antidumping questionnaire on Sunstar by international courier on April 22, 1993. On April 22 and 29, 1993, the Department requested additional information from Mukand in order to determine the appropriate date of sale methodology for this company. On April 29, 1993, we also requested that Mukand submit U.S. sales and third country sales shipped directly from India or from its trading company's warehouse. On April 30, 1993, we sent Echjay an antidumping questionnaire. On April 30, 1993, we also requested export statistics from Akai, Echjay, Mukand and Sunstar for use in determining whether critical circumstances exist.

On May 3, 1993, at its request, we sent Mukand Section D of the Department's antidumping questionnaire. On May 5, 1993, petitioners requested a 50-day postponement of the Department's preliminary determination. On May 7, 1993, we requested that Sunstar submit its selling, general, and administrative expenses, with relation to selling subject merchandise in the United States. On May 10, 1993, Mukand and Sunstar both submitted responses to the Department's April 22, 1993, supplemental questions. Both of these submissions conflicted with information previously submitted to the Department.

On May 11, 1993, Mukand submitted its response to Section C of the Department's questionnaire requesting sales to the United States and other data necessary to calculate United States Price. On May 12, 1993, we extended the preliminary determination until July 29, 1993 (58 FR 29195, May 19, 1993). On May 14, 1993, Echjay withdrew its request for voluntary respondent status before the questionnaire was due. On May 15, 1993, we received Akai's Section C response. On May 28, and June 10, 1993, we issued deficiency letters to Akai. On June 8, 18, and 23, 1993, Akai submitted its responses.

On June 11, 1993, Sunstar submitted its response to additional information requested by the Department on May 7, 1993. On June 15, 1993, Mukand responded to the Department's May 27, 1993, deficiency letter. On June 15, 1993, we sent Mukand a deficiency letter regarding its Section D response. Mukand responded to this letter on June 29, 1993. Also on June 29, 1993, we received Akai's section D response.

On July 19, 1993, respondents Mukand and Sunstar submitted a written explanation of the circumstances surrounding the

submission of their data. and also requested that the Department postpone the final determination should the preliminary determination be affirmative. As noted in the July 29, 1993, concurrence memorandum, the Department has determined that because respondents have seriously impeded this proceeding, there is a compelling reason not to grant the request for a postponement of the final determination. On July 23, 1993, we sent Akai a supplemental deficiency letter. On July 26, 1993, Meera Shankar and Niraj Srivastava of the Embassy of India met with Deputy Assistant Secretary Barbara Stafford. (See the July 27, 1993, *ex-parte* memorandum.)

**Period of Investigation**

The POI is July 1, 1992 through December 31, 1992.

**Scope of Investigation**

The products covered by this investigation are certain forged stainless steel flanges from India both finished and not-finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes 5 general types of flanges. They are weld neck, used to make butt-weld line connections, threaded, used to make threaded line connections, slip-on & lap joint, used to make stub end/butt-weld line connections, socket weld, used to fit pipe into machined recessions, and blind, used to seal off lines. The sizes of the flanges within in the scope range generally from one to six inches; however, all sizes of the above described merchandise are included within the scope. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this investigation are currently classifiable under subheading 7307.211.1000 and 7307.215.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

**Best Information Available**

*Mukand and Sunstar*

In analyzing the numerous responses concerning sales and distribution of flanges from India submitted by respondents Mukand and Sunstar during the course of the investigation, the Department discovered significant inconsistencies in the respondents' certified submissions. (See the June 29, 1993, memorandum to Barbara R. Stafford, outlining these inconsistencies.) These certified submissions form a record of misleading and contradictory responses, such that the Department has not been able to proceed normally with its antidumping duty investigation. In particular, information on the nature of Mukand's and Sunstar's relationship, as well as on the issue of who is responsible for setting prices, both critical issues in determining what information to use in calculating United States price and/or foreign market value, differed significantly from submission to submission. Furthermore, until July 19, 1993, neither respondent attempted to provide an explanation for the significant contradictions reported in their certified submissions.

In order to determine whether sales are made in the United States at less than fair value, it is imperative that the Department be provided with accurate and reliable sales information in a timely basis to be used in its analysis. Because of Mukand's and Sunstar's inconsistent and contradictory information, the Department does not have a reliable source of information on which to base its determination. Section 776(c) of the Act provides that whenever a party significantly impedes an investigation, the Department shall use the best information otherwise available, (BIA) (19 U.S.C. section 1677e). We have done so in this investigation.

As BIA, for Mukand and Sunstar we are assigning the highest margin contained in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospaco Co.* v. *U.S.* Slip-Op. 93–104 (CAFC) (June 22, 1993); *see also Krupp Stahl AG et al v. the United States,* Slip Op. 93–84 (CIT May 26, 1993).). The highest margin contained in the petition is 210 percent. Because the history of the responses indicates that the information reported is highly unreliable, we will not conduct verification for these companies.

*Bombay Forgings Pvt. Ltd. and Dynaforge*

On March 11 and 29, 1993, the Department sent mini-Section A questionnaires to producers and exporters named in the petition and those named by the American Consulate in Bombay. The purpose of these questionnaires was to obtain volume and value of flange shipments to the United States in order to determine which companies should be designated as respondents to the Department's questionnaire. Two of these producers/exporters, Bombay Forgings Pvt. Ltd and Dynaforge, did not respond to the Department's mini-Section A questionnaire. Because Bombay Forgings Pvt. Ltd and Dynaforge have refused to provide the information requested in the form required, as BIA we have assigned them the highest rate in the petition, 210 percent.

*Akai*

Akai has submitted its questionnaire responses to the Department and has also responded to the Department's deficiency letters. Even so, we find that numerous deficiencies remain and that the information submitted by this company is so incomplete or unclear that we cannot use it for our preliminary determination. However, we have given Akai an additional opportunity to correct these deficiencies. Should the Department determine that Akai has responded in a timely manner to correct the remaining deficiencies identified by the Department, we will verify the information submitted by Akai, and Akai's responses will be considered in making our final determination.

Because Akai's submissions are too deficient to be used by the Department in making its preliminary determination, we are assigning Akai a BIA rate. In determining what rate to use as BIA, the Department again follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents which cooperate in an investigation and rates based on more adverse assumptions for those respondents which do not cooperate in an investigation. Because Akai cooperated in this investigation, we are assigning as BIA a simple average of the margins provided in the petition.

*All Others Rate*

The all others rate is the average of the company margins applied in this determination, 185.15 percent.

*Critical Circumstances*

Petitioners allege that "critical circumstances" exist with respect to imports of flanges from India. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that

there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In determining importer knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 15 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See e.g. Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since the preliminary margins for flanges from India for Mukand, Sunstar, Bombay Forgings Pvt. Ltd., Dynaforge and Akai are above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for flanges exported from those companies.

As BIA for Mukand, Sunstar, Bombay Forgings Pvt. Ltd. and Dynaforge, we are making the adverse assumption that imports have been massive over a relatively short period of time in accordance with section 733(e)(1)(B) of the Act. Based on this analysis, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of flanges from India for Mukand, Sunstar, Bombay Forgings Pvt. Ltd. and Dynaforge.

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Based on this analysis, using Akai's response, we find that imports of subject merchandise from Akai during the period subsequent to receipt of the petition have not been massive. Since we do not find that there have been massive imports, pursuant to section 733(e)(1) of the Act, for Akai, we preliminarily determine that critical circumstances do not exist.

### Suspension of Liquidation

In accordance with section 733(e)(2) (19 U.S.C. 1673b(e)(2)) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of flanges from India, as defined in the "Scope of Investigation" section of this notice, for Mukand, Ltd., Sunstar Metals, Ltd., Bombay Forgings Pvt., Ltd. and Dynaforge that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the Federal Register. For all other entries, we are directing the U.S. Customs Service to suspend liquidation of all entries of flanges from India, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States Price as shown below. The suspension of liquidation will remain in effect until further notice.

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Mukand Ltd. | 210.00 |
| Sunstar Metals Ltd. | 210.00 |
| Bombay Forgings Pvt. Ltd. | 210.00 |
| Dynaforge | 210.00 |
| Akai Impex Pvt. Ltd. | 75.76 |
| All others | 183.15 |

### ITC Notification

In accordance with section 733(f) of the Act, 19 U.S.C. 1673b(f), we have notified the ITC of our determination.

### Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments must be submitted, in at least ten copies, to the Assistant Secretary for Import Administration no later than September 17, 1993, and rebuttal briefs no later than September 22, 1993. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held, if requested, at 9:30 a.m. on September 24, 1993, at the U.S. Department of Commerce, room 1411, 14th Street and Constitution Avenue NW., Washington DC., 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099 within ten days of the date of publication of this notice. Requests should contain: an executive summary in conjunction with case briefs of no more than two pages on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where the cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: July 29, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18764 Filed 8–4–93; 8:45 am]

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[A–583–821]

## Preliminary Determination of Sales at Less Than Fair Value; Certain Forged Stainless Steel Flanges From Taiwan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pamela Ward, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1174.

### Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that certain forged stainless steel flanges (flanges) from Taiwan are being, or likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated

margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the notice of initiation on January 21, 1993 (58 FR 6619, February 1, 1993), the following events have occurred.

On February 11, 1993, the American Institute of Taiwan in Taipei informed us of the names and relevant history of the firms producing flanges in Taiwan.

On February 16, 1993, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On March 5, 1993, the Department presented its questionnaire to Enlin Steel Corporation (Enlin). On March 9, 1993, the Department sent "mini-Section A" questionnaires that requested the volume and value of shipments to the United States to all other known Taiwanese exporters of subject merchandise, in order to determine which companies should be designated as questionnaire respondents.

On March 19, 1993, Enlin submitted its response to section A of the Department's questionnaire.

We received responses to the Department's March 9, 1993, questionnaires from March 16, 1993, through March 23, 1993. However, some of these responses were not properly filed. We requested that each of these parties properly file its response in accordance with the Department's regulations. Because we did not receive a properly filed response by Tay Precision Industries Co., Ltd. (Tay Precision), on June 23, 1993, we returned its improperly-filed submission. Consequently, we have assigned a rate to Tay Precision using best information available (BIA). For further discussion, see the "Best Information Available" section of this notice.

Based on our analysis of the responses to the March 9, 1993, questionnaires, we determined that sales by Ta Chen Stainless Pipe Co., Ltd. (Ta Chen) represented a significant percentage of exports of subject merchandise from Taiwan. The two Taiwanese producers, Ta Chen and Enlin, together accounted for at least 60 percent of known sales to the United States during the period of investigation (POI). (See, 19 CFR 353.42(b).) Accordingly, on March 24, 1993, we issued Ta Chen a questionnaire.

On March 26, 1993, Enlin requested that the scope of the investigation be clarified to exclude cast flanges.

On April 7, 1993, Ta Chen submitted its section A questionnaire response.

On April 16, 1993, we notified parties that we were modifying the scope of this investigation by inserting the term "forged" and adding a statement that forged flanges sold in the United States are generally made to specification ASTM A–182. We also added a statement that cast stainless steel flanges were specifically excluded from the scope of the investigation. Petitioners agreed that the intended scope of this investigation was only stainless steel flanges made to specification ASTM A–182. We informed petitioners and respondents of the modification. (See, Memorandum to Richard W. Moreland, Acting Deputy Assistant Secretary for Investigations (April 16, 1993).)

On April 23, 1993, Enlin missed the deadline for submitting its section B and C response. On April 30, 1993, Enlin sent a letter notifying the Department that it would not respond to the Department's questionnaire. Consequently, we have based our margin calculation for Enlin on BIA. For further discussion, see the "Best Information Available" section in this notice.

Also on April 30, 1993, we requested critical circumstances data from Ta Chen. On May 5, 1993, Ta Chen submitted its sections B and C response. On May 6, 1993, Ta Chen submitted critical circumstances data.

On May 17, 1993, petitioners requested a postponement of the preliminary determination. We granted this request, and on May 20, 1993, we postponed the preliminary determination until July 29, 1993 (58 FR 30144 (May 26, 1993)).

On June 2, 1993, petitioners submitted a timely allegation that Ta Chen had made sales in the home market below the cost of production (COP). On June 29, 1993, we initiated a COP investigation of Ta Chen's home market sales. Because Ta Chen subcontracts all of its production to outside companies, on July 9, 1993, we issued COP questionnaires to Ta Chen and its subcontractors. These responses are due August 6, 1993, and will be considered for the final determination.

On June 4, 1993, we issued a supplemental questionnaire to Ta Chen. We received the response to this questionnaire on June 25, 1993.

On July 27, 1993, we issued another supplemental questionnaire to Ta Chen. The response to this questionnaire is due on August 10, 1993, and will be considered for the final determination.

**Scope of Investigation**

The products covered by this investigation are certain forged stainless steel flanges both finished and not-finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connections, threaded, used for threaded line connections, slip-on & lap joint, used with stub ends/butt-weld line connections, socket weld, used to fit pipe into a machined recession, and blind, used to seal off a line. The sizes of the flanges within in the scope range generally from one to six inches; however, all sizes of the above described merchandise are included in the scope. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this investigation are currently classifiable under subheading 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation remains dispositive.

**Period of Investigation**

The POI is July 1, 1992, through December 31, 1992.

**Such or Similar Comparisons**

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. We made all product merchandise comparisons on the basis of identical merchandise.

**Best Information Available**

As noted in the "Case History" section of this notice, the preliminary dumping margins for two exporters, Enlin and Tay Precision, are based on BIA.

Regarding Enlin, this company did not file a response to sections B and C of the Department's questionnaire, due by April 23, 1993. On April 30, 1993, Enlin stated in writing that it would not be responding to the Department's questionnaire and requested a suspension agreement. Because Enlin refused to answer the Department's questionnaire, we find it has been uncooperative in this investigation. Accordingly, we are using the highest margin provided in the petition as BIA. (See Concurrence Memorandum, July 21, 1993, for a full discussion.)

Regarding Tay Precision, on March 9, 1993, the Department requested that this company, as well as all other known Taiwanese exporters of subject

merchandise, provide data on the volume and value of flanges shipments to the United States in order to determine which companies should be designated as respondents to the Department's questionnaire. Tay Precision submitted a response to the Department's request for data. In this submission Tay Precision requested proprietary treatment; however, it failed to provide a public summary of its response as required by 19 CFR 353.32(b)(1) and 19 CFR 353.32(b)(2). The Department requested that Tay Precision provide a public version of its submission and informed Tay Precision that if a public version was not submitted that the Department would return its response. Because Tay Precision did not respond to the Department's request and properly file a response to our questionnaire, on June 23, 1993, we returned its response in accordance with 19 CFR 353.32(d) and have used BIA to determine the dumping margin for this company. Because Tay Precision refused to provide the information requested in proper form, we have assigned it the highest rate in the petition.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents which cooperate in an investigation and rates based on more adverse assumptions for those respondents which do not cooperate in an investigation.

According to the Department's two-tiered BIA methodology outlined in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Italy, Japan, Romania, Sweden, Thailand, and the United Kingdom, 54 FR 18992, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) The margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. This two-tiered methodology for assigning BIA has been recently upheld by the Federal Circuit Court of Appeals in *Allied-Signal* v. *U.S.* Slip-Op. 93–104 (CAFC) (June 22, 1993). The dumping margin calculated for Ta Chen was lower than the highest rate in the petition of 48 percent. Therefore, as BIA, the dumping margin assigned to Enlin and Tay Precision for purposes of this preliminary determination is 48 percent.

**Fair Value Comparisons**

To determine whether sales of flanges from Taiwan to the United States by Ta Chen were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

**United States Price**

We based the calculation of USP for Ta Chen on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on packed F.O.B. prices to unrelated customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, marine insurance, and harbor construction tax.

On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in *Zenith Electronics Corporation* v. *United States*, Slip Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Act provides for an addition to USP to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to USP the absolute amount of tax assessed on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to USP, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to USP.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated USPs net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and will begin the rule making process as soon as possible.

**Foreign Market Value**

In order to determine whether there were sufficient sales of flanges in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of flanges to the volume of third country sales of the same product, in accordance with section 773(a)(1)(A) of the Act. Ta Chen had a viable home market with respect to sales of flanges during the POI.

Petitioners alleged that Ta Chen was selling in the home market at prices below the COP. Based on petitioners allegation, we requested data on the production costs of Ta Chen and its subcontractors. This cost data was not be submitted in time to be considered for the preliminary determination. However, Ta Chen and its subcontractors' cost data will be examined at verification and will be analyzed for purposes of our final determination.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales at the same level of trade.

We calculated FMV based on packed ex-factory prices charged to unrelated customers in the home market. Pursuant to 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. In its sales listing, respondent reported packing expenses that were incurred during the POI. Respondent also reported that merchandise is packed at the time of shipment. Because a large number of shipments occurred after the POI, we have determined that it is appropriate to use the packing expenses incurred during the period over which sales made during the POI were shipped rather than expenses incurred during the POI.

**Currency Conversion**

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

**Critical Circumstances**

Petitioners allege that "critical circumstances" exist with respect to imports of flanges from Taiwan. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of the domestic consumption accounted for by imports.

In determining importer knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more for purchase price sales sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act. (See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987.) Since the preliminary margins for flanges from Taiwan for Enlin and Tay Precision are above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for flanges for those companies.

As BIA for Enlin and Tay Precision, we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 733(e)(1)(B) of the Act. Based on this analysis, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of flanges from Taiwan for Enlin and Tay Precision.

However, regarding Ta Chen, since there are no outstanding antidumping orders on flanges from Taiwan, and the preliminarily-determined dumping margin for this company is less than 25 percent, we cannot impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act. Since the criteria necessary to find the existence of critical circumstances under section 733(e)(1)(A)(i) and 733(e)(1)(A)(ii) are not present for Ta Chen, we do not need to determine whether imports of subject merchandise have been massive over a relatively short period. Therefore, in accordance with section 733(e)(1)(A) of the Act, we preliminarily determine that, for Ta Chen, critical circumstances do not exist with respect to imports of subject merchandise.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of flanges from Taiwan, except those of Ta Chen, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Enlin Steel Corporation | 48.00 |
| Ta Chen Stainless Pipe Co., Ltd. | 0.00 |
| Tay Precision Industries Co., Ltd. | 48.00 |
| All Others | 48.00 |

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments with at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than September 13, 1993, and rebuttal briefs no later than September 17, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 21, 1993, at 10 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In addition, an executive summary of no more than two pages on the major issues to be addressed should be submitted with case briefs. Briefs should contain a table of authorities. Citations to the Department's determinations and court decisions should include the page number where the cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: July 29, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18765 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

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[A–412–602]

## Court Decision and Amended Determination; Certain Forged Steel Crankshafts From the United Kingdom

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**EFFECTIVE DATE:** May 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 482–3464.

**SUMMARY:** On May 11, 1993, in *United Engineering and Forging* v. *United States*, Court No. 92–1489 (CAFC May 11, 1993), a lawsuit challenging the Department of Commerce's (the Department) final determination of sales

at less than fair value and antidumping duty order on certain forged steel crankshafts (crankshafts) from the United Kingdom, the Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the Court of International Trade (CIT) to uphold the Department's results of redetermination on remand. See *United Engineering and Forging* v. *U.S.*, Slip. Op. 92–124 (CIT August 3, 1992). As a result of the redetermination, the final weighted-average margin percentage for the period of investigation (POI) for United Engineering and Forging, and for all other firms has decreased from 14.67% to 6.55%. Consistent with the decision of the CAFC in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), a "conclusive" decision in this case has now been reached.

**SUPPLEMENTARY INFORMATION:**

**Scope of Order**

The products covered by this order are certain forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. The products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

**Background**

On September 1, 1987, the Department published notice of its final determination of sales at less than fair value in connection with the antidumping duty investigation of certain forged steel crankshafts from the United Kingdom. Final Determination of Sales at Less than Fair Value, Certain Forged Steel Crankshafts from the United Kingdom (52 FR 32951). In that determination, the Department set forth its finding of a dumping margin of 14.67% for United Engineering and Forging (UEF) during the POI, October 1, 1985 through October 31, 1986. The rate for all other firms was also 14.67%.

Subsequent to the Department's determination, respondent filed a lawsuit with the CIT challenging this determination. Thereafter, the CIT issued an order in *United Engineering and Forging* v. *United States*, 779 F. Supp. 1375 (CIT, November 18, 1991) remanding the Department's determination in order to: (1) Consider the use of and, if appropriate, apply a six-month forward exchange rate; (2) recalculate U.S. imputed credit expense using the lower of the U.S. or U.K. exchange rates; and (3) reconsider U.E.F.'s claim of reimbursement for certain retooling expenses. On remand, the Department allowed these three adjustments (including use of a U.S. interest rate for the imputed credit expense). On May 4, 1992, the Department filed its required remand results with the CIT. On August 3, 1992, the CIT affirmed the remand results.

UEF appealed to the CAFC the CIT's determination that the Department had acted in accordance with law in selecting foreign-market comparison models, an issue that was contested but not remanded to the Department. On May 11, 1993, the CAFC affirmed without opinion the decision of the CIT. As a result, UEF's dumping margin for certain forged steel crankshafts from the United Kingdom has decreased from 14.67% to 6.55% for the POI. The "all other" rate has also decreased from 14.67% to 6.55% for the POI.

In its decision in *Timken*, the CAFC held that the Department must publish a notice of a decision of the CIT or the CAFC which is not "in harmony" with the Department's determination. Publication of this notice fulfills this obligation. The CAFC also held that in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. The decision of the CAFC in *United Engineering and Forging* represents a "conclusive" decision, as all issues in the case are now resolved.

This notice is published in accordance with section 735(d) of the Tariff Act of 1930, as amended, and 19 CFR 353.20(a)(4).

Dated: July 30, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18763 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

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**[A–588–007]**

## Pagers From Japan; Intent To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on pagers from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:**

Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 16, 1983, the Department of Commerce (the Department) published an antidumping duty order on pagers from Japan (48 FR 37058). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumpng duty order.

**Opportunity To Object**

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–18755 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A-549-601]

## Pipe Fittings From Thailand; Intent To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on pipe fittings from Thailand. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Carlo Cavagna or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4733.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 20, 1987, the Department of Commerce (the Department) published an antidumping duty order on pipe fittings from Thailand (52 FR 31440). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

### Opportunity to Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93-18759 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-602]

## Industrial Phosphoric Acid From Belgium Intent To Revoke Antidumping Duty Order

**AGENCY:** Intentional Trade Administration/Import Administration Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on industrial phosphoric acid from Belgium. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sally Hastings or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-3601.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 20, 1987, the Department of Commerce (the Department) published an antidumping duty order on industrial phosphoric acid from Belgium (52 FR 31439). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

### Opportunity To Object

No later than August 31, 1993, domestic interested parties, as defined in section 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93-18753 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-806]

## Preliminary Results of Antidumping Duty Administrative Review, Silicon Metal From Brazil

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests by our manufacturers/exporters, the Department of Commerce has conducted an administrative review of the antidumping duty order on silicon metal from Brazil. This review covers four manufacturers/exporters and the period March 29, 1991 through June 30, 1992. The review indicates the existence of dumping margins for certain firms during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between U.S. price and foreign market value.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-4475/5253.

SUPPLEMENTARY INFORMATION:

**Background**

On July 12, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 36135) the antidumping duty order on silicon metal from Brazil. In July 1992, four manufacturers/exporters requested, in accordance with section 353.22(a) of the Commerce Regulations, that we conduct an administrative review for the period March 29, 1991 through June 30, 1992. We published a notice of initiation of the antidumping duty administrative review on August 26, 1992 (57 FR 38667).

The Department initiated a review for Companhia Brasileira Carburetto de Calcio (CBCC), Companhia Ferroligas Minas Gerais Minasligas (Minasligas), Eletroila, S.A. (currently known as Eletrosilex Belo Horizonte (Eletrosilex)), and Rima Eletrometalurgia S.A. (Rima).

The Department has now conducted a review for this period in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

**Scope of the Review**

The merchandise covered by this review is silicon metal containing at least 96.00 but less than 99.99 percent of silicon metal from Brazil. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers 4 manufacturers/exporters of Brazilian silicon metal, and the period March 29, 1991 through June 30, 1992.

**United States Price**

In calculating U.S. price, we used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, f.o.b., or C. & F. price to the first unrelated purchasers in the United States.

We made deductions, where appropriate for foreign inland freight, ocean freight, customs charges, and duty drawback. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value (FMV), we used third-country price or constructed value as defined in section 773 of the Tariff Act, as appropriate.

We used third-country sales to Japan for CBCC because CBCC had insufficient sales of such or similar merchandise in the home market, and because we determined that CBCC had sufficient sales of such or similar merchandise above the cost of production (COP).

Third-country price was based upon the C.&F. price to unrelated purchasers in Japan. Where appropriate, we made adjustments for brokerage and handling expenses, foreign inland freight, ocean freight, and for differences in packing and credit expenses. No other adjustments were claimed or allowed.

Based upon a timely sales below cost allegation received from the petitioner in this case, we tested the home market sales of Minasligas, Eletrosilex, and RIMA, and the third-country sales of CBCC against the merchandise's COP to determine whether those home or third-country sales were appropriate for use in the derivation of FMV Since the Brazilian economy was hyper-inflationary during the period of review, we instructed respondents to follow our long-standing methodology for hyper-inflationary economies, including the use of replacement costs. (See Final Determination of Sales at Less Than Fair Value, Silicon Metal from Brazil, 56 FR 26977 (June 12, 1992).)

Because general and administrative (G&A) expenses are period costs which should be based on the annual period in which they were incurred, we did not use the monthly calculation of replacement costs submitted by each of the respondents in our COP and constructed value (CV) calculations. Instead, we used the ratio of G&A expenses to cost of goods sold (COGS) shown in Minasligas's Electrolsilex's, IRMA's or CBCC's income statement to calculate G&A expenses.

We used CBCC's above-cost sales since more than 10 percent of its third-country sales were above the COP. We did not use Eletrosilex's or RIMA's home market sales, since more than 90 percent of their home market sales were found to be below the home market COP. We determined that CBCC's, Eletrosilex's, and RIMA's below-cost sales were made over an extended period of time because they were made in more than two months of the review period. Furthermore, no evidence was presented to indicate that home market COP. We determined that CBCC's, Eletrosilex's, and RIMA's below-cost sales were made over an extended period of time because they were made in more than two months of the review period. Furthermore, no evidence was presented to indicate that below-cost COP prices would permit recovery of all costs within a reasonable period of time in the normal course of trade.

Minasligas did not have a sale of such or similar merchandise above the COP during the month of its U.S. sale. In cases in which the home market is hyperinflationary, our normal practice is to use home market sales only if they occur during the same month as the U.S. sale. We, therefore, did not use Minasligas's home market sales in our calculation of FMV.

In accordance with section 773(b) of the Tariff Act we used CV for RIMA, Minasligas, and Eletrosilex, because we could find no contemporaneous, home-market or third-country sales of silicon metal above the COP. (See Final Determination of Sales at Less Than Fair Value, Silicon Metal from Brazil, 56 FR 26977 (June 12, 1992).) As with our COP test, we applied our long-standing methodology for hyper-inflationary economies in our CV calculations. In accordance with section 773(e) of the Tariff Act, CV consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of export packing. Because the actual amount for general expenses exceeded the statutory minimum of 10 percent, we added the actual amount. Because the statutory minimum of eight percent of the sum of the cost of materials, fabrication, and general expenses exceeded the actual profit, we added the statutory minimum. See section 773(e)(1)(B) of the Tariff Act.

**Preliminary Results of the Review**

As a result of our review, we preliminarily determine that the following margins exist for the period March 29, 1991 through June 30, 1992:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| CBCC | 0.00 |
| Minasligas | .00 |
| Eletrosilex | 88.24 |
| RIMA | .00 |

Interested parties may request a disclosure within 5 days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will

include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for reviewed firms will be those established in the final results of this review;

(2) For merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation, the cash deposit will continue to be the rate published in the final determination for which the manufacturer or exporter received a company specific rate;

(3) If the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the original investigation. In accord with the Court of International Trade's decisions in *Flora Trade Council* v. *United States*, Slip, Op. 93–97, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip. Op. 93–83, the cash deposit for all other manufacturers and exporters will be 91.06 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 26, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18752 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

## INTERNATIONAL TRADE ADMINISTRATION

**[A–351–819]**

### Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods From Brazil

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230; telephone: (202) 482–2778.

**PRELIMINARY DETERMINATION:** We preliminarily determine that stainless steel wire rods from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is October 11, 1993.

### Case History

Since the initiation of this investigation on January 19, 1993 (58 FR 6115, January 26, 1993), the following events have occurred.

On January 25, 1993, the Department sent a cable to the American Embassy in Brazil requesting information on the names of any Brazilian companies that produce and export the subject merchandise to the United States, and the corresponding value and quantity of sales to the United States for the period July 1, 1992 to December 30, 1992.

On January 28, 1993, Eletrometal-Metais Especiais S.A. (Eletrometal), requested that it be treated as a voluntary respondent if it were not selected as a mandatory respondent in this investigation.

On February 16, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On February 17 and 26, 1993, we received comments on the Department's matching criteria outlined in Appendix V of our questionnaire from petitioners. Also on February 26, 1993, we received from the American Embassy in Brazil shipment statistics for one company, Acos Finos Piratini SA (Piratini).

On March 5, 1993, the Department sent mini-Section A antidumping duty questionnaires to Piratini, Acos Villares SA (Villares), and Eletrometal, the three companies named in the petition, requesting value and quantity statistics for the subject merchandise exported to the United States. On March 19, 1993, we received a response to our questionnaire from Eletrometal, but we received no responses from Piratini or Villares. On March 24, 1993, the Department selected Eletrometal as one of the three respondents since they were the only producer to answer the questionnaire and had already requested voluntary status in this investigation (See memorandum dated March 24, 1993, from John Beck to David L. Binder). We also selected Piratini and Villares as respondents since they received and did not reply to mini-Section A questionnaires. Also, on March 24, 1993, we sent the complete antidumping duty questionnaire to Eletrometal.

On April 2, 1993, Eletrometal requested an extension of time to file its response to Section A of the Department's questionnaire, and on April 6, 1993, we granted the request. Then, on April 19, 1993, Eletrometal requested an extension of time to file its response to Sections B and C of the Department's questionnaire. On April 21, 1993, Eletrometal submitted its response to Section A of the Department's questionnaire.

On April 22, 1993, petitioners urged the Department to grant an extension for Sections B and C for a limited period only. The Department granted an extension until May 7, 1993.

On April 27, 1993 the Department determined that this investigation was "extraordinarily complicated" and postponed the preliminary determination until no later than July 28, 1993 (58 FR 26531, May 4, 1993). On May 4, 1993, petitioners submitted comments on Eletrometal's response to Section A of the Department's questionnaire. Then on May 6, 1993, Eletrometal requested a five-day extension to file its response to Sections B and C of the Department's questionnaire. On May 7, 1993, we granted this request, and on May 12, 1993, Eletrometal submitted its Sections B and C responses. On May 18, 1993, the Department requested that Eletrometal resubmit the product concordance section of its response to the Department's questionnaire based

on the matching criteria described in the updated Appendix V.

On May 21 and 28, 1993, petitioners submitted their comments on Eletrometal's response to Sections A, B and C of the Department's questionnaire. On June 8, 1993, the Department sent a deficiency questionnaire to Eletrometal for Sections A, B and C, informing Eletrometal of the special instructions for reporting sales in a hyper-inflationary economy.

On June 14, 1993, petitioners requested a postponement of the deadline for submission of a sales below cost allegation, and on June 16, the Department granted the postponement until July 9, 1993. However, we did not receive a cost allegation from petitioners.

On June 30, 1993, Eletrometal submitted its response to the Department's June 8, 1993 deficiency questionnaire.

On July 13, 1993, petitioners submitted a second amendment to its petition that revised the estimated margins of dumping included in its original petition. Also on July 13, the Department sent another deficiency questionnaire to Eletrometal. On July 14, 1993, petitioners provided the Department with further comments regarding the questionnaire responses submitted by Eletrometal, along with arguments regarding the choice of BIA for the preliminary determination.

**The Petition Amendment**

The Department has rejected petitioners' July 13, 1993 arguments that the estimated margins of dumping included in petitioners' pre-initiation amendment to the original petition should be further amended. The original petition was filed in this investigation on December 30, 1993. On January 15, 1993, petitioners submitted an amendment to the petition that revised the reported home market prices and included an estimate of $.069 per pound for home market freight charges. In that amendment, petitioners stated that they did not reduce U.S. prices for foreign inland freight, since they could not estimate foreign inland freight charges for U.S. sales with a high degree of accuracy.

In a July 13, 1993 amendment, however, petitioners recalculated U.S. prices by deducting the same foreign inland freight charge of $.069 per pound from U.S. prices as was deducted from home market prices in the first amendment. In addition, they deducted from U.S. price an additional amount for U.S. credit expenses, based on payment period information in Eletrometal's response. We have rejected petitioners' proposed revisions in its July 13, 1993 amendment because: (1) The use of information from responses to Department questionnaires as a basis for a post-initiation amendment of a petition is not appropriate, and (2) the freight and credit adjustments are not reasonable adjustments that have been properly supported by adequate information on the record.

In general, the use of response information as a basis for post-initiation amendment of a petition, even for BIA purposes, is not appropriate. Since the purpose of a response is to provide data to the Department so that it can conduct an analysis within the bounds of the statute, it is inappropriate for petitioners to selectively extract information from a response to amend its petition, after initiation, for the purposes of calculating a BIA rate. The purpose of the BIA provision, in turn, is to encourage respondents to submit full and accurate responses to the Department's questionnaire. Allowing petitioners to selectively utilize data contained in responses in order to increase the margins alleged in the petition would serve as a disincentive to respondents to provide full and accurate responses. Therefore, we have rejected petitioners' arguments that the estimated petition margins should be amended, and have based BIA on the margins contained in petitioners' pre-initiation amendment of January 15, 1993.

With respect to credit expenses, petitioners have used actual credit expense data reported in Eletrometal's responses in order to calculate imputed credit on Piratini's U.S. price quotations contained in the petition. Even if it were appropriate for petitioner to amend its petition with data furnished in the questionnaire responses, it is not reasonable for petitioners to assume that the credit period for Eletrometal is a reasonable estimate for Piratini's credit period; in fact, the credit period cited for Piratini in the petition is different from that reported by Eletrometal. Moreover, petitioners have made no credit adjustment to home market prices, only to U.S. prices.

The amendment for freight expenses in the home market is based on a petition quotation for shipment of 25 tons of SSWR between Porto Alegre and Sao Paulo. The U.S. price quotations from Piratini reported in the petition include foreign inland freight. However, it is not clear what the distance is between Piratini's plant and the Brazilian port. Therefore, it is not appropriate to assume that the freight quotation for shipment between Porto Alegre and Sao Paulo on a home market sale is a reasonable estimate for shipping merchandise from Piratini's plant to the Brazilian port of export for a U.S. sale. In fact, petitioners recognized this problem in their January 15, 1993 amendment, stating that they could not estimate foreign inland freight for U.S. sales with a high degree of accuracy, and it did not use the $.069 per pound expense as a freight adjustment to U.S. prices. Therefore, we have not accepted this adjustment to U.S. prices for freight costs.

**Scope of Investigation**

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are always sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-sectional shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. Pursuant to the Customs Service's March 25, 1993, recommendation, we have deleted the qualifying phrase "* * * for subsequent cold-drawing or cold-rolling" contained in the initiation notice scope language. (See the March 25, 1993, memorandum from Customs to the Department.)

The SSWR subject to these investigations are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

**Period of Investigation**

The period of investigation (POI) is July 1, 1992 through December 31, 1992.

**Best Information Available**

We have determined, in accordance with section 776(c) of the Act, that the use of BIA is appropriate for sales of subject merchandise in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to

produce information requested in a timely manner and in the form required. In this case, the exporters of SSWR from Brazil did not do so. Consequently, we based our preliminary determination in this investigation on BIA.

**Piratini and Villares**

During the course of this investigation, the Department encountered serious problems in obtaining the volume and value data needed for its analysis. As outlined in the "Case History" section of this notice, the Department attempted to solicit this information, stating that if we did not receive a response to our requests, we might have to make our determination on the basis of BIA. In spite of this attempt, we did not receive any information from either Piratini or Villares, the two manufacturers and exporters named in the petition.

Since Piratini and Villares did not respond to our questionnaires, we selected as BIA the highest margin contained in the January 15, 1993 pre-initiation amendment to the petition in this investigation, 26.50 percent.

**Eletrometal**

Since Eletrometal did respond to our questionnaires, we have analyzed its responses for purposes of this preliminary determination. After a complete analysis of Eletrometal's Sections B and C sales responses, however, we have concluded that we cannot use them for our preliminary determination. The responses contain major deficiencies which cannot be corrected or adjusted in time for use in our preliminary determination because there is not enough information in the responses to enable us to do so. Therefore, we cannot use them in calculating dumping margins in our preliminary determination.

Specifically, Eletrometal did not follow the Department's instructions for price-to-price comparisons in a hyper-inflationary economy. It did not make identical or similar price-to-price comparisons within the same month, based on the date of sale. Furthermore, Eletrometal did not calculate its difference-in-merchandise adjustments (difmers) using replacement costs of manufacture, as requested by the Department, and it did not report any cost of production (COP) or difmer data which would allow us to make our own price-to-price comparisons. Finally, Eletrometal did not report any constructed value (CV) information which would allow us to compare unmatched U.S. sales to CV where an appropriate home market match was not available.

However, since Eletrometal did respond to our questionnaires in a timely manner and is cooperating with the Department, we are assigning it the average of the margins contained in the January 15, 1993 amendment to the petition, 24.63 percent. In addition, we have issued another deficiency questionnaire to Eletrometal, requesting that it correct these deficiencies so that we may use its response in our final determination.

**Verification**

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

**Critical Circumstances**

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Brazil. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports, if such data is available.

Pursuant to 19 CFR 353.16(a)(1)(ii) in determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987).

Since the preliminary margins for SSWR from Brazil for Piratini and Villares are above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for SSWR from Brazil for these two companies.

Since Piratini and Villares have not responded to our questionnaire, we are making the adverse assumption, as BIA, that imports from Piratini and Villares were massive over a relatively short period of time. See section 733(e)(1)(B) of the Act. Based on this analysis, we preliminarily find that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of SSWR from Brazil for Piratini and Villares.

Since all of Eletrometal's sales to the United States are purchase price sales, and the margin assigned to Eletrometal is less than 25 percent, we determine that there is not a reasonable basis to believe or suspect that knowledge of dumping existed for SSWR from Brazil for Eletrometal. Furthermore, no allegation has been made that there is a history of dumping in the SSWR industry. Since the first prong of the critical circumstances test is not met for Eletrometal, it is not necessary to examine whether there have been massive imports of SSWR over a relatively short period. Therefore, we find that critical circumstances do not exist with respect to Eletrometal.

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain stainless steel wire rods from Brazil manufactured or exported by Piratini or Villares, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain stainless steel wire rods from Brazil manufactured or exported by Eletrometal and all other manufactures that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the margins listed below on all entries of SSWR from Brazil. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Eletrometal—Metais Especiais S.A. | 24.63 |
| Acos Finos Piratini SA | 26.50 |

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Acos Villares SA | 26.50 |
| All Others | 25.88 |

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than September 3, 1993, and rebuttal briefs no later than September 8, 1993. We request that parties in this case provide an executive summary of no more than two pages in conjunction with case briefs on the major issues to be addressed. Furthermore briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 15, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: July 28, 1993.

**Barbara S. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18747 Filed 8–4–93; 8:45 am]

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## International Trade Administration

**[A–427–811]**

## Preliminary Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Gloninger, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2778.

**PRELIMINARY DETERMINATION:** We preliminarily determine that certain stainless steel wire rods from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

Since the initiation of this investigation on January 19, 1993 (58 FR 6115, January 26, 1993), the following events have occurred.

On January 22, 1993, the Department of Commerce (the Department) sent a memo to the Customs Service requesting information on the scope of the investigation. On January 25 and February 11, 1993, the Department sent cables to the American Embassy in Paris requesting volume and value information. On February 4, 1993, Weil, Gotshal & Manges entered an appearance on behalf of Imphy S.A. and Ugine-Savoie and their related U.S. entities, Metalimphy Alloys Corp (MAC) and Techalloy Co. Inc. (Techalloy) (hereinafter referred to collectively as "Imphy" or "respondents").

On February 10, 1993, respondents submitted comments on the matching criteria outlined in a draft of appendix V of the Department's questionnaire. On February 12, 1993, the Department received the volume and value information for the producers of the subject merchandise in France. On February 17, 1993, petitioners, Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc. and United Steelworkers of America, AFL-CIO/CLC, submitted comments on the appendix V matching criteria.

On March 3, 1993, the Department sent a single antidumping duty questionnaire to Imphy S.A. and Ugine-Savoie. On March 9, 1993, Imphy requested Section E of the Department's questionnaire and asked for an extension of time in which to submit responses to Sections B and C. On March 11, 1993, the Department granted an extension giving Imphy until April 19, 1993, on submit responses to Sections B and C. On March 17, 1993, Imphy submitted its response to Section A. On March 22, 1993, the Department sent Section E of the questionnaire to Imphy. On March 29, 1993, Imphy requested an extension of time to respond to Sections B, C and E. On March 31, 1993, the Department denied the requested extension for responses to Sections B and C but granted an extension for the response to Section E until May 10, 1993.

On April 1, 1993, the Department received suggested scope language revisions from the U.S. Customs Service, and petitioners submitted comments on Imphy's Section A response. On April 19, 1993, Imphy submitted its Sections B and C responses. On April 22, 1993, petitioners requested that the preliminary determination be postponed.

On April 23, 1993, petitioners alleged that Imphy was selling in its home market at prices below its cost of production (COP) and requested that a cost investigation be initiated. On April 27, 1993, we postponed the preliminary determination until no later than July 28, 1993 (58 FR 26531, May 4, 1993). On May 10, 1993, the Department revised the appendix V matching criteria, and Imphy submitted its response to Section E. On May 11, 1993, the Department requested that Imphy provide a new product concordance based on the revisions to appendix V. On May 19, 1993, we initiated a COP investigation of Imphy. On May 21, 1993, the Department requested additional information in a deficiency letter for Sections A, B and C. On May 25, 1993, the Department sent Imphy Section D of the questionnaire for COP.

On May 27, 1993, Imphy requested an extension of time to respond to the Department's deficiency letter, and on June 1, 1993, the Department granted the extension until June 14, 1993. Then, on June 14, 1993 Imphy submitted its Section A, B and C deficiencies

responses, and on June 25, 1993 submitted its Section D response. On July 1, 1993, the Department sent Imphy additional questions concerning its sales responses, and on July 7, 1993, sent a Section E deficiency questionnaire. On July 14, 1993, petitioners submitted comments on deficiencies and omissions in Imphy's responses. On July 20, 1993, Imphy submitted comments responding to petitioners' July 14, 1993, submission.

On July 19, 1993, the Department sent Imphy a deficiency letter regarding its Section E–2 computer tape. On July 21, 1993, Imphy requested an extension of time to respond to the Department's request regarding Imphy's Section E–2 computer tape and to respond to the Department's July 7, 1993, Section E deficiency questionnaire. On July 22, 1993, the Department granted Imphy extensions until August 5, 1993, to respond to the Department's request regarding the Section E–2 computer tape, and until July 23, to respond to the Section E deficiency questionnaire. The Department is preparing a deficiency questionnaire to be sent to Imphy on its Section D COP response.

**Scope of Investigation**

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of allow steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are always sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. Pursuant to the Customs Service's March 25, 1993, recommendation, we have deleted the qualifying phrase " * * * for subsequent cold-drawing or cold-rolling" contained in the initiation notice scope language. (See the March 25, 1993, memorandum from Customs to the Department.)

The SSWR subject to this investigation is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

**Period of Investigation**

The period of investigation (POI) is July 1, 1992 through December 31, 1992.

**Such or Similar Comparisons**

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Grade; (2) diameter; (3) further manufacturing. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

**Fair Value Comparisons**

To determine whether sales of SSWR from France to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

**United States Price**

For Imphy, we based USP for some U.S. sales on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price (ESP) methodology, in those instances, was not otherwise indicated. We accepted all of respondent's classifications of purchase price sales (See memorandum dated July 16, 1993, from the Team to Office Director Richard Moreland). We excluded certain U.S. sales with zero prices or zero quantities because these sales constituted an insignificant portion of total U.S. sales.

In addition, for Imphy, where certain sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

For purchase price and ESP sales, we made deductions, where appropriate, for discounts, and the following movement charges: foreign brokerage, foreign inland freight, marine insurance, ocean freight, U.S. brokerage, U.S. duty, and U.S. inland freight. We added amounts for billing adjustments and freight revenue.

For ESP sales only, we deducted commissions, direct U.S. selling expenses, including credit expenses, warranty expenses, warehousing, and other direct non-U.S. selling expenses, indirect selling expenses, inventory carrying costs, and premiums for product liability insurance.

In addition, we made deductions, where appropriate, for all value added in the United States pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with further manufacturing the imported product, including a proportional amount of any profit related to the further manufacture. We calculated profit attributable to further manufacturing in the United States by deducting from the sales price all applicable costs incurred in producing the further manufactured product. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added in the United States was deducted. In determining the costs incurred to produce the further manufactured products, the Department included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general, selling and administrative expenses, and interest expenses. We adjusted respondents' further manufacturing cost data for certain general and administrative (G&A) expenses which had been excluded. This adjustment was specific to each further manufacturing facility. For those sales of further manufactured merchandise where respondent did not specify the facility of further manufacture, we made this adjustment by using the highest G&A rate applied to any facility as best information available (BIA).

For price-to-price comparisons only, we added to U.S. price the absolute amount of value-added tax (VAT) paid on the comparison sale in France. On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in *Zenith Electronic Corporation* v. *United States*, Slip. Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Act provides for an addition to USP to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to USP the absolute amount of tax assessed on

the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to USP, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to USP.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated USPs net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and will begin the rule making process as soon as possible.

**Foreign Market Value**

We compared the volume of home market sales of SSWR to the volume of third country sales to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV. We found that the home market was viable for sales of SSWR.

We used the Department's related party test to determine whether sales to related customers were made on an arm's-length basis. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's related party test. We did not include in our analysis any sales to related customers that we determined were not at arm's-length.

**Cost of Production**

Petitioners alleged that Imphy's home market sales of SSWR were made at price below COP. On the basis of petitioners' allegations, we gathered data on production costs. We compared the weighted-average home market prices to the COP.

If over 90 percent of the Imphy's sales of a given model were at prices equal to or greater than the COP, we did not disregard any below-cost sales because we determined that Imphy's below-cost sales were not made in substantial quantities. If between ten and 90 percent of Imphy's sales of a given model were at prices equal to or greater than the COP, we disregarded only the below-cost sales, if they were found to be made over an extended period of time and not at prices which permit the recovery of all costs within a reasonable period of time in the normal course of trade. Where we found that more than 90 percent of Imphy's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV), if those sales were made over an extended period of time.

We disregarded such below-cost sales because the respondent failed to demonstrate, as requested by the Department in the COP questionnaire, that those below-cost sales were made at prices permitting the recovery of all costs within a reasonable period of time in the normal course of trade.

In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If Imphy sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if Imphy sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of Imphy's cost of materials, fabrication, selling, general and administrative (SG&A) expenses, and interest expenses. We compared home market selling prices, net of movement charges and discounts and rebates to each product's COP.

**Price-to-Price Comparisons**

For those products for which we have an adequate number of sales at prices equal to or greater than the COP, we based FMV on home market prices. For the subject merchandise, we calculated FMV based on delivered prices, inclusive of packing and VAT, to unrelated customers in the home market and to related customers, sales to which we determined to be at arm's-length under the related party methodology. We deducted inland freight, inland insurance, discounts and rebates from these prices. We also deducted home market packing costs and added U.S. packing costs.

For purchase price comparisons, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments for credit expenses, warranties, and interest revenue.

Where commissions were deducted from USP, we deducted indirect selling expenses from FMV, capped by the U.S. commission amount in purchase price comparisons and by the sum of U.S. indirect selling expenses and the U.S. commission amount in ESP comparisons. Although respondents reported related party commissions in the home market, respondents have not claimed them as direct selling expenses and, instead, included these expenses in indirect selling expenses. Therefore, we have not adjusted for these commissions.

For ESP comparisons, where there were no U.S. commissions, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

**Constructed Value**

For those products without an adequate number of sales at prices above the COP, we based FMV on constructed value (CV). We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We included the company's reported general expenses in CV since these expenses were greater than the statutory minimum of ten percent of the cost of manufacture (COM). We recalculated the weighted-average profit from the adjusted home market net sales prices and reported COPs. Since this amount was greater than the statutory minimum of eight percent of the COM, we used the recalculated profit for CV.

Where USP is based on purchase price sales, we made circumstance-of-sale adjustments for differences in credit and warranty expenses and interest revenue, where appropriate.

Where commissions were deducted from USP, the amount of indirect selling expenses deducted from CV was capped by the U.S. commission amount in purchase price comparisons and by the sum of U.S. indirect selling expenses and the U.S. commission amount in ESP comparisons. Although respondents reported related party commissions in the home market, respondents have not claimed them as direct selling expenses and, instead, included these expenses in indirect selling expenses. Therefore, we have not adjusted for these commissions.

For ESP comparisons, where there were no U.S. commissions, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

**Currency Conversion**

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

**Critical Circumstances**

Petitioners allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of SSWR from France. Section 733(e)(1) of the Act provides that critical circumstances exist if there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

To determine whether or not there have been massive imports of SSWR, we compared export volumes for the five months subsequent to the filing of the petition to the five months prior to the filing of the petition. We found that exports of this merchandise from respondents during the period subsequent to receipt of the petition had decreased. Accordingly, we do not need to determine whether there is a history of dumping in the United States or elsewhere or whether there is knowledge that the exporter was selling the merchandise at less that its fair value, and preliminarily determine that critical circumstances do not exist.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of SSWR from France, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Imphy and Ugine-Savoie | 23.82 |
| All others | 23.82 |

**International Trade Commission Notification**

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (ITC) of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than September 7, 1993, and rebuttal briefs no later than September 14, 1993. We requested that parties in this case provide an executive summary of no more than 2 pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 21, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue NW., Washington, DC. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: July 28, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–18748 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

## Preliminary Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116.

**PRELIMINARY DETERMINATION:** We preliminarily determine that certain stainless steel wire rods (SSWR) are being, or are likely to be, sold in the United States at less than fair market value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is 75 days from the date of publication of this notice. However, we may expedite the final determination.

**Case History**

Since the initiation of this investigation on January 19, 1993, (58 FR 6115, January 26, 1993), the following events have occurred.

On January 22, 1993, the Department of Commerce (the Department) sent a memorandum to the Customs Service describing the scope of the investigation. On January 26, 1993, the Department cabled the U.S. Embassy in New Delhi, India, to obtain assistance in identifying producers of the subject merchandise. On February 11, 1993, the Department again cabled the U.S. Embassy in New Delhi, India, to obtain assistance in identifying producers of the subject merchandise. On February 17 and 26, 1993, petitioners filed comments on the proposed product matching criteria contained in Appendix V of the Department's questionnaire. On March 5, 1993, the Department sent out minisection A questionnaires to ascertain the respective quantity and volume of

subject merchandise produced and exported by Indian manufacturers during the period of investigation (POI).

On March 19, 1993, Ferro Alloys Corporation Limited (FACOR) and Mukand submitted their respective responses to the Department's mini-section A questionnaire. In its response, FACOR reported that it did not manufacture or sell subject merchandise during the POI. On March 24, 1993, the Department served its antidumping duty questionnaire on Mukand. The Department did not serve an antidumping duty questionnaire on FACOR because it neither manufactured nor sold SSWR during 1992: (See the March 24, 1993, memorandum from John Beck to Acting Office Director David Binder). On March 25, 1993, customs officials responded to the Department's January 22, 1993, memorandum, informing the Department of potential problems with one part of the initiation scope language. The Department took Custom's response into consideration when modifying the language in the scope section of this notice. On March 25, 1993, Grand Foundry Ltd. (Grand Foundry) submitted its response to the mini-section A questionnaire.

On March 26, 1993, Mukand's counsel met with Department officials to raise issues concerning Mukand's sales policies. On March 29, 1993, Mukand submitted a description of its sales process. On April 7, 1993, FACOR submitted proper certification for its March 19, 1993, response. On April 7, 1993, Mukand submitted its response to section A of the Department's questionnaire. On April 8, 1993, Mukand submitted supplementary sales documentation. On April 8, 1993, Mukand also submitted under separate cover responses to several questions posed by Department officials by telephone. On April 15, 1993, Mukand submitted responses to additional questions posed by a Department official by telephone. On April 16, 1993, petitioners submitted comments on Mukand's response to section A. On April 19, 1993, Mukand requested that the Department postpone the preliminary determination, and also requested an extension for submitting responses to sections B and C of the questionnaire. On April 20, 1993, petitioners submitted their objection to a postponement of the preliminary determination.

Because the Department needed to determine whether Mukand or its trading company, Sunstar Metals Ltd. (Sunstar), was the possible price discriminator, the Department served its antidumping duty questionnaire on Sunstar by international courier on April 22, 1993. (See the April 20, 1993, memorandum from Bill Crow to the file.) On April 22, 1993, the Department granted Mukand an extension until May 7, 1993, to submit the response to sections B and C of the questionnaire. On April 22, 1993, the Department sent both Mukand and Sunstar a list of questions concerning their relationship. On April 27, 1993, the Department postponed the preliminary determination until no later than July 28, 1993, because we determined that the investigation was extraordinarily complicated (58 FR 26531, May 4, 1993). On April 28, 1993, the Department presented its questionnaire to Sunstar's U.S. counsel. On May 6, 1993, Mukand again requested an extension for responding to sections B and C of the Department's questionnaire. On May 7, 1993, petitioners objected to respondent's request for an extension. On May 7, 1993, the Department granted Mukand a partial extension, until May 11, 1993, for responding to sections B and C of the Department's questionnaire.

On May 10, 1993, Mukand submitted its response to the Department's April 22, 1993, questions concerning the relationship of Mukand and Sunstar. On May 10, 1993, Sunstar submitted both its response to section A of the Department's antidumping duty questionnaire and a response to the Department's April 22, 1993, questions concerning its relationship to Mukand. On May 11, 1993, Mukand submitted its response to sections B and C of the questionnaire; the public version was submitted on May 12, 1993. On May 12, 1993, the Department sent both Mukand and Sunstar the revised Appendix V of the Department's questionnaire.

On May 25, 1993, Sunstar requested an extension of two weeks to respond to sections B and C of the Department's questionnaire. On May 25, 1993, the Department granted a partial extension to Sunstar to submit its sections B and C response by June 4, 1993. On May 26, 1993, Mukand resubmitted its computer tape to replace the technically deficient tape submitted on May 11, 1993. On May 27, 1993, petitioners submitted comments on Mukand's May 11, 1993, response to sections B and C of the Department's questionnaire. On June 1, 1993, the Department rejected a late response by Grand Foundry to the Department's March 5, 1993, mini-section A questionnaire. On June 2, 1993, petitioners alleged that critical circumstances exist with respect to SSWR from India.

On June 3, 1993, Sunstar submitted its response to sections B and C of the Department's questionnaire. On June 4, 1993, the Department sent Sunstar a set of questions regarding corporate relationship and sales processes. On June 10, 1993, petitioners requested that the Department initiate an investigation of sales below the cost of production. On June 11, 1993, Sunstar responded to the questions set forth in the Department's June 4, 1993, letter. On June 15, 1993, the Department notified Mukand and Sunstar that the classification and bracketing of proprietary information in previous submissions was overly broad and instructed respondents to resubmit those sections of previous submissions, together with new public versions with proper summarization of proprietary data. On June 16, 1993, petitioners filed comments in which they stated that the nature of direct contradictions made by respondents in their submissions warranted the use of BIA based on information provided in the petition. On June 17, 1993, Mukand and Sunstar resubmitted sections of previous submissions with revised bracketing of proprietary information; on June 18, 1993, each submitted the public versions of the revised sections of their responses. On June 17, 1993, Sunstar also requested that the Department modify the public version of the Department's June 4, 1993, letter before placing the document on the record. On June 23, 1993, petitioners submitted comments on Sunstar's June 4, 1993, response to sections B and C of the Department's questionnaire.

On July 6, 1993, the Department informed respondents' counsel by phone that the Department would not issue any further requests for information such as deficiency letters. On July 7, 1993, counsel for Mukand and Sunstar met with the Director of the Office of Antidumping Investigations to voice their concerns about the investigation. (See the July 8, 1993, memoranda from Bill Crow and Richard Moreland.) On July 19, 1993, Rajesh V. Shah, the executive director of Mukand Ltd., met with Barbara Stafford, Deputy Assistant Secretary for Investigations, to explain the circumstances surrounding the submission of their data. (See the July 20 1993, ex-parte memorandum.)

On July 19, 1993, respondents submitted a written explanation of the circumstances surrounding the submission of their data, and also requested that the Department postpone the final determination should the preliminary determination be affirmative. On July 19, 1993, petitioners submitted comments supporting the Department's decision not to solicit further information in the

investigation. On July 22, 1993, petitioners submitted comments opposing respondent's request for an extension of the final determination. On July 26, 1993, Meera Shankar and Niraj Srivastava of the Embassy of India met with Deputy Assistant Secretary Barbara Stafford. (See the July 27, 1993, ex-parte memorandum.) On July 27, 1993, counsel for petitioners met with Department officials to discuss their concern regarding possible circumvention of a potential duty order. (See the July 27, 1993, memorandum to the file.) As noted in the July 26, 1993, concurrence memorandum, the Department has determined that because respondents have seriously impeded this processing, there is a compelling reason not to grant the request for a postponement of the final determination.

**Scope of the Investigation**

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with our without other elements. These products are only manufactured by hot-rolling and are always sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. Pursuant to Custom's March 25, 1993, recommendation, we have deleted the qualifying phrase" * * * for subsequent cold-drawing or cold-rolling" contained in the initiation notice scope language. (See the March 25, 1993, memorandum from Customs to the Department.)

The SSWR subject to this investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, ourwritten description of the scope of this investigation is dispositive.

**Period of Investigation**

The period of investigation is July 1, 1992, through December 31, 1992.

**Best Information Available**

*Mukand and Sunstar*

In analyzing the numerous responses concerning sales and distribution of SSWR from India submitted by respondents Mukand and Sunstar during the course of the investigation, the Department discovered significant inconsistencies in the respondents' certified submissions. (See the June 22, 1993, memorandum for Barbara R. Stafford, outlining these inconsistencies.) These certified submissions form a record of misleading and contradictory responses, such that the Department has not been able to proceed normally with its antidumping duty investigation. In particular, information on the nature of Mukand's and Sunstar's relationship, as well as on the issue of who is responsible for setting prices, both critical issues in determining what information to use in calculating U.S. price and/or foreign market value, differed significantly from submission to submission. Furthermore, up until July 6, 1993, the date on which the Department informed counsel for Mukand and Sunstar that it would not issue any further requests for information such as deficiency letters (See July 7, 1993, memorandum to the file), neither respondent had provided an explanation for the significant contradictions reported in their certified submissions. Because the Department determined not to solicit further information from either Mukand or Sunstar, the Department did not consider petitioners' allegation of sales below the cost of production.

In order to determine whether sales are made in the United States at less than fair value, it is imperative that the Department be provided with accurate and reliable sales information to be used in analysis. Because of Mukand's and Sunstar's inconsistent and contradictory information, the Department does not have a reliable source of information on which to base its determination. Section 776(c) of the Act provides that whenever a party significantly impedes an investigation, the Department shall use the best information available (BIA) (19 U.S.C. 1677e). We have done so in this investigation.

As BIA for Mukand and Sunstar, we are assigning the highest margin contained in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co.* v. *the United States*, Slip Op. 93–1049 (Fed Cir. June 22, 1993); see *also Krupp Stahl AG. et al* v. *the United States*, Slip Op. 93–84 (CIT May 26, 1993).) The highest margin contained in the petition is 48.80 percent. Because the history of the responses indicates that the information reported is highly unreliable, we will not conduct verification.

*Grand Foundry*

We have determined, in accordance with section 776(c) of the Act, that the use of BIA is appropriate for Grand Foundry Ltd. (Grand Foundry). In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, Grand Foundry failed to provide the information requested in the form required.

The Department sent Grand Foundry a mini-section A questionnaire on March 5, 1993. The Department did not receive Grand Foundry Ltd.'s response until March 25, 1993, after the March 19, 1993, deadline for responding. In addition, Grand Foundry did not file the response in proper number and form. On June 1, 1993, the Department rejected the late response by Grand Foundry. Failure to provide the Department with this information denied the Department the information required to establish the relative size and importance of Grand Foundry's sales.

Consequently, we have determined that it is appropriate to assign Grand Foundry the highest margin contained in the petition, 48.80 percent, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding.

**All Others Rate**

The all others rate is the average of the company margins applied in this determination, 48.80 percent.

**Critical Circumstances**

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from India. Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since the preliminary margins for SSWR from India for Mukand, Sunstar and Grand Foundry are above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for SSWR from India for those companies.

As BIA for Mukand, Sunstar, and Grand Foundry, we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 733(e)(1)(B) of the Act. Based on this analysis, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of SSWR from India for Mukand, Sunstar, and Grand Foundry.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain stainless steel wire rods from India, that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the margins below on all entries of SSWR from India. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Mukand Ltd | 46.60 |
| Sunstar Metals Ltd | 46.60 |
| Grand Foundry Ltd | 46.60 |
| All others | 46.60 |

**ITC Notification**

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

**Public Comment**

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 30, 1993, and rebuttal briefs, no later than September 7, 1993. We request that parties in this case provide an executive summary of no more than 2 pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 13, 1993, at 1:30 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: July 28, 1993.

Barbara R. Stafford,

*Acting Assistant Secretary for Imports Administration.*

[FR Doc. 93-18749 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-DS-P

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[A-475-601]

## Tapered Roller Bearings From Yugoslavia; Intent to Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of intent to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on tapered roller bearings from Yugoslavia. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dennis Askey or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4114.

**SUPPLEMENTARY INFORMATION**

**Background**

On August 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on tapered roller bearings from Yugoslavia (52 FR 30417). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

**Opportunity to Object**

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to

the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–18761 Filed 8–4–93: 8:45 am]

BILLING CODE 3510–DS–M

## United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On July 9, 1933, two Requests for Panel Review were filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the United States-Canada Free Trade Agreement, requesting binational panel review of the Final Determination of Sales at Less Than Fair Value respecting Certain Cold-Rolled Carbon Steel Flat Products from Canada made by the Department of Commerce, International Trade Administration and published in the **Federal Register** on July 9, 1993, (58 FR 37099). The Secretariat has assigned File No. USA–93–1904–01 to this panel review.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

**FILING INFORMATION:** Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 9, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 9, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 23, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 30, 1993.

**James R. Holbein,**

*United States Secretary, FTA Binational Secretariat*

[FR Doc. 93–18766 Filed 8–4–93: 8:45 am]

BILLING CODE 3510–GT–M

## United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notioce of first request for panel review.

**SUMMARY:** On July 9, 1993, two Requests for Panel Review were filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the United States-Canada Free Trade Agreement, requesting binational panel review of the Final Determination of Sales at Less then Fair Value respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada made by the Department of Commerce, International Trade Administration and published in the **Federal Register** on July 9, 1993, (58 FR 37099). The Secretariat has assigned File No. USA–93–1904–03 to this panel review.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews

("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

**FILING INFORMATION:** Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 9, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 9, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 23, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 30, 1993.

**James R. Holbein,**

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 93–8768 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–GT–M

## United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On July 9, 1993, a Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the United States-Canada Free Trade Agreement, requesting binational panel review of the Final Determination of Sales at Less Than Fair Value respecting Certain Cut-to-Length Carbon Steel Products from Canada made by the Department of Commerce, International Trade Administration and Published in the **Federal Register** on July 9, 1993, (58 FR 37099). The Secretariat has assigned File No. USA–93–1904–04 to this panel review.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules as amended.

**FILING INFORMATION:** Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 9, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 9, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 23, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 30, 1993.

**James R. Holbein,**

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 93–18769 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–GT–M

## United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

**AGENCY:** United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On July 9, 1993, two Requests for Panel Review were filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, requesting binational panel review of the Final Determination of Sales at Less Than Fair Value respecting Certain Hot-Rolled Carbon Steel Flat Products from Canada made by the Department of Commerce, International Trade Administration and published in the **Federal Register** on July 9, 1993 (58

FR 37099). The Secretariat has assigned File No. USA–93–1904–02 to this panel review.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the Federal Register on December 30, 1988 (58 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the Federal Register on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the Federal Register on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

**FILING INFORMATION:** Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 9, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 9, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 23, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 30, 1993.

**James R. Holbein,**

*United States Secretary, FTA Binational Secretariat.*

[FR Doc. 93–18767 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–GT–M

## National Institute of Standards and Technology

**[Docket No. 930776–3176]**

## Opportunity to Join a Cooperative Research and Development Consortium to Develop and Conduct Interoperability Testing on Implementations of the BACnet Communication Protocol.

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of opportunity to join a Cooperative Research and Development Consortium.

**SUMMARY:** The National Institute of Standards and Technology (NIST) seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of new technology to assist the building controls industry in conducting interoperability tests on various implementations of the Building, Automation and Control Network (BACnet) communication protocol. The program will be undertaken within the scope and confines of The Federal Technology Transfer act of 1986 (15 U.S.C. 3710a), which provided federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program. Members will be expected to make contributions to the consortium's efforts in the form of materials, equipment, personnel and/or funds. The first phase of the research program is expected to last one to two years. This is not a grant program.

**DATES:** Interested parties should contact NIST at the address or telephone number shown below but no later than September 7, 1993.

**ADDRESSES:** Mr. Steven Bushby, Electronics Engineer, Mechanical Systems and Control Group, Building 226, room B–114, National Institute of Standards and Technology, Gaithersburg, MD 20899.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Bushby, (301) 975–5873.

**SUPPLEMENTARY INFORMATION:** The National Institute of Standards and Technology (NIST) seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of new technology to assist the building controls industry in conducting interoperability tests on various implementations of the BACnet communication protocol. The overall goals of the consortium project are:

(1) Assist control system manufacturers in verifying the correctness and interoperability of their proprietary BACnet implementations;

(2) Verify the technical soundness of the BACnet protocol;

(3) Identify errors or omissions in the BACnet protocol specification before it becomes a final standard;

(4) Identify ambiguities in the BACnet protocol specification which might lead to implementations which cannot interoperate and;

(5) Develop insight into testing requirements which should be included in a future American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) standard for testing conformance of the BACnet protocol.

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which authorizes government owned and operated federal laboratories, including NIST, to enter into cooperative research and development agreements (CRADAs) with qualified parties. Under the law, a CRADA may provide for contributions from the federal laboratory of personnel, facilities and equipment, but not direct funding.

Dated: August 2, 1993.

**Arati Prabhakar,**

*Director.*

[FR Doc. 93–18746 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–13–M

## National Institutes of Standards and Technology

**AGENCY:** National Institutes of Standards and Technology; Commerce.

**ACTION:** Notice of Government Owned Inventions Available for Licensing.

**SUMMARY:** The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on these inventions may be obtained by writing to: Mary Beth Pignone, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, room B256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. for the relevant invention as indicated below.

**SUPPLEMENTAL INFORMATION:**

(Note: These inventions were developed at NIST in the early 1980s and the patents issued before March, 1986)

The inventions available for licensing are:

**NIST Docket No. 79–001**

*Title:* Sampling Current and Method Therefor.

*Description:* This invention is an apparatus that provides a circuit for measuring the value of analog current signals using a Josephson with minimum acquisition time. The apparatus consists of two Josephson junctions. The first one acts as a pulse generator and the second as an amplitude discriminator. An analog current signal is analyzed by triggering a pulse. This method provides a decreased bias in response to a signal.

**NIST Docket No. 79–002**

*Title:* Ultra Black Coating due to Surface Morphology.

*Description:* This invention is a method of preparing a black surface coating by plating the surface with an electroless nickel-phosphorus ally, then submerging it in a bath of nitric acid. The resulting surface has a unique morphology which gives it a special refractrance from 0.5 to 1.0% at wavelengths of light from 320 to 2140 nanometers. The surface is also an excellent solar conductor.

**NIST Docket No. 81–008**

*Title:* Rotating Tool Wear Monitoring Apparatus.

*Description:* This invention employs a time-domain analysis that reduces complexity and cost. It does this by using adaptive techniques to determine a reference level for triggering an output signal, and by employing synchronous detection related to the period of rotation

**NIST Docket No. 82–002**

*Title:* Optical Fiber Thermometer.

*Description:* A thermometer with an elongated optical fiber, a blackbody cavity, and a high temperature fiber and light detector. The thermometer can read temperatures up to 2400 degrees Celsius. Measurements made using the inventive device are free from the interference effects caused by strong nuclear and electromagnetic fields. Therefore, the thermometer is applicable in power generation equipment, nuclear energy systems, and space applications.

**NIST Docket No. 83–002**

*Title:* Image Processor.

*Description:* This invention is an improvement on image processors that utilizes a sequence of identical stages. A programmer specifies the task each stage is to perform to ensure overall performance. An important feature of the processor is the provision of forward, recursive, and backward paths in order to allow the image data to participate in temporal as well as spatial neighborhood operations. Also, the processor specially provides for a multi-resolution capability which enables global events to be made local.

Dated: August 2, 1993.

**Arati Prabhakar,**

*Director.*

[FR Doc. 93–18745 Filed 8–4–93; 8:45 am]

BILLING CODE 3510-13-M

## National Oceanic and Atmospheric Administration

### Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of receipt of application for scientific research permit (P553).

Notice is hereby given that the Florida Department of Environment Protection, Florida Marine Research Institute has applied in due form for a Permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to take for scientific research, 600 Loggerhead (*Caretta caretta*), 300 of which would be hatchlings, 250 Green (*Chelonia mydas*), 100 Kemp's ridley (*Lepidochelys kempi*), 25 Hawksbill (*Eretmochelys imbricata*) and 5 Leatherback (*Dermochelys coriacea*) sea turtles. This research would take place within the marine and estuarine waters off the State of Florida.

The turtles would be taken year round and would include all life history stages from post-hatchling through adult. All captured turtles would be weighed, measured, flipper tagged, photographed, and blood sampled. The applicant proposes to perform several other procedures that would be conducted on only a portion of the turtles. These include: Laparascopic examinations, lavages, and tumor sampling.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713–2322); and

National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141).

Dated: July 29, 1993.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources.*

[FR Doc. 93–18701 Filed 8–4–93; 8:45 am]

BILLING CODE 3510-22-M

### Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTIONS:** Issuance of a third Modification to Robert van Dam, Permit No. 790 (P509). Issuance of Permit 871

to the Public Service Gas and Electric Company (P548).

On September 2, 1992 (57 FR 41477), Robert van Dam, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, San Diego was issued Permit No. 790 under the authority of the Endangered Species Act of 1973 (ESA) (U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). Permit No. 790 authorizes the Physiological Research Laboratory to take listed Hawksbill sea turtles (*Eretmochelys imbricata*) for the purposes of scientific research and enhancement. On May 13, 1993, (58 FR 29392) as authorized by the ESA, NMFS issued a Modification to Permit No. 790, extending the effective date of the Permit through December 31, 1993. Only July 8, 1993, (58 FR 36653) as authorized by the ESA, NMFS issued a second Modification to Permit No. 790. This modification authorized an increase in the number of listed Hawksbills to be captured, measured, tagged and photographed.

Notice is hereby given that on July 23, 1993 Robert van Dam was issued a third Modification, authorizing laparoscopic examinations on a portion of the turtles previously authorized for stomach sampling. Only one of these procedures may be performed on any one turtle.

On May 3, 1993, (58 FR 26288) the Public Service Electric and Gas Company applied for a Permit to take listed loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), and green (*Chelonia mydas*) sea turtles for the purposes of scientific research as authorized by the ESA and the NMFS regulations governing listed fish and wildlife permits.

Notice is hereby given that on July 28, 1993 as authorized by the provisions of the ESA, NMFS issued Permit Number 871 for the above taking subject to certain conditions set forth therein.

Issuance of this Modification and Permit were based on a finding that such documents: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of these documents; (3) are consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Modification and Permit were also issued in accordance with and are subject to parts 217–227 of title 50 CFR, the NMFS regulations governing listed species permits and modifications. The Modification for Mr. van Dam will be valid for the duration of the Permit, through December 31, 1993. The Public Service Gas and Electric Permit will be valid through October 31, 1996.

The application, Permit, Modifications and supporting documentation are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2232); and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: July 28, 1993.

**William W. Fox, Jr.,**

*Acting Director, Office of Protected Resources.*

[FR Doc. 93–18616 Filed 8–4–93; 8:45 am]

BILLING CODE 3510-22-M

## Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of receipt of application for scientific research permit (P504C).

Notice is hereby given that the U.S. Army Corps for Engineers, Walla Walla District has applied in due form for a permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing endangered fish and wildlife permits (50 CFR part 217–227).

The applicant requests authorization to conduct scientific research on adult listed Snake River fall chinook salmon (*Oncorhynchus tshawytscha*). The research would include possible harassment of approximately 300 listed fall chinook salmon while conducting surveys below Lower Granite, Little Goose, Lower Monumental, and Ice Harbor Dams to determine if Snake River fall chinook salmon are spawning in the tailwaters of the four lower Snake River dams, and if they are, to determine the number and spawning habitant characteristics of the spawners. The research would be conducted on two to four dates between October 15, 1993 and December 15, 1993.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, Md 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (502/230–5400).

Dated: July 26, 1993.

**Herbert W. Kaufman,**

*Deputy Director, Office of Protected Resources.*

[FR Doc. 93–18617 Filed 8–4–93; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Extension of an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Myanmar

July 30, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs extending a limit.

**EFFECTIVE DATE:** September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quote status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 347/348 for an additional twelve-month period, beginning on September 1, 1993 and extending through August 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 41925, published on September 14, 1992.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 30, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Myanmar and exported during the period beginning on September 1, 1993 and extending through August 31, 1994, in excess of 131,659 dozen.

Imports charged to this category limit for the period September 1, 1992 through August 31, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–18770 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DR–F

## Extension of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Myanmar

July 30, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs extending a limit.

**EFFECTIVE DATE:** October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 340/640 for an additional twelve-month period, beginning on October 1, 1993 and extending through September 30, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 46541, published on October 9, 1992.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

July 30, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Myanmar and exported during the period beginning on October 1, 1993 and extending through September 30, 1994, in excess of 93,975 dozen.

Imports charged to this category limit for the period October 1, 1992 through September 30, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93–18771 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on September 2, 1981, an arbitration panel rendered a decision in the matter of *The State of Texas (Texas State Commission for the Blind)* v. *The Department of Defense* (Docket No. R-S/79–4). This panel was convened by the Secretary of the U.S. Department of Health, Education, and Welfare pursuant to the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d-1(b), upon receipt of a complaint filed by the State of Texas on May 14, 1979. The Randolph-Sheppard Act is now administered by the Department of Education. The Act creates a priority for blind individuals to operate vending facilities on Federal property. Under 20 U.S.C. 107d-1(b), the State licensing agency (SLA) may file a complaint with the Secretary if the State licensing agency determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

*Background*

This dispute involves the interpretation of the Randolph-

Sheppard Act (20 U.S.C. 107d-3(d)). The Act was amended in 1974 to ensure that blind persons share in the assignment of vending machine income from vending facilities located on Federal property. Section 107d-3(d), however, exempts "vending machines" within retail sales outlets under the control of exchange or ships' stores systems authorized by Title 10 from income sharing. The complainant, the Texas State Commission for the Blind (TSCB), interpreted section 107d-3(d) to exempt only that income from vending machines located physically inside the four walls of retail stores operated by military exchanges. The respondent, the U.S. Department of Defense (DOD), interpreted the section to exempt all income from exchange vending operations regardless of the location of the vending machines.

*Arbitration Panel Decision*

Upon receipt of a complaint filed in May 1979 by the Texas State Commission for the Blind pursuant to 20 U.S.C. 107d-1(b), the Secretary of Health, Education, and Welfare convened an arbitration panel that scheduled a hearing on January 29, 1981. Although DOD objected to arbitration on various grounds, DOD agreed to proceed without prejudice to its right to assert its objections to arbitration at a later time.

The issues before the panel were (1) whether TSCB on behalf of blind vendors had a right to a share of vending machine income from military exchanges; and (2) the extent of the exemption contained in section 107d-3(d) for vending machines within retail stores under the control of exchange or ships' stores systems authorized by title 10.

The arbitration panel in a split decision issued September 2, 1981, held that section 107d-3(d) exempts only income from vending machines physically located inside a retail store of an exchange. The panel directed DOD to reimburse TSCB for all income due since the effective date of the 1974 amendments to the Randolph-Sheppard Act.

The majority of the panel determined that the statutory language of the section was not ambiguous as to the meaning of "within retail sales outlets." They interpreted this phrase to mean inside the four walls of an exchange system store. The panel also relied on the legislative history of the Act and determined that Congress intended the exemption to apply only to vending machines actually within the retail outlets. This conclusion was reinforced by the congressional intent to increase benefits to blind persons under the Act and by HEW's position to limit the nature of the exemption.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education. This case subsequently went into the Federal courts.

Dated: July 30, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93-18666 Filed 8-4-93; 8:45 am]

BILLING CODE 4000-01-P

## Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on July 18, 1983, an arbitration panel rendered a decision in the matter of *The State of Oklahoma (Oklahoma Department of Social and Rehabilitative Services)* v. *United States Postal Service (USPS)* (*Docket No. R-S/80-1*). The Oklahoma Division of Rehabilitation and Visual Services is the State licensing agency (SLA). Upon receipt of a complaint filed by the State of Oklahoma on January 24, 1980, the Secretary of the U.S. Department of Education convened a panel pursuant to 20 U.S.C. 107d-1(b). The Randolph-Sheppard Act creates a priority for blind vendors to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), the SLA may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue SW., room 3230, Switzer Building, Washington, DC 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

*Background*

This dispute involves violations of the priority provisions of the Randolph-Sheppard Act in awarding vending contracts to SLAs for licensed blind vendors.

The 1974 amendments to the Act require Federal agencies and departments to grant the SLA priority in the operation of vending facilities, including cafeterias, on Federal property. Priority in the operation of a cafeteria is contingent on the SLA submitting a proposal within the "competitive range." The Act also requires the Federal entity to share income from vending machines on its property with any blind licensee operating a vending facility on the property or with the SLA that administers the Randolph-Sheppard program.

Prior to 1976, the Oklahoma City Employee Social and Recreation Committee (Employee Committee) handled food services at the Oklahoma City Main Post Office. The Employee Committee operated the second floor eating facility and the vending machines throughout the post office except for the vending facility in the lobby. A blind licensed vendor operated the vending facility in the lobby pursuant to the Randolph-Sheppard Act.

In 1976, the USPS solicited bids for the second floor eating facility. The SLA and Canteen Services Corporation, a commercial vendor, submitted separate proposals. The SLA also submitted an application for a "permit" to operate the facility under the priority provisions of the Act. The USPS rejected the SLA's proposal and awarded the contract to Canteen Services Corporation. The SLA requested a hearing under the arbitration process of the Act.

*Arbitration Panel Decision*

Upon receipt of a complaint filed by the State of Oklahoma (Oklahoma Division of Rehabilitation and Visual Services) on January 24, 1980, the Secretary of Education convened an arbitration panel that conducted a hearing on August 20, 1980. The central issue was whether the USPS violated the priority provisions of the Randolph-Sheppard Act, 20 U.S.C. 107(b)2 and 107d-3(e), when it awarded a contract to a commercial vendor rather than to the State licensing agency.

The USPS contended that, according to the terms of the Act, the second floor eating facility constituted a cafeteria,

which must be awarded by contract. Under the Act and its regulations, the SLA is awarded a cafeteria contract when its bid falls within the "competitive range." According to the USPS, the SLA's offer was outside the competitive range; therefore, the SLA was not awarded the contract.

The parties reached a settlement agreement that the arbitration panel adopted on April 23, 1982. The agreement was made part of the award.

The settlement agreement included the following provisions: (1) The USPS would exercise its option to terminate the cafeteria contract with Canteen Services Corporation under the 90-day termination clause. (2) The USPS and the SLA agreed to enter into a contract whereby the SLA would operate the cafeteria on the second floor of the Main Post Office, and if the USPS deemed service inadequate, the USPS had the option to immediately terminate the contract. (3) The SLA agreed to improve the operation of the first floor vending area, the blind vendor would provide sufficient stock in the machines for all three postal tours, the vendor would not sell any item after the suggested last date of sale had expired, and the SLA would expand the vending facility on the first floor to a snack bar operation.

(4) The SLA would operate the two vending machines in the Vehicle Maintenance Facility under permit. (5) The USPS would make no back payments to the blind vendor or the SLA in connection with the dispute. (6) The SLA agreed to withdraw any claim against the USPS in connection with the dispute.

Dated: July 30, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93–18667 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

## Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on July 18, 1983, an arbitration panel rendered a decision in the matter of Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired v. United States Postal Service (Docket No. R-S/82–5). This panel was convened by the Secretary of the U.S Department of Education pursuant to 20 U.S.C. 107d-1(b), upon receipt of a complaint filed by the Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired, on May 21, 1982. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), the State licensing agency (SLA) may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

### Background

The United States Postal Service (USPS) solicited bids for its cafeteria contract at the Main Post Office in Dayton, Ohio. Ohio's Bureau of Services for the Visually Impaired, the SLA, submitted its bid for the contract. However, the USPS awarded the contract to a commercial vendor rather than to the SLA. The SLA claimed the USPS violated the priority provisions of the Act when the USPS failed to award its cafeteria contract to the SLA. The SLA alleged that its proposal was rejected due to the use of incorrect and prejudicial data in the evaluation process. The USPS contended that it denied the contract to the SLA because the SLA's proposal did not fall within the "competitive range" required by the Act and the Department of Education's implementing regulations.

### Arbitration Panel Decision

Upon receipt of a complaint filed by the Ohio Rehabilitation Services Commission on May 21, 1982, the Secretary of Education convened an arbitration panel that scheduled a hearing on February 1, 1983. The central issue was whether the USPS violated section 7(e) of the Act, 20 U.S.C. 107d-3(e), and its implementing regulations, 34 CFR 395.33, which afford priority to the SLA for the operation of a cafeteria by a blind person if the proposal is judged to be in the competitive range.

The parties reached a settlement agreement at the hearing. The arbitration panel adopted the agreement and made it part of the award issued on July 18, 1983. The settlement agreement provided that nine provisions would be added to a contract governing the operation of the cafeteria at the Main Post Office by the SLA. These provisions included (1) staffing requirements for the cafeteria; (2) a two-part survey conducted by the SLA among the postal employees at the Main Post Office to determine the employees' desires; (3) the SLA's efforts to charge competitive prices at all times; (4) the appointment of individuals by the Dayton Postmaster and the SLA to resolve any disputes between the USPS and the SLA; (5) advertising notices to employees about the food selections offered in the cafeteria; (6) operation of the facility for one year by the SLA; (7) a mutually agreed upon method of processing and resolving employee complaints about the cafeteria's food service; (8) the introduction of new food items; and (9) the procedure for processing the SLA's request for price increases. Subject to these additions, the contract was extended for a one-year trial period from the date of the award.

Dated: July 30, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93–18668 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

## Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on February 28, 1980, an arbitration panel rendered a decision in the matter of James Mayfield v. Tennessee Department of Human Services (Docket No. R-S/78–2). This panel was convened by the Secretary of the then U.S. Department of Health, Education, and Welfare pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, James Mayfield, on April 20, 1978. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal

property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

**Background**

James Mayfield, complainant, is a blind vendor licensed by the respondent, the Tennessee Department of Human Services, the SLA, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 et seq. The SLA, through its Department of Rehabilitation, operates the Tennessee Vending Facility Program for blind vendors. The purpose of the program is to establish and support blind vendors operating vending facilities on Federal property.

Mr. Mayfield operated a vending facility in Memphis, Tennessee, for many years at various locations. In November 1977 the SLA opened a new vending facility at the Tennessee Valley Authority (TVA) steam plant in Cumberland, Tennessee. Mr. Mayfield bid for this location. However, the SLA awarded the new vending facility to another licensed blind vendor.

Based on his assessment of the relative qualifications between himself and the successful bidder, Mr. Mayfield believed that his rights under the Randolph-Sheppard Act had been denied. He requested and received a full evidentiary hearing to contest the selection process and criteria used by the SLA in making the assignment to the other blind vendor. Having exhausted the administrative remedies to this dispute, Mr. Mayfield demanded a hearing under the arbitration process of the Randolph-Sheppard Act.

**Arbitration Panel Decision**

Upon receipt of a complaint filed by Mr. Mayfield in 1978, the Secretary of the then Department of Health, Education, and Welfare convened an arbitration panel that conducted a hearing on January 23, 1980. The central issue was whether the SLA had used inappropriate criteria in the selection process and assignment of the new vending facility at the TVA steam plant.

At the January 23rd hearing, the parties agreed to settle the dispute and reached an agreement outlined in a consent order. The arbitration panel affirmed and adopted the written consent order as the panel's final decision and award.

The consent order provided the following:

1. Mr. Mayfield had first choice of any vending facility that became available statewide from March 1, 1980, to March 1, 1981.

(a) The SLA would give him this choice before it offered the vending facility to other program vendors or before managers were allowed to bid on the facility.

(b) Mr. Mayfield had 30 days to respond to the SLA's Supervisor of Business Enterprises as to his intentions to accept or reject a facility offered during the one-year period.

2. Mr. Mayfield could elect to receive the Kingston vending facility whenever it became available, in lieu of the "first choice" option. If the Kingston vending facility was not available within the one-year period (March 1, 1980, to March 1, 1981), Mr. Mayfield was assured this facility if he forfeited the "first choice" option and awaited the Kingston opening.

3. Mr. Mayfield agreed to continue operating his current vending facility to the best of his ability and according to the rules and regulations of the Tennessee Business Enterprises Program.

4. Mr. Mayfield agreed to dismiss any claims against the SLA for compensatory damages relating to this dispute and for his application for appointment to the TVA vending facility prior to November 1977.

Dated: July 30, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93–18669 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

## Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that, in 1981, an arbitration panel rendered a decision in the matter of *Geraldine Jackson* v. *Massachusetts (Massachusetts Commission for the Blind)* (Docket No. R–S/78–4). This panel was convened by the Secretary of the U.S. Department of Health, Education, and Welfare pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Geraldine Jackson, in the winter of 1978. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

**Background**

The complainant, Geraldine A. Jackson, is a blind vendor licensed by the respondent, the Massachusetts Commission for the Blind, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 et seq. The Commission is the SLA responsible for the operation of the Massachusetts vending stand program for blind individuals. The purpose of the program is to establish and support

blind vendors operating vending facilities on Federal property.

Ms. Jackson operated a vending facility since April 1972 in the lobby of Lemuel Shattuck State Hospital in Massachusetts. She originally sold candy and gift items at this facility, but over the years she expanded her inventory to include "wet" and "dry" goods. She eventually added the sale of food, increasing her gross annual sales to approximately $150,000.

Ms. Jackson had a cordial relationship with the previous hospital administrators with regard to her vending facility. The new hospital administrator complained that Jackson's vending facility drew "vermin." The administrator made it clear to Ms. Jackson that he did not want her to sell food in the lobby vending facility. He filed a complaint with the SLA and, in November 1976, met with the Director of the Vending Facilities Program at the SLA to resolve this problem. The SLA negotiated an agreement with the hospital administrator to place a "dry" vending facility in the hospital's lobby and a "wet" vending facility in the hospital's basement. Ms. Jackson was excluded from these negotiations.

In March 1977, Ms. Jackson was informed of the "two vending facilities" arrangement. Concerned with the impact that this new arrangement would have on her income, Ms. Jackson bid for a vending facility at the John F. Kennedy Federal Building. She believed that the annual gross sales at the Kennedy facility would be comparable to the gross sales at the hospital facility. However, the Kennedy site was awarded to another vendor with more seniority.

Ms. Jackson appealed the selection. She asserted that she was entitled to priority since she would suffer severe financial hardship as a result of the SLA and the administrator's agreement to make two separate vending facilities at the Shattuck Hospital. Her appeal was denied.

Ms. Jackson requested and received a fair hearing from the SLA on September 18, 1978. Dissatisfied with the results of this hearing, Ms. Jackson requested a hearing under the arbitration process of the Randolph-Sheppard Act.

**Arbitration Panel Decision**

Upon receipt of a complaint filed by Ms. Jackson in the Winter of 1978, the Secretary of Health, Education, and Welfare convened an arbitration panel that conducted a hearing in the Spring of 1978. The central issues were: (1) whether the State policy that allows for priority only if a stand is "lost" to the program was in effect in the Spring of 1978, and, if so, whether the complainant was entitled to receive a priority bid if she claims that her stand was "constructively lost" to the program through no fault of her own; and (2) whether the SLA violated its own policy by excluding the complainant from its negotiations with the hospital.

The panel determined that the SLA's policy at the time of the bid provided for priority only if a vending stand was lost to the State program. This policy was contained in the operational procedures and policies of the Vending Facilities Program at the time of complainant's bid. The panel further determined that although a blind vendor foresaw financial hardships at her present facility through no fault of her own, she was not entitled to a priority bid under that policy.

The panel also concluded that the exclusion of the complainant from negotiations between the SLA and the hospital administrator may have violated 45 CFR 1369.36(a) (now 34 CFR 395.36(a)). However, this did not entitle the complainant to a priority bid on another vending facility of equal gross sales.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: July 30, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93–18670 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

## Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on March 2, 1984, an arbitration panel rendered a decision in the matter of *Lester Davenport* v. *Tennessee Department of Human Resources (Docket No. R–S/82–4)*. This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Lester Davenport, on April 23, 1982. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

**Background**

The complainant, Lester Davenport, is a blind vendor licensed by the respondent, the Tennessee Department of Human Services, the SLA, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq*. The SLA, through its Division of Services for the Blind, Tennessee Business Enterprise Program (TBE), operates Tennessee's vending stand program for blind individuals. The purpose of the program is to establish and support blind vendors operating vending facilities on Federal property.

Mr. Davenport had managed the vending facility at the Sequoyah Nuclear Power Plant since May 10, 1976. On October 20, 1981, TBE placed Mr. Davenport on probation for 30 days after receiving continuous complaints from the power plant employees regarding the quality of the merchandise, uncleanliness, and inadequate staffing at the Sequoyah vending facility. Mr. Davenport's probationary letter from TBE cited the following reasons for probation: (1) Failure to provide "general cleanliness" in the vending facility. (2) Failure to adhere to the hours of operation specified in the rider to his licensing agreement. The probationary period was extended to December 23, 1981, when Mr. Davenport failed to comply with the specified hours of operation.

Mr. Davenport requested and received a fair hearing on this matter from the SLA on March 31, 1982. Based on findings from the hearing, the SLA

dismissed Mr. Davenport from the program. Mr. Davenport requested a hearing under the arbitration process of the Randolph-Sheppard Act.

**Arbitration Panel Decision**

Upon receipt of a complaint filed by Mr. Davenport on April 23, 1982, the Secretary of Education convened an arbitration panel. A hearing was conducted, and a decision was rendered on March 2, 1984. The central issue was whether the probationary period and revocation of the complainant's license were for good and proper cause.

The panel concluded that Mr. Davenport did not comply with the hours of operation provision in his license agreement. However, the panel decided that Mr. Davenport should be reinstated in the program, because the SLA failed to assist Mr. Davenport in certain aspects of the operation of the vending facility. The panel also directed the SLA to give Mr. Davenport the right to first choice of any vending facility vacancy that arose—an absolute, one-time preference for a period of two years from the date of the panel's decision. The SLA was ordered to notify Mr. Davenport of any vacancies in vending facilities. Notification had to be given 30 days or more prior to the SLA accepting other bids for the vacant facility. Mr. Davenport had to respond to the SLA within 30 days of notification to exercise his right to first choice of a vacant facility; otherwise, the facility would be available for bids in the normal manner.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: July 30, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93–18671 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

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## Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on January 11, 1982, an arbitration panel rendered a decision in the matter of *Hershel Bradford* v. *Department of Rehabilitation Services, State of Illinois Vending Stand Program for the Blind* (Docket No. R-S/78–3). This panel was convened by the Secretary of the U.S. Department of Health, Education, and Welfare pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, Hershel Bradford, on July 27, 1978. The Randolph-Sheppard Act creates a priority for the operation of vending facilities on Federal property by blind individuals. Under this section of the Randolph-Sheppard Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the Federal Register.

**Background**

Hershel Bradford, complainant, is a blind vendor licensed by the respondent, the Illinois Department of Rehabilitation Services, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 et seq. The Department is the State licensing agency (SLA) responsible for the operation of the Illinois Vending Stand Program for the Blind. The purpose of the program is to establish and support blind vendors operating vending facilities on Federal property.

Mr. Bradford was assigned to the vending facility at the Chicago Post Office (U.S. Postal Service) from December 1974 until July 29, 1977. On August 2, 1977, the SLA suspended Mr. Bradford from his duties for 30 days. The suspension was based on allegations that he disregarded financial responsibility and good management principles in the operation of the facility. The suspension took place without a hearing. After the 30-day suspension, the SLA reassigned Mr. Bradford to the vending facility in the Everett Dirkson Federal Building.

Mr. Bradford, who had 18 years seniority, requested and received a full evidentiary hearing to contest the allegations and the transfer. The hearing officer decided that the suspension by the SLA was improper and cleared Mr. Bradford of all charges. The hearing officer also awarded him the first available facility and $105 per week reimbursement. After this decision, Mr. Bradford requested a transfer to his former facility at the Chicago Post Office and compensation for lost earnings as a result of the transfer. The SLA agreed to the lost earnings compensation, but it was unable to make an immediate reassignment due to various circumstances. Dissatisfied with this response, Mr. Bradford requested a hearing under the arbitration process of the Randolph-Sheppard Act.

**Arbitration Panel Decision**

Upon receipt of a complaint filed by Mr. Bradford in 1978, the Secretary of Health, Education, and Welfare convened an arbitration panel that conducted a hearing on January 11, 1982.

The case resulted in a stipulated agreement by the parties resolving all issues. This agreement was made a part of the award along with other verbally stipulated facts and conclusions.

The agreement provided that Mr. Bradford would accept a transfer back to the Chicago Post Office facility; he would operate in this location in a businesslike manner, subject to all Federal and State laws and regulations; the SLA would assist Mr. Bradford in pursuing good management goals and practices as required under the Randolph-Sheppard Act; and the SLA would provide certain training programs, especially in fiscal management. Mr. Bradford also agreed to waive all rights and claims to any previous payments and released the SLA from any liability related to this dispute.

Dated: July 30, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93–18672 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

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## Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on January 17, 1986, an arbitration panel rendered a decision in the matter of *The Arizona Department of Economic Security* v. *United States Postal Service (Docket No. R-S/85-4)*. This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(b), upon receipt of a complaint filed by The Arizona Department of Economic Security on December 19, 1984. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), the State licensing agency (SLA) may file a complaint with the Secretary if the State licensing agency determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

**Background**

The United States Postal Service (USPS) notified The Arizona Department of Economic Security, the SLA, of plans to construct a General Mail Facility in Phoenix, Arizona. The USPS planned to have an employee cafeteria and at least eight satellite vending locations within this facility. Pursuant to the Randolph-Sheppard Act, the SLA submitted a contract proposal to operate the cafeteria and a permit for the satellite vending locations. USPS denied the SLA's permit. Subsequently, the SLA filed a complaint with the Secretary pursuant to 20 U.S.C. 107d-1(b).

**Arbitration Panel Decision**

Upon receipt of a complaint filed by The Arizona Department of Economic Security in December 1984, the Secretary of Education convened an arbitration panel that scheduled a hearing on December 12, 1985. The specific issues before the panel were (1) whether the USPS refused to recognize the priority afforded licensed blind vendors under 20 U.S.C. 107(a) and 34 CFR 395.30; (2) whether the refusal to grant permits constituted a limitation on the placement or operation of vending facilities under 20 U.S.C. 107(b) and 34 CFR 395.30(b); (3) whether the USPS interfered with the selection of suitable facilities, contrary to 20 U.S.C. 107(b) and 34 CFR 395.31(c); and 4) whether the USPS failed to recognize the requirements under 20 U.S.C. 107d-3(b) and 34 CFR 395.32 to share vending machine income with a State licensing agency.

Prior to the hearing on December 12th, the parties agreed to resolve the matter subject to acceptance and confirmation by the arbitration panel. The panel accepted the agreement and made the following award on January 17, 1986: (1) The existing contract for the cafeteria at the Phoenix General Mail Facility was modified to extend the contract from five years to an indefinite period of time for operation by the SLA. (2) The contract was modified to state that neither the SLA nor its authorized licensee was required to reimburse the USPS for utilities. (3) The amount shared with the SLA under the income-sharing provisions of the Act was modified from the customary 50 percent to 40 percent of all income from the nine satellite vending locations in the General Mail Facility.

The agreement did not preclude the SLA from submitting a permit application to operate the satellite vending locations after the effective date of the agreement. If the SLA submits a permit application, the USPS must respond to it within six months. If the USPS accepts the SLA's permit, the USPS' acceptance is not effective until three years from the effective date of the agreement. If the USPS denies the SLA's permit, the SLA may appeal the decision through the appeal process of the Randolph-Sheppard Act.

Dated: July 30, 1993.

**Judith E. Heumann,**

*Assistant Secretary, Office of Special Education and Rehabilitative Services.*

[FR Doc. 93-18673 Filed 8-4-93; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. JD93-13472T New Mexico-45]**

### United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 30, 1993.

Take notice that on July 27, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation underlying certain lands in the Jicarilla Area Basin Dakota Pool in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 6,498 acres, more or less, consisting of 79% Jicarilla Apache, 10.5% State and 10.5% Federal Lands. The recommended area is described as follows:

*Township 24 North, Range 5 West*

Sections 5-6: All

*Township 25 North, Range 5 West*

Sections 21-22: S/2
Sections 27-28: All
Sections 31-32: All
Sections 33-34: N/2

*Township 24 North, Range 6 West*

Sections 1-2: All

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18642 Filed 8-4-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-13473T New Mexico-46]

**United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation**

July 30, 1993

Take notice that on July 27, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Group underlying certain lands in the Williams Area Blanco Mesaverde Pool in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 3,840 acres, more or less, consisting 66.6% Federal, 16.7% State and 16.7% Fee Lands. The recommended area is described as

*Township 26 North, Range 6 West*

Sections 25-27: All
Sections 34-36: All

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Mesaverde Group meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18643 Filed 8-4-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP86-41-012]

**Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff**

July 30, 1993.

Take notice that Algonquin Gas Transmission Company (Algonquin) on July 26, 1993, tendered for filing certain revised tariff sheets to its FERC Gas Tariffs, Second Revised and Third Revised Volume No. 1 and Original Volume No. 2.

Algonquin states that the revised tariff sheets are submitted to comply with ordering paragraph (B) of the Commission's June 24, 1993 Order in Docket Nos. RP86-41-011, RP87-14-011, and RP90-22-018.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18644 Filed 8-4-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. EG93-59-000]

**Blue Diamond Power Partners L.P.; Application For Commission Determination of Exempt Wholesale Generator Status**

July 30, 1993.

On July 23, 1993, Blue Diamond Power Partners L.P. ("Blue Diamond") 191 Main Street, Annapolis, Maryland 21401 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Blue Diamond is developing and plans to construct a pumped storage hydroelectric project of up to 200 MW (the "Facility") to be located near Las Vegas, Nevada, that will be owned and operated by Blue Diamond. All of the Facility's electricity will be sold at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 17, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-18645 Filed 8-4-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. PL93-2-002]

**Prior Notice and Filing Requirements Under Part II of the Federal Power Act; Final Order**

Issued July 30, 1993.

For the past two years, in a series of orders commencing with *Central Maine Power Company*, 56 FERC ¶ 61,200, reh'g denied, 57 FERC ¶ 61,083 (1991) (*Central Maine*), the Commission has addressed the prior notice and filing obligations of public utilities under the Federal Power Act (FPA) to encourage compliance with those obligations. To this end, the Commission has clarified the jurisdictional status of certain types of agreements, provided additional guidance as to when it will find "good cause" to support waiver of notice, opened a number of related "amnesty windows," and imposed refund obligations in certain cases for the unsupported and unauthorized late filing of jurisdictional agreements.

In this order, after approximately two years' experience, a technical conference, and review of numerous comments, we make a number of modifications to our existing policy in an effect to promote clarity and consistency, and to balance respect for the statutory requirement of prior notice and filing with the market realities of the public utilities we regulate under the FPA. These modifications, stated broadly, are as follows:

- The creation of a new, final amnesty for all agreements for jurisdictional service, to expire on December 31, 1993;
- A different remedy, for both cost-based and market-based rates, for the late filing of jurisdictional rates and agreements (when waiver of notice is denied);
- Clarification that contributions-in-aid-of-construction (CIAC) agreements, under which payment and construction were completed as of August 2, 1991 (the date of issuance of the first *Central Maine* order), are "expired" agreements that, absent a pending complaint, need not be filed with or reviewed by the Commission; and
- Elimination of the "extraordinary circumstances" standard of waiver for the filing of service agreements implementing service under filed tariffs of general applicability.

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In addition, at the request of numerous participants in this proceeding, we attach to this order an Appendix that clarifies the jurisdictional status of, and the attendant need to file, various types of agreements identified by the participants.

**Background**

*A. Central Maine and Subsequent Cases*

Under section 205 of the FPA, 16 U.S.C. 824d (1988), and the Commission's implementing regulations, 18 CFR part 35, public utilities must file rates and charges for jurisdictional service, and all contracts and agreements relating to such service, at least 60 days in advance of the commencement of jurisdictional service. In *Central Maine*, the Commission was presented with the filing of 14 agreements for the short-term sale of capacity and energy at market-based rates after service under all of the agreements had commenced and, indeed, terminated. The Commission accepted the 14 late-filed agreements and waived the 60-day prior notice requirement, but did so on the condition that Central Maine Power Company (Central Maine) file revised rates reflecting a 100 percent contribution to the variable and fixed costs of the facilities used to provide service under the 14 agreements.

In acting on Central Maine's application, the Commission expressed concern with the increasing number of rate filings made after the commencement of jurisdictional service. The Commission took the opportunity to announce a policy statement of industry-wide application concerning implementation of the 60-day prior notice and filing requirement. To encourage compliance with this requirement, the Commission established a general "amnesty period," which expired on October 7, 1991 (60 days after publication of the *Central Maine* order in the **Federal Register**). During this amnesty period, utilities "transacting under existing agreements" not on file with the Commission, in violation of the prior filing requirement of Part II of the FPA, were afforded an additional opportunity to file such agreements for Commission review. Any utility filing rates (cost-based or market-based) for ongoing services prior to the close of the amnesty period, if otherwise just and reasonable, would be entitled to recover up to a 100 percent contribution to its variable and fixed costs of providing service. However, any utility filing rates for ongoing jurisdictional service after the close of the amnesty window would be entitled to receive no more than its variable operation and maintenance (O&M) expenses from the date of commencement of service until the date the Commission accepted such rates for filing. Any revenues collected under late-filed agreements in excess of the amounts ultimately allowed by the Commission (as well as interest calculated pursuant to 18 CFR 35.19a) would be subject to refund.[1]

In the past two years, the Commission has applied its "*Central Maine* policy" in a number of cases involving the late filing of jurisdictional agreements after the commencement of service. In *PacifiCorp Electric Operations*, 58 FERC ¶ 61,283, reh'g denied, 60 FERC ¶ 61,292 (1992), *reh'g pending*, for example, the Commission directed the refund of certain revenues because of the late filing of a jurisdictional transmission service agreement 13 years after the date of commencement of jurisdictional service, and one day after the close of the *Central Maine* amnesty window. In *Green Mountain Power Corp.*, 59 FERC ¶ 61,291, reh'g denied, 60 FERC ¶ 61,158, order on compliance filing, 61 FERC ¶ 61,203 (1992), the Commission directed the refund of certain revenues because of the late filing of two unit power sales agreements and a related capacity exchange agreement.

A series of *Central Maine* cases have involved the late filing of service agreements implementing service under filed tariffs of general applicability (which we will refer to as "umbrella" tariffs). The Commission initially ordered refunds to be paid in *Mississippi Power Co.*, 58 FERC ¶ 61,286, reh'g granted, 61 FERC ¶ 61,014 (1992), *New England Power Co.*, 59 FERC ¶ 61,253, reh'g granted, 61 FERC ¶ 61,015 (1992), and *Central Power & Light Co. and West Texas Utilities Co.*, 60 FERC ¶ 61,211, reh'g granted, 61 FERC ¶ 61,065 (1992). In these cases, the utilities claimed that they were providing service under tariffs that already had been filed with and accepted by the Commission and that, accordingly, the late filing of service agreements indicating only the names of new customers taking service under approved tariffs did not warrant the harsh "penalty" of refunds Recognizing that this matter was not entirely clear at the time of issuance of *Central Maine*, the Commission established an additional 30-day amnesty period (which expired on November 9, 1992) during which utilities could file service agreements implementing tariffs service at previously-approved tariff rates to particular customers, without risking *Central Maine*-type refunds. See *New England Power Co.*, 61 FERC ¶ 61,015 (1992); see also *New England Power Co.*, 61 FERC ¶ 61,123 (1992), reh'g denied, 63 FERC ¶ 61,108 (1993); *New England Power Co.*, 62 FERC ¶ 61,105, reh'g denied, 63 FERC ¶ 61,108 (1993).[2]

In another line of *Central Maine* cases, the Commission directed the payment of refunds for the late filing of jurisdictional agreements providing for the customer payment of contributions-in-aid-of-construction (CIAC agreements). See *Florida Power Corp.*, 58 FERC ¶ 61,161, reh'g denied, 60 FERC ¶ 61,003 (1992); see also *American Municipal Power Ohio, Inc.* v. *Ohio Edison Co.*, 57 FERC ¶ 61,358 (1991), reh'g denied, 58 FERC ¶ 61,182 (1992) (*AMP-Ohio*); *Western Massachusetts Electric Co.*, 59 FERC ¶ 61,091, reh'g denied, 61 FERC ¶ 61,182 (1992). The Commission explained that CIAC agreements have always been considered jurisdictional and subject to the statutory requirement of prior notice and filing. Nevertheless, the Commission recognized that this matter also was not entirely clear at the time the *Central Maine* amnesty window closed. Accordingly, the Commission established another 30-day amnesty period (which expired on November 18, 1992)in which to file with the Commission any unfiled CIAC agreements under which jurisdictional service has been provided. See *Florida Power Corp.*, 61 FERC ¶ 61,063 (1992). However, on November 16, 1992, the Commission indefinitely stayed the close of the amnesty period "until 30 days after the Commission issues a further order addressing the merits" of the CIAC issue. See *Florida Power Corp.*, 61 FERC ¶ 61,244 (1992).[3]

[1] Central Maine ultimately filed with the Commission a settlement agreement under which it agreed to refund approximately $2.6 million in refunds to certain of its customers. On April 17, 1992, the Commission issued a letter order approving the settlement. *See Central Maine Power Co.*, 59 FERC ¶ 61,092 (1992). On April 27, 1993, the Commission issued an order in response to additional arguments raised by Central Maine, declining to rescind the settlement in whole or in part. *See Central Maine Power Co. and New England Power Co.*, 63 FERC ¶ 61,108 (1993), reh'g pending.

[2] A more detailed discussion of the filing of service agreements implementing provisions of umbrella tariffs is found in the Discussion section of this order.

[3] Since that time, the Commission has issued a number of orders granting waiver of notice (because of the ongoing *Central Maine* "amnesty" for CIAC agreements) for CIAC agreements filed after the commencement of service, and addressing the justness and reasonableness of the rates charged thereunder. See *Alabama Power Company*, 63 FERC ¶ 61,309 (1993); *Appalachian Power Company*, 63 FERC ¶ 61,151, order on reh'g, 64 FERC ¶ 61,012 (1993); *Western Massachusetts Electric Company*,

In still other cases, the Commission has refrained in particular circumstances from directing *Central Maine* refunds for the late filing of jurisdictional rates and charges outside Commission-authorized amnesty periods. Thus, in *Fale-Safe, Inc.*, 59 FERC ¶ 61,385 (1992), the Commission refused to apply its *Central Maine* policy to the filing of rates under jurisdictional sales and transmission agreements after the commencement of service under the agreements, when the Commission previously had evaluated the rates and reviewed the operative agreements in filings made by another party to the transaction. In *PSI Energy, Inc.* 63 FERC ¶ 61,107 (1993), reh'g pending, the Commission refused to apply its remedial *Central Maine* policy because the late-filing utility was a net payor to non-jurisdictional entitles under certain agreements providing for the joint operation of a joint transmission system. And in *Barton Village, et al.* v. *Citizens Utilities Co.* (*Barton Village*), 63 FERC ¶ 61,329 (1993), the Commission determined that *Central Maine* refunds, on account of a utility's failure to file certain agreement relating to various services (which, the Commission determined, are jurisdictional services), were not appropriate in light of the utility's good faith reliance on its discussions with Commission staff.

*B. Central Hudson and Subsequent Cases*

As explained above, section 205 of the FPA and the Commission's implementing regulations, 18 CFR 35.3(a) (1992), require that utilities file rates for jurisdictional service at least 60 days prior to the commencement of service. Section 205(d) of the FPA, 16 U.S.C. 824d(d) (1988), and the Commission's regulations, 18 CFR 35.11, also give the Commission the discretion to grant waiver of the 60-days prior notice requirement for good cause shown.

In *Central Hudson Gas & Electric Corp. et al.*, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992) (*Central Hudson*), the Commission provided additional guidance as to when it is likely to grant waiver of the prior notice requirement. The Commission stated that waiver of notice generally will be appropriate when an uncontested filing has no rate impact or when a filing reduces rates or changes, or when a rate increase and its effective date are prescribed by a contract or settlement agreement on file with the Commission. The Commission stressed, however, that even in these circumstances there is the need for utilities to make their filings as soon as possible. The Commission stated that in other situations, such as rate increases not provided for in a contract or settlement on file with the Commission, or new services that will not result in rate decreases to customers, and that are not provided pursuant to an accepted contract or settlement, a strong showing of good cause will be required for waiver of the notice requirement. The Commission also stated that, absent "extraordinary circumstances," the Commission will not grant waiver of the notice requirement when an agreement for new service is filed on or after the date service has commenced.

In a number of orders issued after *Central Hudson*, the Commission has denied waiver of notice for the utility's failure to demonstrate "extraordinary circumstances" justifying filing after the commencement of new service (not provided pursuant to an accepted contract or settlement). See, *e.g.*, *United Illuminating Co.*, 61 FERC ¶ 61,186 (1992). When waiver has been denied, the Commission has applied its *Central Maine* remedy for the period of time preceding the effective date of the new rate or service. In other words, utilities failing to demonstrate good cause in support of waiver of notice have been directed to refund all revenues received under the late-filed agreements in excess of their variable O&M costs until 60 days after the filing was tendered.

*C. Technical Conference*

Recognizing that considerable uncertainty existed regarding the filing obligations of utilities under the FPA and, specifically, compliance with the Commission's *Central Maine* and *Central Hudson* policies, the Commission, on December 9, 1992, issued an order in this proceeding. That order scheduled a technical conference for January 28, 1993 (Technical Conference), and requested comments on a number of related issues. See Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 57 FR 59338 (December 15, 1992).

The Commission directed that participants refrain from commenting on specific requests for Commission action in ongoing proceedings. However, the Commission encouraged comments of general applicability, and suggested that the comments include, but not be limited to, discussion of the following issues: (1) How extensive a search for unfiled jurisdictional agreements should be required, and how burdensome this search obligation would be; (2) whether expired agreements need to be filed; (3) how to handle uncertainty as to the jurisdictional status of unfiled agreements, and how much, if any, reliability to attach to informal advice from Commission Staff; (4) how expansively to apply the amnesty windows for service agreements and CIAC agreements; (5) whether there had been sufficient time to comply with filing obligations under the remedial *Central Main* policy; and (6) whether the *Central Hudson* "extraordinary circumstances" test is detrimental to short-term economy transactions. In addition, interested persons were invited to file requests to participate in the Technical Conference, and those with similar positions were encouraged to file joint requests for participation.

Twenty-six entities filed comments (Initial Comments). Many argued that the various *Central Maine* pronouncements have generated considerable uncertainty, and that the Commission should issue a rule or policy statement a specifying or otherwise delineating which principles are to be followed in determining which transactions are jurisdictional. Many of the Initial Comments proposed that, after such delineation is made, the Commission establish a new, general amnesty period covering all jurisdictional transactions. Various proposals were made for reliance on Staff advice for future jurisdictional questions. Numerous comments argued that the Commission should not require terminated or expired agreements to be filed (except in the case of agreements that are the subject of customer complaints). Some of the participants proposed that searches of even active agreements be limited to a fixed number of years.

A number of the Initial Comments raised specific jurisdictional issues, and requested that the Commission make particular pronouncements on those questions. There were also complaints about the *Central Maine* (variable O&M) remedy, with utility groups arguing that it amounted to an impermissible "penalty," and customer representatives maintaining that it did not go far enough to prevent abuses in the future.

Finally, there was considerable opposition to the *Central Hudson* "extraordinary circumstances" standard for waiver of notice for agreements for new service (not provided pursuant to an accepted contract or settlement). Many participants maintained that this restrictive standard has the effect of stifling short-term economy

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63 FERC ¶ 61,039 (1993), reh'g pending. A more detailed discussion of the filing and jurisdictional status of CIAC agreements is found in the Discussion section of, and the Appendix to, this order.

transactions, penalizes utilities for accommodating requests for service made on short notice, and disadvantages utilities in the competitive market. While umbrella agreements could cover most of these arrangements, some commenters noted that such agreements cannot be designed to cover all potential transactions with all potential customers.

The Commission held the Technical Conference on January 28, 1993. The participants discussed many of the same issues addressed in the Initial Comments. In particular, they stressed that the industry has "gotten the message" the Commission sent in *Central Maine* and subsequent cases, and fully desires to be in compliance with the FPA and the Commission's implementing regulations. Many of the participants expressed concern over potential refund liability for unfiled agreements for jurisdictional service that had expired or terminated. Another topic of concern was how to handle particular jurisdictional questions and whether these specific determinations would be better addressed through the Commission's Office of General Counsel (OGC) or Office of Electric Power Regulation (OEPR).

Significant discussion at the Technical Conference focussed on the Commission's *Central Hudson* rulings, with particular emphasis on how to structure umbrella tariffs, how to deal with transactions occurring under them on short notice, and how to handle exceptions. Many participants expressed the hope that, in cases where an umbrella tariff is on file, the Commission would relax its standards for finding good cause in certain circumstances for the late filing of service agreements implementing tariff service and agreements for other types of short-term or economy services not covered by that tariff. In this context, concern was raised over how to speed the filing system at the Commission, and electronic filings were proposed in certain circumstances.

At the Technical Conference, participants were requested to submit comments to the Commission on any of these topics by March 1, 1993.

*D. Initial Order and Supplemental Comments*

As a result of discussion at the Technical Conference, it became apparent that the industry was not entirely clear on the Commission's policy regarding the filing of expired or terminated agreements, and that this was creating considerable financial uncertainty.[4] Consequently, on February 10, 1993, the Commission issued in this proceeding an "Initial Post-Technical Conference Order on the Filing of Expired Agreements." *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 62 FERC ¶ 61,128 (1993). The Commission explained that, in most instances, no significant regulatory purpose would be furthered by the utility obligations to file, and the Commission obligation to review, agreements involving consensual jurisdictional transactions that commenced and expired prior to the issuance of the *Central Maine* order on August 2, 1991. The Commission explained further that its ability to review the justness and reasonableness of rates, terms, and conditions of services that have terminated necessarily is limited, and that it is not in the public interest to subject public utilities to the financial uncertainty created by the potentially large refund liability associated with unfiled agreements that may date as far back as the 1935 enactment of the FPA.

Accordingly, the Commission expressly declared that executed agreements under which jurisdictional service expired prior to August 2, 1991, and as to which a complaint had not yet been received, need not be filed with or reviewed by the Commission. Nonetheless, the Commission emphasized that this action should not be construed as countenancing the late filing (or non-filing) of rates, charges, and related agreements for jurisdictional service.

In response to the suggestion at the Technical Conference, twenty entities filed comments (Supplemental Comments), on or about March 1, 1993. In this set of comments as well, many participants continued to argue that the Commission should now grant an additional, unconditional amnesty period for all unfiled agreements for jurisdictional service. Again, some commenters maintained that a formal rulemaking is necessary to clarify what types of agreements are jurisdictional and must be filed for Commission review. Some of the commenters again raised particular jurisdictional questions; some argued that the Commission should delegate authority to resolve jurisdictional issues to its Staff. Many of the commenters continued to raise complaints about the perceived excessiveness of the *Central Maine* (variable O&M) remedy. Many discussed the practical implementation of umbrella tariffs. In that context, as well as more generally, the commenters discussed what should constitute good cause for waiver of the prior notice requirement for the filing of different types of jurisdictional agreements. Finally, some of the supplemental Comments suggested ways to speed filings with the Commission through electronic or other means.

On March 4, 1993, Gulf States Utilities Company (Gulf States) filed in this proceeding a motion for clarification or, alternatively, an application for rehearing of the Initial Order. On March 10, 1993, Southwestern Public Service Company (Southwestern) filed an answer in support of "certain" requests for clarification or, alternatively, an application for rehearing of the Initial Order. On March 12, 1993, Citizens Utilities Company (Citizens) filed a request for rehearing and clarification of the Initial Order.

The pleadings filed by Gulf States and Southwestern concern: (1) Whether the November 16, 1992 stay of the close of the amnesty period for the filing of CIAC agreements (*see supra* page 4) was lifted by the Commission action in the Initial Order; (2) whether the exemption for expired agreements applies to CIAC agreements under which construction and payment were completed prior to August 2, 1991 (the date of issuance of the original *Central Maine* order), even though the facilities may still be in service; and (3) whether jurisdiction over CIAC agreements should only be asserted prospectively. Citizens argues that the Initial Order unfairly singled out Citizens by creating the exception for cases involving a pending complaint concerning *Central Maine* and related notice and filing issues. Citizens notes that, at the time of filing of its rehearing, it was the utility respondent to the only such complaint on file with the Commission (filed by the Vermont Villages[5] in Docket No. EL92–33–000). Citizens also questions whether it alone should have a continuing obligation to file expired agreements.[6]

On June 18, 1993, EEI filed a second set of Supplemental Comments and

[4] The was true despite the fact that the original *Central Maine* order itself has applied to utilities that were "transacting under existing agreements."

[5] The Vermont Villages consist of Barton Village, Inc., the Village of Enosburg Falls Water & Light Department, the Village of Orleans, and the Village of Swanton, Vermont.

[6] On June 25, 1993, the Commission issued an order on the Vermont Villages' complaint. See *Barton Village, et al. v. Citizens Utilities Co.*, 63 FERC ¶ 61,329 (1993). The Commission granted the complaint to the extent it found that the agreements at issue provide for jurisdictional service and, accordingly, must be filed with and reviewed by Commission. The Commission denied the complaint to the extent it found that *Central Maine* refunds on account of Citizens' late filing were not appropriate in the circumstances presented.

requests for expedited consideration. EEI urges the Commission to expedite its consideration of the issues presented in this docket and to avoid resolving such issues in individual proceedings without consideration of the considerable record developed here. In particular, EEI argues that contractors involving the construction of jurisdictional facilities, regardless of whether the customer pays in one lump sum or over a period of time, should be considered CIAC agreements entitled to amnesty.

**Discussion**

*A. New Amnesty Period*

Public utilities and their customers now inform us that our efforts at providing further guidance as to the filing obligations of public utilities under Part II of the FPA have not been successful. Indeed, several participants suggest that the filing obligations of public utilities are less clear now than they were prior to issuance of the original *Central Maine* order. In particular, the utility industry remains unclear as to whether various types of agreements need to be filed for Commission review because of the uncertain jurisdictional status of particular types of agreements. This problem is exacerbated, we are told, by the increasingly large number of amnesty periods and *Central Maine* exceptions announced by the Commission which, collectively, serve to undermine the clarity and uniformity that is, after all, the goal of this generic proceeding.

We agree that the current framework, with its numerous "amnesties" and "exceptions," is, from the utility and customer perspective, difficult to understand; from the Commission perspective, it is difficult to administer. It certainly is not our intention to promote a policy that, as some participants suggest, imposes a regulatory minefield for the unwary and creates business opportunities for the legally clever. Therefore, we will simplify the process and provide a more comprehensive, unified framework. This revised structure consists of several components: (1) Increased guidance as to the jurisdictional status of various types of rates, charges, and related agreements that may have to be filed for Commission review; (2) a consolidation of the various amnesties and exceptions into one comprehensive, easy to understand, final general amnesty period; and (3) a relaxing of the standard for waiver of notice for the late filing of certain types of agreements.

To this end, we attach to this order an Appendix that responds to the jurisdictional inquiries of the participants filing comments and participating in the Technical Conference in this proceeding. In the Appendix, we answer the particular jurisdictional questions that have been identified by the participants. In addition, we also discuss the legal framework under the FPA, and the general criteria we use in making these jurisdictional determinations. Our hope is that this analysis will assist utilities in searching their files for agreements that now need to be filed for Commission review, as well as in assessing the jurisdictional status of any current or future transactions of which we have not yet been apprised.

By necessity, the jurisdictional guidance provided is general, rather than case-specific; it cannot begin to cover all of the possible twists and factual variations that may impact on the jurisdictional status of any one particular transaction. To the extent a utility remains uncertain, even after consulting this order and the Appendix, as to its obligation to file rates and charges for a particular transaction or type of transaction, it should assume the initiative to seek a specific ruling. The easiest and most efficient way to do this is to file the agreement pursuant to part 35 of the Commission's regulations, 18 CFR part 35, and simultaneously request the Commission to disclaim jurisdiction. A utility could also file a petition for a declaratory order (see 18 CFR 385.207(a)(2)) or an application for a written interpretation by the Office of the General Counsel (see CFR 388.104(a), (c)).[7]

In light of the additional jurisdictional guidance we are now providing, regarding the filing obligations of public utilities under the FPA, we see no excuse for failing to file all agreements under which jurisdictional service is being provided.

Accordingly, we will now establish an additional, but final, general amnesty period. This amnesty period will close on December 31, 1993. Any existing agreements which are jurisdictional under the criteria we lay out in the Appendix, as well as agreements which we have in the past determined to be jurisdictional, including those of the type addressed in the cases following *Central Maine*, should be filed during this period to obtain the amnesty.

This general amnesty has several specific features:

- The February 10, 1993 "Initial Order" in this proceeding remains intact (with the additional clarification for CIAC agreements provided below). Thus, consensual agreements under which jurisdictional service terminated prior to August 2, 1991 (the date of issuance of the original *Central Maine* order) need not be filed with the Commission unless they are the subject of a customer complaint filed as of February 10, 1993.
- All agreements under which jurisdictional service was being provided at any time between August 2, 1991 and the date of issuance of this order must now be filed for Commission review under this amnesty. Filing is mandatory, regardless of the directions contained in earlier amnesties or exceptions.
- If an agreement under which jurisdictional service was being provided (whether for cost-based or market-based rates) at any time between August 2, 1991 and the date of this order is filed with the Commission by December 31, 1993, or already has been filed (but not yet accepted), than waiver of notice will be granted and "*Central Maine* refunds for late filing will not be ordered. Such an agreement is still subject to examination (and possible refunds) to determine whether the rates charged are just and reasonable under the FPA.
- If an agreement under which jurisdictional service was being provided at any time on or after August 2, 1991 already has been accepted for filing, and the Commission already has ordered modification and "*Central Maine*" refunds for its late filing, the Commission will, in the near future, issue a supplemental order granting waiver of notice and rescinding the refund obligation. If the Commission has deferred judgment on the question of modification and refunds for the late filing of such an agreement, the Commission similarly will issue a supplemental order granting waiver and accepting the agreement without modification or "*Central Maine*" refunds.[8]

[7] Section 388.104(a) provides in part that "[o]pinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission's functions." At this time, we decline to adopt the suggestion of certain participants to designate any particular staff person as a contact person for the utility industry to direct questions about the jurisdictional status of certain types of agreements.

[8] We understand that a considerable number of pending cases are affected by this disposition. In initiating this proceeding, we asked participants to refrain from commenting on the specific facts and circumstances of specific cases involving the late filing of rates for jurisdictional transactions. 57 FR 59340 (December 15, 1992). We again ask utilities and their customers to refrain from raising specific

Continued

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• Agreements under which jurisdictional service has not commenced as of the date of this order, if filed less than 60 days in advance of the commencement of (or proposed effective date for) service, will continue to require waiver of notice. Waiver decisions will continue to based on the standards articulated in *Central Hudson*, as clarified below in this order.

• Remedies for violations of the prior notice and filing requirement, in the event waiver is not granted, are discussed below.

No further amnesties will be provided. In our judgment, this amnesty is long enough (through December 31, 1993), and our instruction clear enough, to ensure that public utilities have sufficient time and ability to review this order and Appendix, to search their files, to consult with appropriate personnel, to make necessary inquiries with the Commission, and to prepare filings. If still unsure, utilities should take the precaution to file all questionable agreements as soon as possible (but, in no event, later than December 31, 1993).

In sum, all public utilities must have on file, by December 31, 1993, all agreements under which they provided jurisdictional services as of the August 2, 1991 issuance of the original *Central Maine* order or at any time thereafter up to the date of issuance of this order.

*B. Future Violations*

In the many actions taken by the Commission since issuance of the first *Central Maine* order, the Commission has attempted to convey to the electric utility industry the seriousness with which it viewed failures to comply with the prior notice and filing requirement contained in the EPA. Below, we clarify our remedial policy to be applied in the event rates or charges for jurisdictional service, or contracts affecting or relating to such service, are not filed with the Commission at least 60 days prior to the commencement or proposed effective date of jurisdictional service, and waiver of notice is not granted.

Many objections have been raised in the Initial and Supplemental Comments and at the Technical Conference to the remedy set out in *Central Maine*, permitting the recovery of only variable O&M expenses, where filings are not made on time and waiver is denied. Some argue that, because the variable O&M remedy is tied to the contribution to fixed costs in the rate, this remedy is not commensurate with the degree of non-compliance. They conclude that the variable O&M remedy, applicable in all cases of non-compliance, leads to inequitable results. Others point out that the FPA currently provides various penalties for a "willful" violation of that statute (i.e., willful failure to file a rate at least 60 days in advance of the commencement of service) in sections 314 to 316 of the FPA, 16 U.S.C. 825m–825o. They argue, as a result, that any further penalty is unnecessary. They also allege that the refund obligation is essentially a prohibited civil penalty; still others maintain that the remedy is unconstitutional because it amounts to a confiscatory taking.

Some commenters argue that the FPA does not distinguish between a filing which is timely and a filing which is untimely, but rather merely mandates that all rates filed be just and reasonable. They argue that the Commission cannot make a generic determination that variable O&M recovery is just and reasonable in all cases, but must engage in a case-specific analysis of each proposed rate and each proposed remedy to ensure that each is just and reasonable. Some claim that the requirement that rates be non-confiscatory must be balanced only against the consumer interest against exorbitant rates; i.e., any attempt to deter future violations cannot justify lowering a particular rate below the zone of reasonableness.

A related argument raised is that, especially in cases where the customer has actual notice of and agrees to the late filed rate, the customer receives a windfall in the event of a refund. Moreover, the utility presumably has already credited revenues from unfiled agreements into rate base or cost of service, reducing customer costs rather than itself receiving financial gain. Finally, it is proposed that the Commission create a "late filing fee" of $10,000 or some other amount, which would apply to all untimely filings, regardless of the length of the violation or the dollar amounts involved in the underlying transaction.

We will not now engage in a detailed discussion of each of the points raised on this matter. Some of the legal arguments raised, in an appropriate context, may have some merit. As a matter of policy, however, we now believe that the "*Central Maine*" variable O&M remedy for violations of the prior notice and filing requirement should be modified. The remedy can have harsh effects, amounting in some cases to millions of dollars, as to rates to which customers have consented and which we may have found to be just and reasonable had they been filed timely.[9]

Accordingly, we will lessen the severity of our refund policy. If a utility files an otherwise just and reasonable cost-based rate after new service has commenced, or if waiver is denied and the proposed rate goes into effect after service has commenced,[10] we will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to § 35.19a of our regulations (18 CFR 35.19a), for the entire period that the rate was collected without Commission authorization.[11] For example, if a utility began jurisdictional service on March 1, 1993, and does not file the proposed rate for such service until January 1, 1994 (one day after that close of the general amnesty period), the utility will be required to refund the time value of the revenues collected for a one-year period: The ten months the rates were collected prior to filing, plus an additional 60 days to account for the prior notice requirement.[12] Or if a rate for new service is filed on January 1, 1994, service at that rate is scheduled to commence on February 1, 1994, and waiver of notice (necessary because less than 60 days' advance notice is provided) is denied, refunds will be the time value of the revenues received for the one-month period from February 1, 1994 to March 1, 1994 (when the rate became effective).

We will implement a similar remedy for the unauthorized late filing of market-based rates. If a utility files a market-based rate less than 60 days prior to the proposed effective date of new service,[13] and waiver is denied, we

concerns about pending cases until we have applied this general amnesty in supplemental orders.

[9] There are two factors which go into cost-based rates, fixed costs and variable costs. Different proportions of the total costs of any particular transaction can be associated with either "fixed" or "variable" costs. This can lead to widely different refund obligations for any two transactions, even where the failures to file are for a similar duration.

However, the Commission must also take into account the fact that, in addition to violating the FPA and our implementing regulations, the failure to file a rate in a timely manner undermines the right of a utility's customers to protection from excessive rates. Moreover, the passage of time makes if often difficult (and particularly so in the case of a market-based rate) to determine accurately the justness and reasonableness of a rate which is not timely filed. Thus, true rate protection for customers in cases of untimely filings may be impossible.

[10] *See infra* note 13.

[11] Such refunds will be in addition to any refunds which may be required because the proposed rate is not found to be just and reasonable.

[12] If this rate, if otherwise just and reasonable, is filed one day earlier (on December 31, 1993), it will, by virtue of filing within the general amnesty announced above, not be subject to refund because of late filing.

[13] For rate increases under existing rates, the Commission will continue to order refunds, with interest, back to the last clean rate.

will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to § 35.19a of our regulations, for the entire period that the rate was collected without Commission authorization. In addition, the utility will be required to refund all revenues resulting from the difference, if any, between the market-based rate and a cost-justified rate.

In other words, the late-filing utility will receive the equivalent of a cost-based rate, less the time value remedy applicable to the unauthorized late filing of cost-based rates, until the date of Commission authorization. After that date, the utility will be able to charge only a cost-justified rate for the remainder of that contract's term. Thus, we will not bifurcate our consideration of late-filed market-based rates; the utility will not be permitted to present a market justification for the proposed rate for past or future periods under that contract. Rather, if a utility files a market-based rate less than 60 days prior to the proposed effective date of service, and waiver of notice is denied, then the utility can recover only a cost-justified rate for all periods (less the time value remedy for the period of time in which the rate was being charged without Commission authorization).

In our judgment, this remedy for the late filing of cost-based and market-based rates will encourage respect for and compliance with the prior notice and filing requirement, yet not impose such a severe financial burden on the utility filing rates that otherwise are just and reasonable. We believe this case-specific, time value remedy is preferable to other types of remedies suggested—especially fixed dollar amounts (say $10,000 or $50,000)—that have little or no relation to the duration or severity of the specific violation at issue.

*C. Request for Rehearing*

1. Request by Citizens

In the February 10, 1993 Initial Order in this docket, the Commission explained that, after reviewing the Initial Comments and the oral testimony presented in the Technical Conference, it generally has no continuing interest in agreements under which jurisdictional service terminated prior to August 2, 1991 (the date of issuance of the original *Central Maine* order). However, the Commission noted that the Vermont Villages [14] had argued in their comments and testimony in this proceeding that utilities should not be rewarded for conduct that precluded meaningful Commission review of the justness and reasonableness of jurisdictional rates prior to the commencement, or during the pendency, of jurisdictional service. Therefore, the Commission announced that it does have a continuing interest in cases involving a complaint filed prior to February 10, 1993, the date of the Initial Order, challenging a utility's failure to file agreements for jurisdictional service in a timely manner. 62 FERC at 61,824.[15] As a result, the complaint filed by the Vermont Villages Against Citizens (in Docket No. EL92–33–000) on June 5, 1992, which involved a number of agreements that had "expired" as of August 2, 1991, was not dismissed in whole or in part.

Notwithstanding that the Commission's June 25, 1993 order in *Barton Village* addressed the merits of that complaint (see *supra* note 6), we will now discuss Citizens' request for rehearing of the Initial Order issued in this proceeding. However, our determination here offers no comment on the merits of the particular allegations raised by the Vermont Villages in their complaint in Docket No. EL92–33–000. Thus, we will not discuss Citizens' arguments in its request for rehearing in this proceeding to the extent that they respond to the allegations raised in the complaint proceeding.

Citizens does not dispute the validity of the general rule announced in the Initial Order. It is the exception, for complaints filed as of February 10, 1993, which Citizens believes is directed specifically and exclusively at the complaint filed against Citizens by the Vermont Villages, that Citizens challenges as inappropriate and unfair disparate treatment. In addition, Citizens requests clarification that the Initial Order did not affirmatively require Citizens to file all expired agreements (in addition to those at issue in the Vermont Villages' complaint) at this time or suffer the application of *Central Maine* remedies for their late filing.

Citizens is correct that it is, in fact, receiving disparate treatment from the rest of the industry. However, that treatment is the direct result of the Vermont Villages' filing of a complaint against Citizens (concerning Citizens' failure to file certain agreements for jurisdictional service), which placed Citizens in a unique position. The complaint forced the Commission to single out either Citizens or its customers for "disparate" treatment. If we had not created the exception for pending complaints, the Initial Order unilaterally would have extinguished the Vermont Villages' case, without any reference to the merits of their position. In our judgment, it would have been much more "unfair" to vitiate the Vermont Villages' statutory right to file a complaint under sections 206 and 306 of the FPA, 16 U.S.C. 824e, 825e, (1988), than to consider the allegations raised against Citizens on their merits.

This position is particularly compelling because of the context of the arguments here. The *Central Maine* remedial policy was issued to remind utilities—not customers— of their obligation, under section 205 of the FPA, to file rates with the Commission in advance of the commencement of jurisdictional service, because of repeated violations of that important obligation by the electric utility industry. In *Central Maine*, we gave utilities an amnesty window in which to file jurisdictional rates. Subsequent to the original *Central Maine* order, we have excused certain other failures by utilities to file in a timely manner. Finally, in the Initial Order, we absolved utilities of their obligation to file terminated or expired agreements, absent a pending complaint on the subject. Our rulings in *Central Maine* and its progeny are not the result of customer actions or inactions of any kind. Accordingly, we will not penalize customers by cutting off their section 206 and 306 rights in the context of granting further forgiveness to a utility. Therefore, we will deny Citizens' request for rehearing.

Regarding Citizens' request for clarification, we reiterate that the Initial Order specifically stated that the "one exception" to the general pronouncement that expired agreements need not be filed "concerns *agreements as to which a complaint has been filed* as of the date of issuance of this order, challenging the utility's failure to file." 62 FERC at 61,824 n.2 (emphasis added). It is only those expired or terminated agreements that were the subject of the Vermont Villages'

[14] As explained above (see *supra* note 5 and accompanying text), the Vermont Villages are a group of municipal corporations in Vermont that filed a complaint (in Docket No. EL92–33–000) against Citizens, claiming their right to *Central Maine* refunds for Citizens' alleged failure to file certain agreements that, the Vermont Villages claimed (and the Commission ultimately found), provide for jurisdictional service.

[15] The Vermont villages also had expressed concern that customers will be subject to the intransigence of a selling utility with unequal bargaining strength. In response, the Initial Order explained that customers may file a complaint or make a call to the Commission's Enforcement "Hotline" alerting the Commission to the commencement of jurisdictional service under unfiled and unreviewed rates and related agreements. 62 FERC at 61,825.

complaint over which the Commission has a continuing interest. Citizens is not obligated, therefore, to file now any other of its expired agreements with the Commission.

2. Clarification Regarding CIAC Agreements

Gulf States and Southwestern request clarification that the Initial Order did not lift the November 16, 1992 indefinite stay (see supra page 4) of the close of the amnesty period for the filing of CIAC agreements. They point out that the Commission, in the Initial order, explicitly stated that it did "not act now on the numerous other issues raised in the comments and the testimony presented in this proceeding." 62 FERC at 61,825. However, they note that the Commission also stated that "all agreements for jurisdictional service that were ongoing as of August 2, 1991, must be filed for Commission review," *id.*, and wonder whether that includes CIAC agreements under which construction was completed and payment fully made as of that date.

Gulf States and Southwestern are correct that we did not intend for the Initial Order to affect the November 16, 1992 stay of the close of the amnesty period for the filing of CIAC agreements. However, as explained above, the specific, ongoing amnesty for the filing of CIAC agreements will be subsumed in the general amnesty for the filing of all agreements for jurisdictional service. Thus, all CIAC agreements over which the Commission has a continuing interest (i.e., those under which service did not expire by August 2, 1991) must be filed by the close of the general amnesty on December 31, 1993.

Gulf States and Southwestern also raise the issue of whether CIAC agreements under which construction was completed and all payment made prior to August 2, 1991 (the date of the original *Central Maine* order), whether or not the facilities constructed are still being used by utilities or their customers, constitute "expired" agreements for purposes of application of the Initial Order.[10] They, and a number of other participants in the Technical Conference, request a Commission determination that such agreements are considered "expired" agreements for purposes of application of the Initial Order.

In support of their position that it is appropriate for the Commission to treat these types of CIAC agreements as "expired" agreements, Gulf States and Southwestern argue that the same reasons for waiving the filing of other expired agreements apply to these agreements as well. Invoking language from the Initial Order, they assert that no "significant regulatory purpose would be furthered" by the filing and review of consensual CIAC agreements under which the relevant construction and payment has long been finalized and as to which no transactional matter remains open. *See* 62 FERC at 61,824. They also maintain that it is neither fair nor "in the public interest to subject utilities to the financial uncertainty created by the potentially large refund liability associated with unfiled [CIAC] agreements that may date as far back as 1935." *Id*, In addition, they argue that the substantial burden of searching for, uncovering, and filing pre-August 2, 1991 agreements is just as significant in cases where the CIAC agreements relate to facilities that are in operation after August 2, 1991 as to CIAC agreements for facilities which were taken out of operation prior to that date.

Finally, Gulf States and Southwestern distinguish between construction activity and sales or transmission *service* over the constructed facilities. Agreements governing ongoing jurisdictional service, they point out, must be filed with the Commission. This is true, they note, independent of the construction status of the underlying facilities. In contrast, they assert, finalized and completed construction activity is not an ongoing activity, but is finalized once the construction has been completed and payment has been tendered. Therefore, they conclude, CIAC agreements dealing with completed construction activity have indeed "expired."

While we find many of these arguments to be persuasive, as explained below, we find all CIAC agreements related to the sale for resale or the transmission of electric energy in interstate commerce by public utilities to be jurisdictional. See, *e.g.*, *AMP-Ohio*, 57 FERC at 62,160–61, 58 FERC at 61,565 n.14. That we may decline to require the filing or review or jurisdictional CIAC agreements in certain, limited circumstances in no way should be taken as a disclaimer of our jurisdiction or a diminution of our interest in such agreements. Nevertheless, we agree that the substantial burdens of searching for "expired" CIAC agreements, under which construction and payment were completed prior to August 2, 1991, are similar to those of other expired agreements. Our ability to review the justness and reasonableness of "expired" CIAC payments, like our ability to review rates for other expired services, is limited. In addition, we are cognizant of the financial uncertainty we would perpetuate by the potentially large refund liability associated with Commission review of all such agreements. Finally, we agree that, in general, no significant regulatory purpose would be furthered by our review of consensual CIAC agreements under which payment and construction have ceased as of August 2, 1991.

Accordingly, we find that consensual CIAC agreements under which all construction was completed and all payments were made prior to August 2, 1991 qualify as "expired" agreements within the meaning of the Initial Order. That is, they need not be filed for Commission review unless they are the subject of a customer-filed complaint, previously-filed with the Commission, challenging the utility's failure to file. Finally, as we discuss in the Appendix, we reiterate that our holding regarding "expired" CIAC agreements has no bearing on our determination that jurisdictional CIAC agreements pursuant to which payments and/or construction were ongoing as of August 2, 1991 do need to be filed with the Commission. And of course, any new jurisdictional CIAC agreements must be filed with the Commission subject to the prior notice and filing requirement. In reviewing future rate applications, the Commission will take payments made pursuant to "unexpired" CIAC agreements into account in setting the rate for any jurisdictional service. Of course, consistent with the Commission's accounting and ratemaking requirements, the Commission would not permit costs recovered under expired CIAC agreements to be reflected in rate base.

*D. Relaxing of "Extraordinary Circumstances" Standard for Waiver*

This proceeding has generated much discussion about so-called "umbrella tariffs," tariffs of general applicability which a utility can file with the Commission. In the original *Central Maine* order, we noted that "[s]uch tariffs give the selling utility the flexibility to respond to market opportunities while satisfying its obligation to have its rate on file." 56 FERC at 61,819. This declaration however, led to some confusion, and in *Mississippi Power Co.*, 58 FERC ¶ 61,286 (1992) (*Mississippi Power*), the Commission explained that:

[t]ariffs can be structured to allow the amount and duration of service to vary once an approved service agreement is on file for a particular customer. The parties to such a

[10] While we discuss the jurisdictional status of CIAC agreements more thoroughly in the Appendix to this order, we will now briefly explain our determination in response to the motions by Gulf States and Southwestern.

service agreement may transact from time to time without requesting Commission approval of each specific transaction. However, the Commission did not suggest [in *Central Maine*] that utilities could apply a tariff rate to a new customer without first filing a service agreement and seeking Commission approval.

58 FERC at 61,897–98 (footnote omitted). The Commission further clarified that it never stated nor meant to imply that "short-term transactions under a tariff could take place without the utility in question filing a service agreement contemplating the transaction in question * * * [because] the Commission must be able to assure itself that a tariff rate extended to a new customer is appropriate for the new customer." *Id.* at 61,898.

This point was reiterated in *New England Power Co.*, 59 FERC ¶ 61,253 (1992) (*New England Power*). The Commission explained there that even in cases involving a short-term service tariff (*Mississippi Power* had involved long-term requirements service, though the Commission did explicitly address short-term service there), agreements covering service to new customers must be filed prior to the commencement of service under the tariff. Specifically, the Commission noted that "[i]n *Central Maine*, the Commission simply recognized that service arrangements or tariffs can be structured to allow the amount and duration of service to vary once that service arrangement or tariff has been approved and is on file for a particular customer." 59 FERC at 61,921. The Commission addressed this issue again in *Central Power & Light Co. and West Texas Utilities Co.*, 60 FERC ¶ 61,211 (1992) (*Central Power & Light*). We explained there that "[w]e do not believe that the execution and filing of a service agreement with respect to a particular customer undermines in any respect the flexibility offered by the tariff format." 60 FERC at 61,718 (footnote omitted). We also noted that a service agreement need not be an extensive document. *Id.* at 61,718 n.17.

As mentioned above, the Commission recognized that, despite the repeated, subsequent discussion of the issue, *Central Maine* itself may have given the industry the impression that the filing of service agreements would not be required if a tariff of general applicability already was on file. Accordingly, in companion orders on rehearing issued on October 5, 1992 in *Mississippi Power* and *New England Power*, the Commission created a new amnesty period for the filing of service agreements implementing tariff service at previously-approved tariff rates to particular customers. 61 FERC at 61,090 and 61 FERC at 61,092–93. This amnesty window expired on November 9, 1992.

The Commission's actions in the cases following *Central Maine*, requiring the prior filing of service agreements, were not meant to disparage the filing of umbrella tariffs. On the contrary, we envision them as providing the industry with assistance in meeting the filing requirements of the FPA and our regulations, while retaining maximum flexibility in transacting business in an evolving, increasingly competitive generation market. We encourage the filing of umbrella tariffs as a means of assisting the industry in making short-term economic transactions where speed is often essential.

Both at the Technical Conference and in the Supplemental Comments, it was clear that, in general, the industry supports the idea of increased use of umbrella tariffs (and we note that many utilities already have been utilizing this type of tariff). As was discussed at the Technical Conference, we envision that the umbrella tariffs will take a "menu" format, offering different types of service at different prices to any customer meeting certain eligibility criteria. The umbrella tariff should contain the general rates, terms, and conditions of service; the precise rate level should be included in the service agreements the utility will file for each customer. For the reasons we enumerated in *Mississippi Power*, *New England Power*, and *Central Power & Light*, we do need to have individual service agreements filed with us. The Commission must ensure that rates for service to a particular customer, even under tariff rates that already have been accepted for filing, are just and reasonable for that customer.

However, we will relax the grounds for finding waiver for service agreements implementing tariff service that are filed less than 60 days in advance of the proposed effective date. Currently, under the *Central Hudson* waiver standard for the filing of rates for new service not provided pursuant to an accepted contract or settlement, a utility must demonstrate "extraordinary circumstances" justifying the failure to file until on or after the date service commences. See background paragraph B "Central Hudson and Subsequent Cases" (explaining the *Central Hudson* grounds for waiver). We are told that this restrictive standard, which is "extraordinarily" difficult to satisfy,[17] has the practical effect of stifling many types of short-term, economic transactions that otherwise would benefit all parties to the transactions. We further are told that many short-term transactional opportunities are first discovered and discussed less than 60 days in advance of the proposed effective date. If we adhere to the "extraordinary circumstances" test for the filing of service agreements under umbrella tariffs, we are counseled, many such short-term transactions never will be negotiated or filed (because of the near certainty that waiver will be denied and refunds ordered). Similarly, many umbrella tariffs of the type we encourage (for the reasons discussed above) will not be negotiated and filed because of the perceived difficulty of implementing short-term service negotiated on short-notice under the tariffs.

This Commission does not want to stifle the efficiencies to be gained by permitting transactions to be made on short notice in response to changing market conditions. Accordingly, we wish to encourage the use of umbrella tariffs which allow substantial transactional flexibility. Having balanced the goal of encouraging efficient transactions on short notice and the purposes of the statutory prior notice requirement, we will eliminate the "extraordinary circumstances" test for waiver for the filing of service agreements under umbrella tariffs. For service agreements filed after the date of this order, and under which tariff service has not already commenced,[18] waiver of notice will be granted if service agreements are filed within 30 days after service commences.

Of course, permitting a utility to begin a particular service covered by an umbrella tariff on file with the Commission, prior to acceptance of a filed service agreement, is not in any way a declaration that such service is just and reasonable as extended to a particular customer. That determination can be made only after the service agreement is filed with the Commission, and only after the Commission has had the opportunity to evaluate the justness and reasonableness of the tariff rate as applied to a particular customer. Accordingly, any rates collected under such circumstances (prior to acceptance of a filed service agreement) will be subject to refund.

We will not relax the "extraordinary circumstances" standard of waiver for any other type of agreement for new service. We are told that no umbrella

[17] Little opposition has been articulated to the other *Central Hudson* standards for waiver.

[18] As explained above, if service already has commenced, filing by the December 31, 1993 close of the general amnesty period will justify waiver of notice.

tariff—no matter how expansively drafted—can accommodate all types of short notice, economic transactions with every potential customer. We further are told, for this reason, that we should not limit our concern solely to service agreements filed under umbrella tariffs.

In our judgment, we should not discourage the drafting and filing of umbrella tariffs, or further complicate the grounds for waiver of notice, by providing a separate relaxed standard of waiver for agreements for new service not implementing tariff service. We are not convinced that tariffs cannot be drafted to cover almost all types of economic transactions that may arise in the future. Further, those few emergency transactions of the type discussed by the participants at the Technical Conference and in their comments could, possibly, qualify as "extraordinary circumstances" justifying waiver.

Accordingly, we will retain, without modification, all of the other *Central Hudson* standards for waiver.

*E. Remaining Issues*

We have reviewed all remaining arguments raised in this proceeding as to all remaining issues. We conclude that no further modification to our implementation of the prior notice and filing requirement is justified.

*The Commission orders:*

(A) The requests for rehearing and motions for clarification filed in this proceeding by Citizens Utilities Company, Gulf States Utilities Company, and Southwestern Public Service Company are hereby denied to the extent and granted to the extent discussed in the body of this order.

(B) The Commission's implementation of the prior notice and filing requirement is hereby clarified to the extent discussed in the body of this order.

(C) The Secretary will promptly publish a copy of this order in the **Federal Register.**

By the Commission.

**Lois D. Cashell,**

*Secretary.*

**Appendix—Response to Requests From Participants in the Technical Conference for Additional Guidance on Agreements the Commission Considers Subject to Filing Under Section 205 of the Federal Power Act**

On January 28, 1993, the Commission held a technical conference in Docket No. PL93–2–000 to discuss how we should proceed with the enforcement of the Commission's policy concerning the late filing of jurisdictional rates and agreements for our review. At the conference and in comments submitted before and after the conference, numerous participants requested additional guidance as to the filing obligations of public utilities, and the Commission's enforcement of those obligations, under Part II of the Federal Power Act (FPA). The background to this proceeding, the issues raised at the technical conference and in initial and supplemental comments, and our disposition of these issues are discussed in the "Final Order" accompanying this Appendix.

We received comments or supplemental comments from the following participants in this proceeding: American Public Power Association (APPA); Baltimore Gas & Electric Company and Potomac Electric Power Company (PEPCO); Barton Village, et al. (Vermont Villages); Boston Edison Company, Central Vermont Public Service Corporation, Eastern Utilities Associates, El Paso Electric Company, Wisconsin Electric Power Company and the Wisconsin Public Service Commission (Boston Edison); Central Maine Power Company (Central ME); Citizens Utilities Company (Citizens); Consolidated Edison Company (Con Ed); the Edison Electric Institute (EEI); Energy Services, Inc. (ESI); Entergy Services, Inc. (Entergy); Green Mountain Power Company (Green Mt.); Gulf States Utilities Company (GSU); Iowa Illinois Gas & Electric Company (IA–IL); Jersey Central Power and Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (Jersey Central); Kansas City Power and Light Company (KCPL); Montana Power Company (MT Power); New England Power Company (NEPCO); New York State Electric & Gas Company (NYSEG); Niagara Mohawk Power Company (NiMo); Northeast Utilities (NU); Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (NSP); PacifiCorp; Pennsylvania Power & Light Company (PP&L); Portland General Electric Company (PGE); Puget Sound Power & Light Company (Puget); Sacramento Municipal Utility District (SMUD); Southwestern Public Service Company (SPS); Washington Water Power Company (Washington Water); United Illuminating Company (UI); UNITIL Companies (UNITIL); and UtiliCorp United, Inc. (UtiliCorp).

In varying degrees, the comments request clarification on how we interpret the reach of our jurisdiction under sections 201 and 205 of the FPA, 16 U.S.C. 824, 824d (1988). In addition, at the conference and in the comments, many in the electric industry asked for additional guidance on whether we will require utilities to file certain types of agreements for Commission review. We have grouped the approximately 42 types of contracts participants inquired about into the following seven categories.

- Contributions in aid of construction (CIAC)
- Interconnection and service agreements between qualifying facilities (QFs) and third-party utilities (QF agreements)
- Exchanges
- Pole attachments
- Joint ownership agreements and operating and maintenance (O&M) agreements
- Borderline agreements
- *De minimis* contracts

As we explain in the Final Order, the jurisdictional guidance we provide in this Appendix is, by necessity, general. The intent here is to clarify further the filing obligations of public utilities, not to provide a comprehensive listing of all services that are jurisdictional and must be filed with and reviewed by the Commission. Public utilities unsure as to the jurisdictional status of a particular contract or type of contract should seek case-specific guidance from the Commission, as discussed in the Final Order.

Before proceeding to the issues involved in each of the above-listed categories of transactions, we think it appropriate first to provide a general overview of the filing requirements of section 205 of the FPA, as the court cases and our decisions have interpreted the law in this area. This review should be useful in helping public utilities and their customers analyze the jurisdictional status of, and the attendant need to file, any transactions that do not fit neatly within any of the above categories or that contain peculiar facts and circumstances that are not addressed below.

*I. Jurisdictional Framework Under the FPA*

A. Section 201

Our jurisdiction over the electric industry derives from Part II of the FPA. Section 201(b)(1) declares that Part II applies to:

> The transmission of electric energy in interstate commerce and * * * the sale of electric energy at wholesale in interstate commerce * * * *

The section goes on to state that federal authority "shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a state line."

Section 201(b)(1) also grants the Commission jurisdiction over "facilities for * * * transmission or [wholesale] sale of electric energy * * * * in interstate commerce." We may not, however, except as specifically provided in Parts II and III of the FPA, regulate "facilities used for the generation of electric energy or * * * facilities used for the generation of electric energy or * * * facilities used in local distribution [or transmission in intrastate commerce or for the transmitter's own use]."

Aside from prescribing the matters and facilities that fall within and outside our jurisdiction, section 201 also delineates the entities whom we may and may not regulate. If a transaction constitutes a wholesale sale or transmission in interstate commerce, the Commission has jurisdiction to regulate that transaction if service is provided by a public utility.

Section 201(d) defines a wholesale sale as "the sale of electric energy to any person for resale." Similarly, section 201(c) defines transmission in interstate commerce as energy transmitted "from a State and consumed at any point outside thereof: but only insofar as much transmission takes place within the United States."

The identity of the purchaser of wholesale energy or transmission service, whether publicly-owned or privately-owned, does not affect the Commission's jurisdiction under Part II of the FPA. The identity of the seller or transmitter, however, does make a

difference. For us to have jurisdiction under sections 205 and 206, a "public utility" must provide the service.

Section 201(e) defines the term "public utility" as "any person who owns or operates" facilities used for wholesale sales or transmission of electric energy in interstate commerce. Having broadly defined "public utility," section 201(f) excludes an entire class of publicly-owned utilities from the class of public utilities subject to Commission regulation:

No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any of [those bodies], or any officer, agent, employee [of a federal, state, or local government] acting in [an official capacity] * * * *

In short, the statute defines jurisdictional service and facilities as well as jurisdictional public utilities. The rest of the Appendix will apply those definitions to the issues raised in the comments and at the technical conference concerning the extent of the obligation of public utilities to file rates for jurisdictional service in compliance with the prior notice and filing requirement of section 205 of the FPA, 16 U.S.C. 824d(d) (1988).

*B. Section 205*

Section 205(a) of the FPA gives the Commission authority to ensure that:

[A]ll rates and charges made, demanded, or received by any public utility *for or in connection with* the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations *affecting or pertaining to* such rates or charges shall be just and reasonable * * * *

(Emphasis added). If the Commission has jurisdiction to determine the justness and reasonableness of a particular rate, section 205(c) requires public utilities to file:

Schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations *affecting* such rates and charges, together with all contracts which in any manner *affect or relate to* such rates, charges, classifications, and services.

(Emphasis added).

Ascertaining the extent of what the industry must file depends on how expansively we define the terms "for," "in connection with," "affect/affecting," "pertaining to" and "relate to." As explained above, section 201 of the FPA describes the two services subject to the Commission's jurisdiction as the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce. As a general matter, then, the Commission typically requires parties to file arrangements involving:

1. A public utility selling or exchanging wholesale power in interstate commerce;

2. A public utility providing or exchanging transmission service in interstate commerce; and

3. Agreements or other arrangements involving the installation, operation or use of facilities for the transmission or delivery of power at wholesale in interstate commerce, if a public utility owns or operates the facilities.

To try to give some content to these broad headings, we next examine the legislative history and selective judicial and administrative case law on the scope of the Commission's jurisdictional authority under section 205. As explained above, our analysis is intended to be illustrative, not comprehensive; it provides a general understanding of the bounds of our authority under the FPA to require the filing of rates and practices for Commission review.

1. The Legislative history. The legislative history of section 205, which we examine in brief below, sheds no light on the extent of the rates or practices which must be filed.

The original versions of the Senate and House bills contained slightly different language from what now appears in section 205(a). In particular, Senator Wheeler's bill, S. 1725, as well as Congressman Rayburn's bill, H.R. 5423, provided in section 202(b):

All rates * * * for any service furnished or to be furnished and all rules and regulations *affecting or pertaining to* such rates and charges shall be just and reasonable. * * *

The Senate Committee on Interstate Commerce changed the numbering of section 202(b) to 205(a), but otherwise left the "affecting or pertaining to" language intact. *See* Senate Committee on Interstate Commerce, Confidential Committee Print at 39–40; S. Rep. No. 621, 74th Cong., 1st Sess. at 51 (1935).

The House Committee on Interstate and Foreign Commerce not only re-numbered the provision, but also added the predicate of "for or in connection with" service subject to our jurisdiction to the "affecting or pertaining to" language that covered rules and regulations. "[A]ffecting or pertaining to" remained as the second clause of section 205(a). *See* House Committee on Interstate and Foreign Commerce, Confidential Committee Print at 15–16.

The House gave no explanation for the amendment. The House Report stated only that "subsection (a) imposes upon public utilities the duty of charging just and reasonable rates. * * *" H. Rep. No. 1318, 74th Cong., 1st Sess. at 29 (1935).

The legislative history of section 205(c) contains no definition of "affecting or relating." The Senate Report, S. Rep. No. 621, at 51, states only that the provision "requires the filing with the Commission of schedules showing the charges for any services subject to the jurisdiction of the Commission."

The House Report contains a similarly terse explanation: "Subsection (c) requires the filing of schedules and contracts relating to all rates and charges subject to the jurisdiction of the Commission. * * *" H. Rep. No. 1318 at 29.

2. The court cases. The case law, in contrast, provides numerous examples indicating that the Commission has considerable flexibility in determining what rates and practices are "for or in connection with," "affecting," "pertaining" or "relat[ing] to" jurisdictional service and, accordingly, must be filed for Commission review.

For example, in the most recent and comprehensive court decision on the subject, *Northern Natural Gas Company* v. *FERC*, 929 F.2d 1261 (8th Cir.), *cert denied*, 112 S. Ct. 169 (1991), the court broadly construed the Commission's authority to require the filing of rates for certain services, even when the physical act of providing the services is not jurisdictional, when the rates are "in connection with" the provision of jurisdictional service. Specifically, in the context of examining the Commission's ratemaking authority under section 4 of the Natural Gas Act (NGA), 15 U.S.C. 717c (1988), which contains the same "for or in connection with" language as section 205 of the FPA,[1] the court discussed the Commission's jurisdiction over the rates an interstate pipeline charged for gathering (assembling gas from the fields) it performed as part of its transportation services. The pipeline claimed that because the NGA denied to the Commission jurisdiction over the physical process of gathering, the agency lacked the authority to require the filing of rates for gathering. After reviewing a series of Supreme Court and lower court cases on the subject, the court affirmed the Commission's finding of jurisdiction.

In particular, the court of appeals 929 F.2d at 1269, placed great emphasis on *Colorado Interstate Gas Company* v. *FPC*, 324 U.S. 581 (1945). There, the Court sustained the Commission's consideration of the cost of nonjurisdictional gathering activity as part of its assessment of the justness and reasonableness of a pipeline's sales rates. In describing the Supreme Court's holding, the *Northern Natural* court explained:

Of course, the Commission's approved sales rate was affected by the gathering rate the companies charged because the gathering rate was "bundled" [*i.e.*, included] in the sales rate. Therefore, it would not have been possible to set a sales rate without effectively including a gathering charge.

929 F.2d at 1270.[2] The court concluded that the "in connection with" language gives the Commission "the ability to regulate other aspects of the * * * industry as necessary to make effective its primary control over interstate transportation and sales." Id. at 1273.

A number of other court decisions have given the Commission considerable discretion in developing content to the phrases "affecting," "pertaining to," or "relat[ing] to" jurisdictional service. In *City of Cleveland* v. *FERC*, 773 F.2d 1368 (D.C. Cir. 1985), for example, the Commission ordered the utility to file in more detail than usual its rules for service to a particular

[1] Courts have long found that the ratemaking provisions of the NGA and the FPA are "in all material respects substantially identical," and have used precedent under one statute in construing the relevant provisions of the other. E.g., Arkansas Louisiana Gas Company v. Hall, 453 U.S. 571, 577 n.7 (1981) (citation omitted).

[2] For additional support, the *Northern Natural* court cited *Interstate Natural Gas Company* v. *FPC*, 331 U.S. 682 (1947), for the proposition that the Commission has jurisdiction to require the filing of rates for nonjurisdictional gathering because those charges " 'become perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of gas. * * *' " 929 F.2d at 1270 (quoting 331 U.S. at 693).

municipal customer. The customer, on the other hand, wanted even greater detail. The court declined to order it, finding as follows:

[T]here is an infinitude of practices affecting rates and service. The statutory directive must reasonably be read to require the recitation of only those practices that affect rates and service *significantly*, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous. It is obviously left to the Commission, within broad bounds of discretion, to give concrete application to this amorphous directive.

773 F.2d at 1376 (emphasis in original).

In addition, the court in *Public Service Commission of New York, et al.* v. *FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987), another case interpreting the nearly identical ratemaking section of the NGA, similarly held that the Commission properly excused utilities from filing policies or practices that dealt only with matters of "practical insignificance" to serving customers. In short, the cases have upheld the Commission's "rule of reason" approach to how much detail a utility must provide in its rate schedules.

3. *The administrative cases.* Below, we discuss briefly three recent Commission decisions that illustrate the considerable discretion we possess under section 205 to require the filing of practices affecting or relating to jurisdictional rates or service, as well as rates that, more indirectly, are "in connection with" jurisdictional service.

In *Central and Southwest Services, Inc.*, 48 FERC ¶ 61,197, reh'g denied, 49 FERC ¶ 61,118 (1989), for example, the Commission directed the utility to file its planning reserve (the margin of safety it uses for planning purposes) with the Commission as part of its rate schedules. The Commission has no authority to fix planning reserve margins. In that instance, however, the Arkansas Public Service Commission pointed out that the "planning reserve level is central to a determination of [certain inter-company] payments" and, therefore, the rate customers pay. 48 FERC at 61,732.

The Commission agreed that the company included the planning reserve as part of the formula that governed inter-company payments for the common physical plant.. The planning reserve, therefore, affected the rate charged for jurisdictional service. *Id.* at 61,733. Thus, the Commission may require any matter that forms any significant part [3] of the calculation of the rate customers actually pay for jurisdictional service to be filed for Commission review.

Simiarly, in *American Municipal Power-Ohio, Inc., et al.* v. *Ohio Edison Company* (*AMP-Ohio*), 57 FERC ¶ 61,358 (1991), reh'g denied, 58 FERC ¶ 61,182 (1992), the Commission required the filing of an agreement providing for the customer payment of contributions in aid of construction (we discuss "CIAC agreements" in greater detail infra), even though construction activity itself, as explained above, is outside the scope of the Commission's jurisdiction. Ohio Edison, which provided wholesale transmission service to AMP-Ohio, contracted to build new facilities for its customer. AMP-Ohio agreed to pay for them in advance, rather than over the life of the transmission service the facilities helped bring about. The Commission held that the agreement covered facilities that Ohio Edison uses "in connection with" transmission service subject to our jurisdiction under section 205.

The order found (57 FERC at 62,161):

A utility's rates for jurisdictional service * * * are developed to recover the costs of providing that service. Moreover, it is well settled that the costs of the facilities that provide the service are among the costs that may be included * * * * The [CIAC agreement] affects transmission service and the rate for such service because it involves facilities necessary in order to provide jurisdictional service * * * * In this instance, instead of attempting to recover such costs over time as is typically the case (i.e., through depreciation), Ohio Edison has opted to recover the costs of the interconnection in the form of lump sum payments.

(Footnotes omitted). Because the CIAC charges received by the public utility constructing new facilities are "for or in connection with" jurisdictional transmission service and, indeed, ultimately become part of the rate charged for jurisdictional service, section 205(a) makes the CIAC payments themselves subject to our jurisdiction.[4]

We have further expanded on our *AMP-Ohio* holding in our most recent case, *New York State Electric & Gas Corporation, et al. (NYSEG)*, 63 FERC ¶ 61,312 (1993). There, two public utilities filed agreements under which they physically altered the transmission grid to accommodate the transmission of a state agency's power. The state agency used the utilities' integrated grid as it sent the power from its own generating plants to its customers. We found the agreements to be subject to our jurisdiction.

We rejected the utilities' argument that their agreements differed from the CIAC agreement at issue in *AMP-Ohio* because that agreement facilitated the provision of transmission service by a Commission-regulated public utility (Ohio Edison), rather than by a non-jurisdictional state agency. We held, mimeo at 7:

The fact that Ohio Edison's charges * * * happened to be part of a broader package of services * * * provided to AMP-Ohio in no way supports the Petitioners' argument here that the charges would not have been jurisdictional absent those other services. Ohio Edison's charges would have been jurisdictional even if [the utility] had provided no other services he AMP-Ohio because Ohio Edison assessed the charge for use of its transmission facilities. As such Ohio Edison's charge to AMP-Ohio was a charge for jurisdictional service. Similarly, here, the Petitioners assess [the state agency] a charge for the use of their transmission facilities, and, accordingly, [the utilities'] charges to [the state agency] are for a jurisdictional service or use * * *

In sum, while only selective, these cases indicate that charges by a public utility for or in connection with transmission in interstate commerce, including charges for the "use" of transmission facilities moving electric energy in interstate commerce, such as in *NYSEG*, fall within the filing requirement of section 205. In addition, contracts "affecting" such charges or services (as in *Central and Southwest*) are jurisdictional.

In contrast, a utility sometimes earns money from putting utility property to unregulated use, for instance, renting its outdoor poles to a cable television company. In that instance (as we elaborate in Section II. B. below), the utility need not file the contract under section 205.

*II. Answers to Specific Filing Questions*

Below, we provide a brief analysis of the jurisdictional status of the various types of agreements identified by the participants in this proceeding, as organized into general categories. In our judgment, breaking down the following categories into smaller sub-categories of agreements is nearly impossible, given that many of the agreements identified by the participants overlap or fall into several categories. In addition, providing further detail may be, in the context of this generic proceeding (without the benefit of specific facts as to specific transactions), misleading, or otherwise counter-productive.

As explained above, this analysis is general in nature and is intended to be illustrative of the Commission's current thinking on these subjects. As such, nothing presented below is new. Rather, the analysis provides a convenient compilation of Commission discussion on these subjects found in various sources. Because of the general nature of this analysis, and the generic nature of this proceeding, we believe that this is not the best vehicle for argument that the Commission's current analysis is incorrect. We discourage the filing of rehearings solely to express disagreement with our current thinking, and instead, encourage participants to save further argument for case-specific proceedings involving particular circumstances.

A. Contributions In Aid of Construction (CIAC) Agreements

*AMP–Ohio*, described above, established with certainty the Commission's position that it has jurisdiction over CIAC agreements for or in connection with interstate transmission service provided by a public utility. None of the comments challenges that basic determination. Rather, those bringing up the subject seek additional clarification. In particular, EEI, PGE, MT Power, and Boston Edison ask that we not require public utilities to file jurisdictional CIAC agreements under which the customer has already paid. SMUD,

[3] The Commission may exercise significant judgment in these matters. For example, a formula rate may have a component covering labor costs. Obviously, if the public utility enters into a new wage agreement, this will affect the rate to be charged. However, the wage agreement would not need to be filed with the Commission, although it might have to be produced in the course of discovery in a litigated case or in an audit.

[4] Again, however, the Commission will exercise judgment, so as to require the filing of, and review of, those things that are necessary for the Commission to exercise effective jurisdiction over transmission and sales for resale in interstate commerce.

on the other hand, urges that we require the filing of CIAC agreements if the utility is still providing jurisdictional transmission service.

We deal with this issue in the Discussion section of the Final Order accompanying this Appendix. In our discretion, we have determined that if both customer payment and construction of the facilities at issue in the CIAC agreements ended prior to August 2, 1991, and no complaint has been filed challenging the utility's failure to file the CIAC agreement at issue in a timely manner, then we will consider the agreement to be "expired." In other words, for the reasons stated in the Final Order and in the Initial Order issued in this proceeding on February 10, 1993, the "expired" CIAC agreement need not be filed for Commission review—even if the utility continues to use the facilities constructed under the agreement to provide jurisdictional service. Rates for jurisdictional transmission or wholesale power sales transacted over the facilities must, of course, continue to be filed for Commission review. In reviewing future rate applications, the Commission will take payments made pursuant to "unexpired" CIAC agreements into account in setting the rate for any jurisdictional service. Of course, consistent with the Commission's accounting and ratemaking requirements, the Commission would not permit costs recovered under expired CIAC agreements to be reflected in rate base.

In addition, EEI and Boston Edison request clarification of the Commission's definition of CIAC agreements. EEI argues that contracts involving construction of facilities subject to our jurisdiction, whether or not the customer pays in one lump sum or over a period of time, fall into the CIAC category.

In support, EEI contends that, as long as the customer did not pay for the facilities as part of the rates for the jurisdictional sales or transmission service transacted over the facilities, the industry historically considered the contract to be a "CIAC" contract that is not subject to our jurisdiction. Therefore, according to EEI, the specific, ongoing amnesty for CIAC agreements announced in *Florida Power Corp.*, 61 FERC ¶ 61,063, order extending amnesty, 61 FERC ¶ 61,244 (1992), should apply even to those construction agreements that call for periodic payment. EEI cites to several Commission cases in which the issue has arisen and questions what it considers to be an arbitrary distinction, for purposes of designating agreements as CIAC agreements, between lump sum payments and periodic payments.

We agree with the jurisdictional result EEI advocates. In general, the question of our jurisdiction over a particular ontract depends on whether the contract contains a rate or charge for or in connection with the transmission or sale of electric energy in interstate commerce, or whether the contract affects or relates to such rates or service. It does not depend on the timing of payment under the contract. The historical confusion about filing is based on the fact that certain of these agreements separated the payment for the construction of the facilities at issue from the rate for sales or transmission service subject to our jurisdiction. The industry assumed, we are told, that because the customer made a discrete arrangement for the construction of the facilities, the transaction fell outside our jurisdiction (regardless of the method of payment).

In *AMP–Ohio*, the Commission clarified that this historical assumption was misguided. As the Commission recited on rehearing in that case, 58 FERC ¶ 61,182 at 61,565 (1992).

> Ohio Edison argues that because the [CIAC] is a separate and distinct contract [it] is nonjurisdictional * * *. [W]e find that the [agreement] cannot be neatly disconnected from the provision of jurisdictional service.

The Commission further clarified that characterization of a particular arrangement as a facilities agreement (under which periodic payments are made over all or a portion of the life of the facilities) or as a CIAC agreement (under which a single lump sum payment is made) is irrelevant because both types of agreements provide for construction "for or in connection with" jurisdictional service and, accordingly, must be filed for Commission review. Similarly, in *Florida Power Corp.*, 58 FERC ¶ 61,161, reh'g denied, 60 FERC ¶ 61,003 (1992), the case which ultimately resulted in the specific amnesty for CIAC agreements, we explained (60 FERC at 61,017) that CIAC agreements do not lose their jurisdictional status simply because they must operate as "stand alone" contracts separate and distinct from agreements for the provision of jurisdictional service over the facilities constructed under the CIAC agreements.

The only reason the distinction between agreements providing for a single lump sum payment for the construction of facilities and agreements providing for periodic payment had any relevance was the existence of a specific amnesty for the filing of CIAC agreement (which automatically justified waiver of notice). Because, as explained in the Final Order, that amnesty is being subsumed in a general amnesty for the filing of all jurisdictional agreements (which expires on December 31, 1993), it no longer matters whether an agreement is considered to be a jurisdictional CIAC agreement or a jurisdictional facilities agreement. Neither type of agreement is now afforded any special type of treatment for purposes of compliance with the prior notice and filing requirement.

Boston Edison asks us to clarify that CIAC agreements subject to out jurisdiction do not include contracts for the construction of generating facilities or other matters, such as rights of way, over which the Commission has no jurisdiction. While we stop short of Boston Edison's request for a blanket clarification, we will clarify that CIAC agreements that must be filed for Commission review must relate to transmission in interstate commerce or sales for resale of electric energy in interstate commerce.

As we noted earlier, even in *NYSEG*, out most recent order on the subject, we held that in order to come within our purview, the agreement must contain a charge connected to jurisdictional service. We exercise no jurisdiction over generating facilities as such. Our authority, however, encompasses sales for resale in interstate commerce. Therefore, if a customer of a utility makes a payment related to the construction of generating facilities in lieu of a per unit charge for wholesale service, the Commission will require that it be filed.

This is because the charges under the contract are in connection with the sale for resale of electric energy in interstate commerce and just as in *AMP–Ohio*, the charges would otherwise go into a wholesale rate (through the utility's rate base). In that instance, the agreement resembles another advance payment, for construction work in progress (CWIP), which falls within the filing requirement of section 205. (For the extent which utilities may collect CWIP in rates, see *Mid-Tex Electric Co-operative v. FERC*, 773 F.2d 327 (D.C. Cir. 1985); 822 F.2d 1123 (D.C. Cir. 1987); 864 F.2d 156 (D.C. 1988)).

B. OF Agreements

In *Western Massachusetts Electric Company*, 59 FERC ¶ 61,091 reh'g denied, 61 FERC ¶ 61,182 (1992), the Commission addressed the boundary between state and federal jurisdiction over agreements under which QFs, within the meaning of the Public Utility Regulatory Policies Act (PURPA), interconnect with the transmission grid.

In that case, the Commission, citing 18 CFR 292.306, held that the states have exclusive jurisdiction over direct interconnections between a QF and the public utility which purchases its power. Conversely, the Commission held that it alone exercises authority over QF interconnections with utilities standing between the QF and its purchaser, i.e., agreements under which third-party utilities, which do not purchase QF-generated power, nevertheless transmit QF power in interstate commerce. Several of the comments, e.g. those filed by PP&L, NU, PGE, GSU, ESI, UNITIL, Central ME and NiMo, urge us to reconsider that holding and leave the matter entirely to the states or, at a minimum, to apply the ruling "prospectively."

We are presented with no reason to overturn our precedent or to apply it prospectively only. As our reasoning in *Western Massachusetts* shows, we always have had jurisdiction over QF interconnections with intermediary utilities (not purchasing QF power). Interconnection agreements between utilities come within section 205 of the FPA. Congress, in PURPA, and the Commission, in its PURPA regulations, made an exception for ties between QFs and purchasing utilities. We do not believe that utilities reasonably should have interpreted the Commission regulation that refers to the direct purchase from a QF as extending state regulation to interconnections with another public utility's integrated grid.

Nor do we see any reason to lessen the jurisdictional reach of our decision in *Western Massachusetts* by applying it "prospectively" or granting some other from of leniency (such as opening a new amnesty period for the filing of jurisdictional QF agreements). Because, as explained in the Final Order, we are adopting a general amnesty for the filing of all jurisdictional agreements, to end on December 31, 1993, there is no need to carve out specific exceptions or amnesties for particular types

of jurisdictional agreements (such as QF interconnection agreements with transmitting public utilities). Of course , jurisdictional QF agreements, like all other jurisdictional agreements, need not be filed for Commission review if service terminated prior to August 2, 1991 and a complaint was not filed by February 10, 1993, the date of the Initial Order.

MT Power asks us to disclaim jurisdiction over interconnection agreements with QFs if those agreements do not also involve transmission. In addition, the utility urges that we consider these contracts outside our jurisdiction even if the QF later expands the relationship to include transmission. In this regard, we decline to go beyond the direct/indirect distinction we set out in *Western Massachusetts*.

Our jurisdiction over interconnection agreements derives from our section 205 authority over matters relating to the wholesale sale or transmission of electric energy in interstate commerce. As we pointed out in *PSI Energy, Inc.*, 56 FERC ¶ 61,237 at 61,908 n.4 (1991), citing 16 U.S.C. 824(b) (section 201(b) of the FPA):

[While] we have no authority with respect to construction obligations [,] the Commission's jurisdiction over the facilities [interconnection] agreement is limited to the provisions of the agreement that facilitate the exchange of energy between the parties, i.e., the sale of electric energy at wholesale in interstate commerce.

Similarly, even if the QF or the utility customer does not actually take transmission service as soon as the line enters the grid, the interconnection agreement "facilitates" future service and falls within our section 205 jurisdiction.

C. Exchanges

PacifiCorp suggests that we declare outside our jurisdiction agreements under which utilities renounce their rights to use transmission lines or acquire electricity and, instead, substitute other arrangements. As an example, the company mentions the Canadian Entitlement Exchange Agreement between Bonneville Power Administration (BPA) and 43 utilities. PacifiCorp informs us that each of the utilities assigned back its "entitlement," and BPA promised to provide capacity or power, instead.

Rather than respond only to the specific facts regarding BPA, we will also discuss the matter as if the exchange occurred between two public utilities. Our regulatory authority over the rates of federal agencies, such as BPA, derives from specific laws, not the FPA. In the case of BPA, the Northwest Power Planning and Conservation Act, 16 U.S.C. 839e, gives us limited rate jurisdiction.

That statute, according to the case law, *e.g.*, *Aluminum Company of America* v. *FERC*, 903 F.2d 585 (9th Cir. 1989), *cert. denied*, 111 S. Ct. 672 (1990); *California Energy Commission* v. *Bonneville Power Administration*, 831 F.2d 1467 (9th Cir. 1987), cert. denied 488 U.S. 818 (1988), gives BPA more autonomy in its operations than public utilities enjoy under the FPA. We will, therefore, first address the issue in the larger context.

In simple terms, if public utilities assign back their entitlement to power or capacity in an exchange arrangement or enter a new agreement, the utilities must file the change because they had to file the agreement in the first place. Since exchanges involve transfers of electric energy at wholesale, even though for payment in kind, our regulations, 18 CFR 35.2 (1992), require public utilities to file those agreements. That provision states that utilities must submit to the Commission rate schedules governing "electric service." The regulation defines "electric service" as including transfers "without regard to the form of payment of compensation," and specifically mentions "exchanges."

A number of recent Commission decisions reiterate that filing requirement, including *Green Mountain Power Corp.*, 59 FERC ¶ 61,291, reh'g denied 60 FERC ¶ 61,158, order on compliance filing , 61 FERC ¶ 61,203 (1992), and *Barton Village, Inc., et al.* v. *Citizens Utilities Company*, 63 FERC ¶ 61,329 (1993). Indeed, in *Barton Village* we held that even if an arrangement involves an "exchange" of Canadian power for power the utility generates in the United States, the agreement falls under the filing requirement of section 205.

Therefore, unless both sides of the exchange occur outside the United States, for example, Canada, public utilities must also file amendments to exchange agreements that come within our jurisdiction. This allows us to review the justness and reasonableness of the new arrangements and to keep our files current. In fact, our regulations, 18 CFR 35.1(b) (1992), require utilities to file anything that "cancels" or "supersedes" an existing rate schedule.

We turn now to the situation with BPA. As we noted earlier, our jurisdiction over that agency, with the exception of the new amended FPA section 211, attaches to rates only. For example, questions regarding entitlement to capacity on the BPA's share of the Pacific Intertie lie elsewhere. We cannot gauge from the record what "entitlement" PacifiCorp refers to—whether to power or to capacity on transmission lines. To the extent that PacifiCorp's comments refer to changes in use of interties, whether the Pacific Intertie or any other BPA line, the utilities need not file.

If, on the other hand, PacifiCorp refers to entitlement to electric energy, the result changes. Public utilities must submit amendments to exchanges of the actual electric energy or entitlement to production of generating plants in the United States. As the Ninth Circuit held in *California Energy Commission*, 831 F.2d at 1472, dividing use of the transmission lines does not relate to charges for BPA service. An exchange of electric energy, as we noted above, amounts to a wholesale sale for payment in kind. Therefore, the utilities need not file agreements relating to capacity on any of the interties, but must submit those relating to electric energy.

D. Pole Attachments

Four submissions, those of PacifiCorp, KCPL, MT Power and Boston Edison, inquire about our jurisdiction over pole attachment agreements. As the name indicates, these arrangements involve utilities leasing space on their poles, allowing the lessee to attach wires. Those in need of the wires take advantage of "'existing poles rather than [use] newly placed poles due to the reluctance of most communities * * * to allow an additional, duplicate set of poles to be placed.'" *Texas Power & Light Company* v. *Federal Communications Commission*, 784 F.2d 1265, 1267 (5th Cir. 1986) (citation omitted).

Pole attachments comprise a variety of wires, not just those carrying electric energy. For example, cable television operators use pole attachments for their wires. Lease charges for these attachments are not for or in connection with the transmission or sale for resale of electric energy in interstate commerce. Moreover, Congress gave authority over the rates for these attachments to the Federal Communications Commission. *See Texas Power & Light Company*, 784 F.2d at 1267–1268. Accordingly, public utilities need not file such agreements with us.

Similarly, if the pole attachment or charges involve any other matter over which this Commission has no jurisdiction (for example, telephone or retail electric service), public utilities need not file the agreements for Commission review.

E. Joint Ownership Agreements and Operating and Maintenance Agreements

Two utilities, PacifiCorp and KCPL, urge us to declare that we lack jurisdiction over joint ownership and O&M agreements covering generating plants. PacifiCorp and several others filing comments, EEI, GSU, ESI and SPS, request that we disclaim jurisdiction over agreements that call for utilities to provide O&M service for the owners of the facilities. In this regard, PacifiCorp inquires specifically about CIAC agreements under which utilities build, but the customer owns, the transmission line.

Agreements concerning joint ownership of transmission facilities are, clearly jurisdictional and must be filed for Commission review. On the other hand, joint ownership agreements covering generating plants fall outside our jurisdiction. As explained in Part I of this Appendix, section 201 of the FPA prohibits us from regulating the construction of generating facilities, except as specifically provided in Parts II and III of the FPA. Therefore, public utilities need not file agreements for the joint ownership of generation facilities unless those agreements contain provisions affecting or relating to rates for wholesale sales of energy in interstate commerce.[5]

The issue of joint ownership agreements may arise in rate cases, in the context of utilities basing their allocation of plant costs in wholesale rates on ownership shares in certain generating facilities. In those instances, utilities may need to produce joint ownership agreements, either as part of their submissions or on discovery.

O&M agreements of the type identified in the comments present a more complicated question. As we explained above, section 205 requires us to regulate the rates "public

[5] *See Mississippi Industries* v. *FERC*, 808 F.2d 1525 n. 74 (D.C. Cir 1987) ("under the clear terms of the statute, the Commission has been awarded jurisdiction over generating facilities * * * to the extent necessary to effectuate regulation of interstate wholesale rates.")

utilities" charge or receive for sales at wholesale or transmission in interstate commerce. Moreover, as we noted above, our authority encompasses rates "for or in connection with" service over which the FPA gives us jurisdiction.

To ascertain whether a person receiving charges or performing services under an O&M agreement has an obligation to file the agreement in a particular case, we must conduct two related inquiries. One, can we tie the O&M service at issue to wholesale sales or to transmission in interstate commerce? In other words does the O&M agreement contain rates or charges for or in connection with transmission or sales for resale in interstate commerce, or does it in any manner affect or relate to jurisdictional rates or services? Two, does a "public utility" provide the O&M service? If the answer to both questions is yes, then the O&M agreement must be filed for Commission review.

The first question requires us to determine the nature of the service the operator engages in—does the O&M agreement require the operator to perform services connected with sales at wholesale or transmission in interstate commerce, or does the contract involve, for example, distribution lines for service to retail customers? If the O&M agreement has to do with jurisdictional services, it has satisfied the first prong, because the payment for O&M service constitutes, at a minimum, a payment affecting a section 205 rate (for the customers ultimately pay for O&M service in their rates).

The answer to the second question depends on who "owns" or "operates" a facility, and requires a specific analysis in each case. "Ownership" depends on the law. Defining an "operator" turns on which entity keeps control and decisionmaking authority over major matters. If: (i) The entity performing the O&M service under the agreement at issue owns the facility or operates it by virtue of its control and decisionmaking authority;* and (ii) the O&M service it performs is related to jurisdictional service, then it must file the O&M agreement for Commission review. *See Bechtel Power Corp.*, 60 FERC ¶61,156 (1992). If, on the other hand, the entity performing the O&M service under the agreement acts merely as the agent of another party wielding authority to make main operational decisions, then it is not "operating" the facility, and, accordingly, it need not file the O&M agreement, even it if is a public utility.*

Thus, in recent years, the Commission has asserted jurisdiction over O&M agreements relating to transmission facilities if the contract gives the provider of the O&M service effective control over the facilities. For example, the agreement in *PSI Energy, Inc.* 63 ¶61,107 at 61,753 (1993), reh'g pending, provided for oversight by an administrative committee of the utility's operation and maintenance of a joint transmission system, but nevertheless limited the utility's discretion over O&M activities only by a "prudent utility practice" standard. We held there that the O&M agreement was jurisdictional and has to be filed for Commission review because of the general delegation of control and decisionmaking to the utility, which served to make it an "operator" of the transmission facilities. *See also Sierra Pacific Power Company*, 42 FERC ¶61,149 (1988).

Conversely, if an entity providing O&M service must have permission for all O&M actions beyond those that are routine or emergency in nature, then it is not "operating" the facilities and, accordingly, need not file the agreement. In this scenario, the provider acts as nothing more than an agent of another entity possessing control and decisionmaking authority. The Commission has employed much the same analysis in deciding to disclaim jurisdiction over certain lessor-owners in a number of sale and leaseback transactions involving transmission facilities. *See, e.g., Pacific Power & Light Company*, 3 FERC ¶61,119 (1978).

This analysis addresses the examples of "ownership" and "operation" PacifiCorp and the others have brought before us.

F. Borderline Agreements

Jersey Central and MT Power argue that we lack jurisdiction over "borderline agreements." The initial decision in *Town of Massena, New York* v. *Niagara Mohawk Power Corp.*, 13 FERC ¶63,036 at 65,147 (1980), vacated as moot, 20 FERC ¶61,406 (1982), described these as arrangements under which one utility (for convenience) serves the retail customers of a neighboring utility along the electric franchise areas common to both. The utility delivering the power, in turn, bills the nominal seller.

From the ultimate customer's point of view, it receives retail service. From the utilities' standpoint, the utility actually delivering the power "sells" electricity to the nominal seller, for the nominal seller to make the retail sale. In fact, the utility whose customers receive service pays the seller for providing the service.

For these reasons, the Commission has taken the view that borderline sales fall within section 205 of the FPA. This is because the sale at issue is to a neighboring utility within whose service territory the borderline loads are located—in other words, a sale for resale. *See Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers*, Order No. 435–A, FERC Stats. and Regs., Regs. Preambles 1982–1985 ¶30,713 at 30,040 (1986); *New York State Electric & Gas Company*, Docket No. ER78–321–000 (Dec. 6, 1978) (unpublished letter order). For example, in Order No. 435–A, the Commission stated that these arrangements constitute wholesale sales of electricity. For that reason, the Commission set fees for utilities to file borderline agreements.

Within the past year, in *Massachusetts Electric Company*, 61 FERC ¶61,278 (1992), we reiterated these points. We explained there that, in recognition of the character of the borderline service provided, the Commission has adopted as the wholesale rate the neighboring utility's retail rate, provided that the utility documents the state commission's approval of the retail rate. Accordingly, in *Massachusetts Electric*, we accepted for filing the wholesale rate that matched the retail rate the Massachusetts Department of Public Utilities set.

G. De Minimis Contracts

Two utilities (PGE and Central ME) request that we decline jurisdiction over de minimis contracts. PGE includes in this category contracts for support or for other ancillary services that do not form part of a jurisdictional transaction. The term usually denotes transactions producing revenue below a stated amount of money.

We discussed PGE's specific issue earlier in this Appendix, in connection with the case law under section 205 and, later, the discussion concerning pole attachments. While section 205 acquires public utilities to file agreements that relate to sales at wholesale or transmission in interstate commerce, these agreements may have an effect on rates customers pay, if the utility seeks to recover costs from or give credits to the ratepayers. In that instance, the Commission would deal with the rate impact of the transaction.

The general topic of jurisdiction over de minimis transactions has arisen in other contexts. The question has come up in two guises: one, whether Congress erected a jurisdictional threshold; the other, whether the Commission may, in its discretion, decline to regulate in marginal situations. As to the first, the courts have unequivocally held that Congress did not. The Commission, on the other hand, may selectively decline jurisdiction.

The FPA makes no mention of a "de minimis" exception for otherwise jurisdictional transactions. Moreover, the courts have rejected the notion. in Particular, the cases, *e.g.*, *FPV* v. *Texaco* (*Texaco*), 417 U.S. 380 (1974), hold that the Commission may not, on *de minimis* grounds, exempt a class of utilities from regulation. The court pointed out, 417 U.S. at 394 (citation omitted):

> The Court of Appeals rejected what it apparently understood was "the Commission's contention * * * that the 'just and reasonable' standard was not mandatory and that the Commission can simply choose not to regulate * * * *" Whatever the position of the Commission * * * has been, it wisely does not challenge that aspect of the Court of Appeals judgment * * * * The Commission may have great discretion as to how to insure just and reasonable rates, but is it plain enough to us that the Act does not empower it to exempt [certain categories of] rates from compliance with that standard.
>
> * * * * *
>
> [The "necessary and proper" provision of the natural Gas Act also] does not authorize the Commission to set at naught an explicit provision of the Act.

In two notable earlier cases, parties made a "de minimis" argument to escape FPA regulation. In *Connecticut Light & Power* v. *FPC*, 324 U.S. 515 (1945), the Commission asserted accounting jurisdiction over a utility. The company argued, 324 U.S. at 535–536, that "the volume of energy passing

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* The Commission in its direction could, however, require that a public utility receiving service under an O&M agreement file that agreement with the Commission when the public utility seeks to recover the O&M costs in its wholesale rates.

over certain of those facilities is insignificant in proportion to the total. Only about one-fifth of one per cent * * * was transmitted out of state during the [relevant] time. * * *"

The Court rejected that contention because, 324 U.S. at 536, "we do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved and we do not think it would be appropriate to supply such a jurisdictional limitation by construction."

The Court left the door open for some "de minimis" exemption. The majority opinion added in dictum, without elaboration, *id.*, that "Congress appears to have left to the Commission's sound administrative discretion to determine whether or not to assert its authority in such situations."

Similarly in the landmark *"Colton"* case, *FPC* v. *Southern California Edison Company*, 376 U.S. 205 (1964), the Court held that if some part of the electricity the utility sold to a municipality came from out of state, the company fell under Commission regulation. The majority opinion, 376 U.S. at 209 n.3, explicitly rejected the argument that "any out-of-state energy was de minimis in amount and that [Commission] jurisdiction did not attach to that amount." As the Court explained:

> that fact would be relevant only on the question whether [the company] was a "public utility" over which the [Commission] in its discretion should assume jurisdiction. * * * Here, [it] is concededly a "public utility" and we agree * * * that [the Commission] has "no discretion to reject that jurisdiction."
>
> (citations omitted)

Lower courts have recognized that the Commission, and administrative agencies generally, may, on their own, make allowances for "de minimis" cases and waive regulating in those instances. The courts have, however, required the agencies to act in individual cases and to strike an appropriate balance. For example, in *Central Power & Light Company* v. *FERC*, 575 F.2d 937, 939 (D.C. Cir. 1978), the court held that the Commission may, in individual circumstances, decide that the effort to regulate would produce minimal public benefit and would amount to a pointless exercise. The Commission must, however, justify in its order such an exercise of discretion "in light of all relevant factors, including 'antitrust considerations or any other component of a public interest determination.'" *id.*

Similarly, in a later decision, *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 357–362 (D.C. Cir. 1979), involving the Environmental Protection Agency's decision to grant a blanket waiver from air quality requirements to small polluters, the same court elaborated on the "de minimis" (and a related "administrative necessity") exemption to regulation. The court dealt with both types of exceptions: categorical and individual.

The court held, 636 F.2d at 357, that granting such exceptions, even on a categorical basis, fell within the inherent power of administrative agencies, except "in the face of the most unambiguous demonstration of congressional intent to foreclose them." The court, 636 F.2d at 358, cited *Texaco* and this Commission's rate regulation as an example of a statute that the Supreme Court found impervious to categorical exemption, even though the Court held the arguments in favor of exemption "persuasive."

Nevertheless, the court, 636 F.2d 357, discussed what it called the "'equitable' discretion of agencies to afford case-by-case treatment" to exempt parties from regulation. The court required an agency in that instance to:

> tak[e] into account circumstances peculiar to individual parties in the application of the general rule to particular cases [that argue for relaxing regulation], or even in appropriate cases * * * grant[ing] dispensation from the rule's operation. The need for such flexibility * * * is generally recognized, and enhances the effective operation of the administrative process, though Congress may * * * restrain the agency by [allowing] no variance. * * *
>
> 636 F.2d at 357–358.

In discussing the "de minimis" standard (although as to a categorical exemption), the court held, 636 F.2d at 360, that the agency bore the burden of showing that the facts of the specific case fall within the rubric of an administrative de minimis exception. The court explained, 636 F.2d at 360–361 (emphasis added):

> Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For [an exemption to apply,] any implied authority must be based * * * on a fair reading of the specific statute [and] legislative history.

In conclusion, the bases hold that: (1) The FPA contains no minimum threshold for Commission ratemaking jurisdiction; (2) the Commission has no authority to grant blanket "*de minimis*" exemptions from rate regulation; (3) in individual cases, however, the "Commission has administrative discretion to decline to exercise jurisdiction * * * [if] the public interest so requires" (*Union Transmission Company*, 41 FPC 816, 819 (1969) (Initial Decision)); and (4) in declining jurisdiction, the Commission must find that regulation will, in the words of the *Alabama Power* court (636 F.2d at 361), bring "trivial or no" public benefits.

Before reaching that decision, however, the Commission must balance all the equities, with "*de minimis*" counting as one factor. At this juncture, in the context of this generic proceeding, we cannot declare a blanket cut-off for which we will waive full-blown section 205 treatment. For now, we will make determinations as to whether to apply the administration de minimis exemption in individual cases under the criteria we have reviewed here. Of course, to do so, the matter must be filed with the Commission.

[FR Doc. 93–18679 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–60–000]

## Dominion Management Argentina S.A.; Application for Commission Determination of Exempt Wholesale Generator Status

July 30, 1993.

On July 26, 1993, Dominion Management Argentina S.A. ("DMASA") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR part 365 of the Commission's regulations.

DMASA, an Argentine corporation, is a wholly-owned subsidiary of Dominion Energy, Inc., which is a wholly-owned subsidiary of Dominion Resources, Inc.

DMASA operates an eligible facility in Neuquen Province, Argentine that consists of five turbines with a combined nominal power production capacity of 98 MW. DMASA will also operate a 450 MW hydroelectric plant located on the Neuquen River in Neuquen Province, Argentina. The plant has a nominal power production capacity of 450 MW. It consists of two 225 MW turbogenerators with associated equipment and five dams.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 20, 1993, and must be served on the applicant (c/o Michael W. Maupin, Esq., Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219). Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18680 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP90–2086–001]

## National Fuel Gas Supply Corp.; Petition to Amend

July 30, 1993.

Take notice that on July 27, 1993, National Fuel Gas Supply Corporation

(National Fuel), 10 LaFayette Square, Buffalo, New York 14203, field in Docket No. CP90–2086–001 a petition to amend the authorization issued by order issued on November 28, 1990, in Docket No. CP90–2086–000, to permit continued operation of the Allegany State Park (ASP) Storage Field located in Cattaraugus County, New York as well as facilities required for the continued operation of the storage field, for a period expiring on the earlier of December 31, 1995, or the effective date of a permanent certificate authorizing the operation of the storage field, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

National Fuel states that it was authorized by order issued November 28, 1990, inter alia, to acquire from Felmont Natural Gas Storage Company the ASP storage field and facilities required to attach the storage field to its Line K and to operate the storage field and connecting facilities for up to three years during which time it would assess the performance of the field and utilize the capacity and deliverability of the field in its system operations.

National Fuel indicates that, while it has gained considerable experience with the ASP field since the commencement of operations, it has found that its utilization of the field is constrained by the size of the connecting facilities. It is also noted that unless and until these connecting facilities are expanded, the pressure-volume relationship and operational characteristics of the ASP field will not be known with certainty. National Fuel also states that further drilling will be necessary to determine the thickness, porosity and permeability of the gas-bearing sandstone in the ASP field as well as the location of the gas-water contact. It is indicated that these activities would be performed pursuant to National Fuel's Subpart F blanket certificate, but that to date they have not been constructed.

National Fuel states that it is important that it continue to operate the ASP field beyond December 31, 1993, and during the pendency of the above-described expansion proposal. National Fuel requests that it be authorized to continue to operate the ASP field and connecting facilities to the earlier of December 31, 1995, or the effective date of a permanent certificate authorizing such operations.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 20, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18641 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

## Office of Fossil Energy

**[FE Docket No. 93–76–NG]**

### Bay State Gas Co., Order Granting Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Bay State Gas Company blanket authorization to import from Canada up to 40 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 30, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18736 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 93–58–NG]**

### Jonan Gas Marketing Inc., Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Jonan Gas Marketing Inc. authorization to import and export a combined total of up to 100 Bcf of natural gas from and to Canada over a two-year term beginning on the date of first import or export delivery after September 2, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 29, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18739 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 93–77–NG]**

### Northern Utilities, Inc., Order Granting Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice to order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern Utilities, Inc., blanket authorization to import from Canada up to 15 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on July 30, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18737 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 93–55–NG]**

### Tennessee Gas Pipeline Co., Order Granting Blanket Authorization to Export Natural Gas to Mexico and Granting Intervention

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice

that it has issued an order granting Tennessee Gas Pipeline Company authorization to export up to 100 Bcf of natural gas to Mexico over a two-year term, beginning on the date of first delivery after August 13, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 30, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18735 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

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[FE Docket No. 93–56–NG]

## Texas International Gas & Oil Co., Order Granting Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Texas International Gas & Oil Company authorization to export up to 29.2 billion cubic feet of natural gas over a two-year term beginning on the date of first delivery after November 29, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8.00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 30, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18734 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

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## Southeastern Power Administration

## Notice of Issuance of Final Power Marketing Policy, Cumberland System of Projects

AGENCY: Southeastern Power Administration (Southeastern), Department of Energy.

ACTION: Notice.

SUMMARY: The Administrator has adopted the attached Final Power Marketing Policy for Southeastern's Cumberland System of Projects. It will be effective upon publication in the **Federal Register** and will be applicable to the sale of system power when contracts can be negotiated or existing contracts are renegotiated. The policy was developed in accordance with Southeastern's Procedure for Public Participation in the Formulation of Marketing Policy published in the **Federal Register** on July 6, 1978, 43 FR 29186. The process was initiated by the Administrator with a decision that a new written marketing policy for the Cumberland System of Projects was needed. A Notice of Intent to Formulate Power Marketing Policy was subsequently published in the **Federal Register** on February 14, 1992, 57 FR 5443, requesting, among other things proposals and recommendations for consideration by Southeastern. Seventy-two responses were received as a result of the Notice of Intent.

On September 17, 1992, a Proposed Power Marketing Policy for the Cumberland System of Projects was published in the **Federal Register**, 57 FR 42992. Seven comments were received relative to the proposed policy itself, during a Public Comment Forum held in Nashville, Tennessee, on November 18, 1992, or during the written comment period which ended December 4, 1992. Several consultations were held with representatives of entities or groups of entities interested in the proposed policy. Additionally, a number of conferences were held with the Corps of Engineers and Tennessee Valley Authority (TVA) to consider matters inherent in facilitating whatever policy might be finally adopted. All of the responses and comments from whatever source and within whatever timeframe were considered.

Thereafter, a Southeastern staff committee was selected by the Administrator to prepare a Staff Evaluation of all oral and written comments and responses received by Southeastern. The Staff Evaluation was completed on July 15, 1993.

Following the Staff Evaluation, the Administrator decided to adopt the policy as modified.

SUPPLEMENTARY INFORMATION: The Final Power Marketing Policy sets forth the guidelines which Southeastern will follow in the future disposition of power from the Cumberland System. The policy covers power from the Barkley, Center Hill, Cheatham, Cordell Hull, Dale Hollow, Laurel, Old Hickory, J. Percy Priest, and Wolf Creek projects. The policy establishes the marketing area for system power and deals with the allocation of power among or for the benefit of area customers. It also deals with utilization of area utility systems for essential purposes, wholesale rates, resale rates, and energy and economic efficiency measures.

Based on the Environmental Assessment of the proposed marketing policy, Southeastern and the Department of Energy concluded that the proposed policy would not have a significant effect upon the quality of the human environment. The Environmental Assessment is available at Southeastern's headquarters. The Final Power Marketing Policy is not modified sufficiently to alter this finding. A recital of the primary comments regarding the proposed marketing policy, brief responses or explanations to those comments, and specific decisions and changes in the proposed marketing policy approved by the Administrator, precede the text of the final policy as adopted.

Issued at Elberton, Georgia; July 20, 1993.

**John A. McAllister, Jr.,**

*Administrator.*

### Final Power Marketing Policy Cumberland System of Projects

*Introduction.* The efforts to develop a new written power marketing policy for Southeastern Power Administration's (Southeastern) Cumberland System of Projects began on February 14, 1992. Southeastern has followed the step by step requirements of its Procedure for Public Participation in Formulation of Marketing Policy published in the **Federal Register** on July 6, 1978, 43 FR 29186. Numerous public comments have been received and evaluated. This public input, offered in an orderly and timely fashion, was carefully considered in the decisionmaking process.

*Purpose and Legal Authority.* The purpose of the policy is to establish with public input written guidelines which Southeastern will follow in the future to reasonably and equitably carry out the statutory requirements set forth in section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s. Southeastern's authority to formulate the policy and perform these functions are derived from section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7152, and delegations pursuant thereto.

*Reasons for Marketing Policy.* The current marketing policy became effective on March 16, 1983, and the earliest contracts executed under the marketing policy commenced at midnight, June 30, 1984. The current marketing policy provided that contracts negotiated under the policy would be for terms of approximately 10

years. The contracts also provide for a 37/36 month notification to effect termination.

Negotiations to market power to one group of customers included in the current marketing policy are still ongoing. One of the stated requirements in the negotiations was that the contracts be of a long term nature—20–30 years. This requirement could not be met under the current marketing policy.

*Primary Comments and Responses.* The primary comments to the proposed marketing policy were:

1. *Comment.* Tennessee Valley Authority (TVA) is over compensated for transmission of power. East Kentucky Power Cooperative (East Kentucky) should not pay wheeling on Laurel Project power.

*Response.* The marketing policy states that: "specific terms and conditions of arrangements between Southeastern and TVA and Southeastern and the other utilities will be the subject of negotiations."

These two comments regarding compensation for transmission services are rate matters and should not be considered in connection with the marketing policy. These issues should more appropriately be raised and considered in the next rate filing.

2. *Comment.* All preference customers, including TVA should be allocated equal hours use of capacity (energy).

*Response.* The Proposed Cumberland Power Marketing Policy states that the power available for allocation to the preference customers outside the TVA system will be peaking power only and will have limited energy. All of the energy marketed to the preference customers outside the TVA area is firm or guaranteed energy. A large percentage of the energy marketed to TVA is not firm, but is the energy remaining after the customers outside the TVA area receive their scheduled firm energy. It represents many hours of less valuable off-peak energy. Therefore, the Administrator has deemed that the present allocations of hours use is appropriate for the Cumberland power.

3. *Comment.* TVA is not a preference customer.

*Response.* This issue was raised and considered in comments found in 48 F.R. 11151 published March 16, 1983, on the current marketing policy. The conclusion arrived at in the staff evaluation for the existing policy is that "Southeastern could alternately market Cumberland power directly to the 160 TVA preference entities using TVA to wheel and facilitate, or it could arrange to pass the power and benefits through TVA to the preference customers. From an efficiency stand point, the latter is preferable." Since no new information has been introduced concerning the matter, the Administrator considers the prior disposition of the issue sufficient.

4. *Comment.* Proposed language in "Energy and Economic Efficiency Measures" should be revised to more adequately reflect Southeastern's Energy Resource Management Plan.

*Response.* The primary objective of Southeastern's Energy Efficiency and Renewable Resource Program is to promote the efficient use of electric power. Southeastern encourages and is fully supportive of Integrated Resource Plan development.

Therefore, each customer who purchases Southeastern's power is encouraged to participate in an integrated resource plan that considers both supply and demand side alternatives. It is recognized that some Southeastern customers are members of a power supply organization that does resource planning for said customer (i.e., power supply cooperatives and joint action agencies.) Where a Southeastern customer, or a power supply organization that does resource planning for a Southeastern customer, is responsible to a regulatory body or another Government agency for an integrated resource plan, the customer will make a copy of such integrated resource plan available to Southeastern. All Southeastern customers shall agree to encourage the efficient use of energy by ultimate customers.

5. *Comment.* The limit of scheduling a maximum of 220 hours of energy per KW-month is too restrictive.

*Response.* The policy states that: "specific terms and conditions of arrangements between Southeastern and TVA and Southeastern and the other utilities will be the subject of negotiations". The 220 hours of energy per month is an operational and contractual matter rather than a marketing policy matter. While this issue may be explored when the existing contracts are renegotiated or amended to extend their terms, the scheduling and disposition of Cumberland power is not deemed appropriate for consideration in conjunction with formulating the marketing policy.

6. *Comment.* Allow East Kentucky to schedule through TVA rather than through Southeastern.

*Response.* Southeastern is the marketing agency responsible for disposing of Federal power. The coordination and combining of the schedules of all the customers is done by Southeastern to provide a summary schedule for the efficient operation of the projects by the Corps of Engineers. Southeastern has determined that the present procedures for scheduling the Cumberland System power are appropriate and are in the best interest of the preference customers.

7. *Comment.* The longer term arrangement should provide a rolling 10-year termination notice.

*Response.* The published marketing policy proposed a contract term of approximately 20 years at the request of one of the parties which will be affected by the policy. No one expressed an objection to the proposed approximate 20-year contract term. Due to changes in the electric utility industry and the area, the policy will probably need to be revised after 20 years. Southeastern considers the 10-year termination notice unduly long, and traditionally notice provisions have been and continue to be subjects of contract negotiation. The present policy does not preclude extending the resultant contracts at the end of the 20-year period.

*Changes or Revisions in Proposed Marketing Policy.* The Energy and Economic Efficiency Measures section has been expanded to more clearly reflect the intent of Southeastern's Energy Resource Management Plan.

**Final Power Marketing Policy Cumberland System of Projects**

*General.* The projects and power subject to this policy are:

| | Capacity (kilowatt) (name-plate) | Energy (mega-watt-hours) (average annual) |
|---|---|---|
| Barkley | 130,000 | [1] 550,000 |
| Center Hill | 135,000 | 385,000 |
| Cheatham | 36,000 | 165,000 |
| Cordell Hull | 100,000 | 350,000 |
| Dale Hollow | 54,000 | 125,000 |
| Laurel | 61,000 | 69,000 |
| Old Hickory | 100,000 | 475,000 |
| J. Percy Priest | 28,000 | 72,000 |
| Wolf Creek | 270,000 | 920,000 |

[1] Does not include increased output resulting from Barkley-Kentucky Canal.

The policy for the Cumberland System of Projects will be implemented as soon as contracts can be amended or negotiated.

The policy will be implemented through negotiated contracts for terms of approximately 20 years.

Southeastern will seek the use of transmission facilities owned by the Tennessee Valley Authority (TVA) and other utilities within the marketing area for all necessary purposes including bulk transmission and transmitting to load centers where required. Power deliveries may be made at the projects,

at utility interconnections with TVA or at customer substations, as determined by Southeastern. The projects will be hydraulically, electrically, and financially integrated and will be operated to make maximum contribution to the power supply of the utilities within the selected marketing area. Preference in the sale of power shall be given to public bodies and cooperatives.

*Marketing Area.* The marketing area will be the TVA service area and the service areas of the following utilities: Big Rivers Electric Corporation; Carolina Power and Light Company, Western Division; East Kentucky Power Cooperative; Kentucky Utilities Company; Municipal Energy Agency of Mississippi, the seven cooperative members of South Mississippi Electric Power Association currently receiving Cumberland power; and Southern Illinois Power Cooperative. The geographic marketing area will consist of approximately 148,000 square miles. Except where duplication of allocations would result, public bodies and cooperatives located outside the TVA service area and listed on Appendix A attached hereto are eligible to share in Cumberland power marketable under this policy; provided that Cumberland power shall not be made available to meet any portion of any preference entity demand within the selected Cumberland marketing area which is in part required to be met by power from any other Southeastern system. Power marketed to TVA will be for the sole benefit of the 160 preference customers on the TVA system and which are served by TVA.

*Allocation of Power.* Power available under this policy for allocation from the Cumberland System will be peaking power only. The power will be allocated as follows:

| Customer | KW |
|---|---|
| Big Rivers Electric Cooperative | 178,000 |
| East Kentucky Power Cooperative | 170,000 |
| City of Henderson, Kentucky | 12,000 |
| Municipal Energy Agency of Mississippi for its eight municipal members | 30,000 |
| Southern Illinois Power Cooperative | 28,000 |
| South Mississippi Electric Power Association for its 7 cooperative members currently receiving Cumberland power | 51,000 |
| Tennessee Valley Authority | 405,000 |
| Municipalities in Kentucky Utilities Company area | 62,000 |
| CP&L Western Division Cooperatives & Municipality | 14,000 |

The energy accompaniment of such capacity, except TVA, will be 1,500 kilowatt-hours per kilowatt per year, except that if additional energy is required in given utility areas to make viable capacity allocations under acceptable arrangements such additional energy will be made available from the Cumberland projects. All remaining capacity and energy will be allocated to TVA for the benefit of public bodies and cooperatives in its area. Capacity and associated energy reserved for the municipalities in the Kentucky Utilities Company area will continue to be marketed to TVA until contracts can be negotiated with the municipalities.

*Utilization of Utility Systems.* In the absence of transmission facilities of its own, Southeastern will acquire the use of area generation and transmission systems to integrate the Cumberland projects, provide firming, wheeling, exchange and other functions as may be necessary to dispose of system power under reasonable and acceptable marketing arrangements. Utility systems providing such services shall be entitled to adequate compensation. Southeastern will make declarations of all energy available from the Cumberland System to TVA and cooperatively determine the magnitude of delivery from particular projects in accordance with acceptable procedures generally followed by Southeastern and the Corps of Engineers with respect to its other systems. TVA will schedule and dispatch all of the Cumberland System power, excluding Laurel power, and will transmit portions of such power to its interconnections in response to appropriate schedules submitted by neighboring utilities entitled to receive designated quantities of system power. Laurel power will be scheduled by East Kentucky. Specific terms and conditions of arrangements between Southeastern and TVA and Southeastern and the other utilities will be the subject of negotiations. Distribution preference agencies directly affected by negotiations with wheeling utilities shall stand in an advisory role to Southeastern and shall be involved as determined by Southeastern and otherwise kept currently advised as to the status and progress of negotiations.

*Wholesale Rates.* Rate schedules shall be drawn so as to recover all costs associated with producing and transmitting the power in accordance with then current repayment criteria. Production costs will be determined on a system basis and rate schedules will be related to the integrated output of the projects. Transmission costs may cause rate schedules to vary between utility areas. Rate schedules may be revised periodically.

*Resale Rates.* Resale rate provisions requiring the benefits of Southeastern power to be passed on to the ultimate consumer will be included in each Southeastern customer contract which provides for Southeastern to supply more than 25 percent of the customer's total power requirements during the term of the contract.

*Energy and Economic Efficiency Measures.* Each customer who purchases Southeastern's power is encouraged to participate in an integrated resource plan that considers both supply and demand side alternatives. It is recognized that some Southeastern customers are members of a power supply organization that does resource planning for their customers (i.e., power supply cooperatives and joint action agencies). Where a customer, or a power supply organization that does resource planning for a Southeastern customer, is responsible to a regulatory body or another Government agency for an integrated resource plan, the customer will make a copy of such integrated resource plan available to Southeastern. All Southeastern customers shall agree to encourage the efficient use of energy by ultimate customers.

**Appendix A—Preference Agencies in the Cumberland System Area**

Kentucky

Big Rivers Electric Corporation
Member Cooperatives:
- Green River EC
- Henderson-Union REC
- Meade County REC
- Jackson-Purchase EC

Associated Utilities:
- Henderson Municipal Power & Light

East Kentucky Power Cooperative, Inc.,
Member Cooperatives:
- Big Sandy REC
- Blue Grass REC
- Clark RECC
- Cumberland Valley REC
- Farmers REC
- Fleming-Mason REC
- Fox Creek REC
- Grayson REC
- Harrison REC
- Inter-County REC
- Jackson County REC
- Licking Valley REC
- Nolin REC
- Owen County REC
- Salt River REC
- Shelby REC
- South Kentucky REC
- Taylor County REC

Kentucky Utilities Company Area
- Barbourville
- Bardstown
- Bardwell
- Benham
- Corbin

Palmouth
Prankfort
Mediaonville
Nicholasville
Paris
Providence
Associated Utilities:
Owensboro Municipal Utilities

Mississippi

Municipal Energy Agency of Mississippi
Member Municipalities
Canton
Clarksdale
Durant
Greenwood
Itta Bena
Kosciusko
Leland
Yazoo City
South Mississippi Electric Power Association
Member Cooperatives:
Coahoma EPA
Delta EPA
Magnolia EPA
Southern Pine EPA
Southwest Mississippi EPA
Twin County EPA
Yazoo Valley EPA

North Carolina

Carolina Power & Light Company Area (Western Division)
Waynesville
French Broad EMC
Haywood EMC

Illinois

Southern Illinois Power Cooperative
Member Cooperatives:
Egyptian ECA
Southeastern Illinois EC
Southern Illinois EC

Tennessee

TVA area:
Aberdeen, Miss.
Albertville, Ala.
Alcoa, Tenn.
Amory, Miss.
Athens, Ala.
Athens, Tenn.
Benton County, Tenn.
Benton, Ky.
Bessemer, Ala.
Boliver, Tenn.
Bowling Green, Ky.
Bristol, Tenn.
Bristol, Va.
Brownsville, Tenn.
Carroll County, Tenn.
Chattanooga, Tenn.
Chickamauga, Ga.
Clarksville, Tenn.
Cleveland, Tenn.
Clinton, Tenn.
Columbia, Tenn.
Columbus, Miss.
Cookeville, Tenn.
Courtland, Ala.
Covington, Tenn.
Cullman, Ala.
Dayton, Tenn.
Decatur, Ala.
Dickson, Tenn.
Dyersburg, Tenn.
Elizabethton, Tenn.
Erwin, Tenn.
Etowah, Tenn.
Fayetteville, Tenn.
Florence, Ala.
Fort Payne, Ala.
Franklin, Ky.
Fulton, Ky.
Gallatin, Tn
Glasgow, Ky.
Greeneville, Tenn.
Guntersville, Ala.
Harriman, Tenn.
Hartselle, Ala.
Hickman, Ky.
Holly Springs, Miss.
Hopkinsville, Ky.
Humboldt, Tenn.
Huntsville, Al
Jackson, Tenn.
Jellico, Tenn.
Johnson City, Tenn.
Knoxville, Tenn.
LaFollette, Tenn.
Lawrenceburg, Tenn.
Lebanon, Tenn.
Lenoir City, Tenn.
Lewisburg, Tenn.
Lexington, Tenn.
Loudon, Tenn.
Louisville, Miss.
Macon, Miss.
Maryville, Tenn.
Mayfield, Ky.
McMinnville, Tenn.
Memphis, Tenn.
Milan, Tenn.
Monticello, Ky.
Morristown, Tenn.
Mount Pleasant, Tenn.
Murfreesboro, Tenn.
Murphy, N.C.
Murray, Ky.
Muscle Shoals, Ala.
Nashville, Tenn.
New Albany, Miss.
Newbern Tenn.
Newport, Tenn.
Oak Ridge, Tenn.
Okolona, Miss.
Oxford, Miss.
Paducah, Ky.
Paris, Tenn.
Philadelphia, Miss.
Princeton, Ky.
Pulaski, Tenn.
Ripley, Tenn.
Rockwood, Tenn.
Russellville, Ala.
Russellville, Ky.
Scottsboro, Ala.
Sevierville, Tenn.
Sheffield, Ala.
Shelbyville, Tenn.
Smithville, Tenn.
Somerville, Tenn.
Sparta, Tenn.
Springfield, Tenn.
Starkville, Miss.
Sweetwater, Tenn.
Tarrant City, Ala.
Trenton, Tenn.
Tullahoma, Tenn.
Tupelo, Miss.
Tuscumbia, Ala.
Union City, Tenn.
Water Valley, Miss.
Weakley County, Tenn.
West Point, Miss.
Winchester, Tenn.
Alcorn County, EPA, Corinth, Miss.
Appalachian EC, Jefferson City, Tenn.
Arab EC, Arab, Ala.
Blue Ridge Mountain EMC, Young Harris, Ga.
Caney Ford Ec, McMinnville, Tenn.
Central EPA, Carthage, Miss.
Cherokee EC, Centre, Ala.
Chickasaw EC, Somerville, Tenn.
Cullman EC, Cullman, Ala.
Cumberland EMC, Clarksville, Tenn.
Duck River EMC, Shelbyville, Tenn.
East Miss. EPC, Meridian, Miss.
Forked Deer EC, Halls, Tenn.
Ft. Loudoun EC, Madisonville, Tenn.
4-County EPA, Columbus, Miss.
Franklin EC, Russellville, Ala.
Gibson County EMC, Trenton, Tenn.
Hickman-Fulton Cos. RECC, Hickman, Ky.
Holston EC, Rogersville, Tenn.
Joe Wheeler EMC, Hartsell, Ala.
Marshall-DeKalb EC, Boaz, Ala.
Meriwether Lewis EC, Centerville, Tenn.
Middle Tenn. EMC, Murfreesboro, Tenn.
Middle Tenn. EMC, Murfreesboro, Tenn.
Monroe County EPA, Amorty, Miss.
Mountain EC, Mountain City, Tenn.
Natchez Trace EPA, Houston, Miss.
North Alabama EC, Stevenson, Ala.
Northcentral Miss. EPA, Byhalia, Miss.
Northeast Miss. EPA, Oxford, Miss.
North Georgia EMC, Dalton, Ga.
Pennyrile RECC, Hopkinsville, Ky.
Pickwick EC, Selmer, Tenn.
Plateau EC, Oneida, Tenn.
Pontotoc EPA, Pontotoc, Miss.
Powell Valley EC, Jonesville, VA
Prentiss County EPA, Booneville, Miss.
Sand Mountain EC, Rainsville, Ala.
Sequachee Valley EC, South Pittsburg, Tenn.
Southwest Tenn. EMC, Brownsville, Tenn.
Tallahatchie Valley EPC, Batesville, Miss.
Tenn. Valley EC, Savannah, Tenn.
Tippah EPA, Ripley, Miss.
Tishomingo Co. EPA, Luka, Miss.
Tombigbee EPA, Tupelo, Miss.
Tri-County EMC, LaFayette, Tenn.
Tri-State EMC, McCaysville, Ga.
Upper Cumberland EMC, Carthage, Tenn.
Volunteer EC, Decatur, Tenn.
Warren RECC, Bowling Green, Ky.
West Kentucky RECC, Mayfield, Ky.

[FR Doc. 93–18738 Filed 8–4–93; 8:45 am]
BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4587–8]

## North Carolina: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

**AGENCY:** Region 4, Environmental Protection Agency.

**ACTION:** Notice of Tentative Determination to Fully Approve the Adequacy of North Carolina's Municipal Solid Waste Landfill Permitting

Program, Public Hearing and Public Comment Period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

North Carolina applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed North Carolina's MSWLF application and has tentatively determined that the North Carolina MSWLF permit program is adequate to assure compliance with the revised Federal MSWLF Criteria (40 CFR part 258).

North Carolina's application for program adequacy determination is available for public review and comment. Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has scheduled a public hearing on this determination to be held on the date given below in the "**DATES**" section.

**DATES:** All comments on North Carolina's application for a determination of adequacy must be received by the close of the public hearing which will be held on September 21, 1993, in Raleigh, North Carolina. The location and time of the hearing may be obtained by contacting the person in the "**CONTACTS**" section below. The State will participate in the public hearing.

**ADDRESSES:** Copies of North Carolina's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying:

North Carolina Department of Environment, Health and Natural Resources, 401 Oberlin Road, Raleigh, North Carolina 27611, Attn: Mr. Dexter Matthews, telephone 919–733–0692;

U.S. EPA Region IV Library, 345 Courtland Street NE., Atlanta, Georgia, 30365, Attn: Ms. Priscilla Pride, telephone 404–347–4216.

Written comments should be submitted to: Ms. Patricia S. Zweig, Program Manager, mail code 4WD-RCRA, U.S. EPA Region IV, Office of Solid Waste, 345 Courtland Street NE., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** U.S. EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, Program Manager, mail code 4WD-RCRA, telephone 404–347–2091.

**SUPPLEMENTARY INFORMATION:**

## A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

## B. North Carolina

On March 12, 1993, North Carolina submitted an application for adequacy determination. EPA reviewed North Carolina's application and submitted comments to the State. North Carolina responded to EPA's comments and submitted a revised final application for adequacy determination on July 13, 1993. Region IV has reviewed North Carolina's revised final application and has tentatively determined that all portions of North Carolina's subtitle D program will ensure compliance with the revised Federal Criteria on October 9, 1993.

Copies of North Carolina's application are available for inspection and copying at the location indicated in the "Addresses" section of this notice. The public may submit written comments on EPA's tentative determination until the close of the public hearing. Written comments should be submitted to the person listed in the "Contacts" section of this notice. Comments may also be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

North Carolina does not have the statutory authority to enforce the MSWLF permit program on Indian Lands. MSWLFs located on Indian Lands are subject to the Federal Criteria.

EPA will consider all public comments on its tentative determination received during the public comment period and the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for North Carolina's program. EPA expects to make a final decision on whether or not to approve North Carolina's program by October 1, 1993 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

**Compliance with Executive Order 12291**

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 27, 1993.

**Jon K. Franzmathes,**

*Acting Regional Administrator.*

[FR Doc. 93–18588 Filed 8–4–93; 8:45 am]

BILLING CODE [illegible]

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[FRL–4688–4]

## State of Georgia; Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of tentative determination on Georgia application for full program adequacy determination, public hearing and public comment period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Georgia has applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV has reviewed Georgia's MSWLF application and has made a tentative determination that all portions of Georgia's MSWLF permit program meet the requirements for full program approval and ensure compliance with the revised MSWLF Criteria. Georgia's application for program adequacy determination is available from EPA Region IV and the State for public review and comment. Although, RCRA does not require EPA to hold a public hearing on a determination to approve a State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the **DATES** section. The Region will notify all persons who submit comments on this notice if it is determined that a hearing is necessary. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **"CONTACTS"** section below.

**DATES:** All comments on Georgia's application for a determination of adequacy must be received by the close of business on September 7, 1993.

If there is sufficient interest, a public hearing will be held on September 22, 1993 in the Floyd Room of the Twin Towers West Building, 200 Piedmont Avenue, SE., Atlanta, Georgia 30334. The State will participate in the public hearing held by EPA.

**ADDRESSES:** Copies of Georgia's application for adequacy determination are available between the hours of 8 a.m. and 5 p.m., Monday through Friday, at the following addresses for inspection and copying: Georgia Department for Natural Resources, Environmental Protection Division, Land Protection Branch, 4244 International Parkway, suite 100, Atlanta, Georgia 30354, Attn: Mr. John Taylor, telephone (404) 362–2537; and U.S. EPA Region IV Library, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Ms. Priscilla Pride, telephone (404) 347–4216. Written comments should be submitted to Ms. Patricia S. Zweig, mail code 4WD–RCRA, EPA Region IV, Office of Solid Waste, 345 Courtland Street NE., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD–RCRA, telephone (404) 347–2091.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under

part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

**B. State of Georgia**

On April 15, 1993, Georgia submitted an application for adequacy determination. EPA Region IV has reviewed Georgia's application and has tentatively determined that all portions of the Georgia's Subtitle D program meet the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 7, 1993. Copies of Georgia's application are available for inspection and copying at the location(s) indicated in the ADDRESSES section of this notice. If a public hearing is held, comments may be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

The application included new regulations developed by the State of Georgia to be technically comparable to the federal criteria. The text and the numbering system used by Georgia are nearly identical to the federal regulations. Georgia's regulations became effective on June 27, 1993, and have been determined to be technically comparable to the federal criteria.

EPA Region IV will consider all public comments on its tentative determination which are received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Georgia's program. EPA Region IV expects to make a final decision on whether or not to approve Georgia's program by October 1, 1993, and will give notice of it in the **Federal Register**. The final notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

**Compliance with Executive Order 12291**

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 29, 1993.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 93-18722 Filed 8-4-93; 8:45 am]

BILLING CODE 6560-50-P

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[FRL-4638-3]

## Tennessee: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Tentative Determination to Fully Approve the Adequacy of the State of Tennessee's Municipal Solid Waste Permitting Program, Public Hearing, and Public Comment Period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the

approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Tennessee has applied for a determination of adequacy under section 4005 of RCRA. Region IV of EPA has reviewed Tennessee's MSWLF application and has made a tentative determination that Tennessee's MSWLF permit program meets the requirements for full program approval and ensures compliance with the revised MSWLF Criteria. Tennessee's application for program adequacy determination is available from EPA Region IV and the State for public review and comment. Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the **DATES** section. The Region will notify all persons who submit comments on this notice if it is determined that a hearing is necessary. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **CONTACTS** section below.

**DATES:** All comments on Tennessee's application for a determination of adequacy must be received by the close business on [September 7, 1993. Thirty(30) days from publication date]. If there is sufficient interest, the public hearing will be held on September 23, 1993 at 6 p.m., at the Legislative Plaza, room #16, at the Corner of Union and Sixth Avenue, Nashville Tennessee 37243–0026. The State will participate in the public hearing held by the EPA.

**ADDRESSES:** Copies of Tennessee's application for adequacy determination are available during the hours of 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, Attn: Mr. Frank Victory, telephone 615–532–0780; and U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia, 30365, Attn: Ms. Priscilla Pride, telephone 404–347 4216. Written comments should be submitted to Ms. Patricia S. Zweig, mail code 4WD-RCRA, EPA Region IV, Office of Solid Waste, 345 Courtland Street, NE., Atlanta, Georgia 30365.

**FOR FURTHER INFORMATION CONTACT:** EPA Region IV, 345 Courtland St. NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD-RCRA, telephone 404–347–2091.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The EPA Region IV will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

**B. State of Tennessee**

On May 17, 1993, Region IV of EPA received Tennessee's final MSWLF permit program application for adequacy determination. Region IV has reviewed Tennessee's application and has tentatively determined that all portions of Tennessee's Subtitle D program meet the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 7, 1993. Copies of Tennessee's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice. If a public hearing is held, comments may be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

The State of Tennessee proposed and passed amendments to rule chapter 1200–1–7 of the Tennessee Solid Waste Disposal Act to make changes necessary to implement a solid waste disposal program that is equivalent to subtitle D of RCRA. The amendments developed by the State of Tennessee became effective on July 10, 1993, and the State of Tennessee's MSWLF regulations have been determined to be technically comparable to the federal criteria.

EPA will consider all public comments received on its tentative determination during the public comment period and during the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for Tennessee's program. EPA intends to make a final decision on whether or not to approve Tennessee's program by October 9, 1993, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

**Compliance With Executive Order 12291**

The Office of Management and Budget has exempted this notice from the

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requirements of section 3 of Executive Order 12291.

**Certification Under the Regulatory Flexibility Act**

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 29, 1993.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

[FR Doc. 93-18723 Filed 8-4-93; 8:45 am]

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[FRL-[illegible]-5]

## Notice of Public Meeting of the Phosphoric Acid Production Waste Dialogue Committee

**AGENCY:** Environmental Protection Agency.

**ACTION:** Federal Advisory Committee Meeting.

**SUMMARY:** As required by the Federal Advisory Committee Act, we are giving notice of the August meeting of the Phosphoric Acid Production Waste Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to continue to review information regarding process changes that will reduce the volume and/or toxicity of phosphogypsum and process wastewater from the production of phosphoric acid.

**DATES:** The Committee meeting will be held on August 25, 1993 from 10 a.m. to 4:30 p.m. and August 26 from 8 a.m. to 3 p.m.

**ADDRESS:** The meeting will be held at the Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia 22204; (703) 521-2122.

**FOR FURTHER INFORMATION CONTACT:** Persons needing further information on the technical or scientific matters related to phosphoric acid wastes should contact Dr. Daniel R. Bushman, Office of Pollution Prevention and Toxics, Economics, Exposure and Technology Division, TS-779, Environmental Protection Agency, Washington, DC 20460; phone (202) 260-6700. Persons needing further information on the committee's procedural and logistical matters should call the Committee's facilitator, Greg Bourne, Southeast Negotiation Network, Georgia Institute of Technology, Atlanta, GA (404) 853-9846.

Dated: July 28, 1993.

**Deborah Dalton,**

*Designated Federal Official, Office of Regulatory Management & Evaluation, Office of Policy, Planning and Evaluation.*

[FR Doc. 93-18721 Filed 8-4-93; 8:45 am]

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[OPP-60048; FRL-4638-5]

## Intent to Suspend Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of issuance of notices of intent to suspend.

**SUMMARY:** This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

**SUPPLEMENTARY INFORMATION:**

**I. Text of a Notice of Intent to Suspend**

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

**United States Environmental Protection Agency**

**Office of Prevention, Pesticides and Toxic Substances**

Washington, DC 20460

Certified Mail

*Return Receipt Requested*

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be

conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data

Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

**II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected**

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

| Registrant Affected | EPA Registration Number | Active Ingredient | Name of Product | Date Issued |
|---|---|---|---|---|
| Bonide Products Inc. | 00000400062 | Sulfur | Bonide Sulphur Plant Fungicide Micronized Spray | 7/16/93 |
| | 00000400107 | Sulfur | Bonide Garden Dust | 7/16/93 |
| Boyer Corporation | 00050000022 | Sodium Hydroxide | Boyer Sewer Root Destroyer | 6/21/93 |
| Griffin Corporation | 00181200295 | Sulfur | Kocide 404S Floweble Agricultural Fungicide | 7/16/93 |
| PIC Corporation | 00309500028 | Sulfur | PIC Sulfur Candle Fumigator | 7/16/93 |
| Schall Chemical Inc. | 00346800028 | Sulfur | Thiodan Sulfur | 7/16/93 |
| Wallace C. Tharp | 00633000013 | Sulfur | Perma-Guard Dust 40% Sulphur D-40 | 7/16/93 |
| | 00633000015 | Sulfur | Perma-Guard Dust 10% Sulphur D-42 | 7/16/93 |
| Southern Mill Creek Products | 00672000436 | Sulfur | Pratt Fruit Tree Spray | 7/16/93 |
| Voluntray Purchasing Group, Inc. | 00740100091 | Sulfur | Sevin-Sulfur 10-40 Dust | 7/16/93 |
| | 00740100198 | Sulfur | Ferti-Lome Dusting Sulfur | 7/16/93 |
| | 00740100214 | Sulfur | Ferti-Lome Improved Root Dust | 7/16/93 |

**III. Basis for Issuance of Notice of Intent; Requirement List**

The following companies failed to submit the following required data or information:

TABLE B.—LIST OF REQUIREMENTS

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due Date |
|---|---|---|---|---|
| Sodium Hydroxide | Boyer Corporation | 90–Day Response | | 1/1/93 |
| Sulfur | Schall Chemical Inc. | Chemical Identity | 61–1 | 12/18/91 |
| | | Beginning Materials & Manufacturing Process | 61–2 | 12/18/91 |
| | | Discussion of Formation of Impurities | 61–3 | 12/18/91 |
| | | Preliminary Analysis of Product Samples | 62–1 | 12/18/91 |
| | | Analytical Method to Verify Certified Limits | 62–3 | 12/18/91 |
| | | Certification of Ingredient Limits | 62–2 | 12/18/91 |
| | | Odor | 63–4 | 12/18/91 |
| | | Melting Point | 63–5 | 12/18/91 |
| | | Boiling Point | 63–6 | 12/18/91 |
| | | Density, Bulk Density, or Specific Gravity | 63–7 | 12/18/91 |
| | | Solubility | 63–8 | 12/18/91 |
| | | Vapor Pressure | 63–9 | 12/18/91 |
| | | Dissociation Constant | 63–10 | 12/18/91 |
| | | Octanol/Water Partition Coefficient | 63–11 | 12/18/91 |
| | | pH | 63–12 | 12/18/91 |
| | | Stability | 63–13 | 12/18/91 |
| | | Oxidizing/Reducing Action | 63–14 | 12/18/91 |
| | | Flammability | 63–15 | 12/18/91 |
| | | Explodability | 63–16 | 12/18/91 |
| | | Storage Stability | 63–17 | 12/18/91 |
| | | Viscosity | 63–18 | 12/18/91 |
| | | Miscibility | 63–19 | 12/18/91 |
| | | Corrosion Characteristics | 63–20 | 12/18/91 |
| | | Dielectric Breakdown Voltage | 63–21 | 12/18/91 |
| | | Acute Oral Toxicity – Rat | 81–1 | *2/18/91 |

TABLE B.—LIST OF REQUIREMENTS—Continued

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due Date |
|---|---|---|---|---|
| | | Acute Dermal Toxicity – Rabbit/Rat | 81–2 | 12/18/91 |
| | | Acute Inhalation Toxicity – Rat | 81–3 | 12/18/91 |
| | | Primary Eye Irritation – Rabbit | 81–4 | 12/18/91 |
| | | Primary Dermal Irritation | 81–5 | 12/18/91 |
| | | Dermal Sensitization | 81–6 | 12/18/91 |
| | | Confidential Statement of Formula (CSF) Form | | 12/18/91 |
| | | Certification Form: Data Citation | | 12/18/91 |
| | | Certification Form: Offer to Cost Share | | 12/18/91 |
| | | Certification Form: Data Compensation | | 12/18/91 |
| | Wallace C. Tharp | Chemical Identity | 61–1 | 12/18/91 |
| | | Beginning Materials & Manufacturing Process | 61–2 | 12/18/91 |
| | | Discussion of Formation of Impurities | 61–3 | 12/18/91 |
| | | Preliminary Analysis of Product Samples | 62–1 | 12/18/91 |
| | | Certification of Ingredient Limits | 62–2 | 12/18/91 |
| | | Analytical Method to Verify Certified Limits | 62–3 | 12/18/91 |
| | | Odor | 63–4 | 12/18/91 |
| | | Melting Point | 63–5 | 12/18/91 |
| | | Boiling Point | 63–6 | 12/18/91 |
| | | Density, Bulk Density, or Specific Gravity | 63–7 | 12/18/91 |
| | | Solubility | 63–8 | 12/18/91 |
| | | Vapor Pressure | 63–9 | 12/18/91 |
| | | Dissociation Constant | 63–10 | 12/18/91 |
| | | Octanol/Water Partition Coefficient | 63–11 | 12/18/91 |
| | | pH | 63–12 | 12/18/91 |
| | | Stability | 63–13 | 12/18/91 |
| | | Oxidizing/Reducing Action | 63–14 | 12/18/91 |
| | | Flammability | 63–15 | 12/18/91 |
| | | Explodability | 63–16 | 12/18/91 |
| | | Storage Stability | 63–17 | 12/18/91 |
| | | Viscosity | 63–18 | 12/18/91 |
| | | Miscibility | 63–19 | 12/18/91 |
| | | Corrosion Characteristics | 63–20 | 12/18/91 |
| | | Dielectric Breakdown Voltage | 63–21 | 12/18/91 |
| | | Acute Oral Toxicity – Rat | 81–1 | 12/18/91 |
| | | Acute Dermal Toxicity – Rabbit/Rat | 81–2 | 12/18/91 |
| | | Acute Inhalation Toxicity – Rat | 81–3 | 12/18/91 |
| | | Primary Eye Irritation – Rabbit | 81–4 | 12/18/91 |
| | | Primary Dermal Irritation | 81–5 | 12/18/91 |
| | | Dermal Sensitization | 81–6 | 12/18/91 |
| | | Certification Form: Data Citation | | 12/18/91 |
| | | Certification Form: Offer to Cost Share | | 12/18/91 |
| | | Certification Form: Data Compensation | | 12/18/91 |
| | | Confidential Statement of Formula (CSF) Form | | 12/18/91 |
| | Bonide Products Inc. | Confidential Statement of Formula (CSF) Form | | 12/18/91 |
| | | Chemical Identity | 61–1 | 12/18/91 |
| | | Beginning Materials & Manufacturing Process | 61–2 | 12/18/91 |
| | | Discussion of Formation of Impurities | 61–3 | 12/18/91 |
| | | Preliminary Analysis of Product Samples | 62–1 | 12/18/91 |
| | | Analytical Method to Verify Certified Limits | 62–3 | 12/18/91 |
| | | Certification of Ingredient Limits | 62–2 | 12/18/91 |
| | | Odor | 63–4 | 12/18/91 |
| | | Melting Point | 63–5 | 12/18/91 |
| | | Boiling Point | 63–6 | 12/18/91 |
| | | Density, Bulk Density, or Specific Gravity | 63–7 | 12/18/91 |
| | | Solubility | 63–8 | 12/18/91 |
| | | Vapor Pressure | 63–9 | 12/18/91 |
| | | Dissociation Constant | 63–10 | 12/18/91 |
| | | Octanol/Water Partition Coefficient | 63–11 | 12/18/91 |
| | | pH | 63–12 | 12/18/91 |
| | | Stability | 63–13 | 12/18/91 |
| | | Oxidizing/Reducing Action | 63–14 | 12/18/91 |
| | | Flammability | 63–15 | 12/18/91 |
| | | Explodability | 63–16 | 12/18/91 |
| | | Storage Stability | 63–17 | 12/18/91 |
| | | Viscosity | 63–18 | 12/18/91 |
| | | Miscibility | 63–19 | 12/18/91 |

TABLE B.—LIST OF REQUIREMENTS—Continued

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due Date |
|---|---|---|---|---|
| | | Corrosion Characteristics | 63–20 | 12/18/91 |
| | | Dielectric Breakdown Voltage | 63–21 | 12/18/91 |
| | | Acute Oral Toxicity – Rat | 81–1 | 12/18/91 |
| | | Acute Dermal Toxicity – Rabbit/Rat | 81–2 | 12/18/91 |
| | | Acute Inhalation Toxicity – Rat | 81–3 | 12/18/91 |
| | | Primary Eye Irritation – Rabbit | 81–4 | 12/18/91 |
| | | Primary Dermal Irritation | 81–5 | 12/18/91 |
| | | Dermal Sensitization | 81–6 | 12/18/91 |
| | | Certification Form: Data Citation | | 12/18/91 |
| | | Certification Form: Offer to Cost Share | | 12/18/91 |
| | | Certification Form: Data Compensation | | 12/18/91 |
| | Griffin Corporation | Chemical Identity | 61–1 | 12/18/91 |
| | | Beginning Materials & Manufacturing Process | 61–2 | 12/18/91 |
| | | Discussion of Formation of Impurities | 61–3 | 12/18/91 |
| | | Preliminary Analysis of Product Samples | 62–1 | 12/18/91 |
| | | Certification of Ingredient Limits | 62–2 | 12/18/91 |
| | | Analytical Method to Verify Certified Limits | 62–3 | 12/18/91 |
| | | Color | 63–2 | 12/18/91 |
| | | Physical State | 63–3 | 12/18/91 |
| | | Odor | 63–4 | 12/18/91 |
| | | Melting Point | 63–5 | 12/18/91 |
| | | Boiling Point | 63–6 | 12/18/91 |
| | | Density, Bulk Density, or Specific Gravity | 63–7 | 12/18/91 |
| | | Solubility | 63–8 | 12/18/91 |
| | | Vapor Pressure | 63–9 | 12/18/91 |
| | | Dissociation Constant | 63–10 | 12/18/91 |
| | | Octanol/Water Partition Coefficient | 63–11 | 12/18/91 |
| | | pH | 63–12 | 12/18/91 |
| | | Stability | 63–13 | 12/18/91 |
| | | Oxidizing/Reducing Action | 63–14 | 12/18/91 |
| | | Flammability | 63–15 | 12/18/91 |
| | | Explodability | 63–16 | 12/18/91 |
| | | Storage Stability | 63–17 | 12/18/91 |
| | | Viscosity | 63–18 | 12/18/91 |
| | | Miscibility | 63–19 | 12/18/91 |
| | | Corrosion Characteristics | 63–20 | 12/18/91 |
| | | Dielectric Breakdown Voltage | 63–21 | 12/18/91 |
| | | Acute Oral Toxicity – Rat | 81–1 | 12/18/91 |
| | | Acute Dermal Toxicity – Rabbit/Rat | 81–2 | 12/18/91 |
| | | Acute Inhalation Toxicity – Rat | 81–3 | 12/18/91 |
| | | Primary Eye Irritation – Rabbit | 81–4 | 12/18/91 |
| | | Primary Dermal Irritation | 81–5 | 12/18/91 |
| | | Dermal Sensitization | 81–6 | 12/18/91 |
| | | Confidential Statement of Formula (CSF) Form | | 12/18/91 |
| | | Certification Form: Data Citation | | 12/18/91 |
| | | Certification Form: Offer to Cost Share | | 12/18/91 |
| | | Certification Form: Data Compensation | | 12/18/91 |
| | PIC Corporation | Chemical Identity | 61–1 | 12/18/91 |
| | | Beginning Materials & Manufacturing Process | 61–2 | 12/18/91 |
| | | Discussion of Formation of Impurities | 61–3 | 12/18/91 |
| | | Preliminary Analysis of Product Samples | 62–1 | 12/18/91 |
| | | Analytical Method to Verify Certified Limits | 62–3 | 12/18/91 |
| | | Certification of Ingredient Limits | 62–2 | 12/18/91 |
| | | Odor | 63–4 | 12/18/91 |
| | | Melting Point | 63–5 | 12/18/91 |
| | | Boiling Point | 63–6 | 12/18/91 |
| | | Density, Bulk Density, or Specific Gravity | 63–7 | 12/18/91 |
| | | Solubility | 63–8 | 12/18/91 |
| | | Vapor Pressure | 63–9 | 12/18/91 |
| | | Dissociation Constant | 63–10 | 12/18/91 |
| | | Octanol/Water Partition Coefficient | 63–11 | 12/18/91 |
| | | pH | 63–12 | 12/18/91 |
| | | Stability | 63–13 | 12/18/91 |
| | | Oxidizing/Reducing Action | 63–14 | 12/18/91 |
| | | Flammability | 63–15 | 12/18/91 |
| | | Explodability | 63–16 | 12/18/91 |
| | | Storage Stability | 63–17 | 12/18/91 |
| | | Viscosity | 63–18 | 12/18/91 |

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TABLE B.—LIST OF REQUIREMENTS—Continued

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due Date |
|---|---|---|---|---|
| | | Miscibility | 63–19 | 12/18/91 |
| | | Corrosion Characteristics | 63–20 | 12/18/91 |
| | | Dielectric Breakdown Voltage | 63–21 | 12/18/91 |
| | | Acute Oral Toxicity – Rat | 81–1 | 12/18/91 |
| | | Acute Dermal Toxicity – Rabbit/Rat | 81–2 | 12/18/91 |
| | | Acute Inhalation Toxicity – Rat | 81–3 | 12/18/91 |
| | | Primary Eye Irritation – Rabbit | 81–4 | 12/18/91 |
| | | Primary Dermal Irritation | 81–5 | 12/18/91 |
| | | Dermal Sensitization | 81–6 | 12/18/91 |
| | | Confidential Statement of Formula (CSF) Form | | 12/18/91 |
| | | Certification Form: Data Citation | | 12/18/91 |
| | | Certification Form: Offer to Cost Share | | 12/18/91 |
| | | Certification Form: Data Compensation | | 12/18/91 |
| | Southern Mill Creek Products | Confidential Statement of Formula (CSF) Form | | 12/18/91 |
| | | Certification Form: Data Citation | | 12/18/91 |
| | | Certification Form: Offer to Cost Share | | 12/18/91 |
| | | Certification Form: Data Compensation | | 12/18/91 |
| | | Chemical Identity | 61–1 | 12/18/91 |
| | | Beginning Materials & Manufacturing Process | 61–2 | 12/18/91 |
| | | Discussion of Formation of Impurities | 61–3 | 12/18/91 |
| | | Preliminary Analysis of Product Samples | 62–1 | 12/18/91 |
| | | Analytical Method to Verify Certified Limits | 62–3 | 12/18/91 |
| | | Certification of Ingredient Limits | 62–2 | 12/18/91 |
| | | Odor | 63–4 | 12/18/91 |
| | | Melting Point | 63–5 | 12/18/91 |
| | | Boiling Point | 63–6 | 12/18/91 |
| | | Density, Bulk Density, or Specific Gravity | 63–7 | 12/18/91 |
| | | Solubility | 63–8 | 12/18/91 |
| | | Vapor Pressure | 63–9 | 12/18/91 |
| | | Dissociation Constant | 63–10 | 12/18/91 |
| | | Octanol/Water Partition Coefficient | 63–11 | 12/18/91 |
| | | pH | 63–12 | 12/18/91 |
| | | Stability | 63–13 | 12/18/91 |
| | | Oxidizing/Reducing Action | 63–14 | 12/18/91 |
| | | Flammability | 63–15 | 12/18/91 |
| | | Explodability | 63–16 | 12/18/91 |
| | | Storage Stability | 63–17 | 12/18/91 |
| | | Viscosity | 63–18 | 12/18/91 |
| | | Miscibility | 63–19 | 12/18/91 |
| | | Corrosion Characteristics | 63–20 | 12/18/91 |
| | | Dieléctric Breakdown Voltage | 63–21 | 12/18/91 |
| | | Acute Oral Toxicity – Rat | 81–1 | 12/18/91 |
| | | Acute Dermal Toxicity – Rabbit/Rat | 81–2 | 12/18/91 |
| | | Acute Inhalation Toxicity – Rat | 81–3 | 12/18/91 |
| | | Primary Eye Irritation – Rabbit | 81–4 | 12/18/91 |
| | | Primary Dermal Irritation | 81–5 | 12/18/91 |
| | | Dermal Sensitization | 81–6 | 12/18/91 |
| | Voluntary Purchasing Group, Inc. | Confidential Statement of Formula (CSF) Form | | 12/18/91 |
| | | Certification Form: Data Citation | | 12/18/91 |
| | | Certification Form: Offer to Cost Share | | 12/18/91 |
| | | Certification Form: Data Compensation | | 12/18/91 |
| | | Chemical Identity | 61–1 | 12/18/91 |
| | | Beginning Materials & Manufacturing Process | 61–2 | 12/18/91 |
| | | Discussion of Formation of Impurities | 61–3 | 12/18/91 |
| | | Preliminary Analysis of Product Samples | 62–1 | 12/18/91 |
| | | Analytical Method to Verify Certified Limits | 62–3 | 12/18/91 |
| | | Certification of Ingredient Limits | 62–2 | 12/18/91 |
| | | Odor | 63–4 | 12/18/91 |
| | | Melting Point | 63–5 | 12/18/91 |
| | | Boiling Point | 63–6 | 12/18/91 |
| | | Density, Bulk Density, or Specific Gravity | 63–7 | 12/18/91 |
| | | Solubility | 63–8 | 12/18/91 |
| | | Vapor Pressure | 63–9 | 12/18/91 |
| | | Dissociation Constant | 63–10 | 12/18/91 |
| | | Octanol/Water Partition Coefficient | 63–11 | 12/18/91 |
| | | pH | 63–12 | 12/18/91 |

TABLE B.—LIST OF REQUIREMENTS—Continued

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due Date |
|---|---|---|---|---|
| | | Stability | 63–13 | 12/18/91 |
| | | Oxidizing/Reducing Action | 63–14 | 12/18/91 |
| | | Flammability | 63–15 | 12/18/91 |
| | | Explodability | 63–16 | 12/18/91 |
| | | Storage Stability | 63–17 | 12/18/91 |
| | | Viscosity | 63–18 | 12/18/91 |
| | | Miscibility | 63–19 | 12/18/91 |
| | | Corrosion Characteristics | 63–20 | 12/18/91 |
| | | Dielectric Breakdown Voltage | 63–21 | 12/18/91 |
| | | Acute Oral Toxicity – Rat | 81–1 | 12/18/91 |
| | | Acute Dermal Toxicity – Rabbit/Rat | 81–2 | 12/18/91 |
| | | Acute Inhalation Toxicity – Rat | 81–3 | 12/18/91 |
| | | Primary Eye Irritation – Rabbit | 81–4 | 12/18/91 |
| | | Primary Dermal Irritation | 81–5 | 12/18/91 |
| | | Dermal Sensitization | 81–6 | 12/18/91 |

**IV. Attachment III Suspension Report--Explanatory Appendix**

A discussion of the basis for the Notice of Intent to Suspend follows:

*A. Sodium Hydroxide*

On September 30, 1992, EPA issued the Phase 5 Reregistration Eligibility Document Data Call–In Notice imposed pursuant to sections 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing sodium hydroxide used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call–In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Sodium Hydroxide Phase 5 Reregistration Eligibility Document Data Call–In Notice dated September 30, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you dated December 28, 1992, requesting a waiver of data required for the subject pesticide product. Your December 28, 1992, letter requesting a waiver of data requirements for the continued registration/reregistration of the subject pesticide product was not sufficient to support a waiver. The Agency informed you of its decision in a letter dated February 9, 1993, and further required a response from you within 15 days from your receipt of the letter to correct the inadequacies or to choose appropriate options to address the data requirements. To date, you have not responded to the Agency.

Because the Agency has not received an adequate response from you as a sodium hydroxide registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

*B. Sulfur*

On April 16, 1991, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing sulfur to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Sulfur Phase 5 Reregistration Data Requirements Notice dated April 16, 1991, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

**V. Conclusions**

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 29, 1993.

**Michael M. Stahl,**

*Director, Office of Compliance Monitoring.*

[FR Doc. 93–18719 Filed 8–4–93; 8:45 am]

BILLING CODE 6560–50–F

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**[OPP–60047; FRL–4638–4]**

**Intent to Suspend Certain Pesticide Registrations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of issuance of notices of intent to suspend.

**SUMMARY:** This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected

by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

**SUPPLEMENTARY INFORMATION:**

**I. Text of a Notice of Intent to Suspend**

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

**United States Environmental Protection Agency**

**Office of Prevention, Pesticides and Toxic Substances**

Washington, DC 20460

Certified Mail

*Return Receipt Requested*

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____for Failure to Comply with the Section 4 Reregistration Requirements Notice for _____Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix

(Attachment III) to the following address (preferably by certified mail):
Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

**II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected**

The following is a product list for which a letter of notification has been sent:

TABLE A.—PRODUCT LIST

| Registrant Affected | EPA Registration Number | Active Ingredient | Name of Product | Date Issued |
|---|---|---|---|---|
| Union Carbide Chemicals & Plastics Company Inc. | 01035200036 | Paraclox | Piror P–15 Paper Slimicide and Water Treatment | 7/2/93 |
| | 01035200042 | Paraclox | Piror P–05 Paper Slimicide and Water Treatment | 7/2/93 |

**III. Basis for Issuance of Notice of Intent; Requirement List**

The following company failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

| Active Ingredient | Registrant Affected | Requirement Name | Guideline Reference Number | Original Due–Date |
|---|---|---|---|---|
| Paraclox | Union Carbide Chemicals & Plastics Company Inc. | Hydrolysis | 161–1 | 7/24/91 |

**IV. Attachment III Suspension Report––Explanatory Appendix**

A discussion of the basis for the Notice of Intent to Suspend follows:

*Paraclox*

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing paraclox to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for

suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Paraclox Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated July 25, 1990, in which you as a paraclox registrant committed to undertake required testing. The Notice further required that data be submitted by the deadline noted for the subject data requirement on Attachment II. This deadline has passed and to date the Agency has not received adequate data to satisfy this data requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

**V. Conclusions**

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 29, 1993.

**Michael M. Stahl,**

*Director, Office of Compliance Monitoring.*

[FR Doc. 93–18718 Filed 8–4–93; 8:45 am]

BILLING CODE 6560–50–F

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[OPP–55179; FRL–4633–2]

## Notice of Intent to Cancel the Registration of WipeOut Cold Sterilizing Disinfecting Solution

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent to cancel.

**SUMMARY:** This Notice announces the Agency's intent to cancel the registration of the pesticide product WipeOut Cold Sterilizing Disinfecting Solution (EPA Reg. No. 58994–1). This action is based in part on a determination that continued sale, distribution, and use of the product would cause unreasonable adverse effects on the environment. This determination is based upon data and other information showing that this product is not efficacious when used as a sterilant in accordance with its label claims. This Notice describes additional bases for cancellation of this product. As required by section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), this Notice announces that the Agency intends to cancel the registration for this product.

**DATES:** Requests for a hearing by a registrant or other adversely affected parties must be received by the Office of the Hearing Clerk at the address given below on or before September 7, 1993 or within 30 days from receipt of this notice by the registrant, whichever occurs later.

**ADDRESSES:** Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

**FOR FURTHER INFORMATION CONTACT:** By mail: Vivian Prunier, Special Review and Reregistration Division (H–7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, Telephone: 703–308–8034.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

This Notice announces EPA's intent to cancel the registration of the pesticide product WipeOut Cold Sterilizing Disinfecting Solution (WipeOut) (EPA Reg. No. 58994–1). For the reasons set forth below, the Administrator has determined that this product, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment. This determination is based primarily on laboratory data and other information indicating that this product is not efficacious as a sterilant or sporicide and does not meet its label claims for those purposes. Any reference in this Notice to "sterilant" also includes "sporicide"; EPA considers these terms to be synonymous. Additional bases for cancellation of this product are described in this Notice.

*A. Organization of this Notice*

This Notice is divided into 13 units. This unit provides introductory information and describes the legal authority for this action. Unit II discusses the role of pesticides used to control pest microorganisms that pose a threat to human health. Unit III discusses the testing protocols used to test this product and other matters leading to this action. Unit IV presents the results of the Agency's testing and the Agency's assessment of the risk from continued use of this product. Unit V discusses the Agency's benefits assessment of this proposed cancellation. Unit VI presents the Agency's risk/benefit assessment. Unit VII presents additional bases for cancellation. Unit VIII describes the role of the Scientific Advisory Panel and the Secretary of Agriculture relating to this action. Unit IX sets forth the Agency's determination that the product registration must be canceled. Unit X discusses disposition of existing stocks of product. Unit XI outlines the procedures for implementing the actions required by this Notice, as well as the procedures for requesting a hearing. Unit XII identifies the references. Unit XIII gives information on the public docket.

*B. Legal Authority*

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by EPA, pursuant to FIFRA sections 3(a) and 12(a)(1).

A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product may be registered or remain registered only if it meets the statutory standard for registration. Among other things, a pesticide must perform its intended pesticidal function without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of [the] pesticide" (FIFRA section 2(bb)).

The burden of demonstrating that a pesticide product satisfies the statutory criteria for registration is at all times on the proponents of initial or continued registration. Under FIFRA section 6, the Agency may issue a notice of intent to cancel the registration of a pesticide product whenever it appears to the Administrator that the product no longer satisfies the statutory criteria for registration. If appropriate, the Agency may require modifications to the terms and conditions of registration, such as deletion of particular uses or revisions

to labeling, as an alternative to cancellation. If the Notice requires such changes, cancellation may be avoided by making the changes specified in the Notice, if possible. Adversely affected persons may also request a hearing on the cancellation of a specified registration. If they do so in a legally effective manner, the registration will be continued pending a decision at the conclusion of an administrative hearing.

## II. Background

### *A. Uses of WipeOut*

WipeOut has been registered in the U.S. since 1989. The registrant is Health Care Products, Inc., of Mississauga, Ontario, Canada. Meditox, Inc., of Deerfield Beach, Florida, is the U.S. agent for the registrant. The composition of the activated WipeOut product is claimed to include 1.0 percent phenol and 0.3 percent glutaraldehyde as active ingredients. The product label instructs the user to activate the product by combining a premeasured amount of activator, which contains glutaraldehyde, with a premeasured amount of buffer solution that contains phenol and inert ingredients (Ref. 17). WipeOut is a chemical germicide registered for use as a sterilant, tuberculocide, bactericide, and virucide. It is recommended for use in hospitals, dental clinics, laboratories, and nursing homes to sterilize or disinfect surgical instruments. It is also registered for use as a disinfectant on nonporous food preparation equipment or any hard nonporous surface suspected of contamination, and as a sanitizing agent for use on any hard nonporous surface that is not a food-contact surface. The label states that unused activated product is 100 percent efficacious as a sterilant for 45 days after activation.

The WipeOut label directs that, in order to be used as a sterilant, the product must be used undiluted for a contact time of 10 hours. In order to be used as a disinfectant, the label indicates that the product may be diluted 1:1 and must be used for a contact time of at least 10 minutes.

WipeOut has been used primarily on medical or dental equipment that is too delicate to be sterilized by means of ethylene oxide gas, steam, or dry heat. Such equipment includes endoscopes, certain surgical implements, and certain types of dental equipment. The registrant has not submitted production data as required by section 7 of FIFRA, so EPA has no data on which to base an estimate of total annual usage of this product.

### *B. Hazards to the Public from Pest Microorganisms that Pose a Threat to Human Health*

The achievement of infection control was a prerequisite for development of modern dental, medical, and surgical procedures. Prior to the promotion of antiseptic surgery in the late 19th century, hospital infection rates were on the order of 90 percent (Ref. 5). Because of the high risk of infection, surgery was associated with a high rate of mortality. Once infection control practices were established, hospital infection rates dropped dramatically and surgery could be performed more safely.

### *C. Control of Pest Microorganisms that Pose a Threat to Human Health*

1. *Levels of disinfection.* According to Favero and Bond (Ref. 11), infection control experts recognize three levels of efficacy for disinfection processes or chemical antimicrobial agents used on inanimate objects:

a. Sterilization is defined as the destruction of all microbial life, including bacterial spores.

b. Disinfection is defined as the elimination of nearly all recognized pathogenic microorganisms, but not necessarily all microbial forms (e.g., bacterial spores). Disinfection does not ensure overkill and lacks the margin of safety achieved by sterilization. Among chemical disinfecting agents, there is a broad range of activity extending from sterility at one extreme to a minimal reduction in the number of microbial contaminants on the other. The extent of activity depends on factors such as potency of the formulation and the length of contact time. Within this category, there are three sublevels—high, intermediate, and low, as follows:

i. High-level disinfection is a process that is lethal to all but the most resistant forms of microbial life; i.e, some bacterial spores may survive this process. To qualify as a high-level disinfectant, an antimicrobial agent must be shown to be capable of killing spores. The capability of killing bacterial spores is an assurance of the relative power and activity spectrum of the antimicrobial agent. Contact time is the single important variable between sterilization and high-level disinfection. If the contact time is long enough, an antimicrobial agent having sporicidal capability can be used to sterilize an item. According to Favero and Bond, if a sterilizing agent is diluted beyond its ability to kill all spores, it no longer qualifies as a high-level disinfectant.

ii. Intermediate and low-level disinfection is the elimination of less resistant forms of microbial life. Bacterial spores and certain viruses are resistant to intermediate disinfection agents; bacterial spores, tuberculosis bacilli, and certain viruses or fungi may be resistant to low-level disinfection agents.

c. Decontamination reduces microbial contamination so that the treated item is safe to handle, but not necessarily safe to use on a patient.

2. *Level of disinfection required for items used in dental, medical, or surgical diagnosis or treatment.* In 1972, E. H. Spaulding devised a classification scheme for choosing the appropriate level of disinfection for various patient care items or equipment (Ref. 30). The U.S. Department of Health and Human Services Centers for Disease Control and Prevention uses this system in its guidelines (Ref. 13). In Spaulding's classification scheme, instruments and items for patient care are divided into three categories on the basis of the risk of infection involved in the use of these items, as follows:

a. Critical items present a high risk of infection if the item is contaminated with any microorganism, including bacterial spores. Items that enter the vascular system or sterile tissue, such as surgical instruments, dental surgical instruments, implants, cardiac or urinary catheters, and hypodermic needles, are critical items. To avoid the risk of infection, these items must be sterilized.

b. Semi-critical items are objects that contact intact mucous membranes (e.g., the mouth, nose, or rectum) but will not ordinarily penetrate the blood barrier or enter other ordinarily sterile areas of the body. Examples of semi-critical items are dental mirrors and aspirators, respiratory therapy and anaesthesia equipment, endoscopes, and diaphragm-fitting rings. Intact mucous membranes are generally resistant to infection by common bacterial spores, but are susceptible to infection by other organisms such as tuberculosis bacilli and viruses. Accordingly, semi-critical items must be free of all microorganisms, except for bacterial spores. Although sterilization of semi-critical items is desirable, it is not absolutely essential. If sterilization of a semi-critical item is not possible or practical, it is reasonable to use a high-level disinfection process.

c. Non-critical items contact intact skin and include stethoscopes, blood pressure cuffs, bed pans, and linens. Intact skin is an effective barrier to most microorganisms. Accordingly, intermediate or low-level disinfection of non-critical items is sufficient.

3. *Alternatives for achieving appropriate level of disinfection for*

*critical and semi-critical items.* Standards of practice for infection control have been established by experts in the transmission of infectious disease and accepted by the medical/dental community. Examples include the Center for Disease Control and Prevention Guideline for Hospital Environmental Control, 1981 and revised in 1985 (Ref. 13); Association for Practitioners in Infection Control Guideline for Selection and Use of Disinfectants, 1990 (Ref. 29); and Infection Control in the Dental Environment, issued jointly by the Departments of Veterans Affairs and Health and Human Services and the American Dental Association in 1990 (Ref. 15).

All guidelines recommend that instruments or other items used for patient care be thoroughly cleaned before they are sterilized or disinfected. Thorough cleansing can remove contaminating microorganisms and organic matter. Residual organic matter (such as blood, saliva, or feces) not only adds to the microbial load, but interferes with the disinfection process by preventing the antimicrobial agent from reaching the surface of the instrument and by directly reacting with the antimicrobial agent.

Currently accepted standards of practice for infection control recommend use of steam sterilization for critical or semi-critical items wherever practicable. Steam sterilization is inexpensive, reliable, and easy to monitor.

Critical or semi-critical items that are too fragile to withstand steam or dry heat sterilization may be sterilized with ethylene oxide gas. However, ethylene oxide gas requires long processing times and repeated treatment may also damage certain items. If none of these methods is feasible, the items are sterilized with chemical sterilizing agents such as the product discussed in this Notice. According to Favero and Bond, critical or semi-critical items that cannot withstand repeated prolonged immersion in a chemical sterilizing agent, but cannot be sterilized by other methods for the reasons discussed above, may be high-level disinfected (Ref. 11). As explained above, high-level disinfection is accomplished by using a chemical sterilizing agent, at the dilution rate required for achieving sterilization, to treat the item for a shorter period rather than the extended period of time usually required to achieve sterilization.

## III. Regulation of Pesticides Claiming to Control Microorganisms that Pose a Threat to Human Health

### *A. Efficacy Standards for Pesticides Used to Control Pest Microorganisms that Pose a Threat to Human Health*

1. *Efficacy measurements for various methods of sterilization.* The efficacy of heat sterilization (including steam autoclave or dry heat treatments) or ethylene oxide gas systems may be monitored with biological monitoring systems to see whether sterilization has occurred. The standards of practice for infection control recommend monitoring to verify the adequacy of sterilization cycles. A biological monitoring system consists of bacterial spores that are impregnated in paper strips or sealed in glass ampules. These are placed in the sterilization chamber and subjected to sterilization treatment along with the instruments being treated. Following the sterilization treatment cycle, the treated spores are cultured, using procedures specified for the particular biological monitoring system used. If the treated spores do not give rise to viable bacteria, the sterilization treatment is judged to have been effective.

Liquid chemical sterilizing or disinfecting agents cannot be biologically monitored, because no monitoring system suitable for use in a liquid medium exists. Consequently, it is not possible to verify whether sterilization or disinfection actually occurred after treatment with such agents. Systems are available for assessing the concentration of the active ingredient in the chemical sterilizing or disinfecting agent; however, this does not give complete assurance that the product will kill or has killed microorganisms on or in the instruments. Because users cannot use biological monitoring systems to verify the efficacy of the chemical sterilant after a particular use, they must rely on the EPA-approved label and use directions for assurance that the product has worked.

2. *EPA requirements for registering chemical sterilizing or disinfecting products.*—a. *Chemical composition.* Registrants must submit analytical data on five batches (i.e., lots or production runs) to demonstrate that the product can be reliably formulated and that the formulation remains stable from the time the product is formulated until it is used. The data must show that the concentration of each ingredient does not vary beyond the ranges specified by EPA in 40 CFR 158.175 (b)(2) or the certified limits specified in the Confidential Statement of Formula for the pesticide.

b. *Product efficacy.* Registrants who claim that their product kills bacterial spores or claim that the product can be used to sterilize items which are classified as critical or semi-critical items must provide data to demonstrate sporicidal activity in accordance with 40 CFR 158.640 and Agency guidelines. In 1982, EPA issued Product Performance Guidelines, Subdivision G (Ref. 7), which specifies use of the Sporicidal Activity Test developed by the Association of Official Analytical Chemists (AOAC) (Ref. 31) and the Agency's performance requirements for products tested with the AOAC Activity Test. In 1985, EPA issued a guideline (DIS/TSS–9) (Ref. 8) to further clarify product testing requirements, including the need to conduct confirmatory testing of sterilant products by a second independent laboratory. The AOAC Sporicidal Activity Test demonstrates the ability of the pesticide product to kill bacterial spores on contaminated surfaces. EPA specifies that each of three batches of product must be tested against 240 "carriers." The carriers represent two types of surfaces, porcelain penicylinders and silk suture loops, and are contaminated with spores of one of two spore-forming microorganisms: *Bacillus subtilis* ATCC 19659 and *Clostridium sporogenes* ATCC 3584 (i.e., 60 replicates of each carrier/microorganism combination).

c. *Performance requirements.* EPA requires that products for which the ability to sterilize or to kill spores is claimed must kill all spores on all of the 720 carriers in the AOAC Sporicidal Activity Test. No failures are permitted for products claiming the ability to sterilize or kill spores. The results of the AOAC Sporicidal Activity Test must be verified by a separate confirmatory test conducted by a laboratory different from the one performing the testing on the first three batches. The confirmatory test follows the protocol for the AOAC Sporicidal Activity Test, except only 1 batch of product is tested and 30 replicate carriers per surface type and microorganism are used. Although the AOAC Sporicidal Activity Test distinguishes between a "sterilant" and a "sporicide" (the AOAC's performance standard for a "sporicide" is less stringent than for a "sterilant"), EPA does not recognize this distinction. Accordingly, any product for which a sporicidal claim is made must show no failures in the 720-carrier AOAC Sporicidal Activity Test and in the 120-carrier confirmatory test; i.e., it must meet the same performance standard as EPA prescribes for a sterilant. It is EPA's

position that the only products suitable for use as sporicides (and therefore recognized by infection control experts as useful in high-level disinfection procedures) are products which meet the EPA performance standards for sterilants.

3. *AOAC Sporicidal Activity Test Protocol.* The AOAC Sporicidal Activity Test protocol is generally accepted in the scientific community. It was first accepted in 1966 and has been modified several times. The test protocol is designed to simulate in-use conditions. First, it requires that the spores of two microorganisms—*Bacillus subtilis* and *Clostridium sporogenes*—be cultured. The rationale for using these particular spores is discussed below. The spores are then put into a medium for transfer to two types of objects: glazed porcelain cylinders and silk surgical suture loops, collectively referred to as "carriers." The process of placing spores on carriers is called "inoculation." After inoculation, the carriers are dried. Some carriers of each type are tested to see whether the inoculation was successful (i.e., whether the spores on the carrier are capable of growth and have resistance to treatment with hydrochloric acid as specified in the protocol). Other carriers are immersed in the product being tested, where they remain for the contact time specified for the product. Then, they are placed into a solution that neutralizes or halts the product's antimicrobial action. The carriers are then transferred to a medium that permits spore growth and observed for a period of 21 days. Each carrier is placed in a separate vessel containing the growth medium, and each carrier is checked for growth (i.e., a positive reading). Any carrier that does not exhibit growth after 21 days is heat shocked. Heat shock is a process whereby an inoculated carrier in a growth medium is heated to 80 degrees Celsius in a final effort to determine whether any living spores remain. Heat shocked carriers are rechecked for growth after 72 hours. Lack of growth after this stage of testing indicates that the spores on the subject carrier have been killed by the product being tested.

4. *Rationale for selection of test microorganisms.* The two spores used in the AOAC test method are representative of the hardiest and most common sporulating forms of bacteria. Spores are the dormant state of microorganisms, typically bacteria, which exhibit a lack of biosynthetic activity, reduced respiratory activity, and resistance to heat, radiation, and various chemical agents. Spores are the most resistant forms of life. Accordingly, spores are used to determine the efficacy of sterilants; any agent that is capable of killing spores is judged to be capable of killing any other form of microbial life. If microorganisms are not killed, they may contaminate medical or dental environments and instruments. If microorganisms on instruments are not killed and remain viable, they may cause serious infection upon contact with a patient.

a. *Bacillus subtilis* is a representative aerobic spore. Aerobic spores require oxygen to germinate and grow. Aerobic spores that cause disease may be present and may pose risks in the medical/dental environment. Among the most serious infections that can be caused by aerobic spores in humans is anthrax. Additionally, new evidence suggests that otherwise harmless aerobic spores, if allowed to enter the bloodstream (e.g., through the use of improperly sterilized arteriogram equipment or other medical instruments) can trigger infection that may damage the patient's heart valves.

b. The other test spore, *Clostridium sporogenes*, is a representative anaerobic spore. Anaerobic spores germinate and grow only in the absence of oxygen. Anaerobic spores that cause disease may be present and may pose risks in the medical/dental environment. Among the most serious infections that can be caused by anaerobic spores are tetanus and gas gangrene. Recent data have implicated improperly disinfected endoscopes as the source of a case of infection by the anaerobic spore-forming bacterium *Clostridium difficile.* The microorganism was found on a gastrointestinal endoscope that had been treated with a glutaraldehyde-based product (Ref. 12). The hazards posed by these and similar infections are well known.

*B. Agency's Old Verification Program*

Until 1982, EPA conducted its own efficacy tests on antimicrobial products. This testing program included pretesting to confirm data submitted by potential registrants and some post-registration testing to check whether antimicrobial products continued to meet sterilant or tuberculocidal claims. In 1982, this program was phased out because of budget cuts. However, in response to a General Accounting Office (GAO) report of August 1990 criticizing this action (Ref. 14), EPA reinstituted a pre- and post-testing program on antimicrobial products.

*C. Agency's New Program*

EPA is conducting a comprehensive program to test all currently registered antimicrobial products to assure that all such products are efficacious. Under the program, EPA is first testing those products with claims having a potentially higher impact on public health. Under an interagency agreement, the Food and Drug Administration (FDA) is providing the laboratory facilities and personnel for testing samples of sterilant products obtained by the EPA. The sterilant claim is the strongest that can be made for an antimicrobial product, and sterilants are registered for use in situations where complete elimination of microbial life is crucial for health reasons. Therefore, the Agency's testing strategy provides for products with such claims to be tested first.

Under EPA's testing strategy, at the time that the tests described below were conducted, an initial screening test (initial test) consisting of testing 1 lot or batch was performed on the product in accordance with the AOAC Sporicidal Activity Test using 30 of each carrier/spore combination (for a total of 120 carriers). If the product failed the initial test, the more extensive EPA enforcement test (validation test), using 60 of each carrier/spore combination, was done to confirm those results. If the product failed the validation test, it was considered inefficacious.

FDA's Sterility Analysis Research Center in Minneapolis, Minnesota, performed the tests on the product in accordance with the AOAC Sporicidal Activity Test published in the 1990 Edition of the AOAC Official Methods of Analysis. EPA approved one minor deviation from this protocol for the tests conducted in 1991 and 1992. At that time, FDA employed a procedure for extracting wax from the suture loops that had been permitted in previous editions of the AOAC. After 1992, FDA used the wax extraction procedures specified in the 1990 edition of the AOAC Methods of Analysis.

## IV. Findings on WipeOut

*A. Chemical Analysis*

The composition of the activated WipeOut product is claimed to include 1.0 percent phenol and 0.3 percent glutaraldehyde as active ingredients.

A sample of WipeOut obtained on January 2, 1991, from Biotrol, Inc., in Wood Cross, Utah, was identified as WipeOut Batch # 20772 and assigned EPA sample number 8–96382 and was sent to EPA's National Enforcement Investigation Center in Denver, Colorado, for analysis. EPA's analysis showed that product tested on the day of activation contained 0.97 percent phenol and 0.26 percent glutaraldehyde. When the activated product was reanalyzed 45 days after activation, the

glutaraldehyde concentration was found to be unchanged. EPA found that the composition of the product was within acceptable limits (Ref. 25).

A product sample obtained on September 5, 1991, from Meditox, Inc., in Deerfield Beach, Florida, was identified as WipeOut Lot # 1E26/Activator 1 E27. The product was assigned EPA sample number "09059115880302B Fazal Haq," sent to EPA's Analytical Chemistry Laboratory in Beltsville, Maryland, and analyzed on the day it was activated. The glutaraldehyde and phenol levels in the product were found to be within acceptable limits (Ref. 28).

Samples of two lots (WipeOut lot numbers 2009SBR5743 and 2009SBR5747) were obtained on February 11, 1992, from Meditox, Inc., in Deerfield Beach, Florida, and identified as EPA sample numbers 021192–2823–0101 NDR 2–11–92 and 021192–2823–0102 NDR 211–92. EPA analysis of these samples showed that the levels of glutaraldehyde in the product samples, 0.35 percent, were higher than specified in the Confidential Statement of Formula for the product (0.30 percent). The composition of these two lots of marketed product does not comply with the requirements of 40 CFR 158.175 (Refs. 10, 26, and 27).

*B. Efficacy Testing*

The product label for WipeOut claims that undiluted, unused product will have 100 percent efficacy for 45 days after activation. WipeOut was tested for EPA by FDA in accordance with the testing strategy described above.

A WipeOut product sample obtained on January 2, 1991, from Biotrol, Inc., in Wood Cross, Utah, was identified as WipeOut Batch # 20772 and assigned EPA sample number 8–96381 and was sent to FDA's Sterility Analysis Research Center in Minneapolis, Minnesota. Undiluted product was tested 45 days after activation for 10 hours at 20 °C. The data were delivered to EPA and reviewed by EPA microbiologists. The results are shown in Table 1 below (Refs. 4 and 32).

Table 1.—WipeOut Batch No. 20772 (EPA Sample # 8–9631)

| Organism | Carrier | Number of Carriers Showing Growth |
|---|---|---|
| *C. sporogenes* | penicylinders | 30/30 |
| | suture loops | 29/30 |

Table 1.—WipeOut Batch No. 20772 (EPA Sample # 8–9631)—Continued

| Organism | Carrier | Number of Carriers Showing Growth |
|---|---|---|
| *B. subtilis* | penicylinders | 22/30 |
| | suture loops | 22/30 |

A sample of WipeOut obtained on September 5, 1991, from Biotrol International of Louisville, Colorado, was identified as WipeOut Lot # 1E26/Activator 1E27. FDA performed the test on undiluted product on the day it was activated for 10 hours at 20 °C. The data were delivered to EPA and reviewed by EPA microbiologists. The results are shown in Table 2 below (Refs. 1, 3, and 24).

Table 2.—WipeOut Lot No. 1E26/Activator 1E27

| Organism | Carrier | Number of Carriers Showing Growth |
|---|---|---|
| *C. sporogenes* | penicylinders | 15/60 |
| | suture loops | 14/60 |
| *B. subtilis* | penicylinders | 22/60 |
| | suture loops | 39/60 |

Samples of WipeOut were obtained on February 11, 1992, from Meditox, Inc., of Deerfield Beach, Florida, and identified as WipeOut lot numbers 2009SBR5743 and 2009SBR5747. FDA performed the testing on undiluted product on the day that the product was activated for 10 hours at 20 °C. Results are in Table 3 below (Refs. 1 and 2).

Table 3.—WipeOut Lot Numbers 2009SBR5743 and 2009SBR5747

| Organism | Carrier | Number of Carriers Showing Growth |
|---|---|---|
| WipeOut Lot No. 2009SBR5743 | | |
| *C. sporogenes* | penicylinders | 47/60 |
| | suture loops | 51/60 |
| *B. subtilis* | penicylinders | 53/60 |
| | suture loops | 60/60 |
| WipeOut Lot No. 2009SBR5747 | | |
| *C. sporogenes* | penicylinders | 53/60 |
| | suture loops | 60/60 |
| *B. subtilis* | penicylinders | 60/60 |
| | suture loops | 59/60 |

*C. Summary*

The label for WipeOut claims that the unused undiluted product can achieve sterilization with 10 hours of contact time for 45 days after activation. EPA has examined the data, including all documentation regarding the handling of the WipeOut product samples, the test procedures used, and the raw data generated during the studies. The Agency finds that the tests were conducted in conformance with the AOAC Sporicidal Activity Test Method, and that the tests demonstrate that WipeOut does not kill all spores when the product is used as directed. EPA concludes that WipeOut does not possess the sterilizing properties claimed on the product label.

*D. Risk Assessment*

The data given above in this unit indicate that WipeOut does not work as a sterilant. Because of its inefficacy, WipeOut poses considerable risk to human health by virtue of its registration and the possibility of its continued sale, distribution, and use.

1. *Data demonstrate that WipeOut does not kill all test microorganisms.* Based on testing results discussed above in this unit, the Agency has found that WipeOut does not work as a sterilant as claimed on its label. Under test conditions, the product failed to eliminate all spores when tested at its label-specified concentration and contact time. As such, there is no level of assurance that WipeOut accomplishes its intended purposes as a sterilant under actual use conditions. Therefore, the product is considered inefficacious.

2. *EPA requires sterilant products to kill all test microorganisms, due to the critical role of such products in reducing the risk of infection.* WipeOut is recommended for use at the following sites: hospitals, dental clinics, nursing homes, and laboratories. The need for reliable and successful sterilization at these sites is beyond dispute, since the use of improperly sterilized dental, medical, or surgical instruments and supplies poses risk of infection to the patient and user. Infection control is so essential a medical function that hospitals generally include on their staffs personnel specifically trained in sterilization and infection control. Moreover, considerable attention and resources are spent in the dental field educating and equipping dentists and other dental personnel to assure effective infection control and sterilization. Accordingly, EPA has designed requirements for testing these substances that reflect their critical use and nature.

As discussed earlier, chemical sterilants (such as WipeOut) are registered for sterilization of certain medical/dental instruments, including those which are used in a manner in which microorganisms can be introduced easily into a patient's body. Therefore, a chemical sterilant's ability to kill all forms of microbial life, including all spores, is critical. A chemical sterilant must work as claimed. Otherwise, considerable risk of infection exists from improperly treated instruments.

3. *Very serious consequences can arise from use of an ineffective sporicide or sterilant.* Patient-to-patient cross-contamination may occur when germs are introduced into the medical/dental environment or onto or into instruments following their use in certain medical or dental procedures. Numerous forms of microorganisms present this potential. Depending upon the particular microorganism and the susceptibility of a subsequent patient exposed to the microorganism, the consequences of cross-contamination from patient-to-patient may be deadly.

The risk of any infection, including procedure-related, cross-contamination-caused infection, is higher for patients with impaired immune systems (such as AIDS or cancer patients). For example, even if, in testing or actual use, a chemical sterilant or disinfectant successfully killed the extremely fragile HIV or AIDS virus, it might not be able to kill other more durable microorganisms (including spores). If incomplete microorganism kill occurs, there is a high possibility that an immuno-suppressed patient exposed to an improperly sterilized instrument may contract an opportunistic infection, which may be fatal.

4. *Doctors, dentists, and other users must rely on sterilants being effective; there is no margin of error.* Infection control practitioners must be able to rely on product sterilization claims; this is crucial in all applications regardless of the method of sterilization used. There is no room for any margin of error in sterilization for any reason, including use of improper procedures or use of an ineffective product. When sterilization is necessary, it is not subject to compromise.

With chemical sterilants, the only assurance of proper product performance that the user has is that the product was properly manufactured, properly labeled, and used according to instructions. Infection control practitioners rarely conduct their own tests of a chemical sterilant product to see if it works and never test a product to see if it was properly formulated. Unlike other methods of sterilization, there are no practical means of verifying whether a liquid chemical sterilant has achieved complete kill. Infection control practitioners rarely, if ever, employ multiple means of sterilization as backup.

Because microorganisms are invisible to the naked eye, infection control practitioners cannot tell by visual inspection whether a chemical sterilant has failed to sterilize a medical instrument. Residues of patient matter such as blood, mucus, or feces would not be evident if the instrument had been properly cleaned prior to the sterilization process. However, if contaminants are present on an instrument, they may be invisible to the naked eye.

In the ordinary course of medical practice, ineffective sterilization cannot be detected for the reasons described above, and could result in the use of a contaminated medical instrument by a medical professional. The use of a contaminated instrument poses a risk of infection that would not exist if a properly sterilized instrument were used instead.

5. *Additional implications of sterilant failures.* As discussed above in this unit, it is reported that some users of sterilant products may also employ products such as WipeOut as high-level disinfectants. Those who recognize products as high-level disinfectants do so only after the products demonstrate efficacy as sterilants as evidenced by the presence of such a claim on the product label.

Therefore, if a product fails to perform as a sterilant in accordance with its label claims, users may no longer rely on the product to be a high-level disinfectant, either. Any assurance that existed that the product will work as a high-level disinfectant no longer is present. Consequently, any use of WipeOut as a high-level disinfectant gives rise to a risk of unreasonable adverse effects.

6. *The use of WipeOut poses considerable risk.* In reaching the conclusion that WipeOut poses considerable risk to human health, the Agency has examined the following factors: (1) The data showing lack of efficacy of WipeOut when used as a sterilant in accordance with its label claims and directions; (2) the importance of infection control; (3) the risks of improper sterilization; (4) the recognized need of users to rely on label claims to achieve sterilization; and (5) the implications of the failing data for those users who rely on sterilant label claims to achieve high-level disinfection. Based on these factors, the Agency concludes that registration and possible continued sale, distribution, and use of WipeOut poses considerable risk to human health.

## V. Benefits Assessment

Under FIFRA, the Agency must examine a product's benefits as well as its risks before registering it or initiating a cancellation action. The Agency has concluded that WipeOut has no benefits.

### *A. WipeOut is an Inefficacious Product and Has No Benefits*

The sole purpose of a sterilant is to kill all forms of microbial life, including all spores, with which it comes into contact. If a sterilant fails to kill spores, the hardiest form of microbial life, it has failed to perform properly. A chemical sterilant product that does not perform properly when used according to its label directions is inefficacious.

As previously discussed, WipeOut is inefficacious in performing its claimed sterilization function. Other implications of that failure affect the reported use of this product as a high-level disinfectant. If a product does not serve its intended purpose, it does not provide any benefits from its use. In these cases, since the product is inefficacious, there is no reason supporting its continued sale, distribution, and use.

### *B. There Are Available and Efficacious Substitutes for WipeOut*

Other chemical sterilants are currently registered for the same uses as WipeOut and are available to users. The Agency has data indicating that several products recently passed the same types of efficacy tests that WipeOut failed. The costs of these alternative products or methods are comparable to the amounts formerly paid for WipeOut.

Even if the cost of these alternatives were higher, a responsible health care professional would not risk using an ineffective sterilant. Use of an ineffective sterilant would pose considerable health risks to both patients and users, as well as the risk of malpractice liability on account of improper sterilization or high-level disinfection and resulting infection. A responsible health care professional would likely avoid such unnecessary risks by using an effective sterilant.

Users of WipeOut have, in fact, switched to alternative sterilant products or alternative sterilization or high-level disinfection procedures. On May 18, 1993, EPA issued a Stop Sale, Use and Removal Order (SSURO) against the WipeOut product registration. Because WipeOut was

removed from the market, users immediately had to use alternative products or procedures to perform the functions for which WipeOut could no longer be used. The former users of this product continue to use alternative products or procedures today. However, the SSURO is not a permanent resolution of the status of WipeOut. Only cancellation can permanently remove WipeOut from the market.

## VI. Risk/Benefit Assessment

Under FIFRA, to cancel a pesticide due to unreasonable adverse effects, the Administrator must determine that there is an "unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits" of the pesticide's use. Before taking a regulatory action, the Administrator must also consider measures short of cancellation. For the reasons described in this Notice, the Administrator has determined that WipeOut no longer meets the standard for registration and must be canceled.

As discussed in this document, the risks to human health from continued registration and use of WipeOut are great, given its lack of efficacy and the risk of infection arising from its use. Because the product does not work as a sterilant, it has no benefits. Therefore, the risks of continued registration and use of WipeOut exceed the benefits. The SSURO discussed above is not a permanent resolution of the status of WipeOut. If for any reason, the SSURO should be lifted before the product registration is canceled, the risks from further use of WipeOut would recur. Accordingly, cancellation provides the only permanent mechanism by which the unreasonable adverse effects posed by the use of WipeOut can be permanently addressed.

In making its determination to propose cancellation, the Agency has examined whether any measures exist short of cancellation and has concluded that none exist. Making WipeOut a restricted use pesticide would not address the product's lack of efficacy. The Agency cannot prescribe a new contact time for WipeOut, as it is aware of no data which demonstrate that any contact is adequate to ensure efficacy. Likewise, the Agency lacks adequate data on which to base a recommendation that the ingredients for this product be altered to achieve efficacy.

The Agency has determined that amending the registration and label to delete all sporicidal and sterilant claims will not be sufficient. As discussed in Unit VII below, EPA has additional evidence that WipeOut does not meet the standard for registration. Deletion of the sporicidal and sterilant claim will not address these problems.

## VII. Additional Bases for Cancellation of WipeOut

### *A. Failure to Submit Materials as Required by FIFRA*

1. Data and other information reportable under section 6(a)(2) of FIFRA were not submitted as required (Refs. 6, 18, 19, and 21). A recall of product due to efficacy failures or improper manufacture or formulation is evidence of unreasonable adverse effects and is reportable under FIFRA section 6(a)(2).

a. The registrant failed to notify the Agency of the recall of WipeOut batch 20772. The registrant has not provided test data or other information on WipeOut batch 20772 showing a problem with the affected batch.

b. The registrant failed to notify the Agency of the recall of WipeOut Lot No. 2648–2. The registrant has not provided test data or other information showing a problem with the affected batch.

2. FIFRA section 6(b) provides for cancellation of a product if "material required to be submitted does not comply with the provisions of [the Act]." Materials submitted to support the registration of WipeOut do not comply with the Act, because submitted studies are not supported by raw data. Maintenance of raw data is required in 40 CFR 169.2(k). However, the registrant was unable to produce raw data for the studies listed below (Ref. 6). In particular, the registrant was unable to produce raw data to show the identity, composition, and sample history of the test material for the studies identified below. The following studies were submitted to support the sterilization claims:

Study Title: WipeOut - Sterilization Claim (Lot C)
EPA MRID No.: 411351–10
Study Submission Date: June 29, 1989

Study Title: Sterilization Claim *Clostridium sporogenes* ATCC 3584 (Lot B)
EPA MRID No.: 411351–09
Study Submission Date: June 29, 1989

Study Title: WipeOut - Sterilization Against *Bacillus subtilis* ATCC 19659
EPA MRID No.: 411351–24
Study Submission Date: June 29, 1989

Study Title: WipeOut - Sterilization Against *Clostrium* (sic) *Sporogen* (sic) ATCC 3584
EPA MRID No.: 411351–25
Study Submission Date: June 29, 1989

3. Materials submitted do not comply with the Act because of the failure to submit production data as required in FIFRA section 7 (Ref. 6)

### *B. Labeling of WipeOut Does Not Comply With the Provisions of FIFRA*

1. There are numerous instances where the registrant failed to make label changes specified by the Agency to comply with FIFRA. EPA's approval on June 19, 1990, of a proposed WipeOut label was contingent upon removal or alteration of certain statements or claims. Labels of products found in the channels of trade contained the following deviations from the approved label (Ref. 16):

a. The phrase "May be reused as a high level disinfecting solution and will maintain 100 percent efficacy for 45 days" was to be deleted. It was not.

b. The term "Non-irritating" was to be deleted. It was not.

c. The term "Safe for Scopes" was to be deleted. It was not.

d. Under directions for use, the registrant was to change the claim for the "cidal" effect on *M. bovis* "in 15 minutes at 68 degrees" to "20 minutes at 20 degrees." The label says, "Disinfection was achieved in 15 minutes at 68 degrees against *M. tuberculosis* and *M. bovis*."

e. Under disinfection use directions, the phrase "WipeOut activated solution may be diluted 1:1 with water" was to be deleted. It was not.

f. Under directions of use, the word "unused" was to be inserted as shown in the following sentence, "After activation, the unused WipeOut solution will maintain 100 percent efficacy for 45 days." The word "unused" was not inserted as required.

g. Under the sanitization section, the word "all" was to be deleted from the statement "For use on all hard non-porous surfaces . . . ." The word "all" was not deleted.

2. The labeling of WipeOut does not comply with the Act because of failure to display the EPA Registration Number or EPA Establishment Number (Ref. 6), 40 CFR 156.10(a)(iv) and (v).

3. The labeling of WipeOut does not comply with the Act because of false and misleading claims constituting "misbranding" under FIFRA section 12(a)(1)(E), regarding the product's ability to sterilize or kill spores (Ref. 6), as follows:

a. "Cold Sterilizing Solution"

b. "Sporicidal"

c. "After activation, unused, the WipeOut solution will maintain 100 percent efficacy for 45 days"

d. "Using test organisms, cidal effect was achieved in 10 minutes against . . . *Bacillus subtilis* . . . *Cl. sporogenes* . . ."

a. "Sterilization: . . . . Immerse completely for a minimum of 10 hours to destroy resistant pathogenic spores including *Cl. sporogenes* and *B. subtilis*."

**VIII. Role of the Scientific Advisory Panel and the Secretary of Agriculture**

Sections 6(b) and 25(d) of FIFRA provide certain opportunities for the Secretary of the Department of Agriculture (USDA) and the FIFRA Science Advisory Panel (SAP) to review and comment upon a draft Notice on Intent to Cancel, and in the case of USDA, an analysis of the impact of the proposed action on the agricultural economy. These reviews may be waived, and when they are, the Notice may be published without delay.

On May 18, 1993, EPA asked the SAP and the Secretary of USDA to waive their rights to review and comment on this Notice (Refs. 9 and 23). On May 20, 1993, the SAP notified EPA that it waived its review of this action (Ref. 22). On May 24, 1993, R. D. Plowman, Acting Assistant Secretary, Science and Education of USDA, notified EPA that the Secretary would waive review of this action (Ref. 20). Because the USDA and SAP have waived their review of this action, the Agency is not delaying issuance of this Notice.

**IX. Agency Determination That Cancellation of WipeOut Is Necessary**

EPA has determined that WipeOut fails to meet the standards for registration under FIFRA for the reasons listed below and that the registration of this product must be canceled.

1. WipeOut is not effective as a sterilant. EPA has concluded that use of this product to sterilize items classified as critical or semi-critical items poses an unreasonable risk to the public. EPA has also concluded that use of this product in a high-level disinfection process also poses an unreasonable risk.

2. The WipeOut registrant failed to submit data and information as required under section 6(a)(2) of FIFRA. Failure to submit these data as required under section 6(a)(2) of FIFRA is a failure to comply with the provisions of FIFRA.

3. The registrant failed to maintain raw data for studies that support the sterilant claims made for WipeOut. This failure to maintain raw data is a failure to comply with the provisions of FIFRA.

4. WipeOut is misbranded in that the label bears false and misleading claims, claims and use directions which the Agency specifically disallowed, and the label fails to display the EPA Registration Number or EPA Establishment Number as required under FIFRA. The failure to label the product in accordance with the terms of registration of the product under FIFRA is a failure to comply with the provisions of FIFRA.

5. The registrant failed to file production data as required under section 7 of FIFRA. The failure to submit this information is a failure to comply with the provisions of FIFRA.

**X. Disposition of Existing Stocks**

For purposes of this Notice, existing stocks are defined as those stocks of WipeOut which were in the United States and were packaged and labeled for shipment prior to the effective date of the cancellation of the registration of the product. The Agency has determined that no further sale, distribution, or use of existing stocks of WipeOut will be permitted after the effective date of cancellation of the registration of the product, except for distribution for the purposes of disposal. Owners of existing stocks of WipeOut may at any time dispose of the product in accordance with applicable local, State, and Federal regulations. The determination is based on the finding that WipeOut is not efficacious as a sterilant and that use of the product as a sterilant or in high-level disinfection procedures poses an unacceptable risk to the public. As explained in Unit V, a SSURO was issued against the WipeOut registration on May 18, 1993. The order remains in effect until it is vacated or lifted by the Agency. The Agency will amend the SSURO to permit the distribution or sale of canceled product if such distribution or sale is for the purpose of disposal only.

**XI. Procedural Matters**

This Notice announces EPA's intent to cancel the registration of WipeOut Cold Sterilizing Disinfecting Solution (EPA Reg. No. 58994–1) and any product with this registration number that is supplementally distributed. This action is taken pursuant to authority in section 6(b) of FIFRA. Under FIFRA section 6(b)(1), registrants and other adversely affected parties may request a hearing on the cancellation actions that this Notice initiates. Any hearing concerning cancellation of registration for any affected pesticide product will be held in accordance with FIFRA section 6(d). Unless a hearing is properly requested in accordance with the provisions of this Notice, the registration will be canceled. This unit of the Notice explains how such persons may request a hearing in accordance with the procedures specified in this Notice, and the consequences of requesting or failing to request a hearing.

*A. Procedures for Requesting a Hearing*

To contest the regulatory action initiated by this Notice, registrants or other adversely affected persons must request a hearing within 30 days of the registrant's receipt of this Notice, or within 30 days from the date of publication of this Notice in the **Federal Register**, whichever occurs later. All registrants and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings (40 CFR part 164). These procedures require that all requests must identify the specific registration by Registration Number and state the basis for objecting to the cancellation of the product for which a hearing is requested, and must be received by the Hearing Clerk within the applicable 30–day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific to each basis of cancellation of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR part 164). All hearings will be held in Washington, DC.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation of a specific product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30–day period, registration of that product will be canceled automatically.

*B. Separation of Functions*

EPA's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are

designated as the judicial staff of EPA in any administrative hearing on this Notice of Intent to Cancel: the Office of Administrative Law Judge, the Environmental Appeals Board, the Deputy Administrator and the members of the staff in the immediate office of the Deputy Administrator, and the Administrator and the members of staff in the immediate office of the Administrator. The following offices are designated as the trial staff in any proceeding which may arise under this Notice: the Office of General Counsel, the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances and his/her immediate staff, the Office of Pesticide Programs, and the Office of Compliance Monitoring. None of the persons designated as the judicial staff may have any *ex parte* communications with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

## XII. References


1. Analyst worksheet on FDA sample # 92–382–557 (EPA # 0211922823-0101 2-11-92 Neil D. Richmond), signed by Carrie Hoffman and Judy Heisick and checked by A. Duran on May 3, 1993.

2. Analyst worksheet on FDA sample # 92–382–558 (EPA # 0211922823-0102 2-11-92 Neil D. Richmond), signed by Carrie Hoffman and Judy Heisick and checked by A. Duran on May 3, 1993.

3. Analyst worksheet for sample identified as "09059115880302A Fazal Haq" and assigned FDA sample number 91–696–908, signed by James Cholensky, Jr. on April 2, 1992, and by A. Duran on April 20, 1992.

4. Biological Report of Analysis on EPA sample # 8–96381, signed by James Danielson on December 6, 1991.

5. Block, S. "Historical Review" in: Disinfection, Sterilization and Preservation, 4th ed., S. Block, ed. Lea and Febiger, Philadelphia, 1991, pp. 3-17.

6. Complaint and Notice of Opportunity for a Hearing - Docket no. FIFRA-93–H–02F dated May 18, 1993, (In the matter of Health Care Products, Inc., Through its Agent, Meditox, Inc.).

7. EPA, Product Performance Guidelines, Subdivision G, 1982.

8. EPA Guideline DIS/TSS–0, Efficacy Data Requirements for Sterilizers, July 11, 1985.

9. EPA Memorandum dated May 18, 1993, from Douglas D. Campt to Bruce Jaeger, Science Advisory Panel Coordinator.

10. Establishment Inspection report signed by Neil D. Richmond on February 11, 1992, describing collection of 021192–2823–0101 NDR 2–11–92 and 021192–2823–0102 NDR 2–11–92 and Investigation Summaries signed by Neil D. Richmond on February 11, 1992, describing the collection of each sample.

11. Favero , M. S. and W. W. Bond, "Chemical Disinfection of Medical and Surgical Materials." *Disinfection, Sterilization, and Preservation*, 4th ed., Seymour Block, ed., Lea Febiger, Philadelphia, PA, 1991, pp. 617–641.

12. G. J. Gorse and A. L. Messner, "Infection Control Practices in Gastrointestinal Endoscopy in the United States: A National Survey." *Infection Control and Hospital Epidemiology*, 12: 289296, 1991.

13. Garner, J. S. and M. S. Favero. Guidelines for handwashing and hospital environmental control. Atlanta, Centers for Disease Control and Prevention, *HHS Publication No. 99–1117*, 1985.

14. General Accounting Office, *Disinfectants: Does EPA Know They Work?*, August 6, 1990.

15. Infection Control in the Dental Environment issued jointly by the Departments of Veterans Affairs and Health and Human Services and the American Dental Association, 1990.

16. Inspection report describing collection of WipeOut Lot 1-E26 on September 5, 1991, signed by Fazal Haq on January 6, 1992.

17. Label for WipeOut Cold Sterilizing Disinfecting Solution, accepted by EPA on November 27, 1990.

18. Letter from Health Care Products to Michael Wood, EPA, dated February 10, 1992.

19. Letter from Health Care Products to Michael Wood, dated March 16, 1993.

20. Letter dated May 24, 1993, from R. D. Plowman, Acting Assistant Secretary for Science and Education, USDA, to Douglas D. Campt.

21. Letter from Daniel Barolo, EPA to Health Care Products, dated April 23, 1993.

22. Letter dated May 20, 1993, from E. McConnell, Chairman of the SAP, to Douglas D. Campt.

23. Letter dated May 18, 1993, from Douglas D. Campt to Nancy Ragsdale, NAPIAP, USDA.

24. Report of biological analysis of FDA sample 91–656–908, signed by Anthony Duran and dated May 15, 1992.

25. Report of Analysis dated December 30, 1991 signed by Dean Hill on WipeOut batch 20772, EPA sample # 8-96382.

26. Report of Analysis of 021192–2823–0101 conducted by J. Negrun and signed by Harvey Hundley on August 14, 1992.

27. Report of Analysis of 021192–2823–0102 conducted by J. Negrun and signed by Harvey Hundley on August 14, 1992.

28. Report of Analysis, sample number "09059115880302B Fazal Haq," signed by Michael Wood and dated January 2, 1992.

29. Rutala, W. A., "Association for Practitioners in Infection Control Guideline for Selection and Use of Disinfectants," *Am. J. Infection Control*, 18: 99–117, 1990.

30. Spaulding, E. H., "Chemicals disinfection and antisepsis in the hospital." *J. Hospital Research* 9: 5-31, 1972.

31. "Sporicidal Activity of Disinfectants," in: Association of Official Analytical Chemists, *AOAC Official Methods of Analysis*, 15th Ed., 1990, pp. 141–142.

32. Standard Data Summary Form on EPA sample # 8–96381, assigned FDA sample # 91–543–090; signed by James Danielson on April 12, 1991.


## XIII. Public Docket

The public docket containing the above references is located at 1921 Jefferson Davis Highway, Room 1128, Arlington, Virginia. The references can be viewed from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: July 29, 1993.

**Victor J. Kimm,**

*Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*

[FR Doc. 93–18720 Filed 8–4–93; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 28, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased form the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235

NEOB, Washington, DC 20503, (202) 395–4814.

*OMB Number:* 3060–0003.

*Title:* Application Form 610 For Amateur Operator/Primary Station License.

*Form Number:* FCC Form 610.

*Action:* Revision of a currently approved collection.

*Respondents:* Individuals or households.

*Frequency of Response:* On occasion reporting requirement.

*Estimated Annual Burden:* 93,000 responses; .166 hours average burden per response; 15,438 hours total annual burden.

*Needs and Uses:* FCC rules require that applicants file FCC Form 610 to apply for a new, renewal or modified licenses. This form is required by the Communications Act of 1934, as amended. International Treaties and FCC rules—47 CFR 97.17, 97.19, 97.511 and 97.519. The form was revised to allow for changes mandated by PR Docket No. 92.154. Commission personnel will use the data to determine eligibility for radio station authorization and to issue a radio station/operator license. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary*

[FR Doc. 93–18677 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

## Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 29, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

*OMB Number:* 3060–0435.

*Title:* Section 80.361, Frequencies for narrow-band direct-printing (NB–DP) and data transmission.

*Action:* Extension of a currently approved collection.

*Respondents:* Individuals or households, state or local governments, nonprofit institutions, and businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion reporting requirement.

*Estimated Annual Burden:* 2 responses; 2 hours average burden per response; 4 hours total annual burden.

*Needs and Uses:* The reporting requirement contained in Section 80.361 is necessary to require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB–DP) frequencies. Applicants for new or additional NB–DP frequencies are required to show the schedule of service of each currently licensed or proposed series of NB–DP frequencies and to show a need for additional frequencies based on at least a 40% usage of existing NB–DP frequencies. The information is used by FCC staff to determine whether an application for a NB–DP frequency should be granted. If the collection of this information was not conducted, the FCC would have no information available regarding the use of NB–DP frequencies by public coast stations, and, therefore would be handicapped in determining whether the frequencies were being hoarded and not put into use by public coast stations.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–18678 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

## Kansas; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely effected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The townships of Tecumseh, Soldier, Menoken, Silver Lake, Rossville, and Dover located in Shawnee County for Individual Assistance.

The counties of Lincoln and Marshall for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18685 Filed 8–4–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

## Kansas: Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

**EFFECTIVE DATE:** July 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The counties of Osborne and Wabaunsee for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18684 Filed 8–4–93; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

[Docket No. 93–16]

### Deppe Linie GMBH & Co. v. Arrigo Mining & Milling Corp. and T.A. Smith & Assoc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Deppe Linie GmbH & Co. ("Complainant") against Arrigo Mining & Milling Corporation and T.A. Smith & Associates ("Respondents") was served July 30, 1993. Complainant alleges that Respondents engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay freight and other lawful tariff charges, after shipping misdescribed, environmentally dangerous cargo from Houston to Rotterdam on a freight collect basis to a consignee and notify party (both of whom refused to take delivery of the cargo or pay freight charges on the grounds that they never ordered the shipment), and abandoning the cargo, thereby causing considerable expense to Complainant, including the expense of having the cargo destroyed in accordance with European environmental regulations.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the Presiding Officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 1, 1994, and the final decision of the Commission shall be issued by November 29, 1994.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–18675 Filed 8–4–93; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL TRADE COMMISSION

[Dkt. C–3446]

### Griffin Bacal, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York advertising agency from misrepresenting any performance characteristic of any toy it promotes. In addition, in any demonstrations or tests used in the advertising for the toys, the respondent is prohibited from knowingly misrepresenting that the demonstration or test proves or confirms any material feature of the toy.

**DATES:** Complaint and Order issued July 2, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:** Rosemary Rosso or Toby Levin, FTC/S–4002, 6th St. & Pa. Ave. NW., Washington, DC 20580. (202) 326–2174 or 326–3156.

**SUPPLEMENTARY INFORMATION:** On Thursday, April 29, 1993, there was published in the **Federal Register**, 58 FR 25989, a proposed consent agreement with analysis In the Matter of Griffin Bacal, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

**Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–18744 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C–3447]

### Hasbro, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Rhode Island-based toy corporation from misrepresenting any performance characteristic of any toy it manufactures or promotes. In addition, in any demonstrations or tests used in the packaging or advertising for the toys, the respondent is prohibited from falsely representing that the demonstration or test proves or confirms any material feature of the toy.

**DATES:** Complaint and Order issued July 2, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:** Rosemary Rosso or Toby Levin, FTC/S–4002, 6th St. & PA. Ave., NW., Washington DC 20580. (202) 326–2174 or 326–3156.

**SUPPLEMENTARY INFORMATION:** On Thursday, April 29, 1993, there was published in the **Federal Register**, 58 FR 25992, a proposed consent agreement with analysis In the Matter of Hasbro, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

**Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–18741 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt C–3444]

### The Right Start, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based mail-order company, and its president, from making false and unsubstantiated advertising claims regarding the "Air Purifier," a small electric air filter, and the "Travel Tray," a foam board tray that is used to hold children's snacks and toys when they are riding in an automobile. The respondents are prohibited from representing that the use of any air filtering device can reduce the risk, alleviate, prevent, or cure respiratory problems, unless the representations are substantiated by competent and reliable scientific evidence. In addition, the company is prohibited from representing that any product it sells has been approved or endorsed, unless the endorsement is supported by an objective test conducted by qualified persons.

**DATES:** Complaint and Order issued June 30, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:**

C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, IL. 60603. (312) 353–8156.

**SUPPLEMENTARY INFORMATION:** On Tuesday, April 20, 1993, there was published in the **Federal Register**, 58 FR 21305, a proposed consent agreement with analysis In the Matter of The Right Start, Inc., et. al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

**Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–18742 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C–3446]

## United Weight Control Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, tests, effectiveness compared to any other diet program, weight loss, or weight loss maintenance; and requires certain disclosures in conjunction with safety and weight loss maintenance claims.

**DATES:** Complaint and Order issued July 2, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:**

Michael J. Bloom, New York Regional Office, Federal Trade Commission, 150 William Street, suite 1300, New York, New York 10038, (212) 264–1207.

**SUPPLEMENTARY INFORMATION:** On Friday, April 9, 1993, there was published in the **Federal Register**, 58 FR 18406, a proposed consent agreement with analysis In the Matter of United Weight Control Corp., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

**Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–18743 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga and Owen are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C–3445]

## YKK (U.S.A.) Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based manufacturer and seller of zippers from requesting, suggesting, or advocating that any competitor: Raise, fix or stabilize prices or price levels; cease providing free equipment or other discounts; cease providing any services or products or engage in any other pricing action. In addition, the respondent is prohibited from entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, plan or program with any competitor to fix, raise, establish, maintain or stabilize prices or service levels.

**DATES:** Complaint and Order issued July 1, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:**

Richard Dagen, FTC/S–2627, Washington, DC 20580. (202) 326–2662.

**SUPPLEMENTARY INFORMATION:** On Wednesday, April 14, 1993, there was published in the **Federal Register**, 58 FR 19454, a proposed consent agreement with analysis In the Matter of YKK (U.S.A.) Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

**Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–18740 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga, Owen, Starek, and Yao are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

## GENERAL SERVICES ADMINISTRATION

### Proposed Border Station, Imperial County, CA; Final Environmental Impact Statement

The United States General Services Administration (GSA) hereby gives notice that a Final Environmental Impact Statement (FEIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) and the Regulations issued by the Council on Environmental Quality, November 29, 1978, for a proposed new Port of Entry (POE) located in Imperial County, California, approximately six miles east of the city of Calexico.

The purpose of this action is to provide a throughly modern and highly efficient border crossing facility in the Calexico/Imperial area, in order to accommodate growth in transboundary traffic and better meet the needs of the Federal Inspection Service agencies, the commercial transporters, and the traveling public between the United States and Mexico. The action is taken to relieve major congestion at the existing downtown Calexico facility, which will continue to serve as an automobile and pedestrian port of entry, and to significantly expand the capacity for processing commercial traffic.

Written comments on the alternatives, impacts and mitigation measures should be sent no later than Tuesday, August 31 to the GSA EIS contractor, Environmental Science Associates, Inc. at 4221 Wilshire Boulevard, suite 480, Los Angeles, California 90010–3512.

For further information, or if you would like to request a copy of the Final EIS, please contact Mr. Alan Campbell, U.S. General Services Administration, Public Buildings Service, Planning Staff (9PL), 525 Market Street, San Francisco, CA 94105. Telephone number (415) 744–5252.

Dated: July 29, 1993.

**Donald R. Jayne,**

*Acting Regional Administrator (9A).*

[FR Doc. 93–18688 Filed 8–4–93; 8:45 am]

BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement Number 355]

### Cooperative Agreement for Conducting Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatality Assessment and Control Evaluation Model Availability of Funds for Fiscal Year 1993

#### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements to build state capacity for conducting traumatic occupational fatality surveillance, investigation, and intervention activities through the National Institute for Occupational Safety and Health's (NIOSH) Fatality Assessment and Control Evaluation (FACE) model. The cooperative agreements will significantly strengthen the occupational public health infrastructure by integrating resources for occupational safety and health research and public health prevention programs at the state and local levels. The goal of the project is for each state to measurably reduce traumatic occupational fatalities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION).

#### Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247(b)) of the Public Health Service Act, as amended.

#### Eligible Applicants

Eligible applicants are state Departments of Health, Departments of Labor, Departments of Industry, and similar organizations located within any state or territory of the United States, or consortia of smaller states arranged in a logical or regional cluster. Ineligible applicants include those agencies that conduct occupational fatality investigations and, in doing so, are legally responsible for the determination of compliance with occupational safety and health standards. Awards will be limited to those organizations which can exercise public health authority for intervention into occupational safety and health problems. Only one application per state will be accepted under this cooperative agreement. Stronger consideration will be given to those states or territories submitting applications demonstrating prevention coordination among other relevant state agencies. Those states currently participating in the project are ineligible for consideration.

#### Availability of Funds

Approximately $180,000 will be available in FY 1993 to fund up to three awards. It is expected that the average award will be $60,000 ranging from $45,000 to $65,000. It is expected that the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period from 3 to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

In selected cases, when consistent with recipient needs and in the best interest of a particular project, CDC/NIOSH may assign Federal staff to provide technical assistance to the recipient which requests such an assignment. Payment of salary would be the responsibility of CDC/NIOSH and would not be subtracted from the award.

#### Purpose

The purpose of this cooperative agreement is to expand the FACE project into more states so that capabilities for the prevention of traumatic occupational fatalities can be more widely developed across the nation. A three-year pilot study with three states demonstrated that occupational fatality surveillance and investigative capability can be successfully implemented at the state level. By stimulating phased development and growth at the state level, this program will permit the states following the FACE model to structure their surveillance, investigation, and intervention activities to more efficiently capture input from other investigating state agencies and departments.

Additionally, states will be encouraged to target on-site investigations of specific occupational fatalities based on specific state priority

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areas to further enhance research and intervention efforts. The specific objectives for this cooperative agreement are as follows:

1. Identify and report basic epidemiologic data on all traumatic occupational fatalities occurring within the state.
2. Conduct on-site investigations of selected traumatic occupational fatalities using the NIOSH FACE investigative model.
3. Identify potential risk factors for selected types of traumatic occupational fatalities which will be useful for targeting intervention strategies and prioritizing research efforts.
4. Develop and disseminate preventive recommendations to reduce the risk of fatal occupational injuries within the state.
5. Develop and implement intervention strategies and projects for reducing state incidence of traumatic occupational injuries and fatalities.
6. Develop and implement the statistical capability to show that the state's intervention strategies have measurably reduced traumatic occupational fatalities.

**Program Requirements**

The cooperative agreement recipient shall be responsible for conducting the activities under A., below, and CDC/NIOSH shall be responsible for conducting the activities under B., below.

*A. Recipient Activities*

1. Develop a comprehensive, multiple-source, state-level surveillance system for prompt identification and electronic reporting of epidemiologic data on all traumatic occupational fatalities occurring in the state.

2. Conduct in-depth, on-site investigations of occupational fatalities using the following selected injury categories: (a) Fall-related injuries, (b) electrocutions, (c) exposure to confined spaces, (d) machine-related injuries, and (e) injuries in which workers have been struck by machines, equipment, etc. States may also request to add or substitute on-site investigations of fatal events that are of a type which are a higher state priority.

3. Develop and submit to CDC/NIOSH a summary report of each on-site fatality investigation which describes the fatal incident and includes recommendations for prevention using a report format provided by CDC/NIOSH. The final report should be submitted to CDC/NIOSH in the specified format and (state-provided) word processing software.

4. Conduct epidemiologic analysis of fatal incident circumstances to assist in developing recommendations for intervention and prevention.

5. Disseminate the results of FACE investigations, epidemiologic analysis and other information collected under this program to employers, workers, and other appropriate constituents within the state.

6. Encourage the implementation of interventions to reduce traumatic occupational fatalities and utilize a variety of accepted methods to evaluate the effectiveness of interventions.

7. Attend and participate in selected training activities and the annual FACE Scientific Conference, all to be held in Morgantown, West Virginia.

8. Prepare an annual summary report which describes the activities and progress made by the state toward meeting the CDC/NIOSH objectives for the state FACE program.

*B. CDC/NIOSH Activities*

1. Provide technical assistance in establishing the state-level surveillance system.

2. Provide training for conducting on-site investigations and provide on-site technical assistance to state personnel conducting fatality investigations, as appropriate.

3. Provide funds to purchase one IBM compatible, personal computer (minimum 386-level), printer, telecommunications equipment, and surveillance (EPI INFO) software.

4. Provide the methods for, and technical assistance in, identifying and evaluating effective intervention strategies.

5. Convene an annual FACE Scientific Conference in Morgantown, West Virginia.

6. Prepare and disseminate an annual report which summarizes the state FACE program to all participating states.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

1. Relevance of the proposal to the scope and objectives outlined in the program announcement. (10%)
2. Overall quality of the state proposal for identifying, recording, and investigating traumatic occupational fatalities within the state using the NIOSH FACE model. (25%)
3. Completeness of the state's plan for implementing and evaluating interventions to reduce traumatic occupational fatalities. (The estimated number of fatality investigations and the proportion these fatalities represent of the total fatalities expected, and the intervention methods planned must be specified for the budget period.) (25%)
4. Qualifications and time commitment of the proposed staff, type and quality of facilities and equipment, and administrative support available for the state FACE program. (15%)
5. Demonstration of the need for developing and implementing state-level occupational surveillance, field investigation and intervention programs based on identification of high risk industries and occupations within the state. (15%)
6. Demonstration of collaborative relationships among various relevant state or territorial agencies in addressing the problem of traumatic occupational fatality surveillance, investigation and intervention. (10%)
7. The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. (Not Scored)

**Executive Order 12372 Review**

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the application deadline date. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number (CFDA)**

The Catalog of Federal Domestic Assistance (CFDA) for this program is 93.283.

**Other Requirements**

*Paperwork Reduction Act*

Projects funded through a cooperative agreement that involve the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The program announcement and application kit were sent to all eligible applicants in June 1993. The application submission deadline for this announcement is August 18, 1993.

**Where To Obtain Additional Information**

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 355. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, room 300, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, telephone (404) 842–6630. Programmatic technical assistance may be obtained from Louis D. Smith, State FACE Project Officer, Trauma Investigations Section, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, Mailstop 180P, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, telephone (304) 284–5849, or Timothy J. Pizatella, Chief, Surveillance and Field Investigations Branch, NIOSH/Division of Safety. Please refer to Announcement Number 355 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 29, 1993.

**Richard A. Lemen,**

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 93–18730 Filed 8–4–93; 8:45 am]

BILLING CODE 4160–19–P

## Food and Drug Administration

### Request for Nominations for Members on Public Advisory Committees; National Mammography Quality Assurance Advisory Committee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting nominations for not fewer than 13, or more than 19 members to serve on the National Mammography Quality Assurance Advisory Committee in FDA's Center for Devices and Radiological Health. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule announcing the establishment of this committee.

FDA has special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

**DATES:** Nominations should be received on or before September 7, 1993.

**ADDRESSES:** All nominations for membership, except for the consumer-nominated member, should be sent to Melvyn Greberman (address below).

All nominations for the consumer-nominated member should be sent to Phyllis Weller (address below).

**FOR FURTHER INFORMATION CONTACT:** Regarding all nominations except for the consumer-nominated member: Melvyn Greberman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1901 Chapman Ave., Rockville, MD 20857, 301–443–2436.

Regarding all nominations for the consumer-nominated member: Phyllis Weller, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

**SUPPLEMENTARY INFORMATION:** FDA is requesting nominations for not fewer than 13, or more than 19 members to serve on the committee.

**Functions**

The function of the committee is to advise the Food and Drug Administration on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; and (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities.

The committee will also determine whether there exists a shortage of mammography facilities in rural and health professional shortage areas and the effects of personnel or other requirements on access to the services of such facilities in such areas, whether there will exist a sufficient number of medical physicists after October 1, 1999, and the costs and benefits of compliance with these requirements.

**Criteria for Members**

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography. At least four of the individuals nominated for membership should be from among national breast cancer or consumer health organizations with expertise in mammography and at least two must be practicing physicians who provide mammography services. The Committee may include one technically qualified member, selected by the Commissioner or his designee, who is identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise.

The Senate Committee Report on the Mammography Quality Standards Act dated October 1, 1992, (S. R. 102–448) contains specific recommendations for organizations that should be considered for representation on the committee. The Senate Committee has urged the nomination of members from among the following groups to the advisory committee: the Breast Cancer Coalition, Susan G. Komen Foundation, American Cancer Society, American College of Radiology, Association of State and Territorial Health Officials, Conference

of Radiation Control Program Directors, American Society of Radiologic Technologists, Public Citizen, American Public Health Association, and the American College of Obstetricians and Gynecologists.

Members shall be invited to serve for overlapping 4-year terms except for the first members appointed: of the first 19 members appointed, 6 shall serve for a term of 2 years, 6 for a term of 3 years, and 7 for a term of 4 years, as designated at the time of appointment. If fewer than 19 members are initially appointed, fewer members may be appointed for terms of these lengths, pro rata. Terms of more than 2 years are contingent upon the renewal of the Committee by appropriate congressional action prior to the Committee's expiration. A member may serve after the expiration of the member's term until a successor has taken office.

**Nomination Procedures**

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates for the agency's selection. Consumer candidates, like all other candidates for membership on the committee, should possess appropriate qualifications to understand and contribute to the committee's work.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 28, 1993.

**Jane E. Henney,**

*Deputy Commissioner for Operations.*

[FR Doc. 93-18631 Filed 8-4-93; 8:45 am]

BILLING CODE 4160-01-F

## Office of Inspector General

**Program Exclusions; March 1993 through June 1993**

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the period March through June 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party.

| Subject city, state | Effective date |
|---|---|
| **Program-Related Convictions** | |
| A & A LIVERY, INC., METHUEN, MA | 04/06/93 |
| ABBAS, MAHMOUD F., ELLICOTT CITY, MD | 05/27/93 |
| ADVANCED HOME HEALTH CARE, PITTSTON, PA | 05/27/93 |
| AKHTAR, SALEEM, OZONE PARK, NY | 05/09/93 |
| ANDREWS, LAURICE BARTON, DEFUNIAK SPRINGS, FL | 04/12/93 |
| ARCHIBEQUE, MAX E., DENVER, CO | 05/16/93 |
| ARNOLD, JOAN, YONKERS, NY | 07/11/93 |
| ARNOLD, NOEL EMORY, TEXARKANA, TX | 06/02/93 |
| ASTIAZARAN, HERMAN JR., SAN DIEGO, CA | 04/12/93 |
| ATKINS, GEORGE M., III, W SPRINGFIELD, MA | 04/06/93 |
| AZIZ, SAYEED, WILMINGTON, DE | 04/12/93 |
| BAHADUE, LORI STAMPLER, MIAMI, FL | 06/01/93 |
| BAHADUE, GEORGE P., MIAMI, FL | 06/01/93 |
| BAUER, THOMAS G., LINCOLN, NE | 05/16/93 |
| BERGMANN, RONDA, BAYSIDE, NY | 07/11/93 |
| BERNSTEIN, BRUCE, OYSTER BAY COVE, NY | 07/11/93 |
| BLOOR, ELIZABETH G., RACINE, WI | 07/08/93 |
| BUKHARI, AHMED, BROOKLYN, NY | 05/09/93 |
| C E SMITH DRUG STORE, W SPRINGFIELD, MA | 04/06/93 |
| CALVO, CARLOS ALBERTO, HERMOSA BEACH, CA | 07/01/93 |
| CARTER, L. J., LITTLE ROCK, AR | 04/12/93 |
| CARTER, MAYLENE, LITTLE ROCK, AR | 04/12/93 |
| CLARK, BILLIE JEAN, TULSA, OK | 05/13/93 |
| COFFMAN, ROBERT BEN, NEW ORLEANS, LA | 05/13/93 |
| COHEN, JACK J., BROOKLYN, NY | 05/27/93 |
| COOPER, FREDDY JOHN, LUBBOCK, TX | 07/05/93 |
| COUKOS, LUKE J., MIDLOTHIAN, VA | 05/11/93 |
| CREATIVE CARE, INC., OYSTER BAY COVE, NY | 07/11/93 |
| DANIEL WALLACH, M.D., P.A., OWINGS MILLS, MD | 05/11/93 |
| DELGRIPPO, GERALD A., LOCK HAVEN, PA | 04/12/93 |
| DONOVAN, VERONICA, HUGHESTOWN, PA | 05/27/93 |
| DUNLAP, MICHAEL J., VISTA, CA | 06/02/93 |
| EDWARDS, QUINTON, DECATUR, GA | 07/04/93 |

| Subject city, state | Effective date |
|---|---|
| EDWARDS, ARTHUR J., ASHTON, MD | 05/27/93 |
| FAROOQUI, MOHAMMED, JAMAICA, NY | 05/27/93 |
| FIEDLER, KURT R., GLEN BURNIE, MD | 05/11/93 |
| FLEMING, JAMES M., HOUSTON, TX | 06/02/93 |
| FORMAN, ROBERT, WOODBURY, NY | 07/11/93 |
| FORSYTHE, MARY ELIZABETH, DALLAS, TX | 04/12/93 |
| FREEDENBERG, GERALD, OWINGS MILLS, MD | 05/27/93 |
| GEMME, HOLLY, STATEN ISLAND, NY | 07/11/93 |
| GILL, JAMES N., SIGNAL MTN, TN | 07/04/93 |
| GLADSTONE, SCOTT V., LAS VEGAS, NV | 04/12/93 |
| GREENBERG, PAULA, BROOKLYN, NY | 05/09/93 |
| GREER, JOHN JR., LEBANON, TN | 04/12/93 |
| GREGORY, TERI L., ROCKWELL CITY, IA | 05/30/93 |
| GUICE, JACQUELINE L., EL CERRITO, CA | 07/01/93 |
| HENDERSON, JOSEPH M., WASHINGTON, DC | 07/14/93 |
| HENRY, JAMES, MURFREESBORO, TN | 07/04/93 |
| HENRY, TOM, LEBANON, TN | 07/04/93 |
| HERRERA, ANIBAL P., MIDDLETOWN, NY | 07/11/93 |
| HILL, WANDA JOY, SPARTA, GA | 05/11/93 |
| HINES, STEPHEN, ELLENWOOD, GA | 04/12/93 |
| HOGANSON, DAVID L., VERMILLION, SD | 07/14/93 |
| HOLLAND, WILLIS, ATLANTA, GA | 05/11/93 |
| HUGGAN, GERALD F., METHUEN, MA | 04/06/93 |
| HUNT, MICHAEL D., GAITHERSBURG, MD | 07/08/93 |
| HUNTER, JANE M., WATERFORD, NY | 07/11/93 |
| INMAN, BRADLEY D., NEW GALILEE, PA | 05/11/93 |
| INMAN MEDICAL REHAB SUPPLY INC., NEW CASTLE, PA | 05/27/93 |
| J'S HOMECARE MEDICAL SERVICES, LITTLE ROCK, AR | 04/12/93 |
| JAME, DAMION, FEDERAL WAY, WA | 05/16/93 |
| JASKIEWICZ, RICHARD F., TUCSON, AZ | 04/12/93 |
| JAVID, MOHAMMED A., JERSEY CITY, NJ | 07/11/93 |
| KENNEDY, DONALD R., GRAND BLANC, MI | 04/12/93 |
| KILLINGSWORTH, CLAUDIA CAROL, CORINTH, TX | 04/12/93 |
| KIMBALL, ELEANOR A., ARLINGTON, VA | 07/14/93 |
| KLEIN, PAUL G., WAYNE, NY | 04/06/93 |
| KOLBOVSKY, FELIX, DULUTH, MN | 05/16/93 |
| MARK S. COLBURN, D.D.S., P.C., WATERLOO, IA | 07/08/93 |
| MARTIN, RODNEY, LEVITTOWN, PA | 05/27/93 |
| MARTIN, DONNA, LEVITTOWN, PA | 05/27/93 |
| MARTINEZ, RENE, MIAMI, FL | 05/11/93 |
| MCCOLLUM, LINDA A., RONKONKOMA, NY | 07/11/93 |
| MCINTOSH RUTMAN, SUSAN ELAINE, SAN DIEGO, CA | 04/12/93 |
| MELTZER, HAROLD S., PITTSFORD, NY | 05/27/93 |
| METWALLI, MOHAMED, PITTSBURGH, PA | 04/12/93 |
| MIDDLETON, WILLIAM F., GAITHERSBURG, MD | 05/27/93 |
| MILLER, DAN, SPARTA, TN | 07/04/93 |
| MILLS, RONALD J., GAITHERSBURG, MD | 07/14/93 |
| MOSS, BRIAN, GAITHERSBURG, MD | 07/14/93 |
| MURTUZA, ATIYA, WEST BLOOMFIELD, MI | 04/12/93 |
| NELSON, MARK J., YONKERS, NY | 07/11/93 |
| PERVEZ, MUJAHID, BROOKVILLE, NY | 04/06/93 |
| PINANO, WILFREDO, CHULA VISTA, CA | 05/16/93 |
| PLYMALE, BILLIE J., FORT SMITH, AR | 06/02/93 |
| POIRIER, JACQUELINE, AUBURN, ME | 07/14/93 |
| PRIOLO, VINCENT, WELLINGTON, FL | 05/09/93 |
| RABIE, FOUAD M., EL DORADO, AR | 05/13/93 |
| REED, DAVID E., MARRERO, LA | 05/13/93 |
| REYES DRUGS, LTD., BAYSIDE, NY | 07/11/93 |
| ROBERTSON, WILLIAM C., FENTON, MI | 07/08/93 |
| RPH CONSULTING, INC., DALLAS, TX | 04/12/93 |
| RUBIN, WARREN A., CAMDEN, NJ | 05/27/93 |
| RUBIO, GASTON, MIAMI, FL | 07/04/93 |
| RUPERT, SANDRA, OSWEGO, NY | 05/27/93 |
| SCHERL, ROBERT, BAYSIDE, NY | 07/11/93 |
| SEIGEL, SHELDON G., BROOKLYN, NY | 04/06/93 |
| SEIGEL, OTTO J., BROOKLYN, NY | 04/06/93 |
| SIEGEL, BERTON, YUMA, AZ | 04/12/93 |
| SILBERSPITZ, ARTHUR, NORTH WOODMERE, NY | 05/09/93 |
| SILVERMAN, IRVING, BRIDGETON, NJ | 05/27/93 |
| SINGER, JEFFREY, LONG BEACH, NY | 05/27/93 |
| SOKOL, ABRAHAM, SCARSDALE, NY | 07/11/93 |
| SPARKS, JOHN E., GREELEY, CO | 06/02/93 |
| SPIERER, FREDRIK ROBERT, HENDERSON, NV | 04/12/93 |
| STACHER, ERIC D., WAYNESBURG, PA | 04/12/93 |

| Subject city, state | Effective date |
|---|---|
| STEWART, JOHN R., HOLLADAY, UT | 04/12/93 |
| STONER, ALFRED W. JR., GAITHERSBURG, MD | 07/14/93 |
| TAGULAO, CORAZON, SAN DIEGO, CA | 07/01/93 |
| THATCHER, REMEDIOS, SAN DIEGO, CA | 07/01/93 |
| THAUNG, PHONE BA, DARNESTOWN, MD | 05/27/93 |
| TRAUTMANN, FLOYD D., SPARTA, WI | 05/30/93 |
| TUTOR, JESSE BORRELL, MERIDIAN, MS | 05/11/93 |
| VIZCAY, SARA, TAMPA, FL | 04/12/93 |
| WARDEN, LARRY D., SHAKOPEE, MN | 07/09/93 |
| WASCHKO, GEORGE M., HAZELTON, PA | 07/08/93 |
| WAX, SETH MARTIN, MERRICK, NY | 05/09/93 |
| WHITNEY, ROBERT C., FT LAUDERDALE, FL | 06/02/93 |
| WOODLEY, JOHN H., SHERIDAN, OR | 05/02/93 |
| YAKSCOE, JAMES, LANCASTER, PA | 07/06/93 |
| YOUNG, WILLIE E., PHILADELPHIA, PA | 07/14/93 |
| **PATIENT ABUSE/NEGLECT CONVICTIONS** | |
| ADAMS, TOMMIE DELL, ALEXANDRIA, LA | 07/05/93 |
| BEST, MARIE, OSSINING, NY | 04/06/93 |
| BURTON, JERROD M., TALLAHASSEE, FL | 04/12/93 |
| CAIN, RICO, BROOKHAVEN, MS | 04/12/93 |
| CAIN, CYNTHIA, NEW ROADS, LA | 05/13/93 |
| CARTER, PAMELA, DETROIT, MI | 05/13/93 |
| CHAVEZ, YOLANDA MEDINA, DAYTONA BEACH, FL | 07/04/93 |
| CUSHIONBERRY, VERONICA, NEW ROADS, LA | 05/13/93 |
| DESISSO, RALPH, BRONX, NY | 05/27/93 |
| DURMAN, CATHY ANN, MANTECA, CA | 04/12/93 |
| FLORES, PEDRO LEON, WHEAT RIDGE, CO | 07/14/93 |
| FLOWERS, ESSIE, DETROIT, MI | 05/30/93 |
| FORERO, HUMBERTO J., WHITE PLAINS, NY | 07/11/93 |
| GRIFFIN, SHEILA, SENECA FALLS, NY | 05/09/93 |
| HESS, MILTON W., SUN VALLEY, CA | 04/12/93 |
| HILLIARD, SILAS, BALTIMORE, MD | 05/27/93 |
| HUBBARD, JAMES L., BATON ROUGE, LA | 07/05/93 |
| JANOSIK, JOHN J., PORT ORCHARD, WA | 06/02/93 |
| JOHNSON, ETHEYN, DETROIT, MI | 07/08/93 |
| JOHNSON, SHERMAN B., OGDEN, UT | 04/12/93 |
| KORTE, THERESE ANN, PALMER, IA | 05/30/93 |
| MABON, GAYLA S., DENVER, CO | 07/14/93 |
| MACK, DOLORES E., LITTLETON, CO | 04/12/93 |
| MARTIN, DANIEL, DETROIT, MI | 07/08/93 |
| NEAL, VEORIA J., NATCHITOCHES, LA | 07/05/93 |
| OGUTU, MILLICENT A., CLAYMONT, DE | 07/08/93 |
| PARIGROS, JOHN, WAUSEON, OH | 07/08/93 |
| POWELL, EMMA, FLINT, MI | 04/12/93 |
| PRUITT, ALBERT LEE, TENNESSEE COLONY, TX | 07/05/93 |
| RAHMATI, BEHNAM, LAGUNA HILLS, CA | 04/12/93 |
| RASHAD, KHALEL J., BUFFALO, NY | 05/27/93 |
| RUSSELL, ELAINE, MIDDLETON, DE | 07/08/93 |
| SADLER, KATHERINE, CONWAY, AR | 07/05/93 |
| SCHOSSOW, JODI L., POCAHONTAS, IA | 06/30/93 |
| SINGLETARY, MITCHELL SETH, BALTIMORE, MD | 05/27/93 |
| STEELE, FREDERICK, STARKE, FL | 04/12/93 |
| STEWART, ERIC, VACHERIE, LA | 07/05/93 |
| STUCKY, BETTY, JACKSON, MS | 04/12/93 |
| SUTTON, MARION, SANFORD, MI | 07/08/93 |
| VALLE, ERNEST, ROUND ROCK, TX | 07/05/93 |
| VAUGHN, MICHAEL, WESSON, MS | 04/12/93 |
| VEASEY, FRANKLIN T., BEAR, DE | 05/27/93 |
| WALTERMANN, HUGH E., PHOENIX, AZ | 04/12/93 |
| WILLIAMS, ANN, ROCHESTER, NY | 05/27/93 |
| WILSON, JAMES J., MT PLEASANT, IA | 07/08/93 |
| **CONVICTION FOR HEALTH CARE FRAUD** | |
| COLE, ROSEMARY A., CHINA, ME | 04/06/93 |
| HOWELLS, ROBERT C., LOCKPORT, NY | 05/09/93 |
| JACKSON, NELCY B., TUCSON, AZ | 04/12/93 |
| LAROUE, DAWN M., WEST WARWICK, RI | 06/02/93 |
| LONG, IDA I., HILLIARD, FL | 07/04/93 |
| MICHAUD, DEBORAH L., JAY, ME | 05/16/93 |
| MORIN, SHARON, BANGOR, ME | 04/06/93 |

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|---|---|
| PACK, CARL DAVID, ASHLAND, KY | 07/09/93 |
| RENICK, JOHN T., PANAMA CITY, FL | 06/01/93 |
| RENICK, JANE LEE WILLS, PANAMA CITY, FL | 06/01/93 |
| **CONTROLLED SUBSTANCE CONVICTIONS** | |
| CLARK, FRANK, BUCHANAN, MI | 07/09/93 |
| DIAS, P KITSHEN KALYAN, ROSLYN, NY | 07/11/93 |
| DICKSON, DANIEL CLARK, NASHVILLE, TN | 06/02/93 |
| EMERSON, WILLIAM KENNETH, KINGSPORT, TN | 04/12/93 |
| ESPER, ROGER A., ERIE, PA | 05/11/93 |
| FOSTER, WARREN JEROME, MOBILE, AL | 04/12/93 |
| GOLLE, RAYMOND M., PITTSBURGH, PA | 04/12/93 |
| HEBEKA, GEORGE, BALTIMORE, MD | 07/09/93 |
| JOHNSON, CECIL W. JR., PHILADELPHIA, PA | 05/27/93 |
| LANGFORD, EDWARD A., LORETTO, PA | 05/27/93 |
| LIPTON, JAMES SPENCER, TYNDALL, FL | 06/01/93 |
| MARLOW, ROGER A., DU QUOIN, IL | 04/12/93 |
| NOONEY, JAY CHRISTOPHER, YANKTON, SD | 06/02/93 |
| RAD, BEN, FRESNO, CA | 04/12/93 |
| SARMIENTO, REMEDIOS MORALES R., COLUMBIA, SC | 05/11/93 |
| STEIN, DANIEL, PHILADELPHIA, PA | 05/27/93 |
| **LICENSE REVOCATION/SUSPENSION** | |
| BOWEN, JAMES D., PORTLAND, OR | 06/30/93 |
| BRADBARD, STEVEN L., POTOMAC, MD | 07/14/93 |
| DAVENPORT, ANTHONY J. JR., STAMFORD, CT | 04/06/93 |
| FALK, WILLY, PROVIDENCE, RI | 06/02/93 |
| LARSON, LINDA, GLADSTONE, MI | 05/13/93 |
| LOCICERO, JOHN MICHAEL, SALAMANCA, NY | 07/11/93 |
| MILLER, RICHARD F., WILLIAMSVILLE, NY | 04/06/93 |
| MORTON, CHARLES F. JR., BALTIMORE, MD | 04/12/93 |
| OLOWOSUKO, EDMUNDS, BROOKLYN, NY | 05/27/93 |
| POGLINCO, JOHN, PELHAM MANOR, NY | 07/11/93 |
| POPESCU, PATRICK W., PUTNAM, CT | 06/02/93 |
| RAMASESHU, MADHUGIRI, WEST ROXBURY, MA | 05/16/93 |
| ROWAN, EILEEN F., GILBERTSVILLE, PA | 07/06/93 |
| SAFRAN, PERRY, ENFIELD, CT | 07/14/93 |
| SMITH, JOSEPH H., BETHESDA, MD | 05/16/93 |
| WHITE, SANDRA E., BALTIMORE, MD | 04/12/93 |
| WIESMAN, ALBERT, ROCKVILLE, MD | 04/12/93 |
| **ENTITIES OWNED/CONTROLLED BY CONVICTED** | |
| ALAMO CHIROPRACTIC CENTER, LINCOLN, NE | 07/14/93 |
| ARGUS MEDICAL SUPPLIES, LEBANON, TN | 07/04/93 |
| EL DORADO WOMEN'S CLINIC, P. A., EL DORADO, AR | 05/13/93 |
| EXTENDED CARE LTD., TUCSON, AZ | 05/06/93 |
| GERIATRICS LTD., TUCSON, AZ | 05/06/93 |
| HIS MAJESTY'S CARE, OTTER LAKE, MI | 04/12/93 |
| LONG BEACH AUDIOLOGICAL, LONG BEACH, NY | 05/27/93 |
| **DEFAULT ON HEAL LOAN** | |
| ABLE, ANTOINNE, SOUTHFIELD, MI | 05/23/93 |
| ANDERS, JEFF P., TIERRA VERDE, FL | 07/14/93 |
| ANDERSON, DENISE, DETROIT, MI | 05/23/93 |
| ANDERSON, GWENDOLYN, PHILADELPHIA, PA | 07/16/93 |
| ARISHIN, MICHAEL W., LOS GATOS, CA | 06/12/93 |
| ASHDOWN, THOMAS P., WARREN, OH | 06/09/93 |
| AZAPIRA, MOHAMMAD H., CHICAGO, IL | 05/23/93 |
| BAMMER, PHILLIP L., LOUISVILLE, CO | 06/26/93 |
| BATES, LEO C., WILBERFORCE, OH | 06/09/93 |
| BECKER, DONNA R., GLENDALE CA | 05/12/93 |
| BENNETT, ELIZABETH C., TEANECK, NJ | 07/21/93 |
| BENSON, FRED JR., SILVER SPRING, MD | 06/06/93 |
| BERK, RICHARD I., ANN ARBOR, MI | 05/23/93 |
| BETHEA-OWENS, CARROLL R., IRVING, TX | 06/12/93 |
| BLAKEMAN, D. NIKIMA L., WALTHAM, MA | 07/24/93 |
| BRADFORD, JOYCE D., SOUTHFIELD, MI | 07/15/93 |
| BROADUS, REGINALD, FORT WORTH, TX | 05/23/93 |
| BROOKS, MICHENA, JERSEY CITY, NJ | 05/12/93 |

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|---|---|
| BROWN, DARREN W., DORAVILLE, GA | 07/14/93 |
| BROWN, HARRY E., KANSAS CITY, MO | 07/18/93 |
| BROWN, LORIN J., ALAHO, OR | 07/11/93 |
| BRUNSON, GREGORY H., DEL MAR, CA | 07/11/93 |
| BUNDRICK, DOYLE D., EDMOND, OK | 05/23/93 |
| BURGESS, DEBORAH, SALISBURY, MD | 06/06/93 |
| CAMPANALE, PAUL R., JACKSONVILLE, FL | 06/11/93 |
| CARLSON, JAMES E., ROCKLIN, CA | 06/12/93 |
| CATHCART, RICHARD A., BARNEGAT, NJ | 05/19/93 |
| CHESTANG, LEO A., CLEVELAND, OH | 06/09/93 |
| CHRISTIANSON, ROBBIN K., CHERRY VALLEY, CA | 06/12/93 |
| CHRISTOPOULOS, STEVE, ST PETERSBURG, FL | 06/11/93 |
| COLBY, SUSAN E., FRISCO, CO | 05/26/93 |
| COLEMAN, LARRY K., LOS ANGELES, CA | 06/12/93 |
| COLLINS, WILLIAM S., ATLANTA, GA D05/21/93. | |
| COMER, JULIA R., DECATUR, GA | 05/21/93 |
| CONERLY, REX A., GREENBELT, MD | 06/06/93 |
| CUMMINS, DAVID F., GAITHERSBURG, MD | 07/18/93 |
| DANCZAK, MICHAEL E., POTTSTOWN, PA | 05/21/93 |
| DARNELL, JOHN E., MONROE, GA | 07/14/93 |
| DAVIS, HELEN N., NASHVILLE, TN | 06/12/93 |
| DAY, DONALD, LOUISVILLE, CO | 06/09/93 |
| DIEHL, JAMES D., CLEARWATER, FL | 07/15/93 |
| DISANTO, VINSON M., PHILADELPHIA, PA | 05/21/93 |
| DONAVON, GREGORY, PORTLAND, OR | 05/26/93 |
| DREWECK, DANIEL NORMAN, BOWLING GREEN, KY | 05/21/93 |
| DUCK, EVANDER, ST PETERSBURG, FL | 06/11/93 |
| DUGGER, LISA, KANSAS CITY, MO | 06/09/93 |
| DURRANT, ANN M., NEWBERG, OR | 05/26/93 |
| ECHOFF, JUNE C., HOUSTON, TX | 06/12/93 |
| ESSEY, ROBERT, LOS ANGELES, CA | 05/26/93 |
| FALOWSKI, FRANCES, FT LAUDERDALE, FL | 06/11/93 |
| FINKE, JANICE L., SAN LEANDRO, CA | 05/26/93 |
| FISCHRE, ROBERT L., III, EAST LANSING, MI | 07/19/93 |
| FRAZIER, KATHALYN G., PITTSBURGH, PA | 07/18/93 |
| FUNDERBURK, WILLIAM, SOMERVILLE, SC | 05/21/93 |
| FURGASON, MARGARET ANN, POWAY, CA | 05/26/93 |
| GLOWASKY, ALBERT V., DARIEN, CT | 06/12/93 |
| GOFORTH, JAMES, JACKSONVILLE, FL | 06/11/93 |
| GREEN, SYNTHIA E., OAKLAND, CA | 06/12/93 |
| GRELLA, CAMILLE, NAPERVILLE, IL | 05/23/93 |
| GUERIN, GERARD G., HAMMOND, LA | 05/23/93 |
| HADACHEK-COBURN, SARAH L., WELCHES, OR | 05/26/93 |
| HALL, PAMELA A., FT LAUDERDALE, FL | 06/06/93 |
| HALLEY, JAMES E. JR., PORT RICHEY, FL | 06/11/93 |
| HAMPTON, RODNEY, GIBBSTOWN, NJ | 05/19/93 |
| HANSEN, KENNETH A., ABILENE, KS | 05/26/93 |
| HARRIS, MICHAEL, UPPER MARLBORO, MD | 06/06/93 |
| HARRIS, ARTHUR WOODLAND HILLS, CA | 05/26/93 |
| HAYGOOD, REGINA J., BROOKLYN, NY | 07/21/93 |
| HEDGECORTH, JULIE ANNE, ALBION, MI | 07/18/93 |
| HEMINGWAY-MAFFEO, LINDA M., SAN RAFAEL, CA | 06/12/93 |
| HERRINGTON, TOMMY L., PASADENA, TX | 05/23/93 |
| HORNE, PATRICIA A., PHILADELPHIA, PA | 05/21/93 |
| HOSLER, JOHN R., HOLLISTER, CA | 07/11/93 |
| HOWARD, DANIEL L. JR., MILFORD, OH | 06/09/93 |
| HOWARD, WILLARD, DAYTON, OH | 07/18/93 |
| JACKSON, JOHN, DUFF JENKS, OK | 06/12/93 |
| JACOME, ROBERT A. JR., PLANO, TX | 06/12/93 |
| JANSSON, SUSANNE E., WESTHAMPTON BCH, NY | 05/19/93 |
| JOHANNING, JEANINE, KILEI, HI | 06/12/93 |
| JOHN, GORDON B., CAMBRIA HEIGHTS, NY | 05/19/93 |
| KING, WANDA, BOLIVAR, TN | 06/12/93 |
| KIZAIRE, DANIELLE C., CHICAGO, IL | 05/23/93 |
| KOLARIK, THOMAS, MARIETTA, GA | 05/21/93 |
| KURTS, TEDD R., IRVINE, CA | 05/26/93 |
| KWAN, EDMUND, HUNTINGTON, CT | 06/12/93 |
| LAMPMAN, CHUCK, SYLMAR, CA | 06/12/93 |
| LEWIS, KENNETH D., HOUSTON, TX | 05/23/93 |
| LIEGEL, JOYCE M., HOUSTON, TX | 05/23/93 |
| LINACRE, WILLIAM, WAPPINGERS FALL, NY | 05/19/93 |
| MACK, RONALD, SPRING HILL, FL | 06/11/93 |
| MAJEED, ISHAQ H., ATLANTA, GA | 07/14/93 |
| MANHART, MARK W., LAKE OSWEGO, OR | 05/26/93 |

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|---|---|
| MASKELL, GARY L., WHITING, NJ | 07/21/93 |
| MATHEWS, DANIEL G., N. LITTLE ROCK, AR | 06/12/93 |
| MCGETTIGAN, BRIAN, PHILADELPHIA, PA | 05/21/93 |
| MCWILLIAMS, WILLIAM B., FREMONT, CA | 05/26/93 |
| MIKESKY, GREGORY R., SCHULENBURG, TX | 06/12/93 |
| MUMUNEY, GANIYU A., SALISBURY, MD | 07/19/93 |
| NORRIS, EDWARD B., NASHVILLE, TN | 06/12/93 |
| NOVETSKY, JERRY J., SOUTHFIELD, MI | 05/23/93 |
| PAYNE, DENISE Y., LOUISVILLE, KY | 06/21/93 |
| PERRY, AUDREY J., SMYRNA, GA | 07/14/93 |
| PETERSON, KIRBY K., CHICAGO, IL | 05/23/93 |
| PIERCE, JOHN P., KANSAS CITY, KS | 05/26/93 |
| PIPER, RICHARD A., ST LOUIS, MO | 06/09/93 |
| PODRY, ROBERT J., LA CANADA, CA | 05/26/93 |
| POWELL, CRAIG, DELMAR, NY | 05/19/93 |
| PRICE, DAVID G., VALPARAISO, IN | 06/09/93 |
| RAMIREZ, NYDIA, NEW MILFORD RD, NJ | 05/19/93 |
| RILEY, ROCK., HOLLY, MI | 05/23/93 |
| RITCHEY, ROBERT E., DENVER, CO | 05/26/93 |
| RODGERS, LARRY A., CLEVELAND, OH | 06/09/93 |
| RONAN, PATRICK, BLOOMFIELD, NJ | 05/19/93 |
| RUNCO, TIMOTHY, PITTSBURGH, PA | 05/21/93 |
| RUTKOWSKI, MORRIS E., MARIETTA, GA | 07/14/93 |
| SAJNA, LYNNE, CHICAGO, IL | 07/18/93 |
| SANTIAGO, JOSE A., NEW YORK, NY | 07/21/93 |
| SHEPPERD, GORDON L., CERES, CA | 07/11/93 |
| SOGARD, ANNA VODICKA, PHOENIX, AZ | 07/11/93 |
| **SECTION 1128Aa** | |
| BRADY, ARTHUR M. SR., KANSAS CITY, MO | 05/19/93 |
| WHITE, VANCE R., RANCHO SANTE FE, CA | 02/22/93 |
| **PEER REVIEW ORGANIZATION CASES** | |
| VALIN, LAWRENCE, DES MOINES, IA | 06/22/93 |

Dated: July 21, 1993.

**James F. Patton,**

*Director, Health Care Administrative Sanctions, Office of Investigations.*

[FR Doc. 93-18694 Filed 8-4-93; 8:45 am]

BILLING CODE 4160-34-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CA-050-4930-10-4503]

### Emergency Closure of Public Lands; California

**AGENCY:** Bureau of Land Management, United States Department of Interior.

**ACTION:** Emergency closure of certain public lands to motorized vehicle use in Trinity County and Shasta County, California.

**SUMMARY:** In accordance with title 43, Code of Federal Regulations, § § 8364.1 and 8341.2, notice is hereby given that all the below listed lands and roads therein, except for Trinity/Shasta County Line Road North and South, administered by the Bureau of Land Management, have been closed to all motorized vehicle use; except for emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, law enforcement vehicles and other motorized vehicles specifically approved by an authorized officer of the Bureau of Land Management.

This closure affects all of the public lands and roads located within the following lands of Grass Valley Creek Granitic Shelter Area of Trinity County, California (with the exception of County Line Road North and South) and Shasta County, California:

T. 31 N., R. 7 W., M.D.M.,
Sec. 6
T. 31 N., R. 8 W., M.D.M.,
Sec. 4
T. 32 N., R. 7 W., M.D.M.,
Sec. 31
T. 32 N., R. 8 W., M.D.M.,
Sec. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 23, 24, 25, 26, 27, 28, 34, 35, 36
T. 33 N., R. 8 W., M.D.M.,
Sec. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

A total of approximately 18,000 acres.

**DATES:** This emergency closure action goes into effect August 5, 1993 and will remain in effect until the Authorized Officer determines it is no longer needed.

**SUPPLEMENTARY INFORMATION:** This emergency closure is required to mitigate the impacts of unregulated vehicle use on highly erosive decomposed granite soils on the subject land.

The road/trail system is underlain by decomposed granite (DG) parent material that weathers into highly erosive forest soils. Historical logging activities and activities related to access and recreation have caused considerable adverse impacts to the public land and resource including the following: Excessive soil erosion and loss, vegetation damage, fisheries degradation, and decreased water quality in Grass Valley Creek, and the Trinity River.

The authority for this closure and rule making is 43 CFR 8341.2 and 43 CFR 8364.1. Any person who fails to comply with a closure order or rule-making is subject to arrest and fines of up to $1,000 and/or imprisonment not to exceed 12 months.

**FOR FURTHER INFORMATION CONTACT:** Mark T. Morse, Area Manager, Bureau of Land Management, Redding Resource

Area, 355 Hemsted Drive, Redding California 96002, (916) 224–2100.

Dated: July 20, 1993.

**Mark T. Morse,**

*Area Manager.*

[FR Doc. 93–18621 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–40–M

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[OR–064–4333–12; GP3–330]

## Emergency Closure of Public Lands; Oregon

**AGENCY:** Bureau of Land Management, Interior, Prineville District.

**ACTION:** Notice is hereby given that effective immediately all public lands as legally described below are closed to all vehicle access and travel with the exception of designated roads.

In Grant County, Oregon:

Township 14 South, Range 32 East, Willamette Meridian

All public lands in Sections 6 and 7.

The purpose of this closure is to protect steep, highly erosive watersheds, native vegetation, wildlife and cultural resources. The only exception would be for special authorized administrative use and emergency needs. The authority for this closure is 43 CFR 8341.2.

This closure will remain in effect until an ORV designation plan is completed for this area.

Dated: July 27, 1993.

**Donald L. Smith,**

*Acting District Manager, Prineville District.*

[FR Doc. 93–18612 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–33–M

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[OR–014–4333–04; GP3–327]

## Emergency Road Closure and Restrictions; Wood River Ranch, OR

**AGENCY:** Bureau of Land Management, Lakeview District, Klamath Falls Resource Area.

**ACTION:** Public notice.

**SUMMARY:** The south half of the Wood River Ranch, 1,540.51 acres, acquired by BLM in Klamath County is closed to motorized vehicular travel from the time of acquisition until completion of the Management Plan. The area will be open for day use only. Day use is defined as the hours of 4 a.m. to 10 p.m. Overnight camping is prohibited. No fires of any kind are permitted. No personal property such as hunting decoys, tents, etc., can remain on the Wood River Ranch during the overnight hours of 10:01 p.m. and 3:59 a.m. Pit hunting blinds may not be dug on the property.

These restrictions are necessary to prevent resource damage to soil, roads, vegetation, including spread of noxious weeds and possible damage to cultural resources. Limitations are also necessary to reduce the development of trails/roads due to unregulated cross country travel. Vehicles used for administrative, emergency, law enforcement, and adjacent landowners, their agency and employees, with a right-of-way for access will be exempt from the motor vehicle restrictions. Motorized boats are not considered motorized vehicles but their use is restricted to the permanently flooded marsh.

**SUPPLEMENTARY INFORMATION:** Any person who fails to comply with this closure/restriction order is subject to the penalties provided in 8360.0–7. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

**FOR MORE INFORMATION CONTACT:** Lakeview District, Klamath Falls Resource Area Manager, A. Barron Bail, 2795 Anderson Avenue, Building 25, Klamath Falls, OR 97603; 503–883–5916.

Dated: July 20, 1993

**A. Barron Bail,**

*Klamath Falls Resource Area Manager.*

[FR Doc. 93–18705 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–33–M

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[CA–940–03–4111–15; CACA 25955]

## California; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 25955 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: July 26, 1993.

**Fred O'Ferrall,**

*Chief, Leasable Minerals Section.*

[FR Doc. 93–18704 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–40–M

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[WY–930–4340–04]

## Filing of Plats of Survey; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

**Sixth Principal Meridian, Wyoming**

T. 44 N., R. 72 W., accepted July 29, 1993
T. 45 N., R. 72 W., accepted July 29, 1993
T. 46 N., R. 72 W., accepted July 29, 1993
T. 44 N., R. 71 W., accepted July 29, 1993
T. 45 N., R. 71 W., accepted July 29, 1993
T. 42 N., R. 113 W., accepted July 29, 1993

**Wind River Meridian, Wyoming**

T. 1 S., R. 1 E., accepted July 29, 1993
T. 2 S., R. 1 E., accepted July 29, 1993
T. 2 N., R. 2 E., accepted July 29, 1993
T. 1 S., R. 3 E., accepted July 29, 1993
T. 7 N., R. 6 E., accepted July 29, 1993

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections and metes and bounds surveys.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, P O. Box

1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: July 29, 1993.

**John P. Lee,**

*Chief, Branch of Cadastral Survey.*

[FR Doc. 93–18695 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–33–M

**[OR–943–4210–06; GP3–321; OR–49218]**

## Proposed Withdrawal and Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 758.46 acres of non-Federal lands, which will be acquired by exchange, for protection of limestone caves and the Crooks Creek fisheries near Grants Pass, Oregon. Upon acquisition, the lands would be closed for up to 2 years from surface entry and mining, and the lands would be opened to mineral leasing.

**DATES:** Comments and requests for a public meeting must be received by November 3, 1993.

**ADDRESSES:** Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

**FOR FURTHER INFORMATION CONTACT:** Donna Kauffman, BLM, Oregon State Office, 503–280–7162.

**SUPPLEMENTARY INFORMATION:** On July 16, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands, which will be acquired by exchange, from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not the mineral leasing laws, subject to valid existing rights:

**Willamette Meridian**

*Non-Federal Lands*

T. 37 S., R. 6 W.,
Sec. 31, lots 1 and 2.
T. 37 S., R. 7 W.,
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 39 S., R. 8 W.,
Sec. 11, SE¼SE¼.

The areas described aggregate 758.46 acres in Josephine County.

The purpose of the proposed withdrawal is to protect the significant recreational and wildlife habitat values in four limestone caves and the Crooks Creek fisheries.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary land uses that may be permitted by the authorized officer during the period of temporary segregation include sale of vegetative materials, issuance of recreational use permits, and all public use activities considered casual use.

Dated: July 20, 1993.

**Betty M. McCarthy,**

*Acting Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 93–18614 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–33–M

## Fish and Wildlife Service

## Availability of the Agency Draft Recovery Plan for Roan Mountain Bluet for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for Roan Mountain bluet. Roan Mountain bluet (*Hedyotis purpurea* var. *montana*) is a rare cespitose perennial herb endemic to a few scattered mountaintops north of the Asheville Basin in North Carolina and, formerly, Tennessee. The Service solicits review and comments from the public on this draft plan.

**DATES:** Comments on the agency draft recovery plan must be received on or before October 4, 1993 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Allen Ratzlaff at the address and telephone number shown above (Ext. 229).

**SUPPLEMENTARY INFORMATION:**

### Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Based upon available information concerning the range, biology, and threats to its continued survival, it is not yet possible to determine if or when full recovery of the Roan Mountain bluet is

possible. Accordingly, this draft recovery plan outlines a mechanism that provides for the protection and maintenance of all known populations, with emphasis on determining autecological factors necessary to manage the species. The Roan Mountain bluet was officially listed as an endangered species on April 5, 1990, primarily because of habitat destruction from commercial, recreational, or residential development at privately owned sites, trampling of populations at accessible cliff- or trail-side locations on national forest lands, erosional loss of cliff-side habitat created by uprooting and wind-throw of high-altitude trees killed by air pollution or exotic pests, successional encroachment by native and exotic plants, and demographic problems. Comments and information provided during this review will be used in preparing the final recovery plan.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: 7/29/93.

**Brian P. Cole,**

*Field Supervisor.*

[FR Doc. 93-18703 Filed 8-4-93; 8:45 am]

BILLING CODE 4310-55-M

## Availability of a Draft Recovery Plan for the Kona Dryland Forest Plants Caesalpinia Kavaiensis and Kokia Drynarioides for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Kona Dryland Forest Plants *Caesalpinia kavaiensis* and *Kokia drynarioides*. *Caesalpinia kavaiensis* occurs in the mountains of Oahu, Kauai, and Lanai islands and on the Kona coast of the island of Hawaii, Hawaii, and *Kokia drynarioides* occurs only on the Kona coast of the island of Hawaii, Hawaii.

**DATES:** Comments on the draft recovery plan must be received on or before October 4, 1993 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808-541-2749). Copies of the draft recovery plan will also be available for inspection at: Kailua-Kona Public Library, 75-138 Hualalai Rd., Kailua-Kona, Hawaii 96740; Kauai Public Library, 4344 Hardy Street, Lihue, Kauai 96766; and Lanai Public and School Library, P.O. Box A-149, Lanai City, Lanai 96763. Written comments and materials regarding the plan should be addressed to Robert P. Smith, Field Supervisor of the Pacific Islands Office at the above Honolulu address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours, at the above Honolulu address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regrading recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan are *Caesalpinia kavaiensis* and *Kokia drynarioides*. The areas of emphasis for recovery actions for these species are: West and northwest slopes of Hualalai Mountain, Kona District, Hawaii Island; three gulches in the Waianae Mountains, Oahu Island; Puhialelu Ridge, Lanai Island; and Koaie Valley and the Poomau Branch of Waimea Canyon, Kauai Island. Recovery efforts will focus on securing habitat, managing it to remove threats by ungulates, fire, alien plants, insect infestations, seed predators and illegal harvest, augmenting current populations and establishing new populations.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

**Authority:** The authority of this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 29, 1993.

**William E. Martin,**

*Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 93-18663 Filed 8-4-93; 8:45 am]

BILLING CODE 4310-55-M

## Public Meetings on the Management of Crystal River National Wildlife Refuge, Crystal River, Florida

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Fish and Wildlife Service is modifying its public recreational use management program on the Crystal River National Wildlife Refuge near Crystal River, Florida. Certain recreational uses on the refuge need to be modified in order to ensure that such uses are compatible with the purposes of the refuge. Comments on the Service's proposed actions, along with additional ideas and suggestions, will be accepted at a public scoping meeting. This meeting will be followed by a public informational meeting to solicit additional comments and review the final actions selected by the Service.

**DATES:** The public scoping meeting will be held from 9 a.m. to 9 p.m. on Tuesday, August 17, 1993, in Crystal River, Florida. The public informational meeting will be held from 7 p.m. to 10

p.m. on Wednesday, September 1, 1993, also in Crystal River.

**ADDRESSES:** Both meetings will be held at the Crystal River National Guard Armory, 8551 West Seven Rivers Drive, Crystal River, Florida. Written comments and suggestions are invited and should be directed to Mr. Cameron Shaw, Refuge Manager, Crystal River National Wildlife Refuge, 1502 Southeast Kings Bay Drive, Crystal River, Florida 34429. For further information, contact Mr. Shaw at the above address (telephone 904/563–2088, fax 904/795–7961).

**SUPPLEMENTARY INFORMATION:** Increasing public use is contributing to conflicts between refuge users and wildlife populations, particularly the endangered West Indian manatee. Modifications to current public use activities are needed to ensure that such activities are compatible with the purposes of the refuge.

Persons wishing to present statements at either meeting are encouraged to bring written copies in order to provide a complete record. Oral statements at the September 1 informational meeting may be limited in length if the number of parties attending necessitates such a limit.

**Author:** The primary author of this notice is Mr. David E. Hefferman, District Manager, U.S. Fish and Wildlife Service, 75 Spring St. SW., room 1240, Atlanta, Georgia 30303 (404/331–0830 or fax 404/730–2023).

Dated: July 30, 1993.

**John R. Eadie,**

*Acting Regional Director.*

[FR Doc. 93–18664 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–M

## Privacy Act of 1974—Establishment of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records maintained by the U.S. Fish and Wildlife Service. The notice, entitled "Marine Mammals Management Marking, Tagging and Reporting Program—Interior, FWS–30," describes a system of records containing information pertaining to mandatory tagging requirements established by the U.S. Fish and Wildlife Service to monitor the harvest of polar bear, sea otter and walrus by Indian Aleut, and Eskimo hunters; to collect biological information needed for the management of marine mammal populations; and to help control illegal activities in take, trade, and transport of marine mammal parts. The notice is published in its entirety below.

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires a 60-day period in which to review such proposals. Written comments on this proposal can be addressed to the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW, Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045. Comments received within 60 days of publication in the **Federal Register** (October 4, 1993) will be considered. The notice shall be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: July 28, 1993.

**Albert C. Camacho,**

*Director, Office of Administrative Services.*

**INTERIOR/FWS–30**

**SYSTEM NAME:**

Marine Mammals Management, Marking, Tagging and Reporting Program—Interior, FWS–30.

**SYSTEM LOCATION:**

U.S. Fish and Wildlife Service, Marine Mammals Management, 4230 University Drive, suite 310, Anchorage, Alaska 99508.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Alaska Native hunters of polar bear, sea otter, and walrus.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

For polar bear certificate: Name and signature of hunter, signature of tagger, date, species hide tag number, species skull tag number, species skull measurement, tagging location, species age class, species sex, species sex identifiers, statistics on other bears present, specimens collected, transportation used, days/hours hunted, date of kill, location of kill.

For sea otter certificate: Name and signature of hunter, signature of tagger, date, species hide tag number, species skull tag number, species skull statistics, tagging location, species age class, species sex, species sex identifiers, specimens collected, days/hours hunted, date of kill, location of kill.

For walrus certificate: Name and signature of hunter, signature of tagger, tagging location, date, species tag number, species take type, date killed or found, location killed or found, species age, species sex, species tusk circumference, species tusk length, location killed or found.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

(1) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1379). (2) 50 CFR part 18, section 109.

**PURPOSE:**

The primary purpose of the records is to monitor the harvest by Alaska Natives of polar bear, sea otter, and walrus; to collect biological information; and to help control illegal activities in take, trade, and transport of marine mammal parts.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The records are used by wildlife biologists in the U.S. Fish and Wildlife Service's Alaska Marine Mammals Management Office and by U.S. Fish and Wildlife Service law enforcement agents. The primary uses of the records are (1) to determine accountability of individual hunters and their actions (i.e. number of animals taken) while harvesting marine mammals; (2) to identify hunters that are not presenting harvested specified parts for tagging, and (3) to promote non-wasteful take. U.S. Fish and Wildlife Service law enforcement agents will use the information to identify individuals involved in wasteful and illegal commercialization of marine mammal products.

Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice, or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, tribal.

territorial, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552a(b)(12).

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual and computer database form.

RETRIEVABILITY:

Indexed by name and harvest certificate.

SAFEGUARDS:

In accordance with 43 CFR 2.51, records are maintained in a secured computer database which can be accessed only by those with knowledge of the code numbers. Manual forms are maintained in a locked file.

RETENTION AND DISPOSAL:

Retention and disposal of subject records is in accordance with the U.S. Fish and Wildlife Service's Records Disposition Schedule and standards for electronic records as outlined in 36 CFR part 1228.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Marine Mammals Management, U.S. Fish and Wildlife Service, Marine Mammals Management, 4230 University Drive, suite 310, Anchorage, Alaska 99508.

NOTIFICATION PROCEDURE:

A request for notification of the existance of records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

(1) Subject individuals on whom the record is maintained, and (2) contractual employees who serve as village taggers.

[FR Doc. 93-18618 Filed 8-4-93; 8:45 am]

BILLING CODE 4310-65-M

## Minerals Management Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and the Office of Management and Budget; Paperwork Reduction Project (1010-0018); Washington, DC 20503, telephone (202) 395-7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

*Title:* Request for Reservoir Maximum Efficient Rate (MER), Form MMS-127.

*OMB approval number:* 1010-0018.

*Abstract:* Respondents submit Form MMS-127 to the Minerals Management Service's (MMS) Regional Supervisors so they can determine whether a lessee has correctly classified an oil or gas reservoir and whether the reservoir MER requested by the lessee is valid.

*Bureau form number:* Form MMS-127.

*Frequency:* On occasion.

*Description of respondents:* Federal OCS oil and gas lessees.

*Estimated completion time:* 1 hour.

*Annual responses:* 910.

*Annual burden hours:* 910.

*Bureau Clearance Officer:* Arthur Quintana, (703) 787-1239.

Dated: August 14, 1993.

**Henry G. Bartholomew,**

*Deputy Associate Director for Operations and Safety Management.*

[FR Doc. 93-18615 Filed 8-4-93; 8:45 am]

BILLING CODE [illegible]

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731-TA-654-657 (Preliminary)]**

### Certain Cordage Products From Costa Rica, Korea, Mexico, and Portugal

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of preliminary antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-654-657 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Costa Rica, the Republic of Korea (Korea), Mexico, and Portugal of cordage of man-made fiber including twine and ropes and cables, provided for in subheadings 5607.41.10, 5607.41.30, 5607.49.10, 5607.49.15, 5607.49.25, 5607.49.30, 5607.50.20, 5607.50.40, and 5607.90.20 of the Harmonized Tariff Schedule of the United States (HTS); and of articles of the foregoing goods, provided for in HTS subheading 5609.00.30; and by reason of imports from Korea, Mexico, and Portugal of fish netting constructed of man-made fiber provided for in HTS subheadings 5608.19.10 and 5608.90.10, and of knitted or crocheted fish netting, provided for in HTS subheading 6002.43.00, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 13, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** July 28, 1993.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade

Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:**

**Background**

These investigations are being instituted in response to a petition filed on July 28, 1993 by counsel on behalf of the Cordage Institute, Hingham, MA.

**Participation in the Investigations and Public Service List**

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Conference**

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 18, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than August 13, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

**Written Submissions**

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 23, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: August 1, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–18600 Filed 8–4–93; 8:45 am]

BILLING CODE 7020–02–P

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**[Investigation No. 337–TA–346]**

**Certain Magnetic Switches for Coaxial Transmission Lines and Products Containing the Same; Commission Determination not to Review an Initial Determination Designating the Investigation "More Complicated"**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." Although the statutory deadline for completion of the investigation is extended by six months, i.e., from January 21, 1994, to July 21, 1994, the Commission has set an administrative deadline for completion of the investigation of March 21, 1994.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth C. Ross, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3113.

**SUPPLEMENTARY INFORMATION:** On June 15, 1993, complainants Sector Microwave Industries, Inc. and Victor Nelson filed a motion to designate the subject investigation "more complicated." Respondent Com Dev Ltd. of Canada opposed the motion, and the Commission investigative attorney supported it.

On June 24, 1993, the presiding ALJ issued an ID granting the motion to designate this investigation "more complicated" due to complainants' difficulties in obtaining crucial information, the unavailability of respondent's Canadian expert witness for deposition, and other significant factors. No petitions for review or government agency comments were received.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Issued: July 30, 1993.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–18646 Filed 8–4–93; 8:45 am]

BILLING CODE 7020–02–P–M

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## INTERSTATE COMMERCE COMMISSION

**Availability of Environmental Assessments**

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates

environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–5212.

Comments on the following assessment are due 15 days after the date of availability:

AB–101 (Sub-No. 10), Duluth, Missabe and Iron Range Railway Company—Summary Abandonment Application—St. Louis County, Minnesota. EA available 7/29/93

Comments on the following assessment are due 30 days after the date of availability:

AB–88 (Sub-No. 6), Bessemer and Lake Erie Railroad Company—Abandonment and Discontinuance—in Erie County, PA. EA available 7/27/93

AB–33 (Sub-No. 78), Union Pacific Railroad Company—Abandonment—in Saline, Ottawa, Lincoln, Russell, Osborne and Rocks Counties, Kansas. EA available 7/30/93

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18727 Filed 8–4–93; 8:45 am]

BILLING CODE 7035–01–M

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[No. 40853]

## Yellow Freight System, Inc. of Indiana—Petition for Declaratory Order—Weighing Shipments

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Institution of declaratory order proceeding; extension of comment due date.

**SUMMARY:** By decision served July 1, 1993 (58 FR 35977, July 2, 1993), the Commission instituted a proceeding to determine whether (1) the Commission has exclusive jurisdiction over the reasonableness of Yellow Freight System Inc. of Indiana's (Yellow's) practice of verifying shipment weights using forklift scales; and (2) more stringent State requirements for scale accuracy are preempted. Written comments were sought by August 1, 1993.

On July 28, 1993, a petition was filed seeking conversion of the proceeding to a rulemaking, and an extension of the comment due date.

**DATES:** Comments must be filed by September 1, 1993.

**ADDRESSES:** Send an original and 15 copies of comments, referring to Docket No. 40853 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy to each of the following representatives of Yellow: Lawrence W. Bierlein, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037; and Jerry C. Bowlin, 10777 Barkley, Overland Park, KS 66211.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Levin, (202) 927–6287. [TDD for hearing impaired: (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: July 30, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18726 Filed 8–4–93; 8:45 am]

BILLING CODE 7035–01–M

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[Docket No. AB–337 (Sub-No. 2X)]

## Dakota, Minnesota, & Eastern Railroad Corporation—Abandonment Exemption—In Brown County, SD

Dakota, Minnesota & Eastern Railroad Corporation (DM&E) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 33.8-mile line of railroad between milepost 38.1, near Aberdeen, and milepost 116.9, near Hecla, in Brown County, SD.

DM&E has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8(c) (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to government agencies) has been met.

As a condition to this exemption, any employees adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 4, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 16, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 25, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Byron D. Olsen, 1935 Piper Jaffray Tower, 222 S. Ninth St., Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 10, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 30, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18728 Filed 8–4–93; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Stipulation of Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; In re: Bond Corporation North America, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Stipulation of Settlement in *In re: Bond Corporation North America, et al.*, Case No. 91 B 10326 (FGC) was lodged on July 26, 1993, with the United States Bankruptcy Court for the Southern District of New York. The United States' amended proof of claim asserts a claim against G. Heileman Brewing Company, Inc. pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9607, and seeks recovery of response costs incurred by the United States in connection with the Newport Dump Site, Wilder, Kentucky (the "Site"). The Site is situated approximately four miles south of the City of Newport, Kentucky, and occupies approximately 41.9 acres. The site began operation in the 1950's and was used as a municipal landfill. The Newport Dump had no restrictions as to type or quantity of waste material that could be disposed.

In the early 1980's, EPA conducted investigations at the Site which detected numerous organic and inorganic contaminants in the surface soils of the landfill area, and the leachate discharge to the Licking River. The Newport Dump is situated adjacent to the Licking River, a source of drinking water for neighboring counties. Leachate flowed directly from the Site into the Licking River and also into an unnamed stream south of the landfill which drained into the Licking River. The main raw water intake for the Kenton County water treatment plant is located approximately 250 feet downstream of the Newport Dump. As a result of these investigations, the Site was placed on the National Priorities List in 1983.

Pursuant to the stipulation of settlement, the United States' amended claim shall be allowed as a Class 8 unsecured claim in accordance with the terms of the Debtors' First Amended Joint Plan of Reorganization in the amount of $800,000. The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Newport, et al.*, D.O.J. Ref. 90–11–3–452A.

The proposed stipulation may be examined at the Office of the United States Attorney, Southern District of New York, 100 Church Street, New York, New York 10001; Office of the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, 202–624–0892. A copy of the proposed stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Myles E. Flint,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93–18697 Filed 8–4–93; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States v. Charles George Trucking Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 27, 1993, a proposed Consent Decree in *United States* v. *Charles George Trucking Co., Inc.*, Civil Action Nos. 85–2463–WD and 85–2714–WD, was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree resolves claims of the United States and the Commonwealth of Massachusetts against James George, Charles George, Jr, and C&J Trucking Co., Inc. ("the settling defendants") under section 107(a) of the Comprehensive Environmental Compensation, Recovery Act, 42 U.S.C. 9607(a), to recover response costs incurred in cleaning up the Charles George Reclamation Trust Landfill, located in Tyngsboro, Massachusetts. The Consent Decree will result in a payment of $3,100,000 over four years by the settling defendants for cost recovery and natural resource damages.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Charles George Trucking Co. et. al.*, D.J. Ref. 90–11–3–91.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, McCormick Federal Building, Post Office Square, Boston Massachusetts 02109, and at the Region I Office of the Environmental Protection Agency, Office of Regional Counsel, 10th Floor, 1 Congress Street, Boston, Massachusetts 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $16 00 (25 cents per page reproduction cost), payable to Consent Decree Library.

**John C. Cruden,**

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 93–18696 Filed 8–4–93; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Settlement Agreement and Stipulated Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States v. Jerald Gershon, et al.

In accordance with Departmental policy, notice is hereby given that on July 19, 1993, a proposed Settlement Agreement and Stipulated Order ("Settlement Agreement"), settling *United States* v. *Jerald Gershon*, Adversary No. 92–7088 (Bkrtcy. D. Kan.), *Jerald Gershon* v. *United States*, Adversary No. 91–7427 (Bkrtcy. D. Kan.), and the United States' objection to exemptions *In re Jerald Gershon*, Case

No. 91–41830–7 (Bkrtcy. D. Kan.), and settling in part *United States* v. *Chemical Commodities, Inc. and Jerald Gershon*, Civ. No. 91–2379 (D. Kan.), was lodged with the United States Bankruptcy Court for the District of Kansas—Topeka Division.

In 1991, the United States filed a Complaint in district court against Jerald Gershon ("Gershon") and Chemical Commodities, Inc. ("CCI") under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, in connection with defendants' ownership or operation of a facility in Olathe, Kansas at which there was a release or threat of release of hazardous substances causing the United States to incur costs in responding to the release or threat of release. In 1992, the United States filed an objection to the discharge of Gershon in bankruptcy and an objection to certain exemptions from creditors' claims asserted by Gershon.

The proposed Settlement Agreement entered into by the United States and Gershon provides for two payments by Gershon to his bankruptcy estate totalling $200,000, the first payment of $150,000 to be made within sixty days of entry of the Settlement Agreement in bankruptcy court, and the second payment of $50,000 to be made within one year of the date of entry. The proposed settlement agreement also provides for allowance of claims of the United States in the Gershon bankruptcy in the amount of $9,452,258.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Chemical Commodities, Inc. and Jerald Gershon*, DOJ Ref. No. 90–11–3–529.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, District of Kansas, 385 Federal Building, 444 SE. Quincy, Topeka, Kansas 66683; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. 20005. In requesting a copy, please enclose a check in the amount of five dollars (25 cents per page reproduction charge) payable to the Consent Decree Library.

**Myles E. Flint,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93–18698 Filed 8–4–93; 8:45 am]

BILLING CODE 4410–01–M

## National Institute of Corrections

### Announcement of Grants, Services, and Training

The National Institute of Corrections (NIC), U.S. Department of Justice, has published its Annual Program Plan for Fiscal Year 1994. The document describes the grants, programs, and services to be made available to the corrections field during the next fiscal year, which begins October 1, 1993 and ends September 30, 1994.

A separate document, the NIC Academy Schedule of Training and Services for Fiscal Year 1994, describes the training programs and services to be provided by the NIC Academy for state and local corrections practitioners.

Both documents contain relevant application forms and may be obtained by contacting the National Institute of Corrections, 320 First Street, NW., Washington, DC 20534 (telephone number: 202–307–3106×156; fax: 202–307–3361); or the NIC Longmont, Colorado, offices (1960 Industrial Circle, Suite A, Longmont, Colorado 80501) (telephone: 303–682–0382; fax: 303–682–0469); TDD 202–307–3156.

**Larry E. Solomon,**

*Deputy Director.*

[FR Doc. 93–18699 Filed 8–4–93; 8:45 am]

BILLING CODE 4410–36–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on August 24–25, 1993, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4215A and B, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

The agenda for this meeting includes OSHA status reports regarding lead in construction; inspection targeting; the permit required confined space standard; VPP construction activities; Hazwoper training and certification; the process safety management standard; the publication "Fatal Facts"; the multi-employer worksite policy for professional engineers; the welding and cutting standard; the scaffold standard; the permissible exposure limits for air contaminants; asbestos; the OSHA training centers; the Office of Construction and Engineering; and the Eastern Research Group report. The Advisory Committee will also receive work group reports and reports concerning the California construction permit system, the development of the Technical Manual, NIOSH cooperative agreements for model statewide programs and NIOSH safe workplace training activity. In addition, the Committee will discuss the glycol ethers rulemaking, the choice between performance and prescriptive standards for construction and the use of joint labor-management committees to address safety and health issues.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202–219–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 2nd day of August, 1993.

**David C. Zeigler,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 93–18724 Filed 8–4–93; 8:45 am]

BILLING CODE 4510–26–M

**NUCLEAR REGULATORY COMMISSION**

**[Docket No. 70-143; License SNM-124]**

**Nuclear Fuel Services, Inc.; Amendment of Special Nuclear Material, Finding of No Significant Impact and Opportunity for a Hearing**

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM-124 to authorize possession and use of 200 gm of plutonium (Pu) and 250 gm of $^{233}U$ for research and development (R&D) projects at the Nuclear Fuel Services, Inc. (NFS) facility located in Erwin, TN.

**Summary of the Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would authorize NFS to possess and use 250 gm of $^{233}U$ and 200 gm of Pu for R&D projects. The R&D Laboratory would conduct research, development, and analyses on any chemical or physical forms of uranium=235, uranium=233, plutonium, byproduct or source material. This is an expansion of their current authorization for R&D work with uranium=235. The State of Tennessee issued License R-86008-D97 on April 20, 1992, authorizing NFS to possess and use source and byproduct material for analysis or developmental studies.

*The Need for the Proposed Action*

The activities proposed by NFS are analysis of samples collected as part of mandatory environmental monitoring programs and R&D concerning environmental remediation and waste reclamation. Other facilities which presently perform these tasks are backlogged. Authorizing NFS to perform these services will relieve this backlog and allow for more timely and effective responses to environmental concerns.

*Environmental Impacts of the Proposed Action*

The R&D Laboratory will utilize buildings currently on site and will have negligible impact on NFS water usage. Solid waste production will also remain largely unchanged as material receive from clients will be returned after it is processed, and materials sent to the R&D Laboratory from other NFS Erwin departments would be covered under their current license. Therefore, the greatest potential for environmental impact would be the release of airborne and liquid effluents.

Release pathways are designed to confine as much material as practicable. Ventilation stacks are fitted, as a minimum, with high efficiency particulate air filters designed to capture 99.97 percent of all particles down to 0.3 microns. Liquid effluent is sent through a waste water treatment facility designed to remove both soluble and insoluble contaminants from water prior to release. Furthermore, airborne releases are required to meet the requirements of 10 CFR part 20, while liquid releases must meet applicable 10 CFR part 20 limits along with the requirements of the Tennessee Department of Conservation contained in their National Pollution Discharge Elimination System (NPDES) permit.

Doses were calculated for both liquid and airborne pathways using the requested possession limits combined with maximum credible releases. For the individual dose, the maximally exposed individual is located in the southwest sector 250 meters from the site's stack. The major exposure pathway is inhalation of Pu-239 particles. The total effective dose equivalent (TEDE) would be approximately 0.41 mrem/yr. This value is far below the 25 mrem/yr TEDE to which the licensee is limited and is a small percentage of the TEDE calculated for current operations (2.3 mrem/yr), as stated in the "Environmental Assessment for Renewal of Special Nuclear Material License No. SNM-124."

*Conclusion*

The activities which the licensee proposes are analysis of environmental samples, and R&D directed towards remediation and resource recovery. These are necessary activities which would be conducted elsewhere if not by this licensee. The possible benefits to be gained by these activities would be more rapid response to environmental releases; more thorough, cost-effective remediation techniques; and waste minimization through the separation of wastes and the recovery of reusable resources.

The impacts of these proposed activities to the environment appear mixed. Although there would be a negligible increase in quantities and types of radiological effluents, non-radiological effluents, land usage, and water usage would remain unchanged. Furthermore, there may be a possible social benefit through the creation of new jobs, if enough new contracts are awarded. In total, the staff concludes that there will be no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

The only alternative to the proposed action would be denial of the amendment request. Denial would mean that NFS would not be allowed to conduct R&D or laboratory analyses on materials containing U-233 or plutonium. Any contracts including these materials would be lost, and due to their essential nature, the activities involved would be conducted elsewhere. The NRC would choose this course if it could be proven that the activities to be conducted by the R&D Laboratory Project would lead to significant environmental effects or problems with human health and safety. However, since denial of this amendment request would result in the blocking of essential activities with positive environmental impact, in order to prevent a negligible increase in existing effluents, this course should be avoided.

*Agencies and Persons Consulted*

Staff utilized the amendment application dated May 20, 1992, and supplemental information dated January 29, 1993 and June 1, 1993.

*Findings of No Significant Impact*

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License SNM-124. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

**Opportunity For a Hearing**

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; to be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Nuclear Fuel Services, Inc., 205 Banner Hill Road, Erwin, TN 37650), and must comply

with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestors's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 28th day of July 1993.

For The Nuclear Regulatory Commission

Robert Pierson,

*Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.*

[FR Doc. 93-18709 Filed 8-4-93; 8:45 am]

BILLING CODE 7590-01-M

## U.S. NUCLEAR REGULATORY COMMISSION

[Docket No. 70-143; License No. SNM-124]

Nuclear Fuel Services, Inc.; Erwin, Tennessee

### Nuclear Fuel Services Inc., Amendment of Special Nuclear Material; Finding of No Significant Impact and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License No. SNM-124 for authorization to process highly enriched uranium (HEU) from material containing HEU and thorium carbide at the Nuclear Fuel Services, Inc. (NFS) facility in Erwin, TN.

**Summary of the Environmental Assessment**

*Identification of the Proposed Action*

The proposed action is to remove highly enriched uranium from unirradiated fuel elements and then separate this uranium from other constituents. In fuel in the elements is enriched to approximately 93 weight percent in the uranium isotope $^{235}U$ which is mixed with $^{232}Th$. Additional material and components from the fuel element production process, and also containing uranium and thorium, may be processed to recover the relatively valuable highly enriched uranium.

*The Need for the Proposed Action*

The proposed action is needed by the licensee to recover the money spent to purchase the material, to free production space, to reduce security requirements and storage costs for the site, and to avoid a layoff of site personnel. Additionally, by separating the uranium and thorium and then shipping the thorium to a low-level burial site, radiation levels in the area where the fuel has been stored will be reduced.

*Environmental Impacts of the Proposed Action*

The environmental impact from operations with licensed material at the NFS facility has been evaluated numerous times in the past for various licensing actions. The date of the latest Environmental Assessment (EA) was August 1991 and was completed for the recent renewal of NFS's operating license. This EA was based on environmental and effluent data for the years 1979 through 1989 and concluded that the environmental impacts associated with continued operations would be insignificant.

Based on the information submitted by NFS, the impact to the environment from activities associated with the proposed action is expected to be minimal. NFS is authorized to perform the various steps involved with separating the uranium from the other constituents in the fuel, and the environmental impacts from these steps have been evaluated in previous environmental reviews. The impact to the environment from processing the uranium has also been reviewed and evaluated in prior assessments. The impact to the environment from the thorium in the fuel has not been evaluated in this assessment because thorium is regulated by the State of Tennessee, not the NRC.

The amount of uranium in the gaseous effluents released to the environment is not expected to change due to the proposed action because other major processing activities will no longer be performed. Based on information supplied for a previous license amendment, the total amount of uranium measured in stack effluents is estimated to be 3.7E-12 μCi/ml. This value is well below the values specified in 10 CFR part 20, appendix B, table II, column 1 for airborne radioactivity in unrestricted areas.

The licensee expects no increase in the volume of liquid effluents as a result of the proposed action. Liquid effluents are sampled and analyzed prior to discharge. Sample values must be less than NFS' internal action guide limits and the limits specified in 10 CFR part 20, appendix B, table II, column 2. Additionally, all liquid discharges are made in accordance with the National Pollution Discharge Elimination System (NPDES) permit issued by the State of Tennessee.

The licensee has an environmental monitoring program in place to determine if plant operations are having an impact upon the environment. Environmental media sampled and analyzed for radiation levels are air, surface water, ground water, soil, vegetation, and ambient radiation. Surface water is also sampled and analyzed for pH, ammonia, nitrate, fluoride, mercury, flow, and temperature in accordance with the NPDES permit. Air samples are also analyzed for fluoride levels. The environmental monitoring program currently in place will be adequate to detect any adverse environmental impact from the proposed action.

In the August 1991 EA, the dose to the maximally exposed individual was calculated using the highest annual gaseous release rate value from the review period. The value used was from 1984 and was 7.7E-12 μCi/ml which is more than twice the estimated gaseous release rate for all current operations.

The maximally exposed individual for the NFS facility is the nearest resident who lives 250 meters south of the plant. Based on the 1991 EA, the estimated annual dose received by this individual was 10 millirem (mrem) to the lung, 0.2 mrem to the kidney, 1.2 mrem to the bone, and 2.2 mrem to the total body. Using the estimated release rate of 3.7E-12 μCi/ml, the maximally exposed individual would receive annual doses of 4.8 mrem to the lung, 0.1 mrem to the kidney, 0.7 mrem to the bone, and 1.1 mrem to the total body. The dose to the maximally exposed individual is well below the specified limits in 40 CFR 61.102 and 10 CFR part 20.

*Conclusion*

Based on the information supplied by the licensee, the staff concludes the impact to the environment from the proposed action will be minimal. There will be no significant change in the types of NRC-regulated effluents released from the site. There will be no significant change in the amount of gaseous or liquid effluents discharged to the environment. All discharges will be through established, monitored pathways. The activities associated with the proposed action will be conducted in an existing building so there will be no significant impact due to construction. The dose to the maximally exposed individual from site activities will be less than the limits specified in the regulation.

*Alternatives to the Proposed Action*

The alternatives to the proposed action are for the licensee to sell the material in its current form or continue to store it. The alternative of selling the material in its current form is not a viable option since no buyers can be found.

The alternative of continuing to store the fuel elements places an economic burden upon NFS in that money that can be used for other purposes will remain tied up in the fuel.

*Agencies and Persons Consulted*

NRC Region II personnel were contacted during the completion of this EA. Staff utilized the amendment application dated August 14, 1992 and supplemental information dated April 8, 1993 and June 1, 1993 in preparing the EA.

*Finding of No Significant Impact*

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street N.W., Washington, DC.

**Opportunity for a Hearing**

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, MD 20852); on the licensee (Nuclear Fuel Services, Inc., P.O. Box 337, Erwin, Tennessee, 37650), and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 27th day of July 1993.

For the Nuclear Regulatory Commission.

**Robert Pierson,**

*Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMS.*

[FR Doc. 93–18710 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–285]**

**Omaha Public Power District, Fort Calhoun Station, Unit No. 1; Issuance of Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to the Omaha Public Power District (the licensee), for the operation of Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

**Environmental Assessment**

*Identification of Proposed Action*

The amendment would consist of changes to the Technical Specifications (TS) that would authorize an increase of the storage capacity of the spent fuel pool from 729 to 1083 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated December 7, 1992, as supplemented by letters dated March 19, April 28, and May 14, 1993. The Commission's staff has prepared an Environmental Assessment of the Proposed Action dated July , 1993.

*Need for Proposed Action*

If the amendment were not approved, the licensee would be unable to continue operations beyond 1995, when the storage capacity of the current spent fuel pool would be reached.

*Environmental Impacts of the Proposed Action*

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of the interim storage of spent fuel was negligible and that the cost of the various alternatives shows the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For Fort Calhoun, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary and the estimated dose to the population within an 80-kilometer radius is believed to be too small to have any significance when compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the spent fuel pool

expansion is the waste heat rejected. The total increase in heat load rejected to the environment will be small compared to the amount of total heat currently being released. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment.

With regard to potential non-radiological impacts, the proposed change to the TS involves a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Fort Calhoun Station, Unit No. 1, dated August 1972.

*Agencies and Persons Consulted*

The staff consulted with the State of Nebraska regarding the environmental impact of the proposed action.

**Finding of No Significant Impact**

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated December 7, 1992, as supplemented by letters dated March 19, April 28, and May 14, 1993, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for Fort Calhoun, dated August 1972, and (4) the Environmental Assessment dated July , 1993.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland this 29th day of July 1993.

For the Nuclear Regulatory Commission.

**Harry Rood,**

*Acting Director, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–18711 Filed 8–4–93; 8:45 am]

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[Docket No. 50–333]

**Power Authority of the State of New York, James A. Fitzpatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of appendix J of 10 CFR part 50 to the Power Authority of the State of New York (PASNY; the licensee), for the James A. FitzPatrick Nuclear Plant located in Oswego County, New York.

**Environmental Assessment**

*Identification of Proposed Action*

The licensee would be exempted from the requirements of section IV.A. of appendix J, to 10 CFR part 50, to the extent that a Type A, B, or C leak rate test would not have to be performed following the replacement of certain piping and welds in the Core Spray system minimum flow lines during the fall 1993 maintenance outage, currently scheduled for September 1993. The replacement piping and welds would be subject to a Type A primary containment integrated leak rate test prior to startup from the next refueling outage, currently scheduled to start in January 1995.

*The Need for the Proposed Action*

In accordance with section IV.A. of appendix J to 10 CFR part 50, a Type A, B, or C test (as applicable) is required to be performed following any major modification or replacement of a component which is part of the primary containment boundary. Augmented erosion/corrosion inspections conducted during the 1992 refueling outage revealed the presence of pipe wall thinning in Core Spray system minimum flow lines (3"–W23–152–7A, B), which the licensee believes to be cavitation induced pitting due to the location of the restricting orifice in each of these lines. PASNY intends to replace approximately 5 feet of piping in each of these lines during the fall 1993 maintenance outage. The sections of piping scheduled to be replaced include the restricting orifices (14RO–27A, B) and the Core Spray minimum flow valves (14MOV–5A/5B). The planned repair constitutes a replacement of a component that is part of the primary containment boundary and would be performed in accordance with the requirements of ASME Section XI and ANSI B–31.1–1967 (the construction code for the FitzPatrick plant). The licensee has determined that the requirement to conduct a Type A, B, or C test following repairs is applicable. However, the licensee has determined that, because of the locations of the sections of minimum flow line piping to be repaired, isolatable volumes cannot be practicably obtained. Therefore, pressure testing can only be accomplished by performing a Type A primary containment integrated leak rate test. Further, the licensee has determined that performance of a Type A test would not be feasible during the 3-week maintenance outage, since it would lengthen the outage by a minimum of 3 to 4 weeks. Therefore, the licensee has requested an exemption from section IV.A. of appendix J to 10 CFR part 50.

In lieu of a Type A, B, or C test, the licensee has proposed an alternate inspection program, including 100% radiography of the new welds, surface examination on new welds that form a portion of the primary containment boundary, and a system leakage test (in accordance with ASME Section XI, 1980 Edition through Winter 1981 Addenda, paragraph IWA–5213) to ensure structural integrity and leak tightness. These nondestructive examinations will ensure that the intent of section IV.A. of appendix J to 10 CFR part 50 is met, which is to assure that modifications to the containment pressure boundary are leak-tight.

*Environmental Impact of the Proposed Action*

The proposed alternate inspection program would ensure that excessive leakage from the primary containment from the repaired areas of the Core Spray minimum flow lines does not exist and would provide a level of safety at least equivalent to that attained by compliance with section IV.A. of appendix J to 10 CFR part 50. On this basis, the Commission concludes that there are no significant radiological impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

*Alternative to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. This alternative would also result in an unwarranted extension of the fall 1993 maintenance outage beyond the planned 3 weeks.

*Alternative Use of Resources*

The actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the James A. FitzPatrick Nuclear Power Plant," dated March 1973.

*Agencies and Persons Contacted*

The Commission consulted with the State of New York regarding the environmental impact of the proposed action.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for exemption dated June 28, 1993. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 29th day of July, 1993.

For the Nuclear Regulatory Commission.

**Robert A. Capra,**

*Director, Project Directorate I–1, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–18712 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

## Regulatory Guide; Withdrawal

The Nuclear Regulatory Commission is withdrawing Regulatory Guide 1.108, "Periodic Testing of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants." The guide was issued in August 1976 (Revision 1, August 1977) to provide guidance on methods acceptable to the NRC staff for periodic testing of diesel generator units to ensure the units could meet availability requirements.

The guidance in Regulatory Guide 1.108 has been updated and incorporated into Revision 3 of Regulatory Guide 1.9, "Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class IE Onsite Electric Power Systems at Nuclear Power Plants," which was issued recently. Since there is no longer a need for Regulatory Guide 1.108, it has been withdrawn. However, the withdrawal of Regulatory Guide 1.108 does not alter any prior or existing licensing commitments based on its use.

Regulatory guides may also be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of July, 1993.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 93–18707 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

## Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 8.9, "Acceptable Models, Equations, and Assumptions for a Bioassay Program," describes practical and consistent methods acceptable to the NRC staff for estimating intake of radionuclides using bioassay measurements.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 8th day of July, 1993.

For the Nuclear Regulatory Commission.

**Eric S. Beckjord,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 93-18708 Filed 8-4-93; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-213]**

## Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 161 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to upgrade the feedwater control system from an analog to a digital system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 8, 1993, (58 FR 12976). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 31760).

For further details with respect to the action see (1) the application for amendment dated January 29, 1993, and supplemented April 30, 1993, (2) Amendment No. 161 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment dated May 27, 1993. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland this 14th day of July 1993.

For the Nuclear Regulatory Commission.

**James W. Andersen,**

*Acting Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93-18713 Filed 8-4-93; 8:45 am]

BILLING CODE 7590-01-M

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## RAILROAD RETIREMENT BOARD

## Repayment of Loans From the Railroad Unemployment Insurance Account to the Railroad Retirement Account

**AGENCY:** Railroad Retirement Board.

**ACTION:** Notice.

**SUMMARY:** Under section 10(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 360(d)) the Railroad Retirement Board is required to order repayment of outstanding loans from the Railroad Retirement Account to the Railroad Unemployment Insurance Account when it has determined that the balance in the Railroad Unemployment Insurance Account is sufficient to repay the outstanding balance of the loans due the Railroad Retirement Account. Section 10(d) further requires the Board, having made such a determination, to direct the Secretary of the Treasury to make the necessary transfers to repay the loan. The Board hereby gives notice of its action under section 10(d) of the Railroad Unemployment Insurance Act to repay the outstanding balance of the loan due the Railroad Retirement Account.

**FOR FURTHER INFORMATION CONTACT:** Peter A. Larson, Chief Financial Officer, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611 [312] 751-4590.

**SUPPLEMENTARY INFORMATION:** On June 28, 1993, the Railroad Retirement Board determined that the balance to the credit of the Railroad Unemployment Insurance Account was sufficient to fully repay the outstanding balance of the loan due the Railroad Retirement Act. Accordingly, the Board directed the Secretary of the Treasury to transfer $180,241,803.96 from the unemployment account to the retirement account and this transfer was made on June 29, 1993. The transfer to the retirement account has completely liquidated the debt due from the unemployment account to the retirement account attributable to loans made prior to October 1, 1985.

By Authority of the Board.

Dated: July 28, 1993.

**Beatrice Ezerski,**

*Secretary of the Board.*

[FR Doc. 93-18610 Filed 8-4-93; 8:45 am]

BILLING CODE 7905-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-32694; File No. SR-CBOE-93-16]**

July 29, 1993.

## Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Flexible Exchange Options ("FLEX Options") Based on the Russell 2000 Index

### I. Introduction

On March 9, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposal to list and trade large-size, customized index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Russell 2000 Index ("Russell 2000" or "Index").[3]

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on April 29, 1993.[4] No comments were received on the proposal.[5] The CBOE amended the proposal on June 29, 1993.[6] This order approves the proposal as amended.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1993).

[3] The Russell 2000 is a capitalization-weighted index developed by Frank Russell and composed of the bottom 2000 of the 3000 largest U.S. equity securities in terms of domestic market capitalization. The Index is designed to track the performance of the domestic small to midsized market. Unlike the S&P Indexes, the Russell 2000 is adjusted for cross-ownership.

[4] See Securities Exchange Act Release No. 32199 (April 23, 1993), 58 FR 26014.

[5] See note 15, *infra*.

[6] On June 29, 1993, the CBOE filed Amendment No. 1 reducing the position and exercise limits applicable to the proposed Russell 2000 FLEX Options from 400,000 to 200,000 contracts. See letter from William J. Barclay, Vice President, Strategic Planning and International Development,

## II. Description of the Proposal

The CBOE in this proposal is seeking to expand the FLEX Options program to include FLEX Options on the Russell 2000.[7] The purpose of the CBOE's FLEX Option program is to provide a framework for the Exchange to list and trade index options that give investors the ability, within specified limits, to designate certain of the terms of the options. Consistent with the original FLEX Options Approval Order, the present proposal to trade FLEX Options based on the Russell 2000 will similarly permit market participants to designate certain terms of the options contract, such as the strike prices, exercise types, expiration date, and form of settlement.[8] Currently, the CBOE lists and trades FLEX Options based on the OEX and SPX Indexes, which consist of 100 and 500 high-capitalization stocks, respectively. The component stocks of the Russell 2000 however consist of 2,000 small-capitalization companies.[9] The Exchange believes that there is a growing market for customized FLEX Options based on a small-capitalization stock index such as the Russell 2000.

Presently, CBOE Rule 24A.7 provides that FLEX Options are subject to maximum position and exercise limits of 200,000 contracts on the same side of the market on a given index, without aggregation for other contracts on the same index with one exception. This exception requires that at the close of business two days prior to the last day of trading of the calendar quarter, members must aggregate positions in P.M.-settled [10] FLEX Options and comparable quarterly expiration index options ("QIXs") with such positions not exceeding the QIX limits specified in Rule 24.4. The applicable hedge exemptions under Rule 24.4 may however be applied to aggregate positions.[11]

The CBOE proposes the FLEX Options on the Russell 2000 be subject to position limits of 200,000 contracts on the same side of the market, which is identical to existing limits for OEX and SPX FLEX Options.[12] In addition, the special aggregation provision in Rule 24A.7 for P.M.-settled FLEX Options and QIX options is intended by the CBOE to apply to FLEX Options on the Russell 2000 and QIX options on the Russell 2000 with the same last trading day prior to expiration ("comparable QIX options").[13] Accordingly, position limits for P.M.-settled FLEX Options and comparable QIX options would be subject to a maximum limit of 50,000 contracts on the same side of the market (without a telescoping requirement for the series with the nearest expiration date) which is consistent with the position limits for Russell 2000 QIX options and existing CBOE Rule 24.4.[14]

## III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and 11A.[15] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product for a broad-based index consisting of small-capitalization stocks that may be more suitable to their investment needs than the other outstanding FLEX index options. Moreover, consistent with section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the CBOE to compete with the growing OTC market in customized index options.

In addition, the Commission believes that the CBOE proposal will help to promote the maintenance of a fair and orderly market, consistent with section 6(b)(5) and 11A, because the purpose of the proposal is to extend the benefits of a listed, exchange market in Russell 2000 options that have certain terms varied by the particular investor. The attributes of the Exchange's options market versus an over-the-counter ("OTC") market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.[16]

In general, transactions in FLEX Options based on the Russell 2000 will be subject to many of the same rules that apply in index options traded on the CBOE. In order to provide investors with the flexibility to designate certain terms of the options and accommodate the special trading of FLEX Options, however, several new rules will apply solely to FLEX Options.[17]

Due to the customized nature of these options, Russell 2000 FLEX Options, unlike regular Russell 2000 options and Russell 2000 QIXs, will not have trading

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CBOE, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated June 29, 1993.

[7] The Commission approved the CBOE's FLEX Options framework on February 24, 1993 permitting the Exchange to list and trade FLEX Options based on the Standard & Poor's ("S&P") 100 ("OEX") and 500 ("SPEX") Indexes. See Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 ("FLEX Options Approval Order").

[8] The Commission in its original FLEX Options approval designated FLEX Options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. See Securities Exchange Act Release No. 31919 (February 23, 1993), 58 FR 12056 ("9b–1 Order"). As described in note 25 *infra*, and for the same reasons stated in the 9b–1 Order, Russell 2000 Flex Options are deemed "standardized options" for purposes of the Rule 9b–1 options disclosure framework.

[9] The Commission approved the listing and trading of options based on the Russell 2000 on the CBOE on October 30, 1992. See Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802. In approving Russell 2000 options the Commission believed that the Index would provide investors with an important trading and hedging mechanism that accurately reflected the overall movement of stocks in the small- to middle-capitalization range of U.S. equity securities. In addition, the Commission determined that the Russell 2000 was a broad-based index not readily susceptible to manipulation.

[10] The settlement value of a P.M.-settled stock index options contract is based on the closing prices of the component securities.

[11] Under the proposal, the CBOE's position limits would be established as a three-year pilot, during or following which adjustments may be required. See letter from William J. Barclay, Vice President, Strategic Planning and International Development, CBOE, to Jeffrey Burns, Attorney, Branch of Options Regulation, SEC, dated July 28, 1993. In addition, the CBOE has stated that it will monitor the effect of the position limits at the end of the first year of trading and provide the Commission with a report concerning the adequacy of the limits and its effects on the underlying cash market. See, *infra*, discussion section on one-year monitoring report.

[12] See, *supra* note 8.

[13] The Commission today is concurrently approving the CBOE's proposal to list the trade QIX options based on the Russell 2000. See Securities Exchange Act Release No. 32893 (July 29, 1993).

[14] The hedge exemption provision found in Policy .01 to Rule 24.4 would continue to be applicable to P.M.-settled FLEX Options and comparable QIX options on the Russell 2000.

[15] 15 U.S.C. 78f(b)(5) and 78k–1 (1982). The discussion in the FLEX Options Approval Order, *supra* note 7, is incorporated herein.

[16] The Commission received a comment letter from the New York Stock Exchange, Inc. ("NYSE") on February 26, 1993 which articulated concerns about potential adverse effects FLEX Options could have on securities markets trading securities that are components of stock index options. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, SEC, date February 26, 1993. Approximately 25 percent of the Russell 2000 is comprised of securities listed on the NYSE.

As discussed in the FLEX Options Approval Order and in the following text, while the Commission shares these concerns, the Commission is satisfied that the CBOE has established appropriate measures to address and monitor potential adverse effects. Moreover, there have been no indications of adverse market consequences through July 19, 1993, in the 46,715 FLEX Options contracts that have expired since trading in FLEX Options on the S&P 100 and 500 commenced. As discussed below, although the Commission shares many of the NYSE's concerns regarding market impact, we believe that structures are in place to monitor the FLEX market and that the CBOE and NYSE will consider appropriate changes if necessary.

[17] See FLEX Options Approval Order *supra* note 7.

rotations at either the opening or closing of trading. In addition, the individually-tailored auction process outlined in the FLEX Options Approval Order,[18] sets forth in detail the procedure of customized negotiation for those investors seeking particular flexibility in options terms. Accordingly, the CBOE FLEX Options framework for trading stock index options, such as the Russell 2000, varies from the traditional exchange procedure for trading non-FLEX stock index options, due to the special FLEX procedures allowing for limited individual negotiation of certain of the terms of the contract between the parties.

The Commission believes that the FLEX auction process appears reasonably designed to provide the benefits of a competitive Exchange auction environment for Russell 2000 options while allowing market participants the flexibility to negotiate certain terms. Accordingly, the CBOE has established procedures for quotes upon requests which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission further notes that FLEX Options based on the Russell 2000 can be constructed with expiration exercise settlement based on the closing values of the component securities which can result in adverse effects for the markets in those securities.[19] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,[20] these concerns are reduced in the case of FLEX Options based on the Russell 2000, since expiration of these stock index options will not correspond to the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, Russell 2000 FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September, and December, thereby diminishing the impact that these FLEX Options could have on the underlying cash market.

Also, as noted above, the proposal would limit the effect on securities markets by addressing the relationship between FLEX and QIX Options. As proposed by the CBOE, amended Rule 24A.7 requires P.M.-settled Russell 2000 FLEX Options to be aggregated with QIX options based on the Russell 2000 and having the same last trading day prior to expiration. Consistent with these requirements, Russell 2000 FLEX Options would be aggregated with comparable QIX options two days prior to expiration subject to the Russell 2000 QIX position limits of 50,000 contracts on the same side of the market.[21] The Commission believes that these rules should help prevent an investor from using Russell 2000 FLEX Options for the purpose of avoiding the position limits applicable to comparable QIXs.

The CBOE pursuant to the existing FLEX Options position limit framework has proposed to establish position limits of 200,000 contracts on the same side of the market for the Russell 2000 FLEX Options . The commission finds that these proposed position limits are consistent with the FLEX Options position limit framework as set forth in the FLEX Options Approval Order.[22]

Nevertheless, because the position limits for Russell 2000 FLEX Options are much higher than those currently existing for outstanding exchange-traded Russell 2000 options and open interest in one or more FLEX series could grow to significant exposure levels, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying the Russell 2000 FLEX Option. The CBOE has taken several steps to address this concern, including establishing the FLEX position limits framework as a three-year pilot program and undertaking to monitor open interest, position limit compliance and potential adverse market effects carefully and to report to the Commission after one year's experience trading Russell 2000 FLEX Options.[23] The reporting of the CBOE's experience in connection with the trading of Russell 2000 FLEX Options will be consistent with the original FLEX Options Approval Order, and include, among other things:

- The type of strategies used by Russell 2000 FLEX Options market participants and whether Russell 2000 FLEX Options are being used, in lieu of existing standardized stock index options on the Russell 2000.
- The type of market participants using Russell 2000 FLEX Options.
- The terms which are predominantly being "flexed" by market participants, *i.e.*, strike prices, settlement value (*A.M.* v. *P.M.*), term of duration, *European* v. *American style*.
- The size of the Russell 2000 FLEX position on average, the size of the largest Russell 2000 FLEX positions on any given day and the size of the largest Russell 2000 FLEX position held by any single customer/member.
- The relationship between strike prices and current index value.
- Whether there is significant interest in long-term expirations greater than nine months.
- Any effect Russell 2000 FLEX positions have had on the underlying cash market, including an analysis of Russell 2000 FLEX positions and their market impact on days NYSE's Rule 80A is invoked.

In addition, the Commission expects and the CBOE has agreed to monitor the actual effect of Russell 2000 FLEX Options once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the CBOE, the Commission believes that the CBOE and OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with Russell 2000 FLEX Options. Specifically, the Exchange represents that "CBOE and OPRA have the necessary systems capacity to support the new series which could result from introduction of Russell FLEX * * * options."[24]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because such amendment will help to benefit the Russell 2000 FLEX Options market and market participants employing these options while at the same time reducing the possible exposure to the market from these larger positions.[25] In addition, the higher limits were published for comment and no comments were received rendering acceleration of the amendment reasonable. The Commission accordingly believes that granting accelerated approval of the amendment to reduce position limits is appropriate and consistent with Section 6 of the Act.

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[18] *Id.*

[19] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33378 ("A.M.-settled SPX Approval Order").

[20] *Id.*

[21] See, *supra* note 13.

[22] See FLEX Options Approval Order *supra* note 7.

[23] *Id.*

[24] See Letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Jeffrey Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, dated June 28, 1993, incorporating a memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Bill Barclay, CBOE, dated June 28, 1993.

[25] In the original Russell 2000 FLEX Option rule filing, the CBOE proposed position and exercise limits of 400,000 contracts. The Commission believes that a position limit requirement of 200,000 contracts on the same side of the market for FLEX Options on the Russell 2000 is consistent with the FLEX Options Approval Order.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File NO. SR–CBOE–93–16 and should be submitted by August 26, 1993.

## V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and sections 6 and 11A of the Act, in particular. In addition, the Commission also finds pursuant to Rule 9b–1 under the Act, that FLEX Options based on the Russell 2000 are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[26]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–93–16), including Amendment No. 1 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

[FR Doc. 93–18656 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32693; File No. SR–CBOE–93–15]**

## Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of Quarterly Index Expiration Options Based on the Russell 2000 Stock Index

July 29, 1993.

On March 9, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the Russell 2000 Stock Index ("Russell 2000" or "Index") that will expire on the first business day of the month following the end of each calendar quarter ("Quarterly Index Expirations" or "QIXs").[3] Currently, Russell 2000 options traded on the Exchange expire on the Saturday immediately following the third Friday of the expiration month.[4] The CBOE intends to trade Russell 2000 QIXs in addition to the existing Russell 2000 options expiring at the middle of the month.

Notice of the proposed rule change appeared in the **Federal Register** on April 29, 1993.[5] No comments were received on the proposed rule change. This order approves the proposal.

The Exchange proposes to include the Russell 2000 in CBOE Rule 24.9 in order to provide for the listing of up to eight near-term quarterly expirations for trading on Russell 2000 options. The CBOE would be permitted at any one time to have up to eight Russell 2000 option open for trading with expiration dates on the first business day of the month following the end of a calendar quarter.[6] Accordingly, Russell 2000 QIXs will have expirations approximately two weeks apart from existing Russell 2000 option expirations in the quarterly month expiration.

The proposed QIX options will trade simultaneously with, not independent of, currently listed and traded Russell 2000 options. The proposed QIX options will be subject to the same rules that presently govern the trading of existing Russell 2000 options contracts, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for the QIX options will be similar to the corresponding Russell 2000 options that presently trade on the Exchange with one exception. For example, Russell 2000 QIXs will have European-style exercise,[7] with the daily exercise settlement value based on the index value derived from the closing prices of component stocks.[8] In addition, the multiplier for Russell 2000 QIXs may be set at 500 rather than the customary 100.[9]

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[26] As part of the original approval process of the FLEX Options framework, the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as standardized options pursuant to Rule 9b–1(a)(4) under the Act. See Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792. On May 4, 1993, Chairman Breeden pursuant to Public Law 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2), and Article 30–3 of the Commission's Statement of Organization; Conduct and Ethics; and Information and Requests (17 CFR 200.30–3), designated that persons serving in the position of Deputy Director, Associate Director, and Assistant Director, in the Division of Market Regulation, be authorized to issue orders designating securities as "standardized options" pursuant to Rule 9b–1(a)(4). Accordingly, this subdelegation provides the necessary authority for Russell 2000 FLEX Options to be designated as "standardized options" by the Division of Market Regulation. See Designation of Personnel to Perform Delegated Functions in the Division of Market Regulation, dated May 4, 1993.

[27] 15 U.S.C. 78s(b)(2) (1982).

[28] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1992).

[2] 17 CFR 240.19b–4 (1993).

[3] The Russell 2000 is a broad-based, capitalization-weighted index of domestic equity securities traded on the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex"), and the National Association of Securities Dealer's ("NASD") Automated Quotation System ("NASDAQ"). The Index was developed by Frank Russell and is composed of the bottom 2,000 of the 3,000 largest U.S. equity securities in terms of domestic market capitalization, and is designed to track the performance of the domestic small to mid-sized capitalization market.

[4] The Commission today is concurrently approving the CBOE's proposal to list and trade Flexible Exchange Options ("FLEX Options") based on the Russell 2000. See Securities Exchange Act Release No. 32694 (July 29, 1993) ("Russell 2000 FLEX Options Approval Order") FLEX Options allow market participants the ability to name certain terms of the option contract including the expiration date and valuation method at settlement.

[5] See Securities Exchange Act Release No. 32198 (April 23, 1993), 58 FR 26013.

[6] Presently, regular (non-FLEX and non-QIX) options traded at the CBOE expire on the Saturday following the third Friday of the expiration month. The CBOE trades index options with expirations of up to one year in length that expire at three month intervals. The Exchange allows for up to six expiration months with none farther out than twelve months. In addition, the CBOE also trades long-term index options that may expire three years from listing named "LEAPS." The CBOE is not now proposing to list or trade QIX options with more than twelve months to expiration. Any such proposal would be filed with the Commission for review under section 19(b) of the Act.

[7] A European-style option is one that may be exercised only during a specified period prior to the expiration of the option.

[8] Regular options on the Russell 2000 are settled based on the opening prices of the component securities.

[9] The Exchange believes that increased contract size may be justified due to the larger portfolios now being managed by institutional investors. The CBOE's rules provide that position limits will be accordingly adjusted if the multiplier is 500 rather than 100. Initially, the Exchange intends to use only the 100 multiplier. The CBOE has stated that the Commission will be notified, and appropriate procedures or rule amendments filed and approved prior to trading options based on a 500 multiplier. Accordingly, the Commission must specifically approve the use of a multiplier other than 100. See letter from Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, to

Continued

With regard to position and exercise limits,[10] the CBOE is proposing to amend Rule 24.4 to provide that Russell 2000 QIXs will be subject to the 50,000 contract limit currently specified for Russell 2000 index options, but without the 30,000 contract limit or "telescoping requirement" for the series with the nearest expiration date applicable for regular Russell 2000 options. For the purpose of this test, regular Russell 2000 options would be aggregated with the Russell 2000 QIXs, however, in the case of regular Russell 2000 options, the 30,000 contract telescoping requirement continues to apply. In addition, the number of contracts in any QIX position having a multiplier of 500[11] must be treated as equal to five times the actual number of contracts in the position for the purposes of position and exercise limits.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[12] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored quarterly portfolio hedge that may be more suitable to their investment needs. Specifically, by providing investors with the ability to use Russell 2000 QIX options that settle based on the value of component stocks on the last business day of the calendar quarter, the CBOE proposal will allow investors increased flexibility to tailor their portfolio positions to satisfy their investment objectives. For instance, according to the CBOE, the performance of portfolio managers and institutional investors is judged on a quarterly basis.[13] Therefore in the past, these investors have been forced to pursue "quarterly hedges" in the over-the-counter ("OTC") market employing forwards, options, and/or swaps. Accordingly, the Commission believes the CBOE proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.

In addition, the Commission believes that the CBOE proposal will help promote the maintenance of a fair and orderly market because the purpose of the proposal is to extend the benefits of a listed, exchange market in Russell 2000 options to quarterly calendar expirations. The attributes of the Exchange's Russell 2000 options market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded on the Exchange.[14]

The Commission also notes that the Exchange's existing rules applicable to stock index options, including among others, strike price interval, bid/ask differential, price continuity, and sales practice rules and position and exercise limits will apply to QIX options. In particular, Russell 2000 QIXs will be subject to a 50,000 contract limit under Rule 24.4(d) without a telescoping provision, and will be aggregated with regular Russell 2000 contracts.[15] Accordingly, all non-FLEX Russell 2000 options contract positions are limited in total to a 50,000 position limit.[16]

The Commission notes that Russell 2000 QIXs will be treated like regular Russell 2000 options except for expiration settlement which will be based on the closing values of the component securities.[17] Although the Commission continues to believe that basing the settlement of index products on opening, as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,[18] these concerns are reduced in the case of Russell 2000 QIXs, since expiration of these stock index options will not correspond with the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, Russell 2000 QIXs will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September, and December, thereby diminishing the impact that Russell 2000 QIXs could have on the market. Accordingly, the Commission believes that Russell 2000 QIXs options will not compromise the protection of investors or have an adverse market effect.[19] Of course, the Commission expects the CBOE to monitor the actual effect of Russell 2000 QIXs once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the CBOE, the Commission believes that the CBOE and the Options Price Reporting Authority ("OPRA") will have adequate systems processing capacity to accommodate the additional options listed in connection with QIX options. Specifically, the Exchange represents that "CBOE and OPRA have the necessary systems capacity to support the new series which could result from introduction of Russell * * * QIX options."[20]

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Sharon Lawson, Assistant Director, Division of Market, Regulation, SEC, dated July 22, 1993.

[10] Position limits are the maximum number of option contracts permitted on the same side of the market with respect to a single underlying interest that may be held or written by a single investor or group of investors acting in concert. Exercise limits are the maximum number of option contracts on the same underlying interest that a single investor or group of investors acting in concert may exercise during any five consecutive business days.

[11] See note 9, *supra*, discussing Commission approval prior to implementation of a multiplier higher than 100.

[12] 15 U.S.C. 78f(b)(5) (1982).

[13] In addition, many investment strategies employed by these portfolio managers converge at the calendar quarter. Hence, traditional exchange-type expirations provide a less than perfect hedge for many institutions.

[14] See Securities Exchange Act Release No. 31898 (February 22, 1993), 58 FR 11878.

[15] Regular Russell 2000 options will continue to be subject to limits of 50,000 contracts with a telescoping requirement in the near term series. In the aggregate, all Russell 2000 contracts, excluding FLEX Options, are limited to the position limits of 50,000 contracts established for this particular contract.

[16] See note 10, *infra*, discussing aggregation requirements for FLEX Options and QIXs on the Russell 2000 expiring on the same trading day. Russell 2000 QIXs will also be entitled to the hedge exemption from position limits under Interpretation .01 of CBOE Rule 24.4. This hedge exemption allows public customers to apply for a "hedge exemption" from established position limits for broad-based index options if those customers hold preapproved portfolios of long positions in common stocks. In addition, this hedge exemption is also available to public customers with accounts having short stock positions who seek to offset economic risk by buying calls or selling puts on a broad-based stock index. The maximum size of an exempted position, however, cannot exceed the unhedged value of the qualified stock portfolio, and no exempted positions can exceed 75,000 contracts, regardless of the size of the stock portfolio.

[17] The Commission in October 1992 approved the CBOE's proposal to trade regular Russell 2000 options with expiration settlement based on the opening prices of the component securities. See Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802.

[18] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33378.

[19] As described in note 4, *supra*, concurrent with approval of Russell 2000 QIXs, the Commission is approving a CBOE proposal to trade FLEX Options on the Russell 2000 Index. As described in more detail in the Russell 2000 FLEX Options Approval Order, positions in FLEX Options and comparable QIX options must be aggregated at the close of business two days prior to the last trading day of the calendar quarter subject to the lower Russell 2000 QIX position limits. The potential market impact of this should minimize the larger position limits applicable to FLEX Options.

[20] See Letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Jeffrey Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC dated June 28, 1993.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CBOE–93–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18657 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32696; File No. SR–NYSE–93–31]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc.; Relating to Global Telecommunications Market Index Target-Term Securities

July 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 19, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list for trading Market Index Target-Term Securities ("MITTS"),[1] the return of which is based upon a global portfolio of securities of telecommunications companies ("Global Telecommunications Portfolio"). Initially, the Global Telecommunications Portfolio will contain the securities of 22 telecommunications companies, representing 14 countries from around the world (Attached in Appendix A is a list of the portfolio securities, the issuing companies, and the countries in which they are organized).

The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

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incorporating a memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Bill Barclay, CBOE, dated June 28, 1993.

[21] 15 U.S.C. 78s(b)(2) (1982).

[22] 17 CFR 200.30–3(a)(12) (1993).

[1] Market Index Target-Term Security or MITTS is a registered service mark of Merrill Lynch & Co., Inc.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

(1) Purpose

Pursuant to the listing criteria set forth in Section 703.19 of the NYSE's Listed Company Manual, the Exchange intends to list and trade MITTS. MITTS are securities that entitle the holder to receive at maturity from the issuer a minimum portion of the principal amount plus an amount based upon the change in the market value of a stock index or portfolio. The Exchange is submitting the proposed rule change specifically to enable the NYSE to list for trading MITTS on the Global Telecommunications Portfolio ("Global Telecommunications MITTS") issued by Merrill Lynch & Co., Inc. ("Merrill Lynch").

Global Telecommunications MITTS will allow investors to combine protection of a portion of the principal amount of the MITTS with additional payments based upon the performance of a portfolio of securities representing the global telecommunications industry. The first issue of Global Telecommunications MITTS will provide 90 percent principal protection.

(a) *The Security.* Global Telecommunications MITTS will be denominated in U.S. dollars and will entitle the owner at maturity[2] to receive an amount based upon the percentage change in the value of the Global Telecommunications Portfolio from the Date of issuance to the "final calculation period," subject to a minimum repayment amount. The "final calculation period" is a specified number of days prior to the maturity date.[3] The average value of the Global Telecommunications Portfolio during the final calculation period will be used in calculating the amount holder will receive upon maturity.[4]

If the market value of the Portfolio has declined, the holder will receive not less than a specified percentage of the principal amount of the security. For example, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than ten percent, the holders of the first issue of Global Telecommunications MITTS will receive 90 percent of the principal amount of the securities. The payment in addition to the minimum principal amount at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio.

Like other MITTS listed on the NYSE, Global Telecommunications MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of MITTS will be able to cash-out of their investment by selling the security on the Exchange. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the Global Securities Telecommunications Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the Global Telecommunications Portfolio, the time remaining to maturity, dividend rates, and the credit worthiness of the issuer.

The Exchange will only list for trading Global Telecommunications MITTS issues that have at least one million outstanding securities, at least 400 shareholders, a minimum life of one year, at least a $4 million market value, and that otherwise comply with the NYSE's initial listing criteria. In addition, the Exchange will monitor each issue to verify that it complies with the exchange's continued listing criteria.[5]

Merrill Lynch will deposit registered global securities representing Global Telecommunications MITTS with its depository, The Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

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[2] The maturity date for Global Telecommunications MITTS is five years from issuance.

[3] In particular, the final calculation period for Global Telecommunications MITTS will consist of the 60 business days prior to maturity of the security. Within this time period, Merrill Lynch will use for calculation purposes, the first 30 business days that occur without a market disruption event.

[4] The closing value for the Global Telecommunications Portfolio will be determined by an affiliate of Merrill Lynch, and will equal the sum of the products of the average market price and the applicable multiplier for each portfolio security over the final calculation period.

[5] See NYSE Listed Company Manual Section 703.19.

(b) *The Portfolio.* The Global Telecommunications Portfolio consists of securities of 22 telecommunications companies that have significantly different levels of market capitalization (from a high of $82 billion to a low of $1.8 billion). The securities include the Exchange-listed common stock of seven U.S. telecommunications companies, the common stock of three foreign issuers (which stock is listed or trading on, or traded over the facilities of, U.S. securities markets), and the American and/or global depositary receipts of 12 additional foreign issuers.

At the outset, each of the securities in the Global Telecommunications Portfolio shall have equal representation. That is, each security included in the portfolio shall be assigned a multiplier on the date of issuance such that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security included in the calculation of the portfolio. Thus, each of the 22 companies shall represent 4.545 percent of the total portfolio at the time of issuance. If a security is subject to a stock split, stock divided or similar adjustment, the multiplier assigned to the security will be adjusted accordingly.

If a security is no longer outstanding prior to the maturity of the Global Telecommunications MITTS, whether for reason of a merger, acquisition or similar type of corporate control transaction, Merrill Lynch shall assign to that security a value equal to the security's final value for the purpose of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to the value per share at which the acquisition takes place. In the case of a security that no longer exists due to bankruptcy, Merrill Lynch will assign a value of zero for the purposes of calculating portfolio values.

A Merrill Lynch affiliate will at a minimum calculate the value of the Global Telecommunications Portfolio on a daily basis and make those values available to investors. For any security that is not listed on a U.S. securities exchange, the calculation would not include quotations made by or through Merrill Lynch or its affiliates.[6]

*The Issuer.* The Exchange has determined that the issuer of the Global Telecommunications MITTS, Merrill Lynch, meets the listing criteria set forth in section 703.19 of the Exchange's Listed Company Manual. It is a member of the Exchange in good standing with sufficient assets to justify the issuance of MITTS offerings of the size contemplated by the proposed rule change.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principle of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others*

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approved such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by August 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret H. McFarland,**

*Deputy Secretary.*

**Appendix A**

[6] As of July 6, 1993, Telecomunicoes Brasileiras S.A. and Telefonica de Argentina were the only two securities not listed on a U.S. securities exchange of quoted through the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system. Telecomunicoes Brasileiras S.A. is an American Depository Receipt ("ADR") traded over-the-counter ("OTC") through the NASD's bulletin board, while Telefonica de Argentina is traded both OTC and on the London Stock Exchange ("LSE"). Accordingly, Merrill Lynch, for purposed of calculating the Global Telecommunications Portfolio, would disregard quotations for these securities made by or through Merrill Lynch or any of its affiliates.

[7] 17 CFR 200.30–3(a)(12)(1992).

GLOBAL TELECOMMUNICATION PORTFOLIO

| Issuer | Type of security | Country |
|---|---|---|
| Alcatel Alsthom Compagnie Generale d'Electricite | ADR* | France. |
| American Telephone & Telegraph Company | Common Stock | United States. |
| Bell Atlantic Corporation | Common Stock | United States. |
| BellSouth Corporation | Common Stock | United States. |
| British Telecommunications plc | ADR | United Kingdom. |
| Compania de Telefonos de Chile, S.A | ADR | Chile. |
| GTE Corporation | Common Stock | United States. |
| Hong Kong Telecommunications, Ltd | ADR | Hong Kong. |
| L.M. Ericsson Telephone Copany | ADR | Sweden. |
| Newbridge Network Corporation | Common Stock | Canada. |
| NYNEX Corporation | Common Stock | United States. |
| Pacific Telesis Group | Common Stock | United States. |
| Philippine Long Distance Telephone Company | Common Stock | Philippines. |
| Rogers Cantel Mobile Communications | Common Stock | Canada. |
| Southwestern Bell Corporation | Common Stock | United States. |
| Tadiran Ltd | Common Stock | Israel. |
| Telecom Corporation of New Zealand Limited | ADR | New Zealand. |
| Telecomunicoes Brasileiras S.A | ADR | Brazil. |
| Telefonica de Argentina | GDR** | Argentina. |
| Telefonica de Espania | ADR | Spain. |
| Telefonos de Mexico, S.A. de C.V | ADR | Mexico. |
| Vodaphone Group plc | ADR | United Kingdom. |

[FR Doc. 93–18655 Filed 8–4–93; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–32695; File No. SR–PHLX–91–21]

## Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to the Responsibilities for the Executions of Missed Orders

July 29, 1993.

On May 6, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to consolidate and modify the Exchange's procedures for the notification of and responsibility for missed orders on the Exchange's equity and foreign currency options floors.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29247 (May 29, 1991), 56 FR 26177. No comments were received on the proposed rule change.

The Exchange proposes to adopt Options Floor Procedure Advice ("OFPA") D–1, which pertains to procedures for the notification of and responsibility for missed orders on the Exchange's equity options and foreign currency options trading floors.[3] A missed order, as defined in part (c) of OFPA D–1, is one that "becomes due an execution" but was not duly executed. OFPA D–1 would require notification of missed orders to the responsible floor agent[4] by 9:30 a.m. on the business day following the day the order was missed in order for the responsible floor agent to be held responsible for satisfying the missed order or for any associated monetary losses.[5]

If timely notification is given, the floor agent will be held responsible for the remedies in part (b) of the proposed Advance. In particular, if the missed order is discovered during the trading day, the missed order will be entitled to an immediate execution at either the order's limit price or at the available market price, whichever is better. The missed order shall be afforded such execution up to the amount of contracts which traded-through the order or for a minimum of ten contracts with respect to a quote-through. If notification is provided to the specialist at any time between the previous session's close

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] On May 28, 1991, the PHLX submitted an amendment to its filing that provided for the deletion of existing OFPAs A–8 (Missed Orders on the Book), B–10 (Responsibility for Mismatched or "Out" Trades) and C–6 (Responsibility for Missed Orders) since proposed OFPA D–1 would unify and codify these existing Advice. The Exchange also proposed to amend corresponding PHLX Rule 1037, regarding floor reports of Exchange options transactions by specialists. Specifically, Rule 1037, as amended, will require members or member organizations to give notice to specialists of instances where the specialist has failed to send a transaction report with respect to an options order which the specialist executed or should have executed by 9:30 A.M. on the business day following the day a transaction report was due. If timely notice is given, the specialist shall be responsible for any loss sustained until such time as the specialist answers the request. Previously, notice was required to be given by 12:00 noon on the following business day. *See* letter from William W. Uchimoto, General Counsel, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, dated May 17, 1991. The PHLX submitted a conforming amendment to Rule 1037 on December 10, 1992. This amendment conforms the language of Rule 1037 to the language of proposed OFPA D–1 concerning instances where two floor officials can require that a specialist be held responsible for a missed order despite the fact that the specialist was notified of the missed order after 9:30. *See* letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated December 10, 1992.

The Exchange further amended its proposal by deciding not to delete OFPA B–10 upon the adoption of OFPA D–1. In this amendment, the PHLX also added the definition of a "floor agent" as the "person or unit in possession of the order at the time the order [became] due an execution" and specified how transaction reports for missed orders should be made. *See* letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated April 21, 1992 ("O'Connell Letter"). Finally, on February 25, 1993, the Phlx in a clarifying amendment corrected language to reflect the amount of contracts due a missed order and the appropriate reporting designations to be used. *See* letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Jeffrey Burns, Branch of Options Regulation, Division of Market Regulation, SEC, dated February 25, 1993.

Because these amendments are technical in nature they have not been separately noticed for comment.

[4] Responsible floor agent is that person or unit in possession of the order at the time the order becomes due an execution.

[5] In certain limited circumstances, OFPA D–1 also provides that the responsible floor agent is liable for a missed order even if timely notification is not made. Specifically, a floor agent may still be held responsible for a missed order if two floor officials determine that it is in the interest of maintaining just and equitable principles of trade to do so.

and 9:30 a.m. on the following business day, the missed order will be entitled to an immediate execution at its limit price or at previous day's closing quote, whichever is better, and shall be afforded such execution, up to the amount of contracts which traded-through the order or for a minimum of ten contracts with respect to a quote-through.[6] Pursuant to OFPA D–1, transactions effected under the remedial provisions of Section (b) must be promptly reported for tape dissemination on an out-of-sequence basis of the missed order is discovered on the trading day in question or on a "as of" basis if discovered on a subsequent trading day.[7]

The proposed rule change is a consolidation of existing OFPAS regarding missed orders. Existing OFPAs A–8 and C–6 correctly set forth the responsibilities of floor brokers and specialists for missed orders. The Exchange is proposing to delete OFPAs A–8 and C–6 and replace with OFPA D–1 in order to unify these floor rules regarding missed orders into one Floor Advice for floor brokers and specialists.[8]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.[9] The Commission believes that the Floor Advice proposed by the PHLX will protect the public interest and remove impediments to and perfect the mechanism of a free and open market by unifying the rules for floor brokers and specialists relating to the responsibilities for missed orders. In addition, the Commission does not believe that shortening the time deadline for the notification of missed orders from 12 noon to 9:30 a.m. will jeopardize the protection of investors. Given the technological advancements in market information systems, that allow brokers and investors to have greater and more timely access to market information, the Commission believes it is not unreasonable for the Exchange to insist that a floor agent must be notified of his errors in handing an order by the opening of trading on the day following the day in which the error was made in order for the floor agent to be held responsible for the missed order.

In addition, the Commission believes that guaranteeing the execution of a missed order at the limit price or better is a reasonable and appropriate remedy for the floor agent to incur as a result of the missed order. In particular, the remedy imposes a "cost" on the floor agent if the market moves in a direction favorable to the customer, irrespective of the limit price of the missed order. The Commission believes this is reasonable because it promotes just and equitable principles of trade on the Exchange floor and ensures investors are not disadvantaged, and may possibly receive a benefit, from an error of the floor agent in handling the order. The Commission also notes that, despite late notification of an error, the OFPA provides that a missed order can still be executed at the correct price if two floor official find that it is in the interest of maintaining just and equitable principles of trade to do so.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PHLX–91–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18654 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

[6] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Jeffrey Burns, Attorney, Division of Market Regulation, Branch of Options Regulation, SEC, dated February 25, 1993.

[7] *Id.*

[8] OFPA B–10 will be retained by the Exchange for the purpose of governing the responsibility of registered options traders ("ROTs") for mismatched or "out" trades. The Exchange decided to retain this OFPA because the responsibility of ROTs for mismatched or "out" trades is significantly different than a floor agent's obligation in the context of a missed order.

[9] 15 U.S.C. 78f (1982).

[10] 15 U.S.C 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1993).

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**[Release No. 35–25861]**

## Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 30, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 23, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**American Electric Power Company, Inc., et al. (70–7886)**

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Investments, Inc. ("AEP Investments"), have filed a post-effective amendment under sections 9(a), 10 and 12(b) of the Act to their application-declaration previously filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By orders dated December 11, 1991 and November 2, 1992 (HCAR Nos. 25424 and 25667), AEP Investments, whose primary purpose is investing and participating in the development of demand-side management projects, was authorized to purchase up to $11.5 million of the securities of InterSource Technologies, Inc. ("InterSource"), which is developing electronic light bulb technology ("E-Lamp Technology") and new lighting products that AEP believes may result in significant reductions in lighting loads. AEP Investments presently holds 800,000 shares of InterSource Common Stock (approximately 9.9% of its issued and outstanding shares) and as of August 31, 1993 will hold 90,000 shares of its Preferred Stock, $100 par value. As of August 31, 1993 the entire $11.5 million funding of InterSource by AEP Investments will have been expended on its research and development efforts.

AEP Investments now proposes to provide InterSource with interim bridge financing in the form of a short-term secured loan evidenced by a Loan and Security Agreement. The loan will mature on December 31, 1993 and bear interest at a rate of 8% per annum in an amount of up to $1 million ("AEP Loan"). The interest on the AEP Loan will be payable upon the earlier of the

maturity of the loan or its prepayment. The security will consist of an assignment of the E-Lamp Technology license agreements presently controlled by InterSource and a perfected security interest in substantially all of InterSource's unencumbered personal property.

The purpose of the AEP Loan is to provide InterSource with continued funding for the development of the E-Lamp Technology while it completes a permanent financing with nonaffiliated investors presently anticipated to close by the end of October 1993. The AEP Loan will be repaid out of the proceeds of InterSource's permanent financing and in any event will mature on December 31, 1993.

AEP requests authority to provide capital contributions to AEP Investments in an aggregate amount of up to $1 million to enable AEP Investments to make the AEP Loan.

AEP Investments will divest itself of all of its interests in InterSource no later than January 1, 2002, by which time the development and commercialization of E-Lamp Technology will be complete and AEP's demand-side management goals largely achieved. AEP proposes to purchase products featuring the E-Lamp Technology for use in its demand-side management programs either directly through InterSource or its distributors. AEP does not propose to become a licensee, a distributor or marketing agent of any electronic light bulb products.

**Central Power and Light Company (70–8053)**

Central Power and Light Company ("CPL") 539 N. Carancahua Street, Corpus Christi, Texas 78401–2431, an electric public-utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed a post-effective amendment, under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42(a), 50 and 50(a)(5) thereunder, to its application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42(a), 50 and 50(a)(5) thereunder.

By order dated September 22, 1992 (HCAR No. 25638) ("1992 Order"), CPL was authorized to issue and sell, through December 31, 1994, up to $800 million of new first mortgage bonds ("New Bonds"). As of July 30, 1993, CPL had issued $765 million aggregate principal amount of New Bonds pursuant to the 1992 Order.

CPL now requests authorization to issue and sell up to $360 million of additional first mortgage bonds ("Additional Bonds"), in one or more series, through December 31, 1995. Except as provided below, the Additional Bonds will have the same terms and conditions and be sold in the same manner contemplated by the 1992 Order.

The Additional Bonds will have maturities of not less than three nor more than thirty-five years. CPL estimates that the Additional Bonds will be issued at an interest rate of between 5½% and 8½% depending on market conditions and states that in no event will the interest rate on the Additional Bonds exceed 11%.

CPL proposes to sell the Additional Bonds either pursuant to competitive bidding or in negotiated transactions with underwriters or agents. It, therefore, requests an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. CPL also requests authority to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the Additional Bonds, and to set the terms of the Additional Bonds, subject to the receipt of the order of this Commission, requested hereby, authorizing their issuance and sale. It may do so.

In additional, CPL seeks authorization to issue the Additional Bonds with terms that deviate from the standards contained in the Commission's Statement of Policy Regarding First Mortgage Bonds, as amended, (HCAR Nos. 13105 and 16369). The Additional Bonds may include terms which (i) limit CPL's ability to redeem or refund the New Bonds for a period of up to fifteen years, (ii) do not include a sinking fund or retirement fund requirement, and/or (iii) do not restrict CPL's ability to pay dividends on its common stock.

The proceeds from the sale of the Additional Bonds will be used principally to refund all or a portion of $143 million of 9⅜% Series Z bonds due December 1, 2019 ("Series Z Bonds"). The Series Z Bonds will become redeemable on December 1, 1994, at a general redemption price of $106.98, plus accrued and unpaid interest to the redemption date. If CPL decides to acquire the Series Z Bonds prior to December 1, 1994, it proposes to do so by means of a tender offer to holders of the Series Z Bonds. The proceeds may also be used to redeem all or a portion of $28 million of 6⅝% Series J Bonds due January 1, 1998 ("Series J Bonds") and $36 million of 7% Series L Bonds due February 1, 2002 ("Series L Bonds"). (Hereafter, the Series Z, Series J and Series L Bonds are collectively referred to as the "Old Bonds".) In addition, CPL proposes that the proceeds may be used to redeem all or a portion of CPL's outstanding 500,000 shares of 8.72% Preferred Stock, par value $100 per share ("Preferred Stock"), at the the current applicable redemption price, currently $102.91 per share, together with all unpaid dividends thereon. Any net proceeds not used for the redemption or repurchase of the Old Bonds and Preferred Stock will be used to repay outstanding short-term borrowings incurred or expected to be incurred primarily to finance construction expenditures, to pay for increased fuel and other costs, to provide working capital and for other general corporate purposes. In the event that the proceeds from the sale of the Additional Bonds are less than the amount required to redeem or repurchase all of the Old Bonds or Preferred Stock, CPL will pay a portion of the redemption or tender price from internally generated funds or available short-term borrowings pursuant to an order of this Commission dated March 31, 1993 (HCAR No. 25777).

CPL states that it will not redeem or repurchase the Old Bonds or Preferred Stock unless the estimated present value savings derived from the net difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all redemption, tendering and issuing costs, assuming an appropriate discount rate determined on the basis of the then after-tax cost of capital of CSW and its subsidiaries, consolidated.

**Hope Gas, Inc. (70–8091)**

Hope Gas, Inc. ("Hope Gas"), 600 Union National Center West, Clarksburg, West Virginia 26302, a wholly owned gas public-utility subsidiary company of Consolidated Natural Gas Company, a registered holding company, has filed a post-effective amendment to its application under section 9(c)(3) of the Act.

By order dated January 26, 1993 (HCAR No. 25739), the Commission authorized Hope Gas to acquire through December 31, 1993 a limited partnership interest in Vandalia Capital Limited Partnership ("Vandalia Partnership") for an aggregate purchase price of $1 million. In connection with such acquisition, Hope Gas was to receive the Vandalia Partnership state tax credits granted by the State of West Virginia. West Virginia, however, limits the available amount of tax credits given each year, and because the tax credits for the fiscal year 1992–93 have already been granted to other qualified West Virginia Capital Companies, Hope Gas

represents that the Vandalia Partnership will not be formed.

Hope Gas now proposes to acquire before December 31, 1994, a limited partnership interest in the Shenandoah Venture Capital Limited Partnership ("Partnership"), a West Virginia limited partnership, by acquiring 1 Class B Unit of the Partnership for an aggregate purchase price of $1,650,000. The Partnership, which will have a term until May 12, 2013, will be qualified as a West Virginia Capital Company under the West Virginia Capital Company Act, part of a program to encourage private venture capital investments in West Virginia businesses by providing qualified West Virginia Capital Companies with certain state tax credits equal to 50% of their venture capital investment. The Partnership also intends to qualify as a Small Business Investment Corporation.

Hope Gas will be the sole owner of the Class B Unit, holding 49.5% of the equity of the Partnership. The Class B Unit entitles Hope Gas to certain tax credits, which it estimates will result in net tax savings of $743,000, and net investment by Hope Gas of $907,000.

The general partner of the Partnership will have the exclusive power and authority to manage the operations, affairs and business investments of the Partnership. No limited partner is to take part in the control, management or investment decisions of the Partnership. Only the Class A Limited Partner may remove and elect a successor General Partner.

**The Columbia Gas System, Inc., et al. (70–8219)**

The Columbia Gas Systems, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company; Columbia's public utility subsidiary companies, Columbia Gas of Pennsylvania, Inc. ("Pennsylvania"), Columbia Gas of Ohio, Inc. ("Ohio"), Columbia Gas of Maryland, Inc. ("Maryland"), Columbia Gas of Kentucky, Inc. ("Kentucky"), and Commonwealth Gas Services, Inc. ("Commonwealth Services"), each located at 200 Civic Center Drive, Columbus, Ohio 43215; and Columbia's nonutility subsidiary companies, Columbia Gas System Service Corporation ("Columbia Service"), Columbia LNG Corporation ("Columbia LNG"), Columbia Atlantic Trading Corporation ("Columbia Atlantic"), TriStar Ventures Corporation ("TriStar Ventures"), TriStar Capital Corporation ("TriStar Capital"), each located at 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Natural Resources, Inc. ("Columbia Natural"), Columbia Coal Gasification Corporation ("Coal Gasification"), both located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corporation ("Energy Services"), 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gulf Transmission Company ("Gulf Transmission"), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas Development Corporation ("Development"), 5847 San Felipe, Houston, Texas 77057; Commonwealth Propane Inc. ("Commonwealth Propane"), and Columbia Propane Corporation ("Columbia Propane"), both located at 800 Moorefield Park Drive, Richmond, Virginia 23236 (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and Rules 43 and 45 thereunder.

Applicants request authority to engage in intrasystem financing from September 30, 1993 through December 31, 1994 of up to $673.9 million. Specifically, certain subsidiaries propose to engage in long-term financing of up to $265.1 million to finance part of their capital expenditure programs. These subsidiaries propose to sell for cash, and Columbia proposes to acquire unsecured installment promissory notes ("Installment Notes"), up to the amounts indicated below.

| | Installament notes $MM |
|---|---|
| Kentucky | 19.5 |
| Maryland | 4.8 |
| Ohio | 73.1 |
| Pennsylvania | 15.9 |
| Commonwealth Services | 41.2 |
| Columbia Natural | 25.0 |
| Development | 50.0 |
| Columbia Propane | 4.0 |
| Columbia Gulf | 25.0 |
| Columbia Service | 1.6 |
| Coal Gasification | 5.0 |
| Total | 265.1 |

The Installment Notes issued during a given quarter will bear interest at a rate based upon the previous quarter's average yield on newly issued "A" rated 25–30 year utility bonds as published in Salomon Brother's weekly Bond Market Roundup, rounded to the nearest ⅛% per annum. The principal amount of the Installment Notes will be repaid over a term, not exceeding 30 years. A default rate equal to 2% per annum in excess of the stated rate on the unpaid principal or interest amounts will be assessed if any interest or principal payment becomes past due.

To meet their short-term financing requirements, certain subsidiaries propose to borrow directly from Columbia and/or from each other through the Columbia's intrasystem money pool ("Money Pool"). These advances will be limited to a maximum amount outstanding through April 30, 1995 as listed below.

| | Short Term Debt $MM |
|---|---|
| Kentucky | 20.0 |
| Maryland | 3.0 |
| Ohio | 162.0 |
| Pennsylvania | 85.0 |
| Commonwealth Services | 30.0 |
| Columbia Gulf | 19.0 |
| Columbia Natural | 30.0 |
| Development | 15.0 |
| Energy Services | 12.7 |
| Columbia Propane | 3.0 |
| Commonwealth Propane | 4.0 |
| Columbia Service | 9.0 |
| Coal Gasification | 10.0 |
| Total | 401.7 |

Funds would be advanced, repaid, and reborrowed as required through December 31, 1994, with all such advances to be fully repaid by April 30, 1995. All short-term borrowings from Columbia and/or the Money Pool will be evidenced by a promissory note ("Short-Term Note" and "Money Pool Note", respectively). A default rate of 2% per annum above the pre-default rate on unpaid principal or interest amounts will be assessed if any interest or principal payment becomes past due.

The interest rate charged on all Short-Term Notes and Money Pool Notes, and the investment rate earned on moneys invested in the Money Pool, will be the interest rate per annum equal to the composite weighted average effective rate on short-term transactions of Columbia and/or the Money Pool short-term investment rate. During any month, this composite rate may be based on one or any combination of: (1) The cost of Columbia's borrowings under its bank facility; (2) the interest rate earned by Columbia on invested excess cash; and/or (3) the interest rate earned by subsidiaries on investments of excess Money Pool funds.

By order dated December 23, 1991 (HCAR No. 25438), the Commission authorized the continuation of the Money Pool through September 30, 1993. Applicants propose that authorization for the Money Pool be extended through April 30, 1995. Columbia Service will administer the Money Pool. Columbia, Columbia LNG, TriStar Ventures, TriStar Capital, and Columbia Atlantic will not borrow from the Money Pool.

The Money Pool provides a vehicle by which Columbia and its subsidiary companies loan their excess cash to their associate companies. Loans to subsidiaries are evidenced by Money Pool Notes which are payable upon demand, but not later than April 30, 1995. Applicants request that investments in the Money Pool be authorized to the extent of the aggregate temporary excess cash from time to time, and that borrowings be authorized to the extent for cash available in the Money Pool, provided that no subsidiary may borrow through the Money Pool, or from Columbia directly, any more than short-term borrowing amounts last approved by the Commission.

In addition to the foregoing, Columbia requests authority to make a $1.1 million capital contribution in TriStar Capital. TriStar Capital is committed to invest indirectly, through its subsidiary company, in new gas related technologies. The requested capital contribution will permit TriStar Capital to fulfill its remaining $1.0 million of a $2.0 million commitment, and to pay up to $100,000 of operating expenses such as accounting and taxes.

**General Public Utilities Corp., et al. (70–8223)**

General Public Utilities Corporation ("GPU"). A registered holding company, and its service subsidiary company, GPU Service Corporation ("Service Company"), have filed a declaration under sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

By order dated September 19, 1990 (HCAR No. 25154) ("Order"), the Commission, among other things, authorized Service Company to enter into a Term Loan Agreement, dated September 24, 1990 ("Existing Loan Agreement"), with The Bank of New York ("BNY") and to issue to BNY its unsecured promissory note maturing on September 30, 1993 ("Existing Note") representing a borrowing in the amount of $12.4 million. The proceeds of the borrowing were used to repay Service Company's then outstanding indebtedness to BNY under a prior Credit Agreement, dated October 1, 1987 ("Prior Credit Agreement"), with BNY. The proceeds of the borrowings under the Prior Credit Agreement had been used to repay Service Company's then outstanding indebtedness used to finance the construction and equipping of its Parsippany, New Jersey headquarters office building. The Order further authorized GPU to unconditionally guarantee payment of principal of and interest on the Existing Note and Service Company's other obligations to BNY under the Existing Loan Agreement. The presently outstanding principal amount of the Existing Note is $11.5 million.

Service Company now proposes to enter into a new loan agreement ("New Loan Agreement") with First Fidelity Bank, N.A., New Jersey ("FFB"). The New Loan Agreement would consist of a new term loan ("New Term Loan") and a revolving credit loan ("New Revolving Credit Loan").

Under the New Term Loan, Service Company would issue to FFB one or more unsecured promissory notes ("New Term Loan Notes") in the principal amount of $11.5 million. New Term Loan Notes would mature not later than five years from the New Term Loan closing date, which will occur on, or before, September 30, 1998.

The New Term Loan Notes will bear interest, at Service Company's election, at either: (1) A Fixed Rate, defined below; or (2) the LIBOR rate, defined below, plus ⅜% per annum, subject to conversion, at Service Company's election, to a fixed rate pursuant to a specified rate conversion schedule.

At Service Company's election, the New Term Loan Notes, would be repaid: (1) In equal annual installments of principal ("Amortized Loan"); (2) in a lump sum on the maturity date ("Bullet Loan"); or (3) at the end of each interest rate period ("LIBOR Rate Loan"). During the period of LIBOR Rate Loan is elected, the interest rate would be fixed, at Service Company's election, for periods of 30, 60, 90 or 120 days.

The Fixed Rate option for the New Term Loan Notes would be set not earlier than 30 days before closing at spreads of between 55 and 70 basis points for Amortized Loans and 60 and 80 basis points for Bullet Loans over comparable U.S. Treasury securities, depending upon the maturity and form of the New Term Loan. The LIBOR Rate will be the London Interbank Offered Rate as in effect from time-to-time. If the LIBOR Rate option is initially elected by Service Company for the New Term Loan Notes, Service Company may elect to convert the interest rate to a fixed rate at spreads of between 65 and 75 basis points for Amortized Loans and 70 and 85 basis points for Bullet Loans over comparable U.S. Treasury securities, and depending upon the remaining maturity and form of the New Term Loan.

The New Revolving Credit Loan would provide for revolving credit borrowings by Service Company from time-to-time until not later than two years from the New Term Loan closing date, which will occur on, or before, September 30, 1995, up to a maximum principal amount of $13.5 million outstanding at any one time. On, or any time prior to, the second anniversary of the New Term Loan closing date, however, Service Company would have the option, subject to the satisfaction of certain conditions in the New Loan Agreement, to convert all or a portion of such loan into a three-year term loan payable in equal annual installments of principal. Upon such election, any remaining borrowing capacity under the New Revolving Credit Loan would no longer be available and the revolving credit facility would terminate.

If and to the extent that Service Company does not elect to convert all of its then outstanding borrowings under the New Revolving Credit Loan to a term loan, such borrowings would be repaid on the second anniversary of the New Term Loan closing date in a lump sum. The New Revolving Credit Loan, and any term loan into which it may be converted, would also be represented by one or more unsecured promissory notes issued by Service Company to FFB ("New Revolving Credit Notes") or "New RC Term Loan Notes", respectively, together with the New Term Loan Notes, the "New Notes").

New Revolving Credit Notes will bear interest, at Service Company's election, at either: (1) The LIBOR Rate, above, plus 3/8% per annum; (2) the Base Rate, defined below; or (3) the Money Market Bid Rate, defined below. New Revolving Credit Notes would mature: (1) In 30, 60, 90 or 120 days from their dates of issue if the LIBOR Rate is selected; (2) not more than 30 days from their dates of issue if the Base Rate is selected; and (3) from overnight to 180 days from their dates of issue if the Money Market Bid Rate is selected. Service Company proposes to pay FFB an annual 1/8 of 1% commitment fee, payable quarterly, on the unused portion of the New Revolving Credit Loan. New RC Term Loan Notes will bear interest at the same spreads over comparable U.S. Treasury securities at the time of conversion as provided, above, for the conversion of the interest rate on New Term Loan Notes from the LIBOR Rate to a fixed rate.

The Base Rate for New Revolving Credit Notes will be the rate established by FFB as its reference rate in making loans, but does not reflect the rate of interest charged to any particular class of borrowers. The Money Market Bid Rate will a daily, uncommitted, advised rate which FFM may, in its discretion, provide from time-to-time.

The New Notes may be prepaid, in whole or in part, prior to maturity and without penalty, to the extent permitted by the New Loan Agreement. GPU

proposes unconditionally to guarantee payment of principal of and interest on the New Notes in addition to Service Company's other obligations to FFB under the New Loan Agreement.

Service will apply the proceeds from the New Term Loan to repayment of the Existing Note and will use the proceeds of the New Revolving Credit Loan for working capital purposes and/or for capital expenditures, including purchases of equipment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-18691 Filed 8-4-93; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-19305; 812-8006]

## Quest for Value Fund, Inc., et al.; Notice of Application

July 30, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Quest for Value Fund, Inc., Quest for Value Family of Funds, Quest for Value Global Equity Fund, Inc., Quest for Value Global Funds, Inc., on behalf of themselves and any other open-end investment company which is or may become a member of Quest for Value Advisor's "group of investment companies" as that phrase is defined in rule 11a-3 under the Act and which issues three or more classes of shares that have different voting rights and expense allocations as described in the application and/or impose a contingent deferred sales charge ("CDSC") on redemptions of shares (the "Funds");[1] Quest for Value Advisors (the "Adviser"); and Quest for Value Distributors (the "Distributor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the Funds to issue three or more classes of shares representing interests in the same portfolios of securities, assess a CDSC on certain redemptions, and waive the CDSC in certain instances.

**FILING DATE:** The application was filed on July 29, 1992, and amended on November 18, 1992, March 12, 1993, May 5, 1993, June 16, 1993, and July 19, 1993. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, One World Financial Center, New York, NY 10281.

**FOR FURTHER INFORMATION CONTACT:** James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. The Funds are open-end diversified management investment companies. Quest for Value Family of Funds is a Massachusetts business trust organized as a series company which has the following portfolios: U.S. Government Income Fund; Investment Quality Income Fund; Opportunity Fund; Small Capitalization Fund; Growth and Income Fund; National Tax-Exempt Fund; California Tax-Exempt Fund; and New York Tax-Exempt Fund. The other Funds are organized as Maryland corporations. Quest for Value Fund is a series fund having one portfolio, Global Income Fund. The Adviser provides investment advisory and other services to the Funds. The Distributor serves as principal underwriter for the Funds.

2. The Funds currently offer a single class of shares at net asset value with the imposition of a front-end sales load. Investors may qualify for a reduced sales load based on the aggregate amount of current and prior investments in the Funds. Pursuant to an order of the SEC, the Funds (except the Global Income Fund, National Tax-Exempt Fund, California Tax-Exempt Fund, and New York Tax-Exempt Fund series) impose a CDSC on certain redemptions of shares sold pursuant to a complete front-end sales load waiver applicable to purchases totaling $1,000,000 or more.[2] Pursuant to rule 12b-1 distribution plans, shares of the Funds are subject to a distribution fee of up to 0.50% of their average annual net assets. Applicants now seek an exemption to permit them to issue three or more classes of shares, to impose a CDSC on certain redemptions of shares of the new classes, and to waive the CDSC in certain instances.

3. Under applicants proposal, the existing class of shares will be designated as "Class A shares," and initially two additional classes of shares will be created and designated "Class B shares" and "Class C shares."[3] At the time the existing shares are categorized as Class A shares, the existing rule 12b-1 distribution fee will be modified so that the Class A shares are subject to a maximum service fee of 0.25%, and a distribution fee of up to 0.25% of their average annual net assets. The Funds may in the future create an unlimited number of additional classes of shares, the terms of which may differ from the Class A, Class B, and Class C shares only in accordance with the characteristics described in this application.

4. Class B shares will be offered for purchases of $250,000 or less. Class B shares will be sold at net asset value, subject to a CDSC (the "Class B CDSC"). The Class B CDSC will range from 1% to 5% on shares redeemed during the first year after purchase and will be reduced at a rate of 1% per year over a six year period so that redemptions of shares held after that period will not be subject to a CDSC. A shareholder will be credited with any CDSC paid in connection with a redemption of any Class B shares followed by a reinvestment in such shares or Class B

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[1] Existing funds that intend to rely on the requested order have been named as applicants. Other funds that are members of the same "group of investment companies" do not presently intend to rely on the requested order but may do so in the future if they subsequently decide to offer multiple classes of shares and/or impose a CDSC.

[2] Investment Company Act Release Nos. 18475 (Jan. 8, 1992) (notice) and 18520 (Feb. 4, 1992) (order).

[3] Class B and Class C shares will not be created for National Tax-Exempt Fund, California Tax-Exempt Fund, and New York Tax-Exempt Fund series.

shares of another Fund within 90 days after such redemption. The credit will be paid by the Distributor. Class B shares will be subject to a distribution fee of 0.75% and a service fee of 0.25% of their average net asset value.

5. Class C shares will be offered exclusively to qualified retirement plans. Class C shares will be sold at net asset value, subject to a CDSC of 1% on shares redeemed during the first year after purchase (the "Class C CDSC"). A shareholder will be credited with any CDSC paid in connection with a redemption of any Class C shares followed by a reinvestment in such shares or Class C shares of another Fund within 90 days after such redemption. The credit will be paid by the Distributor. Class C shares will be subject to a distribution fee of 0.75% and a service fee of 0.25% of their average net asset value.

6. The Class B and Class C CDSCs will be imposed on the lesser of the aggregate net asset value of the shares being redeemed either at the time of purchase or redemption. No Class B or Class C CDSC will be imposed on shares acquired through reinvestment of income dividends or capital gains distributions, or shares acquired by exchange where the exchanged shares would not have been assessed a CDSC upon redemption. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made of shares of a Fund held by the investor for the longest period of time within the CDSC period. The CDSC schedules for both Class B and Class C shares may be modified in the future, and other schedules with different percentages and periods may apply to different classes created in the future. Any variations in CDSC schedules will be set forth in the applicable prospectus.

7. Applicants will waive the Class B and Class C CDSCs in the following instances: (a) Redemptions in connection with (i) retirement distributions to participants or beneficiaries of plans qualified under Internal Revenue Code ("IRC") section 401(a), custodial accounts under IRC section 403(b)(7), individual retirement accounts under IRC section 408(a), deferred compensation plans under IRC section 457 and other employee benefit plans (the "Plans"), and (ii) returns of excess contributions made to the Plans; (b) redemptions effected pursuant to the Funds' right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the then effective minimum account size; and (c) redemptions pursuant to an automatic withdrawal plan limited to annual withdrawals of no more than 10% of the original value of the account. If any of the waiver categories are discontinued, appropriate disclosure will be made in the applicable prospectus and investors who purchased their shares prior to such change will continue to be entitled to such CDSC waivers.

8. Class A shares will be exchangeable for Class A shares of any other Fund, but not for Class B or Class C shares. Class B shares will be exchangeable for Class B shares of any other Fund, but not for Class A shares or Class C shares. Class C shares will be exchangeable for Class C shares of any other Fund, but not for Class A shares or Class B shares. The exchange privilege for the Class B and Class C shares may be expanded to allow holders of Class B or Class C shares of a Fund to exchange their shares for shares of Quest Cash Reserves, Inc. ("QCR"), a money market fund managed by the Adviser. If the exchange privilege is so expanded, Class B or Class C shares of any Fund that have been exchanged for shares of QCR also may be exchanged back into the class from which they were exchanged. Applicants will comply with rule 11a–3 as to any exchanges.

9. All Class B shares of the Funds, other than those purchased through the reinvestment of dividends and distributions, will automatically convert to Class A shares on the basis of the relative net values of the two classes eight years after the end of the calendar month in which the shareholder's order to purchase was accepted. For purposes of calculating the holding period, Class B shares will be deemed to have been issued on the sooner of the date on which the issuance of Class B shares occurred, or for Class B shares obtained through an exchange or series of exchanges, the date on which the issuance of the original Class B shares occurred. Shares purchased through the reinvestment of dividends and other distributions in respect of Class B shares will be treated as Class B shares, except that each time any Class B shares in the shareholders account (other than those purchased through the reinvestment of dividends and other distributions) convert to Class A, an equal *pro rata* portion of the Class B shares purchased through the reinvestment of dividends and other distributions also will convert to Class A. The portion will be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions. Of the initial classes of shares, only Class B will have a conversion feature (additional classes created in the future also may have a conversion feature).

10. Class A, Class B, Class C, and additional classes of shares created in the future will each represent interests in the same portfolio of investments, and will be identical in all respects except: (a) The compensation and other arrangements permitted by different distributions plans for each class; (b) voting rights with respect to any matter specifically affecting that class, including the distribution plan for that class and expenses related to the cost of holding shareholder meetings necessitated by the exclusive voting rights with respect to each class' distribution plan; (c) the impact of any expenses directly attributable to that class ("Class Expenses"), as described in the following paragraph; (d) any differences in distributions and/or net asset value per share resulting from differences in Class Expenses; (e) any differences in features for purchasing, redeeming, exchanging, or converting shares of each class and/or in distribution arrangements for the offer and sale of such shares; (f) the designation of classes; and (g) the impact of Blue Sky expense limitations.

11. If required by state securities (Blue Sky) laws, applicants will apply Blue Sky expense limitations on a class, rather than a Fund, basis. To comply with applicable Blue Sky expense limitations, the Distributor will waive or reimburse a portion of its fees in the event that the aggregate annual expenses of a class would otherwise exceed such limits. The Blue Sky expense limitations may have a different impact on the classes because of differences among the aggregate annual expenses of the classes and also because California Blue Sky regulations allow certain distribution expenses to be excluded from the computation of aggregate annual expenses.

12. Class Expenses may include the following: (a) Distribution plan fees (including service fees); (b) transfer and shareholder servicing agent fees relating solely to a particular class; (c) professional fees relating solely to a particular class; (d) printing and postage expenses for materials distributed to shareholders of a particular class; (e) Blue Sky registration fees relating solely to a particular class; and (f) shareholder meeting expenses for meetings of a particular class. Expenses that are attributable to a particular Fund, but not to a particular class ("Fund Expenses"), include advisory fees, accounting fees, custody fees, auditing fees, directors/trustees fees, interest expense, deferred organization expenses, legal fees, state and federal registration fees, and

typesetting expenses for prospectuses and shareholder reports. Fund Expenses will be allocated based on the net assets of each class.

**Applicants' Legal Analysis**

1. Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of various classes of shares representing interests in the same Fund might be deemed:

(a) To result in a "senior security" within the meaning of section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1); and

(b) To violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed multi-class arrangement will better enable the Funds to meet the competitive demands of today's financial services industry. Under the multi-class arrangement, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

3. The proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflicts of interest because the rights and privileges of each class of shares are substantially identical.

4. Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 of the Act was designed to address. The multi-class arrangement will not increase the speculative character of the shares of the Fund. The multi-class arrangement does not involve borrowing, nor will it affect the Funds' existing assets or reserves, and does not involve a complex capital structure. Nothing in the multi-class arrangement suggests that it will facilitate control by holders of any class of shares.

5. Applicants submit that the requested exemption to permit the funds to implement the proposed Class B and Class C CDSCs is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangements will provide shareholders the option of having their full payment invested for them at the time of their purchase of shares of the Funds with no deduction of a sales charge.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the Fund will relate solely to: (a) The impact of the disproportionate payments made under the distribution plans; (b) the method of allocating certain Class Expenses which are limited to (i) transfer and shareholder servicing agent fees and shareholder servicing costs, (ii) professional fees relating solely to one class, (iii) printing and postage expenses for materials distributed to current shareholders, (iv) Blue Sky registration fees, (v) shareholder meeting expenses, and (vi) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (c) the fact that the class will vote separately with respect to the Funds' rule 12b–1 distribution plan; (d) the different exchange privileges of the classes of shares; (e) designation of each class of shares of the Fund; (f) the impact of Blue Sky expense limitations; and (g) certain classes that impose a 12b–1 fee may be able to convert to a class with a lower 12b–1 fee.

2. The directors/trustees of the Funds, including a majority of the independent directors/trustees, will approve the system of the offering of the various classes of shares. The minutes of the meetings of the directors/trustees regarding deliberations of the directors/trustees with respect to the approvals necessary to implement the multi-class arrangement for any Fund will reflect in detail the reasons for the directors/trustees' determinations that the system is in the best interests of that Fund and its shareholders.

3. On an ongoing basis, the directors/trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts between the interests of the classes of outstanding shares. The directors/trustees, including a majority of the independent directors/trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor of the Funds will be responsible for reporting any potential or existing conflicts to the directors/trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The directors/trustees of the Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (B)(3)(ii) of rule 12b–1, as it may be amended from time to time. In such statements, only expenditures properly attributable to the sale of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale of a particular class will not be presented to the directors/trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors/trustees in the exercise of their fiduciary duties.

5. Dividends paid with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that distribution plan fees and Class Expenses (listed in condition 1) applicable to a class will be borne exclusively by that class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, a copy of which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. The Expert, or an appropriate substitute Expert, will monitor, on an ongoing basis, the manner in which the calculations and allocations are being made and based on that review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member

of the SEC's Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation has been concurred with by the Expert in the initial report referred to in condition 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 6 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

8. The prospectus of the Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another.

9. The Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Funds will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholders reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Funds as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literatures describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset value and public offering price will present each class of shares separately.

10. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors/trustees of the Funds with respect to the multi-class arrangement will be set forth in guidelines which will be furnished to the directors/trustees as part of the materials setting forth the duties and responsibilities of the directors/trustees.

12. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that may be made pursuant to the rule 12b–1 distribution plans or otherwise in reliance on the exemptive order.

13. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the directors/trustees of the Fund including a majority of the independent directors/trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the directors/trustees, and the directors/trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

14. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser of the affected Fund and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18690 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19605; 811–6631]

## Texas Employees Tax Exempt Money Market Mutual Fund; Application for Deregistration

July 30, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Texas Employees Tax Exempt Money Market Mutual Fund.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring it has ceased to be an investment company.

**FILING DATE:** The application was filed on July 7, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 200 E. 10th Street, Austin, Texas 78701.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicant's Representations

1. Applicant is an open-end non-diversified management investment company. The Texas State Treasury filed a registration statement under the Investment Company Act of 1940 and the Securities Act of 1933 on behalf of the applicant on April 10, 1992. At that time, Section 404.103 of the Texas Government Code authorized the State Treasurer to establish within the Texas Safekeeping Trust Company a state employees tax exempt money market mutual fund pursuant to a governmental plan, to be administered by the State Treasurer, that would permit state employees, statewide elected officials, and duly elected members of the Texas Legislature to pool their funds for the purpose of making investments in high-grade tax exempt securities. Section 404.103 of the Texas Government Code was repealed in May 1993 by the Texas legislature. As a result, effective August 30, 1993, the State Treasurer no longer has legal or statutory authority to create the Fund.

2. Applicant never engaged in business operations and never offered shares to investors, or possessed any assets.

3. Applicant has no securityholders.

4. Applicant is not a party to any litigation or administrative proceeding.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18692 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19604; 812–8458]

## WNC Housing Tax Credit Fund IV, L.P. and WNC Tax Credit Partners, IV, L.P.

July 30, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** WNC Housing Tax Credit Fund IV, L.P., a California limited partnership (the "Partnership") and its general partner, WNC Tax Credit Partners IV, L.P., a California limited partnership (the "General Partner").

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) of the Act from all provisions of the Act.

**SUMMARY OF APPLICATION:** Applicants seek an order that would exempt the Partnership from all provisions of the Act to permit the Partnership to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

**FILING DATE:** The application was filed on June 17, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy for the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o WNC Tax Credit Partners IV, L.P., 3158 Redhill Avenue, suite 120, Costa Mesa, California 92626–3416.

**FOR FURTHER INFORMATION CONTACT:** Fran Pollack-Matz, Senior Attorney, at (202) 504–2801, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicants Representations

1. The Partnership was formed on May 4, 1993. The Partnership will operate as a "two-tier" partnership, *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships") that in turn will engage in the ownership and operation of apartment complexes. Applicants believe that this two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnerships. Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The apartment complexes are expected to qualify for low income housing tax credits under the Internal Revenue Code of 1986.

2. The Partnership's investment objectives are (a) to provide current tax benefits in the form of tax credits which qualified investors, as defined in the Partnership's prospectus (the "Prospectus"), may use to offset their Federal income tax liabilities, (b) to preserve and protect the Partnership's capital, and (c) to provide cash distribution from sale or refinancing transactions.

3. On June 16, 1993, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer publicly, in one or more series of

offerings, 30,0000 units of limited partnership interest ("Units") at $1,000 per Unit. The minimum investment will be five Units. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership.

4. The Partnership will not accept any subscriptions for Units until the requested exemptive order is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the Act. Any subscriptions for Units must be approved by the General Partner, which approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in that Partnership is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings and automobiles) of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed upon the transferor Limited Partner.

5. Although the Partnership's direct control over the management of each apartment complex will be limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. The Partnership normally will acquire at least a 90% interest in the profits, losses and tax credits of the Local Limited Partnerships. However, in certain cases, the partnership may acquire a lesser interest. In these cases, the Partnership normally will acquire at least a 50% interest in the profits, losses, and tax credits of the Local Limited Partnership. From 95% to 100% of the proceeds from a sale or refinancing of an apartment complex will normally be paid to the Partnership until it has received a full return of that portion of the net proceeds invested in the Local Limited Partnership (which may be reduced by any cash flow distributions previously received). The Partnership also will receive a share of any remaining sale or refinancing proceeds, which share may range from 10% to 90%.

6. The Partnership will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the local Limited Partnership agreement materially and adversely affecting the Partnership's investment.

7. The Partnership will be controlled by the General Partner, pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement therefor, and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership.

8. The Partnership Agreement and Prospectus contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and Prospectus. While the fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length, applicants believe that the compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a nonaccountable expense reimbursement equal to 2% of capital contributions. The General Partner also will be reimbursed by the Partnership for the actual amount of expenses incurred in connection with organizing the Partnership and conducting the offering. However, the General Partner has agreed to pay any organizational and offering expenses of the Partnership in excess of 15% of capital contributions.

10. During the acquisition phase, the Partnership will pay the General Partner or its affiliates a selection fee for analyzing and evaluating potential investments in Local Limited Partnerships. The selection fee will not exceed 8% of capital contributions. The General Partner and its affiliates will be reimbursed by the Partnership for the actual amount of any partnership acquisition expenses advanced by them, provided that acquisition expenses shall not exceed 1.2% of capital contributions. During the operating phase, the General Partner will receive 1% of any cash available for distribution, and the Partnership may pay certain fees and reimbursements to the General Partner or its affiliates. In addition to the foregoing fees and interests, the General Partner and its affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes and tax credits.

11. All proceeds from any series of the public offering of Units initially will be placed in an escrow account with National Bank of Southern California ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a series, funds in escrow will be released to the Partnership and held by it pending investment in Local Limited Partnerships.

**Applicants' Legal Analysis**

1. Applicants believe that the Partnership is not an "investment company" under section 3(a)(1) or section 3(a)(3) of the Act. If the Partnership is deemed an investment company, however, applicants request an exemption under section 6(c) from all provisions of the Act.

2. Section 3(a)(1) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants, however, believe that the Partnership will not be an investment company under section 3(a)(1) because the Partnership will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(3) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items).

Applicants, however, believe that the Local Limited Partnership interests should not be considered "investment securities" because those interests are not readily marketable, have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships, and cannot be sold without severe adverse tax consequences.

4. Release No. 8456 states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the Partnership will operate in accordance with the purposes and criteria set forth in Release No. 8456. The release lists two conditions, designed for the protection of investors, which must be satisfied to qualify for an exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the exemption requested is both necessary and appropriate in the public interest because investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

7. Applicants also assert that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units comparable to and in some respects greater than that provided by the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-18693 Filed 8-4-93; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Asotin County, WA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Asotin County, Washington.

**FOR FURTHER INFORMATION CONTACT:** Lynn Porter, Area Engineer, Federal Highway Administration, 711 S. Capitol Way, Evergreen Plaza Building, suite 501, Olympia, Washington 98501-1284, Telephone: (206) 753-9411.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Washington State Department of Transportation and the Asotin County Public Works Department, will prepare an environmental impact statement (EIS) on a proposal to construct a new 1.1 mile Fleshman Way roadway in Asotin County, Washington. The proposed improvement would also involve the reconstruction of the existing 15th Street between 16th Avenue and Bridge Street (U.S. Highway 12) for a distance of about 1.5 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands. Also included in this proposal are a new interchange or intersection in the vicinity of 13th Street and 16th Avenue on Fleshman Way.

Alternatives under consideration for Fleshman Way include (1) taking no action; (2) widening existing 16th Avenue from two lanes to four lanes; (3) constructing a new four lane roadway on a route north of 16th Avenue; and (4) constructing a new four lane roadway on a route south of 16th Avenue. Incorporated into and studied with the various build alternatives will be design variations of grade, alignment, and intersections.

Alternatives under consideration for the 15th Street portion of the proposed action include (1) taking no action; and (2) widening the existing two lane roadway to three lanes (two travel lanes and a continuous left turn lane).

Letters describing the proposed action and soliciting comments, have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings have already been held in Asotin County between February and April, 1993. Additional scoping and informational meetings will be held as this process continues, and in addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No additional formal scoping meetings are currently planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 26, 1993.

**Lynn A. Porter,**

*Area Engineer, Olympia, Washington.*

[FR Doc. 93-18622 Filed 8-4-93; 8:45 am]

BILLING CODE 4910-22-M

## Federal Railroad Administration

### Fiscal Year 1993 Railroad User Fee Calculations

**AGENCY:** Federal Railroad Administration; Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The Federal Railroad Administration is today publishing its fiscal year 1993 assessment rates supporting the collection of railroad user fees.

**FOR FURTHER INFORMATION CONTACT:** Vicky McCully, Railroad User Fee Officer, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-6569.

**SUPPLEMENTARY INFORMATION:** In its regulations implementing the Railroad User Fee provisions of the Federal Railroad Safety Act of 1970 (see 49 CFR

part 245.301(a)), the Federal Railroad Administration (FRA) indicated that it would publish a notice each year in the Federal Register identifying FRA's calculations of the total railroad user fee to be collected for the fiscal year, the assessment rate per train mile, the assessment rate per employee hour, and the assessment rate per road mile (as adjusted by the sliding scale).

For fiscal year 1993, user fee assessments totalling $34,583,143 are based on 595,260,083 total industry train miles; 152,414 total industry road miles; and 517,286,132 total industry employee hours.

The base assessment rate per road mile is $79.23, with applicable adjustments for the sliding scale as follows:

| Train mile/road mile ratio | SF* | RM rate** |
|---|---|---|
| 1201 and Above ..... | 1.00 | $94.24 |
| 1001 to 1200 ..... | 0.75 | 59.42 |
| 751 to 1,000 ..... | 0.50 | 39.61 |
| 501 to 750 ..... | 0.25 | 19.81 |
| Up to 500 ..... | 0.00 | 0.00 |

*SF refers to scaling factor.
**RM RATE refers to Road Mile Rate.

The assessment rate per train mile is $.031877. The assessment rate per employee hour is $.006669.

Issued in Washington, DC on July 15, 1993.

S. Mark Lindsey,

*Acting Federal Railroad Administrator.*

[FR Doc. 93–18725 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–06–P

## Maritime Administration

[Docket S–901]

### First American Bulk Carrier Corp. (FABC); Application Under Section 605(c) of the Merchant Marine Act, 1936, as Amended, to Conform FABC's Service Description to Lykes Bros. Steamship Co., Inc.'s Trade Route 1 Description in Docket S–890

Notice is hereby given that First American Bulk Carrier Corporation (FABC) by letter application of July 20, 1993, as amended July 28, 1993, has requested amendment of its subsidized service description to conform the trade route service description in FABC's ODSA MA/MSB–451(a) to the description which is proposed to be incorporated in Lykes Bros. Steamship Co., Inc. (Lykes) ODSA MA/MSB–451 by the Show Cause Order dated June 24, 1993, in Docket No. S–890 (the "Order").

First, the request contemplates that the service description for authority to serve the Mediterranean will include the 48 sailing maximum as set out at page 29 of the Show Cause Order.

Second, FABC requests that the service description incorporate the limitations on the privilege authority for Trade Route 18 set out in letters of May 22, 1992, and July 27, 1993, submitted in Docket S–890, by Lykes which would, if adopted, allow "a maximum of 16 inbound and outbound sailings between U.S. Atlantic and Gulf ports and Southwest Asia from Suez to Burma, inclusive and Africa on the Red Sea and Gulf of Aden."

FABC notes that as recognized in the Maritime Administrator/Maritime Subsidy Board's (MA/MSB) action of August 29, 1990, the twenty sailings included in FABC's ODSA MA/MSB–451(a) are subject to an option in favor of Lykes to repurchase those sailings at the end of the time charterers between Lykes and FABC. FABC states that the time charters also provide that FABC shall request that its subsidy contract be conformed to the description of Lykes' subsidy contract if Lykes seeks to conform its old trade route descriptions to the new trade route redesignations.

Consistent with these obligations, FABC has filed the application to conform the trade route service description in MA/MSB–451(a) to the TR–1 description for MA/MSB–451 set forth in the Order as well as the prospective limitations on TR–18.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 18, 1993. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: July 30, 1993.

By Order of the Maritime Subsidy Board.

James E. Saari,

*Secretary.*

[FR Doc. 93–18632 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–81–M

## National Highway Traffic Safety Administration

### Announcing the Third Meeting of the Crash Data Analysis Subcommittee of the Motor Vehicle Safety Research Advisory Committee

July 28, 1993.

**AGENCY:** National Highway Safety Administration (NHTSA), DOT.

**ACTION:** Meeting announcement.

**SUMMARY:** This notice announces the third meeting of the Crash Data Analysis Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions concerning the types of crash data that should be collected, how existing crash data collection programs can be improved and approaches to analyze crash data.

**DATE AND TIME:** The meeting is scheduled for October 6, 1993, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held in room 9230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research.

The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Crash Data Analysis Subcommittee will focus on the Quality Control of the National Center for Statistics and Analysis's crash data systems. The development of a Quality Control Program begins with understanding the data system, data collection and coding procedures, and finally the building and maintenance of the analysis file. The quality of data is an important issue since it directly impacts on the reliability of the analyses performed using the data. The discussions will cover the following items:

(1) Overview of the types of quality control processes currently in place (this includes edit checks, case review, and monitoring researchers' or coders' performance),

(2) Plans for revisions to the existing quality control approaches, and

(3) Input from the subcommittee on areas needing improvement and on recommended approaches to quality control.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman, Mr. William H. Walsh, Director of the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration.

A public reference file (Number 88–01–Crash Data Analysis) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 9:30 a.m. to 4 p.m., at the National Highway Traffic Safety Administration's Technical Reference Division in room 5110 at 400 Seventh Street, S.W., Washington, DC 20590, telephone: (202) 366–5927.

George L. Parker,

*Chairman, Motor Vehicle Safety Research Advisory Committee.*

[FR Doc. 93–18833 Filed 8–4–93; 8:45 am]

BILLING CODE 4910-59-M

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[Docket No. 784–01; Notice 30]

## Theft Data; Motor Vehicle Theft Prevention Standard

**AGENCY:** National Highway Traffic Safety Administration. (NHTSA), DOT.

**ACTION:** Publication of theft data; request for comments.

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**SUMMARY:** This document publishes, for review and comment, data on passenger motor vehicle thefts that occurred in calendar years 1990–1991. NHTSA obtained these data from the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI). As required by the "Anti Car Theft Act of 1992," these data will be used to determine the theft rates for existing passenger motor vehicle lines manufactured in model years 1990 and 1991 and for determining the median theft rate for all those lines. Vehicle lines with a theft rate that exceeds the median rate would be subject to selection for coverage under the Theft Prevention Standard.

**DATES:** Comments must be received on or before September 20, 1993.

**ADDRESSES:** All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably in ten copies to: Docket section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

**SUPPLEMENTARY INFORMATION:**

### Original Base Median Theft Rate

*(1983–1984 Median Theft Rate)*

The Motor Vehicle Theft Law Enforcement Act of 1984 (Public Law 98–547) (Theft Act), added title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to Title VI, NHTSA promulgated 49 CFR part 541, titled "Federal Motor Vehicle Theft Prevention Standard." Part 541 establishes performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 603 of the Cost Savings Act, as originally enacted, specified three categories of car lines that were high theft lines within the meaning of title VI. These three types were:

Existing lines that had a theft rate exceeding the median theft rate for calendar years (CYs) 1983–1984 (section 603(a)(1)(A));

New lines that were likely to have a theft rate exceeding that median theft rate (section 603(a)(1)(B));

Lines with theft rates below the median theft rate, but which had a majority of major parts interchangeable with lines whose theft rate exceeded or was likely to exceed the median theft rate (section 603(a)(1)(C)).

Section 603(b) of the Cost Savings Act provided that the median theft rate was the combined rate determined for CYs 1983–1984. Section 603(b)(1) set forth the equation NHTSA must use to determine the theft rates for each of the vehicle lines. The theft rate for each line was determined by a fraction, the numerator of which was the number of thefts of model years (MYs) 1983 and 1984 vehicles of that line during CYs 1983–1984, and the denominator of which was the sum of the production volumes for that line in MYs 1983 and 1984, as reported to the EPA under Title V of the Cost Savings Act.

After applying this formula to each existing line, NHTSA was directed by section 603(b)(2) to rank the lines by theft rates to calculate the median theft rate. When there was an even number of theft rates, section 603(b) directed that the median theft rate is the arithmetic average of the two adjoining theft rates midway between the highest and the lowest of such theft rates.

Section 603(b)(3) directed NHTSA to obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, [NHTSA] shall utilize theft data reported by Federal, State, or local police. After such publication and opportunity for comment, [NHTSA] shall utilize the theft data to determine the median theft rate under this subsection.

In a Federal Register document of November 12, 1985 (50 FR 46666), NHTSA published the final theft data reflecting passenger motor vehicle thefts in CYs 1983–1984. In that notice, NHTSA also explained how it decided on the data source to be used and how it calculated the final theft rates. NHTSA determined that information from the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI), would be the most accurate and timely data. The NCIC is a government system that receives vehicle theft information from nearly 23,000 police agencies and other law enforcement authorities throughout the United States. The NCIC data also includes reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

In the November 1985 notice, the agency also explained how it decided to apply the term "line" for purposes of calculating vehicle theft rates. "Line" is defined in section 601(2) of the Cost Savings Act as:

> * * * a name which a manufacturer applies to a group of motor vehicle models of the same make which have the same body or chassis, or otherwise are similar in construction or design.

Section 603(b)(1) of the Cost Savings Act further directs the agency to use production volumes of the lines, as reported to the Environmental Protection Agency (EPA) under Title V of the Cost Savings Act, to calculate the theft rates. Hence, the agency applied the term "line" in a manner as similar as possible to that used by the EPA, so that NHTSA could use the EPA information. NHTSA also explained how it would apply the term "line" in the final rule establishing 49 CFR part 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard. See 50 FR 34831, at 34833; August 28, 1985.

Based on its calculations, NHTSA determined in the November 1985 notice that the median theft rate for CYs 1983 and 1984 was 3.2712 thefts per thousand vehicles. That number was the arithmetic average of the rates for the

lines that ranked 65th and 66th, out of a total of 130 vehicle lines.

**New Base Median Theft Rate**

*(1990–1991 Median Theft Rate)*

The "Anti Car Theft Act of 1992" (ACTA), which became law on October 25, 1992, amended Title VI, "Theft Prevention," of the Cost Savings Act. Section 603(a)(1)(A) was revised to specify that high theft lines are:

> Passenger motor vehicles of any line which is determined * * * to have had a new passenger motor vehicle theft rate in the 2 calendar years immediately preceding the year in which the Anti Car Theft Act of 1992 is enacted which exceeds the median theft rate for all new passenger motor vehicle thefts in such 2-year period.

The effect of this amendment was to require the agency to calculate theft rates for passenger motor vehicle lines for the CY 1990–1991 period and then to establish a new median theft rate, based on that same period.

Title VI was also amended to redefine "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." See section 601(1) of title VI. Before Title VI was amended, "passenger motor vehicle" was defined for Title VI purposes to include passenger cars only. Given the new definition of "passenger motor vehicle," NHTSA must calculate the CYs 1990 and 1991 theft rates not only for passenger cars, but also for multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines that are rated at 6,000 pounds gross vehicle weight rating or less. Depending on their theft rates, certain MPV and LDT lines may be determined to be likely high theft lines, and thus may be subject to the parts marking requirements of the Theft Prevention Standard.

**Calculation of 1990–1991 Median Theft Rate**

In calculating the CY 1990–1991 theft rates, NHTSA followed the same procedures it used in calculating the 1983–1984 theft rates, with minor exceptions. For the 1990–1991 data, NHTSA relied on information from the NCIC and applied the definition of "line." To initially identify the affected MY 1990 and 1991 passenger motor vehicle lines, NHTSA referred to the RPA's Fuel Economy Estimates Guide. For production data on each vehicle line, NHTSA reviewed data collected from mid model year production reports provided to the EPA by the manufacturers. In order to double check this data, NHTSA sent letters to each manufacturer of the relevant vehicle lines, requesting each manufacturer to provide its final MY 1990 and 1991 production volume data for these lines, including MPVs and LDTs rated at 6,000 pounds gross vehicle weight or less. NHTSA received complete responses from all manufacturers that it contacted, with he exception of Mercedes-Benz, which declined to provide production information for individual models within Mercedes-Benz lines. The Mercedes-Benz theft rates are provided by vehicle line, rather than by individual models. Information about Mercedes-Benz models instead of Mercedes-Benz vehicle lines is important because the models are more commonly known than the names of the lines. For example, it is generally known what a Mercedes-Benz 300SEL model looks like, while very few outside of the Mercedes-Benz company are aware that the 300SEL is part of the 126 vehicle line. In order to give the public some idea of the theft rates for each model in appendix A of this notice, NHTSA lists the models in each Mercedes-Benz line for MYs 1990 and 1991. The public can get an idea of the 1990 or 1991 theft rate of a particular Mercedes-Benz model in Appendix A, seeing what vehicle line that model is classified under, and then referring to the listing of the theft rates for the relevant Mercedes-Benz vehicle line.

Before calculating the CY 1990–1991 theft rates, NHTSA reviewed the theft data from NCIC by examining the vehicle identification numbers (VINs) of all the vehicles reported stolen. The VIN is a seventeen character series of arabic numbers and/or roman letters which is assigned to a motor vehicle for identification purposes. Each motor vehicle is assigned a unique VIN number by its manufacturer. By regulation, NHTSA specifies the information about the attributes of the vehicle that must be provided in the VIN. (See 49 CFR part 565 Vehicle Identification Number—Content Requirements.) VIN attributes include type of vehicle (i.e., passenger car, MPV, or truck, and the vehicle's make, line, and model), model year of the vehicle, and gross vehicle weight rating of the vehicle. Thus, through information provided in the VIN, NHTSA can identify the vehicle line and gross vehicle weight rating of each stolen vehicle.

Using the VINs, the agency "cleaned" the data by removing from consideration the VINs of motor vehicles other than passenger motor vehicles (such as VINs of buses, trailers, and motorcycles), and VINs of light-duty trucks and multipurpose passenger vehicles over 6,000 pounds gross vehicle weight rating. The agency also removed VINs of incomplete vehicles, since NHTSA had no means of determining the vehicle type of the incomplete vehicle when completed, or even whether the stolen vehicle was completed. As was done in the calculation of the 1983–1984 theft rates, NHTSA also removed duplicative reports of vehicles with identical VINs reported to have been stolen within a seven day period.

The cleansing process resulted in significant adjustments to the NCIC data. The NCIC reported a total of 61,665 MY 1990 motor vehicles stolen in 1990. After the adjustments for MY 1990, there were 54,752 VINs for stolen passenger cars, and for stolen light-duty trucks and multipurpose passenger vehicles under 6,000 pounds gross vehicle weight. After using the same procedure for the MY 1991 data, the agency found that there were 54,018 VINs for stolen passenger cars, and for light-trucks and multipurpose passenger vehicles under 6,000 pounds gross vehicle weight.

Using the cleansed data, the agency then calculated the theft rates for each vehicle line by dividing the reported thefts of each vehicle line for MYs 1990–1991 over the production volumes for that line (in thousands of vehicles) as reported to the EPA and double checked in letters to NHTSA. After this calculation was made for each vehicle line, NHTSA ranked the lines by theft rate (from high theft to low theft) to calculate the median theft rate.

**Preliminary Median Theft Rate for 1990–1991**

Based on the above, out of a total of 226 vehicle lines, NHTSA has preliminarily determined that the median theft rate for CYs 1990–1991 is 3.6436 thefts per thousand vehicles produced. 3.6436 is the average between number 113 (3.6449 thefts per thousand) and 114 (3.6424 thefts per thousand). Of those vehicle lines with a theft rate higher than 3.6436, 90 are passenger car lines, 17 are MPV lines, and 6 are LDT lines.

In Table I provided below, NHTSA has tentatively ranked each of the vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, especially production volumes of individual vehicle lines. Public comment is also sought on the methodology used by NHTSA in determining the ranking of the existing passenger motor vehicle lines.

**Selection of High Theft Lines Based on Preliminary 1990–1991 Theft Data**

After NHTSA reviews the public comments in response to this request for comment on the preliminary theft data, it will make appropriate adjustments to the data, and publish the final theft data in the **Federal Register**. NHTSA will then follow the procedures it established in 49 CFR part 542 Procedures for Selecting Lines to be Covered by the Theft Prevention Standard in determining high theft lines. For each of those vehicle lines ranked among those with the highest 113 (one-half of the 226 lines) theft rates, and that are not already listed in appendix A of 49 CFR part 541 Federal Motor Vehicle Theft Prevention Standard as high theft lines, NHTSA intends to send a letter to the manufacturer of that vehicle line. The letter would inform the manufacturer of NHTSA's preliminary determination of that line as a high theft line, based on the CY 1990–1991 rates.

As provided in part 542, each manufacturer will have an opportunity to request a reconsideration of NHTSA's preliminary determination, and to provide the facts and arguments underlying its objections to the preliminary determination. NHTSA will then review each request for reconsideration, and make a final determination whether the vehicle line is high theft. The effect of a final high theft determination for a line is that vehicles in that line and their major replacement parts will have to be marked as specified in the Theft Prevention Standard.

For those vehicle lines determined to be high theft based on the CY 1990–1991 theft data, NHTSA intends to require parts marking beginning with MY 1995. In view of the following time considerations, NHTSA does not believe the newly designated high theft lines can be made subject to part 541 any sooner. NHTSA intends to issue the final theft data early in MY 1994, which begins in the fall of CY 1993. NHTSA will make its high theft determinations after it issues the final data. Section 604(a)(4) states that a manufacturer shall not be required to comply with parts marking requirements " * * * for a model year beginning earlier than 6 months after the date of selection." Therefore, the first model year that will begin after the date of selection (which must be some date after the final theft data are issued) is MY 1995.

It is proposed that newly designated high theft passenger cars begin to comply with parts marking requirements in MY 1995. Compliance for high theft MPVs and LDTs may be delayed to a later model year since determination of "major parts" for these vehicles has not yet been made. An advance notice of proposed rulemaking was published July 7, 1993 (58 FR 36376) soliciting comments on what parts of MPVs and LDTs should be considered "major parts." Comments are sought on this implementation schedule.

In addition, those vehicle lines that are presently listed in appendix A, regardless whether they are one of the top 113 high theft vehicle lines, will continue to be listed in appendix A. This is because section 603(d) provides that except for exemptions from parts marking due to NHTSA approved antitheft devices, NHTSA may not "render the standard inapplicable to any line which at any time has been subject to the standard."

**Authority:** 19 U.S.C. 2021; delegations of authority at 49 CFR 1.50 and 501.6.

Issued on: July 30, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

APPENDIX A—MERCEDES-BENZ LINES FOR MODEL YEARS 1990 AND 1991

| Model year 1990 | | Model year 1991 | |
|---|---|---|---|
| Line | Model | Line | Model |
| 201 | 190E 2.6 | 201 | 190E 2.3.<br>190E 2.6. |
| 124 | 300D 2.5 Turbo | 124 | 300D 2.5 Turbo. |
| | 300D 2.6 | ..... | 300E 2.6. |
| | 300E | ..... | 300E. |
| | 300E 4Matic | ..... | 300E 4Matic. |
| | 300TE | ..... | 300TE. |
| | 300TE 4Matic | ..... | 300TE 4Matic. |
| | 300CE | ..... | 300CE. |
| 126 | 300SE | 126 | 300SE. |
| | 300SEL | ..... | 300SEL. |
| | | | 300SD. |
| | 350SDL | ..... | 300SDL. |
| | 420SEL | ..... | 420SEL. |
| | 560SEL | ..... | 560SEL. |
| | 560SEC | ..... | 560SEC. |
| 129 | 300SL | 129 | 300SL. |
| | 500SL | ..... | 500SL. |

TABLE I.—MY'S 1990/91 THEFT DATA NOTICE FOR THE THEFT PREVENTION STANDARD

| Manufacturer | Make/model (line) | Thefts 1990 | Thefts 1991 | Production (mfgr's) 1990 | Production (mfgr's) 1991 | Theft rate (1990/91 thefts per 1,000 cars produced) |
|---|---|---|---|---|---|---|
| 1. Ford Motor Co | Ford Mustang | 1,545 | 2,085 | 115,821 | 91,479 | 17.5109 |
| 2. General Motors | S–15 GMC Jimmy | 276 | 1,048 | 18,257 | 61,794 | 18.5395 |
| 3. Honda | Prelude | 379 | 555 | 29,708 | 20,785 | 15.6993 |
| 4. General Motors | S–10 Chevrolet Blazer | 946 | 2,825 | 56,080 | 192,680 | 15.1592 |
| 5. Nissan | Pathfinder | 357 | 579 | 29,525 | 38,215 | 13.9175 |
| 6. Hyundai | Sonata | 336 | 281 | 25,021 | 24,542 | 12.4486 |
| 7. Toyota | Supra | 65 | 61 | 6,267 | 4,055 | 12.1833 |
| 8. General Motors | Oldsmobile Bravada | 0 | 134 | 0 | 11,139 | 12.0298 |
| 9. Nissan | 300ZX | 449 | 229 | 38,882 | 18,502 | 11.8151 |
| 10. Volkswagen | Cabriolet | 116 | 35 | 6,673 | 4,138 | 11.7957 |
| 11. Chrysler Corp | Jeep Cherokee | 1,837 | 924 | 135,416 | 105,463 | 11.4622 |
| 12. Mazda | RX–7 | 107 | 77 | 10,560 | 7,900 | 10.0218 |
| 13. Alfa Romeo | 164 | 0 | 19 | 0 | 1,947 | 9.7586 |
| 14. General Motors | Cadillac Brougham | 295 | 257 | 32,052 | 25,731 | 9.5530 |
| 15. Mitsubishi | Mirage | 448 | 364 | 60,150 | 30,019 | 9.0053 |
| 16. Chrysler Corp | Dodge Monaco | 23 | 153 | 7,154 | 12,433 | 8.9858 |
| 17. Volkswagen | Golf/GTI | 78 | 166 | 13,866 | 15,965 | 8.8331 |
| 18. General Motors | Cadillac Seville | 305 | 206 | 32,346 | 25,916 | 8.7707 |
| 19. Chrysler Corp | Jeep Wrangler | 397 | 392 | 46,874 | 44,891 | 8.5990 |
| 20. Porsche | 911 | 31 | 48 | 4,609 | 4,918 | 8.3802 |
| 21. General Motors | Pontiac Grand AM | 1,526 | 1,381 | 189,150 | 171,582 | 8.2527 |

TABLE I.—MY'S 1990/91 THEFT DATA NOTICE FOR THE THEFT PREVENTION STANDARD—Continued

| Manufacturer | Make/model (line) | Thefts 1990 | Thefts 1991 | Production (mfgr's) 1990 | Production (mfgr's) 1991 | Theft rate (1990/91 thefts per 1,000 cars produced) |
|---|---|---|---|---|---|---|
| 22. General Motors | Chevrolet Camaro | 288 | 759 | 33,200 | 97,290 | 6.0236 |
| 23. Mitsubishi | Montero | 144 | 108 | 16,403 | 15,959 | 7.7869 |
| 24. Ford Motor Co | Ford Probe | 755 | 654 | 110,201 | 73,522 | 7.6692 |
| 25. Chrysler Corp | Town & Country MPV | 32 | 10 | 3,238 | 2,244 | 7.6614 |
| 26. General Motors | Chevrolet Corvette | 168 | 139 | 22,034 | 10,510 | 7.5720 |
| 27. Toyota | 4-Runner | 521 | 340 | 72,138 | 46,263 | 7.2719 |
| 28. Volkswagen | Jetta | 337 | 329 | 47,731 | 45,136 | 7.1715 |
| 29. General Motors | Pontiac Bonneville | 494 | 345 | 75,655 | 42,919 | 7.0758 |
| 30. Chrysler Corp | Chrysler Lebaron | 614 | 394 | 86,141 | 57,490 | 7.0160 |
| 31. Volvo | 760 | 7 | 2 | 945 | 363 | 6.8807 |
| 32. Suzuki | Sidekick | 59 | 80 | 17,162 | 13,052 | 6.8764 |
| 33. General Motors | Pontiac Firebird | 154 | 288 | 19,157 | 45,234 | 6.8643 |
| 34. Chrysler Corp | Dodge Shadow | 537 | 500 | 71,088 | 81,211 | 6.8090 |
| 35. Mitsubishi | Pickup Truck | 194 | 132 | 24,975 | 23,928 | 6.6661 |
| 36. Ford Motor Co | Lincoln Continental | 396 | 368 | 62,657 | 52,103 | 6.6574 |
| 37. Suzuki | Samurai | 42 | 31 | 5,782 | 5,417 | 6.5184 |
| 38. General Motors | Pontiac 6000 | 293 | 223 | 52,352 | 27,940 | 6.4265 |
| 39. General Motors | Geo Tracker | 232 | 195 | 34,948 | 31,498 | 6.4263 |
| 40. Porsche | 928 | 4 | 1 | 414 | 369 | 6.3657 |
| 41. Ford Motor Co | Lincoln Mark VII | 120 | 71 | 21,658 | 8,898 | 6.2506 |
| 42. General Motors | Buick Skylark | 509 | 482 | 83,666 | 75,811 | 6.2141 |
| 43. Chrysler Corp | Dodge Dynasty | 500 | 768 | 94,510 | 112,320 | 6.1305 |
| 44. General Motors | Chevrolet C–1500 | 1,639 | 1,015 | 267,411 | 168,497 | 6.0884 |
| 45. Mitsubishi | Galant/Sigma | 301 | 212 | 45,397 | 39,562 | 6.0382 |
| 46. Toyota | MR2 | 0 | 129 | 0 | 22,080 | 5.8424 |
| 47. BMW | 3 | 143 | 138 | 21,556 | 26,839 | 5.8064 |
| 48. Chrysler Corp. | Plymouth Acclaim | 538 | 671 | 95,142 | 114,510 | 5.7667 |
| 49. General Motors | Buick Reatta | 55 | 2 | 9,431 | 1,491 | 5.7448 |
| 50. Chrysler Corp. | Dodge Spirit | 415 | 584 | 79,054 | 94,895 | 5.7431 |
| 51. General Motors | GMC Sierra C–1500 | 531 | 273 | 89,021 | 52,079 | 5.6981 |
| 52. Chrysler Corp. | Plymouth Sundance | 432 | 236 | 60,517 | 56,820 | 5.6930 |
| 53. General Motors | Geo Prizm | 1,021 | 489 | 170,272 | 95,000 | 5.6923 |
| 54. General Motors | Oldsmobile Cutlass Calais | 494 | 417 | 88,229 | 74,045 | 5.6140 |
| 55. General Motors | Pontiac Sunbird | 519 | 731 | 106,960 | 115,721 | 5.6134 |
| 56. Ford Motor Co. | Ford Thunderbird | 593 | 427 | 104,847 | 78,133 | 5.5744 |
| 57. BMW | 5 | 126 | 101 | 23,871 | 17,016 | 5.5519 |
| 58. Chrysler Corp. | Chrysler Imperial | 32 | 100 | 13,985 | 10,146 | 5.4929 |
| 59. Chrysler Corp. | Chrysler New Yorker | 429 | 305 | 79,653 | 55,229 | 5.4416 |
| 60. General Motors | Geo Metro | 250 | 337 | 28,029 | 62,206 | 5.3250 |
| 61. Chrysler Corp. | Plymouth Laser | 257 | 141 | 45,141 | 30,720 | 5.2464 |
| 62. Nissan | 240SX | 301 | 190 | 60,582 | 34,534 | 5.1621 |
| 63. Mitsubishi | 3000GT | 0 | 51 | 0 | 9,903 | 5.1500 |
| 64. General Motors | Oldsmobile Cutlass Ciera | 584 | 504 | 126,321 | 107,028 | 5.0911 |
| 65. Isuzu | Amigo | 61 | 28 | 11,622 | 6,000 | 5.0419 |
| 66. General Motors | Pontiac Lemans | 148 | 172 | 34,351 | 29,500 | 5.0117 |
| 67. Mazda | 626/MX–6 | 530 | 448 | 96,966 | 100,436 | 4.9544 |
| 68. Nissan | Maxima | 528 | 482 | 110,685 | 94,646 | 4.9189 |
| 69. General Motors | Buick Estate Wagon | 37 | 0 | 7,524 | 0 | 4.9176 |
| 70. General Motors | Buick Century | 497 | 649 | 123,693 | 110,767 | 4.8837 |
| 71. Chrysler Corp. | Eagle Premier | 55 | 71 | 14,277 | 11,630 | 4.8636 |
| 72. Ford Motor Co. | Lincoln Town Car | 502 | 566 | 142,648 | 119,046 | 4.8454 |
| 73. Alfa Romeo | Spider | 2 | 8 | 915 | 1,154 | 4.8333 |
| 74. Chrysler Corp. | Dodge Stealth | 0 | 96 | 0 | 19,907 | 4.8224 |
| 75. Hyundai | Scoupe | 0 | 165 | 0 | 34,305 | 4.8098 |
| 76. Mitsubishi | Eclipse | 383 | 211 | 67,658 | 56,056 | 4.8013 |
| 77. Honda | Accord | 1,833 | 2,151 | 410,915 | 425,360 | 4.7640 |
| 78. Ford Motor Co. | Ford Escort | 1,030 | 1,545 | 188,146 | 355,642 | 4.7353 |
| 79. General Motors | Chevrolet Cavalier | 1,482 | 1,127 | 263,204 | 293,995 | 4.6823 |
| 80. Volkswagen | Corrado | 49 | 12 | 11,041 | 2,072 | 4.6519 |
| 81. Nissan | Sentra | 885 | 547 | 163,355 | 144,748 | 4.6478 |
| 82. Chrysler Corp. | Dodge Daytona | 186 | 69 | 37,684 | 17,286 | 4.6221 |
| 83. Honda/Acura | Legend | 336 | 282 | 66,611 | 68,274 | 4.5817 |
| 84. Mercedes-Benz | 129 | 19 | 50 | 5,413 | 9,797 | 4.5368 |
| 85. BMW | 7 | 43 | 33 | 10,717 | 6,056 | 4.5311 |
| 86. Ford Motor Co. | Mercury Cougar | 335 | 280 | 76,580 | 60,669 | 4.4809 |
| 87. Hyundai | Excel | 403 | 346 | 92,106 | 78,529 | 4.3895 |
| 88. General Motors | Geo Storm | 370 | 343 | 73,376 | 89,996 | 4.3643 |
| 89. Mazda | B Series Pickup | 323 | 269 | 70,866 | 65,585 | 4.3386 |
| 90. Toyota | Corolla/Corolla Sport | 1,073 | 761 | 219,730 | 208,743 | 4.3269 |

TABLE I.—MY'S 1990/91 THEFT DATA NOTICE FOR THE THEFT PREVENTION STANDARD—Continued

| Manufacturer | Make/model (line) | Thefts 1990 | Thefts 1991 | Production (mfgr's) 1990 | Production (mfgr's) 1991 | Theft rate (1990/91 thefts per 1,000 cars produced) |
|---|---|---|---|---|---|---|
| 91. Chrysler Corp | Jeep Wagoneer | 53 | 10 | 10,928 | 3,702 | 4.3062 |
| 92. General Motors | Oldsmobile Delta 88 Royale | 451 | 214 | 105,506 | 50,451 | 4.2639 |
| 93. Isuzu | Rodeo | 0 | 123 | 0 | 28,953 | 4.2483 |
| 94. Ford Motor Co | Ford Tempo | 999 | 734 | 218,976 | 189,747 | 2.2400 |
| 95. Chrysler Corp | Dodge Omni | 69 | 0 | 16,481 | 0 | 4.1866 |
| 96. General Motors | Chevrolet Beretta | 384 | 261 | 90,981 | 64,022 | 4.1612 |
| 97. General Motors | Buick LeSabre | 593 | 387 | 152,967 | 83,677 | 4.1412 |
| 98. Nissan | Stanza | 305 | 296 | 79,356 | 67,583 | 4.0901 |
| 99. Audi | Coupe Quattro | 6 | 1 | 1,348 | 377 | 4.0580 |
| 100. Subaru | XT | 0 | 7 | 12 | 1,725 | 4.0299 |
| 101. Chrysler Corp | Eagle Talon | 117 | 125 | 28,064 | 32,096 | 4.0225 |
| 102. General Motors | Chevrolet Corsica | 605 | 754 | 188,855 | 169,460 | 4.0170 |
| 103. Isuzu | Trooper/Trooper II | 167 | 120 | 37,448 | 34,502 | 3.9889 |
| 104. General Motors | Cadillac Fleetwood/Deville | 656 | 573 | 170,517 | 140,992 | 3.9453 |
| 105. Honda/Acura | Integra | 479 | 267 | 109,321 | 80,333 | 3.9335 |
| 106. Toyota | Tercel | 406 | 382 | 88,482 | 112,032 | 3.9299 |
| 107. Chrysler Corp | Plymouth Horizon | 60 | 0 | 15,884 | 0 | 3.7774 |
| 108. General Motors | Chevrolet S–10 Pickup | 349 | 1,271 | 72,764 | 358,397 | 3.7571 |
| 109. Ford Motor Co | Mercury Tracer | 0 | 260 | 0 | 70,172 | 3.7052 |
| 110. Toyota | Camry | 1,052 | 909 | 270,029 | 259,414 | 3.7039 |
| 111. Ford Motor Co | E150 Van | 37 | 28 | 10,102 | 7,516 | 3.6894 |
| 112. General Motors | GMC Sonoma | 101 | 306 | 21,165 | 90,222 | 3.6539 |
| 113. General Motors | Chevrolet Caprice | 361 | 413 | 55,528 | 156,622 | 3.6449 |
| 114. General Motors | Chevrolet Lumina APV | 223 | 180 | 72,089 | 39,551 | 3.6424 |
| 115. Chrysler Corp | Jeep Comanche | 45 | 19 | 10,681 | 7,063 | 3.6069 |
| 116. Ford Motor Co | Mercury Topaz | 277 | 187 | 73,207 | 56,165 | 3.5666 |
| 117. General Motors | Oldsmobile 98/Touring | 318 | 72 | 58,444 | 50,417 | 3.5626 |
| 118. Toyota | Celica | 315 | 201 | 82,740 | 61,482 | 3.5778 |
| 119. Isuzu | Impulse | 22 | 10 | 4,772 | 4,287 | 3.5324 |
| 120. Mitsubishi | Wagon | 6 | 0 | 1,791 | 0 | 3.3501 |
| 121. Nissan | Pickup Truck | 460 | 408 | 129,951 | 131,144 | 3.3245 |
| 122. BMW | 8 | 0 | 8 | 0 | 2,411 | 3.3181 |
| 123. Rover Group | Range Rover MPV | 14 | 11 | 4,862 | 2,681 | 3.3143 |
| 124. Mercedez-Benz | 201 | 42 | 45 | 9,247 | 17,033 | 3.3105 |
| 125. Mazda | 323/Protege | 297 | 212 | 74,316 | 79,948 | 3.2995 |
| 126. Isuzu | Stylus | 0 | 49 | 0 | 14,919 | 3.2844 |
| 127. General Motors | Cadillac Allante | 11 | 7 | 3,076 | 2,485 | 3.2368 |
| 128. Rover Group | Sterling 827 | 6 | 5 | 1,200 | 2,216 | 3.2201 |
| 129. Mitsubishi | Van | 3 | 0 | 934 | 0 | 3.2120 |
| 130. General Motors | Pontiac Grand Prix | 363 | 277 | 110,549 | 91,646 | 3.1653 |
| 131. Mazda | Navajo | 0 | 38 | 0 | 12,080 | 3.1457 |
| 132. General Motors | Chevrolet Astro | 290 | 429 | 123,394 | 105,795 | 3.1371 |
| 133. Mercedes-Benz | 124 | 81 | 59 | 21,870 | 22,771 | 3.1361 |
| 134. General Motors | Oldsmobile Cutlass Supre | 361 | 267 | 109,288 | 91,770 | 3.1235 |
| 135. Daihatsu | Rocky MPV | 24 | 5 | 7,514 | 1,883 | 3.0861 |
| 136. Ford Motor Co | Bronco II | 166 | 0 | 54,988 | 0 | 3.0186 |
| 137. General Motors | Oldsmobile Toronado/Trofeo | 38 | 29 | 14,490 | 7,831 | 3.0030 |
| 138. Chrysler Corp | Eagle Summit | 40 | 41 | 9,595 | 17,626 | 2.9756 |
| 139. Ford Motor Co | Mercury Sable | 278 | 264 | 93,126 | 89,349 | 2.9703 |
| 140. Suzuki | Swift | 19 | 22 | 7,671 | 6,227 | 2.9501 |
| 141. Ferrari | Testarossa | 1 | 1 | 426 | 255 | 2.9369 |
| 142. Toyota | Cressida | 33 | 36 | 12,456 | 11,039 | 2.9368 |
| 143. Chrysler Corp. | Dodge Caravan/Grand | 709 | 506 | 234,609 | 162,675 | 2.9117 |
| 144. Jaguar | XJS | 13 | 9 | 5,213 | 2,371 | 2.9006 |
| 145. General Motors | Pontiac Trans Sport APV | 88 | 80 | 33,424 | 18,418 | 2.8548 |
| 146. Porsche | 944 | 5 | 2 | 1,990 | 850 | 2.8169 |
| 147. General Motors | Oldsmobile Silhouette APV | 57 | 58 | 20,103 | 16,322 | 2.8137 |
| 148. Mazda | MX–5 Miata | 157 | 97 | 52,247 | 38,868 | 2.7877 |
| 149. General Motors | Oldsmobile Custom Cruiser | 18 | 13 | 3,573 | 7,660 | 2.7597 |
| 150. Nissan | Infiniti M30 | 20 | 19 | 7,466 | 6,718 | 2.7496 |
| 151. Mercedes-Benz | 126 | 64 | 60 | 21,030 | 24,128 | 2.7459 |
| 152. Honda | Civic | 737 | 759 | 277,631 | 289,947 | 2.7320 |
| 153. Mazda | 929 | 36 | 47 | 16,090 | 12,449 | 2.7178 |
| 154. Chrysler Corp. | Chrysler's TC | 11 | 3 | 3,536 | 1,636 | 2.7069 |
| 155. General Motors | Chevrolet Celebrity | 79 | 0 | 29,271 | 0 | 2.6989 |
| 156. Toyota | Pickup Truck | 437 | 457 | 159,842 | 178,940 | 2.6389 |
| 157. Ford Motor Co | Ford Crown Victoria | 148 | 133 | 57,690 | 49,213 | 2.6288 |
| 158. General Motors | Cadillac Eldorado | 53 | 45 | 21,764 | 15,855 | 2.6023 |
| 159. Chrysler Corp. | Dodge Ramcharger | 30 | 13 | 12,311 | 4,483 | 2.5604 |

TABLE I.—MY'S 1990/91 THEFT DATA NOTICE FOR THE THEFT PREVENTION STANDARD—Continued

| Manufacturer | Make/model (line) | Thefts 1990 | Thefts 1991 | Production (mfgr's) 1990 | Production (mfgr's) 1991 | Theft rate (1990/91 thefts per 1,000 cars produced) |
|---|---|---|---|---|---|---|
| 160. Ford Motor Co | Ford Festiva | 140 | 95 | 47,449 | 44,544 | 2.5545 |
| 161. Volvo | 740 | 147 | 58 | 54,036 | 29,343 | 2.4587 |
| 162. Nissan | Axxess | 44 | 0 | 17,994 | 182 | 2.4206 |
| 163. Ford Motor Co | Mercury Grand Marquis | 160 | 193 | 70,633 | 75,861 | 2.4097 |
| 164. General Motors | Chevrolet Lumina | 763 | 422 | 296,720 | 196,473 | 2.4027 |
| 165. General Motors | Chevrolet Sprint | 1 | 0 | 233 | 187 | 2.3810 |
| 166. Chrysler Corp. | Plymouth Voyager/Grand | 513 | 301 | 197,977 | 144,534 | 2.3766 |
| 167. Chrysler Corp. | Dodge Ram Wagon/Van B150 | 24 | 18 | 13,706 | 3,969 | 2.3762 |
| 168. Isuzu | Pickup | 106 | 94 | 50,124 | 34,635 | 2.3571 |
| 169. General Motors | Buick Regal | 148 | 274 | 53,561 | 126,701 | 2.3410 |
| 170. Chrysler Corp. | Plymouth Colt/Colt Vista | 26 | 50 | 12,183 | 20,681 | 2.3126 |
| 171. Ford Motor Co | Ford Taurus | 716 | 635 | 309,211 | 278,485 | 2.2968 |
| 172. Volkswagen | Passat | 42 | 36 | 17,426 | 16,567 | 2.2946 |
| 173. General Motors | GMC Safari | 88 | 99 | 43,263 | 36,453 | 2.2884 |
| 174. Ford Motor Co. | Ranger Pickup | 566 | 599 | 271,160 | 243,697 | 2.2628 |
| 175. Ford Motor Co. | Explorer | 0 | 711 | 0 | 323,551 | 2.1975 |
| 176. Chrysler Corp. | Dodge Colt/Colt Vista | 23 | 56 | 13,743 | 23,813 | 2.1566 |
| 177. Nissan | Infiniti Q45 | 20 | 40 | 11,615 | 16,264 | 2.1522 |
| 178. General Motors | Buick Electra Park Avenue | 184 | 131 | 46,360 | 100,702 | 2.1420 |
| 179. Volkswagen | Fox | 58 | 15 | 24,714 | 10,425 | 2.0775 |
| 180. Volvo | 240 | 80 | 45 | 35,580 | 25,561 | 2.0445 |
| 181. Volvo | 940 | 0 | 29 | 0 | 14,249 | 2.0352 |
| 182. Ford Motor Co. | F150 Pickup Truck | 298 | 215 | 138,657 | 114,669 | 2.0251 |
| 183. Audi | 80/90 | 24 | 1 | 9,168 | 3,224 | 2.0174 |
| 184. Toyota | Lexus ES250 | 32 | 43 | 19,561 | 17,643 | 2.0159 |
| 185. Ford Motor Co. | Mercury Capri | 0 | 70 | 0 | 35,407 | 1.9770 |
| 186. Jaguar | XJ6 | 24 | 23 | 15,172 | 8,995 | 1.9448 |
| 187. Chrysler Corp. | Dodge Dakota Pickup | 154 | 112 | 66,459 | 71,490 | 1.9282 |
| 188. Subaru | Legacy | 154 | 141 | 88,873 | 64,200 | 1.9272 |
| 189. Honda/Acura | NSX | 0 | 6 | 0 | 3,139 | 1.9114 |
| 190. Toyota | Lexus LS400 | 77 | 82 | 42,227 | 41,559 | 1.8977 |
| 191. Saab | 900 | 32 | 23 | 14,574 | 15,437 | 1.8327 |
| 192. Ford Motor Co. | Aerostar | 303 | 279 | 169,574 | 150,579 | 1.8179 |
| 193. General Motors | Oldsmobile Cutlass Cruiser | 16 | 13 | 8,891 | 7,163 | 1.8064 |
| 194. Volvo | 760 | 17 | 0 | 9,515 | 0 | 1.7867 |
| 195. Mitsubishi | Precis | 17 | 3 | 3,210 | 8,000 | 1.7841 |
| 196. Subaru | Loyale | 68 | 36 | 32,994 | 25,904 | 1.7658 |
| 197. Nissan | Pulsar NX | 2 | 0 | 1,168 | 0 | 1.7123 |
| 198. Daihatsu | Charade | 23 | 4 | 12,447 | 3,732 | 1.6588 |
| 199. Toyota | Land Cruiser | 3 | 0 | 1,921 | 0 | 1.5617 |
| 200. Nissan | Infiniti G20 | 0 | 25 | 0 | 16,132 | 1.5497 |
| 201. Toyota | Previa | 0 | 126 | 0 | 81,426 | 1.5474 |
| 202. General Motors | Buick Riviera | 29 | 25 | 21,982 | 12,956 | 1.5456 |
| 203. Mazda | MPV Wagon | 57 | 62 | 47,852 | 47,107 | 1.4638 |
| 204. Audi | 100/200 | 15 | 12 | 10,869 | 9,036 | 1.3564 |
| 205. Volkswagen | Vanagon | 9 | 5 | 7,363 | 4,729 | 1.2405 |
| 206. General Motors | Saturn SL | 0 | 49 | 0 | 39,867 | 1.2291 |
| 207. Peugeot | 405 | 0 | 4 | 700 | 2,557 | 1.2281 |
| 208. Audi | V8 Quattro Sedan | 4 | 0 | 2,911 | 542 | 1.1584 |
| 209. Subaru | Justy | 10 | 10 | 9,552 | 8,999 | 1.0781 |
| 210. General Motors | Chevrolet Sportvan G–10 | 0 | 15 | 8,715 | 5,604 | 1.0331 |
| 211. General Motors | Buick Roadmaster | 0 | 6 | 0 | 6,729 | 0.8917 |
| 212. Nissan | NX Coupe | 0 | 7 | 0 | 8,705 | 0.8841 |
| 213. Chrysler Corp. | Dodge Ram Pickup | 24 | 19 | 42,251 | 21,763 | 0.6717 |
| 214. General Motors | Saturn SC | 0 | 6 | 0 | 10,296 | 0.5826 |
| 215. Saab | 9000 | 10 | 13 | 20,675 | 24,195 | 0.5126 |
| 216. General Motors | GMC Rally Sportvan | 0 | 2 | 3,092 | 1,620 | .04244 |
| 217. Yugo | GV/GVL/GVX/GVS | 1 | 1 | 1,323 | 8,250 | 0.2069 |
| 218. Ferrari | F40 | 0 | 0 | 90 | 60 | 0.0000 |
| 219. Ferrari | 348 | 0 | 0 | 377 | 240 | 0.0000 |
| 220. Nissan | Van | 0 | 0 | 292 | 0 | 0.0000 |
| 221. Peugeot | 505 | 0 | 0 | 2 | 654 | 0.0000 |
| 222. Lotus | Elan | 0 | 0 | 0 | 159 | 0.0000 |
| 223. Lamborghini | Diablo | 0 | 0 | 0 | 110 | 0.0000 |
| 224. Lotus | Esprit | 0 | 0 | 102 | 28 | 0.0000 |
| 225. Ferrari | Mondial | 0 | 0 | 96 | 49 | 0.0000 |
| 226. Aston Martin | Saloon/Vantage/Volante | 0 | 0 | 2 | 40 | 0.0000 |

TABLE III.—DESIGNATED HIGH THEFT CAR LINES WITH THEFT RATES BELOW THE MEDIAN THEFT RATE OF 3.6436

| Manufacturer | Make/model |
|---|---|
| Volkswagen: | |
| Audi | 100/200/S4, V8 Quattro. |
| BMW | 8. |
| Chrysler | Chrysler's TC. |
| Ferrari | Mondial. |
| Ford: | |
| Mercury | Capri. |
| General Motors: | |
| Buick | Riviera, Electra Park Avenue, Regal. |
| Cadillac | Eldorado, Allante. |
| Chevrolet | Lumina. |
| Oldsmobile | Cutlass Supreme, 98/ Touring. |
| Pontiac | Grand Prix. |
| Honda: | |
| Acura | NSX. |
| Isuzu | Impulse, Stylus. |
| Jaguar | XJ6, XJS. |
| Mazda | MX-5 Miata, 323/Protege. |
| Mercedes-Benz | 124, 126, 129, 201. |
| Nissan: | |
| Infiniti | M30,Q45. |
| Peugeot | 405. |
| Rover Group | Sterling. |
| Saab | 900, 9000. |
| Toyota | Cressida, Celica. |
| Lexus | ES250, LS400. |

[FR Doc. 93–18658 Filed 8–4–93; 8:45 am]
BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

July 30, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Comptroller of the Currency**

*OMB Number* 1557–0102
*Form Number* CC 7610–01 and CC 7510–02
*Type of Review:* Extension
*Title:* Notice of and Report of International Activity
*Description:* The OCC needs to monitor, evaluate, and examine certain foreign activities of national banks. These forms are an information collection tool. The information is used to update our data base which enables us to monitor the oversees activities. It also triggers an evaluation of the activity for prudential and legal purposes. Affects national banks with oversees operations.
*Respondents:* Businesses or other for-profit, Small businesses or organizations
*Estimated Number of Recordkeepers:* 75
*Estimated Burden Hours Per Respondent:* 30 minutes
*Frequency of Response:* On occasion
*Estimated Total Recordkeeping Burden:* 75 hours
*Clearance Officer:* John Ference, (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
*OMB Reviewer:* Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer*
[FR Doc. 93–18716 Filed 8–4–93; 8:45 am]
BILLING CODE 4810-35-M

### Public Information Collection Requirements Submitted to OMB for Review

July 30, 1993

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

*OMB Number:* New
*Form Number: None*
*Type of Review:* New collection
*Title:* Problem Resolution Program (PRP) Customer Expectations Focus Group Project
*Description:* Focus groups are necessary to determine customer expectations of the Problem Resolution Program. This information will be used to develop quality standards, improve customer satisfaction, and improve the design and analysis of a customer satisfaction survey. Focus group participants will be individual, small business, and corporate taxpayers.
*Respondents:* Individuals or households, Small businesses or organizations
*Estimated Number of Respondents:* 2,240
*Estimated Burden Hours Per Respondent:*
Screening Call—5 minutes
Focus Group Sessions—2 hours
Travel Time—1 hour
*Frequency of Response:* Other (One-time)
*Estimated Total Reporting Burden:* 402 hours
*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Officer of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Department Reports, Management Officer.*
[FR Doc. 93–18617 Filed 8–4–93; 8:45 am]
BILLING CODE 4830-01-M

### Public Information Collection Requirements Submitted to OMB for Review.

July 30, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Internal Revenue Service**

OMB Number: 1545–1204
Form Number: IRS Form 8823
Type of Review: Extension
Title: Low-Income Housing Credit Agencies Report of Noncompliance
Description: A housing credit agency is required to notify the IRS when it learns that any building, to which is has allocated any low-income housing credit, is not in compliance with the low-income tax credit provisions.

Respondents: State or local governments
Estimated Number of Respondents/ Recordkeepers: 400
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hours, 7 minutes
Learning about the law or the form—12 minutes
Preparing and sending the form to the IRS—16 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 1,424 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 93–18714 Filed 8–4–93; 8:45 am]

BILLING CODE 4830–01–P

## Public Information Collection Requirements Submitted to OMB for Review.

July 30, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

### Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0298
Form Numbers: ATF REC 5120/1
Type of Review: Extension
Title: Usual and Customary Business Records Relating to Wine
Description: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government (wine excise taxes).
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 1,650
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 165 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 93–18715 Filed 8–4–93; 8:45 am]

BILLING CODE 4810–31–P

## Fiscal Service

**[Dept. Circ. 570, 1992—Rev., Supp. No. 27]**

### Surety Companies Acceptable on Federal Bonds; Termination of Authority; EVANSTON INSURANCE COMPANY

Notice is hereby given that the Certificate of Authority issued by the Treasury to EVANSTON INSURANCE COMPANY, Evanston, Illinois, an Illinois corporation, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 15, 1993.

EVANSTON INSURANCE COMPANY was listed as an acceptable surety on Federal bonds at 57 FR 29369, July 1, 1992.

With respect to any bonds currently in force with EVANSTON INSURANCE COMPANY, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6765.

Dated: July 29, 1993.

**Diane E. Clark,**

*Assistant Commissioner, Financial Information, Financial Management Service.*

[FR Doc. 93–18625 Filed 8–4–93; 8:45 am]

BILLING CODE 4810–35–M

**[Dept. Circ. 570, 1992—Rev., Supp. No. 26]**

### Surety Companies Acceptable on Federal Bonds; Termination of Authority; Ranger Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Ranger Insurance Company, of Houston, TX, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29389, July 1, 1992.

With respect to any bonds currently in force with Ranger Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 874–6507.

Dated: July 26, 1993.

**Diane E. Clark,**

*Assistant Commissioner, Financial Information, Financial Management Service.*

[FR Doc. 93–18626 Filed 8–4–93; 8:45 am]

BILLING CODE 4810–35–M

## Office of Thrift Supervision

**[No. 93–141]**

### Capital and Accounting Standards

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the reporting requirements of section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), we have submitted our annual report to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives identifying the differences between the capital and accounting standards used by the Office of Thrift Supervision (OTS) and the capital and accounting standards used by the other Federal banking agencies.

Our report contains two attachments. Attachment I, "Summary of Differences in Capital Standards," identifies and

explains the reasons for differences in the capital standards applied by OTS and those capital standards applied by the other Federal banking agencies. Attachment II, "Summary of Differences in Accounting Practices," identifies and explains the reasons for the major differences between OTS and the other Federal banking agencies in supervisory reporting practices that affect their respective capital standards.

Despite the list of differences, the agencies' rules are essentially identical. Many of the differences are a result of either statutory requirements (e.g., goodwill) or historical differences between the banking and thrift industries (e.g., investment authorities, mutual form of organization). Moreover, the agencies continue to work together to minimize the differences.

The capital standards of OTS comply with the statutory requirement of FIRREA, which provides that OTS standards be no less stringent than the standards applied to national banks.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Robert Pomeranz, Senior Accountant, Accounting Policy (202) 906–5650; John F. Connolly, Program Manager for Capital Policy (202) 906–6465; Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552.

**SUPPLEMENTARY INFORMATION:**

*Attachment I*

**Summary of Differences in Capital Standards**

FDICIA requires a report to Congress on the differences in the bank and savings association capital standards. Below is a summary of the differences.

*A. Major Differences*

1. Core Capital

*Core Capital Requirement:* The bank regulatory agencies' leverage requirements are tied to Tier 1 capital. These requirements set the minimum leverage ratio rule requirement at 3 percent plus at least 100 to 200 basis points (depending on the CAMEL ratings). The Office of Thrift Supervision (OTS) has proposed to adopt a leverage ratio rule conforming with the leverage ratios of the other bank regulatory agencies.

During 1992, all four Federal banking agencies adopted uniform prompt corrective action regulations, as mandated by section 131 of FDICIA, which require the establishment of specific capital categories based on risk-based capital and leverage measures.

*Goodwill:* The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the OTS capital rule allow "qualifying supervisory goodwill" to be included in core capital through December 31, 1994. The bank regulators, in general, do not allow goodwill to be included in calculating core capital.

Reason for OTS difference: FIRREA requires that the OTS capital rules include a limited amount of qualifying supervisory goodwill in core capital until December 31, 1994 (HOLA 5(t)(3)(A)).

2. Subsidiaries

*Subsidiary (general):* OTS defines a subsidiary as a 5 percent or greater ownership interest in an entity. The OTS requires consolidation of any subsidiary with the insured institution if the subsidiary is considered to be controlled by the insured institution under generally accepted accounting principles (GAAP) (except for those engaged in activities impermissible for national banks, as described below). If an association owns a 5 percent or greater interest, but does not have control under GAAP, OTS requires pro-rata consolidation, as discussed below. For the bank regulatory agencies, subsidiaries are generally consolidated if the parent institution holds more than 50 percent of the outstanding voting stock, or if the subsidiary is otherwise controlled or capable of being controlled by the parent institution (see exception for depository institutions).

Reason for OTS difference: Savings associations, particularly state-chartered institutions, have in the past been allowed to invest in a more expansive list of subsidiaries and equity investments than banks. OTS has adopted its more stringent policy of requiring pro-rata consolidation of ownership interests of 5 percent or greater, but not constituting GAAP control, because it better reflects the risk that may be posed by such subsidiaries.

*Subsidiaries ("impermissible"):* FIRREA and the OTS capital rule require the deduction from capital of investments in and loans to subsidiaries that engage in activities not permissible for a national bank. FIRREA originally provided for a five year phase-out of the investment if the investments or loans were made prior to April 13, 1989. In 1992, the Director of OTS was given discretionary authority to extend the phase-out period until mid-1996 for investments in certain real estate subsidiaries provided the conditions contained in the statute are satisfied. During the phase-out period, the percentage of assets corresponding with the nondeducted portion of the assets is consolidated. The bank regulators may require deduction on a case-by-case basis.

Reason for OTS difference: Although savings associations may own subsidiaries that engage in activities that are prohibited for national banks, HOLA requires the deduction of investments and loans to such subsidiaries, in accordance with a statutorily prescribed phase-out period. (HOLA 5(t)(5)).

Consolidation of the remaining assets of the impermissible subsidiaries is required to ensure that sufficient capital is held by savings associations during the phase-out period.

*Subsidiaries ("permissible—minority ownership"):* The OTS rule requires the pro-rata consolidation of subsidiaries where the association does not have control, as defined under GAAP, but owns a five percent or greater ownership interest in the subsidiary. The bank regulators generally require capital to be held only against the investments in such subsidiaries but may, on a case-by-case basis, deduct them from capital or consolidate them either fully or on a pro-rata basis.

Reason for OTS difference: OTS believes that its treatment is appropriate and that sufficient capital should be held against the risks of such investments. OTS believes associations are better protected from the economic risk presented by their subsidiaries by requiring capital to be held against the amount of the subsidiaries' assets, rather than the association's investment in the subsidiary, which is generally smaller. In most cases, the OTS consolidation rule will result in a higher capital requirement.

*Subsidiaries (lower-tier depository institutions):* Under OTS rules, a depository institution subsidiary is automatically consolidated with its parent association if the subsidiary was acquired prior to May 1, 1989. The parent association's investment in such subsidiaries is automatically excluded from the parent association's capital if the depository institution subsidiary was acquired May 1, 1989 or later (except if it engages only in activities permissible for a national bank, in which case it is consolidated). OTS policy is to require consolidation of lower-tier depository institutions, if consolidation results in a higher capital requirement than the exclusion requirement. For purposes of the risk-based capital regulations, such subsidiaries are generally consolidated by the banking agencies.

Reason for OTS difference: OTS's policy addresses its concerns about (i) "double-leveraging" of the parent association's capital and (ii) incentives to minimally capitalize lower-tier

depository institutions. It also ensures that OTS capital standards are no less stringent than those imposed on banks. (HOLA 5(t)(5)(A),(C),(E)).

3. Equity Investments:

OTS requires associations to deduct equity investments from their capital over a five year transition period. Bank regulators allow only a limited range of equity investments and place those investments in the 100 percent risk-weight category, rather than requiring deduction.

In September 1992, OTS issued a proposed rule that would provide parallel treatment of equity investments for thrifts and national banks. Equity investments of thrifts (primarily stock of the Federal Home Loan Mortgage Corporation, stock of the Federal National Mortgage Association, and certain loans with equity characteristics) that are permissible for national banks would be placed in the 100 percent risk weight category.

Reason for OTS difference: OTS will continue to require the deduction from capital of equity investments that are impermissible for national banks. This approach is designed to insulate the institution and the insurance fund from the risk from these investments. This policy is intended to result in such investments being either divested or "pushed down" into subsidiaries, where savings associations limit their liability and risk to the thrift itself. Upon adoption, the OTS proposal will deal with equity investments of thrifts permissible for national banks through the same capital and supervisory approach used by the other banking agencies.

4. 20 Percent Risk-Weight for High Quality MBS

OTS includes high-quality private-issue mortgage-related securities (Secondary Mortgage Market Enhancement Act or (SMMEA) securities) in the 20 percent risk-weight category. These are mortgage-backed securities (MBS) that are rated in the two highest investment grade rating categories by nationally recognized rating agencies. Generally, bank regulators place private-issue MBS in the 50 percent or 100 percent risk-weight category; the only exception would be for private-issue MBS collateralized by government agency (or government-sponsored agency) securities. These are placed in the 20 percent risk-weight category.

Reason for OTS difference: Policy decision to ensure appropriate capital against the credit risk of these securities, which OTS believes are not sufficiently different from Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC) MBS to warrant a different capital requirement. OTS has chosen to recognize the better credit quality of assets receiving one of the two highest investment ratings by a nationally recognized rating agency.

5. Qualifying Multifamily Mortgage Loans

OTS allows certain low-risk multifamily mortgage loans (buildings with 5–36 units, maximum 80 percent loan-to-value ratio (LTV), minimum 80 percent occupancy rate, etc.) to qualify for the 50 percent risk-weight category. Bank regulators currently place all multifamily mortgage loans in the 100 percent risk-weight category.

OTS and the other bank agencies have issued proposed rules to implement section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTC Act), by reducing the risk weight of multifamily mortgage loans meeting statutory and regulatory criteria to the 50 percent risk weight.

The RTC Act requires OTS and the other banking agencies to place multifamily mortgage loans in the 50 percent risk weight category if they meet the following criteria: (1) The loan is secured by a first lien, (2) the ratio of the principal obligation to the appraised value of the property, that is, the loan-to-value ratio, does not exceed 80 percent (75 percent if the loan is based on a floating interest rate), (3) the annual net operating income generated by the property (before debt service) is not less than 120 percent of the annual debt service on the loan (115 percent if the loan is based on a floating interest rate), (4) the amortization of principal and interest occurs over a period of not more than 30 years and the minimum maturity for repayment of principal is not less than seven years, (5) all principal and interest payments have been made on time for a period of not less than one year, and (6) meets other prudential underwriting criteria imposed by the banking agencies. The OTS and the other banking agencies have reviewed comments received and are now working together to issue their final rules.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS believes that multifamily mortgage loans that pose a lower risk to the institution and insurance fund should be subject to a lower capital requirement. OTS is working with the other agencies to implement the statutory mandate on a uniform interagency basis.

6. Purchased Mortgage Servicing Rights (PMSR)

All agencies currently subject intangible assets to a three part test and impose limits on the amount of PMSRs that may be included in capital. OTS and the Federal Deposit Insurance Corporation (FDIC) impose both a 90 percent of fair market value test and a 100 percent of tangible capital and 50 percent of core capital limit for both savings associations and state chartered non-member banks.

OCC currently imposes a 25 percent of core capital limit on all intangible assets that pass the three-part test. PMSR in excess of any of these limits must be deducted from capital and assets. The Federal Reserve Board (FRB) requires a case-by-case review and close scrutiny of intangible assets, imposing the requirements of the three-part test and occasionally allowing a limited amount above 25 percent.

To develop a uniform capital treatment for identifiable intangible assets, the agencies issued separate proposals, on a coordinated basis, for public comment. The OTS' proposal stated that institutions would be permitted to include PMSRs and purchased credit card relationships (PCCRs) in capital, provided that, in the aggregate, the amount included does not exceed 50 percent of an institution's core capital. PCCRs would be subject to a separate sublimit of 25 percent of core capital. Amounts of PMSRs and PCCRs in excess of these amounts, as well as all other identifiable intangible assets, including core deposit intangibles, would be deducted from core capital for purposes of calculating regulatory capital ratios.

The proposal also deals with the valuation of identifiable intangible assets included in capital in a manner that is consistent with section 475 of FDICIA. Section 475 authorizes the OTS, as well as the other banking agencies, to set its own limit for the amount of PMSRs that associations may count in capital, without regard to the FDIC limit as previously required by FIRREA.

OTS and the other agencies have received public comments on the proposal and are reviewing these comments in preparation for issuing their final rules.

Reason for OTS difference: FIRREA requires OTS to impose the 90 percent of fair market value limitation (HOLA 5(t)(4)) and OTS was required by FIRREA prior to enactment of section 475 of FDICIA to follow the FDIC rules

on the amount of PMSR that may be included in assets when calculating core capital. Section 475 also requires valuation at 90 percent of fair market value computed quarterly. As noted above, OTS is working with the other Federal banking agencies to adopt uniform final rules for the capital treatment of intangible assets.

7. Recourse Arrangements

*Assets sold with recourse (non-mortgage):* If a savings association sells non-mortgage assets with recourse (where the transaction is treated as a sale under GAAP), OTS (i) considers it a sale, and (ii) requires capital to be held against the total amount of the loans sold with recourse through the use of the 100 percent off-balance sheet conversion factor. If a bank sells a non-mortgage asset with recourse (even when the transaction is treated as a sale under GAAP), it is not considered a sale by the bank regulators.

Reason for OTS difference: OTS, in general, follows GAAP in determining whether a transaction is a sale. OTS policy is to follow GAAP while ensuring appropriate capital through the risk-based capital requirement against these assets. Regardless of "sale" treatment, OTS requires capital if savings associations are liable for losses.

*Assets sold with recourse (mortgages—private transactions):* If savings associations sell mortgage assets (with recourse) to private entities (where the transaction is treated as a sale under GAAP), OTS follows the same policy as it follows regarding sales of non-mortgage assets. Under this policy, OTS (i) considers it a sale and (ii) requires capital to be held under the risk based capital computations through the use of the 100 percent off-balance sheet conversion factor.

Banks that sell pools of residential mortgages with recourse to private entities are required to hold the full amount of capital against the mortgages regardless of the amount of recourse retained and the treatment of the transaction for regulatory reporting purposes. If "insignificant" recourse is retained (e.g., recourse is less than the expected loss), the transaction is considered a sale for reporting purposes, but capital will be required against 100 percent of the off-balance sheet contingent liability for risk-based capital purposes. (The FRB and Office of the Comptroller of the Currency (OCC) have proposed a rule under which no capital would be required against pools of residential mortgages sold to private entities with insignificant recourse for which a specific non-capital reserve or liability account is established and maintained for the maximum amount of possible loss under the recourse provision.) If "significant" recourse is retained, the transaction is not reported as a sale and the assets remain on the balance sheet. Capital is required to be held against the on-balance sheet amount of the assets.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS, in general, follows GAAP in determining whether a transaction is a sale. Regardless of "sale" treatment, OTS requires capital if savings associations are liable for losses.

*Assets sold with recourse (limited recourse):* For risk-based capital purposes only, the OTS limits the capital required on assets sold with recourse (that are treated as sales under GAAP) to the lesser of (i) the amount of recourse or (ii) the "normal" capital charge. For both leverage and risk-based capital purposes, the bank regulators require the "normal" capital charge regardless of recourse amount. The FRB and OCC, however, have proposed an exception for pools of residential mortgages sold to private parties (as described above).

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets, which is limited in cases where recourse is limited.

*Recourse servicing:* Where savings associations are responsible for credit losses on loans they service, OTS requires capital against the amount of the underlying loans consistent with the recourse policy set forth above. Although savings associations do not "own" the underlying assets, they have a contingent liability and are subject to losses on those assets. While the bank regulators are not explicit on this point, the general principle of the bank regulators' capital rule is that capital generally will be required whenever there is credit risk.

8. Purchased Subordinated Securities

Savings associations are required to hold capital against the total underlying loans, regardless of whether originated by the institution or purchased from other parties. Banks are only required to treat subordinated securities created from loans originated by the bank as recourse.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. Whether institutions create subordinated securities or purchase subordinated securities, the risks are similar.

9. Repossessed Assets/Assets More Than 90 Days Past Due (Except Single Family Home Loans)/Equity Investments With Similar Characteristics

On December 31, 1992, OTS adopted a final rule placing these assets in the 100 percent risk-weight category. This is the same capital treatment imposed by the other banking agencies. Previously OTS placed these assets in a 200 percent risk-weight category.

Reason for OTS difference: OTS has decided to make its capital treatment of these assets conform with that of the banking agencies, particularly in light of its changed policy on valuation of repossessed assets. The OTS has also proposed a new policy for the valuation of troubled collateral-dependent loans that relies on the use of fair value. The OTS proposal would also revise the classification policy for repossessed assets and troubled collateral-dependent loans.

10. Consequences of Failure To Meet Capital Standards

The prompt corrective action provisions of FDICIA impose a stringent regulatory regimen on thrifts and banks failing their capital requirements. The prompt corrective action provisions of section 131 of FDICIA establish five regulatory categories, with the distinctions primarily based on capital. Section 131 then imposes various sanctions and restrictions on institutions in the lower three prompt corrective action categories, while other regulations (brokered deposits and the risk-based premium rules of the FDIC) provide preferential treatment to the well-capitalized institutions. The banking agencies, including the OTS, issued a joint preamble and parallel rules implementing prompt corrective action.

Savings associations are also subject to additional restrictions and requirements under the HOLA, as enacted in FIRREA. The OTS will continue to apply these provisions to savings associations, but is coordinating their implementation with the prompt corrective action provisions. The HOLA provisions do not apply to banks.

Reason for OTS difference: The OTS and the other banking agencies have adopted uniform rules implementing the prompt corrective action provisions of FDICIA. The HOLA, however, continues to impose additional restrictions on savings associations (HOLA 5(t)(8)).

11. Status of Institutions With Approved Capital Plans

Under FIRREA, savings associations that fail the minimum capital requirements must submit and adhere to approved capital plans. OTS issued a final rule in July 1992 that states that an association will be considered "in compliance" with its capital requirements if it is operating under an approved capital plan and the association is not "critically undercapitalized" under the prompt corrective action provisions of section 131 of FDICIA.

National banks that do not meet their minimum capital requirements but have an approved capital plan are regarded as "in compliance" with the capital standards by the OCC (though they are required to disclose to investors that they fail to meet minimum capital standards.) State non-member banks that fail to meet minimum capital requirements are deemed as not "in compliance" with the capital standards by the FDIC.

Reason for OTS difference: Revised OTS policy to parallel OCC policy except for "critically undercapitalized," which OTS believes is more consistent with FDICIA.

*B. Minor Differences*

1. 1.5 Percent Tangible Capital Requirement

OTS has an explicit 1.5 percent tangible capital requirement; the bank regulators do not.

Reason for OTS difference: FIRREA requires OTS to establish a tangible capital requirement of at least 1.5 percent (HOLA 5(t)(2)(B)).

2. Collateralized Mortgage Obligations (CMO) Tranches

OTS has issued guidance (Thrift Bulletin 38) identifying categories of high-risk CMO tranches that it places in the 100 percent risk-weight category (versus the 20 percent risk-weight category). OTS has also indicated a preference to deal with this issue through an explicit interest rate risk component in the risk-based capital rule.

The bank regulators vary in their approach: OCC has stated that any CMO tranche absorbing more than its pro-rata share of principal loss risk is risk-weighted at 100 percent (others generally at 20 percent); FRB has stated that any CMO tranche absorbing more than its pro-rata share of loss is risk weighted at 100 percent (others generally at 20 percent); FDIC undertakes a case-by-case review

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. Unlike most other risk issues addressed in the risk-based capital rules, the risk posed by these instruments is primarily interest rate risk, not credit risk. Certain CMO tranches are no more risky than straight mortgage-backed securities and some tranches may, in fact, impose less risk; others are more risky than MBS and are appropriately risk-weighted at a higher level.

3. Pledged Deposits/Nonwithdrawable Accounts

OTS includes these instruments as core capital for mutual associations if they meet the same requirements as non-cumulative perpetual preferred stock. If they do not meet the requirements for inclusion as core capital, OTS includes them as supplementary capital provided they meet the standards for preferred stock or subordinated debt. The bank regulators do not address this issue since these instruments do not exist in the banking industry.

Reason for OTS difference: Policy decision to treat items that offer equivalent protection to the insurance fund and the institution in the same way.

4. Qualifying Single Family Mortgage Loans

In order to be placed in the 50 percent risk-weight category, OTS requires that mortgages have no more than an 80 percent loan-to-value (LTV) ratio (unless they have private mortgage insurance (PMI) bringing the LTV ratio down to 80 percent). The bank regulators require "prudent, conservative" underwriting without specific LTV ratio requirements.

Reason for OTS difference: Policy decision to make explicit what OTS believes is generally "prudent and conservative"; the bank regulators have indicated to OTS that they may use the 80 percent LTV ratio in examiner guidance.

5. Loans To Individual Purchasers For The Construction Of Their Homes

OTS and OCC place these assets in the 50 percent risk-weight category. The FRB and FDIC may treat them as construction loans (100 percent) or as mortgage loans (50 percent) depending on their characteristics. The OTS and the OCC have implemented section 618(a) of the RTC Act, which requires the agencies to place certain pre-sold residential construction loans in the 50 percent risk-weight. The FRB and FDIC are in the process of implementing that provision.

OTS issued its final rule in April 1992 and the OCC has also issued its final rule. The FDIC is in the process of adopting a final rule, while the FRB is planning on issuing an interim final rule amending its risk-based capital guidelines.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. The OTS also implemented section 618(a) of the RTC Act.

6. Holding of First and Second Liens on Home Mortgages by the Same Institution

If there are no intervening liens and both the first and second liens are held by the same institution, OTS, the FRB, and the FDIC view holding both first and second liens as a single loan. This could result in assigning both loans to the 50 percent risk weight if they meet the applicable criteria for qualifying mortgage loans. The OCC places second liens in the 100 percent risk-weight category.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. Second mortgages (depending on their characteristics) should be placed in the 50 percent risk weight if both loans are held by the same institution, there are no intervening liens, and they meet the criteria for qualifying mortgage loans.

7. Core Deposit Intangibles (CDI)

While all agencies subject these assets to the three-part intangible asset test, and all agencies are silent in their regulations as to whether they pass the three-part test, OTS previously issued temporary guidance stating that CDI may be included in core capital if management documents that it passes the three-part test. OCC has issued an Advance Notice of Proposed Rulemaking requesting comment on whether core deposit intangibles meet the three-part test. OCC has not generally allowed CDI to be included in capital for purposes of calculating core capital. FDIC generally deducts all intangible assets (other than PMSR) except if institutions have received case specific approval. The FRB does not automatically deduct CDI or other intangible assets from Tier 1 capital, but determines the appropriateness of their inclusion in an institution's capital on a case-by-case basis.

OTS and the other Federal banking agencies have proposed to eliminate the inclusion of CDI in capital on a continuing basis as part of the agencies' adoption of parallel rules on intangible assets.

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Reason for OTS difference: Policy decision to give examiners and institutions interim guidance pending inter-agency review of the issue. OTS has proposed to revise this policy as part of a joint initiative of the banking agencies to adopt uniform rules on the capital treatment of intangible assets.

8. Rules on Maturing Capital Instruments (MCI)

OTS and bank agencies use different rules to determine how much of MCI counts toward capital. OTS (i) grandfathers issuances of MCI issued on or before November 7, 1989 (which was the date of the rule change) and (ii) allows two options for issuances of MCI after November 7, 1989 (a) the bank rule (five year amortization) or (b) a limit of 20 percent of total capital maturing in any one year for instruments within seven years of maturity. Bank regulators use a five year amortization rule.

Reason for OTS difference: Policy decision to minimize unnecessary disincentives for issuance of subordinated debt and to avoid unduly penalizing pre-FIRREA issuances of MCI.

9. Limitation on Subordinated Debt

The bank regulatory agencies limit subordinated debt to 50 percent of core capital. OTS has no limit on the amount of subordinated debt that can count as supplementary capital.

Reason for OTS difference: Policy decision to encourage issuance of supplementary capital.

10. Non-residential Construction and Land Loans

OTS requires the amount of these loans above an 80 percent LTV ratio to be deducted from total capital (with a five year phase-in). The bank regulators place the whole loan amount in the 100 percent risk-weight category. Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS experience indicates that high LTV ratio land loans and non-residential construction loans present particularly high levels of risk.

11. FSLIC/FDIC-covered Assets

OTS places these assets in 0 percent risk-weight category. The banking agencies generally place these assets in the 20 percent risk-weight category.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS notes that these government guaranteed obligations are supported by a "backup" call on the United States Treasury.

12. Mutual Funds

In general, OTS establishes the risk weighting for mutual funds on the asset actually held by the mutual fund with the highest capital requirement. The bank regulators base it on the highest risk-weighted asset that is a permissible investment by the mutual fund. OTS allows, on a case-by-case basis, "pro-rata" risk-weighting of investments in mutual funds, based on the assets of the mutual fund (i.e., if 90 percent of a mutual fund's assets are 20 percent risk-weight assets and 10 percent are 100 percent risk-weight assets, we may allow 90 percent of the investment in 20 percent risk-weight category and 10 percent in the 100 percent risk-weight category). Bank regulators do not allow banks to prorate mutual fund investments between risk-weight categories.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS believes that allowing institutions to prorate their investments and focusing on actual assets ensures that savings associations hold capital in an amount essentially equivalent to that required if they directly held the assets the mutual fund invested in.

13. Capital Requirement on Holding Companies

FRB applies the risk-based capital requirements to bank holding companies; OTS does not apply them to thrift holding companies.

Reason for OTS difference: OTS policy decision to not impose capital requirements on corporate entities that do not pose a risk to the deposit insurance fund.

14. Agricultural Loan Losses

The bank regulators, due to a statutory requirement, allow such losses to be deferred (and, effectively, allow these losses to be "included" in supplementary capital). OTS does not allow such losses to be deferred or included in assets or capital.

Reason for OTS difference: OTS has no statutory requirement to allow such deferred losses in assets or capital.

15. Income Capital Certificates (ICCs) And Mutual Capital Certificates (MCCs)

OTS allows in supplementary capital. Because these items do not exist in the banking industry, the bank regulators do not address them.

Reason for OTS difference: ICCs/MCCs allowed as supplementary capital due to their being functionally equivalent to net worth certificates (which are required, by statute, to be included in capital).

16. Restrictions on Hybrid Capital Instruments

The bank regulators state in the capital rule certain restrictions on hybrid capital instruments (priority of debt, etc.). OTS does not have these restrictions in its capital rule (rather, they are elsewhere in OTS regulations or policy statements).

Reason for OTS difference: Policy decision to retain flexibility to adapt to innovations in capital instruments. (There is no difference in practice.)

**Attachment II**

**Summary of Differences in Accounting Practices**

Differences by each agency in accounting or supervisory reporting practices may cause differences in the amount of regulatory capital maintained by depository institutions. These differences are the result of an evolutionary process that primarily reflects historical agency philosophy and industry trends. A summary of these differences is presented below.

*1. Specific Valuation Allowances for and Charge-offs of Troubled Loans*

Currently, the Office of Thrift Supervision (OTS) requires, at a minimum, net realizable value (NRV) to determine the level of specific valuation allowances or charge-offs for troubled, collateral-dependent loans.

Existing OTS policy requiring, at a minimum, the use of NRV may be more or less stringent than required by bank agencies, depending on how each of the agencies implement their policies in practice.

OTS has proposed a new policy for the classification and valuation of troubled collateral-dependent real estate loans that relies on the use of fair value rather than NRV of the collateral.

*2. Futures and Forward Contracts*

OTS practice is to follow generally accepted accounting principles (GAAP). In accordance with SFAS 80, when hedging criteria are satisfied, the accounting for the futures contract is to be related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred losses in accordance with GAAP.

The banking agencies do not follow GAAP, but require that banks report changes in the market value of futures contracts even when used as hedges in the current period's income statement.

However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP.

*3. Excess Servicing Fees*

OTS practice is to follow GAAP in valuing excess servicing fees. When loans are sold with servicing retained and the stated servicing fee rate differs materially from a normal servicing fee rate, the sales price should be adjusted in determining the gain or loss from the sale of the loans. This provides for the recognition of a normal fee in each subsequent year that servicing continues on the loans. The gain recorded at the date of sale cannot be larger than the gain assuming the loans were sold servicing released. The subsequent valuation of the excess servicing is adjusted based upon anticipated prepayment rates and interest rates.

The banking agencies follow GAAP for residential mortgage loan pools. For all other loans (including individual residential mortgage loans), the banking agencies do not follow GAAP. In those cases, they require that excess servicing fees retained on loans sold be reported as realized over the contractual life of the transferred asset.

*4. In-Substance Defeasance of Debt*

OTS practice is to follow GAAP. In accordance with SFAS 76, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

The banking agencies do not follow GAAP. The banking agencies continue to report the defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

*5. Sales of Assets With Recourse*

OTS practice is to follow GAAP. A transfer of receivables with recourse is recognized as a sale if: (i) The transferor surrenders control of the future economic benefits, (ii) the transferor's obligation under the recourse provisions can be reasonably estimated, and (iii) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

However, in the calculation of OTS risk-based capital, certain off-balance sheet conversions are performed that result in capital being required for the risk retained. See further discussion of capital differences with respect to this item in Attachment I, Capital Differences.

The practice of the banking agencies is generally to report transfers of receivables with recourse as sales only when the transferring institution: (i) Retains no risk of loss from the assets transferred and (ii) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not sales.

However, this general rule does not apply to the transfer of mortgage loans under one of the government programs: Government National Mortgage Association, Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation. Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of mortgages are also reported as sales if the transferring institution does not retain a significant risk of loss on the assets transferred.

*6. Negative Goodwill*

OTS permits negative goodwill to offset goodwill reported as an asset.

The banking agencies require that negative goodwill be reported as a liability, not netted against goodwill assets.

*7. Push-Down Accounting*

OTS requires push-down accounting when there is at least a 90 percent change in ownership.

The banking agencies require push-down accounting when there is at least a 95 percent change in ownership.

*8. Nonaccrual Assets*

The OCC allows interest accrual on certain troubled loans that have been restructured by dividing the loan into two notes. Typically, one of the notes has been charged off, but the borrower's debt has not been forgiven.

This interpretation of GAAP is different than the practice required by the OTS. OTS does not permit accrual of interest in the above example but does allow recognition of interest income on a cash basis.

Dated: February 5, 1993.

By the Office of Thrift Supervision.

**Jonathan L. Fiechter,**

*Acting Director.*

[FR Doc. 93-18732 Filed 8-4-93; 8:45 am]

BILLING CODE 6720-01-P

VOL 58 ISS 149 AG 5 1993 UMI



# Sunshine Act Meetings

Federal Register
Vol. 58, No. 149
Thursday, August 5, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, August 10, 1993, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof.

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

**Note:** Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

*Discussion Agenda*

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5) U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202 898–6757.

Dated: August 3, 1993.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 93–18893 Filed 8–3–93; 8:45 am]

BILLING CODE 6714-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, August 10, 1993, to consider the following matters:

*Summary Agenda*

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

*Discussion Agenda*

Memorandum re: 1993 Mid-Year Financial Management Report.

Memorandum and resolution re: Policy Statement of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision concerning insured depository institutions' branch closing notices and internal policies.

Memorandum and resolution re: Proposed amendments to part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which would conform to the definition and treatment of branch relocations in the final interagency policy statement on branch closings.

Memorandum and resolution re: Delegation of authority to the Director of the Division of Liquidation to make finding of worthlessness of claims against receiverships.

Memorandum and resolution re: Payment of claims arising from severance pay or "golden parachute" agreements of failed banks where employment has been terminated after bank failure.

Memorandum and resolution re: Interim Rule on National Depositor Preference Statute: Clarification of Administrative Expenses of Receivership.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3111 (Voice); (202) 942–3132 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 3, 1993.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson**

*Executive Secretary.*

[FR Doc. 93–18894 Filed 8–3–93; 3:31 pm]

BILLING CODE 6714-01-M

**FEDERAL ELECTION COMMISSION**

**"FEDERAL REGISTER" NUMBER:** 93–18197.

**PREVIOUSLY ANNOUNCED DATE AND TIME:** Thursday, August 5, 1993, 10:00 a.m., Meeting Open to the Public.

**THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:**

Advisory Opinion 1993–9: Eric E. Doster on behalf of the Michigan Republican State Committee. (Continued from meeting of July 29, 1993).

Draft Directive—Confidential and Public Financial Disclosure Reports. (Continued from meeting of July 29, 1993).

**DATE AND TIME:** Thursday, August 10, 1993 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, August 12, 1993 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC (Ninth Floor).

**STATUS:** This Meeting Will Be Open to the Public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.
Advisory Opinion 1993–14: Mr. Guy DuFault on behalf of the Rhode Island Democratic State Committee.
Routine Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

**Delores Hardy,**

*Administrative Assistant.*

[FR Doc. 93–18817 Filed 8–3–93; 2:25 pm]

BILLING CODE 6715–01–M

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**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD**

**TIME AND DATE:** 10:00 a.m., August 16, 1993.

**PLACE:** 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of the July 19, 1993, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of investment policy.
4. Review of Arthur Andersen semiannual review.
5. Review of KPMG Peat Marwick audit reports:
   "Pension and Welfare Benefits Administration Review of U.S. Department of Treasury Operations Relating to the Thrift Savings Plan Investments in the Government Securities Fund."
   "Pension and Welfare Benefits Administration Review of Capacity Planning and Performance Management of the Thrift Savings Plan at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

**CONTACT PERSON FOR MORE INFORMATION:** Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 2, 1993.

**Francis X. Cavanaugh,**

*Executive Director, Federal Retirement Thrift Investment Board.*

[FR Doc. 93–18810 Filed 8–3–93; 10:01 am]

BILLING CODE 6760–01–M

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**UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES**

**TIME AND DATE:** Full Board 9:00 a.m., August 9, 1993.

**PLACE:** Armed Forces Radiobiology Research Institute, Bethesda, Maryland.

**STATUS:** (Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3).

**MATTERS TO BE CONSIDERED:**

9:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes, 14 May 1993; (2) Award Presentation; (3) Presentation by Dean Gary, Admissions, Faculty Matters; (4) Presentation by Dr. Zimble, Middle States, Budget Report, CHE, Update of Major Projects; (5) New Business and Comments by the Board; (6) Tour of AFRRI

**CONTACT PERSON FOR MORE INFORMATION:** George A. Drumbor, Executive Secretary of the Board of Regents, 301/295–3886.

Dated: August 3, 1993.

**Linda Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93–1883 Filed 8–3–93; 2:25 p.m.]

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federal register

Thursday
August 5, 1993

Part II

# Small Business Administration

13 CFR Part 107
Small Business Investment Companies; Proposed Rules

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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 107**

**Small Business Investment Companies; Leverage; Participating Securities; Conditions Affecting Good Standing of Licensees**

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** Title IV of Public Law 102–366 (September 4, 1992), which is entitled "Small Business Equity Enhancement Act of 1992", made a number of changes to the Small Business Investment Act of 1958, as amended (Act). Several of these changes, which are set forth in a separate rule published elsewhere in this issue of the **Federal Register**, affect the eligibility and operations of Small Business Investment Companies (SBICs) that are licensed and regulated by the Small Business Administration (SBA). Title IV also made changes that affect financial assistance (Leverage) provided by SBA to such Licensees.

This proposed rule would implement the statutory provisions relating to Leverage provided to SBICs which would increase the maximum Leverage outstanding to any one or group of Licensees operating under common control from $35 million to $90 million, incrementally reduce the ratio of such Leverage from 400% of private capital to 200% of private capital at the maximum level of assistance, establish a new form of Leverage (Participating Securities) which will be available to Licensees that make Equity Capital Investments in growth oriented small concerns, permit Specialized SBICs that are organized as limited partnerships to obtain Leverage from SBA in the form of a Preferred Limited Partnership interest, and make other technical changes necessary to implement the legislation.

**DATES:** Written comments on this proposed rule must be received no later than October 4, 1993.

**ADDRESSES:** Written comments should be send to: Wayne S. Foren, Associate Administrator for Investment; Small Business Administration; suite 6300; 409 3rd Street SW.; Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Klapp, Acting Director, Office of Program Development; telephone no. (202) 205–6515.

**SUPPLEMENTARY INFORMATION:** This proposed rule would implement the provisions of Title IV of Public Law 102–366 (September 4, 1992) relating to Leverage provided to SBICs.

**1. General Leverage Provisions**

*a. Introduction*

Consideration of the substance of this proposed rule will be made easier if the reader bears in mind that the meaning of the term "Licensee", standing by itself, always includes SBICs licensed under the authority of section 301(c) of the Act and SBICs licensed under the authority of section 301(d) of the Act. A section 301(c) Licensee is sometimes referred to as a Regular SBIC because there is no restriction on the type of Small Concern that it may assist. A section 301(d) Licensee is sometimes referred to as a Specialized SBIC because it is only authorized to assist Small Business Concerns owned by persons who are socially or economically disadvantaged.

Section 107.201 of the present regulations is proposed to be renumbered § 107.210 and this section is significantly reorganized. Definitions previously contained in § 107.201(c) are moved to § 107.3 in order to consolidate the location of definitions within the regulations. Defined terms used throughout this preamble and proposed regulation are capitalized. Other requirements concerning issuance of Leverage and enforcement of rights previously contained in § 107.201 have been moved to new § 107.261.

*b. Application Procedures*

Proposed § 107.210 references the application procedures and sets forth the basic eligibility requirements for obtaining Leverage. In addition to being in regulatory compliance and eligible for the Leverage for which they are applying, Licensees must demonstrate that they have adequate capital and an ability to meet their obligations as they become due. This is a safety and soundness requirement set forth in section 406 of Public Law 102–366. Section 107.210(c) also requires that an applicant for Leverage demonstrate a need for funds. This means that a Licensee ordinarily would not be eligible for Leverage if it has significant available resources of its own. An exception to this general rule is that a Licensee applying for Participating Securities which has at least 50% of its existing portfolio in Equity Capital Investments may qualify for Leverage even it such Licensee has commitments from investors that have not yet been fully drawn down.

*c. Fees*

Proposed § 107.210(d) would increase the user fee charged in connection with obtaining SBA's guaranty from 1.185% to 2% of the face amount of Debentures issued by Licensees and would institute the same 2% fee for Participating Securities, in order to cover the increased costs of administering Leverage. This fee is authorized for Participating Securities by section 403 of Public Law 102–366. These proposed regulations would make no other changes in fees charged in conjunction with the program.

*d. Subordination of Debentures*

Section 107.201(e)(5) has been renumbered as § 107.210(f)(5) and has been revised to clarify that when SBA agrees to subordination with respect to Debentures it guarantees after July 1, 1991, the amount of indebtedness to which such subordination applies is fixed at the time SBA subordinates and is limited at that time and in the future to the lesser of 200% of the Licensee's Leverageable Capital [1] or $10 million. This means that any indebtedness of the Licensee in excess of that amount, which is in existence at the time SBA subordinates or is acquired subsequent thereto, will not benefit from SBA's subordination.

*e. Restrictions on Third Party Debt*

Under the present regulations and policies of the SBIC program, Licensees are permitted to apply for and obtain loans and lines of credit from third parties without obtaining SBA's prior approval or even notifying the Agency, except upon the filing of annual financial statements. Third party lenders have viewed SBA Leverage, which is unsecured and generally subordinate, as part of the capital base of the Licensee. Accordingly, Licensees have been able to borrow from third parties amounts which, when aggregated with the Licensee's Leverage, may exceed a prudent level of indebtedness. As a result, SBA has, on occasion, suffered large losses upon the distribution of a Licensee's assets in liquidation, receivership or bankruptcy proceedings. Concern over SBA's creditor position prompted the Agency to tighten its terms of subordination in July 1991. See 56 FR 31777. However, the subordination limits then adopted are irrelevant if the Licensee has incurred secured third party debt. Recognizing its obligation to further protect its exposure as the largest creditor of most debtor Licensees, SBA is hereby proposing that it have the right to approve all new third party debt of a Licensee.

[1] This term and the related term "Regulatory Capital" are proposed to be defined in a proposed rule published simultaneously herewith.

Proposed § 107.210(f)(6) would require that after September 30, 1993, Licensees obtain the written approval of SBA before incurring or refinancing any third party debt or obtaining any line of credit. In addition to conventional third party debt, this restriction would cover guarantees by Licensees as well as other contingent liabilities provided they are voluntarily assumed. Furthermore, unless otherwise agreed to by SBA in writing, Licensees with existing lines of credit would need to have such lines approved before increasing the amounts outstanding above the balance owed on September 30, 1993.

*f. Maintenance of Unimpaired Capital*

(i) General

Current § 107.203(d) requires Leveraged Licensees to maintain Regulatory Capital in an amount sufficient to avoid a condition of Capital Impairment. Under this current regulation, a section 301(c) Licensee is in a state of Capital Impairment and is in violation of § 107.203(d), if its Undistributed Net Realized Earnings deficit, together with any Unrealized Depreciation in excess of Unrealized Appreciation, exceeds 50 percent of Private Capital. For a section 301(d) Licensee, the applicable percentage is 75 percent.

Present § 107.203(d) is proposed to be renumbered as § 107.210(h), which would continue to permit a higher percentage of impairment for a section 301(d) Licensee than for a section 301(c) Licensee whose situation was otherwise identical. However, the proposed rule is significantly different from the existing rule in that it would, for the first time, allow varying degrees of impairment depending upon differences in the composition of the portfolios of Licensees. In addition, the proposed rule recognizes the delay in profitability that is expected to occur in venture investing.

SBA realizes that this proposed rule is a significant departure from the existing rule and SBA expects comments that are both positive and negative. It should be noted that capital impairment is a means of enforcing the financial safety and soundness of Licensees, and that SBA is attempting to provide flexibility while protecting the interests of the Government.

SBA believes that the impairment levels permitted under the current regulation may be too low for Licensees with a venture capital portfolio and too high for Licensees with a loan portfolio. In a venture portfolio, especially during the early years, there are likely to be considerable losses before profits are realized, and a Capital Impairment Percentage of 50% or more may exist even when the portfolio has genuine long-term value. However, for a Licensee which only provides debt financing, a Capital Impairment Percentage of 50% generally indicates a significant operating deficit that cannot be offset by appreciation in the portfolio. Thus, under the proposed regulation, the maximum permissible Capital Impairment Percentages reflect these differences in portfolio composition and are higher for equity investors than for lenders.

Under the current Capital Impairment concept, Licensees must treat net Unrealized Depreciation as if it represented realized losses, but receive no corresponding credit for net Unrealized Appreciation. The proposed definition seeks to acknowledge the existence of net Unrealized Appreciation in a Licensee's portfolio. At the same time, SBA wishes to avoid providing incentives for Licensees to inflate their portfolio values artificially. Thus, it is proposed to allow partial recognition of Unrealized Appreciation in the computations of Capital Impairment, to an extent which varies depending on whether or not the portfolio securities are Publicly Traded and Marketable. See proposed § 107.210(h)(3).

Pursuant to proposed § 107.261(d), violation of the Capital Impairment regulation would constitute an event of default with respect to Debentures and Preferred Securities, and pursuant to § 107.262(d), such a violation would also affect the good standing of a Licensee issuing Participating Securities. In all cases, a Licensee would be afforded an opportunity to cure a violation before SBA would impose any of the remedies available to it under the proposed regulations.

(ii) Computation of Capital Impairment Percentage

If both Undistributed Realized Earnings and Unrealized Gain (Loss) on Securities Held are zero or positive, no Capital Impairment exists and no further calculations are necessary. If either or both amounts are less than zero, the Licensee must make the calculations described in § 107.210(h)(3) and (4). Depending upon the results of interim calculations in these paragraphs, the Licensee may be required to compute a Capital Impairment Percentage.

(iii) Determination of Capital Impairment Violation

A Licensee would not be in violation of proposed § 107.210(h) simply by having a Capital Impairment Percentage greater than zero. Violations of proposed § 107.210(h) arise out of an excessive Capital Investment Percentage. What constitutes an excessive or acceptable percentage is set forth in two self-explanatory proposed tables, for section 301(c) Licensees and section 301(d) Licensees, respectively.

(iv) Special Rules for Licensees With Outstanding Participating Securities

(A) *General.* All Leveraged Licensees, including Licensees with outstanding Participating Securities, are required to compute their Capital Impairment Percentages in the same manner, but a Licensee with outstanding Participating Securities may, for as long as five years following its initial issuance of Participating Securities, have a Capital Impairment Percentage higher than the applicable table permits without thereby being in violation of § 107.210(h) if it meets the other requirements proposed in § 107.210(h)(7). In addition, a Licensee that meets the requirements proposed in § 107.210(h)(7)(i) of (ii) will be afforded an opportunity to cure on terms that may be more favorable than those available to other Licensees.

(B) *Curable Capital Impairment Percentage during first 48 months following initial issuance of Participating Securities.* During this period a Licensee with outstanding Participating Securities may have a Capital Impairment Percentage of up to, but not as much as, 85 percent if (1) at least two-thirds of its outstanding Leverage consists of Participating Securities; and (2) at least two-thirds of its Loans and Investments, valued at cost, are Equity Capital Investments.

(C) *Curable Capital Impairment Percentage during first 60 months following initial issuance of Participating Securities.* During this period a Licensee with outstanding Participating Securities may have a Capital Impairment Percentage of up to, but not as much as, 85 percent if (1) at least two-thirds of its outstanding Leverage consists of Participating Securities; and (2) at least two-thirds of its Loans and Investments, valued at cost, are Start-up Financings. For the purposes of this proposed regulation, a Start-up Financing is an Equity Capital Investment in a growth-oriental Small Concern that, at the time of the investment, has not been in existence, in any form, for more than three fiscal years, has not had positive cash flow or sales exceeding $5 million in any fiscal year, and is not formed for the purpose of acquiring any existing business.

(D) *Cure of Capital Impairment.* During the fifth year following its initial

issuance of Participating Securities, a Licensee that meets the requirements described in paragraph (B) above may cure its Capital Impairment by taking one or more of the following actions within thirty days after it determines that it has a condition of Capital Impairment. The Licensee may increase its Regulatory Capital [2] by depositing in an escrow account satisfactory to SBA a cash contribution equal to 15 percent of outstanding Leverage; or it may provide SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to 15 percent of its outstanding Leverage. In addition to the normal credit considerations that would determine whether a guarantee is satisfactory to SBA, the terms of the guarantee must provide that any guarantee fee that would otherwise be due the guarantor from the Licensee, and any other sums that would be due the guarantor by virtue of the guarantor's right of subrogation, must be deferred and subordinated to all repayment of all outstanding Leverage plus any unpaid Earned Prioritized Payments (as defined in proposed § 107.3) and earned Adjustments.

During the sixth year following its initial issuance of Participating Securities a Licensee that meets the above-described requirements may cure its Capital Impairment by taking one of the actions described in the preceding paragraph, except that the amount of the cash deposit or guarantee shall be equal to 30 percent of outstanding Leverage. Any amount deposited previously may be used as a credit against the 30 percent requirement.

**2. Leverage for 301(c) Licensees**

Section 107.202 is proposed to be renumbered as § 107.220 and is amended to provide Leverage requirements for Section 301(c) Licensees to reflect amendments to the Act contained in section 402 of Public Law 102–366. it permits SBA to provide Leverage to section 301(c) Licensees through the purchase or guaranty of Debentures and/or Participating Securities. After March 31, 1993, the amount of Leverage outstanding at any time shall not exceed 300% of Leverageable Capital up to $15 million, 200% of Leverageable Capital of more than $15 million but not more than $30 million, and an amount not exceeding $15 million which is equal to 100% of Leveragable Capital over $30 million. In no event shall the aggregate amount of outstanding Leverage by any Licensee or group of two or more Licensees under Common Control [3] exceed $90 million. On a case-by-case basis, however, SBA may grant an exception to this ceiling to a group of Licensees under Common Control and permit a higher amount provided SBA imposes such terms and conditions as it considers appropriate to minimize risk of loss in the event of default. Notwithstanding the foregoing, the aggregate amount of Participating Securities outstanding from a Licensee shall not exceed 200% of Leverageable Capital.

A grandfather clause is provided for Licensees that, on March 31, 1993, have outstanding Debentures in excess of 300% of Leverageable Capital, so that such Licensees are not required to prepay such excess. Moreover, such Licensees may apply to issue additional Debentures or Participating Securities solely to pay the amount due on such excess maturing Debenture. The maturity of any new such Debenture or Participating Security may not be later than September 30, 2002.

**3. Leverage for 301(d) Licensees**

Proposed § 107.230 provides for Leverage for section 301(d) Licensees and substantially replaces existing § 107.205. SBA may provide Leverage to section 301(d) Licensees through the purchase or guarantee of Debentures and/or Participating Securities, and/or through the purchase of Preferred Securities. Proposed § 107.230(b) requires the Articles of section 301(d) Licensees to be conformed to the requirements discussed in paragraphs a. or b. below in order to issue Preferred Securities.

*a. Preferred Stock*

In the case of corporate Licensees, the preferred stock purchased by SBA prior to November 21, 1989, shall be non-voting stock with a 3% cumulative preferred dividend paid out of Retained Earnings Available for Distribution.[4] Preferred stock issued after November 21, 1989, shall provide for 4% preferred cumulative dividends payable out of Retained Earnings Available for Distribution. Preferred Stock purchased by SBA on or after November 21, 1989, shall be redeemed not later than fifteen years after issuance at a price not less than par value plus unpaid dividends accrued to the redemption date. SBA may guarantee Debentures offered for sale by such Licensee immediately prior to such redemption to permit simultaneous redemption of such Preferred Securities.

*b. Preferred Limited Partnership Interest*

Section 412 of Public Law 102–366 authorizes unincorporated section 301(d) Licensees to issue preferred limited partnership interests to SBA which would have the same terms and conditions as 4% preferred stock described immediately above, i.e., a preferred and cumulative return at an annual rate of 4%, accruing on a daily basis, which is payable from Retained Earnings Available for Distribution. Such preferred limited partnership interests shall be redeemed not later than fifteen years from the date of issuance at a price not less than SBA's contributed capital plus accumulated and unpaid distributions through the redemption date. SBA may guarantee Debentures issued by a Licensee immediately preceding such redemption in amounts as will permit simultaneous redemption of such preferred limited partnership interests.

*c. Leverage Ceiling*

Proposed § 107.230(c) would establish maximum Leverage eligibility for section 301(d) Licensees. All types of Leverage issued by such Licensees shall be aggregated for purposes of determining Leverage eligibility, including aggregation of Leverage issued by Licensees under Common Control. Section 301(d) Licensees are eligible for maximum subsidized Leverage, consisting of Preferred Securities and Debentures issued with a rate reduction, of 400% of Leverageable Capital or $35 million, whichever is less. However, section 301(d) Licensees are eligible for nonsubsidized Leverage in excess of $35 million in the amounts and subject to the conditions set forth for section 301(c) Licensees. In order to qualify for Leverage exceeding 300% of Leverageable Capital, at least 30% of the Licensee's Total Funds Available for Investment must be invested in or committed to Venture Capital Financing of disadvantaged concerns, and a Licensee must maintain 30% of its Total Funds Available for Investment in such investments while Leverage in excess of 300% of Leverageable Capital is outstanding. For the purpose of meeting the 30% test, such Venture Capital Financing shall be valued at cost. The present definition of Venture Capital Financing remains unchanged and is set forth in proposed § 107.230(c)(3)(iii).

[2] This increase in Regulatory Capital operates only to cure what would otherwise be a Capital Impairment. It does not increase the Licensee's eligibility for Leverage.

[3] This term is proposed to be defined in a proposed rule published simultaneously herewith.

[4] Preferred stock purchased by SBA prior to November 21, 1989 has no mandatory redemption provision, except as provided for in proposed § 107.261.

*d. Second Tier of Preferred Securities*

SBA is authorized to purchase Preferred Securities in amounts in excess of 100% of Leverageable Capital, but not in excess of 200% of Leverageable Capital, from section 301(d) Licensees with Leverageable Capital of $500,000 or more, or from any section 301(d) Licensee licensed on or before October 13, 1971, regardless of the amount of Leverageable Capital. In either case, a Licensee must have Qualified Investments (defined in current § 107.205(d)(2) and proposed § 107.230(c)(4)(iv)) or commitments at cost equal to the amount of Preferred Securities in excess of 100% of Leverageable Capital. It should be noted that this definition is similar but not identical to the definition of Venture Capital Financing as set forth in § 107.230(c)(3)(iii). The most important difference is that a secured debt instrument may qualify as a Venture Capital Financing but would not qualify as a Qualified Investment.

*e. Participating Securities*

Proposed § 107.230(c)(6) authorizes section 301(d) Licensees to issue Participating Securities (see section 4 of this preamble) in an amount not exceeding 200% of Leverageable Capital, less an amount equal to Licensee's outstanding Preferred Securities. Prioritized Payments and Profit Participation on Participating Securities issued by a section 301(d) Licensees shall not be subsidized.

*f. Other Provisions*

Proposed § 107.230(d) describes the types of Debentures which section 301(d) Licensees may issue and § 107.230(e) permits section 301(d) Licensees, in SBA's discretion, to retire Debentures by the issuance of Preferred or Participating Securities based on Leverageable Capital.

Proposed § 107.230(f) is a recodification of existing § 107.201(a)(2)(iii).

**4. Participating Securities**

Proposed §§ 107.240 through 107.247 describe special rules which apply to Licensees issuing Participating Securities.

The Small Business Equity Enhancement Act of 1992 (Title IV of Pub. L. 102–366) is a mandate for a new relationship between SBA and the venture capital community. The most salient feature of this new relationship is the creation of Participating Securities which are equity-type securities with the characteristics of preferred stock or a preferred limited partnership interest.

SBA recognizes that venture capital companies usually make equity capital investments, manage their portfolios making follow-on investments as necessary, and finally sell their investments as they mature, with the objective of realizing capital gains. As investments are sold, funds are customarily distributed to investors rather than reinvested. Recognition of this business cycle has been incorporated into the proposed rules governing the issuance of Participating Securities.

Under these rules, as a means of financing Licensees which issue Participating Securities, SBA will guarantee the payment of Prioritized Payments on, and the Redemption Price of, the Participating Securities to an authorized Trust or pool which purchases the Participating Securities. Prioritized Payments are the equivalent of the interest or dividend payments scheduled on the Participating Securities. As an inducement for its guaranty, SBA will be entitled to a share in the profits that are generated from investments made while the Participating Securities are outstanding (Profit Participation).

Pass-through Trust Certificates evidencing the rights of the Trust or pools in the guaranteed Participating Securities will be sold to investors. The rights and obligations evidenced in the Trust Certificates will also be guaranteed by SBA. The proceeds of the sale of the Trust Certificates will be used to fund the Participating Securities.

SBA anticipates that Prioritized Payments made by Licensees that issue Participating Securities will not be adequate to fund debt service obligations of the guaranteed Trust Certificates in the early years of Participating Securities' existence and that SBA's guaranty will be called upon to make such payments. However, over the time of the Participating Securities' life, SBA anticipates that it will be repaid most of such guaranty payments through a combination of Earned Prioritized Payments and Profit Participation.

Since Prioritized Payments on Participating Securities are payable only to the extent of earnings, SBA realizes that the success of the program and repayment of its guaranty payments depend upon the successful operation of Licensees as equity investors.

SBA understands that venture capital equity investments in small concerns are risky on an individual basis, and that in the venture capital industry, historical experience indicates that losses on equity investments frequently occur earlier than profits. Therefore, it is anticipated that Licensees issuing Participating Securities will incur losses in the early years of their investment cycle as investments in a limited number of portfolio concerns prove unprofitable and are written off.

Thus, SBA recognizes that it must be patient in expecting profitable operations from Licensees with Participating Securities. At the same time, however, SBA has the responsibility to assure that publicly-guaranteed funds are administered prudently by capable managers. Accordingly, SBA has sought to formulate an economic and regulatory structure which will enhance the likelihood that Licensees participating in the program will be successful.

In this way, SBA believes that is can fulfill the objectives of the Small Business Equity Enhancement Act of 1992 to foster a venture capital industry that is able to serve the needs of eligible Small Concerns, create or retain jobs, expand the tax base, and achieve other objectives such as commercialization of technology, supporting manufacturing firms, fostering urban and rural business development, and stimulating exports.

A primary objective of SBA is to assure that Licensees issuing Participating Securities are structured so that its managers and independent investors are motivated to assure success. Section 410 of Public Law 102–366 authorized inclusion in Private Capital of investments by public and private pension funds as well as limited investments by state and local governments.

In addition, the form of Participating Securities has been structured with the intention of avoiding the imposition of Unrelated Business Taxable Income (UBTI) on certain tax-exempt investors. SBA believes that in consequence, pension funds and other tax-exempt investors will find it advantageous to invest in SBICs using Participating Securities. SBA is aware that such institutional investors historically have provided investment capital to the private venture capital industry and have acquired expertise in selecting managers and monitoring investments. SBA anticipates that SBICs will benefit from this investor expertise. Therefore, SBA desires to benefit from the expertise of institutional investors to help assure the profitability of Licensees that issue Participating Securities.

SBA recognizes that its guarantee of Participating Securities will be an essential motivating factor in the decision of investors to fund Licensees, and that such investors will need to have confidence in SBA's long-term

investment philosophy. Thus, SBA intends that the investment community should regard Participating Securities as patient capital, similar to a partnership interest. At the same time, however, investors must recognize SBA's special responsibilities with respect to public funds and the need to assure compliance with program objectives and regulations.

*a. General Provisions*

Proposed § 107.241 sets forth general provisions for Licensees issuing Participating Securities. This section contains many of the regulations that embody SBA's effort to utilize marketplace dynamics to assure a successful program.

(i) Minimum Regulatory Capital

The minimum capital requirements set forth in proposed § 107.241(a) reflect SBA's belief that a venture equity-oriented Licensee will usually have higher fixed and marginal expenses than a lender Licensee. For example, considerably more time must be put into the due diligence process of investigating a potential investment than is necessary when a secured loan is made. For investments in early-stage companies, this is especially pronounced as there is usually no history of business success, no historical financials showing an ability to produce profits, and no balance sheet which would meet any normal criteria for soundness. Hence, the management of a venture SIBC must spend considerably more time and resources investigating the management and products of a company, and often must hire expensive skilled consultants to assist in such evaluations. Failure to make these kinds of outlays can result subsequently in considerable investment losses. In addition, the legal costs of tailoring the individual unique investment agreement required by venture investing are higher than similar costs associated with lending. Finally, SBIC management must expend considerable time, effort, and expense in watching over their investments.

All of these activities add up to significantly higher costs of doing business for equity-oriented Licensees. Yet, an SBIC must not exhaust its capital by incurring overhead expenses which are high relative to the capital base.

In order to ensure that Licensees issuing Participating Securities have adequate resources to develop and monitor a venture capital portfolio while still preserving an adequate capital base, SBA proposes in § 107.241(a) to require such Licensees, as a general rule, to have Regulatory Capital of at least $10 million. A Licensee with Regulatory Capital of less than $10 million will normally be incurring excessively high fixed and marginal costs relative to the amount of its capital. A secondary rationale for this requirement is that raising $10 million for venture capital investments constitutes a significant affirmation by the investment community of the management capabilities of a Licensee.

SBA will consider authorizing the issuance of Participating Securities by a Licensee with Regulatory Capital of no less than $5 million if it can be shown that, over the long term, the Licensee has a reasonable prospect of being profitable.

For example, SBA expects that a Licensee with Regulatory Capital of less than $10 million may qualify to issue Participating Securities if it is a subsidiary of a bank, bank holding company, or other large organization which undertakes to subsidize management expenses of the Licensee and to provide management personnel and operational support.

Licensees operating in rural areas or within specific geographic areas, such as urban areas which are reasonably compact and focused, may also be acceptable with Regulatory Capital of less than $10 million, as long as management has a track record of expertise in the types of investment activities proposed by the Licensee, and the business plan shows that the Licensee can be operated soundly and profitably over the long term without depleting its capital base through excessive overhead.

(ii) Equity Capital Investments

Section 107.241(b) requires Licensees issuing Participating Securities to invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments. Equity Capital Investments shall be maintained at such level (on a cost basis) and reduced only by the amount of repayments of such Participating Securities. "Equity Capital Investments" means common or preferred stock, limited partnership interests, options, and warrants or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Such Equity Capital Investments may not be amortized. This regulation is mandated by section 403 of Public Law 102/366 and it embodies an essential part of the Participating Securities program.

A deficiency in the existing SBIC program was the Act's intent that Licensees make equity investments, while Leverage for 301(c) Licensees consisted solely of Debentures requiring semi-annual interest payments. This mismatching of the source and use of funds was a principal reason for the creation of Participating Securities. It stands to reason, therefore, that proceeds of Participating Securities would be used to make Equity Capital Investments rather than debt and other income-oriented investments.

(iii) Management and Ownership Diversity

Proposed § 107.241(c) is designed to assure that Licensees issuing Participating Securities have investors who are independent of management and who have a substantial stake in a Licensees' financial performance. SBA believes that the presence of such investors will help to assure that Licensees are operated with the objective of maximizing returns and protecting the interests of all investors, including SBA. Paragraph (1) requires Licensees to have diversity between management and ownership, which SBA will consider satisfied if at least three unaffiliated shareholders or limited partners (only one is required in the case of Institutional Investors) own, in the aggregate, at least 30% of a Licensee or Licensee's ultimate parent entity. Such diversity will also be deemed to be accomplished if a Licensee or its ultimate parent entity is publicly traded under U.S. securities laws.

This requirement is important because it subjects proposed management teams to scrutiny and acceptance by significant unaffiliated investors who are willing to risk their own capital in a Licensee and consequently have a continuing stake in a Licensee's successful operation. The independence and ability of investors to exercise oversight is maintained by the prohibition against the delegation of voting rights contained in paragraph (2). An exception is made for routine proxies and the use of unaffiliated advisors so as not to interfere with routine operations of a Licensee.

(iv) Management Fees

As discussed above, the amount of management fees charged by Licensees issuing participating Securities is limited to 2.5% of Combined Capital (Regulatory Capital plus outstanding Leverage), plus $125,000 in the case of Licensees with Combined Capital of less than $20 million. SBA believes this makes adequate provision for overhead and is consistent with current venture capital industry practices. Under certain

circumstances, SBA may consent to higher amounts if there are clearly demonstrable needs. However, such an exception will not affect the computation of Profit Participation. In the case of larger funds, SBA may require lower amounts for all purposes, including the computation of Profit Participation. Compare §§ 107.241(d) and 107.242(d)(2).

(v) Third Party Debt

Proposed § 107.241(e) limits the type and amount of third party debt that a Licensee issuing Participating Securities may incur and requires that the Licensee obtain the written approval of SBA before incurring any such debt. SBA recognizes SBA recognizes that timing differences and the short-term needs of Licensees for operational liquidity as well as the need to be responsive in meeting funding requests of eligible portfolio concerns may, from time-to-time, make the use of Temporary Debt by Licensees a necessity. This section intends that such Temporary Debt truly be temporary and not a permanent part of a Licensee's operating plans. Therefore, this section would permit Licensees issuing Participating Securities to have only Temporary Debt in an amount not to exceed 50% of Leverageable Capital and it would prohibit the Licensee from having any Temporary Debt at all for at least 30 consecutive days during its fiscal year.

(vi) Liquidity Requirement

Proposed § 107.241(f) establishes a liquidity requirement for Licensees issuing Participating Securities. Because Equity Capital Investments are usually not marketable until they mature, it is essential that Licensees maintain a level of liquid assets sufficient to meet operating expenses, make necessary follow-on investments, and allow investments to be held until they mature and can be sold in the normal course of business. Thus, SBA is introducing a test of "Liquidity Impairment". In broad terms, a Licensee has a condition of Liquidity Impairment if the Liquidity Ratio obtained by dividing Total Current Funds Available [5] by Total Current Funds Required is less than 1.20. No Distributions shall be made that would cause a condition of Liquidity Impairment.

(vii) Mandatory Redemption

Proposed § 107.241(g) requires that Participating Securities be redeemed not later than 15 years after their issue date. Generally, the redemption date will be 10 years after the date of issue and will be the same as the maturity date of the Trust Certificates.

(viii) Priority in Liquidation

Section 107.241(h) provides that upon liquidation of a Licensee, the Redemption Price of any Participating Securities, plus any Prioritized Payments, Profit Participation and other amounts that may be due SBA, shall be senior in priority to all other equity interests of the Licensee. SBA recognizes that Prioritized Payments and Profit Participation are distributable only to the extent of profits on Earmarked Assets, notwithstanding the cumulative feature of Prioritized Payments. However, there shall be no Distributions to investors before amounts due SBA, its agent, or Trustee are paid when a Licensee is liquidated.

*b. Computation of Earmarked Profits (Losses)*

There are seven steps in the computation of Earmarked Profits (Losses) as set forth in proposed § 107.242. (Please note that SBA will provide the spreadsheet templates and/or other software necessary for making the ensuing calculations.)

(i) Step 1: Determination of Earmarked Assets

Briefly stated, Earmarked Assets are a Licensee's Loans and Investments [6] outstanding at the time a Licensee issues Participating Securities [7] or that are acquired while Participating Securities are outstanding, plus any non-cash assets given in consideration for the disposition or exchange of any such asset. Note that even after all Participating Securities have been redeemed, Earmarked Assets maintain such status. See proposed § 107.242(b).

(ii) Step 2: Calculating the Earmarked Asset Ratio

This step establishes the percentage of a portfolio that is earmarked. Because a Licensee may have non-Earmarked Assets deriving from assets acquired after all Participating Securities have been redeemed, or from the special rules governing SBICs licensed on or before March 31, 1993 (see proposed § 107.247), it is necessary that all Licensees calculate an Earmarked Asset Ratio (EAR) as delineated in proposed § 107.242(c). The ratio is calculated on a weighted average basis (that is, on a month-by-month basis, which is then averaged) for the year or fraction of the year in question. For companies licensed after March 31, 1993 that have not yet redeemed any Participating Securities, EAR will equal 100 percent. The formula is:

EAR=[(EA+UPPS)/(L&I+UPPS)]×100

where:

EA=Earmarked assets valued at cost

UPPS=Uninvested proceeds of Participating Securities

L&I=Total Loans and Investments (valued at cost).

The example that follows would apply only to companies licensed on or before March 31, 1993. Assume that such a Licensee issued $10 million of Participating Securities two months prior to the close of its fiscal year, and had elected to exclude its pre-existing portfolio from being Earmarked Assets (as permitted in proposed § 107.247). The following calculations would apply:

VALUES AT CLOSE OF MONTH 1

| Earmarked assets | Uninvested proceeds | Loans and investments (acquired on or before 3/31/93) |
|---|---|---|
| Zero | $10,000,000 | $15,000,000 |

If the Licensee invested $2 million from the proceeds of Participating Securities during the next month, and sold $1 million of assets for cash, the following would occur:

VALUES AT CLOSE OF MONTH 2

| Earmarked assets | Uninvested proceeds | Loans and investments |
|---|---|---|
| $2,000,000 | $8,000,000 | $16,000,000 |

As of the close of Month 1, the Licensee's (interim) EAR was 40 percent [(0+10,000,000)/(15,000,000+10,000,000)].

As of the close of Month 2, for Month 2, (interim) EAR was 41.666 percent [(2,000,000+8,000,000)/(16,000,000+8,000,000)].

As of the close of the Licensee's fiscal year, the Licensee's EAR was 40.833 percent [(40+41.666)/2] or [(2,000,000+18,000,000)/(31,000,000+18,000,000)]. For the purposes of the calculations hereafter

[5] Proposed § 107.241(f)(2) includes a self-explanatory chart that shows how the respective values for Total Current Funds Available and Total Current Funds Required are to be determined.

[6] "Loans and Investments" is a term that is proposed to be defined in this proposed rule as "Portfolio Securities, Assets Acquired in Liquidation, Operating Concerns Acquired, and Other Securities Received as set forth in Statement of Financial Position (SBA Form 468)".

[7] A company licensed on or before March 31, 1993 may elect to exclude its entire portfolio as of that date, but not less than its entire portfolio, from the category of "Earmarked Assets" unless it is refinancing outstanding Debentures by the issuance of Participating Securities. Special rules for such Licensees are proposed in § 107.247.

discussed, this Licensee's EAR is 40.833 percent.

(iii) Step 3: Ascertaining Earmarked Investment Income

Earmarked Investment Income (EII) is defined in proposed § 107.242(d)(1) by the formula: EII=IDA+([IIF+OI]×EAR) where

IDA=All income directly attributable to Earmarked Assets
IIF=Interest on idle funds
OI=Other income not attributable to specific assets
EAR=Earmarked Asset Ratio

Thus, if IDA were $1,000,000 and other income not attributable to specific assets were $500,000, EII would be: ($1,000,000+($500,000×40.833%)) or $1,204,165.

(iv) Step 4: Calculating Earmarked Investment Expenses

As proposed to be defined in § 107.242(d)(2), Earmarked Investment Expenses has two components—Management Expenses and non-Management Expenses.

The first of these, Management Expenses, may be less than the actual cost of managing the Licensee.[8] For the purposes of the calculations proposed in § 107.242(d)(2), Management Expenses means the least of (1) actual Management Expenses; or (2) the product of expenses permitted by § 107.241(d) multiplied by EAR; or (3) 2.5 percent of the product of the Licensee's Combined Capital, multiplied by its EAR (plus, in the case of a Licensee whose Combined Capital is less than $20 million, an additional sum equal to the product of $125,000 and the Licensee's EAR). Expressed in formula terms, this would be:

Management Expense (ME)=0.025×(CC×EAR) for a Licensee with Combined Capital (CC) of $20 million or more.

ME=[(0.025 ×{CC ×EAR})+($125,000 ×EAR)] for a Licensee with Combined Capital of less than $20 million.

The second component of Earmarked Investment Expense is non-Management Expense. Some non-Management Expenses can be attributed directly to Earmarked Assets and, of course, are to be allocated to Earmarked Investment Expenses. In addition, Licensee shall allocate to Earmarked Investment Expense a sum equal to the product of non-Management Expense not attributable to specific assets (specifically including interest on SBA-guaranteed Debentures) times Licensee's Earmarked Asset Ratio. See proposed § 107.242(d)(2)(ii).

The sum of the above-described Management and non-Management Expenses constitutes Earmarked Investment Expenses.

(v) Step 5: Determining Earmarked Net Investment Income.

Subtract Earmarked Investment Expenses (step 4) from Earmarked Investment Income (step 3).

(vi) Step 6: Determining Earmarked Realized Gain (Loss) on Securities

Proposed § 107.242(e) sets forth rules for determining gain or loss on securities that constitute Earmarked Assets. For the purpose of determining whether a gain or loss has been realized[9] on the sale of an Earmarked Asset, the asset's cost basis and net sales price shall be used. The asset's cost basis shall not be increased, even by capitalization of unpaid interest, except that if the basis of an investment in an unincorporated Small Concern is appropriately determined by using the equity method of accounting, the Licensee's basis may be increased by the Licensee's share of the Small Concern's income. See proposed § 107.242(e)(3).

(vii) Step 7: Computing Earmarked Profits (Losses)

Earmarked Profits (Losses) must be computed no less frequently than annually as of the close of a Licensee's fiscal year, and at such other times as Licensee elects to make a Distribution. See proposed § 107.242(a). The computation is simple enough: Earmarked Profits (Losses) is the sum, positive or negative, of Earmarked Net Investment Income and Earmarked Realized Gain (Loss) on Securities. See proposed § 107.242(f).

*c. Computation, Allocation, and Distribution of Prioritized Payments*

(i) Introduction

Proposed § 107.243 provides for the computation, allocation, and payment of Prioritized Payments which are preferred and cumulative at the Trust Certificate Rate, as defined in § 107.3. This is the amount SBA guarantees to pay annually to the Trust Certificate holders. Prioritized Payments resemble dividends on preferred stock or equivalent distributions on preferred or senior limited partnership interests. Even when a Corporate Licensee issues Participating Securities that are in the form of debentures, Prioritized Payments resemble dividends on preferred stock rather than interest payments, in that they are payable only to the extent of earnings.

The calculation of Prioritized Payments is to be performed at least annually within 90 days after the Licensee's fiscal year end, and also at the end of any fiscal quarter for which a Distribution is contemplated. If the Licensee has cumulative Earmarked Profits, Prioritized Payments up to the amount of such profits are characterized as Earned Prioritized Payments and are to be automatically distributed within 90 days after the Licensee's fiscal year end, except to the extent that such Distribution would create a condition of Liquidity Impairment.

A Licensee with Participating Securities or Earmarked Asset in it portfolio is prohibited from making any Distributions that are considered to be a return on capital until all Prioritized Payments have been distributed. Before returns of capital can be made, all Earned Prioritized Payments must have been distributed. See § 107.245.

(ii) Establishment of Prioritized Payment Accounts

To assist in the process of determining whether, or when, a Licensee is responsible for making payments, two Prioritized Payment accounts must be established: a Prioritized Payment Accumulation Account (AA) which is a memorandum account, and a Prioritized Payment Distribution Account (DA) which is a liability account. For the sake of simplicity, the hypothetical examples set forth in paragraphs (iii) and (iv) below illustrate the computations at the fiscal year end following the first issuance of Participating Securities.

(iii) Initial allocations to Prioritized Payment Accumulation Account

This account initially reflects the "accrual" (as a memorandum entry only) of Prioritized Payments. Computations involving this account always begin with the entry of a sum equal to all Prioritized Payments for the fiscal period in question. For example, if a Licensee had issued $10 million of 8 percent Participating Securities at the beginning of its fiscal year, the initial amount to be added to the AA at the close of the fiscal year would be $800,000. See proposed § 107.243(b)(1).

[8] See the definition of Management Expenses that this rule proposed in § 107.3, and also proposed § 107.241(d), which would impose a ceiling on the Management Expenses of a Licensee that has outstanding Participating Securities or Earmarked Assets.

[9] Unrealized Appreciation or Unrealized Depreciation, as the case may be, on Earmarked Assets that are Distributed shall be recognized as if the appreciation or depreciation were realized at the time of the in-kind Distribution. See proposed § 107.242(e)(4), and see also proposed § 107.245(e)(3), which relates to in-kind Distributions.

As subsequently explained, other sums may also be added to this account.

(iv) Initial allocations to Prioritized Payment Distribution Account (DA)

The first step in determining what should be added to the DA is to ascertain cumulative Earmarked Profits (Losses). If, at the fiscal year end following the first issuance of Participating Securities, the Licensee has cumulative Earmarked Profits, that sum constitutes Distributable Earmarked Profits.

The second step is to compare Distributable Earmarked Profits with the balance in the AA. The lesser of the two is subtracted from the AA and is added to the DA. This amount now constitutes Earned Prioritized Payments. See proposed § 107.243(c).

For example, suppose that Earmarked Profits were $20,000. Because $20,000 is less than the $800,000 of Prioritized Payments, $20,000 is subtracted from the AA and is added to the DA. Thus, at this point there is $780,000 in the AA and $20,000 in the DA, a sum which represents Earned Prioritized Payments and is now the amount the Licensee will distribute to SBA or the Trust, unless such Distribution would cause a Liquidity Impairment. See proposed § 107.243(c).

(v) Subsequent Allocations to Prioritized Payment Accumulation Account and to Prioritized Payment Distribution Account

Subsequent allocations to these accounts are handled similarly to the initial allocations, except as hereafter set forth. Distributable Earmarked Profits for the second year are calculated by subtracting from cumulative Earmarked Profits all previous Earned Prioritized Payments and all earned Adjustments (which will be addressed hereafter) for all prior fiscal periods.

Continuing with the example, at the end of the second year following issuance of $10 million 8 percent Participating Securities, an additional $800,000 would be preliminary allocable to the AA, bringing that account (temporarily) up to $1,580,000. If we assume that Earmarked Profits for the second year were $40,000, it follows that cumulative Earmarked Profits is $60,000. Ignoring for the moment "earned Adjustments", Distributable Earmarked Profits for Year 2 are $40,000. Since $40,000 is less than $1,580,000, the sum of $40,000 is added to the DA and subtracted from the AA. Thus, at the close of Year 2, the balance in the AA is $1,540,000 (exclusive of any Adjustments) and, assuming no Distribution of Earned Prioritized Payments had been made to SBA, the balance in the DA is $60,000.

In this example, the Licensee had cumulative Earmarked Profits of $60,000 ($20,000 for the first year and $40,000 for the second year). What if the Licensee, during the second year, instead realized Earmarked Losses of $100,000? Such an event would have had no effect on the $20,000 "obligation" already reflected in the DA. See proposed § 107.243(d).

(vi) Distributions of Prioritized Payments

Except for the provision discussed in the next paragraph, a Licensee is required to remit the balance in its DA to SBA, its agent or Trustee within 90 days after the end of the Licensee's fiscal year, or before any Distribution is made to its own investors, as appropriate. The amount remitted to SBA shall be subtracted from the DA. If a Licensee has issued Participating Securities on more than one occasion, Prioritized Payments shall be made in order of maturity.

A Licensee is excused from remitting the balance in the DA to the extent that such remittance would cause the Licensee to violate the liquidity requirement set forth in proposed § 107.241(f). For example, if the Licensee needs to retain $1,000,000 in cash to attain the required liquidity ratio, the Earned Prioritized Payments are $1,400,000, and the Licensee's cash balance is $1,800,000, Licensee must remit $800,000 to SBA. See proposed § 107.243(c)(3)(iii). Failure to make Distributions because of insufficient liquidity does not trigger a regulatory violation.

(vii) Adjustments to Prioritized Payments

A Licensee's failure to make timely distributions of Earned Prioritized Payments in an amount equal to Prioritized Payments results in the accumulation of additional amounts which may become payable to SBA, subject to the existence of sufficient Earmarked Profits. If, at the end of any fiscal year, there is an unpaid balance in the AA, an amount equal to the average monthly balance in that account is to be multiplied by a rate equal to the average of the rates of new TCs sold to the public [10] during the Licensee's fiscal year, and the product is to be added to the balance in the AA as a supplement to Prioritized Payments. See proposed § 107.243(d)(1).

[10] SBA will publish a notice of the TC rate from time to time in the Federal Register.

Similarly, if there is an unpaid balance in the DA account at the end of the Licensee's fiscal year, an amount equal to the average monthly balance in that account is to be multiplied by a rate equal to the average of the rates on new TCs sold to the public during the Licensee's fiscal year, and the product is to be added to the balance in the AA, not to the balance in the DA. See § 107.243(d)(2), as proposed.

The additional amounts added to the AA as described in the preceding two paragraphs are referred to herein as Adjustments. Once added to the AA, the Adjustments are indistinguishable from Prioritized Payments; they are characterized as "earned" and transferred to the DA in the same manner as Prioritized Payments are characterized as "earned."

Another consequence of failure to remit Earned Prioritized Payments is that so long as unpaid Earned Prioritized Payments, including earned Adjustments, are outstanding, the Licensee shall make the calculations described in this paragraph c. as of the end of each subsequent fiscal quarter until such amounts are paid in full. See proposed § 107.243(c)(3).

*d. Calculation and Allocation of Profit Participation*

(i) Introduction

In consideration for its guarantee of a Licensee's Participating Securities, SBA [11] has a contractual right to Profit Participation consisting of a specified percentage of the Licensee's Earmarked Profits. The percentage is determined, in part, by the ratio of outstanding Participating Securities Leverage to Leverageable Capital. Profit Participation is the primary characteristic that distinguishes Participating Securities from preferred stock or preferred partnership interests.

Proposed § 107.244 mandates the establishment of a Profit Participation Account to reflect the allocation and distribution of the Profit Participation due SBA. The sum to be allocated is determined by multiplying the Base for Profit Participation, if positive, by the applicable Profit Participation Rate.

(ii) Computing the Profit Participation Base

This computation is to be made at the end of Licensee's fiscal year and at the end of any fiscal quarter for which a Distribution is contemplated. Briefly, the Base for Profit Participation (Base) is

[11] In this context, SBA means only SBA. Neither the holders of TCs, nor the Trust itself has any interest in the Profit Participation to which SBA may be entitled.

a number equal to year-to-date Earmarked Profits (Losses) minus year-to-date Prioritized Payments, minus any unused loss carryforward, as computed in the manner hereafter discussed.

(iii) Computation of Unused Loss Carryforward

A Licensee which has never had a positive Base shall compute its unused loss carryforward by substracting Prioritized Payments for all prior fiscal years from the cumulative sum of all Earmarked Profits (Losses) for all prior fiscal years. The result, if it is a negative number, is the Licensee's unused loss carryforward. If the Licensee's Base for any prior year was a positive amount, the unused loss carryforward is computed in the same way, but only for the period beginning with the fiscal year following the most recent year for which the Base was a positive amount. In other words, once Earmarked Profits are used as the basis for an allocation to the Profit Participation Account, they are disregarded in any subsequent allocation or computation. See proposed § 107.244(b)(2).

Some illustrations are present to help clarify this concept. Assume that a Licensee had issued $10 million of 8 percent Participating Securities on July 1, 1994, the first day of its fiscal year, and had Earmarked Profits of $20,000 as of the close of the fiscal year, June 30, 1995. The difference between Earmarked Profits of $20,000 and Prioritized Payments ($800,000) means that the Licensee has an unused loss carryforward of $780,000. Now assume that fiscal year 1995–96 was extremely successful and the Licensee's Earmarked Profits for that year were $2 million. If the Licensee previously had Earmarked Profits of $20,000, the Base would be $420,000: ([$2,000,000 current period Earmarked Profits—$800,000 current period Prioritized Payments)—$780,000 unusued loss carryforward).

As a second example, what if the Licensee had instead posted an Earmarked Loss of $20,000 during the first year that Participating Securities were outstanding? The unused loss carry forward would be $820,000. At the end of the second year, cumulative Earmarked Profits would be only $1,980,000, and the Base for Profit Participation would be only $380,000 ([$2,000,000—$800,000] −$820,0000).

(iv) Computing Profit Participation Rates

(a) *When computation is required; general rules.* Computation of a Profit Participation Rate for the relevant fiscal period must be made at least annually or prior to any Distribution. A Licensee should use one of the two formulas, as appropriate, which are set forth in paragraphs (B) and (C), below. Except as described in paragraph (E) below, the Profit Participation Rate that any particular Licensee must use depends on the ratio of the lowest dollar amount of its Leverageable Capital ever outstanding during the time that Participating Securities have been outstanding to the highest dollar amount of Participating Securities ever outstanding. This is the Participating Securities to Leverageable Capital (PLC) ratio.

(B) *Participating Securities not at any time in excess of Leverageable Capital.* Subject to the indexing described in paragraph (D) below, the Profit Participation Rate is equal to the PLC ratio multiplied by 9 percent. Thus, the Profit Participation Rate=PLC ratio × 0.09. For a Licensee that has a PLC ratio equal to exactly 100 percent of Leverageable Capital, the Profit Participation Rate is 9 percent; for every other Licensee described in this paragraph (B), the Profit Participation Rate is less than 9 percent.

(C) *Participating Securities in excess of Leverageable Capital at any time.* Subject to the indexing described in paragraph (D), the Profit Participation Rate is equal to 9 percent plus an additional percentage equal to the product of .03 multiplied by an amount obtained by substracting one (1) from the PLC ratio. In other words, Profit Participation Rate = .09+(.03×[PLC ratio-1]). If a Licensee has been $10 million in Leverageable Capital and $15 million in Participating Securities, the PLC ratio = 1.5 and Profit Participation Rate equals 10.5 percent, .09+(.03×[1.5-1]).

(D) *Indexing.* No indexing is required if, on the date the Participating Securities in question were issued, the yield-to-maturity on Treasury bonds with a remaining term of ten years was exactly 8 percent. Otherwise, the Profit Participation Rate calculated in accordance with proposed § 107.244(c)(2) or (3) shall be adjusted upward or downward by the same percentage, not by the same number of percentages points or basis points, by which such rate may be above or below 8 percent.

For example, if the above-discussed Treasury rate were 10 percent and the appropriate unindexed Profit Participation Rate were 9 percent, the appropriate index Rate would be 11.25 percent. 10 is 25 percent more than 8; 125 percent of 9 percent is 11.25 percent.

If a Licensee has issued Participating Securities or two or more occasions, any indexing of the Profit Participation Rate will be based on the average Treasury rate for all such issuances, weighted to reflect the dollar amount of each issue and the portion of the fiscal period during which each issue was outstanding. See proposed § 107.244(c)(4)(ii).

(E) *Approved increases in Leaverageable Capital.* Computation of the Profit Participation Rate is not to be affected by any subsequent increase in Leverage Capital, except to the extent that the increase in Leverageable Capital is either the result of the funding of unfunded commitments or the conversion to cash of assets previously recognized by SBA as a part of Private Capital, but not of Leverageable Capital, or such increase is provided for in a business plan previously approved by SBA. See proposed § 107.244(c)(5).

(v) *Computing Profit Participating.* As previously indicated the amount of SBA's Profit Participation for a fiscal year or fiscal year to date or computed by multiplying the Base for the period in question (fiscal year or year-to-year date) by the Profit Participation Rate for the period in question, and subtracting from that result any amounts of Profit Participation that were paid or reserved for payment to SBA, its designated agent or Trustee, for any prior interim periods during the same fiscal year.

Any computation of Profit Participation made as of the close of an interim fiscal quarter is subject to adjustment whenever any subsequent interim distributions are contemplated, and at the end of the fiscal year, in order to account for any increase in the Profit Participation Rate. If the Profit Participation Rate decreases as a result of an approved increase in Leverageable Capital, Profit Participations already computed for any interim periods shall not be adjusted. See proposed § 107.244(d)(3).

(vi) *Allocation of Profit Participation.* Prior to any Distributions, and in any event within 90 days following the end of the Licensee's fiscal year, the amount of any profit Participation calculated in accordance with proposed § 107.244(d) shall be allocated to a Profit Participation Account. Funds equal to the amount allocated to this account shall not be available for reinvestment in Small Business Concerns or for any other use by the Licensee; these funds shall be distributed only to SBA, its agent or Trustee.

(vii) *Distribution of Profit Participation.* Distribution of allocated Profit Participation shall be made at the same time that profits are distributed to the Licensee's investors, either as a tax distribution, or a return on capital.

*e. Distributions*

(i) General

Distributions other than Prioritized Payments shall be made pursuant to proposed § 107.245. All Prioritized Payments must be paid before any Distributions are made that are classified as a tax Distribution or a return on capital. Earned Prioritized Payments and earned Adjustments as recorded in the DA must be paid before any Distributions are made that are classified as returns of capital. Distributions pursuant to proposed § 107.245 may be made only to the extent that they do not cause a condition of Liquidity Impairment. See proposed § 107.241(f).

(ii) Tax Distributions

(A) *General.* A Licensee that is organized as a limited partnership, S Corporation, or similar pass-through entity, may elect to make an annual Distribution from Retained Earnings Available for Distribution (READ) to each of its investors (specifically including SBA) in amounts not greater than the "Maximum Tax Liability" (as computed in paragraph (B) below) for Federal and State income taxes on the income imputed to each investor. Since SBA is not a tax-paying entity, the amount of SBA's share of any such Distribution is determined by multiplying the total tax Distribution to all partners by SBA's "Profit Participation Rate", determined in accordance with proposed § 107.244. Anything that SBA receives as its share of a tax Distribution shall be credited first against Profit Participation as described below.

There are two important limitations on the right of a Licensee to make tax Distributions. First, there can be no unpaid Prioritized Payments. Second, the Distribution can not cause the Licensee to have a "Liquidity Impairment".

Although proposed § 107.245(b) refers to "tax Distributions", it is intended that the benefits of this section be available to all investors in pass-through entities, including those investors that are exempted from Federal or State taxation. Other than SBA, every investor in a Licensee that is a pass-through entity is conclusively presumed to be a resident, for tax purposes, of the State in which the Licensee's principal office is located; and to be liable to pay Federal and State income taxes at the highest marginal tax rates applicable to each category of income (such as ordinary income compared to capital gains), without regard to the actual situation of any specific investor. If individuals are taxed at a higher rate than corporations, every investor will be conclusively presumed to be an individual even if the investor in question is a corporation or a pension fund. See § 107.245(b).

(B) *Computation of tax Distribution to investors.* The amount distributable to an investor other than SBA is determined by multiplying the respective amounts of ordinary income and capital gains imputed to the investor by the highest combined marginal Federal and State tax rates applicable to each category, taking into account the deductibility of State taxes when computing Federal taxes. If the highest rate of Federal tax on ordinary income is 35 percent and the highest rate of State tax on ordinary income is 5 percent, the preceding sentence does not mean that the tax Distribution should be equal to 40 percent of the ordinary income imputed to the investor in question.

By way of illustration, assume that at the end of the Licensee's fiscal year, $1,000 in ordinary income had been imputed to investor A (which may even be a tax-exempt organization). Using the same hypothetical tax rates given in the previous paragraph, it is conclusively presumed that A will have to pay $50 in State income taxes on the $1,000 in the Licensee's hands. But since the $50 payable to the State is deductible from A's Federal taxable income, A's Federal income tax liability is based on only $950, and is therefore equal to $332.50. The total amount than may be distributed to A pursuant to proposed § 107.245(b) is $332.50 plus $50.00 or $382.50, not $400, which is 40 percent of $1,000.

(C) *Computation of tax Distributions to SMA.* The amount of tax Distributions that must be made to SBA is not computed in the same manner as the amount of such Distributions to other investors. Instead, the amount to be remitted to SBA, its agent or Trustee, is computed by multiplying the sum of the total tax Distribution to be made to other investors by the Profit Participation Rate computed in accordance with proposed § 107.244(c). The amount of such tax Distribution to SBA shall be subtracted from the Profit Participation Account referred to above.

(iii) Returns on Capital

(A) *General.* After all Prioritized Payments and tax Distributions, if any, have been made, a Licensee with READ shall, within 90 days following the close of its fiscal year, or at its discretion as of the end of a fiscal quarter, make a Distribution under proposed § 107.245(c) to its investors and SBA to the extent that such Distribution would not cause the Licensee to have a condition of Liquidity Impairment. All such Distributions to investors shall be made from READ; however, Distributions to SBA may or may not be from READ, as discussed hereafter.

While the dollar amount of Profit Participation is determined by formula according to the ratio of Participating Securities to Leverageable Capital, the amount to be distributed to SBA when there is a return on capital to private investors is a function of the ratio of total Leverage (Debentures), and Preferred Securities, and Participating Securities) to Leverageable Capital. See § 107.245(c).

If SBA determines that the value of the Licensee's assets are materially overstated and if SBA provides the Licensee with timely notice of such determination in advance of a proposed Distribution, SBA reserves the right to restrict Distributions.

Distributions paid to SBA under proposed § 107.245(c) are applied in the following sequence: (i) Profit Participation; (ii) dividends or equivalent distributions on Preferred Securities; (iii) redemption or prepayment of outstanding Participating Securities; (iv) redemption or prepayment of outstanding Preferred Securities; (v) repayment of principal of outstanding Debentures. If there are restrictions on prepayment of outstanding Debentures, that part of SBA's share of a Distribution that is to be applied toward such prepayment shall be deposited in an escrow account on terms and conditions as SBA may prescribe.

It is noted that Distributions to SBA will be made from READ only to the extent of Profit Participation and dividends or equivalent distributions, if any, on Preferred Securities. To the extent that a Distribution is applied as a repayment or redemption of Leverage, it shall not reduce READ.

(B) *Computation of SBA's share.* If outstanding Leverage is more than 200 percent of Leverageable Capital, SBA's share shall be in the ratio of Leverage to Leverageable Capital. In other words, if a Licensee has outstanding Leverage equal to 300 percent of Leverageable Capital, SBA's share shall be ⅓th of any Distribution under proposed § 107.245(c) and SBA would be entitled to $3 for every $1 distributed to other investors. If outstanding Leverage were 250 percent of Leverageable Capital, SBA would be entitled to $2.50 for every $1 distributed to other investors.

If outstanding Leverage is more than 100 percent of Leverageable Capital, but not more than 200 percent, SBA's share

of any such Distribution shall be equal to the aggregate shares of all other investors. For every $1 distributed to other investors, SBA shall receive $1.

If outstanding Leverage is not more than 100 percent of Leverageable Capital, SBA's share of any such Distribution shall be a percentage equal to the Profit Participation Rate.

(iv) Returns of Capital

After paying all Earned Prioritized Payments including earned Adjustments in the DA, and all allocated Profit Participation, and provided Licensee does not have a condition of Capital Impairment, a Licensee that has either outstanding Participating Securities or Earmarked Assets in its portfolio may return capital to its investors, and SBA, pursuant to proposed § 107.245(d). This proposed provision allows an exception to present § 107.802, which prohibits Licensees from distributing capital in excess of 2 percent per year without the prior written approval of SBA, subject to certain restrictions. However, unless SBA decides otherwise on a case-by-case basis, any Distribution shall be subject to the liquidity requirement in proposed § 107.241(f).

Generally, Distributions, shall be made to private investors and SBA in the ratio of Leverageable Capital to Leverage as of the date of the proposed Distribution. For example, if Leverageable Capital is equal to one third of outstanding Leverage, the private investors' share will be $1 for every $3 distributed to SBA.

If, however, a Licensee has a Capital Impairment Percentage greater than zero, the relative shares of SBA and the private investors must be computed differently. In such a case, Leverageable Capital for the purposes of proposed § 107.245(d) is deemed to be Leverageable Capital multiplied by a percentage equal to the difference between 100 percent and the Licensee's Capital Impairment Percentage. Assuming a Licensee had $10,000,000 of Leverageable Capital and a Capital Impairment Percentage of 42 percent, the Licensee's Leverageable Capital for purposes of this computation will be deemed to be $5,800,000 ([100% − 42%]×[$10,000,000]).

The proceeds of SBA's share of any capital Distribution shall be credited in the manner prescribed for returns on capital under proposed § 107.245(c), as set forth in proposed § 107.245(c)(5).

(v) In-Kind Distributions

Distributions of READ or of capital need not be in cash, but may be in the form of portfolio securities, subject to certain restrictions specified in proposed § 107.245(e). The securities to be distributed must themselves be both Publicly Traded and Marketable as defined in § 107.3 at the time of Distribution.

At the time a corporate Licensee declares an In-kind Distribution, or an Unincorporated Licensee actually makes one, the Licensee must inpute a gain or loss to the securities in question, determined as of the date of the declaration or distribution, as the case may be. Such imputed gain or loss shall be used to calculate Earmarked Profits pursuant to § 107.242(e) as if it were a realized gain or loss.

All Distributions of securities that constitute part of an In-kind Distribution must be made on a pro-rata basis to each investor, including SBA, as if the securities had previously been converted to cash and the proceeds constituted the entire Distribution. A Licensee may not distribute a disproportionate percentage of the stock of company A to investor X and a disproportionate share of the stock of company B to investor Y, even if the value of the shares of A and B is equal.

SBA's share of an In-kind Distribution shall be deposited with the Central Registration Agent (CRA) unless SBA and the Licensee agree that the Licensee will dispose of SBA's share of such securities. If the Licensee disposes of SBA's share of securities, it shall promptly remit the proceeds to SBA or to SBA's designated agent or Trustee.

(vi) No Recharacterization of Prior Distributions

SBA understands that some limited partnerships recharacterize prior returns on capital as returns of capital where the earnings of the partnership on a cumulative basis would produce a lower return to investors than was actually distributed. This recharacterization generally is performed on an annual basis and/or at the end of the life of the partnership.

This proposed rule does not allow any recharacterization of prior Distributions to SBA, its agents or Trustee, including Prioritized Payments and Profit Participation. As described above, Distributions of Prioritized Payments, Profit Participation, and returns on capital (including tax Distributions) under the Participating Securities are each based on a cumulative measure of earnings (such as cumulative Earmarked Profits or READ). Thus, losses in early years are automatically offset against gains in later years for purposes of these Distributions. However, once computed, the amount of Prioritized Payments or Profit Participation are not recomputed to reflect a Licensee's lower cumulative earnings resulting from losses in subsequent years. In other words, such Distributions are not later "recharacterized" as returns of capital as a result of such later losses.

Section 403 of Public Law 102–366 adds section 303(h)(3) to the Act which states that "[a]fter distributions have been made, the Administration's share of such distributions shall not be recomputed or reduced." SBA interprets this provision to forbid the recharacterization of amounts already distributed and SBA believes that this prohibition should extend to amounts that have been reserved for distribution to SBA. Even if recharacterization were permissible, SBA's conclusion is that it would be extremely difficult to calculate.

*f. Post-Redemption Obligations*

A Licensee that has issued Participating Securities may find itself under certain "obligations" that survive the redemption of the Participating Securities, as set forth in proposed § 107.246.

If, after redemption of outstanding Participating Securities, a Licensee has both Earmarked Assets in its portfolio and an unpaid outstanding balance in the Prioritized Payment Accumulation Account (AA), the Licensee remains "obligated" to determine, at the end of each fiscal quarter, whether any Prioritized Payments have become Earned Prioritized Payments and to distribute such amounts to SBA in accordance with proposed § 107.243. See proposed § 107.246(a). After the last Earmarked Asset has been disposed of, and the resulting Earned Prioritized Payments paid to SBA, the Licensee is under no further obligation to pay the remaining balance, if any, in the AA. See proposed § 107.246(b).

SBA proposes, in § 107.246(c), to adopt a rule that would override the language of proposed § 107.245(e) in cases involving In-kind Distributions to be made after redemption of all Participating Securities if there are also unpaid Prioritized Payments. No In-kind Distributions of Earmarked Assets may be made unless SBA is paid a sum equal to the full amount of the unpaid Prioritized Payments or the full amount of Unrealized Appreciation on the Earmarked Assets in question, whichever is less. Subject to the foregoing rule, a Licensee that has fully redeemed its Participating Securities may distribute Earmarked Assets that are not Publicly Traded and Marketable if it has SBA's prior written consent to such Distribution and to the valuation assigned by the Licensee.

*g. Special Rules for Companies Licensed on or Before March 31, 1993*

(i) General

A company licensed on or before March 31, 1993 that thereafter applies for SBA's guaranty of its Participating Securities must meet certain procedural requirements not applicable to other Licensees, and such a company may have exemptions or options not available to companies licensed after that date. See proposed § 107.247.

(ii) Special Requirements

All companies licensed on or before March 31, 1993 must, when application is made for SBA's guaranty of a first issuance of Participating Securities, submit: (a) A valuation report for each portfolio asset as of the date of the financial statements that accompany the application and as of the end of each of the preceding three years, and (b) a copy of each portfolio concern's last annual report and/or fiscal year-end financial statements, and most recent interim financial statements. See proposed § 107.247(d). This information is required in addition to the financial information that all Licensees, including companies licensed after March 31, 1993, are required to submit in connection with an application for SBA's guaranty of their Participating Securities.

If the Licensee has negative Undistributed Realized Earnings and/or a net Unrealized Loss of Securities Held, SBA may make its approval of the Licensee's request for a guaranty of Participating Securities contingent upon a quasi-reorganization in accordance with generally accepted accounting principles. See proposed § 107.247(d)(2).

If the financial statements of the Licensee submitted with the application are interim financial statements, the Licensee shall have a limited scope audit performed by its SBA-approved independent accountants. That is, the accountants shall use whatever auditing procedures are necessary to enable them to express an opinion on the Licensee's Statement of Financial Position and the accompanying Schedule of Investments.

(iii) Refinancing of Debentures

Subject to two conditions set forth hereafter, a company licensed on or before March 31, 1993 may use part or all of the proceeds of Participating Securities to repay or prepay Debentures outstanding on that date. First, the Licensee must demonstrate to SBA that it has outstanding Equity Capital Investments, valued at cost, in an amount equal to the amount of Participating Securities that would be used to refinance the outstanding Debentures that are to be repaid or prepaid. Second, the Licensee may not elect to exclude any of its pre-existing portfolio from the category of Earmarked Assets.

A Licensee that pays or prepays an outstanding Debenture after it has issued Participating Securities is presumed to have used the proceeds of the Participating Securities for this purpose unless it can demonstrate the availability of other funds to pay the principal amount of the Debenture in question. See proposed § 107.247(a).

(iv) Exclusion of Pre-Existing Portfolio Assets

Unless a Licensee intends to use part or all of the proceeds from the issuance of Participating Securities to repay or prepay a Debenture outstanding on March 31, 1993, it may elect, when its first application for SBA's guaranty is submitted, to exclude all, but not less than all, portfolio assets outstanding on March 31, 1993 from the category of Earmarked Assets; but SBA is not obligated to extend its guaranty if it concludes that exclusion of the Licensee's March 31, 1993 portfolio would significantly decrease SBA's chances of obtaining a satisfactory return on its guaranty.

**5. Financing by Use of SBA Guaranteed Trust Certificates**

Proposed § 107.250 is a recodification of existing § 107.201(c), revised to include the new Participating Securities.

**6. Conditions Affecting Good Standing of Leveraged Licensees**

*a. Introduction*

Under the Act and the present regulations, SBA is authorized, among other things, to demand [12] immediate repayment or redemption of all outstanding Leverage by a Leveraged Licensee in the event of regulatory violations by such Licensee. In practice, SBA has always distinguished between serious regulatory violations and defaults and comparatively minor ones. One purpose of the rules proposed in §§ 107.260 through 107.263 is to codify and publicize the standards that SBA has generally applied in determining what action was appropriate in a particular case.

The proposed rules also distinguish between remedies available for violations by Licensees issuing Debentures and Preferred Securities and violations by those issuing Participating Securities. In consideration of both the special purpose the Participating Securities are intended to serve (i.e., a financing tool for true equity capital investors) and their status as equity-type securities, SBA is proposing to treat violations by issuers of such securities separately and differently from violations by issuers of other forms of Leverage. Defaults under Debentures and Preferred Securities are addressed in proposed § 107.261; similar conditions under Participating Securities are addressed in proposed § 107.262.

In order to maintain the separation between the two proposed sections, no cross-default between Debentures and Preferred Securities, on the one hand, and Participating Securities, on the other, has been written into the regulatory text, and SBA does not intend to administer the program as if it had been. Thus, for example, if a Licensee has both Debentures and Participating Securities, a default under the former will not automatically trigger a "default" under the latter, and vice versa. Furthermore, even if SBA could apply for the institution of a receivership due to the occurrence of a default under a Debenture as provided for in these proposed regulations, SBA might be more reluctant to do so if no "default" existed under the Licensee's Participating Securities.

*b. General Conditions and Remedies*

Some of the material in proposed §§ 107.260 through 107.263 is merely a recodification of present § 107.203. However, these proposed sections also contain some concepts that have not previously been used in the SBIC program.

For example, a Licensee issuing Leverage after a final rule is promulgated would be required to amend its articles of incorporation or partnership agreement to indicate that the Licensee has consented, in advance, to SBA's right to require the removal of officers, directors, or general partners and to the appointment of SBA or its designee as receiver of the Licensee for the purpose of continuing to operate the company. Such remedies would only take effect upon the occurrence of certain events of default under

[12] The Investment Division has no inherent power to compel repayment or redemption of outstanding Leverage; it can only decide whether judicial or administrative proceedings, as appropriate, should be instituted against a Licensee that it believes to have violated the Act or the regulations. In the case of a Leveraged Licensee, SBA must file suit in a United States District Court for an adjudication of violations and a money judgment; if the Licensee is not Leveraged, SBA must institute an administrative proceeding before its Office of Hearings and Appeals. In no case may SBA proceed unilaterally to the seizure of the Licensee's assets.

Debentures or Preferred Securities (§ 107.261(f)) or conditions under Participating Securities (§ 107.262 (b) and (c)).

The practical effect of the consent to a receivership would be that SBA would be entitled to the receivership as a matter of right. In effect, Licensee would be deemed to have waived any and all defenses to the receivership application. Except upon the occurrence of an automatic event of default under a Debenture or Preferred Security (see § 107.261(b)), Licensee's consent would not include consent to a receivership for the purpose of liquidating the company.

SBA has determined that the consent of all Leveraged Licensees to an operating receivership is warranted because of the magnitude of, and the importance of protecting, the government's investment in such companies and because the government's position has a fairly high degree of risk associated with it. At this time, SBA has close to $1 billion at risk in Debenture guarantees and Preferred Stock holdings. Another $180 million may be placed at risk by the end of fiscal year 1993. SBA's position is completely unsecured and, for the most part, subordinate.

Having the Licensee's consent to a receivership would mean that after SBA had followed its usual procedure of attempting to work out default situations directly with the Licensee before resorting to formal remedial action, SBA would be able to move quickly to obtain the protection of a receivership. This is critical because SBA's investment in a Licensee is generally very vulnerable by the time SBA applies for a receivership. In order to continue to afford Licensees the same work-out opportunities as have been made available in the past, SBA must be able to act quickly to protect its investment when it determines it is necessary to do so.

The consent provisions would not apply to any Licensee which only has Leverage issued prior to publication of a final rule. Prospectively, however, the consent would be incorporated in all newly-issued Debentures, Preferred Securities, and Participating Securities. As a result, for Licensees with Leverage issued both before and after SBA's promulgation of a final rule, the Licensee would be deemed to have consented to a receivership upon the occurrence of a default under Leverage issued after the final rule, but not if the default were only under Leverage issued before the final rule.

While a consent to receivership has never been required of Licensees before, it is not without precedent in other federal agency practice and has been upheld by the courts as valid and legally enforceable. See, e.g. *U.S.* v. *Mountain Village Company*, 424 F. Supp 822 (1976).

Also new in the remedies sections of this proposed rule are the type of remedies available to SBA for violations under the Participating Securities. SBA intends that these remedies be consistent with the "patient capital" nature of the security. Accordingly, the remedies under proposed § 107.262 would be different from the current approach of accelerating Leverage either automatically or upon notice. This will be discussed further below. Additionally, the Participating Security would carry certain default-like "conditions" unique to that security, such as Liquidity Impairment and excessive Management Expenses. See proposed § 107.262(d)(3) and (5).

*c. Licensees With Outstanding Debentures and/or Preferred Securities; Events of Default*

Proposed § 107.261 would apply to all Licensees issuing Debentures and/or Preferred Securities after the promulgation of a final rule. As is the case under present § 107.203, proposed § 107.261 provides that all such Licensees would be deemed to have consented to the remedies provided for therein as if such remedies were fully set forth in the Debentures or Preferred Securities. Such remedies include, but are not limited to, acceleration or redemption of the Debentures and/or Preferred Securities and the establishment of a receivership with SBA or its designee as receiver.

This proposed regulation sets forth three categories of defaults or violations that may or will result in the acceleration of a Licensee's outstanding Leverage and the appointment of SBA as receiver of the Licensee. The first such category, set forth in proposed § 107.261(b), consists of three events that automatically accelerate all outstanding Leverage without notice or demand to the Licensee, and allow SBA to apply for receivership of the Licensee without Licensee's objection.

The events in question are insolvency, a voluntary assignment for the benefit of creditors, and the filing of a voluntary or involuntary petition for relief under the Bankruptcy Code. A Licensee is insolvent under this proposed regulation if its liabilities exceed its assets or if it is unable to pay its debts as they come due, even if its assets exceed its liabilities at the time.

Under the second category of defaults, upon written notice, SBA may demand immediate repayment or redemption of all outstanding Debentures and/or Preferred Securities, or take any other action permitted under the Act. See proposed § 107.261(c). Ten defaults are included in this category, almost all of which include an element of either willfulness or actual fraud. No opportunity to cure the default would be afforded the Licensee. Moreover, as discussed earlier, for seven of the defaults in this category the Licensee would already have consented to SBA's right to require the Licensee to replace officers, directors, or general partners with persons approved by SBA, and to SBA's appointment as receiver for the purpose of continuing Licensee's operations. See proposed § 107.261(f). It should be noted that the written notice contemplated under proposed § 107.261(c) is notification by SBA that the Licensee's Leverage must be immediately repaid or redeemed, not a notice that SBA will make such a demand in the future.

With respect to the third category of eight violations or defaults, SBA proposes to obligate itself to give a Licensee the opportunity to cure its violations. See proposed § 107.261(d). If the Licensee fails to cure to SBA's satisfaction, SBA may accelerate and/or, in the case of two of the violations, pursue the other remedies discussed in the previous paragraph. See proposed § 107.261(f).

Proposed § 107.261(e) would authorize SBA to impose a limited sanction on Licensees that repeatedly fail to comply with one or more "non-substantive" provisions of the Act or the regulations. SBA proposes to prohibit such Licensees from receiving any additional Leverage. The Licensee may also be required to take actions necessary to bring itself into full compliance. If, under such circumstances, a Licensee were to fail to take the steps necessary to accomplish the remedial actions required by SBA, such Licensee's Debentures and/or Preferred Securities could be accelerated, or other remedies, including a receivership, could be instituted. See proposed § 107.261(c)(8).

SBA would like to provide Licensees with some guidance as to the distinction between "substantive" and "non-substantive" provisions of the Act and the regulations promulgated thereunder. SBA considers each of the provisions of the Act and the regulations to have an important purpose. Even a regulation as seemingly unimportant as the one that requires all Licensees to maintain a listed telephone number and regular business hours serves a significant purpose: Licensees should be accessible to their communities, not just their

friends. However, an unlisted telephone number or irregular business hours, in the absence of other violations, should not be equated with, for example, unacceptably high levels of capital impairment or financings that are tainted by conflicts of interest. Accordingly, phone listing and business hour requirements would be characterized as "non-substantive", as would other housekeeping-type requirements. All other requirements under the Act and the regulations, specifically including the filing of required financial and disclosure forms with SBA, would be considered "substantive".

*d. Licensees With Outstanding Participating Securities; Conditions Affecting Licensee's Good Standing*

Proposed § 107.262 would apply to any Licensee that issues Participating Securities and would continue to apply until the Licensee repaid or redeemed its Participating Securities and sold or otherwise liquidated its Earmarked Assets. It sets forth four categories of events that would prejudicially affect a Licensee's good standing. Proposed § 107.262 speaks of events or conditions that affect the Licensee's good standing rather than events of default because "default" implies the existence of a fixed and unconditional obligation. The remedies available to SBA under proposed § 107.262, and the Licensee's consent thereto, would be required to be set forth in the articles of incorporation or partnership agreement of the Licensee prior to its issuance of Participating Securities.

The first category of events set forth in proposed § 107.262(b) consists of six events, the occurrence of any of which would permit SBA to take certain action. If the offending Licensee were a corporation, SBA could, with notice to the Licensee, require the Licensee to replace, with individuals approved by SBA, one or more of its officers and/or a sufficient number of its directors to constitute a majority of the board. If the offending Licensee were a partnership, SBA could, with notice to the Licensee, require the removal of the responsible party and/or require replacement of the general partner by a new general partner selected by the Licensee but approved by SBA. Alternatively or in addition to the remedies just described, SBA could apply for the institution of an operating receivership, with SBA or its designee as receiver. As in the case of Debenture and Preferred Securities Leverage, Licensees with Participating Securities would be deemed to have consented to such receivership.

Proposed § 107.262(c) lists three events with remedies identical to those provided under § 107.262(b), as discussed above. However, SBA would have the right to avail itself of such remedies only if the Licensee failed to remove the person(s) identified by SBA as responsible for the violation and/or to cure the violation within a time period determined by SBA. One of the three events in this category is the willful or repeated noncompliance by the Licensee with the substantive provisions of the Act or regulations. Repeated noncompliance should be understood to mean an additional violation of a statutory or regulatory provision after the Licensee has been notified of the initial violation.

Proposed § 107.262(d) lists eleven events, the occurrence of any of which would allow SBA, on written notice to the Licensee, to take certain action aimed at controlling the flow of money in and out of the Licensee until such time as Licensee were to cure the event(s) to SBA's satisfaction. SBA could prohibit Distributions to parties other than SBA, its agent or Trustee. SBA could also prohibit the Licensee from investing in any small business which it is not currently financing unless it were legally bound to make such investment. SBA could also require that any unfunded commitments to invest in the Licensee be funded as soon as possible. If the Licensee were to fail to comply with the restrictions imposed by SBA (as described above), SBA could apply for the institution of an operating receivership with SBA or its designee as receiver, again without any objection from the Licensee.

Proposed § 107.262(e), regarding repeated non-substantive violations, corresponds to proposed § 107.261(e), previously discussed. However, if a Licensee were to fail to take the steps necessary to accomplish the remedial actions required by SBA under proposed § 107.262(e), SBA could take the actions described in the preceding paragraph to control the flow of money in and out of the Licensee.

*e. Non-Waiver*

Proposed § 107.263 is a recodification and amplification of the non-waiver provision presently found in § 107.203(b)(5). As discussed above, it is SBA's policy to attempt to resolve all problems with a Licensee before taking formal remedial action. Proposed § 107.263 clarifies that if SBA does nor resort to the full measure of the remedies available under §§ 107.261 and 107.262, or does so only after a delay, SBA will not be deemed to have waived its right to pursue such remedies in connection with either the original default or any subsequent default.

**Compliance With Executive Orders 12291 and 12612, 12778, and With the Regulatory Flexibility and Paperwork Reduction Acts**

*Executive Order 12291 and Regulatory Flexibility Act*

This proposed rule will, if adopted as proposed, constitute a major rule for the purposes of Executive Order 12291.

This action is under consideration because section 415 of Public Law 102–366 requires SBA to promulgate regulations implementing certain provisions thereof, among others, that, speaking very broadly, authorize SBA to guarantee a new class of securities ("participating securities") that requires the issuer Licensee to make payments out of "retained earnings available for distribution" in exchange for a share in Licensee's "income", and "profits" from a specific class of asset. The intent of the legislation is to attract capital into the program from a variety of sources, including but not limited to pension funds, other institutional investors, and State and local governments in order to meet the needs of small business for equity capital in particular. It is anticipated that the combination of new capital invested in the SBIC industry, together with additional capital obtained through the issuance of SBA-guaranteed participating securities, will substantially exceed $100 million per year, and is likely to have a substantial impact upon a significant number of small businesses. It is expected that the availability of such capital ultimately will result in a substantial number of new jobs and associated increases in payroll, corporate, and capital gains tax revenues.

1. The legal basis for this proposed regulation is section 308(c) of the Small Business Investment Act, 5 U.S.C. 687(c).

2. The potential benefits of this proposed regulation have been set forth in the discussion of this proposal above, under Supplementary Information.

3. The potential cost of this regulation can not be quantified or estimated.

4. There are no Federal rules which duplicate, overlap, or conflict with these rules.

5. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost.

*Executive Order 12612*

SBA certifies that this proposed regulation, if promulgated in final, will not have federalism implications warranting the preparation of a

**Federalism Assessment in accordance with Executive Order 12612.**

*Executive Order 12278*

**For the purposes of Executive Order 12278, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.**

*Paperwork Reduction Act*

**This proposed regulation, if adopted as final, will impose additional record-keeping and reporting requirements upon those Licensees that issue participating securities with SBA's guaranty, but there is no requirement that any Licensee issue participating securities. The proposed additional recordkeeping and reporting requirements are considered indispensable for the calculation of SBA's shares of income and profits, respectively, in accordance with the statutory mandate. These additional requirements have been submitted to OMB for review.**

**List of Subjects in 13 CFR Part 107**

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

**For the reasons set forth above, part 107 of Title 13, Code of Federal Regulations is proposed to be amended as follows:**

**PART 107—SMALL BUSINESS INVESTMENT COMPANIES**

**1. The authority citation for part 107 is revised to read as follows:**

**Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*; 15 U.S.C. 687(c); 15 U.S.C. 683; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 102-366.**

**2. Section 107.1 is proposed to be amended by adding at the end the following two sentences, to read as follows:**

**§ 107.1 Scope of part 107.**

*** * * Provisions of this part which are not mandated by the Act shall not supersede existing State law. A party claiming that a conflict exists shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.**

**3. Section 107.3 is proposed to be amended by revising the definitions for *Leverage*, *SBA* and *Section 301(d) Licensee* and by adding additional definitions, in alphabetical order, to read as follows:**

**§ 107.3 Definition of terms.[2]**

***Accumulated Prioritized Payments* means Prioritized Payments which are not payable as of any given date because the Licensee has insufficient cumulative Earmarked Profits. It is the aggregate of cumulative Prioritized Payments less Earned Prioritized Payments.**

* * * * *

***Affiliate or Affiliates* has the meaning set forth in § 121.401.**

* * * * *

***Central Registration Agent* or *CRA* means one or more agents appointed by SBA for the purpose of issuing TCs and performing the functions enumerated in § 107.250(b) and performing similar functions for Debentures and Participating Securities funded outside the pooling process.**

* * * * *

***Combined Capital* means the sum of Regulatory Capital and outstanding Leverage.**

* * * * *

***Debentures* means debt obligations issued by Licensees pursuant to section 303(a) of the Act and held or guaranteed by SBA.**

* * * * *

***Distributable Earmarked Profits* shall have the meaning set forth in § 107.243(c)(2) and shall be the source for allocation of Prioritized Payments pursuant to section 303(g)(2) of the Act.**

***Distribution* means any transfer of cash or non-cash assets to SBA, its agent or Trustee, or to partners in an Unincorporated Licensee, or to shareholders in a Corporate Licensee. Distributions shall include interest on Debentures, returns on Preferred Securities, Prioritized Payments and adjustments thereto pursuant to § 107.243(d), Profit Participation, returns on capital to private investors, repayment of Leverage and returns of Private Capital. Capitalization of Retained Earnings Available for Distribution shall constitute a Distribution.**

***Earmarked Assets* shall have the meaning set forth in § 107.242(b) (see also § 107.247).**

***Earmarked Profits (Losses)* mean the aggregate amount of Earmarked Net Investment Income and Earmarked Realized Gain (Loss) on Sale of Securities which becomes the basis for Prioritized Payments and Profit Participation (see § 107.242).**

***Earned Prioritized Payments* means Prioritized Payments which have been distributed, or are distributable or deferred in accordance with § 107.243(c).**

***Equity Capital Investments* means investments in a Small Concern in the form of common or preferred stock, limited partnership interests, options, warrants, or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Equity Capital Investments shall not require amortization. Equity Capital Investments may be guaranteed; however, neither Equity Capital Investments nor such guarantee shall be collateralized or otherwise secured.**

* * * * *

***Guaranty Agreement* means the contract entered into by SBA which is a guarantee of the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures or the redemption price of and Prioritized Payments on Participating Securities and SBA's rights in connection with such guarantee.**

* * * * *

***Leverage* means the aggregate outstanding amount of the Original Issue Price of a Licensee's Debentures, Participating Securities, and Preferred Securities.**

* * * * *

***Loans and Investments* means Portfolio Securities, Assets Acquired in Liquidation of Portfolio Securities, Operating Concerns Acquired, and Notes and Other Securities Received, as set forth in Statement of Financial Position (SBA Form 468).**

***Management Expenses* means, for Licensees which have Participating Securities or have Earmarked Assets in their portfolios, those expenses that include salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but shall not include the cost of services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally expected of a venture capital company, nor shall such term include the cost of services provided by any Associate of the Licensee which are not part of the normal process of making and monitoring venture capital financings.**

* * * * *

***Original Issue Price* means the price paid by the purchaser for securities at the time of issuance.**

***Participating Securities* means preferred stock, preferred limited partnership interests, or similar**

[2] Terms defined in this section are capitalized hereafter.

instruments, including debentures having interest payable only to the extent of earnings, all of which are subject to the terms set forth in §§ 107.240 through 107.247 and section 303(g) of the Act.

* * * * *

*Pool* means an aggregation of SBA guaranteed Debentures or SBA guaranteed Participating Securities approved by SBA.

* * * * *

*Preferred Securities* means nonvoting preferred stock issued to SBA by a for-profit section 301(d) Corporate Licensee, or securities having similar characteristics issued by a section 301(d) Licensee organized as a nonprofit corporation, or nonvoting preferred limited partnership interests issued by a section 301(d) Unincorporated Licensee. (See also § 107.230.)

*Prioritized Payments* means amounts which are preferred and cumulative and are distributable to the holder of Participating Securities provided the issuing Licensee has sufficient cumulative Earmarked Profits, and may be represented by dividends on preferred stock or interest on qualifying Debentures issued by a corporate Licensee, or priority returns on preferred limited partnership interests issued by limited partnership Licensees. For a given fiscal period, Prioritized Payments shall be the amount resulting from multiplying the Redemption Price of Participating Securities by the Trust Certificate Rate, weighted to reflect the number of days such securities were outstanding.

* * * * *

*Profit Participation* means a specified percentage of a Licensee's Earmarked Profits which is computed in accordance with § 107.244 and to which SBA is entitled, by agreement, in consideration for its guarantee of such Licensee's Participating Securities.

*Publicly Traded and Marketable* means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 of the Securities Act of 1933, as amended, by the holder thereof or, in the case of an in-kind distribution by the distributee thereof, and are of a class which is (1) traded on a regulated stock exchange, or (2) is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or (3) that have, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended, and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

*Qualified Investments* shall have the meaning set forth in § 107.230(c)(4)(iv).

* * * * *

*Realized Gain (Loss) on Securities* means the amount by which proceeds from the disposition of Loans and Investments are greater than (less than) the cost or other basis approved by SBA. Disposition of Loans and Investments shall include sale, exchange, write-off, recoveries from prior disposition, or any other such transaction resulting in recognition of a gain or loss.

*Redemption Price* means the amount required to be paid by the issuer, or successor to the issuer, of Preferred or Participating Securities to repurchase such securities from the holder. The Redemption Price shall be the Original Issue Price less any prepayments or prior redemptions.

*Retained Earnings Available for Distribution* means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that may be distributed to investors or transferred to Private Capital.

*SBA* means the Small Business Administration, 409 Third Street SW., Washington, DC 20416.

*Section 301(c) Licensee* means an SBIC organized as a for-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(c) of the Act.

*Section 301(d) Licensee* means an SBIC organized as a for-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(d) of the Act. Such Licensees provided assistance only to Small Concerns that are owned by persons who are socially or economically disadvantaged.

* * * * *

*Trust* means the legal entity created for the purpose of holding guaranteed Debentures or Participating Securities and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

*Trust Certificate Rate* means a fixed rate determined at the time Participating Securities are issued by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the maturities of the Trust Certificates being guaranteed by SBA, adjusted to the nearest one-eighth of one percent.

*Trust Certificates (TCs)* means certificates issued by SBA, its agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures or Participating Securities.

*Trustee* means the trustee or trustees of a Trust.

*Undistributed Realized Earnings* means the cumulative sum of Net Investment Income plus Realized Gain (Loss) on Sale of Securities, less the cumulative sum of Distributions of Earned Prioritized Payments and other Distributions made from Retained Earnings Available for Distribution.

* * * * *

*Unrealized Appreciation* means the amount by which a Licensee's valuation of Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with Licensee's valuation policies, exceeds the cost basis thereof.

*Unrealized Depreciation* means the amount by which a Licensee's valuation of Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with Licensee's valuation policies, is below the cost basis thereof.

*Unrealized Gain (Loss) on Securities Held* means the amount by which a Licensee's aggregate valuation of its Loans and Investments is above (below) their aggregate cost basis, and is computed by summing the Unrealized Appreciation and Unrealized Depreciation on all Loans and Investments.

*Venture Capital Financing* shall have the meaning set forth in § 107.230(c)(3).

**§§ 107.201 through 107.205 [Removed]**

4. Part 107, title 13, of the Code of Federal Regulations is proposed to be amended by removing the undesignated center heading "Borrowing by Licensee" and §§ 107.201 through 107.205 and by adding after § 107.105 the undesignated center heading "Leverage" and §§ 107.210 through 107.263 to read as follows:

**Leverage**

**§ 107.210 Leverage—General.**

(a) *General.* SBA may purchase or guarantee three types of Licensee securities:

(1) Debentures;

(2) Preferred Securities; and

(3) Participating Securities.

All Licensees issuing Preferred Securities after August 16, 1982, or Debentures or Participating Securities shall be deemed to have agreed to the terms and conditions set forth in §§ 107.260 through 107.263 as in effect

at the time of such issuance and as if fully set forth in such Preferred Securities, Debentures or Participating Securities.

(b) *Application procedures.* All Leverage applications shall be filed with SBA's Investment Division located at: 409 Third Street SW., Washington, DC 20416.

(1) A section 301(c) Licensee may apply for Debentures pursuant to section 303(b) of the Act on SBA Form 1022, and for Participating Securities pursuant to section 303(g) of the Act on SBA Form 1022B, in accordance with accompanying instructions.

(2) A section 301(d) Licensee may apply for Debentures pursuant to section 303(b) of the Act on SBA Form 1022, for Preferred Securities pursuant to section 303(c) of the Act on SBA Form 1022A, and for Participating Securities pursuant to section 303(g) of the Act on SBA Form 1022B, in accordance with accompanying instructions.

(c) *Basic requirements.* Leverage applicant shall demonstrate to SBA's satisfaction that they meet the following requirements:

(1) Eligibility for the amount of Leverage requested in accordance with § 107.220 for section 301(c) Licensees and § 107.230 for section 301(d) Licensees.

(2) A need for Leverage as evidenced by Licensee's investment plan and funds available for investment: *Provided, however,* That for applicants for Participating Securities that have at least 50% of their aggregate Leverageable Capital and outstanding Leverage invested in Equity Capital Investments, any temporary excess liquidity resulting from the existence of unfunded commitments, or from draw-downs of unfunded commitments and Leverage, shall be disregarded by SBA in determining Licensee's need for Leverage.

(3) Adequacy of Private Capital and an ability to meet its obligations, both of which shall be demonstrated through use of a business plan.

(4) Applicants for Participating Securities shall also meet the requirements of § 107.241 in addition to all other Leverage requirements.

(5) Compliance with the regulations as set forth in this part.

(d) *Fees and charges.* (1) Licensees offering Debentures or Participating Securities for sale to, or for guaranty by, SBA are required to pay a one-time fee equal to 2% of the face amount of the Participating Securities or of the Debentures.

(2) The fee on Debentures or Participating Securities which are issued for the purpose of refunding maturing obligations shall be paid before such Debentures or Participating Securities are purchased or guaranteed. If the Licensee's Debentures or Participating Securities evidence a new indebtedness, as distinguished from the refinancing on a pre-existing indebtedness, the fee shall be deducted from the proceeds remitted to the Licensee.

(3) No portion of the fee shall be refundable upon prepayment of any Debenture or early redemption of any Participating Security by the Licensee.

(4) SBA may establish a fee structure for the performance of services by the CRA; however, SBA shall not collect any fee for the guarantee of TCs.

(e) *Employment of SBA officials.* Without the prior written consent of SBA, for a period of two years after the date of the most recent Leverage issued by Licensee (or the receipt of any SBA Assistance as defined in part 105 of this chapter), Licensee shall not employ, or tender any offer of employment to, or retain for professional services, any person who on or within one year prior to such date:

(1) Served as an officer, attorney, agent, or employee of SBA; and

(2) As such, occupied a position or engaged in activities which SBA shall have determined involved discretion with respect to the granting of Assistance under the Act.

(f) *SBA guarantee.* (1) SBA may in its discretion agree to guaranty a Licensee's Debentures or Participating Securities unconditionally, irrespective of the validity, regularity or enforceability of such Debentures or Participating Securities or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor and, pursuant to its guarantee, make timely payments of principal and interest on such Debentures or the Redemption Price of and Prioritized Payments on such Participating Securities, irrespective of any default by the issuing Licensee or acceleration of the maturity of such Debentures by SBA, or the inability of the Licensee to pay the Redemption Price of or to make the Prioritized Payments on such Participating Securities, or any early redemption of the Participating Securities by SBA pursuant to § 107.245.

(2) SBA in its discretion may arrange for public or private financing under its guaranty authority. Such financing arranged by SBA may be accomplished by the sale of individual Debentures or Participating Securities, aggregations of Debentures or Participating Securities, or Pools or Trusts of Debentures or Participating Securities issued or sold pursuant to § 107.250. Persons interested in providing funds to Licensees with SBA's guaranty shall notify SBA by letter, certifying any direct or indirect beneficial interest, or actual or potential voting rights, in any Licensee, or in any person directly or indirectly controlling, controlled by or under common control with, any Licensee. These reporting requirements are approved under OMB No. 3245–0081.

(3) No SBA guaranty shall be extended to any entity:

(i) Having a direct or indirect beneficial interest of ten or more percent in the Regulatory Capital of the Licensee whose securities are to be guaranteed, or in any Person directly or indirectly controlling, controlled by, or under Common Control with, such Licensee; or

(ii) Having such interest in another Licensee which has received or is about to receive, pursuant to any understanding, arrangement, cross-dealing, reciprocal or circular arrangement, and direct or indirect financing (or commitment for financing) from another lender with SBA's guarantee.

(iii) SBA may void any guarantee obtained in violation of this paragraph (f)(3), but the foregoing shall not apply to lenders whose borrowers are selected or approved by SBA or its agents.

(4) In the event SBA pays a claim under its guarantee, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no Federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

(5) With respect to Debentures guaranteed after July 1, 1991, SBA's claim against any Licensee shall, as of the effective date of SBA's guaranty, be subordinated, in the event of the insolvency of such Licensee, only in favor of existing and future indebtedness outstanding to lenders, not including Associates of a Licensee, and only to the extent that the aggregate amount of such indebtedness does not exceed the lesser of two hundred percent of such Licensee's Regulatory Capital, or ten million dollars; *Provided, however,*

(i) That in its sole discretion SBA may agree in advance and in writing to a subordination in favor of an Associate or in favor of one or more loans from Lending Institutions or other lenders that would cause the aggregate amount of outstanding senior debt to exceed the foregoing limitation;

(ii) That nothing contained herein shall limit the authority of SBA to refuse to subordinate its claims against any Licensee if SBA determines at the time of issuing its guarantee, that the exercise of reasonable investment prudence and the financial soundness of the Licensee warrant such a refusal; and

(iii) That nothing contained herein shall affect the seniority of any indebtedness created prior to July 11, 1991, over the claims of SBA derived from any debenture(s) and/or guarantee(s) outstanding as of that date.

(6) After September 30, 1993, no Licensee may incur additional debt (other than Leverage) or refinance existing indebtedness without the prior written approval of SBA. This restriction applies to secured and unsecured debt, guarantees and other contingent obligations voluntarily assumed, and the establishment of lines of credit. Unless otherwise agreed to by SBA in writing, Licensees with existing lines of credit shall have such lines approved before increasing the amounts outstanding thereunder. SBA's approval under this paragraph may be conditioned upon and restrictions and limitations as it may determine.

(g) *SBA sale of Leverage securities.* Upon such conditions and for such consideration as it deems reasonable, SBA may sell, assign, transfer, or otherwise dispose of any Preferred Security, Debenture, Participating Security, or other security held by or on behalf of SBA in connection with Leverage. In such event and upon notice thereof by SBA, Licensee will make all payments of principal, dividends, interest, Prioritized Payments, and redemptions as shall be directed by SBA. Licensee shall be liable for all damage or loss which SBA may sustain by reason of such disposal, limited, however, to the extent of Licensee's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

(h) *Maintenance of unimpaired capital.* Each Licensee with Leverage shall maintain its Regulatory Capital in such amounts so as to avoid a condition of Capital Impairment. A condition of Capital Impairment as defined in this paragraph shall be a condition affecting Licensee's good standing pursuant to §§ 107.261(d) and 107.262(d).

(1) *Definition of Capital Impairment.* A condition of Capital Impairment shall exist when a Licensee's Capital Impairment Percentage exceeds the maximum permissible level set forth in the appropriate table in paragraph (h)(6) of this section.

(2) *Preliminary impairment test.* If both Undistributed Realized Earnings and Unrealized Gain (Loss) on Securities Held are zero or greater, no Capital Impairment exists and no further procedures shall be performed pursuant to this paragraph (h). Otherwise, a Licensee shall compute its "Adjusted Unrealized Gain (Loss) on Securities Held" in accordance with paragraph (h)(3) of this section.

(3) *Adjusted unrealized gain (loss) on securities held.* (i) When a Licensee has Unrealized Depreciation in excess of Unrealized Appreciation on securities held, such excess depreciation shall be the Licensee's Adjusted Unrealized Gain (Loss) on Securities Held.

(ii) When a Licensee has Unrealized Appreciation in excess of Unrealized Depreciation on securities held, such excess appreciation shall be the Licensee's Adjusted Unrealized Gain (Loss) on Securities Held, to the extent that it represents 80% of the aggregate Unrealized Appreciation on Publicly Traded and Marketable securities and to the extent that it represents 50% of the aggregate Unrealized Appreciation on securities which meet the following criteria:

(A) The Small Concern which issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that would conclusively support the Unrealized Appreciation;

(B) Such financing represents a substantial investment in the form of an arm's length transaction by a sophisticated new investor in the issuer's securities; and

(C) Such financing occurred within 24 months of the date of the calculation of the Impairment Percentage or, if the financing did not occur within such 24 month period, the Small Concern's pre-tax cash flow from operations for the most recent fiscal year was at least 10 percent of the Small Concern's average contributed capital for such fiscal year.

(4) *Computing the Capital Impairment Percentage.* Licensee shall add Adjusted Unrealized Gain (Loss) on Securities Held to Undistributed Realized Earnings. If the result is zero or greater, no Capital Impairment exists and no further computations shall be performed pursuant to this paragraph (h). If the result is less than zero, Licensee shall (i) drop the negative sign, (ii) divide by Regulatory Capital (excluding *Treasury Stock*), and (iii) multiply by 100. The result shall be Licensee's Capital Impairment Percentage.

(5) *Determination of maximum permissible Capital Impairment Percentage.* Utilizing the appropriate table in paragraph (h)(6) of this section, Licensee shall determine its maximum permissible Capital Impairment Percentage at the intersection of its Leverage Percentage and its Equity Investment Percentage. As used in the tables in paragraph (h)(6) of this section, "Equity Investments" includes those Debt Securities which, after consideration of all of the terms, conditions and documentation of such financing, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of 50% of the anticipated return on such financing represented by the potential for equity appreciation.

(6) *Capital Impairment condition.* If Licensee's Capital Impairment Percentage is greater than its maximum permissible Capital Impairment Percentage, Licensee has a condition of Capital Impairment; *Provided, however,* That until the close of Licensee's fiscal year next succeeding [DATE THAT IS ONE YEAR AFTER THE PUBLICATION OF THE FINAL RULE], Licensee shall not have a condition of Capital Impairment if its Capital Impairment Percentage is, for a Section 301(c) Licensee, less than or equal to 50% or, for a Section 301(d) Licensee, less than or equal to 75%.

Note: The symbols used below have the following meanings: > means "greater than"; ≥ means "greater than or equal to"; < means "less than"; and ≯ means "not greater than".)

MAXIMUM PERMISSIBLE CAPITAL IMPAIRMENT PERCENTAGES FOR SECTION 301(C) LICENSEES

| Leverage percentage | Percentage of portfolio in equity investments (at cost) | | |
|---|---|---|---|
| | ≥ 67% equity | ≥ 40% equity | < 40% equity |
| > 200 | 45 | 35 | 30 |
| ≯ 200 | 55 | 45 | 35 |
| ≯ 100 | 65 | 50 | 40 |

MAXIMUM PERMISSIBLE CAPITAL IMPAIRMENT PERCENTAGES FOR SECTION 301(D) LICENSEES

| Leverage percentage | Percentage of portfolio in equity investments (at cost) | | |
|---|---|---|---|
| | ≥ 67% equity | ≥ 40% equity | < 40% equity |
| > 200 | 50 | 40 | 35 |
| ≯ 200 | 60 | 50 | 40 |
| ≯ 100 | 70 | 55 | 45 |

(7) *Forbearance for Licensees with outstanding Participating Securities.* (i) At any time during the first forty-eight (48) months following its initial issuance of Participating Securities, any Licensee which has Leverage consisting

of a minimum of two-thirds Participating Securities and has at least two-thirds of its Loans and Investments, at cost, in Equity Capital Investments, shall not be considered to have a condition of Capital Impairment unless such Licensee's Capital Impairment Percentage equals or exceeds 85%.

(ii) At any time during the first sixty (60) months following its initial issuance of Participating Securities, a Licensee which has Leverage consisting of a minimum of two-thirds Participating Securities and has at least two-thirds of its Loans and Investment, at cost, in Start-up Financings shall not be considered to have a condition of Capital Impairment unless such Licensee's Capital Impairment Percentage equals or exceeds 85%. "Start-up Financing" shall mean an Equity Capital Investment in a growth-oriented Small Concern engaged in activities including, but not limited to, technology development or commercialization, manufacturing, and/or exporting, which at the time of the investment has not been in existence, in any form, for more than three fiscal years, has not had sales exceeding $5 million or positive cash flow in any fiscal year, and is not formed for the purpose of acquiring any existing business.

(iii) At any time during the fifth year following its initial issuance of Participating Securities, any Licensee which meets the Leverage and investment ratios set forth in paragraph (h)(7)(i) of this section, and does not have a Capital Impairment Percentage which equals or exceeds 85%, shall not be considered to have a condition of Capital Impairment if, within thirty (30) days of Licensee's determination that it has a condition of Capital Impairment, such Licensee either (A) increases its Regulatory Capital by a cash contribution equal to 15% of its outstanding Leverage and places such funds in an escrow account, or other account satisfactory to SBA, for the benefit of SBA, or (B) provides SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to 15% of its outstanding Leverage.

(iv) At any time during the sixth year following its initial issuance of Participating Securities, any Licensee which meets the Leverage and investment ratios set forth in paragraph (h)(7)(i) of this section, and does not have a Capital Impairment Percentage which equals or exceeds 85%, shall not be considered to have a condition of Capital Impairment if, within thirty (30) days of Licensee's determination that it has a condition of Capital Impairment, such Licensee either (A) increases its Regulatory Capital by a cash contribution equal to 30% of its outstanding Leverage and places such funds in an escrow account, or other account satisfactory to SBA, for the benefit of SBA, or (B) provides SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to 30% of its outstanding Leverage; *Provided, however,* That any escrowed funds or guarantee received pursuant to paragraph (h)(7)(iii) of this section shall be credited toward the requirements of this paragraph (h)(7)(iv).

(v) Any funds placed in an escrow or other account pursuant to paragraphs (h)(7) (iii) or (iv) shall not be eligible for Leverage purposes.

(vi) Any fee and/or any claim to repayment by the party making the capital contribution or by the guarantor must be deferred and subordinate to all outstanding Leverage plus any unpaid Earned Prioritized Payments and other earned amounts.

(vii) Any funds in the escrow amount and/or any guarantee received by SBA under this paragraph (h)(7) shall be utilized to pay or repay any amounts due SBA in the event of an acceleration or mandatory redemption under § 107.261, or shall be released and returned to Licensee at such time as the sum of Licensee's Adjusted Unrealized Gain (Loss) on Securities Held and Undistributed Realized Earnings is determined by SBA to be zero or greater.

(8) *Quarterly requirement and procedure.* Each Licensee is responsible for determining whether it has a condition of Capital Impairment on a quarterly basis; *Provided, however,* That SBA is not precluded from making its own determination:

(i) *Collection or compromise of SBA claims.* SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to Preferred or Participating Securities or obligations held or guaranteed by SBA, and all legal or equitable rights accruing to it.

(ii) Reserved.

**§ 107.200 Leverage for 301(c) Licensees.**

(a) *General.* SBA may provide Leverage to any Section 301(c) Licensee through the purchase of guaranty of Debentures and/or Participating Securities.

(b) *Leverage formula.* After March 31, 1993, the amount of Leverage a Section 301(c) Licensee may have outstanding at any time shall not exceed the following amounts:

(1) If Leverageable Capital is not more than $15,000,000, Leverage shall not exceed 300 percent of Leverageable Capital;

(2) If Leverageable Capital is more than $15,000,000 but not more than $30,000,000, Leverage shall not exceed $45,000,000 plus 200 percent of the amount of Leverageable Capital over $15,000,000;

(3) If Leverageable Capital is more than $30,000,000, Leverage shall not exceed $75,000,000 plus 100 percent of the amount of Leverageable Capital over $30,000,000, but not to exceed an additional $15,000,000.

(c) *Maximum limits and exceptions.* Notwithstanding paragraph (b) of this section, in no event shall the aggregate amount of outstanding Leverage of any Licensee or group of two or more Licensees (including both section 301(c) and section 301(d) Licensees) under Common Control exceed $90,000,000 unless SBA determines, on a case-by-case basis, to permit a higher aggregate amount for companies under Common Control and SBA imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to SBA in the event of default.

(d) *Grandfather clause.* Nothing herein shall require any section 301(c) Licensee that on March 31, 1993, has outstanding Debentures in excess of 300 percent of Leverageable Capital to prepay such excess, and *Provided further,* That any such Licensee may apply for an additional Debenture guarantee or Participating Security guarantee with the proceeds to be used solely to pay the amount due on such maturing Debenture. The maturity of such new Debenture or Participating Security shall not be later than September 30, 2002.

(e) *Limits on Participating Securities.* The aggregate amount of Participating Securities outstanding from a Licensee shall not exceed 200 percent of Leverageable Capital.

**§ 107.230 Leverage for 301(d) Licensees.**

(a) *General.* SBA may provide Leverage to any section 301(d) Licensee through the purchase or guaranty of Debentures and/or Participating Securities, and/or through the purchase of Preferred Securities.

(b) *Articles requirements for Preferred Securities Leverage.* In addition to the requirements specified in § 107.101, no Preferred Securities will be acquired by SBA from any section 301(d) Licensee unless the following provisions are contained in such Licensee's Articles or partnership agreement:

(1) *Corporate Section 301(d) Licensees—(i) Payment of dividends to SBA.* Preferred stock issued by a corporate section 301(d) Licensee to SBA after November 21, 1989, shall

provide for the preferred payment of cumulative dividends at a rate of four percent per annum on the par value of such stock, accruing on a daily basis from the date of issuance to the date of payment, both inclusive. Such dividends shall be declared and payable from Retained Earnings Available for Distribution before any amount shall be set aside for or paid to any other class of stock. In the event SBA has received less than four percent in any fiscal year, the deficiency shall be payable on a preferred basis from subsequent Retained Earnings Available for Distribution without interest thereon. Before any declaration of dividends or any Distribution (other than to SBA), all dividends accumulated and unpaid on Preferred Securities issued to SBA shall be paid. The dividend rate on nonvoting Preferred Securities purchased by SBA prior to November 21, 1989, shall remain three percent of their par value and otherwise be subject to the provisions of this paragraph.

(ii) *Mandatory redemption of Preferred Securities.* Preferred Securities purchased by SBA on or after November 21, 1989, shall be redeemed by the issuer not later than fifteen years from the date of issuance, at a price not less than the par value, plus any unpaid dividends accrued to the redemption date. SBA may, in its discretion, guarantee Debentures offered for sale by such Licensee at the Debenture sale immediately preceding such fifteenth anniversary date, pursuant to section 321 of the Act, in such amounts as will permit the simultaneous redemption of such Preferred Securities, including all or part of accrued and unpaid dividends, for immediate payment to SBA. SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee in the event of default in payment by the issuer. See also § 107.230(f).

(2) *Unincorporated 301(d) Licensees—(i) Payment of Distributions to SBA.* Preferred limited partnership interests issued to SBA by a limited partnership Section 301(d) Licensee shall provide for Distributions to SBA on a preferred and cumulative basis at an annual rate of four percent on the entire amount of SBA's capital contribution (with no adjustments other than those reflecting prior returns of capital), accruing on a daily basis from the date of issuance to the date of Distribution, both inclusive. SBA shall be paid from Retained Earnings Available for Distribution. In the event SBA has received less than four percent in any fiscal year, the deficiency shall be payable on a preferred basis from subsequent Retained Earnings Available for Distribution without interest thereon. Before any allocation or Distribution (other than to SBA), all accumulated and unpaid Distributions on preferred limited partnership interests issued to SBA shall be paid.

(ii) *Mandatory redemption of preferred limited partnership interest.* Preferred limited partnership interests shall be redeemed by the issuer not later than fifteen years from the date of issuance, at a price not less than the amount of SBA's contributed capital, with no adjustments other than those reflecting prior returns of capital, plus any accumulated and unpaid Distribution to and including the redemption date. SBA may, in its discretion, guarantee Debentures offered for sale by such Licensee at the Debenture sale immediately preceding such fifteenth anniversary date, pursuant to section 321 of the Act, in such amounts as will permit the simultaneous redemption of such preferred limited partnership interests, including all or any part of accumulated and unpaid Distributions, for immediate payment to SBA. SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee in the event of default in payment by the issuer. See also § 107.230(f).

(c) *Maximum Leverage—General.* All Leverage issued by Section 301(d) Licensees shall be aggregated for purposes of determining Leverage eligibility. Subject to the limitations on Leverage issued by Licensees under common Control set forth in § 107.220(c), the total amount of Leverage permissible to a section 301(d) Licensee shall be determined as follows:

(1) *Maximum subsidized Leverage.* A section 301(d) Licensee or group of such Licensees under Common Control shall be eligible for maximum subsidized Leverage of 400 percent of Leverageable Capital or $35,000,000, whichever is less, subject to the exceptions and limitations set forth in paragraphs (c)(3) through (6) of this section. For purposes of this paragraph, "subsidized Leverage" means Preferred Securities and Debentures issued with a rate reduction or subsidy.

(2) *Leverage above $35,000,000.* A section 301(d) Licensee is eligible for Leverage in excess of $35,000,000, in the amounts and subject to the conditions set forth in § 107.220 (b) and (c); *Provided, however,* That the aggregate amount of subsidized Leverage issued by such Licensee or group of such Licensees under Common Control shall not exceed $35,000,000.

(3) *Conditions for Leverage exceeding 300 percent.* (i) To qualify for Leverage exceeding 300 percent of Leverageable Capital, at least thirty percent (30%) of a section 301(d) Licensee's Total Funds Available for Investment must be invested in (or committed to) Venture Capital Financings. Licensee must maintain thirty percent (30%) of its Total Funds Available for Investment in such investments, at the cost basis, subsequent to issuing Leverage in excess of 300 percent of Leverageable Capital. See also § 107.261(d)(5).

(ii) As used herein, "Total Funds Available for Investment" means ninety percent of the sum of total current assets plus Loans and Investments on a cost basis and net of current maturities.

(iii) As used herein, "Venture Capital Financing" means an investment in a Disadvantaged Concern represented by (A) Equity Securities as defined in § 107.3 with no repurchase requirement for at least five years, except as may be specifically approved by SBA under § 107.801 for purposes of relinquishing Control over a Small Concern; (B) any right to purchase Equity Securities in conjunction with the purchase of Equity or Debt Securities which, after consideration of all of the terms, conditions and documentation of such financing, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of 50% of the anticipated return on such financing represented by the potential for equity appreciation; or (C) Debt Securities or Loans which are subordinated by their terms to all borrowings of the issuer, except borrowings from officers, directors, and owners of the Small Concern, or Close Relatives thereof, and have no part amortized during the first three years. A Financing which originally qualified as a Venture Capital Financing but is currently carried as "assets acquired in liquidation of portfolio securities" or "operating concerns acquired" shall continue to qualify as a Venture Capital Financing, at original cost.

(4) *Second Tier Preferred Securities Leverage.* SBA is authorized to purchase Preferred Securities from a section 301(d) Licensee in amounts in excess of 100 percent of Leverageable Capital, but not in excess of 200 percent of Leverageable Capital, *Provided:*

(i) Such company's license was issued on or before October 13, 1971; or

(ii) Such company's license was issued after October 13, 1971, and Licensee has Leverageable Capital of $500,000 or more; and

(iii) In either case, such section 301(d) Licensee has Qualified Investments (or commitments to make such investments), at cost, equal to the amount of Preferred Securities in excess

of 100% of Leverageable Capital—see also § 107.261(d)(5).

(iv) As used herein, "Qualified Investments" means, subject to §§ 107.320 and 107.801, an investment in a Disadvantaged Concern represented by stock of any class (including preferred stock) or limited partnership interests, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer and which, after consideration of all of the terms, conditions and documentation of such instruments, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of 50% of the anticipated return on such financing represented by the potential for equity appreciation. "Qualified Investments" shall not include a debt secured by any agreement with a third party, whether or not a security interest has been created in any asset of such third party, with or without recourse against such third party.

(5) *Non-Cumulative.* If a Financing qualifies as both a Venture Capital Financing and a Qualified Investment, such Financing may be construed as both a Venture Capital Financing and a Qualified Investment.

(6) *Participating Securities Leverage.* The aggregate of a section 301(d) Licensee's Participating Securities and Preferred Securities shall not exceed 200% of Leverageable Capital. The Prioritized Payments and the Profit Participation on Participating Securities issued by Section 301(d) Licensees shall not carry a subsidy or rate reduction.

(d) *Debentures issued by 301(d) Licensees.* Subject to the limitations of paragraph (c) of this section, section 301(d) Licensees may issue three types of Debentures:

(1) Debentures guaranteed by SBA pursuant to section 303(c) of the Act. During the first five years of the term of such Debentures, the rate of interest payable by the issuer is three hundred basis points below the interest rate stated on the face of the Debenture.

(2) Debentures guaranteed by SBA pursuant to section 303(b) of the Act. Such Debentures are not entitled to a reduced interest rate.

(3) Debentures purchased by SBA pursuant to section 303(c) of the Act. Such Debentures shall be entitled to a reduced interest rate determined according to section 317 of the Act. Such Debentures purchased by SBA shall specify both the subsidized interest rate and the non-subsidized interest rate (as prescribed by sections 317 and 303(b) of the Act), together with the dates between which each applies.

(e) *Exchange of outstanding Debentures for Preferred or Participating Securities.* (1) Subject to the conditions applicable to the issuance of Preferred or Participating Securities, a section 301(d) Licensee may, in SBA's discretion, retire Debentures against the issuance of such securities. A section 301(d) Licensee proposing to exchange its outstanding Debentures shall be required to pay all unpaid accrued interest plus any applicable prepayment penalties, fees, and other charges as a condition of such exchange.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, Debentures purchased or guaranteed by SBA on the basis of funds not included in Leverageable Capital may not be retired against issuance of Preferred or Participating Securities. Such Debentures, to the extent purchased or guaranteed by SBA on the basis of ineligible funds, shall be paid at maturity, unless such maturity is extended by SBA, at its discretion, to a maximum of 15 years from the date of issuance if such extension is necessary to achieve an orderly liquidation of the indebtedness.

(f) *Preferred Securities—voluntary redemption rights.* A section 301(d) Licensee may redeem in whole or in part Preferred Securities purchased by SBA, on any dividend payment date or distribution of capital date (after giving SBA at least thirty days written notice) by paying SBA the Original Issue Price of such securities, but not less than $50,000 in any one transaction, plus any dividends or distributions accumulated and unpaid to the date of redemption. SBA is authorized to sell Preferred Securities purchased on or before November 20, 1989 to the issuer at a price less than the sum of the Original Issue Price and such unpaid dividends or distributions. SBA shall determine the sale price of such Preferred Securities in its sole discretion after considering factors including, but not limited to, the market value of such securities, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and SBA's estimate of any anticipated redemption. In such event, SBA may guarantee Debentures issued by the Licensee in order to accomplish the repurchase of such Preferred Securities; *Provided, however,* That SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee in the event of default by the Licensee. See also §§ 107.230(b)(1)(ii) and 107.230(b)(2)(ii).

**§ 107.240 Participating Securities.**

The provisions of §§ 107.241 through 107.247 shall apply to Participating Securities and all Licensees issuing such securities.

**§ 107.241 Participating Securities—General.**

(a) *Minimum private capital.* Subject to § 107.101(d), a Licensee with Regulatory Capital of $10 million or more shall be eligible to issue Participating Securities. A Licensee with Regulatory Capital of less than $10 million shall be eligible to issue Participating Securities if it demonstrates to SBA's satisfaction that it can be financially viable over the long term with such lesser amount; *Provided, however,* That no application shall be considered if the Licensee's Regulatory Capital is less than $5 million.

(b) *Investment requirements.* Any Licensee issuing Participating Securities shall invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments and after the initial investment of such funds, as of the end of each fiscal year, unless SBA permits otherwise, shall maintain Equity Capital Investments with a cost basis of not less than the outstanding balance of Participating Securities.

(c) *Management and ownership diversity.* Unless otherwise approved by SBA, a Licensee applying for Participating Securities shall have, and as long as any Earmarked Assets remain in its portfolio, shall maintain diversity between management and ownership which may only be established by satisfying both of the following conditions:

(1) The Licensee shall meet at least one of the following three conditions:

(i) The Licensee or its ultimate parent shall have three or more shareholders or limited partners who in the aggregate have not less than a 30% interest in such Licensee's Regulatory Capital and (except for such status as a shareholder or limited partner) are not Associates of, or Affiliates of any Associate of, such Licensee;

(ii) The Licensee or its ultimate parent shall have one or more Institutional Investors that are: (A) Regulated by state or Federal authorities satisfactory to SBA, (B) public or private employee pension funds, (C) trusts, foundations, or endowments exempt from Federal income taxation, or (D) other Institutional Investors satisfactory to SBA, who directly or indirectly have in the aggregate not less than a 30%

interest in such Licensee's Regulatory Capital and (except for such status as a shareholder or limited partner) are not Associates of, or Affiliates of any Associate of, such Licensee; or

(iii) The common stock or limited partnership interests of Licensee or at least one class of voting common stock or the limited partnership interests of the ultimate parent (if any) of Licensee is publicly traded.

(iv) As used herein, *ultimate parent* shall mean an entity that directly or indirectly has an interest of more than 50 percent of the Regulatory Capital of a Licensee.

(2) Shareholders or limited partners of a Licensee may not delegate their voting rights to any other person or entity without prior SBA approval; *Provided, however,* That publicly traded Licensees are exempt from this provision; and *Provided further,* That this restriction shall not apply to proxies given to vote at single specified meetings, or to delegation of such rights to investment advisors that are not Affiliates of the Licensee except for their shareholder or partner status.

(d) *Management Expense ceiling.* Every Licensee that has Participating Securities outstanding or has Earmarked Assets in its portfolio shall be subject to an annual ceiling on Management Expenses which shall equal (1) an amount determined by multiplying Licensee's Combined Capital times 2.5 percent; *Provided, however,* That if Licensee's Combined Capital is less than $20,000,000, Licensee shall add $125,000 to that amount, or (2) such other amount approved or determined by SBA.

(e) *Temporary Debt.* The only debt other than Leverage that any Licensee with outstanding Participating Securities may incur shall be Temporary Debt. Licensee must obtain the prior written approval of SBA before incurring any Temporary Debt. As used in this paragraph, the term *Temporary Debt* means qualified short-term borrowings of a Licensee from a regulated financial institution or regulated credit company for the purposes of providing funds for a particular Financing of a Small Concern, or funds to maintain a Licensee's operating liquidity; *Provided, however,* That SBA may, on a case-by-case basis, permit borrowings from non-regulated lenders including shareholders or partners. To qualify as Temporary Debt: (1) Borrowings may not exceed 50 percent of Licensee's Leverageable Capital, and (2) Licensee shall have no Temporary Debt for at least 30 consecutive days during the Licensee's fiscal year. A Licensee with indebtedness which does not meet the requirements of Temporary Debt shall eliminate such third party debt to qualify for Participating Securities.

(f) *Liquidity requirements.* A Licensee with outstanding Participating Securities shall maintain adequate liquidity so as to avoid a condition of Liquidity Impairment (as defined in paragraph (f)(1) of this section). Such a condition shall affect the Licensee's good standing pursuant to § 107.262(c).

(1) *Definition of Liquidity Impairment.* A condition of Liquidity Impairment shall exist when a Licensee's Liquidity Ratio as determined in paragraph (f)(2) of this section is less than 1.20. Each Licensee is responsible for determining whether it has a condition of Liquidity Impairment as of the close of its fiscal year, at the time of application for Leverage, or at such time as Licensee contemplates making any Distribution; *Provided, however,* That SBA is not precluded from making its own determination.

(2) *Computation of Liquidity Ratio.* Licensee's Liquidity Ratio shall be equal to its Total Current Funds Available divided by its Total Current Funds Required, as determined in the following table:

CALCULATION OF SBIC LIQUIDITY RATIO

| Finiencial account | Amt. from 468 | Wt. | Wtd. amount |
|---|---|---|---|
| Cash and Invested Idle Funds. | ..... | 1.00 | |
| Commitments From Investors. | ..... | 1.00 | |
| Other Current Assets. | ..... | 1.00 | |
| Current Portion of Maturities. | ..... | .50 | |
| Publicly Traded & Marketable Securities. | ..... | .65 | |
| Anticipated Operating Revenue for next 12 months. | (*) | 1.00 | |
| Total Current Funds Available. | ..... | ..... | A |
| Current Liabilities. | ..... | 1.00 | |
| Commitments Outstanding. | ..... | .75 | |
| Anticipated Operating Expenses for next 12 months. | (*) | 1.00 | |

CALCULATION OF SBIC LIQUIDITY RATIO—Continued

| Financial account | Amt. from 468 | Wt. | Wtd. amount |
|---|---|---|---|
| Anticipated Interest Expense for next 12 months. | (*) | 1.00 | |
| Contingent Liabilities (Guarantees). | ..... | .25 | |
| Total Current Funds Required. | ..... | ..... | B |
| Liquidity Ratio: (A/B) | ..... | ..... | |

* As determined by Licensee's management, pursuant to a plan of operations.

(g) *Redemption.* The redemption date of Participating Securities shall be the same as the maturity date of the Trust Certificates for the Trust containing such securities, and in no event shall such date be later than 15 years after the issue date. Participating Securities shall be redeemed at the Redemption Price plus any unpaid Earned Prioritized Payments and any additional earned amounts due pursuant to § 107.243 (c) and (d).

(h) *Priority in liquidation.* In the event of liquidation of a Licensee, the Redemption Price of Participating Securities plus any Prioritized Payments and any additional amounts due pursuant to § 107.243 (c) and (d), and any Profit Participation allocated pursuant to § 107.244(e), shall be senior in priority for all purposes to all other equity interests in the issuing Licensee, whenever created.

**§ 107.242 Computation of Earmarked Profits (Losses).**

(a) *Frequency of calculation.* As detailed in this subsection, a Licensee that has Participating Securities outstanding or has Earmarked Assets in its portfolio shall compute Earmarked Profits (Losses) no less frequently than annually at the end of its fiscal year and at such other times as Licensee elects to make a Distribution.

(b) *Earmarked Assets.* "Earmarked Assets" means Loans and Investments that exist at the time Participating Securities are issued or that are acquired by Licensee while Participating Securities are outstanding and non-cash assets received in exchange for any such assets. Notwithstanding Licensee's redemption of all or part of its Participating Securities, Licensee's Earmarked Assets shall retain such status until their disposition. Investments made subsequent to the

complete repayment or redemption of all Participating Securities are not considered Earmarked Assets unless Licensee issues additional Participating Securities, at which time all Licensee's Loans and Investments again become Earmarked Assets. For special rules providing exclusions applicable to companies licensed prior to March 31, 1993, see § 107.247.

(c) *Earmarked Asset Ratio.* Licensee shall first compute an Earmarked Asset Ratio for the fiscal year or portion thereof, as appropriate. Earmarked Asset Ration means, at the cost basis, the ratio of (1) Earmarked Assets plus the proceeds of Participating Securities not yet invested to (2) Licensee's total Loans and Investments plus the proceeds of Participating Securities not yet invested, stated as a percentage. The Earmarked Asset Ratio shall be computed on the respective weighted average amounts of Earmarked Assets, total Loans and Investments, and uninvested proceeds of Participating Securities outstanding during such fiscal year or portion thereof.

(d) *Determining Earmarked Net Investment Income*—(1) *Determining Earmarked Investment Income.* (i) Licensee shall allocate to Earmarked Investment Income all income which is directly attributable to such Earmarked Assets.

(ii) Licensee shall multiply interest on idle funds and other income not attributable to specific assets by the Earmarked Asset Ratio.

(iii) The aggregate of paragraphs (d)(1)(i) and (ii) shall be Earmarked Investment Income.

(2) *Determining Earmarked Investment Expenses*—(i) *Management Expenses.* Management Expenses shall be the Licensee's actual Management Expenses but not to exceed the lesser of (A) such expenses permitted in § 107.241(d) times its Earmarked Asset Ratio, or (B) the result of multiplying Licensee's Combined Capital times its Earmarked Asset Ration times 2.5 percent, and adding $125,000 times the Earmarked Asset Ratio to the product if Licensee's Combined Capital is less than $20,000,000.

(ii) *Non-Management Expenses.* Licensee shall allocate to Earmarked Assets those non-Management Expenses which are directly attributable to such assets. Licensee shall add to this amount the product obtained by multiplying the Earmarked Asset Ratio by those non-Management Expenses not attributable to specific assets. Interest on Debentures shall be considered a non-Management Expense.

(iii) *Earmarked Investment Expenses.* The aggregate of paragraphs (d)(2)(i) and (ii) shall be Earmarked Investment Expenses.

(3) *Earmarked Net Investment Income.* Earmarked Investment Income in paragraph (d)(1) shall be reduced by Earmarked Investment Expenses in paragraph (d)(2) to determine Earmarked Net Investment Income.

(e) *Determining Earmarked Realized Gain (Loss) on Securities.* Licensee shall compute its Earmarked Realized Gain (Loss) on Securities by subtracting the basis of such assets from their net sales price, in accordance with the following:

(1) The cost of an asset shall be the basis used for computing Realized Gain (Loss), unless another basis is permitted by SBA.

(2) If an exchange of assets occurs, the basis of the acquired asset(s) shall be the cost of the original asset being exchanged.

(3) The basis of Earmarked Assets shall only be increased by additional financings to the Small Concern, or by Licensee's share of the income of an unincorporated Small Concern in which Licensee's basis is appropriately determined using the equity method of accounting. The basis of Earmarked Assets shall not be increased by capitalization of interest.

(4) Unrealized Appreciation or (Unrealized Depreciation) on Earmarked Assets that are being distributed as an In-Kind Distribution shall be recognized as Realized Gain (Loss) on Securities. (See § 107.245(e)(3).)

(f) *Determining Earmarked Profits (Losses).* The aggregate of Earmarked Net Investment Income and Earmarked Realized Gain (Loss of Securities (paragraphs (d) and (e) of this section shall be Earmarked Profits (Losses) for the relevant period.

**§ 107.243 Computation, Allocation, and Distribution of Prioritized Payments.**

(a) *General.* Prioritized Payments shall be classified as either Accumulated Prioritized Payments or Earned Prioritized Payments in accordance with this section. Earned Prioritized Payments (and additional "earned" amounts determined under this section) shall be allocated from Distributable Earmarked Profits and distributed from the Prioritized Payment Distribution Account. Such Distributions shall occur before any other Distribution and accordingly shall not be included in Distributions to SBA as set forth in § 107.245.

(b) *Accounts.* Licensee shall establish the following two accounts in its books and records:

(1) *Prioritized Payment Accumulation Account.* The Prioritized Payment Accumulation Account shall be a memorandum account to which Licensee shall add all Prioritized Payments on its Participating Securities and any additional amounts (herein "Adjustments") required under paragraphs (d)(1) and (d)(2) of this section. Licensee shall deduct from the Prioritized Payment Accumulation Account all Earned Prioritized Payments and those Adjustments which are considered "earned" according to the same criteria applied to Prioritized Payments in paragraph (c) of this section. The balance in this account shall represent Licensee's Accumulated Prioritized Payments and unearned Adjustments.

(2) *Prioritized Payment Distribution Account.* The Prioritized Payment Distribution Account shall be a liability account to which Licensee shall add all Earned Prioritized Payments and earned Adjustments and from which Licensee shall deduct all Distributions of Earned Prioritized Payments and earned Adjustments. The balance in this account shall represent Licensee's undistributed Earned Prioritized Payments and earned Adjustments.

(c) *Allocation and Distribution of Prioritized Payments.* At the end of each fiscal year, and at the end of any fiscal quarter for which a Distribution is contemplated, Licensee shall perform the following procedures:

(1) Add to the Prioritized Payment Accumulation Account all Prioritized Payments for the relevant fiscal period.

(2) Determine the cumulative sum of Earmarked Profits (Losses) and subtract from such sum all Earned Prioritized Payments and earned Adjustments previously allocated to the Prioritized Payment Distribution Account. The result, if greater than zero, shall be Licensee's Distributable Earmarked Profits.

(3) If Licensee has Distributable Earmarked Profits:

(i) Licensee shall allocate to the Prioritized Payment Distribution Account an amount equal to the lesser of: (A) Distributable Earmarked Profits or (B) the balance in the Prioritized Payment Accumulation Account.

(ii) Licensee shall reduce the Prioritized Payment Accumulation Account by the amount allocated to the Prioritized Payment Distribution Account in paragraph (c)(3)(i).

(iii) Subject to the liquidity requirement set forth in § 107.241(f) Licensee shall distribute an amount equal to the balance in its Prioritized Payment Distribution Account to SBA, or its designated agent or Trustee, within 90 days after Licensee's fiscal year end or before any other Distribution is made, as appropriate.

The Prioritized Payment Distribution Account balance shall be reduced by such Distribution.

(iv) If Licensee has issued Participating Securities on more than one occasion, Prioritized Payments shall be made on such Participating Securities in order of issue date.

(4) If a Licensee has no Distributable Earmarked Profits, no allocation shall be made to the Prioritized Payment Distribution Account.

(d) *Adjustments to Prioritized Payment Accumulation Account.* The Prioritized Payment Accumulation Account shall be subject to the following adjustments:

(1) If, at the end of any fiscal year, there exists any balance in the Prioritized Payment Accumulation Account, Licensee shall add to such account an amount equal to the product of the average balance in such account during such fiscal year, multiplied by the average Trust Certificate Rate in effect during such fiscal year.

(2) If, at the end of any fiscal year, there remains any undistributed balance in the Prioritized Payment Distribution Account, Licensee shall compute an additional amount equal to the product of the average outstanding balance in such account during such fiscal year, multiplied by the average Trust Certificate Rate in effect during such fiscal year. Such amount shall be added to the Prioritized Payment Accumulation Account.

(3) If, after Licensee has performed the procedures required in paragraphs (c), (d)(1) and (d)(2) of this section, there remains any undistributed balance in the Prioritized Payment Distribution Account, Licensee shall re-perform the procedures in this § 107.243 as of the end of each subsequent fiscal quarter until such amounts are paid in full.

**§ 107.244 Computation and Allocation of Profit Participation.**

(a) *Profit Participation Account.* Licensee shall establish a Profit Participation Account in its books and records which shall reflect the allocation and distribution of Profit Participation. This account shall be reduced by any tax Distribution made to SBA, or its designated agent or Trustee, pursuant to § 107.245(b) or other Distributions pursuant to § 107.245(c).

(b) *Computing the Base for Profit Participation.* At the end of each fiscal year, and at the end of any fiscal quarter for which a Distribution is contemplated, Licensee shall compute and maintain a record of its Base for Profit Participation (hereinafter "Base") according to the following procedure:

(1) *Base.* The Base shall be equal to (A) Earmarked Profits (Losses) minus Prioritized Payments for the fiscal year or fiscal year-to-date, as appropriate, minus (B) any unused loss carryforward from prior fiscal years.

(2) *Unused loss carryforward.* Licensee shall compute its unused loss carryforward, if any, by subtracting all Prioritized Payments from the cumulative sum of Earmarked Profits (Losses) for all prior fiscal years; *Provided, however,* That if Licensee's Base for any prior fiscal year(s) was greater than zero, such computation shall be performed for the period beginning with the fiscal year following the most recent such fiscal year. Any negative result of the computation in this paragraph shall represent Licensee's unused loss carryforward.

(c) *Profit Participation Rates.* A Licensee which issues Participating Securities shall compute a Profit Participation Rate for the relevant fiscal year or fiscal year-to-date in accordance with the following procedure:

(1) Subject to paragraph (c)(5) of this section, the applicable Profit Participation Rate shall be based upon the highest ratio of Participating Securities Leverage to Leverageable Capital which has ever been outstanding for such Licensee, regardless of any repayment or redemption.

(2) Subject to any indexing required in paragraph (c)(4) of this section if the total amount of Participating Securities is 100 percent of Leverageable Capital or less, the Profit Participation Rate shall be the amount of Participating Securities divided by Leverageable Capital, times 9 percent.

(3) Subject to any indexing required in paragraph (c)(4) of this section, if the total amount of Participating Securities is more than 100 percent but not greater than 200 percent of Leverageable Capital, the Profit Participation Rate shall be computed as follows:

(i) 9 percent, plus

(ii) Participating Securities minus Leverageable Capital, divided by Leverageable Capital, times 3 percent.

(4) The Profit Participation Rate shall be indexed to the yield-to-maturity on Treasury bonds with a remaining term of 10 years, according to the following procedures:

(i) *Licensees that have issued Participating Securities on only one occasion.* If, on the date Participating Securities are issued, the yield on Treasury bonds with a remaining term of 10 years is other than 8 percent, the Profit Participation Rates specified in paragraphs (c) (2) and (3) of this section shall be adjusted by the percentage difference between such Treasury bond yield and 8 percent. For example, if a Licensee issued Participating Securities equal to 100 percent of Leverageable Capital and the Treasury rate were 8 percent at the time of issuance, the Profit Participation Rate would be 9 percent pursuant to paragraph (c)(2). However, if the Treasury rate were 10 percent at the time of issuance, the Licensee's Profit Participation Rate would be 11.25 percent. [{((.10–.08)/.08)+1}×.09×100=11.25%]

(ii) *Licensees that have issued Participating Securities on more than one occasion.* If, on any of the dates Participating Securities are issued, the yield on Treasury bonds with a remaining term of 10 years is other than 8 percent:

(A) First, Licensee shall compute an average of such Treasury bond yields for all issuances of Participating Securities, weighted to reflect the dollar amount of each issuance and the portion of the fiscal period during which each issuance was outstanding. For example, if a Licensee issued $10 million of Participating Securities on the first day of its fiscal year when the Treasury rate was 8 percent, and another $15 million on the 300th day of its fiscal year when the Treasury rate was 10 percent, then the weighted average Treasury rate computed as of the end of the fiscal year would be 8.42 percent.
[15,000,000×(365–300)/365=2,671,233;
10,000,000+2,671,233=12,671,233 weighted average Participating Securities;
{(10,000,000×.08)+(2,671,233×)}/12,671,233=8.42% weighted average Treasury rate]

(B) Second, the Profit Participation Rates specified in paragraphs (c) (2) and (3) of this section shall be adjusted by the percentage difference between the weighted average Treasury rate and 8 percent. In the example given in paragraph (c)(4)(ii)(A), if the $25 million of Participating Securities issued were equal to 200 percent of Leverageable Capital, the Profit Participation Rate for the fiscal year would be 12.63%.
[{((.0842–.08)/.08)+1}×.12×100=12.63%]

(5) The computation of the Profit Participation Rate shall not be modified due to an increase in the Leverageable Capital of Licensee unless the increase (i) is the result of takedown of unfunded commitments or the conversion of non-cash assets both of which having been a basis of Private Capital or (ii) is provided for in a proposed business plan submitted to and approved by SBA in writing.

(d) *Computing the Profit Participation.* If the Base for the relevant fiscal period, as determined in paragraph (b) of this section, is greater

than zero, Licensee shall compute the Profit Participation in accordance with the following procedure:

(1) The Profit Participation for the fiscal year or fiscal year-to-date shall be the result of multiplying the Base by the Profit Participation Rate determined in paragraph (c) of this section.

(2) Such Profit Participation shall be reduced by any amounts of Profit Participation that were distributed or reserved for distribution to SBA, or its designated agent or Trustee, for any interim period(s) during such fiscal year.

(3) Any computation of Profit Participation made on the basis of an interim fiscal quarter shall be adjusted, both at fiscal year-end and whenever any additional interim Distributions are made, to account for any increase in the Profit Participation Rate.

(e) *Allocation of Profit Participation.* Prior to any Distribution and in any event within 90 days following the end of the Licensee's fiscal year, the Licensee shall allocate to its Profit Participation Account the amount of Profit Participation calculated pursuant to paragraph (d) of this section. Funds equal to amounts allocated to the Licensee's Profit Participation Account shall be reserved for distribution to SBA, its designated agent or Trustee, and such amount shall not be available for reinvestment in Small Concerns.

(f) *Distribution of Allocated Profit Participation.* Distribution of allocated Profit Participation shall be made at the same time that profits are distributed to private capital investors either as tax Distributions or as other returns on capital (see § 107.245).

**§ 107.245 Distributions**

(a) *General.* Distributions shall only be made based on computations and allocations as of the end of a Licensee's fiscal year or fiscal quarter year-to-date. For purpose of this section, Prioritized Payments shall not be considered a Distribution, but Profit Participation shall be considered a Distribution and shall be included in Distributions made to SBA, or its designated agent or Trustee, under paragraphs (b) and/or (c) of this section.

(b) *Distributions for tax purposes.* After all Prioritized Payments have been paid, and subject to the liquidity requirements set forth in § 107.241(f), a Licensee that is operating as a limited partnership or as an "S Corporation" or an equivalent pass-through entity for tax purposes may make an annual distribution from Retained Earnings Available for Distribution to its partners or shareholders in an amount not greater than its Maximum Tax Liability. SBA, or its designated agent or Trustee, shall receive a "tax distribution" equal to its Profit Participation Rate specified in § 107.244(c) times the total tax Distribution. For purposes of this paragraph, the term "Maximum Tax Liability" means the aggregate amount of income allocated to partners or shareholders for Federal income tax purposes with respect to the fiscal year of the Licensee immediately preceding such Distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term "State income tax" means the income tax of the State where the Licensee's principal place of business is located.

(c) *Returns on Capital.* After all Prioritized Payments and tax Distributions permitted under paragraph (b) of this section have been made, and the liquidity requirement set forth in § 107.241(f) has been satisfied, a Licensee which has Participating Securities outstanding or has Earmarked Assets shall make Distributions to its investors, specifically including SBA, or its designated agent or Trustee, as if it were an investor, in the ratios/percentages specified below within 90 days after Licensee's fiscal year end; *Provided, however,* That subject to prior written approval from SBA, a Licensee may withhold from such Distributions reasonable reserves necessary to protect Licensee's investments or relative position in Loans and Investments and to meet contingent liabilities; and *Provided, further,* That such reserves shall not be used to make investments in additional portfolio companies. Such postponement shall not be a payment failure in violation of § 107.262(c)(1). A Licensee may make Distributions pursuant to this paragraph (c) as of the end of any fiscal quarter, subject to the same restrictions as provided in this section. All Distributions under this paragraph to private investors shall be from Retained Earnings Available for Distribution as a return on capital. Distributions of Profit Participation to SBA, its designated agent or Trustee, shall also be from Retained Earnings Available for Distribution. Distributions under this paragraph to SBA, its designated agent or Trustee, which are in excess of the Profit Participation shall be from Retained Earnings Available for Distribution if they are applied to dividends or equivalent distributions on Preferred Securities (as provided in paragraph (c)(5) of this section), but shall be from other than Retained Earnings Available for Distribution if they are applied as a repayment or redemption of Leverage (see paragraph (c)(5) of this section). All Distributions pursuant to this paragraph shall be as follows:

(1) When the amount of Leverage outstanding as of the date of the proposed Distribution is more than 200 percent of Leverageable Capital, Distributions to the private investors and to SBA, its designated agent or Trustee, shall be made in the ratio of Leverageable Capital to Leverage.

(2) When the amount of Leverage outstanding as of the date of the proposed Distribution is more than 100 percent but not more than 200 percent of the amount of Leverageable Capital, Distributions to private investors and to SBA, its designated agent or Trustee, shall be made in a one-to-one (1:1) ratio.

(3) When the amount of Leverage outstanding as of the date of the proposed Distribution is 100 percent, or less, of the amount of Leverageable Capital, SBA's percentage share of such Distribution shall be at the Profit Participation Rate.

(4) SBA may restrict Distributions under this paragraph (c) if SBA determines that the value of Licensee's assets are materially overstated, and SBA provides the Licensee with timely Notice of such determination in advance of the proposed Distribution.

(5) Distributions to SBA, its designated agent or Trustee, under this paragraph (c) shall be applied first to Profit Participation; second, to the extent there remain any Retained Earnings Available for Distribution, to dividends or equivalent distributions on Preferred Securities, third as a redemption of Participating Securities, fourth as a redemption of Preferred Securities, and fifth as the repayment of principal of any outstanding Debentures, such repayment to be made into escrow on terms and conditions determined by SBA.

(d) *Returns of capital.* Notwithstanding § 107.802, after all Earned Prioritized Payments and any additional earned amounts computed pursuant to § 107.243 (c) and (d) and all Profit Participation computed pursuant to § 107.244(e) have been distributed, and provided Licensee does not have a condition of Capital Impairment, a Licensee which has Participating Securities outstanding or has Earmarked Assets may return capital to its investors, specifically including SBA, its designated agent or Trustee, as if it were an investor; but only if the amount of such Distribution does not: (1) Reduce Licensee's Regulatory Capital below the minimum required; or (2)

cause Licensee to have excess Leverage contrary to section 303 of the Act. Any return of capital under this paragraph shall be made to private investors and to SBA in the ratio of Leverageable Capital to Leverage as of the date of the proposed Distribution; *Provided, however,* That if a Licensee is required to compute a Capital Impairment Percentage under § 107.210(h), such ratio shall be modified by replacing Leverageable Capital with the product of Leverageable Capital multiplied by the complement of the Capital Impairment Percentage. As used herein, "complement" means a percentage equal to 100% minus the Capital Impairment Percentage, but not less than zero. Notwithstanding the above, returns of capital shall be subject to the liquidity requirement set forth in § 107.241(f) unless SBA's prior written approval is obtained. Any amounts received by SBA, its designated agent or Trustee, under this paragraph (d) shall be applied to Leverage in the order set forth in paragraph (c)(5) of this section.

(e) *In-Kind Distributions.* A Licensee making a Distribution pursuant to paragraph (c) or (d) of this section may elect to make such Distribution in the form of securities (an In-Kind Distribution) subject to the following conditions:

(1) An In-Kind Distribution may be made only if the specific securities to be distributed are Publicly Traded and Marketable at the time of Distribution.

(2) An In-Kind Distribution may be made only if the Distribution of each security is made to all investors and to SBA, its designated agent or Trustee, pro-rata based on the amounts that would have been distributed to each if such Distributions were in cash.

(3) A Licensee making an In-Kind Distribution shall impute a gain (loss) on the securities being distributed as if such securities were being sold, using the value of such securities as of the declaration date of the planned Distribution in the case of a corporate Licensee, and on the distribution date in the case of an Unincorporated Licensee. Such gain (loss) shall be included in the calculation of Earmarked Profits (Losses) pursuant to § 107.242(e) as if it were realized.

(4) A Licensee making an In-Kind Distribution shall deposit SBA's share of such securities for disposition with the CRA which will select a Disposition Agent. Alternatively, if Licensee agrees, SBA may direct that the Licensee dispose of SBA's share. If Licensee disposes of SBA's share, it shall promptly remit the proceeds to SBA, its designated agent or Trustee. As used in this paragraph, the term *Disposition Agent* means a Person who is knowledgeable about and proficient in the marketing of thinly traded securities.

### § 107.245 Post-redemption obligations.

After all Participating Securities have been redeemed, a Licensee shall have the following obligations:

(a) When a Licensee (1) has Accumulated Prioritized Payments as specified in § 107.243 and (2) has not disposed of all Earmarked Assets as specified in § 107.242(b), Licensee's obligation to distribute such Accumulated Prioritized Payments shall continue and Distributions shall be made, at the end of each fiscal quarter, from Earmarked Profits resulting from the disposition of any such asset (see § 107.243).

(b) After the disposition of all Earmarked Assets, if there remain any Accumulated Prioritized Payments, the obligation to make such payments shall be extinguished.

(c) Notwithstanding § 107.245, from the time of redemption of all Participating Securities and until all Earmarked Assets have been disposed of, Licensee shall not make any In-Kind Distributions of such assets unless it pays to SBA such sums, up to the amount of the Unrealized Appreciation on such assets, as may be necessary to pay in full any Accumulated Prioritized Payments. Prior to making any such distribution of assets which are not Publicly Traded and Marketable, Licensee shall obtain the written approval of SBA, specifically including approval of the valuation of such asset(s).

### § 107.247 Special Rules for Companies Licensed on or Before March 31, 1993.

Companies licensed on or before March 31, 1993 that apply for Participating Securities are subject to the following special rules:

(a) *Election to exclude pre-existing portfolio.* If the proceeds of the Participating Security are not used to refinance outstanding Debentures at the time of its first application for Participating Securities, such Licensee may elect to have its entire portfolio in existence as of March 31, 1993 excluded from classification as Earmarked Assets. Payment or prepayment of any outstanding Debenture shall be presumed to be a refinancing of such Debenture unless Licensee can demonstrate to the satisfaction of SBA that it had financial resources to pay the principal amount due on the Debenture independent of the proceeds of the Participating Securities.

(b) *Non-Election.* If such Licensee does not elect to exclude such assets, they shall be considered Earmarked Assets, and SBA shall receive a Profit Participation on such Earmarked Assets in accordance with conditions specified in § 107.244.

(c) *Refinancing Debentures with Participating Securities.* SBA may permit the proceeds of a Participating Security to be used to pay the principal amount due on outstanding Debentures of such Licensee, provided: (1) Licensee has outstanding Equity Capital Investments in an amount, at cost, equal to the amount of the Debentures being refinanced, and (2) Licensee has not elected to exclude assets from Earmarked Assets.

(d) *Requirements for first issuance of Participating Securities.* Whether or not a company licensed prior to March 31, 1993 elects to exclude its portfolio under paragraph (a) of this section such Licensee's application for a guarantee of its first issuance of Participating Securities shall be subject to the following requirements:

(1) Licensee shall submit a valuation report for each of its Loans and Investments as of the date of the financial statements submitted with its application and as of the end of each of the prior three fiscal years, together with the last annual report (and/or fiscal year-end financial statements) and most recent interim financial statements of each Small Concern.

(2) If Licensee has negative Undistributed Realized Earnings and/or a net Unrealized Loss on Securities Held, SBA may require Licensee to undergo a quasi-reorganization in accordance with generally accepted accounting principles.

(3) If Licensee's financial statements submitted with its application are interim financial statements, Licensee shall have a limited scope audit performed by its SBA-approved independent public accountant. For purposes of this paragraph, "limited scope audit" means auditing procedures sufficient to enable the independent public accountant to express an opinion on the Statement of Financial Position and the accompanying Schedule of Investments.

### § 107.250 Financing by use of SBA Guaranteed Trust Certificates.

(a) *Authority.*—(1) *Full faith and credit.* Sections 321 (a) and (b) of the Act authorize SBA or its CRA to issue TCs, and SBA to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of such TC shall be limited to the principal and interest due on the Debentures or the

Redemption Price of and Prioritized Payments on Participating Securities in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(2) *Periodic exercise of authority.* SBA shall issue guarantees of Debentures and Participating Securities under section 303 and of TCs under section 321 of the Act at three month intervals, or at shorter intervals, taking into account the amount and number of such guarantees or trust certificates in question.

(3) *Terms and conditions of the TCs.* TCs shall provide for the pass-through to the holders thereof of all amounts of principal and interest paid on the Debentures or the Redemption Price of and Prioritized Payments on the Participating Securities composing the Pool or Trust against which they are issued. SBA shall determine the legal and other terms and conditions of TCs in conjunction with the Secretary of the Treasury and its own statutory authority and such other requirements as may be mandated by law. The interest rate on Debentures or the Prioritized Payment rate on the Participating Securities composing a Trust or Pool shall be determined pursuant to section 303 (b) or (g), respectively, of the Act.

(4) *Section 301(d) subsidy.* Subject to the limits of § 107.203(c), if SBA guarantees Debentures of a section 301(d) Licensee, section 303(d) of the Act requires SBA to make payments to the CRA, or to the holder of any such Debenture, sufficient to reduce the effective rate of interest to such Licensee during the first five years of the term of such Debenture by three percentage points.

(5) *Rights of prepayment of Debentures or early redemption of Participating Securities on a TC.* (i) The rights, if any, of a Licensee to prepay any Debenture or make early redemption of any Participating Security are established by the terms of such securities, and no such right is created or denied by the regulations in this part.

(ii) SBA's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture. SBA's rights to redeem, at any time, any Participating Security without premium are established by the terms of the Guaranty Agreement relating to the Participating Securities.

(iii) Any prepayment of a Debenture or early redemption of a Participating Security pursuant to the terms of the Guaranty Agreement relating to such securities, shall reduce the SBA guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal or Redemption Price that such prepaid Debenture or redeemed Participating Security represents in the Trust or Pool backing such TC.

(iv) SBA shall be discharged from its guaranty obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(v) Interest on prepaid Debentures and Prioritized Payments on Participating Securities shall accrue only through the date of such voluntary prepayment or SBA payment, as the case may be.

(vi) In the event that all Debentures or Participating Securities constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; *Provided, however,* That in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the CRA shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor Licensee pursuant to the terms of the Debenture.

(6) *SBA ownership rights.* In the event SBA pays a claim under the guarantee of a TC, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no Federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

(7) *Pool or Trust approval.* SBA shall approve the formation of each Pool or Trust.

(8) *Pool or Trust attributes.* SBA may, in its discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust it deems appropriate.

(b) *Functions of the CRA.* Pursuant to a contract entered into with SBA, the CRA shall perform the following functions as agent of SBA:

(1) *Issuance of the TCs.* Upon the formation of any Pool or Trust approved by SBA, CRA shall issue TCs, in the form prescribed by SBA, upon the primary sale of Debentures or Participating Securities, and shall issue or effect the transfer of TCs upon the sale of original issue TCs in any secondary market transaction.

(2) *Receipt of amounts due on Debentures and Participating Securities.* CRA shall receive payments from Licensees of amounts due on Debentures and Participating Securities, and amounts paid under voluntary prepayments or prepayments by SBA pursuant to the terms of the relevant Guaranty Agreements.

(3) *Payments of amounts due on TCs.* CRA shall make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures or redemption of Participating Securities.

(4) *Custody of Debentures and Participating Securities and documentation.* CRA shall hold and safeguard all Debentures and Participating Securities constituting Trusts or Pools and shall release, upon instructions of SBA, the Debentures and Participating Securities paid in full at maturity or prepaid in full prior to maturity. CRA shall also be custodian of such other documentation as SBA shall direct by written instructions.

(5) *Registration of Debentures and Participating Securities and TCs.* CRA shall provide for the registration of all pooled Debentures and Participating Securities, all Pools and Trusts, and all TCs. Such registration shall at a minimum include with respect to each sale of Debentures or Participating Securities the identification of the selling Licensee; the interest rate to be paid on the Debentures; the Prioritized Payment rate to be paid on the Participating Securities; commissions, fees, and/or discounts paid to brokers and dealers in TC or others; identification of each purchaser and any subsequent purchaser of any TC; the interest rate on any TC; the price paid by any purchaser for a TC; the fee of the CRA; and such other information as SBA may deem appropriate or that may be customary in the markets for transactions of similar type.

(6) *Fidelity bond or insurance.* Such Agent shall provide a fidelity bond or insurance in such amount as SBA may require to fully protect the interest of the government.

(7) *Other necessary functions.* Such other functions as may be necessary to implement the provisions hereof.

(c) *SBA regulation of disclosure and brokers and dealers*—(1) *Disclosure to purchasers.* Prior to any sale of a Debenture, Participating Security, or TC pursuant to the provisions hereof, SBA shall require the seller, or the broker or dealer as agent for the seller, in the form prescribed or approved by SBA, to disclose specified information on the terms, conditions, and yield of such

instrument to the purchaser of a Debenture, a Participating Security, or a TC.

(2) *Brokers and dealers.* Each broker, dealer, and Pool or Trust assembler approved by SBA or its agent pursuant to these regulations shall be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They shall also be in good standing with SBA as determined by the SBA Associate Administrator for Investment (see paragraph (c)(3)(v) of this section) and shall provide a fidelity bond or insurance in such amount as SBA may require. Nothing herein shall be construed to affect the applicability of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, or any of the rules and regulations thereunder, or otherwise supersede or limit the jurisdiction of the Securities and Exchange Commission or the authority at any time conferred under the securities laws.

(3) *Suspension and/or termination of broker or dealer.* SBA shall exclude from the sale and all other dealings in Debentures, Participating Securities or TCs any broker or dealer:

(i) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(ii) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for Debentures, Participating Securities or TCs, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(iii) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures, Participating Securities or TCs may be terminated.

(iv) When such broker or dealer has failed to make full disclosure of the information required by § 107.250(c)(1) of this part, such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs may be terminated.

(v) Proceedings to terminate such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs shall be conducted in accordance with part 134 of this title. SBA may, for any of the reasons stated above, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to part 134 of this title. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(7) and 134.34.

(d) *Access to records.* The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures, Participating Securities and TCs available to SBA for review and copying purposes. Such access shall be at the place of business during normal business hours.

(e) *Selling Debentures, Participating Securities and TCs.* The function of locating purchasers, and negotiating and closing the sale of Debentures, Participating Securities and TCs, may be the function of the SBA or an agent appointed by SBA. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

(f) *Agents.* SBA will appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures, Participating Securities, or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture or Participating Securities, SBA shall cause each Licensee to appoint a Selling Agent to perform functions which include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (herein "Poolers"). Such actions shall be subject to SBA prior written approval and paragraph (c)(2) of this section.

(ii) Receiving guaranteed Debentures and Participating Securities as well as negotiating the terms and conditions of periodic offerings of Debentures and/or TCs with Poolers on behalf of Licensees.

(iii) Directing and coordinating periodic sales of Debentures and Participating Securities and/or TCs.

(iv) Arrange for the production of the Offering Circular, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* SBA shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures or Participating Securities.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as SBA, from time to time, may prescribe.

**§ 107.250 Conditions affecting good standing of Licensees with Leverage.**

Licensees with outstanding Debentures and/or Preferred Securities are subject to the provisions of § 107.261. Licensees with outstanding Participating Securities or with Earmarked Assets in their portfolios are subject to the provisions of § 107.262.

**§ 107.261 Conditions affecting issuers of Debentures and Preferred Securities.**

(a) *Applicability.* The provisions of this section apply to Licensees issuing Debentures and/or Preferred Securities after September 30, 1993. All such Licensees shall be deemed to have agreed to the terms, conditions and remedies set forth in this section, as in effect at the time of such issuance and as if fully set forth in such Debentures or Preferred Securities. Debentures and Preferred Securities issued prior to September 30, 1993, shall be governed by the remedies in effect at the time of their issuance.

(b) *Automatic Events of Default.* (1) Without notice, presentation or demand: (i) The entire indebtedness evidenced by Debentures, including accrued interest, (ii) the Redemption Price of Preferred Securities, together with accumulated and unpaid dividends or equivalent distributions, and (iii) any other amounts owed SBA with respect thereto, shall be immediately due and payable, and Licensee shall be deemed to have consented to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act, upon the occurrence of any one or more of the following events:

(2) *Insolvency.* Licensee is equitably or legally insolvent.

(3) *Voluntary assignment.* Licensee makes a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(4) *Bankruptcy.* A petition is filed by Licensee in commencement of any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated

against Licensee and is not dismissed within 60 days.

(c) *Events of Default with notice.* (1) Upon written notice, SBA may declare: (i) The entire indebtedness evidenced by Debentures, including accrued interest, and/or (ii) the Redemption Price of Preferred Securities, together with accumulated and unpaid dividends or equivalent distributions, and/or (iii) any other amounts owed SBA with respect thereto, immediately due and payable, and SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) thereof, upon the occurrence of any one or more of the following events as determined by SBA:

(2) *Fraud.* Licensee commits a fraudulent act which causes detriment to SBA's position as a creditor or guarantor.

(3) *Fraudulent transfers.* Licensee makes any transfer or incurs any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(4) *Willful conflicts of interest.* Licensee willfully violates § 107.903.

(5) *Willful non-compliance.* Licensee willfully violates one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(6) *Repeated Events of Default.* At any time after being notified by SBA of the occurrence of an Event of Default under paragraph (d) of this section, Licensee engages in similar behavior which results in another occurrence of the same Event of Default.

(7) *Failure to make payment.* Unless otherwise approved by SBA, failure by Licensee to make timely payment of any amount due under any security or obligation of Licensee, issued to, held or guaranteed by SBA.

(8) *Transfer of Control.* Licensee violates § 107.104 and/or willfully violates § 107.601, and such violation results in a transfer of Control of Licensee.

(9) *Non-cooperation under § 107.261(e).* A Licensee fails to take appropriate steps, satisfactory to SBA, to accomplish such action as SBA may have required pursuant to paragraph (e) of this section.

(10) *Non-notification of Events of Default.* Licensee fails to notify SBA as soon as it knows or should reasonably have known that any Event of Default exists as set forth in this section.

(11) *Non-notification of defaults to others.* Licensee fails to notify SBA in writing within ten days from the date of a declaration of an event of default or nonperformance by Licensee under any note, debenture or indebtedness of Licensee issued to, or held by, anyone other than SBA.

(d) *Events of Default with opportunity to cure.* (1) Upon written notice by SBA to a Licensee of the existence of one or more of the following Events of Default as determined by SBA, and the provision by SBA of an opportunity to cure such default(s), and only if Licensee fails to cure such default(s) to SBA's satisfaction within the time period provided by SBA, SBA may declare: (i) The entire indebtedness evidenced by Debentures, including accrued interest, and/or (ii) the Redemption Price of Preferred Securities, together with accumulated and unpaid dividends or equivalent distributions, and/or (iii) any other amounts owed SBA with respect thereto, to be immediately due and payable, and SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) thereof (the terms "*Retained Earnings Available for Distribution*" and "*Provided, however*" used in this section shall have the same meanings assigned to them on SBA Form 468):

(2) *Excessive compensation.* Without the prior written consent of SBA, Licensee increases the aggregate amount it pays for salaries or other compensation of officers, directors, employees, or Investment Advisers/Managers beyond the amount previously approved by SBA.

(3) *Improper Distributions.* Except as permitted under § 107.802, without the prior written consent of SBA, Licensee makes any Distribution to its shareholders or partners other than payments out of *Retained Earnings Available for Distribution* based on either the shareholder' pro-rata interests or the provisions for profit distributions in Licensee's partnership agreement, as appropriate; *Provided, however,* that Licensees issuing Participating Securities may make Distributions under such securities as permitted under §§ 107.243 and 107.245.

(4) *Failure to maintain Regulatory Capital.* Licensee fails to maintain the minimum Regulatory Capital requirement under the Act or, without the prior written consent of SBA, reduces its Regulatory Capital, except as permitted by §§ 107.245 and 107.802.

(5) *Capital Impairment.* Licensee has a condition of Capital Impairment as determined under § 107.210(h).

(6) *Cross-default.* Failure of Licensee to pay any amount when due on any obligation greater than $100,000 or the occurrence of any event or the existence of any condition, the effect of which default or event or condition is to cause or to permit such obligation to become due or to become payable (with or without notice) prior to its stated maturity, unless Licensee pays such amount within any applicable grace period or contests the payment of such obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* Nonperformance or violation by Licensee of one or more of the terms and conditions of any note, Debenture, or Preferred Security, or other obligation of Licensee issued to, held or guaranteed by SBA, or of any agreement with or conditions imposed by SBA in its administration of the Act and the regulations promulgated thereunder.

(8) *Noncompliance.* Except as otherwise provided for in paragraph (c)(5) of this section, failure of Licensee, as determined by SBA, to comply with one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(9) *Failure to maintain investment ratios.* Failure of Licensee to maintain the investment ratios or amounts required for Preferred Securities in excess of 100% of Leverageable Capital (§ 107.230(c)(4)) or Leverage in excess of 300% of Leverageable Capital (§ 107.230(c)(3)), if applicable to such Licensee, as of the end of each fiscal year; *Provided, however,* That the prepayment, sale, or disposition of Qualified Investments or Venture Capital Financing, as appropriate, increases in Leverageable Capital, or the receipt of additional leverage, within 120 days prior to the end of the fiscal year shall be disregarded in determining whether Licensee meets the foregoing requirements as of the close of its fiscal year.

(e) *Repeated non-substantive violations.* If a Licensee repeatedly fails to comply with any one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated thereunder, SBA, after written notification to the Licensee and until such condition is cured to SBA's satisfaction, shall deny additional Leverage to such Licensee and/or require such Licensee to take such actions as SBA may determine to be appropriate under the circumstances.

(f) *Consent to removal of officers, directors, or general partners and/or*

*appointment of receiver.* The Articles of any Licensee issuing Debentures or Preferred Securities after September 30, 1993, shall include the following provisions as a condition to the purchase or guaranty by SBA of such Leverage. Upon the occurrence or any of the events specified in 13 CFR 107.261(c) (1) through (7) or 107.261(d) (1) and (2) as determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right: (1) With respect to a Corporate Licensee, upon written notice, to require Licensee to replace, with individuals approved by SBA, one or more of Licensee's officers and/or such number of directors of Licensee's board of directors as is sufficient to constitute a majority of such board, or (2) with respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA, and/or (3) with respect to either a Corporate or Unincorporated Licensee, to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent and shall be subject to the relevant provisions of the Act.

**§ 107.262 Conditions affecting issuers of Participating Securities.**

(a) *Applicability.* The conditions of this section apply to Licensees with outstanding Participating Securities or with Earmarked Assets in their portfolios. The Articles of any such Licensee shall include the provisions of this § 107.262 as a condition to the guaranty by SBA of Participating Securities and for so long as the Licensee owns Earmarked Assets.

(b) *Consent to removal of officers, directors, or general partners, and/or appointment of receiver.* (1) Upon the occurrence of any of the following conditions as determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right: (i) With respect to a Corporate Licensee, upon written notice, to require Licensee to replace, with individuals approved by SBA, one or more of Licensee's officers and/or such number of directors of Licensee's board of directors as is sufficient to constitute a majority of such board, or (ii) with respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA, and/or (iii) with respect to either a Corporate or Unincorporated Licensee, to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent and shall be subject to all of the provisions of the Act.

(2) *Insolvency.* Licensee is equitably or legally insolvent.

(3) *Voluntary assignment.* Licensee makes a voluntary assignment for the benefit of creditors.

(4) *Bankruptcy.* The Licensee commences any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against Licensee and is not dismissed within 60 days.

(5) *Transfer of Control.* Licensee violates § 107.104 and/or willfully violates § 107.601, and such violation results in a transfer of Control of Licensee.

(6) *Fraud.* Licensee commits a fraudulent act which causes serious detriment to SBA's position as a guarantor.

(7) *Fraudulent transfers.* Licensee makes any transfer or incurs any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(c) *Failure to remove.* (1) Upon the occurrence of any of the following conditions as determined by SBA, and only if Licensee fails to remove the person(s) SBA identifies as responsible for such occurrence and/or cure such occurrence to SBA's satisfaction within a time period determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right: (i) With respect to a Corporate Licensee, upon written notice, to replace one or more of Licensee's officers and/or such number of directors of Licensee's board of directors as is sufficient to constitute a majority of such board, or (ii) with respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA, and/or (iii) with respect to either a Corporate or Unincorporated Licensee, to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent and shall be subject to the relevant provisions of the Act.

(1) *Willful conflicts of interest.* Licensee willfully violates § 107.903.

(2) *Willful or repeated noncompliance.* Licensee willfully or repeatedly violates one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(3) *Failure to comply with restrictions under § 107.262(d).* Licensee fails to comply with the restrictions imposed by SBA under paragraph (d) of this section.

(d) *Consent to restricted operations.* (1) Upon the occurrence of any of the conditions set forth in this paragraph (d) as determined by SBA, and until such condition(s) are cured to SBA's satisfaction within a time period determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right, upon written notice, to (i) Prohibit Licensee from making any additional investments except for: (A) Investments pursuant to legally binding commitments entered into by Licensee prior to such notice and (B) subject to SBA's prior written approval, investments that are necessary to protect Licensee's investment, (ii) until all Leverage is redeemed and amounts due are paid, prohibit Distributions by the Licensee to any party other than SBA, its agent or Trustee, and (iii) require all commitments to Licensee from Institutional Investors to be funded at the earliest time(s) permitted in accordance with Licensee's Articles:

(2) *Removal Conditions.* Any condition listed in paragraphs (b) or (c) of this section.

(3) *Failure to maintain Regulatory Capital.* Licensee fails to maintain the minimum Regulatory Capital as required by § 107.101(d).

(4) *Capital or Liquidity Impairment.* Licensee has a condition of Capital Impairment as determined under § 107.210(h) or a condition of Liquidity Impairment as determined under § 107.241(f) and fails to cure the impairment within time limits set by SBA in writing.

(5) *Improper Distributions.* A Licensee makes any Distribution to its shareholders or partners other than those permitted by §§ 107.245 and 107.802.

(6) *Excessive Management Expenses.* Without the prior written consent of SBA, Licensee incurs Management

Expenses in excess of those permitted under § 107.241(d).

(7) *Failure to make payment.* Failure of Licensee to make payment of any amount required by §§ 107.240 through 107.247 unless otherwise permitted by SBA.

(8) *Noncompliance.* Except as otherwise provided for in paragraphs (c)(1) and (c)(2) of this section, failure of the Licensee, as determined by SBA, to comply with one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(9) *Failure to maintain diversity.* Licensee fails to maintain diversity between management and ownership as required by § 107.241(c).

(10) *Failure to maintain investment ratios.* Failure of Licensee to maintain the investment ratios or amounts required for Participating Securities (§ 107.241(b)) or Leverage in excess of 300% of Leverageable Capital (§ 107.230(c)(3)), if applicable to such Licensee, as of the end of each fiscal year; *Provided, however,* that the prepayment, sale, or disposition of Equity Capital Investments or Venture Capital Financing, as appropriate, increases in Leverageable Capital, or the receipt of additional Leverage, within 120 days prior to the end of the fiscal year shall be disregarded in determining whether Licensee meets the foregoing requirements as of the close of its fiscal year.

(11) *Nonperformance.* Nonperformance or violation by Licensee of one or more of the terms and conditions of any Participating Security or of any agreement with or conditions imposed by SBA in its administration of the Act and the regulations promulgated thereunder.

(12) *Noncooperation under § 107.262(e).* Licensee fails to take appropriate steps, satisfactory to SBA, to accomplish such action as SBA may have required pursuant to paragraph (e) of this section.

(e) *Repeated non-substantive violations.* If a Licensee repeated fails to comply with any one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated thereunder, SBA, after written notification to the Licensee and until such condition is cured to SBA's satisfaction, shall deny additional Leverage to such Licensee and/or require such Licensee to take such actions as SBA may determine to be appropriate under the circumstances.

**§ 107.263 Non-waiver.**

No failure to SBA to exercise and no delay in exercising any right or remedy under the Act or the regulations in this section shall operate as a waiver thereof. Any failure of SBA at any time to require the performance by Licensee of any one or more of the terms or provisions of any debt instrument, Preferred or Participating Security of Licensee issued to, held, or guaranteed by SBA shall in no way affect SBA's right to enforce the same, nor shall SBA's waiver of, or failure to enforce, any term or provision of any debt instrument, Preferred, or Participating Security of Licensee issued to, held, or guaranteed by SBA or of any event or condition set forth in §§ 107.261 or 107.262 be taken or held to be a waiver of any suceeding breach of any such term or provision or condition.

6. Section 107.901 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

**§ 107.901 Prohibited use of funds.**

* * * * *

(a) *Relending, reinvesting, etc.* For relending or reinvesting, if its primary business activity involves, directly or indirectly, providing funds to others, the purchase of debt obligations, factoring or long-term leasing of equipment with no provision for maintenance or repair; *Provided, however,* that Venture Capital Financings (as defined in § 107.230(c)(3)) of a Disadvantaged Concern engaged primarily in relending or reinvesting activities shall be permitted, except for banks and savings and loan associations not insured by agencies of the Federal Government, and agricultural credit companies.

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7. Section 107.906 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 107.906 Violations based on false filings and nonperformance of agreements with SBA.**

* * * * *

(a) *Nonperformance.* Nonperformance of any of the requirements of any Debenture, Participating Security or Preferred Security issued to, held or guaranteed by SBA, or any written agreement with SBA.

* * * * *

8. Section 107.1004 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

**§ 107.1004 Reporting changes not subject to prior SBA approval.**

(a) *Changes to be reported.* Any change of Licensee's name, address, telephone number, officers, directors, or other participants in the management of Licensee, articles, operating area, investment policy, or increase in capitalization not otherwise required to be submitted for prior approval (see, for example, § 107.601) shall be reported to SBA not later than thirty days after these events. * * *

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(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: June 5, 1993.

**Erskine B. Bowles,**

*Administrator.*

[FR Doc. 93-18362 Filed 8-4-93; 8:45 am]

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## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 107

### Small Business Investment Companies; Definitions of Various Terms

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

In the matter of Small Business Investment Companies; Definitions of Alter Ego Concern, Commitment, Common Control, Control, Control Person, Cost of Money, Institutional Investor, Leverageable Capital, Operating Small Concern, Private Capital, and Regulatory Capital; Limited partnership SBICs; Fees and Interest Charges by SBICs; Operational Requirements; Overlines; Verification of eligibility and use of funds; Economic Impact; Other Permissible Financings; Issuance of Licensee securities; Idle Funds Investments; Financing changes of ownership; Conforming amendment; Prohibited Uses of Funds; Valuation guidelines.

**SUMMARY:** Title IV of the "Small Business Investment Act of 1992 (September 4, 1992)" made a number of changes to the Small Business Investment Act of 1958, as amended (the Act). Several changes which are set forth in a separate rule published elsewhere in this issue of the **Federal Register** affect financial assistance provided by the Small Business Administration (SBA) to Small Business Investment companies (SBICs) that are licensed and regulated by SBA. Title IV also made changes that affect the eligibility and operations of Licensees. This proposed rule would implement these statutorily mandated eligibility and operational changes, and it would

also make other changes many of which relate to the statutory changes.

**DATES:** Written comments on this proposed rule must be received no later than October 4, 1993.

**ADDRESSES:** Written comments should be sent to: Wayne S. Foren, Associate Administrator for Investment; Small Business Administration; suite 6300; 409 3rd Street, SW.; Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Klapp, Director, Office of Program Development; telephone (202) 205–6515.

**SUPPLEMENTARY INFORMATION:**

**Common Control**

On May 10, 1991 SBA published a proposed rule (56 FR 21639) implementing the amendment made to section 303(b)(1) of the Small Business Investment Act (the Act) by section 215(a)(1) of Public Law 101–574, forbidding SBA to guarantee the debentures of any Licensee if, as a result thereof, the aggregate outstanding amount of SBA-guaranteed debentures issued by such Licensee and any other Licensee or Licensees under common control therewith would exceed $35 million. By the terms of section 402 of Public Law 102–366 (September 4, 1992) the $35 million debenture leverage ceiling was superseded by a $90 million ceiling on the aggregate amount of Leverage of all forms that might be outstanding in any Licensee or Licensees under common control, "unless the Administration determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default."

SBA does not believe that Congress intended the words "commonly controlled" to mean only "commonly owned", since there are many different methods of control other than mere ownership of record. Rather, SBA believes that Congress intended both to limit the dollar amount of leverage available to a single group of investors, and to limit the dollar amount for which SBA would be at risk as a result of the business judgment of a single management group, even though the managers are not the owners. Consequently, the intention of this regulation is that two or more Licensees will be presumed to be "commonly controlled" if there is an affiliate relationship between or among them, which could be based upon ownership of stock or partnership capital of the Licensees, or upon management by affiliated persons or entities, even if there is no affiliation between or among the owners of the Licensees. The presumption that two or more Licensees are "commonly controlled" is not precluded solely because of the absence of any affiliation between or among their respective owners, or any interlock of their respective officers and/or directors, or general partners or Control Persons. Licensees shall be presumed to be "commonly controlled" under the terms of the proposed rule if day-to-day management is contracted out to a single entity, or to two or more affiliated entities.

This regulation substitutes a rebuttable presumption of common control for the conclusive presumption contemplated in the withdrawn proposed rule. Specifically, proof of common ownership need not compel the conclusion of common control if it can be satisfactorily demonstrated to SBA that, for example, two or more Licensees under common ownership operate under entirely different management teams, are located in different regions, and pursue different investment plans. On the other hand, the presumption of common control would not be rebutted by a showing that two or more Licensees are separately owned, and each has a separate Board of Directors or General Partner, if it also appeared that each Board or General Partner had effectively delegated operational control to a common adviser/manager.

Since SBA is not aware of any groups of Licensees under common control that presently have outstanding Leverage in any amount close to $90 million, much less in excess of $90 million, there is no need at this time to address the question of any phase-in of the ceiling. It should be understood that SBA has no statutory authority to extend any form of Leverage to any Licensee if the aggregate amount of Leverage of all kinds outstanding from that Licensee and the others under common control with it would thereby exceed $90,000,000 "unless [SBA] determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default."

**Cost of Money**

Section 411 of Public Law 102–366 directs SBA to allow Licensees that have issued debentures with SBA's guarantee, or have issued their debentures to SBA, to charge a maximum rate of interest that also reflects "such other expenses of the company as may be approved by the Administration." Sharing Congress's concern for the general level of profitability of the SBIC industry, SBA proposes three regulatory changes. The first of these is an amendment of the definition of "Cost of Money" (COM) that would allow Licensees to impose upon Small Concerns certain fees and charges that will be excluded from the computation of COM. Other changes are proposed in the wording of §§ 107.302 and 107.402 and will be addressed hereafter. At this point, discussion is primarily directed to the proposed new definition of COM, as set forth in § 107.3.

The general rule now embodied in the definition of COM is that everything that a Small Concern and/or its affiliates is required to pay to a Licensee and/or the Licensee's Associates, regardless of the label that may be applied to any particular payment, is to be included as an element of the Small Concern's COM unless the payment in question falls within a specific exemption.

However, subject to the foregoing general rule that SBA does not propose to change, Licensees are nevertheless authorized to charge certain additional fees that are not considered part of COM. For example, reasonable prepayment penalties imposed pursuant to § 107.301(a) and fees for management services imposed pursuant to § 107.501 are now, and would continue to be, excluded from the computation of COM.

The present definition also excludes commitment fees imposed pursuant to § 107.402 from the computation of COM, but SBA proposes to eliminate the present exclusion of commitment fees and, instead, permit Licensees to charge a processing fee, in no event to exceed 3 percent of the requested amount of Financing; and to collect this fee, in full or in part, before processing the Small Concern's application. SBA intends to allow a Licensee to charge interest at the maximum permissible rate, and to collect a processing fee, not to exceed 3 percent of the amount of the Financing, in addition. If the Financing closes, the Licensee may collect or retain the full amount of the processing fee, even if no commitment was extended, and no part of this fee will be included in the computation of COM. On the other hand, if the Licensee has collected a processing fee equal to 3 percent of the requested Financing, any additional fee, whether based on the extension of a commitment, or otherwise, will be included in computation of COM.

Although the proposed regulatory changes would permit a Licensee to require a processing fee before

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processing an application for Financing, SBA proposes to amend § 107.402 to make it clear that it is not intended that any Licensee will derive a profit from a rejected application. In such a case, the Licensee must return the entire amount of any processing fee collected in excess of certain specified out-of-pocket costs. See the proposed amendments to § 107.402. If the application is rejected, the Small Concern will have no obligation to reimburse the Licensee for any additional expenses the Licensee may have incurred, even if the Licensee has previously charged a smaller advance processing fee than it might have charged, or no processing fee at all.

If the Licensee does provide Financing, the Small Concern may also be required to reimburse the Licensee for out-of-pocket conveyance and/or recordation fees and taxes; and reasonable closing costs. Such reimbursement, which may be required in addition to the processing fee, is also not to be included in the computation of COM.

The proposed definition of COM would also allow Licensees to impose upon Small Concerns three other charges, in addition to presently-excluded charges, that would be excluded from the computation of COM.

By agreement with a Small Concern, a Licensee may receive a reasonable fee for its efforts in arranging Financing from non-SBIC non-Associate sources, and the amount of such fee, whether or not the Licensee itself participates in Financing, is excluded from the computation of COM.

A Licensee may require the Small Concern to reimburse it for the reasonable and necessary costs incurred by the Licensee in monitoring the Financing, and the amount of such reimbursement is excluded from computation of COM.

A Licensee that has a "watchdog" director serving on the board of a Small Concern pursuant to § 107.903(f) may receive reasonable director's fees, not in excess of those paid to outside directors; and such fees are not to be included in computing COM.

Finally, the language presently found in the definition of COM that requires a Licensee, in the event of prepayment under certain circumstances, to refund unearned front-end charges has been moved to proposed § 107.402(f), and will be discussed hereafter.

**Private Capital**

Section 410 of Public Law 102–366 added a definition of "private capital" to the Act that, among other things, requires SBA to recognize "unfunded commitments from Institutional Investors that meet criteria established by the Administration" as part of a Licensee's Private Capital for certain purposes. Accordingly, SBA proposes to adopt a definition of "Institutional Investor". It is not SBA's intention to exclude any particular category of qualified investor, and there is a catch-all clause at the end that brings "any other entity that SBA shall determine to be an Institutional Investor" within the proposed definition's scope. SBA's recognition of an unfunded commitment from any entity that falls under the proposed definition of Institutional Investor will depend upon whether the entity in question is subject to meaningful State or Federal regulation that is intended to insure its solvency, or has a net worth in excess of $10,000,000, or an acceptable guarantee or letter of credit behind its unfunded commitment, or is an investing agent for any of the foregoing classes of investors. See also the discussion, below, of Private Capital.

Public Law 102–366 includes two provisions that significantly affect the definition of "Private Capital" as presently set forth in § 107.3.

Section 410 of Public Law 102–366, the first of these two provisions, adds a statutory definition of "private capital" that, among other things, recognizes funds invested in a Licensee or applicant by a pension fund as private capital, without regard to whether the fund is a public or private fund. Section 410 also requires SBA to recognize as private capital funds invested in a Licensee by any State or local governmental entity, but only to the extent that such investment does not exceed 33 percent of the total private capital of the Licensee or applicant "and otherwise meets criteria established by the Administration". Finally, section 410 recognizes unfunded commitments from an institutional investor as a part of private capital, but only for regulatory purposes, and not for purposes of either meeting the minimum capital requirement, or for leverage eligibility.

Section 413 of Public Law 102–366 is the second provision that affects the definition of private capital. Its language is reflected in the proposed definition that will be discussed in detail hereafter.

Generally speaking, "Private Capital" is the sum of private funds, as the term is ordinarily understood (subject to one exception hereafter discussed), plus "qualified nonprivate funds" which is a term explained with four clauses that define "qualified nonprivate funds". However, there are really only three categories of funds involved: Federal funds, State and local government funds, and funds granted to nonprofit corporations or other institutions. Money invested by any pension fund is considered private funds, even if the beneficiaries are State or local government employees, and the fund is managed by another governmental agency or instrumentality. On the other hand, if private investors capitalize a Licensee on the inducement of a guarantee against loss issued by a State or local governmental entity, their investment, to the extent of the guaranteed amount, will be considered qualified nonprivate funds invested directly by the guarantor.

There are only two subclasses of Federal funds that may be hereafter included in any Licensee's Private Capital if this proposed rule is adopted without change: Federal funds that SBA has already recognized as a part of a Licensee's Private Capital under the present definition, and Federal funds that Congress may, by an explicit statutory commandment, hereafter direct SBA to recognize as a part of a Licensee's Private Capital.

Despite the explicit statutory exclusion of funds derived directly or indirectly from Federal sources from private capital, SBA does not believe that Congress intended to affect any present Licensee whose Private Capital includes direct or indirect Federal funds that were previously recognized by SBA. Since September 30, 1983 SBA has recognized only direct or indirect Federal funds that were invested or committed on or before August 16, 1982. SBA also regards the introductory words of the statutory definition, "notwithstanding any other provision of law" and the statutory definition's explicit and general exclusion of Federal funds from private capital as an implicit repeal of any present laws that may direct SBA to recognize Federal funds as a part of private capital.

On the other hand, the proposed definition also recognizes the possibility that Congress may hereafter require SBA to recognize certain Federal funds as private capital.

The Private Capital status of State or local funds invested in a Licensee is more complex because the proposed regulation reflects the reconciliation of two apparently conflicting statutory provisions. In relevant part, the statutory definition of "private capital" speaks of "any funds invested in the licensee by State or local government entities, to the extent that such investment does not exceed 33 percent of a licensee's total private capital * * *". This language is located at the end of paragraph (c) of the proposed definition, which applies generally to

all money that goes into any Licensee and originates with a State or local governmental entity, regardless of the number of bank accounts or intervening entities through which the money may pass on the way to the Licensee. SBA does not believe Congress intended that the 33 percent limitation that it imposed on the percentage of State or local money in the private capital of a Licensee should be easily evaded by routing additional money through one or more conduits.

The new definition of "private capital" that was added to the Small Business Investment Act is not, however, Congress's last word on the subject. That last word is to be found in section 303(e) of the Act, as amended by section 413(2) of Public Law 102–366. As amended, section 303(e) sets forth an exception to the general rule governing the status of State or local funds invested in a Licensee. This exception applies only when two conditions, both explicitly stated in the Act, as amended, are satisfied: (1) The Licensee (or applicant) is a section 301(d) company (SSBIC); and (2) the money must be "capital indirectly obtained". Congress defined "capital indirectly obtained" in terms of illustration rather than terms of limitation, but from these illustrations SBA has concluded that "capital indirectly obtained" means money derived from the investment of State or local government money, regardless of whether the investing entity is a State or local government financing agency that "invests" by making loans, a State or local government that invests in securities as a passive investor, or a private nonprofit corporation that invests grant funds received from a State or local government. SBA does not propose to treat grant funds themselves as "capital indirectly obtained". The principal amount of any State or local government grant funds routed through a nonprofit corporation would be considered funds invested by a State or local government entity, and subject to the 33 percent limitation applicable to such funds. SBA does not regard the language of section 303(e) of the Act, as amended, as a manifestation of Congressional intent to require SBA to license an SSBIC applicant capitalized entirely with "capital indirectly obtained." Such an interpretation would be inconsistent with section 302(c) of the Act authorizing SBA to limit the "aggregate amount of shares in any [Licensee] which may be owned or controlled by any stockholder, or by any group or class of stockholders * * *". Accordingly, SBA is required to fix a 33 percent limit on the percentage of any applicant's or Licensee's Private Capital that may consist of funds invested by any State or local government entity. In the case of a section 301(d) Licensee or applicant, however, Private Capital may also include "capital indirectly obtained" from a State or local government entity, or private non-profit entity, provided the aggregate of such indirect funds and other State and local government funds does not exceed 40 percent of Private Capital.

Section 301(b) of the Act requires SBA to make a positive determination as to the probability of successful operation by any applicant before it may issue a license, specifically considering the applicant's prospects of "adequate profitability". There is substantial doubt as to the prospective profitability of an applicant that does not have at least 60 percent of its capital contributed by investors whose primary motivation is profit. SBA believes that it is essential that the majority of ownership and that control of a Licensee be vested in the private sector investors.

On the other hand, the proposed definition of Private Capital is not intended to preclude nonprofit entities from investing in Licensees. Funds of unquestionably private (non-Government) origin are private funds, not "qualified nonprivate funds" and there is no reason why a nonprofit entity may not use such funds to capitalize a Licensee, even a wholly-owned Licensee.

The proposed definition of Private Capital includes the contribution non-cash assets which represents a change in policy on SBA's part. SBA's present position, though not explicitly stated in the regulations, is that a Licensee may, without prior SBA approval, accept donations (gifts) of non-cash assets and other physical assets to be used in the Licensee's operations so long as the Licensee assumes no liabilities in connection with such assets, or does not, as owner of donated securities, become involved in the active conduct of a business through a controlled subsidiary; but while these donated assets will, of course, be regarded as assets they will not be recognized as part of Private Capital until, and only to the extent they are, reduced to cash. Moreover, a Licensee was considered to have no investment to protect in donated assets.

SBA proposes to change the above-described policy in two respects: (1) SBA's prior written consent will now be required before a Licensee may accept non-cash assets; and (2) given SBA's consent to accept such assets, a Licensee may issue its securities in exchange for them; § 107.705 is proposed to be amended to conform with this change in policy. Despite these changes, it should be clearly understood that these non-cash assets will still not be recognized as Regulatory Capital until they are converted to cash, and even a Licensee that issues its securities in exchange for non-cash assets (securities) will not be considered to have any investment to protect within the meanings of §§ 107.403, 107.706, and 107.801.

Along with the proposed definition of Private Capital, SBA proposes a definition for "Regulatory Capital". This definition would not replace the present paragraph (d) of Private Capital regarding "compliance." Both the present and the proposed paragraphs deal with assets that represent contributed capital but that SBA does not consider part of Private Capital as a general rule; however, they will be treated for certain limited purposes of regulatory compliance as if they were part of Private Capital. The only change of substance is the statutorily-mandated addition of certain unfunded binding commitments on the part of an Institutional Investor to purchase stock or limited partnership interests in, or to make capital contributions to, a Licensee. An unfunded commitment of an Institutional Investor will be recognized as regulatory capital only to the extent that SBA is satisfied that the investor in question is actually able to fund the commitment.

The present definition of Private Capital also includes a paragraph (c) captioned "Leverage eligibility". SBA proposes to adopt, instead, a definition for "Leverageable capital". The change is purely editorial. Nothing will be added to the category of "Leverageable capital" that is not now included, and nothing eliminated. The categories of Federal funds listed as part of Private Capital for leverage eligibility purposes are intended to be covered under the category of "Qualified nonprivate funds" in paragraph (c) of the proposed definition of Private Capital.

**Limited Partnerships**

The requirement presently set forth in § 107.4(b)(3)(i) that a limited partnership applying to become a Licensee "have a duration of not less than thirty years" is inconsistent with the Small Business Investment Act (Act), as amended by Public Law 100–590. In practice, SBA has not required a thirty-year term for applicant limited partnerships since the statutory amendment, mandating a minimum term of only ten years, became effective. SBA now proposes to amend the rule to provide, instead, for a minimum term that is the longer of ten years or two

years following the maturity date of the last-maturing security issued by such Licensee as evidence of the extension of Leverage by SBA. As a result of the enactment of Pub. L. 102–366 Leverage may be extended by SBA through guarantees of debentures and/or participating securities; and, in the case of limited partnerships licensed under section 301(d) of the Act (SSBICs), also by SBA's purchase of preferred limited partnership interests.

SBA anticipates that a substantial number of license applications will be filed by limited partnerships that wish to take eventual advantage of leverage in the form of 4-percent preferred limited partnership interest (available only to SSBICs) and/or participating securities (available to companies licensed under both sections 302 (c) and (d) of the Act). Preferred limited partnership interests have a statutorily-fixed term of fifteen years. It is anticipated that participating securities will be redeemable not later than ten years from the date of issuance.

As a matter of financial prudence, SBA does not believe that any partner should be in a position to force the liquidation of the partnership so long as any preferred limited partnership interests or participating securities, or debentures held or guaranteed by SBA are outstanding. SBA believes that the orderly liquidation of a Licensee that has obtained leverage from SBA should take approximately two years following maturity of the last-maturing obligations of the Licensee. The minimum term of any limited partnership must be at least ten years, but the maximum length of the partnership's term will depend primarily upon decisions made by the partners. If, in the Year 3 of the partnership, the partnership sells a preferred partnership interest to SBA, the minimum term of the partnership would be extended to Year 20 (the second anniversary of the maturity of the preferred partnership interest).

Accordingly, SBA proposes a new minimum term for any limited partnership applying for an SBIC or SSBIC license after the effective date of a final rule based on this proposal. Section 107.4 is also proposed to be amended to permit Unincorporated Licensees to have as their general partner limited partnerships and limited liability companies as well as inidviduals, general partnerships and corporations which presently are permitted. This change is proposed to bring the SBIC program into conformity with the general practice of the venture capital industry.

**Operational Requirements**

SBA proposes to amend § 107.101 regarding operational requirements in order both to increase the chances of successful operation on the part of Licensees, and to minimize SBA's exposure to loss.

A company that applies for a license, or a Licensee that applies for leverage, must demonstrate to SBA that its management has something more than general business experience. Such applicant or Licensee must show that management has experience making the types of loans or investments in Small Concerns of the sizes and types contemplated in the Licensee's Plan of Operations.

SBA's experience has shown that companies entering the SBIC program with only the minimum amount of capital have little chance of carrying on the "successful operations" and achieving the "adequate profitability" required by section 301(c) of the Act. Accordingly, every applicant will be required to have sufficient capital in excess of the minimum to operate soundly and profitably within the context of its Plan of Operations without reliance upon increases in Leverage from SBA. That is, the prospective Licensee must have sufficient capital so that it will be able to pay its expenses without reliance on additional Leverage from SBA and without dissipating its Private Capital.

SBA's experience has also shown that the portfolio valuation process is a weakness of some Licensees. Accordingly, SBA intends to improve the process and the valuation standards. All Licensees would be required to adopt guidelines for the valuation of their portfolio investments, to evaluate portfolio investments in accordance with such guidelines, and to report such evaluations to SBA. SBA also proposes to add appendix III to part 107 that would set forth the basis upon which valuation guidelines should be framed. SBA's Policy and Procedural Release No. 2006, Valuation Guide, is proposed to be adopted as appendix III, with certain minor changes. See proposed § 107.101(g) and proposed appendix III to part 107.

With the widespread use of computers in virtually all businesses, SBA is in the process of developing systems to enable SBICs to perform their reporting requirements through electronic transmission from the most commonly used types of personal computers. SBA will provide SBICs with custom software that will enable SBICs to perform their reporting tasks more easily, more accurately, and more quickly. To this end, SBA is requiring all SBICs to have personal computers that can run SBA software by December 31, 1993, and to have the capability to perform this reporting function.

**Calculation of Cost of Money Ceiling**

Reference has already been made to the Administrative and Congressional concern over the profitability of the SBIC industry. Section 411 of Public Law 102–366 directs SBA to permit Licensees that have outstanding debentures to "charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis."

At this time, the maximum permissible rate of interest that any Licensee may impose upon any Small Concern is calculated with reference to the rate of interest on the SBA-guaranteed debentures underlying the most recent offering of trust certificates to the public. While the existing rule facilitates the determination of a uniform ceiling throughout the industry, it ignores the actual interest expense on the debenture leverage drawn down by any individual Licensee.

SBA therefore proposes to amend § 107.302 to allow Licensees that have been leveraged through the sale of debentures to use their own weighted average cost of funds borrowed from SBA, or with SBA's guarantee, as the case may be, as an alternative basis for calculating their respective interest rate ceilings. Although companies licensed under section 301(d) of the Act that sell debentures to SBA (or to the public with SBA's guarantee) may enjoy the benefits of a subsidized interest rate for the first five years of the debenture's term, this subsidy may be disregarded in the calculation of the alternative interest rate ceiling SBA proposes to create. On the other hand, Licensees that have sold Preferred Securities (stock or limited partnership interests) or Participating Securities may not include dividends or distributions on such securities in the calculation of their alternative interest rate ceilings.

If SBA adopts this proposal authorizing an alternative method of calculating maximum permissible interest, SBA's intention is to make this alternative method available as soon as possible to any Licensee that wishes to use it. Such Licensee need not wait until the close of its fiscal year following adoption of this proposed regulation. Such Licensee may promptly certify its weighted average cost of leverage to SBA as if this regulation had been in effect prior to the close of the Licensee's preceding fiscal year; and

solely for the purposes of determining whether the notification is timely within the meaning of § 107.302(f), SBA will regard the effective date of this rule as the closing date of the Licensee's fiscal year. In other words, if the Licensee's fiscal year ends on December 31, and this rule is adopted as final on the following July 1, a Licensee may certify a weighted average cost of leverage based on the fiscal year that closed on the preceding December 31, and the required notification to SBA will be considered timely if made within 15 days after July 1. It should be clearly understood that the interest rate ceiling based on the Debenture Rate remains the only permissible ceiling applicable to Loans or Debt Security Financing committed or disbursed prior to the certification of the Licensee's weighted average cost of leverage.

However, while SBA and Congress are both concerned about low profitability generally in the SBIC industry, SBA is concerned that some Licensees may be imposing excessive costs of money upon their borrowers far in excess of anything contemplated by the Act or the regulations. Accordingly, SBA proposes to adopt a new rule that would limit both the amount of default penalty that a Licensee may impose, and the justification for its imposition. The proposed rule would allow a default penalty to be imposed only if the Small Concern fails to make payment in accordance with the terms of its obligation; and the default rate of interest may not exceed the maximum permitted rate at the time of default. In other words, if the rate of interest on the loan is 15 percent at the time of default, and the interest rate ceiling is 17 percent at that time, the interest may be adjusted upwards by 2% and the maximum permissible rate of interest on the defaulting borrower's loan would be 17 percent.

**Regulatory Relief for Unleveraged Licensees**

Section 408 of Public Law 102–366 directs SBA to review, and revise, those regulations "intended to provide for the safety and soundness of leveraged Licensees with a view toward exempting unleveraged Licensees from compliance therewith, or promulgating different rules for unleveraged Licensees." Accordingly, SBA proposes to exempt unleveraged Licensees from compliance with § 107.303 (overline limitation) and with § 107.708 (idle funds).

SBA proposes to amend § 107.708 to clarify its position with respect to a Licensee's deposit of idle funds in an Associate bank. SBA's position has always been that such a deposit does not constitute the Financing of an Associate unless the Licensee is receiving a lower interest rate than the Associate gives the public. In the case of an unleveraged Licensee, SBA will not consider the deposit of funds with an Associate bank to constitute self-dealing, even if the Licensee accepts a lower interest rate than the Associate gives the public.

SBA does not intend that any Licensee shall simultaneously be leveraged and exempted from compliance with the above-cited regulations, or with any other regulations that may hereafter be made inapplicable to unleveraged Licensees. Accordingly, no Leverage is to be made available to any unleveraged Licensee that is not, at the time of the request for Leverage, in compliance with regulations applicable to leveraged Licensees.

**Verification of Use of Proceeds**

SBA has encountered situations in which it would appear either (a) that once it had verified the value of this collateral, the Licensee felt no responsibility to assure that funds were used for intended purposes, or (b) that the principals of the borrower have misrepresented the nature of their present or projected business operations and then diverted loan proceeds away from the use that the Licensee indicated on the Portfolio Financing Report (SBA Form 1031) that it filed with SBA.

SBA proposes to add a § 107.305 to make it quite clear SBA expects every Licensee to look upon the representations that any applicant for Financing may make with respect to its eligibility, including the intended use of funds, as material and no less significant than the representations the applicant may make concerning its cash flow and collateral; and each Licensee is expected to exert the same degree of due diligence in verifying the Small Concern's initial and continued eligibility that it exerts in determining the quality of its investment. The use of the word "expected" is deliberate. A Licensee that declines to exert such due diligence will be presumed to have acted with full knowledge of any information that reasonable due diligence would have unearthed, and thus to have consented to any improper diversion of funds by the Small Concern and to have knowingly uttered whatever false statements were necessary to conceal or facilitate the diversion.

SBA also recognizes the possibility that Small Concerns, or their principals, may engage in fraud and deceit with respect to the Small Concern's eligibility and intended use of funds so that reasonable due diligence would not unearth the truth. The proposed amendment would give the Licensee the right to demand immediate repayment of all Financing advanced by the Licensee if post-disbursement monitoring should reveal a diversion of funds from their originally stated objective, and Licensees are reminded of the possibility that additional damages for civil fraud may be recoverable under applicable law. Licensees would also be required to report such instances of diversion promptly to SBA, so that SBA can consider its available options against the principals of a Small Concern that has fraudulently obtained Financing from a Licensee.

Most of the substance of the proposed amendment of § 107.402 has already been discussed in connection with the proposed amendment of the definition of COM. However, the proposed amendment of § 107.402 reflects a new approach to the treatment of prepayment penalties by a Licensee that has also charged front-end fees. Under the present regulations, a reasonable prepayment penalty was generally excluded from the computation of COM unless the Licensee has also charged front-end fees; and in that case the prepayment penalty itself became part of COM.

SBA proposes to change this rule. In the event of voluntary prepayment every Licensee may charge a reasonable prepayment penalty without regard to front-end charges, but a Licensee that charges an excessive prepayment penalty shall be required to refund the entire amount of the penalty to the Small Concern.

However, if a Licensee has imposed front-end charges that are not explicitly excluded from computation of COM, such as points, discounts, or processing fees in excess of 3 percent, to the extent of the excess, the amount of such fees shall be prorated over the stated term of the Financing and if the sum of interest and unearned front-end charges exceeds the applicable COM limit, the excess shall be repaid to the Small Concern.

SBA proposes to amend § 107.3 by adding a definition of the term "Commitment" to reflect the sense in which it was intended, and understood by most Licensees: an agreement to provide a Financing to a Small Concern.

**Special Situations**

Although the declared purpose of the Act, as stated in section 102, is the extension of "equity capital and long-term loan funds which small concerns need * * * and which are not available in adequate supply * * *, SBA

recognizes certain situations in which the needs of a Small Concern may be more effectively met by the extension of short-term assistance.

Accordingly, SBA now proposes to amend § 107.403(b)(1) to add another and narrow exception to the general requirement that all Financings have a term of at least five years. This exception is to be created in favor of Small Concerns that have received government contracts under Federal, State, or local set-aside programs for "minority" or "disadvantaged" concerns, so that Licensees may provide the short-term contract financing that the Small Concern needs to perform the contract.

Although such financing would only be to firms receiving contracts under set-aside programs wherein eligibility had been established by the contracting agency, Licensees extending short-term contract financing would have a responsibility to assure that the Small Concern in question is a "Disadvantaged Concern", as defined in § 107.3.

SBA proposes to amend § 107.707 to clarify the authority of Licensees to purchase securities of Small Concerns from SBA, as either the receiver or the assignee of another Licensee.

**Economic Impact**

Section 102 of the Act clearly intends that each financing by a Licensee be used by an identified eligible Small Concern for its sound financing and for its growth, modernization or expansion. The purpose of the SBIC Program, therefore, is to provide risk capital to Small Concerns in a way that will bring about greater business activity resulting in job creation or retention, expanded revenues and tax base, and economic empowerment. Other examples of economic benefits to be realized include development or commercialization of technology, minority business development, urban and rural business development, expansion of exports, and support of the manufacturing sector.

SBA proposes to add a paragraph (c) to § 107.304 to require that each Portfolio Financing Report (Form 1031) set forth the economic impact expected to result from the financing in terms of job creation or retention, expanded business activity, or other identified indicators of economic impact.

**Alter Ego Financing**

It is often advantageous for real estate occupied by a Small Concern to be held by an associated "alter ego" entity. Certain advantages can be realized including: Improved cash flow and profitability; elimination of overly restrictive provisions of long-term debt agreements; the ability to increase the absolute level of external funds provided to a Small Concern; and finally, facilitation of the transfer of ownership from one generation to another, thus preserving the existence of such Small Concerns.

SBA proposes to create a narrow exception to the present general rule which makes Small Concerns that are primarily engaged in leasing real estate to others ineligible to receive Assistance from a Small Business Investment Company (Licensee) by allowing Licensees to Finance the acquisition or improvement of real estate of a Small Concern if such real estate is exclusively engaged in leasing its property to an eligible operating company (known as the Operating Small Concern), and furthermore, that this lessor (known as an Alter Ego Concern) will remain a mirror image or Alter Ego of the lessee. Only the Operating Small Concern can be a lessee in privity with its alter ego lessor, but the proposed regulation is intended to allow the Operating Small Concern the same right to sublet a portion of the premises it occupies just as any other Small Concern is permitted to lease a portion of the premises it owns. However, the Operating Small Concern is to occupy and use a majority of the space, and the use of an Alter Ego Concern together with an Operating Small Concern may not be utilized as a means of having a Licensee circumvent regulations in order to make what would otherwise be an ineligible investment. In the context of this proposal, the term "Improvement" means the construction or renovation of the facility that will be used by the operating Small Concern primarily as factory, office, sales, or storage space.

Accordingly, six regulatory changes are proposed to achieve this objective. It is noted that a similar regulatory provision exists in SBA's Regular Business Loan program and in the Development Company Loan programs.

The first change would add a new definition, "Alter Ego Concern", to § 107.3. To qualify as an Alter Ego Concern, the same Persons (a term that includes both individuals and legal entities) must own the same percentage interest in both the lessor (the Alter Ego Concern) and the lessee (the Operating Small Concern), but, while the lessor concern must be either a corporation or a partnership, there is no requirement that lessor and lessee concerns be both corporations or both partnerships. For example, if A and B respectively own 55 and 45 percent of the stock of the lessee corporation, the lessor concern will be an Alter Ego only if A and B also own respectively 55 and 45 percent of that concern, but the lessor concern may be organized as a partnership. There must also be a lessor/lessee relationship between the lessor and the operating (lessee) company; and the lessor may have no other business activity other than leasing real estate to the eligible Operating Small Concern. The term of the lease must extend at least until the maturity date of the Licensee's Financing. Finally, the Operating Small Concern must be either a joint borrower (a co-maker), or a guarantor to the full extent of the borrower's obligation. Unless all the above-listed conditions are met, the lessor concern will be an ineligible real-estate lessor, not an eligible Alter Ego Concern.

The second change would add the definition of "Operating Small Concern" to clarify the relationship with the Alter Ego Concern.

The third change would broaden the definition of "Portfolio Concern" to include the Alter Ego Concern. When an Alter Ego (lessor) Concern is Financed, the Licensee must obtain the Financial reports required by § 107.304(b) from both the operating and the lessor concerns.

The fourth change is a proposed amendment to § 107.706 intended to insure both the continuation of the alter ego relationship between the lessor and the operating concern, and the continued eligibility of the operating concern as long as the Licensee's Financing is outstanding. Except for a merger of lessor and lessee concerns, the termination of any of the relationships that together create an "alter ego" relationship, which includes the lease between the lessor and the Operating Small Concern, terminates the eligibility of the Alter Ego Concern to be a Portfolio Concern of the Licensee; and the Licensee must then either promptly divest itself of the Financing, or demand immediate repayment. Any other change in the eligibility of the Operating Small Concern, except by reason of a change in size, would also terminate the eligibility of the Alter Ego lessor.

The fifth change is a proposed amendment of § 107.901(c)(1), which now generally forbids the extension of Financing to Small Concerns classifiable under Major Group 65 of the Standard Industrial Classification Manual, a group consisting principally of real property lessors and operators. This proposed rule would add another exception, which as such must be narrowly interpreted, to those already set forth in paragraphs (i) through (iii) of § 107.901(c)(1).

Proposed paragraph (iv) also includes an exception to its own rule. Concerns engaged in leasing real estate are still

generally ineligible; Alter Ego Concerns are exempted from this general rule only to permit an Operating Small Concern that would otherwise be paying rent to an unrelated party with no interest in the Operating Small Concern's prosperity beyond its ability to pay the stipulated rent to pay rent instead to the Alter Ego Concern, which will have a substantial interest and investment, directly or indirectly, in the Operating Small Concern. SBA does not intend to permit the financing of a transfer of real estate ownership, as distinguished from financing the necessary improvement of real estate, when the real estate occupied (or to be occupied) by the Operating Small Concern is already in the hands of an affiliate, or was in such hands within six months prior to the Financing. Therefore, even if a prospective investee otherwise falls within the definition of an Alter Ego Concern, as set forth in § 107.3, such a concern is nevertheless ineligible by reason of § 107.901(c)(1) if the real estate in question is already, or was within the preceding six months, in the hands of an affiliate.

Finally, § 107.901(c)(2) is to be further amended to make it clear that only an (otherwise eligible) operating company, and not an Alter Ego lessor, can lease out to third parties any part of real estate acquired through Licensee Financing. An Alter Ego Concern may have only one tenant: The Alter Ego operating company.

**Change of Ownership Financings**

The regulation dealing with Licensee financing of transfers of ownership of a Small Concern, § 107.711, was written many years ago, before the era of the leveraged buyout and the formation of acquisition companies. Experience had demonstrated that the part of the regulation dealing with corporate divestitures is inadequate to prevent Licensee participation in transfers of huge enterprises. Licensee participation is made possible by the Financing of a shell acquisition company that qualifies as a Small Concern under an alternative size standard (§ 121.802(a)(2)), into which a big business is subsequently merged.

SBA proposes to amend § 107.711 to impose a series of tests on the concern that would emerge from the transfer of ownership. This proposal shifts the focus of the rule from the acquisition company financed by the Licensee to the concern that will result after all planned mergers and acquisitions have closed and all necessary financing is in place. If the concern resulting from the consummated acquisition will have no more than 500 full-time equivalent employees, the Licensee may finance the acquisition. If the concern resulting from the consummated acquisition will have more than 500 full-time equivalent employees, the Licensee may still finance the acquisition if, and only if, the resulting concern also meets either one of two alternative debt/equity ratio tests. If the Licensee in question has outstanding Leverage, the resulting concern's debt/equity ratio may not exceed 5:1; in the case of an unleveraged Licensee, the applicable debt/equity ration may not exceed 7:1.

The proposed regulation contains a paragraph (c) that excludes certain classes of debt and other obligations from the category of "debt" for the purpose of determining the resulting concern's debt/equity ratio.

It should be understood that this proposed version of § 107.711 does not constitute an amendment of the size standards. The standards to be set forth in § 107.711 are applicable only in the context of financing a change of ownership.

**Minimum Capital Requirements**

Section 409 of Public Law 102–366 increased the statutory minimum capitalization of an SSBIC to $1,500,000. Accordingly, it is necessary to amend the reference to a $1,000,000 capitalization in § 107.712(c) to reflect the statutory language.

**Compliance With Executive Orders 12291 and 12612, 12778, and With the Regulatory Flexibility and Paperwork Reduction Acts**

*Executive Order 12291 and Regulatory Flexibility Act*

This proposed rule will constitute a major rule for the purposes of Executive Order 12291 because, if promulgated as final, it is likely to have an annual impact on the national economy of $100 million or more, and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is likely to have a substantial impact upon a number of small entities. The proposals to recognize unfunded commitments of Institutional Investors, funds invested by State-managed pension funds, and funds invested by State or local government entities or instrumentalities are, if adopted as final rules, expected to increase the amount of Private Capital in the Small Business Investment Company program, and we believe that the annual amount over the next few years of such increased capitalization will be as much as $100 million or more. The proposed revision of the rule pertaining to financing transfers of ownership, if adopted as final, is expected to reduce Licensee participation in such change of ownership transactions, and may reduce Licensee participation by as much as $100 million annually.

The present regulations that generally restrict "real estate" financing have never been interpreted to forbid loans intended to facilitate an (operating) Small Concern's acquisition or improvement of the premises on which it carries on, or will carry on, its business activity. The proposed rule would allow the Financing intended to accomplish this purpose to be formally extended instead to an Alter Ego concern that falls within SBA's definition of an affiliate, but the ultimate beneficiary would remain the same. SBA has no reason to think that the adoption of this rule would affect the dollar amount of Financing that is presently extended for plant acquisition or improvement purposes, or that the substitution of an Alter Ego holding company as the nominal Portfolio Concern would have a significant impact upon a significant number of Small Concerns. A few Licensees have, on occasion, induced SBA to extend Leverage based on the representation that such Leverage was needed to fund a commitment when none was actually made. A few other Licensees have sought to characterize points as a commitment fee. The annual economic effect of a formal definition of "Commitment" is expected to be minimal, and no substantial impact upon any significant numbers of small entities is expected. What is at stake is a principle.

The proposed rule permitting a Licensee to extend short-term contract loans to recipients of contracts under "minority" or "disadvantaged" set-aside programs will neither have an annual economic impact approaching $100,000,000 nor a substantial impact upon a significant number of small entities. The class of Small Concerns that would be affected is limited to minority or disadvantaged Small Concerns that have been awarded a contract under Federal, State, or local government set-aside programs, and Licensees. The aggregate dollar amount that this proposed rule would make available for short-term contract loans is substantially limited by the existing rule set forth in § 107.403(a), which SBA does not propose to change, that the aggregate of all the specific types of Financings permitted under the cited regulation may not exceed twenty percent of any Licensee's "total adjusted assets."

Finally, the proposed rule that would clarify a Licensee's authority to purchase portfolio securities from SBA

as well as from an operating Licensee will not have an annual economic impact approaching $100,000,000 or a substantial impact upon a significant number of small entities. Relatively few Licensees purchase portfolio securities from other Licensees, and a Licensee may have no more than one-third of its assets invested in portfolio securities purchased from another Licensee.

1. The legal basis for this proposed regulation is section 308(c) of the Small Business Investment Act, 5 U.S.C. 687(c).

2. The potential benefits of this proposed regulation have been set forth in the discussion of this proposal above, under Supplementary Information.

3. The potential cost of this regulation cannot be quantified or estimated.

4. There are no Federal rules which duplicate, overlap, or conflict with these rules.

5. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost.

*Executive Order 12612*

SBA certifies that this proposed regulation, if promulgated in final, will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

*Executive Order 12278*

For the purposes of Executive Order 12278, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

*Paperwork Reduction Act*

SBA certifies that this proposed regulation, if adopted as final, will impose no additional record-keeping requirement upon any Licensee.

**List of Subjects in 13 CFR Part 107**

Investment companies, Loan program—business, Reporting and record-keeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations is proposed to be amended as follows:

## PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

**Authority:** Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*, as amended; 15 U.S.C. 687(c); 15 U.S.C. 683; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 102–366; Pub. L. 100–590 and Pub. L. 101–162; 15 U.S.C. 637(c); 15 U.S.C. 683, as amended by Pub. L. 101–162 and Pub. L. 101–574; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100–590.

2. Section 107.1 is proposed to be amended by adding at the end the following two sentences, to read as follows:

**§ 107.1 Scope of Part 107.**

* * * Provisions of this part which are not mandated by the Act shall not supersede existing State law. A party claiming that a conflict exists shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

* * * * *

3. Section 107.3 is proposed to be amended by revising the definitions of *Control, Cost of Money, Private Capital,* and *Section 301(d) Licensee,* and by adding definitions of *Alter Ego Concerns, Commitment, Common Control, Control Person, Institutional Investor, Leverageable Capital, Operating Small Concern,* and *Regulatory Capital,* and *Section 301(c) Licensee* in the appropriate alphabetical order to read as follows:

**§ 107.3 Definition of terms.[2]**

* * * * *

*Alter Ego Concern* means a Small Concern that is engaged in leasing real estate to another Small Concern, but which is nevertheless eligible to receive Financial Assistance from a Licensee if all of the following characteristics are present in the relationship between the (Lessor) Alter Ego Concern and the Operating (Lessee) Small Concern:

(1) The ownership of both concerns is identical; each Person with a percentage of ownership interest in the Lessor Concern has the same percentage of ownership interest in the Operating Small Concern;

(2) The Lessor Concern is a partnership or corporation that carries on no other business activity other than leasing real estate to the Operating Small Concern;

(3) The lease under which the Operating Small Concern occupies the property extends at least until the maturity date of the Licensee's Financing to the Alter Ego Concern; and

(4) The Operating Small Concern is either a joint obligor or guarantor of the Alter Ego Concern's obligation to the Licensee.

The Operating Small Concern shall have the same right to sub-let portions of the premises it occupies under the Lease from its Alter Ego Lessor that it would have had if it had been directly Financed by the Licensee. See § 107.901(c)(2).

* * * * *

*Commitment* means a written agreement between a Licensee and a Small Concern that obligates the Licensee to provide Financing (except a guarantee) to a Small Concern (whose eligibility has already been determined by the Licensee) in a fixed or determinable sum, by a fixed or determinable future date. In this context the term "agreement" means that there has been agreement on the principal economic terms of the Financing; Provided, however, that the terms of the Commitment may include reasonable conditions precedent to the Licensee's obligation to fund the Commitment.

* * * * *

*Common Control* means a condition where two or more Licensees either through ownership, management, contract, or otherwise, are under the Control of one group or Person.

*Control* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or a Small Concern, whether through the ownership of voting securities, by contact, or otherwise. Two or more Licensees are presumed to be under common Control if they are affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or advised either by a common independent investment advisor or managerial contractor, or by two or more such contractors that are affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA. The term "affiliate" is defined in § 121.401 of this title.

*Control Person* means (1) a general partner of an Unincorporated Licensee, including all general partners of a partnership serving either as a general partner of an Unincorporated Licensee or as general partner of any other (intervening) partnership, limited or general, that serves directly or indirectly as a general partner of an Unincorporated Licensee; (2) any officer, director, agent or employee of a corporate general partner of an Unincorporated Licensee, or of any corporation that is a general partner in a partnership serving as a general partner of an Unincorporated Licensee, or as a general partner of any other (intervening) partnership, limited or general, that serves directly or indirectly as a general partner of an Unincorporated Licensee; (3) any Person

[2] Terms defined in this section are capitalized hereafter.

that owns or controls, directly or indirectly, an interest of 10 percent or more as a stockholder in, or limited partner of, any corporation or partnership, limited or general, that serves directly or indirectly as general partner of an Unincorporated Licensee.

* * * * *

*Cost of Money* generally includes all consideration that a Small Concern and/or its affiliates is (are) contractually obligated to pay to a Licensee and/or the Associates of such Licensee in connection with Financial Assistance from such Licensee, such as interest, discounts, points, fees, commissions, and any other thing of value, except as hereinafter set forth. The following fees and charges are not to be included in calculating Cost of Money:

(1) Processing fees determined in accordance with § 107.402;

(2) Out-of-pocket conveyance and/or recordation fees and taxes;

(3) Reasonable closing costs;

(4) A reasonable fee for arranging Financing from non-SBIC non-Associate sources of capital, whether or not the Licensee participates in such Financing, if there is a written agreement in advance with the Small Concern to pay such fee;

(5) Fees for management consulting services, but only if calculated on a per hour, commercially reasonable basis for services actually rendered;

(6) Prepayment penalties pursuant to § 107.402;

(7) Reasonable and necessary out-of-pocket expenses incurred in monitoring the financing; and

(8) Board of Director fees not to exceed those paid to other outside directors and pursuant to § 107.903(f).

All other fees and charges shall be included in calculating Cost of Money.

* * * * *

*Institutional Investor* means:

(1) Any State on National bank, trust company, savings bank, or savings and loan association, including any such institution investing the funds of others in a fiduciary capacity;

(2) Any insurance company;

(3) Any 1940 Act Investment Company or Business Development Company, as defined in the Investment Company Act of 1940, as amended;

(4) Any holding company of the foregoing;

(5) Any employee benefit or pension plan established for the benefit of employees of the Federal government or any State, their political subdivisions, or any agency or instrumentality thereof;

(6) Any employee benefit or pension plan, as defined in the Employee Retirement Income Security Act of 1974, as amended;

(7) Any trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code, as amended;

(8) Any corporation, partnership, or other entity with a net worth in excess of $10,000,000;

(9) Any individual who is an Accredited Investor as defined by the Securities Act of 1933, as amended, whose commitment to a Licensee is guaranteed by, or backed by a letter of credit from a qualified Institutional Investor;

(10) Any State, its respective political subdivisions, or any agency or instrumentality thereof;

(11) Any entity whose primary purpose is to manage and invest non-Federal funds on behalf of any of the foregoing Institutional Investors; or

(12) Any other entity that SBA shall determine to be an Institutional Investor.

* * * * *

*Leverageable Capital* means Regulatory Capital, excluding unfunded commitments and Qualified Non-Private funds whose source is Federal funds.

* * * * *

*Operating Small Concern* means the lessee Small Concern assisted by a Licensee through the financing of an Alter Ego Concern.

* * * * *

*Private Capital*—(1) *General. Private Capital* means the combined private (non-governmental) paid in capital and paid-in surplus of a Corporate Licensee, or the private (non-governmental) partnership capital of an Unincorporated Licensee, including (i) funds invested by a public or private pension fund; (ii) unfunded binding commitments to purchase stock or limited partnership interests in, or make capital contributions to, a Licensee by an Institutional Investor, and (iii) qualified nonprivate funds as described in paragraph (c) of this definition. The contribution of non-cash assets, except as permitted by § 107.705(a) (1) through (6) requires prior SBA written approval.

(2) *Exclusions.* Private Capital shall not include (i) funds borrowed by a Licensee from any source, (ii) leverage funds obtained as a result of SBA's purchase or guarantee of securities, or (iii) funds obtained directly or indirectly from any Federal, State, or local government, or agency or instrumentality thereof, unless such funds are qualified nonprivate funds.

(3) *Qualified nonprivate funds.* For purposes of the definition of Private Capital, *qualified nonprivate funds* means (i) funds directly or indirectly invested in any Licensee on or before August 16, 1982 by any Federal agency except SBA, pursuant to a statute explicitly mandating the inclusion of such funds in "Private Capital"; (ii) funds directly or indirectly invested in any Licensee by any Federal agency pursuant to a statute that is enacted after September 4, 1992, explicitly mandating the inclusion of such funds in "Private Capital"; (iii) funds invested in any Licensee by any State or local government entity, including the amount of any guarantee extended by such entity, and (iv) in any section 301(d) Licensee or such applicant, funds invested which are income derived from the investment of grants that have been made by a state or local government agency or instrumentality into a nonprofit corporation or institution exercising discretionary authority with respect to such funds; and funds invested by a State financing agency, or similar agency or instrumentality, to the extent such funds are derived from such agency's income and not from appropriated State or local funds; *Provided, however,* that for any Licensee or applicant, the funds described in paragraph (3) (iii) of this definition shall not exceed 33% of Regulatory Capital; and *Provided further,* that for any section 301(d) Licensee or such applicant, the funds described in paragraph (iv)(3) of this definition shall not exceed 40% of Regulatory Capital, less the amount of funds described in paragraph (3)(iii).

(4) *Compliance.* For purposes of determining whether a Licensee is in compliance with §§ 107.103, 107.203(d), 107.303, 107.401(a)(5), 107.501(c), 107.601(g), 107.710(b)(3), or § 107.901(a), the term "Private Capital" shall be deemed to mean "Regulatory Capital" as in the section below. Licensees are not considered to have any investment in contributed assets for the purposes of §§ 107.403(b), 107.706(b), 107.710, and 107.801. See also § 107.705 of the part regarding consideration for issuance of Licensee's securities.

* * * * *

*Regulatory Capital*—(1) *General.* Regulatory Capital means Private Capital excluding contributed non-cash assets unless such assets have been converted to cash. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowing against such assets shall not constitute a conversion to cash.

(2) *Exclusions.* That portion of an Institutional Investor's unfunded commitment to a Licensee that exceeds: (i) 10 percent of the combined liquid assets of such Institutional Investor and

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any subsidiaries it controls, or (ii) 10 percent of the liquid assets of an Institutional Investor that guarantees or backs by letter of credit an Accredited Investor's commitment, or (iii) in the case of an entity that invests funds on behalf of other Institutional Investors, 10 percent of the combined liquid assets of such other Institutional Investors will not be included in such Licensee's Regulatory Capital. The amount of a commitment, the collectibility of which SBA determines to be questionable, shall also be excluded from Regulatory Capital. For purposes of this definition, Liquid Assets are defined (in U.S. dollars) as cash, short-term investments in money market funds, certificates of deposit, U.S. Treasury securities, publicly traded marketable securities, or other instruments with similar liquidity characteristics.

* * * * *

*Section 301(c) Licensee* means an SBIC organized as a for-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(c) of the Act.

*Section 301(d) Licensee* means an SBIC organized as a for-profit corporation, a non-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(d) of the Act. Such Licensees provided assistance only to Small Concerns that are owned by persons who are socially or economically disadvantaged persons.

* * * * *

4. Section 107.4 is proposed to be amended by revising paragraphs (b) (1), (2) and (3)(i), by revising the fourth sentence in paragraph (c), and by adding a new paragraph (f), to read as follows:

**§ 107.4 Limited Partnership SBIC.**

* * * * *

(b) *Application.* * * *

(1) *Number of general partners.* A Licensee shall have as its general partners at least two individuals; or one or more corporations (including limited liability corporations), or one or more partnerships (including limited partnerships), or any combination of individuals, and/or corporations, and/or partnerships. General partners of a general partner of an Unincorporated Licensee shall be considered for all purposes to be general partners of such Licensee. For the status of limited partners of a limited partnership that serves as a general partner of a Licensee, see the definition of "Control Person" in § 107.3.

(2) *General partner.* A general partner which is a corporation, limited liability company or limited partnership (an "Entity General Partner") shall be organized under state law solely for service as such and its Articles or Certificate of Incorporation or Limited Partnership Agreement or other similar governing instrument (which, in each case, shall accompany the license application) shall specify that no person shall serve as an officer, director or general partner without SBA's approval. No Entity General Partner may serve as such for any other Licensee and where an Entity General Partner is a limited partnership, such partnership shall be subject to the number of general partners defined in paragraph (b)(1) of this section. The paid-in capital of each Entity General Partner which is not invested in the Unincorporated Licensee shall be invested only as permitted by the last sentence of section 308(b) of the Act, pursuant to § 107.708 or in accordance with § 107.903(c), or any one of them. An Entity General Partner is subject to the same examination and reporting requirements as a Licensee under section 310(b) of the Act. The restrictions and obligations imposed upon a Licensee by §§ 107.201 through 107.205, and 107.601, 107.603, 107.701, 107.702, 107.703, 107.708, 107.709, 107.801, 107.802, 107.803, 107.1001, 107.1002, and 107.1004 apply also to a corporate general partner of a Licensee.

(3) *Articles of partnership.* * * *

(i) The partnership shall have a minimum duration of not less than the longer of ten years or two years following the maturity of the last-maturing security issued by the partnership evidencing Leverage from SBA. After 10 years and provided all Leverage has been repaid or redeemed and provided that all amounts due SBA, its agent, or trustee have been paid, the partnership may be terminated by a vote of the Licensee's partners. (SBA shall not be considered a partner.)

* * * * *

(c) *Obligations of a Control Person.* * * * The conditions specified in §§ 107.201 through 107.205 shall apply to all general partners; the conditions specified in § 107.203(b)(4) shall apply to all Control Persons. * * *

* * * * *

(f) *Special Leverage requirement.* Prior to the extension of any Leverage, an Unincorporated Licensee shall furnish SBA with evidence that it qualifies as a partnership for tax purposes, either by a ruling from the Internal Revenue Service, or by an opinion of counsel.

6. Section 107.101 is proposed to be amended by revising paragraph (a), redesignating paragraphs (d) and (e) as paragraphs (e) and (f), by inserting a new paragraph (d), by revising redesignated paragraph (e)'s introductory language, and by adding new paragraphs (g) and (h) to read as follows:

**§ 107.101 Operational requirements.**

* * * * *

(a) *Management.* Each Licensee shall have and maintain qualified management (or an Investment Adviser/Manager pursuant to § 107.709) in charge of its operations who will be available during normal business hours to the public. Any manager of a Licensee shall be deemed an officer thereof. When applying for a license or for Leverage, a Licensee must demonstrate, to the satisfaction of SBA, that its management has the knowledge, experience and capability necessary for investing in the types of businesses contemplated by the Act, these regulations, and Licensee's Plan of Operations. Neither management, nor any board of directors, nor any general partner shall be controlled either directly or indirectly by investors of qualified non-private funds.

* * * * *

(d) *General capital requirements.* Each company shall have at licensing, and thereafter shall maintain Private Capital adequate to assure a reasonable prospect that the company will be operated soundly and profitably over the long term, and managed actively and prudently in accordance with its articles or partnership agreement, within the context of its Plan of Operations without reliance upon increases in Leverage from SBA. In this regard, SBA shall determine the ability of the company, both prior to licensing and prior to approving any request for financing, to meet its obligations and shall take into consideration the income which the company anticipates on its investments, the experience of the company's owners and managers, and the company's financial resources. Compliance with these requirements shall be determined within the context of capital impairment and other regulations that relate to safety and soundness.

(e) *Minimum capital.* Any company licensed after August 5, 1993, shall have Private Capital in U.S. dollars sufficient to meet the requirements of paragraph (d) of this section, but in no case shall a Licensee have Private Capital less than the following minimum levels:

* * * * *

(g) *Valuation guidelines and responsibility.* (1) Each Licensee shall adopt written guidelines for its use in determining the value of its loans and investments. Such guidelines shall

incorporate the provisions specified in appendix III to this part. The boards of directors of corporations and the general partners of partnerships shall have sole responsibility for adopting such guidelines and, pursuant thereto, for valuing loans and investments of such Licensee. Such valuations shall be made at least annually, unless SBA on a case-by-case basis requires valuations to be made more frequently. A report of the annual valuation shall be forwarded to SBA with the Licensee's Annual Financial Report on SBA Form 468 and other reports of valuation, as required, shall be forwarded to SBA within thirty days thereof with an interim Financial Report on SBA Form 468. Any Licensee which has outstanding Leverage shall value its loans and investments semi-annually, unless SBA in its discretion requires more frequent reporting.

(2) The amount of Financing provided by a Licensee shall be the cost basis of loans and investments, which is the most appropriate measure of value until a basis exists to value such securities either above or below cost. Unrealized depreciation shall be established on loans and the debt portion of debt securities to recognize the value below cost when there is a basis to do so. Unrealized appreciation shall not be established on Loans and the debt portion of debt securities.

(3) The Licensee's independent public accountant has responsibility to review the Licensee's valuation procedures and implementation of such procedures, including adequacy of documentation. The independent public accountant also has reporting responsibilities regarding the results of this review (see appendix I of this part, section III and section V, paragraphs I and J).

(h) *Computer requirement.* After December 31, 1993, all Licensees shall have a personal computer with modem capable of running software provided by SBA and person(s) trained in the use of SBA provided software and shall electronically transmit computer information as required by SBA. Such Licensees shall use such software for the purpose of reporting specific financial information required by SBA.

7. Section 107.302 is proposed to be revised to read as follows:

**§ 107.302 Cost of Money; Loans and Debt Securities.**

Subject to lower ceilings prescribed by local law, Cost of Money on Loans and Debt Securities shall not exceed the higher of the following:

(a) *Loans.* The higher of either the Licensee's certified Weighted Average Cost of Leverage, computed in accordance with paragraph (e), of this section or the current Debenture Rate, plus, in either case, 7 percentage points, rounded off to the next lower eighth of one percent; *Provided, however;* That if the current Debenture Rate is 8 percentum or lower, a Licensee is permitted to charge up to 15 percentum.

(b) *Debt Securities.* The higher of either the Licensee's certified Weighted Average Cost of Leverage, computed in accordance with paragraph (e) of this section, or the current Debenture Rate, plus, in either case, 6 percentage points, rounded off to the next lower eighth of one percent; *Provided, however;* That if the current Debenture Rate is 8 percentum or lower, a Licensee is permitted to charge up to 14 percentum.

(c) *Maximum Cost of Money.* The maximum Cost of Money on any specific Financing shall be determined with reference to either the Licensee's certified Weighted Average Cost of Leverage or to processing fee or enters into a Commitment, or makes the first disbursement, whichever shall first occur.

(d) *Effective date.* The Cost of Money limitation in effect on [day preceding effective date of the Final Rule] shall remain applicable to all Financings committed or disbursed on or before that date.

(e) *Computation of Weighted Average Cost of Leverage.* Licensee's Weighted Average Cost of Leverage (as a percent) shall be computed as follows:

where W = Weighted Average Cost of Leverage

A = Dollar amount of Interest on SBA Guaranteed Debentures for the prior year, as found on Form 468 (SSBICs are presumed to have paid interest at the coupon rate, without regard to any subsidy payments by SBA)

P = Outstanding principal amount of debenture less Leverage fees

D = Days outstanding for prior fiscal year

i = Individual debenture

n = Number of Debentures outstanding at end of fiscal year

Σ = sum of

$$W = \left( \frac{A}{\sum_{i=1}^{n} \left[ \frac{P_i \times D_i}{365} \right]} \right) \times 100$$

This equation is read as: Multiply the principal balance (less Leverage fees) of each SBA guaranteed debenture still outstanding at the end of the preceding fiscal year by the number of days that the debenture was outstanding in that fiscal year and divide this product by 365; take the sum of these amounts and divide that sum into Interest on SBA Guaranteed Debentures; finally multiply the resulting number by 100.

(f) *Notification of Weighted Average Cost of Leverage.* A Licensee that wishes to utilize its Weighted Average Cost of Leverage as the basis of an alternative Cost of Money ceiling for its next succeeding fiscal year shall transmit a written certification of its Weighted Average Cost of Leverage to SBA as a part of its Annual Financial Report (SBA Form 468) for the prior fiscal year; provided however, that where such licensee provides financing using the weighted average cost of Leverage before submitting its Annual Financial Report, such Licensee shall submit its certified weighted average cost of Leverage as an attachment to the SBA Form 1031 for each such financing. Such Weighted Average Cost of Leverage shall be reviewed by the Licensee's independent public accountant, who shall provide a certification that the Weighted Average Cost of Leverage was calculated in accordance with SBA's regulations. Failure to submit timely a certified Weighted Average Cost of Leverage shall constitute a binding waiver of Licensee's right to use its Weighted Average Cost of Leverage as the basis for an alternative Cost of Money limitation, unless for good cause shown, SBA grants written approval for its use.

(g) *Application of Weighted Average Cost of Leverage to Financings involving multiple Licensees.* Where two or more Licensees participate in the same Financing of a Small Concern and a Weighted Average Cost of Leverage is used to compute the Cost of Money ceiling for the Financing, the Licensees shall use either the Weighted Average Cost of Money of the lead Licensee in the Financing, or the weighted average of the Weighted Average Cost of Money of all Licensees participating in the Financing; *Provided, however,* That in either case no Licensee participating in the Financing, other than the lead Licensee, shall receive consideration in excess of the Cost of Money ceiling based on its individual Weighted Average Cost of Money.

(h) *Default penalties.* In the event of a monetary default by a Small Concern, Licensee may charge a reasonable increased default rate of interest consistent with the practice in the geographic area of the SBIC, and raise the interest rate so long as the resulting rate remains within the Cost of Money ceiling in effect at the time of the default.

8. Section 107.303 is proposed to be amended by revising paragraph (a), by redesignating paragraph (b) as paragraph

(c), and by inserting a new paragraph (b) to read as follows:

**§ 107.303 Overline limitation.**

(a) *General.* Without written SBA approval, the aggregate amount of funds disbursed for securities acquired (exclusive of write-down), and of Commitments and guaranties issued for a Small Concern (including affiliated concerns as defined in § 121.401 of this chapter) shall not exceed twenty percent of such Licensee's Regulatory Capital; *Provided, however,* That for section 301(d) Licensees the limitation shall be thirty percent.

(b) *Non-Leveraged Licensees.* Any Licensee that does not have outstanding Leverage shall be exempt from this section; *Provided, however,* That no Leverage will be extended to any Licensee until such Licensee is in compliance with paragraph (a) of this section.

* * * * *

9. Section 107.304 is proposed to be amended by revising the heading and paragraphs (a)(1) and (b) and adding a paragraph (c) to read as follows:

**§ 107.304 Size status, financial report, and non-discrimination.**

(a) *Size status and nondiscrimination.* No assistance shall be provided unless:

(1) The Licensee has determined that the concern being assisted is a Small Concern based on the financial size standards set forth in § 121.802(a)(2)(i) or the single industry standard covering the industry in which the applicant Small Concern is, or will be, primarily engaged as set forth in § 121.802(a)(2)(ii). The Licensee and the Small Concern shall execute SBA Form 480, Size Status Declaration, including Licensee's determination that applicable size standards have been met, or SBA has determined at the request of the Licensee or of such concern that the latter is a Small Concern.

* * * * *

(b) *Financial reports*—(1)*Initial Financing decision.* In considering any Financing for a Small Concern the Licensee shall require the concern to submit such financial statements, plans of operation, (including intended use of financing proceeds), cash flow analyses and projections as are necessary to support the Licensee's investment decisions, considering the size and type of the business and the amount of the Financing being considered. Such materials shall be in English and shall be retained by, and become a part of the permanent record of, the Licensee.

(2) *Subsequent reports.* The terms of the Financing shall require each assisted Small Concern to forward to the Licensee, at least annually, such financial statements (including verification of the use of financing proceeds) as are necessary to verify not only the financial condition of the Small Concern for the purpose of valuing the Licensee's investment therein, but also the continued eligibility of such Small Concern. Such statements shall be in English and be certified by the chief financial officer, general partner, or proprietor of such Small Concern and shall be retained by, and become a part of the permanent records of, the Licensee. If the Licensee shall deem it appropriate, for financial and valuation purposes only, considering the size and type of the business involved, the Licensee may accept, instead, a complete copy of the Federal income tax return, including all appropriate schedules thereto, filed by the business or by the proprietor, as the case may be: Provided, however, that the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep copies of all reports furnished by such concern to the holders of its securities.

(c) *Economic Impact.* Licensees shall include in their Portfolio Financing Report (SBA Form 1031) an assessment of the expected economic impact of each financing. The assessment shall specify the full-time equivalent jobs to be created or retained, the impact of the financing on the business in terms of expanded revenue and taxes, and other appropriate economic benefits including but not limited to technology development or commercialization, minority business development, urban or rural business development, expansion of exports and assistance to manufacturing firms (SIC Codes 20–49).

* * * * *

10. Part 107 is proposed to be amended by adding a new § 107.305 to read as follows:

**§ 107.305 Use of Proceeds.**

Proceeds of financings by a Licensee shall be used by the Small Concern for its sound financing and for its growth, modernization, or expansion and such use shall be reported on SBA Form 1031. Accordingly, licensees shall obtain sufficient information to assure that the proposed financing will be used for purposes intended by the Act and the regulations in this part. Financing documents shall contain provisions which require the Small Concern to provide information specified in § 107.304(b), and which give the Licensee access to the Small Concern's records to confirm such use of proceeds. The Licensee shall conduct a post closing review to assure that proceeds were used for the intended purposes. The financing documents shall also provide that any diversion by a Small Concern of financing proceeds from their reported use without the Licensee's prior written consent shall constitute an event of default when the Licensee has made a loan or a violation of a covenant with the Licensee when the Licensee has made an investment. The financing documents shall specify that such event of default or covenant violation shall give the Licensee the right to demand immediate repayment of the financing. Nothing in this section shall be construed to restrict the Licensee's right to sue the Small Concern for any additional damages it may sustain or to bring suit against the individuals responsible for the diversion of such funds. Any unauthorized diversion that comes to the attention of a Licensee shall be promptly reported to SBA for such action against the Small Concern as SBA may consider proper. See also § 107.906(b).

11. Section 107.402 is proposed to be amended by revising paragraphs (a) and (d) and adding paragraphs (e), (f), and (g) to read as follows:

**§ 107.402 Commitments; processing fees; additional fees; prepayment penalties.**

(a) *General.* A Licensee is authorized to enter into a written Commitment to furnish Financing to a Small Concern.

* * * * *

(d) *Processing fees.* A Licensee is authorized to charge a processing fee, in no event to exceed three percent of the amount of Financing requested; *Provided however,* That if the amount of Financing offered in response by the Licensee and agreed to by the Small Concern is a lesser amount, the maximum processing fee may not exceed three percent of such lesser amount. A processing fee that does not exceed the foregoing limits shall not be considered part of the Small Concern's Cost of Money. A processing fee that exceeds the foregoing limits shall, to the extent of such excess, be considered part of the Small Concern's Cost of Money.

(1) *Collection of processing fee.* The processing fee may be collected, in full or in part, when the Licensee accepts the Small Concern's application for financing, or such fee may be deducted from Financing proceeds; *Provided, however,* That when the application is accepted for processing, the Licensee shall furnish the applicant Small Concern with a written statement setting forth:

(i) The maximum Cost of Money determined with reference to Licensee's Weighted Average Cost of Leverage, if any, or the present Debenture Rate, as appropriate;

(ii) A date by which Licensee will notify the applicant of its decision; and

(iii) The specific processing services to be performed by the Licensee.

Failure to furnish such statement shall cause the amount of any processing fee to be included in Cost of Money if the requested Financing closes, or shall obligate Licensee to refund the entire amount of the processing fee if the request for Financing is denied.

(2) *Partial refund of processing fee when Financing does not close*—(i) *No Commitment extended.* If the Licensee has not provided a Commitment and the Small Concern and the Licensee do not close the Financing, that part of the processing fee in excess of Eligible Costs, hereafter enumerated, that were incurred by the Licensee shall be refunded within thirty days to the Small Concern, together with a detailed accounting of the Eligible Costs incurred by the Licensee.

(ii) *Commitment extended.* If the Licensee has provided a Commitment and the Small Concern and the Licensee do not close the Financing, any refund of the processing fee, in whole or in part, is dependent upon which party caused the Financing not to close, as follows:

(A) *Failure to close attributable to Small Concern.* If the Financing does not close due to actions of the Small Concern, the Licensee is entitled to retain the processing fee, not to exceed three percent of the amount of the Licensee's Commitment. If Eligible Costs exceed the processing fee, Licensee may obtain reimbursement for such excess Eligible Costs only if the Small Concern has entered into a contractual agreement providing for such reimbursement. If no such contractual agreement exists, a Small Concern shall not be required to pay an additional processing fee, even if the amount of the Licensee's Eligible Costs exceed the amount of the processing fee advanced by the Small Concern.

(B) *Failure to close attributable to Licensee.* If the failure to close is attributable to actions of the Licensee, that part of the processing fee in excess of Eligible Costs incurred by the Licensee shall be refunded to the Small Concern within thirty days, together with a detailed accounting of the Eligible Costs incurred by the Licensee.

(3) *Eligible costs.* As used herein, Eligible Costs means:

(i) Actual computed costs incurred in the segregation of money to fund a Commitment, if one was extended;

(ii) Ordinary and reasonable out-of-pocket expenses necessary to process the application and perform due diligence; and

(iii) Actual costs paid to non-associates of the Licensee for specialized application processing services which are not ordinarily performed by the Licensee.

(e) *Additional fees.* If the Small Concern and the Licensee close the Financing, Licensee is authorized to deduct from the proceeds the unpaid remainder of any processing fee previously agreed upon, not to exceed 3 percent of the total Financing provided at the closing; and, in addition, to charge the Small Concern for:

(1) Eligible Costs incurred by the Licensee; and

(2) Reasonable closing costs.

Such fees and charges shall not be included in the calculation of Cost of Money.

(f) *Prepayment penalties.* A Licensee may charge a reasonable penalty for prepayment of a Financing which shall be excluded from the Cost of Money calculation; *Provided however,* That if such prepayment penalty is considered by SBA to be unreasonable, Licensee shall not be entitled to such prepayment penalty, and if collected, shall refund the entire prepayment penalty to the Small Concern.

(g) *Front-end charges.* If a Licensee has imposed front end charges such as points, discount, loan origination fee, a processing fee to the extent it exceeds three percent, or other such charges, regardless of the label the Licensee may apply, that are not specifically excluded from Cost of Money, such charges shall be prorated over the stated term of the Financing. In that case, the sum of interest and unearned front-end charges shall not exceed the Cost of Money limit in effect at the time of the Financing; and in the event of prepayment, any resulting excess Cost of Money shall be returned to the Small Concern.

12. Section 107.403 is proposed to be amended by revising paragraph (b)(1), to read as follows:

**§ 107.403 Other permissible Financing.**

* * * * *

(b) * * *

(1) *Short-term Financing.* Financing with a term of less than five years when it constitutes:

(i) Interim financing in contemplation of long-term Financing of a Small Concern by the Licensee or a group including the Licensee and others in an amount at least equal to such total interim financing; or

(ii) Protection of prior investments; or

(iii) Financing ownership change pursuant to § 107.711; or

(iv) Financing required by a Small Concern to perform a contract that it has been awarded under any Federal, State, or local government set-aside program for "minority" or "disadvantaged" contractors;

* * * * *

13. Section 107.705 is proposed to be amended by adding a new paragraph (a)(8) to read as follows:

**§ 107.705 Consideration for issuance of Licensee securities.**

(a) * * *

(8) Contributed non-cash assets provided Licensee obtains SBA's prior written approval.

* * * * *

14. Section 107.706 is proposed to be amended by redesignating the existing paragraph as paragraph (a), and by adding a new paragraph (b), to read as follows:

**§ 107.706 Retention of investments.**

(a) *Change in size.* * * *

(b) *Change in business activity or ownership.* A Licensee may not retain its investment in a Portfolio Concern, small or otherwise, that has become ineligible by reason of a subsequent change in such concern's business activity or in the relationship between Alter Ego Concern and an Operating Small Concern. Any such change, other than a merger between an Alter Ego Concern and an Operating Small Concern, shall constitute a default or breach of the terms of the Licensee's Financing by the Portfolio Concern that gives the Licensee the right to demand immediate repayment of all indebtedness and redemption of all equity investments in such concern; and a Licensee shall take prompt steps either to divest itself of such investment, or to collect whatever may be owed.

15. Section 107.707 is proposed to be revised to read as follows:

**§ 107.707 Purchases of securities from another Licensee or from SBA.**

A Licensee may exchange with or purchase for cash from another Licensee, or from SBA as the receiver or assignee of another Licensee or former Licensee, Portfolio securities (or any interest therein), but only on a non-recourse basis: *Provided, however,* That:

(a) A Licensee shall not have at any time more than one-third of its total assets (valued at cost) invested in such securities; and

(b) A Licensee that has previously sold Portfolio securities (or any interest

therein) on a recourse basis shall include the amount for which it may be contingently liable in its overline limit under § 107.303.

16. Section 107.708 is proposed to be revised to read as follows:

**§ 107.708 Deposits and investments of idle funds.**

(a) *General.* Except as set forth in paragraphs (b) and (c) of this section, all funds of a Licensee shall be deposited without delay in an account in a Federally-insured financial institution: *Provided, however,* That a Licensee may maintain a petty cash fund of up to $2,000.

(b) *Leveraged licensees.* Funds of a Licensee with outstanding leverage, or that has applied for leverage, that are not invested in Small Concerns and not reasonably needed for its day-to-day operations shall be invested in: (1) Direct obligations of, or obligations guaranteed as to principal and interest by the United States, the remaining maturities of which do not exceed fifteen months; or (2) in repurchase agreements with Federally-insured institutions, the maturity of which does not exceed seven days collateralized only by direct obligations of, or obligations guaranteed as to principal and interest by the United States; or (3) in certificates of deposit maturing within one year or less issued by a Federally-insured institution, up to the amount of insurance, or (4) in a deposit account in a Federally-insured institution, up to the amount of the insurance, subject to a withdrawal restriction not to exceed one year; *Provided, however,* That nothing in this paragraph (b) shall be interpreted to forbid the temporary deposit, not to exceed 30 days, of Licensee's funds in excess of the insured amount in a Federally-insured institution in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued by the Licensee. The corporate assets of a corporate general partner not invested in the Licensee shall be excluded from the time limits imposed by this section.

(c) *Non-leveraged licensees.* Funds of an unleveraged Licensee that are not invested in Small Concerns and not reasonably needed for its day-to-day operations are exempt from the provisions of paragraph (b) of this section; *Provided, however,* That nothing contained in this paragraph (c) shall be deemed to authorize any Licensee to Finance and Associate in violation of § 107.903, or to engage in any other activity prohibited by this part. No Leverage will be extended to any Licensee until such Licensee is in compliance with paragraph (b) of this section. For purposes of this paragraph (c), a Licensee's deposit of funds in a Federally-insured institution that is an Associate of the Licensee is not considered a Financing of an Associate under § 107.903.

17. Section 107.711 is proposed to be revised to read as follows:

**§ 107.711 Financing changes of ownership.**

(a) A Licensee may finance a change of ownership in a Small Concern when it will promote the sound development or preserve the existence of the Small Concern; or will assist in creation of a Small Concern as a result of a corporate divestiture, facilitate ownership in a Disadvantaged Concern. In these cases, the Licensee must make an assessment of the concern as though the change of control had been accomplished, giving effect to all agreed to financings as well as mergers and acquisitions. Such Financings shall be permitted where the resulting concern has been determined to be small (see § 107.3049(a)(1)) and its full-time equivalent employment does not exceed 500 employees. In cases where the full-time employment exceeds 500 employees, the financing will only be permitted when the concern meets one of the following debt/equity ratio tests:

(1) If the Financing is provided by a Licensee with outstanding Leverage, the Concern's ratio of debt to equity is no more than 5 to 1;

(2) If the Financing is provided by a Licensee with no outstanding Leverage, the Concern's ratio of debt to equity is no more than 7 to 1.

(b) As used herein, *debt* means long-term debt, exclusive of accounts payable, short-term working capital loans which require that the Concern have no outstanding balance for at least 30 consecutive days during its fiscal year, operating leases, letters of credit and subordinated notes payable to the seller; and *equity* means common and preferred stock in the case of a corporation, or contributed capital in the case of a partnership.

18. Section 107.712 is proposed to be amended by revising the first sentence of paragraph (c) to read as follows:

**§ 107.712 Section 301(d) Licensees wholly or partly owned by Licensee companies.**

* * * * *

(c) *Capital contribution.* The capital contribution of a participant Licensee in excess of the minimum capital ($1,500,000, which shall be in cash or cash equivalents, in U.S. dollars) of the section 301(d) Licensee, may (notwithstanding § 107.705(a)) be represented by securities of Small Concerns eligible for investment by a Section 301(d) Licensee, at cost or value, whichever is lower. * * *

19. Section 107.901 is proposed to be amended by adding paragraph (c)(1)(ii), and revising (c)(2) introductory text to read as follows:

**§ 107.901 Prohibited uses of funds.**

* * * * *

(c) *Real estate.* (1) * * *

(iv) Persons whose business activity during the entire period that the Licensee's Financing is outstanding is that of an Alter Ego Concern whose entire activity is limited to leasing real estate exclusively to an eligible Operating Small Concern, but not real estate acquired directly or indirectly from the prospective lessee of such real estate, or from any affiliated concern, or

(2) If the Financing is to be used by an eligible Small Concern (except a Small Concern described in paragraph (c)(1)(iv) of this section), regardless of SIC classification, to acquire realty or to discharge an obligation relating to the prior acquisition of realty unless:

(i) At least fifty-one percent of the usable square footage of an existing building that is to be acquired by the Small Concern or at least two-thirds of the usable square footage of a building that is to be built or renovated by the Small Concern is to be used by the Small Concern for business activity not prohibited by paragraph (c)(1) of this section; or

(ii) Such realty is to be promptly and substantially improved for sale to others, and all necessary zoning approvals have been obtained:

* * * * *

20. Part 107 is proposed to be amended by adding, at the end thereof, a new appendix III, to read as follows:

**APPENDIX III TO PART 107—VALUATION GUIDELINES FOR SBICs**

*I. Introduction*

This appendix describes the policies and procedures to which Licensees (SBICs and SSBICs) must conform in valuing their loans and investments and provides guidance as to the techniques and standards which are generally applicable to such valuations.

The need for clearly defined valuation policies and procedures and understandable techniques arises in connection with the requirement that Licensees report the worth of their portfolios to investors and SBA. This information assists SBA in its assessment of the overall operational performance and financial condition of individual Licensees and of the industry.

*II. Overall Guidelines*

A. Definitions

(1) *Value.* The value of portfolio securities owned by a Licensee shall be (a) with respect to unrestricted Marketable Securities, the market price of such securities, and (b) with respect to other portfolio securities, the Fair Value as determined in good faith by Licensee's Board of Directors or General Partners.

(2) *Marketable securities.* Means securities for which market quotations are readily available and the market is not "thin", either in absolute terms, or relative to the potentially saleable holdings of the Licensee and other investors with saleable blocks of such securities. These securities are valued at the market price on the valuation date which shall be the closing price. This classification does not include securities which are subject to resale restrictions under securities laws or contractual agreements, although other securities of the same class may be freely marketable.

(3) *Other securities.* Means all portfolio securities not defined in paragraph A.(2) of this section. Such securities shall be valued at Fair Value. Most SBIC and SSBIC investments will fall in this classification.

(4) *Fair Value.* Means, generally, the amount that an owner of a portfolio security might reasonably expect to receive upon current sale of the security in a negotiated transaction (fair market value), or in the case of a loan the principal amount that is expected to be collected pursuant to its terms as determined in good faith by the Licensee's Board of Directors or General Partners. No single standard for determining "fair value * * * in good faith" can be established, since fair value depends upon the circumstances of each individual case. Also, since in the normal course of its investment activities a Licensee often does not sell its investments to a third party, the link between fair value and market value is often tenuous.

B. Valuation Responsibility

As specified in 13 CFR 107.101(g), the Licensee's Board of Directors or General Partners have the sole responsibility for determining Fair Value of each of Licensee's portfolio securities. It is incumbent upon the Board of Directors or General Partners to satisfy themselves that all appropriate factors relevant to a good faith determination of Fair Value have been considered and that the methods used are reasonable and prudent and are consistently applied. Although the Board of Directors or General Partners have the ultimate responsibility for determining Fair Value they may appoint management or other persons to assist them in such determinations and to provide supporting data and make the necessary calculations pursuant to the Board's or General Partners' direction. It is essential that a careful, conservative, yet realistic approach be taken by Licensees in determining the Fair Value of each loan and investment.

It should be noted that the Licensee's auditor has responsibility to review the Licensee's valuation procedures and implementation of such procedures including adequacy of documentation. The auditor also has reporting responsibility regarding the results of this review. (See appendix I to this part, section III and section V, paragraph I and J).

C. Written Valuation Policy

Each Licensee shall establish written Valuation Guidelines approved by its Board of Directors or General partners that include the following:

1. A statement of Valuation Policies and Procedures that includes, at a minimum, all of the material set forth in section II of this appendix, and

2. A statement of Valuation Techniques and Criteria including any pertinent information reviewed in section III of this appendix.

The information required in this paragraph C. may be incorporated by reference and attached to Licensees' Valuation Guidelines.

D. Frequency of valuation

Portfolio Securities shall be valued individually and in the aggregate by the Board of Directors or General Partners at least semiannually—as of the end of the second quarter of Licensee's fiscal year and as of the end of Licensee's fiscal year. On a case-by-case basis, SBA may require valuations to be made more frequently and Licensee shall forward the report of such valuation to SBA within thirty days following the close of the reporting period and within 90 days of the end of the fiscal year in the case of annual valuations. Material changes in valuations shall be reported not less often than quarterly within thirty days following the close of the quarter. However, any Licensee which does not have outstanding Leverage shall be required to make such determinations and reports to SBA annually, unless SBA, in its discretion, determine otherwise.

Since the valuations will only be as sound as the timeliness of the financial information upon which they are based, Licensees shall require frequent financial statements from Small Concerns. Monthly financial statements are normally appropriate.

E. Documentation

Each Licensee shall prepare and retain in its permanent files a valuation report as of each valuation date documenting for each portfolio security the cost, the current fair value and the previous value, plus the methodology and supporting data used to determine the value of each such portfolio security. The minutes of meetings of Boards of Directors or General Partners at which valuations are determined will contain a resolution confirming that the valuations of each portfolio security were determined in accordance with Licensee's duly adopted valuation procedures and will incorporate by reference the valuation report signed by each Director or General Partner along with any dissenting valuation opinions.

F. General Classifications of Investments

The Fair Value of portfolio securities will depend upon the circumstances of each individual case and will be based upon the nature of the investment or loan and the stage of a company's existence, such as:

1. Investments in early stage and growth enterprises based on their progress toward previously established targets;

2. Investments in established enterprises based on the present value of Licensee's estimated proceeds from interest, dividends, principal payments, and sales of owned securities;

3. Loans and the loan component of debt securities based on the payment history of the debtor and the value of collateral.

4. Investments in failing enterprises or those in unsound financial condition on a liquidation basis.

G. Key Factors to be Considered

Cost of portfolio securities shall be the Fair Value until there is a basis to increase or decrease the valuation. Some of the general factors which the Board of Directors or General Partners should consider in determining the Fair Value of portfolio assets are:

1. Valuations which the market currently places on similar securities issued by companies in comparable businesses and industries;

2. Fundamental analytical data including financial condition as evidenced by historical and projected operating results;

3. The long-term potential of the business;

4. The potential for successfully accomplishing future financings as necessary, and the potential for dilution, if any, to the Licensee's holdings;

5. General industry and economic conditions and trends;

6. The potential dilutionary effects from the exercise of warrants, options, convertible preferreds, convertible debentures, and any other securities which might dilute the shareholdings of Licensee;

7. The nature and duration of resale restrictions and the nature of any registration rights;

8. Exit opportunities including put and call options;

9. The percentage of the issuer's outstanding securities owned by the Licensee and other similar investors; and

10. The percentage of the issuer's outstanding securities owned by management and founders.

A detailed discussion of these factors and other valuation techniques and standards is set forth in Section III, Valuation Techniques and Criteria.

*III. Valuation Techniques and Criteria*

A. Introduction

The goal of a Licensee's valuation process is to determine the Fair Value of portfolio securities. Ideally, this is defined as the price at which portfolio securities would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts. However, the very nature of Licensees' investments sometimes makes this determination of fair market value problematical. In most cases there is no market for the investment at the time of valuation. Therefore, except for those securities for which market quotations are readily available, Licensees' Boards of Directors and General Partners are necessarily responsible for determining in

good faith the fair value of portfolio securities. It should be noted that loans and the debt portion of debt securities are to be valued at the principal amount expected to be collected pursuant to their terms. Accordingly, valuation below cost will be recognized on loans and the debt portion of debt securities but valuation above cost will not be recognized.

Determination of Fair Value will depend upon the circumstances in each case. No exact formula can be devised that will be generally applicable to the multitude of different valuation issues that will arise. This is especially true for semiannual valuation updates of relatively new investments for which current results either exceed or do not meet the Small Concern's forecasts. Because valuation is not an exact science, wide differences of opinion on the worth of certain investments may be encountered. Therefore, a sound valuation should be based upon all of the relevant facts, with common sense and informed judgment influencing the process of weighing those facts and determining their significance in the aggregate.

B. Valuation Techniques

1. *General considerations.* A Licensee's investment in a small business concern should be the result of due diligence and analysis of financial information. In negotiating the terms and conditions of an investment with a Small Concern, the Licensee, in effect, establishes an initial valuation for the investment, which is cost. Prudent valuation techniques generally use initial cost as value until the concern's operating experience demonstrates improvement or decline.

Appreciation in value should be recorded when warranted, but should be limited to those investments which have a sustained economic basis for an increase in value. Temporary market fluctuations or a temporary increase in earnings should not be the cause or sole reason for appreciation. When a portfolio company's operation shows sustained positive results, appreciation is indicated.

Conversely, depreciation in value should be recorded when portfolio companies show sustained unfavorable financial performance. Continuous close scrutiny of investments will provide an insight into the business cycles and problems encountered by small business concerns. This insight will allow the Licensee to differentiate between a temporary downturn or setback and a permanent problem indicating a measurable decline in value. If a portfolio concern continues to falter by not meeting its projections or by missing its payments, it should be valued down by some percentage to an appropriate fair value.

2. *Equities.* The prices of Marketable Securities which have readily available market quotations best reflect the consensus of the investing public as to fair value of the securities at a given point in time. On the valuation date, such marketable securities should be valued at the closing price for listed securities and at the average of the last bid and last ask price for over-the-counter securities. However, securities are not deemed to be freely marketable in those situations wherein such securities are very thinly or infrequently traded, or may be lacking in truly representative market quotations, or where the market for such securities cannot absorb the quantity of shares which the Licensee and similar investors may want to sell. In such cases, fair value must be determined by the Board of Directors or General Partners.

If the particular securities held by the Licensee are subject to resale restrictions under securities laws or contractual agreements, even though they are part of a class of securities which are freely marketable, then the current market value of freely marketable securities should be appropriately discounted. In unusual circumstances, a premium rather than a discount may be appropriate if the Licensee, or the Licensee together with other investors holding their shares in a trust or under a similar arrangement, own securities which represent voting control of a publicly-owned company and the Licensee's Board of Directors or General Partners determine that such voting control significantly enhances the value of the investment.

In determining the Fair Value of equity securities which are not freely marketable, a number of generally accepted techniques (or combinations thereof) are employed. These include, but are not limited to, the following:

a. Valuations based on the progress of early stage or growth enterprises toward previously established targets including among other things cash flow and profitability levels;

b. Valuations based on the discounted present value of estimated future proceeds to a Licensee including dividend income, principal payments and sales of securities, using a discount rate that reflects the degree of risk of the equity interest;

c. Valuations based on multiples of earnings, revenues, net asset value or cash flow which are commensurate with multiples which the market currently accords to comparable companies in similar businesses and industries;

d. Valuations based on recent sale prices of the issuer's securities in arm's length transactions;

e. Values placed on similar securities issued by companies in comparable businesses and industries;

f. Valuations of restricted securities based on an appropriate discount from the market value of freely marketable securities of the same class;

g. Liquidation value; and

h. Values placed on mergers and acquisitions of companies in comparable businesses and industries.

In applying Item B.2.(d) of this section, valuations may be adjusted to equate to a subsequent and significant equity financing that includes a substantial investment by a sophisticated, unrelated new investor in the issuer's securities. A subsequent and significant equity financing that includes substantially the same group of investors as the prior financing is not a factor in determining Fair Value. In addition, a small business concern's future equity financing requirements should be considered. If it appears likely that equity will be sold in the foreseeable future at a price above or below the Licensee's current valuation, then that prospective offering price should be weighed in the valuation process.

Equity interests or limited partnership interests without the benefit of stock certificates should be valued in a manner similar to the valuation methods described in this paragraph B.2. These forms of equity interest generally define a certain percentage of the profits to be allocated to each of the investors based on its relative contributions. Thus, the valuation of the interests should be based on the underlying profitability of the business and can be determined by using techniques based on future earnings, discounted cash flow analysis, or capitalization rates.

3. *Debt securities.* Debt securities as defined by the SBA are a hybrid between loans and equity. If the debt is convertible to equity ownership through exercise of conversion options or warrants, the Fair Value may increase over the loan value, depending upon factors such as the value of the equity that would be obtained through conversion, the period of convertibility, the projected future financing of the enterprise, and the parameters discussed above for equities.

There are numerous types of debt securities with a variety of equity features. The most common forms are convertible debentures and loans with detachable warrants. A generally accepted method of valuing convertible debentures is to value the loan separately using appropriate loan valuation techniques and to value the convertible portion of the investment by assuming the debenture has been converted to stock and using appropriate equity valuation techniques. Normally, the convertible debenture will be valued at the higher of its loan value (not in excess of face value) or its underlying equity value. When equity considerations govern the fair value assigned, the underlying factors will be disclosed.

Valuation of debt with detachable warrants can be done similarly to convertible debt by treating the debt and warrants as a unit, or, alternatively, the debt can be valued on its own basis as a debt instrument, and the warrants separately. If the warrants are valued separately, the following factors must be taken into account:

(a) Current value of issued shares;

(b) Time until expiration dates are reached or dates of changes in terms of exercise prices;

(c) The exercise prices at various dates;

(d) Number of shares into which the warrants are exercisable;

(e) Any restrictions and/or features of the underlying stock;

(f) The differential between the exercise price and the underlying share values if the share values are higher than the exercise price; or

(g) If the exercise price is above the current underlying share values, the probabilities that shares of the Small Concern will attain the exercise values;

(h) The ability of Licensee to perform the exercise of its rights or to sell its warrants; and

(i) The ultimate desirability, if any, of exercising the rights given by the warrants.

All of these factors must enter into the valuation process in order to assign a value to the warrants.

(4) *Loans.* Loans shall be valued at cost with depreciation being recognized to give effect for decreases in valuation; however, no valuation change shall be made to recognize the difference between the current interest rate and the interest rate on the portfolio security. Accordingly, appreciation shall not be recognized on loans for any reason. If a loan is collateralized by certain assets of a business or assets outside the business, the value of the loan to the SBIC or SSBIC is, at a minimum, the net liquidation value of the collateral after estimated selling expenses. On the other hand, if a loan is only partially secured or is an unsecured obligation of the business, then a number of factors must be taken into account, among which are the value of any collateral, the current and projected financial condition and operating results of the business, the performance history of the loan, the seniority of the debt, the net liquidation value of the tangible business assets (often through professional valuation), and the personal integrity and overall financial standing of the owners of the business. The value of the collateral should reflect current market conditions.

For those Licensees primarily involved in making loans, a loan classification system shall be employed to help manage portfolios and determine Fair Values, with loans that warrant extra attention being flagged by SBIC management. For each loan placed on this "watch list," a reason or statement should describe the particular situation. Danger signals that should alert the SBIC to potential problems include delinquency, a lack of profitability, weak or decreasing equity, increasing debt load, a deteriorating cash position, an abnormal increase in accounts payable, inaccurate financial information, insurance cancellation, judgments and tax liens, family problems, loss of employees, collateral problems, slowdown in inventory turnover, poor maintenance of plant and equipment, and heavy reliance on short term debt. This watch list should be used to report to the Board of Directors or General Partner(s).

Upon careful consideration of all the relevant factors, the Board of Directors or General Partners shall determine which loans require a provision for unrealized depreciation. It is a good rule of operation for an SBIC to perform downward valuations earlier rather than later. When the quality of a loan recovers, a higher Fair Value can subsequently be assigned.

Past due interest should not be valued or converted to a security with carrying value if (i) interest payments are more than 120 days past due, and (ii) the ability of the company to make payments is considered doubtful.

If the delinquent interest on a loan has been capitalized, the loan should be classified in the doubtful or defaulting category, and the Form 468 annual report should indicate the amount of capitalized interest. (Capitalizing delinquent interest requires prior approval by SBA.) Stringent monitoring of such loans is required and problem loan strategies should be undertaken.

C. Valuation Considerations

1. *Nature and history of the enterprise.* The nature of the business is an important consideration, as some types of businesses are more affected by changing market forces and by seasonal or cyclical variations in demand. The history of an enterprise will show its past stability or instability, its growth or lack of growth, its degree of operational diversity, and other relevant facts in forming an opinion as to the risk involved. In determining Fair Value, the factors to be studied may include, but not be limited to, the products and services of the concern, its cost structure and marketing and sales capabilities relative to its competitors, its assets, capital structure, plant facilities, production capacity, unfilled orders, capability of management, quality of budgets, sales projections and sales performance, competitive product analysis, and any legitimate offers to purchase the business in arm's length transactions.

2. *Outlook and condition of the economy and the specific industry.* Valuations should include an analysis of the economic and industry environment, together with market factors,—historic, current, and forecast. In many cases, the market may include local, regional and/or national distribution channels. In many cases, familiarity with, and access to those channels is critical to business success.

In the case of a business that is a relatively new entrant in an established industry, consideration should be especially given to the industry's past history and outlook. Where early stage companies are concerned, market acceptance and forecasted market size and share are critical factors. In all cases, performance trends for the industry involved are highly significant.

3. *Financial condition and the fair value of the Small Business Concern.* In evaluating investments in Small Concerns, three different general approaches may be taken, depending on how well established the business if and its financial health.

a. *The "New Business" approach.* In the case of new or comparatively new organizations, the lack of any operating history requires dependence on current operating results and their relation to financial forecasts. If the business fails to meet its original targets for development of products, markets and facilities, the possible negative effect on Fair Value should be carefully considered, with particular attention to the added risks caused by the possible escalation of cash losses. Disappointing results, which are frequently experienced in start-up or early-stage investments, do not necessarily dictate reduced valuations unless their duration and severity have clearly impaired the viability of the Small Concern. Conversely, the face may have exceeded original targets during the development stage of a new enterprise should not be regarded as a basis for a premature increase in Fair Value.

Business forecasts are a useful reference point in establishing initial and subsequent valuations of enterprises. Much of the material for such forecasts must by necessity come from the organizers of a business. Great care has to be taken to avoid excessive reliance on planned organizational, operating, or market developments that are contemplated but not reasonably attainable. Normal practice on the part of potential investors is to require a complete business plan from the organizers. In general, such plans are expected to contain:

(1) A description of the existing or contemplated business including pertinent history, the management and organization, board members, advisors, and current status of the business efforts.

(2) A thorough description of the product or service provided, including an answer to the question, "Who else is doing it?"

(3) A description of the market being entered, with a special emphasis on the segment or locality being addressed by the small business and what its competitive advantages are.

(4) An operational plan for the business in sufficient detail to include development schedules, production schedules, market plans, and other surveys and analyses that may apply.

(5) Financial projections for income statements and balance sheets, and most important of all in the case of small businesses, cash flow statements, monthly or quarterly for the first two years and annually for three to five years.

The Licensee should not accept this material uncritically but should prepare an independent analysis of reported and projected financial data and evaluate the risks involved. Since forecasts are being relied on so heavily in valuing a start-up business, an important factor to judge is the capability of the organizers and managers of the business, particularly their experience and personal histories gained from independent background checks. Periodic updates of the original business plan should be requested, with particular emphasis on variations of actual performance from plan and reasons for significant changes in the business plan and operating projections.

The Directors or General Partners have to use their best judgement in weighing such initial forecasts and subsequent results in the process of determining Fair Value. The original cash flow estimates and subsequent results may then be used to determine, as appropriate, discounted cash flow valuations of the Small Concern, and to conduct sensitivity analyses.

b. *The going concern approach.* To determine the Fair Value of a Licensee's investment in a small business concern that is well enough established and in sufficiently good financial health to be considered a "going concern", financial statements are of primary importance. They should be in the form of comparative annual statements for relevant years immediately preceding the date of valuation, together with a set of comparative interim statements at the end of the month preceding that date. Income statements should show (1) sales, cost of sales, and gross profit by line of business with selling, general, and administrative expenses similarly presented; (2) components of cost of sales, and other significant expenses such as depreciation and amortization, officers' salaries, income taxes and other taxes, interest on each item of long-

term debt, nonoperating income and expense, and extraordinary items; (3) net income available for dividends; and (4) adjustments in, and reconciliation with, retained earnings as stated on the balance sheet.

With income statements of this character available, Licensees should be able to separate recurring from non-recurring items of income and expense, to distinguish between net operating income and net extraordinary income, and to ascertain whether any line of business is consistently operating at a loss, and if it might be disposed of at a benefit to the company. The percentage of earnings required for business expansion should be noted when dividend paying capacity is considered. As forecasted income and cash flow are major factors in valuations, all information concerning past income and cash flow which may be helpful in predicting the future should be obtained.

The "going concern" approach should not be used without a separate determination of the financial health of the business. Financial health refers to the ability of the small business concern to generate the funds needed to meet its immediate and long-range needs. Obviously, if a company has insufficient working capital, it would not continue in business for any appreciable length of time and cannot be considered a "going concern." A review of the company's sources of income and cash flow generated from operations to meet capital requirements and provide for interest and principal payments on all debt should be made. This would necessarily require close scrutiny of the company's projected budget and its actual income and expenses. The firm's inability to meet its operating expense requirements without extraordinary measures should be taken seriously. If the firm cannot meet its continuing obligations, additional cash investments or borrowing may be urgently needed to avert an imminent liquidity crisis.

c. *The "liquidation" approach.* With respect to portfolio companies that are likely to face bankruptcy or discontinue operations for some other reason, liquidating value is of prime importance. This value will nearly always differ from the "going concern" value and may be determined by estimating the realizable value (often through professional appraisals or firm offers to purchase) of all assets and then subtracting all liabilities and associated liquidation costs. Liquidation value will depend on the decreasing value of wasting assets, the costs experienced by the business being liquidated, the expenses borne by the Licensee in order to be able to realize any liquidating value, the elapsed time until such net proceeds can be realized, the ranking of the Licensee's claims relative to other security interests and subordination agreements, and the probability of any ultimate realization of value. Incorporating this approach as a normal step in valuation can provide improved understanding of the downside of an investment.

4. *Goodwill and other intangible values.* Goodwill is based largely upon earning capacity, although such factors as prestige, ownership of a brand name, prior acquisitions, and a record of successful operation over a long period in a particular locality may also support the inclusion of intangible value. In any event, the augmentation of the value of assets by addition of goodwill should be scrutinized very closely and, when possible, checked by comparing appraised value of all assets other than goodwill with net book value thereof. Intangible values may include patents, copyrights, trade secrets and design, and manufacturing know-how. In many high technology businesses, these intangible values are an important part of the overall value of a company.

An estimate of these intangible values can be made by estimating the costs associated with duplicating such values, since such value frequently reflects the sale value of a business or its assets. Alternatively, a discounted cash flow valuation of the business can be conducted based on analysis of the business plan, and the difference between the discounted cash flow value (using discount rates that are commensurate with the risks) and the book value can be attributed to intangibles.

5. *Sales of securities.* Sales of securities of small business concerns for which market quotations are not readily available should be investigated to determine whether they represent arm's-length transactions, which more frequently than other sales may reflect fair value. Sales of additional securities to investors who have previously acquired an interest in the business, forced sales, distress sales, and sales among friends or family, often do not reflect fair value, nor do isolated arm's-length sales in small quantities.

Valuation of any thinly traded stocks or stock in a privately held company should be based primarily on the firm's fair value as defined earlier. The Board of Directors or General Partners should carefully weigh all relevant factors in valuing investments in companies whose securities have recently been sold, taking into consideration the nature of the most recent transaction before determining Fair Value.

6. *Comparative market prices.* Market values of publicly traded securities of companies in the same or similar lines of business may be considered in valuing the securities of a concern with no market or a thin unrepresentative market. Care should be taken to use only comparable companies, including not only business similarities but also similarities as to size, financial condition, and earning outlook. However, in order for comparative market prices to be meaningful, data for a representative sample of similar companies must be available. Prices paid for acquisitions of similar companies may be considered if a merger or acquisition of the portfolio concern appears likely. Market values of publicly traded companies should be discounted to arrive at the Fair Value of a private firm in order to account for the lack of marketability. After assigning such discount, a premium may be added for control, if applicable.

Values derived from comparative market prices should be confirmed by comparison with fair value arrived at by analyzing earnings, cash flow, assets, liabilities, and other fundamentals.

7. *Capitalization rates.* In the application of certain fundamental valuation factors, particularly earnings and cash flow, it is necessary to capitalize the average or current results at some appropriate rate. Determining the proper capitalization rate presents one of the most difficult problems in valuation. Among the more important factors to be considered in a particular case are (i) the nature of the business, (ii) the risk involved, and (iii) the growth, stability or irregularity of earnings and cash flows. A company with a positive earnings trend and a positive outlook will command a higher capitalization factor (multiplier) in the market place, which may result in a stock valuation well above book value. This excess value is, in effect, an intangible value comparable to goodwill.

While capitalization rates do vary, an appropriate rate can be determined by analyzing rates for comparable companies in the same industry. Investigating similar companies in the same industry or geographic area can be done directly or through published material from sources such as Value Line, Standard and Poor's, Robert Morris and Associates, or any other of the numerous sources available for comparable industry data.

8. *Weight to be accorded various criteria.* Certain of the foregoing factors may rightfully carry more weight than others, depending upon the circumstances in each case. Since valuations cannot be made solely on the basis of a prescribed formula, the assigning of weights on a purely mathematical basis cannot be justified. Thus, no useful purpose is served by averaging several factors such as book value, capitalized earnings, and capitalized dividends and deriving value from the result. Such a process also excludes active consideration of other pertinent criteria such as market potential and management capability, and, therefore, the end result cannot be expected to derive a realistic valuation.

The most useful approach appears to be to look at each investment individually, determine which methodology is best suited to analyze and value that specific type of investment, and take into consideration all applicable market and economic data. In situations where an SBIC or SSBIC concentrates in a particular type of investment, specialized valuation criteria can be developed, but it may only be applicable for that narrow range of investments.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 3, 1993.

Erskine B. Bowles,

*Administrator.*

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Part III

# Department of the Treasury

**Fiscal Service**

**31 CFR Part 206**

**Management of Federal Agency Receipts, Disbursements, and Operation of the Cash Management Improvements Fund; Proposed Rule**

VOL 58 ISS 149 AG 5 1993 UMI



DEPARTMENT OF TREASURY

Fiscal Service

31 CFR Part 206

RIN 1510-AA34

## Management of Federal Agency Receipts, Disbursements, and Operation of the Cash Management Improvements Fund

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document revises collection and deposit regulations requiring timely methods, principally Electronic Funds Transfer (EFT), for the collection and deposit of funds as authorized by section 2652 of the Deficit Reduction Act of 1984. This document also incorporates revisions, authorized by the Cash Management Improvement Act of 1990 (CMIA 90) and the Cash Management Improvement Act Amendments of 1992 (CMIA 92), that require executive agencies to use effective, efficient disbursement mechanisms, principally EFT, in the delivery of payments. An agency's failure to comply may result in a charge equal to the cost of such noncompliance to the Treasury's General Fund.

DATES: Comments must be received by September 7, 1993.

ADDRESSES: Comments may be mailed to the Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, room 511, Liberty Center, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: John Galligan (202) 874–6935 (Director, Cash Management Policy and Planning Division); Shane Gellenthien (202) 874–6789 (Program Specialist); or Randall Lewis (Principal Attorney) (202) 874–6590.

SUPPLEMENTARY INFORMATION:

### Authority

This regulation is authorized by section 2652 of the Deficit Reduction Act of 1984, Public Law 98–369, 98 Stat. 494 (1984), codified at 31 U.S.C. 3720, as amended, section 4 of the Cash Management Improvement Act of 1990, Public Law 101–453, 104 Stat. 1058 (1990), codified at 31 U.S.C. 3335 (CMIA 90), the Cash Management Improvement Act Amendments of 1992, Public Law 102–589, 106 Stat. 5133 (1992), and additional authority found at 5 U.S.C. 301, 31 U.S.C. 321, 31 U.S.C. 3301, 31 U.S.C. 3302, 31 U.S.C. 3321, 31 U.S.C. 3327, 31 U.S.C. 3328, and 31 U.S.C. 3332 (formerly 31 U.S.C. 492). Regulations governing Federal payments by the automated clearinghouse method of EFT appear in 31 CFR part 210 and 31 CFR part 370. Agency guidance for the use of EFT is published in the Treasury Financial Manual.

### Background

Prior to passage of CMIA, part 206 of CFR title 31 (Management of Federal Agency Receipts and Operation of the Cash Management Improvements Fund) reflected exclusively the requirements of section 2652 of the Deficit Reduction Act of 1984 (DRA 84). Pursuant to the authorities vested in the Secretary of the Treasury in DRA 84, and given the technological and cost-effective breakthroughs in the collection of funds such as pre-authorized debit and credit/debit cards in the years since its passage into law, this part prescribes that executive agencies shall collect and deposit monies to the Treasury via EFT, when cost effective and to the maximum extent practicable.

CMIA 90 expands the cash management regulatory role of the Secretary of the Treasury (hereinafter, Secretary) to include the disbursement of funds. Pursuant to CMIA, and given the technological and cost-effective breakthroughs in the disbursement of funds such as direct deposit and ACH/Vendor Express, this Part prescribes that executive agencies shall disburse monies via EFT, when cost effective and to the maximum extent practicable.

### General Principles

It is the policy of the Secretary that all Executive Branch collections be collected by Electronic Funds Transfer (EFT) and all Executive Branch payments be disbursed by EFT. Since the overriding goal of collection and payment systems is to accommodate an efficient, effective, and timely transfer of funds in support of Federal programs, Federal agencies should use the most appropriate funds transfer mechanism, principally EFT, based upon these principles. EFT allows Federal agencies to meet program objectives with convenience, security, and reliability for recipients. By permitting greater control over the timing of collections and payments, EFT improves cash management and supports agency efforts to comply fully with such requirements as the Prompt Payment Act. In addition, EFT reduces processing costs and paperwork, and provides for electronic interface between issuer and receiver accounting systems. The Financial Management Service (Service) recognizes that, under certain circumstances, the use of EFT to collect or disburse funds may not be cost-effective, or practical, or may not be consistent with other statutes.

### Proposed Implementation Process

Treasury proposes to implement the amended 31 CFR part 206 jointly with Federal agencies as has been the case with the original 31 CFR part 206 which was published as a Final Rule in 1985. To that end, six focus groups, chaired by non-Treasury officials, and comprised of 50 non-Treasury Federal agency officials are working with Treasury, identifying barriers to EFT and setting the standards of performance in utilizing cost-effective disbursement applications. Contributions from these groups have aided in shaping this document. It is understood that agencies' ability to reach the suggested future standards, will depend upon the extent to which all impediments or barriers to EFT are eliminated. Barriers include current commercial practices, statutory prohibitions, regulatory prohibitions and incompatible banking systems in some foreign countries. The Service invites comments regarding barriers to achieving EFT and proposed solutions.

Agency standards will be established by agencies, considering the unique characteristics of their operations, system, policies, legislation, regulations and expectations of their customers and programs. Once agency standards are established, Treasury will establish government wide standards which are intended to measure the Government as a whole, not as standards to be applied independently to each agency. Agencies will establish initial standards and adjust their standards based on analysis of measurement data and improvement plans. Over time, Treasury, working in consultation with OMB, will analyze and adjust government wide standards. Interagency comparisons and adjustment of standards will illustrate the fact that the performance measurement program is an iterative and evolving process to foster continuous improvement.

Federal agencies will be responsible for working with their constituencies to attain consensus on agency standards in using the most appropriate, cost-effective mechanisms for delivering payments. These constituencies include, but are not limited to: Vendors, benefit recipients, State officials, and Federal employees. Agencies may provide the public with an opportunity to comment prior to implementing new EFT mechanisms, if deemed appropriate. Treasury will assist Federal agencies in this endeavor to the maximum extent practicable.

Through the cash management review process, which has been in effect successfully for 8 years, Treasury will continue to work with Federal agencies to identify cash flows in which EFT is the most cost-effective and practical approach. Implementation plans will be jointly developed and periodically evaluated by Federal agencies and Treasury. Any modifications to these plans by Federal agencies will be brought to the attention of Treasury in the cash management review process, or on an ad hoc basis, and a negotiation process will ensue. The Service will issue directives within the Treasury Financial Manual to detail "Best Practices" to be followed. Some examples follow regarding how policies may be carried out:

—Fees/Fines: EFT shall be adopted as the presumed method of collecting fees and fines, especially when these collection cash flows are recurring and/or of large dollar amounts.

—Tax Collections: EFT shall be adopted as the primary method for collecting taxes. These methods may include the Automated Clearing House and the acceptance of credit/debit cards.

—Salary Payment: EFT shall be adopted as the presumed method for paying employees.

—Vendor and Miscellaneous Payments: Each department and agency shall exercise its authority under the Federal Acquisition Regulation to require that all contractors are paid by EFT. EFT shall be adopted as the standard method of payment for all Federal program payments originated by agencies or their agents.

—Benefit Payments: EFT shall be presented to new beneficiaries as the presumed method for receiving benefits. EFT payment methods, such as Electronic Benefits Transfer, shall be adopted and implemented to make EFT accessible to all recipients.

Agency representatives have indicated that there are some cash flows for which EFT: (1) Would not be cost-effective; (2) would be impractical; or (3) would be inconsistent with current statutory requirements. It is not the intention of the Service to require that collections or disbursements be made via EFT when it is not cost-effective, is impractical, or is inconsistent with existing statutory requirements. For some collection and disbursement cash flows, such as those which are small-dollar and/or non-recurring, it may not be practical or cost-effective to require EFT. The Service will work with each agency to identify those cash flows in which EFT may not be required.

**Specific Issues**

Unless otherwise indicated in this Supplementary Information, existing language within 31 CFR part 206 as authorized by section 2652 of the Deficit Reduction Act of 1984 remains unchanged except to reflect the Secretary's policy of collecting and disbursing funds via EFT and to reflect changes authorized by the Cash Management Improvement Act of 1990 and the Cash Management Improvement Act Amendments of 1992 to require that all funds be disbursed via EFT to the maximum extent practicable, whenever cost-effective and when consistent with other statutes.

*Scope and Application (§ 206.1)*

This part is amended to reflect the authorities conveyed by the Cash Management Improvement Act of 1990 and the Cash Management Improvement Act Amendments of 1992 to provide for the timely disbursement of funds.

This part is also amended to reflect that an agency shall require the collection of all funds by the Government via EFT and the disbursement of all funds from the Government via EFT as a provision of new contractual agreements or renewal of existing contracts which impact agency collection or payment mechanisms. This is a change from the original language which states that "an agency is prohibited from entering into new contractual agreements or renewal of existing contracts for agency collection systems without the prior approval of the Service." It is not the intention of the Service to pre-approve all agency collection and payments systems; instead, the Service clarifies its intentions to require that all agency collection and disbursement transactions are made via EFT, when cost-effective and to the maximum extent practicable, regardless of the systems utilized by the agencies.

As provided for in section 4 of the CMIA 90, payments made by the Tennessee Valley Authority are excluded from these amendments.

*Definitions (§ 206.2)*

New definitions have been added to § 206.2 that are based on those in 31 CFR part 210 which regulate Federal Payments through Financial Institutions by the Automated Clearing House Method, and those in 31 CFR part 205 for all funds transfers that implement Section 5 of the Cash Management Improvement Act of 1990 and the Cash Management Improvement Act Amendments of 1992. The newly defined terms are: "Cash Management," "Day," "Disburse," "Electronic Funds Transfer," "Payment," "Point-of-Sale Terminal," and "Recipient." Several existing definitions have been amended to reflect the Secretary's EFT policy.

*Billing Policy and Procedures (§ 206.3)*

This language has not been changed. However, the Service emphasizes that the billing requirements contained in this section do not supersede any billing requirements contained within regulations implementing the Prompt Payment Act of 1982 as Amended.

*Collection and Payment Mechanisms (§ 206.4)*

Language has been added to § 206.4 which requires executive agencies to use EFT, when cost-effective and to the maximum extent practicable, in the collection and delivery of all funds. General language describing the selection of appropriate collection mechanisms has been deleted to more precisely convey the Secretary's goal of collecting all collections via EFT.

This section also indicates that directives will be published by the Service in the Treasury Financial Manual, Volume I, Chapter 6–8000 (I TFM 6–8000), prescribing that collections and payments shall be made via EFT when cost-effective and to the maximum extent practicable. These directives will consider all significant costs inherent in collecting and delivering payments via EFT or other means.

*Collection and Deposit Procedures (§ 206.5)*

Language found in § 206.5(b) describing exceptions to collection and deposit time frame policies has been removed because existing dollar thresholds below which non-EFT collections shall be deposited daily are subject to change given fluctuations in interest rates and because mailing deposits to depositaries is strongly discouraged. Instead, § 206.5(b) has been revised to reference I TFM 6–8000 for specific exceptions to collection and deposit timeframe policies.

*Cash Management Review and Planning (§ 206.6)*

This section now includes a reference to the fact that the Service will evaluate an agency's EFT policy and application as part of the periodic cash management review process, as required by I TFM 6–8000.

*Notice of Deficiency (§ 206.7)*

Language has been added which more precisely conveys the Secretary's policy of converting all collections and

payments to EFT when cost-effective and to the maximum extent practicable.

*Charges (§ 206 9)*

This section is amended to reflect that, in instances of cash management payment noncompliance, an agency will absorb any charges assessed from appropriations available for executive agency operations and shall not be paid from amounts available for funding programs. Also, charges collected from an executive agency, in instances of cash management payment noncompliance, shall be deposited in the Treasury and credited as miscellaneous receipts. This differs from charges collected from an executive agency, in instances of cash management collection noncompliance, which shall be deposited into the Cash Management Improvements Fund as outlined in § 206.10.

It should be noted that the differences in treatment between collections and deposits, and disbursements are due to differences in the requirements of the underlying statutes supporting those distinct functions.

**Public Comment**

Public comment is solicited on all aspects of this proposed regulation. The Service will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

**Regulatory Analysis**

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The Regulatory Flexibility Act defines "small entities" to include certain non-profit, for-profit, and Governmental entities. Revisions made pursuant to CMIA 90 only will impact executive agencies, entities not encompassed by that definition. The flexibility incorporated into the revisions to deposit and collection provisions has been included in order to avoid the imposition of EFT in those situations where significant costs or impracticality preclude its effective use and, therefore, will not result in a significant economic impact on a substantial number of small entities.

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. Any economic or other consequences resulting from the revisions in this Proposed Rule which pertain to disbursements will be the direct result of implementation of Section 4 of CMIA 90. Any economic or other consequences of revisions which pertain to deposits and collections are not likely to result in an annual effect on the economy of $100 million or more, major increases in costs or prices to consumers, or a significant adverse impact on competition.

**List of Subjects in 31 CFR Part 206**

Accounting, Banks, Banking, Electronic funds transfer.

**Issuance**

For the reasons set out in the preamble, it is proposed to revise part 206 of title 31 of the Code of Federal Regulations to read as follows:

## PART 206—MANAGEMENT OF FEDERAL AGENCY RECEIPTS, DISBURSEMENTS, AND OPERATION OF THE CASH MANAGEMENT IMPROVEMENTS FUND

Sec.

206.1 Scope and application.
206.2 Definitions.
206.3 Billing policy and procedures.
206.4 Collection and payment mechanisms.
206.5 Collection and deposit procedure exceptions.
206.6 Cash management planning and review.
206.7 Compliance.
206.8 Appeals.
206.9 Charges.
206.10 Operation of and payments from the Cash Management Improvements Fund.

**Authority:** 5 U.S.C. 301; 31 U.S.C. 321, 3301, 3302, 3321, 3327, 3328, 3332, 3335, 3720, and 6503.

**§ 206.1 Scope and application.**

(a) This part applies to all Government departments and agencies in the Executive Branch (except the Tennessee Valley Authority) and all monies collected and disbursed by these departments and agencies. This subpart does not apply to interagency transfers of funds.

(b) Policies and guidelines are prescribed for promoting efficient, effective cash management through improved billing, collection, deposit, and payment of funds. These objectives seek to improve funds availability and the efficiency and effectiveness with which funds are transferred.

(c) Authority to implement this regulation has been delegated within the Department of the Treasury (hereinafter, "Treasury") to the Commissioner (hereinafter "the Commissioner") of the Financial Management Service (hereinafter "the Service".) The Service maintains the final authority as granted under the Deficit Reduction Act of 1984 to specify use of a particular method or mechanism of collection and deposit and to recover costs that result from noncompliance. Authority is also granted to the Service, under the Cash Management Improvement Act of 1990 and the Cash Management Improvement Act Amendments of 1992, to provide for the timely disbursement of funds. As described in the Treasury Financial Manual, Volume I, Chapter 6–8000 (I TFM 6–8000), an agency shall require the collection or disbursement of funds by the agency via EFT as a provision of new contractual agreements or renewal of existing contracts which impact agency collection or payment mechanisms.

**§ 206.2 Definitions.**

For the purpose of this part, the following definitions apply:

*Agency* means any department, instrumentality, office, commission, board, service, Government corporation, or other establishment in the Executive Branch, except the Tennessee Valley Authority.

*Billing* means any of a variety of means by which the Government places a demand for payment against an entity that is indebted to the Government. The term encompasses invoices, notices, initial demand letters and other forms of notification.

*Cash management* means practices and techniques designed to accelerate and control collections, ensure prompt deposit of receipts, improve control over disbursement methods, and eliminate idle cash balances. "Cash Management Review Process" means periodic examinations of collection and disbursement cash flows to ensure that the most effective mechanisms are used to process the funds.

*Collect* means the process of effecting a collection.

*Collection* means the transfer of monies from a source outside the Federal Government to an agency or to a financial institution acting as an agent of the Government.

*Collection mechanism* means any one of a number of tools or systems by which monies are transferred to the Government from a source outside the Government.

*Cutoff time* means a time predesignated by a financial institution beyond which transactions presented or actions requested will be considered the next banking day's business.

*Day* means a calendar day unless otherwise specified.

*Deposit* means as a noun, money that is being or has been presented for credit to the Treasury. Deposits can be made by an agency or directly by the remitter. All such transfers are effected through a Federal Reserve Bank or other financial

institution. As a verb, deposit means the act of presenting monies for credit to the Treasury by an official of an agency.

*Depositary* means a bank or other financial institution which has been authorized by the Treasury to receive monies for credit to the Treasury.

*Disburse* means the initiation of an Electronic Funds Transfer (EFT) transaction or other methods of drawing funds from accounts maintained by the Government.

*Electronic funds transfer (EFT)* means any transfer of funds, other than a transaction originated by cash, check or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Fedwire transfers, Automated Clearing House (ACH) transfers, and transfers made at automatic teller machines (ATM) and Point-of-Sale (POS) terminals.

*Fund* means the Cash Management Improvements Fund.

*Monies* (or "receipts") means EFT transactions, currency, negotiable instruments, and/or demand deposits owed to or collected by an agency.

*Next day deposit* means a deposit made before the cutoff time on the day following the day on which the funds were received by an agency. For example, if an agency receives funds for deposit at 3 p.m. on Monday and transmits the deposits to the depositary by 2 p.m. on Tuesday (the depositary's next cutoff time) then next-day deposit requirements are met.

*Payment* means a sum of money transferred to a recipient in satisfaction of an obligation. A payment includes any Federal Government benefit or non-benefit payment.

(1) A benefit payment is a disbursement for a Federal Government program or annuity. Benefit payments may be one-time or recurring payments including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Civil Service Retirement, Railroad Retirement Board Retirement/Annuity, Veterans Administration Compensation/Pension, Central Intelligence Agency Annuity, Military Retirement Annuity, and Coast Guard Retirement.

(2) A non-benefit payment is a Federal Government disbursement other than a benefit payment. Non-benefit payments may be one-time or recurring payments, including but not limited to, payments for vendors, Internal Revenue Service tax refunds, Federal salaries and allotments therefrom, grants, travel disbursements and reimbursements, loans, principal and/or interest related to United States savings bonds, notes, and other savings-type securities, and payments of service fees to organizations qualified to issue and/or redeem savings bonds.

*Point-of-Sale (POS) terminal* means an automated credit card or debit card transaction device.

*Recipient* means a person, corporation, or other public or private entity receiving benefit or non-benefit payments from the Government.

*Same day deposit* means a deposit made before the cutoff time on the day on which the funds were received by an agency. For example, if an agency receives funds for deposit at 10 a.m. on Monday and transmits the deposits by 2 p.m. on Monday (the depositary's cutoff time) then a same-day deposit has been achieved.

*Service* means the Financial Management Service, Department of the Treasury.

*Treasury Financial Manual (TFM)* means the manual issued by the Service containing procedures to be observed by all Government departments and agencies in relation to central accounting, financial reporting, and other Government-wide fiscal responsibilities of the Department of the Treasury. Volume I, Chapter 6–8000 (I–TFM 6–8000) contains cash management procedures to be followed pertaining to these regulations.

**§ 206.3 Billing policy and procedures.**

The billing process is considered an integral part of an effective cash management collection program. In those situations where bills are required and the failure to bill would affect the cash flow, bills will be prepared and transmitted within 5 business days after goods have been shipped or released, services have been rendered, or payment is otherwise due. An agency may prepare and transmit bills later than the 5 day timeframe if it can demonstrate that it is cost effective to do so. In addition, the bill must include the terms and dates of payments, and late payment provisions, if applicable. Terms and dates of payments will be consistent with industry practices. I TFM 6–8000 describes detailed billing policies, procedures and industry standards.

**§ 206.4 Collection and payment mechanisms.**

(a) All funds are to be collected and disbursed by EFT when consistent with the provisions of paragraph (b) of this section. These mechanisms include, but are not limited to, Fedwire transfers, Automated Clearing House (ACH) transfers, and transfers made at automatic teller machines (ATM) and Point-of-Sale (POS) terminals.

(b) The Service will publish directives in I TFM 6–8000 requiring that collections and payments shall be made by EFT when cost effective and practicable. The Service will also establish in I TFM 6–8000 the process by which Federal agencies and FMS shall construct and agree upon implementation timetables for conversion to EFT.

(c) The Service is the required approval authority when an agency desires to convert from one collection or payment mechanism to another. In proposing the use of a collection or payment mechanism other than EFT, an agency may be required to provide a cost-benefit analysis, as directed in I TFM 6–8000, which justifies its use. This analysis may include, at a minimum, known or estimated agency personnel costs, costs of procurement, recurring operational costs, equipment and system implementation and maintenance costs, costs to payment recipients, and costs to remitters. Agencies should consult with Treasury to determine the need to include interest costs in their computations of benefits and costs.

(d) An agency shall require the collection of funds by the agency to be made via EFT and the disbursement of funds by the agency to be made via EFT as a provision of new contractual agreements or renewal of existing contracts which impact agency collection or payment mechanisms.

**§ 206.5 Collection and deposit procedure exceptions.**

(a) The following collection and deposit timeframe requirements are to be followed in exception cases where EFT mechanisms are not utilized:

(1) An agency will achieve same day deposit of monies. Where same day deposit is not cost-effective or is impracticable, next day deposit of monies must be achieved except in those cases covered by paragraph (b) of this section.

(2) Deposits will be made at a time of the day prior to the depositary's specified cutoff time, but as late as possible in order to maximize daily deposit amounts.

(3) When cost-beneficial to the Government, an agency may make multiple deposits.

(b) Any additional exceptions to the above policies are listed in I TFM 6–8000.

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**§ 206.5 Cash management planning and review.**

(a) The primary responsibility to implement an effective cash management program rests with an agency. As part of its overall responsibility, an agency must constantly seek methods to bring about cash management savings and periodically perform cash management reviews to identify areas needing improvement.

(b) As part of its cash management review process, an agency is expected to document cash flows in order to provide an overview of its cash management activities and to identify areas that will yield savings after cash management initiatives are implemented. The Service will evaluate an agency's EFT policy and application, to include mitigating circumstances which may prevent the use of EFT, as part of the cash management reviews.

(c) An agency's initial and subsequent cash management reviews will provide the basis for identification of improvements and preparation of cash flow reports for submission to the Service as prescribed by I TFM 6–8000. That Chapter provides requirements for an agency in performing periodic cash management reviews, identifying improvements, and preparing cash flow reports. In addition, periodic reports must be submitted by an agency to the Service on progress made in implementing cash management initiatives and associated savings.

(d) The Service will periodically review an agency's cash management program to ensure that adequate progress is being made to improve overall cash management at an agency. As part of its oversight authority, the Service may visit an agency and review all or specific cash management activities of an agency. An agency will be notified in advance of the Service's review and will be required to provide the Service with documentation of the agency cash management review within the timeframes and format required by I TFM 6–8000.

**§ 206.7 Compliance.**

(a) The Service will monitor agency cash management performance. Part of the monitoring process will include establishing implementation and dates for conversion to, or expansion of, EFT mechanisms, as well as the identification of mitigating circumstances which may prevent the use of EFT.

(b) In cases where an agency fails to meet a scheduled date within its control, the Commissioner will send a formal Notice of Deficiency to an agency's designated cash management official. A separate Notice will be sent for each initiative. The Notice of Deficiency will include, at a minimum, the nature of the deficiency, the amount of the proposed charge, the method of calculation, the right to file an appeal, and the date the charge will be imposed in the absence of an appeal.

**§ 206.8 Appeals.**

(a) An agency which chooses to file an appeal must submit the appeal in writing to the Commissioner, within 45 calendar days of the date of the Notice of Deficiency. In the event of an appeal, the charge imposed under the Notice of Deficiency will be deferred pending the results of the appeal. If an appeal is not submitted (i.e., received by the Commissioner) within 45 calendar days, the amount indicated in the Notice of Deficiency will be charged per § 206.9(a).

(b) The appeal shall contain the elements and follow the submission procedures specified in I TFM 6–8000. The appeal will include the background leading to the Notice of Deficiency, the basis of the appeal, and the action requested by an agency. An agency should state its disagreements with the Notice of Deficiency which may include cost/benefit factors, the amount of the charge, and other items.

(c) An agency must state what action it requests in its appeal. An agency may request that the Notice of Deficiency be completely overturned for cost/benefit or other considerations. Alternatively, an agency may request a reduced charge, deferral of the charge, an alternative solution to cash management improvement, or a combination of these actions.

(d) *Appeals board.* The appeals board shall consist of three members—two permanent members and one temporary member. The permanent members will be the Commissioner, and the Service's Assistant Commissioner, Federal Finance (hereinafter "the Assistant Commissioner"). The temporary board member will be a cash management official from an agency other than the agency appealing the Notice of Deficiency. The board will be convened on an as-needed basis. The order of agency assignment to the board will be published by Treasury. The Commissioner, Assistant Commissioner, and the designated agency cash management official may delegate their responsibility to a staff subordinate having sufficient experience in cash management matters. The Assistant Commissioner's designee may be from any area other than that which issued the Notice of Deficiency.

(e) *Appeal review process.* The Appeals Board will review the Notice of Deficiency, any additional information submitted by the Service, and the written appeal from an agency. Based on this review, the Board may decide additional investigation is required. The Board may request an agency and/or the Service to meet with the Board as part of the review process.

(f) *Appeal finding.* A written majority decision shall be rendered by the Appeals Board within 30 calendar days of receipt of the appeal. The Board may extend this period for an additional 30 calendar days if required. The decision of the Board whether to uphold the Notice of Deficiency, to overturn the Notice of Deficiency, or to mandate some other action will be stated in the finding. Other action mandated may include a reduced charge, a deferral of the charge, an alternate solution to cash management improvement, or a combination of these actions. The basis of the decision, the amount of the charge and the effective date of the charge will be stated in the finding. The effective date of the charge may be retroactive to the date indicated in the Notice of Deficiency.

(g) Any terms related to charge deferral will be stated; the Service and an agency will be required to submit evidence of compliance to such terms at a future specified date. At this future time, the Appeals Board will review the evidence of compliance. Based on this evidence, the Board will decide whether to impose a charge.

**§ 206.9 Charges.**

(a) Within 30 calendar days of the effective date of the charge or the appeals decision, an agency must submit appropriate accounting information to the Assistant Commissioner. The charge will be calculated following procedures outlined in I TFM 6–8000, and will be assessed for each month that noncompliance continues.

(b) *Collection noncompliance.* In the case of cash management collection noncompliance, an agency will absorb the charge from within funds available for the administration or operation of the program(s) to which the collections or payments relate. Charges collected from an executive agency in the case of cash management collection noncompliance shall be deposited in the Cash Management Improvements Fund as outlined in section 206.10.

(c) *Payment noncompliance.* In the case of cash management payment noncompliance, an agency will absorb the charge to the maximum extent practicable out of appropriations

available for agency operations, and shall not be paid from amounts available for funding programs of an agency. Also, charges collected from an executive agency, in the case of cash management payment noncompliance, shall be deposited in the Treasury and credited as miscellaneous receipts.

(d) If an agency does not voluntarily pay the charge assessed under § 206.9(a), the Service will debit the appropriate account automatically. By failing to pay voluntarily the charges as required by the Deficit Reduction Act of 1984 or the Cash Management Improvement Act of 1990, an agency shall be deemed to authorize the automatic debit to its account.

(e) The Commissioner will formally terminate the charge when the Commissioner has determined that an agency has complied. In addition, on an annual basis, the Commissioner will review an agency's performance and calculation of the charge, and will notify an agency in writing of any changes to the amount being charged.

**§ 206.10 Operation of and payments from the Cash Management Improvements Fund.**

(a) The Cash Management Improvements Fund (Fund) will be operated as a revolving fund by the Service. Charges assessed under § 206.9(a) for cash management collection noncompliance will be deposited into the Fund according to the Deficit Reduction Act of 1984. The Service will also disburse any payments from the Fund based on projects selected by a project selection and approval committee.

(b) *Committee composition.* The committee shall consist of three members—two permanent members and one temporary member. The permanent members will be the Commissioner, and the Assistant Commissioner. The temporary committee member will be a cash management official from an agency other than an agency being considered for funds. Decisions of the project selection and approval committee cannot be appealed. Agencies will be notified of any available amounts in the Fund, and requirements to apply for such monies through a TFM bulletin.

(c) As provided by 31 U.S.C. 3720, sums in the Fund shall be available without fiscal year limitation for the payment of expenses incurred in developing improved methods of collection and deposit and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

(d) In addition to all reports required by law and regulation, the Service will prepare and publish a full report on payments, receipts, disbursements, balances of the Fund, and full disclosure on projects financed by the Fund.

**Russell D. Morris,**

*Commissioner*

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Part IV

# Department of Education

**National Institute on Disability and Rehabilitation Research**

**Proposed Funding Priorities for Fiscal Years 1994–1995 for Rehabilitation Research and Training Centers; Notice**

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## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research

### Notice of Proposed Funding Priorities

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed funding priorities for fiscal years 1994–1995 for Rehabilitation Research and Training Centers.

**SUMMARY:** The Secretary proposes funding priorities for Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

**DATES:** Comments must be received on or before (September 7, 1993.)

**ADDRESSES:** All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3424, Switzer Building, Washington, DC 20202–2601.

**FOR FURTHER INFORMATION CONTACT:** David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

**SUPPLEMENTARY INFORMATION:** This notice contains seven proposed priorities under the RRTC program. Two of the priorities are in areas related to children and youth with serious emotional disturbances. The remaining priorities are for research related to long-term mental illness, mental health and deafness, pediatric rehabilitation, medical rehabilitation services, and the rehabilitation needs of persons with disabilities in the Pacific Basin.

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities. These proposed priorities support the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priorities proposed in this notice are consistent with the long-range planning process.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

**Note:** This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

### Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

The statute requires that each applicant for a grant, including an RRTC, demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in research training, as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) states that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

*General*

The Secretary proposes that the following requirements will apply to all of the RRTCs pursuant to the priorities:

Each RRTC must conduct a multifaceted program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, including vocational rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

*Priorities*

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

**Proposed Priorities 1 and 2—Children and Youth With Serious Emotional Disturbances (CYSED)**

*Background*

The proportion of children and youth under 18 years of age who have serious emotional disturbances has been estimated to be anywhere from three percent to five percent of the population (Koyanagi and Gaines, "All Systems Failure," National Mental Health Association, Arlington, VA, 1993). CYSED may receive services from a number of social service systems including education, juvenile justice, mental health, health, and vocational rehabilitation. The extent of the coordination that takes place between service agencies varies widely, and parents are sometimes called upon to serve as case managers. Coordination between systems is particularly important when a child transitions into young adult and adult services.

Many CYSED appear to be "falling through the cracks" as reflected by high hospitalization and arrest rates and low rates of employment, poor school attendance and low participation rates in vocational training (Stoep, "Through the Cracks: Transition to Adulthood for Severely Psychiatrically Impaired Youth" Fourth Annual Research Conference Proceedings, Florida Mental Health Institute, Tampa, 1991). When coordination efforts fail or when appropriate services are unavailable, CYSED may be placed in highly restrictive residential settings, including incarceration. The number of CYSED entering the juvenile justice system and the number of violent offenses they commit are increasing (Loeber, "Antisocial Behavior: More Enduring than Changeable?" Journal of the Academy of Child and Adolescent Psychiatry, 30, 1990). Parents and teachers of CYSED experience very similar feelings of isolation and burn-out (Soler et al., "Fighting Fragmentation: Coordination of Services for Children and Families," Nebraska Law Review, 69, (2), 1990).

The financing of services provided to CYSED can be a costly and complicated matter. Flexible and efficient funding strategies need to be developed and evaluated, particularly within the mental health, social services, and education systems.

The importance of providing support to families and, as appropriate, involving them in the services that are provided to their children has been increasingly recognized by State mental health and education administrators. Many States mandate parent representation on committees that coordinate, plan and evaluate services. More research is needed to determine the impact that family support and involvement has on the effectiveness of the services provided to CYSED. In addition, outreach strategies are needed to identify and meet the needs of parents from minority backgrounds and increase their participation on these committees and other bodies which influence policy and practice. As the mental health system moves toward a family focus, there is a need to identify measures that reflect the values of family-centered services, family participation, family support, and empowerment.

The Center on Mental Health Services within the Substance Abuse and Mental Health Services Administration is presently supporting demonstration projects on the development of statewide family-controlled information and support networks. It is important to understand the impact of these information and support networks.

NIDRR, in collaboration with the Substance Abuse and Mental Health Services Administration, Center on Mental Health Services, announces two proposed research priorities related to CYSED.

*Proposed Priority 1—Improving Service Systems for CYSED*

An RRTC on improving service systems for children and youth with serious emotional disturbances shall—

- Utilizing existing databases, identify principal demographic characteristics of children and youth with serious emotional disturbances and the services they receive in the education, juvenile justice, mental health, health, and vocational rehabilitation systems;
- Identify, develop and evaluate models of service system coordination for each of the systems listed above, emphasizing the transition from childhood to young adulthood and adult services;
- Identify, develop and evaluate innovative methods of early identification, educational programming, rehabilitation and treatment for each of the systems listed above;
- Identify and evaluate innovative models of financing and enhanced resource control at the local level for each of the systems listed above;
- Coordinate its activities with related projects supported by the Office of Special Education Programs; and
- Evaluate the impact of the Children's Mental Health Services demonstration projects on the development of statewide family-controlled information and support networks throughout the United States and the effectiveness of the different strategies employed by these family-controlled organizations to expand and include families and children from culturally diverse backgrounds.

**Proposed Priority 2—Services to Families of CYSED**

An RRTC on services to families of children and youth with serious emotional disturbances shall—

- Identify, develop, and evaluate models of family participation in the provision of education, juvenile justice, mental health, health, vocational, and rehabilitation services;
- Identify factors contributing to family burnout and develop and evaluate strategies to prevent it;
- Identify factors for determining when out-of-home placement is appropriate and when it is not;

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• Evaluate the impact that supports provided to families have on the effectiveness of the services provided to CYSED;

• Compare and evaluate, across States, the effectiveness of State-mandated parent representation on committees that coordinate, plan, and evaluate services;

• Develop and evaluate strategies for outreach to families from minority backgrounds in order to increase their participation on advisory committees and other bodies that influence policies and practices;

• Coordinate its activities with related projects supported by the Office of Special Education Programs; and

• Develop and maintain a national clearinghouse of family participation in the provision of services that will provide information and technical assistance to parents and professionals.

**Proposed Priority 3—Rehabilitation in Long-Term Mental Illness**

*Background*

In September, 1992, NIDRR sponsored a Consensus Validation Conference (CVC) on "Strategies to Secure and Maintain Employment for Persons With Long-Term Mental Illness (LTMI)" that produced a number of resource papers. Consumers, providers, family members and researchers submitted papers and provided testimony on current knowledge and recommendations for future research. Areas of concern that emerged as a result of the conference included (1) the importance of a systematic approach to increasing consumer empowerment; (2) the need to address the financial disincentives to employment in various Federal and State systems; (3) the need to explore and improve practices of employers with regard to hiring persons with LTMI; and (4) the importance of the emerging practice of "supported education" which involves the provision of assistance to individuals with disabilities in educational environments that enables them to perform successfully.

The prevalence of mental illness in the United States in 1992 was approximately 45 million individuals, of whom an estimated 4 to 5 million adults are considered "seriously mentally ill" (Rutman, "How Psychiatric Disability Expresses Itself as a Barrier to Employment," CVC Resource Paper, 1992). Severe and persistent mental illness encompasses more than an episodic disorder. It implies significant impairment and disability and, as a result, treatment is often extensive, long-term, and expensive (Goldmen et al., "Defining and Counting the Chronically Mentally Ill," Hospital and Community Psychiatry, 1988).

Consumer-directed vocational, residential, and social-support programs are beginning to appear throughout the country. Typically, in these programs, professionals provide options and consumers set goals, plan services, and assertively ask for help when needed (Mellon, "Member Needs Drive the Program," CVC Public Testimony, 1992). Exploration of the benefits of consumer-directed programs may prove to be valuable.

Persons with LTMI have one of the lowest rates of successful vocational rehabilitation. Many are unable to find or maintain employment for a variety of reasons that include (1) the impact of psychiatric symptoms and the unpredictability of the illness itself; (2) the barriers to employment created by employer discrimination and stigma; (3) the disincentives to work created by professionals and financial support systems; and (4) a lack of marketable skills.

Although effective short-term treatment programs now exist to help people with psychiatric disabilities, there are indications that an array of long-term support services such as personal care attendants and job coaches may be necessary in order to maintain life in the community and lifetime involvement in the labor market.

Employers often express concerns regarding the unpredictable recurrence of symptoms and difficulties in controlling the behavior of persons with LTMI (Cook et al., "Cultivation and Maintenance of Employer Relationships," CVC Resource Paper, 1992). Studies report that employers interested in hiring persons with disabilities are concerned about the availability of support services that will facilitate the individual's employment (Greenwood et al., "Employer Perspectives on Employer Rehabilitation Partnerships," Journal of Rehabilitation Counseling, 19, (1), 1988).

Application of the concept of "supported" services is proving to be beneficial to persons with long-term mental illness. Developments in the field of psychiatric rehabilitation indicate that supported education programs can improve access to education and retention in education programs and may subsequently increase the employability of participants (Unger, "Access to Educational Programs," CVC Resource Paper, 1992).

NIDRR, in collaboration with the Substance Abuse and Mental Health Services Administration, Center on Mental Health Services, announces a proposed priority on Long-Term Mental Illness.

**Proposed Priority**

An RRTC on long-term mental illness shall—

• Identify, compare, and evaluate strategies to increase consumer empowerment in the provision of social and employment training services;

• Identify, develop, and evaluate strategies, including provision of reasonable accommodations as required by the Americans with Disabilities Act, to improve employment training, hiring, retention and promotion outcomes for persons with LTMI;

• Identify financial disincentives to employment and develop recommendations to overcome those disincentives;

• Identify, compare, and evaluate models which provide support to employers, as well as persons with LTMI in the community, including supported employment and education models; and

• Identify and evaluate strategies to reduce and eliminate stigma in the workplace attached to persons with long-term mental illness.

**Proposed Priority 4—Pediatric Rehabilitation**

*Background*

It is estimated that 10 to 15 percent of the children under 18 years of age have a chronic illness or disability (Pless and Perrin, "Issues Common to a Variety of Illnesses," *Issues in the Care of Children with Chronic Illnesses*, Hobbs and Perrin (eds.), Jossey-Bass, 1985). Although most have no limitation in activities of daily living, approximately one million are estimated to be severely limited in their ability to participate in activities of childhood, preschool, or school. It is further estimated that 400,000 children, including 100,000 in institutions, are unable to engage in any major childhood activities (Kohrman, NIDRR Long-Range Plan Hearing Testimony, Chicago, 1991).

There is evidence that the number of infants infected with human immunodeficiency virus (HIV) are growing, and there is an increasing concern about the potentially disabling, long-term effects of crack cocaine use during pregnancy (Office of Technology Assessment, *Adolescent Health*, Washington, DC, 1991). According to a Public Health Service Report, "Family Centered Comprehensive Care for

Children with HIV Infection" (August, 1991) by June 1991 the Center for Disease Control had received reports of 3,140 children (less than 13 years old) with AIDS. This same report estimates that 1,800–2,000 infants were born infected with HIV in 1989 based on a 30 percent transmission rate from the 5,000–6,000 HIV-infected women who gave birth.

Advances in diagnosis and treatment have dramatically changed mortality rates for children with chronic illnesses, and many survive into adulthood (Gortmaker, "Demography of Chronic Childhood Disease," *Issues in the Care of Children with Chronic Illnesses,* Hobbs and Perrin (eds.), Jossey-Bass, 1985). As a result of medical, technological, social, and legal advances, treatment of children with chronic illnesses has shifted from being based in hospitals and institutions to communities and family homes. While there appears to be a growing consensus about the ideal of providing home and community-based care for even the sickest children, or those with the most severe disabilities, there is much less consensus about how to do it (Patterson, "Family Resilience to the Challenge of a Child's Disability," Pediatric Annals, September, 1991).

The role of parents in the treatment of children with chronic illness is changing. Quality of care is often dependent on a parent's assertiveness and ability to coordinate the efforts of numerous medical and social service systems (Smith, "Parents: The Critical Team Members," OSERS News In Print, Summer 1992). In addition, the shift to community-based services has placed new demands on the relationship between professionals and parents.

There are a variety of funding mechanisms that support the treatment of children with chronic illness, such as private health insurance, Medicaid, and an array of managed-care programs. Nevertheless, parents of children with chronic illnesses often have difficulty accessing the services their children need. Parents may encounter service delivery systems that are fragmented as a result of inadequate communication and coordination among providers, varying eligibility requirements for services and financial assistance, and insufficient resources (Fox et al., "An Examination of HMO Policies Affecting Children with Special Needs," U.S. Department of Health and Human Services Grant #MCJ–063500, 1990).

The psychosocial impact of chronic illness through, for example, restrictions of activities of daily living and participation in community life have just begun to be explored (Sinnema, "Resilience Among Children with Special Health Care Needs and Among Their Families," Pediatric Annals, September, 1991). More information is needed about what contributes to resiliency and coping in families (including siblings) with a child with a chronic illness (Leonard, "Siblings of Chronically Ill Children: A Question of Vulnerability Versus Resilience," Pediatric Annals, September, 1991).

The use of health services and patterns of expenditures vary markedly by race and ethnicity (Butler et al., "Health Care Expenditures for Children with Chronic Illness," *Issues in the Care of Children with Chronic Illnesses,* Hobbs and Perrin (eds.), Jossey-Bass, 1985). National survey data revealed a rapid increase in the number of uninsured Black and Hispanic persons between 1977 and 1987 (Fox et al., "An Examination of HMO Policies Affecting Children with Special Needs," U.S. Department of Health and Human Services Grant #MCJ–063500, 1990). Moreover, many poor minority families are ineligible for Medicaid due to employment or citizenship status (McManus, "Health Insurance Differentials Among Minority Children with Chronic Conditions and the Role of Federal Agencies and Private Foundations in Improving Financial Access," Unpublished Paper, University of Minnesota, RRTC on Children with Chronic Illness, 1992). A critical concern to adolescents and their families is the transition from pediatric to adult health care services. Adolescents and young adults have different needs from children and ideally, transition services should take these needs into account (Court, "Outpatient Based Transition Services for Youth," Pediatrician, June, 1991). More information is needed on the process of transition from pediatric to adult services for young people with chronic illnesses.

For this priority, pediatric rehabilitation is defined as those services necessary to assist children to minimize the effects of disability or serious illness so that they may achieve maximum participation in the activities of childhood, preschool, or school. While acute care medical services and improved clinical interventions are included in this combination of services, the improvement of medical services for children, in isolation, is not the focus of this priority.

**Proposed Priority**

An RRTC in pediatric rehabilitation shall—

- Identify, develop, and disseminate effective models for the provision of pediatric rehabilitation services in the community and at home;
- Identify and disseminate models of family-centered, community-based systems of care for HIV-infected children and their families and identify and evaluate the financing options available to meet the multiple needs of this population;
- Identify, develop, and disseminate effective models of parent involvement in the provision of community and home-based pediatric rehabilitation services;
- Develop and disseminate pre-service and in-service training for pediatric rehabilitation professionals in order to improve their ability to provide community and home-based care treatment;
- Identify and analyze the strengths and limitations of the range of financial mechanisms that support the provision of rehabilitative services to children with chronic illness;
- Identify, develop, and disseminate successful interventions that improve the ability of families to cope;
- Identify, develop, and disseminate successful interventions that improve the psychosocial adjustment of children and adolescents with chronic illness and their families;
- Identify and analyze the pediatric rehabilitation service delivery problems facing chronically ill children from minority backgrounds and their parents and, based on that analysis, recommend strategies to improve pediatric rehabilitation service delivery systems;
- Coordinate its activities with related activities supported by the Office of Special Education Programs; and
- Identify and evaluate models of transition from pediatric rehabilitation to adult health and rehabilitation services for children and youth with chronic illnesses.

**Proposed Priority 5—Mental Health and Deafness**

*Background*

The National Institute on Deafness and Other Communication Disorders (NIDCD) estimates that at least 28 million Americans have some degree of hearing loss. It also estimates that, of this number, 15 to 20 million persons have a hearing loss, ranging from mild to deaf, that begins in adulthood.

Over the past two decades, there has been a significant increase in the provision of mental health services for persons who are perlingually deaf, i.e., persons who are born deaf. Little attention, however, has been paid to the mental health needs of persons who

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have severe hearing loss or persons who become deaf in adulthood. Furthermore, appropriate mental health services are not always available to persons with hearing loss. For example, some States offer no specialized mental health services for persons with hearing loss, and the quality of mental health services in those States that do provide such services varies widely (Karchmer and Willigan, "Mental Health Service Delivery for Deaf Individuals in the U.S.: A National Study of Programs and Providers," Unpublished Paper, 1992).

Currently, little is known about the mental health needs, the provision of services, and appropriate interventions for persons with severe hearing loss and those who become deaf in adulthood. What is known suggests that persons with severe hearing loss and those who become deaf in adulthood are likely to have different problems and mental health needs than those who are perlingually deaf. Most persons with severe hearing loss continue to communicate through speech and speech reading, often depending upon strong amplification to heighten their residual hearing. However, because they frequently experience significant variations in sound discrimination that may leave them unable to understand speech while hearing other levels of sound, their capacity to communicate may be undermined. As a result, they may begin to exhibit paranoid-like behavior, withdraw from social contact, and feel isolated because they believe they do not fit in with either the hearing or the deaf world.

Unlike persons who are perlingually deaf and persons with severe hearing loss, persons who become deaf in adulthood are culturally hearing; that is, they have been raised from birth with a language and communication style that depends primarily on voice and sound. When this communication style fails because of deafness, they may not be able to cope. They are likely to become angry, anxious, and depressed. They often isolate themselves from others, and their personal and professional relationships may break down. Their capacity to function independently may be undermined, and they may become overly dependent upon others (Interim Report, Research in Adventitious Hearing Impairment, NIDRR Research and Demonstration Project #133A90003, University of California and San Francisco, 1992).

Additional research is needed regarding the availability and appropriateness of mental health services for persons with hearing loss, particularly those with severe hearing loss and those who become deaf in adulthood, and how the provision of mental health services to such persons can be improved.

**Proposed Priority**

An RRTC on research in mental health services for persons with hearing loss shall—

- Assess and analyze, on a State-by-State basis, the availability of mental health services for persons with hearing loss, particularly on services for persons with severe hearing loss and those who become deaf in adulthood, including the types of services provided, the kinds of locations where services are provided, the delivery systems that provide the services, the sources of funding for the services, and the qualifications of persons providing the services;
- On the basis of the above analysis, identify the barriers to providing adequate and appropriate mental health services to persons with hearing loss, particularly those with severe hearing loss and those who become deaf in adulthood, and develop and evaluate strategies to overcome those barriers;
- Identify, develop, and evaluate interventions that would improve mental health outcomes for persons with hearing loss, particularly those with severe hearing loss and those who become deaf in adulthood, including the identification of interventions already developed for the perlingually deaf that may be appropriate, or can be adapted, for persons with severe hearing loss and persons who become deaf in adulthood;
- Identify the needs for improving the skills of mental health practitioners who provide services to persons with hearing loss, particularly those with severe hearing loss and those who become deaf in adulthood, and develop mechanisms, including the provision of in-service and pre-service training, to meet those needs;
- Develop a national clearinghouse on issues related to mental health services for persons with hearing loss; and
- Include research on persons with hearing loss from a variety of socioeconomic levels, from all racial and ethnic groups, and from rural and inner city areas; involve persons with hearing loss in the planning, implementation, and evaluation of activities undertaken by the Center; coordinate activities with other Rehabilitation Research and Training Centers dealing with sensory disability issues; and, as appropriate, serve as a resource for States, the regional Disability Business Technical Assistance Centers, and others.

**Proposed Priority 6—Rehabilitation in the Pacific Basin**

*Background*

In the Rehabilitation Act Amendments of 1984, the Congress mandated that NIDRR establish an RRTC to address rehabilitation needs of the Pacific Basin, and further described a scope of work for the Center in the 1986 Amendments. In response to the Congressional mandates of 1984 and 1986, NIDRR provided support, on a competitive basis, to the University of Hawaii to conduct a program of research and training to address needs for rehabilitation knowledge concerning the Pacific Basin. In the Rehabilitation Act Amendments of 1992, the Congress again mandated that NIDRR support such a Center.

For the purpose of this priority, the Pacific Basin is defined to include Hawaii, American Samoa, the Commonwealth of Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and Guam. With the exception of Hawaii, the entities in the Pacific Basin are small, geographically-isolated island governments with limited resources for addressing the needs of persons with disabilities.

Disability should be studied and understood in terms of culturally acceptable norms and behaviors. Prior research suggests differences among various cultural groups, such as Asian-American and Pacific Islanders, related to perceptions of impairment and disability, participation in the rehabilitation process, and outcomes of the rehabilitation process. The concepts of independence, independent living, integration, and economic self-sufficiency must be defined in the context of island cultures that value interdependence and the sharing of community and family resources.

At the time the first RRTC was established in the Pacific Basin, little was known about disability in the region. Epidemiologic and rehabilitation service system data regarding individuals with disabilities in the various entities were either incomplete, inaccurate, or non-existent. There was little definitive knowledge about the influence of cultural values or local lifestyles on the experiences of disability and the outcomes of rehabilitation. The capacity to produce, analyze, report and use data was limited. Mechanisms to translate such information into the development of effective programs, practices, and service systems also were limited.

The RRTC focused on the design and development of demographic databases; the design of training for personnel who provide vocational and independent living rehabilitation services and special education; investigations of the primary and secondary long-term disabilities of islanders, such as diabetes, stroke and spinal cord injuries; and the development of rehabilitation data systems in Hawaii, American Samoa, and the Commonwealth of the Northern Marianas.

There is an ongoing need for research directed to epidemiologic and rehabilitation service system databases to enhance the capacity of the Pacific Basin entities to (1) identify rehabilitation needs, patterns, and priorities; (2) engage in coordinated planning for disability and prevention of disability; (3) provide services to persons with disabilities and their families; and (4) evaluate programs.

In addition, while Hawaii is improving its assistive technology service-delivery systems, the use of assistive technology in the other entities continues to present problems. For example, many assistive devices manufactured for use on the mainland do not always have the capacity to withstand the climate and terrain of the Pacific Basin. Furthermore, the need for assistive technology devices may overwhelm the rehabilitation service delivery systems in some entities.

Prior research has led to the identification and development of some assistive technology devices that are cost-effective, able to endure the physical conditions of the islands, and constructed of materials that are available on the islands. Further efforts are needed to refine and disseminate information about assistive technology that is developed in collaboration with persons with disabilities, that supports the infrastructure and economy of each island, and that is acceptable within the culture and social system of each island. Persons with disabilities and their family members, service providers, and local agencies require further training to enable them to maintain assistive devices.

Technical assistance is needed to establish rehabilitation systems, interagency communication and collaboration, and strategies to provide responsive services at low cost. These strategies include on-island services, use of indigenous personnel, networking among islands, and use of modern telecommunications.

There is a continuing need for training of more rehabilitation service providers, including independent living and vocational rehabilitation service providers, from the variety of cultural, linguistic, and ethnic backgrounds represented in the region, and for updated training to address the demands of new and emerging technologies.

**Proposed Priority**

An RRTC on rehabilitation in the Pacific Basin shall—

- Design new or expand and improve existing rehabilitation service system databases and demographic databases that describe Pacific Basin populations in need of rehabilitation services and promote the implementation and effective use of databases to assess and improve rehabilitation programs;
- Identify or develop, assess, and promote the use of assistive technology devices and services appropriate for use on the islands in the Pacific Basin other than Hawaii;
- Develop strategies to facilitate interagency communication and collaboration among rehabilitation-related service providers in the Pacific Basin to expand the capacity to provide effective rehabilitation services;
- Conduct collaborative and participatory research to identify pertinent disability-related differences among cultural and ethnic groups in the Pacific Basin and develop culturally relevant interventions to improve vocational rehabilitation and independent living outcomes;
- Develop and provide pre-service and in-service training, including advances in assistive technology devices, for rehabilitation services personnel that is culturally relevant;
- Develop and disseminate educational materials on rehabilitation interventions that are culturally relevant and in accessible formats to persons with disabilities, their family members, and to vocational rehabilitation, education, and health care personnel.
- Involve individuals with disabilities, including those from minority backgrounds, in all phases of planning, conducting, and disseminating the research and in evaluating the research and training activities;
- Develop all materials for training and dissemination in formats and media that will make them usable by individuals from the relevant cultural backgrounds and accessible to individuals with various types of disabilities; and
- Cooperate with the Hawaii Technology Assistance Project, with vocational rehabilitation agencies, and with other RRTCs and Rehabilitation Engineering Research Centers addressing related problems.

**Proposed Priority 7—Medical Rehabilitation Services**

*Background*

The health care system in the United States is undergoing substantial changes, not the least of which are in the mechanisms for delivering and financing comprehensive medical rehabilitation services, primary health care, and long-term health care. Individuals with disabilities, as a group, are major consumers of health care services (Zook and Moore, "High Cost Users of Medical Care," 302, The New England Journal of Medicine, 1980) and have a substantial stake in the policies that determine the availability of health care—service delivery mechanisms, financing mechanisms, and types of services available. Much of the recent analysis of health care issues has been directed at acute care or communicable diseases. There is a need for more information on the long-term medical and rehabilitation needs of persons with disabilities, particularly those with the most severe disabilities, and how to provide these services.

For this priority, "medical rehabilitation services" are defined as those services provided by physicians, nurses, and allied health professionals to meet the acute care needs of persons with newly-acquired disabilities, and those interdisciplinary services necessary to restore function or achieve maximum possible functioning and independence.

Medical rehabilitation service providers are a rapidly growing sector of the health care industry, with the number of rehabilitation hospitals doubling between 1980 and 1987 (England, Ed., "Medical Rehabilitation Services in Health Care Institutions," American Hospital Association, 1989). Reasons for this development include the less restricted rehabilitation bed space allocations allowed by Federal regulations and comparatively favorable reimbursement sources and rates. The demand for medical rehabilitation services is expected to continue to grow in the coming decades because of increased chances of survival after trauma, disease, or birth anomaly; increased prevalence of disability related to the general aging of the population; and more opportunity for individuals with disabilities to acquire secondary disabilities or chronic conditions as a result of increased longevity.

Rehabilitation researchers and clinicians must define the optimal organization and delivery of rehabilitative care, including such parameters as, for example, ideal facility

and program sizes (economies of scale) and the appropriate numbers and mix of health care providers needed to serve various disability groups. Existing data sources can be used to help define optimal organizational strategies for inpatient rehabilitation, but few data are available to define optimal strategies for outpatient services. Little is known about how different models for the organization of rehabilitation services affect outcomes and costs. A better understanding is needed of how the type, intensity, and setting of rehabilitation services affect rehabilitation costs and outcomes.

More research also is needed on how the demographic, economic, and medical characteristics of consumers affect their utilization of rehabilitation services and the outcomes that are achieved. The rational targeting of appropriate and responsive rehabilitation services to different population subgroups could increase the cost-effectiveness of rehabilitation services. Health care policy must focus on the means to achieve quality care, leading to a corresponding need to define quality of rehabilitative care. Defining quality care entails developing and validating relevant measures of outcomes, establishing outcome norms, defining practice guidelines, identifying acceptable practice variations, and other quality-of-care criteria.

Personnel shortages and increased medical rehabilitation costs may require the consideration of alternative modes of rehabilitation services delivery, such as the increased use of outpatient services, use of home-based rehabilitation services, use of paraprofessional staff, and less reliance on the traditional team approach during inpatient rehabilitation. Many factors in the larger health care economy have an effect on the costs and outcomes of rehabilitation services that cannot be controlled by rehabilitation providers. These include payment ceilings, length-of-stay limits, minimum services requirements, and other factors over which providers have little control and which may result in less than optimal outcomes.

The purpose of this priority is to generate new knowledge to help resolve important health services issues that have an impact on the delivery of comprehensive acute in-patient medical rehabilitation services. Issues that require study in this area include: The costs and efficacy of rehabilitation services and specific rehabilitation modalities; the impact of various innovative payment methods on rehabilitation hospitals and regional service delivery systems; and the development of innovative methods of delivering and financing comprehensive medical rehabilitation services.

NIDRR proposes to support an RRTC to investigate issues surrounding the delivery of medical rehabilitation services. NIDRR expects this Center to coordinate with other RRTCs on trauma services, chronic illness, and serious emotional disorders in children, aging with disabilities, and personal assistance services, as well as with research projects supported by the Agency for Health Care Policy and Research and the National Center for Medical Rehabilitation Research.

The proposed Center is expected to use the emerging approaches of "health services research," a field of scientific investigation that systematically examines the organization, provision, and funding of health care services. The research effort is expected to draw on the skills of such varied disciplines as epidemiology, health care economics, medical ethics and law, the allied health professions, and medical sociology. The research is expected to consider issues concerning access, cost, effectiveness, and quality of health care services.

**Proposed Priority**

An RRTC on medical rehabilitation services shall—

- Identify the service needs of major impairment groups, excluding persons with spinal cord injury, traumatic brain injury, or burns, to serve as a guide for providers, sponsors, and regulators of health services;
- Conduct a definitive survey to develop specific characterizations of existing medical rehabilitation service capacities, including both inpatient and outpatient services currently available and needed;
- Conduct a national longitudinal study of persons served in public and private hospitals to track cohorts of newly impaired persons, including all disabilities except those persons with spinal cord injury, traumatic brain injury, or burns, to ascertain patterns of recovery, optimal patterns of utilization of medical rehabilitative services, service outcomes, and costs;
- Evaluate the continuity of services and identify the types of disabled and socially and economically disadvantaged disabled individuals who fail to receive the services they need, with special attention to the needs of individuals from minority backgrounds; and
- Evaluate the relative costs and outcomes—including consumer satisfaction—of current methods of providing rehabilitation services, including costs and outcomes of post-rehabilitation services for community reintegration, comprehensive medical follow-up, and health maintenance services.

*Invitation to Comment:* Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3423, Mary Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

*Applicable Program Regulations:* 34 CFR parts 350 and 352.

*Program Authority:* 29 U.S.C. 760–762.

Dated: June 18, 1993.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

**Richard Riley,**

*Secretary of Education.*

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Part V

# Department of Education

**Bilingual Vocational Instructor Training Program; Notice Inviting Applications for New Grant Awards for Fiscal Year 1994**

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**DEPARTMENT OF EDUCATION**

**[CFDA No.: 84.099]**

**Bilingual Vocational Instructor Training Program; Notice Inviting applications for new grant awards for fiscal year (FY) 1994.**

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under this competition.

*Purpose of Program:* The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient individuals.

This program supports the National Education Goals by helping to improve vocational education and training for limited English proficient adults. National Education Goal 5 calls for all adult Americans to be literate by the year 2000 and able to compete in the workforce.

*Eligible Applicants:* State agencies or public and private non-profit educational institutions.

*Deadline for Transmittal of Applications:* September 20, 1993.

*Deadline for Intergovernmental Review: November 19, 1993.*

*Available Funds:* $441,936.

*Estimated Range of Awards:* $150,000-$300,000.

*Estimated Average Size of Awards:* $220,000.

*Estimated Number of Awards:* 2.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 18 months.

*Applicable Regulations:*

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbing).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR parts 400 and 428.

**Content of the Application**

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to determine that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project; and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that serves limited English proficient individuals.

**Selection Criteria**

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

For this competition, the Secretary assigns the 15 points, reserved in 34 CFR 428.20(b), as follows:

*Program design.* (34 CFR 428.21(b)). Five points are added to this criterion for a possible total of 25 points.

*Dissemination plan.* (34 CFR 428.21(g)). Ten points are added to this criterion for a possible total of 20 points.

(a) *Need.* (15 points)

(1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area or areas to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area or areas to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient individuals.

(b) *Program design.* (25 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area or areas to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient individuals enrolled in vocational education programs, and how those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient individuals for employment; and

(2) Potential to increase access to vocational education for limited English proficient individuals.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to

achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after-training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured; and

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (20 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

**Additional Factors**

(a) After evaluating the applications according to the selection criteria, and consulting with the appropriate State board established under section 111 of the Carl D. Perkins Vocational and Applied Technology Education Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

**Intergovernmental Review of Federal Programs**

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 23, 1993 (58 FR 21872–73).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.099, U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC. 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note that the Above Address is not the Same Address as the one to Which the Applicant Submits its Completed Application. Do not Send Applications to the Above Address.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.099), Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.099), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

*Application Instructions and Forms:*

The appendix to this application is divided into five parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized.

The parts and additional materials are as follows:

*Part I:* Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

*Part II:* Budget Information.

*Part III:* Budget Narrative

*Part IV:* Program Narrative.

*Part V:* Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: The grantee should keep this form on file. It should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A.)

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original. No grant may be awarded unless a complete application form has been received.

*For Further Information Contact:* Cindy Towsner, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., (room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone (202) 205–5864. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

*Program Authority:* 20 U.S.C. 2441(b).

Dated: July 27, 1993.

**Augusta Kappner,**

*Assistant Secretary, Office of Vocational and Adult Education.*

**Appendix A**

BILLING CODE 4000-01-P

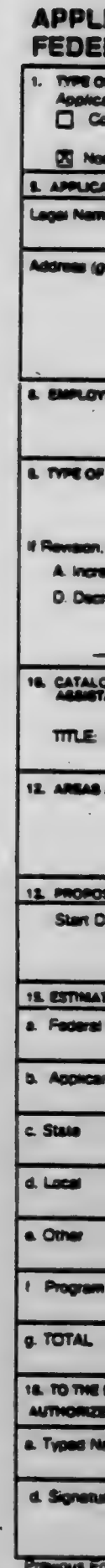

OMB Approval No. 0348-0043

## APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 0 9 9

TITLE: Bilingual Vocational Instructor Training Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

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## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)



SECTION A

| | |
|---|---|
| 1. | Pe |
| 2. | Fr |
| 3. | Tr |
| 4. | Ec |
| 5. | Su |
| 6. | Co |
| 7. | Ot |
| 8. | To (I |
| 9. | In |
| 10. | Tr |
| 11. | TO (I |

SECTION B

| | |
|---|---|
| 1. | C |
| 2. | I (C th |
| 3. | TO |

NOTE:

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

| | A | B | C |
|---|---|---|---|
| 1. Personnel | | | |
| 2. Fringe Benefits (Rate %) | | | |
| 3. Travel | | | |
| 4. Equipment | | | |
| 5. Supplies | | | |
| 6. Contractual | | | |
| 7. Other | | | |
| 8. Total, Direct Cost (lines 1 through 7 | | | |
| 9. Indirect Cost (Rate %) | | | |
| 10. Training Costs/Stipends | | | |
| 11. TOTAL, Federal Funds Requested (lines 8 through 10) | | | |

SECTION B - Cost Sharing Summary (if appropriate)

| | A | B | C |
|---|---|---|---|
| 1. Cash Contribution | | | |
| 2. In-Kind Contribution (only costs specifically for this project) | | | |
| 3. TOTAL, Cost Sharing (Rate %) | | | |

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

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**Instructions for Part III—Budget Narrative**

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

**Instructions for Part IV—Program Narrative**

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly suggests that the applicant limit the program narrative to no more than 40 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. Be sure to number consecutively ALL pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition and is numbered consecutively.

Applicants are advised that: (a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

*Additional Materials*

*Instructions for Estimated Public Reporting Burden*

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503. (Information collection approved under OMB control number 1830–0013. Expiration date: 2/28/95.)

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## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C 2131 et seq.) pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

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## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| | |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| | |
| SIGNATURE | DATE |
| | |

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90, and ED 80-0011, 5/90, which are obsolete)

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by [illegible]

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**
Congressional District, *if known:*

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**
CFDA Number, *if applicable:* _____

**8. Federal Action Number, *if known:***

**9. Award Amount, *if known:***
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI):*

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI):*

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply):*
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** [illegible] information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

**Signature:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

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## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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**Appendix B**

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. May we use this same application to compete for funds under a different grant program?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the grant program to which it is submitted.

Q. I'm not sure which grant program is most appropriate for my project. What should I do?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of grant programs with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," which must be completed, simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the **Federal Register**, a program's regulations, and Federal statues be obtained?

Copies of these materials can usually be found at your local library. If not, most can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Telephone: (202) 783–3238. When requesting copies of regulations or statues, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice would be referred to as follows: Carl D. Perkins Vocational and Applied Technology Education Act (Public Law 101–392).

[FR Doc. 93–18674 Filed 8–4–93; 8:45 am]
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August 5, 1993

Part VI

# Department of the Interior

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 718, 720, and 735**
**Adoption of State Standards; State Enforcement Activities; Final Rule**

VOL 58 ISS 149 AUG 5 1993 UMI

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 718, 720 and 735

RIN 1029-AB58

# Adoption of State Standards; State Enforcement Activities

AGENCY: The Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is removing regulations on the adoption of state standards and state enforcement activities from the initial regulatory program under the Surface Mining Control and Reclamation Act of 1977 (the Act). These provisions have been rendered redundant or unnecessary by enactment of the permanent regulatory program.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208-2634.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Procedural Matters

## I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., (the Act), was enacted August 3, 1977. Two principal purposes of the Act are to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations and to assist the States in developing and implementing a program to achieve the purposes of the Act.

The scheme designed by Congress to implement the requirements of the Act consisted of two distinct regulatory programs on non-Federal and non-Indian lands, one transitional and one permanent. In each coal producing State the transitional program, known as the initial program, took effect six months after the enactment of the Act and created a dual inspection and enforcement role for OSM and the States in ensuring compliance with certain key provisions of the Act at all surface coal mining and reclamation operations. A permanent program would in turn become effective in each State upon either approval by the Secretary of the Interior (the Secretary) of a State regulatory program based on findings that the program provisions met the purposes of the Act and the State had the capability of carrying them out; or, where a State did not submit an application for a State program, upon promulgation and implementation of a Federal program. The initial program in each coal producing State effectively ended upon approval of a permanent State program by the Secretary or the implementation of a Federal program. All such States had either received full or conditional approval of their permanent programs or implementation of a Federal program by 1988.

To implement the requirements of sections 502 and 503 of the Act, the Secretary promulgated regulations on December 13, 1977 (42 FR 62639) and March 13, 1978 (44 FR 14902) for the initial and permanent programs respectively. Among the numerous performance standard and procedural regulations promulgated for the initial program were 30 CFR part 718—Adoption of State Standards, and part 720—State Enforcement Activities, both of which are subject of this rulemaking. Part 718 contains procedures for adoption of State laws and regulations when they prescribe more stringent standards of performance than the general or special performance standards of the initial regulatory program. Part 720 sets forth the regulations governing enforcement activities to be carried out by the States during the initial regulatory program. OSMRE published a proposed rule in the **Federal Register** on August 11, 1992 (56 FR 35960) which would remove these two parts from the initial program regulations. The comment period closed on October 13, 1992. No comments were submitted nor requests made for either a public hearing or meeting. OSMRE is adopting the removal of parts 718 and 720 as proposed with one additional conforming change made to the permanent program rules at 30 CFR 735.21 which deletes its references to part 720.

## II. Discussion of the Final Rule

This final rule removing parts 718 and 720 of the initial regulatory program arose as a result of the periodic review of OSM's regulations required by the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. In accordance with the Paperwork Reduction Act, agencies must review their regulations and, where regulations are identified which are unnecessary or duplicative, they are required to be removed. Parts 718 and 720 were identified by OSM as unnecessary or duplicative for the reasons discussed below.

*Part 718—Adoption of State Standards*

Section 718.1 provided that States could request the Secretary to review any State surface coal mining performance standard in relation to the Federal initial program counterpart to determine which is more stringent and whether the State standard should through rulemaking procedures be adopted as the Federal standard in that State. Since the effective date of the initial program in 1977, no State has ever made a request to the Secretary under this section. Sufficient authority exists under the procedures of 30 CFR 732.17 for a regulatory authority to request approval of a more stringent performance standard for inclusion in a State program. Accordingly, OSM believes this section is no longer necessary.

Section 718.10 sets forth the Secretary's information collection responsibilities under the Paperwork Reduction Act in accordance with 5 CFR 1320.7. Removal of this Section will result in the elimination of the associated burden hours currently charged to the agency.

*Part 720—State Enforcement Activities*

Section 720.10 sets forth the Secretary's information collection responsibilities under the Paperwork Reduction Act in accordance with 5 CFR 1320.7. Removal of this Section will result in the elimination of the associated burden hours currently charged to the agency.

Section 720.11 specifies that a State may continue to exercise its authority to enforce State laws, regulations, and permit conditions in place during the initial program so long as compliance with State law, regulations or permit conditions does not preclude compliance with the initial program performance standards. This section is no longer applicable nor has any meaning to initial program minesites since all States where initial program permits remain either adopted regulations that contained the performance standards of the Federal initial regulatory program or became subject to direct regulation by the Office of Surface Mining through a Federal program. Thus, once the States adopted these regulations or came under a Federal program, the possibility of conflict between State laws and regulations and the Federal initial program performance standards became nonexistent.

The requirement under § 720.12 that States incorporate terms in initial

program permits that comply with the initial program performance-standards in unnecessary because the issuance of permits pursuant to the initial regulatory program ended in all States upon the adoption of permanent State or Federal programs.

Section 720.13 specifies certain initial regulatory program reporting requirements regarding the condition of mine sites and the issuance of permits. These reporting requirements are obsolete and no longer necessary since the requirements of the initial program ended with the adoption of State or Federal permanent programs. Moreover, the requirements of this section have been carried over into 30 CFR 840.14 of the permanent program regulations. This latter section requires that each State make available to OSM upon request, copies of all documents relating to applications for and approvals of existing, new or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions. The specified information is currently being made available to all local OSM offices for both initial and permanent program minesites as necessary to evaluate the administration of each State program.

Removal of parts 718 and 720 does not in any way abrogate any unsatisfied obligation to comply with initial program standards for operators who operated during that program.

## III. Procedural Matters

*Executive Order 12778 on Civil Justice Reform*

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

To the extent that the rule would remove, rather than impose regulatory requirements, the rule will not preempt State law or regulation.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified.

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

To the extent that the rule would remove specific regulatory requirements, the rule promotes simplification and burden reduction.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items.

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of August 5, 1993 the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

*Executive Order 12291*

The Department of the Interior (DOI) has examined the final rule according to the criteria of Executive Order 12291 (February 17, 1981), and has determined that it is not a major rule within the standards established by the Executive Order. Therefore, no regulatory impact analysis is required.

*Regulatory Flexibility Act*

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that the final rule will not have a significant economic impact on a substantial number of small entities. No negative economic effects are anticipated as a result of the rule where the chief purpose is to remove unnecessary and redundant initial program requirements.

*Federal Paperwork Reduction Act*

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

*National Environmental Policy Act*

OSM has prepared an environmental assessment (EA) and has made a finding that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA is on file in the OSM Administrative Record, room 660, 800 North Capitol St., NW., Washington, DC.

*Author*

The author of this final rule is James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208–2634.

**List of Subjects**

*30 CFR Part 718*

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 720*

Intergovernmental relations, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

*30 CFR Part 735*

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: June 14, 1993.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

Accordingly, 30 CFR parts 718 and 720 are removed and part 735 is amended as set forth below.

## SUBCHAPTER B—INITIAL PROGRAM REGULATIONS [REMOVED]

## PART 718—ADOPTION OF STATE STANDARDS

1. Part 718 is removed.

**Authority:** Secs. 201 and 501, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 et seq.)

## PART 720—STATE ENFORCEMENT ACTIVITIES [REMOVED]

2. Part 720 is removed.

**Authority:** Secs. 201, 501 and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 et seq.)

SUBCHAPTER C—PERMANENT REGULATORY PROGRAMS FOR NON-FEDERAL AND NON-INDIAN LANDS

PART 735—GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

3. The authority citation for part 735 continues to read as follows:

**Authority:** Secs. 201, 501, and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201).

4. Section 735.21 paragraph (a)(6) is revised to read as follows:

§ 735.21 Grant reduction and termination.

(a) * * *

(6) If an agency fails to submit reports required by this part or part 705 of this chapter the Director shall reduce or terminate the grant.

* * * * *

[FR Doc. 93–18676 Filed 8–4–93; 8:45 am]
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August 5, 1993

Part VII

# National Institute for Literacy

## Application for State-Capacity Building Awards to Governors for State Literacy Resource Centers; Notices

VOL 58 ISS 149 AG 5 1993 UMI

## NATIONAL INSTITUTE FOR LITERACY

[CFDA NO.: 84.257C]

**Application for State-Capacity Building Awards to Governors for State Literacy Resource Centers To Promote the Development and Implementation of Interagency Performance Measurement and Reporting Systems That Foster Continuous Improvement in Adult Literacy and Basic Skills Programs**

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this Notice contains all the information, application forms, regulations, and instructions needed to apply for a cooperative agreement.

**AGENCY:** The National Institute for Literacy.

**ACTION:** The National Institute for Literacy invites applications from Governors for a new award for Fiscal Year 1993 to fund State Literacy Resource Centers to provide assistance to state leaders in creating performance measurement, reporting, and improvement systems that can be applied to all adult literacy and basic skills programs in a state.

### Definitions

For purposes of this application, the following definitions apply:

"Literacy"—"An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society to achieve one's goals and develop one's knowledge an potential." (As stated in the National Literacy Act of 1991)

"Adult Literacy System"—"All public and private programs and organizations providing or seeking to provide adult literacy or basic skills instruction, including local educational agencies, agencies responsible for corrections education, programs supported by the Job Training Partnership Act (JTPA), welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations." (As stated in the National Literacy Act of 1991)

"Performance Measurement, Reporting, and Improvement System"—A clearly defined and coordinated process for (1) measuring literacy outcome for adult learners who participate in literacy and basic skills program, (2) reporting this information on a regular basis to service providers, program administrators, elected officials, service consumers, and the public, and (3) using this information to improve program quality and state-level policies that guide these programs. A performance measurement, reporting and improvement system (PMRIS) uses a set of common, agreed upon, measures to gauge learner outcomes across all programs in the adult literacy system. A PMRIS for literacy enables states to combine elements of existing measurement and reporting systems including those developed under the National Literacy Act, JTPA and JOBS, to produce a comprehensive picture of literacy efforts and accomplishments in a state.

### Purpose of Program

The National Institute for Literacy proposes to establish a program of capacity-building cooperative agreements (grants) to Governors for administration by State Literacy Resource Centers (SLRCs). The Purpose of the program is:

(1) To help state and local leaders create performance measurement, reporting and improvement systems that will enhance states' abilities to monitor the results of their adult literacy systems and to make continuous improvements in their literacy programs and policies;

(2) To provide information to federal and state policy makers on the feasibility of implementing comprehensive statewide performance measurement, reporting, and improvement systems in the area of literacy, including the identification of barriers, opportunities, and incentives for instituting such systems;

(3) To strengthen the ability of SLRCs to promote greater coordination of literacy programs across state and local agencies and to facilitate the development of results-oriented adult literacy systems; and

(4) To contribute to "the creation and maintenance of a national support system for literacy" (National Literacy Act of 1991).

### *Building State Capacity To Measure Progress and Improve Performance*

Goal 5 of the National Education Goals states that "by the year 2000, every adult will have the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship." To meet this goal, states' adult literacy systems must begin to perform at peak capacity. They must provide high quality literacy and basic skills services. They must have the ability to make changes in service delivery that lead to improved performance. And, most importantly, they must produce recognizable results: Adults who have the skills and abilities to help their children succeed in school, participate actively in civic life, and successfully compete in the job market.

A cornerstone of a high-quality, productive, continuously improving adult literacy system is a well-conceived performance measurement and reporting sytem—a system that provides timely and useful information to many crucial audiences. Governors, legislators, and other top policy makers need information that will help them track the state's progress toward Goal 5, and decide how best to invest state and federal resources to achieve this end. Administrators of state programs for specific groups of adult learners—such as welfare recipients, JTPA participants, or adults with limited English proficiency—need to know what are the characteristics of literacy programs that consistency enable adult learners in these populations to achieve desired outcomes. Local service providers need to know if their current services are effective, or if they need to make program adjustments to improve service delivery.

Adults who are the potential consumers of literacy services need to know which programs are the most likely to help them achieve their goals. Finally, the taxpayers and the general public need to know whether the money invested in literacy programs is producing desired results.

Creating an information and reporting system for adult literacy that meets the needs of these multiple audiences is a formidable challenge. It is challenging in part because of the diversity of programs, organizations, and services that comprise a state's adult literacy system. Not only are literacy services delivered by a multitude of organizations—from volunteer networks, to community-based organizations and private nonprofits, to public schools and community colleges—but they are funded through a wide variety of state and federal programs. These commonly include: Adult Education Act and state-funded literacy and basic skills programs; Administration for Families with Dependent Children/Job Opportunities and Basic Skills (AFDC/JOBS) and state funded education and training programs for welfare recipients; Job Training Partnership Act (JTPA) and state-funded education and training programs for disadvantaged adults and for dislocated or other unemployed workers.

The diversity of the programs in a state's adult literacy system is both a

strength and a problem. For the service consumer, diversity means a greater likelihood of finding a program that will meet his or her individual needs. For policy makers, such as the Governor and the legislature, this same diversity may make it hard to recognize that the state even has an adult literacy system. Often all they can see is a patchwork of seemingly overlapping or competing programs that all claim to be tackling the issue of adult literacy. It is easy to lose sight of the fact that every program—regardless of whether literacy is its only focus, or whether literacy and basic skills education is but one of many services provided—is part of a common system with a common mission: To improve the literacy skills of certain populations of adults so that they can participate fully in civic and economic life.

Since all literacy and basic skills programs, regardless of funding source or method of service delivery, have the same basic aim, it makes sense to establish a common system for measuring and reporting their effectiveness. This has not happened so far. Instead, multiple independent efforts have been launched to develop performance measures for discrete portions of the overall adult literacy system. Because these measurement and reporting systems have been developed separately by different groups, they frequently have incompatible data elements, reporting formats, and standards for judging performance.

These differences make it difficult for policy makers, administrators, and others to measure progress across agencies and funding streams or, generally, to see how well the state is meeting critical adult needs.

*Overview of the Program*

In response to this situation, the National Institute for Literacy has designed a two year demonstration program to assist as many as five states in launching or advancing an interagency partnership effort to plan, test, and implement an integrated statewide system for adult literacy performance measurement, reporting, and program improvement. Such an effort would aim to develop common agreement across programs and agencies on—

- Core outcomes for key populations of participants in adult literacy and basic skills programs,
- Core definitions and core data elements for describing participant characteristics and measuring program outcomes,
- Basic approaches to measurement for each outcome identified, and
- Critical program factors that assist participants in achieving desired outcomes and therefore, are effective indicators of program quality.

Agreement in these areas, across programs and agencies, should lead to the development and implementation of an integration statewide system for measuring performance and for reporting results that fosters continuous improvement in adult literacy and basic skills programs. Such a system also would enable Governors and others to track a State's progress toward Goal 5.

*Promoting Continuous Improvement in Literacy Policies and Programs*

The primary purpose of such a system would be to promote continuous improvement in a State's literacy policies and programs. It would provide timely and useful information on policy and program outcomes to key policy makers. In addition, the links established in this system between program quality and program results would provide the basis for a comprehensive, performance-based program evaluation and improvement process that would assist local literacy and basic skills programs in systematically improving the quality of services they offer. In this way, such a system would lead to programs that more consistently enable adults to achieve desired outcomes and, as a result, will bring us closer to assuring that all adults have the literacy skills they need to participate fully in economic and civic life.

*Promoting Knowledge Development*

This program also has a strong demonstration research component. The NIFL is as much interested in the strategies States use to plan, develop, and test the system as in the system itself. The NIFL recognizes that the process of putting in place such an interagency system is extremely complex and time-consuming and may take up to five years, from initial planning and research to full implementation. By supporting several States through the process of forming successful interagency coordination mechanisms, reaching agreement in key areas, and developing a strategic plan for implementing such systems, the NIFL hopes not only to enhance the delivery of adult literacy services in those states, but also to increase our national knowledge base in this area so that it can assist other states in this critical process. States funded through this program will be expected to work closely with the NIFL to—

- Explore and document barriers, opportunities, and incentives for the development and establishment of such a system,
- Investigate and document the impacts of such an effort on the State's ability to provide quality literacy and basic skills services to adults, and
- Share the knowledge gained through the process of implementation and documentation with other States to assist them in efforts to undergo a similar process.

*Building State Capacity*

This program is also designed to enable the NIFL to accomplish one of its major priorities: Building literacy capacity at the State level. The NIFL assists state efforts to build integrated adult learning systems that can meet the needs of all adults, primarily through its links with State Literacy Resource Centers (SLRCs). These centers were established by the National Literacy Act of 1991 "to [1] stimulate the coordination of literacy services, (2) enhance the capacity of state and local organizations to provide literacy services, and (3) serve as a reciprocal link between the NIFL and service providers for the purpose of sharing information, data, research, expertise and literacy resources with the intent of improving the quality of literacy services and building a national support system for literacy." In fulfilling this mandate, SLRCs are encouraged to—

- Develop innovative approaches to the coordination of literacy services within and among states and with the federal government;
- Assist public and private agencies in coordinating the delivery of services;
- Provide technical and policy assistance to state and local governments and service providers to improve literacy policies and programs and access to such programs.

The NIFL believes this broad mandate makes the SLRCs an ideal vehicle for spearheading interagency partnership efforts to establish performance measurement, reporting, and improvement systems for literacy in the States. For this reason, the grants to States under this program will be administered by the SLRCs.

**Description of Program**

This announcement envisions a two-year grant (cooperative agreement) to Governors to be administered by the State Literacy Resource Centers in up to five states that will support interagency partnership efforts to plan, develop, and begin implementation of a performance measurement, reporting, and improvement system (PMRIS) for all adult literacy and basic skills programs. It is anticipated that states will link this work with state efforts to establish a

broader human resource investment or workforce development system, and will make every effort to assure that the PMRIS is compatible with and complementary to accountability systems for vocational training and employment programs that are part of such a human resource investment system.

The SLRC in each selected state will facilitate the collaborative process of developing and testing a PMRIS. The SLRC will ensure that all major programs that comprise the state's adult literacy system participate in the process. It will also ensure that the process includes structured opportunities for all potential user groups—from policy makers to consumers—to participate in each phase of the design, testing, and implementation of the system. Potential user groups include public and private programs and organizations providing or seeking to provide adult literacy or basic skills instruction, including local educational agencies, agencies responsible for corrections education, programs supported by the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community based organizations.

The center will also coordinate necessary research to support system development—for example, documenting how particular indicators of learner progress relate to "real world" outcomes that are expected to result from a literacy program. In addition, the center will serve as a liaison to the NIFL for conducting technical assistance and for other project-related purposes.

As part of this project, each SLRC will be required to hire a full-time professional to coordinate and facilitate the process of developing the PMRIS. While the complexity of the process warrants a full-time staff person, the need to balance multiple, sometimes competing interests requires an individual broadly perceived as "an independent broker" by all the parties concerned. Each interagency group will want to agree upon a full description for this position that specifies particular roles and responsibilities and identifies key qualifications. Groups may want to identify this staff person as Project Director as well as Facilitator to ensure that the project is represented by an individual who meets the concerns of all parties for independence.

*Program Objectives*

The NIFL has established the following objectives to be achieved through this program:

1. States will establish regular, on-going interagency policy and planning mechanisms for adult literacy and basic skills that are well-integrated with broader coordination mechanisms for employment and training, such as State human resource investment councils, job training coordinating councils, or vocational or adult education councils.

• Through the process of participating in the grant program, States will have the opportunity to strengthen existing and create new interagency coordination mechanisms as well as to more thoroughly integrate statewide systems for performance measurement, reporting, and improvement.

• Key agencies and groups that will be incorporated into the project will include the Governor's Office, key legislative representatives, state agencies administering JTPA, AFDC/JOBS, AEA, Perkins, Headstart and Even Start, and other state agencies or offices involved in funding, managing, or utilizing adult literacy and basic skills services.

2. States will document the process of establishing such mechanisms, including identifying the barriers, opportunities, and incentives for effective collaboration and coordination. This information will be used to benefit other states undertaking the establishment of such mechanisms.

3. States will design a performance measurement, reporting, and improvement system that is based on:

• A common understanding of how the major literacy and basic skills training programs operate in the State;

• Agreement on what short-term and long-term outcomes should result for specific adult learner populations (e.g., welfare recipients, dislocated workers, etc.) if these programs are successful;

• Agreement on which indicators of program quality are associated with improved learner outcomes;

• Agreement on potential outcome and quality measures that could be included in a PMRIS, as well as on existing and potential data sources for these measures.

The PMRIS will have the following attributes:

• Clearly articulates the desired outcomes for the various subgroups/populations of adult learners in the State.

• Identifies key performance indicators that can be used to monitor learner progress and outcomes (regardless of which program serves them).

• Identifies key indicators of program quality (program factors that affect learner outcomes, such as skills and knowledge of program staff, availability of support services, etc.).

• Promotes the use of a common set of performance and quality indicators across agencies and programs for basic skills and literacy programs that serve adults.

• Establishes a comprehensive reporting system, combining both performance and quality indicators, that enables and is designed to promote continuous improvement in (a) the operations of State and local programs for adult learners and (b) the development of State and federal policies that guide these programs. Such a system will also provide case workers and other intake workers with information about programs that will enable them to make more effective referrals.

4. States will develop (no later than June 1994) a long-term strategic plan for the implementation of the adult literacy and basic skills performance measurement, reporting, and improvement system. The strategic plan will describe the basic design of the PMRIS and include a detailed work plan for how the interagency group will work together to develop the PMRIS, including a schedule of activities, assignments, definitions of roles and responsibilities, and benchmarks for progress. The plan will also address such implementation issues as: (1) How the interagency group plans to implement or test at least portions of the PMRIS during the second year of the grant and the resources needed for this activity, (2) how it intends to build statewide consensus for the establishment and use of the PMRIS, and (3) what steps it will take to institutionalize the PMRIS through legislation, executive order, interagency agreements, revision of provider contracting procedures, etc.

5. States will pilot and implement key aspects of their PMRISs, in accordance with their strategic plans, will document the impact of these efforts on state-level planning and local service delivery systems and will assist NIFL in disseminating knowledge gained through this process to other States.

It is anticipated that achieving these goals will require a great deal of work by team members and others in the State. During the grant period, this work might include: Conducting focus groups or surveys of state policy makers, agency staff, service providers, private sector employers, and adult learners to determine their information needs; establishing interagency work groups to review existing measurement and reporting systems or to examine State and Federal regulations; conducting

research on elements of program quality; examining performance measurement systems in other States, etc.

*Program Technical Assistance*

The NIFL will assist states in achieving these goals through an intensive, carefully targeted technical assistance effort that includes:

- An Academy on Performance Accountability to be held the week of December 5, 1993. The Academy will be an intensive work session that gives State teams the opportunity to work with leading national experts on performance measurement and reporting in designing a PMRIS for literacy and basic skills programs. The academy will provide the right balance of informational seminars, individual team work with expert faculty, team presentations, and peer exchange and critique.
- Resource experts who will be available, upon request, throughout the grant period to provide targeted technical assistance to states in areas such as: strategic planning, team facilitation, selecting performance indicators, building consensus and resolving interagency turf issues, performance-based contracting, linking data bases, or designing outcome reports for various audiences. Some resource experts will also be available to meet with a State's PMRIS group to provide intensive feedback on their strategic plan.
- A national meeting for participating States in November 1994 to review progress, share results, and plan further targeted assistance over the remaining grant period.

*Program Timetable*

The NIFL has developed the following timetable for the project:

September 8, 1993: States submit applications for participation in program, including statements of commitment by State leaders to participate as members of the project team.

September 30, 1993: Up to five States are notified of acceptance into the program. NIFL Grants Officer negotiates cooperative agreement with States.

October–November 1993: State interagency groups meet and hire independent brokers. SLRCs work with their State groups to assemble background information in preparation for the Academy.

December 5–9, 1993: Academy on Performance Measurement (site to be announced).

Dec. 1993–June 1994: States design PMRISs, develop strategic plans for implementation, document potential barriers, opportunities, and incentives for interagency collaboration, and prepare funding requests for year two. Technical assistance provided upon request by NIFL, SLRCs, and national experts.

June 30, 1994: State strategic plans and funding requests due to NIFL on or before this date.

July–August 1994: NIFL reviews plans and requests, conducts site visits, and negotiates second-year objectives with States.

September 30, 1994: States awarded second-year funding.

November 1994: Follow-up meeting of State team representatives to review strategic plans and progress with other States (site and dates to be determined).

Oct. 1994–Sept. 1995: Each State develops and tests components of PMRIS; achieves consensus on the design and use of the PMRIS to track learner outcomes and improve programs; integrates the work of the interagency group with other efforts to develop performance measurement systems for employment and training programs; documents barriers, opportunities, and incentives for effective interagency collaboration; and ensures that there is continued funding for implementing and refining the system. Technical assistance provided upon request by NIFL, SLRCs and national experts.

December 31, 1995: States submit final reports on their activities and accomplishments.

January 1996: Possible national conference on performance accountability for literacy and basic skills programs featuring grantee States.

**Proposal Processing and Review**

*Application Narrative*

The application narrative should address the following issues and questions:

(1) *Adult Literacy System*—Briefly describe the State's current adult literacy system, including—

- An overview of the major public and private programs and organizations that comprise the system;
- Mechanisms for coordinating these programs at the State and/or local levels;
- The extent to which interagency policy and planning mechanisms for adult literacy and basic skills are integrated with broader coordination mechanisms for employment and training, such as State human resource investment councils, job training coordinating councils, or vocational or adult education councils;
- A description of major literacy-related initiatives in the State, including initiatives in the areas of family or workforce literacy;
- Evidence that the goal of improving adult literacy and basic skills is a high priority for the State and is linked with other state policy goals.

(2) *Performance Measurement and Reporting*—Provide an overview of the current system or systems that are used to measure and improve the quality and performance of adult literacy and basic skills programs in the State. Be sure to include discussion of what the State education agency has done to implement those provisions of the National Literacy Act that call for "the development and implementation in consultation with a widely representative group of appropriate experts, educators and administrators, of indicators of program quality * * *" (National Literacy Act, title III, section 301(c)(2). Address the following questions for each system:

- What types of data are collected, how these data elements are defined, and how this information is reported?
- Who are the primary audiences for this information, and what do they do with it?
- What efforts have been made to integrate, standardize, link, or otherwise coordinate data collection and reporting across programs?
- To what extent does the system mesh with accountability systems for vocational training and employment programs that are part of broader human resource investment or workforce development systems?
- What are the major strengths and weaknesses of the current measurement and reporting system for adult literacy?

(3) *Plan of Operation for the Project*—Describe the project to be conducted. Include the following information:

- A statement of the State's purpose for participating in this NIFL State capacity building program and the primary needs to be addressed by the project.
- The project's goals and objectives and how each relates to the NIFL's objectives for this program, including the objective to establish ongoing interagency policy and planning mechanisms for adult literacy. If the project meets its objectives, what will be accomplished at the end of one year, two years, and five years? (Note: These grants are intended to help States complete the critical planning and design phase of a multi-year initiative;

therefore, project goals and objectives should have at least a five-year time frame, extending beyond the two years of funding provided by NIFL.)

- A description of project activities to be conducted during year one, year two, and years three to five.
- Identification of the primary State-level agencies and organizations that will be involved in and responsible for the design, development, and implementation of the project. Describe the mechanism for coordinating their activities and the role that each will play in the project.
- The plan for involving other key stakeholder groups in the design, development, and implementation of the project. Indicate which groups or individuals will be asked to provide advice, counsel, feedback, or assistance.
- The plan for using the special resources and technical assistance available through the NIFL program (including the Independent Broker) to achieve the project's first and second-year objectives.
- The plan to ensure continued funding and support for the project beyond the two-year grant period, including steps that will be taken to guarantee that key agencies and organizations remain committed to and involved in the project.

(4) *Key Personnel*—Identify the key individuals who will be responsible for planning, developing, and implementing the project according to the following categories:

- Project Staff. Describe how the project will be staffed, including the names (if already known), titles, roles and responsibilities, qualifications, and organizational affiliations of all staff members. Indicate which staff members will be funded by the grant and the percentage of in-kind staff time to be contributed by others.
- Independent Broker. Describe the procedures and timetable for identifying and selecting a person to fill this crucial full-time position. Provide a "job description" detailing the roles, responsibilities, and authority of the position, and where it will be located.
- Policy Team. Identify by name the key policy makers on the interagency group who will have primary responsibility for planning and overseeing the implementation of the project and who have agreed to participate. Include their titles, the agencies or offices they represent, their responsibilities and authority within those organizations, and their roles and responsibilities in regard to the project. The group should include the following positions:
- Senior staff from the Governor's Office;
- State human service agency staff (Assistant Commissioner or above) for the AFDC/JOBS program;
- State adult basic education agency staff (Director or above);
- State JTPA agency staff (Asst. Commissioner or above);
- The Director of the State Literacy Resource Center;
- Independent Broker/Facilitator;
- Representatives of other State offices involved in the funding, management, or utilization of adult literacy and basic skills services;
- Key legislative leadership/senior staff from relevant committees or appropriations subcommittees (strongly recommended);
- Staff having expertise with State data bases (recommended);
- Consultants. Identify the names and qualifications of any consultants to be hired by the project. Describe their roles and responsibilities.

(5) *Documentation and Evaluation*—Describe the plan to evaluate the project. Indicate how the project plans to document the effects of the project and evaluate progress in the following areas:

- Achievement of the goals and objectives specified in the grant proposal;
- Achievement of the five NIFL program objectives specified in this request for proposals;
- The effects of the project on State and local literacy planning and service delivery.

**Applicable Regulations**

The National Institute for Literacy is subject to the rulemaking requirements of the Administrative Procedures Act (APA). Under the APA, as now codified in title 5 of the United States Code, section 553, matters relating to public property, loans, grants, benefits, or contracts are not subject to the rulemaking requirement of that section. The NIFL is now in the initial stages of establishing a new program recently authorized by Congress and must obligate funds under this authority by September 30, 1993. The NIFL considered waiving this exemption to rulemaking requirements but determined that there was too little time to propose rules and offer applicants a reasonable amount of time to prepare applications for the award announced in this notice. Therefore, the National Institute for Literacy has adopted the following rules for the conduct of this competition and the resulting award.

The following regulations of the Department of Education apply:

34 CFR Part 74, Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations. The following provisions of 34 CFR part 75: §§ 75.50, 75.51, 75.102–75.104, 75.109, 75.117, 75.190–75.192, 75.200, 75.201, 75.215.
34 CFR Part 77, Definitions.
34 CFR Part 80, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
34 CFR Part 82, New restrictions on Lobbying.
34 CFR Part 85, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

The selection criteria used for this competition are set out in this Notice. While the criteria are patterned on those used generally by the Department of Education, they have been adapted by the National Institute for Literacy to meet the needs of this program.

While the NIFL is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the National Institute for Literacy except as expressly stated in this Notice.

**Proposal Processing and Review**

*Selection Criteria*

(a)(1) In evaluating applications for a cooperative agreement under this competition, the Director uses the following selection criteria.

(2) The maximum score for all the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion:

(b) The Criteria:

(1) *State Capability and Commitment (30 points).* The Director reviews each application to determine the capability and commitment of the State to form an interagency partnership to undertake the development and implementation of a comprehensive performance measurement, reporting, and improvement system in adult literacy and basic skills, including:

(i) The extent to which this effort builds upon other successful or unsuccessful efforts at interagency coordination in related areas;

(ii) The extent to which this effort will link with other existing interagency coordination efforts at the State, regional, and local level, including any State-level councils such as a human resource investment council, job training coordinating council, etc ;

(iii) The extent to which this effort shows a knowledge of and builds upon existing performance management systems in the State's adult education, JTPA, AFDC/JOBS, vocational-technical education, Headstart, and other related programs, including National Literacy Act mandated development of indicators of program quality.

(iv) The extent to which State program administrators have involved local providers in prior planning and development efforts, including the State Education Agency process for developing indicators of program quality.

(v) The explicit and documented commitment of all members of an interagency partnership, including the Governor and the head of each State agency involved in the funding, management, or utilization of adult literacy and basic skills services to plan, develop, and begin implementation of an integrated performance measurement, reporting, and improvement system to improve the quality of the State's adult literacy and basic skills programs and the outcomes for adult learners.

(vi) The explicit and documented commitment of all agencies referenced above—(b)(1)(iv)—to participate in a collaborative decision-making process to design and implement an integrated PMRIS.

(vii) The explicit and documented commitment of all key participants referenced below—(b)(3)(ii)—to attend the Academy on Performance Accountability.

(2) *Plan of Operation (30 points).* The Director reviews each application to determine the quality of the plan of operation for the project, including:

(i) The clarity and persuasiveness of the applicant's rationale for participating in the program, including: (a) a statement of needs and goals, and (b) an understanding of the data needs of key stakeholders and decision-makers in the State;

(ii) The extent to which the applicant's plan of operation, including goals and objectives, reflects an understanding of the purposes of the program and the nature of a PMRIS;

(iii) The quality of the applicant's plan for utilizing the resources (including the Independent Broker) and technical assistance provided through the cooperative agreement to achieve the five program objectives identified by the NIFL above;

(iv) The quality of the plan to make use of the SLRC as a home for the project and as a vehicle for administering the grant, and for facilitating, staffing, and providing technical assistance to the interagency group as it designs and implements the PMRIS;

(v) The quality of the plan to involve other key State, regional, and local stakeholders in each stage of the process of designing, testing, and implementing the PMRIS.

(3) *Qualifications of Key Personnel (20 points).* The Director reviews each application to determine the qualifications, responsibilities, and authority of key personnel, including:

(i) Procedures for identifying a person to serve as "Independent Broker" that will assure that the individual (a) meets all parties' concern for independence, (b) has sufficient authority to be able to coordinate a high-level interagency policy process, and (c) has appropriate knowledge, skills, and expertise to properly fill the role. Applicant should provide a "job description' for the Independent Broker that clarifies expected roles and responsibilities, including the extent to which the Independent Broker will fill the role of Project Director.

(ii) The extent to which policy makers who have agreed to participate in the process and to attend the Academy on Performance Accountability have direct responsibilities in the State for literacy policy and programs, and are able to make decisions on policy and allocation of resources on behalf of their agencies or offices. The applicant should be sure to include the following positions:

- Senior staff from the Governor's Office;
- State human service agency staff (Assistant Commissioner or above) for the AFDC/JOBS program;
- State adult basic education agency staff (Director or above);
- State JTPA agency staff (Assistant Commissioner or above);
- The Director of the State Literacy Resource Center;
- Independent Broker Facilitator (to be hired or appointed prior to the academy meeting);
- Representatives of other State offices involved in the funding, management, or utilization of adult literacy and basic skills services;
- Key legislative leadership/senior staff from relevant committees or appropriations subcommittees (strongly recommended);
- Staff having expertise with State data bases (recommended).

(iii) The appropriateness of the roles and responsibilities assigned to each State policy maker participating in the project, individually and on behalf of their agency or office, including representatives of the Governor's office, key agencies, and the State legislature.

(iv) Qualifications of SLRC staff to fulfill the roles and responsibilities assigned under this project and how this use of the SLRC staff fits with their ongoing roles and responsibilities.

(v) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, disability or age.

(4) *Documentation and Evaluation Plan (10 points).* The Director reviews each application to determine the quality of the project's plan for formative and summative evaluation, including:

(i) The quality of the plan to document the five NIFL objectives for the program, including an examination of barriers, opportunities, and incentives for programs to adopt a common PMRIS for literacy and basic skills programs;

(ii) The quality of the plan to document the project's progress toward achieving the goals and objectives specified in its grant proposal;

(iii) The quality of the plan to document and evaluate the effects of the project on state and local literacy planning and service delivery;

(iv) The extent to which the applicant integrates a continuous improvement approach into evaluating the process of design and implementation of the PMRIS;

(v) The extent to which the applicant plans to involve relevant stakeholders in the evaluation process;

(vi) The willingness of the applicant to participate in a program-wide (cross-state) evaluation process coordinated by the NIFL.

(vii) The willingness of the applicant to participate in NIFL efforts to disseminate findings of the project.

(5) *Budget and cost effectiveness (10 points).* The Director reviews each application to determine the extent to which:

(i) The applicant's budget for the two-year period is reasonable in relation to the objectives of the project;

(ii) The applicant's budget includes cash or in-kind contributions that reflect the commitment of each of the key state agencies and offices to the project;

(iii) The applicant's budget reflects the decision to house the project in the SLRC and to utilize SLRC staff for support and technical assistance;

(iv) The applicant's budget reflects personnel costs for a full-time Independent Broker;

(v) The applicant's budget demonstrates a commitment to send key personnel to the Academy on Performance Accountability (a team of

6–10 participants) and to the follow-up national meetings (2–3 participants), using either grant funds or contributions from other sources;

(vi) The applicant's budget narrative includes a plan for how the state will support costs related to continued implementation of the PMRIS after the two-year grant.

**Selection of Applications**

The Director uses 34 CFR 75.217 in selecting an application for award. The Director is particularly interested in bringing together States that have a strong commitment to interagency coordination in the area of adult literacy and that represent a variety of regions and programmatic characteristics. The Director will consider States at different levels of development in the area of outcome measures and reporting for adult literacy, as long as they have an ability to benefit from the project and can demonstrate a strong commitment to interagency coordination.

**Other Applications Requirements**

The application shall include the following:

*Project Summary:* The proposal must contain a 200-word summary of the proposed project suitable for publication. It should not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable to a non-specialist reader.

*Project Description:* This description should not exceed fifteen (15) single-spaced pages, or thirty (30) double-spaced pages. The description may be amplified by material in attachments and appendices, but the body should stand alone to give a complete picture of the project. Proposals which exceed 15 single-spaced pages or 30 double-spaced pages will not be reviewed.

*Summary Proposal Budget:* The proposal must contain a budget for each year of support requested and a cumulative budget for the full term of the cooperative agreement. The budget format may be reproduced as needed. Facsimiles may be used, but do not make substitutions in prescribed budget categories. Additional pages for budget explanation and amplification should be attached and must be consistent with the data and categories on the form. All budget requests must be documented and justified. Complete and detailed summary budgets are expected for the entire 2 year project period.

The budget proposal should be Bound in a Separate Document. In addition to submitting a budget for the project as a whole, applicants should prepare separate budgets for individual activities. Personnel items should include the names (or position titles) of key staff, number of hours, and applicable hourly rates. Discussion of equipment, supplies, and travel should include both the cost and the purpose and justification. Budgets should include all project costs and should identify contributed costs, and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a partnership formed for purposes of the proposal should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost-sharing is proposed for each budget item.

[Note: Cost sharing is not a requirement of this announcement].

*Current and Pending Support:* All current project support from whatever source (such as Federal, State, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other senior personnel, even if they receive no salary support from the project. The number of person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the Institute.

Any fee proposed to be paid to a collaborating or "partner" for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in the narrative.

**Eligible Applicants**

The following are eligible for a new award under this program: Governors of each State, U.S. Possessions and Trust Territories, and the Mayor of the District of Columbia. (Application may be made by a group of Governors acting in behalf of a Regional State Literacy Resource Center).

*Deadline for Transmittal of Applications:* September 8, 1993.

*Available Funds:* In Fiscal Year 1993, $1,000,000 is available for State accountability systems cooperative agreement awards.

*Estimated Number of Awards:* 5–7.

*Average Award Size:* $200,000 per year for a two year project. To provide maximum flexibility in award, an applicant may not receive more than $250,000 for year-1.

Note: The National Institute for Literacy is not bound by any estimates in this Notice.

*Project Period:* Up to 24 months.

*Instructions for Transmittal of Applications:*

(a) To apply for a cooperative agreement—

(1) Mail the original and ten (10) copies of the application on or before the deadline date of September 8, 1993, to: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006, Attention: (CFDA #84.257C).

(2) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The National Institute for Literacy will mail a Grant Applicant Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the National Institute for Literacy at (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

**Application Forms**

The appendix to this announcement is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III. Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debasement, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 90–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

**Note:** ED 80–0014 is intended for the use of recipients and should not be transmitted to the National Institute for Literacy.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a completed application has been received.

**Grant Administration**

The administration of the State Capacity-Building cooperative agreements will be governed by the conditions of the award letter. The Education Department General Administrative Regulations, (EDGAR) 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85 and 86 (July 1, 1992), set forth administrative and other requirements. This document is for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The telephone number is (202) 783–3288 for subscription information. It is recommended that appropriate administrative officials become familiar with the policies and procedures in the EDGAR which are applicable to this award. If a proposal is recommended for an award, the Grants official will request certain organizational, management, and financial information.

The following information on grant administration deals with questions that project directors often raise.

*General Requirements*

Grants and Cooperative Agreements for Federal financial assistance are subject to certain general requirements, such as compliance with the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990 and other laws and regulations prohibiting discrimination; drugfree workplace requirements; restrictions on lobbying; patent and copyright requirements; cost sharing; and the use of U.S. flag carriers for international travel. These are summarized in the Grant General Conditions. The appropriate terms and conditions will accompany notification of award.

*Prior Approval Requirements*

Prior written approval from NIFL is required for transferring a significant part of project activities; making a major change in objectives or scope; making a change in the project director or level of effort; making rearrangements or alterations costing $10,000 or more; and transferring funds from participant support. These changes require prior NIFL approval.

*Transfer of Project Director*

When a Project Director plans to leave an institution during the course of an award, the institution has the prerogative to nominate a replacement or request that the award be terminated and closed out. Replacement of the project director is subject to NIFL approval. In those cases where a particular project director's participation is integral to a given project and the original and new institutions agree, the NIFL will facilitate a transfer of the award and the assignment of remaining unobligated funds to the project director's new institution.

*Suspension or Termination of Award*

NIFL grants and cooperative agreements may be suspended or terminated in accordance with the procedures contained in the Grant General Conditions. Termination may be by mutual agreement. Termination by mutual agreement shall not affect any commitment of funds that, in the judgment of the Institute and the grantee, had become firm before the effective date of the termination.

*Reporting*

The applicant will be required to submit an annual report of activities. This annual report will be presented to the NIFL staff and Interagency Group. Specifications for the annual report for year 1 and year 2 are provided on pp. 9 and 11 above. More detailed specifications will be provided within 3 months after the award.

The grantee must submit the following reports:

- Quarterly Performance: A brief 2–3 page report of progress; due: Within 20 days of the end of each quarter.
- Continuation Application (Annual Report Year 1): Contents to be determined by the NIFL; due: By the end of the 3rd quarter of year-1.
- Final Report: Due 90 days after the expiration of or termination of support.

*Electronic Submission of Proposals and Reports*

The NIFL is exploring the feasibility of receiving reports and proposals using technology that will be part of the National Literacy Database. Further information about this activity will be provided by the Institute during year one of the award.

*Continuation Proposal*

Following year 1 of the award, and to receive funding for year 2, the recipient is required to submit a strategic plan for year 2, which will serve as a continuation proposal (see above pp. 9, 11).

*Acknowledgment of Support and Disclaimer*

An acknowledgment of the NIFL support and disclaimer must appear in publication of any material, whether copyrighted or not, based on or developed under NIFL-supported projects:

This material is based upon work supported by the National Institute for Literacy under Grant No. (grantee should enter NIFL grant number).

Except for articles or papers published in professional journals, the following disclaimer should be included:

Any opinion, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Institute for Literacy.

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**FOR FURTHER INFORMATION CONTACT:** Victor Westbrook, Director, Contracts and Grants, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone: 202–632–1500. FAX: 202–632–1512. Individuals who use a telecommunications device for the deaf (TDD) may call 202–632–1529 between the hours 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

**Program Authority:** 20 U.S.C. 1213C.

*Instructions for Estimated Public Reporting Burden:* Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the National Institute for Literacy invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 65 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the National Institute for Literacy, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

(Information collection approved under OMB control number 3200–0021, Expiration date: June 1994)

**Lilian Dorka,**

*Acting Interim Director, National Institute for Literacy.*

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# APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

| | | |
|---|---|---|
| | 3. DATE SUBMITTED | Applicant Identifier |
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | 2. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, state, and zip code): | Name and telephone number of person to be contacted on matters involving this application (give area code) |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):** ☐☐ - ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

**9. NAME OF FEDERAL AGENCY:**

National Institue for Literacy

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

84 - 257C

TITLE: Performance Measurement

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** (Cities, Counties, States, etc.):

| 13. PROPOSED PROJECT | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1 Self-explanatory

2 Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7 Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

— "New" means a new assistance award.

— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9 Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17 This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)



OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program | Catalog of Federal

VOL 58 ISS 149 AG 5 1993 UMI

OMB Approval No. 0348-0044

## BUDGET INFORMATION - Non-Construction Programs

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a-6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

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VOL 58 ISS 149



| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL (sum of lines 8 – 11) | $ | $ | $ | $ |

| SECTION D - FORCASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL (sum of lines 16-19) | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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Standard Form 424A (Rev. 4-92) Page 2

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**General**

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## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5**—Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i**—Show the totals of Lines 6a to 6h in each column

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

## INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12**—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f) Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S C. §§276a to 276a - 7), the Copeland Act (40 U.S.C. §§276c and 18 U. S. C §§874), and the Contract Work Hours and Safety Standards Act (40 U.S C. §§327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11 Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) noufication of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

Standard Form 424B (Rev. 4/92) back

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## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces CCS-009 (REV. 12/88), which is obsolete)

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

## DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

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As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>For Material Change Only:<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known:*<br><br>Congressional District, *if known:* | Congressional District, *if known:* |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br><br>CFDA Number, *if applicable:* _____ |
| 8. Federal Action Number, *if known:* | 9. Award Amount, *if known:*<br>$ |
| 10. a. Name and Address of Lobbying Entity<br>*(if individual, last name, first name, MI):* | b. Individuals Performing Services *(including address if different from No. 10a)*<br>*(last name, first name, MI):* |
| *(attach Continuation Sheet(s) SF-LLL-A, if necessary)* | |
| 11. Amount of Payment *(check all that apply):*<br>$ _____ ☐ actual ☐ planned | 13. Type of Payment *(check all that apply):*<br>☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| 12. Form of Payment *(check all that apply):*<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

| 16. | |
|---|---|
| Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |

| Federal Use Only: | Authorized for Local Reproduction<br>Standard Form - LLL |
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## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 93-18577 Filed 8-4-93; 8:45 am]
BILLING CODE 6820-01-C

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**NATIONAL INSTITUTE FOR LITERACY**

**[CFDA NO.: 84.257D]**

**Application for State Capacity-Building Awards to Governors for State Literacy Resource Centers To Develop and Demonstrate Statewide Interagency Systems for Adult Literacy Staff Development That Build State Capacity To Support Integrated Adult Literacy Service Delivery**

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all the information, application forms, regulations, and instructions needed to apply for a cooperative agreement under this competition.

**AGENCY:** The National Institute for Literacy.

**ACTION:** The National Institute for Literacy invites applications from Governors for new awards for Fiscal Year 1993 to fund State Literacy Resource Centers to develop and demonstrate statewide intergency staff development systems that support all local programs providing literacy and basic skills services to adults.

**Definitions**

For the purposes of this application, the following definition apply: "Adult literacy system"—All public and private programs and organizations providing or seeking to provide adult literacy or basic skills instruction, including local educational agencies, agencies responsible for correctional education, programs supported by the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations. (As stated in the National Literacy Act of 1991).

"Literacy"—An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential. (As stated in the National Literacy Act or 1991.)

"Staff development"—A comprehensive effort to help staff learn and use new and effective approaches to working with clients and with one another, and to respond to the changing circumstances of their shared work environment, providing for continuous improvement program quality and outcomes.

**Purpose of Program**

The National Institute for Literacy proposes this program of capacity-building cooperative agreements to State Literacy Resource Centers for the purposes of—

1. Helping State leaders create and institutionalize interagency staff development systems for staff of all local programs providing literacy an basic skills services to adults.

2. Strengthening the ability of SLRCs to—

a. Promote greater coordination of literacy programs across agencies;

b. Improve and promote the use of state-of-the-art approaches to literacy services;

c. Provide training and technical assistance to literacy practitioners; and

d. Facilitate and support interagency efforts to develop state literacy systems.

3. Contributing to the creation and maintenance of a national support system for literacy.

This program is designed to help the NIFL accomplish one of its major priorities—"building literacy capacity at the State level. The NIFL will assist State efforts to build integrated adult learning systems that can meet the needs of all adults, primarily through its links with SLRCs." SLRCs were established by the National Literacy Act of 1991 to—

1. stimulate the coordination of literacy services,

2. enhance the capacity of State and local organizations to provide literacy services, and

3. serve as a reciprocal link between the National Institute for Literacy and service providers for the purpose of sharing information, data, research, and expertise and literacy resources.

The SLRCs' broad mandate makes them ideal vehicles for putting in place the infrastructure for a seamless, integrated adult literacy service delivery system. Such a system will enhance the capacity of the States and the nation to achieve Goal 5 of the National Education Goals, which states that "every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship."

*The Importance of Staff Development*

This staff development demonstration project will help SLRCs develop systems that provide continuous assistance to staff in all literacy-related programs in enhancing their ability to help adults reach Goal 5. Statewide systems for continuous staff development will assure that new knowledge in the field can have a direct positive impact on the quality of literacy services.

Strong staff development is essential to building integrated, high-quality adult learning systems that can meet the literacy needs of all adults. By "staff development," we mean not just "teacher training," but a comprehensive effort to help all staff members—teachers, counselors, administrators, case workers, and other front-line workers—learn and use new and effective approaches to working with their clients and with one another, and to respond to the changing circumstances of their shared work environment. Staff development is a critical way to provide for continuous upgrading of proper quality and outcomes.

While teacher training traditionally focuses on individuals' learning needs, staff development deals with how individual staff's needs affect and are affected by those of the group and organization. Staff development for literacy focuses on the skills and knowledge that are specific to the context in which literacy staff are working, preparing them to better serve a particular group of learners or to more effectively address a broader program concern, such as the need for more extensive follow-up for students who drop out before achieving their goals.

Seen in this way, effective staff development is a process of continuous growth and change for both staff and program, leading to increasingly better services and outcomes for clients. Virtually all major programs that provide literacy-related services have begun to invest more in human resources through staff development, but more needs to be done to consolidate and institutionalize these investments.

The need for systematic, continuous, well-integrated staff development as a primary means of program improvement is a major concern in the field of adult basic education. Most States do not have a true staff development *system* for full and part-time staff but rely instead on periodic conferences, workshops, and training courses for subsets of staff. Moreover, States generally have not established a staff development system for adult literacy that cuts across the programs of all funding sources.

Staff development needs related to the provision of literacy services across agencies are many and varied. For example, Job Training Partnership Act (JTPA) and Aid to Families with Dependent Children (AFDC)/Job Opportunities and Basic Skills (JOBS) staff may need to learn methods for screening and serving or referring

clients who have literacy needs. Adult education practitioners may need to upgrade their skills in using multiple instructional techniques or in preparing students to meet the entry requirements for various employment and training programs. Administrators may need help in learning new and better ways to plan and manage programs. All staff in all programs, paid and volunteer, share the need for ongoing professional development.

The NIFL sees the institutionalization of Statewide interagency staff development systems as essential to program development and improved student achievement, as a key strategy for achieving the larger goals of all participating programs, and as a critical element of the infrastructure necessary to maintain a national support system for literacy.

**Description of Demonstration Project**

The cooperative agreements will support the development and demonstration of Statewide interagency systems for adult literacy staff development in up to seven States. These systems are to be Statewide networks for providing systematic, regular staff development to staff in all public and private agencies and organizations that work with adults in need of basic skills or literacy-related services.

*Program Goals*

The NIFL has established the following goals to be achieved through these cooperative agreements:

1. States will build awareness across agencies of all literacy-related services and their requirements, standards, priorities, and needs at local delivery and State policy levels.

2. States will design Statewide systems for the continuous delivery of staff development services to the full- and part-time staff of all programs providing adult literacy and basic skills services, notably those funded by AFDC/JOBS, JTPA, and AEA. The systems must be based on—

- Agreements across agencies on common core values, goals, and priorities for staff development, and
- Commitments from these agencies to integrate support and accommodations (such as release or compensated time for full- and part-time staff) for staff development activities into their provisions for local service delivery programs. These systems will include mechanisms for—

a. Identifying and responding to the staff development needs of staff in all participating programs, and for evaluating the adequacy and quality of responses.

b. Sharing effective staff development responses among localities and sub-State regions, and developing responses centrally that can be tried and used in many localities.

c. Using state-of-the-art approaches to staff development that are based on accepted and innovative adult learning principles.

d. Developing training expertise among local staff to assure that all communities have increasing capability to identify and address staff development needs locally.

e. Assuring that staff development is an integrated, on-going educational process for staff, rather than occasional, unrelated training or workshop exercise.

3. States will document the process of creating such Statewide interagency systems, including information on incentives and barriers to successful implementation within and across programs.

4. States will develop materials and processes to assist other States in planning their own Statewide systems, and will work with NIFL in disseminating these materials to other States and interested parties.

This announcement envisions two-year cooperative agreements with SLRCs with an initial award for one year, and an option for one additional year, subject to program authorization and availability of appropriations. A non-competing proposal will be required to exercise the option for year two.

*Plan of Operation*

The application narrative must include a 2-year plan for meeting the program goals outlined above in developing and demonstrating an interagency staff development system.

The plan must describe how the SLRC will facilitate and support the following activities:

1. Creating or reconstituting a State Interagency Planning Group for staff development. The extent of planning will depend on the progress the State has already made toward establishing a staff development system. The group must include representatives from all agencies with literacy-related programs, including AEA, JTPA, AFDC/JOBS, Head Start, Even Start, vocational education, and corrections.

2. Assisting the Interagency Planning Group in developing a long-range plan for staff development that—

a. Devises mechanisms for conducting staff development needs assessment and priority-setting for each agency;

b. Gathers and incorporates input on staff development needs from local or sub-State regional interagency groups (described below);

c. Ensures input from non-profit State-level literacy organizations;

d. Provides for input from prospective employers of literacy clients;

e. Is tied to State goals for all agencies with literacy-related services;

f. Defines measurable objectives for staff development in terms of learner progress, improvements in program quality, and changes in staff behavior and attitudes.

g. Develops plans for formative and summative evaluation of staff development processes, techniques, activities, and learning outcomes of staff and adult students. These plans shall provide for the involvement of an independent evaluator.

h. Assures the provision of continuous, integrated staff development activities.

i. Provides for continuing reassessment and adjustments of activities based on changes in State and local needs, as well as staff feedback.

j. Establishes processes for facilitating the development or improvement of State and local policies concerning staff development.

3. Helping to create local interagency groups, made up of representative staff from all literacy-related programs, as well as appropriate community leaders, to—

a. Do staff development needs assessment to help shape State plans; and

b. Plan ways of meeting provisions of the State plan and accomplishing any special local goals.

4. Carrying out start-up staff development activities based on preliminary findings of State and local needs assessment. These initial activities might include cross-program orientation and interaction among staff from various programs, and training for local literacy practitioners in how to conduct program needs assessments. Since the NIFL is concerned that appropriate staff development services be delivered to local staff as early as possible in the grant term, planning and implementation activities should take place simultaneously.

5. Testing the effectiveness of the staff development system in the process of providing staff development services at the local level. States may want to focus their staff development efforts on—

a. One or more key populations of particular concern within the state (such as limited English, inner-city or rural residents, dislocated workers, single parents on public assistance, homeless, prisoners, Native Americans); or

b. One or more staff development issues of particular concern in the State, (such as how to do program assessment, how to use volunteers, how to conduct field-based research, or how to serve adults with learning disabilities).

In developing staff development services, the applicant should consider the results of a recent Department of Education study, conducted by Pelavin Associates, Inc., which identify the following key elements of effective staff development programs:

- experienced and dedicated training administrators and staff
- decentralized training services;
- systematic follow-up of training;
- evaluation procedures;
- services that are responsive to the needs of staff;
- active involvement of participants in learning process;
- modeling of appropriate instruction;
- placement of learning in a theoretical framework;
- training topics that are appropriate for staff.

The overall plan must also explain how the applicant will make explicit provisions for—

1. Effective use of existing human and material resources for staff development from multiple sources;
2. A process for documenting all major activities and outcomes, both intended and unintended;
3. Demonstration of state-of-the-art techniques, processes, and materials, including use of technology; and
4. A process for supporting NIFL's efforts to disseminate project findings.

**Applicable Regulations**

The National Institute for Literacy is subject to the rulemaking requirements of the Administrative Procedures Act (APA). Under the APA, as now codified in title 5 of the United States Code, section 553, matters relating to public property, loans, grants, benefits, or contracts are not subject to the rulemaking requirement of that section. The National Institute for Literacy is now in the initial stages of establishing a new program recently authorized by Congress and must obligate funds under this authority by September 30, 1993. The National Institute for Literacy considered waiving this exemption to rulemaking requirements but determined that there was too little time to propose rules and offer applicants a reasonable amount of time to prepare applications for the award announced in this notice. Therefore, the National Institute for Literacy has adopted the following rules for the conduct of this competition and the resulting award.

The following regulations of the Department of Education apply:

34 CFR Part 74, Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations. The following provisions of 34 CFR part 75: §§ 75.50, 75.51, 75.102–75.104, 75.109, 75.117, 75.190–75.192, 75.200, 75.201, 75.215.

34 CFR Part 77, Definitions.

34 CFR Part 80, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

34 CFR Part 82, New restrictions on Lobbying.

34 CFR Part 85, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

The selection criteria used for this competition are set out in this Notice. While the criteria are patterned on those used generally by the Department of Education, they have been adapted by the National Institute for Literacy to meet the needs of this program.

While the NIFL is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the NIFL except as expressly stated in this Notice.

**Proposal Processing and Review**

*Selection Criteria*

(a)(1) In evaluating applications for a cooperative agreement under this competition, the Director uses the following selection criteria.

(2) The maximum score for all the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion.

(1) *Capability and Commitment.* (15) The Director reviews each application to determine the State's capability and commitment to develop and demonstrate a comprehensive Statewide system for the continuous delivery of staff development to staff of all programs providing adult literacy and basic skills services. Evidence of capability and commitment include—

(i) A demonstration of how well the applicant understands the purpose of such a system in relation to the overall goals and priorities of NIFL;

(ii) The extent to which this effort is tied to State goals for all agencies and groups with literacy-related services;

(iii) The extent to which the applicant knows about and builds on existing staff development mechanisms;

(iv) The explicit and documented commitment of all State agencies with programs related to adult literacy and basic skills services to participate in a collaborative decision-making process to design and implement a statewide system for staff development;

(v) The explicit and documented commitment of all such State agencies to integrate support and accommodations (such release or compensated time for full and part-time staff) for staff development activities into their provisions for local service delivery programs; and

(vi) The explicit and documented commitment of State agencies to institutionalize the staff development system at the end of the cooperative agreement.

(2) *Plan of Operation.* (25) The Director reviews each application to determine the quality of the plan of operation for the project, including:

(i) The extent to which provisions have been made to develop a long-range planning process for capacity-building and program improvement through staff development;

(ii) The extent to which the planning process includes the appropriate range of agencies and groups with literacy-related programs, literacy providers, and policymakers, including Governor's staff and prospective employers of literacy clients;

(iii) The extent to which the plan includes a process for developing consensus across agencies and groups on common core values, goals, and priorities for staff development;

(iv) The extent to which the plan includes appropriate mechanisms for conducting initial and ongoing needs assessment and priority-setting for staff development that involve key State and local constituencies;

(v) The extent to which the plan proposes a process for developing and testing measurable objectives for staff development in terms of learner progress, program improvement, and changes in staff behavior and attitudes;

(vi) The extent to which the plan provides for centrally-developed and locally-provided responses to staff development needs;

(vii) The extent to which the plan provides for implementing the staff development system through the provision of continuous, integrated, local staff development services;

(viii) The extent to which the plan addresses the need for developing training expertise among local staff to assure that communities increase their ability to identify and address staff development needs locally;

(ix) The extent to which the plan provides for the effective use of existing human and material resources from all participating agencies; and

(x) The extent to which the plan identifies a process for developing or improving State and local policies to institutionalize ongoing staff development practices.

(3) *Quality of Key Personnel.* (20) The Director reviews each application to determine the quality of key personnel for the project, including:

(i) The extent to which the qualifications of key personnel reflect experience and training in staff development and related areas;

(ii) The extent to which the qualifications of participating SLRC staff are appropriate to the responsibilities assigned in this project, and how well these assignments fit with any other roles and responsibilities;

(iii) The quality of personnel to be assigned by each agency to the State interagency planning group for staff development, and the extent to which these assignments reflect the agencies' high-level commitment to the project; and

(iv) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability.

(4) *Budget, Cost Effectiveness, and Use of Resources.* (10) The Director reviews each application to determine the extent to which:

(i) The budget is adequate to support project activities;

(ii) Costs are reasonable in relation to the objectives of the project;

(iii) Other related funds and resources are used to help support the project; and

(iv) The applicant describes a plan for securing and maintaining financial support for the staff development system beyond the term of the cooperative agreement.

(5) *Documentation and Evaluation Plan.* (20) The Director reviews each application to determine the quality of the evaluation plan for the project, including the extent to which:

(i) The applicant's methods of evaluation are appropriate to the project;

(ii) The applicant outlines a process for documentation of all major activities and outcomes, both intended and unintended;

(iii) The plan includes formative and summative evaluation of staff development processes, techniques, activities, and learning outcomes of staff and adult students; and

(iv) An independent evaluator, with appropriate qualifications and experience, will be involved throughout the project period; and

(v) The applicant is willing to participate in NIFL efforts to disseminate project findings.

(6) *Significance of the Proposed Project.* (10) The Director reviews each application to determine the proposed project's potential to make a significant contribution to staff development systems, as measured by factors such as:

(i) The addition to the knowledge base of statewide staff development practices for literacy and basic skills,

(ii) The extent to which the project is designed to yield materials and outcomes that can be disseminated and used in other States,

(iii) The quality of the plan for disseminating findings and materials to other States and interested parties; and

(iv) The likelihood that the project will result in the institutionalization of ongoing mechanisms for staff development in literacy and basic skills.

**Selection of Applications**

The Director uses 34 CFR 75.217 in selecting an application for award. The Director is particularly interested in bringing together States that have made a strong commitment to interagency coordination in the area of adult literacy and that represent a variety of regions and programmatic characteristics. The Director will consider States at different levels of development in the area of staff development systems for adult literacy as long as those States have an ability to benefit from the project and can demonstrate a strong commitment to interagency coordination.

**Other Applications Requirements**

The application shall include the following:

*Project Summary*

The proposal must contain a 200-word summary of the proposed project suitable for publication. It should not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable by a non-specialist reader.

*Project Description*

This description, which is to include the Plan of Operation, should not exceed fifteen (15) single-spaced pages, or thirty (30) double-spaced pages. The description may be amplified by material in attachments and appendices, but the body should stand alone to give a complete picture of the Center. Proposals which exceed 15 single-spaced pages or 30 double-spaced pages will not be reviewed.

*Budget Proposal*

The proposal must contain a budget for each year of support requested and cumulative budget for the full 2 year term of the cooperative agreement. The budget format may be reproduced as needed. Facsimiles may be used, but do not make substitutions in prescribed budget categories. Additional pages for budget explanation and amplification should be attached and must be consistent with the data and categories on the form. All budget requests must be documented and justified.

The budget proposal should be bound in a Separate Document. In addition to submitting a budget for the project as a whole, applicants should prepare separate budgets for individual activities. Personnel items should include the names (or position titles) of key staff, number of hours, and applicable hourly rates. Discussion of equipment, supplies, and travel should include both the cost and the purpose and justification. Budgets should include all Center costs and should identify contributed costs, and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a partnership formed for purposes of the proposal should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost-sharing is proposed for each budget item.

Applications should provide a detailed breakdown of each cost category in the budget summary.

Applications should indicate all direct and indirect costs that the applicant will require of the project. It should also indicate in detail all resources, whether direct or in-kind, that the applicant or others will provide to the project over and above the funds provided by the National Institute for Literacy.

[Note: Matching is not required for this announcement].

**Current and Pending Support**

All current project support from whatever source (such as Federal, State, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other senior personnel, even if they receive no salary support from the project. The number of person-

months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the Institute.

Any fee proposed to be paid to a collaborating or "partner" for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in the narrative.

*Eligible Applicants:* The following are oligible for a new award under this program: Governors of each State, U.S. Possessions and Trust Territories, and the Mayor of the District of Columbia. (Application may be made by a group of Governors acting in behalf of a Regional State Literacy Resource Center).

*Deadline for Transmittal of Applications:* September 8, 1993.

*Available Funds:* This project will be awarded as a cooperative agreement. In Fiscal Year 1993, $1,700,000 is available for the first year of funding. The funding level for year 2 depends upon program authority, the availability of funds, and needs as reflected in the approved application.

*Estimated Number of Awards:* 5–7.

**Note:** The National Institute for Literacy is not bound by any estimates in this Notice.

*Project Period:* Up to 24 months.

*Instructions for Transmittal of Applications:*

(a) To apply for a cooperative agreement—

(1) Mail the original and ten (10) copies of the application on or before the deadline date of September 8, 1993, to: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006, Attention: (CFDA #84.257D).

(2) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The National Institute for Literacy will mail a Grant Applicant Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the National Institute for Literacy at (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

**Application Forms**

The appendix to this announcement is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debasement, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 90–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

**Note:** ED 80–0014 is intended for the use of recipients and should not be transmitted to the National Institute for Literacy.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a completed application has been received.

**Grant Administration**

The administration of the cooperative agreement for the Center for Learning Disabilities is governed by the conditions of the award letter. The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85 and 86 (July 1, 1992), set forth administrative and other requirements. This document is for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The telephone number is (202) 783–3288 for subscription information. It is recommended that appropriate administrative officials become familiar with the policies and procedures in the EDGAR which are applicable to this award. If a proposal is recommended for an award, the Grants official will request certain organizational, management, and financial information.

The following information on grant administration deals with questions that project directors often raise.

*General Requirement*

Grants and Cooperative Agreements for Federal financial assistance are subject to certain general requirements, such as compliance with the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990 and other laws and regulations prohibiting discrimination; drugfree workplace requirements; restrictions on lobbying; patent and copyright requirements; cost sharing; and the use of U.S. flag carriers for international travel. These are summarized in the Grant General Conditions. The appropriate terms and conditions will accompany notification of award.

*Prior Approval Requirements*

Prior written approval from NIFL is required for transferring a significant part of the project activities; making a major change in objectives or scope; making a change in the project director or level of effort; making rearrangements or alterations costing $10,000 or more; and transferring funds from participant

support. These changes require prior NIFL approval.

*Transfer of Project Director*

When a Project Director plans to leave an institution during the course of an award, the institution has the prerogative to nominate a replacement of request that the award be terminated and closed out. Replacement of the project director is subject to NIFL approval. In those cases where a particular project director's participation is integral to a given project and the original and new institutions agree, the NIFL will facilitate a transfer of the award and the assignment of remaining unobligated funds to the project director's new institution.

*Suspension or Termination of Award*

NIFL grants and cooperative agreements may be suspended or terminated in accordance with the procedures contained in the Grant General Conditions. Termination may be by mutual agreement. Termination by mutual agreement shall not affect any commitment of funds that, in the judgment of the Institute and the grantee, had become firm before the effective date of the termination.

*Reporting Requirements*

The grantee must submit the following reports:

- Quarterly Performance: A brief 2–3 page report of progress; due: Within 20 days of the end of each quarter.
- Continuation Application: Contents to be determined by the NIFL; due: By the end of the 2nd quarter of year-1.
- Final Report: Due: 90 days after the expiration of or termination of support.

More detailed specifications about reporting requirements will be provided within three months after the award.

*Electronic Submission of Proposals and Reports*

The NIFL is exploring the feasibility of receiving reports and proposals using technology that will be part of the National Literacy Database. Further information about this activity will be provided by the Institute during year one of the award.

*Continuation Proposal*

Following year 1 of the award, and to receive funding for year 2, the recipient is required to submit a continuation proposal. The proposal should describe significant activity during the past year, and explain what will be accomplished during the next award. This proposal should also contain projections of work for the next year.

*Acknowledgment of Support and Disclaimer*

An acknowledgment of the NIFL support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL-supported projects:

This material is based upon work supported by the National Institute for Literacy under Grant No: (grantee should enter NIFL grant number).

Except for articles or papers published in professional journals, the following disclaimer should be included:

Any opinion, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Institute for Literacy.

**FOR FURTHER INFORMATION CONTACT:** Victor Westbrook, Director, Contracts and Grants, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone: 202–632–1500. FAX: 202–632–1512. Individuals who use a telecommunications device for the deaf (TDD) may call 202–632–1529 between the hours 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

**Program Authority:** 20 U.S.C. 1213C.

*Instructions for Estimated Public Reporting Burden:* Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the National Institute for Literacy invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 65 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the National Institute for Literacy, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

(Information collection approved under OMB control number 3200–0020, Expiration date: June 1994)

**Lilian Dorka,**

*Acting Interim Director, National Institute for Literacy.*

BILLING CODE 6055-01-M

OMB Approval No. 0348-0043

## APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: Application: ☐ Construction ☐ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

5. APPLICANT INFORMATION

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code) |

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

National Institute for Literacy

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 7D

TITLE: Staff Development

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

| Start Date | Ending Date |
|---|---|
| | |

14. CONGRESSIONAL DISTRICTS OF:

| a. Applicant | b. Project |
|---|---|
| | |

15. ESTIMATED FUNDING:

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 3-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

## INSTRUCTIONS FOR THE SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

## BUDGET INFORMATION - Non-Construction Programs

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a-6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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Prescribed by OMB Circular A-102

**SECTION C - NON-FEDERAL RESOURCES**

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL (sum of lines 8-11) | $ | $ | $ | $ |

**SECTION D - FORECASTED CASH NEEDS**

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDING FOR 2nd YEAR**

| (a) Grant Program | (b) First | (c) Second | (d) Third | (e) Fourth |
|---|---|---|---|---|
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL (sum of lines 16-19) | $ | $ | $ | $ |

**SECTION F - OTHER BUDGET INFORMATION**

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL (sum of lines 8 – 11) | $ | $ | $ | $ |

| SECTION D - FORCASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17 | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL (sum of lines 16-19) | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges |
| 23. Remarks: | |

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## INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary Lines 1-4 Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g)**

*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5**—Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i**—Show the totals of Lines 6a to 6h in each column.

**Line 6j** - Show the amount of indirect cost.

**Line 6k** - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

## INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12**—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f) Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16-19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a - 7), the Copeland Act (40 U.S.C. §§276c and 18 U. S. C. §§874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

Standard Form 424B (Rev. 4/92) back

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

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## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification, and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs, and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| | |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| | |
| SIGNATURE | DATE |
| | |

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

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# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

**1. Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known:*
Congressional District, *if known:*

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**
Congressional District, *if known:*

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**
CFDA Number, *if applicable:* _____

**8. Federal Action Number, *if known:***

**9. Award Amount, *if known:***
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI):*

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI):*

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply):*
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**15. Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

**16.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

## DISCLOSURE OF LOBBYING ACTIVITIES
### CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

•U.S. G P O 1990-260-708:60012

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Standard Form - LLL-A

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

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[FR Doc. 93-18578 Filed 8-4-93; 8:45 am]
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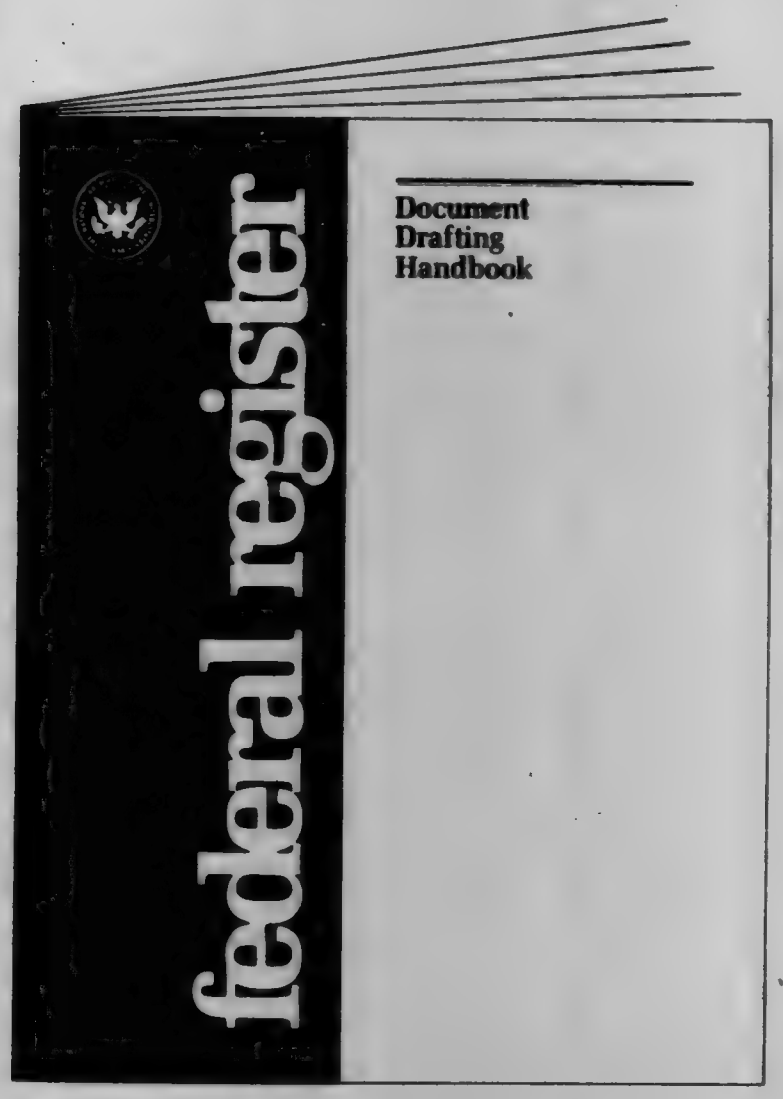


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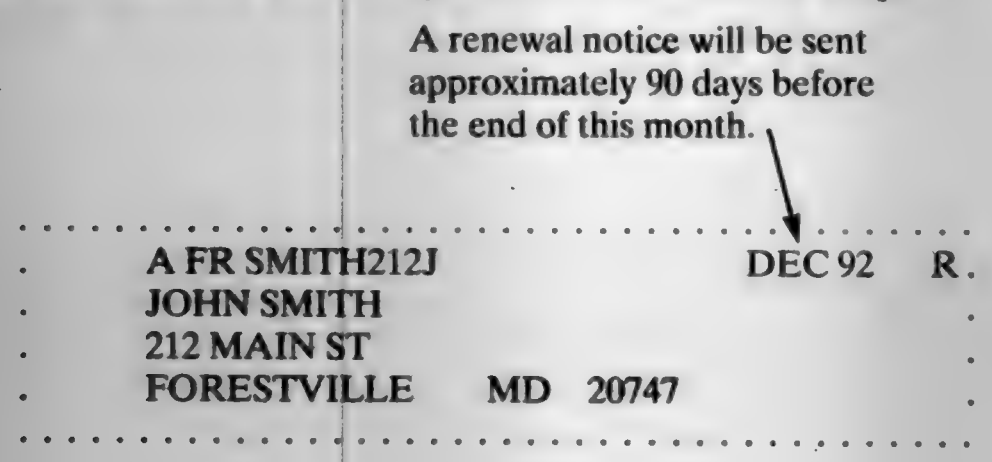


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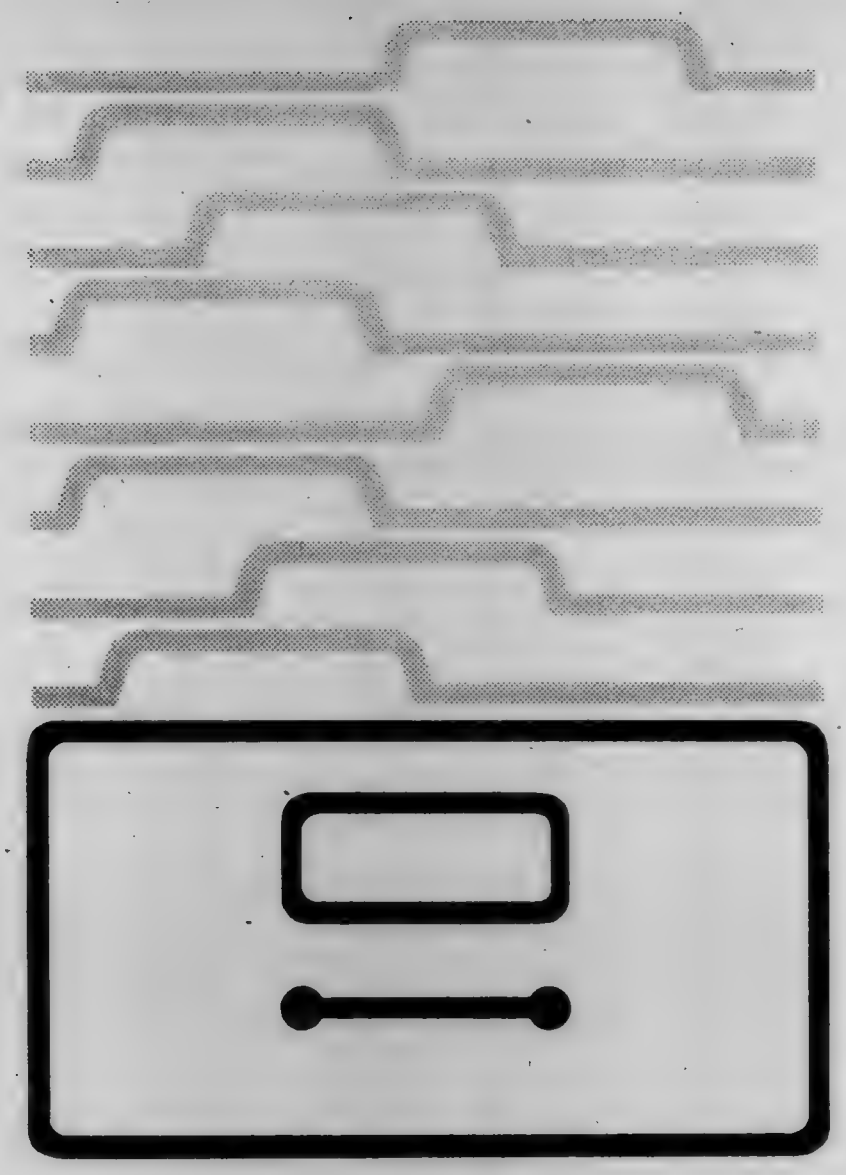

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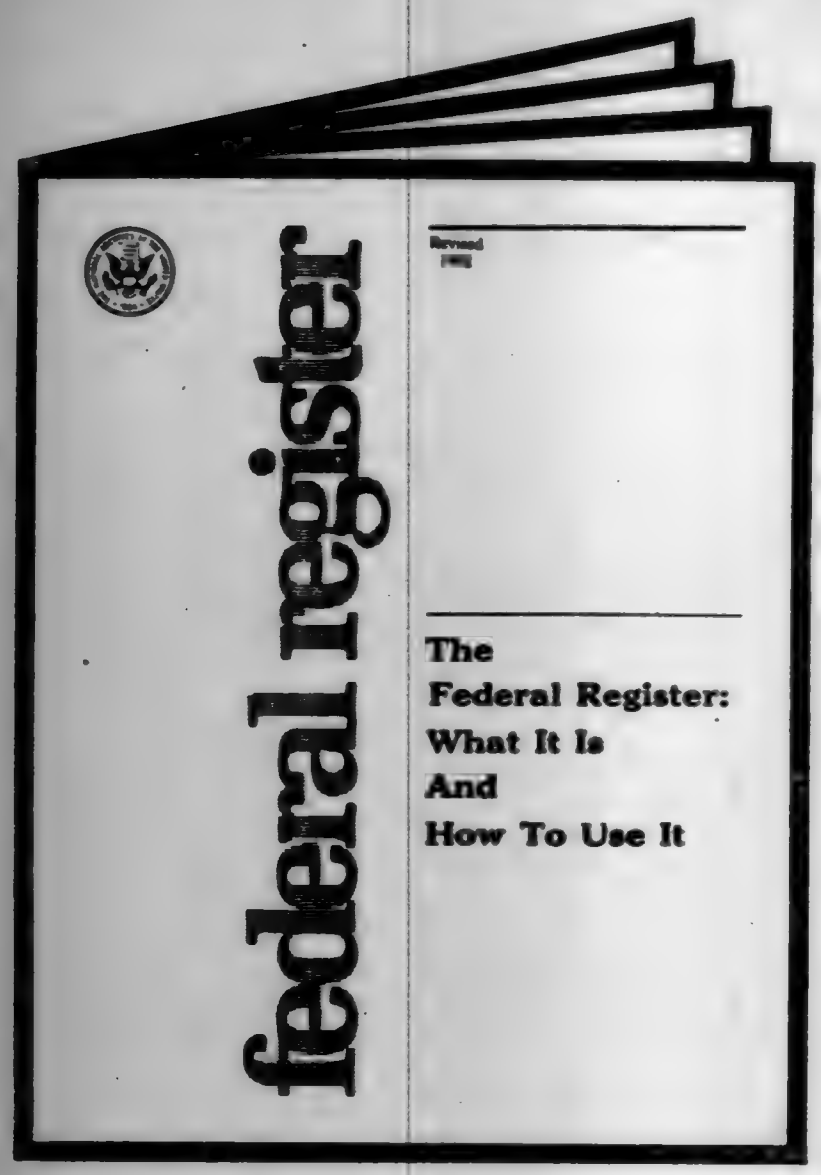


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# Presidential Documents

Title 3—

## The President

**Executive Order 12856 of August 3, 1993**

## Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

WHEREAS, the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001–11050) (EPCRA) established programs to provide the public with important information on the hazardous and toxic chemicals in their communities, and established emergency planning and notification requirements to protect the public in the event of a release of extremely hazardous substances;

WHEREAS, the Federal Government should be a good neighbor to local communities by becoming a leader in providing information to the public concerning toxic and hazardous chemicals and extremely hazardous substances at Federal facilities, and in planning for and preventing harm to the public through the planned or unplanned releases of chemicals;

WHEREAS, the Pollution Prevention Act of 1990 (42 U.S.C. 13101–13109) (PPA) established that it is the national policy of the United States that, whenever feasible, pollution should be prevented or reduced at the source; that pollution that cannot be prevented should be recycled in an environmentally safe manner; that pollution that cannot be prevented or recycled should be treated in an environmentally safe manner; and that disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner;

WHEREAS, the PPA required the Administrator of the Environmental Protection Agency (EPA) to promote source reduction practices in other agencies;

WHEREAS, the Federal Government should become a leader in the field of pollution prevention through the management of its facilities, its acquisition practices, and in supporting the development of innovative pollution prevention programs and technologies;

WHEREAS, the environmental, energy, and economic benefits of energy and water use reductions are very significant; the scope of innovative pollution prevention programs must be broad to adequately address the highest-risk environmental problems and to take full advantage of technological opportunities in sectors other than industrial manufacturing; the Energy Policy Act of 1992 (Public Law 102–486 of October 24, 1992) requires the Secretary of Energy to work with other Federal agencies to significantly reduce the use of energy and reduce the related environmental impacts by promoting use of energy efficiency and renewable energy technologies; and

WHEREAS, as the largest single consumer in the Nation, the Federal Government has the opportunity to realize significant economic as well as environmental benefits of pollution prevention;

AND IN ORDER TO:

Ensure that all Federal agencies conduct their facility management and acquisition activities so that, to the maximum extent practicable, the quantity of toxic chemicals entering any wastestream, including any releases to the environment, is reduced as expeditiously as possible through source reduction; that waste that is generated is recycled to the maximum extent practicable; and that any wastes remaining are stored, treated or disposed of in a manner protective of public health and the environment;

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Require Federal agencies to report in a public manner toxic chemicals entering any wastestream from their facilities, including any releases to the environment, and to improve local emergency planning, response, and accident notification; and

Help encourage markets for clean technologies and safe alternatives to extremely hazardous substances or toxic chemicals through revisions to specifications and standards, the acquisition and procurement process, and the testing of innovative pollution prevention technologies at Federal facilities or in acquisitions;

NOW THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the EPCRA, the PPA, and section 301 of title 5, United States Code, it is hereby ordered as follows:

**Section 1.** *Applicability.*

1–101. As delineated below, the head of each Federal agency is responsible for ensuring that all necessary actions are taken for the prevention of pollution with respect to that agency's activities and facilities, and for ensuring that agency's compliance with pollution prevention and emergency planning and community right-to-know provisions established pursuant to all implementing regulations issued pursuant to EPCRA and PPA.

1–102. Except as otherwise noted, this order is applicable to all Federal agencies that either own or operate a "facility" as that term is defined in section 329(4) of EPCRA, if such facility meets the threshold requirements set forth in EPCRA for compliance as modified by section 3–304(b) of this order ("covered facilities"). Except as provided in section 1–103 and section 1–104 below, each Federal agency must apply all of the provisions of this order to each of its covered facilities, including those facilities which are subject, independent of this order, to the provisions of EPCRA and PPA (*e.g.*, certain Government-owned/contractor-operated facilities (GOCO's), for chemicals meeting EPCRA thresholds). This order does not apply to Federal agency facilities outside the customs territory of the United States, such as United States diplomatic and consular missions abroad.

1–103. Nothing in this order alters the obligations which GOCO's and Government corporation facilities have under EPCRA and PPA independent of this order or subjects such facilities to EPCRA or PPA if they are otherwise excluded. However, consistent with section 1–104 below, each Federal agency shall include the releases and transfers from all such facilities when meeting all of the Federal agency's responsibilities under this order.

1–104. To facilitate compliance with this order, each Federal agency shall provide, in all future contracts between the agency and its relevant contractors, for the contractor to supply to the Federal agency all information the Federal agency deems necessary for it to comply with this order. In addition, to the extent that compliance with this order is made more difficult due to lack of information from existing contractors, Federal agencies shall take practical steps to obtain the information needed to comply with this order from such contractors.

**Sec. 2–2.** *Definitions.*

2–201. All definitions found in EPCRA and PPA and implementing regulations are incorporated in this order by reference, with the following exception: for the purposes of this order, the term "person", as defined in section 329(7) of EPCRA, also includes Federal agencies.

2–202. *Federal agency* means an Executive agency, as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

2–203. *Pollution Prevention* means "source reduction," as defined in the PPA, and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

2–204. *GOCO* means a Government-owned/contractor-operated facility which is owned by the Federal Government but all or portions of which are operated by private contractors.

2–205. *Administrator* means the Administrator of the EPA.

2–206. *Toxic Chemical* means a substance on the list described in section 313(c) of EPCRA.

2–207. *Toxic Pollutants.* For the purposes of section 3–302(a) of this order, the term "toxic pollutants" shall include, but is not necessarily limited to, those chemicals at a Federal facility subject to the provisions of section 313 of EPCRA as of December 1, 1993. Federal agencies also may choose to include releases and transfers of other chemicals, such as "extremely hazardous chemicals" as defined in section 329(3) of EPCRA, hazardous wastes as defined under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901–6986) (RCRA), or hazardous air pollutants under the Clean Air Act Amendments (42 U.S.C. 7403–7626); however, for the purposes of establishing the agency's baseline under 3–302(c), such "other chemicals" are in addition to (not instead of) the section 313 chemicals. The term "toxic pollutants" does not include hazardous waste subject to remedial action generated prior to the date of this order.

**Sec. 3–3.** *Implementation.*

3–301. *Federal Agency Strategy.* Within 12 months of the date of this order, the head of each Federal agency must develop a written pollution prevention strategy to achieve the requirements specified in sections 3–302 through 3–305 of this order for that agency. A copy thereof shall be provided to the Administrator. Federal agencies are encouraged to involve the public in developing the required strategies under this order and in monitoring their subsequent progress in meeting the requirements of this order. The strategy shall include, but shall not be limited to, the following elements:

(a) A pollution prevention policy statement, developed by each Federal agency, designating principal responsibilities for development, implementation, and evaluation of the strategy. The statement shall reflect the Federal agency's commitment to incorporate pollution prevention through source reduction in facility management and acquisition, and it shall identify an individual responsible for coordinating the Federal agency's efforts in this area.

(b) A commitment to utilize pollution prevention through source reduction, where practicable, as the primary means of achieving and maintaining compliance with all applicable Federal, State, and local environmental requirements.

3–302. *Toxic Chemical Reduction Goals.* (a) The head of each Federal agency subject to this order shall ensure that the agency develops voluntary goals to reduce the agency's total releases of toxic chemicals to the environment and off-site transfers of such toxic chemicals for treatment and disposal from facilities covered by this order by 50 percent by December 31, 1999. To the maximum extent practicable, such reductions shall be achieved by implementation of source reduction practices.

(b) The baseline for measuring reductions for purposes of achieving the 50 percent reduction goal for each Federal agency shall be the first year in which releases of toxic chemicals to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic chemicals reported in the baseline year for all of that Federal agency's facilities meeting the threshold applicability requirements set forth in section 1–102 of this order. In no event shall the baseline be later than the 1994 reporting year.

(c) Alternatively, a Federal agency may choose to achieve a 50 percent reduction goal for toxic pollutants. In such event, the Federal agency shall delineate the scope of its reduction program in the written pollution prevention strategy that is required by section 3–301 of this order. The baseline

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for measuring reductions for purposes of achieving the 50 percent reduction requirement for each Federal agency shall be the first year in which releases of toxic pollutants to the environment and off-site transfers of such chemicals for treatment and disposal are publicly reported for each of that Federal agency's facilities encompassed by section 3–301. In no event shall the baseline year be later than the 1994 reporting year. The baseline amount as to which the 50 percent reduction goal applies shall be the aggregate amount of toxic pollutants reported by the agency in the baseline year. For any toxic pollutants included by the agency in determining its baseline under this section, in addition to toxic chemicals under EPCRA, the agency shall report on such toxic pollutants annually under the provisions of section 3–304 of this order, if practicable, or through an agency report that is made available to the public.

(d) The head of each Federal agency shall ensure that each of its covered facilities develops a written pollution prevention plan no later than the end of 1995, which sets forth the facility's contribution to the goal established in section 3–302(a) of this order. Federal agencies shall conduct assessments of their facilities as necessary to ensure development of such plans and of the facilities' pollution prevention programs.

3–303. *Acquisition and Procurement Goals.* (a) Each Federal agency shall establish a plan and goals for eliminating or reducing the unnecessary acquisition by that agency of products containing extremely hazardous substances or toxic chemicals. Similarly, each Federal agency shall establish a plan and goal for voluntarily reducing its own manufacturing, processing, and use of extremely hazardous substances and toxic chemicals. Priorities shall be developed by Federal agencies, in coordination with EPA, for implementing this section.

(b) Within 24 months of the date of this order, the Department of Defense (DOD) and the General Services Administration (GSA), and other agencies, as appropriate, shall review their agency's standardized documents, including specifications and standards, and identify opportunities to eliminate or reduce the use by their agency of extremely hazardous substances and toxic chemicals, consistent with the safety and reliability requirements of their agency mission. The EPA shall assist agencies in meeting the requirements of this section, including identifying substitutes and setting priorities for these reviews. By 1999, DOD, GSA and other affected agencies shall make all appropriate revisions to these specifications and standards.

(c) Any revisions to the Federal Acquisition Regulation (FAR) necessary to implement this order shall be made within 24 months of the date of this order.

(d) Federal agencies are encouraged to develop and test innovative pollution prevention technologies at their facilities in order to encourage the development of strong markets for such technologies. Partnerships should be encouraged between industry, Federal agencies, Government laboratories, academia, and others to assess and deploy innovative environmental technologies for domestic use and for markets abroad.

3–304. *Toxics Release Inventory/Pollution Prevention Act Reporting.* (a) The head of each Federal agency shall comply with the provisions set forth in section 313 of EPCRA, section 6607 of PPA, all implementing regulations, and future amendments to these authorities, in light of applicable guidance as provided by EPA.

(b) The head of each Federal agency shall comply with these provisions without regard to the Standard Industrial Classification (SIC) delineations that apply to the Federal agency's facilities, and such reports shall be for all releases, transfers, and wastes at such Federal agency's facility without regard to the SIC code of the activity leading to the release, transfer, or waste. All other existing statutory or regulatory limitations or exemptions on the application of EPCRA section 313 shall apply to the reporting requirements set forth in section 3–304(a) of this order.

(c) The first year of compliance shall be no later than for the 1994 calendar year, with reports due on or before July 1, 1995.

3–305. *Emergency Planning and Community Right-to-Know Reporting Responsibilities.* The head of each Federal agency shall comply with the provisions set forth in sections 301 through 312 of EPCRA, all implementing regulations, and future amendments to these authorities, in light of any applicable guidance as provided by EPA. Effective dates for compliance shall be: (a) With respect to the provisions of section 302 of EPCRA, emergency planning notification shall be made no later than 7 months after the date of this order.

(b) With respect to the provisions of section 303 of EPCRA, all information necessary for the applicable Local Emergency Planning Committee (LEPC's) to prepare or revise local Emergency Response Plans shall be provided no later than 1 year after the date of this order.

(c) To the extent that a facility is required to maintain Material Safety Data Sheets under any provisions of law or Executive order, information required under section 311 of EPCRA shall be submitted no later than 1 year after the date of this order, and the first year of compliance with section 312 shall be no later than the 1994 calendar year, with reports due on or before March 1, 1995.

(d) The provisions of section 304 of EPCRA shall be effective beginning January 1, 1994.

(e) These compliance dates are not intended to delay implementation of earlier timetables already agreed to by Federal agencies and are inapplicable to the extent they interfere with those timetables.

Sec. 4–4. *Agency Coordination.*

4–401. By February 1, 1994, the Administrator shall convene an Interagency Task Force composed of the Administrator, the Secretaries of Commerce, Defense, and Energy, the Administrator of General Services, the Administrator of the Office of Procurement Policy in the Office of Management and Budget, and such other agency officials as deemed appropriate based upon lists of potential participants submitted to the Administrator pursuant to this section by the agency head. Each agency head may designate other senior agency officials to act in his/her stead, where appropriate. The Task Force will assist the agency heads in the implementation of the activities required under this order.

4–402. Federal agencies subject to the requirements of this order shall submit annual progress reports to the Administrator beginning on October 1, 1995. These reports shall include a description of the progress that the agency has made in complying with all aspects of this order, including the pollution reductions requirements. This reporting requirement shall expire after the report due on October 1, 2001.

4–403. *Technical Advice.* Upon request and to the extent practicable, the Administrator shall provide technical advice and assistance to Federal agencies in order to foster full compliance with this order. In addition, to the extent practicable, all Federal agencies subject to this order shall provide technical assistance, if requested, to LEPC's in their development of emergency response plans and in fulfillment of their community right-to-know and risk reduction responsibilities.

4–404. Federal agencies shall place high priority on obtaining funding and resources needed for implementing all aspects of this order, including the pollution prevention strategies, plans, and assessments required by this order, by identifying, requesting, and allocating funds through line-item or direct funding requests. Federal agencies shall make such requests as required in the Federal Agency Pollution Prevention and Abatement Planning Process and through agency budget requests as outlined in Office of Management and Budget (OMB) Circulars A–106 and A–11, respectively. Federal agencies should apply, to the maximum extent practicable, a life cycle analysis and

total cost accounting principles to all projects needed to meet the requirements of this order.

4–405. *Federal Government Environmental Challenge Program.* The Administrator shall establish a "Federal Government Environmental Challenge Program" to recognize outstanding environmental management performance in Federal agencies and facilities. The program shall consist of two components that challenge Federal agencies; (a) to agree to a code of environmental principles to be developed by EPA, in cooperation with other agencies, that emphasizes pollution prevention, sustainable development and state-of-the-art environmental management programs, and (b) to submit applications to EPA for individual Federal agency facilities for recognition as "Model Installations." The program shall also include a means for recognizing individual Federal employees who demonstrate outstanding leadership in pollution prevention.

Sec. 5–5. *Compliance.*

5–501. By December 31, 1993, the head of each Federal agency shall provide the Administrator with a preliminary list of facilities that potentially meet the requirements for reporting under the threshold provisions of EPCRA, PPA, and this order.

5–502. The head of each Federal agency is responsible for ensuring that such agency take all necessary actions to prevent pollution in accordance with this order, and for that agency's compliance with the provisions of EPCRA and PPA. Compliance with EPCRA and PPA means compliance with the same substantive, procedural, and other statutory and regulatory requirements that would apply to a private person. Nothing in this order shall be construed as making the provisions of sections 325 and 326 of EPCRA applicable to any Federal agency or facility, except to the extent that such Federal agency or facility would independently be subject to such provisions. EPA shall consult with Federal agencies, if requested, to determine the applicability of this order to particular agency facilities.

5–503. Each Federal agency subject to this order shall conduct internal reviews and audits, and take such other steps, as may be necessary to monitor compliance with sections 3–304 and 3–305 of this order.

5–504. The Administrator, in consultation with the heads of Federal agencies, may conduct such reviews and inspections as may be necessary to monitor compliance with sections 3–304 and 3–305 of this order. Except as excluded under section 6–601 of this order, all Federal agencies are encouraged to cooperate fully with the efforts of the Administrator to ensure compliance with sections 3–304 and 3–305 of this order.

5–505. Federal agencies are further encouraged to comply with all state and local right-to-know and pollution prevention requirements to the extent that compliance with such laws and requirements is not otherwise already mandated.

5–506. Whenever the Administrator notifies a Federal agency that it is not in compliance with an applicable provision of this order, the Federal agency shall achieve compliance as promptly as is practicable.

5–507. The EPA shall report annually to the President on Federal agency compliance with the provisions of section 3–304 of this order.

5–508. To the extent permitted by law and unless such documentation is withheld pursuant to section 6–601 of this order, the public shall be afforded ready access to all strategies, plans, and reports required to be prepared by Federal agencies under this order by the agency preparing the strategy, plan, or report. When the reports are submitted to EPA, EPA shall compile the strategies, plans, and reports and make them publicly available as well. Federal agencies are encouraged to provide such strategies, plans, and reports to the State and local authorities where their facilities are located for an additional point of access to the public.

**Sec. 6–6.** *Exemption.*

6–601. In the interest of national security, the head of a Federal agency may request from the President an exemption from complying with the provisions of any or all aspects of this order for particular Federal agency facilities, provided that the procedures set forth in section 120(j)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9620(j)(1)), are followed. To the maximum extent practicable, and without compromising national security, all Federal agencies shall strive to comply with the purposes, goals, and implementation steps set forth in this order.

**Sec. 7–7.** *General Provisions.*

7–701. Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
*August 3, 1993.*

[FR Doc. 93–19069
Filed 8–4–93; 4:37 pm]
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# Rules and Regulations

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**INTERSTATE COMMERCE COMMISSION**

**5 CFR Chapter XL**

**49 CFR Part 1000**

**RIN 3209–AA00, 3209–AA04, and 3209–AA15**

**[Ex Parte No. 515]**

## Supplemental Standards of Ethical Conduct For Employees of the Interstate Commerce Commission

**AGENCY:** Interstate Commerce Commission (ICC).

**ACTION:** Final rule.

**SUMMARY:** The Interstate Commerce Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the ICC that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE in order to provide for a successful ICC ethics program. The ICC also is repealing its Canons of Conduct that were superseded by these standards.

**EFFECTIVE DATE:** These regulations are effective August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Clyde J. Hart, Jr., Designated Agency Ethics Official, (202) 927–6317 (TDD for hearing impaired: (202) 927–5721.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006–35067). Codified at 5 CFR part 2635, the new standards became effective on February 3, 1993.

With the concurrence of OGE, 5 CFR 2635.105 authorizes agencies to publish agency-specific supplemental regulations that are necessary properly to implement their respective ethics programs. The ICC, with OGE's concurrence, has determined that the following supplemental rules, which will now appear in new 5 CFR chapter XL, are necessary to the success of its ethics program.

### II. Analysis of the Regulations

*Section 5001.101 General*

Section 5001.101 explains that the regulations contained in the final rule apply to all ICC employees, including members of the Commission, and are supplemental to the executive branch-wide standards. Members and employees of the Interstate Commerce Commission also are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional regulations regarding their conduct published by the agency at in 49 CFR part 1019.

*Section 5001.102 Prohibited Interests in For-hire Transportation Companies*

5 CFR 2635.403(a) specifically authorizes agencies, by supplemental regulation, to prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees based on the determination that the acquisition or holding of such interests would cause reasonable persons to question the impartially and objectivity with which agency programs are administrated. In its Canons of Conduct, the ICC traditionally has prohibited its employees from holding any employment or other official relationship with, or owning securities of, or being otherwise pecuniarily interested in, any for-hire transportation company. For members of the Commission and certain other personnel, these prohibitions are prescribed by 49 U.S.C. 10301(d) and 10306(e). By 49 CFR 1000.735–13, which is being repealed by this final rule, the ICC extended these prohibitions to all ICC personnel in order to ensure public confidence in the integrity of its programs and operations. New § 5001.102 is a restatement and continuation of this standard.

*Section 5001.103 Impartiality Determinations Involving Members of the Interstate Commerce Commission*

The Commission, in its "Additional Canons of Conduct for Members", at 49 CFR 1000.736–5, which is being repealed by this final rule, has provided that "If an interested person suggests that a member should disqualify himself or herself in a particular matter because of bias or prejudice, the member shall be the sole judge of his or her own qualifications." Under 5 CFR 2635.502(d), however, such determinations are ultimately to be made by the "agency designee" who, at the ICC, is the Designated Agency Ethics Official (DAEO). Except in the case of the Chairman, the definition of "agency designee" at 5 CFR 2635.102(b) would preclude a member of the Commission from serving as the agency designee for the purposes of making any determination regarding his or her own conduct.

Traditionally, judges act upon motions to recuse themselves from cases which have been assigned to them. Because Commissioners perform quasi-judicial functions when voting in ICC adjudicatory proceedings, the ICC believes that it would be inappropriate for any person other than the Commissioner to determine whether or not he or she should be disqualified from performing any of these functions on impartiality grounds. In effect, § 5001.103 modifies the definition of "agency designee" to enable the ICC to delegate authority, and, in fact, constitutes a delegation of authority to each member of the Commission to serve as his or her own agency designee, in consultation with the Designated Agency Ethics Official, for the purposes of making the impartiality determination contemplated by 5 CFR 2635.502(d) in relationship to ICC proceedings.

*Section 5001.104 Approval for Outside Employment*

Under 5 CFR 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. An ICC Canon of Conduct, 49 CFR 1000.735–17, which is being repealed by this final rule, has required such advance authorization. While new § 5001.104 is intended to continue that requirement, it differs from the ICC's old Canon because it requires prior approval only of outside employment. However, a definition of "employment" has been added to clarify the nature of the activities that are subject to this

requirement, and it is general enough to include those undertakings referenced in the Commission's Canon. This language also helps to ensure that determinations to approve or disapprove outside employment are not made arbitrarily, but on the basis of standards stated in applicable statutes, the new OGE regulations and this supplemental regulation. In order to centralize all ICC ethics functions, responsibility for approval of outside employment is transferred from the Director of Personnel to the DAEO.

The ICC believes that this prior approval requirement is necessary to ensure that any problems relating to an employee's outside employment are resolved before an employee begins such an undertaking.

### III. Repeal of the ICC Canons of Conduct

Because the Commission's Canons of Conduct have been largely superseded by the new executive branch standards of ethical conduct and financial disclosure regulations, 5 CFR parts 2634 and 2635, the Commission herewith is repealing existing subparts B, C, and D of 49 CFR part 1000. By a separate rulemaking being published simultaneously with this part, the Commission has incorporated provisions regarding use of intoxicants and sexual harassment, which had been contained in repealed subpart B, into a new part 1019 of title 49 of the Code of Federal Regulations.

### IV. Matters of Regulatory Procedure

*Administrative Procedure Act*

The ICC has found that good cause exists under 5 U.S.C. 553 (b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and repeals. The supplemental regulations are essentially a restatement of rules previously contained in the Canons of Conduct, and the ICC believes that it is important to a smooth transition from the Commission's Canons to the executive branch standards that these rules become effective as soon as possible. Furthermore, this rulemaking is related to the ICC's organization, procedure and practice.

*Regulatory Flexibility Act*

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only ICC employees.

*Paperwork Reduction Act*

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

*Environmental Impact*

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

**List of Subjects**

*5 CFR Part 5001*

Conflict of interests, Government employees.

*49 CFR Part 1000*

Administrative practice and procedure, Seals and insignia.

Decided: June 29, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Approved: July 29, 1993.

**Sidney L. Strickland, Jr.,**

*Secretary.*

Approved: August 2, 1993.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Interstate Commerce Commission, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 49, chapter X, of the Code of Federal Regulations, as follows:

**TITLE 5—[AMENDED]**

1. A new chapter XL, consisting of Part 5001, is added to title 5 of the Code of Federal Regulations to read as follows:

**5 CFR CHAPTER XL—INTERSTATE COMMERCE COMMISSION**

## PART 5001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE INTERSTATE COMMERCE COMMISSION

Sec.

5001.101 General.
5001.102 Prohibited financial interests in for-hire transportation companies.
5001.103 Impartiality determinations for members of the Interstate Commerce Commission.
5001.104 Approval for outside employment.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 49 U.S.C. 10301, 10306, 10321; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp. at 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., at 306; 5 CFR 2635.105, 2635.403, 2635.803.

**§ 5001.101 General.**

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and other employees of the Interstate Commerce Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and and this part, members and other employee are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2635 and to additional regulations regarding their conduct contained in 49 CFR part 1019.

**§ 5001.102 Prohibited financial interests in for-hire transportation companies.**

(a) *General prohibition.* Except as provided in paragraph (c) of this section, no member or other employee of the Interstate Commerce Commission shall, directly or indirectly:

(1) Be employed by or hold any other official relationship with any for-hire transportation company whether or not subject to the Interstate Commerce Act; or

(2) Own securities of or be in any manner pecuniarily interested in any for-hire transportation company whether or not subject to the Interstate Commerce Act.

(b) *Indirect relationships and interests.* (1) For the purposes of paragraph (a) of this section, an indirect relationship with or interest in a for-hire transportation company includes, but is not limited to, an interest in:

(i) Any company that owns or controls and has more than two percent of its assets directly invested in or dervices more than two percent of its income directly from a for-hire transportation company whether or not subject to the Interstate Commerce Act; or

(ii) Any company, mutual fund or other enterprise which has an interest of more than ten percent of its assets directly invested in or derives more than ten percent of its income directly from for-hire transportation companies whether or not subject to the Interstate Commerce Act.

(2) For the purposes of determining the applicability of this paragraph, an employee may rely on the most recent financial statement issued to its security holders by the company, fund or other enterprise.

(c) *Exceptions.* (1) Where a previously proper holding of a member or other employee becomes prohibited because

of the enterprise's acquisition of an interest in a for-hire transportation company, the employee shall have nine months within which to dispose of the interest.

(2) In cases of financial hardship where the relationship or interest is not prohibited by 49 U.S.C. 10301(d) or 10306(e), the Designated Agency Ethics Official may grant a written waiver of the prohibition in paragraph (a) of this section based on a determination that application of the prohibition is not necessary to ensure public confidence in the impartiality and objectivity with which the Commission's programs are administered or to avoid a violation of part 2635 of this title.

**§ 5001.103 Impartiality determinations for members of the Interstate Commerce Commission.**

A member is an "agency designee" for the purposes of making an impartiality disqualification determination under 5 CFR 2635.502(d) with respect to the member's own participation in a Commission proceeding. This determination must be made in consultation with the Designated Agency Ethics Official.

**§ 5001.104 Prior approval for outside employment.**

(a) Before engaging in any outside employment, whether or not for compensation, an employee of the Interstate Commerce Commission, other than a Commissioner, must obtain the written approval of his or her supervisor and the Designated Agency Ethics Official (DAEO). Requests for approval shall be forwarded through normal supervisory channels to the DAEO and shall include, at a minimum, the following:

(1) A statement of the name of the person, group, or other organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment;

(2) The employee's certification that the outside employment will not depend in any way on information obtained as a result of the employee's official Government position;

(3) The employee's certification that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

(4) The employee's certification that he or she has read, is familiar with, and will abide by the restrictions contained in all applicable Federal laws and regulations, including those found in 18 U.S.C. chapter 11 and those found or referenced in subpart H ("Outside Activities") of 5 CFR part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); and

(5) The written approval of the employee's immediate supervisor.

(b) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.

(c) For purposes of this section, "employment" means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. Prior approval is not required, however, to participate in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement for expenses.

**49 CFR CHAPTER X—INTERSTATE COMMERCE COMMISSION**

**PART 1000—THE COMMISSION**

2. The authority citation for part 1000 continues to read as follows:

**Authority:** 49 U.S.C. 10303, 10321, 11144, and 11145.

3. Part 1000 is amended by removing subparts B, C and D.

[FR Doc. 93–18871 Filed 8–5–93; 8:45 am]
BILLING CODE 7035–01–P

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 28**

**[CN–93–001]**

**RIN 0581–AA75**

## User Fees for Cotton Classification Services to Growers

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is making final the decrease in user fees charged to cotton growers from $1.92 per bale to $1.87 per bale for cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987.

In addition, AMS will eliminate the cotton linters standards and the classification service for cotton linters. There has been virtually no demand for official linters classification services in recent years. The cost of maintaining the cotton linters standards is no longer justified.

This action also eliminates manual classification services for American Pima cotton. Since the quality data that is provided under manual classification is now provided as part of the High Volume Instrument (HVI) classification service, it has been determined that there is no practical reason to continue to provide manual classification as a separate service.

**EFFECTIVE DATE:** August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lee Cliburn, 202–720–3193.

**SUPPLEMENTARY INFORMATION:** A proposed rule detailing the revision in fees and the elimination of cotton linters standards and manual classification service for American Pima Cotton was published on June 10, 1993, in the **Federal Register** ( 58 FR 32454). A 15-day comment period was provided for interested persons to respond to the proposed rule; one comment was received.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be "non-major" since it does not meet the criteria for a major regulatory action as stated in the Order.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Acting Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) the fee decrease reflects a decrease in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost decrease will not affect competition

in the marketplace; and (3) the use of classification services and the purchase of standards is voluntary.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The revision of the user fee paid by cotton growers for cotton classification services and the elimination of manual classification services for American Pima cotton will become effective upon publication in the **Federal Register**. The elimination of the cotton linters standards and the cotton linters classification services, will become effective one year after the date on which the final rule is published, as provided by the Cotton Standards Act.

**Fees for Classification Under the Cotton Statistics and Estimates Act of 1927**

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.92 per bale during the 1992 harvest season as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The fees cover salaries, cost of equipment and supplies, and other overhead costs, including administrative and supervisory costs.

The establishment of standards and the preparation and maintenance of standards are necessary for providing grower classification services. The revised fees include seven cents per bale to recover standardization costs, including standards which must be freshly prepared each year. These costs must be recovered by the user fees charged to growers for cotton classification services because it is anticipated that they will no longer be covered by appropriated funds beginning on October 1, 1993.

This final rule establishes the user fee charged to producers for High Volume Instrument (HVI) classification at $1.87 per bale during the 1993 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 1992. Therefore, the 1993 producer's user fee for classification service is based on the 1992 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 1992 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $1.86 per bale. A 2.5 percent, or five cents per bale increase due to the implicit price deflator of the gross domestic product added to the $1.86 resulted in a 1993 base fee of $1.91 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, this has been replaced by the gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 1993 crop is estimated at 16,386,442. The 1993 base fee was decreased 15 percent based on the estimated number of bales to be classed (one percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 29 cents per bale reduction and was subtracted from the 1993 base fee of $1.91 per bale, resulting in a fee of $1.62 per bale.

The formula requires addition of a five cents per bale surcharge to the $1.62 per bale fee since the projected operating reserve would be less than 25 percent. The five cent surcharge resulted in a 1993 season fee of $1.67 per bale. Assuming a fee of $1.67, the projected operating reserve would be 1.4 percent. An additional 20 cents per bale was required to provide an ending accumulated operating reserve for the fiscal year of at least 10 percent of the projected cost of operating the program. This establishes the 1993 season fee at $1.87 per bale.

This rule also eliminates manual classification services for American Pima cotton. Since the quality data that is provided under manual classification (grade, staple, and micronaire) is now provided as part of the HVI classification service, it has been determined that there is no practical reason to continue to provide manual classification as a separate service.

Accordingly, in § 28.909, paragraphs (b) and (c) are revised to reflect the decrease in the HVI classification fees and the elimination of manual classification service for American Pima Cotton.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a five cent per bale discount is continued to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(d).

Growers or their designated agents will continue to incur no additional fees if only one method of receiving classification data is requested. The fee for each additional method of receiving classification data in § 28.910 remains at five cents per bale, and it is applicable even if the same method is requested. Punched computer cards will still be used for the dissemination of classification data, but bar coded, printed cards will no longer be available, because there is an insufficient demand for the use of this method. This change is reflected in § 28.910 (a). The other provisions of § 28.910, concerning the fee for an owner receiving classification data from the central database and the fee for new classification memoranda issued for the business convenience of such an owner without reclassification of the cotton, remain the same.

The fee for review classification in § 28.911 is decreased from $1.92 per bale to $1.87 per bale. The fee for returning samples after classification in § 28.911 remains at 40 cents per sample.

**Discontinuation of the Cotton Linters Standards and Classification Services Under the U.S. Cotton Standards Act**

The demand for cotton linters classification and cotton linters standards offered under the U.S. Cotton Standards Act has diminished in recent years to the point where the industry demand is practically nil and does not justify the cost of preparing and maintaining the linters standards and providing the linters classification service.

One comment concerning the proposed rule was received from a national farm industry organization. The commenter expressed support for the rule as proposed.

Accordingly, § 28.2 (n) and (j) are revised to remove the cotton linters references, and 28.2 (o) is deleted. References to the classification of cotton linters are also be removed from §§ 28.9, 28.122 and 28.175. The subheading "United States Cotton Linters", which appears before § 28.136 is deleted, as is all of the sections under it.

The heading *Subpart B—Classification for Foreign Growth Cotton and Cotton Linters* and § 28.175 are revised to remove the words "* * * and cotton linters". General information on linters classification services, § 28.184, is deleted, as is the subheading "Official Cotton Linters Standards of the United States for

Grade", which appears before § 28.201, as is all of the sections under it. The subheading "Official Cotton Linters Standards of United States for Staple", which appears before § 28.215, is removed, as is all of the sections under it.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the Federal Register because regulatory revision of the user fees in this regulation are required by the Act governing the services and the effective date for the new fees is intended to coincide with the beginning of the harvest of new crop cotton, as provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. Accordingly, this rule is made effective on August 6, 1993.

**List of Subjects in 7 CFR Part 28**

Administrative practice and procedures, Cotton, Cotton linters, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

**PART 28—[AMENDED]**

**Subpart A—[Amended]**

1. The authority citation for subpart A of part 28 continues to read as follows:

**Authority:** Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. In § 28.2, paragraph (o) is removed, paragraphs (p) through (v) are redesignated (o) through (u), and paragraphs (j) and (n) are revised to read as follows:

**§ 28.2 Terms defined.**

* * * * *

(j) *Quality Control Section.* The national classing supervision office at Memphis, Tennessee performing final review of cotton classification.

* * * * *

(n) *Cotton.* The word *cotton* means cotton of any variety produced within the continental United States. In this subpart, for administrative convenience the word "cotton" is used to signify vegetable hair removed from cottonseed in the usual process of ginning.

* * * * *

3. Section 28.9 is revised to read as follows:

**§ 28.9 Inspection; sampling; classification.**

The inspection, sampling, and classification of cotton in the United States pursuant to the Act shall be performed as prescribed in this subpart. Subject in general to the provisions of this subpart the Director may issue from time to time instructions for the sampling, classification, and issuance of classification memoranda for cotton classed for special programs and other Government agencies, including the review of any classification performed pursuant to §§ 28.901 through 28.919.

4. Section 28.122 is amended by revising the first sentence to read as follows:

**§ 28.122 Fee for practical classing examination.**

The fee for the practical classing examination for cotton shall be $105.00.

* * *

**§§ 28.135–28.151 [Removed]**

5. The undesignated center heading *United States Cotton Linters,* and §§ 28.136 through 28.151 under that heading are removed.

**Subpart B—[Amended]**

6. The authority citation for subpart B of part 28 continues to read as follows:

**Authority:** Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

7. The subpart heading for subpart B of part 28 is revised to read as follows:

**Subpart B—Classification for Foreign Growth Cotton**

8. Section 28.175 is revised to read as follows:

**§ 28.175 Administrative and general.**

Insofar as applicable, and not inconsistent with this subpart, the provisions of subpart A of this part shall likewise apply to the classification and comparison of cotton produced outside the continental United States.

**§ 28.184 [Removed]**

9. Section 28.184 is removed.

**Subpart C—[Amended]**

10. The authority citation for the undesignated center heading preceding §§ 28.301 to 28.307 in Subpart C is revised to read as follows:

**§§ 28.215–28.222 [Removed]**

11. In Subpart C—Standards, the undesignated center heading, its authority citation, and its Sections 28.201 through 28.208 and the undesignated center heading, its authority citation and its §§ 28.215 through 28.222 are removed.

**Authority:** Sections 28.301 to 28.307 issued under Sec. 10, 42 Stat. 1519; 7 U.S.C. 61. Interpret or apply sec. 6, 42 Stat. 1518, as amended, sec. 4854, 68A Stat. 590; 7 U.S.C. 56, 26 U.S.C. 4854.

**Subpart D—[Amended]**

12. The authority citation for subpart D of part 28 continues to read as follows:

**Authority:** Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

13. In § 28.909, paragraph (b) is removed, paragraph (c) is redesignated as (b) and revised to read as follows, paragraph (d) is redesignated as (c):

**§ 28.909 Costs.**

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.87 per bale.

* * * * *

14. In § 28.910, paragraph (a) is amended by removing (a)(5), and the introductory text of paragraph (a) and (a)(1) through (a)(4) is revised to read as follows (the concluding text of paragraph (a) remains unchanged):

**§ 28.910 Classification of samples and issuance of classification data.**

(a) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

(1) Computer punchcards,

(2) Computer diskettes,

(3) Computer tapes, or

(4) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

* * * * *

15. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

**§ 28.911 Review classification.**

(a) * * * The fee for review classification is $1.87 per bale.

* * * * *

Dated: August 2, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18868 Filed 8–5–93; 8:45 am]

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**Commodity Credit Corporation**

**7 CFR Part 1427**

**RIN 0560–AD36**

## Upland Cotton Adjusted World Price—Coarse Count Adjustment

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule amends the regulations to update the list of upland cotton qualities eligible for the coarse count adjustment. This change is required to conform with revisions made in the grade standards for the 1993 and future crops of upland cotton. This action is authorized by section 103B of the Agricultural Act of 1949 (1949 Act), as amended. The effect of the amendment is to make the qualities that were eligible for the coarse count adjustment under the old grading system eligible under the new grading system.

**DATES:** Effective August 1, 1993. Comments must be received on or before September 7, 1993, in order to be assured of consideration.

**ADDRESSES:** Submit comments to: Director, Fibers and Rice Analysis Division (FRAD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

**FOR FURTHER INFORMATION CONTACT:** Janise Zygmont, FRAD, ASCS, USDA, room 3754–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291 and Departmental Regulation 1512–1

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "nonmajor." It has been determined that the provisions of this interim rule will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, State, or local governments or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

### Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of the interim rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

### Paperwork Reduction Act

This amendment will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to these amendments.

### Background

Starting with the 1993 marketing year, the schedule of CCC loan premiums and discounts for U.S. upland cotton will express the former "grade" as separate color grade and leaf components. As a result, terms previously used to describe certain upland cotton qualities have changed. Section 1427.25(f)(1) is amended to clarify which qualities of upland cotton are eligible for the coarse count adjustment beginning with the 1993 marketing year. The effect of the amendment is to make the qualities that were eligible for the coarse count adjustment under the old grading system eligible under the new grading system.

Interested persons are invited to submit written comments on the interim rule changes. Comments must be received by September 7, 1993, in order to be assured of consideration.

### List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and record-keeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

## PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2, 15 U.S.C. 714b and 714c.

2. Section 1427.25(f)(1) is revised to read as follows:

**§ 1427.25 Determination of the prevailing world market price and the adjusted world price (AWP) for upland cotton.**

* * * * *

(f)(1)(i) The adjusted world price, as determined in accordance with paragraph (c) of this section, shall be subject to further adjustments as provided in this section with respect to all qualities of upland cotton eligible for price support loan except the following grades of upland cotton with a staple length of 1 1/16 inch or longer:

(A) White Grades—Strict Middling and better, leaf 1 through leaf 6; Middling, leaf 1 through leaf 6; Strict Low Middling, leaf 1 through leaf 6; and Low Middling, leaf 1 through leaf 5,

(B) Light Spotted Grades—Strict Middling and better, leaf 1 through leaf 5; Middling, leaf 1 through leaf 5; and Strict Low Middling, leaf 1 through leaf 4; and

(C) Spotted Grades—Strict Middling and better, leaf 1 through leaf 2.

(ii) Grade and Staple length must be determined in accordance with § 1427 9 If no such official classification is presented, the coarse count adjustment shall not be made.

* * * * *

Signed at Washington, DC on July 28, 1993

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 93–18865 Filed 8–5–93; 8:45 am]

BILLING CODE 3410–05–P

**7 CFR Part 1435**

**RIN 0560–AC14**

## Sugar and Crystalline Fructose Marketing Allotment Appeal Regulations for Fiscal Years 1992 Through 1996

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Commodity Credit Corporation (CCC) previously published an interim rule on July 6, 1993, pertaining to the establishment of marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for the fiscal years 1992 through 1996. This interim rule supplements the previously published interim rule by setting forth the appeal procedures as required by section 359i of the Agricultural Adjustment Act of 1938 (the 1938 Act), as amended.

**DATES:** This interim rule is effective August 5, 1993. Comments must be received on or before September 7, 1993, in order to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim rule. Comments should be mailed or delivered to the Deputy Administrator for Program Analysis (DAPA), Agricultural Stabilization and Conservation Service (ASCS), room 3090, South Agriculture Building, U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday except holidays, in room 3727, South Agriculture Building, USDA, 14th Street and Independence Avenue, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Barry, Director, Sweeteners Analysis Division, ASCS; telephone: 202–720–3391.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12291 and Departmental Regulation 1512–1

The Department has reviewed this action under Executive Order 12291 and Departmental Regulation 1512–1. It has been determined that this action will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individuals, industries, Federal, State, local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "nonmajor."

### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases; 10.051.

### Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Dates" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

### Regulatory Flexibility Act

It has been determined that this regulation will have no significant impact on a substantial number of small entities because the particular marketing allotment options considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. The CCC thus certifies that the rule will have no significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

This interim rule contains reporting requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The information collection requirements will be submitted to OMB for review.

### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this interim rule.

### Background

CCC previously published the regulations (58 FR 36120, July 6, 1993) applicable to the establishment of marketing allotments for sugar processed from domestically produced sugarcane and sugar beets and crystalline fructose manufactured from corn for the fiscal years 1992 through 1996. This interim rule supplements the previously published interim rule by adding § 1435.530 setting forth the appeal procedures applicable to § 1435.529(a) as required by section 359i of the 1938 Act, as amended.

### List of Subjects in 7 CFR Part 1435

Administrative practice and procedures, Appeals, Loan programs/agriculture, Marketing allotments, Price support programs, Reporting and recordkeeping requirements, Sugar.

Accordingly, 7 CFR part 1435 is amended as follows:

## PART 1435—SUGAR

1. The authority citation for 7 CFR part 1435 continues to read as follows:

**Authority:** 7 U.S.C. 1359aa–1359jj, 1421 1423, 1446g; 15 U.S.C. 714b and 714c.

2. Section 1435.530 is added to read as follows:

**§ 1435.530 Appeals procedures.**

(a) *Reconsideration*—(1) *Basis, purpose, and applicability.*

(i) The regulations set forth in this section are applicable only to requests for reconsideration and appeals arising under § 1435.529(a).

(A) The regulations in this section also prescribe the rules and procedure that may be followed by a person who seeks reconsideration of a determination made with respect to:

(*1*) Processors who disagree with the amount of allocation assigned by CCC pursuant to § 1435.529(a)(1);

(*2*) Producers who disagree with a determination with respect to the establishment or adjustment of proportionate shares or acreage bases or excess acreage harvested pursuant to § 1435.529(a)(2); and

(B) The regulations in this section also prescribe the rules and procedure that must be followed by a person who seeks reconsideration with respect to: Producers or processors who disagree with the arbitrator's decision regarding the sharing of the processor's allocation with the producers pursuant to § 1435.529(a)(3).

(ii) Reconsideration and review under this section is limited to individual determinations made with respect to those persons meeting the requirements of paragraph (a)(1)(i) of this section. Accordingly, there is no review under this section with respect to general

program requirements that are applicable to all program participants.

(2) *Definitions.*

*Appeal* means a written request by a participant asking the next level reviewing authority to review an adverse determination.

*CCC* means Commodity Credit Corporation, a wholly-owned Government corporation within the USDA.

*Director* means the director of NAD, or a designee.

*Hearing* means that part of the proceeding which involves the submission of evidence before the Judge for the record in the proceeding.

*Hearing Clerk* means the Hearing Clerk, USDA, Washington, DC 20250.

*Hearing Officer* means an individual who is designated by the Director and assigned the responsibility of conducting the NAD hearing for the appeal filed by the participants with the Executive Vice President, CCC, or other appropriate official in accordance with this part.

*Judicial Officer* means an officer of the United States Department of Agriculture, delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 ed., Appendix, P. 550), as amended by Public Law 97–35, title I, Section 125, 95 Stat. 357, 369 (1981) (7 U.S.C. 2201 note), to perform the adjudicating function involved (7 CFR 2.35(a)), or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary.

*Judge* means any Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to USDA pursuant to 5 U.S.C. 3344 and assigned to the appeal.

*NAD* means the National Appeals Division, the ASCS division designated by the Executive Vice President of CCC to hear and review producer and processor appeals under this part.

*NAD Hearing* means an informal proceeding before a Hearing Officer of NAD to afford a participant the opportunity to present testimony or documentary evidence to show why an adverse determination was not proper.

*Participant* means any person whose right to participate in, or receive payment or other benefits in accordance with, any of the programs to which these regulations apply who is affected by a determination of the Secretary, the Executive Vice President of CCC, or an Administrative Law Judge. An authorized representative of the participant shall be considered the participant.

*Reconsideration* is a subsequent consideration of a prior determination by the Executive Vice President, or a designee.

(3) *Stay of collection.* The filing of a timely notice of a request for reconsideration or appeal shall automatically stay the action of ASCS to collect any penalties assessed under this part until a decision is reached on the acceptability of the reconsideration or appeal, and in the case of an acceptable appeal, until final administrative determination has been issued. However, during the stay, interest will accrue on the outstanding penalty amount at a rate equal to the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the date the penalty is assessed.

(4) *Consolidated hearings.* At the discretion of the Hearing Officer or Judge, hearings on two or more petitions may be consolidated, and the evidence taken at such consolidated hearing may be embodied in a single record. If the Hearing Officer or Judge elects to consolidate the hearings, the parties shall be notified prior to the date set for the hearing.

(5) *Request for extension of time.* No request for extension of time shall be granted under this subpart unless otherwise specified.

(6) *Request for reconsideration*—(i) *Address for request for reconsideration or appeal.* Any participant who believes that a proper determination, pursuant to § 1435.529(a)(1) or (2), has not been made in accordance with applicable program regulations or that all of the facts were not considered with respect to any determination made by the Secretary, may request a reconsideration of such determination and a NAD hearing by filing a request for reconsideration with the Executive Vice President, CCC, or a designee, prior to an appeal to a Judge. However, participants who wish to contest an arbitration determination under § 1435.529(a)(3) must file a request for reconsideration prior to filing an appeal with a Judge. Any participant who elects not to request reconsideration of a determination pursuant to § 1435.529(a)(1) or (2) may appeal directly to the Judge. A request for reconsideration will toll the time for filing an appeal.

(ii) *Time limitations for filing requests for reconsideration.* (A) A request for reconsideration by a participant from any determination shall be filed within 15 calendar days after written notice of the determination is mailed to or otherwise made available to the participant. A request for reconsideration shall be considered to have been "filed" when personally delivered to the Executive Vice President, CCC, room 3086, South Agriculture Building, USDA, 14th Street and Independence Avenue, SW., P.O. Box 2415 Washington, DC 20013–2415, or when postmarked.

(B) Whenever the final date for filing a request for reconsideration prescribed in paragraph (a)(6)(ii)(A) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal work hours, the time for filing shall be extended to the close of business on the next workday.

(C) A request for reconsideration may be accepted and acted upon even though it is not filed within the time prescribed in this section if, in the judgement of the Hearing Officer with whom such request is made, the circumstances warrant such action.

(iii) *Form of request for reconsideration.* Each request for reconsideration shall be in writing and signed by the participant or by an authorized representative of the participant. Each request for reconsideration shall be supported by a written statement of facts and any other materials to support the participant's position. Such materials must be submitted with, or as part of the request for reconsideration, or within 15 calendar days or receipt of the determination. The request for reconsideration may be accompanied by a request for a NAD hearing. If a request for a NAD hearing is not submitted within 15 calendar days of the receipt of the determination, the Director shall make a recommendation to the Executive Vice President, CCC, on the basis of the material that was made available in making the prior determination and the material submitted by the participant.

(iv) *Nature of the NAD hearing.* (A) The hearing shall be held at the time and place designated by the Director.

(B) The hearing shall be conducted by the Director in the manner deemed most likely to obtain the facts relevant to the matter at issue. The participant shall be advised of the issues involved. The Director may confine the presentation of facts and evidence to pertinent matters and may exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

(C) The participant, or an authorized representative of the participant, shall be given full opportunity to present facts and information relevant to the matter in issue and may present oral or documentary evidence. The Director may require that evidence be submitted

in written form or may restrict the number of witnesses testifying. Further, the Director may request or permit persons other than those appearing on behalf of the participants to present information or evidence at such hearing and, in such event, may permit the participant to question such person.

(D) The Director shall prepare a written record containing a clear, concise statement of the facts as asserted by the participant and material facts found by the Director. The names of interested persons appearing at the hearing shall be included. A verbatim transcript shall be made if:

(*1*) The participant requests at a reasonable period of time prior to the time the NAD hearing begins that the Director provide for such a transcript and agrees to pay the expense thereof, or

(*2*) The Director determines that such a transcript is appropriate.

(E) If, at the time scheduled for the NAD hearing, the participant is absent and no appearance is made on behalf of the participant, the Director shall, after a reasonable time conclude the NAD hearing, or may, at its discretion, accept information and evidence submitted by other persons present at the NAD hearing.

(v) *Determination.* (A) The Director, prior to making a recommendation to the Executive Vice President, CCC, may request the participant to produce additional evidence which it may deem relevant or may develop additional evidence from other sources. Upon reconsideration or review, and within program authorities, the Director may recommend affirmance, modification, or reversal of any determination made initially as deemed appropriate. Recommendations by the Director shall be submitted to the Executive Vice President, CCC, for final approval. The participant shall be notified in writing of the determination of the Executive Vice President, CCC. The notification shall clearly set forth the basis for the determination. Each other person affected by the determination shall be notified in writing of the determination.

(B) When the participant requests copies of documents, information, or evidence which will form the basis of the determination, copies of such documents, information, or evidence shall be made available as provided in 7 CFR part 798.

(*7*) *Delegation of authority.* Nothing contained in these regulations in this part shall preclude the Administrator, ASCS, or the Executive Vice President, CCC, or a designee from determining at any time any question arising under the programs to which the regulations in this part apply or from reversing or modifying any determination made by the Hearing Officer.

(b) *Appeals*—(*1*) *Appeal of determination to the Administrative Law Judge.*

(i) *Exhaustion of administrative remedies.* Participants requesting reconsideration or appeal pursuant to § 1435.529(a) must exhaust their administrative remedies before filing suit in the Federal District Courts.

(ii) *Procedure for hearing*—(A) *Time limitations for filing an appeal.*

(*1*) An appeal by a participant from a determination of the Executive Vice President, CCC, shall be filed within 20 days with the Hearing Clerk after written notice of the determination is mailed to or otherwise made available to the participant. An appeal shall be considered to have been "filed" when personally delivered to the appropriate office or when postmarked.

(*2*) A copy of the appeal shall be mailed by the participant to the Executive Vice President, CCC, or a designee. Within 10 days after receipt of the appeal, the Executive Vice President, CCC, or a designee, shall mail notices to all affected parties informing them that an appeal has been filed and that they have the right to intervene in the action. Those parties who elect to intervene shall file a notice with the Hearing Clerk within 5 days after receipt of the notice of appeal.

(*3*) Whenever the final date for filing an appeal prescribed in paragraph (b)(1)(i)(A)(*1*) of this section falls on a Saturday, Sunday, legal holiday, or other day on which the appropriate office is not open for the transaction of business during normal work hours, the time for filing shall be extended to the close of business on the next work day.

(*4*) An appeal may be accepted and acted upon even though it is not filed within the time prescribed in this section if, in the judgement of the Judge with whom such request is made, the circumstances warrant such action.

(B) *Form of request for an appeal.* Each request for appeal shall be in writing and signed by the participant or by an authorized representative of the participant. Each appeal shall be supported by a written statement of facts and argument providing the basis for the appeal. The appeal may be accompanied by a request for a hearing.

(C) *Answer*—(*1*) *Filing and service.* Within 20 days after service of the participant's appeal petition, CCC shall file an answer signed by the Executive Vice President, CCC, or an authorized representative, or the attorney of record in the appeal. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer.

(*2*) *Contents.* The answer shall clearly admit, deny, or explain each of the allegations of the appeal petition and shall:

(*i*) Clearly set forth any defense asserted by CCC; or

(*ii*) State that CCC admits all the facts alleged in the appeal petition; or

(*iii*) State that CCC admits the jurisdictional allegations of the appeal petition and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(*3*) *Default.* Failure to file a timely answer shall be deemed, for purposes of the appeal, an admission of the allegations in the appeal petition and failure to deny or otherwise respond to an allegation of the appeal petition shall be deemed for purposes of the appeal, an admission of said allegation.

(D) *Procedures upon failure to file an answer.* The failure by CCC to file an answer shall constitute a waiver of hearing. Upon such failure to file, the participant shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon CCC by the participant. Within 20 days after service of such motion and proposed decision, CCC may file objections. If the Judge finds that meritorious objections have been filed, the participant's motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue an initial decision without further procedures or hearing. Copies of the initial decision or denial of participant's motion shall be served on each of the parties and shall be included as part of the administrative record. Where the decision as proposed by the participant is adopted as the Judge's initial decision, such decision of the Judge shall become final and effective 30 days after service.

(E) *Withdrawal of appeal.* At any time before the Judge files an initial decision, the participant may withdraw its appeal, however, the participant is responsible for any penalties and interest that has accrued. By withdrawing an appeal, the participant waives all further opportunity to appeal or seek review by the Judicial Officer or by a Federal court on the claim or related matters.

(F) *Prehearing conference and procedure*—(*1*) *Time and place.* The Judge shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the USDA, Washington, DC. Reasonable notice of

the time and place of the prehearing conference, and if personal attendance will be necessary, shall be given. The Judge shall order each of the parties to provide at the prehearing conference, or at another time prior to the hearing, the following:

(*i*) An outline of the appeal or defense;

(*ii*) The legal theories upon which the party will rely;

(*iii*) Copies of or a list of documents that the party anticipates relying upon at the hearing; and

(*iv*) A list of witnesses who will testify on behalf of the party. With permission of the Judge, the names of the witnesses need not be provided if they are otherwise identified in some meaningful way, such as a short statement of the type of evidence they will offer.

(*2*) *Procedures.* The Judge shall not order any of the foregoing procedures if a party can show such procedures are inappropriate or unwarranted under the circumstances of the particular appeal.

(*3*) *Matters to be considered.* At the prehearing conference, the following matters shall be considered:

(*i*) The simplification of issues;

(*ii*) The necessity of amendments to pleadings;

(*iii*) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(*iv*) The limitation of the number of expert or other witnesses;

(*v*) Negotiation, compromise, or settlement of issues;

(*vi*) The exchange of copies of proposed exhibits;

(*vii*) The identification of documents or matters of which official notice may be requested;

(*viii*) A schedule to be followed by the parties for the completion of the actions decided at the conference;

(*ix*) The possibility of obtaining stipulations regarding the type of evidence and number of witnesses to be presented at the hearing; and

(*x*) Such other matters as may expedite and aid in the disposition of the appeal.

(*4*) *Reporting.* (*i*) A prehearing conference will not be stenographically reported unless so directed by the Judge.

(*ii*) Any party to the appeal may petition the Judge to allow for a stenographic transcript of a prehearing conference. The party requesting the transcript shall bear the transcription cost of producing the transcript and the duplication cost for one transcript provided to the Judge and to the other parties to the appeal.

(*5*) *Attendance at prehearing conference.* In the event the Judge concludes that personal attendance by the Judge and the parties or counsel at a prehearing conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the Judge may conduct such conference by telephone.

(*6*) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the Judge concludes that a stenographic report, if available, shall suffice, or, in the event the conference takes place within 7 days of the beginning of the hearing, the Judge elects to make a statement on the record at the hearing summarizing the actions taken.

(G) *Transmittal of the record.* Whenever a party files a petition appealing the decision of the Executive Vice president, CCC, and a response has been filed or the time for filing a response has expired, the Director of NAD, or a designee, shall transmit the administrative record to the Judge.

(H) *Appearances.* The parties may appear in person or by attorney of record in the appeal or by any other designated representative. Any person who appears as attorney or as a party's designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

(I) *Evidence—(1) In general.* (*i*) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross examination.

(*ii*) Upon a finding of good cause, the Judge may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(*iii*) After a witness called by the participant has testified on direct examination, any other party may request and obtain the production of any statement, or any part thereof, of such witness, in the possession of the participant, which relates to the subject matter about which the witness has testified. Such production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(*iv*) Evidence which is immaterial, irrelevant, unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(*2*) *Objections—(i)* If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to the ruling of the Judge, the party shall state briefly the grounds for such objection, whereupon an automatic exception will follow if the objection is overruled by the judge.

(*ii*) Only objections made before the Judge may subsequently be relied upon in the proceeding.

(*3*) *Exhibits.* Unless the Judge finds that the providing of copies is impracticable, four copies of each exhibit shall be filed with the Judge: *Provided,* That, where there are more than two parties in the proceeding, an additional copy shall be filed for each additional party. A true copy of the exhibit may be substituted for the original.

(*4*) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated. Such record or document shall be evidenced by an official publication or by a copy certified by the person having the legal authority to make such certification.

(*5*) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: Provided, That the parties shall be given adequate notice of the matter so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(*6*) *Offer of proof.* Whenever evidence is excluded by the Judge, the party offering such evidence may make an offer of proof which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of an exhibit, it shall be marked for identification and inserted into the hearing record. In either event, the evidence shall be considered a part of the transcript and hearing record if the Judicial Officer, upon appeal, decides the Judge's ruling excluding evidence was erroneous and prejudicial. If the Judicial Officer decides the Judge's ruling was erroneous and prejudicial, and that it would be inappropriate to have such evidence part of the hearing record, the Judicial Officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(J) *Debarment of attorney or representative.* (*1*) Whenever an Judge finds that a person acting as attorney or designated representative for any party

to the appeal is guilty of unethical or contumacious conduct in, or in connection with an appeal, the Judge may order that such person be precluded from further acting as attorney or representative in the appeal. Review by the Judicial Officer may be taken on any such order, but no appeal of the claim shall be delayed or suspended pending disposition of the debarment review by the Judicial Officer; Provided, That the Judge shall suspend the appeal of the claim for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

(2) Whenever it is found, after notice and opportunity for hearing, that a person who is acting or who has acted as attorney or representative for another person in any proceeding before the U.S. Department of Agriculture, is unfit to act as such counsel because of such unethical or contumacious conduct, such person will be precluded from acting as the attorney or representative in any or all proceedings before the Department as found to be appropriate.

(K) *Failure to appear.* (1) If either party, after being duly notified, fails to appear at the hearing without cause, that party shall be deemed to have waived the opportunity for an oral hearing.

(2) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's initial decision, or to seek review by the Judicial Officer in accordance with § 1435.530(a)(6).

(L) *Transcript.* Hearings shall be recorded and transcribed verbatim. The party requesting the hearing shall bear the transcription cost of producing the transcript and the duplication cost for one copy to be provided to the Judge and each of the other parties to the appeal. At such time the hearing is scheduled, the Hearing Clerk shall order the transcript.

(iii) *Post-hearing procedure*—(A) *Corrections to transcript.*

(1) Any party may file a motion proposing correction to the transcript within 5 days of its receipt.

(2) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description. The transcript shall be deemed to be certified without further action by the Judge.

(3) At any time prior to the filing of the Judge's initial decision and after consideration of any objections filed as to the transcript, the Judge may issue an order making any corrections in the transcript that the Judge finds are warranted. Such corrections shall be entered into the original transcript by the Hearing Clerk (without obscuring the original text).

(B) *Proposed findings of fact, conclusions, orders, and briefs.* Proposed findings of facts, conclusions, orders, and briefs shall be filed simultaneously by all parties at the close of the hearing or, at the Judge's discretion, no more than 5 days post hearing.

(C) *Judge's initial decision.* (1) The Judge within a reasonable time shall prepare, upon the basis of the record and officially noticed matters, and shall file, an initial decision, a copy of which shall be served upon each of the parties.

(2) Such initial decision shall become effective 30 days after service unless a motion for review by the Judicial Officer is sought pursuant to § 1435.530(a)(6).

(3) No decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal as prescribed in § 1435.530(a)(6).

(iv) *Judges*—(A) *Assignment.* No Judge shall be assigned to serve in any appeal who:

(1) Has any pecuniary interest in any matter or business involved in the appeal,

(2) Is related by blood or marriage to any party in the appeal, or

(3) Has any conflict of interest which might impair the Judge's objectivity in the appeal.

(B) *Disqualification of Judge.* (1) Any party to the appeal may, by motion, request that the Judge withdraw from the appeal on one or more of the grounds set out in this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The Judge may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The Judge may withdraw from any appeal for any reason deemed by the Judge to be disqualifying.

(C) *Powers.* (1) Subject to review as provided elsewhere in this part, the Judge, in any assigned appeal, shall have the power to:

(*i*) Set the time and place of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(*ii*) Administer oaths and affirmations;

(*iii*) Summon and examine witnesses and receive evidence at the hearing;

(*iv*) Admit or exclude evidence;

(*v*) Hear oral argument on facts or law;

(*vi*) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(*vii*) Take all other actions authorized under these rules.

(2) The Judge may not rule upon the validity of Federal statutes or regulations.

(D) *Who may act in the absence of the Judge.* In case of the absence of the Judge or the Judge's inability to act, the powers and duties to be performed by the Judge under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other Judge.

(2) *Review by the Judicial Officer.* (i) *Filing of review petition.*

(A) Within 10 days after service of the Judge's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk.

(B) Each issue set forth in the review petition, and the arguments thereon, shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support thereof. A brief in support may be filed simultaneously with the review petition.

(ii) *Response to review petition.* Within 10 days after service of a copy of a review petition and any brief in support thereof, any other party to the proceedings may file a response in support of or in opposition to the review petition and in such response any relevant issue, not presented in the review petition, may be raised.

(iii) *Transmittal of the record.* Whenever a review petition of an Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the appeal. Such record shall include: the pleadings, motions and requests filed and the rulings; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection; any documents or papers filed in connection with a prehearing conference; the Judge's decision; such exceptions, statements of objections and briefs in support and responses as may have been filed in the proceeding.

(iv) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear

personally before the Judicial Officer. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(v) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition. Evidence will be limited to the administrative record, no new evidence may be presented.

(vi) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(vii) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(viii) *Submission of briefs.* By agreement of the parties, a brief may be submitted for decision, but the Judicial Officer may direct that the review be argued orally.

(ix) *Decision of the Judicial Officer on review.* (A) As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the review.

(B) The Judicial Officer may adopt, reduce, reverse, compromise, remand or approve settlement of any claim decided by the Judge under this part.

(C) The Judicial Officer shall promptly serve each party to the appeal with a copy of the ruling of the Judicial Officer which shall be considered the final determination for purposes of judicial review and contain a statement describing the right to seek judicial review.

(3) *Ex Parte communications*—(i) *Judge; Judicial Officer.* At no time prior to the issuance of the final decision shall the Judge or Judicial Officer discuss ex parte the merits of the appeal or review with any person who is connected with the appeal or review in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the Judge or Judicial Officer may discuss the merits of the case with such a person if all parties to the appeal or review, or their attorneys have been given notice and an opportunity to participate. A memorandum of such discussion shall be included in the record.

(ii) *Parties; interested persons.* No party or other interested person shall make or knowingly cause to be made to the Judge or Judicial Officer an ex parte communication relevant to the merits of the appeal or review.

(iii) *Procedure.* (A) If the Judge or Judicial Officer receives an ex parte communication in violation of this section, the person who receives the communication shall place in the public record of the appeal or review:

(*1*) All such written communications;

(*2*) Memoranda stating the substance of all such oral communications; and

(*3*) Copies of all written responses, and memoranda stating the substance of all oral responses thereto.

(B) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Judge or Judicial Officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why its claim or interest in the appeal or review should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(iv) *Decision.* To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

(4) *Form; filing; service; proof of service; computation of time; and extensions of time.*

(i) *Form.* (A) The original and two copies of all papers in a proceeding conducted under this part shall be filed with the Hearing Clerk.

(B) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the docket number assigned by the Hearing Clerk, and a descriptive title (e.g., Motion for Extension of Time).

(C) Every pleading and paper shall be signed by and contain the address and telephone number of the representative for the party on whose behalf the paper was filed.

(ii) *Filing.* Papers are considered filed when they are postmarked, or received, if hand-delivered. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(iii) *Service.* A party filing a document with the Judge shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney or designated representative, service shall be made upon such attorney or representative in lieu of the actual party

(iv) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the date, time and manner of service, shall be proof of service.

(v) *Computation of time.* (A) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next workday.

(B) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

(vi) *Extensions of time.* Requests for extensions of time shall be submitted to the Judge, Chief Judge, or the Judicial Officer prior to the expiration of the original due date. Except for the filing of a notice of appeal as required by § 1435.530(b)(2)(i), the time for the filing of any document or paper required or authorized under the rules in this part may be extended by the Judge, Chief Judge, or the Judicial Officer, if, in the judgment of the Judge, Chief Judge, or the Judicial Officer, there is good cause for the extension. In instances where the time permits notice of the request for extension, time shall be given to the other party to submit views concerning the request.

(5) *Procedural matters*—(i) *Communications from Hearing Clerk.* In order to expedite the appeal process, the Hearing Clerk may develop form letters and transmittal forms to be used for notices, service of papers, requests for information, and all other communications between the Hearing Clerk's Office and the parties.

(ii) *Representation.* All parties may be represented by attorneys or by designated representatives. Attorneys or designated representatives appearing for the parties shall file formal notices of appearances and withdrawals with the Hearing Clerk.

Signed the 30th day of July, 1993 in Washington, DC.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 93–18864 Filed 8–5–93; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 73

**[Docket No. 27400; Amendment No. 73–6]**

### Special Use Airspace

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final Rule; technical amendment.

**SUMMARY:** This action amends the office title of the Director, Air Traffic Operations Service, in the regulation that was affected by an agencywide reorganization. This change is necessary to make the regulation consistent with the current agency structure.

**EFFECTIVE DATE:** August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph C. White, Air Traffic Rules Branch, (ATP–230), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 1, 1988, the FAA underwent a reorganization that affected both headquarters and regional offices. One result of the reorganization was a realignment of functions with a corresponding change in office names. Federal Aviation Regulation (FAR) § 73.19 (14 CFR 73.19) requires agencies using special use airspace to report their annual use of assigned restricted areas to the Director, Air Traffic Operations Service. The office with current responsibility for managing those reports, however, is the Director, Office of Air Traffic System Management. This technical amendment updates the rule to reflect the change in office name.

Because this action is merely a technical amendment reflecting the change in the name of an office, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds that good cause exists for making this amendment effective upon publication.

Further, the FAA has determined that this regulation: (1) Is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 73**

Air safety, Air traffic control, Air transportation, Airmen, Airports, Aviation safety.

**The Amendment**

In consideration of the above, the FAA amends Part 73 of the FAR (14 CFR Part 73) as follows:

## PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

**§ 73.19 [Amended]**

2. In paragraphs (a) and (c) of § 73.19, remove the words "Director, Air Traffic Operations Service," and add, in their place, the words "Director, Office of Air Traffic System Management" in each paragraph.

Issued in Washington, DC, on August 2, 1993.

**Willis C. Nelson,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93–18847 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 917

### Kentucky Permanent Regulatory Program; Hearings

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is announcing the approval, with exceptions, of proposed amendments to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendments consist of Senate Bill 318, which revises the Kentucky Revised Statutes (KRS) with respect to conferences, hearings, civil penalties, and administrative review rights and procedures, and modifications to the Kentucky Administrative Regulations (KAR) at 405 KAR 7:001, 7:091, 7:092, 8:001, and 12:020 concerning the same topics. The amendments are primarily a State initiative, but they also satisfy OSM's 30 CFR part 732 notification to Kentucky dated November 14, 1991 (Administrative Record No. KY–1080), which required that the State amend its program to require prepayment of civil penalties into escrow as a prerequisite for administrative review. All changes are intended to either bring the State program into compliance with Federal requirements or improve the clarity and specificity of existing provisions.

**EFFECTIVE DATE:** August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: 606–233–2896.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Kentucky Program
II. Submission of Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

**I. Background on the Kentucky Program**

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

**II. Submission of Proposed Amendment**

By letter dated July 28, 1992, (Administrative Record No. KY–1170) Kentucky submitted a proposed program amendment containing additions and modifications to 405 KAR 7:001, 7:091, 7:092, 8:001, 10:001, 12:001, 12:020, 16:001, 18:001, 20:001 and 24:001. The proposed amendment contained new procedures for

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administrative hearings conducted under KRS Chapter 350.

OSM announced receipt of the proposed amendment in the September 23, 1992, **Federal Register** (57 FR 43949), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 23, 1992. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

By letter dated July 30, 1992 (Administrative Record Number KY–1171), Kentucky submitted a proposed program amendment containing seven pieces of legislation affecting KRS Chapter 350 and a resolution that were enacted by the 1992 Regular Session of the Kentucky General Assembly. Included in this proposed amendment was Senate Bill (S.B.) 318, which relates to conferences, hearings, civil penalties, and appeals. Inasmuch as the material covered by S.B. 318 is directly related to the regulatory revisions contained in the proposed amendment filed by Kentucky on July 28, 1992, S.B. 318 is being consolidated with that submission in this final rule.

OSM announced receipt of the amendment package containing S.B. 318 in the September 23, 1992, **Federal Register** (57 FR 43952), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 23, 1992. Since no one requested an opportunity to testify at a public hearing, the schedule, hearing was cancelled.

By letter dated September 18, 1992 (Administrative Record Number KY–1180), Kentucky submitted revised amendments to its administrative regulations at 405 KAR 7:001, 405 KAR 7:091, 405 KAR 7:092, and 405 KAR 12:020. These revisions to the original program amendments submitted on July 28, 1992, were the result of comments received during a public hearing held by Kentucky on August 27, 1992.

OSM announced receipt of the proposed revisions in the December 9, 1992, **Federal Register** (57 FR 58169), and, in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed revisions to the original amendment. The comment period closed on December 24, 1992. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

By letter dated December 10, 1992 (Administrative Record Number KY–1202), Kentucky resubmitted its administrative hearings regulations as revised during the State's promulgation process. The resubmission included the final promulgation of regulation changes at 405 KAR 7:001, 405 KAR 7:091, 405 KAR 7:092, 405 KAR 8:001 and 405 KAR 12:020 relating to hearings. In addition, those portions of Kentucky's original submission relating to regulation changes at 405 KAR 10:001, 405 KAR 12:001, 405 KAR 16:001, 405 KAR 18:001, 405 KAR 20:001 and 405 KAR 24:001 were withdrawn.

OSM announced receipt of the resubmission dated December 10, 1992, in the January 14, 1993, **Federal Register** (58 FR 4384), and, in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed revisions to the original amendment. The comment period closed on January 29, 1993. Since no one requested an opportunity to testify at a public hearing, the scheduled hearing was cancelled.

## III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendments to the Kentucky program.

Revisions not specifically discussed below either concern cross-references and paragraph notations that have been updated to reflect organizational or nomenclature changes or involve nonsubstantive wording changes.

### *A. Proposed Amendments to Kentucky's Revised Statutes (KRS)*

#### 1. Senate Bill 318, Section 1

Section 1 of S.B. 318 creates a new section in KRS Chapter 350, the State surface mining law, which sets forth the requirements for all hearings, other than conferences, held pursuant to KRS Chapter 350, including hearing officer qualifications, hearing report preparation and service, procedures for the filing of exceptions, identification of items to be considered in a final order, the rights of the parties to a hearing, and public participation in the hearing process. Except as noted below, these requirements, when read together with their implementing regulations, are similar to the Federal requirements concerning administrative review of agency actions in SMCRA; 30 CFR parts 775, 843 and 845; and 43 CFR part 4.

Section 1(3) of S.B. 318 states that "[A]ll hearings conducted pursuant to this chapter shall be open to the public except as may be ordered by the hearing officer." In a letter dated April 28, 1993 (Administrative Record No. KY–1217), OSM notified Kentucky that the exception clause rendered this provision less stringent than SMCRA. In a response dated May 7, 1993 (Administrative Record No. KY–1218), the Secretary of the Natural Resources and Environmental Protection Cabinet (NREPC or the Cabinet) stated that "the cabinet will propose to the 1994 General Assembly that the phrase 'except as may be ordered by the hearing officer' be deleted." Since this change has not yet been made, the Director is not approving the phrase "except as may be ordered by the hearing officer."

Paragraphs (3) and (4) of this section of the legislation direct or authorize the Cabinet to promulgate administrative regulations for (1) procedures for formal and informal hearings, (2) assessment and payment of civil penalties, (3) payment of a proposed penalty assessment into escrow prior to formal hearing, and the waiver of such penalty payment based on demonstrated inability to pay, and (4) procedures for holding administrative conferences. The regulations ultimately adopted in response to this mandate are discussed below in separate findings.

#### 2. Senate Bill 318, Section 2

Section 2 of S.B. 318 creates a new section KRS Chapter 350 setting forth procedures whereby any person aggrieved by a determination of the Cabinet under KRS Chapter 350 may request a hearing; authorizing any person aggrieved by a final order of the Cabinet to appeal to the Franklin Circuit Court; and establishing procedures for filing and review of such appeals.

By letter dated April 26, 1993 (Administrative Record No. KY–1217), OSM requested clarification of a provision in paragraph (1) of this section which requires that the Cabinet serve written notice of a petition and schedule a hearing "unless the Cabinet considers that the petition is frivolous." In a response dated May 7, 1993 (Administrative Record No. KY–1218), Kentucky stated that by law it could not find a petition to be frivolous if the petition alleges that the Cabinet's determination is contrary to law or fact and injurious to the petitioner, and if it sets forth the reasons therefor. In addition, the State pointed out:

> If the petition does not conform to the requirements of the statute and regulation, the hearing officer, in a pretrial order, will require the filing of a more definite statement or an amended petition. The regulations also provide for a show cause proceeding prior to dismissal of any petition.

Finally, the State noted that this same requirement had been approved by the Secretary, in nearly identical form, in an October 22, 1980, final rule concerning the Kentucky program (45 FR 69964). Therefore, the Director finds that the provisions of Section 2 of SB 318, as clarified by Kentucky, are not inconsistent with the requirements of SMCRA or the Federal regulations.

3. Senate Bill 318, Section 3

Section 3 of S.B. 318 revises KRS 350.028(4) by requiring that the Secretary of the Cabinet issue an order to a permittee to show cause why the permit should not be suspended or revoked whenever the Secretary determines that a pattern of violations exists or has existed and that such violations are either willfully caused by the permittee or are the result of an unwarranted failure to comply. The Director finds that this proposal is substantively identical to and, therefore, no less stringent than, the corresponding portion of section 521(a)(4) of SMCRA.

4. Senate Bill 318, Section 5

Section 5 of S.B. 318 removes KRS 350.255(2) in its entirety. All of the provisions being deleted are included in one or both of the new sections being added to KRS Chapter 350 by Sections 1 and 2 of S.B. 318. Therefore, the Director finds that deletion of KRS 350.255(2) will not render Kentucky's program inconsistent with the requirements of SMCRA or the Federal regulations.

*B. Proposed Amendments to Kentucky's Administrative Regulations (KAR)*

1. 405 KAR 7:001 and 8:001—Definitions of Terms

(a) *New definitions.* Kentucky proposes to add definitions of the following terms to 405 KAR 7:001: Administrative hearing, final order, hearing officer, individual, initiating document, interim report, Office (for purposes of 405 KAR 7:091 and 7:092 only), and record. There are no Federal counterparts to these proposed definitions, except for the definition of "record", which the Director finds to be substantively identical to the Federal definition at 43 CFR 4.24(a)(1). However, the Director finds that each of these proposed definitions provides appropriate clarity and specificity to 405 KAR Chapter 7, and is not inconsistent with the requirements of SMCRA or the Federal regulations.

Kentucky also proposes to add a definition of "industrial/commercial lands" to 405 KAR 7:001 and 8:001. The definition as proposed is substantively identical to the Federal definition of this term at 30 CFR 701.5, and to the definitions of this term in 405 KAR 16:001, 18:001 and 20:001, which were previously approved by the Director on October 1, 1992 (54 FR 45295). Therefore, the Director finds the proposed definition to be no less effective than its Federal counterpart.

(b) *Definition of "Person".* As originally proposed in Kentucky's submission dated July 28, 1992 (Administrative Record Number KY–1170), the definition of "person" in 405 KAR 7:001, 405 KAR 8:001, 405 KAR 10:001, 405 KAR 12:001, 405 KAR 16:001, 405 KAR 18:001, 405 KAR 20:001 and 405 KAR 24:001 was to be revised to include a reference to KRS 446.010(26), which provides that "person may extend and be applied to bodies-politic and corporations, societies, communities, the public generally, individuals, partnerships and joint stock companies." Kentucky made this revision in response to OSM's action on a previous program amendment, wherein Kentucky proposed to replace detailed definitions of eleven terms (including "person") in its regulations with cross-references to the statutory definitions of those terms set forth in KRS 350.010 and 350.450(4)(c). For the reasons set forth in finding B.1(c) at 57 FR 45299 (October 1, 1992) as quoted below, the Director deferred as decision on Kentucky's definition of "person":

> The definition of "person" currently set forth as 405 KAR 7:020 contains a reference to governmental agencies, units or instrumentalities and publicly owned utilities or corporations of governmental units. The Federal definition at 30 CFR 700.5 contains the same reference. Kentucky's statutory definition [at KRS 350.010] does not contain such reference. By letter dated July 20, 1992 (Administrative Record Number KY 1169), Kentucky stated that [it would] revise the definition in a program amendment to be submitted to OSM in the near future by adding a reference to KRS 446.010(26), which provides that the term "person" may extend and be applied to "bodies-politic." Therefore, the Director is deferring action on the proposal to replace the current regulatory definition of "person" with a reference to the statutory definition until the proposed program amendment discussed above is submtted and approved by OSM.

On December 10, 1992, Kentucky resubmitted its proposed amendment, incorporating regulation changes made during the promulgation process. One of these changes affected the definition of person. Kentucky removed the definition from 405 KAR 10:001, 405 KAR 12001, 405 KAR 16:001, 405 KAR 18:001, 405 KAR 20:001 and 405 KAR 24:001, leaving the definition at 405 KAR 7:001 and 405 KAR 8:001. In addition, Kentucky revised the definition by removing the reference to KRS 446.010(26). Therefore, Kentucky has, in effect, not changed the definition from the proposed definition on which the Director deferred action on October 1, 1992, at 57 FR 45295.

The Director has determined that Kentucky's regulatory definition of person, to be no less effective than its Federal counterpart, must include reference to "governmental agencies, units or instrumentalities and publicly owned utilities or corporations of governmental units," as does the Federal definition at 30 CFR 701.5. On May 7, 1993 (Administrative Record No. KY–1218), in response to a letter from OSM dated April 26, 1993 (Administrative Record No. KY–1217), Kentucky acknowledged the difference between Kentucky's statutory definition and the Federal regulatory definition and stated that the Cabinet intends to propose that the 1994 General Assembly revise the statutory definition of "person" at KRS 350.010(9) to be consistent with the Federal regulations. Since this action has not yet been accomplished, the Director is not approving the proposed definitions of "person" at 405 KAR 7:001 section 1(63) and 8:001 section 1(78), and the deferral action published on October 1, 1992 (57 FR 45299), continues in effect. In addition, he is requiring that Kentucky revise its statutory definition of "person" in KRS 350.010(9) to be no less inclusive than the corresponding Federal definition at 30 CFR 700.5.

2. 405 KAR 7:091—General Practice Provisions

This proposed regulation sets forth hearing, notice and other procedural and due process provisions for administrative review of actions taken under the Kentucky program. Together with proposed regulation 405 KAR 7:092, which is discussed in finding B.3., it contains the substance of Kentucky's current hearings regulations (405 KAR 7:090), which are proposed for repeal in this amendment.

(a) *Proposed regulations that are substantively identical to existing regulations on hearings (405 KAR 7:090) in Kentucky's current program.*

| 405 KAR 7:091 Section | Subject | 405 KAR 7:090 section |
|---|---|---|
| 1 | Applicability | 1. |
| 2 | Construction | 2. |
| 3(1)(a) | Hearings generally. | 5(8). |

| 405 KAR 7:091 Section | Subject | 405 KAR 7:090 section |
|---|---|---|
| 3(1)(b) | Evidence | 5(9). |
| 3(5) | Hearing Officer's report. | 5(12), (13). |
| 3(6) | Secretary's order | 5(14), (15), (17). |
| 5 | Service | 6. |
| 6(1),(2) | Administrative summons and public notice of hearing. | 5(6). |
| 10 | Location of administrative hearings and penalty assessment conferences. | 7. |
| 11 | Intervention and consolidation. | 12. |
| 12(1),(2) | Judicial review | 14. |

These proposed regulations are substantively identical to existing regulations in Kentucky's currently approved program. Minor revisions and additions have been made to add specificity, provide better procedural guidance, and improve clarity. None of these changes (such as specifying that personal service of documents may only be made on persons at least 18 years of age and requiring that service upon the Cabinet be accomplished by serving the Commissioner of the Department of Law) will adversely affect any Federal requirement or prevent Kentucky from properly implementing State counterparts to Federal requirements. Therefore, the Director finds that adoption of these proposed rules will not render the Kentucky program less effective than SMCRA and its implementing Federal regulations.

(b) *Proposed rules, not part of Kentucky's current hearings regulations, which are substantively identical to corresponding Federal regulations.*

| 405 KAR 7:091 | Subject | 43 CFR |
|---|---|---|
| 3(2) | Hearing officer's duties. | 4.1121(a). |
| 3(3) | Prehearing conference. | 4.1121(b). |
| 3(4) | Summary disposition. | 4.1125. |
| 4(1),(2) | Standards of conduct. | 4.27(b),(c). |
| 5(4) | Service on all parties. | 4.1109(b) - (d). |
| 7(1) | Filing of documents. | 4.22(a). |
| 7(2) | Retention of documents. | 4.22(c). |
| 7(3) | Record address | 4.22(d). |
| 7(4) | Transcripts | 4.23. |
| 8(1) - (3) | Time | 4.22(e), (f)(1), (f)(2). |
| 9 | Subpoenas | 4.26(a). |
| 12(3) | Remands from courts. | 4.29. |

Because these proposed regulations are identical in meaning to the corresponding Federal regulations at 43 CFR part 4, the Director finds that Kentucky's proposed rules are no less effective than the Federal rules and are in compliance with 30 CFR 840.15.

(c) *Proposed repeal of 405 KAR 7:090.* In Section 13 of 405 KAR 7:091, Kentucky proposes to repeal its current regulations on hearings at 405 KAR 7:090. The provisions of those regulations are being transferred to new 405 KAR 7:091 and 7:092, as well as to 405 KAR 12:020 sections 7(2) and (8), as discussed in findings B.2., B.3., and B.4.(b) herein. Since all pertinent provisions thus will remain in effect, the Director finds that the repeal of 405 KAR 7:090 will not render Kentucky's program inconsistent with any SMCRA-related Federal requirements.

3. 405 KAR 7:092—Administrative Hearings and Assessment Conferences

This proposed regulation sets forth civil penalty assessment procedures and specific administrative review rights and procedures pertinent to actions taken (or not taken) by the Cabinet. Together with proposed 405 KAR 7:091, which is discussed in finding B.2. above, it contains the substance of—and generally resembles—Kentucky's current hearings regulations at 405 KAR 7:090, which this amendment would replace. The two most significant changes from 405 KAR 7:090 would allow persons to appeal the fact of violation independent of the penalty assessment process and would replace the formal preliminary hearing process for review of proposed civil penalties with the less formal assessment conference process. Both changes align the revised Kentucky rules more closely to the corresponding Federal rules concerning enforcement actions and civil penalty assessments at 30 CFR 843.16, 845.18, and 845.20, which contain similar procedural requirements.

Kentucky proposed these two changes primarily in response to OSM's Part 732 notification to Kentucky dated November 14, 1991 (Administrative Record No. KY–1080), which required that the Commonwealth revise its regulations to restore the provision requiring prepayment of any proposed penalty into escrow as a prerequisite for formal administrative review of the penalty amount, as is required by section 518(c) of SMCRA. Prior to this amendment, the Kentucky program at 405 KAR 7:090 section 4(9) established prepayment into escrow as a prerequisite for second-level administrative review of either the fact of violation or the penalty amount. (No prepayment was required for a first-level administrative review, known as a preliminary hearing, of either the fact of violation or the proposed penalty.) Although OSM had previously found Kentucky's existing rule to be consistent with section 518(c) of SMCRA and other pertinent Federal requirements (see Comment No. 3, 53 FR 39260, October 6, 1988), the Kentucky Supreme Court, in *James D. Franklin, et al.* v. *NREPC*, Ky., 799 S.W.2d 1 (1990), subsequently invalidated its escrow prepayment requirements on several grounds, thus leaving the State program less stringent than SMCRA. The changes being approved in this rulemaking are intended to address the court's concerns while restoring the State program's consistency with SMCRA. Since the amendment reestablishes escrow prepayment requirements similar to those set forth in both section 518(c) of SMCRA and 30 CFR 845.19, the Director finds that Kentucky has satisfied the requirements placed on the State by the November 14, 1991, part 732 notification.

In addition to the major changes discussed above, Kentucky has replaced the term "permittee" in former 405 KAR 7:090 with the phrase "permittee, operator, or person" in the corresponding provisions of the rules being approved today. Since the enforcement and penalty assessment provisions of the Federal rules at 30 CFR Parts 843 and 845 apply to any responsible party, not just the permittee, the Director finds that the State's proposed change in terminology is consistent with SMCRA and the Federal regulations.

(a) *Proposed regulations that are substantively identical to existing regulations on hearings (405 KAR 7:090) in Kentucky's current program.*

| 405 KAR 7:092 section | Subject | 405 KAR 7:090 section |
|---|---|---|
| 2 | Construction | 2. |
| 3(1) | Notification | 3(1). |
| 3(3) (a), (b) | Service | 3(3)(a),(b). |
| 4(1)(b) | Failure to file | 3(4)(c). |
| 4(2) | Service; public participation. | 4(2). |
| 4(4) | Report of conference officer. | 4(5). |
| 4(5) | Service of report | 4(5). |
| 4(7) | Failure to attend | 3(4)(c). |

| 405 KAR 7:092 section | Subject | 405 KAR 7:090 section |
|---|---|---|
| 4(9) | Who may request a hearing. | 4(9), 5(2)(a)3. |
| 4(10) | Failure to timely request. | 4(10). |
| 5(1)(a), (b) | Cabinet-initiated hearings. | 4(9). |
| 5(2) | Remedies | 5(3) |
| 13 | Penalties | 11. |
| 14(2)–(5) | Costs and expenses. | 13(1), (3)–(6). |

With the exception of the rule restructuring and revisions needed to accommodate the changes discussed in the introductory paragraphs of finding B.3. above, these proposed regulations are substantively identical to existing regulations in Kentucky's currently approved program, which have previously been found to be consistent with Federal requirements. Other minor revisions and additions have been made to add specificity, provide better procedural guidance, and improve clarity. In addition, consistent with both State and Federal requirements concerning temporary relief (405 KAR 7:092 section 12 and section 525(c) of SMCRA, respectively), Kentucky has revised 405 KAR 7:092 section 13(2)(b) to delete the provision in former 405 KAR 7:090 section 11(2)(b) that suggested that, before granting temporary relief from an order ceasing mining, the Cabinet must find that the person requesting relief would suffer irreparable loss or damage from application of the abatement requirements of the order. None of these changes or rule reorganizations will adversely affect any Federal requirement or prevent Kentucky from properly implementing State counterparts to Federal requirements. Therefore, except for that portion of 405 KAR 7:092 section 4(5) discussed in finding B.3.(c)(4) of this preamble, the Director finds that adoption of these proposed rules will not render the Kentucky program inconsistent with SMCRA or its implementing Federal regulations.

(b) *Proposed regulations, not part of Kentucky's current hearings regulations, which are substantively identical to corresponding Federal regulations.*

| 405 KAR 7:092 section | Subject | Federal regulation |
|---|---|---|
| 3(4)(b) | Assessment conference. | 30 CFR 845.18(a). |
| 4(1)(a) | Request for conference. | 30 CFR 845.18(a). |
| 4(1)(c) | Date of conference. | 30 CFR 845.18(b(1). |
| 4(3) | Conference officer. | 30 CFR 845.18(b)(1). |
| 4(6) (a), (b) | Agreed order. | 30 CFR 845.18(d) (1); (2). |
| 4(8) | Inadmissible evidence. | 30 CFR 845.18(f). |
| 12 | Temporary relief. | 30 CFR 4.1262–1266, 43 CFR 4.1367, 30 CFR 775.11(b)(2). |

Because the above proposed regulations are substantively identical to the corresponding Federal regulations, the Director finds that Kentucky's proposed rules are in compliance with 30 CFR 840.13 and 840.15.

(c) *Proposed regulations that are not part of Kentucky's existing regulations on hearings and which either differ from the corresponding Federal requirements or have no Federal counterparts* (1) *Section 1—Applicability*—This proposed rule is similar to Section 1 of the existing Kentucky rule at 405 KAR 7:090, except that the applicability of the penalty prepayment provisions of Sections 3 and 6 and the waiver of payment provisions of Section 15 would be restricted to enforcement actions (notices and orders) issued on or subsequent to the effective date of 405 KAR 7:092. In addition, when requests for formal hearings had been timely filed at the time these proposed regulations take effect, this section specifies that failure to comply with the procedural requirements of the new regulations shall not be cause for dismissal of the cases. Since regulations are generally prospective rather than retroactive in their application, the Director finds that the provisions discussed above are not inconsistent with the requirements of SMCRA or the Federal regulations, and that the changes proposed by the State will not render Kentucky's program less effective than the Federal program.

(2) Section 3—Proposed Penalty Assessment and Request for Assessment Conference and Administrative Hearing.—(A) Penalty assessment. Proposed 405 KAR 7:092 section 3(2) is similar to the currently approved rule at 405 KAR 7:090 section 3(2), except that it would prohibit any consideration of good faith in calculating the amount of the proposed penalty if the violation is not correctable. The Director finds that this provision is consistent with 30 CFR 845.13(b)(4), which stipulates that good faith may be considered only in the context of how rapidly the violation is abated, thereby indicating that a person who commits an unabatable violation is not eligible for good faith consideration during the penalty assessment process.

(B) Waiver of hearing on proposed penalty. Proposed 405 KAR 7:092 section 3(4)(a) is similar to the currently approved rule at 405 KAR 7:090 section 3(4)(c), except that, in cases in which a separate request for an administrative hearing on the fact of violation was filed timely, an uncontested civil penalty would not become due and payable until 30 days after the administrative review entity mails a final order affirming the fact of violation. The Federal civil penalty regulations at 30 CFR part 845 and Federal administrative review regulations at 43 CFR part 4 do not clearly specify when a civil penalty becomes due and payable in this situation. However, the Kentucky proposal appears to be an equitable approach in that it would not require a person who challenges the fact of violation at the time of issuance of the notice of violation to pay any related civil penalties (which would be assessed at a time subsequent to the filing of this appeal) until such time as a final decision on the fact of violation is rendered. Therefore, the Director finds that it is not inconsistent with section 518 of SMCRA or the Federal regulations implementing that section of the Act.

(C) Administrative review rights. Proposed 405 KAR 7:092 section 3(4)(c), which sets forth a person's rights to administrative review of the proposed penalty and/or fact of violation following issuance of the proposed penalty assessment, is similar to the corresponding Federal provisions at 30 CFR 845.19(a), as required by 30 CFR 840.13(c) and 840.15, with one exception. That exception is the sentence specifying that this subsection shall not be construed as infringing upon a person's right to contest the fact of the violation without paying the proposed assessment into the Cabinet's escrow account if a petition is timely filed pursuant to 405 KAR 7:092 section 7, the State counterpart to 30 CFR 843.16, which allows a person to appeal the fact of violation at the time a notice of violation is issued rather than waiting to do so until the proposed penalty assessment is received. Neither 30 CFR 843.16 nor 845.19 include equivalent language. However, OSM has always applied and interpreted these Federal rules in a manner consistent with the State's proposal. Therefore, the Director finds that the proposed State rule is not

inconsistent with any Federal requirement.

(3) Section 5—Administrative Hearings Initiated by the Cabinet—(A) Mandatory actions. Proposed 405 KAR 7:092 section 5(1)(c) sets forth the conditions under which the cabinet shall initiate an administrative hearing and seek revocation of the permit and forfeiture of the bond or suspension of the permit. The proposal is similar to the currently approved Kentucky rule at 405 KAR 7:090 section 5(2)(b), except that the new rule no longer lists a pattern of violations as one of the conditions requiring issuance of a show cause order, whereas the existing rule in 405 KAR 7:090 and the corresponding Federal rule at 30 CFR 843.13(a)(1) do. However, elsewhere in this amendment, Kentucky has transferred this requirement to 405 KAR 12:020 section 8. Therefore, the Director finds that the changes proposed by Kentucky will not render the State program less stringent than SMCRA or less effective than the Federal regulations.

(B) Procedures and filing requirements. Proposed 405 KAR 7:092 section 5(3) sets forth procedures and filing requirements for administrative hearings initiated by the cabinet. Although there is no direct counterpart in Kentucky's current hearings regulations or the Federal regulations, the Director finds that the proposal would not adversely affect the State's ability to comply with the State counterparts to the administrative review and public participation provisions of the Federal regulations at 43 CFR Part 4 or the requirements of 30 CFR 840.13 and 840.15, and that it is therefore not inconsistent with any Federal requirement.

(C) Burden of proof. Proposed 405 KAR 7:092 section 5(4) provides that the Cabinet shall have the ultimate burden of persuasion when the Cabinet initiates an administrative hearing; the responding party shall have the burden of persuasion to establish an affirmative defense; and the responding party shall have the burden of persuasion to establish qualifications for an exemption, if one is claimed. There is no direct counterpart in Kentucky's current hearings regulations or in the Federal regulations. However, the Director finds that the proposed rule is in accordance with established legal principles; that it does not conflict with any SMCRA-related Federal requirement, including the various burden of proof provisions of subpart L of 43 CFR part 4; and that it is, therefore, not inconsistent with SMCRA or the Federal regulations.

(D) Show cause orders for failure to comply with hearing officer orders. Proposed 405 KAR 7:092 section 5(5) sets forth criteria and procedures for issuance of orders to show cause why an objection to the Cabinet's petition should not be dismissed when the person filing the objection fails to comply with a prehearing order of the hearing officer. If the person does not provide a satisfactory explanation, the proposed rule requires that the hearing officer recommend the entry of a final order conforming to the relief requested by the Cabinet. In addition, the proposed rule provides that a person against whom an administrative complaint is filed by the Cabinet shall be deemed to have waived the right to a hearing if he or she fails to appear at the hearing. There is no direct counterpart in either Kentucky's current hearings regulations or the Federal regulations. However, the proposed rule is consistent with the various provisions of subpart L of 43 CFR part 4 governing default judgments and summary disposition of complaints (especially 43 CFR 4.1156), and it would not adversely impact any Federal requirements. Therefore, the Director finds that it is not inconsistent with SMCRA or the Federal regulations.

(4) Section 6—Administrative Hearings for Review of Proposed Penalty Assessments. Proposed 405 KAR 7:092 section 6 sets forth procedural and related requirements concerning administrative review of proposed civil penalty assessments. With two exceptions, these requirements, when read with their companion provisions in this amendment at 405 KAR 7:091 (especially section 3(5)(b)) and 405 KAR 7:092 section 13(6), are similar to the corresponding Federal rules at 43 CFR 4.1150 through 4.1157, as required by 30 CFR 840.13(c) and 840.15.

Although the Kentucky rules do not contain any counterparts to those portions of the Federal rules (e.g., 43 CFR 4.1154 and 4.1157(b)(1)) which refer to use of a civil penalty formula or point system, the omission of these provisions does not render the State program inconsistent with SMCRA or the Federal regulations. Section 518(i) of SMCRA requires only that State programs incorporate penalties no less stringent than those set forth in the Act and "contain the same or similar procedural requirements relating thereto." In interpreting this provision, the court, in *In re Permanent Surface Mining Regulation Litigation*, Civil No. 79–1144 (D.D.C., February 26, 1980, mem. op. at 14–16, and May 16, 1980, mem. op. at 56–57), held that OSM could not require States to adopt a counterpart to the Federal civil penalty formula and point system. Therefore, in omitting the provisions discussed above, the proposed amendment does not violate SMCRA as interpreted by the courts.

However, the proposed Kentucky rules also differ from the Federal rules at 30 CFR 845.18(c) and 43 CFR 4.1151(b) with respect to how participants in an assessment conference must be notified of the results of the conference. The Federal rule at 30 CFR 845.18(c) requires that the person assessed be notified of the conference results by certified mail or alternative means consistent with the rules governing service of a summons or complaint under rule 4 of the Federal Rules of Civil Procedure. The proposed Kentucky rule at 405 KAR 7:092 section 4(5) requires only that the conference officer's report be served by regular mail. Similarly, the Federal rule at 43 CFR 4.1151(b) provides that a person may file a request for administrative review of a proposed civil penalty within 15 days of service of the conference officer's report, while the proposed Kentucky rule at 405 KAR 7:092 section 6(1)(b) provides that such a request must be filed within 30 days of the date of mailing of the report. This difference is significant since, because no proof of service is required under the Kentucky rule, a person's opportunity to file for administrative review of a proposed civil penalty could expire before actual or constructive receipt of the conference officer's report, and, hence, before he or she even was aware, or had an opportunity to be aware, of the filing deadline. Therefore, in this respect, proposed sections 4(5) and 6(1)(b) of 405 KAR 7:092 are not procedurally similar to the corresponding Federal requirements and are not in accordance with 30 CFR 840.13(c). Hence, the Director is requiring that Kentucky further amend these rules to make them fully consistent with Federal requirements.

(5) Section 7—Administrative Review of Notices of Noncompliance and Orders for Remedial Measures and Orders for Cessation and Immediate Compliance. Like the Federal rule at 30 CFR 843.16, proposed 405 KAR 7:092 section 7 would allow a person to request administrative review of the fact of violation at the time the notice or order is issued, rather than waiting until the proposed penalty assessment is issued as is required under the currently approved Kentucky program. This section also specifies the procedural requirements applicable to administrative review of these types of

enforcement actions. Since the proposed administrative review procedures and related requirements are similar to those set forth in the corresponding Federal rules in 43 CFR 4.1160 through 4.1187, the Director finds that the proposed rules are consistent with the requirements of 30 CFR 840.13 and 840.15.

(6) Section 8—Request for Review of Permit Determinations. Proposed 405 KAR 7:092 section 8 sets forth procedural and related requirements for administrative review of permit determinations (permit application decisions and revision orders). The proposed procedures and requirements are similar to those set forth in the corresponding Federal rules at 43 CFR 4.1360 through 4.1366. Therefore, the Director finds that the proposed rules are not inconsistent with SMCRA or the Federal regulations. Additional provisions corresponding to the administrative review requirements of 30 CFR 775.11 concerning permit decisions can be found in Chapter 7:091 and Section 12 of Chapter 7:092 of this amendment.

(7) Section 9—Review of Cabinet Determinations. Proposed 405 KAR 7:092 section 9 sets forth the procedures and related requirements for administrative review of Cabinet determinations for which an administrative hearing is not specifically provided elsewhere in the regulations. Although not specified, it appears that Kentucky intends these rules to govern administrative review of valid existing rights determinations, other findings relating to mining within areas protected under section 522(e) of SMCRA, decisions not to inspect or enforce, and any other regulatory authority action not specifically addressed elsewhere in Chapter 7:092. Corresponding Federal administrative review requirements for these types of actions are located at 43 CFR 4.1390 through 4.1394, 4.1350 through 4.1355, and 4.1280 through 4.1286.

In general, the proposed Kentucky rule contains procedures and requirements that are similar to or more detailed (more precise) than those set forth in the Federal rules. However, Kentucky always assigns the burden of establishing a prima facie case and the ultimate burden of persuasion to the person requesting the review, while the Federal rules sometimes assign one or both of these burdens to the regulatory authority when the permit applicant or potential applicant is the person requesting review (see 43 CFR 4.1355 and 4.1394). Nevertheless, since shifting the burden of proof in these cases to the applicant or potential applicant would not adversely affect public participation in the enforcement of the regulatory program, the proposed rule is not inconsistent with 30 CFR 840.15, which is the operative standard of review when determining whether the State program must be consistent with the cited provisions of 43 CFR part 4.

Also, unlike 43 CFR 4.1280 through 1286, the proposed Kentucky rule would grant any person who considers himself or herself aggrieved by any regulatory authority determination the right to petition for administrative review of that determination. Unless otherwise specified by statute or regulation, the Federal rules grant a person this right only if the regulatory authority's decision document specifically authorizes such an appeal. However, as discussed in part above, providing for expanded public participation in the regulatory program is in keeping with both 30 CFR 840.15 and section 102(i) of SMCRA. Therefore, the Director finds that the proposed rule is not inconsistent with the pertinent requirements of SMCRA and the Federal regulations.

(8) Section 10—Proceedings for Suspension or Revocation of Permits Because of Pattern of Violations. Proposed 405 KAR 7:092 section 10 sets forth requirements and procedures for administrative review proceedings concerning orders to show cause why a permit should not be suspended or revoked because of a pattern of violations. The proposal is similar to the corresponding Federal rules at 43 CFR 4.1190 through 4.1195, except that Kentucky has included no counterparts to 43 CFR 1194(c) (decisions must be issued within 20 days of the close of the hearing record), (d) (parties may enter into a settlement agreement at any time with the approval of the presiding official), or the minimum 3-day suspension requirement of paragraph (b). None of these omissions renders the Kentucky program inconsistent with the pertinent requirements of SMCRA and the Federal regulations.

OSM has previously determined that the 3-day minimum suspension provision of 43 CFR 1194(b) need not be incorporated into State programs since it is not one of the sanctions listed in 30 CFR 840.13(b) and is not a procedural or public participation requirement subject to 30 CFR 840.13(c) or 840.15. See the response to Comment No. 5 in the preamble to an earlier **Federal Register** notice concerning the Kentucky program (45 FR 71591, October 29, 1980). Furthermore, since the Federal rule grants the hearing officer broad discretion to waive the minimum suspension requirement, it is unlikely that there would be any significant difference in actual results under the State rules as opposed to the Federal rules.

With respect to the 20-day decision requirement of 43 CFR 4.1194(c), proposed 405 KAR 7:091 section 3(5)(a) provides that all decisions must be made within 30 days of the close of the hearing record. The Director does not find the additional 10 days allowed by the State to be a significant difference, especially since the Federal timeframe is directory rather than mandatory.

Finally, with respect to 43 CFR 4.1194(d), a specific State counterpart is unnecessary since paragraphs (2) and (3) of 405 KAR 7:091 section 3 grant the hearing officer general authority to facilitate and accept settlement agreements in all types of administrative proceedings.

(9) Section 11—Procedures for Abate or Alleviate Orders. Proposed 405 KAR 7:092 section 11 sets forth procedural and related requirements for administrative review of an order to abate or alleviate issued pursuant to KRS 224.10–410 in connection with a surface coal mining and reclamation operation. While there is no direct Federal counterpart, nothing in the proposal would conflict with any Federal requirement under SMCRA. Therefore, the Director finds that it is not inconsistent with SMCRA or the Federal regulations.

(10) Section 14—Costs and Expenses. Proposed 405 KAR 7:092 section 14(1) identifies who may file a petition for award of costs and expenses, including attorneys fees, reasonably incurred in connection with a proceeding held pursuant to 405 KAR 7:092. The proposal is similar to the existing Kentucky rule at 405 KAR 7:090 section 13(2), and the corresponding Federal rule at 43 CFR 4.1291, except that both of these rules provide that failure to file a timely petition *may* constitute a waiver of the right to an award, whereas the proposed rule provides that such failure *shall* constitute a waiver. In the Statement of Consideration (Administrative Record No. KY–1180) accompanying the proposed amendment, Kentucky expressed its belief that SMCRA provides States with sufficient latitude in the promulgation of regulations to prescribe a definite timeframe within which a petition for an award of costs and expenses must be filed.

While the Federal rule is less restrictive than Kentucky's proposed rule, it is also ambiguous in that it fails to provide any guidance as to what factors might contribute to a determination regarding a waiver, and

its provides the petitioner no assurance that an untimely petition will be accepted for review. The proposed Kentucky rule is specific and leaves no room for uncertainty. The timeframe is specific, as is the impact of failure to meet that timeframe. Because the Federal rule allows a hearing officer complete latitude in determining whether to reject an untimely petition, OSM must accord States similar latitude when evaluating proposed program amendments concerning untimely petitions. Therefore, the Director finds that the proposed rule, which would require the categorical dismissal of all untimely petitions, is not inconsistent with section 525(e) of SMCRA, 30 CFR 840.15, or 43 CFR 4.1291 since such a result could also occur under the Federal program.

(11) Section 15—Determinations as to Inability to Prepay Penalties in Escrow Prior to Administrative Review. Proposed 405 KAR 7:092 section 15 establishes a limited waiver from 405 KAR 7:092 section 6(2)(b), which requires that any proposed penalty assessment be prepaid into escrow as a prerequisite for administrative review. The proposal also sets forth filing and procedural requirements related to the processing of petitions for such waivers. In addition, the proposal identifies presumptions considered to be prima facie evidence of an individual's eligibility, or lack thereof, for a waiver from the prepayment requirement.

Under the proposal, the petitioner is required to file a statement of facts supporting his or her contention that he or she is unable to comply with the prepayment requirement. In addition, an affidavit, signed under penalty of perjury, must be filed setting forth the petitioner's income, property owned, outstanding obligations, number and age of dependents, and a copy of the petitioner's most recent Kentucky and Federal income tax returns. The State must then make an independent determination as to the validity of the contents of the petition for waiver and decide whether the waiver should be granted. In making that determination, the State would be guided in part by the presumptions set forth in subsection 15(5), which establish prima facie evidence that the individual is either unable to comply with the prepayment requirement or is not eligible for a waiver.

By letter dated April 26, 1993 (Administrative Record No. KY–1217), OSM requested clarification regarding the presumptions set forth at 405 KAR 7:092 section 15(5). In particular, OSM questioned what followup action Kentucky would take when presented with the prima facie evidence set forth in section 15(5). In its response dated May 7, 1993 (Administrative Record No. KY–1218), Kentucky stated that it "employs environmental investigators who have the ability to verify the validity of claims made to establish the presumptions in section 15(5)."

Section 518(c) of SMCRA specifies that a person who wishes to contest either the amount of the penalty or the fact of violation shall prepay the proposed penalty to the Secretary, who shall then place it into an escrow account. The Federal regulations at 30 CFR 845.19(a) similarly provide that a person charged with a violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty to the Department of the Interior's Office of Hearings and Appeals.

Neither SMCRA nor the Federal regulations either provide for or prohibit waiver of the prepayment requirement. However, in the preamble to a previous proposed rule, OSM indicated that it was considering adoption of a provision allowing waiver of the penalty prepayment requirement when such a requirement would prevent an essentially insolvent person charged with a penalty from either continuing in business or availing himself or herself of the full range of hearings and appeals otherwise available (46 FR 58468, December 1, 1981). In the same preamble, OSM also stated that it was considering, as an alternative, an amendment to 30 CFR 845.19 which would require prepayment only with respect to proceedings that occur after an administrative law judge has determined that a penalty is lawfully due.

OSM subsequently decided to defer final rulemaking action on the proposed alternatives. However, the **Federal Register** document announcing the deferral (47 FR 35632, August 16, 1982) reiterated the agency's concern that rigid adherence to a prepayment requirement may violate constitutional due process guarantees. The document also stated that OSM would summarize and respond to all public comments in a subsequent rulemaking action. Although OSM has never completed this action, the fact that the final rule document did not dismiss or reject the proposed alternatives indicates that the absence of a prepayment waiver provision in SMCRA does not translate into a prohibition.

In *James D. Franklin, et al.* v. *NREPC*, Ky., 799 S.W.2d 1 (1990), the Kentucky Supreme Court invalidated the State's previous prepayment requirement at 405 KAR 7:090 section 4(9), in part because the court held that it deprived indigent individuals of due process in violation of the equal protection clauses of both the State and Federal constitutions. Kentucky's current proposal with its limited waiver for inability to pay should minimize the possibility of another successful challenge on constitutional grounds; approval also would be consistent with the Federal rule preambles discussed above.

OSM recognizes that one of the principal factors leading to the adoption of SMCRA's prepayment requirement was Congressional concern about the historically low collection rate of similar penalties assessed by other governmental agencies. However, under the proposed Kentucky criteria, the government's ability to collect penalties would not be affected since the financial condition of qualified petitioners would, in all probability, preclude payment of the penalty regardless of whether a waiver of the prepayment requirement is available.

Based on the foregoing discussion, the Director finds that Kentucky's proposal is not inconsistent with section 518(c) of SMCRA. However, during oversight of the Kentucky program, OSM will closely evaluate the State's implementation of this provision. In particular, OSM will monitor whether the presumptions set forth in subsection 15(5) are being verified by the Cabinet, and how the State is determining whether individuals who do not meet the presumptions qualify for a waiver. Should abuse develop, the Director will take all necessary actions to ensure that corrective measures are initiated in a timely fashion.

4. 405 KAR 12:020 Enforcement

(a) *Section 6—Informal Public Hearings on Orders Ceasing Mining.* In concert with the changes to 405 KAR 7:091 and 7:092 eliminating preliminary hearings, Kentucky has proposed to revise 405 KAR 12:020 section 6 by adding provisions for informal public hearings on all enforcement orders ceasing mining. The proposed rules are procedurally similar and substantively identical to all provisions of the corresponding Federal rules at 30 CFR 843.15 that are pertinent to State programs. Accordingly, the Director finds that 405 KAR 12:020 section 6 as proposed is in compliance with 30 CFR 840.13(c) and 840.15.

(b) *Section 7—Suspension and Revocation of Permits*

*Section 8—Pattern of Violations.* In connection with the repeal of 405 KAR 7:090, Kentucky is revising other

chapters of its regulations to include material formerly found in Chapter 7:090. In this case, Kentucky is proposing to add provisions previously found at 405 KAR 7:090 section 5(4) to 405 KAR 12:020 section 7(2). These provisions specify the action a permittee must take when a permit is suspended or revoked; they are substantively identical to the pertinent portion of the corresponding Federal rule at 30 CFR 843.13(c).

In addition, Kentucky is proposing to add provisions previously found at 405 KAR 7:090 section 5(2) to 405 KAR 12:020 section 8. These provisions concern patterns of violations; they are substantively identical to all portions of the corresponding Federal rules at 30 CFR 843.13 (a) and (d) that are pertinent to State programs.

Since the proposed reorganization of the Kentucky rules will not affect the applicability of the rules discussed above, the Director finds that the proposed amendment is in accordance with 30 CFR 840.13 (b) and (c), which require that State programs include enforcement sanctions and procedures consistent with those set forth in SMCRA and 30 CFR part 843.

## IV. Summary and Disposition of Comments

*Public Comments*

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the submissions dated July 28, 1992 (Administrative Record Number KY–1170), and July 30, 1992 (Administrative Record Number KY–1171), in the September 23, 1992, **Federal Register** (57 FR 43949 and 57 FR 43952, respectively); (2) For the submission dated September 18, 1992 (Administrative Record Number KY–1180), in the December 9, 1992, **Federal Register** (57 FR 58169); and (3) For the submission dated December 10, 1992 Administrative Record Number KY–1202), in the January 14, 1993, **Federal Register** (58 FR 4384). The public comment periods closed on October 23, 1992. December 24, 1992, and January 29, 1993, respectively. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

The Kentucky Resources Council (KRC) filed written comments on October 23, 1992 (Administrative Record Number KY–1195), and February 1, 1993 (Administrative Record Number KY–1208). A summary of those comments and their disposition is set forth below by subject.

A. Definitions

1. KRC expressed its concern that the definition of "person" fails to include certain agencies that are included in the Federal definition. As explained in finding B.1.(b) herein, the Director shares KRC's concern. Therefore, he is not approving Kentucky's proposal to replace its current regulatory definition with a reference to its statutory definition.

2. KRC suggested that the definition of "final order," as proposed, might exclude orders which do not include findings of fact, conclusions of law, and an order. KRC stated that all orders should be considered "final" whether they include findings of fact and conclusions of law or not. The Director does not agree that the State's definition, as proposed, requires that an order include findings of fact or conclusions of law in order to be "final" for the purpose of judicial review. On the contrary, the proposed definition only acknowledges that the final order "may" contain these elements.

3. KRC raised questions regarding the definitions of "initiating documents," "interim report," and "record." The Director has determined that the proposed definitions of "initiating document" and "record" add appropriate clarity and specificity to Kentucky's program and are not inconsistent with the requirements of SMCRA and the Federal regulations. Regarding "interim report," KRC pointed out that the definition was unacceptable to the extent that the State's intention was to sanction denial of Secretarial review of orders, such as the partial grant or denial of a motion for summary disposition. In its Statement of Consideration (Administrative Record No. KY–1180) accompanying the amendment, Kentucky stated that Secretarial review of interlocutory orders is inappropriate. Kentucky pointed out that all hearing officer recommendations which are final recommendations will be reviewed by the Secretary. The Director has determined that the public participation requirements of 30 CFR 840.15 will not be compromised under the Kentucky scheme since persons claiming imminent environmental harm from the continued operation of a permit or from the continued existence of a violation during the pendency of an appeal may still seek temporary relief. Interlocutory appeals, therefore, are not necessary to prevent imminent environmental harm.

KRC also pointed out that interlocutory appeals might aid in correcting errors of law "prior to expenditures of resources and funds in trying the cases." While this statement may well be true, the Director believes that appellants who ultimately achieve some degree of success on the merits will be able to recoup such expenditures under the cost and attorney fee recovery provisions of the Kentucky program. Therefore, the proposed definition of "interim report" is not inconsistent with the requirements of SMCRA and the Federal regulations.

B. 405 KAR 7:091

1. KRC stated that the reference to KRS 224.10–410 found in Section 1 was inappropriate since actions taken under KRS Chapter 224 are reviewed pursuant to KRS 224.10–420. In response to this comment during State hearings, Kentucky pointed out that new 405 KAR 7:092 section 11 provides specific review procedures as authorized by, and consistent with, the provisions of KRS 224.10–410. The Director finds Kentucky's explanation to be reasonable and appropriate.

2. KRC expressed its opinion that certain punctuation in Section 1 of both 405 KAR 7:091 and 7:092 implies a restriction on the degree to which public participation in hearings addressing enforcement or other nonpermit-related matters is governed by these chapters. Kentucky responded to this comment in its Statement of Consideration (Administrative Record Number KY–1180) by stating that "nothing is meant to exclude citizen participation in all matters listed in 405 KAR 7:091 section 1, Applicability." The Director finds that this clarification adequately resolves KRC's concerns.

3. KRC stated that the right to contest material that is judicially noticed pursuant to Section 3(1)(b) is meaningless without the expressed right to review such material. In response, Kentucky stated that it interprets the right to contest as including the opportunity to review the materials in question (Administrative Record Number KY–1180). The Director finds that this interpretation satisfactorily addresses KRC's concerns.

4. KRC expressed concern that the last sentence in section 3(1)(b) could be construed to authorize the hearing officer to have contact with Cabinet staff outside the formal administrative process. The Director finds that no revisions are needed since the provisions of 405 KAR 7:091 section 4 are controlling with respect to *ex parte* communications.

5. Regarding section 3(4)(c), KRC states that the characterization of an order disposing of part of a case by summary judgment as an interim report precludes the party from seeking

Secretarial review of that particular disposition. In its Statement of Consideration (Administrative Record Number KY–1180), Kentucky disagreed with this statement, and the Director concurs, since partial dispositions will ultimately be reviewed by the Secretary as part of his or her review of the hearing officer's recommendations. See also the Director's response to the KRC comment concerning the definition of "interim report."

6. KRC suggested that the discussion in section 3(6), regarding Secretarial orders, should refer to findings of fact and conclusions of law since that is how "final order" is defined in 405 KAR 7:001. The Director finds that, since the term "final order" is specifically defined, there is no need to restate that definition whenever the term is used.

7. KRC requested that any proceedings that would authorize *ex parte* contact, as contemplated by Section 4(1), be explicitly stated. Inasmuch as the language of Section 4(1) is substantively identical to the Federal provisions at 43 CFR 4.27, the Director finds that no modifications to the State rule are needed. KRC also stated that this provision should be revised to include language clarifying what is meant by the term "proceedings." In responding to this comment (Administrative Record Number KY–1180), Kentucky stated that the term was self-explanatory and did not require modification. The Director concurs with Kentucky.

8. KRC states that section 5(5) is unclear as to what constitutes service. In its Statement of Consideration (Administrative Record Number KY–1180), Kentucky argues that the provision is sufficiently clear to provide guidance as to how and in what manner initiating and followup documents are to be served, particularly when read together with other provisions such as 405 KAR 7:091 section 5(4). The Director concurs with the State's explanation.

9. KRC opined that section 12(2), which provides that the commencement of proceedings for judicial review of a final order of the Secretary shall not operate as a stay of a final order unless specifically ordered by a court of competent jurisdiction, should reference the criteria for temporary relief since appeals from agency actions do not operate to stay the effect of a final order pending judicial review. Section 12(2) is substantively identical to the corresponding Federal provision in section 526(d) of SMCRA; therefore, the Director finds that no revisions are necessary. Furthermore, temporary relief in these situations would have to be granted by the court, and the regulations in question are not applicable to judicial reviews.

C. 405 KAR 7:092

1. KRC suggested that Kentucky provide training for its assessment conference officers, and that conferences be recorded. In response, the Director notes that there are no Federal requirements for conference officer training or recording of conferences. Indeed, paragraphs (b)(1) and (f) of 30 CFR 845.18 clearly specify that assessment conferences are to be informal and that statements made by participants cannot be used in a subsequent formal proceeding to impeach a witness. Therefore, Kentucky's program is consistent with the Federal regulations in this respect.

2. KRC stated that section 5 must include provisions for revocation of a permit for willful failure to comply with the Federal Act, regulations, and orders. In responding to KRC's concerns (Administrative Record Number KY–1180), Kentucky pointed out that the Cabinet's policy is to refuse to issue a permit when there are outstanding unabated Federal violations. In addition, when a permit has been issued, and it is later determined that there were outstanding violations at the time of issuance, Kentucky stated that the Cabinet would rescind the permit as being improvidently issued pursuant to 405 KAR 8:010.

Finally, 405 KAR 12:020 section 8 provides for suspension or revocation of permits, when appropriate, for all violations of the Kentucky program, regardless of whether the violations were issued by Kentucky or OSM. However, neither SMCRA nor the Federal regulations require that the State revoke a permit for failure to comply with the Federal Act or regulations. To do so would be inconsistent with the doctrine of State primacy established in section 101(f) and section 503 of SMCRA.

3. KRC states that section 14(1) is more restrictive than the Federal rule at 43 CFR 4.1291 since failure to file a timely petition for an award of costs and expenses is considered a mandatory waiver of the right to such an award, whereas the Federal rule provides only that such failure may constitute a waiver. As explained in detail in finding B.3.(c)(10), the Director has determined that the proposed rule is not inconsistent with the Federal standards for State program approval.

4. KRC argues that section 14(4)(a), which pertains to cost and attorney fee recovery, should not be restricted to permit "conditions" inasmuch as a violation might involve permit terms that do not appear as specific conditions in the permit approval document. In its Statement of Consideration (Administrative Record Number KY–1180), Kentucky responded that the Cabinet interprets the term "permit conditions" as including the terms appearing in the permit application as well as those specific conditions appearing on the fact sheet of the permit. Provided Kentucky adheres to this interpretation, the Director finds that the proposed State rule is consistent with the corresponding Federal rule at 43 CFR 4.1294(a)(1).

5. Finally, KRC questioned why cross-references to the hearings regulations in other regulations (i.e., 405 KAR 8:010 section 24, 405 KAR 10:040 section 1(6), and 405 KAR 24:030 section 9), have not been revised to reflect the new citations. Since cross-references are automatically corrected by Kentucky's administrative regulations compiler when regulations are processed for publication, no immediate action is required. However, the Director expects that Kentucky will submit the appropriate revisions, once they are promulgated, as part of a subsequent amendment as soon as is practicable, in keeping with the requirements of 30 CFR 732.17(g).

*Agency Comments*

Pursuant to section 503(b) of SMCRA and its implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various governmental agencies with an actual or potential interest in the Kentucky program. The U.S. Forest Service, Mine Safety and Health Administration, Bureau of Land Management, and Bureau of Mines acknowledged receipt of the amendments but offered no substantive comments.

## V. Director's Decision

Based on the above findings, the Director is approving, with the exceptions discussed in findings A.1 and B.1.(b) the program amendments as submitted by Kentucky on July 28, 1992, and July 30, 1992 (in the latter case only that portion pertaining to Senate Bill 318), and as modified and resubmitted on September 18, 1992, and December 10, 1992. In addition, as discussed in findings A.1., B.1.(b), and B.3.(c)(4), the Director is requiring that Kentucky further amend certain provisions of this amendment or related provisions of the approved program.

The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. The Director is approving these

proposed rules with the understanding that they will be promulgated in a form identical to that submitted to OSM and reviewed by the public. Any differences between these rules and the State's final promulgated rules will be processed as a separate amendment subject to public review at a later date. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

*Environmental Protection Agency (EPA) Concurrence*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

*Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) and (g) require that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Kentucky program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of only such provisions.

**VI. Procedural Determinations**

*Executive Order 12291*

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by Section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731 and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq*

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relief upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 30, 1993.

**W. Hord Tipton,**

*Acting Director.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 917—KENTUCKY**

1. The authority citation for part 917 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In § 917.15, a new paragraph (rr) is added to read as follows:

**§ 917.15 Approval of regulatory program amendments.**

* * * * *

(rr) The following amendments submitted to OSM on July 28, 1992, and July 30, 1992 (in the latter case, only Senate Bill 318), and as modified and resubmitted on September 18, 1992, and December 10, 1992, are approved effective August 6, 1993, with the exceptions identified herein:

(1) Revisions to Chapter 350 of the Kentucky Revised Statutes, as set forth in Senate Bill 318 as enacted during the 1992 regular session of the Kentucky General Assembly, with the exception of the phrase "except as may be ordered by the hearing officer" in Section 1(3) of Senate Bill 318; and

(2) Revisions to Chapters 7:001 and 8:001 of Title 405 of the Kentucky Administrative Regulations, pertaining to definitions, with the exception of the proposed definitions of "person" at 405 KAR 7:001 section 1(63) and 8:001 section 1(78);

(3) Repeal of Chapter 7:090 of Title 405 of the Kentucky Administrative Regulations, pertaining to hearings;

(4) Addition of Chapters 7:091 and 7:092 to Title 405 of the Kentucky Administrative Regulations, pertaining to administrative review requirements and procedures and civil penalty assessment; and

(5) Revisions to Chapter 12:020 of Title 405 of the Kentucky Administrative Regulations, pertaining to inspection and enforcement requirements and procedures.

3. In § 917.16, paragraphs (j) and (k) are added and the section title is revised to read as follows:

§ 917.16 Required regulatory program amendments.

* * * * *

(j) By October 1, 1993, Kentucky shall submit either proposed amendments or a schedule for the submission of proposed amendments to OSM to revise the following provisions of the Kentucky Revised Statutes in the manner described:

(1) That portion of the new section of Chapter 350 added by section 1 of Senate Bill 318 as enacted by the Kentucky General Assembly during the 1992 regular session, to delete the phrase "except as may be ordered by the hearing officer" in section 1(3) of the enacted bill; and

(2) The definition of *person* in KRS 350.010(9), to include all entities encompassed by the corresponding definition in 30 CFR 700.5.

(k) By October 1, 1993, Kentucky shall submit to OSM either proposed amendments or a schedule for the submission of proposed amendments to Kentucky Administrative Regulations to require that the assessment conference officer's report mentioned in 405 KAR 7:092 section 4(5) be served in a manner consistent with 405 KAR 7:091 section 5, and to specify that the time allowed under 405 KAR 7:092 section 6(1)(b) to file a petition for administrative review of the proposed penalty set forth in the conference officer's report does not begin to run until service is obtained in this manner.

[FR Doc. 93–18854 Filed 8–5–93; 8:45 am]
BILLING CODE 4310–05–M

## POSTAL SERVICE

### 39 CFR Part 111

### Implementation of Delivery Point Barcode Requirement for Letter-Size Mail

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts on a permanent basis the temporary changes to the standards for automation rate letter-size mailings that were made effective March 21, 1993, requiring a delivery point barcode on all letter-size mail for which a barcoded discount is claimed, and making conforming changes to the standards for ZIP+4 numeric discounts.

**EFFECTIVE DATE:** August 11, 1993

**FOR FURTHER INFORMATION CONTACT:** Mrs. Lynn Martin (202) 268–5176.

**SUPPLEMENTARY INFORMATION:** On November 9, 1992, pursuant to 39 U.S.C. 3623, the Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on Pre-barcoded Letter Mail Requirements, PRC Docket No. MC93–2, requesting that the Domestic Mail Classification Schedule (DMCS) be changed to re-define prebarcoded letter-size mail as mail "which bears a barcode as prescribed by the Postal Service." The Postal Rate Commission published a notice in the **Federal Register** on November 20, 1992 (57 FR 54866) describing the request and offering interested parties an opportunity to intervene.

On February 18, 1993, the Postal Service published a proposed rule setting forth the amendments to the prebarcoding standards in the Domestic Mail Manual (DMM) that would be needed to implement the requested classification change, as well as conforming changes to the standards for numeric ZIP+4 rates for letter mail (58 FR 8921).

On March 5, 1993, the Postal Service published notice that the DMCS change it had requested would be placed into effect on a temporary basis, pursuant to 39 U.S.C. 3641(e) and as authorized by the Board of Governors of the Postal Service in Resolution No. 93–3 (March 1, 1993). The temporary change took effect at 12:01 a.m. on March 21, 1993 (58 FR 12605).

Pursuant to the authority granted by the temporary classification change, the Postal Service published a final rule on March 12, 1993, setting forth DMM regulations implementing the temporary DMCS change (58 FR 13551). As proposed in the February 18 proposed rule, the final rule amended the prebarcoding standards in the DMM to require a delivery point barcode on all letter-size mail for which a barcoded discount is claimed, and made conforming changes to the standards for ZIP+4 numeric discounts. These DMM changes also took effect on March 21, 1993.

On June 30, 1993, the Postal Service published a notice concerning the restructuring and revision of the DMM, effective with DMM Issue 46, July 1, 1993 (58 FR 34887). The notice included detailed cross-reference tables. DMM Issue 46 made no substantive changes to the prebarcoding and related standards that had taken effect on March 21. The standards for letter-size automation-rate mailings appear in Modules R (Rates and Fees), P (Postage Payment), E (Eligibility), A (Addressing), C (Characteristics and Content), M (Mail Preparation and Sortation), and L (Labeling Lists) in the restructured DMM.

On August 2, 1993, the Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625, approved the Recommended Decision of the Postal Rate Commission in Docket No. MC93–2 to amend the DMCS to re-define pre-barcoded letter-size mail as mail which bears a barcode "representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service." The Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to implement the DMCS changes approved by the Governors effective at 12:01 a.m. on August 11, 1993 (Resolution No. 93–9). A notice of those DMCS changes is published elsewhere in this issue.

In accordance with these permanent DMCS changes, this final rule continues on a permanent basis the amendments to the Domestic Mail Manual that were published in the March 12 final rule and took effect on March 21, 1993. Since this final rule makes no changes to the existing standards, those amendments are not reprinted here. The standards that were changed by the March 12 final rule now appear in sections R100, R200, R300, P000, P100, P200, P300, P700, R100, E200, E300, A000, A800, A950, C800, M000, and M800 of the restructured DMM. For more detailed information on the location of these standards, see the cross-reference tables at 58 FR 34887–900.

These permanent changes to the Domestic Mail Manual will take effect at 12:01 a.m. on August 11, 1993. The Postal Service believes that mailers have adequate notice of the permanent standards, since no change in existing standards is made.

### List of Subjects in 39 CFR Part 111

Postal Service.

### PART 111—[AMENDED]

Under the authority of the Postal Reorganization Act, the temporary changes to the Domestic Mail Manual promulgated on March 12, 1993 at 58 FR 13551–55 are hereby adopted on a permanent basis.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 93–18839 Filed 8–5–93; 8:45 am]
BILLING CODE 7710–12–M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 21 and 76**

**[MM Docket No. 92-264, FCC 93-332]**

## Broadcast Services; Cable Television Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Report and Order segment of this Report and Order/Further Notice of Proposed Rule Making adopts regulations interpreting and implementing the anti-trafficking and cross-ownership provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). Specifically, this Report and Order finds that section 617 anti-trafficking restrictions apply only to assignment and transfers of control of cable systems, defines such transactions, and establishes certification requirements and procedures for resolutions of anti-trafficking disputes concerning certification, applicability, and exemptions. It also adopts a blanket anti-trafficking waiver for small cable systems. This Report and Order establishes a standardized transfer approval form for use in requesting transfers of cable systems held for three years or more, and procedures for approval of such requests by local franchising authorities. Finally, this decision amends the Commission's rules to implement the cable/Multichannel Multipoint Distribution Service (MMDS), and the cable/satellite master antenna television service (SMATV) cross-ownership restrictions mandated by the 1992 Cable Act. These actions are taken in order to comply with the mandate of the 1992 Cable Act. The Further Notice of proposed Rule Making segment of this decision may be found elsewhere in this **Federal Register**.

**EFFECTIVE DATE:** This action is effective September 7, 1993, except for 47 CFR 76.502(i), which becomes effective November 4, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Chorney, Mass Media Bureau (202) 632-6990.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Report and Order segment of the Commission's Report and Order and Further Notice of Proposed Rule Making in MM Docket No. 92-264, FCC 93-332, adopted June 24, 1993, and released July 23, 1993. The complete text of this Report and Order and Further Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

### Synopsis of the Report and Order

1. Through this decision, the Commission adopts regulations interpreting and implementing the anti-trafficking and cross-ownership provisions of the 1992 Cable Act. The Notice of Proposed Rule Making and Notice of Inquiry (Notice) initiating this proceeding was published at 58 FR 3523, January 11, 1993.

2. Section 13 of the 1992 Cable Act mandates a cable anti-trafficking rule, which, with certain exceptions, prohibits cable operators from selling or otherwise transferring ownership in a cable system within three years following the acquisition or initial construction of the system by the operator. Section 11(a) of the 1992 Cable Act modifies section 613(a) of the Communications Act to prohibit the common ownership of a cable system and an MMDS license, or a cable system and an SMATV, separate and apart from any franchised cable service, within any portion of the franchise area served by that cable operator's system. The anti-trafficking and cross-ownership provisions of the 1992 Cable Act contain no specific effective date and thus, pursuant to section 28 of the 1992 Cable Act, became effective on December 4, 199Z.

3. Briefly, this Report and Order: (1) Concludes that the section 617 anti-trafficking restriction applies only to assignments and transfers of control of cable systems; (2) finds that such transactions will be defined generally, by reference to the Commission's broadcast assignment and transfer of control standards used to implement section 310(d) the Communications Act; (3) clarifies that the Commission will rely on local franchise authorities to monitor and exercise primary enforcement responsibility under the anti-trafficking rule; (4) requires that cable operators seeking to assign or transfer control of a cable system must certify compliance with the anti-trafficking rule to the local franchise authority at the time local transfer approval is sought; (5) finds that disputes regarding the validity of such anti-trafficking certifications, the applicability of the anti-trafficking rule to a particular transaction, or eligibility for one of the rule's exemptions will be handled by the Commission pursuant to the § 76.7 special relief procedures; (6) determines that the statute provides the Commission with authority to waive the three-year holding period in the public interest and directs the Commission to grant such waivers in cases of default, foreclosure and financial distress; (7) adopts a blanket anti-trafficking waiver for small systems, serving 1000 or fewer subscribers; (8) establishes a standardized transfer approval form for use in requesting transfers of cable systems owned for three years or more, and procedures for approval of such requests by local franchising authorities, and (9) amends the Commission's rules to implement the cable/MMDS, and the cable/SMATV cross-ownership restrictions mandated by the 1992 Cable Act.

### I. Anti-Trafficking Restriction

4. As indicated above, a new section 617 of the Communications Act provides, with certain exceptions, that "no cable operator may sell or otherwise transfer ownership in a cable system within a 36-month period following either the acquisition or initial construction of such system by such operator." Where a transaction involving a multiple system transfer provides for the subsequent transfer of one or more such acquired systems to a third party, the subsequent transfer will be considered part of the original transaction for purposes of determining compliance with the three-year holding period.

5. Section 617(c) of the Communications Act creates several exceptions under the anti-trafficking rule, including: (1) Transfers which are not subject to Federal income tax liability; (2) sales required by operation of law or any act of any Federal agency, any State or political subdivision thereof, or any franchising authority; and (3) any sale, assignment or transfer to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with the seller, assignor or transferor. Moreover, the Commission is given broad authority to grant waivers under the anti-trafficking rule, consistent with the public interest. However, where local transfer approval is required, the Commission may not waive the three-year holding requirement unless the franchise authority has approved such transfer Section 617(d) directs the Commission to grant anti-trafficking waivers to permit appropriate transfers in cases of default, foreclosure, or other financial distress.

*Transfer of Ownership*

6. It is not clear from the statutory language whether the anti-trafficking provision applies to all transfers of ownership in a cable system which effect changes in the identity of the cable operator or whether the rule applies to transfers of ownership of a cable system by a cable operator, so that only transfers of ownership which constitute transfers of control of a cable system would be subject to the rule. Given the uncertainty regarding the intended application of the anti-trafficking rule, the Commission seeks to adopt an ownership standard that will accomplish the House Report's stated objective of preventing profiteering transactions and other transfers that may affect cable rates or service, without inhibiting investment in the cable industry or disrupting legitimate cable transactions.

7. The Commission believes that the anti-trafficking provision of the 1992 Cable Act was aimed at deterring the acquisition of cable systems by individuals interested only in speculating or exploiting ownership in cable systems for short term gain through quick resale, and was not meant to prohibit all transactions in which a cable system is sold at a profit. Consequently, the Commission determines that the anti-trafficking rule will apply only to transfers of control of cable systems. The Commission further concludes that its current broadcast assignment and transfer or control standards developed to implement section 310(d) of the Communications Act are appropriate to accomplish these objectives and so will be effective in implementing the cable anti-trafficking restriction.

8. Involuntary or *pro forma* transfers of control are exempt from the cable anti-trafficking rule under the statutory exceptions provided in section 617(c) of the Communications Act. Transfers of purely management interests will also be exempt from the cable anti-trafficking rule as the statutory language addresses only transfers of "ownership" interests in a cable system. Consequently, the Commission will apply the three-year holding period only to assignments and transfers involving substantial changes in ownership that constitute transfers of control. The procedures that currently govern the need for Commission approval in connection with assignments and transfers of control of CARS licenses can be used as reference for determining when the anti-trafficking rule will be applicable to a particular transfer. Thus, if a transfer of ownership in a cable system does not result in a change in the identity of the franchisee, or in the holder of a controlling interest in the cable operator, the transfer will not be subject to the three-year holding period. For this purpose, an assignment occurs when a franchise is transferred from one entity to another. A transfer of control occurs when the franchisee remains the same, but the owner or holder of a controlling interest in the franchise changes. Assignments are generally associated with asset sales, and transfers of control are generally associated with stock sales. There are no significant differences between assignments and transfers of control for purposes of the Commission's rules.

9. The Commission briefly describes how it determines the types of transfers of ownership interests that constitute transfers of control requiring Commission approval under the broadcast rules. These same issues and determinations will apply to determinations of transfers of control of cable systems subject to the anti-trafficking rule. Transfers of control are easily identifiable in the vast majority of cases. Typically, the buyer will acquire *de jure* control or "legal control," by acquiring a majority (51% or more) of the licensee's voting stock, or partnership interests, or effect a change in the general partner. Such transfers would be considered transfers of control under our broadcast rules and thus, in the cable context would be subject to the anti-trafficking rule, provided they are substantial and voluntary and do not qualify for any of the statutory exceptions.

10. The more difficult questions regarding determinations of transfers of control involve transfers of *de facto* or "actual control." *De facto* control exists when a holder of a minority interest in a corporation is in actual control. Thus, some transfers of a minority interest in a cable system may constitute a transfer of control subject to the anti-trafficking rule. In the broadcast context, we have said that determinations of *de facto* control are governed by the demonstration of power to dominate management of corporate affairs. In this context the Commission has defined transfers of control in broad terms as "any act which vests in a new entity or individual the right to determine the manner or means of operating the license and determining the policy that licensee will pursue." This definition encompasses every form of control, actual or legal, direct or indirect, negative or positive.

11. Since the size of a person's equity ownership interest is relevant but not determinative to issues of control, the Commission ascertains issues of *de facto* control on a case-by-case basis by looking at all relevant factors. Commission decisions have generally focused on the ability of a person or entity to control a licensee's finances, personnel practices, and programming decisions. Transfers of *de facto* control have been established where non-controlling stockholders exercise substantial management or financial control over a licensee. The Commission notes, however, that sales of minority interests in corporate licensees occur routinely, particularly in publicly traded companies. Such sales, unless they result in the acquisition or loss of control, do not require Commission approval.

12. As indicated above, in all but a few cases transfers of control will be clearly established by transfers of a majority or controlling ownership interest. Where transfers of ownership do not affect the entity holding a controlling interest in the franchisee, the three-year holding period is inapplicable. In unusual cases, where doubt exists about the applicability of the anti-trafficking rule, cable operators seeking to transfer an ownership interest in a cable system should consult with their local franchise authority. Reference should also be made to whether or not the cable operator is required to file an application for Commission approval to transfer a CARS license in connection with such transfer. Where Commission approval is required to transfer a CARS license, the transfer will also be subject to the three-year holding requirement. If franchise authorities and cable operators are unable to determine the applicability of the anti-trafficking rule to a particular transfer, either party may request a declaratory ruling from the Commission.

*Procedures for Monitoring Compliance*

13. The Report and Order concludes that local authorities are best able to monitor compliance with the anti-trafficking rule, as local authorities are knowledgeable about individual cable operators and franchise agreements and so are better positioned than the Commission to evaluate the effects of a proposed transfer on cable rates and service. Moreover, local anti-trafficking enforcement should not delay or add significantly to the administrative burden associated with most cable system transfers. Thus, cable operators seeking to assign or transfer ownership in a cable system must certify to the local franchise authority that the subject transfer complies with the anti-trafficking rule, that the transferor is seeking or has obtained a waiver from

the Commission, or that the transfer is otherwise exempt from the anti-trafficking rule. Such certification must be submitted to the local franchise authority at the time a cable operator submits a request for transfer approval.

14. If local transfer approval is not otherwise required by the franchise agreement, the anti-trafficking certification must be submitted to the local franchise authority no later than 30 days in advance of the closing date of the proposed transaction. All such certifications must contain a complete description of the transaction and the nature of the interest being transferred, the date on which such interest was acquired, and the effective date of the proposed transfer. Certifications claiming exemption from the anti-trafficking rule should also describe the nature of the transaction and identify the applicable exemption accompanied by a statement of the facts giving rise to the claimed exemption. Receipt by the local franchise authority of the appropriate certification will create a presumption of compliance with the anti-trafficking provision. Franchise authorities may request additional information reasonably necessary to determine the validity of a certification in cases where the franchise authority has reason to doubt the accuracy of a certification.

15. Franchise authorities questioning the accuracy of an anti-trafficking certification must notify the cable operator within 30 days of the filing of such certification, or such certification shall be deemed accepted. The 30-day review period will not be tolled by requests for additional information by the franchise authority, unless the cable operator fails to provide complete and accurate responses to such requests within 10 days of the date of such request. The 30-day limitation on franchise authority consideration of an anti-trafficking certification in no way affects the time allowed for franchise authority consideration of the transfer request itself.

16. For systems held for three years or more the anti-trafficking certification is incorporated into the FCC standardized transfer approval Form discussed below. For such systems, the 30-day period for consideration of the anti-trafficking certification will in no way affect the running of the 120-day statutory period for consideration of such transfer requests. Local decisions regarding the accuracy of a certification, eligibility for one of the exemptions, and questions regarding whether a transaction is subject to the holding period are appealable to the FCC pursuant to the special relief procedures set forth in § 76.7 of the Commission's rules. The Report and Order further concludes that Commission resolution of anti-trafficking disputes is necessary to ensure prompt and consistent determinations regarding the application of the three-year holding period to a particular transaction.

17. Local franchise authorities shall notify the Commission if the facts ultimately reveal a willful violation of the anti-trafficking rule. The Commission will then determine the application of appropriate sanctions, according to the procedures set forth in § 76.9 of Commission rules. Determinations by the Commission regarding appropriate remedies will not limit, in any respect, the remedies available to local franchise authorities under the terms of the franchise agreement or local law.

*Calculation of Three-Year Holding Period*

18. The Commission ascertains that for initially constructed systems, the holding period will be measured from the date on which service is activated to the system's first subscriber. For acquired systems, the holding period will commence on the effective date of the closing of the transaction in which the system was acquired. In the case of sales in stages or installment transactions, the holding period will begin on the effective date of the transaction which results in the transferee or assignee acquiring a control of the cable system. The three-year holding period will be measured from the date of acquisition or initial construction through the proposed effective date of the closing of the transaction transferring ownership of the cable system. While a transfer or sale agreement may be executed prior to the completion of the three-year holding period, consummation of the transfer may not take place until after the expiration of the holding period.

*MSO Transfers*

19. The Commission does not believe that Congress meant for the anti-trafficking rule to impede MSO transactions. Because system operators frequently build out their systems into adjacent communities or acquire nearby cable systems, a separate holding period may not be appropriate for each such franchise. Common ownership of cable systems creates operating efficiencies and allows cable operators to expand cable service to previously unserved areas. Nonetheless, to preserve the objectives underlying the anti-trafficking rule, a substantial number of the MSO's subscribers must have been served by cable systems owned by the MSO for at least three years.

20. In this regard, the Commission will entertain requests to waive the anti-trafficking restriction in cases involving MSO transfers. The Commission will look favorably upon such waiver applications where two-thirds or more of the MSO's subscribers are served by systems owned for three years or more. Where an MSO transfers several systems in a single transaction, the Commission will look favorably upon waiver requests if two-thirds of the subscribers of the systems being transferred are served by systems held for three years or more.

*Subsequent Transfers Required by the Terms of the Sale*

21. Section 617(b) of the Communications Act provides that in the case of multiple system transfers, "if the terms of the sale require the buyer subsequently to transfer ownership of one or more of the systems to one or more third parties, such transfers shall be considered part of the original transaction." The Commission believes that this provision does not require that a subsequent transfer be explicitly mentioned in the original transfer or sale agreement. Accordingly, the Commission interprets the "terms of the sale" requirement to include all agreements in connection with the original sale or transfer including the sale or transfer agreement, letters of intent, financing agreements, security agreements or other contemporaneous arrangements or agreements in connection with the original transfer.

22. A request for local transfer approval for such subsequent transfer must be filed within 90 days of the effective date of the closing of the original transaction. In addition, the effective date of the closing of the subsequent transaction must be no more than 90 days following the grant of transfer approval by the local franchise authority. If local transfer approval is not required pursuant to the terms of the franchise, then we require that the subsequent transfer be completed within 180 days from the closing of the original transaction. Under this provision, a subsequent transfer that is considered part of the original transaction will not require application of a separate three-year holding requirement

*Exceptions*

23. The 1992 Cable Act provides for three exceptions to the anti-trafficking rule contained in section 617(c). First, section 617(c)(1) exempts from the three-year holding period all transfers of

ownership in a cable system which are not subject to Federal income tax liability. The Commission determines that Congress sought to exempt all transactions which qualify as "tax exempt" under the Federal Income Tax Code ("Code"). For this purpose, "tax exempt" transactions include all transactions in which there is no cognizable gain or loss under the Code. Certifications claiming an anti-trafficking exemption under any of the exemptions listed in section 617(c), accompanied by an explanation of the basis for the claimed exemption, shall be sufficient to establish a presumption of compliance. However, local authorities may request additional information reasonably necessary to establish eligibility under the claimed exemption.

24. The second exception sales required by operation of law, or by act of any Federal agency or any State or political subdivision thereof, or any franchising authority. The Commission finds that this provision exempts from the three-year holding period involuntary transfers required by any law, order, act or decree of any Federal, State or local authority, including franchise authorities, executors, receivers, guardians and trustees. The Commission further finds that such involuntary transfers to effect bankruptcy, divorce or probate proceedings would be encompassed in the statutory language and are therefore, appropriately exempted under this provision. In addition, transfers involving municipally-owned cable systems are exempt under this provision.

25. The third exception under the 1992 Cable Act exempts any sale, assignment or transfer to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with the seller, assignor or transferror. The Commission concludes that this provision was intended to exempt the type or *pro forma* transfers defined in § 73.3540(f) of the Commission's Rules, which establishes "short form" approval for *pro forma* transfer only if such transfers do not result in any substantial change in ownership or control between affiliated entities. Furthermore, the legislative history of the 1992 Cable Act indicates that "common control" as used in section 617(c) was meant to include transfers between affiliated entities, regardless of whether such affiliation is by virtue of common "stock ownership, other equity or debt ownership, or management control." Thus, transfers between subsidiaries owned or controlled by the same parent corporation are exempt from the anti-trafficking rule, as are transfers between limited partners and 50% joint venturers. In addition, debt for equity exchanges between affiliated entities, in connection with refinancings and reorganizations, will be exempt from the three-year holding requirement.

*Waivers*

26. Section 617(d) gives the Commission broad discretion to grant waivers in the public interest. However, the 1992 Cable Act prohibits the Commission from granting waivers unless local franchise authority approval has been obtained, if such approval is required. Except with respect to transfers of MSOs and small systems, the Commission declines to establish specific waiver criteria applicable to public interest waivers. Instead public interest waiver requests will be considered on a a case-by-case basis. Waiver requests must be filed pursuant to the special relief procedures established in § 76.7 of the Commission's rules. Although in most cases local approval is required prior to the consummation of a transfer, the Commission may grant waivers in appropriate cases prior to the grant of such approval so long as the waiver is conditioned upon the grant of such local transfer approval. Commission waivers issued in advance of local transfer approval will not become effective unless such approval is ultimately obtained and will in no way affect the discretion of local franchise authorities to decide such transfer requests.

27. The 1992 Cable Act directs the Commission to grant waivers in cases of default, foreclosure and other financial distress. Such waiver requests should be filed pursuant to the special relief procedures established in § 76.7 of the Commission rules. In cases of default, waiver applicants must establish an affirmative factual showing, supported by affidavits of a person or persons having personal knowledge that the cable operator is in default, other than a technical default, under the terms of a credit or loan agreement pursuant to which the cable operator is primarily liable. Waiver applicants should provide the Commission with copies of default notices or other documentation establishing the creditor's acknowledgment of such default. In cases of foreclosure, waiver applicants must establish an affirmative factual showing, supported by affidavits, that a foreclosure action has been initiated with respect to property affecting the ability of the cable operator to maintain cable service. Copies of foreclosure notices or other documentation establishing that a foreclosure action has been initiated should be submitted as evidence of such foreclosure. A cable operator may establish an affirmative showing of financial distress by submitting evidence, supported by affidavits, of the existence of financial distress. Indica of such financial distress may include, but shall not be limited to, evidence of a net operating loss or insufficient capital to maintain operations. Audited financial statements including statements of cash flow or balance sheets should also be submitted to establish such financial distress.

*120-day Limitation on Franchise Authority Consideration or Transfer Requests*

28. Under the 1992 Cable Act, franchise authorities must approve or deny transfer requests involving systems owned for three years or more within 120 days, or such requests shall be deemed granted. Thus, the Commission establishes a standardized transfer approval form setting forth the informational requirements which must be satisfied in order to commence the running of the 120-day period. The 120-day limitation and the Commission's informational requirements only apply to transfer of systems owned for three years or more, and only where local transfer approval is required under the franchise. The information solicited on the Commission's form is limited to the information necessary to establish the legal, technical and financial qualifications of the proposed transferee and any information required by the franchise or applicable local law. A copy of the FCC Cable Transfer Form is attached as Appendix B of the full text of this Report and Order/Further Notice of Proposed Rule Making.

29. Franchise authorities may request such additional information as is reasonably necessary to determine the qualifications of the proposed transferee. However, such requests for additional information will not toll or extend the 120-day period unless the cable operator and franchise authority otherwise agree. Cable operators must promptly respond to such requests by completely and accurately submitting all information reasonably requested by the franchise authority.

*Blanket Waiver for Small System Operators*

30. The Report and Order next adopts a blanket anti-trafficking waiver for small cable systems. Small systems are defined for this purpose as any cable system serving 1000 subscribers or less. The small system waiver is contingent upon, and in no way affects local

franchise authority consideration of such transfer requests, where such transfer approval is required. However, the Commission believes the small system waiver is appropriate for several reasons. First, it comports with the 1992 Cable Act's mandate that the Commission develop appropriate cable regulations which place minimal administrative burden on small systems. Also, to the extent that the anti-trafficking rule may inhibit further investment in the development of small systems serving sparsely populated rural areas, the blanket waiver satisfies Congress' expressed desire to encourage the provision of cable service to such unserved rural areas. Finally, the blanket waiver will eliminate a significant number of waiver requests, while affecting only a small percent (approximately 3.6%) of total cable subscribers. However, if the Commission receives complaints with respect to trafficking abuses by small system operators, the small system waiver may be revoked in individual cases.

## II. Cross-Ownership Restrictions

31. The 1992 Cable Act amends section 613(a) of the Communications Act, to add a cable/MMDS and a cable/SMATV cross-ownership restriction. The cross-ownership provision addresses Congress' concern that common ownership of different means of video distribution may reduce competition and limit the diversity of voices available to the public. Section 613 of the 1992 Cable Act also authorizes the Commission to waive the statutory cross-ownership requirements to the extent necessary to "ensure all significant portions of a franchise area are able to obtain video programming." Section 613 further directs the Commission to waive all cable/MMDs and cable/SMATV cross-ownership interests existing as of the effective date of the 1992 Cable Act, December 4, 1992.

32. When the Commission adopted the existing cable/MMDS cross-ownership rule, it specifically grandfathered all cable/MMDS cross-ownership interests that existed as of February 8, 1990, and thus no additional cable/MMDS combinations shall be waived pursuant to the 1992 Cable Act. By contrast, all cable/SMATV cross-ownership interests existing as of December 4, 1992, shall be waived under the 1992 Cable Act.

### *Cable/MMDS Cross-Ownership Restriction*

33 As stated above, section 613(a)(2) of the Communications Act prohibits a cable operator from holding an MMDS license in any portion of the franchise area served by that cable operator's cable system. The Commission is authorized, however, to waive the cross-ownership prohibition to ensure that all significant portions of the franchise area are able to obtain video programming. The Report and Order concludes that the cable/MMDS restriction contained in § 21.912 of the Commission's rules (47 CFR 21.912) with certain additions and modifications, effectively implements the statutory cable/MMDS provision.

34. In adopting regulations to implement the statutory cable/MMDS cross-ownership restriction the Commission also adopts an attribution standard that is consistent with the standards adopted by the Commission in the video dialtone context. (See Second Report, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking in CC Docket No. 87–266, 57 FR 41106 (September 9, 1992.) Thus, in assessing cross-ownership, a cable operator will be considered to have an attributable interest in an MMDS licensee if he or she holds five percent or more of the stock of such licensee, regardless of whether such stock is voting or non-voting. The Commission does not adopt a single majority shareholder exception, and all officer and director positions and general partnership interests will be attributable, as will limited partnership interests of five percent or greater regardless of insulation. Finally, the Commission retains the § 21.912(b) prohibition against cable operators leasing MMDS capacity where there is system overlap. Nevertheless, consistent with the statutory cross-ownership restriction, § 21.912(b) of the Commission's rules is modified to apply only where the MMDS protected service area and the cable operator's actual service area overlap.

35. Overbuild Exception. Section 21.912 of the Commission rules contains an overbuild exception, which provides that the cable/MMDS cross-ownership provision is inapplicable if the cable operator is not the sole provider of cable service in the franchise area. No similar statutory exception was created under section 613 of the 1992 Cable Act. Since the § 21.912 overbuild exception appears to conflict with the statutory cable/MMDS cross-ownership ban, and Congress did not specifically provide for such an exception, this exception is eliminated. The Commission notes however, that nothing in our interpretation of section 613 would prevent an MMDS licensee from obtaining a cable franchise which overlapped with the licensee's protected services area, provided there was no overlap between the licensee's MMDS protected service and the cable systems' service area.

36. Rural Exception. Section 21.912(d)(1) of the Commission's rules establishes a limited rural exception allowing cable operators to obtain an MMDS license to provide service to otherwise unserved rural communities. No similar exception is established under the 1992 Cable Act. Significantly the Commission interprets section 613(a) such that cable/MMDS cross-ownership is permitted in the unserved portions of the franchise area, provided there is no overlap with the MMDS protected service area. Although section 613 allows increased cross-ownership in the unserved portions of the franchise area, several commenters argue that it is essential for the Commission to retain the rural exception in implementing the statutory cross-ownership restriction. Because the Commission is authorized under the 1992 Cable Act to waive the statutory cross-ownership restriction to the extent necessary to ensure all significant portions of a franchise area are able to obtain video programming, such cases will be handled by waiver requests filed pursuant to the special relief procedures set forth in § 76.7.

37. Therefore, the Commission will consider such waivers filed by cable operators subject to the same procedural safeguards established under § 21.912(d)(1) of the existing rules. Cable operators seeking to provide service to rural areas will be granted a waiver of the cross ownership restrictions only if no other MMDS operator desires to provide such service. Cable operators seeking such a waiver, should submit a waiver request and file an application for an MMDS license. Applications for MMDS licenses filed by cable operators will be placed on public notice. Only if no wireless cable applicant responds to the notice with a timely filed application, will the Commission grant a waiver awarding a cable operator an MMDS license.

38. Local Programming Exception. Section 21.912(e) of the Commission's rules contains an exception to the cross-ownership restriction, which allows cable operators to use one MMDS channel in a protected service area to provide locally-produced programming to cable headends. Several commenters argue that the Commission should retain the local programming exception in implementing the statutory cross-ownership restriction. The Report and Order concludes that the local programming exception is consistent with the statutory cross-ownership

restriction and is therefore maintained as it applies to the leasing of MMDS channels.

*Cable/SMATV Cross-Ownership Restriction*

39. As discussed above, the 1992 Cable Act also mandates a cable/SMATV cross-ownership restriction. The Report and Order determines that while the § 21.912 cable/MMDs regulations contained in the Commission's rules address the same concerns as the cable/SMATV cross-ownership restriction. As detailed in the full text of the Commission's decision, our rules implementing the statutory cable/SMATV cross-ownership restriction prohibit a cable operator from acquiring an attributable ownership interest in a separate SMATV operator providing service within the cable operator's actual service area. Separate SMATV operators are defined as providers of SMATV service within the cable operator's service area, which were not owned, operated or controlled by the cable operator as of the effective date of the 1992 Cable Act. In implementing the cable/SMATV cross-ownership restriction, the Commission employs the same attribution criteria adopted in connection with cable/MMDS cross-ownership restriction above. The attribution rules in this context generally attribute all stock interests of five percent or more, whether such stock is voting or nonvoting. In addition, all officer and director positions and general partnership interests shall be attributable, as will limited partnership interests of five percent or greater, regardless of insulation.

40. Finally, as described above, the 1992 Cable Act only prevents cable/SMATV cross-ownership in those areas of the cable operator's franchise that are served by the cable operator's cable system. Thus, if a cable operator has not wired its entire franchise area, the cross-ownership ban does not prevent the cable operator from building or acquiring a stand-alone SMATV system. However, the Commission concludes that such cable-owned SMATV systems must be operated in accordance with the terms of the cable franchise agreement. In order to protect the competitive opportunities of independent SMATV operators, it is essential that the Commission limit the ability of cable operators to use SMATV technology in their franchise area to provide programming services other than the franchised cable service.

41. In addition, consistent with congressional intent, the Commission's regulations do not prevent the common ownership of an SMATV system that itself qualifies as a cable system under section 602(7)(B) of the Communications Act, and a separate stand-alone SMATV system that is within the same service area. The Commission also does not consider an SMATV system that qualifies as a cable system to be subject to the statutory cable/MMDS cross-ownership restriction. Since Congress intended section 613 to encourage competition for traditional cable systems, it would be contrary to the statutory objective to prevent the common ownership of more than one SMATV system in a franchise area simply because one of the SMATV systems crosses a public right of way.

*Enforcement*

42. As indicated in the Notice, it is not necessary at this time to establish additional reporting requirements in connection with the MMDS or SMATV cross-ownership restrictions. The Commission's existing rules at 47 CFR 21.921(c) require applicants for MMDS licenses to show that no portion of the facility's protected service area will overlap with the cable franchise area of an affiliated cable operator. This rule is amended to require that applicants show that the protected service area will not overlap with any portion of the franchise area actually served by an affiliated cable operator's cable system. However, the Commission will not adopt specific reporting requirements at this time for cable/SMATV cross-ownership. Instead, the Commission will enforce these cross-ownership rules on a complaint basis. Complaints regarding cross-ownership violations should be filed with the Commission pursuant to the procedures set forth in § 76.9. of the rules.

**Final Regulatory Flexibility Analysis**

43. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small cable systems. As detailed in the full text of the Report and Order/Further Notice of Proposed Rule Making, the Commission has attempted, wherever possible within the statutory constraints, to interpret the language of the 1992 Cable Act and to fashion the implementing regulations to minimize the additional burden placed on small operators. For example, the Commission has provided a blanket waiver of the anti-trafficking rule for systems serving 1000 subscribers or less, as well as exceptions in cases of default, foreclosure and financial distress. The full text of the Commission's final regulatory flexibility analysis may be found in Appendix C of the Report and Order/Further Notice of Proposed Rule Making.

**Ordering Clauses**

44. Accordingly, *it is ordered*, That pursuant to the authority contained sections 2(a), 4 (i), and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Protection and Competition Act of 1992, Pub. L. No. 102–385, part 21 of the Commissions rules, 47 CFR part 21, and part 76 of the Commission's rules, 47 CFR part 76, are amended as set forth in below, and will become effective 30 days after their publication in the **Federal Register**, (except 47 CFR 76.502 (i) which will become effective 90 days after publication in the **Federal Register**).

**List of Subjects**

*47 CFR Part 21*

Cable television/multipoint distribution service cross ownership, Television.

*47 CFR Part 76*

Cable television.

Federal Communications Commission.
**William F. Caton,**
*Acting Secretary.*

**Amendatory Text**

Parts 21 and 76 of title 47 of the Code of Federal Regulations are amended to read as follows:

## PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

**Authority:** Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

2. Section 21.912 is amended by revising paragraphs (a), (b) and (c), and the Notes following paragraph (c), by removing paragraph (d), redesignating paragraphs (e) through (g) as (d) through (f), and by revising the first sentence of newly designated paragraph (f) to read as follows:

**§ 21.912 Cable television company eligibility requirements.**

(a) Nothwithstanding the provisions of § 21.900 of this part, initial or modified authorizations for stations in the 2150-2162 MHz and 2596–2680 MHz frequency bands may not be granted to a cable operator if a portion of the Multipoint Distribution Service (MDS) station's protected services area

is within the portion of the franchise area actually served by the cable operator's cable system. No cable operator may acquire such authorization either directly, or indirectly through an affiliate owned operated, or controlled by or under common control with a cable operator.

(b) No licensee of a station in this service may lease transmission time or capacity to a cable operator either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable operator, if a portion of the Multipoint Distribution Service (MDS) station's protected services area is within the portion of the franchise area actually served by the cable operator's cable system.

(c) Applications for new stations, station modifications, assignments or transfers of control by cable operators of stations in the 2150–2162 MHz and 2596–2680 MHz frequency bands shall include a showing that no portion of the protected service area of the MDS station is within the portion of the franchise area actually served by the cable operator's cable system, or of any entity indirectly affiliated, owned, operated, controlled by, or under common control with the cable operator.

**Note 1:** (A) In applying the provisions of this section an attributable ownership interest shall be defined by reference to the definitions contained in the notes to § 76.501, provided however, that:

(i) The single majority shareholder provisions of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply; and

(ii) The provisions of Note 2(a) to § 76.501 regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(B) The term "area served by a cable system" means any area actually passed by the cable operator's cable system and which can be connected for a standard connection fee.

(C) As used in this section "cable operator" shall have the same definition as in § 76.5.

**Note 2:** The Commission will entertain requests to waive the restrictions in paragraph (a) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with special relief procedures set forth in § 76.7

* * * * *

(f) Interested persons may file a petition to deny an application filed pursuant to paragraph (d) of this section within 30 days after the Commission gives public notice that the application or petition has been filed. * * *

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## PART 76—CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

**Authority:** Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended 106 Stat. 1460.

4. The heading of subpart J is revised to read as follows:

### Subpart J—Ownership of Cable Systems

5. Section 76.501 is amended by adding paragraphs (d), and (e) to read as follows:

**§ 76.501 Cross-ownership.**

* * * * *

(d) No cable operator shall offer satellite master antenna television service ("SMATV") separate and apart from any franchised cable service in any portion of the franchise area served by that cable operator's cable system, either directly, or indirectly through an affiliate owned, operated, controlled, or under common control with the cable system operator.

(e)(1) A cable operator may offer SMATV service within the portion of the franchise area served by the cable operator's cable system only if the cable operator's SMATV system was owned, operated, controlled by or under common control with the cable operator as of December 4, 1992, or was constructed by the cable operator, and provided that such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

(2) A cable operator may either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with the cable operator offer SMATV service in the unserved portions of the franchise area, regardless of whether the cable operator acquires or constructs the SMATV system, provided such SMATV service is offered in accordance with the terms and conditions of the cable franchise agreement.

(i) In applying the provisions of paragraphs (d) and (e) an attributable ownership interest shall be defined by reference to the definitions contained in the notes to § 76.501, provided however, that:

(A) The single majority shareholder provisions of Note 2(b) and the limited partner insulation provisions of Note 2(g) shall not apply; and

(B) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(ii) The term *area served by a cable system shall mean any area actually passed by a cable system and which can be connected for a standard connection fee.*

(iii) The Commission will entertain requests to waive the restrictions in paragraphs (d) and (e) of this section where necessary to ensure that all significant portions of the franchise area are able to obtain multichannel video service. Such waiver requests should be filed in accordance with the special relief procedures set forth in § 76.7.

6. Section 76.502 is added to subpart J to read as follows:

**§ 76.502 Three-year holding requirement.**

(a) Except as otherwise provided in this section no cable operator may sell, assign, or otherwise transfer controlling ownership of a cable system within a three-year period following either the acquisition or initial construction of such cable system by such cable operator.

(b) A transfer of ownership in a cable system that does not affect the identify of the cable franchisee or the holder of a controlling interest in the cable system shall not be subject to the three-year holding requirement.

(c) For initially constructed cable systems the three-year holding period shall be measured from the date on which service is activated to the system's first subscriber. The holding period for acquired systems shall be measured from the effective date of the closing of the transaction in which control of the cable system was acquired through the proposed effective date of the closing of the transaction assigning or transferring control of such cable system.

(d) Cable operators seeking to assign or transfer control of a cable system are required to certify to the local franchise authority that the proposed assignment or transfer of control of such cable system will not violate the three-year holding requirement. Such certification shall be submitted to the franchise authority at the time a cable operator submits a request for transfer approval to the local franchise authority If local transfer approval is not required by the terms of the franchise agreement, certification of compliance with the three-year holding requirement must be submitted to the franchise authority no later than 30 days in advance of the proposed closing date of the transfer or assignment.

(1) Receipt by the local franchise authority of a certification containing a

description of the transaction and indicating that the cable system has been owned for three years, or that the transferror has obtained or is seeking awaiver from the Commission, or that the transaction is otherwise exempt under this section, shall create a presumption that the proposed assignment or transfer of the cable system will comply with the three-year holding requirement.

(2) Franchise authorities questioning the accuracy of a certification filed pursuant to this section must notify the cable operator within thirty (30) days of the filing of such certification, or such certification shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(e) If an assignment or transfer of control involves multiple systems and the terms of the transaction require the buyer to subsequently transfer or assign one or more such systems to one or more third parties, such subsequent transfers shall be considered part of the original transaction for purposes of measuring the three-year holding period.

(1) In order to qualify as part of the original transaction, a request for approval of the subsequent transfer must be filed with the local franchise authority within 90 days of the closing date of the original transfer and the date of the closing of the subsequent transaction must be no later than 90 days following the grant of transfer approval by the local franchise authority.

(2) If local transfer approval is not required by the terms of the cable franchise agreement, then a subsequent transfer must be completed within 180 days of the date of the closing of the original transfer in order to qualify as part of the original transaction.

(f) Paragraph (a) of this section shall not apply to:

(1) Any assignment or transfer of control of a cable system which is not subject to Federal income tax liability under the Federal Income Tax Code;

(2) Any assignment or transfer of control of a cable system required by operation of law or by any act, order or decree of any Federal agency, any State or political subdivision thereof or any franchising authority;

(3) Any assignment or transfer of control to one or more purchasers, assignees or transferees controlled by, controlling, or under common control with, the seller, assignor or transferror.

(g) The Commission will consider requests for waivers from the three-year holding requirement, consistent with the public interest, and will grant waivers in appropriate cases of default, foreclosure and financial distress. Waiver requests under this section should be filed in accordance with the special relief procedures set forth in § 76.7. Commission waivers will not become effective, however, unless local franchise authority approval of a transfer is obtained if such approval is required by the terms of the franchise agreement.

(1) The Commission will look favorably upon waiver requests involving multiple system operators or transfers of multiple systems if at least two-thirds of the subscribers of the systems being transferred are served by systems owned by the cable operator for three-years or more.

(2) Conditioned upon receipt of local franchise authority transfer approval, where such approval is required by the terms of the franchise agreement or applicable state or local law, transfers of cable systems serving less than 1000 subscribers shall be subject to a blanket Commission waiver.

(h) Cable operators may seek Commission review of franchise authority decisions regarding the application of the three-year holding period to a particular transaction pursuant to the special relief procedures set forth in § 76.7.

(i) Cable system operators seeking to assign or transfer a cable system after three-years must submit a copy of FCC (Form 394) to the local franchise authority if franchise authority approval of the transfer is required by the terms of the franchise agreement.

(1) A franchise authority shall have 120 days from the date of submission of a completed FCC (Form 345), together with all exhibits, and any additional information required by the terms of the franchise agreement, or applicable state or local law to act upon such transfer request.

(2) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting part otherwise agree to an extension of time.

[FR Doc. 93–18652 Filed 8–5–93; 8:45 am]

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## 47 CFR Part 73

**[MM Docket No. 93–64; RM–8195]**

## Radio Broadcasting Services; Corning, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 264C1 for Channel 264B at Corning, California, and modifies the license of Station KCEZ(FM) to specify operation on the higher powered channel, as requested by Phoenix Broadcasting, Inc. See 58 FR 16809, March 31, 1993. Coordinates for Channel 264C1 at Corning are 40–15–31 and 122–05–20. With this action, the proceeding is terminated.

**EFFECTIVE DATE:** September 13, 1993.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93–64, adopted July 14, 1993, and released August 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 264B and adding Channel 264C1 at Corning

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–18787 Filed 8–5–93; 8:45 am]

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## 47 CFR Part 74

**[MM Docket No. 88–140; FCC 93–338]**

## Radio Broadcast Service; FM Translator Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for reconsideration.

**SUMMARY:** Before the Commission are petitions for reconsideration of the

Report and Order adopted in this proceeding, which amended the rules governing the FM translator service. By this Memorandum Opinion and Order, the Commission affirms and further clarifies the FM translator rules, including the revised standards for ownership and financial support of translators; the definition of "major change" in translator coverage areas; maximum power output; and interference criteria for translators. The Commission also adopts minor amendments in the grandfathering criteria and the technical aspects of local program origination.

**EFFECTIVE DATE:** September 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Alan Schneider, Mass Media Bureau, (202) 634–6307.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 88–140 adopted June 28, 1993, and released July 28, 1993. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**Synopsis of Memorandum Opinion and Order**

1. On November 8, 1990, the Commission adopted a Report and Order (Report), 55 FR 50690 (December 10, 1990), amending the rules governing the FM translator service. The Commission's action restructured the FM translator rules consistent with the intended purpose of providing supplementary service to areas in which direct reception of FM radio broadcast stations is unsatisfactory due to distance or intervening terrain barriers. Before the Commission are petitions for reconsideration filed by the National Association of Broadcasters (NAB), John S. La Tour (La Tour), the National Translator Association (NTA), Klimek Communications Corp. (Klimek), Ed Crook (Crook), and Doyle Brewer (Brewer).[1] By this Memorandum Opinion and Order, we affirm and further clarify the FM translator rules, including the revised standards for: Ownership and financial support of translators; the definition of "major change" in translator coverage areas; maximum power output; and interference criteria for translators. We also adopt minor amendments in the grandfathering criteria and the technical aspects of local program origination.

2. In the Report, we tightened or clarified several rules after concluding that the proper role for FM translators remains as a secondary service supplementing the service of FM radio broadcast stations. We also modified several rules so that translators could better serve the public. The rule changes sought to ensure that the translator service does not adversely affect the operation of FM radio broadcast stations. First, the coverage contour of a translator providing fill-in service was defined to coincide with the coverage contour of the primary station for the respective station classes. With respect to service issues, we determined that an FM translator may not be licensed to a commercial FM broadcast station if the translator's coverage contour goes beyond the primary station's coverage contour. In "white area" situations, beyond the protected contour of any full-time aural service, we indicated that we would be favorably disposed toward requests for waivers of our rules to permit commercial primary station ownership. Similarly, we determined that commercial primary stations could financially support fill-in translators both before and after the translator commences operation. We also concluded that commercial FM broadcast stations may not provide financial support beyond technical assistance to "other area" FM translators; however, we indicated that we will favorably view waiver requests to allow financial support for translators in "white areas." Noncommercial educational FM (NCE–FM) translators are exempt from these ownership and financial support restrictions.

3. With respect to other service issues, we permitted all translators to use one or more announcements not to exceed a total of 30 seconds per hour in order to acknowledge and solicit funds for operating expenses. We allowed commercial fill-in translators to use any terrestrial means to obtain the primary station signals, with a favorable disposition toward waiver requests for similar permission entertained for "white area" translators. We clarified that licensees may operate multiple FM translators upon showing "need" as determined on technical grounds by the quality of signal received from the intended primary station or any operating translator. We also adopted procedures to resolve mutually exclusive applications. We defined a "major change" for FM translators as any change in output frequency (output channel), or any change or increase (but not decrease) in geographic area that increases the 1 mV/m coverage area by more than 10 percent of the previously authorized 1 mV/m coverage contour. We continued to exempt FM translators from our multiple ownership rules, and also to prohibit AM–FM cross-service translating.

4. Regarding technical issues, we decided to allow all FM translators to operate on any of the 80 commercial channels with the 20 reserved noncommercial educational channels remaining available for NCE–FM translator use. We adopted a maximum ERP standard of 250 watts at low antenna heights (HAAT), and stated that additional antenna height must be traded for reduced power, implemented by new criteria that limit permissible coverage distance. We indicated that we would be favorably disposed toward waiving this rule to permit higher power (up to 250 watts ERP at any HAAT) if applicants demonstrate that the service to a greater distance reaches only a "white area." In order to apply the waiver standard to NCE–FM translators, we decided to construe any area that is not served by a full-service noncommercial educational radio station as a "white area." We clarified the standards for antennas and adopted our proposed prohibited overlap criteria for predicted interference to FM and TV Channel 6 stations. We concluded that existing stations must comply with the new service rules within three years of the effective date of these new rules, and stated that we would entertain waiver requests where service to the public would be unduly lost as a result of compliance. We also "grandfathered" existing translators that do not comply with the new technical rules unless interference problems occur or the licensee of a grandfathered translator seeks to modify its facilities.

5. In the Report, we found that any enhancements to FM service are most efficiently provided by full-service broadcast stations. The prior rules allowed certain uses by FM translators that contributed to the potential for abuse and to the possible detriment of the FM radio broadcast service. We conclude that the new ownership and financial support limitations adopted in the Report will best serve the public interest by promoting incentives for primary station development.

6. The FM translator service is designed to function on a secondary basis in order to supplement the service provided by FM radio broadcast stations. While we have defined

[1] Dan Hendrix and FM Technology Associates, Inc. filed petitions for reconsideration after the 30-day statutory deadline. See 47 U.S.C. 405. 48 CFR 1.106(f). Therefore, the issues raised by these parties are not considered in this proceeding.

"adequately served" and "underserved" areas differently in other Commission regulatory contexts, our definition of "white areas" for the purposes of FM translators is more relevant to the FM translator service's role of filling gaps caused by distance and terrain barriers. The full-service broadcast station concept of an "underserved" area considers a greater number of stations because such stations are our preferred means of achieving broad distribution of radio service. Furthermore, the definition of "underserved" is one used to determine which of several competing proposals for stations would, on a comparative basis, better serve the public interest. Therefore, that definition has little direct relevance to the relationship between full-service and translator service. In addition, the number of entities necessary for establishing effective competition for cable services, is irrelevant to the standard applied in the aural medium. Therefore, we continue to believe that commercial primary stations should be able to own FM translators beyond the station's predicted 1 mV/m coverage contour only if the translator serves a "white area." Independent parties, of course, are permitted to establish FM translators to serve any area as desired.

**Service Issues**

7. The new ownership rules allow commercial FM broadcast stations to own a translator only when the translator's coverage area is entirely within the primary station's coverage contour. The rules do not allow ownership of "other area" FM translators by any entity "interested in or connected with" the licensee of a primary station. We stated that we would view favorably waiver requests to permit commercial primary station ownership of translators providing "other-area" coverage for "white areas."

8. We conclude that the record does not support that a "white-area" exception to our ownership rule would substantially improve public service in comparison to a waiver process. We find that the waiver process more appropriately addresses the unique needs of "white areas" by permitting the Commission to engage in thorough oversight of situations where primary stations continue to own "other area" FM translators. Therefore, where a licensee establishes that service is indeed unavailable in the absence of a translator, we will be favorably disposed toward requests for waivers of this rule to address these unique circumstances. We also wish to clarify that we will be especially reluctant to grant a request for authorization "other-area" translator unless the party requesting the authorization states affirmatively that the translator is not sought as part of a reciprocal arrangement with another primary station, whereby the primary stations seek translator authorizations in order to rebroadcast each other's signals. Such arrangements would present substantial potential for abuse and would undermine our new service rules.

9. Under the new financial support rules, fill-in translators may be supported financially by the primary station before and after beginning operations. However, "other area" translators cannot receive support, either direct or indirect, from commercial primary stations or interested parties at any time except for technical assistance. The Commission will favorably consider waiver requests for commercial FM primary station support of other area translators serving "white areas."

10. We affirm our decision to prohibit a commercial primary station from providing direct or indirect financial support to any FM translators serving "other areas," both before and after they commence operation, except for technical assistance. Also, we will maintain a favorable disposition toward requests for waivers of this rule to permit a commercial primary station to support any translator providing service to "white areas." We continue to believe that the revised financial support rule is necessary to ensure that translators owned by a commercial station seeking to increase its coverage are used only to provide FM service to areas and populations that are unable to receive satisfactory FM signals due to distance or intervening terrain barriers.

11. In the Report, the Commission dismissed arguments favoring only limited constraints upon financial support for FM translators. As noted in the Report, we believed that an expanded translator service could provide disincentives for the establishment of boardcast stations, relative to translator facilities, since translators have no local service obligations and generally operate at significantly lower cost. Therefore, we affirm our prior determination that the new rules will help ensure that FM translators remain limited to a supplementary role so as not to discourage full-service radio broadcast station development of additional formats and service to the public.

12. We also reject the proposal for a $200 per month limit on acceptable financial support combined with reporting requirements. This would create a substantial burden for both licensees and the Commission due to the additional oversight and review necessitated by such filings. In response to the concern that listeners may not contribute funds despite benefiting from the translator's service, we emphasize that the new rules provide for waivers of the "grandfathering" period upon a showing by the licensee that the public would lose service as a result of compliance with the rules. Given that many of the potential abuses by translators would arguably occur by primary stations providing support in the form of "indirect services", we conclude that the public is better served by the limitations established in the new rules. In addition, we reiterate that communities seeking additional service and formats will have the opportunity to fund FM translator service under the new rule through their independent charitable support.

13. We stated in the Report that "technical assistance" by primary stations will be excepted from the indirect financial support proscription. We affirm this decision and clarify that "technical support" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Such support does not include the supply of equipment or direct funding for the translator's discretionary use. We also reiterate that technical assistance by the primary station should occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment. We continue to believe that these maintenance expenses may become prohibitive given the limited financial resources of many FM translators, and that limited technical assistance by the primary station will enable translators to continue to provide valuable service to the public.

14. The new fundraising rules permit FM translators to air one or more fundraising announcements or advertisements per hour totalling 30 seconds in length. We reaffirm the rule limiting on-air fundraising activities by FM translators to 30 seconds of announcements within an hour. We continue to believe that the 30-second period is an adequate opportunity for FM translators to acknowledge contributions as well as to solicit funds from their listeners as necessary. We also affirm our decision in the Report that the solicitations or announcements may be split during the hour. We continue to believe that it is unnecessarily restrictive to regulate how translators should allocate their 30

seconds of announcements within an hour.

15. We deny the request that announcements should be restricted in form to "enhanced underwriting" messages. In order to encourage donations from independent sources, translators must be able to provide some information about their contributors. We find it unnecessary to limit the content of these brief announcements. Also, while the new rules no longer require FM translator licensees to operate non-profit facilities, the record before us does not indicate that translators will be able to earn substantial profits. In addition, we find that the scenario under which a primary station's advertisers could be enticed to provide financial support to a translator in return for reduced advertising rates—would violate the "indirect support" prohibition.

16. In the Report, the Commission retained its limitation on local program origination to 30 seconds per hour for fundraising and acknowledgement of contributions. Emergency warnings of danger are limited in time and frequency to that necessary to protect life and property. Translators owned by parties other than the primary station must obtain written consent for the rebroadcast of the FM radio broadcast station signals.[2] We also retained the rule that prohibits the retransmission on translators of signals other than those emanating from FM full-service or translator stations.

17. We reaffirm the rules prohibiting program origination by all translators, commercial and NCE–FM, with the exception of acknowledgements or solicitations of financial support as well as emergency warnings of danger. In the Report, we emphasized that the proper role of FM translators is to provide secondary service to areas where direct reception of signals from FM Broadcast stations is unsatisfactory due to distance or intervening terrain obstructions. We remain committed to providing FM radio broadcast service in a manner that promotes program diversity while enhancing the incentives for efficient full-service broadcast station development. Therefore, we intend to maintain the existing programming authority distinctions between FM broadcast stations and translator services.

18. We note that the rules concerning the permissible sources of input channels for FM translators are not intended to restrict programming content. Rather, where there is sufficient community interest, the rules permit translators to rebroadcast any programming broadcast by a primary FM station, thereby affording translators an opportunity to import programming formats otherwise unavailable. Thus, rebroadcasts of the aural portion of a TV or cable signal would be permitted if such a signal were first rebroadcast by a full-service FM station, but not solely by a translator. Once again, we believe that it is necessary to distinguish between the services provided by low cost translators and FM radio broadcast stations due to our preference to provide service through more efficient radio broadcast stations.

19. The Report provides that fill-in translators of commercial primary stations may now use any terrestrial delivery means to obtain the signal from the primary station. "Other-area" translators, however, may only use off-air delivery, although we indicated that we will favorably consider waiver requests to permit signal delivery by any terrestrial means for translators serving "white areas." We believe that any further extension of signal delivery alternatives for "other area" translators would be inconsistent with the secondary role of FM translators in the commercial context. The Report extended permission for fill-in translators to use alternative signal delivery on the grounds that other terrestrial means would conceivably be necessary to circumvent the terrain or other barriers that prevent otherwise expected over-the-air delivery of an FM signal to the translator. As for "other-area"translators, however, there is no similar expectation, especially at large distances, such as 70 to 80 miles from the station. We continue to believe that, to the extent that translator service is desirable beyond a station's predicted service contour, the over-the-air signal will generally be suitable for rebroadcast, although certain white-area situations may warrant a waiver to permit alternative signal delivery methods. Moreover, we believe that the signal delivery provisions in the Report will eliminate disincentives for service by full-service radio broadcast stations in instances where sufficient community interest exists for additional services, but where the existence of "other area" translators financed by primary stations would work to limit the economic viability of such stations. Furthermore, we do not believe that allowing alternative signal delivery for "other area" NCE translators owned by their primary stations requires that we do the same for commercial translators. We have long recognized that NCE–FM and commercial licensees participate in fundamentally different broadcast services. Therefore, we continue to believe that we are not required to apply the same standards for signal delivery to NCE–FM and commercial licensees.

20. A "major change" is defined in the Report as occurring due to any change in output frequency (output channel), or any change or increase (but not decrease) in 1 MV/m coverage area of more than 10 percent of the previously authorized coverage contour. We continue to believe that our definition for "major change" appropriately covers those changes in technical parameters and coverage areas that are significant. The standard also allows licensees sufficient flexibility to make minor technical and facility changes that cause negligible changes in signal patterns. In addition, we believe that changes in coverage areas in excess of 10% could have significant public interest implications. For example, FM translators have an obligation to protect audiences beyond the defined service areas of full service FM stations, and such information is not available in an FM translator application itself. The greater the change in the translator's coverage area, the higher the risk that the audience of a full service station will be affected. Accordingly, changes in coverage area in excess of 10% are appropriately considered "major changes."

21. We also reject the request to include a change in input channel or primary station as a major change criterion. A change in the input channel does not alter a translator's technical parameters because the coverage area, output channel, and potential for creating interference remain identical. While a change in the output frequency is a significant technical change, the input channel is essentially a programming content decision that is not significant with respect to the public interest. Furthermore, to the extent that a translator changes its primary station in a manner that does not clearly comply with our rules, we note that the matter is more appropriately a question for our enforcement function rather than the application process.

**Technical Issues**

22. As decided in the Report, an FM translator's maximum power output will be limited to 250 watts ERP. In addition, the coverage contour of fill-in translators may not go beyond the coverage contour of the primary station. "Other-area" translators will be restricted to power and height combinations that yield a distance to the translator's coverage contour that does not exceed 7 km in Zone I–A and east

[2] 47 CFR 74.1284(b). 47 U.S.C. 325(a).

of the Mississippi River, and 13 km elsewhere. The Commission will be favorably disposed toward waiving this rule to permit higher power up to 250 watts at any antenna height if the service to a greater distance reaches only a "white area."[3]

23. The Commission's new maximum power limits recognized that translators must deliver broadcast signals to small and distant service areas with the minimum necessary power. However, we observed that many translators were already constructed more than 16 km from the area of service and utilized power output in excess of 250 watts. As a result, the 250 watt maximum ERP standard and the grandfathering provisions will promote the fundamental purpose of FM translators while also accommodating most existing authorized facilities. Although we originally proposed a 1 kW ERP limit with a distance to the coverage contour not to exceed 16 km, we observed that most licensees are already in compliance with the lower adopted power standard as well as the 7 km and 13 km distances to coverage contours. For these reasons, the Commission affirms its decision not to expand the maximum power limits so as not to contradict the intended purpose of the FM translator service. We continue to believe that service similar to large or high-power translator stations should be provided by full-service stations. Nonetheless, we emphasize that existing facilities that are not in compliance with the new maximum power standards are grandfathered until actual interference occurs or licensees propose to make changes in their facilities.

24. In the Report, we adopted a contour overlap method for predicting interference with translator applicants permitted to show that interference will in fact not occur. We will grant an application if an objecting party provides convincing evidence that the proposed translator station would be likely to interfere with the reception of a regularly received, off-the-air existing service, even if there is no predicted overlap. This revised method for predicting interference incorporates greater processing flexibility through population and terrain exceptions. Complaints of actual interference must be resolved by the FM translator.

25. We reject the suggestion to require applicants to include exhibits demonstrating compliance with our interference limits because it would create an unnecessary burden on applicants. We find that the proposal is unnecessary because we will continue to perform interference studies to determine whether applicants comply with the new rules. We also recognize that due to their limited financial and technical means, many FM translator licensees may require the flexibility of determining compliance with the interference rules without detailed analyses as part of their applications. Due to the secondary nature of the service, we reiterate that FM translator licensees must adjust their operations following instances of actual interference.

**Other Matters**

26. Licensees authorized prior to June 1, 1991[4] may continue to operate without conforming with the new technical rules, provided that no actual interference occurs and the translator does not propose to modify its facilities. If actual interference develops or the translator seeks to modify its facilities, translators must satisfy the new technical standards concerning interference protection for FM broadcast and TV channel 6 stations, as well as the new power limitations. With respect to the service rules, compliance by existing FM translators will be required in three years, and requests for waivers will be considered if licensees show that the public would unduly lose service as a result of compliance with the new rules.

27. In adopting the Report's three-year grandfathering provision for compliance with the service rules, we emphasized the limited resources of many FM translator licensees and the burden that could result if we were to require accelerated compliance with the new financial support standard. We therefore deny the request to reduce the grandfathering period for the service rules based upon our desire to promote an orderly transition to the new rules and to avoid an unnecessary disruption of service to the public. We also conclude that an indefinite grandfathering period would undermine the effectiveness of the new rules in returning the FM translator service to its original secondary role. Instead, we continue to believe that the Report's provision for extended waivers will adequately prevent the public from unduly losing service in unique circumstances.

28. We wish to clarify that the "other-area" translators that are temporarily "grandfathered" with respect to the ownership and financial support provisions of the new rules will not be required to comply with the new service rules for the remainder of the three-year period if the translator changes its primary station. We believe that a change in the primary station will reflect the preferences of local audiences in the community without altering the technical aspects of a translator's operation, and should ensure that translators constructed based on expectations formed under our prior rules will have sufficient time to adjust their operations.

29. We also amend the grandfathering provision concerning the technical rules by specifying that FM translators authorized prior to the effective date of the rules must comply with the full scope of the technical requirements when they implement a "major change modification or if they cause interference. Such FM translators seeking "minor changes" may continue to operate without complying with the technical rules provided that they satisfy the standards for actual interference. We have affirmed that translators proposing modifications that would not change or increase the 1 mV m coverage area by more than 10 percent are not subject to the "major change" review process. Similarly, we believe that it would be unduly onerous to require compliance with all the technical rules in instances where modifications do not significantly increase the translator's coverage area [5]

30. We are amending § 74.1204(g) of our rules to state standards for the treatment of FM translators based on ERP, so that they are consistent with the minimum permissible power level for Class A FM stations, and the treatment of other secondary FM services.[6]

[3] For NCE–FM translator applications, white areas are defined as "any area that is not served by a full-service public radio station." See 5 FCC Rcd 7227 (1990). By using the term "public radio," we did not intend to exclude from the relevant stations those noncommercial stations not affiliated with the National Public Radio or American Public Radio networks.

[4] The amended rules governing the FM translator service became effective on June 1, 1991. See Order, 47 FR 23024 (May 22, 1991). Applications pending as of June 1, 1991 can be granted only under the terms of the new service and technical requirements and must be amended to conform with the new rules. See Report, 5 FCC Rcd 7233 (1991). We allowed pending applicants 60 days to file amendments demonstrating compliance with the new rules. We now believe, however, that this 60-day period was too restrictive, and we will allow pending applicants to file conforming amendments upon notification by the processing staff. Applicants must use a revised FCC Form 349.

[5] In this regard, we also correct the text of the Report, which states in paragraph 142 that FM translators causing interference or proposing to modify facilities must comply with only the predicted interference standards in § 74.1204, rather than §§ 74.1204, 74.1205, and 74 1235 of the rules

[6] See Order, FCC 91–317 6 FCC Rcd 6060 (1991 56 FR 56169, November 1, 1991, reconsideration pending.

Translators operating with less than 100 watts ERP will be treated as Class D stations and will not be subject to IF separation requirements. We believe that adjusting this requirement to this extent, given the totality of the safeguards adopted in this proceeding, is consistent with our fundamental concern with preventing interference, and we emphasize that the secondary nature of the FM translator service will require correction of any actual interference.

31. The Report adopted a contour protection method for protecting existing translator licensees against potential interference. In order to implement this approach, we are entering the technical parameters of each FM translator station into the Commission's data base. We have found that many licensees and permittees have inadequate information currently on file for our use. Accordingly, we are requesting by letter that such licensees furnish data necessary to implement the Report. In order to ensure that a licensee's failure to provide the requested information does not unduly hamper the functioning of our licensing process, we are, on our own motion, amending § 74.1235 to establish specific mileage contours consistent with a translator station's power for those licensees that fail to submit the requested data. We note that this procedure is similar to that followed in updating our data bases for low-power television and TV translators, and we believe that it will enable us to effectively implement changes in our rules that affect existing translator licensees. We also do not believe that public comment would serve a useful purpose because this action is a minor and noncontroversial process to facilitate our efforts to gather information. However, we recognize that licensees may fail to submit the requested data and later conclude that the hypothetical values applied for their facility are unacceptable. In such instances, licensees may submit corrected figures for our use in protecting translators against potential interference.

32. In the Report, we adopted contour overlap standards to protect TV Channel 6 operations from FM translator operations. These standards were generally consistent with the NCE–FM broadcast station rules. However, Section 73.525(a) of the NCE–FM broadcast station rules permits NCE–FM broadcast applicants whose stations would potentially affect TV Channel 6 broadcast operations to file written agreements with each relevant TV Channel 6 broadcast station concurring with the proposed facilities. The new rule for translators lacked such a provision but we find no reason to omit a similar provision from the translator rules. On our own motion, we will add a provision to Section 74.1205 of the rules to indicate that we will accept FM translator applications that are accompanied by written agreements with all relevant TV Channel 6 broadcast station licensees or permittees.

**Final Regulatory Flexibility Analysis**

33. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the Report detailing (i) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substitute changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

34. The Secretary shall send a copy of the Memorandum Opinion and Order, including Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 et seq. (1981)).

**Ordering Clause**

35. Accordingly, it is ordered that the Petitions for Reconsideration filed by the National Association of Broadcasters, the National Translator Association, Ed Crook, Klimek Communications Corporation; John S. La Tour, J and J Broadcasting, and Power du Pree Broadcasting Corporation; and Doyle Brewer are denied.

36. It is further ordered that pursuant to the authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, part 74 of the Commission's rules and regulations are amended as set forth below, effective September 7, 1993.

**List of Subjects in 47 CFR Part 74**

Radio broadcasting.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Amendatory Text**

Title 47 CFR part 74 is amended as follows:

## PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

1. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154 and 303.

2. Section 74.1204 is amended by revising paragraphs (g) and (j) to read as follows:

**§ 74.1204 Protection of FM broadcast stations and FM translators.**

* * * * *

(g) An application for an FM translator or an FM booster station that is 53 or 54 channels removed from an FM radio broadcast station will not be accepted for filing if it fails to meet the required separation distances set out in § 73.207 of this chapter. For purposes of determining compliance with § 73.207 of this chapter, translator stations will be treated as Class A stations and booster stations will be treated the same as their FM radio broadcast station equivalents. FM radio broadcast station equivalents will be determined in accordance with §§ 73.210 and 73.211 of this chapter, based on the booster station's ERP and HAAT. Provided, however, that FM translator stations and booster stations operating with less than 100 watts ERP will be treated as class D stations and will not be subject to intermediate frequency separation requirements.

* * * * *

(j) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, provided that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with provisions of this section.

3. Section 74.1205 is amended by adding an introductory paragraph and revising paragraph (d) to read as follows:

**§ 74.1205 Protection of channel 6 TV broadcast stations.**

The provisions of this section apply to all applications for construction permits for new or modified facilities for a noncommercial educational FM translator station on Channels 201–220, unless the application is accompanied by a written agreement between the NCE–FM translator applicant and each affected TV Channel 6 broadcast station licensee or permittee concurring with

the proposed NCE–FM translator facility.

* * * * *

(d) FM translator stations authorized prior to June 1, 1991 with facilities that do not comply with the predicted interference protection provisions of this section, may continue to operate, provided that operation is in conformance with § 74.1203 regarding actual interference. Applications for major changes in FM translator stations must specify facilities that comply with the provisions of this section.

4. Section 74.1231 is amended by revising paragraph (f) to read as follows:

**§ 74.1231 Purpose and permissible service.**

* * * * *

(f) A locally generated radio frequency signal similar to that of an FM broadcast station and modulated with aural information may be connected to the input terminals of an FM translator for the purpose of transmitting voice announcements. The radio frequency signals shall be on the same channel as the normally used off-the-air signal being rebroadcast. Connection of the locally generated signals shall be made by any automatic means when transmitting originations concerning financial support. The connections for emergency transmissions may be made manually. The apparatus used to generate the local signal that is used to modulate the FM translator must be capable of producing an aural signal which will provide acceptable reception on FM receivers designed for the transmission standards employed by FM broadcast stations.

* * * * *

5. Section 74.1232 is amended by adding two sentences to paragraph (d) and adding three sentences to paragraph (e) and accompanying Note to paragraph (e) to read as follows:

**§ 74.1232 Eligibility and licensing requirements.**

* * * * *

(d) * * * An FM translator station in operation prior to June 1, 1991, which is owned by a commercial FM radio broadcast station and whose coverage contour extends beyond the protected contour of the primary station, may continue to be owned by a commercial FM radio broadcast station until June 1, 1994. Thereafter, any such FM translator station must be owned by independent parties.

(e) * * * Such an FM translator station may, however, receive technical assistance from the primary station to the extent of installing or repairing equipment or making adjustments to equipment to assure compliance with the terms of the translator station's construction permit and license. FM translator stations in operation prior to June 1, 1991 may continue to receive contributions or support from a commercial FM radio broadcast station for the operation and maintenance of the translator station until June 1, 1994. Thereafter, any such FM translator station shall be subject to the prohibitions on support contained in this section.

**Note:** "Technical assistance" refers to actual services provided by the primary station's technical staff or compensation for the time and services provided by independent engineering personnel. Conversely, such support must not include the supply of equipment or direct funding for the translator's discretionary use. "Technical assistance" must occur after the issuance of the translator's construction permit or license in order to meet expenses incurred by installing, repairing, or making adjustments to equipment.

* * * * *

6. Section 74.1235 is amended by adding a note to paragraph (i) and revising paragraph (j) to read as follows:

**§ 74.1235 Power limitations and antenna systems.**

* * * * *

(i) * * *

**Note:** Existing licensees and permittees that do not furnish data sufficient to calculate the contours in conformance with § 74.1204 will be assigned protected contours having the following radii:

Up to 10 watts—1 mile (1.6 km) from transmitter site.

Up to 100 watts—2 miles (3.2 km) from transmitter site.

Up to 250 watts—4 miles (6.5 km) from transmitter site.

(j) FM translator stations authorized prior to June 1, 1991, with facilities that do not comply with the ERP limitation of paragraph (a) or (b) of this section, as appropriate, may continue to operate, provided that operation is in conformance with § 74.1203 regarding interference. Applications for major changes in FM translator stations must specify facilities that comply with paragraph (a) or (b) of this section, as appropriate.

7. Section 74.1237 is amended by revising paragraph (d) to read as follows:

**§ 74.1237 Antenna location.**

* * * * *

(d) The transmitting antenna of an FM booster station shall be located within the protected contour of its primary station, subject to Note, § 74.1231 (h). The transmitting antenna of a commonly owned commercial FM translator station shall be located within the protected contour of its commercial primary FM station.

[FR Doc. 93–18776 Filed 8–5–93; 8:45 am]

BILLING CODE 6712–01–M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Parts 1019 and 1102

**[Ex Parte No. 515 (A)]**

### Regulations Governing Conduct of Interstate Commerce Commission Employees

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Interstate Commerce Commission (ICC) is reissuing these regulations, which were previously part of the ICC's Canons of Conduct (Canons) for Members and employees. These regulations, which cover matters not included in the Standards of Ethical Conduct for Employees of the Executive Branch (standards) issued by the Office of Government Ethics (OGE), are intended as guidance for ICC Members and employees.

**EFFECTIVE DATE:** These regulations are effective August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Clyde J. Hart, Jr., Designated Agency Ethics Official, (202) 927–6317. (TDD for hearing impaired: (202) 927–5721.)

**SUPPLEMENTARY INFORMATION:** On August 7, 1992, OGE published new standards of ethical conduct for employees of the executive branch (codified at 5 CFR part 2635) which became effective on February 3, 1993. The ICC Canons in subparts B and C of 49 CFR part 1000 have been superseded by those standards and by the new executive branch financial disclosure regulations. (They have been repealed in a separate rule.) However, an agency may retain regulations previously contained in its ethics rules, which are not within the ambit of the OGE standards. 5 CFR 2635.105(c)(3).

The ICC, therefore, has established a new part 1019 of title 49 of the Code of Federal Regulations that will contain those Canons that the ICC intends to continue in effect, as follows: Section 1019.1 contains a cross reference to the OGE standards in 5 CFR part 2635, the Commission's supplemental ethics rules in 5 CFR part 5001 and the financial disclosure regulations in 5 CFR part 2634.

Section 1019.2 covers the administration of the Commission's ethics program and references the recent

designation of the Managing Director's Counsel as the ICC's Designated Agency Ethics Official (DAEO).

Sections 1019.3–1019.6 contain restatements of the Commission's prior Canons on ex parte communications, the use of intoxicants, sexual harassment, and disciplinary action for violations.

The Commission also is amending 49 CFR 1102.2(e) to state that the DAEO, rather than the General Counsel, is responsible for providing rulings to ICC staff on matters concerning ex parte communication.

**Administrative Procedure Act**

The ICC has found that good cause exists under 5 U.S.C. 553 (b) and (d)(3) for waiving, a general notice of proposed rulemaking and 30-day delay in making these regulations effective. They are essentially a restatement of previous ICC Canons and the ICC believes that it is in the public interest for them to become effective as soon as possible. Furthermore, this rulemaking is related to the ICC's organization, procedures and practice, which are not subject to the notice and comment procedures.

**Regulatory Flexibility Act**

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only ICC employees.

**Environmental Impact**

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

**List of Subjects**

*49 CFR Part 1019*

Government employees.

*49 CFR Part 1102*

Administrative practice and procedure.

Decided: June 29, 1993.

By the Commission, Chairman McDonald Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

**Sidney L. Strickland, Jr.,**

*Secretary.*

For the reasons set forth in the preamble, title 49, chapter X of the Code of Federal Regulations is amended as set forth below.

1. A new part 1019 is added to read as follows:

## PART 1019—REGULATIONS GOVERNING CONDUCT OF INTERSTATE COMMERCE COMMISSION EMPLOYEES

Sec.

1019.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.
1019.2 Interpretation and advisory service.
1019.3 Ex parte communications.
1019.4 Use of intoxicants.
1019.5 Sexual harassment.
1019.6 Disciplinary and other remedial action.

**Authority:** 49 U.S.C. 10321.

### § 1019.1 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Members and employees of the Interstate Commerce Commission also should refer to the executive branch Standards of Ethical Conduct at 5 CFR part 2635, the ICC regulations at 5 CFR part 5001 which supplement the executive branch standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

### § 1019.2 Interpretation and advisory service.

(a) The Managing Director's Counsel shall be the Commission's Designated Agency Ethics Official (DAEO).

(b) By June 30 of each year, the DAEO shall report to the Commission on the operation of the Commission's ethics program with any recommendations that the DAEO deems advisable.

### § 1019.3 Ex parte communications.

Members and employees of the Commission must conform to the standards adopted by the Commission in 49 CFR 1102.2.

### § 1019.4 Use of intoxicants.

Members and employees of the Commission shall not use alcohol, drugs, or other intoxicants so as to impede the discharge of their official duties.

### § 1019.5 Sexual harassment.

(a) Members and employees shall not engage in harassment on the basis of sex. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, offensive, or unpleasant working environment.

(b) Employees and applicants may follow the standard Equal Employment Opportunity Commission complaint process if they believe they have a work-related sexual harassment problem. This requires that the employee or applicant contact an EEO Counselor within 45 days of the alleged harassment or, if a personnel action is involved, within 45 days of its effective date.

(c) The regulations in this section apply also to harassment based on race, color, religion, or national origin.

### § 1019.6 Disciplinary and other remedial action.

Any violation of the regulations in this Part by an employee shall be cause for appropriate disciplinary or other remedial action as provided in the ICC's Manual of Administration 22–751, which may be in addition to any penalty prescribed by law. The manual is available from the Office of the Managing Director, Interstate Commerce Commission, 12th Street and Constitution Ave., NW., Washington, DC 20423.

## PART 1102—COMMUNICATIONS

2. The authority citation for part 1102 continues to read as follows:

**Authority:** 49 U.S.C. 10321; 5 U.S.C. 559.

### § 1102.2 [Amended]

3. In § 1102.2 paragraph (e) is amended by removing the words "General Counsel" and adding in their place the words "Designated Agency Ethics Official" in the 4 places they appear in that paragraph.

[FR Doc. 93–18870 Filed 8–5–93; 8:45 am]
BILLING CODE 7035-01-P-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 215

**[Docket No. 930514–3195; I.D. 042093B]**

### Marine Mammals; Subsistence Taking of Northern Fur Seals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final subsistence harvest estimates for subsistence fur seal harvest on the Pribilof Islands.

**SUMMARY:** Regulations governing the subsistence taking of northern fur seals

require NMFS to publish a summary of the previous year's fur seal harvest and to project the number of seals expected to be taken in the current year to meet subsistence needs of the Aleut residents of the Pribilof Islands, Alaska. NMFS published that notice on June 14, 1993. Following a 30-day comment period, NMFS is publishing this final notice of the expected harvest levels for 1993 as follows: St. Paul Island: 1,645–2,000; St. George Island: 281–500.

**EFFECTIVE DATE:** August 6, 1993.

**ADDRESSES:** Dr. William W. Fox, Jr., Director, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Zimmerman (907) 586–7235 or Mr. Michael Payne, (301) 713–2332.

**SUPPLEMENTARY INFORMATION:**

## Background

The northern fur seal (*Callorhinus ursinus*) population is considered depleted under the MMPA (50 CFR 216.15(c)). The subsistence harvest of northern fur seals (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 215 subpart D—Taking for Subsistence Purposes, and has been regulated to minimize negative effects on the population. These regulations were published under the authority of the Fur Seal Act (FSA), 15 U.S.C. 1151 *et seq.*, and the Marine Mammal Protection Act (MMPA) 16 U.S.C 1361 *et seq.* (see 51 FR 24828, July 9, 1986). The purpose of these regulations is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof Aleuts using humane harvesting methods, and to restrict taking by sex, age, and season for herd management purposes.

The purpose of the annual notice is to provide subsistence estimates for the current year's harvest for St. Paul and St. George Islands. The estimates are given as a range, the lower end of which can be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determines that the subsistence needs of the Aleut residents of either of the Pribilof Islands have not been satisfied. Conversely, the harvest can be terminated before the lower range of the estimate is reached if it is determined that the subsistence needs of the Pribilof Aleuts have been met or the harvest has been conducted in a wasteful manner.

## Response to Comments

NMFS received one set of comments on the proposed 1993 fur seal subsistence estimates from the Humane Society of the United States (HSUS).

*Comments:* The comments of HSUS were: (1) The 1993 fur seal subsistence estimates proposed by NMFS are unjustified and should be reduced, and (2) the estimates reflect continued approval (by NMFS) of waste. HSUS maintains that NMFS has adopted an uncritical approach toward its MMPA responsibilities to protect the depleted Pribilof Island population of northern fur seals, and that NMFS has officially approved historical wasteful seal killing. NMFS has proposed the same estimates of subsistence need for each of the Pribilof Islands for 1993 as were proposed in 1992. The HSUS restated their position that the 1992 estimates were arbitrary and unsupported (HSUS referenced their 1992 comments in response to the May 28, 1992, estimates of subsistence need (at 57 FR 22450)), and should not be repeated in 1993.

The HSUS maintains that NMFS has proposed an excessive kill level based on wasteful practices. Under the MMPA and FSA, subsistence harvesting is restricted to nonwasteful subsistence needs. HSUS maintains that NMFS has institutionalized regulations regarding nonwasteful subsistence use based on harvesting practices carried over from the period of commercial harvest when only the choicest cuts of meat were taken for human consumption. The HSUS is concerned that more seals are killed than necessary for subsistence.

*Response:* "Wasteful manner" is defined in the MMPA regulations at 50 CFR 216.3. Similarly, "wasteful manner" is also defined under the Fur Seal regulations at 50 CFR 215.2. The two definitions are functionally similar with the exception that the definition of wasteful manner (in the Fur Seal regulations) is restricted to the taking of fur seals on the Pribilof Islands for subsistence need. In promulgating regulations for the subsistence fur seal harvest, NMFS indicated those parts of a fur seal that should be taken in order to ensure that a "substantial portion" of each animal is taken. The preamble to the final regulations (at 51 FR 24828, July 9, 1986) stated that "* * * NMFS considers the removal and consumption of the following seal parts to constitute substantial use which would be consistent with the requirements that the taking of seals not be accomplished in a wasteful manner: All hearts, livers, flippers, breasts, shoulders, and other readily utilizable tissues and organs, a limited number of backbones, and some, but not necessarily all, rib sections."

The "some, but not necessarily all" language was not written to infer that "some" has to be removed from each animal killed in the harvest, but rather, that a harvest that ensures that backbones and ribs are removed from a percent of the total number of fur seals harvested during each day, satisfies this requirement. The HSUS interprets this to require utilization of these portions from each animal harvested.

In order to monitor compliance with the prohibition on taking in a wasteful manner, NMFS determines the extent of the utilization of fur seals taken. Since 1986, 10–20 percent of all fur seals killed have been sampled on a daily basis to determine the percent-use of the animals taken for subsistence need on St. Paul Island. During the 1987 harvest, 101 carcasses were weighed before and after butchering had removed the front flippers, shoulders, breasts, hearts and livers. A mean 29.1 percent of each animal was dressed out under these circumstances (53 FR 17773, May 18, 1988). This has been commonly referred to as the average percent-use value. An additional 83 seals were weighed before and after virtually all consumable parts had been removed (i.e., everything was taken except for the pelt, blubber, skull, neck, inedible internal organs, and body fluids). A mean 53.3 percent of each animal was dressed out under these circumstances (53 FR 17773 May 18, 1988). Thus, it was determined that the range of percent-use values between animals that have been butchered to remove only selected parts, and animals that have been butchered to remove virtually all consumable parts, lies between 29.1 and 53.3 percent of the initial carcass weight. Since the subsistence harvest has been monitored, each of the annual mean values for percent-use has fallen between these two values. Likewise, with the exception of one day in 1987, all of the mean daily-use estimates (n=146) have fallen between these values. NMFS observers have concluded that the harvest is being conducted in a nonwasteful manner.

NMFS data indicate that there has been a decline in the estimated percent-use of fur seals in recent years. The HSUS contends that this decline reflects a decrease in the number of fur seals being butchered with the whole-cut technique, and represents a waste of a substantial portion of the animals resulting in unnecessary takes of fur seals. In 1992 the NMFS Alaska Region staff analyzed subsistence data to determine if waste of a substantial portion of the animals has resulted. The center of the controversy on whether the harvest is being conducted in a "wasteful" versus "nonwasteful" manner focuses on whether or not the "butterfly cut" method of butchering is

interpreted as a "wasteful manner" as defined in the regulations. The difference between the "butterfly" cut and the other butchering technique, the "whole cut", involves whether the ribs, the backbone, and hindquarters are taken.

In 1992, the whole carcass, as well as the weight of each major body part (breast, shoulder, arm, ribs, backbone, and hindquarter as well as heart, liver, front flippers, rear flippers, head, guts and pelt), was weighed to determine the proportion of edible meat that was available from the different parts of the body for each of six fur seals. Meat, bone, and fat were separated and weighed for each of these body components. The mean of the weights of the parts taken in a "whole cut" (shoulder, breast, arm, front flippers, heart, liver, ribs, backbone, hindquarters) totalled 54.9 percent of the beginning weight of the seals. The sum of the means observed for the parts constituting a "butterfly cut" (shoulder, breast, arm, front flippers, heart, liver) was 32.5 percent. It is these two values that are commonly referred to as the average percent-use for each of the two butchering techniques. However, bone and inedible tissue are major components of several of these parts. Also, much of the meat in these parts consists of a large percentage of connective tissue, which is considered minimally edible. Using mean values, the total amount of edible meat available from a "whole" cut seal was 29.6 percent (range 26.8–31.6) of the beginning weight of the animal. The total amount of edible meat from a "butterfly" cut seal was 21.1 percent (range 18.9–23.4) of the beginning weight of the animal. Therefore, although the average difference between the "percent-use" weight of parts taken in a whole versus butterfly cut is greater than 20 percent, the difference in the amount of edible meat between the two butchering techniques is approximately 8–9 percent of the original body weight of the animal. Thus, at a minimum, the argument that the "whole" cut results in more meat being made available for subsistence use, than does the "butterfly" cut, is exaggerated.

The apparent decrease in the average percent-use values during the past years does reflect a decreased use of the whole-cut butchering technique, as indicated by NMFS data and HSUS comments. However, it does not indicate taking in a "wasteful manner" but instead represents a practical reluctance by the Pribilof Aleuts to utilize the bony parts of the fur seal from which very little usable meat can be obtained.

The HSUS also maintains that the present harvest level does not reflect the "true" subsistence need on the Pribilof Islands. The HSUS is correct in stating that, at the time that the subsistence harvest replaced the commercial harvest, the Aleut dietary requirements for fur seal meat, the specific number of seals, and the amount of seal meat needed to meet dietary requirements were unknown. One of the last true subsistence periods on St. Paul Island occurred during 1912–1916. The commercial harvest was not allowed during those years, and the data were kept on the number of animals taken for subsistence purposes. It is apparent that the number of fur seals taken each year on St. Paul Island during 1912–1916 (range 1,764–3,483) was significantly higher than is presently being requested even though the human population on St. Paul Island at that time was less than one half of the present population. Thus, available information does not indicate that the present number of fur seals taken for subsistence on the Pribilof Islands is beyond that taken for traditional subsistence need.

In summary, the subsistence harvest of northern fur seals in the Pribilof Islands has been monitored every year since 1985. In 1992, NMFS conducted an examination of the precent-use values taken from a systematic sample of fur seals harvested between 1986 and 1991 to determine trends in percent-use and to determine causes for the observed differences in percent-use values during each year of the harvest, specifically with regard to changes in the relative numbers of seals taken by "butterfly" and "whole" cuts. The analysis of weights of parts taken in the subsistence harvest using the "butterfly" versus "whole" cut indicates that a substantial portion of each fur seal harvested is being used for subsistence purposes, but that there is some amount of meat available on parts not taken with the butterfly cut (ribs, backbone, hind quarter). However, such parts are very bony and the meat consists, in large part, of inedible connective tissue. The monitoring procedures followed during each annual harvest ensures that substantial portions of all fur seals harvested are removed and consumed, and that the harvest is conducted consistent with the requirement that the taking of seals be accomplished in a nonwasteful manner. No evidence of a pattern of takes beyond those needed for subsistence has been observed.

**Subsistence Harvest Estimates for 1993**

NMFS published a notice that summarized the 1992 harvest, and proposed a range of subsistence need estimates for 1993 (FR 32892, June 14, 1993). Based on the evidence presented to NMFS to date, NMFS proposed that the lower bound of the harvest estimate for northern fur seals on St. Paul Island in 1993 remain at 1,645 (the same as that in 1992). If the Aleut residents of St. Paul Island reach the lower limit of the estimated range of animals during the 1993 harvest, and still have unmet subsistence needs, they may request an additional number of seals, up to a harvest total of 2,000 fur seals. On St. George Island, the proposed lower bound of the estimate of subsistence need in 1993 also remained at 1992 levels, 281 fur seals. If the Aleut residents of St. George Island reach the lower level of estimated need during the 1993 harvest, and still have unmet subsistence needs, they may request an additional number of seals up to a harvest total of 500 (the upper bound estimated for the 1991 and 1992 harvests).

Between June 23 and August 8, 1993, the Aleut residents of St. Paul and St. George Islands may harvest up to the lower bound of the applicable estimate. If, at any time during the harvest, the lower estimate of subsistence need for an island is reached, the harvest must be suspended for no longer than 48 hours pursuant to 50 CFR 215.32(e)(1)(iii), pending a review of the harvest data to determine if the subsistence needs of the island residents have been met. At such time, the Pribilof Aleuts may submit information indicating that subsistence needs (for either island) have not been met. This information should be submitted as quickly as possible, optimally at the same time notice is given that the lower end of the harvest estimate has been reached in order to assure that the required harvest suspension lasts no longer than 48 hours. If the Pribilof Aleuts substantiate an additional need for seals, and there has been no indication of waste, the Assistant Administrator may authorize the take of additional seals up to the number required for subsistence purposes. If additional information is not submitted by the Pribilof Aleuts, the Assistant Administrator will consider only the information in the record at the time of the suspension. It is very likely, under these circumstances, that the revised subsistence estimate will remain the same as the original estimate. If that is the case, no additional takings would be authorized.

**List of Subjects in 50 CFR Part 215**

Administrative practice and procedure, Marine mammals, Penalties,

Pribilof Islands, Reporting and recordkeeping requirements.

Dated: August 2, 1993.

Nancy Foster,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 93–18815 Filed 8–3–93; 2:01 pm]

BILLING CODE 3510-22-M

## 50 CFR Part 216

[Docket No. 930793–3193; I.D. 071293B]

## Taking and Importing of Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of affirmative finding.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), announces that the Government of Spain has submitted documentation to indicate that it is in compliance with the yellowfin tuna importation regulations for harvesting nations that have acted to ban purse seine sets on marine mammals in the eastern tropical Pacific Ocean (ETP). NMFS has issued an affirmative finding that will allow yellowfin tuna and yellowfin tuna products to be imported into the Untied States from Spain through December 31, 1993, if and when the intermediary nation embargo on all yellowfin tuna and yellowfin tuna products from Spain has been lifted.

**DATES:** This finding was effective July 16, 1993, and remains in effect through December 31, 1993, or until further notice is published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Gary Matlock, Acting Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213, or by telephone at 310–980–4000, or by FAX at 310–980–4018.

**SUPPLEMENTARY INFORMATION:** The Marine Mammal Protection Act (MMPA) prohibits the importation of yellowfin tuna and yellowfin tuna products into the United States from the ETP unless the harvesting nation has a marine mammal regulatory program comparable to that of the United States (16 U.S.C. 1371(a)(2)(B)). A nation that prohibits its vessels from intentionally setting on marine mammals in the course of harvesting yellowfin tuna by purse seine in the ETP may request that NMFS make an affirmative finding under the yellowfin tuna import regulations (50 CFR 216.24(e)(5)(viii)). With an affirmative finding, yellowfin tuna and yellowfin tuna products harvested in the ETP by purse seine vessels of that nation will not be subject to a "primary nation embargo" on importation into the United States.

Spain has purse seine vessels of 400 short tons (362.8 metric tons) carrying capacity or greater fishing for yellowfin tuna in the ETP. Without an affirmative finding, Spain is subject to a "primary nation embargo" of its ETP yellowfin tuna and yellowfin tuna products harvested by purse seine. Spain has provided to the United States: (1) A list of its vessels participating in the ETP purse seine fishery; (2) a copy of Spanish law prohibiting Spanish vessels from intentionally setting purse seine on marine mammals; and (3) assurances that its purse seine vessels are accompanied by observers. Based on this documentation, the Assistant Administrator, after consultation with the Department of State, has made an affirmative finding for Spain under 50 CFR 216.24(e)(5)(viii), effective through December 31, 1993. As a result of this affirmative finding, yellowfin tuna and products derived from yellowfin tuna harvested by Spanish-flag purse seine vessels operating in the ETP will not be subject to a primary nation embargo on importation into the Untied States.

This affirmative finding does not affect the status of Spain as an intermediary nation, or the lifting of the intermediary nation embargo on all yellowfin tuna and yellowfin tuna products from Spain. To have the intermediary nation embargo lifted, Spain must provide certification and documentary evidence that it has not imported, in the preceding 6 months, yellowfin tuna subject to a direct ban on importation into the United States. Once the appropriate documentation has been submitted and the intermediary nation embargo removed, this affirmative finding for Spain as a harvesting nation will allow yellowfin tuna and yellowfin tuna products harvested by Spanish-flag purse seine vessels to be imported into the United States.

Dated: July 30, 1993.

Samuel W. McKeen,

*Program Management Officer.*

[FR Doc. 93–18819 Filed 8–5–93; 8:45 am]

BILLING CODE 3510-22-M

## 50 CFR Part 661

[Docket No. 930402–3134, I.D. 073093B]

## Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency rule; extension of effective date and request for comments.

**SUMMARY:** An emergency interim rule is in effect through August 4, 1993, which establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California. Because conditions warranting the emergency still exist, the Secretary of Commerce (Secretary) extends the emergency rule for 90 days. The emergency rule is intended to prevent overfishing, to apportion the ocean harvest equitably among non-treaty commercial and recreational and treaty Indian fisheries, and to provide for treaty Indian and non-treaty inside fisheries and spawning escapement.

**DATES:** Effective from 0001 hours August 5, 1993, through 2400 hours November 2, 1993. Comments will be accepted until August 20, 1993.

**ADDRESSES:** Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115–0070; or Gary Matlock, Acting Regional Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at (206) 526–6140, or Rodney R. McInnis at (310) 980–4030.

**SUPPLEMENTARY INFORMATION:** Due to concerns regarding the spawning escapement and Indian inriver harvest of Klamath River fall chinook salmon, NMFS disapproved the 1993 salmon seasons recommended by the Pacific Fishery Management Council (Council). Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), an emergency rule was implemented on May 1, 1993 (58 FR 26922, May 6, 1993) to establish fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for the month of May. The emergency rule was amended effective June 1, 1993, through August 4, 1993 (58 FR 31664, June 4, 1993), to establish management measures for the remainder of the season under the assumption that those management measures would be extended for a second 90-day period.

Continuation of the salmon fisheries outlined in the amended emergency rule is necessary to allow the fishery along the coast to proceed and to achieve the objectives for Klamath River fall chinook salmon as agreed by the Department of Commerce and the Department of the Interior. These

objectives, which provide for an increased spawning escapement floor and the expected harvest by the Indian tribes on the Klamath River, and their rationale are described in detail at 58 FR 31664. The emergency rule must be extended for an additional 90 days to implement the management measures for the majority of the 1993 season in order to prevent an inconvenient and premature closure of the fishery. The Council concurs in a 90-day extension. Therefore, the Secretary extends the effectiveness of the amended emergency rule through November 2, 1993.

*Comments:* NMFS received comments regarding the negative economic impact the Secretary's decision would have on the commercial troll fleet and coastal communities. Other comments expressed concern about the timing and rationale for rejecting the management recommendations produced by the lengthy Council process. NMFS also received letters in support of the Secretary's action.

*Response to Comments:* The Secretary's decision strikes a balance between the conservation need for additional spawners inriver fishery needs, and the economic impacts on the ocean fishery. Klamath River fall chinook salmon have suffered serious declines in recent years. The revised spawning escapement floor of 38,000 natural spawners combined with improved environmental conditions in 1993 and the Department of the Interior's commitment to provide more water for fish production in the Trinity River, a major tributary of the Klamath River, will substantially improve the probability that Klamath River fall chinook salmon will rebuild to a level that can sustain healthy fisheries. The timing of the Secretary's decision was dependent on the outcome of discussions between the Department of Commerce and the Department of the Interior over unresolved legal issues concerning the nature and magnitude of tribal fishing rights on the Klamath River. Both Departments agreed to seek an orderly resolution of the legal dispute in time for the 1994 management process. NMFS continues to support the Council process, and will rely on the Council to provide recommendations to the Secretary for fishery management actions that are in the long-term interest of conservation of fishery resources, the fishing industry, and the Nation.

The emergency rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order and was reported to the Director of the Office of Management and Budget with an explanation of why following the procedures of that order is not possible.

**List of Subjects in 50 CFR Part 661**

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: August 3, 1993.

**Nancy Foster,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 93–18818 Filed 8–3–93; 1:46 pm]

BILLING CODE 3510-22-M

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**50 CFR Part 675**

**[Docket No. 921185–3021; I.D. 080293A]**

## Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is rescinding the closure to directed fishing for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1993 total allowable catch (TAC) of Pacific ocean perch in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t), August 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP), prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The directed fishery by operators of vessels using trawl gear for Pacific ocean perch in the AI was previously closed under § 675.20(a)(8) (58 FR 25952, April 29, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the 1993 TAC for Pacific ocean perch in the AI has not been reached. Therefore, NMFS is rescinding that closure and is re-opening directed fishing for Pacific ocean perch in the AI, effective at 12 noon, A.l.t., August 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

*Classification*

This action is taken under § 675.20 and complies with E.O. 12291.

**List of Subjects in 50 CFR 675**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 3, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–18830 Filed 8–5–93; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Chapter I

### Issuance of Quarterly Report on the Regulatory Agenda

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Regulatory Agenda.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the second quarter, April through June, of 1993. This agenda provides the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

**ADDRESSES:** A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 12, No. 2, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2303 or (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7758, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 29th day of July 1993.

For the Nuclear Regulatory Commission.

**David L. Meyer,**

*Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.*

[FR Doc. 93–18831 Filed 8–5–93; 8:45 am]

BILLING CODE 7590–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 92–NM–237–AD]**

### Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Rolls Royce RB211–524 or General Electric CF6–80C2 Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires inspections, adjustments, and functional checks of the thrust reverser system. This action would add a requirement for installation of a terminating modification on airplanes equipped with Rolls Royce engines, and repetitive operational checks of the gearbox locks and of the air motor brake following accomplishment of the installation. This proposal is prompted by the identification of a modification that ensures that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The actions specified by the proposed AD are intended to prevent possible discrepancies that exist in the current thrust reverser control system, which could result in an inadvertent deployment of a thrust reverser during flight.

**DATES:** Comments must be received by October 4, 1993.

**ADDRESSES:** Submit Comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Lanny Pinkstaff, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2684; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–237–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–237–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On October 7, 1991, the FAA issued AD 91–22–02, Amendment 39–8062 (56 FR 51638, October 15, 1991), to require inspections, adjustments, and functional checks of the thrust reverser system on all Boeing Model 767 series airplanes powered by Rolls Royce RB211–524 or General Electric CF6–80C2 series engines. That action was prompted by an ongoing design review, resulting from an accident investigation from which it had been determined that, prior to the accident, the airplane apparently experienced an uncommanded in-flight deployment of a thrust reverser. Deployment of a thrust reverser in flight could result in reduced controllability of the airplane. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing the possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight.

Since the issuance of that AD, Boeing and the FAA have identified a modification for Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines, which, when accomplished, will ensure that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The FAA has determined that the accomplishment of this modification will prevent possible discrepancies that exist in the current thrust reverser control system, which could result in an inadvertent deployment of a thrust reverser during flight.

The FAA has reviewed and approved Boeing Service Bulletin 767–78–0059, Revision 2, dated June 10, 1993, that describes procedures for installation of a second locking gearbox system on the left- and right-hand engine thrust reversers on Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines to minimize the possibility of an uncommanded in-flight deployment of the thrust reversers. This modification involves revising certain wiring and installing new wiring on the engine fan case, strut, wing leading edge, and body to the electrical equipment center. The FAA has determined that accomplishing this modification in accordance with the service bulletin would positively address the identified unsafe condition with regard to those airplanes equipped with Rolls Royce RB211–524 series engines.

The FAA has also reviewed and approved Boeing Service Bulletin 767–78–0047, Revision 2, dated January 21, 1993 (for Model 767 series airplanes equipped with General Electric CF6–80C2 series engines), that adds airplanes to the service bulletin effectivity. In addition, the FAA has reviewed and approved Boeing Service Bulletin 767–78–0048, Revision 1, dated March 26, 1992, that revises the original issue of the service bulletin by adding procedures for an insulation test and a troubleshooting test for Model 767 airplanes equipped with Rolls Royce RB211–524 series engines. The FAA has included these latest revisions of the service bulletins in this proposal as the appropriate service information sources.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 91–22–02 to continue to require inspections, adjustments, and functional checks of the thrust reverser system. Those actions would be required to be accomplished in accordance with the latest revisions of the service bulletins (described previously).

This AD also would add a requirement for installation of a second locking gearbox system on the thrust reversers on Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines, which, when accomplished, would terminate the requirements of the existing AD for those airplanes. The installation would be required to be accomplished in accordance with the modification service bulletin described previously.

This action also would require repetitive operational checks of the numbers 2 and 3 gearbox locks and the air motor brake following accomplishment of the installation. These components are the locking devices that prevent inadvertent in-flight deployment of the thrust reverser. Operational checks of these components will detect latent failures of the components and are necessary in order to ensure the integrity of the thrust reverser system. These operational checks would be required to be accomplished in accordance with procedures described in the airplane maintenance manual.

There are approximately 155 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 42 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 22 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $50,820, or $1,210 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Currently, there are no Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 754 work hours to accomplish the proposed modification, at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact for installation of the modification would be $41,470 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distruction of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation Safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14

CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–8062 (56 FR 51638, October 15, 1991), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 92–NM–237–AD. Supersedes AD 91–22–02, Amendment 39–8062.

*Applicability:* All Model 767 series airplanes equipped with Rolls Royce RB211–524 series engines or General Electric CF6–80C2 series engines, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

(a) For airplanes equipped with Rolls Royce RB211–524 series engines: Within 30 days after October 15, 1991 (the effective date of AD 91–22–02, Amendment 39–8062), perform the inspections, adjustments, and functional checks described in Boeing Service Bulletin 767–78–0048, dated August 15, 1991, or Revision 1, dated March 26, 1992. After the effective date of this AD, these actions shall be accomplished only in accordance with Revision 1 of the service bulletin.

(1) Except as provided by paragraph (a)(2) of this AD, repeat all inspections and functional checks in accordance with the service bulletin at intervals not to exceed 3,000 flight hours.

(2) Repeat the functional check of the grounding wire for the thrust reverser Selector Sequence Valve (SSV) in accordance with paragraph III.E. of the service bulletin at intervals not to exceed 1,500 flight hours, and whenever maintenance action is taken that would disturb the SSV grounding circuit.

(b) For airplanes equipped with General Electric CF6–80C2 series engines: Within 30 days after October 15, 1991 (the effective date of AD 91–22–02, Amendment 39–8062), perform the inspections, adjustments, and functional checks described in Boeing Service Bulletin 767–78–0047, dated August 22, 1991, Revision 1, dated March 26, 1992, or Revision 2, dated January 21, 1993. After the effective date of this AD, these actions shall be accomplished only in accordance with Revision 2 of the service bulletin.

(1) Except as provided by paragraph (b)(2) of this AD, repeat all inspections and functional checks in accordance with the service bulletin at intervals not to exceed 3,000 flight hours.

(2) Repeat the functional check of the grounding wire for the thrust reverser Directional Pilot Valve (DPV) in accordance with the service bulletin at intervals not to exceed 1,500 flight hours, and whenever maintenance action is taken that would disturb the DPV grounding circuit.

(c) If any of the inspections and/or functional checks required by paragraph (a) or (b) of this AD cannot be successfully performed, or if those inspections and/or functional checks result in findings that are unacceptable in accordance with Boeing Service Bulletin 767–78–0048, dated August 15, 1991, or Revision 1, dated March 26, 1992; or Boeing Service Bulletin 767–78–0047, dated August 22, 1991, Revision 1, dated March 26, 1992, or Revision 2, dated January 21, 1993; accomplish paragraphs (c)(1) and (c)(2) of this AD. After the effective date of this AD, the actions required by paragraph (c)(2) of this AD shall be accomplished only in accordance with Boeing Service Bulletin 767–78–0048, Revision 1, dated March 26, 1992; or Boeing Service Bulletin 767–78–0047, Revision 2, dated January 21, 1993; as applicable.

(1) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–31–1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 11, dated March 15, 1993. No more than one reverser on any airplane maybe deactivated under the provisions of this paragraph.

(2) Within 10 days after deactivation of any thrust reverser in accordance with this paragraph, the thrust reverser must be repaired in accordance with Boeing Service Bulletin 767–78–0048, dated August 15, 1991, or Revision 1, dated March 26, 1992; or Boeing Service Bulletin 767–78–0047, dated August 22, 1991, Revision 1, dated March 26, 1992, or Revision 2, dated January 21, 1993; as applicable. Additionally, the inspections and/ or functional checks required by paragraph (a) or (b) of this AD must be successfully accomplished; once this is accomplished, the thrust reverser must then be reactivated.

(d) For airplanes equipped with Rolls Royce RB211–524 series engines: Within 3 years after the effective date of this AD, install a second locking gearbox system on the left- and right-hand engine thrust reversers, in accordance with Boeing Service Bulletin 767–78–0059, Revision 2, dated June 10, 1993. Within 3,000 flight hours after accomplishing this modification, or within 1,000 flight hours after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,000 flight hours; perform operational checks of the number 2 and number 3 gearbox locks and of the air motor brake in accordance with the Airplane Maintenance Manual, Task 78–30–00–715–132–D00; Item 11, "Gearbox Lock and Air Motor Brake Test;" page 537, dated August 10, 1992; page 538, dated November 10, 1992; page 539, dated August 10, 1992; and pages 540 through 543, dated November 10, 1992.

(e) For airplanes equipped with Rolls Royce RB211–524 series engines: Accomplishment of the modifications and periodic operational checks required by paragraph (d) of this AD constitutes terminating action for the inspections, adjustments, and functional checks required by paragraph (a) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18808 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 92–NM–173–AD]**

## Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped with Pratt and Whitney PW2000 Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that would have superseded an existing AD to require inspections, adjustments, and functional checks of the engine thrust reverser system and installation of an additional thrust reverser system locking feature. That proposal was prompted by results of a safety review of the thrust reverser system on these airplanes. This action revises the proposed rule by revising the compliance time for accomplishing the modification; adding airplanes to the applicability; and requiring periodic functional tests of the locking feature following its installation. The actions specified by this proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

**DATES:** Comments must be received by September 17, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport

Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Duven, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2688; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–173–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 14, 1992 (57 FR 59001). That NPRM would have superseded AD 91–20–09, Amendment 39–8043 (56 FR 46725, September 16, 1991), to require certain inspections, adjustments, and functional checks of the engine thrust reverser system; modification of the engine thrust reverser directional control valve; and installation of an additional thrust reverser system locking feature (sync lock), which, when accomplished, would terminate the requirements for repetitive inspections and functional checks. That NPRM was prompted by results of a safety review of the thrust reverser system on these airplanes, which revealed that the installation of additional features to further reduce the likelihood of an in-flight thrust reverser deployment is necessary. Deployment of a thrust reverser in flight could result in reduced controllability of the airplane.

Since the issuance of that NPRM, the FAA has determined that, following installation of the sync lock (either in production or by retrofit), a periodic functional test must be accomplished on all airplanes to ensure the integrity of the sync lock. Indication of failures, resulting in an "unlocked" sync lock, is not provided as part of this proposed installation. In light of this design implementation, the FAA has concluded that a periodic functional test of the sync lock is necessary for all airplanes, as proposed in paragraph (e) of this NPRM. The functional test and correction of any discrepancy found would be required to be accomplished in accordance with procedures defined in the Boeing 757 Maintenance Manual. The FAA may later revise the proposed interval at which this test is to be accomplished, based on sync lock service experience.

The economic impact information, below, has been revised to include the one additional work hour that would be necessary to accomplish each functional test.

In addition, since all Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines would be subject to this requirement, the applicability statement of the proposal has been revised accordingly.

The FAA has reviewed and approved Revision 2 to Boeing Service Bulletin 757–78–0028, dated January 14, 1993. The service bulletin revision divides the thrust reverser sync lock installation into work packages that operators can accomplish in increments of 48 hours or less. The proposed AD includes reference to this revised service bulletin as an additional appropriate source of service information.

The actions specified by the proposed AD are intended to prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane.

The FAA has given due consideration to comments submitted in response to the original NPRM:

One commenter to the NPRM requests that the FAA revise the proposed rule to indicate that approvals of alternative methods of compliance for AD 91–20–09 remain in effect for purposes of compliance with the proposed AD. The commenter does not believe that operators should be required to reapply for approved deviations to a restated provision in an AD simply because the AD number has been changed.

The FAA concurs with the commenter's request. The FAA did not intend to restrict previously approved alternative methods of compliance for AD 91–20–09 from remaining effective under a superseding AD. A note is included in paragraph (g) of this supplemental NPRM to state that approvals of alternative methods of compliance for AD 91–20–09 remain effective for the proposed requirements of paragraphs (a) through (c) of this AD.

This commenter also requests that the compliance time for accomplishing the modification required by proposed paragraph (d) be revised to remove the requirement that each operator accomplish the installation on at least 20 percent of the affected fleet in its possession during each one-year period of the proposed 5-year compliance period. The commenter states that adoption of the proposed compliance requirements would cause operators to schedule special times for the accomplishment of this modification at additional expense over that estimated in the cost impact analysis of the AD. Additionally, the commenter states that the proposed compliance period would discourage operators from beginning the modifications before the final rule becomes effective, since credit is given only for installations accomplished within each of the five one-year periods included in the compliance time.

The FAA concurs with the commenter's request. In evaluating the current status of the fleet, the FAA has

determined that operators are accomplishing the modification in a timely manner, even in the absence of a mandated schedule. Therefore, revising the compliance time as requested will not adversely affect safety, and will allow the modification to be performed at a base during regularly schedule maintenance where special equipment and trained maintenance personnel will be available. Paragraph (d) of this supplemental NPRM has been revised accordingly.

Since certain of the changes described previously expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

There are approximately 211 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 192 airplanes of U.S. registry would be required to accomplish the modification required by this proposed AD, that it would take approximately 624 work hours per airplane to accomplish that proposed modification, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish the proposed modification is estimated to be $6,589,440, or $34,320 per airplane.

In addition, the FAA estimates that 270 airplanes of U.S. registry would be required to accomplish the periodic functional tests required by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish each functional test, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators to accomplish each functional test is estimated to be $14,850, or $55 per airplane.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,604,290. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

*§ 39.13—[Amended]*

2. Section 39.13 is amended by removing amendment 39–8043 (56 FR 46725, September 16, 1991), and by adding the following new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 92–NM–173–AD. Supersedes AD 91–20–09, Amendment 39–8043.

*Applicability:* All Model 757 series airplanes equipped with Pratt and Whitney PW2000 series engines, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

**Note 1:** Paragraphs (a) and (b) of this AD restate the requirements of AD 91–20–09, Amendment 39–8043, paragraphs (a) and (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91–20–09 have been accomplished previously, paragraphs (a) and (b) of this AD do not require those actions to be repeated.

**Note 2:** Paragraph (d) of this AD restates the requirement for repetitive inspections contained in paragraph (d) of AD 91–20–09, Amendment 39–8043. Paragraph (d) of this AD requires that the first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraph (d) of AD 91–20–09.

To prevent deployment of a thrust reverser in flight and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 14 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Accomplish both paragraphs (a)(1)(i) and (a)(1)(ii) of this AD:

(i) Inspect the thrust reverser Directional Control Valve (DCV) assemblies of both engines to determine the solenoid-driven pilot valve's part number, in accordance with Boeing Alert Service Bulletin 757–78A0027, dated September 9, 1991.

(A) If any DCV has a suspect pilot valve as specified in the service bulletin, prior to further flight, replace the DCV with a DCV that has a part number of a non-suspect solenoid-driven pilot valve, in accordance with the service bulletin.

(B) If a DCV has a non-suspect solenoid-driven pilot valve as specified in the service bulletin, that pilot valve does not need to be replaced.

(ii) Perform all tests and inspections of the engine thrust reverser control and indication system on both engines in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991. Prior to further flight, correct any discrepancy found in accordance with the service bulletin.

(2) Accomplish paragraph (a)(1) of this AD on one engine's thrust reverser and deactivate the other engine's thrust reverser, in accordance with section 78–31–1 of Boeing Document D630N002, "Boeing 757 Dispatch Deviation Guide," Revision 8, dated January 15, 1991.

(b) Within 24 days after September 16, 1991 (the effective date of AD 91–20–09, Amendment 39–8043), the requirements of paragraph (a)(1) of this AD must be accomplished on both engines' thrust reverser systems.

(c) Repeat the tests and inspections specified in paragraph (a)(1)(ii) at intervals not to exceed 3,000 flight hours, and prior to further flight following any maintenance that disturbs the thrust reverser control system. Prior to further flight, correct any discrepancy found in accordance with Boeing Service Bulletin 757–78–0025, dated September 9, 1991.

(d) Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (sync lock installation), in accordance with Boeing Service Bulletin 757–78–0028, Revision 1, dated October 29, 1992, or Revision 2, dated January 14, 1993.

(e) Within 1,000 hours time-in-service after installing the sync lock required by paragraph (d) of this AD (either in production or by retrofit), or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Perform functional tests of the sync lock in accordance with the "Thrust Reverser Auto Restow and Sync Lock Test" procedure described in Section 78–31–00, pages 507–516, dated June 20, 1992, of the Boeing 757

Maintenance Manual. Prior to further flight, correct any discrepancy found in accordance with procedures described in the Boeing 757 Maintenance Manual.

(f) Installation of the sync lock, as required by paragraph (d) of this AD, constitutes terminating action for the requirements of paragraphs (a) through (c) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Approvals of alternative methods of compliance issued for AD 91-20-09 constitute valid approvals for compliance with the requirements of paragraphs (a) through (c) of this AD.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 2, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-18809 Filed 8-5-93; 8:45 am]

BILLING CODE 4910-13-P

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## 14 CFR Part 71

**[Airspace Docket No. 93-AWP-5]**

## Proposed Establishment of Class D Airspace; Gila Bend, Arizona

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class D airspace at Gila Bend Air Force (AF) Auxiliary (AUX) Field, Gila Bend, Arizona. The U.S. Air Force operates a control tower at Gila Bend AF AUX Field with an associated airport traffic area. Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "airport traffic area" and eliminate those ATA's not already designated to become Class D airspace. As a result, the requirement for two-way radio communication with the control tower at Gila Bend AF AUX Field would lapse. The intended effect of this proposal is to provide adequate Class D airspace to contain instrument flight rules (IFR) operations and continue the existing two-way radio communication requirement at Gila Bend AF AUX Field.

**DATES:** Comments must be received on or before September 15, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP-530, Docket No. 93-AWP-5, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 2010, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gene Enstad, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0010.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AWP-5." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NRPM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Gila Bend AF AUX Airport, Gila Bend, AZ. The U.S. Air Force operates a control tower at Gila Bend AF AUX Field with an associated airport traffic area (ATA). Airspace Reclassification, which becomes effective September 16, 1993, will discontinue the use of the term "airport traffic area" and, for current control zones with operating control towers, replace it with the designation "Class D airspace." Only ATA's already designated to become Class D airspace will continue to exist; Gila Bend AF AUX Field has not been so designated. As a result, the requirement for two-way radio communication with the control tower at Gila Bend AF AUX Field would lapse. The intended effect of this proposal is to provide adequate Class D airspace to contain IFR operations and continue the existing two-way communication requirement at Gila Bend AF AUX Field. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

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keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A Airspace designations and reporting points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 5000—Subpart D—Class D Airspace*

* * * * *

**AWP AZ CZ Gila Bend [New]**

Gila Bend AF AUX Airport, Gila Bend, AZ
(Lat. 32°53'06" N, long. 112°43'14" W)

That airspace extending upward from the surface up to and including 3,900 feet MSL within a 4.2-mile radius of Gila Bend AF AUX Airport, excluding that airspace within Restricted Area R–2305. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on July 14, 1993.

**Harvey R. Riebel,**

*Acting Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 93–18848 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 93–ANM–20]**

**Proposed Alteration of Jet Route J–171; CO**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would revoke a portion of Jet Route J–171 from Hugo, CO, to Kiowa, CO, because the Kiowa, CO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility is scheduled to be decommissioned after the new Denver International Airport becomes operational. The intended effect of this action is to support the new Denver International Airport airspace realignment.

**DATES:** Comments must be received on or before September 17, 1993.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM–500, Docket No. 93–ANM–20, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division. .

**FOR FURTHER INFORMATION CONTACT:** Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact the FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM'S**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM'S should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke a portion of Jet Route J–171 from Hugo, CO, to the Kiowa, CO, VORTAC because the Kiowa, CO, VORTAC is scheduled to be decommissioned after the new Denver International Airport becomes operational. This action would accommodate the new Denver International Airport airspace realignment. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—[AMENDED]**

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 2004—Subpart A—Class A Airspace.*

* * * * *

**J–171 [Revised]**

From Tobe, CO, to Hugo, CO.

* * * * *

Issued in Washington, DC, on July 20, 1993.

**Harold W. Becker,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 93–18849 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Public Health Service**

**42 CFR Part 63**

**RIN 0905–AD28**

**Traineeships**

**AGENCY:** National Institutes of Health, Public Health Service, Department of Health and Human Services.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Institutes of Health (NIH) proposes to issue revised regulations concerning research traineeships awards. The revised regulations are intended to provide NIH with the flexibility needed to effectively support the development and operation of a variety of training programs essential to its research mission.

**DATES:** Comments must be received on or before October 5, 1993.

**ADDRESSES:** Comments should be sent to Mr. John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Migliore, at the address above, or telephone (301) 496–2832 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 405(b)(1)(C) of the PHS Act authorizes the Secretary, acting through the directors of the national research institutes of NIH, which pursuant to Public Law 102–321 include the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute on Drug Abuse (NIDA), and the National Institute of Mental Health (NIMH), to conduct and support research training for which fellowship support is not provided under section 487 of the PHS Act, and which is not residency training of physicians or other health professionals. Additionally, section 472 of the PHS Act authorizes the award of traineeships in medical library science and related fields, and section 484 authorizes the Director of the National Center for Nursing Research (NCNR) of NIH to provide research training and instruction, and to establish research traineeships and fellowships. Under these authorities, NIH offers research traineeships to qualified individuals. The existing regulations at 42 CFR part 63 covering traineeships, promulgated on December 12, 1956 (21 FR 9868), are obsolete. This proposed rule would revise the existing regulations in their entirety to cover traineeships awarded by NIH pursuant to sections 405(b)(1)(C), 472, and 484 of the PHS Act. The revised regulations are intended to provide NIH with the flexibility needed to effectively support the development and operation of a variety of training programs essential to its research mission. The purpose of this notice is to invite public comment concerning the proposed rule. The following statements are provided as public information.

**1. Regulatory Impact Statement**

The proposed rule has been reviewed in accordance with the requirements of Executive Order No. 12291. This rule simply establishes the procedures by which traineeships are managed and does not create any anti-competitive, economic, or other effects which would make this a major rule. Therefore, the Secretary has determined that it does not constitute a major rule as specified in that Order, and that a Regulatory Impact Analysis is not required.

**2. Regulatory Flexibility Analysis**

The proposed rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). This rule simply establishes the procedures by which traineeships for individuals are managed and does not effect small entities. Therefore, the Secretary has determined that compliance with the proposed regulations would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis is not required.

**3. Paperwork Reduction Act**

This proposed rule contains information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The information collection is § 63.6(b) regarding application materials and the associated burden were previously approved by OMB under OMB Approval Number 0925–0299 (expires October 31, 1993). The title, description, and respondent description of the information collection requirements specified in this proposed rule and reported to OMB are presented below with an estimated annual burden. Organizations and individuals interested in commenting on the information collection requirements are invited to send their comments to: Dr. Charles MacKay, Project Clearance Officer, National Institutes of Health, Building 1, room 328, 9000 Rockville Pike, Bethesda, Maryland 20892, and/or OMB Desk Officer, Office of Information

and Regulatory Affairs, OMB, New Executive Office Building, room 3208, 725 17th St., NW., Washington, DC 20503.

*Title:* National Institutes of Health Research Traineeships

*Description:* the information collection will be used by NIH to determine an applicant's eligibility to apply for a traineeship, ensure that an awardee agrees to comply with the terms and conditions of the traineeship, and ensure that an awardee shows good cause for not reimbursing PHS for any overpayment of stipends or other allowances because of early termination of the traineeship or any other reason.

*Respondent Description:* Individuals or households.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

| | Annual number of respondents | Annual frequency | Average burden per response | Annual burden hours |
|---|---|---|---|---|
| Reporting: § 63.6(b) | | | | |
| Summer Fellowship Applicants | 3,000 | 1 | 1 | 3,000 |
| Predoctoral & Postdoctoral Applicants | 400 | 1 | 1 | 400 |
| Summer Fellowship References | 6,000 | 1 | .33 | 2,000 |
| Predoctoral & Postdoctoral References | 1,200 | 1 | .33 | 400 |
| Subtotal | 10,600 | 1 | .55 | [1] (5,800) |
| § 63.8(c) | 100 | 1 | .25 | 25 |
| § 63.9(a) | 100 | 1 | .25 | 25 |
| Total | | | | 5,850 |

[1] This burden is approved under OMB Approval Number 0925–0299 (expired October 31, 1993).

**4. Catalog of Federal Domestic Assistance**

Catalog of Federal Domestic Assistance program number affected by this proposed rule is: 93.140.

**List of Subjects in Part 63**

Grant programs—health; Health; Medical research.

Accordingly, it is proposed to revise part 63 of title 42 of the Code of Federal Regulations to read as set forth below.

Dated: March 1, 1993.

**Audrey F. Manley,**

*Acting Assistant Secretary for Health.*

Approved: April 2, 1993.

**Donna E. Shalala,**

*Secretary.*

## PART 63—TRAINEESHIPS

Sec.

63.1 To what programs do these regulations apply?
63.2 Definitions.
63.3 What is the purpose of traineeships?
63.4 What are the minimum qualifications for awards?
63.5 How will NIH make awards?
63.6 How to apply.
63.7 What are the benefits of awards?
63.8 What are the terms and conditions of awards?
63.9 How may NIH terminate awards?
63.10 Other HHS policies and regulations that apply.

**Authority:** 42 U.S.C. 216, 284(b)(1)(C), 286b–3, 287c–1.

**§ 63.1 To what programs do these regulations apply?**

(a) The regulations in this part apply to intramural research traineeships awarded by each Director of a national research institute of NIH, the Director of the National Library of Medicine (NLM), the Director of the National Center for Nursing Research (NCNR), or designees pursuant to sections 405(b)(1)(C), 472, and 484 of the Public Health Service Act.

(b) The regulations of this part do not apply to research training which is part of the National Research Service Award Program provided under 42 CFR part 66, the Mental Health Traineeship Program provided under 42 CFR part 64a, or residency training of physicians or other health professionals.

**§ 63.2 Definitions.**

As used in this part:

*Act* Means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

*Award* means an award of funds under section 405(b)(1)(C), 472, and 484 of the Act, or other sections of the Act which authorize research training or traineeships.

*Awardee* means an individual awarded a traineeship under sections 405(b)(1)(C), 472, and 484 of the Act, or other sections of the Act which authorize research training or traineeships.

*Director* means the Director of one of the national research institutes of NIH specified in section 401(b)(1) of the Act, the Director of the National Library of Medicine, the Director of the National Center for Nursing Research, or any official of NIH to whom the authority involved has been delegated.

*HHS* means the Department of Health and Human Services.

*NIH* means the National Institutes of Health.

*PHS* means the Public Health Service.

*Traineeship* means an award of funds under section 405(b)(1)(C), 472, or 484 of the Act, or other sections of the Act authorizing research training or traineeships, and the regulations of this part, to a qualified individual for the person's subsistence and other expenses during a period in which the awardee is acquiring the research training approved under the award.

**§ 63.3 What is the purpose of traineeships?**

The purpose of an NIH research traineeship is to provide support for financial subsistence to an individual during a period in which the awardee is acquiring training in:

(a) Basic and/or clinical biomedical or behavioral research relating to human health, including extending healthy life and reducing the burdens of illness, or

(b) Medical library science or related fields pertaining to sciences related to health or the communication of health sciences information.

Traineeships are intended to make available in the United States an increased number of persons having special competence in these research fields through developmental training and practical research experience in the facilities of NIH, with supplemental

training at other qualified institutions (see § 63.8(a)).

**§ 63.4 What are the minimum qualifications for awards?**

Minimum qualifications for any traineeship shall be established by the Director and shall be uniformly applicable to all applicants in each traineeship program. These minimum qualifications may include requirements as to citizenship, medical standards, academic degrees, professional or other training or experience, and other factors as may be necessary to the fulfillment of the purpose of the traineeship. The Director may, as a matter of general policy or, in individual cases, waive compliance with any minimum qualification so established to the extent that the applicant or applicants have substantially equivalent qualifications or have such special training, experience or opportunity for service as to make an award particularly appropriate, and to the extent the Director finds it is consistent with the fulfillment of the purpose of the traineeship.

**§ 63.5 How will NIH make awards?**

Subject to the regulations of this part, the Director may award traineeships to those qualified applicants who are best able in that official's judgment to carry out the purpose of the traineeships. These awards may be made for a period of one (1) year or other period, including extensions or renewals, as may be specified.

**§ 63.6 How to apply.**

(a) Application for a traineeship shall be made in writing as prescribed by the Director.

(b) In addition to other pertinent information, the Director may require each applicant to submit the following information:

(1) Certification of the applicant's citizenship status;

(2) The applicant's educational background and other qualifications and experience, including previous academic and professional degrees, if any; and

(3) The subject area of the proposed training.

(c) By applying, eligible individuals agree to abide by HHS, PHS, and NIH regulations, and the terms and conditions of the traineeship award which may require compliance with policies and procedures that apply to the proper conduct of research, such as research involving human and animal subjects, patient care, hospital and laboratory procedures, handling of confidential information, and outside employment.

**§ 63.7 What are the benefits of awards?**

(a) Subject to the availability of funds, each individual awarded a traineeship may receive a stipend fixed in an amount determined by the Director.

(b) Additional allowances and benefits may be authorized by and at the discretion of the Director, taking into account the cost of living and other factors such as the requirements of the training program and availability of discretionary funds. Discretionary allowances and benefits may include: Health benefits coverage; dependents' allowance; travel to pre-award interviews, to first duty station, and return to place of origin upon conclusion of the traineeship; tuition and institution fees; and other specific costs as may be necessary to fulfill the purpose of the training program.

**§ 63.8 What are the terms and conditions of awards?**

All traineeships shall be subject to the following terms and conditions:

(a) Training must be carried out at a facility of the NIH, but may be supplemented by additional training acquired at another institution which is found by the Director to be directly related to the purpose of the traineeship and necessary to its successful completion.

(b) Payments shall be made to the awardee or to the institution for payment to the awardee in accordance with payment schedules as prescribed by the Director for each traineeship program.

(c) The awardee shall reimburse NIH for any overpayment of stipends or other allowances because of early termination of the traineeship or any other reason, unless waived for good cause shown by the awardee.

(d) The Director may establish procedures and requirements applicable to traineeship awards, consistent with the regulations in this part, regarding: (1) The proper conduct of research investigations, including research involving human and animal subjects; (2) patient care; (3) hospital and laboratory procedures; (4) handling of confidential information; (5) outside employment; and (6) additional conditions the Director finds necessary to fulfill the purpose of the traineeship.

(e) The awardee shall sign an agreement to comply with the terms and conditions of the traineeship.

**§ 63.9 How may NIH terminate awards?**

The Director may terminate a traineeship at any time:

(a) Upon written request of the awardee; or

(b) If it is determined that the awardee has materially failed to comply with the terms and conditions of the award, or to carry out the purpose for which it was made.

**§ 63.10 Other HHS policies and regulations that apply.**

Several other policies and regulations apply to awards under this part. These include, but are not necessarily limited to:

45 CFR Part 46—Protection of human subjects.

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964.

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title.

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 86—Nondiscrimination on the basis of sex in HHS education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules.

"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986), or successor.

[FR Doc. 93–18689 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

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**Health Care Financing Administration**

**42 CFR Parts 435, 436, and 441**

**[MB–59–P]**

**RIN 0938–AF82**

## Medicaid Program; Minimum Physician Qualifications for Certain Services

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would prohibit payment of Federal matching funds to a State Medicaid program for all physicians' services provided on or after January 1, 1992 to a child under age 21 or a pregnant woman, unless the physician meets specified requirements or is certified by a recognized medical specialty board as qualified to provide physicians' services to a child under age 21 or to a pregnant woman. It would incorporate and interpret provisions of section 4752(e) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508.

The purpose of the legislation and these proposed regulations is to improve

the quality of physicians' services under Medicaid.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 5, 1993.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services. Attention: MB–59–P, P.O. Box 7518, Baltimore, MD 21207–0518.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independance Avenue, SW., Washington, DC 20201, or,

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–59–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Laura Oliven, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Sizelove, (410) 966–4626

SUPPLEMENTARY INFORMATION:

## I. Background

### *A. Current Policy*

Title XIX of the Social Security Act (the Act) provides authority for States to establish Medicaid programs to provide medical assistance to needy individuals. Medical assistance, as defined in section 1905 of the Act, includes physicians' services. Federal financial participation (FFP) is available to States for medical assistance payments to physician providers made on behalf of eligible Medicaid recipients.

Prior to the enactment of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), Public Law 101–508, on November 5, 1990, there were no statutory or regulatory requirements concerning the availability of FFP for physicians' services provided to children under age 21 or to pregnant women. Any physician who was a qualified provider under the State plan could furnish covered physicians' services to a Medicaid recipient and the State would be eligible to receive FFP. In an effort to improve the quality of care provided to children under age 21 and pregnant women, section 4752(e) of OBRA 90 imposes specific requirements on physicians who furnish Medicaid services to children under age 21 and pregnant women.

### *B. Legislation*

Section 4752(e) of OBRA 90 added to section 1903(i) of the Act a new paragraph (14) which prohibits FFP for physicians' services provided on or after January 1, 1992 to a child under age 21 or a pregnant woman (or during the 60-day period following the termination of the pregnancy) unless the physician meets at least one of six specific criteria. Section 1903(i)(14)(A) of the Act lists minimum qualifications that must be met by physicians in order for FFP to be available for their services provided to a child under 21 years of age. Section 1903(i)(14)(B) of the Act lists minimum qualifications that must be met by physicians in order for FFP to be available for their services provided to a pregnant woman.

Section 1903(i)(14)(A) of the Act provides that payment to States under the provisions of section 1903 of the Act will not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a child under 21 years of age, unless the physician either—

- Is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics;
- Is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act);
- Holds admitting privileges at a hospital participating in a State plan approved under title XIX;
- Is a member of the National Health Service Corps;
- Documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described above for purposes of specialized treatment and admission to a hospital; or
- Has been certified by the Secretary as qualified to provide physicians' services to a child under 21 years of age.

Section 1903(i)(14)(B) of the Act provides that payment to States under the provisions of section 1903 of the Act will not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician either—

- Is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics;
- Is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act);
- Holds admitting privileges at a hospital participating in a State plan approved under title XIX;
- Is a member of the National Health Service Corps;
- Documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described above for purposes of specialized treatment and admission to a hospital; or
- Has been certified by the Secretary as qualified to provide physicians' services to pregnant women.

The House bill (section 4482 of H.R. 5835) listed the first five qualifications that must be met by physicians in order for FFP to be available for their services to children under age 21 and pregnant women. However, the House bill did not include the sixth provision that permits the Secretary to "certify" that a physician who does not meet those first five minimum qualifications, nevertheless, would be qualified to furnish services to children under age 21 and pregnant women. The Senate amendment had no provisions regarding qualifications of physicians. The Conference Committee added the sixth criterion regarding certification by the Secretary (H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 896–897 (1990)).

## II. Proposed Changes to the Regulations

We are proposing to add a new § 441.23 to 42 CFR part 441, subpart A, which would list the minimum qualifications that must be met by physicians in order for FFP to be available for their services to children under 21 years of age and to pregnant women on or after January 1, 1992.

We also propose to add a new paragraph (e) to § 435.1002, which would make FFP available, subject to the conditions specified in the new § 441.23, for physicians' services provided on or after January 1, 1992 to children under 21 or to pregnant women in the States, the District of Columbia,

the Northern Mariana Islands, and American Samoa. We propose to make a corresponding change to § 436.1002, which would apply in Guam, Puerto Rico, and the Virgin Islands.

*A. Physician Qualifications—Physicians' Services Provided to Children Under Age 21*

Section 441.23(b) of the proposed regulations would provide that payment to States would not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a child under 21 years of age unless the physician meets at least one of the following criteria:

(1) The physician is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics.

(2) The physician is employed by, or affiliated with, a federally-qualified health center, as defined in section 1905(1)(2)(B) of the Act.

Under section 1905(1)(2)(B) of the Act, federally-qualified health center means an entity which is receiving a grant under section 329, 330, or 340 of the Public Health Service Act; is receiving funding from such a grant under a contract with the recipient of the grant, and meets the requirements to receive a grant under those sections of the Public Health Service Act listed above; or, based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant. The entity may also include an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act. With regard to meeting the requirements to receive a grant under the sections of the Public Health Service Act listed above, the Secretary may waive any of those requirements for up to 2 years for good cause shown.

(3) The physician holds admitting privileges at a hospital participating in an approved State Medicaid plan.

(4) The physician is a member of the National Health Service Corps.

(5) The physician documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in criterion (1) above for purposes of specialized treatment and admission to a hospital.

Under this provision, we propose to define the term "specialized treatment" to mean care beyond the scope of general medical practice which requires the expanded knowledge, skills, and abilities of a certified pediatrician or family practitioner.

Under § 441.23(b)(5), we propose to provide that a non-certified physician may be qualified if he or she enters into a consultation and referral arrangement with a certified pediatrician or family practitioner. Under this arrangement, the non-certified physician would consult with or refer the patient to the certified pediatrician or family practitioner for purposes of specialized treatment or hospital admission.

We would require the arrangement to be currently in effect, in writing, and provide for consultation with and referral to the certified physician when a Medicaid child is treated or admitted to a hospital.

A suggested form to document an acceptable consultation and referral arrangement could resemble the following: *Consultation and Referral Arrangement between Physician Treating Child under 21 Years of Age and Physician Certified in Family Practice or Pediatrics.*

As a physician specialist certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties, I agree to consult with and accept referrals for diagnosis, evaluation, treatment, or hospital admission from _____, M.D. for children who are under 21 years of age and enrolled in the Medicaid program for whom _____, M.D. provides physician services.

Section 1903(i)(14)(A)(v) of the Act requires that referral and consultation agreements include a physician who is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics as described in section 1903(i)(14)(A)(i) of the Act. Doctors of osteopathy do not meet the board certification criteria required by section 1903(i)(14)(A)(i) of the Act and, therefore, would not meet the criterion for entering into an agreement with a physician who does not meet any of the specific physician qualifications.

(6) The physician is certified by the Secretary as qualified to provide physicians' services to children under age 21.

(7) The physician is a Medicaid-qualified provider or becomes one between January 1, 1992 and December 31, 1994.

This seventh criterion is our proposal to provide deemed certification for a 3-year period, under the Secretarial certification authority under criterion six, to any physician who does not meet any of the first five criteria. We believe that this deeming is necessary to ensure adequate access to physicians' services to children under 21 and pregnant women under Medicaid by allowing a limited time for physicians who do not meet the specified criteria to do so.

We considered alternative ways of certifying that a physician who does not meet any of the five minimum qualifications listed in section 1903(i)(14)(A) of the Act, as added by section 4752(e) of OBRA 90, is otherwise qualified to provide these services.

One consideration was to develop a formal certification process to determine if a physician who does not meet the minimum qualifications is medically qualified to provide these services. We rejected this alternative as too administratively burdensome. The Secretary would have to delegate authority to HFCA to develop certification criteria, establish hearing procedures, and determine if other components of the Department of Health and Human Services, such as the Public Health Service, would need to be involved. Also, the States are generally responsible for licensing physicians, and we do not want to infringe on this authority.

We have determined that an administrative certification that the physician is medically qualified to receive Medicaid payment for certain services would be more feasible than a certification by the Secretary. We would use the Secretary's authority to provide a 3-year grace period from January 1, 1992, the effective date of OBRA 90, through December 31, 1994, for physicians to meet at least one of the first five specified criteria. During this time, any physician who is a qualified Medicaid provider under an approved State Medicaid plan would be deemed certified by the Secretary as qualified to provide physicians' services to children under age 21. This would apply to any physician who is or who becomes a qualified provider during this 3-year period (that is, a physician who was already a qualified provider as of January 1, 1992 and a physician who becomes a qualified provider in March 1993 would both be deemed certified by the Secretary through December 31, 1994).

After December 31, 1994, a physician who is a qualified Medicaid provider would have to meet one of the first five criteria specified in section 1903(i)(14)(A) of the Act or be certified by the Secretary as qualified to provide physicians' services to children under age 21.

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Section 441.23(d)(1) of the proposed regulations provides that, for the period beginning January 1, 1992 through December 31, 1994, a physician who is a qualified provider under the State's Medicaid program is considered certified by the Secretary as qualified to provide physicians' services to a child under 21 (or to a pregnant woman as discussed under section II.B of this preamble). The State determines who is a qualified provider and what constitutes a provider agreement. Therefore, any physician who has a provider agreement with the State Medicaid agency and is qualified to receive payment from the State Medicaid agency for providing physicians' services is a qualified provider for those services from January 1, 1992 through December 31, 1994.

Section 441.23(d)(2) provides that effective January 1, 1995, Federal payments to the State for physicians' services to children under 21 and pregnant women will not be made unless the provider meets the minimum qualifications listed under § 441.23(b)(1) through (b)(6) of these proposed regulations for children under 21 (or § 441.23(c)(1) through (c)(6) for pregnant women as discussed under section II.B of this preamble).

(Section II.D. of this preamble discusses our solicitation of public comments on the feasibility of providing blanket Secretarial certification of certain groups of physicians in order to ensure that access to physicians' services is not adversely affected.)

*B. Physician Qualifications—Physicians' Services Provided to Pregnant Women*

Section 441.23(c) of the proposed regulations would provide that payment to States would not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a pregnant woman (or during the 60-day period following termination of the pregnancy) unless the physician meets certain statutory criteria.

Under this section, physicians' services for pregnant women apply to all physicians' services for pregnant women, not just pregnancy related services. Physicians' services to pregnant women would include physicians' services provided to a presumptively eligible pregnant woman under section 1920 of the Act (even though we do not consider these women to be eligible for regular Medicaid), and to a woman being treated during the 60-day period beginning on the date of termination of the pregnancy. (Note: Section 1903(i)(14)(B), as added by section 4752(a) of OBRA 90, specifies a 60-day postpartum period for payment for physicians' services under this section. This postpartum period is shorter than other statutorily specified postpartum periods, such as sections 1902(a)(5) and (8) of the Act, which end at the end of the month in which the 60th day occurs.) Under section 1920(d)(1)(B) of the Act, the prenatal services furnished to a presumptively eligible pregnant woman are "medical assistance" under the State plan (and eligible for FFP) only if they are furnished by a provider "that is eligible for payments under the State plan." This would be a provider who meets all of the qualifications under section 1903(i)(14)(B) of the Act.

Specifically, § 441.23(c) would provide that payment to States would not be made with respect to any amount spent for physicians' services furnished by a physician on or after January 1, 1992 to a pregnant woman (or during the 60-day period beginning on the date of termination of the pregnancy) unless the physician meets at least one of the following criteria:

(1) The physician is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics.

(2) The physician is employed by, or affiliated with, a Federally-qualified health center, as defined in section 1905(l)(2)(B) of the Act.

(3) The physician holds admitting privileges at a hospital participating in an approved State Medicaid plan.

(4) The physician is a member of the National Health Service Corps.

(5) The physician documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in criterion (1) above for purposes of specialized treatment and admission to a hospital.

(6) The physician is certified by the Secretary as qualified to provide physicians' services to pregnant women.

(7) The physician is a Medicaid-qualified provider or becomes one between January 1, 1992 and December 31, 1994.

The statutory language of the qualifications criteria for physicians who furnish services to children under age 21 is almost identical to the criteria for physicians who furnish services to pregnant women. The exception is the specified field in which the physician must be certified (for example, family practice or pediatrics, for children under age 21; family practice or obstetrics, for pregnant women). Therefore, our previous discussion, under section II.A. of this preamble, regarding the application and interpretation of the second, fifth, and sixth criteria for physicians' services to children under 21 would apply equally to physicians' services to pregnant women, with recognition of the difference in the field of certification and practice. We are not repeating the discussion under this section.

*C. Billing Practices*

Billing practices and financial arrangements for the formal consultation and referral agreements described in sections 1903(i)(14)(A)(v) and 1903(i)(14)(B)(v) of the Act are not addressed in this proposed rule. Billing practices and financial arrangements would follow the same State policies and procedures that exist for current referral and consultation agreements between physicians. The State determines whether a specific billing practice or financial arrangement complies with State policy and procedures. However, we solicit comments regarding any problems in the area of billing practices and financial arrangements between physicians who enter into referral and consultation agreements under these proposed regulations.

*D. Blanket Physician Certification*

Several States and interested parties have suggested that certain groups of physicians receive blanket Secretarial certification under the provisions of sections 1903(i)(14)(A)(vi) and 1903(i)(14)(B)(vi) of the Act in order to ensure that access to physicians' services is not adversely affected. We are interested in receiving comments regarding the impact of such a provision on access to physicians' services and the rationale for certifying certain groups of physicians. Categories of physicians that might be recommended for blanket certification include:

- Internists.
- Physicians, regardless of specialty or board-certification status, performing a service not usually related to childhood illness or pregnancy
- Physicians board-eligible in obstetrics or family practice.
- Physician residents and recent medical school graduates.
- Physicians with admitting privileges at any Medicare-participating hospital (to address, for example, any State's practice of selective contracting for Medicaid services).
- Physicians providing services through a coordinated care arrangement with a Medicaid contract.
- Doctors of osteopathy.

- Physicians in underserved areas.
- Emergency room physicians.

In order to give due consideration to providing blanket Secretarial certification for groups of physicians as described above, we are soliciting comments in regard to the rationale for exempting all or any of the above groups from the specific qualifications in sections 1903(i)(14) (A) and (B) of the Act. We also want to be advised of situations in which access to care might be adversely affected by such a proposed regulation. In addition, we would appreciate comments addressing the specific reasons or barriers that prevent certain groups of physicians from meeting any of the criteria specified in sections 1903(i)(14) (A) and (B) of the Act; or, if there are none, the reasons that these physicians do not obtain board certification or admitting privileges at a Medicaid-participating hospital.

We will consider these comments during preparation of the final rule, in determining whether any or all of the above categories of physicians are qualified to provide physicians' services to children under age 21 and to pregnant women. Also, the Secretary may continue to use his authority to certify additional physicians as qualified at a later date.

## III. Regulatory Impact Statement

### *A. Executive Order 12291*

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The majority of physicians who provide services to children and pregnant women should have no difficulty meeting at least one of the criteria specified in the proposed regulations. In fact, it is likely that most providers of these services already meet at least one (and probably more than one) of the criteria listed. Therefore, we believe that the proposed regulations will have a negligible cost impact.

Since this proposed rule would not meet any of these criteria, it is not considered to be a major rule and a regulatory impact analysis is not required.

### *B. Regulatory Flexibility Act*

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, long term care facilities, and other providers to be small entities.

Based on the provisions of this proposed rule, we have determined, and the Secretary certifies, consistently with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), that this proposed rule would not have a significant economic impact on a substantial number of small entities. In fact, we anticipate that less than 5 percent of the total number of physicians would not meet any of these criteria. Further, we expect that any providers that currently do not meet the requirements of these provisions will have ample time to do so during the 3-year grace period. However, to the extent that some providers may find the requirements of these provisions adverse, we solicit your comments and any available data. Therefore, an initial regulatory flexibility analysis has not been prepared.

Section 1102(b) of the Act requires the Secretary to prepare an initial regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area. We are not preparing a rural hospital impact analysis since we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

## V. Other Required Information

### *A. Collection of Information Requirements*

Section 441.23(b)(5) of this document contains information collection and recordkeeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These reporting and recordkeeping requirements are not effective until a notice of OMB's approval is published in the **Federal Register**. The information collection requirement concerns an arrangement between a non-certified physician who may be qualified if he or she enters into a consultation and referral arrangement with a certified pediatrician or family practitioner. Since this arrangement must be in writing, it is considered an information collection requirement under the authority of the Paperwork Reduction Act of 1980. The respondents who would provide the information include the non-certified physician and the certified pediatrician or family practitioner. Public reporting burden for this collection of information is estimated to be ten minutes per agreement if the physician chooses to use the sample form contained in this preamble, and one hour per agreement if the physician produces his or her own written agreement.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

### *B. Response to Comments*

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

## List of Subjects

### *42 CFR Part 435*

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

### *42 CFR Part 436*

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

### *42 CFR Part 441*

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as follows:

A. Part 435 is amended as set forth below:

**PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA**

1. The authority citation for part 435 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.1002 is amended by revising paragraph (a), adding and reserving paragraphs (c) and (d), and adding a new paragraph (e) to read as follows:

**§ 435.1002 FFP for services.**

(a) Except for the limitations specified in §§ 435.1007 and 435.1008, and the conditions described in paragraph (e) of this section, FFP is available in expenditures for Medicaid services for all recipients whose coverage is required or allowed under this part.

* * * * *

(e) FFP is available in expenditures for physicians' services provided on or after January 1, 1992 to children under 21 or to pregnant women (or during the 60-day period beginning on the date of termination of the pregnancy) only if the conditions specified in § 441.23 of this subchapter are met.

B. Part 436 is amended as set forth below:

**PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS**

1. The authority citation for part 436 continues to read as follows:

**Authority:** Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 436.1002 is amended by revising paragraph (a), adding and reserving paragraphs (c) and (d), and adding a new paragraph (e) to read as follows:

**§ 436.1002 FFP for services.**

(a) Subject to the conditions described in paragraph (e) of this section, FFP is available in expenditures for Medicaid services for all recipients whose coverage is required or allowed under this part.

* * * * *

(e) FFP is available in expenditures for physicians' services provided on or after January 1, 1992 to children under 21 or to pregnant women (or during the 60-day period beginning on the date of termination of the pregnancy) only if the conditions specified in § 441.23 of this subchapter are met.

C. Part 441 is amended as set forth below:

**PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES**

1. The authority citation for Part 441 continues to read as follows:

**Authority:** Section 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.10 is amended by adding paragraph (j) to read as follows:

**§ 441.10 Basis.**

* * * * *

(j) Section 1903(i)(14) which lists minimum qualifications for physicians in order for FFP to be available for physician services to children under age 21 and pregnant women (or during the 60-day period beginning on the date of termination of the pregnancy).

3. A new § 441.23 is added under subpart A to read as follows:

**§ 441.23 Conditions for payment for physicians' services to children under age 21 and pregnant women.**

(a) *Definition of "specialized treatment."* As used in this section, the term "specialized treatment" means care beyond the scope of general medical practice which requires the expanded knowledge, skills, and abilities of a certified pediatrician or family practitioner (for children under age 21), or of a certified obstetrician or family practitioner (for pregnant women).

(b) *Payment for physicians' services provided to children under age 21.* FFP under Medicaid is not available for physicians' services provided on or after January 1, 1992 to a child under 21 unless the physician meets at least one of the following criteria:

(1) The physician is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics;

(2) The physician is employed by, or affiliated with a Federally-qualified health center (as defined in section 1905(1)(2)(B) of the Act);

(3) The physician holds admitting privileges at a hospital participating in an approved State Medicaid plan;

(4) The physician is a member of the National Health Service Corps;

(5) The physician documents a current, formal, written, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in paragraph (b)(1) of this section for purposes of specialized treatment and admission to a hospital;

(6) The physician is certified by the Secretary as qualified to provide physicians' services to children under age 21; or

(7) For the period of January 1, 1992 through December 31, 1994, a physician who is or becomes a Medicaid qualified provider in accordance with paragraph (d)(1) of this section will be considered certified by the Secretary as qualified to provide physicians' services.

(c) *Payment for physicians' services provided to pregnant women.* (1) For purposes of this section, physicians' services to pregnant women include physicians' services provided to a presumptively eligible pregnant woman under section 1920 of the Act and to a woman during the 60-day period beginning on the date of termination of the pregnancy.

(2) FFP under Medicaid is not available for physicians' services provided on or after January 1, 1992 to a pregnant woman unless the physician meets at least one of the following criteria:

(i) The physician is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics;

(ii) The physician is employed by, or affiliated with a Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act);

(iii) The physician holds admitting privileges at a hospital participating in an approved State Medicaid plan;

(iv) The physician is a member of the National Health Service Corps;

(v) The physician documents a current, formal, written, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in paragraph (c)(2)(i) of this section for purposes of specialized treatment and admission to a hospital; or

(vi) The physician is certified by the Secretary as qualified to provide physician services to pregnant women.

(vii) For the period of January l, 1992 through December 31, 1994, a physician who is or becomes a Medicaid qualified provider in accordance with paragraph (d)(1) of this section will be considered certified by the Secretary as qualified to provide physicians' services.

(d) *Certification by the Secretary.* (1) On or before December 31, 1994, a physician who is determined by the State to be a qualified provider under the State's Medicaid program is considered certified by the Secretary as qualified to provide physicians' services to a child under 21 or to a pregnant woman.

(2) Effective January 1, 1995, FFP is not available for physicians' services:

(i) Furnished to a child unless the physician meets at least one of the qualifications listed under paragraphs (b)(1) through (b)(6) of this section.

(ii) Furnished to a pregnant woman unless the physician meets at least one of the qualifications listed under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: March 25, 1993.

**William Toby,**

*Acting Deputy Administrator, Health Care Financing Administration.*

Approved: June 16, 1993.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 93-18823 Filed 8-5-93; 8:45 am]

BILLING CODE 4120-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 21 and 76

**[MM Docket No. 92-264, FCC 93-332]**

### Broadcast Services; Cable Television Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Further Notice of Proposed Rule Making (Further Notice) segment of the Commission's Report and Order/Further Notice of Proposed Rule Making seeks additional comment on a number of issues relating to implementation of the anti-trafficking and cross-ownership provisions of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act). Specifically, the Commission invites further comment on establishing subscriber limits and channel occupancy limits. The Further Notice segment of this decision is adopted to solicit substantive input from various affected industries and from the public regarding specific proposals for the establishment of vertical and horizontal ownership limits as required by the 1992 Cable Act. The summary of the Report and Order portion of the decision may be found elsewhere in this Federal Register.

**DATES:** Comments are due by August 23, 1993, and reply comments are due by September 3, 1993.

**ADDRESSES:** Federal Communications Commission, 1919 M St. NW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Chorney, Mass Media Bureau (202) 632-6990.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Further Notice portion of the Commission's Report and Order/Further Notice of Proposed Rule Making in MM Docket No. 92-264, FCC 93-332, adopted June 24, and released July 23, 1993. The complete text of this Report and Order/FNPRM is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at 857-3800, 2100 M Street, NW, suite 140, Washington, DC 20037.

### Synopsis of Further Notice of Proposed Rule Making

1. The Commission, in the Further Notice portion of this Report and Order/Further Notice of Proposed Rule Making continues its effort to establish a substantive record on which to base vertical and horizontal ownership limits as required by the 1992 Cable Act. The Notice of Proposed Rule Making and Notice of Inquiry (Notice) initiating this proceeding was published at 58 FR 3523, January 11, 1993. Specifically, the Commission invites further comment on subscriber limits and on channel occupancy limits.

### I. Subscriber limits

2. Section 11(c)(2) of the 1992 Cable Act requires the Commission to establish limits on the number of subscribers an entity can reach through cable systems owned by that entity. In establishing the ownership limits mandated by section 11, the 1992 Cable Act directs the Commission to consider the following public interest objectives of the legislation: (A) To ensure that no cable operator or group of cable operators can unfairly impede the flow of video programming from the programmer to the consumer; (B) to ensure that cable operators do not favor affiliated video programmers in determining carriage and do not unreasonably restrict the flow of video programming of unaffiliated video programmers to other video distributors; (C) to take account of the market structure, ownership patterns, and other relationships of the cable industry, including the market power of the local franchise, joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests; (D) to take into account any efficiencies and other benefits that might be gained through increased ownership or control; (E) to ensure that such rules and regulations reflect the dynamic nature of the communications marketplace; (F) to impose limitations that will not prevent cable operators from serving previously unserved rural areas; and (G) to impose limitations that will not impair the development of diverse and high quality programming.

3. Although the record in this proceeding to date has enabled the Commission to form certain tentative conclusions, it is apparent that further comment on a number of matters is necessary before appropriate subscriber limits can be established. In brief, the Commission proposes to adopt a national subscriber limit of 25% of homes passed and to attribute cable system ownership based on the same criteria that is used in the broadcast context. However, the Commission continues to seek comment on establishing subscriber limits in the range of 0% to 35% of homes passed nationwide. In addition, the Commission proposes to permit ownership of additional cable systems, beyond the 25% limit, if such systems are minority controlled.

*Applicable Market*

4. The Notice solicited comment on whether regional or national subscriber limits, or both, are necessary to implement the objectives of the 1992 Cable Act. The Commission now proposes to adopt exclusively national subscriber limits. Commenters are asked to indicate whether the proposed national subscriber limits would suffice to implement the objectives of the 1992 Cable Act. In addition, commenters should consider whether the benefits of regional concentration outweigh the possible anti-competitive harm that such concentration may have on the local advertising and programming marketplace. Finally, the Commission asks whether other multichannel video distributors will be available to serve unserved subscribers in all communities if regional limits are imposed.

*Measurement and Percentage Limitation*

5. In adopting horizontal ownership limits the Commission wishes to balance Congress' concerns regarding the ability of the largest multiple system operators (MSOs) to preclude the launch of new programming services with the benefits to consumers that result from some degree of horizontal concentration. Consequently, the Commission proposes to adopt a horizontal ownership limit prohibiting MSOs from owning cable systems that in the aggregate reach more than 25% of all cable homes passed nationwide. Nonetheless, before adopting this

specific limit, the Commission wants to be certain that we have fully considered all the marketplace implications of such a limit. Therefore, further comment is invited on establishing subscriber limits in a range of 20%–35%.

6. Commenters favoring limits below 25% are asked to indicate how such limits can be squared with the Senate Report's indication that divestiture of existing systems was not intended. In addition, these commenters are asked to discuss the effect that such divestiture would have on service to subscribers, programming carriage agreements, and on future MSO investment in new programming and technology. Conversely, commenters arguing for a limit above 25% are asked to discuss the effect that such limits will have on the ability of new programming services to obtain MSO carriage and to indicate the competitive rationale for a higher limit, given the lack of competition faced by most cable operators locally and in the program acquisition market.

7. We also ask commenters to address the effect of the prohibitions on anti-competitive practices established under section 12 and 19 of the 1992 Act on the appropriate level for subscriber limits.

8. The Commission further proposed to allow ownership of additional cable systems, beyond the limit ultimately adopted, provided such systems are minority-controlled. Commenters are asked to indicate whether allowing such increased ownership is desirable to encourage minority ownership of cable systems as a means of encouraging diversity of programming. Commenters are also asked to indicate the appropriate amount of such increased ownership.

9. As indicated in the Notice, the Commission believes it appropriate to measure subscriber limits as share of homes passed rather than as a share of cable subscribers. The Commission prefers a homes passed standard because it more accurately measures a cable operator's potential reach, by encompassing all television households for which a particular cable operator has the ability to provide service. Comments are solicited at to whether this measure is reasonable and appropriate to our objectives.

10. Also, as referenced in the Notice, the Commission proposes to calculate compliance with the national subscriber limits by subtracting the number of homes passed by cable systems in areas where "effective competition"—as defined under the 1992 Cable Act—is established. The Commission questions, however, whether to include for this purpose the definition of effective competition which applies to cable systems subscribed to by fewer than 30% of the households in the franchise area. Commenters are requested to address whether this definition of effective competition is relevant to the competitive concerns which underlie the establishment of subscriber limits. In addition, some commenters, in response to the Notice, advocate more lenient approaches, proposing that the Commission eliminate subscriber limits in communities where cable operators face competition from another multichannel video program provider. The Commission solicits comment as to why a more lenient definition of effective competition would be appropriate for purposes of subscriber limits than for purposes of rate regulation since both provisions are concerned with establishing the threshold level of competition at which cable operators will be deterred from engaging in anti-competitive practices.

*Horizontal Attribution Standard*

11. The Commission proposes to adopt horizontal attribution criteria similar to the broadcast attribution criteria contained in § 73.3555 of the Commission's rules. Generally, under the broadcast attribution criteria, all non-voting stock interests (including most "preferred" stock classes) are generally not attributable. All voting stock interests of 5% or more are generally considered attributable. There are several exceptions to the presumption of attribution created by this 5% benchmark. Most notably there is a single majority shareholder exception, which provides that minority interests will not be attributed where there is a single 51% shareholder. In addition, the interests of "insulated" limited partners are not attributed. The Commission requests further comment on whether all these criteria are appropriate and applicable in the cable context. Commenters are also asked to evaluate the relevance of any of the other provisions or exceptions contained in § 73.3555 to this proceeding.

12. Several commenters advocate a stricter approach, such as the video dialtone attribution standard, which attributes 5% voting non-voting stock interests without exception. The Commission concludes that such an approach is unwarranted in this context. In addition, several cable interests advocate that the attribution standard should focus exclusively on control, since in the absence of control, an operator does not have the ability to direct a system's programming choices. The Commission's attribution rules have long recognized that parties that have less than a majority equity interest in a media property can influence management and programming decisions. The Commission sees no reason at this time to diverge from this longstanding principal. Commenters are encouraged to discuss these conclusions.

*Jurisdiction and Enforcement*

13. The Further Notice proposes that the Commission enforce the suggested subscriber limit. The Commission believes that in enforcing the subscriber limits it may be unnecessary to institute a formal certification process, whereby all cable operators must verify upon transfer or assignment of a cable system that they are in compliance with our subscriber limits. However, additional comment is requested on whether such certification should be required for cable operators currently reaching 20% or more of homes passed. Alternatively, it may be possible for the Commission to adequately monitor and enforce subscriber limits through the use of readily obtainable public information regarding cable system ownership. Commenters favoring such an approach should indicate whether the necessary information regarding cable system ownership and the share of homes passed by the largest MSOs is publically available and the appropriate source that should be used to obtain such information on a regular basis. In addition, the Further Notice finds that the Commission, and not the local franchise authorities, is the appropriate entity to consider any complaints asserting that a particular MSO is in violation of the subscriber limits. The Commission seeks comment on these proposals.

14. Cable commenters have also requested that the Commission waive or exempt MSOs from the subscriber limits in instances of *de minimis* violations or when an MSO is seeking to expand service into an otherwise unserved rural area. The Commission agrees that waivers may be appropriate in these situations and proposes to consider such waiver requests on a case-by-case basis. Commenters are invited on these conclusions and on whether waivers may be appropriate in other circumstances.

15. As proposed in the Notice, the Commission plans to review the subscriber limits every five years to determine whether such limits are reasonable under the prevailing market conditions. The Commission solicits further comment on this proposal and asks commenters to indicate whether review every five years will be adequate to ensure that the regulations are

responsive to the dynamic nature of the cable industry.

## II. Channel Occupancy Limits

16. Section 11(c)(2)(B) of he 1992 Cable Act requires the Commission to establish reasonable limits on the number of cable channels that can be occupied by a video programmer in which a cable operator has an ownership interest ("channel occupancy limits"). By requiring the adoption of channel occupancy limits, Congress sought to reduce the incentive and ability of cable operators and video programmers to engage in anti-competitive practices. In addition, the Senate Report expressed concern that vertical integration limits diversity of cable programming and reduces the number of voices available to the public. In this respect, the channel occupancy limits were also intended to increase the diversity of sources of cable programming.

17. After considering the record submitted in response to the Notice, the Commission continues to have questions and concerns regarding the appropriate level at which to establish channel occupancy limits and the proper application of such limits to specific types of programming. While a review of the record and the Commission's analysis of the market structure has enabled the Commission to reach certain tentative conclusions, additional information regarding how such proposals will affect continued MSO investment in new programming services is requested.

18. Briefly, the Commission proposes to adopt a 40% limit on the number of channels that can be occupied on a cable system by programming in which the particular cable operator has an attributable interest. Vertical ownership attribution for this purpose would be defined by reference to the broadcast attribution criteria. In addition, the Commission proposes to allow carriage of additional vertically integrated video programmers provided such video programmers are minority-controlled or are targeted to a minority audience. The Commission plans to count all activated channels in calculating system capacity and all channels occupied by affiliated programming services would be counted toward the 40% limit. However, the Commission proposes to exempt local and regional programming networks from such limits.

19. The Commission further proposes to grandfather carriage of all vertically integrated programming services that existed as of the effective date of the 1992 Cable Act, which exceed the channel occupancy limits we ultimately adopt. The Commission also proposes to eliminate channel occupancy limits in any community where effective competition is established. In addition, the Commission plan to adopt a maximum channel capacity beyond which the channel occupancy limits will no longer apply.

### *Application of Channel Occupancy Limits*

20. As observed in the Notice, the language contained in section 11(c)(2)(B) of the 1992 Cable Act is unclear regarding whether the channel occupancy limits were meant to apply only to carriage of video programmers affiliated with the particular cable operator or to carriage of any vertically integrated cable programmer on any cable system. Given the uncertainty surrounding the application of channel occupancy limits, the Commission proposes to apply such limits only to video programmers that are vertically integrated with the particular cable operator.

21. Only Tele-Communications, Inc. (TCI) an International Family Entertainment (IFE) offer alternative approaches to channel occupancy limits. Comment is invited on TCI's suggestion that the Commission implement channel occupancy limits by measuring bandwith rather than traditional channels. Commenters are asked to discuss whether TCI's recommended approach would be preferable to a channel based restriction and whether such an approach would be consistent with Congress' direction that the Commission establish limits on "the number of channels" that can be occupied by vertically integrated programming. The Commission also request that commenters indicate whether a bandwith measure would be more adaptive to cable systems employing digital signal compression and other advanced delivery systems. The Commission seeks to adopt regulations that will encourage cable operators to continue to invest in the development of new technologies and innovative program services and invites commenters to indicate whether there are alternative approaches that might further these objectives. The Commission specifically asks commenters to address how the adopted restrictions can be adapted to video on demand systems. Moreover, commenters are asked to indicate what, if any, provisions should be made in the Commission's regulations for the use of cable capacity to provide information and communications services as opposed to video programming services.

22. With respect to IFE's suggestion that no channel occupancy limits be imposed on cable operators unless an unaffiliated or competing video programmer complains that it has been denied access, the Commission finds that such an approach would be consistent with the plain meaning of the statute and so declines to follow this approach. However, comments are solicited on whether an exception should be made allowing systems to carry additional affiliated programming where no unaffiliated or competing programmer seeks carriage and channel capacity would otherwise go.

### *Calculation of Channel Capacity.*

23. The statutory language does not indicate how a cable system's channel capacity should be determined for purposes of applying channel occupancy limits. However, the Senate Report provides a hypothetical calculation in which the cable system's broadcast, PEG and leased access channels are subtracted from the overall system capacity before the channel occupancy limit is applied. Nevertheless, the Commission believes that all activated channels (including those used for non-video services) should be taken into account in calculating system capacity for purposes of applying channel occupancy limits. The Commission notes that cable operators are obligated by the 1992 Cable Act to carry local broadcast and noncommercial educational channels, and are required to reserve channel capacity for lease to unaffiliated programmers. Consequently, it would be unreasonable to use such channels to reduce the base of channels available for carriage of vertically integrated programming. The Commission asks commenters to indicate whether this approach is appropriate and consistent with the objectives of the channel occupancy limits.

### *Vertical Ownership Attribution Standard*

24. The plain language of section 11(c)(2) of the 1992 Cable Act does not indicate the appropriate criteria for determining vertical ownership attribution. The Senate Report, however, suggests that in determining what is an attributable interest, the Committee intended that the Commission use the attribution rules set forth § 73.3555 (Notes) of the Commission's Rules or such other criteria as the Commission deems appropriate. The Commission proposes to apply the broadcast attribution criteria for purposes of applying the channel occupancy limits. In so doing, the Commission dismisses

a number of alternative attribution criteria suggested by commenters.

25. In the context of establishing limits on vertical integration in the cable industry, the Commission is concerned with identifying interests in cable programming services which are sufficient to afford influence or control over programming decisions. The Commission also seeks to identify interests that might potentially provide cable operators with an incentive to favor an affiliated programming service over an unaffiliated or competing programming service. However, these concerns must be balanced with the objective of preserving the benefits and efficiencies of vertical integration and encouraging continued MSO investment in new cable programming services. The Commission tentatively concludes that the broadcast attribution criteria are strict enough to identify all interests that afford the potential to exert influence or control over management or programming decisions, yet flexible enough to permit continued MSO investment in new programming services. Comments are sought as to whether there are any modifications or additional exceptions that should be made to the Commission's attribution criteria to better adapt them for this purpose.

*Percentage Limitation*

26. The Commission tentatively proposes to adopt a 40% limitation on the number of channels that can be occupied by vertically integrated programming. The Commission notes however, that the appropriate percentage limitation for channel occupancy limits is dependent upon the attribution standard we ultimately adopt to define vertical integration, and on other issues regarding the application of the channel occupancy limits to particular types of programming. The Commission also proposes to allow carriage of additional vertically integrated programming services, beyond the 40% limit, if such services are minority-controlled or are targeted to a minority audience. The Commission asks commenters to discuss whether allowing such expanded carriage of minority-controlled or minority oriented programming services will encourage additional minority ownership and participation in the development of cable programming. Commenters are also requested to indicate whether the definition of "qualified minority programming source" provided in the leased access provisions of the Communications Act would be appropriate for this purpose. (47 U.S.C. 532(i)(2) defines "qualified minority programming source" as a programming source "which devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50% minority-owned.")

27. Comment is further solicited on whether the proposed 40% channel occupancy limit is reasonable, given the structure of the marketplace and the other carriage obligations already imposed on cable operators. Commenters are asked to submit whether a 40% limit will adversely affect continued MSO investment in the development of new and innovative programming services. The Commission also asks commenters to indicate how carriage of vertically integrated programming services will be affected by the establishment of a 40% limit. Finally, the Commission seeks comment on whether channel occupancy limits should vary depending on system capacity as is the case with must-carry, leased access, and noncommercial educational carriage requirements.

*Treatment of Pay Channels, Multiplexed Channels and Local and Regional Networks*

28. The Commission proposes to count all vertically integrated pay-per-view and pay-per-channel services against a system's channel occupancy limits. The Commission disagrees with commenters who argue that multiplexed channels should not be counted towards the channel occupancy limits because they provide subscribers with time diversity or who argue that the Commission should assume that cable operators engage in multiplexing only when they are already carrying a full array of programming. The Commission proposes, however, to exempt local and regional networks from the channel occupancy limits in order to encourage the development of local cable programming. Commenters are requested to address these tentative conclusions and to suggest an appropriate definition for local and regional programming services that should qualify for this exemption.

29. In addition, the Commission is not persuaded by commenters arguments in support of an exemption for new programming services from channel occupancy caps for a period of five years. The Commission believes that if the channel occupancy limit is set at the appropriate level, such an exception for new programming services should be unnecessary. The Commission seeks further comment on whether such an exception is necessary given the proposed 40% channel occupancy limit. Commenters are also asked to indicate whether, alternatively, the Commission should grant waivers to permit carriage of new programming services in appropriate circumstances. Commenters favoring such a waiver provision should suggest the criteria that would be appropriate in connection with such waiver requests.

*Effect of Fiber Optic Cable and Digital Signal Compression*

30. The Commission continues to support the proposal in the Notice to establish a channel capacity threshold beyond which the channel occupancy limits would not apply. As previously indicated, the expanded channel capacity that will result from fiber optic cable and digital compression technology will most likely eliminate the need for such limits to encourage cable operators to carry unaffiliated or competing programming services. Nevertheless, the Commission tentatively concludes that it is premature to establish such a ceiling at this time.

31. Fiber optics and digital signal compression are still in the experimental phases and are presently being tested in only a few markets. Given the various potential applications of such technologies to provide communications, information and other non-video services, the Commission is unsure what effect such developments will have on the ability of unaffiliated video programers to obtain access to vertically integrated systems. Accordingly, the Commission proposes to consider the adoption of an appropriate channel occupancy ceiling at a late date when there has been an opportunity to study the effects of fiber optic cable and digital signal compression on the carriage of video programming. Alternatively, the Commission asks commenters to indicate whether there is an identifiable channel capacity threshold associated with the next generation of cable technology which would provide an appropriate level beyond which channel occupancy limits should no longer apply. The Commission also seeks comment on whether to review channel occupancy limits every five years making such adjustments as are appropriate at that time.

*Effective Competition*

32. The Commission proposes to eliminate channel occupancy limits in any community where effective competition, as defined under section 3 of the 1992 Cable Act, is established. The Commission asks commenters to address this proposal and to indicate

whether channel occupancy limits should be automatically phased out where effective competition is established or whether cable operators should be required to obtain a Commission waiver. Commenters are also asked to indicate whether the statutory definition of "effective competition" applicable to rate regulation should also be used for this purpose or whether another standard of effective competition would be more appropriate. Specifically, the Commission questions whether to include for this purpose the definition of effective competition which applies to cable systems subscribed to by fewer than 30% of the households in the franchise area. Commenters are requested to address whether this definition of effective competition is relevant to the competitive concerns which underlie the establishment of channel occupancy limits.

*Grandfathering Carriage of Vertically Integrated Programs*

33. The Commission concludes that the public interest would not be served by requiring cable operators to delete vertically integrated programming services in order to comply with the channel occupancy caps. Accordingly, the Commission proposes to grandfather all vertically integrated programming services that were carried as of December 4, 1992 (the effective date of the 1992 Cable Act), which exceed the channel occupancy limits ultimately adopted. Once additional capacity becomes available on a grandfathered system, however, the Commission believes that such system should be prohibited from expanding its carriage of vertically integrated programming services until such system is in full compliance with the channel occupancy limits. Commenters are invited to address our rationale for proposing such grandfathering.

*Enforcement*

34. While the Notice proposed to rely primarily on local franchise authorities to monitor compliance with the channel occupancy limits, the record in this proceeding has raised questions as to whether local authorities have either the resources or the expertise to effectively monitor compliance with the Commission's channel occupancy limits. For this reason the Commission proposed to retain responsibility for monitoring and enforcing compliance with the channel occupancy limits. Commenters are asked to suggest how the Commission can most effectively enforce such limits. The Commission tentatively rejects the proposal of some commenters that channel occupancy limits be enforced on a compliance only basis. Such complaint based enforcement would only ensure that anti-competitive practices are prevented. However, Congress also intended such limits to ensure that a diversity of voices is available to cable subscribers. This objective can only be accomplished by ensuring that all cable operators are in compliance with the carriage limits on vertically integrated programming.

**Administrative Matters**

*Ex Parte.* This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.203 and 1.206(a).

*Comments.* Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 23, 1993, and reply comments on or before September 3, 1993.

*Initial Regulatory Flexibility Analysis*

35. Reason for the Action: The purpose of this Further Notice is to establish rules and regulations in accordance with the Cable Television Consumer Protection and Competition Act of 1992 relating to the development of horizontal and vertical ownership limits.

36. Objective of this Action: The 1992 Act and the subsequent actions to implement it are intended to encourage competition in the cable industry and prevent the exercise of undue market power by horizontally or vertically integrated cable systems. This action is meant to assist the Commission in adopting reasonable subscriber limits and channel occupancy limits required by the 1992 Cable Act.

37. Legal Basis: Authority for the actions proposed in this Notice may be found in sections 4, 303, 613 and 617 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 533.

38. Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule: This Further Notice proposes to adopt new reporting requirements appliance to cable systems, in order to ensure compliance with the proposed rules.

39. Federal Rules Which Overlap, Duplicate, or Conflict with the Proposed Rule: None.

40. Description, Potential Impact and Number of Small Entities Involved: Approximately 11,000 existing cable systems of all sizes may be affected by the proposals contained in this Further Notice. In addition, an unknown number of video programming sources may be affected.

41. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The purpose of this Further Notice is to seek comment on issues including alternatives that would minimize the impact on small entities.

**Ordering Clauses**

42. Accordingly, *it is ordered*, That pursuant to the authority contained sections 2(a), 4(i) and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Protection and Competition Act of 1992, Pub. L. 102–385, MM Docket No. 92–264 will remain open until such time as the remaining issues relating to section 11 of the 1992 Cable Act are resolved.

**List of Subjects**

*47 CFR Part 21*

Cable television/multipoint distribution services cross ownership, Television.

*47 CFR Part 76*

Cable television.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–18651 Filed 8–5–93; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ACTION

### Agency Information Collection Activities

**AGENCY:** ACTION, the Federal Domestic Volunteer Agency.

**ACTION:** Information collection submitted to the Office of Management and Budget (OMB) for review.

**SUMMARY:** The following form(s) have been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. chapter 35). This entry is not subject to 44 U.S.C. 3504(h). Copies of the submission(s) may be obtained from the ACTION Clearance Officer.

**DATES:** OMB and ACTION will consider comments received by September 7, 1993. Send comments to both:

**ADDRESSES:**

Willard L. Hoing, Clearance Officer, ACTION, 1100 Vermont Avenue NW., Washington, DC 20525.

Steve Semenuk, Desk officer for ACTION, Office of Management & Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:**

*Title of Forms:* Project Progress Reports (PPRs), *ACTION Forms Nos.:*
A–1020 (Older American Volunteer Programs);
A–1035 (Special Volunteer Programs);
A–1432 (Student Community Service Program);
A–1433 (Volunteers in Service to America)

*Need and Use: Need:* To assure that projects fulfill legislated purpose to monitor progress. Use: To provide standard performance reports by which progress is measured and determine need for technical assistance.

*Type of Request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

*Respondent's Obligation to Reply:* Required to retain benefits.

*Description of Respondents:* Public agencies and private non-profit organizations.

*Frequency of Collection:* A–1020, Semi-Annually (except when required quarterly for projects (1) during first year of operation; (2) with a new project director in his/her first year, and (3) where the Project Manager indicates special oversight is required; A–1035, Quarterly; A–1432 and A–1433, quarterly first year and semiannually in subsequent years.

*Estimated Number of Annual Responses:* 5,308

*Estimated Average Burden Hours per Response:* 1.5

*Estimated Annual Reporting or Disclosure Burden:*
Reporting only = 3.75 hours per project
Recordkeeping only = 10.83 hours per project
Total burden per project = 14.58 (average)

**Regulatory Authority:** 42 U.S.C. 4950 et seq.

Dated: July 30, 1993.

**Gary Kowalczyk,**

*Acting Director, ACTION.*

[FR Doc. 93–18799 Filed 8–5–93; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

### Allison Draw Watershed, WY; Record of Decision

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of availability of a record of decision.

**SUMMARY:** Frank S. Dickson, Responsible Federal Official for the projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Wyoming, is hereby providing notification that a record of decision to proceed with the installation of the Allison Draw Watershed project is available. Single copies of this record of decision may be obtained from Frank S. Dickson at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** Frank S. Dickson, State Conservation, Soil Conservation Service, 100 East B Street, Casper, Wyoming 82601, telephone 307-261-5201.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials)

Dated: July 30, 1993.

**Frank S. Dickson,**

*State Conservationist.*

[FR Doc. 93–18804 Filed 8–5–93; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### Minority Business Development Agency

### Business Development Center Applications: Middlesex-Somerset-Hunterdon, N.J. (Service Area)

**AGENCY:** Minority Business Development Agency, DOC.

**ACTION:** Notice.

**SUMMARY:** In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-years period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first Budget period (12 months) is estimated as $169,125 in Federal funds, and a minimum of $29,846 in non-Federal (cost sharing) contribution, from January 1, 1994 to December 31, 1994. Cost-sharing contributions, may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Middlesex-Somerset-Hunterdon, N.J. SMA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state, local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of

viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points).

An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. to assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods.

MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and the Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Applicants are notified that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Applicants are notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DoC to cover pre-award costs.

If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full
2. A negotiated re-payment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DoC are made

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards. False information on the application can be grounds for denying or terminating funding.

"Certification for Contracts, Grants, Loans, and Cooperative Agreements" and SF–LLL, the "Disclosure of Lobbying Activities" (if applicable) is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

15 CFR part 28 is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant, or cooperative agreement. Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF–LLL, "Disclosure of Lobbying Activities," are required.

Notification must be provided that recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure from, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

**DATES:** The closing date for application is September 10, 1993. Applications must be postmarked on or before September 10, 1993.

**ADDRESSES:** The mailing address for submission is: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, rm. 3720, New York, New York 10278. Area Code/Telephone Number: (212) 264–3262.

**FOR FURTHER INFORMATION CONTACT:** John F. Inglehart, Regional Director, New York Regional Office at (212) 264–3263.

**SUPPLEMENTARY INFORMATION:** Anticipated processing time of this award is 120 days. Executive Order 12372 "Inter-governmental Review of Federal Programs" is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above New York address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: July 30, 1993.

**William E. Fuller,**

*Deputy Regional Director.*

[FR Doc. 93–18807 Filed 8–5–93; 8:45 am]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

### Evaluation of State Coastal Management Programs

**AGENCY:** Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the New Hampshire Coastal Management Program, the Chesapeake Bay National Estuarine Research Reserve in Maryland, and the Great Bay (New Hampshire) National Estuarine Research Reserve.

These evaluations will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management. Evaluation of coastal management programs and estuarine reserves require findings concerning the extent to which a state has adhered to the CZM program or estuarine reserve management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. These reviews include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits:

The New Hampshire Coastal Management Program site visit will be September 20–24, 1993. A public meeting will be held Wednesday, September 22, 1993, at 7 p.m., at the Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH.

The Chesapeake Bay National Estuarine Research Reserve in Maryland site visit will be September 20–24, 1993. Public meetings will be held on Tuesday, September 21, 1993, at 7 p.m. at the County Administration Building, Oden Bowie Drive, room 2161, Upper Marlboro, MD and on Thursday, September 23, 1993 at 7 p.m., at the County Council Chambers, Level A, 20 West Courtland Street, Bel Air, MD.

The Great Bay (New Hampshire) National Estuarine Research Reserve site visit will be September 27 to October 1, 1993. A public meeting will be held Wednesday, September 29, 1993, at 7 p.m., at the New Hampshire Fish and Game Department, Region 3 Office, 225 Main Street (Route 155A), Durham, NH.

The States will issue notices of the public meetings in local newspapers at least 45 days prior to the public meetings being held, and will issue other timely notices as appropriate.

Copies of the state's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the states, are available upon written request from OCRM. Written comments from interested parties regarding these programs are encouraged at this time and will be accepted until 15 days after the site visit. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, SSMC4—11th Floor, Silver Spring, MD 20910. When the final evaluation findings are completed, OCRM will place a notice in the **Federal Register** announcing their availability.

**FOR FURTHER INFORMATION CONTACT:** Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, 1305 East-West Highway, SSMC4—11th Floor, Silver Spring, MD 20910, (301) 713–3090.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: August 2, 1993.

**W. Stanley Wilson,**

*Assistance Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 93–18802 Filed 8–5–93; 8:45 am]

BILLING CODE 3510-08-M

## Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Modification to below-listed permits: Theater of the Sea, Permit Nos. 69 and 326 (P92 and P92B); Dolphin Research Center, Permit No. 514 (P53B); Dolphins Plus, Inc., Permit Nos. 292 and 577 (P234 and P234A); Hyatt Regency Waikoloa Resort, Permit No. 625 (P407).

**ADDRESSES:** Documents concerning the above modification, clarification, and permits are available for review by appointment in the Office of Protected Resources and Habitat Programs, NMFS, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Special Conditions on Swim-With-The-Dolphin (SWTD) programs that apply to Public Display Permits Nos. 69 and 326 issued to the Theater of the Sea, Islamorada, Florida; Permit No. 514 issued to the Dolphin Research Center, Marathon, Florida; Permit Nos. 292 and 577 issued to Dolphins Plus, Inc., Key Largo, Florida; and Permit No. 625 issued to the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii, are modified by deleting Special Condition D.1 and substituting the following:

D.1. The Permit Holder is authorized to use dolphins in an experimental human/dolphin swim program until June 30, 1994. The National Marine Fisheries Service (NMFS) may modify, suspend, or revoke this authority before June 30, 1994, if the SWTD programs are found to have an adverse impact on the health or well-being of the animals, if an ongoing review of public display permit authorities, procedures, and criteria results in new regulations that disallow such programs, or if the terms of the conditions that follow are not met.

Special condition D.3 is deleted and the numbering of the successive special conditions has been advanced accordingly. The wording of all special conditions with the exception of D.1 has also been clarified.

This modification is effective on August 1, 1993.

Dated: July 30, 1993.
William W. Fox, Jr.,
*Director, Office of Protected Resources.*
[FR Doc. 93-18805 Filed 8-5-93; 8:45 am]
BILLING CODE 3510-22-M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received a proposal to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** September 7, 1993.

**ADDRESS:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman, (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agencies listed:

*Commodities*

Insulation Tape, Electrical
5970-00-816-6056
Nonprofit Agency: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.

Chair, Rotary
7110-00-194-1611
7110-00-281-4469
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky.

*Services*

Commissary Shelf Stocking and Custodial, Columbus Air Force Base, Mississippi.
Nonprofit Agency: Alabama Goodwill Industries, Inc., Birmingham, Alabama.

Commissary Shelf Stocking and Custodial, Naval Air Station, Meridian, Mississippi.
Nonprofit Agency: Alabama Goodwill Industries, Inc., Birmingham, Alabama.

Commissary Shelf Stocking and Custodial, Roosevelt Roads, Puerto Rico.
Nonprofit Agency: Brevard Achievement Center, Inc., Rockledge, Florida.

Commissary Shelf Stocking, Custodial and Warehousing, Tyndall Air Force Base, Florida.
Nonprofit Agency: Lakeview Center, Inc., Pensacola, Florida.

Fabrication of Customized Tool Box Liners, Fleet and Industrial Supply Center, Jacksonville, Florida.
Nonprofit Agency: Arizona Industries for the Blind, Phoenix, Arizona.

Food Service Attendant, Oregon Air National Guard, Camp Rilea National Guard Training Site, Building 7028, Warrenton, Oregon.
Nonprofit Agency: Clatsop County Development Training Center Association, Astoria, Oregon.

Janitorial/Custodial Naval and Marine Corps Reserve Center, 1600 West Lafayette Avenue, Moundsville, West Virginia.
Nonprofit Agency: Ohio County Council for Retarded Children, Inc., Wheeling, West Virginia.

Management of Bachelor Housing, Naval Station, Pascagoula, Mississippi.
Nonprofit Agency: Goodwill Industries of South Mississippi, Inc., Gulfport, Mississippi.

Beverly L. Milkman,
*Executive Director.*
[FR Doc. 93-18860 Filed 8-5-93; 8:45 am]
BILLING CODE 6820-33-P

## DEPARTMENT OF EDUCATION

**[CFDA No: 84.185A]**

### Robert C. Byrd Honors Scholarship Program; Inviting Applications for New Grants for Fiscal Year (FY) 1993

**PURPOSE OF PROGRAM:** To provide, through grants to States, scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.

**ELIGIBLE APPLICANTS:** The 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, Guam, and the Trust Territory of the Pacific (Palau) are eligible to apply for grants under this program.

**DEADLINE FOR TRANSMITTAL OF APPLICATIONS:** 9/7/93.

**DEADLINE FOR INTERGOVERNMENTAL REVIEW:** 9/22/93.

**AVAILABLE FUNDS:** $9,469,500.

**ESTIMATED RANGE OF AWARDS:** $15,000 to $1,126,500.

**ESTIMATED AVERAGE SIZE OF AWARDS:** $166,132.

**ESTIMATED NUMBER OF AWARDS:** 57.

Note: The Department is not bound by any estimates in this notice.

**PROJECT PERIOD:** Up to 12 months.

**BUDGET PERIOD:** 12 months.

**APPLICABLE REGULATIONS:** (a) When republished in revised form, the Robert C. Byrd Honors Scholarship Program regulations in 34 CFR part 654; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75.60-75.62, 76, 77, 79, 80, 82, 85, and 86.

**SUPPLEMENTARY INFORMATION:** On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (58 FR 28538).

It is not the policy of the Department of Education to solicit applications

before the publication of final regulations. However, in this case it is necessary to solicit applications on the basis of the NPRM in order to have sufficient time available to conduct the competition and make awards prior to the end of the fiscal year (September 30, 1993).

The comment period for the NPRM ended on June 14, 1993. Six commenters responded to the Secretary's invitation to comment. Many of the comments objected to regulatory provisions based on statutory requirements that the Secretary does not have the authority to change. The Secretary anticipates making one change to the proposed regulations based on public comment. The Secretary expects to add to § 654.5 a definition of the term "cost of attendance" that cross-references the definition of that term in section 472 of the Higher Education Act of 1965, as amended.

Applicants should prepare their applications based on the proposed regulations, as modified by the expected changes discussed in this notice. If additional changes are made in the final regulations, applicants will be given an opportunity to revise or resubmit their applications.

**FOR APPLICATIONS OR INFORMATION CONTACT:** Patricia W. Gore, U.S. Department of Education, 400 Maryland Avenue SW., room 3022, ROB–3, Washington, DC. 20202–5251. Telephone: (202)708–8849. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Program Authority:** 20 U.S.C. 1070d–31 to 1070d–41.

Dated: July 30, 1993.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 93–18801 Filed 8–5–93; 8:45 am]

BILLING CODE 4000–01–P

## Advisory Council on Education Statistics; Meeting

**AGENCY:** Advisory Council on Education Statistics, Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** September 9, 1993, a.m.–4 p.m. and September 10, 1993, 9 a.m.–noon.

**ADDRESSES:** 555 New Jersey Avenue, NW., room 326, Washington, DC 20208.

**FOR FURTHER INFORMATION CONTACT:** Barbara Marenus, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400A, Washington, DC 20208–7575, telephone: (202) 219–1839.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics (ACES) is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- NCES Dropout Report
- National Adult Literacy Survey
- Update on the National Assessment of Educational Progress
- Proposals for future ACES activities
- Council Business

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400A, Washington, DC 20208–7575.

**Sharon P. Robinson,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 93–18881 Filed 8–5–93; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

## Floodplain/Wetlands Involvement, Assessment and Statement of Findings for the Post Waterflood $CO_2$ Miscible Flood in Light Oil Fluvial Dominated Deltaic Reservoir (Marginulina Sand) Project, Orange County, TX, With Texaco Exploration and Production Inc.

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice.

**SUMMARY:** This is a combined Floodplain/Wetlands Notice of Involvement, Assessment and Statement of Findings for the proposed Post Waterflood Carbon Dioxide ($CO_2$) Miscible Flood in Light Oil Fluvial Dominated Deltaic Reservoir (Marginulina Sand) project prepared consistent with 10 CFR part 1022. Texaco Exploration and Production, Inc. (Texaco), in conjunction with the DOE, proposes to demonstrate the technical and economic feasibility of using a horizontal $CO_2$ injection well to increase oil production in an existing producing field that has substantial oil and gas facilities and activities located about 8.5 miles east of Beaumont, Texas. Texaco would drill several infill wells, including a horizontal $CO_2$ injection well, and initiate a $CO_2$ injection program. All but a small portion of the project is located in both the 100-year floodplain of the Neches River and an associated wetlands area in Port Neches, Texas (see enclosed map). This document describes the effects, alternatives, and mitigative measures designed to avoid or minimize potential harm to or within the affected floodplain/wetlands. No direct or indirect permanent adverse impacts on floodplains or wetlands are expected. While the project is in a high flood hazard area, project implementation would result in no additional potential flood hazard. Additionally, there would be no effect on the survival, quality, and natural and beneficial value of wetlands. This document constitutes the Notice of Involvement for the proposed action and includes the Floodplain/Wetlands Assessment pursuant to 10 CFR 1022.12(c). Due to the urgent nature of the project and in accordance with 1022.18(c), DOE waives the 15 day comment period associated with the Notice as well as the 15 day public review period that follows the publication of the Statement of Findings. This proposed action is categorically excluded from the preparation of an EA or an EIS under the Department of Energy's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021).

**FOR FURTHER INFORMATION, INCLUDING A LOCATION MAP, CONTACT:** Dr. Arthur M. Hartstein, FE–32, Germantown Headquarters, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (301) 903–2760, FAX: (301) 903–9482.

**FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT:** Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** With the exception of a small portion in the western project area, the entire area of the proposed project is located in both a 100-year floodplain of the Neches River and an associated wetlands area. The proposed project would include drilling both a horizontal and vertical $CO_2$ injection well in an existing field which has substantial existing oil and gas facilities and ongoing activities. These proposed new wells would require dredging new drilling slips. COE and Texas State Parks and Wildlife Service have reviewed all proposed project activities (including dredging), concluded that they are standard field procedure for the area, and approved all project activities under the current COE 404 Permit. They further concluded that all project activities (including dredging) would have no significant additional environmental impact. Impacted vegetation would fully recover within one to two growing seasons. The drilling slip for the first well measuring approximately 560 ft. by 190 ft. by 8 ft. would require removal of approximately 31,000 cubic yards of material. The drilling slip for the second well measuring approximately 380 ft. by 190 ft. by 8 ft., would require removal of approximately 21,000 cubic yards of material. Spoils would be piled directly adjacent to the dredging site. A drilling barge would then be floated to the new well locations via existing access canals and drilling activities would occur. These wells would be analyzed and results would be incorporated into reservoir, production, and injection models. Upon the completion of drilling activities, the drilling barge would be removed. Based on subsequent project performance, Texaco would determine whether additional production or injection wells should be drilled.

Minor site dredging required to prepare a separate slip for a production barge would involve the partial removal of an existing 6 ft. high spoils (dredged material) bank directly adjacent to an access canal (see figures 1 and 2). COE and Texas state officials concluded these activities to also be standard for the area, and that they would have no additional long-term environmental impact. The existing spoils bank currently measures 70 ft. wide by 6 ft. high (measured from mean water level) and runs along the bank of the access canal. The total volume of material to be dredged would be approximately 9000 cubic yards, with the area to be dredged measuring approximately 70 ft. by 235 ft. (see Figure 2). Material would be dredged to a depth of 10 ft. below mean water level. Spoil material would be deposited directly adjacent to both the newly dredged site, and the existing spoils bank. A layer of limestone (a limestone mat) measuring 235 ft. long by 70 ft. wide by 4 ft. thick would then be laid in the excavated hole in the slip bottom to form a mat for the production barge. The total volume of limestone required would be approximately 2500 cubic yards. The top of the limestone mat would be approximately at the same level as the slip bottom. Two production barges would then be placed on the limestone pad directly adjacent to each other. These barges would measure 54 ft. by 125 ft. by 10 ft., and 64 ft. by 90 ft. by 12 ft. respectively. Each production barge would contain a compressor and a $CO_2$ injection pump. Upon project completion, the barge and facilities would be removed, but the limestone mat would remain, which is standard field procedure for the area. These activities also were reviewed by COE and Texas state officials, were found to be a standard procedure for the area, having no long-term environmental impact, and were approved under the current 404 Permit.

Texaco would also "workover" 12 wells located in both a 100-year floodplain and an associated wetlands area, converting eight to production wells and four to injection wells. Additional wells also may be worked-over, as needed, for routine maintenance. The project would also install other required field operating and safety equipment at existing production facilities.

A 4½ mile $CO_2$ pipeline would be laid in an existing pipeline corridor from a pre-existing $CO_2$ pipeline west of the project area to the project site. COE and Texas state officials reviewed all activities associated with pipeline installation, concluded that these activities would have minimal environmental impact, and also approved them under the current Army Corps of Engineers 404 Permit. The pipeline would be installed through approximately 14,000 ft. of open water and approximately 9000 ft. of vegetated wetland. This activity would require excavating a ditch measuring 9000 ft. long by 4 ft. wide by 4 ft. deep, resulting in approximately 9700 cubic yards of spoil material. The spoil would be temporarily piled on either side of the ditch so as not to interfere with water flow. Once the pipeline is in-place, the ditch would be backfilled to the maximum extent practicable with available spoil. Impacted vegetation would fully recover within one to two growing seasons. Upon initiation of injection activities, $CO_2$ would be purchased and transported from a near-by facility via the new pipeline.

During project development, all possible project alternatives were considered, including utilizing alternate sites (locations) and alternate actions (processes and materials). During project design, the Texas State Parks and Wildlife Service was consulted to determine impact minimization measures. The project was redesigned to include only locations, processes, and materials which would eliminate or mitigate environmental impacts. Examples of the mitigative measures incorporated into this proposed action include:

a. Installing air control devices that would minimize air emissions to levels well below allowable limits;

b. Utilizing a minimum amount of equipment on the site, thus minimizing associated environmental impacts;

c. Utilizing $CO_2$ that would otherwise be released into the atmosphere, thus reducing area $CO_2$ emissions;

d. Utilizing any dredged topsoil to reconstruct wetlands; and

e. elevating flood sensitive equipment on platforms at least eight feet above the surrounding terrain, thus minimizing hazards during seasonal high water episodes.

For these reasons, this project design would have the lowest potential for adverse environmental impacts relative to other alternatives. Selecting an alternative project site or alternative actions likely would not result in reduced potential environmental impacts and possibly would reduce overall project performance.

Because of previous floodplain and wetlands damage resulting from intense historic oil and gas production, the no-action alternative would result in little or no environmental benefit relative to project implementation. Thus, not implementing the project would have no effect on either lowering environmental impacts relative to project implementation, or in helping to restore area floodplains and/or wetlands to pre-activity conditions.

The entire project area has been classified as being within the 100-year floodplain area as determined by Flood Insurance Rate Maps (FIRMs) and within a wetlands area as determined by analysis of U.S. Geological Survey Topographical Maps and from discussions with Texas state wetland authorities. The proposed action would conform with applicable state and local floodplain protection standards.

Issued in Washington, DC, on August 2, 1993.

Arthur M. Hartstein,

*Deputy Director, Office of Oil and Gas Processing.*

[FR Doc. 93–18857 Filed 8–5–93; 8:45 am]

BILLING CODE 6450–01–P

## Floodplain/Wetlands Involvement, Assessment and Notice of Statement of Findings for the West Hackberry Tertiary Project, Cameron Parish, Louisiana With Amoco Production Co.

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice.

**SUMMARY:** This is a combined Floodplain/Wetlands Notice of Involvement, Assessment and Statement of Findings for the proposed West Hackberry Tertiary Project prepared consistent with 10 CFR part 1022. Amoco Production Company (Amoco), in conjunction with DOE, proposes to demonstrate the technical and economic feasibility of using air to displace a water invaded oil column to promote gravity drainage and thus increase oil production in an existing producing field with substantial oil and gas facilities and activities located in northern Cameron Parish, Louisiana, approximately 2 miles west of the Strategic Petroleum Reserve's West Hackberry facility. Additional oil recovery would be expected in response to an in-situ combustion front, which will occur within the reservoir and serve to increase oil mobility. The Amoco project would require no major field modifications to surface facilities. The entire project area is located within both a 100-year floodplain and an associated wetlands area of a coastal zone area in Lake Charles, Louisiana. This document describes the effects, alternatives, and mitigative measures designed to avoid or minimize potential harm to or within the affected floodplain/wetlands. No direct or indirect permanent adverse impacts on floodplains or wetlands are expected. While the entire project is in a high flood hazard area, project implementation would result in no additional potential flood hazard. Additionally, there would be no effect on the survival, quality, and natural and beneficial value of wetlands.

This document constitutes the Notice of Involvement for the purposed action and includes the Floodplain/Wetlands Assessment pursuant to 10 CFR 1022.12(c). Due to the urgent nature of this project and in accordance with § 1022.18(c), DOE waives the 15-day comment period associated with the Notice of Involvement as well as the 15-day public review period that follows the publication of the Statement of Findings. This proposed action is categorically excluded from the preparation of an EA or an EIS under the Department of Energy's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021).

**FOR FURTHER INFORMATION, INCLUDING A LOCATION MAP, CONTACT:** Dr. Arthur M. Hartstein, FE–32, Germantown Headquarters, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (301) 903–2760, FAX: (301) 903–9482.

**FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT:** Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** The entire area of the proposed project is located in both a 100-year floodplain and an associated wetlands of a coastal zone area. This proposed project that would not require major field modifications to surface facilities has received COE approval under General Permit NOD–22, which is issued when planned activities are ongoing in the area have been proved to have minimal impact on the environment.

Activities associated with this project would include floating a concrete production barge, measuring 30 ft. by 120 ft., to an existing drilling slip at the project site via existing access canals. Two compressors would be located on the barge. To prepare the site for the barge, bucket dredging, allowed under the existing COE permits because of the minimal associated environmental impact, would remove an average of 3 ft. of material from the irregular slip bottom, or approximately 4,000 cubic yards of dredged material (spoil). All spoil would be placed on an existing spoil bank directly adjacent to the site. A layer of shells (shell pad) measuring 50 ft. wide by 140 ft. long by 5 ft. thick would then be laid in the excavated hole in the slip bottom, which would require approximately 1,300 cubic yards of shell material to be barged to the project site via existing access canals. The production barge would be placed on the shell pad in water approximately 5 to 6 ft. deep. The top of the shell pad would be at approximately the same level as the slip bottom. The only environmental impact associated with this activity would be a minor short-term impact on a small number of indigenous flora and fauna due to the removal of marsh bottom material. Installation of the production barge would be tied to the timing of producing well workovers which would be dictated by the advance of the flood front. Upon completion of the project, the barge and facilities would be removed, but the shell pad would remain, which is standard procedure in the area. Any associated long-term environmental impacts would be expected to be minimal since the top of the shell pad is deeper than the surrounding marsh bottom and the slip would eventually be covered by marsh sediment.

New flowlines would be laid along existing flowline corridors, thus minimizing potential associated environmental impacts. The installation of these flowlines has been approved under the U.S. Army Corps of Engineers (COE) General Permit NOD–22 because their installation has been found to have minimal environmental impact by the COE. These flowlines would either be laid on the ground; laid on pre-existing platform; be buried; laid on an existing pipe rack; or laid on a new pipe rack, which would be installed when flowlines must be laid over open water. A flowline would also be laid on a new above the water pipe bridge directly adjacent to an existing foot bridge. Also, a separate-test-and-boost (STAB) facility would be installed at existing facilities. A natural gas liquids recovery unit may also be required and would be installed at existing facilities. After produced fluids are separated and tested, they would be piped via an existing pipeline to Amoco's central production facility for treatment. Undesired produced gas would be either sold or injected into low pressure oil reservoirs.

"Workovers" would begin by converting two producing wells to injection wells. Two additional producing wells may also be converted to injector wells based on overall project need. Typical workover procedures include: Cleaning out the wellbore; perforating the full prospective injection interval; and completing the well with new packers, tubing, and wellhead. Amoco would recondition or recomplete 10 wells to serve as producing wells and/or monitoring wells. Air would be injected at a total rate of 4 million standard cubic feet per day (MMSCF\D). Oil recovery would be expected in response to an in-situ combustion front, which would occur within the reservoir and serve to increase oil mobility. Once formation breakthrough occurs, a separate gas lift compressor would be required for the

gas lift system and would be located on the production barge. Produced gas would either be sold or injected into low pressure reservoirs. To inject the produced gas, a booster compressor may be required, which would also be located on the production barge. Pulse neutron logs, bottom hole pressure surveys, temperature surveys, and spinner surveys may be run in both production and monitor wells to assess project effectiveness. Produced oil and gas samples would be periodically analyzed for composition and physical properties. A grant would also be provided to Louisiana State University to study various aspects of the project.

During project development, Amoco considered all possible project alternatives, including utilizing alternate sites (locations) and alternate actions (processes and materials). The project was redesigned to include only locations, processes, and materials which either eliminate or mitigate potential environmental impacts. Examples of these mitigative measures incorporated into this proposed action include:

a. Conducting all required well activities through existing wellbores, thus eliminating potential environmental risk associated with drilling new wells;

b. Locating equipment and facilities at field sites which have been used as a production facility in the past, thus eliminating the need for additional land usage;

c. Conducting only minimal dredging and only in existing canals and waterways, thus minimizing dredging impacts;

d. Transporting all produced fluids through existing flowlines (when existing flowlines are useable) for treatment at an existing central production facility, and injecting all produced water into currently utilized salt water disposal wells, thus eliminating impacts associated with the need for additional disposal equipment and facilities;

e. Disposing of all produced gas by either selling it or injecting it into low pressure oil reservoirs, thus eliminating impacts associated with gas flaring; and

f. Locating any new flowlines (only if none are present or useable) in existing flowline corridors (where flowlines are already in place) whenever possible, and back-filling trenches when flowline trench excavation is required, thus minimizing environmental impacts.

For these reasons, this project design would have the lowest potential for adverse environmental impacts relative to other alternatives. Selecting an alternative project site or actions would likely not result in reduced potential environmental impacts and possibly would reduce overall project performance.

Because of extensive existing floodplain and wetlands damage resulting from almost 70 years of intense oil and gas production, the no-action alternative would result in little or no environmental benefit relative to project implementation. Thus, not implementing the project would have no effect on either reducing environmental impacts relative to project implementation, or in helping to restore area floodplains and wetlands to pre-activity conditions.

The entire project area is classified as a 100-year floodplain area by Flood Insurance Rate Maps (FIRM's) and as a wetlands area by U.S. Geological Survey Topographical Maps. The proposed action would conform with applicable state and local floodplain protection standards.

Issued in Washington, DC, on August 2, 1993.

**Arthur M. Hartstein,**

*Deputy Director, Office of Oil and Gas Processing.*

[FR Doc. 93–18858 Filed 8–5–93; 8:45 am]

BILLING CODE 6450–01–P

## DOE Response To Recommendation 93–3 of the Defense Nuclear Facilities Safety Board Improving DOE Technical Capability in Defense Nuclear Facilities Programs

**AGENCY:** Department of Energy.

**ACTION:** Notice and request for public comment.

**SUMMARY:** Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93–3 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on June 8, 1993, (58 FR 32109) concerning improving DOE technical capability in defense nuclear facilities programs.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before September 7, 1993.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas P. Grumbly, Assistant Secretary for Environmental Restoration and Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on July 22, 1993.

**Mark B. Whitaker,**

*Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.*

July 23, 1993.

The Honorable John T. Conway, Chairman
*Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, D.C. 20004.*

Dear Mr. Conway: On June 1, 1993, the Defense Nuclear Facilities Safety Board approved Recommendation 93–3 which deals with improving the technical capability of personnel associated with defense nuclear facilities programs. Recommendation 93–3 is accepted by the Department and the basis of our acceptance is discussed below.

The Department has established a statement of core values which captures the substance of this Recommendation regarding a commitment to improving the capabilities of our staff. In addition, a specific policy expanding the appropriate core value statements in this area will be issued by October 31, 1993.

We will seek excepted appointment authority through appropriate Administration and congressional processes. The functions, numbers, and locations of the positions for which this authority is needed are yet to be developed. We are now initiating an effort leading to achieving this objective in advance of submitting a detailed implementation plan.

We agree that a technical personnel coordinator is necessary to assure timely and effective program execution. This coordinator must be qualified in technical training and recruitment and have a personal commitment and enthusiasm to forge a steadily improving program of technical qualification. He or she will have the authority to represent me and must have credibility with line managers to assure their needs are receiving proper priority. Additionally, this coordinator must have access to all top executives to assure that other competing forces do not dilute the focus of this effort. These attributes for the coordinator are key for realizing our objectives. However, the organizational assignment of the coordinator can be made in a number of areas and still be successful. In this regard, the appropriate individual to provide overall management on these initiatives is the Assistant Secretary for Human Resources and Administration. Since his responsibilities cover many intimately related supporting activities in the personnel and training areas, segregation of this initiative would detract from clear accountability. I will assure that the Assistant Secretary has the authority, resources, and support to carry out this mandate.

We will develop a broadly-based program giving strong consideration to each of the specific initiative you recommended in the areas of internal initiative, independent external assessment, and internal assessments.

As noted in my June 14, 1993, letter, this provides the opportunity for the Department to reevaluate current and past Board recommendations related to training and qualification and deal with them comprehensively. An "ad hoc" work group to respond to Recommendation 93–3 has been established and is reporting to the Acting Under Secretary. This group will be working with the task group you have created to address this recommendation.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 93–18859 Filed 8–5–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

### Third Party Contractors Qualified To Prepare Environmental Impact Statements Under the Provisions of Section 2403(a) of the Energy Policy Act of 1992

August 2, 1993.

On February 25, 1993, the Federal Energy Regulatory Commission (Commission) announced in the Federal Register that three firms were qualified as third party contractors to prepare environmental impact statements (EISs) for hydroelectric projects under the provisions of the Section 2403(a) of the Energy Policy Act of 1992. The three firms are: CH2M Hill; EBASCO Services Incorporated; Stone & Webster Environmental Services.

On May 4, 1993, the Commission solicited in the Commerce Business Daily, qualifications statements from other contractors seeking status to prepare environmental impact statement (EISs) under the Third Party Contracting provisions of section 2403(a).

A technical panel of 7 Commission employees independently evaluated the statements of qualifications submitted. Twenty-four contractors met the minimum qualifications. The names of the 24 appear below.

(1) VERSAR, Inc.
(2) HDR Engineering
(3) Black & Veatch
(4) EDAW Inc.
(5) Burns & McConnell
(6) TAMS Consultants Inc.
(7) Dames & Moore
(8) Mead & Hunt, Inc.
(9) Woodward-Clyde Consultants
(10) Acres International Corp.
(11) Northrop, Devine & Tarbell, Inc.
(12) Parsons Brinckerhoff
(13) Lawler, Matusky & Shelly Engineers
(14) Chambers Group Inc.
(15) Greystone Development Consultants
(16) R.W. Beck & Associates
(17) Louis Berger & Associates, Inc.
(18) RMC Enviromental Services, Inc.
(19) ENTRIX, Inc.
(20) parametrix, Inc.
(21) EA Engineering, Science & Technology
(22) Environmental Resource Management, Inc.
(23) HARZA Engineering Company
(24) Keller Environmental Associates

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18794 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[P–2360–000, P–2363–000]

### Minnesota Power & Light Co., Potlatch Corp.; Public Meeting Scheduled for Relicensing of St. Louis and Cloquet Hydroelectric Projects

August 2, 1993.

The Federal Energy Regulatory Commission's (FERC) Office of Hydropower Licensing will hold two "Scoping" Meetings August 19, to identify issues that should be evaluated in the preparation an Environmental Impact Statement (EIS) for the relicensing of the St. Louis and Cloquet Hydroelectric Projects. The hydropower projects are located northwest of the City of Duluth, Minnesota on the St. Louis, Whiteface and Cloquet rivers.

The first scoping meeting will be held at 9 a.m. until noon in the Duluth Public Library, 520 West Superior Street, Duluth, Minnesota. Issues of primary concern to government agencies will be the focus of the session.

The second scoping meeting will be held from 7 p.m. until 10 p.m. on the campus of the University of Minnesota-Duluth, Montague 80 Lecture Hall, 10 University Drive, Duluth, Minnesota. Issues of primary concern to the general public will be the focus of the meeting.

FERC has prepared a "Scoping Document" providing details of the projects proposed operations and a preliminary list of environmental impact issues to be examined. Copies of the document can be obtained by writing: FERC—St. Louis/Cloquet Project, c/o Tom Dupuis, CH2M Hill Inc. 310 West Wisconsin Ave, Suite 700, Milwaukee, WI 53203. Copies will also be available at the meetings.

Individuals, representatives of organizations and government agencies with environmental expertise and concerns are encouraged to attend the meetings to assist FERC in defining the issues to be identified in the EIS. Participants wishing to make oral comments at the scoping meetings are asked to keep them to five minutes.

Questions regarding the relicensing of the projects can be addressed to John Blair, Task Monitor, FERC, (202) 219–2845.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18826 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP79–473–006 and CP84–709–003]

### Alabama-Tennessee Natural Gas Co.; Petition to Amend

August 2, 1993.

Take notice that on July 28, 1993, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35631, filed in Docket Nos. CP79–473–006 and CP84–709–003, a petition to amend the orders issued in Docket Nos. CP79–473 and CP84–709–000 pursuant to section 7(c) of the Natural Gas Act for authorization to sell natural gas it presently sells to North Mississippi Natural Gas Corporation (North Mississippi) to Tumlinson Engineering, Inc., d/b/a Burnsville Gas Company (Burnsville), all as more full set forth in the petition to amend which is on file with the Commission and open to public inspection.

Specifically, Alabama-Tennessee requests authorization to sell 205 dt per day of natural gas it presently sells to North Mississippi to Burnsville. Alabama-Tennessee states that Burnsville has expressed interest in purchasing its natural gas requirements directly from Alabama-Tennessee and, thereby, eliminating North Mississippi as an intermediate. North Mississippi does not object to this arrangement, it is stated. Alabama-Tennessee says that the requested amendment would have no impact on its current load.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 23, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Louis D. Cashell,

*Secretary.*

[FR Doc. 93–18796 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–594–000]

## ANR Pipeline Co.; Request Under Blanket Authorization

August 2, 1993.

Take notice that on July 29, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–594–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate delivery point facilities for service to Iowa Southern Utilities Company (ISU), an existing customer of ANR, under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR proposes to construct and operate a new meter station in Lee County, Iowa, to be known as the South Burlington Meter Station, for the delivery of up to 1,000 dt equivalent of gas per day to ISU for use in its electric generating station located near South Burlington, Iowa. It is stated that ANR would provide a firm transportation service for ISU under ANR's part 284 blanket certificate and pursuant to the terms of ANR's Rate Schedule FTS–1. The cost of the proposed facilities is estimated at $800,000. It is asserted that deliveries would be within ISU's currently certificated entitlement from ANR. It is further asserted that the proposed delivery point would have no adverse impact on ANR's peak day and annual entitlements of any of ANR's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18795 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EF93–2011–000, EF93–2021–000 and EF93–2041–000]

## Department of Energy—Bonneville Power Administration; Notice of Filing

August 2, 1993.

Take notice that on August 2, 1993, the Bonneville Power Administration (BPA) tendered for filing proposed rate adjustments for its wholesale power and transmission rates pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839e(a)(2). BPA seeks interim approval for most of its proposed rates effective October 1, 1993, pursuant to the Commission's regulations at 18 CFR 300.20.

BPA's wholesale power and transmission rates are proposed to be increased. BPA's wholesale power rates are designed to increase revenues over the 2-year test period by approximately $478.5 million (excluding the residential exchange), which represents an increase of approximately 13.3 percent. BPA's transmission rates are designed to increase revenues by approximately $62.5 million, or 22.7 percent. With these increases BPA's total test period revenues (excluding the residential exchange) will be approximately $4.8 billion.

BPA requests approval effective October 1, 1993 through September 30, 1995 for the following proposed wholesale power rates and their associated General Rate Schedule Provisions: PF–93 Priority Firm Power Rate; IP–93 Industrial Firm Power Rate; SI–93 Special Industrial Firm Power Rate; CE–93 Emergency Capacity Rate; NR–93 New Resource Firm Power Rate; NF–93 Nonfirm Energy Rate; SS–93 Share-the-Savings Energy Rate; and RP–93 Reserve Power Rate. BPA also requests approval of its proposed SP–93 Short-Term Surplus Firm Power Rate effective October 1, 1993, through September 30, 1998. BPA also requests approval of three modifications to VI–91 effective October 1, 1993 through September 30, 1995. BPA also requests approval of its Impact Aid Methodology.

BPA requests approval effective October 1, 1993 through September 30, 1995 for the following proposed transmission rate schedules and their associated General Transmission Rate Schedule Provisions: FPT–93.1 Formula Power Transmission; IR–93 Integration of Resources; IS–93 Southern Intertie Transmission; IN–93 Northern Intertie Transmission; IE–93 Eastern Intertie Transmission; ET–93 Energy Transmission; MT–91 Market Transmission; FPT–91.3 Formula Power Transmission; UFT–93 Use-of-Facilities Transmission; TGT–1 Townsend-Garrison Transmission; and AC–93 Southern Intertie Annual Cost.

BPA generally requests interim approval of its proposed 1993 wholesale power and transmission rates, effective October 1, 1993, pursuant to the Commission's regulations at section 300.20(b)(2)(i).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests concerning BPA's request for interim approval should be filed on or before August 20, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18825 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–592–000]

## Nebraska Gas Transport Company versus K N Interstate Gas Co.; Notice of Complaint

August 2, 1993.

Take notice that on July 28, 1993, Nebraska Gas Transport Company (NebGas), P.O. Box 402, Holdredge, Nebraska 68949, filed in Docket No. CP93–592–000 a complaint alleging discriminatory treatment by K N Interstate Gas Company (KNI) and requesting that the Commission direct KNI to install a mainline tap to implement deliveries to NebGas, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

NebGas states that it applied to KNI for a mainline tap in Nebraska so that it could construct a local distribution

line to serve irrigation well motors and that KNI denied the request. It is indicated that the denial was based upon KNI's policy not to bypass existing local distribution facilities. NebGas alleges that KNI's decision is unfair, discriminatory and anti-competitive. NebGas also states that the rates charged by K N Energy (K N), KNI's affiliate, the existing local distribution company in the area, are completely arbitrary and not based on a reasonable rate of return.

NebGas indicates that Nebraska agricultural users have no place to address their dissatisfaction with the rates charged by a local distribution company because Nebraska has no corporation commission that regulates the natural gas industry. It is stated that each municipality is responsible for determining the natural gas rates under its jurisdiction.

It is also indicated that the customers that NebGas would serve behind the proposed tap would pay K N approximately $53,000 in transportation fees during the irrigation season. NebGas states that the local distribution line that K N owns to serve these customers could be reconstructed for approximately one-half of what they would pay in transportation fees in one year, and they would own the line in perpetuity. NebGas alleges that KNI's rationale for denying access to NebGas is to protect their parent company's interest. It is stated that NebGas needs access to KNI's system as leverage to negotiate more equitable rates or, in lieu of that relief, they need the ability to develop their own local distribution companies which would drastically reduce KNI's system as leverage to negotiate more equitable rates or, in lieu of that relief, they need the ability to develop their own local distribution companies which would drastically reduce transportation costs.

NebGas asserts that the purpose of Order No. 436 is to encourage competition and allow the end user more accessibility to the producer. NebGas asserts that allowing a company to charge more for moving gas hundreds of feet on an local distribution company than the FERC allows them to charge to move gas hundreds of miles on the interstate system is absurd. It is indicated that KNI, in its letter of refusal, states that its policy is not to bypass local distribution facilities. However, it is pointed out that KNI arbitrarily lowers transportation costs to retain some large end users on their system so as to prevent those end users from switching their incremental loads to alternate fuels. NebGas points out that irrigation load is also an incremental load but NebGas is forced to pay transportation rates priced off peak season rates. NebGas asserts that, if one class of customer can coerce KNI into negotiating discounts because of perceived problems, the irrigation customers should have the same options.

NebGas requests that the Commission order KNI to grant it a tap to its mainline and to deliver gas to those points as required in its tariff. NebGas states that the tap would allow NebGas to construct a local distribution company to serve its customers and compete on a level playing field with K N. In addition, NebGas also requests that the Commission enforcement staff commence a formal investigation of KNI's denial of NebGas request for access to KNI's pipeline to show if proper channels have been circumvented.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before September 1, 1993, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (19 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before September 1, 1993.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18828 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP93–158–000]**

## Phillips Petroleum Co., Phillips Gas Marketing Company and GPM Gas Corporation, Complainant v. ANR Pipeline Co. Respondent; Notice of Complaint

August 2, 1993.

Take notice that on July 27, 1993, Phillips Petroleum Company, Phillips Gas Marketing Company and GPM Gas Corporation (Phillips/GPM), filed with the Commission a complaint against ANR Pipeline Company (ANR) and move that the Commission issue an order requiring ANR to show cause why it should not be found in violation of a direct Commission order governing discovery of critical information about the ANR system, namely the facts about ANR's gathering facilities and unbundled rates.

Phillips/GPM state that ANR agreed as a condition of its Interim Settlement in Docket No. RP89–161–000 to develop and distribute a study as to the manner and desirability of creating separate, unbundled gathering services. Phillips/GPM state that ANR advised the Commission and all parties in its restructuring proceeding in Docket No. RS92–1–000 that "voluminous" workpapers supporting the gathering study were available in its Detroit, Michigan data room. Phillips/GPM state that ANR asserted in its June 23, 1993 Answer to Phillips/GPM June 8, 1993 petition to require that ANR comply with its gathering study obligations, that (i) the specific identity of ANR's gathering facilities and (ii) economic cost data (including the cost of fuel for gathering) were available for review in such workpapers.

Phillips/GPM argue that on July 9, 1993, GPM's representative found that almost none of the requisite data was available for his review. Phillips/GPM argue that ANR's failure to make workpapers available improperly prevents Phillips/GPM, other parties and the Commission from evaluating ANR's "Gathering Study". Phillips/GPM state that ANR has refused to provide Phillips/GPM with all of the workpapers supporting its "Gathering Study".

Phillips/GPM request that the Commission: (1) Issue an order to show cause why ANR should not be held in contempt of the Commission as a result of its apparently intentional withholding of "Gathering Study" workpapers; and (2) convene, if appropriate, an expedited hearing to determine any fact issues and to resolve whether the subject actions constitute improper conduct by any party appearing before the Commission.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before September 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection. Answers to this complaint shall be due on or before September 1, 1993.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18827 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP92–74–008]

**South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

August 2, 1993.

Take notice that on July 29, 1993, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Substitute Original Sheet No. 4E, with a proposed effective date of July 1, 1993.

On December 1, 1992, South Georgia filed a proposal in Docket No. RP92–74–005 (December 1 Filing) to implement the allocation by customer of any remaining balance in South Georgia's Account No. 191 attributable to any overcollections or undercollections on gas costs. South Georgia states that First Substitute Original Sheet No. 4E and the accompanying working papers are being filed in compliance with a Commission's letter order issued June 29, 1993, in Docket No. RP92–74–005 which directed South Georgia to reflect a reduction in the level of purchased gas demand costs reflected in its December 1 Filing, consistent with the Commission's March 16, 1993 order on rehearing in Docket Nos. CP92–6–007 and CP92–311–003.

South Georgia states that copies of the filing will be served upon all of South Georgia's customers, interested state commissions and interested parties as well as parties of record in Docket No. RP92–74–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18798 Filed 8–5–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP93–586–000]

**Williams Natural Gas Co., Application**

August 2, 1993.

Take notice that on July 27, 1993, Williams Natural Gas Company (WNG), P.O. 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–586–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the exchange agreement and gas sales agreement with Western Gas Interstate Company (Western) provided pursuant to WNG's Rate Schedule X–9, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that the exchange agreement terminated on May 15, 1991, pursuant to the terms of the agreement, and that Western requested termination of the sales agreement, pursuant to the terms of the agreement, effective May 15, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 23, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for WNG to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18797 Filed 8–5–93; 8:45 am]

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## Office of Fossil Energy

[FE Docket No. 93–75–NG]

**Natural Gas Clearinghouse; Application for Blanket Authorization to Import and Export Natural Gas from and to Mexico, and to Export Liquefied Natural Gas to Any Foreign Country**

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Natural Gas Clearinghouse (NGC) on July 16, 1993, as amended July 30, 1993, requesting blanket authorization to import from Mexico up to 200 Bcf of natural gas and export to Mexico up to 200 Bcf of natural gas. In addition, NGC requests authorization to export liquefied natural gas (LNG) to any foreign country. The combined volumes of natural gas and LNG exported by NGC would not exceed 200 Bcf. The term of the proposed authorization would begin on the date of the first delivery of either imports or exports after October 31, 1993, the expiration date of NGC's existing blanket import and export authorization granted by DOE/FE Opinion and Order No. 544 (1 FE ¶ 70,492, October 25, 1991).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 7, 1993.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

**FOR FURTHER INFORMATION CONTACT:**

C. Frank Duchaine, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building room 3H–

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087, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6567.

**SUPPLEMENTARY INFORMATION:** NGC is a partnership with its principal place of business in Houston, Texas. It proposes to import and export the gas and LNG under spot and short-term transaction, either on its own behalf or as the agent for others. NGC states that the specific terms of these arrangements would be negotiated individually, and the price would be competitive. The imports and exports would take place using existing pipeline and LNG facilities and no new construction would be involved. If this application is approved, NGC would be required to file quarterly reports with DOE giving the specific details of each transaction

DOE notes that NGC filed for a separate authorization (FE Docket No. 93–74–NG) to extend its existing authority to import and export natural gas from and to Canada and import LNG from any foreign country. NGC's current license for this authority, conferred by DOE/FE Opinion and Order No. 544, will expire October 31, 1993.

Proceedings limited to such requests are generally shorter because they are not notice in the **Federal Register** for public comment. Rather, section 3 of the NGA, as amended by the Energy Policy Act of 1992, requires DOE to grant "without modification or delay" applications for natural gas imports from, or exports to a "nation with which the United States has in effect a free trade agreement requiring national treatment for trade in natural gas" (currently Canada). Such imports and exports are "deemed to be consistent with the public interest." This statutory public interest finding also applies to LNG imports (but not to LNG exports) regardless of whether the United States has a free trade agreement with a foreign supplier.

The decision on NGC's request for authority to import natural gas from Mexico will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing NGC's proposal to export natural gas to Mexico and export LNG to any foreign country, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. NGC asserts the proposed imports would be competitive and that there is no current need for the domestic gas and LNG that would be exported. Parties opposing NGC's application bear the burden of overcoming these assertions.

### NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

### Public Comment Procedures

In the response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

NGC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC August 2, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–18855 Filed 8–5–93; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–4658–7]**

### Acid Rain Program: Notice of Draft Permits and Public Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Draft Permit and Pubic Comment Period.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year Phase I Acid Rain permits to 37 utility plants and denial of draft Phase I Acid Rain permits to 2 utility plants according to the Acid Rain Program regulations (40 CFR part 72).

**DATES:** Comments on draft permits must be received no later than 30 days after the date of this notice or the publication date of this notice in local newspapers.

**ADDRESSES:** *Administrative Records.* The administrative record for each draft permit, except information protected as confidential, may be viewed at the

addresses listed in SUPPLEMENTAL INFORMATION.

*Comments.* Send comments, requests for public hearings, and requests to receive notice of future actions concerning a draft permit to the following:

*For plants in Massachusetts:* Linda Murphy, Director, Air, Pesticides, and Toxics Division, EPA Region 1, JFK Federal Bldg., One Congress St., Boston, MA 02203.

*For plants in New York:* Steve Riva, Chief, Permitting and Toxics Support Section, Air Compliance Branch, EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, Room 500, New York, NY 10278.

*For plants in Pennsylvania and West Virginia:* Thomas Maslany, Director, Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), 841 Chestnut Bldg., Philadelphia, PA 19107.

*For plants in Kentucky:* Winston Smith, Director, Air, Pesticides and Toxics Management Division, EPA Region 4, 345 Courtland St. NE, Atlanta, GA 30365.

*For plants in Illinois and Ohio:* David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

*For plants in Utah and Wyoming:* Patricia Hull, Director Air, Radiation and Toxics Division, EPA Region 8, 999 18th St., Suite 500 (8ART), Denver, CO 80202–2466.

Submit all comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units covered by the permit. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the permit.

*Hearings.* To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the draft permit.

FOR FURTHER INFORMATION CONTACT: Contact the following persons for more information about the draft permits:

For plants in Massachusetts, Ian Cohen at (617) 565–3229. Air Permits and Assessment Section, EPA Region 1 (APA), (address above).

For pants in New York, Gerry DeGaetano at (212) 264–6685. Air and Waste Management Division, EPA Region 2 (address above).

For Harrison, Fort Martin, Bruce Mansfield, New Castle, Jim Topsale at (215) 597–6553, for Glen Lyn Hatfield's Ferry, John E Amos, Mitchell (PA), Mitchell (WV) and Pleasants, Kimberly Peck at (215) 597–9839, for Armstrong, David Campbell at (215) 597–9781. Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), (address above).

For plants in Illinois, Cecelia Mijares at (312 886–0968, for plants in Ohio, Franklin Echevarria at (312) 886–9653. Air and Radiation Division, EPA Region 5 (A–18J), (address above).

For plants in Utah and Wyoming, Mark Komp at (303) 293–0956. Air, Radiation and Toxics Division EPA Region 8 (address above).

SUPPLEMENTARY INFORMATION: *Permits.*

EPA proposes to approve, for 1995 only, substitution plans and reduced utilization plans (and parts of plans) with compensating units that are consistent with the current rules and proposes to defer action on these plans and parts of plans for 1996–99.

EPA recently stated, in a July 16, 1993 **Federal Register** notice, that it is concerned that the existing Acid Rain Program regulations could be read to provide utilities an open-ended ability to use substitution and reduced utilization plans to bring Phase II units into Phase I and create a significant number of excess, new allowances in Phase I. 58 FR 38370 (July 16, 1993). This creation of allowances would threaten achievement of the sulfur dioxide emissions reductions intended to be made under the Act and thus would be contrary to the purposes of the Act. *See id.* As stated in the July 16, 1993 notice, EPA is therefore planning to propose revision of the January 11, 1993 regulations implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization. *Id.* EPA plans to explain these matters in more detail in a notice of proposed rulemaking.

The owners and operators of some affected sources, however, have already submitted to EPA substitution and reduced utilization plans based on their reading of the existing regulations. In order to provide owners and operators an opportunity to adjust their compliance strategies in the event of regulatory revisions, EPA issued on July 16, 1993, and is issuing today, draft permits that approve for 1995 those substitution plans and those reduced utilization plans (and parts of plans) with compensating units that comply with the January 11, 1993 regulations. In the draft permits, EPA defers action on those plans and parts of plans for 1996–1999 pending the potential regulatory revisions.

Further, as explained in the July 16, 1993 notice, the one-year approval is applicable only to those plans that were submitted before July 16, 1993 and that are not revised on or after that date to add units to the plans. *Id.* Where plans are submitted, or revised to add units, on or after that date and before issuance of Phase I permits for the units involved and where EPA issues the permits before the completion of the rulemaking discussed above, EPA intends to defer action on the plans for 1995–99. Similarly, where plans are submitted or revised on or after July 16, 1993 and after issuance of Phase I permits for the units, EPA also intends to defer action on those plans for 1995–99 until completion of the rulemaking. Plans on which action is deferred will be reviewed and acted on in accordance with the regulations that result from the rulemaking.

EPA proposes to approve draft permits that specify the sulfur dioxide emission allowances and compliance plans for following utility plants:

**Region 2**

*Goudey in New York:* 2,337 allowances under 40 CFR 72.43 (compensating unit allowances) in 1995 to unit 11; 2,297 compensating unit allowances in 1995 to unit 12; 9,758 compensating unit allowances in 1995 to unit 13; and 6 conditional reduced utilization plans for 1995, 3 for units 11 and 12 and 3 for unit 13, in which Milliken units 1 and 2 Greenidge unit 6 designate units 11, 12 and 13 as compensating units. The designated representative is John I. Fiala.

*Greenidge in New York:* 7,342 allowances under column A of Table 1 of 40 CFR 73.10 (Table 1 allowances) in each 1995–1999 to unit 6; 2,913 compensating unit allowances in 1995 to unit 4; 2,883 compensating unit allowances in 1995 to unit 5; 8 conditional reduced utilization plans for 1995, in which unit 6 designates units 4 and 5, Goudey units 11, 12 and 13 Hickling units 1, 2, 3 and 4, Jennison units 1, 2, 3 and 4, and Somerset unit 1 as compensating units; 2 conditional reduced utilization plans for 1995 for units 4 and 5, in which Milliken units 1 and 2 designates units 4 and 5 as compensating units; 5 conditional reduced utilization plans, one for each year 1995–1999 for unit 6, that rely on energy conservation measures; 5 conditional reduced utilization plans, one for each year 1995–1999 for unit 6, that rely on improved unit efficiency measures; and 5 conditional reduced utilization plans, one for each year 1995–1999 for unit 6, that rely on sulfur-free generation. A Phase I

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extension plan in which unit 6 is a transfer unit for Milliken units 1 and 2 is not approved because unallocated allowances do not remain in the Phase I Extension Reserve (Reserve). If Reserve allowances become available, unit 6 is eligible to receive 4,439 Reserve allowances in each year 1995–1996. The designated representative is John I. Fiala.

*Hickling in New York:* 1,310 compensating unit allowances in 1995 to unit 1; 1,288 compensating unit allowances in 1995 to unit 2; 1,496 compensating unit allowances in 1995 to unit 3; 1,565 compensating unit allowances in 1995 to unit 4; and 6 conditional reduced utilization plans for 1995, 3 for units 1 and 2, and 3 for units 3 and 4, in which Milliken units 1 and 2 and Greenidge unit 6 designate units 1, 2, 3 and 4 as compensating units. The designated representative is John I. Fiala.

*Jennison in New York:* 968 compensating unit allowances in 1995 to unit 1; 1,012 compensating unit allowances in 1995 to unit 2; 986 compensating unit allowances in 1995 to unit 3; 974 compensating unit allowances in 1995 to unit 4; and 6 conditional reduced utilization plans for 1995, 3 for units 1 and 2, and 3 for units 3 and 4, in which Milliken units 1 and 2, and Greenidge unit 6 designate units 1, 2, 3 and 4 as compensating units. The designated representative is John I. Fiala.

*Milliken in New York:* 10,876 Table 1 allowances in each year 1995–1999 to unit 1; 12,083 Table 1 allowances in each year 1995–1999 to unit 2; 16 conditional reduced utilization plans for 1995, 8 for each unit, in which units 1 and 2 designate Greenidge units 4 and 5, Goudey units 11, 12 and 13, Hickling units 1, 2, 3 and 4, Jennison units 1, 2, 3 and 4, and Somerset unit 1 as compensating units; 10 conditional reduced utilization plans, one for each year 1995–1999 for units 1 and 2, that rely on energy conservation measures; 10 conditional reduced utilization plans, one for each year 1995–1999 for units 1 and 2, that rely on improved unit efficiency measures; and 10 conditional reduced utilization plans, one for each year 1995–1999 for units 1 and 2, that rely on sulfur-free generation. A Phase I extension plan in which units 1 and 2 are control units and Greenidge unit 6, Hennepin unit 2, and Baldwin unit 3 are transfer units, is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Milliken is eligible to receive the following Reserve allowances: 2,954 in each year 1995–1996, 3,493 in 1997, 3,453 in 1998, and 3,455 in 1999 to unit 1; and 1,520 for each year 1995–1996, 3,878 in 1997, 3,809 in 1998, and 3,816 in 1999 to unit 2. The designated representative is John I. Fiala.

*Somerset in New York:* 9,445 compensating unit allowances in 1995 to unit 1; and 3 conditional reduced utilization plans for 1995 in which Milliken units 1 and 2, and Greenidge unit 6 designate unit 1 as a compensating unit. The designated representative is John I. Fiala.

**Region 3**

*Armstrong in Pennsylvania:* 14,031 Table 1 allowances in each year 1995–1999 and 3,707 Reserve allowances in each year 1995–1996 to unit 1; 15,024 Table 1 allowances in each year 1995–1999 to unit 2; a Phase I extension plan in which unit 1 is a transfer unit for Harrison units 1, 2 and 3. The designated representative is David C. Benson.

*Bruce Mansfield in Pennsylvania:* 10,510 allowances under 40 CFR 72.41 (substitution allowances) in 1995 to unit 1; 11,537 substitution allowances in 1995 to unit 2; 11,922 substitution allowances in 1995 to unit 3; 3 conditional substitution plans for 1995, one for each substitution unit, in which W H Sammis units 5, 6 and 7, R E Burger units 5, 6, 7 and 8, Niles units 1 and 2, and Edgewater unit 13 designated units 1, 2 and 3 as substitution units; and 3 conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

*Hatfield's Ferry in Pennsylvania:* 36,835 Table 1 allowances in each year 1995–1999 and 18,897 Reserve allowances in each year 1995–1996 to unit 1; 36,338 Table 1 allowances in each year 1995–1999 and 21,168 Reserve allowances in each year 1995–1996 to unit 2; 39,210 Table 1 allowances in each year 1995–1999 and 17,370 Reserve allowances in each year 1995–1996 to unit 3; a Phase I extension plan in which units 1, 2 and 3 are transfer units for Harrison units 1, 2 and 3; and 3 conditional substitution plans for 1995 in which unit 1 designates Pleasants unit 1 as a substitution unit, unit 2 designates Pleasants unit 2 as a substitution unit, and unit 3 designates Mitchell (PA) unit 33 as a substitution unit. The designated representative is David C. Benson.

*Mitchell in Pennsylvania:* 2,084 substitution allowances in 1995 to unit 33; and 1 conditional substitution plan for 1995 in which Hatfield's Ferry unit 3 designates unit 33 as a substitution unit. The designated representative is David C. Benson.

*New Castle in Pennsylvania:* 1,367 substitution allowances in 1995 to unit 1; 1,520 substitution allowances in 1995 to unit 2; 6,328 substitution allowances in 1995 to unit 3; 6,002 substitution allowances in 1995 to unit 4; 9,997 substitution allowances in 1995 to unit 5; 5 conditional substitution plans for 1995, one for each substitution unit, in which Edgewater unit 13, Niles units 1 and 2, W H Sammis units 5, 6, and 7, and R E Burger units 5, 6, 7 and 8 designate units 1, 2, 3, 4 and 5 as substitution units; 5 conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

*Fort Martin in West Virginia:* 40,496 Table 1 allowances in each year 1995–1999 and 1,409 Reserve allowances in each year 1995–1996 to unit 1; 40,116 Table 1 allowances in each year 1995–1999 and 4,002 Reserve allowances in each year 1995–1996 to unit 2; and a Phase I extension plan in which units 1 and 2 are transfer units for Harrison units 1, 2 and 3. The designated representative is David C. Benson.

*Glen Lyn in West Virginia:* 7,006 substitution allowances in 1995 to unit 6; and a conditional substitution plan for 1995 in which Mitchell (WV) unit 2 designates unit 6 as a substitution unit. The designated representative is John M. McManus.

*Harrison in West Virginia:* 47,341 Table 1 allowances in each year 1995–1999, 35,272 Reserve allowances in each year 1995–1996, and 20,737 Reserve allowances in each year 1997–1999 to unit 1; 44,936 Table 1 allowances in each year 1995–1999, 46,244 Reserve allowances in each year 1995–1996, and 19,552 Reserve allowances in each year 1997–1999 to unit 2; 40,408 Table 1 allowances in each year 1995–1999, 50,319 Reserve allowances in each year 1995–1996, and 17,322 Reserve allowances in each year 1997–1999 to unit 3; and a Phase I extension plan that requires units 1, 2 and 3 to install qualifying Phase I technology and that designates Armstrong unit 1, Fort Martin units 1 and 2, Hatfield's Ferry units 1, 2 and 3, R E Burger units 5, 6, 7 and 8, Niles units 1 and 2, and Eastlake unit 5 as transfer units. The designated representative is David C. Benson.

*John E Amos in West Virginia:* 21,512 substitution allowances in 1995 to unit 1; 24,664 substitution allowances in 1995 to unit 2; and two conditional

substitution plans for 1995 in which Mitchell (WV) unit 1 designates unit 1 as a substitution unit, and Mitchell (WV) unit 2 designates unit 2 as a substitution unit. The designated representative is John M. McManus.

*Mitchell in West Virginia:* 42,823 Table 1 allowances in each year 1995–1999 to unit 1; 44,312 Table 1 allowances in each year 1995–1999 to unit 2; three conditional substitution plans for 1995 in which unit 1 designates John E Amos unit 1 as a substitution unit, unit 2 designates John E Amos unit 2 as a substitution unit, and unit 2 designates Glen Lyn unit 6 as a substitution unit; and two conditional reduced utilization plans, one for each unit, that rely on energy conservation measures. The designated representative is John M. McManus.

*Pleasants in West Virginia:* 16,762 substitution allowances in 1995 to unit 1; 19,230 substitution allowances in 1995 to unit 2; 2 conditional substitution plans for 1995 in which Hatfield's Ferry unit 1 designates unit 1 as a substitution unit, and Hatfield's Ferry unit 2 designates unit 2 as a substitution unit. The designated representative is David C. Benson.

**Region 4**

Elmer Smith in Kentucky: 6,348 Table 1 allowances in each year 1995–1999 to unit 1; 14,081 Table 1 allowances in each year 1995-1999 to unit 2. A Phase I extension plan that requires units 1 and 2 to install qualifying Phase I technology is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Elmer Smith is eligible to receive the following Reserve allowances: 9,540 in each year 1995–1996 and 5,192 in each 1997–1999 to unit 1, and 9,885 in each year 1995–1999 and 2,150 each year 1997–1999 to unit 2. The designated representative is Robert M. Carper.

**Region 5**

Baldwin in Illinois: 46,052 Table 1 allowances in each year 1995–1999 to unit 1; 48,695 Table 1 allowances in each year 1995–1999 to unit 2; 46,644 Table 1 allowances in each year 1995–1999 to unit 3; 3 conditional substitution plans for 1995 in which unit 1 designates Wood River unit 4 as a substitution unit, unit 2 designates Wood River unit 5 as a substitution unit, and unit 3 designates Havana unit 9 as a substitution unit; 1 substitution plan for 1995 in which unit 2 designates Jim Bridger units BW71, BW72 and BW73, Wyodak unit BW91, and Gadsby unit 3 as substitution units; 6 reduced utilization plans, 2 for each unit (one for 1995 and one for 1996–1999), that rely on sulfur free generation; and 3 conditional reduced utilization plans, one for each unit, that rely on sulfur-free generation. A Phase I extension plan in which unit 3 is a transfer unit for Milliken units 1 and 2 is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, Baldwin unit 3 is eligible to receive 5,436 Reserve allowances in 1995 and 5,461 Reserve allowances in 1996. The designated representative is Jene L. Robinson.

*Havana in Illinois:* 6,399 substitution allowances in 1995 to unit 9; one conditional substitution plan for 1995 in which Baldwin unit 3 designates unit 9 as a substitution unit; and one conditional reduced utilization plan for unit 9 that relies on sulfur-free generation. The designated representative is Jene L. Robinson.

*Hennepin in Illinois:* 20,182 Table I allowances in each year 1995–1999 to unit 2; 10,012 substitution or compensating allowances in 1995 to unit 1; one conditional substitution plan for 1995 in which unit 2 designates unit 1 as a substitution unit that can be activated only for years for which a reduced utilization plan designating unit 1 as compensating unit is not activated; 3 reduced utilization plans for unit 2, one active plan for 1995, one active plan for 1996–1999, and one conditional plan, that rely on sulfur-free generation; the part of a conditional reduced utilization plan for unit 2 for 1995 that designates unit 1 as a compensating unit, with the limitation that it can be activated only for years in which the conditional reduced utilization plan for unit 1 that relies on sulfur-free generation (described below) is not activated and in which a substitution plan designating unit 1 is not activated; the part of a conditional reduced utilization plan for unit 2 that relies on sulfur-free generation; and one conditional reduced utilization plan for unit 1 that relies on sulfur-free generation, with the limitation that it can be activated only for years in which the conditional reduced utilization plan in which unit 2 designates unit 1 as a compensating unit (described above) is not activated. A Phase 1 extension plan in which unit 2 is a transfer unit for Milliken units 1 and 2 is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, unit 2 is eligible to receive 9,914 Reserve allowances in each year 1995–1996. The designated representative is Jene L. Robinson.

*Vermilion in Illinois:* 9,735 Table 1 allowances in each year 1995–1999 to unit 2; 12,972 substitution or compensating allowances in 1995 to unit 1; one conditional substitution plan for 1995 in which unit 2 designates unit 1 as a substitution unit, that can be activated only for years in which a reduced utilization plan designating unit 1 as compensating unit is not activated; 3 reduced utilization plans for unit 2, one active plan for 1995, one active plan for 1996–1999, and one conditional plan, that relies on sulfur-free generation; the part of a conditional reduced utilization plan for unit 2 for 1995 that designates unit 1 as a compensating unit, with the limitation that it can be activated only for years in which the conditional reduced utilization plan for unit 1 that relies on sulfur-free generation (described below) is not activated and in which a substitution plan designating unit 1 is not activated; the part of a conditional reduced utilization plan for unit 2 that relies on sulfur-free generation; and one conditional reduced utilization plan for unit 1 that relies on sulfur-free generation, with the limitation that it can be activated only for years in which the conditional reduced utilization plan in which unit 2 designates unit 1 as a compensating unit (described above) is not activated. The designated representative is Jene L. Robinson.

*Wood River in Illinois:* 2,018 substitution allowances in 1995 to unit 4; 9,028 substitution allowances in 1995 to unit 5; 2 conditional substitution plans for 1995, one in which Baldwin unit 1 designates unit 4 as a substitution unit and one in which Baldwin unit 2 designates unit 5 as a substitution unit; and two conditional reduced utilization plans, one for each unit, that rely on sulfur-free generation. The designated representative is Jene L. Robinson.

*Acme in Ohio*: 9 substitution allowances in 1995 to unit 13; 13 substitution allowances in 1995 to unit 14; 17 substitution allowances in 1995 to unit 15; 1,930 substitution allowances in 1995 to unit 16; 740 substitution allowances in 1995 to unit 91; 662 substitution allowances in 1995 to unit 92; five substitution plans for 1995, one for each substitution unit, in which Ashtabula unit 7 designates units 13, 14, 15, 91 and 92 as substitution units; one conditional substitution plan for 1995 in which Ashtabula unit 7 designates unit 16 as a substitution unit; five reduced utilization plans for units 13, 14, 15, 91 and 92 that rely on energy conservation measures and sulfur-free generation; and one conditional reduced utilization plan for unit 16 that relies on energy conservation and improved unit

efficiency measures, and sulfur-free generation. The designated representative is Fred J. Lange, Jr.

*Ashtabula in Ohio:* 18,351 Table 1 allowances in each year 1995–1999 to unit 7; 10,753 substitution allowances in 1995 to unit 8; 9,173 substitution allowances in 1995 to unit 9; 8,275 substitution allowances in 1995 to unit 10; 8,706 substitution allowances in 1995 to unit 11; fourteen conditional substitution plans for 1995, one for each substitution unit, in which unit 7 designates Ashtabula units 8, 9, 10 and 11, Bay Shore units 1, 2, 3 and 4, Acme unit 16, and Lake Shore units 18, 91, 92, 93 and 94 as substitution units; five substitution plans for 1995, one for each substitution unit, in which unit 7 designates Acme units 13, 14, 15, 91 and 92 as substitution units; four conditional reduced utilization plans for units 8, 9, 10 and 11 that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; and a reduced utilization plan for unit 7 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation. A Phase I extension plan in which unit 7 is a transfer unit for Elmer Smith is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, unit 7 is eligible to receive 7,279 Reserve allowances in each year 1995–96. The designated representative is Fred J. Lange, Jr.

*Bayshore in Ohio:* 7,546 substitution allowances in 1995 to unit 1; 7,311 substitution allowances in 1995 to unit 2; 7,585 substitution allowances in 1995 to unit 3; 12,481 substitution allowances in 1995 to unit 4; four conditional substitution plans for 1995, one for each substitution unit, in which Ashtabula unit 7 designates units 1, 2, 3 and 4 as substitution units; and four conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Fred J. Lange, Jr.

*Eastlake in Ohio:* 8,551 Table 1 allowances in each year 1995–1999 to unit 1; 9,471 Table 1 allowances in each year 1995–1999 to unit 2; 10,984 Table 1 allowances in each year 1995–1999 to unit 3; 15,906 Table 1 allowances in each year 1995–1999 to unit 4; 37,349 Table 1 allowances in each year 1995–1999 and 5,146 Reserve allowances in each year 1995–1996 to unit 5; a Phase I extension plan in which unit 5 is a transfer unit for Harrison; and five reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. A Phase I extension plan in which unit 1 is a transfer unit for Elmer Smith is not approved because unallocated allowances do not remain in the Reserve. If Reserve allowances become available, unit 1 is eligible to receive 7,229 Reserve allowances in each year 1995–1996. The designated representative is Fred J. Lange, Jr.

*Edgewater in Ohio:* 5,536 Table 1 allowances in each year 1995–1999 to unit 13; 1,062 substitution allowances in 1995 to unit 11; 1,145 substitution allowances in 1995 to unit 12; 23 conditional substitution plans for 1995, one for each substitution unit, in which unit 13, Niles units 1 and 2, W H Sammis units 5, 6 and 7, and R E Burger units 5, 6, 7 and 8 designate units 11 and 12, W H Sammis units 1, 2, 3 and 4, R E Burger units 1, 2, 3 and 4, Gorge units 25 and 26, Toronto units 9, 10 and 11, Bruce Mansfield units 1, 2 and 3, and New Castle units 1, 2, 3, 4 and 5 as substitution units; 2 conditional reduced utilization plans, one each for units 11 and 12, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; and part of a conditional reduced utilization plan for unit 13 that relies on energy conservation and improved unit efficiency measures, and sulfur-free generation. Part of a conditional reduced utilization plan for unit 13 that designates New England Power Company's Brayton Point units 1, 2, 3 and 4 and Salem Harbor units 1, 2 and 3 as compensating units is disapproved. The designated representative is Howard C. Couch, Jr.

*Gorge in Ohio:* 2,553 substitution allowances in 1995 to unit 25; 2,860 substitution allowances in 1995 to unit 26; two conditional substitution plans for 1995, one for each substitution unit, in which Edgewater unit 13, Niles units 1 and 2, R E Burger units 5, 6, 7 and 8, and W H Sammis units 5, 6 and 7 designate units 25 and 26 as substitution units; and two conditional reduced utilization plans for units 25 and 26, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

*Lake Shore in Ohio:* 4,767 substitution allowance in 1995 to unit 18; 44 substitution allowances in 1995 to unit 91; 80 substitution allowances in 1995 to unit 92; 62 substitution allowances in 1995 to unit 93; 102 substitution allowances in 1995 to unit 94; five conditional substitution plans for 1995, one for each substitution unit, in which Ashtabula unit 7 designates units 18, 91, 92, 93 and 94 as substitution units; three conditional reduced utilization plans for units 18, 91 and 92 that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation; and two conditional reduced utilization plans for units 92 and 94 that rely on energy conservation measures and sulfur-free generation. The designated representative is Fred J. Lange, Jr.

*Niles in Ohio:* 7,608 Table 1 allowances in each year 1995–1999, 10,632 Reserve allowances in 1995, and 10,896 Reserve allowances in 1996 to unit 1; 9,975 Table 1 allowances in each year 1995–1999, 4,831 Reserve allowances in 1995, and 4,346 Reserve allowances in 1996 to unit 2; a Phase I extension plan in which units 1 and 2 are transfer units for Harrison; 23 conditional substitution plans for 1995, one for each substitution unit, in which units 1 and 2, Edgewater unit 13, W H Sammis units 5, 6 and 7, and R E Burger units 5, 6, 7 and 8 designate W H Sammis units 1, 2, 3 and 4, Edgewater units 11 and 12, R E Burger units 1, 2, 3 and 4, Gorge units 25 and 26, Toronto units 9, 10 and 11, Bruce Mansfield units 1, 2 and 3, and New Castle units 1, 2, 3, 4 and 5 as substitution units; and 2 conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

*R E Burger in Ohio:* 3,371 Table 1 allowances in each year 1995–1999, 1,316 Reserve allowances in 1995, and 1,426 Reserve allowances in 1996 to unit 5; 3,371 Table 1 allowances in each year 1995–1999, 1,325 Reserve allowances in 1995, and 1,436 Reserve allowances in 1996 to unit 6; 11,818 Table 1 allowances in each year 1995–1999 and 10,155 Reserve allowances in each year 1995–1996 to unit 7; 13,626 Table 1 allowances in each year 1995–1999 and 9,501 Reserve allowances in each year 1995–1996 to unit 8; 2,820 substitution allowances in 1995 to unit 1; 2,751 substitution allowances in 1995 to unit 2; 2,891 substitution allowances in 1995 to unit 3; 2,956 substitution allowances in 1995 to unit 4; a Phase I extension plan in which units 5, 6, 7, and 8 are transfer units for Harrison; 23 conditional substitution plans for 1995, one for each substitution unit, in which units 5, 6, 7 and 8, Niles units 1 and 2, Edgewater unit 12, and W H Sammis Units 5, 6, and 7 designate units 1, 2, 3 and 4, W H Sammis units 1, 2, 3, and 4, Edgewater units 11 and 12, Gorge units 25 and 26, Toronto units 9, 10, and 11, Bruce Mansfield units 1, 2 and 3, and new Castle units 1, 2, 3, 4 and 5 as substitution units; and eight

conditional reduced utilization plans, one for each unit, that relay on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

*Toronto in Ohio:* 5,325 substitution allowances in 1995 to unit 9; 9,505 substitution allowances in 1995 to unit 10; 10,274 substitution allowances in 1995 to unit 11, three conditional substitution plans for 1995, one for each substitution unit, in which Edgewater unit 13, Niles units 1 and 2, R E Burger units 5, 6, 7, and 8, and W H Sammis units 5, 6 and 7 designate units 9, 10 and 11 as substitution units; and three conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

*W H Sammis in Ohio:* 26,496 Table 1 allowances in each year 1995–1999 to unit 5; 43,773 Table 1 allowances in each year 1995–1999 to unit 6; 47,380 Table 1 allowances in each year 1995–1999 to unit 7; 8,390 substitution allowances in 1995 to unit 1; 7,356 substitution allowances in 1995 to unit 2; 8,388 substitution allowances in 1995 to unit 3; 7,432 substitution allowances in 1995 to unit 4; 23 conditional substitution plans for 1995, one for each substitution unit, in which units 5, 6, and 7, Edgewater unit 13, Niles units 1 and 2, and R E Burger units 5, 6, 7, and 8 designate units 1, 2, 3 and 4, Edgewater units 11 and 12, R E Burger units 1, 2, 3 and 4, Gorge units 25 and 26, Toronto units 9, 10 and 11, Bruce Mansfield units 1, 2 and 3, and New Castle units 1, 2, 3, 4 and 5 as substitution units; and seven conditional reduced utilization plans, one for each unit, that rely on energy conservation and improved unit efficiency measures, and sulfur-free generation. The designated representative is Howard C. Couch, Jr.

**Region 8**

*Gadsby in Utah:* 1,445 substitution allowances in 1995 to unit 3; and 1 conditional substitution plan for 1995 in which Baldwin unit 2 designates unit 3 as a substitution unit. The designated representative is Jene L. Robinson.

Jim Bridger in Wyoming: 19,130 substitution allowances in 1995 to unit BW71; 18,739 substitution allowances in 1995 to unit BW72; 17,944 substitution allowances in 1995 to unit BW73; and 1 conditional substitution plan for 1995 in which Baldwin unit 2 designates units BW71, BW72, and BW73 as substitution units. The designated representative is Jene L. Robinson.

*Wyodak in Wyoming:* 16,855 substitution allowances in 1995 to unit BW91; and 1 conditional substitution plan for 1995 in which Baldwin unit 2 designates unit BW91 as a substitution unit. The designated representative is Jene L. Robinson.

EPA proposes to deny draft Phase I permits and compliance plans for the following utility plants:

**Region 1**

Brayton Point in Massachusetts: a reduced utilization plan in which units 1, 2, 3 and 4, and Salem Harbor units 1, 2 and 3 are designated as compensating units for Edgewater unit 13; and four reduced utilization plans in which units 1, 2, 3 and 4 rely on energy conservation measures and sulfur-free generation. The designated representative is Andrew H. Aitken.

Salem Harbor in Massachusetts: a reduced utilization plan in which units 1, 2, and 3 and Brayton Point units 1, 2, 3 and 4 are designated as compensating units for Edgewater 13; and three reduced utilization plans in which units 1, 2 and 3 rely on energy conservation measures and sulfur-free generation. The designated representative is Andrew H. Aitken.

*Addresses:* The administrative records for each plant may be viewed during normal operating hours at the following locations:

**Region 1**

For plants in Massachusetts: EPA Region 1, JFK Federal Bldg., One Congress St., Boston, MA 02203.

**Region 2**

For plants in New York: EPA Region 2, Jacob K. Javitz Federal Bldg., 26 Federal Plaza, Room 505, New York, NY 10278.

**Region 3**

For plants in Pennsylvania and West Virginia: EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800.

**Region 4**

*For Elmer Smith:* (1) EPA Region 4 Library, 345 Courtland St., NE, Atlanta, GA 30365, (404) 347–4216; (2) Division of Air Quality, Department of Environmental Protection, Natural Resources and Environmental Protection Cabinet, 316 St. Clair Mall, Franfort, KY 40601; and (3) Davies County Public Library, 450 Griffith Ave., Owensboro, KY 42301, (502) 684–0211.

**Region 5**

*For plants in Illinois:* (1) EPA Region 4, Ralph H. Metcalfe Federal Bldg., Room 1822, 77 West Jackson Blvd., Chicago, IL 60604, and (2) Illinois Environmental Protection Agency Library, 2200 Churchill Road, Springfield, IL 62706.

For plants in Ohio: EPA Region 4, Ralph H. Metcalfe Federal Bldg., 17th floor, 77 West Jackson Blvd., Chicago, IL 60604

**Region 8**

*For plants in Utah and Wyoming:* EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466.

Dated: August 3, 1993.

*Brian McLean,*

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93–18840 Filed 8–5–93; 8:45 am]

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## Acid Rain Program: Notice of Final Permits

[FRL–[illegible]]

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final permit.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is issuing five-year, Phase I Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 3 utility plants: Coffeen, Grand Tower and Joppa Steam in Illinois.

**FOR FURTHER INFORMATION CONTACT:** Cecilia Mijares at (312) 886–0968. Air and Radiation Division, EPA Region 5 (AR-18J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: August 3, 1993.

Brian McLean,

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 93–18841 Filed 8–5–93; 8:45 am]

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[ER–FRL–4623–4]

## Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 19, 1993 through July 23, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental

Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

**Draft EISs**

ERP No. D–NPS–D61037–DC Rating EC2, New Stadium Construction and Operation, Implementation, Anacostia Park, Washington, DC.

*Summary:* EPA expressed environmental concerns regarding the insufficient evaluation of alternatives, primarily the upgrade/renovation of the existing RFK stadium.

EPA raised concerns regarding cumulative impacts to air, water, open space and community values resulting from the proposed stadium and other proposed projects in the immediate area.

ERP No. DS–USA–K10009–TT Rating EO2, Kwajalein Atoll Ongoing and Strategic Defense Initiative Activities, New Information, Test Range Facility Construction and Support Services, Republic of the Marshall Islands.

*Summary:* EPA expressed environmental objections regarding the projects potential for significant impacts to natural and cultural resources. EPA requested mitigation or alternatives that would avoid potential adverse effects of quarrying, dredging, filling and construction. EPA also recommended reestablishing the letter of authority procedure considered during the development of standards and procedures for U.S. Army activities on Kwajalein Atoll.

**Final EISs**

ERP No. F–AFS–K65144–CA, 1992 Cleveland Watershed/Fire Recovery Project, Eldorado National Forest, South Fork American River, Eldorado, Alpine and Amador Counties, CA.

*Summary:* EPA continued to have environmental concerns with cumulative environmental impacts to water quality and watersheds, and impacts to contiguous riparian and mammal biological corridors. EPA requested that the EIS Record of Decision identify appropriate mitigation measures for these impacts.

ERP No. F–COE–E30035–NC, Carolina Beach and Vicinity/Area South Project, Beach Erosion Control and Hurricane Wave Protection, Implementation, New Hanover County, NC.

*Summary:* EPA continued to have environmental concerns with the cumulative impacts of beach nourishment projects and their lack of total projected life time cost.

ERP No. F–FHW–K40186–AZ, AZ–87/Beeline Highway Upgrading, Saguaro Lake Road to near the Maricopa-Gila County Line, Funding, Land Exchange with the Forest Service and COE Section 404 Permit Issuance, Maricopa County, AZ.

*Summary:* EPA expressed continued concerns regarding potential project impacts to water quality, air quality and the Sycamore Creek Riparian Area. EPA requested that the Record of Decision contain a commitment to assess and monitor these impacts and to implement remedial measures should monitoring reveal that adverse impacts to air and water quality are occurring.

ERP No. F–UAF–K11016–CA, Norton Air Force Base (AFB) Disposal and Reuse, Implementation, San Bernardino, CA.

*Summary:* EPA believed that the FEIS does not sufficiently discuss contaminated sites, cleanup actions, and the coordination process to be used to ensure that reuse and site cleanup decisions are properly integrated. EPA recommended that the Air Force provide additional information in the EIS Record of Decision on reuse/contaminated site cleanup integration and the status of cleanup actions, including specific terms, conditions, and mitigation measures to promote wise reuse and to promote pollution prevention, waste minimization, conservation and recycling.

ERP No. FS–TVA–A82025–00, Control of Eurasian Watermilfoil, Updated Information concerning the Aquatic Plant Management Program, Implementation, Tennessee Valley Region.

*Summary:* EPA identified that herbicide applications should be proscribed to those situations in which there are no other practicable alternatives. EPA supported the monitoring program for determining potential water quality impacts from their reduced use.

Dated: August 5, 1993.

**William D. Dickerson,**

*Deputy Director, Office of Federal Activities.*

[FR Doc. 93–18879 Filed 8–5–93; 8:45 am]

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**[ER–FRL–4623–3]**

**Environmental Impact Statements; Notice of Availability**

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed July 26, 1993 Through July 30, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930253, Draft EIS, AFS, ID, Sunshine Timber Sale, Implementation, Salmon National Forest, Cobalt Ranger District, Big Deer Creek, Lemhi County, ID, Due: August 27, 1993, Contact: Barbara A. Levesque (208) 756–2240.

EIS No. 930254, Final EIS, EPA, FL, Fort Pierce Harbor Offshore Ocean Dredged Material Disposal Site (ODMDs), Designation, Fort Pierce, FL, Due: September 7, 1993, Contact: Wesley B. Crum (404) 347–1740.

EIS No. 930255, Draft EIS, AFS, MT, Middle Fork Ecosystem Management Project, Implementation, Flathead National Forest, Hungry Horse Ranger District, Flathead River, Flathead County, MT, Due: September 21, 1993, Contact: Heidi Trechsel (406) 387–5243.

EIS No. 930256, Final Supplement, NOA, PR, VI, Shallow-Water Reef Fish Fishery Management Plan, Amendment 2, Updated Information, Puerto Rico and U. S. Virgin Island, Due: September 7, 1993, Contact: Sr. Miquel Rolon (809) 753–6910.

EIS No. 930257, Draft Supplement, FHW, MA, Central Artery/I–93 Third Harbor Tunnel/I–90 Extension, Updated and Additional Information, Design Alternatives for the Charles River Crossing, Funding, US COE Section 10 and 404 Permits, US CGD Permits and EPA NPDES Permit, Suffolk County, MA, Due: October 5, 1993, Contact: Paul Stakutis (617) 951–6496.

EIS No. 930258, Final EIS, USN, VA, MD, Dahlgren Division, Naval Surface Warfare Center Base Realignment, New Construction and Renovation, Westmoreland, Stafford, Spotsylvania and King George Counties, VA and Charles County, MD, Due: September 7, 1993, Contact: Larry Chernikoff (202) 433–3387.

EIS No. 930259, FINAL EIS, FHW, AZ, Price Freeway (Loop 101) Corridor Construction, Price Road between the Superstition Freeway to Pecos Road, Funding and Right-of-Way Acquisition, Maricopa County, AZ, Due: September 7, 1993, Contact: Ken Davis (602) 379–3646.

EIS No. 930260, FINAL EIS, AFS, AK, Central Prince of Wales Ketchikan Pulp Long-Term Timber Sale, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: September 7, 1993, Contact: David Arrasmith (907) 225–3101.

EIS No. 930261, FINAL EIS, DOE, MO, Weldon Spring Site, Chemical Plant

Area Remedial Action Feasibility Study, Implementation, St. Charles County, MO, Due: September 7, 1993, Contact: Stephen McCracken (314) 441–8066.

Amended Notices

EIS No. 930164, DRAFT EIS, BLM, NV, Bedell Flat Water and Natural Gas Pipelines Crossing Project, Right-of-Way Grants and COE Section 404 Permit, Washoe County, NV , Due: September 22, 1993, Contact: James M. Phillips (702) 885–6000. Published FR 5–21–93—Review period extended.

Dated: August 3, 1993.

William D. Dickerson,

*Deputy Director, Office of Federal Activities.*

[FR Doc. 93–18878 Filed 8–5–93; 8:45 am]

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[FRL–4689–1]

## Connecticut: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of tentative determination to fully approve the adequacy of the State of Connecticut's municipal solid waste permitting program, public hearing and public comment period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B), requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs), which may receive hazardous household waste or small quantity generator hazardous waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA Section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C), requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibilities provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria shall apply to all permitted and unpermitted MSWLF facilities.

The state of Connecticut has applied for a determination of adequacy under section 4005(c)(1)(C) of RCRA, 42 U.S.C. 6945(c)(1)(C). EPA Region I has reviewed Connecticut's MSWLF permit program adequacy application and has made a tentative determination that all portions of Connecticut's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Connecticut's application for program adequacy determination is available for public review and comment at the places listed in the "ADDRESSES" section below during regular office hours.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF permit program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of persons express interest in participating in a hearing by writing to the Region I Solid Waste Program or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing, in Hartford, Connecticut, on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it appears that there is sufficient public interest to warrant a hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

**DATES:** All comments on Connecticut's application for a determination of adequacy must be received by the close of business on September 7, 1993. If there is sufficient interest, a public hearing will be held on September 23, 1993 at 10 a.m., at the State Legislative Office Building, Room 2C, Hartford, Connecticut. The State will participate in the public hearing, if held by EPA on this subject.

**ADDRESSES:** Copies of Connecticut's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying: Connecticut Department of Environmental Protection, Waste Management Bureau, Planning and Standards Division, 4th Floor, 79 Elm Street, Hartford, CT 06106; U.S. EPA Region I, 90 Canal Street, Boston, MA 02203, Attn: Fred Friedman, telephone (617) 573–9687.

Written comments should be sent to Mr. John F. Hackler, Chief, Solid Waste Section, mail code HER-CAN6, EPA Region I, Solid Waste Section, John F. Kennedy Federal Building, Boston, MA 02203.

**FOR FURTHER INFORMATION CONTACT:** EPA Region I, John F. Kennedy Federal Building, Boston, MA 02203, Attn: Ms. Connie Dewire, mail code HER-CAN6, telephone (617) 573–5719.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Subtitle D also requires in section 4005(c)(1)(C), 42 U.S.C. 6945(c)(1)(C) that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits, or other forms of prior approval and conditions (for example, license to operate) to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval and conditions to all new and

existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA, 42 U.S.C. 6974(b). Finally, the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the STIR. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

*B. State of Connecticut*

On April 1, 1993, EPA, Region I, received Connecticut's final MSWLF Permit program application for adequacy determination. Region I reviewed the final application and submitted comments to Connecticut. Connecticut addressed EPA's comments and submitted a revised final application for adequacy determination on July 14, 1993. Region I has reviewed Connecticut's revised application and has tentatively determined that all portions of Connecticut's MSWLF program meet all the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 7, 1993. Copies of Connecticut's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice.

Region I based its decision of tentative full approval on the current, overall approach of MSWLF disposal in Connecticut which includes up front, a determination of need for new landfill capacity, restrictive siting provisions, both groundwater and surface water permitting requirements, design requirements which include a "worst case" demonstration prior to approval, a restrictive groundwater use classification system, institutional controls over property, and as necessary, the authority to require remediation for releases to the environment. In addition, the State's current Solid Waste Management Plan has established the following order of priority for managing solid waste: Source reduction; recycling; resource recovery; waste-to-energy; incineration, and finally, landfilling, an approach which will further reduce the use or development of existing or new MSWLF's.

As a result of the State's overall approach to solid waste management, the Connecticut Department of Environmental Protection expects more than three quarters of the fifty four (54) facilities active as of October 9, 1991 to close (under Connecticut statutory and regulatory requirements).

The design standard for new and lateral expansions of landfills currently in effect in the State includes a dual liner system as well as a primary and secondary leachate collection system. The current siting criteria carefully restrict new or expanding landfills to hydrogeologic settings that do not conflict with drinking water resources and ensure the protection of surface water quality.

In 1980, Connecticut adopted water quality standards and classifications that apply to groundwater as well as surface water. The water quality standards, among other things, define the types of discharges that can be considered in the various water classification areas of the State.

Under Connecticut's current program, MSWLFs can only be sited in areas which receive a GC groundwater classification. A GC classification means the subject ground waters: (1) Are not suitable for development as drinking water supplies; (2) are hydraulically connected to class B surface waters; and (3) are a hydrogeologic setting for which the flow path of groundwater or of a discharge to it, can be defined, predicted and, if necessary, remediated.

For example, the groundwater flow path from an upland till site underlain by discretely fractured bedrock could not be predicted or defined with any confidence, and a discharge of pollutants to such a site could not be controlled, and most likely, could not be successfully remediated. Such a setting, therefore, would not be classified GC, and no waste disposal facility, regardless of the design of liner and collection systems, could be permitted.

Key provisions in Connecticut's current MSWLF permitting requirements are:

(1) The applicant must own or control the entire land area for which groundwater would be affected in quality—in any way, not just an exceedence of a drinking water standard—by the discharge of leachate. This area, also called the zone of influence, must be determined as if no liner or collection system existed. This requirement, in conjunction with the GC siting requirement, provides for the complete segregation of groundwater used or which could potentially be used for drinking water.

(2) The applicant must demonstrate that under worst case conditions, the discharge of the plume would not cause aquatic toxicity in the surface water quality criteria. Worst case conditions are assumed to be (A) no liner and (B) maximum pollutant concentrations in leachate discharging the annual flow instantaneously to surface water under extreme low flow conditions with (C) no attenuation prior to discharge.

By currently restricting landfills to such settings, Connecticut has protected all state drinking water resources, whether surface or groundwater, from the potential impact of leachate—an approach which EPA has determined to be an alternate to the 40 CFR part 258 requirements, but still as protective as the federal requirements under 40 CFR part 258. In addition, the State requirements are no less stringent than the requirements at 40 CFR part 258.

To further protect the State's water resources, the solid waste permit process requires the State to deny a permit if the Commissioner of the Connecticut Department of Environmental Protection determines that a facility or disposal area is not necessary to meet the solid waste disposal needs of the State and would result in substantial excess disposal capacity in the State.

Connecticut will be using alternate, but equally effective methods, to ensure that provisions which are technically comparable and no less stringent than the revised federal criteria are being applied in Connecticut. The revised Guidelines for Engineering Evaluations of Solid Waste Disposal Areas are applicable to all existing MSWLFs and to all MSWLF permit applications effective July 1, 1993. To ensure compliance with all of the revised federal criteria, Connecticut has revised its existing Guidelines for Engineering Evaluations of Solid Waste Disposal Areas in the following areas, and will implement its MSWLF permit program through enforceable permit conditions.

1. Connecticut has revised its current permit requirements with the adoption of the following definitions as required by the revised federal criteria, 40 CFR 258.2: Active life, active portion, owner, saturated zone, state, and waste management unit boundary.

2. Connecticut has revised its current permit requirements to comply with the new location restrictions of 40 CFR 258.10, 258.11. 258.12, 258.13, 258.14, 258.15, and 258.16, which pertain to airport safety, floodplains, wetlands, fault areas, seismic impact zones,

unstable areas and closure of existing MSWLF units.

3. Connecticut has revised its current permit requirements to comply with the new operating criteria of 40 CFR 258.20, 258.23, 258.26, 258.28, 258.29, which describe procedures for excluding the receipt of hazardous waste, explosive gases control, run-on/run-off control systems, liquids restrictions, and recordkeeping requirements.

4. Connecticut has revised its current permit requirements to comply with the new ground-water monitoring and corrective action requirements of 40 CFR 258.50, 258.54, 258.55, 258.56, 258.57, which describe applicability, detection and assessment monitoring programs, assessment of corrective measures, and selection of remedy.

5. Connecticut has revised its current permit requirements to comply with the new closure and post-closure care requirements of 40 CFR 258.60, and 258.61.

6. Connecticut has revised its current permit requirements to comply with the new financial assurance requirements of 40 CFR 258.70, 258.71, 258.73, 258.74, which describe applicability and effective date, financial assurance for closure, corrective action, and allowable mechanisms.

Connecticut's Department of Environmental Protection will update the permits of existing municipal solid waste landfills scheduled to remain open after the effective date of 40 CFR part 258, to assure compliance with current state requirements. The State of Connecticut is not asserting jurisdiction over Indian land recognized by the United States government for the purpose of this notice. Tribes recognized by the United States government are also required to comply with the terms and conditions found at 40 CFR part 258.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Connecticut's program. EPA will make a final decision on approval of the State of Connecticut's program and will give notice of the final determination in the **Federal Register**. The notice shall include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA, 42 U.S.C. 6945(a) provides that citizens may use the citizen suit provisions of Section 7002 of RCRA, 42 U.S.C. 6972 to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 *FR* 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291: The Office of Management and Budget has exempted this notice from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act: Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of Section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 29, 1993.

**Paul G. Keough,**

*Acting Regional Administrator.*

[FR Doc. 93-18843 Filed 8-5-93; 8:45 am]

BILLING CODE 6560-50-P

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[FRL-4689-2]

## Proposed Administrative Order on Consent; Lowry Landfill Site, Arapahoe County, CO

**AGENCY:** U.S. Environmental Protection Agency (U.S. EPA).

**ACTION:** Proposed *de minimis* settlement.

**SUMMARY:** In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed *de minimis* settlement under section 122(g) concerning the Lowry Landfill Site in Arapahoe County, Colorado (the Site). The proposed Administrative Order on Consent (AOC) requires 5 potentially responsible parties (PRP) to pay an aggregate total of $653,570.97 to resolve their liability to the EPA related to response actions taken or to be taken at the Site.

**DATES:** Comments must be submitted by no later than September 7, 1993.

**ADDRESSES:** Comments should be addressed to Gwendolyn Hooten (8HWM-SR), Enforcement Specialist, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, and should refer to: In the matter of Lowry Landfill *De Minimis* Settlement.

**FOR FURTHER INFORMATION CONTACT:** James M. Stearns, Office of Regional Counsel, EPA Region VIII, at (303) 294-7197.

**SUPPLEMENTARY INFORMATION:** Notice of section 122(g) *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) have been agreed to by the following parties, for the following amounts: Colorado Department of Agriculture [$7,441.98]; Colorado Department of Highways [$175,203.21]; Colorado School of Mines [$46,246.59]; Colorado Surplus Agency [$369,316.74]; and Colorado State University (Environmental Health Services) [$55,362.45]. By the terms of the proposed AOC, these PRPs will together pay $653,570.97 to the Hazardous Substances Trust Fund (Superfund). The $653,570.97 represents approximately 0.122% of the total anticipated costs for the Site upon which this settlement was based.

In exchange for payment, U.S. EPA will provide the settling parties with a covenant not to sue for liability under sections 106 and 107(a) of CERCLA, including liability for EPA past costs, the one-time cost of remedy, future EPA oversight costs, and future operation and maintenance of the as-yet unselected remedy. The covenant not to sue includes actions under section 7003 of the Solid Waste Disposal Act, as amended (also known as the Resource Conservation and Recovery Act (RCRA)).

The amount that each individual PRP will pay, as shown above, equals $3.77 multiplied by the number of gallons of waste the party sent to the Site (Base Amount), plus a premium payment of 50% or 200% of the Base Amount, as specified by each Respondent PRP in the AOC. The per gallon charge of $3.77 was calculated by dividing the total estimated response costs of the Site ($536,000,000) by the total estimated volume of waste disposed of at the Site (142,295,420 gallons). For parties paying a 50% premium, there is an exception to the covenant not to sue if total response costs at the Site exceed $536 million. For parties paying the 200% premium, there is no such limitation of the U.S. EPA's covenant not to sue.

U.S. EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed *de minimis* settlement.

A copy of the proposed AOC may be obtained in person or by mail from Gwendolyn Hooten (8HWM-SR), U.S.

Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405. Additional background information relating to the *de minimis* settlement is available for review at the Superfund Records Center at the above address, and at the Aurora Central Public Library located at 14949 East Alameda Drive, Aurora, Colorado.

**Jack W. McGraw,**

*Acting Regional Administrator, U.S. EPA, Region VIII.*

[FR Doc. 93–18844 Filed 8–5–93; 8:45 am]

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## FEDERAL MARITIME COMMISSION

[Petition Nos. P47–93 and P48–93]

### Filing of Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; World Transport and Transitainer, Inc.

Notice is hereby given of the filing of petitions by World Transport and Transitainer, Inc., pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than August 9, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P47–93—Mr. Young Hee Ko, World Transport, 302 West Grand Avenue, Suite 5C, El Segundo, California 90245

P48–93—Mr. Thomas Bosselmann, Secretary, Transitainer, Inc., 1024 Del Amo Blvd., Carson, California 90746

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–18781 Filed 8–5–93; 8:45 am]

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## FEDERAL RESERVE SYSTEM

### Harold Copperman; Change in Bank Control Notice

### Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 25, 1993.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Harold Copperman*, Omaha, Nebraska; to acquire an additional 1.29 percent of the voting shares of First Continental Financial, Inc., Omaha, Nebraska, for a total of 13.12 percent, and thereby indirectly acquire River City National Bank, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, July 30, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18811 Filed 8-5-93; 8:45 am]

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### First Star Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 30, 1993.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. First Star Bancorp, Inc.*, Bethlehem, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First Star Savings Bank, Bethlehem, Pennsylvania, which was previously known as Greater Bethlehem Savings and Loan Association.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. First Union Corporation*, Charlotte, North Carolina; to acquire 100 percent of the voting shares of First Union Home Equity Bank, National Association, Charlotte, North Carolina, a *de novo* bank.

**C. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. American Chartered Bancorp II, Inc.*, Lake Zurich, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of American Chartered Bank of Lake Zurich, Lake Zurich, Illinois.

*2. F & M Bancorporation, Inc.*, Kaukauna, Wisconsin, and F & M Merger Corporation, Kaukauna, Wisconsin; to merge with First National Financial Corporation, Oconto, Wisconsin, and thereby indirectly acquire First National Bank of Wisconsin, Oconto, Wisconsin.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Magna Group, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of City Bancorp, Inc., Murphysboro, Illinois, and thereby indirectly acquire The City National Bank of Murphysboro, Murphysboro, Illinois.

Board of Governors of the Federal Reserve System, July 30, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18812 Filed 8-5-93; 8:45 am]

BILLING CODE 6210-01-F

## Huntington Bancshares Incorporated, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 30, 1993.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Huntington Bancshares Incorporated*, Columbus, Ohio, and Huntington Bancshares Indiana, Inc., Columbus, Ohio; to acquire First Bancorp Indiana, Inc., Lafayette, Indiana, and thereby indirectly acquire First Bank of Lafayette, FSB, Lafayette, Indiana, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Liberty National Bancorp, Inc.*, Louisville, Kentucky; to acquire First Federal Savings Bank, Hopkinsville, Kentucky, and thereby engage in operating a savings association pursuant to § 225.25(b)(9); and in the sale, as agent, of credit related life and health insurance in connection with loans made by First Federal Savings Bank, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18813 Filed 8-5-93; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

[Program Announcement Number 361]

### Research Program To Assess the Acceptability of Single Large Dose Animal Testing Programs To Determine the Carcinogenesis of Chemical Exposure In Humans

#### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program to assess the acceptability of single large dose animal testing programs to determine the carcinogenesis of chemical exposure in humans. Toward this end, ATSDR encourages the identification and critical assessment of toxicological studies demonstrating single exposure carcinogenesis.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

#### Authority

This program is authorized in Sections 104(i)(5) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604 (i)(5) and (15)].

#### Eligible Applicants

Eligible applicants are the official state and local public health departments, state universities, state colleges and state research institutions of the states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

#### Availability of Funds

Approximately $50,000 is available in FY 1993 to fund one award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget and project period.

#### Purpose

The purpose of this award is to encourage the identification and critical assessment of toxicological studies demonstrating single exposure carcinogenesis and to critically analyze the associated biochemical mechanisms.

#### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and ATSDR will be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Identify and assess the completeness of the published toxicological studies for single exposure carcinogens and summarize the appropriate information to adequately describe the specifics of the study.
2. Develop a prototype integrative synthesis by class or chemical.
3. Analyze the relationship of the dose causing cancer to its large dose value in consideration of the additional factors of route of exposure, age/sex of the animals, chemical class and other significant factors.
4. Conduct a critical analysis of the biochemical mechanisms for single

exposure causation of cancer without exogenous promotion.

5. Communicate information in the above areas to all relevant communities including state and local governments and the public.

*B. ATSDR Activities*

1. Provide assistance in identifying and assessing the completeness of the published toxicological studies for single exposure carcinogens and summarize the appropriate information to adequately describe the specifics of the study.

2. Assist the recipient in developing a prototype integrative synthesis by class or chemical.

3. Provide assistance in analyzing the relationship of the dose causing cancer to its large dose value in consideration of the additional factors of route of exposure, age/sex of the animals, chemical class and other significant factors.

4. Assist recipient in the identification and evaluation of the biochemical mechanisms as the basis for explaining the test results.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and Technical Review Criteria of New Application

a. *Proposed Program* 40%

The extent to which the applicant's proposal addresses (a) the scientific merit of the proposed project, including the originality and feasibility of the approach, adequacy, and rationale of the design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield or demonstrate results.

b. *Program Personnel* 40%

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership and (b) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project.

c. *Applicant Capability* 20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

d. *Program Budget*—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

*Executive Order 12372 Review*

Applications are not subject to the Intergovernmental review of Federal Programs as governed by Executive Order 12372.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

*Catalog of Federal Domestic Assistance number*

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

A. *Technical Review*

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA section 104(i)(13).

B. *Cost Recovery*

The CERCLA, as amended by the SARA, provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR), unless there is a litigation, claim, negotiation, audit or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

C. *Animal Welfare*

If the proposal project involves research on animal subjects, the applicant must comply with the "PHS Policy Statement on Humane Care on Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

**Application Submission and Deadline**

The original and two copies of the application PHS form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before September 7, 1993. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

A complete program description, information on applications procedures, an application package, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6630. Programmatic technical assistance may be obtained from Jim Holler, Ph.D., Quality Assurance Branch, Agency for Toxic Substances and Disease Registry, Mailstop E–33, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6306.

Please Refer to Announcement Number 361 when Requesting Information and Submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office,

Washington, DC 20402–0325, telephone (202) 783–3238.

Dated: August 2, 1993.

Walter R. Dowdle,

*Deputy Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 93–18923 Filed 8–5–93; 8:45 am]

BILLING CODE 4160–70–P

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[Program Announcement Number 360]

## Research Program To Assess the Utility of Genetic Toxicology Screens as Predictors of Long-Term Health Consequences

### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement for a research program to assess the usefulness of genetic toxicology screens as predictors of long-term health consequences such as cancer and reproductive toxicity resulting from exposure to hazardous substance releases at CERCLA sites. Toward this end, ATSDR encourages genotoxicity methods development and/or testing for methyl tertiary butyl ether (MTBE), a gasoline additive with unknown potential to cause cumulative effects following long-term exposure.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Environmental Health, Surveillance and Data Systems, and Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

### Authority

This project is authorized under Sections 104(i) (5) and (15) of the Comprehensive, Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i) (5) and (15)].

### Eligible Applicants

Eligible applicants are the official public health agencies of the states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Island, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal government. State organizations, including state universities, state colleges, and state research institutions, must affirmatively establish that they meet their respective state's legislative definition of a state entity or political subdivision to be considered an eligible applicant.

### Availability of Funds

Approximately $75,000 is available in FY 1993 to fund one cooperative agreement. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget and project period.

### Purpose

The purpose of this research program is to assess the usefulness of genetic toxicology screens as predictors of long-term health consequences such as cancer and reproductive toxicity resulting from exposure to hazardous substance releases at CERCLA sites. Toward this end, ATSDR encourages genotoxicity methods development and/or testing for MTBE to enhance the public's knowledge of the potential health effects associated with exposure to this substance.

### Program Requirements

ATSDR will provide financial assistance to recipients in developing methods and technologies to explore the relationship between exposure to hazardous substances and adverse health conditions.

In conducting activities to achieve the objectives of this program, the recipient will be responsible for the activities listed under A., below, and ATSDR will be responsible for conducting activities listed under B., below:

*A. Recipient Activities*

1. Assess the usefulness of genetic toxicology screens as predictors of long-term health consequences of MTBE.
2. Identify information related to research activities associated with MTBE.
3. Develop genotoxicity methods and/or testing for MTBE.
4. Publish findings resulting from research activities associated with this research program.
5. Communicate information in the above areas to all relevant communities including state and local governments and the public.

*B. ATSDR Activities*

1. Assist recipient in assessing the usefulness of genetic toxicology screens as predictors of long-term health consequences of MTBE.
2. Assist recipient with identifying information related to research activities associated with MTBE.
3. Provide consultative, administrative and technical assistance, as needed, to assist the recipient with genotoxicity methods development and/or testing for MTBE.
4. Assist the recipient on development and implementation efforts related to the publication of findings resulting from research activities associated with this research program.
5. Assist in communicating advances in the above areas to all relevant communities including other Federal agencies, state and local governments and the public.

### Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. *Scientific and Technical Review Criteria of New Application*

a. *Proposed Program*—50%

The extent to which the applicant's proposal addresses (a) the scientific merit of the proposed project, including the originality and feasibility of the approach, adequacy, and rationale of the design; (b) the technical merit of the proposed project, including the degree to which the project can be expected to yield or demonstrate results that meet the program objective as described in the Purpose section of this announcement; (c) the proposed project schedule, including clearly established and attainable project objectives for which progress toward attainment can and will be measured; and (d) the specific study objectives and scientific hypothesis.

b. *Program Personnel*—30%

The extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal investigator, and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associate investigators to accomplish the proposed study, their commitment, and the time they will devote to the project.

c. *Applicant Capability*—20%

Description of the adequacy and commitment of institutional resources to administer the program and the adequacy of the facilities as they impact on performance of the proposed study.

d. *Program Budget*—(Not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

*Executive Order 12372 Reviw*

Applications submitted under this announcement are not subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372.

*Public Health System Reporting Requirements*

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.161.

Other Requirements

*A. Technical Review*

All protocols, studies, and results of research that ATSDR carries out or funds in whole or in part will be reviewed to meet the requirements of CERCLA section 104(i)(13) as amended by SARA.

*B. Protection of Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to an initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

*C. Animal Welfare*

If the proposal project involves research on animal subjects, the applicant must comply with the "PHS Policy Statement on Humane Care on Use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

*D. Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

*E. Cost Recovery*

The CERCLA, as amended by the SARA, provides for the recovery of costs incurred for health-related activities at each Superfund site from potentially responsible parties. The recipient would agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated costs including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final financial status report, unless there is a litigation, claim, negotiation, audit, or other action involving the specific site; then the records will be maintained until resolution of all issues on the specific site.

*F. Third Party Agreements*

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the grantee and the third party. The written agreement shall at a minimum:

(1) State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review (ATSDR selected peer reviewers), ownership of data, and the arrangement for copyright when publications, data, or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity;

(2) State that any copyrighted or copyrightable works shall be subject to a royalty-fee, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes;

(3) State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work; and

(4) State the activities to be performed, the time schedule for those activities, the policies and procedures to be followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall therefore retain sufficient rights and control to the grantee to enable it to fulfill this responsibility and accountability.

**Application Submission and Deadline**

The original and two copies of the application PHS form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before September 7, 1993. (By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.)

1. *Deadline*: Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications*: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

If you are interested in obtaining additional information regarding this project, please refer to Announcement Number 360 and contact Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, for business mangement technical information. Programmatic technical assistance may be obtained from Mike Youson, Office of the Director, Division of Toxicology, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–29, Atlanta, Georgia 30333, (404) 639–6306.

Please Refer To Announcement Number 360 When Requesting Information and Submitting an Application.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 2, 1993.

**Walter Dowdle,**

*Deputy Administrator, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 93–18922 Filed 8–5–93; 8:45 am]

BILLING CODE 4160-70-P

## Health Care Financing Administration

### Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (49 Federal Register 35247, dated September 6, 1984) is amended to include the following blanket delegation of authority from the Secretary to the Administrator, HCFA, to conduct studies and demonstration projects related to the Medicare and Medicaid programs. Also, Part F. is amended to include a general reservation of authority to indicate that the Secretary may exercise or otherwise delegate the authority to conduct studies and demonstration projects under titles XI, XVIII, and XIX of the Social Security Act as required

The specific amendments to Part F. are described below:

- Section F.30., Delegations of Authority, is amended by adding the following paragraph RR:

RR. The authority vested in the Secretary or that may become vested in the Secretary, and not otherwise delegated, limited, or reserved, to conduct studies and demonstration projects, as directed by Congress, that relate to programs established by title XI of the Social Security Act (the Act), insofar as they relate to the mission of the Health Care Financing Administration (HCFA), and titles XVIII and XIX of the Act. This delegation encompasses the authority to approve related program activities required by the studies and demonstration projects if such authority is or becomes vested in the Secretary and is not otherwise delegated, limited, or reserved. These activities include, but are not limited to, direct performance, entering into contracts or cooperative agreements, making grants, approving payments for contracts, cooperative agreements, and grants, and approving authorized waivers of compliance with certain requirements of titles XI, XVIII and XIX of the Act when such actions are for the purpose of conducting studies and demonstration projects.

- Section F.40.3., General Reservations, is amended by deleting the existing paragraph c. and replacing it with the following paragraph c:

c. Nothing in sections F.30., F.40., F.50. (except 1.b. and 2.a.), or F.60. shall be construed as limiting the Secretary's right to exercise the authorities otherwise delegated or to revise a delegation of authority.

Dated: July 28, 1993.

**Donna E. Shalala,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 93–18824 Filed 8–5–93; 8:45 am]

BILLING CODE 4120-03-M

## Health Resources and Services Administration

### Final Review Criteria and Funding Priority for Grants for Nurse Anesthetist Traineeships for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces the final review criteria and funding priority for fiscal year (FY) 1993 Grants for Nurse Anesthetist Traineeships under the authority of section 831(a), title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Pubic Law 102–408, dated October 13, 1992.

This program was announced in the Federal Register at 58 FR 21985 on April 26, 1993. The announcement included proposed review criteria and a proposed funding priority. A comment period of 30 days was established to allow public comment concerning the proposed review criteria and proposed funding priority. One comment was received. This notice includes a discussion of the comment received and the final review criteria and the final funding priority for Grants for Nurse Anesthetist Traineeships for Fiscal Year 1993. Comments on program aspects that were not specifically proposed for public comment are not addressed in this notice.

#### Purpose

Section 831(a) of the Public Health Service Act authorizes the Secretary to award grants to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists. To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart F.

#### Eligibility

Eligible applicants for Grants for Nurse Anesthetist Traineeships are public or private nonprofit institutions.

The applicant must agree that, in providing traineeships, the institution will give preference to individuals who are residents of health professional shortage areas designated under section 332. The applicant must also agree that traineeships provided with the grant will pay all or part of the costs of (A) the tuition, books, and fees of the program of nursing with respect to which the traineeship is provided; and (B) reasonable living expenses of the individual during the period for which the traineeship is provided.

#### Final Review Criteria

The comment received on the proposed notice suggested that the review criterion related to clinical experiences in medically underserved communities should be eliminated because "extensive experience in such settings would not afford the student the opportunity to meet the Council on Accreditation's clinical requirements for graduation." The respondent also suggested that the two review criteria related to cultural diversity and competence and special needs of minority populations should be eliminated because "the plan of anesthesia delivery is not dictated by cultural/minority characteristics but by health history and physical examination findings."

Pubic Law 103–43 amends section 860(d) of the PHS act so that this program is no longer subject to peer review by individuals who are not officers or employees of the Federal Government. Therefore, the review criteria are being deleted. However, the intent of the legislation and the Department is to enhance health services to the underserved, including individuals from diverse cultures, and to increase the number of health professionals working in or serving medically underserved communities.

The review of applications will take into consideration the following criteria:

1. Program information including total full-time enrollment, and full-time enrollment beyond the first 12 months

of the program; and information on other financial aid available to students.

2. Qualifications of the Program Director.

**Other Considerations**

In addition, funding factors may be applied in determining funding of approved applications. It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

**Statutory Funding Preferences**

In making awards of grants under this section, preference will be given to any qualified applicant that—(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. Preference will be given only for applications ranked above the 20th percentile of applications that have been recommended for approval.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 9570, dated February 22, 1993. The burden for collection of information to request this preference is under review by the Office of Management and Budget in accordance with the Paperwork Reduction Act.

Preference will also be given to qualified applicants carrying out traineeship programs whose participants gain significant experience in providing health services at rural health facilities.

**Final Funding Priority**

It was proposed that a funding priority be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating students from those minority or low-income populations identified as at-risk of poor health outcomes. The comment received objected to including low-income populations in this priority because, "The average income for registered nurses prevents applicants from qualifying for this funding priority." This language does not hinder applicants for this program since applicants can qualify for this priority by enrolling and graduating students from minority populations. However, since nurse anesthetist students are registered nurses whose income would be higher than the low-income figures, we agree that low-income populations be deleted from this priority. The final funding priority is as follows.

A funding priority will be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating students from those minority populations identified as at-risk of poor health outcomes.

**Additional Information**

If additional programmatic information is needed, please contact: Ms. Anastasia Buchanan, Chief, Nursing Practice Resources Section, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5763 FAX: (301) 443–8586

This program, Grants for Nurse Anesthetist Traineeships, is listed at 93.124 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: August 1, 1993.

**William A. Robinson,**

*Acting Administrator.*

[FR Doc. 93–18829 Filed 8–5–93; 8:45 am]

BILLING CODE 4160–15–P

## National Institutes of Health

### National Cancer Institute; Meeting of the Cancer Biology-Immunology Contracts Review Subcommittee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Subcommittee A, National Cancer Institute, National Institutes of Health, on August 27, 1993, at the Executive Plaza North Building, Conference room J, 6130 Executive Boulevard, Rockville, Maryland 20892.

This meeting will be open to the pubic from 8:30 to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on August 27 from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Executive Plaza North Building, room 630, National Institutes of Health, Rockville, Maryland 20892, Tel. 301/496–5708, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 6130 Executive Boulevard, room 609, Rockville, Maryland 20892, Tel. 301/496–7575, will furnish substantive program information.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, should contact Ms. Alma O. Carter, (301) 496–7523 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer control.)

Dated: August 2, 1993.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 93–18875 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

### National Center for Research Resources; Meeting of the National Advisory Research Resources Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and

evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Research Resources Council.

*Date of Meeting:* September 9–10, 1993.

*Place of Meeting:* National Institutes of Health, Conference Room 10, Building 31C, 9000 Rockville Pike, Bethesda, Maryland 20892.

*Open:* September 9, 9 a.m. until 1:30 p.m.

*Closed:* September 9, 1:30 p.m. until 3 p.m.

*Open:* September 9, 3 p.m. until recess.

*Closed:* September 10, 8 a.m. until 10 a.m.

*Open:* September 10, 10 a.m. until adjournment.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7938, will provide a summary of meeting and a roster of the members upon request. Dr. Louise Ramm, Executive Secretary, NCRR, Westwood Building, room 854, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7906, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; National Institutes of Health.)

Dated: August 2, 1993.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 93–18874 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Diabetes and Digestive and Kidney Diseases; National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 13–14, 1993, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 13, from 8:30 a.m. to 12 noon and again on September 14, from 10 a.m. to 12 p.m. to discuss administrative details relating to Council business and special reports. Subcommittee meetings will be open to the public September 13 from 1 p.m. to 2 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 13, from 2 p.m. to 5 p.m.: Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on September 14, from 8:30 a.m. to 10 a.m.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

For any further information, and for individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, please contact Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, room 657, Bethesda, Maryland 20892, (301) 594–7527, at least two weeks prior to the meeting.

In addition, upon request, a summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 2, 1993.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 93–18873 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

## Prospective Grant of Exclusive License: Modified Adeno-Associated Virus Vector Capable of Expression From a Novel Promoter

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Application SN 07/891,962, entitled "Modified Adeno-Associated Virus Vector Capable Of Expression From A Novel Promoter" and related foreign patent applications to Targeted Genetics Corporation of Seattle, WA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of viral vector-based gene therapy for the treatment of cystic fibrosis. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent application describes the construction of a modified adeno-associated virus (AAV) vector capable of carrying a large coding region such as the cystic fibrosis gene and expressing such a foreign DNA sequence using a novel transcription promoter.

**ADDRESSES:** Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered.

Dated: July 29, 1993.

Enid G. Adler,

*Director, Office of Technology Transfer.*

[FR Doc. 93–18578 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

## National Library of Medicine

### Notice of Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on September 10, 1993, in the Board Room of the National Library of Medicine, Building 38A, room B1N30B, 8600 Rockville Pike, Bethesda, Maryland.

The meeting will open to the public from 9 a.m. to 3 p.m. for the review of research and development programs and preparation of reports of the National Center for Biotechnology Information. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. David Lipman at 301–496–2475.

In accordance with provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on September 10, from approximately 3 to 5 p.m. for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, with furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: August 2, 1993.

Susan K. Feldman,

*Committee Management Officer, NIH.*

[FR Doc. 93–18872 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

### Opportunity For Licensing: Anti-viral Agent (F-ddA) Useful in The Treatment Of AIDS

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The National Institutes of Health (NIH), Department of Health and Human Services (DHHS), seeks a licensee who can effectively pursue the preclinical, clinical and commercial development of 9–(2, 3 dideoxy-2-fluoro-b-D-threopentofuranosyl) adenine (F-ddA) as a drug for the treatment of human immunodeficiency virus (HIV) infection. Scientists at the National Cancer Institute (NCI) have established that this compound is effective in inhibiting *in vitro* growth of HIV, the etiologic agent of Acquired Immunodeficiency Syndrome (AIDS). NIH intends to grant the selected company an exclusive world-wide royalty-bearing license to practice the invention embodied in U.S. Patent Application SN 07/762,082 (FWC of 07/288,652, CIP of 07/039, 402) entitled "Acid Stable Purine Dideoxynucleosides Active Against The Cytopathic Effects Of Human Immunodeficiency Virus" and U.S. Patent Application SN 07/556,713 entitled "2'-Fluorofuranosyl Derivatives And Novel Method Of Preparing 2'-Fluoropyrimidine and 2'-Fluoropurines" for this field of use. The patent rights in these inventions have been assigned to the United States of America.

**SUPPLEMENTARY INFORMATION:** The NIH seeks a licensee, who in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR part 404), has the most meritorious plan for the development of F-dda to a marketable status to meet the needs of the public and with the best terms for the NIH. Specifically, companies are sought who directly or indirectly, will be able to:

(1) Synthesize bulk pharmaceutical product necessary for the treatment of 500–1, 500 patients with HIV infection in Phase I, II and III developmental studies;

(2) Carry out preclinical toxicology and pharmacology studies and testing, without guaranteed assistance from the government, to complement preclinical toxicology and pharmacology currently being performed to the Investigational New Drug (IND) stage by NCI.

(3) Perform formulation for oral and intravenous use, vialing, quality control testing, bioavailability testing and distribution of the drug for Phase I and Phase II and, if appropriate, Phase III clinical trials both in the NIH intramural program and in the extramural AIDS Clinical Trials Groups (ACTGs) established by the National Institute of Allergy and Infectious Diseases (NIAID). The clinical trials may be performed under the sponsorship of an IND to be held by NCI or NIAID. Prior to being released for commercial distribution, the drug will have to be granted a product license by the Food and Drug Administration (FDA);

(4) Perform clinical studies. NCI may conduct studies of F-ddA in the ACTGs, the NIH Clinical Center and NIAID may conduct studies, and the company will be expected to provide the drug free of charge to NIH for studies conducted in the ACTGs and in the NIH intramural program; the company will be expected to cooperate with NCI and NIAID in providing the drug and supporting distribution of the drug under a treatment IND when appropriate;

(5) Provide data management support for both the intramural NIH and extramural studies of F-ddA necessary for the timely submission of a NDA to the FDA;

(6) Share the cost with NIH of intramural and extramural clinical monitoring studies (pharmacokinetics, patient immune profiles and viral outgrowth studies) necessary for the demonstration of clinical efficacy of F-ddA for the treatment of AIDS;

(7) Agree to abide by the standard NIH requirement that exclusive licenses that may be required to submit documentation in confidence showing a reasonable relationship between the pricing of a licensed product, the public investment in that product, and the health and safety needs of the public.

The criteria that NIH will use to choose the exclusive licensee will, in addition to those set forth by 37 CFR 404.7(a)(1)(ii)–(iv), include:

(1) Manufacturing capabilities in nucleoside analogs and a plan for production of F-ddA;

(2) Experience in preclinical and clinical drug development with special emphasis on the development of antiviral compounds;

(3) Experience in the evaluation, monitoring and interpretation of data for investigational biologic and virologic assays under an IND;

(4) Experience in the evaluation, monitoring and interpretation of data from Phase I and Phase II clinical studies for an IND;

(5) Demonstrated expertise in monitoring drug levels using state-of-the-art methods for measuring drugs in blood, urine and CSF;

(6) A willingness to cooperate with NCI in the collection, evaluation, publication and maintenance of data from animal studies and from clinical trials and tests of investigational biologic assays;

(7) Demonstrated competence in developing oral formulation and sustained-release oral formulations;

(8) Ability to produce, package, market and distribute pharmaceutical products in the United States and to provide the product at a reasonable price;

(9) Willingness to sustain the cost of F-ddA drug development as outlined above (i.e., bulk drug synthesis, data management, animal studies, clinical studies, etc.);

(10) Agreement to be bound by DHHS regulations and guidelines involving human and animal subjects;

(11) An aggressive developmental plan that includes appropriate milestones and deadlines for preclinical and clinical development and for marketing approval.

**DATES:** In view of the high priority for developing new drugs for the treatment of HIV infection, all proposals must be received on or before November 4, 1993.

**ADDRESSES:** Requests for a summary of F-ddA's anti-HIV activity, its pharmacological properties and toxicological information, or other questions and comments concerning the clinical aspects of this technology should be directed to: Dr. Wyndham Wilson, Special Assistant to the Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, 9000 Rockville Pike, Bethesda, MD 20892. Telephone: (301) 496–5404.

Requests for a copy of the patent applications, license application form, or other questions and comments concerning the licensing of this technology should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220.

Dated: July 29, 1993.

**Reid G. Adler,**

*Director, Office of Technology Transfer.*

[FR Doc. 93–18877 Filed 8–5–93; 8:45 am]

BILLING CODE 4140–01–M

## Public Health Service

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 30, 1993.

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690–7100.

1. HRSA Competing Training Grant Application: General Instructions and Supplements—0915–0060—The Health Resources and Services Administration uses this information to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. This revision adds statutory reporting requirements authorized under Public Law 102–408. *Respondents*: Non-profit institutions.

| Title | Number of respondents | Number of responses per respondent | Average burden per response (hours) |
|---|---|---|---|
| Previously Approved Reporting Burden | 3,177 | 1.03 | 57 |
| Previously Approved Recordkeeping | 17 | 1 | 10 |
| New Reporting Burden Request | 1,364 | 1 | 105 |

Estimated Total Annual Burden.....328,951 hours

2. Scholarship Program for Students of Exceptional Financial Need (EFN) and Program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS)—Regulatory Requirements and Application Form—0915–0028—*Respondents:* Non-profit institutions.

| Title | Number of respondents | Number of responses per respondent | Average burden per response (hours) |
|---|---|---|---|
| EFN & FADHPS Application | 200 | 1 | .33 |
| Documentation of Cost of Attendance (57.2804(b) & 57.2904(b)(1)(ii)) | 200 | 1 | .17 |
| Records Requirements (57.2809(b) & 57.2909(b)) | 200 | 1 | .17 |

Estimated Total Annual Burden.....134 hours

3. Surveillance and Evaluation of Blood Donors Positive for Human Immunodeficiency Virus (HIV) Antibody—New—This request for the Office of Management and Budget's review and approval is to perform surveillance and evaluation of blood donors who test positive for Human Immunodeficiency Virus (HIV) Antibody and their needle-sharing and sexual partners. Respondents: Individuals or households; Number of Respondents: 1,025; Number of Responses Per Respondent: 1; Average Burden Per Response: .243 hours; Estimated Annual Burden: 249 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, *Human Resources and Housing Branch, New Executive Office Building, Room 3002, Washington, DC 20503.*

Dated: August 2, 1993.

**James Scanlon,**

*Director, Division of Data Policy, Office of Health Planning and Evaluation.*

[FR Doc. 93–18786 Filed 8–5–93; 8:45 am]

BILLING CODE 4160–17–M

## Social Security Administration

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on June 18, 1993.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Application for Wife's or Husband's Insurance Benefits—0960–0008. The information on form SSA–2 is used by the Social Security Administration to determine an applicant's eligibility to benefits. The affected public consists of individuals who file for wife's or husband's benefits.
   *Number of Respondents*: 700,000
   *Frequency of Response*: 1
   *Average Burden Per Response*: 10 minutes
   *Estimated Annual Burden*: 116,667 hours
2. Application for Parent's Insurance Benefits—0960–0012. The information on form SSA–7 is used by the Social Security Administration to determine the entitlement of an individual to parent's insurance benefits. The respondents are parents of a deceased worker who apply for benefits.
   *Number of Respondents*: 1,400
   *Frequency of Response*: 1
   *Average Burden Per Response*: 15 minutes
   *Estimated Annual Burden*: 350 hours
3. Application for Widow's or Widower's Insurance Benefits—0960–0004. The information on form SSA–10 is used by the Social Security Administration to make a determination of entitlement to widow's or widower's benefits. The respondents are widows or widowers who file claims for entitlement to benefits.
   *Number of Respondents*: 640,000
   *Frequency of Response*: 1
   *Average Burden Per Response*: 15 minutes
   *Estimated Annual Burden*: 160,000 hours
4. SSI Prerelease Survey Questionnaire—0960–NEW. The information on form SSA–41 will be used by the Social Security Administration to evaluate the effectiveness of its prerelease procedure. The respondents will be private and public institutions which have individuals in custody who file for Supplemental Security Income payments prior to release.
   *Number of Respondents*: 200
   *Frequency of Response*: 1
   *Average Burden Per Response*: 15 minutes
   *Estimated Annual Burden*: 50 hours
5. 800 Number Afterhours Caller Survey—0960–NEW. The information on form SSA–88 will be used by the Social Security Administration to help determine the efficiency of its 800 number service. The respondents will be selected people who call the 800 number between 7 p.m. and 7 a.m. or on weekends or holidays.
   *Number of Respondents*: 1,200
   *Frequency of Response*: 1
   *Average Burden Per Response*: 10 minutes
   *Estimated Annual Burden*: 200 hours
6. State Vocational Rehabilitation Agency Claim—0960–0310. The information on form SSA–199 is used by the Social Security Administration (SSA) to allow or deny claims for reimbursement filed by State Vocational Rehabilitation (VR) agencies. The respondents are such VR agencies which file claims with SSA for reimbursement.
   *Number of Respondents*: 82
   *Frequency of Response*: 135
   *Average Burden Per Response*: 8 minutes
   *Estimated Annual Burden*: 1,476 hours
7. Request for Overpayment Recovery or Change in Repayment Rate—0960–0037. The information on form SSA–632 is used by the Social Security Administration to determine if an overpaid amount can be waived or to determine how recovery will be made.
   *Number of Respondents*: 500,000
   *Frequency of Response*: 1
   *Average Burden Per Response*: 25 minutes
   *Estimated Annual Burden*: 208,333 hours
8. Service Delivery Questionnaires—0960–NEW. The information on forms SSA–3299, SSA–4000, SSA–4298 and SSA–4299 will be used by the Social Security Administration to measure the quality of service provided by its field offices. The respondents will be selected individuals who: Are entitled to title II or title XVI benefits; were denied under either title; or applied for Social Security numbers.
   *Number of Respondents*: 11,000
   *Frequency of Response*: 1
   *Average Burden Per Response*: 17.7 minutes
   *Estimated Annual Burden*: 3,250 hours
9. Application for Supplemental Security Income—0960–0444. The information on form SSA–8001 is used by the Social Security Administration to make a determination of eligibility for Supplemental Security Income payments (SSI). This form is used when only an abbreviated application is necessary. The respondents are applicants for SSI payments who wish formal non-disability determinations on their applications.
   *Number of Respondents*: 1,560,000
   *Frequency of Response*: 1
   *Average Burden Per Response*: 15 minutes
   *Estimated Annual Burden*: 390,000 hours
10. Statement of Income and Resources—0960–0124. The information on form SSA–8010 is used by the Social Security Administration to determine the eligibility of certain individuals for Supplemental Security Income (SSI) payments. The respondents are sponsors, ineligible children, and parents and spouses living in the same household of an SSI recipient or applicant.
    *Number of Respondents*: 450,000
    *Frequency of Response*: 1
    *Average Burden Per Response*: 25 minutes
    *Estimated Annual Burden*: 187,500 hours
11. Supplemental Security Income—Quality Review Case Analysis—0960–0133. The information on form SSA–8508 is used by the Social Security Administration to provide an ongoing assessment of the Supplemental Security Income (SSI) program, SSI policies and procedures, and the effect of incorrect payments. The respondents are SSI recipients who are selected for this analysis.
    *Number of Respondents*: 18,000
    *Frequency of Response*: 1
    *Average Burden Per Response*: 60 minutes
    *Estimated Annual Burden*: 18,000 hours
12. Permanent Residence in the United States—0960–0451. The information on final regulation F–20–416P is used by the Social Security Administration to establish that aliens meet certain residency requirements before being entitled

to Supplemental Security Income (SSI) payments. The affected public consists of aliens who file for SSI.
*Number of Respondents*: 234,800
*Frequency of Response*: 1
*Average Burden Per Response*: 5 minutes
*Estimated Annual Burden*: 19,567
*OMB Desk Officer*: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Date: July 30, 1993.

**Charlotte Whitenight,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 93-18627 Filed 8-5-93; 8:45 am]

BILLING CODE 4190-29-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-43]

### Federal Property Suitable as Facilities to Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**ADDRESSES:** For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Air Force*: Bob Menke, USAF, Bolling AFB, SAF-MIIR, Washington, DC 20332-5000; (202) 767-6235; *Dept. of Veterans Affairs*: Michael Reynolds, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave., NW, Washington, DC 20420; (202) 233-5026; (These are not toll-free numbers).

Dated: July 30, 1993.

**Jacquie M. Lawing,**

*Deputy Assistant Secretary for Economic Development.*

**Title V, Federal Surplus Property Program**
**Federal Register Report for 8/06/93**

**Suitable/Available Properties**

*Buildings (by State)*

Alabama

Bldg. 19, VA Medical Center
Tuskegee Co: Macon AL 36083-
Landholding Agency: VA
Property Number: 979220006
Status: Underutilized
Comment: Portion of a 5320 sq. ft. 4-story structure

California

Bldgs. 604, 605, 612, 611, 613-618
Point Arena Air Force Station Co: Mendocino CA 95468-5000
Landholding Agency: Air Force
Property Number: 189010237-189010246
Status: Unutilized
Comment: 1232 sq. ft.; stucco-wood frame; most recent use - housing.

Bldg. 20 - VA Medical Center
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979210003
Status: Unutilized
Comment: 8758 gross sq. ft., one story wooden, requires complete restoration meeting standards of national preservation laws and guidelines

Bldg. 13, VA Medical Center
Wilshire and Sawtelle Blvds.

Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979220001
Status: Underutilized
Comment: portion of 66,165 sq.ft. bldg., needs major rehab, no util., pres. of asbestos, in historic district, potential to be hazardous due to storage of radioactive material nearby.

Bldg. 156, VAMC
Wilshire & Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979230015
Status: Underutilized
Comment: portion of 39,454 sq. ft. bldg., presence of asbestos, needs rehab, seismic reinforcement deficiencies, in his. district, potentially hazardous due to nearby radioactive material.

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU 96912-
Location: Access is through Route 1 and Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex
In the municipality Dededo
Dedeco Co: Guam GU 96912-
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use - radio beacon facility.

Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU 96912-
Location: Access is through Route 1, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Underutilized
Comment: various sq. ft.; 1 story frame/modified quonset; on 376 acres; portions of building and land leased to Government of Guam.

Harmon VORsite (Portion)(AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912-
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue Co: Elmore ID 83648-
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use - medical administration, veterinary services.

Indiana

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230007
Status: Underutilized
Comment: 60 sq. ft., concrete block bldg., most recent use - trash house, access restrictions.

Iowa

Bldg. 00627
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310001
Status: Unutilized
Comment: 1932 sq. ft., 1-story concrete block bldg., most recent use - storage, pigeon infested

Bldg. 00669
Sioux Gateway Airport
Sioux City Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310002
Status: Unutilized
Comment: 1113 sq. ft., 1-story concrete block bldg., contamination clean-up in process

Bldg. 00106, Fort Dodge
Ft. Dodge Co: Webster IA 50501-
Landholding Agency: Air Force
Property Number: 189310051
Status: Unutilized
Comment: 200 sq. ft., 1-story wood frame, needs rehab, most recent use - storage

Louisiana

Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111-
Location: 7 miles south of Bossier City on highway 71 south; left 1 1/4 miles on highway C1552.
Landholding Agency: Air Force
Property Number: 189010269
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Maine

31 Capehart Family Houses
Charleston Family Housing Annex, Union St.
Bangor Co: Penobscot ME
Landholding Agency: Air Force
Property Number: 189310052
Status: Excess
Comment: 2916-7097 sq. ft., 1-2 story wood, 3-duplexes, 27-four plexes totaling 114 units with garages
GSA Number: 2-D-ME-526G

Michigan

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use - communications transmitter building.

Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use - visiting personnel housing.

Bldgs. 51-62
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010791-189010802
Status: Excess
Comment: 1134 sq. ft. each; 1 story wood frame residence with garage; possible asbestos.

Bldgs. 63-67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010803-189010807
Status: Excess
Comment: 1306 sq. ft. each; 1 story wood frame residence with garage; possible asbestos.

Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use - youth center.

Bldgs. 72-89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010811-189010828
Status: Excess
Comment: 1168 sq. ft.; 1 story wood frame residence; potential utilities; possible asbestos.

Bldgs. 97-98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010829-189010830
Status: Excess
Comment: 171 and 114 sq. ft.; 1 floor; potential utilities; most recent use - pump house.

Bldg. 10
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010836
Status: Excess
Comment: 1056 sq. ft.; 1 story wood frame residence.

Bldgs. 216-224, 212, 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force
Property Number: 189010847-189010855, 189010859, 189010861
Status: Excess
Comment: 780 sq. ft. each; 1 story wood frame housing garage.

Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.

Bldgs. 23-24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010865-189010866
Status: Excess
Comment: 44 sq. ft. each; 1 story; metal frame; prior use - storage of fire hoses.

Bldgs. 36, 37, 201
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010872-189010873, 189010879
Status: Excess
Comment: 25 sq. ft. each; 1 floor metal frame; prior use - storage of fire hoses.

Pennsylvania

Bldg. 25 - VA Medical Center
Delafield Road
Pittsburgh Co: Allegheny PA 15215-
Landholding Agency: VA
Property Number: 979210001
Status: Unutilized
Comment: 133 sq. ft., one story brick guard house, needs rehab

Tennessee

Bldg. 16, VAMC Mountain Home
Johnson Co: Washington TN 37604-
Landholding Agency: VA
Property Number: 979220007
Status: Unutilized
Comment: 3215 sq. ft., 3-story wood frame residence, needs repair, subject to historic preservation requirements

Wisconsin

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660-
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

*Land (by State)*

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083-
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

California

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano CA 94535-5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use - location for instrument landing systems equipment.

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121-
Landholding Agency: VA
Property Number: 979240001
Status: Underutilized
Comment: 4 acres; landslide area.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam GU 96912-
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)
Andersen Petroleum Storage
Dededo Co: Guam GU 96912-
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Louisiana

Land -- 8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301-
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use - recreation/buffer area.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard Co: Baltimore MD 21052-
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use - dump site for leaves.

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.

Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504-
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.

VA. Medical Center
4800 Memorial Drive
Waco Co: McLennan TX 76711-
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized
Comment: 2.3 acres, negotiating lease w/ Owens-Illinois Glass Plant, most recent use - parking lot.

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660-
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

**Suitable/Unavailable Properties**

*Buildings (by State)*

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino CA 92402-
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9290 sq ft., 2 story concrete, most recent use-radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979110009
Status: Underutilized
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab. poss. asbestos in pipes/floor tiles, site access lim.

Bldg. 263
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979110010
Status: Unutilized
Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Florida

Bldg. 24, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA

Property Number: 979230008
Status: Underutilized
Comment: portion of 6150 sq. ft., 3 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 36, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230009
Status: Underutilized
Comment: portion of 15,984 sq. ft., 1 story concrete frame bldg., needs rehab, presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Bldg. 37, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230010
Status: Underutilized
Comment: Third floor of a concrete frame bldg. (13,900 sq. ft.), presence of asbestos, listed on Natl Register of Historic Places, access restrictions.

Indiana

Bldg. 24, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230005
Status: Underutilized
Comment: portion of 4135 sq. ft. 2-story wood structure, needs major rehab, no sanitary or heating facilities, presence of asbestos, access restrictions.

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230006
Status: Underutilized
Comment: 310 sq. ft., 1 story stone structure, needs major rehab, no sanitary or heating facilities, access restrictions.

Michigan

Bldg. 20
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - warehouse/supply facility.

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010776
Status: Excess
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - administrative facility

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use - maintenance facility.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use - administrative facility.

Bldgs. 41, 43, 44, 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010781, 189010783-189010784, 189010789
Status: Excess
Comment: 1944 - 7216 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use - dining hall.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use - administrative facility.

Bldgs. 47, 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010787-189010788
Status: Excess
Comment: 83 - 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use - storage.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use - Fire Department vehicle parking building.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use - gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use - commissary facility.

Bldgs. 9, 11-13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010835, 189010837-189010839
Status: Excess
Comment: 1056 sq. ft. each; 1 story wood frame residence.

Bldgs. 5-8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010840-189010843
Status: Excess
Comment: 864 sq. ft. each; 1 floor wood frame residence; possible asbestos

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess
Comment: 2340 sq. ft.; 1 floor concrete block; most recent use - heating facility.

Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use - maintenance shop and office.

Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use - office.

Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use - electrical power station.

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use - gymnasium facility.

12 Bldgs.
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-

Landholding Agency: Air Force
Property Number: 189010867-189010871, 189010874, 189010880- 189010885
Status: Excess
Comment: 25 - 36 sq. ft.; 1 story; metal frame; prior use - storage of fire hoses.

Bldgs. 153, 154, 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010886-189010888
Status: Excess
Comment: 3744 - 8960 sq. ft.; concrete block facility; (radar tower bldg.) potential use - storage.

Minnesota

Bldg. 43
VA Medical Center
Minneapolis Co: Hennepin MN 55441-7
Location: 54th Street and 48th Avenue S.
Landholding Agency: VA
Property Number: 979010032
Status: Underutilized
Comment: 26000 sq. ft., 8 story brick/steel frame, asbestos present on pipe insulation, most recent use - office/storage.

Bldg. 227
Va Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111-
Landholding Agency: VA
Property Number: 979010033
Status: Unutilized
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

Missouri

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St. Louis MO 63125-4118
Landholding Agency: Air Force
Property Number: 189010081
Status: Underutilized
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

Nebraska

Bldg. 4, Hastings Family Hsg.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320059
Status: Excess
Comment: 19370 sq. ft., brick frame, 1-story, possible asbestos, most recent use - recreation

33 Bldgs.
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320060-189320092
Status: Excess
Comment: 2012 - 4984 sq. ft., 2-story plus partial or full basement wood frame family housing, possible asbestos

27 Detached Garages
Hastings Family Housing
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320093
Status: Excess
Comment: 280 - 708 sq. ft., wood frame, accommodates 1 to 3 vehicles, possible asbestos

Bldg. 17
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320094
Status: Excess
Comment: 2225 sq. ft., 1-story wood frame, most recent use - offices, needs rehab, possible asbestos

5 Bldgs.
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320095-189320099
Status: Excess
Comment: various sq. ft., 1-story, most recent use - storage, possible asbestos

New Hampshire

Bldgs. 114-115
New Boston Air Force Staton
Amherst Co: Hillsborough NH 03031-1514
Landholding Agency: Air Force
Property Number: 189320055-189320056
Status: Excess
Comment: 2606 sq. ft. each, 1-story, concrete block frame, possible asbestos, access restrictions, most recent use - storage

Bldg. 127
New Boston Air Force Staton
Amherst Co: Hillsborough NH 03031-1514
Landholding Agency: Air Force
Property Number: 189320057
Status: Excess
Comment: 698 sq. ft., 1-story, concrete and metal frame, possible asbestos, access restrictions, most recent use - storage

New York

Bldg. 5
V.A. Medical Center
Redfield Parkway
Batavia Co: Genesee NY 14020-
Landholding Agency: VA
Property Number: 979030001
Status: Underutilized
Comment: Portion of 16800 sq. ft., 3 story, brick and masonry bldgs., needs minor repairs.

Bldgs. 144, 143, 142/146 VAECC
Linden Blvd. and 179th St.
St. Albans Co: Queens NY 11425-
Landholding Agency: VA
Property Number: 979210004-979210006
Status: Unutilized
Comment: 5215 sq. ft. each, 2 story wood frame residence, needs rehab, potential utilities

Pennsylvania

Bldg. 3 - VA Medical Center
University Drive C
Pittsburgh Co: Allegheny PA 15240-
Landholding Agency: VA
Property Number: 979210002
Status: Unutilized
Comment: Approx. 2765 sq. ft., two story brick residence, needs rehab

Bldg. 2, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042-
Landholding Agency: VA
Property Number: 979230011
Status: Underutilized
Comment: portion of 16,360 sq. ft. 3-story structure, most recent use - storage.

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042-
Landholding Agency: VA
Property Number: 979230012
Status: Underutilized
Comment: portion of bldg. (3850 and 4360 sq. ft.), most recent use - storage.

Bldg. 27, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042-
Landholding Agency: VA
Property Number: 979230013
Status: Underutilized
Comment: Second floor of bldg. (3,410 sq. ft.)

Bldg. 103, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042-
Landholding Agency: VA
Property Number: 979230014
Status: Underutilized
Comment: portion of 1215 sq. ft. 2-story stone farm house, needs repair.

Texas

Bldg. 605
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110090
Status: Unutilized
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use - storage; possible asbestos; needs rehab.

Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110091
Status: Unutilized
Comment: 1344 sq. ft.; possible asbestos; most recent use - auto hobby shop; needs rehab.

Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft.; possible asbestos; most recent use - supply store; needs rehab.

Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5815 sq. ft.; 1 story corrugated iron; possible asbestos; needs rehab; most recent use - recreation, workshop.

Bldg. 699
Brooks Air Force Base
San Antonio Co: Bexar TX 78235-
Landholding Agency: Air Force
Property Number: 189110094
Status: Unutilized
Comment: 2659 sq. ft.; 1 story; possible asbestos; most recent use - arts and crafts center.

Wyoming

Bldg. 13

Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110001
Status: Unutilized
Comment: 3613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.

Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110003
Status: Unutilized
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use - reservoir house, use for storage purposes.

*Land (by State)*

California

Camp Kohler Annex
McClellan AFB
Sacramento Co: Sacramento CA 95652-5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Unutilized
Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use - recreational area; portion subject to easements.

Land
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles Co: Los Angeles CA 90073-
Landholding Agency: VA
Property Number: 979010077
Status: Underutilized
Comment: Approx. 30 acres of 80 acre tract, 7 acre portion contaminated, portions may be environmentally protected.

Florida

Buffer Zone, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230016
Status: Underutilized
Comment: approx. 20 acres, storm water retention area

Compound, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230017
Status: Underutilized
Comment: approx. 7 acres, storage compound, partially wooded

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago Co: Lake IL 60064-
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized
Comment: 2.5 acres, currently being used as a construction staging area for the next 6-8 years, potential utilities.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016-
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis Co: Hennepin MN 55417-
Landholding Agency: VA
Property Number: 979010005
Status: Underutilized
Comment: 8.9 acres, most recent use - parking, potential utilities.

Bldg. 227-229 Land
VA Medical Center
Fort Snelling
St Paul Co: Hennepin MN 55111-
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417-
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized
Comment: 12.1 acres, most recent use - parking, potential utilities.

Land - 12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis Co: Hennepin MN 55417-
Landholding Agency: VA
Property Number: 979010031
Status: Unutilized
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424-
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001-
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206-
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 52.42 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

**Suitable/To Be Excessed**

*Buildings (by State)*

Nevada

47 Bldgs.
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120001-189120047
Status: Unutilized
Comment: 1170 - 2750 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120048
Status: Unutilized
Comment: 2464 Sq. ft., one story, most recent use-maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120049
Status: Unutilized
Comment: 2570 Sq. ft., one story, most recent use-Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2376 Sq. ft., one story, most recent use-religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2605 Sq. ft., one story, most recent use-child care facility, easement restrictions, potential utilities, off-site removal only.

13 Bldgs.
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120052, 189120054-189120065

Status: Unutilized
Comment: 120 sq. ft. each, one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.
Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018-
Landholding Agency: Air Force
Property Number: 189120053
Status: Unutilized
Comment: 60 sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

North Dakota

9 Bldgs.
Fortuna Air Force Station
Fortuna Co: Divide ND 58844-
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110095-189110103
Status: Excess
Comment: 768 - 988 sq. ft.; 2 to 3 bedroom single family housing unit; needs rehab; off-site use only.
36 Bldgs.
Fortuna Air Force Station
Fortuna Co: Divide ND 58844-
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110104-189110121, 189110127-189110144
Status: Excess
Comment: 1203 - 2295 sq. ft.; 3 bedroom single family housing unit with attached garage; needs rehab; off-site use only.
14 Bldgs.
Fortuna Air Force Station
Fortuna Co: Divide ND 58844-
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110122-189110126, 189110145-189110153
Status: Excess
Comment: 364 - 672 sq. ft.; 1 and 2 stall vehicle garage; needs rehab; off-site use only.
Bldg. 1
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310066
Status: Excess
Comment: 10859 sq. ft., 1-story concrete, needs extensive repairs, presence of asbestos
38 Bldgs.
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310067-189310092, 189310094-189310105
Status: Excess
Comment: 62 - 5806 sq. ft., 1 or 2 story concrete block, wood frame or metal, needs extensive repairs, presence of asbestos
Bldg. 35
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310093
Status: Excess
Comment: 14520 sq. ft., 5-story concrete block, needs extensive repairs, presence of asbestos
Bldgs. 41-49, 51, 61, 62
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310106
Status: Excess
Comment: 36-40 sq. ft., wood frame, no utilities, need extensive repairs, presence of asbestos, most recent use - fire hose storage

*Land (by State)*

Florida

Springfield Annex (VZTD)
Tyndall Air Force Base
Springfield Co: Bay FL -
Landholding Agency: Air Force
Property Number: 189240053
Status: Unutilized
Comment: 7.55 acres; improved w/parking lot, 2 loading ramps and railroad tracks.

Minnesota

Land around Bldg. 240-249,253
VA Medical Center
Fort Snelling
St. Paul Co: Hennepin MN 55111-
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized
Comment: 3.76 acres, potential utilities.

**Unsuitable Properties**

*Buildings (by State)*

Alabama

84 Bldgs.
Maxwell AFB
Montgomery Co: Montgomery AL 36112-
Landholding Agency: Air Force
Property Number: 189010002-189010005, 189030220-189030223, 189110165-189110167, 189120231-189120232, 189130335-189130336, 189130369-189130381, 189140010-189140014, 189220005-189220014, 189240013-189240019, 189310042-189310050, 189320044-189320047, 189330045-189330065
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)
22 Bldgs.
Gunter AFB
Montgomery Co: Montgomery AL 36114-
Landholding Agency: Air Force
Property Number: 189010011-189010013, 189010015-189010016, 189010019-189010020, 189010022, 189040853-189040855, 189130349, 189140001-189140009, 189140021
Status: Unutilized
Reason: Secured Area

Alaska

Bldg. 203
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010296
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination
Bldgs. 165, 150, 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010298-189010300
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination
Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination
Bldg. 1401
Galena Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010302
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination
Bldgs. 11-230, 21-116, 43-010, 63-320, 63-325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010303-189010304, 189010306-189010308
Status: Unutilized
Reason: Secured Area, Contamination
Bldgs. 103, 110, 112-115, 118, 1018, 1025, 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010309-189010315, 189010317-189010319
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination
Bldgs. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010320-189010329
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldgs. 103-105, 110, 114, 202, 204-205, 1001, 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010330-189010339
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Isolated area, Arctic environment, Not accessible by road

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518-
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone

Bldgs. 392, 1182, 152, 159, 384 60 ABG/DE
Travis Air Force Base
Travis AFB Co: Solano CA 94535-5495
Landholding Agency: Air Force
Property Number: 189010187-189010192
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 707, 575, 502, 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409-5045
Landholding Agency: Air Force
Property Number: 189010193-189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 100-101, 116, 202
Point Arena Air Force Station
Mendocino CA 95468-5000
Landholding Agency: Air Force
Property Number: 189010233-189010236
Status: Unutilized
Reason: Secured Area

118 Bldgs.
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437-
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Number: 189010546-189010549, 189010561-189010563, 189010567-189010568, 189010571-189010574, 189010579-189010580, 189130360, 189130362, 189140029, 189210011-189210019, 189210024- 189210029, 189230007-189230013, 189230019-189230020, 189240044, 189240046-189240050, 189310012-189310019, 189310024-189310025, 189310027-189310030, 189310032-189310041, 189320009-189320031, 189330011-189330034
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material and some are extensively deteriorated)

Colorado

House on Tract 107
Falcon Air Force Base
Co: El Paso CO 80912
Landholding Agency: Air Force
Property Number: 189320008
Status: Unutilized
Reason: Secured Area

Bldgs. 712, 518, 505, 504, 503, 502, 32, 27, 23
Buckley Air National Guard Base
Aurora Co: Arapahoe CO 80011-9599
Landholding Agency: Air Force
Property Number: 189330002-189330010
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Delaware

Bldgs. 1900, 1304
436 CSG Dover AFB
Dover Co: Kent DE 19902-5516
Landholding Agency: Air Force
Property Number: 189120230, 189140018
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Florida

Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403-5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area

Bldgs. 400, 430
Patrick Air Force Base
Cocoa Beach Co: Brevard FL 32925-
Landholding Agency: Air Force
Property Number: 189220001-189220002
Status: Unutilized
Reason: Secured Area

Bldgs. 1176, 1179, 659, 321, 510
Patrick Air Force Base Co: Brevard FL 32935-
Landholding Agency: Air Force
Property Number: 189240029-189240031, 189320001-189320002
Status: Unutilized
Reason: Secured Area, Extensive Deterioration

Bldgs. 558, 575
Patrick Air Force Base Co: Brevard FL 32925-
Landholding Agency: Air Force
Property Number: 189320003-189320004
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Extensive deterioration

Bldg. 184, MacDill AFB
MacDill AFB Co: Hillsbourgh FL 33608-
Landholding Agency: Air Force
Property Number: 189320100
Status: Unutilized
Reason: Extensive deterioration

Facility 90523
Cape Canaveral AFS
Cape Canaveral AFS Co: Brevard FL
Landholding Agency: Air Force
Property Number: 189330001
Status: Underutilized
Reason: Secured Area

Idaho

Bldgs. 1012, 923, 604
Mountain Home Air Force Base
Co: Elmore ID 83648-
Landholding Agency: Air Force
Property Number: 189030004-189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648-
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225-5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldgs. 3670, 503, 869, 865
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225-5001
Landholding Agency: Air Force
Property Number: 189010248, 189010725, 189110087, 189130347
Status: Unutilized
Reason: Secured Area

Indiana

Bldgs. 21, 22, 62 VA Medical Center
East 38th Street
Marion Co: Grant IN 46952-
Landholding Agency: VA
Property Number: 979230001-979230003
Status: Underutilized
Reason: Extensive deterioration

Iowa

Bldg. 00273
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310008
Status: Unutilized
Reason: Secured Area

Bldg. 00671
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310009
Status: Unutilized
Reason: Other
Comment: Fuel pump station

Bldg. 00736
Sioux Gateway Airport
Sioux Co: Woodbury IA 51110-
Landholding Agency: Air Force
Property Number: 189310010
Status: Unutilized
Reason: Other
Comment: Pump station

Louisiana

Bldg. 3477

Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110-5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area

Maryland

Bldgs. 4-5, 3427
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613-
Landholding Agency: Air Force
Property Number: 189010261, 189010264, 189140016
Status: Unutilized
Reason: Secured Area

Massachusetts

Bldgs. 1900, 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022-
Landholding Agency: Air Force
Property Number: 189010438, 189040002
Status: Unutilized
Reason: Secured Area

Michigan

12 Bldgs.
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045-
Landholding Agency: Air Force
Property Number: 189010522-189010533
Status: Unutilized
Reason: Secured Area

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010810
Status: Excess
Reason: sewage treatment and disposal facility.

Bldgs. 99-100
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010831-189010832
Status: Excess
Reason: water well

Bldgs. 118, 120, 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010875-189010876, 189010878
Status: Excess
Reason: Gasoline Station

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess
Reason: Pump lift station.

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess
Reason: Sewer pump facility.

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess
Reason: Water pump station

Minnesota

Bldgs. 641, 643, 646, 665
Minnesota Air National Guard
934th Airlift Group
Minneapolis Co: Hennepin MN 55111-4098
Landholding Agency: Air Force
Property Number: 189310003-189310006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Missouri

Bldgs. 42, 45-47, 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125-
Landholding Agency: Air Force
Property Number: 189010726, 189010728-189010731
Status: Unutilized
Reason: Secured Area

Montana

8 Bldgs.
Malmstrom AFB
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Number: 189010076-189010080, 189010722-189010723, 189040057
Status: Unutilized
Reason: Secured Area, Other environmental (Some are within 2000 ft. of flammable or explosive material)

Nebraska

Offutt Communications Annex-t3
Offutt Air Force Base
Scribner Co: Dodge NE 68031-
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: former sewage lagoon

Bldgs. 637, 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524-
Landholding Agency: Air Force
Property Number: 189230021-189230022
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 31, 311, 401, 416, 417, 545
Offutt Air Force Base
Offutt Co: Sarpy NE 68113-
Landholding Agency: Air Force
Property Number: 189240007-189240012
Status: Unutilized
Reason: Secured Area

Bldg. 21
Hastings Radar Bomb Scoring Site
Hastings Co: Adams NE 68901-
Landholding Agency: Air Force
Property Number: 189320058
Status: Excess
Reason: Generator

New Hampshire

Bldgs. 101, 102, 104
New Boston Air Force Station
Amherst Co: Hillsborough NH 03031-1514
Landholding Agency: Air Force
Property Number: 189320005-189320007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

New Mexico

12 Bldgs.
Holloman Air Force Base
Holloman AFB Co: Otero NM 88330-
Landholding Agency: Air Force
Property Number: 189130333, 189240032-189240042
Status: Unutilized
Reason: Secured Area

Bldgs. 874, 1258
Holloman Air Force Base Co: Otero NM 88330-
Landholding Agency: Air Force
Property Number: 189320041-189320042
Status: Unutilized
Reason: Secured Area, Extensive Deterioration

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303-5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

14 Bldgs.
Griffiss Air Force Base
Rome Co: Oneida NY 13441-
Landholding Agency: Air Force
Property Number: 189140022-189140023, 189230001-189230003, 189240020-189240028
Status: Excess
Reason: Secured Area (Some are within airport runway clear zone)

Bldg. 759, Hancock Field
6001 East Molloy Road
Syracuse Co: Onondaga NY 13211-7099
Landholding Agency: Air Force
Property Number: 189310007
Status: Unutilized
Reason: Secured Area, Extensive deterioration

North Carolina

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB Co: Cumberland NC 28308-5045
Landholding Agency: Air Force
Property Number: 189010262
Status: Unutilized
Reason: Secured Area

Bldg. 4230 - Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531-5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area

Bldgs. 600, 602-607, 612, 619, 6606
Pope Air Force Base
Fayetteville Co: Cumberland NC 28308-2890
Landholding Agency: Air Force
Property Number: 189330035-189330044
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805-

Landholding Agency: VA
Property Number: 979010008
Status: Underutilized
Reason: Friable asbestos.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705-
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area

Bldg. 50
Fortuna Air Force Station
Extreme northwestern corner of North Dakota
Fortuna Co: Divide ND 58844-
Landholding Agency: Air Force
Property Number: 189310107
Status: Excess
Reason: garbage incinerator

7 Bldgs.
Minot Air Force Base
Minot Co: Ward ND 58701-
Landholding Agency: Air Force
Property Number: 189320034-189320040
Status: Unutilized
Reason: Secured Area

Ohio

Bldgs. 404-405
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473-5000
Landholding Agency: Air Force
Property Number: 189220015-189220016
Status: Unutilized
Reason: Secured Area

Oklahoma

Bldg. 604
Vance Air Force Base
Enid Co: Garfield OK 73705-5000
Landholding Agency: Air Force
Property Number: 189010204
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759-
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area

South Dakota

Bldgs. 88513, 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706-
Landholding Agency: Air Force
Property Number: 189210001-189210002
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 200-206 South Nike Ed Annex
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706-
Landholding Agency: Air Force
Property Number: 189320046-189320053
Status: Unutilized
Reason: Extensive Deterioration

Bldg. 00605
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706-
Landholding Agency: Air Force
Property Number: 189320054
Status: Underutilized
Reason: Secured Area

Tennessee

Bldg. 60, VAMC Mountain Home
Johnson Co: Washington TN 37604-
Landholding Agency: VA
Property Number: 979220005
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. 400
Laughlin Air Force Base
Val Verde Co. Co: Val Verde TX 78843-5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldgs. 645, 02106
Reese Air Force Base
Lubbock Co: Lubbock TX 79489-
Landholding Agency: Air Force
Property Number: 189010210, 189210005
Status: Excess
Reason: Secured Area

Bldgs. 24-26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504-
Landholding Agency: VA
Property Number: 979010050-979010052
Status: Unutilized
Reason: Friable asbestos

Utah

Bldg. 789
Hill Air Force Base
Co: Davis UT 84056-
Landholding Agency: Air Force
Property Number: 189040859
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Washington

34 Bldgs.
Fairchild AFB
Fairchild Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189010139-189010159, 189310053-189310065
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204-
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1, Waste Annex
West of Craig Road Co: Spokane WA 99022-
Landholding Agency: Air Force
Property Number: 189320043
Status: Unutilized
Reason: Secured Area

Wisconsin

Bldgs. 204, 306 440 Airlift Wing
Gen. Mitchell IAP
Milwaukee Co: Milwaukee WI 53207-6299
Landholding Agency: Air Force
Property Number: 189320032-189320033
Status: Unutilized
Reason: Secured Area

Wyoming

12 Bldgs.
Warren Air Force Base
Cheyenne Co: Laramie WY 82005-
Landholding Agency: Air Force
Property Number: 189010198-189010203, 189240001-189240006
Status: Unutilized
Reason: Secured Area

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized
Reason: Sewage digestor for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized
Reason: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized
Reason: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized
Reason: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan Co: Sheridan WY 82801-
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized
Reason: Chlorination chamber for sewage disposal plant.

*Land (by State)*

Alaska

Campion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Isolated area, Arctic environment, Not accessible by road

Lake Louise Recreation
21 CSG-DEER
Elmendorf AFB Co: Anchorage AK 99506-5000

Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Isolated area, Arctic coast, Not accessible by road

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506-5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Isolated area, Arctic coast, Not accessible by road

California

DVA Medical Center
4951 Arroyo Road
Livermore Co: Alameda CA 94550-
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized
Reason: 750,000 gallon water reservoir.

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608-
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504-
Landholding Agency: VA
Property Number: 979230004
Status: Underutilized
Reason: Inaccessible

Louisiana

Land -- 3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria Co: Rapides LA 71301-
Landholding Agency: VA
Property Number: 979010010
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613-
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area

Minnesota

VAMC
VA Medical Center
4801 8th Street No.
St. Cloud Co: Sterns MN 56303-
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

New Mexico

Facility 75100
Holloman Air Force Base Co: Otero NM 88330-
Landholding Agency: Air Force
Property Number: 189240043
Status: Unutilized
Reason: Secured Area

New York

Tracts 1, 4
VA Medical Center
Bath Co: Steuben NY 14810-
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010011, 979010014
Status: Unutilized
Reason: Secured Area

Tracts 2, 3
VA Medical Center
Bath Co: Steuben NY 14810-
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 979010012-979010013
Status: Underutilized
Reason: Secured Area

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1 1/2 miles south of Highway 44 Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150-
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway

Parcel 3, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150-
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150-
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451-
Landholding Agency: Air Force
Property Number: 189010589
Status: Unutilized
Reason: Secured Area

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011-
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011-
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area

[Doc. 93-18792 Filed 8-5-93; 8:45 am]
BILLING CODE 4310-35-F

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY-040-03-4320-04]

### Rock Springs District Grazing Advisory Board; Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting of the Rock Springs District Grazing Advisory Board.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a meeting of the Rock Springs District Grazing Advisory Board. Notice of this meeting is required under Public Law 92-463.

**DATES:** September 10, 1993, 9 a.m. until 4 p.m.

**ADDRESSES:** Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82902-1869.

**FOR FURTHER INFORMATION CONTACT:** Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902-1869, (307) 382-5350.

**SUPPLEMENTARY INFORMATION:** The agenda for the meeting will include:

1. Introductions and opening remarks
2. Election of a Chairman and Vice-Chairman
3. Green River Resource Area Resource Management Plan
4. Big Sandy River Project
5. Improvements proposed for completion in FY94 with range betterment (8100) funds
6. Update on wild horse gathering
7. Update on District wildlife program
8. Update on Cumberland/Uinta Allotment
9. Public comment period

The meeting is open to the public. Interested persons may make oral statements to the Board between 2:30 and 3 p.m., or file written statements for the Board's consideration.

Anyone wishing to make an oral presentation should notify the District Manager, Bureau of Land Management,

Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, by September 9, 1993. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

**Marlowe E. Kinch,**

*District Manager.*

[FR Doc. 93–18788 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–22–M

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**[AZ–820–03–4210–06; AZA 22922 et al.]**

## Arizona; Conveyance of Federal Mineral Interest Applications

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of segregation.

**SUMMARY:** Notice is hereby given that pursuant section 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b), the following applications have been filed for the conveyance of certain Federally-owned mineral interests within each accompanying land description:

**Gila and Salt River Meridian, Arizona**

AZA–22922

T. 10 S., R. 14 E.,
Secs. 12 and 13.
T. 10 S., R. 15 E.,
Secs. 5 and 7.

AZA–23415

T. 20 S., R. 9 E.,
Sec. 25.
T. 20 S., R. 10 E.,
Secs. 13, 14, 15, 23, 24, 28, 29, 30, 32, and 36.

AZA–23870 *

T. 11 N., R. 24 E.
Secs. 8, 10, 12, 14, and 22.
T. 12 N., R. 24 E.,
Secs. 30.

AZA–24062

T. 19 S., R. 14 E.,
Secs. 27 and 28.

AZA–24090

T. 19 S., R. 14 E.,
Secs. 21 and 22.

AZA–24709

T. 8 N., R. 1 W.,
Secs. 6, 20, 21, and 22.
T. 8 N., R. 2 W.,
Secs. 10 and 15.
T. 9 N., R. 2 W.,
Secs. 23, 24, 25, and 26.

AZA–25360

T. 12 N., R. 5 W.,
Secs. 25, 26, 33, 34, and 35.

AZA–25510

T. 21 S., R. 12 E.,
Sec. 24.

AZA–25950

T. 24 S., R. 22 E.,
Sec. 9.

ARA–26183

T. 17 S., R. 13 E.,
Secs. 27 and 34.
T. 18 S., R. 13 E.,
Secs. 3 and 4.

AZA–27169

T. 20 S., R. 13 E.,
Sec. 12.

The mineral interests may be conveyed in whole or in part.

The purpose of conveyance is to allow consolidation of surface and subsurface ownership where there are no known mineral values, or in those instances where the reservation of mineral interests to the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use.

**SUPPLEMENTARY INFORMATION:** Concerning this application may be obtained from the Branch of Lands Operations, Arizona State Office, Bureau of Land Management, 3707 North Seventh Street, Phoenix, Arizona 85011. Telephone (602) 650–0518. Upon publication of this notice in the **Federal Register** the mineral interests owned by the United States in the lands under application shall be segregated to the extent that they will not be open to appropriation under the mining and mineral leasing laws. The segregative effect of the applications shall terminate upon issuance of a conveyance document of such mineral interests, upon final rejection of the application, or two years from the date of publication of this notice, whichever comes first.

**Mary Jo Yoas,**

*Chief, Branch of Lands Operations.*

[FR Doc. 93–18806 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–32–M

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**[AZ–020–03–5410–11–A004; AZA–28010]**

## Receipt of Conveyance of Mineral Interest Application

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of minerals segregation.

**SUMMARY:** The private lands described in this notice aggregating approximately 33,064.405 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine their suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

**FOR FURTHER INFORMATION CONTACT:** Vivian Reid, Land Law Examiner, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027 (602) 780–8090. Serial Number AZA–28010.

**Gila and Salt River Base and Meridian, Maricopa County, Arizona.**

*Parcel 1*

T. 4 N., R. 4 W.,
Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 18, lots 1 thru 4, inclusive, E½W½, E½E½.
T. 3 N., R. 5 W.,
Sec. 3, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 4, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 5, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 6, lots 1 thru 7, inclusive, SE¼NW¼, S½NE¼, E½SW¼, SE¼;
Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 8, all, except CAP portion;
Sec. 9, all, except CAP portion;
Sec. 10, all;
Sec. 11, W½;
Sec. 14, W½;
Sec. 15, all;
Sec. 23, E½NE¼, W½NW¼.
T. 4 N., R. 5 W.,
Sec. 1 lots 1 thru 4, inclusive, S½N½, S½;
Sec. 3, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 4, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 5, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 6, lots 1 thru 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, Lots 1 thru 4, inclusion, E½W½, E½
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 17, all;
Sec. 18, lots 1 thru 4, inclusive, E½W½, E½;

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* This corrects segregation published as AZA–23907.

Sec. 19, lots 1 thru 4, inclusive, E½W½,E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25 W½, W½NE¼, SE¼SE¼;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 thru 4, inclusive, E½W½,E½;
Sec. 31, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 34, all;
Sec. 35, all;
T. 3 N., R. 6 W.,
Sec. 1, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 3, lots 1 thru 2, S½NE¼, SE¼
Sec. 11 E½;
Sec. 12, all.
T. 4 N., R. 6 W.,
Sec. 25, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 26, all;
Sec. 27, E½;
Sec. 34, E½;
Sec. 35, all;
Sec. 36, N½, SE¼.

*Parcel 2*

T. 5 N., R. 4 W.,
Sec. 33, S½W¼NW¼SE¼.

*Parcel 3*

T. 3 N., R. 5 W.,
Sec. 14, W½SE¼.

*Parcel 4*

T. 3 N., R. 5 W.,
Sec. 23, W½NE¼, E½NW¼.

*Parcel 5*

T. 4 N., R. 4 W.,
Sec. 6, E½.

*Parcel 6*

T. 5 N., R. 4 W.,
Sec. 4, SE¼.

*Parcel 7*

T.5 N., R. 4 W.
Sec. 9, E½.

*Parcel 8*

T. 5 N., R. 4 W.,
Sec. 10, SW¼NE¼, NW¼SE¼.

*Parcel 9*

T. 5 N., R. 4 W.,
Sec. 33, N½NW¼SW¼SE¼.

*Parcel 10*

T. 5 N., R. 4 W.,
Sec. 4, lot 1.
T. 6 N., R. 4 W.,
Sec. 33, E½ except west 1100 ft. thereof.

Consisting of 33,064.40 acres, more or less.

**Minerals Reservation—All Minerals**

Upon publication of this Notice of Segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate either upon issuance of a patent or deed of such mineral interest; upon final rejection of the application; or two years form the date of filing, July 23, 1993, whichever occurs first.

Dated: August 2, 1993.

**G. L. Chenier,**

*District Manager.*

[FR Doc. 93–18882 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–32–M

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**[NM–020–4210–06; NMNM 52392]**

## Notice of Proposed Continuation of Withdrawal; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation proposes that a withdrawal for the Rio Grande Project continue for an additional 50 years. The land will remain closed to surface entry and mining. The land has been and will remain open to mineral leasing.

**DATES:** Comments should be received by November 4, 1993.

**ADDRESSES:** Comments should be sent to: BLM, New Mexico State Director, P.O. Box 27115, Santa Fe, NM 87502–7115.

**FOR FURTHER INFORMATION CONTACT:** Georgiana E. Armijo, BLM, New Mexico State Office, 505–438–7594.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation proposes that the withdrawal of land made by Secretarial Order dated December 19, 1934 be continued for a period of 50 year pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.c. 1714(f) (1988). The land is described as follows:

**New Mexico Principal Meridian**

T. 24 S., R. 1 E.,
Sec. 12, lot 1;
Sec. 13 lots 6, 7, and 8.

The area described contains 97.86 acres in Dona Ana County.

The withdrawal is essential for protection of the Rio Grande Project. The withdrawal currently segregates the land from surface entry and mining but not from mineral leasing.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: July 28, 1993.

**Kathy Eaton,**

*Acting State Director.*

[FR Doc. 93–18702 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–FB–M

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## Minerals Management Service

## Outer Continental Shelf, Western Gulf of Mexico

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of Leasing Systems, Sale 143.

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the **Federal Register**:

a. Identifying the bidding systems to be used and the reasons for such use; and

b. Designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. *Bidding Systems to be Used.* In the Outer Continental Shelf (OCS) Sale 143, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16⅔-percent royalty on all unleased blocks in less than 400 meters of water; and (b) bonus bidding with a fixed 12½-percent royalty on all remaining unleased blocks.

a. *Bonus Bidding With a 16⅔-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency

payments but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. *Bonus Bidding With a 12½-Percent Royalty.* This system is authorized by section (8)(a)(1)(A) of the OCSLA. It has been chosen for certain deeper water blocks proposed for the Western Gulf of Mexico (Sale 143) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow-water blocks. Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12½-percent royalty system would be less than for the same blocks under a 16⅔-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. *Designation of Blocks.* The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased blocks were considered to enhance orderly development of each field.

b. Blocks in deep water were selected for the 12½-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are shown on Map 2 entitled "Western Gulf of Mexico Lease Sale 143—Final Bidding Systems." This map is available from the Minerals Management Service, Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

Dated: August 2, 1993.

**Tom Fry,**

*Director, Minerals Management Service.*

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 93–18814 Filed 8–5–93; 8:45 am]

BILLING CODE 4310-MR-P

## Outer Continental Shelf, Western Gulf of Mexico, Gas and Oil Lease Sale 143

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of sale.

1. *Authority.* This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331–1356, (1988)), and the regulations issued thereunder (30 CFR part 256).

2. *Filing of Bids.* Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m. Central Standard Time (c.s.t.)) until the bid submission deadline at 10 a.m., Tuesday, September 14, 1993. Hereinafter, all times cited in this Notice refer to c.s.t. unless otherwise stated. Bids will not be accepted the day of bid opening, Wednesday, September 15, 1993. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or written withdrawal request is received by the RD prior to 10 a.m., Tuesday, September 14, 1993. Bid opening time will be 9 a.m., Wednesday, September 15, 1993, at the Clarion Hotel, 1500 Canal Street, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations including 30 CFR part 256. The list of restricted joint bidders which applies to this sale appeared in the **Federal Register** at 58 FR 18416, published April 9, 1993.

3. *Method of Bidding.* A separate signed bid in a sealed envelope labeled "Sealed Bid for Gas and Oil Lease Sale 143, not to be opened until 9 a.m., c.s.t., Wednesday, September 15, 1993," must be submitted for each block bid upon. The sealed envelope and the bid should contain the following information: the company name, qualification number, area number and/or name (abbreviations acceptable), and the block number of the block bid upon. In addition, the total amount bid must be in whole dollar amounts.

Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. For identification purposes, the company name and company qualification number should also appear on the check or draft together with the bid block identification (abbreviations acceptable). No bid for less than all of the unleased portions of a block will be considered.

All documents must be executed in conformance with signatory authorizations on file in the Gulf of Mexico regional office. Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, e.g., 33.33333 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

4. *Bidding, Yearly Rental, and Royalty Systems.* The following bidding, yearly rental, and royalty systems apply to this sale:

(a) *Bidding Systems.* All bids submitted at this sale must provide for a cash bonus in the amount of $25 or more per acre or fraction thereof.

(b) *Yearly Rental.* All leases awarded will provide for a yearly rental payment of $5 per acre or fraction thereof.

(c) *Royalty Systems.* All leases will provide for a minimum royalty of $5 per acre or fraction thereof. The following royalty systems will be used in this sale:

(1) *Leases With a 12½–Percent Royalty.* This royalty rate applies to blocks in water depths of 400 meters or greater as shown on Map 2 (see paragraph 12). Leases issued on the blocks offered in this area will have a fixed royalty rate of 12½ percent.

(2) *Leases With a 16⅔–Percent Royalty.* This royalty rate applies to blocks in water depths of less than 400 meters (see Map 2). Leases issued on blocks offered in this area will have a fixed royalty rate of 16⅔ percent.

5. *Equal Opportunity.* Each bidder must qualify for the sale by submitting prior to the bid submission deadline stated in paragraph 2, the certification required by 41 CFR 60–1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS–2033 (June 1985), and the Affirmative Action Representation Form, Form MMS–2032 (June 1985). See paragraph 14(e).

6. *Bid Opening.* Bid opening will begin at the bid opening time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time.

If the Department is prohibited for any reason from opening any bid before midnight on the day of bid opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. *Deposit Of Payment.* Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. *Withdrawal Of Blocks.* The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. *Acceptance, Rejection, Or Return Of Bids.* The United States reserves the right to reject any and all bids. In any case, no bid may be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $25 or more per acre or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance.

10. *Successful Bidders.* Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid along with the first year's annual rental for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

11. *Leasing Maps and Official Protraction Diagrams.* Blocks offered for lease may be located on the following Leasing Maps or Official Protraction Diagrams which may be purchased from the Gulf of Mexico regional office (see paragraph 14(a)):

(a) OCS Leasing Maps—Texas Nos. 1 through 8. This is a set of 16 maps which sells for $18.00.

(b) OCS Official Protraction Diagrams. These diagrams sell for $2.00 each.

NG 14–3 Corpus Christi (revised 01/27/76)
NG 14–6 Port Isabel (revised 01/15/92)
NG 15–1 East Breaks (revised 01/27/76)
NG 15–2 Garden Banks (revised 10/19/81)
NG 15–4 Alaminos Canyon (revised 04/27/89)
NG 15–5 Keathley Canyon (revised 04/27/89)
NG 15–8 (No Name) (revised 04/27/89)

(c) A complete set of all the above OCS Leasing Maps and Official Protraction Diagrams is available on microfiche for $5.00 per set.

12. *Description Of the Areas Offered for Bids.*

(a) Acreages of blocks are shown on Leasing Maps and Official Protraction Diagrams. Some of these blocks, however, may be partially leased or transected by administrative lines such as the Federal/State jurisdictional line. Information on the unleased portions of such blocks, including the exact acreage, are included in the following document available from the Gulf of Mexico regional office:

Western Gulf of Mexico Lease Sale 143—Final. Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease.

(b) Maps 1, 2, and 3 referred to in this Notice are available on request from the Gulf of Mexico regional office:

*Map 1* entitled "Western Gulf of Mexico Lease Sale 143—Final. Stipulations, Lease Terms, and Warning Areas."

*Map 2* entitled "Western Gulf of Mexico Lease Sale 143—Final. Bidding Systems." Refers largely to Royalty Rates.

*Map 3* entitled "Western Gulf of Mexico Lease Sale 143—Final. Detailed Maps of Biologically Sensitive Areas." Pertains to areas referenced in Stipulation No. 2.

(c) Prospective bidders are advised of specific archaeological survey requirements further detailed in paragraph 14(g).

(d) *Blocks which have recently become available for leasing:* Attention is drawn to the following update list which is included as a matter of convenience for interested parties. Any questions may be directed to Ms. Patricia Bryars, Phone (504) 736–2763.

*Update List:* Galveston Blocks 323 and A–9; High Island Block 94; High Island, East Addition, Block A–170; High Island, South Addition, Block A–576; High Island, East Addition, South Extension, Blocks A–399 and A–401.

(e) *Blocks not available for leasing:* The areas offered for leasing include all those blocks shown on the OCS Leasing Maps and Official Protraction Diagrams listed in paragraph 11(a), (b), and (c), except for those blocks or partial blocks already under lease, as listed at the end of this Notice, and blocks deferred from bidding as follows:

(1) Although currently unleased and shown on Texas Leasing Map No. 7C, High Island Area, East Addition, South Extension, no bids will be accepted on Blocks A–375 and A–398.

(2) No bids will be accepted in the Corpus Christi Naval Operations Area (near Corpus Christi, Texas), as depicted on Map 1 of paragraph 12(b) above.

(3) No bids will be accepted on Block A–125, as shown on Leasing Map No. 6A, Galveston, South Addition, the status of which is currently under appeal.

13. *Lease Terms and Stipulations.*

(a) Leases resulting from this sale will have initial terms as shown on Map 1 and will be issued on Form MMS–2005 (March 1986). Copies of the lease form are available from the Gulf of Mexico regional office (see paragraph 14(a)).

(b) The applicability of the stipulations which follow is as shown on Map 1 and Map 3 and as supplemented by references in this Notice.

*Stipulation No. 1—Protection of Archaeological Resources*

(This stipulation will apply to all blocks offered for lease in this sale. Bidders should refer also to paragraph 14(g) of this Notice for specific survey requirements.)

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental

information. The lessee shall submit this report to the RD for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be, or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(3) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

*Stipulation No. 2—Protection of Topographic Features.*

(This stipulation will be included in leases located in the areas so indicated on Maps 1 and 3 described in paragraph 12.) The banks which cause this stipulation to be applied to blocks of the Western Gulf are:

NO ACTIVITY ZONE DEFINED BY ISOBATH

| Bank name | Meters |
|---|---|
| Shelf Edge Banks: | |
| West Flower Garden Bank [1] (defined by 1/4 1/4 1/4 system). | 100 |
| East Flower Garden Bank [1] (defined by 1/4 1/4 1/4 system). | 100 |
| MacNeil Bank | 82 |
| 29 Fathom Bank | 64 |
| Rankin Bank | 85 |
| Geyer Bank | 85 |
| Elvers Bank | 85 |
| Bright Bank [2] | 85 |
| McGrail Bank [2] | 85 |
| Rezak Bank [2] | 85 |
| Sidner Bank | 85 |
| Parker Bank | 85 |
| Stetson Bank | 82 |

NO ACTIVITY ZONE DEFINED BY ISOBATH—Continued

| Bank name | Meters |
|---|---|
| Applebaum Bank | 85 |
| Low Relief Banks [3] | |
| Mysterious Bank | [4]74,76,78,80,84 |
| Coffee Lump | Various. |
| Blackfish Ridge | 70 |
| Big Dunn Bar | 65 |
| Small Dunn Bar | 65 |
| 32 Fathom Bank | 52 |
| Claypile Bank [4] | 50 |
| South Texas Banks [5] | |
| Dream Bank | 78,82 |
| Southern Bank | 80 |
| Hospital Bank | 70 |
| North Hospital Bank | 68 |
| Aransas Bank | 70 |
| South Baker Bank | 70 |
| Baker Bank | 70 |

[1] Flower Garden Banks—In paragraph (c) a "4–Mile Zone" rather than a "1–Mile Zone" applies.

[2] Central Gulf of Mexico bank with a portion of its "1–Mile Zone" and/or "3–Mile Zone" in the Western Gulf of Mexico.

[3] Low Relief Banks—Only paragraph (a) applies.

[4] Claypile Bank—Paragraphs (a) and (b) apply. In paragraph (b) monitoring of the effluent to determine the effect on the biota of Claypile Bank shall be required rather than shunting.

[5] South Texas Banks—Only paragraphs (a) and (b) apply.

[6] See Map 3.

(a) No activity including structures, drilling rigs, pipelines, or anchoring will be allowed within the listed isobath ("No Activity Zone" as shown on Map 3) of the banks as listed above.

(b) Operations within the area shown as "1,000–Meter Zone" shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

(c) Operations within the area shown as "1–Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom. (Where there is a "1–Mile Zone" designated, the "1,000 Meter Zone" in paragraph (b) is not designated.)

(d) Operations within the area shown as "3–Mile Zone" on Map 3 shall be restricted by shunting all drill cuttings and drilling fluids from development operations to the bottom through a downpipe that terminates an appropriate distance, but no more than 10 meters, from the bottom.

*Stipulation No. 3—Military Warning Areas*

(This stipulation will be included in leases located within Warning Areas shown on Map 1 described in paragraph 12.).

*(a) Hold and Save Harmless*

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS; if such injury or damage to such person or property occurs by reason of the activities of any agency of the U. S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the command headquarters listed in the table below.

Notwithstanding any limitation of the lessee's liability in section 14 of the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee; and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the appropriate military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of its officers, agents, or employees; and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

*(b) Electromagnetic Emissions*

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors, or subcontractors emanating from

individual designated defense warning areas in accordance with requirements specified by the commander of the command headquarters listed in the table below to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing, or operational activities conducted within individual designated warning areas. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be effected by the commander of the appropriate onshore military installation conducting operations in the particular warning area provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

*(c) Operational*

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in the individual designated warning areas, shall enter into an agreement with the commander of the individual command headquarters listed in the following table, upon utilizing an individual designated warning area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in the warning areas at all times.

**Warning Areas' Command Headquarters for Western Planning Area**

*Area and Command headquarters*

W–228—Chief, Naval Air Training, Naval Air Station, Attn: Lt. Cmdr. I.V. Velez, USN, or Lt. Joseph, Corpus Christi, Texas 78419–5100, Telephone: (512) 939–3862/3902

W–602—Headquarters ACC/DOSR, Detachment 1, Operations Headquarters, U.S. Strategic Air Command, Attn: Mr. Dave Olsen, Offutt AFB, Nebraska 68113–5550, telephone: (402)-294–2334

14. *Information to Lessees.*

(a) *Supplemental Documents.* For copies of the various documents identified as available from the Gulf of Mexico regional office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, either in writing or by telephone (504) 736–2519. For additional information, contact the Regional Supervisor for Leasing and Environment at the above address or by telephone at (504) 736–2759.

(b) *Navigation Safety.* Operations on some of the blocks offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended.

U.S. Corps of Engineers (COE) permits are required for the construction of any artificial islands, installations, and other devices temporarily or permanently attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

For additional information, prospective bidders should contact Lt. Commander Ken Parris, Assistant Marine Port Safety Officer, 8th Coast Guard District, Hale Boggs Federal Building, New Orleans, Louisiana 70130, telephone (504) 589–6901. For COE information, prospective bidders should contact Mr. Dolan Dunn, Chief Evaluation Section, Regulatory Branch, P.O. Box 1229, Galveston, Texas 77553, telephone (409) 766–3935.

(c) *Offshore Pipelines.* Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) *8–Year Leases.* Bidders are advised that any lease issued for a term of 8 years will be canceled after 5 years, following notice pursuant to the OCS Lands Act, as amended, if within the initial 5-year period of the lease, the drilling of an exploratory well has not been initiated; or if initiated, the well has not been drilled in conformance with the approved exploration plan criteria; or if there is not a suspension of operations in effect, etc. Bidders are referred to 30 CFR 256.37.

(e) *Affirmative Action.* Revision of the Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS–2005, March 1986) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60–1.5(a)(1) and 60–1.7(a)(1).

Submission of Form MMS–2032 (June 1985) and Form MMS–2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(f) *Ordnance Disposal Areas.* Bidders are cautioned as to the existence of two inactive ordnance disposal areas in the Corpus Christi and East Breaks areas, shown on Map 1 described in paragraph 12 of this Notice. These areas were used to dispose of ordnance of unknown composition and quantity. These areas have not been used since about 1970. Water depths in the Corpus Christi area range from approximately 600 to 900 meters. Water depths in the East Breaks area range from approximately 300 to 700 meters. Bottom sediments in both areas are generally soft, consisting of silty clays. Exploration and development activities in these areas require precautions commensurate with the potential hazards. Lessees are also advised of an Environmental Protection Agency dumping site located in portions of Alaminos Canyon, East Breaks, Garden Banks, and Keathley Canyon.

(g) *Archaeological Resources.* Bidders are advised of the Notice to Lessees (NTL) affecting the historic shipwreck requirements published December 20, 1991, in the Federal Register pages 66076–66082 with an effective date of February 17, 1992. This NTL details the survey methodology, including a more intensive survey with line spacing 50 meters apart, and report writing requirements. A Letter to Lessees (LTL) of November 30, 1990, lists those blocks identified as having a high probability for encountering historic shipwrecks. Copies of the NTL and LTL are available from the MMS Public Information Unit.

(h) *Proposed Rigs To Reefs.* Bidders are advised that there are OCS artificial reef sites and planning sites for the Gulf of Mexico. These are generally located in water depths of less than 200 meters. While all existing and proposed sites require a permit from the U.S. Army Corps of Engineers, this "Rigs to Reefs" program is implemented through State sponsorship.

*Alabama:* Mr. Wallace M. Tatum (205) 968–7578

*Louisiana:* Mr. Rick Kaspzrac (504) 765–2375

*Mississippi:* Mr. Mike Buchanan (601) 385–5868

*Texas:* Ms. Jan Coulbertson (512) 389–4553

For more information on artificial reef sites, prospective bidders should contact the above listed State Artificial Reef Coordinator for their areas of interest.

**Tom Fry,**

*Director, Minerals Management Service.*

Dated: August 2, 1993.

**Bob Armstrong,**

*Assistant Secretary, Land and Minerals Management.*

**Outer Continental Shelf Lease Sale 143—Western Gulf of Mexico**

*Leased Blocks and Partial Blocks*

Descriptions of blocks listed represent all Federal acreage leased unless otherwise noted.

South Padre Island
1030, 1040, 1043, 1044, 1050, 1052, 1059, 1060, 1073, 1111, 1112, 1122, 1125, 1134, 1165

North Padre Island
886, 887, 908, 927, 935, 948, 956, 957, 967, 968, 976, 977, 978, 987, 988, 989

North Padre Island, East Addition
891, 892, 911, 931, 932, 951, 952, 970, 974, 975, 990, 993, 995, 996, 1011, 1016, 1018, A–8, A–9, A–10, A–11, A–12, A–13, A–23, A–26, A–27, A–32, A–38, A–42, A–43, A–44, A–48, A–55, A–57, A–58, A–59, A–62, A–63, A–64, A–69, A–70, A–72, A–75, A–76, A–83, A–84, A–86, A–87

Mustang Island
730, 731, 737, 738, 739, 740, 742, 743, 752, 754, 755, 757, 758, 782, 763, 764, 765, 767, 768, 769, 776, 778, 779, 781, 782, 784, 785, 786, 787, 789, 790, 791, 801, 802, 803, 804, 805, 806, 809, 811, 813, 814, 821, 822, 823, 824, 825, 826, 827, 828, 830, 831, 832, 833, 837, 838, 844, 846, 847, 848, 849, 850, 852, 853, 854, 858, 868, 869, 870, 871, 872, 873, 874, 875, 876, A–1, A–2, NE¼NW¼, NE¼;, NE¼NW¼;, NE¼SE¼, NW¼;, W½NW¼, NE¼, A–3, A–6, A–10, A–11, A–15, A–16, A–17, A–18, A–19, A–21, A–22, A–24, A–25, A–26, A–27, A–30, A–31, A–32, A–33, A–36, A–37, A–38

Mustang Island, East Addition
760, A–46, A–47, A–48, A–51, A–53, A–54, A–57, A–61, A–64, A–65, A–70, A–71, A–84, A–85, A–86, A–96, A–97, A–98, A–111, A–112, A–117, A–118, A–119, A–121, A–122, A–124, A–133, A–135, A–138, A–140, A–149, A–174

Matagorda Island
487, 518, 519, 520, 526, 527, 528, 529, (Landward of 8(g) Line), 555, 556, 557, 564, 565, 566, 567, 568, 569, 586, 587, 588, 589, 591, 592, 599, 600, 601, 602, 603, 604, 605, 606, 607, 616, 617, 618, 619, 620, 622, 623, 624, 632, 633, 634, (Seaward of 8(g) Line), 635, 636, 637, 638, 639, 640, 641, 649, 650, 651, 652, 653, 654, 656, 657, 658, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 674, 676, 678, 680, 681, 682, 683, 685, 686, 687, 688, 689, 696, 699, 700, 701, 703, 704, 705, 707, 708, 709, 710, 711, 712, 713, 715, 716, A–4, A–5, A–7, A–8

Brazos
341, 342, 364, 365, 375, 376, 377, 378, 396, 397, 398, 399, 411, 412, 413, 414, 416, 417, 431, 432, 433, 434, 435 (Seaward of 8(g) Line), 436, 437, 438, 439, 449, 450, 451, 452, (E½, 453, 454, 455, 456, 457, 466, 467, 469, 470, 474, 475, 476, 477, 488, 490, 491, 492, 493, 494, 495, 496, 498, 500, 501, 502, 504, 506, 507, 509, 510, 514, 515, 516, 517, 530, 531, 533, 534, 535, 537, 538, 539, 541, 542, 544, 546, 549, 550, 552, 553, 570, 571, 572, 573, 576, 577, 578, 579, 583, 584, 606, 613, 614, 615, A–1, A–2, A–6, A–7, A–9, A–14, A–19, A–20, A–21, A–22, A–23, A–24, A–31, A–36, A–37, A–39, A–40, A–41, A–43

Brazos, South Addition
A–46, A–47, A–51, A–52, A–53, A–61, A–62, A–65, A–66, A–70, A–71, A–84, A–85, A–100, A–101, A–102, A–104, A–105, A–106, A–110, A–111, A–127, A–128, A–131, A–132, A–133

Galveston
144, 151, 180, 181, 182, 189, 190, 191, 192, 209, 210, 211, 212, 213, 223, 225, 226, 238, 239, 240, 241, 242, (Landward of 8(g) Line), 243, 252, 253, 255, 256, 257, 258, 265, 266, 269, 270, 272, 273, 274, 283, 284, 285, 286, 287, 288, 289, (SW¼ NW¼ NW¼;W½ SW¼ NW¼;, SE¼ SW¼, NW¼;SW¼, SE¼ NW¼;, SW¼ W½, SE¼), 290, 291, 294, 295, (S½ NE¼, NE¼; NW¼, NE¼; W½, SW¼ NE¼;, NE¼ SW¼, NE¼; N½, SE¼ NE¼;, W½; W½, NW¼ SE¼;, S½ SE¼), 296, (NE¼; NE¼, NE¼ NW¼;, S½ NE¼, NW¼; SE¼, NW¼; S½, SW¼ NW¼;, N½ SW¼;, NE¼ SW¼, SW¼; N½, SE¼ SW¼;, N½ SE¼;, N½ SW¼, SE¼; SE¼, SE¼), 297, 298, 299, 300, 301, 303, 304, 305, 312, 313, 318, 319, 320, 321, 322, 324, 325, 326, 328, 329, 330, 331, 332, 333, 334, 343, 344, 345, 348, 349, 350, 351, 354, 356, 357, 358, 359, 360, 361, 362, 363, 379, 380, 383, 384, 386, 388, 389, 391, 392, 393, 394, 395, 418, 419, 423, 427, 428, 460, 465, 503, A–2, A–15, A–16, A–18, A–21, A–24, A–34, A–35, A–37, A–38, A–39, A–40, A–41, A–42, A–49, A–50, A–54, A–58, A–60, A–62, A–77, A–78, A–79, A–81, A–84, A–85, A–86, A–108, A–109, A–110, A–111

Galveston, South Addition
A–142, A–143, A–144, A–145, A–212

High Island
20, 21, 22, 34, 36, 47, 52, 53, 67, 68, 69, 70, 71, 73, 87, 88, 89, 90, 91, 92, 93, 97, 98, 105, 106, 108, 109, 110, 111, 113, 114, 115, 116, 117, 134, 135, (N½; N½, S½; SW¼, SW¼; W½, SE¼ SW¼;, NE¼ SE¼, SW¼; N½, S½ SE¼), 136, (E½; E½, NE¼ SW¼;, S½ SE¼, SW¼) 138, 139, 140, 141, (W½), 154, (N½), 155, (W½), 156, 160, (NE¼; NE¼, NW¼; E½, SE¼ NW¼;, N½ SE¼;, N½ SE¼, SE¼), 161, (NW¼ NE¼, NW¼; S½, NE¼ NW¼;, W½ NW¼;, SE¼ NW¼;, NE¼ NE¼, SW¼; W½, NE¼ SW¼;, NW¼ SW¼;, NW¼ SW¼, SW¼), 164, 165, 170, 171, 173, 174, 175, 176, 177, 178, 179, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 204, 206, 207, 208, 229, 230, 231, 232, 233, 234, 235, 261, 262, 263, 264, 292, A–1, A–3, A–5, A–6, A–7, A–8, A–9, A–12, A–14, A–16, A–17, A–19, A–20, A–21, A–22, A–23, A–26, A–36, A–37, A–38, A–39, A–41, A–44, A–61, A–62, A–63, A–64, A–68, A–69, A–72, A–78, A–83, A–87, A–92, A–93, A–94, A–95, A–98, A–99, A–108, A–127, A–128, A–129, A–137, A–154

High Island, South Addition
A–411, A–412, A–417, A–421, A–424, A–434, A–435, A–438, A–441, A–442, A–443, A–444, A–446, A–447, A–448, A–462, A–466, A–467, A–468, A–469, A–470, A–471, A–472, A–474, A–475, A–477, A–479, A–480, A–486, A–488, A–489, A–490, A–494, A–496, A–497, A–499, A–501, A–503, A–506, A–510, A–511, A–512, A–513, A–515, A–517, A–518, A–519, A–520, A–521, A–523, A–524, A–528, A–530, A–531, A–532, A–535, A–536, A–537, A–538, A–545, A–547, A–548, A–549, A–550, A–551, A–552, A–553, A–555, A–556, A–557, A–558, A–561, A–562, A–563, A–564, A–568, A–570, A–571, A–572, A–573, A–574, A–582, A–585, A–587, A–588, A–589, A–590, A–593, A–595, A–596

High Island, East Addition
38, 39, 45, 46, 74, 75, 76, 83, 84, 118, 120, 128, 129, 130, 166, 167, A–168, A–169, A–171, A–172, A–173, A–174, A–175, A–176, A–177, A–185, A–187, A–192, A–195, A–200, A–201, A–224, A–228, A–231, A–233, A–244, A–245, A–246, A–247

High Island, East Addition, South Extension
A–263, A–269, A–270, A–271, A–272, A–274, A–279, A–280, A–281, A–282, A–283, A–285, A–286, A–287, A–288, A–293, A–295, A–299, A–300, A–301, A–302, A–303, A–305, A–309, A–310, A–313, A–314, A–315, A–316, A–317, A–318, A–323, A–325, A–327, A–329, A–330, A–331, A–332, A–334, A–335, A–339, A–340, A–341, A–345, A–349, A–350, A–351, A–355, A–356, A–365, A–368, A–369, A–370, A–373, A–374, A–376, A–377, A–378, A–379, A–382, A–383, A–384, A–385, A–389, A–392, A–393, A–395, A–396, A–397, A–403

Sabine Pass
17, 18, 40

East Breaks
109, 110, 112, 122, 125, 154, 156, 157, 158, 159, 160, 161, 162, 165, 166, 167, 168, 169, 171, 172, 173, 209, 215, 216, 235, 236, 237, 238, 246, 254, 255, 260, 279, 280, 290, 303, 329, 330, 342, 343, 344, 345, 386, 388, 389, 392, 393, 402, 403, 430, 431, 437, 462, 473, 474, 475, 476, 477, 506, 507, 518, 520, 562, 563, 564, 565, 566, 579, 580, 593, 598, 599, 604, 605, 607, 608, 609, 623, 624, 625, 626, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 653, 654, 684, 685, 686, 688, 689, 690, 691, 692, 728, 729, 732, 739, 740, 741, 783, 784, 785, 901, 902, 904, 943, 944, 945, 946, 947, 948, 949, 988, 989, 990, 991, 992, 994

Garden Banks
34, 35, 70, 71, 72, 73, 75, 78, 80, 83, 84, 85, 102, 103, 105, 106, 117, 119, 120, 121, 122, 123, 126, 127, 128, 134, 144, 145, 147, 151, 152, 157, 158, 161, 162,

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Port Isabel

39, 40, 81, 82, 125, 126, 130, 131, 174, 175, 216, 217, 218, 481, 482, 483, 525, 526, 568, 570, 653, 654, 676

Alaminos Canyon

20, 21, 24, 25, 26, 65, 133, 192, 236, 237, 261, 280, 305, 336, 337, 380, 398, 441, 442, 485, 489, 490, 491, 533, 534, 556, 557, 558, 599, 600, 601, 602, 644, 645, 646, 647, 648, 687, 691, 719, 720, 726, 730, 731, 734, 735, 736, 763, 764, 766, 767, 770, 774, 775, 780, 781, 810, 811, 813, 814, 818, 827, 854, 856, 857, 900, 901, 903, 904, 947, 951, 954

Keathley Canyon

6, 7, 114, 133, 134, 155, 156, 157, 158, 159, 177, 178, 179, 199, 200, 201, 202, 203, 211, 212, 221, 241, 242, 243, 245, 246, 247, 255, 256, 286, 300, 324, 377, 388, 420, 421, 422, 431, 432, 465, 466, 476, 509, 512, 522, 523, 556, 557, 567, 568, 583, 584, 594, 595, 596, 600, 601, 603, 604, 638, 639, 647, 648, 649, 650, 693, 694, 695

[FR Doc. 93–18816 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–MR–F

## National Park Service

### Acadia National Park, Bar Harbor, Maine; Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. ap. 1, sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, August 30, 1993.

The Commission was established pursuant to Public Law 99–420, section 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at the Old Salt Restaurant, Swans Island, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the May 10, 1993 meeting.
2. Round Pond landowners boundary change proposal.
3. Report of the Conservation Easement Subcommittee.
4. Report of the Acquisition Subcommittee.
5. Superintendent's report.
6. Public comments.
7. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone: (207) 288–3338.

Dated: July 30, 1993.

**Herbert Olsen,**

*Acting Regional Director.*

[FR Doc. 93–18880 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–70–M

### Native American Graves Protection and Repatriation Review Committee: Meeting

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on September 20, 21, and 22, 1993, in Washington, DC.

The Committee will meet in the Maritime Commission Hearing Room, 800 North Capital Street NW, Washington DC. Meetings will begin each day at 8:30 a.m. and conclude not later than 5 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

The matters to be discussed at this meeting include development of final regulations implementing the statute.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–suite 210, Washington, DC. 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street Washington, DC.

Dated: July 15, 1993.

**Francis P. McManamon,**

*Departmental Consulting Archeologist and, Chief, Archeological Assistance Division.*

[FR Doc. 93–18822 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–70–F

### Subury, Assabet and Concord Rivers Study Committee; Meetings

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1 Section 10), that there will be two upcoming meetings of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, August 26, 1993 and Thursday, September 23, 1993.

the Committee was established pursuant to Public Law 101-628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5 (a) (110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the

National Wild and Scenic Rivers System.

The August 26, 1993 meeting will be held at 7:30 p.m. at Great Meadows National Wildlife Refuge Headquarters, Weir Hill Road, Sudbury, Massachusetts. (Directions: From South—take Route 27 to Water Row Road in Sudbury, turn right at end on to Lincoln Road, left on Weir Hill Road, follow signs to Great Meadows Headquarters. From North—from Concord Road turn left on Lincoln Road in Sudbury, left on Weir Hill Road, follow signs to Great Meadows Headquarters.)

**Agenda—August 26, 1993**

I. Welcome, introductions, and approval of minutes from 7/22/93 meeting
II. Brief questions and comments from public
III. Subcommittee Reports—Subcommittee Chairs
  A. Water Resources Subcommittee: Water Resources Study
  B. River Conservation Planning Subcommittee
  C. Public Participation Subcommittee
IV. Discussion — Study Schedule and Town Meeting Approach
V. Discussion — Issues of Local Concern
VI. Opportunity for public questions and comments
VII. Other Business
  A. Next meeting dates and locations.

The September 23, 1993 meeting will be held at 7:30 p.m. at Lincoln Town Hall, Lincoln, Massachusetts. (Directions: Lincoln Town Hall is located on the south side of Lincoln Road, approximately 0.2 miles southwest of the 5-way intersection of Bedford, Trapelo, Weston, Lincoln, and Sandy Pond roads. From Route 2, take Bedford Road south to the 5-way intersection. Town Hall is straight ahead on the left hand side of Lincoln Road. From Route 117, take Tower or Lincoln Road north. Town Hall is on the right, just past the Post Office on the other side of the road.)

**Agenda—September 23, 1993**

I. Welcome, introductions, and approval of minutes from 8/26/93 meeting
II. Brief questions and comments from public
III. Subcommittee Reports—Subcommittee Chairs
  A. Water Resources Subcommittee; Water Resources Study
  B. River Conservation Planning Subcommittee
  C. Public Participation Subcommittee
IV. Discussion — What Good is Designation?
V. Discussion — Issues of Local Concern
VI. Opportunity for public questions and comments
VII. Other Business
  A. Next meeting dates and locations.

Dated: July 30, 1993.

**Herbert Olsen,**

*Acting Regional Director.*

[FR Doc. 93–18821 Filed 8–5–93; 8:45 am]

BILLING CODE 4310–70–M

## INTERAGENCY ENVIRONMENTAL TECHNOLOGY EXPORT GROUP

### Environmental Technology Development and Export "Stakeholder" Meetings

**SUMMARY:** The U.S. Department of Commerce (DOC), the U.S. Department of Energy (DOE), the Environmental Protection Agency (EPA) (FRL 4688–60) and the White House Office of Science and Technology Policy announce a series of public "stakeholder" meetings to solicit input from the environmental technology and services industry (developers, vendors, services providers, and exporters), the users of environmental technology and services, the investment community, government organizations, and the general public on a Federal export promotion strategy that is under development for environmental technologies and services. This initiative will include steps to strengthen the domestic environmental technology industry. Three meetings will be held:

1. August 25, 1993. Los Angeles, California. Address: Los Angeles Airport Marriott Hotel, 5855 West Century Boulevard, Los Angeles, CA 9 a.m.–5:30 p.m.
2. August 31, 1993. Dallas, Texas. Address: EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor Suite, Dallas, TX 75202–2733. 9 a.m.–5:30 p.m.
3. September 2, 1993. Boston, Massachusetts. Environmental Protection Agency: Region 1. Address: John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203. 9 a.m.–5:30 p.m.

Written comments will also be accepted.

*Discussion*

On Earth Day, the President asked an interagency committee with representatives from the U.S. Department of Commerce (DOC), the U.S. Department of Energy (DOE), the Environmental Protection Agency (EPA), and other relevant agencies to develop an export promotion initiative for U.S. environmental technologies and services. This initiative will include steps to strengthen the domestic environmental technology industry, allowing U.S. firms to meet domestic environmental objectives and compete more effectively in international markets. the Federal agencies are examining several topics in developing their recommendations:

1. The process of developing and commercializing environmental technologies and the barriers to success.
2. The process of developing businesses that provide environmental technology and services and the barriers to their success.
3. The need for government to support potential exporters of environmental technologies and services.
4. The needs for in-country support to exporters.
5. Public/private efforts to develop overseas markets for U.S. environmental firms.

The Federal agencies will submit their proposals to the President this Fall. These proposals will capture the best opportunities for the U.S. government to support export promotion in the environmental technology and services areas.

The Federal agencies are seeking public comment from all involved "stakeholders". The Federal agencies invite individuals, firms, and other organizations to provide statements for the public meetings. Written comments for the record will also be accepted. Appropriate statements should include at least the following information:

1. The name, relevant affiliation, address, and phone and fax numbers for the respondent.
2. Comments about any of the five topics listed above that the respondent believes affect the development of commercial environmental technologies and the domestic and international operations of U.S. environmental businesses.
3. Suggestions of important opportunities for the government to assist the growth of a strong domestic environmental industry and exports of environmental technologies and services.
4. Illustration of the significance of these comments and suggestions using specific, real case studies, based on the direct experience of the potential respondent, that of their organization, or that of their clients or other associates.

Members of the public wishing to make comments at any of the meetings are invited to identify themselves in writing to Dr. Kathryn D. Sullivan, Chief Scientist of the National Oceanic and Atmospheric Administration of the Department of Commerce, by August 20, 1993, for the Los Angeles public meeting and by August 27, 1993, for the Dallas and Boston public meetings. It is requested that respondents provide a summary of their comments by the appropriate date and a complete text, if possible. Please send requests to make a presentation to Dr. Kathryn D. Sullivan, c/o Jonathan Menes, Department of Commerce, International Trade Administration, room 2815

(H2815/ITA), 14th and Constitution Avenue, NW., Washington, DC 20230.

The "stakeholder" meetings will be open to the public. It is hoped that time will be found for all respondents to make presentations at the meeting and for all questions to be answered. Priority for making oral presentations may be given to those submitting written comments to ensure that all four criteria listed above are adequately discussed. More time may be given to presentations consolidating the views of a number of potential respondents.

The written record will remain open until September 6, 1993. All written comments will be received and reviewed by the responsible representatives of the Federal agencies. Please send written comments to Kathyrn D. Sullivan, c/o Jonathan Menes, Department of Commerce, International Trade Administration, room 2815 (H2815/ITA), 14th and Constitution Avenue, NW., Washington, DC 20230.

Additional information may be obtained from Jonathan Menes by calling 202–482–5145 or by written request sent by fax to 202–482–4614 or by mail to the above address.

Dated: July 30, 1993.

**Dr. Kathryn D. Sullivan,**

*Chairperson.*

[FR Doc. 93–18773 Filed 8–5–93; 8:45 am]

BILLING CODE 6820–60–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–658 (Preliminary)]**

### Class 150 Stainless Steel Threaded Pipe Fittings From Taiwan

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution and scheduling of a preliminary antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–658 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of class 150 stainless steel threaded pipe fittings,[1] provided for in subheadings 7307.19.90, 7307.22.10, 7307.22.50, and 7307.29.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 16, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** August 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**SUPPLEMENTARY INFORMATION:**

**Background.**

This investigation is being instituted in response to a petition filed on August 2, 1993, by Alloy Stainless Products, Totawa NJ; and Capitol Manufacturing Company, Columbus, OH.

*Participation in the Investigation and Public Service List.*

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

*Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List*

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants 3 under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference*

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on August 23, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than August 19, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written Submissions*

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 26, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

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[1] For purposes of this investigation, class 150 stainless steel threaded pipe fittings are defined as cast or forged stainless steel products used to connect pipe sections in piping systems where conditions require non-permanent, threaded connections and the ability to withstand normal pressure service (150 pounds per square inch (psi) at 350°F and 300 psi at 20 to 150°F) as well as resistance to corrosion or extreme temperatures, or prevention of metallic contamination to materials in the system. These fittings are generally used for process piping systems such as those in chemical, pharmaceutical, food processing, waste treatment and paper production facilities.

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: August 3, 1993.

By order of the Commission.

Donna R. Koehnke,

*Secretary*

[FR Doc. 93–19078 Filed 8–5–93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337–TA–343]

## Commission Determination to Review and Remand an Initial Determination Terminating the Investigation as to Respondent A.R. Hutchings on the Basis of a Proposed Consent Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

In the Matter of certain mechanical gear couplings and components thereof.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review and remand the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 17) which terminated the above-captioned investigation on the basis of, inter alia, a proposed consent order.

**FOR FURTHER INFORMATION CONTACT:** Katherine M. Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3097.

**SUPPLEMENTARY INFORMATION:** On April 15, 1993, complainant Kop-Flex, Inc. (Kop-Flex) and respondents K-Power Products, Inc. (K-Power) and A.R. Hutchings filed a joint motion to terminate the investigation on the basis of a proposed consent order, consent order agreement, and settlement agreements. The Commission investigative attorney supported the motion. On June 25, 1993, the presiding ALJ issued an ID (Order No. 17) terminating the investigation on the basis of the proposed consent order. No petitions for review, or agency or public comments were filed.

The Commission has determined to review and remand the ID to the ALJ for further proceedings consistent with the Commission's Order. The basis for the Commission's review and remand of the ID is that the proposed consent order directed to Hutchings is ambiguous, and may be extraterritorial in scope and thus exceed the Commission's jurisdiction.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337) and Commission interim rule 210.55 (19 CFR 210.55).

Copies of the Commission's Order, the nonconfidential version of the ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

Issued: July 30, 1993.

By order of the Commission.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 93–18803 Filed 8–5–93; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

**BACKGROUND:** The Department of Labor (DOL), in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

**LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW:** As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

**COMMENTS AND QUESTIONS:** Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202)395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

*New*

Employment and Training Administration
Unemployment Insurance Core Revenue Quality Control Program Annually
State or local governments
52 respondents; 2,266.3846 hours per response; 117,852 total hours

Core Revenue Quality Control is the States' and DOL's main vehicle for assessing the essential quality dimension (accuracy, timeliness, completeness) of tax processing functions. Findings will be used to improve UI operations and assist DOL in oversight, technical assistance, and policy development.

*New*

Employment and Training Administration
Compendium of State Unemployment Insurance Operations, Organizations and Relationship
Every three years
State or local governments
53 respondents; 3 hours per response; 159 total hours

The Unemployment Insurance Service (UIS) has a need to know how each of the 53 State Employment Security Agencies (SESAs) uniquely operate in specific areas, linkages with other programs and how UI activity areas are

managed. No current reporting mechanism exists to gather this information.

*Extension*

Departmental Management—President's Committee on Employment of People with Disabilities
Job Accommodation Network (JAN)
1225–0022
On occasion

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations 4,500 respondents; 30 minutes per response; 2,250 total hours; 1 form.

The President's Committee on Employment of People with Disabilities has established the Job Accommodation Network (JAN) to provide information on possible accommodations to employers and others desiring to hire, retain, or promote persons with disabilities within the work setting. Continued use of this information collection will enhance the effectiveness of JAN's information resources which may be accessed by representatives of business, rehabilitation professionals, and other service providers for the purpose of identifying accommodations which will assist persons with disabilities in obtaining/maintaining employment.

*Extension*

Employment and Training Administration
Trade Adjustment Assistance (TAA Financial Status/Request Funds Report)
1205–0275, ETA 9023
Quarterly
State or local governments

50 respondents; 2 hours per response; 5 average responses per year; 500 total hours; 1 form.

The Department of Labor requires financial data for the Trade Adjustment Assistance (TAA) program administered by States which are not available from the Standard Form 269A. The required data are necessary in order to meet statutory requirements prescribed in Public Law 100–418, the Omnibus Trade and Competitiveness Act of 1988.

*Extension*

Employment and Training Administration
Labor Condition Application for H–1B Nonimmigrants 1205–0310; ETA 9035
Other

Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations

| Form No. | Respondents | Average time per response | Burden hours |
|---|---|---|---|
| ETA 9035 | 50,000 | 1 hour | 50,000 |
| Complaints | 200 | 15 minutes | 50 |
| 50,050 total hours | | | |

The information provided on the ETA 9035 by employers seeking to use aliens in specialty occupations on H–1B visas will permit the DOL to meet Federal responsibilities for program administration, management and oversight.

*Extension*

Mine Safety and Health Administration
Alternative Mine Rescue Capability for Small and Remote Mines and Mines with Special Mining Conditions
1219–0078
On occasion
Businesses or other for-profit; Small businesses or organizations
25 respondents; 2 hours per response; 50 total hours

If an underground mine is small and remote or is operating under special mining conditions, the operator may apply for permission to provide alternative mine rescue capability. The intent of the regulation is to establish the best possible rescue response available under the circumstances.

*Extension*

Employment and Training Administration
Unemployment Insurance Self-Employment Demonstration
1205–0314
Annually
Individuals or households

| Title | Respondents | Estimated time per response | Burden hours |
|---|---|---|---|
| First Followup | 500 | 33 minutes | 275 |
| Second Followup | 300 | 28 minutes | 140 |
| 415 total hours | | | |

The DOL is evaluating two experimental demonstration projects that test self-employment as a strategy to assist unemployment insurance claimants to return to work. Approval is sought to extend the information collection period to complete the evaluation of these demonstration projects.

*Revision*

Bureau of Labor Statistics
Occupational Compensation Survey
1220–0007
State or local governments; Businesses or other for-profit; Nonprofit institutions; Small businesses or organizations

| Form No. | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|
| 2751A | 25,900 | Annual or biennial | 5 |
| 2751A-Cont | 6,720 | Every 4 or 5 years | 15 |

| Form No. | Respondents | Frequency | Average time per response (minutes) |
|---|---|---|---|
| 2752A | 6,720 | Every 2 or 4 years | 10 |
| 2752B | 19,180 | Every 1 to 4 years | 15 |
| 2753F | 15,540 | Every 1 to 4 years | 60 |
| 2753G | 14,300 | Every 2 to 4 years | 90 |
| 2753GAF | 600 | Every 1 to 2 years | 5 |
| 43,024 total hours | | | |

Survey results are needed for a variety of Federal and non-Federal purposes, including administration of the Federal Employees Pay Comparability Act and the Service Contract Act. Results are used for compensation administration, negotiations and mediation proceedings, plant location decisions, and for responding to information requests from the general public.

Signed at Washington, DC this 3rd day of August, 1993.

Kenneth A. Mills,

*Departmental Clearance Officer.*

[FR Doc. 93-18837 Filed 8-5-93; 8:45 am]

BILLING CODE 4510-87-P

## Employment Standards Administration

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

### Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in title 29 of the Code of Federal Regulations, part 1, § 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

*Volume I*

Wage Decision No. AL930023

Pursuant to the Regulations, 29 CFR part 1, § 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

### New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

*Volume I*

New York
- NY930035 (Aug. 6, 1993)
- NY930037 (Aug. 6, 1993)
- NY930038 (Aug. 6, 1993)
- PA930034 (Aug. 6, 1993)
- PA930035 (Aug. 6, 1993)
- PA930036 (Aug. 6, 1993)
- PA930037 (Aug. 6, 1993)

*Volume II*

Iowa
- IA930030 (Aug. 6, 1993)

Kansas
- KS930027 (Aug. 6, 1993)
- KS930028 (Aug. 6, 1993)
- KS930029 (Aug. 6, 1993)

Louisiana
- LA930018 (Aug. 6, 1993)
- LA930019 (Aug. 6, 1993)

LA930020 (Aug. 6, 1993)
LA930021 (Aug. 6, 1993)
LA930022 (Aug. 6, 1993)
LA930023 (Aug. 6, 1993)
LA930024 (Aug. 6, 1993)
LA930025 (Aug. 6, 1993)
LA930026 (Aug. 6, 1993)
LA930027 (Aug. 6, 1993)
LA930028 (Aug. 6, 1993)
LA930029 (Aug. 6, 1993)
LA930030 (Aug. 6, 1993)
LA930031 (Aug. 6, 1993)

*Volume III*

Alaska
AK930002 (Aug. 6, 1993)
AK930003 (Aug. 6, 1993)
Montana
MT930009 (Aug. 6, 1993)
MT930010 (Aug. 6, 1993)
MT930011 (Aug. 6, 1993)
MT930012 (Aug. 6, 1993)
MT930013 (Aug. 6, 1993)
MT930014 (Aug. 6, 1993)
MT930015 (Aug. 6, 1993)
MT930016 (Aug. 6, 1993)
MT930017 (Aug. 6, 1993)
MT930018 (Aug. 6, 1993)
MT930019 (Aug. 6, 1993)
MT930020 (Aug. 6, 1993)
Wyoming
WY930012 (Aug. 6, 1993)
WY930013 (Aug. 6, 1993)
WY930014 (Aug. 6, 1993)
WY930015 (Aug. 6, 1993)
WY930016 (Aug. 6, 1993)
WY930017 (Aug. 6, 1993)
WY930018 (Aug. 6, 1993)
WY930019 (Aug. 6, 1993)
WY930020 (Aug. 6, 1993)
WY930021 (Aug. 6, 1993)
WY930022 (Aug. 6, 1993)

**Modification to General Wage Determination Decisions**

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

*Volume I*

Alabama
AL930023 (Feb. 19, 1993)
Florida
FL930017 (Feb. 19, 1993)
Maryland
MD930001 (Feb. 19, 1993)
Pennsylvania
PA930001 (Feb. 19, 1993)
PA930004 (Feb. 19, 1993)

*Volume II*

Arkansas
AR930003 (Feb. 19, 1993)
AR930006 (Feb. 19, 1993)
Kansas
KS930006 (Feb. 19, 1993)
KS930007 (Feb. 19, 1993)
KS930009 (Feb. 19, 1993)
KS930010 (Feb. 19, 1993)
KS930011 (Feb. 19, 1993)
KS930012 (Feb. 19, 1993)
KS930013 (Feb. 19, 1993)
KS930019 (Feb. 19, 1993)
KS930021 (May 7, 1993)
KS930022 (May 28, 1993)
KS930023 (Jul. 2, 1993)
KS930026 (Jul. 16, 1993)
Louisiana
LA930005 (Feb. 19, 1993)
Texas
TX930001 (Feb. 19, 1993)
TX930018 (Feb. 19, 1993)

*Volume III*

Alaska
AK930001 (Feb. 19, 1993)
California
CA930001 (Feb. 19, 1993)
CA930002 (Feb. 19, 1993)
CA930004 (Feb. 19, 1993)
Colorado
CO930014 (Feb. 19, 1993)
Idaho
ID930001 (Feb. 19, 1993)
ID930002 (Feb. 19, 1993)
Montana
MT930001 (Feb. 19, 1993)
Oregon
OR930001 (Feb. 19, 1993)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 30th day of July 1993.

**Alan L. Moss,**

*Director, Division of Wage Determinations.*

[FR Doc. 93–18628 Filed 8–5–93; 8:45 am]

BILLING CODE 4510–27–M

## Employment and Training Administration

### Advisory Council on Unemployment Compensation; Hearing

**SUMMARY:** The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992, Federal Register, February 3, 1992, pg. 4067). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program; and to make recommendations for improvement. The Council has also been directed to focus on specific subjects such as the use of regional or sub-state triggers for the Extended Benefit (EB) program, the work search requirement for the EB program, and eligibility and unemployment coverage for alien agricultural labor.

**TIME AND PLACE:** The hearing will be held from 9:30 a.m. to 4 p.m. on September 20, 1993 at the Southland Center Hotel, Seminar Theater, 400 N. Olive Street, Dallas, Texas.

**PUBLIC PARTICIPATION:** The hearing will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Handicapped individuals should contact the Designated Federal Official (DFO), listed below, if special accommodations are needed.

**SUBMITTING WRITTEN STATEMENTS:** Individuals or organizations wishing to submit written statements should send fifteen (15) copies to Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. Statements must be received not later than September 7, 1993.

**PRESENTING ORAL STATEMENTS:** Individuals or organizations wishing to present oral statements should send a written request to Ellen S. Calhoun, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4206 Washington, DC 20210. Requests for presenting oral statements should indicate a preferred time slot (either morning or afternoon) and the

request must contain a daytime phone number. All such requests must be received not later than September 7, 1993.

**FOR ADDITIONAL INFORMATION CONTACT:** Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. (202) 219–7831.

Signed at Washington, DC, this 29th day of July 1993.

**Carolyn M. Golding,**

*Acting Assistant Secretary.*

[FR Doc. 93–18835 Filed 8–5–93; 8:45 am]

BILLING CODE 4510-30-M

## Advisory Council on Unemployment Compensation; Meeting

**SUMMARY:** The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992, **Federal Register**, February 3, 1992, pg. 4067). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program; and to make recommendations for improvement. The Council has also been directed to focus on specific subjects such as the use of regional or sub-state triggers for the Extended Benefit (EB) program, the work search requirement for the EB program, and eligibility and unemployment coverage for alien agricultural labor.

**TIME AND PLACE:** The meeting will be held from 9:30 a.m. to 5 p.m. on September 21, 1993 at the Southland Center Hotel, North Section of Ballroom, 400 N. Olive Street, Dallas, Texas.

**AGENDA:** The agenda for the meeting is as follows:

(1) Introduction of new Council members.

(b) Review of the priorities established at the May 11, 1993 meeting of the Council.

(c) Discussion of the reasons for the decline in the Insured Unemployment Rate and the policy implications.

(d) Discussion of the Extended Benefit Program.

(e) Discussion of the state of Unemployment Compensation Financing.

(f) Discussion of issues and determination of priorities for additional review and research.

**PUBLIC PARTICIPATION:** The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Handicapped individuals should contact the Designated Federal Official (DFO), listed below, if special accommodations are needed.

**FOR ADDITIONAL INFORMATION CONTACT:** Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4231, Washington, DC 20210. (202) 219–7831.

Signed at Washington, DC, this 29th day of July 1993.

**Carolyn M. Golding,**

*Acting Assistant Secretary.*

[FR Doc. 93–18836 Filed 8–5–93; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, 5 U.S.C., App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Preservation. In accordance with Executive Order 12838, the Office of Management and Budget has approved the continuation of this agency-established committee. This notice informs of the renewal of the Advisory Committee on Preservation for a period not to extend beyond July 13, 1995.

The Archivist of the United States has determined that the renewal of this Advisory Committee is in the public interest. The Committee Management Secretariat, General Services Administration has concurred with the renewal. The Advisory Committee provides NARA with expert knowledge and valuable advice on technical preservation issues, including emerging preservation problems and technologies for a variety of media. NARA uses the Advisory Committee's recommendations as it fulfills its mandate to preserve the permanently valuable records of the Federal Government.

Dated: July 29, 1993.

**Trudy Huskamp Peterson,**

*Acting Archivist of the United States.*

[FR Doc. 93–18789 Filed 8–5–93; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Challenge and Advancement Advisory panel (Dance Challenge Section) to the National Council on the Arts will be held on August 26, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. for introductions.

The remaining portion of this meeting from 10 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meeting, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 2, 1993.

Yvonne M. Sabine,

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–18785 Filed 8–5–93; 8:45 am]

BILLING CODE 7537–01–M

### Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Presenting and Commissioning Advisory Panel (Presenting Organizations Section A) to the National Council on the Arts will be held on August 24–27, 1993. The panel will meet from 8:30 a.m. to 7 p.m. on August 24–26, 1993 and from 8:30 a.m. to 5 p.m. on August 27, 1993. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 9 a.m. on August 25–27, 1993 and from 2 p.m. to 5 p.m. on August 27, 1993 for guidelines and policy discussion.

The remaining portions of this meeting from 8:30 a.m. to 7 p.m. on August 24, 1993, from 9 a.m. to 7 p.m. on August 25–26, 1993, and from 9 to 2 p.m. on August 27, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 3, 1993.

Yvonne M. Sabine,

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–18783 Filed 8–5–93; 8:45 am]

BILLING CODE 7537–01–M

### Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Presenting and Commissioning Advisory Panel (Presenting Organizations Section B) to the National Council on the Arts will be held on August 31–September 3, 1993. The panel will meet from 9 a.m. to 7 p.m. on august 31, 1993, from 8:30 a.m. to 6 p.m. on September 1–2, 1993, and from 8:30 a.m. to 5 p.m. on September 3, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 8:30 a.m. to 9 a.m. on September 1–3, 1993, and from 2 p.m. to 5 p.m. on September 3, 1993 for policy and guidelines discussion.

The remaining portions of this meeting from 9 a.m. to 7 p.m. on August 31, 1993, from 9 a.m. to 6 p.m. on September 1–2, 1993, and from 9 a.m. to 2 p.m. on September 3, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: August 2, 1993.

Yvonne M. Sabine,

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–18784 Filed 8–5–93; 8:45 am]

BILLING CODE 7537–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Graduate Education and Research Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Graduate Education and Research Development.

*Date and Time:* August 20–23, 1993; a.m. to 5 p.m. each day.

*Place:* Holiday Inn, Governors' House; Rhode Island Avenue at 17th Street, NW., Washington, DC.

*Type of meeting:* Closed.

*Contact person:* Dr. Roosevelt Y. Johnson, Program Director, Graduate Education and Research Development, rm. 1202, NSF, Washington, DC 20550. Telephone: (202) 357–9453.

*Purpose of meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Graduate Research Traineeship proposals as part of the selection process for awards.

*Reasons for closing:* The proposals being reviewed including information of a proprietary or confidential nature, including technical information; financial; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 25, 1993.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 93–18778 Filed 8–5–93; 8:45 am]

BILLING CODE 7555–01–M

### Special Emphasis Panel in Industrial Innovation Interface; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), The National Science Foundation announces the following meeting:

*Name:* Special Emphasis in Industrial Innovation Interface.

*Date and time:* August 26, 1993: 8:30 a.m. to 5 p.m.

*Place:* Rooms 500 A & B, National Science Foundation, 1110 Vermont Avenue NW., Washington, DC

*Type of meeting:* Closed.

*Contact person:* Dr. Richard I. Schoen, Deputy Division Director of Industrial Innovation Interface, 1110 Vermont Avenue NW., rm. V–502, Washington, DC 20550. Telephone (202) 653–5202.

*Purpose of meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluation proposals for the Small Business Innovation Research Program.

*Reason for closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: July 30, 1993.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 93–18793 Filed 8–5–93; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in MIPS Division; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Microelectronic Information Processing Systems.

*Date and time:* August 27, 1993, 8:30 a.m. to 5 p.m.

*Place:* Room 414, 1800 G St. NW., Washington, DC 20550.

*Type of Meeting:* Closed.

*Contact person:* Dr. Robert B. Grafton, Program Director, MIPS Division, room 414, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7853.

*Purpose of meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate SBIR Phase I proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 2, 1993.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 93–18779 Filed 8–5–93; 8:45 am]

BILLING CODE 7555–01–M

## Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Polar Programs.

*Date and time:* September 1–2, 1993; 8 a.m. to 6 p.m.

*Place:* Room 1243, National Science Foundation, 1800 G Street, NW., Washington, DC.

*Type of meeting:* Closed.

*Contact person:* Polly A. Penhale, Program Manager, OPP, room 620, Telephone: (202) 357–7894.

*Purpose of meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Polar Biology and Medicine proposals as part of the selection process for awards.

*Reason for closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 2, 1993.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 93–18780 Filed 8–5–93; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

## Houston Lighting & Power Co., South Texas Project, Unit Nos. 1 and 2; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of appendix A to 10 CFR part 20 in response to a request filed by the Houston Lighting & Power Company (the licensee) for the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

### Environmental Assessment

*Identification of Proposed Action*

The proposed action would grant an exemption from a requirement in footnote d-2(c) in appendix A to 10 CFR part 20 related to protection factors for respiratory protective devices. The footnote requires that no allowance is to be made for the use of sorbents against radioactive gases or vapors. The exemptions would allow the use of a radioiodine protection factor of 50 for certain respiratory protection canisters used by workers at the licensee's facility.

The proposed action is in accordance with the licensee's request for exemption dated December 19, 1991, and supplemented by letter dated July 1, 1993.

*The Need for the Proposed Action*

The proposed exemption is needed because the use of the sorbent canisters described in the licensee's request can potentially reduce the time required to complete those tasks that require the use of respiratory protection devices, thereby minimizing the amount of radiation exposure to plant operating personnel.

*Environmental Impacts of the Proposed Action*

The proposed exemption will most likely reduce the work effort and occupational exposure from some tasks at South Texas. The utilization of air purifying respirators in lieu of air-supplied or self-contained apparatuses, where possible, can result in person-rem reductions estimated overall at 25 percent for tasks requiring radioiodine protection. The light weight, less cumbersome air purifying respirators (i.e., sorbent canisters) can provide increased comfort and mobility in most cases, and result in increased worker efficiency and decreased time on-the-job.

With regard to potential radiological impacts to the general public, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect the potential for, or consequences of, radiological accidents and does not affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impact, the proposed exemption involves systems located entirely within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts

associated with the proposed exemption.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental impacts that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts as a result of plant operations.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the South Texas Project, Units 1 and 2, dated August 1986.

*Agencies and Persons Contacted*

The NRC staff reviewed the licensee's requests. The staff consulted with the State of Texas regarding the environmental impact of the proposed action.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated December 19, 1991, supplemented July 1, 1993, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555, and at Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Dated at Rockville, Maryland, this 30th day of July 1993.

For the Nuclear Regulatory Commission.

**Suzanne C. Black,**

*Director, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93-18833 Filed 8-5-93; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-315 and 50-316]**

**Corrected Exemption**

In the Matter of Indiana Michigan Power Company (Donald C. Cook Nuclear Plant Units 1 and 2).

I

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License Nos. DPR-58 and DPR-74 which authorize operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 at steady-state reactor power levels not in excess of 3250 and 3411 megawatts thermal, respectively. The Donald C. Cook facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan. These licenses provide, among other things, that they are subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Paragraph III.D.2(b)(ii) of appendix J of 10 CFR part 50 requires, in part, that a full pressure air lock leakage test be performed whenever air locks are opened during periods when containment integrity is not required by the plant's Technical Specifications.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

III

By letter dated December 21, 1992, the licensee requested an Exemption from certain requirements of 10 CFR part 50, appendix J. On July 16, 1993, the Commission granted the requested Exemption which was published in the **Federal Register** on July 23, 1993 (58 FR 39583). The Exemption issued on July 16, 1993, included two typographical errors. This Exemption corrects those errors and supersedes the July 16, 1993 Exemption.

In its letter dated December 21, 1992, the licensee requested an Exemption from the requirement of 10 CFR part 50, appendix J, III.D.2(b)(ii) identified in section II above, and substitution of an air lock door seal leakage test (paragraph III.D.2(b)(iii) of appendix J, 10 CFR part 50) for the full pressure air lock test otherwise required by paragraph III.D.2(b)(ii) when the air lock is opened while the reactor is in cold shutdown (Mode 5) or refueling (Mode 6), if no maintenance has been performed on the air lock that could affect its sealing capability. The exemption would also allow the door seal leakage rates test of III.D.2(b)(iii) to be used when the maintenance affecting the air locks sealing capability was performed only on the door gaskets. That is, door seal testing will be done after each opening, after maintenance which could affect the air lock door gaskets, and prior to establishing containment integrity. If maintenance that could affect sealing capability has been performed on an air lock, other than the door gaskets, a full pressure air lock tests must still be performed.

If an air lock is opened during Modes 5 and 6, paragraph III.D.2(b)(ii) of appendix J requires that an overall air lock leakage test at not less than the calculated peak containment pressure from a design-basis LOCA (Pa) be conducted before plant heatup and startup (i.e., entering Mode 4). The existing air lock doors are so designed that a full-pressure (i.e., Pa=12.0 psig) test of an entire air lock can only be performed after strongbacks (structural bracing) have been installed on the inner door. Strongbacks are needed because the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. Installing strongbacks, performing the test, and removing strongbacks requires at least 8 hours per air lock (there are two air locks) during which access through the air lock is prohibited.

If the periodic 6-month test of paragraph III.D.2(b)(i) of appendix J and the test required by paragraph III.D.2(b)(iii) of appendix J are current, no maintenance (other than to door gaskets) has been performed on the air lock that could affect its sealing capability, and the air lock is properly sealed, there is no reason to expect the air lock to leak excessively just because it has been opened in Mode 5 and Mode 6.

Accordingly, the Commission concludes that the licensee's proposed approach of substituting the seal leakage test of paragraph III.D.2(b)(iii) for the pressure test of paragraph III.D.2(b)(ii) of appendix J is acceptable following door gasket maintenance and/or prior to entering Mode 4. Furthermore, the licensee has committed to meet the requirements of paragraph III.D.2(b)(ii) of appendix J whenever other maintenance that could affect sealing capability has been performed on the air lock.

The special circumstances for granting this exemption pursuant to 10 CFR 50.12 have also been identified. The purpose of paragraph III.D.2(b)(ii) is to ensure that air locks are properly sealed when containment integrity is required. The proposed alternative test method is sufficient to achieve this underlying purpose in that it provides adequate assurance of continued leak

tight integrity of the air lock. Consequently, the special circumstances described by 10 CFR 50.12(a)(2)(ii) and (iii) exist in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensee has proposed an acceptable alternative test method that accomplishes the intent of the regulation. Compliance would result in undue hardship that would be significantly in excess of that contemplated when the regulation was adopted in that plant startup would be delayed while an overall air lock leakage test was performed at full pressure. The effort and delay required is not warranted by the resulting safety benefit.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption as described in Section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) and (iii) are present justifying the exemption.

Therefore, the Commission hereby grants the exemption as described in Section III above from 10 CFR part 50, appendix J, III.D.2(b)(ii).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (58 FR 35984).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of July.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Acting Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.*

[FR Doc. 93-18832 Filed 8-5-93; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meeting

The Federal Prevailing Rate Advisory Committee meeting scheduled for August 16, 1993, has been canceled.

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, Aug. 26, 1993
Thursday, Sept. 9, 1993
Thursday, Sept. 23, 1993

The meetings will start at 10:45 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, DC

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street NW., Washington, DC 20415, (202) 606-1500.

Dated: July 23, 1993.

**Anthony F. Ingrassia,**

*Chairman, Federal Prevailing Rate, Advisory Committee.*

[FR Doc. 93-18772 Filed 8-5-93; 8:45 am]

BILLING CODE 6325-01-M

## POSTAL SERVICE

### Change to the Domestic Mail Classification Schedule Regarding Prebarcoding of Letter-Size Mail

**AGENCY:** Postal Service.

**ACTION:** Notice of implementation of a change to the domestic mail classification schedule.

**SUMMARY:** This gives notice that the Domestic Mail Classification Schedule is amended to provide that First-, second-, and third-class letter-size mail must bear a barcode as prescribed by the Postal Service to qualify for pre-barcoded rates.

**EFFECTIVE DATE:** August 11, 1993.

**FOR FURTHER INFORMATION CONTACT:** Grayson M. Poats, (202) 268-2981.

**SUPPLEMENTARY INFORMATION:** On November 9, 1992, pursuant to 39 U.S.C. 3623, the Postal Service filed with the Postal Rate Commission a Request for a Recommended Decision on Pre-barcoded Letter Mail Requirements, PRC Docket No. MC93-2, requesting that the Domestic Mail Classification Schedule (DMCS) be changed to re-define prebarcoded letter-size mail as mail "which bears a barcode as prescribed by the Postal Service." The Postal Service's Request also included a number of stylistic, non-substantive changes. The Postal Rate Commission published a notice in the Federal Register on November 20, 1992 (57 FR 54866) describing the request and offering interested parties an opportunity to intervene.

On March 5, 1993, the Postal Service published notice that the DMCS change it had requested would be placed into effect on a temporary basis, pursuant to 39 U.S.C. 3641(e) and as authorized by the Board of Governors of the Postal Service in Resolution No. 93-3 (March 1, 1993). The temporary change took effect at 12:01 a.m. on March 21, 1993, (58 FR 12605).

On July 13, 1993, the Postal Rate Commission issued an Opinion and Recommended Decision in Docket No. MC93-2. The Commission approved the Postal Service's Request, with minor modifications, and recommended amending the DMCS to re-define pre-

barcoded letter-size mail as mail which bears a barcode "representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service."

On August 2, 1993, the Governors of the Postal Service, pursuant to their authority under 39 USC 3625, approved the Recommended Decision of the Postal Rate Commission in Docket No. MC93–2. The Board of Governors of the Postal Service, pursuant to their authority under 39 U.S.C. 3625(f), determined to implement the DMCS changes approved by the Governors effective at 12:01 a.m. on August 11, 1993 (Resolution No. 93–9).

In accordance with the Decision of the Governors and Resolution No. 93–9, sections 100.0204, 100.0214, 100.031, 100.043, 100.047, 100.100, 200.095, 300.0232, 300.0235, and 300.0236 of the DMCS will be amended to read as follows effective at 12:01 a.m. on August 11, 1993:

**Classification Schedule 100—First-Class Mail**

* * * * *

100.0204 Pre-barcoded Presorted Mail

Prebarcoded presorted mail is First-Class Mail presented in mailings of 500 or more pieces presorted to three- or five-digit ZIP Codes or both, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service, and which meets the preparation requirements in section 100.047.

* * * * *

100.0214 Pre-barcoded Rate Category Post Cards

A pre-barcoded rate category post card is a privately printed mailing card for the transmission of messages which meets the eligibility and preparation requirements in sections 100.0211b, 100.043, and 100.047.

a. Double post cards may be mailed at the pre-barcoded rate for post cards. A double post card consists of two attached cards, one of which may be detached by the receiver and returned by mail as a single post card.

b. Pre-barcoded rate category post cards must:

i. Bear a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service.

ii. Be presented in mailings of 500 or more pieces.

iii. Meet machinability criteria as prescribed by the Postal Service but may not exceed any of the following dimensions:

(1) Length not greater than 6 inches;

(2) Width not greater than 4¼ inches; or

(3) Thickness not greater than 0.0095 inch and uniform.

iv. Meet addressing specifications for applicable mail processing equipment as prescribed by the Postal Service.

v. Meet barcoding specifications and other preparation requirements prescribed by the Postal Service.

vi. Have postage paid in a manner not requiring cancellation.

* * * * *

100.031 Cards exceeding the maximum post card dimensions set forth in section 100.021c or 100.0211b or section 100.0214 for ZIP + 4 and prebarcoded rate category cards may be mailed only under sections 100.020, 100.0201, 100.0203, and 100.0204, as appropriate.

* * * * *

100.043 Postal and post cards, including ZIP+4 and pre-barcoded rate category post cards, with any of the following four characteristics are not mailable unless prepared as prescribed by the Postal Service:

a. Numbers or letters unrelated to postal purposes appearing on the address side of the card;

b. Punched holes;

c. Vertical tearing guide;

d. An address portion which is smaller than the remainder of the card.

* * * * *

100.047 Pieces mailed under sections 100.0201, 100.0202, 100.0203, 100.0204, 100.0205, 100.0206, 100.0211, and 100.023 must be prepared as follows:

a. All pieces in a mailing must be presented in a manner specified by the Postal Service.

b. All pieces in a mailing must bear markings as required by the Postal Service.

c. Pieces not within the same postage increment may be mailed at ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates only when specific methods approved by the Postal Service for ascertaining and verifying postage are followed.

d. Pieces mailed at presorted ZIP+4 rate category or pre-barcoded presorted mail rates or presorted pre-barcoded flat rates must be properly prepared and presorted as prescribed by the Postal Service.

* * * * *

100.10 Authorizations and Licenses

100.100 A presorted mailing fee as set forth in Rate Schedule 1000 must be paid once each year at each office of mailing by any person who mails presorted mail, including presorted ZIP+4 rate category mail and pre-barcoded presorted mail.

* * * * *

**Classification Schedule 200—Second-Class Mail**

* * * * *

200.095 Copies of any automation compatible second-class mail which bear a proper ZIP+4 code, or which bear a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meet the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service qualify for the applicable ZIP+4 or pre-barcoding discounts as set forth in Rate Schedules 200, 201, 202, and 203.

* * * * *

**Classification Schedule 300—Third-Class Mail**

* * * * *

300.0232 Basic Sortation, Pre-barcoded Mail

Basic sortation pre-barcoded mail is mail mailed under section 300.0230 which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service.

* * * * *

300.0235 Three-Digit Presort Level, Pre-barcoded Mail Three-digit presort level, pre-barcoded mail is mail mailed under section 300.0233 which is presorted to three digits, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service.

300.236 Five-Digit Presort Level, Pre-barcoded Mail Five-digit presort level, pre-barcoded mail is mail mailed under section 300.0233 which is presorted to five digits, which bears a barcode representing not more than 11 digits (not including "correction" digits) as prescribed by the Postal Service, and which meets the machinability, addressing, and barcoding specifications, and other preparation requirements prescribed by the Postal Service.

The temporary classification change that took effect on March 21, 1993 will terminate at 10:01 a.m. on August 11, 1993, when the change described above

takes effect. Implementing regulations also become effective on August 11, as noted elsewhere in this issue.

Stanley F. Mires,

*Chief Counsel, Legislative.*

[FR Doc. 93–18838 Filed 8–5–93; 8:45 am]

BILLING CODE 7710–12–M

## SECURITIES AND EXCHANGE COMMISSION

### Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

August 2, 1993.

On July 23, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

| File No. | Symbol | Issuer |
|---|---|---|
| 7–10991 ..... | LLTC | Linear Technology Corp., Common stock, no par value. |

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act for the following issue:

| File No. | Symbol | Issuer |
|---|---|---|
| 7–10992 ..... | MXTR | Maxtor Corp., Common stock, $.01 per value. |

A replacement issue is being requested due to lack of trading activity.

**Comments**

Interested persons are invited to submit, on or before August 23, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 93–18791 Filed 8–5–93; 8:45 am]

BILLING CODE 8010–01–M

## Requests Under Review by Office of Management and Budget

*Agency Clearance Office:* John J. Lane, (202) 272–5407

*Upon written request copy available from:* Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002

*Extension*

Rule 15Aa–1; Form X–15AA–1: File No. 270–24
Rule 15Aj–1; Forms X–15AJ–1 and X–15AJ–2: File No. 270–25
Rule 17Ac3–1; Form TA–W: File No. 270–96
Rule 17Ad–10: File No. 270–265
Rule 17f–2(c): File No. 270–35
Rule 17f–2(d): File No. 270–36
Rule 17f–2(e): File No. 270–37
Rule 19b–4; Form 19b–4: File No. 270–38

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted for extension of Office of Management and Budget approval of rules and forms under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.).

Rule 15Aa–1 and Form X–15AA–1 provide for the application for registration of an association as a national securities association or as an affiliated securities association. One respondent incurs an annual total of 150 burden hours complying with Rule 15Aa–1.

Rule 15Aj–1 and Forms X–15AJ–1 and X–15AJ–2 provide for registered securities associations to file amendments to their registration statements to reflect changes made during the preceding year in the information contained in those statements. One respondent incurs an annual total of 3 burden hours complying with Rule 15Aj–1.

Rule 17Ac3–1 prescribes filing requirements for registered transfer agents seeking to deregister. Form TA–W implements the rule. Approximately 30 respondents incur a cumulative total of 15 annual burden hours complying with Rule 17Ac3–1.

Rule 17Ad–10 requires transfer agents to create and maintain accurate securityholder files. Approximately 1800 recordkeepers incur a total of 36,000 hours complying with Rule 17Ad–10.

Rule 17f–2(c) requires registered national securities exchanges and associations to submit plans for collecting, processing, and forwarding fingerprint cards to the FBI. One respondent incurs an annual total one burden hour complying with Rule 17f–2(c).

Rule 17f–2(d) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies to maintain fingerprint cards processed by the FBI, or any substitute records when original fingerprint cards are not returned by the FBI. These records must be maintained for all employees for the term of their employment plus three years. Approximately 9500 respondents incurs an annual total burden of .75 hours complying with the recordkeeping requirements of Rule 17f–2(d).

Rule 17f–2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemptions from the fingerprint requirement to prepare and maintain a statement supporting their claim for exemption. Approximately 75 respondents incurs an annual total burden of 37.5 hours complying with the requirements of Rule 17f–2(e).

Rule 19b–4 requires the various self-regulatory organizations to file their rule proposals on Form 19b–4. A total of 25 respondents incur an annual total of 12,390 burden hours complying with Rule 19b–4.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be

directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Paperwork Reduction Act Nos. 3235–0030, 3235–0044, 3235–0151, 3235–0273, 3235–0029, 3235–0028, 3235–0031, 3235–0045), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 26, 1993.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18861 Filed 8–5–93; 8:45 am]

BILLING CODE 8010–01–M

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## Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

August 2, 1993.

On July 28, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under Section 12(b) of the Act.

| File No. | Symbol | Issuer |
|---|---|---|
| 7–11047 | OXHP | Oxford Health Plans, Inc., Common Stock, $.01 par value. |

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

| File No. | Symbol | Issuer |
|---|---|---|
| 7–11048 | CRGN | Cragin Financial, Common Stock, $.01 par value. |

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before August 23, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with Section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18790 Filed 8–5–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32703; File No. SR–PSE–92–37]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Permanent Approval of the Pacific Options Exchange Trading System ("POETS") Pilot Program

July 30, 1993.

### I. Introduction

On October 30, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change seeking permanent approval of its automated options trading system pilot program designated as the Pacific Options Exchange Trading System ("POETS").[3] Notice of the proposal to grant permanent approval to POETS and accelaration of the provisions in the proposal extending the pilot program through July 31, 1993, appeared in the **Federal Register** on July 7, 1993.[4] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

### II. Description of the Proposal

In January 1990 the Commission approved POETS on a pilot basis.[5] Subsequently, the Commission approved several Exchange proposals to extend the pilot, including, most recently, an extension through July 31, 1993.[6]

As noted above, POETS is an automated trading system comprised of an automatic execution system, ORS, Auto-Book,[7] and Auto-Quote.[8] ORS

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1992).

[3] POETS is a completely automated trading system comprised of an automatic execution system, an options order routing system ("ORS"), an on-line limit order book system ("Auto-Book"), and an automatic market quote update system ("Auto-Quote"). The Commission approved the PSE's POETS system on a six-month pilot basis on January 18, 1990. See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2456 (order approving File SR–PSE–89–28) ("Pilot Approval Order"). The initial six-month approval expired on July 23, 1990, and was extended until October 22, 1990, in order to allow the PSE to complete installation of the system's hardware. See Securities Exchange Act Release No. 28264 (July 26, 1990), 55 FR 31272 (order approving File No. SR–PSE–90–28). In January 1991, the POETS pilot program was extended until June 30, 1991. See Securities Exchange Act Release No. 28778 (January 14, 1991), 56 FR 2576 (order approving File No. SR–PSE–90–36). In April 1991, the Commission approved the PSE's proposal to implement the system's automatic and semi-automatic execution features, termed "Auto-Ex" and "semi-Auto-Ex," respectively, on a floor-wide basis, and to extend the pilot until July 31, 1992. See Securities Exchange Act Release No. 29104 (April 18, 1991), 56 FR 19134. The POETS pilot program was extended through October 31, 1992. See Securities Exchange Act Release No. 31027(August 12, 1992), 57 FR 37179 (order approving File No. SR–PSE–92–26), and through April 30, 1993. See Securities Exchange Act Release No. 31035 (March 1, 1992), 57 FR 12611 (order approving File No. SR–PSE–92–46). Most recently, the pilot program was extended through July 31, 1993. See Securities Exchange Act Release No. 32568 (June 30, 1993), 58 FR 36493 (order granting partial accelerated approval to File No. SR–PSE–92–37).

[4] See Securities Exchange Act Release No. 32568 (June 30, 1993), 58 FR 36493.

[5] See Pilot Approval Order, supra, note 3.

[6] See Securities Exchange Act Release No. 32568, supra note 3.

[7] Auto-Book, the on-line limit order book function of POETS, eliminates the use of the physical file of orders. Auto-Book allows public Limit Order Book ("Book") staff to enter update, inquire, delete, cancel and execute Book orders. Auto-Book also allows members firms to enter cancel, update, and inquire about their public customers' Book orders. Because the eligibility requirements for Auto-Book are the same as for the manual Book, only customer limit orders and cabinet orders (off-board transactions that are normally utilized to permit an investor to close out his position for one dollar per contract) may be submitted to the Book.

[8] Auto-Quote allows market quotes to be generated systematically, using programmed theoretical models and variable criteria which are entered through the Auto-Quote function by Book

Continued

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permits the Exchange to accept, edit, and route market [9] and limit orders [10] which are submitted electronically to the Exchange by member firms for execution at market prices or placement in the Book. Currently, all eligible market orders and marketable limit orders received by ORS are directed to Auto-Ex.[11] In determining the eligibility of an order for routing to Auto-Ex, ORS utilizes order size, class, and series parameters. Although the order size parameter may be changed on an issue-by-issue basis by authorized Exchange staff pursuant to an Options Floor Trading Committee ("OFTC") determination, the maximum order size for execution through Auto-Ex or semi-Auto-Ex is ten contracts.[12]

In full Auto-Ex, an incoming eligible market or marketable limit order is priced and executed automatically at the displayed market bid or offer. A participating market maker is designated as contra-side to an Auto-Ex order.[13] Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves Book priority in all options.[14] If Auto-Ex determines that the Book price is at or better than the market quote, the Auto-Ex order is executed against the Book.

The Exchange's Pilot Report states that, as of August 1992, approximately 20% of the Exchange's daily options order flow was routed through ORS, 43% of all option series were eligible for automatic execution, and approximately 13.5% of those Auto-Ex eligible trades where traded through Auto-Ex.[15]

All non-marketable limit orders are directed to Auto-Book, which prioritizes the orders in the on-line Book based upon limit price and time received within each series, with separate priority for buy and sell orders. In order to be eligible for Auto-Book an order must be for a member firm's customer's account, and the order must meet certain size requirements determined by the OFTC. When a new order is entered on Auto-Book, the system verifies the current best Book bid/ask for the series and automatically updates the Book bid/ask and size if the limit price entered is at or better than the bid/ask resting on the Book. Auto-Book automatically compares the market bid/ask field to the Book bid/ask whenever the current market quote or Book quote changes for a specific series. When the Book bid/ask is at or better than the market the system signals both the trading crowd and Book staff that there is a customer trade that should be given priority. The booked order is then executed automatically against the displayed market quote.

As noted above, the Exchange has submitted a Pilot Report to the Commission.[16] The PSE believes, as evidenced by the Pilot Report, that POETS is a viable and effective trading system. Specifically, the PSE believes that POETS has provided, and continues to provide, substantial benefits to the investing public, including the on-line updating of quotations, increased speed and accuracy in the execution and reporting of trades, and improved accuracy and accessibility of trade information. The PSE believes that POETS has contributed to the quality and integrity of the Exchange's options markets and notes that there have been no capacity problems with POETS during the operation of the pilot program. In addition, the Exchange states that it has received no formal complaints about POETS, nor has the Exchange taken any disciplinary action against a member for activities involving POETS.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [17] and 11A.[18]

Based upon the representations made by the PSE in the Pilot Report, the Commission believes that POETS has benefited public customers and PSE member firms by enabling the Exchange to provide on-line updating of market quotes, more efficient execution of customer orders, and faster, more accurate trade information reports.[19] The Commission believes that the enhanced efficiency of order processing resulting from POETS has helped to ensure the depth and liquidity of the PSE's options markets and, in addition, that POETS has enabled the Exchange to develop more accurate and timely audit trails, thereby helping the PSE to maintain the integrity of its markets.

With regard to the specific components of POETS, the Commission believes that the automatic execution and on-line Book features of POETS have benefited public customers by providing a more efficient method of executing small market and limit orders in PSE options, and by allowing public customers to receive immediate executions and nearly instantaneous confirmations of orders executed through Auto-Ex. The Commission believes that Auto-Ex has benefited public customers by ensuring that a POETS order will be executed at the current disseminated quotation. In addition, the Commission believes that the on-line Book has benefited investors because, as noted in the Pilot Report, the Book function allows the Exchange's members to place customer limit orders in the Book so that Book staff are responsible for executing those orders at the best possible market price. These orders are given priority for execution over any other incoming orders at that price once the bid or offer is announced and displayed to the crowd.[20]

The Commission continues to believe, as it found in the Pilot Approval Order, that Auto-Ex reduces the number of transactions that require manual

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staff. Market quotes are entered into the trading system and used to update the screen information on the monitors above the trading floor.

[9] A market order is an order to buy or sell a stated amount of a security at the most advantageous price obtainable after the order is represented in the trading crowd.

[10] A limit order is an order to buy or sell a stated amount of a security at a specified price.

[11] Auto-Ex and semi-Auto-Ex have been implemented on a floor-wide basis. The Exchange notes that although the semi-Auto-Ex function exists, it is not used at this time because the PSE believes that the full Auto-Ex function is better suited to members' needs (e.g., faster executions and price reports). See "Report of the Pacific Stock Exchange on the Status of its POETS Pilot Program," dated September 18, 1992 ("Pilot Report"). In semi-Auto-Ex, an order entered into ORS would be delivered to Book staff, who would call for a market in the particular options class and series. If a market maker bettered the market, Book staff would execute the trade with the market maker or allocate the trade among market makers. If no one in the crowd updated the displayed market quote, Book staff would execute the trade against the screen.

[12] See Pilot Approval Order, supra note 3. As the Commission noted in the Pilot Approval Order, if the PSE plans to increase the size of orders eligible for automatic execution above ten contracts, or plans to modify the types of orders that are eligible for automatic execution and/or other POETS' systems, the Exchange must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act.

[13] Any Exchange member who is a registered market maker acting in the capacity of either an individual market maker or a joint account participant is eligible to be logged onto Auto-Ex as a contra-broker.

[14] Under normal conditions, orders entered into Auto-Book via ORS and orders placed with an Order Book Official for manual entry into Auto-Book receive priority over other bids or offers at an inferior price. During fast market conditions, however, as determined by the Chairman of the Exchange or his nominee, an order will not gain time priority until it is entered into the system. Once orders have been placed electronically into the system, book priority is maintained at all times under Auto-Book.

[15] See Pilot Report, supra note 11.

[16] See Pilot Report, supra note 11.

[17] 15 U.S.C. 78f(b)(5) (1988).

[18] 15 U.S.C. 78k–1 (1982).

[19] See Pilot Report, supra note 11.

[20] See Pilot Report, supra note 11. The Pilot Report states that as of August 1992, 7.20% of all trades were executed with the on-line Book.

execution on the Exchange floor, thereby providing an opportunity for increased efficiency in the handling of non-POETS orders, especially large orders where floor broker intervention is more likely to be necessary. In addition, the Commission believes that by automating the processing of market and limit orders, all parties to a trade have benefited from the enhanced accuracy and timeliness of the price reports and trade comparison process.

The Pilot Report states that Auto-Ex has enhanced the efficiency and accuracy of order execution on the PSE in that:

(1) Orders that are entered through ORS are executed instantaneously;

(2) The system produces a report which allows member firms to report a fill of an Auto-Ex order to the customer immediately after execution;

(3) An incoming order secures a guaranteed execution at the current disseminated quotation;

(4) Orders that are routed to the Book receive priority in execution over other incoming orders once their criteria for execution have been met; and

(5) Orders which are not eligible for execution through Auto-Ex are re-routed instantly to the designated default location for immediate handling.

The Pilot Report finds that POETS has also enhanced the efficiency of order execution for manual orders in that: (1) Price reporting and some trade matching are performed electronically by the system upon execution of an order, so that all customers receive faster and more accurate price reports; (2) because POETS reduces the paper flow in trading crowds, larger orders that must be executed manually receive greater attention by staff and traders; and (3) problems in trade matching can be discovered and remedied more quickly, thereby reducing the market risk to member firms if price adjustments are necessary. The PSE notes that the reduction in paper flow for small orders also provides for more efficient order execution in fast markets.[21]

In sum, the Commission believes that the enhanced efficiency of order processing resulting from POETS, together with the immediacy and certainty of order execution obtained through AutoEx, has strengthened the PSE's markets and provides resulting benefits to market participants. The Commission also believes that the system's automated order routing has enhanced the accuracy of the PSE's audit trail, thereby helping to increase the effectiveness of the Exchange's surveillance procedures in detecting trading abuses on the Exchange's options floor.

In this regard, the Commission believes that POETS has provided the Exchange's Market Surveillance Department with more accurate trade information. Specifically, the Pilot Report indicates that POETS provides the Exchange's Surveillance Department with faster, more accurate, and more complete trade information than was available previously, thereby allowing the Exchange to develop more accurate and timely audit trails. In addition, because the system provides the time-stamp when an order is executed, the risk of human error is reduced and the Exchange's Time and Sales Reports are faster and more accurate. In addition, POETS generates information on market conditions that appear in the Exchange's Times and Sales Reports, thereby allowing the Times and Sales Reports to provide a more realistic picture of the trading environment at the time a transaction occurred.[22]

As the Commission stated in its Pilot Approval Order, the Commission has recommended that options exchanges ensure that their automated systems remain operational during periods of market volatility and volume surges, as well as during normal periods. To this end, the PSE originally developed the POETS system assuming a capacity requirement consistent with "record" PSE volume.[23] The Commission notes that as of August 1992, the PSE has indicated that the year-to-date availability of POETS was 99.96%,[24] and that there have been no significant system outages or failures since that time.[25]

In addition to operational concerns associated with automated execution systems, the Commission has recommended that the self-regulatory organizations take steps to ensure adequate market maker participation in their systems. As the Commission found in its Pilot Approval Order, the PSE has designed POETS so that it will be operational at all times after opening rotation, except for rare exceptional circumstances. First, the system has built-in market maker participation, in that the market makers are the system's contra-brokers, unless the Book or crowd quote represents the displayed quote. Second, the PSE has imposed requirements to ensure adequate market maker participation. In particular, any market maker logging onto the system for a particular options class during an expiration month must log onto the system in that options class whenever he is in the trading crowd, until the next expiration. In addition, if at any time there is inadequate participation in a particular options class, the OFTC may require market makers who are members of a trading crowd to log onto Auto-Ex absent reasonable justification or excuse for non-participation. The Exchange may pursue either disciplinary or remedial action against any member who fails to comply with these requirements.[26]

Finally, the Commission notes that the PSE has received no formal complaints in connection with POETS, and has taken no disciplinary action against a member for activities involving the system.[27]

## IV. Conclusion

Based upon the PSE's experience with the pilot program, the Commission believes that POETs has provided significant benefits to the Exchange's public customers and has enhanced the efficiency of the PSE's options markets. For the reasons stated above, the Commission believes that the proposal to grant permanent approval to POETS is consistent with the requirements of Sections 6 and 11A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, Pursuant to section 19(b)(2) of the Act,[28] that the proposal (File No. SR–PSE–92–37) to grant permanent approval to POETS is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–18860 Filed 8–5–93; 8:45 am]

BILLING CODE 8010–01–M

[21] See Pilot Report, supra note 11.

[22] See Pilot Report, supra note 11.

[23] See Pilot Approval Order, supra note 3.

[24] See Pilot Report, supra note 11.

[25] Telephone conversation between Michael D. Pierson, Senior Attorney, Market Regulations, PSE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission on July 28, 1993 ("July 28 Telephone Conversation").

[26] See Pilot Approval Order, supra note 3.

[27] See July 28 Telephone Conversation, supra note 25.

[28] 15 U.S.C. 78s(b)(2) (1988).

[29] 17 CFR 200.30–3(a)(12) (1988).

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Index of Administrator's Decision and Orders in Civil Penalty Actions; Publications

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of publication.

VOL 58 ISS 150 AUG 6 1993 UMI



**SUMMARY:** This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the subject matter index, ensures that the agency is in compliance with statutory indexing requirements.

**FOR FURTHER INFORMATION CONTACT:** James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., suite 925, Washington, DC 20004: Telephone (202) 376–6441.

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (i.e., in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

| Dates of quarter | Federal Register publication |
|---|---|
| 10/1/90–12/31/90 | 56 FR 44886; 2/6/91 |
| 1/1/91–3/31/91 ... | 56 FR 20250; 5/2/91 |
| 4/1/91–6/30/91 ... | 56 FR 31984; 7/12/91 |
| 7/1/91–9/30/91 ... | 56 FR 51735; 10/15/91 |
| 10/1/91–12/31/91 | 57 FR 2299; 1/21/92 |
| 1/1/92–3/31/92 ... | 57 FR 12359; 4/9/92 |
| 4/1/92–6/30/92 ... | 57 FR 32825; 7/23/92 |
| 7/1/92–9/30/92 ... | 57 FR 48255; 10/22/92 |
| 10/1/92–12/31/92 | 58 FR 5044; 1/19/93 |
| 1/1/93–3/31/93 ... | 58 FR 21199; 4/19/93 |

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

As noted at the beginning of the subject matter index and the digests, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

In addition, the Administrator's final decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

## Civil Penalty Actions—Orders Issued By the Administrator

*Order Number Index*

(This index includes all decisions and orders issued by the Administrator from April 1, 1993 to June 30, 1993.)

| Order No. (service date) | Name and docket No. |
|---|---|
| 93–15 | Mark Brown. |
| (4/22/93) | CP92WP0036. |
| 93–16 | Millon Air. |
| (4/30/93) | CP92SO0376. |
| 93–17 | Burton D. Metcalf. |
| (6/10/93) | CP91NM0066. |
| 93–18 | Westair Commuter Airlines. |
| (6/10/93) | CP92NM0042. |
| 93–19 | Pacific Sky Supply. |
| (6/10/93) | CP91NM0319. |
| 93–20 | Douglas V. Smith. |
| (6/16/93) | CP92CE0492. |
| 93–21 | Delta Air Lines. |
| (6/24/93) | CP92SO0523. |
| 93–22 | Katherine M. Yannotone. |
| (6/25/93) | CP91CE0201. |

## Civil Penalty Actions—Decisions Issued By the Administrator

*Subject Matter Index*

(Current as of June 30, 1993)

*This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.*

Administrative Law Judges—Power and Authority:
- Continuance of hearing ..... 91–11 Continental Airlines; 92–29 Haggland.
- Credibility findings ..... 90–21 Carroll; 92–3 Park; 93–17 Metcalf.
- Default Judgment ..... 91–11 Continental Airlines; 92–47 Cornwall.
- Discovery ..... 89-6 American Airlines; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92 -46 Sutton-Sautter; 93–10 Costello.
- Granting extensions of time ..... 90–27 Gabbert.
- Hearing location ..... 92–50 Cullop.
- Hearing request ..... 93–12 Langton.

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| 107.31 | 89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson. |
| 108.5 | 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 Delta Air Lines. |
| 108.7 | 90–18 Continental Airlines; 90–19 Continental Airlines. |
| 108.11 | 90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 92–46 Sutton-Sautter. |
| 108.13 | 90–12 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines. |
| 121.133 | 90–18 Continental Airlines. |
| 121.153 | 92–48 & 92–70 USAir. |
| 121.317 | 92–37 Giuffrida. |
| 121.318 | 92–37 Giuffrida. |
| 121.367 | 90–12 Continental Airlines. |
| 121.571 | 92–37 Giuffrida. |
| 135.25 | 92–10 Flight Unlimited. |
| 135.67 | 90–21 Carroll. |
| 145.53 | 90–11 Thunderbird Accessories. |
| 145.61 | 90–11 Thunderbird Accessories. |
| 191 | 90–12 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines. |
| 298.1 | 92–10 Flight Unlimited. |
| 302.8 | 90–22 USAir. |
| 49 CFR: | |
| 1.47 | 92–76 Safety Equipment. |
| 171.2 | 92–77 TCI. |
| 171.8 | 92–77 TCI. |
| 172.101 | 92–77 TCI. |
| 172.200 | 92–77 TCI. |
| 172.202 | 92–77 TCI. |
| 172.204 | 92–77 TCI. |
| 172.304 | 92–77 TCI. |
| 172.400 | 92–77 TCI. |
| 172.408 | 92–77 TCI. |
| 173.1 | 92–77 TCI. |
| 173.27 | 92–77 TCI. |
| 173.115 | 92–77 TCI. |
| 173.240 | 92–77 TCI. |
| 821.30 | 92–73 Wyatt. |
| 821.33 | 90–21 Carroll. |
| Statutes: | |
| 5 U.S.C.: | |
| 504 | 90–17 Wilson; 91–17 KDS Aviation; 92–71 KDS Aviation; 92–74 Wendt; 93–2 Wendt; 93–9 Wendt. |

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|---|---|
| 552 | 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 93–10 Costello. |
| 554 | 90–18 Continental Airlines; 90–21 Carroll. |
| 556 | 90–21 Carroll; 91–34 Alaska Airlines. |
| 557 | 90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines. |
| 11 U.S.C.: | |
| 362 | 91–2 Continental Airlines. |
| 28 U.S.C.: | |
| 2413 | 93–10 Costello. |
| 2462 | 90–21 Carroll. |
| 49 U.S.C. App.: | |
| 1301 (31) (operate) | 93–18 Westair Commuter. |
| (32) (person) | 93–18 Westair Commuter. |
| 1356 | 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines. |
| 1357 | 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator]. |
| 1421 | 92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt. |
| 1429 | 92–73 Wyatt. |
| 1471 | 89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited; 92–48 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment. |
| 1475 | 90–20 Degenhardt; 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]. |
| 1486 | 90–21 Carroll. |
| 1809 | 92–77 TCI. |

## Digests

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1993, through June 30, 1993. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g., April, July, October, and January of each year).

## Civil Penalty Case Decisions

### *Digests*

(Current as of June 30, 1993)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

*In the Matter of Mark Brown*

Order No. 93–15 (4/21/93)

*Withdrawal of Appeal.* Respondent withdrew his notice of appeal from the initial decision. Respondent's appeal is dismissed.

*In the Matter of Millon Air, Inc.*

Order No. 93–16 (4/30/93)

*Withdrawal of Appeal.* Complainant has withdrawn its appeal from the initial decision. Complainant's appeal is dismissed.

*In the Matter of Burton D. Metcalf*

Order No. 93–17 (6/10/93)

*Low Flight Violation Affirmed.* The Administrator affirmed the law judge's decision finding that Respondent operated a helicopter carelessly or recklessly when it hovered at 30 to 40 feet above ground level (AGL) near persons on the ground. If Respondent did not know that there were persons underneath the helicopter, he should have. As pilot in command of the helicopter, he was responsible for its operation and safety. Before hovering at low altitudes, Respondent should have ensured that there were no persons under the helicopter.

*Credibility Determinations.* Though not bound by the credibility determinations of the law judge, the Administrator found no persuasive reason for disturbing them. Law judges are in the best position to evaluate the demeanor of witnesses in administrative proceedings.

*Expert Testimony.* The testimony of the FAA expert witness that Respondent could not have made an emergency landing without undue hazard to persons if his power unit had failed while hovering 30 to 40 feet AGL, was more persuasive than that of Respondent's expert witness. Respondent's expert witness assumed that the helicopter had hovered at higher altitudes than those found by the law judge.

*Improper Courtroom Demeanor.* Respondent's counsel should have call the law judge's attention to any matter in the courtroom that his witnesses may have found distracting. Law judges should avoid all conduct which could appear inappropriate in a courtroom.

*In the Matter of Westair Commuter Airlines, Inc., d/b/a United Express*

Order 93–18 (6/10/93)

*Careless or Reckless Operation by Air Carrier.* The Administrator affirmed the law judge's decision finding Respondent, an air carrier, responsible for the careless or reckless taxi operation of five of its aircraft by Respondent's mechanics. On three separate occasions mechanics, taxied aircraft onto runways without Air Traffic Control (ATC) clearance. The taxi operations were within the mechanics' scope of employment. Respondent was responsible for the acts of its employees committed while they were acting within the scope of their employment.

*Operator Defined.* Under the Federal Aviation Act of 1958, as amended, and the Federal Aviation Regulations, the person (individual or corporation) who authorizes the operation of aircraft is deemed to be engaged in operating aircraft. Respondent authorized its mechanics to use its aircraft for taxi operations. Respondent, as well as its mechanics, may be charged as the "person operating" the five aircraft under 14 CFR 91.13(b).

*Weather As A Mitigating Factor.* The mechanics knew that there was heavy fog when they began to taxi. The fog was not unexpected, and cannot be regarded as a mitigating factor.

*Corrective Action As A Mitigating Factor.* After the runway incursions, Respondent retrained its mechanics

throughout the country in taxi operations under revised procedures. The corrective action taken by Respondent was swift and comprehensive, and warrants mitigation of the sanction amount. The law judge did not consider the corrective action in arriving at the sanction amount. The Administrator reduced the civil penalty by $1,000, and assessed a total civil penalty of $2,000.

*In the Matter of Pacific Sky Supply, Inc.*

Order No. 93–19 (8/10/93)

*Request for Oral Argument Denied.* Complainant has failed to persuade the Administrator that oral argument is necessary to resolve its appeal.

*Law Judge's Interpretation of the Regulation Rejected.* The law judge held that to show a violation of the 14 CFR 21.303(a), Complainant must be able to show by a preponderance of the evidence that Respondent either: (1) Produced the parts with the specific intent of having them installed on type-certificated products; or (2) had actual knowledge that the parts would be installed on type-certificated products. The Administrator stated that the law judge interpreted the regulation far too narrowly. In doing so, he created a loophole for producers who sell to "middlemen."

*Complainant's "Reasonably Likely" Standard Rejected.* Complainant's interpretation of the intent requirement of the regulation is that Complainant must prove that a reasonable person would find it reasonably likely that the parts would be installed on type-certificated products. Complainant's formulation is rejected.

*"Substantial Certainty" Standard Announced.* Complainant must show that Respondent knew or should have known that it was substantially certain that the parts produced by Respondent without a Parts Manufacturer Approval (PMA) would be installed on type-certificated products. This is a somewhat more difficult burden to meet than Complainant's reasonably likely standard. It more appropriately balances the equities involved—the FAA's duty to promote aviation safety by controlling the spread of unapproved parts, and the producer's right to produce parts without FAA approval when it is insufficiently probably that the parts will find their way into type-certificated aircraft.

*In the Matter of Douglas Vernon Smith*

Order No. 93–20 (8/16/93)

*Dismissal of Appeal.* Respondent failed to perfect his appeal by filing an appeal brief as required by 14 CFR 13.233(c). Respondent's appeal is dismissed.

*In the Matter of Delta Air Lines, Inc.*

Order No. 93–21 (8/24/93)

*Withdrawal of Appeal.* Respondent withdrew its notice of appeal from the initial decision. Respondent's appeal is dismissed.

*In the Matter of Katherine M. Yannotone*

Order No. 93–22 (8/25/93)

*Withdrawal of Appeal.* Complainant withdrew its notice of appeal from the law judge's order. Complainant's appeal is dismissed.

## Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

In June, 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

Avlex, published by Aviation Daily, 1156 15th Street, NW., Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD 21106, (301) 798–1098

Federal Aviation Decisions, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483, is placing the decisions on CD-ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on the following computer databases: Compuserve; Fedix; and Genie.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

## FAA Offices

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., room 924A, Washington, DC 20591; (202) 267–3641

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3298

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AK 99513; (907) 271–5269

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270

Issued in Washington, DC, on July 29, 1993.

Mark L. Gerchick,
*Chief Counsel.*

[FR Doc. 93–18852 Filed 8–5–93; 8:45 am]
BILLING CODE 4910–13–M

## Research, Engineering and Development Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.

L. 92–362; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration Research, Engineering and Development (R, E&D) Advisory Committee to be held Tuesday, August 24, 1993, at 10 a.m. The meeting will take place at the Holiday Inn Capitol, 550 C Street, SW., Washington, D. 20024.

In addition to the reviewing the status of various ongoing committee activities, the agenda will include:

(a) An update of FAA's surveillance program;

(b) An overview of the issues to be addressed by FAA at the upcoming ICAO FANS Meeting;

(c) Status of the RTCA Task Force II activities related to data link; and

(d) Introduction of new tasks involving airport investment criteria and land use initiatives.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to attend the meeting should contact Ms. Jan Peters, Special Assistant to the Executive Director of the R, E&D Advisory Committee, ASD–6, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 287–8543.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on August 2, 1993.

**Martin T. Pozesky,**

*Executive Director, Research, Engineering and Development Advisory Committee.*

[FR Doc. 93–18846 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

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## Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at New Orleans International Airport, New Orleans, LA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 7, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Edward Lovell, Jr., of the New Orleans International Airport at the following address: Director of Aviation, New Orleans International Airport, P.O. Box 20007, New Orleans, LA 70141.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the New Orleans International Airport under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at New Orleans International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 21, 1993, the FAA determined that the application to use the revenue from a PFC submitted by New Orleans International Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 18, 1993.

The following is a brief overview of the application.

*Level of the PFC:* $3.00.

*Actual charge effective date:* June 1, 1993.

*Estimated charge expiration date:* April 1, 2000.

*Total approved net PFC revenue:* $77,800,372.00.

*Brief description of use-only project(s):* Projects to impose and use PFC's: Land Acquisition and Construction of East/West Taxiway North General Aviation Road, East Air Cargo Access Road

Class of air carriers exempted from collecting PFC's: FAR part 135 on-demand air taxi/commerical operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at New Orleans International Airport.

Issued in Fort Worth, Texas on July 21, 1993.

**Hugh W. Lyon,**

*Assistant Manager, Airports Division.*

[FR Doc. 93–18845 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

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## Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Shreveport Regional Airport, Shreveport, LA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at Shreveport Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 7, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roy H. Miller, Jr., of the Shreveport Airport Authority at the following address: Director of Airports, Shreveport Regional Airport, 5103 Hollywood Avenue, Suite 300, Shreveport, LA 71109–7764.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Shreveport Regional Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Shreveport Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 21, 1993, the FAA determined that the application to impose a PFC submitted by the Shreveport Regional Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 17, 1993.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* October 1, 1993.

*Proposed charge expiration date:* September 30, 2018.

*Total estimated PFC revenue:* $33,337,210.00.

*Brief description of proposed project(s): Projects to impose PFC's:* Renovate Passenger Terminal at Shreveport Regional Airport Proposed class or classes of air carriers to be exempted from collecting PFC's:

All non-scheduled FAR part 135 air taxi operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch, ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611.

In addition, any person may upon request, inspect the application, notice and other documents germane to the application in person at the Shreveport Regional Airport.

Issued in Fort Worth, Texas on July 21, 1993.

Hugh W. Lynn,

*Assistant Manager, Airports Division.*

[FR Doc. 93–18850 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

## Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Tulsa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 7, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr Ben Guttery, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brent A. Kitchen of the Tulsa International Airport at the following address: Tulsa Airports Improvement Trust, 7777 East Apache, Tulsa, OK 74115.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Tulsa International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule invites public comment on the application to use the revenue from a PFC at Tulsa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 26, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Tulsa International Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 20, 1993.

The following is a brief overview of the application.

*Level of PFC:* $3.00.

*Charge effective date:* August 1, 1992.

*Charge expiration date:* July 31, 1995.

*Total PFC revenue:* $9,717,000.00.

*Brief description of proposed project(s):*

Projects to Use PFC's

Emergency Communications Equipment
Acquire ARFF Vehicle
Reconstruct Taxiway Alpha Holding Apron and Taxiway Delta
Construct Taxiway X-Ray (Phase 2, Part 2)
Construct ARFF Building
Extend Taxiway Juliet
Reconstruct and Realign Taxiway Whiskey

*Class of air carriers to be exempted from collecting PFC's:* None.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT" and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76193–0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Tulsa International Airport. Issued in Fort Worth, Texas on July 26, 1993.

John M. Dempsey,

*Airports Division.*

[FR Doc. 93–18851 Filed 8–5–93; 8:45 am]

BILLING CODE 4910–13–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Korean Arts of the Eighteenth Century Splendor and Simplicity" (see list [1]), imported from

[1] A copy of this list may be obtained by contacting Ms. Cassandra Shenkan of the Office of the General Counsel of USIA. The telephone number is

abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Asia Society, New York, New York, from on or about October 1, 1993, to on or about January 2, 1994; the Arthur M. Sackler Gallery, Washington, DC, from on or about February 20, 1994 to on or about May 15, 1994; and the Los Angeles Museum of Art, Los Angeles, California, from on or about June 16, 1994 to on or about August 21, 1994, is in the national interest.

Pubic notice of this determination is ordered to be published in the Federal Register.

Dated: July 29, 1993.

R. Wallace Stuart,

*Acting General Counsel.*

[FR Doc. 93-18820 Filed 8-5-93; 8:45 am]

BILLING CODE [illegible]

## American Civilization Workshop/ Seminar and Research Grants in the People's Republic of China

**AGENCY:** United States Information Agency.

**ACTION:** Notice—Request for Proposals.

**SUMMARY:** The United States Information Agency (USIA) invites applications from U.S. educational institutions to: (A) Conduct workshops and seminars in the People's Republic of China, (B) administer programs to conduct research in the People's Republic of China in areas which contribute to mutual understanding between the United States and the People's Republic of China. Applications may request funds for either or both of the above programs. All program support is subject to the availability of funding.

Successful applicants are responsible for administration of tax withholding and reporting as required by Federal, State and local authorities.

Support is offered for two categories of institutional programs: Category A, Workshops/Seminars; Category B, Research. Each category has separate conditions and requirements, which are stated in this announcement. Institutions requesting funds for both categories may submit one application comprising the total request. However, each category must be described in a separate narrative and must have a separate, detailed budget. Institutions applying under either or both categories must follow the requirements stipulated in this RFP, the application guidelines, and any additional material specific to a given category. Failure to do so may result in a proposal being deemed technically ineligible.

Programs and projects must conform with all Agency requirements and guidelines as well, and are subject to final review by a USIA contracting officer.

**DATES:** Deadline for proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. EST on Friday, October 15, 1993. Faxed documents will not be accepted, nor will documents postmarked on the deadline date but received at a later date.

It is the responsibility of each grant applicant to ensure that its proposals are received by the appropriate deadline. Programs may not begin prior to October 1, 1993, or they will be deemed technically ineligible. No funds may be incurred until the grant agreement is signed with USIA's Office of Contracts.

**ADDRESSES:** The original and 15 complete copies of the application, including required forms, should be addressed as follows: U.S. Information Agency, Ref: The People's Republic of China Grants Competition, Office of Grants Management, E/XE, room 336, 301 4th Street, SW. Washington, DC 20547.

**FOR FURTHER INFORMATION:** Contact: William Shine, room 238, E/AEF, 301 4th Street, SW., Washington, DC 20547, *FAX: 202-401-1728,* for application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information. Requests via Fax are encouraged.

**SUPPLEMENTARY INFORMATION:** Authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

### Category A

*Workshops/Seminars*

Grant funding under this category is intended to enhance and expand the scope of social sciences and humanities programs in American Society and Culture in the People's Republic of China. $80,000 is available for this category. Specific disciplines for the FY 1994 competition are: Higher Education Administration, University Library Management (with an emphasis upon collections in American Studies fields such as literature and history) and programs in Government and/or American Law. Intense, scholarly 3-4 week summer programs are particularly encouraged. Individual participants on the American side must be citizens of the U.S. Both existing and new projects are eligible.

*Duration:* Applications will be accepted for projects from at least 15 days to no more than 30 days duration. Programs may not begin earlier than October 1, 1993 and should be completed by September 30, 1993.

*Overview:* The overall purpose of this program is to provide opportunities for U.S. educational institutions to conduct scholarly workshops/seminars in the People's Republic of China in fields such as Higher Education Administration, University-level Library Science, American Law and American Government and thereby give the opportunity for Chinese institutions to offer their members access to recent information and perspectives in American Civilization disciplines as well as to allow for the substantive exchange of ideas. Workshops/seminars should take place in one Chinese city. American organizations are encouraged, however, to purpose programs that would include participants from a variety of Chinese institutions from across the People's Republic of China. A workshop on the American judicial process, for example, could include law professors, students, as well as legal officials. Applicants should specify the workshop length and venue, the intended audience, the audience's level of sophistication, e.g., faculty, graduate

202/619-5077, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

students, researchers, government officials, and whether there would be any co-sponsor.

*Guidelines:* Preference will be given to organizations with demonstrated expertise in the proposed workshop/seminar fields. Previous experience with conducting scholarly seminars in the People's Republic of China and/or current working relations with Chinese educational institutions will be considered a plus. A substantive history of organizing subject-specific programs led by acknowledged experts in the field who also have considerable teaching experience is highly advantageous. Proposals should present a very clearly designed program plan that enunciates specific objectives and that demonstrate the likelihood of substantive follow-through. Be specific as to what issues the workshop/seminar will address and who the intended audience is. In the context of the intended audience(s), please describe clearly the proposed approach, e.g., didactic, participatory, etc.

**Proposed Budget Category A**

*Projects:* Project awards to U.S. institutions for Category A can be made in a range of amounts but will not exceed $75,000. The Agency reserves the right to reduce, revise or increase budgets. For organizations with less than four years of experience in international exchange activities, total grants (Categories A and B) will be limited to a maximum of $60,000 from USIA, and total proposed budgets should not exceed this amount. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

*Please Note:* It is required that requested administrative funds not exceed 20 percent of the amount requested for travel and per diem expenses. This includes both direct and indirect administrative expenses; expenses both administrative and programmatic should be cost-shared to the maximum extent possible.

**Category B**

**Research**

Grant funding under this category is intended to enhance and expand the scope of U.S. scholarly research in the People's Republic of China in social sciences or humanities fields. Such research should assist in promoting mutual understanding between the U.S. and the People's Republic of China. A minimum of $150,000 will be available for this category. Research should be focused on contemporary or, at least Twentieth Century, projects. Research focusing on areas such as law; economics, with an emphasis upon the developing market economy in the People's Republic of China and its implications for both Sino-American and regional economic cooperation; and the social and political consequences of greater access to mass media, communications systems and information technology are especially encouraged. An excellent working knowledge of Chinese is required for any work involving comparative studies. The grantee institution is responsible for verifying knowledge of Chinese when required by the research project.

*Overview:* The short-term objective of a research grant would be to give institutionally-sponsored scholars the opportunity to explore current and recent trends in his or her area of expertise in the People's Republic of China. The longer-term goal is to encourage and maintain a scholarly dialogue based upon active research and the exchange of research information.

*Guidelines:* A Category B grant will be for educational institutions which provide a publicly announced, open competition selection process for choosing the recipients of individual research grants.

The proposal should include the criteria for and the mechanics of the actual selection process. Individual grantees should be experienced researchers holding a doctorate (Ph.D., Ed.D., J.D) in his or her field of expertise. The successful individual recipient would present a careful research design, preferably related to an on-going research project in which the grantee is currently involved. Preference should be given to candidates whose research would enhance the exchange of substantive knowledge in his or her discipline between scholars in the People's Republic of China and the United States.

*Duration:* Research projects should be for a minimum of three months duration. Grants will generally be made for exchanges occurring within a 12-month period.

**Allowable Costs for Category B**

*Projects:* While grants are likely to involve a wide range of amounts depending on the duration of the stay, cost per participant may not exceed $50,000, including administrative costs. All institutions/organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

**Review Process (All Categories)**

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals may be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency's Office of East Asian and Pacific Affairs, the USIA section of the American Embassy in Beijing, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

**Review Criteria (All Categories)**

Technically eligible applications will be competitively reviewed according to the following criteria:

a. *Quality of Program Plan*—Including academic rigor, thorough conception of project, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. *Feasibility of Program Plan*—Capacity of the organization to conduct the exchange; proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. *Track Record*—Relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. *Multiplier Effect/Impact*—The impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity to promoting mutual understanding.

e. *Value to U.S.–PRC Relations*—The assessment of the need, potential impact, and significance of the project with the PRC.

f. *Cost Effectiveness*—The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

g. *Institutional Capacity*—Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

h. *Follow-on-Activities*—Proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events.

i. *Evaluation Plan*—Proposals should provide a plan for evaluation by the grantee institution and by individual participants in categories B.

**Application Disclaimer (All Categories)**

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

**Notification**

All applicants will be notified of the results of the review process on or about December 29, 1993. All funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: July 30, 1993.

Barry Fulton,

*Acting Associate Director for Educational and Cultural Affairs.*

[FR Doc. 93-18777 Filed 8-5-93; 8:45 am]

BILLING CODE 8230-01-M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 150
Friday, August 6, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, August 12, 1993.

**PLACE:** Room 600, 1730 K Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *Secretary of Labor* v. *Shirel & Guess, employed by Pyro Mining Co.*, Docket No. KENT 92-73, etc. (Issues include whether the judge erred dismissing this proceeding brought against Shirel & Guess under 30 U.S.C. § 820(c) on the basis that their employer was a partnership.)

2. *American Mine Services, Inc.*, Docket No. WEST 91-563, etc. (Issues include whether the judge erred in finding that the mine operator's violation of 30 CFR 75.1400-3 was not a result of its unwarrantable failure to comply with the safety standard.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: August 3, 1993.

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 93-19000 Filed 8-4-93; 2:09 pm]

BILLING CODE 6735-01-M

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10:00 a.m., Wednesday, August 11, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

*Summary Agenda*

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed interagency policy statement regarding branch closings by depository institutions.

*Discussion Agenda*

2. Publication for comment of proposed amendments to Regulation A (Extensions of Credit by Federal Reserve Banks) to implement section 142 of the Federal Deposit Insurance Corporation Act of 1991 regarding limits on discount window advances.

3. Proposal under the Board's Payments System Risk Reduction Policy regarding daylight overdraft penalty fee for bankers' banks, Edge corporations, and limited purpose trust companies. (Proposed earlier for public comment; Docket No. R-0693)

4. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 4, 1993

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 93-18979 Filed 8-4-93; 12:55 pm]

BILLING CODE 6210-01-P

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** Approximately 11:30 a.m., Wednesday, August 11, 1993, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 4, 1993.

Jennifer J. Johnson,

*Associate Secretary of the Board.*

[FR Doc. 93-18980 Filed 8-4-93; 12:55 am]

BILLING CODE 6210-01-P

federal register

Friday
August 6, 1993

Part II

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 23**

**Small Airplane Airworthiness Review Program Amendment No. 4; Final Rule**

VOL 58 ISS 150 AG 6 1993 UMI



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26269; Amendment No. 23–45]

RIN 2120–AD20

## Small Airplane Airworthiness Review Program Amendment No. 4

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment changes airframe and flight airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. The changes are based on a number of recommendations discussed at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984, in St. Louis, Missouri. These updated safety standards will continue to provide an acceptable level of safety in the design requirements for small airplanes used in both private and commercial operations. Some of the changes provide design requirements applicable to advancements in technology being incorporated in current designs. This amendment will also reduce the regulatory burden in showing compliance with some requirements while maintaining an acceptable level of safety.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Payauys, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

### Background

On June 15, 1990, the FAA issued a notice of proposed rulemaking (NPRM) that proposed changes to the airframe and flight airworthiness standards for normal, utility, acrobatic, and commuter category airplanes (Notice No. 90–18, 55 FR 26534, June 28, 1990). The FAA based the proposed changes on the Small Airplane Airworthiness Review Program and on the conference that resulted in recommendation based on review proposals.

### History

To encourage public participation in improving and updating the airworthiness standards applicable to small airplanes, the FAA announced the Small Airplane Airworthiness Review Program on January 31, 1983, and invited all interested persons to submit proposals for changes to part 23.

By the close of the proposal period on May 3, 1984, the FAA had received more than 560 proposals. On October 22–26, 1984, the FAA held the Small Airplane Airworthiness Review Program Conference in St. Louis, Missouri. The conference was attended by over 300 persons representing all aspects of the U.S. small airplane industry as well as many international representatives. A copy of the transcripts of all discussions held during the conference is filed in FAA Regulatory Docket 23494.

After reviewing the proposals and the public comments received at the conference, the FAA issued a number of rulemaking documents. These include:

(1) A notice proposing to upgrade cabin safety and occupant protection standards during emergency landing conditions (Notice 86–19, 51 FR 44878, December 12, 1986), which led to amendment 23–36 (53 FR 30802, August 15, 1988).

(2) A notice proposing airworthiness standards for advanced technology in current airplane design (Notice 89–5, 54 FR 9276, March 6, 1989), which led to amendment 23–42 (56 FR 344, January 3, 1991).

(3) A notice proposing airworthiness standards for complex systems critical for safety in small airplanes (Notice 89–6, 54 FR 9338, March 6, 1989), which led to amendment 23–41 (55 FR 43306, October 26, 1990).

(4) A notice of proposed airworthiness standards for powerplant and equipment not included in the above three notices (Notice 90–23, 55 FR 40598, October 3, 1990), which led to Amendment 23–43 entitled Small Airplane Airworthiness Review Program Amendment No. 3 (58 FR 18958, April 9, 1993).

The review program and conference also led to the proposal for this rulemaking action, which updates the airframe and flight airworthiness standards for small airplanes.

The FAA is participating in an important international effort to harmonize part 23 of the Federal Aviation Regulations (FAR) with the Joint Aviation Requirements (JAR) developed by representatives of the Joint Aviation Authorities (JAA). This final rule is a significant step in the harmonization effort, which is being encouraged and supported by the aviation community worldwide.

### Discussion of Comments

*General*

Interested persons were invited to participate in the development of this final rule by submitting written data, views, or arguments to the regulatory docket. Eight commenters responded to Notice No. 90–18. Commenters represent U.S. manufacturers of small aircraft (General Aviation Manufacturers Association, GAMA), Joint Aviation Authorities, JAA, individual airworthiness authorities (United Kingdom, Australia, Transport Canada), the Air Line Pilots Association (ALPA), a representative of the Association of Europeene des Constructeures des Material Aerospatial (AECMA), and one private individual. Most commenters either endorse other comments or comment on only a few of the proposed changes. GAMA comments on a significant number of the proposed changes and JAA comments on virtually every proposed change. AECMA submitted a one-sentence comment endorsing the GAMA comment.

One commenter (ALPA), while supporting "the fundamental intent" of the NPRM and applauding "The FAA for the work and progress" from the 1984 conference, also states a belief that there is a need for a "single regulation to prescribe that all part 25 certification aircraft are used by scheduled commercial airlines."

In general, the commenters agree with the proposed changes and one commenter (GAMA) urges the FAA to issue a final rule as expeditiously as possible.

In the NPRM, the FAA specifically solicited comments on the following subjects:

Conference Proposal 2, § 23.3, Permit installation of turboject engines on commuter category airplanes.

Conference Proposal 7, § 23.65, Require performance limitations based on weight, altitude and temperature.

Conference Proposal 10, § 23.145, Establish control force limits for reduced pilot strength, and

Conference Proposal 29, § 23.307, Require material correction factors during structural tests.

The first two subjects listed above are subjects on which the FAA solicited comments for future rulemaking. No final action is taken in this rulemaking on these two subjects. The discussion of comments on these two subjects follows the proposal-by-proposal discussion at the end of the supplementary information section of this preamble. The second two subjects relate to rulemaking proposal number 10 (§ 23.145) and rulemaking proposal 29 (§ 23.307). Discussion of comments for these subjects is contained in the proposal-by-proposal discussion.

**Discussion of Comments on Specific Sections of Part 23**

As stated above, the majority of the specific comments were received from the GAMA and the JAA. In the following proposal-by-proposal discussion, the basic intent of each proposed change is summarized and substantive comments are addressed individually. Comments and changes of an editorial nature are generally omitted from the discussion.

In this final rule, the FAA has withdrawn a total of three proposals from the NPRM and is amending (for clarification) two sections for which changes were not proposed in the NPRM. The withdrawal of some proposed amendments and the addition of amendments that were not proposed has created a mismatch between the proposal numbers as discussed in this preamble and the amendment numbers included in the amendatory portion of this final rule. The following table provides the necessary cross reference:

| Proposal No. | Amendment No. |
|---|---|
| 1–28 | 1–28. |
| 29 | Not Adopted. |
| 30–47 | 29–46. |
| No proposal | 47 & 48. |
| 48–67 | 49–68. |
| 68 | Not Adopted. |
| 69–72 | 69–72. |
| 73 | Not Adopted. |
| 74–83 | 73–82. |

*Proposal 1*

This proposal contained the authority citation for part 23, for which there was no change.

*Proposal 2*

The FAA proposed a change to § 23.23 that specified the limits for load distribution for weight and balance considerations. The one comment (JAA) received generally agrees with the proposed change but does not agree that the specific reference to lateral center of gravity (c.g.) range limits should be deleted. Also, the JAA does not believe (1) that the proposal treats lateral c.g. consistently and (2) that there is a need for all of the required flight test evaluation with displaced lateral c.g. limits. The JAA notes that requiring all testing to be repeated with fuel asymmetry is unnecessary and impractical but that it would be appropriate to take fuel asymmetry into account for some tests such as minimum control speeds, stall handling, and lateral stability.

The FAA agrees that deleting specific references to lateral c.g. limits may not be appropriate and has revised § 23.23(a) to retain lateral load limits in the regulations. The FAA disagrees that the proposal treats lateral c.g. limits inconsistently. Repeating all testing with fuel asymmetry is unnecessary to find compliance. Accordingly, the FAA adopts § 23.23 with the change discussed above.

*Proposal 3*

The FAA proposed a change to § 23.25 to clarify the criteria used for assuming occupant weights in normal, commuter, utility, and acrobatic category airplanes. The proposed change would no longer permit the certification of normal category airplanes with seats placarded for occupants of less than 170 pounds. Seats limited to some lower weight by the placard installation will be referred to as "child seats" in the remainder of this discussion.

The GAMA and JAA commented on this proposal. The GAMA opposes deleting the provision that allows for the installation of child seats. The GAMA notes that existing provisions of § 23.25 allow the manufacturer to install child seats and establish proper loading provisions for the airplane. GAMA believes that deleting this provision would operationally limit future airplanes. The GAMA also notes that several unacceptable alternatives could result from the proposed deletion, such as carrying less fuel, installing fewer seats, and carrying less safety equipment. The GAMA feels that child seats in airplanes fulfill a consumer need. The GAMA does not agree with the FAA's statement in the NPRM that the lack of specific standards for child seats is appropriate justification for disallowing placarding of child seats. The GAMA states that seat rules can be changed to certify fixed child seats at selected weight limits.

The JAA states that it does not understand the FAA's reasoning for disallowing child seats in normal category airplanes.

The FAA reconsidered this proposal, based on these comments, and agrees that eliminating the approval of child seats in normal category airplanes is inappropriate. However, the FAA points out that future rulemaking to provide safe standards for child seats will be needed in view of changes to § 23.562 made by amendment 23–36 (53 FR 30802, August 15, 1988), which established a safety level for occupants with a nominal weight of 170 pounds.

Although the FAA will allow the installation of child seats, placarding pilot seats for occupants weighing less than 170 pounds or 190 pounds, depending upon airplane category, will not the be allowed because there is no reason to do so. Accordingly, a revision to § 23.25(a)(2) ensures that pilot seats are not placarded for a reduced weight.

The GAMA also pointed out that the minimum fuel requirement of "at least one-half hour" in § 23.25(a)(2)(i), which is a part of the requirement for computing the minimum or maximum weight, is inconsistent with the fuel requirements of part 91. Section 91.151, Fuel requirements for flight in VFR conditions, requires 30 minutes of fuel reserve for day operations and 45 minutes of fuel reserve for night operations. Also, § 91.167, Fuel requirements for flight in IFR conditions, requires the airplane to have enough fuel to: (1) Reach its intended destination; (2) fly to an alternate destination, if required; and (3) allow 45 minutes of further flight at normal cruising speed.

Section 23.25(a)(2)(i) requires the pilot to have all seats occupied, engine oil at full capacity, and enough fuel for continued flight and a safe landing. The 45-minute fuel reserve, required by the operating rules, exceeds the § 23.25(a)(2)(i) fuel requirement of "at least one-half hour." Proposed § 23.25(a)(2)(i) is, therefore, revised to "at least 45 minutes for night VFR and IFR approved airplanes." The FAA adopts § 23.25 with the changes discussed above.

*Proposal 4*

The FAA proposed to change § 23.33 by adding propeller speed and pitch limits for turbine engine/propeller combinations and other requirements applicable to turbopropeller-powered airplanes not covered by the present rule.

The FAA received comments from the JAA and the GAMA. Both commenters questioned the need to add requirements for turbopropeller-powered airplanes (proposed paragraphs (b)(1)(ii) and (b)(2)(ii)) since it is unlikely that a fixed-pitch propeller will be used on a turbine-powered engine.

The FAA has re-examined these proposals and determined that proposed paragraphs (b)(1)(ii) and (b)(2)(ii) are not necessary.

The GAMA states that the proposal for § 23.33(d)(2)(ii) will allow a 2,700 r.p.m. engine to operate at 2,940 r.p.m., or higher, if the governor should fail and that this change does not appear to be in the interest of safety. The FAA is not making any change to the proposed requirement because the information contained in the comment is insufficient. The NPRM documents that there are usually two governors in an

engine/propeller system, one controlling the propeller rotational speed and one controlling the overspeed of the turbine engine. This explanation notes that if the propeller governor fails, the overspeed limit will be established by the turbine governor and probably will be 106 to 108 percent. The condition identified by the GAMA is nearly the same as the condition identified in the notice (2,940 r.p.m. is a 108.9 percent overspeed of 2,700 r.p.m.). The GAMA appears to support proposed § 23.33(d)(2)(ii) that would have required a means to limit the engine overspeed to 99 percent of the approved engine overspeed.

The FAA recognizes that a fuel control governor usually controls turbine engine overspeed. Any required margin (such as the proposed 1 percent) would be considered during the establishment of the approved overspeed. Accordingly, it burdens the applicant to require an additional device that arbitrarily limits overspeed to 99 percent. By removing the 99 percent requirement, § 23.33(d)(2)(ii) allows full approved overspeed. The FAA adopts § 23.33 with the changes discussed above.

*Proposal 5*

The FAA proposed to clarify the performance data requirements of § 23.45 and to combine the requirements for reciprocating and turbine-engine-powered airplanes. Since the one comment received from the JAA agreed with the proposed change, the FAA amends § 23.45 as proposed.

*Proposal 6*

The FAA proposed to change § 23.53 to introduce a rotation speed, $V_R$, for multiengine airplanes and to eliminate reference $V_X$ (speed for the best angle of climb) for airspeeds at 50 feet. The FAA received comments on this proposal from the JAA and the GAMA.

The JAA notes that the reference to 1.3 $V_{S1}$ (stalling speed or minimum steady flight speed in a specific configuration) in proposed §§ 23.53 (b)(1)(ii) and (b)(2)(ii) is unnecessary and suggest clearer wording for the proposed change. The proposed language that states, "not less than 1.2 $V_{S1}$," establishes the minimum $V_{S1}$ speed that must be reached by a height of 50 feet above the takeoff surface. The JAA recommends revising the language to read, "1.2 $V_{S1}$, or any other speed shown to be safe * * *." The FAA rejects this suggestion because it would allow the use of a speed below 1.2 $V_{S1}$, which the FAA considers the minimum acceptable margin above the stall speed at the 50 foot point.

The GAMA recommends deleting the words "including turbulence" in proposed § 23.53 (b)(1)(ii) and (b)(2)(ii). The GAMA believes that considering turbulence deviates from the intent of the general requirement of § 23.45 that requires still air performance corrections in a standard atmosphere.

The commenter is partly correct. Most of the performance testing can be done in still air under standard atmospheric conditions, but some tests need to be done under other conditions. Thus, § 23.53 requires turbulent conditions for some, but not all, testing to find safe minimum takeoff speeds. Accordingly, these words are not being deleted from § 23.53 (b)(1)(ii) and (b)(2)((ii).

The GAMA also asks why turbulence is considered for normal, utility, and acrobatic category airplanes and not for commuter category airplanes.

The GAMA is correct that the takeoff speed requirements in § 23.53(c) for commuter category do not specifically address turbulence. However, other requirements applicable to commuter category, such as § 23.45(f)(3), that, in part, address critical-engine-inoperative takeoff performance require this performance to be determined according to the procedures established by the applicant for the operation in service, including turbulence conditions. Therefore, since turbulence for commenter category airplanes is otherwise addressed it has not been nor does it need to be included in § 23.53.

In addition, the FAA has noted that the proposed paragraph § 23.53(a) was not clear in distinguishing between the proposed $V_R$ speed and the $V_R$ speed established by § 23.53(c)(4) for commuter category airplanes. An editorial change to § 23.53(a) clarifies that § 23.53(a) applies only to normal, utility, and acrobatic category airplanes, not to commuter category airplanes. The FAA Adopts § 23.53 with the changes discussed above.

*Proposal 7*

The FAA proposed to delete from § 23.65 the current rate-of-climb requirements and to specify a minimum speed at which the angle-of-climb criteria must be met. The FAA received comments on this proposal from the JAA, GAMA, and ALPA. As previously discussed, the portion of the JAA, GAMA, and ALPA comments that addresses the subject of weight, altitude, and temperature (WAT) requirements for part 23 airplanes is discussed following this proposal-by-proposal discussion.

The GAMA states that the FAA has not justified the proposed change to § 23.65(a)(1) for a minimum all-engine-climb speed of 1.2 $V_{S1}$ and that this restriction appears unnecessary because $V_X$ is usually greater than 1.2 $V_{S1}$. GAMA notes that, if $V_X$ is lower, any questions resulting from attitude and engine failure can easily be dealt with in the flying quality rules.

The JAA believes that the proposed minimum climb speed of 1.2 $V_{S1}$ (stall speed or minimum steady flight speed obtained in a specific configuration) offers an inadequate stall speed margin for an everyday all-engines-operating case and recommends not less than 1.2 $V_{MC}$ (minimum control speed with critical engine inoperative) or 1.3 $V_{S1}$. The GAMA states that the FAA has not justified the proposed minimum all-engine-climb speed of 1.2 $V_{S1}$.

As presented in the NPRM, the FAA finds that 1.2 $V_{S1}$ is an improvement in the minimum performance standards. Deleting climb rate requires considering a minimum speed to ensure an adequate margin between stall speed $V_S$ and the selected climb speed. If $V_X$ is usually greater than 1.2 $V_{S1}$, as the GAMA states, then rule compliance is not a burden. If $V_X$ is lower than 1.2 $V_{S1}$, then $V_X$ provides an insufficient margin with stall speed which cannot be dealt with in the flying quality rules. This position is supported by another commenter. The FAA concludes that 1.2 $V_{S1}$ is adequate and that a $V_{MC}$ based requirement is unnecessary. The FAA adopts § 23.65 as proposed.

*Proposal 8*

The FAA proposed to change § 23.141 to clarify the general requirements for flight characteristics.

The one commenter (JAA) agrees with the proposal but suggests some changes for the paragraph. The first is to insert the phrase "at all practical loading conditions" so that the section will read "through § 23.253 at all practical loading conditions, at all practical operating altitudes."

The FAA notes that the current evaluation of an airplane's flight characteristics must consider all practical loading conditions in accordance with § 23.21. This addition does not add a requirement to flight characteristic testing and does clarify the requirement. The final rule paragraph adds this phrase.

The other suggested change proposes to add a phrase between "under § 23.1527" and "without exceptional piloting skill," which reads, "for which certification has been requested." The FAA agrees and has added the phrase to the final rule. The phrase clarifies that the loading condition and altitudes, checked during the flight characteristics evaluation, are those conditions and

altitudes requested by the applicant for approval. The FAA adopts § 23.141 with the changes discussed above.

*Proposal 9*

The FAA proposed to change § 23.143 by replacing the word "Dive" with the word "Descent" because descent more accurately reflects the total phase of flight. No one commented on this proposed change, and the FAA adopts the change to § 23.143 as proposed.

Some comments received on § 23.145 resulted in revisions to the table in § 23.143(c). These comments are discussed in the discussion of § 23.145.

*Proposal 10*

The FAA proposed to change § 23.145 to correct an error created by amendment 23–21 and to correct the trim speeds and procedures.

Although the FAA received no comments on paragraph (a) of § 23.145, the FAA notes that "the airplanes as nearly as possible in trim at 1.3 $V_{S1}$"is a condition specified for both maximum continuous power and power off in § 23.145 (a)(1) and (a)(2). To eliminate redundancy, the FAA moved these words in the final rule to the introductory text of § 23.145(a).

The JAA and the GAMA commented on § 23.145 (b), (c), and (d). The GAMA believes that the one-hand control force of 50 pounds in proposed § 23.145(b) is too stringent but does not provide any further recommendations. The NPRM proposal discusses the reasons for selecting, the particular control force and the control force is retained as proposed.

The GAMA also suggested deleting the 50-pound control force in § 23.145(b) or moving it to the table in § 23.145(c). The FAA agrees with the suggestion that the one-hand control force for the wheel should be located in the table in § 23.143(c). This table contains other forces for the control wheel, stick, and rudder pedals. It is appropriate to add this one-hand control force to the table.

The JAA provides extensive comments on § 23.145(b). First, the JAA asks to what the 50-pound control force limit of § 23.145(b) applies. The JAA believes that this force should include any initial out-of-trim force and the change of control force that occurs during the variations in flight conditions. As proposed by the FAA, this requirement does not determine the total control force in the airplane during the maneuvers specified in § 23.145, paragraph (b)(1) through (b)(5). The one-hand control force test verifies that the changing control forces, during the maneuver, do not become higher than the pilot can safely control. The FAA specifies a one-hand control force because, during the maneuvers, the pilot is using one hand to change the power settings or flap positions. Only one hand will be available to correct the resulting control force changes. Accordingly, the requirement for the airplane control force is not limited to a total of 50 pounds, as the JAA advocates. The requirement allows force to be the sum of the initial out-of-trim force plus the allowed 50 pounds to correct the maneuver. In practice, the total control force on the airplane depends upon the direction of the pilot force and the direction of the initial out-of-trim force. The out-of-trim forces may add (or subtract) to the 50-pound force limit.

The JAA also recommends deleting the words "the gear extended" from § 23.145(b) since the demonstration required by paragraph (b)(3) and (b)(4) are with gear retracted.

The FAA re-examined these requirements and agrees that the gear position requirements of § 23.145(b) conflict with § 23.145, paragraph (b)(3) and (b)(4). But, the FAA does not agree that the gear position requirement of § 23.145(b) should be deleted. It is necessary to specify the needed gear position in the maneuvers in § 23.145, paragraphs (b)(1) through (b)(5). To correct these requirements, the FAA removes the words "with the landing gear extended" from § 23.145(b) and adds this phase to § 23.145, paragraphs (b)(1) and (b)(2).

The JAA also believes that proposed § 23.145(b)(2)(i) fails to address properly a normal balked landing demonstration. First, the JAA notes that the proposed initial trim speed 1.2 $V_{SO}$ (stalling speed or minimum steady flight speed in landing configuration) is below the final approach speed of 1.3 $V_{SO}$. Second, mishandled balked landings are covered in § 23.145(b)(2)(ii). Third, it is incorrect to require a speed abuse for the normal demonstration requirements.

The JAA also disagrees with the proposal to require the airplane to maintain the speed used to show compliance with § 23.77. The JAA's reasons for disagreeing are that § 23.77 provides requirements for the balked landing climb case, and it is inappropriate to correlate this climb condition to those for the balked landing demonstration of § 23.145(b)(2)(i), which recommends go-around settings. To support not using the speed of § 23.77, the JAA notes that it could be as low as 1.1 $V_{SO}$, which is not a realistic go-around speed with flaps partly retracted. The JAA recommends a speed of 1.3 $V_{SO}$.

Finally, the JAA disagrees with the reference to § 23.145(b)(1)(i) in proposed § 23.145(b)(2)(iii) because there should be no flap gate positions between fully extended and go-around flaps. The JAA agrees with giving credit for the flap gate positions in the mishandled balked landing requirements of § 23.145(b)(2)(ii), but questions the need to maintain a speed of 1.1 $V_{SO}$. The JAA believes that it is acceptable to retrim between each gate state of flap retraction and that it should be acceptable to allow the airplane to accelerate to 1.1 $V_{S1}$, where $V_{S1}$ is the selected flap setting configuration.

The FAA has reviewed the proposal in light of the comments received on § 23.145(b) concerning airplane trim at 1.2 $V_{SO}$ or 1.3 $V_{SO}$ and agrees that an abuse speed of 1.2 $V_{SO}$ for a normal balked landing is inappropriate. The final rule allows an abuse speed of 1.3 $V_{SO}$ for a normal balked landing. However, the FAA considers an abuse speed 1.2 $V_{SO}$ appropriate for a mishandled balked landing.

The FAA does not agree that it is inappropriate to correlate the balked landing climb in § 23.77 to the balked landing of § 23.145(b)(2)(i). The FAA has evaluated this and determined that a speed showing compliance with the balked landing climb is also safe for a wings level go-around flight. Changes to § 23.77 clarify that the balked landing speed is the minimum speed that must be maintained.

The last item related to § 23.145(b) is the comment on the credit given for gated flap positions. Upon re-examination of proposed § 23.145(b)(2)(iii), the FAA agrees with this comment. There should not be a flap gate position between the flap fully extended position and the go-around position. If one is provided, it should be bypassed so the go-around setting can be quickly attained. Permitting a gated position conflicts with § 23.145(b)(2)(i) in a normal balked landing. Section 23.145(b)(2)(i) requires the flaps to be retracted as quickly as possible to the go-around position. Section 23.145(b)(2)(iii) omits the provision for flap gate credit from the final rule.

As proposed, § 23.145(b)(2)(ii) would allow the use of flap gate positions for the mishandled balked landing demonstration requirements. The FAA agrees; therefore, it is acceptable to accelerate the airplane to 1.1 times the minimum steady flight speed. The final rule includes this provision.

The JAA concurs with § 23.145, paragraphs (b)(3), (b)(4), and (b)(5), and suggests moving § 23.145(b)(5) to § 23.175 and combining it with § 23.175(d). The FAA reviewed the

possibility of combining these two sections, which would require revisions in both. This could create unintended meanings, and since the recommended changes are beyond the scope of the notice, the FAA will consider this proposal for future rulemaking.

Both the GAMA and the JAA offer comments on proposed § 23.145(c). The GAMA notes that this requirement would require a demonstration of an elevated load factor, and suggests that, for reasons of safety, this should be an extrapolation of lower speed data or an analytical finding. The JAA states that the JAA is unclear on the relationship of this proposal to present § 23.335(b)(4)(i) and suggests a paragraph revision that would reference § 23.335(b)(4)(i).

Proposed § 23.145(c) requires a demonstration of 1.5 g pitch maneuver capability up to $V_D/M_D$ (design dive speed/design dive Mach number). The demonstration is necessary and should not be extrapolated from a lower speed test. Calculations may be used to show compliance with § 23.335(b)(4)(i). It is inappropriate to combine the design airspeed with the proposed § 23.145(c) flight demonstration. Also, showing compliance with § 23.335(b)(4)(i) by flight demonstration fails to explore the pitch maneuver capabilities close to $V_D/M_D$. The FAA adopts § 23.145(c) as proposed.

The JAA questions the need for the c.g. conditions contained in § 23.145, paragraphs (d)(1) and (d)(2). Section 23.21 covers these conditions. The FAA's review shows that the specific reference to the c.g. position is unnecessary, and deletes it. The FAA adopts § 23.145 with the changes discussed above.

*Proposal 11*

The FAA proposed changing § 23.147 to delete the existing § 23.147(a), to renumber the remaining requirements, and to delete references to center of gravity.

Since the only comment, from the JAA, agrees with the proposed change, the FAA adopts § 23.147, as proposed.

*Proposal 12*

The FAA proposed to define airworthiness standards for determining the minimum control speed and to reword particular portions of § 23.149 for clarity.

The FAA received comments from the JAA and the GAMA, on § 23.149. Only the JAA addressed the proposed revised definition of $V_{MC}$ in § 23.149(b)(2). The JAA objected to the proposal to change the words "recovering control" to "maintaining control." The FAA intended this proposed revision to eliminate any implication that control is lost when the engine fails. The JAA feels the proposed change is "ill-advised" because the demonstration of $V_{MC}$ results in an airplane handling excursion, in all three axes, followed by a recovery. The JAA identifies the continued use of the word "recovery" in the stall requirements to support this position.

The FAA considered the JAA's comments, and the conference discussion, and concludes that the term "recovering" should not be used. Though excursions may occur in all three axes, those excursions do not mean that complete loss of control of the airplane has occurred. "Maintaining control" includes the action needed to correct these excursions and to continue to fly the airplane with one engine inoperative. It is appropriate for use in this definition. This revision in the $V_{MC}$ definition should not be considered for extension to the stall requirements. Control is lost in a stall; therefore, the term "recovery" is appropriate for the stall requirements.

The JAA also states that the NPRM phrase, "with a yaw of not more than 20 degrees," in the proposed definition of $V_{MC}$ is confusing, since heading excursions are limited to 20 degrees in unchanged § 23.149(d).

The FAA has reviewed this proposed change, along with the text of § 23.149(d), and agrees that the proposed revision does not provide the intended improvements. Accordingly, it is removed in this final rule.

The JAA also comments on proposed § 23.149(b)(5), which would require that in determining minimum control speed the airplane must be in the most critical takeoff configuration. The JAA states that JAR 23.149(b)(5) requires that the propeller controls should remain in the recommended take-off setting throughout.

To clarify this requirement and ensure that the proper propeller control setting will be used, final rule § 23.149(b)(5) includes a statement on the propeller control setting consistent with JAR 23.149(b)(5).

The FAA received comments from the GAMA and the JAA on the proposed change to § 23.149(c) to establish an operational limitation for a minimum speed to intentionally render the critical engine inoperative. This proposal for a safe, intentional, one-engine-inoperative speed, $V_{SSE}$, includes language that defines a maximum and a minimum value for this speed. The GAMA opposes the maximum and minimum values proposed and believes that these limits are so small that they defeat the purpose. The JAA does not agree with the establishment of $V_{SSE}$ as a limitation.

The FAA has considered these comments and agrees with the expressed position that $V_{SSE}$ should not be established as a limitation. The FAA is aware of the benefits resulting from informing the pilot of the speed that provides an additional safety margin above $V_{MC}$. This is a especially important in a training environment. Accordingly, § 23.149(c) is revised to require that $V_{SSE}$ must be established and a new § 23.1585(c)(6) requires that this information must be put in the AFM. By establishing this requirement, information recommended by GAMA's Specification No. 1 can be included in the AFM. The FAA adopts § 23.149 with the changes discussed above.

*Proposal 13*

The FAA proposed changes to the landing control requirements in § 23.153. The FAA received comments from the JAA and the GAMA on this proposal.

The GAMA believes that the FAA may have overlooked the effect that the proposed change would have on airplanes weighing 6,000 pounds or less which are not required to meet § 23.153. For these airplanes the GAMA believes that the speed for control during landing should be set in a different way than using the speed used for the demonstration of landing under § 23.75, minus 5 knots.

The FAA disagrees. The FAA considered all airplane weights in the NPRM. Existing § 23.75 does not differentiate landing speed by weight.

The GAMA states that § 23.153(b) adds the steepest approach gradient for landing control. The GAMA believes that the approach gradient is inappropriate because there is no practical way for a pilot to determine the gradient.

The FAA notes that part 23 already requires a pilot to determine the gradient. Section 23.75(a), as amended by amendment 23–42, requires landing distance to be determined for all airplanes. The section also requires that the distances be based on a descent gradient of 5.2 percent at not less than a 1.3 $V_{S1}$ speed. Additionally, an applicant may show a steeper approach gradient if a means is available to display gradient to the pilot.

The JAA states that the proposed changes to § 23.153 bring the requirement substantially into line with JAR 23.153. JAA also concurs with the inclusion of all airplanes and with the inclusion of proposed paragraphs (b) and (c). The JAA states that it is

"disturbed that the cross-reference to § 23.143(c) could allow the use of a (two-handed) elevator control force as high as 75 pounds in a landing maneuver."

The FAA agrees with the JAA. To clarify the FAA's intent, final rule § 23.153 specifies a one-handed force. The FAA adopts proposed § 23.153, with this change.

*Proposal 14*

The FAA proposed to change § 23.155 to clarify the conditions used to prove elevator control force.

The JAA submitted the only comment on this proposal, stating its preference for existing § 23.155(b)(2). Also, the JAA states that, if the FAA retains § 23.155(b)(1) as proposed, the words "for level flight" should be changed to "for wings level flight."

The FAA agrees that "for wings level flight" clarifies "level flight condition" and has, therefore, changed the final rule accordingly. In evaluating the suggestion to add the word "wings", the FAA notes that the current § 23.155(b)(2), which this proposal is replacing, uses the words "with wings level." Adding the word "wings" will retain the previously used language. Since the proposals for § 23.155(b)(1) and (b)(2) also contain the words "level flight," the suggested change is also made to these paragraphs. The FAA adopts § 23.155, with the changes discussed above.

*Proposal 15*

The FAA proposed to add a ten-second limit to the equation in § 23.157(a)(2) and a seven-second limit to the equation in § 23.157(c)(2). These proposed limits would restrict all airplanes above 12,500 pounds to a minimum rate of roll, correcting an inadvertent oversight introduced by adding the commuter category in amendment 23–34.

The JAA stated that the proposed change would align § 23.157 with JAR 23.157. The GAMA believes that proposed § 23.157(b)(4) is not clear and suggested reversing the words "and" and "or."

The FAA agrees that it would not be possible to trim the airplane to the greater of "1.2 $V_{S1}$ and 1.1 $V_{MC}$." Accordingly, "and" has been changed to "or" in the final rule.

The FAA adopts § 23.157 with the change discussed.

*Proposal 16*

The FAA proposed to revise the engine power requirements of § 23.175 for the climb conditions.

The comment from the JAA agrees with the proposed change to the required power for reciprocating engines. However, the JAA does not believe that the phrase "or the maximum power or thrust selected by the applicant as an operating limitation for use during cruise * * *" is appropriate. The JAA believes that this limitation can be abused and asks how it should be interpreted in comparison with, for example, maximum continuous power or thrust, if the latter is greater. The JAA notes it is considered unreasonable to "get around" the requirement by declaring a "limitation" while claiming credit for a higher maximum continuous limit under other circumstances. Also, the JAA notes other requirements in part 23 using similar words referring to limits for cruise or climb operations.

The first item addressed by the JAA is that this limitation can be abused; the FAA agrees. This is true of most limitations placed on an airplane. Engine power or thrust limitations are no more likely to be abused than any other limitation. An important aspect of safety in the aviation community is the training of pilots and their understanding that limitations are established to avoid possible unsafe conditions. The FAA does not find the JAA's reasons adequate to change the proposed requirements that would permit the establishment of limitations.

The other JAA position, that limitations are established to allow the holders of a type certificate to "get around" certain other provisions of the requirements, is not valid. There are circumstances, such as where an airframe manufacturer needs to replace the engine on a particular airplane model and the only engine available produces more horsepower than the engine that was originally approved for that airframe. By using the higher powered engine, and establishing limitations, it may be possible to obtain approval without incurring the additional expenses of redesign and testing that would otherwise be needed for using a higher power engine. The regulations permitting the establishment of limitations benefit the public by reducing costs. No known adverse affects on safety have resulted from these provisions.

The JAA also noted that the present § 23.175(d)(3) contains a reference to § 23.161(c)(4), which does not exist. A review of the regulations shows that some publications do reference § 23.161(c)(4) while other publications correctly reference § 23.161(c)(2).

To verify the correct paragraph that should be referenced in § 23.175(d)(3), the FAA reviewed the history of both §§ 23.161 and 23.175. Before the adoption of amendment 23–21 on March 1, 1978, § 23.161 requirements for power approaches were contained in § 23.161(c)(4), and § 23.175(d)(3) correctly referenced in § 23.161(c)(4). When the FAA adopted amendment 23–21, it revised the trim requirements and moved the power approach requirements to § 23.161(c)(2). Amendment 23–21 also revised § 23.175(d)(3) to correctly reference § 23.161(c)(2). This error needs to be corrected in the current publications and, while not included in the NPRM, is included in this final rule.

The FAA adopts § 23.175 with the change discussed above.

*Proposal 17*

The FAA proposed to revise § 23.177(a) to require that static directional stability and lateral stability be shown under more realistic operating conditions expected in service. Changes proposed to § 23.177(a)(1) revise the approach configuration to be used to evaluate the static directional stability. Instead of the maximum continuous power previously required, the engine power necessary to maintain a three degree angle of descent is now specified. Proposed revisions to § 23.177(a)(2) require static lateral stability in the landing configuration at the engine power necessary to maintain a three degree angle of descent. Presently, 75 percent maximum continuous power is used. In addition, the proposal would have deleted the current rule requiring a bank angle of 10 degrees or more.

The JAA and the GAMA address § 23.177(a)(1). The JAA states, "We do not agree with the proposed relaxations in minimum speed (in configurations other than takeoff) and maximum power in the landing configuration for demonstrating positive directional stability." The JAA believes that directional instability is an undesirable characteristic and should not be permitted within, or outside, the normal flight envelope, and that 1.2 $V_{S1}$ is a reasonable lower speed for all configurations. The JAA also states that power settings above that needed for approach are reasonable in the landing configuration, for example, during the initiation of a go-around. The JAA recommends retaining the existing criteria for airspeed and power. Further, the JAA states that the NPRM explanation that the relaxation in minimum airspeed is taken from Conference Proposal 130 "is not valid for directional stability as the proposed

relaxation was only applicable to lateral stability demonstrations."

The FAA reviewed Conference Proposal 130 and agrees with the JAA that speed range relaxation was not applicable to directional stability. The FAA also agrees that 1.2 $V_{S1}$ is a reasonable lower speed for all configurations and revises § 23.177(a)(1) accordingly. The FAA disagrees with requiring directional stability in the landing configuration at maximum continuous power, since go-around is a transitory condition and the pilot normally changes the airplane configuration promptly. The power required for the three degree angle of descent is retained.

The GAMA states that § 23.177(a)(1) needs to be clarified. The GAMA states that the proposed language calls for a demonstration at 1.2 $V_{S1}$ for the takeoff configuration and at 1.3 $V_{S1}$ for climb, cruise, and approach configurations in the same sentence. The GAMA states that the next sentence addresses the "landing configuration" (normally a power-off case) as having power to maintain a three degree angle of descent (usually the approach case). The GAMA asks whether the word "landing" should be replaced with the word "approach" for the latter demonstration.

The FAA has determined that, contrary to the GAMA assumption, "landing" is the correct word and as the rule states some power is required in the landing configuration to maintain a three-degree angle of descent. This agrees with the configuration and power in proposed § 23.75.

The GAMA notes that the NPRM proposes showing directional stability "at speeds from 1.2 $V_{S1}$ in the takeoff configuration and 1.3 $V_{S1}$ in other configurations * * *." The GAMA states that rudder force reversal (in the same paragraph) is prohibited "from $V_{S1}$" with no configuration distinction and asks if these are compatible.

The FAA agrees that the rule, as proposed, gave speed ranges that were not compatible. As noted earlier, § 23.177(a) adopts the speed of 1.2 $V_{S1}$ as the lowest for all configurations and this change eliminates the incompatibility. The FAA adopts § 23.177(a)(1) with the changes discussed.

The JAA comment on proposed § 23.177(a)(2), states "we see merit in retaining the existing 10° bank criterion, to define slip angle, provided that a rudder force of 150 lbs. is not exceeded." Section 23.177(a)(2) is adopted as proposed.

However, the JAA also believes that the proposed relaxation in power for the landing configuration demonstration is ill-advised and that the airplane could be laterally unstable in a go-around.

The FAA agrees that relaxation of the engine power requirements could result in lateral instability in a go-around. However, since go-around is a transitory condition where the pilot normally makes prompt changes to the airplane configuration, there is no need for the regulations to address higher engine power in the landing configuration.

Concerning the proposed § 23.177(a)(3), the JAA questions two points. First, in the sentence, "At larger slip angles up to the angle at which full rudder and aileron control is used * * *," the JAA believes that the wording should read "full rudder or aileron." The JAA also believes it is unlikely that rudder and aileron limits would be reached together in a steady sideslip maneuver. Second, the JAA questions the meaning of the sentence, "Enough bank must accompany the sideslip to hold a constant heading." The JAA believes clarification is necessary.

The FAA agrees that the word "or" between the words "rudder" and "aileron" clarifies § 23.177(a)(3). Concerning the second point, the FAA has applied this rule for several years without any questions about its intent or manner of performing the maneuver. The FAA adopts § 23.177(a), with the changes discussed above.

*Proposal 18*

The FAA proposed to remove § 23.179, Instrumented stick force measurements. Since the FAA received only one comment from JAA, which agrees with the proposed change, the FAA is deleting § 23.179, as proposed.

*Proposal 19*

The FAA proposed to revise § 23.181 to account for installed stability augmentation systems, and to require an evaluation of the airplane for phugoid-type oscillations. The FAA received comments on this proposal from the JAA and the GAMA.

The JAA notes that part 25 requires stability and augmentation systems and § 25.181 "does not include the relaxation in stick fixed dynamic stability demonstrations offered by the proposed change to FAR 23.181". JAA apparently bases this conclusion on the phrase "except when compliance with § 23.672 is shown."

The FAA did not intend for this phrase (proposed for § 23.181(a)(2) and (b)(2)) to relax the dynamic stability requirements. If a stability and augmentation system is installed, that system will move the primary controls. Since the JAA comment shows that the proposed wording could be misunderstood, the FAA has removed this wording from the final rule and has added a new § 23.1891(c) to replace it. Proposed paragraph (c) of § 23.181 is paragraph (d) in the final rule.

The JAA and the GAMA each comment on proposed § 23.181(c). The JAA states that it will propose the same requirement for JAR 23. The GAMA notes the phugoid oscillation requirement of proposed § 23.181(c) requires the development of guidance material (phugoid is an oscillation in pitch). The FAA recognizes the need for guidance and is revising Advisory Circular 23–8A, Flight Test Guide for the Certification for part 23 Airplanes. The FAA adopts § 23.181 with the changes discussed above.

*Proposal 20*

The FAA proposed to clarify the requirements of § 23.201(c) by stating the time that the elevator control must be held against the stop to consider the airplane in a stall condition. The FAA recognizes the use of artificial stall barrier systems, such as a stick pusher, as an acceptable means of defining stall. When the system activates, the airplane is in a stall condition. The FAA received comments on this proposal from the GAMA and the JAA.

The GAMA questions the FAA's justification for the proposed requirement for a two-second delay after the control reaches the aft stop during stall determination.

The wording proposed by the FAA would replace the current definition, which reads, "or until the control reaches the stop." Several airplanes have been tested where the elevator has been pulled back to achieve the required speed reduction, but a nose pitch down motion and stall did not occur. Instead, the speed reduction continued until the elevator control reached the mechanical stop and the speed reduction simply stopped. In each of these tests, lengthy discussions between the FAA and the manufacturer have occurred on how long the elevator control needs to be held against the stop before this flight condition can be called a stall. This proposed change defines the stall condition. The FAA chose the two-second interval based on conference discussions and testing experience. The FAA adopts this proposal as presented

The GAMA also suggests that the last line of § 23.201(c) more appropriately belongs in § 23.201(d)(2).

Section 23.201(d)(2) addresses the power application procedure to be used, if required during stall recovery, and is similar to § 23.201(c). The requirements of § 23.201(c) define when the stall

evaluation is completed and assure that engine power is not applied too quickly. To clarify the two different statements on the application for power at the completion of the stall, the requirements of § 23.201(c) are adopted as proposed, and § 23.201(d)(2) is revised to use similar wording.

The JAA notes on § 23.201(f) that it is the power loading and not the weight of the airplane that produces the extremely high nose-up attitudes at 75 percent maximum continuous power; therefore, the proposed relaxation for airplanes of over 6,000 pounds should be extended to all weights of airplanes. The JAA believes that the power-on stall problem should be addressed more directly by placing an upper limit of 30 degrees on the pitch attitude.

The FAA does not agree with the recommendation to place an upper limit of 30 degrees on the pitch attitude. An attitude limit would require extensive and costly flight tests to evaluate various airplane configurations and flight attitudes without a corresponding increase in safety.

The FAA agrees with the JAA's position that the relief proposed for airplanes of more than 6,000 pounds should be extended to airplanes of all weights. When these proposals were developed, the FAA was unaware of any airplanes of 6,000 pounds or less that would have engine power-to-weight ratios capable of producing the extremely nose-high stall characteristics experienced in heavier airplanes. Following the development of these proposals, several airplanes of 6,000 pounds or less maximum weight have been developed with similar power-to-weight ratios. There is a need to allow those airplanes to use the same test procedures proposed for airplanes of more than 6,000 pounds. The FAA has re-examined the stall test procedures and notes that airplanes of all weights have been successfully tested at the current 75 percent maximum continuous power requirement. Therefore, there is a need to consider various power-to-weight ratios likely to occur for airplanes of any weight. Accordingly, the final rule language is revised to allow manufacturers to continue testing at 75 percent maximum continuous power for airplanes at any weight. If this test shows undesirable stall characteristics at extremely nose-high attitudes, the testing may be done in accordance with the power and configuration proposed in the notice for airplanes of more than 6,000 pounds. The final rule provides relief for airplanes that encounter extremely nose-high attitudes and undesirable stall characteristics. The FAA revises proposed § 23.201(f)(4) to allow testing airplanes of any weight for the power requirements discussed. The FAA adopts § 23.201 with the changes discussed above.

*Proposal 21*

The FAA proposed to change the § 23.203 roll excursion requirements to clarify the permissible limits for both turning stalls and accelerated stalls. The FAA received two comments on this proposal.

The GAMA asks FAA "to clarify how one can 'regain level flight * * * without increasing power' (§ 23.203(b)) with the power off at the maneuver entry requirement of § 23.203(c)(4)(i)."

The FAA has clarified the requirement by revising § 23.203(b) to read "wings level flight" rather than "level flight."

The GAMA also states that the "FAA has not provided sufficient data to justify the reduction in allowable roll excursion requirements for turning flight stalls" and requests more justification.

As stated in the NPRM, 60 degrees of roll in turning flight stalls would permit a roll to go to 90 degrees, which the FAA considers to be hazardous. The FAA adopts the proposal for § 23.203(b)(4) as proposed.

The JAA concurs with the proposed changes to § 23.203 but notes that the two comments offered on § 23.201(f) relating to power apply equally here.

As discussed in the response to comment on § 23.201(f)(4), the FAA disagrees with the recommendation to place an upper limit of 30 degrees on pitch attitude. An attitude limit would require many tests to evaluate various airplane configurations and flight attitudes without a corresponding increase in safety. Since the NPRM did not address a specific pitch limit, the suggested limit is beyond the scope of the notice and would require additional rulemaking. Also, as previously indicated, the FAA agrees with the JAA recommendation that the relief proposed for airplane weights greater than 6,000 pounds should be applied to all airplane weights. The FAA revises § 23.203(c)(4) to read like § 23.201(f)(4).

The JAA also states that to advocate "normal use of flight controls" in the special circumstances of stall recovery is potentially misleading.

The FAA does not agree. The phrase "normal use of flight controls" has been successfully applied in § 23.202(e) for many years without problems. For example, if ailerons remain effective during the stall, then regaining level flight by using them is appropriate. The FAA adopts § 23.203 with the change discussed above.

*Proposal 22*

The FAA proposed to revise the critical-engine-inoperative stall requirements of § 23.205 to require that critical-engine-inoperative stalls be evaluated with the wing flaps in the climb position.

The comment received, from the JAA, expresses serious reservations about keeping the critical-engine-inoperative stall requirement. The JAA asserts that the real life one-engine-inoperative stall is not represented by limiting power to 75 percent, by maintaining wings level at the stall, and by utilizing a reduced throttle recovery. Conversely, the JAA states that requiring high asymmetric power to be held down to the stall and throughout the recovery would create an unreasonable risk of spinning. The JAA questions whether this requirement can be of significance in ensuring adequate one-engine-inoperative low speed characteristics in service. The JAA observed that the Transport Category Directorate deleted the equivalent part 25 requirement through amendment 25–72.

Since this issue was not addressed in the NPRM, the FAA is not taking any action at this time. The FAA adopts proposed § 23.205 as proposed.

*Proposal 23*

The FAA proposed to change § 23.207 to require the current stall warning margins to be applicable to straight stalls, as set forth in § 23.201(c). It also proposed requirements for turning flight and accelerated stalls in a new § 23.207(d). The intent is to ensure that an adequate margin above the stalling speed exists in these two stall conditions.

The FAA received comments from the JAA and the GAMA on this proposal. The GAMA states that the upper stall warning margin should apply to power-off stalls only. The GAMA believes the lead-in of proposed § 23.207(c) should be rewritten to read, "For the power-off stall tests required by § 23.201(c) * * *." According to the GAMA, applying § 23.207(c) to the power-on stall conditions of § 23.201(c) would result in very high deck angles for airplanes with high thrust-to-weight ratios. With a stall warning greater than the 10 knot limit, or 15 percent of the stalling speed limit, the commenter feels that the pilot will be alerted sooner and, thus, avoid excessively high deck angles. The GAMA notes that multiengine airplanes at maximum weight, aft c.g., and high power can fly at airspeeds below $V_{MC}$. If the difference

between $V_{MC}$ and the stall speed is greater than 10 knots, or 15 percent of the stall speed, the GAMA believes the airplane could be difficult to recover if the critical engine fails. According to the GAMA, a stall warning greater than 10 knots, or 15 percent of the stall speed, reduces the time the airplane will be below $V_{MC}$ without a stall warning. The GAMA states that an equivalent level of safety can be established for a stall warning in excess of 10 knots, or 15 percent of the stall speed, if there are no nuisance warnings during normal takeoff, climb, approach to landing flare, go-around, or during the emergency procedures of single-engine takeoff and climb, approach, and landing.

The GAMA's suggested changes are beyond the scope of this notice. The proposed revision of § 23.201 would preclude very high deck angle stalls in the power-on condition. Further, the stalls required by § 23.201(c) are one knot/second decelerations and the 10 knot, or 15 percent of the stalling speed, warning is appropriate for this flight condition. New § 23.207(d) addresses higher decelerations; therefore, § 23.207(d) is adopted as proposed.

The JAA concurs with the proposed amendments. However, the JAA is concerned with the FAA's explanation for rejecting conference proposal 160 concerning the audibility of a stall warning when wearing headsets. The JAA believes that regulating the use of headsets, regarded as personal instead of airplane equipment, would be difficult. The JAA states that it would be unusual to see an AFM prohibition on the use of certain types of headsets and questions whether such a limitation would be observed. The JAA states it is therefore essential to ensure that all audio warnings remain adequately audible with any standard of headset that is likely to be used in service. The JAA states that the following words are being considered for JAR 23.1431(d): "If provision is made for the use of headsets, it must be demonstrated that all aural warnings are effective, with all permitted types of such equipment in use under the most adverse conditions." The JAA concludes that the FAA apparently does not intend to regulate this subject.

The FAA discussed this issue in the NPRM but did not make a specific proposal. This issue is under consideration for a future rulemaking.

After publishing the NPRM, the FAA recognized that the second sentence of the proposed § 23.207(d) prohibits a stall warning occurrence when a stall is imminent. The intent of the proposal was to preclude nuisance stall warnings. Revised § 23.207(d) clarifies that stall warnings should not occur when utilizing AFM procedures. The FAA adopts § 23.207 with the change discussed above.

*Proposal 24*

First, the FAA proposed to clarify § 23.233(a) by specifying that the crosswind requirements must be demonstrated. Second, it proposed to revise § 23.233(b) to make the rudder effective at half the touchdown speed. Third, it proposed seaplane directional stability and control requirements to ensure better handling during water operations up to the maximum crosswind velocity of 0.2 $V_{SO}$.

The FAA received comments on this proposal from the JAA and from a private individual. The JAA believes that it is necessary to establish the maximum crosswind conditions under which safe operation has been demonstrated and to publish this information in the AFM. The JAA suggests that, with the addition of the word "taxiing," the words currently proposed for JAR 23.233(a) are preferable. They are: "(a) A 90° cross-component of wind velocity, demonstrated to be safe for taxying, take-off and landing, must be established and must not be less than 0.2 $V_{SO}$." The FAA concurs with this suggestion and revises § 23.233(a) to agree with the JAR wording.

The other commenter states: "Paragraph 23.233 as proposed is unclear and grossly unrealistic. It is not clear that 23.233(a) applies during landing or takeoff as well as taxiing. Moreover, 0.2 $V_{SO}$ is inadequate for normal operation of small airplanes. That velocity is less than seven knots for airplanes offered currently. Small airplanes are routinely operated in crosswinds several times as great." The commenter believes that § 23.233(a) should be revised to read: "(a) It must be demonstrated that there is no uncontrollable ground or water looping tendency in 90° crosswinds, up to a wind velocity of 0.5 $V_{SO}$, but not less than 15 knots, at any speed at which the airplane may be expected to be operated on the ground or water during landing or takeoff." The commenter also notes that many small airports have single runways that are subject to crosswinds substantially exceeding the demonstrated crosswind components of existing airplanes but that operations proceed regularly in these conditions. The commenter concludes, "The regulations should agree with the clear public need."

In response to this commenter, the FAA notes that the change to § 23.233, made in response to the JAA comments, clarifies that § 23.233(a) includes landing, takeoff, and taxiing. Since the FAA did not propose crosswinds above 0.2 $V_{SO}$ in the NPRM, it is inappropriate to apply a more stringent crosswind criterion in the final rule.

The JAA also states that there is no need to address seaplanes separately in a proposed new § 23.233(d), which refers to § 23.233(a). The FAA disagrees. Seaplanes need to be addressed separately. As stated in the NPRM, seaplane step taxi and step turns are conditions that need separate investigation; therefore, § 23.233(d) is adopted as proposed. The FAA adopts § 23.233 with the change discussed above.

*Proposal 25*

The FAA proposed changing the requirements of § 23.235 to require an airplane evaluation during taxi, takeoff, and landing on the roughest surface expected in service. Also, the FAA proposed to require water handling information and information on allowable sea conditions for small airplanes that may be operated from water.

The FAA received comments from the GAMA and the JAA on this proposal. The JAA believes that § 23.235(a) should address the characteristics of the whole airplane, not just the shock-absorbers. The commenter recommends the wording of proposed JAR 23.235: "The airplane shall be demonstrated to have satisfactory characteristics and the shock-absorbing mechanism must not damage the structure of the aeroplane, when the aeroplane is taxied on the roughest ground that may reasonably be expected in normal operation and when takoffs and landings are performed on unpaved runways having the roughest surface that may reasonably be expected in normal operation."

The FAA concurs and changes § 23.235(a) for clarification. The GAMA mentions that § 23.235(a) proposes to cover rough field takeoffs and landings, but the title of the existing rule limits its content to taxi operations. The FAA agrees and has revised the section title.

The GAMA states that the means of compliance is unclear and asks whether takeoffs and landings on rough ground must be demonstrated. The clarification of § 23.235(a) discussed above resolves this issue.

The GAMA also notes that § 23.235(b) proposes inclusion of "allowable" sea conditions for floatplanes in the AFM. The GAMA believes that this establishes an inappropriate limitation of little use to a pilot contemplating a landing. At most, the GAMA states, a statement of

demonstrated wave height for operations should be included in the AFM. The FAA concurs with the GAMA's view and § 23.235(b) is revised as suggested.

The JAA wants AFM information to appear in subject G, not subpart B, and suggests transferring the intent of proposed § 23.235(b) to §§ 23.1583 and 23.1585. The FAA concurs and moves the AFM portion of § 23.235(b) to § 23.1585. Sea conditions are not an intended limitation so it is inappropriate to move the AFM portion to § 23.1583. The FAA adopts § 23.235 with the changes discussed above.

*Proposal 26*

The FAA proposed clarifying in § 23.251 that buffeting must not cause structural damage anywhere in the flight envelope and specifying a single value of design dive/mach speed, $V_D/M_D$, rather than the minimum value of design dive speed, $V_D$, permitted in the structural requirements. Since the only comment from the JAA agrees with the proposed change, the FAA adopts § 23.251 as proposed.

*Proposal 27*

The FAA proposed to change § 23.253 to expand the trim condition in § 23.253(a) from "any likely cruise speed" to "any likely speed," which encompasses the descent trim condition. Since the only comment from the JAA agrees with the proposed change, the FAA adopts § 23.253 as proposed.

*Proposal 28*

The FAA proposed to revise § 23.305 to clarify the meaning of failure during static ultimate load test.

The one commenter, the JAA, questions why the "liberal interpretation" mentioned in the NPRM occurs in applications of part 23 regulations and not in part 25. The FAA addressed this issue in the FAR part 23 Airframe Airworthiness Review, which identified inconsistent definitions of failure during ultimate load testing. Advisory Circular 23–6, which resulted from that meeting, addresses this commenter's concerns. The Transport Airplane Directorate, which is responsible for part 25, is aware of the part 23 regulatory action.

The FAA adopts § 23.305 as proposed.

*Proposal 29*

The FAA proposed a new requirement to correct structural test results for material correction factors in § 23.307. The FAA received comments on this proposal from the GAMA, the JAA, and from Transport Canada.

The GAMA states that the proposed amendment is impractical and, perhaps, impossible to meet. The GAMA notes that under current regulations a factor of safety of 1.5 times limit load covers variations in material mechanical properties, construction dimensions, and load predictions. Also, the GAMA notes that the 1.5 factor has proven satisfactory for ultimate strength for more than 60 years. The GAMA recommends withdrawing the proposal.

Transport Canada notes difficulties when accounting for material and dimensional variations of the many subcomponents, determining their effect on the strength tests, and justifying a material correction factor of a singular value. Transport Canada proposes a "practical alternative" for low budget manufacturers of requiring the test specimen to be of lower strength than production articles.

The JAA suggests that this topic should more properly be addressed in FAR part 21 since the topic applies to all products.

No comments addressed composite materials which is a specific issue of this proposal.

Considering the validity of the comments, the complexities of the "practical alternative," and the lack of attention to the composite material issue, the FAA has decided to withdraw the proposed change to § 23.307.

*Proposal 30*

The FAA proposed to amend § 23.321 so the effects of compressibility on flight loads will be considered at each speed within the flight envelope.

The GAMA recommends that § 23.321(b) be rewritten to require consideration of compressibility effects above Mach 0.6. The GAMA argues that the effects of compressibility below Mach 0.6 are insignificant on flight loads. The JAA argues that compressibility needs to be taken into account only if significant and that compressibility is unlikely to be significant if the airplane Mach number is less than 0.5.

The FAA has reviewed the NPRM proposal and the comments received. To simplify certification procedures of lower performance airplanes, small compressibility effects may be neglected below a design dive speed of Mach ($M_D$) 0.40. At Mach numbers above zero, theoretical compressibility effects cause an increase in an airfoil lift curve slope. This increase is proportional to the Prandtl-Glauert factor, $1/\sqrt{(1-M^2)}$, where M is the free stream Mach number. This theory correlates very well with wind tunnel tests of airfoils and wings.

Wind tunnel tests provide low speed airfoil data between Mach 0.2 and 0.4. The experimental data contains the theoretical effects of speed between zero and the test Mach number Taking 0.30 as an average test Mach number, then, according to theory, the lift curve slope will increase by 4 and 10 percent, respectively, at 0.40 and 0.50 Mach numbers. The FAA considers the latter figure to be a significant increase.

Considering this problem, the FAA reviewed the design dive speeds for some light airplanes certificated under Civil Air Regulation (CAR), part 3. It calculated an $M_D$ somewhat less than 0.4 at 15,000 feet in the standard atmosphere. One of the airplanes examined, a turbocharged version, had a maximum operating altitude of 24,000 feet and an $M_D$ somewhat greater than 0.5.

The FAA has decided that the effects of compressibility must be considered by the applicant. Compressibility threshold significance varies due to wind tunnel data and testing methods, altitudes, and airplane design. For these reasons, the FAA establishes no design dive speed Mach number compliance threshold. The original proposal would have revised paragraph (b) of § 23.321 to provide for the effects of compressibility. Upon reevaluation, the FAA has concluded that it would be clearer to add this requirement in a new paragraph (c). The FAA adopts § 23.321 with the changes discussed above.

*Proposal 31*

The FAA proposed to correct an error in § 23.361 introduced by amendment 23–26. The error significantly reduced the structural design torque levels required for flight conditions at takeoff power. The intent is that the torque factors of § 23.361(c) apply to all § 23.361(a) conditions.

Since the only comment received, from the JAA, agrees with the proposed change, the FAA adopts § 23.361 as proposed.

*Proposal 32*

The FAA proposed to change the heading of § 23.369 by eliminating the phrase "Special conditions for" at the beginning of the heading. The content of § 23.369 remains unchanged.

The one commenter, the JAA, agrees with the editorial change and asks whether this is the only part of the structure needing special consideration in reversed airflow conditions. The FAA is not aware of any additional need for special consideration based on 30 years of service history. The FAA adopts § 23.369 as proposed.

*Proposal 33*

The FAA proposed to include aerodynamic loads in the design of the engine mount with the gyroscopic loads required by § 23.371. The one commenter, the JAA, suggests adding the word "combined" so the introductory statement reads "designed for the combined gyroscopic and aerodynamic loads * * *." The FAA agrees and revises the introductory statement. The proposed § 23.371 is adopted with the change discussed above.

*Proposal 34*

The FAA proposed to increase the minimum rudder force, from 130 pounds to 150 pounds, in the last line of the table of § 23.397(b) to make it compatible with the "strength of pilots" limits shown in § 23.143. Since the only comment received, for the JAA, agrees with the proposed change, § 23.397(b) is adopted as proposed.

*Proposal 35*

The FAA proposed to revise § 23.415 to add requirements defining airplane tie-down loads and to include design criteria for attachment fittings and surrounding structure.

The one commenter, the JAA, submits a recommended "more comprehensive" regulatory paragraph for consideration, and interpretative material based on JAR 23.415(c). The JAA proposes considering all weights between the empty weight and the maximum weight declared for tie-down limit load conditions. The JAA believes the following areas should be included in the consideration: tie-down points stated in the appropriate manual, surrounding structure, control system surfaces, and associated gust locks.

The FAA agrees that all weights should be considered for tie-down points and that structure surrounding the tie-down points should be substantiated for adequate strength. The recommentation to consider these weights is beyond the scope of the notice. The recommendation is retained for a future rulemaking notice. The FAA adopts § 23.415 as proposed.

*Proposal 36*

The FAA proposed to clarify when § 23.473(f) requires a ground load energy absorption test. The FAA received one comment on this proposal. The commenter proposed a wording change that would revise § 23.473(f) and would change the meaning of this requirement. Since the FAA considers the commenter's proposed change beyond the scope of the notice, the FAA adopts § 23.473(f) as proposed.

*Proposal 37*

The FAA proposed to revised § 23.479(c) to add a new requirement for landing gear spring-back loads. Additionally, this proposal allows for loads development based on testing or rational analyses other than that referenced in appendix D. This proposal also restricts the minimum values of the drag component when using the method referenced in appendix D. Since the only comment received, from the JAA, agrees with the proposed change, § 23.479(c) is adopted as proposed.

*Proposal 38*

The FAA proposed to clarify the location and combination of loads in § 23.485. Since the only comment received, from the JAA, agrees with the proposed change, the FAA is amending § 23.485, as proposed.

*Proposals 39–47*

The FAA proposed to amend § 23.521 and to add new §§ 23.523, 23.525, 23.527, 23.529, 23.531, 23.533, 23.535, 23.537, and a new appendix H, to provide a complete new set of water load requirements. Present part 23 refers to Air Force-Navy-Civil (ANC–3) and incorporates by reference the water loads sections of part 25. Since the one comment received, from the JAA, agrees with the proposal, the proposed amendment, new sections and appendix H are adopted as proposed.

*Proposal 48*

The FAA proposed to add a new § 23.573, applicable to composite structure, which would require the applicant to apply a damage tolerance evaluation. It also proposed optional damage tolerance requirements for metallic structures.

The proposed optional damage tolerance requirements caused confusion, so in this final rule the FAA has referenced this optional provision in new §§ 23.571(c) and 23.572(a)(3). Further, in § 23.573, the FAA added a lead sentence informing the applicant that composite structure must be evaluated using § 23.573. Now, when the applicant reads these three sections, it should be clearer that damage tolerance is mandatory for composite structures and optional for metallic structures.

The FAA received substantive comments on this proposal from the GAMA, the JAA, the CAA-Australia, and Transport Canada. The CAA-Australia's views on fiber reinforced plastics (FRP) are:

1. They exhibit very complex failure mechanisms.

2. Fatigue failures usually show multiple defects throughout the specimen; for metallic structures, a single crack is frequently observed

3. Four basic damage modes occur. These are matrix cracking, delamination, fiber fracture, and interfacial debonding. These damage modes may occur singly, or in combination, and interact with each other.

Based on these views, the CAA-Australia believes that: (1) Primary structure that has undetectable damage must carry design ultimate load; (2) that this structure must also carry design limit loads if the damage is detectable; and (3) when detectable damage occurs, the airplane must be removed from service unless it can be shown that the structure will always carry ultimate load with that damage.

The CAA-Australia believes that FRP structures should be designed to carry the ultimate load when manufacturing or service damage exists that is not immediately obvious. This position is based on the lack of knowledge about actual damage initiation, propagation rates, inspection difficulties, and material that is vulnerable to invisible accidental damage. The CAA-Australia offers the following additional comments on proposed § 23.573:

1. We are concerned that the damage tolerance approach will be used even where it is not practicable simply to circumvent the consequences of large scatter factors needed in the safe life approach. We believe that with appropriate scatter factors the safe life approach remains acceptable, and perhaps desirable, for FRP in these classes of airplanes.

2. Proposed paragraphs (b) and (k) should not be limited to impact damage because other sources of damage exist.

3. Damaged structure ultimate load capability should also apply to metallic structure despite whether it is damage tolerant. Damaged structure should be removed from service if its strength falls below ultimate load capacity.

4. The proposal is interpreted to require analyses, or proof testing, of production bonded joints in metallic structures, regardless of whether they have been evaluated as safe life or damage tolerant.

5. The words "and/or" in the introductory text of the proposal should be revised to read "and" to clarify that both the wing and pressurized cabin must be evaluated.

6. The primary structure should be inspected even when a "no growth (zero growth)" crack exists. Also, visual inspections may be misleading. The intent of part 25, and the proposal for

part 23, is to maintain safety by inspection given uncertainties in the design process, and errors in manufacturing, maintenance, and operation.

7. The term "barely visible damage" should be avoided. Certain non-destructive inspection (NDI) techniques are believed to "find" defects, to "see" defects. Considering NDI, "visible" is no longer a word associated only with human vision. Also, the commenter notes that, if the unaided eye visual inspection is accepted as a threshold for detecting damage, explicit inspection procedures should be provided. It is not acceptable to use maintenance procedures or the pilot's preflight inspection as the means of accomplishing visual inspection.

The GAMA comments on this proposal:

1. The NPRM heading "Water Loads" for § 23.573 is a typographical error.

2. The proposal would add a requirement that makes the damage tolerance evaluation a requirement for composite structure and an option for metallic structure.

3. Many requirements for composite structure are not appropriate for metallic structure.

4. The proposal contains detailed acceptable means of compliance that should be removed and placed in an Advisory Circular.

Based on the above stated positions, the GAMA submitted a proposed complete revision of § 23.573 that would more clearly present the criteria for composite and metallic structure.

The JAA comment states that the proposed provisions of JAR 23 relating to composites are also based on recently issued FAA special conditions and is therefore largely technically harmonized with the proposed new § 23.573. However, the JAA notes several concerns:

1. Unlike previously issued special conditions, the proposal only addressed pressurized cabin structure and omitted critical fuselage structure.

2. The proposal for § 23.573(k) for structures, where damage tolerance methods are shown to be impractical fails to require previously issued special conditions. These special conditions required a residual strength test to ultimate load after completion of the fatigue test. The JAA recommends inserting this provision because the operator would be unaware of any reduction in strength capability.

3. The editorial layout of proposed § 23.573 is potentially misleading as to its applicability to metallic and composite structures.

The FAA reviewed the above comments and, in general, concurs. Special conditions issued earlier for composite airplanes were used as the basis for this proposed new section. Many of these special conditions were prepared and issued before AC 20–107 was issued. Therefore, there was no guidance available for composite structures and it was appropriate for those special conditions to include acceptable means of compliance. The regulations should be limited to minimum airworthiness standards to be met by an applicant for a type certificate and the acceptable means of compliance should be included in advisory circulars. The FAA finds that AC 20–107 contains much of the guidance needed for compliance with the requirement in proposed § 23.573. If there is a need, the FAA will develop and issue additional guidance. Based on the comments, the FAA has carefully reviewed the proposal and has deleted the redundant material and the guidance material from the final rule.

The FAA agrees with and generally accepts the complete rewrite of proposed § 23.573 submitted by the GAMA. The GAMA rewrite clearly presents mandatory requirements for composite materials, § 23.573(a); optional damage tolerance design standards for metallic structures, § 23.573(b); and inspection provisions, § 23.573(c).

The following paragraphs should assist the reader's understanding of the transition from NPRM to this final rule:

1. Section 23.573(a) of the final rule contains the provisions included in the introductory text in the NPRM. The last sentence of this paragraph comes from proposed § 23.573(j) in the notice. Proposed § 23.573(j) contained general requirements applicable to all composite structures. It also should have been included in the general requirements of the introductory text in the notice. The words "material variability and environmental conditions" in § 23.573(j) cover the list of conditions, such as temperature and humidity, that were spelled out in the proposal and that are removed from the final rule. AC 20–107 contains information about this topic.

2. Section 23.573(a)(1) of the final rule contains the text of the first sentence of proposed § 23.573(b). The FAA guidance material in the second sentence of proposed § 23.573(b) is included in AC 20–107.

3. Section 23.573(a)(2) comes from proposed § 23.573(c). Certain explanatory words were removed from this paragraph. Section 23.573(a)(3) is a combination of § 23.573(g) and (h), in the proposal. Section 23.573(g), for pressurized cabins, and § 23.573(h), for other parts of the airplane, contained common testing requirements that have been combined. The structural items, such as the wing, identified in proposed § 23.573(h) appear in final rule § 23.573(a) and are not repeated in § 23.573(a)(3). The special consideration for pressurized cabin structure in proposed § 23.573(g)(1) and (g)(2), is now included in final rule § 23.573(a)(3)(i) and (a)(3)(ii).

4. Section 23.573(a)(4) is the same as § 23.573(d) in the NPRM. Section 23.573(a)(5) is the same as § 23.573(i) in the NPRM. Verifying the strength of bonded joints by non-destructive testing is added to this paragraph to provide a third acceptable means of approval.

5. Section 23.573(a)(6) comes from § 23.573(k) in the NPRM. This paragraph is rewritten for consistency with the other paragraphs in this section.

6. Instead of the composite damage tolerance requirements proposed for metallic structures by § 23.573(a) in the NPRM, the final rule provides these requirements in § 23.573(b).

7. Section 23.573(c) combines the proposed requirements of § 23.573, paragraphs (e) and (1), from the NPRM and makes this a requirement applicable to composite structures. Those inspection requirements also apply to metallic structures subject to the optional damage tolerance provisions of final rule § 23.573(b).

8. Proposed § 23.573(f) is deleted in the final rule. This paragraph described load spectra, load truncation, and types of damage that must be considered in the damage tolerance evaluation. It contained advisory material on testing methods and did not contain any testing requirements. Though this paragraph is removed, the topics identified must be considered and documented in any damage tolerance evaluation.

The FAA adopts § 23.573, with the changes discussed above and includes revisions to §§ 23.571 and 23.572.

*Proposal 49*

The FAA proposed to revise § 23.613 to place into part 23 the probability basis used for establishing material allowables. The probability basis appears in MIL–HDBK–5 and is duplicated in §§ 23.613 and 23.615.

The FAA received comments on this proposal from the GAMA, the JAA, and Transport Canada. The JAA agrees with the proposals because they significantly harmonize with JAR 23.

The GAMA believes that § 23.613(c) should continue to list the various strength authority documents (MIL–

HDBK–5 and others) to make it clear that these references continue to be acceptable. The FAA agrees that these references are still acceptable and concludes that since this material is advisory, it is more appropriate that it be included in an advisory circular.

Transport Canada suggests substitution of the word "design" for the word "strength" in proposed § 23.613(d) on the ground that a "design detail may have high static strength but still be a poor design from the point of view of fatigue." The FAA agrees and has amended the paragraph accordingly. The proposed § 23.613 is adopted with the changes discussed above.

*Proposal 50*

The FAA proposed to remove § 23.615 since it is no longer needed in view of the changes to § 23.613. The two commenters, the GAMA and the JAA, agree with the proposal. Section 23.613 is removed as proposed.

*Proposal 51*

The FAA proposed to provide relief from non-destructive testing requirements for critical castings and to define non-structural casting requirements in § 23.621.

One commenter, the JAA, believes the intent of proposed § 23.621(c)(1)(i) is: "* * * 100 percent inspection by visual, radiographic and either magnetic particle, penetrant or other approved equivalent non-destructive inspection method." The FAA agrees and revises § 23.621(c)(1)(i) accordingly.

The JAA states that it is sympathetic to the FAA's proposed revision to § 23.621(c)(1)(ii) but requests the sharing of FAA's experience concerning the adequacy of a factor of 2.0. All available experience was shared in discussions at the Airworthiness Review Conference; in conference proposals 240, 241, and 242; and in the explanation information contained in the NPRM. The FAA adopts proposed § 23.621(c)(1)(ii) as proposed.

The JAA also states that § 23.621(e), regarding non-structural castings, is redundant since present § 23.621(e) already excludes non-structural castings.

After further review, the FAA has concluded that § 23.621(e) refers to "non-structural" fluid systems castings only. Section 23.621(e) includes those fluid systems castings addressed by § 23.621(e), but it is not limited to them. Section 23.621(e) is adopted as proposed and any redundancy between § 23.621, paragraphs (a) and (e), will be addressed by future rulemaking. The FAA adopts § 23.621 with the changes discussed above.

*Proposal 52*

The FAA proposed to define the dive speed, $V_D$, to reduce the Mach number from 0.6 to 0.5, and to introduce flutter criteria for damaged structure in § 23.629. The FAA received comments on this proposal from the GAMA and from the JAA.

The GAMA recommends that the proposed changes to § 23.629(d)(1) not be made. This commenter recommends that the Mach cut-off references remain at 0.6 and 260 knots (EAS) and that the reference to altitude be eliminated. The JAA states that since "260 kt EAS at 14,000 feet is M=0.5, this has been proposed for JAR 23."

The FAA has determined that the Mach number 0.5 is technically more appropriate (and the JAA agrees) to the 260 knot (EAS) requirement and causes no significant flutter certification problem. After further review, the FAA has decided that the reference to altitude, although technically correct, is irrelevant; therefore, it is removed.

The GAMA proposes that $V_D/M_D$ would be more appropriate than $V_D$ alone. The FAA agrees and changes the proposal accordingly.

The GAMA also asks the FAA to revise § 23.629(g) and (h) to clarify that the phrase "analysis only" is the regulatory requirement.

The FAA disagrees. As proposed, § 23.629(g) and (h) require an analysis and permit certification by testing. An "analysis only" requirement would effectively discourage and prohibit other certification substantiation. The words "by analysis or test" replace the words "by analysis" in paragraphs (g) and (h). By this change, the applicant is required to show that the airplane is free from flutter up to $V_D/M_D$, but is permitted to use analysis or other means that are appropriate for the design.

Finally, the GAMA proposes that the analytical flutter clearance factor of 1.2 $V_D$ in § 23.629(b) be changed to 1.15 $V_D$. Changes to § 23.629(b) are outside the scope of this NPRM. The FAA will consider this in future rulemaking projects.

The JAA observes that $V_D$ is not explicitly stated in proposed § 23.629(h) although it is in proposed § 23.629(g). The FAA agrees that both paragraphs should address $V_D$, and final rule § 23.629(h) is revised accordingly. The FAA adopts § 23.629 with the changes discussed above.

*Proposal 53*

The FAA proposed to extend the installation requirements in § 23.655, currently applicable only to the tail surfaces, to include all control surfaces. Since the only comment, received from the JAA, agrees with the proposed change, the FAA adopts § 23.655 as proposed.

*Proposal 54*

The FAA proposed to add a new § 23.672 that provides criteria for approval of certain stability augmentation devices, and automatic and power-operated systems.

The FAA received comments on this proposal from the GAMA, the JAA, and the ALPA. The ALPA strongly supports the proposed change. The JAA states that the adoption of proposed FAR 23.672 for JAR 23 is under discussion.

The GAMA recommends that the FAA make it clear that this requirement would not apply to a simple downspring or a bobweight stability device. The FAA agrees with the GAMA that new § 23.672 would not apply to devices such as downsprings and bobweights since they are not "systems" as addressed in this requirement. Since § 23.672 is virtually identical to § 25.672, and since there have been no problems interpreting that section consistent with this position, the FAA concludes that no changes are needed. The FAA adopts § 23.672 as proposed.

*Proposal 55*

The FAA proposed to revise § 23.679 by adding provisions for an automatic-disengage control lock system. The proposal would also add requirements for the locks to be installed so they limit operation of the controls and thereby provide the pilot with an unmistakable warning that the controls are locked at the start of the takeoff roll.

The FAA received comments on this proposal from the GAMA, the JAA, and the ALPA. The ALPA strongly supported the proposed change.

The GAMA believes that the proposal would add to the cost and complexity of the control lock system without a commensurate benefit. The GAMA is unaware of any adverse service history resulting from installed control locks and believes that the current rule provides an adequate level of safety. In support of this position, the GAMA includes an estimated cost of $250,000 to develop a fully automatic gust lock system for a type certificated airplane model.

To evaluate and resolve the GAMA comments, the FAA has reviewed the original conference proposals, numbers 252, 253, and 254. It has also reviewed the record of the public meeting. In response to the GAMA comment concerning any adverse service history, this review shows that the original conference proposals were submitted

because accidents were occurring because of control locks that remained installed during takeoff. The economic analysis of the proposals in the notice also identified this accident service history and showed severe airplane damage, pilot injuries, and possible fatalities.

The FAA is aware that an automatically released control lock system would be costly. The proposal did not mandate the installation of an automatic system, but would add an optional provision that would show the acceptance of such systems.

The JAA stated its assumption that the proposed requirement would not be applicable to external locks. Based on the comments received, the FAA has re-examined the proposal. Since the proposal would have eliminated the current § 23.679(a), external systems that use the red warning ribbons as a means of warning the pilot that the locks are in place would no longer be acceptable. The FAA has determined that there is a need to retain the provision of current § 23.679(a), so that presently used locks and their warning systems remain acceptable. The added provision of § 23.679(a)(2) will make it clear that systems that automatically disengage the locks are also acceptable but not mandatory.

The proposal to limit the operation of the airplane when the locks are engaged is being restated since control locks and their warnings can be overlooked and automatic disengage systems will fail. The FAA believes an additional safeguard is required. By requiring a system that will ensure that airplane operation is limited, the pilot will receive a pre-takeoff warning and thus a hazardous takeoff will not be attempted.

In summary, the FAA has considered the comments and has revised the proposed rule language by retaining the current provisions of § 23.679(a) and § 23.679(a)(1), and by adding the provision for accepting automatically disengaged locking systems as an option. The language in proposed § 23.679(a)(2) to require the control surface to be locked so the pilot receives an unmistakable warning at the start of the takeoff if the locks have not been removed is retained as § 23.679(b). The unmistakable warning required by this paragraph may be a tactile warning that the pilot receives by the feel of the controls. Finally, proposed § 23.679(b) is retained as paragraph (c).

The FAA has determined that these changes are not substantive and will clarify this requirement by providing relief from the provisions identified by the commenters. The FAA adopts § 23.679 with the changes discussed above.

*Proposal 56*

The FAA proposed to revise § 23.729, paragraphs (f)(1) and (f)(2), by changing the power and flap settings necessary to warn the pilot that the landing gear is not fully extended and locked.

The FAA received two comments on this proposal from the JAA and the ALPA. The ALPA strongly supported the proposed change.

The JAA generally agrees with the proposal. However, the JAA notes that these requirements are liable to produce nuisance warnings when the throttles are closed for descent from a high altitude or when one throttle is pulled back following an engine failure. The JAA suggests that the FAA consider an approach for part 23 gear warning requirements similar to the approaches proposed for part 25 in Notice No. 89–20 (54 FR 34116, August 17, 1989).

The revision of the landing gear warning requirements proposed for part 25 is beyond the scope of this rulemaking. While no action will be taken on this suggestion now, the FAA will consider this suggestion for future rulemaking.

Nuisance warnings concern the FAA, and the language changes proposed in the NPRM should reduce them. Proposed § 23.729(f)(2) would have required a landing gear warning when the flaps are extended beyond the approach setting. That change would eliminate the nuisance warnings occurring when flaps are set "to" the approach flap position. Subsequent to the issuance of the notice it has come to FAA attention that many airplanes have more than one approach flap setting and that the proposal would be unclear as to which approach flap setting should be used as the threshold for the gear warning. Also, if the lower approach flap setting is used, nuisance warnings could occur because that setting is also frequently used for takeoff flaps. To clarify this requirement, the proposal has been revised to require the gear warning when the flaps are extended beyond the maximum approach flap position. The FAA adopts § 23.729 with the changes discussed above.

*Proposal 57*

The FAA proposed to remove § 23.731(a), which contains a requirement that each main and nose wheel must be approved. Since there is a basic requirement to approve the complete airplane, including all components, parts, and appliances, § 23.731(a) is unnecessary. No comments were received on this proposal, and the FAA adopts § 23.731, as proposed.

*Proposal 58*

The FAA proposed to remove the current § 23.733 reference to the tire rating assigned by the Tire and Rim Association. This would be accomplished by:

1. Stating that tire ratings must be approved.
2. Requiring that static and dynamic ratings be established.
3. Defining the conditions where those ratings are to be used.

The FAA received comments on this proposal from the GAMA and the JAA. The JAA asks the FAA to explain the undiscussed change in the drag reaction from 0.21W to 0.31W.

At least one publication of part 23 regulations contains a typing error that gave this reaction as 0.21W. The FAA has reviewed the history of this requirement and verified that the value of 0.31W that is in § 23.733(a)(2), as published in the Code of Federal Regulations, is correct.

The GAMA questions the removal of the reference to the Tire and Rim Association and recommends its retention. In the NPRM, the FAA identifies the existence of other organizations whose appropriate rating also would be considered. The FAA adopts § 23.733 as proposed.

*Proposal 59*

The FAA proposed to remove the first sentence of § 23.737 that states that each ski must be approved. Since the only commenter, the JAA, agrees with the proposed change, the FAA adopts § 23.737 as proposed.

*Proposal 60*

The FAA proposed to revise § 23.751 to clarify the buoyancy requirements for the main floats of seaplanes. Since the only commenter, the JAA, agrees with the proposed change, the FAA adopts § 23.751 as proposed.

*Proposal 61*

The FAA proposed to remove the words "must be approved" from the main floats design requirements in § 23.753. Since the only commenter, the JAA, agrees with the proposed change, the FAA adopts § 23.753 without change.

*Proposal 62*

The FAA proposed to add wording to the hull requirements for seaplanes in § 23.755 to clarify that airplanes must be kept afloat without capsizing. Since the only commenter, the JAA, agrees with the proposed change, the FAA adopts

§ 23.755(a), introductory text, as proposed.

*Proposal 63*

The FAA proposed to revise the § 23.773 requirements for the pilot compartment view to address the environment expected in all the operations requested for certification.

The JAA states that it will consider this change for JAR 23 but that it proposes to retain present paragraph (b) relating to night flight tests. The GAMA contends that the words "must be shown in all operations for which certification is requested," could be interpreted to mean that the same view must be provided for all operations.

The FAA does not agree with the GAMA interpretation. Section 23.773 (a) and (a)(1) requires the pilot compartment view to be sufficiently extensive, clear, and undistorted to allow the pilot to perform the various functions identified in this proposal. The word "sufficiently" is included because the FAA recognizes that the view needed for one operation may differ from the view needed for another. The intent is also shown by the words "sufficiently large" used in § 23.773(b). The FAA adopts § 23.773 as proposed.

*Proposal 64*

The JAA proposed to clarify the § 23.775 criteria to be used for determining the cleared windshield area that is necessary to ensure safe operation for icing conditions. The proposed new § 23.775 would require that a probable single failure of a transparency heating system may not adversely affect the integrity of the airplane cabin. The FAA received comments on this proposal from the GAMA and the JAA.

The JAA does not find the proposal for § 23.775(f) acceptable for inclusion into JAR 23. The JAA does not provide any suggested changes.

In reviewing this comment, the FAA notes that the proposal for § 23.773 identifies the need for a clear and undistorted view for these same four operations and the ability to "perform any maneuver within the operating limitations of the airplane." If the airplane is approved for operation in known or forecast icing conditions, the requirements of § 23.773 will be applicable. Section 23.775(f) should be the same as § 23.773. Accordingly, § 23.775(f) is revised to be the same as § 23.773.

The JAA also believes that transparency heating systems, covered by proposed § 23.775(g), should be certificated under the principles of § 23.1309. The FAA notes that § 23.1309 applies to all systems, as defined by § 23.1309(f), and would apply to transparency heating systems. The provisions of the proposal for § 23.775(g) identify specific hazards that could occur. These specific hazards would have catastrophic consequences and must be avoided through the use of appropriate designs.

The other commenter, GAMA, notes that its comments on proposal 63 also apply to this proposal to clarify criteria for determining cleared windshield areas. The FAA addresses the concern about the amount of cleared windshield under proposal 63. The response is also applicable to the cleared area needed for the operations identified in this proposal. The FAA adopts § 23.775 with the change discussed above.

*Proposal 65*

The FAA proposed that § 23.851 be revised to require a hand fire extinguisher to be located in the pilot's compartment of all airplane categories. This proposal would also add minimum standards for hand held fire extinguishers. The FAA received comments on this proposal from the JAA and the GAMA.

One commenter, JAA, believes the requirements in current § 23.851, paragraphs (a) and (b), is more appropriate for the operating rules.

The FAA does not agree with this commenter's position. It is incorrect to allow an airplane to be certificated and not include the equipment required for the airplane to be placed in operation. When this occurs, the new owner/operator must then install the required equipment. Such an installation would not only need to meet the operating rules but also would need to meet the requirements of §§ 23.851 and 23.561(b)(3). Because the operator may not have the structural design data for the airplane, finding a suitable location to install a fire extinguisher meeting the load factors of § 23.561 could be difficult. Such installations are more easily accomplished by the airframe manufacturer. The requirements of current § 23.851(a) and (b) will be retained.

The JAA also notes that proposed § 23.851(c)(2) does not ban extinguishers that use toxic agents. The JAA believes that such agents should be banned. The FAA does not agree with this position. The first consideration in evaluating the use of a hand fire extinguisher is its effectiveness in putting out any in-flight fire. If the best agent for the type of fire that may occur causes toxic gas, the concentration of that gas that would result from a completely discharged extinguisher and its hazard to the occupants must be evaluated. If the concentration would be hazardous, it may still be possible to use the extinguisher if the gas can be vented from the area in a short time, and if there would be no adverse affect upon the occupants. To ban such fire extinguishers could lower the level of safety of the airplane by reducing the chance the in-flight fires can be extinguished. The FAA plans no action to ban the use of such fire extinguishing agents at this time.

The other commenter, GAMA, believes the proposal for § 23.851(a), requiring a hand fire extinguisher to be located conveniently in the pilot's compartment, is too restrictive. The GAMA points out that the pilot's compartment is usually small, therefore, it is frequently difficult to find suitable space for a fire extinguisher. The GAMA recommends revising § 23.851(a) to read, "There must be at least one hand fire extinguisher located within easy access of the pilot while seated."

The FAA agrees that the recommended revision would require the same pilot access to the fire extinguisher as intended by the proposal. Because this revision allows the fire extinguisher to be located in the cabin, where the pilot can reach it, it could be confused with the extinguisher required for the cabin. To identify the applicable extinguisher, the proposal is revised to read, "There must be at least one hand fire extinguisher for use in the pilot compartment that is located within easy access of the pilot while seated."

The GAMA also recommends that the FAA develop more explicit guidance criteria concerning the acceptable size, agent, etc., than is now contained in the operating rules in § 91.513. The FAA agrees that better guidance needs to be developed, and will consider future advisory material to develop such guidance.

The FAA observes that § 91.513(c)(3) requires at least one hand fire extinguisher located in the passenger compartment of each airplane accommodating more than six passengers. Accordingly, this operating rule and the NPRM are not compatible. If the requirements in the notice were adopted as proposed, normal category airplanes that accommodate more than six passengers could be certificated without a passenger compartment fire extinguisher. Then, operators of those airplanes would be required to have an extinguisher installed.

The FAA discussed, in the NPRM, the burden that would fall on the operator if that operator needed to install a new fire extinguisher that also must meet other current airworthiness

requirements. For consistency with §91.513(c)(3), the final rule §23.851 has been revised to require a fire extinguisher in the cabin of airplanes that accommodate more than six passengers. The FAA adopts §23.851 with the changes discussed above.

*Proposal 66*

The FAA proposed to clarify the existing requirement of § 23.865 by excluding those portions of the engine mount certificated with the engine and by addressing the allowable damage expected on engine isolators. Since the only commenter, JAA, agrees with this proposal, the FAA adopts § 23.685 as proposed.

*Proposal 67*

The FAA proposed a change to § 23.1507 to establish an operating maneuvering speed ($V_O$) different from the design maneuvering speed ($V_A$) established by § 23.335(c). $V_O$ is the maximum speed where, at any given weight, the pilot may apply full control excursion without exceeding the design limit load factor.

The one commenter, the JAA, believes that this new concept of $V_O$ needs further discussion. The JAA also notes that, while proposed § 23.1507(a), establishing an operating limitation, is correctly located, § 23.1507(b), which defines $V_O$, should be moved to become § 23.335(d) while retaining the existing definition of $V_A$, design maneuvering speed, at § 23.335(c).

The FAA disagrees with moving the $V_O$ definition to § 23.335, since it would put an operational definition in the design section of part 23. The $V_O$ definition in § 23.1507 is consistent with the requirements of §§ 23.1505 and 23.1511, namely, that the relationships between "operating" speeds and "design" speeds are established. The comment has caused the FAA to reexamine and reword proposed § 23.1507. The revised wording deletes the definitions of computed stall speed ($V_S$) and the limit maneuvering load factor (n) and utilizes those already contained in § 23.335. The final rule section heading includes the word "operating" to maintain a distinction from the design maneuvering speed of § 23.335. The FAA adopts § 23.1507 with the change discussed above.

*Proposal 68*

The FAA proposed to add a new § 23.1516 that establishes an intentional one-engine-inoperative speed for pilot training.

The one commenter, the JAA, refers to its comments on proposed § 23.149. The FAA agrees that $V_{SSE}$ should not be established as a limitation; therefore, it deletes the proposed § 23.1516.

*Proposal 69*

The FAA proposed to change § 23.1521 to ensure that powerplant limitations established for airplane certification do not exceed those established during the certification of the engine or the propeller, and are in accord with limitations used in determining compliance with this part.

The one commenter on this proposal, JAA, notes that examples from FAA experience would be useful in the preparation of interpretations. The FAA's principal experience involves derated engines and some turbopropeller engine installations that have a higher maximum power at cruise than at takeoff. The FAA adopts § 23.1521 as proposed.

*Proposal 70*

The FAA proposed to add a new § 23.1522 that specifies auxiliary power unit (APU) limitations in the operating limitation section of the AFM.

The one commenter, JAA, believes that, without requirements addressing APU's in subpart E of part 23, the introduction of this proposal on operating limitations is premature.

The FAA points out that APU's have been addressed in § 23.901 as amended in Small Airplane Airworthiness Review Program Amendment No. 3, Amendment 23–43 (58 FR 18958, April 9, 1993). The FAA adopts § 23.1522 as proposed.

*Proposal 71*

The FAA proposed to change § 23.1525 to clarify the existing rule which is vague and brief, by requiring the establishment and inclusion of kinds of operations authorized in the AFM, as specified by § 23.1583(h).

The one commenter, JAA, notes that existing § 23.1525 and proposed JAR 23.1525 are statements rather than requirements. The JAA believes that what is needed is a requirement that establishes the kinds of operations authorized and the resulting airplane operational limitations. The JAA suggests a slightly modified version of proposed JAR 23.1525, as follows: "The kinds of operation authorized (such as VFR, IFR, day or night) and the meteorological conditions (such as icing) and the category in which the aeroplane is eligible for certification, appropriate to the installed equipment, must be established." The JAA believes that the requirement to furnish this information in the AFM belongs in § 23.1583(h) and that a cross-reference, as proposed in § 23.1525, is unnecessary.

The FAA concurs with the JAA's comment and the final rule language is changed to closely follow the JAA's suggested version. The FAA adopts § 23.1525 with the change discussed above.

*Proposal 72*

The FAA proposed to change § 23.1527 to clarify that the maximum operating altitude allowed for any part 23 airplane must be established based on those limitations determined by flight, structural, powerplant, functional, or equipment characteristics.

The one commenter, JAA, suggests reversing the order of § 23.1527(a) and (b) for clarity. The FAA concurs and adopts § 23.1527 with this change.

*Proposal 73*

The FAA proposed to change § 23.1545 by deleting current paragraph § 23.1545(b)(6) which requires a red radial mark on the airspeed indicator. This mark identifies the minimum control speed with the critical engine inoperative, $V_{MC}$, on multiengine airplanes.

The one commenter on this proposal, JAA, states that the red radial line on the airspeed indicator at $V_{MC}$ offers useful guidance to the pilot for this class of airplane and should be retained.

For the reasons given by the JAA, the FAA agrees that the red radial should be retained. The proposed amendment to § 23.1545 is withdrawn.

*Proposal 74*

The FAA proposed to change § 23.1549 to expand the current powerplant instrument requirements to include auxiliary power units (APU).

The one comment from JAA on this proposed change refers to the JAA's comments on proposed changes to § 23.1522 in which the JAA opposed referencing APU in the absence of requirements addressing APU in subpart C.

As previously stated, since the Small Airplane Airworthiness Review Program Amendment No. 3, Amendment 23–43 (58 FR 18958, April 9, 1993) addresses APU, § 23.1549 is adopted as proposed.

*Proposal 75*

The FAA proposed to change § 23.1557 to clarify the marking requirements for filler openings and to require a marking for the coolant filler opening similar to the requirements for fuel and oil. The FAA also proposed deleting § 23.1557(f) because the AFM and fuel quantity indicator provide this information to the pilot.

The one commenter, JAA, concurs with the proposed changes, except that the JAA believes that § 23.1557(c)(2), which contains marking requirements for oil filter openings, should end with the words "and the permissible oil designations." While the FAA agrees, after further review, the FAA has determined that, as with fuel filler marking, the oil filler marking should permit reference to the AFM as an alternative. The proposed § 23.1557 is adopted with the change discussed above.

*Proposal 76*

The FAA proposed to change § 23.1563(a) by substituting $V_o$ for $V_A$ in conjunction with the change to § 23.1507.

The one commenter, JAA, states that $V_o$ should be further considered later, in the light of discussions on proposed § 23.1507. The concept of $V_o$ was discussed under proposal 67 relating to § 23.1507, and for the reasons stated there the FAA adopts § 23.1563(a) as proposed.

*Proposal 77*

The FAA proposed to change § 23.1581(f) to establish a new requirement for providing a means to record updates to the AFM.

The FAA received comments on this proposal from the ALPA and JAA. The ALPA strongly supports the proposed change.

The JAA agrees with a requirement for a means of recording the amendment status of the AFM, but believes that a "log of revisions" is only one acceptable means of compliance and that a list of effective pages is equally acceptable.

The FAA agrees with the commenter and has determined that the rule text permits the suggested alternative. A change in the heading to read "Revisions and amendments" clarifies this point. The proposed § 23.1581(f) is adopted with the change discussed above.

*Proposal 78*

The FAA proposed an introductory sentence to § 23.1583. During the type certification process, there are limitations required other than those specified by this section. The FAA proposed to expand § 23.1583(h) to identify the kinds of operation that were type certificated, such as icing. Also, the section was proposed to be revised to identify installed equipment that must be operable for aircraft operation in icing conditions. The NPRM also proposed a new § 23.1583(m). Although § 23.1523, Load distribution limits, generally covers it, the effects of an asymmetric fuel load are not emphasized. The effects of lateral fuel imbalance are not usually addressed although the lateral center of gravity limits must be furnished in the AFM.

The FAA received comments on this proposal from the GAMA and the JAA. The commenters on the proposal for § 23.149, which would establish a safe, intentional, one-engine-inoperative speed, $V_{SSE}$, as a limitation in § 23.1583, oppose the inclusion of $V_{SSE}$ in § 23.1583(a)(2). In response to these comments, the FAA agrees that this speed should not be established as a limitation and $V_{SSE}$ is removed from § 23.1583(a)(2). Revisions to § § 23.149 and 23.1585 require manufacturers to determine a safe one-engine-inoperative speed and provide this information in the AFM.

The JAA also notes that the words "of each airplane" in the introductory statement are not necessary and should be removed. The FAA concurs. While reviewing comments on § 23.1583(a)(2), the FAA noted that since $V_A$ is removed as an airspeed limitation in § 23.1507, $V_A$ should also be removed from § 23.1583(a)(2).

The JAA states that, having established the kinds of operation authorized under § 23.1525 (VFR, IFR, day, night, and others), § 23.1583(h) is merely to require that this information be made available in the AFM. The JAA suggests words based on JAR 23.1583, as follows:

"The Aeroplane Flight Manual must contain:

* * * * *

(h) Kinds of operation. A list of the kinds of operation to which the aeroplane is limited under 23.1525 for which approval has been given."

If the FAA retains proposed § 23.1583 as proposed, the JAA suggests replacing "is requested" with "has been given." The JAA also notes the need to identify the required operational status of installed equipment, where this may affect operation limitations, will be proposed as an extension to JAR 23.1583(i).

The GAMA states that "The last sentence of proposed § 23.1583(h) is confusing and subject to multiple interpretations. Certain equipment, such as deicing equipment, might be appropriately included in a listing that affects operating limitations (flight into known icing in this example) but, reference to the kinds of operation for which approval is requested may lead to confusion and continue the argument that has been going on for more than ten years with respect to minimum equipment lists versus what is required (required equipment lists) for a particular operation. Most operators of part 23 airplanes, including operators of single-engine personal use airplane, have traditionally equipped their airplanes according to their personal operational requirements and preferences. This will become even more true in the near future as alternate sole source navigational systems are approved. The proposed wording of the last sentence of paragraph 23.1583(h) appears to require that a detailed minimum equipment list be included in the limitations section of the AFM. This in turn requires a supplemental type certificate for *any* variation from the manufacturer's standard installed equipment list. Such a list might well be appropriate as a 'required' equipment list for various kinds of operations and may be interpreted to provide operational authority for such operations. However, it is more likely that it will perpetuate the confusion of what must be operative and what may be inoperative during a particular flight. This item needs further review."

The FAA agrees that reference in § 23.1583(h) to the kinds of operation within § 23.1525 is appropriate instead of repeating examples of kinds of operations. This change and the other change suggested by the JAA are made in the final § 23.1583(h).

The FAA does not agree with the GAMA that the last sentence in § 23.1583(h) is confusing and subject to multiple interpretation. A Kind of Equipment List (KOEL) has been part of the limitations for many years. A Minimum Equipment List (MEL) is an operational requirement covered by part 91 and the relationship between a KOEL and an MEL is well established and in use by the public.

Except for editorial changes, suggested by the JAA, and minor clarifying editorial changes § 23.1583(h) is adopted as proposed.

*Proposal 79*

The FAA proposed to change § 23.1585 to revise flight procedures and scheduled speeds that are essential for the safe operation of the airplane and the achievement of the scheduled performance. Additionally, the procedures for starting engines in flight are considered necessary for all multi-engine airplanes; therefore, the FAA proposed to eliminate the reference to commuter category and to turbine engines.

The FAA received comments on this proposal from the JAA and the CAA-UK. The CAA-UK comment addresses conference proposals that the FAA rejected and, as previously stated, this preamble does not address comments on

rejected conference proposals. The JAA notes that the proposed changes align closely with JAR 23.

The JAA believes that GAMA Specification No. 1 is acceptable and fears that certain of the proposed changes may conflict with it. The FAA recognizes that GAMA Specification No. 1 may need to be revised.

Also, the JAA states that it is "unclear from what the operating procedures 'must be * * * segregated'" in the AFM.

With the addition of abnormal procedures to normal and emergency procedures covered under the present rule, the FAA's intent is that the AFM be organized so that abnormal procedures are clearly separated from normal procedures, etc.

The JAA notes that procedures for maintaining and recovering control following engine failure above or below $V_{MC}$ are still required in spite of the NPRM explanation that these are within the scope of basic airmanship The FAA concurs with the JAA that the explanation in the NPRM shows that recovering of control above and below $V_{MC}$ is within the scope of basic airmanship These procedures were inadvertently left in the text of the proposed rule as § 23.1585(c)(5); therefore, proposed paragraph (c)(5) is omitted from the final rule.

The JAA states: "In spite of the explanation, FAR 23.1585(d) through (g) appear to remain unchanged although (f), not required for JAR 23, requires for all aeroplanes that a restart envelope must be established. In § 23.1585, however, the operating procedures for restarting of the engine(s) must be furnished for multi-engined aeroplanes only This inconsistency will lead to confusion."

The JAA comment on § 23.1585(d) through (g) indicates that the text of the NPRM explanation may have been misunderstood. The NPRM explanation noted that non-flight items were considered for the NPRM but not addressed as the NPRM was aimed at flight items. Thus, the FAA did not intend to change § 23.1585(d) through (g).

The FAA does not understand the JAA's reference to § 23.1585(f) with respect to an engine restart envelope for all airplanes, since § 23.1585(f) concerns unusable fuel and indicator marking. Nor does the FAA understand the inconsistency suggested by the JAA since the proposed restart procedures are in paragraph (c) which only applies to multiengine airplanes.

In response to comments on proposed § 23.235, as discussed under that section, the FAA is amending § 23.1585(a) to add a requirement for seaplane handling procedures and demonstrated wave height.

Also as discussed in proposal 12, the FAA decided that $V_{SSE}$ should not be a limitation; therefore, a new § 23.1585(c)(6) is added to require that $V_{SSE}$ be furnished to the pilot in the AFM. The FAA adopts § 23.1585 with the changes discussed above.

*Proposal 80*

The FAA proposed to reorganize and simplify § 23.1587, which specifies the performance information that must be provided in the AFM.

The one commenter, JAA, states that while the proposed changes move considerably towards the proposed text of JAR 23.1587, the JAA has already decided that "the calculated approximate effect" on performance of altitude and temperature is unacceptable.

The JAA states that the maximum temperature at which compliance with the cooling requirements has been shown is wrongly located in the AFM and that it should appear as a limitation in § 23.1521(e), as in proposed JAR 23. Unlike proposed JAR 23.1587, the JAA notes that there is no proposal to address the effect of factored winds, runway slope, or grass surfaces on takeoff and landing distances or to schedule a flight-over-water speed. The JAA believes data are necessary for meaningful compliance with even the simplest performance operating rules.

Since one of these items were proposed in the NPRM, it is inappropriate for the FAA to include them in the final rule and the proposed § 23.1587 is adopted as proposed.

*Proposal 81*

The FAA proposed to amend § 23.1589(a) to publish the weight and location of each item of equipment that can be easily removed, relocated, or replaced.

Since the only comment received, from the JAA, agrees with the proposed change, the FAA adopts § 23.1589, as proposed.

*Proposal 82*

The FAA proposed to amend appendix D by adding a new paragraph (c), which supports a new requirement in § 23.479(c) concerning dynamic spring-back of the landing gear.

Since the only comment received, from the JAA, agrees with the proposed change, appendix D is adopted as proposed.

*Proposal 83*

The FAA proposed to add a new appendix H that supports amended § 23.521.

Since the only comment received, from the JAA, agrees with the proposed change, appendix H is adopted as proposed.

**Turbojet Engines**

While not proposing any rule change in the NPRM, the FAA requested and received comments about changing part 23 to allow the use of turbojet engines on commuter category airplanes. Comments were received from the ALPA and from the JAA. The ALPA opposes the use of turbojet engines and believes that the certification of turbojet airplanes should remain under part 25 requirements.

The JAA states that since basic FAR/JAR 23 includes turbojets, "there is no fundamental reason for excluding them from commuter category" airplanes. The JAA believes that turbojets provide enhanced reliability compared to reciprocating engines. The JAA also believes that turbojet engines provide better airplane handling characteristics, with one engine inoperative, than any propeller driven airplane (reciprocating or turbine engine powered). The JAA recognizes that part 23 is intended to provide a simplified airworthiness code appropriate to simple airplane designs. The JAA recognizes that the use of turbojet engines has the potential to convey a performance capability involving design complexities not envisioned in formulating FAR 23. The JAA states that it is not opposed to the use of turbojet engines on airplanes certificated to commuter category requirements, subject to a review of requirements related to a higher performance capability (speed and altitude).

**Performance Limitations Based on Weight, Altitude and Temperature (WAT)**

While not proposing any rule change in the NPRM, the FAA requested comment on the need for WAT criteria, as information or as a limitation on piston-powered twin-engine part 23 airplanes. It also requested comments about WAT criteria on turbine-powered twin-engine part 23 airplanes, specifically during takeoff and landing. The FAA received comments from the JAA, the GAMA, and the ALPA. The ALPA supports the requirement that WAT information be furnished during the certification process. The ALPA cites the variety of operational uses, including scheduled air carrier and

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regional airline service, and the need for "one level" of safety as justification. The GAMA "believes that WAT information is useful but certainly not the only way to present operating data for any airplane" and that making WAT criteria an airplane or operating limitation for part 23 airplanes is "an unnecessary and unjustified expansion or redirection of operating criteria." The JAA generally supports the use of WAT criteria for part 23 airplane certifications. The JAA believes that the chance of a single-engine failure on any airplane is high. Also, the JAA warns that safety considerations include airplane occupants and personnel on the ground. According to the JAA, transport category airplanes do this by limiting the operation of the airplane. Beyond the point where takeoff can be rejected, one-engine-inoperative climb must guarantee obstacle clearance. The JAA recognizes the need for generally similar requirements for commuter category airplanes.

The JAA believes that a continued flight capability would preclude the operation of single-engine airplanes. Also, the JAA believes that airplane size and stall speed provide characteristics that permit safe landings.

The JAA points out that between the two extremes within present part 23 (from single-engine airplanes to commuter category airplanes) lie the light twin-engine reciprocating and turbine engine airplanes, ranging from four to nine seats and 4,000 to 12,500 pounds. The JAA notes that, for these types of airplanes, it would be burdensome to require compliance with full net flight path obstacle clearance. In the JAA's opinion, a safe forced landing becomes less satisfactory with increased takeoff weight, involving longer stopping distances even for the same landing speed. The JAA notes that twin-engine airplanes have other significant adverse characteristics compared to single-engine airplanes. First, an engine failure is twice as probable, second, asymmetric power demands immediate pilot action.

The JAA also points out that the inability to continue flight with one engine inoperative creates the following situation: The chance of a second engine failure is increased; a suitable site for an emergency landing is reduced; and the pilot resists the inevitable forced landing and tries to maintain flight. Training, under more favorable conditions, may have taught the pilot to expect success in these situations. In unfavorable conditions, attempts to maintain flight lead to loss of airspeed at high asymmetric power and, commonly, loss of directional control that results in a stall/spin accident.

The JAA advocates certification and operations criteria for multiengine airplanes that blend the performance requirements for a single-engine airplane and a transport category airplane. The JAA believes that the requirements accept a limited period for risk just before and just after liftoff where engine failure may not be fully accounted for. The JAA believes that the application of WAT limits clearly accounts for actual conditions, although the climb gradient requirements are lower than those of FAR/JAR 25.

The JAA recommends using compensating operational criteria, like transport category airplanes use, for the lower performance commuter category airplanes. Cockpit visibility and a reasonable maximum speed provide adequate compensation for takeoff so the pilot can see and avoid obstacles as the airplane returns for landing. The JAA does not propose a distinction between reciprocating and turbine engines. Where applicable, the WAT criteria should be imposed, in the JAA's opinion, as limitations through the Airplane Flight Manual (AFM).

The JAA does not believe that such proposals would involve costs disproportionate to the benefits. The JAA suggests that the comment from the airworthiness conference, that such criteria would "eliminate the certification of an entire class of airplanes," is an exaggeration. The proposals are achievable, in the JAA's view, by typical modern light twin-engine airplanes with realistic payloads, particularly the more significant executive/air taxi airplanes. It is the JAA's opinion that adopting this concept would instill a greater awareness of performance consideration in pilots from an early stage of their training.

The JAA also believes that the climb and handling qualities requirements of present §§ 23.65 and 23.67 are illogical and unreasonable. The JAA recommends using WAT criteria, so it applies equally to all airplane operations, because it offers improved airplane capability.

The JAA points out that the manufacturers of "WAT type" airplanes routinely determine performance under a wide range of conditions. The JAA also notes that flight manuals produced to the widely accepted General Aviation Manufacturers Association (GAMA) specification already contain performance data beyond the minimum requirements of part 23. Additional testing or scheduled data create no additional costs in the JAA's opinion.

The JAA notes that present draft JAR 23 applies WAT limits only to piston-engine airplanes above 6,000 pounds and turbine-engine airplanes and that it has been proposed to the JAR Operations Group that WAT limits be applied to all JAR 23 airplanes in commercial operation.

## Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimates of the costs and benefits to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or to modify existing regulations only if potential benefits to society outweigh potential costs for each regulatory change. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly-defined exigencies. A "major" rule is one that is likely to have an annual impact on the economy of $100 million or more, to have a major increase in consumer costs, or to have a significant adverse effect on competition.

The FAA has determined that this rule is not major as defined in the Executive Order. This section contains a summary of the regulatory evaluation, a regulatory flexibility determination as required by the 1980 Regulatory Flexibility Act, and an international trade impact assessment. The complete regulatory evaluation, which contains more detailed economic information than this summary provides, is available in the docket.

## Cost-Benefit Analysis

### *Costs*

Of the rule's 79 amendments, only six will result in more than negligible costs of compliance for airplane manufacturers. Each of these six amendments requires additional testing or analysis, costing about $5,800 per airplane certification. One of the amendments, § 23.851, also requires a fire extinguisher in all part 23 airplanes that are produced under future certifications. Other regulations already require fire extinguishers in airplanes with greater than six passengers and in commuter airplanes. For purposes of estimating the cost of this requirement, the FAA assumes a worst case scenario

under which all future part 23 certifications will involve airplanes with six or fewer passengers. The FAA estimates that a fire extinguisher and a suitable bracket cost $40.

The FAA assumes that an average of five airplanes will be certified under part 23 each year during the period of analysis from 1993–2012. Based on discussions with industry, the FAA also assumes that, during the first year following certification, 60 airplanes will be produced per certification. In the second, third, and fourth years following certification, 120 airplanes per year are assumed to be produced. In the fifth and subsequent years, 100 airplanes per year are assumed to be produced. Based on this assumption, the costs of the rule over the 20-year period of analysis total $3.7 million ($1.5 million discounted) or about $48 per airplane produced.

*Benefits*

The benefits of the rule are two-fold. First, the rule is expected to enhance safety. An examination of accidents that might have been prevented by this rule include those involving control locks that were not removed prior to flight (seven accidents over a five-year period with five fatalities, three airplanes destroyed, and four substantially damaged) and multiengine stall/spin accidents (four accidents over eight years, resulting in nine fatalities and all airplanes destroyed). Had those accidents been avoided by the rule, the benefits would be $5.4 million per year.

Other safety benefits will be realized from the rule. The requirement to demonstrate 1.5g pitch maneuver capability will ensure that a pilot can make 30-degree banked turns and slow down from potential overspeed conditions without encountering low-speed buffeting. Determination of spin-up and spring-back loads will ensure that landing gear fore and aft drag loads, which affect both landing gear and wing strength, will be considered in the design of new part 23 airplanes. The requirement that airplanes be free from flutter will ensure that this dangerous phenomenon does not occur, even after fatigue failure. The rule also requires that additional information about procedures, speeds, and configurations for a glide following an engine failure for single-engine airplanes and procedures for restarting engines in flight for multiengine airplanes be included in the airplane flight manual. This information can lessen the consequences of emergency landings after engine failures. Although the FAA has not quantified the benefits of these requirements, the benefits exceed the generally minor costs.

There were 108 recorded accidents that occurred from January 1989 through April 1991 in which there was fire after impact. Although the number of fatalities and injuries in these accidents that could have been avoided cannot be determined, it is likely that the presence of a fire extinguisher could have mitigated the consequences in at least some of these fires.

Less than $194,000 in average annual accident losses needs to be averted annually to render this rule cost-beneficial. For those control system lock and multiengine stall/spin accidents that could have been prevented or mitigated by the provisions of this rule, the annual losses averaged $5.4 million. This exceeds the $194,000 threshold value, thus, the rule is cost-beneficial. In addition, the avoidance of fatalities because of the presence of fire extinguishers in affected airplanes will further increase the benefits. Finally, other requirements, such as those discussed above, will provide additional safety benefits.

Another valuable additional benefit of this rule is that it comports to a large extent with international requirements, particularly the Joint Aviation Requirements (JAR) of the Joint Aviation Authorities (JAA). The creation of common international standards, or harmonization, will benefit manufacturers in the U.S. and those in the countries of the JAA.

The rule modifies certain testing requirements and allows optional evaluations and analysis. This may result in cost savings. However, the FAA does not have sufficient information to quantify such savings.

**Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) requires Federal agencies to review rules that may have a "significant economic impact on a substantial number of small entities." FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, contains criteria for determining whether a proposed or existing rule has a significant economic impact on substantial number of small entities.

The entities that will be affected by this rule are the manufacturers of airplanes certificated under part 23. Based on the Regulatory Flexibility Criteria and Guidance, the size threshold for manufacturers is 75 or fewer employees and the cost threshold is $18,200 in 1992 dollars.

Approximately 14 affected manufacturers are considered to be small entities. The annual cost of the rule per certification during peak production is estimated to be $5,700, which is substantially less than the cost threshold limit cited above. Therefore, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

**International Trade Impact Assessment**

The rule will have little or no impact on international trade. Both foreign and domestic manufacturing seeking type certification in the United States will be required to comply with the rule. The Joint Aviation Authorities (JAA) is including many of the sections in this rule to harmonize with U.S. aviation regulations. It is expected that other countries will also adopt these requirements.

**Federalism Implications**

The regulations herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Conclusion**

The FAA is revising the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes as a result of comments received in reply to the Small Airplane Airworthiness Review Program Notice No. 4 dated June 28, 1990. The notice, which addresses airframe and flight items, was published as a result of recommendations discussed at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984 in St. Louis, Missouri. Originally, the proposals reflected updated safety standards and advancements in technology while reducing the regulatory burden for some requirements and maintaining an acceptable level of safety. Harmonization with the European Joint Aviation Authorities Joint Airworthiness Requirements became a dominant factor at the close of the extended Notice of Proposed Rulemaking comment period, December 14, 1990. Considerable effort was invested to harmonize these airworthiness standards because aircraft industry estimates indicate reduced overall certification costs. These airworthiness standards will continue to provide adequate levels of safety for

small airplanes used in both private and commercial operations.

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

**List of Subjects in 14 CFR Part 23**

Aircraft, Air transportation, Aviation safety, Safety.

Issued in Washington, DC, on July 28, 1993.

Joseph N. Del Balzo,
*Acting Administrator.*

**The Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR part 23 of the Federal Aviation Regulations as follows:

**PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES**

1. The authority citation for part 23 continues to read as follows:

**Authority:** 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g).

2. Section 23.23 is revised to read as follows:

**§ 23.23 Load distribution limits.**

(a) Ranges of weights and centers of gravity within which the airplane may be safely operated must be established. If a weight and center of gravity combination is allowable only within certain lateral load distribution limits that could be inadvertently exceeded, these limits must be established for the corresponding weight and center of gravity combinations.

(b) The load distribution limits may not exceed any of the following:

(1) The selected limits;

(2) The limits at which the structure is proven; or

(3) The limits at which compliance with each applicable flight requirement of this subpart is shown.

3. Section 23.25 is amended by revising paragraph (a)(2)(i) to read as follows:

**§ 23.25 Weight limits.**

(a) * * *

(2) Not less than the weight with—

(i) Each seat occupied, assuming a weight of 170 pounds for each occupant for normal and commuter category airplanes, and 190 pounds for utility and acrobatic category airplanes, except that seats other than pilot seats may be placarded for a lesser weight; and

(A) Oil at full capacity, and

(B) At least enough fuel for maximum continuous power operation of at least 30 minutes for day-VFR approved airplanes and at least 45 minutes for night-VFR and IFR approved airplanes; or

* * * * *

4. Section 23.33 is amended by revising paragraph (d)(2) to read as follows:

**§ 23.33 Propeller speed and pitch limits.**

* * * * *

(d) * * *

(2) With the governor inoperative, the propeller blades at the lowest possible pitch, with takeoff power, the airplane stationary, and no wind, either—

(i) A means to limit the maximum engine speed to 103 percent of the maximum allowable takeoff r.p.m., or

(ii) For an engine with an approved overspeed, a means to limit the maximum engine and propeller speed to not more than the maximum approved overspeed.

5. Section 23.45 is amended by removing paragraph (e), by redesignating paragraph (f) as paragraph (e), by amending the cross-reference in newly redesignated paragraph (e)(2) from (f)(3) to (e)(3), by amending the cross-references in newly redesignated paragraph (e)(5) introductory text from (f)(3) and (f)(4) to (e)(3) and (e)(4), respectively, and by revising paragraphs (b) and (d) to read as follows:

**§ 23.45 General.**

* * * * *

(b) The performance data must correspond to the propulsive power or thrust available under the particular ambient atmospheric conditions, the particular flight condition, and the relative humidity specified in paragraph (d) of this section.

* * * * *

(d) The performance, as affected by engine power or thrust, must be based on a relative humidity of—

(1) 80 percent, at and below standard temperature; and

(2) 34 percent, at and above standard temperature, plus 50°F.

(3) Between the two temperatures listed in paragraphs (d)(1) and (d)(2) of this section, the relative humidity must vary linearly.

* * * * *

6. Section 23.53 is amended by revising paragraphs (a), (b)(1)(ii), and (b)(2) to read as follows:

**§ 23.53 Takeoff speeds.**

(a) For multiengine normal, utility, and acrobatic category airplanes, the rotation speed, $V_R$, may not be less than $V_{MC}$ determined in accordance with § 23.149.

(b) * * *

(1) * * *

(ii) Any lesser speed, not less than 1.2 $V_{S1}$, that is shown to be safe for continued flight or land-back, if applicable, under all conditions, including turbulence and complete failure of the critical engine.

(2) For single-engine airplanes, any speed, not less than 1.2 $V_{S1}$, that is shown to be safe under all conditions, including turbulence and complete engine failure.

* * * * *

7. Section 23.65 is amended by revising paragraph (a) to read as follows:

**§ 23.65 Climb: All engines operating.**

(a) Each airplane must have a steady angle of climb at sea level of at least 1:12 for landplanes or 1:15 for seaplanes and amphibians with—

(1) A speed not less than 1.2 $V_{S1}$;

(2) Not more than maximum continuous power on each engine;

(3) The landing gear retracted;

(4) The wing flaps in the takeoff position; and

(5) The cowl flaps or other means for controlling the engine cooling air supply in the position used in the cooling tests required by §§ 23.1041 through 23.1047.

* * * * *

8. Section 23.141 is revised to read as follows:

**§ 23.141 General.**

The airplane must meet the requirements of §§ 23.143 through 23.253 at all practical loading conditions and operating altitudes for which certification has been requested, not exceeding the maximum operating altitude established under § 23.1527, and without requiring exceptional piloting skill, alertness, or strength.

9. Section 23.143 is amended by removing the word "Dive" in paragraph

(a)(4) and inserting the word "Descent" in its place, and by revising the force table in paragraph (c) to read as follows:

**§ 23.143 General.**

* * * * *

(c) * * *

| Values in pounds of force as applied to the stick, control wheel, or rudder pedals | Pitch | Roll | Yaw |
|---|---|---|---|
| (a) For temporary application: | | | |
| Stick | 60 | 30 | ..... |
| Wheel (Two hands on rim) | 75 | 60 | ..... |
| Wheel (One hand on rim) | 50 | ..... | ..... |
| Rudder Pedal | ..... | ..... | 150 |
| (b) For prolonged application | 10 | 5 | 20 |

10. Section 23.145 is revised to read as follows:

**§ 23.145 Longitudinal control.**

(a) With the airplane as nearly as possible in trim at 1.3 $V_{S1}$, it must be possible, at speeds below the trim speed, to pitch the nose downward so that the rate of increase in airspeed allows prompt acceleration to the trim speed with—

(1) Maximum continuous power on each engine;

(2) Power off; and

(3) Wing flap and landing gear—

(i) retracted, and

(ii) extended.

(b) No change in trim or exertion of more control force, as specified in § 23.143(c), than can be readily applied with one hand for a short period of time may be required for the following maneuvers:

(1) With the landing gear extended, the flaps retracted, and the airplanes as nearly as possible interim at 1.4 $V_{S1}$, extend the flaps as rapidly as possible and allow the airspeed to transition from 1.4$V_{SO}$ to 1.4 $V_{SO}$:

(i) With power off; and

(ii) With the power necessary to maintain level flight in the initial condition.

(2) With the landing gear and flaps extended—

(i) With power off and the airplane as nearly as possible in trim at 1.3 $V_{SO}$, quickly apply takeoff power or thrust and retract the flaps as rapidly as possible to the recommended go-around setting while attaining and maintaining, as a minimum, the speed used to show compliance with § 23.77. Retract the gear when positive rate of climb is established; and

(ii) With power off and in level flight at 1.1$V_{SO}$, and the airplane as nearly as possible in trim at 1.2 $V_{SO}$, it must be possible to maintain approximately level flight while retracting the flaps as rapidly as possible with simultaneous application of not more than maximum continuous power. If gated flap positions are provided, the airplane may be retrimmed between each stage of retraction, and the airplane may accelerate to a speed that is 1.1 times the minimum steady flight speed obtained for the flap gate position.

(3) With maximum takeoff power, landing gear retracted, flaps in the takeoff position, and the airplane as nearly as possible in trim at $VV_{FE}$, appropriate to the takeoff flap position, retract the flaps as rapidly as possible while maintaining constant speed.

(4) With power off, flaps and landing gear retracted, and the airplane as nearly as possible trim at 1.4 $V_S$, apply takeoff power rapidly while maintaining the same airspeed.

(5) With power off, landing gear and flaps extended, and the airplane as nearly as possible in trim at 1.4 $V_{SO}$, obtain and maintain airspeeds between 1.1 $V_{SO}$ and either 1.7 $V_{SO}$ or $V_{FE}$, whichever is lower.

(c) At speeds above $V_{MO}/M_{MO}$ and up to $V_D/M_D$, a maneuvering capability of 1.5 g must be demonstrated to provide a margin to recover from upset or inadvertent speed increase.

(d) It must be possible, with a pilot control force of not more than 10 pounds, to maintain a speed of not more than 1.3 $V_{SO}$, during a power-off glide with landing gear and wing flaps extended, for any weight of the airplane, up to and including the maximum weight.

(e) By using normal flight and power controls, except as otherwise noted in paragraphs (e)(1) and (e)(2) of this section, it must be possible to establish a zero rate of descent at an attitude suitable for a controlled landing without exceeding the operational and structural limitations of the airplane, as follows:

(1) For single-engine and multiengine airplanes, without the use of the primary longitudinal control system.

(2) For multiengine airplanes—

(i) Without the use of the primary directional control; and

(ii) If a single failure of any one connecting or transmitting link would affect both the longitudinal and directional primary control system, without the primary longitudinal and directional control system.

11. Section 23.147 is revised to read as follows:

**§ 23.147 Directional and lateral control.**

For each multiengine airplane, it must be possible, while holding the wings level within 5 degrees, to make sudden changes in heading safely in both directions. This must be shown at 1.4 $V_{S1}$ with heading changes up to 15 degrees (except that the heading change at which the rudder force corresponds to the limits specified in § 23.143 need not be exceeded), with the—

(a) Critical engine inoperative and its propeller in the minimum drag position;

(b) Remaining engines at maximum continuous power;

(c) Landing gear—

(1) Retracted; and

(2) Extended; and

(d) Flaps in the most favorable climb position.

12. Section 23.149 is amended by replacing the word "recovery" in paragraph (d) with the words "the maneuver" and by revising paragraphs (a), (b), and (c), to read as follows:

**§ 23.149 Minimum control speed.**

(a) $V_{MC}$ is the calibrated airspeed at which, when the critical engine is suddenly made inoperative, it is possible to maintain control of the airplane with that engine still inoperative and then maintain straight flight at the same speed with an angle of bank of not more than 5 degrees. The ability to maintain straight flight at $V_{MC}$ in a static condition with a bank angle of not more than 5 degrees must also be demonstrated. The method used to simulate critical engine failure must represent the most critical mode of powerplant failure, with respect to controllability expected in service.

(b) $V_{MC}$ may not exceed 1.2 $V_{S1}$, where $V_{S1}$ is determined at the maximum takeoff weight, with—

(1) Maximum available takeoff power or thrust on the engines;

(2) The most unfavorable center of gravity;

(3) The airplane trimmed for takeoff;

(4) The maximum sea level takeoff weight, or any lesser weight necessary to show $V_{MC}$;

(5) The airplane in the most critical takeoff configuration, with the propeller controls in the recommended takeoff position and the landing gear retracted; and

(6) The airplane airborne and the ground effect negligible.

(c) A minimum speed to intentionally render the critical engine inoperative must be established and designated as the safe, intentional, one-engine-inoperative speed, $V_{SSE}$.

* * * * *

13. Section 23.153 is revised to read as follows:

**§ 23.153 Control during landings.**

It must be possible, while in the landing configuration, to safely

complete a landing without exceeding the one hand control force specified in § 23.143(c) following an approach to land—

(a) At a speed 5 knots less than the speed used in complying with the requirements of § 23.75 and with the airplane in trim, or as nearly as possible in trim, and without the trimming control being moved throughout the maneuver;

(b) At an approach gradient equal to the steepest recommended for operational use; and

(c) With only those power or thrust changes that would be made when landing normally from an approach at 1.3 $V_{S1}$.

14. Section 23.155 is amended by revising paragraph (b) to read as follows:

**§ 23.155 Elevator control forces in maneuvers.**

* * * * *

(b) The requirement of paragraph (a) of this section must be met at 75 percent of maximum continuous power for reciprocating engines, or the maximum power or thrust selected by the applicant as an operating limitation for use during cruise for reciprocating or turbine engines, and with the wing flaps and landing gear retracted—

(1) In a turn, with the trim setting used for wings level flight at $V_A$; and

(2) In a turn with the trim setting used for the maximum wings level flight speed, except that the speed may not exceed $V_{NE}$ or $V_{MO}/M_{MO}$, whichever is appropriate.

* * * * *

15. Section 23.157 is amended by adding the phrase "but not more than 10 seconds," after the word "seconds," and before the word "where" in paragraph (a)(2); by adding the phrase "but not more than 7 seconds," after the word "seconds," and before the word "where" in paragraph (c)(2); and by revising paragraph (b) to read as follows:

**§ 23.157 Rate of roll.**

* * * * *

(b) The requirement of paragraph (a) of this section must be met when rolling the airplane in each direction with—

(1) Flaps in the takeoff position;

(2) Landing gear retracted;

(3) For a single-engine airplane, at maximum takeoff power; and for a multiengine airplane with the critical engine inoperative and the propeller in the minimum drag position, and the other engines at maximum takeoff power; and

(4) The airplane trimmed at a speed equal to the greater of 1.2 $V_{S1}$ or 1.1 $V_{MC}$, or as nearly as possible in trim for straight flight.

* * * * *

16. Section 23.175 is amended by revising paragraphs (a)(3) and (d)(3) to read as follows:

**§ 23.175 Demonstration of static longitudinal stability.**

* * * * *

(a) * * *

(3) All reciprocating engines operating at maximum continuous power, or turbine engines operating at the maximum power selected by the applicant as an operating limitation for use during climb; and

* * * * *

(d) * * *

(3) The airplane trimmed at a speed in compliance with § 23.161(c)(2).

* * * * *

17. Section 23.177 is amended by revising paragraphs (a)(1), (a)(2) and (a)(3) to read as follows:

**§ 23.177 Static directional and lateral stability.**

(a) * * *

(1) The static directional stability, as shown by the tendency to recover from a skid with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach, and landing configurations. This must be shown with symmetrical power up to maximum continuous power, and at speeds from 1.2 $V_{S1}$ up to the maximum allowable speed for the condition being investigated in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be up to that necessary to maintain a three degree angle of descent in coordinated flight. The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip, up to that at which full rudder is used or a control force limit in § 23.143 is reached, whichever occurs first, and at speeds from 1.2 $V_{S1}$ to $V_A$, the rudder pedal force must not reverse.

(2) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for any landing gear and flap position. This must be shown with symmetrical power, up to 75 percent of maximum continuous power, at speeds above 1.2 $V_{S1}$ in the takeoff configuration and 1.3 $V_{S1}$ in other configurations, up to the maximum allowable speed for the configuration being investigated in the takeoff, climb, approach, and cruise configurations. For the landing configuration, the power must be up to that necessary to maintain a three degree angle of descent in coordinated flight. The angle of bank for these tests must be appropriate to the type of airplane but in no case may the constant heading sideslip angle be less than that obtainable with 10° bank, or, if less, the maximum bank angle obtainable with full rudder deflection or 150 pounds rudder force. The static lateral stability must not be negative at 1.2 $V_{S1}$.

(3) In straight, steady slips at 1.2 $V_{S1}$ for any landing gear and flap positions, and for any symmetrical power conditions up to 50 percent of maximum continuous power, the aileron and rudder control movements and forces must increase steadily, but not necessarily in constant proportion, as the angle of slip is increased up to the maximum appropriate to the type of airplane. At larger slip angles, up to the angle at which full rudder or aileron control is used or a control force limit contained in § 23.143 is obtained, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Enough bank must accompany the sideslip to hold a constant heading. Rapid entry into, and recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

* * * * *

**§ 23.179 [Removed]**

18. Section 23.179 is removed.

19. Section 23.181 is amended by adding new paragraphs (c) and (d) to read as follows:

**§ 23.181 Dynamic stability.**

* * * * *

(c) If it is determined that the function of a stability augmentation system, reference § 23.672, is needed to meet the flight characteristic requirements of this part, the primary control requirements of paragraphs (a)(2) and (b)(2) of this section are not applicable to the tests needed to verify the acceptability of that system.

(d) During the conditions as specified in § 23.175, when the longitudinal control force required to maintain speeds differing from the trim speed by at least plus and minus 15 percent is suddenly released, the response of the airplane must not exhibit any dangerous characteristics nor be excessive in relation to the magnitude of the control force released. Any long-period oscillation of flight path, phugoid oscillation, that results must not be so unstable as to increase the pilot's workload or otherwise endanger the airplane.

20. Section 23.201 is amended by revising paragraphs (c), (d)(2) (f)(4), and (f)(5) to read as follows:

**§ 23.201 Wings level stall.**

* * * * *

(c) The wings level stall characteristics must be demonstrated in flight as follows: Starting from a speed above the stall warning speed, the elevator control must be pulled back so that the rate of speed reduction will not exceed one knot per second until a stall is produced, as shown by an uncontrollable downward pitching motion of the airplane, until the control reaches the stop or until the activation of an artificial stall barrier, for example, stick pusher. Normal use of the elevator control for recovery is allowed after the pitching motion has unmistakably developed or after the control has been against the stop for not less than two seconds. In addition, engine power may not be increased for recovery until the speed has increased to approximately 1.2 $V_{S1}$.

(d) * * *

(2) If power is required during stall recovery, the power used must be that used under the normal operating procedures selected by the applicant for this maneuver; however, the power used to regain level flight may not be increased until the speed has increased to approximately 1.2 $V_{S1}$.

* * * * *

(f) * * *

(4) *Power:* Power off, and 75 percent maximum continuous power. If the power-to-weight ratio at 75 percent continuous power provides undesirable stall characteristics at extremely nose-high attitudes, the test may be accomplished with the power or thrust required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 $V_{SO}$, but the power may not be less than 50 percent of maximum continuous power.

(5) *Trim:* The airplane trimmed at a speed as near 1.5 $V_{S1}$ as practicable.

* * * * *

21. Section 23.203 is amended by revising paragraph (b) introductory text, (b)(4), (b)(5), (c)(1), (c)(4), and (c)(5) to read as follows:

**§ 23.203 Turning flight and accelerated stalls.**

* * * * *

(b) When the stall has fully developed or the elevator has reached its stop, it must be possible to regain wings level flight by normal use of the flight controls but without increasing power, and without—

* * * * *

(4) Exceeding a bank angle of 60 degrees in the original direction of the turn or 30 degrees in the opposite direction in the case of turning flight stalls, and without exceeding a bank angle of 90 degrees in the original direction of the turn or 60 degrees in the opposite direction in the case of accelerated stalls; and

(5) Exceeding the maximum permissible speed or allowable load factor.

(c) * * *

(1) *Wing Flaps:* Retracted, fully extended, and in each intermediate position, as appropriate.

* * * * *

(4) *Power:* Power or thrust off, and 75 percent maximum continuous power or thrust. If the power-to-weight ratio at 75 percent continuous power or thrust provides undesirable stall characteristics at extremely nose-high attitudes, the test may be accomplished with the power or thrust required for level flight in the landing configuration at maximum landing weight and a speed of 1.4 $V_{SO}$, but the power may not be less than 50 percent of maximum continuous power.

(5) *Trim:* The airplane trimmed at a speed as near 1.5 $V_{S1}$ as practicable.

22. Section 23.205 is amended by revising paragraphs (b)(1) and (b)(6) to read as follows:

**§ 23.205 Critical-engine-inoperative stalls.**

* * * * *

(b) * * *

(1) *Wing flaps:* Retracted and set to the position used to show compliance with § 23.67.

* * * * *

(6) *Trim:* Level flight, critical engine inoperative, except that for an airplane of 6,000 pounds or less maximum weight that has a stalling speed of 61 knots or less and cannot maintain level flight with the critical engine inoperative, the airplane must be trimmed for straight flight, critical engine inoperative, at a speed as near 1.5 $V_{S1}$ as practicable.

23. Section 23.207 is amended by revising paragraph (c) and by adding a new paragraph (d) to read as follows:

**§ 23.207 Stall Warning.**

* * * * *

(c) For the stall tests required by § 23.201(c), the stall warning must begin at a speed exceeding the stalling speed by a margin of not less than 5 knots, but not more than the greater of 10 knots or 15 percent of the stalling speed, and must continue until the stall occurs.

(d) For all other stall tests, the stall warning must begin at not less than 5 knots above the stall speed and be sufficiently in advance of the stall for the stall to be averted by action after the stall warning first occurs. In addition, when following the procedures of § 23.1585, the stall warning must not operate during a normal takeoff, a takeoff continued with one engine inoperative or approach to landing.

24. Section 23.233 is amended by revising paragraphs (a) and (b), and by adding a new paragraph (d) to read as follows:

**§ 23.233 Directional stability and control.**

(a) A 90 degree cross-component of wind velocity, demonstrated to be safe for taxiing, takeoff and landing must be established and must not be less than 0.2 $V_{SO}$.

(b) The airplane must be satisfactorily controllable in power-off landings at normal landing speed, without using brakes or engine power to maintain a straight path until the speed has decreased to at least 50 percent of the speed at touchdown.

* * * * *

(d) Seaplanes must demonstrate satisfactory directional stability and control for water operations up to the maximum wind velocity specified in paragraph (a) of this section.

25. Section 23.235 is revised to read as follows:

**§ 23.235 Taxiing, takeoff, and landing condition.**

(a) The airplane must be demonstrated to have satisfactory characteristics and the shock-absorbing mechanism must not damage the structure of the airplane when the airplane is taxied on the roughest ground that may be reasonably expected in normal operation, and when takeoffs and landings are performed on unpaved runways having the roughest surface that may reasonably be expected in normal operation.

(b) A wave height, demonstrated to be safe for operation, and any necessary water handling procedures for seaplanes and amphibians, must be established.

26. Section 23.251 is revised to read as follows:

**§ 23.251 Vibration and buffeting.**

There must be no vibration or buffeting severe enough to result in structural damage, and each part of the airplane must be free from excessive vibration, under any appropriate speed and power conditions up to $V_D/M_D$. In addition, there must be no buffeting in any normal flight condition severe enough to interfere with the satisfactory control of the airplane or cause excessive fatigue to the flight crew. Stall warning buffeting within these limits is allowable.

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27. Section 23.253 is amended by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

**§ 23.253 High speed characteristics.**

* * * * *

(a) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely speed up to $V_{MO}/M_{MO}$. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradients in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitude.

(b) Allowing for pilot reaction time after occurrence of the effective inherent or artificial speed warning specified in § 23.1303, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to $V_{MO}/M_{MO}$, without—

* * * * *

28. Section 23.305 is amended by revising paragraph (b) to read as follows:

**§ 23.305 Strength and deformation.**

* * * * *

(b) The structure must be able to support ultimate loads without failure for at least three seconds, except local failures or structural instabilities between limit and ultimate load are acceptable only if the structure can sustain the required ultimate load for at least three seconds. However when proof of strength is shown by dynamic tests simulating actual load conditions, the three second limit does not apply.

29. Section 23.321 is amended by adding a new paragraph (c) to read as follows:

**§ 23.321 General.**

* * * * *

(c) When significant, the effects of compressibility must be taken into account.

30. Section 23.361 is amended by revising the introductory text of paragraph (a), paragraph (a)(2), and the introductory text of paragraph (c) to read as follows:

**§ 23.361 Engine torque.**

(a) Each engine mount and its supporting structure must be designed for the effects of—

* * * * *

(2) A limit engine torque corresponding to maximum continuous power and propeller speed acting simultaneously with the limit loads from flight condition A of § 23.333(d); and

* * * * *

(c) The limit engine torque to be considered under paragraph (a) of this section must be obtained by multiplying the mean torque by a factor of—

* * * * *

31. Section 23.369 is amended by revising the heading to read as follows:

**§ 23.369 Rear lift truss.**

* * * * *

32. Section 23.371 is amended by revising the heading and the introductory text of this section to read as follows:

**§ 23.371 Gyroscopic and aerodynamic loads.**

For turbine-powered airplanes, each engine mount and its supporting structure must be designed for the combined gyroscopic and aerodynamic loads that result, with the engines at maximum continuous r.p.m., under either of the following conditions:

* * * * *

**§ 23.397 [Amended]**

33. Section 23.397(b) is amended by removing the words "130 pounds" in the last line of the table and inserting the words "150 pounds" in its place.

34. Section 23.415 is amended by adding a new paragraph (c) to read as follows:

**§ 23.415 Ground gust conditions.**

* * * * *

(c) The tie-down attachment fittings and the surrounding structure must be designed for limit load conditions resulting from wind speeds up to 65 knots horizontally from any direction for the weight determined to be critical for tie-down.

35. Section 23.473 is amended by revising paragraph (f) to read as follows:

**§ 23.473 Ground load conditions and assumptions.**

* * * * *

(f) Energy absorption tests (to determine the limit load factor corresponding to the required limit descent velocities) must be made under § 23.723(a) unless specifically exempted by that section.

* * * * *

36. Section 23.479 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 23.479 Level landing conditions.**

* * * * *

(b) When investigating landing conditions, the drag components simulating the forces required to accelerate the tires and wheels up to the landing speed (spin-up) must be properly combined with the corresponding instantaneous vertical ground reactions, and the forward-acting horizontal loads resulting from rapid reduction of the spin-up drag loads (spring-back) must be combined with vertical ground reactions at the instant of the peak forward load, assuming wing lift and a tire-sliding coefficient of friction of 0.8. However, the drag loads may not be less than 25 percent of the maximum vertical ground reactions (neglecting wing lift).

(c) In the absence of specific tests or a more rational analysis for determining the wheel spin-up and spring-back loads for landing conditions, the method set forth in appendix D of this part must be used. If appendix D of this part is used, the drag components used for design must not be less than those given by appendix C of this part.

* * * * *

37. Section 23.485 is amended by adding a new paragraph (d) to read as follows:

**§ 23.485 Side load conditions.**

* * * * *

(d) The side loads prescribed in paragraph (c) of this section are assumed to be applied at the ground contact point and the drag loads may be assumed to be zero.

38. Section 23.521 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 23.521 Water load conditions.**

* * * * *

(b) Unless the applicant makes a rational analysis of the water loads, §§ 23.523 through 23.537 apply.

(c) Floats previously approved by the FAA may be installed on airplanes that are certificated under this part, provided that the floats meet the criteria of paragraph (a) of this section.

39. A new § 23.523 is added under the heading "Water Loads" to read as follows:

**§ 23.523 Design weights and center of gravity positions.**

(a) *Design weights.* The water load requirements must be met at each operating weight up to the design landing weight except that, for the takeoff condition prescribed in § 23.531, the design water takeoff weight (the maximum weight for water taxi and takeoff run) must be used.

(b) *Center of gravity positions.* The critical centers of gravity within the limits for which certification is requested must be considered to reach

maximum design loads for each part of the seaplane structure.

40. A new § 23.525 is added under the heading "Water Loads" to read as follows:

**§ 23.525 Application of loads.**

(a) Unless otherwise prescribed, the seaplane as a whole is assumed to be subjected to the loads corresponding to the load factors specified in § 23.527.

(b) In applying the loads resulting from the load factors prescribed in § 23.527, the loads may be distributed over the hull or main float bottom (in order to avoid excessive local shear loads and bending moments at the location of water load application) using pressures not less than those prescribed in § 23.533(b).

(c) For twin float seaplanes, each float must be treated as an equivalent hull on a fictitious seaplane with a weight equal to one-half the weight of the twin float seaplane.

(d) Except in the takeoff condition of § 23.531, the aerodynamic lift on the seaplane during the impact is assumed to be ⅔ of the weight of the seaplane.

41. A new § 23.527 is added under the heading "Water Loads" to read as follows:

**§ 23.527 Hull and main float load factors.**

(a) Water reaction load factors $n_w$ must be computed in the following manner:

(1) For the step landing case

$$n_w = \frac{C_1 V_{SO}^2}{(\mathrm{Tan}^{2/3}\beta)\, W^{1/3}}$$

(2) For the bow and stern landing cases

$$n_w = \frac{C_1 V_{SO}^2}{(\mathrm{Tan}^{2/3}\beta)\, W^{1/3}} \times \frac{K_1}{(1+r_x^2)^{2/3}}$$

(b) The following values are used:

(1) $n_w$=water reaction load factor (that is, the water reaction divided by seaplane weight).

(2) $C_1$=empirical seaplane operations factor equal to 0.012 (except that this factor may not be less than that necessary to obtain the minimum value of step load factor of 2.33).

(3) $V_{SO}$=seaplane stalling speed in knots with flaps extended in the appropriate landing position and with no slipstream effect.

(4) 9β=Angle of dead rise at the longitudinal station at which the load factor is being determined in accordance with figure 1 of appendix H of this part.

(5) W=seaplane landing weight in pounds.

(6) $K_1$=empirical hull station weighting factor, in accordance with figure 2 of appendix H of this part.

(7) $r_x$=ratio of distance, measured parallel to hull reference axis, from the center of gravity of the seaplane to the hull longitudinal station at which the load factor is being computed to the radius of gyration in pitch of the seaplane, the hull reference axis being a straight line, in the plane of symmetry, tangential to the keel at the main step.

(c) For a twin float seaplane, because of the effect of flexibility of the attachment of the floats to the seaplane, the factor $K_1$ may be reduced at the bow and stern to 0.8 of the value shown in figure 2 of appendix H of this part. This reduction applies only to the design of the carrythrough and seaplane structure.

42. A new § 23.529 is added under the heading "Water Loads" to read as follows:

**§ 23.529 Hull and main float landing conditions.**

(a) *Symmetrical step, bow, and stern landing.* For symmetrical step, bow, and stern landings, the limit water reaction load factors are those computed under § 23.527. In addition—

(1) For symmetrical step landings, the resultant water load must be applied at the keel, through the center of gravity, and must be directed perpendicularly to the keel line;

(2) For symmetrical bow landings, the resultant water load must be applied at the keel, one-fifth of the longitudinal distance from the bow to the step, and must be directed perpendicularly to the keel line; and

(3) For symmetrical stern landings, the resultant water load must be applied at the keel, at a point 85 percent of the longitudinal distance from the step to the stern post, and must be directed perpendicularly to the keel line.

(b) *Unsymmetrical landing for hull and single float seaplanes.* Unsymmetrical step, bow, and stern landing conditions must be investigated. In addition—

(1) The loading for each condition consists of an upward component and a side component equal, respectively, to 0.75 and 0.25 tan β times the resultant load in the corresponding symmetrical landing condition; and

(2) The point of application and direction of the upward component of the load is the same as that in the symmetrical condition, and the point of application of the side component is at the same longitudinal station as the upward component but is directed inward perpendicularly to the plane of symmetry at a point midway between the keel and chine lines.

(c) *Unsymmetrical landing; twin float seaplanes.* The unsymmetrical loading consists of an upward load at the step of each float of 0.75 and a side load of 0.25 tan β at one float times the step landing load reached under § 23.527. The side load is directed inboard, perpendicularly to the plane of symmetry midway between the keel and chine lines of the float, at the same longitudinal station as the upward load.

43. A new § 23.531 is added under the heading "Water Loads" to read as follows:

**§ 23.531 Hull and main float takeoff condition.**

For the wing and its attachment to the hull or main float—

(a) The aerodynamic wing lift is assumed to be zero; and

(b) A downward inertia load, corresponding to a load factor computed from the following formula, must be applied:

$$n = \frac{C_{TO} V_{SI}^2}{(\mathrm{Tan}^{2/3}\beta) W^{1/3}}$$

Where—

n=inertia load factor;

$C_{TO}$=empirical seaplane operations factor equal to 0.004;

$V_{SI}$=seaplane stalling speed (knots) at the design takeoff weight with the flaps extended in the appropriate takeoff position;

β=angle of dead rise at the main step (degrees); and

W=design water takeoff weight in pounds.

44. A new § 23.533 is added under the heading "Water Loads" to read as follows:

**§ 23.533 Hull and main float bottom pressures.**

(a) *General.* The hull and main float structure, including frames and bulkheads, stringers, and bottom plating, must be designed under this section.

(b) *Local pressures.* For the design of the bottom plating and stringers and their attachments to the supporting structure, the following pressure distributions must be applied:

(1) For an unflared bottom, the pressure at the chine is 0.75 times the pressure at the keel, and the pressures between the keel and chine vary linearly, in accordance with figure 3 of appendix H of this part. The pressure at the keel (p.s.i.) is computed as follows:

$$P_K = \frac{C_2 K_2 V_{SI}^2}{\mathrm{Tan}\,\beta_k}$$

where—
$P_K$=pressure (p.s.i.) at the keel;
$C_1$=0.00213;
$K_2$=hull station weighing factor, in accordance with figure 2 of appendix H of this part;
$V_{S1}$=seaplane stalling speed (knots) at the design water takeoff weight with flaps extended in the appropriate takeoff position; and
$\beta_K$=angle of dead rise at keel, in accordance with figure 1 of appendix H of this part.

(2) For a flared bottom, the pressure at the beginning of the flare is the same as that for an unflared bottom, and the pressure between the chine and the beginning of the flare varies linearly, in accordance with figure 3 of appendix H of this part. The pressure distribution is the same as that prescribed in paragraph (b)(1) of this section for an unflared bottom except that the pressure at the chine is computed as follows:

$$P_{ch} = \frac{C_3 K_2 V_{S1}^2}{\text{Tan } \beta}$$

where—
$P_{ch}$=pressure (p.s.i.) at the chine;
$C_3$=0.0016;
$K_2$=hull station weighing factor, in accordance with figure 2 of appendix H of this part;
$V_{S1}$=seaplane stalling speed (knots) at the design water takeoff weight with flaps extended in the appropriate takeoff position; and
$\beta$=angle of dead rise at appropriate station.

The area over which these pressures are applied must simulate pressures occurring during high localized impacts on the hull or float, but need not extend over an area that would induce critical stresses in the frames or in the overall structure.

(c) *Distributed pressures.* For the design of the frames, keel, and chine structure, the following pressure distributions apply:

(1) Symmetrical pressures are computed as follows:

$$P = \frac{C_4 K_2 V_{SO}^2}{\text{Tan } \beta}$$

where—
P=pressure (p.s.i.);
$C_4$=0.078 $C_1$ (with $C_1$ computed under § 23.527);
$K_2$=hull station weighing factor, determined in accordance with figure 2 of appendix H of this part;
$V_{SO}$=seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect; and
$\beta$=angle of dead rise at appropriate station.

(2) The unsymmetrical pressure distribution consists of the pressures prescribed in paragraph (c)(1) of this section on one side of the hull or main float centerline and one-half of that pressure on the other side of the hull or main float centerline, in accordance with figure 3 of appendix H of this part.

(3) These pressures are uniform and must be applied simultaneously over the entire hull or main float bottom. The loads obtained must be carried into the sidewall structure of the hull proper, but need not be transmitted in a fore and aft direction as shear and bending loads.

45. A new § 23.535 is added under the heading "Water Loads" to read as follows:

**§ 23.535 Auxiliary float loads.**

(a) *General.* Auxiliary floats and their attachments and supporting structures must be designed for the conditions prescribed in this section. In the cases specified in paragraphs (b) through (e) of this section, the prescribed water loads may be distributed over the float bottom to avoid excessive local loads, using bottom pressures not less than those prescribed in paragraph (g) of this section.

(b) *Step loading.* The resultant water load must be applied in the plane of symmetry of the float at a point three-fourths of the distance from the bow to the step and must be perpendicular to the keel. The resultant limit load is computed as follows, except that the value of L need not exceed three times the weight of the displaced water when the float is completely submerged:

$$L = \frac{C_5 V_{SO}^2 W^{2/3}}{\text{Tan}^{2/3}\beta_s (1 + r_y^2)^{2/3}}$$

where—
L=limit load (lbs.);
$C_5$=0.0053;
$V_{SO}$=seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect;
W=seaplane design landing weight in pounds;
$\beta_s$=angle of dead rise at a station ¾ of the distance from the bow to the step, but need not be less than 15 degrees; and
$r_y$=ratio of the lateral distance between the center of gravity and the plane of symmetry of the float to the radius of gyration in roll.

(c) *Bow loading.* The resultant limit load must be applied in the plane of symmetry of the float at a point one-fourth of the distance from the bow to the step and must be perpendicular to the tangent to the keel line at that point. The magnitude of the resultant load is that specified in paragraph (b) of this section.

(d) *Unsymmetrical step loading.* The resultant water load consists of a component equal to 0.75 times the load specified in paragraph (a) of this section and a side component equal to 3.25 tan $\beta$ times the load specified in paragraph (b) of this section. The side load must be applied perpendicularly to the plane of symmetry of the float at a point midway between the keel and the chine.

(e) *Unsymmetrical bow loading.* The resultant water load consists of a component equal to 0.75 times the load specified in paragraph (b) of this section and a side component equal to 0.25 tan $\beta$ times the load specified in paragraph (c) of this section. The side load must be applied perpendicularly to the plane of symmetry at a point midway between the keel and the chine.

(f) *Immersed float condition.* The resultant load must be applied at the centroid of the cross section of the float at a point one-third of the distance from the bow to the step. The limit load components are as follows:

$$\text{vertical} = \rho g V$$

$$\text{aft} = \frac{C_X \rho V^{2/3} (K V_{SO})^2}{2}$$

$$\text{side} = \frac{C_Y \rho V^{2/3} (K V_{SO})^2}{2}$$

where—
P=mass density of water (slugs/ft.$^3$)
V=volume of float (ft.$^3$);
$C_X$=coefficient of drag force, equal to 0.133;
$C_y$=coefficient of side force, equal to 0.106;
K=0.8, except that lower values may be used if it is shown that the floats are incapable of submerging at a speed of 0.8 $V_{so}$ in normal operations;
$V_{so}$=seaplane stalling speed (knots) with landing flaps extended in the appropriate position and with no slipstream effect; and
g=acceleration due to gravity (ft/sec$^2$).

(g) *Float bottom pressures.* The float bottom pressures must be established under § 23.533, except that the value of $K_2$ in the formulae may be taken as 1.0. The angle of dead rise to be used in determining the float bottom pressures is set forth in paragraph (b) of this section.

46. A new § 23.537 is added under the heading "Water Loads" to read as follows:

**§ 23.537 Seawing loads.**

Seawing design loads must be based on applicable test data.

47. Section 23.571 is amended by removing the word "either" from the introductory paragraph and replacing it with the word "one" and by adding a new paragraph (c) to read as follows:

**§ 23.571 Pressurized cabin.**

* * * * *

(c) The damage tolerance evaluation of § 23.573(b).

48. Section 23.572 is amended by removing the word "either" from paragraph (a) and replacing it with the word "one" and by adding a new paragraph (a)(3) to read as follows:

**§ 23.572 Wing, empennage, and associated structures.**

(a) * * *

(3) The damage tolerance evaluation of § 23.573(b).

* * * * *

49. Under the heading "Fatigue Evaluation," a new § 23.573 is added to read as follows:

**§ 23.573 Damage tolerance and fatigue evaluation of structure.**

(a) *Composite airframe structure.* Composite airframe structure must be evaluated under this paragraph instead of §§ 23.571 and 23.572. The applicant must evaluate the composite airframe structure, the failure of which would result in catastrophic loss of the airplane, in each wing (including canards, tandem wings, and winglets), empennage, their carrythrough and attaching structure, moveable control surfaces and their attaching structure fuselage, and pressure cabin using the damage-tolerance criteria prescribed in paragraphs (a)(1) through (a)(4) of this section unless shown to be impractical. If the applicant establishes that damage-tolerance criteria is impractical for a particular structure, the structure must be evaluated in accordance with paragraphs (a)(1) and (a)(6) of this section. Where bonded joints are used, the structure must also be evaluated in accordance with paragraph (a)(5) of this section. The effects of material variability and environmental conditions on the strength and durability properties of the composite materials must be accounted for in the evaluations required by this section.

(1) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with damage up to the threshold of detectability considering the inspection procedures employed.

(2) The growth rate or no-growth of damage that may occur from fatigue, corrosion, manufacturing flaws or impact damage under repeated loads expected in service, must be established by tests or analysis supported by tests.

(3) The structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of detectable damage consistent with the results of the damage tolerance evaluations. For pressurized cabins, the following loads must be withstood:

(i) Critical limit flight loads with the combined effects of normal operating pressure and expected external aerodynamic pressures.

(ii) The expected external aerodynamic pressures in 1g flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without any other load.

(4) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must allow development of an inspection program suitable for application by operation and maintenance personnel.

(5) The limit load capacity of each bonded joint must be substantiated by one of the following methods:

(i) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (a)(3) of this section must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features; or

(ii) Proof testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint; or

(iii) Repeatable and reliable non-destructive inspection techniques must be established that ensure the strength of each joint.

(6) Structural components for which the damage tolerance method is shown to be impractical must be shown by component fatigue tests (or analysis supported by tests) to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be done to establish the fatigue scatter factor and the environmental effects. Damage up to the threshold of detectability and ultimate load residual strength capability must be considered in the demonstration.

(b) *Metallic airframe structure.* If the applicant elects to use § 23.571(c) or § 23.572(a)(3), then the damage tolerance evaluation must include a determination of the probable locations and modes of damage due to fatigue, corrosion, or accidental damage. The determination must be by analysis supported by test evidence and, if available, service experience. Damage at multiple sites due to fatigue must be included where the design is such that this type of damage can be expected to occur. The evaluation must incorporate repeated load and static analyses supported by test evidence. The extent of damage for residual strength evaluation at any time within the operational life of the airplane must be consistent with the initial detectability and subsequent growth under repeated loads. The residual strength evaluation must show that the remaining structure is able to withstand critical limit flight loads, considered as ultimate, with the extent of detectable damage consistent with the results of the damage tolerance evaluations. For pressurized cabins, the following load must be withstood:

(1) The normal operating differential pressure combined with the expected external aerodynamic pressures applied simultaneously with the flight loading conditions specified in this part, and

(2) The expected external aerodynamic pressures in 1g flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without any other load.

(c) *Inspection.* Based on evaluations required by this section, inspections or other procedures must be established as necessary to prevent catastrophic failure and must be included in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 23.1529.

50. Section 23.613 is amended by revising paragraphs (b) and (c) and by adding paragraphs (d) and (e) to read as follows:

**§ 23.613 Material strength properties and design values.**

* * * * *

(b) Design values must be chosen to minimize the probability of structural failure due to material variability. Except as provided in paragraph (e) of this section, compliance with this paragraph must be shown by selecting design values that ensure material strength with the following probability:

(1) Where applied loads are eventually distributed through a single member within an assembly, the failure of which would result in loss of structural integrity of the component; 99 percent probability with 95 percent confidence.

(2) For redundant structure, in which the failure of individual elements would result in applied loads being safely distributed to other load carrying members; 90 percent probability with 95 percent confidence.

(c) The effects of temperature on allowable stresses used for design in an essential component or structure must be considered where thermal effects are significant under normal operating conditions.

(d) The design of the structure must minimize the probability of catastrophic fatigue failure, particularly at points of stress concentration.

(e) Design values greater than the guaranteed minimums required by this section may be used where only guaranteed minimum values are normally allowed if a "premium selection" of the material is made in which a specimen of each individual item is tested before use to determine that the actual strength properties of that particular item will equal or exceed those used in design.

**§ 23.615 [Removed]**

51. Section 23.615 is removed.

52. Section 23.621 is amended by revising paragraph (c)(1) and the introductory text of paragraph (d), and by adding a new paragraph (e) to read as follows:

**§ 23.621 Casting factors.**

* * * * *

(c) * * *

(1) Each critical casting must either—

(i) Have a casting factor of not less than 1.25 and receive 100 percent inspection by visual, radiographic, and either magnetic particle, penetrant or other approved equivalent non-destructive inspection method; or

(ii) Have a casting factor of not less than 2.0 and receive 100 percent visual inspection and 100 percent approved non-destructive inspection. When an approved quality control procedure is established and an acceptable statistical analysis supports reduction, non-destructive inspection may be reduced from 100 percent, and applied on a sampling basis.

* * * * *

(d) *Non-critical castings.* For each casting other than those specified in paragraph (c) or (e) of this section, the following apply:

* * * * *

(e) *Non-structural castings.* Castings used for non-structural purposes do not require evaluation, testing or close inspection.

53. Section 23.629 is amended by revising paragraph (d)(1) and by adding new paragraphs (g) and (h) to read as follows:

**§ 23.629 Flutter.**

* * * * *

(d) * * *

(1) $V_D/M_D$ for the airplane is less than 260 knots (EAS) and less than Mach 0.5,

* * * * *

(g) For airplanes showing compliance with the fail-safe criteria of §§ 23.571 and 23.572, the airplane must be shown by analysis or test to be free from flutter to $V_DM_D$ after fatigue failure, or obvious partial failure of a principle structural element.

(h) For airplanes showing compliance with the damage-tolerance criteria of § 23.573, the airplane must be shown by analysis or test to be free from flutter to $V_D/M_D$ with the extent of damage for which residual strength is demonstrated.

54. Section 23.655 is amended by revising paragraph (a) to read as follows:

**§ 23.655 Installation.**

(a) Movable surfaces must be installed so that there is no interference between any surfaces, their bracing, or adjacent fixed structure, when one surface is held in its most critical clearance positions and the others are operated through their full movement.

* * * * *

55. A new § 23.672 is added to read as follows:

**§ 23.672 Stability augmentation and automatic and power-operated systems.**

If the functioning of stability augmentation or other automatic or power-operated systems is necessary to show compliance with the flight characteristics requirements of this part, such systems must comply with § 23.671 and the following:

(a) A warning, which is clearly distinguishable to the pilot under expected flight conditions without requiring the pilot's attention, must be provided for any failure in the stability augmentation system or in any other automatic or power-operated system that could result in an unsafe condition if the pilot was not aware of the failure. Warning systems must not activate the control system.

(b) The design of the stability augmentation system or of any other automatic or power-operated system must permit initial counteraction of failures without requiring exceptional pilot skill or strength, by either the deactivation of the system or a failed portion thereof, or by overriding the failure by movement of the flight controls in the normal sense.

(c) It must be shown that, after any single failure of the stability augmentation system or any other automatic or power-operated system—

(1) The airplane is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved operating limitations that is critical for the type of failure being considered;

(2) The controllability and maneuverability requirements of this part are met within a practical operational flight envelope (for example, speed, altitude, normal acceleration, and airplane configuration) that is described in the Airplane Flight Manual (AFM); and

(3) The trim, stability, and stall characteristics are not impaired below a level needed to permit continued safe flight and landing.

56. Section 23.679 is revised to read as follows:

**§ 23.679 Control system locks.**

If there is a device to lock the control system on the ground or water:

(a) There must be a means to—

(1) Give unmistakable warning to the pilot when lock is engaged; or

(2) Automatically disengage the device when the pilot operates the primary flight controls in a normal manner.

(b) The device must be installed to limit the operation of the airplane so that, when the device is engaged, the pilot receives unmistakable warning at the start of the takeoff.

(c) The device must have a means to preclude the possibility of it becoming inadvertently engaged in flight.

57. Section 23.729 is amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

**§ 23.729 Landing gear extension and retraction system.**

* * * * *

(f) * * *

(1) A device that functions continuously when one or more throttles are closed beyond the power settings normally used for landing approach if the landing gear is not fully extended and locked. A throttle stop may not be used in place of an aural device. If there is a manual shutoff for the warning device prescribed in this paragraph, the warning system must be designed so that when the warning has been suspended after one or more throttles are closed, subsequent retardation of any throttle to, or beyond, the position for normal landing approach will activate the warning device.

(2) A device that functions continuously when the wing flaps are extended beyond the maximum approach flap position, using a normal landing procedure, if the landing gear is not fully extended and locked. There may not be a manual shutoff for this warning device. The flap position sensing unit may be installed at any suitable location. The system for this device may use any part of the system (including the aural warning device) for the device required in paragraph (f)(1) of this section.

**§ 23.731 [Amended]**

58. Section 23.731 is amended by removing paragraph (a), and by redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

59. Section 23.733 is amended by revising paragraph (a) to read as follows:

**§ 23.733 Tires.**

(a) Each landing gear wheel must have a tire whose approved tire ratings (static and dynamic) are not exceeded—

(1) By a load on each main wheel tire) to be compared to the static rating approved for such tires) equal to the corresponding static ground reaction under the design maximum weight and critical center of gravity; and

(2) By a load on nose wheel tires (to be compared with the dynamic rating approved for such tires) equal to the reaction obtained at the nose wheel, assuming the mass of the airplane to be concentrated at the most critical center of gravity and exerting a force of 1.0 W downward and 0.31 W forward (where W is the design maximum weight), with the reactions distributed to the nose and main wheels by the principles of statics and with the drag reaction at the ground applied only at wheels with brakes.

* * * * *

60. Section 23.737 is revised to read as follows:

**§ 23.737 Skis.**

The maximum limit load rating for each ski must equal or exceed the maximum limit load determined under the applicable ground load requirements of this part.

61. Section 23.751 is amended by revising paragraph (a) to read as follows:

**§ 23.751 Main float buoyancy.**

(a) Each main float must have—

(1) A buoyancy of 80 percent in excess of the buoyancy required by that float to support its portion of the maximum weight of the seaplane or amphibian in fresh water; and

(2) Enough watertight compartments to provide reasonable assurance that the seaplane or amphibian will stay afloat without capsizing if any two compartments of any main float are flooded.

* * * * *

62. Section 23.753 is revised to read as follows:

**§ 23.753 Main float design.**

Each seaplane main float must meet the requirements of § 23.521.

**§ 23.755 [Amended]**

63. The introductory text of § 23.755(a) is amended by inserting the words "without capsizing" between the words "afloat" and "in".

64. Section 23.773 is revised to read as follows:

**§ 23.773 Pilot compartment view.**

(a) Each pilot compartment must be—

(1) Arranged with sufficiently extensive, clear and undistorted view to enable the pilot to safely taxi, takeoff, approach, land, and perform any maneuvers within the operating limitations of the airplane.

(2) Free from glare and reflections that could interfere with the pilot's vision. Compliance must be shown in all operations for which certification is requested; and

(3) Designed so that each pilot is protected from the elements so that moderate rain conditions do not unduly impair the pilot's view of the flight path in normal flight and while landing.

(b) Each pilot compartment must have a means to either remove or prevent the formation of fog or frost on an area of the internal portion of the windshield and side windows sufficiently large to provide the view specified in paragraph (a)(1) of this section. Compliance must be shown under all expected external and internal ambient operating conditions, unless it can be shown that the windshield and side windows can be easily cleared by the pilot without interruption of moral pilot duties.

65. Section 23.775 is amended by adding new paragraphs (f) and (g) to read as follows:

**§ 23.775 Windshields and windows.**

* * * * *

(f) Unless operation is known or forecast icing conditions is prohibited by operating limitations, a means must be provided to prevent or to clear accumulations of ice from the windshield so that the pilot has adequate view for taxi, takeoff, approach, landing, and to perform any maneuvers within the operating limitations of the airplane.

(g) In the event of any probable single failure, a transparency heating system must be incapable of raising the temperature of any windshield or window to a point where there would be—

(1) Structural failure that adversely affects the integrity of the cabin; or

(2) There would be a danger of fire.

66. Section 23.851 is revised to read as follows:

**§ 23.851 Fire extinguishers.**

(a) There must be at least one hand fire extinguisher for use in the pilot compartment that is located within easy access of the pilot while seated.

(b) There must be at least one hand fire extinguisher located conveniently in the passenger compartment—

(1) Of each airplane accommodating more than 6 passengers; and

(2) Of each commuter category airplane.

(c) For hand fire extinguishers, the following apply:

(1) The type and quantity of each extinguishing agent used must be appropriate to the kinds of fire likely to occur where that agent is to be used.

(2) Each extinguisher for use in a personnel compartment must be designed to minimize the hazard of toxic gas concentrations.

67. Section 23.865 is revised to read as follows:

**§ 23.865 Fire protection of flight controls, engine mounts, and other flight structure.**

Flight controls, engine mounts, excluding those portions that are certificated as part of the engine, and other flight structure located in the engine compartment must be constructed of fireproof material or shielded so that they are capable of withstanding the effects of a fire. Engine vibration isolators must incorporate suitable features to ensure that the engine is retained if the non-fireproof portions of the isolators deteriorate from the effects of a fire.

68. Section 23.1507 is revised to read as follows:

**§ 23.1507 Operating maneuvering speed.**

The maximum operating maneuvering speed, $V_O$, must be established as an operating limitation. $V_O$ is a selected speed that is not greater than $V_S\sqrt{n}$ established in § 23.335(c).

69. Section 23.1521 is amended by revising paragraph (a) to read as follows:

**§ 23.1521 Powerplant limitations.**

(a) *General.* The powerplant limitations prescribed in this section must be established so that they do not exceed the corresponding limits for which the engines or propellers are type certificated. In addition, other powerplant limitations used in

determining compliance with this part must be established.

* * * * *

70. A new § 23.1522 is added to read as follows:

**§ 23.1522 Auxiliary power unit limitations.**

If an auxiliary power unit is installed, the limitations established for the auxiliary power must be specified in the operating limitations for the airplane.

71. Section 23.1525 is revised to read as follows:

**§ 23.1525 Kinds of operation.**

The kinds of operation authorized (e.g. VFR, IFR, day or night) and the meteorological conditions (e.g. icing) to which the operation of the airplane is limited or from which it is prohibited, must be established appropriate to the installed equipment.

72. Section 23.1527 is revised to read as follows:

**§ 23.1527 Maximum operating altitude.**

(a) The maximum altitude up to which operation is allowed, as limited by flight, structural, powerplant, functional or equipment characteristics, must be established.

(b) A maximum operating altitude limitation of not more than 25,000 feet must be established for pressurized airplanes unless compliance with § 23.775(e) is shown.

73. Section 23.1549 is amended by revising the heading, introductory text of the section, and paragraph (d) to read as follows:

**§ 23.1549 Powerplant and auxiliary power unit instruments.**

For each required powerplant and auxiliary power unit instrument, as appropriate to the type of instruments—

* * * * *

(d) Each engine, auxiliary power unit, or propeller range that is restricted because of excessive vibration stresses must be marked with red arcs or red lines.

74. Section 23.1557 is amended by removing paragraph (f) and by revising paragraph (c) to read as follows:

**§ 23.1557 Miscellaneous markings and placards.**

* * * * *

(c) *Fuel, oil, and coolant filler openings.* The following apply:

(1) Fuel filter openings must be marked at or near the filler cover with—

(i) For reciprocating engine-powered airplanes—

(A) The word "Avgas"; and

(B) The minimum fuel grade.

(ii) For turbine engine-powered airplanes—

(A) The words "Jet Fuel"; and

(B) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(iii) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with the word "Oil" and the permissible oil designations, or references to the Airplane Flight Manual (AFM) for permissible oil designations.

(3) Coolant filler openings must be marked at or near the filler cover with the word "Coolant".

* * * * *

75. Section 23.1563 is amended by revising paragraph (a) to read as follows:

**§ 23.1563 Airspeed placards.**

* * * * *

(a) The operating maneuvering speed, $V_O$; and

* * * * *

76. Section 23.1581 is amended by adding a new paragraph (f) to read as follows:

**§ 23.1581 General.**

* * * * *

(f) *Revisions and amendments.* Each Airplane Flight Manual (AFM) must contain a means for recording the incorporation of revisions and amendments.

77. Section 23.1583 is amended by adding introductory text to the section, by revising paragraphs (a)(2) and (h), and by adding a paragraph (m) to read as follows:

**§ 23.1583 Operating limitations.**

Operating limitations determined during type certification must be stated, including the following:

(a) * * *

(2) The speeds $V_{MC}$, $V_O$, $V_{LE}$, and $V_{LO}$, if established, and their significance.

* * * * *

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been given.

* * * * *

(m) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential must be furnished if less than the maximum possible.

78. Section § 23.1585 is amended by revising paragraphs (a) and (c), and adding paragraph (b), to read as follows:

**§ 23.1585 Operating procedures.**

(a) For each airplane, information concerning normal, abnormal, and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance must be identified and segregated, including—

(1) The maximum demonstrated values of crosswind velocity for takeoff and landing and procedures and information pertinent to operations in crosswinds;

(2) The speeds, configurations, and procedures for making a normal takeoff and the subsequent climb;

(3) Procedure for abandoning a takeoff due to engine failure or other cause;

(4) The recommended climb speeds, and any variation with altitude;

(5) An explanation of significant or unusual flight or ground handling characteristics of the airplane;

(6) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling); and

(7) For seaplanes and amphibians, water handling procedures and the demonstrated wave height.

(b) For single-engine airplanes, the procedures, speeds, and configurations for a glide following an engine failure and subsequent forced landing.

(c) For multiengine airplanes, the information must include—

(1) Procedures and speeds for continuing a takeoff following failure of the critical engine and the conditions under which takeoff can be safely continued, or a warning against attempting to continue the takeoff;

(2) Procedures, speeds, and configurations for continuing a climb following engine failure after takeoff or en route;

(3) Procedures, speeds, and configurations for making an approach and landing with one engine inoperative;

(4) Procedures, speeds, and configurations for making a go-around with one engine inoperative and the conditions under which the go-around can safely be executed, or a warning against attempting the go-around maneuver;

(5) Procedures for restarting engines in flight, including the effects of altitude, must be set forth in the Airplane Flight Manual (AFM); and

(6) The $V_{SSE}$ determined in § 23.149.

* * * * *

79. Section 23.1587 is amended by adding the introductory text and by revising paragraphs (a), (b), and (c) to read as follows:

**§ 23.1587 Performance information.**

The following information must be furnished:

(a) For normal, utility, and acrobatic category airplanes:

(1) The takeoff distance determined under § 23.51 and the kind of runway surface used in the tests.

(2) The climb gradient determined under §§ 23.65 and 23.77, with the associated airspeed, power, and the airplane configuration.

(3) The landing distance determined under § 23.75.

(4) The one engine inoperative en route climb/descent gradients determined under § 23.67 for multiengine airplanes.

(5) The calculated approximate effect on takeoff distance, landing distance, and climb performance for variations in—

(i) Altitude from sea level to 10,000 feet in a standard atmosphere and cruise configuration; and

(ii) Temperature, at those altitudes from 60°F below standard to 40°F above standard.

(b) For skiplanes, a statement of the approximate reduction in climb performance may be used instead of complete new data for the skiplane configuration if—

(1) The landing gear is fixed in both the landplane and skiplane configurations;

(2) The climb performance is not critical; and

(3) The climb reduction in the skiplane configuration does not exceed 50 feet per minute.

(c) For each airplane:

(1) Any loss of altitude more than 100 feet, or any pitch more than 30 degrees below level flight attitude, occurring during the recovery part of maneuvers prescribed in §§ 23.201(c) and 23.305, if applicable.

(2) The stalling speed, $V_{SO}$, at maximum weight.

(3) The stalling speed, $V_{S1}$, at maximum weight and with the landing gear and wing flaps retracted and the effect upon this stalling speed of angles of bank up to 60 degrees.

(4) The speed used in showing compliance with the cooling and climb requirements of §§ 23.1041 through 23.1047 if this speed is greater than the best rate of climb with one engine inoperative for multiengine airplanes and the maximum atmospheric temperature at which compliance with the cooling requirements has been shown.

* * * * *

80. Section 23.1589 is amended by revising paragraph (a) to read as follows:

**§ 23.1589 Loading information.**

* * * * *

(a) The weight and location of each item of equipment that can be easily removed, relocated, or replaced and that is installed when the airplane was weighed under the requirement of § 23.25.

* * * * *

81. Appendix D of part 23 is amended by revising the heading and by adding a paragraph (c) to read as follows:

**Appendix D to Part 23—Wheel Spin-Up and Spring-Back Loads**

* * * * *

(c) Dynamic spring-back of the landing gear and adjacent structure at the instant just after the wheels come up to speed may result in dynamic forward acting loads of considerable magnitude. This effect must be determined, in the level landing condition, by assuming that the wheel spin-up loads calculated by the methods of this appendix are reversed. Dynamic spring-back is likely to become critical for landing gear units having wheels of large mass or high landing speeds.

82. A new appendix H is added to part 23 to read as follows:

**Appendix H to Part 23—Seaplane Loads**

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Appendix H

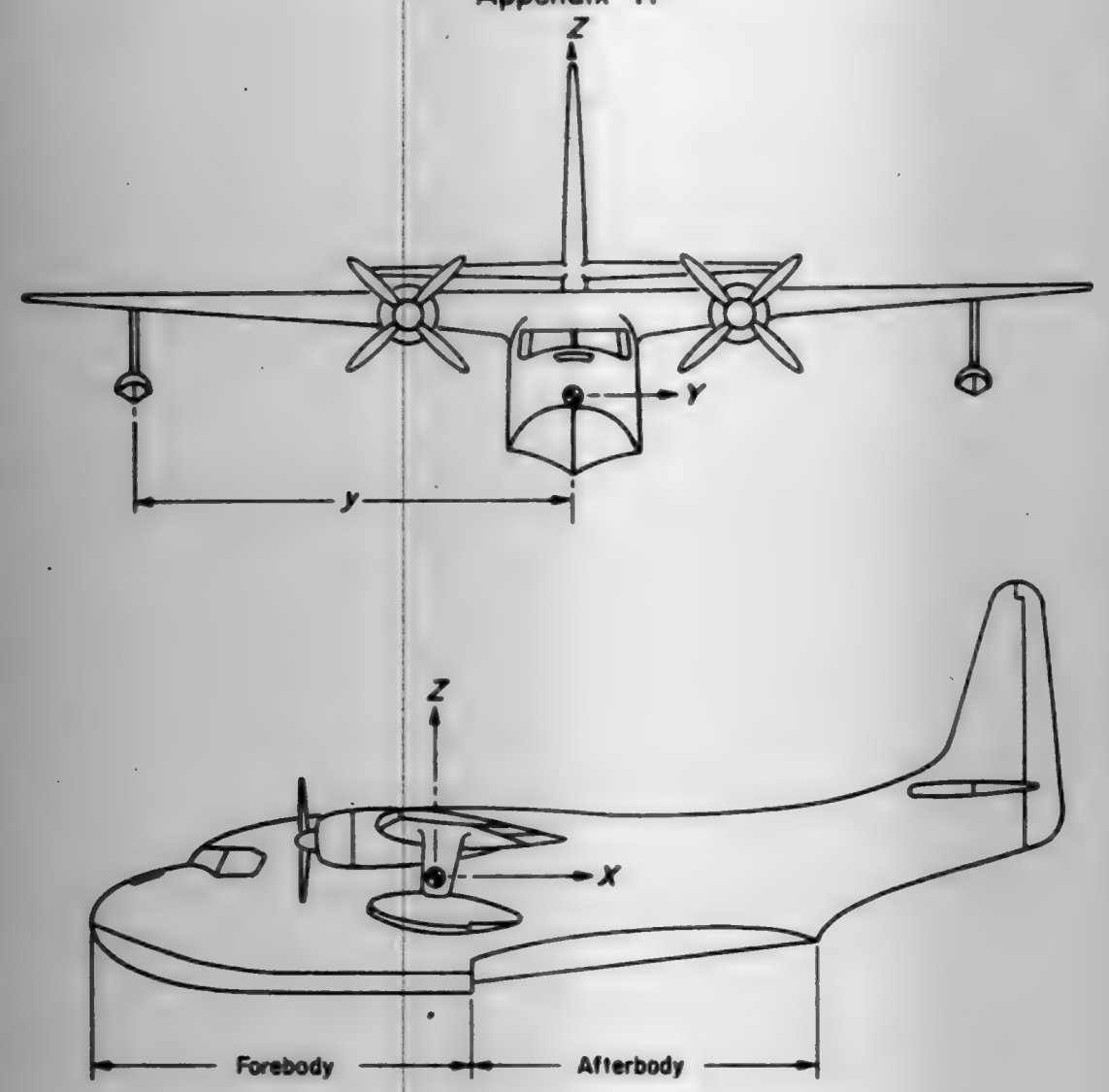


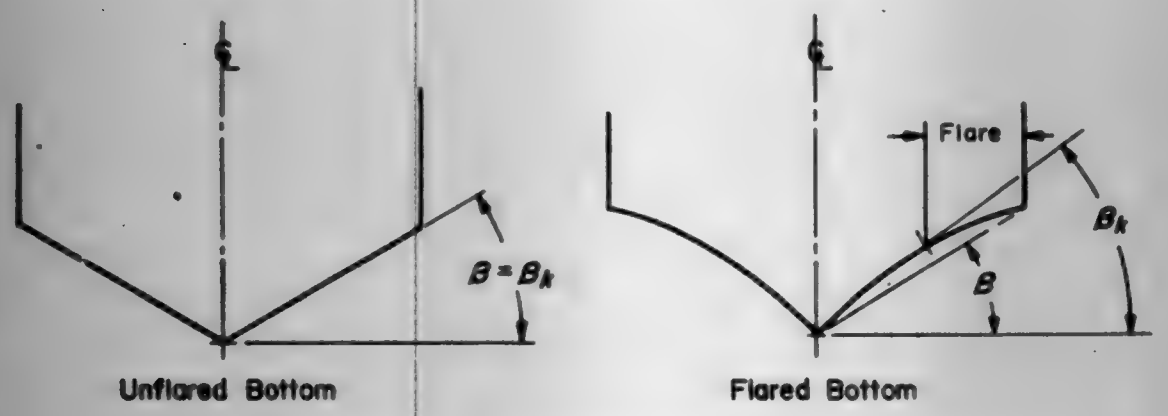


Unflared Bottom

Flared Bottom

FIGURE 1. Pictorial definition of angles, dimensions, and directions on a seaplane.

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Appendix H (continued)

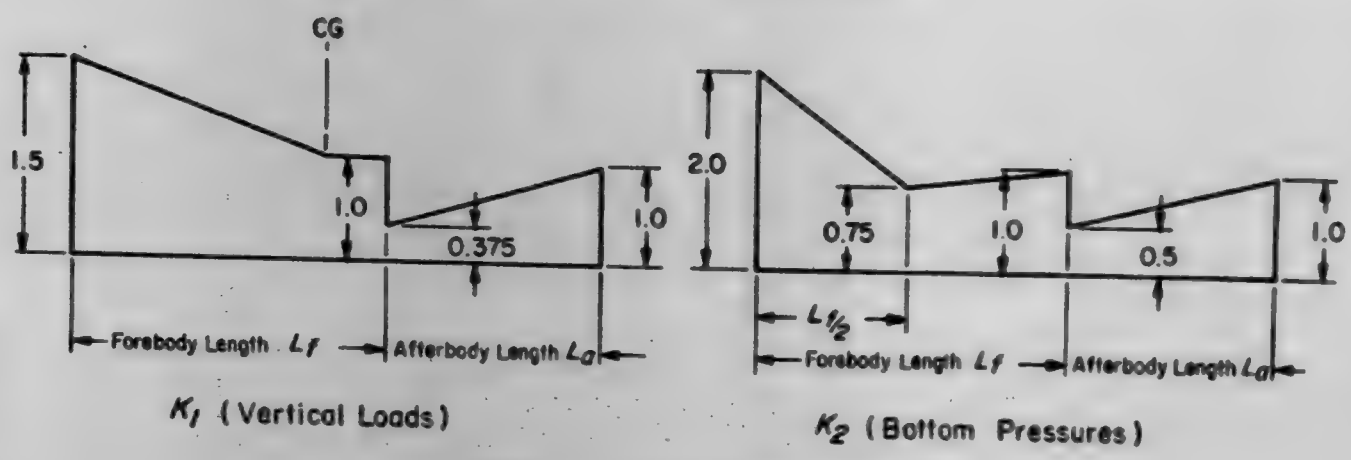


FIGURE 2. Hull station weighing factor.

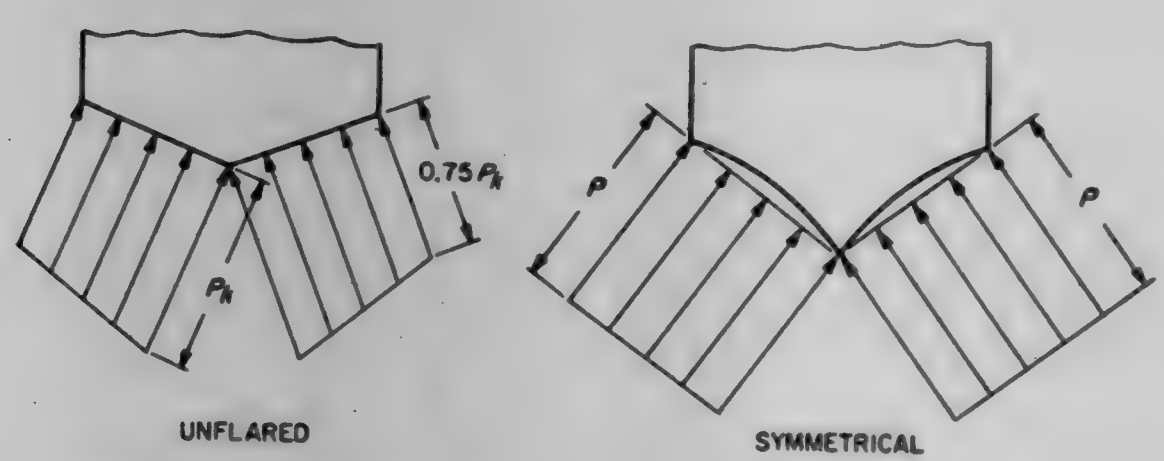


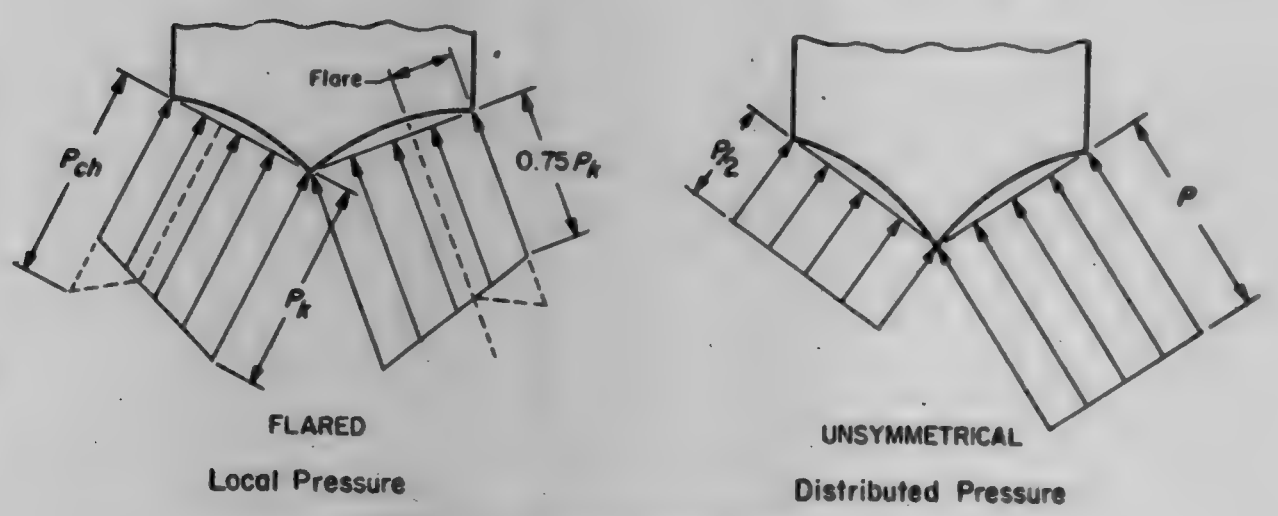


FIGURE 3. Transverse pressure distributions.

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Part III

# Federal Election Commission

11 CFR Parts 102 and 110

Multicandidate Political Committees; Final Rule

VOL 58 ISS 150 AG 6 1993 UMI



**FEDERAL ELECTION COMMISSION**

**11 CFR Parts 102 and 110**

**[NOTICE 1993—17]**

## Multicandidate Political Committees

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules; transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission has revised its regulations regarding multicandidate political committees. The revisions require political committees to report to the Commission that they have achieved multicandidate status; provide documentation to the Commission verifying such status at the time this is first reported; and give written notice of this status to candidates and their committees that receive campaign contributions from multicandidate committees. These revisions will help the Commission carry out its statutory responsibility to maintain a current Multicandidate Committee Index, and also help candidates determine what level of contributions they can accept from donor committees.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of revisions to its regulations at 11 CFR 102.2(a)(1) and (3) and 110.2(a), regarding multicandidate committees.

On March 3, 1993, the Commission issued a Notice of Proposed Rulemaking ["NPRM"] seeking comments on proposed revisions to these regulations. 58 FR 12189. Two written comments were received in response to the Notice.

Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on August 3, 1993.

### Explanation and Justification

A political committee may generally contribute a maximum of $1,000 per election to a federal candidate or that candidate's authorized committee. 2 U.S.C. 441a(a)(1)(A), 11 CFR 110.1(b)(1). However, a "multicandidate political committee" may contribute a maximum of $5,000 per candidate, per election. 2 U.S.C. 441a(a)(2)(A), 11 CFR 110.2(b)(1).

A political committee qualifies as a "multicandidate political committee" if it has been registered with the Federal Election Commission for at least six months; received contributions from more than 50 persons; and, except for state party organizations, made contributions to five or more candidates for federal office. 2 U.S.C. 441a(a)(4), 11 CFR 100.5(e)(3). The Commission is required to maintain an index of committees that have qualified as multicandidate committees. 2 U.S.C. 438(a)(6)(C).

Prior to these revisions, a committee informed the Commission that it had qualified as a multicandidate committee by checking the appropriate box on the first regularly-scheduled Report of Receipts and Disbursements [FEC Form 3X] due after this status was achieved. This at times resulted in a significant lapse of time between the date on which the committee qualified and the date on which this information was made known to the Commission, and hence to the general public. For example, if a committee achieved multicandidate status shortly after filing its July 31 semi-annual report in a non-election year, the Commission's Index would not list this committee until after the committee filed the year-end report due on January 31 of the following year. 2 U.S.C. 434(a)(4), 11 CFR 104.5. A candidate or candidate's committee might find it difficult to verify the legality of a contribution over $1,000 received during this period.

### Part 102—Registration, Organization, and Recordkeeping by Political Committees

*Section 102.2 Statement of Organization: Forms and Committee Identification Number*

New paragraph 102.2(a)(3) requires each committee to report that it has qualified as a multicandidate committee before making any contributions to candidates that exceed $1000 per election, and to submit data verifying its multicandidate status, at the time this status is reported. Both the change in status and the verifying information are to be reported on a new form: FEC Form 1M.

The NPRM proposed requiring this information to be reported as an amendment to the Statement of Organization that each committee is required to file. 2 U.S.C. 433(a), 11 CFR 102.1. Any change in information previously submitted in a Statement of Organization must be reported to the Commission no later than 10 days after the date of the change. 2 U.S.C. 433(c), 11 CFR 102.2(a)(2). (Information on multicandidate status could not be reported on an original Statement of Organization, because of the requirement that a committee be registered at least six months before it can qualify as a multicandidate committee.) The Commission has now decided on a more straightforward approach, that is requiring this information to be reported on a new, and separate, FEC Form 1M.

FEC Form 1M requires the committee, after qualifying as a multicandidate committee, to provide the Commission with: (1) The date on which it first registered with the Commission; (2) a listing of five federal candidates it has supported, with the date of the contribution to each; and (3) a certification that it has received contributions from more than 50 persons.

Formerly, this information was apparent from the committee's reports filed at the time this status was reported. Under the revised rules, however, the committee is required to provide this information at the time it files Form 1M, since the information may not have been reported by the time this form is filed.

One commenter endorsed the NPRM, but suggested the verification required in the preceding paragraph be replaced by random requests for this information from the Commission's Reports Analysis Division ["RAD"]. However, the Commission believes each committee should be required to provide this information, as proposed in the Notice.

Since the difference in maximum contributions is significant, the Commission feels strongly that each committee must demonstrate that it qualifies for this status. Moreover compliance with this requirement will not be burdensome. Committees are not required to list all of their contributors, for example, but merely to certify that they have received contributions from a sufficient number of persons. Also, the Commission's experience has been that committees may not fully understand the criteria for achieving multicandidate status, and this approach would help ensure that they comply fully. Finally, random requests for information may

not be sufficient to ensure full compliance with these requirements.

FEC Form 3X, where this information was formerly reported, has also been amended. Committees formerly checked square 3 only if they had achieved multicandidate status during the period covered by that report. They now indicate in that square if they have qualified as a multicandidate committee in every report filed after qualification, so that candidates and other interested parties may readily determine this information. The new square cross-references FEC Form 1M, which provides the more detailed information.

**Part 110—Contributions and Expenditure Limitations and Prohibitions**

*Section 110.2 Contributions by Multicandidate Political Committees*

New paragraph 110.2(a)(2) requires multicandidate committees to notify recipients of this status in writing, at the time a contribution is made. This allows a candidate or authorized committee to easily determine the legality of a committee contribution over $1,000.

The Federal Election Campaign Act prohibits both the making and the receipt of any contribution over $1,000 from a political committee that has not qualified as a multicandidate committee; and the donor is in the better position to know whether multicandidate status has been achieved. While the recipient can check the Commission's Multicandidate Committee Index, there is inevitably some time lag between the date a committee achieves multicandidate status and the date this information becomes publicly available.

The revised rule does not specify the nature of this writing. Multicandidate committees may choose to have this information printed on their checks and/or their letterhead stationery. Prior to the time this is available, they may handwrite or type this information on their checks. Alternatively, they may include this information in the body of an accompanying letter or other communication, or in another manner of their choosing.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]**

The attached rules do not have a significant economic impact on a substantial number of small entities. The basis of this certification is that any entities affected are already required to comply with the Act's requirements in this area.

**List of Subjects**

*11 CFR Part 102*

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

*11 CFR Part 110*

Campaign funds, Political candidates, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

**PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)**

1. The authority citation for part 102 continues to read as follows:

**Authority:** 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. In § 102.2, paragraph (a)(3) is added, to read as follows:

**§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).**

(a) * * *

(3) A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee set forth at 11 CFR 100.5(e)(3) by filing FEC Form 1M before it makes any contributions to candidates that exceed $1000 per election.

* * * * *

**PART 110—CONTRIBUTIONS AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

3. The authority citation for part 110 continues to read as follows:

**Authority:** 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

4. In § 110.2, paragraph (a) is redesignated as paragraph (a)(1) and new paragraph (a)(2) is added, to read as follows:

**§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).**

(a) (1) * * *

(2) *Notice to recipients.* Each multicandidate committee that makes a contribution under this section shall notify the recipient in writing of its status as a multicandidate committee.

* * * * *

Dated: August 3, 1993.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 93–18862 Filed 8–5–93; 8:45 am]

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Part IV

# Interstate Commerce Commission

## Norfolk Southern Railway Company; Consolidation of Operations—CSX Transportation, Inc.; Notice

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## INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32299]

## Norfolk Southern Railway Company; Consolidation of Operations—CSX Transportation, Inc.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision accepting application for consideration.

**SUMMARY:** The Commission is accepting for consideration the application filed July 7, 1993, by Norfolk Southern Railway Company (NS) and CSX Transportation, Inc. (CSXT) for approval and authorization of the consolidation of certain operations and joint use of certain railroad lines of NS and CSXT in South Carolina. Pursuant to 49 CFR part 1180, the Commission finds this to be a minor transaction.

**DATES:** Written comments must be filed with the Commission no later than September 7, 1993, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by September 20, 1993. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due by October 12, 1993.

**ADDRESSES:** Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32299, Interstate Commerce Commission, Washington, DC 20423. In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicants' representatives: (1) Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, room 8201, 400 Seventh St. SW., Washington, DC 20590; (2) Attorney General of the United States, United States Department of Justice, 10th St. and Constitution Ave. NW., Washington, DC 20530; (3) Robert J. Cooney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191; (4) Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, room J150, Jacksonville, FL 32202; and (5) Peter J. Shudtz, CSX Corporation, One James Center, 901 East Cary Street, Richmond, VA 23219.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** By application filed July 7, 1993, NS and CSXT, collectively "applicants," seek Commission approval under 49 U.S.C. 11343, *et seq.*, for a consolidation of certain of their operations in South Carolina. The proposal involves a series of trackage rights agreements, joint use agreements, and operating agreements under which the applicants propose to operate over certain trackage of each other.

Under the proposal, NS will grant overhead trackage rights to CSXT over its line of railroad between Columbia and Charleston, allowing CSXT to operate over this line with its own trains and its own crews. CSXT will have the right to exit the line at Pregnall and Orangeburg. In connection with these trackage rights, NS has agreed to handle cars in CSXT's accounts in trains operated by NS crews between Columbia and Charleston, including the setting out and picking up of CSXT's traffic at Pregnall and Orangeburg.

CSXT will lease NS's line of railroad between Pregnall and Giant. CSXT and NS have agreed that CSXT will switch traffic between Pregnall and Giant for all CSXT and NS customers, and traffic to or from CSXT or NS customers will remain in the respective railroad's account.

CSXT will grant overhead trackage rights to NS over its line of railroad between Columbia and Newberry, allowing NS to operate over this line with its own trains and its own crews. In connection with these trackage rights, CSXT has agreed to handle cars in NS's accounts in trains operated by CSXT crews between Columbia and Newberry. In addition, CSXT has agreed to handle cars in NS's accounts in trains operated by CSXT crews between Newberry and Spartanburg. NS and CSXT have agreed that NS will switch traffic in the Newberry area for all CSXT and NS customers. Traffic switched to and from CSXT or NS customers will remain in the respective railroad's account.

CSXT is a class I rail carrier that operates a rail system comprising approximately 19,000 miles of trackage located in 19 States, the District of Columbia, and the Province of Ontario, Canada. CSXT is a wholly owned subsidiary of CSX Corporation (CSX), a noncarrier holding company that owns and controls several carriers subject to Commission regulation, including CSXT, American Commercial Barge Line Company (an inland barge carrier), CSX Intermodal, Inc. (a motor carrier), and various other wholly owned carrier affiliates. The proposed consolidation of operations involves only CSXT's rail operations in South Carolina. The carrier operations of CSX's other Commission-regulated affiliates are not affected by the proposed transaction.

NS is a class I rail carrier that operates a rail system comprising approximately 9,000 miles of trackage located in 14 States. NS is a wholly owned subsidiary of Norfolk Southern Corporation, a noncarrier holding company. NS controls Norfolk and Western Railway Company and other carriers.

According to applicants, the proposed transaction will not substantially lessen intermodal or intramodal competition. Applicants point out that the proposed consolidation of operations relates to train operations only. They emphasize that, following the consolidation, the current customers of CSXT will continue to be CSXT customers and the current NS customers will continue to be NS customers. There will be no change in the status of those customers that are jointly served by CSXT and NS, and no prospective customers will be denied service from either CSXT or NS as a result of the consolidation. Applicants assert that the only effect the proposed consolidation will have on customer service is that CSXT cars will be handled in some instances in NS trains and by NS crews, and NS cars will be handled in other instances in CSXT trains and by CSXT crews. In short, applicants contend, there will be no lessening of competition because there will be no change in the competitive balance between NS and CSXT in South Carolina as a result of the proposed consolidation of operations.

Both CSXT and NS anticipate operating economies as a result of the proposed transaction. CSXT's traffic between Columbia and Charleston can be handled more efficiently by using NS trains between those two points. Adding the CSXT traffic to the existing NS traffic will increase the size of NS trains, provide economies of scale, and reduce the transportation costs per carload of both carriers. CSXT's use of NS trains between Columbia and Charleston will allow CSXT to eliminate two road switchers and the costs that accompany those operations. In addition, having NS switch the CSXT traffic at Newberry will allow CSXT to eliminate one road switcher at that point. By using CSXT trains to handle its traffic between Columbia and Newberry and between

Newberry and Spartanburg, and to switch its traffic between Pregnall and Giant, NS will realize certain operating efficiencies. In addition, the NS trackage between Prosperity and Alston will be surplus because NS will have trackage rights over CSXT trackage to Prosperity, and no shippers are located between Prosperity and Alston. There is no financial consideration involved in the proposed consolidation of operations other than the reimbursement by CSXT and NS for the cost of their respective use of each other's facilities in South Carolina. Applicants do not intend for the proposed consolidation of operations to result in any changes in the traffic levels of either party or any increases or decreases in revenue. Neither do they expect the proposed consolidation to involve any increase in fixed charges.

Applicants anticipate a positive impact on the adequacy of transportation service to the public. By using each other's facilities for the handling of traffic in South Carolina, NS and CSXT will both be able to streamline their respective operations and rationalize their systems. The economic gains that applicants anticipate will strengthen both NS and CSXT and allow them to provide high quality transportation service to the shippers and receivers on their respective systems.

The proposed consolidation of operations will result in the elimination of three CSXT trains. Accordingly, the train crews of CSXT who normally work on those trains will be affected by the proposed consolidation. No NS trains are to be eliminated. CSXT and NS acknowledge that, pursuant to 49 U.S.C. 11347, the Commission is required to impose labor protective provisions as a condition to its approval of the proposed consolidation of operations under 49 U.S.C. 11343. At this time, applicants have not reached agreements with the employees to be affected.

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal here does not involve the control or merger of two or more class I railroads. Further, the proposed transaction has no regional or national significance and does not involve a major market extension as defined under our rules for rail consolidations. NS and CSXT are not combining to enlarge their market shares between major city pairs or regions. They are individually paring down expenses to operate more efficiently in markets they are already serving. This may make the carriers more effective in meeting geographic or intermodal competition, but not to the extent that it would qualify as a major market extension. Accordingly, we find the proposal is a minor transaction as defined in 49 CFR 1180.2(c). Because the application complies with our regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, copies may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in the proceeding by submitting written comments. Any person who submits, in timely-filed, written comments, a request to participate in this proceeding as a party of record will be accorded that status, and need not file a petition for leave to intervene.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding.

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal in this proceeding constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

*It is ordered:*

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

Decided: August 2, 1993.

By the Commission, Chairman McDonald Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–19081 Filed 8–5–93; 8:45 am]

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Part V

# The President

Executive Order 12857—Budget Control
Executive Order 12858—Deficit Reduction Fund

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# Presidential Documents

Title 3—

## The President

## Executive Order 12857 of August 4, 1993

## Budget Control

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including section 1105 of title 31, United States Code, it is hereby ordered as follows:

Section 1. *Purpose.* The purpose of this order is to create a mechanism to monitor total costs of direct spending programs, and, in the event that actual or projected costs exceed targeted levels, to require that the budget address adjustments in direct spending.

Sec. 2. *Establishment of Direct Spending Targets.*

(a) *In General.* The initial direct spending targets for each of fiscal years 1994 through 1997 shall equal total outlays for all direct spending except net interest and deposit insurance as determined by the Director of the Office of Management and Budget (Director) under subsection (b).

(b) *Initial Report by Director.* (1) Not later than 30 days after the date of enactment of the Omnibus Budget Reconciliation Act of 1993 (OBRA), the Director shall submit a report to the Congress setting forth projected direct spending targets for each of fiscal years 1994 through 1997.

(2) The Director's projections shall be based on legislation enacted as of 5 days before the report is submitted under paragraph (1). To the extent feasible, the Director shall use the same economic and technical assumptions used in preparing the concurrent resolution on the budget for fiscal year 1994 (H.Con.Res. 64).

(c) *Adjustments.* Direct spending targets shall be subsequently adjusted by the Director under Section 6.

Sec. 3. *Annual Review of Direct Spending and Receipts by President.* As part of each budget submitted under section 1105(a) of title 31, United States Code, the Director shall provide an annual review of direct spending and receipts, which shall include (1) information supporting the adjustment of direct spending targets pursuant to Section 6, (2) information on total outlays for programs covered by the direct spending targets, including actual outlays for the prior fiscal year and projected outlays for the current fiscal year and the 5 succeeding fiscal years, and (3) information on the major categories of Federal receipts, including a comparison between the levels of those receipts and the levels projected as of the date of enactment of OBRA.

Sec. 4. *Special Direct Spending Message by President.* (a) *Trigger.* In the event that the information submitted under Section 3 indicates—

(1) that actual outlays for direct spending in the prior fiscal year exceeded the applicable direct spending target, or

(2) that outlays for direct spending for the current or budget year are projected to exceed the applicable direct spending targets, the Director shall include in the budget a special direct spending message meeting the requirements of subsection (b) of this Section.

(b) *Contents.* (1) The special direct spending message shall include:

(A) An explanation of any adjustments to the direct spending targets pursuant to Section 6.

(B) An analysis of the variance in direct spending over the adjusted direct spending targets.

(C) The President's recommendations for addressing the direct spending overages, if any, in the prior, current, or budget year.

(2) The recommendations may consist of any of the following:

(A) Proposed legislative changes to reduce outlays, increase revenues, or both, in order to recoup or eliminate the overage for the prior, current, and budget years in the current year, the budget year, and the 4 out-years.

(B) Proposed legislative changes to reduce outlays, increase revenues, or both, in order to recoup or eliminate part of the overage for the prior, current, and budget year in the current year, the budget year, and the 4 out-years, accompanied by a finding by the President that, because of economic conditions or for other specified reasons, only some of the overage should be recouped or eliminated by outlay reductions or revenue increases, or both.

(C) A proposal to make no legislative changes to recoup or eliminate any overage, accompanied by a finding by the President that, because of economic conditions or for other specified reasons, no legislative changes are warranted.

(3) Any proposed legislative change under paragraph (2) to reduce outlays may include reductions in direct spending or in the discretionary spending limits under section 601 of the Congressional Budget Act of 1974.

**Sec. 5.** *Proposed Special Direct Spending Resolution.* If the President recommends reductions consistent with subsection 4 (b)(2)(A) or (B), the special direct spending message shall include the text of a special direct spending resolution implementing the President's recommendations through reconciliation directives instructing the appropriate committees of the House of Representatives and Senate to determine and recommend changes in laws within their jurisdictions to reduce outlays or increase revenues by specified amounts. If the President recommends no reductions pursuant to Section 4 (b)(2)(C), the special direct spending message shall include the text of a special resolution concurring in the President's recommendation of no legislative action.

**Sec 6.** *Adjustments to Direct Spending Targets.*

(a) *Required Annual Adjustments.* Prior to the submission of the President's budget for each of fiscal years 1995 through 1997, the Director shall adjust the direct spending targets in accordance with this Section. Any such adjustments shall be reflected in the targets used in the report under Section 3 and message (if any) under Section 4.

(b) *Adjustment for Increases in Beneficiaries.* (1) The Director shall adjust the direct spending targets for increases (if any) in actual or projected numbers of beneficiaries under direct spending programs for which the number of beneficiaries is a variable in determining costs.

(2) The adjustment shall be made by—

(A) computing, for each program under paragraph (1), the percentage change between (i) the annual average number of beneficiaries under that program (including actual numbers of beneficiaries for the prior fiscal year and projections for the budget and subsequent fiscal years) to be used in the President's budget with which the adjustments will be submitted, and (ii) the annual average number of beneficiaries used in the adjustments made by the Director in the previous year (or, in the case of adjustments made in 1994, the annual average number of beneficiaries used in the Director's initial report under Section 2(b));

(B) applying the percentages computed under subparagraph (A) to the projected levels of outlays for each program consistent with the direct spending targets in effect immediately prior to the adjustment; and

(C) adding the results of the calculations required by subparagraph (B) to the direct spending targets in effect immediately prior to the adjustment.

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(3) No adjustment shall be made for any program for a fiscal year in which the percentage increase computed under paragraph (2)(A) is less than or equal to zero.

(c) *Adjustments for Revenue Legislation.* The Director shall adjust the targets as follows:

(1) they shall be increased by the amount of any increase in receipts; or

(2) they shall be decreased by the amount of any decrease in receipts, resulting from receipts legislation enacted after the date of enactment of OBRA, except legislation enacted in response to the message transmitted under Section 4.

(d) *Adjustments To Reflect Congressional Decisions.* Upon enactment of a reconciliation bill enacted in response to a message submitted under Section 4, the Director shall adjust direct spending targets for the current year, the budget year, and each outyear through 1997 by—

(1) increasing the target for the current year and the budget year by the amount stated for that year in that reconciliation bill (but if a separate vote was required by Congressional rules, only if that vote has occurred); and

(2) decreasing the target for the current, budget, and outyears through 1997 by the amount of reductions in direct spending enacted in that reconciliation bill.

(e) *Designated Emergencies.* The Director shall adjust the targets to reflect the costs of legislation that is designated as an emergency by Congress and the President under section 252(e) of the Balanced Budget and Emergency Deficit Control Act of 1985.

**Sec. 7.** *Relationship to Balanced Budget and Emergency Deficit Control Act.* Recommendations pursuant to Section 4 shall include a provision specifying that reductions in outlays or increases in receipts resulting from that legislation shall not be taken into account for purposes of any budget enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985.

**Sec. 8.** *Estimating Margin.* For any fiscal year for which the overage is less than one-half of 1 percent of the direct spending target for that year, the procedures set forth in Section 4 shall not apply.

**Sec. 9.** *Means-Tested Programs.* In making recommendations under Section 4, the Director shall seriously consider all other alternatives before proposing reductions in means-tested programs.

**Sec. 10.** *Effective Date.* This order shall take effect upon enactment of OBRA. This order shall apply to direct spending targets for fiscal years 1994 through 1997 and shall expire at the end of fiscal year 1997.

William J Clinton

THE WHITE HOUSE,
*August 4, 1993.*

[FR Doc. 93–19098
Filed 8–5–93; 10:15 am]
Billing code 3195–01–P

**Editorial note:** For the President's remarks on signing this Executive order, see issue 31 of the *Weekly Compilation of Presidential Documents.*

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# Presidential Documents

**Executive Order 12858 of August 4, 1993**

## Deficit Reduction Fund

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 1104 and 1105 of title 31, United States Code, it is hereby ordered as follows:

**Section 1.** *Purpose.* It is essential to guarantee that the net deficit reduction achieved by the Omnibus Budget Reconciliation Act of 1993 is dedicated exclusively to reducing the deficit.

**Sec. 2.** *Deficit Reduction Fund.*

(a). *Establishment of the Fund.* There is established a separate account in the Treasury, known as the Deficit Reduction Fund, which shall receive the net deficit reduction achieved by the Omnibus Budget Reconciliation Act of 1993 as called for in subsection (b) of this order.

(b) *Amounts in Fund.* Beginning upon enactment of the Omnibus Budget Reconciliation Act of 1993, the Deficit Reduction Fund shall receive any increases in total revenues resulting from enactment of such Act on a daily basis. In addition, on a daily basis, the Secretary of the Treasury shall enter into such account an amount equivalent to the net deficit reduction achieved as a result of all spending reductions resulting from such Act. The cumulative fiscal year amounts for the combination of all such revenue increases and spending reductions shall be equal to:

(1) for fiscal year 1994, $60,292,000,000;

(2) for fiscal year 1995, $70,437,000,000;

(3) for fiscal year 1996, $92,061,000,000;

(4) for fiscal year 1997, $125,881,000,000;

(5) for fiscal year 1998, $146,939,000,000.

Within 30 days of enactment of the Omnibus Budget Reconciliation Act of 1993, the foregoing amounts may be adjusted by the Director of the Office of Management and Budget to reflect the final scoring of such Act.

(c) *Status of Amounts in Fund.* (i) The amounts in the Deficit Reduction Fund shall be used exclusively to redeem maturing debt obligations of the Treasury of the United States held by foreign governments in the amounts specified in subsection (b).

(ii) The amounts in the Deficit Reduction Fund as set forth in subsection (b) that result from increases in total revenues and spending reductions shall not be available for new spending or to finance measures that increase the deficit for purposes of budget enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901–922).

(d) *Effect on Other Funds.* Establishment of and transfers to the Deficit Reduction Fund shall not affect trust fund transfers that may be authorized or required by provisions of the Omnibus Reconciliation Act of 1993 or any other provision of law.

**Sec. 3.** *Requirement for the President To Report Annually on the Status of the Fund.* The Director of the Office of Management and Budget shall include in the President's Budget transmitted under section 1105 of title 31, United States Code, information about the Deficit Reduction Fund, includ-

ing a separate statement of amounts in and Federal debt redeemed by that Fund.

Sec. 4. *Implementation.* The Secretary of the Treasury and the Director of the Office of Management and Budget shall each take such actions as may be necessary, within their respective authorities, promptly to carry out this order.

Sec. 5. *Effective Date.* This order shall take effect upon enactment of the Omnibus Budget Reconciliation Act of 1993.

William J. Clinton

THE WHITE HOUSE,
*August 4, 1993.*

[FR Doc. 93-19101
Filed 8-5-93; 10:30 am]
Billing code 3195-01-P

**Editorial note:** For the President's remarks on signing this Executive order, see issue 31 of the *Weekly Compilation of Presidential Documents.*

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Monday
August 9, 1993

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 911 and 915

[Docket No. FV92-911-1IFR; Amendment 1]

### Increase in Expenses for Marketing Orders Covering Fresh Limes and Avocados Grown in Florida

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes an increase in expenses for the Florida Lime Administrative Committee under Marketing Agreement (M.O.) No. 911 and the Florida Avocado Administrative Committee (committees) under M.O. 915 for the 1993–94 fiscal year. Authorization of this budget increase will enable the committees to incur additional expenses that are reasonable and necessary to administer their programs.

**DATES:** Effective April 1, 1993, through March 31, 1994. Comments received by September 8, 1993 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** William J. Pimenthal, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276, telephone: (813) 299–4886; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 911 (7 CFR part 911) regulating the handling of fresh limes grown in Florida and Marketing Agreement and Order No. 915 (7 CFR part 915) regulating the handling of fresh avocados grown in Florida. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes and avocados grown in Florida are subject to assessments applicable to all assessable limes and avocados handled during the 1993–94 fiscal year, which began April 1, 1993, through March 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of limes and 40 handlers of avocados regulated under the marketing order each season and approximately 260 lime and 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committees met on December 9, 1992, and unanimously recommended total expenses for the 1993–94 fiscal year of $106,346 and an assessment rate of $0.16 per bushel for their respective committees. This action was published as an interim final rule in the **Federal Register** (58 FR 8533, February 16, 1993) and provided a 30-day comment period which ended March 18, 1993.

Each committee met again February 11, 1993, and unanimously recommended to increase budgeted expenses for both limes and avocados to $108,346. As a result, the committees submitted a comment to the Department to increase their budgeted expenses by $2,000.

The $2,000 increase in expenditures for each committee will finance an aerial survey on which a tree count can be conducted, scheduled for March 1994. This survey is necessary due to the hurricane that hit the production area last August. The strong winds uprooted many lime and avocado trees. The aerial survey will give a better idea

of crop size for assessment and estimating purposes by the committees.

The committees' 1993–94 fiscal year expenses and assessment rate approvals, including the recommended increase in expenses, were adopted in a final rule and published in the **Federal Register** (58 FR 33757, June 21, 1993).

Each committee met again on June 9, 1993, and unanimously recommended to increase their budget of expenses from $108,346 to $113,846, representing an increase of $5,500 for each committee. Each committee deems the increase necessary in order to finance additional research on the impact of increased water supplies on the water table in the lime and avocado production areas.

This action amends the two previously finalized sections that appeared in the **Federal Register**. The assessment rates that were previously established for each committee will not be changed. Adequate funds are available from the committees' reserves to cover the increases in expenses resulting from this action. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects**

*7 CFR Part 911*

Marketing agreements and orders, Limes, Reporting and recordkeeping requirements.

*7 CFR Part 915*

Marketing agreements and orders, Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

## PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 911 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**Note:** This section will not appear in the annual Code of Federal Regulations.

**§ 911.232 (Amended)**

2. Section 911.232 is amended by changing "$108,346" to "$113,846."

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

**Note:** This section will not appear in the annual Code of Federal Regulations.

**§ 915.232 (Amended)**

2. Section 915.232 is amended by changing "$108,346" to "$113,846."

Dated: August 2, 1993.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–18867 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–02–P

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**Food Safety and Inspection Service**

**9 CFR Parts 317, 318, and 381**

**[Docket No. 91–017F]**

**RIN 0583–AB36**

## Approval of Smoke Flavorings and Artificial Smoke Flavorings

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations by deleting specific requirements for prior Agency approval for the use of smoke flavorings and artificial smoke flavorings in meat and poultry products. Prior FSIS approval is no longer necessary because smoke flavorings and artificial smoke flavorings are now generally recognized as safe (GRAS) by the Food and Drug Administration.

**EFFECTIVE DATE:** September 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12291**

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

**Executive Order 12778**

This final rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA or PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This final rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR part 335 and part 381, subpart W, must be exhausted prior to any judicial challenge to the application of the

provisions of this rule with respect to labeling decisions.

**Effects on Small Entities**

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. Currently, FSIS is aware of 21 firms that manufacture smoke flavorings and artificial smoke flavorings for use in products prepared in official establishments. It is believed that the manufacture of these substances is not a major part of the business of most of these 21 firms, large or small. FSIS has no information that would indicate that this rule would affect any of these entities in a significant manner.

**Background**

Smoke flavorings and artificial smoke flavorings are currently listed as "Flavoring agents" in the charts of approved substances in § 318.7(c)(4) of the Federal meat inspection regulations and in § 381.147(f)(4) of the poultry products inspection regulations (9 CFR 318.7(c)(4) and 381.147(f)(4)). Unlike other flavorings, however, each specific smoke flavoring has been permitted in federally inspected meat and poultry products only upon prior FSIS review and approval. Such approved smoke flavorings and artificial smoke flavorings were subsequently listed in the Agency's List of Proprietary Substances and Nonfood Compounds. This policy was initiated in the 1960's to ensure safety, at that time, of a relatively new product used in meat and poultry products.

*Current Regulations*

The Food and Drug Administration (FDA) has primary responsibility over the safety and use of food and color additives. Over the years, FDA has conducted reviews of the safety of smoke flavorings and artificial smoke flavorings. FDA has now concluded that these substances, when produced under good manufacturing practices, are generally recognized as safe under the food additives provisions of the Federal Food, Drug, and Cosmetic Act. Under the circumstances, FSIS's preapproval of such additives, on a case-by-case basis, is no longer necessary.

*Proposed Rule*

On December 4, 1992, FSIS published a proposed rule in the **Federal Register** (57 FR 57390) to amend the Federal meat and poultry products inspection regulations by deleting specific requirements for prior Agency approval on the use of smoke flavorings and artificial smoke flavorings. The Agency proposed to delete the word "approved" from the phrases "approved artificial smoke flavoring" and "approved smoke flavoring" in 9 CFR 317.2(j)(3), which indicates that smoke flavorings and artificial smoke flavorings must be approved, on a case-by-case basis, prior to use in meat products. In addition, FSIS proposed to amend the charts of substances in 9 CFR 318.7(c)(4) and 9 CFR 381.147(f)(4) by deleting the words "program approved" from the entries for smoke flavoring and artificial smoke flavoring, and deleting the footnotes identifying smoke flavorings and artificial smoke flavorings as proprietary products. All smoke flavorings and artificial smoke flavorings would continue to be subject to all restrictions that apply to the use of any flavoring prescribed in 9 CFR parts 317, 318, 319, and 381.

*Discussion of Comments*

FSIS received four comments in response to the proposed rule—one from the Small Business Administration (SBA), one from a meat and poultry trade association, and two from food manufacturers. The trade association and the food manufacturers were in favor of the proposed rule. The SBA did not take a position on the issues proposed; however, it did express an opinion regarding the preparation of a regulatory impact analysis.

The SBA commented that, even though the proposed rule would impact positively upon small entities, the Agency should have prepared a regulatory impact analysis supporting that determination. SBA further advised that FSIS misinterpreted the Regulatory Flexibility Act (RFA) by not developing such an analysis. For each rulemaking, FSIS determines whether a proposed rule would impact significantly upon a substantial number of small entities, as prescribed in the RFA. This determination is not based on whether the impact would be positive or negative, but rather on whether a substantial number of small entities would be significantly affected. Currently, FSIS is aware of 21 firms that manufacture smoke flavorings and artificial smoke flavorings for use in products prepared in official establishments. It is believed that the manufacture of these substances is not a major part of the business of most of these 21 firms, large or small. FSIS has no information that would indicate that this rule would affect any of these entities in a significant manner.

The Administration has determined that (1) the use of smoke flavoring and artificial smoke flavoring will not render the product in which they are used adulterated, misbranded, or otherwise not in compliance with the requirements of the FMIA and the PPIA, (2) the use of these substances is functional and suitable for the intended purpose, and (3) the substances are used at the lowest level necessary to accomplish the intended technical effect. Accordingly, because of these determinations and the positive comments received in response to the proposed rule, FSIS is adopting the proposed rule as published.

**List of Subjects**

*9 CFR Part 317*

Food labeling, Meat inspection.

*9 CFR Part 318*

Food additives, Meat inspection.

*9 CFR Part 381*

Food additives, Poultry inspection.

**Final Rule**

For the reasons discussed in the preamble, FSIS is amending 9 CFR parts 317, 318, and 381 to read as follows:

## PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

**Authority:** 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 317.2(j)(3) is amended by removing the word "approved" in both places.

## PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 continues to read as follows:

**Authority:** 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

**§ 318.7 [Amended]**

4. In the table in § 318.7(c)(4) under the Class of substance "Flavoring agents; protectors and developers," the substances "Program approved artificial smoke flavoring" and "Program approved smoke flavoring" are revised to read "Artificial smoke flavoring" and "Smoke flavoring," and the footnote "1" designations are removed. Furthermore, the text of footnote 1 at the end of the table is removed and footnote 1 is designated as "Reserved."

## PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. The authority citation for part 381 continues to read as follows:

**Authority:** 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

§ 381.147 [Amended]

6. In the table in § 381.147(f)(4) under the Class of substance "Flavoring agents; protectors and developers," the substances "Approved artificial smoke flavorings" and "Approved smoke flavoring" are revised to read "Artificial smoke flavoring" and "Smoke flavoring," and the footnote "2" designations are removed. Furthermore, the text of footnote 2 at the end of the table is removed and footnote 2 is designated as "Reserved."

Done at Washington, DC, on August 2, 1993.

Eugene Branstool,

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-18997 Filed 8-6-93; 8:45 am]

BILLING CODE 3410-DM-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93-NM-109-AD; Amendment 39-8646; AD 93-14-21]**

## Airworthiness Directives; Boeing Model 747-400 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747-400 series airplanes. This action requires the installation of a system that ensures full pitot and total air temperature heat in the event an airplane enters "ground mode" while the airplane is in flight. This AD action also requires a revision to the FAA-approved Airplane Flight Manual that imposes operating limitations in the event hydraulic system number one or four becomes inoperative. This amendment is prompted by two incidents of airplanes losing pressure in hydraulic system number four. The actions specified in this AD are intended to reduce the effect on airplane systems should they enter ground operating mode while the airplane is in flight.

**DATES:** Effective August 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 8, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-109-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gregory Dunn, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2799; fax (206) 227-1181.

**SUPPLEMENTARY INFORMATION:** Recently, the FAA received two reports of in-service Model 747-400 series airplanes losing pressure in hydraulic system number four, which resulted in the airplanes entering "ground mode" while the airplanes were in flight. In these two incidents, there were no obvious flight deck indications to warn the flight crew that the airplane had entered into the "ground mode." The FAA has determined that when there is a loss of pressure in hydraulic system number four, the wing gear trucks may relax sufficiently to exceed the tilted position indication. When this occurs on the sensing systems for both the left and right wing gear trucks, the airplane will enter into the "ground mode." Moreover, if hydraulic system one is depressurized and the body gear trucks relax sufficiently, the airplane will enter the "ground mode" when the gear is extended for landing. Analysis indicates that the following systems may be affected by this type of failure:

1. Pitot/Static Probe Heat: Reduction of heat in the "ground mode" may cause ice to build up, which subsequently may cause the air data computer to send erroneous information to other systems such as the integrated display system, flight instrument system, stall warning system, and overspeed warning system.

2. Cowl Thermal Anti-Ice System: The primary ice detection system becomes inoperative in "ground mode," and "cowl thermal anti-ice" must be selected manually when required.

3. Wing Thermal Anti-Ice System: The wing thermal anti-ice system becomes inoperative in both "AUTO" and "manual" modes.

4. Total Air Temperature Probe Heaters: Heaters turn off in the "ground mode." Ice build up may affect engine settings during climb-out and go-around, but would not be considered an operational concern.

5. Horizontal Stabilizer and Rudder Module: The stabilizer speed trim deactivates in "ground mode" with minimal impact on airplane handling characteristics. The rudder ratio changer may default to the "low airspeed (high authority) mode" when accompanied by anomalies in the air data computer. Excessive rudder input could damage the vertical stabilizer.

6. Yaw Damper: The yaw damper enters the normal "on ground, no rudder command mode." The airplane is stable throughout all flight regimes without a functioning yaw damper. However, pilot workload increases during turbulence.

7. Fuel Management System: Fuel cannot be transferred from the horizontal stabilizer fuel tank or reserve tanks 2 and 3. Fuel in those tanks becomes unusable if "ground mode" is entered with fuel in those tanks. Specific fuel feed procedures must be followed to avoid exceeding the airplane center of gravity limits.

8. Thrust Reversers: The thrust reverser aisle stand flight lockout mechanisms are released in "ground mode." The thrust reversers will deploy and the leading edge flaps will retract, if the reverse thrust levers are pulled. There is no indication of "flight lockout release" to the flight crew.

9. Auto-Throttle: Auto-throttle is inoperative in "ground mode" (hydraulic system four loss only); however, an annunciation is provided to the crew.

10. Automatic Flight Idle: In "ground mode," automatic selection of "approach idle" will not occur when approach/landing flaps are selected, or when "cowl thermal anti-ice" is commanded "ON." (Airplane go-around performance is based on engine acceleration capability from the approach idle setting; sufficient bleed air flow for cowl thermal and anti-ice is dependent on the approach idle power setting.)

11. Cabin Pressurization System: Below 15,000 feet mean sea level (MSL), the outflow valve opens gradually in "ground mode" to depressurize the airplane with no effect above 15,000 feet MSL.

12. Transponder: The transponder becomes disabled in the "ground mode." Some airplanes have an optional control switch, which would permit the flight crew to switch to the "manual mode."

13. Traffic Collision Avoidance System (TCAS): TCAS becomes inoperative in the "ground mode;" however, a TCAS status message would be annunciated to the flight crew.

14. Auxiliary Power Unit (APU) GEN 2: APU "Avail" light illuminates in "ground mode" on P5 panel when the APU is running.

15. Forward Cargo Ground Exhaust System (KLM only): The forward ground exhaust valves open in "ground mode" if the air conditioning system for the forward cargo compartment is selected "ON." Rapid depressurization occurs and results in an engine indication and crew alerting system (EICAS) "Cabin Altitude" warning message.

16. Upper Deck Door Flight Lock: The flight lock actuator will not energize to lock in air in "ground mode;" however, a blue "DR GND Mode" light will be annunciated above each upper deck door.

Depressurization of the hydraulic system number one or four can result in various electrical and avionics systems entering the ground operating mode while the airplane is in flight.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–30A2069, dated July 15, 1993, that describes procedures for installation of a system that ensures full pitot and total air temperature heat in the event an airplane enters "ground mode" while the airplane is in flight.

Boeing has issued 747–400 Operations Manual Bulletin 93–5, dated July 26, 1993, that describes flight crew procedures to impose operating limitations when hydraulic system number one or four is inoperative.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747–400 series airplanes of the same type design, this AD is being issued to reduce the effect on the airplane systems and the flight crew should the airplane enter ground operating mode while the airplane is in flight. This AD requires a revision to the FAA-approved Airplane Flight Manual that imposes operating limitations in the event the hydraulic system number one or four becomes inoperative. This AD also requires installation of a system that ensures full pitot and total air temperature heat in the event an airplane enters "ground mode" while the airplane is in flight. These actions are required to be accomplished in accordance with the service information described previously.

This is considered to be interim action. The FAA is currently considering requiring modification of the air/ground system which will constitute terminating action for the operating limitation imposed by this AD action.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–109–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–14–21 Boeing:** Amendment 39–8646. Docket 93–NM–109–AD.

*Applicability:* All Model 747–400 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To reduce the effect on airplane systems should they enter ground operating mode while the airplane is in flight due to depressurization of hydraulic system number one or four, accomplish the following:

(a) Within 15 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by accomplishing paragraphs (a)(1) and (a)(2) of this AD.

(1) Insert a copy of 747–400 Operations Manual Bulletin 93–5, dated July 26, 1993, into the AFM.

(2) Include the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD in the AFM. This may be accomplished by inserting a copy of this AD in the AFM.

(i) Do not operate the airplane unless both the number 4 hydraulic engine driven pump and the number 4 hydraulic demand pump are operative.

(ii) If hydraulic system number 1 or 4 becomes inoperative while the airplane is in flight, the flight crew shall accomplish the procedures contained in 747–400 Operations Manual Bulletin 93–5, dated July 26, 1993.

(iii) If hydraulic system number 4 becomes inoperative while the airplane is in flight, the flight crew shall consider the ramifications of changes in system operation should the airplane enter the "ground mode." Specifically, consideration shall be given to trip and reserve fuel requirements, and enroute and destination forecasts for potential icing conditions. If these or other conditions present a significant adverse effect on safety if the flight is continued, the crew shall consider, as an alternative, diverting to a suitable airport. It is the responsibility of the captain to assess the situation and execute sound judgement to determine a safe course of action. A landing shall be made at the most suitable airport.

(b) Within 60 days after the effective date of this AD, install a system that provides full pitot and total air temperature heat in the event an airplane enters "ground mode" while the airplane is in flight, in accordance with Boeing Alert Service Bulletin 747–30A2069, dated July 15, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The AFM revision shall be accomplished in accordance with 747–400 Operations Manual Bulletin 93–5, dated July 26, 1993. The installation shall be done in accordance with Boeing Alert Service Bulletin 747–30A2069, dated July 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 9, 1993.

Issued in Renton, Washington, on July 29, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18914 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 39

[Docket No. 93–NM–103–AD; Amendment 39–8654; AD 93–15–08]

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes equipped with certain IPECO pilot and co-pilot seats. This action requires an inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure; and modification of loose bearings, and marking the seat identification label. This amendment is prompted by reports that pilot seats failed to lock horizontally due to the tracklock pin bearing becoming detached from its housing and wedged in the mechanism. The actions specified in this AD are intended to prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane.

**DATES:** Effective August 24, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 8, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from IPECO, Inc., 3882 Del Amo Blvd., suite 604, Torrance, CA 90503. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Roy Boffo, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2780; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA recently received a report of a pilot seat that failed to lock horizontally on an in-service Model 737 series airplane. The reported cause of the failure has been traced to a problem that occurred during production and resulted in the tracklock pin bearing becoming detached from its housing and wedged in the mechanism. Subsequent investigation by the manufacturer has revealed a second instance of a loose bearing. Under these conditions, the pilot and co-pilot seats might not lock into position after repositioning the seats. Consequently, the seat(s) would then slide freely on the track, with no means of locking into the correct position. This condition, if not corrected, could result in the pilot and co-pilot seats sliding freely on the track, which could lead to the inability of the pilots to control the airplane.

The FAA has reviewed and approved IPECO Service Bulletin A001–25–74, Issue 2, dated May 6, 1993, that describes procedures for a one-time inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure, and modification of loose bearings. This modification entails drilling a hole through the tracklock bracket, and installing a spirol pin through the tracklock bracket assembly into the tracklock bearing. This one-time inspection and modification will prevent the possibility of the pilot and co-pilot seats from sliding freely on the track. The service bulletin also describes procedures for marking the seat identification label using vibro-etch or a similar method.

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737 series airplanes of the same type design, this AD is being issued to prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane. This AD requires a one-time inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure; and modification of loose bearings, and marking the seat identification label. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–103–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–15–08 Boeing:** Amendment 39–8654. Docket 93–NM–103–AD.

*Applicability:* Model 737 series airplanes equipped with IPECO, Model 093, pilot and co-pilot seats, having seat serial numbers up to and including 21121; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the pilot and co-pilot seats from sliding freely on the track, which could lead to the inability of the pilots to control the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an inspection to determine whether the bearings of the tracklock bracket assemblies of the pilot and co-pilot seats are secure by attempting to rotate the head of the bearing in either direction in accordance with IPECO Service Bulletin A001–25–74, Issue 2, dated May 6, 1993.

(1) If a bearing rotates in either direction: Prior to further flight, modify the tracklock bracket assembly in accordance with the service bulletin, and mark the seat identification label by service bulletin number, "A001–25–74", using vibro-etch or a similar method in accordance with the service bulletin.

(2) If a bearing does not rotate in either direction: Prior to further flight, mark the seat identification label, "INSPECTED REF. SBA001–25–74", using vibro-etch or a similar method in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane a pilot/co-pilot seat that does not bear "INSPECTED REF. SBA001–25–74," on its identification label.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, modification, and marking of the seat shall be done in accordance with IPECO Service Bulletin A001–25–74, Issue 2, dated May 6, 1993, which contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1, 3 ..... | 2 | May 6, 1993. |
| 2, 4–8 ..... | 1 | April 15, 1993. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IPECO, Inc., 3882 Del Amo Blvd., suite 604, Torrance, CA 90503. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 24, 1993.

Issued in Renton, Washington, on August 2, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18945 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 92-NM-211-AD; Amendment 39-8632; AD 93-14-08]

**Airworthiness Directives; British Aerospace Model ATP Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, that requires an inspection to detect cracking of the aft end of the wing rib boom angles on the left and right engine, and repair or replacement of the wing rib boom angle assemblies, if necessary. This amendment is prompted by the detection of cracks in the engine outboard rib boom angles at the main landing gear (MLG) actuator attachment point. The actions specified by this AD are intended to prevent structural failure of the actuator attachment point, which could lead to collapse of the MLG.

**DATES:** Effective September 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model ATP series airplanes was published as a supplemental notice of proposed rulemaking in the Federal Register on April 27, 1993 (58 FR 25579). That action proposed to require an inspection to detect cracking of the aft end of the wing rib boom angles on the left and right engine, and repair or replacement of the wing rib boom angle assemblies, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $990, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93-14-08 British Aerospace:** Amendment 39-8632. Docket 92-NM-211-AD

*Applicability:* All Model ATP series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent structural failure of the main landing gear actuator attachment point, which could lead to collapse of the main landing gear, accomplish the following:

(a) Within 400 hours time-in-service after the effective date of this AD, or within 12 months since airplane manufacture, whichever occurs later, conduct a detailed visual inspection to detect cracking of the aft end of the engine outboard rib boom angles under the wing rib outboard of the left and right engine, in accordance with British Aerospace Service Bulletin ATP-57-13, Revision 1, dated January 15, 1993.

(b) If no crack is detected, repeat the detailed visual inspection at intervals not to exceed 3,000 landings or 12 months, whichever occurs first.

(c) If any crack is detected on only one rib boom angle during any inspection required by paragraph (a) or (b) of this AD, and that crack does not extend beyond bolt hole X, accomplish either paragraph (c)(1), (c)(2), or (c)(3) of this AD.

**Note:** Procedures for addressing cracks found in both rib boom angles are contained in paragraphs (f), (g), and (h) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 300 hours time-in-service, reinspect the rib boom angle for crack propagation, in accordance with British Aerospace Service Bulletin ATP-57-13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 6 months after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager,

Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(d) If any crack is detected on only one rib boom angle during any inspection required by paragraph (a) or (b) of this AD, and that crack extends beyond bolt hole X, but not beyond bolt hole Y or down towards bolt hole A, accomplish either paragraph (d)(1), (d)(2), or (d)(3) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle in accordance with the service bulletin.

(3) At intervals not to exceed 100 hours time-in-service, reinspect the rib boom angle for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 3 months after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(e) If any crack is detected on only one rib boom angle during any inspection required by paragraph (a) or (b) of this AD, and that crack extends beyond bolt hole Y or into bolt hole A, accomplish either paragraph (e)(1), (e)(2), or (e)(3) of this AD.

(1) Prior to further flight, repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 50 hours time-in-service, reinspect the rib boom angle for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 1 month after discovery of the crack, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (e) of this AD, prior to further flight, either repair the rib boom angle in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(f) If any crack is detected on both rib boom angles during any inspection required by paragraph (a) or (b) of this AD, and cracks do not extend beyond bolt hole X, accomplish either paragraph (f)(1), (f)(2), or (f)(3) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 100 hours time-in-service, reinspect the rib boom angles for crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 3 months after discovery of the cracks, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (h) of this AD, prior to further flight, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(g) If any crack is detected on both rib boom angles during any inspection required by paragraph (a) or (b) of this AD, and cracks extend beyond bolt hole X, but not beyond bolt hole Y or down towards bolt hole A, accomplish either paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(3) At intervals not to exceed 50 hours time-in-service, reinspect the rib boom angles for additional crack propagation, in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993.

(i) If no additional crack propagation is detected during any of the repetitive inspections, within 1 month after discovery of the cracks, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(ii) If any of the repetitive inspections reveal that crack propagation has reached or exceeded the limits specified in paragraph (h) of this AD, prior to further flight, either repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate; or replace the rib boom angle assembly in accordance with the service bulletin.

(h) If any crack is detected on both rib boom angles during any inspection required by paragraph (a) or (b) of this AD, and cracks extend beyond bolt hole Y or into bolt hole A, accomplish either paragraph (h)(1) or (h)(2) of this AD.

(1) Prior to further flight, repair the rib boom angles in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(2) Prior to further flight, replace the rib boom angle assembly in accordance with the service bulletin.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) The inspections and replacements shall be done in accordance with British Aerospace Service Bulletin ATP–57–13, Revision 1, dated January 15, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on September 8, 1993.

Issued in Renton, Washington, on July 14, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18943 Filed 8–6–93; 8:45 am]

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14 CFR Part 39

[Docket No. 93-NM-124-AD; Amendment 39-8653; AD 93-15-07]

## Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all de Havilland Model DHC-7 series airplanes. This action requires inspection of upper lockstrut sub-assemblies to detect cracking, and replacement, if necessary. This amendment is prompted by a report of failure of an upper lockstrut sub-assembly, which led to partial collapse of one of the main landing gears. The actions specified in this AD are intended to prevent failure of the upper lockstrut sub-assembly, which could lead to partial collapse of the main landing gear.

DATES: Effective August 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 9, 1993.

Comments for inclusion in the Rules Docket must be received on or before October 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-124-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6220; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all de Havilland Model DHC-7 series airplanes. Transport Canada Aviation advises that an incident of upper lockstrut sub-assembly failure occurred recently, which led to partial collapse of one of the main landing gears. Failure of the upper lockstrut sub-assembly was caused by fatigue cracking, which led to tension overload. Fatigue cracking was possibly a result of undampened gear extension, which can occur if the landing gear is extended at higher than recommended flight speeds, if the lock release actuator is not properly bled after removal or replacement, or if excessive wear is present in the lock stay actuator joints. Failure of the upper lockstrut sub-assembly, if not corrected, could result in partial collapse of the main landing gear.

De Havilland has issued Alert Service Bulletin S.B. A7-32-100, dated July 7, 1993, that describes procedures for conducting a one-time non-destructive testing inspection of upper lockstrut sub-assemblies, part numbers 15709-7 and 15709-9, to detect cracking, and replacement of any discrepant sub-assembly with a serviceable sub-assembly. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-93-11, dated July 7, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the upper lockstrut sub-assembly, which could lead to partial collapse of the main landing gear. This AD requires a one-time non-destructive inspection of upper lockstrut sub-assemblies to detect cracking, and replacement of any discrepant sub-assembly with a serviceable sub-assembly. The actions are required to be accomplished in accordance with the service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-124-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93–15–07 De Havilland, Inc.:** Amendment 39–8653. Docket 93–NM–124–AD.

*Applicability:* All Model DHC–7 series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent failure of the upper lockstrut sub-assembly, which could lead to partial collapse of the main landing gear, accomplish the following:

(a) Within 250 landings after the effective date of this AD, conduct a non-destructive testing inspection of upper lockstrut sub-assemblies, part numbers 15709–7 and 15709–9, to detect cracking, in accordance with de Havilland Alert Service Bulletin S.B. A7–32–100, dated July 7, 1993.

(1) If any crack is detected, prior to further flight, replace the discrepant sub-assembly with a serviceable sub-assembly in accordance with the service bulletin.

(2) If no crack is detected, no further action is required by this AD.

(b) Within 5 days after completion of the inspection required by paragraph (a) of this AD, operators must submit a report containing details of any cracked upper lockstruts found to de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada; fax (416) 375 4539. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et *seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with de Havilland Alert Service Bulletin S.B. A7–32–100, dated July 7, 1993. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 9, 1993.

Issued in Renton, Washington, on August 2, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18944 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

**14 CFR Part 39**

**[Docket No. 93–NM–21–AD; Amendment 39–8633; AD 93–14–09]**

## Airworthiness Directives; Short Brothers, PLC, Model SD3–SHERPA Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–SHERPA series airplanes, that requires modification of the power supply to the emergency lighting system and a subsequent functional test of the system. This amendment is prompted by an engineering analysis, which revealed that, in the event of loss of normal electrical power, the emergency lighting system may fail to illuminate or remain illuminated. The actions specified by this AD are intended to prevent failure of the emergency lights to illuminate during an emergency.

**DATES:** Effective September 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1993.

**ADDRESSES:** The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–SHERPA series airplanes was published in the **Federal Register** on April 12, 1993 (58 FR 19073). That action proposed to require modification of the power supply to the emergency lighting system and a subsequent functional test of the system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 10 airplanes of U.S. registry will be effected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,750, or $1,375 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**93-14-09 Short Brothers, PLC:** Amendment 39-8633. Docket 93-NM-21-AD.

*Applicability:* Model SD3-SHERPA series airplanes; serial numbers SH3201 through SH3210, inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the emergency lighting system to illuminate during an emergency, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the power supply to the emergency lighting system and perform a functional test of the system in accordance with Shorts Service Bulletin SD3 SHERPA-33-1, dated January 17, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Shorts Service Bulletin SD3 SHERPA-33-1, dated January 17, 1993, which includes Attachment to Service Bulletin Drawing SD3 SHERPA-33-1/A. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1993.

Issued in Renton, Washington, on July 14, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-18942 Filed 8-6-93; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Parts 1 and 602

### T.D. 8482

### RIN 1545-AQ90

## Capitalization and Inclusion in Inventory of Certain Costs

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final regulations under section 263A of the Internal Revenue Code of 1986 relating to accounting for costs incurred in producing property and acquiring property for resale. Section 263A was enacted as part of the Tax Reform Act of 1986. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Omnibus Budget Reconciliation Act of 1989. This final regulation affects all taxpayers subject to section 263A.

**DATES:** *Effective date:* January 1, 1994.

Comments are requested from taxpayers on or before November 8, 1993, regarding the approach for implementing method changes required under the final regulations.

**FOR FURTHER INFORMATION CONTACT:** Ellen McElroy of the Income Tax and Accounting Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:07), (202) 622-4970, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1233. The estimated annual burden per recordkeeper varies from one hour to ten hours, depending on individual circumstances, with an estimated average of one hour.

These estimates are approximations based on information available to the Internal Revenue Service (the Service). Individual recordkeepers may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed

to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Background**

On March 30, 1987, the Internal Revenue Service published in the **Federal Register** a notice of proposed rulemaking (52 FR 10118) by cross reference to temporary regulations (T.D. 8131) published the same day (52 FR 10052). Amendments to the notice of proposed rulemaking and temporary regulations were published in the **Federal Register** on August 7, 1987, by notice of proposed rulemaking (52 FR 29391) by cross reference to temporary regulations (T.D. 8148) published the same day (52 FR 29375). A public hearing was held on December 7, 1987. After consideration of the public comments regarding the proposed regulations, they are adopted as revised by this Treasury decision.

**Explanation of Statutory Provisions**

Section 263A (the uniform capitalization rules) was enacted as part of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 1986–3 C.B. Vol. 1 (the 1986 Act). The statute was amended as part of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, 101 Stat. 1330, 1987–3 C.B. Vol. 1 (the 1987 Act), the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342, 1988–3 C.B. Vol. 1 (the 1988 Act), and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2106 (the 1989 Act).

Prior to the enactment of section 263A, the rules regarding the capitalization of costs incurred in producing property were deficient in two respects. First, no uniform system regarding the capitalization of costs incurred in producing property existed. Rather, costs were capitalized under a variety of Internal Revenue Code provisions depending on the nature of the underlying property and its intended use. Second, costs incurred in producing, acquiring, or carrying property were permitted, in some instances, to be deducted currently, rather than accounted for in the year when the property was used or sold.

Section 263A was enacted to provide a single, comprehensive set of rules to govern the capitalization of the costs of producing, acquiring, and holding property, subject to appropriate exceptions where application of the rules might be unduly burdensome. These rules are designed to more accurately reflect income and prevent unwarranted deferral of taxes by properly matching income with related expenses. These rules are also intended to make the tax system more neutral by eliminating the differences in the former capitalization rules that created distortions in the allocation of economic resources and in the manner in which certain economic activity is organized. See S. Rep. No. 313, 99th Cong., 2d Sess. 140 (1986), 1986–3 C.B. (Vol. 3), 140.

Section 263A generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer. Produced property includes both property that is sold to customers (e.g., inventory) and property that is used in a taxpayer's trade or business (self-constructed assets). Section 263A also requires the capitalization of direct costs and indirect costs properly allocable to real property and personal property acquired by a taxpayer for resale. Personal property acquired for resale includes both tangible and intangible personal property described in section 1221(1). Section 263A(b)(2)(B), however, excepts from the uniform capitalization rules personal property acquired by a taxpayer for resale if its average annual gross receipts for the preceding three taxable years do not exceed $10,000,000 (small reseller).

**Certain Administrative Guidance**

The following notices regarding section 263A have been published: Notice 87–76, 1987–2 C.B. 384; Notice 88–23, 1988–1 C.B. 490; Notice 88–24, 1988–1 C.B. 491; Notice 88–662, 1988–1 C.B. 548; Notice 88–78, 1988–2 C.B. 394; Notice 88–86, 1988–2 C.B. 401; Notice 88–92, 1988–2 C.B. 416; Notice 88–99, 1988–2 C.B. 422; Notice 88–103, 1988–2 C.B. 442; Notice 88–104, 1988–2 C.B. 443; Notice 88–113, 1988–2 C.B. 448; Notice 89–59, 1989–1 C.B. 700; and Notice 89–67, 1989–1 C.B. 723. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

The final regulations incorporate and supersede most of the guidance set forth in the notices referred to above. Therefore, unless otherwise noted, these notices are withdrawn for taxable years to which this Treasury decision applies. However, certain notices or portions thereof are not incorporated in this Treasury decision and continue to remain in effect in whole or in part as provided below.

The following notices continue to remain in effect in their entirety: Notice 87–76 (guidance for farmers); Notice 88–23 (ordering rules for method changes); Notice 88–24 (special election for farmers); Notice 88–62 (safe harbor for certain producers of creative properties); Notice 88–99 (guidance regarding interest capitalization issues); Notice 88–104 (application of section 263A to foreign persons); and Notice 89–59 (deadline for accounting method change requests regarding practical capacity). In addition, certain portions of the following notices continue to remain in effect: section IV (A) of Notice 88–86 (guidance regarding deferred intercompany exchanges); section IV (B) of Notice 88–86 (permission to elect a new base year for LIFO taxpayers); section V of Notice 88–86 (guidance for property produced in a farming business); section II (B) of Notice 89–67 (guidance for free-lance authors, artists, and photographers); section II (C) of Notice 89–67 (guidance for farmers); section III (E) of Notice 89–67 (application of section 263A to foreign persons).

The final regulations do not incorporate, in whole or in part, Notice 88–78, which provides guidance regarding accounting method changes for taxpayers that failed to timely comply with the uniform capitalization rules. Nevertheless, Notice 88–78 does not remain in effect. See the discussion of Accounting Method Changes below.

**Public Comments**

*Simplification in General*

Commentators made several suggestions for simplifying the rules provided in the temporary regulations and notices. As discussed in more detail below, the final regulations implement many of these suggestions. For example, the final regulations permit the use of a "historic absorption ratio" to determine additional capitalizable costs under section 263A. In addition, the final regulations provide rules that expand the availability of reasonable allocation methods in determining capitalizable costs, rules that except de minimis production activities of small resellers from the capitalization requirements of section 263A, and rules under which producers with de minimis indirect costs that use the simplified production method are deemed to have no additional capitalizable costs under section 263A.

Based on specific suggestions of commentators, the final regulations include a table of contents for all final and temporary regulations issued under section 263A. The regulations have also been reorganized to make them easier to use. Instead of having one long section with rules for producers and resellers as

the temporary regulations did, the final regulations include three sections organized so that rules relating primarily to producers are separate from rules relating primarily to resellers. In particular, the regulations provide general rules affecting both producers and resellers in § 1.263A–1, rules primarily affecting producers in § 1.263A–2, and rules primarily affecting resellers in § 1.263A–3.

**Provisions Applicable to All Producers and Resellers**

*A. Relationship to Other Capitalization Provisions*

The final regulations clarify that where statutory or regulatory exceptions limit the application of section 263A, costs may still be subject to capitalization under other provisions of the Internal Revenue Code and regulations. For example, a taxpayer not subject to section 263A may nonetheless be subject to the general capitalization provisions of section 263.

*B. Property Provided Incident to the Provision of Services*

Commentators questioned whether taxpayers that provide property to customers incident to the provision of services are subject to section 263A. The final regulations generally incorporate the de minimis exception of Notice 88–86 for acquired property provided to customers incident to the provision of services. However, the regulations expand this exception to cover all property, whether produced or acquired, provided incident to services. Specifically, the final regulations provide that section 263A does not apply to any property provided to a client (or customer) incident to the provision of services if the property provided to the client is (1) de minimis in amount, and (2) not inventory in the hands of the service provider.

*C. Economic Performance*

Commentators requested clarification on whether costs that have not met the economic performance requirement of section 461(h) must be capitalized. The final regulations incorporate section 461(h) and underlying regulations contained in T.D. 8408 (57 FR 12411 (April 10, 1992)). Accordingly, the final regulations provide that the amount of any costs required to be capitalized under section 263A may not be included in inventory or charged to capital accounts or basis by an accrual method taxpayer any earlier than the taxable year in which economic performance occurs.

*D. Direct Material Costs*

The temporary regulations define "direct material costs" differently from the definition of direct material costs contained in § 1.471–11(b)(2)(i). Commentators questioned why these definitions are different. To alleviate any confusion, the definition of direct material costs in the final regulations has been conformed to the definition of direct material costs provided in § 1.471–11(b)(2)(i).

*E. Indirect Costs Subject to Capitalization*

Consistent with the Congressional directive, the final regulations are patterned after the extended-period long-term contract regulations of § 1.451–3. See S. Rep. No. 313, 99th Cong., 2d Sess. 141–42 (1986), 1986–3 C.B. (Vol. 3) 141–42. Therefore, indirect costs that were capitalized under the extended-period long-term contract regulations are generally included in the list of indirect costs required to be capitalized under section 263A.

A few commentators requested clarification on the types of taxes required to be capitalized under the temporary regulations. Commentators suggested that excise taxes and franchise taxes (regardless of whether the tax is based on income, capital, etc.) be excluded from capitalization under section 263A. The final regulations adopt this suggestion only for franchise taxes that are based on income. Excluding only taxes based on income from the capitalization requirements of section 263A is consistent with the extended-period long-term contract regulations. See § 1.451–3(d)(6)(iii)(H).

Commentators objected to the treatment of depletion in the temporary regulations as an indirect cost required to be capitalized. In response to these concerns, and as indicated in Notice 88–86, the final regulations provide that depletion is properly allocable only to property that has been sold for purposes of determining gain or loss on the sale of the property.

Commentators questioned the distinction in the temporary regulations between engineering and design costs that are subject to capitalization under section 263A and research and experimental costs that are not. The final regulations clarify that engineering and design costs include pre-production costs, such as costs attributable to research, experimental, engineering and design activities, that do not qualify as research and experimental expenditures under section 174 and the regulations thereunder.

One commentator suggested that bidding expenses incurred with respect to a contract to sell standard stock items should not be capitalized because these expenses are essentially selling expenses, which generally are not capitalized. In order to insure that taxpayers are not required to capitalize what are essentially selling expenses, the regulations provide that bidding expenses are only required to be capitalized with respect to certain contracts to produce property and to acquire property for resale. These contracts include both (1) any agreement with respect to a specific unit of property providing for the production or sale of property to a customer if the agreement is entered into before the taxpayer produces or acquires the specific unit of property to be provided to the customer under the agreement, and (2) any agreement with a customer with respect to fungible property to the extent that, at the time the agreement is entered into, the taxpayer has on hand an insufficient quantity of completed fungible items of such property that may be used to satisfy the agreement (plus any other production or sales agreements of the taxpayer).

*F Indirect Costs Not Subject to Capitalization*

The final regulations expand the list of costs that are not subject to capitalization by providing that section 179 costs and warranty and product liability costs are not capitalized.

As in the temporary regulations, the final regulations except from section 263A, depreciation, amortization, and cost recovery allowances on equipment and facilities that have been placed in service but are temporarily idle. Certain aspects of this exception have been clarified in the final regulations in response to comments. The temporarily idle equipment and facilities exception has not been expanded to include costs other than depreciation, amortization, and cost recovery allowances. The Service and the Treasury believe that excluding other costs from this exception, such as insurance, taxes, etc. is consistent with Congressional intent that the section 263A regulations be patterned after the extended-period long-term contract regulations. See S. Rep. No. 313, 99th Cong., 2d Sess. 141–42 (1986), 1986–3 C.B. (Vol. 3) 141–42.

In addition, for the reasons set forth in the preamble accompanying T.D. 8148 (52 FR 29375), the final regulations continue to prohibit the use of any practical capacity concept or method to identify the fixed indirect costs subject to capitalization.

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*G. Service Costs*

Under the temporary regulations, the total direct and indirect costs (service costs) of administrative, service, or support functions or departments (service departments) that directly benefit a particular production or resale activity must be directly allocated to that activity. In addition, service costs that benefit production or resale activities as well as other activities (mixed service costs) must be allocated to activities based on a factor that reasonably relates the incurring of the service cost to the benefits received by the activity. Commentators indicated that, notwithstanding the above guidance in the temporary regulations, service costs are difficult to identify and therefore difficult to allocate to property produced or property acquired for resale. In response, the final regulations provide definitions of service costs, and service departments, as well as two new categories of service costs, capitalizable service costs, and deductible service costs. In addition, to eliminate confusion about mixed service costs, the final regulations identify the portion of mixed service costs that are allocable to production or resale activities (capitalizable mixed service costs) and the portion of mixed service costs that are allocable to non-production or non-resale activities (deductible mixed service costs).

*H. Cost Allocations*

The temporary regulations provide general rules regarding how direct and indirect costs are allocated to or among the various activities of a taxpayer. Commentators stated that the temporary regulations do not provide specific guidance regarding how the allocation of costs to activities relates to determining the amount of section 263A costs that must be capitalized. In response to this concern, the final regulations explain that after section 263A costs are allocated to a production or resale activity, these costs are generally allocated to the items of property produced or property acquired for resale during the taxable year and capitalized to the items that remain on hand at the end of the taxable year.

The temporary regulations permit taxpayers to use a variety of methods for allocating section 263A costs among their activities and items of property produced or acquired for resale. For example, the temporary regulations permit the use of facts-and-circumstances allocation methods, such as a specific identification method, a burden rate method, a standard cost method, and generally any other reasonable allocation method. Generally, the final regulations continue to allow the use of these methods and adopt, with slight modifications, the criteria in the temporary regulations and Notice 88–86 for determining a reasonable allocation method. The final regulations also continue to permit taxpayers to use certain simplified methods in determining their section 263A costs. (The simplified methods are discussed in more detail below.)

Under the temporary regulations, mixed service costs must be allocated among a taxpayer's production or resale activities as well as its other activities. The temporary regulations permit taxpayers to use any reasonable method to make these allocations. They also provide that a direct reallocation method (which in general allocates mixed service costs to departments engaged in production or resale activities) and a step-allocation method (which in general allocates mixed service costs to all departments benefitting from the mixed service costs including other mixed service departments) are reasonable allocation methods. The final regulations incorporate these provisions and provide examples of a direct reallocation method and a step-allocation method.

*I. Section 263A and Valuations of Inventory at Market*

Section 263A does not explicitly address whether the uniform capitalization rules affect market valuations of inventory. However, the legislative history states, "[t]he uniform capitalization rules are not intended to affect the valuation of inventories on a basis other than cost. Thus, the rules will not affect the valuation of inventories at market by a taxpayer using the lower of cost or market method, or by a dealer in securities or commodities using the market method. However, the rules will apply to inventories valued at cost by a taxpayer using the lower of cost or market method." 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–305 (1986), 1986–3 C.B. (Vol. 4) 305.

The final regulations interpret the above language in accordance with the overall Congressional intent underlying section 263A. The final regulations provide that section 263A applies to inventories valued at cost, lower of cost or market (LCM), or market. Section 263A does not apply, however, in those cases where the market valuation used by the taxpayer generally equals the fair market value at which the taxpayer would sell its inventories to its customers less, if applicable, only the direct cost of disposition. Thus, section 263A, which applies in determining the cost of property, must be applied in determining the market value of any inventory for which market is determined with reference to replacement cost or reproduction cost. The Service and the Treasury believe that this approach satisfies the fundamental policy objective Congress sought by enacting section 263A—that is, to more accurately reflect income by eliminating "a mismatching of expenses and the related income and an unwarranted deferral of taxes." See S. Rep. No. 313, 99th Cong., 2d Sess. 140 (1986), 1986–3 C.B. (Vol. 3) 140.

The following example demonstrates the mismatching that would occur if section 263A costs were not included in determining the market value of inventory. A reseller, X, values its inventory using LCM in accordance with the FIFO inventory method. X purchases an item for $80 and incurs $8 of indirect costs attributable to the item. The item, which remains on hand at the end of X's taxable year, could be sold to a customer for $100 at year end. If the item is included in ending inventory using X's cost, determined in accordance with section 263A, the item would be valued at $88. On the other hand, if the item is included in ending inventory using its market value (i.e., the current bid price of the item) and section 263A is not applied in determining market at year end, the item would only be valued at $80. Thus, the $8 of additional section 263A costs that Congress intended to be matched against the ultimate $100 of income from the sale of the item would be deducted in a year prior to the year X sells the item.

**Producers**

*A. Ownership of Property Produced*

Commentators questioned whether a taxpayer that does not have formal or legal title to the property it is producing is considered a producer for purposes of section 263A. The final regulations generally provide that a taxpayer that does not hold legal title to the property it is producing must capitalize its production costs if the taxpayer is considered the owner of the produced property for federal income tax purposes.

The final regulations incorporate two statutory-based exceptions to this general rule. First, section 460(e)(1) provides that section 263A applies to a home construction contract unless that contract will be completed within two years of the contract commencement date and the taxpayer's average annual

gross receipts for the three preceding taxable years do not exceed § 10,000,000. Because section 460(e)(1) provides that section 263A applies to these home construction contracts (even if the contractor does not own the underlying property), the Service and the Treasury believe that ownership is not a prerequisite to capitalization under section 263A with respect to such contracts. Thus, the final regulations adopt the position in Q & A 4 of Notice 89–15, 1989–1 C.B. 634. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

Second, section 263A(g)(2) provides that, with respect to certain costs, a taxpayer is treated as producing any property that is produced for the taxpayer under contract. Therefore, a taxpayer that has property produced for it under contract is subject to section 263A even though it does not own the underlying property being produced.

Commentators suggested that contract be defined for this purpose in a manner that would minimize taxpayer compliance burdens. They noted that a broad interpretation of contract could include routine purchase orders, which would require taxpayers to allocate and capitalize a portion of their general and administrative expenses to items acquired under routine business arrangements. The Service and the Treasury are studying this issue further in connection with a project to finalize proposed regulations under section 263A(f) and intend to issue final regulations defining contract under section 263A(g)(2) when those proposed regulations are finalized. Therefore, the final regulations reserve the paragraph regarding the definition of a contract. The Service is requesting comments from taxpayers for a 60-day period after the publication of these final regulations in the **Federal Register** regarding the definition of a contract for these purposes.

*B. Definition of Tangible Personal Property*

Section 263A(b) provides that tangible personal property "include[s] a film, sound recording, video tape, book, or similar property." Additionally, the Conference Report to section 263A defines tangible personal property, for purposes of section 263A, as including "films, sound recordings, video tapes, books, and other similarly [sic] property embodying words, ideas, concepts, images, or sounds, by the creator thereof." 2 H.R. Conf. Rep. No. 841 n.1, 99th Cong., 2d Sess. II–308 (1986), 1986–3 C.B. (Vol. 4) 308 n.1.

The final regulations generally incorporate the definition of tangible personal property used in the Conference Report. The final regulations clarify the definition in the Conference Report by providing further guidance as to what constitutes other similar property for purposes of the tangible personal property definition. In general, the final regulations provide that other similar property is intellectual or creative property for which, as costs are incurred in producing the property, it is intended (or is reasonably likely) that any tangible medium in which the property is embodied will be mass distributed by the creator or any one or more third parties in a form that is not substantially altered. However, the final regulations provide an exception to this general rule. Any intellectual or creative property that is embodied in a tangible medium that is mass distributed merely incident to the distribution of a principal product or good of the creator is not other similar property for these purposes.

Several commentators inquired whether the enactment of section 263A has affected the Service's administrative position in Rev. Proc. 69–21, 1969–2 C.B. 303, (see § 601.601(d)(2)(ii)(*b*) of the Statement of Procedural Rules), that computer software development costs so closely resemble the kind of research and experimental expenditures that fall within the purview of section 174 as to warrant accounting treatment similar to that accorded such costs under section 174. The Service has no present intention of changing its administrative position contained in Rev. Proc. 69–21, but continues to study its viability. Thus, as long as Rev. Proc. 69–21 remains in effect, taxpayers are not required to capitalize (and may currently deduct) computer software development costs.

The temporary regulations provide that the costs of copyrights, licenses, and manuscripts, and other items that may be treated as intangible for other purposes of the Internal Revenue Code are treated as tangible personal property under section 263A (e.g., films, sound recordings, video tapes, and books). One commentator suggested that the final regulations delete the reference to licenses. However, the final regulations retain the reference to licenses because licenses are commonly used in the publishing, sound recording, and film industries and are appropriately considered a cost of publishing a book or producing a sound recording or film. The final regulations also add licensing and franchising fees (or amortization thereof) to the examples of indirect costs that are capitalized to the extent properly allocable to property produced or acquired for resale.

*C. Definition of Produce*

Many commentators suggested that produce be defined more precisely in the final regulations and that the final regulations include a complete list of all types of production activities. Other commentators requested that produce be defined more narrowly in the final regulations.

The final regulations do not adopt these suggestions. The Service and the Treasury believe that the determination of whether a taxpayer is a producer is generally a facts-and-circumstances determination that must take into account the nature of the taxpayer's trade or business activities. Further, the Service and the Treasury believe that many of the commentators' concerns regarding the scope of produce have been alleviated in the final regulations through the adoption of various de minimis rules. These rules include de minimis rules for property provided to customers incident to the provision of services, de minimis rules for property produced incident to resale activities, and rules treating producers using the simplified production method as having no additional section 263A costs if they incur de minimis indirect costs.

*D. Pre-production Costs*

Commentators questioned whether costs incurred prior to the commencement of production (pre-production costs) must be capitalized. Under the extended-period long-term contract regulations, pre-production costs (e.g., bidding expenses) are capitalized. Accordingly, the final regulations, which are patterned after the extended-period long-term contract regulations, clarify that pre-production costs must be capitalized if it is reasonably likely that they relate to production that will take place in the future. For example, a manufacturer must capitalize the costs of storing and handling raw materials before the raw materials are committed to production. Further, a real estate developer must capitalize taxes incurred with respect to property if it is reasonably likely the property will be subsequently developed.

*E. Post-production Costs*

Commentators questioned whether costs incurred subsequent to completion of production (post-production costs) must be capitalized. The legislative history explains that section 263A was intended to provide a uniform, comprehensive set of capitalization rules governing the cost of both producing and reselling property. S. Rep. No. 313, 99th Cong., 2d Sess. 140

(1986), 1986–3 C.B. (Vol. 3) 140. Because the legislative history specifically states that costs incurred by resellers incident to purchasing property, such as storage costs, must be capitalized, the final regulations clarify that similar costs incurred by producers (such as the cost of storing finished goods) must be capitalized as well. However, as indicated in Notice 88–86, the final regulations provide that producers may deduct the costs of an on-site storage facility to the same extent as resellers.

**Reseller Provisions**

*A. Resellers With Production Activities*

Commentators questioned whether personal property acquired by a small reseller becomes subject to the uniform capitalization rules under section 263A(g)(2) because the property is produced for the small reseller under contract (e.g., private label goods). In response, the final regulations provide that a small reseller is not required to capitalize additional section 263A costs to personal property produced for it under contract if the contract is entered into with an unrelated person incident to its resale activities and the property is sold to its customers.

In addition, commentators questioned whether a reseller otherwise subject to section 263A (e.g., a reseller with gross receipts of greater than $10,000,000) that acquires property for resale is prohibited from using the simplified resale method merely because the reseller is considered a producer with respect to the property produced for it under contract. The final regulations clarify that such a reseller is not ineligible to use the simplified resale method merely because its personal property acquired for resale is produced under contract with an unrelated third person.

The final regulations also generally provide that a small reseller is not required to capitalize additional section 263A costs associated with any personal property produced incident to its resale activities if the production activities are de minimis. For this purpose, a reseller's production activities are presumed de minimis if: (1) The gross receipts from the sale of property produced by the reseller are less than 10 percent of the total gross receipts of the trade or business; and (2) the labor costs allocable to the production activities of the trade or business are less than 10 percent of the total labor costs of the trade or business. Further, the final regulations generally provide that resellers are not precluded from using the simplified resale method solely by reason of a de minimis amount of production activity.

*B. Costs Capitalized by Resellers*

Commentators expressed concern that the temporary regulations were not clear on which indirect costs resellers are required to capitalize. The final regulations clarify that in addition to purchasing, storage, and handling costs, resellers must also capitalize other indirect costs that are properly allocable to property acquired for resale.

*C. Storage Costs*

Under the temporary regulations, resellers must capitalize their storage costs attributable to their off-site storage facilities but not their on-site storage facilities. The temporary regulations provide that an on-site storage facility is a facility which is physically attached to, and an integral part of, a retail sales facility where the taxpayer sells merchandise stored at the facility to retail customers physically present at the facility. Commentators suggested that the physically attached to and integral part of standards be modified to provide a broader definition of an on-site storage facility.

The final regulations retain both the physically attached to and integral part of standards. The Service and the Treasury believe that these standards are mandated by the legislative history of section 263A. This legislative history provides that off-site storage costs are the "costs of storing goods in a facility distinct from the facility wherein the taxpayer conducts retail sales of * * * goods." S. Rep. No. 313, 99th Cong., 2d Sess. 142 (1986), 1986–3 C.B. (Vol. 3) 142. The final regulations clarify, however, that a retail sales facility includes those portions of any specific retail site: Which are customarily associated with and are an integral part of the operations of that retail site; which are generally open each business day exclusively to retail customers; on or in which retail customers normally and routinely shop to select specific items of merchandise; and which are adjacent to or in immediate proximity to other portions of the specific retail site.

Based on several comments received, the final regulations permit certain non-retail customers to be treated as retail customers for purposes of determining whether a facility is a retail sales facility. For this purpose, a non-retail customer is treated as a retail customer if the following requirements are satisfied: the non-retail customer purchases goods at the facility under the same terms and conditions as are available to retail customers (e.g., no special discounts); the non-retail customer purchases goods in the same manner as a retail customer (e.g., the non-retail customer may not place orders in advance and must come to the facility to examine and select goods); retail customers shop at the facility on a routine basis (i.e., on most business days) and no special days or hours are reserved for non-retail customers; and more than 50 percent of the gross sales of the facility are made to retail customers.

The temporary regulations provide that a dual-function storage facility is a storage facility that serves as both an on-site storage facility and an off-site storage facility. They also provide that a dual-function storage facility is treated as an on-site storage facility to the extent of the ratio of gross on-site sales of the facility (i.e., gross sales of the facility made to retail customers visiting the premises in person) to total gross sales of the facility. The final regulations include this allocation ratio and also provide that prior to its computation a taxpayer must make appropriate adjustments for other uses of a dual-function storage facility.

*D. Handling Costs*

Handling costs are defined in the temporary regulations as the costs attributable to handling, processing, assembling, repackaging, and transporting property acquired for resale. For purposes of clarification, the final regulations provide definitions of each of the above terms associated with handling costs so that taxpayers can more easily distinguish handling activities from other activities not subject to section 263A.

In addition, commentators requested clarification regarding the types of handling costs that must be capitalized under section 263A. In response, the final regulations provide a bright-line test for determining which handling costs must be capitalized. Under this test, handling costs incurred at a retail sales facility with respect to property sold to retail customers at the facility are not required to be capitalized. Thus, for example, handling costs incurred at a retail sales facility to unload, unpack, mark, and tag goods sold to retail customers at the facility are not required to be capitalized. In addition, handling costs incurred at a dual-function storage facility with respect to property sold to customers from the facility are not required to be capitalized to the extent that the costs are incurred with respect to property sold in on-site sales. Handling costs attributable to property sold to customers from a dual-function storage facility in on-site sales are determined generally by comparing the

gross on-site sales of the facility to the total gross sales of the facility.

*E. Exception for Repackaging Costs*

Under the temporary regulations, the costs of repackaging goods in preparation for immediate delivery to particular customers are excepted from handling costs that resellers must capitalize if the repackaging occurs after the customer has ordered the goods. Commentators suggested that this repackaging exception be expanded to include all handling costs incurred after the customer orders the goods. The final regulations reserve the paragraph regarding the repackaging exception. Under a separate Notice of Proposed Rulemaking in the proposed rules section of this issue of the Federal Register, it is proposed that the repackaging exception be eliminated for the reasons discussed therein. However, until the Notice of Proposed Rulemaking is finalized, the paragraph in the temporary regulations providing the repackaging exception continues to apply.

*F. Exceptions for Distribution Costs and Costs of Delivering Custom-Ordered Items*

Under the temporary regulations, distribution costs are a type of handling costs that are not required to be capitalized (distribution cost exception). Distribution costs are defined in the temporary regulations as the cost of delivering goods directly to an unrelated customer.

Some commentators suggested that the cost of delivering goods to a related customer should be deductible just as the cost of delivering goods to an unrelated customer are deductible. Another commentator suggested that the cost of delivering goods to a related customer should be deductible unless the related persons are members of a consolidated group. As explained in the accompanying Notice of Proposed Rulemaking, these suggestions have not been adopted.

The temporary regulations also exclude from capitalization under section 263A the costs of delivering certain items from an off-site storage facility to a retail sales facility where the sale takes place, provided the items are specifically ordered by customers (custom order exception). The final regulations reserve the paragraph regarding the custom order exception and the distribution cost exception (including a provision regarding costs incurred transporting goods to a related person). As provided therein, the separate Notice of Proposed Rulemaking provides that these exceptions pertain only to transportation costs that are incurred generally outside a storage facility. For this purpose, costs incurred on a loading dock are considered incurred outside a storage facility. However, until the Notice of Proposed Rulemaking is finalized, the paragraphs in the temporary regulations providing the distribution cost exception and the custom order exception continue to apply.

**Simplified Allocation Methods**

The final regulations provide several simplified allocation methods for allocating direct and indirect costs to property produced and property acquired for resale. In general, these simplified methods determine aggregate amounts of additional section 263A costs allocable to ending inventory. Additional section 263A costs are those costs, other than interest, that were not capitalized under the taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A. In addition, the final regulations provide a simplified method for allocating costs incurred in a service department (i.e., service costs) to property produced and property acquired for resale.

*A. Simplified Production Method*

The final regulations provide a simplified production method for purposes of determining the aggregate amount of additional section 263A costs that must be added to eligible property held by producers at the close of the taxable year. Under this method, producers determine additional section 263A costs by multiplying their section 471 costs remaining on hand at year end by an absorption ratio consisting of their additional section 263A costs incurred during the taxable year over their section 471 costs incurred during the taxable year.

The temporary regulations limit the availability of the simplified production method to two types of property: stock in trade of the taxpayer properly includible in inventory; and non-inventory property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. The final regulations follow Notice 88–86 and expand the categories of produced property eligible for the simplified production method to include: self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property or other property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business; and self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's production activities.

A number of commentators requested that the simplified production method in the temporary regulations be revised to reduce the amount of section 263A costs allocable to raw materials inventories. These commentators suggested that allocations based on this method may result in an excessive amount of section 263A costs being allocated to raw materials inventories. They argue that this result occurs because the simplified production method does not take into account the fact that fewer indirect costs are incurred with respect to raw materials normally held only a short period of time than are incurred with respect to other items of inventory held longer. For example, a taxpayer that buys additional raw materials on the last day of the year would be required to allocate significantly more additional section 263A costs (such as storage, handling, and carrying costs) to those materials under the simplified production method than it would under a facts-and-circumstances allocation method.

The final regulations do not adopt these recommendations. The Service and the Treasury believe that the simplified production method formula properly reflects the costs of raw materials that are purchased on the last day of the year. First, the taxpayer will have likely incurred purchasing costs and handling costs in obtaining these materials, which should be included in the inventoriable cost of these materials. Second, incorporating these suggestions in the final regulations would reduce the simplicity that the simplified production method is intended to provide. If the simplified production method produces inappropriate results, a taxpayer may request to change its method of accounting to a facts-and-circumstances allocation method.

Commentators requested clarification on determining section 471 costs. They questioned whether a change in financial reporting practices with respect to category iii costs (described in the full absorption regulations of § 1.471–11(c)(2)) for years after the effective date of section 263A would automatically change the costs included in section 471 costs for purposes of the simplified production method. The final regulations clarify that in order for a taxpayer to change its costs included in section 471 costs, the taxpayer must first change its method of accounting used in determining section 471 costs for federal income tax purposes. Therefore, a change in the treatment of section 471

costs for financial reporting purposes does not automatically result in a change in the treatment of section 471 costs for federal income tax purposes.

Finally, commentators suggested that the final regulations provide an exception for producers similar to the gross receipts exception available to resellers. Although the final regulations do not adopt this suggestion, they do provide, however, a de minimis exception for producers electing the simplified production method. Under this exception, if a producer using the simplified production method has indirect costs of $200,000 or less in a taxable year (excluding certain indirect costs specifically not required to be capitalized), the producer is deemed to have no additional section 263A costs in that year.

*B. Simplified Resale Method*

Prior to issuance of the final regulations, resellers were permitted to choose from three simplified allocation methods to determine the aggregate amount of additional section 263A costs allocable to ending inventory. The final regulations provide only one simplified allocation method for resellers, the simplified resale method, which is the principal simplified allocation method being used by resellers. The simplified resale method is essentially the same as the modified resale method set forth in Notice 89–67. The final regulations permit resellers to modify the formulas provided under the simplified resale method to yield allocations equivalent to the other two simplified allocation methods not specifically retained in the final regulations.

Generally, the simplified resale method may not be elected by taxpayers with production activities. However, the final regulations permit certain taxpayers engaged in both resale and production activities to elect the simplified resale method in two situations. First, the final regulations generally permit a reseller with personal property produced under contract to elect the simplified resale method. Second, the final regulations permit a taxpayer with de minimis production activities to elect the simplified resale method. For this purpose, a reseller's production activities are presumed de minimis if: (1) The gross receipts from the sale of property produced by the reseller are less than 10 percent of the total gross receipts of the trade or business; and (2) the labor costs allocable to the production activities of the trade or business are less than 10 percent of the total labor costs of the trade or business. If the simplified resale method is elected, it must be used to capitalize all costs allocable to eligible property produced and property acquired for resale.

*C. Simplified Service Cost Method*

The temporary regulations provide a simplified service cost method producers may use to allocate mixed service costs among their various business activities. Under this method, the portion of a taxpayer's mixed service costs required to be capitalized is determined by multiplying the taxpayer's total mixed service costs incurred during the taxable year by the ratio of its total production costs (excluding mixed service costs and interest) incurred during the taxable year to its total costs incurred during the taxable year (excluding mixed service costs, interest, and taxes assessed based on income). Resellers may use a similar simplified service cost method provided they elect the simplified resale method. Commentators suggested that all resellers, not just resellers using the simplified resale method, be permitted to use the simplified service cost method. In response to this concern, the final regulations provide one simplified service cost method that may be used by all resellers and producers, regardless of whether they elect another simplified method.

In addition, commentators suggested that the allocation ratio under the simplified service cost method in the temporary regulations results in the over-capitalization of mixed service costs because the cost of raw materials is included in both the numerator and denominator of the ratio. They also suggested that producers be permitted to use a labor-based allocation ratio similar to the one in the temporary regulations provided for resellers that elect the simplified resale method. As announced in Notice 88–86, the final regulations permit producers to elect to use either a labor-based allocation ratio or the production cost allocation ratio described above.

Commentators also requested that the categories of produced property eligible for the simplified service cost method be expanded. Consistent with Notice 88–86, the final regulations provide that the simplified service cost method is also available for: self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property or other property held primarily for sale to customers in the ordinary course of the taxpayer's business; and self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's production activities.

In determining total mixed service costs under the simplified service cost method, the temporary regulations require that a taxpayer include the total costs of any department or function performing mixed service activities. For example, a reseller is not permitted to segregate non-resale activities performed in a mixed service department from the department's other costs. Commentators requested that this restriction be removed in the final regulations. The Service and the Treasury, however, believe this restriction is appropriate to prevent distortions in the allocation of mixed service costs to production and resale activities.

**Simplification for Both Producers and Resellers**

*A. Historic Absorption Ratio Election*

Commentators expressed concern that computations under the simplified production method and the simplified resale method are costly and time consuming because a taxpayer must determine its absorption ratio annually. In response, the final regulations permit producers and resellers to elect to use a historic absorption ratio in conjunction with the simplified production method or the simplified resale method.

In general, if a taxpayer elects to use a historic absorption ratio, the additional section 263A costs allocable to a taxpayer's ending inventory are computed by multiplying the taxpayer's historic absorption ratio by its section 471 costs remaining in ending inventory. A taxpayer's historic absorption ratio is generally based on the percentage of additional section 263A costs capitalized by the taxpayer during a three-year test period. Taxpayers are required to test the accuracy of the historic absorption ratio by computing an actual absorption ratio once every six years. If the test of the ratio indicates a more than one-half of one percentage point difference (plus or minus) from the taxpayer's actual absorption ratio, the taxpayer must redetermine its historic absorption ratio using an updated test period.

For the following reasons, the historic absorption ratio is only available to taxpayers that use one of the simplified methods. First, it is difficult for taxpayers that do not use a simplified production method or simplified resale method to identify additional section 263A costs. Second, the historic absorption ratio results in certain complexities for dollar-value LIFO taxpayers that must allocate additional section 263A costs to specific items of property.

Taxpayers will be permitted to elect a historic absorption ratio in their first, second, or third taxable year beginning after December 31, 1993.

*B. Taxpayers Not Electing Simplified Methods*

Taxpayers that do not use a simplified method must capitalize their costs under section 263A based on the facts and circumstances of the particular taxpayer's operations, with the same degree of specificity as required of manufacturers capitalizing costs prior to the enactment of section 263A.

*C. Trade or Business Requirement*

A number of commentators suggested that taxpayers should be permitted to apply the simplified methods to more discrete business units than a separate and distinct trade or business (e.g., a product line). The final regulations have not adopted this suggestion. Applying the simplified methods to business units smaller than a trade or business is not consistent with the legislative history, which intended that the simplified methods would be applied separately to each trade or business of a taxpayer. See 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–306 (1986), 1986–3 C.B. (Vol. 4) 306. Also, applying the simplified methods to business units smaller than a trade or business is contrary to the goals of administrative convenience and simplicity for both taxpayers and the Service.

*D. Add-on Percentage Method*

Some commentators suggested that the final regulations permit producers and resellers to capitalize additional section 263A costs based on average absorption percentages experienced within various industries. The Service generally believes that, for small taxpayers for which the costs of compliance with section 263A might outweigh the benefits to the government of compliance, the use of industry-specific safe harbor absorption percentages would be a reasonable simplifying assumption under the Secretary's section 263A(i) authority. The Service has, however, encountered difficulty in collecting the necessary industry-specific data (e.g., by Standard Industry Code grouping) to facilitate the development of safe harbor absorption percentages. Thus, the final regulations do not permit the use of an add-on percentage method as requested by commentators.

The regulations do provide, however, a significant simplification through the availability of the historic ratio election and the rule under which producers with de minimis indirect costs and using the simplified production method are deemed to have no additional capitalizable costs under section 263A. In addition, the Service is willing to work with interested taxpayers toward the development of industry-specific safe harbor add-on percentages. In this regard, the final regulations provide that taxpayers may elect any additional simplified methods prescribed by the Commissioner.

**Accounting Method Changes**

Taxpayers that have previously adopted methods of accounting under section 263A in accordance with guidance published in the temporary regulations and Notices may be required to change their methods of accounting under section 263A to comply with provisions in the final regulations. These taxpayers may also desire to change their methods of accounting to avail themselves of certain simplified methods and elections under the final regulations.

The Service intends to issue a revenue procedure prescribing the procedures, terms, and conditions for effecting method changes arising due to the promulgation of these final regulations. The revenue procedure will generally permit taxpayers to make expedited method changes by attaching a Form 3115 to their tax returns for the year of change. It is anticipated that the revenue procedure will require taxpayers to revalue their inventories as of the effective date of the final regulations to reflect differences between the methods required under the final regulations and those methods used by taxpayers prior to promulgation of the final regulations. The principles of § 1.263A–1T(e) of the temporary regulations will be required for revaluing inventories under the revenue procedure. The Service is requesting comments from taxpayers for a 90-day period after the publication of these final regulations in the Federal Register regarding the approach for implementing method changes required under the final regulations.

The Service generally does not intend to permit taxpayers to change their adopted allocation methods under the forthcoming expedited change procedures. It is anticipated that the procedures will generally permit taxpayers to change only those methods necessary to bring them into compliance with the final regulations. The Service does plan, however, to provide a listing in the revenue procedure of certain elective methods that may be changed under the expedited change procedures. For example, the Service plans to permit a taxpayer that adopted a facts-and-circumstances allocation method to change to the simplified production method if that method is now more desirable to the taxpayer by reason of the historic absorption ratio election or the de minimis indirect costs exception. During the 90-day period after the publication of these regulations in the Federal Register, taxpayers are invited to comment on elective method changes that should be permitted under the expedited consent procedures.

**Special Analysis**

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required.

**Drafting Information**

The principal author of these regulations is Ellen McElroy of the Income Tax and Accounting Division, Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury, however, assisted in developing these regulations on matters of both substance and style.

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding new entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.263A–1 also issued under 26 U.S.C. 263A. * * *

Section 1.263A–2 also issued under 26 U.S.C. 263A.

Section 1.263A–3 also issued under 26 U.S.C. 263A.

Section 1.263A–4 also issued under 26 U.S.C. 263A.

Section 1.263A–5 also issued under 26 U.S.C. 263A.

Section 1.263A–6 also issued under 26 U.S.C. 263A.

Section 1.263A–7 also issued under 26 U.S.C. 263A. * * *

Section 1.471–4 also issued under 26 U.S.C. 263A.

Section 1.471–5 also issued under 26 U.S.C. 263A. * * *

**Par. 2.** Section 1.56(g)-1 is amended by revising the first sentence of the example in paragraph (a)(5)(ii)(B) to read as follows:

**§ 1.56(g)–1 Adjusted current earnings.**

* * * * *

(a) * * *
(5) * * *
(ii) * * *

(B) Pursuant to section 263A and § 1.263A–1(e)(3)(ii)(I), N must capitalize the depreciation allowed for the year for the new manufacturing equipment in the ending inventory of golf clubs. * * *

* * * * *

**Par. 3.** Section 1.263(a)–1 is amended by revising the last sentence of paragraph (b) to read as follows:

**§ 1.263(a)–1 Capital expenditures; in general.**

* * * * *

(b) * * * See section 263A and the regulations thereunder for cost capitalization rules that apply to amounts referred to in paragraph (a) of this section with respect to the production of real and tangible personal property (as defined in § 1.263A–2(a)(2)), including films, sound recordings, video tapes, books, or similar properties.

* * * * *

**Par. 4.** Section 1.263A–0 is added to read as follows:

**§ 1.263A–0 Outline of regulations under section 263A.**

This section lists the paragraphs in §§ 1.263A–1, 1.263A–2, and 1.263A–3.

*§ 1.263A–1 Uniform Capitalization of Costs.*

(a) Introduction.
(1) In general.
(2) Effective dates.
(3) General scope.
(i) Property to which section 263A applies.
(ii) Property produced.
(iii) Property acquired for resale.
(iv) Inventories valued at market.
(v) Property produced in a farming business.
(vi) Creative property.
(vii) Property produced or property acquired for resale by foreign persons.
(b) Exceptions.
(1) Small resellers.
(2) Long-term contracts.
(3) Costs incurred in certain farming businesses.
(4) Costs incurred in raising, harvesting, or growing timber.
(5) Qualified creative expenses.
(6) Certain not-for-profit activities.
(7) Intangible drilling and development costs.
(8) Natural gas acquired for resale.
(i) Cushion gas.
(ii) Emergency gas.
(9) Research and experimental expenditures.
(10) Certain property that is substantially constructed.
(11) Certain property provided incident to services.
(i) In general.
(ii) Definition of services.
(iii) De minimis property provided incident to services.
(12) De minimis rule for certain producers with total indirect costs of $200,000 or less.
(13) Exception for the origination of loans.
(c) General operation of section 263A.
(1) Allocations.
(2) Otherwise deductible.
(3) Capitalize.
(4) Recovery of capitalized costs.
(d) Definitions.
(1) Self-constructed assets.
(2) Section 471 costs.
(i) In general.
(ii) New taxpayers.
(iii) Method changes.
(3) Additional section 263A costs.
(4) Section 263A costs.
(e) Types of costs subject to capitalization.
(1) In general.
(2) Direct costs.
(i) Producers.
(A) Direct material costs.
(B) Direct labor costs.
(ii) Resellers.
(3) Indirect costs.
(i) In general.
(ii) Examples of indirect costs required to be capitalized.
(A) Indirect labor costs.
(B) Officers' compensation.
(C) Pension and other related costs.
(D) Employee benefit expenses.
(E) Indirect material costs.
(F) Purchasing costs.
(G) Handling costs.
(H) Storage costs.
(I) Cost recovery.
(J) Depletion.
(K) Rent.
(L) Taxes.
(M) Insurance.
(N) Utilities.
(O) Repairs and maintenance.
(P) Engineering and design costs.
(Q) Spoilage.
(R) Tools and equipment.
(S) Quality control.
(T) Bidding costs
(U) Licensing and franchise costs.
(V) Interest.
(W) Capitalizable service costs.
(iii) Indirect costs not capitalized.
(A) Selling and distribution costs.
(B) Research and experimental expenditures.
(C) Section 179 costs.
(D) Section 165 losses.
(E) Cost recovery allowances on temporarily idle equipment and facilities.
(f) In general.
(2) Examples.
(F) Taxes assessed on the basis of income.
(G) Strike expenses.
(H) Warranty and product liability costs.
(I) On-site storage costs.
(J) Unsuccessful bidding expenses.
(K) Deductible service costs.
(4) Service costs.
(i) Introduction.
(A) Definition of service costs.
(B) Definition of service departments.
(ii) Various service cost categories.
(A) Capitalizable service costs.
(B) Deductible service costs.
(C) Mixed service costs.
(iii) Examples of capitalizable service costs.
(iv) Examples of deductible service costs.
(f) Cost allocation methods.
(1) Introduction.
(2) Specific identification method.
(3) Burden rate and standard cost methods.
(i) Burden rate method.
(A) In general.
(B) Development of burden rates.
(C) Operation of the burden rate method.
(ii) Standard cost method.
(A) In general.
(B) Treatment of variances.
(4) Reasonable allocation methods.
(g) Allocating categories of costs.
(1) Direct materials.
(2) Direct labor.
(3) Indirect costs.
(4) Service costs.
(i) In general.
(ii) De minimis rule.
(iii) Methods for allocating mixed service costs.
(A) Direct reallocation method.
(B) Step-allocation method.
(C) Examples.
(iv) Illustrations of mixed service cost allocations using reasonable factors or relationships.
(A) Security services.
(B) Legal services.
(C) Centralized payroll services.
(D) Centralized data processing services.
(E) Engineering and design services.
(F) Safety engineering services.
(v) Accounting method change.
(h) Simplified service cost method.
(1) Introduction.
(2) Eligible property.
(i) In general.
(A) Inventory property.
(B) Non-inventory property held for sale.
(C) Certain self-constructed assets.
(D) Self-constructed assets produced on a repetitive basis
(ii) Election to exclude self-constructed assets.
(3) General allocation formula.
(4) Labor-based allocation ratio.
(5) Production cost allocation ratio.
(6) Definition of total mixed service costs.
(7) Costs allocable to more than one business.
(8) De minimis rule.
(9) Separate election.
(i) [Reserved]
(j) Special rules.
(1) Costs provided by a related person.
(i) In general.
(ii) Exceptions.
(2) Optional capitalization of period costs.

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(i) In general.
(ii) Period costs eligible for capitalization.
(3) Trade or business application.
(4) Transfers with a principal purpose of tax avoidance. [Reserved]

*§ 1.263A–2 Rules Relating to Property Produced by the Taxpayer*

(a) In general.
(1) Produce.
(i) In general.
(ii) Ownership.
(A) General rule.
(B) Property produced for the taxpayer under a contract.
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*§ 1.263A–3 Rules Relating to Property Acquired for Resale*

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**Par. 5.** Section 1.263A–1 is added to read as follows:

**§ 1.263A–1 Uniform capitalization of costs.**

(a) *Introduction*—(1) *In general.* The regulations under §§ 1.263A–1 through 1.263A–6 provide guidance to taxpayers that are required to capitalize certain costs under section 263A. These regulations generally apply to all costs required to be capitalized under section 263A except for interest that must be capitalized under section 263A(f) and the regulations thereunder. Statutory or regulatory exceptions may provide that section 263A does not apply to certain activities or costs; however, those activities or costs may nevertheless be subject to capitalization requirements under other provisions of the Internal Revenue Code and regulations.

(2) *Effective dates.* (i) In general, this section and §§ 1.263A–2 and 1.263A–3 apply to costs incurred in taxable years beginning after December 31, 1993. In the case of property that is inventory in the hands of the taxpayer, however, these sections are effective for taxable years beginning after December 31, 1993. Changes in methods of accounting necessary as a result of the rules in this section and §§ 1.263A–2 and 1.263A–3 must be made under terms and conditions prescribed by the Commissioner. Under these terms and conditions, the principles of § 1.263A–1T(e) generally must be applied in revaluing inventory property.

(ii) For taxable years beginning before January 1, 1994, taxpayers must take reasonable positions on their federal income tax returns when applying section 263A. For purposes of this paragraph (a)(2)(iii), a reasonable position is a position consistent with the temporary regulations, revenue rulings, revenue procedures, notices, and announcements concerning section 263A applicable in taxable years beginning before January 1, 1994. See § 601.601(d)(2)(ii)(*b*) of this chapter.

(3) *General scope*—(i) *Property to which section 263A applies.* Taxpayers subject to section 263A must capitalize all direct costs and certain indirect costs properly allocable to—

(A) Real property and tangible personal property produced by the taxpayer; and

(B) Real property and personal property described in section 1221(1), which is acquired by the taxpayer for resale.

(ii) *Property produced.* Taxpayers that produce real property and tangible personal property (producers) must capitalize all the direct costs of producing the property and the property's properly allocable share of indirect costs (described in paragraphs (e)(2)(i) and (3) of this section), regardless of whether the property is sold or used in the taxpayer's trade or business. See § 1.263A–2 for rules relating to producers.

(iii) *Property acquired for resale.* Retailers, wholesalers, and other taxpayers that acquire property described in section 1221(1) for resale (resellers) must capitalize the direct costs of acquiring the property and the property's properly allocable share of indirect costs (described in paragraphs (e)(2)(ii) and (3) of this section). See § 1.263A–3 for rules relating to resellers. See also section 263A(b)(2)(B), which excepts from section 263A personal property acquired for resale by a small reseller.

(iv) *Inventories valued at market.* Section 263A does not apply to inventories valued at market under either the market method or the lower of cost or market method if the market valuation used by the taxpayer generally equals the property's fair market value. For purposes of this paragraph (a)(3)(iv), the term fair market value means the price at which the taxpayer sells its inventory to its customers (e.g., as in the market value definition provided in § 1.471–4(b)) less, if applicable, the direct cost of disposing of the inventory. However, section 263A does apply in determining the market value of any inventory for which market is determined with reference to replacement cost or reproduction cost. See §§ 1.471–4 and 1.471–5.

(v) *Property produced in a farming business.* Section 263A generally requires taxpayers engaged in a farming business to capitalize certain costs. See section 263A(d) and § 1.263A–1T(c) for rules relating to taxpayers engaged in a farming business.

(vi) *Creative property.* Section 263A generally requires taxpayers engaged in the production and resale of creative property to capitalize certain costs.

(vii) *Property produced or property acquired for resale by foreign persons.* Section 263A generally applies to foreign persons.

(b) *Exceptions*—(1) *Small resellers.* See section 263A(b)(2)(B) for the $10,000,000 gross receipts exception for small resellers of personal property. See § 1.263A–3(b) for rules relating to this exception. See also the exception for small resellers with de minimis production activities in § 1.263A–3(a)(2)(ii) and the exception for small resellers that have property produced under contract in § 1.263A–3(a)(3).

(2) *Long-term contracts.* Except for certain home construction contracts described in section 460(e)(1), section 263A does not apply to any property produced by the taxpayer pursuant to a long-term contract as defined in section 460(f), regardless of whether the taxpayer uses an inventory method to account for such production.

(3) *Costs incurred in certain farming businesses.* See section 263A(d) for an exception for costs paid or incurred in certain farming businesses. See § 1.263A–1T(c) for specific rules relating to taxpayers engaged in a farming business.

(4) *Costs incurred in raising, harvesting, or growing timber.* See section 263A(c)(5) for an exception for costs paid or incurred in raising, harvesting, or growing timber and certain ornamental trees. See § 1.263A–1T(c), however, for rules relating to taxpayers that produce certain trees to which section 263A applies.

(5) *Qualified creative expenses.* See section 263A(h) for an exception for qualified creative expenses paid or incurred by certain free-lance authors, photographers, and artists.

(6) *Certain not-for-profit activities.* See section 263A(c)(1) for an exception for property produced by a taxpayer for use by the taxpayer other than in a trade or business or an activity conducted for profit. This exception does not apply, however, to property produced by an exempt organization in connection with its unrelated trade or business activities.

(7) *Intangible drilling and development costs.* See section 263A(c)(3) for an exception for intangible drilling and development costs. Additionally, section 263A does not apply to any amount allowable as a deduction under section 59(e) with respect to qualified expenditures under sections 263(c), 616(a), or 617(a).

(8) *Natural gas acquired for resale.* Under this paragraph (b)(8), section 263A does not apply to any costs incurred by a taxpayer relating to natural gas acquired for resale to the extent such costs would otherwise be allocable to cushion gas.

(i) *Cushion gas.* Cushion gas is the portion of gas stored in an underground storage facility or reservoir that is required to maintain the level of pressure necessary for operation of the facility. However, section 263A applies to costs incurred by a taxpayer relating to natural gas acquired for resale to the extent such costs are properly allocable to emergency gas.

(ii) *Emergency gas.* Emergency gas is natural gas stored in an underground storage facility or reservoir for use during periods of unusually heavy customer demand.

(9) *Research and experimental expenditures.* See section 263A(c)(2) for an exception for any research and experimental expenditure allowable as a deduction under section 174 or the

regulations thereunder. Additionally, section 263A does not apply to any amount allowable as a deduction under section 59(e) with respect to qualified expenditures under section 174.

(10) *Certain property that is substantially constructed.* Section 263A does not apply to any property produced by a taxpayer for use in its trade or business if substantial construction occurred before March 1, 1986. See § 1.263A–1T(a)(6)(v) for a definition of substantial construction.

(11) *Certain property provided incident to services*—(i) *In general.* Under this paragraph (b)(11), section 263A does not apply to property that is provided to a client (or customer) incident to the provision of services by the taxpayer if the property provided to the client is—

(A) De minimis in amount; and

(B) Not inventory in the hands of the service provider.

(ii) *Definition of services.* For purposes of this paragraph (b)(11), services is defined with reference to its ordinary and accepted meaning under federal income tax principles. In determining whether a taxpayer is a bona-fide service provider under this paragraph (b)(11), the nature of the taxpayer's trade or business and the facts and circumstances surrounding the taxpayer's trade or business activities must be considered. Examples of taxpayers qualifying as service providers under this paragraph include taxpayers performing services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.

(iii) *De minimis property provided incident to services.* In determining whether property provided to a client by a service provider is de minimis in amount, all facts and circumstances, such as the nature of the taxpayer's trade or business and the volume of its service activities in the trade or business, must be considered. A significant factor in making this determination is the relationship between the acquisition or direct materials costs of the property that is provided to clients and the price that the taxpayer charges its clients for its services and the property. For purposes of this paragraph (b)(11), if the acquisition or direct materials cost of the property provided to a client incident to the services is less than or equal to five percent of the price charged to the client for the services and property, the property is de minimis. If the acquisition or direct materials cost of the property exceeds five percent of the price charged for the services and property, the property may be de minimis if additional facts and circumstances so indicate.

(12) *De minimis rule for certain producers with total indirect costs of $200,000 or less.* See § 1.263A–2(b)(3)(iv) for a de minimis rule that treats producers with total indirect costs of $200,000 or less as having no additional section 263A costs (as defined in paragraph (d)(3) of this section) for purposes of the simplified production method.

(13) *Exception for the origination of loans.* For purposes of section 263A(b)(2)(A), the origination of loans is not considered the acquisition of intangible property for resale. (But section 263A(b)(2)(A) does include the acquisition by a taxpayer of pre-existing loans from other persons for resale.)

(c) *General operation of section 263A*—(1) *Allocations.* Under section 263A, taxpayers must capitalize their direct costs and a properly allocable share of their indirect costs to property produced or property acquired for resale. In order to determine these capitalizable costs, taxpayers must allocate or apportion costs to various activities, including production or resale activities. After section 263A costs are allocated to the appropriate production or resale activities, these costs are generally allocated to the items of property produced or property acquired for resale during the taxable year and capitalized to the items that remain on hand at the end of the taxable year. See however, the simplified production method and the simplified resale method in §§ 1.263A–2(b) and 1.263A–3(d).

(2) *Otherwise deductible.* (i) Any cost which (but for section 263A and the regulations thereunder) may not be taken into account in computing taxable income for any taxable year is not treated as a cost properly allocable to property produced or acquired for resale under section 263A and the regulations thereunder. Thus, for example, if a business meal deduction is limited by section 274(n) to 80 percent of the cost of the meal, the amount properly allocable to property produced or acquired for resale under section 263A is also limited to 80 percent of the cost of the meal.

(ii) The amount of any cost required to be capitalized under section 263A may not be included in inventory or charged to capital accounts or basis any earlier than the taxable year during which the amount is incurred within the meaning of § 1.446–1(c)(1)(ii).

(3) *Capitalize.* Capitalize means, in the case of property that is inventory in the hands of a taxpayer, to include in inventory costs and, in the case of other property, to charge to a capital account or basis.

(4) *Recovery of capitalized costs.* Costs that are capitalized under section 263A are recovered through depreciation, amortization, cost of goods sold, or by an adjustment to basis at the time the property is used, sold, placed in service, or otherwise disposed of by the taxpayer. Cost recovery is determined by the applicable Internal Revenue Code and regulation provisions relating to the use, sale, or disposition of property.

(d) *Definitions*—(1) *Self-constructed assets.* Self-constructed assets are assets produced by a taxpayer for use by the taxpayer in its trade or business. Self-constructed assets are subject to section 263A.

(2) *Section 471 costs*—(i) *In general.* Except as otherwise provided in paragraphs (d)(2)(ii) and (iii) of this section, for purposes of the regulations under section 263A, a taxpayer's section 471 costs are the costs, other than interest, capitalized under its method of accounting immediately prior to the effective date of section 263A. Thus, although section 471 applies only to inventories, section 471 costs include any non-inventory costs, other than interest, capitalized or included in acquisition or production costs under the taxpayer's method of accounting immediately prior to the effective date of section 263A.

(ii) *New taxpayers.* In the case of a new taxpayer, section 471 costs are those acquisition or production costs, other than interest, that would have been required to be capitalized by the taxpayer if the taxpayer had been in existence immediately prior to the effective date of section 263A.

(iii) *Method changes.* If a taxpayer included a cost described in § 1.471–11(c)(2)(iii) in its inventoriable costs immediately prior to the effective date of section 263A, that cost is included in the taxpayer's section 471 costs under paragraph (d)(2)(i) of this section. Except as provided in the following sentence, a change in the financial reporting practices of a taxpayer for costs described in § 1.471–11(c)(2)(iii) subsequent to the effective date of section 263A does not affect the classification of these costs as section 471 costs. A taxpayer may change its established methods of accounting used in determining section 471 costs only with the consent of the Commissioner as required under section 446(e) and the regulations thereunder.

(3) *Additional section 263A costs.* Additional section 263A costs are defined as the costs, other than interest, that were not capitalized under the

taxpayer's method of accounting immediately prior to the effective date of section 263A (adjusted as appropriate for any changes in methods of accounting for section 471 costs under paragraph (d)(2)(iii) of this section), but that are required to be capitalized under section 263A. For new taxpayers, additional section 263A costs are defined as the costs, other than interest, that the taxpayer must capitalize under section 263A, but which the taxpayer would not have been required to capitalize if the taxpayer had been in existence prior to the effective date of section 263A.

(4) *Section 263A costs.* Section 263A costs are defined as the costs that a taxpayer must capitalize under section 263A. Thus, section 263A costs are the sum of a taxpayer's section 471 costs, its additional section 263A costs, and interest capitalizable under section 263A(f).

(e) *Types of costs subject to capitalization*—(1) *In general.* Taxpayers subject to section 263A must capitalize all direct costs and certain indirect costs properly allocable to property produced or property acquired for resale. This paragraph (e) describes the types of costs subject to section 263A.

(2) *Direct costs*—(i) *Producers.* Producers must capitalize direct material costs and direct labor costs.

(A) *Direct material costs* include the costs of those materials that become an integral part of specific property produced and those materials that are consumed in the ordinary course of production and that can be identified or associated with particular units or groups of units of property produced.

(B) *Direct labor costs* include the costs of labor that can be identified or associated with particular units or groups of units of specific property produced. For this purpose, labor encompasses full-time and part-time employees, as well as contract employees and independent contractors. Direct labor costs include all elements of compensation other than employee benefit costs described in paragraph (e)(3)(ii)(D) of this section. Elements of direct labor costs include basic compensation, overtime pay, vacation pay, holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983), shift differential, payroll taxes, and payments to a supplemental unemployment benefit plan.

(ii) *Resellers.* Resellers must capitalize the acquisition costs of property acquired for resale. In the case of inventory, the acquisition cost is the cost described in § 1.471–3(b).

(3) *Indirect costs*—(i) *In general.* Indirect costs are defined as all costs other than direct material costs and direct labor costs (in the case of property produced) or acquisition costs (in the case of property acquired for resale). Taxpayers subject to section 263A must capitalize all indirect costs properly allocable to property produced or property acquired for resale. Indirect costs are properly allocable to property produced or property acquired for resale when the costs directly benefit or are incurred by reason of the performance of production or resale activities. Indirect costs may be allocable to both production and resale activities, as well as to other activities that are not subject to section 263A. Taxpayers subject to section 263A must make a reasonable allocation of indirect costs between production, resale, and other activities.

(ii) *Examples of indirect costs required to be capitalized.* The following are examples of indirect costs that must be capitalized to the extent they are properly allocable to property produced or property acquired for resale:

(A) *Indirect labor costs.* Indirect labor costs include all labor costs (including the elements of labor costs set forth in paragraph (e)(2)(i) of this section) that cannot be directly identified or associated with particular units or groups of units of specific property produced or property acquired for resale (e.g., factory labor that is not direct labor). As in the case of direct labor, indirect labor encompasses full-time and part-time employees, as well as contract employees and independent contractors.

(B) *Officers' compensation.* Officers' compensation includes compensation paid to officers of the taxpayer.

(C) *Pension and other related costs.* Pension and other related costs include contributions paid to or made under any stock bonus, pension, profit-sharing or annuity plan, or other plan deferring the receipt of compensation, whether or not the plan qualifies under section 401(a). Contributions to employee plans representing past services must be capitalized in the same manner (and in the same proportion to property currently being acquired or produced) as amounts contributed for current service.

(D) *Employee benefit expenses.* Employee benefit expenses include all other employee benefit expenses (not described in paragraph (e)(3)(ii)(C) of this section) to the extent such expenses are otherwise allowable as deductions under chapter 1 of the Internal Revenue Code. These other employee benefit expenses include: worker's compensation; amounts otherwise deductible or allowable in reducing earnings and profits under section 404A; payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983; amounts includible in the gross income of employees under a method or arrangement of employer contributions or compensation that has the effect of a stock bonus, pension, profit-sharing or annuity plan, or other plan deferring receipt of compensation or providing deferred benefits; premiums on life and health insurance; and miscellaneous benefits provided for employees such as safety, medical treatment, recreational and eating facilities, membership dues, etc. Employee benefit expenses do not, however, include direct labor costs described in paragraph (e)(2)(i) of this section.

(E) *Indirect material costs.* Indirect material costs include the cost of materials that are not an integral part of specific property produced and the cost of materials that are consumed in the ordinary course of performing production or resale activities that cannot be identified or associated with particular units or groups of units of property. Thus, for example, a cost described in § 1.162–3, relating to the cost of a material or supply, is an indirect material cost.

(F) *Purchasing costs.* Purchasing costs include costs attributable to purchasing activities. See § 1.263A–3(c)(3) for a further discussion of purchasing costs.

(G) *Handling costs.* Handling costs include costs attributable to processing, assembling, repackaging and transporting goods, and other similar activities. See § 1.263A–3(c)(4) for a further discussion of handling costs.

(H) *Storage costs.* Storage costs include the costs of carrying, storing, or warehousing property. See § 1.263A–3(c)(5) for a further discussion of storage costs.

(I) *Cost recovery.* Cost recovery includes depreciation, amortization, and cost recovery allowances on equipment and facilities (including depreciation or amortization of self-constructed assets or other previously produced or acquired property to which section 263A or section 263 applies).

(J) *Depletion.* Depletion includes allowances for depletion, whether or not in excess of cost. Depletion is, however, only properly allocable to property that has been sold (i.e., for purposes of determining gain or loss on the sale of the property).

(K) *Rent.* Rent includes the cost of renting or leasing equipment, facilities, or land.

(L) *Taxes.* Taxes include those taxes (other than taxes described in paragraph (e)(3)(iii)(F) of this section) that are otherwise allowable as a deduction to the extent such taxes are attributable to labor, materials, supplies, equipment, land, or facilities used in production or resale activities.

(M) *Insurance.* Insurance includes the cost of insurance on plant or facility, machinery, equipment, materials, property produced, or property acquired for resale.

(N) *Utilities.* Utilities include the cost of electricity, gas, and water.

(O) *Repairs and maintenance.* Repairs and maintenance include the cost of repairing and maintaining equipment or facilities.

(P) *Engineering and design costs.* Engineering and design costs include pre-production costs, such as costs attributable to research, experimental, engineering, and design activities (to the extent that such amounts are not research and experimental expenditures as described in section 174 and the regulations thereunder).

(Q) *Spoilage.* Spoilage includes the costs of rework labor, scrap, and spoilage.

(R) *Tools and equipment.* Tools and equipment include the costs of tools and equipment which are not otherwise capitalized.

(S) *Quality control.* Quality control includes the costs of quality control and inspection.

(T) *Bidding costs.* Bidding costs are costs incurred in the solicitation of contracts (including contracts pertaining to property acquired for resale) ultimately awarded to the taxpayer. The taxpayer must defer all bidding costs paid or incurred in the solicitation of a particular contract until the contract is awarded. If the contract is awarded to the taxpayer, the bidding costs become part of the indirect costs allocated to the subject matter of the contract. If the contract is not awarded to the taxpayer, bidding costs are deductible in the taxable year that the contract is awarded to another party, or in the taxable year that the taxpayer is notified in writing that no contract will be awarded and that the contract (or a similar or related contract) will not be rebid, or in the taxable year that the taxpayer abandons its bid or proposal, whichever occurs first. Abandoning a bid does not include modifying, supplementing, or changing the original bid or proposal. If the taxpayer is awarded only part of the bid (for example, the taxpayer submitted one bid to build each of two different types of products, and the taxpayer was awarded a contract to build only one of the two types of products), the taxpayer shall deduct the portion of the bidding costs related to the portion of the bid not awarded to the taxpayer. In the case of a bid or proposal for a multi-unit contract, all bidding costs must be included in the costs allocated to the subject matter of the contract awarded to the taxpayer to produce or acquire for resale any of such units. For example, where the taxpayer submits one bid to produce three similar turbines and the taxpayer is awarded a contract to produce only two of the three turbines, all bidding costs must be included in the cost of the two turbines. For purposes of this paragraph (e)(3)(ii)(T), a contract means—

(*1*) In the case of a specific unit of property, any agreement under which the taxpayer would produce or sell property to another party if the agreement is entered into before the taxpayer produces or acquires the specific unit of property to be delivered to the party under the agreement; and

(*2*) In the case of fungible property, any agreement to the extent that, at the time the agreement is entered into, the taxpayer has on hand an insufficient quantity of completed fungible items of such property that may be used to satisfy the agreement (plus any other production or sales agreements of the taxpayer).

(U) *Licensing and franchise costs.* Licensing and franchise costs include fees incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right associated with property produced or property acquired for resale. These costs include the otherwise deductible portion (e.g., amortization) of the initial fees incurred to obtain the license or franchise and any minimum annual payments and royalties that are incurred by a licensee or a franchisee.

(V) *Interest.* Interest includes interest on debt incurred or continued during the production period to finance the production of real property or tangible personal property to which section 263A(f) applies.

(W) *Capitalizable service costs.* Service costs that are required to be capitalized include capitalizable service costs and capitalizable mixed service costs as defined in paragraph (e)(4) of this section.

(iii) *Indirect costs not capitalized.* The following indirect costs are not required to be capitalized under section 263A:

(A) *Selling and distribution costs.* These costs are marketing, selling, advertising, and distribution costs.

(B) *Research and experimental expenditures.* Research and experimental expenditures are expenditures described in section 174 and the regulations thereunder.

(C) *Section 179 costs.* Section 179 costs are expenses for certain depreciable assets deductible at the election of the taxpayer under section 179 and the regulations thereunder.

(D) *Section 165 losses.* Section 165 losses are losses under section 165 and the regulations thereunder.

(E) *Cost recovery allowances on temporarily idle equipment and facilities*—(*1*) *In general.* Cost recovery allowances on temporarily idle equipment and facilities include only depreciation, amortization, and cost recovery allowances on equipment and facilities that have been placed in service but are temporarily idle. Equipment and facilities are temporarily idle when a taxpayer takes them out of service for a finite period. However, equipment and facilities are not considered temporarily idle—

(*i*) During worker breaks, non-working hours, or on regularly scheduled non-working days (such as holidays or weekends);

(*ii*) During normal interruptions in the operation of the equipment or facilities;

(*iii*) When equipment is enroute to or located at a job site; or

(*iv*) When under normal operating conditions, the equipment is used or operated only during certain shifts.

(*2*) *Examples.* The provisions of this paragraph (e)(3)(iii)(E) are illustrated by the following examples:

*Example 1. Equipment operated only during certain shifts.* Taxpayer A manufactures widgets. Although A's manufacturing facility operates 24 hours each day in three shifts, A only operates its stamping machine during one shift each day. Because A only operates its stamping machine during certain shifts, A's stamping machine is not considered temporarily idle during the two shifts that it is not operated.

*Example 2. Facility shut down for retooling.* Taxpayer B owns and operates a manufacturing facility. B closes its manufacturing facility for two weeks to retool its assembly line. B's manufacturing facility is considered temporarily idle during this two-week period.

(F) *Taxes assessed on the basis of income.* Taxes assessed on the basis of income include only state, local, and foreign income taxes, and franchise taxes that are assessed on the taxpayer based on income.

(G) *Strike expenses.* Strike expenses include only costs associated with hiring employees to replace striking personnel (but not wages of replacement personnel), costs of security, and legal fees associated with settling strikes.

(H) *Warranty and product liability costs.* Warranty costs and product liability costs are costs incurred in fulfilling product warranty obligations for products that have been sold and costs incurred for product liability insurance.

(I) *On-site storage costs.* On-site storage costs are storage and warehousing costs incurred by a taxpayer at an on-site storage facility, as defined in § 1.263A–3(c)(5)(ii)(A), with respect to property produced or property acquired for resale.

(J) *Unsuccessful bidding expenses.* Unsuccessful bidding costs are bidding expenses incurred in the solicitation of contracts not awarded to the taxpayer.

(K) *Deductible service costs.* Service costs that are not required to be capitalized include deductible service costs and deductible mixed service costs as defined in paragraph (e)(4) of this section.

(4) *Service costs*—(i) *Introduction.* This paragraph (e)(4) provides definitions and categories of service costs. Paragraph (g)(4) of this section provides specific rules for determining the amount of service costs allocable to property produced or property acquired for resale. In addition, paragraph (h) of this section provides a simplified method for determining the amount of service costs that must be capitalized.

(A) *Definition of service costs.* Service costs are defined as a type of indirect costs (e.g., general and administrative costs) that can be identified specifically with a service department or function or that directly benefit or are incurred by reason of a service department or function.

(B) *Definition of service departments.* Service departments are defined as administrative, service, or support departments that incur service costs. The facts and circumstances of the taxpayer's activities and business organization control whether a department is a service department. For example, service departments include personnel, accounting, data processing, security, legal, and other similar departments.

(ii) *Various service cost categories*—(A) *Capitalizable service costs.* Capitalizable service costs are defined as service costs that directly benefit or are incurred by reason of the performance of the production or resale activities of the taxpayer. Therefore, these service costs are required to be capitalized under section 263A. Examples of service departments or functions that incur capitalizable service costs are provided in paragraph (e)(4)(iii) of this section.

(B) *Deductible service costs.* Deductible service costs are defined as service costs that do not directly benefit or are not incurred by reason of the performance of the production or resale activities of the taxpayer, and therefore, are not required to be capitalized under section 263A. Deductible service costs generally include costs incurred by reason of the taxpayer's overall management or policy guidance functions. In addition, deductible service costs include costs incurred by reason of the marketing, selling, advertising, and distribution activities of the taxpayer. Examples of service departments or functions that incur deductible service costs are provided in paragraph (e)(4)(iv) of this section.

(C) *Mixed service costs.* Mixed service costs are defined as service costs that are partially allocable to production or resale activities (capitalizable mixed service costs) and partially allocable to non-production or non-resale activities (deductible mixed service costs). For example, a personnel department may incur costs to recruit factory workers, the costs of which are allocable to production activities, and it may incur costs to develop wage, salary, and benefit policies, the costs of which are allocable to non-production activities.

(iii) *Examples of capitalizable service costs.* Costs incurred in the following departments or functions are generally allocated among production or resale activities:

(A) The administration and coordination of production or resale activities (wherever performed in the business organization of the taxpayer).

(B) Personnel operations, including the cost of recruiting, hiring, relocating, assigning, and maintaining personnel records or employees.

(C) Purchasing operations, including purchasing materials and equipment, scheduling and coordinating delivery of materials and equipment to or from factories or job sites, and expediting and follow-up.

(D) Materials handling and warehousing and storage operations.

(E) Accounting and data services operations, including, for example, cost accounting, accounts payable, disbursements, and payroll functions (but excluding accounts receivable and customer billing functions).

(F) Data processing.

(G) Security services.

(H) Legal services.

(iv) *Examples of deductible service costs.* Costs incurred in the following departments or functions are not generally allocated to production or resale activities:

(A) Departments or functions responsible for overall management of the taxpayer or for setting overall policy for all of the taxpayer's activities or trades or businesses, such as the board of directors (including their immediate staff), and the chief executive, financial, accounting, and legal officers (including their immediate staff) of the taxpayer, provided that no substantial part of the cost of such departments or functions benefits a particular production or resale activity.

(B) Strategic business planning.

(C) General financial accounting.

(D) General financial planning (including general budgeting) and financial management (including bank relations and cash management).

(E) Personnel policy (such as establishing and managing personnel policy in general; developing wage, salary, and benefit policies; developing employee training programs unrelated to particular production or resale activities; negotiating with labor unions; and maintaining relations with retired workers).

(F) Quality control policy.

(G) Safety engineering policy.

(H) Insurance or risk management policy (but not including bid or performance bonds or insurance related to activities associated with property produced or property acquired for resale).

(I) Environmental management policy (except to the extent that the costs of any system or procedure benefits a particular production or resale activity).

(J) General economic analysis and forecasting.

(K) Internal audit.

(L) Shareholder, public, and industrial relations.

(M) Tax services.

(N) Marketing, selling, or advertising.

(f) *Cost allocation methods*—(1) *Introduction.* This paragraph (f) sets forth various detailed or specific (facts-and-circumstances) cost allocation methods that taxpayers may use to allocate direct and indirect costs to property produced and property acquired for resale. Paragraph (g) of this section provides general rules for applying these allocation methods to various categories of costs (i.e., direct materials, direct labor, and indirect costs, including service costs). In addition, in lieu of a facts-and-circumstances allocation method, taxpayers may use the simplified methods provided in §§ 1.263A–2(b) and 1.263A–3(d) to allocate direct and indirect costs to eligible property produced or eligible property acquired for resale; see those sections for definitions of eligible property.

Paragraph (h) of this section provides a simplified method for determining the amount of mixed service costs required to be capitalized to eligible property. The methodology set forth in paragraph (h) of this section for mixed service costs may be used in conjunction with either a facts-and-circumstances or a simplified method of allocating costs to eligible property produced or eligible property acquired for resale.

(2) *Specific identification method.* A specific identification method traces costs to a cost objective, such as a function, department, activity, or product, on the basis of a cause and effect or other reasonable relationship between the costs and the cost objective.

(3) *Burden rate and standard cost methods*—(i) *Burden rate method*—(A) *In general.* A burden rate method allocates an appropriate amount of indirect costs to property produced or property acquired for resale during a taxable year using predetermined rates that approximate the actual amount of indirect costs incurred by the taxpayer during the taxable year. Burden rates (such as ratios based on direct costs, hours, or similar items) may be developed by the taxpayer in accordance with acceptable accounting principles and applied in a reasonable manner. A taxpayer may allocate different indirect costs on the basis of different burden rates. Thus, for example, the taxpayer may use one burden rate for allocating the cost of rent and another burden rate for allocating the cost of utilities. Any periodic adjustment to a burden rate that merely reflects current operating conditions, such as increases in automation or changes in operation or prices, is not a change in method of accounting under section 446(e). A change, however, in the concept or base upon which such rates are developed, such as a change from basing the rates on direct labor hours to basing them on direct machine hours, is a change in method of accounting to which section 446(e) applies.

(B) *Development of burden rates.* The following factors, among others, may be used in developing burden rates:

(*1*) The selection of an appropriate level of activity and a period of time upon which to base the calculation of rates reflecting operating conditions for purposes of the unit costs being determined.

(*2*) The selection of an appropriate statistical base, such as direct labor hours, direct labor dollars, machine hours, or a combination thereof, upon which to apply the overhead rate.

(*3*) The appropriate budgeting, classification and analysis of expenses (for example, the analysis of fixed versus variable costs).

(C) *Operation of the burden rate method.* The purpose of the burden rate method is to allocate an appropriate amount of indirect costs to production or resale activities through the use of predetermined rates intended to approximate the actual amount of indirect costs incurred. Accordingly, the proper use of the burden rate method under this section requires that any net negative or net positive difference between the total predetermined amount of costs allocated to property and the total amount of indirect costs actually incurred and required to be allocated to such property (i.e., the under or over-applied burden) must be treated as an adjustment to the taxpayer's ending inventory or capital account (as the case may be) in the taxable year in which such difference arises. However, if such adjustment is not significant in amount in relation to the taxpayer's total indirect costs incurred with respect to production or resale activities for the year, such adjustment need not be allocated to the property produced or property acquired for resale unless such allocation is made in the taxpayer's financial reports. The taxpayer must treat both positive and negative adjustments consistently.

(ii) *Standard cost method*—(A) *In general.* A standard cost method allocates an appropriate amount of direct and indirect costs to property produced by the taxpayer through the use of preestablished standard allowances, without reference to costs actually incurred during the taxable year. A taxpayer may use a standard cost method to allocate costs, provided variances are treated in accordance with the procedures prescribed in paragraph (f)(3)(ii)(B) of this section. Any periodic adjustment to standard costs that merely reflects current operating conditions, such as increases in automation or changes in operation or prices, is not a change in method of accounting under section 446(e). A change, however, in the concept or base upon which standard costs are developed is a change in method of accounting to which section 446(e) applies.

(B) *Treatment of variances.* For purposes of this section, net positive overhead variance means the excess of total standard indirect costs over total actual indirect costs and net negative overhead variance means the excess of total actual indirect costs over total standard indirect costs. The proper use of a standard cost method requires that a taxpayer must reallocate to property a pro rata portion of any net negative or net positive overhead variances and any net negative or net positive direct cost variances. The taxpayer must apportion such variances to or among the property to which the costs are allocable. However, if such variances are not significant in amount relative to the taxpayer's total indirect costs incurred with respect to production and resale activities for the year, such variances need not be allocated to property produced or property acquired for resale unless such allocation is made in the taxpayer's financial reports. A taxpayer must treat both positive and negative variances consistently.

(4) *Reasonable allocation methods.* A taxpayer may use the methods described in paragraph (f) (2) or (3) of this section if they are reasonable allocation methods within the meaning of this paragraph (f)(4). In addition, a taxpayer may use any other reasonable method to properly allocate direct and indirect costs among units of property produced or property acquired for resale during the taxable year. An allocation method is reasonable if, with respect to the taxpayer's production or resale activities taken as a whole—

(i) The total costs actually capitalized during the taxable year do not differ significantly from the aggregate costs that would be properly capitalized using another permissible method described in this section or in §§ 1.263A–2 and 1.263A–3, with appropriate consideration given to the volume and value of the taxpayer's production or resale activities, the availability of costing information, the time and cost of using various allocation methods, and the accuracy of the allocation method chosen as compared with other allocation methods;

(ii) The allocation method is applied consistently by the taxpayer; and

(iii) The allocation method is not used to circumvent the requirements of the simplified methods in this section or in § 1.263A–2, § 1.263A–3, or the principles of section 263A.

(g) *Allocating categories of costs*—(1) *Direct materials.* Direct material costs (as defined in paragraph (e)(2) of this section) incurred during the taxable year must be allocated to the property produced or property acquired for resale by the taxpayer using the taxpayer's method of accounting for materials (e.g., specific identification; first-in, first-out (FIFO); or last-in, first-out (LIFO)), or any other reasonable allocation method (as defined under the principles of paragraph (f)(4) of this section).

(2) *Direct labor.* Direct labor costs (as defined in paragraph (e)(2) of this section) incurred during the taxable year are generally allocated to property produced or property acquired for resale

using a specific identification method, standard cost method, or any other reasonable allocation method (as defined under the principles of paragraph (f)(4) of this section). All elements of compensation, other than basic compensation, may be grouped together and then allocated in proportion to the charge for basic compensation. Further, a taxpayer is not treated as using an erroneous method of accounting if direct labor costs are treated as indirect costs under the taxpayer's allocation method, provided such costs are capitalized to the extent required by paragraph (g)(3) of this section.

(3) *Indirect costs.* Indirect costs (as defined in paragraph (e)(3) of this section) are generally allocated to intermediate cost objectives such as departments or activities prior to the allocation of such costs to property produced or property acquired for resale. Indirect costs are allocated using either a specific identification method, a standard cost method, a burden rate method, or any other reasonable allocation method (as defined under the principles of paragraph (f)(4) of this section).

(4) *Service costs*—(i) *In general.* Service costs are a type of indirect costs that may be allocated using the same allocation methods available for allocating other indirect costs described in paragraph (g)(3) of this section. Generally, taxpayers that use a specific identification method or another reasonable allocation method must allocate service costs to particular departments or activities based on a factor or relationship that reasonably relates the service costs to the benefits received from the service departments or activities. For example, a reasonable factor for allocating legal services to particular departments or activities is the number of hours of legal services attributable to each department or activity. See paragraph (g)(4)(iv) of this section for other illustrations. Using reasonable factors or relationships, a taxpayer must allocate mixed service costs under a direct reallocation method described in paragraph (g)(4)(iii)(A) of this section, a step-allocation method described in paragraph (g)(4)(iii)(B) of this section, or any other reasonable allocation method (as defined under the principles of paragraph (f)(4) of this section).

(ii) *De minimis rule.* For purposes of administrative convenience, if 90 percent or more of a mixed service department's costs are deductible service costs, a taxpayer may elect not to allocate any portion of the service department's costs to property produced or property acquired for resale. For example, if 90 percent of the costs of an electing taxpayer's industrial relations department benefit the taxpayer's overall policy-making activities, the taxpayer is not required to allocate any portion of these costs to a production activity. Similarly, if 90 percent or more of a mixed service department's costs are capitalizable service costs, a taxpayer may elect to allocate 100 percent of the department's costs to the production or resale activity benefitted. For example, if 90 percent of the costs of an electing taxpayer's accounting department benefit the taxpayer's manufacturing activity, the taxpayer must allocate 100 percent of the costs of the accounting department to the manufacturing activity. An election under this paragraph (g)(4)(ii) applies to all of a taxpayer's mixed service departments and constitutes the adoption of a (or a change in) method of accounting under section 446 of the Internal Revenue Code.

(iii) *Methods for allocating mixed service costs*—(A) *Direct reallocation method.* Under the direct reallocation method, the total costs (direct and indirect) of all mixed service departments are allocated only to departments or cost centers engaged in production or resale activities and then from those departments to particular activities. This direct reallocation method ignores benefits provided by one mixed service department to other mixed service departments, and also excludes other mixed service departments from the base used to make the allocation.

(B) *Step-allocation method.* (*1*) Under a step-allocation method, a sequence of allocations is made by the taxpayer. First, the total costs of the mixed service departments that benefit the greatest number of other departments are allocated to—

(*i*) Other mixed service departments;

(*ii*) Departments that incur only deductible service costs; and

(*iii*) Departments that exclusively engage in production or resale activities.

(*2*) A taxpayer continues allocating mixed service costs in the manner described in paragraph (g)(4)(iii)(B)(*1*) of this section (i.e., from the service departments benefitting the greatest number of departments to the service departments benefitting the least number of departments) until all mixed service costs are allocated to the types of departments listed in this paragraph (g)(4)(iii). Thus, a step-allocation method recognizes the benefits provided by one mixed service department to another mixed service department and also includes mixed service departments that have not yet been allocated in the base used to make the allocation.

(C) *Examples.* The provisions of this paragraph (g)(4)(iii) are illustrated by the following examples:

*Example 1. Direct reallocation method.* (i) Taxpayer E has the following five departments: the Assembling Department, the Painting Department, and the Finishing Department (production departments), and the Personnel Department and the Data Processing Department (mixed service departments). E allocates the Personnel Department's costs on the basis of total payroll costs and the Data Processing Department's costs on the basis of data processing hours.

(ii) Under a direct reallocation method, E allocates the Personnel Department's costs directly to its Assembling, Painting, and Finishing Department, and not to its Data Processing department.

| Department | Total dept. costs | Amount of payroll costs | Allocation ratio | Amount allocated |
|---|---|---|---|---|
| Personnel | $500,000 | $50,000 | | <$500,000> |
| Data Proc'g | 250,000 | 15,000 | | |
| Assembling | 250,000 | 15,000 | 15,000/285,000 | 26,315 |
| Painting | 1,000,000 | 90,000 | 90,000/285,000 | 157,895 |
| Finishing | 2,000,000 | 180,000 | 180,000/285,000 | 315,790 |
| Total | $4,000,000 | $350,000 | | |

(iii) After E allocates the Personnel Department's costs, E then allocates the costs of its Data Processing Department in the same manner.

| Department | Total dept. cost after initial allocation | Total data proc. hours | Allocation ratio | Amount allocated | Total dept. cost after final allocation |
|---|---|---|---|---|---|
| Personnel | 0 | 2,000 | | | 0 |
| Data Proc'g | $250,000 | | | <$250,000> | |
| Assembling | 276,315 | 2,000 | 2,000/10,000 | 50,000 | $326,315 |
| Painting | 1,157,895 | 0 | 0/10,000 | 0 | 1,157,895 |
| Finishing | 2,315,790 | 8,000 | 8,000/10,000 | 200,000 | 2,515,790 |
| Total | $4,000,000 | 12,000 | | | $4,000,000 |

*Example 2. Step-allocation method.* (i) Taxpayer F has the following five departments: the Manufacturing Department (a production department), the Marketing Department and the Finance Department (departments that incur only deductible service costs), the Personnel Department and the Data Processing Department (mixed service departments). F uses a step-allocation method and allocates the Personnel Department's costs on the basis of total payroll costs and the Data Processing Department's costs on the basis of data processing hours. F's Personnel Department benefits all four of F's other departments, while its Data Processing Department benefits only three departments. Because F's Personnel Department benefits the greatest number of other departments, F first allocates its Personnel Department's costs to its Manufacturing, Marketing, Finance and Data Processing departments, as follows:

| Department | Total cost of dept. | Total payroll costs | Allocation ratio | Amount allocated |
|---|---|---|---|---|
| Personnel | $500,000 | $50,000 | | <$500,000> |
| Data Proc'g | 250,000 | 15,000 | 15,000/300,000 | 25,000 |
| Finance | 250,000 | 15,000 | 15,000/300,000 | 25,000 |
| Marketing | 1,000,000 | 90,000 | 90,000/300,000 | 150,000 |
| Manufac'g | 2,000,000 | 180,000 | 180,000/300,000 | 300,000 |
| | 4,000,000 | 350,000 | | |

(ii) Under a step-allocation method, the denominator of F's allocation ratio includes the payroll costs of its Manufacturing, Marketing, Finance, and Data Processing departments.

(iii) Next, F allocates the costs of its Data Processing Department on the basis of data processing hours. Because the costs incurred by F's Personnel Department have already been allocated, no allocation is made to the Personnel Department.

| Department | Total dept. cost after initial allocation | Total data proc. hours | Allocation ratio | Amount allocated | Total dept. cost after final allocation |
|---|---|---|---|---|---|
| Personnel | $0 | 2,000 | | | $0 |
| Data Proc'g | 275,000 | | | <$275,000> | 0 |
| Finance | 275,000 | 2,000 | 2,000/10,000 | 55,000 | 330,000 |
| Marketing | 1,150,000 | 0 | 0/10,000 | 0 | 1,150,000 |
| Manufac'g | 2,300,000 | 8,000 | 8,000/10,000 | 220,000 | 2,520,000 |
| | 4,000,000 | 12,000 | | | 4,000,000 |

(iv) Under the second step of F's step-allocation method, the denominator of F's allocation ratio includes the data processing hours of its Manufacturing, Marketing, and Finance Departments, but does not include the data processing hours of its Personnel Department (the other mixed service department) because the costs of that department have previously been allocated.

(iv) *Illustrations of mixed service cost allocations using reasonable factors or relationships.* This paragraph (g)(4)(iv) illustrates various reasonable factors and relationships that may be used in allocating different types of mixed service costs. Taxpayers, however, are permitted to use other reasonable factors and relationships to allocate mixed service costs. In addition, the factors or relationships illustrated in this paragraph (g)(4)(iv) may be used to allocate other types of service costs not illustrated in this paragraph (g)(4)(iv).

(A) *Security services.* The costs of security or protection services must be allocated to each physical area that receives the services using any reasonable method applied consistently (e.g., the size of the physical area, the number of employees in the area, or the relative fair market value of assets located in the area).

(B) *Legal services.* The costs of legal services are generally allocable to a particular production or resale activity on the basis of the approximate number of hours of legal service performed in connection with the activity, including research, bidding, negotiating, drafting, reviewing a contract, obtaining necessary licenses and permits, and resolving disputes. Different hourly rates may be appropriate for different services. In determining the number of hours allocable to any activity, estimates are appropriate, detailed time records are not required to be kept, and insubstantial amounts of services provided to an activity by senior legal staff (such as administrators or reviewers) may be ignored. Legal costs may also be allocated to a particular production or resale activity based on the ratio of the total direct costs incurred for the activity to the total direct costs incurred with respect to all production or resale activities. The taxpayer must also allocate directly to an activity the cost incurred for any outside legal services. Legal costs relating to general corporate functions are not required to be allocated to a particular production or resale activity

(C) *Centralized payroll services.* The costs of a centralized payroll

department or activity are generally allocated to the departments or activities benefitted on the basis of the gross dollar amount of payroll processed.

(D) *Centralized data processing services.* The costs of a centralized data processing department are generally allocated to all departments or activities benefitted using any reasonable basis, such as total direct data processing costs or the number of data processing hours supplied. The costs of data processing systems or applications developed for a particular activity are directly allocated to that activity.

(E) *Engineering and design services.* The costs of an engineering or a design department are generally directly allocable to the departments or activities benefitted based on the ratio of the approximate number of hours of work performed with respect to the particular activity to the total number of hours of engineering or design work performed for all activities. Different services may be allocated at different hourly rates.

(F) *Safety engineering services.* The costs of a safety engineering departments or activities generally benefit all of the taxpayer's activities and, thus, should be allocated using a reasonable basis, such as: the approximate number of safety inspections made in connection with a particular activity as a fraction of total inspections, the number of employees assigned to an activity as a fraction of total employees, or the total labor hours worked in connection with an activity as a fraction of total hours. However, in determining the allocable costs of a safety engineering department, costs attributable to providing a safety program relating only to a particular activity must be directly assigned to such activity. Additionally, the cost of a safety engineering department only responsible for setting safety policy and establishing safety procedures to be used in all of the taxpayer's activities is not required to be allocated.

(v) *Accounting method change.* A change in the method or base used to allocate service costs (such as changing from an allocation base using direct labor costs to a base using direct labor hours), or a change in the taxpayer's determination of what functions or departments of the taxpayer are to be allocated, is a change in method of accounting to which section 446(e) and the regulations thereunder apply.

(h) *Simplified service cost method—*(1) *Introduction.* This paragraph (h) provides a simplified method for determining capitalizable mixed service costs incurred during the taxable year with respect to eligible property (i.e., the aggregate portion of mixed service costs that are properly allocable to the taxpayer's production or resale activities).

(2) *Eligible property—*(i) *In general.* Except as otherwise provided in paragraph (h)(2)(ii) of this section, the simplified service cost method, if elected for any trade or business of the taxpayer, must be used for all production and resale activities of the trade or business associated with any of the following categories of property that are subject to section 263A:

(A) *Inventory property.* Stock in trade or other property properly includible in the inventory of the taxpayer.

(B) *Non-inventory property held for sale.* Non-inventory property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(C) *Certain self-constructed assets.* Self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property produced by the taxpayer or other property produced by the taxpayer and held primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(D) *Self-constructed assets produced on a repetitive basis.* Self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business.

(ii) *Election to exclude self-constructed assets.* At the taxpayer's election, the simplified service cost method may be applied within a trade or business to only the categories of inventory property and non-inventory property held for sale described in paragraphs (h)(2)(i) (A) and (B) of this section. Taxpayers electing to exclude the self-constructed assets described in paragraphs (h)(2)(i) (C) and (D) of this section from application of the simplified service cost method must, however, allocate service costs to such property in accordance with paragraph (g)(4) of this section.

(3) *General allocation formula.* (i) Under the simplified service cost method, a taxpayer computes its capitalizable mixed service costs using the following formula:

$$\text{Allocation ratio} \times \text{total mixed service costs}$$

(ii) A producer may elect one of two allocation ratios, the labor-based allocation ratio or the production cost allocation ratio. A reseller that satisfies the requirements for using the simplified resale method of § 1.263A–3(d) (whether or not that method is elected) may elect the simplified service cost method, but must use a labor-based allocation ratio. (See § 1.263A–3(d) for labor-based allocation ratios to be used in conjunction with the simplified resale method.) The allocation ratio used by a trade or business of a taxpayer is a method of accounting which must be applied consistently within the trade or business.

(4) *Labor-based allocation ratio.* (i) The labor-based allocation ratio is computed as follows:

$$\frac{\text{Section 263A labor costs}}{\text{Total labor costs}}$$

(ii) Section 263A labor costs are defined as the total labor costs (excluding labor costs included in mixed service costs) allocable to property produced and property acquired for resale under section 263A that are incurred in the taxpayer's trade or business during the taxable year. Total labor costs are defined as the total labor costs (excluding labor costs included in mixed service costs) incurred in the taxpayer's trade or business during the taxable year. Total labor costs include labor costs incurred in all parts of the trade or business (i.e., if the taxpayer has both property produced and property acquired for resale, the taxpayer must include labor costs from resale activities as well as production activities). For example, taxpayer G incurs $1,000 of total mixed service costs during the taxable year. G's section 263A labor costs are $5,000 and its total labor costs are $10,000. Under the labor-based allocation ratio, G's capitalizable mixed service costs are $500 (i.e., $1,000 × ($5,000 divided by $10,000)).

(5) *Production cost allocation ratio.* (i) Producers may use the production cost allocation ratio, computed as follows:

$$\frac{\text{Section 263A production costs}}{\text{Total costs}}$$

(ii) Section 263A production costs are defined as the total costs (excluding mixed service costs and interest) allocable to property produced (and

property acquired for resale if the producer is also engaged in resale activities) under section 263A that are incurred in the taxpayer's trade or business during the taxable year. Total costs are defined as all costs (excluding mixed service costs and interest) incurred in the taxpayer's trade or business during the taxable year. Total costs include all direct and indirect costs allocable to property produced (and property acquired for resale if the producer is also engaged in resale activities) as well as all other costs of the taxpayer's trade or business, including, but not limited to: salaries and other labor costs of all personnel; all depreciation taken for federal income tax purposes; research and experimental expenditures; and selling, marketing, and distribution costs. Such costs do not include, however, taxes described in paragraph (e)(3)(iii)(F) of this section. For example, taxpayer H, a producer, incurs $1,000 of total mixed service costs in the taxable year. H's section 263A production costs are $10,000 and its total costs are $20,000. Under the production cost allocation ratio, H's capitalizable mixed service costs are $500 (i.e., $1,000 X ($10,000 divided by $20,000)).

(6) *Definition of total mixed service costs.* Total mixed service costs are defined as the total costs incurred during the taxable year in all departments or functions of the taxpayer's trade or business that perform mixed service activities. See paragraph (e)(4)(ii)(C) of this section which defines mixed service costs. In determining the total mixed service costs of a trade or business, the taxpayer must include all costs incurred in its mixed service departments and cannot exclude any otherwise deductible service costs. For example, if the accounting department within a trade or business is a mixed service department, then in determining the total mixed service costs of the trade or business, the taxpayer cannot exclude the costs of personnel in the accounting department that perform services relating to non-production activities (e.g., accounts receivable or customer billing activities). Instead, the entire cost of the accounting department must be included in the total mixed service costs.

(7) *Costs allocable to more than one business.* To the extent mixed service costs, labor costs, or other costs are incurred in more than one trade or business, the taxpayer must determine the amounts allocable to the particular trade or business for which the simplified service cost method is being applied by using any reasonable allocation method consistent with the principles of paragraph (f)(4) of this section.

(8) *De minimis rule.* If the taxpayer elects to apply the de minimis rule of paragraph (g)(4)(ii) of this section to any mixed service department, the department is not considered a mixed service department for purposes of the simplified service cost method. Instead, the costs of such department are allocated exclusively to the particular activity satisfying the 90-percent test.

(9) *Separate election.* A taxpayer may elect the simplified service cost method in conjunction with any other allocation method used at the trade or business level, including the simplified methods described in §§ 1.263A–2(b) and 1.263A–3(d). However, the election of the simplified service cost method must be made independently of the election to use those other simplified methods.

(i) [Reserved]

(j) *Special rules*—(1) *Costs provided by a related person*—(i) *In general.* A taxpayer subject to section 263A must capitalize an arm's-length charge for any section 263A costs (e.g., costs of materials, labor, or services) incurred by a related person that are properly allocable to the property produced or property acquired for resale by the taxpayer. Both the taxpayer and the related person must account for the transaction as if an arm's-length charge had been incurred by the taxpayer with respect to its property produced or property acquired for resale. For purposes of this paragraph (j)(1)(i), a taxpayer is considered related to another person if the taxpayer and such person are described in section 482. Further, for purposes of this paragraph (j)(1)(i), arm's-length charge means the arm's-length charge (or other appropriate charge where permitted and applicable) under the principles of section 482. Any correlative adjustments necessary because of the arm's-length charge requirement of this paragraph (j)(1)(i) shall be determined under the principles of section 482.

(ii) *Exceptions.* The provisions of paragraph (j)(1)(i) of this section do not apply if, and to the extent that—

(A) It would be inappropriate under the principles of section 482 for the Commissioner to adjust the income of the taxpayer or the related person with respect to the transaction at issue; or

(B) A transaction is accounted for under an alternative Internal Revenue Code section resulting in the capitalization (or deferral of the deduction) of the costs of the items provided by the related party and the related party does not deduct such costs earlier than the costs would have been deducted by the taxpayer if the costs were capitalized under section 263A. Thus, for example, paragraph (j)(1)(i) of this section does not apply if, and to the extent that, a transaction is treated as a deferred intercompany transaction under § 1.1502–13, and the gain or loss is deferred by the selling member under that section.

(2) *Optional capitalization of period costs*—(i) *In general.* Taxpayers are not required to capitalize indirect costs that do not directly benefit or are not incurred by reason of the production of property or acquisition of property for resale (i.e., period costs). A taxpayer may, however, elect to capitalize certain period costs if: The method is consistently applied; is used in computing beginning inventories, ending inventories, and cost of goods sold; and does not result in a material distortion of the taxpayer's income. A material distortion relates to the source, character, amount, or timing of the cost capitalized or any other item affected by the capitalization of the cost. Thus, for example, a taxpayer may not capitalize a period cost under section 263A if capitalization would result in a material change in the computation of the foreign tax credit limitation under section 904. An election to capitalize a period cost is the adoption of (or a change in) a method of accounting under section 446 of the Internal Revenue Code.

(ii) *Period costs eligible for capitalization.* The types of period costs eligible for capitalization under this paragraph (j)(2) include only the types of period costs (e.g., under paragraph (e)(3)(iii) of this section) for which some portion of the costs incurred is properly allocable to property produced or property acquired for resale in the year of the election. Thus, for example, marketing or advertising costs, no portion of which are properly allocable to property produced or property acquired for resale, do not qualify for elective capitalization under this paragraph (j)(2).

(3) *Trade or business application.* Notwithstanding the references generally to taxpayer throughout this section and §§ 1.263A–2 and 1.263A–3, the methods of accounting provided under section 263A are to be elected and applied independently for each separate and distinct trade or business of the taxpayer in accordance with the provisions of section 446(d) and the regulations thereunder.

(4) *Transfers with a principal purpose of tax avoidance.* [Reserved]

**Par. 6.** Section 1.263A–1T is amended by adding three sentences to the end of paragraph (a)(4) to read as follows:

**§ 1.263A–1T Capitalization and inclusion of inventory costs of certain expenses (temporary).**

(a) * * *

(4) * * * Paragraphs (a), (b), and (d) (excluding paragraphs (d)(3)(ii)(C) (*2*), (*3*), and (*4*) are not effective for costs incurred after December 31, 1993, in taxable years beginning after that date. In the case of property that is inventory in the hands of the taxpayer, however, those paragraphs are not effective for taxable years beginning after December 31, 1993. See §§ 1.263A–1, 1.263A–2, and 1.263A–3 for rules applicable in taxable years beginning after December 31, 1993, for taxpayers previously subject to those paragraphs.

* * * * *

**Par. 7.** Sections 1.263A–2 and 1.263A–3 are added, and §§ 1.263A–4 through 1.263A–6 are added and reserved to read as follows:

**§ 1.263A–2 Rules relating to property produced by the taxpayer.**

(a) *In general.* Section 263A applies to real property and tangible personal property produced by a taxpayer for use in its trade or business or for sale to its customers. In addition, section 263A applies to property produced for a taxpayer under a contract with another party. The principal terms related to the scope of section 263A with respect to producers are provided in this paragraph (a). See § 1.263A–1(b)(11) for an exception in the case of certain de minimis property provided to customers incident to the provision of services.

(1) *Produce*—(i) *In general.* For purposes of section 263A, produce includes the following: construct, build, install, manufacture, develop, improve, create, raise, or grow.

(ii) *Ownership*—(A) *General rule.* Except as provided in paragraphs (a)(1)(ii) (B) and (C) of this section, a taxpayer is not considered to be producing property unless the taxpayer is considered an owner of the property produced under federal income tax principles. The determination as to whether a taxpayer is an owner is based on all of the facts and circumstances, including the various benefits and burdens of ownership vested with the taxpayer. A taxpayer may be considered an owner of property produced, even though the taxpayer does not have legal title to the property.

(B) *Property produced for the taxpayer under a contract*—(*1*) *In general.* Property produced for the taxpayer under a contract with another party is treated as property produced by the taxpayer to the extent the taxpayer makes payments or otherwise incurs costs with respect to the property. A taxpayer has made payment under this section if the transaction would be considered payment by a taxpayer using the cash receipts and disbursements method of accounting.

(*2*) *Definition of contract.* [Reserved]

(C) *Home construction contracts.* Section 460(e)(1) provides that section 263A applies to a home construction contract unless that contract will be completed within two years of the contract commencement date and the taxpayer's average annual gross receipts for the three preceding taxable years do not exceed $10,000,000. Section 263A applies to such a contract even if the contractor is not considered the owner of the property produced under the contract under federal income tax principles.

(2) *Tangible personal property*—(i) *General rule.* In general, section 263A applies to the costs of producing tangible personal property, and not to the costs of producing intangible property. For example, section 263A applies to the costs manufacturers incur to produce goods, but does not apply to the costs financial institutions incur to originate loans.

(ii) *Intellectual or creative property.* For purposes of determining whether a taxpayer producing intellectual or creative property is producing tangible personal property or intangible property, the term tangible personal property includes films, sound recordings, video tapes, books, and other similar property embodying words, ideas, concepts, images, or sounds by the creator thereof. Other similar property for this purpose generally means intellectual or creative property for which, as costs are incurred in producing the property, it is intended (or is reasonably likely) that any tangible medium in which the property is embodied will be mass distributed by the creator or any one or more third parties in a form that is not substantially altered. However, any intellectual or creative property that is embodied in a tangible medium that is mass distributed merely incident to the distribution of a principal product or good of the creator is not other similar property for these purposes.

(A) *Intellectual or creative property that is tangible personal property.* Section 263A applies to tangible personal property defined in this paragraph (a)(2) without regard to whether such property is treated as tangible or intangible property under other sections of the Internal Revenue Code. Thus, for example, section 263A applies to the costs of producing a motion picture or researching and writing a book even though these assets may be considered intangible for other purposes of the Internal Revenue Code. Tangible personal property includes, for example, the following:

(*1*) *Books.* The costs of producing and developing books (including teaching aids and other literary works) required to be capitalized under this section include costs incurred by an author in researching, preparing, and writing the book. (However, see section 263A(h), which provides an exemption from the capitalization requirements of section 263A in the case of certain free-lance authors.) In addition, the costs of producing and developing books include prepublication expenditures incurred by publishers, including payments made to authors (other than commissions for sales of books that have already taken place), as well as costs incurred by publishers in writing, editing, compiling, illustrating, designing, and developing the books. The costs of producing a book also include the costs of producing the underlying manuscript, copyright, or license. (These costs are distinguished from the separately capitalizable costs of printing and binding the tangible medium embodying the book (e.g., paper and ink).) See § 1.174–2(a)(1), which provides that the term research or experimental expenditures does not include expenditures incurred for research in connection with literary, historical, or similar projects.

(*2*) *Sound recordings.* A sound recording is a work that results from the fixation of a series of musical, spoken, or other sounds, regardless of the nature of the material objects, such as discs, tapes, or other phonorecordings, in which such sounds are embodied.

(B) *Intellectual or creative property that is not tangible personal property.* Items that are not considered tangible personal property within the meaning of section 263A(b) and paragraph (a)(2)(ii) of this section include:

(*1*) *Evidences of value.* Tangible personal property does not include property that is representative or evidence of value, such as stock, securities, debt instruments, mortgages, or loans.

(*2*) *Property provided incident to services.* Tangible personal property does not include de minimis property provided to a client or customer incident to the provision of services, such as wills prepared by attorneys, or blueprints prepared by architects. See § 1.263A–1(b)(11).

(3) *Costs required to be capitalized by producers*—(i) *In general.* Except as specifically provided in section 263A(f) with respect to interest costs, producers must capitalize direct and indirect costs

properly allocable to property produced under section 263A, without regard to whether those costs are incurred before, during, or after the production period (as defined in section 263A(f)(4)(B)).

(ii) *Pre-production costs.* If property is held for future production, taxpayers must capitalize direct and indirect costs allocable to such property (e.g., purchasing, storage, handling, and other costs), even though production has not begun. If property is not held for production, indirect costs incurred prior to the beginning of the production period must be allocated to the property and capitalized if, at the time the costs are incurred, it is reasonably likely that production will occur at some future date. Thus, for example, a manufacturer must capitalize the costs of storing and handling raw materials before the raw materials are committed to production. In addition, a real estate developer must capitalize property taxes incurred with respect to property if, at the time the taxes are incurred, it is reasonably likely that the property will be subsequently developed.

(iii) *Post-production costs.* Generally, producers must capitalize all indirect costs incurred subsequent to completion of production that are properly allocable to the property produced. Thus, for example, storage and handling costs incurred while holding the property produced for sale after production must be capitalized to the property to the extent properly allocable to the property. However, see § 1.263A–3(c) for exceptions.

(4) *Practical capacity concept.* Notwithstanding any provision to the contrary, the use, directly or indirectly, of the practical capacity concept is not permitted under section 263A. For purposes of section 263A, the term practical capacity concept means any concept, method, procedure, or formula (such as the practical capacity concept described in § 1.471–11(d)(4)) whereunder fixed costs are not capitalized because of the relationship between the actual production at the taxpayer's production facility and the practical capacity of the facility. For purposes of this section, the practical capacity of a facility includes either the practical capacity or theoretical capacity of the facility, as defined in § 1.471–11(d)(4), or any similar determination of productive or operating capacity. The practical capacity concept may not be used with respect to any activity to which section 263A applies (i.e., production or resale activities). A taxpayer shall not be considered to be using the practical capacity concept solely because the taxpayer properly does not capitalize costs described in § 1.263A–1(e)(3)(iii)(E), relating to certain costs attributable to temporarily idle equipment.

(5) *Taxpayers required to capitalize costs under this section.* This section generally applies to taxpayers that produce property. If a taxpayer is engaged in both production activities and resale activities, the taxpayer applies the principles of this section as if it read production or resale activities, and by applying appropriate principles from § 1.263A–3. If a taxpayer is engaged in both production and resale activities, the taxpayer may elect the simplified production method provided in this section, but generally may not elect the simplified resale method discussed in § 1.263A–3(d). If elected, the simplified production method must be applied to all eligible property produced and all eligible property acquired for resale by the taxpayer.

(b) *Simplified production method*—(1) *Introduction.* This paragraph (b) provides a simplified method for determining the additional section 263A costs properly allocable to ending inventories of property produced and other eligible property on hand at the end of the taxable year.

(2) *Eligible property*—(i) *In general.* Except as otherwise provided in paragraph (b)(2)(ii) of this section, the simplified production method, if elected for any trade or business of a producer, must be used for all production and resale activities associated with any of the following categories of property to which section 263A applies:

(A) *Inventory property.* Stock in trade or other property properly includible in the inventory of the taxpayer.

(B) *Non-inventory property held for sale.* Non-inventory property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(C) *Certain self-constructed assets.* Self-constructed assets substantially identical in nature to, and produced in the same manner as, inventory property produced by the taxpayer or other property produced by the taxpayer and held primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(D) *Self-constructed assets produced on a repetitive basis.* Self-constructed assets produced by the taxpayer on a routine and repetitive basis in the ordinary course of the taxpayer's trade or business.

(ii) *Election to exclude self-constructed assets.* At the taxpayer's election, the simplified production method may be applied within a trade or business to only the categories of inventory property and non-inventory property held for sale described in paragraphs (b)(2)(i) (A) and (B) of this section. Taxpayers electing to exclude the self- constructed assets, defined in paragraphs (b)(2)(i) (C) and (D) of this section, from application of the simplified production method must, however, allocate additional section 263A costs to such property in accordance with § 1.263A–1 (f).

(3) *Simplified production method without historic absorption ratio election*—(i) *General allocation formula*—(A) *In general.* Except as otherwise provided in paragraph (b)(3)(iv) of this section, the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year under the simplified production method are computed as follows:

$$\text{Absorption ratio} \times \text{section 471 costs remaining on hand at year end}$$

(B) *Effect of allocation.* The absorption ratio generally is multiplied by the section 471 costs remaining in ending inventory or otherwise on hand at the end of each taxable year in which the simplified production method is applied. The resulting product is the additional section 263A costs that are added to the taxpayer's ending section 471 costs to determine the section 263A costs that are capitalized. See, however, paragraph (b)(3)(iii) of this section for special rules applicable to LIFO taxpayers. Except as otherwise provided in this section or in § 1.263A–1 or 1.263A–3, additional section 263A costs that are allocated to inventories on hand at the close of the taxable year under the simplified production method of this paragraph (b) are treated as inventory costs for all purposes of the Internal Revenue Code.

(ii) *Definitions*—(A) *Absorption ratio.* Under the simplified production method, the absorption ratio is determined as follows:

Additional section 263A costs incurred during the taxable year

Section 471 costs incurred during the taxable year

(1) *Additional section 263A costs incurred during the taxable year.* Additional section 263A costs incurred during the taxable year are defined as the additional section 263A costs described in § 1.263A–1(d)(3) that a taxpayer incurs during its current taxable year.

(2) *Section 471 costs incurred during the taxable year.* Section 471 costs incurred during the taxable year are defined as the section 471 costs described in § 1.263A–1(d)(2) that a taxpayer incurs during its current taxable year.

(B) *Section 471 costs remaining on hand at year end.* Section 471 costs remaining on hand at year end are generally means the section 471 costs, as defined in § 1.263A–1(d)(2), that a taxpayer incurs during its current taxable year which remain in its ending inventory or are otherwise on hand at year end. For LIFO inventories of a taxpayer, the section 471 costs remaining on hand at year end means the increment, if any, for the current year stated in terms of section 471 costs. See paragraph (b)(3)(iii) of this section.

(iii) *LIFO taxpayers electing the simplified production method*—(A) *In general.* Under the simplified production method, a taxpayer using a LIFO method must calculate a particular year's index (e.g., under § 1.472–8(e)) without regard to its additional section 263A costs. Similarly, a taxpayer that adjusts current-year costs by applicable indexes to determine whether there has been an inventory increment or decrement in the current year for a particular LIFO pool must disregard the additional section 263A costs in making that determination.

(B) *LIFO increment.* If the taxpayer determines there has been an inventory increment, the taxpayer must state the amount of the increment in current-year dollars (stated in terms of section 471 costs). The taxpayer then multiplies this amount by the absorption ratio. The resulting product is the additional section 263A costs that must be added to the taxpayer's increment for the year stated in terms of section 471 costs.

(C) *LIFO decrement.* If the taxpayer determines there has been an inventory decrement, the taxpayer must state the amount of the decrement in dollars applicable to the particular year for which the LIFO layer has been invaded. The additional section 263A costs incurred in prior years that are applicable to the decrement are charged to cost of goods sold. The additional section 263A costs that are applicable to the decrement are determined by multiplying the additional section 263A costs allocated to the layer of the pool in which the decrement occurred by the ratio of the decrement (excluding additional section 263A costs) to the section 471 costs in the layer of that pool.

(iv) *De minimis rule for producers with total indirect costs of $200,000 or less*—(A) *In general.* If a producer using the simplified production method incurs $200,000 or less of total indirect costs in a taxable year, the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year are deemed to be zero. Solely for purposes of this paragraph (b)(3)(iv), taxpayers are permitted to exclude any category of indirect costs (listed in § 1.263A–1(e)(3)(iii)) that is not required to be capitalized (e.g., selling and distribution costs) in determining total indirect costs.

(B) *Related party and aggregation rules.* In determining whether the producer incurs $200,000 or less of total indirect costs in a taxable year, the related party and aggregation rules of § 1.263A–3(b)(3) are applied by substituting total indirect costs for gross receipts wherever gross receipts appears.

(v) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples.

*Example 1—FIFO inventory method* (i) Taxpayer J uses the FIFO method of accounting for inventories. J's beginning inventory for 1994 (all of which is sold during 1994) is $2,500,000 (consisting of $2,000,000 of section 471 costs and $500,000 of additional section 263A costs). During 1994, J incurs $10,000,000 of section 471 costs and $1,000,000 of additional section 263A costs. J's additional section 263A costs include capitalizable mixed service costs computed under the simplified service cost method as well as other allocable costs. J's section 471 costs remaining in ending inventory at the end of 1994 are $3,000,000. J computes its absorption ratio for 1994, as follows:

$$\frac{\text{Additional section 263A costs incurred during 1994}}{\text{Section 471 costs incurred during 1994}} = \frac{\$1,000,000}{\$10,000,000} = 10\%$$

(ii) Under the simplified production method, J determines the additional section 263A costs allocable to its ending inventory by multiplying the absorption ratio by the section 471 costs remaining in its ending inventory:

$$\text{Additional section 263A costs} = 10\% \times \$3,000,000 = \$300,000$$

(iii) J adds this $300,000 to the $3,000,000 of section 471 costs remaining in its ending inventory to calculate its total ending inventory of $3,300,000. The balance of J's additional section 263A costs incurred during 1994, $700,000, ($1,000,000 less $300,000) is taken into account in 1994 as part of J's cost of goods sold.

*Example 2—LIFO inventory method* (i) Taxpayer K uses a dollar-value LIFO inventory method. K's beginning inventory for 1994 is $2,500,000 (consisting of $2,000,000 of section 471 costs and $500,000 of additional section 263A costs). During 1994, K incurs $10,000,000 of section 471 costs and $1,000,000 of additional section 263A costs. K's 1994 LIFO increment is $1,000,000 ($3,000,000 of section 471 costs in ending inventory less $2,000,000 of section 471 costs in beginning inventory).

(ii) To determine the additional section 263A costs allocable to its ending inventory, K multiplies the 10% absorption ratio ($1,000,000 additional section 263A costs divided by $10,000,000 section 471 costs) by the $1,000,000 LIFO increment. Thus, K's additional section 263A costs allocable to its ending inventory are $100,000 ($1,000,000 multiplied by 10%). This $100,000 is added to the $1,000,000 to determine a total 1994

LIFO increment of $1,100,000. K's ending inventory is $3,600,000 (its beginning inventory of $2,500,000 plus the $1,100,000 increment). The balance of K's additional section 263A costs incurred during 1994, $900,000 ($1,000,000 less $100,000), is taken into account in 1994 as part of K's cost of goods sold.

(iii) In 1995, K sells one-half of the inventory in its 1994 LIFO increment. K must include in its cost of goods sold for 1995 the amount of additional section 263A costs relating to this inventory, $50,000 (one-half of the additional section 263A costs capitalized in 1994 ending inventory, or $100,000).

*Example 3—LIFO pools* (i) Taxpayer L begins its business in 1994 and adopts the LIFO inventory method. During 1994, L incurs $10,000 of section 471 costs and $1,000 of additional section 263A costs. At the end of 1994, L's ending inventory includes $3,000 of section 471 costs contained in three LIFO pools (X, Y, and Z) as shown below. Under the simplified production method, L computes its absorption ratio and inventory for 1994 as follows:

$$\frac{\text{Additional section 263A costs incurred during 1994}}{\text{Section 471 costs incurred during 1994}} = \frac{\$1,000}{\$10,000} = 10\%$$

| | Total | X | Y | Z |
|---|---|---|---|---|
| 1994: | | | | |
| Ending section 471 costs | $3,000 | $1,600 | $600 | $800 |
| Additional section 263A costs (10%) | 300 | 160 | 60 | 80 |
| 1994 Ending inventory | $3,300 | $1,760 | $660 | $880 |

(ii) During 1995, L incurs $2,000 of section 471 costs as shown below and $400 of additional section 263A costs. Moreover, L sells goods from pools X, Y, and Z having a total cost of $1,000. L computes its absorption ratio and inventory for 1995:

$$\frac{\text{Additional section 263A costs incurred during 1995}}{\text{Section 471 costs incurred during 1995}} = \frac{\$400}{\$2,000} = 20\%$$

| | Total | X | Y | Z |
|---|---|---|---|---|
| 1995: | | | | |
| Beginning section 471 costs | $3,000 | $1,600 | $600 | $800 |
| 1995 section 471 costs | 2,000 | 1,500 | 300 | 200 |
| Section 471 cost of goods sold | (1,000) | (300) | (300) | (400) |
| 1995 Ending Section 471 costs | $4,000 | $2,800 | $600 | $600 |
| Consisting of: | | | | |
| 1994 layer | $2,800 | $1,600 | $600 | $600 |
| 1995 layer | 1,200 | 1,200 | ..... | ..... |
| | $4,000 | $2,800 | $600 | $600 |
| Additional section 263A costs: | | | | |
| 1994 (10%) | $280 | $160 | $60 | $60 |
| 1995 (20%) | 240 | 240 | ..... | ..... |
| | $520 | $400 | $60 | $60 |
| 1995 ending inventory | $4,520 | $3,200 | $660 | $660 |

(iii) In 1995, L experiences a $200 decrement in pool Z. Thus, L must charge the additional section 263A costs incurred in prior years applicable to the decrement to 1995's cost of goods sold. To do so, L determines a ratio by dividing the decrement by the section 471 costs in the 1994 layer ($200 divided by $800, or 25%). L then multiplies this ratio (25%) by the additional section 263A costs in the 1994 layer ($80) to determine the additional section 263A costs applicable to the decrement ($20). Therefore, $20 is taken into account by L in 1995 as part of its cost of goods sold ($80 multiplied by 25%).

(4) *Simplified production method with historic absorption ratio election*—(i) *In general.* This paragraph (b)(4) generally permits producers using the simplified production method to elect a historic absorption ratio in determining additional section 263A costs allocable to eligible property remaining on hand at the close of their taxable years. Except as provided in paragraph (b)(4)(v) of this section, a taxpayer may only make a historic absorption ratio election if it has used the simplified production method for three or more consecutive taxable years immediately prior to the year of election and has capitalized additional section 263A costs using an actual absorption ratio (as defined under paragraph (b)(3)(ii) of this section) for its three most recent consecutive taxable years. This method is not available to a taxpayer that is deemed to have zero additional section 263A costs under paragraph (b)(3)(iv) of this section. The historic absorption ratio is used in lieu of an actual absorption ratio computed under paragraph (b)(3)(ii) of this section and is based on costs capitalized by a taxpayer during its test period. If elected, the historic absorption ratio must be used for each taxable year within the qualifying period described in paragraph (b)(4)(ii)(C) of this section.

(ii) *Operating rules and definitions*—(A) *Historic absorption ratio.* (*1*) The historic absorption ratio is equal to the following ratio:

$$\frac{\text{Additional section 263A costs incurred during the test period}}{\text{Section 471 costs incurred during the test period}}$$

(*2*) Additional section 263A costs incurred during the test period are defined as the additional section 263A costs described in § 1.263A–1(d)(3) that the taxpayer incurs during the test period described in paragraph (b)(4)(ii)(B) of this section.

(*3*) Section 471 costs incurred during the test period mean the section 471 costs described in § 1.263A–1(d)(2) that the taxpayer incurs during the test period described in paragraph (b)(4)(ii)(B) of this section.

(*B*) *Test period*—(1) *In general.* The test period is generally the three taxable-year period immediately prior to the taxable year that the historic absorption ratio is elected.

(*2*) *Updated test period.* The test period begins again with the beginning of the first taxable year after the close of a qualifying period. This new test period, the updated test period, is the three taxable-year period beginning with the first taxable year after the close of the qualifying period as defined in paragraph (b)(4)(ii)(C) of this section.

(C) *Qualifying period*—(*1*) *In general.* A qualifying period includes each of the first five taxable years beginning with the first taxable year after a test period (or an updated test period).

(*2*) *Extension of qualifying period.* In the first taxable year following the close of each qualifying period, (e.g., the sixth taxable year following the test period), the taxpayer must compute the actual absorption ratio under the simplified production method. If the actual absorption ratio computed for this taxable year (the recomputation year) is within one-half of one percentage point (plus or minus) of the historic absorption ratio used in determining capitalizable costs for the qualifying period (i.e., the previous five taxable years), the qualifying period is extended to include the recomputation year and the following five taxable years, and the taxpayer must continue to use the historic absorption ratio throughout the extended qualifying period. If, however, the actual absorption ratio computed for the recomputation year is not within one-half of one percentage point (plus or minus) of the historic absorption ratio, the taxpayer must use actual absorption ratios beginning with the recomputation year under the simplified production method and throughout the updated test period. The taxpayer must resume using the historic absorption ratio (determined with reference to the updated test period) in the third taxable year following the recomputation year.

(iii) *Method of accounting*—(A) *Adoption and use.* The election to use the historic absorption ratio is a method of accounting. A taxpayer using the simplified production method may elect the historic absorption ratio in any taxable year if permitted under this paragraph (b)(4), provided the taxpayer has not obtained the Commissioner's consent to revoke the historic absorption ratio election within its prior six taxable years. The election is to be effected on a cut-off basis, and thus, no adjustment under section 481(a) is required or permitted. The use of a historic absorption ratio has no effect on other methods of accounting adopted by the taxpayer and used in conjunction with the simplified production method in determining its section 263A costs. Accordingly, in computing its actual absorption ratios, the taxpayer must use the same methods of accounting used in computing its historic absorption ratio during its most recent test period unless the taxpayer obtains the consent of the Commissioner. Finally, for purposes of this paragraph (b)(4)(iii), the recomputation of the historic absorption ratio during an updated test period and the change from a historic absorption ratio to an actual absorption ratio by reason of the requirements of this paragraph (b)(4) are not considered changes in methods of accounting under section 446(e) and, thus, do not require the consent of the Commissioner or any adjustments under section 481(a).

(B) *Revocation of election.* A taxpayer may only revoke its election to use the historic absorption ratio with the consent of the Commissioner in a manner prescribed under section 446(e) and the regulations thereunder. Consent to the change for any taxable year that is included in the qualifying period (or an extended qualifying period) will be granted only upon a showing of unusual circumstances.

(iv) *Reporting and recordkeeping requirements*—(A) *Reporting.* A taxpayer making an election under this paragraph (b)(4) must attach a statement to its federal income tax return for the taxable year in which the election is made showing the actual absorption ratios determined under the simplified production method during its first test period. This statement must disclose the historic absorption ratio to be used by the taxpayer during its qualifying period. A similar statement must be attached to the federal income tax return for the first taxable year within any subsequent qualifying period (i.e., after an updated test period).

(B) *Recordkeeping.* A taxpayer must maintain all appropriate records and details supporting the historic absorption ratio until the expiration of the statute of limitations for the last year for which the taxpayer applied the particular historic absorption ratio in determining additional section 263A costs capitalized to eligible property.

(v) *Transition rules.* Taxpayers will be permitted to elect a historic absorption ratio in their first, second, or third taxable year beginning after December 31, 1993, under such terms and conditions as may be prescribed by the Commissioner. Taxpayers are eligible to make an election under these transition rules whether or not they previously used the simplified production method. A taxpayer making such an election must recompute (or compute) its additional section 263A costs, and thus, its historic absorption ratio for its first test period as if the rules prescribed in this section and §§ 1.263A–1 and 1.263A–3 had applied throughout the test period.

(vi) *Example.* The provisions of this paragraph (b)(4) are illustrated by the following example:

*Example.* (i) Taxpayer M uses the FIFO method of accounting for inventories and for 1994 elects to use the historic absorption ratio with the simplified production method. After recomputing its additional section 263A costs in accordance with the transition rules of paragraph (b)(4)(v) of this section, M identifies the following costs incurred during the test period:

1991:

Add'l section 263A costs—$100 Section 471 costs—$3,000

1992:

Add'l section 263A costs—200 Section 471 costs—$4,000
1993:

Add'l section 263A costs—300 Section 471 costs—$5,000

(ii) Therefore, M computes a 5% historic absorption ratio determined as follows:

$$\text{Historic absorption ratio} = \frac{\$100+200+300}{\$3,000+4,000+5,000} = \frac{\$600}{\$12,000} = 5\%$$

(iii) In 1994, M incurs $10,000 of section 471 costs of which $3,000 remain in inventory at the end of the year. Under the simplified production method using a historic absorption ratio, M determines the additional section 263A costs allocable to its ending inventory by multiplying its historic absorption ratio (5%) by the section 471 costs remaining in its ending inventory as follows:

$$\text{Additional section 263A costs} = 5\% \times \$3,000 = \$150$$

(iv) To determine its ending inventory under section 263A, M adds the additional section 263A costs allocable to ending inventory to its section 471 costs remaining in ending inventory ($3,150=$150+$3,000). The balance of M's additional section 263A costs incurred during 1994 is taken into account in 1994 as part of M's cost of goods sold.

(v) M's qualifying period ends with the close of its 1998 taxable year. Therefore, 1999 is a recomputation year in which M must compute its actual absorption ratio. M determines its actual absorption ratio for 1999 to be 5.25% and compares that ratio to its historic absorption ratio (5.0%). Therefore, M must continue to use its historic absorption ratio of 5.0% throughout an extended qualifying period, 1999 through 2004 (the recomputation year and the following five taxable years).

(vi) If, instead, M's actual absorption ratio for 1999 were not between 4.5% and 5.5%, M's qualifying period would end and M would be required to compute a new historic absorption ratio with reference to an updated test period of 1999, 2000, and 2001. Once M's historic absorption ratio is determined for the updated test period, it would be used for a new qualifying period beginning in 2002.

(c) *Additional simplified methods for producers.* The Commissioner may prescribe additional elective simplified methods by revenue ruling or revenue procedure.

(d) *Cross reference.* See § 1.6001–1(a) regarding the duty of taxpayers to keep such records as are sufficient to establish the amount of gross income, deductions, etc.

**§ 1.263A–3 Rules relating to property acquired for resale.**

(a) *Capitalization rules for property acquired for resale*—(1) *In general.* Section 263A applies to real property and personal property described in section 1221(1) acquired for resale by a retailer, wholesaler, or other taxpayer (reseller). However, section 263A does not apply to personal property described in section 1221(1) acquired for resale by a reseller whose average annual gross receipts for the three previous taxable years do not exceed § 10,000,000 (small reseller). For this purpose, personal property includes both tangible and intangible property. Property acquired for resale includes stock in trade of the taxpayer or other property which is includible in the taxpayer's inventory if on hand at the close of the taxable year, and property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. See, however, § 1.263A–1(b)(11) for an exception for certain de minimis property provided to customers incident to the provision of services.

(2) *Resellers with production activities*—(i) *In general.* Generally, a taxpayer must capitalize all direct costs and certain indirect costs associated with real property and tangible personal property it produces. See § 1.263A–2(a). Thus, except as provided in paragraphs (a)(2)(ii) and (3) of this section, a reseller, including a small reseller, that also produces property must capitalize the additional section 263A costs associated with any property it produces.

(ii) *Exception for small resellers.* Under this paragraph (a)(2)(ii), a small reseller is not required to capitalize additional section 263A costs associated with any personal property that is produced incident to its resale activities, provided the production activities are de minimis (within the meaning of paragraph (a)(2)(iii) of this section).

(iii) *De minimis production activities*—(A) *In general.* (*1*) In determining whether a taxpayer's production activities are de minimis, all facts and circumstances must be considered. For example, the taxpayer must consider the volume of the production activities in its trade or business. Production activities are presumed de minimis if—

(*i*) The gross receipts from the sale of the property produced by the reseller are less than 10 percent of the total gross receipts of the trade or business; and

(*ii*) The labor costs allocable to the trade or business' production activities are less than 10 percent of the reseller's total labor costs allocable to its trade or business.

(*2*) For purposes of this de minimis presumption, gross receipts has the same definition as provided in paragraph (b) of this section except that gross receipts are measured at the trade-or-business level rather than at the single-employer level.

(B) *Example.* The application of this paragraph (a)(2) may be illustrated by the following example:

*Example—Small reseller with de minimis production activities.* Taxpayer N is a small reseller in the retail grocery business whose average annual gross receipts for the three previous taxable years are less than $ 10,000,000. N's grocery stores typically contain bakeries where customers may purchase baked goods produced by N. N's gross receipts from its bakeries are 5% of the entire grocery business. N's labor costs from its bakeries are 3% of its total labor costs allocable to the entire grocery business. Because both ratios are less than 10%, N's production activities are de minimis. Further, because N's production activities are incident to its resale activities, N is not required to capitalize any additional section 263A costs associated with its produced property.

(3) *Resellers with property produced under contract.* Generally, property produced for a taxpayer under a contract (within the meaning of § 1.263A–2(a)(1)(ii)(B)(*2*)) is treated as property produced by the taxpayer. See § 1.263A–2(a)(1)(ii)(B). However, a small reseller is not required to capitalize additional section 263A costs to personal property produced for it under contract with an unrelated person if the contract is entered into incident to the resale activities of the small reseller and the property is sold to its customers. For purposes of this paragraph, persons are related if they are described in section 267(b) or 707(b).

(4) *Use of the simplified resale method*—(i) *In general.* Except as provided in paragraphs (a)(4)(ii) and (iii) of this section, a taxpayer may elect the simplified production method (as described in § 1.263A–2(b)) but may not elect the simplified resale method (as described in paragraph (d) of this section) if the taxpayer is engaged in both production and resale activities with respect to the items of eligible property listed in § 1.263A–2(b)(2).

(ii) *Resellers with de minimis production activities.* A reseller otherwise permitted to use the simplified resale method in paragraph (d) of this section may use the simplified resale method if its production activities with respect to the items of eligible property listed in § 1.263A–2(b)(2) are de minimis (within the meaning of paragraph (a)(2)(iii) of this section) and incident to its resale of personal property described in section 1221(1).

(iii) *Resellers with property produced under a contract.* A reseller otherwise permitted to use the simplified resale method in paragraph (d) of this section may use the simplified resale method even though it has personal property produced for it (e.g., private label goods) under a contract with an unrelated person if the contract is entered into incident to its resale activities and the property is sold to its customers. For purposes of this paragraph (a)(4)(iii), persons are related if they are described in section 267(b) or 707(b).

(iv) *Application of simplified resale method.* A taxpayer that uses the simplified resale method and has de minimis production activities incident to its resale activities or property produced under contract must capitalize all costs allocable to eligible property produced using the simplified resale method.

(b) *Gross receipts exception for small resellers*—(1) *In general.* Section 263A does not apply to any personal property acquired for resale during any taxable year if the taxpayer's (or its predecessors') average annual gross receipts for the three previous taxable years (test period) do not exceed $10,000,000. However, taxpayers that acquire real property for resale are subject to section 263A with respect to real property regardless of their gross receipts. See section 263A(b)(2)(B).

(i) *Test period for new taxpayers.* For purposes of applying this exception, if a taxpayer has been in existence for less than three taxable years, the taxpayer determines its average annual gross receipts for the number of taxable years (including short taxable years) that the taxpayer (or its predecessor) has been in existence.

(ii) *Treatment of short taxable year.* In the case of a short taxable year, the taxpayer's gross receipts are annualized by—

(A) Multiplying the gross receipts of the short taxable year by 12; and

(B) Dividing the product determined in paragraph (b)(1)(ii)(A) of this section by the number of months in the short taxable year.

(2) *Definition of gross receipts—(i) In general.* Gross receipts are the total amount, as determined under the taxpayer's method of accounting, derived from all of the taxpayer's trades or businesses (e.g., revenues derived from the sale of inventory before reduction for cost of goods sold).

(ii) *Amounts excluded.* For purposes of this paragraph (b), gross receipts do not include amounts representing—

(A) Returns or allowances;

(B) Interest, dividends, rents, royalties, or annuities, not derived in the ordinary course of a trade or business;

(C) Receipts from the sale or exchange of capital assets, as defined in section 1221;

(D) Repayments of loans or similar instruments (e.g., a repayment of the principal amount of a loan held by a commercial lender);

(E) Receipts from a sale or exchange not in the ordinary course of business, such as the sale of an entire trade or business or the sale of property used in a trade or business as defined under section 1221(2); and

(F) Receipts from any activity other than a trade or business or an activity engaged in for profit.

(3) *Aggregation of gross receipts*—(i) *In general.* In determining gross receipts, all persons treated as a single employer under section 52(a) or (b), section 414(m), or any regulation prescribed under section 414 (or persons that would be treated as a single employer under any of these provisions if they had employees) shall be treated as one taxpayer. The gross receipts of a single employer (or the group) are determined by aggregating the gross receipts of all persons (or the members) of the group, excluding any gross receipts attributable to transactions occurring between group members.

(ii) *Single employer defined.* A controlled group, which is treated as a single employer under section 52(a), includes members of a controlled group within the meaning of section 1563(a), regardless of whether such members would be treated as component members of such group under section 1563(b). (See § 1.52–1(c).) Thus, for example, the gross receipts of a franchised corporation that is treated as an excluded member for purposes of section 1563(b) are included in the single employer's gross receipts under this aggregation rule, if such corporation and the taxpayer were members of the same controlled group under section 1563(a).

(iii) *Gross receipts of a single employer.* The gross receipts of a single employer for the test period include the gross receipts of all group members (or their predecessors) that are members of the group as of the first day of the taxable year in issue, regardless of whether such persons were members of the group for any of the three preceding taxable years. The gross receipts of the single employer for the test period do not, however, include the gross receipts of any member that was a group member (including any predecessor) for any or all of the three preceding taxable years, and is no longer a group member as of the first day of the taxable year in issue. Any group member that has a taxable year of less than 12 months must annualize its gross receipts in accordance with paragraph (b)(1)(ii) of this section.

(iv) *Examples.* The provisions of this paragraph (b)(3) are illustrated by the following examples:

*Example 1. Subsidiary acquired during the taxable year.* A parent corporation, (P), has owned 100% of the stock of another corporation, (S1), continually since 1989. P and S1 are calendar year taxpayers. S1 acquires property for resale. On January 1, 1994, P acquires 100% of the stock of another calendar year corporation (S2). In determining whether S1's resale activities are subject to the provisions of section 263A for 1994, the gross receipts of P, S1, and S2 for 1991, 1992, and 1993 are aggregated, excluding the gross receipts, if any, attributable to transactions occurring between the three corporations.

*Example 2. Subsidiary sold during the taxable year.* Since 1989, a parent corporation, (P), has continually owned 100% of the stock of two other corporations, (S1) and (S2). The three corporations are calendar year taxpayers. S1 acquires property for resale. On December 31, 1993, P sells all of its stock in S2. In determining whether S1's resale activities are subject to the provisions of section 263A for 1994, only the gross receipts of P and S1 for 1991, 1992, and 1993 must be aggregated, excluding the gross receipts, if any, attributable to transactions occurring between the two corporations.

(c) *Purchasing, handling, and storage costs*—(1) *In general.* Generally, § 1.263A–1(e) describes the types of costs that must be capitalized by taxpayers. Resellers must capitalize the acquisition cost of property acquired for resale, as well as indirect costs described in § 1.263A–1(e)(3), which are

properly allocable to property acquired for resale. The indirect costs most often incurred by resellers are purchasing, handling, and storage costs. This paragraph (c) provides additional guidance regarding each of these categories of costs. As provided in § 1.263A–1(e), this paragraph (c) also applies to producers incurring purchasing, handling, and storage costs.

(2) *Costs attributable to purchasing, handling, and storage.* The costs attributable to purchasing, handling, and storage activities generally consist of direct and indirect labor costs (including the costs of pension plans and other fringe benefits); occupancy expenses including rent, depreciation, insurance, security, taxes, utilities and maintenance; materials and supplies; rent, maintenance, depreciation, and insurance of vehicles and equipment; tools; telephone; travel; and the general and administrative costs that directly benefit or are incurred by reason of the taxpayer's activities.

(3) *Purchasing costs*—(i) *In general.* Purchasing costs are costs associated with operating a purchasing department or office within a trade or business, including personnel costs (e.g., of buyers, assistant buyers, and clerical workers), relating to—

(A) The selection of merchandise;

(B) The maintenance of stock assortment and volume;

(C) The placement of purchase orders;

(D) The establishment and maintenance of vendor contacts; and

(E) The comparison and testing of merchandise.

(ii) *Determination of whether personnel are engaged in purchasing activities.* The determination of whether a person is engaged in purchasing activities is based upon the activities performed by that person and not upon the person's title or job classification. Thus, for example, although an employee's job function may be described in such a way as to indicate activities outside the area of purchasing (e.g., a marketing representative), such activities must be analyzed on the basis of the activities performed by that employee. If a person performs both purchasing and non-purchasing activities, the taxpayer must reasonably allocate the person's labor costs between these activities. For example, a reasonable allocation is one based on the amount of time the person spends on each activity.

(A) *⅓–⅔ rule for allocating labor costs.* A taxpayer may elect the ⅓–⅔ rule for allocating labor costs of persons performing both purchasing and non-purchasing activities. If elected, the taxpayer must allocate the labor costs of all such persons using the ⅓–⅔ rule. Under this rule—

(*1*) If less than one-third of a person's activities are related to purchasing, none of that person's labor costs are allocated to purchasing;

(*2*) If more than two-thirds of a person's activities are related to purchasing, all of that person's labor costs are allocated to purchasing; and

(*3*) In all other cases, the taxpayer must reasonably allocate labor costs between purchasing and non-purchasing activities.

(B) *Example.* The application of paragraph (c)(3)(ii)(A) of this section may be illustrated by the following example:

*Example.* Taxpayer O is a reseller that employs three persons, A, B, and C, who perform both purchasing and non-purchasing activities. These persons spend the following time performing purchasing activities: A–25 %; B–70 %; and C–50 %. Under the ⅓–⅔ rule, Taxpayer O treats none of A's labor costs as purchasing costs, all of B's labor costs as purchasing costs, and Taxpayer O allocates 50 % of C's labor costs as purchasing costs.

(4) *Handling costs*—(i) *In general.* Handling costs include costs attributable to processing, assembling, repackaging, transporting, and other similar activities with respect to property acquired for resale, provided the activities do not come within the meaning of the term produce as defined in § 1.263A–2(a)(1). Handling costs are generally required to be capitalized under section 263A. Under this paragraph (c)(4)(i), however, handling costs incurred at a retail sales facility (as defined in paragraph (c)(5)(ii)(B) of this section) with respect to property sold to retail customers at the facility are not required to be capitalized. Thus, for example, handling costs incurred at a retail sales facility to unload, unpack, mark, and tag goods sold to retail customers at the facility are not required to be capitalized. In addition, handling costs incurred at a dual-function storage facility (as defined in paragraph (c)(5)(ii)(G) of this section) with respect to property sold to customers from the facility are not required to be capitalized to the extent that the costs are incurred with respect to property sold in on-site sales. Handling costs attributable to property sold to customers from a dual-function storage facility in on-site sales are determined by applying the ratio in paragraph (c)(5)(iii)(B) of this section.

(ii) *Processing costs.* Processing costs are the costs a reseller incurs in making minor changes or alterations to the nature or form of a product acquired for resale. Minor changes to a product include, for example, monogramming a sweater, altering a pair of pants, and other similar activities.

(iii) *Assembling costs.* Generally, assembling costs are costs associated with incidental activities that are necessary in readying property for resale (e.g., attaching wheels and handlebars to a bicycle acquired for resale).

(iv) *Repackaging costs.* Repackaging costs are the costs a taxpayer incurs to package property for sale to its customers.

(v) *Transportation costs.* Generally, transportation costs are the costs a taxpayer incurs moving or shipping property acquired for resale. These costs include the cost of dispatching trucks; loading and unloading shipments; and sorting, tagging, and marking property. Transportation costs may consist of depreciation on trucks and equipment and the costs of fuel, insurance, labor, and similar costs. Generally, transportation costs required to be capitalized include costs incurred in transporting property—

(A) From the vendor to the taxpayer;

(B) From one of the taxpayer's storage facilities to another of its storage facilities;

(C) From the taxpayer's storage facility to its retail sales facility;

(D) From the taxpayer's retail sales facility to its storage facility; and

(E) From one of the taxpayer's retail sales facilities to another of its retail sales facilities.

(vi) *Costs not considered handling costs*—(A) *Distribution costs.* [Reserved]

(B) *Delivery of custom-ordered items.* [Reserved]

(C) *Repackaging after sale occurs.* [Reserved]

(5) *Storage costs*—(i) *In general.* Generally, storage costs are capitalized under section 263A to the extent they are attributable to the operation of an off-site storage or warehousing facility (an off-site storage facility). However, storage costs attributable to the operation of an on-site storage facility (as defined in paragraph (c)(5)(ii)(A) of this section) are not required to be capitalized under section 263A. Storage costs attributable to a dual-function storage facility (as defined in paragraph (c)(5)(ii)(G) of this section) must be capitalized to the extent that the facility's costs are allocable to off-site storage.

(ii) *Definitions*—(A) *On-site storage facility.* An on-site storage facility is defined as a storage or warehousing facility that is physically attached to, and an integral part of, a retail sales facility.

(B) *Retail sales facility.* (1) A retail sales facility is defined as a facility where a taxpayer sells merchandise

exclusively to retail customers in on-site sales. For this purpose, a retail sales facility includes those portions of any specific retail site—

(*i*) Which are customarily associated with and are an integral part of the operations of that retail site;

(*ii*) Which are generally open each business day exclusively to retail customers;

(*iii*) On or in which retail customers normally and routinely shop to select specific items of merchandise; and

(*iv*) Which are adjacent to or in immediate proximity to other portions of the specific retail site.

(*2*) Thus, for example, two lots of an automobile dealership physically separated by an alley or an access road would generally be considered one retail sales facility, provided customers routinely shop on both of the lots to select the specific automobiles that they wish to acquire.

(C) *An integral part of a retail sales facility.* A storage facility is considered an integral part of a retail sales facility when the storage facility is an essential and indispensable part of the retail sales facility. For example, if the storage facility is used exclusively for filling orders or completing sales at the retail sales facility, the storage facility is an integral part of the retail sales facility.

(D) *On-site sales.* On-site sales are defined as sales made to retail customers physically present at a facility. For example, mail order and catalog sales are made to customers not physically present at the facility, and thus, are not on-site sales.

(E) *Retail customer—(1) In general.* A retail customer is defined as the final purchaser of the merchandise. A retail customer does not include a person who resells the merchandise to others, such as a contractor or manufacturer that incorporates the merchandise into another product for sale to customers.

(*2*) *Certain non-retail customers treated as retail customers.* For purposes of this section, a non-retail customer is treated as a retail customer with respect to a particular facility if the following requirements are satisfied—

(*i*) The non-retail customer purchases goods under the same terms and conditions as are available to retail customers (e.g., no special discounts);

(*ii*) The non-retail customer purchases goods in the same manner as a retail customer (e.g., the non-retail customer may not place orders in advance and must come to the facility to examine and select goods);

(*iii*) Retail customers shop at the facility on a routine basis (i.e., on most business days), and no special days or hours are reserved for non-retail customers; and

(*iv*) More than 50 percent of the gross sales of the facility are made to retail customers.

(F) *Off-site storage facility.* An off-site storage facility is defined as a storage facility that is not an on-site storage facility.

(G) *Dual-function storage facility.* A dual-function storage facility is defined as a storage facility that serves as both an off-site storage facility and an on-site storage facility. For example, a dual-function storage facility would include a regional warehouse that serves the taxpayer's separate retail sales outlets and also contains a sales outlet therein. A dual-function storage facility also includes any facility where sales are made to retail customers in on-site sales and to—

(*1*) Retail customers in sales that are not on-site sales; or

(*2*) Other customers.

(iii) *Treatment of storage costs incurred at a dual-function storage facility—*(A) *In general.* Storage costs associated with a dual-function storage facility must be allocated between the off-site storage function and the on-site storage function. To the extent that the dual-function storage facility's storage costs are allocable to the off-site storage function, they must be capitalized. To the extent that the dual-function storage facility's storage costs are allocable to the on-site storage function, they are not required to be capitalized.

(B) *Dual-function storage facility allocation ratio—(1) In general.* Storage costs associated with a dual-function storage facility must be allocated between the off-site storage function and the on-site storage function using the ratio of—

(*i*) Gross on-site sales of the facility (i.e., gross sales of the facility made to retail customers visiting the premises in person and purchasing merchandise stored therein); to

(*ii*) Total gross sales of the facility. For this purpose, the total gross sales of the facility include the value of items shipped to other facilities of the taxpayer.

(*2*) *Illustration of ratio allocation.* For example, if a dual-function storage facility's on-site sales are 40 percent of the total gross sales of the facility, then 40 percent of the facility's storage costs are allocable to the on-site storage function and are not required to be capitalized under section 263A.

(*3*) *Appropriate adjustments for other uses of a dual-function storage facility.* Prior to computing the allocation ratio in paragraph (c)(5)(iii)(B) of this section, a taxpayer must apply the principles of paragraph (c)(5)(iv) of this section in determining the portion of the facility that is a dual-function storage facility (and the costs attributable to such portion).

(C) *De minimis 90–10 rule for dual-function storage facilities.* If 90 percent or more of the costs of a facility are attributable to the on-site storage function, the entire storage facility is deemed to be an on-site storage facility. In contrast, if 10 percent or less of the costs of a storage facility are attributable to the on-site storage function, the entire storage facility is deemed to be an off-site storage facility.

(iv) *Costs not attributable to an off-site storage facility.* To the extent that costs incurred at an off-site storage facility are not properly allocable to the taxpayer's storage function, the costs are not accounted for as off-site storage costs. For example, if a taxpayer has an office attached to its off-site storage facility where work unrelated to the storage function is performed, such as a sales office, costs associated with this office are not off-site storage costs. However, if a taxpayer uses a portion of an off-site storage facility in a manner related to the storage function, for example, to store equipment or supplies that are not offered for sale to customers, costs associated with this portion of the facility are off-site storage costs.

(v) *Examples.* The provisions of this paragraph (c)(5) are illustrated by the following examples:

*Example 1. Catalog or mail order center.* Taxpayer P operates a mail order catalog business. As part of its business, P stores merchandise for shipment to customers who purchase the merchandise through orders placed by telephone or mail. P's storage facility is not an on-site storage facility because no on-site sales are made at the facility.

*Example 2. Pooled-stock facility.* Taxpayer Q maintains a pooled-stock facility, which functions as a back-up regional storage facility for Q's retail sales outlets in the nearby area. Q's pooled stock facility is an off-site storage facility because it is neither physically attached to nor an integral part of a retail sales facility.

*Example 3. Wholesale warehouse.* Taxpayer R operates a wholesale warehouse where wholesale sales are made to customers physically present at the facility. R's customers resell the goods they purchase from R to final retail customers. Because no retail sales are conducted at the facility, all storage costs attributable to R's wholesale warehouse must be capitalized.

(d) *Simplified resale method—(1) Introduction.* This paragraph (d) provides a simplified method for determining the additional section 263A costs properly allocable to property

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acquired for resale and other eligible property on hand at the end of the taxable year.

(2) *Eligible property.* Generally, the simplified resale method is only available to a trade or business exclusively engaged in resale activities. However, certain resellers with property produced as a result of de minimis production activities or property produced under contract may elect the simplified resale method, as described in paragraph (a)(4) of this section. Eligible property for purposes of the simplified resale method, therefore, includes any real or personal property described in section 1221(1) that is acquired for resale and any eligible property (within the meaning of § 1.263A–2(b)(2)) that is described in paragraph (a)(4) of this section.

(3) *Simplified resale method without historic absorption ratio election*—(i) *General allocation formula*—(A) *In general.* Under the simplified resale method, the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year are computed as follows:

$$\text{Combined absorption ratio} \times \text{section 471 costs remaining on hand at year end}$$

(B) *Effect of allocation.* The resulting product under the general allocation formula is the additional section 263A costs that are added to the taxpayer's ending section 471 costs to determine the section 263A costs that are capitalized.

(C) *Definitions*—(1) *Combined absorption ratio.* The combined absorption ratio is defined as the sum of the storage and handling costs absorption ratio as defined in paragraph (d)(3)(i)(D) of this section and the purchasing costs absorption ratio as defined in paragraph (d)(3)(i)(E) of this section.

(2) *Section 471 costs remaining on hand at year end.* Section 471 costs remaining on hand at year end are generally mean the section 471 costs, as defined in § 1.263A–1(d)(2), that the taxpayer incurs during its current taxable year, which remain in its ending inventory or are otherwise on hand at year end. For LIFO inventories of a taxpayer, the section 471 costs remaining on hand at year end means the increment, if any, for the current year stated in terms of section 471 costs. See paragraph (d)(3)(ii) of this section for special rules applicable to LIFO taxpayers. Except as otherwise provided in this section or in § 1.263A–1 or 1.263A–2, additional section 263A costs that are allocated to inventories on hand at the close of the taxable year under the simplified resale method of this paragraph (d) are treated as inventory costs for all purposes of the Internal Revenue Code.

(D) *Storage and handling costs absorption ratio.*

(1) Under the simplified resale method, the storage and handling costs absorption ratio is determined as follows:

$$\frac{\text{Current year's storage and handling costs}}{\text{Beginning inventory plus current year's purchases}}$$

(2) Current year's storage and handling costs are defined as the total storage costs plus the total handling costs incurred during the taxable year that relate to the taxpayer's property acquired for resale and other eligible property. See paragraph (c) of this section, which discusses storage and handling costs. Storage and handling costs must include the amount of allocable mixed service costs as described in paragraph (d)(3)(i)(F) of this section. Beginning inventory in the denominator of the storage and handling costs absorption ratio refers to the section 471 costs of any property acquired for resale or other eligible property held by the taxpayer as of the beginning of the taxable year. Current year's purchases generally mean the taxpayer's section 471 costs incurred with respect to purchases of property acquired for resale during the current taxable year. In computing the denominator of the storage and handling costs absorption ratio, a taxpayer using a dollar-value LIFO method of accounting, must state beginning inventory amounts using the LIFO carrying value of the inventory and not current-year dollars.

(E) *Purchasing costs absorption ratio.* (1) Under the simplified resale method, the purchasing costs absorption ratio is determined as follows:

$$\frac{\text{Current year's purchasing costs}}{\text{Current year's purchases}}$$

(2) Current year's purchasing costs are defined as the total purchasing costs incurred during the taxable year that relate to the taxpayer's property acquired for resale and eligible property. See paragraph (c)(3) of this section, which discusses purchasing costs. Purchasing costs must include the amount of allocable mixed service costs determined in paragraph (d)(3)(i)(F) of this section. Current year's purchases generally mean the taxpayer's section 471 costs incurred with respect to purchases of property acquired for resale during the current taxable year.

(F) *Allocable mixed service costs.* (1) If a taxpayer allocates its mixed service costs to purchasing costs, storage costs, and handling costs using a method described in § 1.263A–1(g)(4), the taxpayer is not required to determine its allocable mixed service costs under this paragraph (d)(3)(i)(F). However, if the taxpayer uses the simplified service cost method, the amount of mixed service costs allocated to and included in purchasing costs, storage costs, and handling costs in the absorption ratios in paragraphs (d)(3)(i) (D) and (E) of this section is determined as follows:

$$\frac{\text{Labor costs allocable to activity}}{\text{Total labor costs}} \times \text{Total mixed service costs}$$

(2) Labor costs allocable to activity are defined as the total labor costs allocable to each particular activity (i.e., purchasing, handling, and storage), excluding labor costs included in mixed service costs. Total labor costs are defined as the total labor costs (excluding labor costs included in mixed service costs) that are incurred in the taxpayer's trade or business during the taxable year. See § 1.263A–1(h)(6) for the definition of total mixed service costs.

(ii) *LIFO taxpayers electing simplified resale method*—(A) *In general.* Under the simplified resale method, a taxpayer using a LIFO method must calculate a particular year's index (e.g., under § 1.472–8(e)) without regard its additional section 263A costs. Similarly, a taxpayer that adjusts current-year costs by applicable indexes to determine whether there has been an inventory increment or decrement in the current year for a particular LIFO pool must disregard the additional section 263A costs in making that determination.

(B) *LIFO increment.* If the taxpayer determines there has been an inventory increment, the taxpayer must state the amount of the increment in current-year dollars (stated in terms of section 471 costs). The taxpayer then multiplies this amount by the combined absorption ratio. The resulting product is the additional section 263A costs that must be added to the taxpayer's increment for the year stated in terms of section 471 costs.

(C) *LIFO decrement.* If the taxpayer determines there has been an inventory decrement, the taxpayer must state the amount of the decrement in dollars applicable to the particular year for which the LIFO layer has been invaded. The additional section 263A costs incurred in prior years that are applicable to the decrement are charged to cost of goods sold. The additional section 263A costs that are applicable to the decrement are determined by multiplying the additional section 263A costs allocated to the layer of the pool in which the decrement occurred by the ratio of the decrement (excluding additional section 263A costs) to the section 471 costs in the layer of that pool.

(iii) *Permissible variations of the simplified resale method.* The following variations of the simplified resale method are permitted:

(A) The exclusion of beginning inventories from the denominator in the storage and handling costs absorption ratio formula in paragraph (d)(3)(i)(D) of this section; or

(B) Multiplication of the storage and handling costs absorption ratio in paragraph (d)(3)(i)(D) of this section by the total of section 471 costs included in a LIFO taxpayer's ending inventory (rather than just the increment, if any, experienced by the LIFO taxpayer during the taxable year) for purposes of determining capitalizable storage and handling costs.

(iv) *Examples.* The provisions of this paragraph (d)(3) are illustrated by the following examples:

*Example 1. FIFO inventory method.* (i) Taxpayer S uses the FIFO method of accounting for inventories. S's beginning inventory for 1994 (all of which was sold during 1994) was $2,100,000 (consisting of $2,000,000 of section 471 costs and $100,000 of additional section 263A costs). During 1994, S makes purchases of $10,000,000. In addition, S incurs purchasing costs of $460,000, storage costs of $110,000, and handling costs of $90,000. S's purchases (section 471 costs) remaining in ending inventory at the end of 1994 are $3,000,000.

(ii) In 1994, S incurs $400,000 of total mixed service costs and $1,000,000 of total labor costs (excluding labor costs included in mixed service costs). In addition, S incurs the following labor costs (excluding labor costs included in mixed service costs): purchasing—$100,000, storage—$200,000, and handling—$200,000. Accordingly, the following mixed service costs must be included in purchasing costs, storage costs, and handling costs as capitalizable mixed service costs: purchasing— $40,000 ([$100,000 divided by $1,000,000] multiplied by $400,000); storage—$80,000 ([$200,000 divided by $1,000,000] multiplied by $400,000); and handling— $80,000 ([$200,000 divided by $1,000,000] multiplied by $400,000).

(iii) S computes its purchasing costs absorption ratio for 1994 as follows:

$$\frac{\text{1994 purchasing costs}}{\text{1994 purchases}} = \frac{\$460{,}000 + \$40{,}000}{\$10{,}000{,}000}$$

$$= \frac{\$500{,}000}{\$10{,}000{,}000}$$

$$= 5.0\%$$

(iv) S computes its storage and handling costs absorption ratio for 1994 as follows:

$$\frac{\text{Storage and handling costs}}{\text{Beginning inventory plus 1994 purchases}} = \frac{(\$110,000 + \$80,000) + (\$90,000 + \$80,000)}{\$2,000,000 + \$10,000,000}$$

$$= \frac{\$190,000 + \$170,000}{\$12,000,000}$$

$$= \frac{\$360,000}{\$12,000,000}$$

$$= 3.0\%$$

(v) S's combined absorption ratio is 8.0 %, or the sum of the purchasing costs absorption ratio (5.0 %) and the storage and handling costs absorption ratio (3.0 %). Under the simplified resale method, S determines the additional section 263A costs allocable to its ending inventory by multiplying the combined absorption ratio by its section 471 costs with respect to current year's purchases remaining in ending inventory:

$$\text{Additional section 263A costs} = 8.0\% \times \$3,000,000 = \$240,000$$

(vi) S adds this $240,000 to the $3,000,000 of purchases remaining in its ending inventory to determine its total ending FIFO inventory of $3,240,000.

*Example 2. LIFO inventory method.* (i) Taxpayer T uses a dollar-value LIFO inventory method. T's beginning inventory for 1994 is $2,100,000 (consisting of $2,000,000 of section 471 costs and $100,000 of additional section 263A costs). During 1994, T makes purchases of $10,000,000. In addition, T incurs purchasing costs of $460,000, storage costs of $110,000, and handling costs of $90,000. T's 1994 LIFO increment is $1,000,000 ($3,000,000 of section 471 costs in ending inventory less $2,000,000 of section 471 costs in beginning inventory).

(ii) In 1994, T incurs $400,000 of total mixed service costs and $1,000,000 of total labor costs (excluding labor costs included in mixed service costs). In addition, T incurs the following labor costs (excluding labor costs included in mixed service costs): purchasing—$100,000, storage—$200,000, and handling—$200,000. Accordingly, the following mixed service costs must be included in purchasing costs, storage costs, and handling costs as capitalizable mixed service costs: purchasing—$40,000 ([$100,000 divided by $1,000,000] multiplied by $400,000); storage— $80,000 ([ $200,000 divided by $1,000,000] multiplied by $400,000); and handling— $80,000 ([ $200,000 divided by $1,000,000] multiplied by $400,000).

(iii) Based on these facts, T determines that it has a combined absorption ratio of 8.0 %. To determine the additional section 263A costs allocable to its ending inventory, T multiplies its combined absorption ratio (8.0 %) by the $1,000,000 LIFO increment. Thus, T's additional section 263A costs allocable to its ending inventory are $80,000 ($1,000,000 multiplied by 8.0 %). This $80,000 is added to the $1,000,000 to determine a total 1994 LIFO increment of $1,080,000. T's ending inventory is $3,180,000 (its beginning inventory of $2,100,000 plus the $1,080,000 increment).

(iv) In 1995, T sells one-half of the inventory in its 1994 LIFO increment. T must include in its cost of goods sold for 1995 the amount of additional section 263A costs relating to this inventory, i.e., one-half of the $80,000 additional section 263A costs capitalized in 1994 ending inventory, or $40,000.

*Example 3. LIFO Pools.* (i) Taxpayer U begins its business in 1994, and adopts the LIFO inventory method. During 1994, U makes purchases of $10,000, and incurs $400 of purchasing costs, $350 of storage costs and $250 of handling costs. U's purchasing costs, storage costs, and handling costs include their proper allocable share of mixed service costs.

(ii) U computes its purchasing costs absorption ratio for 1994, as follows:

$$\frac{\text{1994 purchasing costs}}{\text{1994 purchases}} = \frac{\$400}{\$10,000}$$

$$= 4.0\%$$

(iii) U computes its storage and handling costs absorption ratio for 1994, as follows:

$$\frac{\text{1994 storage and handling costs}}{\text{Beginning inventory plus 1994 purchases}} = \frac{\$350 + \$250}{\$0 + \$10,000}$$

$$= \frac{\$600}{\$10,000}$$

$$= 6.0\%$$

(iv) U's combined absorption ratio is 10%, or the sum of the purchasing costs absorption ratio (4.0%) and the storage and handling costs absorption ratio (6.0%). At the end of 1994, U's ending inventory included $3,000 of current year purchases, contained in three LIFO pools (X, Y, and Z) as shown below. Under the simplified resale method, U computes its ending inventory for 1994 as follows:

| 1994 | Total | X | Y | Z |
|---|---|---|---|---|
| Ending section 471 costs | $3,000 | $1,600 | $600 | $800 |
| Additional section 263A costs (10%) | 300 | 160 | 60 | 80 |
| 1994 ending inventory | 3,300 | 1,760 | 660 | 880 |

(v) During 1995, U makes purchases of $2,000 as shown below, and incurs $200 of purchasing costs, $325 of storage costs and $175 of handling costs. U's purchasing costs, storage costs, and handling costs include their proper share of mixed service costs. Moreover, U sold goods from pools X, Y, and Z having a total cost of $1,000. U computes its ending inventory for 1995 as follows.

(vi) U computes its purchasing costs absorption ratio for 1995:

$$\frac{\text{1995 purchasing costs}}{\text{1995 purchases}} = \frac{\$200}{\$2,000} = 10.0\%$$

(vii) U computes its storage and handling costs absorption ratio for 1995:

$$\frac{\text{1995 storage and handling costs}}{\text{Beginning inventory plus 1995 purchases}} = \frac{\$325 + \$175}{\$3,000 + \$2,000} = \frac{\$500}{\$5,000} = 10.0\%$$

(viii) U's combined absorption ratio is 20.0%, or the sum of the purchasing costs absorption ratio (10.0%) and the storage and handling costs absorption ratio (10.0%).

| 1995 | Total | X | Y | Z |
|---|---|---|---|---|
| Beginning section 471 costs | $3,000 | $1,600 | $600 | $800 |
| 1995 section 471 costs | 2,000 | 1,500 | 300 | 200 |
| Section 471 cost of goods sold | (1,000) | (300) | (300) | (400) |
| 1995 ending section 471 costs | 4,000 | 2,800 | 600 | 600 |
| Consisting of: | | | | |
| 1994 layer | 2,800 | 1,600 | 600 | 600 |
| 1995 layer | 1,200 | 1,200 | ..... | ..... |
| | 4,000 | 2,800 | 600 | 600 |
| Additional section 263A costs: | | | | |
| 1994 (10%) | 280 | 160 | 60 | 60 |
| 1995 (20%) | 240 | 240 | ..... | ..... |
| | 520 | 400 | 60 | 60 |
| 1995 ending inventory | 4,520 | 3,200 | 660 | 660 |

(ix) In 1995, U experiences a $200 decrement in Pool Z. Thus, U must charge the additional section 263A costs incurred in prior years applicable to the decrement to 1995's cost of goods sold. To do so, U determines a ratio by dividing the decrement by the section 471 costs in the 1994 layer ($200 divided by $800, or 25%). U then multiplies this ratio (25%) by the additional section 263A costs in the 1994 layer ($80) to determine the additional section 263A costs applicable to the decrement ($20). Therefore, $20 is taken into account by U in 1995 as part of its cost of goods sold ($80 multiplied by 25%).

(4) *Simplified resale method with historic absorption ratio election*—(i) *In general.* This paragraph (d)(4) permits resellers using the simplified resale method to elect a historic absorption ratio in determining additional section 263A costs allocable to eligible property remaining on hand at the close of their taxable years. Except as provided in paragraph (d)(4)(v) of this section, a taxpayer may only make a historic absorption ratio election if it has used the simplified resale method for three or more consecutive taxable years immediately prior to the year of election. The historic absorption ratio is used in lieu of an actual combined absorption ratio computed under paragraph (d)(3)(i)(C)(*1*) of this section and is based on costs capitalized by a taxpayer during its test period. If elected, the historic absorption ratio must be used for the qualifying period described in paragraph (d)(4)(ii)(C) of this section.

(ii) *Operating rules and definitions*—(A) *Historic absorption ratio.* (*1*) The historic absorption ratio is equal to the following ratio:

$$\frac{\text{Additional section 263A costs incurred during the test period}}{\text{Section 471 costs incurred during the test period}}$$

(*2*) Additional section 263A costs incurred during the test period are defined as the sum of the products of the combined absorption ratios (defined in paragraph (d)(3)(i)(C)(*1*) of this section) multiplied by a taxpayer's section 471 costs incurred with respect to purchases, for each taxable year of the test period.

(*3*) Section 471 costs incurred during the test period mean the section 471

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costs described in § 1.263A–1(d)(2) that a taxpayer incurs generally with respect to its purchases during the test period described in paragraph (d)(4)(ii)(B) of this section.

(B) *Test period*—(*1*) *In general.* The test period is generally the three taxable-year period immediately prior to the taxable year that the historic absorption ratio is elected.

(*2*) *Updated test period.* The test period begins again with the beginning of the first taxable year after the close of a qualifying period (as defined in paragraph (d)(4)(ii)(C) of this section). This new test period, the updated test period, is the three taxable-year period beginning with the first taxable year after the close of the qualifying period.

(C) *Qualifying period*—(*1*) *In general.* A qualifying period includes each of the first five taxable years beginning with the first taxable year after a test period (or updated test period).

(*2*) *Extension of qualifying period.* In the first taxable year following the close of each qualifying period (e.g., the sixth taxable year following the test period), the taxpayer must compute the actual combined absorption ratio under the simplified resale method. If the actual combined absorption ratio computed for this taxable year (the recomputation year) is within one-half of one percentage point (plus or minus) of the historic absorption ratio used in determining capitalizable costs for the qualifying period (i.e., the previous five taxable years), the qualifying period must be extended to include the recomputation year and the following five taxable years, and the taxpayer must continue to use the historic absorption ratio throughout the extended qualifying period. If, however, the actual combined absorption ratio computed for the recomputation year is not within one-half of one percentage point (plus or minus) of the historic absorption ratio, the taxpayer must use actual combined absorption ratios beginning with the recomputation year under the simplified resale method and throughout the updated test period. The taxpayer must resume using the historic absorption ratio (determined with reference to the updated test period) in the third taxable year following the recomputation year.

(iii) *Method of accounting*—(A) *Adoption and use.* The election to use the historic absorption ratio is a method of accounting. A taxpayer using the simplified resale method may elect the historic absorption ratio in any taxable year if permitted under this paragraph (d)(4), provided the taxpayer has not obtained the Commissioner's consent to revoke the historic absorption ratio election within its prior six taxable years. The election is to be effected on a cut-off basis, and thus, no adjustment under section 481(a) is required or permitted. The use of a historic absorption ratio has no effect on other methods of accounting adopted by the taxpayer and used in conjunction with the simplified resale method in determining its section 263A costs. Accordingly, in computing its actual combined absorption ratios, the taxpayer must use the same methods of accounting used in computing its historic absorption ratio during its most recent test period unless the taxpayer obtains the consent of the Commissioner. Finally, for purposes of this paragraph (d)(4)(iii)(A), the recomputation of the historic absorption ratio during an updated test period and the change from a historic absorption ratio to an actual combined absorption ratio during an updated test period by reason of the requirements of this paragraph (d)(4) are not considered changes in methods of accounting under section 446(e) and, thus, do not require the consent of the Commissioner or any adjustments under section 481(a).

(B) *Revocation of election.* A taxpayer may only revoke its election to use the historic absorption ratio with the consent of the Commissioner in a manner prescribed under section 446(e) and the regulations thereunder. Consent to the change for any taxable year that is included in the qualifying period (or an extended qualifying period) will be granted only upon a showing of unusual circumstances.

(iv) *Reporting and recordkeeping requirements*—(A) *Reporting.* A taxpayer making an election under this paragraph (d)(4) must attach a statement to its federal income tax return for the taxable year in which the election is made showing the actual combined absorption ratios determined under the simplified resale method during its first test period. This statement must disclose the historic absorption ratio to be used by the taxpayer during its qualifying period. A similar statement must be attached to the federal income tax return for the first taxable year within any subsequent qualifying period (i.e., after an updated test period).

(B) *Recordkeeping.* A taxpayer must maintain all appropriate records and details supporting the historic absorption ratio until the expiration of the statute of limitations for the last year for which the taxpayer applied the particular historic absorption ratio in determining additional section 263A costs capitalized to eligible property.

(v) *Transition rules.* Taxpayers will be permitted to elect a historic absorption ratio in their first, second, or third taxable year beginning after December 31, 1993, under such terms and conditions as may be prescribed by the Commissioner. Taxpayers are eligible to make an election under these transition rules whether or not they previously used the simplified resale method. A taxpayer making such an election must recompute (or compute) its additional section 263A costs, and thus, its historic absorption ratio for its first test period as if the rules prescribed in this section and §§ 1.263A–1 and 1.263A–2 had applied throughout the test period.

(vi) *Example.* The provisions of this paragraph (d)(4) are illustrated by the following example:

*Example.* (i) Taxpayer V uses the FIFO method of accounting for inventories and in 1994 elects to use the historic absorption ratio with the simplified resale method. After recomputing its additional section 263A costs in accordance with the transition rules of paragraph (d)(4)(v) of this section, V identifies the following costs incurred during the test period:

1991:
Add'l section 263A costs—$100
Section 471 costs—$3,000
1992:
Add'l section 263A costs—200
Section 471 costs—4,000
1993:
Add'l section 263A costs—300
Section 471 costs—5,000

(ii) Therefore, V computes a 5% historic absorption ratio determined as follows:

$$\text{Historic absorption ratio} = \frac{\$100 + 200 + 300}{\$3,000 + 4,000 + 5,000} = \frac{\$600}{\$12,000} = 5\%$$

(iii) In 1994, V incurs $10,000 of section 471 costs of which $3,000 remain in inventory at the end of the year. Under the simplified resale method using a historic absorption ratio, V determines the additional section 263A costs allocable to its ending inventory by multiplying its historic ratio (5%) by the section 471 costs remaining in its ending inventory:

$$\text{Additional section 263A costs} = 5\% \times \$3{,}000 = \$150$$

(iv) To determine its ending inventory under section 263A, V adds the additional section 263A costs allocable to ending inventory to its section 471 costs remaining in ending inventory ($3,150=$150+$3,000). The balance of V's additional section 263A costs incurred during 1994 is taken into account in 1994 as part of V's cost of goods sold.

(v) V's qualifying period ends as of the close of its 1998 taxable year. Therefore, 1999 is a recomputation year in which V must compute its actual combined absorption ratio. V determines its actual absorption ratio for 1999 to be 5.25% and compares that ratio to its historic absorption ratio (5.0%). Therefore, V must continue to use its historic absorption ratio of 5.0% throughout an extended qualifying period, 1999 through 2004 (the recomputation year and the following five taxable years).

(vi) If, instead, V's actual combined absorption ratio for 1999 were not between 4.5% and 5.5%, V's qualifying period would end and V would be required to compute a new historic absorption ratio with reference to an updated test period of 1999, 2000, and 2001. Once V's historic absorption ratio is determined for the updated test period, it would be used for a new qualifying period beginning in 2002.

(5) *Additional simplified methods for resellers.* The Commissioner may prescribe additional elective simplified methods by revenue ruling or revenue procedure.

(e) *Cross reference.* See § 1.6001–1(a) regarding the duty of taxpayers to keep such records as are sufficient to establish the amount of gross income, deductions, etc.

**§ 1.263A–4 Rules for property produced in a farming trade or business. [Reserved]**

**§ 1.263A–5 Exception for qualified creative expenses incurred by certain free-lance authors, photographers, and artists. [Reserved]**

**§ 1.263A–6 Rules for foreign persons. [Reserved]**

**Par. 8.** Section 1.446–1 is amended by revising the last sentence of paragraph (c)(1)(ii)(A) to read as follows:

**§ 1.446–1 General rule for methods of accounting.**

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) * * * As a further example, under section 263 or 263A, a liability that relates to the creation of an asset having a useful life extending substantially beyond the close of the taxable year is taken into account in the taxable year incurred through capitalization (within the meaning of § 1.263A–1(c)(3)) and may later affect the computation of taxable income through depreciation or otherwise over a period including subsequent taxable years, in accordance with applicable Internal Revenue Code sections and related guidance.

* * * * *

**Par. 9.** Section 1.461–1 is amended by revising the fifth sentence of (a)(2)(i) to read as follows:

**§ 1.461–1 General rule for taxable year of deduction.**

(a) * * *

(2) * * * (i) * * * As a further example, under section 263 or 263A, a liability that relates to the creation of an asset having a useful life extending substantially beyond the close of the taxable year is taken into account in the taxable year incurred through capitalization (within the meaning of § 1.263A–1(c)(3)), and may later affect the computation of taxable income through depreciation or otherwise over a period including subsequent taxable years, in accordance with applicable Internal Revenue Code sections and guidance published by the Secretary.

* * *

* * * * *

**Par. 10.** Section 1.471–3 is amended by adding a sentence to the end of paragraph (b), and by revising the last sentence of paragraph (c) to read as follows:

**§ 1.471–3 Inventories at cost.**

* * * * *

(b) * * * For taxpayers acquiring merchandise for resale that are subject to the provisions of section 263A, see §§ 1.263A–1 and 1.263A–3 for additional amounts that must be included in inventory costs.

(c) * * * See §§ 1.263A–1 and 1.263A–2 for more specific rules regarding the treatment of production costs.

* * * * *

**Par. 11.** Section 1.471–4 is amended by revising paragraph (a); by adding headings for paragraphs (b) and (c), and by adding paragraph (d) to read as follows:

**§ 1.471–4 Inventories at cost or market, whichever is lower.**

(a) *In general*—(1) *Market definition.* Under ordinary circumstances and for normal goods in an inventory, *market* means the aggregate of the current bid prices prevailing at the date of the inventory of the basic elements of cost reflected in inventories of goods purchased and on hand, goods in process of manufacture, and finished manufactured goods on hand. The basic elements of cost include direct materials, direct labor, and indirect costs required to be included in inventories by the taxpayer (e.g., under section 263A and its underlying regulations for taxpayers subject to that section). For taxpayers to which section 263A applies, for example, the basic elements of cost must reflect all direct costs and all indirect costs properly allocable to goods on hand at the inventory date at the current bid price of those costs, including but not limited to the cost of purchasing, handling, and storage activities conducted by the taxpayer, both prior to and subsequent to acquisition or production of the goods. The determination of the current bid price of the basic elements of costs reflected in goods on hand at the inventory date must be based on the usual volume of particular cost elements purchased (or incurred) by the taxpayer.

(2) *Fixed price contracts.* Paragraph (a)(1) of this section does not apply to any goods on hand or in process of manufacture for delivery upon firm sales contracts (i.e., those not legally subject to cancellation by either party) at fixed prices entered into before the date of the inventory, under which the taxpayer is protected against actual loss. Any such goods must be inventoried at cost.

(3) *Examples.* The valuation principles in paragraph (a)(1) of this section are illustrated by the following examples:

*Example 1.* (i) Taxpayer A manufactures tractors. A values its inventory using cost or market, whichever is lower, under paragraph (a)(1) of this section. At the end of 1994, the cost of one of A's tractors on hand is determined as follows:

| | |
|---|---|
| Direct materials | $3,000 |
| Direct labor | 4,000 |
| Indirect costs under section 263A | 3,000 |
| Total section 263A costs (cost) | 10,000 |

(ii) A determines that the aggregate of the current bid prices of the materials, labor, and overhead required to reproduce the tractor at the end of 1994 are as follows:

| | |
|---|---|
| Direct materials | $3,100 |
| Direct labor | 4,100 |
| Indirect costs under section 263A | 3,100 |
| Total section 263A costs (market) | 10,300 |

(iii) In determining the lower of cost or market value of the tractor, A compares the cost of the tractor, $10,000, with the market value of the tractor, $10,300, in accordance with paragraph (c) of this section. Thus, under this section, A values the tractor at $10,000.

*Example 2.* (i) Taxpayer B purchases and resells several lines of shoes and is subject to section 263A. B values its inventory using cost or market, whichever is lower, under paragraph (a)(1) of this section. At the end of 1994, the cost of one pair of shoes on hand is determined as follows:

| | |
|---|---|
| Acquisition cost | $200 |
| Indirect costs under section 263A | 10 |
| Total section 263A costs (cost) | 210 |

(ii) B determines the aggregate current bid prices prevailing at the end of 1994 for the elements of cost (both direct costs and indirect costs incurred prior and subsequent to acquisition of the shoes) based on the volume of the elements usually purchased (or incurred) by B as follows:

| | |
|---|---|
| Acquisition cost | $178 |
| Indirect costs under section 263A | 12 |
| Total § 263A costs (market) | 190 |

(iii) In determining the lower of cost or market value of the shoes, B compares the cost of the pair of shoes, $210, with the market value of the shoes, $190, in accordance with paragraph (c) of this section. Thus, under this section, B values the shoes at $190.

(b) *Inactive markets.* * * *

(c) *Comparison of cost and market.* * * *

(d) *Effective date.* This section applies to inventory valuations for taxable years beginning after December 31, 1993. For taxable years beginning before January 1, 1994, taxpayers must take reasonable positions on their federal income tax returns with respect to the application of section 263A, and must have otherwise complied with § 1.471–4 (as contained in the 26 CFR part 1 edition revised April 1, 1993). For purposes of this paragraph (d), a reasonable position as to the application of section 263A is a position consistent with the temporary regulations, revenue rulings, revenue procedures, notices, and announcements concerning section 263A applicable in taxable years beginning before January 1, 1994. (See § 601.601(d)(2)(ii)(*b*) of this chapter.)

**Par. 12.** Section 1.471–5 is amended by revising the last sentence of that section in the concluding text to read as follows:

**§ 1.471–5 Inventories by dealers in securities.**

* * * See §§ 1.263A–1 and 1.263A–3 for rules regarding the treatment of costs with respect to property acquired for resale.

**Par. 13.** Section 1.471–6 is amended by revising the last sentence of the concluding text of paragraph (a) to read as follows:

**§ 1.471–6 Inventories of retail merchants.**

(a) * * *

* * * See §§ 1.263A–1 and 1.263A–3 for rules regarding the computation of costs with respect to property acquired for resale.

* * * * *

**Par. 14.** Section 1.471–11 is amended by revising the last sentence of paragraph (a) to read as follows:

**§ 1.471–11 Inventories of manufacturers.**

(a) * * * See also § 1.263A–1T with respect to the treatment of production costs incurred in taxable years beginning after December 31, 1986, and before January 1, 1994. See also §§ 1.263A–1 and 1.263A–2 with respect to the treatment of production costs incurred in taxable years beginning after December 31, 1993.

* * * * *

**Par. 15.** Section 1.1502–13 is amended by revising the last sentence of paragraph (c)(2) to read as follows:

**§ 1.1502–13 Intercompany transactions.**

* * * * *

(c) * * *

(2) * * * See the regulations under section 263A for costs properly includible in cost of goods sold.

* * * * *

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

**Par. 16.** The authority citation for part 602 continues to read as follows:

**Authority:** 26 U.S.C. 7805.

**Par. 17.** Section 602.101(c) is amended by adding entries in numerical order to read as follows:

**§ 602.101 OMB Control Numbers.**

* * * * *

(c) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.263A–1 | 1545–1233 |
| 1.263A–2 | 1545–1233 |
| 1.263A–3 | 1545–1233 |
| * * * * * | |

**Margaret Milner Richardson,**
*Commissioner of Internal Revenue.*

Approved:

**Leslie Samuels,**
*Assistant Secretary of the Treasury.*

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## NATIONAL LABOR RELATIONS BOARD

### 29 CFR Part 102

### Records and Information; Exemption of Records System Under the Privacy Act

**AGENCY:** National Labor Relations Board.

**ACTION:** Final rule.

**SUMMARY:** The National Labor Relations Board ("NLRB") is exempting a Privacy Act system of records from certain provisions of the Privacy Act of 1974, 5 U.S.C. 552a. This system of records is entitled "NLRB–18, Office of Inspector General Investigative Files."

Section (j)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt a system of records from the Act, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (10) and (11), and (i) if the system of records is compiled for a criminal law enforcement purpose and maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws.

Section (k)(2) of the Privacy Act provides that the head of an agency may promulgate rules to exempt a system of records from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), if the system of records is investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2) of the Act.

The Office of the Inspector General Investigative Files contain information of the type described in sections (j)(2) and (k)(2) of the Privacy Act. The Inspector General Act Amendments of 1988, Pub. L. No. 100–504, amending Pub. L. No. 95–452, 5 U.S.C. app. at 1184 (1988), authorize the Office of Inspector General to conduct investigations to detect fraud and abuse

in the programs and operations of the NLRB and to assist in the prosecution of participants in such fraud or abuse. The Office of the Inspector General (OIG) investigative files are maintained pursuant to its law enforcement and criminal investigation functions. Exemptions under sections 552a(j)(2) and (k)(2) of the Privacy Act are necessary to maintain the confidentiality of the investigative files and the effectiveness of the Inspector General's investigations.

The disclosure of information contained in this system of records, including the names of persons or agencies to whom the information has been transmitted, would substantially compromise the effectiveness of OIG investigations. Knowledge of such investigations could enable suspects to take action to prevent detection of unlawful activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to the intimidation of, or harm to, informants, witnesses, and their families, and could jeopardize the safety and well-being of investigative and related personnel and their families. The imposition of certain restrictions on the manner in which investigative information is collected, verified or retained would significantly impede the effectiveness of OIG investigative activities and in addition, could preclude the apprehension and successful prosecution or discipline of persons engaged in fraud or other illegal activity.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:**

John C. Truesdale, Executive Secretary, National Labor Relations Board, room 11602, 1099 14th Street, NW., Washington, DC 20570–0001.

**SUPPLEMENTARY INFORMATION:** A proposed rule with invitation to comment was published in the **Federal Register** on April 3, 1992. No comments were received regarding the NLRB's application of the exemptions pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Accordingly, this final rule reflects no changes.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NLRB certifies that this final rule will not have a significant impact on a substantial number of small businesses. The NLRB further finds that this rule does not qualify as a "major rule" under Executive Order No. 12291 since it will not have an annual effect on the economy of $100 million or more.

**List of Subjects in 29 CFR Part 102:**

Privacy, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 102 of title 29, chapter I of the Code of Federal Regulations, is amended by adding paragraphs (m), (n), and (o) as follows:

## PART 102—[AMENDED]

### Subpart K—Records and Information

1. The authority citation for part 102 is revised as follows:

**Authority:** Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a (j) and (k) of the Privacy Act (5 U.S.C. 552a (j) and (k)). Sections 102.143 through 102.155 also issued under sec. 504(c)(1) of the Equal Access to Justice Act as amended (5 U.S.C. 504(c)(1)).

**§ 102.117 [Amended]**

2. Section 102.117 of subpart K, is amended by adding paragraphs (m), (n), and (o) as follows:

* * * * *

(m) Pursuant to 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of the National Labor Relations Board that contains Investigative Files shall be exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and 29 CFR 102.117(c), (d), (f), (g), (h), (i), (j) and (k), insofar as the system contains investigatory material compiled for criminal law enforcement purposes.

(n) Pursuant to 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of the National Labor Relations Board that contains the Investigative Files shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 29 CFR 102.117 (c), (d), (f), (g), (h), (i), (j), and (k), insofar as the system contains investigatory material compiled for law enforcement purposes not within the scope of the exemption at 29 CFR 102.117(m).

(o) Privacy Act exemptions contained in paragraphs (m) and (n) of this section are justified for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his/her request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since this system of records is being exempted from subsection (d) of the Act, concerning access to records, this section is inapplicable to the extent that this system of records will be exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him/her, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in this system of records could inform the subject of an investigation of an actual or potential criminal violation, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his/her activities, or of the identity of confidential sources, witnesses, and law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel, and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish

a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective law enforcement, OIG investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation, thereby enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation that could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise an undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4) (G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual, at his/her request, if the system of records contains a record pertaining to him/her, how to gain access to such a record and how to contest its content. Since this system of records is being exempted from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that this system of records will be exempt from subsections (f) and (d) of the Act. Although the system would be exempt from these requirements, OIG has published information concerning its notification, access, and contest procedures because, under certain circumstances, OIG could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a **Federal Register** notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, OIG has published such a notice in broad generic terms.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision could prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which seems unrelated, irrelevant, or incomplete when collected can take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his/her request if any system of records named by the individual contains a record pertaining to him/her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation were able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since this system would be exempt from subsection (d) of the Act, concerning access to records, the requirements of subsection (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable to the extent that this system of records will be exempted from subsection (d) of the Act. Although this system would be exempt from the requirements of subsection (f) of the Act, OIG has promulgated rules which establish agency procedures because, under certain circumstances, it could be appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections

(d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since this system of records would be exempt from subsections (c)(3) and (4), (d), (e)(1), (2), and (3) and (4)(G) through (I), (e)(5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act would be inapplicable to the extent that this system of records will be exempted from those subsections of the Act.

Dated, Washington, DC, July 30, 1993.

By direction of the Board.

National Labor Relations Board.

**John C. Truesdale,**

*Executive Secretary.*

[FR Doc. 93–18900 Filed 8–6–93; 8:45 am]

BILLING CODE 7545–01

## DEPARTMENT OF DEFENSE

### Corps of Engineers

### Department of the Army

### 33 CFR Part 334

### Restricted Area, Federal Correctional Institution, Terminal Island, Reservation Point, California; Correction

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Correction to interim final rule.

**SUMMARY:** This document contains a correction to interim final regulations which were published in the Federal Register on December 8, 1992 (57 FR 58098) with the comment period expiring on January 7, 1993. We received no comments in response to the interim final rule and it remains in effect. However, an error was made in the description of the area, both in the preamble and in the text of the regulation. On the *west* side of Reservation Point should have read "on the *east* side of Reservation Point". No other changes are being made to the regulations.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tiffany Welch at (213) 894–5606 or Mr. Ralph Eppard at (202) 272–1783.

**SUPPLEMENTARY INFORMATION:** The Warden, Federal Prison System, Federal Correctional Institution, Los Angeles, requested the Army Corps of Engineers to establish a restricted area in the waters adjacent to the Federal Correctional Institution. The restricted area extends approximately 150 feet (50 yards), out from and parallel to the prison perimeter fence on the *east* side of Reservation Point in San Pedro Bay (underscoring added). As published the interim final regulations in 33 CFR 334.938 paragraph (a), contains an error in the first sentence.

**Correction of Publication**

Accordingly, the publication of December 8, 1992, of the interim final regulations which were the subject of 57 FR 58098 is corrected as follows:

**§ 334.938 [Corrected]**

In the third column, paragraph (a), second line, the word "west" is corrected to read "east".

**John P. Elmore,**

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

[FR Doc. 93–18903 Filed 8–6–93; 8:45 am]

BILLING CODE 3710–92–M

### 33 CFR Part 334

### Restricted Area in the Kuluk Bay Near Adak, Alaska

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** On April 29, 1993, the Army Corps of Engineers published interim final rules amending the regulations in 33 CFR 334.1320 to correct errors in the coordinates which establish a restricted area in the waters of Kuluk Bay, Adak, Alaska. The area encompassed by the coordinates in 33 CFR 334.1320 does not exactly agree with the location of submarine cables the area was designed to protect. The regulations presently prohibit anchoring and the dragging of anchors within the restricted area, except in great emergency. Due to the possibility of damage to the existing submarine cables, fishing and trawling are also prohibited within the restricted area. This amendment was published as an interim final rule with the opportunity for comment to coincide with the publication of a public notice published by the Alaska District Engineer. No comments were received in response to the interim final rule and the regulations are adopted without change.

**DATES:** Effective on April 29, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Weger at (907) 753–2716 or Mr. Ralph Eppard at (202) 272–1783.

**SUPPLEMENTARY INFORMATION:** On April 29, 1993, the Corps of Engineers published an interim final rule in the Federal Register (58 FR 26046), effective on that date. Written comments were invited with the closing period on June 1, 1993. The Commander, U.S. Navy Undersea Surveillance, U.S. Pacific Fleet, Pearl Harbor, Hawaii, requested that the Corps amend the regulations in 33 CFR 334.1320, which establish a naval restricted area in Kuluk Bay, near Adak, Alaska, (NOAA Nautical Chart No. 16475). The purpose of the amendment is to correct the coordinates which define the restricted area boundaries. The corrections expand the area approximately 1.3 nautical miles east, and the northern boundary approximately ½ nautical mile north. These amendments also include placing a restriction on fishing and trawling activities, in addition to anchoring and dragging of anchors, as currently stated in the regulations.

**Economic Assessment and Certification**

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small government jurisdictions.) It has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

**List of Subjects in 33 CFR Part 334**

Navigation (water), Transportation, Danger zones.

**PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

Accordingly, the interim final rule amending 33 CFR part 334 which was published at 58 FR 26046 on April 29, 1993, is adopted as a final rule without change.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–18902 Filed 8–6–93; 8:45 am]

BILLING CODE 3710–92–M

### 33 CFR Part 334

### Restricted Area, San Nicholas Island, Ventura County, California

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** On April 19, 1993, the Corps of Engineers published interim final rules amending the regulations which establish a naval restricted area in the waters of the Pacific Ocean surrounding San Nicholas Island, Ventura County,

California. The existing restricted area regulations prohibit dredging, dragging, seining and other fishing operations. These regulations were amended to also prohibit anchoring within the section designated as ALPHA. This is essential to protect undersea cables in that area. The interim final rules were effective on April 19, 1993, with public comments invited until May 19, 1993. No comments were received and the final rules are adopted without change.

**DATES:** Effective on April 19, 1993.

**ADDRESSES:** HQUSACE, Attn: CECW–OR, Washington, DC 20314–1000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tiffany Welch at (805) 641–1127 or Mr. Ralph Eppard at (202) 272–1783.

**SUPPLEMENTARY INFORMATION:** On April 19, 1993, the Corps of Engineers published an interim final rule in the **Federal Register** (58 FR 21226), effective on that date. Written comments were invited with the comment closing period on May 19, 1993. The Commander Undersea Surveillance, Pacific Fleet, U.S. Navy, requested that the Corps amend 33 CFR 334.980(d)(3) to prohibit anchorage indefinitely within ALPHA section surrounding San Nicholas Island. The current regulations governing the area forbid dredging, dragging, seining, and other fishing operations.

**Economic Assessment and Certification**

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small Government jurisdictions). It has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

**List of Subjects in 33 CFR Part 334**

Navigation (water), Restricted areas, Transportation.

**PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

Accordingly, the interim final rule amending 33 CFR part 334 which was published at 58 FR 21226 on April 19, 1993, is adopted as a final rule without change.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–18904 Filed 8–6–93; 8:45 am]

BILLING CODE 3710–92–M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[SW–FRL–4688–9]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in EPA regulations for certain solid wastes generated at Ampex Recording Media Corporation (Ampex), Opelika, Alabama. This action responds to a delisting petition submitted under those regulations that allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

**EFFECTIVE DATE:** August 9, 1993.

**ADDRESSES:** The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–93–AMEF–FFFFF." The public may copy material from any regulatory docket at no cost for the first 100 pages, and at a cost of $0.15 per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 412–9810. For technical information concerning this notice, contact Narendra K. Chaudhari, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–4787.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Authority*

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

### *B. History of This Rulemaking*

Ampex Recording Media Corporation, located in Opelika, Alabama, petitioned the Agency to exclude from hazardous waste control its F003/F005 solvent recovery residue (powder and pellet form) resulting from the manufacture of magnetic recording tapes. After evaluating the petition, EPA proposed, on August 21, 1992, to exclude Ampex's wastes from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 57 FR 37927). On September 30, 1992 (see 57 FR 45112), the Agency published a list of editorial corrections to the August 21, 1992 proposed rule. This list of corrections included clarification that Ampex's petitioned wastes are listed as EPA Hazardous Waste Nos. F003 and F005. (The proposed language amending part 261 incorrectly stated that Ampex's wastes were EPA Hazardous Waste Nos. F003 and F004.)

This notice responds to comments received on the proposed rule and finalizes the proposed decision to grant Ampex's petition.

## II. Disposition of Petition

Ampex Recording Media Corporation, Opelika, Alabama

### *A. Proposed Exclusion*

Ampex Recording Media Corporation, located in Opelika, Alabama, petitioned the Agency to exclude from hazardous waste control its solvent recovery residue resulting from the manufacture of magnetic recording tape, presently listed as EPA Hazardous Waste No. F003—"The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing,

before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures," and EPA Hazardous Waste No. F005—"The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures". Wastes classified as EPA Hazardous Waste No. F003 are listed as hazardous wastes solely because of the characteristic of ignitability (see 40 CFR 261.31). The listed constituents of concern for EPA Hazardous Waste No. F005 are toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxy-ethanol, benzene, and 2-nitropropane (see 40 CFR part 261, appendix VII).

In support of its petition, Ampex submitted:

(1) Detailed descriptions and schematics of its manufacturing and waste treatment processes;[1]

(2) A list of raw materials and Material Safety Data Sheets (MSDS) for all trade name products used in the manufacturing and waste treatment processes;

(3) Results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24,[2] and for nickel, antimony, cyanide, and sulfide;

(4) Results from total constituent analyses for 32 volatile organic and semi-volatile organic constituents;

(5) Results from the Toxicity Characteristic Leaching Procedure (TCLP; as described in 40 CFR part 261, appendix II) analysis for the TC constituents (except for the herbicides, 2,4-D, and 2,4,5-TP), antimony, and nickel;

(6) Results from total oil and grease analyses; and

(7) Results from characteristics testing for ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Ampex in support of its petition and determined that the hazardous constituents found in the petitioned wastes would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned wastes. In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned wastes. Based on this evaluation, the Agency determined that the constituents in Ampex's wastes would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 57 FR 37927, August 21, 1992, for a detailed explanation of why EPA proposed to grant Ampex's petition for its solvent recovery residue.

*B. Response to Public Comments*

The Agency received two sets of comments on the proposed rule. The first commenter supported the Agency's proposed decision to exclude the petitioned wastes, and submitted information to clarify descriptions of Ampex's waste treatment process and sample collection procedures presented in the proposed rule. This commenter specifically noted that the transport of Ampex's powdered residue from the thin film evaporator to the pelletizer does not involve a conveyor. The commenter stated that the powdered material drops through a star valve into a chute which drops the material onto the pelletizer rotating plate. This commenter also noted that grab samples of the powdered material were collected using a 40-inch grain sampler only during the 1987–1988 sampling round; quart mason jars were used during all other sampling rounds. The Agency notes that these comments are editorial in nature and do not alter the Agency's evaluation of the potential hazard of Ampex's petitioned wastes.

The second set of comments (submitted jointly by two commenters) opposed the Agency's proposed exclusion of Ampex's wastes for a number of reasons. The comments submitted related to the following main subject areas: (1) Inadequacy of the models (i.e., TCLP, OLM, EPACML) used in evaluating non-aqueous phase liquid contaminants; (2) presence of high leachable levels of lead in Ampex's waste; and (3) the Agency's failure to adequately evaluate non-ground water pathways of exposure, especially air and surface water. The technical comments made by these commenters regarding the Agency's proposed decision to grant the petition, coupled with the Agency's responses to them, are discussed in the following sections.

a. Inadequacy of the Models Used in Evaluating Non-aqueous Phase Liquid Contaminants

*Comment:* The commenters' primary concern related to EPA's choice of models in evaluating Ampex's petitioned wastes. The commenters noted that some of the organic contaminants detected in Ampex's wastes are compounds that form non-aqueous phases in ground water, and that the presence of non-aqueous phase liquids (NAPLs) or oily materials in the subsurface make complete ground water clean-up via conventional technologies difficult. The commenters believed that, because Ampex's wastes contained non-aqueous phase liquid contaminants, the TCLP, OLM, and EPACML were inappropriate to use in evaluating the leaching potential of contaminants from these wastes.

The commenters were concerned specifically that the methods and models used by the delisting program are based largely on water solubility principles. With regard to evaluating the potential hazards of NAPL wastes, the commenters specifically noted that the use of the OLM is flawed because the model assumes that water solubility of organic constituents predicts mobility. The commenters further stated that the use of the TCLP is flawed because the method relies on organic constituents partitioning into the aqueous phase during the extraction step of the method. The commenters also indicated, by reference to other comments, that the EPACML is similarly flawed as it was developed to mimic the fate and transport of materials dissolved in an aqueous phase.

*Response:* The Agency believes that the commenters are attempting to characterize Ampex's petitioned wastes as NAPL wastes simply because the wastes contain constituents typically found in NAPL wastes. The Agency disagrees with this conclusion and does not believe that the presence of organic constituents known to be NAPL-related is a reason by itself to conclude that a petitioned waste could cause the formation of a non-aqueous phase liquid, that a petitioned waste is an oily material, or that the organic constituents

[1] Ampex has claimed portions of its manufacturing and treatment process descriptions and MSDSs as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

[2] EPA has adopted the Toxicity Characteristic Leaching Procedure (TCLP) in the Toxicity Characteristic (TC) rulemaking (55 FR 11798, March 29, 1990) as a replacement to the EP for the establishment of the TC regulatory levels and these eight metals are now referred to as the TC metals.

present in the waste will only minimally dissolve in water.

First, Ampex's petitioned wastes contain relatively low concentrations of constituents that the commenters identify as NAPL-related. As discussed further in the response to the next comment, the Agency believes that total phenol and o-cresol concentrations in the petitioned wastes are not present at significant levels and do not pose a potential hazard to human health and the environment. Specifically, even if 100 percent of the phenol and o-cresol from Ampex's waste leached out into the extract medium, the maximum leachate concentrations of phenol and o-cresol would be far below the health-based levels of phenol (20 ppm) and o-cresol (2 ppm).

Second, it is extremely unlikely that Ampex's petitioned wastes would be the source of a non-aqueous phase liquid. The waste is originally generated as a powder, and not the oily type of waste that could lead to NAPL. As noted in the proposal, Ampex analyzed 12 composite samples of solvent recovery residue (SRR) powder and 12 composite samples of SRR pellets for total oil and grease content. These analyses indicated that the maximum total oil and grease content of the SRR powder ranged between 0.267 and 0.832 percent; and that the maximum oil and grease content of the SRR pellet samples ranged between 0.203 and 0.552 percent. Thus, the oil and grease content of Ampex's petitioned wastes are less than one percent, clearly indicating that the petitioned wastes are not oily wastes.

Finally, the constituents of particular concern to the commenters, phenol and o-cresol, are very soluble in water based on six categories of solubility described in an existing EPA document (See Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards, Draft Report. Office of Air Quality Planning and Standards, Research Triangle Park, NC. EPA–450/3–89–023.) Specifically, the solubility of phenol is $8\times10^4$ mg/l, and the solubility of o-cresol is $3.1\times10^4$ mg/l. The major organic constituent of possible concern in Ampex's waste, cyclohexanone, is also quite soluble in water ($2.3\times10^4$ mg/l). The Agency believes that these compounds, at the concentrations exhibited in Ampex's petitioned waste, would dissolve into the aqueous phase of the TCLP extract, or the leachate modeled by the OLM, or subsurface ground water.

For these reasons, the Agency does not believe that Ampex's petitioned wastes are NAPL wastes. Therefore, the Agency believes that the TCLP, OLM, and EPACML are appropriate models to use in the assessment of the potential hazard of Ampex's petitioned wastes.

*Comment:* The commenters also believed that total phenol levels were of particular concern. The commenters noted that data in the proposed rule reported maximum phenol concentrations of 31 ppm in the SRR pellets and 29 ppm in the SRR powder. The commenters believed that the analytical data for phenol in Ampex's wastes indicated that the wastes contained high enough levels of phenol to contaminate ground water above health-based levels. The commenters also stated that total o-cresol concentrations could be of concern, but that the proposed rule failed to present total constituent data for o-cresol.

*Response:* The Agency disagrees with the commenters that total phenol concentrations in Ampex's wastes are of concern. The commenters compared the maximum total levels of phenol in the waste directly with the health-based level for phenol. However, the health-based level is for phenol dissolved in water and ingested via drinking water. Therefore, any comparison of the total level of phenol in the waste (which is a solid), to this health-based level is meaningless. In the proposed rule, the Agency used the OLM and EPACML models to calculate the level of phenol that would result from phenol that leaches out of the waste, and migrates to a downgradient drinking water well. The maximum concentration of phenol calculated at the exposure point was 0.015 ppm, which is far below the health-based level of 20 ppm. The Agency continues to believe that this is the appropriate approach in evaluating the level of phenol in the waste.

Furthermore, even if the Agency assumed that 100 percent of the phenol leached out of Ampex's waste in the TCLP, the maximum concentration in the leachate would be 1.5 ppm. (The leaching solution used in the TCLP method is 20-times the amount of the waste sample, thus, the maximum phenol concentration in the waste of 31 ppm would result in no more than 1.5 ppm in the leachate.) Therefore, even without assuming any dilution or attenuation during migration, the leachable level itself would be below the health-based level.

With regard to o-cresol, the Agency notes that data for total o-cresol concentrations in the petitioned wastes were available in the RCRA public docket supporting the proposed rule. Specifically, the four samples collected during the Agency's May 8, 1990 spot-check visit were analyzed for total o-cresol. Analysis results for these samples showed that total o-cresol was not detected at the detection limit of 980 ug/kg (0.98 ppm). As presented in the proposed rule, the maximum concentration of o-cresol in the TCLP leachate was reported to be 0.066 ppm by Ampex. Based on the above discussion for phenol, migration and transport would lead to drinking water levels of o-cresol that are far below the total and leachable levels in the waste. Thus, under any set of assumptions, the level of o-cresol calculated for a downgradient exposure point would be below the delisting health-based level of 2 ppm. For these reasons, the Agency maintains its belief that phenol and o-cresol concentrations in Ampex's petitioned wastes are not of concern.

b. Presence of High Leachable Levels of Lead in Ampex's Waste

*Comment:* The commenters were concerned with leachable levels of lead in Ampex's waste, particularly leachable levels of lead in the two samples collected by EPA during a site visit. The commenters questioned EPA's preference for leachable lead data supplied by Ampex, rather than leachable lead data from analyses of its own two samples. The commenters noted that the compliance-point concentrations for lead based on Ampex's data, calculated using the EPA Composite Model for Landfills (EPACML), were near the level of regulatory concern, while EPACML results based on EPA's data actually exceeded the level of regulatory concern.

The commenters also noted that EPA apparently deferred to Ampex's data because it believed that the analytical technique used by Ampex (flame atomic absorption (AA) method) was more appropriate than the ICP method used by EPA to determine lead in the waste matrix. The commenters claimed that they were unable to fully evaluate EPA's rationale for this decision because EPA failed to identify if its ICP method was ICP atomic emission spectroscopy or ICP mass spectrometry (ICP/MS). The commenters believed that, if EPA used ICP/MS, then the rationale to use the Flame AA method data was inappropriate, because ICP/MS is less subject to matrix interference than AA for analyzing lead.

The commenters also had two other concerns related to the choice of analytical technique. In the first, the commenters noted that the analysis of lead using AA must be made by the method of standard additions because of recognized problems of matrix suppression. Second, the commenters noted that if EPA's analytical result

from the ICP analysis (2.7 ppm) was correct, then the sample could have "swamped" the Furnace AA detector and yielded an erroneously low result.

*Response:* In response to the commenters' concerns, EPA re-evaluated the leachable lead data submitted in support of Ampex's petition and collected during EPA's May 8, 1990 spot-check visit. As presented in Table 10 of the proposed rule, the spot-check samples were analyzed using ICP and the Ampex samples were analyzed using Flame or Furnace AA. The Agency notes, in fact, that the EPA's contract lab followed SW–846 Method 6010, ICP atomic emissions spectroscopy (ICPAES), and not the ICP/MS method in analyzing the spot-check samples. The Agency selected ICPAES because it is, in general, quicker and cheaper than Furnace AA when multi-component analyses are being performed. Both ICPAES and Furnace AA are equally valid methods for lead analysis. As noted in the proposed notice, however, the spot-check analyses using ICPAES had some unexplained matrix interferences. As a result, the Agency requested that Ampex submit eight additional powder and pellet samples analyzed for leachable lead to verify that lead was not present at levels of concern. Ampex's results for the additional samples showed no detectable levels of leachable lead in these samples. These results confirmed that the Agency's detected level was likely an anomaly for Ampex's waste. The Agency considers the larger database of leachable lead information (e.g., 16 samples) to be a better indicator of the lead levels in Ampex's waste than a single value.

The Agency disagrees with the commenters that method of standard additions (MSA) analyses must be used when Furnace AA analyses are performed. SW–846 requires that matrix spike and matrix spike duplicate analyses (MS/MSD) be performed during the analyses and not MSA. If significant matrix interferences are discovered during the MS/MSD then MSA can be used to resolve matrix interferences. The Agency notes that Ampex performed matrix spike and matrix spike duplicate analyses during each of its analytical events and reported satisfactory QC results for lead. Thus, performing MSA was not necessary or required. The Agency also disagrees with the commenters' assertion that a 2.7 ppm level of lead may have "swamped" the furnace detector during Ampex's reanalysis of the spot-check sample. Ampex has documented that during its reanalysis of the spot-check sample, the instrument was correctly calibrated so that this level would be in the linear range of the instrument. Thus, it is unlikely that this level swamped the detector and provided an erroneously low result. Thus, the Agency maintains its belief that leachable lead levels in Ampex's waste are not of concern.

*Comment:* The commenters believed that the discrepancies between EPA's leachable levels for lead and Ampex's should have raised a cautionary flag for EPA, and that EPA should have re-sampled and reanalyzed the waste before proposing to exclude Ampex's waste.

*Response:* The Agency maintains its belief that leachable lead levels are not of concern. Nonetheless, to fully address this issue, the Agency has collected additional samples of Ampex's waste. The Agency conducted a second spot-check visit to Ampex on November 9, 1992 and collected two samples of Ampex's powdered material. These samples were analyzed for lead using Furnace AA to allow for a more direct comparison with the analytical results provided by Ampex. In addition, the laboratory was requested to analyze the samples using the method of standard additions as specified in SW–846 Method 7000 to eliminate uncertainties regarding matrix effects. Table 2 presents a summary of all the leachable lead data for Ampex's SRR powder, including EPA's most recent spot-check visit (i.e., samples EPA–03 and EPA–04). (The laboratory reports themselves are available for review in the RCRA public docket for today's rule.)

TABLE 2.—SUMMARY OF LEACHABLE LEAD CONCENTRATIONS (PPM) (SOLVENT RECOVERY RESIDUE POWDER)

| Sample No. | Leachable lead concentration | Extraction method | Analytical method |
|---|---|---|---|
| AMP–01 | <0.05 | EP | Furnace AA. |
| AMP–02 | <0.05 | EP | Furnace AA. |
| AMP–03 | <0.05 | EP | Furnace AA. |
| AMP–04 | <0.05 | EP | Furnace AA. |
| AMP–05 | <0.2 | TCLP | Flame AA. |
| AMP–06 | <0.2 | TCLP | Flame AA. |
| AMP–07 | <0.2 | TCLP | Flame AA. |
| AMP–08 | <0.2 | TCLP | Flame AA. |
| EPA–01 | 0.943 | TCLP | ICP. |
| EPA–02 | 2.750 | TCLP | ICP. |
| EPA–02a | 0.13 | TCLP | Furnace AA. |
| AMP–09 | <0.008 | TCLP | Furnace AA. |
| AMP–10 | <0.008 | TCLP | Furnace AA. |
| AMP–11 | <0.008 | TCLP | Furnace AA. |
| AMP–12 | <0.008 | TCLP | Furnace AA. |
| AMP–13 | <0.008 | TCLP | Furnace AA. |
| AMP–14 | <0.007 | TCLP | Furnace AA. |
| AMP–15 | <0.007 | TCLP | Furnace AA. |
| AMP–16 | <0.007 | TCLP | Furnace AA. |
| EPA–03 | 0.015 | TCLP | Furnace AA. |
| EPA–04 | 0.010 | TCLP | Furnace AA. |

<: Denotes that the constituent was not detected at the detection limit specified in the table.
a: Ampex reanalysis of EPA–02 sample.

The Agency believes that the analytical results from EPA's second spot-check visit support the conclusion that the data from EPA's initial site visit were not representative of the levels of leachable lead in Ampex's waste.

Therefore, the Agency continues to believe that leachable lead levels are not of concern in Ampex's powder solvent recovery residues.

*Comment:* The commenters also disagreed with EPA's decision to use the level 0.015 mg/l as the regulatory level of concern for leachable lead. The commenters contend that EPA stated the 0.015 mg/l action level corresponded to approximately 0.005 mg/l as an average (see 56 FR 26477). The commenters believed that it would be more appropriate to use the average lead level, or 0.005 mg/l, as the regulatory level of concern. The commenters also argued that the use of a Safe Drinking Water Act "action level" as a regulatory level of concern for delisting was inapplicable because the action level was keyed to a first-draw water from leaded pipes, which bears little resemblance to the types of conditions encountered by a delisted waste and is therefore not an appropriate measure for determining the allowable level of leachable lead for a delisting decision. The commenters believed that, if EPA was going to use this approach, it should at least consider using 0.005 mg/l as the regulatory level of concern, since the level corresponded to the average leach level.

*Response:* The Agency disagrees with the commenters' assertion that it should use the level of 0.005 mg/l as the regulatory level of concern for leachable lead. While the action level of 0.015 mg/l is not a formal MCL, EPA stated in the preamble to the lead rule that the level of 0.015 mg/l is "associated with substantial public health protection" (see 56 FR 26477, June 7, 1991). Furthermore, the Agency decided to adopt this value instead of an average or median value because this method does not require assumptions concerning values less than the lead practical quantitation level of 0.005 mg/l. Thus, the Agency believes that the 0.015 mg/l level is the appropriate level for use in delisting decision making.

To further address the commenters' concern, the Agency calculated a mean value for all of the leachable lead data in Table 2 (0.23 mg/l) to compare to the "average" level of concern suggested by the commenters. The value specified for the detection limit was used for samples with no detected lead levels. This is a worst case assumption, given that all but the two initial EPA samples (EPA–01 and EPA–02) appear to be far below the detection limits reported for some of Ampex's data (AMP–05 through AMP–08). In any case, the calculated mean for leachable lead of 0.23 mg/l, when input in the EPACML, would yield a compliance point concentration for lead (0.0023 mg/l) that is well below 0.005 mg/l. Furthermore, as noted earlier, the initial EPA samples (EPA–01 and EPA–02) appear to be anomalous. If these data points are not included, the mean lead level (0.064 mg/l) yields an even lower compliance point concentration (0.00064 mg/l). Therefore, even using the approach suggested by the commenters, the lead levels in Ampex's waste are not of concern.

c. Hazards From Non-Groundwater Pathways of Exposure: Air Emissions and Surface Water Contamination

*Comment:* The commenters disputed EPA's decision to evaluate only the hazard posed by particles of 10 um or less when considering the airborne dispersal of waste contaminants. (The comments refer to particles of "10 ug" or less; EPA believes this is a typographical error and assumed the commenter intended to write 10 um.) The commenters believed that using an upper limit size of 10 um ignored the principal pathway of concern for toxic constituents, such as lead, for which the principal pathway is ingestion.

*Response:* As noted in the proposed rule, the Agency chose to assess the potential hazards of Ampex's petitioned waste via an airborne pathway because of the possible nature of Ampex's solvent recovery residue (powder form). Specifically, the Agency evaluated the potential impact of inhaling particulate matter that is released and dispersed from the surface of a disposal site. The Agency believes that the commenters are concerned about human exposure to contaminants that potentially could be deposited on a surface downwind of the disposal site and available for ingestion through hand-to-mouth contact. While the Agency agrees that some particulate matter might be ingested following dispersion, EPA believes that this is not a principal pathway of concern in this case for several reasons.

First, the level of toxic constituents in Ampex's waste are relatively low, e.g., the maximum level of lead measured in the waste powder was 358 ppm (average = 227 ppm). This level is below acceptable soil levels for lead (500 to 1,000 ppm) as currently used by EPA in remediation of lead contaminated soil. (See Memorandum on "Interim Guidance on Establishing Soil Lead Cleanup Levels at Superfund Sites," which is in the docket for today's rule.) Furthermore, as the docket to the proposed rule noted, the area containing any of Ampex's waste that might be exposed (i.e., uncovered) at a landfill should be relatively small (1,126 square meters, or < 0.3 acres) due to the small volume of waste generated. Thus, in the unlikely event that Ampex's exposed waste (1,126 square meters), containing the maximum level of measured lead (358 ppm) is completely dispersed over an area enclosed by a circle with a radius of 1,000 feet or 305 meters (area = 2.92E+05 square meters), the soil lead level from Ampex's waste at a distance of 1,000 feet (the hypothetical exposure point for wind dispersal) would not exceed 1.3 ppm. This level, which can be calculated from the ratio of waste area to total area (0.0038) multiplied by the maximum level of measured lead (358 ppm), is far below any reasonable level of concern. For example, the mean lead level in uncontaminated soils throughout the United States was reported to be 19 ppm (See Shacklette, H.T. and J.G. Boerngen, 1984. Element Concentrations in Soils and Other Surficial Materials of the Coterminous United States. U.S. Geological Survey Professional Paper 1270.)

In order to fully respond to the commenters' concerns, the Agency also investigated the potential hazards associated with exposure to particles up to 30 um in size that are deposited on soil and subsequently ingested, using a methodology that relies on a modified version of EPA's Ambient Air Dispersion Model (AADM) to predict the downwind concentration of contaminants. (The AADM was originally described in 50 FR 48963, November 27, 1985, and was used by EPA to evaluate the potential hazards of inhaling particulate emissions, as presented in the RCRA public docket supporting the Agency's proposal to exclude Ampex's petitioned waste.)

Using the modified AADM, the concentrations of contaminants in soil from Ampex's waste were conservatively estimated based on atmospheric deposition of waste particles for one year (without loss at the site of deposition) at a downwind distance of 1,000 feet from the disposal site boundary. Modifying the analyses this way results in a negligible level of lead in the soil (<0.02 ppm). The results of this determination were compared to Agency's criteria for evaluating contaminant levels in soil (500 to 1000 ppm) and the background level (19 ppm) noted above. All of these evaluations clearly show that Ampex's waste does not pose a substantial present or potential hazard to human health through air dispersion and deposition. A complete description of the Agency's assessment of the potential impact of Ampex's waste, with regard to atmospheric deposition and ingestion of waste contaminants accumulated in soil using the modified AADM, is presented

in the RCRA public docket for today's rule.

*Comment:* The commenters believed that EPA must also evaluate the hazard posed by the volatilization of organic contaminants present in Ampex's waste. The commenters were particularly concerned about the presence of phenol, toluene, formaldehyde, methyl ethyl ketone, and cyclohexanone in the waste. The commenters believed that wastes containing volatile constituents cannot be evaluated for the hazards they pose to human health and the environment without a quantitative assessment of the volatilization pathway.

*Response:* The Agency agrees with the commenters that some volatilization may occur from Ampex's waste contained in a landfill. However, given its relatively small volume and data showing that it contains relatively low concentrations of volatile organics, EPA believes any volatile emissions from Ampex's waste would be insignificant. Furthermore, the Agency notes that the residuals generated by Ampex are in powder form, and result from recovery of spent solvents. Significant volatile releases seem unlikely for this waste. Therefore, the Agency believes a quantitative evaluation of volatile organic emissions is unnecessary.

In any case, to fully respond to the commenters' concerns, the Agency investigated whether the levels of volatile organic contaminants present in Ampex's waste could possibly pose a potential hazard to human health. As noted in the proposed rule, twelve organic constituents were detected in samples of Ampex's petitioned waste. Of these twelve constituents, the Agency determined that the following eight compounds have the potential to volatilize (based on information about constituent-specific boiling points): acetone, cyclohexanone, ethyl benzene, formaldehyde, methyl ethyl ketone, methylene chloride, toluene, and xylene. The Agency believes that the commenters' concern regarding the potential volatilization of phenol is unfounded, as the boiling point for phenol (i.e., 182 °C) is significantly greater than the boiling points of compounds typically classified as "volatile". For example, EPA did not classify phenol as volatile when evaluating it as a potential TC constituent (see 51 FR 21648, June 13, 1986). However, EPA included phenol in its evaluation in order to fully address the commenters' concern.

As a worst case, the Agency assumed that 100 percent of these constituents would be lost to the air. The Agency used the AADM model that was included in the docket to the proposed rule to predict the downwind concentrations of these constituents. The results of this conservative, worst-case evaluation indicated that there is no substantial present or potential hazard to human health from volatilization of organic contaminants present in Ampex's waste. All organic constituents were estimated to be well below levels of concern. A complete description of the Agency's modeling and analysis of volatile emissions from Ampex's petitioned waste is presented in the RCRA public docket for today's rule.

*Comment:* The commenters took exception to EPA's assertion that leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. The commenters noted that many industrial waste disposal sites are located close to surface water bodies and that wastes, such as Ampex's petitioned waste, have a high likelihood of running directly off of the land without first entering the subsurface. In a runoff scenario such as this, the commenters argued that total concentrations of toxic constituents, not leachable concentrations, would be of primary concern.

*Response:* The Agency maintains its belief that leachate derived from Ampex's petitioned waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur. This is because delisted wastes are typically managed in regulated solid waste management units. Discharge of pollutants into surface waters are currently regulated under the Clean Water Act (CWA). The Agency has promulgated regulations for municipal solid waste landfills that will also require run-on and run-off controls, and explicitly prohibit discharges that violate the CWA (see 56 FR 50978, October 9, 1991).

Furthermore, EPA disagrees with the commenters' statement that leachable concentrations are not useful in assessing risks posed by surface water runoff. Leachable concentrations provide a direct measure of the solubility of a toxic constituent in water, and are indicative of the fraction of the constituent that may be mobilized in surface water, as well as groundwater. For example, TCLP tests (which are performed with a more aggressive acidic extraction medium, not water) show that the fraction of lead in Ampex's waste that is mobile is only on the order of 1 percent. Similar results can be calculated for other metals. However, in response to the commenters' concerns, the Agency investigated the potential hazards that may result from exposure to contaminants in Ampex's petitioned waste through a surface water pathway. This evaluation involved a worst-case estimation of the annual soil/waste erosion from a landfill, the amount of waste delivered to the surface water body, and the volume of surface water into which runoff occurs. The Agency determined the dissolved concentration of contaminants from Ampex's waste by making the worst-case assumption that the contaminants in the eroded material completely dissolve in the surface water body. The results of this conservative evaluation indicated that there is no substantial present or potential hazard to human health from runoff of Ampex's waste to surface water. The minimum dilution factors calculated by this approach (>300,000) confirm the Agency's contention in the proposed rule that any contaminants in runoff would be further diluted by the water body. A complete description of the Agency's evaluation of contaminant releases from runoff of Ampex's waste to a surface water body is presented in the RCRA public docket for today's rule.

### *C. Final Agency Decision*

For the reasons stated in the proposal and in this final rule, the Agency believes that Ampex's solvent recovery residue (powder and pellet form) should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Ampex Recording Media Corporation, located in Opelika, Alabama, for its solvent recovery residue, described in its petition as EPA Hazardous Waste Nos. F003/F005.

This exclusion only applies to the processes and waste volume (a maximum of 1,000 cubic yards generated annually in the powder or pellet form) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition occurred (e.g., if levels of hazardous constituents increased significantly) or if an increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 1,000 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from the Subtitle C jurisdiction upon final promulgation of an

exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted wastes may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the wastes, or treats the wastes prior to such beneficial use, reuse, recycling, or reclamation (see 40 CFR part 260, appendix I).

### III. Limited Effect of Federal Exclusion

The final exclusion for Ampex is being granted under the Federal (RCRA) delisting program; this exclusion is not effective in Alabama because on May 17, 1993, the State of Alabama became authorized to administer a number of RCRA programs, including delisting, in lieu of the Federal program. If Ampex wants to dispose of its waste in Alabama, it will need to have its delisting petition approved by Alabama. However, Ampex has indicated that it may transport its delisted waste for disposal to another State where the Federal delisting program remains in effect, and thus where today's delisting would be effective. In addition, even if Alabama eventually decides (as an authorized State) to delist the waste, that action would only have effect within Alabama, and a Federal delisting would generally still be needed for out of State transport as nonhazardous waste. Therefore, the Agency has decided to proceed with the final rulemaking and is granting a Federal delisting to Ampex.

### IV. Effective Date

This rule is effective August 9, 1993. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date of six months after publication and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon publication. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

### V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its wastes as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore no Regulatory Impact Analysis is required.

### VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

### VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050–0053.

### List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: July 27, 1993.

**David Bussard,**

*Acting Deputy Director, Office of Solid Waste.*

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| • | • | • |
| Ampex Recording Media Corporation | Opelika, Alabama | Solvent recovery residues in the powder or pellet form (EPA Hazardous Waste Nos. F003 and F005) generated from the recovery of spent solvents from the manufacture of tape recording media (generated at a maximum annual rate of 1,000 cubic yards in the powder or pellet form) after August 9, 1993. In order to confirm that the characteristics of the wastes do not change significantly, the facility must, on an annual basis, analyze a representative composite sample of the waste (in its final form) for the constituents listed in 40 CFR 261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to 40 CFR 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Alabama. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. |
| • | • | • |

[FR Doc. 93–18842 Filed 8–6–93; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6990

[OR–943–4210–06; GP3–230; OR–46136]

## Withdrawal of National Forest System Lands To Protect the Rehabilitation Work on the White King and Lucky Lass Uranium Mines; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 200.59 acres of National Forest System lands in the Fremont National Forest from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the rehabilitation work to be done on the White King and Lucky Lass uranium mines near Lakeview, Oregon. The lands have been and will remain open to such forms of disposition as may by law be made of National Forest System lands and to mineral leasing.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to prevent damage to the proposed containment cell and the rehabilitation mine pits:

Willamette Meridian

*Fremont National Forest*

T. 37 S., R. 18 E.,
Sec. 25, NE¼NE¼.
T. 37 S., R. 19 E.,
Sec. 30, lot 1, E½NW¼, and NW¼SE¼.

The areas described aggregate 200.59 acres in Lake County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 28, 1993.

Bob Armstrong,

*Assistant Secretary of the Interior.*

[FR Doc. 93–19012 Filed 8–6–93; 8:45 am]
BILLING CODE 4310–33–M

43 CFR Public Land Order 6991

[OR–943–4210–06; GP3–231; OR–47602]

## Withdrawal of National Forest System Land To Protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 1,936 acres of National Forest System land in the Mt. Hood National Forest from mining for a period of 20 years for the Department of Agriculture, Forest Service, to protect the Bagby Hot Springs Research Natural Area and Bagby Hot Springs Special Interest Area near Estacada, Oregon. The land has been and will remain open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–280–7162.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect the

recreational, historical, educational, and geological values in the Bagby Hot Springs Area:

Willamette Meridian

*Mt. Hood National Forest*

T. 7 S., R. 5 E.,
Sec. 14, SE¼SW¼SW¼, E½SE¼SW¼, SW¼SE¼SW¼, NW¼SW¼SE¼, S½SW¼SE¼, and SW¼SE¼SE¼;
Sec. 22, SE¼SW¼, NE¼SE¼, S½NW¼SE¼, and S½SE¼;
Sec. 23, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼, SE¼NE¼, E½NW¼, E½NW¼NW¼, SW¼NW¼NW¼, SW¼NW¼, and S½;
Sec. 24, SW¼SW¼SW¼;
Sec. 25, W½W½NW¼, W½NW¼SW¼, and NW¼SW¼SW¼;
Sec. 26, N½, N½S½, and that portion of the S½S½ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 27, NE¼, E½NW¼, E½NE¼SW¼, NE¼SE¼SW¼, N½SE¼ and that portion of the S½SE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 34, that portion of the N½NW¼NE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office;
Sec. 35, that portion of the N½NE¼NE¼ outside the Bull of the Woods Wilderness Area as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office.

The area described contains approximately 1,936 acres in Clackamas County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: July 28, 1993.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 93-19013 Filed 8-6-93; 8:45 am]

BILLING CODE 4310-33-M

## 43 CFR Public Land Order 6992

[AK-932-4210-06; AA-56314]

## Partial Revocation of Executive Order No. 4257, Dated June 27, 1925; Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order revokes an Executive order insofar as it affects approximately 228 acres of National Forest System lands withdrawn for use by the Coast Guard, Department of Transportation, for the Sukoi Islets and the Turn Point Lighthouses. The lands are no longer needed for the purpose for which they were withdrawn. This action also opens the Sukoi Islets Lighthouse land for selection by the State of Alaska, if such land is otherwise available. Any of this land that is not selected by the State will be open to such forms of disposition as may by law be made of National Forest System lands. The Turn Point Lighthouse land is part of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness, as established and designated by the Alaska National Interest Lands Conservation Act, and remains withdrawn from all forms of entry, appropriation, or disposal under the public land laws.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 4257, dated June 27, 1925, which withdrew National Forest System lands for lighthouse purposes, is hereby revoked insofar as it affects the following described lands:

Copper River Meridian

*Tongass National Forest*

(a) Sukoi Islets Lighthouse

The western island of the Sukoi Islets, Frederick Sound, located within protracted secs. 26, 27, and 35, of T. 57 S., R. 79 E., excluding a parcel of land more particularly described as:

Beginning at a point 100 feet due East of Sukoi Islets Light; Thence along due North, South line to mean high water, all land due West of this North, South line containing approximately 2.0 acres.

The area described contains approximately 118 acres.

(b) Turn Point Lighthouse

A parcel of land located within protracted secs. 15 and 22, of T. 74 S., R. 101 E., beginning at a point on low water line, west shore of Portland Canal, 3040 feet in a direct line, southerly from the center of Turn Point Beacon, a tripod anchored to concrete piers; Thence west true 1520 feet; Thence north true, 5050 feet, more or less, to an intersection with the low line; Thence southeasterly and southerly following the windings of low water line to point of beginning. The area described contains approximately 110 acres.

The areas described aggregate approximately 228 acres.

2. Subject to valid existing rights, the land described in paragraph 1(a) is hereby opened to selection by the State of Alaska under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described in paragraph 1(a), for a period of ninety-one (91) days from the date of publication of this order, if such land is otherwise available. Any of the land described in paragraph 1(a) that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest reservation, and any other withdrawal of record.

4. At 10 a.m. on November 8, 1993, the land described in paragraph 1(a) will be opened to such forms of disposition as may by law be made of the National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

5. The land described in paragraph 1(b) is part of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness pursuant to sections 503, 703, and 707 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2399, 2418, and 2421, and remains withdrawn from all forms of entry, appropriation, or disposal under the public land laws. Any land described in paragraph 1(b) that may be outside of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness will remain withdrawn from all forms of entry, appropriation, or disposal under the public lands laws until a further opening order is published.

Dated: July 28, 1993.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 93–19011 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–JA–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 1, 21, 25, 73, 74, 76 and 100**

**[MM Docket No. 92–261, FCC 93–334]**

## Revision of Broadcast and Cable Television EEO Rules and Policies

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This Report and Order in MM Docket No. 92–261 adopts rules to implement Section 22 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). Specifically, in this Report and Order the Commission has amended its broadcast EEO Rule to require a mid-term review of broadcast television stations. In addition, the Commission amended its cable EEO regulations and reporting form to expand the number of job categories from nine to 15, require the collection of job title information, and to expand the scope of the cable EEO regulations to include any multichannel video programming distributor. This action is taken in order to comply with the EEO provisions set forth in Section 22 of the 1992 Cable Act.

**EFFECTIVE DATES:** Rules: September 8, 1993. Revised FCC Form 395–A: November 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Higginbotham, Mass Media Bureau, Enforcement Division. (202) 632–7069.

**SUPPLEMENTARY INFORMATION:** Public reporting burden for the collection of information under FCC Form 395–A is estimated to be 1.95 hours per response. This reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, AMD–PIRS, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

This is a synopsis of the Commission's Report and Order in MM Docket No. 92–261, adopted June 24, 1993, and released July 23, 1993. The complete text of this document which was adopted in MM Docket No. 92–261, is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

### Synopsis of Report and Order

1. This Report and Order in MM Docket No. 92–261 adopts rules to implement Section 22 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). This Act adds a new Section 334 to the Communications Act of 1934 which codifies the Commission's broadcast EEO rule (47 CFR 73.2080) and its EEO reporting forms as they apply to broadcast television stations (FCC Form 396 and FCC Form 395–B) and requires a mid-term review of broadcast television stations' employment practices. The 1992 Cable Act also amends Section 634 of the Communications Act to require the collection of more specific employee data from cable operators, expand the number of job categories from nine to 15, raise the basic forfeiture for cable EEO violations from $200 to $500, and expand the scope of the EEO provisions to include multichannel video programming distributors. The Notice of Proposed Rule Making ("NPRM") in this rule making proceeding, 58 FR 3929 (January 12, 1993), sought comment on proposed rules to implement the EEO provisions of the 1992 Cable Act.

### Mid-term Reviews for Broadcast Television Stations

2. In the Report & Order we amended our current broadcast EEO Rule (47 CFR 73.2080) to require an EEO mid-term review of broadcast television stations. This review will consist of an evaluation of a station's employment profile using our processing guidelines. To conduct this review, we will use the first two Forms 395–B filed after the station's group license expiration date as specified in 47 CFR 73.1020 of our rules. The mid-term review letters, which will be sent only to those licensees who fail the review, will contain sufficient information to provide licensees with specific guidance as to areas of possible EEO deficiency. The results of the mid-term review will not result in a sanction against the licensee but will constitute only an early warning that a licensee's EEO efforts may need improvement. Thus, the absence of a deficiency letter at mid-term will not be evidence of compliance at renewal time. Moreover, at renewal time, we will take cognizance of all pertinent EEO data, including data relied upon for the mid-term review. The first group of broadcast television stations that will be subject to the mid-term review, will be those stations whose licenses expired on October 1, 1991. This group includes those broadcast television stations located in the District of Columbia, Maryland, Virginia, and West Virginia.

### Cable Equal Employment Opportunities

3. *Collection of Employee Data.* In the NPRM, the Commission proposed to amend the cable annual employment report (FCC Form 395–A) to collect employment data for full and part-time employees separately as well as by job title. In addition, the Commission proposed to collect recruitment, hiring, promotion and employment information for the additional six new upper-level job categories. Based upon the comments in this proceeding, we have revised the amount of information collected on the Form 395–A. Specifically, cable operators will continue to report employee data for full and part-time employees in the aggregate on one grid. To collect the job title information, we will allow cable operators to submit computer-generated employee lists as suggested by one commenter. Cable operators also will submit hiring and promotion data for the six new job categories. Although we will not collect specific recruitment information, on the Form 395–A, we remind cable operators that they are expected to maintain documentation of their recruitment efforts for all job categories, including the six new job categories, and to submit such documentation upon Commission request.

4. *Definitions for Job Categories.* The 15 job categories include: Corporate Officers, General Manager, Chief Technician, Comptroller, General Sales Manager, Production Manager, Managers, Professionals, Technicians, Sales, Office and Clerical, Craftsworkers, Operatives, Laborers, and Service Workers. In the NPRM, the Commission proposed definitions for the first six job categories and to adopt the current definitions for the remaining nine job categories. Based upon the record in this proceeding, we have

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revised and clarified the definitions for 11 of the 15 job categories.

5. *Analysis of Employee Data.* In the NPRM, the Commission sought comment on whether it should provide workforce statistics for the six new job categories, as it currently does for the original nine job categories. It also sought comment on whether it was required to engage in a competency-based analysis. Based on the record in this proceeding, we have determined that we should maintain our current practice of providing statistical information only for each of the original nine job categories and in the aggregate. In addition, we will not engage in a competency-based analysis when reviewing employee data submitted by cable operators.

6. *Multichannel Video Programming Distributors.* In the NPRM, the Commission proposed to amend its rules to include "any multichannel video programming distributor" within the scope of its cable EEO regulations. In addition, it proposed to adopt the Act's definition of this term. In the Report and Order, we have revised our cable EEO rules to include within their scope multichannel video programming distributors. As such, the cable EEO regulations will be imposed on only those entities which exercise control over multiple channels of video programming offered directly to the public. An entity is deemed to have control over the video programming it distributes if it selects video programming channels or programs and determines how they are presented for sale to consumers.

7. Accordingly, a local exchange carrier (LEC) offering video dialtone service currently does not provide video programming directly to the public or have the ability to exercise control over the selection of video programming provided directly to the public. Consequently, LECs are not under these circumstances subject to the cable EEO provisions. Rather, the entity that exercises control over video programming—the program service provider using the video dialtone transport facility—will under our new rules be subject to our cable EEO rules and policies. Similarly, a licensee or lessee of an MMDS facility which does not exercise control over the video programming distributed (*e.g.*, those operating as common carriers) would not be subject to these cable EEO rules. Rather, our cable EEO requirements would apply to the "wireless cable" provider, whether using owned or leased MDS, MMDS (and/or ITFS) facilities to distribute video programming. Likewise, the licensee of a DBS facility that does not exercise control over video programming distributed would not be subject to our EEO rules. Rather, our EEO requirements would apply to the "provider" of the DBS service whether using owned or leased satellite facilities to distribute video programming. If both the licensee and the customer-programmer exercise control, both would be subject to the EEO rules.

8. In each of the above-listed scenarios, the cable EEO provisions apply to those program packagers who distribute two or more channels of video programming directly to the public. We do not believe, however, that Congress intended to impose the cable EEO requirements on entities that principally own and originate programming, even though a small portion of their business may be devoted to distributing commonly-owned programming in packages to subscribers. We will, therefore, adopt a limited exception to the cable EEO rules to accommodate such programmers. Specifically, a programming service offering six or less channels of commonly-owned video programming over a leased transport facility will not be subject to the cable EEO requirements. However, a programmer offering more than six channels of commonly-owned video programming must comply with the cable EEO requirements. For purposes of this exception, programming services will be considered "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

9. *Effective Date of New Provisions.* Entities using MDS, MMDS, ITFS, DBS, TVRO, and/or video dialtone transport facilities that previously have not been subject to the cable EEO requirements are expected, as of the effective date of these rules, to ascertain the requirements of the cable EEO regulations and to take steps to ensure compliance with all of these provisions, including the reporting requirements. Although the Commission will make an effort to compile a mailing list of the entities newly subject to the cable EEO regulations, it is ultimately the responsibility of each "multichannel video programming distributor" to which the statutory requirement applies to obtain and file the requisite annual reporting forms. Parties seeking to be included on the forms mailing list are requested to provide the Commission (Equal Employment Opportunity Branch, Mass Media Bureau) with a letter indicating the company's name and address and the location(s) of the regulated operation no later than October 1, 1993. We anticipate that entities that are newly subject to the cable EEO rules will file cable annual employment reports (FCC Form 395–A) pursuant to 47 CFR 76.77 beginning with the 1994 Annual Employment Report. However, in order to facilitate the transitional filing period for these entities we will waive the requirement for the submission by these entities of the 12-month hiring and promotion data as requested in Section V. B & C and Section VII of the 1994 Annual Employment Report.

## Administrative Matters

### *Final Regulatory Flexibility Analysis*

10. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need and purpose of this action.* This action is taken to implement the equal employment opportunity (EEO) provisions of the Cable Television Consumer Protection and Competition Act of 1992.

II. *Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis.* No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis. However, comments received in response to the Notice of Proposed Rule Making indicate that smaller cable systems are concerned about the administrative impact of the EEO reporting requirements. One commenter suggested that we eliminate redundant reporting requirements or streamline EEO reporting forms for small cable systems.

III. *Significant alternatives considered and rejected.* The Act streamlines reporting requirements for small cable entities which employ fewer than six full-time employees. Cable entities, which employ six or more full-time employees, must comply with all of the EEO reporting requirements. Thus, we find no reason to provide a more streamlined reporting form for small cable operators as one commenter suggests. We have, however, revised our Form 395–A to require less information than that proposed in the Notice. We believe that this revised form complies with the 1992 Cable Act, collects sufficient data to ascertain EEO compliance; and imposes a minimum burden on cable operators.

IV. *Paperwork Reduction Act Statement:* The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new and modified information collection on the public. Implementation of any new or modified

requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

11. The Secretary shall cause a copy of this Report & Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

**Ordering Clauses**

12. Accordingly, it is ordered that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102–385, parts 1, 21, 25, 73, 74, 76, and 100 of the Commission's rules, 47 CFR parts 1, 21, 25, 73, 74, 76, and 100 are amended as set forth below.

13. It is further ordered that the amendments to parts 1, 21, 25, 73, 74, 76, and 100 of the Commission's rules as set forth in this Report and Order will be effective thirty (30) days from the date of publication within the **Federal Register**.

14. It is further ordered that the revised Form 395–A set forth in this Report & Order will be effective ninety (90) days from the date of publication within the **Federal Register**.

15. It is further ordered that the Petition for Further Rule Making filed by NAACP on February 17, 1993, is denied.

16. It is further ordered that MM Docket No. 92–261 is terminated.

**List of Subjects**

*47 CFR Part 1*

Reporting and recordkeeping requirements.

*47 CFR Part 21*

Reporting and recordkeeping requirements, Television.

*47 CFR Part 25*

Reporting and recordkeeping requirements, Satellites.

*47 CFR Part 73*

Television broadcasting.

*47 CFR Part 74*

Television broadcasting.

*47 CFR Part 76*

Equal employment opportunity, Reporting and recordkeeping requirements.

*47 CFR Part 100*

Equal employment opportunity.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

**Amendatory Text**

Parts 1, 21, 25, 73, 74, 76 and 100 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

**PART 1—PRACTICE AND PROCEDURE**

1. The authority citation for part 1 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Paragraph (c) is added to § 1.815 to read as follows:

**§ 1.815 Reports of annual employment.**

* * * * *

(c) *Cross references.*

(1) *Applicability of cable television EEO reporting requirements to MDS and MMDS facilities,* see § 21.920 of this Chapter.

(2) *Applicability of cable television EEO reporting requirements for FSS facilities,* see § 25.601 of this Chapter.

**PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES**

3. The authority citation for part 21 is revised to read as follows:

**Authority:** Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

4. Paragraph (g) is added to § 21.307 to read as follows:

**§ 21.307 Equal employment opportunities.**

* * * * *

(g) *Cross reference.* Applicability of cable television EEO requirements to MDS and MMDS facilities, see § 21.920.

5. Section 21.920 is added to Subpart K to read as follows:

**§ 21.920 Applicability of cable television EEO requirements to MDS and MMDS facilities.**

Notwithstanding other EEO provisions within § 1.815 of this chapter and § 21.307, an entity that uses an owned or leased MDS, MMDS and/or ITFS facility to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes.

**PART 25—SATELLITE COMMUNICATIONS**

6. The authority citation for part 25 is revised to read as follows:

**Authority:** Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101–104, 76 Stat. 419–427; 47 U.S.C. 701–744; 47 U.S.C. 554.

7. Part 25 is amended by adding Subpart I to read as follows:

**Subpart I—Equal Employment Opportunities**

25.601 Equal employment opportunity requirement.

**Subpart I—Equal Employment Opportunities**

**§ 25.601 Equal employment opportunity requirement.**

Notwithstanding other EEO provisions within § 1.815 of this chapter, an entity that uses an owned or leased fixed satellite service facility (operating under this part) to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes.

**PART 73—RADIO BROADCAST SERVICES**

8. The Authority Citation for part 73 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334.

9. Paragraph (d) is added to § 73.2080 to read as follows;

**§ 73.2080 Equal employment opportunities.**

* * * * *

(d) *Mid-term review for television broadcast stations.* The Commission will conduct a mid-term review of the employment practices of each broadcast television station at two and one half years following the station's most recent license expiration date as specified in § 73.1020. The Commission will use the employment profile information provided on the first two Form 395–B reports submitted following such license expiration date to determine whether television station's employment profiles as compared to the applicable labor force data, are in compliance with the Commission's processing criteria. Television broadcast stations which employment profiles fall

below the processing criteria will receive a letter noting any necessary improvements identified as a result of the review.

## PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

10. The Authority Citation for part 74 is revised to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

11. Section 74.986 is added to subpart I to read as follows:

**§ 74.986 Applicability of cable EEO requirements to ITFS facilities.**

Notwithstanding other EEO provisions within §§ 1.815 and 21.307 of this chapter, an entity that uses an owned or leased MDS, MMDS and/or ITFS facility to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes. With respect to the use of an ITFS facility, the EEO provisions set forth in part 76, subpart E do not apply to an accredited institution or government organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.

## PART 76—CABLE TELEVISION SERVICE

12. The authority citation for part 76 is revised to read as follows:

**Authority:** Sec. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309; 532; 533; 535; 542; 543; 552; 554, as amended, 106 Stat. 1460.

13. Paragraph (a) of § 76.71 is revised to read as follows:

**§ 76.71 Scope of application.**

(a) The provisions of this subpart shall apply to any corporation, partnership, association, joint-stock company, or trust engaged primarily in the management or operation of any cable system. Cable entities subject to these provisions include those systems defined in § 76.5(a), all satellite master antenna television systems serving 50 or more subscribers, and any multichannel video programming distributor. For purposes of the provisions of this subpart, a multichannel video programming distributor is an entity such as, but not limited to, a cable operator, a multipoint distribution service, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, or a video dialtone program service provider, who makes available for purchase, by subscribers or customers, multiple channels of video programming, whether or not a licensee. Multichannel video programming distributors do not include any entity which lacks control over the video programming distributed. For purposes of this subpart, an entity has control over the video programming it distributes, if it selects video programming channels or programs and determines how they are presented for sale to consumers. Nothwithstanding the foregoing, the regulations in this subpart are not applicable to the owners or originators (of programs or channels of programming) that distribute six or fewer channels of commonly-owned video programming over a leased transport facility. For purposes of this subpart, programming services are "commonly-owned" if the same entity holds a majority of the stock (or is a general partner) of each program service.

* * * * *

14. Paragraph (d) is added to § 76.77 to read as follows:

**§ 76.77 Reporting requirements.**

* * * * *

(d) *Job category definitions.* The following job category definitions are to be used when classifying employees for purposes of this section:

(1) *Corporate officers.* An employee who is responsible for setting broad policies for the overall operation of the company and who holds a corporate office as designated by the company's governing regulations (*e.g.*, Articles of Incorporation, Articles of Partnership, By-Laws). Examples of positions which may fall within this category include, Chairman of the Board, President and Vice President.

**Note:** Employees who perform responsibilities falling within the "Corporate Officers" and another of the job categories in paragraphs (d) (2) through (6), should normally be classified in only one of the categories in paragraphs (d) (2) through (6). Specific job titles for categories in paragraphs (d) (1) through (6) are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities and not merely the employee's title. Employees who are appropriately classified into one of the categories in paragraphs (d) (1) through (6) also should fall within the category of paragraph (d)(7).

(2) *General manager.* An employee who exercises overall responsibility for a cable unit or system. Related title may include "systems manager."

(3) *Chief technician.* An employee who has overall responsibility for the system's technical operations. The incumbent ordinarily oversees technical budgets and expenditures, inventory control and fleet management. Individual ordinarily supervises technical personnel in the installation, service, maintenance and construction departments and/or studio. Category includes related titles such as "Technical Operations Manager," "Technical Manager," "Plant Manager," or "Chief Engineer."

(4) *Comptroller.* An employee who manages the activities of the accounting department in the maintenance of the accounting book and other such records.

(5) *General sales manager.* A senior sales or marketing employee who oversees the marketing functions of the system which may include telemarketing in addition to direct sales.

(6) *Production manager.* A senior employee responsible for advertising and/or production of local community programming.

**Note:** An employee whose responsibilities fall within more than one of the job categories in paragraphs (d) (2) through (6), (i.e., General Manager/Comptroller), should be listed in the one job category which represents the most frequently performed task by that person.

(7) *Managers.* Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases or segments of a firm's operation or subdepartments of a major department. Incumbents within this category ordinarily exercise authority to hire and terminate employees. This category would include systems managers and assistant managers, program directors and assistant directors, office managers, budget officers, promotions managers, public affairs directors, chief engineers and those holding equivalent positions. Employees appropriately falling within categories in paragraphs (d) (1) through (6) also should fall within this category.

(8) *Professionals.* Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, editors, engineers, lawyers and labor

relations specialists. This category would include persons engaged in the writing, preparation and reproduction of programming, writers or editors, producers and directors of programs, floor directors, announcers, singers, actors, music librarians and those in similar positions.

(9) *Technicians.* Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: computer programmers and operators, engineering aides, junior engineers and electronic technicians. This category also would include strand mappers, audio and video engineers, camera technicians (live or film), film processors, light technicians, drafters and design personnel, electronic converter repair technicians (technicians who perform more than clear and recycle functions) and advertising sales production personnel.

(10) *Sales.* Occupations engaging wholly or primarily in direct selling. This category would include advertising agents, cable service sales personnel (sales representatives), and individuals engaged in direct customer contact for the purposes of product and service promotion. This category includes employees who ordinarily are paid by commissions.

(11) *Office and clerical.* Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included. Includes: Bookkeepers, cashiers, collectors of bills and accounts, messengers and clerks, office machine operators, stenographers, typists and secretaries, telephone operators, kindred workers and customer service representatives.

(12) *Craft workers (skilled).* Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: Hourly paid supervisors who are not members of management, mechanics, and repair workers, electricians, motion picture projectionists, and splicers.

(13) *Operatives (semi-skilled).* Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training Includes: Apprentices, operatives, truck and tractor drivers, welders, installers, line workers, and trenching machine workers.

**Note:** Apprentices—Persons employed in a program including work training and related instruction to learn a trade or craft which is traditionally considered an apprenticeship regardless of whether the program is registered with a Federal or State agency.

(14) *Laborers (unskilled).* Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: gardeners and groundskeepers, laborers performing lifting or digging, stage hands and kindred workers.

(15) *Service workers.* Workers in both protective and nonprotective service occupations. Includes: Char workers and cleaners, elevator operators, guards and watch workers, janitors, and kindred workers.

**NOTE:** A person who does a job falling within more than one of the job categories listed in paragraphs (d) (7) through (15) is to be listed in the job category which represents the most frequently performed task by that person; a person is to be listed only once. Specific job titles listed in the categories above are merely illustrative. The proper categorization of any employee depends on the kind and level of the employee's responsibilities.

## PART 100—DIRECT BROADCAST SATELLITE SERVICE

15. The authority citation for part 100 is revised to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 554.

16. Paragraph (e) is added to) § 100.51 to read as follows:

**§ 100.51 Equal employment opportunities.**

* * * * *

(e) Notwithstanding other EEO provisions within these rules, an entity that uses an owned or leased DBS facility operating under this part to provide more than one channel of video programming directly to the public must comply with the equal employment opportunity requirements set forth in part 76, subpart E of this chapter, if such entity exercises control (as defined in part 76, subpart E of this chapter) over the video programming it distributes.

[FR Doc. 93–18775 Filed 8–6–93; 8:45 am]
BILLING CODE 6712–01–M

**47 CFR Part 61**

**[CC Docket No. 90–132 FCC 93–355]**

## Competition in the Interstate Interexchange Marketplace—Petitions for Modification of Fresh Look Policy

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petitions for modification of "fresh look" policy.

**SUMMARY:** This Memorandum Opinion and Order ("the order") denies petitions by the Ad Hoc Telecommunications Users Committee and Sprint Communications Company LP seeking extension and expansion of the Commission's "fresh look" policy adopted in the August 1, 1991, Report and Order in this proceeding. The order finds that petitioners' arguments were not sufficiently compelling to warrant the extension of "fresh look" and noted that many of petitioners' arguments had been considered and rejected in earlier proceedings. The order rejected Sprint's request to expand "fresh look" to AT&T's 800 service term plans, finding the request procedurally improper and its arguments unconvincing. The order is intended to allow the "fresh look" period to close, as scheduled, after 90 days and to bring stability to the 800 services market.

**EFFECTIVE DATE:** September 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andy Lachance, Common Carrier Bureau, Policy and Program Planning Division, (202) 632–1305.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Memorandum Opinion and Order in CC Docket No. 90–132, adopted on July 15, 1993, and released on July 26, 1993.

The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's contractor, International Transcription Service, Inc., at 1919 M Street, NW., room 246, Washington, DC 20554, (202) 857–3800.

### Synopsis of Memorandum Opinion and Order

1. On November 6, 1992, the Ad Hoc Telecommunications Users Committee (Ad Hoc) petitioned the Commission requesting extension of the "fresh look" policy that was adopted in the Commission's August 1, 1991 Report and Order in this proceeding, 6 FCC Rcd 5880 (1991), 56 FR 55235 (October 25, 1991). Ad Hoc asks that the "fresh look"

period be extended until ninety days after implementation of an automated notice-and-acceptance functionality in the 800 database system. On December 2, 1992, Sprint Communications Company LP (Sprint) filed an emergency petition for declaratory ruling asking the Commission to revise its "fresh look" policy by extending it from 90 to 180 days and expanding it to include all of AT&T's 800 term plans.

2. In the Report and Order, we found that AT&T maintained a market advantage in the provision of 800 and inbound services due to the lack of 800 number portability. (Prior to May 1, 1993, customers could not change 800 service providers without also having to change their 800 numbers.) We found further that AT&T had a unique ability to leverage its market power in 800 and inbound services by bundling these services with other services. We found that through bundling, AT&T could use its market power over certain 800 service customers to gain an advantage in other markets. Thus, we prohibited AT&T from future bundling of 800 services in integrated services packages until 800 numbers became portable. However, we allowed Tariff 12 options on file as of August 1, 1991, to remain in effect, even if they included inbound service. In addition, we provided that AT&T must permit customers with Tariff 12 packages that include inbound service to terminate these packages within ninety days of the time 800 numbers became portable without the imposition of any termination liabilities—the so-called "fresh look" requirement.

3. On April 17, 1992, in the Memorandum Opinion and Order on Reconsideration, 7 FCC Rcd 2677 (1992), 57 FR 20206 (May 12, 1992), we modified the bundling restrictions to prohibit AT&T from offering bundled service arrangements that included "old" 800 numbers (numbers in use by the customer prior to April 17, 1992), and to apply to Tariff 16s and other tariffed service offerings that included 800 service. Likewise, we modified the grandfathering provision to allow the customers of Tariff 12s, Tariff 16s, or other tariffed offerings with bundled 800 service, to continue to take service under those arrangements, provided that the customer had signed a final contract for service or begun taking service on or before April 16, 1992. Finally, we reaffirmed the fresh look requirement and applied it to all grandfathered Tariff 12, Tariff 16, and other bundled service customers.

4. Fresh look rights were triggered by the implementation on May 1, 1993, of a new 800 data base system of 800 access which permits 800 number portability. Under the 800 data base system, all 800 customer service records are loaded into a central data base known as the service management system (SMS). The only entity authorized to input a new 800 customer service record or change an existing record in the SMS is the "responsible organization" or "RESPORG" designated by the customer. In the event that multiple carriers provide service for a particular 800 number, the RESPORG for that record may not add traffic to another carrier's network without first notifying that carrier and obtaining its acceptance of the service order. Initially, the industry will use manual notice-and-acceptance procedures. It is expected that automated procedures will replace these manual procedures in May 1994.

5. The order denies the Ad Hoc and Sprint petitions. It finds that none of the reasons given by the petitioners warrant an extension of the ninety-day "fresh look" period. Sprint argues that many customers will adopt a "wait and see attitude" and hold off on a change in 800 service provider until they are comfortable with the 800 data base and related systems. This argument is not convincing. Commission staff have closely monitored the progress of 800 data base implementation to ensure that the necessary network-related work was complete before the system was implemented. Moreover, our monitoring efforts have included monthly meetings attended by representatives of the large users that are subject to the "fresh look" policy. As a result, we do not believe that users harbor the grave concerns Sprint identifies or that these types of concerns would still be justified.

6. The order also rejects Ad Hoc's argument that customers seeking multiple carrier routing arrangements may be reluctant to change carriers without automated notice-and-acceptance procedures. In the 800 Data Base Proceeding, we rejected assertions that customers would be unwilling to use multiple carrier routing without automated notice-and-acceptance. No party presents any evidence here that would cause us to change our view. In particular, no one demonstrates why manual procedures will not suffice as an interim approach.

7. Sprint claims, further, that "[t]here are a number of as-yet unresolved issues relating to the administration and operation of the SMS/800 database which directly affect how easy it will be for customers to subscribe to multiple 800 service providers." Among the issues Sprint identifies, virtually all were resolved prior to the implementation of number portability. The only previously unresolved "area of uncertainty;" claimed by Sprint concerns the availability of a view-only functionality (which enables carriers, other than the RESPORG, serving a particular 800 number to view, without changing, the record for that number). While this functionality has been scheduled for implementation in October 1993, Sprint has not demonstrated that its unavailability until then will affect the ability to customers to subscribe to multiple 800 service providers.

8. Sprint and MCI also raise the possibility that AT&T may be able to dissuade customers from exercising their "fresh look" rights by refusing to provide only part of the service for a particular 800 number. There is no evidence in the record to support this allegation. Moreover, we have previously held that basic 800 access service includes area-of-service routing, which allows customers to divide their 800 traffic among different carriers based on the local access transport area (LATA) in which the call originates. This should ensure that users will be able to split their traffic between AT&T and other carriers if they so choose. Finally, with the advent of 800 number portability, any customer eligible for "fresh look" may now take all of its 800 business to an AT&T competitor if AT&T does not offer the service the customer seeks.

9. Finally, Sprint, TRA and United/Covia ask the Commission to extend the "fresh look" period in order to allow customers adequate time to complete the carrier selection process and migrate traffic to new carriers. Customers and carriers have known about "fresh look" since August of 1991. There is no valid reason why customers should not have begun the process of soliciting bids and considering their various service options in time for them to exercise "fresh look" during the ninety-day period. United/Covia claims that migration of its traffic to a new carrier will take longer than ninety days. This is not a reason, we believe, to extend "fresh look" as United/Covia requests. It is not our intention, in setting the "fresh look" period at ninety days, to ensure that each and every customer with "fresh look" rights is able to migrate all of its traffic off AT&T's network in the allotted time.

10. We also deny Sprint's request to expand "fresh look" to apply to customers of AT&T's 800 term plans. We note at the outset that Sprint filed its petition as a prayer for an emergency declaratory ruling, an inappropriate vehicle for Sprint to raise this issue.

Section 1.2 of our Rules states that "[t]he Commission may, * * * issue a declaratory ruling terminating a controversy or removing uncertainty."[1] In adopting the 800 and inbound service bundling restrictions, we stated unequivocally that these restrictions applied only to certain of AT&T's bundled offerings. Sprint does not allege, and we do not find, any language in either the Report and Order or the Reconsideration Order that might lend itself to an interpretation that the 800 and inbound bundling restrictions might apply to AT&T's 800 term plans. Sprint should have pursued the relief it seeks in a petition for reconsideration of the Report and Order or a petition for rulemaking, not a petition for declaratory ruling.

11. We find further that Sprint's petition fails on the merits. Sprint contends that 800 term plan customers should get a "fresh look" because they are less sophisticated than other users and may have been unaware that numbers would soon be portable when they signed their long-term contracts. However, 800 term plan customers are not necessarily smaller or less sophisticated than customers with bundled packages of services. Moreover, the 800 data base proceeding has been ongoing since 1986. Thus we are not convinced by arguments that term plan customers were generally unaware of the imminence of number portability.

12. In any event, Sprint's argument misconstrues the purpose of "fresh look." "Fresh look" is part of a package of remedies designed to address a specific practice—bundling by AT&T of 800 or inbound service with other services. "Fresh look" was never intended to apply in every instance in which some carrier might have had a competitive advantage with respect to a particular customer as a result of the lack of 800 number portability. In particular, "fresh look" was never intended to apply to 800 term plans offered by AT&T or other carriers, and we do not find it appropriate to extend fresh look to these situations now.

### Ordering Clause

13. Accordingly, pursuant to authority contained in sections 1, 4, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, and § 1.2 of the Commission's Rules, 47 CFR 1.2, it is ordered that the petition of the Ad Hoc Telecommunications Users Committee for expedited modification of fresh look policy and Sprint Communications Company's emergency petition for declaratory ruling are denied.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–18884 Filed 8–6–93; 8:45 am]

BILLING CODE 6712–01–M

[1] 47 CFR 1.2.

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**47 CFR Parts 61, 64 and 69**

**[CC Docket No. 91–115; FCC 93–383]**

## Tariffing Requirements for Billing Name and Address

**AGENCY:** Federal Communications Commission.

**ACTION:** Final Rule; suspension of effective date.

**SUMMARY:** On May 13, 1993, the Commission adopted a Second Report and Order establishing rules requiring local exchange carriers to provide billing name and address information on a common carrier basis to telecommunications service providers for billing purposes. The Commission also established rules requiring local exchange carriers to notify their customers that their billing name and address information may be provided to telecommunications service providers for billing purposes, and to obtain authorization from customers with unlisted or nonpublished telephone numbers prior to disclosing their billing name and address information. On August 4, 1993, the Commission on its own motion stayed the effective date of several of these requirements to give carriers sufficient time to provide notification and obtain authorization from their customers, and give end users an adequate opportunity to weigh their options regarding disclosure of their billing name and address information. Because the Commission revises on its own motion the deadlines for several of these requirements, we dismiss as moot several petitions for stay of the Second Report and Order pending before us.

**EFFECTIVE DATE:** August 5, 1993.

**FOR FURTHER INFORMATION CONTACT:** Steven Spaeth, Tariff Division, Common Carrier Bureau, (202) 632–6917.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order adopted August 4, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (Room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, suite 140, 2100 M Street, NW., Washington, DC 20037.

### Regulatory Flexibility Analysis

We have determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in Section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange carriers do not qualify as small entities because they have a monopoly on ubiquitous access to the subscribers in their service area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. *See* 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, we hereby certify that these rules will not have a significant effect on a substantial number of "small entities."

### Summary of Report and Order

On June 9, 1993, the Commission adopted the Second Report and Order in this docket 58 FR 36143, July 6, 1993, requiring local exchange carriers (LECs) to provide their customers' billing name and address (BNA) information to interexchange carriers and other telecommunications service providers on a common carrier basis for this purpose. LECs were required to file tariffs for BNA provision within 90 days of the release date of the Second Report and Order, or September 8, 1993. The Commission also required LECs to notify their subscribers that when they use a LEC use card or accept a collect or third party call, their BNA may be disclosed to the serving interexchange carriers and other telecommunications service providers to facilitate billing. As a further precaution, LECs were prohibited from releasing the BNA information associated with unlisted and nonpublished telephone numbers without the customer's consent, and were required to obtain a one-time written authorization for BNA disclosure from existing and future LEC cardholders having nonpublished or unlisted numbers. LECs were given 60 days from the release date of the Order, or August 9, 1993, to provide this notification and obtain this authorization.

LECs will now be given until February 9, 1994, to provide notification and obtain authorization from their

customers with nonpublished or unlisted telephone numbers for disclosure of their BNA information to interstate service providers. LECs are also required to file tariff revisions for the provision of the BNA information of calling card customers with nonpublished or unlisted telephone numbers no later than February 9, 1994, on 45 days' notice. Finally, the Commission extended the deadline for providing notification to customers with listed telephone numbers to October 24, 1993, the date LEC tariffs providing BNA will be scheduled to take effect. The Commission believes these revisions should give carriers sufficient time to provide notification and obtain authorization from their customers, and should give end users an adequate opportunity to weigh their options regarding disclosure of their BNA information. However, the Commission saw no need at this time to modify the September 8, 1993 date for filing tariffs for the provision of BNA associated with customers who have listed telephone numbers.

On July 2, 1993, the United States Telephone Association (USTA) and several Bell Operating Companies (BOCs) filed a petition for stay of the Second Report and Order pending reconsideration. On July 8, 1993, the United and Central Telephone Companies (United) filed a petition for limited stay of the written authorization requirement of the Second Report and Order. On July 9, 1993, GTE Service Corporation (GTE) filed a petition for stay of the authorization requirement and the notification requirement. On July 12, 1993, U.S. Intelco Networks, Inc. (Intelco) filed a petition for stay of all the requirements of the Second Report and Order. Because the Commission is changing certain of the deadlines established in the Second Report and Order as they relate to customers with nonpublished or unlisted telephone numbers, GTE's and United's petitions for stay are now moot, and USTA's and Intelco's petitions are now moot to the extent they seek stay of these requirements. The Commission denied the petitions for stay of the Second Report and Order filed by USTA and Intelco to the extent they are not moot because these parties failed to show that they would suffer irreparable harm in the absence of a stay, as required by Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F.2d 921, 925 (D.C. Cir 1958).

**Ordering Clauses**

Accordingly, *it is ordered*, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.108 of the Commission's Rules, 47 CFR 1.108, that In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, Second Report and Order, FCC 93–254, released June 9, 1993 *is modified* to reflect the revisions to the deadlines established in paragraphs 45 and 46 of that Order, as specified in paragraph 3, *supra*, effective upon publication in the **Federal Register**.[1]

*It is further ordered* that the petition for stay filed by United States Telephone Association, Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., New York Telephone Company and New England Telephone and Telegraph Company, Southwestern Bell Telephone Company, and US West Communications, Inc., *is dismissed as moot*, to the extent indicated above, and otherwise *is denied*.

*It is further ordered* that the petition for limited stay filed by United and Central Telephone Companies *is dismissed as moot*.

*It is further ordered* that the petition for limited stay filed by GTE Service Corporation *is dismissed as moot*.

*It is further ordered* that the petition for limited stay filed by U.S. Intelco Networks, Inc. *is dismissed as Moot*, to the extent indicated above, and otherwise *is denied*.

The effective date of August 5, 1993 of the amendments to parts 61, 64, and 69 published at 58 FR 36143, July 6, 1993 is suspended.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–19166 Filed 8–5–93; 3:47 pm]

BILLING CODE 6712–01–M

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## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### 48 CFR Parts 709, 726, 737, and 752

### [AIDAR Notice 93–2]

### Miscellaneous Amendments

**AGENCY:** Agency for International Development, IDCA.

**ACTION:** Final rule.

**SUMMARY:** The Agency for International Development Acquisition Regulation (AIDAR) is being amended to make miscellaneous changes concerning organizational conflict of interest, disadvantaged enterprises, and advisory and assistance services.

**EFFECTIVE DATE:** September 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ms. Frances M. Maki, FA/PPE, concerning organizational conflict of interest and advisory and assistance services, and Ms. Kathleen O'Hara, FA/PPE, concerning disadvantaged enterprises, room 1600I, SA–14, Agency for International Development, Washington, DC 20523–1435. Telephone (703) 875–1534.

**SUPPLEMENTARY INFORMATION:** A brief summary of the changes being made to the AIDAR follows:

A new clause is being added which requires the contractor to notify the Contracting Officer in writing if after award it discovers either an actual or potential organizational conflict of interest (OCI) with respect to the contract. This clause is used if one of the FAR OCI solicitation clauses, FAR 52.209–7 or 52.209–8, is used. It differs from the FAR clauses in that it is specifically for OCI discovered during the performance of a contract.

The coverage on disadvantaged enterprises is amended to add a limitation on subcontracting under contracts for technical assistance services which are awarded using less than full and open competition under the authority of 706.302–71.

Section 737.206(c), thresholds for Executive approval for advisory and assistance (A&A) services, has been amended to raise the thresholds. Based on experience with A&A services and considering the Agency's project approval process, AID has decided to increase the threshold for A&A Executive approval.

The changes being made by this Notice are administrative and are not considered significant rules under FAR Section 1.301 or Subpart 1.5, nor major rules as defined in Executive Order 12292. This Notice will not have an impact on a substantial number of small entities, nor does it establish any information collection as contemplated by the Regulatory Flexibility Act and Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at any time. Comments or questions may be addressed as specified

[1] See 5 U.S.C. 553(d)(1).

in the "FOR FURTHER INFORMATION CONTACT" section of the preamble.

**List of Subjects in 48 CFR Parts 709, 726, 737, and 752**

Government procurement.

Accordingly, for the reasons set out in the preamble, 48 CFR chapter 7 is amended as follows:

1. The authority citations in parts 709, 726, 737, and 752 continue to read as follows:

**Authority:** Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., P. 435.

## PART 709—CONTRACTOR QUALIFICATIONS

### Subpart 709.5—Organizational Conflicts of Interest

2. A new section 709.507–2 is added to read as follows:

**709.507–2 Contract clause.**

(a)–(b) [Reserved]

(c) In order to avoid problems from organizational conflicts of interest that may be discovered after award of a contract, the clause found at 752.209–71 should be inserted in all contracts whenever the solicitation includes one of the FAR organizational conflict of interest solicitation clauses, FAR 52.209–7 or 52.209–8.

## PART 726—OTHER SOCIOECONOMIC PROGRAMS

### Subpart 726.3—Subcontracting Requirement

3. The title of section 726.301 is revised to read as follows:

**726.301 Requirement for subcontracting with disadvantaged enterprises.**

* * * * *

4. Section 726.302 is added to read as follows:

**726.302 Limitations on subcontracting.**

The contracting officer shall insert the clause at 752.226–3, Limitations on Subcontracting, in any solicitation and contract for technical assistance services which is to be awarded under the authority of 706.302–71.

## PART 737—SERVICE CONTRACTING

### Subpart 737.2—Advisory and Assistance Services

**737.206 [Amended]**

5. Section 737.206, paragraph (c)(3) is amended by removing the last sentence.

6. Also in section 737.206, a new paragraph (c)(4) is added to read as follows:

**737.206 Requesting activity responsibilities.**

* * * * *

(c) * * *

(4) In addition to the requirements in paragraphs (c) (1) through (3), approval by the AID Advisory and Assistance Executive (see 737.270) is required for:

(i) Contracts for A&A services which benefit the host country and are funded under a project agreement when the estimated value is $15 million or more for the first year of the contract.

(ii) Contracts for A&A services which are not funded under a project agreement, regardless of the beneficiary, when the estimated value is $1 million or more for the first year of the contract.

7. Section 737.270 is revised to read as follows:

**737.270 AID Advisory and assistance executive.**

As required by OMB Circular A–120, the Administrator has designated the Associate Administrator for Finance and Administration as the AID Advisory and Assistance Executive, responsible for assuring that advisory and assistance acquisitions comply with the terms of OMB Circular A–120.

## PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### Subpart 752.2—Texts of Provisions and Clauses

8. A new section 752.209–71 is added to read as follows:

**752.209–71 Organizational conflicts of interest discovered after award.**

As prescribed in 709.507–2, for use if one of the FAR organizational conflict of interest solicitation clauses, FAR 52.209–7 or 52.209–8, is used.

**Organizational Conflicts of Interest Discovered After Award (June 1993)**

(a) The Contractor agrees that, if after award it discovers either an actual or potential organizational conflict of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action(s) which the Contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict.

(b) The Contracting Officer shall provide the contractor with written instructions concerning the conflict. AID reserves the right to terminate the contract if such action is determined to be in the best interest of the Government.

(End of Clause)

9. A new section 752.226–3 is added to read as follows:

**752.226–3 Limitation on subcontracting.**

As prescribed in 726.302, insert the following clause:

**Limitations on Subcontracting (June 1993)**

By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract, at least 51 percent of the cost of contract performance incurred for personnel shall be expended for employees of the contractor or employees of other disadvantaged enterprises eligible under the terms of 706.302–71. For the purposes of this clause, independent contractors hired by the contractor shall be considered employees of the contractor.

(End of Clause)

Dated: June 9, 1993.

**John F. Owens,**

*Procurement Executive.*

[FR Doc. 93–18623 Filed 8–6–93; 8 45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 672

**[Docket No. 921107–3068; I.D. 080393D]**

### Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing the directed fishery for the pelagic shelf rockfish species category in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pelagic shelf rockfish species category total allowable catch (TAC) in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), August 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the pelagic shelf rockfish species category TAC for the Central Regulatory Areas was established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 4,450 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), established in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for the pelagic shelf rockfish species category of 4,350 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the pelagic shelf rockfish species category in the Central Regulatory Area effective from 12 noon, A.l.t., August 4, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93-18953 Filed 8-4-93; 12:00 pm]

BILLING CODE 3510-22-M

## 50 CFR Part 672

[Docket No. 921107-3068; I.D. 080393E]

## Groundfish of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of the shortraker/rougheye (SRRE) rockfish species category in the Eastern Regulatory Area of the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the SRRE rockfish species category total allowable catch (TAC) in this area has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), August 4, 1993, through 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Goundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the SRRE rockfish species category TAC for the Eastern Regulatory Area was established by the final 1993 initial specifications (58 FR 16787, March 31, 1993) as 513 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(c)(3), that the TAC for the SRRE rockfish species category in the Eastern Regulatory Area has been reached. Therefore, NMFS is requiring that further catches of the SRRE rockfish species category in the Eastern Regulatory Area be treated as prohibited species in accordance with § 672.20(e)(3), effective from 12 noon, A.l.t., August 4, 1993, through 12 midnight, A.l.t., December 31, 1993.

### Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

### List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 4, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93-18952 Filed 8-4-93; 11:50 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 58, No. 151
Monday, August 9, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### 7 CFR Part 801

### FGIS To Change Protein Reference Method

**AGENCY:** Federal Grain Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Grain Inspection Service (FGIS) proposes to revise the regulations under the United States Grain Standards Act (USGSA), as amended. Specifically, FGIS proposes to adopt the Combustion method as the chemical reference method for determining the protein content in both wheat and soybeans. FGIS also proposes to eliminate the use of the Kjeldahl method for official protein inspections and to more clearly describe the application of tolerances to official near-infrared spectroscopy (NIRS) type instruments.

**DATES:** Comments must be submitted on or before September 8, 1993.

**ADDRESSES:** Written comments must be submitted to George W. Wollam, Federal Grain Inspection Service, USDA, room 0624, South Building, P.O. Box 96454, Washington, DC 20090–6454 and telecopy users may send responses to the automatic telecopier machine at (202) 720–4628.

All comments received will be made available for public inspection during regular business hours in room 0624, South Building, 1400 Independence Avenue, SW., Washington, DC (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** George W. Wollam, Federal Grain Inspection Service, USDA, room 0624, South Building, P.O. Box 96454, Washington, DC 20090–6454; Telephone (202) 720–0292.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as non-major because it does not meet the criteria for a major regulation established in the Order.

#### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. The United States Grain Standards Act provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Regulatory Flexibility Act Certification

David R. Galliart, Acting Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (4 U.S.C. 601 *et seq.*), because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

#### Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the information collection requirements contained in the regulations issued under the United States Grain Standards Act have been previously approved by OMB under control numbers 0580–0011 and 0580–0013.

#### Background

FGIS currently uses the Kjeldahl method as the primary reference method by which official near-infrared spectroscopy (NIRS) protein-measuring instruments are calibrated. NIRS instruments are used to determine protein in wheat and soybeans in both domestic and export markets. FGIS is proposing to replace the Kjeldahl method with the Combustion method as the chemical reference method.

The Combustion method that FGIS is proposing to adopt uses a nitrogen analyzer consisting of a computer-controlled closed-system combustion process and a thermal conductivity detector. This method has been accepted (August 1992) by the AOAC International (formerly known as the Association of Official Analytical Chemists) as an alternative to the Kjeldahl method for protein determinations in cereal grains and oilseeds and has been approved (September 1992) by the American Association of Cereal Chemists (AACC) for protein determination in cereal grain.

Changing from the Kjeldahl method to the Combustion method will provide many benefits to FGIS. The Combustion method does not use hazardous chemicals or produce the environmental pollutants associated with the Kjeldahl method. Also, the shorter analysis time for the Combustion method allows a larger sample throughput, permitting a more effective evaluation of the NIRS instrument calibrations.

FGIS has extensively compared the protein results obtained using the Combustion method and the Kjeldahl method. Statistical analysis of these data shows that each method is capable of providing equally precise and reproducible protein results; however, the Combustion method has a general tendency to yield slightly higher results than the FGIS Kjeldahl method. The observed differences are approximately +0.03 percent protein for wheat and +0.3 percent protein for soybeans. These differences are believed to be due to more effective nitrogen recovery by the Combustion method than by the Kjeldahl method.

The more effective nitrogen recovery of the Combustion method should reflect the true protein content of U.S. wheat and soybeans more accurately than the current Kjeldahl reference method. A change of +0.03 percent protein for wheat should have minimal impact on domestic and export wheat markets. The change of +0.5 percent protein for soybeans should have minimal impact on domestic and export soybean markets because the trading price of soybeans is not routinely based on the protein content.

The NIRS instrument maintenance tolerances are used to maintain

consistent results among official protein and oil determinations.

All NIRS instruments are adjusted to give consistent results on the national Standard Reference Samples (SRS). The adjustments are based on the differences between each official NIRS instrument's results for the SRS and the average of the FGIS national standard NIRS instruments' results for the SRS. These same FGIS national standard NIRS instruments are calibrated and routinely standardized to the FGIS chemical reference method.

Copies of the chemical reference methods used by FGIS are available from David Funk, FGIS, USDA, 10383 N. Executive Hills Blvd., Kansas City, Missouri 64153.

**Proposed Action**

FGIS proposes to:

1. Revise § 801.7 (The heading of) to reflect the deletion of Kjeldahl analyzers.

2. Revise § 801.7(a) to more clearly describe the application of tolerances for official NIRS wheat protein analyzers.

3. Revise § 801.7(b) to more clearly describe the application of tolerances for official NIRS soybean protein and oil analyzers.

4. Delete § 801.7(c) to reflect the deletion of Kjeldahl protein as an official inspection service.

**List of Subjects in 7 CFR Part 801**

Administrative practice and procedure, Grain, Export.

For reasons set out in the preamble, 7 CFR part 801 is proposed to be amended as follows:

1. Authority citation for part 801 continues to read as follows:

**Authority:** Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Section 801.7 is revised to read as follows:

**§ 801.7 Tolerances for near-infrared spectroscopy (NIRS) analyzers.**

(a) NIRS wheat protein analyzers. The maintenance tolerance for the NIRS analyzers used in performing official inspection for determination of wheat protein content shall be ± 0.15 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS Combustion method.

(b) NIRS soybean oil and protein analyzers. The maintenance tolerance for the NIRS analyzers used in performing official inspection for determination of soybean oil shall be ± 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS solvent oil extraction method; and for determination of protein content shall be ± 0.20 percent mean deviation from the national standard NIRS instruments, which are referenced and calibrated to the FGIS Combustion method.

Dated: July 21, 1993.

**David R. Galliart,**

*Acting Administrator.*

[FR Doc. 93–18866 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–EN–M

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**Agricultural Marketing Service**

**7 CFR Part 1030**

**[DA–93–20]**

## Milk in the Chicago Regional Marketing Area; Notice of Proposed Revision of Supply Plant Shipping Percentages

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed revision of rules.

**SUMMARY:** This notice invites public comments on a proposal to reduce the supply plant shipping standards for the month of September 1993 under the Chicago Regional order. The proposal would reduce the shipping percentage for pooling individual supply plants to 2 percent of receipts and the shipping percentage for units of supply plants to 5 percent of receipts. The reductions were requested by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The organization contends that the action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants.

**DATES:** Comments are due no later than August 16, 1993.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P. O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P. O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended, provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1030.7(b)(5) of the order, the revision of certain provisions of the order regulating the handling of milk in the Chicago Regional marketing area is being considered for the month of September 1993.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures to make the

action effective for the month of September 1993.

All written submission made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

The provisions proposed to be revised are the supply plant shipping percentages for the month of September 1993. The proposed action would reduce the shipping percentage for individual supply plants by 3 percentage points (from 5 to 2 percent of receipts) and for supply plant units by 5 percentage points (from 10 to 5 percent of receipts) during September 1993.

Currently, the order provides that individual supply plants must ship at least 5 percent of milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

With regard to the current supply plant shipping standards, it is noted that the annual Code of Federal Regulations specifies shipping standards of one percent for individual plants and four percent for a supply plant unit for the months of September through December. Such shipping percentages are the result of a revision published on December 27, 1991 (56 FR 66953). Such revision was to be applicable only for one month, but, was inadvertently included in the annual Code of Federal Regulations.

The Chicago order provides that the Market Administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points for up to 3 months. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards by up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC has requested that the market administrator reduce the shipping percentages by 2 percentage points for the month of August. A reduction of the shipping percentages for August is being considered by the Market Administrator.

Based on the most recent supply and demand projections, CMPC contends a further reduction of shipping percentages, beyond the request to the Market Administrator, will be necessary.

CMPC contends that in order to make the most efficient use of available milk supplies, as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the month of September 1993, CMPC contends that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 2 and 5 percent of receipts, respectively.

In view of the supply/demand relationship, it may be necessary to reduce the supply plant shipping percentages as proposed to provide for the efficient and economic marketing of milk during the month of September 1993.

**List of Subjects in 7 CFR Part 1030**

Milk marketing orders.

The authority citation for 7 CFR part 1030 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31,as amended; 7 U.S.C. 601–674.

Dated: August 3, 1993.

**Richard M. McKee,**

*Deputy Director, Dairy Division.*

[FR Doc. 93–18989 Filed 8–6–93; 8:45 am]

BILLING CODE 3410-02-P

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 93–NM–101–AD]**

**Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. This proposal would require replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves. This proposal is prompted by a fire resistance test of the hydraulic EDP, associated hoses, and couplings installed on the number 2 and number 3 engines, which revealed that the pump case drain line quick release couplings leaked hydraulic fluid. The actions specified by the proposed AD are intended to prevent hydraulic fluid leaking from the pump case drain line quick release coupling, which could fuel the flames in the event of an engine fire.

**DATES:** Comments must be received by October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–101–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. The CAA advises that a fire resistance test of the hydraulic engine driven pump (EDP), associated hoses, and couplings installed on the number 2 and number 3 engines of these airplanes revealed that the pump case drain line quick release couplings leaked hydraulic fluid. Two couplings on the number 2 and number 3 engines are susceptible to hydraulic fluid leakage: one at the end of the pump case drain line which connects to the hydraulic EDP, and one at the end of the pump case drain line which connects to the engine bay/pylon interface. This condition, if not corrected, could result in hydraulic fluid leaking from the pump case drain line quick release couplings, which could fuel the flames in the event of an engine fire.

British Aerospace has issued Service Bulletin SB.29–31–01339A, dated May 24, 1993, that describes procedures for replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic EDP on the number 2 and number 3 engines with improved fire resistant coupling halves. The improved coupling halves are comprised of an inner valve and an outer nut with fireSleeves. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacing the quick release coupling halves on each end of the pump case drain line on the hydraulic EDP on the number 2 and number 3 engines with improved fire resistant coupling halves. The action would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 46 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,590, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**British Aerospace:** Docket 93–NM–101–AD.

*Applicability:* Model BAe 146–100A, -200A, and -300A series airplanes; serial numbers E3001 through E3207 inclusive, E3209 through E3220 inclusive, and E3222; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent hydraulic fluid leaking from the pump case drain line quick release couplings, which could fuel the flames in the event of an engine fire, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the quick release coupling halves on each end of the pump case drain line on the hydraulic engine driven pump (EDP) on the number 2 and number 3 engines with improved fire resistant coupling halves, in accordance with British Aerospace Service Bulletin SB.29–31–01339A, dated May 24, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 3, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18924 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–NM–66–AD]**

## Airworthiness Directives; McDonnell Douglas Model DC–8–70 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8–70 series airplanes. This proposal would require inspections to detect cracking in the front spar pylon support attach fittings on the number 2 and number 3 engines, and repair, if necessary. This proposal is prompted by reports of cracking in the pylon support fittings of the front spar on the number 2 and number 3 engines. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the pylon-to-wing main load path.

**DATES:** Comments must be received by October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425.

**FOR FURTHER INFORMATION CONTACT:** Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–66–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

Recently, three operators of McDonnell Douglas Model DC–8–70 series airplanes reported finding cracks in the front spar pylon support fittings on the number 2 and number 3 engines. Analysis indicates that such cracking may be attributed to preload during installation of these fittings. Such cracking in these fittings, if not detected and corrected, could result in structural degradation of the pylon-to-wing main load path.

The FAA has reviewed and approved McDonnell Douglas DC–8–70 Alert Service Bulletin A57–99, dated December 10, 1992, that describes procedures for eddy current inspections of the front spar pylon support fittings on the number 2 and number 3 engines.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive eddy current inspections of the front spar pylon support fittings on the number 2 and number 3 engines. The actions would be required to be accomplished in accordance with the service bulletin described previously. This action also proposes that findings of cracks be repaired.

There are approximately 57 Model DC–8–70 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 252 work hours per airplane to accomplish the proposed actions (if the wing leading edge must be removed to permit the proposed inspections), and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $512,820, or $13,860 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

• However, if lower access doors have been installed on the wing leading edge of these airplanes, it would take approximately 6 work hours per airplane to accomplish the proposed actions at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators of these airplanes is estimated to be $12,210, or $330 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant

rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 93–NM–66–AD.

*Applicability:* Model DC–9–72, –72F, –73, and –73F series airplanes, as listed in McDonnell Douglas DC–9–70 Alert Service Bulletin A57–99, dated December 10, 1992, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent reduced structural integrity of the pylon-to-wing main load path, accomplish the following:

(a) Perform an eddy current inspection of the front spar pylon support fittings (part numbers 5753054–501 and –502) on the number 2 and number 3 engines, in accordance with McDonnell Douglas DC–9–70 Alert Service Bulletin A57–99, dated December 10, 1992, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter, repeat this inspection at intervals not to exceed 720 landings.

(1) For the number 2 engine: Prior to the accumulation of 4,000 landings since installation of the engine, or within 6 months after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 720 landings prior to the effective date of this AD.

(2) For the number 3 engine: Prior to the accumulation of 4,000 landings since installation of the engine, or within 6 months after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 720 landings prior to the effective date of this AD.

(b) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Repeat the inspection, thereafter, at intervals not to exceed 720 landings in accordance with McDonnell Douglas DC–9–70 Alert Service Bulletin A57–99, dated December 10, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 3, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18925 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

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**14 CFR Part 39**

**[Docket No. 93–NM–95–AD]**

## Airworthiness Directives; Learjet Model 55, 55B, and 55C Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 55, 55B, and 55C airplanes. This proposal would require modification of the wiring inside the left- and right-hand generator interface boxes and between these boxes. This proposal is prompted by a report that an electrical short occurred in the generator interface box wiring during flight on a Learjet Model 55 airplane and resulted in the failure of both generators. The actions specified by the proposed AD are intended to prevent the loss of both generators during flight, which could result in the possible loss of all communication and navigation equipment.

**DATES:** Comments must be received by October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Learjet Corporation, Customer Services, P.O. Box 7707, Wichita, Kansas 67277–7707. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–95–AD." The

postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received a report that an electrical short occurred in the generator interface box wiring during flight on a Learjet Model 55 airplane. This single fault resulted in the failure of both generators. A circuit breaker was found to be tripped and could not be reset. The airplane had sufficient electrical power from the battery to land safely at a nearby landing site.

Further investigation after landing revealed that a wire had shorted to ground. The short was on an interconnect wire between the left- and right-hand generator interface boxes. The function of the interconnect wire is to carry a generator current limit signal (+28 VDC) to a voltage regulator while the airplane is on the ground and only one generator is operating. The short caused both generators to go off line by tripping a circuit breaker (that resulted in the loss of one generator) and opening a current limiter (that resulted in the loss of the other generator). Apparently, the interconnect wire had been damaged during manufacturing or maintenance action.

An electrical short in the generator interface box wiring could result in the loss of both generators during flight. If an in-flight incident similar to that reported were to occur and the battery is unable to provide sufficient electrical power, or a suitable landing site is not within close proximity, the flight crew could lose all communication and navigation equipment.

The FAA has reviewed and approved Learjet Service Bulletin SB 55–24–4, dated May 3, 1993, that describes procedures for modification of the wiring inside the left- and right-hand generator interface boxes and between these two boxes. Accomplishment of this modification will ensure that both generators will not drop off line in the event an electrical short circuit occurs in the generator control system wiring. The service bulletin also describes procedures to perform an operational test of the DC power distribution system following modification of the wiring.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the wiring inside the left- and right-hand generator interface boxes and between these two boxes. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 145 Model 55, 55B, and 55C airplanes of the affected design in the worldwide fleet. The FAA estimates that 102 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $73 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $46,716, or $458 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Learjet:** Docket 93–NM–95–AD.

*Applicability:* Model 55, 55B, and 55C airplanes; serial numbers 55–003 through 55–147 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the loss of both generators during flight, accomplish the following:

(a) Within 100 hours time-in-service or 90 days after the effective date of this AD, whichever occurs later, modify the wiring inside the left- and right-hand generator interface boxes and between these two boxes, and perform an operational test of the DC power distribution system in accordance with Learjet Service Bulletin SB 55–24–4, dated May 3, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 3, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–18926 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–P

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[IA–64–91]**

**RIN 1545–AQ58**

**Capitalization and Inclusion in Inventory of Certain Costs**

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Omnibus Reconciliation Act of 1989. These proposed regulations primarily affect taxpayers subject to section 263A that acquire property for resale.

**DATES:** Written comments and requests for a public hearing must be received by October 8, 1993.

**ADDRESSES:** Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (IA–62–91), room 5228, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Rosemary DeLeone or Harry-Todd Astrov of the Office of the Assistant Chief Counsel, Income Tax and Accounting, (202) 622–4970 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

Section 263A (the uniform capitalization rules) was enacted as part of Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 1986–3 C.B. (Vol. 1) (the 1986 Act). The statute was amended as part of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, 101 Stat. 1330, 1987–3 C.B. Vol. 1 (the 1987 Act), the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647, 102 Stat. 3342, 1988–3 C.B. (Vol. 1) (the 1988 Act), and the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2106 (the 1989 Act).

Section 263A generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer. Section 263A also generally requires the capitalization of direct costs and indirect costs (including purchasing, handling, and storage costs) properly allocable to real property and personal property acquired by a taxpayer for resale.

On March 30, 1987, and August 7, 1987, temporary regulations under section 263A were published in the Federal Register. T.D. 8131, 52 FR 10052 (1987) and T.D. 8148, 52 FR 29375 (1987). Final regulations under section 263A are being published elsewhere in this issue of the Federal Register.

The final regulations adopt most of the rules provided in the temporary regulations. See the preamble to the final regulations for an explanation of the differences between the temporary and final regulations. The final regulations do not, however, adopt certain exceptions to the requirement contained in the temporary regulations that handling costs generally be capitalized, in particular, the exceptions relating to distribution costs, custom-order delivery costs, and repackaging costs. Rather, the final regulations reserve the provisions concerning these three exceptions. These proposed regulations provide rules concerning these three exceptions.

## Explanation of Provisions

### *Handling Costs*

The final regulations provide that handling costs include costs attributable to processing, assembling, repackaging, transporting, and other similar activities with respect to property acquired for resale, provided the activities do not come within the meaning of the term produce as defined in § 1.263A–2(a)(1) of the final regulations. As an initial matter, the final regulations provide a bright-line test for determining handling costs that are not required to be capitalized under section 263A. Under this test, handling costs incurred at a retail sales facility with respect to property sold from the facility are not required to be capitalized. Additionally, handling costs incurred at a dual-function storage facility with respect to property sold from the facility are not required to be capitalized to the extent that the costs are incurred with respect to property sold to retail customers in on-site sales. Handling costs attributable to property sold from a dual-function storage facility in on-site sales are determined by comparing the gross on-site sales of the facility to the total gross sales of the facility.

### *Distribution Costs*

Under the temporary regulations, distribution costs are a type of handling costs that are not required to be capitalized (distribution costs exception). Distribution costs are defined in the temporary regulations as the cost of delivering goods directly to an unrelated customer. Commentators suggested that for purposes of the distribution costs exception, the final regulations should define distribution costs as all costs that are incurred after an order for specific goods has been placed. They commented, for example, that costs incurred to gather the goods to fill the order should be treated the same as distribution costs that are not required to be capitalized.

The Service believes that this suggestion is contrary to Congressional intent for two reasons. First, section 263A is designed to match expenses against related income (the matching principle). See S. Rep. No. 313, 99th Cong., 2d Sess. 140 (1986), 1986–3 C.B. (Vol. 3) 140. The Service believes that expansion of the distribution costs exception would be contrary to this principle because gross income is not typically recognized from a sale of an item when an order is placed, but rather when the item is shipped, delivered, or accepted, or when title to the item passes to the purchaser, whether or not billed.

Second, Congress specifically indicated that handling costs that are required to be capitalized generally must include all of the costs incurred prior to the loading of goods for final shipment to customers. The Conference Report to the 1986 Act describes costs allocable to inventory under the simplified resale method as including "handling, processing, assembly, repackaging, and similar costs, including labor costs attributable to unloading goods (but not including labor costs attributable to loading of goods for final shipment to customers, or labor at a retail facility)." 2 H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–306 (1986), 1986–3 C.B. (Vol. 4) 306. The Blue Book to the 1986 Act also states that deductible "distribution expenses are intended to include only external distribution costs, that is, those costs incurred in transporting goods from the taxpayer's warehouse or retail outlet to the customer, or to the customer's agent, a common carrier, or some other intermediary. Distribution expenses do not include costs of moving inventory from a taxpayer's warehouse to its retail store or other internal transportation costs." Joint Committee on Taxation Staff, General Explanation of the Tax Reform Act of 1986, 99th Cong., JCS–10–87, 510 n.61. Accordingly, these proposed regulations do not expand the distribution costs exception.

In addition, some commentators suggested that the costs of delivering goods to a related customer be deductible just as the costs of delivering goods to an unrelated customer are deductible. Another commentator suggested that the cost of delivering goods to a related customer be deductible unless the related parties are members of a consolidated group. The Service believes that transportation costs between related parties are substantially equivalent to internal

transportation costs for purposes of section 263A. Therefore, these suggestions are contrary to the Congressional intent that the costs of moving inventory from a taxpayer's warehouse to its retail store or other internal transportation costs must be capitalized.

*Cost of Delivering Custom-Ordered Items and Repackaging Costs*

The temporary regulations also exclude from capitalization under section 263A the costs of delivering certain items from a storage facility to a location where the sale takes place, provided the items are specifically ordered by customers (custom-order exception), and the costs of repackaging goods in preparation for immediate delivery to particular customers if the repackaging occurs after the customer has ordered the goods (the repackaging costs exception).

Commentators suggested that the custom-order exception be expanded to include all costs necessary to gather and deliver custom-ordered items. Commentators also suggested that the repackaging costs exception be expanded to include all handling costs incurred after the customer orders the goods. The Service believes that these suggestions are contrary to Congressional intent as well. These suggestions are inconsistent with the matching principle that section 263A was designed to advance. In addition, these suggestions are contrary to Congressional intent that handling costs required to be capitalized generally must include all of the costs incurred prior to the loading of goods for final shipment to customers. Accordingly, the Service has elected not to expand the custom-order exception in these proposed regulations and is considering eliminating the exception altogether when these proposed regulations are finalized. Further, these proposed regulations eliminate the repackaging costs exception altogether.

*Application of the Distribution Costs and Custom-Order Exceptions*

These proposed regulations clarify the application of the distribution costs and custom-order exceptions. In the case of the distribution costs exception, the only costs not required to be capitalized as distribution costs are transportation costs incurred outside of a storage facility in delivering goods to an unrelated customer. In the case of the custom-order exception, the only costs not required to be capitalized are transportation costs incurred outside of a storage facility in delivering goods to a retail sales facility. For these purposes, these proposed regulations treat any costs incurred on a loading dock as incurred outside a storage facility. However, until these proposed regulations are finalized, the paragraphs in the temporary regulations providing the distribution costs exception and the custom-order exception continue to apply.

**Transfers for Tax Avoidance Purposes**

Section 263A(i) grants the Secretary the authority to prescribe regulations as may be necessary or appropriate to carry out the purposes of section 263A, including regulations to prevent the use of related parties, pass-thru entities, or intermediaries to avoid the application of the section. Under this grant of authority, the proposed regulations also would amend the final regulations to provide that the District Director may require appropriate adjustments to valuations of inventory and other property subject to section 263A if a transfer of property is made to another person for a principal purpose of tax avoidance. Thus, for example, the District Director may require a taxpayer using the simplified production method of § 1.263A– 2(b) to apply that method to transferred inventories immediately prior to a transfer under section 351 if a principal purpose of the transfer is tax avoidance.

**Proposed Effective Date**

These regulations are proposed to be effective for taxable years beginning after December 31, 1993.

**Special Analysis**

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations. Therefore, an initial Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

**Written Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who timely submits written comments on the proposed rules. Notice of the date, time, and place for the hearing will be published in the **Federal Register**.

**Drafting Information**

The principal authors of these proposed regulations are Rosemary DeLeone and Harry-Todd Astrov of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. Other personnel from the Internal Revenue Service and the Treasury, however, assisted in developing these proposed regulations on matters of both substance and style.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

**PART 1—[AMENDED]**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.263A–1 is amended by adding the text of paragraph (j)(4) to read as follows:

**§ 1.263A–1 Uniform capitalization of costs.**

* * * * *

(j) * * *

(4) * * * The District Director may require appropriate adjustments to valuations of inventory and other property subject to section 263A if a transfer of property is made to another person for a principal purpose of tax avoidance. Thus, for example, the District Director may require a taxpayer using the simplified production method of § 1.263A–2(b) to apply that method to transferred inventories immediately prior to a transfer under section 351 if a principal purpose of the transfer is tax avoidance.

**Par. 3.** Section 1.263A–1T(a)(4) is amended by revising the fourth sentence of paragraph (a)(4) to read as follows:

**§ 1.263A–1T Capitalization and inclusion of inventory costs of certain expenses (temporary).**

(a) * * *

(4) * * Paragraphs (a), (b), and (d) are not effective for costs incurred after December 31, 1993, in taxable years beginning after that date. * * *

* * * * *

Par. 4. Section 1.263A–3(c)(4)(vi) is amended by:

1. Adding paragraphs (A)(*1*) and (*2*) and the text of paragraph (B) to read as set forth below.

2. Removing paragraph (C).

**§ 1.263A–3 Rules relating to property acquired for resale.**

* * * * *

(c) * * *

(4) * * *

(vi) * * * (A) * * * (*1*) In general. Distribution costs are any transportation costs incurred outside a storage facility in delivering goods to an unrelated customer. For this purpose, any costs incurred on a loading dock are treated as incurred outside a storage facility.

(*2*) Costs incurred transporting goods to a related person. Distribution costs do not include the costs of delivering goods by a taxpayer to a related person. Thus, for example, when the taxpayer sells goods to a related person, the costs of transporting such goods are included in determining the basis of the goods that are sold, and hence in determining the resulting gain or loss from such sale, for all purposes of the Internal Revenue Code and the regulations thereunder. See, e.g., sections 267, 707, and 1502. For purposes of this provision, persons are related if they are described in section 267(b) or section 707(b).

(B) * * * Generally, costs incurred in transporting goods from the taxpayer's storage facility to its retail sales facility are transportation costs that must be capitalized. However, the costs incurred outside a storage facility in delivering custom-ordered items to a retail sales facility are not required to be capitalized. For this purpose, any costs incurred on a loading dock are treated as incurred outside a storage facility. Delivery of custom-ordered items occurs when the taxpayer can demonstrate that a delivery to the taxpayer's retail sales facility is made to fill an identifiable order of a particular customer (placed by the customer before the delivery of the goods occurs) for the particular goods in question. Factors that may demonstrate the existence of a specific, identifiable delivery include the following—

(*1*) The customer has paid for the item in advance of the delivery;

(*2*) The customer has submitted a written order for the item;

(*3*) The item is not normally available at the retail sales facility for on-site customer purchases; and

(*4*) The item will be returned to the storage facility (and not held for sale at the retail sales facility) if the customer cancels an order.

* * * * *

**Shirley D. Peterson,**

*Commissioner of Internal Revenue.*

[FR Doc. 93–18131 Filed 8–6–93; 8:45 am]

BILLING CODE 4830–01–U

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 88

**[AMS–FRL–4690–3]**

### Clean Fuel Fleet Emission Standards, Conversions, and General Provisions and the California Pilot Test Program and Clean-Fuel Vehicle Standards for Light-Duty Vehicles and Light-Duty Trucks

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rules; extension of the comment period.

**SUMMARY:** This action extends the close of comment period to September 15, 1993 for portions of the Clean Fuel Fleet NPRM (58 FR 32474, June 10, 1993) and for the entire California Pilot Program NPRM (58 FR 34727, June 29, 1993). This action is in response to a request from manufacturers to extend the written comment periods on these two proposed rules until September 15, 1993. The comment period extension does not apply to the Definitions and General Provisions portion of the Clean Fuel Fleets NPRM. The comment period will still close on August 16, 1993 for that portion of the Clean Fuel Fleets NPRM.

**DATES:** Written comments on the definitions and general provisions sections of the Clean Fuel Fleet NPRM must be submitted on or before August 16, 1993. Written comments on the other sections of the Clean Fuel Fleet NPRM and the entire California Pilot Program NPRM must be submitted on or before September 15, 1993.

**ADDRESSES:** As indicated in the original notices, interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–30 for the Clean Fuel Fleet NPRM and to Public Docket No. A–92–69 for the California Pilot Program NPRM at the following address: U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for public inspection from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Manning, U.S. EPA (SRPB–12), Regulation Development and Support Division, 2565 Plymouth Rd. Ann Arbor, MI 48105, Telephone: (313) 741–7832.

**SUPPLEMENTARY INFORMATION:** EPA has received a request from manufacturers to extend the written comment periods on these two proposed rules until September 15, 1993. The schedule for completing these rules is now the subject of a draft consent decree. The negotiated due date for the final rule on the Definitions and General Provisions portion of the Clean Fuel Fleet NPRM is December 1, 1993. The negotiated due dates for the final rules on the remaining portions of the Clean Fuel Fleet Program NPRM and the entire California Pilot Program NPRM are April 15, 1994 and April 30, 1994, respectively. EPA does not believe the flexibility exists to extend the comment period for the definitions portion of the Clean Fuel Fleet NPRM and to meet the final rule deadline. However, to provide more opportunity for comment while recognizing there are fixed deadlines for these rulemakings, we are extending the comment period deadline for the remaining portions of the Clean Fuel Fleet NPRM and for the entire California Pilot Program NPRM for 30 days, until September 15, 1993.

**Robert D. Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 93–18972 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–P

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### 40 CFR Parts 122, 123, 131, and 132

**[FRL–4639–7]**

**RIN 2040–AC08**

### Proposed Water Quality Guidance for the Great Lakes System

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed rule; availability of documents; correction.

**SUMMARY:** The purpose of this document is to announce the availability of two reports that EPA is considering as it develops the final Water Quality Guidance for the Great Lakes System; to request public comment on the possible application of the options set forth in these reports in the final Guidance; and to make corrections to the preamble and proposed rule text for the proposed Water Quality Guidance for the Great Lakes System, including missing text and changes that were inadvertently omitted during the editing of the

proposed rule. The proposed rule was published in the April 16, 1993, Federal Register (58 FR 20802), with corrections published at 58 FR 21046.

The two reports being made available for public comment are: "Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health: Report of Workshop and EPA's Preliminary Recommendations for Revision" ("Preliminary Recommendations"), and "Interim Report on Data and Methods for Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Life and Associated Wildlife" ("Interim Dioxin Report"). EPA wants to ensure that the public has an opportunity to comment on whether any of the options in the Preliminary Recommendations should be adopted in the final Great Lakes Water Quality Guidance methodologies for development of human health criteria and values, and for development of bioaccumulation factors. EPA also invites the public to comment on whether any of the data and methods in the Interim Dioxin Report should be adopted in the final Great Lakes Guidance.

**DATES:** Written comments should be submitted on or before September 13, 1993. Comments postmarked after this date may not be considered.

**ADDRESSES:** Send written comments to Wendy Schumacher, Water Quality Branch (WQS–16J), U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312–886–0142). Commenters are requested to submit one original and 4 copies of their written comments. In addition, EPA encourages commenters to provide one copy of their comments in electronic format, preferably 5.25" or 3.5" diskettes compatible with WordPerfect for DOS. A copy of the reports identified in this document are available for inspection and copying at the U.S. EPA Region V Records Center, 77 W. Jackson Blvd., Chicago, Illinois, by appointment only. Appointments may be made by calling Wendy Schumacher (telephone: 312–886–0142). A reasonable fee will be charged for photocopies. The two reports are also available by mail upon request for a fee (see section I.C of Supplementary Information for more information).

**FOR FURTHER INFORMATION CONTACT:** Kenneth A. Fenner, Water Quality Branch Chief, (WQS–16J), U.S. EPA Region V, 77 W. Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312–353–2079).

**SUPPLEMENTARY INFORMATION:**

## I. Availability of Documents and Request for Comments

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation. Section 118(c)(2) of the Clean Water Act requires EPA to publish water quality guidance for the Great Lakes System which includes guidance on numerical limits on pollutants in ambient Great Lakes waters to protect human health, aquatic life and wildlife.

The proposed Water Quality Guidance for the Great Lakes System was published on April 16, 1993, in the Federal Register (58 FR 20802). Corrections to the proposed preamble and proposed rule text were published in the Federal Register on the same date (58 FR 21046). This Guidance, once finalized, will establish minimum water quality standards, antidegradation policies, and implementation procedures for waters within the Great Lakes System in the States of New York, Pennsylvania, Ohio, Indiana, Illinois, Minnesota, Wisconsin, and Michigan, including waters within the jurisdiction of Indian Tribes.

### *A. Great Lakes Guidance Human Health Methodology*

In 1980, EPA published National guidelines for the development of protective criteria for contaminants that may adversely affect human health in ambient water. These guidelines can be found at 45 FR 79347, dated November 28, 1980. Using the 1980 National Guidelines, criteria may be developed based on toxicological endpoints (cancer and non-cancer adverse health effects), and organoleptic effects. The guidelines for derivation of criteria consider potential human exposure via consumption of water and ingestion of contaminated fish and shellfish.

The proposed Great Lakes Water Quality Guidance includes proposed numeric criteria to protect human health for 20 pollutants and methodologies to derive cancer and non-cancer human health criteria and values for additional pollutants. It also includes a methodology for development of bioaccumulation factors to be used in developing human health and wildlife criteria. Although the objectives of the proposed Great Lakes Human Health Guidance are similar to those of the 1980 National Guidelines, the proposed Great Lakes Human Health Methodology differs from current National Guidance in several respects. For example, the Great Lakes Guidance uses bioaccumulation factors which account for uptake of pollutants directly from the waters of the Great Lakes System plus uptake of pollutants from the food chain rather than bioconcentration factors (which only account for uptake of pollutants directly from the water). Additionally, a fish consumption rate that is based on data from the Great Lakes area is used in the proposed Guidance. For additional details on the proposed methodology, including similarities and differences with the 1980 National Guidelines, readers are referred to the preamble discussion contained in the April 16, 1993, notice (58 FR 20863–20877).

The April 16, 1993, proposed Guidance indicated that EPA is currently in the process of reviewing and revising its 1980 National Guidelines. EPA believes that the National Guidelines should be evaluated from time to time to determine whether significant advances have occurred in the science which should be reflected in the National methodology guidelines. As a first step in the revision effort, EPA prepared an issues paper and held a workshop on September 13–16, 1992, in Bethesda, Maryland to discuss the issues with a group of experts from EPA, other federal agencies, states, academia, industry, conservation groups and other interested parties. The workshop participants were divided into six working groups which discussed the following technical subjects: (1) cancer risk, (2) non-cancer risk, (3) exposure, (4) microbiology, (5) minimum data and (6) bioaccumulation. Each group provided a written summary of the information discussed by the group. The reports from the workshop and EPA's preliminary recommendations for revisions to the human health methodology were integrated into a report entitled, "Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health: Report of Workshop and EPA's Preliminary Recommendations for Revision" ("Preliminary Recommendations"), prepared by the Human Risk Assessment Branch, U.S. EPA Office of Water, January 8, 1993.

The Preliminary Recommendations report was submitted to EPA's Science Advisory Board (SAB) for review and comment during the SAB's February 9–10, 1993, meeting. The SAB meetings are open to the public and the public may submit comments on the issues discussed at these meetings directly to

the SAB. EPA anticipates that the SAB will provide formal written comments on the Preliminary Recommendations in an SAB report expected this year. EPA will make the SAB report available to the public at that time. EPA will consider all public comments submitted to the SAB in response to the February 9–10, 1993, SAB review meeting and any public comments on the final SAB report, when it becomes available, in the preparation of the final Great Lakes Guidance. EPA encourages the public to also send one original and 4 copies of their written comments to the SAB directly to Ms. Wendy Schumacher at the address specified at the beginning of today's notice.

EPA is providing this notice of availability, and placing the Preliminary Recommendations in the administrative record for the proposed Great Lakes Water Quality Guidance, because EPA intends to consider all the recommendations concerning issues associated with the National guidelines revision, and discussed in the subject report, in the development of final Water Quality Guidance for human health protection in the Great Lakes System. EPA will also consider the SAB comments on the Preliminary Recommendations in finalizing the Great Lakes Guidance, and intends to issue a subsequent notice of availability when the SAB report is issued. The following are some examples of alternatives discussed in the January 8, 1993, Preliminary Recommendations to the SAB but not included in the April 16, 1993, proposal.

1. Minimum Data

The proposed Great Lakes Guidance would include two tiers of criteria/values for the protection of human health which differ in minimum data requirements. For example, to develop a noncancer Tier I criterion, the minimum requirement is a no-observed-adverse-effect-level (NOAEL) from a well conducted subchronic mammalian study. The duration of the study must be at least 90 days in rodents, or 10 percent of the lifespan of other appropriate species. For a noncancer Tier II value, the minimum acceptable database is a NOAEL from a well conducted repeated dose mammalian study of at least 28 days. For both Tier I criteria and Tier II values all relevant data must be considered. The terms "criteria" and "values" are used to differentiate between protective ambient concentrations derived with optimum, as opposed to acceptable, data requirements. Both Tier I criteria and Tier II values will have regulatory effect under the proposed Great Lakes Guidance. [See 58 FR 20871–74.]

One option discussed in the January 8, 1993, Preliminary Recommendations involves a five-tier approach based on the quality and type of toxicological information. These tiers range from high confidence data (Tier I) to no available data (Tier V). Data requirements for Tier I chemicals include mechanistic, pharmacokinetic, and target organ toxicity data. Tier II includes those chemicals with enough data to establish a reference dose (RfD) for noncancer endpoints or a cancer potency factor. Readers are referred to the April 16, 1993 notice (58 FR 20872–73) for information on the minimum acceptable data base for an RfD or a cancer potency factor. Tier III includes: (1) Chemicals for which available data are not sufficient to meet the requirements for RfD development but consist of at least a well conducted 28-day repeated oral dose rodent bioassay resulting in a NOAEL, (2) chemicals which are Group C chemicals (see U.S. EPA's Guidelines for Carcinogenic Risk Assessment, published on September 24, 1986 at 51 FR 33992) and for which insufficient data to calculate a cancer potency slope exists, and (3) chemicals which are Group C chemicals of low concern (e.g., chemicals of low potency or in which the mechanism of carcinogenicity does not appear directly related to humans due to species differences in toxicokinetics). Tier IV chemicals include those not meeting the 28-day minimum data requirement for Tier III, but available noncancer and cancer data (such as acute toxicity data, genetic toxicology, structure activity relationship data) indicates a potential health hazard. Tier IV data are insufficient to develop a numeric criterion but may be used in interpreting narrative criteria. Tier V indicates no data availability. Under this alternative five-tier approach, Tiers I and II are equivalent to Tier I criteria in the proposed Great Lakes Guidance while Tier III is equivalent to Tier II values in the Guidance. This alternative scheme is a refinement of the proposed Great Lakes Guidance 2-tier approach. The extra tiers are added to better describe and categorize the quality of the data. EPA requests comment on the use of this alternative classification scheme of five tiers for the Great Lakes Guidance and, specifically, on how these different tiers could be used in regulatory decision-making (e.g., in setting permit limits). For example, in those instances where insufficient data exist to develop numeric criteria or values, available information could nevertheless be used to interpret State narrative criteria.

2. Relative Source Contribution

Under the proposed Great Lakes Guidance, EPA assumes an 80 percent relative source contribution (RSC) from surface water pathways (water and fish) for bioaccumulative contaminants of concern (BCCs), and 100 percent RSC for non-BCCs, in deriving noncancer criteria/values. A 100 percent RSC is assumed for all chemicals in deriving cancer criteria/values. (See 58 FR 20870.)

Several alternative options are described in the Preliminary Recommendations. One option is to use a subtraction approach to account for other sources of exposure (e.g., air, food) when there are sufficient data to quantitatively apportion them rather than using arbitrary default values. (In the case of no available data, a default assumption will still have to be made.) The contribution from these other sources could be subtracted from the Reference Dose (RfD) in deriving the criteria. One of the options includes the use of a 20 percent floor and an 80 percent ceiling for the RSC when adequate exposure data are available, and a 20 percent default value when adequate exposure data are lacking. There is no differentiation for bioaccumulative and non-bioaccumulative chemicals under any of the options in the report. EPA requests specific comments on the possibility of incorporating one of the RSC options described in the January 8, 1993, Preliminary Recommendations in the final Great Lakes Guidance.

3. Development of Short-Term Advisory Levels

Under the Great Lakes Guidance, all criteria and values are developed based on an assumption of long-term exposures to humans. A 70-year exposure is assumed, and fish and water consumption rates reflect long-term exposures. An alternative is discussed in the report to the SAB. The workshop report and EPA's preliminary recommendations include the concept of developing one-day Health Advisory Doses (HADs) which could be used to develop criteria to protect the public (including sensitive subpopulations such as pregnant women) from large short-term doses of contaminants from consumption of fish containing pollutant residues. This concept was developed with the belief that people may consume large amounts of fish during a given meal and that reproduction/developmental effects (or other short-term acute effects) may not

adequately be accounted for with a lifetime criterion using a long-term exposure assumptions. Criteria based on short-term exposures would supplement criteria based on long-term exposures. EPA requests specific comment on this issue with regard to the need for development of human health criteria based on short-term exposures.

B. Interim Dioxin Report

EPA released a peer-reviewed interim report on dioxin ecological effects on April 23, 1993. This report is entitled, "Interim Report on Data and Methods for the Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Organisms and Associated Wildlife", prepared by the Office of Research and Development, U.S. EPA, March 1993 (EPA Report Number: EPA/600/R-93/055). The report compiles and evaluates toxicity, exposure and bioaccumulation data from the current scientific literature for aquatic life and associated wildlife regarding dioxin. The report addresses issues related to risk characterization to illustrate the use of current information in ecological risk assessments.

EPA is placing this document in the administrative record for the Great Lakes Guidance because the proposed Great Lakes Guidance includes both human health and wildlife criteria for dioxin. The Interim Dioxin Report contains relevant information for the derivation of a wildlife criterion for dioxin. In addition, the Interim Dioxin Report summarizes available effects and exposure data for assessment of dioxin risks to aquatic life and provides information on how to derive dioxin bioaccumulation factors (BAFs). BAFs are used in deriving both human health and wildlife criteria. Under the BAF methodology in the Interim Report, the dioxin BAF varies with the particulate organic carbon (POC) content of the ambient water. The Interim Report shows BAFs and environmental concentrations associated with risks to aquatic life and wildlife based on Lake Ontario data (POC of 0.2 mg/L). Available information suggests that POC levels vary considerably among the waters of the Great Lakes system. For example, POC levels range from less than 0.05 mg/L in Lake Superior to levels from 2 mg/L to 20 mg/L (during heavy rain periods) in the Fox River, a tributary of Lake Michigan. As the POC level increases, the effect concentration increases due to greater binding by organic matter.

EPA did not propose an aquatic life-based criterion for dioxin in the April 16, 1993, proposed Great Lakes Guidance because research efforts in this area are still on-going and the available data are not sufficient to derive a Tier I aquatic life criterion. The Interim Dioxin Report has data that may be used to calculate a Tier II aquatic life value for dioxin.

EPA requests specific public comments on: (1) The applicability of the information contained in the Interim Dioxin Report to a wildlife criterion for dioxin in the Great Lakes System, (2) whether the information provided on aquatic life effects in the Interim Dioxin Report should be used in the final Great Lakes Guidance to calculate an interim numerical limit for dioxin to protect aquatic life (i.e., a Tier II value), and (3) whether the methodology in the report should be used to develop BAFs that vary in the Great Lakes basin with POC levels in the ambient water or whether a single BAF should be used for consistency among the Great Lakes States.

*C. Document Availability*

The two reports that are referenced in this document are available for inspection and photocopying in the administrative record for this rulemaking at the address listed at the beginning of this preamble. A reasonable fee will be charged for photocopies.

The report, "Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health: Report of Workshop and EPA's Preliminary Recommendations for Revision" is available for a fee upon written request or telephone call to the National Technical Information Center (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The toll free number is 800-553-6847 and the local number is 703-487-4650. Alternatively, copies may be obtained for a fee upon written request or telephone call to the Educational Resources Information Center/Clearinghouse for Science, Mathematics, and Environmental Education (ERIC/CSMEE), 1200 Chambers Road, room 310, Columbus, Ohio 43212 (phone number: 614-292- 6717). When ordering, please include the NTIS accession number, PB 93-213494, price code AO6, or the ERIC/CSMEE accession number, 687-D, $12.25.

The report, "Interim Report on Data and Methods for Assessment of 2,3,7,8-Tetrachlorodibenzo-p-dioxin Risks to Aquatic Life and Associated Wildlife," is available upon written request or telephone call to the Center for Environmental Research Information, EPA Office of Research and Development, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268 (phone number: 513-569-7562).

**II. Corrections**

This notice provides corrections to several paragraphs in the preamble and the proposed rule text for the proposed Water Quality Guidance for the Great Lakes System which appeared on the April 16, 1993, **Federal Register** (58 FR 20802). The corrections provide missing text and changes that were inadvertently omitted during editing of the proposed rule and are in addition to corrections 1 through 7 published with the proposed rule in a separate section of the April 16, 1993, **Federal Register** (58 FR 21046).

*Correction 8*

The last sentence of the second paragraph of the **DATES** section of the notice should read, "The hearing officer reserves the right to limit oral testimony to 10 minutes or less, if necessary." (58 FR 20802) The words "or less" were omitted through editing error.

*Correction 9*

Two addresses in the **ADDRESSES** section contained typographical errors. Under Minnesota, the address should read, "Minnesota Pollution Control Agency, Library, 520 Lafayette, St. Paul, Minnesota (612-296-7719)." Under New York, the entry for NYSDEC, Region 8, should read, "NYSDEC, Region 8, 6274 East Avon-Lima Road, Avon, New York, 14414 (716-226-2466)." (58 FR 20802)

*Correction 10*

The third sentence of the second paragraph of section I.A.4.a of the preamble should read, "An effluent limit of one mg/L of phosphorus was imposed on all major (greater than 1 million gallons per day) municipal sewage treatment facilities in the Great Lakes basin." (58 FR 20807) The revision corrects an error in the units of the effluent limit.

*Correction 11*

The references in sections I.A.4.b (58 FR 20809) and I.H (58 FR 20832) to a study by Ballschmitter et al., 1989, are deleted.

*Correction 12*

The following reference should be added to the list in section I.H of the preamble (58 FR 20832):

Eisenreich, S.J. and W.M.J. Strachan. 1992. Estimating atmospheric deposition of toxic substances to the Great Lakes: an update, from workshop, Canada Center for Inland Waters, Burlington, Ontario, January

31–February 2, 1992, sponsored by Great Lakes Protection Fund and Environment Canada. June 1992.

*Correction 13*

The last sentence of section II.C of the preamble should read as follows: "For example, the EPA guidance document 'Technical Support Document for Water Quality-based Toxics Control' (March 1991) remains fully applicable as guidance within the Great Lakes System for topics that have not been addressed by the proposed Guidance, and fully applicable as guidance for all topics for waters outside the Great Lakes System." (58 FR 20835) The second word "guidance" replaces the word "evidence," which was a typographical error.

*Correction 14*

The second sentence of the second paragraph of section II.D.3 of the preamble should read, "The approach may therefore result in permit limits which may later be found to be more stringent than those derived from new toxicity data." (58 FR 20837). The words "more stringent" replace the word "nonresistant," which was a typographical error.

*Correction 15*

The ninth paragraph of section II.G of the preamble should read as follows: "The third way that Table 6 affects the initial focus of this Guidance is in determining when States, Tribes, and/or permittees must generate data necessary to calculate Tier II values used in developing water quality-based effluent limits. Procedure 5.D of the proposed Implementation Procedures in appendix F requires that permitting authorities generate, or have permittees generate, the data necessary to calculate Tier II values for pollutants in Table 6 for which there is no Tier I criterion or Tier II value if the permitting authority determines based on a specified screening approach that a discharge causes, has the reasonable potential to cause or contributes to an excursion above a State water quality standard." (58 FR 20844) The word "permittee" replaces the word "permitter," which was a typographical error, in two places.

*Correction 16*

The first sentence of the second to the last paragraph of section II.G of the preamble should read, "EPA invites comment on the proposed BAF level of 1000 and any alternative BAF levels for use in defining BCCs." (58 FR 20845). The word "defining" replaces the word "defending," which was a typographical error.

*Correction 17*

The fifth paragraph of section II.H of the preamble should read as follows: "If a Great Lakes State or Tribe fails to submit criteria, methodologies, policies, and procedures to EPA for review, proposed § 132.5(c) provides that the requirements of this part will apply to discharges within the State or Federal Indian Reservation upon EPA's publication of a final rule in the **Federal Register** indicating the effective date of the part 132 requirements in the identified jurisdictions. EPA does not intend to provide at that time an opportunity for another round of public comment on the criteria, methodologies, policies, and procedures presented in the proposed Guidance. EPA believes that under these circumstances, today's public comment period will provide adequate notice and opportunity for comment on all issues related to the criteria, methodologies, policies, and procedures. Accordingly, EPA will issue a final rule identifying the criteria, methodologies, policies, and procedures that apply in the appropriate jurisdictions." (58 FR 20846) The words "a final rule" replace "the final Guidance," to correct an editing error, in two places.

*Correction 18*

The first sentence of the twelfth paragraph of section II.H of the preamble should read as follows: "Proposed § 132.5 of the proposed Guidance would provide that requirements of this part will become effective within a State or Federal Indian Reservation if the State or Tribe fails to make the necessary submission, or if one or more parts of the submission cannot be approved by EPA and the State or Tribe fails to correct the deficiency upon notice by EPA, following EPA's publication of a final rule in the **Federal Register** identifying the elements of the part 132 requirements that apply in the jurisdiction and their effective date in the jurisdiction." (58 FR 20846) As in correction 17, the words "a final rule" replace "the final Guidance," to correct an editing error.

*Correction 19*

The ambient water quality criteria for aquatic life for pentachlorophenol and phenol should be corrected in Tables III–1 and III–2 of the preamble (58 FR 20853) and Tables 1 and 2 of proposed part 132 (58 FR 21014). The correct values were used, however, in the support document, "Great Lakes Water Quality Initiative Criteria Documents for the Protection of Aquatic Life in Ambient Water." The corrected values are: for Pentachlorophenol, chronic criterion (CCC), 4.1 µg/L; for Phenol, acute criterion (CMC), 3600 µg/L; for Phenol, chronic criterion (CCC), 110 µg/L.

*Correction 20*

The headings "Percentile" and "Sample Size" for Table III–3 of the preamble were transposed by typographical error. (58 FR 20856) "Percentile" should appear over the left column, and "Sample Size" should appear over the 7 sub-columns on the right.

*Correction 21*

In Table IX–1 of the preamble, the entries for Major direct dischargers—Municipal should read 348.9 and 353.5 for Scenarios 3 and 4 respectively. (58 FR 20987) The initial "3"s were omitted through typographical error. The totals for Scenarios 3 and 4 were also in error for the same reason. They should read 473.9 and 505.5 for Scenarios 3 and 4 respectively. Please note that these errors occur only in the table. EPA used the correct figures in its analysis of the costs of implementing the Guidance, and in the preamble text discussing the analysis. The figures are also stated correctly in the support document, "Assessment of Compliance Costs Resulting from Implementation of the Proposed Great Lakes Water Quality Guidance."

*Correction 22*

The telephone number for the National Technical Information Service in the second paragraph of section XIII of the preamble should be 800–553–6847. (58 FR 21002)

Dated: July 30, 1993.

**Martha G. Prothro,**

*Acting Assistant Administrator.*

[FR Doc. 93–18974 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### 45 CFR Part 57a

RIN 0905–AC95

### Special Volunteer Services at the National Institutes of Health

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The National Institutes of Health (NIH) proposes to issue new

regulations concerning the acceptance and use of uncompensated volunteer services. Existing Department of Health and Human Services regulations governing volunteer services apply exclusively to the acceptance of voluntary and uncompensated services for use in the operation of any health care facility of the Department or in the provision of health care. The new regulations would provide coverage for the acceptance and use of other diverse voluntary and uncompensated services by NIH which are not covered by the existing regulations.

**DATES:** Comments must be received by October 8, 1993.

**ADDRESSES:** Comments should be sent to Mr. John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Migliore, National Institutes of Health, Building 31, room 3B11, 9000 Rockville Pike, Bethesda, Maryland, 20892, telephone (301) 496–2832.

**SUPPLEMENTARY INFORMATION:** Sections 402 and 405 of the Public Health Service Act (PHS Act), as amended (42 U.S.C. 282, 284), authorize the Secretary, acting respectively through the Director of the National Institutes of Health (NIH) and the Directors of the national research institutes of NIH, to accept voluntary services, without compensation, in carrying out the functions of NIH. Other NIH components, including the National Library of Medicine, National Center for Research Resources, National Center for Human Genome Research, John E. Fogarty International Center for Advanced Study in the Health Sciences, National Center for Nursing Research, Warren Grant Magnuson Clinical Center, Division of Computer Research and Technology, and Division of Research Grants, have been delegated this authority by the Director, NIH. Additionally, section 464P of the PHS Act, as added by section 123 of the ADAMHA Reorganization Act (Pub. L. 102–321) (42 U.S.C. 285o–4), authorizes the Director of the National Institute on Drug Abuse (NIDA) to accept voluntary and uncompensated services in carrying out the Institute's Medication Development Program.

Existing regulations in 45 CFR part 57 concerning volunteer services apply exclusively to the acceptance of voluntary and uncompensated services for "use in the operation of any health care facility of the Department or in the provision of health care." The proposed regulations in part 57a would apply to the acceptance and use of other diverse voluntary and uncompensated services authorized by sections 402, 405, and 464P of the PHS Act, which are not covered by part 57. These volunteer services include, but are not limited to, services accepted in support of a wide variety of NIH activities such as research, patient care, clerical assignments, technical assistance, and other general activities necessary in carrying out the authorized functions of NIH. These services are termed "special volunteer services" and are administered through the NIH Special Volunteer Program.

The purpose of this notice is to invite public comment on the proposed rule that would implement the statutory authority of NIH to accept these special volunteer services in support of its authorized functions.

The following statements are provided for the information of the public:

**1. Regulatory Impact Statement**

The proposed regulations have been reviewed in accordance with the requirements of Executive Order No. 12291. The Secretary has determined that they do not constitute a major rule as specified in the Order and that a Regulatory Impact Analysis is not required.

**2. Regulatory Flexibility Analysis**

The proposed regulations have been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6). The Secretary has determined that compliance with the regulations would not have a significant economic impact on a substantial number of small entities and therefore a Regulatory Flexibility Analysis is not required.

**3. Paperwork Reduction Act**

Section 57a.4 of this proposed rule contains information collection requirements subject to Office of Management and Budget (OMB) review and approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The form (Form NIH–590) used for the information collection specified in § 57a.4(c) regarding special volunteer assignment and the associated burden were previously approved by OMB under OMB Approval Number 0925–0177 (expires January 31, 1994). The title, description, and respondent description of the information collection requirements specified in this proposed rule are presented below with an estimate of the annual burden. Organizations and individuals interested in commenting on the information collection requirements are invited to send their comments to: Dr. Charles MacKay, Project Clearance Office, National Institutes of Health, Building 1, room 328, 9000 Rockville Pike, Bethesda, Maryland 20892; and/or OMB Desk Officer, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, 725 17th St., NW., Washington, DC 20503.

*Title:* National Institutes of Health Special Volunteer Program.

*Description:* The information collection will be used by NIH to determine an individual's qualifications and eligibility for assignments under the NIH Special Volunteer Program.

*Respondent Description:* Individuals or households.

*Estimated Annual Reporting and Recordkeeping Burden:*

| | Annual number of respondents | Annual frequency | Average burden per response | Annual burden hours |
|---|---|---|---|---|
| *Reporting:* § 57a.4(c) | 850 | 1 | .08 | (68) |
| Total Burden | | | | 0 |

[1] This burden is approved under OMB Approval Number 0925–0177 (expires, January 31, 1994).

**List of Subjects in 45 CFR Part 57a**

Special volunteers, Volunteers.

Accordingly, it is proposed to amend title 45, subtitle A of the Code of Federal Regulations, by adding a new part 57a as set forth below.

Dated: March 2, 1993.
**Audrey F. Manley,**
*Acting Assistant Secretary for Health.*
Approved: May 18, 1993.
**Donna E. Shalala,**
*Secretary.*

## PART 57a—SPECIAL VOLUNTEER SERVICES AT THE NATIONAL INSTITUTES OF HEALTH

Sec.
57a.1 Applicability.
57a.2 Definitions.
57a.3 Acceptance of special volunteer services.
57a.4 Compensation, authorization, and termination of special volunteer services.
57a.5 Services and benefits available to special volunteers.
57a.6 Other policies and procedures that apply.

**Authority:** 42 U.S.C. 216, 282(b)(10), 284(b)(1)(K), 285o–4(b)(4).

### § 57a.1 Applicability.

The regulations in this part implement sections 402 and 405 of the Public Health Service Act, as amended (42 U.S.C. 282, 284), which authorize the Secretary, acting through the Director of the National Institutes of Health (NIH) and the Director of each national research institute, to accept and use voluntary services of individuals and groups of individuals in carrying out the functions of NIH, without compensation from NIH; and section 464P of the PHS Act, as amended (42 U.S.C. 285o–4), which authorizes the Director of the National Institute on Drug Abuse to accept and use voluntary services of individuals and groups of individuals in carrying out the Medication Development Program, without compensation from NIH. They are in addition to the regulations in part 57 of this subtitle in which the authority to accept volunteer services is limited exclusively to activities supporting the operation of a health care facility or provision of health care. The authority described in this part applies to all NIH components and permits acceptance and use of volunteer services in support of a large variety of NIH activities.

### § 57a.2 Definitions.

As used in this part:

*Secretary* means the Secretary of Health and Human Services.

*Director* means the Director of NIH, or with respect to the acceptance of voluntary and uncompensated services under section 464P of the Public Health Service Act, the Director of the National Institute on Drug Abuse, and any other officer or employee of NIH to whom authority has been delegated.

*NIH* means the National Institutes of Health, an agency of the Public Health Service within the Department of Health and Human Services.

*National research institute* means each organizational entity of NIH so designated in or pursuant to section 401 of the Public Health Service Act, as amended (42 U.S.C. 281).

*Special volunteer services* mean services performed by individuals or groups of individuals whose offer of services to NIH has been accepted under a formal agreement to provide services to NIH in research, direct patient care, clerical assignments, technical assistance, or any other activities necessary to carry out authorized functions of NIH, without compensation from NIH.

*Special volunteer* means an individual who provides special volunteer services.

### § 57a.3 Acceptance of special volunteer services.

(a) Volunteer services may be accepted from individuals or groups who:

(1) Are donating their services as members of volunteer or charitable organizations;

(2) Offer their services to be performed on their own time, and not associated with any employment they may have;

(3) Are receiving fellowship or stipend support from academic institutions, or other outside organizations with which the individuals have nonemployment relationships;

(4) Are employees of outside organizations on sabbaticals or leaves of absence;

(5) Are employees of outside nonprofit organizations which administer donor funds, but which require no services from these individuals; or

(6) Offer their volunteer services under other circumstances determined by the Director to be appropriate.

(b) Special volunteers are not subject to the investigative requirements of Executive Order No. 10450, "Security Requirements for Government Employment." However, a special volunteer is subject to such tests of character, reputation, and fitness as the Director may prescribe to ensure that the volunteer is suitable to provide the special volunteer services for which he/she is being considered.

(c) Special volunteers are not required to be U.S. citizens. However, noncitizens performing volunteer services at NIH must have appropriate visas that permit their activities at NIH.

(d) Special volunteers are not eligible for health insurance coverage under the Federal Health Benefits Program. The Director may require that a volunteer have adequate health care benefits coverage, based upon a determination that the volunteer assignment involves a significant risk of injury or exposure to conditions that could cause disease or impairment of health.

(e) Special volunteers who will engage in direct patient care activities must have appropriate professional credentials, and must obtain appropriate clinical privileges in accordance with procedures prescribed by the Director.

(f) Special volunteers who are working in health care activities may, as prescribed by the Director, be subject to medical preventive measures designed to minimize exposure of patients and workers to contagious diseases.

### § 57a.4 Compensation, authorization, and termination of special volunteer services.

(a) Individuals and groups of individuals who provide volunteer services to NIH under the regulations of this part may not be compensated by NIH for their services.

(b) Proposed special volunteer assignments must be reviewed by appropriate NIH approving officials to ensure that acceptance of the services will not present actual or potential conflicts of interest.

(c) Authorization of special volunteer assignments requires volunteers to provide general information about themselves and the nature of the services offered which is used for the purpose of determining the qualifications and eligibility of the volunteer to participate in the Special Volunteer Program and the appropriateness of the proposed volunteer assignment. Additionally, approval of parents or guardians is required for all volunteers who are minors.

(d) Except as may be otherwise determined by the Director, taking into account NIH needs for the services offered by the volunteer, special volunteer assignments will be authorized for a period of one year, renewable in one-year increments upon mutual written agreement of the volunteer and NIH.

(e) Notwithstanding the policies of individual NIH organizations on the length of volunteer assignments, special volunteer service arrangements may be terminated at any time by either party to the agreement.

### § 57a.5 Services and benefits available to special volunteers.

(a) The following provisions of law are applicable to special volunteers

whose services are offered and accepted under the regulations of this part insofar as the volunteers are acting within the scope of work assigned to them:

(1) 5 U.S.C. chapter 81, subchapter I, relating to medical services for work related injuries;

(2) 28 U.S.C. chapter 171, relating to tort claims;

(3) 5 U.S.C. section 7903, relating to protective clothing and equipment; and

(4) 5 U.S.C. section 5703, relating to travel and transportation expenses.

(b) Special volunteers also may be provided such other benefits as are authorized by law or administrative action by the Director, NIH, the Director of each national research institute, or other officials of NIH components with appropriate delegated authority.

(c) NIH may reimburse volunteers for travel expenses for interviews and to the duty station in accordance with the Office of Personnel Management regulations (5 CFR part 572).

**§ 57a.6 Other policies and procedures that apply.**

(a) While on the premises of NIH, and while performing volunteer services off the premises of NIH, special volunteers are required to conform to all applicable administrative instructions and requirements of the Department of Health and Human Services and NIH including, but not limited to, all regulations and procedures concerning conduct, safety, patient care, and animal care.

(b) Special volunteers must be under the direct supervision and guidance of NIH employees. Persons volunteering patient care services in the Warren Grant Magnuson Clinical Center must be under the direct supervision and guidance of appropriate NIH employees authorized to provide patient care.

(c) Special volunteers may not supervise or direct the activities of NIH employees. Volunteers may, acting under the direction of NIH employees, coordinate the activities of other volunteers.

(d) Special volunteers may not make policy, contractual, or legal commitments on behalf of NIH.

(e) Additional policies and procedures consistent with this part may be established by the Director, NIH, the Director of each national research institute, or other officials of NIH organizations to whom appropriate authority has been delegated. These policies and procedures may include, but are not limited to, additional requirements for accepting volunteer services from individuals or groups of individuals, using volunteer services, giving appropriate recognition to volunteers, and maintaining records regarding volunteer services.

[FR Doc. 93-18687 Filed 8-6-93; 8:45 am]
BILLING CODE 4140-01-M

## FEDERAL MARITIME COMMISSION

**46 CFR Part 502**

**[Docket No. 93-02]**

**Miscellaneous Amendments to Rules of Practice and Procedure**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Discontinuance of proceeding.

**SUMMARY:** The Federal Maritime Commission ("Commission") is discontinuing this rulemaking proceeding. The Proposed Rule would have required complaints alleging violations of section 10(a)(1) of the Shipping Act of 1984 ("1984 Act") to state with particularity the circumstances constituting such violations, failing which the complaint could be dismissed. The Commission has concluded, on the basis of the record, that the Proposed Rule is not necessary to facilitate the efficient disposition of carriers' unpaid freight complaints.

**FOR FURTHER INFORMATION CONTACT:** Joseph C. Polking, Secretary, Federal Maritime Commission, 800 N. Capitol St., NW., Washington, DC 20573, (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** The Commission initiated this proceeding by publishing in the **Federal Register**, 58 FR 7199, Feb. 5, 1993, a proposed rule ("Proposed Rule") to effect a variety of amendments to its Rules of Practice and Procedure ("Rules").[1] The Commission proposed, inter alia, to amend 46 CFR 502.62 of the Rules ("Rule 62") to require that in all complaints alleging violations of section 10(a)(1) of the 1984 Act, 46 U.S.C. app. 1709(a)(1), the circumstances constituting such violations must be stated with particularity.[2] A complaint alleging merely that a respondent failed to pay ocean freight bills, without specifying the conduct alleged to violate section 10(a)(1), would be deemed not to have complied with the rule. The Proposed Rule directed that if a complaint failed to specify such circumstances as required by the rule, an administrative law judge ("ALJ") could dismiss the complaint at any time, regardless of whether an answer had been filed.

The Proposed Rule noted that in recent years the Commission has seen a marked increase in the number of complaints alleging violations of section 10(a)(1) of the 1984 Act. In the large majority of these cases the complaints did not specify an "unjust or unfair device or means," as required by the statute. Instead, the complaints merely asserted that respondent shippers failed to pay ocean freight on the shipments involved. Often, the Proposed Rule explained, shippers failed to answer the complaints or respond to orders and notices, and default judgments were issued against them.[3]

In addressing these unpaid freight cases, the Commission has encountered concerns regarding the extent of its jurisdiction over "simple failure to pay" cases, which traditionally have been heard in state law courts.[4] In order to clarify these jurisdictional questions and to provide guidance to complainants, the Commission, in Docket No. 92-46, issued an interpretive rule, 46 CFR 571.2 ("Interpretive Rule"). That rule instructs, in part:

> An essential element of the (section 10(a)(1)) offense is use of an "unjust or unfair device or means." In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an "unjust or unfair device or means" from the failure of a shipper to pay ocean freight. an "unjust or unfair device or means" could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

In issuing the Interpretive Rule, the Commission explained that the legislative history of section 10(a)(1) (and its predecessor, section 16, initial paragraph, of the Shipping Act, 1916, 46 U.S.C. ap. 815) indicates that the section was intended to address cases involving actual fraud of deception, and not simple freight collection disputes.

The Proposed Rule suggested, however, that under the current Rules the Commission often cannot determine from the face of a complaint whether the

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[1] The majority of the changes advanced in the Proposed Rule generated no objections, and were adopted by the Commission in a final rule published in the **Federal Register**, 58 FR 27208, May 7, 1993.

[2] Section 10(a)(1) directs that no person may "knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation by water for property at less than the rates or charges which would otherwise be applicable."

[3] See, *e.g.*, *Deppe Line GmbH & Co.* v. *Total Tank Distribution Inc.*, 25 S.R.R.832 (1990); Safbank Line Limited v. *Royale International Transport, Inc.*, 25 S.R.R. 951 (1990).

[4] See, *e.g.*, *China Ocean Shipping Co.* v. *DMV Ridgeview, Inc. motion to dismiss granted*, 26 S.R.R. 50 (1991), *reconsideration denied on other grounds*, 26 S.R.R. 200 (1992).

claim properly involves section 10(a)(1), and is thus within the Commission's jurisdiction, or if instead it is a simple freight collection dispute. It was also observed that the typical complaint in such cases may fail to give respondents adequate notice of the true nature of an alleged section 10(a)(1) violation. Therefore, it was proposed that Rule 62 be amended as follows:

(b) In all averments of violations of section 10(a)(1), the circumstances constituting such violations shall be stated with particularity. In the event that the complaint fails to specify the circumstances, as required by this rule, the presiding officer may dismiss the complaint at any time whether or not an answer has been filed. A complaint which merely alleges that respondent has failed to pay ocean freight bills without alleging conduct that violates section 10(a)(1) will be deemed not to have complied with this rule. For a discussion of an essential element of this offense and the evidence necessary to satisfy it, reference should be had to the Federal Maritime Commission interpretation set forth at § 571.2 of this chapter.

Three comments have been filed in response to the Proposed Rule. Comments supporting the proposed amendment, although urging some clarifications, were submitted by the National Industrial Transportation League ("NIT League"). Comments in opposition have been filed by the Transpecific Westbound Rate Agreement ("TWRA"), and on behalf of seventeen conferences or agreements ("Conferences").[6]

## Discussion

The comments in opposition set forth several arguments against the proposed amendment. Some of these critiques, such as the suggestion that the procedure set forth in the Proposed Rule would violate due process rights, are not persuasive. Other objections have already been considered and rejected by the Commission in the promulgation of the Interpretive Rule. For example, both TWRA and the Conferences object to the distinction in the Proposed Rule between a simple failure to pay freight due and the use of an unjust or unfair device or means to avoid paying freight due. The Conferences argue that such a distinction makes the collection of filed rates more difficult, and thus is contrary to the Congressional intent underlying the 1984 Act. However, this argument was considered and found not persuasive by the Commission when it issued the Interpretive Rule. As noted by the Commission at that time, the language of the statute and its legislative history clearly indicate that Congress did not intend section 10(a)(1) to afford a cause of action against all shippers who fail to pay freight; instead, the section applies only to those who pay less than the filed rate through use of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means.

Similarly without merit are the Conferences' policy arguments that it is "illogical" for shippers who refuse to pay freight charges to be treated differently from those shippers who employ a scheme for misdeclaration or misdescription of cargo to reduce freight charges. When this objection was raised with regard to the Interpretive Rule, the Commission responded:

(S)ound policy reasons may exist as to why carrier complaints seeking to collect unpaid freight from a shipper should be brought under the Commission's jurisdiction * * *. However, the Commission may not itself act upon those policy reasons in the first instance; that power is reserved to Congress. At present, it continues to appear that section 10(a)(1) does not encompass ordinary freight collection complaints.

*Unpaid Freight Charges—Final Interpretive Rule*, 58 FR 7190, 7193, Feb. 5, 1993 (quoting Notice of Proposed Rulemaking).

More compelling, however, is the Conferences' observation that current Commission rules already require careful pleading and provide presiding officers with a variety of options for the disposition of inadequately drafted complaints. Commission regulations mandate that complaints "fully describe the alleged violation of the specific section(s) of the shipping statute(s) involved and how complainant is or was directly injured as a result." 46 CFR part 502, Exhibit No. 1 to subpart E (§ 502.62)—Complaint From and Information Checklist. If the complaint lacks sufficient facts, the ALJ can require that it be amended, pursuant to Rule 62(c), which directs:

If the complaint fails to indicate the sections of the acts alleged to have been violated or clearly to state facts which support the allegations, the Commission may, on its own initiative, require the complaint to be amended to supply such further particulars as it deems necessary.

The ALJ enjoys broad discretion even when the respondent fails to respond to the complaint. Rule 64(b), 46 CFR 502.64(b), provides:

In the event that respondent should fail to file and serve the answer within the time provided, the presiding officer may enter such rule or order as may be just, or may in any case require such proof as he or she may deem proper, except that the presiding officer may permit the filing of a delayed answer after the time for filing has expired, for good cause shown.

Furthermore, it is already within the ALJ's discretion to dismiss a complaint *sua sponte*, if a complaint fails to allege facts sufficient to establish the Commission's subject matter jurisdiction over the dispute. Jurisdiction must appear on the face of a complaint, as the Commission's jurisdiction is of limited scope; section 11(a), which establishes jurisdiction over private actions for violations of the 1984 Act, gives the Commission authority to hear only complaints "alleging a violation of the Act."[8] Moreover, Commission regulations direct that complaints must include an "allegation of jurisdiction," i.e., a "synopsis of the statutory basis of the claim." 46 CFR part 502, Exhibit No. 1 to subpart E; see also Federal Rule of Civil Procedure 8(a)(1) (requiring a "short and plain statement of the grounds upon which the court's jurisdiction depends"). The jurisdictional requirement cannot be satisfied by a pro forma recitation of a section of the 1984 Act, as to do so would provide easy circumvention of the bounds of Commission authority; instead, the pleading must contain averments in its claim for relief demonstrating that the action actually does arise under the 1984 Act.[9] Therefore, if a section 10(a)(1) complaint fails to allege necessary elements required by the statute (and instead contains only those allegations necessary to establish a state law claim

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[6] The conferences or agreements are: Caribbean and Central America Credit Agreement, Central America Discussion Agreement, Central America Liner Association, Hispaniola Discussion Agreement, Inter-American Freight Conference Area River Plate/Puerto Rico and U.S. Virgin Islands, Inter-American Discussion Agreement, Inter-American Freight Conference, Inter-American Freight Conference/Pacific Coast Area Conference, Inter-American Freight Conference/Puerto Rico and U.S. Virgin Islands, Jamaica Discussion Agreement, PANAM Discussion Agreement, Puerto Rico/Caribbean Discussion Agreement, Southeastern Caribbean Discussion Agreement, U.S. Atlantic & Gulf/Hispaniola Steamship Freight Association, U.S. Atlantic & Gulf Southeastern Caribbean Steamship Freight Association, U.S./Panama Freight Association, and the Venezuelan American Maritime Association.

[8] The section directs that "[a]ny person may file with the Commission a sworn complaint alleging a violation of this Act, other than section 6(g), and may seek reparations for any injury caused to the complainant by that violation."

[9] "It is well settled that the recitation of a statute can neither deprive a court of jurisdiction nor confer jurisdiction upon it. It is the operative facts pleaded alone which can do that." *Beeler* v. *United States*, 338 F.2d 687, 689 (1964), citing *Newberry* v. *Central of Georgia Ry. Co.*, 276 F. 337, 341 (5th Cir. 1921). See also *Burgess* v. *Charlottesville Savings and Loan Association*, 477 F.2d 40, 43 (4th Cir. 1973) ("complaint must, however, contain allegations affirmatively and distinctly establishing federal grounds not in mere form, but in substance") (citations omitted).

for breach of contract), the complaint would be inadequate to establish Commission jurisdiction over the claim, and would be subject to dismissal without prejudice, either *sua sponte* or on respondent's motion.[8]

In light of the guidance provided to complainants by the existing regulations, and the broad discretion to address inadequate pleadings currently enjoyed by ALJs, we are satisfied that a new procedural rule applicable only to section 10(a)(1) is not needed at this time for the efficient disposition of these cases.

This conclusion finds additional support in the fact that, since the publication of the Interpretive Rule, in February 1993, there have been only two section 10(a)(1) unpaid freight complaints filed with the Commission.[9] Both complaints included language alleging the presence of an unfair device or means. The Interpretive Rule therefore appears to have served its intended purpose by making clear the elements required to establish a violation of section 10(a)(1).[10]

Therefore, on the basis of the foregoing considerations, the Proposed Rule is withdrawn, and this proceeding is discontinued.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93-18887 Filed 8-6-93; 8:45 am]

BILLING CODE 6750-01-M

[8] Federal courts have long recognized the obligation of judges to raise jurisdictional questions by their own motion. See, *e.g., KVOS, Inc.* v. *Associated Press*, 299 U.S. 269, 277 (1936); *Mansfield, C. & L. M. Ry. Co.* v. *Swan*, 111 U.S. 379, 382 (1884); *John Birch Society* v. *National Broadcasting Co.*, 377 F.2d 194, 199 (2d Cir. 1967); *Arnold* v. *Troccoli*, 344 F.2d 842, 844 (2d Cir. 1965); Federal Rule of Civil Procedure 12(h). See also *Trane Co.* v. *South African Marine Corp.*, 19 F.M.C 375, 378 (1976) (ALJ noting jurisdictional deficiencies not raised by the litigants).

[9] *Tropical Shipping & Construction Co., Ltd.* v. *Valley Wide Produce, Inc.*, Docket No. 93-05 (default judgment entered July 20, 1993); *Waterman Steamship Corp.* v. *General Foundries Inc.*, Docket No. 93-15 (complaint filed July 22, 1993).

[10] The NIT League and TWRA suggest that the Commission provide more detailed guidelines as to what facts must be pleaded to state a cause of action under section 10(a)(1). However, considerable guidance has already been provided by the Interpretive Rule. It would be counterproductive to try to resolve myriad hypothetical scenarios in a rulemaking proceeding; such particularized disputes would be decided best in the context of individual adjudications.

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 76**

**[MM Docket No. 93-218; DA 93-931]**

**Cable Television Service; List of Major Television Markets**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission invites comments on its proposal, initiated by a request filed by Christian Television Corporation, Inc. ("CTC"), to amend the Commission's Rules to change the designation of the Tampa-St. Petersburg, Florida television market to include the community of Clearwater, Florida. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

**DATES:** Comments are due on or before August 27, 1993, and reply comments are due on or before September 13, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-218, adopted July 16, 1993, and released July 29, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Washington, DC 20037.

### Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by Christian Television Corporation, Inc., licensee of WCLF(TV), Clearwater, Florida, proposed to amend Section 76.51 of the Rules to change the designation of the Tampa-St. Petersburg, Florida television market to include the community of Clearwater, Florida.[1]

[1] On September 25, 1985, the Commission dismissed as moot a number of petitions and requests, including CTC's, involving mandatory carriage issues following the United States Court of Appeals decision in *Quincy Cable TV, Inc.* v. *FCC* 768 F.2d 1434 (D.C. Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986), and the Commission's subsequent determination to set aside the cable "must-carry" rules. On October 10, 1985, CTC filed a petition for reconsideration of the dismissal of its rulemaking petition. In light of the Commission's recent actions implementing the provisions of Section 4 of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), the Commission granted CTC's petition for reconsideration and reinstated CTC's rulemaking request.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before the Commission that WCLF and stations licensed to communities in the Tampa-St. Petersburg television market do compete for audiences and advertisers throughout most of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, CTC's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

### Initial Regulatory Flexibility Analysis

4. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few television licensees and permittees will be affected by the proposed rule amendment. The Secretary shall send a

copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

**Ex Parte**

5. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

**Comment Dates**

6. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 27, 1993, and reply comments on or before September 13, 1993. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

7. Accordingly this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by Section 0.283 of the Commission's Rules.

**List of Subjects in 47 CFR Part 76**

Cable television.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Mass Media Bureau.*

[FR Doc. 93–18885 Filed 8–6–93; 8:45 am]

BILLING CODE 6712–01–M

## INTERSTATE COMMERCE COMMISSION

**49 CFR Parts 1002 and 1312**

**[Ex Parte No. MC–213]**

**Range Tariffs—Fax Filing**

**AGENCY:** Interstate Commerce Commission (ICC).

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The ICC is proposing to permit carriers to supplement range tariffs by filing by fax the actual rate applicable to individual shipments prior to transport of those shipments. "Range" tariffs are tariffs that disclose neither the actual rate for a shipment nor an objective methodology by which the rate can be determined. The Commission has concluded that such tariffs do not comply fully with statutory rate disclosure requirements. Fax supplementation of these tariffs should permit carriers to respond rapidly to market demands while still complying with the statutory requirement that carriers must publish in tariffs filed with the Commission the rates that they charge.

**DATES:** Comments are due on September 8, 1993.

**ADDRESSES:** Send comments (an original and 10 copies) referring to Ex Parte No. MC–213 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Charles Langyher (202) 927–5160, [TDD for hearing impaired (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** In a notice issued at 58 FR 3559 (January 11, 1993) in No. 40887, the Commission required motor common carriers to show cause why their "range" tariffs should not be ordered canceled for failure to comply with the rate disclosure requirements of 49 U.S.C. 10762. The Commission has now concluded that range tariffs do not comply fully with these requirements (see notice of decision in today's issue of the **Federal Register**), and, once the ICC completes this proceeding, carriers may no longer rely on range tariffs, standing alone, to establish transportation rates. However, because the comments indicated that carriers need a means to file rates rapidly in order to compete with less regulated transportation providers in the transportation "spot" market, the Commission is proposing to allow carriers to correct the disclosure deficiencies of range tariffs by faxing the rates applicable to specific shipments to the Commission prior to transporting those shipments.

We request public comment on all aspects of the fax filing proposal including (but not limited to) the following: (1) Whether the proposal is operationally practical from a carrier's point of view; (2) whether it would benefit shippers and/or carriers; (3) whether carriers are likely to use this tariff arrangement, or would be more likely to use some other means of achieving rate flexibility; (4) how many activating tariffs commenters estimate would be filed (yearly or daily); (5) whether a significant number of filings would occur at night or on weekends; (6) whether the proposed $1 per page filing fee would be appropriate; and (7) whether to permit carriers to use any format convenient to them (such as faxing copies of bills of lading) provided the document contains all of the information required of activating tariffs.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

**Regulatory Flexibility Certification**

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding would not have a significant economic impact on a substantial number of small entities. The economic impact would be minimal since the proposed regulation merely permits the filing by fax (rather than mail or hand delivery) of rates required by statute to be filed. Thus the economic impact is unlikely to be significant within the meaning of the Regulatory Flexibility Act.

**Environmental Statement**

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects**

*49 CFR Part 1002*

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

*49 CFR Part 1312*

Motor carriers, Moving of household goods, Pipelines, Tariffs.

For the reasons set forth in the preamble, the Commission proposes to

amend Chapter X of Title 49 of the Code of Federal Regulations, Parts 1002 and 1312, as follows:

## PART 1002—FEES

1. The authority citation for Part 1002 continues to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. In § 1002.2(f), in the table, No. (74) is redesignated as (74)(i) and revised to read as follows; a new (74)(ii) is added to read as follows:

**§ 1002.2 Filing fees.**

* * * * *

(f) * * *

| Type of proceedings | Fees |
|---|---|
| (74)(i) The filing of tariffs (except for activating tariffs), rate schedules and contracts including supplements. | $9 per series transmitted. |
| (74)(ii) Activating tariffs ..... | $1 per page. |
| • • • • • | |

## PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

3. The authority citation for part 1312 continues to read as follows:

**Authority:** 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

**§ 1312.14 [Amended]**

4. The heading for § 1312.14 is revised to read as follows:

**§ 1312.14 Statement of rates and fares (see also § 1312.41).**

5. A new § 1312.41 is added to read as follows:

**§ 1312.41 Range tariffs.**

(a) A range tariff presents a series of rates or discounts with each rate or discount potentially applicable to any given shipment; the particular rate or discount made applicable to particular shipment(s) is given effect by the filing of a second tariff. Under these circumstances the rate or discount made applicable by the filing of the second tariff takes precedence over other filed tariffs otherwise applicable to the shipment(s).

(b) To initiate range tariff pricing, a carrier shall:

(1) File with the Commission a tariff setting forth the series (range) of rates or discounts potentially applicable to shipments moving on, or subsequent to, the effective date of the tariff. The tariff shall show on its title page the term INITIATING RANGE TARIFF.

(2) Provide in such tariffs a listing of all other filed rate tariffs otherwise applicable to the traffic to be accorded range pricing; the listing shall cite such other tariffs by the name of their issuing carrier or authorized agent and by its designated code and tariff number.

(3) Simultaneously amend all other filed rate tariffs otherwise applicable to the issue traffic to include the filed initiating range tariff as a publication governing such other tariffs.

(4) Provide an explanation of the application of the tariff, including any conditions, limitations or restrictions that attend use of the tariff; the explanation shall be contained in an Item 150 designated "Application of Tariff".

(5) File not more than one initiating range tariff to be in effect at any one time; however, different ranges of rates or discounts may be established within the one tariff, provided the application of the different ranges is clearly explained to avoid ambiguity of applicability.

(6) File initiating range tariffs with the Commission in the manner required by § 1312.3 and § 1312.4(a) and (b) of this part.

(7) Establish and maintain with the Commission a tariff filing fee account pursuant to the provisions of § 1002.2(a)(1)(ii) of this chapter, for use in making activating range tariff filings under paragraph (c) of this section.

(c) To activate for particular shipment(s) a particular rate or discount (from among the range of rates or discounts provided in the initiating range tariff established under paragraph (b) of this section), a carrier shall:

(1) Prior to transport of the specifically identified shipment(s), file with the Commission a tariff stating the actual rate or discount to be applied to the shipment(s). The tariff shall show on its title page the term ACTIVATING RANGE TARIFF and shall refer to the initiating range tariff (previously established under paragraph (b) of this section) as a control tariff. (2) Issue activating range tariffs in the carrier's own name, immediately followed by the carrier's code and the characters "6R"; immediately under this designation shall be shown the actual date of filing with the Commission (which shall serve as the date on which the tariff becomes applicable for traffic moving subsequent to the filing thereof).

Example: ICC ABCD 6R
Filed: 7/1/93

Each page of the activating range tariff (if comprised of more than one page) shall show this same information. Each page shall be sequentially numbered with the final page stating "end" following the last page number.

(3) Show on the title page of each activating range tariff a specific date of expiration, which shall not exceed 7 days from the date of the tariff's filing. In the event a carrier fails to designate an expiration date, the tariff shall expire 7 days from the date of filing.

(4) Identify the specific traffic to be accorded service under the stated rate or discount with whatever information is needed to specifically identify the intended shipments, but in any event at a minimum identifying either (a) the shipper's name, or (b) the commodity description and origin and destination points.

(5) File one copy of each activating range tariff with the Commission by hand or by "fax" transmission to (phone number(s) to be determined); to avoid the necessity of filing a separate transmittal letter (see § 1312.4(b) of this part), the title page of every activating range tariff shall provide the name, title and phone number of the party authorized to submit the publication for filing with the Commission.

(d) Except as expressly provided in this section, range tariffs are subject to the provisions of §§ 1312.1 through 1312.40 of this part.

Decided: August 8, 1993.

By the Commission: Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Walden commented with a separate expression. Commissioner Phillips dissented with a separate expression.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–19002 Filed 8–6–93; 8:45 am]

BILLING CODE 7035-01-P

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## 49 CFR Part 1312

[Ex Parte No. MC–211]

## Revision of Tariff Regulations—Indexes

**AGENCY:** Interstate Commerce Commission (ICC).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The ICC is proposing to require tariffs to contain indexes, unless the information in the tariff is arranged in a pattern readily discernible to tariff users. Because many tariffs now on file contain thousands of pages but no indexes, the rates applicable to particular shipments can be difficult (or virtually impossible) to determine. Indexes will improve the public's ability to determine the rates which are contained in the tariffs and which are therefore applicable by law.

**DATES:** Comments are due on September 8, 1993.

**ADDRESSES:** Send comments (an original and 10 copies) referring to Ex Parte No. MC–211 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Larry Herzig (202) 927–5180 or Charles E. Langyher (202) 927–5160. [TDD for hearing impaired (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** In an Advance Notice of Proposed Rulemaking issued at 58 FR 3529 (January 11, 1993), the Commission requested public comment on whether to require indexes for tariffs. The Commission has now concluded that some indexing requirement is necessary if the public is to have practical access to tariff information, and is proposing a rule requiring indexes where the tariff information is not otherwise arranged in a readily discernible pattern. The public is requested to comment on (1) the proposed rule itself, (2) the frequency of index updating that should be required, (3) the implications of possible electronic tariff filing, (4) the appropriate transition time required for complying with the indexing requirement, (5) our regulatory flexibility findings (discussed below), and (6) any other matters relevant to the indexing proposal.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

**Regulatory Flexibility Certification**

Pursuant to 5 U.S.C. 605(b), we conclude that our proposed action in this proceeding would not have a significant economic impact on a substantial number of small entities. The economic impact, which would consist of the costs of publishing indexes, would not be significant. Carriers already are required by statute to file tariffs containing rates and other terms of service. The new rule would merely require carriers to file indexes for materials they are already obliged by law to prepare. Moreover, the economic impact would be mitigated by the fact that (1) many carriers probably already prepare internal indexes for their own use, (2) carriers would not have to provide indexes if the information in their tariffs is arranged in a pattern that is easily discernible, and (3) the proposed rule is flexible, allowing a carrier to choose an index that best accords with the carrier's preferred tariff format. For these reasons, although indexing would admittedly require additional carrier expense by what is potentially a substantial number of small entities (because all small trucking companies will have to comply), the economic impact is unlikely to be significant within the meaning of the Regulatory Flexibility Act.

**Environmental Statement**

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**List of Subjects in 49 CFR Part 1312**

Motor carriers, Moving of household goods, Pipelines, Tariffs.

Decided: July 23, 1933.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Phillips commented with a separate expression. Commissioner Philbin concurred in part and dissented in part with a separate expression. Commissioner Walden dissented with a separate expression.

**Sidney L. Strickland,**

*Secretary.*

For the reasons set forth in the preamble, the Commission proposes to amend chapter X of title 49 of the Code of Federal Regulations, part 1312 as set forth below.

## PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for part 1312 continues to read as follows:

**Authority:** 49 U.S.C. 10321 and 10762; 5 U.S.C. 533.

2. In § 1312.13, paragraph (a) is redesignated as paragraph (a)(1) and a new paragraph (a)(2) is added to read as follows:

**§ 1312.13 Contents of tariffs.**

(a) * * *

(2) Tariff information must be presented in a way that facilitates the determination of the prices and services offered, and the related classifications, rules, and practices. When information within a tariff is not arranged in a pattern readily discernible to tariff users, indexes of the exact location of such information (by item number, rule number, page number, etc.) shall be provided. The Commission reserves the right to require reissue or amendment of any tariff which does not satisfy these standards.

* * * * *

[FR Doc. 93–19003 Filed 8–6–93; 8:45 am]
BILLING CODE 7035–01–P

# Notices

Federal Register
Vol. 58, No. 151
Monday, August 9, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Privacy Act of 1974; Systems of Records

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of revision of Privacy Act systems of records.

**SUMMARY:** Notice is hereby given that the United States Department of Agriculture (USDA) is amending one of its Privacy Act Systems of Records, USDA/FmHA–1, "Applicant, Borrower, Grantee or Tenant File."

**EFFECTIVE DATE:** This notice will be adopted without further publication in the **Federal Register** on October 8, 1993, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before September 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Hinden, Freedom of Information Officer, General Services Staff, Farmers Home Administration (FmHA), USDA, Room 6847, South Building, Washington, DC 20250; Telephone: (202) 720–9638.

**SUPPLEMENTARY INFORMATION:** The purpose of this revision is to amend the system of records entitled, "USDA/FmHA–1 Applicant, Borrower, Grantee, or Tenant File." "Categories of records in the system" is modified to include appraisals. This revision also clarifies which information contained in the system will be released to the recipients under the routine uses.

Stylized language has been utilized for three routine uses: (1) To the Department of Justice for use in litigation, (2) for other disclosures in litigation, and (3) for law enforcement purposes.

The footnotes are no longer applicable under the routine uses.

The notice has been amended to delete four routine uses because they are no longer needed:

1. "Referral of information * * * for statistical reports and news releases citing borrowers' progress."
2. "Referral to employers * * * to determine repayment ability and eligibility for FmHA programs and benefits."
3. "Referral of commercial credit information * * * to make the information publicly available."
4. "Referral to a court * * * in the course of discovery * * * necessary to the proceeding."

Accordingly, USDA amends the FmHA System of Records, USDA/FmHA–1 "Applicant, Borrower, Grantee or Tenant File, USDA/FmHA," published in its entirety in 58 FR 6105, January 26, 1993.

Signed at Washington, DC, on July 23, 1993.

**Mike Espy,**
*Secretary of Agriculture.*

**USDA/FmHA–1**

**SYSTEM NAME:**

Applicant, Borrower, Grantee or Tenant File, USDA/FmHA.

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system includes files containing applicants', borrowers', grantees', tenants', and their respective household members' characteristics, such as gross and net income, sources of income, capital, assets and liabilities, net worth, age, race, number of dependents, marital status, reference material, farm or ranch operating plans, and property appraisals. The system also includes credit reports and personal references from credit agencies, lenders, businesses, and individuals. In addition, a running record of observation concerning the operations of the person being financed is included. A record of deposits in and withdrawals from an individual's supervised bank account is also contained in those files where appropriate. In some County Offices, this record is maintained in a separate folder containing only information relating to activity within supervised bank accounts. Some items of information are extracted from the individual's file and placed in a card file for quick reference.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.
2. A record from this system of records may be disclosed to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.
3. Disclosure may be made of names, home addresses, social security numbers, and financial information to business firms in a trade area that buy chattel or crops or sell them for commission. This is in order that FmHA may benefit from the purchaser notification provisions of section 1324 of the Food Security Act of 1985 (7 U.S.C. 163(e)). The Act requires that potential purchasers of farm commodities must be advised ahead of time that a lien exists in order for the creditor to perfect its lien against such purchases.
4. Disclosure of the name, home address, and information concerning default on loan repayment when the default involves a security interest in tribal allotted or trust land. Pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701 *et seq.*), liquidation may be pursued only after offering to transfer the account to an eligible tribal member, the tribe, or the Indian Housing Authority serving the tribe(s).
5. Referral of names, home addresses, social security numbers, and financial information to a collection or servicing contractor, financial institution, or a local, State, or Federal agency, when FmHA determines such referral is

appropriate for servicing or collecting the borrower's account or has provided for in contracts with servicing or collection agencies.

6. It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body, when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the agency collected the records.

7. Referral of name, home address, and financial information for selected borrowers to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when FmHA determines such referral is appropriate to encourage the borrower to refinance their FmHA indebtedness as required by Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471).

8. Referral of legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS), to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made, in accordance with the IRS regulations at 26 CFR 301.6402–6T, Offset of Past Due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

9. Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the FmHA in order to collect debt under the provisions of the Debt Collection Act of 1982 (5 U.S.C. 5514) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

10. Referral of names, home addresses, and financial information to lending institutions when FmHA determines the individual may be financially capable of qualifying for credit with or without a guarantee.

11. Disclosure of names, home addresses, social security numbers, and financial information to lending institutions that have a lien against the same property as FmHA for the purpose of the collection of the debt. These loans can be under the direct and guaranteed loan programs.

12. Referral to private attorneys under contract with either FmHA or with the Department of Justice for the purpose of foreclosure and possession actions and collection of past due accounts in connection with FmHA.

13. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

14. Referral of names, home addresses, social security numbers, and financial information to the Department of Housing and Urban Development (HUD) as a record of location utilized by Federal agencies for an automatic credit prescreening system.

15. Referral of names, home addresses, social security numbers, and financial information to the Department of Labor, State Wage Information Collection Agencies, and other Federal, State, and local agencies, as well as those responsible for verifying information furnished to qualify for Federal benefits, to conduct wage and benefit matching through manual and/or automated means, for the purpose of determining compliance with Federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits.

16. Referral of names, home addresses, and financial information to financial consultants, advisors, or underwriters, when FmHA determines such referral is appropriate for developing packaging and marketing strategies involving the sale of FmHA loan assets.

* * * * *

[FR Doc. 93–18994 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–07–M

## Animal and Plant Health Inspection Service

[Docket No. 93–094–1]

## Availability of Environmental Assessments and Findings of No Significant Impact

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that five environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

**ADDRESSES:** Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect these documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered

organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

| Permit No. | Permittee | Date issued | Organisms | Field test location |
|---|---|---|---|---|
| 93–175–01, renewal of permit 91–205–01, issued on 10–22–91. | Calgene, Incorporated | 07–02–93 | Rapeseed plants genetically engineered to express an oil modification gene. | California. |
| 93–074–03 | Upjohn Company | 07–12–93 | Cucumber plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus. | Georgia. |
| 93–105–02 | University of Florida | 07–12–93 | Peanut plants genetically engineered to express resistance to tomato spotted wilt virus and a marker gene for tolerance to the phosphinothricin class of herbicides. | Florida. |
| 93–118–01 | New York State Agricultural Experiment Station. | 07–12–93 | Squash plants genetically engineered to express resistance to cucumber mosaic virus, watermelon mosaic virus, watermelon mosaic virus 2, and zucchini yellow mosaic virus. | New York. |
| 93–165–01 | Upjohn Company | 07–12–93 | Squash plants genetically engineered to express resistance to zucchini yellow mosaic virus and watermelon mosaic virus 2. | Maryland. |

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 3rd day of August 1993.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 93–18996 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–34–M

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**[Docket No. 93–093–1]**

## Receipt of A Permit Application for Release Into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

**ADDRESSES:** Copies of the application referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and

Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

| Application No. | Applicant | Date received | Organisms | Field test location |
|---|---|---|---|---|
| 93–183–01, renewal of permit 92–156–01, issued on 09–23–92. | Calgene, Incorporated ... | 07–02–93 | Rapeseed plants genetically engineered to express sense or anti-sense desaturase genes, a thioesterase gene, and a reductase gene, for oil modification. | Georgia. |

Done in Washington, DC, this 3rd day of August 1993.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 93–18995 Filed 8–6–93; 8:45 am]

BILLING CODE 3410-34-M

## Forest Service

### Appeal Exemption, Burgett Fire Area

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice: Burgett Fire Area Decision Administrative Appeal Exemption.

**SUMMARY:** On July 30, 1993, Lincoln National Forest Supervisor, Lee Pesgue, made a decision to approve the Burgett Fire Rehabilitation Plan which will provide for rehabilitation of the fire area and assist in restoring the forest resources of the area to pre-fire conditions.

The 4,293 acre Burgett Fire in new Mexico damaged timber and other resources. The Lincoln National Forest has completed an environmental analysis on the impact of this wildfire. It will be necessary to rehabilitate sections of the fire area and recover timber resources in a short, emergency timeframe to minimize damages to resources damaged by the fire. Damaged timber that is selected to be harvested needs to be removed within 6 months or the value will decrease due to rapid deterioration. If the decision document resulting from this environmental analysis is appealed under 36 CFR part 217, valuable time in rehabilitation and resource recovery are likely to be lost. I have therefore determined that, pursuant to 36 CFR 217.4(a)(11), decisions involving rehabilitation and timber recovery within the Burgett Fire area are exempt from administrative appeal.

Copies of the Environmental Assessment are available upon request at the Forest Supervisor's office, Federal Building, 11th and New York Ave., Alamogordo, NM 88310.

**DATES:** This notice is effective August 9, 1993.

**ADDRESSES:** Direct comments to: Larry Henson, Regional Forester, 1570 Southwestern Region, USDA Forest Service, 517 Gold Avenue, SW., Albuquerque, New Mexico, 87102.

**FOR FURTHER INFORMATION CONTACT:** Milo Larson, Director, Timber Management, (505) 842–3240. Direct requests for a copy of the appeal regulation to Pat Jackson at the above address.

Dated: August 2, 1993.

**Arvin L. White,**

*Acting Regional Forester.*

[FR Doc. 93–18920 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–11–M

## Polyoxometalate Bleaching Consortium Notice of Intent To Form a Consortium

### Program Description

*Purpose*

The USDA, Forest Service, Forest Products Laboratory (FPL) is seeking industrial partners to form a consortium dedicated to the application of polyoxometalate bleaching as a pulp treatment Process under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

An industrial partner may be a Federal Agency, university, private business, nonprofit organization, research or engineering entity, or combination of the above.

A summary of the proposed research and development is as follows:

(a) All aspects of pretreatment prior to application of polyoxometalate oxidation.

(b) All aspects of reactor design and operating principles for application of the polyoxometalate delignifying and bleaching agents.

(c) All aspects of catalyst recovery and regeneration processes.

(d) All aspects of pulp washing.

(e) All systems for treatment of sideproduct and effluent streams.

(f) All aspects of mill closure procedures.

(g) All polyoxometalate compounds intended for use as oxidation catalysts in pulping or bleaching.

(h) All combinations of polyoxometalates and oxidants, the latter including chemical oxidants and electrochemical oxidation processes.

(i) All aspects of bleaching sequence design that entail the combination of polyoxometalate stages with additional acidic, basic, and/or oxidative stages.

A meeting of potential industrial partners will be held October 5 and 6, 1993, to discuss formation of the consortium, the present status of the technology, and the anticipated technology to be developed under the auspices of the consortium. Attendance at the meeting is open to anyone; however, prior to attending the meeting,

each person attending must be bound by a Proprietary Information Disclosure Agreement which requires that proprietary or confidential information disclosed at the meeting as confidential be kept confidential. Copies of the agreement may be obtained by writing the address shown below. Along with the request for a copies of the agreement, the requestor must provide the legal name of the entity making the request and the name(s) of the person(s) who will represent the entity.

The FPL Grants and Agreements Officer will negotiate and enter into Cooperative Research and Development Agreements (CRADAs) with individual members of the consortium .The CRADAs will provide for statements of the mutuality of interest of the parties, the actions to be performed by the parties which contribute to the research and development, and the disposition of intellectual property rights arising from the research. It is anticipated that each CRADA will provide the industrial partner with a right of first refusal to negotiate for a nonexclusive, a partially exclusive, a co-exclusive, or an exclusive license to the technology derived from the research under the CRADA. A copy of a sample CRADA may be obtained by writing to the address below.

The execution of a CRADA does not commit or obligate the United States in any way to provide further support of a project or any portion thereof other than as provided for in the CRADA.

The address to obtain a Proprietary Information Disclosure Agreement or sample CRADA is: John G. Bachhuber, Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398.

Done at Madison, WI, on July 27, 1993.

**Kenneth R. Peterson,**

*Acting Director.*

[FR Doc. 93–19018 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–11–M

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## Enzymatic Deinking of Recycled Fibers Correction of Notice of Intent to Form a Consortium

### Program Description

*Purpose*

The USDA, Forest Service, Forest Products Laboratory (FPL) announced the formation of a consortium dedicated to the enzymatic deinking of recycled fibers under the authority of the Federal Transfer Act in the Federal Register, Vol. 58, No. 134 dated Thursday, July 15, 1993. (58 FR 38115). The notice indicating a meeting of potential industrial partners would be held on August 24, 1993, to discuss the formation of the consortium, the present status of the technology, and the anticipated technology to be developed under the auspices of the consortium. The date of the meeting has been changed from August 24, 1993, to August 26 and 27, 1993. All other information remains as stated in the original announcement.

Done at Madison, WI, on July 27, 1993.

**Kenneth R. Peterson,**

*Acting Director.*

[FR Doc. 93–19017 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–11–M

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## Timber Bridge Research Joint Venture Agreements; Solicitation of Applications and Application Guidelines

### Program Description

*Purpose*

The Federal Highway Administration and the USDA, Forest Service, Forest Products Laboratory (FPL), are working cooperatively under Pub. L. 102–240, The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, on Research for the development of wood in transportation structures.

The FPL is now inviting proposals for specific areas of the research under the authority of the Food Security Act of 1985 (7 U.S.C. 3318(b) and will award competitive Research Joint Venture Agreements for cooperative research related to wood in transportation structures. The specific research areas are stated within this announcement.

### Eligibility

Proposals may be submitted by any Federal Agency, university, private business, nonprofit organization, or any research or engineering entity.

An applicant must qualify as a responsible applicant in order to be eligible for an award. To qualify as responsible, an applicant must meet the following standards:

(a) Adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through subagreement(s)) or contracts;

(b) Ability to comply with the proposed or required completion schedule for the project;

(c) Adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(d) Satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants, agreements, and contracts from the Federal government; and

(e) Otherwise be qualified and eligible to receive an award under the applicable laws and regulations.

### Available Funding

Available funding is shown under the specific research areas, below. The FPL will reimburse the cooperator not-to-exceed eighty percent (80%) of the total cost of the research. The proposing entity may contribute the indirect costs as its portion of the total cost of the research. Indirect costs will not be reimbursed to State Cooperative Institutions. State Cooperative Institutions are designated by the following:

(a) The Act of July 2, 1862 (7 U.S.C. 301 and the following), commonly known as the First Morrill Act,

(b) The Act of August 30, 1890 (7 U.S.C. 321 and the following), commonly known as the Second Morrill Act, including the Tuskegee Institute;

(c) The Act of March 2, 1887 (7 U.S.C. 361a and the following), commonly known as the Hatch Act of 1887;

(d) The Act of May 8, 1914 (7 U.S.C. 341 and the following), commonly known as the Smith-Lever Act;

(e) The Act of October 10, 1962 (16 U.S.C. 582a and the following), commonly known as the McIntire-Stennis Act of 1962; and

(f) Sections 1429 through 1439 (Animal Health and Disease Research), sections 1474 through 1483 (Rangeland Research) of Public Law 95–113, as amended by Public Law 97–98.

### Definitions

(a) Grants and Agreements Officer means the Grants and Agreements Officer of the FPL and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) Awarding Official means the Grants and Agreements Officer and any other officer or employee of the Department of Agriculture to whom the authority to issue or modify awards has been delegated.

(c) Budget Period means the interval of time (usually twelve months) into which the project period is divided for budgetary and reporting purposes.

(d) Department or USDA means the U.S. Department of Agriculture.

(e) Research Joint Venture Agreement means the award by the Grants and Agreements Officer of his/her designee

to a cooperator to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research problem area identified herein.

(f) Cooperator means the entity designated in the Research Joint Venture Agreement award document as the responsible legal entity to whom a Research Joint Venture Agreement is awarded.

(g) Methodology means the project approach to be followed to carry out the project.

(h) Peer review group means an assembled group of experts or consultants qualified by training and/or experience in particular scientific or technical field to give expert advice on the technical merit of grant applications in those fields.

(i) Principal Investigator means an individual who is responsible for the scientific and technical direction of the project, as designated by the cooperator in the application and approved by the Grants and Agreements Officer.

(j) Project means the particular activity within the scope of one or more of the research areas identified herein.

(k) Project Period means the total time approved by the Grants and Agreements Officer for conducting the proposed project as outlined in an approved application or the approved portions thereof.

(l) Research means any systematic study directed toward new or fuller knowledge of the subject field. Areas: Proposals are currently being solicited in the following areas:

(a) Problem Area I: Guidelines for the Development of Waterproof Asphalt Wearing Surface Systems for Timber Bridge Decks: To develop waterproof asphalt wearing surface systems for timber bridge decks and to develop a comprehensive handbook for the design, application, and maintenance of asphalt wearing surfaces for timber bridge decks. Total estimated cost of the research: $182,500; estimated Federal funding: $146,000.

(b) Problem Area II: Economics of Timber Bridges: To determine the comparative initial cost, service life, and life cycle cost of various types of timber bridge superstructures, exclusive of those constructed under the Forest Service or Federal Highway Administration demonstration bridge programs, compared to superstructures constructed of other materials. Total estimated cost of the research: $112,500; estimated Federal funding: $90,000.

(c) Problem Area III: Moisture Protection for Timber Bridges: To develop, refine, and/or evaluate a variety of coatings and coverings for protecting bridge members from moisture. Total estimated cost of the research: $43,750; estimated Federal funding: $35,000.

(d) Problem Area IV: Treatability of Heartwood: (i) To develop a comprehensive literature review of the composition, treatability, and subsequent durability of heartwood, with principle emphasis on U.S. wood species likely to be used for the construction of transportation structures; (ii) to analyze available information and identify the cost critical needs for improving the long-term durability of wood members with heartwood; (iii) to identify those combinations of species and technologies that seemingly have the greatest potential for improving the treatability of heartwood in species currently considered refractory; (iv) to develop recommendations for research initiatives which, if successful, will yield significant advancements in either product durability or treating methodology; (v) to develop recommendations for research that have high probability for success and will contribute incremental gains in either product durability or treating methodology. Total estimated cost of the research: $89,375; estimated Federal funding: $71,500.

(e) Problem Area V: Standard Plans and Specifications for Timber Bridge Substructures and Box Culverts: To develop standard plans and specifications for several or all of the following timber systems: pile abutments, post and sill abutments, crib abutments, pile bents frame bents, and box culverts. Total estimated cost of the research: $83,750; estimated Federal funding: $67,000.

(f) Problem Area VI: Development of Sound Barriers: To investigate and develop wood applications for sound barriers. Total estimated cost of the research: $111,250; estimated Federal funding: $89,000.

(g) Problem Area VII: Shear Strength of Sawn Lumber Beams: To develop and present solutions to the following problem areas: (i) Define ranges or typical sizes of checks and splits that are found in timber members of the sizes commonly used in bridge construction; (ii) develop and experimentally verify shear design criteria for unsplit beams based on relationship between beam size, ASTM shear block test results, and shear strength, and compare this relationship to that found in recent research for unsplit glued laminated timber beams. Total estimated cost of the research: $168,750; estimated Federal funding: $135,000.

**Programmatic Contact**

For additional information, contact John G. Bachhuber, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398.

**Proposal Preparation**

*Application Materials*

An Application Kit and a copy of this solicitation will be made available upon request. The kit contains detailed information on each Problem Area, required forms, certifications, and instructions for preparing and submitting agreement applications. Copies of the Application Kit and this solicitation may be requested from: Grants and Agreements, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398, Telephone Number (608) 231–9282.

*Proposal Format*

(a) Proposal Cover Page

(1) Form CSRS–661, Application for Funding, must be completed in its entirety. The program to which you are applying is "Wood in Transportation Structures." The Program Numbers and Areas are shown above.

(2) One copy of Form CSRS–661 must contain the pen-and-ink signatures of the proposing Principal Investigator(s) and the Authorized Organizational Representative who possesses the necessary authority to commit the applicant entity's time and other relevant resources. Investigators who do not sign the cover sheet will not be listed on the awards documents in the event an award is made.

(b) Project Summary

Each proposal must contain a project summary which may not exceed 2 single- or double-spaced pages in length. This summary is not intended for the general reader; consequently, it may contain technical language. The project summary should be a self-contained, specific description of the activity to be undertaken and should focus on:

(1) Overall project goal(s) and supporting objectives; and

(2) Plans to accomplish project goal(s).

(c) Project Description

The specific aims of the project description may not exceed 15 single- or

double-spaced pages and must contain the following components:

(1) Introduction. A clear statement of the long-term goal(s) and supporting objectives of the proposed project should preface the project description. The most significant published works in the field under consideration, including work of key project personnel on the current proposal, should be reviewed. All work cited, including that of key personnel, should be cited.

(2) Experimental Plan. The hypotheses or questions being asked and the methodology to be applied to the proposed project should be stated explicitly and must include:

(i) A description of the investigations and/or experiments proposed and the sequence in which the investigations and/or experiments are to be performed;

(ii) Techniques to be used in carrying out the proposed project, including the feasibility of the techniques;

(iii) Results expected;

(iv) Means by which experimental data will be interpreted or analyzed;

(v) Pitfalls that may be encountered;

(vi) Limitations to proposed procedures; and

(vii) Tentative schedule for conducting major steps involved in these investigation/experiments.

In describing the experimental plan, the applicant must explain fully any materials, procedures, situations, or activities that may be hazardous to personnel (whether or not they are directly related to a particular phase of the proposed project), along with an outline of precautions to be exercised to avoid or mitigate the effects of such hazards.

(d) Facilities and Equipment

All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully conclude the proposed project should be listed.

(e) Collaborative Arrangements

If the nature of the proposed project requires collaboration or subcontractual arrangements with other scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator/subcontractor and provide a full explanation of the nature of the relationship. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborator have agreed to render this service.

(f) Vitae, Publications, and Conflicts of Interest Lists

Curriculum Vitae. A curriculum vitae should be included for each key person associated with the project. The vitae must be limited to a presentation of credentials related to the study, and must be no more than two pages each in length, excluding publications list(s).

Publications Lists. A chronological list of all publications in referenced journals during the past five years, including those in press, must be provided for each key project person for whom a curriculum vitae is provided. The list should follow a format used in journals. In cases where key individuals do not publish in journals, a chronological list of work for the past five years may be provided in lieu of the list of publications.

Conflicts of Interest List. To assist program staff in excluding from proposal review individuals who have conflicts of interest with project personnel, a list of the following individuals should be appended for each project person:

(1) Collaborators on research projects within the past five years;

(2) Co-authors on publications issued within the past five years;

(3) Thesis or postdoctoral advisors within the past five years; and

(4) Graduate students or postdoctoral associates within the past five years.

(g) Budget

A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. Form CSRS–55, Budget, must be used for this purpose. A copy of Form CSRS–55, along with instructions for its completion, is contained in the Application Kit and may be reproduced as needed.

Funds may be requested under any of the categories listed on Form CSRS–55, provided that the item or service for which support is requested is identified as necessary for successful conduct of the proposed project, is allowable under the authorizing legislation, the applicable Federal cost principles, and these guidelines, and is not prohibited under any applicable Federal statute.

Salaries of project personnel who will be working on the project may be requested in proportion to the effort they will devote to the project.

All salaries and wages, nonexpendable equipment, foreign travel, and "All Other Direct Costs" for which support is requested must be itemized and justified on separate sheet of paper placed immediately behind the Form CSRS–55.

(h) Current and Pending Support

Each applicant must complete Form CSRS–663, Current and Pending Support, a copy of which is contained in the Application Kit. The purpose of this form is to identify any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for personnel involved is included in the proposed budget. Analogous information must be provided for any pending proposals that are being considered by, or which will be submitted in the near future to, other possible sponsors. Concurrent submission of identical or similar project to other possible sponsors will not prejudice the review or evaluation of a project. However, a proposal that duplicates or overlaps substantially with a proposal funded or that will be funded by another sponsor will not be funded.

(i) Appendices

Each project description is expected to be complete. However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are unsuitable for inclusion in the text of the proposal), the number of copies of additional information should match the number of copies of the application submitted. Extraneous materials will not be used in the evaluation process.

(j) Organizational Management Information

Specific management information relating to an applicant entity must be submitted on a one-time basis prior to the award if the proposed cooperator has not received other awards from FPL and such information was not previously submitted. FPL will request management information (e.g., bank references, financial statements, statements of purpose, etc.) from "new" cooperators once a proposal has been recommended for funding.

**Proposal Submission**

*What to Submit*

An original and five copies of a proposal must be submitted. Each copy of each proposal must be stapled securely in the upper left-hand corner (Do not bind). All copies of the proposal must be submitted in one package.

*Where and When to Submit*

Proposals submitted through the regular mail must be received by the Grants and Agreements Officer by 2 p.m., October 25, 1993, and should be sent to the following address: Grants and Agreements Officer, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, WI 53705–2398, Telephone (608) 231–9282.

Proposal Review, Evaluation, and Disposition

**Proposal Review**

All proposals received will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to this solicitation. Proposals that do not fall within solicitation guidelines will be eliminated from competition; one copy will be returned to the applicant and the remainder will be destroyed. All accepted proposals will be reviewed by the Grants and Agreements Officer, qualified officers of employees of the Department, and by peer panel(s) of scientists or others who are recognized specialists in the areas covered by the proposals. Peer panels will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals.

**Evaluation Criteria**

The peer review panel(s) will take into account the following criteria in carrying out its review of responsive proposal submitted:

(a) Scientific merit of proposal.

(1) Conceptual adequacy of hypothesis;

(2) Clarity and delineation of objectives;

(3) Adequacy of the description of the undertaking and suitability and feasibility of methodology;

(4) Demonstration of feasibility through preliminary data;

(5) Probability of success of project;

(6) Novelty, uniqueness, and originality.

(b) Qualifications of proposed project personnel and adequacy of facilities.

(1) Training and demonstrated awareness of previous and alternative approaches to the problem identified in the proposal and performance record and/or potential for future accomplishments;

(2) Time allocated for specific attainment of objectives;

(3) Institutional experience and competence in subject area; and

(4) Adequacy of available or obtainable support personnel, facilities, and instrumentation.

**Proposal Disposition**

When the peer review panel(s) has completed its deliberations, the USDA program staff, based on the recommendations of the peer review panel(s), will recommend to the Awarding Official that the project be (a) approved for support from currently available funds or (b) declined due to insufficient funds or unfavorable review.

USDA reserves the right to negotiate with the Principal Investigator and/or the submitting entity regarding project revisions (e.g., reduction in scope of work), funding level, or period of support prior to recommending any project for funding.

A proposal may be withdrawn at any time before a final funding decision is made. One copy of each proposal that is not selected for funding (including those that are withdrawn) will be retained by USDA for one year, and remaining copies will be destroyed.

**SUPPLEMENTARY INFORMATION:**

**Grant Awards**

Within the limit of funds available for such purpose, the awarding official shall make awards to those responsible eligible applicants whose proposals are judged most meritorious under the evaluation criteria and procedures set forth in this solicitation and application guidelines.

The date specified by the awarding official as the beginning of the project period shall not be later than March 15, 1994.

All funds awarded shall be expended only for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of any resulting award, and the applicable Federal cost principles.

**Obligation of the Federal Government**

Neither the approval of any application nor the award of any Research Joint Venture Agreement commits or obligates the United States in any way to provide further support of a project or any portion thereof.

**Other Conditions**

The FPL may, with respect to any class of awards, impose additional conditions prior to or at the time of any award, when, in the FPL's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of Research Joint Venture Agreement funds.

Done at Madison, WI on July 29, 1993.

**Susan L. LeVan,**

*Acting Director.*

[FR Doc. 93–19019 Filed 8–6–93; 8:45 am]

BILLING CODE 3410-11-M

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**Soil Conservation Service**

**Gooding Constructed Wetland; Resource Conservation and Development (RC&D) Measure Gooding County**

**AGENCY:** Soil Conservation Service, U.S. Department of Agriculture.

**ACTION:** Notice of a finding of no significant impact.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho, 83705, telephone (208) 334–1601.

**NOTICE:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Gooding Constructed Wetland RC&D Measure, Gooding County, Idaho.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Gooding Constructed Wetland RC&D Measure will reduce nutrients and sediment being delivered to the Snake River from irrigation return flows. This measure will demonstrate to local landusers how constructed wetland systems can be used to improve the water quality of irrigation return flows.

This Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various federal, state and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days

after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials)

Dated: August 2, 1993.

**Paul H. Calverley,**

*State Conservationist.*

[FR Doc. 93–18927 Filed 8–6–93; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration (ITA).

*Title:* User Satisfaction Surveys.

*Agency Form Numbers:* ITA–4015P, 4099P–1, 4103P, 4106P, 4107P, 4108P–A1 and A2, 4108P–C1 and C2, 4108P–E –I –T and W, 4117P, 4121P–4123P, 4125P–4126P, 4129P–4131P, and 735P.

*OMB Approval Number:* None.

*Type of Request:* New Collection.

*Burden:* 3,683 hours.

*Number of Respondents:* 26,195.

*Avg Hours Per Response:* Ranges between 3 and 60 minutes.

*Needs and Uses:* ITA provides information and counseling products and services that help give U.S. exporters a leading edge in world markets. There is a continuous need to assess user satisfaction with these products and services. These evaluation forms will provide ITA offices with flexible information collection forms to send out to customers following any transaction. This information will be used by individual offices within ITA to improve their ability to deliver services or enhance products. In addition, the information will enable staff to set priorities, maximize resources, develop base performance measures, and establish indicators for use with other available benchmarks.

*Affected Public:* Businesses or other for–profit institutions; state or local governments; small businesses or organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

*Agency:* National Telecommunications and Information Administration (NTIA).

*Title:* National Telecommunications Facilities Program (PTFP) Grant Application.

*Agency Form Number:* None.

*OMB Approval Number:* 0660–0003.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 56,250 hours.

*Number of Respondents:* 450.

*Avg Hours Per Response:* 125 hours.

*Needs and Uses:* The PTFP is a grant–making program which operates an annual application review process. The application forms are the only method by which NTIA can comparatively evaluate over 450 proposed projects each fiscal year.

*Affected Public:* State and local governments; non–profit corporations; Indian Tribes.

*Frequency:* Annually.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Jonas Niehardt, (202) 395–3785, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: August 3, 1993

**Edward Michals,**

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 93–19028 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–CW–F

### Foreign-Trade Zones Board

**[Docket 38–93]**

### Foreign-Trade Zone 40—Cleveland, OH; Application for Subzone Picker International, Inc., Facility (Medical Equipment) Valley View, OH

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Cleveland Regional Port Authority, grantee of FTZ 40, requesting special-purpose subzone status for the medical diagnostic equipment processing/distribution facility of Picker International, Inc. in Valley View, Ohio, within the Cleveland, Ohio, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 30, 1993.

The Picker facility (65,000 sq. ft.) is located at 7825 Hub Parkway, Valley View (Cuyahoga County), Ohio, 10 miles south of Cleveland. The facility (14 employees) is used for final assembly, testing, packaging and distribution of medical diagnostic imaging equipment, including: magnetic resonance, computed tomography, nuclear medicine and X-ray equipment. Manufacturing of the major components and assemblies occurs at other Picker plants in northern Ohio. Certain components or assemblies are sourced from abroad (approx. 26% of total value), including: X-ray generators, mobile X-ray units, vascular gantry and components, mammography units, MRI tape drives, MRI gradient tubes, patient handling systems, magnet beams, and tubes, patient handling system, magnet beams, and electromagnets.

Zone procedures would exempt Picker from Customs duty payments on the foreign products that are reexported. On domestic sales, the company would be able to choose the duty rates that apply to finished diagnostic products (2.1% to 4.7%). The duty rates on foreign-sourced items range from 2.1% to 4.2%. Foreign merchandise and finished products held for export would be eligible for an exemption from certain state and local ad valorem taxes. The application indicates that zone savings would help improve the international competitiveness of Picker's Ohio plants.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 8, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period October 25, 1993.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Department of Commerce District Office, 600 Superior Avenue East, Room 700, Cleveland, Ohio 44114.

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Office of the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: July 30, 1993

Dennis Puccinelli,

*Acting Executive Secretary.*

[FR Doc. 93-19037 Filed 8-6-93; 8:45 am]

BILLING CODE 3510-DS-P

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[Order No. 652]

## Approval of Export Processing Activity; Total Foods Corporation (Confectionery Blends); Within Foreign-Trade Zone 70; Detroit, MI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Greater Detroit Foreign Trade Zone, Inc., grantee of FTZ 70, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Total Foods Corporation, to process under zone procedures foreign-origin sugar (up to 50 million pounds annually) and foreign-origin dairy products for certain confectionery blends for export within FTZ 70, Detroit, Michigan (filed 9–29–92, FTZ Docket A(32b1)–1–92; Doc. 34–93, assigned 7–26–93);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign-origin sugar and foreign-origin dairy product admitted to the zone for the Total Foods operation shall be reexported.

Signed at Washington, DC, this 29th day of July, 1993.

Barbara R. Stafford,

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

Dennis Puccinelli,

*Acting Executive Secretary.*

[FR Doc. 93-19038 Filed 8-6-93; 8:45 am]

BILLING CODE 3510-DS-P

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[Order No. 650]

## Grant of Authority for Subzone Status; American Feeds & Livestock Co., Inc., (Animal Feeds) Howard Lake, MN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of Foreign-Trade Zone No. 119 for authority to establish a special-purpose subzone for export activity at the animal feed manufacturing plant of American Feeds & Livestock Company, Inc., in Howard Lake, Minnesota, was filed by the Board on June 23, 1992, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 20–92, 57 FR 29277, 7–1–92); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export processing is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 119C) at the American Feeds & Livestock Company, Inc., plant, in Howard Lake, Minnesota, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign-origin dairy products admitted to the subzone shall be reexported.

Signed at Washington, DC, this 23rd day of July, 1993.

Joseph A. Spetrini,

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:

Dennis Puccinelli

*Acting Executive Secretary*

[FR Doc. 93-19039 Filed 8-6-93; 8:45 am]

BILLING CODE 3510-DS-P

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## International Trade Administration

[A-427-801, A-428-801, A-475-801, A-588-804, A-485-801, A-559-801, A-401-801, A-549-801, A-412-801]

## Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom; Amendment to Final Results of Antidumping Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of Amendment to Final Results of Antidumping Duty Administrative Reviews.

SUMMARY: On July 7, 1993, the Department of Commerce issued the final results of its 1991–1992 administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings), and parts thereof, from France, Italy, Germany, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews covered 41 manufacturers/exporters and the period May 1, 1991, through April 30, 1992.

Subsequent to issuance of the final results, NSK Ltd. and NSK Corporation, and RHP Bearings and RHP Bearings Inc. filed motions with the Court of International Trade to restrain, until further notice, the Department of Commerce from publishing the final results of these reviews. On July 15, 1993, the Court of International Trade granted these motions. As a result, the Department of Commerce determined to publish the final results of these reviews

for all companies except NSK Ltd. and NSK Corporation, and RHP Bearings and RHP Bearings Inc.

On July 21, 1993, the Court of International Trade lifted the order restraining the Department of Commerce from publishing the final results of review for NSK Ltd. and NSK Corporation, and RHP Bearings and RHP Bearings Inc. Accordingly, we are now publishing the final results of review for these companies.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Rill or Richard R. Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 7, 1993, the Department of Commerce (the Department) issued the final results of its 1991–1992 administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings), and parts thereof, from France, Italy, Germany, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews were ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). The reviews covered 41 manufacturers/exporters and the period May 1, 1991, through April 30, 1992.

On July 13, 1993, and July 15, 1993, respectively, NSK Ltd. and NSK Corporation (collectively, NSK), and RHP Bearings and RHP Bearings Inc. (collectively, RHP), filed motions with the Court of International Trade (CIT) to hold the Department in contempt of court for not following in these reviews previous CIT decisions that the Department should add U.S. direct selling expenses to foreign market value in Exporter's Sales Price (ESP) comparisons, rather than deducting such expenses from ESP. The motions further requested that the CIT sanction the Department by restraining it from publishing the final results of these reviews for NSK and RHP.

The CIT granted plaintiffs' motions on July 15, 1993, thereby restraining, until further notice, the Department from publishing the final results of these reviews for NSK and RHP. Accordingly, on July 16, 1993, prior to publication in the **Federal Register**, the Department amended its notice of July 7, 1993, to exclude the final results of review for NSK and RHP.

On July 21, 1993, the CIT lifted the order restraining the Department from publishing the final results of review for NSK and RHP. Therefore, we are now publishing the final results of review for these firms.

**Amended Final Results of Review**

Based on our analysis of the comments received on our preliminary results of these reviews, we determine that the following weighted-average margins exist for the period May 1, 1991, through April 30, 1992:

| Company | BBs | CRBs | SPBs |
|---|---|---|---|
| **Japan** | | | |
| NSK | 23.95 | 31.43 | [1] |
| **United Kingdom** | | | |
| RHP/NSK | 49.14 | 45.35 | |

[1] No U.S. sales during the review period.

Our description of clerical error corrections to our preliminary results, and our responses to comments received on both general issues and issues specific to NSK and RHP, are contained in our July 26, 1993, notice of final results for these reviews (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and United Kingdom, 58 FR 39729, July 26, 1993).

**Cash Deposit Requirements**

We will direct the Customs Service to collect the percentage cash deposit rate against the entered value of each of the respondent's entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Our calculation of these rates and the procedures governing the collection of cash deposits of estimated antidumping duties are set forth in our July 26, 1993, notice of final results for these reviews (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and United Kingdom, 58 FR 39729, July 26, 1993).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period.

Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Assessment Rates**

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Our calculation of assessment rates and the procedures governing the assessment of antidumping duties are set forth in our July 26, 1993, notice of final results for these reviews (see Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, Thailand, and United Kingdom, 58 FR 39729, July 26, 1993).

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1657(a)(1)), and 19 CFR 353.22 (1990).

Dated: August 5, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–19163 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–P

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**[A–588–038]**

## Bicycle Speedometers From Japan; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

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**SUMMARY:** In response to a request from a domestic producer, the Department of Commerce has conducted an administrative review of the antidumping finding on bicycle speedometers from Japan. The review covers one manufacturer/exporter of this merchandise sold in the United States for the period November 1, 1991 through October 31, 1992. We preliminarily find that a margin of 4.51 percent exists for the manufacturer/exporter, Cat Eye, Co., Ltd.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–3814.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 22, 1972, the Department of Treasury published in the **Federal Register** (37 FR 24826) an antidumping finding on bicycle speedometers from Japan. On November 24, 1992, a domestic manufacturer, Avocet, Inc. (Avocet), in accordance with 19 CFR 353.22(a), requested that the Department of Commerce (the Department) conduct an administrative review. Avocet is an interested party as defined in section 771(9)(C) of the Tariff Act of 1930, as amended (the Tariff Act). We published a notice of initiation of the antidumping duty administrative review on December 29, 1992 (57 FR 61873). The Department is now conducting this administrative review in accordance with section 751 of the Tariff Act.

**Scope of the Review**

Imports covered by the review are shipments of bicycle speedometers. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 9029.20.20, 9029.40.80, and 9029.90.40. HTS item numbers are provided for convenience and Customs purposes. Our written description remains dispositive.

The review covers the shipments of Cat Eye Co., Ltd. (Cat Eye), a manufacturer/exporter of bicycle speedometers during the period November 1, 1991 through October 31, 1992.

From July 12 through July 16, 1993, we verified the home market and U.S. sales data submitted by Cat Eye. During the verification, we noted that Cat Eye failed to provide information on certain of its home market sales. While Cat Eye was willing to provide the missing sales at the verification, we refused to accept this new information as it was considered untimely. Therefore, as best information available, we have assumed that these missing sales had the highest home market price within each model of those sales reported on a timely basis. We have included those values in our weighed-average foreign market values (FMV).

*United States Price*

The Department used purchase price, as defined in section 772 of the Tariff Act, to calculate U.S. price. For sales to the first unrelated purchaser in the United States, purchase price was based on the free on board (f.o.b.), packed price from the producer. For sales to an unrelated Japanese trading company intended for sale in the United States under the "Specialized" label, purchase price was also based on the f.o.b., packed price from the producer. We made adjustments where applicable, for foreign inland freight, brokerage and handling charges, and amortization of tooling charges. The tooling amortization adjustment is an addition to U.S. price and incorporates the advance payment, on a per unit basis, the tooling charges the trading company paid Cat Eye to produce the "Specialized" models. No other adjustments were claimed or allowed.

*Foreign Market Value*

For its FMV calculation, the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price to unrelated purchasers. We made adjustments, where applicable, for inland freight, quantity rebates, and differences in credit, direct advertising, and packing costs. In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise by applying to the FMV the difference between the variable cost of production of the model sold in the United States and the variable cost of production of the most similar model sold in the home market, in accordance with § 353.57 of the Department's regulations. Because the information we received was inadequate to assign difference in merchandise values on a model-specific basis, we have applied as best information available the lowest variable cost difference for these preliminary results. No other adjustments were claimed or allowed.

In general in administrative reviews, the Department relies on monthly weighted-average prices in the calculation of FMV. However, after comparing the monthly and annualized weighted-average price for each model, we determined that there was an insignificant amount of variance between the two and that there was no discernable correlation between price and time during the period reviewed. Therefore, we calculated FMV for each model based on annual weighted-average prices.

**Preliminary Results of the Review**

As a result of our comparison of U.S. price to FMV, we preliminarily determine that the margin for Cat Eye is 4.51 percent for the period November 1, 1991 through October 31, 1992.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or on the first workday thereafter. Case briefs and/or written comments may be submitted not later than 30 days after the date of publication. Rebuttal briefs or rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any comments submitted or made during a hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions concerning the respondent directly to Customs.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of

the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "new shipper" rate established in the first administrative review, as discussed below.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that is appropriate to adopt the "new shipper" rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of the review will be 26.44 percent, the "new shipper" rate established in the first final results of administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 353.22.

Dated: July 30, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–19032 Filed 8–6–93; 8:45 am]

BILLING CODE 3510-DS-M

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[A–583–009]

## Color Television Receivers, Except for Video Monitors, From Taiwan; Termination of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of termination of antidumping duty administrative review.

**SUMMARY:** In response to a request from Action Electronics Co., Ltd. (Action), Proton Electronic Industrial Co., Ltd. (Proton) and Tatung Co. (Tatung) (collectively, the respondents), the Department of Commerce (the Department) initiated reviews for these respondents on May 27, 1993 for the period April 1, 1992 through March 31, 1993. We received timely requests for withdrawal from this review from the respondents. Because there were no requests for review from other interested parties we are terminating this review.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael Heaney or David Genovese, Office of Antidumping Compliance, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4475/4697.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 30, 1984, the Department published in the **Federal Register** (49 FR 18336) the antidumping duty order on color television receivers, except for video monitors, from Taiwan. On April 9, 1993, in accordance with 19 CFR 353.22(c), we initiated an administrative review of those orders for the period April 1, 1992 through March 31, 1993 (58 FR 18374).

We had initiated reviews for Action, Proton, and Tatung covering sales of color television receivers, except for video monitors, during the period of review. We received timely requests for withdrawal from this review from the respondents. Because there were no requests for review from other interested parties, we are terminating this review in accordance with 19 CFR 353.22(a)(5).

This termination notice is in accordance with 19 CFR 353.22(a)(5).

Dated: July 28, 1993.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–19033 Filed 8–6–93; 8:45 am]

BILLING CODE 3510-DS-M

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[A–588–029]

## Fishnetting of Man-Made Fiber From Japan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On July 2, 1993, the Department of Commerce published in the **Federal Register** the preliminary results of an administrative review of the antidumping finding on fishnetting of man-made fiber from Japan. The review covers shipments of two exporters to the United States during the period June 1, 1990, through May 31, 1991. Based on our analysis of comments received, the dumping margins for both companies have changed from the margins presented in the preliminary results.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lisa Raisner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482–3518.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 2, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 29467) the preliminary results of the administrative review of the antidumping finding (37 FR 11560, June 6, 1972) on fishnetting of man-made fiber from Japan. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

### Scope of the Review

Imports covered by the review are shipments of fishnetting of man-made fibers, not including salmon gill netting, from Japan. The merchandise is currently classified under item numbers 5608.11.00, 5608.19.10, and 5608.90.10 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs

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purposes. The written product description remains dispositive.

This review covers entries of the subject merchandise by Momoi Fishing Net Manufacturing Company, Ltd. (Momoi), and Nippon Kenmo Company, Ltd. (Kenmo), during the period from June 1, 1990, through May 31, 1991.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the Cordage Institute (CI), the successors in interest to the American Cordage and Netting Manufacturers, the petitioner, and one respondent, Momoi. We rejected Momoi's case brief because it was untimely filed. Momoi filed a timely rebuttal brief which included comments beyond the scope of CI's case brief; we have not addressed comments which were beyond the proper scope of rebuttal. Kenmo did not comment on the preliminary results.

*Comment 1:* CI contends that it is not clear how the Department treated home market interest expenses associated with in-warehouse or on-dock production; nor is it clear whether all credit expenses associated with sales to the United States were included in the Department's preliminary results.

Momoi states that there is no interest cost on in-warehouse or on-dock production in Japan. Momoi also contends that it did not incur credit costs on sales to the United States.

*Department's Position:* Based on the information in CI's comment, in-warehouse and on-dock production interest expenses appear to be part of the production process. Since no allegation of sales below cost has been made, we did not conduct a sales-below-cost investigation. Such costs are not part of our price-to-price comparison and are therefore not relevant in this review.

Regarding credit expense, however, the Department considers the time period between shipment and payment a credit expense. Because Momoi did not provide an amount for this expense, we have imputed one and followed our standard practice of subtracting home market credit expense from home market price and adding U.S. credit expense.

*Comment 2:* CI contends that it is unable to locate in the Department's calculations any adjustment for differences between Japanese and U.S. packing costs. Specifically, CI asserts that packing expenses for sale to the United States should include cost for marking, labelling, and protective packaging.

Momoi notes that all differences between Japanese and U.S. market packing costs were reported in its questionnaire response.

*Department's Position:* Although Momoi reported packing expenses for both market and U.S. sales in its questionnaire response, it failed to report such expenses on its computer tape, and, therefore, our calculations did not reflect Momoi's reported packing expenses for our preliminary results. Although it is not our burden to locate and apply information missing from the required computer tape, because packing expenses were reported as the same rate per pound for all shipments listed, for these final results we have subtracted Momoi's reported home market packing expenses from foreign market value and added U.S. packing expense. We did not add packing expense to U.S. price since it is already included.

*Comment 3:* CI states that the Department's calculation methodology does not include deductions for manufacturing costs, namely, waste and scrap and selvedge removal. Momoi replies that waste and scrap losses are reported in its questionnaire response, and that there is no selvedge created in its production of fishnetting and, accordingly, there are no selvedge expenses to report.

*Department's Position:* These items, waste and scrap and selvedge removal, are associated with costs of production. Since no allegation of sales below cost has been made, we did not conduct a sales-below-cost investigation. Such costs are not part of our price-to-price comparison and are therefore not relevant in this review.

*Comment 4:* CI contends that if Momoi's nylon mono-netting is single strand monofilament, there should be a discernible cost difference between single strand monofilament and multifilament bundles.

Momoi agrees that there is a cost difference between single strand monofilament and multifilament bundles, but states that the decision in the Department's preliminary results to match monofilament netting with monofilament netting, and multifilament netting with multifilament netting, was appropriate.

*Department's Position:* We agree with Momoi that the model-match methodology we used in our preliminary results is appropriate. Before issuance of our preliminary results, we solicited comments on product matches from both CI and Momoi. Both CI and Momoi agreed on the basic criteria for model matching, but differed as to how strict the comparison should be. Based on these comments, as well as model-matching criteria established in previous reviews of this finding, we agree with Momoi's proposed model matches, which result in identical merchandise comparisons. Therefore, no adjustments to foreign market value for differences in physical characteristics were necessary.

*Comment 5:* CI contends that no deductions from U.S. price were made for U.S. brokerage, wharfage, or storage. Momoi states that all sales to the United States have terms of cost, insurance, and freight (CIF) destination.

*Department's Position:* In our preliminary results we deducted brokerage from U.S. price. However we did not make deductions for wharfage or storage, as Momoi is on record claiming that it did not incur such expenses. Because there is no information on the record to suggest that such expenses were incurred but not reported by Momoi, in our final results we have not made a deduction for wharfage or storage, but have deducted brokerage expense for U.S. price.

*Comment 6:* CI contends that most U.S. prices in the market place for netting of man-made fibers from Japan include regular U.S. Customs duties. CI asks the Department to confirm that these duties, if they have in fact been included, have been deducted in the dumping analysis.

*Department's Position:* In our questionnaire, we requested that Momoi identify costs for regular U.S. Customs duties. We cannot determine from Momo's response that any claimed charges include an amount for regular U.S. Customs duties applicable to this merchandise. In addition, Momoi did not address this issue in its rebuttal comments. Therefore, in absence of this information, we have referred to information from U.S. Customs as a reasonable basis for this adjustment. Accordingly, for these final results we have deducted 17 percent regular U.S. Customs duties from U.S. price.

*Comment 7:* CI contends that it was appropriate for the Department to use in its preliminary results the highest available margin for the firm which did not respond to the Department's questionnaire.

*Department's Position:* We agree, in part, with CI. Because it did not respond to our questionnaire, Kenmo was deemed uncooperative. In accordance with section 776(c) of the Tariff Act, we have used best information otherwise available (BIA). We note that the rate assigned to Kenmo in our preliminary results did not follow our BIA hierarchy, as outlined in Antifriction Bearings (Other than Tapered Roller

Bearings) and Parts from France, et al. (57 FR 28379, June 24, 1992), because it was from the preliminary results, not the final results of a previous administrative review. The correct BIA rate, which is the highest of the rates found for any firm in the final results of a prior administrative review, has been applied in these final results (see Fishnetting of Man-Made Fibers from Japan; Final Results of Administrative Review of Antidumping Finding, 48 FR 43210, September 22, 1983).

*Comment 8:* CI contends that circumvention by certain unidentified manufacturers is occurring via manufacturing operations in Mexico.

Momoi contends that CI failed to meet the conditions necessary for the Department to initiate an anticircumvention inquiry. Specifically, CI has not demonstrated that the difference between the value of the merchandise sold in the United States is minimal as compared to the value of merchandise subject to the antidumping finding which is completed or assembled in another foreign country. Accordingly, Momoi asserts CI's allegation should be ignored.

*Department's Position:* The allegation that CI makes does not contain adequate information for us to initiate an anticircumvention inquiry. In addition, CI does not tie the identities of the two companies covered by the current review to the alleged circumvention activity, nor is there any reference to the period of this administrative review. If there is further concern on the part of interested parties, they should make an appropriately documented request for an anticircumvention inquiry.

**Final Results of the Review**

After analysis of the comments received, we determine that the following weighted-average margins exist for the period June 1, 1990, through May 31, 1991:

| Manufacturer/producer/exporter | Percent margin |
|---|---|
| Momoi Fishing Net Mfg. | 2.67 |
| Nippon Kenmo Co. | 18.30 |

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentages stated above. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "new shipper" rate established in the first administrative review, as discussed below.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once on "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction for clerical errors or as a result of litigation), in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of the administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of the review will be 1.94 percent, the "new shipper" rate established in the first final results of the administrative review published by the Department (47 FR 28978, July 2, 1982).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 30, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–19031 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–813]

## Preliminary Results of Antidumping Duty Administrative Reviews; Light-Scattering Instruments and Parts Thereof From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative reviews: light-scattering instruments and parts thereof from Japan.

**SUMMARY:** In response to requests from the petitioner, Wyatt Technology Corporation (Wyatt), the Department of Commerce (the Department) is conducting the first and second administrative reviews of the antidumping duty order on light-scattering instruments (LSIs) and parts thereof from Japan. The reviews cover one manufacturer/exporter, Otsuka Electronics Co., Ltd. (Otsuka), and entries of the subject merchandise to the

United States during the period November 15, 1990 through October 31, 1992. As a result of these reviews, the Department has preliminarily determined that there were no entries of LSIs exported by Otsuka and sold to unrelated parties during the first administrative review period. The Department has also preliminarily determined, using the best information available, (BIA), that dumping margins exist with respect to Otsuka for the second review period. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 19, 1990, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on light scattering instruments (LSIs) from Japan (55 FR 48144). Petitioner, Wyatt, requested the first administrative review of this order on November 21, 1991, and the second administrative review on November 27, 1992. We initiated both reviews, covering the periods July 10, 1990 through October 31, 1991 (56 FR 66429, December 23, 1991), and November 1, 1991 through October 31, 1992 (57 FR 61873, December 29, 1992), respectively. The Department has now conducted the reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On June 4, 1992, Otsuka claimed that the Department had incorrectly identified the beginning date of the first period of review (POR) as July 10, 1990. Otsuka believes that the POR should begin on November 15, 1990, because suspension of liquidation became effective on that date. We agreed to change to November 15, 1990, the beginning date of the first administrative review period, consistent with 19 CFR 353.22(b)(2).

On April 21, 1993, we granted Otsuka a two-week extension for submitting its questionnaire response in the second review, in accordance with 19 CFR 353.31(b)(3). We received Otsuka's questionnaire response 12 days after the extended deadline of May 6, 1993. We rejected the response as untimely, in accordance with 19 CFR 353.31(b)(2), and used BIA for purposes of the second review, in accordance with section 776(c) of the Act.

**Scope of the Reviews**

These reviews cover imports of LSIs and parts thereof from Japan. The Department defines such merchandise as LSIs and the parts thereof from Japan, specified below, that have classical measurement capabilities, whether or not also capable of dynamic measurements. Classical measurement (also known as static measurement) capability usually means the ability to measure absolutely (i.e., without reference to molecular standards) the weight and size of macromolecules and submicron particles in solution, as well as certain molecular interaction parameters, such as the so-called second viral coefficient. (An instrument that uses single-angle instead of multi-angle measurement can only measure molecular weight and the second viral coefficient.) Dynamic measurement (also known as quasi-elastic measurement) capability refers to the ability to measure the diffusion coefficient of molecules or particles in suspension and deduce therefrom features of their size and size distribution. LSIs subject to these reviews employ laser light and may use either the single-angle or multi-angle technique.

The following parts are included in the scope of these administrative reviews when they are manufactured according to specifications and operational requirements for use only in an LSI as defined in the preceding paragraph: Scanning photomultiplier assemblies, immersion baths (to provide temperature stability and/or refractive index matching), sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches. LSIs subject to these reviews may be sold inclusive or exclusive of accessories such as personal computers, cathode ray tube displays, software, or printers. LSIs are currently classifiable under Harmonized Tariff Schedule (HTS) subheading 9027.30.40. LSI parts are currently classifiable under HTS subheading 9027.90.40. HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written product description remains dispositive. Different items with the same name as subject parts may enter under subheading 9027.90.40. To avoid the unintended suspension of liquidation of non-subject parts, those items entered under subheading 9027.90.40 and generally known as scanning photomultiplier assemblies, immersion baths, sample-containing structures, electronic signal-processing boards, molecular characterization software, preamplifier/discriminator circuitry, and optical benches must be accompanied by an importer's declaration to the Customs Service to the effect that they are not manufactured for use in a subject LSI.

These reviews cover entries of the subject merchandise exported by Otsuka and entered during the periods November 15, 1990 through October 31, 1991, and November 1, 1991 through October 31, 1992.

**Preliminary Results of Reviews**

We have preliminarily determined that Otsuka had no exports of the subject merchandise, entered into the United States and sold to unrelated parties during the first administrative review period, November 15, 1990 through October 31, 1991. Otsuka exported one subject LSI during this period to a related party in the United States. The related party has not sold the LSI. We will include this unit in a future review if it is ever sold.

Otsuka also exported two high-speed correlation calculation boards (correlation boards) that entered during the POR, one for sale, and one for demonstration use. In accordance with 19 CFR 353.29(i)(1), we preliminarily determine that these parts are not covered by the scope of the order. It is clear from the final determination of the LTFV investigation that the correlation boards are not covered because they are not manufactured exclusively for use with subject LSIs, as is required. The correlation boards in question can be used with at least one model of LSI that is outside the scope. In this regard, Otsuka itself manufactures a model of LSI that is capable of performing dynamic measurements, but not classical measurements, and is therefore outside the scope. Because the correlation boards can be used with LSIs like this model, which has dynamic measuring capabilities but not classical measuring capabilities, they can be used in LSIS that are outside the scope of the order. Accordingly, the correlation boards are not manufactured exclusively for use in the subject merchandise, and we preliminarily determine that the correlation boards are not within the scope.

Because Otsuka failed to respond in a timely manner to our antidumping request for information in the second administrative review, we are using BIA, in accordance with section 776(c) of the Act, for that period. In this case, we have used as BIA the rate from the

antidumping order. Consequently, we have preliminarily determined that the following dumping margins exist for the periods November 15, 1990 through October 31, 1991, and November 1, 1991 through October 31, 1992:

| Manufacturer/Exporter | Period of review | Margin (percent) |
|---|---|---|
| Otsuka Electronics, Ltd ..... | 11/15/90–10/31/91 | [1]129.71 |
| Otsuka Electronics, Ltd ..... | 11/01/91–10/31/92 | [2]129.71 |

[1] No entries during this period; margin used is from the investigation.
[2] BIA rate; margin used is from the investigation.

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of these administrative reviews, which will include the results of its analysis of issues raised in any such case briefs or hearing.

The following deposit requirements shall be effective for all shipments of the subject merchandise that are entered or withdrawn from warehouse for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company shall be the rates established in the final results of the administrative review for the 1991–1992 period; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate shall be the rate established for the most recent period for the manufacturer of the merchandise and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the "all others rate" from the LTFV investigation.

On May 25, 1993, the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction for clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 129.71 percent, the "all other" rate established in the final notice of LTFV investigation by the Department (55 FR 34952, August 27, 1990).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations.

Dated: July 30, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–19034 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–810]

**Final Determination; Antidumping Duty Investigation of Pads for Woodwind Instrument Keys From Italy Manufactured by Music Center s.n.c. di Luciano Pisoni and Lucien s.n.c. di Danilo Pisoni & C.**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** John Beck, Office of Antidumping Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 482–3464.

**Final Determination**

We have determined that pads for woodwind instrument keys manufactured by Music Center s.n.c. di Luciano Pisoni (Pisoni) and Lucien s.n.c. di Danilo Pisoni & C. (Lucien) (collectively respondent) from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

*Case History*

Since publication of the affirmative preliminary determination on May 25, 1993 (58 FR 30015), the following events have occurred. Respondent requested a public hearing on May 25, 1993. On June 4, 1993, petitioner requested to participate in the public hearing.

We conducted verification on June 7 through June 9, 1993. Petitioner filed its case brief on July 12, 1993. Also on July 12, 1993, respondent notified the Department of Commerce (the Department) that it would not be submitting a case brief. A public hearing was held on July 19, 1993.

*Scope of Investigation*

The products covered by this investigation are pads for woodwind instrument keys (pads), which are manufactured by Pisoni and Lucien.

Pads for woodwind instrument keys covered by the scope of this investigation are currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 9209.99.4040 and 9209.99.4080. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

*Period of Investigation*

The period of investigation is April 1, 1992, through September 30, 1992.

*Such or Similar Comparisons*

We have determined that the products covered by this investigation comprise a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the third country to compare to U.S. sales, we made similar merchandise comparisons on the basis of: Diameter, type of material, pad variety, type of core, type of disk, and thickness, as listed in Appendix V of the Department's antidumping questionnaire. We compared sets of pads sold in the U.S. market to sets of pads sold in the third country market, and compared individual pads to individual pads. We made adjustments, where appropriate, for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

*Fair Value Comparisons*

To determine whether sales of pads from Italy to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based all USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on f.o.b sales to unrelated customers. We made one addition to USP for payments respondent received from respondent's distributor in the U.S. market for exchange rate fluctuations. We recalculated this adjustment based on the terms specified in the price protection agreement between respondent and its distributor. We made no adjustment for reported quantity discounts because the prices reported were already net of discounts. Also, we did not deduct reported expenses for air freight charges because the prices respondent reported were ex-factory prices which did not include any expenses associated with air freight.

We discovered at verification that respondent did not report certain sales of pads made with cork. Therefore, we have used as best information available (BIA) for the U.S. sales of cork pads the highest rate calculated for any other sale of the subject merchandise, as this rate was determined to be non-aberational (see comment #3 in the "Analysis of Comments Received" section of this notice).

Foreign Market Value

We calculated FMV based on f.o.b. and c&f prices to unrelated customers in Taiwan because the home market was not viable. Where possible, we compared U.S. sales to third country sales of identical and similar merchandise made at the same level of trade, in accordance with 19 CFR 353.58. We made deductions, where appropriate, for freight expenses incurred on c&f sales. We made no adjustment for reported quantity discounts because the prices reported were already net of discounts.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses. Since respondent used an inconsistent methodology for calculating the credit period for U.S. and third country sales, we have added to every U.S. credit period the longest period between the date the bank receives the funds and the date the company receives the funds in either the U.S. or Taiwanese markets, as BIA (see comment #5 in the "Analysis of Comments Received" section of this notice). Since we are collapsing Pisoni and Lucien into one entity for purposes of this investigation, as stated in our preliminary determination (58 FR 30015, May 25, 1993), we have recalculated credit expenses using the average interest rate for Pisoni and Lucien.

We did not make a circumstance of sale adjustment for reported direct selling expenses because the expenses were not properly supported on the record, and it is not clear who incurs these reported expenses. Also, it is unclear how respondent derived the percentage factor it applied to USP to calculate these reported expenses. In two deficiency letters, we requested that respondent submit documents showing how this adjustment was calculated, but respondent did not do so. Respondent's narrative description only states that its direct selling expenses for products sold in the U.S. market are less than its expenses for products sold in the home market, and therefore, we should adjust upward the U.S. price by the amount of this difference.

Moreover, at verification, respondent declined to present any documentation supporting these expenses and stated that it was no longer claiming that a circumstance of sale adjustment should be made for them. In addition, respondent did not provide any information with respect to selling expenses incurred for products sold in third countries. Since we are using Taiwan sales as a basis for FMV and the reported expenses are not properly supported on the record, we have not made a circumstance of sale adjustment for reported direct selling expenses (see comment #9 in the "Analysis of Comments Received" section of this notice).

In reporting its physical differences in merchandise (difmer) adjustment, respondent incorrectly included amounts for packing. Because of this, as BIA we have denied respondent's claimed adjustment when it results in a decrease to the FMV (see comment #1 in the "Analysis of Comments Received" section of this notice). Where the difmer results in an increase to FMV, as BIA we made the adjustment.

*Currency Conversion*

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

*Verification*

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

**Analysis of Comments Received**

*Comment 1:* Petitioner argues that the respondent omitted from the Japanese database a number of products based on the difmer adjustment, which was contrary to the Department's instructions to report all sales to Japan, regardless of the difmer adjustment. Petitioner contends that, based on the limited information gained at verification, respondent incorrectly calculated the difmer adjustment using packing charges. Thus, petitioner argues that numerous sales excluded by respondent from the Japanese database based on the difmer test should have been included and that the inclusion of these sales could have caused the Department to select Japan as the appropriate third country market.

*DOC Position:* We disagree with petitioner's assertion that the Department would have used sales to Japan as the basis for foreign market value if certain products from this

database had not been deleted by respondent. As stated in the preliminary determination (58 FR 30015, May 25, 1993), the Department selected Taiwan as the third country market because exports to Taiwan consisted of sales of the most similar merchandise and in the largest quantities. Although petitioner is correct in stating that respondent did not report all individual sales in the Japanese database, this issue is moot since we selected the Taiwanese market as the appropriate basis for FMV based on a review of the total amount of Taiwanese and Japanese sales, including those Japanese sales which were excluded from the Japanese database. These sales totals were also confirmed at the verification.

Regarding Taiwanese sales, we agree that these sales also incorrectly include packing charges in the difmer adjustment. We determined that the difmer adjustment included packing charges at the verification. The Department's policy is to calculate the difmer adjustment based on the variable cost of manufacture only, as indicated in the Department's questionnaire. Packing costs are not considered variable costs of manufacture and, therefore, should not be included in the difmer adjustment. Any differences in packing costs are recognized by adding the cost of U.S. packing to FMV, as required by section 773(a)(1) of the Act. Respondent made no arguments why packing should be included in the difmer adjustment in the course of the investigation. Furthermore, respondent did not provide the data in a manner that would allow us to remove the packing costs from the difmer adjustment. Therefore, as BIA, we have denied respondent's claimed difmer adjustment when it results in a decrease in FMV.

*Comment 2:* Petitioner argues that the proper date of sale should be the date when the price and quantity are agreed to, which in this case, petitioner claims, is the date of the purchase order. (Respondent used date of the invoice to determine date of sale.) Petitioner maintains that, because respondents were unable to provide any purchase orders at verification, the Department should reject respondent's sales information and, instead, use BIA.

*DOC Position:* We disagree with petitioner. In our preliminary determination, we stated that the invoice date appears to be the date when the price and quantity are fixed. This topic was examined closely at the verification, where the Department found no evidence that the respondent ever officially confirms orders upon receipt of the purchase order. Instead, we found that the first written documentation that could be considered to be an order confirmation is the invoice, which is produced upon shipment. Therefore, we believe that the date of sale methodology utilized by respondent in this case is reasonable.

*Comment 3:* Petitioner contends that respondent failed to report sales of pads made with cork which were discovered at verification, even though it was instructed to report these sales.

*DOC Position:* We agree with petitioner. Our scope states that: "The products covered by this investigation are pads for woodwind instrument keys." Pads made with cork are included in the scope since the scope clearly includes pads for woodwind instrument keys regardless of material. Respondent failed to report sales of pads made with cork. Therefore, the Department used as BIA for these sales the highest rate calculated for any other sale of the subject merchandise, as this rate was determined to be non-aberational.

*Comment 4:* Petitioner argues that unreported bank charges were discovered during verification. Thus, petitioner states that the Department has incomplete and unreliable information to base the final determination and should therefore use petitioner's information as BIA to calculate a margin. If this is not done, petitioner argues that the Department should deduct the highest bank charge noted at verification from all sales in the U.S. market when calculating a margin.

*DOC Position:* We agree, in part, with petitioner. We found at verification that respondent incurred certain banking charges and should have reported them as direct selling expenses, as requested in the questionnaire. Therefore, as BIA, we have: (1) Calculated bank charges for U.S. sales, based on the highest percentage of the bank charge found on payments for U.S. sales; (2) calculated no bank charges for Taiwan sales; and (3) performed a circumstance of sale adjustment for the bank charges.

*Comment 5:* Petitioner asserts that the circumstance of sale adjustment for credit expenses should be disallowed because the methodology used to calculate the number of days of payment was inconsistent between U.S. sales and the third country sales. Petitioner contends as BIA, the Department should use the longest reported payment period for all U.S. sales.

*DOC Position:* We agree with petitioner. The Department's policy for calculating the credit period is to take the difference between the date of shipment and the date the company receives payment. Based on information obtained at the verification, the methodologies between the U.S. and Taiwanese credit periods were found to be inconsistent. For U.S. sales, respondent calculated the payment period as the number of days between the date of shipment and the date the bank received payment from the customer; for Taiwan sales, it used the period between the date of shipment and the date the bank deposited the funds in respondent's bank account. As a result, the U.S. credit period was under-reported. Therefore, as BIA, we have added to every U.S. credit period the longest period found at verification, for either Taiwan or U.S. sales, between the date the bank received the funds and the date it deposited them in the respondent's account.

*Comment 6:* Petitioner maintains that the Department should deny respondent's attempt to revise at verification the interest rate it used to impute credit expenses, since it was unable to substantiate the revised rate.

*DOC Position:* We agree with petitioner. In its response, respondent had used all short-term borrowings to calculate the interest rate. At verification, respondent then attempted to revise its interest rate calculation by only including dollar-denominated short-term borrowings. However, we are not accepting this new rate since: (1) It is untimely; and (2) as described in the verification report, respondent could not substantiate the revised interest rate as they were unable to support interest paid on dollar-denominated loans. We have therefore used the rate reported in the questionnaire response and used in the preliminary determination.

*Comment 7:* Petitioner argues that the range adjustment cited by the respondent is not required because the difmer adjustment should capture the difference in physical characteristics. Petitioner requests that the Department use BIA in calculating the difmer adjustment since respondent failed to report all costs associated with different pad sizes and to delete the range adjustment.

*DOC Position:* The range adjustment only applies to Japanese sales. Because we are not basing foreign market value on sales to Japan, this issue is moot.

*Comment 8:* Petitioner maintains that since respondent did not provide information regarding inland freight on sales made to the United States, the Department should use BIA for this adjustment.

*DOC Position:* We disagree with petitioner. Based on information submitted on the record in the course of this investigation, as well as information

obtained at the verification, we have determined that respondent did not incur any inland freight on sales made to the United States. Therefore, we made no deduction to USP for U.S. inland freight charges.

Comment 9: Petitioner contends that since the respondent did not provide an explanation and supporting documentation for an upward adjustment to USP which respondent had classified as a direct selling expense, the Department should use BIA for this adjustment.

*DOC Position:* We disagree with petitioner that an adjustment should be made. As stated in our preliminary determination, this adjustment was not properly supported on the record, and it was not clear who incurred this expense. This item was also examined at the verification. At the verification, company officials stated that they were withdrawing their claim for this adjustment, had no documentation to support it, and did not know what they had used to calculate it. Departmental officials checked to make sure that any selling expenses incurred had been reported and found no discrepancies. Therefore, we are not making any adjustment for this item.

*Comment 10:* Petitioner argues that, even though no documentation was found at verification supporting a relationship between Pisoni or Lucien and Enzo Pizzi (the U.S. distributor) (Pizzi), Pizzi is a selling agent of Pisoni, and that the transactions between Pisoni and Pizzi are exporters' sales price transactions.

*DOC Position:* We disagree with petitioner. We informed petitioner on July 7, 1993, that we had found at verification no evidence of a relationship between the parties nor any evidence that Pizzi acted as a selling agent of Pisoni, and that we would not conduct a verification of Pizzi. Therefore, we are continuing to treat Pizzi as one of respondent's unrelated U.S. customers.

**Critical Circumstances**

Petitioner alleges that "critical circumstances" exist, with respect to imports of pads from Italy. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period. Since there is currently an antidumping duty order in effect with respect to imports of pads from Italy (other than those from Lucien and Pisoni), we find that there is a history of dumping in the United States of merchandise which is the subject of this investigation.

However, based on our analysis of the shipment data submitted by respondent, we have determined that massive imports do not exist. As stated in 19 CFR 353.16(f), we consider imports to be massive if there has been an increase in imports of 15 percent or more over a relatively short period of time. A comparison of respondent's shipments from April 1992 through October 1992 and those from November 1992 through May 1993, indicate that imports have increased by less than 15 percent. As such, we have determined that critical circumstances do not exist.

**Suspension of Liquidation**

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pads from Italy from Pisoni and Lucien, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after May 25, 1993, which is the date of publication of our preliminary determination in the **Federal Register**. There is no "All Others" rate in this investigation since the Department limited this investigation to Pisoni and Lucien, as an antidumping duty order currently exists with respect to exports of pads from all other companies in Italy. (See Pads for Woodwind Instrument Keys from Italy: Antidumping Duty Order, 49 FR 37137, September 21, 1984). This suspension of liquidation and the estimated margin shown below apply only to Pisoni and Lucien.

For previously reviewed or investigated companies, other than Pisoni and Lucien, the cash deposit rate will continue to be the company-specific rate published for the most recent review period. (See Pads for Woodwind Instrument Keys from Italy: Final Results of Antidumping Duty Administrative Review, 57 FR 48202, October 22, 1992). For unreviewed or non-investigated companies, the cash deposit rate will continue to be the all other rate published in this review period, (57 FR 48202, October 22, 1992).

For Pisoni and Lucien, the Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margin for Pisoni and Lucien is 1.82 percent.

**ITC Notification**

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of our determination. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess and antidumping duty on pads from Italy entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: August 2, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93-19027 Filed 8-6-93; 8:45 am]

BILLING CODE 3510-DS-P

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[A-580-601]

## Photo Albums and Filler Pages From Korea; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On October 20, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on photo albums and filler pages from Korea. The

review covers one exporter and the period December 1, 1990 through November 30, 1991. We preliminarily found that there were no shipments by that exporter of Korean photo albums and filler pages to the United States during the period of review.

We gave interested parties an opportunity to comment on our preliminary results. We received one comment from respondent. Based on our analysis of the comment received, the final results of review are unchanged from those presented in the preliminary results.

**EFFECTIVE DATE:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Barbara Victor or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0090/3814.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 20, 1992, the Department published in the **Federal Register** (57 FR 47838) the preliminary results of its administrative review of the antidumping duty order on photo albums and filler pages from Korea (December 16, 1985, 50 FR 51273). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

**Scope of the Review**

Imports covered by the review are shipments of photo albums and filler pages. This merchandise is currently classifiable under item numbers 3920, 3921, 4819.50, 4820.50, 4820.90 and 4823.90 of the Harmonized Tariff Schedule (HTS). HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers Four Star Trading Company and the period December 1, 1990 through November 30, 1991.

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results as provided by 19 CFR 353.22(c)(5). We received one comment from Four Star.

*Comment:* Four Star requests that the Department remove its name from a list of companies deemed to be possible exporters of Korean photo albums and filler pages when the Department issues instructions to the U.S. Customs Service (Customs) regarding the final results of this administrative review.

*Department's Position:* As a result of a previous administrative review, the Department notified customs that Four Star had been identified by the petitioner as a possible exporter of Korean photo albums and filler pages and that liquidation should be suspended on all entries of merchandise exported by Four Star regardless of country of origin. During the period of review, Customs suspended liquidation of an entry of this merchandise exported by Four Star. However, after review of Four Star's information, the Department agrees with Four Star that this entry was of Taiwanese origin, and therefore, not subject to the antidumping duty order on photo albums and filler pages from Korea. Upon completion of this administration review, the Department will instruct Customs that the above-referenced entry of photo albums and filler pages made by Four Star is not subject to the antidumping duty order with regard to Korea. However, the fact that this one entry was not of Korean origin does not eliminate the previously established possibility that other photo albums and filler pages exported by Four Star may be of Korean origin. Therefore the Department will instruct Customs to continue to suspend liquidation on entries of all photo albums and filler pages, exported by Four Star (54 FR 46963, November 8, 1989).

**Final Results of Review**

After analysis of the data and the comment received, we determine that there were no shipments of Korean photo albums and filler pages from Four Star to the United States during the period December 1, 1990 through November 30, 1991. Therefore, because there were no sales to analyze, we are continuing to apply the deposit rate established in the final results of the last administrative review, 64.81 percent.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will continue to be 64.81 percent as established in the final results of the last administrative review; (2) for previously reviewed or investigated companies, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, any prior review, or the original less-than-fair-value investigation, but the manufacturer is, the case deposit rate will be the rate established for the most recent period for the manufacturer of this merchandise. In accord with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, the cash deposit rate for all other manufacturers or exporters will be 8.37 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a sanctionable violation. This administration review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 29, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 93–19030 Filed 8–6–93; 8:45 am]

BILLING CODE 3510–DS–M

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**University of California, Irvine, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments**

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign

instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

*Docket Number:* 93–043. *Applicant:* University of California, Irvine, Irvine, CA 92717-3100. *Instrument:* Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan Corporation, Germany. *Intended Use:* See notice at 58 FR 31509, June 3, 1993. *Reasons:* The foreign instrument provides: (1) an internal precision of 0.005 per mil for 3 bar µl samples of $CO_2$, (2) a six-cup multicollector array for simultaneous collection of three ion beams and (3) all-metal inlet valves.

*Docket Number:* 93–045. *Applicant:* University of Rhode Island, Kingston, RI 02881. *Instrument:* Gas Source Isotope Ratio Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 58 FR 31509, June 3, 1993. *Reasons:* The foreign instrument provides: (1) an internal precision of 0.008 per mil for 70 bar µl samples of $N_2$, (2) a six-cup collector array and (3) an all metal inlet system.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 93–19005 Filed 8–6–93; 8:45 am]

BILLING CODE 3510-DS-F

## National Oceanic and Atmospheric Administration

[I.D. 073093D]

## South Atlantic Fishery Management Council; Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on August 23–27, 1993, at the Town and County Inn, 2008 Savannah Highway, Charleston, SC; telephone: (803) 571–1000.

On August 23 from 1:30 p.m. until 5 p.m., the Council's Habitat and Environmental Protection Committee is scheduled to review various options for management of the live rock fishery.

On August 24 from 8:30 a.m. until 12 p.m., the Standard Operating Practices and Procedures Committee is scheduled to discuss the Council member conflict-of-interest issue and begin developing language to address the issue for inclusion in the Council's operating procedures.

Also on August 24 from 1:30 p.m. until 5 p.m., and on August 25 from 8:30 a.m. until 5 p.m., the Snapper-Grouper Committee will review public hearing and agency comments on Amendment #6 to the Snapper-Grouper Fishery Management Plan before taking action to finalize the amendment. After making appropriate changes, the committee is scheduled to approve the amendment for submission to the full council on August 26.

On August 26 from 8:30 a.m. until 5 p.m. and on August 27 from 8:30 a.m. until 12 p.m., the full Council will meet to receive Committee reports. A public hearing is scheduled on August 26 at 9 a.m., prior to the Council taking final action on Amendment #6. A detailed agenda with specific meeting times will be available on August 5.

**FOR FURTHER INFORMATION CONTACT:** Carrie Knight, Public Information Officer; South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407; telephone: (803) 571–4366.

Dated: August 2, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–18962 Filed 8–6–93; 8:45 am]

BILLING CODE 3510-22-F-M

## Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Issuance of modification of Permit No. 813 (P523C).

**SUMMARY:** Notice is hereby given that on August 2, 1993, Permit No. 813, issued to Mr. Adam Frankel, University of Hawaii at Manoa, Department of Oceanography, 1000 Pope Road, Honolulu, Hawaii 96822, on February 1, 1993 (58 FR 7548), was modified to extend its duration through September 30, 1994.

**ADDRESSES:** The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1335 East-West Highway, suite 7324, Silver Spring, MD 20910 (301/712–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

**SUPPLEMENTARY INFORMATION:** The subject modification was issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Dated: August 2, 1993.

**William W. Fox, Jr.,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 93–18916 Filed 8–6–93; 8:45 am]

BILLING CODE 3510-22-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of Import Limits for Certain Cotton and Silk Blend Textile Products Produced or Manufactured in China

August 3, 1993.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** August 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 335 is being increased by application of swing, reducing the limit for Category 846 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

August 3, 1993.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on August 3, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels not in a group | |
| 835 | 379,028 dozen. |
| 846 | 141,504 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 93-19026 Filed 8-6-93; 8:45 am]

BILLING CODE 3510-DR-F

## CONSUMER PRODUCT SAFETY COMMISION

### Petition Requesting Issuance of Flammability Standard for Upholstered Furniture

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** The National Association of State Fire Marshals has petitioned the Commission to issue a flammability standard for upholstered furniture under provisions of the Flammable Fabrics Act. The Commission solicits written comments concerning the petition from all interested parties.

**DATES:** Comments on the petition should be received in the Office of the Secretary by October 8, 1993.

**ADDRESSES:** Comments on the petition should be addressed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0800, and should be captioned "Petition FP 93-1 for Issuance of Flammability Standard for Upholstered Furniture." Copies of the petition are available by writing or calling the Office of the Secretary.

**FOR FURTHER INFORMATION CONTACT:** Sheldon D. Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0800.

**SUPPLEMENTAL INFORMATION:** The Commission has docketed correspondence from the National Association of State Fire Marshals requesting issuance of a flammability standard for upholstered furniture as Petition FP 93-1 for rulemaking under provisions of the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*)

The petition requests issuance of a flammability standard to reduce risks of deaths and injuries associated with cigarette-ignited fires involving upholstered furniture. The petition describes the substance of the requested standard as the requirements of Technical Bulletins 117 and 133 issued by the Bureau of Home Furnishings and Thermal Insulation of the State of California. The petition includes copies of those documents and the text of California statutes and regulations which make their requirements applicable to specified products of upholstered furniture and component materials used to manufacture upholstered furniture.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0800. A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 420, 5401 Westbard Avenue, Bethesda, Maryland.

Dated: August 3, 1993.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 93-18886 Filed 8-6-93; 8:45 am]

BILLING CODE 6355-01-F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Technology Transfer Working Group

**AGENCY:** Director, Defense Research and Engineering.

**ACTION:** Solicitation of inputs for defense technology transfer.

The Defense Technology Transfer Working Group (DTTWG) has been constituted to prepare a Congressional report required by Section 4224, entitled "Encouragement of Technology Transfer" of the National Defense Authorization Act for Fiscal Year 1993. This working group chaired by DDR&E has been established to: (1) Identify the technology transfer activities and accomplishments that are currently under way, (2) assess core competencies of major DoD laboratories in dual-use technologies; (3) investigate existing barriers to more effective technology transfer; and (4) provide recommendations on how to streamline the process. The working group includes representatives of the Military Departments, Defense Nuclear Agency, Advanced Research Projects Agency, and Ballistic Missile Defense Organization.

Inputs are welcomed from other Federal agencies, State and local governments, colleges and universities, private individuals, and industry, particularly constructive comments concerning any of the points listed above. The working group needs inputs regarding those aspects of DoD technology transfer which work well today, and recommendations for improvement.

The Defense Nuclear Agency has agreed to serve as the point-of-contact for receipt of industry comments. Please provide inputs by 30 August 1993 to: Defense Nuclear Agency; Attn: Dr. C. Stuart Kelley, OTA/DTT; 6801 Telegraph Road, Alexandria, VA 22310-3398.

Dated: August 4, 1993.
L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 93–18941 Filed 8–6–93; 8:45 am]
BILLING CODE [illegible]

## Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title and Applicable OMB Control Number:* Defense Federal Acquisition Regulation Supplement, Part 228, Bonds and Insurance, and the clause at 252.228–7005; OMB Control No. 0704–0216.

*Type of Request:* Revision.

*Average Burden per Response:* 40 hours.

*Responses per Respondent:* 1.

*Number of Respondents:* 21.

*Annual Burden Hours:* 840.

*Annual Responses:* 21.

*Needs and Uses:* The clause at 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles, requires defense contractors to promptly provide to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile or space launch vehicle being manufactured, modified or overhauled.

*Affected Public:* Businesses or other for-profit and small Businesses or organizations.

*Frequency:* On Occasion.

*Respondents Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia, 22202–4302.

Dated: August 3, 1993.
L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 93–18898 Filed 8–6–93; 8:45 am]
BILLING CODE [illegible]

## Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title, Applicable Form, and OMB Control Number:* Application for Uniformed Services Identification Card—DEERS Enrollment; DD Form 1171; OMB Control No. 0704–0020.

*Type of Request:* Epedited submission—Approval date requested: Not later than 30 days following publication in the Federal Register.

*Number of Respondents:* 2,125,000.

*Responses per Respondent:* 1.

*Annual Responses:* 2,125,000.

*Average Burden per Response:* 10 minutes.

*Annual Burden Hours:* 354,167.

*Needs and Uses:* The Department of Defense provides members of the Uniformed Services, their eligible dependents, and other eligible individuals with a distinct identification card for use in identifying their status as active duty, reserve, or retired members, and as an authorization card for benefits of the Uniformed Services. The DD Form 1172 collects the pertinent information necessary to identify the applicant's status and eligibility, and is used as the application for issuance of the identification card.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: August 4, 1993.
L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 93–18940 Filed 8–6–93; 8:45 am]
BILLING CODE [illegible]

## Office of the Secretary

## Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF); Notice of Initial meeting

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the initial meeting of the Armament Retooling and Manufacturing Support (ARMS) Public/Private Task Force (PPTF). The purpose of this meeting is to analyze what needs to be done to foster execution of the ARMS Initiative. All sessions will be open to the public.

**DATES:** August 10–12, 1993.

**ADDRESSES:** Holiday Inn, 5202 Brady Street, Davenport, Iowa 52806.

**FOR FURTHER INFORMATION CONTACT:** Mr. R. B. Auger, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333.

**SUPPLEMENTARY INFORMATION:** Reservations at the Holiday Inn Hotel may be made through the Protocol Office at Rock Island Arsenal; telephone (309) 782–5510/5583.

Dated: August 3, 1993.
L.M. Bynum,
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*
[FR Doc. 93–18897 Filed 8–6–93; 8:45 am]
BILLING CODE [illegible]

## Privacy Act of 1974; Notice to Amend Systems of Records

**AGENCY:** Office of the Secretary of Defense.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of Defense (DOD) is amending the Retention and Disposal category of 13 systems of records notices to reflect the DOD policy for the retention of grievance and adverse action and performance-based action records. DOD policy is to maintain these records for four years and then destroy them.

**DATES:** This action will be effective August 9, 1993.

**ADDRESSES:** If you have any comments, send them to the Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 607–2943 or DSN 327–2943.

**SUPPLEMENTARY INFORMATION:** The Principal Director, Civilian Personnel Policy/EO, Office of the Assistant Secretary of Defense for Force Management and Personnel has decided that the Department of Defense will maintain grievance, adverse action and performance-based action records for four years. This action amends notices affected by this decision.

Dated: August 3, 1993.

**L.M. Bynum,**
*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0690–700DAPE**

**SYSTEM NAME:**

Grievance Records *(February 22, 1993, 58 FR 10177).*

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Records of appropriated fund employees are destroyed 7 years after closing of the case; those of non-appropriated fund employees are destroyed 5 years after closing. Disposal is by shredding.'

* * * * *

**DOCHA 09**

**SYSTEM NAME:**

Grievance Records *(February 22, 1993, 58 FR 10254).*

**CHANGES:**

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**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Records are closed at the end of the calendar year in which they are closed, held an additional 4 years, and then destroyed.'

* * * * *

**DODDS 21**

**SYSTEM NAME:**

Department of Defense Dependents Schools (DODDS) Grievance Records *(February 22, 1993, 58 FR 10244).*

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'These records are disposed of four years after closing of the case. Disposal is by shredding or burning.'

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**DWHS P37**

**SYSTEM NAME:**

Grievance and Unfair Labor Practices Records *(February 22, 1993, 58 FR 10276).*

**CHANGES:**

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**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Case files are destroyed 4 years after case is closed.'

* * * * *

**GNSA 09**

**SYSTEM NAME:**

NSA/CSS Personnel File *(February 22, 1993, 58 FR 10539).*

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

After 'Computerized portion is purged and updated as appropriate.' add 'Records relating to adverse actions, grievances, excluding EEO complaints, and performance-based actions, except SF–50s, will be retained for four years.'

* * * * *

**HDNA 02**

**SYSTEM NAME:**

Employee Relations *(February 22, 1993, 58 FR 10549).*

**CHANGES:**

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**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Records are destroyed four years after the close of each case or the separation of employee.'

* * * * *

**K700.01**

**SYSTEM NAME:**

Employee-Management Relations and Services Files *(February 22, 1993, 58 FR 10596).*

**CHANGES:**

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**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Records are retained for four years and subsequently destroyed, except for blood donor records which are retained until the employee terminates his/her employment with DISA after which time they are destroyed.'

* * * * *

**K700.17**

**SYSTEM NAME:**

603–01 Official Personnel Folder Files (Standard Form 66) *(February 22, 1993, 58 FR 10606).*

**CHANGES:**

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**RETENTION AND DISPOSAL:**

Add a new paragraph 'Administrative grievance, disciplinary and adverse action files are maintained for four years and then destroyed.'

* * * * *

**N12771-1**

**SYSTEM NAME:**

Employee Grievances, Discrimination Complaints, and Adverse Action Appeals *(February 22, 1993, 58 FR 10821).*

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Case files maintained for four years. Files are then sent to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409 and maintained for an additional four years. EEOC decisions and index cards are retained indefinitely.'

* * * * *

**RDCAA 358.3**

**SYSTEM NAME:**

Grievance and Appeal Files *(February 22, 1993, 58 FR 10849).*

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with 'Files are destroyed 4 years after the grievance has been decided or after the transfer of separation of the employee.'

* * * * *

**S337.25 DLA-KS**

**SYSTEM NAME:**

Employee Relations Under Negotiated Grievance Procedures *(February 22, 1993, 58 FR 10885).*

**CHANGES:**

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed four years after case is closed.'

* * * * *

V4–07

SYSTEM NAME:

Adverse Actions, Grievance Files, and Administrative Appeals *(February 22, 1993, 58 FR 10909).*

CHANGES:

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RETENTION AND DISPOSAL:

Delete entry and replace with 'Adverse action files are destroyed four years after the case is closed. Grievance and administrative appeals files are destroyed four years after the case is closed. Destruction is accomplished by burning or shredding..'

* * * * *

WUSU07

SYSTEM NAME:

USUHS Grievance Records *(February 22, 1993, 58 FR 10927).*

CHANGES:

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RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are disposed of four years after closing of the case. Disposal is by shredding or burning.'

* * * * *

[FR Doc. 93–18899 Filed 8–6–93; 8:45 am]

BILLING CODE 5000–04–F

## DEPARTMENT OF THE ARMY

### Request for Nominations to the Inland Waterways Users Board

**AGENCY:** Assistant Secretary of the Army (Civil Works), DOD.

**ACTION:** Notice.

**SUMMARY:** Section 302 of Public Law (PL) 99–662 established the Inland Waterways Users Board. The Board is an independent Federal advisory committee. Its eleven members are appointed by the Secretary of the Army. This notice is to solicit nominations for six appointments or reappointments to a two-year terms that will begin January 1, 1994.

**EFFECTIVE DATE:** August 9, 1993.

**ADDRESSES:** Office of Assistant Secretary of the Army (Civil works), ATTN: Inland Waterways Users Board Nominations Committee, Washington, DC 20310–0103.

**FOR FURTHER INFORMATION CONTACT:** Dr. G. Edward Dickey, Acting Assistant Secretary of the Army (Civil Works), (703) 697–4671.

**SUPPLEMENTARY INFORMATION:** The selection, service, and appointment of board members are covered by provisions of section 302 of Public Law 99–662. The substance of those provision is as follows: *Selection.* Members are to be selected from the spectrum of commercial carriers and shippers using the inland and intracostal waterways, to represent geographical regions, and to be representative of waterway commerce as determined by commodity ton-miles statistics. *Service.* The Board is required to meet at least semi-annually to develop and make recommendations to the Secretary of the Army on waterways construction and rehabilitation priorities and spending levels for commercial navigation improvements, and report its recommendations annually to the Secretary and Congress. *Appointment.* The operation of the Board and appointment of its members are subject to the Federal Advisory Committee Act (Pub. L. 92–463 as amended) and Departmental implementing regulations. Members serve without compensation but their expenses due to Board activities are reimbursable.

The considerations specified in section 302 for the selection of the Board members, and certain terms used therein, have been interpreted, supplemented, or otherwise clarified as follows:

*Carriers and Shippers.* The law uses the terms "primary users and shippers." Primary users has been interpreted to mean the providers of transportation services on inland waterways such as barge or towboat operators. Shippers has been interpreted to mean the purchasers of such services for the movement of commodities they own or control. Individuals are appointed to the Board, but they must be either a carrier or shipper, or represent a firm that is a carrier or shipper. For that purpose a trade or regional association is neither a shipper or primary user.

*Geographical Representation.* The law specifies "various" regions. For the purpose of selecting Board members, the waterways subjected to fuel taxes and described in Public Law 95–502, as amended, have been aggregated into six regions. They are: (1) The Upper Mississippi River and its tributaries above the mouth of the Ohio; (2) the Lower Mississippi River and its tributaries below the mouth of the Ohio and above Baton Rouge; (3) the Ohio River and its tributaries; (4) the Gulf Intracoastal Waterway in Louisiana and Texas; (5) the Gulf Intracoastal Waterway east of New Orleans and associated fuel-taxed waterway east of New Orleans and associated fuel-taxed waterways including the Tennessee-Tombigbee, plus the Atlantic Intracoastal Waterway below Norfolk; and (6) the Columbia-Snake River System and Upper Willamette. The intent is that each region shall be represented by at least one Board member, with that representation determined by the regional concentration of the individual's traffic on the waterways. *Commodity Representation.* Waterway commerce has been aggregated into six commodity categories based on "inland" ton-miles shown in *Waterborne Commerce of the United States.* In rank order they are: (1) Farm and Food Products; (2) Coal and Coke; (3) Petroleum, Crude and Products; (4) Minerals, Ores, and Primary Metals and Mineral Products; (5) Chemicals and Allied Products; and (6) All other. A consideration in the selection of Board members will be that the commodities carried or shipped by those individuals or their firms will be reasonably representative of the above commodity categories.

Reflecting preceding selection criteria, the present representation by Board members is as follows: The six members whose terms expire December 31, 1993, include one shipper representative representing the Lower Mississippi River region (Region 2), and farm and food products; one shipper representative representing the East Gulf region, and coal; two carrier representatives representing the Ohio River (Region 3), and coal, farm and food products, petroleum, chemicals, minerals and metals; and two shipper/carrier representatives representing the Ohio River (Region 3), and coal. The five members whose terms expire December 31, 1994, include one shipper representative representing the Upper Mississippi River region (Region 1) and farm and food products, ethanol, and coal; one shipper representative representing the Lower Mississippi River region (Region 2), and farm and food products; one carrier representative representing the Gulf Intracoastal Waterway in Louisiana and Texas (Region 4), and petroleum and petroleum products; one carrier representative representing the Ohio River region (Region 3), and coal and coke, minerals, and metals, petroleum and petroleum products, farm and food products and chemicals; and, one carrier representative representing the

Columbia/Snake River system and Upper Willamette (Region 6), and farm and food products, petroleum products, chemicals, containers, and forest products.

Nominations to replace members whose terms will expire December 31, 1993, may be made by individuals, firms, or associations. Nominations should state the region to be represented and whether the nominee is to represent carriers or shippers. Information should be provided on the nominee's personal qualifications and the commercial operations of the carrier and/or shipper with whom the nominee is associated. The latter information should show the actual or estimated ton-miles of commodities carried or shipped on inland waterways in a recent year (or years) using the waterway regions and commodity categories previously listed.

Nominations received in response to last year's **Federal Register** notice published July 16, 1992, have been retained for consideration for appointment along with nominations received in response to this **Federal Register** notice. Renomination is not required but may be desirable. Five of the six members whose terms expire December 31, 1993, are eligible for reappointment.

Deadline for Nominations: All nominations must be received at the address shown above no later than August 30, 1993.

**John R. Brown,**

*Colonel, Corps of Engineers, Executive Director of Civil Works.*

[FR Doc. 93–18901 Filed 8–6–93; 8:45 am]

BILLING CODE 3710-92-M

## Department of the Army

### Intent To Grant an Exclusive License

**AGENCY:** U.S. Army Belvoir RD&E Center, DOD.

**ACTION:** Notice.

In compliance with 37 CFR 404.4 the Department of the Army hereby gives notice of its intent to grant to Sartomer Company, Incorporated, a U.S. corporation having its principal place of business at Oaklands Corporate Center, 468 Thomas Jones Way, Exton, PA 19341, an exclusive license under U.S. Patent No. 4,843,114 with designations in not only the United States but the foreign countries of Canada, United Kingdom, West Germany, Israel, Sweden, Korea, Australia, and Austria. This patent is for a "Rubber Compound for Tracked Vehicle Tank Pads". Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

**DATES:** Written comments/objections must be received not later than October 8, 1993.

**ADDRESSES:** Commander, U.S. Army Belvoir RD&E Center, ATTN: SATBE–HS (Karen Gordon), Fort Belvoir, VA 22060–5606.

**FOR FURTHER INFORMATION CONTACT:** Karen Gordon, (703) 704–2279.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–19016 Filed 8–6–93; 8:45 am]

BILLING CODE 3710-08-M

## Department of the Navy

### Medi-Train, Inc.; Intent to Grant Exclusive Patent License

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Intent to Grant exclusive patent license; Medi-Train, Inc.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Medi-Train, Inc. a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent No. 4,932,880 entitled "Low-Cost Sound Related Trainer".

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230), Ballston Tower One, Arlington, Virginia 22217–5660.

**DATES:** August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–40001.

Dated: July 27, 1993.

**Michael P. Rummel,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 93–19020 Filed 8–6–93; 8:45 am]

BILLING CODE 3810-AE-M

## DEPARTMENT OF ENERGY

### Financial Assistance: University of Alabama-Birmingham Cooperative Agreement

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of Intent.

**SUMMARY:** The U.S. Department of Energy, Idaho Operations Office (DOE–ID), announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.7, it intends to award a new start Cooperative Agreement Number DE–FC07–93ID13230 to the University of Albama-Birmingham (UAB). This project was originally proposed by Southern Research Institute (SRI) in response to a solicitation. The SRI proposal identified Dr. Charles Bates, who possessed the unique technical background and expertise to perform this work, as the Principal Investigator (PI). After the selection was made, Dr. Bates changed his employer from SRI to UAB. Since the PI was the major factor in selection of this award, SRI transferred the project to UAB. The UAB proposal was then submitted to DOE–ID and selected as a non-competitive award.

The objective of the work to be performed under this agreement is to provide funds to advance the state of the art in Expendable Pattern Casting (EPC) Technology Laboratory in order to improve the competitiveness of the U.S. metals casting industries. The proposed project will focus on developing and demonstrating advanced casting technology and on transferring the knowledge to program participants (including casting designers, foundry suppliers, equipment producers, producing foundries, and casting users). The Federal Domestic Catalog Number is 81.078, Industrial Energy Conservation.

**FOR FURTHER INFORMATION CONTACT:**

Ginger L. Sandwina or Kathleen M. Stallman, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562, (208) 526–8698 or (208) 526–7038 respectively.

**SUPPLEMENTARY INFORMATION:** The statutory authority for the proposed award is Public Law 101–425, Department of Energy Metal Casting Competitiveness Research Act of 1990. The proposal meets the criteria for "non-competitive" financial assistance as set forth in 10 CFR 600.7(b)(2)(i)(D). The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications. The anticipated total project period to be awarded is 24 months. The total cost of the agreement is $1,214,030 of which 55% is to be industrially cost-shared (cash and in-

kind contributions] through the American Foundrymen's Society (AFS).

Delores J. Perri,

*Director, Contracts Management Division.*

[FR Doc. 93–18985 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

## Financial Assistance Award; Intent to Award Grant to Energy Concepts Company

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of intent.

**SUMMARY:** DOE announces that pursuant to 10 CFR 600.14, it is making a financial assistance award to the Energy Concepts Company, Annapolis, Maryland, under the Grant Number DE–FG01–93CE15557. The purpose of the grant is to design, build, operate, and bench-test a 15-ton engineering prototype of the patented invention which modifies the generator-absorber heater-exchange (GAX) cycle which had been previously developed by the heat pump industry in cooperation with DOE. The overall objective of this effort is to prove that the additional heat exchanger in the branch of the GAX will permit operations at a higher heat input temperature, making it about 15 percent more thermodynamically efficient than the industry-DOE version.

The proposed Grant effort will be cost shared with DOE providing $99,570, the State of Maryland $114,823 and the Grantee $18,575 for a combined total of $232,968.

**FOR FURTHER INFORMATION CONTACT:** Please write the U.S. Department of Energy, Office of Placement and Administration, ATTN: Bernard G. Canlas, PR 322.2, 1000 Independence Avenue, SW., Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Energy, through the Energy Related Invention Programs (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public.

The Energy Concepts Company is meritorious based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) and the proposed project represents a unique idea that is not eligible for financial assistance under a recent, current, or planned solicitation.

The proposed technology has a strong possibility of allowing for future reductions in the nation's energy consumption where energy savings of 2 million barrels of oil may be achieved.

The anticipated term of the proposed grant shall be 24-months from the effective date of award.

Arnold Gjerstad,

*Acting Director, Division "B", Office of Placement and Administration.*

[FR Doc. 93–18986 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

## Office of Arms Control and Nonproliferation

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the following sale: Contract No. S–EU–1014 for the sale of 9 grams of uranium-233 and 209 milligrams of thorium-229 to the Joint Research Centre, Karlsruhe, the Federal Republic of Germany for medical research purposes.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on August 4, 1993.

Edward T. Fei,

*Acting Director, Office of Nonproliferation Policy.*

[FR Doc. 93–18983 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

## Bonneville Power Administration

### Scoping Meeting and Close of Scoping: Environmental Impact Statement on Pacific Northwest Commercial Services and Rates

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Environmental Impact Statement (EIS) Scoping Meeting and Close of Scoping on Pacific Northwest (PNW) Commercial Services and Rates.

**SUMMARY:** On April 30, 1992, BPA published a Notice of Intent to Prepare an Environmental Impact Statement on the replacement of its long-term firm requirements power sales contracts (57 FR 18477). The Notice of Intent announced the date of an initial scoping meeting, which was held May 13, 1992, and explained that additional scoping meetings would be held. Since that time, BPA has been engaged in discussions with customers and interested members of the public to identify interests, issues, and alternatives for long-term service to PNW firm power loads. Based on these discussions, BPA proposes to include power and transmission rate designs, including the whole-sale power "tiered rate" concept, and access to Federal transmission system within the PNW among the topics to be addressed by the EIS. To reflect this change the title of the EIS, formerly, "Replacement of Long-Term Requirements Power Sales Contracts," will be "Pacific Northwest Commercial Services and Rates." BPA has scheduled an additional scoping meeting to receive comments from interested persons concerning the full range of issues, alternatives, and impacts to be considered in the EIS. BPA will then conclude the scoping process for the EIS and prepare an implementation plan to guide the preparation of the EIS.

**DATES AND LOCATIONS:** The scoping meeting will be held at the Holiday Inn, Portland Airport Hotel and Trade Center, Juarez Room, 8439 NE. Columbia Blvd., Portland, Oregon, from 3 to 8 p.m. on August 24, 1993. All interested parties are invited to attend.

Written comments should be submitted by September 13, 1993, to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Mr. Don Wolfe, Commercial Services and Rates EIS Project Manager, BPA–PG, P.O. Box 3621, Portland, Oregon 97208, 503–230–5145. You may also contact BPA's Public Involvement Office at 503–230–3478, or call BPA's nationwide toll-free number, 1–800–622–4519. Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–465–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Ms. Carol S. Fleischman, Spokane District Manager, room 112, West 920

Riverside Avenue, Spokane, Washington 99201, 509–353–2907.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.
Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, room 307, 301 Yakima Street, Wenatchee, Washington 98801, 509–662–4377, extension 379.
Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109–1030, 206–553–4130.
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99632, 509–522–6225.
Ms. Jerry Leone, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.
Mr. James R. Normandeau, Boise District Manager, room 450, 304 N. 8th Street, Boise, Idaho 83702, 208–334–9137.

For further information on general DOE National Environmental Policy Act (NEPA) procedures or the status of a NEPA review, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:** BPA was created by Congress in 1937 to transmit and market power from Bonneville Dam on the Columbia River. BPA now markets power from 30 hydroelectric projects and one nuclear plant in the PNW. Since 1937, BPA has marketed large amounts of power under successive 20-year firm power sales contracts with utilities and direct-service industrial customers (DSIs). The existing power sales contracts were offered in 1981 according to the requirements of the Pacific Northwest Electric Power Planning and Conservation Act (Pub. L. 96–501), and will expire in 2001. BPA is now preparing to offer new contracts to its utility, Federal agency, and DSI customers to replace the existing contracts.

As part of the initial scoping process, BPA invited interested persons to participate in the Power Sales Contract Renegotiation Working Group (Working Group) to identify issues, impacts, and alternatives to be considered in developing new contracts. The Working Group is made up of BPA staff, customer representatives, and other interested parties including representatives from the Northwest Power Planning Council, State governments, environmental groups, and other non-governmental entities, such as the Northwest Conservation Act Coalition. The Working Group began meeting in June 1992, and has continued meeting on a monthly basis, except for a hiatus in the spring of 1993 during the proceedings for BPA's 1993 rate case. Smaller, self-selected groups meet at other times to discuss issues in more detail or to produce documents. Smaller groups have met to talk about reserves, products and services, and EIS alternatives, and to brainstorm analytical needs. Work done by these groups is presented to the larger Working Group. Products from the Working Group are then shared with a broader public through mailings, Issue Alerts and Fact Sheets. In its work thus far, the Working Group has: (1) identified the interests of the participants in the process; (2) developed a comprehensive list of specific issues which the contracts should address; (3) articulated 18 broader "overarching" issues which the Working Group considers to be fundamental to the development of new contracts; and (4) discussed alternative concepts for new contracts. The results of these discussions are summarized in published fact sheets. Call 800–622–4520 for copies of fact sheets.

Overarching issues identified by the Working Group include some matters which are not addressed by the existing power sales contracts, such as access to BPA's PNW transmission facilities (excepting Interties with other regions) and wholesale power rate design. Working Group discussions have demonstrated that customers are reluctant to decide whether to execute contracts BPA may offer for firm power service without also knowing BPA's direction on other related issues, like transmission access for non-Federal power serving PNW firm loads and rate design, that affect customers' ability to serve their PNW firm loads. Recognizing that new power sales contracts will to a large degree define the business relationship between BPA and its PNW customers, and that BPA's decisions in this process essentially will select the form of that relationship, BPA proposes, as a matter of convenience and efficiency, to expand the scope of the EIS to include PNW transmission access and rate design matters. These topics are being combined for the convenience of participants who may direct their attention to a single public process instead of multiple processes addressing related subjects, and for efficiency in analysis of issues and alternatives concerning related matters.

Earlier discussions have suggested that rate design issues would be the subject of a separate EIS apart from the EIS on power sales contracts. By expanding the scope of the EIS process to include rate design, BPA is setting aside the prospect of a separate rate design EIS in favor of a combined EIS on both contracts and rates. Therefore, those who desire to comment on the scope of BPA's NEPA evaluation of rate designs may only do so during scoping for this EIS. Comments received on rate design will be considered for the 1995 Rate Case and possibly rate design decisions for later rate cases. Although other technical discussions are planned or underway on tiered rates and other rate design issues, no other NEPA forum is now planned to consider power and transmission rate design. Individuals or groups wishing to comment on the scope of this EIS are urged to raise any concerns they may have relating to rate design in this EIS scoping process.

The same is true of PNW transmission access. Although technical discussions are underway to address transmission access, particularly to address the access provisions of the National Energy Policy Act of 1992, no other NEPA forum is now planned to consider PNW transmission access. BPA encourages interested parties to raise any concerns they may have relating to transmission access in this EIS scoping process.

BPA seeks public input to supplement the work of the Working Group in defining the scope of the EIS. Those who desire more detailed information on EIS issues and alternatives may obtain project publications, information papers, and background materials from the information contacts listed above. Following the scoping meeting, BPA will conclude the scoping period for the EIS and will prepare an implementation plan that will describe the steps for completing the EIS. Comments received in the scoping meeting, together with written comments received and the results of previous scoping activities, will be considered in planning the preparation of the draft EIS and will be summarized in the implementation plan.

Issued in Portland, Oregon, on July 29, 1993.

**Steven G. Hickok,**

*Executive Assistant Administrator, Bonneville Power Administration.*

[FR Doc. 93–18982 Filed 8–6–93; 8:45 am]
BILLING CODE 6450–01–M

VOL 58 ISS 151 AG 9 1993 UMI

Office Of Energy Efficiency and Renewable Energy

[Docket EE–93–Nina-Cert]

## Applications From Investor-Owned Utilities for Certification of Net Income Neutrality

**AGENCY:** Department of Energy, Office of Energy Efficiency and Renewable Energy.

**ACTION:** Notice.

**SUMMARY:** The Clean Air Act Amendments of 1990 allow an investor-owned electric utility, whose rates are regulated by a state utility regulatory authority, to seek sulfur dioxide emission allowances from the Conservation and Renewable Energy Reserve for avoided emissions from the installation of applicable conservation measures. An applicant for such allowances must obtain certification of net income neutrality from the Secretary of Energy. This certification verifies that the state regulatory authority has established rates and charges which ensure that the net income of such utility after implementation of conservation measures is at least as high as it would have been if the conservation measures had not been implemented. This notice provides: (a) Guidance to assist the potential applicant for such certification in determining what information it may be necessary to include in its application, in order to address its specific circumstances; and, (b) information regarding the review and comment procedures which the Department of Energy (DOE) will follow in regard to these applications.

**ADDRESSES:** All applications and attachments (10 copies), responses to DOE requests for additional information, comments, and other requests should be sent to: U.S. Department of Energy; Office of Energy Efficiency and Renewable Energy; EE–10, Room 6C–036; 1000 Independence Ave., SW.; Washington, DC 20585. Attention: Net Income Neutrality Certification, Docket EE–93–NINA-CERT. If an application has already been filed with DOE, the application number must be included.

**FOR FURTHER INFORMATION CONTACT:** Diane B. Pirkey; U.S. Department of Energy; EE–14; 1000 Independence Ave., SW.; Washington, DC 20585; (202) 586–9839.

**SUPPLEMENTARY INFORMATION:** The requirements for net income neutrality certification by DOE are prescribed under section 404(f)(2)(B)(iv) of the Clean Air Act, 42 U.S.C. 7651c(f)(2)(B)(iv) as added by Section 401 of the Clean Air Act Amendments, Public Law 101–549 (November 15, 1990). The requirements are further addressed in the final rule adopted by the U.S. Environmental Protection Agency (EPA) and published in the **Federal Register**. (58 Fed. Reg. 3590 (January 11, 1993), to be codified at 40 C.F.R. Sec. 72) (see Sec. 72.2, providing a definition of net income neutrality; Sec. 73.82(b), establishing application requirements; and Sec. 73.83, describing generally the Secretary of Energy's review of such applications.) This review is separate from the EPA review of applications for the allocation of allowances from the Conservation and Renewable Energy Reserve.

### I. Applications

Although the EPA final rule sets forth the comprehensive substantive rules for DOE net income neutrality determinations, DOE wishes to call five specific matters regarding the contents of applications for certification to the attention of potential applicants:

1. The "Certifying Official" who is referred to at section 73.82(e) of the regulations must sign the application, and include the statement that is set out in section 73.82(e)(2) of the regulations. The application should indicate the position of the certifying official;

2. Section 73.82(b) requires submission of the order(s) or decision(s) setting forth the rate-making mechanisms that ensure net income neutrality. With regard to these, the application should describe: (a) Their effect; (b) any accounting and cost recovery practices regarding net income neutrality that are adopted therein; (c) where there are multiple relevant orders, their relationship to one another (unless this is evident from their text). The application should also include;

(a) any order(s) and decision(s) describing the state regulatory authority's general policy and overall regulatory framework related to utility's achievement of net income neutrality, and,

(b) any other relevant materials related to the specific conservation measures and programs undertaken during the period for which the applicant is requesting net income neutrality certification, which,

(i) allow the recovery of the costs of such measures and programs,

(ii) address the impact of related lost sales,

(iii) describe incentive measures or any other factors that should be considered by the Department in determining whether to certify net income neutrality.

3. Applicants are requested to indicate the time period during which rates and charges that ensured net income neutrality, as described in the application, were in effect. Applicants should state the date and the year when the subject rates and charges became effective. If the subject rates and charges are still in effect, the application should so state. If they are no longer in effect, the application should indicate the date and year at which they ceased to be effective. If such dates are not provided, DOE will limit its review to the period: (a) Beginning either on January 1, 1992, or on the effective date of the latest rate order included in the application, whichever is most recent, and; (b) ending on the date that the application is accepted for filing.

4. The draft forms released by the Environmental Protection Agency in October 1992 included a form for net income neutrality applications. It has since been determined that applicants will not be required to use this form. However, as indicated above, each application must be signed by the certifying official, and must clearly identify the applicant electric utility and the state rate-making jurisdiction(s) for which certification is sought.

5. Sec. 73.82(b)(1)(iii) of the regulations indicates that, if necessary to facilitate its review, DOE may request additional information from the applicant. For this reason, each application should identify the name, address, telephone number, and telephone facsimile number of the staff contact to whom such requests should be directed. Responses to such a request should also include the application and docket numbers assigned by DOE, and indicate the written request to which the response is being made. Responses should be sent to the address listed in the **ADDRESSES** section of this notice.

### II. Department of Energy Review

DOE encourages all investor-owned utilities to apply, where it appears that there is compliance with the requirements of the regulations. DOE will review the applications on a case-by-case basis.

The regulations indicate that the existence of any one or more rate-making mechanisms shall not necessarily constitute fulfillment of the net income neutrality requirement. (Sec. 73.82 (a)(9)(ii)) In line with this, certifications of net income neutrality will be based upon all significant factors affecting whether the rates and charges of the applicant utility, for the relevant jurisdiction and time period, meet the definition of net income neutrality that is set forth in Sec. 72.2 of the

regulations. Examples of factors which in selected cases could be relevant are: elements of rate recovery not specifically described in commission orders, related accounting practices, any relevant comparisons to the recovery of supply-side resource costs, the amount of available incentives and net lost revenues, carrying costs, working capital provisions, deferrals, any conditions applicable to cost or lost revenue recovery, true-up procedures for performance based rate adjustments, the effect of any profit caps, or the impact of conservation programs on off-system sales. This approach provides flexibility for applicants in meeting the statutory requirement. It also recognizes variations in the regulatory treatment of demand-side management for different utilities, including, in many instances, different utilities within the jurisdiction of the same state regulatory authority.

### III. Solicitation of Comments

DOE intends to undertake an initial completeness review of each application. An application which is deemed complete will be accepted for filing. When an application is accepted for filing, the Department intends in most instances to place a notice of the filing and request for public comment in the **Federal Register**.

These notices will establish a time period during which interested parties may file comments on the application's request for certification of net income neutrality. Unless otherwise specified, DOE expects to accept comments until 5:00 pm Eastern Standard Time on the 35th day after the date that the application is accepted for filing. If the 35th day falls on a weekend or a holiday, comments will be accepted on the next subsequent business day. For purposes of calculating the time for the filing of comments, the date on which the application was deemed to have been filed shall be listed in the **Federal Register** notification and included in the calculation of the period for filing comments. Written comments may be submitted to the address listed in the **ADDRESSES** section of this notice.

Additionally, the Department expects to mail notification of the filing of the application to the affected state regulatory authority and to submit notices to the National Association of Regulatory Utility Commissioners (NARUC) for inclusion in the *NARUC* Bulletin.

Copies of applications, responses to requests for additional information, and comments will be available for review and copying by the public at: the Freedom of Information Reading Room; U.S. Department of Energy; 1000 Independence Ave., SW.; Washington, DC 20585; (202) 586–6020, Monday through Friday, excluding federal holidays, between the hours of 9 a.m. and 4 p.m. Applicants also are requested to make a copy of their application available for review at their offices or at a central location within the affected state jurisdiction. This location and the times at which the application will be available for public review should be specified in the application, and, if clearly specified, will be included in the Department's **Federal Register** notice of the application's filing.

Dated: August 2, 1993.

**Robert L. San Martin,**

*Acting Assistant Secretary, Office of Energy Efficiency and Renewable Energy.*

[FR Doc. 93–19897 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–P

## Office of Fossil Energy

### National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* National Petroleum Council (NPC).

*Date and Time:* Tuesday, August 31, 1993 at 9 a.m.

*Place:* The Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW., Washington, DC.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, DC 20585, Telephone: 202/586–3867.

*Purpose:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

*Tentative Agenda*

—Call to order and introductory remarks by Ray L. Hunt, Chairman of the NPC.
—Remarks by the Honorable Hazel R. O'Leary, Secretary of Energy.
—Consider and approve the proposed final report of the NPC Committee on Refining, Kenneth T. Derr, Chairman.
—Administrative matters.
—Discussion of any other business properly brought before the NPC.
—Public comment (10-minute rule).
—Adjournment.

*Public Participation:* The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

*Transcripts:* Available for public review and copying at the Public Reading Room, room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August 3, 1993.

**Marcia Morris,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 93–18984 Filed 8–6–93; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project Nos. 2561–003, et al.]**

### Hydroelectric Applications [Sho-Me Power Corp., et al]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: New Major License.

b. Project No.: 2561–003.

c. Date Filed: December 27, 1991.

d. Applicant: Sho-Me Power Corporation.

e. Name of Project: Niangua.

f. Location: Niangua River in Camden County, Missouri.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Howard Fillmer, Sho-Me Power Corporation, 301 West Jackson, Marshfield, MO 65706. (417) 468–2615.

i. FERC Contact: Hector M Perez (202) 219–2843.

j. Sixty days after the issuance date of this notice (September 20, 1993).

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The project consists of: (1) An 878–foot-long dam with a 24-foot-high, 300-foot-long concrete gravity overflow section, a 533-foot-long rock and earthfilled section and a rock-filled crib section; (2) a reservoir of about 360 acres; (3) an 830-foot-long concrete-lined tunnel; (4) a powerhouse with an installed capacity of 3,000 kW; (5) a substation and transmission line connection; and other appurtenances.

m. Purpose of the Project: To generate electricity to offset the purchase of energy by the applicant from Associated

Electric Cooperative, Inc., its major supplier.

n. This notice also consists of standard paragraphs D9.

o. Available copies of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington DC 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address specified in item h above.

2 a. Type of Application: New Major License.

b. Project No.: 2514–003.

c. Date filed: December 16, 1991.

d. Applicant: Appalachian Power Company.

e. Name of Project: Byllesby/Buck.

f. Location: On the New River near the city of Galax, in Carroll County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. B.H. Bennett, Assistance Vice President, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, Ohio 43215, (614) 223–2930.

i. FERC Contact: Mr. Hector Perez, (202) 219–2843.

j. Comment Date: Sixty days after the issuance date of this notice (September 20, 1993).

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: This project consists of two developments. The first, the Byllesby development, consists of: (1) A 44-foot-high, 528-foot-long concrete dam and spillway section topped with 9 sections of 9-foot-high flashboards and 6 bays of tainter gates; (2) a 239-acre impoundment; (3) a powerhouse containing four generating units with a total installed capacity of 21,600 kW; and (4) appurtenant facilities.

The second, the Buck development, consists of: (1) A 44-foot-high, 352-foot-long concrete dam; (2) a 1,005-foot-long, 19-foot-high spillway section topped with twenty-four sections of 9-foot-high flashboards and 6 bays of tainter gates; (3) a 66-acre impoundment; (4) a powerhouse containing three generating units with a total installed capacity of 8,505 kW; and (5) appurtenant facilities."

The Applicant is not proposing any changes to the existing project facilities as licensed. The estimated average annual generation for the Byllesby and Buck developments are 64,000 MWh and 42,000 MWh, respectively.

m. Purpose of Project: All energy generated by the project would be utilized by the customers of the Appalachian Power Company.

n. This notice also consists of the following standard paragraphs: D9.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Appalachian Power Company, located at 40 Franklin Road, Roanoke, Virginia 24022, or by calling Mr. B.H. Bennett at (614) 223–2930.

3 a. Type of Filing: Settlement Agreement for the Development of Fish Passage Facilities at the Safe Harbor, Holtwood, and York Haven Projects on the Susquehanna River, PA.

b. Project Nos: 1025–010, 1881–012, and 1888–012.

c. Date Filed: June 2, 1993.

d. Licensee: Safe Harbor Water Corporation, Pennsylvania Power and Light Company, and York Haven Power Company.

e. Name of Projects: Safe Harbor (FERC No. 1025), Holtwood (FERC No. 1881), and York Haven (FERC No. 1888).

f. Location: The lower Susquehanna River in southeastern Pennsylvania: Lancaster and York Counties.

g. Filed Pursuant to: The 1984 Susquehanna River Settlement Agreement, approved by the Commission on April 10, 1985 (31 FERC ¶61,308).

h. Licensee Contact: Mr. William J. Madden, Jr., Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502. (202) 371–5700.

i. FERC Contact: Mr. George C. O'Connor, (202) 208–0439 Dr. John M. Mudre, (202) 219–1208.

j. Comment Date: September 10, 1993.

k. Description of Filing: The licensees for the Safe Harbor, Holtwood, and York Haven Projects have entered into a settlement agreement with the Pennsylvania Department of Environmental Resources, the Pennsylvania Fish and Boat Commission, the Maryland Department of Natural Resources, the U.S. Fish and Wildlife Service, the Susquehanna River Basin Commission, the Upper Chesapeake Watershed Association, Inc. and the Pennsylvania Federation of Sportmen's Clubs. The agreement was also executed by the Governors of the States of Maryland and Pennsylvania. The settlement agreement provides for upstream and downstream fish passage facilities at the projects. The agreement contains provisions for the construction and operation of upstream passage facilities at Safe Harbor and Holtwood Projects no later than April 1, 1997 and at the York Haven Project no later than April 1 of the third year following the in-service date of the Safe Harbor and Holtwood facilities.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4 a. Type of Application: New License.

b. Project No.: 1922–008.

c. Date filed: November 19, 1992.

d. Applicant: The City of Ketchikan, dba Ketchikan Public Utilities.

e. Name of Project: Beaver Falls.

f. Location: On Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. It occupies lands within the Tongass National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Thomas W. Stevenson, General Manager, 2920 Tongass Avenue, Ketchikan, AK 99901. (907) 225–1000.

i. FERC Contact: Hector M. Perez at (202) 219–2842.

j. Deadline for interventions and protests: September 13, 1993.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E.

l. Description of Project: The existing project consists of the Silvis Development and the Beaver Falls Development.

The Silvis Development consists of : (1) The 60-foot-high, 135-foot-long Upper Silvis Dam with a crest elevation of 1,164 feet; (2) the Upper Silvis Spillway with a crest elevation of 1,154 feet; (3) an 800–foot–long spillway channel from the Upper Silvis Spillway to Lower Lake silvis; (4) Upper Lake Silvis with a storage capacity of 38,000 acre-feet at maximum water surface of 1,154 feet; (5) the 980–foot–long Tunnel 1; (6) a 36–inch–diameter penstock; (7) Silvis Powerhouse containing a 2,100-KW generating unit; (8) a trapezoidal-shaped channel tailrace about 150 feet long discharging into Lower Lake Silvis; (9) a 2,900-foot-long, 5-kV submarine cable and a 7,100-foot-long, 34.5-kV aerial transmission line; and (101) other appurtenances.

The Beaver Falls Development consists of: (1) Lower Lake Silvis with a storage capacity of 8,052 acre-feet at maximum water surface elevation of 827 feet; (2) the 32–foot-high, 140-foot-long Lower Silvis Dam; (2) the 3-foot-high, 40-foot-long Beaver Falls Creek

Diversion Dan. with 6-inch-high flashboards, about two-thirds of a mile downstream of Lower Lake Silvis; (3) an intake structure at Lower lake Silvis; (4) the 3,800-foot-long Tunnel 2; (4) a 42-inch-diameter penstock through Tunnel 3 feeding units 3 and 4 (2,000 kW each) in Beaver Falls powerhouse; (5) a 225-foot-long, 20-inch-diameter wood stave pipe from Tunnel 2 discharging into Beaver Falls Creek just upstream of the diversion dam; (6) a 28-inch-diameter, 4,170-foot-long penstock from the diversion dam feeding unit 1 (1,000 kW) at the Beaver Falls Power house (unit 2 has been decommissioned); (7) 2 Tailrace channels; and (8) other appurtenances.

m. This notice also consists of the following standard paragraph: B1 and E.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NW., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

5 a. Type of Application: Approval of Mitigation Plan and Expansion of Project Boundary.

b. Project No: 485–027.

c. Date Filed: June 17, 1993.

d. Applicant: Georgia Power Company.

e. Name of Project: Bartletts Ferry Project.

f. Location: Cattahoochee River, Harris County, Georgia and Chambers County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms. JoLee Gardner, Georgia Power Company, 270 Peachtree Street, Atlanta, GA 30303. (404) 526–2406.

i. FERC Contact: Heather Campbell, (202) 219–3097.

j. Comment Date: September 10, 1993.

k. Description of Project: Georgia Power Company, licensee for the Bartletts Ferry Project, requests approval of a mitigation plan and an expansion of the project boundary. The 230 acres of land in the expansion would complement the Blanton Creek Wildlife Area which is managed by the Georgia Department of Natural Resources.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. Type of Application: New License

b. Project No.: 2459–005

c. Date Filed: December 20, 1991

d. Applicant: West Penn Power Company

e. Name of Project: Lake Lynn

f. Location: On the Cheat River in Monogalia County, West Virginia and Fayette County, Pennsylvania

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r)

h. Applicant Contact: Mr. D.E. Gervenak, Executive Director, Operating, Allegheny Power Service Corporation, 800 Cabin Hill Drive, Greensburg, PA 15601. (412) 838–6835.

i. FERC Contact: James Hunter at (202) 219–2839

j. Deadline for interventions and protests: September 30, 1993

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph E1.

l. Description of Project: The Lake Lynn Hydro Station consists of: (1) A 125-foot-high, 1,000-foot-long concrete gravity type dam with a 624-foot-long spillway controlled by 26 tainter gates, each 17 feet high by 21 feet long; (2) a reservoir with a surface area of 1,700 acres and containing 72,000 acre-feet of water at full pool elevation 870 feet; (3) a log boom and trash racks at the intake facility; (4) eight 12-foot by 18-foot, gated penstocks of reinforced concrete; (5) a 72-foot by 165-foot, 68-foot-high red brick powerhouse containing four identical generating units with a total rated capacity of 51.2 megawatts; and (6) dual 800-foot-long, 138-kV transmission lines.

m. Purpose of Project: The average annual generation of the Lake Lynn project is 132.7 GWh. Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Allegheny Power Service Corporation's offices at 800 Cabin Hill Drive, Greensburg, Pennsylvania.

7 a. Type of Application: Amendment of Project Recreation Plan.

b. Project No: 3409–016.

c. Date Filed: July 7, 1993.

d. Applicant: Boyne USA, Inc.

e. Name of Project: Boyne Dam.

f. Location: Charlevoix County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Everett Kircher, President, Boyne USA Inc., P.O. Box 19, Boyne Falls, MI 49713–0019, (616) 549–2441.

i. FERC Contact: Dan Hayes, (202) 219–2660.

j. Comment Date: September 10, 1993.

k. Description of Project: Boyne USA, Inc. licensee for the Boyne Dam Project has filed an application to amend the recreation access requirements of its project license. Currently, the licensee is required to maintain access for anglers to two ten-foot-wide easement strips on either side of the project tailrace. The proposed amendment would limit the easement strips to 200 feet below the project spillway and eliminate access to the easement strips from the road. Fishermen would be required to wade up the Boyne River to reach the access easements.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

8 a. Type of Application: Exemption of Small Conduit Hydroelectric Facility (Tendered Notice).

b. Project No.: 11178–001.

c. Date filed: July 12, 1993.

d. Applicant: City of Tucson, Arizona.

e. Name of Project: City of Tucson Hydroelectric Project.

f. Location: At eleven locations within the city of Tucson's water distribution system, which gets its water from an existing U.S. Bureau of Reclamation aqueduct located west of the city, in Pima County, Arizona.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas Mundinger, Tuscon Water, City of Tucson, Arizona, P.O. Box 27210, Tuscon, Arizona 85726–7210.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Description of Project: The project would be located on the city of Tuscon's water distribution system which includes the enclosed Clearwell Reservoir and approximately 28 miles of water distribution pipeline. The project itself would consist of 11 powerhouses whose generating units have installed capacities ranging from 49 kW to 1,275 kW, for a cumulative capcity of 4,246 kW. The project excludes the existing conduits on which the powerhouses are located.

k. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO)*, as required by Sec. 106, National Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, SHPO, Indian Tribe, or person believes that the

applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (September 10, 1993)

m. The Commission's deadline for the applicant's filing of a final amendment to the application is October 12, 1993.

9 a. Type of Application: Preliminary Permit

b. Project No. 11399–000.

c. Date filed: March 25, 1993.

d. Applicant: Tumalo Irrigation District.

e. Name of Project: Bend Canal Hydroelectric Project.

f. Location: On the Deschutes River in Deschutes Oregon, near the town of Bend. T.18S., R11E. section 19, Willamette Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Elmer G. McDaniels, Manager, Secretary to the Board of Directors, Tumalo Irrigation District, 64697 Cook Avenue, Bend, Oregon 97701, (503) 382–3051.;

Donald R. Clarke, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, DC 20006, (202) 783–4141.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842.

j. Comment Date: September 30, 1993.

k. Description of Project: The proposed project would consist of: (1) The existing 258-foot-long concrete gravity overflow Tumalo Division Dam; (2) the existing 18,500-foot-long canal/pipeline; (3) a 54-inch-diameter, 500-foot-long penstock; (4) a powerhouse containing a single generating unit with a total installed capacity of 2,000 kW, producing an average annual energy output of 9,800 MWh; (5) a tailrace; and (6) a 12.5–kV, .75-mile-long transmission line tying into an existing Pacific Power and Light Company line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $50,000. No new roads will be needed for the purpose of conducting these studies.

l. Purpose of Project: Project power would be sold to a local utility or municipality.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No. 11410–000.

c. Date filed: May 3, 1993.

d. Applicant: Soldier Creek Hydro Associates.

e. Name of Project: Soldier Creek Hydroelectric Project.

f. Location: On Soldier Creek in Tooele County, Utah, near the town of Stockton. T.4S., R4W., sections 31, 32, 33, 34, 35, and 36. Salt Lake Base and Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. Gene Deveraux, 1190 North Spring Creek Place, P.O. Box 870, Springville, UT 84663–0870, (801) 489–0089

Mr. Frank Haws, 719 North 400 East, Logan, UT 84321.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842.

j. Comment Date: September 30, 1993.

k. Description of Project: The proposed project would consist of: (1) An existing reinforced concrete drop inlet structure, with an overflow wall and a sluice-bypass gate at elevation 7,420 feet, msl; (2) a 12-inch diameter, 21,000-foot-long buried penstock, presently under construction by the state and Soldier Creek Irrigation District for irrigation purposes; (3) a powerhouse containing a single generating unit with an installed capacity of 1,600 kW, producing an average annual energy output of 10,577,600 KWh; (6) a tailrace; and (7) a 2-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $35,000. No new roads will be needed for the purposes of conducting these studies.

l. Purpose of Project: Project power would be sold to a local utility or municipality.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Original License for Major Project (Tendered Notice).

b. Project No.: 11367–001.

c. Date filed: July 20, 1993.

d. Applicants: Peak Power Corporation, Kvaener Venture, Inc., Las Vegas Energy Storage Limited Partnership.

e. Name of Project: Sheep Mountain Pumped Storage, Hydroelectric Project.

f. Location: Predominantly on lands administered by the Bureau of Land Management in the Sheep Mountains, approximately 19 miles south of Las Vegas, in Clark County, Nevada. R60E, T22S to T25S.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: David Olsen, President, Peak Power Corporation, 4365 Executive Drive, Suite 900, San Diego, CA 92121, (619) 622–7800.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Description of Project: The proposed pumped storage project would consist of: (1) Five dams, ranging in height from 18 feet to 130 feet, forming a 50-acre upper reservoir; (2) a 14-foot-diameter, 730-foot-long concrete vertical shaft; (3) a 14-foot-diameter, 1,700-foot-long concrete horizontal tunnel; (4) a 1,255-foot-long steel penstock; (5) a powerhouse containing two generating units with a total installed capacity of 200 MW; (6) a 50-foot-high dam creating a 65-acre lower reservoir; (7) a 17.5-mile-long transmission line interconnecting with an existing Nevada Power Company transmission line; and (8) appurtenant facilities.

k. With this notice, we are initiating consultation with the *State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR., at § 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, and must serve a copy of the request on the applicant. (September 20, 1993)

m. The Commission's deadline for the applicant's filing of a final amendment to the application is October 20, 1993.

12 a. Type of Application: Minor License.

b. Project No.: 11426–000.

c. Date filed: July 22, 1993.

d. Applicant: T.A. and Holly S. Keck.

e. Name of Project: Blackstone Mill.

f. Location: on the Mahantango Creek, near Pillow, Dauphin County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: T.A. Keck, Blackstone Mill, P.O. Box 98, Pillow, PA 17080, (717) 758–3340.

i. FERC Contact: Mary C. Golato (202) 219–2804.

j. Deadline Date for Filing Additional Scientific Studies: 60 days from the filing date of application.

Deadline Date for Filing Protests or Motions to Intervene: 60 days from issuance date of this notice.

Deadline Date for Filing Comments, Recommendations, Terms & Conditions

and Prescriptions: 60 days from the issuance date of this notice.

Deadline Date for Filing Reply Comments: 105 days from issuance date of this notice.

k. Status of Environmental Analysis: This application is accepted for filing and is ready for environmental analysis at this time—see attached D4.

l. Description of Project: The existing project consists of the following features: (1) An existing concrete dam 100 feet wide and 2 feet high; (2) an existing impoundment with a storage capacity of 7 acre-feet and a normal water surface elevation of 470 feet mean sea level; (3) an existing powerhouse housing two existing turbine-generator units at a total installed capacity of 65 kilowatts; (4) an existing 12.5-kilovolt transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 200,000 kilowatthours. The dam is owned by T.A. Keck.

m. Purpose of Project: All project energy generated would be utilized by the applicant or sold to a utility.

n. With this notice, we are initiating consultation with the Pennsylvania State Historic Preservation Officer (Shpo), as required by § 106, National Historical Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

o. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

p. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.

q. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NW., room 3104, Washington, DC 20426, or by calling (202) 291–1371. A copy is also available for inspection and reproduction at Mr. Ted Keck, Blackstone Mill, P.O. Box 98, Pillow, PA 17080 (717) 758–3340.

13 a. Type of Application: Amendment of License.

b. Project No.: 6879–009.

c. Date Filed: March 1, 1993.

d. Applicant: Southeastern Hydro-Power, Inc.

e. Name of Project: W. Kerr Scott Project.

f. Location: On the Yadkin River, in Wilkes County, North Carolina. The project will utilize the existing U.S. Army Corps of Engineer's W. Kerr Scott Dam and Reservoir.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Charles Mierek, P.E., President, Southeastern Hydro-Power, Inc., 5250 Clifton-Glendale Road, Spartanburg, SC 29307–4618, (803) 579–4405.

i. FERC Contact: Paul Shannon, (202) 219–2866.

j. Comment Date: September 16, 1993.

k. Description of Amendment: Southeastern Hydro-Power, Inc. requests authorization to construct the project's powerhouse on the left side (looking downstream) of the existing outlet works conduit. The powerhouse was authorized to be on the right side of the conduit which extends from the project's reservoir to the Yadkin River. The licensee also proposes to terminate the powerhouse tailrace within 150 feet of the end of the existing vertical side wall of the stilling basin so that all flows from the powerhouse will enter the channel upstream of the existing fishing pier. Further, the licensee requests that the Commission delete the article 46 requirement for an instream flow study plan to determine minimum flows. Instead, the licensee proposes that all flows will pass through the powerhouse as dictated by release from the U.S. Army Corps of Engineers.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

14 a. Type of Application: Major License.

b. Project No.: 10893–001.

c. Date Filed: March 19, 1992.

d. Applicant: HY Power Energy Company.

e. Name of Project: Inglis Lock By-pass Dam.

f. Location: On the Inglis Lock By-pass Dam, Withlacoochee River, Levy County, Florida.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Robert Karow, 7008 Southwest 30th Way, Gainesville, FL 32601, (904) 336–4727.

i. FERC Contact: Charles Raabe (tag) (202) 219–2811.

j. Deadline for interventions and protests: October 4, 1993.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph D7.

l. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Inglis Lock By-pass Dam, and would consist of: (1) An intake channel with a length of approximately 175 feet and a maximum width of 143 feet; (2) a reinforced concrete powerhouse with dimensions of 115 feet by 28 feet and containing one 3.0-megawatt (MW) pit turbine and generator unit, rated at a head of 22.5 feet and a hydraulic capacity of 1,667 cubic feet per second (cfs); (3) a short tailrace lined with concrete and rip-rap; (4) a 470-foot-long, 12.47-kilovolt (kV) transmission line; (5) a substation with dimensions of 25 feet square; and (6) appurtenant equipment and facilities. The project would have an estimated annual output of 15.7 GWh.

m. Purpose of Project: Power generated would be sold to Florida Power Corporation.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, D7.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at HY Power Energy Company, 7008 Southwest 30th Way, Gainesville, Florida 32601, (904) 336–4727.

15 a. Type of Application: Preliminary Permit.

b. Project No. 11422–000.

c. Date filed: July 1, 1993.

d. Applicant: Dike Hydroelectric Partners, Inc.

e. Name of Project: Dike Hydroelectric Project.

f. Location: On the Snake River in Elmore County, Idaho near the town of Glenns Ferry. T. 5S., R.11E, section 33. T.6S., R.11E, sections 4, 9, 16, 14, 11, 12, 7, 15.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Bart M. O'Keeffe, P.O. Box 245, Byron, CA 94514, (510) 634–1550.

i. FERC Contact: Ms. Deborah Frazier-Stutely (202) 219–2842.

j. Comment Date: October 4, 1993.

k. Description of Project: The proposed project would consist of: (1) A 188-foot-high, 5900-foot-long roller compacted concrete dam with a crest elevation of 2,600 feet, msl creating; (2) a 500-acre reservoir with a storage capacity of 20,000 acre-feet and a water

surface elevation of 2,585 feet msl; (3) a 90-foot-long concrete ogee type spillway consisting of two 40-foot-high radial tainter gates, with a crest elevation of 2,500 feet msl; (4) a powerhouse adjacent to the dam containing two generating units with a total installed capacity of 73,200 kW, producing an average annual energy output of 400 GWh; (5) a switchyard; and (6) a 3,200-foot-long, 138-kV transmission line typing into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $2,500,000. No new roads will be needed for the purpose of conducting these studies.

l. Purpose of Project: Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. Type of Application: Proposed Recreation Plan update.

b. Project No: 2149–041.

c. Dated Filed: January 4, 1993.

d. Applicant: Public Utility District No. 1 of Douglas County.

e. Name of Project: Wells Project.

f. Location: Wells Reservoir area in Douglas County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Charles Robins, Supervisor of Properties, P.U.D. No. 1 of Douglas County, 1151 Valley Mall Parkway, East Wenatchee, WA 98802–4497, (509) 884–7191.

i. FERC Contact Person: Jack Hannula, (202) 219–1040.

j. Comment Date: September 20, 1993.

k. Description of Project: On January 4, 1993, Public Utility District No. 1 of Douglas County, licensee for the Wells Project, filed a Recreation Action Plan-1992 Update as required by article 51 of the license. The licensee requests Commission approval of the plan which provides for improvements to existing recreational facilities and the construction of new recreational development at the project, to include facilities in the cities of Pateros, Brewster, and Bridgeport and other locations on the reservoir. Proposed recreation development includes trails, picnic facilities, camp sites, parking, boat launches, restrooms, a basketball court, a gazebo, an interpretive display, landscaping, lighting, painting and resurfacing.

l. This notice also consists of the following standard paragraphs: B, C1, D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 11425–000.

c. Date Filed: July 20, 1993.

d. Applicant: City of Auburn, New York.

e. Name of Project: Owasco River.

f. Location: On the Owasco River within the city limits of Auburn in Cayuga County, New York.

g. Filed Pursuant to: Federal Power Act 17 U.S.C. 791(a)–825(r).

h. Contact Person: James Malone, City Manager, City of Auburn, Memorial City Hall, 24 South Street, Auburn, NY 13021–3832, (315) 253–0282.

i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.

j. Comment Date: October 4, 1993.

k. Description of Project: The proposed project would consist of four existing hydroelectric sites as follows: (1) The State Dam site owned by the City of Auburn and consisting of (a) an existing, unreinforced-concrete, gravity dam; (b) Owasco Lake having a surface area of 10.6 square miles and a storage capacity of 50,000 acre-feet; (c) a new powerhouse containing one generating unit with a rated capacity of 310 kW and an estimated annual energy production of 1,710 MWh; and, (d) a 700-foot-long transmission line; (2) the Dunn and McCarthy site owned by Monticola Associates, Inc. and consisting of (a) a concrete dam; (b) a 1,100 foot-long power canal; (c) an intake structure; (c) a 60-foot-long penstock; (d) a powerhouse containing one new generating unit with a rated capacity of 612 kW and an estimated annual energy production of 2,600 MWh; and, (e) a 100-foot-long transmission line; (3) the Aurelius site owned by the City of Auburn and consisting of (a) an existing concrete dam; (b) an existing powerhouse containing one new generating unit with a rated capacity of 360 kW and an estimated annual energy production of 1,710 MWh; and, (c) a 1-mile-long transmission line; and, (4) the Canoga site owned by Robert J. Ross and Cap Realty Corporation and consisting of (a) new 7-foot-high concrete dam; (b) a new 900-foot-long open flume; (c) a new powerhouse containing one generating unit with a rated capacity of 430 kW and an estimated annual energy production of 2,050 MWh; and, (d) a 200-foot-long transmission line. The cost of the work to be performed under the preliminary permit is estimated to be $129,000.

l. Purpose of Project: The power produced would be sold to a local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

18 a. Type of Application: Subsequent Minor License.

b. Project No.: 2347–001.

c. Date filed: December 23, 1991.

d. Applicant: Wisconsin Power and Light Company.

e. Name of Project: Janesville Central.

f. Location: On the Rock River near Janesville in Rock County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Norman E. Boys, P. O. Box 192, 222 West Washington Avenue, Madison, WI 53701–0192, (608) 252–3086.

i. FERC Contact: Ed Lee, (202) 219–2809.

j. Deadline Date: See paragraph D9. (October 4, 1993).

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The licensed project would consist of the following existing facilities: (1) A reinforced concrete and timber gated spillway; (2) a reservoir with a surface area of 548 acres at surface elevation 769.1 feet m.s.l. and a storage area of 3,675 acre feet; (3) a powerhouse containing two generating units each with a rated capacity two generating units each with a rated capacity of 250 kW; and (4) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 2,033,667 kWh.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Power and Light Company, 222 West Washington Avenue, Madison, WI 53701–0192, or by calling (608) 252–3311.

19 a. Type of Application: Minor License.

b. Project No.: 11142–000.

c. Date Filed: May 3, 1991.

d. Applicant: Consolidated Hydro Maine, Inc.

e. Name of Project: Estes Lake Dam.

f. Location: On the Mousam River, York County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791(a)–824(r).

h. Applicant Contact: Mr. Wayne E. Nelson, RR2 Box 690 H Industrial Avenue, Sanford, ME 04073, (207) 490–1980.

i. FERC Contract: Ed Lee (202) 219–2809.

j. Deadline Date: See paragraph D9. (October 4, 1993).

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The existing project consists of the following: (1) A concrete-capped cut stone dam eight to 40 feet high and 728 feet long, with a left abutment dike about six feet high and 115 feet long; (2) an impoundment with a surface area of 474 acres and a normal water surface elevation of 214 feet msl; (3) a wooden/brick and masonry powerhouse housing two hydropower units with a combined capacity of 775 kW; (4) a tailrace excavated from bedrock with cut stone sidewalls; (5) a 2,000 kVA transmission line five miles long; and (6) appurtentant facilities. The average annual energy generation is 3.8 GWh and is sold to Central Maine Power Company. The project facilities are owned by the applicant.

m. Purpose of Project: The purpose of the project is to generate electric energy for sale.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction by calling Consolidated Hydro Maine, Inc. at (207) 490–1980.

20 a. Type of Application: Subsequent License.

b. Project No.: 2417–001.

c. Date Filed: December 23, 1991.

d. Applicant: Northern States Power Company.

e. Name of Project: Hayward Hydro Project.

f. Location: On the Namakagon River in Sawyer County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Anthony G. Schuster, Vice President, Power Supply, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI, (715) 839–2621.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Deadline Date: See paragraph D9. (October 4, 1993)

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. Description of Project: The project as licensed consists of the following: (1) Three existing earthen embankments, the first 200 feet long, the second 80 feet long and the third 85 feet long, with concrete and steel sheetpile retaining walls present on the upstream and downstream ends; (2) an existing concrete over-flow spillway, approximately 120 feet long and founded on rock-filled timber cribbing, containing ten stop-log bays separated by concrete spillway piers; (3) an existing reservoir with a surface area of 247 acres and a total volume of 2,000 acre-feet at the normal maximum surface elevation of 1187.4 MSL; (4) an existing concrete intake channel, about 42 feet long with side walls approximately 12.5 feet high and a width ranging from 13 feet to 8 feet, containing (a) a steel trashrack, and (b) a headgate; (5) an existing powerhouse with a concrete substructure and a brick masonry wall superstructure, approximately 18 feet wide 24 feet long and 27.5 feet high, containing (a) a vertical Francis turbine with a hydraulic capacity of 178 cfs, manufactured by S. Morgan Smith and rated at 280 hp, and (b) a generator, manufactured by Northwestern Electric Equipment Company and rated at 168 kW; (6) and existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 1,448 MWH. The dam and existing project facilities are owned by the applicant.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Pubic Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI or by calling (715) 839–2621.

**Standard Paragraphs**

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of

application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR THE TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (September 27, 1993 for Project No. 11426–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (November 10, 1993 for Project No. 11426–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 20, 1993 for Project Nos. 2561–003 and 2514–003; October 4, 1993 for Project Nos. 2347–001, 11142–000 and 2417–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (November 2, 1993 for Project Nos. 2561–003 and 2514–003; November 16, 1993 for Project Nos. 2347–001, 11142–000 and 2417–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 3, 1993, Washington, DC.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–19029 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–13528T New Mexico-47]

**United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation**

August 3, 1993.

Take notice that on July 30, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Group underlying certain lands in the Rentz Area, Blanco Mesaverde Pool in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 4,467 acres, more or less, all of which are administered by the Bureau of Land Management. The recommended area is described as all of Sections 17–20 and 29–31 of Township 25 North, Range 3 West.

The notice of determination also contains BLM's findings that the referenced portion of the Mesaverde Group meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18913 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TA94–1–32–000]

**Colorado Interstate Gas Co.; Filing of Annual Purchased Gas Adjustment**

August 3, 1993.

Take notice that on July 30, 1993, Colorado Interstate Gas Company (CIG) filed the following proposed tariff sheets reflecting a purchased gas adjustment ("PGA") change to become effective on October 1, 1993:

Second Revised Ninth Revised Sheet No. 7.1
Second Revised Ninth Revised Sheet No. 7.2
Second Revised Ninth Revised Sheet No. 8.1
Second Revised Ninth Revised Sheet No. 8.2

CIG states that the tariff rates underlying Second Revised Ninth Revised Sheet Nos. 7.1 through 8.2 reflect a net 3.23 cent decrease in the commodity rate for the G–1, P–1, SG–1, H–1, F–1 and PS–1 Rate Schedules.

CIG states that the subject PGA filing would be mooted in part, if the Federal Energy Regulatory Commission (Commission) approves CIG's compliance filing and offer of settlement in Docket No. RS92–4–000, for the restructuring of CIG's services pursuant to Order No. 636. Such restructuring, among other things, would eliminate CIG's current PGA tariff provisions effective October 1, 1993, and provide for the recovery, as transition costs, of CIG's Account 191 deferred purchase gas costs accrued through September 30, 1993.

CIG states that it anticipates its restructuring under Order 636 will be approved by the Commission effective October 1, 1993. However, CIG notes that it is necessary to make the instant PGA filing with the Commission: (1) to comply with the CIG's currently effective tariff; and (2) to quantify the deferred purchased gas cost balance in CIG's Account 191 related to the twelve months ended May 31, 1993 that, together with additional accruals for the period June to September, 1993, would establish the level of CIG's Account 191 transition costs to be recovered pursuant to CIG's Order 636 tariff.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before August 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18911 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP93–589–000]

**Florida Gas Transmission Co. Request Under Blanket Authorization**

August 3, 1933.

Take notice that on July 28, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–589–000 a request pursuant to § 157.205 of the Commission's Regulations to operate three existing delivery point facilities initially constructed under Section 311(a) of the Natural Gas Policy Act of 1978 (NGPA) under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to operate (1) the Amoco Smith Point in Chambers County, Texas; (2) the Endevco Port Hudson Point in East Baton Rouge, Louisiana; and (3) the Corpus Christi Point in Nueces, Texas to expand the deliverability and utilize these points for the transportation of natural gas under part 284, for Subpart G service. These existing delivery points were constructed under Section 311(a) of the NGPA to provide Section 311(a) transportation services, it is indicated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18912 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. EG93–61–000]

**Hidroelectrica El Chocon S.A.; Application for Determination of Exempt Wholesale Generator Status**

August 3, 1993.

On July 29, 1993, Hidroelectrica El Chocon S.A. (El Chocon), Suipacha 268,

pisa 12 (1355), Buenos Aires, Argentina, c/o Hidroinvest S.A., filed an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

El Chocon, an Argentine corporation, will be owned in part by Hidroinvest S.A., an Argentine corporation, which is owned in part by CMS Generation S.A., also an Argentine corporation. CMS Generation S.A. is a subsidiary of CMS Enterprises Company, which is a wholly-owned subsidiary of CMS Energy Corporation.

El Chocon will hold and operate two hydroelectric generating facilities, the El Chocon and the Arroyito, on the Limay River in between the Nequen and Rio Negro Provinces, Republic of Argentina, South America. El Chocon is a 1200 MW hydroelectric plant consisting of six 200 MW turbogenerators with associated equipment and one dam. Arroyito is a 120 MW hydroelectric plant consisting of three 40 MW gensets with associated equipment and one dam.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 23, 1993, and must be served on the applicant (c/o Rodger A. Kershner, Esq., CMS Enterprises Company, Fairlane Plaza South, 330 Town Center Drive, suite 1100, Dearborn, Michigan 48126). Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary*

[FR Doc. 93–18907 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–599–000]**

## Northern Natural Gas Co.; Request Under Blanket Authorization

August 3, 1993.

Take notice that on July 30, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP93–599–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point to Hutchinson Utilities Commission (Hutchinson Utilities) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authorization to construct and operate a delivery point in McLeod County, Minnesota to deliver gas, transported by Northern, to Hutchinson Utilities for use in a new power plant. Northern estimates the peak day volumes to be 9,000 Mcf and annual volumes to be 2,520,000 Mcf. Northern states that it would also construct and operate 2.1 miles of 6-inch pipeline under § 157.208(a) of the Commission's Regulations to provide the requested transportation service to Hutchinson Utilities.

Northern asserts that the proposed delivery point is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18908 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. TQ93–3–55–000]**

## Questar Pipeline Co.; Rate Changes

August 3, 1993.

Take notice that on July 30, 1993, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Twenty-Sixth Revised Sheet No. 12, with a proposed effective date of September 1, 1993.

Questar states that the purpose of this filing is to adjust the purchased gas cost under Questar's sale-for-resale Rate Schedule CD–1 effective September 1, 1993.

Questar states that the Twenty-Sixth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.15079/Dth which is $1.19515/Dth lower than the currently effective date of $3.34594Dth. The demand base cost of purchased gas remained unchanged at $0.00000/Dth.

Questar states that a copy of the filing has been provided to Mountain Fuel Supply Company, the Utah Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–18910 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP93–587–000]**

## Texas Eastern Transmission Corp.; Request Under Blanket Authorization

August 3, 1993.

Take notice that on July 27, 1993, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed a prior notice request with the Commission in Docket No. CP93–587–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to increase the capacity of a York County, Pennsylvania, metering and regulating station in order to make natural gas deliveries to Columbia Gas of Pennsylvania (CPA), a local distribution company, under Texas Eastern's blanket certificate issued in

Docket No. CP82–535–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Texas Eastern proposes to install a 6-inch hot tap and dual 6-inch orifice meters on its 36-inch pipeline in York County in order to deliver a maximum daily quantity of 170,000 dekatherms of natural gas on an interruptible basis to CPA under Texas Eastern's FERC Rate Schedule IT–1. Texas Eastern states that the natural gas volumes it would deliver to CPA are within CPA's certificated entitlements. Texas Eastern further states that CPA would reimburse Texas Eastern for the estimated $652,000 modification cost of this proposal. Texas Eastern also states that it would modify the facilities herein without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Lois D. Cashell,

*Secretary.*

[FR Doc. 93–18909 Filed 8–6–93; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4638–2]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**OMB Responses to Agency PRA Clearance Requests**

*OMB Approvals*

EPA ICR No. 1057.06; NSPS for Stationary Sources, Sulfuric Acid Plants (subpart H); was approved 06/23/93; OMB No. 2060–0041; expires 06/30/96.

EPA ICR No. 1289.03; Wood Preservatives, Submission of Information Regarding Arsenic Exposure Levels in Wood Treatment Plants; was approved 06/23/93; OMB No. 2070–0081; expires 06/30/96.

EPA ICR No. 1080.08; National Emission Standards for Hazardous Air Pollutants, Benzene Emissions from Benzene Storage Vessels, and Coke Byproduct Recovery Plants; was approved 06/25/93; OMB No. 2060–0185; expires 06/30/96.

EPA ICR No. 1596.02; Significant New Alternatives Policy Regulations under Title VI of the Clean Air Act Amendments of 1990; was approved 06/28/93; OMB No. 2060–0226; expires 06/30/96.

EPA ICR No. 1646.01; 1993 Screener Questionnaire for the Industrial Laundries Industry; was approved 07/05/93; OMB No. 2040–0163; expires 06/30/96.

EPA ICR No. 1086.03; NSPS for Onshore Natural Gas Processing Plants/Equipment Leaks of VOC and Emissions of SO2-Reporting and Recordkeeping for subparts KKK/LLL; was approved 07/06/93; OMB No. 2060–0120; expires 07/31/96.

EPA ICR No. 1642.01; Special Data Call-in Notice to Certain Pesticide Registrants Requiring Replacement of Craven Laboratory Generated Data Previously Submitted in Support of Existing Tolerances or Registration; was approved 07/08/93; OMB No. 2070–0130; expires 07/31/96.

*OMB Disapprovals*

EPA ICR No. 1638.01; FC33 Surface Protection Listing; was disapproved by OMB 06/08/93.

EPA ICR No. 1639.01; Water Quality Guidance for the Great Lakes System; was disapproved by OMB 06/17/93.

EPA ICR 0976.06; 1993 Hazardous Waste Report; was disapproved by OMB 06/25/93.

EPA ICR No. 1520.02; Reporting and Recordkeeping for Suspended and Canceled Pesticides (proposed amendment); was disapproved by OMB 06/25/93.

Dated: August 3, 1993.

**Paul Lapsley,**

*Director, Regulatory Management Division.*

[FR Doc. 93–18970 Filed 8–6–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4680–1]

### Public Water Supply Supervision Program; Program Revision for the State of Oregon

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the State of Oregon is revising its approved State Public Water Supply Supervision Primacy Program. Oregon has adopted drinking water regulations for lead and copper. EPA has determined that these State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted September 8, 1993 to the EPA Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 8, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective September 8, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Drinking Water Section, Oregon Health Division, 800 NE. Oregon Street, Portland, Oregon 97232; and Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Wendy Marshall, EPA, Region 10, Ground Water and Drinking Water Branch, at the Seattle address given above; telephone (206) 553–1890.

Dated: July 27, 1993.

Jane S. Moore,

*Acting Regional Administrator.*

[FR Doc. 93–18976 Filed 8–6–93; 8:45 am]

BILLING CODE 6560-50-P

[FRL–4690–3]

## Louisiana; Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of tentative determination on application of Louisiana for full program adequacy determination, public hearing and public comment period.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Louisiana applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Louisiana's MSWLF application and has made a tentative determination that all portions of Louisiana's MSWLF permit program are adequate to assure compliance with the revised MSWLF Criteria. Louisiana's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has scheduled a public hearing on this determination and will hold the hearing if a sufficient number of people express interest in participating in the hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice. If a public hearing is held, it will take place on the date given below in the "**DATES**" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "**CONTACTS**" section below.

**DATES:** All comments on Louisiana's application for a determination of adequacy must be received by the close of business on September 8, 1993. If a public hearing is held, it will be scheduled for September 23, 1993 in Baton Rouge, Louisiana. State of Louisiana officials will participate in the hearing, if held by EPA.

**ADDRESSES:** Copies of Louisiana's application for adequacy determination are available during normal business hours for inspection and copying at the following addresses: Louisiana Department of Environmental Quality, 7290 Bluebonnet Drive, Baton Rouge, Louisiana, William J. Mollere, 504–765–0249; U.S. EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas, Robin Moran, 214–655–6760. Written comments should be sent to U.S. EPA Region 6, Robin Moran (6H–HW), 1445 Ross Avenue, Dallas, Texas 75202–2733.

**FOR FURTHER INFORMATION CONTACT:** Robin Moran, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, 214–655–6760.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

### B. State of Louisiana

On May 17, 1993, Louisiana submitted an application for adequacy determination. EPA has reviewed Louisiana's application and has tentatively determined that all portions of Louisiana's subtitle D program will ensure compliance with the revised Federal Criteria.

Louisiana promulgated solid waste regulations on February 20, 1993, (title 33, part VII, Solid Waste). On June 20, 1993, the State proposed a few minor

amendments to these regulations (title 33, part VIII, chapters 2, 5, and 7). These amendments are currently undergoing public comment at the State level and are expected to be finalized by September 20, 1993. The proposed amendments pertain to the following:

1. The financial assurance mechanism must provide sufficient funding for corrective action of known releases.

2. Final assurance must be provided within 120 days after the corrective action remedy is selected.

3. The daily cover requirement for industrial solid waste (Type I) may be waived by the administrative authority only if the permit owner can demonstrate that the nature of the waste is such that daily cover is not required; however, the requirement for daily cover may not be waived in a facility which receives residential or commercial solid waste (Type II).

4. Quality assurance procedures must be followed in the construction and installation of liner systems, leachate control systems, leak-detection and cover systems.

5. The permit owner must submit a new or amended closure plan and post-closure plan no later than October 9, 1993, or the date of the initial receipt of waste, whichever is later.

Louisiana's liner design requires the use of a composite liner consisting of a geomembrane liner at least 30-mil thick installed directly above and in uniform contact with a three-foot thick recompacted clay liner having a hydraulic conductivity no greater than $1x10^{-7}$ cm/sec; the use of a secondary liner is allowed below and in addition to the required composite liner, upon approval by the administrative authority. Any geomembrane liner used must be compatible with the solid waste and leachate in the unit.

EPA has tentatively determined that Louisiana's application, including the above proposed amendments, is consistent with the Federal Criteria and will make a final determination of adequacy after the amendments have been adopted by the State.

The public may submit written comments on EPA's tentative determination until September 8, 1993. Copies of Louisiana's application are available for inspection and copying at the location indicated in the "ADDRESSES" section of this notice. If there is sufficient public interest, the Agency will hold a public hearing on its tentative determination on September 23, 1993 at 10 a.m. at the Louisiana Department of Environmental Quality in Baton Rouge, Louisiana. Comments can be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

EPA will consider all public comments on its tentative determination received during the public comment period and during the public hearing, if held. Issues raised by those comments may be the basis for a determination of inadequacy for Louisiana's program. EPA's final determination notice will include a summary of the reasons for the final determination and a response to all major comments.

Louisiana's solid waste program is not enforceable on Indian lands.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

*Compliance with Executive Order 12291:* The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

*Certification Under the Regulatory Flexibility Act:* Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**Authority:** This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 30, 1993.

**Joe D. Winkle,**

*Acting Regional Administrator.*

[FR Doc. 93-18971 Filed 8-6-93; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-996-DR]

### Iowa; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Iowa, (FEMA-996-DR), dated July 9, 1993, and related determinations.

**EFFECTIVE DATE:** July 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Iowa dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

The counties of Adair, Buchanan, Buena Vista, Carroll, Cass, Clay, Dallas, Green, Hamilton, Marshall, Mills, Muscatine, Sioux, Taylor, Union, Warren, and Worth for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93-18950 Filed 8-6-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1000-DR]

### Kansas; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA-1000-DR), dated July 22, 1993, and related determinations.

**EFFECTIVE DATE:** August 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Rush and Russell counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93-18948 Filed 8-6-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA–1000–DR]

## Kansas; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

**EFFECTIVE DATE:** July 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Jefferson County for Individual Assistance. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18948 Filed 8–6–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

## Kansas; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The county of Ellsworth for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18946 Filed 8–6–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1001–DR]

## North Dakota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1001–DR), dated July 26, 1993, and related determinations.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of North Dakota dated July 26, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 26, 1993:

The counties of Benson, Grand Forks, Griggs, McLean, Mercer, Nelson, Oliver, Ramsey, Sheridan, Stark, Steele, Traill, Walsh, and Wells for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18947 Filed 8–6–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

## Wisconsin; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), dated July 2, 1993, and related determinations.

**EFFECTIVE DATE:** July 30, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Wisconsin dated July 2, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993:

The county of Outagamie for Public Assistance. (Already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**Richard W. Krimm,**

*Deputy Associate Director, State and Local Programs and Support.*

[FR Doc. 93–18951 Filed 8–6–93; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL RESERVE SYSTEM

## William R. Bullock, Sr.; Change in Bank Control Notice

## Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 30, 1993.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. William R. Bullock, Sr.*, Dardanelle, Arkansas; to acquire an additional 2.28 percent of the voting shares of Bank of Dardanelle Bancksbares, Inc., Dardanelle, Arkansas, for a total of 40.08 percent, and thereby indirectly acquire Bank of Dardanelle, Dardanelle, Arkansas.

Board of Governors of the Federal Reserve System, August 3, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18936 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

**Cardinal Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities**

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 2, 1993.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Cardinal Bancshares, Inc.*, Lexington, Kentucky; to acquire Mutual Federal Savings Bank, Somerset, Kentucky, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

*2. PNC Bank Corp, Inc.*, Pittsburgh, Pennsylvania; to acquire United Federal Bancorp, State College, Pennsylvania, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Carolina First Corporation*, Greenville, South Carolina; to acquire First Sun Mortgage Corporation, Columbia, South Carolina, and thereby engage in mortgage loan servicing operations as well as the business of originating mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

**C. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Norwest Corporation*, Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to acquire substantially all of the assets of Premium Services Corporation of Columbia, Columbia, South Carolina, devoted to the insurance premium finance business and thereby engage in making and servicing consumer and commercial loans pursuant to § 225.25(b)(1); and providing data software services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18937 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

**Edgemark Financial Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 30, 1993.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Edgemark Financial Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Edgemark Financial Services, Inc., Countryside, Illinois, in providing securities brokerage services in connection with investment advisory services pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y.

*2. Erie Bancorp, Inc.*, Erie, Illinois; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 3, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18939 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

**Grupo Financiero Prime Internacional S.A. de C.V., Cuauhtemoc, Mexico; Application to Engage in Nonbanking Activities**

Grupo Financiero Prime Internacional S.A. de C.V., Cuauhtemoc, Mexico (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to acquire 100 percent of the voting shares of IRC Investments Inc., Rowayton, Connecticut (Company), and thereby engage in the following securities-related activities:

(1) Providing securities brokerage services and acting as an investment or

financial advisor, both separately and on a combined basis;

(2) Buying and selling in secondary market trading all types of securities on the order of investors as a "riskless principal";

(3) Acting as adviser in leasing real or personal property;

(4) Providing foreign exchange advisory services; and

(5) Arranging commercial real estate equity financing and providing related advisory services.

Applicant would conduct the proposed activities throughout the United States and the world. Applicant does not presently engage, either directly or indirectly, in any nonbanking activities in the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806, January 5, 1984.

The Board has previously approved, by regulation, the proposed securities brokerage, investment and financial advisory, real and personal property leasing advisory, foreign exchange advisory, and commercial real estate financing activities. *See* 12 CFR 225.25(b)(4), (5), (14), (15), (17). The Board also has previously approved, by order, the proposed "riskless principal" activities. *See J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). Applicant also contends that the Board has previously approved the proposed commercial real estate financing advisory activities. *See Southeast Banking Corporation*, 69 Federal Reserve Bulletin 564 (1983).

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition, and by allowing Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 1, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, August 3, 1993.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 93-18935 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-P

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## National Penn Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 2, 1993.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 100 percent of the voting shares of Chestnut Hill National Bank, Philadelphia, Pennsylvania.

**B. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

*1. Centura Banks, Inc.*, Rocky Mount, North Carolina; to acquire 100 percent of the voting shares of Canton Savings Bank, SSB, Canton, North Carolina.

**C. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Community Bancshares, Inc.*, Blountsville, Alabama; to acquire 100 percent of the voting shares of City and

County Bank of McMinn County, Athens, Tennessee.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Edmonson Bancshares, Inc.*, Brownsville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Edmonson County, Brownsville, Kentucky.

**E. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. First Sleepy Eye Bancorporation, Inc.*, Sioux Falls, South Dakota; to acquire 100 percent of the voting shares of First Security Bank of Benson, Benson, Minnesota, a *de novo* bank.

**F. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. Community First Bancorp, Inc.*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Laramie, Laramie, Wyoming; American National Bank of Cheyenne, Cheyenne, Wyoming; Financial Partners, Inc., Worland, Wyoming, and thereby indirectly acquire Stockgrowers State Bank, Worland, Wyoming.

**G. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Whitman Bancorporation, Inc.*, Colfax, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Whitman, Colfax, Washington.

Board of Governors of the Federal Reserve System, August 3, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-18938 Filed 8-6-93; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research

### Update of the Clinical Practice Guideline for Cataract in Adults; Management of Functional Impairment

The Agency for Health Care Policy and Research announces that it is inviting nominations of qualified individuals to serve on a panel as the co-chairperson and as panel members to update a clinical practice guideline that was released during the first quarter of 1993, Cataract in Adults: Management of Functional Impairment. Selected individuals will replace one-third of the existing panel members and expand the panel's members to disciplines not currently represented in the panel.

**Background**

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (See 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) enacted on October 13, 1992, extended the authorization of AHCPR and amended certain provisions related to the development of clinical practice guidelines. In keeping with its legislative mandates, AHCPR is arranging for the development, periodic review, and updating of clinically relevant guidelines that may be used by physicians, other health care practitioners, educators, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and clinically managed. Based on the guidelines produced, AHCPR oversees development of medical review criteria, standards of quality, and performance measures.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care;
4. Include information on risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 913 of the Act (42 U.S.C. 299b–2) describes two mechanisms through which AHCPR may arrange for development of guidelines: 1. Panels of qualified health care experts and consumers may be convened; and 2. contracts may be awarded to public and private non-profit organizations. The AHCPR has elected to use the panel process for development and updating of the clinical practice guideline for Cataract in Adults: Management of Functional Impairment.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the AHCPR Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

**Panel Nominations**

The panel that will update the guideline for Cataract in Adults: Management of Functional Impairment will assess new research in selected areas previously reviewed, review current literature on new treatments, and assess research in management of functional impairment due to cataract in adults. The panel will consist of two co-chairpersons and approximately fifteen to seventeen other members. To assist in identifying members for the panel, AHCPR is requesting recommendations from a broad range of interested individuals and organizations. To replace the expertise of the retiring members and expand representation, AHCPR is especially interested in receiving nominations of: (1) vision scientists; (2) cataract surgeons; (3) optometrists; (4) physicians representing primary care, including geriatricians, family practitioners, and internists; (5) nurses; (6) anesthesiologists and anesthetists; (7) epidemiologists who are familiar with ocular diseases or their treatments; (8) health services researchers or health economists; and (9) consumers with

pertinent experience or information, either as a patient, family member, or friend of a cataract patient. Nominees should have no substantial financial interests or professional affiliations that would significantly jeopardize the integrity of the guideline development process or final products.

This notice requests nominations of qualified individuals to serve on the panel as members or as panel co-chairpersons. The functions of the panel co-chairpersons are critical to the process of developing guidelines. Co-chairpersons provide leadership regarding methodology, literature review, panel deliberations, and preparation of the final products. Nominations for co-chairpersons and members should address the criteria specified below, which AHCPR will use in making panel selections.

- Relevant training and clinical experience;
- Demonstrated interest in quality assurance and research on management of functional impairment due to cataract in the adult;
- Commitment to the need to produce clinical guidelines;
- Recognition in the field with a record of leadership in relevant activities;
- Broad public health view of the utility of particular procedure(s) or clinical service(s);
- Demonstrated capacity to respond to consumer concerns;
- Prior experience in developing guidelines for the clinical condition in question; and
- No substantial financial interests or professional affiliations that would significantly impair the scientific integrity of the guidelines or final products.

Nominations of individuals who are from minority population groups, and individuals who have less than full-time academic appointments are encouraged.

When the panel co-chairpersons have been appointed, nominations for members of the panel will be submitted to the co-chairpersons for review and consideration. The co-chairpersons will, in turn, recommend proposed panel members to AHCPR. Appointments of the panel members will be made by the Administrator, AHCPR, after review of proposed members' qualifications and the overall composition of the panel to ensure representation of a range of background expertise and experience. In making panel selections, AHCPR will maintain, to the extent possible, a balance between individuals selected from academic settings and individuals selected without full-time academic appointments. Also, at least two other members of this panel shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in this guideline.

Individuals selected for the guideline update panel will be asked to serve from one to three years.

Nominations should indicate whether the individual is being recommended to serve as a panel co-chairperson or to serve as a panel member. The term of appointment for panel co-chairpersons is up to three years. Each nomination must include a copy of the individual's curriculum vitae or résumé, plus a statement of the rationale for the specific nomination. To be considered nominations must be received by August 30, 1993, at the following address: Mikalix and Company, Attn: David Schactman, 404 Wyman Street, suite 375, Waltham, Massachusetts 02154–1210, Phone: (617)290–0090, Fax: (617)290–0180.

### For Additional Information

Additional information on the guideline development process is contained in the AHCPR Fact Sheet, "AHCPR-Supported Clinical Practice Guidelines," dated April 1993. This document describes AHCPR's activities with respect to clinical practice guidelines, including the process and criteria for selecting panels. This document may be obtained from the AHCPR Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; or call Toll-Free: 1–800–358–9295.

Also, information can be obtained by contacting Kathleen A. McCormick, Ph.D., R.N., Director, Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, 6000 Executive Boulevard, suite 310, Rockville, Maryland 20852.

Dated: July 29, 1993.

J. Jarrett Clinton,

*Administrator.*

[FR Doc. 93–18892 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–90–U

## Agency for Health Care Policy and Research; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during August 1993:

*Name*: Subcommittee on AHCPR Clinical Practice Guidelines: Screening for Colorectal Cancer.

*Date and Time*: August 17–18, 1993, 9 a.m.

*Place*: Executive Office Center, 2101 E. Jefferson Street, suite 603, Conference Room, Rockville, MD 20852.

This meeting will be closed to the public.

*Purpose*: The Subcommittee's charge is to provide, on behalf of the Office of the Forum for Quality and Effectiveness in Health Care, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this contract is to develop and update clinical practice guidelines and to develop medical review criteria, standards of practice, and performance measures on screening for colorectal cancer.

*Agenda*: The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Barbara Fleming, M.D., Ph.D., Office of the Forum for Quality and Effectiveness in Health Care, Agency for Health Care Policy and Research, Willco Building, suite 310, 6000 Executive Blvd., Rockville, MD 20852, (301) 594–4015.

Note: Due to unforeseen circumstances, arrangements for this meeting were delayed. Consequently, more timely notification was not possible.

Dated: July 28, 1993.

J. Jarrett Clinton,

*Administrator.*

[FR Doc. 93–18891 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–90–U

## Agency for Toxic Substances and Disease Registry

[Program Announcement Number 407]

## Health Activities Recommendation Panel Site-Specific Health Activities

### Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement/grant program to conduct site-specific health activities related to human exposure to hazardous substances at hazardous waste sites or releases. The activities

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will be conducted in communities near hazardous waste sites for which ATSDR (or a state under cooperative agreement) has prepared a preliminary public health assessment, public health assessment, public health advisory, or health consultation, and Health Activities Recommendation Panel (HARP) has determined that specific public health actions are warranted. Emphasis will be given to the urgent Public Health Concern and Public Health Concern/Hazard sites listed in Appendix A.

Note: This announcement replaces a previously announced initiative, Program Announcement No. 230—State Health Departments and Public Health Agencies to Conduct Site-Specific Health Activities, which was published in the Federal Register on June 8, 1992, [57 FR 24500].

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

**Authority**

This program is authorized in sections 104(i) (7) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986 [42 U.S.C. 9604(i) (7) and (15)].

**Eligible Applicants**

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments. State organizations, including state universities, must establish that they meet their respective state's legislature definition of a state entity or political subdivision to be considered an eligible applicant.

**Availability of Funds**

Approximately $750,000 is expected to be available in FY 1994 to fund an estimated 10 awards. It is expected that the awards will range from $50,000 to $100,000. Awards are funded for a 12-month budget period within a project period of up to 2 years.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Purpose**

The purpose of the program is to assist public health agencies in conducting site-specific health activities recommended by HARP to assess the public health impact of human exposure to hazardous substances in communities located near hazardous waste sites or releases.

**Program Requirements**

Applicants *must* specify the type of award for which they are applying, either grant or cooperative agreement. These two types of Federal assistance are explained below.

*A. Grants*

In a grant, the applicant will be required to conduct the proposed study without substantial programmatic involvement from the funding agency. Therefore, the grantee's application should be presented in a manner that demonstrates the applicant's ability to conduct the study. Applications should include a protocol which will undergo scientific peer review as required by ATSDR. The applicant's protocol should contain consent forms and questionnaires, baseline morbidity and mortality information, procedures for collecting biological and environmental specimens and for conducting laboratory analysis of the test specimens, statistical and epidemiologic analysis of the study information, and a description of the safeguards for protecting the confidentiality of individuals on whom data are collected. The applicant must include in the application a methodology for ongoing community interaction/involvement.

By comparison, the activities of the recipient and the ATSDR relating to a cooperative agreement are different and are described in paragraph B.

*B. Cooperative Agreements*

In a cooperative agreement, the funding agency will assist the collaborator in conducting the study. The application should be presented in a manner that demonstrates the applicant's ability to address the health study in a collaborative manner with the funding agency.

The cooperative activities of the recipient agency and the funding agency are:

*1. Recipient Activities*

a. Recipient will develop a protocol; and conduct the recommended study. This protocol will undergo scientific peer review as required by ATSDR.

b. Recipient is required to provide proof by citing a state code or regulation or other state pronouncement under authority of law, that medical information obtained pursuant to the agreement will be protected from disclosure when the consent of the individual to release identifying information is not obtained.

c. Recipient will develop a mechanism for ongoing interaction with the affected community.

*2. ATSDR Activities*

a. ATSDR will provide assistance in both the planning and implementation phases of the field work called for under the study protocol.

b. ATSDR will provide consultation and assist in monitoring the data and specimen collection.

c. ATSDR will participate in the study analysis.

d. ATSDR will collaborate in interpreting the study findings.

e. ATSDR will conduct technical and peer review.

**Evaluation Criteria**

The review for scientific and technical merit by an objective review group will be based on the following criteria; however, grant applications and cooperative agreement applications will be given separate consideration:

*A. Scientific and Technical Review Criteria of New Applications*

**1. Proposed Program—50%**

The extent to which the applicant's proposal and protocol addresses (a) the study as recommended by HARP; (b) the approach, feasibility, adequacy, and rationale of the proposed project design; (c) the technical merit of the proposed project, including the degree to which the project can be expected to yield results that meet the program objective as described in the Purpose section of this announcement and the technical merit of the methods and procedures (including quality assurance and quality control procedures) for the proposed project; (d) the proposed project timeline, including clearly established project objectives for which progress toward attainment can and will be measured; (e) the proposed community involvement strategy; and (f) the proposed method to disseminate the results to state and local public health officials, community residents, and

other concerned individuals and organizations.

**2. Program Personnel—30%**

The extent to which the proposal has described the (a) qualifications, experience, and commitment of the principal investigator (or project director) and his/her ability to devote adequate time and effort to provide effective leadership, and (b) the competence of associates to accomplish the proposed activity, their commitment, and time they will devote.

**3. Applicant Capability and Coordination Efforts—20%**

The extent to which the proposal has described (a) the capability of the applicant's administrative structure to foster successful scientific and administrative management of a study; (b) the capability of the applicant to demonstrate an appropriate plan for interaction with the community; and (c) the suitability of facilities and equipment available or to be purchased for the project.

**4. Program Budget—(Not Scored)**

The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement/grant funds.

*B. Review of Continuation Applications*

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;
2. Objectives for the new budget period are realistic, specific, and measurable;
3. Proposed changes in described objectives, methods of operation, need for grant support, and/or evaluation procedures will lead to achievement of project objectives; and
4. The budget is clearly justified and consistent with the intended use of grant/cooperative agreement funds.

*Executive Order 12372*

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and to receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

*Public Health System Reporting Requirements*

This program is not subject to the Public Health System Reporting Requirements.

*Catalog of Federal Domestic Assistance Number*

The Catalog of Federal Domestic Assistance Number is 93.161, Health Programs for Toxic Substances and Disease Registry.

**Other Requirements**

*A. Protection of Human Subjects*

This program requires research on human subjects, therefore, all applicants must comply with Pub. L. 42 U.S.C. 289 and Department of Health and Human Services regulations 45 CFR Part 46 regarding the protection of human subjects. Assurances must be provided that the project or activity will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

*B. Animal Welfare*

If the proposal involves research on animals, the applicant must comply with the "PHS Policy Statement on Humane Care on use of Laboratory Animals by Awardee Institutions." An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office for the Protection from Research Risks at the National Institutes of Health.

*C. Cost Recovery*

The CERCLA, as amended by the SARA, provides for the recovery of costs incurred for health assessments and health effects studies at each Superfund site from potentially responsible parties. The recipient will agree to maintain an accounting system that will keep an accurate, complete, and current accounting of all financial transactions on a site-specific basis, i.e., individual time, travel, and associated cost including indirect cost, as appropriate for the site. The recipient will retain the documents and records to support these financial transactions, for possible use in a cost recovery case, for a minimum of ten (10) years after submission of a final Financial Status Report (FSR). If there is litigation, a claim, negotiation, audit, or other action involving the specific site, then the records will be maintained until resolution of all issues on the specific site.

*D. Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*E. Third Party Agreements*

Project activities which are approved for contracting pursuant to the prior approval provisions shall be formalized in a written agreement that clearly establishes the relationship between the recipient of the grant or cooperative agreement and the third party.

The written agreement shall, at a minimum:

1. State or incorporate by reference all applicable requirements imposed on the contractors under the grant by the terms of the grant, including requirements concerning peer review and technical review as required by ATSDR, release of data, ownership of data, and the arrangement for copyright when publications, data or other copyrightable works are developed under or in the course of work under a PHS grant supported project or activity.
2. State that any copyrighted or copyrightable works shall be subject to a royalty-free, nonexclusive, and irrevocable license to the Government to reproduce, publish, or otherwise use them, and to authorize others to do so for Federal Government purposes.
3. State that whenever any work subject to this copyright policy may be developed in the course of a grant by a contractor under a grant, the written agreement (contract) must require the contractor to comply with these requirements and can in no way diminish the Government's right in that work.
4. State the activities to be performed, the time schedule for those activities, the policies and procedures to be

followed in carrying out the agreement, and the maximum amount of money for which the grantee may become liable to the third party under the agreement.

5. State that the contractor must comply with all peer review and technical review requirements.

The written agreement required shall not relieve the grantee of any part of its responsibility or accountability to PHS under the grant. The agreement shall, therefore, retain sufficient rights and control to the grantee to enable it to fulfill this responsibility.

**Application and Submission Deadlines**

The original and two copies of the application Form PHS 5161–1 must be submitted to Henry Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–13, Atlanta, Georgia 30305, in accordance with the submission schedule below.

This is a continuous announcement and the proposed timetable for receiving new applications and making awards is shown below:

| Submission deadlines new applications | Review dates | Award dates |
|---|---|---|
| September 15, 1993. | October 15, 1993. | November 30, 1993. |
| January 15, 1994. | February 15, 1994. | March 31, 1994. |
| April 15, 1994 | May 16, 1994 | June 30, 1994. |
| July 15, 1994 | August 15, 1994. | September 30, 1994. |

*A. Deadline*

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*B. Late Applications*

Applications which do not meet the criteria in A. above are considered late applications. Late applications will not be considered in the current competition and may either be returned to the applicant or held for the next review cycle.

**Where To Obtain Additional Information**

Additional information on application procedures, copies of application forms, other material, and business management assistance may be obtained from Maggie Slay, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mail Stop E–13, Atlanta, Georgia 30305, telephone (404) 842–6797. Programmatic assistance may be obtained from Dr. Jeffrey A. Lyberger, Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

Please refer to announcement number 407 when requesting information and submitting an Application.

Potential Applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 2, 1993.

**Walter R. Dowdle,**

*Deputy Administrator, Agency for Toxic Substances Disease Registry.*

**Appendix A—Urgent Public Health Concern**

No Sites Pending at Present

**Public Health Concern/Hazard**

Allied Paper, MI
American Creosote Works, Inc, FL
Artic Surplus, AK
Bayou Bonfouca, LA
Big River Mine Tailings-Deslog
Blackburn-Union Privileges Site, MA
C & D Recycling, PA
Chemical Sales, CO
Combustion Inc, LA
Cryo-Chem Inc, PA
Dublin Water, PA
E.I. Dupont, NJ
Endicott Village Wellfield, NY
Greenwood Chemical, VA
Groton Gratuity, MA
Groveland Wells, MA
Heleva Landfill, PA
Iron Horse Park, MA
Kohler Company Landfill, WI
Lord Shope Landfill, PA
Moses Lake Wellfield, WA
Nease Chemical, OH
Nutmeg Valley Road, CT
New Bedford Harbor, MA
Ottawa Radiation, IL
Petrochemical Recycl Corp/Ekotek, UT
Powell Road Landfill, OH
Prestolite Battery Site, IN
PSC Resources, MA
Roebling Steel Company
Sangamo/12 Mile Creek/Hartwell, SC
Savage Municipal Water Supply, NH
Shaffer Equipment Company, WV
Sheboygan Harbor and River, WI
Smeltertown, CO
Spickler Landfill, WI
Spiegelberg & Rasmussen Dump, MI
Stringfellow, CA
Tibbetts Road, NH
U.S. Smelter and Lead Refinery, IN
United Heckathorn, CA
United Creosoting Company, TX

**Potential/Indeterminate Public Health Threat**

Anderson Development, MI
East Helena Smelter, MT
General Electric Co/Shepherd Farm, NC
GSX, SC
Jackson Township Landfill, NJ
Lomberger Transport & Recycling Landfill, WI
Marine Shale Processors, Inc, LA
Motor Wheel, MI
Munisport Landfill, FL
Navajo-Desiderio & Navajo Brown Uranium Mine, NM
North Sea Municipal Landfill, NY
Precision Plating, CT
Reilly Tar and Chemical, IN
Welsh Road Landfill, PA

[FR Doc. 93–18919 Filed 8–6–93; 8:45 am]
BILLING CODE 4163–70–P

## Centers for Disease Control and Prevention

### National Institute for Occupational Safety and Health

**[Announcement Number 354]**

### Cooperative Agreements for Lead Poisoning Prevention With States in Collaboration With Local Health Departments Availability of Funds for Fiscal Year 1993

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement program with state departments of health and/or appropriate agencies of state government such as departments of labor or environment, to build state capacity for conducting lead poisoning prevention programs through local health departments. This cooperative agreement will assist the recipient state health, labor, or environment departments in working with or through local health departments to develop programs to prevent diseases resultant from lead exposure in small businesses.

This cooperative agreement program will significantly strengthen the public health infrastructure by demonstrating a role for local health departments in the occupational health promotion and prevention activities in coordination with state agencies.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, and Environmental Health. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

**Authority**

This program is authorized under Section 301(a) of the Public Health Service Act, [42 U.S.C. 241(a)], as amended, and the Occupational Safety and Health Act of 1970, section 20(a) [29 U.S.C. 669(a)].

**Eligible Applicants**

Assistance will be provided to the official state or territorial health departments, and/or state departments of labor or environment. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments and territories.

Note: State departments of labor and/or environment with occupational safety and health jurisdiction must apply *in collaboration with* their state or territorial health department.

Applicants must have regulations for laboratory-based reporting of blood lead levels consistent with current CDC Surveillance Guidelines (see section Where to Obtain Additional Information) and active Adult Blood Lead Epidemiology and Surveillance programs (ABLES).

**Availability of Funds**

Approximately $110,000 is available in FY 1993 to fund one to two awards. It is expected that the average award will range from $55,000 to $110,000. It is expected that the award(s) will begin on or about September 30, 1993, and are made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Purpose**

The purpose of these awards is to assist state departments with responsibilities for occupational health, in collaboration with local health departments, to develop effective models for intervention in the prevention of lead poisoning. In particular, the focus for the local health departments should be on lead-using industries covered under the OSHA Lead Standard for General Industry (29 CFR 1025.1910), such as radiator repair shops, in their localities to determine methods for effective interventions to control lead exposures in small business environments. An effective intervention strategy developed by the program will serve as a model for local health departments nationally.

**Goals**

The Lead Poisoning Prevention Program with States in Collaboration with Local Health Departments has the following goals:

1. Develop a model for intervention related to lead poisoning at the local level for small businesses;
2. Build occupational disease prevention capacity via state health departments or other appropriate agencies at the local level;
3. Design, field test, demonstrate, and evaluate the effectiveness of the intervention.

**Program Requirements**

Applicants must focus their efforts at the local health department level and on small businesses that use lead, preferably radiator repair shops, where control technology exists to limit lead exposure. Throughout the project period, recipients will work in cooperation with NIOSH towards achieving these goals.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for activities under A., below, and CDC/NIOSH will be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Develop an effective working relationship with local health department(s).
2. Revise and refine the methodology for the proposed intervention and evaluation as described in the program application.
3. Implement the revised and approved intervention and evaluation.
4. Conduct a thorough evaluation of the model program.

*B. CDC/NIOSH Activities*

1. Provide technical assistance and consultation in the implementation of the model program throughout the project period.
2. Provide assistance in the conduct of field investigations and intervention efforts, at the recipient's request.
3. Provide guidelines for evaluating the intervention activities and technical assistance for the evaluation.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

1. The clarity, feasibility, and scientific soundness of the approach. The following will be specifically considered: (30%)
   a. Who will be targeted for the intervention?
   b. How will the intervention be conducted and by whom?
   c. How will the intervention be evaluated?
   d. How and when will the data be analyzed?
2. The extent to which the proposed activities are likely to result in development and execution of a model intervention strategy to prevent and reduce occupational lead poisoning in small businesses through local health departments (as defined in the Program Requirements section.) (25%)
3. The extent to which the proposed schedule for accomplishing each of the project activities, and the methods for evaluating each activity, are clearly defined and appropriate. (15%)
4. The extent to which the proposed activities are likely to result in the use of the model program by other local health departments. (15%)
5. The extent to which the qualifications and time commitments of project personnel are clearly documented and appropriate for implementing the proposal. (10%)
6. The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies. (5%)
7. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

*Executive Order 12372 Review*

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other then federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state

process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, no later than 30 days after the deadline date for new and competing awards. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

*Public Health System Reporting Requirements*

This program is not subject to the Public Health Reporting System Requirements.

*Catalog of Federal Domestic Assistance Number*

The Catalog of Federal Domestic Assistance number is 93.283.

*Other Requirements*

Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Application Submission And Deadline*

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before August 20, 1993. The program announcement and application kit were sent to all eligible applicants on June 30, 1993.

*1. Deadline*

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*2. Late Applications*

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in either current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description and information on application procedures, an application package, and business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, (404) 842–6814.

Programmatic technical assistance may by obtained from Janie Gittleman, Ph.D, or Paul Seligman, M.D., National Institute for Occupational Safety and Health, Division of Surveillance, Hazard Evaluations, and Field Studies, Robert A. Taft Laboratory, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 841–4353.

Please refer to Announcement Number 354 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 3, 1993.

**Phillip W. Strine,**

*Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18915 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–19–P

**National Institute for Occupational Safety and Health**

**[Program Announcement Number 353]**

**Cooperative Agreement for Research, Design, and Development of Concurrent Engineering Systems and Technologies**

**Introduction**

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement to foster scientific collaboration and cooperation for scientific technologies of concurrent engineering and occupational safety and health. Concurrent engineering is defined as an integrated, systematic approach to the design of products and/or processes from conceptualization through completion. Concurrent engineering emphasizes integration of available resources, and utilizes computer-assisted, networked, multimedia, communication environments to facilitate information sharing and transfer. This cooperative agreement will significantly strengthen occupational public health research and intervention strategies by testing the feasibility of applying the principles of concurrent engineering to improving worker safety and health. In turn, the technologic practice of concurrent engineering will be enhanced through the inclusion of the principles of disease and injury safety strategies.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section Where to obtain additional information.)

**Authority**

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 [29 U.S.C. 669(a)] and sections 301 [42 U.S.C. 241] and 317 [42 U.S.C. 247(b)] of the Public Health Service Act, as amended.

**Eligible Applicants**

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide

agents or instrumentalities, and small, minority and/or women-owned businesses are eligible for this cooperative agreement.

**Availability of Funds**

Approximately $230,000 is available for FY 1993 to fund one cooperative agreement. It is expected that the award will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to 2 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting the project objectives and on the availability of funds.

**Purpose**

The purpose of this cooperative agreement is for the recipient to design, implement, and evaluate two projects which merge the scientific principles of concurrent engineering and occupational safety and health prevention efforts. The following are some examples of potential applications:

- Development and integration of real-time, on-line electronic surveillance systems including automated coding subsystems, for occupational injuries and diseases.
- Development of advanced protective equipment using novel telemetry, microelectronics, sensor, and heads-up display technologies.
- Application of virtual reality systems and simulators to aid in equipment design, testing, certification, and personnel training.
- Development and implementation of new and emerging technologies such as robotics, intelligent sensors, expert systems, and ergonomics.
- Development of advanced laboratory protocols for research design, testing, protective equipment certification, and personnel training.
- Development and implementation of project management systems.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC/NIOSH shall be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Conduct research, design, and implement concurrent engineering technologies and methodologies for two engineering design projects.
2. Develop an engineering project description or plan for each project, including: (a) a system for ascertaining the ongoing progress of the project and (b) the exact method for inclusion of OSH principles.
3. Revise and refine the design of the two projects.
4. Implement the revised and approved activity.
5. Develop a method to evaluate the degree of success of the cooperative agreement.

*B. CDC/NIOSH Activities*

1. Provide technical assistance and consultation in the implementation of the two projects in the areas of occupational safety and health.
2. Collaborate with recipient on the on-going progress and method of including OSH principles.
3. Collaborate with recipient on the design of protocols.
4. Provide assistance on the evaluation of the project.

**Evaluation Criteria**

Applications will be reviewed and evaluated according to the following criteria:

1. Demonstrated expertise in the principles and methodologies of concurrent engineering. (30%)
2. Demonstrated ability to apply concurrent engineering principles to complex problems and obtain appropriate and effective solutions. (15%)
3. Quality and completeness of the plan and approach, including a proposed time schedule, for accomplishing the activities and objectives for this cooperative agreement. (30%)
4. The qualifications and time commitment of the proposed staff, type and quality of facilities and equipment, and administrative support to be applied to the activities of this cooperative agreement. (25%)
5. Budget. (not scored)

*Executive Order 12372 Review*

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

*Public Health System Reporting Requirements*

This program is not subject to the Public Health System Reporting Requirements.

*Catalog of Federal Domestic Assistance Number*

The Catalog of Federal Domestic Assistance (CFDA) number of this program is 93.262.

*Other Requirements*

**Paperwork Reduction Act**

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Application Submission and Deadline*

The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, room 300, Atlanta, Georgia 30305, on or before September 9, 1993.

*1. Deadline*

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Services as proof of timely mailing. Private metered postmarks shall not be acceptable as proof of timely mailing.

*2. Late Applications*

Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 353. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–

6814. Programmatic technical assistance may be obtained from Richard Metzler, National Institute for Occupational Safety and Health, Division of Safety Research, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, telephone (304) 284–5722.

Please refer to Announcement Number 353 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 3, 1993.

**Phillip W. Strine,**

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18928 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–19–P

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**[Program Announcement No. 350]**

## National Institute for Occupational Safety and Health; Occupational Health; Nurses in Agricultural Communities; Notice of Availability of Funds for Fiscal Year 1993

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements for programs to prevent occupational illness and injury in workers employed in agriculture. These programs will conduct surveillance and develop intervention strategies to reduce injury and disease rates among Americans engaged in agricultural work and will develop more complete information on agricultural injury and disease problems. Nurses will be used in an effort to identify, report, and prevent certain sentinel health events related to agricultural hazards.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000 see the section Where to Obtain Additional Information.)

### Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and the Public Health Service Act section 301(a), (42 U.S.C. 241(a)), as amended.

### Eligible Applicants

Assistance will be provided only to the official health departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments.

These programs are designed to link state and territorial health departments to agricultural areas and, in some instances, specifically to local hospitals.

### Availability of Funds

Approximately $176,000 is available in FY 1993 to fund 1 to 2 awards. It is expected that the average award will be approximately $88,000, ranging from approximately $60,000 to $100,000. It is expected that the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

### Purpose

The purpose of the Occupational Health Nurses in Agricultural Communities (OHNAC) program is to conduct ongoing, responsive surveillance of agriculture-related disease and injury through the employment and placement of nurses (preferably with occupational health training) in agricultural communities. These nurses will identify and report agriculture-related disease and injury cases to the state or territorial health departments, conduct or participate in the follow-up investigations of sentinel health events, and provide instruction in local high school vocational agricultural classes and health classes. They will provide disease and injury prevention information to individuals and families at risk with the assistance of county extension agents, home economists, the state or territorial health department or other community resources when appropriate. They will also assist the local and state or territorial health department in collecting other agricultural job-related fatality, safety and health data, and in conducting community evaluations of occupational agriculture risk factors.

### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC/NIOSH shall be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Develop, implement and maintain a community-based system of reporting agricultural job-related diseases and injuries through the employment and assignment of nurses (preferably nurses with occupational health training) in agricultural locales that convey the agricultural representativeness of the state and that would most benefit from such a nurse assignee. Maintain regular supportive contact with the assignees.

2. Select targeted sentinel health incidents associated with the work that agricultural workers and their families perform: (a) Acute pesticide poisonings and dermatoses; (b) bacteria-related diarrheal diseases and tuberculosis among migrant agricultural workers and their children; (c) agricultural worksite- and farm implement-related amputations, fatalities, injuries and severe disabilities; (d) hypersensitivity pneumonitis and other acute respiratory insults; and (e) musculoskeletal disorders; and noise-induced hearing loss.

The choice of sentinel events should be affected by any prior experience with surveillance in agricultural communities, and the flexibility to respond to the recognition of new problems should be maintained.

Incident reports should be sought from emergency rooms, hospital admission and discharge summaries, physicians' offices, directly from agricultural workers (who may not seek professional health services for occupational health concerns), health department reporting records and disease registries, community hospitals, and migrant health clinics, and other community sources as appropriate. Current exposure information on machinery and equipment used by agricultural workers, including typical operating times and circumstances, may also be included.

3. Identify a suitable location for the physical assignment of a nurse, most likely in a local or county health department or community health center, an agricultural extension service office, hospital or some other community or

municipal government office which serves the needs of that agricultural community and where access to agricultural, migrant and seasonal workers, their families, and extension agents would be facilitated.

4. Provide report of incident cases and outbreaks of significant illnesses and injuries ascertained by project nurses. (Significant events could include fatalities, multiple occurrences or single occurrences affecting multiple individuals, occurrences of new or emerging problems, conditions such as organic dust toxic syndrome which are of particular importance to agriculture, and others in accordance to NIOSH guidance.)

5. Collaborate with county extension agents, agricultural workers, agricultural worksite owners, NIOSH staff, health department, and hospital emergency room, outpatient and inpatient personnel in developing a process of case follow-up with agricultural workers and families to ascertain preventable causes of illnesses and injuries leading to the development and dissemination of disease and injury prevention strategies.

6. Collaborate with the local medical community, schools, cooperative extension service, agriculture workers, agricultural worksite owners, adult and youth farmer associations, NIOSH staff, and health department personnel to provide health education and promotion that incorporates agricultural vocation classes, health classes, and other appropriate areas.

7. Evaluate the activities of the agricultural community-based nurse in terms of the altered degree of case ascertainment and the effectiveness of worksite follow-up and recommendations.

8. Develop and adhere to a timetable for planning and implementing this project.

9. Collaborate with NIOSH in: (a) Training and providing orientation for nurse assignees in occupational safety and health and taking occupational histories; (b) introducing nurse assignees to concepts in surveillance and reporting; (c) securing expertise and assistance to site nurses and local health officials to perform appropriate health screening and testing; (d) securing technical support ranging from site investigations to supplying handout literature; and (e) final evaluation of the proposed activity.

10. Transmit data in an electronic format to NIOSH.

11. Collaborate with other NIOSH-funded occupational and agricultural health and safety activities in the state or region. (These could include the Farm Family Health and Hazard Surveillance (FFHHS) project; Agricultural Health Promotion Systems (AHPS); regional Centers for Agricultural Disease and Injury Research, Education and Prevention, Cancer Control in Agriculture, the Sentinel Event Notification System for Occupational Risks (SENSOR) and the Fatality Assessment, Control and Epidemiology (FACE) program.)

The following directions are offered as guidance as to the responsibilities of the nurse assignee:

1. Identify agriculture-related fatalities, illnesses and injuries;

2. Provide liaison (i.e., gaining entry to the agricultural worksite, obtaining cooperation from local residents) to local, state or territorial health departments and/or NIOSH personnel doing site evaluations;

3. Collaborate with the local medical community, schools, county extension agents, agriculture workers, agricultural worksite owners, adult and youth farmer associations, NIOSH staff, and other health department personnel to provide outreach for health education and health promotion and prevention within agricultural regions of the state. This may be accomplished through:

a. Receiving and forwarding case reports,

b. Making worksite visits,

c. Providing instructional programs,

d. Assisting county and state or territorial health departments in data collection and community evaluation of agricultural fatalities and job-related health and safety data and risk factors,

e. Using an on-site personal computer and modem link with the state or territorial health department for reporting cases and requesting technical assistance (This will permit timely responses from health personnel and timely requests for site investigations when appropriate.),

f. Assisting in case determination and making referrals to industrial hygiene and medical specialists elsewhere including NIOSH,

g. Providing sensitive, confidential attention to reported cases, including case confirmation and determination of appropriate follow-up,

h. Assisting in the assessment and evaluation of the effectiveness of intervention methods proposed by site investigators,

i. Coordinating and assisting, when necessary, in conducting appropriate and effective evaluation of worksite factors potentially responsible for the case,

j. Preparing and distributing case summaries and recommendations to the medical, public health, academic and farming communities, and

k. Collaborating with occupational safety and health expertise available in the community, region, and state or territory from academic and medical institutions, NIOSH occupational safety and health Educational Resource Centers (ERCs), occupational health groups, local and county health departments, county extension offices, and adult and youth farm associations (e.g., the Grange, 4–H Clubs, Future Farmers of America).

*B. CDC/NIOSH Activities*

1. Provide technical assistance in all phases of the development, implementation and maintenance of these cooperative agreements, including, but not limited to, providing guidance on occupational conditions appropriate for reporting, recommending reporting guidelines, developing case reporting forms, developing and providing booklets and educational materials to be used by the nurse assignees in carrying out intervention and prevention functions, and providing NIOSH publications and other documents to nurse assignees or field location, when appropriate and needed;

2. Provide expertise and assistance to site nurses and local health officials to assist in problem identification and resolution, and provide technical support which may range from site investigation to supplying literature, depending on applicant's resources;

3. Assist in conducting field investigations and intervention efforts and responding to incident reports requiring field follow-up;

4. Provide technical assistance in evaluation of the results of the reporting, intervention and outreach activities;

5. Promote and facilitate collaboration, as appropriate, with safety and health researchers funded under other NIOSH-sponsored surveillance and agricultural initiatives; and

6. Assist in disseminating a description of the impact of community-based outreach nurses in agricultural communities.

**Evaluation Criteria**

The applications will be reviewed and evaluated according to the following criteria:

1. Proposed plan for sentinel event surveillance, including the selection of appropriate agriculture related target conditions amenable to further investigative and preventive efforts and a demonstrated ability to obtain case

reports with adequate identifiers to enable follow-up efforts. (20%)

2. Documented experience conducting timely follow-up evaluations of affected agricultural sites. (The conduct of these evaluations should include timely and appropriate epidemiologic, industrial hygiene and engineering support from state, Federal or other clearly identified sources.) (20%)

3. Demonstrated capability of the proposed staff, including project nurses, to perform surveillance, follow-up and prevention activities in agricultural communities. (Substantial in-kind time and resources should be committed to the program.) (15%)

4. Scope of plans and demonstrated ability to provide outreach to communities through, for example, schools, county extension offices, and other municipal and civic organizations. (15%)

5. Demonstrated capacity for creative collaboration and coordination with local community, state, and Federal expertise for the purposes of implementing the proposed outreach, reporting, intervention, consultation and training efforts. (10%)

6. Suitability of the geographic locations selected for the nurses' activities. (5%)

7. Proposed schedule for initiating and accomplishing the activities of the cooperative agreement. (5%)

8. Capability to provide confidential handling of individual incident reports as medical information. (5%)

9. A feasible plan to evaluate techniques for the outreach, reporting and follow-up strategies, and the overall impact of the project. (5%)

10. Extent to which the program budget is reasonable, clearly justified and consistent with the intended use of cooperative agreement funds. (The budget should indicate: (a) Anticipated costs for personnel, travel, communications and postage, equipment contracts, and miscellaneous supplies for the budget period; and (b) the applicant's and other sources of funds that will be contributed to meet those needs.) (Not Scored)

**Funding Priorities**

Higher consideration for funding will be afforded those applications received from states with current funding under the "Occupational Health and Safety Surveillance Through Health Departments and Nurses In Agricultural Communities" program. Public comment regarding funding priorities is not being solicited due to time constraints.

**Executive Order 12372 Review**

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the application deadline date. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance Number for this program is 93.262.

**Other Requirements**

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Application Submission and Deadline**

The program announcement and application kit were sent to all eligible applicants in June 1993.

**Where To Obtain Additional Information**

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 350. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E13, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6546. Programmatic technical assistance may be obtained from Eugene Fround, M.D., M.S.P.H., NIOSH, Division of Surveillance, Hazard Evaluations and Field Studies, 4676 Columbia Parkway, Mailstop R–21, Cincinnati, Ohio 45226, (513) 841–4353.

Please refer to Announcement Number 350 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238).

Dated: August 3, 1993.

**Phillip W. Strine,**

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18917 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–19–P

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[Program Announcement No. 348]

## National Institute for Occupational Safety and Health; Reducing Work-Related Musculoskeletal Disorders and Cardiovascular Diseases Among Workers in Transportation Equipment Manufacturing and Related Industries; Notice of Availability of Funds for Fiscal Year 1993

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a cooperative agreement to conduct studies to examine the prevalence and etiology of work-related musculoskeletal disorders and cardiovascular diseases among workers employed in transportation equipment manufacturing and related industries, and to develop related intervention and prevention programs. Feasibility assessments for research on occupational risk factors for

cardiovascular disorders related to occupational exposures will also be considered.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000 see the section Where to Obtain Additional Information.)

**Authority**

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669 (a)).

**Eligible Applicants**

Eligible applicants include non-profit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents or instrumentalities, and small; minority and/or women-owned businesses are eligible for this cooperative agreement.

**Availability of Funds**

Approximately $100,000 will be available in FY 1993 to fund one award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period within a project period of 1 to 3 years.

**Purpose**

One objective of the cooperative agreement is to reduce work-related musculoskeletal disorders (WMD's) of the upper and lower extremities and the back (e.g., tendinitis, arthritis and nerve compression syndromes such as carpal tunnel syndrome) among workers engaged in manufacturing transportation equipment and related industries. A second objective is to evaluate the association between work and cardiovascular disease by:

(1) Developing and conducting a study to evaluate ergonomic hazards in the work environment of workers manufacturing transportation equipment and related industries to assess the prevalence of WMD's in the same workers and in a suitable comparison group, and to develop prevention or intervention projects to reduce WMD's. The prevention or intervention projects will incorporate the concepts of worksite analysis, health and hazard surveillance, hazard control and training, and illustrate the role of employee involvement in each of these steps. This project shall include an evaluation of the success of the prevention and intervention activities; and

(2) Determining the feasibility of conducting a study to evaluate the association between occupational factors and heart disease among workers manufacturing transportation equipment and in related industries.

**Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below and CDC/NIOSH shall be responsible for B., below:

*A. Recipient Activities*

I. Develop a Study of Work-Related Musculoskeletal Disorders

The objectives of the study of work-related musculoskeletal disorders are to:

(1) Determine the extent of ergonomic hazards in the work environment of selected workers engaged in manufacturing transportation equipment and related industries and a suitable comparison group; (2) assess the prevalence of WMD's in the same workers and comparison group; and (3) implement prevention or intervention projects to reduce WMD's and evaluate their success.

1. Develop a protocol to conduct an assessment of the ergonomic hazards in selected workers, a study of the prevalence of WMD's among the workers, and a comparison group and a strategy for reducing WMD's in the workers. Such a protocol would include:

a. Provide criteria for selection of a facility or group of workers at risk and a suitable comparison group for this study.

b. Provide methods to be used to identify and quantify the ergonomic hazards to which the workers and comparison group are exposed.

c. Provide methods for determining the prevalence of WMD's in the selected population of workers at risk and the comparison group. These might include the assessment of symptoms history, physical examinations, analysis of worker compensation records, etc. (The statistical analysis should be detailed, and the methods for incorporating information gathered on the extent of exposure to ergonomic hazards should be described.); and

d. Demonstrate that the project can be carried out in a cooperative labor-management environment.

2. Complete periodic progress reports. Complete a report suitable for publication in a peer reviewed journal that describes the findings of the ergonomic hazard identification and the epidemiologic components.

3. Develop a protocol to develop and implement a demonstration project to reduce and prevent WMD's in the selected group of workers. Such a protocol would include:

a. A description of the hazards targeted for intervention; (This description will be based upon information collected from the ergonomic hazard identification and epidemiologic components.)

b. A description of the prevention or demonstration program; (The program may include engineering controls, worker ergonomic training programs, and other controls or a combination of things that reduce worker exposure to risk factors associated with WMD's. The description should also include the time line for the program and the expected results.)

c. A description of an evaluation of the effectiveness of the prevention or demonstration program; and

d. A report suitable for publication which describes the results of the prevention/demonstration program.

4. Develop a plan for dissemination of the information on hazards prevalence of WMD's and the successful intervention strategies and control measures.

II. Assess the Feasibility of Conducting a Study of Occupational Risk Factors Related to Cardiovascular Disease and Develop a Protocol

The purpose of this activity is to determine the feasibility of studying risk factors associated with cardiovascular disease among workers in transportation equipment manufacturing and related industries.

1. Develop a plan for determining the feasibility of conducting the proposed study. The plan should include:

a. An enumeration of the types of cardiovascular disease of interest;

b. An enumeration of the types of occupational exposures or factors that may be risk factors for work-related cardiovascular disease in this population;

c. An evaluation of the feasibility and statistical validity of identifying an exposed population of suitable size with the exposure of interest;

d. A description and evaluation of the types of record systems that might be useful in identifying individuals with the disorders and exposures of interest; and

e. A demonstration that the project can be carried out in a cooperative labor-management environment.

2. Prepare a report describing the feasibility of conducting the study. If considered to be feasible by both the recipient and CDC/NIOSH, develop a protocol to conduct the study. The protocol should include:

a. A description of the disorders of interest and the rationale for the study;

b. A description of the exposures of interest and the methods for determining extent and intensity of subject exposure, outcomes and potential confounding factors;

c. A description of the study design, study population, comparison population, sample size necessary to detect meaningful differences;

d. A description of the data collection methods—if an existing data set will be used, a description of the data elements;

e. A description of the statistical methods;

f. An evaluation of the strengths and limitations and feasibility of the proposed study;

g. A time line for completing the study; and

h. A budget and personnel requirements.

*B. CDC/NIOSH Activities*

1. Provide technical assistance and consultation during protocol development and study period.

2. Coordinate review of protocols and draft final reports for each study and prevention/demonstration project. (Reviewers will include NIOSH staff, other occupational health experts, unions and company representatives.)

3. Assist in the analysis and interpretation of data collected during the studies, feasibility assessments, and prevention/demonstration project.

4. Assist in the preparation of the final report and articles for publication.

**Evaluation Criteria**

Applications will be reviewed and evaluated based on the following criteria:

1. Responsiveness to the objectives of the cooperative agreement including: (a) The applicant's understanding of the objectives of the proposed cooperative agreement and, (b) the relevance of the proposal to the objectives. (15%)

2. Feasibility of meeting the proposed goals of the cooperative agreement including: (a) The proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement and, (b) the proposed method for evaluating the accomplishments. (20%)

3. Experience in delivering occupational health and ergonomics programs for the target population, particularly in a cooperative labor-management environment. (30%)

4. Experience in conducting epidemiologic studies of worker populations. (10%)

5. Technical soundness of the approach in terms of ergonomic hazard identification and control, epidemiologic study design and conduct and prevention/demonstration project. (15%)

6. The qualifications, expertise, experience and supporting bibliographies of proposed program staff, and time allotted for them to accomplish program activities, support staff available for the performance of this project, and the facilities, space and equipment available for performance of this project. (10%)

7. The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

**Executive Order 12372 Review**

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

**Public Health System Reporting Requirements**

This program is not subject to the Public Health Reporting Requirements.

**Catalog of Federal Domestic Assistance Number (CFDA)**

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before September 9, 1993.

*1. Deadline*

Applications shall be considered to have met the deadline if they are:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service as proof of timely mailing. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*2. Late Applications*

Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where To Obtain Additional Information**

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 348. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6546. Programmatic technical assistance may be obtained from Marie Haring Sweeney, Ph.D., Industrywide Studies Branch, Division of Surveillance, Hazard Evaluation and Field Studies, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, (513) 841–4207.

Please refer to Announcement Number 348 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (202) 783–3238.

Dated: August 3, 1993.

**Phillip W. Strine,**

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18918 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–19–P

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**Meetings**

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Idaho National Engineering Laboratory Public Meetings.

*Time:* 7 p.m.–9 p.m.

*Date:* Tuesday, August 24, 1993

*Place:* Ramada Inn Lewiston, 621 21st Street, Lewiston, Idaho 83501.

*Time:* 7 p.m.–9 p.m.

*Date:* Wednesday, August 25, 1993

*Place:* Best Western Canyon Springs, 1357 N. Blue Lakes Boulevard, Twin Falls, Idaho 83301.

*Time:* 7 p.m.–9 p.m.

*Date:* Thursday, August 26, 1993

*Place:* Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402.

*Status:* Open to the public. Informal, come-and-go sessions, limited only by space available.

*Purpose:* The purpose of these meetings is to provide facility-specific information, to give the public an opportunity to review example documents from specific facilities, and further enhance informal one-on-one working relationships between project team members and citizens.

Agenda items are subject to change as priorities dictate.

For More Information Contact: Leeann Denham, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, HCEH, CDC, 4770 Buford Highway, NE., (F35), Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: August 3, 1993.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–18921 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–18–M

## Prevention Centers Grant Review Committee: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call committee meeting.

*Name:* Prevention Centers Grant Review Committee.

*Time and Date:* 4 p.m.–5 p.m., August 10, 1993.

*Place:* CDC, Rhodes Building, 3005 Chamblee-Tucker Road, NE., Chamblee, Georgia 30341.

*Status:* Closed 4 p.m.–5p.m., August 10, 1993.

*Purpose:* This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of health promotion and disease prevention centers.

*Matters To Be Discussed:* The conference call meeting will entail the review of a cooperative agreement application.

For this reason the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S. Code, and the Determination of the Associate Director for Policy Coordination, CDC, pursuant to Public Law 92–463.

The public is being given less than fifteen days notice of this meeting because of problems encountered in scheduling members' availability. It is necessary to hold this meeting on an expedited basis in order to provide a timely response to meet fiscal year funding deadlines.

*Contact Person For More Information:* Diane H. Jones, Ph.D., Project Officer, Office of the Director, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE., Mailstop K–41, Atlanta, Georgia 30341–3724, telephone 404/488–5395.

Dated: August 4, 1993.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–19086 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–18–M

## Food and Drug Administration

**[Docket No. 93N–0282]**

## Drug Export; Pulmozyme® (Dornase Alfa)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Genentech, Inc., has filed an application requesting approval for the export of the biological product Pulmozyme® (dornase alfa) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

**ADDRESSES:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFM–660), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–295–9070.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Genentech Inc., 460 Point San Bruno Boulevard, South San Francisco, CA 94080, has filed an application requesting approval for the export of the biological product, Pulmozyme® (dornase alfa) to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Pulmozyme® (dornase alfa) is an enzyme inhalation solution produced by recombinant DNA technology and is indicated for chronic use for the management of cystic fibrosis. The application was received and filed in the Center for Biologics Evaluation and Research on June 14, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by August 19, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: July 1, 1993.

F. Michael Dubinsky,

*Acting Director, Office of Compliance, Center for Biologics Evaluation and Research.*

[FR Doc. 93-18690 Filed 8-6-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93D-0120]

## Formation of the Advertising and Promotional Labeling Staff (APLS), Office of Establishment Licensing and Product Surveillance, Center for Biologics Evaluation and Research; APLS Procedural Guide; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the formation of the Advertising and Promotional Labeling Staff (APLS) within the Office of Establishment Licensing and Product Surveillance (OELPS), Center for Biologics Evaluation and Research (CBER). OELPS was given responsibility for the surveillance and compliance evaluation of advertising and promotional labeling as part of CBER's reorganization, as announced in the Federal Register of November 17, 1992 (57 FR 54241). APLS began performing their review surveillance and compliance evaluation functions on January 11, 1993. The review and monitoring of biological advertising and labeling (including promotional labeling) was previously accomplished by the former Division of Product Certification, Office of Biological Product Review, CBER. CBER is also announcing the availability of the APLS Procedural Guide that details the operational review and evaluation procedures followed by the new staff and provides guidance on CBER's current interpretation of the regulation in 21 CFR 601.12 (*Changes to be reported*) with respect to promotional labeling and current practices for the review of advertising materials.

**DATES:** Comments by October 8, 1993.

**ADDRESSES:** Correspondence concerning advertising and promotion of biologic products from manufacturers or distributors of biologic products should be directed to the Advertising and Promotional Labeling Staff (HFM-202), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Submit written requests for single copies of the APLS Procedural Guide to the Congressional and Consumer Affairs Branch (HFM-12), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the APLS Procedural Guide to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one copy. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The APLS Procedural Guide and comments received are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Toni Stifano, Center for Biologics Evaluation and Research (HFM-202), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-2084.

**SUPPLEMENTARY INFORMATION:** CBER is announcing the formation of APLS within OELPS. APLS began performing their advertising surveillance and compliance evaluation functions on January 11, 1993. The review and monitoring of biological advertising was previously accomplished by the former Division of Product Certification, Office of Biological Product Review, CBER. APLS, through their surveillance and compliance evaluation functions, will monitor all advertising and promotional labeling for biologic products to help ensure they are not false or misleading, are consistent with the approved labeling, present a fair balance about the product and include proper prescribing information (disclosure).

Advertisements, examples of which are provided in § 202.1(l)(1) (21 CFR 202.1(l)(1)) of the regulations, are subject to section 502(n) of the Federal Food, Drug, and Cosmetic Act (the act). Labeling (including promotional labeling) is defined in section 201(m) of the act and § 202.1(l)(2) and subject to various other provisions in section 502 of the act, including section 502(a) and (f).

CBER is also making available the APLS Procedural Guide, which details the procedure that manufacturers and distributors should follow in submitting promotional labeling and advertising material for review by CBER and the procedures APLS will follow in the review and evaluation of this material. The APLS Procedural Guide also provides guidance on CBER's current interpretation of the regulation requiring the reporting of important proposed changes in the labeling of biological products for which a license is in effect or for which an application for license is pending (21 CFR 601.12). Previously, CBER had interpreted this regulation to require the submission, for review and approval prior to distribution, of promotional labeling materials for all biological products. CBER is now interpreting this regulation to require, as part of the product license application or significant amendment, preapproval for promotional labeling materials only for (1) any biological product for which a license is pending; (2) any licensed biological product that is under review for a new use; or (3) any newly approved biological product. (As used in the APLS Procedural Guide, "newly approved" refers to products approved within the previous 120 days.) The 120-day period permits the review of any such materials that may have been in preparation at the time of approval. CBER is basing its present interpretation on its conclusion that changes in material other than those mentioned above are less important with regard to the public health. CBER notes that its present interpretation is more consistent with practices currently followed in the Center for Drug Evaluation and Research, and is in accordance with its ongoing efforts to reduce the burden of reporting.

By eliminating the need for preapproval of promotional labeling for approved products after the 120-day period, CBER can concentrate its review on the adequacy of the labeling for new products and/or indications. However, after the 120-day period, manufacturers should continue to submit final copies of all promotional labeling materials at the time of distribution. The APLS will review and evaluate, on a selective surveillance basis, the adequacy of the promotional labeling materials for approved biological products and may contact the manufacturer regarding any deficiencies.

In addition, the APLS Procedural Guide also provides guidance on CBER's current practices for the review of advertising materials. Previously, in order to ensure consistency and uniformity across the entire launch campaign, CBER had requested that manufacturers submit, for review prior to initial publication and/or dissemination, advertising materials for all biological products. CBER will continue to request that manufacturers submit for review prior to publication and/or dissemination, only the introductory advertising campaign materials to be used in the first 120 days after approval. For materials published and/or disseminated after the 120-day

period, manufacturers should continue to submit final copies of all advertising materials at the time of publication and/or dissemination.

Manufacturers should send duplicate copies of all promotional labeling and advertising materials, with a Transmittal of Labels and Circulars (Form FDA–2567) signed by the Responsible Head, to APLS (address above) for inclusion in their CBER files. (The forms may be obtained by calling APLS at 301–594–2084.) The APLS will review and evaluate, on a selected surveillance basis, the adequacy of the promotional labeling and advertising materials for approved biological products and may contact the manufacturer regarding any deficiencies.

APLS will issue or coordinate all CBER correspondence regarding advertising or promotion, including notices of violations and warning letters. APLS will work in cooperation with CBER's Office of Compliance in requesting FDA district offices to investigate advertising and promotional activities to obtain additional information or documentation. Other compliance procedings may be conducted by CBER's Office of Compliance in cooperation with APLS.

FDA is making available the APLS Procedural Guide to help ensure that manufacturers and distributors have a clear understanding of the procedures to follow in submitting advertising and promotional material for review by CBER and the procedures APLS will follow in the review and evaluation of this material. FDA considers the procedures set out in the guide as interim. Interested persons may submit written comments on the procedural guide to the Dockets Management Branch (address above). FDA will consider such comments in determining whether revisions to the procedural guide are warranted.

Dated: August 3, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–18889 Filed 8–6–93; 8:45 am]

BILLING CODE 4160–01–F

## Health Care Financing Administration

### Privacy Act of 1974; Report of New System

**AGENCY:** Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

**ACTION:** Notice of new system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women," HHS/HCFA/ORD No. 09–70–0063. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires that only the "Routine Uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice. See "Dates" section for comment period.

**DATES:** HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, on August 2, 1993.

Comments on the routine use portion of this notice must be received by 30 days after publication in the **Federal Register** (September 8, 1993). The new system of records will become effective September 20, 1993, unless HCFA receives comments which would necessitate alterations to the system.

**ADDRESSES:** The public should address comments to Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, HCFA, Room 2–H–4 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. Comments received will be available for inspection at thislocation.

**FOR FURTHER INFORMATION CONTACT:** Edward Hutton, Division of Health Systems and Special Studies, Office of Demonstrations and Evaluations, Office of Research and Demonstrations, HCFA, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187. His telephone number is (410) 966–6616.

**SUPPLEMENTARY INFORMATION:** HCFA proposes to initiate a new system of records. This system of records is essential to evaluating the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women. This departmental initiative is in recognition of the growing number of substance abusing women of child bearing age, the concern about adverse birth outcomes because of prenatal substance abuse, and the apparent shortage of appropriate substance abuse treatment facilities for this population.

In order to analyze the effect of the demonstration on birth outcomes and on cost and utilization of health care, the evaluation will use individually identifiable data. Consequently, HCFA will establish a system of records that includes individually identifiable data.

The Medicaid demonstration projects, which are expected to provide services for 3 years, beginning approximately July 1, 1993, will seek to improve outreach and assessment; expand, integrate, and coordinate program services; and improve client case management. The overall objective of the demonstration is to increase the number of Medicaid-eligible women who receive essential prenatal care services, substance abuse treatment, and other relevant services to promote better health outcomes for themselves and their offspring.

The demonstration which is being implemented in five States: Maryland, Massachusetts, New York, South Carolina, and Washington. The award for the independent evaluation is through September 29, 1997. The system of records will include data collected from the Medicaid Management Information System of each participating state; vital records; utilization data systems maintained by providers and case managers who serve the covered population and comparison group members; a survey of demonstration participants and control group members; and substance abuse data.

In order to fulfill the objectives and complete the tasks of this contract, the contractor must have individually identifiable records. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, it will not have an unfavorable effect on the privacy or other personal or property rights of individuals.

The Privacy Act permits us to disclose information without the consent of the individual for what is known as "routine use"—that is, disclosure without consent for purposes that are compatible with the purposes for which we collected the information. The establishment of routine uses does not mandate HCFA to release records with identifiers. In fact, HCFA is extremely cautious when releasing records. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for administration and evaluation of the Medicaid program for which HCFA is responsible. The disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy or other personal or property rights of individuals.

Dated: July 29, 1993.

Bruce C. Vladeck,

*Administrator, Health Care Financing Administration.*

09-70-0063

SYSTEM NAME:

Evaluation of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system will be maintained by the demonstration evaluation contractor selected by HCFA. Contact System Manager for the location of the contractor. The system or portions of the system, may also be maintained at the HCFA Data Center. The Data Center is located at the Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207–5187.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medicaid eligibles in demonstration and in comparison sites. Areas participating in the demonstration were awarded through a competitive grant process. The demonstration is being implemented in five States: Maryland, Massachusetts, New York, South Carolina, and Washington.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information concerning individuals' names, Medicaid numbers, Social Security numbers, demographic characteristics (e.g., age, sex), substance abuse history, and utilization and cost of health care services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1115 of the Social Security Act, 42 U.S.C. 1315.

PURPOSE(S):

To provide data necessary to analyze the impact of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Subject to the provisions of 42 U.S.C. 290dd–2 and 42 CFR 2.52(a), which prescribe standards for confidentiality and disclosure of records pertaining to certain substance abuse treatment-related activities or programs, disclosure may be made to the following:

1. The evaluation contractor who will use this information to analyze the impacts of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women.

2. A congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. A HCFA contractor, for the purpose of permitting its employees to collate, analyze, aggregate, or otherwise refine or process records in this system, or to enable its employees to develop, modify, and/or manipulate automated data processing (ADP) software. Data would also be disclosed to HCFA contractors or their subcontractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system.

4. An individual or organization for a research, demonstration, evaluation, or epidemiologic project related to the prevention of disease or disability or the restoration or maintenance of health if HCFA:

a. Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

b. Determines that the research purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form, and

(2) Is of sufficient importance to warrant the risk of any adverse effect on the privacy of the individual that additional exposure of the record might bring, and

(3) Is such that there is reasonable probability that the objective for the use would be accomplished;

c. Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record, and

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient presents an adequate justification of a research or health nature for retaining such information, and

(3) Make no further use or disclosure or the record except:

(a) In emergency circumstances affecting the health or safety of any individual, or

(b) For use in another research project, under these same conditions, and with the written authorization of HCFA, or

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law.

d. Secures a written statement attesting to the recipient's understanding of and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Information will be retrieved by the Medicaid eligible woman's name, Social Security number, and Medicaid number.

SAFEGUARDS:

The contractor will maintain all records in secure storage areas accessible only to authorized employees and will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. For computerized records, safeguards established in accordance with Department standards and National Institute of Standards and Technology guidelines (e.g., security codes) will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management (IRM) Circular #10, Automated Information Systems Security Program, and HCFA Automated Information Systems (AIS) Guide, Systems Security Policies. Similar safeguards will be provided to any record transferred to HCFA central office.

RETENTION AND DISPOSAL:

Paper copies of data collection forms and magnetic tapes (or equivalent media) with identifiers will be retained in secure storage areas. Records will be retained for 2 years after the termination of the evaluation contract. The disposal techniques of degaussing will be used to strip magnetic tape (or equivalent media) of identifying names and numbers. Paper copies of records will be destroyed at this time.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Research and Demonstrations, Health Care Financing Administration, 2230 Oak Meadows

Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

NOTIFICATION PROCEDURE

Inquiries and requests for system records should be addressed to the system manager at the address indicated above. The requestor must specify the name and Social Security number or Medicaid number of the record for which an inquiry or request is made.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should reasonably specify the record contents being sought. These procedures are in accordance with Department Regulations, 45 CFR 5b.5(a)(2).

CONTESTING RECORD PROCEDURE:

Contact the system manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting the record (e.g., why it is inaccurate, irrelevant, incomplete, or not current). These procedures are in accordance with Department regulations, 45 CFR 5b.7

Note: Notification, record access, and contesting record procedures apply only to the subject individual.

RECORD SOURCE CATEGORIES:

Sources of information contained in this records system are expected to include the following: Vital records; utilization data systems maintained by case managers and providers who serve the covered population and comparison group members; a survey of demonstration participants and control group members; substance abuse data; and Medicaid claims and administrative data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–18896 Filed 8–6–93; 8:45 am]
BILLING CODE 4120–03–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–TBA), Washington, DC 20503, telephone 202–395–7340.

*Title:* Wild Exotic Bird Import Permit Requirements Contained in the Wild Bird Conservation Act of 1992.

*OMB Approval Number:* N/A.

*Abstract:* On October 23, 1992, the President signed into law the Wild Bird Conservation Act of 1992, the purposes of which include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment; and assisting wild bird conservation and management programs in countries of origin. The Act authorizes the Service to issue permits for the importation of individual birds from otherwise prohibited species. The information required on the application to issue such permits is necessary to allow the Service to determine if an applicant is qualified to import an exotic bird species for one of the four activities authorized by the statute. The four exemptions are: Scientific research, zoological breeding or display programs; cooperative breeding programs designed to promote the conservation of the species in the wild that are developed and administered by organizations meeting certain standards; and personally owned pets of individuals returning to the U.S. after being out of the country for at least a year.

*Service Form Numbers:* 3–200 (Federal Fish and Wildlife Permit Application).

*Frequency:* On occasion.

*Description of Respondents:* Individuals or households; educational institutions; businesses or other for profit; non-profit institutions; and small businesses or organizations.

*Estimated Completion Time:* 600 respondents at 4 hours = 2,400 hours; 200 respondents at 1 hour = 200 hours.

*Annual Responses:* 800 respondents.

*Annual Burden Hours:* 2,600.

*Service Clearance Officer:* Phyllis H. Cook, 703–358–1943. Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: July 28, 1993.

M. J. Spear,

*Assistant Director—Ecological Services.*

[FR Doc. 93–19006 Filed 8–6–93; 8:45 am]
BILLING CODE 4310–55–M

### Availability of a Technical/Agency Draft Recovery Plan for Chamaecrista glandulosa var. mirabilis for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for *Chamaecrista glandulosa* var. *mirabilis*. This endemic, endangered plan occurs on white silica sands in northern Puerto Rico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before October 8, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the recovery plan may obtain a copy by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303. Written comments and materials regarding the plan should be addressed to Field Supervisor, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials are available on request for public inspection, by appointment, during normal business hours at the above-mentioned address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Silander, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

SUPPLEMENTARY INFORMATION:

#### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. to help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for the downlisting or delisting of them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et*

*seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comments be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Recovery Plan is for *Chamaecrista glandulosa* var. *mirabilis*, a small shrub endemic to the white silica sands of the northern coasts of Puerto Rico. Data from herbarium collections indicate that this species was once common throughout this area of the north coast. Urban, industrial and agricultural expansion have resulted in the restriction of the species to only one area in Dorado, one in Vega Alta, and scattered populations along the southern shore of the Tortuguero Lagoon. The extraction of silica sand and fire, as well as development, continue to threaten these remaining populations.

**Public Comments Solicited**

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered for inclusion in the Recovery Plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

James P. Oland

*Field Supervisor.*

[FR Doc. 93–19023 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–55–M

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## Endangered and Threatened Wildlife and Plants; Availability of Draft Preliminary Analysis of Potential Population Reestablishment Sites for the Florida Panther

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Fish and Wildlife Service, with input form various State and Federal agencies, has initiated the process to identify and evaluate candidate population reestablishment sites for the Florida panther, *Felis concolor coryi*. The study area includes areas of the Southeastern U.S. considered to represent the historic range of the Florida panther. A draft preliminary analysis of potential reestablishment sites has been completed and is available for review and input by the public, affected Federal, State, and local agencies and other interested parties.

**DATES:** Comments from all interested parties must be received by October 8, 1993, in order to be considered in the development of the final preliminary analysis of potential population reestablishment sites.

**ADDRESSES:** Send correspondence concerning this notice to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis B. Jordan, Florida Panther Coordinator, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Florida panther represents one of this Nation's most critically endangered animals—presently consisting of a single population in south Florida estimated to number 30 to 50 adults. The Florida panther's existence is severely threatened by both rapid and gradual extinction processes. Factors of concern include habitat loss, environmental contaminants, highways, prey resources, human activities, disease, and genetic erosion. Recent population viability analysis projections indicate that under existing demographic and genetic conditions the Florida panther will likely be extinct in 25–40 years. Actual time to extinction could be accelerated significantly by the occurrence of a catastrophic population reducing event.

Extinction of the Florida panther can be avoided only if programs to enhance existing genetic conditions and expand the existing population are successful. Programs to enhance genetic conditions must include actions to preserve existing genetic diversity, manage for inbreeding problems and restore historic gene flow. Programs to expand the population must include actions to preserve habitats that are considered essential to meeting the needs of a self-sustaining population in south Florida and actions to reestablish populations elsewhere within the panther's historic range.

Because of demographic and viability factors, the existing wild population provides virtually no security against complete loss of the taxon. The lack of suitable, unoccupied habitat for recruitment and inherent density limiting factors associated with this species virtually eliminates prospects of achieving significant population growth within the existing wild population. Thus, successful population reestablishment is essential for recovery of the panther. The recovery objective of the approved recovery plan is to achieve three viable, self-sustaining populations within the panther's historic range. With only one extant population remaining, a minimum of two additional populations will have to be reestablished. The purpose of this analysis is to complete the first step in identifying and evaluating potential population reestablishment sites on a range-wide basis.

**Author**

The primary author of this notice is Dennis B. Jordan, U.S. Fish and Wildlife Service, 117 Newins-Ziegler Hall, University of Florida, Gainesville, Florida 32611–0307, telephone 904/392–1861.

**Authority**

The authority for this action is the Endangered Species Act (16 U.S.C. 1531–1544).

Dated: July 26, 1993.

James W. Pulliam, Jr.,

*Regional Director.*

[FR Doc. 93–18613 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–55–M

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## Bureau of Land Management

**[UT–920–93–4120–01]**

## Utah: Public Hearing and Call for Public Comment on Fair Market Value and Maximum Economic Recovery; Coal Lease Application UTU–68082

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Bureau of Land Management announces a public hearing on a proposed coal lease sale and requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The Federal coal lands in the vicinity of coal lease application UTU–68082 have been delineated into a coal lease tract referred to as the Crandall Canyon Tract. The tract under consideration is located in the Manti-LaSal National Forest of Emery County, Utah, approximately 15 miles northwest of

Huntington, Utah, and is described as follows:

T. 15 S., R. 6 E., SLM,
Sec. 25, S½;
Sec. 26, S½;
Sec. 27, E½SE¼;
Sec. 34, lot 1, E½NE¼, NE¼SE¼;
Sec. 35, lots 1–4, N½, N½S½.
T. 15 S., R. 7 E., SLM,
Sec. 30, lots 7–12, SE¼
Sec. 31, lots 1–12 NE¼, N½SE¼, SW¼SE¼.
T. 16 S., R. 6 E., SLM,
Sec. 1, lots 1–12, SW¼
Sec. 3, lot 1, SE¼NE¼, E½SE¼.
T. 16 S., R. 7 E., SLM,
Sec. 6, lots 2–4, SW¼NE¼.
Containing 3,384.02 acres more or less.

One economically minable coal bed (the Hiawatha) is found in this tract. The Hiawatha seam average 8 feet in thickness in this area. This tract contains an estimated 18 million tons of recoverable, high-volatile C bituminous coal. Coal quality in the seam, on an as received basis, is as follows: 12,790 BTU/lb. 4.08 percent moisture, 0.63 percent sulfur, and 8.75 percent ash, 45.31 percent fixed carbon, and 42.45 percent volatile matter.

The public is invited to the hearing to make public comment and also to submit written comments on the fair market value and the maximum economic recovery of the tract.

**SUPPLEMENTARY INFORMATION:** In accordance with Federal coal management regulations 43 CFR parts 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining the proposed lease. Not less than 30 days prior to the publication of a notice of sale, the Secretary shall solicit public comments on fair market value appraisal and maximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the mentioned address during regular business hours (8 a.m. to 4 p.m.) Monday through Friday.

Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.
2. The mining method or methods which would achieve maximum economic recovery of the coal including specification of seams to be mined and the most desirable timing and rate of production.
3. The quantity of coal.
4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated, on a realistic incremental basis, in relation to the existing mine to which it has the greatest value.
5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a port ion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit).
6. The configuration of any larger mining unit of which the tract may be a part.
7. Restrictions to mining which may affect coal recovery.
8. The price that the mined coal would bring when sold.
9. Costs include mining and reclamation of producing the coal and tons of production.
10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given.
11. Depreciation and other tax accounting factors.
12. The value of any surface estate where held privately.
13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.
14. Any comparable sales data of similar coal lands.

Coal values developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

**DATES:** The public hearing will be held August 31, 1993, and comments on fair market value and maximum economic recovery must be received by September 30, 1993.

**ADDRESSES:** For more complete data on this tract, please contact Max Nielson, 801–539–4038, Bureau of Land Management, Utah State Office, PO Box 45155, 324 South State Street, Salt Lake City, Utah 84145–0155.

The public hearing will be held at the Emery County Courthouse, 2nd Floor, Conference Room, 95 East Main Street, Castledale, Utah, at 7 p.m.

**FOR FURTHER INFORMATION CONTACT:** Max Nielson, 801–539–4038.

**James M. Parker,**
*Utah State Director.*

[FR Doc. 93–18906 Filed 8–6–93; 8:45 am]
BILLING CODE 4310–DQ–M

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**[CO–920–93–4110–03; COC54297]**

## Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC54297, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: July 27, 1993.

**Janet Budzilek,**
*Chief, Fluid Minerals Adjudication Section.*

[FR Doc. 93–19024 Filed 8–6–93; 8:45 am]
BILLING CODE 4310–JB–M

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**[CO–920–93–4110–03; COC54291]**

## Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC54291, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from January 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and

16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective January 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239–3783.

Dated: July 27, 1993.

**Janet Budzilek,**

*Chief, Fluid Minerals Adjudication Section.*

[FR Doc. 93–19025 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–JB–M

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**[AZ–050–03–4210–05; AZA 27798 and AZA 27835]**

## Realty Action, Recreation and Public Purposes Act Classification; La Paz County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following public lands in La Paz County, Arizona have been examined and found suitable for classification for lease or conveyance to the La Paz County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The La Paz County Board of Supervisors propose to use the following lands for a shooting range.

**Gila and Salt River Meridian, Arizona**

T. 7 N., R. 16 W.,
Sec. 31, Lots 2, 3, SE¼NW¼, NE¼SW¼ (within);
T. 7 N., R. 17 W.,
Sec. 36, SE¼NE¼, NE¼SE¼ (within);
Containing 81.50 acres, more or less.

The La Paz County Board of Supervisors propose to use the following lands for a community park.

**Gila and Salt River Meridian, Arizona**

T. 7 N., R. 16 W.,
Sec. 22, SE¼SW¼ (within);
Sec. 27, NE¼NW¼ (within);
Containing 80.00 acres, more or less.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the current Bureau of Land Management land use planning and would be in the public interest. The lease/patent, when issued will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. An easement for streets, roads, and utilities in accordance with the transportation plan for La Paz County.

Detailed information concerning this action is available for review at the Bureau of Land Management, Yuma District, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

**DATES:** Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period until September 23, 1993, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

**SUPPLEMENTARY INFORMATION:** Interested parties may submit comments involving the suitability of the lands for the shooting range or community park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Interested parties may submit comments regarding the specific use proposed in the application and plan of developments, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a shooting range or community park.

**EFFECTIVE DATE:** Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective October 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Realty Specialist Karen Vercauteren, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, telephone (602) 855–8017.

Dated: July 26, 1993.

**Michael A. Taylor,**

*Acting District Manager.*

[FR Doc. 93–19021 Filed 8–6–93; 8:45 am]

BILLING CODE 4310–32–M

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**[AZ–050–03–4210–05; CAAZCA 19694]**

## Noncompetitive Sale of Public Lands in San Bernardino County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management has determined that the following described land is suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at not less than fair market value.

**San Bernardino Meridian, California**

T. 9 N., R. 22 E.,
Sec. 13, Lot 11.
Containing 0.07 acre.

**DATES:** Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws. For a period until September 23, 1993 interested persons may submit comments regarding the proposed sale of the land to the Area Manager, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406. The land will not be offered for sale until October 8, 1993. On August 9, 1993, the public land described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws. The segregative effect will end upon issuance of the patent or May 6, 1994, whichever is first.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management proposes to sell the surface and subsurface estates of the above-described land to Donald A. and/or Peggy Q. Lewis to resolve a longstanding inadvertent trespass.

Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required

to pay a $50 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation for the United States:

1. Reservation to the United States of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

**EFFECTIVE DATE:** Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior effective October 8, 1993.

**FOR FURTHER INFORMATION CONTACT:** Debbie Rowland, Realty Specialist, Havasu Resource Area Office, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86406, telephone (602) 855–8017.

Dated: July 26, 1993.

**Michael A. Taylor,**

*Acting District Manager.*

[FR Doc. 93–19022 Filed 8–6–93; 8:45 am]

BILLING CODE 4310-32-M

## Minerals Management Service

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (101–0046); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

*Title:* Well Summary Report, Form MMS–125

OMB approval number: 1010–0046

*Abstract:* Respondents submit Form MMS–125 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

*Bureau form number:* Form MMS–125

*Frequency:* On occasion

*Description of respondents:* OCS oil, gas, and sulphur lessees

*Estimated completion time:* 1 hour

*Annual responses:* 2,579

*Annual burden hours:* 2,579

*Bureau Clearance Officer:* Arthur Quintana, (703) 787–1239.

Dated: June 14, 1993.

**Henry G. Bartholomew,**

*Deputy Associate Director for Operations and Safety Management.*

[FR Doc. 93–19009 Filed 8–6–93; 8:45 am]

BILLING CODE 4310-MR-M

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0045); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

*Title:* Sundry Notices and Reports on Wells, Form MMS–124.

*OMB approval number:* 1010–0045.

*Abstract:* Respondents submit Form MMS–124 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials, and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations, protection of the human, marine, and coastal environments, conservation of the natural resources in the OCS, prevention of waste, and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

*Bureau form number:* Form MMS–124.

*Frequency:* On occasion.

*Description of respondents:* Outer Continental Shelf oil, gas, and sulphur lessees.

*Estimated completion time:* 1 hour.

*Annual responses:* 8,820.

*Annual burden hours:* 8,820.

*Bureau Clearance Officer:* Arthur Quintana, (703) 787–1239.

Dated: June 14, 1993.

**Henry G. Bartholomew,**

*Deputy Associate Director for Operations and Safety Management.*

[FR Doc. 93–19010 Filed 8–6–93; 8:45 am]

BILLING CODE 4310-MR-M

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0044); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

*Title:* Application for Permit to Drill, Form MMS–123

*OMB approval number:* 1010–0044

*Abstract:* Respondents submit Form MMS–123 to the Minerals Management Service's (MMS) District Supervisors to be evaluated and approved or disapproved for the adequacy of the equipment, materials,

and/or procedures which the lessee plans to use to safely perform drilling, well-completion, well-workover, and well-abandonment operations.

This form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil, gas, and sulphur operations in the OCS.

*Bureau form number:* Form MMS–123
*Frequency:* On occasion
*Description of respondents:* OCS oil, gas, and sulphur lessees
*Estimated completion time:* 1.5 hours
*Annual responses:* 1,307
*Annual burden hours:* 1,555
*Bureau Clearance Officer:* Arthur Quintana, (703) 787–1239

Dated: June 14, 1993.

**Henry G. Bartholomew,**

*Deputy Associate Director for Operations and Safety Management.*

[FR Doc. 93–19014 Filed 8–6–93; 8:45 am]

BILLING CODE 4310-MR-M

## Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–0017); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

*Title:* Semiannual Well Test Report, Form MMS–128
*OMB approval number:* 1010–0017
*Abstract:* Respondents submit Form MMS–128 to the Minerals Management Service's (MMS) Regional Supervisors so they can evaluate the results of well tests to ascertain if reservoirs are being depleted in a manner that will lead to the greatest ultimate recovery of hydrocarbons. The form is designed to present current well data on a semiannual basis to permit the updating of permissible producing rates and provide the basis for estimates of currently remaining recoverable gas reserves.
*Bureau form number:* Form MMS–128
*Frequency:* Semiannual
*Description of respondents:* Outer Continental Shelf oil and gas lessees
*Estimated completion time:* 2 hours
*Annual responses:* 1,540
*Annual burden hours:* 3,080
*Bureau Clearance Officer:* Arthur Quintana, (703) 787–1239

Dated: June 14, 1993.

**Henry G. Bartholomew,**

*Deputy Associate Director for Operations and Safety Management.*

[FR Doc. 93–19015 Filed 8–6–93; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

## Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Nancy Sipes, (202) 927–5040. Comments regarding this information collection should be addressed to Nancy Sipes, Interstate Commerce Commission, room 4136, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

*Type of Clearance:* Extension without change of a currently approved form.
*Bureau/Office:* Office of Economics
*Title of Form:* Class I Quarterly and Annual Report of Motor Carriers of Passengers.
*OMB Form Number:* 3120–0021
*Agency Form Number:* MP–1
*Frequency:* Quarterly and Annually
*No. of Respondents:* 30
*Total Burden Hours:* 450

*Type of Clearance:* Extension without change of a currently approved form.
*Bureau/Office:* Office of Economics
*Title of Form:* Uniform System of Accounts—Railroads.
*OMB Form Number:* 3120–0107
*Agency Form Number:* None
*Frequency:* Recordkeeping Requirement
*No. of Respondents:* 13
*Total Burden Hours:* 17,160

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18999 Filed 8–6–93; 8:45 am]

BILLING CODE 7035-01-M

[No. 40887]

## Range Tariffs of All Motor Common Carriers—Show Cause Proceeding

**AGENCY:** Interstate Commerce Commission (ICC).

**ACTION:** Notice of decision.

**SUMMARY:** The ICC has concluded that tariffs that disclose neither the actual rate for a shipment nor an objective methodology by which the rate can be determined (so-called "range" tariffs) do not fully comply with the statutory rate disclosure requirements. In a notice of proposed rulemaking published in the rules section of today's issue of the Federal Register, the ICC is proposing a regulation to permit carriers to supplement range tariffs by fax filing of the actual rate applicable to individual shipments prior to transport of those shipments. This decision will have prospective effect only. Moreover, until range tariffs are ordered canceled or modified, they remain applicable to all relevant shipments. Once the ICC has completed the rulemaking proceeding, carriers will no longer be able to rely on range tariffs, standing alone, to establish transportation rates.

**FOR FURTHER INFORMATION CONTACT:** Charles Langyher (202) 927–5160, [TDD for hearing impaired (202) 927–5721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

*Decided:* August 2, 1993.

*By the Commission:* Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Commissioner Walden commented with a separate expression. Commissioner Phillips dissented with a separate expression.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–19004 Filed 8–6–93; 8:45 am]

BILLING CODE 7035-01-P

[Ex Parte No. 516]

**Railroad Revenue Adequacy—1992 Determination**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision.

**SUMMARY:** On August 6, 1993, the Commission served a decision announcing the 1992 revenue adequacy determinations for the Nation's Class I railroads. Two carriers (Illinois Central and Norfolk Southern) are found to be revenue adequate. The remaining carriers are found to be revenue inadequate.

**EFFECTIVE DATE:** This decision shall be effective on August 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ward L. Ginn, Jr. (202) 927–6187 (TDD for hearing impaired: (202) 927–5721.)

**SUPPLEMENTARY INFORMATION:** This annual determination of railroad revenue adequacy is made in accordance with the standards developed in *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), as modified in *Standards for Railroad Revenue Adequacy*, 3 I.C.C.2d 261 (1986), and *Supplemental Reporting of Consolidated Information for Revenue Adequacy Purposes*, 5 I.C.C.2d 65 (1988). It also incorporates modifications made in *Railroad Revenue Adequacy—1988 Determination*, 6 I.C.C.2d 933 (1990). This decision applies the rate of return standard to data for the year 1992.

A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment at least equal to the current cost of capital for the railroad industry for 1992, determined to be 11.4 percent in *Railroad Cost of Capital—1992*, 9 I.C.C.2d 566 (1993). Under this standard, we find that two railroads were revenue adequate in 1992, the Illinois Central Railroad Company and Norfolk Southern Corporation. Additional information is contained in the Commission decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4257. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

**Environmental and Energy Considerations**

We conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Regulatory Flexibility Analysis**

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding by the Commission. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

**Decided:** July 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–18998 Filed 8–6–93; 8:45 am]

BILLING CODE 7035-01-P

## DEPARTMENT OF JUSTICE

**Federal Bureau of Investigation**

**Uniform Crime Reporting Data Providers' Advisory Policy Board; Meeting**

The Uniform Crime Reporting (UCR) Data Providers' Advisory Policy Board will meet on September 17–18, 1993, from 9 a.m. until 5 p.m., at the Sand Dunes Resort Hotel, 74th Avenue North, Myrtle Beach, South Carolina, telephone 803–449–7441, to formulate recommendations to the Director, Federal Bureau of Investigation (FBI) on the policy, and operation of the UCR system, and related topics.

The topics to be discussed will include the progress of the National Incident Based Reporting System (NIBRS), the status of the reorganization of the FBI criminal justice information system, reorganization of the CJIS advisory groups process, and other operational matters.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning UCR or related matters with the Board before or after the meeting. Anyone wishing to address this session of the meeting should notify the Committee Management Liaison Officer, Mr. David F. Nemecek, Federal Bureau Investigation (FBI), at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name, and corporate designation, consumer affiliation, or Government designation, along with a short statement describing the topic to be addressed. A nonmember requestor will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Inspector-Deputy Assistant Director, CJIS Division, FBI, 10th and Pennsylvania Avenue, Washington, DC 20535, telephone (202) 324–8920.

**Dated:** August 1, 1993.

**David F. Nemecek,**

*Inspector-Deputy Assistant Director, Designated Federal Employee.*

[FR Doc. 93–19035 Filed 8–6–93; 8:45 am]

BILLING CODE 4410-02-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–064]

**NASA Advisory Council; Meeting**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

**DATES:** September 1, 1993, 9 a.m. to 5 p.m.; and September 2, 1993, 8:30 a.m. to noon.

**ADDRESSES:** National Aeronautics and Space Administration, Program Review Center, Ninth Floor, room 9H40, 300 E Street, SW., Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sylvia K. Kraemer, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0791.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows.

—Recent Senior Appointments
—Budget and Congressional Update
—Space Station Transition
—Program highlights
—Committee Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

**Dated:** August 3, 1993.

**Timothy M. Sullivan,**

*Advisory Committee Management Officer.*

[FR Doc. 93–18984 Filed 8–6–93; 8:45 am]

BILLING CODE 7510-01-M

VOL 58 ISS 151 AG 9 1993 UMI

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-424 and 50-425]

## Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-68 and NPF-81 issued to Georgia Power Company, et al. (the licensee) for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

The proposed amendments would revise Technical Specification (TS) 3/4.3.1, "Reactor Trip System Instrumentation," TS 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and their associated Bases to relax surveillance test intervals (STI) and allowed outage times (AOT) for engineered safety features actuation system (ESFAS) instrumentation based on Westinghouse topical report WCAP-10271 as previously approved by the NRC. The changes to TS 3/4.3.1 for the reactor trip system (RTS) are those directly associated with implementing the ESFAS relaxations as recommended by the NRC staff in previous SERs regarding WCAP-10271.

The licensee is making plant hardware and procedural modifications to perform routine testing in bypass of the ESFAS and RTS instrumentation without the use of temporary jumpers or the lifting of leads. Therefore, the licensee also proposes certain changes to the Vogtle TS to incorporate the provisions of "test in bypass."

The changes to TS 3/4.3.1 would include:

(1) Removal of the requirement to perform the RTS analog channel operational test on a staggered basis from TS Table 4.3-1 (Note 17).

(2) Addition of a new Action to allow 6 hours to restore an inoperable channel to Operable status before requiring shutdown to Hot Standby within the next 6 hours and to allow surveillance testing, provided the other channel is Operable (Action 7).

(3) Removal of table notations g and 18 and appropriate references from TS Tables 3.3-1 and 4.3-1, indicating that the ESFAS Actions are more restrictive and, therefore, applicable.

(4) Changes to Action statements to allow for "test in bypass" (Actions 2 and 6).

(5) Retention of the current Action 6 as Action 9 for the reactor coolant pump undervoltage and underfrequency trip functions.

(6) Addition of table notation f to identify those instrument functional units which have "test in bypass" capability.

The changes to TS 3/4.3.2 would include:

(1) Increase in STIs for ESFAS analog channel operational tests from once per month to once per quarter (Functional Units 1.c, 1.d, 1.e, 2.c, 4.c, 4.d, 4.e, 5.c, 6.b, 6.d, and 9.a).

(2) Increase in the time that an inoperable ESFAS channel may be maintained in an untripped condition from 1 hour to 6 hours (Action 20 and new Action 29).

(3) Removal of current Action 15 which is no longer used. Functional Units which used current Action 15 would be applied to other Actions. A new Action 15 would be created (see item 4 below) since that number is no longer used.

(4) Increase in the time that an inoperable ESFAS channel may be bypassed to allow testing of another channel in the same function from 2 hours to 4 hours (Actions 14, 17, 20, 22, and 25). New Actions 15 and 29 would be created since the semi-automatic switchover to containment emergency sump function's AOT and the loss of power to the 4.16 kv ESF bus, for a channel to be bypassed during surveillance testing, would remain at 2 hours.

(5) Revision to Actions 14, 22, and 25 to allow 6 hours to restore an inoperable Channel to Operable status before requiring shutdown to Hot Standby within the next 6 hours.

(6) Changes to Action statement 20 to allow for "test in bypass."

(7) Addition of new Action 29 to allow Startup and/or Power Operation to proceed when the number of Operable channels is one less than the Total Number of Channels provided certain conditions are met.

(8) Removal of table notation d and appropriate references to establish consistency with previous amendments on Vogtle regarding Generic Letter 87-09.

(9) Addition of table notation "##" to identify those instrument functional units which have "test in bypass" capability.

(10) Administratively increasing each Action Statement number 29 and higher in TS Tables 3.3-4 and 3.3-8 so that each Action Statement number would continue to be unique.

Proposed revisions to the Bases for TS 3/4.3.1 and 3/4.3.2 would also be made.

The licensee's submittal included Westinghouse report WCAP-13376 (Proprietary) and WCAP-13377 (Non-proprietary), Revision 2, "Bypass Test Instrumentation for the Vogtle Electric Generating Plant Units 1 and 2," to describe the design modifications associated with the capability at Vogtle to "test in bypass." The licensee notes, however, that it has elected not to implement, and has proposed no TS changes with respect to, the "test in bypass" capabilities for the reactor coolant pump undervoltage and underfrequency reactor trip functions that is described in this Westinghouse report.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1994, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.19(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

### Significant Hazards Evaluation Regarding WCAP-10271

(1) The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. The determination that the result of the proposed changes are within all acceptable criteria has been established in the SERs prepared for WCAP-10271, WCAP-10271 Supplement 1, WCAP-10271 Supplement 2 WCAP-10271 Supplement 2, Revision 1. Implementation of the proposed changes results in a slight increase in the postulated instrumentation yearly unavailability. This slight increase, which is primarily due to less frequent surveillance, results in a slight increase in core damage frequency (CDF) and public health risk. The values determined by WOG [Westinghouse

Owners Group] and presented in the WCAP for the increase in CDF were verified by Brookhaven National Laboratory (BLN) as part of an audit and sensitivity analyses for the NRC Staff. Based on the small value of the increase compared to the range of uncertainty in the CDF, the increase is considered acceptable. The proposed changes do not result in an increase in the severity or consequences of an accident previously evaluated. Implementation of the proposed changes may effect the probability of failure of the RTS, but does not alter the manner in which protection is afforded nor the manner in which limiting criteria are established.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not result in a change in the manner in which the RTS/ESFAS provides plant protection or the manner in which surveillances are performed to demonstrate operability. Therefore, a new or different kind of accident will not occur as a result of these changes.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operation are determined. The impact of reduced testing, other than as addressed above, is to allow a longer time interval over which instrument uncertainties (e.g., drift) may act. Evaluations have been performed to assure that the plant setpoints properly account for these instrument uncertainties over the longer time interval.

Implementation of the proposed changes is expected to result in an overall improvement in safety as follows:

a. Less frequent testing will result in fewer inadvertent actuations of ESFAS components.

b. Longer AOTs provide for better assessment of problems and easier repairs ultimately resulting in better equipment performance.

c. Less frequent distraction of the operator and shift supervisor to attend to and support instrumentation testing will improve the effectiveness of the operating staff in monitoring and controlling plant operation.

**Significant Hazards Evaluation Regarding "Test in Bypass"**

(1) The bypass testing capability does not involve a significant increase in the probability of consequences of an accident previously evaluated. Surveillance testing in the bypass condition will not cause any design or analysis acceptance criteria to be exceeded. The structural and functional integrity of the reactor protection and engineered safety features actuation systems, or any other plant system, is unaffected. Operability of the reactor trip and engineered safety features actuation systems is defined by the TS. These systems are part of the accident mitigation response and do not themselves act as an initiator for any transient. Therefore, the probability of occurrence is not affected.

Implementation of the bypass testing capability does not affect the integrity of the fission product barriers utilized for mitigation of radiological dose consequences as a result of an accident. Plant response as modeled in the safety analyses is unaffected. Hence, the offsite mass releases used as input to the dose calculations are unchanged from those previously assumed. Therefore, the offsite dose predictions remain within the acceptance criteria for each of the transients affected. Since it has been determined that the transient results are unaffected by surveillance testing in bypass, it is concluded that the consequences of an accident previously evaluated are not increased.

(2) Implementation of the bypass test capability does not create the possibility of a new or different kind of accident from any accident previously evaluated. Surveillance testing in bypass does not affect accident initiation sequences or response scenarios as modeled in the safety analyses. No new operating configuration is being imposed by the surveillance testing in bypass that would create a new failure scenario. In addition, no new failure modes are being created for any plant equipment. Integrity of the bypass test instrumentation has been demonstrated by design conformance to applicable industry standards, evaluation, and testing for fault condition control, failure detection, reliability, and equipment qualification. Therefore, the types of accidents defined in the Final Safety Analysis Report (FSAR) continue to represent the credible spectrum of events to be analyzed which determine safe plant operation.

(3) The margin of safety associated with reactor trip and engineered safety features functions is evident by the results of the accident analyses. Results of the safety analyses confirm that the acceptance criteria are met. The required margin of safety regulated for each affected safety analysis is maintained. These conclusions are not affected by performing surveillance testing in bypass. Thereby, the adequacy of the revised TS for bypass testing implementation to maintain the plant in a safe operating range is also confirmed, and this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be

affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-evidence witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If a final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Esquire, Troutman, Sanders, Nations Bank Plaza, suite 5200, 600 Peachtree Street NE., Atlanta, Georgia 30308–2210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 1, 1993, as supplemented July 26, 1993, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 3rd day of August 1993.

For the Nuclear Regulatory Commission.

**Darl S. Hood,**

*Project Manager, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–18930 Filed 8–6–93; 8:45 am]

BILLING CODE 7590–01–M

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[Docket No. 50–289]

## GPU Nuclear Corporation; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50 issued to GPU Nuclear Corporation (the licensee) for operation of the Three Mile Island Nuclear Station, Unit 1 located in Dauphin County, Pennsylvania.

The proposed amendment would revise the plant Technical Specifications (TS) to reflect the inclusion of gadolinia-urania in the fuel rod design description, to revise the borated water storage tank boron concentration limits, and to clarify the bases section of the TS. The proposed amendment would also place a reference in the TS to Babcock & Wilcox Topical Report BAW–10179P, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses." This report consolidates the methodologies used to establish the operating limits contained in the Core Operating Limits Report and was approved by the Commission in March 1993.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The use of gadolina-urania fuel rods has been adequately demonstrated and bench-marked by B&W. Reactivity and power distribution limits for a gadolinia-urania fueled core will be based on approved BAW–10180, Rev. 1, NEMO methodology. NRC approval of GDTACO BAW–10184P will provide an approved methodology for predicting gadolinia-urania fuel rod behavior. All previous safety and design criteria will be met.

The proposed change to reference Topical Report BAW–10179P as the description of the methodologies and safety criteria applicable to fuel mechanical, nuclear, thermal-hydraulic, and reload safety analyses, is considered administrative since this Topical Report has been reviewed and approved by NRC.

The proposed changes to the BWST boron concentration requirement and Bases change to the minimum acceptable pH value have been evaluated and determined to have no affect on the consequences of an accident previously evaluated and continue to provide sufficient margin to the solubility limit in the core during long-term cooling. Additionally, the remaining proposed Bases revisions are editorial clarifications or corrections to the Bases description and do not revise the existing methods or criteria used to establish these limits.

Therefore, the proposed changes do not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different king of accident from any previously evaluated. The use of gadolinia-uranin fuel rods has been adequately demonstrated and bench-marked by B&W.

An approved methodology will be used to predict gadolinia-urania fuel rod behavior.

The proposed change to reference approved Topical Report BAW–10179P will continue to ensure that approved methods and criteria are used to establish core operation limits.

The proposed changes to the BWST boron concentration and Bases change to the minimum acceptable pH value have no affect on the safety function of interfacing systems and components. Additionally, the remaining proposed Bases revisions are editorial clarifications or corrections to the Bases description and have no impact on the existing methods or criteria for establishing these limits.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. Existing margins of safety related to fuel rod performance are maintained with the use of gadolina-urania fuel rods, and existing approved methods and criteria for establishing core operating limits bound the predicted gadolinia-urania fuel rod behavior.

The proposed change to reference approved Topical Report BAW–10179P maintains existing margins of safety since previously approved methods and criteria are still used to establish core operating limits.

The proposed change to the BWST boron concentration results in a minimal change to the previously accepted lower pH value of the reactor building spray and sump inventory. This change has no affect on materials compatibility, criteria for environmental qualification of equipment, or the potential for boron precipitation. Additionally, the remaining proposed Bases revisions are editorial clarifications or corrections and have no potential to impact margins of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10

CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first rehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 7, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 2nd day of August 1993.

For the Nuclear Regulatory Commission.

**Ronald W. Hernan,**

*Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–18929 Filed 8–6–93; 8:45 am]

BILLING CODE 7590–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2652; Amdt. #2]**

### Illinois; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective July 27, 1993 to include Greene County in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

In addition, applications for economic injury loans from small business located in contiguous Morgan County, Illinois may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

The economic injury number of Illinois is 793200.

All other information remains the same, i.e., the termination date for filing

applications for physical damage is September 9, 1998 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1993.

Alfred E. Judd,

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–18933 Filed 8–6–93; 8:45 am]

BILLING CODE 8025–01–M

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[Declaration of Disaster Loan Area #2663; Amdt. 1]

## Missouri; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated July 21, 1993 to include the counties of Adair, Caldwell, Johnson, Livingston, Macon, Pemiscot, Pettis, Putnam, Scott, and Scotland in the State of Missouri as a disaster area as a result of damages caused by severe storms and flooding beginning on June 28, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Dunklin, Mississippi, New Madrid, Schuyler, Stoddard, and Sullivan Counties in Missouri; Mississippi County in Arkansas; and Dyer and Lake Counties in Tennessee.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 7, 1993 and for economic injury the deadline is April 11, 1994.

The economic injury numbers are 793300 for Missouri; 793700 for Arkansas; and 795600 for Tennessee.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1993.

Alfred E. Judd,

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–18934 Filed 8–6–93; 8:45 am]

BILLING CODE 8025–01–M

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## Small Business Size Standards; Environmental Services

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given that the interim size standard of $18.0 million in average annual receipts established by the Small Business Administration (SBA) for Environmental Services under Standard Industrial Classification (SIC) code 8744 has been judicially vacated.

DATES: This Notice applies immediately to all procurement requirements involving environmental services, including all those for which solicitations have been issued but award has not been made, using SIC code 8744 and the corresponding $18.0 million size standard for environmental services thereunder.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, at (202) 205–6618.

SUPPLEMENTARY INFORMATION: On January 13, 1993, SBA published an interim final rule in the **Federal Register**, 58 FR 4074, that established a size standard of $18.0 million in average annual receipts for Environmental Services. SBA determined Environmental Services to be an emerging industry which the current SIC code system and its corresponding size standards did not adequately address. As such, SBA defined a new component of SIC code 8744 to be the emerging industry of Environmental Services and established an $18.0 million size standard for it. On June 23, 1993, the United States District Court for the District of Columbia held that SBA's publication of that size standard as an interim final rule violated applicable provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, requiring notice and public comment as part of an agency's rulemaking procedures. *Analysas Corp.* v. *Bowles,* No. 93–0711, slip op. (D.D.C. June 23, 1993). Because applicable provisions of the APA were not followed, the Court vacated the $18.0 million size standard. *Id.* at 10. As a result of this decision, the $18.0 million size standard for Environmental Services under SIC code 8744 is not in effect.

Dated: July 15, 1993.

Erskine B. Bowles,

*Administrator.*

[FR Doc. 93–18932 Filed 8–6–93; 8:45 am]

BILLING CODE 8025–01–M

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[License No. 07/07–0087]

## United Financial Resources Corp.; Filing of an Application for an Exemption Under Regulation 107.903 Governing Conflicts of Interest

Notice is hereby given that United Financial Resources Corp. (the Licensee), 7401 "F" Street, Omaha, Nebraska 68127, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act), has filed an application with the U.S. Small Business Administration (SBA) pursuant to § 107.903(b) of the Regulations governing small business investment companies (13 CFR 107.903(b) (1993)) for an exemption from the provisions of the cited Regulations.

Subject to SBA approval, the Licensee proposes to provide funds to an associate, Ames Avenue Corporation d/b/a Phil's Foodway (Ames), 3030 Ames Avenue, Omaha, Nebraska 68111, to be used for working capital.

The proposed financing is brought within the purview of § 107.903(b) of the Regulations because Mr. Phil Morrison is a director of the Licensee's parent, United-A.G. Cooperative, Inc. (UAG) which owns 100% of the Licensee, and is also an owner of Ames.

Notice is hereby given that any interested person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments on the proposed transaction to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Omaha, Nebraska.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 13, 1993.

Wayne S. Foren,

*Associate Administrator for Investment.*

[FR Doc. 93–18931 Filed 8–6–93; 8:45 am]

BILLING CODE 8025–01–M

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## DEPARTMENT OF TRANSPORTATION

## Aviation Proceedings; Agreements Filed During the Week Ended July 30, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 49059

*Date filed:* July 29, 1993

*Parties:* Members of the International Air Transport Association
*Subject:*
TC1 Reso/P 0414 dated July 23, 1993;
TC1 Longhaul Expedited Resos r–1 to r–8
*Proposed Effective Date:* Expedited September 1, 1993
*Docket Number:* 49060
*Date filed:* July 29, 1993
*Parties:* Members of the International Air Transport Association
*Subject:*
TC1 Resos/P 0415 dated July 23, 1993
TC1 Within South America Expedited Reso 070j
*Proposed Effective Date:* Expedited September 1, 1993
*Docket Number:* 49061
*Date filed:* July 29, 1993
*Parties:* Members of the International Air Transport Association
*Subject:*
TC12 Reso/P 1511 dated June 29, 1993
Mid Atlantic-Europe/Mideast Reso r–1
TC12 Reso/P 1512 dated June 29, 1993
Mid Atlantic-Europe Resos r–1 to r–12
TC12 Resos/P 1513 dated June 29, 1993
Mid Atlantic-Mideast Resos r–13 to r–22
*Proposed Effective Date:* October 1, 1993
*Docket Number:* 49062
*Date filed:* July 29, 1993
*Parties:* Members of the International Air Transport Association
*Subject:* Comp Mail Vote 644—Amend Rounding Units for China
*Proposed Effective Date:* August 10, 1993
*Docket Number:* 49064
*Date filed:* July 29, 1993
*Parties:* Members of the International Air Transport Association
*Subject:*
TC1 Reso/C 0249 dated May 18, 1993 r1–r4
TC1 Reso/C 0250 dated May 18, 1993 r5–r9
TC1 to/from USA/UST Cargo Resos
Airline Economic Justifications; Tables—TC1 Rates 0065 dated June 11, 1993
*Proposed Effective Date:* August 1/ October 1, 1993

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 93–18955 Filed 8–6–93; 8:45 am]
BILLING CODE 4910–62–P

## Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 30, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49066
*Date filed:* July 29, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 27, 1993
*Description:* Application of Lauda Air S.p.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in charter foreign air transportation of persons, property and mail between a point or points in the Republic of Italy and a point or points in the United States.

**Phyllis T. Kaylor,**
*Chief, Documentary Services Division.*
[FR Doc. 93–18956 Filed 8–6–93; 8:45 am]
BILLING CODE 4910–62–P

## Federal Aviation Administration

## Receipt of Noise Compatibility Program and Request for Review, Capital City Airport, Lansing, MI

**AGENCY:** Federal Aviation Administration. DOT.
**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Capital City Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by Capital Region Airport Authority. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR part 150 for Capital City Airport were in compliance with applicable requirements effective June 29, 1993. The proposed noise compatibility program will be approved or disapproved on or before January 23, 1994.

**EFFECTIVE DATE:** The effective date of the start of the FAA's review of the noise compatibility program is July 27, 1993. The public comment periods ends September 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ernest P. Gubry, Community Planner, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA is reviewing a proposed noise compatibility program for Capital City Airport which will be approved or disapproved on or before January 23, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Capital City Airport, effective on July 27, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 23, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150 § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably

consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Great Lakes Regional Office, 2300 East Devon Avenue, Des Plaines, IL 60018.
Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.
Capital Region Airport Authority, Capital City Airport, Lansing, MI 48906.

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Belleville, Michigan, on July 27, 1993.

**Dean C. Nitz,**

*Manager, Detroit Airports District Office, FAA Great Lakes Region.*

[FR Doc. 93–18958 Filed 8–6–93; 8:45 am]

BILLING CODE 4910-13-M

## RTCA, Inc. Technical Management Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for RTCA Technical Management Committee meeting to be held August 27, 1993. Meeting place to be determined.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approve summary of the July 14, meeting; (3) Consider/approve: (a) RTCA Special Committee 159 Minimum Aviation System Performance Standards for DGNSS Instrument Approach Systems Special Category I (SCAT–1) (b) RTCA Special Committee 159—Change 1 to DO–208, Minimum Operational Performance Standards for Airborne Supplemental Navigation Equipment Using Global Positioning System (c) RTCA Special Committee 142–DO–203A, Minimum Operational Performance Standard for Mode S Airborne Data Link Processor (d) RTCA Special Committee 169—Minimum Operational Performance Standards for ATC Two-Way Data Link Communications, Draft 10; (4) Review status of Technical Management Committee restructuring initiative; (5) Review status of RTCA Special Committees; (6) Other Business; (7) Date and Place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 3, 1993.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 93–18961 Filed 8–6–93; 8:45 am]

BILLING CODE 4910-13-M

## RTCA, Inc. Special Committee 165; Meeting

### Minimum Operational Performance Standards for Aeronautical Mobile Satellite Services; Tenth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 165 Meeting to be held August 11–13, 1993, in the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Approval of the summary of the ninth meeting; (3) Working Group Reports: (a) Equipment Standards Working Group (WG–1) Report, (b) Service Performance Criteria Working Group (WG–3) Report, (c) Satellite Voice Communications Working Group (WG–5) Report; (4) Review proposed modifications to the AMSS MOPS (RTCA Document No. DO–210); (5) Review proposed final draft of the document "Guidelines on AMS(R)S Voice Implementation and Utilization. (This is referred to by WG–5 as "Ralph-Third Draft"); (6) Assignment of tasks/review plans for future work; (7) Other Business; (8) Date and Place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 3, 1993.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 93–18960 Filed 8–6–93; 8:45 am]

BILLING CODE 4910-13-M

## RTCA, Inc. Task Force 2 Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for RTCA Task Force 2 meeting to be held August 17, 1993, at the Software Productivity Consortium (SPC), 2214 Rock Hill Road, Herndon, Virginia.

The agenda for this meeting is as follows: (1) Chairman's Remarks; (2) Presentation by Co-Chairman from each working group: (a) Operational requirements, (b) Institutional issues, (c) Technology choices and opportunities; (3) Break at 10:30 a.m.; (4) Separate but Concurrent Working Group Deliberations; (5) Task Force 2 Plenary Discussion; (6) Meeting Summary.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140, Connecticut Avenue, NW., Suite 1020, Washington, DC 20036, (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 3, 1993.

**Joyce J. Gillen,**

*Designated Officer.*

[FR Doc. 93–18959 Filed 8–6–93; 8:45 am]

BILLING CODE 4910-13-P

## Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at New Hanover International Airport, Wilmington, NC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at New Hanover International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L.

101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

**DATES:** Comments must be received on or before September 8, 1993.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia 30349.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert J. Kemp, Airport Director, New Hanover International Airport, 1740 Airport Boulevard, Wilmington, NC 28405.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the New Hanover International Airport under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Walter Bauer, Program Manager, Atlanta Airports District Office, 1680 Phoenix Parkway, suite 101, Atlanta, Georgia, 30349, telephone (404) 994–5306. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at New Hanover International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 30, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by New Hanover International Airport was substantially complete within the requirements of § 158.25 of part 158.

The FAA will approve or disapprove the application, in whole or in part, no later than November 3, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 2, 1994.

Proposed charge expiration date: June 30, 1997.

Total estimated PFC revenue: $1,505,000.

Brief description of proposed projects:

Recover local participation on four existing AIP projects
Study to define land/easement acquisition needs
Land acquisition (phase I)
Taxiway B extension and widening
Taxiway lighting systems rehabilitation
Acquisition of ramp sweeper
Install vertical guidance slope indicator—runway 35
Reconstruct taxiways A and H and taxiway connectors to runway 17/35
Construct taxiway connectors to runway 8/24
Construct taxiway connectors to runway 17/35
Fencing and security road construction
Airport Master Plan update

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand air taxi/commercial operators filing FAA Form 1800–31 enplaning less than 150 passengers per year at New Hanover International Airport.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the New Hanover International Airport.

Issued in Atlanta, Georgia, on August 2, 1993.

**Stephen A. Brill,**

*Manager, Airports Division Southern Region.*

[FR Doc. 93–18957 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

### Environmental Impact Statement; Chesapeake, VA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this notice of intent to advise the public that an environmental impact statement will be prepared for a proposed highway project in Chesapeake, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Allen Masuda, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, Virginia 23240–0045, Telephone 804/771–2380.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environmental Impact Statement (EIS) on a proposal to widen existing Route 17—George Washington Highway in Chesapeake, Virginia. The proposed project would involve construction of a multi-lane, urban arterial in the western portion of Chesapeake, Virginia. The southern terminus is at the Virginia-North Carolina state line with the northern terminus at the intersection of Route 17 and Route 104—Dominion Boulevard. The length of the proposed project ranges from 9.8 miles to 12.5 miles, depending on the alternative. Development of the proposed project is considered necessary to provide for efficient movement of both existing and projected traffic and provide relief to safety deficiencies experienced along existing Route 17.

Alternatives under consideration include: (1) Taking no action (no build); (2) transportation system management (improvement to existing roadway network); (3) mass transit; and (4) various build alternatives on both existing and new location. The build alternatives will incorporate variations of vertical and horizontal grade alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, private organizations, and citizens who have previously expressed or are known to have interest in this proposal. The scoping process is anticipated to begin in the late Summer or early Fall of 1993. A public informational meeting and a public hearing will be held in the future. Public notice will be given indicating the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project.)

Issued on: August 2, 1993.

**Allen Masuda,**

*District Engineer, Richmond, Virginia.*

[FR Doc. 93–19036 Filed 8–6–93; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

August 2, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

**Departmental Offices/Financial Crimes Enforcement Network (FinCEN)**

*OMB Number:* 1505–0137
*Form Number:* TD F 90.22.45
*Type of Review:* Extension
*Title:* FinCEN Access Identification Form
*Description:* This collection will be used to ensure that confidential law enforcement information is provided only to authorized officials of state and local law enforcement agencies. The collected information will allow identities to be efficiently verified.
*Respondents:* State or local governments
*Estimated Number of Respondents:* 250
*Estimated Burden Hours Per Response:* 10 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 43 hours

*OMB Number:* 1505–0139
*Form Number:* TD F 90–22.44
*Type of Review:* Extension
*Title:* Request for Query/Analysis
*Description:* This form allows the efficient intake of requests for investigative support sent to the Financial Crimes Enforcement Network (FinCen) by Federal, State and local law enforcement. The information will provide the information necessary to determine the lawful parameters of data base searches in response to the requests.
*Respondents:* State or local governments, Federal agencies or employees
*Estimated Number of Respondents:* 4,800
*Estimated Burden Hours Per Response:* 30 minutes
*Frequency of Response:* On occasion
*Estimated Total Reporting Burden:* 2,400 hours
*Clearance Officer:* Lois K. Holland, (202) 622–1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
*OMB Reviewer:* Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports, Management Officer.*

[FR Doc. 93–18963 Filed 8–6–93; 8:45 am]
BILLING CODE 4810–25–P

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 151
Monday, August 9, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

**Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting**

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following will be withdrawn from the agenda for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 10:00 a.m. on Tuesday, August 10, 1993, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC:

Memorandum and resolution re: Payment of claims arising from severance pay or "golden parachute" agreements of failed banks where employment has been terminated after bank failure.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 5, 1993.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 93–19168 Filed 8–5–93; 2:29 pm]

BILLING CODE 6714–01–M

## NUCLEAR REGULATORY COMMISSION

**DATES:** Weeks of August 9, 16, 23, and 30, 1993.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of August 9**

*Wednesday, August 11*

2:00 p.m.
Briefing on Strategic Information Technology Plan (Public Meeting)
(Contact: Fran Goldberg, 301–492–7216)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 16—Tentative**

*Thursday, August 19*

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 23—Tentative**

*Wednesday, August 25*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of August 30—Tentative**

*Tuesday, August 31*

10:00 a.m.
Briefing on NRC Research Program on Aging (Public Meeting)
(Contact: John Craig, 301–492–3850)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** "Briefing on Status of Part 100 Rule Change and Proposed Update on Source Term and Related Issues" scheduled for August 2, was held on August 3.

**Note:** Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill, (301) 504–1661.

Dated: August 4, 1993.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 93–19170 Filed 8–5–93; 6:45 am]

BILLING CODE 7590–01–M

## SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 9, 1993.

An open meeting will be held on Wednesday, August 11, 1993, at 10:00 a.m. A closed meeting will be held on Thursday, August 12, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and(10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, August 11, 1993, at 10:00 a.m., will be:

Consideration of whether to issue a release that will approve amendments to the net capital rule, Rule 15c–3–1 under the Securities Exchange Act of 1934, to make the rule applicable to certain specialists that are currently exempt from the rule and generally exempt such specialists from the rule's haircut and undue concentration deductions. For further information, please contact Michael A. Macchiaroli at (202) 272–2904.

The subject matter of the closed meeting scheduled for Thursday, August 11, 993, at 10:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: August 3, 1993.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–19169 Filed 8–5–93; 2:29 pm]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 58, No. 151
Monday, August 9, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

### Final Rule and Rule Amendments Concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees

*Correction*

In rule document 93-16525 beginning on page 37644 in the issue of Tuesday, July 13, 1993, on page 37644 in the third column, under the **DATES** caption, in the second paragraph, the last sentence should read: "Each SRO must comply with § 1.64 (b)(2) and (3) as of the date of its next governing board election."

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93-NM-28-AD]**

### Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

*Correction*

In proposed rule document 93-18419 beginning on page 41210 in the issue of Tuesday, August 3, 1993, make the following corrections:

1. On page 41210, in the first column, the Docket Number appearing in the heading of the document should read as set forth above.

2. On the same page, in the second column, under the **ADDRESSES** caption, in the first paragraph, in the fifth and sixth lines "Docket No. 93-NM-28-D" should read "Docket No. 93-NM-28-AD".

3. On the same page, in the same column, under the **FOR FURTHER INFORMATION CONTACT** caption, in the third line "ANM-13" should read "ANM-113".

4. On the same page, in the third column, in the first full paragraph, in the seventh line, "Docket Number 93-NM-28-D" should read "Docket Number 93-NM-28-AD".

5. On the same page, in the same column, under the heading **Availability of NPRMs**, in the fourth line, "ANM-03" should read "ANM-103" and in the fifth line "93-NM-28-D" should read "93-NM-28-AD".

**§ 39.13 [Corrected]**

6. On page 41211, in the second column, in § 39.13, the airworthiness directive heading should read "Fokker: Docket 93-NM-28-AD".

7. On the same page, in the same column, in paragraph (b), in the 5th and 11th lines "ANM-13" should read "ANM-113".

8. On the same page, in the same column, in the "Note" following paragraph (b), in the last line, "ANM-13" should read "ANM-113".

BILLING CODE 1505-01-D

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federal register

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Part II

# Federal Trade Commission

16 CFR Part 308
Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992; Rule

VOL 58 ISS 151 AUG 9 1993 UMI

FEDERAL TRADE COMMISSION

16 CFR Part 308

**Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992**

AGENCY: Federal Trade Commission.

ACTION: Final trade regulation rule.

SUMMARY: The Federal Trade Commission issues its final Rule pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA" or "the Act"). Titles II and III of the TDDRA directed the Federal Trade Commission ("FTC" or "Commission") to prescribe regulations, within 270 days of enactment on October 28, 1992, governing the advertising and operation of pay-per-call services, as well as billing and collection procedures for such services.

EFFECTIVE DATE: The Rule will become effective on November 1, 1993.

ADDRESS: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Division of Marketing Practices: David Torok (202) 326–3140, Carol Jennings (202) 326–3010, or Heather McDowell (202) 326–3356; Division of Advertising Practices: Mary Koelbel Engle (202) 326–3161, or Marianne Kastriner (202) 326–3165; Division of Credit Practices: Ronald Isaac (202) 326–3231, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Rule: (1) Sets forth disclosures that must be included in advertisements for pay-per-call services (including the cost of the call, the odds of winning a sweepstakes, non-affiliation with the Federal government, and parental permission for those under 18), as well as certain standards for ensuring that these disclosures are "clear and conspicuous"; (2) requires, for all pay-per-call services costing more than $2.00, a preamble containing certain specified information; (3) prohibits pay-per-call programs, and advertisements for such programs, that are directed to children under 12; (4) prohibits charging callers to pay-per-call services if they hang up prior to three seconds after a signal or tone indicating the end of the required preamble; (5) prohibits the use of 800 or other toll-free numbers for providing pay-per-call services; (6) prohibits the use of electronic tones that can automatically dial a pay-per-call number; (7) requires certain disclosures for billing statements for pay-per-call services; and (8) sets forth procedures for the correction of billing errors for telephone-billed purchases.

**Statement of Basis and Purpose**

*I. Introduction*

Congress enacted the TDDRA, Pub. L. 102–556, to curtail certain unfair and deceptive practices engaged in by some pay-per-call businesses, and to encourage the continued growth of the legitimate pay-per-call industry.[1] Title I of the Act[2] directs the Federal Communications Commission ("FCC") to enact regulations defining the obligations of common carriers with respect to the provision of pay-per-call services.[3] Title II of the Act[4] directs the FTC to enact regulations governing the advertising and operation of pay-per-call services. It requires that certain disclosures appear in all advertising for such services and in preambles to pay-per-call programs. Moreover, it prohibits pay-per-call providers from engaging in certain practices, such as directing their services to children under the age of 12. In addition, the Act authorizes the Commission to prescribe other regulations it deems necessary to prevent abusive practices in this industry or to prevent evasion of these requirements. Title III of the TDDRA[5] directs the FTC to prescribe regulations establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The Act grants the Commission limited jurisdiction over common carriers for purposes of this Rule.[6] Finally, the Act provides that for enforcement purposes, the Rule promulgated by the FTC will be treated as a rule issued under § 18(a)(1)(B), and enforced pursuant to section 5, of the FTC Act.[7]

The Commission published a Notice of Proposed Rulemaking ("NPR") in the **Federal Register** on March 10, 1993,[8] and a 30-day comment period closed on April 9, 1993. Comments were received from 99 companies, organizations, governmental entities, and individuals.

Seven commenters represent state and local government agencies. These include: The Telecommunications Subcommittee of the Consumer Protection Committee of the National Association of Attorneys General ("NAAG") (members of the Subcommittee include the Attorneys General of Arizona, California, Connecticut, Florida, Illinois, Iowa, Kansas, Maine, Minnesota, New Jersey, New Mexico, New York, Pennsylvania, Tennessee, Vermont, Washington, West Virginia, and Wisconsin); the National Association of Consumer Agency Administrators ("NACAA"); the National Association of Regulatory Utility Commissioners ("NARUC"); the California Public Utilities Commission ("CAPUC"); the New York State Department of Public Service ("NYDPS"); the National Association of State Utility Consumer Advocates ("NASUCA"); and the Attorney General for the State of North Carolina (the latter two both joining the comments of NAAG). One Federal agency, the U.S. Postal Service ("USPS"), submitted comments.

Three public interest organizations filed comments: Consumer Action ("CA"); the National Consumers League ("NCL"); and (jointly) the Center for Media Education and the National PTA ("CME"). Thirteen common carriers, or associations representing common carriers, filed comments: American Telephone and Telegraph Company ("AT&T"); the Ameritech Operating Companies ("Ameritech"); the Bell Atlantic Telephone Companies ("Bell Atlantic"); BellSouth Telecommunications, Inc. ("BellSouth"); GTE Service Corporation ("GTE"); MCI Telecommunications Corporation ("MCI"); the National Telephone Cooperative Association ("NTCA"); NYNEX Telephone Companies ("NYNEX"); Pilgrim Telephone, Inc. ("Pilgrim"); Southwestern Bell Telephone Company ("Southwestern"); Sprint Corporation ("Sprint"); US West, Inc. ("US West") and the United States Telephone Association ("USTA").

Fifty-five information providers, and associations representing information providers, service bureaus and other related businesses, filed 15 discrete comments. Forty-one information providers (collectively referred to as "Fun Lines") filed identical copies of

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[1] 15 U.S.C. 5701(b).

[2] 47 U.S.C. 228.

[3] The FCC published its Notice of Proposed Rulemaking and Notice of Inquiry at 58 FR 14371 (March 17, 1993).

[4] 15 U.S.C. 5711–14.

[5] 15 U.S.C. 5721–24.

[6] In general, common carriers are not subject to the jurisdiction of the FTC Act. 15 U.S.C. 45(a)(2).

[7] 15 U.S.C. 57a(a)(1)(B); 15 U.S.C. 45.

[8] 58 FR 13370. The record of this proceeding has been designated by the number R311001. The record contains the following three categories of documents: Category A includes Federal Register notices and notifications concerning the public workshop conference; Category D includes comments filed in response to the NPR; and Category L includes the transcripts of the public workshop conference.

the same comment.[9] The other 14 comments from this sector of the industry came from the following parties: The Association of Information Providers of New York and Info Access, Inc. (filing jointly) ("AIP"); Call Interactive; Cox Enterprises, Inc. ("Cox"); ICN Corporation ("INC"); the Information Industry Association ("IIA"); the Interactive Information Services Council ("IISC"); Meganews; Money Minds, the National Association for Information Services ("NAIS");[10] New Insights, Inc. ("NII"); Phone Programs, Inc. ("PPI"); The Suarez Corporation ("Suarez"); Tele-Publishing, Inc. ("TPI"); and USA Today Information Center ("USA Today").

Three organizations representing advertising interests filed comments: the American Advertising Federation ("AAF"); the American Association of Advertising Agencies, Inc. ("AAAA"); and the Association of National Advertisers, Inc. ("ANA").[11] Two companies that provide third-party (non-common carrier) billing services for pay-per-call services, International Telemedia Associates, Inc. ("ITA") and VRS Billing Systems, Inc. ("VRS"), filed comments.

Others filing comments included three individual consumers (Alberta Buschmann, Marie Stevens, and Brad S. Parker) and the following 12 organizations or companies: Amalgamated MegaCorp ("Amalgamated"); the American Society of Travel Agents, Inc. ("ASTA"); Capital Cities/ABC, Inc. ("ABC"); the Children's Advertising Review Unit of the Council of Better Business Bureaus, Inc. ("CARU"); the Direct Marketing Association ("DMA"); Grocery manufacturers of America, Inc. ("GMA"); Kellogg Company ("Kellogg"); the National Infomercial Marketing Association ("NIMA") ; the Newspaper Association of America ("NAA"); the Promotion Marketing Association of America, Inc. ("PMA"); Summit Telecommunications Corporation ("Summit"); and the Yellow Pages Publishers Associations ("YPPA").

On April 22 and 23, 1993, Commission staff conducted a public workshop conference at the FTC headquarters. Those interested parties wishing to participate in the Conference were required to notify Commission staff by March 25, 1993. Commission staff were able to include all parties that gave timely notice of interest in participating. Participants included: AAAA, AAF, AIP, ANA, AT&T, CARU, CME, GMA, ICN, IIA, IISC, ITA, MCI, NAAG, NACAA, NAIS, NARUC, NCL, Pilgrim, PPI, TPI, and USTA. Howard Bellman served as a conference facilitator.[12] Participants discussed various aspects of the proposed regulations, including pay-per-call service standards, advertising requirements, and procedures for the resolution of billing disputes. They addressed each other's comments and questions and responded to questions from FTC staff members. The conference was open to the public, and comments from members of the public were invited each day. Mr. Blake Barker, of USA Today—Gannett Company, addressed the conference on both days during the public participation segment. The entire proceeding was transcribed and the transcript was placed on the public record.[13]

## II. The Rule

### A. *Section 308.2: Definitions*

The proposed rule defined the following terms: Bona fide educational service, Commission, pay-per-call services, person, presubscription or comparable arrangement, program-length commercial, provider of pay-per-call services, reasonably understandable volume, slow and deliberate manner, and sweepstakes.[14] The Commission sought comment as to whether these definitions were clear, meaningful, and appropriate.[15]

In the final Rule, the Commission has modified the definitions of three of these terms: Bona fide educational service (§ 308.2(a)); presubscription or comparable arrangement (§ 308.2(e)); and provider of pay-per-call services (§ 308.2(g)). In addition, the Commission has added a definition of the term "service bureau" (§ 308.2(i)), since it has determined that service bureaus should bear some liability for violations of the Rule by pay-per-call services using their call processing facilities. All other definitions have been adopted in the final Rule without change.

#### 1. *Section 308.2(a): Definition of "Bona Fide Educational Service"*

The proposed rule in § 308.2(a) defined the term "bona fide educational service" to be any pay-per-call service that provides information or instruction relating to education, subjects of academic study, or other related areas of school study. The term describes the one statutorily-permitted exception to the prohibition against pay-per-call services directed to children under the age of 12 and advertisements for such services. The proposed rule defined such services solely in terms of the content of the pay-per-call service itself without reference to the party offering the service.

In the NPR, the Commission asked specifically whether the proposed definition was sufficiently narrow so as not to allow the exception to swallow the rule. The Commission also asked whether the definition should include an additional requirement concerning the nature of the party offering the pay-per-call service and, if so, what requirement should be used to include only those providers with a legitimate connection to education. Finally, the Commission asked whether another approach to defining the term "bona fide educational service" would be more useful.[16] Responsive comments were sharply divided. Some contended that the definition contained in the proposed rule was so broad as to virtually swallow the prohibition against services directed to children. Those commenters urged the Commission to include a requirement that bona fide educational services be provided only by individuals or organizations with a

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[9] Fun Lines, Inc., A Personal Encounter, Inc., Advanced Gateways, Advanced Telecom Services, Inc., Almarc Communications, American International Communications, Chase Companies, CommNet, Inc., ConnecTec Corporation, Dobbs Enterprises, Ltd., Durango Associates, Fones, Inc., Gigaphone, Inc., Halo Communications, Independent Entertainment Group, Jamestown Entertainment, Inc., Jartel, Inc., Kaos Communications, Kuryl Communications, LO/AD Communications, National Automobile Data Service, National Communications Team, National Network, Inc., New Media Telecommunications, Inc., Northwest Nevada Telco, Pacific Teleconnect, Inc., Real People, Ltd., Ryder Communications, Inc., Seascape Productions, SimTel Communications, Source Communications, Talk Show, Inc., Telecharge Audio Network, Telecharge Support Systems, The Advantage Group, Inc., The Scoreboard, Inc., TVTV, Twelve Signs, Inc., Uni-Access Company, Worthington Voice Services, Inc., and 123 Communications.

[10] NAIS also filed with the FTC a copy of its comments filed in the FCC rulemaking pursuant to the TDDRA. (FCC, In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93–22, RM 7990.) These comments were appended to the NAIS FTC comments (number 63).

[11] In addition to their comments filed during the 30-day comment period, AAAA and ANA addressed letters to each of the Commissioners prior to publication of the NPR. Representative copies of these letters have been placed on the public record as part of the comments filed in response to the NPR.

[12] Mr. Bellman is a mediator from Madison, Wisconsin. His cases have included mediations of state and federal public policy issues.

[13] References to the conference transcript are cited as "Tr." followed by the appropriate page designation. References to comments are cited as "Comment (public record comment number) (name of commenter) at (page number)."

[14] 58 FR at 13384–85.

[15] 58 FR at 13380 (questions 1 and 2).

[16] 58 FR at 13380 (question 2). The Commission did not receive any feasible alternative suggestions.

genuine connection to the field of education.[17] Others argued that the proposed definition already was sufficiently narrow, and that such an additional restriction would unfairly prohibit many companies, such as those offering computer support services, from providing valuable information to children under 12.[18] Several commenters also urged the Commission to interpret the term broadly to permit pay-per-call providers to offer young children services pertaining to topics other than traditional academic subjects, and presented in formats such as contests and games.[19] Others contended that such services should not qualify for the exemption.[20]

The Commission is not persuaded that the definition of the term "bona fide educational service" should be expanded or interpreted broadly in any manner. Congress clearly was concerned about pay-per-call services directed to children, and intended to permit only a narrow exemption to the ban. The explicit language in the TDDRA—the use of "bona fide" to modify "educational service"—is itself an indication that Congress intended that the exemption apply only to services of a genuinely educational nature. Moreover, in discussing the scope of the ban, the Senate Report stated:

> This ban does not extend to educational services to ensure that children have access to such programs. The Committee recognizes that some of these (pay-per call) programs are provided through schools, and therefore the children's use of these programs is supervised.[21]

Based on the written comments, the discussion at the public workshop conference, and review of the legislative history, the final Rule has been modified slightly to clarify the intended scope of the definition to insure that it is consistent with the congressional mandate for a narrow exception. The final Rule clarifies what was intended by the proposed rule as to the type of service that would qualify as a bona fide educational service. While the proposed rule defined the term to mean any service "*that provides* information" (emphasis added), the final Rule modifies the underlined phrase to require that the service be "*dedicated to providing* information" (emphasis added). After reviewing the comments and the transcript of the public workshop conference, the Commission determined that the proposed definition inadvertently may have permitted pay-per-call services containing only an incidental educational component to be directed to children under 12.[22] For example, a pay-per-call service featuring a popular cartoon character who offered to talk to children and, incidentally, to send them a series of math cards, charged to their parent's telephone bill, may have qualified under the proposed definition. The Commission believes that a service containing such an incidental educational component should not qualify for the "bona fide educational service" exemption under the Rule. On the other hand, if an encyclopedia publisher offered a geography lesson through a pay-per-call service, use of a cartoon character or well-known child star would not necessarily remove the service from the exemption. By using the phrase "dedicated to providing," the Commission intends to convey that this exemption is limited to those pay-per-call services of a genuinely educational nature. Accordingly, the Commission has modified § 308.2(a) of the final Rule.

*2. Section 308.2(c): Definition of "Pay-Per-Call Service"*

The definition of "pay-per-call service" (§ 308.2(c)) remains the same as it was in the proposed rule.[23] The term is defined in the TDDRA by reference to section 228 of the Communications Act of 1934.[24] The service provided may be audio information, audio entertainment, access to simultaneous voice conversation services, or any service, including provision of a product, for which the charges are assessed on the basis of the completion of the call. The caller pay a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call. The call is accessed through use of a 900 telephone number of other prefix or area code designated by the FCC for such services. However, the term does not include directory services provided by a common carrier or local exchange carrier; any service for which the charge is tariffed; or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of the service.

One commenter suggested that the Commission's Rule should extend to pay-per-call programs available through seven-digit local numbers (with a 976, 960 or other prefix) or through abbreviated N11 dialing arrangements.[25] Such calls would not fall within the statutory definition of "pay-per-call services" because they are not reached through a service access code designated by the FCC in accordance with the Communications Act.[26] US West, on the other hand, requested clarification that the FTC Rule will not apply to local pay-per-call numbers.[27]

The Commission is incorporating into the Rule the definition of "pay-per-call service" in the TDDRA. The Rule covers those pay-per-call services accessed through use of a 900 telephone number, as designated pursuant to FCC regulations.[28] There is no evidence of congressional intent that the Commission extend its Rule to cover pay-per-call programs accessed through local prefixes not designated by the FCC. Moreover, the record does not show evidence of deceptive or unfair practices, associated with use of such numbers, that have not or cannot be addressed by state regulatory or law enforcement authorities. In fact, title I of the TDDRA specifically recognizes state authority to regulate such services.[29]

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[17] Comments 31 (CA) at 2, 4; 40 (NACAA) at 3; 53 (CME) at 2, 5–9.

[18] Comments 30 (CARU) at 3; 34 (TPI) at 6; 37 (PPI) at 27–28; 41 (Kellogg) at 2; 63 (NAIS) at 27–28; Tr. at 395–98, 405–06.

[19] Comments 30 (CARU) at 3; 35 (AIP) at 2–3; (PPI) at 27–28; 63 (NAIS) at 27–28; Tr. at 403–04.

[20] Comments 40 (NACCAA) at 3; 53 (CME) at 5–9; Tr. at 403, 406.

[21] Senate Committee Report on S. 1578, S. Doc. No. 160, 102d Cong., 1st Sess. (1991) ("Senate Report") at 6. The TDDRA (Pub. L. No. 102–556, formerly H.R. 6191) is a combination of prior bills passed in each house of Congress during 1991 and early 1992. The Senate bill, S. 1578, and the House bill, H.R. 3490, were joined in conference in the 1992 session. There is no report on the bill as passed.

[22] Comment 53 (CME) at 6–7; Tr. at 407.

[23] 58 FR at 13384–85.

[24] 15 U.S.C. 5714(1); 47 U.S.C. 228(i).

[25] Comment 46 (Cox) at 7–8.

[26] 47 U.S.C. 228(b)(5).

[27] Comment 47 (US West) at 2 and 6. US West explained that although most such calls would be intrastate in nature, its local exchange carrier does have certain local pay-per-call services that cross state lines even though accessed by dialing a local number.

[28] Pursuant to 47 CFR 64.1506, any service described in 47 CFR 64.1501(a)(1)–(2) (which is the same as § 308.2(c)(1)(A)–(B) of this rule) shall be offered "only through telephone numbers beginning with a 900 service access code." The FCC rule, at 47 CFR 64.1505(a), also prohibits carriers from providing interstate transmission services to an entity offering any service within the scope of 47 CFR 64.1501(a)(1) (which is the same as § 308.2(c)(1)(A) of this Rule) that is billed to a telephone subscriber on a collect basis at a rate above the tariffed rate for transmission of the call. Some commenters suggested that the Commission consider prohibiting collect pay-per-call services entirely or expanding the definition of a "pay-per-call service" to include those services charged to the customer on a collect basis. Comments 10 (NARUC) at 9–10; 15 (Nynex) at 2. However, it appears that it is now unnecessary for the Commission to address this issue.

[29] 47 U.S.C. 228(g)(4) states: "Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes."

Accordingly, the final rule does not cover intrastate pay-per-call numbers.

3. *Section 308.2(e): Definition of "Presubscription or Comparable Arrangement"*

The definition of "presubscription or comparable arrangement" is important to the effectiveness of the Rule because any call placed pursuant to such an agreement is not afforded the protection of these regulations. The proposed definition required that a contractual agreement be established prior to the placement of a call to a pay-per-call service.[30]

Some parties noted the importance of having consistent definitions of this term by the FCC and the FTC.[31] Both agencies are using the same definition. In addition, several commenters suggested that the definition should be more specific, setting forth the required elements of the contractual agreement.[32] The definition in the final Rule has done this. In order to have a presubscription agreement, the service provider must clearly and conspicuously disclose to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service. In addition, the service provider must agree to notify the consumer of any future rate changes. The consumer must affirmatively agree to utilize the service on the terms and conditions disclosed by the service provider. Finally, the service provider must require the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers. These added requirements should ensure that any consumer entering a presubscription arrangement does so knowingly and with full disclosure of the terms of the agreement. Moreover, there seemed to be general agreement at the public workshop conference that the terms listed above should be part of any presubscription arrangement.[33]

In addition, NACAA urged that the definition require a written agreement, signed by the consumer.[34] NAAG suggested that the terms of the agreement be set forth in a written document.[35] Some industry groups, on the other hand, proposed that the Rule allow establishing such an agreement by telephone.[36] They noted that this is an industry accustomed to conducting business by telephone.

The Commission does not believe it necessary to require that a presubscription arrangement be contained in a signed, written agreement. If all of the required elements of presubscription can be achieved, to the satisfaction of both parties to the contract, without a written agreement, the parties should be free to exercise this option.[37]

IIA and Pilgrim requested that the definition include use of a charge or credit card.[38] IIA noted that Congress did not intend to include credit card transactions within the TDDRA. The Commission agrees with IIA that it appears Congress did not intend that services paid for by credit or charge card be included within this Rule.[39] In such transactions, the charge is not assessed on the basis of the completion of the call; rather the charge is assessed when the consumer provides the seller a credit or charge card number and authorizes a charge to the account. Moreoever, such transactions already have the protection of the Truth in Lending Act and the Fair Credit Billing Act.[40] Accordingly, the definition of "presubscription or comparable arrangement" has been modified to include those transactions where the consumer pays by authorizing a charge to a credit or charge card that is subject to the requirements of those statutes.[41] No other action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription agreement. However, such an agreement, provided it meets the criteria set forth in § 308.2(e)(1), could be established during the course of a call to an 800 telephone number or any other local or long distance telephone number.

4. *Section 308.2(g): Definition of "Provider of Pay-Per-Call Services"*

The proposed rule defined "provider of pay-per-call services" as "any person who sells a pay-per-call service."[42] Several parties commented that this definition was ambiguous and perhaps overly broad.[43] MCI requested clarification that the Commission did not intend the definition to encompass a carrier merely providing transmission or billing and collection services for a pay-per-call service.[44] In the final rule, the Commission has modified the definition accordingly.

In addition, the Commission has added language to make clear that the term includes any person who *offers* to sell a pay-per-call service. This ensures that the Rule covers anyone advertising such a service even before any completed calls have taken place.

5. *Section 308.2(i): Definition of "Service Bureau"*

As discussed in part II.D.12, *infra*, § 308.5(1) of the Rule imposes liability on a service bureau where it knew or should have known of violations of the Rule by pay-per-call providers using its call processing facilities. Therefore, the Commission has defined the term "service bureau" in § 308.2(i). The definition is consistent with industry usage of the term.[45] Service bureaus may perform a variety of services for pay-per-call providers. However, the key services are providing access to telephone service and voice storage. The definition also makes clear that common carriers are not considered service bureaus for purposes of the Rule.

B. *Section 308.3: Advertising of Pay-Per-Call Services*

Section 308.3 of the Rule sets forth the requirements for advertising pay-per-call services, including both what must be disclosed and how the disclosures must be made. To implement the TDDRA's requirements that disclosures be made "clearly and conspicuously," the proposed rule set forth detailed requirements as to what constituted "clear and conspicuous" disclosures. In the NPR, the Commission specifically sought comment on the advantages and disadvantages of providing detailed

[30] 58 FR at 13385.

[31] Comments 32 (MCI) at 1–2; (NAIS) at 6–7.

[32] Comments 23 (VRS) at 5; 33 (ITA) at 4–5; 63 (NAIS–FCC comments) at 3–5; 81 (Sprint) at 3–6.

[33] Tr. at 50–67.

[34] Comment 40 (NACAA) at 3.

[35] Comment 42 (NAAG), Attachment 1 at 1.

[36] Comments 23 (VRS) at 3–5; 35 (AIP) at 3; 54 (Amalgamated) at 3; 63 (NAIS) at 30.

[37] Of course, any business claiming exemption from the requirements of this Rule by virtue of a presubscription arrangement will bear the burden of proof that a valid agreement, meeting the requirements of § 308.2(e), has been established.

[38] Comments 52 (IIA) at 15–20; 60 (Pilgrim) at 7.

[39] Senate Report at 12.

[40] 15 U.S.C. 1601 *et seq.*

[41] The Rule makes clear that to qualify as a "presubscription arrangement," the calling party not only must disclose a credit or charge card number during the course of the call, but also must authorize a charge to that account for the service being called. CA pointed out that in some instances a credit or charge card number is requested as a screening device, with the actual charge then being billed on the telephone bill or through a third-party billing entity. Comment 31 (CA) at 1–2. The Commission is also aware of instances where telemarketers have requested a credit or charge card number, ostensibly "for identification purposes," then billed a charge to that account even though the customer never authorized such a charge.

[42] 58 FR at 13385.

[43] Comments 33 (ITA) at 5–6; 37 (PPI) at 27; 59 (USPS) at 1–2.

[44] Comment 32 (MCI) at 3–4.

[45] *See, e.g.*, Infotext Publishing, Inc., *The 1992 Telemedia Almanac, pp. 39–56 (1992).*

requirements for "clear and conspicuous" disclosures versus other approaches, such as performance standards and safe harbors.[46] Many commenters, particularly those representing the advertising industry, urged the Commission not to impose specific standards for disclosures, other than the statutorily required "clear and conspicuous" standard.[47] In contrast, many other commenters expressed agreement with the need for further guidance as to what "clear and conspicuous" means in the context of pay-per-call service advertisements, while disagreeing about the particulars of what that guidance should be.[48]

The Commission believes that merely requiring disclosures to be "clear and conspicuous" would not provide a useful guide of conduct for those affected by the regulations, nor would it adequately safeguard the interests of consumers in being informed of the required disclosures. The TDDRA itself mandates that the Commission "prescribe rules * * * (that) shall require" that various disclosures be made "clearly and conspicuously."[49] Moreover, the legislative history makes clear that Congress was concerned about the inadequacy of pay-per-call service advertisement disclosures,[50] and continued monitoring by Commission staff indicates that this remains a problem.

A number of commenters asserted that the "clear and conspicuous" standard is adequate.[51] In its comment, PMA stated that it endorses the Commission's previous enforcement policy statement that set standards for "clear and conspicuous" television disclosures,[52] and, referring to the sweepstakes industry, stated that these standards "are widely accepted and have become industry practice."[53] Nevertheless, the Commission's own observation of disclosures in sweepstakes promotions indicates that in some instances disclosures are being made in a fashion that may not be clear and conspicuous.[54] In this context, the Commission is concerned that merely requiring disclosures to be "clear and conspicuous" does not provide adequate guidance to the advertising community about what the Commission believes would satisfy such a standard. The legislative history indicates that Congress anticipated that the Commission would use its discretion to adopt more specific standards than a bare "clear and conspicuous" standard.[55] Accordingly, § 308.3 of the final Rule provides specific requirements for "clear and conspicuous" disclosures.

A number of commenters recommended that, if the rules contained guidance as to the particulars of "clear and conspicuous" disclosures, the particulars should be given in safe harbors, rather than in requirements.[56] The Commission rarely employs safe harbors in rulemakings and has decided against a safe harbor approach in this rulemaking. The advertising disclosure provisions of this Rule will be enforced by the attorneys general of the 50 states, as well as by the Commission.[57] The Commission believes that specificity in the standards for advertising disclosures is important to ensure uniform enforcement standards. If a safe harbor approach were adopted and advertisers chose not to comply with the safe harbor, the Commission and the state attorneys general would still be required to decide and prove *de novo*, on a case-by-case basis, that the disclosures were not clear and conspicuous. Moreover, the Commission and the state attorneys general would have to decide what level of communication of the disclosure to consumers would satisfy the "clear and conspicuous" requirement. The legislative history, as well as the experience of the Commission,[58] the state attorneys general,[59] consumer protection agencies,[60] and the U.S. Postal Service,[61] indicates widespread failure to make full and clear disclosure in advertisements for pay-per-call services.

Given this background, the Commission believes that specifying clear requirements as to what constitutes a "clear and conspicuous" disclosure is the appropriate approach in this rulemaking. For certain critical disclosures, including the cost and the parental permission advisory, the Commission has adopted very specific requirements. For other disclosures, it has adopted a more flexible approach while at the same time providing guidance beyond a minimal "clear and conspicuous" standard.

### 1. *Section 308.3(a): General Requirements*

Each section of the proposed rule mandating a disclosure required that the disclosure be presented clearly and conspicuously and explained how the disclosures were to be made "clearly and conspicuously." While the proposed rule contained certain minimum standards applicable to all disclosures in advertisements, these minimum standards were not set out separately, but rather were contained within each section, along with any further requirements for disclosures under those specific sections.

This format was not raised as an issue for comment and was not specifically addressed in the comments. However, a number of commenters suggested modifications to or exceptions from various sections of the proposed rule, and the final Rule has been revised to address some of those suggestions. After revision, some of the descriptions of what constituted "clear and conspicuous" disclosures became rather lengthy and, therefore, difficult to follow. Accordingly, the Commission thought it appropriate to reorganize the advertising section so that the requirements common to each of the sections so that the requirements common to each of the sections are

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[46] 58 FR at 13380–81 (question 15). To the extent that the Commission has not prescribed language to be used in making the required disclosures, the Commission has adopted a performance standard, *i.e.*, advertisers must ensure that the language they choose conveys the required information to consumers.

[47] Comments 14 (AAAA) at 6; 19 (AAF) at 4; 39 (IISC) at 16; 43 (GMA) at 20; 45 (ANA) at 4; 51 (USA Today) at 11; 58 (PMA) at 2.

[48] Comments 5 (Fun Lines) at 1; 35 (AIP) at 4; 37 (PPI) at 28–29, 34, 37; 46 (Cox) at 4–5; 61 (ICN) at 3; 80 (Suarez) at 2.

[49] 15 U.S.C. 5711(a)(1).

[50] House Committee Report on H.R. 3490, H.R. Doc. No. 430, 102d Cong., 2d Sess. (1992) ("House Report") at 8–9; Senate Report at 3, 9.

[51] Tr. at 342; Comments 14 (AAAA) at 6; 19 (AAF) at 4; 39 (IISC) at 16; 43 (GMA) at 20; 45 (ANA) at 4; 51 (USA Today) at 11; 58 (PMA) at 2.

[52] "Clear and Conspicuous" Disclosure, 3 Trade Reg. Rep. (CCH) ¶ 7569.09 (1970). In some respects, these standards would require more stringent requirements for television advertisements than the requirements in either the proposed rule or the final Rule.

[53] Comment 58 (PMA) at 2.

[54] For example, IISC submitted with its comment video tape samples of recent, non-pay-per-call service, sweepstakes promotions. During the public workshop conference, IISC stated its position that the disclosures in the advertisements submitted were clear and conspicuous. Tr. at 343, 347–48.

[55] 138 Cong. Rec. H538 (daily ed. Feb. 25, 1992) (H.R. 3490 was intended to give the FTC the authority to address type-size requirements for disclosures, as it has done in the past).

[56] Comments 14 (AAAA) at 4, 6; 37 (PPI) at 37–38; 39 (IISC) at 32; 43 (GMA) at 24; 45 (ANA) at 6; 52 (IIA) at 23; 60 (Pilgrim) at 10; 63 (NAIS) at 18.

[57] 15 U.S.C. 5712(a).

[58] *E.g.*, *Phone Programs, Inc.*, D. 9247 (Dec. 10, 1992); *FTC* v. *M & H Assocs.*, No. HAR–92–2198 (D. Md. filed Aug. 7, 1992) (complaint and consent agreement); *FTC* v. *Starlink, Inc.*, No. 91–10–85 (E.D. Pa. filed Feb. 7, 1992) (complaint and stipulated final judgment and order for permanent injunction); *FTC* v. *Timmerman*, No. HAR–90–2007) (D. Md. filed Sept. 5, 1991) (complaint and consent order); *Audio Communications, Inc.*, No. C–3338 (July 24, 1991); *Teleline, Inc.*, No. C–3337 (July 24, 1991); *FTC* v. *Interactive Communications Technology, Inc.*, No. CV–F–91018 REC (E.D. Cal. filed Jan. 15, 1991) (complaint and consent order).

[59] Comment 42 (NAAG) at 6–10; Tr. at 303–04.

[60] Comments 21 (NCL) at 3–4; 40 (NACAA) at 1–2.

[61] Comment 59 (USPS) at 1.

grouped together in one section, numbered § 308.3(a). These requirements apply to each of the four sections requiring disclosures (now numbered § 308.3(b), cost of the call; § 308.3(c), sweepstakes; § 308.3(d), Federal programs; and § 308.3(f), parental permission for individuals under 18).

Section 308.3(a) of the final rule contains the "minimum standards" applicable §§ 308.3(b), (c), (d) and (f). Section 308.3(a)(1) requires disclosures to be in the same language as that principally used in the advertisement. No comment was received on this requirement, which was in the proposed rule and is consistent with the Commission's longstanding policy concerning clear disclosures in foreign language advertising.[62]

As originally proposed, print and video disclosures were required to be of a color or shade that readily contrasts with the background of the advertisement. Few commenters specifically addressed this provision. Several supported it,[63] while one commenter objected to it, without citing any specific reasons for the opposition.[64] The Commission believes that ready contrast between the disclosure and the background on which it appears is fundamental to readability.[65] The USPS commented that it has experience with enforcing similar requirements for certain disclosures.[66] The USPS noted that promoters acting in bad faith technically comply by using a contrasting color, but nevertheless the disclosure is still not noticeable, because it is a color such as bright yellow. The USPS suggested that the provision be modified to require that the contrasting background also maximize the visibility of the disclosure. The Commission believes that the USPS has raised a valid concern, but believes that the concern can be addressed by the provision, applicable to all disclosures, which prohibits the use of techniques likely to detract significantly from the communication of the disclosure (see discussion of § 308.3(a)(5) below). Thus, no change is made in the proposed regulations. The contrasting background requirement is now contained in § 308.3(a)(2) of the final Rule.

The proposed rule required disclosures in print advertisements to be parallel with the base of the advertisement. This provision was specifically supported,[67] while no specific opposition was stated. Again, this requirement is retained in the final Rule at § 308.3(a)(3).

The proposed rule required all audio disclosures in broadcast advertising to be delivered in a "slow and deliberate manner" and a "reasonably understandable volume," as those terms are defined in § 308.2(h) and (j). No commenters objected to the "reasonably understandable volume" requirement, but a few commenters objected to the "slow and deliberate manner" requirement.[68] The AAF opposed this requirement on the grounds that it might interrupt the style or flow of the broadcast. This term, however, is defined in the Rule as "a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service." Accordingly, the Commission believes that the stated concern does not weigh in favor of changing the regulations; these requirements are now found in § 308.3(a)(4).

In addition, the proposed rule provided that with respect to each disclosure, nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be made in any advertisement, nor shall any audio or video technique be used that is likely to detract significantly from the communication of the disclosure. Although one commenter objected to this provision as being inappropriate,[69] the Commission believes that it is needed to prevent circumvention of the "clear and conspicuous" requirements, either through the conveyance of other information or through the manner in which the disclosures are made. Furthermore, based on the concern noted above by USPS about circumvention of the contrasting background requirement, the Commission is modifying the regulations to include print techniques among those that may not be used to detract significantly from the communication of the disclosure. This requirement is found in § 308.3(a)(5) of the final Rule.

As originally proposed, the rule did not specifically address program-length commercials (infomercials), as distinguished from traditional television or radio advertisements, in the sections concerning sweepstakes and games of chance or information concerning a Federal program. The Commission is concerned that if required information is presented only once in particularly long commercials, consumers who do not see the entire advertisement will miss the disclosures. Therefore, the final Rule, § 308.3(a)(6), requires that, unless otherwise specified, required disclosures will be made at least three times, near the beginning, middle and end of any program-length commercial. This requirement will apply to disclosures required by §§ 308.3(c), (d), and (f). The section pertaining to cost disclosures, § 308.3(b), however, requires a more stringent standard, consistent with the TDDRA. A video presentation of the cost disclosure must appear adjacent to each presentation of the pay-per-call number (in any length commercial), and in radio program-length commercials the cost must be given following each delivery of the number.

### 2. *Section 308.3(b): Cost of the Call*

Section 308.3(b)(1) of the final Rule describes the requirements for disclosing the costs of a call to pay-per-call service. They are the same requirements as those for disclosure of costs in the preamble of the pay-per-call service itself, and will be discussed in part II.D.1.b, *infra*, covering this preamble requirement. This section will only discuss the manner in which the disclosures must be made, *i.e.*, the "clear and conspicuous" standards for cost disclosures in advertisements.

The proposed rule[70] required video and print disclosures to be placed adjacent to each presentation of the pay-per-call telephone number. Few comments focused specifically on this requirement, though a number in general objected to any particular placement requirements.[71] Two commenters specifically supported this

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[62] 16 CFR 14.9.

[63] Comments 5 (Fun Lines) at 1; 59 (USPS) at 2; 61 (ICN) at 3–4.

[64] Comment 37 (PPI) at 11.

[65] Similar requirements are found in other Commission rules and guides. *E.g.*, Guide Concerning Fuel Economy Advertising for New Automobiles, 16 CFR 259.2(b)(1)(i), n.3 (each visual "estimated mpg" disclosure must be broadcast against a solid color background that contrasts easily with the color used for the numbers); Smokeless Tobacco Regulations, 16 CFR 307.6, 307.7 (required warning must be in type contrasting with all other printed material on package or advertisement).

[66] Comment 59 (USPS) at 2, n.1 (regarding enforcement of 39 U.S.C. 3001(d)(2), which provides that a direct mail piece that takes the form of a bill, but is in fact a solicitation, must bear a disclosure, "on its face, in conspicuous and legible type in contrast by typography, layout or color with other printing on its face").

[67] Comment 5 (Fun Lines) at 1.

[68] Comments 19 (AAF) at 2; 45 (ANA) at 4–5.

[69] Comment 35 (AIP) at 6–7. AIP stated that it preferred reasonably specific, objective regulations, and opposed this section because of its subjective nature.

[70] In the proposed rule, this section was numbered 308.3(a)(1). 58 FR at 13385.

[71] Comments 19 (AAF) at 2–5; 37 (PPI) at 11; 39 (IISC) at 17–18; 52 (IIA) at 23–24; 63 (NAIS) at 15–16.

requirement.[73] Because a pay-per-call service provider is likely to ensure that the pay-per-call number is in a prominent position in the advertisement, requiring the cost to be adjacent to the number also ensures a prominent place for the cost, thus fulfilling Congress's objective of ensuring that consumers are informed of this important information when they see the advertisement.[74] One commenter objected to the provision on the grounds that it would prevent the use of column-style advertising.[75] The Commission, however, interprets "adjacent to" as meaning above, below, or next to (on either side). Accordingly, in a column-style advertisement, the cost could be above or below the telephone number, and comply with the Rule.

Some commenters raised an additional concern regarding the adjacency requirement; namely, the application of the proposed rule to advertisements in which more than one pay-per-call number is advertised, generally in list form, with only one price applicable to all of the telephone numbers. These commenters suggested that in such cases, the cost need only be displayed once, rather than adjacent to each of the telephone numbers.[76] The Commission agrees that in such circumstances, it would be unduly restrictive to require display of the cost of the call next to each pay-per-call number. Accordingly, the Rule is revised to state that where an advertisement displays more than one pay-per-call number with the same cost, the cost need only be placed adjacent to the largest presentation of the pay-per-call number. Otherwise, the final Rule retains the requirement that the cost be placed adjacent to each presentation of the pay-per-call number.

As originally proposed, in television and print advertisements, each letter and numeral of the video portion of the cost disclosure were to be at least as large as each letter and numeral of the pay-per-call number to which they were adjacent. The Commission sought comment on the appropriateness of this requirement, and whether a more appropriate measure existed for ensuring that the cost is disclosed "clearly and conspicuously."[78] Numerous commenters specifically opposed the "same size" requirement.[77] As noted previously, many commenters believed it is sufficient to require that all disclosures, including cost, be "clear and conspicuous," and therefore they opposed any specific requirement, whatever it might be. Others suggested alternatives, such as one-quarter the size of the pay-per-call number, but in at least 12-point type.[78] One commenter suggested that the cost could be one-half the size of the pay-per-call number and still be conspicuous.[79] Another suggested that the disclosures be in type no smaller than that used for the majority of text in the ad, or in the average type size used in the ad.[80] A number of commenters suggested that any minimum type size requirements be in the form of safe harbors.[81] Some commenters supported the same size requirement.[82]

After reviewing the comments, the Commission is persuaded that the cost need not necessarily be in the same type size as the pay-per-call number. A copy test of print advertisements for a 900-number sweepstakes submitted by IISC indicated that cost disclosures one-half the size of the pay-per-call number produced recall not significantly different than a cost disclosure the same size as the pay-per-call number.[83] This copy test provides some evidence that the cost could be smaller than the pay-per-call number and still produce significant recall.[84] In addition, some commenters suggested that having the cost the same size as the pay-per-call number would be visually distracting, would make the cost difficult to distinguish from the pay-per-call number, or would otherwise render the advertisement ineffective.[85]

Under the final Rule, the cost of the call must be at least one-half the type size[86] of the pay-per-call number.[87] The Commission recognizes, however, that there may be certain kinds of advertisements (such as classified advertisements or matchbook cover advertisements) in which a type size one-half the size of the pay-per-call number would result in an illegible disclosure. In such cases, it may be necessary for the cost to be larger than one-half the size of the number in order not to violate § 308.3(a)(5) of the general disclosure requirements. That section prohibits anything inconsistent with or in mitigation of the required disclosures, and any technique that is likely to detract significantly from the communication of the disclosures. The Commission would consider a very small cost disclosure to fall within those prohibitions and, thus, not comply with the requirement that all disclosures be "clear and conspicuous."

The proposed rule required that in television advertising, the cost must appear on the screen for the same duration as the video display of the pay-per-call number. A few commenters opposed this requirement,[88] but because it reflects a statutory mandate,[89] the final Rule retains the requirement.

The proposed rule required that disclosures in television advertisements always appear at least once simultaneously in both the audio and video portions of the advertisement, with one exception: Advertisements fifteen seconds or shorter would not require an audio disclosure if the pay-per-call number was not stated in the audio portion of the advertisement. The Commission sought comment on this proposed requirement and the proposed exception.[90] Several commenters

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[73] Comments 59 (USPS) at 2; 61 (ICN) at 3–4.

[74] House Report at 4–5.

[75] Comment 19 (AAF) at 3.

[76] Comments 35 (AIP) at 6; 52 (IIA) at 21.

[77] 58 FR at 13380 (question 3).

[78] Comments 5 (Fun Lines) at 1; 19 (AAF) at 2; 22 (Meganews) at 3; 35 (AIP) at 4–5; 37 (PPI) at 7–9; 39 (IISC) at 10; 45 (ANA) at 4–5; 46 (Cox) at 3–4; 48 (DMA) at 3–5; 51 (USA Today) at 10–11; 52 (IIA) at 23–24; 61 (ICN) at 3; 63 (NAIS) at 12–15.

[79] Comment 5 (Fun Lines) at 1.

[80] Comment 35 (AIP) at 4.

[81] Comment 52 (IIA) at 24–25.

[82] Comments 33 (ITA) at 6; 37 (PPI) at 38; 39 (IISC) at 32; 43 (CMA) at 24; 45 (ANA) at 6; 52 (IIA) at 23; 60 (Pilgrim) at 10; 63 (NAIS) at 16.

[83] Comments 21 (NCL) at 1; 27 (NYDPS) at 1 (both generally supporting the proposed regulations); 40 (NACAA) at 4; 42 (NAAG) at 12 (generally supporting the proposed regulations); 59 (USPS) at 2.

[84] Comment 39 (IISC) at 31, Appendix A at 14.

[85] The study contained some methodological flaws, however. For example the study did not control additional factors—such as the format or organization of the 900-number information, and the type size of the rules of the game—that are likely to affect perceptions of the communications elements for which the study was designed (*e.g.*, the type size of the cost of the call). The advertisements were quite cluttered and were likely to have presented information overload problems with respect to the targeted information, *i.e.*, the 900 number, as evidenced by the fact that when asked what the main points of the advertisement were, only 28.5% of the respondents in the *industry* version of the advertisement mentioned the 900 number.

[86] Comments 19 (AAF) at 3; 22 (Meganews) at 2; 35 (AIP) at 5; 46 (Cox) at 3; 51 (USA Today) at 11.

[87] The Commission recognizes that the type set used for pay-per-call numbers and the cost disclosures will have both upper and lower case. When determining what type size to use for the cost disclosure, the upper case of the cost should be one-half the size of the upper case of the pay-per-call number. A similar measurement should be made for the lower case characters.

[88] In several 900-number cases, the Commission required parental permission video disclosures to be one-half the size of the pay-per-call number. *Fone Telecommunications, Inc.*, C–3432 (June 21, 1993); *Audio Communications, Inc.*, No. C–3338 (July 24, 1991); *Teleline, Inc.*, No. C–3337 (July 24, 1991). In addition, at least one state (Louisiana) requires that the cost be one-half the size of the largest pay-per-call number. La. Admin. Code tit. 51, Ch. 19–B, Sec. 1731 (1992).

[89] Comments 37 (PPI) at 11; 45 (ANA) at 4–5.

[90] 15 U.S.C. 5711(a)(1)(G).

[91] 58 FR at 13380–81 (questions 6 and 10).

supported this requirement.[91] Several others believed that simultaneous audio-video disclosures should not be required; they urged that advertisers be given the choice of using either audio or video for disclosures.[92] The Commission appreciates that allowing advertisers the choice of using the audio or video format for disclosures would provide more flexibility and allow for more creativity in the design of advertisements. However, the Commission believes that simultaneous audio-video disclosures are particularly appropriate for the cost disclosures, given the importance of this information to the consumer.[93] Accordingly, § 308.3(b)(2)(i) of the final Rule retains the audio-video disclosure requirement for the cost disclosure.

However, second exception to the simultaneous audio-video disclosure requirement has been added for advertisements that do not provide *any* audio information, including the pay-per-call number, about the pay-per-call service. No audio disclosures would be required for such advertisements. One commenter noted that mandatory audio disclosures would disallow the use of "scroll" ads commonly used on cable television.[94] These ads frequently scroll independently of the sound, which may be a rebroadcast radio transmission. In addition, some pay-per-call service advertisements occur in one portion of the television screen, while most of the screen is devoted to an unrelated program; the pay-per-call service advertisement has no audio component. For instance, a sports game could be ongoing on the screen, with the accompanying play-by-play in the audio portion, while the bottom of the screen might contain an advertisement for a pay-per-call service providing sports scores. The Commission believes that for those types of advertisements (*i.e.*, advertisements that either have no audio component or otherwise provide no information about the pay-per-call service in the audio component) it would be unduly restrictive to require audio disclosures. Accordingly, the final Rule is modified to provide an exception for such advertisements.

The proposed rule did not specifically address pay-per-call service advertisements in which the pay-per-call number is presented only in the audio portion of the advertisement, and not in the video portion. As proposed, the rule would have required video disclosure of the cost, even though the pay-per-call number would not have been made in the video portion. Because the proposed rule's requirements as to size and placement of the cost disclosure were tied to the video pay-per-call number, the proposed rule was ambiguous as to the size and placement requirements for the cost in such advertisements. Accordingly, the Commission has modified the proposed rule to require that in advertisements in which the pay-per-call number is presented only in the audio portion, the cost of the call is required only in the audio portion, immediately following the first and last delivery of the pay-per-call number. In program-length commercials (where the pay-per-call number is presented only in the audio portion), however, the cost must be disclosed immediately following each delivery of the pay-per-call number. In such program-length commercials, disclosure of the cost only after the first and last presentation of the pay-per-call number would be inadequate because of the likelihood that some consumers would tune in during the middle of the advertisement and miss the disclosure.

As proposed, the rule required that the cost be disclosed at least once in radio advertisements, immediately following the first presentation of the pay-per-call number, while in any program-length radio commercial, the cost must be disclosed each time the pay-per-call number is given. The Commission sought comment on whether it would be appropriate for the cost to be disclosed with each presentation of the pay-per-call number in all radio advertisements.[95] Few commenters focused on this question. NACAA and CA commented that the cost should be disclosed immediately after each time the pay-per-call number is given.[96] The AAF commented that repetition of the cost after the pay-per-call number would lengthen the advertisement, and thus increase the advertisement's cost.[97] According to the AAF, repetition of the pay-per-call number is required in order for listeners to retain the number, or to allow them to write it down, while such repetition is not required for the cost. The proposed rule, however, required repetition of the cost only in program-length radio commercials. Most radio commercials are short enough that consumers who hear the pay-per-call number are likely to hear the cost—even if it is only presented once. However, if the cost is only given once during a fifteen- to thirty-minute commercial, consumers might easily miss it. The Commission believes the rule as proposed is appropriate, and this section of the regulations has not been changed in the final rule.[98]

*3. Section 308.3(c): Sweepstakes; Games of Chance*

Section 308.3(c) addresses pay-per-call services that advertise sweepstakes, including games of chance. The proposed rule[99] incorporated the requirements of the TDDRA[100] that such advertisements clearly and conspicuously disclose the odds of winning a prize, award, service, or product at no cost or at reduced cost, or the factors that will determine the odds, if the odds are not calculable in advance. The proposed rule limited the application of the odds disclosure requirement to those situations where the prize, etc., is offered in connection with a sweepstakes or game of chance.

The Commission requested comment on whether other types of promotions,

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[91] Comments 21 (NCL) at 1; 27 (NYDPS) at 1; 40 (NACAA) at 2; 42 (NAAG) at 12 (all generally supporting the proposed regulations); 53 (CME) at 18 (generally supporting the proposed regulations, but opposing the 15-second exception).

[92] Comments 10 (AAF) at 2; 34 (TPI) at 5; 37 (PPI) at 11; 39 (IISC) at 34–35; 45 (ANA) at 4; 46 (DMA) at 3; 49 (NIMA) at 3–4; 58 (PMA) at 2; 63 (NAIS) at 15 (if the pay-per-call number is not presented in the audio portion, the disclosures should not have to be presented in the audio portion either).

[93] Consumer communications research indicates that video-only presentation of information produces weaker recall than audio-only or audio-video presentation. *E.g.*, S. Ducoffe, *The Impact of Product Usage Warnings in Alcoholic Beverage Advertising*, 9 J. Pub. Pol'y & Mktg. 18, 26–27 (1990); D.D. Lovil, A.B. Pedderud, *Video Disclosures in Television Advertising: Are They Effective?*, 31 J. of Communications 72–77 (1981); C.G. Penney, *Modality Effects in Short-Term Verbal Memory*, 82 Psychological Bull. 68–84 (1975). In the Ducoffe study, recall of alcohol warnings in beer commercials was tested, using different combinations of warnings and subjects. Among subjects for whom the product was relevant who were exposed to a high-severity warning, 63.3% in the audio condition, 74.1% in the audio-video condition, and only 14.3% in the video condition recalled the presence of a warning without aid. *Id.* at 24. In general, however, among all of the different combinations of warnings and subjects, audio-video warnings failed to produce greater recall than audio-only disclosures, suggesting the lack of impact of video disclosures. *Id.* at 27. Nevertheless, some studies have shown audio-video warnings to effect recall more than audio-only warnings. *E.g.*, Morris, Mazis & Brinberg, *Prescription Drug Information for Consumers: An Experiment of Source and Format*, in *Current Issues and Research in Advertising* (J. Leigh & C. Martin, Jr., eds. 1984).

[94] Comment 34 (TPI) at 5.

[95] 58 FR 13380 (question 3).

[96] Comments 31 (CA) at 4; 40 (NACAA) at 4.

[97] Comment 10 (AAF) at 2.

[98] Under the final Rule, television advertisements with audio-only presentation of the pay-per-call number must deliver the cost immediately following the first and last presentations of the pay-per-call number, while in (non-program-length) radio advertisements, it must be presented only once. The Commission believes that different standards for the different media are appropriate because in a radio advertisement, to receive any information, the consumer must be listening; in contrast, with television advertisements, the consumer's attention may be at least partially focused on the screen and not entirely on the audio.

[99] In the proposed rule, this section was numbered 308.3(b). 58 FR at 13385–86.

[100] 15 U.S.C. 5711(a)(1)(B).

such as lotteries or games of skill, should be subject to this provision, and whether the proposed rule was sufficiently clear as to the types of promotions subject to the rule.[101] Two commenters suggested that the provision apply to games of skill as well as games of chance.[102] One commenter opposed extending the requirement to games of skill because a true game of skill has no element of chance.[103] The Commission is persuaded that determining the odds even for games of skill having some element of chance would be problematic. The TDDRA, by requiring that the odds of winning be disclosed, was clearly directed at games where the winner is determined by chance. Accordingly, the final Rule applies only to sweepstakes and games of chance.

Several commenters noted that the proposed regulations could be read as requiring the odds disclosure in situations where it presumably was no intended, such as situations where no odds would be associated with receipt of the service or product.[104] For instance, if an information provider running a sweepstakes offered, as an incentive for entering the sweepstakes, a token to all those who entered, and this token was not in the prize to be awarded to the winner of the sweepstakes, then the proposed regulations could be read as requiring the odds disclosure for receipt of the token, even though the odds of receiving the token would be 1:1. Based on these comments, the Commission has decided to clarify the language of this section. Thus, the final Rule only requires the odds disclosure with respect to prizes "to be awarded to the winner" of the sweepstakes, rather than for prizes "in connection with the offering" of a sweepstakes.

The proposed rule required that the odds be disclosed in all advertisements, including television and radio advertisements. The Commission recognizes that at times it could be quite time- and space-consuming to disclose all the odds, particularly in games with multiple prizes and complex odds structures. In the NPR, the Commission posed questions regarding ways in which this burden might be lessened.[105] A number of commenters urged that no odds disclosures be required in broadcast advertisements, pointing to the Commission's Games of Chance Rule,[106] which, since 1983, has granted a temporary exemption to the odds disclosure requirement for broadcast advertisements.[107] The Commission, however, is constrained by the language of the TDDRA, which requires that the odds of winning be disclosed in advertisements, without an exception for television or radio advertisements. The Commission received no feasible suggestions in the comments on how to lessen the burden of odds disclosures in broadcasting advertising. Commission staff also specifically raised this issue in the public workshop conference, and once again the participants did not offer any feasible suggestions.[108] Accordingly, this requirement is retained unchanged in the final Rule.

Some commenters expressed confusion over the proposed rule's requirement that if the odds of winning are not determinable in advance, the factors used in determining the odds must be disclosed. Two commenters indicated concern that this information could not be disclosed if the odds of winning depended upon the number of entries received.[109] It is the Commission's position that when the odds depend upon the number of entries received, a statement to that effect satisfies the requirement to disclose the factors used in determining the odds.

As proposed, the rule required a disclosure that no purchase (*i.e.*, no call to the pay-per-call service) is required to participate, along with a disclosure of a free alternative method of entry and instructions on how to enter.[110] The Commission requested comment on the preferability of allowing the free method of entry information to be disclosed in the preamble rather than in the advertisement.[111]

Several commenters opposed the proposed advertising disclosure requirements,[112] while several others supported them.[113] Some commenters opposing the requirements referred to the burden of having to make lengthy disclosures, particularly in broadcast media. The commenters favoring the requirements expressed the opinion that pay-per-call number sweepstakes are unlike traditional sweepstakes in which the consumer is presented with the alternative of entering the sweepstakes either by purchasing a particular product or, for example, by sending in a postcard, because in the case of a pay-per-call number sweepstakes, there is no separate product to be purchased. Rather, the purchase is accomplished through calling the pay-per-call number.

The Commission believes this last concern is valid. Although consumers may generally be aware of the "no purchase required" disclaimer typically found in sweepstakes advertisements, they may not appreciate that, in the case of an advertisement for a pay-per-call number, the "purchase" is calling the pay-per-call number. In this regard, it is significant that a 1992 Harris consumer survey showed that 35% of adult Americans were unaware of the difference between 900 numbers and 800 (toll-free) numbers,[114] while another 1992 survey indicated that 50% of adult Americans did not expect to be charged for 900 number calls.[115] In other words, between one-third and one-half of adult Americans may not realize that 900 numbers cost money. It is reasonable to expect, therefore, that at least one-third of adults would not equate calling a pay-per-call service with making a purchase and would believe that they could enter the contest without cost.

The Commission thus believes that to prevent consumer deception, sweepstakes offered through pay-per-call numbers should disclose, either in advertising or in the preamble to the call, that no call to the pay-per-call service is necessary to enter the sweepstakes. The USPS stated in its comment that some promoters have used confusing phrases in print advertising to describe the free entry option, such as "manual handling."[116] At the public workshop conference, some commenters stated that saying "no purchase necessary" is confusing to consumers, and the IISC indicated it did not object to alternative language, such as "no telephone call necessary."[117] The Commission believes it should be made completely clear to consumers that they do not have to incur a charge in order to enter a sweepstakes. Accordingly, the final Rule is modified slightly to make clear that the disclosure should state that no call to the pay-per-

[101] 58 FR at 13380 (question 7).
[102] Comments 31 (CA) at 5; 59 (USPS) at 3–4.
[103] Comment 37 (PPI) at 21.
[104] Comments 37 (PPI) at 27; 52 (IIA) at 22; 63 (nais) at 16–17.
[105] 58 FR at 13381 (question 9).
[106] 16 CFR part 419.
[107] 48 FR at 1046 (1983).
[108] Tr. at 440–461.
[109] Comments 37 (PPI) at 10; (IIA) at 22.
[110] Offering a free method of entering a sweepstakes or game of chance is necessary to avoid violation of the Federal law prohibiting commercial lotteries, 18 U.S.C. 1301, *et seq.*
[111] 58 FR at 13380–81 (question 8).
[112] Comments 39 (IISC) at 10; 45 (ANA) at 5; (IIA) at 22–23; 58 (PMA) at 1; 63 (NAIS) at 21–23.
[113] Comments at 21 (NCL) at 13; 31 (CA) at 6; 37 (PPI) at 10; 40 (NACAA) at 6; 42 (NAAG), Appendix 1 at 2–3; 59 (USPS) at 5.
[114] Comment 21 (NCL) at 10.
[115] Comment 42 (NAAG), Appendix 2 at 1–2.
[116] Comment 59 (USPS) at 5.
[117] Tr. at 424–426.

call number (rather than no purchase) is necessary to enter the sweepstakes.[118]

Disclosing that no call to the pay-per-call number is necessary to enter the sweepstakes, however, is insufficient without also telling consumers how to enter the sweepstakes without calling the pay-per-call number. As originally proposed, the rule required advertisements to disclose an alternative means of entry and instructions on how to enter. As noted above, a number of commenters argued that it was too burdensome to make these disclosures in broadcast advertisements, particularly in the size required by the proposed rule. After reviewing the comments and considering the discussion of this issue at the public workshop conference,[119] the Commission believes that the proposed rule should be modified to require disclosure of the existence of an alternative method of entry and a cost-free means of learning of that method: Either a local or toll-free telephone number that consumers may call to learn of the information, or an address that consumers may write to for instructions on how to enter.[120] The actual instructions on how to enter without cost need not be disclosed so long as consumers are adequately informed how to obtain that information.

At least one commenter disliked the alternative of allowing disclosure of the free method of entry information in the preamble, citing the relative costliness of making disclosures in the preamble compared to making them in advertisements.[121] Other commenters raised the concern that if consumers are forced to call the pay-per-call number in order to learn of the free method of entry, the tendency may be for them simply to stay on the line and enter through the pay-per-call service.[122]

The Commission has decided to allow pay-per-call providers to place the free method of entry information *either* in the advertisement or in the preamble. If provided in the preamble, the information must be presented at a reasonably understandable volume and in a slow and deliberate manner, as those terms are defined in § 308.2(h) and (j).

The proposed rule required that the advertisement disclose the scheduled termination date of the game of chance. In addition, the Commission had requested comment on the desirability of requiring disclosure of other limitations on the sweepstakes program's availability, such as geographical restrictions, time-of-day availability, or touch-tone phone requirements; the name, city, state, and customer service telephone number of the promoter or provider of the pay-per-call service; and the value of the prize.[123] Several commenters noted that sweepstakes are already subject to a plethora of Federal and State regulations,[124] and objected to the requirement to disclose the game's termination date or the other information not required by the TDDRA.[125] The Commission is persuaded that sweepstakes promotions run through pay-per-call services are not sufficiently different from other sweepstakes promotions with respect to these types of disclosures that it is necessary for this Rule to address these issues, either to prevent unfair or deceptive practices, or to prevent evasion of the regulations. Accordingly, the final Rule does not contain the requirement to disclosure the game's termination date, or any of the additional disclosure requirements listed above.

A number of commenters, however, noted that pay-per-call service sweepstakes are frequently used to promote prizes that are represented to be far more valuable than is actually the case.[126] The legislative history indicates that Congress was also concerned about the problem.[127] The Commission requested comment on the advisability of requiring disclosure of the material terms and conditions of receiving a service or product through a pay-per-call service.[128] One of the material terms suggested was a clear and accurate description of the service or product. While the Commission has decided not to include this requirement for all pay-per-call service advertisements (relying instead on general compliance with section 5 of the FTC Act), in the case of pay-per-call service sweepstakes, the Commission is persuaded that sufficient evidence exists, as presented in the comments, that explicitly requiring a clear and accurate description of sweepstakes prizes is required in order to prevent deceptive practices.[129] Thus, the final Rule requires that in advertisements for pay-per-call service sweepstakes, any characterization of the prizes or awards must be truthful and accurate. The Rule does not impose an affirmative duty to describe the prizes; it simply requires that to the extent that the advertisement identifies, describes, or otherwise characterizes the prizes, such characterization must be truthful and accurate.

With respect to the manner in which the required disclosures must be made, the proposed rule stated that in television advertisements, there must be a simultaneous audio-video disclosure and that each line of the video disclosure must occupy at least one-tenth of the vertical field of the television screen. Several commenters objected to these specific requirements.[130] After reviewing the comments, the Commission believes that the Rule's purpose would better be served by allowing more flexibility in the size and presentation of the sweepstakes disclosures. Because the regulations require several disclosures, there is a concern that the advertisement would become overly cluttered with information, with the result that the important information would not appear prominently in the advertisement.[131] In addition, variability in disclosure size among advertisements may be desirable because it is likely to lessen the potential for the disclosures to "wear-out," thus enhancing their noticeability.[132] The proposed rule is

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[118] This disclosure requirement does not prescribe a specific phrase that must be used. The Commission, however, interprets the Rule as requiring a specific statement that no call to a pay-per-call telephone number, or to a telephone call costing money, is required. It is the Commission's opinion that stating that "no purchase is necessary to enter" would not comply with the Rule.

[119] Tr. at 412–22.

[120] Providers of pay-per-call services that choose to provide a local or toll-free telephone number have the responsibility of ensuring that the telephone numbers are adequately staffed or otherwise adequately maintained so that the free method of entry information is readily accessible to consumers who call those telephone numbers.

[121] Comment 37 (PPI) at 32.

[122] Comments 31 (CA) at 2; 40 (NACAA) at 6; 42 (NAAG) at 14.

[123] 58 FR at 13380 (question 7).

[124] *See, e.g.*, Comment 58 (PMA) at 1 and Appendix (listing federal and state laws and regulations governing contests and promotions). *E.g.*, Minn. Stat. Sec. 609.75 (labels and advertisements must clearly state the scheduled termination date of the promotion).

[125] Comments 37 (PPI) at 9–11, 31; 39 (IISC)—at 10–11; 45 (ANA) at 6; 58 (PMA) at 1.

[126] Comments 21 (NCL) at 13–14; 31 (CA) at 6; (NACAA) at 5; 42 (NAAG) at 13–14; 59 (USPS) at 4, 7.

[127] House Report at 5.

[128] 58 FR at 13382 (question 16).

[129] Comments 21 (NCL) at 13–14; 31 (CA) at 6; 40 (NACAA) at 5; 42 (NAAG) at 13–14; 59 (USPS) at 4, 7.

[130] Comments 14 (AAAA) at 4–6; 22 (Magnavox) at 3; 37 (PPI) at 11; 39 (IISC) at 16, 20; 45 (ANA) at 5, 7; 52 (IIA) at 22; 58 (PMA) at 2; 63 (NAIS) at 22.

[131] Comments 19 (AAF) at 4; 35 (AIP) at 5; 37 (PPI) at 10; 39 (IISC) at 37–38; 45 (ANA) at 6; 46 (Cox) at 3; 48 (DMA) at 4; 49 (NIMA) at 3–5; 61 (ICN) at 4–5.

[132] *See* Bhalla & Lastovicka, *The Impact of Changing Cigarette Warning Message Content and Format*, in *Advances in Consumer Research* 306, 309 (T. Kinnear ed. 1984) (varying the content and format of messages enhances noticeability and attention); R. Petty & J. Cacioppo, *Communication and Persuasion: Central and Peripheral Routes of*

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modified to allow the required disclosures to be presented either in audio or video form. Where video disclosures are used, they must appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend them. If audio disclosures are used, they must, of course, be given in a slow and deliberate manner and at a reasonably understandable volume.

In print advertisements, the proposed rule required that the disclosures be in at least 12-point type. A number of objections were raised to this requirement,[133] with several commenters responding to the Commission's question whether this requirement would be feasible for different types of advertising media.[134] Some commenters pointed out that classified ads generally only use 6-point type, and do not necessarily allow variation in size or typeface, so that the rule would prevent the use of that medium for some advertisements.[135] As the Commission suggested in the NPR, and as several commenters noted, in the case of billboards, a 12-point disclosure would be inappropriate.[136] In addition, some extrinsic evidence was submitted indicating that consumer recall of odds disclosures made in 12-point type was no better than when made in 10-point type.[137] The Commission has decided that the purposes of the Rule would best be served by a more flexible standard. Therefore, the final Rule requires that the disclosures be made in a sufficient size and prominence, and in such location in the advertisement, that the information is noticeable, readable, and comprehensible. This flexibility enables variation in the size of disclosures, relative to the type and size of the advertisement, so long as the information is always readable and of sufficient prominence to be readily noticed. Moreover, this flexible standard addresses the concerns raised by the copy test evidence[138] that a 12-point requirement was too rigid to allow effective presentation of both the selling message and the required disclosures.

*Attitude Change* 68–73 (1986) (once consumers become accustomed to an advertising message, repetition of the same message results in decreased effectiveness).

[133] Comments 14 (AAAA) at 5; 22 (Meganews) at 3; 37 (PPI) at 11, 28–29, 37; 39 (IISC) at 16–24, 29–32; 45 (ANA) at 8; 58 (PMA) at 2.

[134] 58 FR at 13381 (question 10).

[135] Comments 22 (Meganews) at 3; 46 (Cox) at 5; 48 (DMA) at 4; 52 (IIA) at 24; 63 (NAIS) at 20–23; 73 (NII) at 9; 80 (Suarez) at 2.

[136] Comments 14 (AAAA) at 15; 37 (PPI) at 34; 48 (DMA) at 6.

[137] Comment 39 (IISC) at 37.

[138] See comment 39 (IISC), Appendix B.

4. *Section 308.3(d): Federal Programs*

Section 308.3(d) covers advertisements for pay-per-call services that provide information on Federal programs, but that are not sponsored or endorsed by any Federal agency.[139] The proposed rule[140] required that the advertisement clearly and conspicuously disclose, at the beginning, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency. While few comments focused on this provision, those that did stated that the Rule ought to provide better definition of services that "provide information on a Federal program." The IIA, for instance, suggested that the provision be narrowed to cover only those services that contain "a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement."[141] This language is found in a U.S. Postal Service statute prohibiting sending through the mail certain materials that contain the above information, without a disclosure regarding lack of Federal government approval or endorsement.[142]

IIA commented that the provision should not cover programs that merely provide information originating with or obtained from the Federal government.[143] Similarly, NAIS commented that the disclosure should only be required on programs exclusively or predominantly dedicated to the provision of Federal program information, or that otherwise give the appearance of Federal sponsorship or authority.[144] After reviewing the comments, the Commission is persuaded that further clarification is warranted.

The Commission agrees that programs giving the appearance of Federal sponsorship or endorsement should contain the disclosure. While the legislative history of the TDDRA does not shed any light on congressional intent with respect to this provision, the Commission believes that the statute is reasonably interpreted as intending to require the disclosure in those situations in which consumers may be misled about the program's affiliation with the Federal government. The Commission is not persuaded, however, that such misinterpretation would be limited to those programs that predominantly or exclusively are dedicated to providing information on a Federal program.[145] The final Rule, therefore, is modified to make clear that pay-per-call services that provide information on a Federal program include services that give the appearance of Federal affiliation. The Rule states that such services include those using a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval, or endorsement.

The TDDRA requires the Federal programs disclosure to be made at the beginning of the advertisement.[146] Accordingly, the proposed rule required that in both television and radio advertisements, the disclosure must begin within the first fifteen seconds of the advertisement, while in print advertisements, the disclosure must appear within the top one-third of the advertisement. Two commenters objected to this requirement, but it appears that they were unaware of the statutory requirement that the disclosure be made in the beginning of the advertisement, and thus they did not offer any alternative way of fulfilling the statutory requirement.[147] Thus, no modification will be made in the final Rule.

The final issue with respect to the Federal programs disclosure concerns the size and manner of the disclosure. As proposed, the rule required a simultaneous audio-video disclosure in television advertisements, and specified that each line of the video disclosure must occupy at least one-tenth of the vertical field of the television screen. For the reasons stated above in the sweepstakes section, the Commission has decided to modify the proposed rule to allow the disclosure to be made in either the audio or video portion of the advertisement. If a video disclosure is used, it must appear on the screen in sufficient size and for sufficient time to

[139] An example would be a service providing access to information in the Federal Register or the Congressional Record.

[140] In the proposed rule, this section was numbered 308.3(c). 58 FR at 13386.

[141] Comment 52 (IIA) at 7.

[142] 39 U.S.C. 3001(h), (i).

[143] Comment 52 (IIA) at 8.

[144] Comment 63 (NAIS) at 24.

[145] At the same time, the Commission does not contemplate that the disclosure would be required in programs that make only incidental use of, or incidental reference to, information obtained from the Federal government. For example, a winery could run a promotional campaign highlighting the wine region's attraction as a tourist destination, and give the population of the region, by referring to the most recent U.S. Census. The Commission does not interpret the regulations as applying to such a pay-per-call service, merely because it referred to U.S. Census Bureau data.

[146] 15 U.S.C. 5711(a)(1)(C).

[147] Comments 37 (PPI) at 12; 63 (NAIS) at 25.

allow consumers to read and comprehend the disclosure. An audio disclosure must be delivered in accordance with the requirements of § 308.3(a)(4).

Similarly, the proposed rule required that the disclosure in print advertisements be in at least 12-point type. Again, for the reasons stated in the sweepstakes section, the Commission has decided to modify the proposed rule to require that print disclosures be made in a sufficient size and prominence, and in such location in the advertisement, that the information is noticeable, readable, and comprehensible.

5. *Section 308.3(e): Prohibition on Advertising to Children*

As required by the TDDRA,[148] section 308.3(e) of the Rule prohibits a provider of pay-per-call services from directing advertisements for such services at children under the age of 12, unless the service is a bona fide educational service (as defined in § 308.2(a)).[149] In the proposed rule,[150] advertisements directed to children under 12 were defined, both by the type of medium in which they appear as well as by the nature and content of the advertisement, in the form of a rebuttable presumption. Advertisements directed to children under 12 were presumed to include the following: Advertisements appearing in publications directed to children (*e.g.*, children's books, magazines and comic books); advertisements appearing during or immediately adjacent to television programs directed to children (*e.g.*, children's programming as defined by the FCC,[151] animated programs, and after-school specials directed to children); advertisements broadcast during or immediately adjacent to radio programs directed to children; advertisements appearing on a commercially prepared video directed to children; and advertisements or promotions appearing on product packaging directed to children.

In addition, in the proposed rule, any advertisement, regardless of placement, that is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like, would also be presumed directed to children under the age of 12. However, the proposed rule provided that this presumption could be rebutted with competent and reliable evidence demonstrating that the receiving audience was composed predominantly of individuals aged 12 or older. The final Rule retains the use of content-based criteria, but only as a factor for the Commission to consider in determining whether an advertisement is directed to children under 12.

The Commission specifically sought comment on several discrete issues regarding this provision of the proposed rule: (1) Whether structuring the definition of advertising to children under 12 in the form of a rebuttable presumption is appropriate and useful; (2) whether the use of audience composition and readership data to demonstrate whether a particular advertisement is directed to that age group is appropriate and useful; and (3) the appropriate criteria for the Commission to rely upon in determining whether an advertisement is directed to children under 12.[152] Included with these questions was a specific request by the Commission for any data that would assist the Commission in setting a specific percentage of audience composition that would reflect accurately a "children's audience."[153] The NPR also asked, among other things, whether the definition provided sufficient guidance as to the type of advertisement that would be presumed directed to children, and whether it was appropriate for the Commission to rely, at least in part, on the content of an advertisement as a factor.[154] This section discusses each of these issues.

The comments were divided regarding whether the definition of advertisements directed to children under 12 should take the form of a rebuttable presumption. Some of the commenters urged the Commission to maintain this format because they believed that the proposed definition properly placed on the advertiser the burden of proving the composition of the receiving audience.[155] In addition, several commenters stated that a standard based on audience composition data provides objective, measurable proof, using data that advertisers already use and analyze in determining where to place advertisements.[156] In particular, PPI favored using audience composition data as the basis for the definition, and stated that it should be given a more prominent role than merely as evidence to rebut the presumption.[157] Most of the commenters that favored the rebuttable presumption also favored reliance on audience composition data to rebut the presumption. However, nearly all of those commenters also urged the Commission to make it more difficult to rebut the presumption by requiring a higher percentage of audience members

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[148] 15 U.S.C. 5711(a)(1)(D).

[149] A number of commenters raised First Amendment issues with respect to the congressional ban on all pay-per-call advertising and services directed to children under 12. Comments 14 (AAAA) at 2–4, 7–9; 30 (CARU) at 2; 39 (IISC) at 6–8, 11–13; 45 (ANA) at 1–3, 8–9; 48 (DMA) at 7–8, 10; 63 (NAIS) at 7–8, 25. Several of these commenters also challenged the constitutionality of the advertising restrictions generally. Under the First Amendment, commercial speech that is misleading or fraudulent may be prohibited altogether, and even commercial speech that is neither misleading nor fraudulent may be restricted, provided the government's interest in doing so is substantial, the restrictions directly advance the government's asserted interest, and the restrictions are no more extensive than necessary to serve that interest. *See Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980) (cited in Senate Report at 4–5); *see also Board of Trustees of the State Univ. of New York* v. *Fox*, 492 U.S. 469, 475 (1989); *City of Cincinnati* v. *Discovery Network, Inc.*, 113 S.Ct. 1505, 1510 (1993).

The test is not whether the regulation, as applied, represents the "least restrictive means" available, but merely whether it has been "narrowly tailored" to serve the government's asserted interest without ensnaring protected, non-commercial speech. *Fox*, 492 U.S. at 480; *see, e.g., FTC* v. *Brown & Williamson Tobacco Corp.*, 778 F.2d 35, 43–44 (D.C. Cir. 1985) (injunction did not impose a sweeping or blanket prohibition and was not broader than reasonably necessary to prevent deception). The fit between the government's goals and the means chosen to meet those goals need not be "perfect," but simply "reasonable." *Fox*, 492 U.S. at 480. The legislative history of the TDDRA notes, for example, that programming aimed at children may be subject to reasonable restrictions, where such restrictions serve a substantial interest and are otherwise consistent with First Amendment requirements. *See* Senate Report at 4–5 (*citing FCC* v. *Pacifica Foundation*, 438 U.S. 726, 749 (1978) (quoting *Ginsberg* v. *New York*, 390 U.S. 629 (1968)).

As explained throughout this statement of basis and purpose, the Commission has considered and evaluated various regulatory alternatives in determining the final scope and extent of its regulations. The Commission believes that the requirements set forth in the final Rule are reasonable, are narrowly tailored to meet the required regulatory and law enforcement objectives, and are no more extensive than necessary to serve the purposes articulated by Congress in the statute and the legislative history.

[150] 58 FR at 13380.

[151] The FCC defines "children's programming" as "programs originally produced and broadcast for an audience of children 12 years old and under." FCC, Report and Order, Policy and Rules Concerning Children's Television Programming, Docket No. 90–570 (April 9, 1991). Thus, the FCC definition relates to children *12 years old and under*, while this rule prohibits pay-per-call services and advertisements for such services directed to children *under the age of 12*. Nevertheless, the FCC's definition provides a useful benchmark.

[152] 58 FR at 13381 (question 11).

[153] *Id.* at 13381 (question 13.b).

[154] *Id.* at 13381–82 (question 14).

[155] Comments 21 (NCL) at 4, 16–17; 31 (CA) at 7; 37 (PPI) at 35; 40 (NACAA) at 6; 42 (NAAG) at 15; 53 (CME) at 14–15.

[156] Comments 37 (PPI) at 35–36; 53 (CME) at 15. On the same issue, CA stated that pay-per-call providers should not be permitted to rebut the presumption with evidence other than audience composition data due to the inherent subjectivity of such information. Comment 31 (CA) at 7.

[157] Comment 37 (PPI) at 12–13.

12 and older than suggested in the NPR.[158]

On the other hand, a significant number of commenters were opposed to a rebuttable presumption format. These commenters generally took the position that while the factors identified in the proposed rule might be appropriate if considered together, none of them were sufficient alone, and none were sufficient to rise to the level of presumptive evidence.[159] Moreover, several of these commenters stated that any presumption contained in the Rule should run in favor of the pay-per-call providers and against the Commission—*i.e.*, that all advertisements for pay-per-call services should be presumed directed to children aged 12 and older, unless the Commission is able to prove otherwise.[160] A majority of the commenters opposing the rebuttable presumption also took the position that the percentages identified by the Commission in the NPR were inappropriate because they made it too difficult to rebut the presumption.[161] However, only PPI responded to the Commission's request for relevant data, by providing a one-page list showing the audience composition for several different types of television programs, and circulation data for several magazines.[162]

With respect to the criteria detailed in the proposed rule that would raise the presumption that an advertisement is directed to children under 12, there was general agreement by the commenters that the factors identified by the Commission were appropriate, provided that the presence of one factor would not raise the presumption by itself.[163] The public workshop conference was particularly enlightening regarding this issue, and it is clear that the weight of the comments indicates that the criteria developed by the Commission are thought to be comprehensive and reasonable indicia of whether a particular advertisement is directed to children under the age of 12. However, many of the participants also indicated that it would be necessary for the Commission to review an advertisement in light of all of the factors in making its determination.[164] Many of the commenters that favored the use of the delineated criteria, when taken as a whole, also opposed the use of any one factor to raise the presumption that an advertisement is directed at young children.[165]

Several of the commenters noted that the use of media-based criteria, *i.e.*, placement of the advertisements in particular types of media, was appropriate because that is the manner in which most advertisers place their advertisements.[166] CME also urged the Commission to retain the content-based portion of the criteria in the final Rule, emphasizing that there was legislative history to support this aspect of the definition.[167]

In contrast, a few of the commenters were completely opposed to the presumption criteria as set forth in the proposed rule. Several commenters expressed concern over the ambiguity of these criteria or the fact that they were not narrowly tailored, while others indicated a preference for no criteria at all, or simply disagreed with the criteria listed in the proposed rule.[168] Some of those commenters who opposed any criteria felt that the Rule should merely restate the TDDRA's ban on all advertisements directed to children under 12. For the reasons stated in part II.B., *supra*, regarding clear and conspicuous disclosures, the Commission believes this suggestion would violate the congressional mandate that the Commission enact implementing regulations, and that it would produce an unenforceable Rule.

Two commenters objected to considering advertisements placed immediately adjacent to children's television programs as advertisements directed to children under 12 because doing so would prohibit pay-per-call providers from placing advertising as "run-of-station" spots—*i.e.*, allowing the particular television station to place the advertisements at any available time, rather then specifying a particular placement.[169] According to one commenter, it is more expensive for advertisers to specify during which television program they want their advertising placed, rather than placing a "run-of-station" advertisement.[170]

After reviewing the comments and the transcript of the public workshop conference, the Commission has decided to modify the form of the prohibition on advertisements directed to children under 12. The Commission is persuaded that a one-factor rebuttable presumption is unworkable. As drafted, the proposed rule would permit only audience composition data to rebut the presumption. While audience composition data is available for a wide variety of broadcast programming through established services such as Nielsen Television Viewing Profiles, and for magazines through reader profiles, there are currently few data sources for cable channels, nor is their readily available data for other types of advertising formats, such as product packaging. Since no factor alone could have raised the presumption, such a rule could subject many pay-per-call advertisements to a one-factor test without a real opportunity for the advertiser to rebut the presumption. Absent a meaningful source of audience composition data, this approach would be inconsistent with the Commission's approach to reviewing advertising claims; *i.e.*, the Commission generally examines the totality of the circumstances, including the advertisement is placed and the nature of the advertisement itself. Thus, after reviewing the comments, the Commission believes that audience composition data may not be a realistic rebuttal factor, but that it is of use, when available, as an indicator of when an advertisement is directed to children under 12.

The final Rule has two distinct tests for determining whether an advertisement is directed to children under 12. The first test is found in

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[158] Comments 31 (CA) at 7; 40 (NACAA) at 6; 42 (NAAG) at 15; 53 (CME) at 16–17.

[159] Comments 19 (AAF) at 5; 43 (GMA) at 7–8, 13, 15–16; 41 (Kellogg) at 3–5; 45 (ANA) at 9–10; 48 (DMA) at 8–10; 63 (NAIS) at 25–26.

[160] Comments 14 (AAAA) at 8; 19 (AAF) at 5; 45 (ANA) at 9; 48 (DMA) at 10; 52 (IIA) at 27.

[161] Comments 19 (AAF) at 5–6; 43 (GMA) at 17–18; 45 (ANA) at 10.

[162] Comment 37 (PPI), unnumbered attachment.

[163] Comments 19 (AAF) at 3; 35 (AIP) at 8; 43 (GMA) at 8, 13; 45 (ANA) at 9; 52 (IIA) at 25; 53 (CME) at 10–14; 63 (NAIS) at 26. CA supported a medium-based definition, but did not comment specifically on the criteria. Comment 31 (CA) at 7. NCL supported this provision of the rule as proposed. Comment 21 (NCL) at 16–17.

[164] Tr. at 360–65. Additionally, several participants at the public workshop conference stated that audience composition data should be considered as one of the criteria to examine in determining whether an advertisement is directed to a particular age group. Tr. at 373–73, 384.

[165] Comments 19 (AAF) at 3; 43 (GMA) at 15–16; 52 (IIA) at 27; 63 (NAIS) at 26–27; Tr. at 371.

[166] Comments 52 (IIA) at 28; 53 (CME) at 12; Tr. at 381–82.

[167] Comment 53 (CME) at 13 (citing House Report at 14). Clearly the House Committee contemplated that the Commission could use both a media-based and a content-based definition. *See also* Comments 31 (CA) at 7; 52 (IIA) at 26–27.

[168] Comments 20 (ABC) at 1–2; 30 (CARU) at 2–3; 35 (AIP) at 8 (favored all media-based criteria, but opposed content-based criteria as unnecessarily vague); 37 (PPI) at 12, 33; 45 (ANA) at 10 (believed criteria to be relevant factors but opposed the rebuttable presumption and would not support using criteria as part of that presumption); 48 (DMA) at 8. Some commenters identified, in their written comments, particular criteria they believed to be vague, ambiguous, or overly broad. Comments 14 (AAAA) at 10; 43 (GMA) at 12–15; 45 (ANA) at 8; 63 (NAIS) at 27. At the public workshop conference, however, some of these same parties indicated agreement with the criteria if they are examined together, and no single factor is determinative.

[169] Comments 34 (TPI) at 6; 63 (NAIS) at 27; Tr. at 387.

[170] Comments 34 (TPI) at 6; Tr. at 387–88.

§ 308.3(e)(2), which addresses the case where audience composition data or readership data is available and demonstrates that a majority (more than 50%) of the viewing audience of the program or readership [171] of the periodical is composed of children under 12. This first test defines any pay-for-call advertisement in those media placements as an advertisement directed to children under 12 and, therefore, completely prohibits such advertisements. Such a finding will be based solely on preexisting competent and reliable audience composition or readership data. This section does not create a new evidentiary burden on a pay-per-call provider to create a database where one does not already exist.

The Commission set the threshold for a "children's audience," *i.e.*, when children under 12 comprise over 50% of the viewers, based on its review of the comments and on its experience and expertise in regulating advertising.[172] An audience composed of over 50% young children can reasonably be characterized as a "children's audience." [173] The Nielsen data provided by PPI demonstrate that very few television programs or periodicals would fall into this category. According to that data, Saturday and Sunday morning cartoons, such as "Beetlejuice," would have an audience composed of more than 50% children under 12. Prime time programs with a juvenile appeal, like "Growing Pains," have approximately 40% of their audience in that age group. With respect to periodicals, the data provided indicate that publications such as "Game Players Guide to Nintendo" have an under-12 readership of 30%.[174] Thus, based on the record, the 50% cutoff would not sweep too broadly, as there are very few television programs or periodicals that would fall into the prohibited category.[175]

The second test for determining whether an advertisement is directed to children under 12 is contained in §§ 308.3(e)(3)(i)-(vii). Under this test, if competent and reliable audience composition data or readership data do not demonstrate that more than 50 percent of the audience or readership is composed of children under 12, the Commission will consider where the advertisement is placed and its nature and content in determining whether an advertisement is directed to children under 12.[176] Sections 308.3(e)(3)(i)-(vi) set forth the media placements the Commission will consider. As discussed below, these sections have been modified slightly compared to the corresponding sections of the proposed rule.[177] On the other hand, § 308.3(e)(3)(vii) of the final Rule, which remains essentially the same as proposed, states that the Commission will consider the content of the advertisement itself, regardless of where it is placed, in determining whether a particular advertisement is directed to children under the age of 12.

While the criteria contained in the second test are virtually the same as those set forth in the proposed rule, the use of the criteria is entirely different. Under the proposed rule, the existence of any one of the criteria could raise the presumption that a particular advertisement was directed to children under 12. In contrast, under the final Rule, if competent and reliable audience composition or readership data demonstrates that 50 percent or less of the audience is composed of children under 12, or if such data does not exist, the Commission will consider the placement of the advertisement as well as the nature and content of the advertisement itself in making its determination.

The Commission is persuaded by the comments that it would be unreasonable to find that an advertisement violated the statutory prohibition on advertising to children based on the existence of only one factor where it is not evident that a majority of the audience is under 12. Consistent with the Commission's approach to advertising cases generally, in these cases the Commission will examine the totality of circumstances in making its determination. However, the Commission will not assign any particular weight to any of the delineated criteria, nor will it state, in the abstract, the number of factors that it will require to be present in order to find a violation.[178] Under this section, audience composition data will not play a role in the Commission's analysis except to place an advertisement in a category of review where the Commission will consider both the placement and content of the advertisement. After reviewing the comments, the Commission is persuaded that this is a fair and reasoned approach.

The criteria identified in the final Rule are identical, for the most part, to the criteria set forth in the proposed rule which raised the presumption that an advertisement was directed to children under 12.[179] Based on overwhelming approval by the commenters and the conference participants of the criteria outlined in the proposed rule, the Commission decided to incorporate them into the final Rule. However, the Commission has added several new factors, including advertisements that appear: (1) On television stations or channels directed to children under 12; (2) on radio stations directed to children under 12; and (3) preceding a movie, shown in a movie theater, directed to children under 12. The Commission has expanded these categories of advertising placement because under the final Rule, the criteria merely provide guidance as

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[171] The proposed rule did not include the phrase "readership data" in connection with evidence to rebut the presumption that an advertisement was directed to children. However, in the final Rule the Commission added that phrase to clarify that the Rule is intended to cover evidence regarding readership of print media as well as viewership of broadcast media.

[172] Several commenters suggested that 50% was an appropriate threshold for determining whether an advertisement was directed to children under 12. Comments 19 (AAF) at 5; 43 (GMA) at 17–18; Tr. at 378 (GMA: "at least 50% would be a more realistic figure"), 380, 383 (PPI: "50% is a fair percentage").

[173] PPI and CME both urged the Commission to avoid a one-time look at audience composition data, but instead, to ensure that the data reflect audience composition over a reasonable period of time. Comments 37 (PPI) at 37; 53 (CME) at 15. While the Rule does not explicitly state that audience composition data be examined over time, the Commission contemplates that such data generally would be viewed over time, and not on a one-time basis. There may be instances, however, where a one-time look at audience composition or readership data will be sufficient to demonstrate that the receiving audience is composed of a majority of those under 12.

[174] Comment 37 (PPI), unnumbered attachment.

[175] As indicated above, the NPR specifically requested data regarding audience composition for different television shows. PPI did provide evidence and it amply supports the Commission's 50% threshold. In addition, during the public workshop conference, Commission staff asked again whether any participant had data regarding audience composition, and no additional data was supplied. One participant, AAAA, stated at the public workshop conference that nearly all Saturday morning cartoons and some of the afternoon specials specifically designed for children's viewing have an audience over 50% under 12. Tr. at 381–82.

[176] NAIS expressed concern that audience composition data does not exist for certain forms of advertising, such as product packaging. Comment 63 (NAIS) at 28. While not explicit, this provision is intended to cover situations where data does not exist. Thus, this provision does not require pay-per-call providers to conduct research to determine who may be viewing or receiving an advertisement, in the event that such data does not already exist.

[177] This section of the proposed rule was numbered 308.3(d)(2). 58 FR at 13386.

[178] *See Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60 (1983) (even when Constitutional rights are implicated, weighing several criteria is permitted).

[179] ABC expressed concern that the phrase "after-school specials," as used in this section, referred specifically to the "ABC After-School Specials" which ABC asserts are geared toward a teen audience. Comment 20 (ABC) at 2. The final Rule modifies the phrase to the more generic "after school programs," to clarify that the Commission will consider the placement of an advertisement in any program that is directed to young children and shown in the afternoon.

to the type of media-placement that the Commission will consider. Thus, the addition of these factors will not create an additional burden on pay-per-call providers, but will merely provide notice to the industry that the Commission will consider such placement in its determination of what constitutes advertising of pay-per-call services to children under 12.

*6. Section 308.3(f): Advertising to Individuals Under 18*

As required by the TDDRA,[100] all pay-per-call advertisements directed primarily to individuals under the age of 18 are required to provide a clear and conspicuous parental permission disclosure. In the proposed rule,[101] advertisements directed to individuals under 18 were defined in terms of a rebuttable presumption based on the medium in which the advertisement was placed, as well as by the nature and content of the advertisement itself. The criteria used to determine if a program was directed to those under 18 were virtually identical to the criteria used to determine if a program was directed to children under 12.

In the proposed rule, advertisements directed primarily to individuals under 18 were presumed to include the following: advertisements appearing in publications directed primarily to individuals under 18 (*e.g.*, certain books, magazines and comic books); advertisements appearing during or immediately adjacent to television programs directed primarily to individuals under 18 (*e.g.*, mid-afternoon weekday television shows); advertisements broadcast on radio stations directed primarily to individuals under 18; and advertisements appearing on a commercially-prepared video directed primarily to individuals under 18. Finally, any advertisement, regardless of placement, that was directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like was presumed to be directed primarily to individuals under the age of 18. However, the proposed rule provided that this presumption could be rebutted with competent and reliable evidence demonstrating that the receiving audience was composed primarily of individuals aged 18 or older.

In the final Rule, the Commission has adopted the same approach for requiring the parental permission disclosure as it has in implementing the prohibition on advertising directed to children. Accordingly, § 308.3(f) of the final Rule sets forth the same two-part test and the same criteria—both in terms of the media-placement and nature and content of the advertisement—that the Commission will consider in determining whether an advertisement is directed primarily to individuals under the age of 18. This section of the final Rule also retains many of the criteria listed in the proposed rule.[102] In addition, the Commission has added two new criteria, including advertisements that: (1) Appear on cable or broadcast television stations directed primarily to individuals under 18; and (2) precede a movie, shown in a movie theater, directed primarily to individuals under 18. Like the additions to the criteria contained in § 308.3(e), these new factors do not create an additional burden on pay-per-call providers; they merely provide additional guidance as to the type of media placement that the Commission will consider.

Under the proposed rule, the standard required to demonstrate that the receiving audience was composed primarily of individuals aged 18 or older was different from the standard required to demonstrate that the receiving audience was composed predominantly of children aged 12 or older. These different standards ("predominantly" versus "primarily") were based on the specific language differences in the TDDRA. Thus, the Commission contemplated that in order to rebut the presumption that an advertisement was directed primarily to individuals under 18, the advertiser would need only to show that more than half of the receiving audience was 18 or older. In contrast, the Commission contemplated that in order to rebut the presumption that an advertisement was directed to children under the age of 12, the advertiser would have to show that more than two-thirds to three-quarters of the audience was 12 years of age or older.[103]

The Commission recognized, however, in the NPR, the potential difficulties raised by these provisions, and accordingly asked whether the use of the words "predominantly" and "primarily" was meaningful and whether the corresponding percentages contemplated by the Commission were appropriate. As discussed above in part II.B.5, *supra*, the Commission also requested audience composition data that would assist it in setting standards for audience size.

Few commenters focused specifically on the definition of advertisements to individuals under 18.[104] Those that did were divided as to whether the standard for rebutting the presumption should be the same as that for children under 12, or whether it should be different, based on dissimilar language used in the TDDRA.[105] The commenters that favored different standards generally based their assertions on the language of the statute.[106] These commenters also urged the Commission to set an even higher standard for rebutting the presumption that an advertisement was directed to individuals under 18. In contrast, several commenters objected to the proposed rule's reliance on two different standards; however, few provided reasons for their beliefs.[107] CA asserted that there was no justification for two standards and that in order to protect consumers, both standards should be set at 25% (*i.e.*, any audience composed of 25% or more of a certain age group would constitute an audience of that group).[108] On the other hand, GMA proposed a threshold of 50% for both groups.[109]

Based on its review of the comments, the Commission has decided to use the same standard of audience composition data for both groups.[110] As noted in the NPR,[111] the Commission contemplated in the original proposal that to rebut the presumption that an advertisement was directed primarily to individuals under 18, over 50% of the audience would have to be individuals 18 and over. Consistent with that policy, the Commission has determined that any advertisement, appearing where

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[100] 15 U.S.C. 5711(a)(1)(E).

[101] In the proposed rule, this section was numbered 308.3(e). 58 FR at 13386–87.

[102] As noted above, the weight of the comments supported the criteria outlined in the proposed rule.

[103] 58 FR at 13381 (question 13).

[104] The reason for this may be that if an advertisement falls into this category, the only requirement is that the pay-per-call provider include a parental permission disclosure in the advertisement. In contrast, if an advertisement is deemed to be directed to children under 12, then it is completely prohibited under the Rule. Moreover, the industry already appears to include parental permission disclosures in many of its pay-per-call advertisements.

[105] The TDDRA prohibits advertisements *directed* to children under 12, but requires parental permission disclosure in advertisements *directed primarily* to individuals under 18. 15 U.S.C. 5711(a)(1) (D) and (E).

[106] Comments 40 (NACAA) at 6; 42 (NAAG) at 15; 53 (CME) at 16.

[107] Comments 21 (NCL) at 17; 31 (CA) at 7; 43 (GMA) at 17–18.

[108] Comment 31 (CA) at 7.

[109] Comment 43 (GMA) at 17–18.

[110] The reasons for deleting the rebuttable presumption from this section of the final Rule are the same as the reasons for deleting the similar presumption in the prohibition against advertisements to children under 12, discussed in part II.B.5, *supra*.

[111] 58 FR at 13374.

available audience composition or readership data demonstrates that a majority (more than 50%) of the viewing audience of the programming or the readership of the periodical is composed of individuals under 18, will be required to include the parental permission disclosure.[192] While the Commission initially contemplated the use of two different standards, upon examination of the record, the Commission has decided to adopt the same standard for both age categories. The legislative history does not provide any explanation for the discrepancy in statutory language, and it is not apparent that Congress had differing intents. The over-50% audience cutoff figure can just as reasonably be applied to the under-18 age group as it can to the under-12 group. As in the case with advertisements directed to children, if advertisements do not fall into this delineated category, the Commission will consider a number of other criteria in its determination to apply the Rule.

In the proposed rule, the parental permission disclosure was required to be clear and conspicuous, as that term was set forth in the rule. The proposed rule included requirements that in television or videotape advertisements, the video disclosure concerning parental permission be adjacent to the largest presentation of the pay-per-call number, and that each line of the video portion of the disclosure occupy at least one-tenth of the vertical field of the television screen. In any program-length commercial (*i.e.*, 15 minutes or longer), the video disclosure had to appear simultaneously with and for the same duration as each presentation of the pay-per-call number. In print advertisements, the disclosure was required to be adjacent to the largest presentation of the pay-per-call number, and each letter or numeral was required to be at least 12-point type. In any program-length radio commercial, the disclosure was required to be delivered immediately preceding each delivery of the pay-per-call number.

While the Commission received many comments pertaining to the clear and conspicuous standards set out in the proposed rule, including the specific size and placement specifications, the Commission did not receive many comments specific to the particular requirements set forth in this section of the proposed rule. Several comments favored the proposed size requirement for the parental permission disclosure,[193] while others opposed the specifications as too restrictive and rigid.[194] Another comment expressed concern that requiring both the cost and parental permission disclosures to be adjacent to the pay-per-call number would result in cluttered disclosures.[195] CME generally supported the rule as proposed, but saw no basis for exempting 15-second advertisements that contain no audio presentation of the pay-per-call number from the simultaneous audio-video disclosure requirements.[196]

Regarding the language of the parental permission disclosure, one commenter requested that the Commission adopt the language prescribed in its consent orders relating to children's 900 numbers.[197] Another commenter questioned whether an advertisement in a magazine with a readership composed of individuals 16–35 years old [198] could merely disclose that one must be 18 years old to call the service.[199] The Commission has decided not to require any specific language in advertisements directed to individuals under 18, nor will it provide "safe harbor" language in this instance. The Commission's existing orders in this area dealt with advertisements clearly directed at a very young age group (*i.e.*, Santa Claus and Easter Bunny lines), and therefore it was reasonable to construct a disclosure that could be easily understood by young children. In contrast, the Rule requires a parental permission disclosure in advertisements directed to an audience that may contain young children and teenagers.

Given the inherent difficulty of creating specific language that would be appropriate to a broad range of services and age groups, the Commission has declined to do so. Those who produce pay-per-call services can exercise their discretion in developing disclosures both appropriate to the particular service and appropriate to the age group in need of the required warning. Furthermore, there is evidence to suggest that when consumers view the same warning in advertisements over long periods of time, they ignore it because the disclosure has "worn out."[200] Thus, requiring specific language for this disclosure could have the unintended effect of desensitizing the target audience to the required warning. Accordingly, no specific language is mandated.[201]

As discussed in part II.B.1, *supra*, the final Rule requires that all disclosures comply with the standards set forth in § 308.3(a). In addition, each letter of the parental permission disclosure in any advertisement must be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number.

The Commission has modified the size requirements for the parental permission disclosure for the same reasons as those discussed above concerning the size requirements for the disclosure regarding the cost of the call.[202] The legislative history indicates that Congress was particularly concerned that the cost of the call and the parental permission disclosures be adequately conveyed to consumers. Therefore, the parental permission disclosure, like the cost disclosure, must be presented at least once simultaneously in both the audio and video portions of a television advertisement.[203] However, based on the comments, the Commission believes that it would be impractical to require that both disclosures appear adjacent to the pay-per-call number. The Commission recognizes the need of pay-per-call providers to have some flexibility in designing advertisements for their services. Thus, the parental permission disclosure need not appear adjacent to and simultaneously with the pay-per-call number. In television advertisements, however, the video disclosure must remain on the screen for sufficient time to allow consumers to read and comprehend it. The Commission believes that by maintaining the requirement that the

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[192] One commenter specifically suggested that 50% was an appropriate threshold in the context of advertisements directed primarily to individuals under 18. Comment 43 (GMA) at 18. Many commenters simply did not address the issue. This over-50% figure, however, includes all those under the age of 18, including those below the age of 12 who happen to be in the audience. To the extent that advertising continues to reach the under-12 age group, it should include the parental permission warning.

[193] Comments 31 (CA) at 7–8; 53 (CME) at 17.

[194] Comments 37 (PPI) at 13–14; 43 (GMA) at 19; 63 (NAIS) AT 29.

[195] Comment 63 (NAIS) at 29.

[196] Comment 53 (CME) at 17–19.

[197] Comment 53 (CME) at 22.

[198] In placing an advertisement in a magazine with a readership of individuals between the ages of 16 and 35, the advertiser would have to consider the particular spread of that readership. If more than 50% of the readers were under 18, the advertisement would be considered directed primarily to those under 18. If less than 50% of the readers were under 18, the advertiser would have to look to the criteria set forth in § 308.3(f)(4) to determine whether the disclosure is required.

[199] Comment 35 (AIP) at 9.

[200] *See* footnote 132, citing marketing studies indicating that repetition of the same advertising message results in decreased effectiveness.

[201] The TDDRA requires a statement that conveys that individuals under 18 must have parental permission to call the number. Given this statutory mandate, the Commission believes that it is not sufficient for an advertisement merely to advise the viewer that one must be 18 years old to call.

[202] *See* part II.B.2, *supra*.

[203] The same limited exceptions that apply to this requirement in the cost disclosure section will also apply here.

parental permission disclosure be the same size as the cost disclosure, by tying these sizes to the size of the pay-per-call number,[204] and by requiring that the statement be in both the audio and video portions of television advertisements, the Rule ensures that the disclosure will be clear and conspicuous. Moreover, as discussed in part II.D.1.d, *infra*, *all* preambles for pay-per-call services must also state that individuals under 18 years of age must have their parent's permission before calling.

In any program-length advertisement (radio or television), the disclosure must be delivered at least three times, near the beginning, middle and end of the commercial. This should ensure that those who may tune in to only a portion of the commercial will nonetheless receive the information.

*7. Section 308.3(g): Electronic Tones in Advertisements*

The TDDRA mandates that the Commission prescribe a rule prohibiting a provider of pay-per-call services from using advertisements that emit electronic tones that can automatically dial a pay-per-call telephone number.[205] The proposed rule included this prohibition, and the Commission received no comments on this provision. Accordingly, it is included in the final Rule as proposed.

*8. Section 308.3(h): Telephone Solicitations*

The proposed rule required the provider of pay-per-call services to ensure that any telephone message soliciting calls to a pay-per-call service disclose the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with the cost disclosure requirements set out in the proposed rule at §§ 308.3(a)(1)(i)–(v). As explained in the NPR, such messages might be accessed through a toll-free telephone number, for example,[206] or through any regular long distance or local telephone exchange.[207] The Commission did not receive any comment on this provision, and it has been retained unchanged, except to reflect that the sections setting forth the cost disclosure requirements are now contained in §§ 308.3(b)(1)(i)-(v) of the final Rule.

*9. Section 308.3(i): Referral to Toll-Free Telephone Numbers*

The proposed rule closely tracked the language of the TDDRA,[208] and prohibited providers of pay-per-call services from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll-free, if callers to that number may be connected to an access number for, or may otherwise be transferred to, a pay-per-call service. One commenter suggested that this section be expanded to prohibit advertisements referring to "toll-free numbers" for which any charge is levied due to the completion of the call.[209]

As will be discussed in part II.D.9, *infra*, the Commission has expanded the prohibition against providing pay-per-call services through an 800 or toll-free telephone number to parallel the statutory provision on common carrier requirements, as well as the relevant FCC regulations, restricting the use of 800 numbers. The prohibited uses of toll-free numbers now include: (1) The calling party being assessed a charge for the call simply by virtue of completing the call; (2) the calling party being connected to an access number for, or otherwise transferred to, a pay-per-call service; (3) the calling party being charged for information conveyed during the call, unless there is a presubscription or comparable arrangement; and (4) the calling party being called back collect for the provision of audio information services, simultaneous voice conversation services, or products.

The Commission believes that if pay-per-call services are prohibited on toll-free telephone lines, providers should not be permitted to advertise such services. Accordingly, this section of the final Rule states that providers of pay-per-call services are prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised or widely understood to be toll-free, if that number violates the prohibition concerning toll-free numbers set forth in § 308.5(i) of the Rule.

*C. Section 308.4: Special Rule for Infrequent Publications*

In the TDDRA, Congress left to the discretion of the Commission whether to grant certain exemptions to "infrequent publications," based on the fact that many such publications have a policy against publishing specific prices.[210] The proposed rule allowed an exemption from the cost disclosure requirements for advertisements for pay-per-call services that appear in publications that meet certain requirements. This section is intended to cover publications such as a yellow pages telephone directory, or other publications published on an infrequent basis. Instead of the usual cost disclosures required by the proposed rule, advertisements for pay-per-call services in this type of publication are permitted simply to include a clear and conspicuous disclosure that a call to the pay-per-call service may result in a substantial charge above the long-distance charge. In order to qualify for this exemption, the proposed rule required that the publication be: (1) Widely distributed; (2) printed annually or less frequently; and (3) one that has an established and written policy of not publishing specific prices in advertisements.

The final Rule retains the exemption for infrequent publications, with several modifications, as noted below.[211] First, the Rule does not require that an infrequent publication's policy against publishing specific prices be in *writing*, only that it be an *established* policy. In the NPR, the Commission specifically asked whether it would be sufficient if a publication had an established, but unwritten, policy of not publishing prices.[212] While few commenters

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[204] As noted in the cost disclosure section, above, there may be certain kinds of advertisements in which a type size one-half the size of the pay-per-call number would not be adequate to provide a clear and conspicuous disclosure.

[205] 15 U.S.C. 5711(a)(1)(F).

[206] As required by the TDDRA, 15 U.S.C. 5711(a)(2)(F), the final Rule, at § 308.5(i), prohibits the providing of pay-per-call services through toll-free telephone numbers. Thus the caller cannot be connected or transferred to a pay-per-call service after calling a toll-free number. However, there is no prohibition against using a toll-free number to advertise a pay-per-call service so long as no direct connection or transfer to the service can be made.

[207] The Telephone Consumer Protection Act of 1991, 47 U.S.C. 227 ("TCPA"), would ban all computer-generated calls to homes, including those soliciting calls to pay-per-call services, unless such calls are made for emergency purposes or the subscriber consents in advance to them. The TCPA became effective December 20, 1992. However, the United States District Court for the District of Oregon found that this provision of the TCPA placed an unconstitutional restriction on protected commercial speech, and therefore prohibited its enforcement. *Moser* v. *FCC*, No. 92–1408–RE (D. Or. May 21, 1993). On July 19, 1993, the government filed, in the U.S. Court of Appeals for the 9th Circuit, a notice of appeal of this decision.

[208] 15 U.S.C. 5711(a)(1)(I).

[209] Comment 21 (NCL) at 17–18.

[210] 15 U.S.C. 5711(a)(7).

[211] One commenter, CA, opposed the exemption for infrequent publications because it feared that such an exemption would create a loophole that would allow providers to avoid disclosure requirements set forth in other sections of the Rule. CA stated, however, that if such an exemption were created, it should be tightly regulated to protect consumers. Comment 31 (CA) at 8. The Commission is persuaded by the weight of the comments that the Rule should include an exemption for infrequent publications. The requirement that the publication be published annually, or less frequently, lessens the likelihood that such a publication will be a popular forum for advertising pay-per-call services.

[212] 58 FR at 13382 (question 17.b).

focused specifically on this issue, those that did were unanimous in their opposition to the requirement in the proposed rule that such policy be in writing.[213] One commenter, YPPA, suggested that such a requirement would create a disproportionate burden on smaller directory publishers because many of these publishers do not maintain the staff necessary to draft and analyze written policies.[214] The commenter further explained that, while most directory publishers do, indeed, have an established policy against publishing specific prices, many do not have a written policy to that effect.[215] Thus, it could be costly for many infrequent publishers to develop a written policy regarding the publication of prices for pay-per-call services. Moreover, the language of the TDDRA describes a publication with an "established policy" against publishing specific prices, and does not mention the need for a written policy.[216] Thus, the Commission is persuaded that the requirement in the proposed rule that infrequent publications must have a written policy against publishing specific prices in advertisements in order to qualify for this exemption is unnecessarily restrictive; accordingly, the final Rule does not contain such a requirement.[217]

Second, in the actual disclosure requirement for infrequent publications, the final Rule deletes the phrase "above the long-distance charge," and will only require a disclosure that the call may result in a "substantial charge." One commenter, US West, indicated some confusion as to whether the language as originally proposed was prescriptive (*i.e.*, whether the language in the proposed rule was always required in the advertisement) and also whether the disclosure requirement applied only to pay-per-call services in which a long-distance charge was also going to be assessed.[218] US West correctly noted that in some cases, a call to a pay-per-call service may not, in fact, result in a charge greater than one might expect to pay for a long-distance call.[219] US West also noted that the TDDRA did not require this additional language. The TDDRA merely stated that in lieu of requiring infrequent publications to publish specific prices, such publications could be required to disclose that a "substantial charge" may be incurred.[220] The Commission believes that US West has raised a legitimate concern, and that the phrase "above the long-distance charge" in the proposed rule may be confusing. Thus, § 308.4(a) of the final Rule requires that an advertisement in an infrequent publication clearly and conspicuously disclose only that a call to the advertised service may result in a *substantial charge*. While the Commission does not intend for the actual language of this provision to be required to be used in the advertisements, any disclosure would have to convey the message that the charge for the call might be significant—*i.e.*, more than a consumer might expect to pay for a local or even a long-distance telephone call. For example, it is the Commission's opinion that the use of the phrase "pay-per-call" adjacent to the pay-per-call number in such an advertisement, as suggested by one commenter,[221] would not suffice, as it does not necessarily convey this message.

The proposed Rule did not address requirements for alphabetical listings contained in infrequent publications, such as the white or yellow pages alphabetical listings. Although the Commission did not specifically solicit comments on this issue, several commenters proposed that the final Rule exempt from *all* disclosure requirements any alphabetical listings contained in such publications.[222] Although such listings are paid for, they are, as YPPA noted, usually limited to the name, address, and telephone number of the pay-per-call provider. Moreover, the listings themselves occupy a very small amount of space, leaving virtually no room in or adjacent to the listing for any disclosures.[223] The Commission is persuaded that if the final Rule requires that all disclosures set forth in the proposed rule be included in alphabetical listings of the type commonly found in telephone directories, then such listings would not be feasible for listing pay-per-call providers' names and telephone numbers. Based on the comments, the Commission has decided to add a section to the final Rule, stating that the provider of a pay-per-call service that places an alphabetical listing in an infrequent publication is not required to make *any* of the disclosures required by § 308.3, provided that such listing does not contain any information except the name, address, and telephone number of the pay-per-call provider. The inclusion of any additional information, such as a slogan, would trigger all relevant disclosure requirements.

D. *Section 308.5: Operation of Pay-Per-Call Services*

Section 308.5 of the Rule sets forth the various requirements and prohibitions that apply to the operation of pay-per-call services.

1. *Section 308.5(a): Preamble Message*

As required by the TDDRA, each pay-per-call message must be preceded by an introductory message, or preamble, that discloses various facts relevant to the consumer's decision to complete the call and incur the charge for the service.[224] These disclosures are set forth in § 308.5(a) of the Rule. Both NACAA and NAAG suggested that the Rule require the preamble to precede any other information in the pay-per-call message.[225] This is the intent of the Commission, and the Commission believes the Rule imposes this requirement by describing the preamble as "an introductory disclosure message."

(a) Section 308.5(a)(1): Name of Provider and Description of Service

The preamble must identify the name of the provider of the pay-per-call service and describe the service that is offered. The TDDRA requires description of the service, but not identification of the name of the provider.[226] However, FCC regulations that have governed the interstate transmission of pay-per-call services by common carriers since 1991 have required identification of the name of the provider in the preamble.[227] The

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[213] Comments 56 (YPPA) at 3–7; 57 (US West) at 20; 63 (NAIS) at 31. Another commenter, AIP, opposed the requirement that the publication be published annually or less frequently. Comment 35 (AIP) at 9–10. However, the TDDRA specifically states that any exemption for cost disclosures be permitted only in publications that are published annually or less frequently. 15 U.S.C. 5711(a)(7). Therefore, the Commission will retain that condition.

[214] Comment 56 (YPPA) at 4, 6–7.

[215] *Id.* at 5–7.

[216] 15 U.S.C. 5711(a)(7).

[217] However, such a publication will have the burden of proving that it had an established, but unwritten, policy against publishing specific prices in advertisements.

[218] Comment 57 (US West) at 21–22.

[219] Comment 57 (US West) at 22.

[220] 15 U.S.C. 5711(a)(7).

[221] Comment 57 (US West) at 22.

[222] Comments 56 (YPPA) at 11; 57 (US West) at 21.

[223] Comment 56 (YPPA) at 11. YPPA also noted that this exclusion is explicit in some state laws. *See* Iowa Admin. Code 714A.1(1) (1992).

[224] 15 U.S.C. 5711(a)(2)(A).

[225] Comments 40 (NACAA) at 8; 42 (NAAG) at 18.

[226] 15 U.S.C. 5711(a)(2)(A)(i).

[227] 47 CFR 64.711(b) (to be deleted as of November 1, 1993). With the promulgation of both FTC and FCC regulations pursuant to the TDDRA, the FCC will rescind its preamble requirements. The new FCC rule obligates any common carrier assigning a telephone number to a pay-per-call service provider to require, by contract or tariff, that such provider comply with regulations promulgated by the FTC pursuant to titles II and III of the TDDRA. 47 CFR 64.1502.

FCC noted that this requirement would "provide important additional information to the consumer with little or no additional burden on the (interexchange carriers) or information providers."[228]

The Commission sought comment as to the usefulness of this requirement, and asked whether the address or location of the pay-per-call service provider should also be disclosed in the preamble.[229] Identification of the provider in the preamble was supported by USTA, VRS, CA, NACAA, USPS, and Sprint.[230] USTA suggested that this requirement helps to "eliminate the possibility of an erroneous perception of an affiliation between the local telephone company and a 900 service provider in the eyes of the customer." USPS pointed out that the information may help a consumer to avoid dealing with an entity with whom he or she has had problems in the past. Sprint, CA, and USPS supported preamble disclosure of the address of the provider; Sprint and CA also advocated inclusion of the provider's business telephone number in the preamble. PPI opposed the requirement, stating that the identity of the provider was irrelevant in most cases and should be left to the discretion of the pay-per-call provider.[231] NII asserted that the information could be confusing to the caller, who may be familiar with the name of the program but not the corporate identity of the pay-per-call provider.[232]

The Commission has determined that it is appropriate to require identification of the name of the provider in the preamble. The industry has been required to incorporate this information into the preamble since the FCC regulations went into effect in 1991. No member of the industry has argued that it is burdensome to do so. Moreover, as pointed out by USTA, the information may be important in some cases to dispel erroneous consumer perceptions about the identity of the pay-per-call provider. Because of the unique nature of this transaction, the consumer generally will have little or no idea of the identity of the business entity before placing the call and incurring the charge. Since the information may be of benefit to some consumers, and the obligation to provide it does not appear to be burdensome to the industry, the requirement will be retained.

However, the Rule will not require that additional information, such as the address and business telephone number of the provider, be given in the preamble. There is little basis to conclude that this additional information would be particularly beneficial to consumers in a preamble. Moreover, the information with regard to the address is otherwise available to consumers. Pursuant to FCC regulations, common carriers assigning telephone numbers to pay-per-call providers, and offering billing and collection services to such providers, must establish a local or toll-free telephone number to answer consumers' questions regarding pay-per-call services and to give callers the name and mailing address of the provider of any pay-per-call service offered by that carrier.[233] This toll-free number must appear in any telephone bill containing charges for such services.[234]

(b) Section 308.5(a)(2): Cost of the Call

The preamble must disclose the cost of the call. The TDDRA requires that this disclosure include "the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred."[235] The preamble requirement in the final Rule, § 308.5(a)(2), parallels the cost disclosure requirement for advertising, set forth in § 308.3(b)(1). If a flat fee is charged for the call, the preamble must disclose the total cost. If the call is billed on a time-sensitive basis, the preamble must state the cost per minute and any minimum charges. In addition, if the length of the program can be determined in advance, the preamble must disclose the maximum charge that could be incurred if the caller listens to the complete program.

Some industry associations opposed this latter requirement, which is phased slightly differently in the final Rule than it was in the NPR.[236] Both IISC and NAIS asserted that the FTC has exceeded its statutory authority by requiring a disclosure of total cost in some instances where the pay-per-call provider assesses charges on a time-sensitive basis. They argued that the TDDRA's use of the word "or" in the phase "the total cost or the cost per minute"[237] precludes the Commission from adopting this provision.[238]

The Commission does not believe its statutory mandate to be so restricted, particularly in light of other language in the TDDRA which authorizes the Commission to adopt additional measures to prevent practices that might evade the Rule or otherwise undermine its protections.[239] The provision applies only in those limited situations where the program is a fixed duration, but the pay-per-call provider has elected to impose a per minute charge rather than a flat fee.[240] If the complete program is 10 minutes in length, but the advertising and preamble disclose only that the cost is $2.95 per minute, the consumer cannot make an informed choice to place the call, without knowing that the full price of the information will be $29.50. In the absence of any requirement that the total cost be disclosed in this instance, there would be an incentive for some pay-per-call providers to lengthen the program and place key information near the end of the program to discourage the caller from hanging up.

Moreover, this disclosure has been required under FCC regulations since 1991.[241] In adopting its preamble requirement, the FCC stated: "The benefits to consumers in the form of full knowledge of the total cost for pay-per-call programs which have a predictable duration will outweigh the minimal

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[228] FCC, Report and Order, Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, ¶ 26 at 13 (October 23, 1991) ("FCC 900 Telecommunications Services Rule of 1991").

[229] 58 FR at 13382 (question 18).

[230] Comments 10 (USTA) at 14; 23 (VRS) at 5–6; 31 (CA) at 8–9; 40 (NACAA) at 8; 50 (USPS) at 7–8; 61 (Sprint) at 7.

[231] Comment 37 (PPI) at 39.

[232] Comment 73 (NII) at 8.

[233] 47 CFR 64.1509.

[234] 47 CFR 64.1510. Under the FTC Rule, § 308.5(j), pay-per-call providers must ensure that any billing statement for their services includes this local or toll-free telephone number. *See* section II.D.10, *infra*. This requirement ensures that billing entities that are not common carriers will also be obligated to display this information on the bill. The failure to display this number on the bill would constitute a billing error, pursuant to § 308.7(a)(2)(viii) of the Rule.

[235] 15 U.S.C. 5711(a)(2)(A)(ii).

[236] The proposed rule stated: "If the duration of the program can be determined in advance, the preamble shall also state the total cost for the complete program." 58 FR at 13387. The wording has been changed in order to clarify the intent of this provision.

[237] 15 U.S.C. 5711(A)(1)(A) and (a)(2)(A)(ii).

[238] Comments 39 (IISC) at 12–13, 25–26, 42; 63 (NAIS) at 11–12, 34.

[239] 15 U.S.C. 5711(a)(4) states: "The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title, including through the use of alternative billing or other procedures."

[240] The obligation to disclose total cost will not apply to programs of undetermined length, such as programs that are interactive or asynchronous because they depend upon input from or options selected by the caller (other than the ultimate option of hanging up prior to completion of the program or the option of repeating the program, if available). Some industry representatives indicated at the public workshop conference that they had no objection to a required total cost disclosure for time-based calls so long as such a provision applied only to those programs that would not vary in length. Tr. at 110, 127–28.

[241] 47 CFR 64.711(a) (to be deleted as of November 1, 1993).

difficulties that some information providers may have in implementing this disclosure requirement."

The proposed rule additionally required, for time-sensitive calls where the duration of the program could not be determined in advance, that the preamble state that the length of the call is subject to caller discretion. The proposed disclosure was qualified by the phrase "unless it is otherwise clear from the context that such is the case."[242] The Commission asked whether this additional disclosure was necessary and appropriate.[243] Various providers of pay-per-call services and industry associations asserted that this language is unnecessary.[244] Some believed it to be self-evident that when charges are stated on a per-minute basis, the length of the call is determined by the caller. Other comments suggested that the qualifying language ("unless it is otherwise clear from the context * * *") was ambiguous and confusing.[245]

The Commission has dropped this proposal requiring disclosure that the length of the call be subject to caller discretion. The Commission is persuaded that in most instances, that fact will be self-evident to the consumer. Moreover, the Commission is concerned about unduly lengthening both the parable and the required advertising disclosures by an added statement that may have only marginal consumer benefit.[246]

The proposed requirement for disclosure of the cost of variable rate calls, § 308.5(a)(2)(iii), evoked very little comment. This provision remains unchanged in the final Rule. For these calls, the preamble must state the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on options chosen by the caller. This seems to be the minimum necessary information that should be disclosed for complex programs which involve varying rate structures. The capability for variable-rate billing within the same call leaves open the possibility of deception and abuse if the multi-rate structure is not carefully disclosed to the consumer. The Commission has tried to construct a disclosure requirement to preclude this possibility of misuse.

Finally, the Rule at § 308.5(a)(2)(iv), as mandated by the TDDRA,[247] requires disclosure of any other fees that will be charged for the service, as well as fees for any other pay-per-call service to which the caller may be transferred. The required disclosure of "any other fees * * * for the service" prevents a pay-per-call provider from imposing undisclosed, additional charges for the service by designating them as something other than the cost of the call. For example, such additional fees might include charges for computer time, or charges for the mailing of print information that the consumer is supposed to receive by calling the 900 number. AIP noted that "(t)he proposed rules do not specify whether usual toll charges must be disclosed where such tolls are charged in addition to the charge for pay-per-call services."[248] The Commission believes that the clear intent of the TDDRA is to require full disclosure of all fees the consumer will be charged in order to receive the advertised service. If the pay-per-call provider imposes a "toll" charge upon the caller, in addition to the charge for the pay-per-call service itself, that charge should be disclosed in advertising and the preamble. Likewise, if multiple calls to the same or a different number are required to receive the advertised service, those charges must also be disclosed.

Both NACAA and NAAG propose that the Commission prohibit a pay-per-call provider from transferring a caller from one pay-per-call service to another.[249] However, the TDDRA does not prohibit this practice.[250] It requires only that full disclosure be made, in both advertising for and the preamble to the first pay-per-call, of the cost of any service to which the caller may be transferred. Given the apparent congressional intent to permit this practice, so long as full disclosure is made, the Commission declines to prohibit all such transfers. It is hoped that by requiring the disclosure of the costs of multiple services within one advertisement and one preamble, the use of such transfers will be limited to those services where such a transfer may perform a legitimate, non-deceptive purpose. The disclosure obligation applies to any program where the caller may be transferred to another pay-per-call service without hanging up and dialing the second number.

(c) Section 308(a)(3): Changes Begin After the Preamble

The preamble must state that charges for the call will begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernible signal or tone indicating the end of the preamble. The TDDRA makes no reference to a signal or tone. However, it requires that callers be informed that charges begin at the end of the introductory message and that the pay-per-call provider enable the caller to hang up at or before the end of that message without incurring any charge whatsoever.[251] The Commission included the tone requirement in the proposed rule,[252] and various parties commented on this provision. AT&T supported the proposal, noting that "(t)his signal or tone would clarify any possible misunderstanding of when the charges will begin."[253] However, AT&T noted that such a tone is not currently available from the carrier and must emanate from the provider's equipment. Some industry associations and pay-per-call providers opposed the requirement, asserting that a tone is intrusive, unnecessary, and inappropriate for calls involving live conversation.[254] Their views were repeated at the public workshop conference. On the other

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[242] 58 FR at 13387.

[243] 58 FR at 13380 (questions 4 and 5) and 13382 (question 19).

[244] Comments 22 (Meganews) at 4; 37 (PPI) at 29–31, 40; 39 (IISC) at 29; 52 (iia) at 22; 61 (ICN) at 4–6 Tr. at 112–114.

[245] Comments 35 (AIP) at 3–4; 40 (NACAA) at 4.

[246] IISC noted that many states, as well as some industry guidelines, require that advertising for pay-per-call services billed on a time-sensitive basis disclose the length of the average call. Comment 39 (IISC) at 28–29. NAAG proposed that the FTC require disclosure in advertising of the average cost of the call as well as a statement that "the total amount of the charges increases each minute that the customer stays on the line." Comment 42 (NAAG) at 12 and Attachment 1 at 2. USPS recommended that both advertising and preambles for certain calls, involving recorded programs that require some caller interaction, disclose either the average length and cost of the call or the minimum and maximum length and cost. Comment 59 (USPS) at 3 and 8. The FCC, in 1991, declined to include an average cost disclosure in its preamble requirement. It did so because of the difficulties in calculating a meaningful average, and because it was "concerned that an average cost requirement could, itself, be used to deceive consumers." FCC 900 Telecommunications Services Rule of 1991, ¶ 23 at 12. The FTC likewise shares these concerns. For example, the average call might be short if a number of consumers hang up prematurely because the service did not meet their expectations. Accordingly the commission declines to include an average cost or length disclosure requirement in either advertising or the preamble.

[247] 15 U.S.C. 5711(a)(2)(A)(ii).

[248] Comment 35 (AIP) at 3.

[249] Comments 40 (NACAA) at 4; 42 (NAAG) at 12.

[250] It appears that the TDDRA did intend to prohibit transfer from an 800 or other toll-free number to a pay-per-call service (15 U.S.C. 5711(a)(1)(I) and (a)(2)(F)), and the Commission has done this in § § 308.3(i) and 308.5(i)(2) of the Rule. *See* parts II.B.9, *supra*, and II.D.9, *infra*.

[251] 15 U.S.C. 5711(a)(2)(A)(iii) and (a)(2)(B).

[252] 58 FR at 13387.

[253] Comment 62 (AT&T), Attachment A at i.

[254] Comments 22 (Meganews) at 4; 35 (AIP) at 11; 37 (PPI) at 16, 41; 61 (ICN) at 6; 63 (NAIS) at 39. Some of the opposition to the proposal seemed to be based on the assumption that the FTC would require the tone to be generated by the carrier. This was not the intent of the proposed requirement, and apparently such a system is not technologically feasible at the present time.

band. NCL and NACAA both emphasized that a tone is a clear, easily-understood signal and one that is familiar to many telephone-users because of its prevalent use on telephone answering machines.[255]

It is the judgment of the Commission that such a signal or tone is a useful and important benchmark to indicate to the caller that the introductory message has concluded and charges are about to begin.[256] In fact, a similar requirement has been in place since the FCC adopted its regulations in 1991. Those regulations mandate that billing begin only "after a specific identified event following the disclosure message, such as a signal tone."[257] The required signal or tone need not be intrusive and annoying as feared by some industry commenters. It could be a chime or other musical note that is pleasing to the ear, so long as it is clearly discernible by the caller.

In addition to the signal or tone, the proposed rule also stated that the preamble shall inform the caller that he or she "may avoid any charge for the call by hanging up at or before the sound of the tone."[258] A few commenters opposed this provision, describing the message as an unnecessarily negative "kill message."[259] The language of the final Rule makes clear that callers must be informed both when charges begin and how to avoid being charged for the call. However, the Commission does not intend to mandate any specific language for this portion of the preamble. The choice of words is left to the discretion of the pay-per-call provider, so long as the caller is left with no doubt as to when he or she must hang up to avoid being charged for the call.

(d) Section 308.5(a)(4): Parental Permission Required for Those Under 18

The preamble must state that anyone under the age of 18 must have parental permission to make the call. Some commenters suggested that the disclosure not be required for all pay-per-call programs, but only those programs directed to, or likely to be of interest to, individuals under 18.[260] However, the TDDRA clearly requires the disclosure to be included on all pay-per-call programs.[261]

A few commenters suggested that the Commission provide model, safe harbor language for the parental permission advisory.[262] CME proposed, for example: "This telephone call costs money. If you are under 18 and you do not have your mom or dad's permission, hang up now and there will be no charge for this call." This language was derived from FTC consent orders with certain pay-per-call providers.[263] While there is merit to the CME proposal, the Commission has decided not to try to write a specific disclosure that might be appropriate to all pay-per-call programs. The language mandated by the FTC consent orders, and now proposed by CME, was created for pay-per-call programs specifically directed to young children. Such programs are now prohibited by the TDDRA and § 308.5(h) of this Rule. However, the parental permission advisory must be included in the preambles to all pay-per-call programs. Some of these programs will be directed, or clearly of interest, to those under 18. Other programs may hold little interest for that age group. Given the inherent difficulty of creating specific language that would be appropriate to such a broad range of programs, the Commission has declined to do so. Those who produce pay-per-call programs can exercise their discretion in developing disclosures that are appropriate both to the particular program and to the age group to which the words are directed.

NACAA proposed a requirement that the parental consent advisory be stated in language that is "no higher than a fifth-grade level."[264] It is essential to the effectiveness of this disclosure requirement that it be clear and readily understandable to the population under the age of 18, including some children under the age of 12.[265] However, the Commission is not convinced that it is necessary to mandate a specific educational standard for the disclosure.

(e) Section 308.5(a)(5): Information About a Federal Program

Finally, if the pay-per-call service provides information about a Federal program, but is not operated or authorized by any Federal agency, the preamble must state that the service is not authorized, endorsed, or approved by any Federal agency. In the proposed rule, this provision simply tracked the requirement set forth in the TDDRA.[266] However, for the reasons discussed above with regard to § 308.3(d) of the Rule (which requires a similar disclosure in advertising for such services), the Commission has determined that the requirement should be further clarified. Therefore, language has been added to this provision, § 308.5(a)(5), to make clear that the disclosure is required if the pay-per-call service uses a trade or brand name, or any other term that reasonably could be interpreted to imply a Federal government connection, approval, or endorsement. Thus, a program which purports to provide information about a federal benefit program, while actually trying to sell a product or service, would be obligated to make the disclosure. Likewise, a program that does provide information on a Federal program, in more than an incidental manner, would also be required to give the disclosure.[267]

*2. Section 308.5(b): No Charge to Caller for Preamble Message*

The TDDRA requires providers of pay-per-call services to enable callers to hang up at or before the end of the preamble message without incurring any charge whatsoever.[268] In the proposed rule, the Commission expanded on this requirement by allowing consumers to hang up without charge at any time prior to five seconds after the conclusion of the preamble. The Commission proposed this additional brief period in order to give consumers sufficient time, after hearing the complete preamble message, to make the decision to disconnect and to do so without incurring any charge for the call.

In the NPR, the Commission sought comment on the following aspects of this provisions: (1) Its usefulness, as well as its costs and benefits; (2) whether five seconds was a sufficient length of time to assure that consumers who hang up at the end of the preamble

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[255] Tr. at 168–61.

[256] The Rule then requires an additional three-second delay to allow the caller sufficient time to hang up after the signal or tone. See discussion of § 308.5(b), *infra*.

[257] 47 CFR 64.711(c) (to be deleted as of November 1, 1993).

[258] 58 FR at 13387.

[259] Comments 39 (IISC) at 42; 61 (ICN) at 6; 65 (NAIS) at 34.

[260] Comments 34 (TPI) at 6–7; 37 (PPI) at 18, 40; 51 (ICN) at 6.

[261] 15 U.S.C. 5711(a)(2)(A)(iv).

[262] Comments 53 (CME) at 22–23; 60 (Pilgrim) at 12.

[263] *Audio Communications, Inc.*, No. C–3336 (July 24, 1991); *Teleline, Inc.*, No. C–3337 (July 24, 1991); *Phone Programs, Inc.*, D. 9247 (Dec. 10, 1992); *Fone Telecommunications*, File No. 912–3086 (March 17, 1993).

[264] Comment 40 (NACAA) at 8.

[265] This population necessarily includes some children under the age of 12. Even though pay-per-call programs, and advertisements for such programs, cannot be directed to those under 12 (§§ 308.3(e) and 308.5(h)), children in that age group can and do call pay-per-call services.

[266] 58 FR at 13387; 15 U.S.C. 5711(a)(2)(A)(v).

[267] However, data services, providing the non-verbal transmission of information, are exempt from the preamble requirement under § 308.5(d) of the Rule.

[268] 15 U.S.C. 5711(a)(2)(B).

will not be billed for the call; and (3) whether the Rule should require some period of silence between the end of the preamble and the start of the program to indicate to consumers that this was the appropriate time to hang up if they so choose.[269] A number of law enforcement agencies and public interest organizations supported some period of time between the end of the preamble and the commencement of charges.[270] For example, a NARUC resolution recommended that any Federal regulation of pay-per-call services require sufficient time after the preamble to allow the caller to hang up without incurring a charge. In addition, New York currently requires ten seconds between the end of the preamble and the commencement of charges, for intrastate pay-per-call services, to give the consumer adequate time to respond to the information in the preamble.[271]

On the other hand, a number of providers and associations representing their interests opposed any such delay in the commencement of charges as unnecessarily burdensome and restrictive.[272] PPI noted that each additional second in the introductory period costs the information provider one cent. Other providers stated their belief that consumers have sufficient notice to hang up if they do not wish to be charged, given the preamble and the tone requirement.[273]

The Commission believes that consumers must be given some period of time, after listening to the entire preamble, to physically hang up the telephone and still not be charged for the call. In an effort to balance the needs of consumers with the cost of this requirement to providers of pay-per-call services, the Commission has decided to reduce the required period of time to three seconds. AT&T noted at the public workshop conference that a three-second period of silence currently is required by that carrier, for pay-per-call services on its network, between the end of the preamble message and the commencement of charges. According to AT&T, it has no evidence to indicate that such a time period is inadequate.[274] The Commission believes this brief interval will be sufficient to address consumers' needs, while minimizing the costs to providers.

As for the question of silence after the preamble, PPI noted that any silence on a pay-per-call service is "deadly" to the provider, since consumers hang up when they hear silence.[275] At least two other providers raised a similar concern at the public workshop conference.[276] Given this potential for harm to the providers of pay-per-call services, the Commission has determined that no period of silence is necessary between the preamble and the start of the message. The Commission does not believe that consumers will be confused if the message begins immediately after the preamble, especially since consumers will hear a signal or tone indicating that the preamble has ended.[277]

At least two commenters suggested, as an alternative to a period of delay between the preamble and billing, that the Rule permit providers to allow consumers an affirmative means of positively accepting charges for a pay-per-call service.[278] For example, a pay-per-call service may state in the preamble that consumers must press a certain key on their telephone keypad to indicate that they accept the charges for the service. The program would not begin until consumers take the required positive action. Although the major carriers do not offer positive acceptance at this time,[279] the Commission believes this option should not be precluded by the regulations. Positive acceptance gives consumers adequate time to decide if they wish to be billed for the call. Any further delay after the consumer indicates acceptance of charges and before billing commences would be superfluous. Accordingly, the final Rule adopts this provision as an exception to the required three-second period after the end of the preamble.

As a final matter, a number of commenters suggested that providers should be permitted to bill consumers for the cost of the preamble, if the consumer in fact decides to remain on the line after the preamble is complete.[280] On the other hand, at the public workshop conference, both NAAG and NACAA objected to any such provision, stating that the preamble is like a price tag for which the consumer should not be required to pay.[281] While the Commission understands the providers' contention that charging consumers for the preamble on completed calls may be equitable, we believe an argument can be made that the TDDRA prohibits such charges.[282] At a minimum, the statutory language signals congressional disfavor for charging consumers for the preamble time. Moreover, the FCC recently considered this issue, and concluded that providers should not be permitted to charge consumers for the preamble.[283] Accordingly, the Commission declines to adopt such a provision.

*3. Section 308.5(c): Nominal Cost Calls*

The TDDRA gives the Commission the discretion to exempt from the preamble requirements pay-per-call services provided at "nominal charges, as defined by the Commission."[284] As stated in the NPR, "(t)his exemption provision recognizes that below a certain minimal level, it may not be cost effective for the provider to offer the service if all of the disclosures required by § 308.5(a) must be included in a preamble for which the consumer cannot be charged."[285] Therefore, the proposed rule exempted from the preamble requirements any pay-per-call service for which the total cost, whether billed on a flat rate or a time sensitive basis, is $2.00 or less. The Commission also asked a series of detailed, factual

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[269] 58 FR at 13382 (question 21).

[270] Comments 10 (NARUC) at 4, 18; 31 (CA) at 9 (at least five seconds of silence; if no silence, at least a ten-second delay); 40 (NACAA) at 8 (five seconds of silence); 59 (USPS) at 8 (at least two or three seconds of silence).

[271] Comment 27 (NYDPS) at 2.

[272] Comments 22 (MegaNews) at 4; 37 (PPI) at 41; 39 (IISC) at 42; 61 (ICN) at 6–7; 63 (NAIS) at 34–35.

[273] *See, e.g.*, comment 22 (MegaNews) at 4.

[274] Tr. at 136.

[275] Comment 37 (PPI) at 41.

[276] *See* statement of TPI, Tr. at 158. In addition, Blake Barker of USA Today noted that in 1988, when he was a provider of an interactive weather service, the local public utility commission mandated six seconds of silence between the end of the preamble and the start of the message. Within 90 days, Mr. Barker stated that the completed calls to this service dropped by 63 percent because consumers incorrectly thought there was a problem with the service. Tr. at 264–65. *See also* Tr. at 119.

[277] At least one commenter suggested that the proposed regulations were unclear as to the sequence of events required at the beginning of a pay-per-call service. *See* comment 52 (IIA) at 32. The Commission believes the final Rule clearly requires the following sequence of events: (1) A preamble message, containing all of the information required by § 308.5(a); (2) a signal or tone, indicating the end of the preamble; and (3) an additional three seconds after the sound of the signal or tone, which do not have to be silent, before charges may begin.

[278] Comments 23 (VRS) at 6–7; 60 (Pilgrim) at 13–14.

[279] Tr. at 149–50.

[280] Comments 35 (AIP) at 10–11; 51 (USA Today) at 3, 9–10; 61 (ICN) at 6–7; 63 (NAIS) at 37.

[281] Tr. at 102–03, 107.

[282] For example, the TDDRA states that preambles should inform the caller that charges for the call begin at the end of the introductory message, 15 U.S.C. 5711(a)(2)(A)(iv), and that providers should enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever 15 U.S.C. 5711(a)(2)(B).

[283] FCC, Order on Reconsideration, Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91–65, ¶¶ 12–17 at 7–9 (March 10, 1993) ("FCC Reconsideration Order").

[284] 15 U.S.C. 5711(a)(5)(B).

[285] 58 FR at 13375.

questions to determine whether the $2.00 fee level was appropriate.[286]

A large number of commenters suggested various rates at which the nominal cost exemption should be set, but most commenters provided little if any factual information to support their contentions. In a second attempt to gain useful data, Commission staff at the public workshop conference asked those in attendance for specific factual information to support an appropriate nominal cost level. Once again, very little evidence was forthcoming.[287]

The commenters presented the following factual information to us. First, MCI indicated that in 1992, more than 50 percent of all consumer requests for credit for pay-per-call services that it received were for services costing more than $10.00, while less than 30 percent of consumer credit requests were for calls of $5.00 or less.[288] PPI submitted an ATT&T graph showing that during February of an unidentified year, the refund rate for calls below $10.00 was less than two percent.[289] USA Today cited comments in the FCC rulemaking proceeding by a "major interstate carrier," which stated that 12 percent of the total amount of pay-per-call services on that carrier's network fell below $2.00 in charges, while 30 percent were under $5.00 in total charges. The chargeback rate for these programs was less than 2 percent.[290]

While an argument can be made that refund rates are a measure of the level of consumer dissatisfaction, it is also possible that consumers simply fail to complain about low-cost calls they find unsatisfactory. NAAG noted at the public workshop conference that its law enforcement experience tends to show that the latter scenario is more typical.[291] Moreover, both NAAG and NACAA stated that the nominal cost exemption should not be set at the level where consumer refund requests rise, but rather at the level where providers can make a profit even though they include the preamble in their programs.[292] The Commission agrees. No evidence presented by any commenter showed that providers cannot make a profit, while still delivering the preamble, on calls that cost more than $2.00. In addition, it appears that Congress wanted to limit any exemption for nominal cost calls to services costing either $2.00 or $3.00.[293] Finally, the Commission agrees with the commenters who stated that consumers can be equally harmed by making a number of calls to a lower priced pay-per-call service as by one call to a higher priced service.[294] Accordingly, the Commission has decided to maintain the $2.00 threshold for nominal cost calls that will be exempt from the preamble requirements of § 308.5(a).

*4. Section 308.5(d): Data Service Calls*

In the NPR, the Commission asked whether the final Rule should exempt from the preamble requirements data services, *i.e.*, pay-per-call services that transmit data from one computer to another. The exemption would address situations where no individual is present to receive the information in the preamble.[295] A number of commenters in general supported such an exemption.[296] Bell Atlantic noted that such calls have not caused the same consumer problems as have voice messages. IIA states that facsimile machines may disconnect in the time it takes to complete a preamble. Moreover, the FCC recently determined that legitimate pay-per-call data services may not be able to place a verbal preamble on their programs, because no reasonable method exists.[297]

Based on this information, the Commission believes an exemption from the preamble requirements is appropriate for data services. Section 308.5(d) of the Rule sets forth this exemption, and states that it applies only when the entire call consists of the non-verbal transmission of information. In other words, this exemption applies to any call in which two machines (*i.e.*, computers, facsimile machines or the like) communicate, without the transmission of the spoken word. However, the exemption will not apply to an entertainment program providing music instead of the spoken word.

*5. Section 308.5(e): Bypass Mechanism*

The TDDRA gives the Commission discretion to exempt from the preamble requirements calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the preamble.[298] However, the Act further requires that any such bypass mechanism be disabled after the institution of any price increase for "a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change."[299] Accordingly, the proposed rule stated that providers of pay-per-call services that offer frequent callers the option of activating a bypass mechanism to avoid the preamble will not be in violation of § 308.5(a), provided that any such bypass mechanism is disabled for no less than 30 days after the institution of a price increase or a change in the nature of the service offered. In the NPR, the Commission asked, among other things, if this exemption was useful and appropriate.[300]

The limited number of commenters who responded to this proposal generally supported the exemption.[301] CA believed that the bypass mechanism should be disabled for 60 days after any "significant" change in the preamble, while PPI stated that the bypass should be disabled for only 15 days after a change in the program. The Commission continues to believe that 30 days is an appropriate period of time to give frequent callers adequate and sufficient notice of any increase in price or change in the nature of the service offered. Accordingly, the Commission is adopting the proposed language of this section in the final Rule.[302]

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[286] 58 FR at 13383 (question 22).

[287] Tr. at 86–87.

[288] Comment 32 (MCI) at 12.

[289] Comment 37 (PPI) at 43 and unnumbered attachment.

[290] Comment 31 (USA Today) at 6–7.

[291] Tr. at 86–87.

[292] Tr. at 86–87, 92–93.

[293] *See* Senate Report at 13, 18. The FCC also limited the nominal cost exemption to the preamble requirements at $2.00 in both its original regulations of the pay-per-call industry, 47 CFR 64.711(a), and in its reconsideration of those regulations released in March 1993. FCC Reconsideration Order, ¶¶ 5–6 at 4–6.

[294] Comments 18 (Bell Atlantic) at addendum; 33 (CME) at 20–22.

[295] 58 FR at 13383 (question 24).

[296] Comments 18 (Bell Atlantic) at addendum; 31 (CA) at 10; 37 (PPI) at 45; 52 (IIA) at 10–12, 33–34; 62 (AT&T), Attachment A at i–ii.

[297] FCC Reconsideration Order, ¶ 11 at 7.

[298] 15 U.S.C. 5711(a)(5)(A).

[299] 15 U.S.C. 5711(a)(2)(E).

[300] 58 FR at 13383 (question 23).

[301] Comments 27 (NYDPS) at 2; 31 (CA) at 10; 37 (PPI) at 43–45. CA suggested that any bypass code should be vendor specific, so that casual callers cannot activate the bypass on programs for which they have not heard the preamble. The Commission does not believe such a specific requirement is necessary, since callers who use a bypass mechanism do so at their own risk, knowing they are skipping important disclosure information in the preamble.

[302] Some providers suggested that the bypass mechanism may be a vehicle for consumers to avoid pay-per-call service charges, if information is provided during the preamble period, since providers cannot bill for the time it takes to complete a preamble message. For example, if consumers call a pay-per-call service, immediately bypass the preamble, and obtain the information they seek within the normal preamble time, those consumers will not be billed for their calls, even though they obtained information from the programs. *See* comment 37 (PPI) at 18–19; Tr. at 101–02. While the Commission recognizes this problem exists, a provider is not required to use a bypass mechanism. Furthermore, while carriers currently may not be able to detect when a consumer has activated a bypass mechanism, they may develop such an ability in the future. Nothing in the Commission's Rule should be interpreted as prohibiting a provider from initiating billing as soon as a caller has bypassed the preamble.

*6. Section 308.5(f): Billing Limitations*

Congress required the Commission to prohibit providers of pay-per-call services from billing consumers in excess of the amounts described in the preamble, and from billing for services provided in violation of the rules prescribed by the Commission pursuant to the TDDRA.[303] The proposed rule incorporated this prohibition.

The Commission received only one comment concerning this provision. NAAG suggested that providers of pay-per-call services also be prohibited from billing consumers for any services provided in violation of any other law, regulation or rule, not simply the final Rule adopted by the Commission in this proceeding.[304] The Commission believes such a provision could be quite burdensome, because it would require billing entities, through their collection contracts with providers, to make evaluations of other Federal or state laws and regulations about which they may have no knowledge. Moreover, states have their own enforcement programs for these purposes. Accordingly, the Commission is adopting the language as proposed in the NPR.

*7. Section 3085.(g): Stopping the Assessment of Time Based Charges*

The TDDRA mandates regulations requiring providers of pay-per-call services to stop the assessment of time-based charges immediately upon disconnection by the caller.[305] The proposed rule adopted this provision verbatim. The Commission received no comments on this requirement, as proposed, and therefore is incorporating this provision into the final Rule. As stated in the NPR, the Commission recognizes that time-sensitive billing is accomplished in one-minute increments, and that any portion of a minute will be billed as a full time. Such a billing method will not be considered a violation of this provision.

*8. Section 3085.(h): Prohibition on Services to Children*

Pursuant to the TDDRA,[306] the proposed rule imposed a ban on pay-per-call services, except for bona fide educational services, directed to children under the age 21. In a manner similar to the ban on advertisements for pay-per-call services that are directed to children under 12, the proposed rule framed this ban in terms of a rebuttable presumption.

For the reasons set forth in part II.B.5, *supra*, concerning the prohibition on directing advertising of pay-per-call services to children under 12, the Commission is eliminating the use of a rebuttable presumption in this section of the final Rule as well. Instead, the Rule sets forth the criteria the Commission will use to determine whether a pay-per-call service is directed to children under the age of 12. These criteria include the following: (1) Whether the pay-per-call service is advertised in the manner set forth in §§ 308(e)(2) and (3) of the Rule; and (2) whether the pay-per-call service, regardless of when or where it is advertised, is directed to children under 12 in light of its subject matter, content, language, featured personality, characters, tone, message or the like.

*9. Section 308.5(i): Prohibition Concerning Toll-Free Numbers*

The TDDRA, in title II, prohibits the providing of pay-per-call services "through an 800 number or other telephone number advertised or widely understood to be toll free."[307] The proposed rule tracked this statutory language.[308] However, some commenters suggested the need to make it clear that the Rule prohibits any charge for a call to an 800 number, even if there is no actual connection or transfer to a 900 number.[309] Others suggested that the Rule explicitly prohibit collect call backs that result from a call to an 800 number.[310] It is clear from title I of the TDDRA that Congress intended to prohibit both of these uses of 800 telephone numbers.[311] Accordingly, in the final Rule, the provision concerning toll-free numbers, § 308.5(i), has been expanded to parallel the statutory provision on common carrier requirements, as well as the relevant FCC regulations restricting the use of 800 numbers.[312]

The prohibited uses of 800 and other toll-free numbers[313] include: (1) The calling party being assessed a charge for the call simply by virtue of completing the call; (2) calling party being connected to an access number for, or otherwise transferred to, pay-per-call service; (3) the calling party being charged for information conveyed during the call, unless there is a presubscription or comparable arrangement; and (4) the calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.[314]

NAAG suggested that this provision also include a reference to local numbers.[315] However, the provision covers any telephone number that is "widely understood to be toll free." This would include total numbers where the consumer expects the call to be a tool-free one.

AIP suggested that this section should apply only to calls billed through the telephone company and not to service that are "billed privately."[316] The Commission does not believe that Congress intended to limit the prohibited conduct to services billed through the telephone bill.[317] Toll-free numbers can be used to provide pay-per-call services in only two situations. First, calls to toll-free telephone numbers can be billed pursuant to a presubscription arrangement that meets the criteria set forth in § 308.2(e). Second, calls to toll-free telephone numbers also can be billed to credit or charge card accounts, if authorized by the caller, since the definition of presubscription arrangement also includes calls billed in that manner. Apart from these two situations, charges

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[303] 15 U.S.C. 5711(a)(2)(G). Title I of the Act imposes a similar requirement on common carriers that bill for pay-per-call services. The carrier must ensure that a telephone subscriber is not billed for any services that the carrier knows, or reasonably should know, were provided in violation of regulations issued by the FTC pursuant to title II of the Act. 47 U.S.C. 228(d)(1).

[304] Comment 42 (NAAG) at 16–17.

[305] 15 U.S.C. 5711(a)(2)(D).

[306] 15 U.S.C. 5711(a)(2)(C).

[307] 15 U.S.C. 5711(a)(2)(F).

[308] 58 FR at 13388.

[309] Comments 21 (NCL) at 17–18, 40 (NACAA) at 7; Tr. at 74, 76–78.

[310] Comments 55 (GTE) at 2–4, 81 (Sprint) at 13.

[311] 47 U.S.C. 288(c)(6).

[312] 47 CFR 64.1504.

[313] This provision also has been modified to prohibit any person, not just pay-per-call providers, from engaging in these practices. This is necessary to address a problem inherent in the definition of "pay-per-call services." That definition, as set forth in title I of the statute, 47 U.S.C. 228(i), and incorporated into this Rule, § 308.2(c), includes a provision that such services are accessed through use of a 900 telephone number (or other prefix or area code designated by the FCC). Therefore, an information provider that is charging customers for information conveyed pursuant to a call to an 800 telephone number is not, by definition, a "provider of pay-per-call services." The problem is resolved by prohibiting any person from engaging in such conduct.

[314] Summit's comment describes a system for providing audio information via calls to an 800 number and collect call backs. As described, the system affords the consumer two opportunities to indicate positive acceptance of a collect return call. Summit requests that the FTC include in its Rule provisions governing this type of service. However, it is clear that the TDDRA prohibits this type of service. *See* 47 U.S.C. 228(c)(6)(D). After the effective date of this Rule, and the parallel FCC regulations, the use of 800 numbers to generate collect call backs will no longer be permitted.

[315] Comment 42 (NAAG), Attachment 1 at 6.

[316] Comment 15 (AIP) at 11–12.

[317] Under 15 U.S.C. 5711(a)(4), Congress authorized the Commission to include provisions necessary to prevent evasion of its regulations through the use of alternative billing procedures.

for calls to 800, and other toll-free numbers, are prohibited.

*10. Section 308.5(j): Disclosure Requirements for Billing Statements*

The TDDRA requires providers of pay-per-call services to ensure that any billing statements for their pay-per-call service charges: (1) Display those charges in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and (2) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time and duration of the call.[318] The proposed rule incorporated these provisions. In addition, the NPR asked whether the provider's name, address or city and state should be required in the billing statements discussed in this section of the proposed rule.[319]

One commenter stated that the requirement in the proposed rule that pay-per-call service charges be displayed in a separate part of the consumer's telephone bill was unnecessary.[320] However, this requirement is mandated by the TDDRA and cannot be deleted.[321]

Another commenter stated that the separate identification of charges for pay-per-call services is appropriate, but that the Commission should not require these charges to be segregated on a separate page of the consumer's bill, since any additional pages in a telephone bill increases costs to the billing entities and ultimately to the providers.[322] The Commission did not intend that charges for pay-per-call services must be printed on a separate page of the consumer's telephone bill. Rather, pay-per-call charges simply must be displayed in *a portion* of the consumer's bill that is identified as not being related to local and long distance telephone charges. The method and manner used to segregate these charges, and to identify them as not being related to other telephone charges, is left to the discretion of the billing entity. The Commission believes this section of the proposed rule provides the proper degree of flexibility to the industry, while creating the necessary separation in consumers' telephone bills between pay-per-call charges and local and long distance telephone charges. Accordingly, the Commission is adopting this provision as proposed.

The proposed rule also required all pay-per-call service charges on a consumer's bill to specify the type of service, the amount of the charge, and the date, time and duration of the call. One commenter noted a potential problem with this provision. According to US West, when a pay-per-call service is billed on a flat-rate basis, the billing entity may not receive information on the duration of the call, since that information is irrelevant to the amount of the charge for the call.[323] To address this concern, the final Rule, at § 308.5(j)(2), includes a provision that the duration of the call need only be specified for calls billed on a time-sensitive basis.

In response to the NPR question whether the provider's name or address should be required on a consumer's billing statement,[324] CA and NACAA both stated that such a provision would aid consumers and enforcement agencies in determining the identity of the provider.[325] Many other commenters opposed this proposal, however. Ameritech stated that the inclusion of additional information about the provider on a consumer's bill would increase both the size and complexity of the bill, which ultimately may produce a negative consumer reaction.[326] BellSouth and US West both stated that it would be difficult for the local exchange carrier to keep a current database of this information.[327] At the public workshop conference, both USTA and ICN noted that each additional line of information placed on a consumer's telephone bill increases the costs to produce that bill.[328] Finally, a number of commenters stated that it is not necessary to present this information on the consumer's telephone bill, since consumers are able to call a toll-free telephone number to obtain this information.[329]

After considering the comments on this matter, the Commission has determined that the costs to providers and billing entities of having this information printed on a consumer's telephone bill outweighs the benefits of such a requirement to consumers and law enforcement agencies. This is especially true since billing entities are required to provide consumers with a toll-free telephone number to obtain additional information about any pay-per-call charges.

Title I of the TDDRA requires common carriers to disclose on a billing statement a local or toll-free telephone number where consumers can obtain answers to their questions and information on their rights and obligations with regard to their use of pay-per-call services, and can obtain the name and mailing address of any provider of pay-per-call services offered by that carrier.[330] Given this carrier requirement, and the importance of such information to consumers, the Commission has decided to add a similar provision to the final Rule. Thus; providers of pay-per-call services shall endure that any billing statement for such provider's charges shall display the local or toll-free telephone number discussed above.[331] No other requirements have been added to this section of the final Rule.

*11. Section 308.5(k): Refunds to Consumers*

Pursuant to the TDDRA,[332] the proposed rule stated that the provider of pay-per-call services shall be liable for refunds to consumers who have been billed, and have paid charges, for pay-per-call services found to have violated any provision of the final Rule or any other Federal rule or law.[333] The Commission received only two comments concerning this section. First, USTA stated that this provision should permit credits to consumers, in addition to requiring refunds.[334] According to USTA, local telephone companies, who deal with their customers on a recurring monthly basis, prefer to issue credits on a monthly bill rather than refunds when a customer inquiry is resolved in the customer's favor. USTA stated that the final Rule should not inadvertently prevent this. The Commission agrees. Actual cash refunds to consumers may not be necessary, when pay-per-call programs are found to have violated Federal law, if in fact consumer redress can be distributed more quickly and with less expense by way of credits on consumers' telephone bills. The final

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[318] 15 U.S.C. 5711(a)(2)(H). Title I of the Act imposes the same requirements on common carriers that offer billing and collection services to pay-per-call service providers. 47 U.S.C. 228(d)(4).

[319] 58 FR at 13382 (question 18.b).

[320] Comment 22 (MegaNews) at 8.

[321] *See* 15 U.S.C. 5711(a)(2)(H)(i).

[322] Comment 50 (BellSouth) at 8. *See also* comment 55 (GTE) at 4–5 (the section should only require that the billing statement "display the pay-per-call service charges in such a way as to clearly distinguish them from the consumer's local and long distance telephone charges").

[323] Comment 57 (US West) at 11–12.

[324] 58 FR at 13382 (question 18.b).

[325] Comments 31 (CA) at 9; 40 (NACAA) at 9.

[326] Comment 29 (Ameritech) at 2–3.

[327] Comments 50 (BellSouth) at 7; 57 (US West) at 14–15.

[328] Tr. at 231–32, 245–47.

[329] Comments 13 (NTCA) at 5–6; 29 (Ameritech) at 2–3; 50 (BellSouth) at 7; 57 (US West) at 14–15.

[330] 47 U.S.C. 228(d)(4)(C).

[331] Such a provision is also important to ensure that third party billers, not covered by the FCC rules governing carriers, also disclose on their bills for pay-per-call services this local or toll-free telephone number.

[332] 15 U.S.C. 5711(a)(2)(I).

[333] 58 FR at 13388.

[334] Comment 16 (USTA) at 13.

Rule has been modified to permit such credits.

NAAG submitted the second comment concerning this section of the proposed rule. NAAG recommended that providers should be liable for refunds to consumers for programs found to have violated any law, regulation or rule, whether state or Federal.[335] The Commission believes that expanding this provision to cover any state law, regulation or rule would in effect require the Commission to expend considerable resources monitoring and enforcing the laws of all fifty states. Moreover, states can exercise their independent authority in this area. Accordingly, with the exception of the minor change discussed above, this section of the proposed rule remains unchanged.

*12. Section 308.5(1): Service Bureau Liability*

In the NPR, the Commission asked whether service bureaus should be required to monitor all pay-per-call services that operate on their equipment, and be held liable for some or all violations of the Rule by those services.[336] Two commenters responded negatively. PPI stated that such a provision would be a "discriminating and unwarranted intrusion on this industry,"[337] while Pilgrim maintained that liability should be placed only on the party who has responsibility or control over the activity.[338] on the other hand, a number of commenters suggested that such liability is appropriate. CA claimed that providers have hidden behind service bureaus in the past, making if difficult for consumers to resolve complaints.[339] NACAA argued that service bureau liability is appropriate, if the company knew or should have known of the violations, since it is providing the necessary equipment for the violation to occur.[340] Southwestern agreed, for the following reasons: A service bureau is often the only party with direct contact to the provider; it profits from the pay-per-call service; and it can move the fastest to effect any necessary changes in a program found to be violating the Rule.[341] Finally, USPS stated that since a service bureau profits from pay-per-call services, it should be liable for violations and be required to forfeit its income from any promotion found to violate the Rule.[342]

Based on the comments, the Commission believes that some degree of service bureau liability is warranted. Service bureaus provide the equipment, and often numerous other forms of assistance, to providers of pay-per-call services. Without service bureau assistance, many providers would be unable to distribute their programs. Given service bureaus' degree of involvement in the delivery of pay-per-call services, as well as the profits they make from these services, the Commission concludes that they should be held liable for violations of the Rule by their client providers.[343]

At the same time, however, the Commission has determined that service bureau liability should not be absolute. The Commission understands that it may be impossible for a service bureau to monitor constantly all programs operating on its equipment, and that providers may change programs without the knowledge or consent of the service bureau. Accordingly, the final Rule states that a service bureau shall be liable for violations of the Rule by pay-per-call services using its call processing facilities only where the service bureau either knew or should have known of the violation.

Where service bureaus assist pay-per-call providers in the creation of pay-per-call programs and advertising for such programs, they likely will be in a position to know whether there are violations. Similarly, if a service bureau receives a number of consumer complaints, or information that a program is generating a high rate of billing error notices, the service bureau would be alerted to the fact that violations may be occurring.

*13. Other Questions*

The NPR posed a series of additional questions concerning the operation of pay-per-call services. For example, the TDDRA states that the Commission shall consider requiring providers of pay-per-call services to automatically disconnect a call after one full cycle of the programs.[344] In the NPR, the Commission asked whether the final Rule should require such a disconnection.[345] NACAA believed that such a requirement would be appropriate, since consumers can redial if they want to hear a program again.[346] On the other hand, Bell Atlantic argued that such a provision would not be in the public interest, since many callers may want to hear a program a second time.[347] The Commission agrees with the latter view. Consumers will be told the cost of the program in both the advertisement and the preamble. With this knowledge, the Commission believes consumers will stay on the line to hear a program a second time only if it contains information they want to hear again. Moreover, no commenter demonstrated any consumer harm caused by the absence of such a requirement. The Commission therefore has decided not to impose such a provision in the final Rule.

The TDDRA also states that the Commission should consider a regulation requiring providers of pay-per-call services to include a beep tone or other appropriate signal during a live interactive program so that callers will be alerted to the passage of time.[348] The Commission sought comment in the NPR whether such a provision should be promulgated.[349]

A number of commenters stated that such a tone should be required in order to prevent consumers from losing track of time during these calls.[350] On the other hand, PPI stated that such a tone is intrusive and interferes with the listener's enjoyment of the program.[351] NII stated that, as a small provider, it does not have the technology available to include a recurring beep tone during its live programs.[352] In addition, at the public workshop conference, other providers discussed how any tone requirement was both awkward and difficult to produce during live conversations.[353]

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[335] Comment 42 (NAAG) at 17.
[336] 58 FR at 13383 (question 29).
[337] Comment 37 (PPI) at 47.
[338] Comment 90 (Pilgrim) at 17.
[339] Comment 31 (CA) at 10–11.
[340] Comment 40 (NACAA) at 10.
[341] Comment 44 (Southwestern) at 3.
[342] Comment 99 (USPS) at 8–9.
[343] FCC regulations enacted pursuant to the TDDRA mandate that common carriers assigning numbers for pay-per-call services must require, by contract or tariff, that the provider of the services comply with the FTC regulations enacted pursuant to titles II and III of the Act. 47 U.S.C. 228(c)(1); 47 CFR 64.1502. In addition, such carriers must specify, by contract or tariff, that programs not in compliance with FTC regulations will be terminated following notice to the information provider. 47 U.S.C. 228(c)(2); 47 CFR 64.1503. In those instances where the common carrier contracts directly with a service bureau, that in turn subcontracts with individual pay-per-call providers, it appears that the carrier will have to require the service bureau to require compliance with the FTC rule by those information providers using its call processing facilities.
[344] 15 U.S.C. 5711(a)(6)(A).
[345] 58 FR at 13383 (question 25).
[346] Comment 40 (NACCA) at 9.
[347] Comment 18 (Bell Atlantic) at addendum. *See also* comment 44 (Southwestern) at 1–2.
[348] 15 U.S.C. 5711(a)(6)(B).
[349] 58 FR at 13383 (question 26).
[350] Comments 18 (Bell Atlantic) at addendum 2; 31 (CA) at 10; 40 (NACCA) at 9; 99 (USPS) at 9.
[351] Comment 37 (PPI) at 46.
[352] Comment 73 (NII) at 3.
[353] Tr. at 170, 172. This discussion at the public workshop conference concerned the requirement that a tone be used to signal the end of the preamble, but it is relevant to this proposal as well.

The Commission does not believe the potential consumer benefit from a tone signaling the passage of time during the course of a live conversation with a pay-per-call service is sufficient to justify this requirement, given the difficulties involved in generating tones during a live conversation and the potential cost involved. Accordingly, the Commission has decided not to include such a requirement in the final Rule.[354]

In order to address the potential problem of billing for pay-per-call services through the use of fraudulent billing tapes, the Commission asked in the NPR whether the final Rule should include a requirement that all billing for pay-per-call services be based on the call detail records provided by the certified carrier of the call.[355] A number of commenters suggested this would be a good idea.[356] However, the commenters presented little or no information concerning the costs of such a requirement or actual experiences with fraudulent billing tapes. Given this lack of evidence, the Commission does not believe the record supports the imposition of such a requirement.

Finally, the NPR asked if the Rule should include protection against the unauthorized use of a consumer's telephone to call pay-per-call services. The Commission suggested, for example, requiring either an access code or a PIN number which consumers must dial before being able to access pay-per-call services.[357] Individual providers can require such a PIN number to access their individual programs. However, a large number of commenters stated that a system-wide access code or PIN number is currently unavailable, would be extremely costly to implement, and would stifle the growth of this industry by inhibiting the occasional caller from accessing pay-per-call services.[358] Based on this uniform opposition, the Commission will not impose such a requirement in the final Rule.

### *E. Section 308.6: Access to Information*

The TDDRA authorizes the Commission to require common carriers providing telephone services to pay-per-call providers to make the following information available to the Commission: "Any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services."[359] Section 308.6 of the Rule incorporates this requirement as set forth in the statute.[360]

In the NPR, the Commission asked whether the Rule should include a list of the types of records that common carriers must maintain for this purpose, and, if so, what types of information should be included in the list and how long it should be maintained.[361] Comments were mixed on the recordkeeping issue. NTCA, Bell Atlantic, Ameritech, MCI, AT&T, NAIS, and Sprint asserted that no new recordkeeping requirement should be imposed.[362] As noted by some of these commenters, the FCC already requires that carriers maintain call detail records for 18 months.[363] US West suggested that the FTC not list required records, but give examples of the kind of information in which it is interested.[364] On the other hand, NACAA, NAAG, USPS, and Pilgrim believed the FTC Rule should include a recordkeeping requirement.[365] NAAG proposed that common carriers be required to compile records regarding the number of complaints and credits issued against pay-per-call providers. NACAA suggested that carriers be required to maintain records of arrangements for pay-per-call services for as long as the applicable statute of limitations.[366] NACAA further proposed that the Rule require these records be made available to state officials who will share enforcement responsibility. USPS also advocated that the Rule allow for access to records by other Federal and state agencies and proposed a three-year recordkeeping requirement.

The Commission has determined not to impose a specific recordkeeping requirement in the Rule. Common carriers are already subject to recordkeeping requirements imposed by the FCC. Discussion at the public workshop conference showed, in addition, that carriers have recordkeeping systems in place that in some cases may exceed Federal legal requirements.[367] There is no clear basis, at the present time, to warrant a conclusion that existing requirements and recordkeeping systems maintained by the carriers are inadequate for purposes of enforcement of this Rule. Finally, the Commission does not believe that the TDDRA authorizes it to require the carriers to make information available to other law enforcement agencies. However, the Commission notes that its Rules of Practice make provision, under certain circumstances, for the sharing of information with other Federal and state law enforcement agencies.[368]

### *F. Section 308.7: Billing and Collection for Pay-Per-Call Services*

#### *1. Section 308.7(a): Definitions*

The proposed rule defined the following terms to apply to the billing and collection of pay-per-call services: Billing entity; billing error; customer; preexisting agreement; providing carrier; telephone-billed purchase; and vendor.[369] The final Rule changes only the definition of "providing carrier."

##### (a) Section 308.7(a)(1): Definition of "Billing Entity"

NACAA commented that the definition of "billing entity" should expressly include third-party billers. The NPR did in fact state explicitly that the term "billing entity" applies to third-party billers.[370] The Commission believes that by expressly stating that the term applies to "*any* person who transmits a billing statement to a customer for a telephone-billed purchase or *any* person who assumes responsibility for receiving and responding to billing error complaints or inquiries" (emphasis added), the definition is sufficiently broad to leave

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[354] In contrast, as previously discussed in part II.D.1.c., *infra*, the Commission believes that the consumer benefits of a signal or tone indicating the end of the preamble are significant, justifying such a requirement at that time.

[355] 48 FR at 13383 (question 27).

[356] Comments 23 (VRS) at 7–8; 31 (CA) at 10; 44 (Southwestern) at 2; 50 (BellSouth) at 9; 59 (USPS) at 8.

[357] 58 FR at 13383 (question 30).

[358] Comments 16 (USTA) at 14; 23 (VRS) at 8–9; 29 (Ameritech) at 4; 37 (PPI) at 48; 40 (NACAA) at 10; 44 (Southwestern) at 4; 50 (BellSouth) at 8; 52 (IIA) at 34–35; 63 (AT&T), Attachment A at ii; 81 (Sprint) at 8–9.

[359] 15 U.S.C. 5711(a)(3).

[360] In addition, title I of the Act lists certain categories of information that common carriers must make available on request to Federal and state agencies and other interested persons. These include: (A) A list of the telephone numbers for each of the pay-per-call services carried; (B) a short description of each such service; (C) a statement of the total cost or the cost per minute and any other fees for each such service; (D) a statement of the pay-per-call service's name, business address, and business telephone number; and (E) such other information as the FCC considers necessary for the enforcement of its regulations and other applicable Federal statutes and regulations.

[361] 58 FR at 13383 (question 32).

[362] Comments 13 (NTCA) at 7–8; 18 (Bell Atlantic) at 6–7; 29 (Ameritech) at 5; 32 (MCI) at 5; 62 (AT&T), Attachment A at iii; 63 (NAIS) at 40; 81 (Sprint) at 9–10.

[363] 47 CFR 42.6.

[364] Comment 57 (US West) at 16–17.

[365] Comments 40 (NACAA) at 11; 42 (NAAG) at 33; 59 (USPS) at 9; 60 (Pilgrim) at 17–18.

[366] The statute of limitations in civil penalty actions is five years. 28 U.S.C. 2462.

[367] Tr. at 462–87. USTA pointed out that a number of states have record retention requirements more extensive than those imposed by the FCC. Tr. at 466.

[368] *See, e.g.*, 16 CFR 4.11(c).

[369] 58 FR at 13385.

[370] 58 FR at 13376.

no doubt that it applies to third-party billers. Moreover, as stated in the NPR, the term would also apply to any person who assumes responsibility for receiving or responding to billing error complaints, even if that person does not send billing statements to customers.[371]

(b) Section 308.7(a)(2): Definition of "Billing Error"

"Billing error" is defined by the TDDRA to encompass a number of situations that result in the reflection of a mistake or inaccuracy on a billing statement for a telephone-billed purchase about which a customer might complain or seek clarification.[372] The billing errors described in the Act closely resemble those described in the Fair Credit Billing Act's definition of "billing error."[373]

The proposed rule expanded upon the Act's definition of "billing error" in § 308.7(a)(2)(i), by including in the definition of billing error "a reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer *who was billed for the purchase*" (emphasis added). The Commission sought comment as to whether this definition should be changed to permit a customer to allege as a "billing error" a telephone-billed purchase made by someone other than the customer using the customer's telephone without permission, *i.e.*, an "unauthorized charge."[374] NACAA answered in the affirmative, commenting that parents must be able to dispute calls made by children without their consent.[375] NAAG agreed, insisting that the billing and collection procedure must permit customers to present all claims they might have.[376] CA remarked that the right to challenge unauthorized charges is accorded to consumers under the Fair Credit Billing Act ("FCBA"); hence, they should have a similar right under this Rule.[377]

Industry members generally opposed the idea, taking the position that a customer is responsible for all calls placed from the customer's telephone, regardless of whether the customer knew of or approved the call.[378] Bell Atlantic commented that this has always been the rule in the telecommunications industry and that this principle has been affirmed by the courts.[379] Sprint observed that most common carriers' tariffs hold the customer responsible for the payment of all charges for telephone service.[380] ICN pointed out that the concern about calls made by minors should be addressed by the TDDRA's prohibition on pay-per-call services (other than bona fide educational services) directed to children under 12 and the disclosures required for programs directed primarily to persons under 18.[381]

Several commenters supported continuance of the current industry practice, which, generally, is to allow the customer a one-time credit for a pay-per-call charge that the customer claims he or she did not make or authorize, and then to hold the customer responsible for any subsequent unauthorized charges or to impose mandatory blocking.[382]

None of the comments shed any light on how a billing entity might determine whether a customer had in fact made or authorized a telephone-billed purchase for which the customer denied any responsibility. MCI remarked that there is no way for the billing entity to prove that a call was or was not authorized; thus, it is pointless to permit the customer to assert such a claim as a "billing error" when the billing entity has no way of investigating the truth of that assertion.[383] ICN commented that the inability to evaluate such claims might cause local exchange carriers to give the customer a credit anytime such a claim was raised, forcing the information provider to bear the loss.[384] This could lead to consumer abuse of the privilege.

The Commission finds these arguments persuasive. Furthermore, Congress has directed the Commission to consider the extent to which these regulations should diverge from the requirements of the TILA and FCBA to be cost effective to billing entities, as well as to protect consumers.[385] Therefore, the Commission has decided against changing the definition of "billing error" to include claims of unauthorized charges. This will not preclude billing entities from continuing to grant customers a one-time forgiveness of such charges, nor will it preclude them from investigating these claims. They will not, however, have to follow the billing review procedures prescribed by the Rule in doing so.

AT&T commented that the definition of "billing error" is overbroad to the extent it includes "a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof," § 308.7(a)(2)(ii). It expressed concern that to include such requests in the definition might trigger unnecessary notification requirements when the customer is merely seeking clarification and not actually disputing the charge.[386]

This provision is mandated by the Act,[387] which directs the Commission to promulgate rules under this section substantially similar to the requirements imposed under the TILA and the FCBA.[388] The Official Staff Commentary on Regulation Z[389] clarifies that a request for documentation, such as for receipts or sales slips, unaccompanied by an allegation of error or a request for additional clarification, does not trigger the error-resolution procedures of the FCBA.[390] Furthermore, a request for additional clarification need not trigger the notification requirements under this Rule if the customer, after initially inquiring about a telephone-billed purchase, agrees that the billing statement was correct or agrees to withdraw voluntarily the billing error notice.[391]

Several commenters recommended that the definition of "billing error" be expanded to include specifically the following: (1) Charges for calls in which the vendor failed to comply with any of the advertising or pay-per-call standards of this Rule; and (2) charges for calls involving any unfair, misleading, or

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[371] *Id.*

[372] 15 U.S.C. 5724(2).

[373] 15 U.S.C. 1666(b).

[374] 58 FR at 13383 (question 34).

[375] Comment 40 (NACAA) at 12.

[376] Tr. at 190.

[377] Comment 31 (CA) at 11. In fact, it is not the FCBA but Regulation Z, the implementing regulation of the Truth in Lending Act ("TILA") and the FCBA, promulgated by the Board of Governors of the Federal Reserve System, which gives consumers this right. 12 CFR 226.13(a)(1). The credit card situation is clearly distinguishable from one involving a pay-per-call service. The former involves a credit card and a credit card number that can be lost or stolen. Moreover, the cardholder's signature is generally required, which would allow for subsequent verification of the cardholder's identity. A consumer's telephone, however, is usually only accessible to those who have been granted access to the consumer's residence, and no identification code peculiar to the consumer is needed to initiate a call from that telephone. Thus, the Board had a logical reason for permitting consumers to allege unauthorized credit card charges as "billing errors," which does not appear to apply to pay-per-call services.

[378] *See, e.g.*, comments 13 (NTCA) at 4–5; 16 (USTA) at 15; 18 (Bell Atlantic), addendum at 2–3; 61 (Sprint) at 11.

[379] Comment 18 (Bell Atlantic), addendum at 2–3.

[380] Comment 61 (Sprint) at 11.

[381] Tr. at 206.

[382] Comments 31 (CA) at 11; 37 (PPI) at 50; 38 (CAPUC) at 85–86; Tr. at 193–94, 196–98, 200, 203.

[383] Tr. at 203.

[384] Tr. at 206.

[385] 15 U.S.C. 5721(d)(10).

[386] Comment 62 (AT&T) at 5.

[387] 15 U.S.C. 5724(2)(B).

[388] 15 U.S.C. 5721(a)(2).

[389] 12 CFR part 226, Supplement I.

[390] 12 CFR part 226, Supplement I, Comment 226.13(a)(6)–1.

[391] Section 308.7(e) of the Rule.

deceptive acts or practices under Federal or state law.[392] NARUC and NAAG maintain that this expansion of the definition is necessary to ensure continuance of the general practices currently followed by most local telephone companies and inter-exchange carriers for handling pay-per-call billing disputes.[393]

Industry members objected to an allegation of a law violation being considered a "billing error," contending that it would place an unreasonable administrative burden on billing entities if they had to follow the billing review procedures set forth in the Rule every time a customer lodged such a claim.[394] Moreover, they argued, it would force billing entities to become policemen, essentially performing the task of the regulatory enforcement agencies, a function that they are not equipped to perform.[395] IISC remarked that such a provision would suggest to consumers that they can be the initial arbiter of what is false or deceptive or misleading.[396]

The Commission interprets § 308.7(a)(2)(iii) of the Rule to include as a "billing error" any allegation by a customer that representations made by a vendor or an agent of the vendor, whether through advertising or otherwise, were inconsistent with the product or service delivered to the customer or what the customer expected to receive. However, the Commission declines to expand the definition to apply expressly to any violation of this Rule, or any other state or Federal law or regulation. To expand the definition in this manner could be quite burdensome, requiring billing entities to evaluate other Federal or state laws and regulations about which they may have no knowledge.

The Commission also seeks to clarify that a subjective claim of dissatisfaction with the quality or value of a product or service received is not a "billing error" under § 308.7(a)(2). However, an objective assertion by the customer that the quality or value of the product or service received was less than or substantially different from that represented by the provider might constitute a "billing error" under § 308.7(a)(2)(iii) as a telephone-billed purchase "not provided to the customer in accordance with the stated terms of the transaction."

Finally, the proposed rule added a section to the TDDRA definition of "billing error," § 308.7(a)(2)(viii). In this section, a billing error is defined to include the failure to display charges for a telephone-billed purchase on a billing statement in the manner prescribed by § 308.5(j) of the Rule, *i.e.*, by segregating them from other telephone charges and specifying the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, duration of the call. This section is included in the final Rule as proposed.

(c) Section 308.7(a)(3): Definition of "Customer"

In the proposed rule, the Commission broadened the TDDRA's definition of "customer" [397] to cover any person who is billed for a telephone-billed purchase, whether or not that person placed the call or received the goods or services in question. This would give these persons the billing error rights accorded to other "customers" under the statute. The Commission has decided to adopt this definition as proposed.

(d) Section 308.7(a)(4): Definition of "Preexisting Agreement"

The Commission sought comment as to whether the term "preexisting agreement," as used in section 304(1)(A) of the TDDRA[398] should have the same meaning as "presubscription or comparable arrangement," defined in § 308.2(e) of the proposed rule.[399] PPI commented that a reasonable person would understand the two terms to have the same meaning.[400] MCI replied that the two terms appear to be used interchangeably in the Act, and that there is nothing in the Act that would require these terms to have different meanings. To avoid the confusion that could arise if the terms were given different meanings, MCI urged the Commission to find that the term "preexisting agreement" means "presubscription or comparable arrangement," as defined by the FCC.[401]

The Commission agrees that the terms "preexisting agreement" and "presubscription or comparable arrangement," as used in the TDDRA, are synonymous and, thus, has tied the definition of the former term to the latter. As explained in part II.A.3, *supra*, the definition of "presubscription or comparable arrangement," in § 308.2(e) of this Rule, is identical to the FCC's definition of that term.

(e) Section 308.7(a)(5): Definition of "Providing Carrier"

The proposed rule defined a "providing carrier" as "a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a *billing error*." [402] (Emphasis added). PPI commented that by changing the term "billing error complaint" (the term used in the Act's definition) to "billing error," the Commission made "a slight and subtle difference, but one which could be interpreted to assume each complaint is correct."[403] The proposed rule used the broader term "billing error" rather than "billing error complaint" to clarify that a "billing error" need not involve a "complaint," *i.e.*, an expression of customer dissatisfaction. An inquiry by the customer may also be a "billing error" (*e.g.*, a customer request for additional clarification regarding a pay-per-call charge appearing on the customer's billing statement).[404]

Nonetheless, to avoid possible confusion, the Commission has decided to change the definition of "providing carrier" to refer instead to "a telephone-billed purchase that is the subject of a billing error complaint or inquiry." This also is consistent with the use of the phrase "billing error complaints or inquiries" in the definition of "billing entity," § 308.7(a)(1).

(f) Section 308.7(a)(6): Definition of "Telephone—Billed Purchase"

The term "telephone-billed purchase" is defined in the final Rule as it is in the TDDRA.[405] It applies to any purchase involving the use of a telephone that is consummated solely as a result of the completion of the call or the subsequent entry of a number or access code using a rotary or touch tone telephone, or by comparable action. The term does not apply to any purchase by a caller pursuant to a preexisting agreement (such as presubscription) with the vendor, nor to any service that the FCC determines by rule is closely related to the provision of telephone service and is subject to billing dispute resolution procedures required by Federal or state law. Also exempt are sales transactions that are otherwise subject to billing dispute resolution procedures required

[392] Comments 10 (NARUC) at 7; 40 (NACAA) at 13; 42 (NAAG) at 18–20.
[393] Comments 10 (NARUC) at 7; 42 (NAAG) at 18.
[394] Tr. at 269, 278.
[395] Tr. at 269, 275–76, 286.
[396] Tr. at 277.

[397] 15 U.S.C. 5724(6).
[398] 15 U.S.C. 5724(1)(A).
[399] 58 FR at 13383 (question 33).
[400] Comment 37 (PPI) at 50.
[401] Comment 32 (MCI) at 2–3.

[402] 58 FR at 13358.
[403] Comment 37 (PPI) at 22.
[404] See the discussion of § 308.7(a)(2)(ii), above.
[405] 15 U.S.C. 5724(1).

by Federal law (*e.g.*, credit card purchases under the FCBA).

(g) Section 308.7(a)(7): Definition of "Vendor"

"Vendor" is defined as it is in the TDDRA.[406] The term applies to the person who sells the goods or services that are the subject of the telephone/billed purchase.

*2. Section 308.7(b): Initiation of Billing Review*

Section 308.7(b) describes how a customer shall initiate a billing review of a telephone-billed purchase. In general, a customer must provide the billing entity with notice of a billing error within 60 days after the billing entity sends the customer the billing statement on which the questioned charge first appears.[407] Comments submitted by NACAA, NAAG and Sprint suggest that there are certain situations in which a customer might need more than 60 days to assert a billing error claim. NACAA commented that because some goods or services are not provided immediately when calls are made (such as prizes and vouchers for future travel), it sometimes is not apparent to the customer that there is a problem until after 60 days have elapsed.[408] NAAG recommended that the time frame in which to initiate a billing review be expanded to 90 days, and that the Rule clarify that "if a 'service' includes the subsequent delivery of a prize, award or other product, that a consumer has 90 days to complain from the date that the goods or services arrive or are supposed to arrive."[409]

Sprint stated that situations in which the customer might need more than 60 days are rare. However, it commented that a longer period of time might be justified where customers can prove they were told by the vendor to allow more than 60 days for delivery of the specific goods or services.[410]

The Commission believes the situations cited by NACAA, NAAG and Sprint are covered by the Rule.[411] Where the customer's "billing error" involves a charge billed by a pay-per-call service for goods or services that were delivered after the customers received the billing statement, the 60-day notification period does not begin to run until the goods or services are delivered. This includes any gift or award that was promised to the customer for entering into the transaction. If the complete goods or services bargained for are never delivered, the 60-day period begins to run on the date the customer was told or led to believe the goods or services were to be delivered, if that date is later than the date the billing statement was transmitted to the customer. In either case, the customer would have at least 60 days from the date the customer was on notice of the problem in which to assert the billing error.

The Rule does not require a customer to give written notice to initiate a billing review. The NPR solicited comment as to whether written notification should be required.[412] The majority of commenters were not in favor of such a requirement, stating that consumers should have the option to call or write.[413] NCL's comment was representative of this group, contending that to require written notification would be unnecessarily restrictive, as most telephone subscribers are accustomed to dealing with their telephone companies over the phone.[414] PPI suggested that the administrative cost attendant to requiring written notification would outweigh any possible benefits.[415]

The telephone companies were the most adamant in their opposition to requiring written notification.[416] USTA commented that the current procedures used by most local telephone companies do not require their customers to reduce billing complaints to writing. As a result, consumers are able to receive prompt responses to their complaints or inquiries. USTA maintained that these procedures have been shown to work and, thus, should be allowed to continue.[417]

A number of information providers supported requiring customers to submit written notification. Fun Lines expressed concern that the proposed billing error resolution procedures would serve as an incentive to billing entities to credit customers' accounts for disputed amounts and charge the amounts back to the vendors, which would then foster consumer abuse of the dispute resolution procedures. To dissuade such abuse, Fun Lines proposed that written notice be required to initiate a billing review.[418] Another organization of information providers, AIP, commented that written notice of a billing error should be required "for clarity of record-keeping."[419]

Two commenters offered proposals where the written notice requirement would be triggered only if the billing error dispute exceeded a defined threshold. ICN observed that requiring written notice to initiate a billing review might be warranted where the disputed charge exceeds a certain dollar amount, such as $75.[420] VRS, a third-party biller, proposed a two-stage error resolution process: in the initial stage, oral notice would be sufficient to assert a billing error; if the initial call did not result in resolution of the dispute, the customer would then have to submit written notification to continue the dispute resolution process.[421]

Because of the breadth of the opposition to requiring written notice and the value to consumers in being able to communicate billing error complaints and inquiries quickly and easily, the Commission has decided against requiring written notice to initiate a billing review. Thus, the final Rule permits billing entities to decide for themselves whether to require written notice.

*3. Section 308.7(c): Disclosure of the Method of Providing Notice*

Section 308.7(c) remains unchanged. It requires the billing entity to disclose on or with each billing statement the method, or methods (*e.g.*, by letter or by telephone), by which the customer may provide notice of a billing error. If the billing entity allows oral notice to be given, it must disclose the presumption that applies if a dispute arises concerning the sufficiency of the customer's oral communication to initiate a billing review.

*4. Section 308.7(d): Response to Customer Notice*

Section 308.7(d) explains the procedure a billing entity must follow to respond to a customer's billing error notice. The proposed rule, § 308.7(d)(1), required the billing entity to acknowledge the customer's notice *in*

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[406] 15 U.S.C. 5724(5).

[407] The 60-day limitation to initiate a billing review shall have no effect on the time in which a person may file a complaint with the FCC against carriers for the recovery of damages or overcharges under the Federal Communications Act, 47 U.S.C. 415.

[408] Comment 40 (NACAA) at 13.

[409] Comment 42 (NAAG) at 30–31.

[410] Comment 81 (Sprint) at 14.

[411] This issue was addressed in footnote 2 of the proposed rule. 58 FR at 13388. To emphasize the point, The Commission has incorporated that footnote into the body of the text of § 308.7(b) of the final Rule.

[412] 58 FR at 13384 (question 35.a).

[413] *See, e.g.*, Comments 21 (NCL) at 19; 31 (CA) at 11; 37 (PPI) at 51; 40 (NACAA) at 13; 81 (Sprint) 12.

[414] Comment 21 (NCL) at 19.

[415] Comment 37 (PPI) at 51.

[416] Comments 16 (USTA) at 7; 18 (Bell Atlantic) at 5; 29 (Ameritech) at 4–5; 57 (US West) at 6; 62 (AT&T), Attachment A at iii; 81 (Sprint) at 12.

[417] Comment 16 (USTA) at 7.

[418] Comment 5 (Fun Lines) at 2.

[419] Comment 35 (AIP) at 13.

[420] Comment 61 (ICN) at 10.

[421] Comment 23 (VRS) at 11.

writing within 30 days after receiving the customer's notice unless the billing entity resolved its dispute with the customer within that 30 days by taking the action set forth in § 308.7(d)(2). The Commission asked for comments as to whether billing entities should have to provide written acknowledgment.[423] CA responded in the affirmative, commenting that there is no way of ensuring that the customer receives acknowledgement of his or her billing error notice.[424] NACAA agreed, stating that if the customer is to be permitted to give oral notice of a billing error, the billing entity's acknowledgement must be in writing.[425] Fun Lines commented that billing entities should be subject to written notification requirements just as credit card issuers are under the FCBA.[426]

A number of commenters expressed opposition to requiring written acknowledgement.[427] MCI, AT&T and USTA commented that the telecommunications industry is accustomed to responding to customers telephonically and is not equipped to handle large amounts of written communications. They voiced support for permitting the industry to maintain the *status quo*.[427] While objecting to requiring written acknowledgement, Sprint noted that "the customer will receive written notification through his or her regularly rendered billing statements."[428] Indeed, one reason the Commission views the written acknowledgement requirement as not being burdensome to billing entities is because it may be satisfied by a notation on the customer's billing statement (*e.g.*, "Your dispute is acknowledged.").

One commenter, AT&T proposed that billing entities be given 45 days in which to acknowledge a customer's billing error notice. AT&T explained that in instances where its customers call the local exchange carrier ("LEC") for a billing adjustment, the LEC must relay the customer dispute to AT&T before it can begin to investigate. According to AT&T, this is done by memorandum, which AT&T often receives as much as two weeks after the customer has notified the LEC of the billing dispute. Thus, AT&T claims it would not, in many instances, be able to resolve the customer's dispute within the initial 30 days, thus necessitating its sending the customer a written acknowledgement, a requirement it would like to avoid.[429]

The Commission believes that a 30-day written acknowledgement requirement would not disadvantage interexchange carriers ("IXCs") in the manner AT&T described. Section 308.7(c) of the Rule, discussed below in greater detail, will require a LEC in the situation AT&T described to either: (1) Promptly provide the customer with the name, address, and telephone number of the billing entity responsible for receiving and responding to customer billing error notices; or (2) relay the customer's billing error notice to the responsible billing entity within 15 days after receiving it. Moreover, the 30-day time frame for acknowledging the customer's notice would not begin in such situations until the responsible billing entity actually received the notice. Thus, AT&T and similarly-situated IXCs would have as much time to resolve customer's billing error disputes as other billing entities.

Nevertheless, the Commission seeks to avoid imposing additional paperwork requirements on billing entities where possible. For this reason, the final Rule affords billing entities 40 days in which to provide written acknowledgement of a customer's billing error notice. The Commission has determined that the additional 10 days will give the billing entity, in almost all instances, sufficient time to send the written acknowledgement on or with the customer's next regularly scheduled billing statement and, thus, avoid the expense of a separate mailing for the acknowledgement.

Under § 308.7(d)(2) of the Rule, the billing entity may resolve its dispute with the customer in one of two ways: (1) It may simply credit the customer's account in the amount disputed without conducting further investigation; or (2) it may elect to investigate the matter and, based on the results of its investigation, make any appropriate adjustments in the customer's account. If the billing entity opts to credit the customer's account without investigation, and a providing carrier or vendor are also parties to the transaction, the billing entity must tell the customer that its crediting of the customer's account may result in efforts by the vendor, its agent, or the providing carrier (whichever applies) to collect the disputed charge. This disclosure is not required, however, if the vendor, its agent, or the providing carrier will not attempt to collect the disputed charge. The burden is on the billing entity to ensure either that this disclosure is given or no secondary collection efforts are undertaken.

Section 308.7(d)(2)(i) of the proposed rule would have required the billing entity to provide the customer with the name, mailing address, and business telephone number of the other parties to the transaction.[430] Several commenters objected to this requirement. Nynex and Bell Atlantic stated that the LECs do not have this information for vendors because the LEC's have no direct relationship with vendors.[431] They have only the program name of the pay-per-call service, which is supplied by the IXC.[432] Bell Atlantic commented that it would be a significant burden to have to distribute lists to its 5,000 service representatives showing the vendors for thousands of pay-per-call telephone numbers and, furthermore, these lists would change daily as carriers assigned numbers to new providers or reassigned numbers from one provider to another.[433] AT&T recommended that the rule be modified to require that billing entities provide this information only upon customer request.[434]

In response to these concerns, the Commission has modified § 308.7(d)(2)(i) of the final Rule to permit the billing entity the option of providing the customer with identifying information about the providing carrier and vendor, as applicable, or providing the customer with a local or toll-free telephone number where the customer can obtain the information directly. This information need only be disclosed if the billing entity's crediting of the customer's account will result in an attempt by the vendor or providing carrier to collect the disputed charge.

Under § 308.7(d)(2)(ii), if the billing entity decides to investigate a billing error dispute, it must contact any parties whose input is needed to reasonably determine whether a billing error occurred as alleged by the customer. If the results of the investigation lead it to conclude that a billing error occurred as alleged, it must credit the customer's account for any disputed amount. If the billing entity determines as a result of the investigation that no billing error occurred, or that a different billing error occurred from that asserted by the customer, the billing entity must explain to the customer the reasons for

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[423] 58 FR at 13284 (question 31.b).

[424] Comment 31 (CA) at 12.

[425] Comment 40 (NACAA) at 13.

[426] Comment 5 (Fun Lines) at 2.

[427] Comments 18 (Bell Atlantic) at 5; 33 (ITA) at 9; 37 (PTI) at 21; 44 (Southwestern) at 5; 50 (BellSouth) at 11; 55 (GTE) at 9–11; 63 (AT&T), Attachment A at ill; 69 (NAD) at 43–44; 81 (Sprint) at 12–13.

[428] Tr. at 213–15.

[429] Comment 81 (Sprint) at 12.

[430] Comment 63 (AT&T) at 2–3.

[431] 58 FR at 13283.

[432] Comments 15 (Nynex) at 4–5; 16 (Bell Atlantic) at 4–5.

[433] Comment 15 (Nynex) at 4–5.

[434] Comment 18 (Bell Atlantic) a 4–5.

[435] Comment 62 (AT&T) at 6.

that determination and make any appropriate adjustments to the customer's account. The billing entity need only provide the customer with a written explanation, including copies of supporting documents, if the customer requests it.

Section 308.7(d)(3) requires a billing entity to complete the steps required by § 308.7(d)(2) within two complete billing cycles after receiving the customer's billing error notice, which in no event may be more than 90 days. If a billing entity were to comply with § 308.7(d)(2)(i)—*i.e.*, to correct the customer's bill and credit his account—within 40 days after receiving the customer's billing error notice, no written communication of any kind would need to be provided to the customer. This provision was received favorably by the telephone companies,[435] while the information providers expressed concern that it might encourage the telephone companies to credit customers' accounts for disputed amounts that might very well be legitimate charges.[436] The Commission believes that the billing review procedures of § 308.7(d) strike a reasonable balance among the consumer's interest in having billing errors resolved quickly and efficiently, the billing entity's interest in being able to operate free of undue administrative burdens, and the information provider's interest in receiving fair compensation for pay-per-call services provided to the public.

Section 308.7(d)(3)(i) provides that if a billing entity determines that any disputed amount is in error, it must notify the providing carrier and vendor of its disposition of the billing error and the reasons for its action. Under § 308.7(d)(3)(ii), if the billing entity determines that any portion of the disputed amount should be sustained, it must promptly notify the customer in writing of the time when payment of that amount is due.

The proposed rule would have required the billing entity to give the customer at least 20 days from the date of notice to pay this sustained amount.[437] A number of commenters opposed the 20-day requirement as unreasonable and unnecessary.[438] USTA commented that the LECs should be permitted to include disputed amounts determined not to be in error in their next bill cycle for payment within the normal time set by state regulation. It stated that the "time provided by specific state regulation for telephone bill payment is likely to be reasonable, and is likely to have been subject to a preexisting determination generally to the effect that the period set would not impose harsh conditions on the customer."[439] In response to these comments, the Commission has modified § 308.7(d)(3)(ii) of the final Rule to permit the billing entity to require payment of disputed amounts determined not to be in error within the number of days the customer is ordinarily allowed by custom, contract, or state law to pay undisputed amounts, but in no case less than 10 days.

Under § 308.7(d)(3)(ii), the billing entity also must notify the customer in writing that failure to pay the disputed amount determined not to be in error may be reported to a credit reporting agency, or may subject the customer to collection action. This section of the final Rule has been changed to state that if there is no possibility that either event will occur, the notice need not, and indeed should not, be sent. For example, if a third-party biller does not report delinquent customers to credit reporting agencies and takes no action to collect unpaid pay-per-call charges *and*, by contract or for policy reasons, forbids its clients to undertake such actions, no such notice should be sent to the customer. If only one of the events was operational (*e.g.*, the third-party biller does not report to credit reporting agencies but does undertake collection activity), the notice should mention only the possibility of that particular event occurring.

*5. Section 308.7(e): Withdrawal of Billing Error Notice*

Under § 308.7(e) of the proposed rule, a billing entity would not have had to proceed with the billing review procedures if the customer agreed, before the notification requirements of § 308.7(d) were triggered, that the billing statement was correct.[440] AT&T observed that customers may not always be willing to expressly admit that no billing error occurred, even when they have indicated they no longer intend to pursue a billing dispute.[441] The final Rule addresses this problem by permitting the billing entity to dispense with the billing review if the customer agrees that the billing statement was correct or if the customer agrees to withdraw voluntarily the billing error notice. This may be achieved by the customer's clear affirmation that he or she does not wish the billing entity to pursue further investigation of the dispute.

*6. Section 308.7(f): Limitation on Responsibility for Billing Error*

Section 308.7(f) limits the billing entity's obligation to respond to a customer's billing error complaint to the procedures set forth in § 308.7(d). Once the billing entity follows the prescribed procedures, it will not have to continue to respond in the same manner to subsequent assertions by the customer of the same billing error. The Commission is adopting this section as proposed.

*7. Section 308.7(g): Customer's Right to Withhold Disputed Amount; Limitation on Collection Action*

Section 308.7(g) sets forth the customer's right to withhold payment of any disputed amount after having provided notice of a billing error. No one may try to collect this amount from the customer until the billing entity has completed its billing review and given the customer as much time to make payment as the billing entity ordinarily affords for undisputed charges. The billing entity may continue to display the disputed charge on the customer's billing statement during the billing review, so long as the statement discloses that payment of the disputed amount is not required. There is no restriction on the billing entity's right to collect any undisputed charges on the customer's bill. The Commission is adopting this section as proposed.

*8. Section 308.7(h): Prohibition on Charges*

Section 308.7(h) of the proposed rule provided that if a billing error is determined to have occurred, whether as alleged by the customer or in a different amount or manner, no charge may be imposed on the customer related to the billing review. The proposed rule also provided that if it is determined that no billing error occurred, any charges imposed on the customer must be reasonable and not have the effect of discouraging customers from asserting their billing error rights. The Commission solicited comment on whether there should be an absolute prohibition on charging for billing error investigations.[442]

The Commission received one comment in favor of permitting billing entities to charge for billing error investigation. AIP commented that it should be permissible for a billing entity

[435] *See, e.g.*, Comment 13 (NTCA) at 4–5.

[436] Comments 5 (Fun Lines) at 2–3; 63 (NAIS) at 46–47; Tr. at 224.

[437] 58 FR at 13389.

[438] Comments 15 (Nynex) at 5–6; 16 (USTA) at 15–16; 35 (AIP) at 13–14; 50 (BellSouth) at 11.

[439] Comment 16 (USTA) at 15–16.

[440] 58 FR at 13389.

[441] Comment 62 (AT&T) at 7.

[442] 58 FR at 13384 (question 36).

to impose a reasonable charge "unless the error ultimately found is a 'material' error."[443] One commenter suggested that the Rule should be silent on the issue.[444] Several commenters were adamantly opposed to allowing billing entities to impose any charge for a billing review. NACAA and NAAG contended that allowing any charges for conducting a billing review would only discourage consumers from exercising their rights.[445] VRS agreed and observed that vendors could recoup their investigation costs through adjustments to their overall pricing structure.[446] NCL stated that unless there is an absolute prohibition on such charges, billing entities are likely to abuse the privilege and coerce customers into accepting inaccurate or excessive charges for pay-per-call services.[447] At the public workshop conference, Commission staff asked whether industry members felt they needed to have the right to charge customers for investigating billing errors that are determined not be valid. There was no response in support of permitting such charges.[448]

On balance, the Commission has concluded that the imposition of any charges for billing error investigations could deter consumers from the assertion of legitimate disputes. Therefore, the final Rule prohibits billing entities from imposing any charges in connection with a billing review.

*9. Section 308.7(i): Restrictions on Credit Reporting*

Section 308.7(i) of the final Rule is identical to the proposed rule except for the modification to § 308.7(i)(1), relating to the time allowed the customer to pay any disputed amount found not to be in error. The modification conforms this provision to the change in § 308.7(d)(3)(ii), discussed above.

Section 308.7(i) forbids anyone from reporting or threatening to report negative information related to the customer's withholding payment of the disputed amount until the billing review is completed and the customer has been given as much time to make payment as the billing entity ordinarily affords for undisputed charges. If, before this time expires, the customer reasserts his dispute with respect to the same billing error, no one may report the customer's account as delinquent without also reporting that the customer disputes the delinquent amount. Additionally, any person reporting such a delinquency must notify the customer in writing of the name and address of each person to whom it reported the delinquency. Any subsequent resolution of the dispute would have to be reported in writing to anyone to whom the delinquency was reported initially.

One commenter objected to what it perceived to be the Rule's allowing a customer to perpetuate a billing error dispute indefinitely. PPI stated that the Rule would permit a persistent consumer to "repeatedly seek review of a claim and thus save himself from having a bad credit report."[449] In fact, the only protection this provision gives a customer who reasserts a billing error is to inform the credit reporting agency or other party who receives notice of the customer's delinquency that the customer disputes a matter with respect to that delinquency. Except for the aforementioned restrictions on credit reporting, any interested party may pursue all of its other normal collection procedures (including involuntary blocking of the customer's access to future pay-per-call services) if a disputed charge remains unpaid after the billing entity has completed the billing review and determined that no billing error occurred.

*10. Section 308.7(j): Forfeiture of Right to Collect Disputed Amount*

Section 308.7(j) requires a billing entity, providing carrier, or vendor to forfeit the amount of any telephone-billed purchase (up to $50 per transaction) if it fails to comply with the Rule's billing error resolution requirements. The penalty applies only to the person or persons who failed to comply. The provision does not prevent any other interested party from pursuing collection of any legitimate amount to which it is entitled. For example, a billing entity's failure to respond properly to a customer's billing error notice would not result in forfeiture of the vendor's right to pursue independent collection of the charge.

AIP commented that the penalty should apply only if the failure to comply was "material,"[450] whereas NACAA believes the provision should compel the billing entity, providing carrier, and vendor, and their agents, to forfeit the right to collect from customers any charges involving violations of the TDDRA.[451] The purpose of the forfeiture penalty is to enforce compliance with the billing and collection provisions of the Rule, including those provisions some might consider to be technical in nature. There are other provisions of the Rule that should serve to deter the types of practices the TDDRA was enacted to prevent.[452] Therefore, the Commission has decided to issue this provision of the Rule as initially proposed.

*11. Section 308.7(k): Notification of Returns and Crediting of Refunds*

Section 308.7(k) prescribes the procedure a vendor who is not billing entity must follow after agreeing to give a customer a refund or credit for returned goods or a forgiven debt. Within seven days after the vendor agrees to give the customer a cash refund, the vendor must send the refund directly to the customer's address, and must also notify the appropriate billing entity that the refund has been given. The proposed rule did not provide for notice of the refund to be sent to the billing entity. However, AT&T commented that the addition was advisable to prevent the customer from receiving an adjustment from both the vendor and the billing entity.[453] The Commission agrees.

If the vendor agrees to credit the customer's account for the returned property or forgiven debt, the vendor has seven days in which to send a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. Within seven days after receiving the credit statement, the billing entity must credit the customer's account for the amount of the refund. The proposed rule gave the billing entity only three days to effect the credit. Two commenters noted that the billing entity responsible for responding to and handling billing error disputes, *e.g.*, an IXC, might not be the billing entity that originally billed the customer for the charge, *e.g.*, a LEC. If the vendor sent the credit statement to the IXC, the IXC might not be able to relay the credit statement to the LEC in sufficient time to ensure that the customer's account was credited within three days.[454] Therefore, the final Rule gives the billing entity seven days in which to credit the customer's account.[455]

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[443] Comment 35 (AIP) at 14.

[444] Comment 37 (PPI) at 52.

[445] Comment 40 (NACAA) at 14; 42 (NAAG) at 31.

[446] Comment 23 (VRS) at 13.

[447] Comment 21 (NCL) at 19–20.

[448] Tr. at 229. Although AIP, in its comments filed with the Commission, had expressed support for permitting such charges in certain situations, it was silent on the issue at the conference.

[449] Comment 37 (PPI) at 23.

[450] Comment 35 (AIP) at 14.

[451] Comment 40 (NACAA) at 15.

[452] *See, e.g.*, § 308.5(k), making pay-per-call service providers liable for refunds to consumers who have been billed for services found to have violated any provision of this Rule or any other Federal law.

[453] Comment 62 (AT&T) at 6.

[454] Comments 55 (GTE) at 11; 62 (AT&T) at 7.

[455] AIP commented that the Rule does not provide vendors sufficient time to perform the required

*12. Section 308.7(l): Customer's Right to Assert Claims or Defenses*

Section 308.7(l) makes any billing entity or providing carrier who attempts to collect charges from a customer for a disputed telephone-billed purchase subject to any claims or defenses that the customer may lawfully assert against the vendor with respect to that purchase. The provision remains unchanged from the proposed rule. The customer's rights under this provision are not dependent on the customer's assertion of a billing error pursuant to § 308.7(b). However, the customer must first have made a good faith attempt to settle the dispute with the vendor, or the providing carrier (other than the billing entity) if the vendor is not readily accessible. Any determination of what claims or defenses are valid as to the vendor must be made under state or other applicable law. The billing entity or providing carrier cannot be liable under this provision for any amount greater than the amount of the telephone-billed purchase, plus any related charges for which the customer has been billed.

*13. Section 308.7(m): Retaliatory Actions Prohibited*

Section 308.7(m) makes it unlawful to accelerate the customer's debt or to restrict to terminate the customer's access to pay-per-call services to penalize the customer for exercising in good faith any billing error rights accorded by these regulations. This does not constitute an absolute prohibition on all actions that might effectively limit a customer's access to pay-per-call services. For example, if a vendor or providing carrier regularly suspends a customer's access to pay-per-call services when that customer's outstanding debt exceeds a certain dollar amount, that vendor or providing carrier would not be prohibited from applying any disputed amount towards that outstanding debt. Moreover, this provision does not preclude a billing entity, providing carrier, or vendor from blocking or ordering the blocking of pay-per-call services to subscribers who have incurred, but not paid, legitimate pay-per-call charges.[456] Furthermore, a billing entity, providing carrier, or vendor will not have violated this section if it took adverse action against the customer with respect to a telephone-billed purchase without knowing that the customer had asserted a billing error related to that purchase.[457] The determining factor in each instance is whether the action was motivated, or reasonably appears to have been motivated, by a desire to retaliate against the customer for asserting his or her billing error rights.

*14 Section 308.7(n): Notice of Billing Error Rights*

Section 308.7(n) requires a billing entity to provide its customers with written notice of their pay-per-call billing rights at least once per calendar year. If the billing entity is not a common carrier, it must follow the procedures set forth in § 308.7(n)(1)(i), and send the notice to each customer (whether that customer is an old, current, or new customer) with the first billing statement for a telephone-billed purchase mailed or delivered to that customer after the effective date of the regulations. Thereafter, the billing entity must ensure that the customer receives the notice at least once during each subsequent calendar year in which that customer receives a bill for a telephone-billed purchase.

Billing entities that are common carriers have the option of sending the annual statement to only those customers whom they have billed for a telephone-billed purchase, or they may elect to send the annual statement to all of their customers who receive telephone service of any kind. If they choose the former approach, they must follow the procedure set forth in § 308.7(n)(1)(i). If they opt for the latter, they must comply with § 308.7(n)(1)(ii), which requires the billing entity to send the annual statement to all of its customers within 60 days after the effective date of the regulations. The billing entity must then send the notice at least once each following year to all of its customers at intervals of not less than six months nor more than 18 months.

The proposed rule would have prescribed the precise language that billing entities must disclose in the notices.[458] Two commenters suggested that the billing entity should have the flexibility to fashion its own notice, so the material information might be arranged and disclosed in a more cost-effective manner.[459] The Commission, on reconsideration, has modified the final Rule to specify the information that must be disclosed without mandating specific language.

The annual statement must inform the customer how to initiate a billing review. The presumption set forth in § 308.7(c) of the Rule need only be disclosed if the customer is permitted to provide oral notice. The annual statement must also describe the procedure the billing entity must follow to respond to a billing error notice and to investigate the alleged billing error. Additionally, the annual statement must disclose the customer's right to withhold payment of any disputed amount and the restrictions placed on collection and adverse reporting of the disputed amount. Finally, the statement must tell the customer about the forfeiture penalty.

Instead of sending the annual statement, the billing entity may choose to send an abridged pay-per-call billing rights summary to its customers with each billing statement. Like the annual statement, the alternative summary statement must inform the customer how to initiate a billing review, including the presumption applying to oral notice, if such notice is permitted. However, the summary notice need not explain the procedure the billing entity must follow to respond to and investigate a billing error complaint. Also, the alternative summary must contain a statement (which may be abridged) of the customer's rights with respect to the collection of any disputed amount. It need not mention the forfeiture penalty.

Section 308.7(n)(3), which sets forth general requirements concerning the billing error rights notices, has been added to the final Rule. If the billing entity elects to send an annual statement, it must be provided on a separate statement that the customer may keep. A portion of the customer's billing statement containing the disclosures is permissible under this section if that portion can be easily detached (*e.g.*, with perforations) and kept, and the statement advises the customer to do so.

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take, contending that vendors should have as much time to give credits and refunds as customers have to assert a billing error, 60 days. Comment 35 (AIP) at 14–15. The Commission believes, however, this fails to take into consideration that § 308.7(k) only applies where the vendor has already made the determination to give a refund or credit to the customer. The time requirements are similar to those prescribed under the FCBA for credit card purchases, through which many merchants also process a large number of transactions.

[456] MCI proposed that § 308.7(m) state expressly that blocking for nonpayment of legitimate pay-per-call charges is not precluded by this section. Comment 32 (MCI) at 6–7. However, stating this in the Rule might dilute the principal message of this provision, which is that a customer should not be subjected to any adverse action solely because of that customer's good faith exercise of his or her billing error rights under this Rule. The Commission believes that the issue is addressed satisfactorily by discussion in this Statement of Basis and Purpose.

[457] BellSouth expressed concern that a LEC that acts as a collection agent for an IXC that performed its won billing might not be aware of a pending dispute. Comment 50 (BellSouth) at 12.

[458] 56 FR at 13378, 13390.

[459] Comments 32 (MCI) at 7–12; 50 (BellSouth) at 13.

If the alternative summary statement is used and is disclosed on each copy of the customer's billing statement, it need not be in a form that the customer may keep. If the disclosures are made on the back of the statement, the front of the statement must include a clear and conspicuous reference to the disclosures on the back.

One commenter proposed that billing entities be permitted to include additional information on the billing rights notice.[460] Section 308.7(n)(3)(iii) permits such information to be disclosed on the notice, but it must not confuse or mislead the customer or obscure or detract from the required disclosures, which must appear separately and above any other information.

*15. Section 308.7(o): Multiple Billing Entities*

Section 308.7(o) explains the responsibilities of multiple billing entities involved in a telephone-billed purchase. It remains unchanged from the proposed rule. This provision gives these billing entities the flexibility to decide among themselves the one that will be responsible for making any disclosures and for complying with the other requirements of the Rule.

The Commission received several comments seeking clarification of the role of the LEC under this provision where that company renders bills for pay-per-call services but the responsibility for handling billing complaints and inquiries resides with the IXC.[461] The Rule provides that if the LEC receives notice of a billing error from a customer, the LEC must either identify for the customer the proper party to whom the notice should be sent or the LEC may accept the billing error notice on behalf of the IXC, in which case it must transmit the notice to the IXC within 15 days. The LEC would have no further responsibility with respect to the billing error dispute, even if the customer persisted in attempting to have the LEC credit his or her account. However, nothing in this section would preclude the LEC from crediting the customer's account in that situation. If the IXC objects to the LEC doing so, it must resort to the terms of its contract with the LEC for relief.

*16. Section 308.7(p): Multiple Customers*

Section 308.7(p) provides that disclosures may be made to any customer primarily liable on a joint account. It remains unchanged from the proposed rule.

*17. Other Questions*

The proposed rule did not contain any provision requiring billing entities, providing carriers, or vendors to maintain records with respect to the billing and collection of pay-per-call services. The NPR solicited comment on whether such a requirement is needed.[462] Many commenters noted that common carriers are required by the FCC to keep call detail records for 18 months. These records identify the name, address, and telephone number of the caller, the telephone number called, and the date, time, and length of the call.[463] Sprint commented, "These records provide the back-up for the services provided by common carriers acting as billing entities and/or providing carriers in any pay-per-call service transaction."[464] NTCA noted that state laws already require LECs "to respond to consumer complaints within designated time frames, to resolve complaints and to provide consumers back-up records to resolve billing disputes."[465] The common carriers maintained that these records are sufficient to demonstrate compliance with the billing and collection procedures of the Rule, and that a separate FTC record retention provision is not needed.[466] They recommended, however, that should the FTC decide to implement a record retention provision, it should mirror the FCC rule.[467]

The consumer groups and regulatory agencies commented in support of some form of recordkeeping provision, as did IIA, a trade association of information providers. NACAA, asserting that such records are vital to law enforcement officials, recommended that billing entities be required to keep records for at least as long as the applicable statute of limitations.[468] CA and IIA believe that billing entities should be subject to the same record retention provisions as found in the TILA and FCBA.[469] Regulation Z (which implements the TILA and FCBA) requires creditors generally to maintain evidence of compliance for two years.[470] The value of implementing such a provision is questionable when common carriers already are required by the FCC to keep records for 18 months.

In fact, at least some of the parties potentially affected by a recordkeeping provision currently keep records for longer than 18 months. USTA said this is true for some of its members, and that one member (BellSouth) keeps records for 3–10 years.[471] ITA, a third-party biller, stated it has kept billing records for as long as it has been in operation, approximately two years.[472] TPI, an information provider and service bureau, said it has kept its records for all of the four years it has been in operation.[473]

Finally, the record shows that the state regulatory agencies have had no difficulties obtaining relevant records in connection with their investigations of pay-per-call services, except in certain atypical situations.[474] Therefore, the Commission has concluded that there is insufficient evidence at the present time to support the need for a specific recordkeeping provision with respect to the billing and collection procedures of the Rule.

The Commission also solicited data concerning the practices of third-party billers. Specifically, the Commission asked whether the Rule should include additional protections for consumers who deal with third-party billers.[475] Only a few commenters responded. The gist of these comments was that third-party billers should be subject to the same requirements as other billing entities—no more, no less.[476] Therefore, the Commission has determined that there is insufficient evidence to justify imposing any additional requirements on third-party billers.

*18. Relation to State Laws*

Section 302(a) of the TDDRA[477] provides that no person subject to the provisions of Title III (Billing and Collection) of the final Rule shall be exempt from complying with the laws of any state with respect to telephone billing practices, except, and only, to the extent that those laws are inconsistent with any provision of Title III. The Commission is given the authority to determine whether such inconsistencies exist. A billing entity, providing carrier, vendor, state, or other interested party may petition the

[460] Comment 22 (MCI) at 9–10.
[461] Comments 18 (Bell Atlantic) at 4; 37 (PPI) at 34; 83 (NAIS) at 48.
[462] 58 FR at 13384 (question 37).
[463] Comments 18 (Bell Atlantic) at 7; 81 (Sprint) at 10, citing 47 CFR 42.6.
[464] Comment 81 (Sprint) at 10.
[465] Comment 13 (NTCA) at 7.
[466] *See, e.g.*, Comment 16 (USTA) at 12.
[467] Comments 81 (Sprint) at 10; 60 (Pilgrim) at 16.
[468] Comment 40 (NACAA) at 14.
[469] Comments 31 (CA) at 12; 53 (IIA) at 35.
[470] 12 CFR 226.25.
[471] Tr. at 468.
[472] Tr. at 465.
[473] Tr. at 470.
[474] Tr. at 484–85.
[475] 58 FR at 13384 (question 39).
[476] Comments 23 (VRS) at 14; 31 (CA) at 12; 33 (ITA) at 7.
[477] 15 U.S.C. 5722(a).

Commission to determine whether a state law requirement is inconsistent.

Section 302(b) of the TDDRA [478] provides that the Commission shall by regulation exempt from Title III any class of telephone-billed purchase transactions within any state if it determines that under the law of that state, that class of transactions is subject to requirements substantially similar to those imposed under the Act, or that such state law gives greater protection to consumers, and that there is adequate provision for enforcement. Any state may apply to the Commission to exempt a class of transactions within that state from the requirements of the Federal law and the corresponding provisions of this Rule.

A petition for the Commission to determine whether a state law requirement is inconsistent , or an application for an exemption of a class of transactions, shall be in writing and addressed to the Secretary, Federal Trade Commission, Washington, DC 20580.

*G. Section 308.8: Severability*

This section of the final Rule states the Commission's intent that if any Rule provision is stayed or held invalid, the other provisions will remain in effect.

*H. Section 308.9: Rulemaking Review*

This section of the Rule, which was not included in the proposal set forth in the NPR, states the Commission's intention to undertake a review of the Rule, no later than four years after its effective date, in order to evaluate its operation.

**III. Regulatory Flexibility Act**

In publishing the proposed regulations, the Commission certified, subject to subsequent public comment, that the proposed regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities and, therefore, that the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), requiring the initial regulatory analysis, did not apply.[479] The Commission noted that any economic costs imposed on small entities by the proposed regulations were, in many instances, specifically imposed by statute. Where they were not, efforts had been made to minimize any unforeseen burden on small entities (for example, by making the proposed rule's requirements flexible). The Commission determined, on the basis of the information available to the staff at that time, that the proposed regulations would result in few, if any, independent additional costs. The Commission nonetheless requested comment on the effects of the proposed regulations on costs, profitability, competitiveness, and employment in small entities, in order not to overlook any substantial economic impact that would warrant a final regulatory flexibility analysis.[480]

The information and comments received by the Commission did not provide sufficient reliable statistical or analytical data to quantify precisely the effect, differential or otherwise, of the proposed regulations on small entities versus its effect on all entities that may be subject to these regulations. While virtually all of the comments made general reference to the economic effects of the proposed regulations, only two comments addressed the Commission's request for comments on the effect of the proposed regulations with specific regard to small entities. One commenter, not citing any particular provision of the proposed regulations, simply urged that the Commission's rules take into account the higher costs for small IXC's to acquire 900 numbers than to acquire such service through other exchanges.[481] The second commenter, representing nearly 500 small local exchange carriers, believed that § 308.7(o) of the proposed regulations, regarding procedures for responding to billing error notices, would have a favorable impact on administrative and customer complaint costs shouldered by their small member companies that provide billing services to pay-per-call providers.[482] As the commenter noted, the Commission's rule would permit billing entities to decide between or among themselves who among them should be responsible for making required disclosures, investigating complaints, or complying with other requirements of the Rule when more than one billing entity may be involved in a telephone-billed purchase.

Accordingly, the Commission has determined that the public comments and information before the Commission do not alter the conclusion that the Commission's Rule would not have a sufficiently significant economic impact on a substantial number of small entities to warrant a final regulatory flexibility analysis under the Regulatory Flexibility Act. This notice serves as certification to that effect to the Small Business Administration.

**IV. Paperwork Reduction Act**

The NPR solicited comments on the need for and scope of possible recordkeeping requirements in provisions governing Commission access to information (§ 308.6) and billing and collection for pay-per-call services (§ 308.7).[483] Such requirements, if adopted, would constitute "collections of information" as defined under the Paperwork Reduction Act.[484] As discussed elsewhere in this Statement of Basis and Purpose, the Commission has determined, on the basis of public comments, not to include such requirements in its final Rule. Accordingly, the requirements of the Paperwork Reduction Act are not applicable.

**V. Effective Date**

One commenter stated that members of the pay-per-call industry will need a certain amount of time to make changes in their business practices to reflect the new requirements of the final Rule.[485] Specifically, Fun Lines claimed that it can take up to four months to remove or change existing pay-per-call advertisements, since the layout and printing of certain periodicals often is completed months in advance. Fun Lines requested adequate time to make these changes.

The Commission agrees that there should be a period of time between the date this Rule is prescribed and its effective date. The Commission believes that three months is an adequate amount of time to address the industry's needs in this regard.[486] Accordingly, the effective date for this Rule is November 1, 1993.

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[478] 15 U.S.C. 5722(a).

[479] 58 FR at 13379.

[480] *Id.*; *see also id.* at 13384 (question 42).

[481] Comment 60 (Pilgrim) at 22–23. This rulemaking does not reach whether such cost differentials are just or reasonable or warrant investigation, as the commenter also urged the Commission and the FCC to address.

[482] Comment 13 (NTCA) at 2–4; *see also* comment 16 (USTA) at 4–5. While USTA did not comment on the effect of the proposed regulations specifically as to small entities, USTA notes that its membership consists of over 1,000 local exchange carriers offering about 99% of the nation's local telephone lines, and that the overwhelming majority of these carriers are small telephone companies with fewer than 10,000 telephone lines, with some of these companies having fewer than 50 such lines.

[483] 58 FR at 13384 (questions 32 and 34).

[484] 44 U.S.C. 3501–3520. *See* 44 U.S.C. 3502; 5 CFR 1320.7.

[485] Comment 5 (Fun Lines) at 2.

[486] Three months is consistent with the lead time allowed before the effective date in other Commission rulemakings. *E.g.*, Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances under the Energy Policy and Conservation Act; Ranges of Comparability for Refrigerators, Refrigerator-freezers, and Freezers, 58 FR 3224 (Jan. 8, 1993); Labeling and Advertising of Home Insulation, 44 FR 50218 (Aug. 27, 1979).

**List of Subjects in 16 CFR Part 308**

Advertising, 900 telephone numbers, Pay-per-call services, Telephone, Trade practices.

For the reasons set forth in the preamble, title 16 of the Code of Federal Regulations is amended by adding part 308 to read as follows:

## PART 308—TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Sec.


308.1 Scope of regulations in this part.
308.2 Definitions.
308.3 Advertising of pay-per-call services.
308.4 Special rule for infrequent publications.
308.5 Pay-per-call service standards.
308.6 Access to information.
308.7 Billing and collection for pay-per-call services.
308.8 Severability.
308.9 Rulemaking review.


**Authority:** Pub. L. 102–556, 106 Stat. 4181 (15 U.S.C. 5701, et seq.)

### § 308.1 Scope of regulations in this part.

This rule implements titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, to be codified in relevant part at 15 U.S.C. 5711–14, 5721–24.

### § 308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service dedicated to providing information or instruction relating to education, subjects of academic study, or other related areas of school study.

(b) *Commission* means the Federal Trade Commission.

(c) *Pay-per-call service* has the meaning provided in section 228 of the Communications Act of 1934, 47 U.S.C. 228.[1]

(d) *Person* means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(e) (1) *Presubscription or comparable arrangement* means a contractual agreement in which

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service;

(ii) The service provider agrees to notify the consumer of any future rate changes;

(iii) The consumer agrees to utilize the service on the terms and conditions disclosed by the service provider; and

(iv) The service provider requires the use of an identification number or other means to prevent unauthorized access to the service by nonsubscribers.

(2) Disclosure of a credit card or charge card number, along with authorization to bill that number, made during the course of a call to a pay-per-call service shall constitute a presubscription or comparable arrangement if the credit or charge card is subject to the dispute resolution requirements of the Fair Credit Billing Act and the Truth in Lending Act, as amended. No other action taken by the consumer during the course of a call to a pay-per-call service can be construed as creating a presubscription or comparable arrangement.

(f) *Program-length commercial* means any commercial or other advertisement fifteen (15) minutes in length or longer or intended to fill a television or radio broadcasting or cablecasting time slot of fifteen (15) minutes in length or longer.

(g) *Provider of pay-per-call services* means any person who sells or offers to sell a pay-per-call service. A person who provides only transmission services or billing and collection services shall not be considered a provider of pay-per-call services.

(h) *Reasonably understandable volume* means at an audible level that renders the message intelligible to the receiving audience, and, in any event, at least the same audible level as that principally used in the advertisement or the pay-per-call service.

(i) *Service bureau* means any person, other than a common carrier, who provides, among other things, access to telephone service and voice storage to pay-per-call service providers.

(j) *Slow and deliberate manner* means at a rate that renders the message intelligible to the receiving audience, and, in any event, at a cadence or rate no faster than that principally used in the advertisement or the pay-per-call service.

(k) *Sweepstakes*, including games of chance, means a game or promotional mechanism that involves the elements of a prize and chance and does not require consideration.

### § 308.3 Advertising of pay-per-call Services.

(a) *General requirements.* The following requirements apply to disclosures required in advertisements under §§ 308.3(b)–(d), and (f):

(1) The disclosures shall be made in the same language as that principally used in the advertisement.

(2) Television video and print disclosures shall be of a color or shade that readily contrasts with the background of the advertisement.

(3) In print advertisements, disclosures shall be parallel with the base of the advertisement.

(4) Audio disclosures, whether in television or radio, shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

(5) Nothing contrary to, inconsistent with, or in mitigation of, the required disclosures shall be used in any advertisement in any medium; nor shall any audio, video or print technique be used that is likely to detract significantly from the communication of the disclosures.

(6) In any program-length commercial, required disclosures shall be made at least three times (unless more frequent disclosure is otherwise required) near the beginning, middle and end of the commercial.

(b) *Cost of the call.* (1) The provider of pay-per-call services shall clearly and conspicuously disclose the cost of the call, in Arabic numerals, in any advertisement for the pay-per-call service, as follows:

(i) If there is a flat fee for the call, the advertisement shall state the total cost of the call.

(ii) If the call is billed on a time-sensitive basis, the advertisement shall state the cost per minute and any minimum charges. If the length of the program can be determined in advance, the advertisement shall also state the maximum charge that could be incurred if the caller listens to the complete program.

(iii) If the call is billed on a variable rate basis, the advertisement shall state,

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[1] Section 228 of the Communications Act of 1934 states:

(1) The term *pay-per-call services* means any service—

(A) In which any person provides or purports to provide—

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) Which is accessed through use of a 900 telephone number or other prefix or area code designated by the (Federal Communications) Commission in accordance with subsection (b)(5) (47 U.S.C. 228(b)(5)).

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.

in accordance with §§ 308.3(b)(1)(i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller.

(iv) The advertisement shall disclose any other fees that will be charged for the service.

(v) if the caller may be transferred to another pay-per-call service, the advertisement shall disclose the cost of the other call, in accordance with §§ 308.3(b)(1)(i), (ii), (iii), and (iv).

(2) For purposes of § 308.3(b), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the video disclosure shall appear adjacent to each video presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the video disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent. In addition, the video disclosure shall appear on the screen for the duration of the presentation of the pay-per-call number. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in: (A) An advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number. In an advertisement in which the pay-per-call number is presented *only* in the audio portion, the cost of the call shall be delivered immediately following the first and last delivery of the pay-per-call number, except that in a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(ii) In a print advertisement, the disclosure shall be placed adjacent to each presentation of the pay-per-call number. However, in an advertisement displaying more than one pay-per-call number with the same cost, the disclosure need only appear adjacent to the largest presentation of the pay-per-call number. Each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the pay-per-call number to which the disclosure is adjacent.

(iii) In a radio advertisement, the disclosure shall be made at least once, and shall be delivered immediately following the first delivery of the pay-per-call number. In a program-length commercial, the disclosure shall be delivered immediately following each delivery of the pay-per-call number.

(c) *Sweepstakes; games of chance.* (1) The provider of pay-per-call services that advertises a prize or award or a service or product at no cost or for a reduced cost, to be awarded to the winner of any sweepstakes, including games of chance, shall clearly and conspicuously disclose in the advertisement the odds of being able to receive the prize, award, service, or product at no cost or reduced cost. If the odds are not calculable in advance, the advertisement shall disclose the factors used in calculating the odds. Either the advertisement or the preamble required by § 308.5(a) for such service shall clearly and conspicuously disclose that no call to the pay-per-call service is required to participate, and shall also disclose the existence of a free alternative method of entry, and either instructions on how to enter, or a local or toll-free telephone number or address to which consumers may call or write for information on how to enter the sweepstakes. Any description or characterization of the prize, award, service, or product that is being offered at no cost or reduced cost shall be truthful and accurate.

(2) For purposes of § 308.3(c), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the disclosures may be made in either the audio or video portion of the advertisement. If the disclosures are made in the video portion, they shall appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend the disclosures.

(ii) In a print advertisement, the disclosures shall appear in a sufficient size and prominence and such location to be readily noticeable, readable and comprehensible.

(d) *Federal programs.* (1) The provider of pay-per-call services that advertises a pay-per-call service that is not operated or expressly authorized by a Federal agency, but that provides information on a Federal program, shall clearly and conspicuously disclose in the advertisement that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency. Advertisements providing information on a Federal program shall include, but not be limited to, advertisements that contain a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal government connection, approval, or endorsement.

(2) For purposes of § 308.3(d), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, the disclosure may be made in either the audio or video portion of the advertisement. If the disclosure is made in the video portion, it shall appear on the screen in sufficient size and for sufficient time to allow consumers to read and comprehend the disclosure. The disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(ii) In a print advertisement, the disclosure shall appear in a sufficient size and prominence and such location to be readily noticeable, readable and comprehensible. The disclosure shall appear in the top one-third of the advertisement.

(iii) In a radio advertisement, the disclosure shall begin within the first fifteen (15) seconds of the advertisement.

(e) *Prohibition on advertising to children.* (1) The provider of pay-per-call services shall not direct advertisements for such pay-per-call services to children under the age of 12, unless the service is a bona fide educational service.

(2) For the purposes of this regulation, advertisements directed to children under 12 shall include: any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of children under 12, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of children under 12.

(3) For the purposes of this regulation, if competent and reliable audience composition or readership data does not demonstrate that more than 50% of the audience or readership is composed of children under 12, then the Commission shall consider the following criteria in determining whether an advertisement is directed to children under 12:

(i) Whether the advertisement appears in a publication directed to children under 12, including, but not limited to, books, magazines and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed to children under 12, including, but not limited to, children's programming as defined by the Federal Communications Commission, animated programs, and after-school programs;

(iii) Whether the advertisement appears on a television station or channel directed to children under 12;

(iv) Whether the advertisement is broadcast during or immediately adjacent to radio programs directed to children under 12, or broadcast on a radio station directed to children under 12;

(v) Whether the advertisement appears on the same video as a commercially-prepared video directed to children under 12, or preceding a movie directed to children under 12 shown in a movie theater;

(vi) Whether the advertisement or promotion appears on product packaging directed to children under 12; and

(vii) Whether the advertisement, regardless of when or where it appears, is directed to children under 12 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(f) *Advertising to individuals under the age of 18.* (1) The provider of pay-per-call services shall ensure that any pay-per-call advertisement directed primarily to individuals under the age of 18 shall contain a clear and conspicuous disclosure that all individuals under the age of 18 must have the permission of such individual's parent or legal guardian prior to calling such pay-per-call service.

(2) For purposes of § 308.3(f), disclosures shall be made "clearly and conspicuously" as set forth in § 308.3(a) and as follows:

(i) In a television or videotape advertisement, each letter or numeral of the video disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number. The video disclosure shall appear on the screen for sufficient time to allow consumers to read and comprehend the disclosure. An audio disclosure shall be made at least once, simultaneously with a video presentation of the disclosure. However, no audio presentation of the disclosure is required in: (A) An advertisement fifteen (15) seconds or less in length in which the pay-per-call number is not presented in the audio portion, or (B) an advertisement in which there is no audio presentation of information regarding the pay-per-call service, including the pay-per-call number.

(ii) In a print advertisement, each letter or numeral of the disclosure shall be, at a minimum, one-half the size of each letter or numeral of the largest presentation of the pay-per-call number.

(3) For the purposes of this regulation, advertisements directed primarily to individuals under 18 shall include: Any pay-per-call advertisement appearing during or immediately adjacent to programming for which competent and reliable audience composition data demonstrate that more than 50% of the audience is composed of individuals under 18, and any pay-per-call advertisement appearing in a periodical for which competent and reliable readership data demonstrate that more than 50% of the readership is composed of individuals under 18.

(4) For the purposes of this regulation, if competent and reliable audience composition or readership data does not demonstrate that more than 50% of the audience or readership is composed of individuals under 18, then the Commission shall consider the following criteria in determining whether an advertisement is directed primarily to individuals under 18:

(i) Whether the advertisement appears in publications directed primarily to individuals under 18, including, but not limited to, books, magazines and comic books;

(ii) Whether the advertisement appears during or immediately adjacent to television programs directed primarily to individuals under 18, including, but not limited to, mid-afternoon weekday television shows;

(iii) Whether the advertisement is broadcast on radio stations that are directed primarily to individuals under 18;

(iv) Whether the advertisement appears on a cable or broadcast television station directed primarily to individuals under 18;

(v) Whether the advertisement appears on the same video as a commercially-prepared video directed primarily to individuals under 18, or preceding a movie directed primarily to individuals under 18 shown in a movie theater; and

(vi) Whether the advertisement, regardless of when or where it appears, is directed primarily to individuals under 18 in light of its subject matter, visual content, age of models, language, characters, tone, message, or the like.

(g) *Electronic tones in advertisements.* The provider of pay-per-call services is prohibited from using advertisements that emit electronic tones that can automatically dial a pay-per-call service.

(h) *Telephone solicitations.* The provider of pay-per-call services shall ensure that any telephone message that solicits calls to the pay-per-call service discloses the cost of the call in a slow and deliberate manner and in a reasonably understandable volume, in accordance with §§ 308.3(b)(1)(i)-(v).

(i) *Referral to toll-free telephone numbers.* The provider of pay-per-call services is prohibited from referring in advertisements to an 800 telephone number, or any other telephone number advertised as or widely understood to be toll-free, if that number violates the prohibition concerning toll-free numbers set forth in § 308.5(i).

### § 308.4 Special rule for infrequent publications.

(a) The provider of any pay-per-call service that advertises a pay-per-call service in a publication that meets the requirements set forth in § 308.4(c) may include in such advertisement, in lieu of the cost disclosures required by § 308.3(b), a clear and conspicuous disclosure that a call to the advertised pay-per-call service may result in a substantial charge.

(b) The provider of any pay-per-call service that places an alphabetical listing in a publication that meets the requirements set forth in § 308.4(c) is not required to make any of the disclosures required by §§ 308.3 (b), (c), (d) and (f) in the alphabetical listing, provided that such listing does not contain any information except the name, address and telephone number of the pay-per-call provider.

(c) The publication referred to in § 308.4(a) and (b) must be:

(1) Widely distributed;

(2) Printed annually or less frequently; and

(3) One that has an established policy of not publishing specific prices in advertisements.

### § 308.5 Pay-per-call service standards.

(a) *Preamble message.* The provider of pay-per-call services shall include, in each pay-per-call message, an introductory disclosure message ("preamble") in the same language as that principally used in the pay-per-call message, that clearly, in a slow and deliberate manner and in a reasonably understandable volume:

(1) Identifies the name of the provider of the pay-per-call service and describes the service being provided;

(2) Specifies the cost of the service as follows:

(i) If there is a flat fee for the call, the preamble shall state the total cost of the call;

(ii) If the call is billed on a time-sensitive basis, the preamble shall state

the cost per minute and any minimum charges; if the length of the program can be determined in advance, the preamble shall also state the maximum charge that could be incurred if the caller listens to the complete program;

(iii) If the call is billed on a variable rate basis, the preamble shall state, in accordance with §§ 308.5(a)(2)(i) and (ii), the cost of the initial portion of the call, any minimum charges, and the range of rates that may be charged depending on the options chosen by the caller;

(iv) Any other fees that will be charged for the service shall be disclosed, as well as fees for any other pay-per-call service to which the caller may be transferred;

(3) Informs the caller that charges for the call begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernible signal or tone indicating the end of the preamble;

(4) Informs the caller that anyone under the age of 18 must have the permission of parent or legal guardian in order to complete the call; and

(5) Informs the caller, in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, or that uses a trade or brand name or any other term that reasonably could be interpreted or construed as implying any Federal government connection, approval or endorsement, that the pay-per-call service is not authorized, endorsed, or approved by any Federal agency.

(b) *No charge to caller for preamble message.* The provider of pay-per-call services is prohibited from charging a caller any amount whatsoever for such a service if the caller hangs up at any time prior to three seconds after the signal or tone indicating the end of the preamble described in § 308.5(a). However, the three-second delay, and the message concerning such delay described in § 308.5(a)(3), is not required if the provider of pay-per-call services offers the caller an affirmative means (such as pressing a key on a telephone keypad) of indicating a decision to incur the charges.

(c) *Nominal cost calls.* The preamble described in § 308.5(a) is not required when the entire cost of the pay-per-call service, whether billed as a flat rate or on a time sensitive basis, is $2.00 or less.

(d) *Data service calls.* The preamble described in § 308.5(a) is not required when the entire call consists of the non-verbal transmission of information.

(e) *Bypass mechanism.* The provider of pay-per-call services that offers to frequent callers or regular subscribers to such services the option of activating a bypass mechanism to avoid listening to the preamble during subsequent calls shall not be deemed to be in violation of § 308.5(a), *provided that* any such bypass mechanism shall be disabled for a period of no less than 30 days immediately after the institution of an increase in the price for the service or a change in the nature of the service offered.

(f) *Billing limitations.* The provider of pay-per-call services is prohibited from billing consumers in excess of the amount described in the preamble for those services and from billing for any services provided in violation of any section of this rule.

(g) *Stopping the assessment of time-based charges.* The provider of pay-per-call services shall stop the assessment of time-based charges immediately upon disconnection by the caller.

(h) *Prohibition on services to children.* The provider of pay-per-call services shall not direct such services to children under the age of 12, unless such service is a bona fide educational service. The Commission shall consider the following criteria in determining whether a pay-per-call service is directed to children under 12:

(1) Whether the pay-per-call service is advertised in the manner set forth in §§ 308.3(e)(2) and (3); and

(2) Whether the pay-per-call service, regardless of when or where it is advertised, is directed to children under 12, in light of its subject matter, content, language, featured personality, characters, tone, message, or the like.

(i) *Prohibition concerning toll-free numbers.* Any person is prohibited from using an 800 number or other telephone number advertised as or widely understood to be toll-free in a manner that would result in:

(1) The calling party being assessed, by virtue of completing the call, a charge for the call;

(2) The calling party being connected to an access number for, or otherwise transferred to, a pay-per-call service;

(3) The calling party being charged for information conveyed during the call unless the calling party has a presubscription or comparable arrangement to be charged for the information; or

(4) The calling party being called back collect for the provision of audio or data information services, simultaneous voice conversation services, or products.

(j) *Disclosure requirements for billing statements.* The provider of pay-per-call services shall ensure that any billing statement for such provider's charges shall:

(1) Display any charges for pay-per-call services in a portion of the consumer's bill that is identified as not being related to local and long distance telephone charges;

(2) For each charge so displayed, specify the type of service, the amount of the charge, and the date, time, and, for calls billed on a time-sensitive basis, the duration of the call; and

(3) Display the local or toll-free telephone number where consumers can obtain answers to their questions and information on their rights and obligations with regard to their use of pay-per-call services, and can obtain the name and mailing address of the provider of pay-per-call services.

(k) *Refunds to consumers.* The provider of pay-per-call services shall be liable for refunds or credits to consumers who have been billed for pay-per-call services, and who have paid the charges for such services, pursuant to pay-per-call programs that have been found to have violated any provision of this rule or any other Federal rule or law.

(l) *Service bureau liability.* A service bureau shall be liable for violations of the rule by pay-per-call services using its call processing facilities where it knew or should have known of the violation.

### § 308.6 Access to information.

Any common carrier that provides telecommunication services to any provider of pay-per-call services shall make available to the Commission, upon written request, any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

### § 308.7 Billing and collection for pay-per-call services.

(a) *Definitions.* For the purposes of this section, the following definitions shall apply:

(1) *Billing entity* means any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints or inquiries.

(2) *Billing error* means any of the following:

(i) A reflection on a billing statement of a telephone-billed purchase that was not made by the customer nor made from the telephone of the customer who was billed for the purchase or, if made,

was not in the amount reflected on such statement.

(ii) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(iii) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(iv) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(v) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(vi) A computation error or similar error of an accounting nature on a billing statement of a telephone-billed purchase.

(vii) Failure to transmit a billing statement for a telephone-billed purchase to a customer's last known address if that address was furnished by the customer at least twenty days before the end of the billing cycle for which the statement was required.

(viii) A reflection on a billing statement of a telephone-billed purchase that is not identified in accordance with the requirements of § 308.5(j).

(3) *Customer* means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase, or who receives a billing statement for a telephone-billed purchase charged to a telephone number assigned to that person by a providing carrier.

(4) *Preexisting agreement* means a "presubscription or comparable arrangement," as that term is defined in § 308.2(e).

(5) *Providing carrier* means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint or inquiry.

(6) *Telephone-billed purchase* means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include:

(i) A purchase by a caller pursuant to a preexisting agreement with a vendor;

(ii) Local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines by rule—

(A) Is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(B) Is subject to billing dispute resolution procedures required by Federal or state statute or regulation; or

(iii) The purchase of goods or services that is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(7) *Vendor* means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(b) *Initiation of billing review.* A customer may initiate a billing review with respect to a telephone-billed purchase by providing the billing entity with notice of a billing error no later than 60 days after the billing entity transmitted the first billing statement that contains a charge for such telephone-billed purchase. If the billing error is the reflection on a billing statement of a telephone-billed purchase not provided to the customer in accordance with the stated terms of the transaction, the 60-day period shall begin to run from the date the goods or services are delivered or, if not delivered, should have been delivered, if such date is later than the date the billing statement was transmitted. A billing error notice shall:

(1) Set forth or otherwise enable the billing entity to identify the customer's name and the telephone number to which the charge was billed;

(2) Indicate the customer's belief that the statement contains a billing error and the type, date, and amount of such; and

(3) Set forth the reasons for the customer's belief, to the extent possible, that the statement contains a billing error.

(c) *Disclosure of method of providing notice; presumption if oral notice is permitted.* A billing entity shall clearly and conspicuously [2] disclose on each billing statement or on other material accompanying the billing statement the method (oral or written) by which the customer may provide notice to initiate review of a billing error in the manner set forth in § 308.7(b). If oral notice is permitted, any customer who orally communicates an allegation of a billing error to a billing entity shall be presumed to have properly initiated a billing review in accordance with the requirements of § 308.7(b).

(d) *Response to customer notice.* A billing entity that receives notice of a billing error as described in § 308.7(b) shall:

(1) Send a written acknowledgement to the customer including a statement that any disputed amount need not be paid pending investigation of the billing error. This shall be done no later than forty (40) days after receiving the notice, unless the action required by § 308.7(d)(2) is taken within such 40-day period; and

(2)(i) Correct the billing error and credit the customer's account for any disputed amount and any related charges, and notify the customer of the correction. The billing entity also shall disclose to the customer that collection efforts may occur despite the credit, and shall provide the names, mailing addresses, and business telephone numbers of the vendor and providing carrier, as applicable, that are the subject of the telephone-billed purchase, or provide the customer with a local or toll-free telephone number that the customer may call to obtain this information directly. However, the billing entity is not required to make the disclosure concerning collection efforts if the vendor, its agent, or the providing carrier, as applicable, will not collect or attempt to collect the disputed charge; or

(ii) Transmit an explanation to the customer, after conducting a reasonable investigation (including, where appropriate, contacting the vendor or providing carrier),[3] setting forth the reasons why it has determined that no billing error occurred or that a different billing error occurred from that asserted, make any appropriate adjustments to the customer's account, and, if the customer so requests, provide a written explanation and copies of documentary evidence of the customer's indebtedness.

(3) The action required by § 308.7(d)(2) shall be taken no later than two complete billing cycles of the billing entity (in no event later than ninety (90) days) after receiving the

[2] The standard for "clear and conspicuous" as used in this section shall be the standard enunciated by the Board of Governors of the Federal Reserve System in its Official Staff Commentary on Regulation Z, which requires simply that the disclosures be in a reasonably understandable form. *See* 12 CFR part 226, Supplement I, Comment 226.5(a)(1)–1.

[3] If a customer submits a billing error notice alleging either the nondelivery of goods or services or that information appearing on a billing statement has been reported incorrectly to the billing entity, the billing entity shall not deny the assertion unless it conducts a reasonable investigation and determines that the goods or services were actually delivered as agreed or that the information was correct. There shall be a rebuttable presumption that goods or services were actually delivered to the extent that a vendor or providing carrier produces documents prepared and maintained in the ordinary course of business showing the date on, and the place to, which the goods or services were transmitted or delivered.

notice of the billing error and before taking any action to collect the disputed amount, or any part thereof. After complying with § 308.7(d)(2), the billing entity shall:

(i) If it is determined that any disputed amount is in error, promptly notify the appropriate providing carrier or vendor, as applicable, of its disposition of the customer's billing error and the reasons therefor; and

(ii) Promptly notify the customer in writing of the time when payment is due of any portion of the disputed amount determined not to be in error, which time shall be the longer of ten (10) days or the number of days the customer is ordinarily allowed (whether by custom, contract or state law) to pay undisputed amounts, and that failure to pay such amount may be reported to a credit reporting agency or subject the customer to a collection action, if that in fact may happen.

(e) *Withdrawal of billing error notice.* A billing entity need not comply with the requirements of § 308.7(d) if the customer has, after giving notice of a billing error and before the expiration of the time limits specified therein, agreed that the billing statement was correct or agreed to withdraw voluntarily the billing error notice.

(f) *Limitation on responsibility for billing error.* After complying with the provisions of § 308.7(d), a billing entity has no further responsibility under that section if the customer continues to make substantially the same allegation with respect to a billing error.

(g) *Customer's right to withhold disputed amount; limitation on collection action.* Once the customer has submitted notice of a billing error to a billing entity, the customer need not pay, and the billing entity, providing carrier, or vendor may not try to collect, any portion of any required payment that the customer reasonably believes is related to the disputed amount until the billing entity receiving the notice has complied with the requirements of § 308.7(d). The billing entity, providing carrier, or vendor are not prohibited from taking any action to collect any undisputed portion of the bill, or from reflecting a disputed amount and related charges on a billing statement, provided that the billing statement clearly states that payment of any disputed amount or related charges is not required pending the billing entity's compliance with § 308.7(d).

(h) *Prohibition on charges for initiating billing review.* A billing entity, providing carrier, or vendor may not impose on the customer any charge related to the billing review, including charges for documentation or investigation.

(i) *Restrictions on credit reporting.*—(1) *Adverse credit reports prohibited.* Once the customer has submitted notice of a billing error to a billing entity, a billing entity, providing carrier, vendor, or other agent may not report or threaten directly or indirectly to report adverse information to any person because of the customer's withholding payment of the disputed amount or related charges, until the billing entity has met the requirements of § 308.7(d) and allowed the customer as many days thereafter to make payment as prescribed by § 308.7(d)(3)(ii).

(2) *Reports on continuing disputes.* If a billing entity receives further notice from a customer within the time allowed for payment under § 308.7(i)(1) that any portion of the billing error is still in dispute, a billing entity, providing carrier, vendor, or other agent may not report to any person that the customer's account is delinquent because of the customer's failure to pay that disputed amount unless the billing entity, providing carrier, vendor, or other agent also reports that the amount is in dispute and notifies the customer in writing of the name and address of each person to whom the vendor, billing entity, providing carrier, or other agent has reported the account as delinquent.

(3) *Reporting of dispute resolutions required.* A billing entity, providing carrier, vendor, or other agent shall report in writing any subsequent resolution of any matter reported pursuant to § 308.7(i)(2) to all persons to whom such matter was initially reported.

(j) *Forfeiture of right to collect disputed amount.* Any billing entity, providing carrier, vendor, or other agent who fails to comply with the requirements of §§ 308.7(c), (d), (g), (h), or (i) forfeits any right to collect from the customer the amount indicated by the customer, under § 308.7(b)(2), to be in error, and any late charges or other related charges thereon, up to $50 per transaction.

(k) *Prompt notification of returns and crediting of refunds.* When a vendor other than the billing entity accepts the return of property or forgives a debt for services in connection with a telephone-billed purchase, the vendor shall, within seven (7) business days from accepting the return or forgiving the debt, either:

(1) Mail or deliver a cash refund directly to the customer's address, and notify the appropriate billing entity that the customer has been given a refund, or

(2) Transmit a credit statement to the billing entity through the vendor's normal channels for billing telephone-billed purchases. The billing entity shall, within seven (7) business days after receiving a credit statement, credit the customer's account with the amount of the refund.

(l) *Right of customer to assert claims or defenses.* Any billing entity or providing carrier who seeks to collect charges from a customer for a telephone-billed purchase that is the subject of a dispute between the customer and the vendor shall be subject to all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute that the customer could assert against the vendor, if the customer has made a good faith attempt to resolve the dispute with the vendor or providing carrier (other than the billing entity). The billing entity or providing carrier shall not be liable under this paragraph for any amount greater than the amount billed to the customer for the purchase (including any related charges).

(m) *Retaliatory actions prohibited.* A billing entity, providing carrier, vendor, or other agent may not accelerate any part of the customer's indebtedness or restrict or terminate the customer's access to pay-per-call services solely because the customer has exercised in good faith rights provided by this section.

(n) *Notice of billing error rights.*—(1) *Annual statement.* (i) A billing entity shall mail or deliver to each customer, with the first billing statement for a telephone-billed purchase mailed or delivered after the effective date of these regulations, a statement of the customer's billing rights with respect to telephone-billed purchases. Thereafter the billing entity shall mail or deliver the billing rights statement at least once per calendar year to each customer to whom it has mailed or delivered a billing statement for a telephone-billed purchase during the previous twelve months. The billing rights statement shall disclose that the rights and obligations of the customer and the billing entity, set forth therein, are provided under the federal Telephone Disclosure and Dispute Resolution Act. The statement shall describe the procedure that the customer must follow to notify the billing entity of a billing error and the steps that the billing entity must take in response to the customer's notice. If the customer is permitted to provide oral notice of a billing error, the statement shall disclose that a customer who orally communicates an allegation of a billing error is presumed to have provided

sufficient notice to initiate a billing review. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review. The statement shall further disclose the customer's rights and obligations if the billing entity determines that no billing error occurred, including what action the billing entity may take if the customer continues to withhold payment of the disputed amount. Additionally, the statement shall inform the customer of the billing entity's obligation to forfeit any disputed amount (up to $50 per transaction) if the billing entity fails to follow the billing and collection procedures prescribed by § 308.7 of this rule.

(ii) A billing entity that is a common carrier may comply with § 308.7(n)(1)(i) by, within 60 days after the effective date of these regulations, mailing or delivering the billing rights statement to all of its customers and, thereafter, mailing or delivering the billing rights statement at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, to all of its customers.

(2) *Alternative summary statement.* As an alternative to § 308.7(n)(1), a billing entity may mail or deliver, on or with each billing statement, a statement that sets forth the procedure that a customer must follow to notify the billing entity of a billing error. The statement shall also disclose the customer's right to withhold payment of any disputed amount, and that any action to collect any disputed amount will be suspended, pending completion of the billing review.

(3) *General disclosure requirements.* (i) The disclosures required by § 308.7(n)(1) shall be made clearly and conspicuously on a separate statement that the customer may keep.

(ii) The disclosures required by § 308.7(n)(2) shall be made clearly and conspicuously and may be made on a separate statement or on the customer's billing statement. If any of the disclosures are provided on the back of the billing statement, the billing entity shall include a reference to those disclosures on the front of the statement.

(iii) At the billing entity's option, additional information or explanations may be supplied with the disclosures required by § 308.7(n), but none shall be stated, utilized, or placed so as to mislead or confuse the customer or contradict, obscure, or detract attention from the information required to be disclosed. The disclosures required by § 308.7(n) shall appear separately and above any other disclosures.

(o) *Multiple billing entities.* If a telephone-billed purchase involves more than one billing entity, only one set of disclosures need by given, and the billing entities shall agree among themselves which billing entity must comply with the requirements that this regulation imposes on any or all of them. The billing entity designated to receive and respond to billing errors shall remain the only billing entity responsible for complying with the terms of § 308.7(d). If a billing entity other than the one designated to receive and respond to billing errors receives notice of a billing error as described in § 308.7(b), that billing entity shall either: (1) Promptly transmit to the customer the name, mailing address, and business telephone number of the billing entity designated to receive and respond to billing errors; or (2) transmit the billing error notice within fifteen (15) days to the billing entity designated to receive and respond to billing errors. The time requirements in § 308.7(d) shall not begin to run until the billing entity designated to receive and respond to billing errors receives notice of the billing error, either from the customer or from the billing entity to whom the customer transmitted the notice.

(p) *Multiple customers.* If there is more than one customer involved in a telephone-billed purchase, the disclosures may be made to any customer who is primarily liable on the account.

**§ 308.8 Severability.**

The provisions of this rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

**§ 308.9 Rulemaking review.**

No later than four years after the effective date of this Rule, the Commission shall initiate a rulemaking review proceeding to evaluate the operation of the rule.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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Part III

# Department of Agriculture

**Agricultural Marketing Service**

**7 CFR Parts 29, 52, 55, 58, 59, 61, 70, 90–159, 180**

**Agency Reorganization of Analytical Testing Services; Rules**

VOL 58 ISS 151 AG 9 1993 UMI

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 29, 52, 55, 58, 59, 61, 70, 90–158, 180

[CS–91–009]

RIN 0581–AA51

## Agency Reorganization of Analytical Testing Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: On January 15, 1989, the Agricultural Marketing Service (AMS) of the Department of Agriculture consolidated and transferred functions related to analytical laboratory testing services performed on various agricultural products to its Science Division (formerly Commodities Scientific Support Division). This rule revises AMS regulations by establishing a new subchapter E in title 7 and by amending and transferring regulations concerning laboratory services and the Plant Variety Protection Act to the new subchapter. The regulations are also revised by adding provisions for statistical science support services and residue monitoring operations to the new subchapter E. The fees charged for testing and related services under the various Science Division programs are amended to reflect additional costs associated with the services. As a result of these amendments, AMS regulations related to analytical testing and laboratory services will be consolidated and the entire program will be administered by the Science Division.

EFFECTIVE DATE: August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Craig A. Reed, Director, Science Division, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, room 3507 South Agriculture Building, Washington, DC 20090–6456, Telephone (202) 720–5231.

SUPPLEMENTARY INFORMATION:

### I. Executive Order 12291 and Secretary's Memorandum No. 1512–1; Executive Order 12778

This final rule has been reviewed under Executive Order 12291 and the USDA procedures established in Departmental Regulation 1512–1. The Agency has determined that this action is non-major and will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; significant adverse affects on competition, employment, investment, productivity, innovation; or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Further, the fee increases only reflect an increase in costs to the applicants that utilize certain laboratory services.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

### II. Effect on Small Entities

The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612). The fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which utilize certain laboratory services. In addition to reorganizing AMS analytical testing services under the new Science Division, this rule provides for uniform laboratory test fees for the same type of analysis performed in different commodities and their related products.

### III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the reporting and recordkeeping included in 7 CFR part 96 have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0581–0008. The forms included in 7 CFR part 97 have been approved by the Office of Management and Budget and have been assigned OMB control number 0581–0055.

### IV. Background Information

AMS provides voluntary and mandatory analytical laboratory testing, licensure of chemists and analysts, and quality assurance oversight services to private and government applicants in accordance with applicable authorities. Prior to January 15, 1989, laboratory services and technical support were provided by various AMS Divisions—Cotton, Poultry, Fruit and Vegetable, Tobacco, Dairy, and Livestock and Seed. The laboratory testing programs operated independently under the divisions according to the respective division's rules published in title 7 of the Code of Federal Regulations.

In August 1987, the AMS Administrator established a task force composed of members from the various divisions. The task force reviewed and evaluated existing AMS laboratory and technical support programs to identify organizational alternatives that could improve the quality, efficiency, and cost-effectiveness of services.

Based on task force findings and recommendations, the AMS Administrator proposed to reorganize and consolidate the field laboratory structure under the Science Division (formerly the Commodities Scientific Support Division). On October 28, 1988, the Assistant Secretary for Administration approved the proposal. On January 15, 1989, the Administrator announced the transfer of functions to the Science Division (SD).

Presently, regulations pertaining to analytical testing programs appear in chapter I, subchapters A and C of the regulations under the former divisions' sections. Due to the reorganization and consolidation of the field laboratory structure of AMS, and the transfer of functions and responsibilities to Science Division, a new subchapter E, Commodity Laboratory Testing Programs, is established to implement the changes. In addition, laboratory testing fees and hourly rates currently specified in parts 52, 55, 58, and 70 are revised, consolidated, and published in a new part 91. Fees pertaining to cottonseed grading and certification in current part 61 remain in new part 96 pertaining to cottonseed because cottonseed grade determination is a direct result of laboratory analysis performed by USDA licensed chemists in their individual laboratories. Fees charged under the Plant Variety Protection program in current part 180 remain in new part 97 which pertains to nonlaboratory services under the Plant Variety Protection program. Since the hourly rate for the laboratory services provided herein may change from time to time, by consolidating the majority of these fees in part 91, the Agency only needs to amend one part instead of several different parts of the CFR each time the rate for such laboratory test services is revised. This consolidation also results in greater fee uniformity for identical tests and eases the administration of laboratory services and oversight.

New part 90 contains the introduction to subchapter E and provides an overview of the functions and responsibilities of the Science Division. In addition, part 90 contains the good

laboratory practice and general quality assurance requirements for laboratory service programs of laboratories certified and approved by the Science Division. Part 91, in addition to laboratory testing fees, contains general administrative provisions and definitions.

Part 92 pertaining to tobacco contains definitions, the location of the Science Division laboratory, specific pesticide residues tests, and other types of laboratory testing services. Part 93 contains definitions, locations of Science Division laboratories, references for analytical methods, and available laboratory tests, and special analyses performed on processed fruits and vegetables. Part 93 is divided into three subparts in order to separate the analytical testing and laboratory services for fruits and vegetables performed at the multidisciplinary Science Division Midwestern laboratory in Chicago, Illinois, and the specialty Science Division laboratories located throughout the southern United States. Subpart A of part 93 describes the analytical services performed at Science Division's Citrus Laboratory in Winterhaven, Florida. Laboratory analyses are conducted at this specialty laboratory primarily to determine if citrus products produced in Florida satisfy quality and grade standards set forth in the Florida Citrus Code. Analyses of citrus juice and citrus products from other countries and other locations within the United States are also available. Subpart B of part 93 describes the laboratory analyses available for different types of food products, including processed fruits and vegetables and beverage products. The Midwestern Laboratory in Chicago conducts the majority of analyses for these food products to derive their grade and quality, and to determine compliance of the product with applicable government specifications. Subpart C of part 93 describes the analytical services and the quality control sample program conducted at Science Division's nine aflatoxin laboratories located in Georgia, Virginia, North Carolina, Alabama, and Oklahoma. These specialty laboratories primarily determine the aflatoxin content for peanuts, peanut products and tree nuts. In addition, some of the laboratories offer physical and chemical composition analyses for oilseeds or oilseed products.

Part 94 contains definitions, locations of the Science Division laboratories, references for the majority of analytical methods, available laboratory analyses that are applicable to assure food safety, and the identity and quality of egg products or poultry products. Subpart A of this part describes the mandatory egg product samples that are analyzed for the Poultry Division by appropriated and annually designated funds. Subpart B of this part describes the voluntary egg product samples that are analyzed for a fee at a previously ascertained analysis time, and the current hourly rate. Subpart C of this part is reserved for the Salmonella Laboratory Recognition Program.

Part 95, Processed Dairy Products, contains definitions, the location of the Science Division laboratory, references for analytical testing methods, and available laboratory analyses to determine the United States grade standards, wholesomeness and quality of processed dairy products. Laboratory analyses that are applicable to determine compliance with government specifications and tolerances for residues also are specified. In addition, part 95 outlines the laboratory quality assurance programs for dairy products that are administered by the Science Division. These programs involve annual on-site laboratory reviews to assess continued conformance with method and equipment requirements of USDA approved procedures, and to assess the analysts' current proficiency in performing analyses of dairy products with quality control check samples.

Part 96 contains definitions, regulations regarding the issuance of licenses, and the conditions for renewal of licenses for chemists in analyzing and performing official grade determination of cottonseed. Part 96 includes user fees for grading, the official certification for cottonseed, the cottonseed chemist license examination fee, and the annual chemist license renewal fee. In addition, part 96 includes procedure for issuance of the certificates and recordkeeping responsibilities of cottonseed chemists, grounds for suspension of chemists' licenses, and the procedures for official cottonseed grade determinations using individually determined composition factors.

Part 97 contains all the regulations of the Plant Variety Protection (PVP) Office in Beltsville, Maryland. Part 97 results from the AMS transferral of the PVP Office from the Livestock and Seeds Division to the Science Division. The existing PVP regulations in part 180 of former subchapter H are removed in their entirety and are redesignated and moved to part 97 of new subchapter E. Except for changes in applicable words from the masculine to neuter gender, no text nor fee schedule changes are made.

Part 98 contains definitions, locations of the Science Division laboratories, references for the majority of analytical methods, quality assurance programs and the available laboratory analyses for meats and meat products, that are often specified by purchase contracts, to be performed for the Department of Defense (DOD), Defense Personnel Support Center (DPSC), or for city or state government parties through the inspection service of the AMS Livestock and Seed Division. Part 98 is divided into two subparts: subpart A of this part pertains to meat and meat product procurement testing for school lunch, defense, prison and other feeding programs, and subpart B of this part describes the Science Division's certification program for private United States laboratories conducting the examination of horsemeat for trichinae parasites in exported products to the European Community.

Part 99 contains statistical terms and provisions pertaining to the Statistical Science Program within the AMS Science Division. The Statistical Science staff, comprised of specialists in Washington, DC and Kansas City, Missouri, provides technical consulting and advising services for the AMS commodity divisions, and data processing and statistical support for applied research, for the standardization of inspection equipment. This branch also renders advice and answers concerning sampling problems through the application of mathematical statistics and computing. Together with other divisions of AMS, the branch establishes uniform testing procedures and develops rapid identification methods for hazardous substances which present an environmental and human health risk.

Part 100 contains administrative details of the Science Division's National Laboratory Accreditation Program once it is implemented. Laboratories are required to meet established criteria for accreditation in chemical residue testing of agricultural products and minimum requirements for facility, equipment, methodology and quality controls. In addition, analysts in such laboratories are required to demonstrate sustained acceptable performance through regular testing of interlaboratory proficiency check samples at different chemical residue levels. Part 100 also includes fees for laboratory accreditation to offset the costs of the National Laboratory Accreditation Program (NLAP).

Part 101 is reserved for regulations pertaining to Science Division's Pesticide Data Program (PDP). The Program is currently staffed by Science Division employees in Washington, DC and Manassas, Virginia.

Part 110 is reserved for Science Division's recordkeeping program for restricted use pesticides by certified applicators. Parts 102–109 and parts 111–159 is reserved for the future SD programs.

**V. Basis for Fee and Hourly Analysis Rate Changes**

Fees and hourly analysis rates which are presently in effect are inadequate to recover the current cost of providing the laboratory services and technical support to the AMS Divisions—Poultry, Fruit and Vegetable, Dairy, and Livestock and Seed and to other applicants of the services. The Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1627, provides that reasonable fees be collected from the user of program services to cover as nearly as practicable the costs of services rendered. This rule amends the current hourly analytical testing rates to a consolidated and single rate of $34.20 per hour for the users of the laboratory services to cover costs associated with improvements in operation of the programs, replacements of outdated essential laboratory equipment, and increases in those costs due to raises in salaries of Federal employees as well as other increases affecting Federal employees, such as costs for travel and benefits.

Cost analysis studies have revealed that since the last fee change on October 19, 1992, as published in the Federal Register at 57 FR 47566, the current hourly rate of $32.11 for the voluntary laboratory testing of eggs and poultry products is inadequate to cover expenses. Analysis of costs have shown that since the last fee change on April 17, 1989, as published in the Federal Register at 54 FR 15167, the current hourly rate of $28.00 for the laboratory testing of dairy and meat products is also inadequate to cover expenses. In addition, the current hourly rate of $25.00 for analysis and testing of fruits and vegetables, as published on November 19, 1990, in the Federal Register at 55 FR 48102, is insufficient to recover this program's costs. The major increase in expenses is the result of salary increases effective each January for Federal employees that have increased General Schedule (GS) salaries by 11.9 percent since Fiscal Year 1989. Furthermore, the program's cost for the retirement system and health insurance of Federal employees has increased by over 13 percent. There have also been expenditures for new laboratory equipment and facilities. The Agency has determined that due to the aforementioned increases in operating costs of the programs, the two Science Division regional laboratories (Eastern and Midwestern) will incur a $304,900 loss in fiscal year 1992. Therefore, the Agency is revising the above mentioned hourly rates to $34.20. This hourly fee for laboratory service was established by distributing the annual operating expenditures for the laboratories over the total bench hours of service required to perform the analytical tests. The laboratory program costs do not include premium pay or service performed in the laboratories on Federal legal holidays. Hence, the rate for appeal, Federal holidays, and overtime laboratory service is 1½ times the base, or $51.30 per hour. These fees would meet the expenses of the Science Division laboratory service programs.

**VI. Programs Without Consolidated Fees and Charges**

Certain programs administrated by Science Division do not have a consolidated fee schedule because the laboratory fees and charges are set by agreement, the scientific programs are not a laboratory based service, or the costs are covered by allocated funds. The analyses for citrus juices and certain citrus products (part 93, subpart C) are performed in the Science Division laboratory in Winter Haven, Florida, for the State of Florida. The costs of analytical testing are covered by a Florida State Cooperative Agreement. The fees for imported tobacco pesticide residue determinations (part 92) are set annually and covered by a Memorandum of Understanding with the AMS Tobacco Division. The Science Division costs for the mandatory analyses of egg product samples (part 94, subpart A) are covered by designated funds of the Poultry Division which are appropriated annually. The cost of administering the USDA licensing program for cottonseed oil chemists is covered by license application and annual license renewal fees, as well as a unit fee assessed on each official certificate for cottonseed quality analyses and grade determination. These fees are specified in part 96. The Plant Variety Protection (PVP) schedule of fees remain with the PVP regulations in part 97. The PVP fees are assessed to certify the novelty and distinctiveness of sexually reproduced plant varieties. The costs of scheduled laboratory analyses and nonscheduled laboratory analyses for meats and related meat food products, that are listed in subpart A of part 98, are paid to the Science Division by a reimbursable agreement with the Livestock and Meat Standardization Branch of the Livestock and Seed Division. The fee charged to certify or to renew certification for each laboratory or analyst performing trichina testing on horsemeat for export to European Community countries is set annually by agreement between the Science Division and the United States Horsemeat Association in Fort Worth, Texas. Since the fee is based on actual costs that are part of the agreement, it does not need appear in subpart B of part 98. The costs of the Science Division Statistical Science support services for AMS commodity divisions are covered by the Agency's administrative overhead funds. The fees and charges for statistical science service to applicants outside AMS do not appear in part 99 because they are set by agreement with the applicant on an individual project and on a cost reimbursement basis. The fees and charges associated with the National Laboratory Accreditation Program will appear in part 100 and are aligned with the actual costs of administering this program when available. The costs for the Pesticide Data Program (PDP) in part 101 and the Recordkeeping Program for Restricted Use Pesticides by Certified Applicators (part 110) are covered by appropriated and annually designated funds.

**VII. Basis for Proposed Fee Changes Related to Cottonseed Grading and Quality Certification**

Cottonseed inspection, grading, and certification is conducted pursuant to authority in the Agricultural Marketing Act of 1946. The regulations concerning cottonseed may be found in 7 CFR part 61. The Act provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the cost of services rendered. Since the last fee change on January 27, 1988, program operating costs have increased, but revenues from assessed user fees for cottonseed grading have remained the same.

The majority of funds under the cottonseed grading program are obtained from a unit fee assessment for official grade certificates. A portion of the certificate fees is used to recover the expenses of official cottonseed sampling and the remainder is used to meet the costs of supervision of the licensed chemists. Since Fiscal Year (FY) 1989 was a short year of 8½ months for the newly formed Science Division, with $5,609.25 total revenue generated for the cottonseed grading program, all fee increases are based on the income shortfalls after October 1, 1989. The travel expenditures for reviewing the performance of licensed cottonseed chemists, the support service charges, and the cost of preparing and fumigating check samples for proficiency testing have increased since the last increase in

cottonseed grading user fees. The Federal General Schedule salaries and civil service employee benefits have also increased. There are additional contractual costs for samplers oversight, sample selection and shipments. The Agency has determined that due to the aforementioned increases in program operating costs, the program will incur a $49,024 loss in FY 1993. This warrants a unit cost increase per certificate to provide sufficient revenue to balance the expenses of the service. Therefore, the Agency will revise the certificate fee charged for official analysis and cottonseed grade determination from $1.35 per certificate, issued by the chemist, to $3.00. The application fee for a chemist's license will be raised from $360.00 to $1,100.00 for the examination, while the fee for renewal of the license will be increased from $125.00 to $275.00. These substantial increases in licensing fees are also necessary, in part, because of the additional travel costs associated with the relocation of the supervisor of the licensed chemists from the vicinity of the cottonseed laboratories to Washington, DC. The new fees serve to meet the financial obligations of keeping the licensed cottonseed chemist program active.

**VIII. Summary and Analysis of Proposal**

A proposed rule was published in the **Federal Register** (58 FR 13130–13171) on March 9, 1993, providing for a 30 day comment period ending April 8, 1993. One comment letter from a national trade association was received. The association opposed the reorganization of the analytical testing services of the Agricultural Marketing Service, USDA. The trade organization expressed concern that the proposed fee increases for the cottonseed certificates and the chemists' licenses (initial and renewal) are not reasonable considering an average inflation rate and the salary increases since the last increase in cottonseed grading user fees in 53 FR 2213 on January 27, 1988. The Agency agrees that salary increases alone would not justify the fee increases. However, there were several other contributing factors that need to be considered as a total expenditure to arrive at the revised fees. These factors include substantial increases in costs for proficiency sample preparation and for fumigating seed. Aluminum phosphide is now used to fumigate cottonseed in place of methyl bromide. This is because aluminum phosphide is much more effective as a fumigant since phosphine gas (hydrogen phosphide) generated from it kills all life stages of pink bollworm (*Pectinophora* spp.) infestation which must be eliminated in order to ship the seed. In addition, since the U.S. Environmental Protection Agency has proposed to classify methyl bromide as a class I ozone-depleting substance, production and consumption of this substance would terminate in the year 2000 (58 FR 15014–15049, March 18, 1993). As a consequence, fumigation costs have risen from $100 to $859 per application. There has been an added contractual cost for the oversight service related to the 56 licensed cottonseed samplers. In FY 1993 there were 27,853 official certificates issued at $1.35 each, accounting for a revenue of $37,602. The outlay for cottonseed sampling supervision for FY 1993 was $15,483, which is 41.2% of the revenue from certificate issuance. There have also been large increases in transportation and shipment costs, travel expenses, mailing and supply expenditures, and support service costs.

For FY 1993 the cottonseed grading program expects to incur total expenses of approximately $89,001 and receive approximately $39,977 in income, leaving an estimated shortfall of $49,024. The new certificate fee of $3.00 for cottonseed grading was determined by distributing the projected FY 1994 net operating costs of $84,425 over 28,000, which is the estimated number of official certificates to be issued for the 1994 season. The projected FY 1994 net operating costs were derived by subtracting the anticipated revenue of $5,225 for 19 chemist license renewals at the new charge of $275 from the expected total expenses of $89,650. In arriving at the new license renewal fee, travel costs, which averaged $3,552 over the last 3 years, were taken into consideration. For new licenses, the $1,100 cottonseed chemist licensing exam fee includes the travel costs for the SD examiner and the expenses for preparing and delivering cottonseed exam samples. Since the Agency needs to have sufficient funds to pay its expenses for the cottonseed grading program, which are incurred on a continuous basis, the revised fees reflecting the current costs associated with the program are determined to be reasonable and acceptable fees. It should be added that the costs for cottonseed grading are voluntary and the secretary is authorized by statute to recover the costs of the services. The fees are needed to continue to provide cottonseed quality grading services at the levels desired by the industry.

**IX. Amendments**

This rule amends parts 29, 52, 55, 58, 59, 61, and 70 to conform with the changes resulting from the AMS reorganization and reassignment of functions in January 1989. Accordingly, subchapter H, part 180, Plant Variety Protection is deleted in its entirety.

**X. Discussion of Changes of Regulations**

Section 29.500 of part 29 for subchapter A is revised. The following sections of part 52, part 55, part 58, part 59, part 61 and part 70 of the regulations for subchapter C either will be revised or will be removed: §§ 52.2, 52.47, 55.20 (b), (d), 55.510(d), 55.550, 58.44, 58.101, 58.126, 59.580, 61.2, 61.6, 61.8, 61.10 to 61.24, 61.44, 61.45, 61.46, 61.101, 61.102, 61.103, 61.104, 70.72 and 70.73. All sections of part 180 for subchapter H are removed. The following parts either will be added or will be reserved in the new subchapter E, chapter I of title 7 of the CFR: 90 (in part reserved), 91, 92, 93, 94 (includes reserved § 94.200), 95, 96, 97, 98 (in part reserved), 99 (reserved except for § 99.3), 100 (reserved except for § 100.3), 101 (reserved except for § 101.3), 102 to 109 (reserved), 110 (reserved for separate rulemaking except § 110.9), and 111 to 159 (reserved).

To identify those sections of the current regulations that are redesignated without amending into the new subchapter E, chapter I of this title, the following redistribution table is provided as a reference aid:

REDISTRIBUTION TABLE

| Current section(s) | Redesignated section(s) |
|---|---|
| 61.22 | 96.16. |
| 61.101 | 96.25. |
| 180.24 | 97.24. |
| 180.122 | 97.122. |
| 180.131 | 97.131. |
| 180.142 | 97.142. |
| 180.144 | 97.144. |
| 180.155 to 180.158 | 97.155 to 97.158. |
| 180.176 | 97.176. |
| 180.206 | 97.206. |
| 180.208 | 97.208. |
| 180.222 | 97.222. |
| 180.800 | 97.800. |

To identify those sections of the current regulations that are amended or repealed for subchapters A or C, chapter I of this title, the following revision table is provided as a reference aid:

REVISION TABLE

| Section(s) | Proposed action |
|---|---|
| 29.500 | Amend heading and text. |
| 52.2 | Amend; remove terms. |
| 52.47 | Remove in its entirety. |
| 55.20 (b) | Amend text. |
| 55.20 (d) | Remove in its entirety. |

REVISION TABLE—Continued

| Section(s) | Proposed action |
|---|---|
| 55.510 (d) .. | Amend text. |
| 55.550 ..... | Remove in its entirety. |
| 58.44 ..... | Remove in its entirety. |
| 58.101 ..... | Amend text. |
| 58.128 ..... | Amend; remove paragraph (e)(5)(ii) and redesignate paragraph (e)(5)(iii) as (e)(5)(ii). |
| 59.580 ..... | Amend wording. |
| 61.2 ..... | Amend wording. |
| 61.6 ..... | Amend wording. |
| 61.8 ..... | Amend wording. |
| 61.104 ..... | Amend wording. |
| 70.72 ..... | Amend wording. |
| 70.73 ..... | Remove in its entirety. |

To identify those sections of the current regulations that are amended and transferred into the new subchapter E, chapter I of this title, the following distribution table is provided as a reference aid:

DISTRIBUTION TABLE

| Current section(s) | Amended and redesignated section(s) |
|---|---|
| 61.10 to 61.13 ..... | 96.5 to 96.8. |
| 61.14 to 61.16 ..... | 96.9 to 96.11. |
| 61.17 to 61.19 ..... | 96.13 to 96.15. |
| 61.20 ..... | 96.7 (a), (b), (c) and 96.16. |
| 61.21 ..... | 96.7 (d) and 96.17. |
| 61.23 ..... | 96.12. |
| 61.24 ..... | 96.19. |
| 61.44 to 61.46 ..... | 96.20 to 96.22. |
| 61.102 to 61.103 ..... | 96.26 to 96.27. |
| 180.1 to 180.23 ..... | 97.2 to 97.23. |
| 180.100 to 180.121 ... | 97.100 to 97.121. |
| 180.130 ..... | 97.130. |
| 180.132 to 180.141 ... | 97.132 to 97.141. |
| 180.143 ..... | 97.143. |
| 180.150 to 180.154 ... | 97.150 to 97.154. |
| 180.175 ..... | 97.175. |
| 180.177 to 180.205 ... | 97.177 to 97.205. |
| 180.207 ..... | 97.207. |
| 180.209 to 180.221 ... | 97.209 to 97.221. |
| 180.300 to 180.700 ... | 97.300 to 97.700. |

To identify those sections that are reserved or added as regulations in the new subchapter E, chapter I of title 7 of the Code of Federal Regulations, the following table, noting the final actions, is provided as a reference aid:

TABLE OF NEW REGULATIONS

| Added section(s) | Final action |
|---|---|
| 90.1 to 90.3; 90.101 to 90.103. | New additions. |
| 90.4 to 90.100; 90.104 to 90.200. | Reserved. |
| 91.1 to 91.45; 92.1 to 92.6. | New additions. |
| 93.1 to 93.5; 93.10 to 93.14. | New additions. |
| 93.100 to 93.105; 94.1 to 94.5. | New additions. |

TABLE OF NEW REGULATIONS—Continued

| Added section(s) | Final action |
|---|---|
| 94.100 to 94.104; 94.300 to 94.304. | New additions. |
| 94.200 ..... | Reserved. |
| 95.1 to 95.6; 96.1; 96.2; 96.8. | New additions. |
| 96.23; 96.24; 96.28; 96.29. | New additions. |
| 97.1; 98.1 to 98.5; 98.100 to 98.101. | New additions. |
| 98.102 to 98.600; 99.1 to 99.2. | Reserved. |
| 99.4 to 99.999 ..... | Reserved. |
| 99.3; 100.3; 101.3; 110.9 | New additions. |
| 100.1 to 100.2; 100.4 to 100.999. | Reserved. |
| 101.1 to 101.2; 101.4 to 101.999. | Reserved. |
| 110.1 to 110.8 ..... | Addition under separate rulemaking. |
| Parts 111 to 159 ..... | Reserved parts. |

## XI. Need for Immediate Action

This final rule, as hereinafter set forth, finalizes the provisions of the March 9 proposal. Pursuant to 5 U.S.C. 533, good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** since the fee increases contained herein are needed to adequately fund the various services provided. A comment period was included in the proposed rule with one written comment received. A detailed explanation to the remark is provided above and the proposed rule is adopted as a final rule. No useful purpose would be served by a ruling delay.

**List of Subjects**

*7 CFR Part 29*

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

*7 CFR Part 52*

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

*7 CFR Part 55*

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

*7 CFR Part 58*

Food grades and standards, Dairy products, Food labeling, Reporting and recordkeeping requirements.

*7 CFR Part 59*

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Polychlorinated biphenyls (PCB's), Reporting and recordkeeping requirements.

*7 CFR Part 61*

Cottonseeds, Reporting and recordkeeping requirements.

*7 CFR Part 70*

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

*7 CFR Part 90*

Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

*7 CFR Part 91*

Administrative practice and procedure, Agricultural commodities, Fees and charges, Laboratories.

*7 CFR Part 92*

Laboratories, Pesticides and pests, Tobacco.

*7 CFR Part 93*

Citrus fruits, Fruit juices, Fruits, Laboratories, Nuts, Vegetables.

*7 CFR Part 94*

Eggs and egg products, Laboratories, Poultry and poultry products.

*7 CFR Part 95*

Dairy products, Laboratories, Milk.

*7 CFR Part 96*

Administrative practice and procedure, Cottonseeds, Chemist's licensure, Laboratories, Reporting and recordkeeping requirements.

*7 CFR Part 97*

Administrative practice and procedure, Plant variety and protection, Novel seed variety certification.

*7 CFR Part 98*

Meat and meat products, Laboratories.

*7 CFR Part 99*

Agricultural commodities, Statistics.

*7 CFR Part 100*

Agricultural commodities, Laboratories.

*7 CFR Part 101*

Agricultural commodities, Pesticides and pests.

*7 CFR Part 110*

Pesticides and pests, Reporting and recordkeeping requirements.

*7 CFR Part 180*

Administrative practice and procedure, Labeling, Plants.

For the reasons set out in the preamble, AMS amends title 7, chapter I, Code of Federal Regulations as follows:

## PART 29—TOBACCO INSPECTION

### Subpart B—Regulations

1. The authority citation for subpart B of part 29 continues to read as follows:

**Authority:** 7 U.S.C. 511m and 511r.

**§ 29.500 [Amended]**

2. Section 29.500 is amended as follows:

a. The heading for § 29.500 is revised to read as follows:

**§ 29.500 Fees and charges for inspection and acceptance of imported tobacco.**

b. In § 29.500, paragraphs (b) and (c) are amended by removing (both times that it appears) the word "testing" and replacing with the word "accepting."

## PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

1. The authority citation for part 52 is revised to read as follows:

**Authority:** 7 U.S.C. 1622, 1624.

**§ 52.2 [Amended]**

2. Section 52.2 is amended by removing the definition of the term "Commodities Scientific Support Division (CSSD)."

**§ 52.47 [Removed]**

3. Section 52.47 is removed.

## PART 55—VOLUNTARY INSPECTION OF EGG PRODUCTS AND GRADING

1. The authority citation for part 55 is revised to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

**§ 55.20 [Amended]**

2. Section 55.20 is amended by removing in paragraph (b) the phrase "and laboratory analysis" and paragraph (d) is removed.

**§ 55.510 [Amended]**

3. In § 55.510, paragraph (d) is amended by removing (both times that it appears) the phrase "laboratory analysis,".

**§ 55.550 [Removed]**

4. Section 55.550 is removed.

## PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for part 58 continues to read as follows:

**Authority:** Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

**§ 58.44 [Removed]**

2. Section 58.44 is removed.

**§ 58.101 [Amended]**

3. In § 58.101, paragraph (c) is amended by removing (the first time it appears) the phrase "the Administrator" and replacing with the phrase "the AMS Science Division Director".

**§ 58.126 [Amended]**

4. Section 58.126 is amended by removing paragraph (e)(5)(ii) and redesignating paragraph (e)(5)(iii) as paragraph (e)(5)(ii).

## PART 59—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

1. The authority citation for part 59 is revised to read as follows:

**Authority:** 21 U.S.C. 1031–1056.

**§ 59.580 [Amended]**

2. In § 59.580, paragraph (b) is amended by changing the phrase "the Administrator" to "the AMS Science Division Director", and paragraph (d) is amended by changing the phrase "USDA laboratory" to "AMS Science Division laboratory".

## PART 61—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (INSPECTION, SAMPLING AND CERTIFICATION)

### Subpart A—Regulations

1. The authority citation for subpart A of part 61 continues to read as follows:

**Authority:** Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

**§ 61.2 [Amended]**

2. In § 61.2, paragraph (n) is amended by removing the phrase "the Director" and replacing it with the phrase "the Science Division Director of the Agricultural Marketing Service".

**§ 61.8 [Amended]**

3. Section 61.8 is amended by removing the phrase "and licensed cottonseed chemists".

**§ 61.8 [Amended]**

4. In § 61.8, first sentence is amended by changing the phrase "any sample of cottonseed" to "any official sample of cottonseed".

**§§ 61.10 to 61.24 [Removed]**

5. Subpart A of part 61 is amended by removing the undesignated center heading "Licensed Cottonseed Chemists" and §§ 61.10 through 61.

**§§ 61.44 to 61.46 [Removed]**

6. Subpart A of part 61 is amended by removing §§ 61.44 through 61.46.

### Subpart B—Standards for Grades of Cottonseed Sold or Offered for Sale for Crushing Purposes Within the United States

1. The authority citation for subpart B of part 61 continues to read as follows:

**Authority:** Secs. 203, 205, 60 Stat. 1087, 1090, as amended; 7 U.S.C. 1622, 1624.

**§ 61.101 [Amended]**

2. In § 61.101, introductory text, after the word "samples" the phrase "by licensed chemists" is added.

**§ 61.104 [Amended]**

3. Section 61.104 is amended as follows:

a. The heading for § 61.104 is revised to read as follows:

**§ 61.104 Sampling and certification of samples and grades.**

b. Section 61.104 is amended by removing the words "and the analysis" in the paragraph.

## PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS AND U.S. CLASSES, STANDARDS, AND GRADES

1. The authority citation for part 70 is revised to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

**§ 70.72 [Amended]**

2. Section 70.72 is amended as follows:

a. The heading for § 70.72 is revised to read as follows: "§ 70.72 Fees for appeal grading or examination or review of a grader's decision."

b. Section 70.72 is amended by removing in the paragraph (both times that it appears) the words "laboratory analysis,".

**§ 70.73 [Removed]**

3. Section 70.73 is removed.

**Subchapter H and part 180—[Removed]**

1. Subchapter H consisting of part 180 is removed in its entireties.

2. Subchapter E, consisting of parts 90 through 159, is added to read as set forth below:

## SUBCHAPTER E—COMMODITY LABORATORY TESTING PROGRAMS

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## PART 90—INTRODUCTION

**Subpart A—Scope of Subchapter**


Sec.
90.1 General.


**Subpart B—Subchapter Definitions**


90.2 General terms defined.


**Subpart C—Good Laboratory Practices for Commodity Laboratory Analyses**


90.3 General.
90.4–90.100 [Reserved]


**Subpart D—Quality Assurance**


90.101 General.
90.102 Quality assurance review.
90.103 Maintenance of quality control records.
90.104–90.200 [Reserved]


**Authority:** Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624)

### Subpart a—Scope of Subchapter

#### § 90.1 General.

This subchapter sets forth the functions and responsibilities of the Science Division (SD) of the Agricultural Marketing Service (AMS) relating to:

(a) The performance of comprehensive analytical tests and laboratory determinations of agricultural commodities and processed products.

(b) The conduct of experiments and collaborative studies to validate new analytical procedures and improved methodologies in order to promote faster, more precise, or safer laboratory testing for agricultural commodities and processed products.

(c) The supervised issuance of external quality control or proficiency check samples to laboratories under the Science Division's direction or performance review in order to regularly spot check and assess that analytical or test data produced by each laboratory is reproducible, precise, and reliable for a specific test program.

(d) The granting of laboratory program accreditation or certification or approval for specialty testing of agricultural commodities and products.

(e) The licensing of chemists to analyze cottonseed in order to certify its quality and grade.

(f) The granting of certification to non-federal laboratories for testing for trichinae in horsemeat for export to the European Community (EC).

(g) The granting of acceptance of standardized methodology or new procedures for commodity testing.

(h) The auditing of the facilities, equipment, quality control procedures, standard methodologies, and good laboratory practices for a commodity testing program of a laboratory.

(i) The furnishing of consultation and centralized technical and statistical science support for marketing programs.

(j) The recommendation of statistical sampling plans.

(k) The examination of plants for novelty and distinctiveness in order to grant certificates of protection for new varieties of sexually reproduced plants, and the provision of other fee based services authorized by the Plant Variety Protection Act.

(l) The extension or coordination of research for the determination of a new chemical analyte or microorganism in a commodity product or food.

(m) The management of a pesticide residue monitoring program for agricultural commodities (especially fresh fruits and vegetables), currently referred to as the Pesticide Data Program.

(n) The analysis of imported flue-cured and burley tobacco for pesticide residues.

(o) The supervision and implementation of the State enforcement of the recordkeeping requirements for private applicators of restricted-use pesticides for agricultural production.

### Subpart B—Subchapter Definitions

#### § 90.2 General terms defined.

Words used in the regulations in this subchapter in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subchapter and unless the context requires otherwise, the following terms will be construed to mean:

*Act.* The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627).

*Administrator.* The Administrator of the Agricultural Marketing Service, or any officer or employee of the Service, to whom authority has been delegated, or to whom authority may be delegated, to act in his or her stead.

*Cooperative agreement.* An agreement between the Agricultural Marketing Service and another Federal agency or a State agency, or other agency, organization or person that defines in the general terms the basis on which the parties concerned will cooperate to serve a mutual interest on an agricultural service project. The responsibilities for AMS and each cooperator are stated in the document along with the conditions as applicable.

*Department.* The United States Department of Agriculture.

*Director.* The Director of the Science Division, or any officer or employee of the Division to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

*Division.* The Science Division (SD) of the Agricultural Marketing Service (AMS), which performs analytical testing services, issues licenses for cottonseed chemists, conducts quality assurance reviews and grants accreditation or certification for commodity testing programs of laboratories.

*Laboratories.* Division laboratories performing the analyses described in this subchapter.

*Quality assurance.* The assurance that there is accuracy of analytical data using proficiency check sample or analyte recovery techniques. In addition, the certainty that there is strict adherence by the analysts in following the quality control details in the recommended or official methods for reagents, laboratory apparatus and procedures. The overall objective of quality assurance, as a comprehensive program, is to ensure that all analytical data produced by the laboratory meets certain quality criteria and that all data produced is reproducible, precise, and accurate.

*Quality control.* The system of close examination of the critical details of an analytical procedure in order to have the proper equipment parameters, techniques, supplies and reagents to achieve a predetermined level of quality

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data, with the performance of a particular laboratory analysis.

*Secretary.* The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

*Service.* The Agricultural Marketing Service of the United States Department of Agriculture.

### Subpart C—Good Laboratory Practices for Commodity Laboratory Analyses

#### § 90.3 General.

Laboratory service programs of laboratories certified and approved by the Science Division shall have good laboratory practice (GLP) requirements that are generalized in this subpart.

#### §§ 90.4–90.100 [Reserved]

### Subpart D—Quality Assurance

#### § 90.101 General.

Laboratory service programs of laboratories certified and approved by the Science Division shall have quality assurance requirements that are generalized in this subpart.

#### § 90.102 Quality assurance review.

(a) Each laboratory performing tests and analysis under this subchapter will be subject to a quality assurance program evaluation at least annually, and more often if deemed necessary by the Director. Such evaluation will include:

(1) A review of the adequacy of quality control measures taken by the laboratory for the standardized method of analysis for a commodity and its related products;

(2) A review of the laboratory methodologies and procedures;

(3) A review of records for the calibration and maintenance of equipment;

(4) A review of records documenting sample handling;

(5) The evidence of quality control records;

(6) The evidence of correct reporting and determination of analytical data.

(b) A laboratory will receive a quality assurance report following the review. This evaluation will address any necessary improvements to the laboratory program(s) being examined.

#### § 90.103 Maintenance of quality control records.

Quality control records pertaining, but not limited to the following areas, shall be retained by the laboratory for at least the 3 most recent years:

(a) Prepared solution standardizations;

(b) Recovery studies by known analyte additions;

(c) The purity checks of reagents and test materials;

(d) Apparatus and equipment calibrations;

(e) The quality examination and testing of materials;

(f) The mandatory participation in proficiency check sample testing or collaborative studies;

(g) Daily critical parameter checks of equipment, such as temperature readings;

(h) The equivalency tests of new procedures with standard methodologies.

#### §§ 90.104–90.200 [Reserved]

## PART 91—SERVICES AND GENERAL INFORMATION

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91.41 Charges for demonstrations and courses of instruction.
91.42 Billing.
91.43 Payment of fees and charges.
91.44 Charges on overdue accounts and issuance of delinquency notices.
91.45 Charges for laboratory services on a contract basis.

**Authority:** Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

### Subpart A—Administration

#### § 91.1 General.

This part consolidates the procedural and administrative rules of the Science Division of the Agricultural Marketing Service for conducting the analytical testing and laboratory audits with quality assurance reviews. It also contains the fees, charges and laboratories applicable to such services.

#### § 91.2 Definitions.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

*Analyses.* Microbiological, chemical, or physical tests performed on a commodity.

*Applicant.* Any person who requests services provided by the Division.

*Legal holidays.* Those days designated as legal public holidays specified by Congress in paragraph (a) of section 6103, title 5 of the United States Code and any other day declared to be a holiday by Federal Statute or Executive Order. Under section 6103 and

Executive Order 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered the holiday, or if the specified legal holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

**§ 91.3 Authority.**

The Division Director is charged with the administration of this subchapter.

**Subpart B—General Services**

**§ 91.4 Kinds of services.**

(a) *Analytical tests.* Analytical laboratory testing services under the regulations consist of microbiological, chemical, and certain other analyses, requested by the applicant and performed on tobacco, seed, dairy, egg, fruit and vegetable, meat and poultry, and related processed products. Analyses are performed to determine if products meet Federal specifications or specifications defined in purchase contracts and cooperative agreements. Analyses are also performed on egg products as part of the mandatory Egg Products Inspection Program.

(b) *Examination and licensure.* The Division administers examinations and issues licenses to chemists to certify the grade of cottonseed.

(c) *Quality assurance reviews.* The Division performs on-site laboratory quality assurance reviews (both required and voluntary) to ensure that appropriate technical methods, equipment maintenance, and quality control procedures are being observed.

(d) *Consultation.* Technical advice, statistical science consultation, and quality assurance program assistance are provided by the Division for domestic and foreign laboratories.

**§ 91.5 Where services are offered.**

(a) Services are offered to applicants at the Science Division laboratories and facilities as listed below.

(1) *Science Division regional laboratories.* A variety of tests and laboratory analyses are available in two regional multi-disciplinary Science Division (SD) laboratories, and are located as follows:

(i) USDA, AMS, SD, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618.

(ii) USDA, AMS, SD, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054.

(2) *Science Division aflatoxin laboratories.* The specialty laboratories performing aflatoxin testing on peanuts, peanut products, tree nuts and other commodities are located as follows:

(i) USDA, AMS, SD, 1411 Reeves Street, Mail: P.O. Box 1368, Dothan, AL 36302.

(ii) USDA, AMS, SD, 200 West Washington Street, Mail: P.O. Box 488, Ashburn, GA 31714.

(iii) USDA, AMS, SD, 2705 Taft Street, Albany, GA 31707.

(iv) USDA, AMS, SD, 301 West Pearl Street, Mail: P.O. Box 279, Aulander, NC 27805.

(v) USDA, AMS, SD, 610 North Main Street, Blakely, GA 31723.

(vi) USDA, AMS, SD, 42 North Ellis Street, Mail: P.O. Box 548, Camilla, GA 31730.

(vii) USDA, AMS, SD, 107 South Fourth Street, Madill, OK 73446.

(viii) USDA, AMS, SD, 715 North Main Street, Mail: P.O. Box 272, Dawson, GA 31742.

(ix) USDA, AMS, SD, 308 Culloden Street, Mail: P.O. Box 1130, Suffolk, VA 23434.

(3) *Citrus laboratory.* The Science Division Citrus Laboratory specializes in testing citrus juices and other citrus products and is located as follows: Science Division Citrus Laboratory, 111 Third Street, SW., suite 211, Winter Haven, FL 33880.

(4) *Divisional laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide laboratory services.

(5) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science Division laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel is available.

(6) *The Plant Variety Protection (PVP) Office.* The PVP office and plant examination facility of the Science Division issues certificates of protection to developers of novel varieties of plants which reproduce sexually and is located as follows: USDA, AMS, Science Division, Plant Variety Protection Office, Room 500 National Agricultural Library Building, Beltsville, MD 20705.

(7) *Science Division headquarters offices.* The examination, licensure, quality assurance reviews, and consultation services are provided by headquarters staff located in Washington, DC.

(8) *Statistical Branch offices.* Statistical Science services are provided by Science Division (SD) offices located as follows:

(i) USDA, AMS, Science Division, Statistical Branch, Kansas City Technical Center, 10383 No. Executive Hills Blvd., Kansas City, MO 64153.

(ii) USDA, AMS, SD, Statistical Branch, 0611 So. Agriculture Bldg., 14th & Independence Avenue, SW., Washington, DC 20250.

(9) *Residue Branch offices.* Services afforded by the Recordkeeping Program for restricted use pesticides by certified applicators and services afforded by the Pesticide Data Program are provided by offices located as follows:

(i) USDA, AMS, Science Division, 8700 Centreville Rd., suite 200, Manassas, VA 22110.

(ii) USDA, AMS, Science Division, Office of Director, 3507 So. Agriculture Bldg., 14th & Independence Avenue, SW., Washington, DC 20250.

(b) The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science Division laboratories, offices, and facilities by addressing an inquiry to the Director, Science Division, Agricultural Marketing Service, United States Department of Agriculture (USDA), PO Box 96456, Washington, DC 20090–6456.

**§ 91.6 Availability of services.**

(a) Services may be furnished whenever a Science Division staff is available and the facilities and conditions are satisfactory for the conduct of such service.

(b) Laboratories may provide limited service on Saturdays and Sundays at a premium fee. Weekend service may be obtained by contacting the laboratory director or supervisor.

(c) Holiday and overtime laboratory service may be obtained with a minimum 24 hour advance notice, at a premium fee, by any prospective applicant through the laboratory director or supervisor.

**Subpart C—Application for Services**

**§ 91.7 Nondiscrimination.**

All services under these regulations are provided to applicants without discrimination as to race, color, handicapped or disabled condition, religion, sex, age, or national origin.

**§ 91.8 Who may apply.**

An application for service may be made by any individual or interested

party including, but not limited to, the United States and any instrumentality or agency thereof, any State, county, municipality, or common carrier, and any authorized agent on behalf of the foregoing.

**§ 91.9 How to make an application.**

(a) *Voluntary.* An application for analysis and testing may be made by contacting the director or supervisor of the Science Division laboratory where the service is provided, or by contacting either the Laboratory Operations Coordination branch chief, or the Technical Services branch chief at Science Division Headquarters, Washington, DC. A list of the Science Division laboratories is included in § 91.5.

(b) *Mandatory.* In the case of mandatory analyses, such as those required to be performed on eggs and egg products, application for services may be submitted to the office or division which administers the program, or by contacting an inspector who is involved with the program.

**§ 91.10 Information required in connection with an application.**

(a) An application for laboratory service shall be made in the English language and may be made orally (in person or by telephone), in writing, or by facsimile. If an application for laboratory service is made orally, written confirmation may be required by the laboratory involved.

(b) In connection with each application for a laboratory service, information that may be necessary to perform analyses on the processed product(s) shall also be furnished. The information shall include, but is not limited to, the name of the product, name and address of the packer or plant where such product was packed, the location of the product, its lot or load number, codes or other identification marks, the number of containers, the type and size of the containers, the analytical test requested, and the size of the sample. In addition, information regarding analysis of the lot by any federal agency previous to the application and the purpose of the desired laboratory service may be requested.

**§ 91.11 Filing of an application.**

An application for a laboratory service shall be regarded as filed only when made in accordance with the regulations in this part.

**§ 91.12 Record of filing time and laboratory tests.**

A record showing the date of receipt for each application for a laboratory service or an appeal of a laboratory service shall be maintained. In addition, the requested laboratory analyses shall be recorded at the time of sample receipt.

**§ 91.13 When an application may be rejected.**

(a) An application for a laboratory service may be rejected by the Administrator when deemed appropriate as follows:

(1) For non-compliance by the applicant with the regulations in this part,

(2) For non-payment of previous laboratory services rendered,

(3) When the sample is not properly identified by a code or other marks,

(4) When the samples are received in an unsatisfactory condition and are rejected for analysis,

(5) When there is evidence or knowledge of tampering with the sample,

(6) When it appears that to perform the analytical testing or laboratory service specified in this part would not be to the best interests of the public welfare or of the Government, or

(7) When it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

(b) Each such applicant shall be promptly notified by registered mail of the reasons for the rejection.

(c) A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

**§ 91.14 When an application may be withdrawn.**

An application for a laboratory service may be withdrawn by the applicant at any time before the analytical testing is performed; *Provided,* That, the applicant shall pay, at the hourly rate prescribed in § 91.37, for the time incurred by the scientist or laboratory technician, in connection with such application and any travel expenses, telephone, facsimile, mailing, telegraph or other expenses, which have been incurred by the laboratory servicing office, in connection with such application.

## Subpart D—Laboratory Service

**§ 91.15 Basis of a laboratory service.**

Analytical testing and laboratory determination for analyte or quality constituent shall be based upon the appropriate standards promulgated by the U.S. Department of Agriculture, applicable standards prescribed by the laws of the State where the particular product was produced, specifications of any governmental agency, written buyer and seller contract specifications, or any written specifications by an applicant which is approved by the Administrator; *Provided,* That, if such product is regulated pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), or the comparable laws of any State, such testing and determination shall be on the basis of the standards, if any, prescribed in, or pursuant to, the marketing order and/or agreement effective thereunder.

**§ 91.16 Order of a laboratory service.**

Laboratory service shall be performed, insofar as possible, in the order in which applications are made except that precedence may be given to any such applications which are made by the United States (including, but not being limited to, any instrumentality or agency thereof) and to any application for an appeal inspection.

**§ 91.17 Postponing a laboratory service.**

If the scientist determines that it is not possible to accurately analyze or make a laboratory determination of a sample immediately after receipt because standard materials, laboratory equipment and supplies need replacement, or for any other substantial reason, the scientist may postpone laboratory service for such period as may be necessary.

**§ 91.18 Financial interest of a scientist.**

No scientist shall perform a laboratory analysis on any product in which he is directly or indirectly financially interested.

## Subpart E—Samples

**§ 91.19 General requirements of suitable samples.**

(a) Samples must be representative of the product tested and provided in sufficient quantity for the analyses requested.

(b) Each sample must be identified with the following information:

(1) Product type (specific description);

(2) Lot number or production date;

(3) Analyses desired;

(4) Date/time collected;

(5) Storage conditions prior to shipping;
(6) Name of applicant;
(7) Name of sampler;
(8) Any other information which is required by the specific program under which analysis or test is performed.

**§ 91.20 Shipping.**

(a) Samples must be submitted to the laboratory in a condition (including temperature) that does not compromise the quality and validity of analytical results.
(b) All samples must be submitted in sealed, leakproof containers.
(c) Containers for perishable refrigerated samples should contain ice or ice packs to maintain temperatures of 0° to 5° C, unless a different temperature is required for the sample to be tested.
(d) Containers for frozen samples should contain dry ice or other effective methods of maintaining samples in a frozen state.
(e) The applicant is responsible for providing shipping containers and paying shipping costs for fee basis tests.
(f) A courier charge may apply for the shipment of some samples.

**§ 91.21 Protecting samples.**

Laboratory personnel shall protect each sample from manipulation, substitution, and improper or careless handling which would deprive the sample of its representative character from the time of receipt in the laboratory until the analysis is completed and the sample has been discarded.

**§ 91.22 Disposition of analyzed samples.**

(a) Excess samples not used in analyses will be placed in proper storage for a maximum period of 30 days after reporting results of tests.
(b) Any sample of a processed commodity that has been used for a laboratory service may be returned to the applicant at his or her request and expense; otherwise, it shall be destroyed or disposed of to a charitable institution.

**Subpart F—Method Manuals**

**§ 91.23 Analytical methods.**

Most analyses are performed according to approved procedures described in manuals of standardized methodology. These standardized methods are the specific methods used. Alternatively, equivalent methods prescribed in cooperative agreements are used. The manuals of standard methods most often used by the Science Division laboratories are listed as follows:

(a) Edwards, P.R. and W.H. Ewing, Edwards and Ewing's Identification of Enterobacteriaceae, Elsevier Science Publishing Co., Inc., 52 Vanderbilt Avenue, New York, NY 10017.
(b) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, U.S. Environmental Protection Agency (EPA), Environmental Toxicology Division, Health Effects Research Laboratory (HERL), Alexander Drive and Highway 54, Mail Drop 51, Research Triangle Park, NC 27711.
(c) Official Analytical Methods of the American Spice Trade Association (ASTA), American Spice Trade Association, 580 Sylvan Avenue, P.O. Box 1267, Englewood Cliffs, NJ 07632.
(d) Approved Methods of the American Association of Cereal Chemists, American Association of Cereal Chemists, 3340 Pilot Knob Road, St. Paul, MN 55121–2097.
(e) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826–3489.
(f) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.
(g) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), suite 1120, 1100 Connecticut Avenue, NW, Washington, DC 20036.
(h) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Eighteenth Street, NW, Washington, DC 20036.
(i) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association and the Water Pollution Control Federation, APHA, 1015 Eighteenth Street, NW, Washington, DC 20036.
(j) U.S. Army Individual Protection Directorate's Military Specifications, approved analytical test methods noted therein, U.S. Army Natick Research, Development and Engineering Center, Kansas Street, Natick, MA 01760–5017.
(k) U.S. Food and Drug Administration Bacteriological Analytical Manual (BAM), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.
(l) U.S. Food and Drug Administration Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, U.S. Department of Health and Human Services, 200 C Street, SW, Washington, DC 20204 (available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161).

**Subpart G—Reporting**

**§ 91.24 Reports of test results.**

(a) Results of analyses are provided, in writing, by facsimile or other electronic means to the applicant.
(b) Applicants may call the appropriate Science Division laboratory for interim or final results prior to issuance of the formal report. The advance results may be telegraphed, telephoned, or sent by facsimile to the applicant. Any additional expense for advance information shall be borne by the requesting party.
(c) A letter report in lieu of a certificate of analysis may be issued by a laboratory representative when such action appears to be more suitable than a certificate; *Provided,* That, issuance of such report is approved by the Division Director.

**§ 91.25 Certificate requirements.**

Certificates of analysis and other memoranda concerning laboratory service and the reporting of results should have the following requirements.
(a) Certificates of analysis shall be on standard printed forms approved by the Division Director;
(b) Shall be printed in English;
(c) Shall have results typewritten, computer generated, or handwritten in ink and shall be clearly legible;
(d) Shall show the results of laboratory tests in a uniform, accurate, and concise manner with abbreviations identified on the form;
(e) Shall show the information required by §§ 91.25–91.29; and
(f) Show only such other information and statements of fact as are provided in the instructions authorized by the Division Director.

**§ 91.26 Issuance of certificates.**

(a) The person signing and issuing the certificate of analysis shall be one of the following:
(1) The scientist who performed the analysis;
(2) Another technician of the laboratory facility, who has been given power of attorney by the scientist who performed the analytical testing and been authorized by the Division Director to affix the scientist's signature to a certificate. The power of attorney shall be on file with the employing office or laboratory of the Division;
(3) A person designated as the "laboratory director in charge," when

the certificate represents composite analyses by several technicians.

(b) The laboratory certificate shall be prepared in accordance with the facts set forth in the official memoranda made by the scientist or technicians in connection with the analysis.

(c) Whenever a certificate is signed by a person under a power of attorney, the certificate should so indicate. The signature of the holder of power shall appear under the name of the scientist who personally analyzed the sample, and whenever a certificate issued is signed by a scientist in charge, that title must appear in connection with the signature.

**§ 91.27 Corrections to certificates prior to issuance.**

(a) The accuracy of the statements and information shown on certificates of analysis must be verified by the individual whose name or signature, or both, is shown on the certificate or by the authorized agent who affixed the name or signature, or both. When a name or signature, or both, is affixed by an authorized agent, the initials of the agent shall appear directly below or following the name, or signature of the person. Errors found during this process shall be corrected according to this section.

(b) Only official personnel or their authorized agents may make corrections, additions, or other changes to certificates.

(c) No corrections, additions, or other changes shall be made which involve identification, quality, or quantity. If such errors are found, a new certificate shall be prepared and issued and the incorrect certificate marked "Void." Otherwise, errors may be corrected, provided there is evidence of satisfactory correction procedures as follows:

(1) The corrections are neat and legible;

(2) Each correction is initialed by the individual who corrects the certificate; and

(3) The corrections and initials are shown on the original and all copies.

**§ 91.28 Issuance of corrected certificates or amendments for analysis reports.**

(a) A corrected certificate of analysis or an amended letter report may be issued by the laboratory representative who issued the original certificate or report after distribution of the form if errors, such as incorrect dates, analytical results, or test determination statements, lot numbers, or errors in any other pertinent information require the issuance of a corrected certificate or an amended report.

(b) Whenever a corrected certificate or amended report is issued, such certificate or report shall supersede the original form which was issued in error. The superseded certificate or incorrect report shall become null and void after the issuance of the corrected certificate or the amended analysis report.

(c) The corrected certificates or amended reports shall show the following:

(1) The terms "Corrected Original" and "Corrected Copy;"

(2) A statement identifying the superseded certificate or incorrect letter report and the corrections;

(3) A new serial number or new date of issuance; and

(4) The same statements and information, including permissive statements, that were shown on the incorrect certificate or the incorrect report, along with the correct statement or information, shall be shown on the corrected form.

(d) If all copies of the incorrect certificate or incorrect report can be obtained, then the superseded form shall be marked "Void" when submitted.

(e) Corrected certificates or amended letter reports cannot be issued for a certificate that has been superseded by another certificate, or superseded on the basis of a subsequent analysis or an additional laboratory test determination.

**§ 91.29 Issuance of duplicate certificates or reissuance of an analysis report.**

(a) Upon request by an applicant, a duplicate certificate or an additional report may be issued for a lost, destroyed, or otherwise not obtainable original form.

(b) The duplicate certificate or the reissuance of an analysis report shall be at the expense of the applicant.

(c) Requests for duplicate certificates or additional analysis reports shall be filed as follows:

(1) In writing;

(2) By the applicant who requested the service covered by the lost, destroyed, or otherwise not obtainable original form; and

(3) With the office that issued the initial certificate or original laboratory analysis report.

(d) The duplicate certificates or reissued analysis reports shall show the following:

(1) The terms "Duplicate Original," and the copies shall show "Duplicate Copy."

(2) A statement that the certificate or letter report was issued in lieu of a lost or destroyed or otherwise not obtainable certificate or laboratory analysis report; and

(3) The same statements and information, including permissive statements, that were shown on the original certificate or the initial analysis report shall be shown on the duplicate form.

(e) Duplicate certificates or duplicate analysis reports shall be issued as promptly as possible and distributed as the original certificates or original analysis reports and their copies.

(f) Duplicate certificates shall not be issued for certificates that have been superseded.

**§ 91.30 Maintenance and retention of copies of certificates or analysis reports.**

(a) At least one copy of each certificate or analysis report shall be filed in the laboratory for a period of not less than 3 years either from the date of issuance of the document, from the date of voiding a certificate, or from the date last payment is made by the applicant for a reported laboratory determination, whichever is later.

(b) Whenever any document, because of its condition, becomes unsuitable for its intended or continued use, the laboratory personnel shall make a copy of the original document.

(c) True copies shall be retained as photocopies, microfilm, microfiche, or other accurate reproductions and durable forms of the original document. Where reduction techniques, such as microfilming are used, suitable reader and photocopying equipment shall be readily available. Such reproductions shall be treated and considered for all purposes as though they were the original documents.

(d) All documents required to be maintained under this part shall be kept confidential and shall be disclosed only to the applicants or other persons with the applicants' knowledge and permission. Only such information as the Administrator deems relevant shall be disclosed to the public without the applicants' permission, and then, only in a suit or administrative hearing brought at the direction, or on the request, of the Administrator, or to which the Administrator or any other officer of the United States is a party.

## Subpart H—Appeal of Laboratory Services

**§ 91.31 When an appeal of a laboratory service may be requested.**

(a) An application for an appeal of a laboratory service may be made by any interested party who is dissatisfied with the results of an analysis as stated in a certificate or laboratory report, if the lot of the commodity can be positively identified by the laboratory service as

the lot from which originally drawn samples were previously analyzed.

(b) An application for an appeal of a laboratory service shall be made within thirty (30) days following the day on which the previous analysis was performed. However, upon approval by the Division Director, the filing time for an appeal application may be extended.

**§ 91.32 Where to file for an appeal of a laboratory service and information required.**

(a) Application for an appeal of a laboratory service may be filed with the supervisor in the office or laboratory facility that issued the certificate or laboratory report on which the appeal analysis covering the commodity product is requested.

(b) The application for an appeal of a laboratory service shall state the location of the lot of the commodity product and the reasons for the appeal; and date and serial number of the certificate covering the laboratory service of the commodity product on which the appeal is requested. In addition, such application shall be accompanied by the original and all available copies of the certificate or laboratory report.

(c) Application for an appeal of a laboratory service may be made orally (in person or by telephone), in writing, by facsimile, or by telegraph. If made orally, written confirmation shall be made promptly.

**§ 91.33 When an application for an appeal of a laboratory service may be withdrawn.**

An application for an appeal of a laboratory service may be withdrawn by the applicant at any time before the appealed laboratory service is performed; *Provided*, That, the applicant shall pay, at the hourly rate prescribed in § 91.37, for the time incurred by the laboratory personnel, any travel, telephone, telegraph, or other expenses which have been incurred by the laboratory service in connection with such application.

**§ 91.34 When an appeal of a laboratory service may be refused.**

An application for an appeal of a laboratory service may be refused if:

(a) The reasons for the appealed laboratory service are frivolous or not substantial;

(b) The quality or condition of the commodity product has undergone a material change since the laboratory service covering the commodity product on which the appealed laboratory service is requested;

(c) The lot in question is not, or cannot be made accessible for sampling;

(d) The lot relative to which the appealed laboratory service is requested cannot be positively identified as the lot from which samples were previously drawn and originally analyzed; or

(e) There is noncompliance with the regulations in this part. Such applicant shall be notified promptly of the reason for such refusal.

**§ 91.35 Who shall perform an appealed laboratory service.**

An appealed laboratory service shall be performed, whenever possible, by another individual or other individuals than the scientist(s) or the technician(s) that performed the original analytical determination.

**§ 91.36 Appeal laboratory certificate.**

(a) An appeal laboratory certificate shall be issued showing the results of such appealed analysis. This certificate shall supersede the laboratory certificate previously issued for the commodity product involved.

(b) Each appeal laboratory certificate shall clearly identify the number and date of the laboratory certificate which it supersedes. The superseded certificate shall become null and void upon the issuance of the appealed laboratory certificate and shall no longer represent the analytical results of the commodity product.

(c) The individual issuing an appeal laboratory certificate shall forward notice of such issuance to such persons as he or she considers necessary to prevent misuse of the superseded certificate if the original and all copies of such superseded certificate have not previously been delivered to the individual issuing the appeal certificate.

(d) The provisions in the regulations in this part concerning forms and certificates, issuance of certificates, and retention and disposition of certificates shall apply to appeal laboratory certificates, except that copies of such appeal certificates shall be furnished to all interested parties who received copies of the superseded certificate.

## Subpart I—Fees and Charges

**§ 91.37 Fees for laboratory testing, analysis, and other services (general schedules).**

(a) The fees listed in the general schedules in this section for the individual laboratory analyses cover the costs of Science Division laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in §§ 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.47, 70.71 through 70.72, and 70.75 through 70.78. The fees apply to all processed commodity products, except flue-cured and burley tobacco, citrus juices and certain citrus products. The laboratory fees are listed for single test analysis (unless specified) for processed fruits and vegetables (part 93), poultry and egg products (part 94), processed dairy products (part 95), and meat and meat products (part 98). The fees for chemical analysis of cottonseed associated with grading and novel variety seed certification under the Plant Variety Protection Act are specified in parts 96 and 97, respectively. Except as otherwise provided in this section, charges will be made for laboratory analysis at the hourly rate of $34.20 for the time required to perform the service. A minimum charge of one-half hour will be made for service pursuant to each request or certificate issued. The following times per single test on each schedule will apply.

**General Schedules of Fees for Official Laboratory Test Services Performed at the AMS Science Division Laboratories for Processed Commodity Products**

TABLE 1.—SINGLE TEST TIMES AND LABORATORY FEES FOR PROXIMATE ANALYSES

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Ammonia, Ion Selective Electrode | 2.25 | $76.95 |
| Ash, Total | 1 | 34.20 |
| Ash, Acid Insoluble | 1.5 | 51.30 |
| Fat, Acid Hydrolysis | 1 | 34.20 |
| Fat, Ether Extraction | 1 | 34.20 |
| Fat, Microwave—Solvent Extraction | 1 | 34.20 |
| Fat, Specific Gravity | 1 | 34.20 |
| Fiber, Crude | 2 | 68.40 |
| Moisture, Distillation | 1 | 34.20 |
| Moisture, Karl Fischer | 1.5 | 51.30 |
| Moisture, Oven | 0.5 | 17.10 |
| Protein, Kjeldahl | 2 | 68.40 |
| Salt, Back Titration | 0.75 | 25.65 |
| Salt, Potentiometric | 0.5 | 17.10 |

TABLE 2.—SINGLE TEST TIMES AND LABORATORY FEES FOR LIPID RELATED ANALYSES

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Acid degree value (dairy) | 1 | $34.20 |
| Acidity, titratable | 0.5 | 17.10 |
| Carotene, spectrophotometric | 2.5 | 85.50 |
| Catalase test | 0.5 | 17.10 |
| Cholesterol | 5 | 171.00 |

TABLE 2.—SINGLE TEST TIMES AND LABORATORY FEES FOR LIPID RELATED ANALYSES—Continued

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Moisture and fat analyses are required to be analyzed at an additional cost as prerequisites to the cholesterol test: | | |
| Color (honey) | 0.5 | 17.10 |
| Color, NEPA (eggs) | 1 | 34.20 |
| Consistency, Bostwick (cooked) | 0.5 | 17.10 |
| Consistency, Bostwick (uncooked) | 0.5 | 17.10 |
| Density (specific gravity) | 0.5 | 17.10 |
| Dispersibility (Mosts-Dabbah method) | 0.5 | 17.10 |
| Fat stability, AOM | 1 | 34.20 |
| Peroxide value analysis is required as a prerequisite to the fat stability test at the additional fee: | | |
| Fatty acid profile (AOAC–GC method) | 4 | 136.80 |
| Flash point test only | 2 | 68.40 |
| Free fatty acids | 0.75 | 25.65 |
| Meltability (process cheese) | 0.5 | 17.10 |
| Peroxidase test | 0.5 | 17.10 |
| Peroxide value | 1.5 | 51.30 |
| Smoke point test only | 2 | 68.40 |
| Smoke point and flash point | 3.5 | 119.70 |
| Solids, total (oven drying) | 0.5 | 17.10 |
| Soluble solids, refractometer | 0.5 | 17.10 |

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Aflatoxin, (dairy, eggs) | 3.5 | $119.70 |
| Alar or daminozide residue | 5 | 205.20 |
| Amitraz residue, GLC | 5 | 205.20 |
| Alcohol (qualitative) | 2 | 68.40 |
| Alkalinity of ash | 4 | 136.80 |
| Antibiotic (dry milk) | 4 | 136.80 |
| Ascorbates (qualitative—meats) | 0.5 | 17.10 |
| Ascorbic acid, titration | 1.0 | 34.20 |
| Ascorbic acid, spectrophotometric | 1.0 | 34.20 |
| Benzene, residual | 2 | 68.40 |
| Brix, direct percent sucrose | 0.5 | 17.10 |
| Brix, dilution | 0.5 | 17.10 |
| Butylated hydroxyanisole (BHA) | 1.5 | 51.30 |
| Butylated hydroxytoluene (BHT) | 1.5 | 51.30 |
| Caffeine, micro Bailey-Andrew | 1.5 | 51.30 |
| Caffeine, spectrophotometric | 1 | 34.20 |
| Calcium | 1.5 | 51.30 |
| Citric acid, GLC or HPLC | 1.5 | 51.30 |
| Chlorinated hydrocarbons: | | |
| Pesticides and industrial chemicals—initial screen | 4 | 136.80 |
| Second column confirmation of analyte | 1 | 34.20 |
| Confirmation on mass spectrometer | 2 | 68.40 |
| Dextrin (qualitative) | 0.5 | 17.10 |
| Dextrin (quantitative) | 3 | 102.60 |
| Filth, heavy (dairy) | 2.5 | 85.50 |
| Filth, heavy (eggs) | 4 | 136.80 |
| Filth, light (eggs) | 2.5 | 85.50 |
| Filth, light and heavy (eggs extraneous) | 6 | 205.20 |
| Flavor | 0.75 | 25.65 |
| Fumigants: | | |
| Initial screen—Dibromochloropropane (DBCP) | 1 | 34.20 |
| Ethylene dibromide | 1 | 34.20 |
| Methyl bromide | 1 | 34.20 |
| Confirmation on mass spectrometer—each individual fumigant residue | 2 | 68.40 |
| Glucose (qualitative) | 0.75 | 25.65 |
| Glucose (quantitative) | 1.75 | 59.85 |
| Glycerol (quantitative) | 3 | 102.60 |
| Gums | 3 | 102.60 |
| High sucrose content or avasucrol—percent sucrose (Holland eggs) | 4 | 136.80 |
| Hydrogen ion activity, pH | 0.5 | 17.10 |
| Mercury, cold vapor AA | 2.5 | 85.50 |
| Metals—other than mercury, each metal | 2 | 68.40 |
| Monosodium dihydrogen phosphate | 4 | 136.80 |
| Monosodium glutamate | 4 | 136.80 |
| Nitrites (qualitative) | 0.5 | 17.10 |
| Nitrites (quantitative) | 3 | 102.60 |
| Oxygen | 0.5 | 17.10 |
| Palatability and Odor: | | |
| First Sample | 0.75 | 25.65 |
| Each additional sample | 0.5 | 17.10 |
| Phosphatase, residual | 1 | 34.20 |
| Phosphorus | 2 | 68.40 |
| Propylene glycol, codistillation: (qualitative) | 2 | 68.40 |
| Pyrethrin residue (dairy) | 4 | 136.80 |
| Scorched particles | 0.5 | 17.10 |
| Sodium, potentiometric | 1 | 34.20 |
| Sodium benzoate, HPLC | 1.5 | 51.30 |
| Sodium lauryl sulfate (SLS) | 8 | 273.60 |
| Sodium silicoaluminate (Zeolex) | 2 | 68.40 |
| Solubility index | 0.75 | 25.65 |
| Starch, direct acid hydrolysis | 3 | 102.60 |
| Sugar, polarimetric methods | 1 | 34.20 |
| Sugar profile, HPLC—This profile includes the following components: Dextrose, fructose, lactose, maltose and sucrose: | | |
| One type sugar from HPLC profile | 3 | 102.60 |

TABLE 3.—SINGLE TEST TIMES AND LABORATORY FEES FOR FOOD ADDITIVES (DIRECT AND INDIRECT)—Continued

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Each additional type sugar | 0.5 | 17.10 |
| Sugars, non-reducing | 3 | 102.60 |
| Sugars, total as invert | 2 | 68.40 |
| Sulfites (qualitative) | 0.75 | 25.65 |
| Sulfur dioxide, Monier-Williams. | 1.5 | 51.30 |
| Sulfur dioxide, direct titration | 1 | 34.20 |
| Toluene, residual | 2 | 68.40 |
| Triethyl citrate, GC (quantitative) | 1 | 34.20 |
| Vitamin A | 5 | 171.00 |
| Vitamin D, HPLC (vitamins $D_2$ and $D_3$) | 8.5 | 290.70 |
| Whey protein nitrogen | 2.5 | 85.50 |
| Xanthydrol test for urea | 1.5 | 51.30 |
| This is an optional test to the extraneous materials isolation test. | | |

TABLE 4.—SINGLE TEST TIMES AND LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Available carbon dioxide (baking powders) | 4 | $136.80 |
| Complete Kohman analysis (dairy) | 3 | 102.60 |
| Jelly strength (bloom) | 2.5 | 85.50 |
| Methyl anthranilate | 1 | 34.20 |
| Grape juice absorbancy ratio | 0.5 | 17.10 |
| Net weight (per can) | 0.5 | 17.10 |
| Non-volatile methylene chloride extract | 2.5 | 85.50 |
| Particle size (ether wash) | 0.5 | 17.10 |
| Potassium iodide (table salt) | 1.5 | 51.30 |
| Quinic acid (cranberry juice) | 1.75 | 59.85 |
| Sieve or particle size | 0.5 | 17.10 |
| Water activity | 4 | 136.80 |

TABLE 4.—SINGLE TEST TIMES AND LABORATORY FEES FOR OTHER CHEMICAL AND PHYSICAL COMPONENT ANALYSES—Continued

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Water insoluble inorganic residues (WIIR) | 2 | 68.40 |
| Yellow onion test | 0.75 | 25.65 |

TABLE 5.—SINGLE TEST TIMES AND LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Aerobic (standard) plate count | 0.5 | $17.10 |
| Anaerobic bacterial plate count | 0.75 | 25.65 |
| Bacterial direct microscopic count | 1 | 34.20 |
| *Campylobacter jejuni* | 4 | 136.80 |
| Coliform plate count, violet red bile agar: (Presumptive coliform plate count) | 0.75 | 25.65 |
| Coliforms, most probable number (MPN): [1] | | |
| Step 1 | 0.75 | 25.65 |
| Step 2 | 0.75 | 25.65 |
| *E. coli*, presumptive MPN (additional fee) [2] | 1.5 | 51.30 |
| Enterococci count | 3 | 102.60 |
| Listeria monocytogenes confirmation analysis: [3] | | |
| Step 1 | 1.5 | 51.30 |
| Step 2 | 1.5 | 51.30 |
| Step 3 (confirmation) | 2.5 | 85.50 |
| Proteolytic count | 1 | 34.20 |
| Psychrotrophic bacterial plate count | 0.75 | 25.65 |
| Salmonella (USDA culture method): [4] | | |
| Step 1 | 1.5 | 51.30 |
| Step 2 | 0.75 | 25.65 |
| Step 3 (confirmation) | 1.5 | 51.30 |
| Serological typing (optional) | 2.5 | 85.50 |
| *Salmonella* (rapid methods): [5] | | |
| Step 1 | 2.0 | 68.40 |
| Step 2 | 0.75 | 25.65 |
| Step 3 (confirmation) | 1.5 | 51.30 |
| *Staphylococcus aureus*, MPN: With coagulase positive confirmation | 1.75 | 59.85 |

TABLE 5.—SINGLE TEST TIMES AND LABORATORY FEES FOR MICROBIOLOGICAL ANALYSES—Continued

| Type of analysis | Hours for single test | List fee |
|---|---|---|
| Thermoduric bacterial plate count | 0.75 | 25.65 |
| Yeast and mold count | 0.5 | 17.10 |
| Yeast and mold differential plate count | 0.75 | 25.65 |

[1] Coliform MPN analysis may be in two steps as follows: Step 1—presumptive test through lauryl sulfate tryptose broth; Step 2—confirmatory test through brilliant green lactose bile broth.

[2] Step 1 of the coliform MPN analysis is a prerequisite for the performance of the presumptive *E. coli* test. Prior enrichment in lauryl sulfate tryptose broth is required for optimal recovery of *E. coli* from inoculated and incubated EC broth (*Escherichia* coli broth). The *E. coli* test is performed through growth on eosin methylene blue agar. The fee stated for *E. coli* analysis is a supplementary charge to step 1 of coliform test.

[3] *Listeria* monocytogenes test using the USDA method may be in three steps as follows: Step 1—isolation by University of Vermont modified (UVM) broth and Fraser's broth enrichments and selective plating with Modified Oxford (MOX) agar; Presumptive Step 2—typical colonies inoculated from Horse Blood into brain heart infusion (BHI) broth and check for characteristic motility; Confirmatory Step 3—culture from BHI broth with typical motility is inoculated into the seven biochemical medias, BHI agar for oxidase and catalase tests, Motility test medium, and Christie-Atkins-Munch-Peterson (CAMP) test.

*Listeria* monocytogenes test using the FDA method may be in three steps as follows: Step 1—isolation by trypticase soy broth with 0.6% yeast extract (TSB–YE) broth enrichment and selective plating with Modified McBrides agar and Lithium chloride Phenylethanol Moxalactam (LPM) agar; Presumptive Step 2—typical colonies inoculated to trypticase soy agar with yeast extract (TSA–YE) with sheep blood plates to check for hemolysis followed by inoculations to BHI broth and TSA–YE plates to check for characteristic motility, gram stain and catalase test; Confirmatory Step 3—culture from BHI broth with typical motility for wet mount is inoculated into the required 10 biochemical medias, Sulfide-Indole-Motility (SIM) medium, and the CAMP test. Serology is checked using growth from TSA–YE plates.

Both methods for *Listeria* determination have the equivalent time needed for each step.

[4] *Salmonella* test may be in three steps as follows: Step 1—growth through differential agars; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums. The serological typing of *Salmonella* is requested on occasion.

[5] *Salmonella* test may be in three steps as follows: Step 1—growth in enrichment broths and Elisa test or DNA hybridization system assay; Step 2—growth and testing through triple sugar iron and lysine iron agars; Step 3—confirmatory test through biochemicals, and polyvalent serological testing with Poly "O" and Poly "H" antiserums.

TABLE 6.—SINGLE TEST TIMES AND LABORATORY FEES FOR AFLATOXIN ANALYSES

| Aflatoxin test by commodity | Hours for single test | Fee per single analysis | Fee per pair analyses [1] |
|---|---|---|---|
| Peanut Butter (TLC—CB) | 1 | $34.20 | [2] NA |
| Corn (TLC—CB) | 1 | 34.20 | NA |
| Roasted Peanuts (TLC—BF) | 1 | 34.20 | NA |
| Brazil Nuts (TLC—BF) | 2 | 68.40 | NA |
| Pistachio Nuts (TLC—BF) | 2 | 68.40 | NA |
| Shelled Peanuts (TLC—BF) | NA | 14.00 | 28.00 |
| Shelled Peanuts (Aflatest) | NA | 20.00 | 40.00 |
| Shelled Peanuts (HPLC) | NA | 50.00 | 100.00 |
| Tree Nuts (TLC) | 1 | 34.20 | NA |
| Oilseed Meals (TLC) | 1 | 34.20 | NA |
| Edible Seeds (TLC) | 1 | 34.20 | NA |
| Dried Fruit (TLC) | 1 | 34.20 | NA |
| Small Grains (TLC) | 1 | 34.20 | NA |
| In-Shell Peanuts (TLC) | NA | 14.00 | 28.00 |
| Silage; Other Grains (TLC) | 1 | 34.20 | NA |

[1] Aflatoxin testing of raw peanuts under Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD is $28.00 per pair of analyses using Thin-Layer Chromatography (TLC) and Best Foods (BF) extraction method. The BF method has been modified to incorporate a water slurry extraction procedure. The Contaminants Branch (CB) method is used on occasion as an alternative method for peanuts and peanut meal when doubt exists as to the effectiveness of the BF method in extracting aflatoxin from the sample or when background interferences exist that might mask TLC quantitation of aflatoxin. The cost per pair of analyses using Aflatest and High Pressure Liquid Chromatography (HPLC) is $40.00 and $100.00, respectively. Other aflatoxin analyses for fruits and vegetables are listed at Science Division's current hourly rate of $34.20.

[2] NA denotes not applicable.

TABLE 7.—MISCELLANEOUS CHARGES SUPPLEMENTAL TO THE SCIENCE DIVISION'S LABORATORY ANALYSIS FEES

| Laboratory service description | Hours for single sample | List fee |
|---|---|---|
| Sample Grinding (Raw Peanuts) | 0.25 | $8.55 |
| Sample Grinding (Canned Boned Poultry) | 1 | 34.20 |
| Sample Grinding (Meats, Meat Products, Meals, Ready-to-Eat): | | |
| Per pouch or raw sample | 0.25 | 8.55 |
| Per tray pack | 0.5 | 17.10 |
| Compositing Multiple Subsamples for an Individual Test Sample Unit per subsample | 0.25 | 8.55 |

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO THE SAMPLE RECEIPT AND ANALYSIS REPORT

| Service description | List charge |
|---|---|
| Established Courier Expense at Albany, Georgia Laboratory. | $2.00 |
| Courier Expense at Other AMS Laboratories: Mileage Charge Set at $0.30 Per Mile Roundtrip from Laboratory to Delivery Site. | Varies. |

TABLE 8.—ADDITIONAL CHARGES APPLICABLE TO THE SAMPLE RECEIPT AND ANALYSIS REPORT

| Service description | List charge |
|---|---|
| Facsimile Charge (Per Analysis Report). | $3.00 minimum up to first 3 pages, then $1.00 per page. |
| Additional Analysis Report or Extra Certificate (½ hour charge). | $17.10 per report or certificate reissued. |

(b) The fee charge for any laboratory analysis not listed in paragraph (a) of this section, or for any other applicable services rendered in the laboratory, shall be based on the time required to perform such analysis or render such service. The standard hourly rate shall be $34.20.

(c) When a laboratory test service is provided for AMS by a commercial or State government laboratory, the applicant will be assessed a fee which covers the costs to AMS for the service provided.

**§ 91.38 Additional fees for appeal of analysis.**

(a) The appellant will be charged an additional fee at a rate of 1.5 times the standard rate stated in paragraph (a) of § 91.37 if, as a result of an authorized appeal analysis, it is determined that the original test results are correct. The appeal laboratory rate is $51.30 per analysis hour.

(b) The appeal fee will be waived if the appeal laboratory test discloses that an error was made in the original analysis.

**§ 91.39 Special request fees for overtime and legal holiday service.**

(a) Laboratory analyses initiated at the special request of the applicant to be rendered on Saturdays, Sundays, Federal holidays, and on an overtime basis will be charged at a rate of 1.5 times the standard rate stated in paragraph (a) of § 91.37. The premium laboratory rate for holiday and overtime service will be $51.30 per analysis hour.

(b) Information on legal holidays or what constitutes overtime service at a particular AMS laboratory is available from the laboratory supervisor.

**§ 91.40 Fees for courier service and facsimile of the analysis report.**

(a) The AMS peanut aflatoxin laboratory at Albany, Georgia, has a set courier charge of $2.00 per trip to retrieve the sample package. The mileage charge specified in Table 8 in § 91.37 of this part for courier service at other AMS laboratories is based on the shortest roundtrip route from laboratory to sample retrieval site.

(b) The faxing of laboratory analysis reports or certificates is an optional service offered at the fee specified in Table 8 in § 91.37 of this part.

**§ 91.41 Charges for demonstrations and courses of instruction.**

Charges, not in excess of the cost thereof and as approved by the Division Director, may be made for demonstrations, samples, or courses of instruction when such are furnished upon request.

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**§ 91.43 Billing.**

(a) Each billing cycle will end on the 25th of the month. The applicant will be billed by the National Finance Center on the 1st day, following the end of the billing cycle in which voluntary laboratory services and other services were rendered at a particular Science Division laboratory.

(b) The total charge shall normally be stated directly on the analysis report or on a standardized certificate form for the laboratory analyses of a specific agricultural commodity and related commodity products.

(c) The actual bill for collection will be issued by the National Finance Center, Program Billings and Collection Section, PO Box 60950, New Orleans, Louisiana 70160.

**§ 91.43 Payment of fees and charges.**

(a) Fees and charges for services shall be paid by the applicant, by check or money order payable, to the "Agricultural Marketing Service, USDA" and sent to the office indicated on the bill.

(b) Fees and charges for services under a cooperative agreement with a State or other AMS Divisions will be paid in accordance with the terms of the cooperative agreement.

(c) As necessary, the Division Director may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by applicant.

**§ 91.44 Charges on overdue accounts and issuance of delinquency notices.**

(a) Accounts are considered overdue if payment is late with the National Finance Center (NFC). The timeliness of a payment will be based on the postmark date of the payment or the date of receipt by the NFC if no postmark date is present or legible. Bills are payable upon receipt and become delinquent 30 days from date of billing.

(b) Any amount due not paid by the due date will be increased by a late payment charge. The actual assessed rate applied to overdue accounts is set quarterly by the Department of the Treasury. This amount is one-twelfth of one year's late penalty interest rate computed at the prescribed rate.

(c) Overtime or holiday laboratory service will not be performed for any applicant with a notice of delinquency.

(d) Applicants with three notices of delinquency will be reviewed for possible termination of services. A deposit in advance sufficient to cover the fees and expenses for any subsequent service may be required of any person failing to pay in claim after issuance of such notice of delinquency.

(e) The Division Director will take such action as may be necessary to collect any delinquent amounts due.

**§ 91.45 Charges for laboratory services on a contract basis.**

(a) Irrespective of fees and charges prescribed in § 91.37, or in other sections of this subchapter E, the Division Director may enter into contracts with applicants to perform continuous laboratory services or other types of laboratory services pursuant to the regulations in this part and other requirements, as prescribed by the Division Director in such contract. In addition, the charges for such laboratory services, provided in such contracts, shall be on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory services, including an appropriate overhead charge to cover administrative overhead expenses as may be determined by the Administrator.

(b) Irrespective of fees and charges prescribed in § 91.37, or in other sections of this subchapter E, the Division Director may enter into a written Memorandum of Understanding (MOU) or agreement with any administrative agency or governing party for the performance of laboratory services pursuant to said agreement or order on a basis that will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such laboratory service, including an appropriate overhead administrative overhead charge.

(c) The conditions and terms for renewal of such Memorandum of Understanding or agreement shall be specified in the contract.

## PART 92—TOBACCO

Sec.

92.1 General.
92.2 Definitions.
92.3 Location for laboratory testing and kind of services available.
92.4 Approved forms for reporting analytical results.
92.5 Analytical methods.
92.6 Cost for pesticide analysis set by cooperative agreement.

Authority: 7 U.S.C. 511m and 7 U.S.C. 511r.

**§ 92.1 General.**

Analytical testing of imported flue-cured and burley tobacco is performed for maximum allowable pesticide residue levels. Domestic grown tobacco may also be analyzed for pesticide residues at the Science Division's Eastern Laboratory facility.

**§ 92.2 Definitions.**

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

*Air-cured.* Tobacco cured under natural atmospheric conditions. Artificial heat is sometimes used to control excess humidity during the curing period to prevent house-burn, barn-burn and pole-burn in damp weather. Air-cured tobacco should not carry the odor of smoke or fumes resulting from the application of artificial heat.

*Burley.* A thin to medium-bodied tobacco, usually a light tan to reddish-brown in color.

*Burley, Type 93.* That type of air-cured tobacco commonly known as foreign-grown Burley, produced in countries other than the United States.

*Certificate of Analysis (Form CSSD-3).* A legal document on which the test results for official samples will be certified by a Division chemist in charge of testing.

*Cured.* Tobacco dried of its sap by either natural or artificial processes.

*2,4-D.* The common abbreviation for the acid herbicide 2,4-Dichlorophenoxyacetic acid.

*DBCP.* The common abbreviation for the volatile fumigant pesticide 1,2-Dibromo-3-chloropropane.

*DDE.* The common abbreviation for the chlorinated pesticide Dichlorodiphenyldichloroethylene. Degradation product of DDT by loss of one molecule of hydrochloric acid or referred to as a dehydrohalogenation process.

*DDT.* The common abbreviation for Dichloro diphenyl trichloroethane or the common name for the chlorinated insecticide or contact poison 1,1-Bis(p-chlorophenyl)-2,2,2-trichloroethane.

*Dicamba.* The common name for the acid herbicide 2-Methoxy-3,6-dichlorobenzoic acid.

*EDB.* The common abbreviation for Ethylene dibromide or the common name for the volatile fumigant pesticide 1,2-Dibromoethane.

*Flue-cured.* Tobacco cured under artificial atmospheric conditions by a process of regulating the heat and ventilation without allowing smoke or fumes from the fuel to come in contact with the tobacco; or tobacco cured by some other process which accomplishes the same results.

*Flue-cured, Type 92.* That type of flue-cured tobacco commonly known as

Foreign-grown Flue-cured, produced in countries other than the United States.

*Formothion.* The common name for the organophosphorus pesticide S-(2-(Formylmethylamino)-2-oxoethyl) O-O-dimethyl phosphorodithioate.

*HCB.* The common abbreviation for the organochlorine pesticide Hexachlorobenzene.

*Lot.* A unit of shipment of tobacco encompassed by a single invoice. The lot may represent a pile, basket, bulk, hack, burden, or more than one bale, case, hogshead, tierce, package, or other definite package unit.

*Maximum pesticide residue level.* The maximum concentration of residue allowable for a specific pesticide or combination of pesticides, as set forth in § 29.427 by the Director of the Tobacco Division.

*Pesticide.* Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

*Pesticide certification.* A document issued by the Tobacco Division in a form approved by its Director, containing a certification by the importer that flue-cured and burley tobacco offered for importation does not exceed the maximum allowable residue levels of any pesticide that has been canceled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

*Pesticide test sample.* An official sample or samples, collected from a lot of tobacco by the AMS Tobacco Division inspector for analysis by a certified chemist to ascertain the residue levels of pesticides that have been canceled, suspended, revoked, or otherwise prohibited under the FIFRA.

*Sample Identification Form (Form TB–89).* A document approved by the Director of the Tobacco Division that identifies and accompanies the sample to the testing facility.

*2,4,5–T.* The common abbreviation for the acid herbicide 2,4,5–Trichlorophenoxyacetic acid.

*TDE.* The common abbreviation for the chlorinated insecticide 1,1–Dichloro-2,2-bis(p-chlorophenyl)ethane.

*Testing.* The chemical analysis of a pesticide test sample to determine the presence and levels of pesticide residues.

*Tobacco.* Tobacco as it appears between the time it is cured and stripped from the stalk, or primed and cured, in whole leaf or strip form, and the time it enters into the different manufacturing processes. Conditioning, sweating, stemming, and threshing are not regarded as manufacturing processes. Tobacco, as used in this part does not include manufactured or semimanufactured products, stems, cuttings, clippings, trimmings, siftings, or dust.

### § 92.3 Location for laboratory testing and kind of services available.

(a) The analytical testing of imported Type 92 flue-cured tobacco samples and imported Type 93 burley tobacco samples for maximum pesticide residue level determinations is performed at the Science Division's Eastern Laboratory, and is located at: USDA, AMS, Science Division, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054.

(b) Domestic-grown tobacco and tobacco products may be analyzed for acid herbicides, chlorinated hydrocarbons, fumigants, and organophosphates at the Science Division facility in this section.

(c) The Division performs for the Tobacco Division the quantitative and confirmatory chemical residue analyses on pesticide test samples of imported tobacco for the following specific pesticides:

(1) Organochlorine pesticides such as Dichloro-diphenyldichloroethylene (DDE), Dichloro Diphenyl Trichloroethane (DDT), 1,1–Dichloro-2,2-bis (p-chlorophenyl)ethane (TDE), Toxaphene, Endrin, Aldrin, Dieldrin, Heptachlor, Methoxychlor, Chlordane, Heptachlor Epoxide, Hexachlorobenzene (HCB), Cypermethrin, and Permethrin.

(2) Organophosphorus pesticides such as Formothion.

(3) Fumigants such as Ethylene Dibromide (EDB) and Dibromochloropropane (DBCP).

(4) Acid herbicides such as 2,4-D, 2,4,5-T, and Dicamba.

### § 92.4 Approved forms for reporting analytical results.

(a) Form TB–89, "Imported Tobacco Pesticide Residue Analysis" certificate, is enclosed with and identifies the sample submitted to the laboratory.

(b) Test results of the pesticide analyses for tobacco shall be recorded on "Certificate of Analysis For Official Samples," Form CSSD–3, and shall be expressed in total parts per million, per gram sample for each particular pesticide residue found in the lot of tobacco. Form CSSD–3 is attached to Form TB–89 that is returned to the Tobacco Division. The analytical data on Form CSSD–3 substantiates the information placed on Form TB–89.

### § 92.5 Analytical methods.

Every chemist certified to analyze tobacco samples for pesticide residue contamination shall follow precisely the USDA developed analytical test methods and all successive official method updates, as approved by the Director, Science Division.

### § 92.6 Cost for pesticide analysis set by cooperative agreement.

The fee for the pesticide analysis of tobacco is set by the Tobacco Division, in conjunction with the Science Division, and appears at § 29.500 as part of Tobacco Division's fees for sampling and certification of imported flue-cured and burley tobacco. A Memorandum of Understanding (MOU) exists between the Tobacco Division and the Science Division for the testing of imported tobacco samples for pesticide residue contamination, and the corresponding agreement on the cost of analyses is specified in this document.

## PART 93—PROCESSED FRUITS AND VEGETABLES

### Subpart A—Citrus Juices and Certain Citrus Products

Sec.

93.1 General.
93.2 Definitions.
93.3 Analyses available and location of laboratory.
93.4 Analytical methods.
93.5 Fees for citrus product analyses set by cooperative agreement.

### Subpart B—Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products

93.10 General.
93.11 Definitions.
93.12 Location of the laboratory for processed food products.
93.13 Analytical methods.
93.14 Fees for processed fruits and vegetables and related products.

### Subpart C—Peanuts, Tree Nuts, Corn and Other Oilseeds

93.100 General.
93.101 Definitions.
93.102 Analyses available and locations of laboratories.
93.103 Analytical methods.
93.104 Fees for aflatoxin testing.
93.105 Fees for analytical testing of oilseeds.

**Authority:** Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624)

## Subpart A—Citrus Juices and Certain Citrus Products

### § 93.1 General.

Domestic and imported citrus products are tested to determine whether quality and grade standards are satisfied as set forth in the Florida Citrus Code.

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**§ 93.2 Definitions.**

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Acid.* The grams of total acidity, calculated as anhydrous citric acid, per 100 grams of juice or citrus product. Total acidity is determined by titration with standard sodium hydroxide solution, using phenolphthalein as indicator.

*Brix or degrees Brix.* The percent by weight total soluble solids of the juice or citrus product when tested with a Brix hydrometer calibrated at 20° C (68° F) and to which any applicable temperature correction has been made. The Brix or degrees Brix may be determined by any other method which gives equivalent results.

*Brix/acid ratio.* The ratio of the degrees Brix of the juice to the grams of anhydrous citric acid per 100 grams of the juice.

*Brix value.* The refractometric sucrose value of the juice or citrus product determined in accordance with the "International Scale of Refractive Indices of Sucrose Solutions" and to which the applicable correction for acid is added. The Brix value is determined in accordance with the refractometric method outlined in the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

*Brix value/acid ratio.* The ratio of the Brix value of the juice or citrus product, in degrees Brix, to the grams of anhydrous citric acid per 100 grams of juice or citrus product.

*Citrus.* All plants, edible parts and commodity products thereof, including pulp and juice of any orange, lemon, lime, grapefruit, mandarin, tangerine, kumquat or other tree or shrub in the genera *Citrus, Fortunella,* or *Poncirus* of the plant family Rutaceae.

*Recoverable oil.* The percent of oil by volume, determined by the Bromate titration method as described in the current edition of the AOAC.

**§ 93.3 Analyses available and location of laboratory.**

(a) Laboratory analyses of citrus juice and other citrus products are being performed at the following Science Division location: Science Division Citrus Laboratory, 111 Third Street, SW, suite 211, Winter Haven, FL 33880.

(b) Laboratory analyses of citrus fruit and products in Florida are available in order to determine if such commodities satisfy the quality and grade standards set forth in the Florida Citrus Code (Florida Statutes Pursuant to chapter 601). Such analyses include tests for acid as anhydrous citric acid, Brix, Brix-acid ratio, recoverable oil, and artificial coloring matter additive, as turmeric. The Florida Division of Fruit and Vegetable Inspection may also request analyses for arsenic metal, pulp wash (ultraviolet and fluorescence), standard plate count, yeast with mold count, and nutritive sweetening ingredients as sugars.

(c) Additional laboratory tests are available upon request at the Science Division Citrus Laboratory at Winter Haven, Florida. Such analyses include tests for vitamins, naringin, sodium benzoate, *Salmonella,* protein, salt, pesticide residues, sodium metal, ash, potassium metal, and coliforms for citrus products.

**§ 93.4 Analytical methods.**

(a) The majority of analytical methods for citrus products are found in the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC).

(b) Other analytical methods for citrus products may be used as approved by the Director, Science Division.

**§ 93.5 Fees for citrus product analyses set by cooperative agreement.**

The fees for the analyses of fresh citrus juices and other citrus products shall be set by mutual agreement between the applicant, the State of Florida, and the Director, Science Division. A Memorandum of Understanding (MOU) or cooperative agreement exists presently with the AMS Science Division and the State of Florida, regarding the set hourly rate and the costs to perform individual tests on Florida citrus products, for the State.

## Subpart B—Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products

**§ 93.10 General.**

Analytical testing is performed for certain types of food products, including processed fruits and vegetables, as part of the determination of their grade or conformance of the product with applicable analytical requirements.

**§ 93.11 Definitions.**

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Processed product.* Any fruit, vegetable, or other food product covered under the regulations in this subpart which has been preserved by any recognized commercial process, including, but not limited to, canning, freezing, dehydrating, drying, the addition of chemical substances, or by fermentation.

*Quality.* The inherent properties of any processed product which determine the relative degree of excellence or desirability of such product. This includes the effects of preparation and processing, and may or may not include the effects of packing media, or added ingredients.

**§ 93.12 Location of the laboratory for processed food products.**

(a) The Science Division Midwestern Laboratory conducts the majority of laboratory analyses for processed food products to assure uniformity of analytical requirements and conformance with applicable military, Federal, or State government specifications. The wide array of analyses for processed food products are performed at the following location: USDA, AMS, Science Division, Midwestern Laboratory, 3570 North Avondale Ave., Chicago, IL 60618.

(b) The analyses available for processed fruits and vegetables and related products include ash, oil or fat, crude fiber, moisture, protein, specific gravity, daminozide and amitraz residues, ascorbic acid, quinic acid, methyl anthranilate, caffeine, calcium, brix, citric acid, and chlorinated hydrocarbon residues. In addition, chemical and physical analyses include extraneous materials, fumigants, pH, heavy metals and minerals, color, sodium, sugar profile, sulfur dioxide, vitamin A, bloom, non-volatile methylene chloride extract, sieve or particle size, water activity, Water Insoluble Inorganic Residues (WIIR) test, yellow onion test, and carbohydrates. Microbiological analyses for fruits and vegetables include standard plate counts, anaerobic bacterial plate counts, direct microscopic counts, coliforms, presumptive *Escherichia* coli, *Staphylococcus* aureus, *Salmonella,* Enterococci, psychrotrophic bacteria, *Bacillus,* and yeast with mold differential counts.

**§ 93.13 Analytical methods.**

The majority of analytical methods used for performing official analyses for processed food products are found in the following manuals:

(a) Official Analytical Methods of the American Spice Trade Association (ASTA), American Spice Trade Association, 580 Sylvan Avenue, PO Box 1267, Englewood Cliffs, NJ 07632.

(b) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, PO Box 3489, Champaign, IL 61826–3489.

(c) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(d) U.S. Army Individual Protection Directorate's Military Specifications, approved analytical test methods noted therein, U.S. Army Natick Research, Development and Engineering Center, Kansas Street, Natick, MA 01760–5017.

**§ 93.14 Fees for processed fruits and vegetables and related products.**

(a) The fee charged for any single laboratory analysis for processed fruits and vegetables is specified in the schedules of charges in paragraph (a) of § 91.37 of this subchapter.

(b) The hourly rate for any requested laboratory analysis not listed shall be the standard rate specified in § 91.37(b) of this subchapter.

## Subpart C—Peanuts, Tree Nuts, Corn and Other Oilseeds

**§ 93.100 General.**

Chemical analyses are performed to detect the presence of aflatoxin in lots of shelled peanuts and peanut products, as well as in other nuts and agricultural products. In addition, proximate chemical analyses for quality determination are performed on oilseeds.

**§ 93.101 Definitions.**

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Aflatoxin.* A toxic metabolite produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. The aflatoxin compounds fluoresce when viewed under UV light as follows: aflatoxin $B_1$ and derivatives with a blue fluorescence, aflatoxin $B_2$ with a blue-violet fluorescence, aflatoxin $G_1$ with a green fluorescence, aflatoxin $G_2$ with a green-blue fluorescence, aflatoxin $M_1$ with a blue-violet fluorescence, and aflatoxin $M_2$ with a violet fluorescence. These closely related molecular structures are referred to as aflatoxin $B_1$, $B_2$, $G_1$, $G_2$, $M_1$, $M_2$, $GM_1$, $B_{2a}$, $G_{2a}$, $R_o$, $B_3$, 1–$OCH_3B_2$, and 1–$CH_3G_2$.

*Peanuts.* The seeds of the legume *Arachis hypogaea*, and includes both inshell and shelled nuts.

*Peanut Administrative Committee (PAC).* The committee established under the U.S. Department of Agriculture Marketing Agreement for Peanuts, 7 CFR part 998, which administers the terms and provisions of this Agreement, including the aflatoxin control program for domestically produced raw peanuts, for peanut shellers.

*Peanut Marketing Agreement.* The agreement concerning the regulations and instructions set forth since July 12, 1965, by the Peanut Administrative Committee (30 FR 9402), for the marketing of peanuts entered into by handlers of domestically produced peanuts under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

*Seed.* Any vegetable or other agricultural plant ovule having an embryo that is capable of germinating to produce a plant.

**§ 93.102 Analyses available and locations of laboratories.**

(a) *Aflatoxin testing services.* The aflatoxin analyses for peanuts, other nuts, corn, and other oilseed products are performed at the following 9 locations for Science Division (SD) Aflatoxin Laboratories:

(1) USDA, AMS, SD, 1411 Reeves Street, Mail: P.O. Box 1368, Dothan, AL 36302.

(2) USDA, AMS, SD, 2705 Taft Street, Albany, GA 31707.

(3) USDA, AMS, SD, 610 North Main Street, Blakely, GA 31723.

(4) USDA, AMS, SD, 107 South Fourth Street, Madill, OK 73446.

(5) USDA, AMS, SD, 308 Culloden Street, Mail: P.O. Box 1130, Suffolk, VA 23434.

(6) USDA, AMS, SD, 200 West Washington Street, Mail: P.O. Box 488, Ashburn, GA 31714.

(7) USDA, AMS, SD, 301 West Pearl Street, Mail: P.O. Box 279, Aulander, NC 27805.

(8) USDA, AMS, SD, 42 North Ellis Street, Mail: P.O. Box 548, Camilla, GA 31730.

(9) USDA, AMS, SD, 715 North Main Street, Mail: P.O. Box 272, Dawson, GA 31742.

(b) *Peanuts, peanut products, and oilseed testing services.* (1) The Science Division Aflatoxin Laboratories at Dothan, Alabama and Albany and Blakely, Georgia will perform other analyses for peanuts, peanut products, and a variety of oilseeds. The analyses for oilseeds include testing for free fatty acids, ammonia, nitrogen or protein, moisture and volatile matter, foreign matter, and oil (fat) content.

(2) All of the analyses described in paragraph (b)(1) of this section performed on a single seed sample are billed at the rate of one hour per sample. Any single seed analysis performed on a single sample is billed at the rate of one-half hour per sample. The standard hourly rate shall be as specified in § 91.37, paragraph (b).

(c) *Vegetable oil testing services.* The analyses for vegetable oils are performed at the Science Division Midwestern Laboratory, as indicated in § 93.12, paragraph (a). The analyses for vegetable oils will include the flash point test, smoke point test, acid value, peroxide value, phosphorus in oil, and specific gravity. The fee charged for any single laboratory analysis for vegetable oils shall be obtained from the schedules of charges in paragraph (a) of § 91.37 of this subchapter.

**§ 93.103 Analytical methods.**

Official analyses for peanuts, nuts, corn, oilseeds, and related vegetable oils are found in the following manuals and forthcoming revisions:

(a) Analyst's Instruction for Aflatoxin (November 1991), SD Instruction No. 1, USDA, Agricultural Marketing Service, Science Division, South Agriculture Building, 14th & Independence Avenue, SW., P.O. Box 96456, Washington, DC 20090–6456.

(b) Official Methods and Recommended Practices of the American Oil Chemists' Society (AOCS), American Oil Chemists' Society, 1608 Broadmoor Drive, P.O. Box 3489, Champaign, IL 61826–3489.

(c) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(d) Standard Analytical Methods of the Member Companies of Corn Industries Research Foundation, Corn Refiners Association (CRA), suite 1120, 1100 Connecticut Avenue, NW. Washington, DC 20036.

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**§ 93.104 Fees for aflatoxin testing.**

(a) The fee charged for any single laboratory analysis for aflatoxins shall be obtained from the schedules of charges in paragraph (a) of § 91.37 of this subchapter.

(b) The charge for the aflatoxin testing of raw peanuts under the Peanut Marketing Agreement for subsamples 1–AB, 2–AB, 3–AB, and 1–CD is a set cost per pair of analyses and shall be set by cooperative agreement between the Peanut Administrative Committee and AMS Science Division.

(c) The charge for any requested laboratory analysis for aflatoxins not listed shall be based on the standard hourly rate specified in § 91.37(b) of this subchapter.

**§ 93.105 Fees for analytical testing of oilseeds.**

(a) The fee charged for any single laboratory analysis for oilseeds shall be obtained from the schedules of charges in paragraph (a) of § 91.37 of this subchapter.

(b) The charge for any requested laboratory analysis for oilseeds not listed shall be based on the standard hourly rate specified in § 91.37(b) of this subchapter.

## PART 94—POULTRY AND EGG PRODUCTS

### Subpart A—Mandatory Analyses of Egg Products

Sec.
94.1 General.
94.2 Definitions.
94.3 Analyses performed and locations of laboratories.
94.4 Analytical methods.
94.5 Charges for laboratory service.

### Subpart B—Voluntary Analyses of Egg Products

94.100 General.
94.101 Definitions.
94.102 Analyses available.
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94.104 Fees and charges.

### Subpart C—Salmonella Laboratory Recognition Program

94.200 [Reserved]

### Subpart D—Processed Poultry Products

94.300 General.
94.301 Definitions.
94.302 Analyses available and locations of laboratories.
94.303 Analytical methods.
94.304 Fees and charges.

**Authority:** Secs. 2–28 of the Egg Products Inspection Act (84 Stat. 1620–1635; 21 U.S.C. 1031–1056), Agricultural Marketing Act of 1946, Secs. 202–208 as amended (60 Stat. 1087–1091; 7 U.S.C. 1621–1627).

### Subpart A—Mandatory Analyses of Egg Products

**§ 94.1 General.**

Microbiological, chemical, and physical analysis of liquid, frozen, and dried egg products is performed under authority of the Egg Products Inspection Act (21 U.S.C. 1031–1056).

**§ 94.2 Definitions.**

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Egg.* The shell egg of the domesticated chicken, turkey, duck, goose, or guinea. Some of the terms applicable to shell eggs are defined by the Poultry Division in § 59.5.

*Egg product.* Any dried, frozen, or liquid eggs, with or without added ingredients. However, products which contain eggs only in a relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry may be exempted by the Secretary under such conditions as may be prescribed to assure that the egg ingredients are not adulterated and such products are not represented as egg products. Some of the products exempted as not being egg products are specified by the Poultry Division in § 59.5.

*Mandatory sample.* An official sample of egg product(s) taken for testing under authority of the Egg Products Inspection Act (21 U.S.C. 1031–1056) for analysis by a U.S. Department of Agriculture, Agricultural Marketing Service, Science Division laboratory at government expense. A mandatory sample shall include an egg product sample to be analyzed for microbiological, chemical, or physical attributes.

*Official plant.* Any plant, as determined by the Secretary, at which the U.S. Department of Agriculture maintains inspection of the processing of egg products under the authority of the Egg Products Inspection Act.

*Pasteurize.* The subjecting of each particle of egg products to heat or other treatments to destroy harmful viable microorganisms by such processes as may be prescribed by the regulations in the EPIA.

*Pesticide chemical, food additive, color additive, and raw agricultural commodity.* These terms shall have the same meaning for purposes of this subpart as under sections 408, 409, and 706 of the Federal Food, Drug, and Cosmetic Act.

*Plant.* Any place of business where egg products are processed.

*Processing.* Manufacturing of egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products at official plants.

**§ 94.3 Analyses performed and locations of laboratories.**

(a) Samples drawn by a USDA egg products inspector will be analyzed by Science Division personnel for microbiological, chemical, and physical attributes. The analytical results of these samples will be reported to the resident egg products inspector at the applicable plant on the official certificate.

(b) Mandatory egg product samples for *Salmonella* are required and are analyzed in Division laboratories to spot check and confirm the adequacy of Division approved and recognized laboratories for analyzing routine egg product samples for *Salmonella*.

(c) Mandatory egg product samples for chlorinated hydrocarbons are required and are submitted by the plant inspectors on a random basis. These samples screen for pesticide residues and industrial chemical contaminants in egg products.

(d) Samples are drawn by a USDA egg products inspector to determine potential adulteration. These egg product samples may be analyzed for extraneous material, color, color additive, pesticide, heavy metal, microorganism, dextrin, or other substance.

(e) The Science Division's Eastern Laboratory shall conduct the majority of laboratory analyses for egg products. The analyses for mandatory egg product samples are performed at the following USDA location: USDA, AMS, Science Division, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054.

**§ 94.4 Analytical methods.**

The majority of analytical methods used by the USDA laboratories to perform mandatory analyses for egg products are listed as follows:

(a) Edwards, P.R. and W.H. Ewing, Edwards and Ewing's Identification of Enterobacteriaceae, Elsevier Science Publishing Co., Inc., 52 Vanderbilt Avenue, New York, NY 10017.

(b) Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples, U.S. Environmental Protection Agency (EPA), Environmental Toxicology Division, Health Effects Research Laboratory (HERL), Alexander Drive and

Highway 54, Mail Drop 51, Research Triangle Park, NC 27711.

(c) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(d) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Eighteenth Street, NW., Washington, DC 20036.

(e) Standard Methods for the Examination of Water and Wastewater, American Public Health Association (APHA), the American Water Works Association and the Water Pollution Control Federation, APHA, 1015 Eighteenth Street, NW., Washington, DC 20036.

(f) U.S. Food and Drug Administration Bacteriological Analytical Manual (BAM), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(g) U.S. Food and Drug Administration Pesticide Analytical Manuals (PAM), Volumes I and II, Food and Drug Administration, U.S. Department of Health and Human Services, 200 C Street, SW., Washington, DC 20204 (available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161).

### § 94.5 Charges for laboratory service.

The costs for analysis of mandatory egg product samples at Science Division laboratories shall be paid by annually appropriated and designated funds allocated to the egg products inspection program. The costs for any other mandatory laboratory analyses and testing of an egg product's identity and condition, necessitated by the Egg Products Inspection Act, shall also be paid by such program funding.

## Subpart B—Voluntary Analyses of Egg Products

### § 94.100 General.

Analyses for voluntary egg product samples may be requested to certify that specifications regarding stated identity, quality, and wholesomeness are met; to test routinely for the presence of *Salmonella;* and to ensure laboratory quality control with testing activities.

### § 94.101 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

*Certification sample.* An egg product sample submitted by an applicant for chemical, physical, or microbiological analyses and tests at a Science Division laboratory. This voluntary sample is analyzed or tested by the Division's analyst or scientist to certify that an egg product lot meets applicable specifications for identity, quality, and wholesomeness.

*Surveillance sample.* This is a 100 gram sample for *Salmonella* analysis that is drawn by the USDA egg product inspector from each lot of egg product processed at an official plant. This sample may be analyzed by a Science Division laboratory, or by a laboratory approved and recognized by the Division to analyze for *Salmonella* in egg products.

*Unofficial sample.* These samples of egg products are drawn by plant personnel upon the request of plant management. Analyses of these samples are usually conducted for the plant's refractometer correlation, bacteriological evaluation of production techniques, or quality control of procedures. Official plant or Science Division laboratories can analyze these samples.

### § 94.102 Analyses available.

A wide array of analyses for voluntary egg product samples is available. Voluntary egg product samples include surveillance, certification, and unofficial samples. The physical and chemical tests for voluntary egg products include analyses for total ash, fat by acid hydrolysis, moisture, salt, protein, beta-carotene, catalase, cholesterol, NEPA color, density, total solids, aflatoxin, daminozide and amitraz residues, BHA, BHT, alcohol, chlorinated hydrocarbon and fumigant residues, dextrin, heavy and light filth, glucose, glycerol and gums. In addition, egg products can be analyzed for high sucrose content, pH, heavy metals and minerals, monosodium dihydrogen phosphate, monosodium glutamate, nitrites, oxygen, palatability and odor, phosphorus, propylene glycol, SLS, and zeolex. There are also be tests for starch, total sugars, sugar profile, whey, standard plate count, direct microscopic count, *Campylobacter*, coliforms, presumptive *Escherichia* coli, *Listeria* monocytogenes, proteolytic count, psychrotrophic bacteria, *Salmonella*, *Staphylococcus*, thermoduric bacteria, and yeast with mold count.

### § 94.103 Analytical methods.

The analytical methods used by the Science Division laboratories to perform voluntary analyses for egg products shall be the same as listed in § 94.4.

### § 94.104 Fees and charges.

(a) The fee charged for any single laboratory analysis of voluntary egg product samples shall be obtained from the schedules of charges in paragraph (a) of § 91.37 of this subchapter.

(b) The charge for any requested laboratory analysis not listed shall be based on the standard hourly rate specified in § 91.37, paragraph (b).

## Subpart C—Salmonella Laboratory Recognition Program

### § 94.200 [Reserved]

## Subpart D—Processed Poultry Products

### § 94.300 General.

Laboratory services of processed poultry products are conducted to derive their analytical attributes used to determine the compliance of the product with applicable specifications.

### § 94.301 Definitions.

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Dark meat.* Refers to the skinless and deboned drumstick, thigh, and back portions of poultry.

*Light meat.* Refers to the skinless and deboned breast and wing portions of poultry.

*Poultry.* Any kind of domesticated bird, including, but not limited to, chicken, turkey, duck, goose, pigeon, and guinea.

*Poultry product.* Any ready-to-cook poultry carcass or part therefrom or any specified poultry food product.

### § 94.302 Analyses available and locations of laboratories.

(a) The Science Division laboratories will analyze processed poultry products for moisture, fat, salt, protein, nitrites, and added citric acid.

(b) Deboned poultry for roasting will have the individual dark meat, light meat, and skin portions tumbled separately in the natural juices prior to grinding. The skin, light meat, and dark meat portion weight percentages of the total product are determined. The ground skin, ground dark meat, and ground light meat portions will be analyzed separately for moisture, protein, salt, and fat. Moisture to protein ratios will be reported also for the individual portions of poultry.

(c) Canned boned poultry for a variety of USDA programs will be tested as a total can composite of the canned product for moisture, fat, salt, and protein analyses. Additional poultry commodities and related products for specific USDA sponsored programs will be tested for different chemical and physical attributes.

(d) Microbiological analyses, as the *Salmonella* determination, are available for poultry products.

(e) The majority of analyses for processed poultry products shall be performed at the Science Division Eastern Laboratory, as indicated in paragraph (e) of § 94.3.

**§ 94.303 Analytical methods.**

The analytical methods used by the USDA laboratories to perform analyses for processed poultry products are found in the latest edition of the Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, Suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

**§ 94.304 Fees and charges.**

(a) The fee charged for any single laboratory analysis of processed poultry products shall be obtained from the schedules of charges in paragraph (a) of § 91.37 of this subchapter.

(b) The laboratory analyses for processed poultry products shall result in an additional fee, found in Table 7 of § 91.37 of this subchapter, for sample preparation or grinding.

(c) The charge for any requested laboratory analysis of processed poultry products not listed shall be based on the standard hourly rate specified in § 91.37 (b) of this subchapter.

## PART 95—PROCESSED DAIRY PRODUCTS

Sec.

95.1 General.
95.2 Definitions.
95.3 Analyses available and location of laboratory.
95.4 Analytical methods.
95.5 Quality assurance programs.
95.6 Fees and charges.

**Authority:** Agricultural Marketing Act of 1946, secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627.

**§ 95.1 General.**

Analytical services of processed dairy products are conducted to derive their grade and quality, and to determine the compliance of the product with applicable specifications.

**§ 95.2 Definitions.**

Words used in the regulations in this part in the singular form will be deemed to import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed, respectively to mean:

*Approved laboratory.* A laboratory in which the facilities and equipment used for official testing have been approved by the Science Division Director as being adequate to perform the necessary official tests in accordance with this part, or the Milk Marketing Administrator laboratories and Resident Grader Dairy laboratories granted approval by the Dairy Division Director.

*Butter.* The food product usually known as butter, as defined in the Butter Act of 1923 (Pub. L. 519 of the 67th Congress).

*Cheese.* The fresh or matured product obtained by draining after coagulation of milk, cream, skimmed or partly skimmed milk, or a combination of some or all these products.

*Complete Kohman analysis.* Analysis used for moisture, fat, and salt determinations in butter and margarine. A weighed portion is heated to drive off the moisture and then reweighed to determine the moisture content. The fat is extracted using ether, and the remaining solids are weighed to determine fat content. The solids are then dissolved, and the salt content is determined by titration with standard silver nitrate solution.

*Concentrated milk, plain condensed milk or evaporated milk.* The liquid food obtained by removing water partially from milk.

*Corn-soya-milk.* A blended and formulated food consisting of corn meal, soybean flour, and nonfat dry milk that is enriched with vitamins and minerals.

*Curd.* The coagulated portion of milk, used in making cheese, or one of the components of butter.

*Cusum control chart.* The cusum chart is a graphical presentation of a cusum value representing variability or cumulative deviation, of individual test results with the means of the analytical data, from all participating and approved laboratories in the quality control study. It can detect a subtle trend and bias with a reported result as it is occurring for a particular analysis of an individual laboratory.

*Dairy products.* Butter, cheese (whether natural or processed), skim milk, cream, whey or buttermilk (whether dry, evaporated, stabilized or condensed), frozen desserts and any other food product which is prepared or manufactured in whole or in part or fractions from any of the aforesaid products, as the Administrator may hereafter designate.

*Dry milk.* The pasteurized product resulting from the removal of water from milk which contains lactose, milk proteins, milk fat, and milk minerals in the same relative proportions as in the fresh milk from which it is made.

*Percent curd.* The percentage for the proteinaceous substance, referred to as curd, is obtained in butter by difference. The sum of the percentages for moisture, fat, and salt is subtracted from 100, giving the percent of curd.

*Process cheese.* The cheese made by comminuting and mixing, with the aid of heat, one or more cheeses of the same or two or more varieties, with the addition of an emulsifying agent.

*Salt.* Refined sodium chloride meeting the requirements of the Food Chemical Codex.

*Sweetened condensed milk.* The liquid or semi-liquid food made by evaporating a mixture of milk and refined sugar (sucrose) or any combination of refined sugar (sucrose) and refined corn sugar (dextrose).

**§ 95.3 Analyses available and location of laboratory.**

(a) Some of the wide array of analyses for each product available are listed by the category of processed dairy product as follows:

(1) *Dry milk and related products:* Aflatoxin $M_1$, alkalinity of ash, antibiotic, ash, bacterial direct microscopic count, coliform count, density, dispersibility, fat, flavor, fortified Vitamin A, *Listeria* monocytogenes, moisture, oxygen, phosphatase, protein, *Salmonella, scorched particles, solubility index, Staphylococcus,* titratable acidity, and whey protein nitrogen.

(2) *Condensed milk and related products:* Aflatoxins $M_1$ and $M_2$, chlordane residue, extraneous material, fat, *Listeria* monocytogenes, sugar (sucrose), and total solids.

(3) *Cheese and related products:* Aflatoxin $M_1$, ash, calcium, extraneous material, fat, meltability (process cheese), moisture, nitrite, pH, phosphatase, pyrethrin residue, *Salmonella*, salt, and *Staphylococcus* aureus.

(4) *Butter and related products*: Acid degree value, coliform count, complete Kohman analysis, copper content, curd, enterococci count, fat, free fatty acid, iron content, moisture, peroxide value, pH, phosphatase, presumptive *Escherichia* coli, proteolytic count, salt, and yeast and mold.

(5) *Corn-soya-milk*: Bostwick (cooked), Bostwick (uncooked), crude fiber, density, fat, flavor, moisture, protein, and sieve test.

(b) The Science Division Midwestern Laboratory conducts the majority of laboratory analyses for processed dairy products to derive their analytical requirements used to determine the compliance of the product with applicable Federal or State government specifications. The location of this laboratory is as follows: USDA, AMS, Science Division, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618.

**§ 95.4 Analytical methods.**

The three analytical manuals used by the USDA laboratory to perform the majority of analyses for processed dairy products are listed as follows:

(a) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, VA 22201–3301.

(b) Standard Methods for the Examination of Dairy Products, American Public Health Association, 1015 Eighteenth Street, NW., Washington, DC 20036.

(c) U.S. Department of Agriculture's Instructions for Resident Grading Quality Control Service Programs and Laboratory Analysis, DA Instruction 918–RL, AMS, Dairy Division, Dairy Grading Section, PO Box 96456, Washington, DC 20090–6456.

**§ 95.5 Quality assurance programs.**

(a) Each month two different quality assurance (QA) check samples of nonfat dry milk will be sent by the Science Division (SD) to each applicable Dairy Division resident grader laboratory, as listed in the current edition of "Dairy Plants Surveyed and Approved for USDA Grading Service", USDA, AMS, Dairy Division, Washington, DC. Each month these approved resident grader laboratories will also receive a QA sample of butter from the SD Midwestern Laboratory. These QA dairy product samples shall be identified as proficiency check samples to the participants.

(b) The butter QA proficiency sample will be analyzed for fat, pH, salt, curd, and moisture. Both nonfat dry milk QA proficiency samples will be analyzed and evaluated for fat, moisture, titratable acidity, solubility index, scorched particles, Vitamin A, coliform, Standard Plate Count (SPC), Direct Microscopic Clump Count (DMCC), penicillin, whey protein nitrogen, flavor and grade.

(c) Each participating analyst will receive a monthly comparison of laboratory results in a report prepared by the director of the SD Midwestern Laboratory. All reported data will be statistically analyzed and individual laboratory outlier data will be highlighted in the report. The standard deviation and mean value of each statistically analyzed test result shall be included in the report. Copies of the report will be sent to the Dairy Division National Field office and the Dairy Division in Washington, DC.

(d) On-site laboratory reviews of the Dairy Division's resident grader laboratories shall be conducted. The purpose of the reviews by the Science Division is to assess continued conformance of each laboratory with method and equipment requirements of the USDA-approved procedures for testing of processed dairy products. During the visit, the reviewer completes a checklist on the procedures used, physical facilities, equipment, materials used, records kept, and quality assurance, as well as other areas of a laboratory's operation.

**§ 95.6 Fees and charges.**

(a) The fee charged for any single laboratory analysis of processed dairy products shall be obtained from the schedules of charges in paragraph (a) of § 91.37 of this subchapter.

(b) The charge for any requested laboratory analysis of processed dairy products not listed shall be based on the standard hourly rate specified in § 91.37, (b) of this subchapter.

## PART 96—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (CHEMICAL ANALYSIS AND UNITED STATES OFFICIAL GRADE CERTIFICATION)

**Subpart A—Cottonseed Chemists—Licensing Regulations**

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**Authority:** Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, 1090, as amended, (7 U.S.C. 1622, 1624).

**Subpart A—Cottonseed Chemists—Licensing Regulations**

**Scope**

**§ 96.1 General.**

Licenses are issued to chemists of laboratories involved in the grading of cottonseed. A chemist that has passed examinations for analyst proficiency and for official standards used for grading shall be issued a license to perform quality analyses for grade determinations of cottonseed.

**Definitions**

**§ 96.2 Terms defined.**

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Blind check sample.* A sample designated to check the routine analytical testing performance of the licensed USDA cottonseed chemist. The cottonseed is originally mixed in bulk quantities at a Division laboratory and packaged so that it is a representative portion for the samples forwarded to all chemists in a region under a certain number code. An oil mill representative and official cottonseed sampler repackage and identify the cottonseed as an official sample so that it would be blind or unknown as a check sample to the analyst.

*Commercial laboratory.* A chemical laboratory operated by an individual, firm, or corporation in which one or more persons are engaged in the chemical analysis of materials for the public.

*Cotton gin.* The machine or device used to separate the cotton fiber from the cottonseed.

*Cottonseed.* The word "cottonseed" as used in this part means the seed, after having been put through the usual and customary process known as cotton ginning, of any cotton produced within the continental United States.

*Dispute.* A disagreement between parties as to the true grade of a sample of cottonseed analyzed and graded by a licensed chemist.

*License.* A license issued under the Act by the Secretary.

*Licensed cottonseed chemist.* A person licensed under the Act by the Secretary to make quantitative and qualitative chemical analyses of official samples of cottonseed, according to the methods prescribed by the Director of the Division, and to certify the grade according to the official cottonseed standards of the United States.

*Licensed cottonseed sampler.* A person licensed by the Secretary to draw and to certify the authenticity of samples of cottonseed in accordance with the regulations in this subpart.

*Lot.* That parcel or quantity of cottonseed, offered for sale or tendered for delivery, or delivered on a sale or contract of sale, in freight cars, trucks, wagons, or otherwise in the quantities and within the time limits, prescribed from time to time by the Director of the AMS Cotton Division, for the drawing and preparation of official samples by licensed cottonseed samplers.

*Official cottonseed standards.* The official standards of the United States for the grading, sampling, and analyzing of cottonseed sold or offered for sale for crushing purposes, established May 23, 1932, and amendments thereto.

*Official sample.* A specimen of not less than 2 pounds of cottonseed, drawn and prepared by a licensed cottonseed sampler and certified as representative of a certain identified lot, in accordance with the regulations in this subpart.

*Owner.* A person who through financial interest owns or controls, or has the disposition of either cottonseed or of samples of cottonseed.

*Society.* The American Oil Chemists' Society (AOCS), P.O. Box 3489, 1608 Broadmoor Drive, Champaign, IL 61826–3489.

*Supervisor of cottonseed chemists.* An officer of the Science Division designated as such by the Director.

## Licensed Cottonseed Chemists

### § 96.3 Application for license as cottonseed chemist; form.

(a) Application for a license to analyze and grade cottonseed shall be made to the Director on a form furnished for the purpose by the Science Division.

(b) Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by satisfactory evidence:

(1) That the applicant is at least 25 years of age and that the applicant is an actual resident of the continental United States;

(2) That the applicant holds a degree in chemistry or chemical engineering from a recognized college or university, and has had not less than 3 years practical experience in laboratory work, in which the applicant shall have analyzed quantitatively and qualitatively samples of cottonseed; or in the absence of a degree from a recognized college or university, that the applicant has had at least 5 years practical laboratory experience, 3 years of which shall have been devoted chiefly to the analysis of samples of cottonseed;

(3) That the applicant has no financial interest, or is in the employ of anyone having a financial interest in any cottonseed oil mill or cotton ginning establishment;

(4) That the applicant agrees to comply with and abide by the terms of the Act and these regulations so far as they may relate to him or her;

(5) That the applicant is an independent analytical chemist or an employee of a commercial analytical laboratory; and

(6) That the applicant owns or will have the use of all of the apparatus specified in the regulations, established hereunder for the analysis and grading of cottonseed.

(c) Every chemist licensed hereunder to analyze cottonseed and to certify the grade thereof shall comply with the Society's official analytical test methods and other methods of analysis approved by the Director.

(d) The applicant shall furnish such additional information, as the Director shall at any time find to be necessary, to the consideration of the submitted application.

(e) Upon receipt of an incomplete or improperly executed application, the applicant will be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application will be considered as having been abandoned.

### § 96.4 Examination of applicant.

Each applicant for a license as a chemist and each licensed chemist shall, when requested, submit to a practical examination and written test, to show an ability to analyze and grade cottonseed. These examinations can only be administered by the supervisor of cottonseed chemists. The chemist's failure to pass such tests may be considered sufficient ground for withholding the issuance of a license or of a renewal of a license.

### § 96.5 Period of license; renewals.

The period for which a license may be issued shall be from the first day of August, until, and including the 31st day of July, following. Renewals shall be for not more than 1 year beginning with the first day of August of each year, provided that licenses issued on and after June 1 of any year shall be for the period ending on July 31 of the following year.

### § 96.6 Conditions in licensing.

(a) It shall be a condition of the licensing of any person and of the retention by him or her of a license, that during the active cotton season each year, the licensee shall be engaged in or in connection with the grading of cottonseed; that each cottonseed sample offered for grading shall be analyzed and grade certified by the licensee, in accordance with the official cottonseed standards of the United States; and that the USDA license of the cottonseed chemist shall not be used or be allowed to be used for any improper purpose.

(b) A USDA licensed cottonseed chemist shall be required to participate in each quality assurance program and each collaborative study for the analytical testing of cottonseed as follows:

(1) The licensed chemist must participate in the American Oil Chemists' Society (AOCS) cottonseed series which requires the testing of 10 known cottonseed samples per year for foreign matter, moisture, free fatty acids, oil, and ammonia.

(2) The licensed chemist must analyze and issue a grade for 10 blind cottonseed check samples per year from the Science Division. These blind check samples will be submitted as "official" samples.

(3) The chemist shall participate in all collaborative cottonseed analytical method validation studies, initiated by the Division Director.

(c) Each licensed chemist shall keep his or her license conspicuously posted

at the place where he or she functions as a chemist, or in such other place as may be approved by the Division Director.

(d) Each licensed chemist must pay in a timely manner an annual licensing renewal fee and other charges and fees assessed by the Division, as listed in §§ 96.20 and 96.21. In the event the chemist fails to pay the annual license renewal fee by the 31st day of August, the chemist will be sent a written notice of a 7-day review by the Director for the suspension of his or her license.

**§ 96.7 Sustained proficiency; suspension of license of cottonseed chemist.**

(a) Sustained proficiency in the analysis of the two check sample series is required to maintain a license. If a licensed chemist fails to perform satisfactorily during a 1 year period on either the AOCS or the USDA check cottonseed series, the chemist shall be placed on probation for 1 year, providing that the person achieves a passing score (90 or higher) on a retake of the proficiency examination. In the event that the chemist fails the examination, he or she may be subject to an immediate suspension of the license.

(b) Failure to perform satisfactorily with either quality assurance program during a 1 year probationary period may also result in suspension of the license.

(c) Pending final action by the Director to suspend a license of a cottonseed chemist, a written notice of such suspension shall be given to the respective licensee, accompanied by a statement of the reasons therefore. Within 7 days after receipt of notice and statement of reasons by a licensee, an appeal may be filed in writing with the Director supported by any argument or evidence as to why the license should not be suspended. After expiration of the 7-day period and consideration of such argument and evidence, the Director shall take such action, as deemed appropriate, with respect to a suspension.

(d) Upon termination of service as a cottonseed chemist or suspension of such license, such licensee shall surrender the license immediately to the supervisor of the cottonseed chemists.

(e) The minimum period of license suspension for a cottonseed chemist shall be 1 year, after which the chemist may reapply and be reexamined for a USDA license.

(f) At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the suspension period shall be endorsed thereon and returned to the licensed chemist to whom it was originally issued.

**§ 96.8 Annual review of licensed chemist.**

Each licensed chemist shall be subject to an annual on-site review, by the supervisor of the cottonseed chemists, to assess the chemist's continued conformance with procedure and equipment requirements of official analytical test methods.

**§ 96.9 Fees for grading and certification.**

Whenever any licensed chemist shall grade and/or certify any cottonseed or samples for a fee, the fee charged shall be reasonable, unconditional, nondiscriminatory, and shall be in accordance with a schedule previously submitted to and approved by the Division. The schedule shall include the certificate fee provided for in § 96.21.

**§ 96.10 Records of analyses; inspection of certificate recordkeeping.**

(a) Certificate recordkeeping responsibilities. The laboratory shall have an adequate system for the numbering and accounting of issued official cottonseed certificates. Provisions shall be made for consecutively numbering all cottonseed grade certificates issued and listing in a separate journal certificate numbers with the sample identification for accurate billing.

(b) Retention of records for inspection. Each licensed chemist, shall keep, or shall cause to be kept for him or her, for a period of at least 3 years after date of analysis, a record of the analysis of each individual sample of cottonseed graded by the licensee.

(c) Each licensed chemist shall permit any authorized officer or agent of the Department to inspect or examine, on any business day during normal business hours, books and records relating to analyses of cottonseed samples and issuance of cottonseed grade certificates under the Act and the regulations in this subpart.

**§ 96.11 Official and unofficial samples; analyses; certificate.**

(a) Each licensed cottonseed chemist shall designate a certificate number from a series of assigned numbers to each official sample of cottonseed as received and shall analyze and certify over his or her signature the grade of each sample or lot of cottonseed in the order of its receipt.

(b) Each such sample which is in proper condition for analysis under these regulations and which is accompanied by the certificate of a licensed cottonseed sampler certifying it to be an official sample that represents an identified lot of cottonseed shall be considered an official sample. In any case where the original sample is lost or destroyed before analysis, the duplicate thereof, retained by the licensed cottonseed sampler, as provided in § 61.34 of this subchapter, shall become the official sample. Each licensed chemist shall retain for at least 2 weeks a portion of each official sample first analyzed; and in any case where a review is requested under § 61.8 of this subchapter, such retained portion shall be considered an official sample for purposes of review analysis.

(c) Each such sample which is: (1) Not sufficient for proper analysis as an official sample under these regulations, or

(2) Not accompanied by a certificate of a licensed cottonseed sampler, or

(3) Not believed to be samples of the same seed represented by an official sample (except duplicates or lost or destroyed official samples) shall be considered an unofficial sample and the licensed cottonseed chemist's certificate of the grade thereof shall be plainly marked: "Sample not official; grade applies to sample only." This paragraph shall not apply to mill control or crush samples.

**§ 96.12 Unlicensed persons shall not analyze and certify the grade of official samples.**

(a) No person shall in any way represent that he or she is a chemist licensed under the Act, unless that person holds a license issued under the Act. Title 18 U.S.C. 1001, Crimes and Criminal Procedures, makes it a criminal offense to knowingly and willfully make such false representations.

(b) Only licensed chemists shall analyze and certify the grade of official cottonseed samples.

**§ 96.13 Grade certificate; form.**

Each grade certificate issued under the Act by a licensed chemist shall be in a form, approved for the purpose by the Director and shall embody within its written or printed terms:

(a) The caption "Cottonseed Grade Certificate."

(b) The serial number assigned to it.

(c) The date and place of issuance.

(d) A statement certifying that the analysis of the cottonseed sample was made according to the methods approved by the Director of the Division and that the grade given is according to the official standards of the United States.

(e) A statement of the condition of the lot of cottonseed as reported by the sampler, and in cases where the sample was submitted by a licensed sampler,

the name and license number of the sampler.

(f) The identification of each lot of cottonseed by the marks and notations by which the seed was identified at the time the sample was taken, and the origin of the cottonseed by county and State.

(g) All analytical data required by the Director.

(h) The signature and license number of the chemist. In addition, the grade certificate may include any other matter consistent with the Act or the regulations in this part. Two copies of the grade certificate form shall be submitted to and approved by the Division, before use by a licensed chemist. A copy of each certificate shall be mailed to a designated office of the Division within 36 hours after its issuance.

**§ 96.14 Reports of licensed chemists.**

Each licensed chemist shall periodically, when requested by the Director, make reports on forms furnished for the purpose by the Division, concerning the activities as such licensed chemist.

**§ 96.15 Information of violations.**

Whenever any person licensed under this part becomes aware of information relating to the violation of the Act or these regulations, such person shall inform the Director of the Division of the alleged violations.

**§ 96.16 Licensed chemists; suspension or revocation of license.**

The Director may, without a hearing, suspend or revoke the license issued to a licensed chemist upon written request and a satisfactory statement of reasons submitted by such licensed chemist. Pending final action by the Secretary, the Director may, whenever such action is deemed necessary, suspend or revoke the license of any licensed chemist when such licensed chemist:

(a) Has ceased to perform services as such chemist;

(b) Has knowingly or carelessly analyzed cottonseed improperly;

(c) Has violated or evaded any provision of the Act or the regulations so far as they relate to the licensee;

(d) Has used the license or allowed it to be used for any fraudulent or improper purposes; or

(e) Has in any manner become incompetent or incapacitated to perform the duties of a licensed chemist.

In such cases the Director shall give written notice of the suspension or revocation to the licensed chemist, accompanied by a statement of the reasons therefor. Within 10 days after the receipt of the aforesaid notice and statement of reasons by such licensee, the individual may file an appeal, in writing, with the Secretary, supported by any argument or evidence that the licensee may wish to offer, as to why the license should not be suspended or revoked. After the expiration of the aforesaid 10-day period and consideration of such argument and evidence, the Secretary will take such action as is deemed appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 10 days, the license shall be automatically suspended or revoked.

**§ 96.17 Revoked license to be returned to Division.**

If a license issued to a licensed chemist is revoked, such license shall be returned to the Division.

**§ 96.18 Duplicate license.**

Upon satisfactory proof of the loss or destruction of a license issued to a licensed chemist, a duplicate thereof may be issued under the same or a new number.

**§ 96.19 Information on grading to be kept confidential.**

Every person licensed under the Act as a licensed chemist shall keep confidential all information secured by the licensee, relative to cottonseed analyzed and graded by the licensee. The licensee shall not disclose such information to any person, except to the owner or custodian of the seed in question, or to an authorized agent of the Department.

**Fees and Charges**

**§ 96.20 Fee for chemist's license.**

(a) The fee for the examination of an applicant for a license as a chemist to analyze and certify the grade of cottonseed shall be $1100.00.

(b) The examination fee shall be paid at the time the application is filed or at a time prior to the administration of the examinations. This fee shall be paid regardless of the outcome of the licensing examinations. The examination fee shall be nonrefundable to the applicant; however, in the evident of death of the applicant prior to the examination, full payment of the fee may be returned to the applicant's beneficiary. If an application is filed with an insufficient fee, the application and fee submitted will be returned to the applicant.

(c) For each renewal of a chemist's license, the fee shall be $275.00.

**§ 96.21 Fee for certificates to be paid by licensees to Service.**

(a) To cover the cost of administering the regulations in this part, each licensed cottonseed chemist shall pay to the Service $3.00 for each certificate of the grade of cottonseed issued by the licensee.

(b) Upon receipt of a statement from the Service each month, showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA."

**§ 96.22 Fees for the review of grading of cottonseed.**

For the review of the grading of any lot of cottonseed, the fee shall be $60.00. Remittance to cover such fee, in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA" shall accompany each application for review. For each such fee collected, $20.00 shall be disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

**Subpart B—Official Cottonseed Grade Calculations**

**§ 96.23 General.**

Using methods prescribed by the Science Division, the licensed cottonseed chemist makes quantitative and qualitative chemical analyses, certificating the grade according to the official cottonseed standards of the United States.

**§ 96.24 Definitions, cottonseed quality analysis terms.**

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Cottonseed quality analysis.* In determining the quality of cottonseed, testing is performed by licensed chemists for total composition of oil, ammonia, moisture, free fatty acids, and foreign matter. These individual analytical factors of cottonseed samples are combined to form indexes of quantity and quality, which in turn are used to determine the official grade of cottonseed, in accordance with the United States Official Standards for Grades.

*Foreign matter.* The foreign matter in cottonseed includes boll portions, sand, dirt, stones or gravel, hulls, leaves, stems, unginned locks of cotton, lint

cotton, immature seeds, and any noncotton extraneous material.

*Official grade.* The official grade is the product of the quantity index times the quality index, and it is determined by a representative official sample of cottonseed, graded by a licensed chemist under the supervision of the United States Department of Agriculture. The base grade for cottonseed is 100.0.

*Quality index.* The quality index measures the deterioration of cottonseed in oil and meal and takes into account the excesses of moisture, foreign matter and free fatty acids.

*Quantity index.* The quantity index measures the oil and cake or meal in the cottonseed and takes into account variations in the quantity of oil and ammonia.

**§ 96.25 Determination of grade.**

The grade of cottonseed shall be determined from the analysis of samples, and it shall be the result, stated in the nearest whole or half numbers, obtained by multiplying a quantity index by a quality index and dividing the result by 100. The quantity index and the quality index shall be determined as hereinafter provided.

(a) The basis grade of cottonseed shall be grade 100.

(b) High grades of cottonseed shall be those grades above 100.

(c) Low grades of cottonseed shall be those grades below 100.

(d) Grades for American Pima cottonseed shall be suffixed by the designation "American Pima" or by the symbol "AP."

**§ 96.26 Determination of quantity index.**

The quantity index of cottonseed shall be determined as follows:

(a) For Upland cottonseed, the quantity index shall equal four times the percentage of oil, plus six times the percentage of ammonia, plus five.

(b) For American Pima cottonseed, the quantity index shall equal four times the percentage of oil, plus six times the percentage of ammonia, minus ten.

**§ 96.27 Determination of quality index.**

The quality index of cottonseed shall be an index of purity and soundness, and shall be determined as follows:

(a) *Prime quality cottonseed.* Cottonseed, that by analysis, contains not more than 1.0 percent of foreign matter, not more than 12.0 percent of moisture, and not more than 1.8 percent of free fatty acids in the oil in the seed, shall be known as prime quality cottonseed and shall have a quality index of 100.

(b) *Below prime quality cottonseed.* The quality index of cottonseed that, by analysis, contains foreign matter, moisture, or free fatty acids in the oil in the seed, in excess of the percentages prescribed in paragraph (a) of this section, shall be found by reducing the quality index of prime quality cottonseed as follows:

(1) Four-tenths of a unit for each 0.1 percent of free fatty acids in the oil, in the seed, in excess of 1.8 percent.

(2) One-tenth of a unit for each 0.1 percent of foreign matter in excess of 1.0 percent.

(3) One-tenth of a unit for each 0.1 percent of moisture in excess of 12.0 percent.

(c) *Off quality cottonseed.* Cottonseed that has been treated by either mechanical or chemical process other than the usual cleaning, drying, and ginning (except sterilization required by the United States Department of Agriculture for quarantine purposes) or that are fermented or hot, or that upon analysis are found to contain 12.5 percent or more of free fatty acids, in the oil, in the seed, or more than 10.0 percent of foreign matter, or more than 20.0 percent of moisture, or more than 25.0 percent of moisture and foreign matter combined, shall be designated as "off quality cottonseed."

(d) *Below grade cottonseed.* Cottonseed, the grade of which, when calculated according to § 96.25 is below grade 40.0, shall be designated as "below grade cottonseed," and a numerical grade shall not be indicated.

**§ 96.28 Calculation of grades of official samples.**

(a) Data on certificates of official cottonseed analyses shall be expressed as follows:

Foreign Matter to—0.1 percent
Oil to—0.1 percent
Ammonia to—0.01 percent
Free Fatty Acid, when 5% or under, to—0.1 percent
Free Fatty Acid, when over 5%, to—0.5 percent
Quantity Index to—0.01 percent
Quality Index to—0.1 percent

(b) Grade to whole or half units, whichever actual calculation is nearest shall be determined as follows:

(1) The calculation of grades shall be made by the method of disregarding the figures to the right of the second decimal place.

(2) Calculated grades ending with .2500 through .7499 will be considered to be in the .25 through .74 range, and will be reported to the nearest half grade.

(3) Calculated grades ending with .7500 through .2499 will be considered to be in the .75 through .24 range, and will be reported to the nearest whole grade.

**§ 96.29 Analysis and certification of samples and grades.**

The certification of samples of cottonseed, and the analysis and certification of grades of cottonseed shall be performed in accordance with methods, approved from time to time for the purposes by the Director, or a designated representative.

## PART 97—PLANT VARIETY AND PROTECTION

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**Authority:** Secs. 6, 22, 23, 26, 31, 42 (b), 43, 56, 57, 91 (c), Plant Variety Protection Act, 84 Stat. 1542; 7 U.S.C. 2321, 2326, 2352, 2353, 2356, 2371, 2402 b, 2403, 2426, 2427, 2501 (c); 29 FR 16210, as amended, 37 FR 6327, 6505; 7 U.S.C. 2371.

## Scope

### § 97.1 General.

Certificates of protection are issued by the Plant Variety Protection office for novel varieties of sexually reproduced plants. Each certificate of plant variety protection certifies that the breeder has the right, during the term of the protection, to prevent others from selling the variety, offering it for sale, reproducing it, importing or exporting it, or using it in producing a hybrid or different variety from it, as provided by the Act.

## Definitions

### § 97.2 Meaning of words.

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. The definitions of terms contained in the Act shall apply to such terms when used in this part. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

*Abandoned application.* An application which has not been pursued to completion within the time allowed by the Office or has been voluntarily abandoned.

*Act.* The Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

*Administrator.* The Administrator of the Agricultural Marketing Service of the U.S. Department of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

*Applicant.* The person who applied for a certificate of plant variety protection.

*Application.* An application for plant variety protection under the Act.

*Assignee.* A person to whom an owner assigns his/her rights in whole or in part.

*Board.* The Plant Variety Protection Board appointed by the Secretary.

*Certificate.* A certificate of plant variety protection issued under the Act by the Office.

*Certified seed.* Seed which has been determined by an official seed certifying agency to conform to standards of genetic purity and identity as to variety, which standards have been approved by the Secretary.

*Commissioner.* The Examiner in Chief of the Office.

*Decision and order.* Includes the Secretary's findings of fact; conclusions with respect to all material issues of fact and law, as well as the reasons or basis therefor; and order.

*Examiner.* An employee of the Plant Variety Protection Office who determines whether a certificate is entitled to be issued. The term shall, in all cases, include the Commissioner.

*Foreign application.* An application for plant variety protection filed in a foreign country.

*Hearing Clerk.* The Hearing Clerk, U.S. Department of Agriculture, Washington, DC.

*Hearing Officer.* An Administrative Law Judge, U.S. Department of Agriculture, or other officer or employee of the Department of Agriculture, duly assigned to preside at a hearing held pursuant to the rules of this part.

*Hybrid.* It shall be defined as set forth in the regulations under the Federal Seed Act (Secs. 201.2(y) of this chapter).

*Office or Plant Variety Protection Office.* The Plant Variety Protection Office, Science Division, AMS, USDA.

*Official Journal.* The "Official Journal of the Plant Variety Protection Office."

*Owner.* A breeder who developed or discovered a variety for which plant variety protection may be applied for under the Act, or a person to whom the rights to such variety have been assigned or transferred.

*Person.* An individual, partnership, corporation, association, government agency, or other business or governmental entity.

*Secretary.* The Secretary of Agriculture of the United States or any other officer or employee of the U.S. Department of Agriculture, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his or her stead.

*Seed certifying agency.* It shall be defined as set forth in the Federal Seed Act (53 Stat. 1275).

*Sale for other than seed purposes.* The transfer of title to and possession of the seed by the owner to a grower or

other person, for reproduction for the owner, for testing, or for experimental use, and not for commercial sale of the seed or the reproduced seed for planting purposes.

**Administration**

**§ 97.3 Plant Variety Protection Board.**

(a) The Plant Variety Protection Board shall consist of 14 members appointed for a 2-year term. The Board shall be appointed every 2 years and shall consist of individuals who are experts in various areas of varietal development. The membership of the Board, which shall include farmer representation, shall be drawn approximately equally from the private or seed industry sector and from the government or public sector. No member shall be eligible to act on any matter involving any appeal or questions under section 44 of the Act, in which the member or his or her employer has a direct financial interest.

(b) The functions of the Board are to:

(1) Advise the Secretary concerning adoption of rules and regulations to facilitate the proper administration of the Act;

(2) Make advisory decisions on all appeals from the examiner or Commissioner;

(3) Advise the Secretary on the declaration of a protected variety open to use in the public interest; and

(4) Advise the Secretary on any other matters under the regulations in this part.

(c) The proceedings of the Board shall be conducted in accordance with the Federal Advisory Committee Act (Pub. L. 92–463), Administrative Regulations of the U.S. Department of Agriculture (7 CFR part 25), and such additional operating procedures as are adopted by members of the Board.

**The Application**

**§ 97.5 General requirements.**

(a) Protection under the Act shall be afforded only as follows:

(1) Nationals and residents of the United States shall be eligible to receive all of the protection under the Act.

(2) Nationals and residents of Member States of the International Union for the Protection of New Varieties of Plants shall be eligible to receive the same protection under the Act as is provided to nationals of the United States.

(3) Persons who are not entitled to protection under paragraph (a)(1) or (2) of this section, and who are nationals of a foreign state which is not a member of the International Union for the Protection of New Varieties of Plants, shall be entitled to only so much of the protection provided under the Act, as is afforded by such foreign state to nationals of the United States, for the same genus and species under the laws of such foreign state in effect at the time that the application for protection under the Act is filed, except where further protection under the Act must be provided in order to avoid the violation of a treaty to which the United States is a party.

(b) Applications for certificates shall be made to the Plant Variety Protection Office. An application shall consist of:

(1) A completed application form, except that the section specifying that seed of the variety shall be sold by variety name only, as a class of certified seed, need not be completed at the time of application.

(2) A completed set of the exhibits, as specified in the application form, unless the examiner waives submission of certain exhibits as unnecessary, based on other claims and evidence presented in connection with the application.

(3) Language and legibility: (i) Applications and exhibits must be in the English language and legibly written, typed or printed.

(ii) Any interlineation, erasure, cancellation, or other alteration must be made in permanent ink before the application is signed and shall be clearly initialed and dated by the applicant to indicate knowledge of such fact at the time of signing.

(4) To determine the extent of reciprocity of the protection to be provided under the Act, persons filing an application for plant variety protection in the United States under the provisions of paragraph (a)(3) of this section shall, upon request [1], furnish the Plant Variety Protection Office with a copy of the current plant variety protection laws and regulations for the country of which the applicant is a national, and an accurate English translation of such laws and regulations.

(c) Application and exhibit forms shall be issued by the Commissioner. (Copies of the forms may be obtained from the Plant Variety Protection Office, Science Division, AMS, USDA, room 500, National Agricultural Library Building, Beltsville, Maryland 20705.)

(d) Effective the date of these regulations and rules of practice, the signature of the applicant, or his or her agent or attorney on any affidavit or other statement filed pursuant to these regulations and rules constitutes a certification by the applicant. The signature certifies that all information relied on in any affidavit or statement filed in the course of the proceeding is knowingly correct and false claims have not been made to mislead.

[1] Copies and translations of foreign laws and regulations will be requested only if they are not in the files of the Plant Variety Protection Office. Applicants may learn whether such a request will be made by writing to the address given in paragraph (c) of this section or by calling (301) 344–2518.

**§ 97.6 Application for certificate.**

(a) An application for a plant variety protection certificate shall be signed by, or on behalf, of the applicant.

(b) The application shall state the full name, including the full first name and the middle initial or name, if any, and the capacity of the person executing it.

(c) The fees for filing an application, and search or examination, shall be submitted with the application in accordance with §§ 97.175 through 97.178.

(d) The applicant shall submit with the application at least 2,500 seeds of the viable basic seed required to reproduce the variety.

**§ 97.7 Statement of an applicant.**

(a) The applicant, by signing a completed application, states in accordance with section 42 of the Plant Variety Protection Act that:

(1) The applicant believes himself or herself, or his or her privies, to be the original and first breeder or discoverer of the variety for which a certificate is solicited;

(2) The applicant, or his or her privies, has sexually reproduced the variety;

(3) The applicant does not know and does not believe that the variety was ever a public variety before the date of determination;

(4) The applicant is a sole or joint owner of the variety;

(5) The variety was not a public variety more than 1 year prior to the effective filing date of the application;

(6) Before the date of determination of the variety by the owner, or his or her privies, or more than 1 year before the effective filing date of the application, the variety was not effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country, which description must include a disclosure of the principal characteristics by which the variety is distinguished; and

(7) The applicant, or his or her privies, have not offered for sale or marketed the variety, with the agreement of the breeder, in a foreign state for longer than 6 years in the case of vines, forest trees, fruit trees, and ornamental trees, including, in each case, their rootstocks, or for longer than 4 years, in the case of all other plants.

(b) If the same variety has been marketed with the agreement of either the applicant or his or her privies, the applicant shall state the names of the countries in which the variety was marketed, and give the day, month, and year of first marketing in each country.

(c) When an applicant files an application, cross-references to other related applications may be made, when appropriate.

**§ 97.8 Specimen requirements.**

(a) The applicant may be required by the examiner to furnish representative specimens of the variety, or its flower, fruit, or seeds, in a quantity and at a specified stage of growth, as may be necessary to verify the statements in the application. Such specimens shall be packed and forwarded in conformity with instructions furnished by the examiner. If the applicant requests the examiner to inspect plants in the field before a final decision is made, all such inspection costs shall be borne by the applicant by payment of fees sufficient to reimburse the Office for all costs, including travel, per diem or subsistence, and salary.

(b) Plant specimens submitted in support of an application shall not be removed from the Office except by an employee of the Office or other person authorized by the Secretary.

(c) Plant specimens submitted to the Office shall, except as provided below, and upon request, be returned to the applicant at his or her expense after the specimens have served their intended purpose. The Commissioner, upon a finding of good cause, may require that certain specimens be retained in the Office for indefinite periods of time. Specimens which are not returned or not retained as provided above shall be destroyed.

**§ 97.9 Drawings and photographs.**

(a) Drawings or photographs submitted with an application shall disclose the distinctive characteristics of the variety.

(b) Drawings or photographs shall be in color when color is a distinguishing characteristic of the variety, and the color shall be described by use of Nickerson's or other recognized color chart.

(c) Drawings should be sent flat, or may be sent in a suitable mailing tube, in accordance with instructions furnished by the Commissioner.

(d) Drawings or photographs submitted with an application shall be retained by the Office as part of the application file.

**§ 97.10 Parts of an application to be filed together.**

All parts of an application, including exhibits, should be submitted to the Office together, otherwise, each part shall be accurately and clearly referenced to the application.

**§ 97.11 Application accepted and filed when received.**

(a) An application, if materially complete when initially submitted, shall be accepted and filed to await examination.

(b) If any part of an application is so incomplete, or so defective that it cannot be handled as a completed application for examination, as determined by the Commissioner, the applicant will be notified. The application will be held a maximum of 6 months for completion. Applications not completed at the end of the prescribed period will be considered abandoned. The application fee in such cases will not be refunded.

**§ 97.12 Number and filing date of an application.**

(a) Applications shall be numbered and dated in sequence in the order received in the Office. Applicants will be informed in writing as soon as practicable of the number and effective filing date of the application.

(b) An applicant may claim the benefit of the filing date of a prior foreign application in accordance with section 55 of the Act. A certified copy of the foreign application shall be filed upon request made by the examiner. If a foreign application is not in the English language, an English translation, certified as accurate by a sworn or official translator, shall be submitted with the application.

**§ 97.13 When the owner is deceased or legally incapacitated.**

In case of the death of the owner or if the owner is legally incapacitated, the legal representative (executor, administrator, or guardian) or heir or assignee of the deceased owner may sign as the applicant. If an applicant dies between the filing of his or her application and the granting of a certificate thereon, the certificate may be issued to the legal representative, heir, or assignee, upon proper intervention.

**§ 97.14 Joint applicants.**

(a) Joint owners shall file a joint application by signing as joint applicants.

(b) If an application for certificate is made by two or more persons as joint owners, when they were not in fact joint owners, the application shall be amended prior to issuance of a certificate by filing a corrected application, together with a written explanation signed by the original applicants. Such statement shall also be signed by the assignee, if any.

(c) If an application has been made by less than all the actual joint owners, the application shall be amended by filing a corrected application, together with a written explanation, signed by all of the joint owners. Such statement shall also be signed by the assignee, if any.

(d) If a joint owner refuses to join in an application or cannot be found after diligent effort, the remaining owner may file an application on behalf of him or herself and the missing owner. Such application shall be accompanied by a written explanation and shall state the last known address of the missing owner. Notice of the filing of the application shall be forwarded by the Office to the missing owner at the last known address. If such notice is returned to the Office undelivered, or if the address of the missing owner is unknown, notice of the filing of the application shall be published once in the Official Journal. Prior to the issuance of the certificate, a missing owner may join in an application by filing a written explanation. A certificate obtained by less than all of the joint owners under this paragraph conveys the same rights and privileges to said owners as though all of the original owners had joined in an application.

**§ 97.15 Assigned novel varieties and certificates.**

In case the whole or a part interest in a variety is assigned, the application shall be made by the owner or one of the persons identified in § 97.13. However, the certificate may be issued to the assignee, or jointly to the owner and the assignee, when a part interest in a variety is assigned.

**§ 97.16 Amendment by applicant.**

An application may be amended before or after the first examination and action by the Office, after the second or subsequent examination or reconsideration as specified in § 97.107, or when and as specifically required by the examiner. Such amendment may include a specification that seed of the variety be sold by variety name only as a class of certified seed, if not previously specified or if previously declined. Once an affirmative specification is made, no amendment to reverse such a specification will be permitted unless the variety has not been sold and labeled or publication made in any manner that the variety is

to be sold by variety name, only as a class of certified seed.

**§ 97.17 Papers of completed application to be retained.**

The papers submitted with a completed application shall be retained by the Office except as provided in § 97.23(c). After issuance of a certificate of protection the Office will furnish copies of the application and related papers to any person upon payment of the specified fee.

**§ 97.18 Applications handled in confidence.**

(a) Pending applications shall be handled in confidence. Except as provided below, no information may be given by the Office respecting the filing of an application, the pendency of any particular application, or the subject matter of any particular application. Also, nor will access be given to or copies furnished of any pending application or papers relating thereto, without written authority of the applicant, or his or her assignee or attorney or agent. Exceptions to the above may be made by the Commissioner in accordance with 5 U.S.C. 552 and § 1.4 of this title, and upon a finding that such action is necessary to the proper conduct of the affairs of the Office, or to carry out the provisions of any Act of Congress, or as provided in sections 56 or 57 of the Act and § 97.19.

(b) Abandoned applications shall not be open to public inspection. However, if an abandoned application is directly referred to in an issued certificate and is available, it may be inspected or copies obtained by any person on written request, and with written authority received from the applicant. Abandoned applications shall not be returned.

(c) Decisions of the Commissioner on abandoned applications not otherwise open to public inspection (see paragraph (b) of this section) may be published or made available for publication at the Commissioner's discretion. When it is proposed to release such a decision, the applicant shall be notified directly or through the attorney or agent of record, and a time, not less than 30 days, shall be set for presenting objections.

**§ 97.19 Publication of pending applications.**

Information relating to pending applications shall be published in the Official Journal periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Official Journal shall show the:

(a) Application number and date of filing;

(b) The name of the variety or temporary designation;

(c) The name of the kind of seed; and

(d) Whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed, together with a limitation in the number of generations that it can be certified.

Additional information, such as the name and address of the applicant or a brief description of the novel features of the variety, may be published only upon request or approval received from the applicant, at the time the application is filed or at any time before the notice of allowance of a certificate is issued.

**§ 97.20 Abandonment for failure to respond within the time limit.**

(a) Except as otherwise provided in § 97.104, if an applicant fails to advance actively his or her application within 6 months after the date when the last request for action was mailed to the applicant by the Office, or within such longer time as may be fixed by the Commissioner, the application shall be deemed abandoned. The application fee in such cases will not be refunded.

(b) The submission of an amendment to the application, not responsive to the last request by the Office for action, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When the applicant makes a bona fide attempt to advance the application, and is in substantial compliance with the request for action, but has inadvertently failed to comply with some procedural requirement, opportunity to comply with the procedural requirement shall be given to the applicant before the application shall be deemed abandoned. The Commissioner may set a shortened period, not less than 30 days, to correct any deficiency in the application.

**§ 97.21 Extension of time for a reply.**

The time for reply by an applicant to a request by the Office for certain action, shall be extended by the Commissioner only for good and sufficient cause, and for a specified reasonable time. A request for extension shall be filed on or before the specified time for reply. In no case shall the mere filing of a request for extension require the granting of an extension or state the time for reply.

**§ 97.22 Revival of an application abandoned for failure to reply.**

An application abandoned for failure on the part of the applicant to advance actively his or her application to its completion, in accordance with the regulations in this part, may be revived as a pending application within 3 months of such abandonment, upon a finding by the Commissioner that the failure was inadvertent or unavoidable and without fraudulent intent. A request to revive an abandoned application shall be accompanied by a written statement showing the cause of the failure to respond, a response to the last request for action, and by the specified fee.

**§ 97.23 Voluntary withdrawal and abandonment of an application.**

(a) An application may be voluntarily withdrawn or abandoned by submitting to the Office a written request for withdrawal or abandonment, signed by the applicant or his or her attorney or agent of record, if any, or the assignee of record, if any.

(b) An application which has been voluntarily abandoned may be revived within 3 months of such abandonment by the payment of the prescribed fee and a showing that the abandonment occurred without fraudulent intent.

(c) An original application which has been voluntarily withdrawn shall be returned to the applicant and may be reconsidered only by refiling and payment of a new application fee.

**§ 97.24 Assignee.**

The assignee of record of the entire interest in an application is entitled to advance actively or abandon the application to the exclusion of the applicant.

## Examinations, Allowances, and Denials

**§ 97.100 Examination of applications.**

(a) [Reserved]

(b) Examinations of applications shall include a review of all available documents, publications, or other material relating to varieties of the species involved in the application, except that if there are fundamental defects in the application, as determined by the examiner, the examination may be limited to an identification of such defects and notification to the applicant of needed corrective action. However, matters of form or procedure need not, but may, be raised by an examiner until a variety is found to be novel and entitled to protection.

**§ 97.101 Notice of allowance.**

If, on examination, it shall appear that the applicant is entitled to a certificate, a notice of allowance shall be sent to the applicant or his or her attorney or agent of record, if any, calling for the payment of the prescribed fee, which fee shall be paid within 1 month from the date of

the notice of allowance. Thereafter, a fee for delayed payment shall be made as required under § 97.175.

**§ 97.102 Amendments after allowance.**

Amendments to the application, after the notice of allowance is issued, may be made, if the certificate has not been issued.

**§ 97.103 Issuance of a certificate.**

(a) After the notice of allowance has been issued, the prescribed fee is received by the Office, and the applicant has clearly specified whether or not the variety shall be sold by variety name only as a class of certified seed, the certificate shall be promptly issued. Once an election is made and a certificate issued specifying that seed of the variety shall be sold by variety name only as a class of certified seed, no waiver of such rights shall be permitted by amendment of the certificate.

(b) The certificate shall be delivered or mailed to the owner.

**§ 97.104 Application or certificate abandoned.**

(a) Except as provided in paragraph (c) of this section, if the fee specified in the notice of allowance is not paid within 1 month from the date of the notice, the application shall be considered abandoned.

(b) Upon request by the Office, the owner shall replenish the viable basic seed sample of the novel variety. Upon request, the sample of seed which has been replaced shall be returned to the owner, otherwise it shall be destroyed. Failure to replenish viable basic seed within 3 months from the date of request shall result in the certificate being regarded as abandoned. No sooner than 1 year after the date of such request, notices of abandoned certificates shall be published in the Official Journal, indicating that the variety has become open for use by the public and, if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

(c) If the allowance fee, the viable basic seed sample or the fee for delayed payment are submitted within 9 months of the final due date, it may be accepted by the Commissioner as though no abandonment had occurred. For good cause, the Commissioner may extend for a reasonable time the period for submitting a viable basic seed sample before declaring the certificate abandoned.

(d) A certificate may be voluntarily abandoned by the applicant or his or her attorney or agent of record or the assignee of record by notifying the Commissioner in writing. Upon receipt of such notice, the Commissioner shall publish a notice in the Official Journal that the variety has become open for use by the public, and if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

**§ 97.105 Denial of an application.**

(a) If the variety is found by the examiner to be not novel, the application shall be denied.

(b) In denying an application for want of novelty, the examiner shall cite the reasons the application was denied. When a reason involves the citation of certain material which is complex, the particular part of the material relied on shall be designated as nearly as practicable. The pertinence of each reason, if not obvious, shall be clearly explained.

(c) If prior domestic certificates are cited as a reason for denial, their numbers and dates and the names of the owners shall be stated. If prior foreign certificates or rights are cited, as a reason for denial, their nationality or country, numbers and dates, and the names of the owners shall be stated, and such other data shall be furnished, as may be necessary to enable the applicant to identify the cited certificates or rights.

(d) If printed publications are cited as a reason for denial, the author (if any), title, date, pages or plates, and places of publication, or place where a copy can be found shall be given.

(e) When a denial is based on facts known to the examiner, and upon request by the applicant, the denial shall be supported by the affidavit of the examiner. Such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

(f) Abandoned applications may not be cited as reasons for denial.

**§ 97.106 Reply by applicant; request for reconsideration.**

(a) After an adverse action by the examiner, the applicant may respond to the denial and may request a reconsideration, with or without amendment of his or her application. Any amendment shall be responsive to the reason or reasons for denial specified by the examiner.

(b) To obtain a reconsideration, the applicant shall submit a request for reconsideration in writing and shall specifically point out the alleged errors in the examiner's action. The applicant shall respond to each reason cited by the examiner as the basis for the adverse action. A request for reconsideration of a denial based on a faulty form or procedure may be held in abeyance by the Commissioner until the question of novelty is settled.

(c) An applicant's request for a reconsideration must be a bona fide attempt to advance the case to final action. A general allegation by the applicant that certain language which he or she cites in the application or amendment thereto establishes novelty without specifically explaining how the language distinguishes the alleged novel variety from the material cited by the examiner shall not be grounds for a reconsideration.

**§ 97.107 Reconsideration and final action.**

If, upon reconsideration, the application is denied by the Commissioner, the applicant shall be notified by the Commissioner of the reason or reasons for denial in the same manner as after the first examination. Any such denial shall be final unless appealed by the applicant to the Secretary within 60 days from the date of denial, in accordance with §§ 97.300–97.303. If the denial is sustained by the Secretary on appeal, the denial shall be final subject to appeal to the courts, as provided in § 97.500.

**§ 97.108 Amendments after final action.**

(a) After a final denial by the Commissioner, amendments to the application may be made to overcome the reason or reasons for denial. The acceptance or refusal of any such amendment by the Office and any proceedings relative thereto shall not relieve the applicant from the time limit set for an appeal or an abandonment for failure to reply.

(b) No amendment of the application can be made in an appeal proceeding. After decision on appeal, amendments can only be made to carry into effect a recommendation under § 97.302(b).

**Correction of Errors in Certificate**

**§ 97.120 Corrected certificate—office mistake.**

When a certificate is incorrect because of a mistake in the Office, the Commissioner may issue a corrected certificate stating the fact and nature of such mistake, under seal, without charge, to be issued to the owner and recorded in the records at the Office.

**§ 97.121 Corrected certificate—applicant's mistake.**

When a certificate is incorrect because of a mistake by the applicant of a clerical or typographical nature, or of minor character, or in the description of the variety (including, but not limited to, the use of a misleading variety name

or a name assigned to a different variety of the same species), and the mistake is found by the Commissioner to have occurred in good faith and does not require a further examination, the Commissioner may, upon payment of the required fee and return of the original certificate, correct the certificate by issuing a corrected certificate, in accordance with section 85 of the Act. If the mistake requires a reexamination, a correction of the certificate shall be dependent on the results of the reexamination.

**Reissuance of Certificate**

**§ 97.122 Certified seed only election.**

When an owner elects after a certificate is issued to sell the protected variety by variety name only as a class of certified seed, a new certificate may be issued upon return of the original certificate to the Office and payment of the appropriate fee.

**Assignments and Recording**

**§ 97.130 Recording of assignments.**

(a) Any assignment of an application for a certificate, or of a certificate of plant variety protection, or of any interest in a variety, or any license or grant and conveyance of any right to use of the variety, may be submitted for recording in the Office in accordance with section 101 of the Act (7 U.S.C. 2531).

(b) No instrument shall be recorded which is not in the English language or which does not identify the certificate or application to which it relates.

(c) An instrument relating to title of a certificate shall identify the certificate by number and date, the name of the owner, and the name of the novel variety as stated in the certificate. An instrument relating to title of an application shall identify an application by number and date of filing, the name of the owner, and the name of the novel variety as stated in the application.

(d) If an assignment is executed concurrently or subsequent to the filing of an application, but before its number and filing date are ascertained, the assignment shall identify the application by the date of the application, the name of the owner, and the name of the novel variety.

**§ 97.131 Conditional assignments.**

Assignments recorded in the Office are regarded as absolute assignments for Office purposes until canceled in writing by both parties to the assignment or by a decree of a court of competent jurisdiction. The Office shall not determine whether conditions precedent to the assignment, such as the payment of money, have been fulfilled.

**§ 97.132 Assignment records open to public inspection.**

(a) Assignment records relating to original or amended certificates shall be open to public inspection and copies of any recorded document may be obtained upon payment of the prescribed fee.

(b) Assignment records relating to any pending or abandoned application shall not be available for inspection except to the extent that pending applications are published as provided in section 57 of the Act and § 97.19, or where necessary to carry out the provisions of any Act of Congress. Copies of assignment records and information on pending or abandoned applications shall be obtainable only upon written authority of the applicant or his or her assignee, or attorney or agent of record, or where necessary to carry out the provisions of any Act of Congress. An order for a copy of an assignment shall give the proper identification of the assignment.

**Marking or Labeling Provisions**

**§ 97.140 After filing.**

Upon filing an application for protection of a novel variety and payment of the prescribed fee, the owner, or his or her designee, may label the variety or containers of the seed of the variety or plants produced from such seed, substantially as follows: "Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Variety Protection Applied For."

**§ 97.141 After issuance.**

Upon issuance of a certificate, the owner of the novel variety, or his or her designee, may label the variety or containers of the seed of the variety or plants produced from such seed substantially as follows: "Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Protected Variety."

**§ 97.142 For testing or increase.**

An owner who contemplates filing an application and releases for testing or increase, seed of the variety or other sexually reproducible plant material produced from seed of the variety, may label such plant material or containers of the seed or plant substantially as follows: "Unauthorized Propagation Prohibited—For Testing (or Increase) Only."

**§ 97.143 Certified seed only.**

(a) Upon filing an application, or amendment thereto, specifying seed of the variety is to be sold by variety name only as a class of certified seed, the owner, or his or her designee, may label containers of seed of the variety substantially as follows: "Unauthorized Propagation Prohibited—U.S. Variety Protection Applied for Specifying That Seed of This Variety Is To Be Sold By Variety Name Only as a Class of Certified Seed."

(b) An owner who has received a certificate specifying that a variety is to be sold by variety name only, as a class of certified seed, may label containers of the seed of the variety substantially as follows: "Unauthorized Propagation Prohibited—To Be Sold By Variety Name Only as a Class of Certified Seed —U.S. Protected Variety."

**§ 97.144 Additional marking or labeling.**

Additional clarifying information that is not false or misleading may be used by the owner, in addition to the above markings or labeling.

**Attorneys and Agents**

**§ 97.150 Right to be represented.**

An applicant may actively advance an application or may be represented by an attorney or agent authorized in writing.

**§ 97.151 Authorization.**

Only attorneys or agents specified by the applicant shall be allowed to inspect papers or take action of any kind, on behalf of the applicant, in any pending application or proceedings.

**§ 97.152 Revocation of authorization; withdrawal.**

An authorization of an attorney or agent may be revoked by an applicant at any time, and an attorney or agent may withdraw, upon application to the Commissioner. When the authorization is so revoked, or the attorney or agent has so withdrawn, the Office shall inform the interested parties and shall thereafter communicate directly with the applicant, or with such other attorney or agent as the applicant may appoint. An assignment will not of itself operate as a revocation of authorization previously given, but the assignee of the entire interest may revoke previous authorizations and be represented by an attorney or agent of his or her own selection.

**§ 97.153 Persons recognized.**

Unless specifically authorized as provided in § 97.151, no person shall be permitted to file or advance applications before the Office on behalf of another person.

**§ 97.154 Government employees.**

Officers and employees of the United States who are disqualified by statute

(18 U.S.C. 203 and 205) from practicing as attorneys or agents in proceedings or other matters before government departments or agencies, shall not be eligible to represent applicants, except officers and employees whose official duties require the preparation and prosecution of applications for certificates of variety protection.

**§ 97.155 Signatures.**

Every document filed by an attorney or agent representing an applicant or party to a proceeding in the Office shall bear the signature of such attorney or agent, except documents which are required to be signed by the applicant or party.

**§ 97.156 Addresses.**

Attorneys and agents practicing before the Plant Variety Protection Office shall notify the Office in writing of any change of address. The Office shall address letters to any person at the last address received.

**§ 97.157 Professional conduct.**

Attorneys and agents appearing before the Office shall conform to the standards of ethical and professional conduct, generally applicable to attorneys appearing before the courts of the United States.

**§ 97.158 Advertising.**

(a) The use of advertising, circulars, letters, cards, and similar material to solicit plant variety protection business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Office or may be suspended, excluded, or disbarred from further practice before the Office.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends and insertion of listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories, shall not be considered a violation of this section.

**Fees and Charges**

**§ 97.175 Fees and charges.**

The following fees and charges apply to the services and actions specified below:

(a) Filing the application and notifying the public of filing—$275

(b) Search or examination—2,050

(c) Allowance and issuance of certificate and notifying public of issuance—275

(d) Revive an abandoned application—275

(e) Reproduction of records, drawings, certificates, exhibits, or printed material (copy per page of material)—1

(f) Authentication (each page)—1

(g) Correcting or reissuance of a certificate—275

(h) Recording assignments (per certificate/application)—25

(i) Copies of 8 x 10 photographs in color—25

(j) Additional fee for reconsideration—275

(k) Additional fee for late payment—25

(l) Additional fee for late replenishment of seed—25

(m) Appeal to Secretary (refundable if appeal overturns the Commissioner's decision)—2,600

(n) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(o) Any other service not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $40 per employee-hour.

**§ 97.176 Fees payable in advance.**

Fees and charges shall be paid at the time of making application or at the time of submitting a request for any action by the Office for which a fee or charge is payable and established in this part.

**§ 97.177 Method of payment.**

Checks or money orders shall be made payable to the Treasurer of the United States. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the prescribed fee. Money sent by mail to the Office shall be sent at the sender's risk.

**§ 97.178 Refunds.**

Money paid by mistake or excess payments shall be refunded, but a mere change of plans after the payment of money, as when a party decides to withdraw an application or to withdraw an appeal, shall not entitle a party to a refund. However, the examination or search fee shall be refunded if an application is voluntarily abandoned pursuant to § 97.23(a) before a search or examination has begun. Amounts of $1 or less shall not be refunded unless specifically demanded.

**§ 97.179 Copies and certified copies.**

(a) Upon request, copies of applications, certificates, or of any records, books, papers, drawings, or photographs in the custody of the Office and which are open to the public, will be furnished to persons entitled thereto, upon payment of the prescribed fee.

(b) Upon request, copies will be authenticated by imprint of the seal of the Office and certified by the official, authorized by the Commissioner upon payment of the prescribed fee.

**Availability of Office Records**

**§ 97.190 When open records are available.**

Copies of records, which are open to the public and in the custody of the Office, may be examined in the Office during regular business hours upon approval by the Commissioner.

**Protest Proceedings**

**§ 97.200 Protests to the grant of a certificate.**

Opposition on the part of any person to the granting of a certificate shall be permitted while an application is pending and for a period not to exceed 5 years following the issuance of a certificate.

**§ 97.201 Protest proceedings.**

(a) Opposition shall be made by submitting in writing a petition for protest proceedings, which petition shall be supported by affidavits and shall show the reason or reasons for opposing the application or certificate. The petition and accompanying papers shall be filed in duplicate. If it appears to an examiner that a variety involved in a pending application or covered by a certificate may not be or may not have been entitled to protection under the Act, a protest proceeding may be permitted by the Commissioner.

(b) One copy of the petition and accompanying papers shall be served by the Office upon the applicant or owner, or his or her attorney or agent of record.

(c) An answer, by the applicant or owner of the certificate, or his or her assignee, in response to the petition, may be filed with the Commissioner within 60 days after service of the petition, upon such person. If no answer is filed within said period, the Commissioner shall decide the matter on the basis of the allegations set forth in the petition.

(d) If the petition and answer raise any issue of fact needing proof, the Commissioner shall afford each of the parties a period of 60 days in which to

file sworn statements or affidavits in support of their respective positions.

(e) As soon as practicable after the petition or the petition and answer are filed, or after the expiration of any period for filing sworn statements or affidavits, the Commissioner shall issue a decision as to whether the protests are upheld or denied. The Commissioner may, following the protest proceeding, cancel any certificate issued and may grant another certificate for the same novel variety to a person who proves to the satisfaction of the Commissioner, that he or she is the breeder or discoverer. The decision shall be served upon the parties in the manner provided in § 97.403.

## Priority Contest

### § 97.205 Definition; when declared.

A priority contest may be instituted by the Secretary, on his or her own motion, or upon the request of any person who has applied for protection on the same variety, for which an adverse certificate has been issued, for the purpose of determining the question of priority between two or more parties claiming development or discovery of the same novel variety; *Provided, however,* That any person shall have forfeited his or her right to assert priority when an adverse certificate has been issued, if he or she fails to make a request for the institution of a priority contest within 1 year of the publication in the Official Journal of issuance of the adverse certificate by the Secretary, or if he or she fails to make the request within the period for taking action after refusal of the application on the basis of the adverse certificate.

### § 97.206 Preparation for priority contest between applicants.

(a) Before a priority contest will be handled by the Office, an examiner must determine that the same novel variety is involved in separate applications filed by two or more parties and apparently certifiable to each of the parties, subject to the determination of the question of priority.

(b) The fact that a certificate has been issued will not prevent a priority contest.

### § 97.207 Preparation of priority papers and declaration of priority contest.

(a) When a priority question is found to exist, the examiner shall forward the pertinent files to the Commissioner, together with a written statement showing the reason for the contest.

(b) The Commissioner shall institute and declare the priority contest by forwarding a notice to each of the applicants involved. Each notice shall include the name and residence of each of the other applicants or those of his or her attorney or agent, if any, and of any assignee, and will identify the application of each opposing party by number and filing date, or in the case of a certificate, by the number and date of the certificate. The notice shall specify the basis of the priority contest. The notice shall specify a time, not to exceed 2 months, for filing preliminary statements.

(c) When a notice is returned to the Office undelivered, or when one of the parties resides abroad and his or her agent in the United States is unknown, notice may be given once by publication in the Official Journal.

### § 97.208 Burden of proof.

The parties to a priority contest will be presumed to have developed their varieties in the chronological order of the filing dates of their applications for certificates involved in the priority contest, and the burden of proof will rest upon the party who last filed an application.

### § 97.209 Preliminary statement on novel variety developed in the United States.

(a) Each party to the priority contest is required to file on or before a date fixed by the Office, a concise preliminary statement giving the facts and dates relating to the development of his or her alleged novel variety. The preliminary statement must be signed by the owner; *Provided, however,* That in appropriate circumstances, as when the owner is dead or legally incapacitated, or a showing is made of inability to obtain a statement from the owner, the preliminary statement may be made by the assignee or by someone authorized or entitled to make the statement, having knowledge of the facts.

(b) Preliminary statements shall be filed with the Office in duplicate. A copy shall be forwarded to each opposing party by the Office as soon as practicable after both parties have filed their statements within the requisite period.

(c) In filing a preliminary statement each party must show the following information:

(1) The date upon which the first determination of the novel variety was made.

(2) The date upon which the first written description of the novel variety was made. If a written description of the novel variety has not been made prior to the filing date of the application, it must be so stated.

(3) The date of the first act or acts susceptible of proof (other than making a written description or disclosing the novel variety to another person), which, if proven, would establish determination of the novel variety, and a brief description of such act or acts. If there have been no such acts, it must be so stated.

(4) The date of the actual production of the novel variety. If the novel variety had not been actually produced before the filing date of the application, it must be so stated.

(d) When an allegation as to the first written description (paragraph (c)(2) of this section) is made, a copy of such written description shall be attached to the statement.

(e) If a party intends to rely on a prior application, domestic or foreign, the preliminary statement shall clearly identify such prior application. Copies of the cited application and related documents will be served by the Office, upon all interested parties to the contest. In the case of an application filed in a foreign country, English translations shall be served to all interested parties by the party relying on the application filed in the foreign country.

### § 97.210 Preliminary statement on novel variety developed in a foreign country.

When the novel variety was developed in a foreign country, the preliminary statement must show (a) the information specified in § 97.209 (c) through (e) and (b) whether, and if so, when and under what circumstances the novel variety was introduced into the United States by or on behalf of the party.

### § 97.211 Statements sealed before filing.

The preliminary statement shall be submitted in a sealed envelope bearing the name of the party filing it and the number and title of the priority contest as shown on the notice issued by the Office. The envelope should be enclosed in an outer mailing envelope marked "To Be Opened Only by the Commissioner."

### § 97.212 Correction of a statement on motion.

In case of material error arising through inadvertence or mistake, a preliminary statement may be corrected upon a satisfactory showing to the Commissioner that the correction is of material significance. Correction of the statement must be made as soon as practicable after the discovery of the error.

### § 97.213 Failure to file statements.

If any party to a priority contest fails to file a preliminary statement, he or she

shall be restricted to his or her earliest effective filing date.

**§ 97.214 Access to preliminary statements.**

The preliminary statements shall be open to the inspection of any party after the date set for the filing of preliminary statements (§ 97.207(b)), but shall not be open to inspection prior to that time.

**§ 97.215 Dissolution at the request of the Commissioner.**

If during a priority contest, information is submitted or found which, in the opinion of the Commissioner, may render the variety ineligible for a certificate, the priority contest may be suspended by the Commissioner and referred to an examiner for consideration of the matter. The parties will be notified of the reason for the suspension. Arguments of the parties regarding the suspension will be considered, if filed within 60 days of the notification. The suspension will then be continued, modified, or dismissed, in accordance with the determination by the Commissioner.

**§ 97.216 Concession; abandonment.**

(a) An applicant or a certificate holder involved in a priority contest may, at any time, file a written concession of priority, or abandonment of the certificate, signed by him or her. Upon the filing of such an instrument by any party, the decision shall be rendered against the interested party by the Commissioner.

(b) A concession of priority may not be made by an assignee of a part interest.

**§ 97.217 Affidavits and exhibits.**

Affidavits and exhibits, including official records and any special matter contained in a printed publication, pertinent to the issue involved in the contest, may be introduced as evidence in a priority contest by any party to the contest. In the case of official records and printed publications, the party introducing the evidence shall specify the record or the printed publication, the page or pages to be used, indicate generally its relevancy, and submit to the Commissioner the record or authenticated copy, or the printed publication, or a copy. Copies of affidavits and exhibits, including any record or publication, shall be served by the Commissioner on each of the other interested parties.

**§ 97.218 Matters considered in determining a priority.**

In determining priority, the Commissioner will consider only priority of development based on the evidence submitted. Questions of novelty generally will not be considered in the decision on priority. The Commissioner may refer proposed findings of fact, conclusions, and notice of priority to the Board for an advisory decision.

**§ 97.219 Recommendation by the Commissioner.**

The Commissioner may, either before or concurrently with a decision on the question of priority, but independently of such decision, direct the attention of the examiner to any matter not relating to priority which may come to the Commissioner's attention, and which in his or her opinion establishes the fact that there has been an irregularity which amounts to a bar to the granting of a certificate to either of the parties. The Commissioner may suspend the priority contest and remand the case to the examiner for further consideration of the matters, to which attention has been directed.

**§ 97.220 Decision by the Commissioner.**

(a) When a priority contest is concluded on the basis of preliminary statements, or proposed findings of fact, conclusions and notice of priority shall be issued by the Commissioner to the interested parties, giving them a specified period, not less than 30 days, to show cause why such proposed findings of fact, conclusions, and notice of priority should not be made final. Any response made during the specified period will be considered by the Commissioner. Additional affidavits or exhibits will not be considered, unless accompanied by a showing of good cause acceptable to the Commissioner. Thereafter, final findings of fact, conclusions, and notice of priority shall be issued by the Commissioner.

(b) The decision shall be entered by the Commissioner against a party whose preliminary statement alleges a date of determination later than the filing date of the other party's application.

**§ 97.221 Status of claims of defeated applicant.**

Whenever a final notice of priority has been issued by the Commissioner in a priority proceeding, and the time limit for an appeal from such decision has expired, the claim or claims constituting the issue of the priority stand finally disposed of without further action by the Commissioner.

**§ 97.222 Second priority contest.**

A second priority contest between the same parties shall not be entertained by the Commissioner for the same novel variety.

## Appeal to the Secretary

**§ 97.300 Petition to the Secretary.**

(a) Petition may be made to the Secretary from any final action of the Commissioner denying an application or refusing to allow a certificate to be issued, or from any adverse decision of the Commissioner made under §§ 97.18(c), 97.107, 97.201(e), and 97.220.

(b) Any such petition shall contain a statement of the facts involved and the point or points to be reviewed, and the actions requested.

(c) A petition to the Secretary shall be filed in duplicate and accompanied by the prescribed fee (see § 97.175).

(d) Upon request, an opportunity to present data, views, and arguments orally, in an informal manner or in a formal hearing, shall be given to interested persons. If a formal hearing is requested, the proceeding shall be conducted in accordance with §§ 50.28 and 50.30 through 50.33 (§§ 50.28, 50.30 through 50.33 of this chapter) of the rules of practice under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621, *et seq.*).

(e) Except as otherwise provided in the rules in this part, any such petition not filed within 60 days from the action complained of shall be dismissed as untimely.

**§ 97.301 Commissioner's answer.**

(a) The Commissioner may, within such time as may be directed by the Secretary, furnish a written statement to the Secretary in answer to the appellant's petition, including such explanation of the reasons for the action as may be necessary and supplying a copy to the appellant.

(b) Within 20 days from the date of such answer, the appellant may file a reply statement directed only to such new points of argument as may be raised in the Commissioner's answer.

**§ 97.302 Decision by the Secretary.**

(a) The Secretary, after receiving the advice of the Board, may affirm or reverse the decision of the Commissioner, in whole or in part.

(b) Should the decision of the Secretary include an explicit statement that a certificate be allowed, based on an amended application, the applicant shall have the right to amend his or her application in conformity with such statement and such decision shall be binding on the Commissioner.

**§ 97.303 Action following the decision.**

(a) Copies of the decision of the Secretary shall be served upon the appellant and the Commissioner in the manner provided in § 97.403.

(b) When an appeal petition is dismissed, or when the time for appeal to the courts pursuant to the Act has expired and no such appeal or civil action has been filed, proceedings in the appeal shall be considered terminated as of the dismissal or expiration date, except in those cases in which the nature of the decision requires further action by the Commissioner. If the decision of the Secretary is appealed or a civil action has been filed pursuant to sections 71, 72, or 73 of the Act, the decision of the Secretary will be stayed pending the outcome of the court appeal or civil action.

**General Procedures in Priority, Protest, or Appeal Proceedings**

**§ 97.400 Extensions of time.**

Upon a showing of good cause, extensions of time not otherwise provided for may be granted by the Commissioner or, if an appeal has been filed by the Secretary for taking any action required in any priority, protest, or appeal proceeding.

**§ 97.401 Miscellaneous provisions.**

(a) Petitions for reconsideration or modification of the decision of the Commissioner in priority or protest proceedings shall be filed within 20 days after the date of the decision.

(b) The Commissioner may consider on petition any matter involving abuse of discretion in the exercise of an examiner's authority, or such other matters as may be deemed proper to consider. Any such petition, if not filed within 20 days from the decision complained of, may be dismissed as untimely.

**§ 97.402 Service of papers.**

(a) Every paper required to be served on opposing parties and filed in the Office in any priority, protest, or appeal proceeding, must be served by the Secretary in the manner provided in § 97.403.

(b) The requirement in certain sections that a specified paper shall be served includes a requirement that all related supporting papers shall also be served. Proof of such service upon other parties to the proceeding must be made before the supporting papers will be considered by the Commissioner or Secretary.

**§ 97.403 Manner of service.**

Service of any paper under this part must be on the attorney or agent of the party if there be such, or on the party if there is no attorney or agent, and may be made in any of the following ways:

(a) By mailing a copy of the paper to the person served by certified mail, with the date of the return receipt controlling the date of service;

(b) By leaving a copy at the usual place of business of the person served with someone in his or her employ;

(c) When the person served has no usual place of business, by leaving a copy at his or her home with a member of the family over 14 years of age and of discretion; and

(d) Whenever it shall be found by the Commissioner or Secretary that none of the above modes of serving the paper is practicable, service may be by notice, published once in the Office Journal.

**Review of Decisions by Court**

**§ 97.500 Appeal to U.S. Courts.**

Any applicant dissatisfied with the decision of the Secretary on appeal may appeal to the U.S. Court of Customs and Patent Appeals or the U.S. Courts of Appeals, or institute a civil action in the U.S. District Court as set forth in sections 71, 72, and 73 of the Act. In such cases, the appellant or plaintiff shall give notice to the Secretary, state the reasons for appeal or civil action, and obtain a certified copy of the record. The certified copy of the record shall be forwarded to the Court by the Plant Variety Protection Office on order of, and at the expense of the appellant or plaintiff.

**Cease and Desist Proceedings**

**§ 97.600 Rules of practice.**

Any proceedings instituted under section 128 of the Act for false marking shall be conducted in accordance with §§ 202.10 through 202.29 of this chapter (rules of practice under the Federal Seed Act) (7 U.S.C. 1551 *et seq.*), except that all references in those rules and regulations to "Examiner" shall be construed to be an Administrative Law Judge, U.S. Department of Agriculture, and not an "Examiner" as defined in the regulations under the Plant Variety Protection Act.

**Public Use Declaration**

**§ 97.700 Public interest in wide usage.**

(a) If the Secretary has reason to believe that a protected variety should be declared open to use by the public in accordance with section 44 of the Act, the Secretary shall give the owner of the variety appropriate notice and an opportunity to present views orally or in writing, with regard to the necessity for such action to be taken in the public interest.

(b) Upon the expiration of the period for the presentation of views by the owner, as provided in paragraph (a) of this section, the Secretary shall refer the matter to the Plant Variety Protection Board for advice, including advice on any limitations or rate of remuneration.

(c) Upon receiving the advice of the Plant Variety Protection Board, the Secretary shall advise the owner of the variety, the members of the Plant Variety Protection Board, and the public, by issuance of a press release, of any decision based on the provisions of section 44 of the Act to declare a variety open to use by the public. Any decision not to declare a variety open to use by the public will be transmitted only to the owner of the variety and the members of the Plant Variety Protection Board.

**Publication**

**§ 97.800 Publication of public variety descriptions.**

Voluntary submissions of varietal descriptions of "public varieties" on forms obtainable from the Office will be accepted for publication in the Official Journal. Such publication shall not constitute recognition that the variety is, in fact, novel.

## PART 98—MEALS, READY-TO-EAT (MRE's), MEATS, AND MEAT PRODUCTS

**Subpart A–MRE's, Meats, and Related Meat Food Products**

Sec.
98.1 General.
98.2 Definitions.
98.3 Analyses performed and locations of laboratories.
98.4 Analytical methods.
98.5 Fees and charges.

**Subpart B—USDA Certification of Laboratories for the Testing of Trichinae in Horsemeat**

98.100 General.
98.101 Definitions.
98.102–98.600 [Reserved].

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622 and 1624).

### Subpart A—MRE's, Meats, and Related Meat Food Products

**§ 98.1 General.**

Analytical services of meat and meat food products are performed for fat, moisture, salt, protein, and other content specifications.

**§ 98.2 Definitions.**

Words used in the regulations in this subpart in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this subpart, unless the context requires otherwise, the following terms will be construed to mean:

*Lard (Edible).* The fat rendered from clean and sound edible tissues from swine.

*Meals, Ready-To-Eat (MRE).* Meals, Ready-To-Eat are complete portions of one meal for one military person and are processed and packaged to destroy or retard the growth of spoilage-type microorganisms in order to extend product shelf life for 7 years. Composition analyses for MRE's are covered by the reimbursable agreement in the Memorandums of Understanding (MOU's) between AMS, USDA and the Defense Personnel Support Center, Department of Defense (DOD). These DOD, Defense Personnel Support Center (DPSC) contracts state certain military specifications for an acceptable one meal serving, retorted pouched or 18–24 serving hermetically-sealed tray packed meat, or meal product regarding satisfactory analyses for fat, salt, protein, moisture content, added stabilizer ingredient, and sometimes microbiological composition. MRE's are for use by the DOD, DPSC as a component of operational food rations, and as an item of general issue by the military.

*Meat.* This includes the edible part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, and which is intended for human food, with or without the accompanying and overlying fat, and the portions of bone, skin, tendon, nerve, and blood vessels which normally accompany the muscle tissue, and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

*Meat food product.* Any article capable for use as human food (other than meat, prepared meat, or a meat by-product), which is derived or prepared wholly or in substantial part from meat or other portion of the carcass of any cattle, sheep, swine, or goats. An article exempted from definition as a meat food product by the Administrator, such as an organotherapeutic substance, meat juice, meat extract, and the like, which is used only for medicinal purposes and is advertised solely to the medical profession is not included.

*Ready-to-eat.* The term means consumers are likely to apply little or no additional heat to the fully-cooked and the fully-prepared food product before consumption.

*Specifications.* Descriptions with respect to the class, grade, other quality, quantity or condition of products, approved by the Administrator, and available for use by the industry regardless of the origin of the descriptions.

*Tallow (Edible).* The hard fat derived from USDA inspected and passed cattle, sheep, or goats.

*Titer.* The measure of the hardness or softness of the tested material as determined by the solidification point of fatty acids and expressed in degrees centigrade (°C).

**§ 98.3 Analyses performed and locations of laboratories.**

(a) Tables 1 through 4 list the special laboratory analyses rendered by the Science Division as a result of an agreement with the Livestock and Seed Division. The payment for such laboratory services rendered at the request of an individual or third party served shall be reimbursed pursuant to the terms as specified in the cooperative agreement.

TABLE 1.—SCHEDULE ANALYSIS

| Identity | Analyses | Samples tested |
|---|---|---|
| Schedule BC (Beef Chunks, Canned). | Fat, salt .... | 1 |
| Schedule BJ (Beef with Natural Juices, Canned). | Fat ..... | 1 |
| Schedule CS (Canned Meatball Stew). | Fat ..... | 3 |
| Schedule GP (Frozen Ground Pork). | Fat ..... | 4 |
| Schedule PJ (Pork with Natural Juices, Canned). | Fat ..... | 1 |
| Schedule RB (Beef for Reprocessing). | Fat ..... | 4 |
| Schedule RG (Beef Roasts and Ground Beef). | Fat ..... | 4 |
| Schedule SB (Slab or Sliced Bacon). | Moisture, fat, salt. | 1 |
| Schedule WS (Beef or Wafer Steaks). | Fat ..... | 1 |

TABLE 2.—MICROBIOLOGICAL ANALYSIS

| Type of analysis | Number of samples tested |
|---|---|
| Psychrotrophic Bacterial Plate Count ..... | 1 |

TABLE 3.—NONSCHEDULE ANALYSIS

| Identity | Analyses | Samples tested |
|---|---|---|
| Fed Specification PP-B–2120B (Ground Beef Products). | Fat ..... | 4 |
| Fed Specification PP-B–81J (Sliced Bacon). | Fat, salt, moisture. | 1 |
| Fed Specification PP-L–800E (Luncheon Meat, Canned). | Fat, salt .... | 1 |
| Ground Beef or Ground Pork. | Fat ..... | 4 |
| Ground Beef or Ground Pork. | Fat ..... | 1 |
| Pork Sausage ..... | Fat, salt .... | 4 |
| Pork Sausage ..... | Fat, moisture. | 4 |
| Pork Sausage ..... | Fat ..... | 4 |
| Mil-P–44131A (Pork Steaks, Flaked, Formed, Breaded). | Fat ..... | 4 |
| Milwaukee Public Schools (Breaded/Unbreaded Meat). | Fat ..... | 4 |
| Chili Con Carne Without Beans. | Fat ..... | 1 |
| A-A–20047–B ..... | Fat, protein | 3 |
| A-A–20136 ..... | salt ..... | 3 |
| A-A–20148 ..... | Fat, salt .... | 3 |
| Mil-B–44133 (GL) ..... | Fat, salt .... | 3 |
| Mil-B–44158A ..... | Water activity. | 5 |
| Mil-C–44253 ..... | Fat, salt .... | 3 |
| Mil-H–44159B (GL) .... | Fat, salt .... | 1 |
| PP-F–02154 (Army GL). | Fat, salt, moisture. | 1 |

TABLE 4.—LARD AND TALLOW ANALYSIS

| Type of analysis | Number of samples tested |
|---|---|
| Fat Analysis Committee (FAC) Color ..... | 1 |
| Free Fatty Acids ..... | 1 |
| Insoluble Impurities ..... | 1 |
| Moisture and Volatile Matter ..... | 1 |

TABLE 4.—LARD AND TALLOW ANALYSIS—Continued

| Type of analysis | Number of samples tested |
|---|---|
| Specific Gravity | 4 to 6 |
| Titer Test | 1 |
| Unsaponifiable Material | 1 |

(b) Meats, such as ground beef or ground pork, meat food products, and MRE's, not covered by an agreement with Livestock and Seed Division, are analyzed for fat, moisture, salt, sulfur dioxide, nitrites, sulfites, ascorbates, citric acid, protein, standard plate counts, and coliform counts, among other analyses. These food product analyses are performed at any one of the Science Division (SD) field laboratories as follows:

(1) USDA, AMS, Science Division, Midwestern Laboratory, 3570 North Avondale Avenue, Chicago, IL 60618.
(2) USDA, AMS, SD Aflatoxin Laboratory, 107 South 4th Street, Madill, OK 73446.
(3) USDA, AMS, SD, Eastern Laboratory, 645 Cox Road, Gastonia, NC 28054.

**§ 98.4 Analytical methods.**

(a) The majority of analytical methods used by the USDA laboratories to perform analyses of meat, meat food products and MRE's are listed as follows:

(1) Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC), Association of Official Analytical Chemists, suite 400, 2200 Wilson Boulevard, Arlington, Va 22201–3301.

(2) U.S. Army Individual Protection Directorate's Military Specifications, approved analytical test methods noted therein, U.S. Army Natick Research, Development and Engineering Center, Kansas Street, Natick, MA 01760–5017.

(b) Additional analytical methods for these foods will be used, from time to time, as approved by the Director.

**§ 98.5 Fees and charges.**

(a) The fee charged for any single laboratory analysis of meat, meat food products, and MRE's, not covered by an agreement with Livestock and Seed Division, is specified in the schedules of charges in paragraph (a) of § 91.37 of this subchapter.

(b) The laboratory analyses of meat, meat food products, and MRE's, not covered by a cooperative agreement, shall result in an additional fee, found in Table 7 of § 91.37 of this subchapter, for sample preparation or grinding.

(c) The charge for any requested laboratory analysis of meat, meat food products, and MRE's not listed shall be based on the standard hourly rate specified in § 91.37, paragraph (b).

## Subpart B—USDA Certification of Laboratories for the Testing of Trichinae in Horsemeat

**§ 98.100 General.**

A laboratory that has met the requirements for certification specified in this subpart shall receive an AMS Science Division certificate to approve its analysis for *Trichinella* spiralis in horsemeat. Certification would be granted to a qualified analyst or a laboratory based on having the proper training, facilities, and equipment. This AMS laboratory certification program will enable horsemeat exporters to comply with trichinae testing requirements of the European Community.

**§ 98.101 Definitions.**

Words used in the regulations in this part in the singular form will import the plural, and vice versa, as the case may demand. As used throughout the regulations in this part, unless the context requires otherwise, the following terms will be construed to mean:

*European Community*. The European Community (EC) consists of the initial 12 European countries and the updated and expanded membership of nations. The original EC members are Belgium, Britain, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain.

*Horsemeat*. That U.S. inspected and passed clean, wholesome muscle tissue of horses, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat and the portions of sinews, nerves, and blood vessels, which normally accompany the muscle tissue and which are not separated from it in the process of dressing.

*Trichinae*. Round worms or nematodes of the genus *Trichinella*, which live as parasites in man, horses, rats, and other animals.

*Trichinella spiralis*. A small parasitic nematode worm which lives in the flesh of various animals, including the horse. When such infected meat is inadequately cooked and eaten by man, the live worm multiplies within the body and the larvae burrow their way into the muscles, causing a disease referred to as trichinosis.

**§§ 98.102–98.500 [Reserved]**

## PART 99—STATISTICAL SCIENCE PROGRAM

Sec.
99.1 General. [Reserved]
99.2 Definitions. [Reserved]
99.3 Locations for statistical science services.
99.4–99.999 [Reserved]

**Authority:** Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, 1090, as amended, (7 U.S.C. 1622, 1624); 104 Stat. 3562–3565 (7 U.S.C. 138, 138(a), 138(b), 138(c), 138(d), 138(e), 138(f), 138(g), 138(h), 138(i)).

**§ 99.1 General. [Reserved]**

**§ 99.2 Definitions. [Reserved]**

**§ 99.3 Locations for statistical science services.**

The Science Division (SD) statistical science services are performed at any one of the offices as follows:

(a) USDA, AMS, Science Division, Statistical Branch, Kansas City Technical Center, 10383 No. Executive Hills Blvd., Kansas City, MO 64153.
(b) USDA, AMS, SD, Statistical Branch, 0611 So. Agriculture Bldg., 14th & Independence Ave., SW., Washington, DC 20250.

**§§ 99.4–99.999 [Reserved]**

## PART 100—NATIONAL LABORATORY ACCREDITATION PROGRAM

Sec.
100.1 General. [Reserved]
100.2 Definitions. [Reserved]
100.3 Location of administrative office.
100.4–100.999 [Reserved]

**Authority:** Agricultural Marketing Act of 1946, secs. 203, 205 60 Stat. 1087, 1090, as amended, (7 U.S.C. 1622, 1624); 104 Stat. 3562–3565 (7 U.S.C. 138, 138(a), 138(b), 138(c), 138(d), 138(e), 138(f), 138(g), 138(h), 138(i)).

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§ 100.1 General. [Reserved]

§ 100.2 Definitions. [Reserved]

§ 100.3 Location of administrative office.

The Science Division (SD) office that administers the National Laboratory Accreditation Program is located as follows: USDA, AMS, Science Division, Office of Chief, Technical Services Branch, 3521 South Agriculture Bldg., 14th & Independence Ave., SW., Washington, DC 20250.

§§ 100.4–100.999 [Reserved]

## PART 101—PESTICIDE DATA PROGRAM

Sec.
101.1 General. [Reserved]
101.2 Definitions. [Reserved]
101.3 Locations of administrative offices.
101.4–101.999 [Reserved]

Authority: 7 U.S.C. 1622, 1624.

§ 101.1 General. [Reserved]

§ 101.2 Definitions. [Reserved]

§ 101.3 Locations of administrative offices.

The Science Division (SD) offices that administer the Pesticide Data Program are located as follows:

(a) USDA, AMS, Science Division, 8700 Centreville Rd., suite 200, Manassas, Virginia 22110
(b) USDA, AMS, Science Division, Office of Director, 3507 So. Agriculture Bldg., 14th & Independence Ave., SW., Washington, DC 20250

§§ 101.4–101.999 [Reserved]

## PARTS 102 THROUGH 109 [RESERVED]

## PART 110—RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATORS; SURVEYS AND REPORTS

Sec.
110.1 Scope. [Reserved]
110.2 Definitions [Reserved]
110.3 Records, retention, and access to records. [Reserved]
110.4 Demonstration of compliance. [Reserved]
110.5 Availability of records to facilitate medical treatment. [Reserved]
110.6 Federal cooperation with States. [Reserved]
110.7 Penalties. [Reserved]
110.8 Rules of practice. [Reserved]
110.9 Locations of administrative offices.

Authority: 7 U.S.C. 136i–1; 7 U.S.C. 1624.

§ 110.1 Scope. [Reserved].

§ 110.2 Definitions. [Reserved]

§ 110.3 Records, retention, and access to records. [Reserved]

§ 110.4 Demonstration of compliance. [Reserved]

§ 110.5 Availability of records to facilitate medical treatment. [Reserved]

§ 110.6 Federal cooperation with States. [Reserved]

§ 110.7 Penalties. [Reserved]

§ 110.8 Rules of practice. [Reserved]

§ 110.9 Locations of administrative offices.

The Science Division (SD) offices that administer the Recordkeeping Program are located as follows:

(a) USDA, AMS, Science Division, 8700 Centreville Rd., suite 200, Manassas, Virginia 22110
(b) USDA, AMS, Science Division, Office of Director, 3507 So. Agriculture Bldg., 14th & Independence Ave., SW., Washington, DC 20250

## PARTS 111 THROUGH 159 [RESERVED]

Dated: July 16, 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18212 Filed 8–6–93; 8:45 am]

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Part IV

# Department of Energy

10 CFR Part 765
Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites; Proposed Rule

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DEPARTMENT OF ENERGY

10 CFR Part 765

**Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites**

AGENCY: Office of Environmental Restoration and Waste Management, Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy, Office of Environmental Restoration and Waste Management, is proposing to amend its regulations by adding a new provision governing reimbursement for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium or thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. Title X of the Energy Policy Act of 1992 requires the Department of Energy to promulgate regulations implementing the requirements of Title X and establishing procedures for eligible applicants to submit claims for, and receive, such reimbursements.

DATES: Comments must be submitted on or before September 23, 1993. The Department of Energy has scheduled a public hearing in Denver, Colorado, beginning at 9:30 a.m. on September 14, 1993.

ADDRESSES: The public hearing will be held at the Holiday Inn-Denver International Airport, 15500 East 40th Avenue, Denver, Colorado 80239 (303/371-8494). Requests to speak at the public hearing and comments on today's proposal should be addressed to Mr. David Mathes, Office of Environmental Restoration and Waste Management, Southwestern Area Programs, U.S. Department of Energy, EM-45/Trevion II Building, Washington, DC 20585-0002. All comments received will be available for public review in the Department of Energy Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, DC, from 9:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Mathes, Office of Environmental Restoration and Waste Management (EM-45), U.S. Department of Energy, (301) 903-7223.

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X. Review Under Executive Order 12778

## I. Introduction and Background

### *A. Statutory Authority*

Title X of the Energy Policy Act of 1992 (Pub. L. 102-486, the Act), enacted on October 24, 1992, requires the Department of Energy to reimburse certain uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action ("remedial action costs") at active uranium or thorium processing sites, which also includes vicinity properties. Consistent with section 1002 of the Act (42 U.S.C. 2296a-1) the Department has issued this proposed rule to implement the requirements of Title X and establish procedures for eligible applicants to submit claims for, and receive, reimbursement.

Title X provides that, with certain exceptions, remedial action costs at active uranium or thorium processing sites shall be borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954. Title X requires the Department of Energy, however, to reimburse each licensee that owns an active processing site for such portion of these costs as are determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States and either (a) incurred by such licensee not later than December 31, 2002; or (b) placed in escrow and incurred by the licensee in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Department.

In order to be reimbursable, such costs must be for work that is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) ("Agreement State"). In addition, claims for reimbursement of remedial action costs must be supported by reasonable documentation as determined by the Department of Energy.

Section 1001(b)(2) of Title X [42 U.S.C. 2296a(b)(2)] limits the amount of reimbursement paid to any one licensee of an active uranium mill tailings site to an amount not to exceed $5.50 multiplied by the dry short tons of byproduct material located at the site on October 24, 1992, and generated as an incident of sales to the United States. Total reimbursement, in the aggregate, for work performed at active uranium sites shall not exceed $270 million. Total reimbursement for work performed at the active thorium site shall not exceed $40 million, and is limited to costs incurred for offsite disposal. These aggregate ceilings and the $5.50 per dry short ton limit on reimbursement to individual uranium site licensees shall be subject to annual adjustment for inflation based upon an inflation index chosen by the Department of Energy.

### *B. Background*

#### 1. Overview of Uranium Processing Activity Licensed Under the Atomic Energy Act of 1954

The U.S. Army's Manhattan Engineering District, from 1942 to 1946, and later the Atomic Energy Commission (AEC), from 1947 through 1970, entered several contracts for the purchase of uranium concentrate to

support the Nation's defense programs. Initially, four mills provided uranium for the Army, primarily through reprocessing radium and vanadium mill tailings. Eventually a total of 34 commercially operated mills produced uranium concentrate for sale to the United States Government.

These uranium procurement contracts were for the purchase of an agreed-upon quantity of uranium concentrate. Contract specifications addressed physical characteristics, grade, and impurities but did not include provisions for mill decommissioning, stabilization of tailings piles, or long-term management of the milling-process wastes, known as tailings. When these contracts were executed, the potential hazards of tailings were not fully recognized. Over the ensuing decades, however, potential radiological and chemical hazards associated with uranium and thorium mill tailings were identified and standards and requirements were developed for the control and management of tailings.

The first remedial action program related to uranium mill tailings was authorized by Pub. L. 92–314 on June 16, 1972. This program provided for remedial action for properties contaminated in the vicinity of Grand Junction, Colorado. Because there were no restrictions on access to approximately 4.4 million cubic yards of tailings at Grand Junction, building contractors and individuals used an estimated 300,000 tons of tailings as construction or fill material before the practice was stopped in 1966. Pub. L. 92–314 provided financial assistance to the State of Colorado to limit radiation exposure resulting from the use of uranium mill tailings for construction purposes.

Between 1975 and 1979, the Department of Energy and the Energy Research and Development Administration, successor agencies to the AEC, completed studies of uranium mill sites that had produced uranium concentrate for the AEC, had subsequently ceased operations, and were considered inactive. These studies determined that uranium mill tailings located at these inactive uranium milling sites posed potentially significant health hazards to the public and that a program should be developed to ensure proper stabilization or disposal of these tailings, in order to prevent or minimize radon diffusion into the environment and other related hazards.

2. Overview of Uranium Mill Tailings Radiation Control Act

In November 1978, as a result of these studies, Congress enacted the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). UMTRCA authorizes the Department of Energy to undertake remedial action at "inactive" sites and at vicinity properties contaminated with byproduct material generated at a site. Inactive uranium milling sites are those that were no longer licensed under the Atomic Energy Act on January 1, 1978, and where all or substantially all of the uranium concentrate was produced for the Federal Government. The Department conducts remedial action in coordination with affected States and Indian tribes under cooperative agreements. Remedial action costs are apportioned, on a 90 percent to 10 percent ratio, between the Federal Government and the affected State, respectively. Remedial action costs at sites on Indian lands are paid in full by the Federal Government.

In addition, UMTRCA established a program authorizing the Nuclear Regulatory Commission (NRC) to regulate mill tailings generated during processing operations at "active" processing sites (i.e., sites with active licenses under the Atomic Energy Act on or after January 1, 1978) to ensure sound management of tailings throughout the production, reclamation, and disposal phases.

3. Legislative Background

UMTRCA did not provide for payment of remedial action costs incurred at active uranium processing sites containing piles of commingled tailings generated under Federal contract and for commercial entities. Two reports prepared subsequently for Congress, by the Department of Energy in January 1979[1] and by the General Accounting Office in February 1979,[2] concluded that Federal assistance should be provided to licensees at these sites to address the cost of remediating mill tailings that were generated under contracts with the United States Government.

Congress directed the Department of Energy, through section 213 of Public Law 96–540, to develop a plan for establishing a cooperative program to provide Federal assistance in the stabilization and management of commingled uranium mill tailings generated as an incident of sales to the United States Government. The Department was directed to identify, among other things, the amount of tailings generated under Federal contract at each active site. This determination was to be used to calculate the percentage of such tailings in relation to total tailings at each site, and the corresponding share of Federal assistance appropriate to meet the costs of stabilizing and managing tailings as required by Federal law.

Title X of the Energy Policy Act of 1992 establishes the authority and framework for providing this Federal assistance. The Department of Energy is required to issue regulations governing reimbursement to licensees at active uranium and thorium processing sites for certain costs of remedial action. This proposed rule presents the requirements and procedures under which the Department will implement this reimbursement program.

## II. Analysis of Major Issues

### *A. Determination of Reimbursable Costs*

Section 1001(b)(1) of the Act [42 U.S.C. 2296a(b)(1)] authorizes the Department of Energy to determine the portion of remedial action costs, incurred at each active processing site before December 31, 2002, or in accordance with a plan for subsequent remedial action approved by the Department, that are attributable to byproduct material generated as an incident of sales to the United States. Reimbursement may only be made for such portion of the remedial action costs incurred at each site and supported by adequate documentation.

At most active processing sites, byproduct material attributable to the United States is commingled with byproduct material generated for commercial or private parties. These commingled tailings are often consolidated at each site in a single, or a few, tailings pile or piles. Since byproduct material generated as a result of sales to the United States usually was produced prior to that generated as a result of sales to private parties, such Government-related byproduct material is often at the bottom of the pile, covered by layers of byproduct material subsequently generated as an incident of sales to private parties.

Plans for remedial action required pursuant to UMTRCA or Agreement State requirements usually address remediation and stabilization of the entire tailings pile. In addition, these plans usually require that tailings be

[1] "Answers to Questions on Commingled Tailings at Currently Operating Uranium Ore Processing Mills That Produced Uranium Under Atomic Energy Commission Contracts" (Department of Energy, January 29, 1979).

[2] "Cleaning Up Commingled Uranium Mill Tailings: Is Federal Assistance Necessary" (General Accounting Office, EMD–79–38, U.S. Department of Commerce, February 5, 1979).

stabilized in place, rather than moved or disposed of elsewhere. As a result, it often may be impossible to attribute specific costs of remedial action to specific byproduct material in a tailings pile. Instead, many remedial action costs may only be attributable to the entire tailings pile, not discreet portions that can be identified as commercial or Federal-related tailings. In addition, it often may be impossible to attribute specific costs of remedial action to a precise quantity, in tons, of byproduct material.

1. Maximum Reimbursement Amount

Since costs of remedial action attributable to byproduct material generated as an incident of sales to the United States generally cannot be segregated specifically from costs attributable to other byproduct material at the site, the Department of Energy shall provide reimbursement only for that percentage of the costs incurred for remedial action, and approved by the Department, that corresponds to the percentage of total tailings that were generated as an incident of sales to the United States.

The proposed rule provides that remedial action costs may only be attributable to the United States, as specified by Title X, in direct proportion to the percentage, by weight measured in dry short tons, of all tailings at the site that is comprised of Federal-related tailings, as that term is defined in the proposed rule. Accordingly, the proposed rule utilizes this percentage, defined as the Federal reimbursement ratio, to determine a maximum reimbursement amount to which a licensee at each processing site may be eligible. The maximum reimbursement amount for each site will be based on the site's total approved cost of remedial action multiplied by the Federal reimbursement ratio.

As required by section 1001(b)(1) of the Act [42 U.S.C. 2296a(b)(1)], the total approved cost of remedial action will be for costs of "decontamination, decommissioning, reclamation, and other remedial action" as defined by section 1004(3) of the Act [42 U.S.C. 2296a–3(3)]. Such costs (referred to throughout this proposed rule as "remedial action costs") must be for work performed which is necessary to comply with applicable UMTRCA, or Agreement State, requirements. These requirements are incorporated in a site's reclamation plan, or other written authorization conferred by NRC or an Agreement State. Furthermore, such costs must be supported by reasonable documentation and be approved by the Department as specified in today's proposed rule.

For example, if the total approved remedial action cost at a site equals $40 million, and 25 percent of the site's total tailings are Federal-related, then the maximum reimbursement amount to which the licensee could be eligible would be $40 million multiplied by the Federal reimbursement ratio (i.e., 0.25), or $10 million.

One factor may further limit the maximum reimbursement amount at each uranium processing site. As required by section 1001(b)(2)(A) of the Act [42 U.S.C. 2296a(b)(2)(A)], the reimbursement ceiling for each eligible uranium processing site may not exceed $5.50, as increased for inflation, multiplied by the number of dry short tons of tailings present at the site on October 24, 1992, that were generated as an incident of sales to the United States.[3] For example, in the hypothetical case above, if the site had only 1 million tons of Federal-related tailings, the reimbursement ceiling required by the Act would be $5.50 multiplied by 1 million tons, or $5.5 million, instead of $10 million. The Department of Energy requests public comments on this methodology for determining the Federal reimbursement ratio and invites comments on other methodologies which may also be appropriate.

2. Reimbursement Process

Today's proposed rule establishes a two-phase reimbursement process. The first phase consists of any reimbursement to a licensee made prior to the Department of Energy's approval of a plan submitted by that licensee for subsequent remedial action as authorized by section 1001(b)(1)(B)(ii) of the Act [42 U.S.C. 2296a(b)(1)(B)(ii)]. The second phase consists of all reimbursements made subsequent to approval of, and in accordance with, such a plan.

*(a) Phase One.* Reimbursement made to a licensee in response to each claim for reimbursement submitted in phase one would be limited to the total approved cost of remedial action multiplied by the Federal reimbursement ratio up to $5.50 per dry short ton, as adjusted for inflation. In other words, the Department of Energy would provide reimbursement only for that portion of the costs incurred for remedial action, and approved by the Department, that is derived by multiplying total approved costs by the percentage of Federal-related tailings. For example, if 30 percent of the total tailings present at the site on October 24, 1992, is Federal-related, then 30 percent of the remedial action costs claimed, which are supported by adequate documentation and approved by the Department, would be reimbursed up to an inflation-adjusted ceiling of $5.50 per dry short ton of Federal-related tailings.

*(b) Phase Two.* The second phase of the reimbursement process would begin in 2003. Claims for reimbursement during the second phase may be submitted only after the licensee's plan for subsequent remedial action has been approved by the Department of Energy. Funds for the reimbursement of projected costs of remedial action would be placed in an escrow account by the Department, as specified by Subpart D of this proposed rule. The proposed rule requires a licensee to prepare and submit for approval a plan for subsequent remedial action at any time after January 1, 2000, but not later than December 31, 2002.

The Department of Energy would use the site's reclamation plan approved by NRC or an Agreement State as the basis of such plan for subsequent remedial action. The plan for subsequent remedial action would adopt all of the remaining requirements concerning remedial action at the site contained in the site's approved reclamation plan. In addition, the plan for subsequent remedial action would include a total cost of remedial action, broken down into actual costs incurred and approved to date, and anticipated future costs. Actual costs would include all those costs for which a claim for reimbursement had been reviewed, approved, and paid by the Department. Anticipated costs would include the estimated costs of work remaining to be completed as required by the site's reclamation plan or other applicable requirements established by NRC or the Agreement State. All necessary supporting documentation would be incorporated into the plan.

Actual costs and anticipated costs would be combined to determine the total cost of remedial action at the site. This total cost would be multiplied by the Federal reimbursement ratio. The result of this equation would be the site's maximum reimbursement

[3] The $5.50 per dry short ton ceiling on individual site reimbursements established by section 1001(b)(2)(A) of the Act is applicable only to work at uranium processing sites. Section 1001(b)(2)(C) of the Act sets a ceiling of $40,000,000 for reimbursement of costs for work at the eligible thorium processing site. Accordingly, the licensee of the eligible thorium processing site shall be reimbursed for remedial action costs otherwise eligible in accordance with the requirements of the Act and this rule, in an amount not to exceed $40,000,000, as adjusted for inflation.

amount.[4] The Department of Energy would authorize funds, not to exceed such maximum reimbursement amount minus any reimbursement previously paid by the Department, to be placed in an escrow account as needed for future reimbursement of remedial action costs incurred in accordance with the plan for subsequent remedial action. Costs incurred in accordance with such plan would be eligible for reimbursement from the funds placed in escrow until such time as such funds have been expended, in accordance with the provisions of Subpart D of this rule. In particular, such costs must be for work approved by NRC or an Agreement State, supported by adequate documentation, and approved by the Department. As in phase one, reimbursement made to a licensee in response to each claim for reimbursement submitted in phase two would be limited to the total approved cost of remedial action multiplied by the Federal reimbursement ratio.

Because of the uncertainties involved in predicting the factual circumstances which may exist during phase two, the Department of Energy may need to issue additional regulations at an appropriate time to govern reimbursements made during this phase.

*B. Eligible Licensees, Sites, and Quantities of Tailings*

As discussed elsewhere in this preamble, a uranium or thorium licensee[5] at active uranium or thorium processing sites[6] is eligible for reimbursement of costs of remedial action[7] attributable to byproduct material generated as an incident of sales to the United States.

The Department of Energy has reason to believe that each of the following sites may qualify as an active uranium or thorium processing site, as defined under section 1004 of the Act (42 U.S.C. 2296a–3), and that persons license to conduct activities which result or have resulted in the production of byproduct material at these sites may qualify for reimbursement. In addition, the Department has determined that the following quantities of uranium tailings generated as an incident of sales to the United States and total uranium tailings, were present at each site on October 24, 1992, the date of enactment of the Act. The data from which these quantities are derived were first developed for the report entitled "Commingled Uranium-Tailings Study, Volume II: Technical Report," (Department of Energy, June 30, 1982). These data were reviewed, and in some instances updated, in an October 1992 Department report entitled "Integrated Data Base for 1992: U.S. Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics."[8] These reports are available from the Department of Energy Freedom of Information Reading Room indicated in the "ADDRESSES" section of this notice. Data on estimated thorium tailings have not been confirmed and therefore are not yet available for publication.

| | Tailings (millions of dry short tons) | |
|---|---|---|
| | Federal-related | Total |
| Licensee/active uranium site: | | |
| American Nuclear Corporation, Gas Hills Mill Site, (Gas Hills Station, WY) | 2.081 | 5.8 |
| Atlantic Richfield Company, Bluewater Mill Site, (Grants, NM) | 8.837 | 23.9 |
| Atlas Corporation, Moab Mill Site, (Moab, UT) | 5.945 | 10.6 |
| Cotter Corporation, Canon City Mill Site, (Canon City, CO) | 0.315 | 2.3 |
| Dawn Mining Company, Ford Mill Site, (Ford, WA) | 1.171 | 3.1 |
| Homestake Mining Company, Grants Mill Site, (Grants, NM) | 11.411 | 22.4 |
| Pathfinder Mines Corporation, Lucky McMine, (Riverton, WY) | 2.842 | 11.7 |
| Petrotomics Company, Shirley Basin Mill Site, (Shirley Basin, WY) | 0.725 | 5.9 |
| Quivira Mining Company, Ambrosia Lake Mill Site, (Grants, NM) | 10.032 | 33.2 |
| Tennessee Valley Authority, Edgemont Mill Site, (Edgemont, SD) | 1.625 | 2.0 |
| Umetco Mineral Corporation, Uravan Mill Site, (Nucla, CO) | 5.701 | 10.5 |
| Union Carbide Corporation, East Gas Hills Mill Site, (Gas Hills Station, WY) | 2.103 | 6.0 |
| Western Nuclear, Inc., Split Rock Mill Site, (Jeffrey City, WY) | 3.347 | 7.7 |
| *Licensee/active thorium site:* | | |
| Kerr-McGee Corporation, West Chicago Thorium Mill Site, (West Chicago, IL) | (1) | (1) |

[1] Data not available at this time.

The Department of Energy intends to make a final determination regarding the total quantity of tailings, and that portion attributable to the United States, present at each site on October 24, 1992, prior to reviewing or approving any reimbursement claim from such site. Claims from those sites for which a final determination is made will be evaluated individually. The Department will utilize the public notice and comment opportunities associated with this proposed rule to solicit and evaluate data and other input on these issues from interested parties. In particular, the Department requests information from interested parties concerning total quantities of tailings and Federal-related tailings which were present at each site on October 24, 1992; projected schedules for performing and completing remedial action at each eligible site; and estimates of remedial action costs incurred to date, and to be

[4] Such maximum reimbursement amount shall not exceed $5.50 per dry short ton, or other ceiling established by the Department of Energy as necessary to comply with the $270 million cumulative ceiling on uranium reimbursements, multiplied by the dry short tons of Federal-related tailings.

[5] "Licensee" is defined by section 1001 of the Act as a person "licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity . . . which results or has resulted in the production of byproduct material."

[6] "An active uranium or thorium processing site" is defined by section 1004(1) of the Act as:

(1) any uranium or thorium processing site, including the mill, containing byproduct material for which a license [issued by the Nuclear Regulatory Commission or its predecessor agency under the Atomic Energy Act of 1954, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)] for the production at such site of any uranium or thorium derived from ore—

(i) Was in effect on January 1, 1978;

(ii) was issued or renewed after January 1, 1978; or

(iii) for which an application for renewal or issuance was pending on, or after January 1, 1978; and

(2) Any other real property or improvement on such real property that is determined by the Department of Energy or by a State as permitted under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) to be:

(i) In the vicinity of such site; and

(ii) contaminated with residual byproduct material.

[7] "Costs of remedial action" means costs incurred by a licensee to perform decontamination, decommissioning, reclamation, and other remedial action, which are necessary to perform such action and are supported by reasonable documentation in accordance with the requirements of Subpart C of this rule.

[8] The tailings quantities obtained from this report were converted from metric tons to short tons for the purposes of this rule.

incurred, for which reimbursement may be claimed. The Department solicits this information for budget and other planning purposes. In addition, because there are an estimated 56.11 million dry short tons of Federal-related tailings, the aggregate $270 million statutory ceiling will not support the maximum allowable reimbursement of $5.50 per dry short ton, as established by the Act, if remedial action costs at all, or certain combinations, of the eligible processing sites reach or approach this per ton limit (i.e., $5.50 per dry short ton multiplied by 56.11 million dry short tons equals approximately $309 million). As such, the Department may need to establish a limit below the $5.50 per dry short ton ceiling, established by the Act, on the maximum amount of reimbursement potentially available to each licensee to ensure the equitable distribution of available funds. The Department will utilize data submitted in response to this proposed rule to evaluate the need for such a preliminary limit.

The Department of Energy intends to make a determination as to the amount of tailings present at each active site based on the best available data. The Department will solicit and review data from licensees and other interested parties in order to identify and obtain such data. In this regard, the Department intends to work cooperatively with each licensee to reach a determination on the total quantity of tailings and Federal-related tailings that reflects the most accurate and current information available.

The Department of Energy will notify the public of its determinations regarding quantities of tailings present at each site when the final rule is published, unless the Department is unable to conclude its evaluation of relevant data in time for such publication. In such event, the Department will notify by mail each eligible licensee, and all parties that submitted comments concerning a particular site, of its determination regarding such site. Any dispute concerning a determination by the Department regarding quantities of tailings present at a site would be subject to the appeals procedures specified in § 765.22 of this proposed rule.

*C. Verification of Adequacy of Remedial Action*

Section 1004(3) of the Act [42 U.S.C. 2256a–3(3)] requires that remedial action costs for which reimbursement is claimed must be for "work . . . necessary to comply with all applicable requirements" of UMTRCA or, where appropriate, with requirements established by a State acting pursuant to the terms of a discontinuance agreement entered with NRC under section 274 of the Atomic Energy Act of 1954.*

Work that is necessary to comply with UMTRCA, or applicable Agreement State requirements, is work identified in a site's approved reclamation plan or a license provision or is otherwise required by NRC or an Agreement State consistent with UMTRCA, which results in irreversible remediation as a part of a final closure plan. Accordingly, this proposed rule provides for reimbursement only for work required by such approved plan or license provision, or work otherwise required by NRC or Agreement State consistent with UMTRCA, and conducted in accordance with the terms of such plan, license, or authorization. Since NRC, or the applicable Agreement State, is responsible for ensuring that remedial action is conducted in accordance with such requirements, this proposed rule is linked closely with the existing processes by which NRC or the Agreement State monitor each site.

First, the proposed rule would require licensees to link each cost of remedial action for which reimbursement is claimed to a specific element or activity contained in an approved reclamation plan, or other NRC/Agreement State authorization. This will facilitate the Department of Energy's review of claims and will help to ensure that reimbursement is claimed only for those costs incurred in performing work that was necessary to comply with UMTRCA or Agreement State requirements.

Second, before approving a claim for reimbursement, the Department of Energy would request NRC or the applicable Agreement State to review the claim and provide written concurrence as to those elements of remedial action, for which reimbursement is claimed, that have been conducted in compliance with the requirements of the site's reclamation plan, or other authority, approved or required by NRC or the Agreement State. Such concurrence by NRC or the Agreement State would be a prerequisite for the Department to determine that the work for which reimbursement is claimed was necessary to comply with UMTRCA, or Agreement State, requirements.

Finally, the Department of Energy would use the reclamation plan approved by NRC or an Agreement State as the basis of any plan approved by the Department, pursuant to section 1001(b)(1)(B)(ii) of the Act [42 U.S.C. 2296a(b)(1)(B)(ii)], for subsequent decontamination, decommissioning, reclamation, and other remedial action. Any such plan for subsequent remedial action approved by the Department will adopt the remaining requirements contained in the site's reclamation plan approved by NRC or an Agreement State. Costs incurred by licensees in performing such subsequent remedial action, and approved by the Department, are reimbursable from funds placed in escrow, in accordance with the provisions of Subpart D of this rule. Once all remedial actions have been completed under UMTRCA, the Department intends to issue a Federal Register notice announcing a termination date beyond which claims for reimbursement will no longer be accepted.

*D. Inflation Index Determination*

Section 1001(b)(2)(D) of the Act [42 U.S.C. 2296a(b)(2)(D)] requires certain specified amounts to be increased annually based upon an inflation index selected by the Department of Energy. One purpose of this provision is to enable each of the three ceilings on reimbursement imposed by the Act to maintain their present day values. Accordingly, in order to prevent any inflationary erosion of the funds set aside for reimbursement, Congress authorized the Department to adjust the following amounts: the $5.50 per dry short ton ceiling established by section 1001(b)(2)(A) of the Act limiting reimbursement to individual uranium site licensees; the $270 million established by section 1001(b)(2)(B) limiting total aggregate reimbursement to uranium site licensees; and the $40 million established by section 1001(b)(2)(C) limiting total reimbursement to the eligible thorium processing site licensee.

The Department of Energy has determined that the appropriate inflation index for this purpose is the consumer price index for all urban consumers (CPI-U) established by the Department of Labor. This determination is based principally on two factors. First, the Uranium Enrichment Decontamination and Decommissioning Fund (the Fund) established under section 1801 of the Atomic Energy Act of 1954, from which reimbursement payments to licensees will be drawn, will itself be adjusted for inflation using the CPI-U. Second, the surety required of active site licensees by NRC pursuant to UMTRCA is also adjusted for inflation using the CPI-U. In order to facilitate a consistent and uniform rate of escalation between the

*The States of Colorado, Washington, and Illinois have entered into discontinuance agreements with NRC and are referred to herein as Agreement States.

Fund and that portion of the Fund to be used for reimbursements, as well as develop consistency between the reimbursement program and NRC's surety requirements, the Department proposes that the CPI-U is the appropriate inflation index to be used in the reimbursement program established by Title X of the Act (subject to alternative suggestions received during the comment process).

The amount of $5.50, and any unspent portion of the $270 million authorized for payment of uranium licensees and $40 million authorized for payment of the thorium site licensee, will be adjusted annually, beginning on April 1, 1994, and every April 1 thereafter, until such time as each eligible licensee has been reimbursed for the full amount determined by the Department of Energy to be owed to such licensee. The adjustment will be based on the ratio of the final CPI-U for December of the year in question to the CPI-U for October 1992. In addition, amounts paid to a licensee in previous years will be adjusted annually to determine a cumulative cost per ton ratio in current year dollars. This cumulative cost per ton ratio will be compared with the current year cost per ton ceiling, derived by adjusting for inflation the $5.50 per dry short ton statutory ceiling. The Department of Energy proposes under section 765.12 that the index used for these adjustments will be the annual CPI-U established by the Department of Labor for the preceding calender year.

*E. Additional Reimbursement at Active Uranium Processing Sites*

Section 1001(b)(2)(E) of the Act [42 U.S.C. 2296a(b)(2)(E)] requires the Department of Energy to determine, as of July 31, 2005, whether or not excess funds are available to reimburse licensees whose eligible costs exceed the statutory ceiling on reimbursement for individual uranium site licensees of $5.50 per dry short ton of byproduct material generated as an incident of sales to the United States. Specifically, the Department is required to determine whether the $270 million to be appropriated for reimbursement of uranium site licensees "exceeds the amount reimbursable to the licensees" when considering the $5.50 per dry short ton ceiling on reimbursement. In the event the Department determines that excess funds exist, the Department is authorized, but not required, to provide reimbursement in excess of $5.50 per dry short ton to any uranium site licensee whose approved costs of remedial action exceed $5.50 per dry short ton of Federal-related tailings.

As previously discussed, the Department of Energy proposes to determine a maximum reimbursement amount to which each licensee may be eligible based on five requirements. First, reimbursement must be for costs necessary to comply with UMTRCA or applicable Agreement State requirements. Second, reimbursement must be for costs of remedial action "attributable to" Federal-related byproduct material. Third, reimbursement may only be made for such costs that are supported by reasonable documentation confirming that the costs were necessary to comply with applicable requirements. Fourth, a licensee's maximum reimbursement amount cannot exceed the lesser of either the licensee's total approved costs of remedial action multiplied by the licensee's Federal reimbursement ratio or $5.50, as adjusted for inflation, or other per ton ceiling established by the Department as necessary, multiplied by the dry short tons of Federal-related tailings present at the site on October 24, 1992. Fifth, maximum reimbursement may be subject to adjustment on a prorated basis to assure that the aggregate reimbursement to all uranium licensees does not exceed $270 million, as adjusted for inflation. The maximum reimbursement amount will be the sum of all costs satisfying these five requirements, which either have been incurred by the licensee and approved by the Department for reimbursement, or have been approved by the Department in a plan for subsequent remedial action to be incurred in accordance with such plan. In addition, the Department may approve an increase in the maximum reimbursement amount established for any active uranium site to reflect approved remedial action costs incurred in excess of estimated costs contained in the original maximum reimbursement amount. The Department would determine an average per ton cost of remedial action at each site by dividing the site's maximum reimbursement amount by the number of dry short tons of Federal-related tailings. At any uranium processing site where such estimated per dry short ton cost of remedial action exceeds $5.50, the maximum amount for which the licensee may be eligible for reimbursement would be limited initially to $5.50 per dry short ton.

As of July 31, 2005, the Department of Energy would determine if the total of all maximum reimbursement amounts is less than the amount authorized to be appropriated by section 1003 of the Act (42 U.S.C. 2296a–2), as adjusted for inflation. In the event such amount authorized by section 1003 exceeds the total amount reimbursable to uranium site licensees, the Department would then determine if the per dry short ton costs of remedial action at any active uranium processing site have exceeded $5.50. At any such site, the Department may approve an increase in the maximum reimbursement amount to reflect, in whole or in part, the amount by which the per dry short ton remedial action cost exceeded $5.50. In the event additional costs approved for reimbursement by the Department exceeded the amount of funds available for such reimbursement, the Department will provide reimbursement on a prorated basis. Each eligible licensee's prorated share would be determined in the following manner. Total excess funds available will be divided by the total number of tons of Federal-related tailings present at sites where costs of remedial action exceeded $5.50 per dry short ton, as adjusted for inflation. The resulting number would be the maximum cost per ton, over $5.50, that may be reimbursed. Total reimbursement for each licensee that had incurred approved costs of remedial action in excess of $5.50 per dry short ton would be the product of such excess cost per ton multiplied by the number of dry short tons of Federal-related tailings at the site or the actual costs incurred and approved by the Department, whichever is less.

Because of the uncertainties involved in predicting the factual circumstances which may exist at such time, the Department of Energy may issue additional guidance at an appropriate time to govern any reimbursement of such additional costs.

*F. Reimbursement of Costs at the Active Thorium Processing Site*

This proposed rule reflects the differences and similarities established by the Act between reimbursement of remedial action costs at active uranium sites versus such reimbursement at the active thorium processing site.[10]

Two major differences apply to reimbursement of remedial action costs incurred at the active thorium site. First, section 1001(b)(2)(A) of the Act [42 U.S.C. 2296a(b)(2)(A)] excludes reimbursement of costs at the active thorium site from the $5.50 per dry short ton ceiling, which is applicable only to reimbursement at active

[10] The Department of Energy is aware of only one site that satisfies the Act's definition of an active thorium processing site. This site, known as the West Chicago Thorium Mill Site and located in or near West Chicago, Illinois, is owned by the Kerr-McGee Corporation.

uranium sites. Instead of a per ton ceiling, the Act establishes a $40 million ceiling, adjusted for inflation, on the total reimbursement to be paid to the licensee of the active thorium site. Second, section 1001(b)(2)(C) of the Act provides that reimbursement of the thorium site licensee may only be made for costs incurred for offsite disposal.

In all other significant respects, however, reimbursement paid to the thorium site licensee would be governed by the same requirements applicable to payments made to uranium site licensees. For example, costs incurred at the thorium site must be for work that is necessary to comply with applicable requirements of the licensing agency, which is currently the State of Illinois, an Agreement State. Costs must be attributable to Federal-related byproduct material. Such costs would have to be incurred no later than December 31, 2002, or in accordance with a plan for subsequent remedial action approved by the Department of Energy.

Accordingly, the licensee of the thorium site would be subject to the claim procedures established by Subpart C of this rule. The licensing agency must concur that work for which reimbursement is claimed was necessary to comply with applicable requirements. Work performed after December 31, 2002, must be in accordance with a plan approved by the Department of Energy for subsequent remedial action. All work for which reimbursement is claimed must be for offsite disposal. In addition, reimbursable costs would be limited to the total approved costs multiplied by the Federal reimbursement ratio established for the site until total reimbursement equals the site's maximum reimbursement amount or $40 million adjusted for inflation, whichever is less.

## III. Section-By-Section Analysis

### A. Subpart A—General

*1. Section 765.1 and 765.2 Purpose, Scope, and Applicability*

Section 765.1 specifies that the purpose of this proposed rule is to establish procedures and requirements governing the reimbursement of remedial action costs authorized by Title X of the Act. The section confirms that the proposed rule is promulgated as required by section 1002 of the Act (42 U.S.C. 2296a–1).

Section 765.2 describes the general scope and applicability of the proposed rule. In particular, the section provides that reimbursement shall be made to a licensee of an active uranium or thorium processing site for costs of decontamination, decommissioning, reclamation, or other remedial action, which are supported by adequate documentation and determined by the Department of Energy to be attributable to Federal-related byproduct material. Costs of decontamination, decommissioning, reclamation, and other remedial action must be for work that is necessary to comply with the requirements of UMTRCA, or with applicable requirements established by an Agreement State. Moreover, except as provided by § 765.32, reimbursement of a uranium site licensee shall be limited to $5.50, as adjusted for inflation, per dry short ton of Federal-related tailings. The total reimbursement paid to all uranium licensees shall not exceed $270 million, as adjusted for inflation. Reimbursement of the thorium site licensee shall not exceed $40 million, as adjusted for inflation.

*2. Section 765.3 Definitions*

Section 765.3 defines the acronyms and key terms referenced in this proposed rule. Many of the definitions contained in § 765.3 are taken verbatim, or with minor changes, from the Act, UMTRCA, or the Atomic Energy Act of 1954. Additional definitions were developed specifically for this rule.

The term "claim for reimbursement" is defined as the submission of an application for reimbursement in accordance with the requirements established in Subpart C of this rule.

The term "costs of remedial action" is defined to clarify that such costs must be incurred for decontamination, decommissioning, reclamation, or other remedial action which is necessary to comply with the requirements of UMTRCA or an Agreement State, and must be substantiated by documentation in accordance with the requirements of Subpart C of this rule. Such costs may include, but are not limited to, groundwater remediation, treatment of contaminated soil, disposal of process wastes, removal actions, air pollution studies, mill and equipment decommissioning, site monitoring, administrative expenses directly related to remedial action, and other costs for activities necessary to comply with the requirements of UMTRCA or applicable requirements established by an Agreement State.

The term "dry short ton of byproduct material" is defined as the tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock.

As previously discussed, the terms "Federal-related tailings" and "Federal reimbursement ratio" are defined as the tailings attributable to sales to the United States, and the ratio of such tailings to total tailings present at the site on October 24, 1992, respectively.

The term "inflation index" is defined as the consumer price index for all urban consumers (CPI–U) as established by the Department of Labor.

The term "plan for subsequent remedial action" is defined as a plan approved by the Department of Energy, which incorporates an estimated total cost for remedial action and all applicable requirements of remedial action to be performed after December 31, 2002, at an active uranium or thorium processing site.

Finally, "reclamation plan" is defined to clarify that such plan, which outlines the applicable requirements necessary to comply with UMTRCA or applicable Agreement State requirements, must have been approved by NRC or the Agreement State.

### B. Subpart B—Reimbursement Criteria

*1. Section 765.10 Eligibility for Reimbursement*

Section 765.10 outlines the basic eligibility requirements governing reimbursement. In particular, as required by section 1001 of the Act (42 U.S.C. 2296a), § 765.10 specifies that persons licensed under section 62 or section 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) shall be eligible for reimbursement of certain costs of remedial action determined by the Department of Energy to be attributable to byproduct material generated as an incident of sales to the United States. Such reimbursement is subject to further procedures and limitations specified in this rule.

*2. Section 765.11 Reimbursable Costs*

Section 765.11 defines the parameters within which costs must fall in order to be reimbursable. In order to be reimbursable, costs of remedial action incurred by a licensee must be necessary to comply with applicable requirements of UMTRCA of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) (i.e., an Agreement State). Such requirements are those contained in a reclamation plan, or other written authorization, approved by NRC or an Agreement State as contributing to the irreversible remediation, and final closure, of the site. Reimbursable costs must be incurred prior to December 31, 2002, or be in accordance with a plan for subsequent remedial action approved by

the Department of Energy. Claims for reimbursement must be supported by reasonable documentation as determined by the Department. In addition, costs of remedial action are reimbursable only if they are attributable to Federal-related byproduct material present at the site as of October 24, 1992.

Section 765.11 limits the amount of reimbursement paid to any one licensee of an active uranium mill tailings site to an amount not to exceed $5.50 multiplied by the dry short tons of Federal-related tailings. Total reimbursement, in the aggregate, of uranium site licensees is limited to $270 million. Reimbursement of remedial action costs at the eligible thorium processing site may only be made for costs incurred for offsite disposal, attributable to Federal-related byproduct material, and is limited to $40 million.

*3. Section 765.12 Inflation Index Adjustment Procedures*

The Act directs the Department of Energy to determine an appropriate inflation index by which to increase annually (1) the $5.50 per dry short ton ceiling on individual reimbursement, (2) any remaining amount of the $270 million available in the aggregate for reimbursement of eligible uranium site licensees, and (3) any remaining amount of the $40 million available for reimbursement of the thorium site licensee. As discussed in section II (D) of this preamble, the Department is proposing the CPI–U as the appropriate inflation index for these adjustments. Section 765.12 of the proposed rule provides that the CPI–U will be used to adjust these amounts annually on April 1 beginning on April 1, 1994, to account for inflation that occurred in the previous calendar year.

**C. Subpart C—Procedures for Filing and Processing Reimbursement Requests**

Subpart C establishes the procedures for preparing and processing reimbursement claims. These procedures are designed to ensure that all information the Department of Energy needs to review a claim is provided, that claims are evaluated on a consistent basis, and that claims are processed in an efficient and equitable manner.

*1. Section 765.20 Reimbursement Request Filing Procedures*

Section 765.20 of the proposed rule establishes the filing procedures that must be followed by an applicant when submitting a claim for reimbursement.

Each claim for reimbursement of remedial action costs must be supported by adequate documentation. Such documentation should be submitted in the same shipment, except for additional information requested by the Department of Energy.

Paragraph (c) of § 765.20 specifies the content and format with which reimbursement claims must comply.[11] In particular, a copy of the licensee's approved reclamation plan, or other written authorization from NRC or an Agreement State, must be submitted with the initial claim. Revisions to such plan or authorization must be submitted with the next claim prepared following approval of such revision. All costs for which reimbursement is claimed, and all supporting documentation, must be organized and cross-referenced to such approved plan or other authorization.

All costs for which reimbursement is claimed must be supported by documentation that demonstrates that each cost for which reimbursement is claimed was incurred for a specific activity required by NRC or an Agreement State, the time period in which the cost was incurred, and the portion of such cost attributable to remedial action. Copies of invoices, payroll records, receipts, and other documents should be provided by the licensee to support claims for reimbursement. The Department of Energy strongly urges licensees to provide documents that were prepared contemporaneous to the time the cost which they support was incurred. Documents prepared substantially after the cost was incurred will be considered by the Department in reviewing claims if such documents are the only means available for the licensee to provide adequate documentation to support reimbursement of the cost. The Department will evaluate all documentation submitted in support of a claim for reimbursement on a case-by-case basis and will exercise its discretion in determining the weight to accord to various supporting documents.

Since NRC or an Agreement State must certify that remedial action for which reimbursement is claimed is appropriate to comply with applicable requirements, the Department of Energy anticipates that each licensee will usually submit claims following a site review by NRC or the Agreement State. Nevertheless, in order to allow licensees to submit claims reasonably soon after a site review, and reduce delays in processing claims that would occur if all claims were submitted before a single, annual deadline, the proposed rule provides for semi-annual submittal of claims.

*2. Section 765.21 Processing Reimbursement Requests*

Section 765.21 outlines the procedures to be followed by the Department of Energy in processing each claim for reimbursement.

Section 765.21 (a) through (e) provides that the Department of Energy will conduct a preliminary review of each claim within 60 days of the claim submittal deadline to determine if all necessary documentation has been submitted. The Department may contact the applicant at any time during this review to request additional information or receive any clarification necessary to continue the review. The Department may formally request the applicant in writing to supply additional documentation or clarification as necessary to enable the Department to complete its evaluation of the claim. In addition, the Department may request an informal conference with the applicant and, if necessary, NRC or an Agreement State, to obtain information or clarification concerning any aspect of a claim. While the applicant is not required to provide additional information or clarification requested by the Department, a failure to do so may result in the denial of that portion of the claim for which information is requested.

The Department of Energy will conduct a final review of the claim, after receiving any additional information requested and prior to making a reimbursement decision. The Department will notify the claimant of its decision regarding a claim within 10 days of completing the final review.

Section 765.21 (f) and (g) discuss the timing for processing for payment reimbursement requests. Reimbursements will be made on a prorated basis if there are insufficient funds available to reimburse all claims in full. Amounts not initially disbursed will be paid on a prorated basis, until satisfied in full, as funds become available. Funds will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund, as required by the Act. Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act as specified by § 765.21(g) of this rule. Following each annual appropriation by Congress, the Department of Energy will issue a

[11] The Department of Energy intends to prepare and distribute a standardized format guide to aid licensees in the preparation of claims. The Department may revise this format from time to time as warranted, based upon experience gained in administering the reimbursement program.

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Federal Register notice informing licensees of the availability of funds for reimbursement and whether the Department anticipates that approved claims for that year may be subject to prorated payment. This Federal Register notice will also serve as the Department's official invitation for eligible licensees to submit their claims for reimbursement by the dates specified in the notice. It is the Department's intent to request initial claims on or before February 1, 1994, and beginning in 1995, request claims on a semi-annual basis on or before February 1 or August 1 of each year.

*3. Section 765.22 Appeals Procedures*

Section 765.22 authorizes a licensee to utilize the established Department of Energy dispute resolution process to appeal decisions that deny, in whole or in part, any claim for reimbursement. The initial decision of the Department becomes final if the decision is not appealed to the Department's Office of Hearings and Appeals (OHA) within 45 days. In the event of an appeal, the OHA decision is the Department's final decision. Appeals of the Department's final determination regarding quantities of Federal-related and total tailings present at a site, and its Federal reimbursement ratio, would also be subject to this process. Appeals are to be filed with the Department's OHA. OHA is a quasi-judicial body that reports to the Secretary of Energy and, except as otherwise provided by law, is responsible for conducting informal adjudicative proceedings of the Department, where there is provision for separation of function. In connection with these duties, OHA holds hearings, receives evidence, develops a record, and issues a final determination, which is subject to review in the Federal courts.

Appeals will be governed by the dispute resolution procedures of OHA set forth in 10 CFR Part 205, Subpart H. Subpart H describes who may file an appeal, the form and content of the appeal, and the dispute evaluation and resolution procedures. The proposed rule would require a claimant to file an appeal because the Department believes that administrative remedies should be exhausted before a claimant could file a petition for review in a Federal Court. This policy would prevent unnecessary litigation. A decision of OHA concerning any such appeal shall be considered a final agency action for purposes of judicial review.

*4. Section 765.23 Annual Report*

The Department of Energy will prepare an annual report, available to the public, summarizing pertinent information from the preceding year regarding the reimbursement program. Such information may include, but not be limited to, individual and aggregate reimbursement claims approved and paid, approval of plans for subsequent remedial action, completion of particular elements of remedial action at active sites, total amounts paid and remaining for reimbursement, and other information. Licensees should be aware that any information submitted in a claim for reimbursement may be subject to public disclosure, through the annual report as well as by specific request, in accordance with the Freedom of Information Act, and all other applicable requirements.

**D. Subpart D—Additional Reimbursement Procedures**

*1. Section 765.30 Reimbursement of Costs Incurred in Accordance With a Plan for Subsequent Remedial Action*

As discussed more fully in section II(E) of this preamble, § 765.30 of Subpart D establishes provisions governing reimbursement of costs incurred in accordance with a plan for subsequent remedial action approved by the Department of Energy. Reimbursement of costs incurred after December 31, 2002, shall be subject to the submission of such a plan by the licensee and approval of the plan by the Department. Licensees seeking reimbursement of costs of remedial action incurred after December 31, 2002, shall submit to the Department for review and approval such a plan at any time between January 1, 2000, and December 31, 2001. A plan must address all applicable requirements remaining to be satisfied, which are contained in a reclamation plan for the site approved by NRC or an Agreement State. In addition, a plan for subsequent remedial action must provide a total estimated cost of remedial action, broken down into costs already incurred by the licensee and approved by the Department, and projected costs to be incurred to satisfy all remaining requirements of the site's approved reclamation plan. Each licensee would be required to provide adequate documentation or other information to support its estimate of costs to be incurred.

The Department of Energy may approve or reject any plan submitted by a licensee. At any time following submittal of a plan, the Department may request additional information from the licensee, and may consult with NRC or an Agreement State concerning remaining remedial action requirements contained in the site's approved reclamation plan. In the event the Department rejects a plan, the licensee may submit additional plans for review by the Department, until such a plan is approved, or until December 31, 2002, whichever occurs first. A failure by a licensee to receive approval from the Department of a plan for subsequent remedial action prior to December 31, 2002, will preclude that licensee from receiving any reimbursement for costs incurred after that date, unless and until such time as the licensee obtains approval from the Department of such a plan.

*2. Section 765.31 Placement of Funds in Escrow for Subsequent Remedial Action*

Section 765.31 establishes procedures for reimbursement of costs incurred in accordance with an approved plan(s) for subsequent remedial action.

Upon approval of the first plan by the Department of Energy, the Department will authorize to be placed into an escrow account, established and administered by the United States Treasury Department in accordance with requirements specified by the Department of Energy, funds sufficient to reimburse the licensee for costs of remedial action subsequently incurred and approved by the Department of Energy. Funds will be added to the escrow account upon Department of Energy approval of any subsequent plans submitted by other licensees. Placement of funds in such escrow account will be subject to the availability of funds from the Uranium Enrichment Decontamination and Decommissioning Fund established pursuant to section 1801 of the Atomic Energy Act of 1954, and the requirements of the Anti-Deficiency Act.

Costs incurred in accordance with the requirements of a plan for subsequent remedial action, and approved by the Department of Energy, will be reimbursed in an amount equal to the approved cost multiplied by the site's Federal reimbursement ratio, until such time as the Department determines its obligation under Title X to reimburse the licensee has been satisfied or remedial action has been completed at the site.

*3. Section 765.32 Reimbursement of Excess Funds*

As discussed in section II(E) of this preamble, the Act authorizes the Department of Energy to determine, as of July 31, 2005, whether the amount authorized for reimbursement by section 1003 of the Act (42 U.S.C. 2296a-2) exceeds the amount otherwise

reimbursable to licensees, as limited by the $5.50 per dry short ton reimbursement ceiling on uranium site licensees. In the event any uranium site licensee incurs reimbursable costs in excess of $5.50 per dry short ton, and the Department has determined that excess funds exist as of July 31, 2005, the Department is authorized to provide reimbursement of such costs to the extent funds are available.

Section 765.32 outlines the procedures that will govern such additional reimbursement. In the event further clarification of these procedures becomes necessary, the Department of Energy will issue appropriate guidance.

## IV. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting information, opinions, or arguments with respect to the proposed regulations set forth in this notice. Comments should be submitted to the address indicated in the "Addresses" section of this notice and should be identified on the outside of the envelope and on documents submitted to the Department with the designation "Comments on the Title X Proposed Rule." Two copies should be submitted if possible. All comments received by the date indicated in the "Dates" section will be considered by the Department before final action is taken on the proposed rule. Late comments will be considered to the extent practicable. Any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and three copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information and treat it according to its determination.

In addition, the Department of Energy has scheduled a public hearing at the Holiday Inn-Denver International Airport, 15500 East 40th Avenue, Denver, Colorado 80239 (303/371–9494), beginning at 9:30 a.m., on September 14, 1993. Those individuals who wish to present oral comments at this non-evidentiary hearing are encouraged to request in writing an opportunity to be heard. Unless the Department is otherwise requested in writing, individuals will be scheduled 10-minute time segments to present their comments. Time segments will be allotted based on the order in which the written requests are received. Individuals who do not submit a written request to speak will be allowed time to speak as time permits. Written requests should be submitted to the Department official identified in the "Addresses" section of this preamble.

## V. Review Under Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether rules are major rules as defined in the order. The Department of Energy has reviewed this proposed rule and has determined that it is not a major rule because: implementing this rule will not have an annual effect of $100 million or more on the economy; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Prior to publication, the proposed rule was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291. The Director has concluded his review and concurred with the Department's determination that this is not a major rule.

## VI. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Regulatory Flexibility Act requires that a regulatory flexibility analysis be performed for all rules that are likely to have "significant impact on a substantial number of small entities." This regulation involves reimbursement for costs of remedial action at active uranium and thorium processing sites. The number of potentially eligible applicants is very limited. Because this regulation provides for reimbursement of funds authorized by Title X of the Act, it does not pose any adverse effect on the private sector economy or small entities, and in fact may provide a benefit to small entities located near active processing sites. The Department of Energy, therefore, certifies that this regulation will not have a significant impact on a substantial number of small entities.

## VII. Review Under the Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 2501 *et seq.* The final rule will respond to any OMB or public comments concerning the proposed information collection requirements.

## VIII. Review Under the National Environmental Policy Act

The Department of Energy has determined that this proposed rule is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D of 10 CFR part 1021, which applies to establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

## IX. Review Under Executive Order 12612

This proposed rule does not have a substantial direct effect on the States, the relationship between the States and the Federal Government, or the distribution of power and responsibilities among various levels of government. No federalism assessment under Executive Order 12612 is required.

## X. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation clearly specifies any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. The Department of Energy certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

## List of Subjects in 10 CFR Part 765

Radioactive materials, Reclamation, Reporting and recordkeeping requirements, Surety bonds, Uranium.

**Thomas P. Grumbly,**

*Assistant Secretary for Environmental Restoration and Waste Management.*

For the reasons set out in the Preamble, chapter III of title 10 of the Code of Federal Regulations is proposed

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to be amended by adding a new part 765 to read as follows:

## Part 765—REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES

### Subpart A—General

Sec.
765.1 Purpose
765.2 Scope and Applicability
765.3 Definitions

### Subpart B—Reimbursement Criteria

765.10 Eligibility for Reimbursement
765.11 Reimbursable Costs
765.12 Inflation Index Adjustment Procedures

### Subpart C—Procedures for Filing and Processing Reimbursement Requests

765.20 Reimbursement Request Filing Procedures
765.21 Processing Reimbursement Requests
765.22 Appeals Procedures
765.23 Annual Report

### Subpart D—Additional Reimbursement Procedures

765.30 Reimbursement of Costs Incurred in Accordance with a Plan for Subsequent Remedial Action
765.31 Placement of Funds in Escrow for Subsequent Remedial Action
765.32 Reimbursement of Excess Funds

**Authority:** Pub. L. 102–486 (42 U.S.C. 2296 and 7254).

### Subpart A—General

#### § 765.1 Purpose.

The provisions of this part establish regulatory requirements governing reimbursement for certain remedial action costs at active uranium or thorium processing sites as specified by Subtitle A of Title X (Title X) of the Energy Policy Act of 1992 (Pub. L. 102–486, 106 Stat. 2776). These regulations are authorized by section 1002 of the Energy Policy Act (42 U.S.C. 2296a-1) which requires the Secretary of Energy (Secretary) to issue regulations governing such reimbursements.

#### § 765.2 Scope and applicability.

(a) This part establishes policies, criteria, and procedures governing reimbursement of certain costs of remedial action incurred by uranium or thorium licensees at active uranium or thorium processing sites as a result of byproduct material generated as an incident of sales to the United States.

(b) Costs of remedial action at active uranium or thorium processing sites are borne by persons licensed under section 62 or 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111), subject to the exceptions and limitations specified in this part.

(c) The Department of Energy shall, subject to the provisions specified in this part, reimburse a licensee described in paragraph (b) of this section that owns an active uranium or thorium processing site for such portion of the costs of remedial action as are determined by the Department to be attributable to byproduct material generated as an incident of sales to the United States and either incurred by such licensee not later than December 31, 2002, or incurred by the licensee in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Department.

(d) Such costs of remedial action must be necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA) (42 U.S.C. 7901 *et seq.*) or, in a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021), with requirements established by the State pursuant to the authority established by such agreement. Claims for reimbursement must be supported by reasonable documentation as specified in subpart C of this part.

(e) Except as authorized by § 765.32, the total amount of reimbursement paid to any licensee of an active uranium mill processing site shall not exceed $5.50, as adjusted for inflation by applying the consumer price index for all urban consumers (CPI-U) as provided by § 765.12, multiplied by the number of dry short tons of Federal-related tailings located at the site on October 24, 1992.

(f) The total amount of reimbursement paid to all uranium licensees shall not exceed $270 million, as adjusted for inflation by applying the CPI-U as provided by § 765.12.

(g) The total amount of reimbursement paid to any licensee of an active thorium processing site shall not exceed $40 million, as adjusted for inflation by applying the CPI-U as provided by § 765.12.

(h) Reimbursement of licensees for costs of remedial action will only be made for such costs that are supported by reasonable documentation as required by § 765.20 and claimed for reimbursement by a licensee in accordance with the procedures established by subpart C of this part.

#### § 765.3 Definitions.

For the purposes of this part, the following terms are defined as follows:

*Active uranium or thorium processing site or active processing site* means:

(1) Any uranium or thorium processing site, including the mill, containing byproduct material for which a license [issued by NRC or its predecessor agency under the Atomic Energy Act of 1954, or by a State as permitted under section 274 of such Act (42 U.S.C. 2021)] for the production at such site of any uranium or thorium derived from ore—

(i) Was in effect on January 1, 1978;

(ii) Was issued or renewed after January 1, 1978; or

(iii) For which an application for renewal or issuance was pending on, or after January 1, 1978; and

(2) Any other real property or improvement on such real property that is determined by the Secretary or by a State as permitted under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021) to be:

(i) In the vicinity of such site; and

(ii) Contaminated with residual byproduct material.

*Agreement State* means a State that has entered into a discontinuance agreement with NRC under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).

*Byproduct material* means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

*Claim for reimbursement* means a claim for reimbursement submitted in accordance with the requirements established in subpart C of this part.

*Costs of remedial action* means costs incurred by a licensee to perform decontamination, decommissioning, reclamation, and other remedial action, which are necessary to perform such action and are supported by reasonable documentation in accordance with the requirements of subpart C of this part.

*Decontamination, decommissioning, reclamation, and other remedial action* means work performed which is necessary to comply with all applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.) or, where appropriate, with requirements established by a State that is a party to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).

*Department* means the United States Department of Energy.

*Dry short tons of byproduct material* means the tailings generated from the extraction and processing of 2,000 pounds of uranium or thorium ore-bearing rock.

*Federal reimbursement ratio* means the ratio of dry short tons of Federal-related tailings to total dry short tons of

tailings present at an active uranium or thorium processing site on October 24, 1992.

*Federal-related tailings* means tailings that were present at an active uranium or thorium processing site on October 24, 1992, and were generated as incident of uranium or thorium sales to the United States.

*Inflation index* means the consumer price index for all urban consumers as determined by the Department of Labor.

*Licensee* means a person licensed under section 62 or section 81 of the Atomic Energy Act of 1954 (42 U.S.C. 2091, 2111) for any activity at an active uranium or thorium processing site which results, or has resulted, in the production of byproduct material.

*NRC* means the United States Nuclear Regulatory Commission.

*Offsite disposal* means disposal of byproduct material in a location that is not contiguous to the West Chicago Thorium Mill Site located in West Chicago, Illinois, in accordance with a plan approved by, or other written authorization from, the Illinois Department of Nuclear Safety or appropriate State agency.

*Plan for subsequent remedial action* means a plan approved by the Department of Energy incorporating an estimated total cost for remedial action, and all applicable requirements of remedial action to be performed after December 31, 2002, at an active uranium or thorium processing site.

*Reclamation plan* means a plan, which has been approved by NRC or an Agreement State, establishing requirements for cleanup of an active processing site that are necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978, or requirements established by an Agreement State.

*Remedial action* means decontamination, decommissioning, reclamation, and other remedial action at an active uranium or thorium processing site.

*Secretary* means the Secretary of Energy.

*Surety Requirements* means the amount of necessary funds, as required by NRC or an Agreement State, that a licensee must possess to cover the estimated cost of conducting all licensed remedial action activities including costs of construction and disposal.

*Tailings* means the remaining granular material which was disposed of in a tailings impoundment after the extraction of uranium or thorium from ore.

*UMTRCA* means the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*).

*United States* means any executive department, commission, or agency, or other establishment in the executive branch of the Federal Government.

## Subpart B—Reimbursement Criteria

### § 765.10 Eligibility for reimbursement.

(a) Any licensee that owns an active uranium or thorium processing site and that has incurred costs of remedial action at such site that are attributable to Federal-related byproduct material shall be eligible for reimbursement of such costs, subject to the procedures and limitations specified in this part.

(b) Prior to reimbursement of remedial action costs incurred by a licensee, the Department of Energy shall make a determination regarding the total quantity of tailings, and that portion of such tailings that is Federal-related tailings, present on October 24, 1992, at the active processing site owned by such licensee. The licensee shall concur in such determination, or waive or exhaust its right to any administrative or judicial appeal disputing such determination, prior to submitting any claim for reimbursement of remedial action costs incurred at the site. Claims from those sites for which such determination is made will be evaluated individually.

### § 765.11 Reimbursable costs.

(a) Costs for which an eligible licensee may apply for reimbursement must be for remedial action attributable to Federal-related byproduct material, as determined by the Department of Energy. Such costs must be incurred in the performance of activities contributing to final closure of the site and required by either:

(1) A plan, portion thereof, or other written authorization, approved by NRC pursuant to the authority provided by section 2022(d) of the Atomic Energy Act of 1954 (42 U.S.C. 2021); or

(2) A plan, portion thereof, or other written authorization, approved by an Agreement State, pursuant to the authority provided by a discontinuance agreement with NRC entered pursuant to section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021).

(b) In addition, such costs must either:

(1) Be incurred not later than December 31, 2002; or

(2) Be incurred in accordance with a plan for subsequent remedial action approved by the Department of Energy, as specified in § 765.30.

(c) A licensee seeking reimbursement for costs of remedial action must demonstrate that such costs are attributable to Federal-related byproduct material. For purposes of such demonstration, costs of remedial action that are attributable to Federal-related byproduct material are those costs equal to the total approved costs of remedial action at a site multiplied by the Federal reimbursement ratio established for the site.

(d) Total reimbursement of costs of remedial action incurred at an active processing site, that are otherwise reimbursable pursuant to the provisions of this part, shall be limited as follows:

(1) Reimbursement of remedial action costs to active uranium licensees shall not exceed the lesser of: (i) the actual cost of remedial action multiplied by the Federal reimbursement ratio; or (ii) $5.50 or other per ton ceiling established by the Department of Energy in accordance with the requirements of this part, as adjusted for inflation pursuant to § 765.12, multiplied by the number of dry short tons of byproduct material generated as an incident of sales to the United States.

(2) Aggregate reimbursement of remedial action costs incurred at all active uranium processing sites shall not exceed $270 million; and

(3) Reimbursement of remedial action costs at the active thorium processing site shall be limited to costs incurred for offsite disposal and shall not exceed the actual approved costs of remedial action multiplied by the Federal reimbursement ratio, or $40 million, whichever is less.

(e) Costs of remedial action shall be reimbursable only if supported by adequate documentation and approved by the Department of Energy in accordance with the provisions of this part.

(f) Notwithstanding the requirement that byproduct material must be located at an active processing site on October 24, 1992, remedial action costs attributable to byproduct material generated at the site of the Edgemont Mill in Edgemont, South Dakota, and moved subsequently from such location for disposal, shall be eligible for reimbursement in accordance with all other requirements of this part.

### § 765.12 Inflation index adjustment procedures.

(a) The amounts of $5.50 [as specified in § 765.2(e) or other per ton ceiling established by the Department of Energy, $270 million [as specified in § 765.2(f)], and $40 million [as specified in § 765.2(g)], shall be adjusted for inflation as provided by this section.

(b) The Department of Energy shall multiply $5.50 or other ceiling

established by the Department of Energy, and those portions of $270 million and $40 million that have not yet been paid in reimbursement, by the CPI–U. The Department of Energy shall apply the CPI–U to the amounts specified in this paragraph annually on April 1 of each year, using the CPI–U as determined by the Department of Labor for the preceding calendar year.

(c) The Department of Energy shall adjust annually, using the CPI–U as defined in this part, each amount paid to a uranium site licensee in previous years to determine a cumulative cost per ton ratio in current year dollars for purposes of comparison with the $5.50 per ton ceiling as adjusted for inflation.

## Subpart C—Procedures for Filing and Processing Reimbursement Requests

### § 765.20 Reimbursement request filing procedures.

(a) All remedial action costs for which reimbursement is claimed must be supported by adequate documentation as specified in this subpart. The Department of Energy reserves the right to deny any claim for reimbursement, in whole or in part, that is not submitted in accordance with the requirements of this subpart.

(b) Except if requested by the Department of Energy as provided by § 765.21, all documentation in support of a reimbursement claim must be submitted at the same time in the same shipment. If a claimant determines it will be unable to submit all documentation in the same shipment, the claimant shall provide written notice to the Department prior to any submittal of documentation. The claimant should specify the reasons for this action and describe the type of documentation to be sent at a later date, including the estimated date of shipment. The Department may, at its discretion, require the claimant to withhold the original shipment until all documentation can be sent to the Department at one time.

(c) Each claim submitted must be consistent with the format and content prescribed by this paragraph.

(1) The claimant shall provide a copy of the approved site reclamation plan, or other authorization from NRC or an Agreement State, with the initial claim submitted. Any revisions or modifications made to such plan and approved by NRC or an Agreement State shall be included by the licensee in the next claim submitted to the Department of Energy following such revision or modification. Such reclamation plan, as modified or revised, shall serve as the basis for the Department's evaluation of all claims for reimbursement submitted by a licensee.

(2) The licensee shall organize and cross-reference all supporting documentation submitted in support of any claim to specific requirements or activities included in the reclamation plan. All documentation submitted must be individually coded and cross-referenced by page and activity to the licensee's reclamation plan.

(3) The licensee shall provide with each claim submitted a summary of the claim outlining all costs of remedial action for which reimbursement is claimed. This summary shall identify the costs of remedial action associated with each major activity or requirement established by the site's reclamation plan.

(4) Documentation provided to support a reimbursement claim must demonstrate that the costs of remedial action for which reimbursement is claimed were incurred specifically for activities specified in the site's reclamation plan, or otherwise authorized by NRC or an Agreement State as contributing to final closure of the site. Claims will be reviewed by the Department of Energy to assure that costs are consistent with the surety requirements provided by the licensee.

(i) Documentation prepared contemporaneous to the time the cost was incurred should identify the date or time period for which the cost was incurred; the activity; and the reclamation plan provision or other authorized requirement to which the cost relates. Each claim should be supported by photocopies of original receipts, invoices, pay records, or other documents that substantiate that each specific cost for which reimbursement is claimed was incurred for an activity that was necessary to comply with UMTRCA or applicable Agreement State requirements.

(ii) Documentation not prepared contemporaneous to the time the cost was incurred, or not directly related to activities specified in the plan, should not be provided unless the claimant determines such documentation is the only means available to document costs for which reimbursement is sought. The Department of Energy will evaluate such documents on a case-by-case basis and may approve, approve in part, or deny reimbursement for costs not supported by contemporaneously prepared documentation, as considered appropriate by the Department.

(5) The licensee shall utilize generally accepted accounting practices consistently throughout the claim. Such accounting principles, underlying assumptions, and any other information necessary for the Department of Energy to evaluate the claim shall be set forth in each claim.

(6) The licensee should submit to the Department of Energy in writing any questions regarding the type or format of documentation required to be submitted. Such questions should be submitted as soon as practicable to facilitate preparation of complete applications.

(d) Following each annual appropriation by Congress, the Department of Energy will issue a **Federal Register** notice informing licensees of the availability of funds for reimbursement and whether the Department anticipates that approved claims for that year may be subject to prorated payment. This **Federal Register** notice will also serve as the Department's official invitation for eligible licensees to submit their claims by the dates specified in the notice. It is the Department's intent that initial claims for reimbursement, with accompanying documentation, may be submitted to the Department on or before February 1, 1994, and subsequent claims may be submitted to the Department on a semi-annual basis on or before February 1 or August 1, beginning in 1995. Such claims may request reimbursement for any incurred costs of remedial action, otherwise eligible for reimbursement under this part, and for which reimbursement has not previously been approved or denied by the Department.

(e) A licensee shall certify, with respect to any claim submitted by it for reimbursement, that the work was completed as described in an approved reclamation plan or other authorization and that a quality assurance program sufficient to ensure the adequacy of the reclamation construction was implemented. In addition, the licensee shall certify that all costs for which reimbursement is claimed, all documentation submitted in support of such costs, and all statements or representations made in the claim are complete, accurate, and true. Such certification shall be signed by an officer or other official of the licensee with knowledge of the contents of the claim and authority to represent the licensee in making such certification.

(f) All claims for reimbursement submitted to the Department of Energy shall be sent by registered or certified mail, return receipt requested.

### § 765.21 Processing reimbursement requests.

(a) The Department of Energy shall conduct a preliminary review to determine the completeness of each

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claim submitted in accordance with the requirements of § 765.20. For the claims submitted on or before February 1, 1994, the Department shall complete a preliminary review as soon as practicable following receipt of such claims. For claims submitted after such date, the preliminary review will be completed within 60 days of the applicable deadline for submitting such claims.

(b) After completing the preliminary review specified in paragraph (a) of this section, the Department of Energy may request the claimant to provide additional documentation or clarification determined by the Department to be necessary to complete its evaluation of the claim. Any additional information requested by the Department, if provided, must be submitted by the claimant within 60 days of receipt of such request unless the Department specifies in writing that additional time is provided.

(c) At any time during the review of a claim, the Department of Energy may request an informal conference with a claimant or with NRC or an Agreement State to obtain further information or clarification on any unresolved issue pertaining to the claim. While the applicant is not required to provide additional clarification requested by the Department, a failure to do so may result in the denial of that portion of the claim for which information is requested.

(d) Upon receiving any additional documentation requested and submitted in accordance with the provisions of paragraph (b) of this section, the Department of Energy shall complete a final review of all submitted information prior to making a reimbursement decision. As a part of this final review, the Department shall request from NRC or an Agreement State written certification that the activities for which reimbursement is claimed and certified by the licensee as being factually correct are substantially in conformance with the licensee's approved reclamation plan. The Department shall not provide reimbursement for costs incurred for any activity for which such concurrence is not received.

(e) A written decision regarding the Department of Energy's determination to approve, approve in part, or deny a claim will be provided to the applicant within 10 days of completion of the final review.

(f) All reimbursements approved by the Department of Energy in a given review cycle, as specified in the Federal Register notice described in § 765.20(d), will be processed at the same time for payment in accordance with the requirements governing disbursements from the Uranium Enrichment Decontamination and Decommissioning Fund (referred to in this section as the 'Fund') established pursuant to section 1801 of the Atomic Energy Act of 1954. In the event the Department of Energy determines that insufficient funds are available at any time to provide for complete payment of all outstanding approved claims, reimbursements of approved claims will be made on a prorated basis. The Department shall provide annual notice of congressional appropriation levels and any anticipated short fall between funds available and the expected claims for reimbursement, as specified in § 765.20(d). Any portion of an approved claim for which reimbursement was not made due to insufficient funds shall be paid in full at such time as funds become available.

(g) Notwithstanding the provisions of paragraph (f) of this section, or any other provisions of this part, any requirement for the payment or obligation of funds by the Department of Energy established by this part shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

### § 765.22 Appeals procedures.

(a) Any licensee that wishes to contest a determination made by the Department of Energy concerning the total quantity of tailings or Federal-related tailings present at a site, or the Federal reimbursement ratio applicable to such site, shall invoke the appeals process specified in § 765.22(c) and (d).

(b) Any licensee that has submitted a claim that has been denied, in whole or in part, that chooses to appeal such denial, shall invoke the appeals process specified in § 765.22(c) and (d).

(c) A licensee shall file any appeal with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(d) Any appeal must be filed within 45 days from the date the licensee was notified of the denial, in whole or in part, of a claim [as described in § 765.23(b)] or a quantity or ratio determination [as described in § 765.23(a)]. Appeals will be governed by, and must comply in full with, the procedures set forth in 10 CFR part 205, subpart H. The decision of the Office of Hearings and Appeals shall be the final decision of the Department.

### § 765.23 Annual report.

The Department of Energy shall prepare annually a report summarizing pertinent information concerning claims submitted in the previous calendar year, the status of the Department's review of such claims, determinations made regarding such claims, amounts paid for claims approved, and other relevant information concerning this reimbursement program. The report will be available to all interested parties upon written request to the Department and will also be available in the Department's Freedom of Information Reading Room, 1000 Independence Avenue SW., Washington, DC.

## Subpart D—Additional Reimbursement Procedures

### § 765.30 Reimbursement of costs incurred in accordance with a plan for subsequent remedial action.

(a) This section establishes procedures governing remedial action costs incurred in accordance with a plan for subsequent remedial action approved by the Department of Energy as provided in this section. Costs otherwise eligible for reimbursement in accordance with the terms of this part and incurred in accordance with such plan shall be reimbursed in accordance with the provisions of this subpart D and subpart C. In the event there is an inconsistency between the requirements of this subpart D and subpart C, the provisions of subpart D shall govern reimbursement of such costs.

(b) At any time after January 1, 2000, but in no event later than December 31, 2001, a licensee to which the full reimbursement authorized under § 765.11 has not been made may submit to the Department of Energy a plan for subsequent remedial action. Reimbursement of costs incurred after December 31, 2002, shall be subject to the submission of such a plan by the licensee and approval by the Department. Such plan shall include:

(1) All applicable requirements established by NRC pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, or by an Agreement State, that are included in a reclamation plan approved by NRC or an Agreement State, and that have not yet been satisfied in full by the licensee.

(2) The total cost of remedial action required at the site, together with all necessary supporting documentation, segregated into actual costs incurred to date and anticipated future costs. Actual costs incurred to date shall be all those costs for which claims for reimbursement have been reviewed and approved by the Department of Energy

Anticipated costs shall be the estimated cost of remedial action to be completed as required by an approved reclamation plan for the site authorized by NRC or the Agreement State. Such estimated costs shall identify the costs of remedial action associated with each activity or requirement contained in the plan for subsequent remedial action. Claims will be reviewed by the Department to assure that costs are consistent with the surety requirements provided by the licensees to NRC or an Agreement State.

(c) The Department of Energy shall review the plan for subsequent remedial action submitted by each licensee and shall approve, approve with modifications, or reject such plan. At any time during such review, the Department may request additional information from the licensee to clarify or provide support for any provision or estimate contained in such plan. The Department may also consult with NRC or an Agreement State concerning any provision or estimate contained in such plan. Upon approval, approval with modifications, or rejection of a plan, the Department shall inform the licensee of such decision and provide an explanation of the basis for such action.

(d) In the event the Department of Energy rejects a plan for subsequent remedial action submitted by a licensee, the licensee may prepare and submit a new plan within 120 days of receiving notice of the plan's rejection. The Department shall review and approve, approve with modifications, or reject the new plan in accordance with paragraph (c) of this section. The licensee may continue to submit additional plans for subsequent remedial action in accordance with the provisions of this section until such time as the Department approves such a plan, or December 31, 2002, whichever occurs first. A failure by a licensee to receive approval from the Department of such a plan prior to December 31, 2002, will preclude that licensee from receiving any reimbursement for costs of remedial action incurred after such date, unless and until such time as the licensee obtains approval from the Department of such a plan.

(e) The Department of Energy shall determine, in approving a plan for subsequent remedial action, the maximum reimbursement amount for which the licensee may be eligible. This maximum reimbursement amount shall be the smaller of the following two quantities: (1) The amount obtained by multiplying the total cost of remedial action at the site, as determined in the approved plan for subsequent remedial action, by the Federal reimbursement ratio established for such site; or (2) $5.50, as adjusted for inflation, per dry short ton multiplied by the quantity of Federal-related tailings. The Department shall subtract from such maximum reimbursement amount any reimbursement already approved to be paid to the licensee. The resulting sum shall be the potential additional reimbursement to which the licensee may be entitled.

**§ 765.31 Placement of funds in escrow for subsequent remedial action.**

(a) Upon approval of the first plan for subsequent remedial action, the Department of Energy shall establish an escrow account, subject to the availability of funds, with and administered by the United States Treasury Department in accordance with requirements established by the Department of Energy. Funds will be added to the escrow account upon Department of Energy approval of any subsequent plans submitted by other licensees. The Department of Energy shall authorize reimbursement of costs of remedial action, incurred in accordance with an approved plan for subsequent remedial action and approved by the Department of Energy as specified by subpart C of this part, to be made from such escrow account.

(b) All reimbursable costs under § 765.11 are payable in full from the funds placed in escrow. The Department of Energy's reimbursement of these costs is contingent upon the availability of funds as specified in § 765.21. These costs are reimbursable until: (1) This remedial action has been completed, or (2) The licensee has been reimbursed its maximum reimbursement amount as determined by the Department pursuant to paragraph (e) of § 765.30.

(c) A licensee shall submit any claim for reimbursement of costs incurred in accordance with an approved plan for subsequent remedial action in accordance with the requirements of subpart C. The Department of Energy shall review and approve, approve in part, or deny any such claims in accordance with the procedures specified in subpart C. The Department shall authorize the withdrawal of funds placed in the escrow account upon approval of any such claim for reimbursement.

(d) After all remedial actions have been completed by affected Agreement State or NRC licensees, the Department of Energy will issue a Federal Register notice announcing a termination date beyond which claims for reimbursement will no longer be accepted.

**§ 765.32 Reimbursement of excess funds.**

(a) No later than July 31, 2005, the Department of Energy shall determine if the funds authorized for appropriation pursuant to section 1003 of the Energy Policy Act of 1992 (42 U.S.C. 2296a–2), as adjusted for inflation pursuant to § 765.12, exceed, as of that date, the combined total of all reimbursements which have been paid to licensees under this part, any amounts approved for reimbursement and owed to any licensee, and any anticipated additional reimbursements to be made in accordance with any approved plans for subsequent remedial action.

(b) In the event the Department of Energy determines that funds authorized pursuant to section 1003 of the Energy Policy Act (42 U.S.C. 2296a–2), as increased for inflation, exceed the combined total of all reimbursements (as indicated in paragraph (a) of this section), the Department may establish procedures for providing additional reimbursement to a licensee for eligible remedial action costs. In the event such excess funds are insufficient to provide reimbursement of all eligible costs of remedial action, reimbursement of eligible costs shall be paid on a prorated basis.

(c) Each eligible licensee's prorated share will be determined by dividing the total excess funds available by the total number of tons of Federal-related tailings present at sites where costs of remedial action exceed $5.50 per dry short ton, as adjusted for inflation pursuant to § 765.12. The resulting number will be the maximum cost per ton, over $5.50, that may be reimbursed. Total reimbursement for each licensee that has incurred approved costs of remedial action in excess of $5.50 per dry short ton will be the product of such excess cost per ton multiplied by the number of dry short tons of Federal-related tailings at the site or the actual costs incurred and approved by the Department of Energy, whichever is less.

(d) Any costs of remedial action for which reimbursement is sought from excess funds determined by the Department of Energy to be available is subject to all requirements of this part except the per ton limit on reimbursement established by paragraph (d) of § 765.11.

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Part V

# Environmental Protection Agency

40 CFR Part 261

Final Regulatory Determination on Four Large-Volume Wastes From the Combustion of Coal by Electric Utility Power Plants; Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[530-Z-93-009; FRL-4689-8]

# Final Regulatory Determination on Four Large-Volume Wastes From the Combustion of Coal by Electric Utility Power Plants

AGENCY: Environmental Protection Agency.

ACTION: Final regulatory determination.

SUMMARY: Today's action presents the Agency's final regulatory determination required by Section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA) on four large-volume fossil-fuel combustion (FFC) waste streams—fly ash, bottom ash, boiler slag, and flue gas emission control waste—studied in the Agency's February 1988, *Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants* (RTC). EPA has concluded that regulation under Subtitle C of RCRA is inappropriate for the four waste streams that were studied because of the limited risks posed by them and the existence of generally adequate State and Federal regulatory programs. The Agency also believes that the potential for damage from these wastes is most often determined by site- or region-specific factors and that the current State approach to regulation is thus appropriate. Therefore, the Agency will continue to exempt these wastes from regulation as hazardous wastes under RCRA Subtitle C. However, EPA believes that industry and the States should continue to review the appropriate management of these wastes. EPA will consider these wastes during the Agency's ongoing assessment of industrial non-hazardous wastes under RCRA Subtitle D.

EPA plans to make a final regulatory determination on the remaining FFC waste streams (beyond the four listed above) subject to Section 3001(b)(3) of RCRA by April 1, 1998.

EFFECTIVE DATE: September 2, 1993.

FOR FURTHER INFORMATION CONTACT: For further information on the regulatory determination, contact the RCRA/Superfund hotline at (800) 424–9346 or (703) 412–9810, or Patti Whiting at (703) 308–8421.

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## I. Background

### A. Statutory Authority

Today's notice is issued under the authority of Section 3001(b)(3)(C) of RCRA, which requires that after completion of the Report to Congress mandated by Section 8002(n) of RCRA, the Administrator must determine whether Subtitle C regulation of fossil fuel combustion wastes is warranted.

### B. History of the Combustion Waste Exclusion

In December 1978, EPA proposed the first regulations to implement Subtitle C of RCRA. At that time, the Agency recognized that certain large-volume wastes, including wastes from the combustion of fossil fuels, might warrant special treatment. However, the Agency had very little information regarding the nature of and risks posed by these large-volume wastes. Additionally, the Agency had no data on the costs and effectiveness of technologies for managing these wastes. In light of these uncertainties, EPA proposed a limited set of regulations for the management of these wastes (43 FR 58946, 59015, December 18, 1978).

On May 19, 1980, EPA promulgated the initial regulations implementing Subtitle C. By then, however, Congress was debating RCRA reauthorization and both Houses had passed bills restricting EPA's authority to regulate large-volume wastes under Subtitle C of RCRA. Anticipating the enactment of legislation amending RCRA Section 3001, EPA excluded fossil fuel combustion wastes from these regulations (45 FR 33084, 33089, May 19, 1980).

In October 1980, Congress passed the Solid Waste Disposal Act Amendments. Among other things, the amendments temporarily exempted from regulation as hazardous wastes certain large-volume wastes generated primarily from the combustion of coal or other fossil fuels (RCRA Section 3001(b)(3)(A)(i)). These large-volume wastes include fly ash waste, bottom ash waste, boiler slag waste, and flue gas emission control (or flue gas desulfurization) waste. In RCRA Section 8002(n), Congress directed EPA to conduct a detailed and comprehensive study based on eight study factors (discussed in detail below) and to submit a Report to Congress on "the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other byproduct materials generated primarily from the combustion of coal or other fossil fuels."

Finally, in RCRA Section 3001(b)(3)(C), Congress directed that within 6 months of submitting the report, EPA must, after public hearings and opportunity for comment, decide whether regulation of the management of the temporarily exempt FFC wastes as hazardous wastes under Subtitle C is warranted. Once the decision is made, the Administrator must publish the Agency's regulatory determination in the Federal Register.

In 1981, EPA provided an interpretation of the RCRA regulations regarding the exclusion of fossil-fuel combustion wastes from regulation under Subtitle C[1]. EPA stated that, pending the results of the Report to Congress, the Agency would interpret the following to be exempt from RCRA Subtitle C pending further study: (1) Fly ash, bottom ash, boiler slag, and flue gas emission control wastes resulting from: the combustion solely of coal, oil, or natural gas, the combustion of any mixture of these fossil fuels, and the combustion of any mixture of coal and other fuels[2] where coal makes up at least 50 percent of the mixture, and (2) wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that have been and are mixed with and co-disposed or co-treated with fly ash, bottom ash, boiler slag, or flue gas emission control wastes from coal combustion.

RCRA was amended again in 1984 by the Hazardous and Solid Waste Amendments (HSWA) (Pub. L. No. 98–616, 98 Stat. 3221). These amendments

[1] Letter from G. Dietrich, U.S. EPA, to P. Emler, Utility Solid Waste Activities Group, January 13, 1981, Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants, February 1988, Appendix A.

[2] See discussion below on page 10.

added Section 3004(x), which gave EPA the flexibility to promulgate regulations under Subtitle C that considered the unique characteristics of some large-volume wastes, including FFC wastes. Specifically, if EPA determined that some or all of the wastes from fossil-fuel combustion should be regulated as hazardous waste, it could modify certain HSWA requirements to take into account the special characteristics of the wastes, the practical difficulties of implementing the standards, and site-specific characteristics, as long as the modifications still protected human health and the environment.

In February 1988, EPA submitted its Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants, as required under RCRA Section 8002(n). Because coal-fired electric utilities generate a large majority of all fossil-fuel combustion wastes, the RTC focused on wastes generated by coal-fired electric utilities. The document does not address wastes generated by utilities burning other fossil fuels or wastes from non-utility boilers burning any type of fossil fuel (the Agency deferred study of these waste streams until a later date). The report provided the Agency's analysis of available data considering the eight study factors listed in Section 8002(n) of RCRA and presented the Agency's tentative determination regarding large-volume wastes from coal-fired electric utilities. Following the release of the RTC, the Agency provided a notice and comment period that extended through May 16, 1988, and held a public hearing in Denver, Colorado, on April 26, 1988. Appendix A summarizes the comments received on the RTC.

Because of other priorities, the Agency did not publish the regulatory determination for fossil-fuel combustion wastes within the timeframe established in Section 3001(b)(3)(C). As a result, a suit was filed on behalf of the Bull Run Coalition (an Oregon citizens group), with the Edison Electric Institute intervening as plaintiffs.[3] On June 30, 1992, the Agency entered into a Consent Decree that established a schedule for the Agency to complete the regulatory determinations for all fossil-fuel combustion wastes. The Consent Decree divides FFC wastes into two categories: (1) Fly ash, bottom ash, boiler slag, and flue gas emission control waste from the combustion of coal by electric utilities and, (2) all remaining wastes subject to RCRA Sections 3001(b) and 8002(n). Separate schedules are provided in the Consent Decree for each category of waste.

In accordance with the requirements of the Consent Decree, the Agency notified the parties to the litigation on December 1, 1992, that a regulatory determination for fly ash, bottom ash, slag, and flue gas emission control waste from the combustion of coal by electric utilities would be made by August 2, 1993. For the remaining FFC wastes, the Agency indicated that further study was required and that a regulatory determination would be completed for these wastes by April 1, 1998.

In preparing the regulatory determination, EPA collected and reviewed recent information on wastes from coal-fired electric utility power plants. On February 12, 1993, EPA published a Notice of Data Availability in the Federal Register, soliciting comments on these data (58 FR 8273). In the notice, EPA also requested comments on a proposed methodology to be used in making the final regulatory determination. This three-step analytical approach was recently used in making the June 13, 1991, regulatory determination for special wastes from mineral processing (56 FR 27300). Comments on the newly available data and on the proposed methodology are discussed in Appendix B of today's notice.

Today's decision is based on the RTC and the data and analyses that underlie the report, comments on the RTC, supplemental information gathered after the RTC, and comments on that newly available information.

### *C. Overview of the Report to Congress*

#### 1. Scope of the Report

EPA published the RTC in 1988. The RTC documents EPA's study of special wastes from coal-fired utilities temporarily excluded from regulation under RCRA Subtitle C. EPA did not include within the scope of the RTC oil- and gas-fired utility wastes, as well as industrial FFC wastes. The study presents EPA's understanding of the generation, management, disposal, and reuse of wastes from coal combustion for electricity generation.

#### 2. Study Factors

The RTC addressed the following eight study factors required under Section 8002(n) of RCRA:

1. Sources and volumes of such materials generated per year,
2. Present disposal and utilization practices,
3. Potential danger, if any, to human health and the environment from the disposal and reuse of such materials,
4. Documented cases in which danger to human health or the environment from surface runoff or leachate has been proved,
5. Alternatives to current disposal methods,
6. Costs of such alternatives,
7. Impact of those alternatives on the use of coal and other natural resources, and
8. Current and potential utilization of such materials.

In preparing the RTC, EPA addressed these eight study factors as they apply to coal-fired combustion wastes generated by electric utilities. The RTC is divided into six sections that address these factors. The first section provides an overview of the U.S. electric utility industry, including the structure, economic and environmental regulations, and describes the importance of coal to the electric utility industry. The second section examines the amounts and types of wastes generated. The third section discusses current waste management and disposal practices used by the electric utility industry and possible alternatives to these practices. The fourth section reviews the potential and documented impacts of these wastes on human health and the environment, and the fifth section evaluates costs associated with current waste disposal practices and additional costs that could be incurred under a variety of alternative waste management practices. The final section summarizes the RTC's tentative findings and provides recommendations for a regulatory determination.

#### 3. Preliminary Findings

Using the RTC findings, EPA developed three preliminary recommendations for such wastes. A summary of these recommendations is provided below.

*a. Large-volume wastes.* The RTC found that while the majority of the materials present in the four large volume wastes—fly ash, bottom ash, boiler slag, and flue dust—are not of major concern (e.g., more than 95 percent of the ash is composed of oxides of silicon, aluminum, iron, and calcium), trace constituents in the wastes, including arsenic, barium, cadmium, chromium, lead, mercury, and selenium, may present risks to human health and the environment. However, the data also indicates that these wastes generally do not exhibit the RCRA hazardous waste characteristics. In particular, a review of the extraction procedure (EP) test data indicated that metals are generally not found in leachate at levels above the hazardous waste toxicity characteristic. Only three

[3] *Frank Gearhart, et al. v. William K. Reilly, et al.*, No. 91-2435 (D.D.C.)

metals—cadmium, chromium, and arsenic—were detected in any ash or sludge samples above toxicity characteristic levels and then only infrequently.

In addition, the report tentatively concluded that current waste management practices appear to be adequate for protecting human health and the environment. For example, while groundwater monitoring data showed that waste management units can cause releases of pollutants to underlying groundwater, the frequency and magnitude of exceedences of Primary Drinking Water Standards (PDWSs) were found to be relatively low—about 5 percent of all samples showed exceedences of PDWS, with exceedences less than 20 times the applicable standard in all cases. Additionally, human populations generally are not directly exposed to groundwater in the vicinity of coal-fired utility waste management sites; public drinking water intakes are usually at least several kilometers from the sites.

Furthermore, the RTC indicated that as of 1988, coal-fired electric utilities spent about $800 million per year for the disposal of coal combustion wastes. If all utility large-volume wastes from coal combustion were regulated as hazardous wastes, the cost of disposal practices, excluding corrective action costs or higher recycling costs, could increase to $3.7 billion per year. Costs would approach $5 billion annually if all existing facilities were capped and closed and new facilities were constructed with liners, leachate collection systems, flood protection, and groundwater monitoring. Based on these findings, the RTC tentatively concluded that regulation of these wastes under Subtitle C was not warranted.

b. *Low-Volume Wastes.* The RTC identified a number of wastes other than the large-volume wastes that are typically generated in lower volumes by coal-fired electric utilities. These "low-volume wastes" include, but are not limited to, boiler blowdown, coal pile runoff, cooling tower blowdown, demineralizer regenerant and rinses, metal and boiler cleaning wastes, pyrites, and sump effluents. The report indicated that several low-volume wastes may exhibit the hazardous waste characteristics of corrosivity and EP toxicity.

Data in the RTC showed that waste streams produced during equipment maintenance (e.g., boiler chemical cleaning wastes) occasionally exceeded hazardous waste toxicity characteristics for chromium and lead. Boiler chemical cleaning wastes were also, in limited instances, found to exhibit the characteristic of corrosivity. No exceedences of toxicity characteristics were observed for other low-volume wastes, but available data were limited. In addition, the Agency concluded that data on these low-volume wastes that are co-disposed with the four large-volume waste streams were insufficient to determine the potential contribution of particular wastes to environmental risk and that additional study of low-volume wastes was warranted. Because of these findings, the Agency indicated that it was considering removing the exemption for low-volume wastes.

*c. Waste utilization.* EPA noted in the RTC that waste utilization practices appeared to be conducted in an environmentally safe manner. The Agency encouraged the utilization of coal combustion wastes as one method for reducing the amount of these wastes requiring disposal and supported voluntary efforts by industry to investigate new possibilities for utilizing coal combustion wastes.

4. Public Comment Process

With the publication of the RTC, EPA established a comment period that ended May 16, 1988 (See 53 FR 9976, March 28, 1988). In addition, the Agency held a public hearing on the RTC in Denver, Colorado, on April 26, 1988 (53 FR 14839). A second hearing was scheduled but subsequently cancelled. EPA received 24 sets of written comments prior to the close of the comment period. All individual comments and a transcript from the public hearing are available for public inspection in the RTC docket (Docket No. F–88–PATA–FFFFF). The docket also contains a summary of all the comments presented at the hearing or submitted in writing. EPA's responses to those comments are provided in the docket, as well as in Appendix A to this regulatory determination.

*D. Supplemental Analysis and Notice of Data Availability*

Supplemental data were collected and analyzed for the large-volume and some low-volume wastes addressed by the RTC. A Notice of Data Availability (Notice), which announced the availability of this information, was published in the **Federal Register** on February 12, 1993. In the Notice, EPA also made available for comment the proposed methodology to be used in making a final regulatory determination for fly ash, bottom ash, slag, and flue gas emission control wastes. The Agency provided a 45-day public comment period, which closed on March 29, 1993.

The supplemental data provided in the Notice were obtained by EPA from various EPA offices and other Federal agencies, State agencies, and the electric utility industry. In addition, literature searches were performed to identify recently published materials on fly ash, bottom ash, boiler slag, and flue gas emission control waste generated by coal-fired electric utilities. Information in the Notice included:

- Published and unpublished materials obtained from State and Federal agencies, utilities and trade industry groups, and other knowledgeable parties on the volumes and characteristics of fly and bottom ash, slag, and flue gas emission control waste.
- Published and unpublished materials on management practices (including co-disposal and reutilization) associated with fly and bottom ash, slag, and flue gas emission control waste.
- Published and unpublished materials on the potential environmental impacts associated with fly and bottom ash, slag, and flue gas emission control waste management.
- Published and unpublished materials on trends in utility plant operations that may affect waste volumes and characteristics. Specific information was sought on innovations in scrubber use and the potential impacts of the 1990 Clean Air Act Amendments on waste volumes and characteristics.
- Energy Information Agency (EIA), Department of Energy, 1990 data on utility operations and waste generation obtained from EIA's Form 767 database. These data are submitted to EIA annually by electric utilities.
- Site visit reports and accompanying facility submittals for five power plants visited by EPA during fall of 1992.
- Materials obtained from public files maintained by State regulatory agencies in Virginia, North Dakota, Texas, Indiana, Colorado, Wisconsin, Ohio, and Pennsylvania. These materials focus on waste characterization and environmental monitoring data, along with supporting background information.

EPA received 14 written comments addressing the Notice. All of the comments are available for public inspection in Docket No. F–93–FFCA–FFFFF. EPA's response to the comments are provided in the docket and in Appendix B to this regulatory determination.

## II. Scope of the Regulatory Determination

This section describes the wastes that are and are not affected by this

regulatory determination. The discussion addresses the affected generators, the status of wastes generated from those utilities that co-burn fossil fuels with non-coal fossil fuels or other materials, and the effect of co-management of the four large-volume wastes with low-volume coal combustion wastes on the regulatory status of the large-volume wastes.

The Consent Decree divided the universe of fossil-fuel combustion wastes into two categories: large-volume wastes from coal-fired electric utilities referenced in RCRA Section 3001(b)(3) (fly ash, bottom ash, boiler slag, and flue gas emission control wastes) and "remaining wastes" (these wastes must still be studied according to RCRA Section 8002(n)). Each category has separate schedules for making the regulatory determination. Today's action only affects fly ash, bottom ash, boiler slag, and flue gas emission control waste from coal-fired electric utilities. All remaining wastes are outside the scope of this determination. Because a waste stream which is categorized as a large-volume waste as generated may become a remaining waste as a result of the manner in which it is managed, this section explains the universe of as-generated and as-managed large-volume wastes affected by today's action.

*A. As-Generated Large-Volume Wastes*

The universe of wastes affected by this action is limited to the large-volume wastes generated by coal-fired units at steam electric utility power plants in the United States, including independent power producers not engaged in any other industrial activity (this latter group was included because the Agency has no reason to believe that its wastes and practices are any different than those of larger power plants). These wastes are subject to the regulatory determination only when managed separately from other FFC wastes. Further, the population is limited to wastes from those facilities for which coal is almost the sole fossil-fuel feed.

Information on electric utilities collected since publication of the Report to Congress demonstrates that nearly all coal-fired boilers occasionally burn small amounts of natural gas and/or fossil-fuel oil for boiler startup or flame stabilization. While oil ash is a remaining waste outside the scope of today's action, the Agency believes, based on published literature and information collected during site visits, that the burning of oil for startup and flame stabilization results in a de minimis contribution to the total volume of combustion by-products generated by the boiler during normal operations. Similarly, natural gas combustion for boiler startup or flame stabilization results in de minimis ash formation relative to the volume of by-products generated from coal combustion. Accordingly, the total volume of fly ash, bottom ash, slag, and flue gas emission control waste generated by a coal-fired plant that burns oil or natural gas in small quantities for start-up or flame stabilization shall be considered a large-volume waste subject to this determination.

The information collected following publication of the RTC also indicates that some operators occasionally burn materials other than coal in utility boilers, some of which are considered hazardous wastes under RCRA (operators may do so and their residues continue to remain exempt under the Bevill exemption as long as 50 percent of the feed is coal and the residue passes the BIF two-part test if they burn hazardous waste). This practice may be conducted for the purposes of disposal or energy recovery. Wastes from the co-burning of materials were not studied in the RTC, and very limited information regarding their generation, characteristics, and management has been collected to date. The Agency recognizes that the burning of such materials, when practiced in an environmentally sound manner, can be an effective waste management or energy recovery strategy. However, EPA has insufficient data to determine the amount of material burned or the potential influence of burning such materials on the characteristics of the four large-volume wastes. The Agency intends to study the co-burning issue further at a later date, as appropriate. Thus, the large-volume wastes which result from any such burning (with the exception of co-burning with hazardous waste) are outside the scope of this determination. The following paragraph discusses the special case of co-burning hazardous waste and coal.

The residues from those facilities that burn hazardous wastes are subject to the Boiler and Industrial Furnace (BIF) rule under RCRA (40 CFR 266.112).[4] Under the BIF rule, facilities must conduct site-specific sampling and analysis of waste-derived residues to document that hazardous waste burning has not significantly increased concentrations of hazardous constituents in the residues. Because this testing ensures that such wastes are similar to those studied in the RTC, thus making further study of these wastes unnecessary, residues that pass the test are within the scope of today's regulatory determination.

Finally, for the purposes of this action, large-volume wastes from coal-fired electric utilities do not include wastes generated from fluidized bed combustion (FBC) boiler units. FBC is a relatively new combustion technology that allows for the removal of sulfur without an end-of-pipe scrubber. The wastes generated by this technology were not studied in the RTC, and only limited information regarding their characteristics and management has been collected to date. The information that is available has not provided EPA with enough evidence to conclude that waste generated from FBC units is substantially similar to conventional boiler wastes. Some sources maintain that FBC units that burn solely coal as a fossil-fuel source generate fly ash and spent bed material that is substantially different from conventional boiler wastes.[5] This is because in FBC, coal is burned in the presence of limestone. The differences in the FBC wastes are defined by a presence of sulfur compounds and high amounts of residual alkalinity. On the other hand, industry representatives believe that the wastes are very similar to the fly ash waste and flue gas emission control wastes studied in the RTC.

The information does indicate that the use of FBC technology in the electric utility industry may be increasing. Because of the current lack of data, the potential of the co-firing of limestone to have a significant effect on the characteristics of the wastes produced, and the potential for increased utilization of the technology, the Agency has decided to defer a decision on these wastes until further information from the growing number of facilities can be examined. Therefore, the Agency considers these wastes "remaining wastes," which are outside the scope of today's regulatory determination.

*B As-Managed Large-Volume Wastes*

As described above, large-volume wastes include fly ash, bottom ash, slag, and flue gas emission control wastes

[4] The 1981 interpretation at footnote 1 above states that the residues from co-burning enjoy the temporary exemption only when the non-coal material in the feed is burned for its fuel value. This condition, however, was removed for co-burners of hazardous waste in the BIF rule (see preamble discussions at 56 FR 7199–7200, Feb. 21, 1991). For the same reasons cited during that rulemaking, and as a matter of consistency, the Agency no longer imposes such a condition when the non-coal material is not a hazardous waste.

[5] United States Environmental Protection Agency, Office of Research and Development, Fluidized-Bed Combustion Technology Overview, EPA–600/7–81–074, April 1981.

from coal-fired electric utility boilers. However, the Consent Decree defines large-volume wastes that are "mixed with, co-disposed, co-treated, or otherwise co-managed with other wastes generated in conjunction with the combustion of coal or other fossil-fuels * * *" as remaining wastes. As a result, a waste that may be categorized as large-volume as generated may become a remaining waste by virtue of the circumstances of its management. Remaining wastes are outside the scope of this regulatory determination. (Although these wastes are not covered by today's regulatory determination, these wastes remain exempt from RCRA Subtitle C until April 1, 1998, at the latest.)

The RTC found that the level of "co-mixing, co-treatment, co-disposal or co-management" practiced at utility waste disposal sites varies considerably. At one extreme, many or most liquid wastes generated at the plant may be handled along with ash in a single impoundment system. At the other extreme, all large-volume wastes may be discharged to units receiving no other materials of any kind. In practice, most utility disposal sites operate somewhere between these extremes, with large-volume wastes discharged into units receiving certain other materials. Depending on the specific materials commingled in a particular management unit, the resulting mixture may be a remaining waste and hence fall outside of the scope of today's action.

The Agency recognizes that many plant operators use process waters (e.g., non-contact cooling water and low-pressure service water) in ash handling or FGD systems. Because of the continuous use of these process waters, the Agency does not consider them to be wastes. In any event, the use of these process waters as feedwater for emission control systems or for ash transport generally will not increase the environmental risks associated with the wastes relative to the risks derived from utilization of fresh water for the same purposes. Discouraging such practices may lead to an increased usage of fresh water for the same purposes, thereby increasing the total volume of water exposed to the large-volume wastes as well as the total volume of waste generated. The Agency feels that this would be an undesirable outcome of today's action. For these reasons, the Agency does not consider the practice of using these non-contact process waters in ash sluicing systems or as makeup water for FGD systems to constitute co-management. The four large-volume wastes, therefore, that are transported/mixed with these process waters do not become "remaining wastes." Instead, they are within the scope of this Regulatory Determination. These waters are limited to ash hopper seal water, ash hopper cooling water, and other non-contact cooling waters.

The Agency emphasizes that co-management of low-volume wastes and large-volume wastes makes the combined waste stream a remaining waste. Given below is a list of management practices that result in combined waste streams that are remaining wastes. This list, which is not exhaustive, includes those activities observed or believed to occur at operating FFC waste disposal facilities that involve the "mixing, co-treatment, co-disposal, or co-management" of large-volume wastes with low-volume wastes. Remaining wastes as managed include:

- Discharge of boiler blowdown to a large-volume waste impoundment,
- Discharge of demineralizer regenerant to a large-volume waste impoundment,
- Discharge of metal cleaning wastes to a large-volume waste impoundment,
- Discharge of boiler chemical cleaning wastes to a large-volume waste impoundment,
- Discharge of plant wastewater treatment effluent to a large-volume waste impoundment,
- Discharge of coal mill rejects to a large-volume waste impoundment,
- Disposal of oil ash in a large-volume waste landfill or impoundment,
- Disposal of plant wastewater treatment sludge in a large-volume waste landfill,
- Disposal of coal mill rejects in a large-volume waste landfill, and
- Reuse of metal cleaning wastewaters in a FGD feedwater system.

EPA recognizes that it may not have provided a clear understanding of what constitutes co-management since offering the 1981 interpretation of the exemption cited above. Therefore, the Agency may propose a definition of co-management in the future. This is important because low-volume wastes are within the Bevill Exemption only if they are co-managed with large volume waste. Low-volume wastes that are independently managed are not and have never been within the scope of the Bevill Exemption.[6]

### III. Factors Considered in Making the Regulatory Determination

RCRA, as amended, directs EPA to make a regulatory determination generally based upon the RTC and comments received from interested parties. The statute contains the eight study parameters identified in Section I.C.2., Study Factors. In addition, RCRA Section 8002(n) suggests that EPA review relevant studies and other actions of other Federal and State agencies and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort.

EPA complied with the congressional mandate in developing, in 1988, the required RTC. In conducting this study, EPA relied upon the analysis of the eight study factors noted above. The Agency has expanded the data base through the collection of additional data referenced in the February 12, 1993, Notice. The Notice also made available, in the RCRA docket, the three-step methodology the Agency was considering using in making this regulatory determination. This basic analytical approach was used in making the regulatory determination for mineral processing wastes (56 FR 27300, June 13, 1991). EPA modified the methodology in this case, however, so that it best fit the available information on the nature and management of the coal-fired electric utility wastes at issue in this determination. The method involves answering a series of questions covering the potential hazards of the wastes, the existing management and regulatory controls that affect the hazards that may be presented, and the potential impacts of regulating the wastes as hazardous under RCRA Subtitle C. This approach allows EPA to make a systematic evaluation of the information presented in the RTC and other information collected pursuant to the Notice. EPA has solicited and incorporated comments on the RTC, the data described in the Notice, and the three-step methodology in making today's regulatory determination. EPA believes that this approach is consistent with congressional intent.

EPA received no comments that disagreed with any aspect of the three-step methodology. Therefore, no changes have been made in the approach. The decision process outlined below presents a series of questions and sub-questions that were addressed in the order posed. If the Agency determined the response to Step 1 for a waste to be affirmative (e.g., "Yes, management of this waste does pose human health/environmental problems, or might cause problems in the future"), then the analysis proceeded to Step 2 for the waste and constituent(s) of concern. If, however, the answer to Step 1 was negative, then the analysis

[6] Industry comments on both the RTC and Notice generally agreed with this interpretation.

stopped and the Agency determined that regulation of that waste under Subtitle C was not warranted. If the analysis proceeded to Step 2 and the response to Step 2 was affirmative (e.g., "Yes, more stringent regulation is necessary and desirable"), analysis then proceeded to Step 3. If the response to Step 2 was negative, however, the analysis stopped and the Agency determined that regulation of that waste under Subtitle C was not warranted. Finally, if the Agency proceeded to Step 3 and found that the consequences of regulating the waste under Subtitle C were substantial and not justified by the risk reduction that could be obtained by Subtitle C regulation, then the Agency would determine that Subtitle C regulation was not warranted. The opposite conclusion to the question posed by Step 3 would result in a determination that regulation of the waste as hazardous under Subtitle C is warranted.

The rationale for the order of questions is that a FFC waste should first be considered to present risk to human health or the environment or a potential risk under plausible mismanagement scenarios before the Agency considers it for regulation under Subtitle C. Second, the Agency should determine that current management practices and existing State and Federal regulatory controls are inadequate to limit the risks posed by a waste, and that Subtitle C regulation would be effective and appropriate, before it considers regulating the waste under Subtitle C. Finally, the special status of the waste requires that the Agency consider the impacts to the industry that regulation under Subtitle C would create in making a decision to regulate the waste as hazardous. The methodology, therefore, allows EPA to systematically narrow its focus to those wastes that do or may present significant risk of harm and for which additional regulatory controls are necessary and desirable.

The discussion below addresses each of the steps and sub-steps in more detail.

Step 1. Does the management of this waste pose human health/environmental problems? Might current practices cause problems in the future?

Critical to the Agency's decision-making process is whether the special waste either has caused or may cause human health or environmental damage. To resolve those issues, EPA has posed the following key questions:

Substep 1. Has the waste, as currently managed, caused documented human health impacts or environmental damage?

Substep 2. Does EPA's analysis indicate that the waste could pose significant risk to human health or the environment at any sites that generate it (or in offsite use), under either current management practices or plausible mismanagement scenarios?

Substep 3. Does the waste exhibit any of the characteristics of hazardous waste?

As described above, the Agency first determined whether each waste may pose human health/environmental problems by examining whether the waste has caused documented human health or environmental damages in the past, whether each waste, as managed, may pose significant risk to human health or the environment, and whether each waste exhibits any of the characteristics of hazardous waste. If each of the questions in Step 1 resulted in a negative response, no further review would be performed for that waste, and the Agency would determine that regulation under Subtitle C of RCRA is not warranted. However, as with the Regulatory Determination for Mineral Processing Special Wastes (56 FR 27305, June 13, 1991), an affirmative response to any one of the three sub-questions above did not necessarily trigger further analysis under Step 2 of the methodology. Rather, the Agency answered each of the three questions separately and then considered the combined responses as a whole in deciding whether further evaluation was necessary. In that consideration, the certainty and weight of evidence supporting an affirmative response to one question was taken into account in the Agency's decision to proceed to Step 2. If the Agency determined that additional review was warranted for a particular waste, additional review under Step 2 was limited to those waste characteristics or waste management practices for which significant potential for risk was identified in Step 1.

The first question the Agency addressed under Step 1 was whether coal combustion waste has caused documented human health impacts or environmental damage. To determine this, the Agency first considered existing damage case information presented in the RTC. EPA examined additional damage case information to determine whether there was further evidence of negative impacts to human health or the environment. The Agency requires that each relevant case satisfy at least one of the following three conditions: scientific investigation concluding that damages occurred, administrative ruling concluding that damages occurred, or court decision or out-of-court settlement concluding that damages occurred. Ideally, damages would clearly be the result of the large-volume coal combustion wastes.

In the Agency's analysis, damage to human health or the environment was considered as follows: Threat to human health included both acute and chronic effects (e.g., exceedences of primary drinking water standards, directly observed health effects, such as elevated blood contaminant levels or loss of life) associated with management of coal-fired electric utility wastes, while danger to the environment included: (1) Impairment of natural resources (e.g., contamination of any source of drinking water reasonably expected to be used), (2) ecological effects resulting in impairment of the structure or function of natural ecosystems and habitats, and (3) effects on wildlife resulting in impairment of terrestrial or aquatic fauna (e.g., reduction in species diversity or density, impairment of reproduction).

To address the second question—"could the waste pose significant risk to human health and the environment under either current management practices or plausible mismanagement scenarios, the Agency performed a two-part assessment of the potential for risk presented by the waste.

First, the Agency conducted a risk screen of intrinsic hazard of the wastes, comparing waste characterization data with conservative screening criteria developed for four exposure pathways: groundwater, surface water, inhalation, and ingestion. The purpose of the risk screen was to identify the waste constituents and exposure pathways that have the potential to present threats to human health and the environment. Exceedences of the screening criteria indicate the need for further study, but do not in themselves demonstrate that the wastes pose a significant hazard.

Second, for each waste constituent found to exceed the screening criteria, the Agency evaluated the potential for release, transport, and exposure of that constituent for specific pathways. The three exposure pathways evaluated for human health risk were groundwater ingestion, particulate inhalation, and soil ingestion. The fourth pathway, surface water, was evaluated for ecological risk. The Agency solicited comment in the Notice on excluding from consideration another pathway, radiation exposure, because of insufficient information to perform the required analysis. No comments or supplemental data were received regarding the proposed exclusion. Therefore, EPA did not consider radiation exposure in the analysis.

To address the third question of Step 1, the Agency reviewed available waste characterization data to determine whether fly and bottom ash, slag, and FGD sludge exhibit any of the hazardous characteristics. In evaluating toxicity data, the Agency considered both Extraction Procedure (EP) and Toxicity Characteristic Leaching Procedure (TCLP) data, since much of the currently available data on toxicity predates the use of the TCLP.

Several commenters on the RTC claimed that the EP toxicity test is not a valid indication of hazards associated with utility wastes since the test was designed to mimic conditions in acidic municipal landfills rather than homogeneous monofills used by electric utilities. Those commenters concluded that data from the EP test significantly overstate potential risks.

As discussed further in Appendix A to this preamble, EPA has developed the methodology to take into account the eight study factors (Section 8002(n)) set forth in the Bevill Exemption to determine whether hazardous waste regulation is warranted for FFC wastes. While waste characterization data, including both the results of EP toxicity testing and those of other leaching procedures (TCLP, ASTM, etc.), are considered in the decision, they are not the sole basis for determining whether to regulate fossil-fuel combustion wastes under RCRA Subtitle C. The methodology focuses on the risks posed by fossil-fuel combustion wastes as managed (and some ash is currently managed in Subtitle D landfills). EPA therefore believes that consideration of EP toxicity data, in conjunction with the results of other leaching studies and data on the actual environmental impacts of waste management practices, is appropriate.

EPA received limited additional data from commenters to the Notice. The few EP and TCLP results provided were consistent with other samples collected for the purposes of the RTC and the Notice. None of the additional data supplied during the comment period exceeded the hazardous waste criteria.

Step 2. Is more stringent regulation necessary or desirable?

If the Agency determined in Step 1 that the management of fly or bottom ash, slag, or FGD sludge from coal-fired utilities has caused or may potentially cause human health or environmental impacts, then the Agency would proceed to Step 2. In evaluating the need for more stringent controls to address the potential risks associated with the management of these wastes, EPA asked the following questions:

1. Are current practices adequate to limit contaminant release and associated risk?
2. Are current Federal and State regulatory controls adequate to address the management of the wastes?
3. Will Subtitle C effectively address problems associated with the waste without imposing significant unnecessary controls that are inconsistent with the special status of the waste?

In Step 2, the Agency looked at waste management practices and existing regulations to examine the potential for release and exposure under current practices. If current management practices or existing regulatory controls were found to be adequate or if Subtitle C was found to be an ineffective or inappropriate regulatory alternative, then the Agency would determine that the waste should not be regulated under Subtitle C. If, on the other hand, current practices or existing regulatory controls were found to be inadequate in controlling potential and actual risks and if Subtitle C would be effective, the Agency would proceed to Step 3.

Step 3. What would be the operational and economic consequences of a decision to regulate a special waste under Subtitle C?

If, based upon the previous two steps, the Agency found that a waste presents significant risk despite current management practices and existing regulatory controls and that Subtitle C regulation would be effective and appropriate in reducing those risks without imposing unnecessary controls, the Agency would then evaluate the costs and impacts associated with regulating this waste under Subtitle C and, possibly, other regulatory scenarios. Costs and impacts would be evaluated in terms of the estimated affected population of generators, the ability of generators to pass on costs of compliance to customers or suppliers, the effect of regulation on domestic energy supply and capacity, and the effect of regulation on beneficial use of the affected waste.

With cases in which the Subtitle C scenarios would impose widespread and significant impacts on facilities, reduce domestic capacity or supply, and/or deter safe and beneficial use of the waste, EPA might conclude that regulation under Subtitle C is inappropriate. However, EPA might determine that regulation of the waste under Subtitle C is warranted if, in the Agency's judgement, the reduction in risk that would result from such regulation would justify the operational and economic consequences to the industry and the economy as a whole. The Agency invited commenters to the Notice to submit information regarding cost data.

## IV. Regulatory Determination for Four Large-Volume Coal-Fired Utility Wastes

The following discussion presents EPA's conclusions regarding the regulatory status of large-volume coal-fired utility wastes under RCRA. The determination as to whether regulation of such wastes under Subtitle C is warranted is based upon the February 1988 Report to Congress, comments on the Report to Congress including comments received at the public hearing held in Denver on April 26, 1988, the information collected for the February 12, 1988, Notice, and comments received on the Notice.

Based on all of the available information, EPA has concluded that regulation of the four large-volume fossil-fuel combustion wastes as hazardous waste under RCRA Subtitle C is unwarranted. Below are the Agency's responses to each step of the decision methodology.

Step 1. Does the management of this waste pose human health/environmental problems? Might current practices cause problems in the future? The Agency has determined that the answer to this question is yes.

Substep 1. Has the waste, as currently managed, caused documented human health impacts or environmental damage?

Response: The Agency has determined that the waste has caused documented impacts, but at a very limited number of sites.

In accordance with the methodology described above, EPA first addressed whether the management of this waste currently poses human health/environmental problems and whether current practices could cause problems in the future. In its examination of potential/actual cases in which danger to human health or the environment could be attributed to the management of fossil-fuel combustion wastes, the RTC included information from several studies that documented occasional exceedences of primary and secondary drinking water standards in groundwater underlying fossil-fuel waste management sites. To supplement the RTC data, EPA conducted State file reviews in States selected for their geographical representation and large coal-fired electricity generation capacity. Overall, both efforts indicate that the extent of actual damage cases/environmental harm associated with large volume FFC waste management appears limited.

EPA used the "test of proof" developed to support the Report to Congress on Mineral Processing Wastes to evaluate the potential damage cases. As described in Chapter 2 of that report, the test of proof requires that a case satisfy at least one of three conditions: scientific investigation concluding that damages occurred, administrative ruling concluding that damages occurred, or court decision or out-of-court settlement concluding that damages occurred. For the six damage cases described below, scientific investigation was the measure of proof satisfied, since the data most supported application of this measure.

In applying the test, EPA first considered whether actual documentation exists that shows that human health or environmental harm occurred (e.g., contaminated groundwater in a water supply well, observed impacts on wildlife). Only a limited number of large-volume FFC waste management sites actually meet this criterion and can be considered proven damage cases. These cases include the two sites identified in the RTC, as well as four additional sites identified during recent data collection efforts. EPA notes that of these six cases, only one case can clearly be attributed to fly ash management alone. The remaining five cases are associated with the co-management of the large-volume wastes with other wastes. Because co-management of large and low-volume wastes is the predominant waste management practice, limited information exists on independently managed large-volume wastes.

The RTC described a site that involved a dike failure that caused an accidental release from a fly ash disposal lagoon to a river. This case resulted in substantial damage to river organisms. The other case described in the RTC involved co-management. In this case, a release occurred from a fly ash and petroleum coke waste disposal site that resulted in the contamination of drinking water wells with selenium and vanadium. This site is ranked on the CERCLA (Superfund) National Priority List Site.

EPA's more recent data collection efforts resulted in the identification of four additional sites that are considered proven cases of damage (see the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste, found in Docket no. F–93–FFCA–FFFFF). Each case involves co-management of wastes at older, unlined waste management units. These incidents involved groundwater contamination and/or vegetative damages due to releases from waste management units.

In summary, there is minimal documentation of impacts on drinking water sources in the vicinity of coal-fired utilities. In addition, it is important to note that the damage case sites were chosen for study because of known releases and cannot necessarily be extrapolated to the general universe. Also, most releases have been from unlined units at older sites that in many States are now subject to more stringent design and operating criteria.[7] Furthermore, actual cases of harm to human health or the environment may be limited to a few sites, often with other contributing factors, including additional pollutant sources attributed to the co-management with other FFC and non-FFC wastes. The review of such cases of co-management will be reserved for the "remaining waste" study.

The FFC waste damage case/environmental data collected to date indicate, therefore, that although the extent appears limited, damage to the environment has occurred. Although the releases are often confined to the vicinity of the units and have not reached environmental/human receptors, the potential for exposure necessitates further analysis in Substep 2, which examines the potential risks posed by these wastes.

Substep 2. Does EPA's analysis indicate that the waste could pose significant risk to human health or the environment at any sites that generate coal combustion wastes, under either current management practices or plausible mismanagement scenarios?

Responses: Groundwater contamination and surface water contamination through groundwater recharge are possible under some plausible conditions (unlined units). Available information on the environmental conditions of the sites indicates ecological and natural resource damages are of most concern, because potential for human exposure is limited.

The RTC contains considerable information on the four large-volume coal combustion wastes (fly ash, bottom ash, slag, and flue gas desulfurization (FGD) sludge). Information includes waste characteristics and management practices, environmental factors affecting human exposure potential at disposal sites, and evidence of ecological damage at coal combustion sites. In addition, EPA collected supplemental information from various EPA offices and other Federal agencies, State agencies, and the electric utility industry on waste characterization, management, and potential impacts. This supplemental information included groundwater monitoring data for 43 coal combustion waste sites collected from State regulatory agencies and from EPA site visit reports. All data used in this supplemental analysis are available for public inspection in the docket No. F–93–FFCA–FFFFF. A bibliography of the sources used in the risk analysis is found in Appendix A of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste, also found in Docket no. F–93–FFCA–FFFFF.

The first step of the methodology was to evaluate constituents of concern (identified by waste characterization data) using a risk screen. A risk screen analysis is a process which applies a conservative and simplified methodology to the constituents and pathways to determine if they are of concern. The risk screen compared waste characterization data with screening-level criteria. The screening criteria were developed to identify wastes, constituents, and pathways requiring further analysis; that is, wastes captured by the screen may or may not be of concern. Criteria for 23 constituents (primarily metals) were developed for groundwater, surface water, ingestion, and inhalation exposure pathways using a methodology similar to that used in the mineral processing regulatory determination. (In the cases where the Agency regulatory levels had changed since the mineral processing RTC, the screening criteria were also updated.)

Groundwater exposure criteria were developed using the MCLs set by the Agency to protect drinking water. If no primary MCL had been established for a particular parameter, then a health-based level (HBL) was calculated using Agency cancer slope factors or non-cancer reference doses (RfDs) from IRIS.[8] In instances where the calculated HBL was less than corresponding MCL, both values were considered in the screening.

Screening criteria based on primary MCLs were derived by multiplying the MCL by a factor of 10 to simulate scenarios where only limited dilution of waste leachate occurs prior to exposure. HBLs were derived from IRIS [9] drinking

[7] The percentage of units required to meet more stringent design and operating criteria will increase as older units reach capacity (assuming a typical lifetime fo 15 years) and new units come on-line (and are subject to these more stringent requirements).

[8] U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS). (IRIS, November 1992 update).

[9] Ibid.

water or oral cancer slope factors (CSFs) representing a $1\times10^{-5}$ lifetime cancer risk, or RfDs. Calculation of the HBLs relied on the following conservative assumptions: the maximally exposed 70 kg individual drinking 2 liters of water per day, 365 days per year, for a lifetime duration of 70 years. (The 70-year exposure duration was chosen to maintain comparability with the MCLs; this approach is consistent with that taken in the mineral processing regulatory determination.) These assumptions yield the following general equations:

$HBL_{CSF}$ (mg/l) = $\{(1\times10^{-5})(70\ y)(70\ kg)/\{(CSF\ (mg/kg/d)^{-1})(2\ l/d)(70\ y)\}$

$HBL_{RfD}$ (mg/l) = (RfD mg/kg/day)(70 kg)/(2 l/day)

As with the MCL-based criteria, the HBLs were multiplied by a factor of 10 to simulate a scenario where only limited dilution of waste leachate occurs prior to exposure. Groundwater exposure criteria were compared with waste EP Toxicity and TCLP analysis results for each of the four waste steams.

The surface water exposure criteria were selected to represent potential harm to aquatic organisms exposed to surface water releases of wastes or waste leachate. The criteria were derived by multiplying the freshwater chronic Ambient Water Quality Criteria (AWQC) for non-human effects by a factor of 100 to simulate a scenario where only limited dilution occurs. Surface water exposure criteria were compared with waste EP Toxicity and TCLP analysis results for the four waste streams.

The ingestion screening criteria were derived from IRIS oral RfDs and oral CSFs, assuming incidental ingestion of solid waste materials. Exposure assumptions are an ingestion rate of 200 mg/day from ages 1 to 6, and 100 mg/day from ages 7 to 31 (resulting in an average of 0.114 g soil/day), an adult receptor weight of 70 kg and an exposure of 350 days/year for 30 years. For CSF-derived values, a life-time averaging 70 years was assumed. These assumptions were then used to calculate the concentration of a constituent in a waste that would result in an exposure equivalent to the RfD or the concentration corresponding to a lifetime cancer risk of $1\times10^{-5}$. The equations for RfD- and CSF-based criteria are shown below.

$Criterion_{RfD}$ (mg/g) = RfD (mg/kg/d) {(70 kg)(365 d/y)(30 y)}/ {(350 d/y)(30 y)(0.114 g soil/d)}

$Criterion_{CSF}$ (mg/g) = $\{10^{-5}/CSF\ (mg/kg/d)^{-1}\}(70\ kg)(365\ d/y)(70\ y)\}/\ \{(350\ d/y)(30\ y)(0.114\ g\ soil/d)\}$

No dilution factor was employed in deriving the criteria for solid samples. The exposure pathway assumes exposure to particulate whole waste material. Ingestion exposure criteria were compared with waste total constituent analysis results for the four waste steams.

The exposure assumptions used in deriving inhalation exposure criteria include: 50 µg/m3 airborne dust concentration;[10] adult inhalation volume of 20 m³/d; 70 kg body weight; exposure frequency of 350 days per year; exposure duration of 30 years; and, for CSF-derived values, 70 year lifespan (or averaging time) and $1\times10^{-5}$ risk of cancer. Note that 50 µg/m³x20 m³/d results in a soil exposure rate of 1 mg/d. The equations used to derive the criteria from both inhalation RfDs and inhalation CSFs are shown below:

$Criteria_{RfD}$ (mg/g) = RfD (mg/kg/d) {(70 kg)(365 d/y)(30 y)}/ {(350 d/y)(30 y)(0.001 g soil/d)}

$Criteria_{CSF}$ (mg/g) = $\{(1\times10^{-5}/CSF\ (mg/kg/d)^{-1}\}$ {(70 kg)(365 d/y)(70 y)}/ {(350 d/y)(30 y)(0.001 g soil/d)}

Again, no dilution factor was employed in deriving the criteria for solid samples. The exposure pathway assumes exposure to particulate whole waste material. Inhalation exposure criteria were compared with waste total constituent analysis results for the four waste steams.

The screening criteria described above were then compared to EP, TCLP, and total constituent data from the RTC and subsequent data collection efforts. For all waste constituents that exceeded a screening-level criterion at more than 10 percent of the sites sampled, or exceeded the criteria by more than a factor of 10, further analysis was conducted. A summary of screening criteria exceedences, reported by waste type and by exposure pathway, can be found in Appendix C of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste.

The results of the risk screening suggest that of the large-volume wastes, fly ash and FGD sludge are of most concern. The risk screen also identified groundwater, surface water, and inhalation as exposure pathways needing further analysis. The constituents needing further analysis included arsenic, cadmium, chromium, lead, mercury, nickel, Ph, selenium, and silver.

The Agency then evaluated the release, transport, and exposure potential of those constituents, wastes, and pathways for which the risk screen indicated that further analysis was necessary. When available, monitoring data were used to determine the potential for human and environmental exposure. In other cases, information on the physical setting of coal combustion waste sites and on the waste management practices was used to evaluate exposure potential. In the case of the inhalation pathway, the potential for human health risk was evaluated using an atmospheric fate and transport model. For the inhalation pathway, the potential for human health risk, when evaluated using an atmospheric fate and transport model, was found to be negligible. For more information on the air pathway analysis, please consult the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste. Further analyses of the groundwater and surface water pathway are summarized below.

Groundwater monitoring data were used in both the groundwater and surface water exposure pathway analyses. A summary table of the groundwater monitoring sites is in Appendix D of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste found in the docket. When interpreting the groundwater monitoring data, the Agency took several factors into account.

First, many of the sites may have co-managed their coal combustion wastes with other wastes, such as boiler cleaning solution or pyrites. The extent to which these other wastes may have contributed to groundwater contamination could not be conclusively determined, because it was difficult to assess in many cases whether co-management had occurred and without this information, it was not possible to separate the effects of the large-volume wastes from the other wastes. However, at least two site operators asserted that they believed that co-managed wastes, and not the large-volume wastes, were the cause of groundwater contamination. The Agency took the presence of co-managed wastes into account when evaluating the risk from the large-volume coal combustion wastes.

Second, some of the sites have other possible sources of contamination nearby. To the extent that they can be determined, these sources are noted in the summary table referenced above. Finally, in the case of some contaminants (e.g., iron), naturally occurring levels may be quite high. Again, to the extent that naturally occurring constituents can be

[10] 50 µg/m3 is the National Ambient Air Quality Standard for annual exposure to particulates.

determined to be adding to downgradient concentrations, this is noted in the summary table.

With these considerations in mind, the Agency determined that available data from coal combustion waste landfills and surface impoundments demonstrated the existence of potential for human exposure to groundwater contamination, because coal combustion waste constituents identified in the risk screen as needing further study were found to be leaching onsite in excess of the primary MCLs. Subsequent analyses of coal combustion waste sites suggest, however, that potential for actual human exposure is very limited.

For example, nine sites of the forty-nine sites with groundwater monitoring data had contaminants above the MCL that appeared to stem from coal combustion units. (Another ten sites had upgradient concentrations equal to downgradient concentrations, other possible sources of groundwater contamination, or (in two cases) a lack of upgradient information, preventing any conclusions about the effects of the coal combustion units on groundwater contamination.) Constituents with exceedences include arsenic, barium, cadmium, chromium, fluoride, lead, mercury, nickel, and selenium. Of the nine sites, none were completely lined, although one site had a clay-lined disposal unit with an under-drain emptying into a series of unlined ponds. All nine sites have older (pre-1975) units, four consisting of surface impoundments, four consisting of landfills, and one with both types of units. Fly ash was the principal waste disposed of in all units. Four sites of the nine also are known to have accepted co-managed wastes (pyrites, boiler cleaning wastes, demineralizer regenerant, oil ash, etc.), and the others may have as well.

Potential for human exposure to groundwater contaminants from coal combustion wastes is limited because of the location of most coal combustion sites. Based on a random study (found in the RTC) of one hundred sites, only 29 percent of the sites have any population within 1 kilometer, and only 34 percent of the sites have public drinking water systems within 5 kilometers. Although infiltration and transportation of contaminants in groundwater varies with site- or regional-specific factors (such as depth to groundwater, hydraulic conductivity, soil type, and net recharge), exposure to coal combustion waste groundwater contaminants 5 kilometers from the source of contamination is not expected to occur. Of the public drinking water systems within 5 kilometers of coal combustion waste sites, just under half (47 percent) are expected to treat the groundwater for hardness (i.e., these systems have groundwater with over 240 ppm $CaCO_3$), which would tend to remove co-contaminant metals as well.

Coal combustion units also tend to be near surface water bodies. The same RTC study revealed that 58 percent of the sites are within 500 meters of a surface water body. The volume and flow rate of surface water would tend to dilute and divert the contaminant plume.

In addition, groundwater contamination appears to be attributable to past management practices. As the Agency's groundwater monitoring data outlines above, all of the nine sites with a clear indication of groundwater contamination are older (pre-1975), unlined units. (In contrast, of the 13 lined sites, only one had exceedences of an MCL, and that site had equal concentrations upgradient and downgradient.)

Finally, some of the groundwater contamination may be attributable to co-management with other wastes, such as pyrites, boiler cleaning waste, and demineralizer regenerant. Because of the prevalence of co-management (several public comments on the RTC reported that the predominant industry practice is to co-dispose of low-volume wastes in ash or flue gas emission control waste ponds), the large-volume waste may not be the sole contributor to the groundwater contamination. Two of the nine sites report that co-management is the cause of the contamination.

In conclusion, hazardous constituents in coal combustion waste (particularly in fly ash and flue gas emission control waste) have the potential to leach into groundwater under certain conditions. Contaminants of concern include arsenic, cadmium, chromium, lead, mercury, and selenium. Available data suggest, however, that contamination stems from older, unlined units representing past practices, and that the units are not typically located near populations and drinking water systems. In addition, the sites within 5 kilometers of public drinking water systems, about half have groundwater with over 240 ppm $CaCo_3$ and are therefore expected to treat the water for hardness, thus removing co-contaminant metals as well. Furthermore, at least some of the groundwater contamination is attributable to other wastes managed with the large-volume coal combustion wastes. Thus, potential for human exposure solely from the large-volume coal combustion waste from current management practices is limited.

An examination of the surface water pathway reveals that, although direct discharge of untreated coal combustion waste to surface water is not likely because of Clean Water Act controls, a few of the coal combustion waste constituents have the potential in some instances, to affect nearby vegetation and aquatic organisms by migration through shallow groundwater to nearby surface waters. This was observed at one site where migration of boron to a nearby wetland was determined by the State to be the cause of vegetative damage. In many cases, natural attenuation processes are expected to dilute the contaminants below levels of concern. For example, if contaminants reach surface waters, the volume of surface water and its high flow rate could dilute the contaminants. For those sites whose nearby water bodies may have a low flow rate (e.g., lakes, swamps, or marshes), however, coal combustion waste may cause local environmental damages, as was observed at the above site.

Even when contaminated groundwater does not affect human health and the environment, it may be considered to have caused impacts that limit future use of that groundwater. In particular, available data suggest that the groundwater at a number of coal combustion waste sites is contaminated above secondary MCLs (SMCLs) by such secondary parameters as iron, manganese, sulfate, and total dissolved solids, although these effects may be localized through dilution and attenuation. The SMCLs are guidelines generally set to be protective of such aesthetic considerations as taste, odor, potential to stain laundry, and human cosmetic effects such as tooth and skin staining.

In addition to being disposed of in landfills and surface impoundments, coal combustion ash is often beneficially used both onsite and offsite. EPA continues to encourage the beneficial use of coal combustion wastes. Because most offsite applications tend to immobilize the coal combustion waste (e.g., fly ash used to make concrete), adverse impacts appear to be unlikely. However, if fly ash is applied directly to agricultural soil, there is some concern with metals uptake by food crops and cattle feed. In addition, boron in the coal ash is readily mobilized and has a phytotoxic effect on plants. Although coal ash is not frequently used in agriculture, any

agricultural use of coal combustion waste should be carefully evaluated.[11]

Substep 3: Does the waste exhibit any of the characteristics of hazardous waste?

Response: The Agency has determined that these wastes exhibit the characteristics of hazardous waste infrequently, from 0 to 7 percent of the samples depending on waste type.

The RTC concludes that although coal combustion waste may leach contaminants (arsenic, cadmium, chromium, lead, and mercury) above toxicity characteristic regulatory levels, such exceedences are infrequent and the average concentrations of constituents are below characteristically toxic levels. A full bibliography of the sources of EP and TCLP data and a summary of the results are given in Appendices A and B of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste.

The results of Step 1 of the analysis indicate that the wastes rarely exhibit any characteristics of hazardous waste and the waste pose very limited risk to human health or the environment under certain scenarios, such as unlined units sited over shallow groundwater with nearby drinking water wells. Furthermore, since most releases have occurred at unlined older sites, EPA recognized that a review of current waste management practices and regulatory control governing these practices was appropriate as outlined in Step 2 of the methodology, which assesses the need for more stringent regulation.

Step 2: Is more stringent regulation necessary or desirable? The Agency has determined that the answer is no. EPA regulation is not necessary or desirable.

In evaluating the need for more stringent controls to address the potential risks associated with the management of these wastes, EPA first evaluated the adequacy of current industry waste management practices in limiting contaminant release and associated risk. The Agency then viewed the adequacy of current State and Federal regulatory controls addressing these wastes. For the purposes of this analysis, EPA supplemented the data supplied in the RTC with site visits, a 1992 EPA study under which the Agency obtained and reviewed State regulations applicable to FFC waste management, the Department of Energy's 1991 report entitled Coal Combustion Waste Disposal: Update of State Regulations and Cost Data, dialogue with industry and State representatives, the Electric Power Research Institute's Facility Design and Installation Manual (1991), State file searches, and literature reviews.

Substep 1. Are current practices adequate to limit contaminant release and associated risk?

Response: The Agency has determined that industry practices are moving toward increased use of control measures (liners, covers, etc.) and groundwater monitoring.

The Agency's data on current practices indicate that industry is moving toward an increased use of control measures (e.g., liners, covers) and groundwater monitoring. For example, the RTC noted that before 1975, less than 20 percent of units (surface impoundments and landfills) in the United States for which data were available had installed some form of liner. More recent data (EEI's Power Statistics Database, 1989) suggest that 13 to 29 percent of surface impoundments for which data are available, have some form of liner and that 41 to 43 percent of landfills have some form of liner. As the damage case and groundwater monitoring information suggests, most of the releases have occurred at older, unlined units. EPA has observed during site visits that newer units are generally lined. Furthermore, most newer utility waste management facilities have groundwater monitoring systems, and many also have leachate collection systems. Despite the positive trends in management of FFC wastes, some of these units may be sited with inadequate controls. Therefore, in addition to viewing industry management practices, EPA collected and evaluated information on the extent of current State and Federal regulation of coal-fired utility waste management.

Substep 2. Are current Federal and State regulatory controls adequate to address the management of the waste?

Response: Effluent limitations in the Clean Water Act regulations for steam electric power plants under 40 CFR part 423 require no discharge from new fly ash ponds. State programs are generally adequate and are improving, with most States now requiring permits and minimum design and operating criteria that would address likely risks. Additionally, Federal authorities exist to address site-specific problems posing threats to human health and the environment under RCRA Section 7003 and CERCLA Sections 104 and 106.

The RTC included information on coal-fired electric utility waste regulation in all 50 States. In updating this information, EPA conducted a review of States that were selected according to the high levels of ash generated in those States. This approach resulted in a study universe of 17 States that generate approximately 70 percent of all coal ash in the United States.

The data show that States have generally implemented more stringent regulations for FFC waste since 1983 (when the State regulation review was conducted for the RTC). Under developing State industrial solid waste management programs, coal-fired utilities are more frequently being required to meet waste testing standards, and waste management units often must comply with design and operating requirements (e.g., liners and groundwater monitoring standards).

Of the 17 States for which EPA updated the RTC data, 14 regulate coal-fired utility wastes as solid wastes, explicitly exempting them from hazardous waste regulation;[12] 16 States require offsite FFC waste management units to have some type of operating permit, with design and operating criteria varying by State; 12 have mandatory liner requirements, while three States provide for discretionary authority to impose liner requirements on a site-specific basis; 12 impose mandatory groundwater monitoring requirements on FFC waste disposal sites; and 16 impose final cover requirements. In addition, some States have been working to reduce the threat of groundwater and surface water contamination, by discouraging the use of wet management in ponds as a disposal practice (through permitting requirements and location restrictions). On the Federal level, National Pollutant Discharge Elimination System permits under the Clean Water Act regulate all direct discharges to surface water. Effluent limitations under 40 CFR part 423 govern steam electric power generating point sources and require no (zero) discharge to surface waters from new source fly ash transport waters (40 CFR 423.15(g)).

Considering industry's trend toward more protective waste management practices, the fact that State regulatory programs are generally adequate, and because Federal authorities exist that can address these wastes, EPA has concluded that current management practices and regulatory controls are adequate for managing the four large-volume FFC wastes.

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[11] Characterization of Coal Creek Station Fly Ash for Utilization Potential, Energy and Environmental Research Center, February 1993 (see Docket No. F-93-FPCA-FFFFF).

[12] Of the remaining three States, two States establish requirements based on waste characteristics and one exempts these wastes from their solid and hazardous waste management program.

**Substep 3. Would Subtitle C effectively address the problems associated with the waste without imposing significant unnecessary controls?**

**Response:** The Agency has determined that it is unlikely that Subtitle C would effectively address the problems associated with the four large-volume fossil-fuel combustion wastes without imposing unnecessary controls.

After reviewing industry practices and current State and Federal regulation, EPA reviewed the alternative scenario of regulating the four large-volume FFC wastes under Subtitle C. First, it was recognized that coal combustion wastes rarely exceed the RCRA characteristics for hazardous waste, and therefore, that most coal combustion wastes would not be subject to Subtitle C controls unless they were listed as hazardous wastes. Furthermore, it was noted that even if these wastes were listed as hazardous, and therefore, regulated under Subtitle C, such an approach would be inappropriate for these wastes. A Subtitle C system would require coal combustion units to obtain a Subtitle C permit (which would unnecessarily duplicate existing State requirements) and would establish a series of waste unit design and operating requirements for these wastes, which would generally be in excess of requirements to protect human health and the environment. For example, if such wastes were placed in the Subtitle C universe, all ash disposal units would be required to meet specific liner and monitoring requirements. Since FFC sites vary widely in terms of topographical, geological, climatological, and hydrological characteristics (e.g., depth to groundwater, annual rainfall, distance to drinking water sources, soil type) and the wastes' potential to leach into the groundwater and travel to exposure points is linked to such factors, it is more appropriate for individual States to have the flexibility necessary to tailor specific controls to the site or region specific risks posed by these wastes.

EPA also reviewed the comments received in response to the 1988 RTC and the Notice. Comments received on the RTC showed unanimous support for EPA's initial recommendation that large-volume combustion wastes do not warrant regulation under RCRA Subtitle C. Specifically, the commenters felt that current Subtitle D criteria, together with existing State regulations, have proved adequate to protect human health and the environment. Furthermore, of the respondents to the Notice who addressed the recommendation that large-volume combustion wastes do not warrant regulation under Subtitle C, all agreed that the supplemental data support this recommendation.

For these reasons, EPA concludes that Subtitle C is inappropriate to address the problems associated with these wastes and that the site or region specific State approach is appropriate for addressing the limited human health and environmental risks involved with the disposal of FFC wastes. The Agency encourages States to continue to develop and implement site-specific approaches to these wastes. EPA believes that industry and the States should continue to review the appropriate management of these wastes. EPA will also consider these wastes during the Agency's ongoing assessment of industrial non-hazardous wastes under RCRA Subtitle D. Should the characteristics of the waste streams change as a result of implementation of any provisions of the Clean Air Act as amended in 1990, the Agency may choose to reexamine the exemption.

**Step 3. What would be the operational and economic consequences of a decision to regulate a special waste under Subtitle C?**

Although the analysis never reached this point, EPA's preliminary examination of potential costs under Subtitle C indicates that annual costs of full Subtitle C controls would range between $100 and $500 million per year. This assumes that these wastes would be listed as hazardous in RCRA part 261, subpart D. However, if these wastes were not listed, the wastes would often not be subject to Subtitle C, since they rarely test characteristically hazardous pursuant to part 261, subpart C. Subtitle C controls include groundwater monitoring, liners, leachate collection, closure/covers, dust control, financial assurance, location restrictions, and corrective action.

## V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub.L. 96–354), requires Federal regulatory agencies to consider the impact of rulemaking on "small entities." If a rulemaking will have a significant impact on small entities, agencies must consider regulatory alternatives that minimize economic impact.

Today's decision does not affect any small entity. Rather, it continues to exempt the four large-volume wastes from coal-fired electric utilities from regulation as hazardous wastes. Accordingly, this action will not add any economic burdens to any affected entities, small or large. Therefore, a regulatory flexibility analysis is not required. Pursuant to Section 605(b) of the RFA, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on small entities.

## VI. Regulatory Determination Docket

Documents related to this regulatory determination are available for inspection at the docket.

The EPA RCRA docket is located at the following address: United States Environmental Protection Agency, EPA RCRA Docket, room M2427, 401 M Street SW., Washington, DC 20460.

The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call the docket clerk at (202) 260–9327 to make an appointment.

Dated: August 2, 1993.

**Carol M. Browner,**

*Administrator.*

## Appendix A—Analysis of and Responses to Public Comments on the Report to Congress

The 1988 Report to Congress: Wastes from the Combustion of Coal by Electric Utility Power Plants concluded with three recommendations. Comments on the RTC were largely organized in response to those recommendations. The summarized comments and EPA's response to those comments follow each recommendation, printed in bold below.

(1) EPA has concluded that coal combustion waste streams generally do not exhibit hazardous characteristics under current RCRA regulations. EPA does not intend to regulate under Subtitle C fly ash, bottom ash, boiler slag, and flue gas emission control wastes.

All respondents agreed with and supported the RTC's first recommendation that high-volume combustion wastes do not warrant regulation under Subtitle C. They concluded that current Subtitle D criteria, together with existing State regulations, have proved adequate to protect human health and the environment.

Several commenters claimed that the EP toxicity test is not a valid indication of the hazards associated with utility wastes since the test was designed to mimic conditions in acidic municipal landfills rather than homogeneous monofills used by electric utilities. They claim, therefore, that data from the EP test significantly overstate potential risks.

As noted in the RTC and by several commenters, the Bevill Exemption requires EPA to consider eight factors (Section 8002(n)) in determining

whether hazardous waste regulation is warranted for fossil-fuel combustion wastes. To that end, EPA has developed the methodology identified in the Notice that takes into account all of these factors. While waste characterization data, including the results of EP toxicity testing as well as other leaching procedures (TCLP, ASTM, and batch/column) are considered in the decision, they are not the sole basis for determining whether to regulate FFC wastes as hazardous. The methodology specifically focuses on the risks posed by FFC wastes as they are actually managed.

EPA acknowledges that EP toxicity test results may not always represent the leaching potential of hazardous constituents from FFC wastes. However, some ash is (or could be) managed in offsite Subtitle D landfills. Furthermore, EPA has found significant variability in the leaching characteristics of FFC wastes, depending on the fossil-fuel source and boiler operating conditions. Therefore, EPA believes that consideration of EP toxicity data, in conjunction with the results of other leaching studies and data on the actual environmental impacts of waste management practices, is appropriate. Finally, EPA's data show that EP toxicity test results for the four large-volume wastes are not inconsistent with leach tests conducted using ASTM, batch/column, and TCLP methods (see February, 1988 RTC).

(2) EPA is concerned that several other wastes from coal-fired utilities may exhibit the hazardous characteristics of corrosivity or EP toxicity and merit regulation under Subtitle C. EPA intends to consider whether these waste streams should be regulated under Subtitle C of RCRA based on further study and information obtained during the public comment period.

Nineteen of the twenty-two respondents commented on the RTC's second recommendation to study low-volume wastes further and consider regulating these wastes under RCRA Subtitle C. All 19 respondents disagreed with the recommendation to regulate any low-volume wastes under Subtitle C.

Several commenters claimed that insufficient data existed to support a Regulatory Determination for low-volume wastes. EPA concurs with these comments. The Agency intends to study co-managed low-volume wastes further to obtain sufficient data to make a Regulatory Determination. Low-volume wastes managed independently are outside the scope of the Bevill Exemption.

Many comments maintained that Subtitle C regulation is not warranted for low-volume wastes co-managed with large-volume coal combustion wastes. Some commenters claimed that the predominant industry practice is to co-dispose of low-volume wastes in ash or FGD sludge ponds (several commenters referenced the 1985 Radian study and the 1982 Envirosphere report). Such co-management was claimed to be practical, effective, and environmentally sound. The report acknowledges that this practice may reduce the potential hazard of low-volume wastes, by neutralization or dilution. Commenters emphasized that no adverse environmental impacts from the co-disposal of high-volume and low-volume wastes have been shown in studies by the electric utility industry and EPA and that none were cited in the RTC.

EPA acknowledges that the RTC contained very limited information on the extent and potential environmental impacts of co-management of low-volume wastes with ash, slag, and FGD wastes. In fact, although the Agency has information verifying that co-management does occur, there is limited information clarifying the amounts and types of co-management. Indeed, this was the reason EPA reached no tentative conclusions regarding these practices. Comprehensive studies were available for fewer than five of the hundreds of existing co-management sites. EPA's efforts to compile more recent data continue to show limited information on the effects of co-management. However, some information suggests that at several large-volume waste management sites where groundwater impacts have been detected (see data in the RCRA Docket), the operators have suggested that the cause of the contamination is co-management with low-volume wastes. Of specific concern are pyrites and chemical boiler cleaning wastes. Further, the Agency has observed that the general trend in the industry is to segregate certain low-volume wastes (i.e., pyrites, boiler cleaning wastes, and demineralizer regenerant) from ash, slag, and FGD sludge.

The Agency believes that additional data collection for the low-volume wastes co-managed with the large-volume wastes described in the report is required and is deferring a final Regulatory Determination for co-managed wastes, pending completion of further studies. Co-managed low-volume wastes remain exempt from hazardous waste regulation, however, until such a determination is made. As required under the Bevill Exemption, the Agency emphasizes that the decision on remaining wastes will be based on all Section 8002(n) study factors, not on waste characterization data alone.

As discussed in the scope section of this determination, the Agency does not consider process waters (e.g., non-contact cooling water and low-pressure service water) used in ash handling or FGD systems to be wastes. Also, the continuous use of these process waters as feedwater for emission control systems or for ash transport generally will not increase the environmental risks associated with the wastes relative to the risks derived from utilization of fresh water for the same purposes. Discouraging such practices may lead to an increased usage of fresh water for the same purposes, thereby increasing the total volume of water exposed to the large-volume wastes as well as the total volume of waste generated. The Agency believes that this would be an undesirable outcome of today's action. For these reasons, the Agency does not consider the practice of using these non-contact process waters in ash sluicing systems or as makeup water for FGD systems to constitute co-management.

One commenter thought that the limitations applied to discharges of pollutants from ash disposal facilities under the National Pollutant Discharge Elimination System adequately protect the environment and that additional regulations would be redundant.

The Agency does not concur with the commenter that meeting NPDES permit limits at surface water discharge points alone is necessarily adequate to ensure groundwater protection. For example, FFC waste management units may not have surface water discharges, and, therefore, might not be required to have NPDES permits. Even if NPDES-permitted, these units may generate leachate that could affect underlying groundwater. Although some States may use Federal NPDES permit requirements to protect groundwater resources, the Clean Water Act and the NPDES program generally focus on protecting surface water quality.

One commenter referred to a 1976 study conducted by an electric utility company in which both bench (laboratory) and field tests were conducted. The purpose of the study was to demonstrate to EPA, for purposes of meeting the effluent limitations of a NPDES permit, that co-disposal of two boiler cleaning wastes with ash in ash ponds provided treatment equivalent to that available from a dedicated waste treatment facility. The bench tests showed 99 percent treatment for metals. The commenter maintained that the

low-volume wastes were effectively treated without any increase in risk from the high-volume wastes (and the waste management unit) into which they were added.

EPA acknowledges that the referenced study does demonstrate that a level of Ph adjustment can be achieved over a period of time so that NPDES permit limits can be met. However, the study does not address protection of the groundwater underlying the impoundment. Further, the study provides data for only two types of boiler cleaning solution mixed with ash from a single plant. Because of the variability in types of boiler cleaning solutions and ash characteristics and the relative paucity of data on low-volume wastes and co-management in general (and the consequent uncertainty related to the environmental impacts of co-management), the Agency believes that further study is required.

Several commenters claimed that EPA appeared to have selectively included data from EP test results for boiler cleaning wastes and other low-volume waste streams in the RTC (Exhibits 5–5 and 5–6). Exhibit 5–5 (taken from the 1985 Radian study) presents test results for two treated and three untreated boiler cleaning waste streams. The commenters noted that the Radian study sets forth data for four untreated and four treated waste streams. None of the results for the streams omitted in the report exceeds the EP toxicity limits. To the extent that only the untreated waste streams for which an exceedence was shown are included in the report, the commenters maintained that observations on those results are overstated.

In addition, the commenters felt that the report was similarly selective in reporting "EP Toxicity Test Results for Liquid Low-Volume Wastes" (taken from the 1987 Radian study) shown in Exhibit 5–6. Where the original data included 17 boiler cleaning wastes and 7 waterside rinse tests, the report included only 10 boiler cleaning wastes and 3 waterside wastes in Exhibit 5–6. Additionally, by omitting the "less than" sign next to many of the values, there was concern that the report gives a false impression that a reading is a positive value, when actually the value was below the detection limit. It was also pointed out that this omission factors into the calculation of the geometric mean for the samples.

EPA acknowledges the comments. The intent was not to overstate or overemphasize the frequency or magnitude of observed concentrations of constituents in leachate. Rather, EPA was attempting simply to present data that illustrated the concentrations that could be observed. In its Regulatory Determination on the wastes, EPA considered all data (including non-detects), rather than only selected observations.

One commenter noted that the boiler cleaning wastewaters from the initial acid wash stage and subsequent rinses should not be considered separately because they are typically combined and managed together as a single waste stream. The commenter noted that the report shows these fluids as separate waste streams and includes data for each stream in Exhibit 5–6. If the data were collected on these fluids as a unified stream, the commenter claimed that the resulting boiler cleaning waste would likely not, exceed any of the current limits for EP toxicity.

The commenter went on to say that even if certain boiler cleaning wastes may, in certain circumstances, test hazardous as generated, this fact should not trigger Subtitle C regulation. The commenter emphasized that co-disposed boiler cleaning waste does not present a hazard and that this critical fact is acknowledged in the RTC.

The Agency has found that some utilities do manage the wastes generated during different stages of the waterside boiler tube cleaning operations separately, at least for some period of time. Therefore, the Agency believes that it is appropriate to consider waste characterization data for the distinct streams (as well as for combined streams). As noted previously, the Agency does not believe that the RTC and other currently available information provide sufficient data to complete a Regulatory Determination for boiler chemical cleaning wastes co-managed with large-volume wastes at this time.

One commenter cited data on 17 untreated waterside boiler cleaning wastes (which include ethylene-diamine-triacetic acid (EDTA), hydroxyacetic-formic acid, and ammoniated bromate and hydrochloric acid). Only one sample (or 5.8 per cent) showed an exceedence of the EP limits, for total lead with a concentration of 6.67 mg/l. The average lead concentration for all 17 samples was 1.43 mg/l with a median value of 0.5 mg/l. None of the 17 waterside boiler cleaning waste samples was corrosive.

Another commenter cited company data for 69 samples of waterside boiler cleaning wastes (which include EDTA, hydroxyacetic-formic acid, and citric acid). Among these samples, only 15 (or 22 percent) showed exceedences of the EP limits. Thirteen of these exceedences were for total chromium and two were for total lead. The average total chromium concentration for all 69 samples was 3.41 mg/l with a median value of 2.08 mg/l. The average total lead concentration was 1.23 mg/l with a median value of 0.56 mg/l. The commenter emphasized that these values were all considerably less than those cited in the RTC.

In addition, the company tested several of the same waterside boiler cleaning wastes for hexavalent chromium under the EP toxicity test procedure. Of the 16 samples so tested, only 1 showed a concentration of hexavalent chromium above the detection limit of 0.02 mg/l. Two of the 16 tested samples, exceeded 5.0 mg/l for total chromium concentrations. All 17 of the other samples showed concentrations of hexavalent chromium below the detection limit.

EPA acknowledges these comments and would welcome the opportunity to review any additional data. The averages for lead and chromium cited by the commenters are indeed lower than those cited in the RTC. However, because some boiler cleaning chemicals appear to exhibit hazardous waste characteristics and the data on the impacts of their management with large-volume wastes are limited, the Agency believes further study is necessary before a final regulatory determination is made.

Several commenters claimed that the costs of managing low-volume wastes under Subtitle C would be very high. Some commenters felt that such management would necessitate transporting these wastes offsite, thereby posing risks of environmental releases without significant environmental benefit. Other commenters observed that continuing to manage these wastes onsite would require that the disposal facilities become treatment, storage, or disposal facilities.

As noted previously, EPA is deferring a final determination on low-volume wastes co-managed with the four large-volume wastes, pending additional data collection. As necessary and in accordance with the Section 8002(n) study factors, EPA will consider the potential cost impacts in making a determination for these wastes. Low-volume wastes managed independently are not and never have been within the scope of the Bevill Exemption.

The Agency also recognizes that transporting hazardous wastes may pose risks of environmental releases. However, regulations have been developed to ensure that hazardous wastes are transported in a manner

sufficient to protect human health and the environment (see 40 CFR § 263).

Many commenters stated that when low-volume wastes are co-managed with high-volume wastes, the Bevill Amendment forbids EPA from regulating them until the Agency addresses each of the Section 8002(n) factors in its study and bases its determination on all of those factors. These commenters maintained that EPA may not rely solely on the outcome of a waste characteristic test as the basis of its Regulatory Determination regarding these wastes and this management process. They went on to say that the record assembled in the Report to Congress presents no evidence of environmental risk associated either with this co-management practice or with the co-disposed wastes and contains no information or findings as to many of the remaining Section 8002(n) factors.

For the reasons cited above, the data are insufficient to assess fully the potential risks associated with present co-disposal practices. As discussed, EPA does not intend to rely solely on waste characterization data as the basis of its Regulatory Determination for remaining wastes. The Agency acknowledges that many of the 8002(n) study factors have not been considered for low-volume wastes co-managed with high-volume wastes. EPA plans to address these study factors before we make a final regulatory determination on these wastes.

(3) EPA encourages the utilization of coal combustion wastes as one method for reducing the amount of these wastes that need to be disposed to the extent that such utilization can be done in an environmentally safe manner.

While all respondents agreed with the RTC's third recommendation encouraging coal combustion waste utilization, several qualifying comments were received.

One commenter noted that, while the RTC is correct in requiring that utilization to be done in an environmentally safe manner, Congress needs to be equally concerned that waste utilization is done in a structurally safe manner. This commenter claimed that the RTC's assertion, "all types of coal ash are appropriate for use as construction materials, as cement additives, and for several other uses," is entirely erroneous. The commenter stated that the RTC contradicts this statement further on by delineating some of the reasons why some fly ashes are not appropriate for use in construction. All materials used in engineering construction work are required to comply with appropriate ASTM standards. Regarding utilization in concrete, the commenter felt that the RTC must cite the appropriate ASTM Standard C618.

EPA acknowledges and agrees with the comment. However, it is not within EPA's authority to mandate structural requirements, except where they may affect the potential for environmental impacts.

In a recommendation on utilization, one commenter pointed out that the RTC encourages this practice "to the extent that it can be done in an environmentally safe manner." The commenter cited the report's statement that "current waste utilization practices appear to be done in an environmentally safe manner." The commenter claims that there is no delineation between practices that are environmentally safe and ones that are not environmentally safe.

To date, and using the limited data available, the Agency has not found any environmental damages associated with the utilization of large-volume coal-fired utility wastes. However, the Agency agrees with the commenter that utilization of coal combustion wastes should be done in a manner fully protective of the environment and consistent with existing Federal and State regulations.

Several commenters disagreed with the RTC where it stated that the potential for significantly increasing the amount of waste utilization may be limited. Given current utilization techniques, the report predicts that the major portion of coal combustion wastes will continue to be land disposed. Some commenters felt that reluctance toward waste utilization is largely due to the stigma of classifying the by-products as "waste" and that EPA should remove "beneficially used coal ash" from the definition of "solid waste".

Some commenters also noted that in enacting RCRA, Congress intended that EPA take a more active role in resource conservation and recovery. They thought EPA should give stronger support for additional use and market development with the emphasis placed on large-volume utilization. It was noted that some States have exempted ash for reuse from their solid waste programs and recommended that the Agency support State efforts to authorize the use of coal combustion by-products.

These commenters claimed that considerable attention was directed to limited cases of adverse impact in the RTC. They maintained that EPA should acknowledge in its Regulatory Determination that a selective ash characterization program coupled with good engineering practice would ensure environmental acceptability of large-volume ash applications. The Agency should take a leadership role by issuing procurement guidelines related to the use of coal ash in high-volume applications within the transportation and construction industries. Such high-volume applications would include the use of coal ash as structural fills, road embankments, and backfills.

The Agency notes that Congress specifically mandates in RCRA Section 8002(n) that the Agency consider the cases of adverse impact. The Agency encourages utilization of coal combustion byproducts and supports State efforts to promote utilization in an environmentally beneficial manner. EPA notes that the Agency has issued a procurement guideline to encourage the use of fly ash in cement and concrete in Federal projects (see 48 FR 4230, January 28, 1984). The Agency prefers to allow States the flexibility to develop their own approaches to fostering utilization. The individual states are in the best position to determine what types of utilization are appropriate for their environmental settings.

### Appendix B—Analysis of and Responses to Public Comments on the Notice of Data Availability

On February 12, 1993, the Agency issued a Notice of Data Availability (Notice) requesting comment on additional data on fossil-fuel combustion (FFC) wastes. These data are intended to update and supplement the materials presented in the 1988 Report to Congress on Wastes from the Combustion of Coal by Electric Utility Power Plants (RTC). In addition, the Notice solicited comment on the proposed methodology to be used in completing the August 1993 regulatory determination.

Comments were received from 14 parties. Several commenters also submitted additional published materials on FFC waste characteristics and management/treatment techniques. The Agency considered these materials in completing the regulatory determination, as appropriate.

The following discussion briefly summarizes the comments received on the additional data and the proposed methodology. The Agency's responses are also provided. The comments and responses have been grouped according to general topic areas.

*Methodology:* Several commenters supported the use of EPA's proposed three-step methodology for completing the FFC waste regulatory determination. No commenters disagreed with any aspect of the methodology.

*Fly Ash, Bottom Ash, Boiler Slag, and FGD Waste:* Nearly all respondents indicated that the Notice documents supported the 1988 RTC's recommendation that large-volume combustion wastes do not warrant regulation under Subtitle C. No commenters disagreed with this recommendation.

The Agency concurs with the commenters that the information contained in the docket does not contradict the data presented in the RTC. The Notice documents update and supplement the RTC by providing additional data on waste characteristics, environmental monitoring, and environmental impacts.

Several commenters noted that State regulation of FFC waste management has become more stringent since the 1988 RTC. More stringent solid waste regulations, including waste testing requirements and design- and performance-based standards, were specifically cited.

The Department of Energy and the EPA have recently completed separate studies of the current level of State regulation of FFC wastes. Proceeding from the findings of these studies, the Agency concurs with the commenters that State requirements have generally become more stringent since 1983 (when the data cited in the 1988 RTC were collected). EPA supplemented the 1983 data for all 50 States with an updated analysis of 17 States representing all geographic regions of the United States and generating approximately 70 percent of the Nation's coal ash. As noted in the preamble to the regulatory determination, this study showed that States are imposing additional controls to ensure the proper management of these wastes.

One commenter felt that there is the potential for groundwater degradation from these coal combustion residues as a result of their leaching potential, although regulation of these wastes under Subtitle C is not appropriate. The inherent high permeability of materials landfilled without the benefit of stabilization or liners could allow a large volume of percolation to occur, resulting in potential groundwater contamination. The commenter urged the Agency to eliminate questionable coal combustion waste impoundments and suggested that regulations similar to 40 CFR part 258 (requirements for municipal solid waste landfills) would be appropriate for FFC waste management units.

While the Agency believes that design and operating requirements similar to part 258 may be appropriate for some FFC waste management units, the risks posed by FFC waste management are site-specific. Although groundwater contamination has occurred at certain coal combustion waste sites, contamination has been due to a limited number of constituents, which are likely to attenuate and dilute to safe levels before reaching an exposure point. This is in contrast to municipal solid waste landfills that are subject to 40 CFR part 258. The leachate at these sites often contains elevated levels of a wide range of toxic pollutants, and numerous damages have been observed. Therefore, the Agency believes that the level of protection provided by the part 258 criteria may not need to be universally applied to all FFC waste management units. It is therefore appropriate to allow the States to retain the flexibility to tailor requirements to site-specific or regional factors rather than establish broad Federal minimum requirements. It should be noted that many States have adopted regulatory requirements for FFC waste management units comparable to the part 258 criteria. EPA will consider these wastes as part of the Agency's ongoing assessment of industrial non-hazardous wastes under RCRA Subtitle D.

*Low-Volume Wastes and Co-Management:* Five of the fourteen respondents supported permanently retaining the exemption for low-volume coal-fired utility wastes co-managed with large-volume wastes. These commenters indicated that the 1988 RTC and Notice data show that co-management is an environmentally sound management practice. One commenter specifically cited two Electric Power Research Institute (EPRI) studies completed since 1988 as demonstrating that co-managed wastes should be excluded.

EPA's efforts to compile more recent data continue to show limited information on the effects of co-management. However, some information included in the Notice docket suggests that at several large-volume waste management sites where groundwater impacts have been detected, the operators have suggested that the cause of the contamination is co-management with low-volume wastes. Of specific concern to the Agency is co-management of ash, slag, and FGD waste with pyrites and/or chemical boiler cleaning wastes.

The Agency does not believe that the two recent co-management studies cited by the commenter are conclusive or sufficiently representative of the entire universe of co-management sites. For example, at one site, EPRI findings indicate that a release is occurring because of pyrite co-disposal. The release is localized by site-specific conditions (i.e., alkaline soils) that may not be found at every facility. Similarly, a release is also occurring at the second site. While migration of constituents with primary drinking water standards is limited, boron and sulfate have been detected in downgradient wells.

Low-volume wastes co-managed with large-volume wastes remain exempt pending additional study. Separately managed low-volume wastes are outside the scope of the exemption, as noted by one commenter representing a large part of the industry. The same commenter in responding to the RTC cited RCRA Section 3001(b)(3)(i) and a January 13, 1981, letter from G. Dietrich, U.S. EPA, to P. Emler, Utility Solid Waste Activities Group, as indicating that the Bevill Exemption applies only to low-volume wastes when they are co-managed with the four large-volume.[13]

However, the Agency cautions that the limited data available to date indicate that co-management of some large-volume wastes with pyrites and chemical boiler cleaning wastes can cause adverse environmental impacts. Pending the study of low-volume wastes co-managed with large-volume wastes, the Agency will continue to rely on its authorities pursuant to RCRA Section 7003 as well as its Superfund authorities under CERCLA Sections 104 and 106, to address any human health and environmental threats associated with the co-management of these wastes.

Several commenters emphasized that low-volume wastes are typically co-managed with ash, slag, and FGD wastes.

The Agency has observed that the general trend in the industry is to segregate certain low-volume wastes (e.g., boiler chemical cleaning wastes) from ash, slag, and FGD wastes. At some plants, low-volume wastes, such as pyrites and chemical boiler cleaning wastes, are now being disposed of separately. As indicated above, the Agency believes that additional study is required to evaluate the risks posed by co-management of the low-volume wastes with the large-volume wastes.

Reutilization: One commenter noted that in enacting RCRA, Congress intended that EPA take an active role in resource conservation and recovery. The commenter indicated that some States have developed overly stringent regulatory requirements that have

[13] Comments dated May 16, 1988, received from USWAG on the RTC and comments dated March 29, 1993, received from USWAG on the Notice (see Docket numbers F–88–PATA–FFFFF and F–93–FFCA–FFFFF).

discouraged reuse of FFC wastes. Several commenters recommended that, in the Regulatory Determination, EPA should recognize coal combustion byproducts as beneficial resources rather than as waste materials.

Because, according to the RTC, the majority of coal combustion byproducts are currently managed as wastes rather than re-used (because, in part, of market conditions as well as regulatory status), the Agency believes it is appropriate to consider them waste materials. However, the Agency continues to encourage reutilization of coal combustion byproducts and supports State efforts to promote reutilization in an environmentally beneficial manner. In terms of exempting coal combustion wastes from the definition of solid waste, because this determination is confined to the issue of whether to regulate those wastes as hazardous, this request is outside the scope of today's action. The Agency, however, is currently engaging in an effort to revise the definition of solid waste. In April 1993, EPA's Definition of Solid Waste Task Force held a public meeting in Washington, DC. The task force plans to hold a series of monthly open meetings from July through November 1993, which will provide a forum for the public to provide input on the definition of solid waste.

*Comments Related to Specific Documents:*

Two commenters suggested that three documents in the docket addressing the Gavin Power Plant were added in error and should not be considered in the regulatory determination because they deal with the investigation of groundwater constituents (volatile organic compounds (VOCs)) that are unrelated to the management of coal combustion byproducts.

The Agency recognizes that the source of the VOC contamination at the Gavin site is unlikely to have been coal combustion wastes. These documents were included in the docket only to provide a complete understanding of groundwater conditions, including background levels, at the site.

Site Visit Reports: One commenter provided comments on EPA's site visit report for the Cayuga Power Station, PSI Energy, Incorporated. The commenter's specific remarks and the Agency's responses are summarized below:

One commenter noted that the Cayuga site visit report incorrectly assumes that all data in Table 5 are from downgradient wells. The commenter suggests that the maximum arsenic and vanadium values above background were actually detected in an ash well (PZ-14), rather than with a soil core system. Because of this, the commenter concludes that no adverse impact on groundwater has occurred.

In response, CPZ–14 is specifically identified in EPRI's Report on the Cayuga site (see Comanagement of Coal Combustion By-product and Low-Volume Wastes: Midwestern Sites, EPRI Report EN–7545) as a downgradient well, and arsenic and vanadium were found above background levels in the sediments immediately underlying the ash pond. The Agency acknowledges that any release of these constituents is limited because they were not found in other wells. It should further be noted that other constituents, including sulfate and boron, have consistently been found above background levels in several downgradient wells.

One commenter stated that the Cayuga site visit report overemphasizes the lack of background groundwater monitoring data, because the actual downgradient groundwater data show no adverse impacts.

The report only indicates which parameters appear to be above background levels and notes that the limited background data make any data analysis difficult. The site visit report does not comment on whether the data show any adverse impacts associated with the ash management unit.

One commenter noted that total constituent and hydroxylamine extraction coal ash data presented in the EPRI study and the Cayuga site visit report should not be used to consider the actual leaching potential.

These data were included in the site visit report because they were the only waste characterization data available for the Cayuga site (no other leaching studies were performed). The Agency recognizes that the hydroxylamine extraction test provides a "worst case" estimate of the potential for constituent mobilization and would likely overestimate actual leachability. The Agency emphasizes that the proposed three-step methodology not only considers waste characterization information, but also the actual risks posed by a waste in its "as managed" state.

One commenter noted that the new groundwater monitoring data included in the Notice docket show few exceedences of primary drinking water standards. Most exceedences of primary drinking water standards occurred at older sites that are atypical of current sites. Exceedences of Secondary Drinking Water Standards occur more frequently, but the percentage of sites involved is still low. The commenter noted that exceedences of SDWSs are not violations of a Federal standard requiring enforcement or of most State standards, since SDWSs are guidelines. Further, exceedences would likely not occur if the relevant point of compliance were set further from the site (e.g., 150 meters downgradient as in the municipal solid waste landfill rules). Finally, the commenter indicated that many elevated constituent levels could be attributable to natural or other non-coal ash related sources (data were cited from several sites). Another commenter suggested that the data show that the potential exists for groundwater degradation through migration of constituents with SDWSs (e.g., iron, sulfates, chlorides, and other soluble salts).

The Agency disagrees that the new docket materials show a low percentage of exceedences of both PDWSs and SDWSs. Of the 49 individual sites with groundwater monitoring information (summarized in Appendix D of the Supplemental Analysis of Potential Risks to Human Health and the Environment from Large-Volume Coal Combustion Waste, found in the docket), 19 had at least one exceedence of a PDWS, and 42 had at least one exceedence of a SDWS.

The Agency concurs that some of these exceedences of PDWSs could be due to contamination from other sources and that dilution and attenuation would tend to reduce contaminant concentration below levels of concern at receptors. While the Agency recognizes that SDWS exceedences are not always considered violations, elevated levels of secondary parameters can cause adverse impacts. Therefore, the Agency has considered the mobility of these parameters in determining the risks posed by FFC waste management. Acknowledging the results of this analysis, the Agency concurs that many newer units have been designed to prevent releases (i.e., with liners), releases are frequently localized by site-specific conditions such that contaminants do not reach receptors, and exceedences are sometimes caused by natural or non-coal ash related sources (often for chlorides, iron, and manganese). Finally, although much of the data is from older sites, many of these sites are currently active; therefore, they cannot be regarded as categorically atypical.

[FR Doc. 93–18975 Filed 8–6–93; 8:45 am]

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

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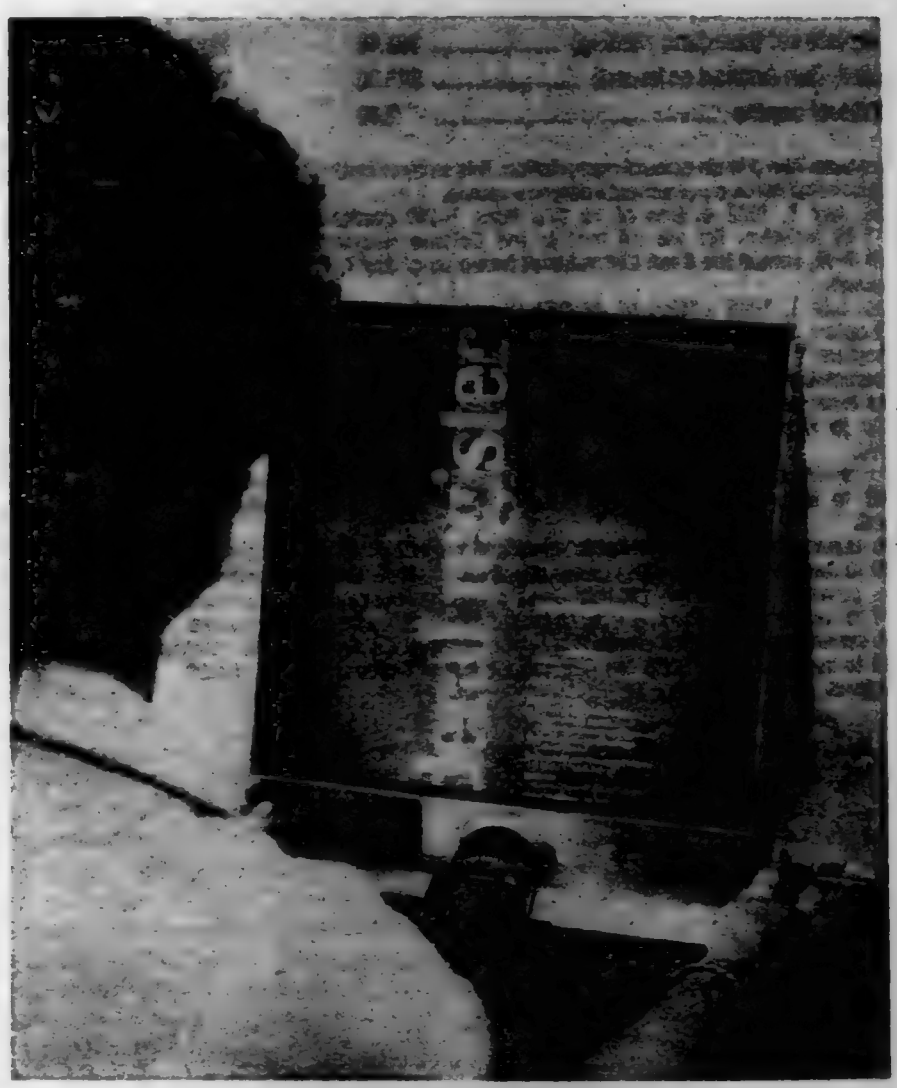


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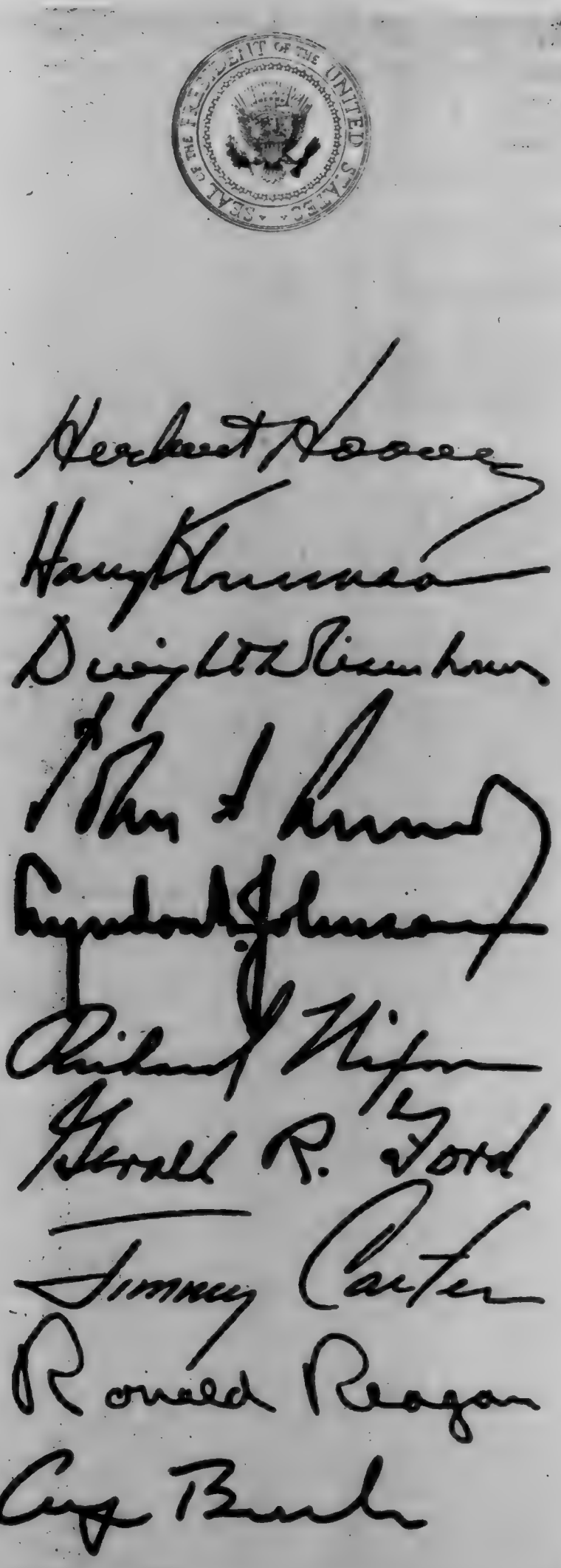

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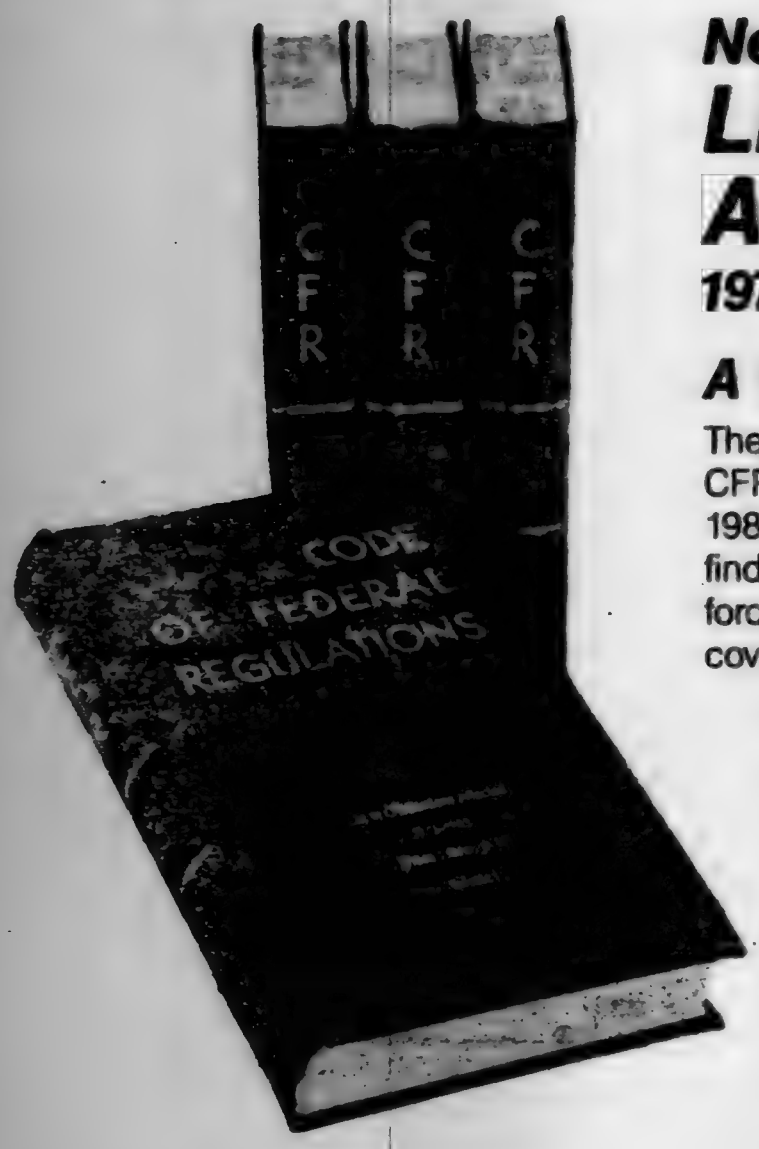


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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 210, 235 and 245**

## Meal Supplements in the National School Lunch Program

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulations for the National School Lunch Program (NSLP), to authorize reimbursement under NSLP for meal supplements served in afterschool care programs operated by schools that were participating in the Child and Adult Care Food Program (CACFP) as of May 15, 1989. This rule establishes the requirements that apply to the contents of the meal supplements and also defines eligible children and schools. This rule also incorporates the appropriate technical references to meal supplements.

**EFFECTIVE DATE:** September 9, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, or Mr. Charles Heise, Child Nutrition Division, USDA, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302, telephone (703) 305–2620.

**SUPPLEMENTARY INFORMATION:**

### Classification

This final rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule related to notice at 48 FR 29114, June 24, 1983.

### Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program, the administrative procedures are set forth in the following regulations: (1) School food authority appeals of State agency findings as a result of a Coordinated Review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of a Coordinated Review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

### Information Collection

This final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* Meal Supplements in the National School Lunch Program.

*Description:* This provision will enable respondents to realize a substantial reduction in the overall burden associated with providing supplements to children enrolled in afterschool care programs. While this estimated burden represents an increase in the total burden approved by OMB for the National School Lunch Program, The Department emphasizes that the actual burden on respondents will be less than is presently the case. These respondents are participating in the Child and Adult Care Food Program and, as a consequence, must make separate applications, maintain separate agreements and submit separate claims for that program. If there respondents participate under the National School Lunch Program, they will be authorized to claim reimbursement for supplements under the permanent agreement for that program, and their claims will simply be an addendum to the existing claim for other meals. Therefore, respondents will experience some decrease in the burden associated with these aspects of program administration. Moreover, this final regulation reduces from six to two the number of annual visits which respondents must make to each of their sites. It should also be noted that the Department is reducing the overall burden associated with the Child and Adult Care Program to reflect the shift of these respondents to the National School Lunch Program.

*Description of Respondents:* School food authorities.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

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|---|---|---|---|---|
| 226.16(d): | | | | |
| Existing | 241 | 6 | 1.44 | 2,082 |
| Final rule | [illegible] | [illegible] | [illegible] | [illegible] |
| 210.9(c): | | | | |
| Existing | [illegible] | [illegible] | [illegible] | [illegible] |
| Final rule | 241 | 2 | 1.44 | 694 |

As required by section 3504(h) of the Paperwork Act of 1980 (44 U.S.C. 3504 (h)), this rule was approved by OMB. The information collection requirements of 7 CFR part 210, are OMB Nos. 0584–0006. These requirements have been approved by OMB for use through September 30, 1994.

Organizations and individuals who desire to comment on these requirements, including suggestions for reducing the reporting and recordkeeping burdens, should direct them to the Policy and Program Development Branch, Child Nutrition Division (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC, 20503, Attn: Laura Oliven, Desk Officer for FNS.

**Background**

Section 106(a) of the Child Nutrition and WIC Reauthorization Act of 1989, Public Law 101–147, enacted November 10, 1989, added section 17A (42 U.S.C. 1766a) to the National School Lunch Act (NSLA), authorizing elementary and secondary schools to be reimbursed by the Department for meal supplements as part of the National School Lunch Program (NSLP) if they meet the following requirements; (1) Operate school lunch programs under the NSLA; (2) sponsor afterschool care programs; and (3) were participating in the Child and Adult Care Food Program (CACFP) as of May 15, 1989. Section 106(a) also set forth the requirements applicable to the contents of the meal supplements, defined which children would be eligible for the supplements and specified the rates at which schools would be reimbursed for providing the supplements.

Currently, schools participating in the NSLP that also offer meal supplements to children enrolled in afterschool care programs do so through the CACFP. Under previous law, such schools had to submit separate applications and claims and maintain separate records for participation in the two programs. In an effort to reduce the paperwork burden for officials in these schools, Congress amended the NSLA as noted above. On July 2, 1991, the Department published a proposed rule in the **Federal Register** at 56 FR 30339–30342 which would implement this provision and make appropriate technical references to meal supplements in 7 CFR parts 210, 235, and 245. That proposal provided for a 75 day public comment period, which closed September 16, 1991. During the public comment period, 22 predominately favorable comments were received. The commenters represented 10 State agencies as well as other state representatives and professional groups. The remainder of this preamble discusses the issues raised by commenters.

**Limitation on Schools' Eligibility**

Under the proposed meal supplements rule, schools operating afterschool care programs under the CACFP may be reimbursed for meal supplements as part of the NSLP if they meet the following requirements: They operate school lunch programs under the NSLA; they sponsor afterschool care programs; and they were participating in the CACFP as of May 15, 1989. Most commenters took issue with the proposal to limit eligibility to those schools participating in the CACFP as of May 15, 1989. These commenters recommended extending this consideration to all schools offering afterschool care programs. However, as noted in the legislative report accompanying Public Law 101–147 (H.R. Rep. No. 194, 101st Cong., 1st Sess. 5–6), the House Committee on Education and Labor was unable to authorize all schools participating in the NSLP to exercise this option because of the constraints imposed by the Fiscal Year 1990 Budget Resolution. Due to the statutory nature of this provision, the Department is not at liberty to extend this consideration to schools that did not participate in CACFP until after that date.

Additionally, several commenters requested that eligibility be expanded to include all schools serving midmorning or afternoon snacks and to other programs that serve snacks to enrolled children, such as Head Start. The Department wishes to emphasize that this provision is applicable only to schools operating afterschool care programs. The Department has no authority to provide reimbursement for supplements under the NSLP if they are served during the school day. Consequently, programs such as Head Start which operate in school settings and wish to be reimbursed for midmorning or midafternoon snacks must continue to participate in the CACFP. Moreover, the statute does not permit the NSLP to be extended to afterschool care programs operated in nonschool settings. This provision was intended to be a paperwork reduction measure for schools participating in both the NSLP and CACFP and not a blanket extension to other entities involved in afterschool care programs. Thus, the provision to allow only those schools operating afterschool care programs under the CACFP as of May 15, 1989 to be reimbursed for snacks under NSLP is being incorporated as proposed.

**Definition of Afterschool Care Program**

In § 210.2 of the proposed rule, the Department defined an afterschool care program to be a "program providing organized child care services to enrolled school age children after school hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes". This definition was adopted from the CACFP definition in 7 CFR 226.2 of "outside school hours care center" in order to maintain consistency between the two programs. One commenter expressed concern that this definition excluded some programs that are not defined as "providing child care". Another commenter expressed dissatisfaction with the exclusion of "afterschool programs organized for scholastic, cultural or athletic activities", since these types of programs also offer "child care services" and with older children this type of

afterschool activity is more socially acceptable. The commenter also recommended, however, that children should be in care for two hours at a minimum after normal hours in order for the school to be eligible to claim reimbursement for meal supplements served to that child. In addition, one commenter noted that the definition of afterschool care program in the proposed regulation did not specify any licensing requirements and felt that the final rule should address this issue.

The Department does not feel that it is appropriate to adopt a licensing requirement for the NSLP. All schools must satisfy State and local health and safety codes in order to operate legally as a school. The Department feels that Congress clearly limited the scope of this provision to schools offering afterschool care programs as defined above and did not intend to extend the program to bring other kinds of afterschool care situations into the NSLP. Moreover, the Department notes that no time limitation is applied to outside school hour care situations in the CACFP. Since the purpose of the statutory provision is to maintain the status quo for service of supplements while reducing paperwork for schools, the Department does not consider a time restriction to be appropriate. Therefore, the Department will adopt as proposed the definition of afterschool care programs.

**Definition of Child**

A number of commenters were not supportive of the definition of eligible child in § 210.2 of the proposed regulation. The proposal specified that, for purposes of reimbursement for meal supplements in afterschool care, an eligible child must be 12 years of age or under, or, in the case of children of migrant workers and children with handicaps, not more than 15 years of age. The commenters generally believed that this definition was too exclusive and would eliminate several groups of students from participation. One commenter noted that the proposed definition of "child" also could be interpreted to include a child from birth through age 12 or 15, and not just school-age children.

The Department recognizes that some children enrolled in afterschool care programs may not be eligible because they do not meet the proposed age limitations. However, since these age limits are stipulated in the legislation, the Department has no authority to expand eligibility to all enrolled children regardless of age. The Department notes, moreover, that children older than 12 (15 if they are the children of migrants or, under certain circumstances, older children with handicaps) are not currently eligible for reimbursable meals under CACFP. However, the Department considers that meals served to infants and other children not yet of "school-age" may be reimbursed, provided these children are enrolled in the afterschool care program. As noted above, in the proposed rule the Department adopted the CACFP definition of outside-school-hours care centers for NSLP afterschool care programs, and the CACFP definition includes a reference to "school-age children." As a practical matter, the Department believes the term, itself, has meaning only when applied to children who are enrolled in school. Nevertheless, the Department can envision situations in which infants and preschool children may be enrolled in afterschool programs primarily designed for school-age children. In these situations, the Department considers it only reasonable to allow reimbursement for supplements served to nonschool-age children. The Department emphasizes, however, that this consideration can be extended only so long as these younger children are in an afterschool care program intended for school-age children. As noted above, the Department has no authority to reimburse meals served in other day care situations.

One commenter also noted an inconsistency between the definition of "child" in this proposal and that in the CACFP. (The proposal limits eligibility for children with handicaps to age 15 or less, whereas there is no age limitation for children with handicaps in the CACFP.)

The Department is aware of this discrepancy. However, the proposed age limit for NSLP, including the limitation for children with handicaps, has been taken directly from the law. Therefore, due to the statutory nature of this provision, the Department is adopting the proposed definition of "child."

**Point of Service Counts**

The Department proposed in § 210.9(c)(8) that the point of service count requirement for the lunch program would not be required for snacks served in afterschool care programs operated by eligible schools. However, schools would still be responsible for making accurate counts of the number of free, reduced price and paid meal supplements served to children. A number of commenters addressed the issue of point of service counts and argued that such counts should be required by the program regulations. The Department recognizes the concern of one commenter that accountability not be compromised. The Department clearly intended that schools maintain accurate counts of the number of free, reduced price and paid meal supplements served to children. However, in recognition of the logistics involved in afterschool care programs, the Department does not believe it is appropriate to require point of service counts and, for this reason, is adopting the proposed provision. Of course, States may, if they wish, require point of service counts. The Department wishes to emphasize that there must be a system in place that yields accurate counts of the number of meals claimed by type without overt identification of children receiving free or reduced price meals.

**Monitoring**

The Department proposed in § 210.9(c)(7) to require school food authorities to visit each of their afterschool care sites two times each year. The first visit was required to be made within the first four weeks of the school year. As noted in the preamble to the proposed rule, Senator Leahy indicated that the Senate Agriculture Committee believed that monitoring requirements for school food authorities acting as sponsors of afterschool care programs should be reduced to no more than three visits a year, as opposed to the six annual visits which other outside-school-hours sponsors must make to their sites under the CACFP. Given this direction, the Department proposed reducing the number of visits school sponsors must make from six to two, one less than suggested by Congress.

While the proposed monitoring requirement was generally well received by commenters, some commenters believed that even this degree of monitoring would be excessive, noting that only one visit before February 1 is required for the NSLP. Other commenters, while agreeing with the number of visits, objected to having to complete the first visit within the first four weeks of the school year, and one commenter specifically suggested combining the first visit to the afterschool care program with the monitoring visit of the lunch program required in § 210.8(a)(1). The Department recognizes these concerns. However, the Department continues to believe that the supplement portion of the NSLP will usually need to be monitored more frequently than the lunch portion due to the likelihood that the service of supplements would not be done directly by food service personnel familiar with food service operations

under the NSLP and will generally not be administered in school cafeterias. Therefore, while the Department believes that monitoring of these programs in schools need not be as intensive as the monitoring of programs in nonschool sites, the Department does not believe that fewer than two visits per year could be justified. For the same reason, the Department continues to believe that the first monitoring visit must be made during the first four weeks of the school year that the school is actually in operation. The Department agrees, however, that at least one of the visits for meal supplements may be done in conjunction with any other monitoring visit, such as the one on-site visit required before February 1 for the lunch portion of the NSLP, thus reducing administrative burden. Therefore, the monitoring provision is being adopted as proposed.

As a final note, one commenter expressed concern over how the first four-week requirement would affect schools that operate year-round programs. The Department feels that during the first year of serving supplements under NSLP, these particular schools should be monitored in the same manner as all other afterschool care programs in schools, including a visit during the first four weeks of its initial year of operation. Thereafter, these schools should be monitored twice each school year. In addition, whenever there is a change in the food service personnel, the Department recommends that the school food authority schedule a monitoring visit as soon after the change as possible.

In order to clarify the application of the monitoring requirement to year-round programs, § 210.9(c)(7) of the final rule provides that an afterschool care program operating year-round shall be reviewed during the first four weeks of its initial year of operation, once more during the first year of operation, and twice a year thereafter. Section 210.9(c)(7) is further revised to make clear that for all other programs the first review is to be made within the first four weeks that the school is in operation each school year.

**Reimbursement Method**

Under § 210.7 of the proposed rule, reimbursement of meal supplements would have been made based on the eligibility of the child served. Commenters disapproved of this provision on the basis that afterschool care programs operating under CACFP generally utilize a claiming percentage or blended rate method for reimbursement and, thus, are not encumbered by the free, reduced price and paid counting system which tracks money or tickets as in the NSLP. One commenter noted that, given the setting of the service of meal supplements, daily counts by category would be difficult. Additionally, another commenter felt that the choice of reimbursement method should be left to the discretion of the State agency. While the CACFP allows reimbursement according to claiming percentages or blended rates, the Department continues to believe that it is important to maintain consistency with the counting and claiming procedures established in the NSLP and School Breakfast Program (SBP), both of which, see 7 CFR 210.7(c) and 7 CFR 220.9(c), require the reporting of actual meal counts. The Department considers that using different claiming methods on the same form could create difficulties for States' reimbursement procedures. Therefore, the Department adopts, as proposed, the requirement that reimbursement for meal supplements by based on the status of the child—free, reduced price, or fully paying—who receives the meal.

**Number of Supplements**

Section 106(a) of Public Law 101–147 did not specify the number of supplements that may be reimbursed under the NSLP. However, the Department proposed in § 210.9(c)(6) to limit the number of reimbursable supplements to one per child per day.

One commenter believed schools should be allowed to serve and claim more supplements, particularly for children in care for long periods of time. This commenter felt that one supplement should be allowed for every 3 or 4 hours of participation in afterschool care. The Department believes that one supplement is adequate in the situation envisioned. Children in afterschool care would have received a lunch at school and would be receiving their evening meal at home. For this reason, the Department incorporates this provision into the final rule as proposed. As a final note on this issue, one commenter suggested that the limitation on meal supplements should apply to the number claimed for reimbursement not served as stated in the proposal. The Department intended the limitations to apply to reimbursable supplements. Schools may, if they wish, serve additional foods which are not claimed. In the interest of clarity, therefore, the Department is changing the term "served" in the proposed rule to "claimed for reimbursement" in § 210.9(c)(6) of this final rule.

**Maximum Charge for Reduced Price Supplements**

The proposed rule would have limited the maximum charge which a school could make for a reduced price supplement to 15 cents. As a result, the total amount of revenue which the school would receive from reimbursement and the child's payment would not equal the reimbursement for a free supplement, unlike the situation with lunches and breakfasts. One commenter was dissatisfied with this limitation on price, arguing that the difference between the cost of the meal and the revenue received could result in the quality of the supplement being compromised. The Department recognizes that, in some situations, this limitation could reduce revenue for some afterschool care programs. However, the Department feels that a higher charge for supplements could possibly discourage eligible children from participating and, therefore, does not support any increase in the maximum charge to participants at this time. The Department also believes the practical effect of this provision on afterschool care programs will be slight, at most. First, only a small number of institutions in the CACFP make separate charges for meals and would, therefore, be affected by the limitation on price. Moreover, the Department notes that in Fiscal Year 1990, less than 10 per cent of the snacks reimbursed under CACFP were served at a reduced price. For these reasons, the 15 cent maximum charge for reduced price snacks is adopted as proposed.

**Meals Served on Minimum and Nonschool Days**

One commenter requested that the rule be revised to permit schools to claim supplements served on minimum (i.e., short) days and on nonschool days. Currently in the CACFP, reimbursable meals served on minimum and nonschool days may be claimed, including snacks served in afterschool care situations. However, under the NSLP and SBP, lunches and breakfasts served on nonschool days may be reimbursed only if the activity is an integral part of the curriculum or actual extension of the local education system. The Department does not believe that afterschool care on nonschool days would fit into either category. The Department recognizes that afterschool care programs will frequently operate on shortened days, since adults will often be unable to pick children up early, or on days when school is not in session. The Department will authorize reimbursement for snacks served in

afterschool care programs in those situations when the regular school day has been shortened, because the additional nonschool time simply represents an extension of the afterschool care program. However, reimbursement cannot be authorized for snacks served on nonschool days, since these situations would actually constitute regular child care.

**Miscellaneous Technical Changes**

Finally, several technical changes have been incorporated into the meal supplement chart. The title of the first chart "Meal Supplement Chart for Children and Infants" will be changed to read "Meal Supplements for Children", since there is a separate chart for infant supplements. Additionally, one commenter recommended changing the wording in this chart to read "Select 2 different components from the 4 listed" in order to eliminate the possibility that 2 of the same items will be selected. The Department has adopted this recommendation. Secondly, a footnote concerning infant cereal on the infant supplement chart was inadvertently included and, therefore, will be deleted since infant cereal is not a supplement component.

The Department wishes to thank all commenters for taking the time to share their concerns and recommendations with us.

**List of Subjects**

*7 CFR Part 210*

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

*7 CFR Part 235*

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Child and Adult Care Food Program, Food Distribution Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

*7 CFR Part 245*

Food assistance programs, Grant programs-social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210, 235 and 245 are amended as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

**Authority:** The provisions of part 210 issued under Sec. 2–12, 60 Stat. 230, as amended; Sec. 10, 80 Stat 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. In § 210.2:

a. A new definition, "afterschool care program" is added;

b. The definition of "child" is amended by removing the period at the end of the current definition, adding a semicolon and the word "or" in its place and adding a new paragraph (c). The additions read as follows:

**§ 210.2 Definitions**

* * * * *

*Afterschool care program* means a program providing organized child care services to enrolled school-age children afterschool hours for the purpose of care and supervision of children. Those programs shall be distinct from any extracurricular programs organized primarily for scholastic, cultural or athletic purposes.

* * * * *

*Child* * * * (c) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 12 years of age or under, or in the case of children of migrant workers and children with handicaps, not more than 15 years of age.

* * * * *

3. In § 210.4:

a. Paragraph (a) is amended by adding the words "and meal supplements" after the word "lunches" in the first sentence.

b. The title of paragraph (b)(1) is amended by adding the words "for lunches" at the end of the current title.

c. New paragraphs (b)(3) and (b)(4) are added to read as follows :

**§ 210.4 Cash and donated food assistance to States.**

* * * * *

(b) * * *

(3) *Cash assistance for meal supplements.* For those eligible schools (as defined in § 210.10(j)(1) of this part) operating afterschool care programs and electing to serve meal supplements to enrolled children, funds shall be made available to each State agency, each school year in an amount no less than the sum of the products obtained by multiplying:

(i) The number of meal supplements served in the afterschool care program within the State to children from families that do not satisfy the income standards for free and reduced price school meals by 2.75 cents;

(ii) The number of meal supplements served in the afterschool care program within the State to children from families that satisfy the income standard for free school meals by 30 cents;

(iii) The number of meal supplements served in the afterschool care program within the State to children from families that satisfy the income standard for reduced price school meals by 15 cents.

4. The rates in paragraph (b)(3) are the base rates established in August 1981 for the CACFP. FNS shall prescribe annual adjustments to these rates in the same Notice as the National Average Payment Rates for lunches. These adjustments shall ensure that the reimbursement rates for meal supplements served under this part are the same as those implemented for meal supplements in the CACFP.

* * * * *

4. In § 210.6, the first sentence is amended by adding the words "and meal supplements" after the word "lunches".

5. In § 210.7:

a. Paragraph (a) is amended by adding the words "and meal supplements" after the word "lunches" in the second sentence and by adding a new sentence after the third sentence.

b. Paragraph (c) is amended by adding the words "and meal supplements" after the word "lunches" wherever it appears in the introductory text of paragraph (c), paragraphs (c)(1), (c)(1)(i) and (c)(1)(ii); by adding the words "and supplement" after the word "lunch" in paragraph (c)(1)(iv); and by adding the words "or for more than one meal supplement per child per day" at the end of paragraph (c)(1)(v).

c. A new paragraph (d) is added. The additions read as follows:

**§ 210.7 Reimbursement for school food authorities.**

(a) * * * Reimbursement payments shall also be made for meal supplements served to eligible children in afterschool care programs in accordance with the rates established in § 210.4(b)(3). * * *

* * * * *

(d) The State agency shall reimburse the school food authority for meal supplements served in eligible schools (as defined in § 210.10(j)(1) of this part) operating afterschool care programs under the NSLP in accordance with the rates established in § 210.4(b).

6. In § 210.8:

a. Paragraph (c) is amended by adding the words "and meal supplements" after

the word "lunches" wherever it appears in the text.

b. Paragraph (d) is amended by adding the words "and meal supplements" after the word "lunches".

7. In § 210.9:

a. Paragraph (b)(19) is amended by adding the words "and meal supplements" after the word "lunches".

b. A new paragraph (c) is added to read as follows:

**§ 210.9 Agreement with State agency.**

* * * * *

(c) *Afterschool care requirements.* These school food authorities with eligible schools (as defined in § 210.10(j)(1) of this part) that elect to serve meal supplements during afterschool care programs, shall agree to:

(1) Serve meal supplements which meet the minimum requirements prescribed in § 210.10;

(2) Price the meal supplement as a unit;

(3) Serve meal supplements free or at a reduced price to all children who are determined by the school food authority to be eligible for free or reduced price school meals under 7 CFR part 245;

(4) If charging for meals, the charge for a reduced price meal supplement shall not exceed 15 cents;

(5) Claim reimbursement at the assigned rates only for meal supplements served in accordance with the agreement;

(6) Claim reimbursement for no more than one meal supplement per child per day;

(7) Review each afterschool care program two times a year; the first review shall be made during the first four weeks that the school is in operation each school year, except that an afterschool care program operating year round shall be reviewed during the first four weeks of its initial year of operation, once more during its first year of operation, and twice each school year thereafter; and

(8) Comply with all requirements of this part, except that, claims for reimbursement need not be based on "point of service" meal supplement counts (as required by § 210.9(b)(9)).

8. In § 210.10:

a. The section title is revised.

b. Paragraph (b) is amended by adding a new sentence at the end of the paragraph.

c. A new paragraph (j) is added;

The additions read as follows:

**§ 210.10 Meal components and quantities.**

* * * * *

(b) * * * The component requirements for meal supplements served under the CACFP shall also apply to meal supplements served by eligible school food authorities in afterschool care programs under the NSLP.

* * * * *

(j) *Supplemental food.* Eligible schools operating afterschool care programs may be reimbursed for one meal supplement served to an eligible child (as defined in § 210.2) per day.

(1) Eligible schools mean schools that:

(i) Operate school lunch programs under the National School Lunch Act;

(ii) Sponsor afterschool care programs as defined in § 210.2; and

(iii) Were participating in the CACFP as of May 15, 1989.

(2) Meal supplements shall contain two different components from the following four:

(i) A serving of fluid milk as a beverage, or on cereal, or used in part for each purpose;

(ii) A serving of meat or meat alternate. Nuts and seeds and their butters listed in program guidance are nutritionally comparable to meat or other meat alternates based on available nutritional data. Acorns, chestnuts, and coconuts are excluded and shall not be used as meat alternates due to their low protein content. Nut or seed meals or flours shall not be used as a meat alternate except as defined in this part under Appendix A: Alternate Foods for Meals;

(iii) A serving of vegetable(s) or fruit(s) or full-strength vegetable or fruit juice, or an equivalent quantity of any combination of these foods. Juice may not be served when milk is served as the only other component;

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made with whole-grain or enriched meal or flour; or a serving of cooked whole-grain or enriched pasta or noodle products such as macaroni, or cereal grains such as rice, bulgur, or corn grits; or an equivalent quantity of any combination of these foods.

(3) Infant supplements shall contain the following:

(i) Birth through 3 months: 4–6 fluid ounces of infant formula.

(ii) 4 through 7 months: 4–6 fluid ounces of infant formula.

(iii) 8 through 11 months: 2–4 fluid ounces of infant formula or whole fluid milk or full strength fruit juice; 0–½ slice of crusty bread or 0–2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate. To improve the nutrition of participating children over one year of age, additional foods may be served with the meal supplements as desired.

The minimum amounts of food components to be served as meal supplements as set forth in paragraph (j)(3) of this section are as follows. Select two different components from the four listed. (Juice may not be served when milk is served as the only other component.)

MEAL SUPPLEMENT CHART FOR CHILDREN

| Snack (supplement) for children | Children 1 and 2 | Children 3 through 5 | Children 6 through 12 |
|---|---|---|---|
| (Select 2 different components from the 4 listed): | | | |
| Milk, fluid | ½ cup | ½ cup | 1 cup. |
| Meat or meat alternate [4] | ½ ounce | ½ ounce | 1 ounce. |
| Juice or fruit or vegetable | ½ cup | ½ cup | ¾ cup. |
| Bread and/or cereal: | | | |
| Enriched or whole grain bread or | ½ slice | ½ slice | 1 slice. |
| Cereal: | | | |
| Cold dry or | ¼ cup [1] | ⅓ cup [2] | ¾ cup.[3] |
| Hot cooked | ¼ cup | ¼ cup | ½ cup. |

[1] ¼ cup (volume) or ⅓ ounce (weight), whichever is less
[2] ⅓ cup (volume) or ½ ounce (weight), whichever is less.
[3] ¾ cup (volume) or 1 ounce (weight), whichever is less.

[4] Yogurt may be used as meat/meat alternate in the snack only. You may serve 4 ounces (weight) or ½ cup (volume) of plain, or sweetened and flavored yogurt to fulfill the equivalent of 1 ounce of the meat/meat alternate component. For younger children, 2 ounces (weight) or ¼ cup (volume) may fulfill the equivalent of ½ ounce of the meat/meat alternate requirement.

Caution: Children under five years of age are at the highest risk of choking. USDA recommends that nuts and/or seeds be served to them ground or finely chopped in a prepared food.

SUPPLEMENTS FOR INFANTS

| Birth through 3 months | 4 months through 7 months | 8 months through 11 months |
|---|---|---|
| 4–6 fluid ounces formula.[1] | 4–6 fluid ounces formula.[1] | 2–4 fluid ounces formula,[1] breast milk,[4] whole milk or fruit juice.[2] 0–½ slice bread or 0–2 crackers (optional).[3] |

[1] Shall be iron-fortified infant formula.
[2] Shall be full-strength fruit juice.
[3] Shall be from whole-grain or enriched meal or flour.
[4] Breast milk provided by the infant's mother may be served in place of formula from birth through 11 months. Meals containing only breast milk are not reimbursable. Meals containing breast milk served to infants 4 months or older may be claimed when the other meal component(s) is supplied by the child care facility.

9. In § 210.23:

Paragraph (a) is amended by adding the words "and meal supplements" after the word "lunches" wherever it appears in the text.

## PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for part 235 continues to read as follows:

**Authority:** Secs. 7 and 10 of the Child Nutrition Act of 1966, 80 Stat. 888, 889, as amended (42 U.S.C. 1776, 1779).

2. In § 235.4, paragraph (a) is amended by removing the words "sections 3 and 4" in the first sentence and by adding the words "sections 3, 4 and 17A" in their place.

## PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 continues to read as follows:

**Authority:** Secs. 3, 4, and 10 of the Child Nutrition Act of 1966, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); Secs. 2–12, 60 Stat. 230, as amended (42 U.S.C. 1751–60).

2. In § 245.2, paragraph (f) is amended by adding the words "or meal supplement" after the word "lunch".

Dated: July 30, 1993.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 93–19108 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–30–M

## Animal and Plant Health Inspection Service

## 7 CFR Part 301

[Docket 91–155–6]

## Mediterranean Fruit Fly; Addition to the Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Mediterranean fruit fly regulations by designating an additional portion of Los Angeles County, CA, as a quarantined area. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

**DATES:** Interim rule effective August 3, 1993. Consideration will be given only to comments received on or before October 12, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–6. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

**SUPPLEMENTARY INFORMATION:**

### Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 *et seq.*; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Santa Clara, Orange, and San Diego Counties, CA, from the list of quarantined areas. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19 and July 16, 1993 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an additional infestation of Medfly has been discovered in the Granada Hills area of Los Angeles County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly finding described above, we are amending § 301.78–3 by designating as quarantined an additional area comprised of approximately 76 square miles in Los Angeles County, CA. The new quarantined area is as follows:

**Los Angeles County**

That portion of Los Angeles County in the Granada Hills area beginning at the intersection of Interstate Highway 210 and Van Nuys Boulevard; then southwest along Van Nuys Boulevard to its intersection with Foothill Boulevard; then southeast along Foothill Boulevard to its intersection with Osborne Street; then southwest along Osborne Street to its intersection with San Fernando Road; then southeast along San Fernando Road to its intersection with Branford Street; then southwest along Branford Street to its intersection with Arleta Avenue; then southeast along Arleta Avenue to its intersection with Sheldon Street; then southwest along Sheldon Street to its intersection with Coldwater Canyon Avenue; then south along Coldwater Canyon Avenue to its intersection with Vanowen Street; then west along Vanowen Street to its intersection with Tampa Avenue; then north along Tampa Avenue to its intersection with Nordhoff Street; then west along Nordhoff Street to its intersection with Corbin Avenue; then north along Corbin Avenue to its intersection with Lassen Street; then west along Lassen Street to its intersection with Winnetka Avenue; then north along Winnetka Avenue to its intersection with San Fernando Mission Boulevard; then east along San Fernando Mission Boulevard to its intersection with Winnetka Avenue; then north along Winnetka Avenue to its intersection with Sesnon Boulevard; then east along Sesnon Boulevard to its intersection with Tampa Avenue; then due north along an imaginary line from this intersection to its intersection with the Los Angeles City Limits; then northeast and east along the Los Angeles City Limits to its intersection with Cobalt Street; then south along Cobalt Street to its intersection with Olive View Drive; then east along Olive View Drive to its intersection with Bledsoe Street; then southwest along Bledsoe Street to its intersection with Interstate Highway 210; then southeast along Interstate Highway 210 to the point of beginning.

*Emergency Action*

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

*Executive Order 12291 and Regulatory Flexibility Act*

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule affects the interstate movement of regulated articles from the Granada Hills area of Los Angeles County in California. There are approximately 640 small entities that could be affected, including 350 retail/wholesale fruit stands, 102 nurseries, 3 distributor/wholesalers, 2 farmers' markets, 25 growers, 1 processor, 3 community gardens, 150 mobile vendors, and 4 swapmeets.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement and the sale of these articles would not be affected by this interim regulation.

The effect on those few small entities that do move regulated articles interstate from parts of the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12372*

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

*Executive Order 12778*

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

*National Environmental Policy Act*

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

*Paperwork Reduction Act*

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by adding an additional area in Los Angeles County immediately before the description for Los Angeles and Orange Counties, as follows:

**§ 301.78–3 Quarantined areas.**

* * * * *

(c) * * *

**California**

*Los Angeles County.* That portion of Los Angeles County in the Granada Hills area beginning at the intersection of Interstate Highway 210 and Van Nuys Boulevard; then southwest along Van Nuys Boulevard to its intersection with Foothill Boulevard; then southeast along Foothill Boulevard to its intersection with Osborne Street; then southwest along Osborne Street to its intersection with San Fernando Road; then southeast along San Fernando Road to its intersection with Branford Street; then southwest along Branford Street to its intersection with Arleta Avenue; then southeast along Arleta Avenue to its intersection with Sheldon Street; then southwest along Sheldon Street to its intersection with Coldwater Canyon Avenue; then south along Coldwater Canyon Avenue to its intersection with Vanowen Street; then west along Vanowen Street to its intersection with Tampa Avenue; then north along Tampa Avenue to its intersection with Nordhoff Street; then west along Nordhoff Street to its intersection with Corbin Avenue; then north along Corbin Avenue to its intersection with Lassen Street; then west along Lassen Street to its intersection with Winnetka Avenue; then north along Winnetka Avenue to its intersection with San Fernando Mission Boulevard; then east along San Fernando Mission Boulevard to its intersection with Winnetka Avenue; then north along Winnetka Avenue to its intersection with Sesnon Boulevard; then east along Sesnon Boulevard to its intersection with Tampa Avenue; then due north along an imaginary line from this intersection to its intersection with the Los Angeles City Limits; then northeast and east along the Los Angeles City Limits to its intersection with Cobalt Street; then south along Cobalt Street to its intersection with Olive View Drive; then east along Olive View Drive to its intersection with Bledsoe Street; then southwest along Bledsoe Street to its intersection with Interstate Highway 210; then southeast along Interstate Highway 210 to the point of beginning.

* * * * *

Done in Washington, DC, this 3rd day of August 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–19152 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–34–P

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## Agricultural Marketing Service

### 7 CFR Parts 927

**[Docket No. FV93–927–1IFR]**

### Winter Pears Grown in Oregon, Washington, and California; Expenses and Assessment Rates

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenses and establishes assessment rates for the Winter Pear Control Committee (Committee) under M.O. No. 927 for the 1993–94 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

**DATES:** Effective beginning July 1, 1993, through June 30, 1994. Comments received by September 9, 1993, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, Green-Wyatt Federal Building, room 369, Portland, Oregon, telephone: (503) 326–2724; or Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: (202) 690–0992.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 927 [7 CFR part 927] regulating the handling of winter pears grown in Oregon and Washington. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, winter pears grown in Oregon, Washington, and California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable pears handled during the 1993–94 fiscal year, which began July 1, 1993, through June

30, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of winter pears regulated under the marketing order each season and approximately 1,850 winter pear producers in Oregon, Washington, and California. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The Oregon, Washington, and California winter pear marketing order, administered by the Department, requires that the assessment rates for a particular fiscal year apply to all assessable winter pears handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Oregon, Washington, and California winter pears. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committee's budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committee are derived by dividing the anticipated expenses by expected shipments of pears. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to cover the Committee's expected expenses.

The Winter Pear Control Committee met on June 4, and June 24, 1993, and unanimously recommended total expenses of $6,933,615 for the 1993–94 fiscal year. In comparison, the 1992–93 fiscal year expense amount was $6,716,983, which is $216,632 less than the recommended amount for this fiscal year.

The Committee also unanimously recommended an assessment rate of $0.45 per standard box, or equivalent and a supplemental assessment rate of $0.04 per standard box, or equivalent for Anjou variety pears. In comparison, the 1992–93 pear assessment rate was $0.43 per standard box, or equivalent and $0.09 for the supplemental assessment rate on Anjou variety pears. This represents a $0.02 increase and $0.05 decrease, respectively, in the assessment rates recommended for this fiscal year. These rates, when applied to anticipated pear shipments of 13,167,475 standard boxes and Anjou pear shipments of 10,570,650, will yield a total of $6,348,190 in assessment income. The supplemental assessment will be used to fund Ethoxyquin data research.

Assessment income, along with $190,000 from other income, and $395,425 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. The $395,425 withdrawal of funds from the Committee's authorized reserve will result in no reserve remaining at the end of the 1993–94 fiscal period.

Major expense categories for the 1993–94 fiscal year include $4,937,803 for advertising, $566,433 for contingency, $422,826 for Ethoxyquin data research, and $174,775 for salaries and benefits. Comparable 1992–93 budgeted expenses are $4,562,500, $490,578, $855,000, and $160,905, respectively.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee began July 1, 1993, and the marketing order requires that the rates of assessment for the fiscal year apply to all assessable winter pears handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at public meetings and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Part 927**

Marketing agreements and orders, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

## PART 927—WINTER PEAR GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 927.233 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

**§ 927.233 Expenses and assessment.**

Expenses of $6,933,615 by the Winter Pear Control Committee are authorized and an assessment of $0.045 per standard box, or equivalent, on assessable winter pears and a supplemental assessment of $0.04 per standard box, or equivalent, on assessable Anjou variety pears are established for the fiscal year ending June 30, 1994. Unexpended funds may be carried over as a reserve.

Dated: August 3, 1993.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–18990 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 929**

**[Docket No. FV93–929–11FR]**

## Expenses and Assessment Rate for Marketing Order Covering Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenses and establishes an assessment rate for the Cranberry Marketing Committee (Committee) under M.O. No. 929 for the 1993–94 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer the program are derived from assessments on handlers.

**DATES:** Effective beginning September 1, 1993, through August 31, 1994. Comments received by September 9, 1993, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Fax # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 690–0992.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 929 [7 CFR part 929] regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, cranberries grown in 10 States are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable cranberries handled during the 1993–94 fiscal year, beginning September 1, 1993, through August 31, 1994. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries regulated under the marketing order each season and approximately 950 cranberry producers in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The cranberry marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable cranberries handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of cranberries. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Committee conducted a mail vote and unanimously recommended total expenses for the 1993–94 fiscal year of $155,000 and an assessment rate of $0.03 per 100-pound barrel. In comparison, the 1992–93 fiscal year expense amount was $146,600, which is $8,400 less than the $155,000 recommended for this fiscal year and

the assessment rate has remained unchanged.

Assessment income for the 1993–94 fiscal year is expected to amount to $124,350 based upon an estimated domestic production of 4,145,000 barrels. This, along with the anticipated $4,500 in interest income and the transfer of $26,150 from the Committee's authorized reserve fund, will be adequate to cover budgeted expenses. Funds in the reserve at the end of the fiscal year will be within the maximum permitted by the order for one fiscal year's expenses.

Major expense categories for the 1993–94 fiscal year include $68,174 for operating and compensation expenses, $32,512 for administrative and office expenses, and $34,500 for travel and meeting expenses. Comparable 1992–93 budgeted expenses are $67,640, $44,245, and $37,500, respectively.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs should be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee begins September 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable cranberries handled during the fiscal year; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR part 929**

Marketing agreements, Cranberries, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

## PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 929.233 is added to read as follows:

**Note:** This section will not appear in the annual Code of Federal Regulations.

**§ 929.233 Expenses and assessment rate.**

Expenses of $155,000 by the Cranberry Marketing Committee are authorized and an assessment rate of $0.03 per 100-pound barrel on assessable cranberries is established for the fiscal year ending August 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: August 3, 1993.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 93–18991 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 101

**[Docket No. RM90–8–000]**

## Amendments to FERC Form Nos. 1 and 1–F, and Annual Charges, and Fuel Cost and Purchased Economic Power Adjustment Clauses; Technical Amendment

August 4, 1993.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is correcting a minor error in General Instruction No. 1 in its Uniform Systems of Accounts for Public Utilities and Licensees, found at part 101 of the Commission's regulations. General Instruction No. 1 was not amended to reflect Commission-ordered revisions in Order No. 529 issued on November 5, 1990. (55 FR 47311 (Nov. 13, 1990)).

**EFFECTIVE DATE:** This technical amendment is effective December 13, 1990.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Harkins, Office of Chief Accountant, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 219–2617.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

### Final Rule; Technical Amendment

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

*I. Introduction*

The Federal Energy Regulatory Commission (Commission) is correcting an error in General Instruction No. 1 of the Commission's Uniform System of Accounts for Public Utilities and Licensees (Instruction No. 1), to reflect a conforming change that was inadvertently omitted from the final rule in this proceeding. Also, the Commission is redesignating the four subsections of Instruction No. 1A. (1), from (1) through (4) to (a) through (d), respectively, to avoid possible confusion.

*II. Discussion*

On November 5, 1990, the Commission issued Order No. 529, a

final rule amending FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others, and FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Order No. 529).[1] Order No. 529 also made minor conforming changes to the Commission's annual charges regulations in 18 CFR part 382 and to the Commission's fuel cost and purchased economic power adjustment clause regulations in 18 CFR 35.14.

Among other changes, Order No. 529 changed the term "interchange power" to "exchange power" in the FERC Form Nos. 1 and 1–F and in part 382 and § 35.15. A conforming change to General Instruction No. 1 in part 101 of the Commission's regulations was inadvertently omitted. Therefore, this final rule changes the words "gross interchange out" in General Instruction 1A. (1) (3) to "power exchanges delivered."

Additionally, the four subsections of General Instruction 1A. (1) are presently designated in a way that could cause confusion: E.g., the first subsection is now General Instruction 1A. (1) (1). This final rule redesignates the four subsections with lower-case letters instead of numbers: E.g., the First subsection will be General Instruction 1A. (1) (a).

*III. Environmental Statement*

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[2] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[3] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or that does not substantially change the effect of legislation or regulations being amended.[4] This final rule is clarifying in nature. It corrects a minor wording error in the Commission's regulations and redesignates certain paragraphs to avoid confusion. Accordingly, no environmental consideration is necessary.

*IV. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA)[5] requires rulemakings to either contain a description and analysis of the impact the rule will have on small entities or certify that the rule will not have a substantial economic impact on a substantial number of small entities. The final rule does not establish any new reporting requirements and merely makes it easier for entities to conform to the Commission's regulations. Consequently, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities." Therefore, no regulatory flexibility analysis is required.

*V. Information Collection Statement*

The Office of Management and Budget's (OMB) regulations[6] require that OMB approve certain information collection requirements imposed by the agency's rule. However, this order neither contains new information collection requirements nor significantly modifies any existing information collection requirements in part 101; therefore, it is not subject to OMB approval.

*VI. Administrative Findings and Effective Date*

The Administrative Procedure Act (APA)[7] requires rulemakings to be published in the **Federal Register**. The APA also mandates that an opportunity for comment be provided when an agency promulgates regulations. However, notice and comment are not required under the APA when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[8] The Commission finds that notice and comment are unnecessary for this rulemaking. The Commission is merely correcting a minor wording error in the Commission's regulations and redesignating certain paragraphs in part 101 for clarity.

The Commission also finds good cause to make this rule effective December 13, 1990, the effective date of Order No. 529. FERC Forms 1 and 1–F were changed in early 1991 pursuant to Order No. 529. This rule merely makes the instructions conform to the amended Forms 1 and 1–F that the utilities were required to file and have been filing since 1991. Therefore, the Commission finds good cause to make this rule effective as of December 31, 1990.

**List of Subjects in 18 CFR Part 101**

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

In consideration of the foregoing, the Commission amends part 101, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

## PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for part 101 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–76510.

2. In part 101, General Instruction 1.A.(1) is amended by redesignating subjections "(1)," "(2)," "(3)," and "(4)" as subsections "(a)," "(b)," "(c)," and "(d)," respectively, and the newly redesignated paragraph (c) revised to read as follows:

1. *Classification of utilities.*

A. * * *

(1) * * *

(a) * * *

(b) * * *

(c) 500 megawatt-hours of power exchanges delivered; or

(d) * * *

* * * * * *

[FR Doc. 93–19117 Filed 8–9–93; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 5

### Delegations of Authority and Organization; Enforcement Activities

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority relating to enforcement activities. The amendment delineates the authority of

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[1] Amendments to FERC Form Nos. 1 and 1–F, et al., Order No. 529, 55 FR 47311 (Nov. 13, 1990), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,904 (Nov. 5, 1990).

[2] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47, 897 (Dec. 17, 1987), FERC Stats. and Regs. Regulations Preambles 1986–1990 ¶ 30,783 (Dec. 10, 1987).

[3] 18 CFR 380.4.

[4] 18 CFR 380.4(a)(2)(ii).

[5] 5 U.S.C. 601–612.

[6] 5 CFR 1320.

[7] 5 U.S.C. 551–559.

[8] 5 U.S.C. 553b(B).

FDA criminal investigative specialists and describes the official credentials issued to them.

**EFFECTIVE DATE:** August 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

**SUPPLEMENTARY INFORMATION:** FDA is amending the regulations in § 5.35 *Enforcement activities* (21 CFR 5.35) by granting the authority to receive information to officers and employees of FDA who have been issued official credentials and have been designated by the Commissioner of Food and Drugs to provide specialized law enforcement support under the Federal Food, Drug, and Cosmetic Act (the act), and other duties as assigned by the Commissioner.

**List of Subjects in 21 CFR Part 5**

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

**PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION**

1. The authority citation for 21 CFR part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.35 is amended by redesignating paragraph (c) as paragraph (d), by revising the introductory text of newly redesignated paragraph (d), and by adding new paragraphs (c) and (d)(4) to read as follows:

**§ 5.35 Enforcement activities.**

* * * * *

(c) Any officer or employee of the Food and Drug Administration who has been designated by the Commissioner to provide specialized law enforcement support involving criminal investigations under the Federal Food, Drug, and Cosmetic Act (the act), and other duties as assigned by the Commissioner, and issued the Food and Drug Administration Official Credential consisting of Form FDA-200E, Special Authority for Criminal Investigative Specialists, is authorized to receive information as to all matters relating to such act and regulations promulgated under the act.

(d) The Food and Drug Administration's official credentials referred to in paragraphs (a), (b), and (c) of this section are described as follows:

* * * * *

(4) Form FDA–200E, entitled "Special Authority for Criminal Investigative Specialists," is in two parts and bears the holder's name, a color photograph, the signature of the holder, his or her special authority under the act, and other duties under the law, as assigned by the Commissioner, an identification number, the Commissioner's or his designee's signature, the names of the Department of Health and Human Services, the Public Health Service, and the Food and Drug Administration. Part 1 of the form is superimposed with the symbol FDA with blue imprint, and part 2 is superimposed with the FDA criminal investigative specialist's badge with blue imprint.

Dated: August 2, 1993.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 93–19114 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–01–F

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 228**

**[FRL–4687–7]**

## Ocean Dumping: Final Designation of Site

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is designating a dredged material disposal site in Massachusetts Bay. This action is necessary to provide an acceptable ocean disposal site to be considered as an alternative for the current and future disposal of dredged material.

**EFFECTIVE DATE:** August 10, 1993.

**ADDRESSES:** U.S. Environmental Protection Agency, Region I, JFK Federal Building (WQE), Boston, MA 02203–2211.

The files supporting this site designation are available for public inspection at EPA Region I's library located at: 1 Congress Street, 11th Floor, Boston, MA.

**FOR FURTHER INFORMATION CONTACT:** Kymberlee Keckler, (617) 565–4432.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 102(c) of the Marine Protection Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("MPRSA"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dredged material disposal sites to Regional Administrators. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR chapter 1, subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last extended on August 19, 1985 (50 FR 33338 *et seq.*). That list established an interim site in Massachusetts Bay approximately 15 nautical miles off the coast of Marblehead, MA and extended its period of use until July 31, 1988, or until final rulemaking is completed. This final rulemaking action will move the site boundary toward the southwest (approximately 1 nautical mile westward and ½ nautical mile southward).

**B. EIS Development**

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* ("NEPA"), requires that Federal agencies prepare an EIS on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to incorporate careful consideration of all environmental aspects of proposed actions into the decision-making processes.

Although NEPA does not apply to many EPA activities, it is EPA's voluntary policy to prepare EISs for site designations under the MPRSA (39 FR 16187 (May 7, 1974)), and EPA has prepared draft, supplemental, and final EISs entitled, "Evaluation of Continued Use of the Massachusetts Bay Dredged Material Disposal Site," "Alternative Site Screening," and "Designation of an Ocean Dredged Material Disposal Site in Massachusetts Bay," respectively. On

September 29, 1989, EPA published in the **Federal Register** (54 FR 40177) a notice of availability of the draft EIS for public review and comment. On July 6, 1990, EPA published a **Federal Register** (55 FR 27886) notice of availability of the draft SEIS for public review and comment. On July 24, 1992, EPA published a notice of availability for public review and comment of the final EIS in the **Federal Register** (57 FR 32988). The public comment periods closed November 13, 1989; August 20, 1990; and August 28, 1992 for the draft EIS, the draft SEIS, and the FEIS, respectively. Many reviewers including Federal and State agencies, and environmental groups commented on these EISs.

The action currently being proposed is the final designation for continued use of an environmentally acceptable ocean dredged material disposal site in Massachusetts Bay. However, site designation does not indicate or constitute approval to dispose any dredged material at the site. Material disposition is determined on a case-by-case basis as part of the U.S. Army Corps of Engineers' ("COE") permit-issuing process under section 103 of the MPRSA, 33 U.S.C. 1413(a).

The EISs discuss the need for site designation and examine ocean disposal site alternatives. Information needed to evaluate the suitability of ocean areas for final designation is presented. Regional land-based alternatives were rejected because of the lack of available land area near dredging proposals, the lack of information on possible construction of marshlands, and greater costs. Additional analysis of specific land-based alternatives will be performed as part of any application for a permit to use the site. The environmental studies and final designation process are being conducted in accordance with requirements of the MPRSA, EPA's Ocean Dumping Regulations, and other applicable Federal environmental legislation.

## C. Final Site Designation

The proposed area has been used since the 1940s for the ocean disposal of dredged material and industrial waste.

The center coordinate for the MBDS is located at 42° 25.1′N and 70° 35.0′W, which is approximately 1 nautical mile westward and ½ nautical mile southward of the existing interim site (North American Datum of 1983). The site is approximately 22 nautical miles offshore from Boston and is two nautical miles in diameter. Water depths average 90 meters.

## D. Regulatory Requirements

In accordance with EPA policy, EPA has evaluated this site designation for consistency with the State's approved coastal zone management program. EPA determined that the designation of the MBDS is consistent to the maximum extent practicable with the State coastal management program and submitted this determination on July 2, 1992 to the State for review. EPA also consulted with the State regarding the effects of the dumping at the site on the Massachusetts coastal zone as part of the NEPA process. On November 13, 1992, the Massachusetts Coastal Zone Management ("MCZM") office determined that the MBDS designation is consistent with State policies provided that disposal of contaminated sediments will not occur under any circumstances. It should be noted that EPA's EISs made clear that only materials that satisfied EPA's ocean dumping criteria could be disposed at the MBDS in accordance with section 103(c) of the MPRSA, 33 U.S.C. 1413(c), and that based on current information EPA did not accept that the environment could effectively be protected from contaminated dredged material by trying to cap the material on the ocean floor at a site such as the MBDS. EPA also stated its view that if capping pilot studies are proposed, they should utilize clean dredged material to ensure the protection of the marine environment in case of failure.

The general criteria for the selection of sites are given in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. Five general criteria are used in the selection and approval for continued use of an ocean disposal site. Selection of sites incorporates minimizing interference with other marine activities, preventing any temporary perturbations of water quality from the dumping from causing impacts outside the disposal site, and monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. Based on the information presented in the EISs, EPA has determined that no environmental benefit would be obtained by selecting a site off the Continental Shelf versus that proposed in this action. The MBDS conforms to the five general criteria. Moreover, if at any time, disposal operations at the MBDS cause unacceptable adverse impacts, further use of the MBDS will be restricted or terminated.

EPA established eleven factors, at 40 CFR 228.6, to use in evaluating alternative disposal sites to ensure that the general criteria are met and to assess the impact of using each site for disposal. The criteria are used to make comparisons between sites and are the bases for final site selection. The characteristics of the MBDS are reviewed below in terms of the eleven factors. Detailed information is presented in the EISs.

### *1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6 (a)(1))*

The site's center coordinate, size, and distance from shore are listed under part C, Final Site Designation. Water depths at the site average 90 meters. The sediment composition in Massachusetts Bay is dominated by heterogeneous sediments composed primarily of glacial till. The floor of western Massachusetts Bay is characterized by outcroppings of bedrock interspersed with areas of cobble, gravel, and sand, grading into fine mud with a high clay content in the deeper depositional areas in Stellwagen Basin. The MBDS is located within the northwestern corner of the Stellwagen Basin, an area dominated by fine silts and clays. Because of its depth, the basin is considered to be a low-energy environment and is not significantly affected by waves and currents. Consequently, the majority of the disposed dredged material is likely to remain in the immediate area.

### *2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult and Juvenile Phases (40 CFR 228.6(a)(2))*

Areas for breeding, spawning, nursery and/or passage of commercially and recreationally important finfish and shellfish species occur on a seasonal basis across the western shelf of the Gulf of Maine. Past disposal of dredged material at the site has not been shown to cause detectable, significant, or irreversible adverse impacts on living marine resources.

Most species spawn during a period of several months, and over a wide geographical area. Species common to Massachusetts Bay include American plaice, cod, pollack, haddock, silver hake, witch flounder, and Atlantic mackerel.

The present MBDS is located on the western edge of an apparent whale migratory corridor extending from George's Bank north to Jeffrey's Ledge. The area directly east of the site is used on a regular basis by a number of whales including humpback, right, and finback whales. Other whales, marine mammals, and turtles are occasionally seen in the general area. Both the National Marine Fisheries Service and the U.S. Fish and

Wildlife Service have determined that designation of the MBDS will not jeopardize any threatened or endangered species.

Impacts of dredged material disposal on demersal fish at the site are expected to be restricted to temporary changes in abundance, numbers of species, mean size, and food preferences. It is unlikely that disposal activities will interfere with commercially valuable fish because of their mobility and the limited area in which disposal occurs. Two species of commercial fish that lay demersal eggs are not expected to be adversely affected since the substrate and offshore locale of the site are not preferred spawning areas for these fish.

*3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6 (a)(3))*

Use of the MBDS is not considered to have any potential for coastal impacts because the site is approximately 15 miles from the nearest beach and has a relatively low probability of resuspension and transport to this area. Distance from shore, water depth, configuration of the basin, and net southeast transport are factors that minimize the possibility of dredged material reaching beaches or other amenity areas. Studies reported in the EIS indicate that most of the dredged material disposed at the site remains within the disposal area.

*4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, If Any (40 CFR 228.6(a)(4))*

Dredged material released at approved sites must conform to the EPA criteria in the ocean dumping regulations (40 CFR part 227). Sediments presently being dredged from the Massachusetts coastal area are composed of fine sand, silt, and clay, and are similar in grain size to natural sediments in the central basin of the MBDS. The dredged material is transported in bulk by a barge equipped with a bottom dump mechanism. Future dredging projects, if determined to be suitable for ocean disposal, may contribute approximately three million cubic yards of dredged material to the MBDS in the next decade.

*5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))*

The COE currently conducts on-board surveillance to ensure that disposal operations occur at the proper location. Monitoring by EPA, the COE, and permittees will continue for as long as the site remains active. In order to detect any transport of dredged material outside the site, sediments will be monitored at the site and along transects of possible transport. Benthic communities will be monitored to detect changes that extend beyond the site.

Periodic bioaccumulation and toxicity analyses of benthic invertebrates and fishes collected from the disposal site and bioassays will be used to determine whether dredged material disposal has adversely affected any marine resources. If evidence of significant adverse environmental effects is found, EPA will take appropriate steps to restrict or terminate dumping at the site.

*6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction, and Velocity, If Any (40 CFR 228.6(a)(6))*

Current velocities range from 0 to 30 centimeters per second at the site. Currents are influenced by tides in a rotational manner, but net water movement is to the southeast. The COE reports that regional dredged material (primarily fine sand, silt, and clay) is generally cohesive and should fall as a single mass. As a result, rapid settling of the released sediments should occur. Minimal horizontal mixing or vertical stratification of disposal materials should occur, resulting in low suspended sediment concentrations.

Previous studies have demonstrated the relative immobility of dredged material at the site.

*7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))*

Several industrial and municipal wastewater discharges are located in the western area of Massachusetts Bay. Although the closest proposed discharge is approximately 13 nautical miles from the MBDS, it represents the closest point source discharge of pollutants. Because of the distance involved, dispersion, and dilution associated with mixing, discharges in Massachusetts Bay are not expected to have a measurable effect on the site.

Although EPA agrees that it is possible that previous dredged material disposal may have resulted in some environmental degradation, other sources of pollution exist and disposal at the existing site has not been definitively shown to produce significant adverse effects on sediment or water quality. Changes in water quality as a result of disposal operations have been of short duration (minutes) and have been confined to relatively small areas inside the MBDS boundary. No major differences in finfish and/or shellfish species or numbers were found in recent surveys within and adjacent to the site.

Recent disposal of dredged material has produced localized and reversible impacts of smothering of the benthos, and possible temporary impacts on demersal fish.

Sediment collected by EPA and the COE from the disposal area in 1985, 1986, and 1987 contain higher levels of chromium, copper, lead, zinc, polyaromatic nuclear hydrocarbons, and polychlorinated biphenyls than do sediments at control stations near the site. These higher trace metal and hydrocarbon concentrations are believed to reflect contaminants present in dredged material previously disposed at the site. However, concentrations of these contaminants at the site were not definitively shown to cause any adverse ecological or human health effects. Trace metal concentrations in tissues of benthic organisms collected at the site were well below FDA action levels.

*8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))*

Extensive shipping, fishing, recreational activities, and scientific investigations take place in the Massachusetts Bay throughout the year. However, previous dredged material disposal operations are not known to have interfered with these activities. The Bureau of Land Management has not announced plans to lease any areas on the nearshore Continental Shelf adjacent to the site for oil and gas exploration. Mineral extraction, desalination, and aquaculture activities do not presently occur near the site.

The Stellwagen Bank national marine sanctuary is located adjacent to the MBDS. EPA and the National Oceanic and Atmospheric Administration ("NOAA") concluded that designation of the MBDS should not interfere with the Stellwagen Bank national marine sanctuary.

*9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9))*

Investigations of dredged material disposal operations at the site have not indicated that disposal has had any significant adverse effects on water quality (e.g., dissolved nutrients, trace metals, dissolved oxygen, or pH).

Diatoms, nannoplankton, and phytoflagellates are the major types of phytoplankton within the coastal areas of Massachusetts Bay, and their population dynamics are closely correlated with annual cycles of nutrients, light energy, and temperature. Population cycles of zooplankton often are closely correlated with seasonal cycles of phytoplankton since many zooplankters use phytoplankton as food. Zooplankton numbers peak in July and October in the coastal areas of the Gulf of Maine.

The infaunal community at the disposal site is highly variable because of active dredged material disposal. Each area is in a different stage of recovery. Some epibenthic invertebrates do occur at MBDS on both muddy bottoms and rocky surfaces. Principle epibenthic forms include anemones, crustaceans, assorted shellfish, and sea stars. Many fish frequent the area, but several species of demersal fish dominate the population.

Site surveys have detected no significant differences in water quality among areas within the site and adjacent reference areas. Therefore, dredged material disposal at the site does not appear to significantly alter water quality.

*10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))*

There are no known components of this dredged material or consequences of its disposal which would attract or result in recruitment or development of nuisance species at the site. Previous surveys at the site did not detect the development or recruitment of nuisance species, and the similarity of the dredged material with the existing sediments suggests that the development or recruitment of nuisance species is unlikely.

*11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))*

The Massachusetts Board of Underwater Archeology reported that no known historical shipwrecks exist at or near the site.

**E. Proposed Action**

The MBDS has been used for ocean disposal activities since the 1940s. In 1977, EPA promulgated the ocean dumping regulations, and subsequently granted interim site designation status to sites which have been historically used.

Alternative ocean sites which were evaluated and rejected from consideration were approximately 25 nautical miles further offshore and approximately 15 nautical miles south of the preferred location. Disposing dredged material in these sites would not have any appreciable benefits. Alternative deep water sites on the Continental Shelf beyond the Gulf of Maine were rejected from consideration for several reasons. The greater distance from shore (approximately 250 nautical miles) increases the potential for short dumping due to possible emergencies during adverse weather conditions. Greater water depth (over 200 meters) would result in the deposition of dredged materials over a larger area than projected for the MBDS. Finally, costs to transport the dredged material would be excessive.

EPA has concluded that the MBDS is compatible with the general criteria and specific factors used for site evaluation. Designating a site other than the MBDS offers no clear environmental benefit or economic advantage. The MBDS has been previously used for dredged material disposal without apparent significant adverse effects.

The designation of the MBDS as an EPA-Approved Ocean Dumping Site is being published as final rulemaking. Management authority over this site will be a joint responsibility of EPA, Region I and the COE, New England Division.

Final site designation will serve to clarify the site's status for the long-term, including its availability as an ocean disposal alternative to consider during case-by-case permit reviews for future dredging projects. It should be emphasized that if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of dredged material at the site. Before any particular proposal to ocean dump dredged material may be put into practice, the COE must issue a permit in accordance with EPA's Ocean Dumping Criteria. Federal projects are also evaluated in accordance with those criteria. In either case, once a project has been approved by the COE, EPA must evaluate compliance with the Ocean Dumping Criteria and EPA is authorized to disapprove the actual dumping if it determines that environmental concerns under the MPRSA have not been met.

**F. Regulatory Assessments**

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this proposal does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this final rule does not necessitate preparation of a Regulatory Impact Analysis.

This final rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

**G. Response to Public Comments on the Proposed Rule**

A number of commentors prepared comments on EPA's Proposed Rule (58 FR 10999 *et seq.*). Written comments were received from government agencies and private individuals and organizations. In order to be responsive to commentors and address comments in an efficient manner, EPA has conducted a review of all comments received and developed a complete list of the issues raised by commentors. Categorizing issues and responses in this manner allows all aspects of an issue to be discussed comprehensively and also allows for a clear presentation of the particular issues of concern. A summary of the comments on each of these issues is presented below, followed by EPA's detailed response.

1. *Site Location.* One commentor believed that EPA should explain the basis for shifting the MBDS boundary in the Final Rule.

*EPA Response:* The bases for relocating the MBDS boundary were explained in Section 4.1 of the FEIS and in Section II of the ROD. EPA is currently proposing to designate an area southwest of the existing MBDS, a two nautical mile diameter circle centered at 70° 35.0' west longitude and 42° 25.1' north latitude (please note that there was a typographical error on these coordinates for the proposed site in the Proposed Rule). EPA's proposal to revise the existing MBDS boundary by moving it slightly to the southwest will have several advantages. First, the revised MBDS boundary will not encompass the relatively pristine eastern portion of the existing MBDS.

including the toe of Stellwagen Bank. This area has not been used historically for dumping and it also will not be used according to the proposed MBDS boundary. Second, although the new boundary would overlap the IWS in part, the proposed MBDS boundary avoids the northern area within the IWS where most of the waste barrels and debris are concentrated. Relocation of the MBDS boundary to the southwest area will not result in disposing dredged material on top of previously disposed barrels or debris. Given the uncertainty as to the condition, and methods for proper management, of these waste containers, EPA is not currently proposing (and in fact has never proposed) to dispose dredged material on top of these barrels, as has been suggested by some commentors. The potential public health and environmental risk from past disposal at the IWS and other sites in Massachusetts Bay is the subject of ongoing studies by EPA and other Federal and State agencies. Third, the new MBDS boundary encompasses an area just outside the existing MBDS where contaminated sediments have been identified, probably as a result of past short-dumping. Relocating the MBDS boundary will enable EPA and the U.S. Army Corps of Engineers ("COE") to eventually cover this contaminated area with cleaner sediments. Fourth, the revised disposal site boundary will not encroach onto the boundaries of the Stellwagen Bank national marine sanctuary as proposed by the NOAA.

2. *Site Management.* One commentor believed that EPA should describe the Federal Water Resources Development Act of 1992 ("WRDA") requirements for development of a site management plan, including an explanation of public involvement.

*EPA Response:* The WRDA became federal law in October 1992, after EPA had completed its EISs. Section 506 of the WRDA requires the Administrator to develop site management plans for all disposal sites by January 1, 1997. It should be noted, however, that EPA and the COE already engage in extensive site monitoring to ensure that use of the existing MBDS is not causing harm. EPA is dedicated to fulfilling this requirement. EPA explained in Section 3.9.1.3 of the FEIS that it plans to share its monitoring plans with the Dredged Material Task Force. Additionally, EPA is committed to developing and sharing the management plan with the public under a separate process.

3. *Role of Massachusetts Coastal Zone Management ("MCZM").* One commentor thought that the responsibility for regulating dredged material disposal at the MBDS is a shared responsibility between EPA and the COE which should not be abrogated either directly or indirectly. This same commentor stated that the role of the MCZM was unclear, and further stated that a federal consistency determination cannot be conditional as it appeared to be in this case.

*EPA Response:* EPA has been steadfast in stating that capping proposals will not be relied upon to ensure the environmental safety of disposal proposals until the efficacy and legality of capping at the MBDS has been clearly demonstrated. The Massachusetts Coastal Zone Management Office ("MCZM") has reinforced this restriction by stating in its consistency determination that disposal of contaminated sediments, under any circumstances, would not be consistent with MCZM policies. Therefore, MCZM stated in its consistency finding that the MBDS site designation was consistent with MCZM policies as long as EPA expressly indicated that its designation barred the capping of materials violating the ocean dumping criteria. EPA's EISs clearly had not approved the disposal of contaminated sediments at the MBDS even if capping of the sediments was proposed. Nevertheless, in order to obtain MCZM certification, EPA made the requested express conditions part of the conditions of the site designation. The MCZM office has agreed that the certification conditions can be revisited if new information demonstrates the efficacy of capping. Therefore, the situation after EPA's adoption of the MCZM conditions is no different than it was throughout the designation process. Both before and after EPA's issuance of the Record of Decision, EPA did not allow disposal and capping of otherwise prohibited materials at the MBDS, but if capping is shown to be technically and legally supportable it can ultimately be permitted. Thus, EPA's statements concerning the efficacy of capping at the MBDS have been consistent and the MCZM office has determined that the MBDS designation, as currently proposed, is consistent with State CZM Policies. The responsibilities of federal and state agencies under the Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.* (CZMA), are governed by section 307 of the CZMA, 16 U.S.C. 1456. MCZM indicated in this case that unless EPA expressly prohibited dumping-and-capping of otherwise unsuitable materials, MCZM would not concur that the designation was consistent to the maximum extent practicable with State CZM Policies. While federal agencies may seek mediation of serious disputes with state CZM offices, EPA is not obliged to do so in this case or any other case. EPA chose not to challenge MCZM's consistency determination in this case because it was not inconsistent with our past position on this issue and EPA does not presently have any reason to believe that the MCZM's action did not comport with CZMA.

4. *Testing Protocol Use.* One commentor believed that EPA was setting a precedent by requiring use of the Green Book. Another commentor believed that EPA should either delete the Green Book citation or add a reference to other management guidance manuals.

*EPA Response:* Use of dredged material testing procedures approved by EPA and the COE is required by the Ocean Dumping Regulations per §§ 227.6(c)&(e) and 227.27(b). Since the Ocean Dumping Regulations specifically refer to procedures that are acceptable to EPA and the COE, such as those detailed in EPA's and the COE's Green Book, EPA agrees that an additional reference to these testing protocols is not necessary here. Thus, the reference to the Green Book will be omitted. Federal regulations do not require use of other management guidance documents, and thus EPA believes that requiring use of them for this site would be inappropriate and might have an undesirable impact of limiting the catalog of alternatives available for dredged material disposal. EPA has therefore chosen not to include a reference to other management guidance manuals.

5. *Capping.* Several commentors believed that EPA should specifically state that capping is prohibited. One commentor did not understand that capping was banned at the MBDS.

*EPA Response:* EPA's site designation now specifically states that the prohibition on disposal of contaminated dredged materials may not be overcome by proposals to cap these materials. EPA had never stated in its EISs that such capping proposals would be permissible at the MBDS. Indeed, EPA has consistently stated its strong doubts about the efficacy of such capping proposals at the MBDS. Furthermore, as discussed above, the Massachusetts Coastal Zone Management Office certified the MBDS designation as consistent with State Coastal Zone policies only as long as the prohibition on the dumping-and-capping of contaminated sediments at the MBDS was expressly stated in the site designation. EPA has, therefore, included this express condition in the

site designation. It should also be noted that in order for capping to be allowed at the MBDS, an additional federal consistency review process must be initiated if the prohibition on capping is to be repealed. Specifically, the Massachusetts Executive Office of Environmental Affairs has indicated in a letter that should "* * * new data become available, it is possible to reopen the federal consistency review on this matter at some future date* * *." Thus, the acceptability of capping could be revisited in the future on the basis of technical data considered through the regulatory process.

6. *Endangered Species.* One commentor thought that EPA should state that NMFS's Biological Opinion was only for disposal of uncontaminated sediments. Another commentor believed that the MBDS designation was not protective of endangered species, including marine mammals, and should specifically include NMFS's recommendations.

*EPA Response:* EPA's designation of the MBDS was based on the premise that only sediments which met the requirements of the MPRSA and its implementing regulations would be disposed. NMFS did not object to the proposed site designation and did not find that it would threaten or harm endangered species. Because the Biological Opinion prepared by NMFS was included in Appendix C of the FEIS, EPA does not believe that it is necessary to repeat it here. Moreover, EPA stated that the conservation measures recommended by the NMFS are currently being implemented (see Section 3.10 of the FEIS).

7. *NOAA Consultation.* One commentor stated that the COE needs to do separate consultation with NOAA on discrete disposal actions proposed for the MBDS because of the recent designation of the Stellwagen Bank national marine sanctuary.

*EPA Response:* The National Marine Sanctuaries Program Amendments Act of 1992 became law in November 1992. In Section 2202 of this Act, Congress legislatively designated the Stellwagen Bank national marine sanctuary. Section 2202(e) of the Act addresses the responsibility of federal agencies to consult with NOAA concerning certain actions in the vicinity of the sanctuary. Also, section 2104(d) generally imposes a consultation requirement on federal agencies with respect to certain actions that could affect sanctuaries.

8. *Inconsistency.* One commentor believed that the option of disposal of "clean" sediments only was not studied by EPA and that the option of capping was eliminated without any evidence. Further, this same commentor believed that EPA's Proposed Rule contradicts findings reported in EPA's EISs.

*EPA Response:* EPA's EISs were directed at studying whether there was a need to designate a dredged material disposal site in the Massachusetts Bay area. The EISs did not study alternatives of whether "clean" or "contaminated" materials should be allowed to be disposed; rather, the EISs studied disposal site alternatives and the alternative of no site. However, the EISs did evaluate sites in light of how they would be used and the EISs clearly stated that the MBDS would only be used for materials that are "clean" in the sense of satisfying the technical and legal requirements of the MPRSA and the Ocean Dumping Criteria regulations (see DEIS on pages 215, 217, and 230; see FEIS on pages 52, 57, 61, and 76). While the EISs were not directed at studying whether or not dumping-and-capping of contaminated materials should be allowed, EPA did clearly state that based on EPA's review of current information it did not believe that such dumping-and-capping would be effective at the MBDS. It was quite clear that until the technical and legal appropriateness of such dumping-and-capping is established it is not permissible. Then, as is discussed above, the Massachusetts Coastal Zone Management Office indicated that its certification that the MBDS designation is consistent with State Coastal Zone Management Policies was contingent on EPA specifying in the site designation that dumping-and-capping of contaminated materials would be prohibited. In order to complete the designation, EPA adopted the requested condition. EPA disagrees with the comment that the final designation is inconsistent with the findings of the EISs. The EISs in no way endorsed disposal-and-capping of contaminated materials at the MBDS and the designation prohibiting disposal-and-capping of such materials does not contradict the EISs.

EPA does not believe that inconsistent statements have been made regarding the quality of sediments allowed for ocean disposal at the MBDS. In fact, the entire EIS process was based on the disposal of clean sediments, or more specifically, those that meet the requirements of the MPRSA and its implementing regulations. Further, EPA has been operating under the existing ocean dumping regulations since 1977 and the regional and national testing protocols since 1989 and 1991, respectively. This final designation is consistent with the existing regulations and guidance.

9. *Economic Burden:* One commentor believed that limiting disposal to solely "clean" sediments would impair the ability of U.S. ports to compete.

*EPA Response:* EPA cannot allow materials that do not comply with the requirements of the MPRSA and applicable regulations to be dumped in the ocean. Section 103(d) of the MPRSA, 33 U.S.C. 1413(d), provides for a waiver from mandatory compliance with the ocean dumping criteria in certain circumstances. If the COE believes that there are no economically feasible alternatives to a particular dumping proposal, the MPRSA authorizes the COE to seek a project-specific waiver from EPA from the application of the environmental ocean dumping criteria. The MPRSA directs EPA to grant such waivers unless certain unacceptable environmental harms would result. The waiver process is described at §§ 225.4 and 227.1(b).

10. *Sanctuary Designation Issues.* One commentor believed that the Final Rule should reflect the legal responsibilities of EPA and the NOAA under title III of the MPRSA. In particular, they thought that the need for formal notification and consultation should be discussed. One commentor informed EPA that the boundary of the Stellwagen Bank National Marine Sanctuary depicted in the Record of Decision ("ROD") was incorrect.

*EPA Response:* In response to the comment which identified an incorrect boundary of the Stellwagen Bank National Marine Sanctuary, EPA did not receive the proper coordinates of the Stellwagen Bank national marine sanctuary until after the ROD was published. However, final designation of the Stellwagen Bank national marine sanctuary has not affected EPA's designation of the MBDS, as the potential designation of the marine sanctuary was considered in EPA's EISs. In response to the comment which requested EPA to discuss the need for formal notification and consultation, the National Marine Sanctuaries Program Amendments Act of 1992 became law in November 1992, after EPA completed the EISs. In section 2202 of that Act, Congress legislatively designated the Stellwagen Bank national marine sanctuary. Section 2202(e) addresses the responsibility of federal agencies to consult with NOAA concerning actions that could harm the Stellwagen Bank national marine sanctuary, while section 2104 of the Act imposes a general consultation requirement on federal agencies with respect to actions that might harm sanctuary resources. The COE, NOAA, EPA, and other agencies will need to implement these

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requirements in the future. The coordinates for the Stellwagen Bank National Marine Sanctuary and the requirements for consultation are discussed in detail in the Congressional Record, Public Law 102–587.

11. *Impact Status.* One commentor believed that the MBDS should be categorized as an "Impact Category I" site under EPA's regulations.

*EPA Response:* EPA concurs with this recommendation. However, the reason EPA has elected to place the MBDS into Impact Category I is because the MBDS is situated within 12 miles of the Stellwagen Bank National Marine Sanctuary, not because there have been any identifiable adverse impacts to the marine ecosystem from present dredged material disposal operations. EPA's regulations at 40 CFR 228.10(c)(1)(i) state that a "disposal site shall be categorized in Impact Category I when * * * [t]here is identifiable * * * accumulation, in detectable concentrations above normal ambient values, of any waste or waste constituent from the disposal site within 12 nautical miles of any * * * marine sanctuary designated under title III of the Act * * *." Although we do not believe materials will migrate from the MBDS to the Stellwagen Bank Sanctuary, the MBDS will by definition be a Category I site because dredged materials will accumulate there and within 12 miles of the Sanctuary since the entire site is within 12 miles of the Sanctuary. EPA's regulations at 40 CFR 228.11(c) direct EPA to impose such conditions on the use of Category I sites as are needed to ensure that impacts from site use will be acceptable. In this case, conditions are being imposed on the use of the MBDS to ensure that its use is acceptable. EPA believes that application of existing restrictions on the quality of materials to be disposed at the MBDS will be adequate to ensure there are no unacceptable impacts. These restrictions are imposed by the MPRSA and EPA's Ocean Dumping Criteria regulations. Also, as discussed above, the present designation prohibits the dumping-and-capping of materials that otherwise do not satisfy the regulations. EPA is not currently planning to place any additional limitations on site use, such as limiting times or rates of disposal, beyond those in the regulations. While EPA has acknowledged that past use of the site for the disposal of various wastes may have resulted in some environmental degradation at the site, EPA has also concluded that use of the MBDS under the current, proper management approach will not result in significant unacceptable adverse impacts on the marine environment. Indeed, EPA is confident that environmental conditions at the MBDS will improve in the future for several reasons. First, only dredged material that meets the requirements of the regulations, and the national and regional testing protocols designed to implement the regulations, is allowed to be disposed at the MBDS. In particular, sediments allowed for ocean disposal are those that do not exhibit significant mortality or the potential to cause significant undesirable effects, whether from sublethal impacts or chronic toxicity, as a result of bioaccumulation of contaminants. Second, disposal of contaminated materials with capping, a mitigation measure sometimes proposed as method for isolating contaminated sediments, is prohibited until the efficacy of capping at the MBDS has been demonstrated. Third, even tighter constraints on the disposal of dredged material have been imposed at the MBDS. These constraints include: (i) Stricter requirements in the dredged material testing protocol, (ii) relocation of the reference site to a cleaner area near Stellwagen Bank, (iii) the requirement by the COE for disposal inspectors on every trip to the MBDS, and (iv) the use of a taut-wire moored buoy. Moreover, by relocating the MBDS boundary the eastern portion of the existing MBDS will remain pristine and previously disposed dredged material can eventually be covered with newer deposits. All of these factors lead EPA to believe that conditions at the proposed MBDS will improve. Further, EPA and the COE are committed to monitoring the MBDS to ensure that the marine environment is not degraded from future disposal activities.

**List of Subjects in 40 CFR Part 228**

Water pollution control.

Dated: July 30, 1993.

**Paul G. Keough,**

*Acting Regional Administrator, Region I.*

In consideration of the foregoing part 228 of chapter I of title 40 shall be amended as set forth below:

**Part 228—[Amended]**

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

**§ 228.12 [Amended]**

2. Section 228.12 is amended by revising the section heading, removing from paragraph (a)(3) the entry for Marblehead, MA, dredged material disposal site, and adding paragraph (b)(92) to read as follows:

**§ 228.12 Delegation of management authority for ocean dumping sites.**

* * * * *

(b) * * *

(92) Massachusetts Bay Disposal Site, Region I

Center coordinates (NAD 1983): 42° 25.1′ north latitude; 70° 35.0′ west longitude

Size: 2 nautical mile diameter

Depth: Average 90 meters

Exclusive Use: Dredged material

Period of Use: Continuing

Restriction: Disposal shall be limited to dredged material which meets the requirements of the MPRSA and its accompanying regulations. Disposal-and-capping is prohibited at the MBDS until its efficacy can be effectively demonstrated.

[FR Doc. 93–19129 Filed 8–9–93; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 93–97; RM–8203]**

**Radio Broadcasting Services; Norway, MI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 232C3 for Channel 232A at Norway, Michigan, and modifies the license for Station WZNL(FM), to specify operation on Channel 232C3, in response to a petition filed by Zephyr Broadcasting Inc. Canadian concurrence has been obtained for this allotment at coordinates 45–46–29 and 87–55–22. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** September 17, 1993.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 93–97, adopted July 19, 1993, and released August 4, 1993. See 58 FR 25592, April 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**47 CFR PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 232A and adding Channel 232C3 at Norway.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–19053 Filed 8–9–93; 8:45 am]

BILLING CODE 6712–01–M

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 672**

**[Docket No. 921107–3068; I.D. 080593B]**

**Groundfish of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Prohibition of retention.

**SUMMARY:** NMFS is prohibiting retention of sablefish by persons using trawl gear in the Central Regulatory Area, Statistical Areas 62 and 63, in the Gulf of Alaska (GOA) and is requiring that incidental catches be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to trawl gear in that area has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), August 5, 1993, until 12 midnight, A.l.t., December 31, 1993.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.24(c)(2), the share of the sablefish TAC assigned to trawl gear in the Central Regulatory Area is 1,922 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.24(c)(3)(ii), that the share of the sablefish TAC assigned to trawl gear in the Central Regulatory Area has been reached. Therefore, NMFS is requiring that further catches of sablefish by trawl gear in that area be treated as prohibited species in accordance with § 672.20(e), effective from 12 noon, A.l.t., August 5, 1993, until 12 midnight, A.l.t., December 31, 1993.

**Classification**

This action is taken under 50 CFR 672.24, and is in compliance with E.O. 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 5, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–19164 Filed 8–5–93; 2:33 pm]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 58, No. 152
Tuesday, August 10, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Parts 300 and 319

[Docket No. 92-177-1]

### Importation of Fruits and Vegetables

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to allow a number of previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables would be required to undergo prescribed treatments for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. This proposed action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

**DATES:** Consideration will be given only to comments received on or before September 9, 1993.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-177-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in 7 CFR 319.56 through 319.56-6 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

We are proposing to amend the regulations to allow additional fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that the fruits and vegetables could introduce injurious insects into the United States. We are proposing to allow these importations at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses[1] that indicate the fruits or vegetables can be imported under certain conditions without significant pest risk.

All of the fruits and vegetables included in this document would be subject to the requirements in § 319.56-6 of the regulations. Section 319.56-6 provides, among other things, that all imported fruits and vegetables, as a condition of entry, shall be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a U.S. Department of Agriculture (USDA) inspector to detect and eliminate plant pests. Section 319.56-6 also provides that any shipment of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous plant pests and an inspector determines that it cannot be cleaned by disinfection or treatment.

Some of the fruits and vegetables proposed for importation would be required to undergo prescribed treatments for fruit flies or other insect pests as a condition of entry, or to meet other special conditions.

The proposed conditions of entry, which are discussed in greater detail below, appear adequate to prevent the introduction and dissemination of injurious plant pests by the importation of fruits and vegetables into the United States.

### Subject to Inspection and Treatment Upon Arrival

We would allow the following fruits and vegetables to be imported into the United States from the country or locality indicated in accordance with § 319.56-6 and all other applicable requirements of the regulations:

| Country/Locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Belize | Bay leaf | *Laurus nobilis* | Leaf and stem. |
| | Tarragon | *Artemisia dracunculus* | Above ground parts. |
| Chile | Basil | *Ocimum* spp | Above ground parts. |
| | Oregano | *Origanum* spp | Leaf and stem. |
| | Tarragon | *Artemisia dracunculus* | Above ground parts. |
| Colombia | Terragon | *Artemisia dracunculus* | Above ground parts. |
| Ecuador | Banana | *Musa* spp | Flower. |
| | Chervil | *Anthriscus* spp | Leaf and stem. |
| Mexico | Bay leaf | *Laurus nobilis* | Leaf and stem. |
| | Blueberry | *Vaccinium* spp | Fruit. |

[1] Information on these pest risk assessments and any other pest risk assessment referred to in this document may be obtained by writing to the person listed under "FOR FURTHER INFORMATION CONTACT."

| Country/Locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| | Lambsquarters | *Chenopodium* spp | Above ground parts. |
| Peru | Carrot | *Daucus carota* | Root. |
| Philippines | Yam bean | *Pachyrhizus tuberosus* or *P. erosus*. | Root. |
| Poland | Pepper | *Capsicum* spp | Fruit. |
| | Tomato | *Lycopersicon esculentum* | Fruit. |
| South Korea | Chinese bellflower | *Platycodon grandiflorum* | Root. |
| Thailand | Turmeric | *Curcuma domestica* | Leaf and stem. |
| Trinidad and Tobago | Lemongrass | *Cymbopogon citratus* | Leaf and stem. |
| | Shield leaf | *Cecropia peltata* | Leaf and stem. |

Pest risk analyses conducted by the Animal and Plant Health Inspection Service (APHIS) have shown that the fruits and vegetables listed above are not attacked by fruit flies or other injurious plant pests, either because they are not hosts to the pests or because the pests are not present in the country of origin. In addition, we have determined that any other injurious plant pests that might be carried by any of the listed fruits or vegetables would be readily detectable by a USDA inspector. Therefore, the provisions in § 319.56–6 concerning inspection, disinfection, or both, upon arrival appear adequate to prevent the introduction of injurious plant pests by the importation of these fruits and vegetables.

**Subject to Inspection and Treatment Upon Arrival; Additional Conditions**

We would allow the following fruits and vegetables to be imported into the United States from the country indicated subject to the prescribed conditions and in accordance with § 319.56–6 and all other applicable requirements of the regulations:

*Lucuma From Chile*

We are proposing to allow lucuma (fruit) *(Manilkara sapota [=Lucuma mammosa])* from Chile to be imported into the United States if the fruit is grown in one of the designated Mediterranean fruit fly (Medfly) free provinces of Chile described in § 319.56–2(j) of the regulations. Because there is currently no approved treatment for Medfly that can be used on lucuma, we would continue to prohibit the importation into the United States of lucuma grown in any area of Chile outside the Medfly-free areas.

*Mountain Papaya From Chile*

We are proposing to allow mountain papaya (fruit) (*Carica pubescens* [=*C. candamarcensis*]) from Chile to be imported into the United States without treatment for Medfly if the fruit is grown in one of the designated Medfly-free provinces of Chile. There are approved treatments for Medfly that can be used on mountain papaya, so we would also allow mountain papaya grown in Chile outside the Medfly-free areas to be imported into the United States, provided the fruit is treated for Medfly as described below under "Treatment Required."

Because mountain papaya from Chile would be subject to different restrictions, depending on whether or not the fruit was grown in a Medfly-free area, the fruit would be listed twice in the regulations. Mountain papaya from the Medfly-free areas would be listed in § 319.56–2t, "Administrative instructions: conditions governing the entry of certain fruits and vegetables," and mountain papaya from the areas not designated as Medfly-free would be listed in § 319.56–2x, "Administrative instructions: conditions governing the entry of certain fruits and vegetables for which treatment is required." In each section, the listing for mountain papaya from Chile would refer the reader to § 319.56–2(j), the section in which the Medfly-free areas of Chile are described. As part of this proposed change, we would move the provision that allows the importation of sandpears (*Pyrus pyrifolia*) from Chile from § 319.56–2(j) to §§ 319.56–2t and 319.56–2x, where sandpears would be listed in the same manner as mountain papaya. The lists of commodities in §§ 319.56–2t and 319.56–2x, where sandpears would be more appropriately listed, were not part of the regulations when sandpears from Chile were approved for importation into the United States.

*Plumcot From Chile*

We are proposing to allow plumcot (fruit) (*Prunus domestica* X *P. armeniaca*) to be imported into the United States from Chile. Plumcot is a potential host of Medfly, however, so we would require that the fruit be grown in one of the designated Medfly-free provinces of Chile described in § 319.56–2(j).

We currently allow the importation of apricots, grapes, nectarines, peaches, and plums from Chile under the provisions of § 319.56–2m. As a cross between a plum and an apricot, plumcot falls into the same pest risk category, and may be treated for pests using the same procedures, as the stonefruits listed in § 319.56–2m. Like the other stonefruits, plumcot presents a risk of introducing several pests, including *Proeulia* spp., *Leptoglossus chilensis*, *Naupactus xanthographus*, *Listroderes subcintus*, and *Conoderus rufangulus*. These pests do not normally feed on plumcot or the other stonefruits, but may be present as hitchhiking pests. A recognized treatment for these pests—fumigation with methyl bromide—is prescribed in § 319.56–2m for apricots, grapes, nectarines, peaches, and plums.

An alternative to the methyl bromide fumigation prescribed in § 319.56–2m, which is set forth in § 319.56–2s, allows apricots, nectarines, peaches, and plums to be imported from Chile without fumigation, provided that multiple safeguards, including inspection in Chile, are met. As mentioned above, plumcot falls into the same pest risk category as apricots, nectarines, peaches, and plums, so this alternative to fumigation could be used as safely and as effectively with plumcot as it is with the other stonefruits.

Therefore, we are proposing to allow plumcot to be imported into the United States from Chile subject to the provisions of either § 319.56–2m or § 319.56–2s. By giving shippers a choice between fumigation and preclearance, which are both effective programs for Chilean stonefruit, we would maximize the flexibility available to shippers and importers without increasing the risk of introducing plant pests into the United States.

*Watermelon from Ecuador*

We are proposing to allow the importation of watermelon (fruit) (*Citrullus lanatus*) from Ecuador under the same conditions currently imposed on the importation of cantaloupe from Ecuador (7 CFR 319.56–2y). Watermelon, like cantaloupe, is a recorded host of the South American cucurbit fly, and we believe that the multiple safeguards applied to the importation of cantaloupe from Ecuador

would also be adequate to prevent the introduction of the pest with watermelon.

Although the South American cucurbit fly is known to exist in a few places in South America, no commercially produced watermelon has ever been recorded as a host of the pest, nor has APHIS detected the pest in watermelon from any source. This interception history indicates that commercially produced watermelon is unlikely to present a risk of introducing the South American cucurbit fly. Because this information is based on limited data, however, we believe additional precautions are warranted to ensure that commercially produced watermelon from Ecuador is free of the South American cucurbit fly.

In Ecuador, there have been unconfirmed reports of the South American cucurbit fly in only a limited area. To ensure that commercially produced melons for export are free of the South American cucurbit fly, the Ecuadoran government, under the direction of APHIS, has conducted trapping for the pest since 1991 throughout the area where the watermelon is being grown. No South American cucurbit flies have been detected in that area. It would appear that commercially produced watermelon from this trapped area would present very little risk of introducing the South American cucurbit fly.

The trapping program will not keep the South American cucurbit fly from entering the commercial growing area; it will only let us know if this happens. Although measures could be taken immediately to stop watermelon from being exported from this area to the United States if the South American cucurbit fly is detected, we would have to consider the possibility that watermelon carrying the pest might already have been shipped to the United States. As a final precaution, therefore, we believe it would be prudent to prohibit the movement of the watermelon into areas of the United States where the South American cucurbit fly could become established. These areas are: Alabama, American Samoa, Arizona, California, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, New Mexico, Puerto Rico, South Carolina, Texas, and the U.S. Virgin Islands. We would require the boxes in which the watermelon is packed to be stamped "not for distribution" in those areas.

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by commercially produced watermelon would be readily detectable by a USDA inspector.

*Peppers From Israel*

The Israeli Ministry of Agriculture has requested that we allow the importation of peppers (fruit) (*Capsicum* spp.) into certain areas of the United States. Peppers are a recorded host of Medfly, which is known to occur in Israel. APHIS personnel, working in cooperation with members of Israel's Department of Plant Protection and Inspection (DPPI), have determined that peppers grown under certain conditions in specified areas of Israel can be imported for limited distribution in the United States under certain conditions without presenting a significant risk of introducing Medfly. We believe the multiple safeguards discussed below would be adequate to guard against the introduction of Medfly with the peppers.

The peppers would have to be grown in the Paran region of the Arava Valley by growers registered with the DPPI. The Paran region is on the eastern edge of the Negev Desert, about 92 kilometers north of the city of Eilat. Only one highway, Arava Highway 90, traverses the region. The area is quite arid and contains essentially no wild host material for Medfly. The pest has been found sporadically in the Arava Valley, but only rarely in the Paran region. Medfly trapping data from January through December 1992 shows that no Medflies were captured in the residential area of Paran during that period, and Medfly has never been found infesting peppers grown in screenhouses in the agricultural area of Paran.

Screenhouses are rigid-framed enclosures covered with sheets of clear plastic that have fruit-fly-proof screens along the sides for ventilation. The screenhouses may vary in size, but most cover a growing area of several thousand square feet.

The peppers would have to be grown in screenhouses approved by both the DPPI and APHIS. We would require the screenhouses to be periodically inspected by APHIS or DPPI personnel for tears in the plastic or screen.

We would require that trapping for the Medfly be conducted throughout the year in the agricultural region along Arava Highway 90 and in the residential area of Paran. If a single Medfly were to be captured in a screenhouse in the agricultural area, all exports from that screenhouse would be canceled until measures acceptable to APHIS are taken to prevent further occurrences. Those measures would include delimiting the source of infestation, increasing trap density, and applying pesticides.

Because some residents of the Paran region maintain gardens around their homes, which are located in a residential area removed from the agricultural area mentioned above, there is the possibility that potential Medfly host material could be present in the residential area. To help prevent those backyard gardens from becoming the site of a Medfly infestation, we would require that DPPI apply Malathion bait sprays in the residential areas of Paran at 6- to 10-day intervals beginning not less than 30 days before the harvest of the backyard host material. We would require the Malathion applications to continue until all backyard host material has been harvested.

In order to help prevent potential host material from being introduced into the area from passing vehicles, we would require that signs in English and Hebrew be posted along Arava Highway 90 to warn drivers and passengers that it is prohibited to throw out or discard any fruits or vegetables from their vehicles.

To help prevent Medfly from infesting the peppers after they have been harvested, we would require that the peppers be sorted and packaged in their insect-proof screenhouses and transported from Paran to Tel Aviv in fruit-fly-proof containers. The peppers would have to be exported directly from Tel Aviv, by air, to the United States.

As a final precaution, we believe it would be prudent to limit the distribution of the peppers to areas of the United States where the Medfly could not become established in the unlikely event all the other safeguards failed and the pest was introduced into the United States. These areas are: Connecticut, the District of Columbia, Delaware, Iowa, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin, and West Virginia. We would require the boxes in which the peppers are packaged to be stamped "not for distribution" outside those States.

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried on the peppers would be readily detectable by a USDA inspector.

**Treatment Required**

The fruits and vegetables listed below are attacked by the Medfly or other injurious insects, as specified below, in their country of origin. Visual inspection cannot be relied upon to

detect the insects, but the fruits and vegetables can be treated to destroy the insects. Therefore, we propose to allow these fruits and vegetables to be imported into the United States, or specified parts of the United States, only if they have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which has been incorporated by reference into the Code of Federal Regulations at 7 CFR part 300. We would revise the PPQ Treatment Manual to show that treatments are required as follows for the fruits and vegetables listed below:

| Country | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Bolivia | Blueberry | *Vaccinium* spp. | Fruit. |
| Fumigation as follows for Medfly: | | | |
| With methyl bromide at NAP—chamber or tarpaulin: | | | |
| *32 g/m³ (2 lb/1000 ft³)* for 3½ hours at 21°C (70°F) or above, with minimum gas concentrations of: | | | |
| 26g (26 oz) at ½ hour after fumigation begins | | | |
| 22g (22 oz) at 2 or 2½ hours after fumigation begins | | | |
| 21g (21 oz) at 3½ hours after fumigation begins | | | |
| *32 g/m³ (2 lb/1000 ft³)* for 4 hours at 18–20.5°C (65–69°F), with minimum gas concentrations of: | | | |
| 26g (26 oz) at ½ hour after fumigation begins | | | |
| 22g (22 oz) at 2 or 2½ hours after fumigation begins | | | |
| 19g (19 oz) at 4 hours after fumigation begins | | | |
| (Fruit must be at the indicated temperature at start of fumigation.) | | | |
| Chile | Lime | *Citrus aurantiifolia* and *C. latifolia* | Fruit. |
| Fumigation as follows for *Brevipalpus chilensis*: | | | |
| With methyl bromide at NAP—chamber or tarpaulin: | | | |
| *24 g/m³ (1½ lb/1000 ft³)* for 2 hours at 26.5–31.5°C (80–89°F), with minimum gas concentrations of: | | | |
| 19g (19 oz) at ½ hour after fumigation begins | | | |
| 14g (14 oz) at 2 hours after fumigation begins | | | |
| *32 g/m³ (2 lb/1000 ft³* for 2 hours at 21–26°C (70–79°F), with minimum gas concentrations of: | | | |
| 26g (26 oz) at ½ hour after fumigation begins | | | |
| 19g (19 oz) at 2 hours after fumigation begins | | | |
| *40 g/m³* (2½ lb/1000 ft³) for 2 hours at 15.5–20.5°C (60–69°F), with minimum gas concentrations of: | | | |
| 32g (32 oz) at ½ hour after fumigation begins | | | |
| 24g (24 oz) at 2 hours after fumigation begins | | | |
| *48 g/m³* (3 lb/1000 ft³) for 2 hours at 10–15°C (50–59°F), with minimum gas concentrations of: | | | |
| 36g (36 oz) at ½ hour after fumigation begins | | | |
| 29g (29 oz) at 2 hours after fumigation begins | | | |
| (Fruit must be at the indicated temperature at start of fumigation.) | | | |
| Chile | Mountain papaya | *Carica pubescens (=C. candamarcensis)* | Fruit. |
| All fruit grown outside Medfly-free areas described in § 319.56–2(j) must be treated for Medfly with high-temperature forced air or vapor heat treatment. | | | |
| High-temperature forced air treatment as follows: | | | |
| The treatment consists of four incremental temperature increases, with each increase in air temperature based on when the internal temperature in the seed cavity is reached as indicated below: | | | |

| Air temperature | Seed cavity temperature |
|---|---|
| 1. 43+1°C (109.4+1.8°F) | 41+1.5°C (105.8+2.7°F). |
| 2. 45+1°C (113.0+1.8°F) | 44+1°C (111.2+1.8°F). |
| 3. 46.5+1°C (115.7+1.8°F). | 46+0.75°C (114.8+1.35°F). |
| 4. 49+0.5°C (120.2+0.9°F) | 47.2°C (117°F). |

Fruits are exposed in an approved chamber to each air temperature in steps 1 to 3 for 2 hours or until the indicated seed cavity temperature is reached. The treatment is complete when the seed cavity temperature reaches 47.2°C (117°F). The treated fruits may be hydrocooled immediately with tap water (20+5°C or 68+9°F) when 47.2°C is reached.

Vapor heat treatment as follows:

Temperature of articles raised by saturated water vapor at 44.4°C (112°F) until approximate center reaches that temperature, within a period of time designated by the inspector, held for 8¾ hours, then immediately cooled.

(Pretreatment conditioning is optional. Such conditioning is the responsibility of the shipper and is conducted in accordance with procedures that the shipper believes necessary.)

| | | | |
|---|---|---|---|
| Guatemala | Tuna | *Opuntia* spp. | Fruit. |
| Fumigation for Medfly as set forth above for blueberries from Bolivia. | | | |

The treatments described above have been determined to be effective against the specified insects. This determination is based on research evaluated and approved by the Department. A bibliography and additional information on this research may be obtained from the Hoboken Methods Development Center, PPQ, APHIS, USDA, 209 River Street, Hoboken, NJ, 07030.

Fruits and vegetables required to be treated for fruit flies would be restricted to North Atlantic ports of arrival if treatment has not been completed before the fruits and vegetables arrive in the United States. Climatic conditions at North Atlantic ports are unsuitable for the fruit flies listed above. Therefore, in the unlikely event that any fruit flies escape before treatment, they will not

become established pests in the United States. North Atlantic ports are: Atlantic Ocean ports north of and including Baltimore; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington, DC (including Baltimore-Washington International and Dulles International airports).

Pest risk analyses conducted by APHIS have determined that any other injurious plant pests that might be carried by the fruits and vegetables listed above would be readily detectable by a USDA inspector. As noted, the fruits and vegetables would be subject to inspection, disinfection, or both, at the port of first arrival, in accordance with § 319.56–6.

**Use of Methyl Bromide**

Methyl bromide is currently in widespread use as a fumigant. It is prescribed as a treatment for three of the commodities included in this proposal (blueberries from Bolivia, lime from Chile, and tuna from Guatemala) and is offered as one possible treatment for a fourth commodity (plumcot from Chile). The environmental effects of using methyl bromide, however, are being scrutinized by international, Federal, and State agencies. The U.S. Environmental Protection Agency (EPA), based on its evaluation of data concerning the ozone depletion potential of methyl bromide, published a notice of proposed rulemaking in the **Federal Register** on March 18, 1993 (58 FR 15014–15049). Should that EPA proposal be finalized, methyl bromide production would be frozen at 1991 levels and the domestic use of methyl bromide would be phased out by the year 2000. APHIS is studying the effectiveness and environmental acceptability of alternative treatments to prepare for the potential unavailability of methyl bromide fumigation. Our current proposal assumes the continued availability of methyl bromide for use as a fumigant for at least the next few years.

**Miscellaneous**

In addition to allowing the importation of the fruits and vegetables discussed above, we are also proposing to modify the format of one section of the regulations. The introductory text of § 319.56–2x(a) currently states that the fruits and vegetables listed in that paragraph may be imported into the United States only if treated as specified in the paragraph in accordance with the PPQ Treatment Manual, which is incorporated by reference at 7 CFR 300.1. The paragraph goes on to list the fruits and vegetables and the required treatment for each. Because the PPQ Treatment Manual sets out all approved treatments for imported fruits and vegetables, listing the treatments in the regulations is redundant and unnecessary. Therefore, we propose to amend § 319.56–2x(a) by removing the specific treatments from the list of fruits and vegetables. We would also revise the introductory text of the paragraph to reflect the modified format.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing a number of previously prohibited fruits and vegetables to be imported into the United States under specified conditions. The importation of these fruits and vegetables has been prohibited because of the risk that they could introduce injurious plant pests into the United States. This proposed rule would revise the status of certain commodities from certain countries, allowing their importation into the United States for the first time.

Our proposed changes are based on biological risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The risk assessments indicate that the fruits or vegetables listed in this proposed rule could, under certain conditions, be imported into the United States without significant pest risk. All of the fruits and vegetables, as a condition of entry, would be subject to inspection, disinfection, or both, at the port of first arrival as may be required by a USDA inspector. In addition, some of the fruits and vegetables in this proposal would be required to undergo mandatory treatment for fruit flies or other injurious insects as a condition of entry, or to meet other special conditions. Thus, our proposed action would provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction of injurious plant pests by imported fruits and vegetables.

Of the fruits and vegetables proposed for importation into the United States, domestic production information is available only for basil, blueberries, carrots, limes, peppers, tomatoes, and watermelon.

*Basil*

Domestic commercial production of basil is centered largely in California, Florida, and Hawaii. Only Hawaii, however, reports its herb production. A total of 390,000 pounds of basil, with an estimated value of $715,000, was produced in Hawaii in 1991 (Hawaii Agriculture Statistics Service, Hawaii Department of Agriculture, "Hawaii Herbs," November 19, 1992). The number of farms producing basil is not known, nor is it known how many of the producers would be considered small entities (annual gross receipts of $0.5 million or less, according to Small Business Administration [SBA] criteria).

This proposed rule would allow basil from Chile to be imported into the United States under certain conditions. Although Chile has not indicated the amount of basil it expects to export to the United States, we do not anticipate the importation of basil from Chile to have a significant economic impact on U.S. producers of the herb.

*Blueberries*

In the United States in 1987, 109.4 million pounds of cultivated blueberries were harvested on nearly 4,000 farms in 36 States. An additional 32.6 million pounds of wild blueberries were harvested on about 500 farms in 6 of those States (U.S. Department of Commerce, "1987 Census of Agriculture," Table 29). The total value of the 1987 blueberry harvest and the number of producers that would meet the SBA's criteria for a small business (annual gross receipts of less than $0.5 million) are not known.

This proposed rule would allow blueberries from Bolivia and Mexico to be imported into the United States under certain conditions. APHIS experts do not anticipate that high volumes of blueberries will be imported from Bolivia and Mexico, so the economic impact of those importations on domestic blueberry producers is expected to be small.

*Carrots*

In 1987, a total of 1,580 U.S. farms harvested carrots, with 960 of those farms being located in 10 States (USDA, "Agricultural Statistics, 1991," table 207). In 1990, domestic producers of carrots harvested approximately 2.0 billion pounds of carrots for sale as fresh, which makes up about 90 percent of the market for carrots. (The remaining 10 percent of carrots were sold for processing.) The total value of the fresh carrot production was estimated at $237.6 million (USDA, "Agricultural Statistics, 1991," Table 208). The number of domestic carrot producers that would meet SBA criteria for small entities—annual gross receipts of less than $0.5 million—is not known, but given the number of producers and the value of production, it is likely that most carrot producers could be classified as small entities.

This proposed rule would allow carrots from Peru to be imported into the United States under certain conditions. According to the United Nations' Food and Agriculture Organization (FAO), Peru produced approximately 121.3 million pounds of carrots in 1990, which is about 5.9 percent of U.S. production (FAO, "FAO Production Year 1991," Volume 45). The United States imported approximately 122.8 million pounds of carrots in 1990, with about 25 percent (32.1 million pounds) coming from Mexico. Even if the volume of carrots imported into the United States from Peru approached the level of imports from Mexico, which is unlikely, the volume of carrots from Peru would equal only 1.57 percent of domestic production and about 1.48 percent of the total carrot supply (domestic and imported) in the United States. Assuming a 1.48 percent increase in the total carrot supply would lead to a 1.48 percent decrease in domestic carrot prices (i.e., unitary price elasticity), there would be a price decrease of about $0.18 per hundredweight, or $0.0018 per pound, from an original price of $12.00 per hundred weight (USDA, "Agricultural Statistics, 1991," Table 208). As a result, again assuming unitary price elasticity, there would be a decrease in domestic carrot production of about 30.3 million pounds, which would result in a revenue decrease of $7.2 million (less than 2.95 percent of total revenue) for domestic producers. Therefore, it is expected that allowing carrots to be imported into the United States from Peru would have a negligible economic impact on U.S. carrot producers.

*Limes*

From April 1990 to March 1991, 127.6 million pounds of limes, with an estimated value of $27.9 million, were harvested in the United States (USDA, "Agricultural Statistics, 1991," Table 277). Ninety percent of domestically produced limes are grown in Florida, with the remainder being grown in Arizona, California, and Hawaii. It is likely that most U.S. lime producers would be considered small entities using SBA size criteria of annual gross receipts of less than $0.5 million.

This proposed rule would allow limes from Chile to be imported into the United States under certain conditions. APHIS experts expect that Chile would export no more than 4.4 million pounds of limes to the United States, which would amount to about 4.5 percent of total U.S. lime imports, about 3.4 percent of domestic production, and about 2.0 percent of the total lime supply. Assuming unitary price elasticity, the 2.0 percent increase in the total lime supply would lead to a 2.0 percent decrease in the domestic price of limes, or about $0.38 per box on an original price of $19.21 per box (USDA, "Agricultural Statistics, 1991," Table 277). The corresponding decrease in U.S. lime production would be 125 million pounds, which would result in a maximum revenue decrease of $1.1 million (less than 4 percent) for domestic producers. Therefore, we anticipate that allowing the importation of limes from Chile would not have a significant economic impact on U.S. lime producers.

*Peppers*

In 1992, 1.3 billion pounds of bell peppers, with an estimated value of $368 million, were produced domestically for the fresh market (USDA, National Agricultural Statistics Service, Agricultural Statistics Board, "1992 Vegetable Summary"). In 1987, a total of 9,403 farms reported harvesting peppers on a total of 100,521 acres. It is likely that most U.S. pepper producers would be considered small entities using SBA size criteria of annual gross receipts of less than $0.5 million.

This proposed rule would allow peppers from Israel and Poland to be imported into the United States under certain conditions. In 1991, Israel reported producing approximately 116.8 million pounds of green chilies and peppers (FAO, "FAO Production Yearbook, 1991"), which is roughly 8.7 percent of U.S. production. We anticipate that Israel would export no more than 400,000 pounds of peppers, which equals approximately 0.14 percent of current U.S. pepper imports, about 0.03 percent of current U.S. production, and about 0.02 percent of the total pepper supply in the United States (USDA, Economic Research Service [ERS], "Foreign Agricultural Trade of the United States [FATUS], Calendar Year 1991 Supplement"). Assuming that a 0.02 percent increase in the pepper supply would lead to corresponding 0.02 percent decreases in domestic price and production, there would be a $0.0068 per hundredweight price decrease (from an original price of $27.41 per hundredweight) and a production drop of about 330,000 pounds, which equals a revenue decrease of $180,000 or 0.05 percent. Therefore, we anticipate that allowing the importation of peppers from Israel would not have a significant economic impact on U.S. pepper producers.

Data regarding Polish pepper production and exports is not available. We anticipate, however, that Poland would not export significantly more peppers than are expected from Israel, so it is likely that allowing peppers to be imported into the United States from Poland would have only a negligible economic impact on U.S. pepper producers.

*Tomatoes*

In 1987, a total of 14,542 U.S. farms harvested tomatoes (U.S. Department of Commerce, "1987 Census of Agriculture"). The number of domestic tomato producers that would meet SBA criteria for small entities—annual gross receipts of less than $0.5 million—is not known, but it is likely that most tomato producers could be classified as small entities. In 1990, domestic producers of tomatoes harvested approximately 3.6 billion pounds of tomatoes for sale as fresh, which makes up about 57 percent of the market for tomatoes. (The remaining 43 percent of tomatoes were sold for processing.) The total value of the fresh tomato production was estimated at $974.5 million (USDA, "Agricultural Statistics, 1991," Table 208).

This proposed rule would allow tomatoes from Poland to be imported into the United States under certain conditions. According to FAO data, Poland produced approximately 913 million pounds of tomatoes in 1990, which is about 25.7 percent of U.S. production (FAO, "FAO Production Yearbook, 1991"). The United States imported approximately 795.9 million pounds of fresh tomatoes in 1990, with about 98 percent coming from Mexico (USDA, ERS, "FATUS, Calendar Year 1990 Supplement"). Poland exported 3.3 million pounds of tomatoes in 1990,

which is roughly 0.36 percent of its total production (FAO, "FAO Trade Yearbook, 1990"). We do not expect the volume of tomatoes imported into the United States from Poland to exceed 3.3 million pounds, which would amount to about 0.42 percent of total U.S. tomato imports, about 0.09 percent of domestic production, and about 0.08 percent of the total tomato supply. Assuming a 0.08 percent increase in the total tomato supply would lead to a 0.08 percent decrease in domestic tomato prices, there would be a price decrease of about $0.02 per hundredweight, or $0.0002 per pound, from an original price of $27.40 per hundredweight (USDA, "Agricultural Statistics, 1991," Table 240). As a result, again assuming unitary price elasticity, there would be a decrease in domestic tomato production of about 2.7 million pounds, which would result in a revenue decrease of $1.5 million (less than 0.20 percent of total revenue) for domestic producers. Therefore, it is expected that allowing tomatoes to be imported into the United States from Poland would have a negligible economic impact on U.S. tomato producers.

*Watermelon*

In 1992, 3.5 billion pounds of watermelon, with an estimated value of $198.9 million, were produced domestically for the fresh market (USDA, National Agricultural Statistics Service, Agricultural Statistics Board, "1992 Vegetable Summary"). In 1987, a total of 10,324 farms reported harvesting watermelon (U.S. Department of Commerce, "1987 Census of Agriculture"). It is likely that most U.S. watermelon producers would be considered small entities using SBA size criteria of annual gross receipts of less than $0.5 million.

This proposed rule would allow watermelon from Ecuador to be imported into the United States under certain conditions. According to FAO data, Ecuador produced approximately 132.3 million pounds of watermelon in 1990, which is about 3.8 percent of U.S. production (FAO, "FAO Production Yearbook, 1991"). The United States imported approximately 230.9 million pounds of fresh watermelon in 1991 (USDA, ERS, "FATUS, Calendar Year 1990 Supplement"). We do not expect the volume of watermelon imported into the United States from Ecuador to exceed 4.0 million pounds, which would amount to about 1.73 percent of total U.S. watermelon imports, about 0.11 percent of domestic production, and about 0.11 percent of the total watermelon supply. Assuming a 0.11 percent increase in the total watermelon supply would lead to a 0.11 percent decrease in domestic watermelon prices, there would be a price decrease of about $0.0061 per hundredweight from an original price of $5.70 per hundredweight. As a result, again assuming unitary price elasticity, there would be a decrease in domestic watermelon production of about 3.8 million pounds, which would result in a revenue decrease of about $430,000 (less than 0.22 percent of total revenue) for domestic producers. Additionally, we expect that imports of watermelon from Ecuador would not occur during the domestic watermelon growing season, thus lessening the impact even more. Therefore, it is expected that allowing watermelon to be imported into the United States from Ecuador would have a negligible economic impact on U.S. watermelon producers.

The aggregate economic impact of this proposed rule is expected to be positive. U.S. consumers would benefit from greater availability of fruits and vegetables. It is not likely that any U.S. producers, large or small, of fruits and vegetables would be affected in a significant way by the easing of importation restrictions on these particular commodities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Executive Order 12778**

This proposed rule would allow certain fruits and vegetables to be imported into the United States from certain parts of the world. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact has been prepared for this proposed rule. The assessment provides a basis for the conclusion that the importation of fruits and vegetables under the conditions specified in this proposed rule would not present a risk of introducing or disseminating plant pests and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under "FOR FURTHER INFORMATION CONTACT."

**Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**List of Subjects**

*7 CFR Part 300*

Incorporation by reference, Plant diseases and pests, Quarantine.

*7 CFR Part 319*

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, title 7, chapter III, of the Code of Federal Regulations would be amended as follows:

**PART 300—INCORPORATION BY REFERENCE**

1. The authority citation for part 300 would continue to read as follows:

**Authority:** 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) would be revised to read as follows:

**§ 300.1 Materials incorporated by reference.**

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted November 1992, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

## PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In § 319.56–2, paragraph (j), the second and third sentences would be removed and a new second sentence would be added to read as follows:

**§ 319.56–2 Restrictions on entry of fruits and vegetables.**

* * * * *

(j) * * * Fruits and vegetables from Chile otherwise eligible for importation under this subpart may be imported from these areas without treatment for Medfly.

* * * * *

**§ 319.56–2m [Amended]**

5. In § 319.56–2m, in the section heading, the introductory text of the section, and paragraphs (a)(2), (c), and (e), the word "plumcot," would be added immediately after the word "peaches," each time it appears.

**§ 319.56–2s [Amended]**

6. In § 319.56–2s, in the section heading; paragraphs (a), (b), (c)(1), and (c)(2); the introductory text of paragraph (d); paragraphs (d)(1)(ii), (e), and (f)(1); the introductory text of paragraph (g); and paragraph (g)(3), the word "plumcot," would be added immediately after the word "peaches," each time it appears.

7. In § 319.56–2t, the table would be amended by revising the heading in the first column to read "Country/Locality"; revising the entry for "Korea" in the first column to read "South Korea" and moving that entry to the appropriate alphabetical order; revising the entry for "Trinidad" in the first column to read "Trinidad and Tobago"; and by adding, in alphabetical order, the following:

**§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.**

* * * * *

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| * * | * * | * * | * * |
| Belize | Bay leaf | *Laurus nobilis* | *Leaf and stem.* |
| | Tarragon | *Artemisia dracunculus* | Above ground parts. |
| * * | * * | * * | * * |
| Chile | Basil | *Ocimum* spp. | Above ground parts. |
| | Lucuma | *Manilkara sapota (=Lucuma mammosa).* | Fruit. (From Medfly—free areas only—see § 319.56–2(j).) |
| | Mountain papaya | *Carica pubescens (=C. candamarcensis).* | Fruit. (From Medfly-free areas (see § 319.56–2(j)). Fruit from outside Medfly-free areas must be treated in accordance with § 319.56–2x.) |
| | Oregano | *Origanum* spp. | Leaf and stem. |
| | Sandpear | *Pyrus pyrifolia* | Fruit (From Medfly-free areas (see § 319.56–2(j)). Fruit from outside Medfly-free areas must be treated in accordance with § 319.56–2x.) |
| | Tarragon | *Artemisia dracunculus* | Above ground parts. |
| Colombia | | | |
| * * | * * | * * | * * |
| | Tarragon | *Artemisia dracunculus* | Above ground parts. |
| * * | * * | * * | * * |
| Ecuador | Banana | *Musa* spp. | Flower. |
| | Chervil | *Anthriscus* spp. | Leaf and stem. |
| * * | * * | * * | * * |
| Mexico | | | |
| * * | * * | * * | * * |
| | Bay leaf | *Laurus nobilis* | Leaf and stem. |
| | Blueberry | *Vaccinium* spp. | Fruit. |
| * * | * * | * * | * * |
| | Lambsquarters | *Chenopodium* spp. | Above ground parts. |
| * * | * * | * * | * * |
| Peru | | | |
| * * | * * | * * | * * |
| | Carrot | *Daucus carota* | Root. |

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| • • | • • | • | • • |
| Philippines | Yam bean | *Pachyrhizus tuberosus* or *P. erosus*. | Root. |
| Poland | Pepper | *Capsicum* spp. | Fruit. |
| | Tomato | *Lycopersicon esculentum* | Fruit. |
| • • | • • | • | • • |
| South Korea | | | |
| • • | • • | • | • • |
| | Chinese bellflower | *Platycodon grandiflorum* | Root. |
| • • | • • | • | • • |
| Thailand | | | |
| • • | • • | • | • • |
| | Turmeric | *Curcuma domestica* | Leaf and stem. |
| • • | • • | • | • • |
| Trinidad and Tobago | Lemongrass | *Cymbopogon citratus* | Leaf and stem. |
| • • | • • | • | • • |
| | Shield leaf | *Cecropia peltata* | Leaf and stem. |
| • • | • • | • | • • |

8. Section 319.56–2u would be amended as follows:

a. The section heading would be revised as set forth below.

b. The text would be designated as paragraph (a).

c. A new paragraph (b) would be added to read as set forth below.

As amended, § 319.56–2u would read as follows:

**§ 319.56–2u Conditions governing the entry of pummelo and peppers from Israel.**

* * * * *

(b) Peppers (fruit) (*Capsicum* spp.) from Israel may be imported into the United States only under the following conditions:

(1) The peppers have been grown in the Paran region of the Arava Valley by growers registered with the Israeli Department of Plant Protection and Inspection (DPPI).

(2) Malathion bait sprays shall be applied in the residential areas of Paran at 6- to 10-day intervals beginning not less than 30 days before the harvest of backyard host material in residential areas and shall continue through harvest.

(3) The peppers have been grown in insect-proof plastic screenhouses approved by the DPPI and APHIS. Houses shall be examined periodically by DPPI or APHIS personnel for tears in either plastic or screening.

(4) Trapping for Mediterranean fruit fly (Medfly) shall be conducted by DPPI throughout the year in the agricultural region along Arava Highway 90 and in the residential area of Paran. The capture of a single Medfly in a screenhouse will immediately cancel export from that house until the source of the infestation is delimited, trap density is increased, pesticide sprays are applied, or other measures acceptable to APHIS are taken to prevent further occurrences.

(5) Signs in English and Hebrew shall be posted along Arava Highway 90 stating that it is prohibited to throw out/discard fruits and vegetables from passing vehicles.

(6) The cartons in which the peppers are packaged must be stamped "Peppers not to be distributed outside of the following States: CT, DC, DE, IA, IL, IN, MA, MD, ME, MI, MN, NH, NJ, NY, OH, PA, RI, VT, WI, and WV."

(7) Sorting and packing of peppers shall be done in the insect-proof screenhouses in Paran.

(8) Transportation of the peppers from Paran to Tel Aviv Airport for export shall be in fruit fly-proof containers.

(9) The peppers shall be exported directly from Tel Aviv, by air, to the United States.

9. In § 319.56–2x, paragraph (a) would be revised to read as follows:

**§ 319.56–2x Administrative instructions; conditions governing the entry of certain fruits and vegetables for which treatment is required.**

(a) The following fruits and vegetables may be imported into the United States only if they have been treated in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter:

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Bolivia | Blueberry | *Vaccinium* spp. | Fruit. |
| Chile | Lime | *Citrus aurantifolia* and *C. latifolia* | Fruit. |
| | Mountain papaya | Carica pubescens (=*C. candamarcensis*). | Fruit. (Treatment for Mediterranean fruit fly (Medfly) not required if fruit is grown in Medfly-free area [see § 319.56–2(j)]) |
| | Sandpear | *Pyrus pyrifolia* | Fruit. (Treatment for Mediterranean fruit fly (Medfly) not required if fruit is grown in Medfly-free area [see § 319.56–2(j)]) |

| Country/locality | Common name | Botanical name | Plant part(s) |
|---|---|---|---|
| Greece | Kiwi | *Actinidia deliciosa* | Fruit. |
| | Tangerine | *Citrus reticulata* | Fruit. |
| Guatemala | Tuna | *Opuntia* spp. | Fruit. |
| Israel | Loquat | *Eriobotrya japonica* | Fruit. |
| Jordan | Apple | *Malus domestica* | Fruit. |
| | Persimmon | *Diospyros* spp. | Fruit. |
| Lebanon | Apple | *Malus domestica* | Fruit. |
| Panama | Bean, green and lima | *Phaseolus vulgaris* and *P. lunatus* | Pod. |
| Taiwan | Mango | *Mangifera indica* | Fruit. |

10. Section 319.56–2y would be amended as follows:

a. The section heading would be revised as set forth below.

b. In the introductory text of paragraph (a), the words "and watermelon (fruit) (*Citrullus lanatus*)" would be added immediately after the words "(*Cucumis melo*)".

c. In paragraphs (a)(1) and (a)(2), and in the first sentence of paragraph (a)(4), the words "or watermelon" would be added immediately after the word "cantaloupe".

d. The second sentence of paragraph (a)(4) would be revised to read as set forth below.

As amended, § 319.56–2y would read as follows:

**§ 319.56–2y Administrative instructions; conditions governing the entry of cantaloupe and watermelon from Ecuador.**

(a) * * *

(4) * * * The boxes in which the cantaloupe or watermelon is packed must be stamped with the name of the commodity followed by the words "Not to be distributed in the following States or territories: AL, AS, AZ, CA, FL, GA, GU, HI, LA, MS, NM, PR, SC, TX, VI."

Done in Washington, DC, this 2nd day of August 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93–18863 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 93–NM–102–AD]**

## Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped with Over-Wing Escape Slides

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes equipped with over-wing escape slides. This proposal would require modification of the trailing edge panels and the aft flaps. This proposal is prompted by the results of functional tests of over-wing escape slides, which revealed that some slides were damaged when they were deployed across sharp corners on the trailing edge of the wing and the large gaps between the trailing edge panels of the wing. The actions specified by the proposed AD are intended to prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation.

**DATES:** Comments must be received by October 4, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Jayson Claar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2784; fax (206) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–102–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–102–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports indicating that, during functional tests of over-wing escape slides installed on certain Boeing Model 767 series airplanes, several escape slides were damaged when they were deployed across sharp corners on the trailing edge

of the wing and the large gaps between the trailing edge panels of the wing. In some instances, the slide caught on the aft inboard corner of the trailing edge flaps; sharp corners on the trailing edge of the wing punctured the slide's fabric as the slide inflated, and prevented or hindered normal deployment of the slide. Damage to the over-wing escape slide, if not corrected, could hinder the inflation of the escape slide to a usable configuration during an emergency evacuation.

The FAA has reviewed and approved Boeing Service Bulletin 767–57–0043, Revision 1, dated May 6, 1993, that describes procedures for modification of the (1) trailing edge panels, (2) the aft flaps, and (3) the inboard spoilers. Modification of the trailing edge panels and the aft flaps (items 1 and 2) entails installing a radius on the outboard aft corner of the inboard trailing edge panels, installing a radius on the inboard aft corner of the aft flaps, and moving the special washer for lockwire on the aft flaps. [Modification of the inboard spoilers (item 3) entails modification of the inboard edges of the rub strip on these spoilers. This modification is required by AD 92–10–01, Amendment 39–8234 (57 FR 19529, May 7, 1992). That AD references Boeing Service Bulletin 767–27–0104, Revision 2, dated September 12, 1991, for required procedures, however.]

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the trailing edge panels and the aft flaps (items 1 and 2 described in the preceding paragraph). The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 476 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 166 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $365,200, or $2,200 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 93–NM–102–AD.

*Applicability:* Model 767 series airplanes, equipped with over-wing escape slides, line position 1 through 476 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously. To prevent damage to the over-wing escape slide, which could hinder inflation of the slide to a usable configuration during an emergency evacuation, accomplish the following:

(a) Within 15 months after the effective date of this AD, modify the trailing edge panels and the aft flaps, in accordance with Boeing Service Bulletin 767–57–0043, Revision 1, dated May 6, 1993.

**Note 1:** Modification of the inboard edges of the rub strip on the inboard spoilers is required by AD 92–10–01, Amendment 39–8234, which references Boeing Service Bulletin 767–27–0104, Revision 2, dated September 12, 1991, for accomplishment instructions.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 1993.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–19080 Filed 8–9–93; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 416

RIN 0960–AD66

### Appeal Rights Following Mass Change Resulting in Reduction, Suspension, or Termination of State Supplementary Payments

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Proposed rules.

**SUMMARY:** We are proposing to amend our current rules with regard to initial determinations in order to revise our policy on providing appeal rights when a State-initiated mass change in federally administered State supplementary payment level amounts results in the reduction, suspension or termination of a recipient's State supplementary payments, or when Federal administration of State supplementary payments has been terminated.

**DATES:** Your comments will be considered if we receive them no later than October 12, 1993.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security

Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

**SUPPLEMENTARY INFORMATION:** Section 1616(a) of the Social Security Act (the Act) authorizes the Secretary of Health and Human Services (the Secretary) to enter into agreements with the States under which the Secretary administers the States' supplementary payments. State supplementary payments are cash benefits paid on a regular basis to individuals who are receiving Federal Supplemental Security Income (SSI) benefits, or who, but for their income, would be eligible to receive SSI benefits. When the Social Security Administration, acting as the Secretary's delegate, has entered into an agreement with a State for the Federal administration of these supplementary payments, the State transfers the funds necessary to make these payments to us and we make these payments to the recipients. States that make State supplementary payments but that have not elected Federal administration make the payments themselves directly to recipients. If a State elects Federal administration, we do not charge the State for administrative costs. A federally administered State supplementary payment is included in the same payment with the Federal SSI benefit where both a State supplementary payment and a Federal SSI benefit are payable. The payment level amounts of State supplementary payments are determined by the States. From time to time, States may change the payment level amounts, either by increasing them, or by reducing them.

Our current regulations provide in § 416.1402(b) that reduction, suspension, or termination of SSI benefits is an initial determination. The regulations at § 416.2005(d) provide that, generally, the regulations in effect for the SSI program are applicable in the Federal administration of State supplementary payments. Therefore, any reduction, suspension, or termination of federally administered State supplementary payments is also an initial determination. Section 416.1404 provides that we will mail to the affected recipient a written notice of our initial determination, including the right to a reconsideration before the determination takes effect. Further, § 416.1413b provides that a recipient has 60 days within which to appeal our determination that we plan to reduce, suspend, or terminate his or her benefits.

In the current process under our regulations, we consider the reduction, suspension or termination of State supplementary payments to be an initial determination, mail appropriate written notice of our initial determination and provide appeal rights to all affected recipients. We apply this process even with respect to mass changes in State supplementary payment level amounts, i.e., a State-initiated change in the level(s) of federally administered State supplementary payments payable to all recipients of State supplementary payments or to categories of such recipients, due, for example, to State legislative or executive action. In many such cases in which a recipient appeals the reduction, suspension, or termination of his or her State supplementary payments due to the State-initiated mass change, he or she wishes only to dispute the propriety, fairness, or legality of that mass change, for example, and not to dispute the application of that mass change to the facts of his or her case, (i.e., not to dispute the revised benefit computation).

We believe that this policy of providing affected recipients the right to appeal the State's action in reducing payment levels in these cases is not required by the Act or by fundamental principles of procedural due process. Moreover, in the past, this policy has had a needless administrative impact on us since we do not control, nor can we alter, the State-initiated mass change. This impact was demonstrated most recently when a large federally administered State supplementary payment State, as a result of a State law change, initiated an across-the-board reduction in its State supplementary payment levels. Over 27,000 affected individuals appealed to us the resulting reduction, suspension, or termination of their State supplementary payments on the basis that the State-initiated mass change was unfair to them, and not because they wished to dispute the resulting computation of their benefits. The vast majority of affected individuals requested benefit continuation at the previously established payment levels, pending issuance of decisions on the initial appeals, as set forth in § 416.1336(b). SSA provided appeal opportunities to individuals, informing them that their appeals were denied on the basis that SSA had no authority to order the State to repeal its law and reinstate State supplementary payments to their former higher levels. Since States must provide the funding for SSP, in some cases the State incurred additional program costs while the individuals' appeals were pending. Processing these actions served only to exacerbate existing workload backlogs by diverting scarce workpower resources from other necessary service delivery activities.

The courts have stated clearly that the legal sufficiency of an agency's procedures with respect to recipients of public assistance who are experiencing such a mandated change in their entitlement will be measured first under an agency's statute and regulations. If no violation of the statute or regulations is found, then it must be determined if the agency's procedures violate constitutional due process requirements. In *Atkins* v. *Parker*, 472 U.S. 115 (1985), the United States Supreme Court considered whether the Food Stamp Act required that an individual hearing be provided for every household affected by a general change in the law. The Court found that the Food Stamp Act distinguished between an adverse action based on the particular facts of an individual case, on the one hand, and a mass change initiated by the State or Federal Government affecting the entire caseload of recipients or significant portions thereof, on the other hand, with Congress only contemplating hearings on individual fact-based adverse actions.

Our current regulations do not relieve us from providing appeal rights to recipients for mass change actions in their State supplementary payments. Nevertheless, we believe that there is no requirement in the Act that we provide a recipient of a federally administered State supplementary payment an opportunity to appeal a reduction, suspension or termination of his or her payments resulting from a State-initiated mass change, if that individual does not dispute the application of that mass change to the facts of his or her case. Like the Food Stamp Act, only appeal rights with respect to individual adverse actions appear to be contemplated under the Social Security Act.

With regard to constitutional due process requirements, we believe that those requirements mandate that an individual whose benefits are reduced, suspended or terminated as a result of a State-initiated mass change be afforded the full measure of appeal rights in a matter in which he or she disputes the application of that mass

change to the facts of his or her particular case, that is, in a case where the recipient alleges that we have improperly computed his or her benefits as a result of the mass change. In *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the United States Supreme Court held that fundamental notions of due process of law required that individuals who sought to challenge the termination of their public entitlements as "resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases" be afforded a hearing in which they could "defend by confronting any adverse witnesses and by presenting * * * arguments and evidence orally." *Id.* at 268.

In light of the *Atkins* v. *Parker* and *Goldberg* v. *Kelly* decisions, we do not believe that full appeal rights under our administrative review system are required in situations where claimants are contesting only the State legislative or executive action which results in a change in the level(s) of the federally administered State supplementary payments. Instead, under these proposed regulations, claimants would receive notice of the State-initiated mass change and be given appeal rights only with respect to the calculation of their individual benefit amount made pursuant to the mass change. These procedures would follow the rationale of the *Atkins* v. *Parker* decision which distinguished adverse actions based on mass changes from adverse actions based on the facts of an individual case and would still provide an opportunity to contest the factual bases or the application of rules to particular facts as is required by the *Goldberg* v. *Kelly* decision.

In cases where the individual desires to appeal the reduction, suspension or termination resulting from a State-initiated mass change only to dispute the propriety, fairness, or legality, for example, of the mass change, and presents no claim that his or her benefits have been improperly calculated, then we believe that the Act and procedural due process do not require that we provide such an individual the right to appeal that action. As indicated above, State supplementary payment levels are established by the States. Any change in those levels as they apply across the caseload of State supplementary payment recipients is, for the most part, a matter within the control and jurisdiction of the States. We are required to administer the States' payment levels under the Act, regulations and provisions of the Federal/State Supplementation Agreements and have no right, power or authority to find State-initiated mass changes in those levels to be unfair, illegal or improper, nor can we order the States to increase those payment levels.

In proposing these regulatory changes, we have noted the Secretary's regulations for the Office of Family Assistance, Family Support Administration, regarding the availability of a hearing in cases of mass change in the Aid to Families With Dependent Children program. Those regulations provide in 45 CFR 205.10(a)(5) that "[a] hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation." We believe that a similar approach is appropriate where a mass change in the level of a federally administered State supplementary payment is the result of State legislative or executive action.

Thus, because of the futility of affording individuals affected by a State-initiated mass change the opportunity to appeal the effects of that mass change in cases involving no disputed facts but only a claim, for example, regarding the propriety or legality of the mass change itself, we believe that it is appropriate for us to amend our regulations so as to limit the opportunity to appeal, and the corresponding right to continue to receive benefits pending a decision on the initial appeal, as set forth in § 416.1336(b), only to those cases involving disputed facts. We, therefore, are proposing to revise our regulations at § 416.1401 to define a "mass change" as a State initiated change in the level(s) of federally administered State supplementary payments applicable to all recipients of such payments, or to categories of such recipients, due, for example, to State legislative or executive action. In addition, we are proposing to revise our regulations at § 416.1402 by adding a paragraph (m) to state that only our calculation of the amount of change in an individual's State supplementary payment amount which results from a mass change is an initial determination, subject to administrative and judicial review, and continuation of benefits pursuant to § 416.1336(b).

We also are proposing to revise our regulations at § 416.1403(a) to provide that a determination to reduce, suspend, or terminate your federally administered State supplementary payments due to a State-initiated mass change in the level of such payments is not an initial determination, except as is provided in § 416.1402(m), i.e., only our calculation of the amount of the change in the State supplementary payment is an initial determination. In addition, we propose to revise § 416.1403(a) to clarify that the termination of Federal administration of State supplementary payments is not an initial determination. The termination of Federal administration of these payments means only that the State has assumed the responsibility for the issuance of its supplementary payments. The amount of State supplementary payments an individual receives will not change because of the termination of Federal administration. The only change will be that the State will be making the payments. There will be no adverse impact to the recipients. We further propose to revise § 416.1403(b) to explain that we will provide to these recipients a notice of the termination of Federal administration, although the determination will not be subject to administrative or judicial review.

Early in the SSI program, which became effective January 1, 1974, several States terminated Federal administration of their State supplementary payments. Although there have been no recent terminations, we are proposing to revise § 416.1403 to clearly state our policy on the effect of terminations.

## Regulatory Procedures

*Executive Order No. 12291*

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will have no impact on SSI Federal program costs. The cost impact to the State programs and reductions in SSA's administrative costs are dependent upon whether States initiate mass changes which reduce the federally administered State supplementary payments in the future. Therefore, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

*Paperwork Reduction Act*

These proposed rules impose no additional reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

**List of Subjects in 20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: April 23, 1993.

**Louis D. Enoff,**

*Principal Deputy Commissioner of Social Security.*

Approved: June 16, 1993.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, we propose to amend subpart N of part 416 of 20 CFR chapter III as follows:

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for Subpart N of Part 416 continues to read as follows:

**Authority:** Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, 1383b.

2. Section 416.1401 is amended by adding the following new definition after the definition for *Determination:*

**§ 416.1401 Definitions**

* * * * *

*Mass change* means a State-initiated change in the level(s) of federally administered State supplementary payments applicable to all recipients of such payments, or to categories of such recipients, due, for example, to State legislative or executive action.

* * * * *

3. Section 416.1402 is amended by removing "and" at the end of paragraph (k), replacing the period at the end of paragraph (l) with a semicolon, inserting "and" after the semicolon; and by adding paragraph (m) to read as follows:

**§ 416.1402 Administrative actions that are initial determinations.**

* * * * *

(m) Our calculation of the amount of change in your federally administered State supplementary payment amount (i.e., a reduction, suspension, or termination) which results from a mass change, as defined in § 416.1401.

4. Section 416.1403 is amended by adding paragraphs (a)(12), (a)(13), and (b)(3) to read as follows:

**§ 416.1403 Administrative actions that are not initial determinations.**

(a) * * *

(12) The determination to reduce, suspend, or terminate your federally administered State supplementary payments due to a State-initiated mass change, as defined in § 416.1401, in the levels of such payments, except as provided in § 416.1402(m).

(13) Termination of Federal administration of State supplementary payments.

(b) * * *

(3) If there is a termination of Federal administration of State supplementary payments.

[FR Doc. 93–18385 Filed 8–9–93; 8:45 am]

BILLING CODE 4190–29–P

## DEPARTMENT OF THE TREASURY

**27 CFR Parts 4, 5, and 7**

**[Notice No. 776]**

## Nutrition Labeling for Wine, Distilled Spirits, and Malt Beverages (91F–072P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering amending the regulations to require nutrition labeling for wine, distilled spirits, and malt beverages. Based on a petition it has received, the Bureau wishes to gather information by inviting comments from the public and industry as to whether the regulations should be amended to provide for nutrition information on labels of alcoholic beverages.

**DATES:** Written comments must be received on or before November 8, 1993.

**ADDRESSES:** Send written comments to: Chief, Wine and Beer Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; ATTN: Notice No. 776.

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. § 205(e), vests broad authority in the Director of ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e), as they relate to wine, distilled spirits, and malt beverages, are set forth in Title 27, Code of Federal Regulations (CFR), parts 4, 5, and 7, respectively.

*Petition*

Recently, ATF received a petition requesting an amendment of the regulations to require nutrition labeling for alcoholic beverages. As stated in the petition:

> In recent years, * * * scientific advances have established the existence of a close relationship between diet and health. As this relationship has become clearer, concerns about nutrition and diet have increased. Today, consumer awareness of and interest in nutritional information has become a very important issue throughout the nation.

Citing, in part, the Nutrition Labeling and Education Act of 1990, which mandates nutrition labeling for most foods regulated by the Food and Drug Administration (FDA), the petitioner claims that consumers of alcoholic beverages need full nutritional information to make intelligent choices regarding the products they purchase. Consequently, the petitioner has requested that the regulations be amended to require nutritional information on labels of alcoholic beverages. According to the petitioner, such information would include the following: total calories; calories from alcohol; total fat; saturated fat; cholesterol; sodium; total carbohydrate; dietary fiber; sugars; protein; vitamin A; vitamin C; calcium; and iron.

*Discussion*

ATF is requesting information from consumers, consumer groups, interest groups, associations, and industry members on the desirability and feasibility of nutrition labeling for alcoholic beverages. Although ATF is soliciting comments on the following specific questions, the Bureau is also requesting any relevant information on the subject.

1. Should nutritional information be displayed on labels of alcoholic beverages? Why or why not?
2. If "yes," should it be voluntary or mandatory?
3. If mandatory, what specific nutrients should appear on the label?
4. If mandatory, should there be any exemptions from nutrition labeling, such as for small businesses or for small containers?
5. What would be the costs associated with mandatory nutrition labeling, to the industry and, ultimately, the consumer?

6. As a consumer, how much extra would you be willing to pay for nutrition labeling information?

7. Are there alternatives to mandatory nutrition labeling for alcoholic beverages? For example, what if there appeared on the label an address that consumers could write to for nutritional information about the product?

8. ATF solicits comments or studies regarding the effect of alcohol on both the ability of the human body to absorb nutrients and the stability of nutrients in the fermentation or aging process, i.e., whether the alcoholic beverage loses any of its nutritional value during the fermentation or aging process.

*Public Participation*

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

*Drafting Information*

The principal author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

*Disclosure*

Copies of the petition, this notice, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

**List of Subjects**

*27 CFR Part 4*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

*27 CFR Part 5*

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors and, Packaging and containers.

*27 CFR Part 7*

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling.

**Authority and Issuance**

This advance notice of proposed rulemaking is issued under the authority in 27 U.S.C. 205.

Signed: June 25, 1993.

**Daniel R. Black,**

*Acting Director.*

Approved: July 15, 1993.

**Ronald K. Noble,**

*Assistant Secretary (Enforcement).*

[FR Doc. 93–19106 Filed 8–9–93; 8:45 am]

BILLING CODE 4810–31–U

## DEPARTMENT OF DEFENSE

### Department of the Army

### 32 CFR Ch. V

### New Payment System Affecting Invoicing Procedures for all Freight and Personal Property Carriers

**AGENCY:** Defense Finance and Accounting Service, DOD.

**ACTION:** Advanced notice of proposed rulemaking.

**SUMMARY:** Defense Finance and Accounting Service, Indianapolis Center (DFAS–IN) is implementing a new payment system that will affect invoicing procedures for all freight and personal property carriers. Carriers may submit billings electronically or continue to submit paper invoices using the Public Voucher, Standard Form 1113 (SF 1113), along with the required supporting documentation. New billing procedures have been drafted to provide new guidance both for electronic and paper billing.

The New billing procedures include information regarding the EDI approval process, Trading Partner Agreements, submission of electronic invoice, testing, rejection, and resubmission of valid invoices, payment, and suspension of EDI operations. Also included is the information regarding waivers, payee codes, and other payment processes.

Carriers electing to conduct business electronically must use the Electronic Data Interchange (EDI) Standards X12, developed by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) and the Department of Defense (DOD) EDI Conventions. Department of Defense has obtained the services of a commercial EDI Value-Added Network (VAN) to send and receive EDI shipping and billing documents. Carriers must use a VAN to communicate with DFAS–IN.

Carriers that continue to submit paper billings must conform to new paper submission procedures within six months of the final rule. The two most significant changes are:

a. Identification of each service by code and amount with a subtotal for each Government Bill of Lading on the SF 1113.

b. Mandatory payee codes.

Carriers will have 30 days after publication of this notice to submit comments concerning the billing instructions dated April 23, 1993. (All previous versions should be discarded). The date of the final rule will be within 60 days following the last day of the comment period. Copies of the new billing procedures may be obtained from DFAS—Indianapolis Center. Carriers comments regarding the new procedures should be forwarded to the same address.

**DATES:** September 9, 1993.

**ADDRESSES:** Defense Finance and Accounting Service—Indianapolis Center, ATTN: DFAS–IN–TA (Mail Stop #5), 8899 East 56th Street, Indianapolis, IN 46249–0601.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy Jones, (317) 543–7814. Same address as above.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 93–18905 Filed 8–9–93; 8:45 am]

BILLING CODE 3710–08–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Ch. I

**[FRL–4690–4]**

### Wood Furniture Manufacturing Industry Negotiated Rulemaking Advisory Committee; Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Announcement of Meeting.

**SUMMARY:** The Wood Furniture Advisory Committee will meet in Raleigh, NC. to attempt to reach consensus that can be sued as the basis of a proposed rule. The meeting is open to the public with no need for advance registration.

**DATES:** The Committee will meet on August 25–27. On August 25 and 26, the meeting will start at 9 a.m. and end by 5 p.m. On August 27, the meeting will start at 8 a.m. and end by 3 p.m.

**ADDRESSES:** The meeting will be held at the Raleigh Marriott Crabtree Valley, 4500 Marriott Drive, Raleigh, NC, (919) 781–7000.

**FOR FURTHER INFORMATION CONTACT:** For additional information on substantive aspects of the rule, call EPA's Madeleine Strum at (919) 541–2383. For additional information on the meeting, call the Committee's independent co-facilitators, Susan Wildeau or John Lingelbach, at (303) 442–7367.

Dated: August 4, 1993

**Chris Kirtz,**

*Director, Consensus and Dispute Resolution Program.*

[FR Doc. 93–18968 Filed 8–9–93; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 300**

**[FRL–4690–7]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the LaBounty Site from the National Priorities List: request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA) Region VII announces its intent to delete the LaBounty site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. The reason this action is being taken is that Superfund Remedial Activities have been completed and no further action is appropriate.

**DATES:** Comments concerning this site may be submitted on or before September 9, 1993.

**ADDRESSES:** Comments may be mailed to: Paul W. Roemerman, Superfund Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101.

Comprehensive information on this site is available through the EPA Region VII public docket, which is located in the EPA's Region VII office and is available for viewing by appointment only from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed formally to the EPA Region VII docket office.

The address for the Regional docket office is: Barry Thierer, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551–7515.

Background information from the Regional public docket is also available for viewing at the LaBounty site information repository which is located with:

Charles City Public Library, 106 Milwaukee, Charles City, Iowa 50616.

Waterloo Public Library, 415 Commercial, Waterloo, Iowa 50701.

**FOR FURTHER INFORMATION CONTACT:** Paul W. Roemerman, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551–7694.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

### I. Introduction

The Environmental Protection Agency (EPA) Region VII announces its intent to delete the LaBounty site, Charles City, Floyd County, Iowa from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Fund (Fund). Pursuant to § 300.425 (e)(3) of the National Contingency Plan (NCP), any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after the publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that the EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that the agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup action by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and therefor, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that the remedy (or no remedy if appropriate) is protective of public health, welfare, and the environment. In addition, § 300.425 (e)(2) of the NCP requires State concurrence for deleting a site from the NPL.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.425 (e)(3) states: "All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the HRS".

### III. Deletion Procedures

EPA Region VII will accept and evaluate public comments before making the final decision to delete the site from the NPL. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the site:

1. EPA Region VII has recommended the deletion and prepared the relevant documents.

2. The State of Iowa has been consulted about the deletion decision.

3. Concurrent with this National Notice of Intent to Delete a local notice has been published in local and community newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties. This local notice announces a

thirty (30) day public comment period on the deletion package, which starts two weeks from the date of the notice, July 12, 1993, and which will conclude on August 11, 1993.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur after the Regional Administrator for Region VII places a final notice of deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region VII.

**IV. Basis for Intended Site Deletion**

The following summary provides the Agency's rationale for recommending deletion of the LaBounty site, Charles City, Floyd County, Iowa from the NPL.

The LaBounty site occupies 12 acres on the Cedar River floodplain at the southeastern edge of Charles City, Floyd County, Iowa. The city of Charles City has an estimated population of 8761.

From 1953 to 1977, Salsbury Laboratories (now Solvay Animal Health Products), a veterinary pharmaceuticals manufacturer, disposed of an estimated 6.4 million cubic feet of arsenical sludge and organic waste onsite by landfilling in an existing borrow pit. Leachate from LaBounty has been determined to be contaminated with 36 chemicals including arsenic, ortho-nitroaniline (ONA), and 1,1,2-trichloroethane (TCEA). Some leachate plumes also contain metals. Leachate-contaminated ground water discharges from shallow aquifers into the Cedar River. The deeper aquifer is presently not contaminated and is protected by an upward gradient and by an aquiclude.

The LaBounty site was added to the NPL in September, 1983 with an HRS score of 70.73.

The State of Iowa ordered LaBounty closed in 1977. In 1979, EPA and the then IDEQ proposed a 3-phased remedial program. Between 1977 and 1985 several investigations were conducted on LaBounty by the EPA and by others. Beginning in 1979, Phase I of the remedial action included installation of 24 ground water monitoring wells. In 1980, as part of Phase II, Salsbury constructed surface water diversion structures, an onsite cap, and rerouted a storm sewer.

The Agency for Toxic Substances and Disease Registry (ATSDR) completed a health assessment for the site in October, 1983. ATSDR reviewed the monitoring data and determined the concentrations of contaminants measured posed a health threat via the ingestion pathway. ATSDR recommended continued monitoring through remediation to provide protection of human health.

On July 3, 1985, EPA issued the CERCLA Section 106/RCRA Section 3013 Consent Order. This Order required Phase III remedial actions. These included installation of an upgradient ground water diversion wall and nine ground water monitoring wells.

Phase III remedial actions were completed in January 1986. EPA has compiled post-Phase III data evaluating the effectiveness of the cutoff wall. The wall has been proven to be effective and contaminant levels are continuing to drop.

A number of institutional controls have been implemented and are already in place at the LaBounty site. The Iowa Department of Environmental Quality has restricted withdrawals from the Cedar Valley aquifer near Charles City. The Lower Cedar Valley aquifer is protected by a confining shale layer and a positive head difference in excess of nine feet which prohibits movement from the upper aquifer. The Iowa Department of Environmental Quality has limited head reduction in the Lower Cedar Valley aquifer to no more than five feet. The site is also listed in the "State Abandoned or Uncontrolled Sites Registry" under classification "d" as properly closed and requiring continued maintenance. By law, sites on this registry may not be sold without written approval from the director of the Iowa Department of Natural Resources. Also, Salsbury Labs has obtained perpetual easements and restrictive covenants restricting activity at the site.

Salsbury will continue monitoring ground water wells and the Cedar River as required by the July 3, 1985, CERCLA 106/RCRA 3013 Order. The company is taking weekly measurements of flow quantities from the upgradient diversion wall sump and performing arsenic analysis.

EPA, in consultation with the State of Iowa, has determined that all fund-financed response under CERCLA at the LaBounty site has been completed, and that no further clean-up by the responsible parties is appropriate at this time.

**William W. Rice,**

*Acting Regional Administrator.*

[FR Doc. 93–19128 Filed 8–9–93; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 93–221; RM–8265]**

**Radio Broadcasting Services; East Wenatchee, Ephrata and Chelan, WA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Hartline Broadcasters proposing the allotment of Channel 229C2 at East Wenatchee, Washington, as its second local FM transmission service. To accommodate the allotment at East Wenatchee, we shall also propose the deletion of vacant Channel 230C2 at Ephrata, Washington, the substitution of Channel 238A for Channel 228A at Chelan, Washington, and the modification of Station KOZI–FM's license accordingly. See **SUPPLEMENTARY INFORMATION** *infra.*

**DATES:** Comments must be filed on or before September 24, 1993, and reply comments on or before October 12, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the following: John F. Garziglia, Esq., Pepper & Corazzini, 1776 K Street NW., suite 200, Washington, DC 20006 (Counsel for Petitioner); and Northcentral Broadcasting, P.O. Box 819, Chelan, Washington 98816 (Licensee of Station KOZI–FM).

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–221, adopted July 21, 1993, and released August 4, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–

3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Channel 229C2 can be allotted to East Wenatchee in compliance with the Commission's minimum distance separation requirements at petitioner's requested with a site restriction of 6.8 kilometers (4.2 miles) west, provided Channel 230C2 at Ephrata is deleted. The coordinates for Channel 229C2 at East Wenatchee are North Latitude 47–25–18 and West Longitude 120–22–53. Additionally, Channel 238A can be allotted to Chelan at Station KOZI–FM's licensed site. The coordinates for Channel 23A at Chelan are North Latitude 47–51–07 and West Longitude 119–52–18. Since East Wenatchee and Chelan are located within 320 kilometers (200 miles) of the U.S. Candian border, concurrence by the Canadian government has been requested.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–19052 Filed 8–9–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–219, RM–8290]**

## Radio Broadcasting Services; Staples, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by David J. DeLaHunt d/b/a Normin Broadcasting Company requesting the substitution of Channel 234C3 for Channel 234A at Staples, Minnesota, and modification of its construction permit for Station KSKK to specify operation on Channel 234A.

Canadian concurrence will be requested for this allotment at coordinates 46–23–29 and 94–57–21. We shall propose to modify the construction permit for Station KSKK in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before September 24, 1993, and reply comments on or before October 12, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David J. DeLaHunt, Normin Broadcasting Company, P.O. Box 49, Park Rapids, Minnesota 56470.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–219, adopted July 16, 1993, and and released August 4, 1993.

The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisinos of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–19054 Filed 8–9–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–220, RM–8293]**

## Radio Broadcasting Services; Houston, AK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed on behalf of Evangelistic Alaska Missionary Fellowship, Inc. requesting the allotment of FM Channel 221A to Houston, Alaska, as that community's second local FM service. Coordinates used for this proposal are 61–38–01 and 149–50–28.

**DATES:** Comments must be filed on or before September 24, 1993, and reply comments on or before October 12, 1993.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Edward W. Hummers, Jr. and Frank R. Jazzo, Esqs., Fletcher, Heald & Hildreth, 11th Floor, 1300 North 17th St., Rosslyn, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–220, adopted July 16, 1993, and released August 4, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

*parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and rules Division, Mass Media Bureau.*

[FR Doc. 93–19055 Filed 8–9–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–224, RM–8291]**

## Radio Broadcasting Services; Farmington, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by KREI, Inc. proposing the allotment of Channel 258C3 to Farmington, Missouri, as that community's second FM broadcast service. There is a site restriction 18.2 kilometers (11.3 Miles) southwest of the community. The coordinates for Channel 258C3 are 37–38–45 and 90–32–14.

**DATES:** Comments must be filed on or before September 24, 1993, and reply comments on or before October 12, 1993.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John E. Fiorini III, James K. Edmundson, Gardner, Carton & Douglas, 1301 K Street NW., suite 900, East Tower, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–224, adopted July 16, 1993, and released August 4, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Michael C. Ruger,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 93–19056 Filed 8–9–93; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 74**

**[MM Docket No. 93–106, DA 93–861]**

## Experimental, Auxiliary, and Special Broadcast and Other Program Distribution Services; Instructional Television Fixed Service, Purpose and Permissible Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking; extension of time.

**SUMMARY:** This Order extends the deadline for filing reply comments in response to the Notice of Proposed Rule Making in MM Docket No. 93–106 to August 19, 1993. The Wireless Cable Association International, Inc. (WCA) requested a 21-day extension of the reply comment period to provide additional time for its members and educational entities to attend WCA's annual convention on August 2, 1993 and to discuss a possible compromise. In view of these justifications, the Bureau finds good cause exists for an extension of time, until August 19, 1993, for the filing of reply comments.

**DATES:** Reply comments are due by August 19, 1993.

**ADDRESSES:** Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

**FOR FURTHER INFORMATION, CONTACT:** Anne Lucey, Mass Media Bureau, Video Services Division, Distribution Services Branch, (202) 632–6357.

**SUPPLEMENTARY INFORMATION:**

**Order**

In the matter of Amendment of Part 74 of the Commission's Rules Governing Use of the Frequencies in the Instructional Television Fixed Service.

Adopted: July 28, 1993.
Released: July 28, 1993.

Reply Comment Date: August 19, 1993.
By the Chief, Mass Media Bureau

1. This action extends the deadline for filing reply comments in response to the Notice of Proposed Rulo Making in MM Docket No. 93–106, in which the Commission sought comment on the proposed use of "channel loading," whereby Instructional Television Fixed Service (ITFS) licensees authorized to operate multiple channels may shift the per-channel minimum ITFS program requirements onto fewer than four channels. The deadline for acceptance of reply comments was July 29, 1993.

2. The Wireless Cable Association International, Inc. (WCA) requests a 21-day extension of the reply comment period, until August 19, 1993, to provide additional time for WCA and educational entities to attend WCA's annual convention in Orlando, Florida on August 2, 1993. Several entities which filed initial comments in this proceeding, according to WCA, have agreed to participate in the conference to discuss a possible compromise regarding the proposal.

3. In view of the foregoing, the Bureau finds that good cause exists for an extension. Pursuant to § 0.283 of the Commission's Rules, 47 CFR 0.283, the deadline for filing reply comments in this proceeding is extended to August 19, 1993.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Mass Media Bureau.*

[FR Doc. 93–19051 Filed 8–9–93; 8:45 am]

BILLING CODE 6712–01–M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**50 CFR Part 650**

## Atlantic Sea Scallop Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan and request for comments.

**SUMMARY:** NMFS issues this notice that the New England Fishery Management Council has submitted Amendment 4 to the Fishery Management Plan (FMP) for Atlantic Sea Scallops for Secretarial review and is requesting comments from the public.

**DATES:** Comments will be accepted through October 4, 1993.

**ADDRESSES:** Send Comments to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 10930. Clearly mark the outside of the envelope "Comments on Scallop FMP." Copies of the Amendment, Supplemental Environmental Impact Statement, and Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

**SUPPLEMENTARY INFORMATION:** This amendment was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Amendment 4 proposes: (1) A moratorium on new entrants into the scallop fishery; (2) allocations of days-at-sea (DAS) that vessels may fish for scallops based on three vessel groups (Full-time and Part-time, and Occasional); (3) a requirement to purchase and install Vessel Tracking Systems (VTS) for Full-time and Part-time vessels and a call-in system for Occasional vessels to monitor DAS; (4) new permit requirements for vessel operators and dealers; (6) an open access scallop permit for vessels landing up to 400 pounds of shucked scallops per trip; (7) limitations on upgrading of vessel size and engine horsepower; (8) a prohibition on having more than a 5 percent ownership interest in scallop vessels; (9) mandatory reporting for permitted vessels and dealers; (10) crew-size limits; (11) maximum dredge and trawl sweep size restrictions; (12) minimum ring mesh size restrictions; (13) framework measures to adjust the effort control and other measures in the proposed amendment and provisions in the plan; and (14) an annual option for vessels in the Part-time or Occasional category to fish in the next higher vessel group (i.e. Occasional to Part-time or Part-time to Full-time) with additional gear and crew restrictions. This amendment also includes a definition of overfishing for sea scallops and a determination, based on this definition, that the sea scallop resource is overfished. The intent of this amendment is to reduce the fishing mortality rate and rebuild the stock of Atlantic sea scallops.

The receipt date for this amendment is August 4, 1993. Proposed regulations to implement this amendment are scheduled to be published within 15 days of the receipt date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 5, 1993.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 93–19165 Filed 8–5–93; 2:33 pm]

BILLING CODE 3510-22-M

VOL 58 ISS 152 AG 10 1993 UMI



# Notices

Federal Register
Vol. 58, No. 152
Tuesday, August 10, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Establishment of Ozark Purchase Unit

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of establishment of Ozark Purchase Unit.

**SUMMARY:** On July 8, 1993, the Secretary of Agriculture created the Ozark Purchase Unit. This purchase unit comprises 7,115 acres, more or less, within Pope County, Arkansas. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

**EFFECTIVE DATE:** The effective date of this purchase unit was July 8, 1993.

**ADDRESSES:** A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW, Washington, DC 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

Dated: July 30, 1993.

**Charles R. Hartgraves,**

*Acting Chief.*

**Establishment of Ozark Purchase Unit, Pope County, AR**

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 stat. 2949), the Ozark Purchase Unit is being established and is described as follows:

**Pope County, Arkansas, 5th Principal Meridian**

T10N, R19W
Section 31: NW¼, W½NE¼, N½SW¼, Part of S½SW¼SW¼ lying north of Broomfield Road
T10N, R20W
Section 15: All
Section 16: All
Section 17: E½, E½SW¼, SW¼SW¼
Section 19: E½E½
Section 20: All
Section 21: All
Section 22: All
Section 23: All
Section 26: All
Section 27: N½, NE¼SE¼, Part of NW¼SE¼ lying north of Broomfield Road, Part of NE¼SW¼ lying north of Broomfield Road
Section 28: N½, N½N½SE¼
Section 29: N½, NW¼SW¼, W½NE¼SW¼, W½SW¼SW¼
Section 30: E½E½
Section 36: NE¼, E½NW¼, N½NW¼,NE¼SE¼, N½SE¼SE¼.

The area described contains 7,115 acres, more or less, and is adjacent to the Ozark National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: July 8, 1993.

**Mike Espy,**

*Secretary of Agriculture.*

[FR Doc. 93–19077 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–11–M

### Establishment of Bogachiel Purchase Unit

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of establishment of Bogachiel Purchase Unit.

**SUMMARY:** On July 8, 1993, the Secretary of Agriculture created the Bogachiel Purchase Unit. This purchase unit comprises 1,080 acres, more or less, within Jefferson County, Washington. A copy of the Secretary's establishment document which includes the legal description of the lands within the purchase unit appears at the end of this notice.

**EFFECTIVE DATE:** The effective date of this purchase unit was July 8, 1993.

**ADDRESSES:** A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Chief of the Forest Service, Auditor's Building, 201 14th Street, SW., Washington, DC 20090–6090.

**FOR FURTHER INFORMATION CONTACT:** Ralph Bauman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1248.

Dated: July 30, 1993.

**Charles R. Hartgraves,**

*Acting Chief.*

**Establishment of Bogachiel Purchase Unit, Jefferson County, WA**

Pursuant to the Secretary of Agriculture's authority under section 17, Public Law 94–588 (90 Stat. 2949), the Bogachiel Purchase Unit is being created in Jefferson County, Washington. The lands within the purchase unit are described as follows:

**Jefferson County, WA, Williamette Meridian**

T. 27 N., R. 12 W.
Section 4: N½;
Section 5: N½;
Section 6: N½, NW¼SE¼, and N½SW¼.

The area described contains 1,080 acres, more or less, and is adjacent to the Olympic National Forest.

These lands are well suited for watershed protection and meet the requirements of the Act of March 1, 1911, as amended.

Dated: July 8, 1993.

**Mike Espy,**

*Secretary of Agriculture.*

[FR Doc. 93–19078 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–11–M

### Open Pit Gold Mine Expansion Proposal, Sawtooth National Forest, Cassia County, Idaho; Intent To Prepare an Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Forest Service, acting as lead agency, will prepare a Draft Environmental Impact Statement on a proposal by Black Pine Mining, Inc., to expand their current open pit gold mining operations. The proposed action is to mine gold ore from newly discovered deposits in the area. The proposed action involves development of three open pits, one associated waste rock dump, three waste backfills to existing permitted pits, three haul road segments, and an increase in the height of the currently permitted leach pad entirely on National Forest System Lands. The gold ore would be processed within the footprint of the currently permitted leach pad and processing plant facilities.

**DATES:** Comments concerning the scope of the analysis, issues, and alternatives should be received by September 9, 1993.

**ADDRESSES:** Send written comments to Donald E. Peterson, Burley District Ranger, 3650 S. Overland Avenue, Burley, Idaho 83318.

**FOR FURTHER INFORMATION CONTACT:** Larry Randall, District Minerals Administrator, Burley Ranger District, Sawtooth National Forest, 3650 S. Overland Avenue, Burley, Idaho 83318. Phone: (208) 678–6430.

**SUPPLEMENTARY INFORMATION:**

**Background**

Black Pine Mining, Inc. (a subsidiary of Pegasus Gold Corporation) purchased the rights to develop a cyanide heap leach/open pit gold operation from Noranda, Inc., in June 1990. The project is located on the Black Pine Division of the Burley Ranger District, Sawtooth National Forest, and the Deep Creek Resource Area, Burley District, Bureau of Land Management.

Noranda submitted plans for the development of the mine in 1987. Environmental analysis was conducted on the proposal and the findings documented in an Environmental Assessment (EA) dated August 1988. The decision to allow mining was documented in a Decision Notice and Finding of No Significant Impact (FONSI) dated August 4, 1988.

Naranda's Operating Plan, Revision 2, was prepared and approved on August 7, 1989. The approved operating plan involved the development of three open pits, two large cyanide heap leach pads, up to eight cyanide pounds, and ore haul road system, ore recovery facilities, and ancillary mining facilities with the capacity to process approximately 11 million tons of gold ore.

Black Pine Mining, Inc. (BPMI) adopted Noranda's approved plan when they acquired the rights to mine from Noranda in June 1990. BPMI then re-evaluated the approved plan and submitted a revised development plan—The Black Pine Plan of Operations, Revision 3. It was evaluated in an EA dated March 1991. The decision to allow changes identified in the revised operating plan was documented in a FONSI dated March 4, 1991.

Revision 3 involves constructing a single 100-acre valley fill (composite) heap leach facility in place of the previously approved two leach pads. Seven of the eight surface ponds were eliminated. Instead of the 11 million tons of ore previously approved, up to 22 million tons could be processed.

**Proposed Action**

The Forest Service proposes to approve a new operating plan to allow BPMI to mine gold ore in three newly discovered deposits in open pit fashion. Specific components of the proposal are "E" Pit, "E" Pit Haul Road, "E" Pit Waste backfill of the approved "B" Pit, "C/D" Pit, "C/D" Haul Road, "C/D" Waste backfill of the approved Tallman Pit, "C/D" Waste Dump, "J" Pit, "J" Pit Haul Road, "J" Pit Waste backfill of the approved "A" Pit, and the increase in height on the presently approved leach pad. The company proposes to utilize existing facilities to process the leach solutions.

*"E" Pit*—The recently developed "E" Pit has approximately one million tons of ore and .7 million tons of waste material. The location of the pit is on the western slope of Black Pine Cone with an alignment that is northwest to southeast. The pit area will affect 42.6 acres.

*"E" Pit Haul Road*—The proposed route to "E" Pit is on the east side of Black Pine Mountain, crossing just above the approved "B" Pit. This route uses as much of the present road system as possible without limiting the flexibility of mining operations. The proposed route also allows for backfilling of the approved "B" Pit.

The proposed route is 6,490 feet in length. The balance between cut and fill material for the road will be generated from pit waste material. This route affects approximately 22.5 acres.

*"E" Pit Waste*—Waste material from "E" Pit will be used as backfill in the approved "B" Pit. This component will not disturb any new acreage.

*"C/D" Pit*—The proposed "C/D" Pit has approximately 8 million tons of ore and 12 million tons of waste material. The location of the pit is southwest of the present Tallman Pit, with elevations similar to Tallman Pit, with a general alignment of northwest to southeast. The pit will affect approximately 115.2 acres.

*"C/D" Haul Road*—The proposed route utilizes approximately 1,500 feet of the existing approved Tallman Waste dump, and is constructed internal to the pit. The road will not affect any area outside of the approved Tallman Waste dump and the proposed "C/D" Pit and "C/D" Waste dump.

*"C/D" Waste Dumps*—Two waste dump areas are proposed for waste material from the "C/D" Pit. The upper site utilizes the existing Tallman Pit to continue the backfilling started with "B" Pit material. The upper dump will provide dump capacity for 3.5 million tons of material and will not affect any additional area. Access to this upper dump location will affect 5.3 acres. The lower dump site allows for capacity for the remainder of the material not used as backfill of Tallman Pit, but as with the present mine plans every effort will be made to backfill portions of "C/D" Pit as is practical and scheduling allows. The lower dump will be reshaped to 3H:1V slopes and will affect 28.5 acres.

*"J" Pit*—The "J" Pit contains approximately .8 million tons of ore and 1.6 million tons of waste material. The pit is located to the north of the approved "A" Pit, on the north slope of Mineral Gulch drainage. The proposed pit will affect approximately 18.8 acres.

*"J" Pit Haul Road*—The road to "J" Pit will take advantage of the existing, approved roads and waste dumps in "A" Pit. As with other approved and proposed roads, this road will be constructed to minimize disturbance and at the maximum safe grade (10%). The proposed road will affect 40.7 acres.

*"J" Pit Waste*—The waste material from "J" Pit will be used to backfill the lower part of the eastern portion of the approved "A" Pit. This proposed component will not affect any new area.

*Leach Pad*—The proposed increase in height of the approved leach pad will accommodate all of the additional reserves from the proposed pits. It is proposed to increase the approved pad height by 50 feet. No additional area will be affected. The contours of the reclaimed heap will approximate the approved Operating Plan. Geotechnically the proposed height does not present any problems. Test work done for the permitted heap, evaluated a total leaded depth of 200 feet.

Idaho Department of Health and Welfare, Division of Environmental Quality and Division of Water Resources, Department of Lands, and Department of Fish and Game will be cooperating agencies.

**Decision To Be Made**

Based on the analysis in the Environmental Impact Statement (EIS), a determination of how to best operate the Black Pine Mine will be made. The analysis in the EIS will not make a determination as to whether BPMI should be allowed to mine. This decision has already been made in the Forest Plan and through the approval of BPMI's existing operating plan. The decision to be made is whether to implement the proposed expansion plan or continue with the currently approved plan.

In making this decision, the following determinations must be made:

1. Determine if the proposed changes are in conformance with existing Forest Service policies, regulations, and approved land management direction including the requirements of the Federal Land Policy and Management Act (FLPMA).

2. Determine if any additional mitigation, management, or monitoring requirements are needed if the proposed changes are implemented.

**Issues Identified to Date**

A number of issues have been identified to date for the proposed expansion of the mine. The issues shown here were derived from an interdisciplinary team of resource specialists who have reviewed the proposal and monitored the current mining operations. The main issues are summarized below:

1. Visual Quality: The proposed pits, dumps, and haul roads impact the visual quality of the Black Pine Mountains. The existing mine site is visible from Interstate 84. The proposed expansion will be visible from Interstate 84 and/or Highway 30.

2. Public/Operator Safety: The construction of haul roads, pit excavation methods, waste dump construction, and temporary area closure boundaries affect public and operator safety.

3. Soil/Watershed: Disturbances associated with the construction of the pits, dumps, and haul roads include the potential to increase surface erosion and affect watershed quality.

4. Reclamation Potential: The surface conditions (side slope steepness, sparse vegetation, various soil conditions, dry climate, etc.) and type of disturbance (pit, dump, or road) affects the standard of reclamation that can be expected to be successful.

5. Mine Economics: The location of the project components, the timing of approval and the reclamation standards imposed affect the economics of the mine. The mining operations affect the economies of the local communities (Malta, Burley, and Snowville).

6. Waste Rock Stability: The location, construction, and composition of the waste rock affect the stability of the waste dump over time.

7. Wildlife: The proposed pits, dumps, and haul roads impact wildlife habitat.

**Possible Alternatives**

The Draft Environmental Impact Statement will analyze alternatives for roads and dumps. The location of the deposits are fixed. Following are the alternatives to be analyzed as of this date. These alternatives are not fully developed at his time, but will be when the Draft EIS is completed. Any components of the expansion or their alternatives could require an amendment to the Forest Plan.

*No Action Alternative:* Under the no action alternative, mining would continue as approved in BPMI's Plan of Operations, Revision 3. The proposed pits, waste dumps, haul roads, and the increased height of the leach pad would not be allowed.

*Haul Road Alternative #1:* "E" Pit—BPMI's proposed haul route. Starts on the east edge of "A" Pit and traverses southwest along the south edge of "A" Pit, the north edge of "B" Pit and the eastern slope of Black Pine Cone Mountain to "E" Pit. Length is approximately 6,490 feet. Disturbance is 22.5 acres.

*Haul Road Alternative #2:* "E" Pit—Starts from the west edge of "A" Pit heading south through a series of switch backs and traverses the east slope of Black Pine Cone Mountain to "E" Pit. Length is 6,900 feet. Disturbance is 28.8 acres.

*Haul Road Alternative #3:* "C/D" Pit—The proposed route starts on the existing Tallman waste dump heading south to the edge of "C/D" Pit. The remainder of the road is constructed internal to the pit, and will be mined out as the pit progresses. Due to the narrow nature of the deposit and the steepness of the terrain, only one practical route is available. No new disturbance would occur.

*Haul Road Alternative #4:* "J" Pit—The proposed route utilizes the existing roads and waste dumps in "A" Pit. The route starts on the "A" Pit Waste Dump and heads east to the edge of "J" Pit for 1,700 feet. Due to the small size of the deposit and the steep terrain, only one practical route is available. Disturbance is approximately 40.7 acres.

*Wast Dump Alternative #1:* "E" Pit—This is the proposed waste dump for "E" Pit. Waste will be backfilled in the existing, mined out "B" Pit at an "angle of repose." No new disturbance would occur.

*Waste Dump Alternative #2:* "E" Pit—An angle of repose backfill of the mined-out "A" Pit west. No new disturbance would occur. This alternative would require the construction of the Haul Road Alternative ι2.

*Waste Dump Alternative #3:* This is the proposed waste dump for "C/D" Pit. A portion of the waste would be used to backfill the existing Tallman Pit, requiring about 5.3 acres of haul road disturbance. The backfill will not disturb any new areas. The remainder of the waste will be hauled to a location immediately east of "C/D" Pit and would be shaped to 3H:1V. Disturbance will be approximately 28.5 acres.

*Waste Dump Alternative #4:* "C/D" Pit—As is Waste Dump Alternative ι3, a portion will be used to backfill Tallman Pit. The remainder would be hauled to the existing Tallman Waste Dump. Disturbance will be about 28.5 acres.

*Waste Dump Alternative #5:* The proposed waste dump for "J" Pit to backfill the mined out lower portion of "A" Pit at an angle of repose. No new disturbance would occur.

*Leach Pad Alternative #1:* The proposed action is to increase the height of the current permitted leach pad by an additional 50 feet. The current permitted loading depth is a nominal 100 feet. The contours of the reclaimed heap will approximate those in the approved Operating Plan. The permitted heap was evaluated for a total loading depth of 200 feet and found no geotechnical problems. No new disturbance would occur.

**Permits, Licenses Required**

There are a number of state permits that have been secured by BPMI for their current operations. The following permits may need to be modified if the expansion project is implemented:

*Reclamation Plan:* Idaho Department of Lands; Amend Plan #RP–1086.

*Permit to Construct an Air Pollution Emitting Source:* Idaho Department of Health and Welfare, Division of Environmental Quality; Amend Permit #0440–0018.

*Ore Processing by Cyanidation:* Idaho Department of Health and Welfare, Division of Environmental Quality; Amend Permit CN–000020–3.
Resources; Amend Permit D17–7132.

*Plan of Operations:* USDA Forest Service, USDI Bureau of Land Management; Supplement to Operating Plan #01–91–02 (Black Pine Mine, Plan of Operations, Revision 3) as amended.

**Scoping Process**

A scoping statement is being developed which will be sent to all interested publics. Those on the scoping mailing list from the EA and supplemental EA for mining will be notified. All publics who indicated they wished to be notified of any proposal on the Sawtooth National Forest (1992 Sawtooth National Forest Shareholder's list) will receive a scoping statement and invitation to comment. There are over two hundred individuals, organizations, and agencies on these lists.

Several local newspapers will be notified. A press release will describe

the proposal and invite the public to comment. The release will include notification of a public scoping meeting that will be held in Burley, Idaho, on August 24, 1993. This scoping process will allow 30 days after publication of this notice for submitting additional comments concerning the scope of the analysis, issues, and alternatives.

The Forest Service will be actively seeking public input after the draft has been published. It is anticipated the Draft Environmental Impact Statement will be completed by September 24, 1993, and the final by December 22, 1993. There will be a formal comment period on the draft and an open house will be held to discuss the draft if needed.

The comment period on the draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 552 (1978). Also, environmental objections that could be raised at the draft environmental impact stage but that are not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at CFR 1503.3 in addressing these points.

Jack E. Bills, Forest Supervisor, Sawtooth National Forest is the responsible official.

Dated: August 4, 1993.

**Jack E. Bills,**

*Forest Supervisor.*

[FR Doc. 93–19147 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–11–M

## Cooperative State Research Service

### Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

*Name:* Committee of Nine.

*Date:* September 8, 1993, 8 a.m.–5 p.m., September 9, 1993, 8 a.m.–Noon

*Place:* Room 338C, 901 D. Street SW. USDA CSRS, Washington, DC.

*Type of Meeting:* Open to the public. Persons may participate in the meeting as time and space permit.

*Comments:* The public may file written comments before or after the meeting with the contact person listed below.

*Purpose:* To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agricultural Experiment Stations.

*Contact Person for Agenda and More Information:* Dr. Walter R. Woods, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Room 346, Aerospace Building, Washington, D.C. 20250, Telephone: 202–401–6040.

Done at Washington, D.C. this 30th day of July, 1993.

**John Patrick Jordan,**

*Administrator, Cooperative State Research Service.*

[FR Doc. 93–19146 Filed 8–9–93; 8:45 am]

BILLING CODE 3410–22–M

## Packers and Stockyards Administration

### Posting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

| Facility No., name, and location of stockyard | Date of posting |
|---|---|
| CO–100 Alamosa Auction, Alamosa, Colorado | March 7, 1957. |
| IL–159 Mercer County Livestock Auction, Viola, Illinois | November 30, 1959. |
| OK–103 Dorsey Horse Auction, Anadarko, Oklahoma | September 7, 1961. |
| OK–130 Tillman County Stockyards, Inc., Frederick, Oklahoma | January 19, 1962. |
| OK–136 Hobart Stockyard, Inc., Hobart, Oklahoma | February 5, 1958. |
| OK–142 Lawton Stockyards, Lawton, Oklahoma | December 20, 1949. |
| OK–157 Pauls Valley Livestock Auction, Pauls Valley, Oklahoma | April 6, 1956. |
| OK–162 Spitler Auction, Inc., Prague, Oklahoma | March 27, 1969. |
| OK–169 Snyder Livestock Co., Inc., Snyder, Oklahoma | February 12, 1959. |
| OK–172 Loopers Auction, Stillwater, Oklahoma | October 1, 1959. |
| OK–175 Tahlequah Sale Barn, Inc., Tahlequah, Oklahoma | May 16, 1959. |
| OK–194 Tonkawa Livestock Exchange, Tonkawa, Oklahoma | May 1, 1975. |
| OK–182 Watonga Livestock Commission, Inc., Watonga, Oklahoma | August 26, 1965. |
| TX–104 Amarillo Horse Auction, Amarillo, Texas | August 11, 1968. |
| TX–110 Runnels County Auction Co., Ballinger, Texas | March 6, 1959. |
| TX–120 Cattleman's Commission Company, Brady, Texas | June 17, 1970. |
| TX–325 OK Auction Co., Breckenridge, Texas | August 7, 1962. |
| TX–121 Breckenridge Stockyards, Breckenridge, Texas | August 16, 1963. |

| Facility No., name, and location of stockyard | Date of posting |
|---|---|
| TX-125 Central Texas Livestock Auction, Brownwood, Texas | February 28, 1957. |
| TX-139 Clarksville Livestock Exchange, Clarksville, Texas | April 7, 1960. |
| TX-151 Crockett Auction Company, Crockett, Texas | January 16, 1957. |
| TX-166 Evant Commission Company, Evant, Texas | February 27, 1957. |
| TX-179 Grapevine Livestock Barn, Grapevine, Texas | April 17, 1967. |
| TX-186 Rusk County Auction, Inc., Henderson, Texas | March 9, 1959. |
| TX-328 Hereford Cattle Commission Co., Inc., Hereford, Texas | July 25, 1963. |
| TX-217 Mansfield Livestock Commission Co., Inc., Mansfield, Texas | March 6, 1959. |
| TX-218 Falls County Livestock Auction, Marlin, Texas | February 26, 1957. |
| TX-221 McKinney Stable and Horse Auction, McKinney, Texas | January 19, 1959. |
| TX-224 B & B Livestock Market, Mercedes, Texas | October 30, 1964. |
| TX-226 Wood County Livestock Commission Co., Mineola, Texas | December 18, 1959. |
| TX-289 Anderson County Livestock Auction, Palestine, Texas | March 22, 1972. |
| TX-243 Pearsall Livestock Market, Inc., Pearsall, Texas | June 12, 1957. |
| TX-317 Pearsall Livestock Market, Pearsall, Texas | August 13, 1979. |
| TX-324 Community Livestock Sales, Inc., Rio Grande City, Texas | December 15, 1982. |
| TX-258 Seymour Stockyards, Seymour, Texas | November 14, 1956. |
| TX-261 Erath County Stockyards, Stephenville, Texas | March 18, 1957. |
| TX-299 Davis Livestock Commission, Inc., Tyler, Texas | September 9, 1972. |
| TX-319 Ranchers and Farmers Livestock, Inc., Uvalde, Texas | September 8, 1981. |
| TX-320 Van Alstyne Livestock Commission Co., Van Alstyne, Texas | August 13, 1982. |
| TX-279 Waxahachie Live Stock Commission, Inc., Waxahachie, Texas | September 1, 1970. |
| TX-285 Wills Point Livestock Commission, Inc., Wills Point, Texas | April 3, 1957. |
| WY-106 Powell Livestock Exchange, Powell, Wyoming | June 29, 1950. |

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the Federal Register without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the Federal Register.

Done at Washington, DC this 3rd day of August, 1993.

**Harold W. Davis,**

*Director, Livestock Marketing Division.*

[FR Doc. 93-19144 Filed 8-9-93; 8:45 am]

BILLING CODE 3410-KD-P

## Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below are stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards are subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.).

| Facility No., name, and location of stockyard | Date of posting |
|---|---|
| AR-169 London Auction Barn, London, Arkansas | July 5, 1993. |
| MN-189 All Phase Arena, Inc., Spring Grove, Minnesota | June 7, 1993. |
| MO-275 MO-KAN Livestock Market, Passaic, Missouri | July 1, 1993. |

Done at Washington, DC this 3rd day of August, 1993.

**Harold W. Davis,**

*Director, Livestock Marketing Division Packers and Stockyards Administration.*

[FR Doc. 93-19145 Filed 8-9-93; 8:45 am]

BILLING CODE 3410-KD-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### U.S. Automotive Parts Advisory Committee; Notice of Re-Establishment

The delegate of the Secretary of Commerce re-established the U.S. Automotive Parts Advisory Committee (APAC). The re-established of the committee is in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, and 41 CFR 101-5.10 (1990), Federal Advisory Committee Management Rule.

The APAC was established by the Secretary of Commerce on June 6, 1989, to advise Department of Commerce officials on issues related to sales of U.S.-made auto parts to Japanese markets.

The Committee functions as an advisory body in accordance with the Federal Advisory Committee Act. Additional information may be obtained from Stuart Keitz, U.S. Department of Commerce, International Trade Administration, (202) 482-0719.

Dated: July 26, 1993.

**Henry P. Misisco,**

*Acting Deputy Assistant Secretary for Basic Industries.*

[FR Doc. 93-19098 Filed 8-9-93; 8:45 am]

BILLING CODE 3510-DR-P

### Export Trade Certificate of Review

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Jude Kearney, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the

Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 93–00002." A summary of the application follows.

**Summary of the Application**

*Applicant:* Northwest Blueberries USA, Inc., Post Office Box 9187, Brooks, Oregon 97305. Contact: Milt Lankton, Attorney, Telephone: (503) 241–2300

*Application No.:* 93–00002

*Date Deemed Submitted:* August 3, 1993

*Members (in addition to applicant):* Oregon Onions, Inc., Brooks, OR; Pacific Harvest, Inc., Aurora, OR; Hurst Berry Farm, Inc., Sheridan, OR; and Gingerich Farms, Canby, OR.

Northwest Blueberries USA, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

**Export Trade**

*Products*

Fresh cultivated blueberries.

*Export Trade Facilitation Services (as They Relate to the Export of Products)*

Consulting, international market research, advertising, marketing, insurance, product research and design, legal assistance, transportation (including trade documentation and freight forwarding), communication and processing of foreign orders, warehousing, foreign exchange, financing and taking title to goods.

*Export Markets*

The Export Markets include all parties of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

*Export Trade Activities and Methods of Operation*

Northwest Blueberries, USA, Inc. and/or its Members may:

1. Determine with respect to specific sales transactions the quantity of Products to be sold or available for sale by each member in the export markets.
2. Set guidelines to govern all terms of sales (freight, insurance, financing and payment), sales negotiations and sales of the member's Products in the export markets.
3. Collect information from world markets to assist its members to determine market price of Products on the prevailing conditions in the export markets.
4. Establish sales strategies in the export markets.
5. Process export orders on behalf of its members.
6. Provide information to its members regarding:

a. Contract and spot pricing in the export markets, including prices and availability of Products or substitute products from competitors in the export markets.

b. Customary terms of sale in the export markets and specifications from customers.

c. Past export prices for the member's Products.

d. Efforts and activities undertaken by Northwest Blueberries USA, Inc. on behalf of its members in connection with the export of the member's Products to the export markets.

7. N.W. Blueberries USA, Inc. will serve as the member's exclusive sales representative in the export markets, dealing exclusively in Products produced by its members.
8. N.W. Blueberries USA, Inc. may provide export trade facilitation services to assist the export of the member's Products.
9. N.W. Blueberries USA, Inc. and its members may exchange information regarding:

a. Market research, advertising and promotion in the export markets;

b. Expenses necessary for sale in the export markets, including handling and transportation;

c. Legislation and regulations affecting sales to the export markets, including applicable licensing and other trade documentation requirements;

d. Common marking and identification;

e. Financing, legal assistance, foreign exchange and taking title to the member's Products.

Dated: August 4, 1993.

**Jude Kearney,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 93–19167 Filed 8–9–93; 8:45 am]

BILLING CODE 3510–DR–M

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## U.S. Automotive Parts Advisory Committee; Closed Meeting

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Closed meeting of U.S. Automotive Parts Advisory Committee.

**SUMMARY:** The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

**DATE AND LOCATION:** The meeting will be held on Thursday, September, 9, 1993 from 10 a.m. to 5 p.m. at the Department of Commerce in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stuart Keitz, Office of Automotive Affairs, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 482–0719.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration,

with the concurrence of the General Counsel formally determined on July 21, 1993, pursuant to section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: July 26, 1993.

Henry P. Misisco,

*Director, Office of Automotive Affairs.*

[FR Doc. 93-19097 Filed 8-9-93; 8:45 am]

BILLING CODE 3510-DR-P

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before September 9, 1993.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:** Cary Green (202) 401-3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: August 4, 1993.

Cary Green,

*Director, Information Resources Management Service.*

### Office of Postsecondary Education

*Type of Review:* Reinstatement.
*Title:* Foreign Language and Area Studies Fellowships Program—Institutional List of Awardees and Student Performance Report.
*Frequency:* Semi-annually.
*Affected Public:* Individuals or households; non-profit institutions.
*Reporting Burden:*
Responses: 1,708.
Burden Hours: 1,194.
*Recordkeeping Burden:*
Recordkeepers: 0.
Burden Hours: 0.

*Abstract:* This collection will be used to analyze and evaluate the need for specified fields of instruction. It will also be used to identify areas of professional study in determining responses to the Secretary's announced program priorities, and to prevent fraud, waste and abuse by ensuring that student awardees are meeting program requirements. The Department will use the information for program management, monitoring, planning, evaluation, and fiscal accountability.

[FR Doc. 93-19074 Filed 8-9-93; 8:45 am]

BILLING CODE 4000-01-M

**CFDA Nos.: 84.019, 84.022**

### Fulbright-Hays Training Grant Programs: Faculty Research Abroad and Doctoral Dissertation Research Abroad; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

*Purpose of Programs:* Applications are invited for new awards under the Fulbright-Hays Training Grant Programs for Fiscal Year 1994. The Fulbright Hays Training Grant Programs include the Faculty Research Abroad Fellowship Program and the Doctoral Dissertation Research Fellowship Abroad Program. Authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2452(b)(6)).

The Faculty Research Abroad Fellowship Program offers opportunities to faculty members of higher education for research and study abroad in modern foreign languages and area studies.

The Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

*Eligible Applicants:* For Faculty Research Abroad Fellowship and Doctoral Dissertation Research Abroad Fellowship Programs, eligible applicants are institutions of higher education.

*Deadline for Transmittal of Applications:* November 1, 1993.

*Applications Available:* August 27, 1993.

FULBRIGHT-HAYS TRAINING GRANT PROGRAMS

| Title and CFDA number | Available funds | Estimated range of awards | Estimated average size of awards | Estimated number of awards | Project period in months |
|---|---|---|---|---|---|
| Faculty Research Abroad (84.019) | $872,500 Rs.1,200,000* | $6,000 to $60,000 | $37,935 | 23 | 3 to 12 |
| Doctoral Dissertation Research Abroad (84.022) | $1,767,000 Rs.2,490,000* | $6,000 to $60,000 | $30,466 | 58 | 6 to 12 |

*Rupee allocation from the U.S.—India Fund.

**Note:** The Department is not bound by any estimates in this notice.

*Applicable Regulations*

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 81, 82, 85 and 86; and

(b) The regulations for these programs in 34 CFR parts 662 and 663.

*Priorities:* Under 34 CFR 75.105(c)(3) and 34 CFR 663.32(c) (Faculty Research Abroad Fellowship Program) and 34 CFR 662.32(c) (Doctoral Dissertation Research Abroad Fellowship Program), the Secretary gives an absolute preference to applications that meet the following priority: Research projects that focus on Africa, East Asia, Southeast Asia and the Pacific, South Asia, the Near East, East Central Europe (i.e., Poland, the Czech Republic, the Slovak Republic, Hungary, Bulgaria, Albania, Romania and the new republics that were formerly part of Yugoslavia), the Baltic States and the other new republics of the former Union of Soviet Socialist Republics, and the Western Hemisphere. Applications that propose projects focused on Western Europe will not be funded. The Secretary funds only applications that meet this absolute priority.

*For Applications or Information Contact:* Ms. Karla Ver Bryck Block, Telephone (202) 708–7283, Department of Education, Center for International Education, 400 Maryland Avenue S.W., Washington, D.C. 20202–5331. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**Program Authority:** 22 U.S.C. 2452(b)(6).

Dated: August 4, 1993.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 93–19076 Filed 8–9–93; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Chicago Operations Office; Financial Assistance Award, Unsolicited Proposal; Energy Materials Research

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent to make an award based on an unsolicited application.

**SUMMARY:** The Department of Energy (DOE), Chicago Operations Office, through the Chicago Support Office (CSO), announces, pursuant to the DOE Financial Assistance rules 10 CFR 600.14(f), that DOE intends to award a grant to Dr. Carl Bleil, Energy Materials Research, to prove his patented modification of the Czochralski process can minimize waste and increase the production rate of defect-free single silicon crystals, thus saving energy and costs.

**SUPPLEMENTARY INFORMATION:** The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to Dr. Carl Bleil, Energy Materials Research, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1)(ii). Advantages over current technology are that single crystals of silicon can be made rapidly and continuously at low cost and with minimum waste.

Thus, the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation. The invention is using a technique for which a patent will be applied. The energy savings would depend on the increase in solar cell efficiency, the reduction of processing waste achieved and the increased rate of production of saleable product.

The project period for the grant award is 36-months, expected to begin in September 1993. DOE plans to provide funding in the amount of $91,372.

**FOR FURTHER INFORMATION CONTACT:** Charles F. Baxter, Acting Director; U.S. Department of Energy; Chicago Support Office; 9800 South Cass Avenue; Building 201; Argonne, Illinois 60439.

Issued in Chicago, Illinois on July 30, 1993.

**Alan E. Smith,**

*Director, Operations Management Support Division.*

[FR Doc. 93–19155 Filed 8–9–93; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

[Project No. 2256–029 California]

### Nevada Irrigation District; Availability of Environmental Assessment

August 5, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application to (1) temporarily lower water levels in Milton Reservoir (to an elevation of 5,660 feet) and (2) temporarily reduce minimum flows from Jackson Meadows Dam (from 5 to 3 cubic feet per second). Both dams are part of the Yuba-Bear Project and both are located on the Middle Yuba River in Nevada and Sierra Counties, California. The staff on OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the action. In the EA, the staff concludes that the above two actions would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93–19116 Filed 8–9–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-025]

## Great Lake Gas Transmission Limited Partnership; Revenue Sharing Report

August 4, 1993.

Take notice that on July 20, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Interruptible/Overrun (I/O) Revenue Sharing Report with the Federal Energy Regulatory Commission (Commission) in accordance with the Stipulation and Agreement (settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91-143-000, et al.

Great Lakes states that this report reflects application of the revenue sharing mechanism and remittances made to firm shippers for I/O revenue collected for the November 1, 1991 through October 31, 1992 period, in accordance with Article IV of the settlement. Such remittances, totaling $674,808, were made to Great Lakes' firm shippers on June 24, 1993. The amounts remitted are subject to adjusted at a future date in accordance with Articles III and V of the settlement because the ratemaking methodology resulting from the implementation of Opinion Nos. 367 and 367-A is subject to judicial review and the outcome of the current proceeding before the Presiding Administrative Law Judge.

Great Lakes states that copies of the report were sent to the Public Service Commissions of Minnesota, Wisconsin and Michigan and the parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before August 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93-19071 Filed 8-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT93-54-000]

## High Island Offshore System; Tariff Revision

August 4, 1993.

Take notice that on July 27, 1993, the High Island Offshore System ("HIOS") tendered for filing the following revised tariff sheets of its FERC Gas Tariff, Original Volume No. 2:

| Rate schedule | Sheet No. |
|---|---|
| T-13 ..... | Tenth Revised Sheet No. 322.<br>Second Revised Sheet No. 322C.<br>Second Revised Sheet No. 322D. |

HIOS states that Rate Schedule T-13 is a transportation agreement between HIOS and El Paso Natural Gas Company ("El Paso"), authorized by the Commission at Docket No. CP75-104, et al. HIOS further states the revisions reflect El Paso's Currently Effective Contract Demand at zero.

To the extent necessary, HIOS respectfully requests that the Commission waive its notice requirements to permit the revised tariff sheets to become effective less than 30 days from the date of the filing. HIOS has requested that the subject Tariff revision be made effective on August 1, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, (18 CFR 385.214, 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93-19072 Filed 8-9-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT93-53-000]

## High Island Offshore System; Tariff Revision

August 4, 1993.

Take notice that on July 27, 1993, the High Island Offshore System ("HIOS") tendered for filing the following revised tariff sheets from HIOS' Rate Schedule I, as set forth in its FERC Gas Tariff, First Revised Volume No. 1:

Third Revised Sheet No. 13
(superseding Second Revised Sheet No. 13)
Fourth Revised Sheet No. 14
(superseding Third Revised Sheet No. 14)

HIOS states that the tariff sheet reflects elimination of the Contract Demand volume of El Paso Natural Gas Company ("El Paso") as specified in Rate Schedule I that governs the allocation to El Paso of Interruptible Overrun capacity. HIOS states further that the elimination is required by, a relinquishment of firm capacity by El Paso pursuant to § 284.304(a) of the Commission's regulations.

Additionally, under this same filing, the tariff sheets reflect elimination of the Contract Demand volume of several firm shippers as listed below as specified in Rate Schedule I that governs the allocation of Interruptible Overrun capacity. These revisions are due to an Order approving abandonment of transportation service issued by the Commission on May 4, 1993.

| Docket No. | Date filed | Abandonment of service to |
|---|---|---|
| CP93-118-000 ..... | December 18, 1992 ..... | Trunkline Gas Company. |
| CP93-133-000 ..... | December 23, 1992 ..... | Columbia Gas Transmission Corp. |
| CP93-135-000 ..... | December 24, 1992 ..... | United Gas Pipeline Co. |
| CP93-142-000 ..... | January 4, 1993 ..... | Natural Gas Pipeline of America. |
| CP93-144-000 ..... | January 4, 1993 ..... | Transcontinental Gas Pipe Line Corp. |
| CP93-174-000 ..... | January 22, 1993 ..... | ANR Pipeline Company. |

To the extent necessary, HIOS respectfully requests that the Commission waive its notice requirements to permit the revised tariff sheets become effective less than 30 days from the date of the filing, concurrently with the related revised Exhibit A filed on July 27, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 13, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93–19073 Filed 8–9–93; 8:45 am]

BILLING CODE 6717–01–M

## Grant Renewal Award to Colorado State University

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Colorado State University (CSU) for continuing research efforts in support of the DOE Office for Building Technologies programs. The CSU project seeks to develop and improve solar heating and cooling systems.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer is Paul K. Kearns.

**SUPPLEMENTARY INFORMATION:** Colorado State University (CSU) has been performing research in the area of solar heating and cooling for a number of years. The result of this research has been numerous reports documenting system design, methods of performance prediction, and actual performance testing of different experimental systems. The CSU solar program focuses on the design and evaluation of solar heating and cooling systems that are assembled from commercially available components. The principal objective of the instant research is to develop and improve practical solar heating and cooling systems that could be used in residential and small office buildings.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant renewal is estimated at $308,000 and the anticipated period of performance is twelve (12) months.

Issued in Chicago, Illinois, on July 27, 1993.

**Alan E. Smith,**

*Director, Operations Management Support Division.*

[FR Doc. 93–19153 Filed 8–9–93; 8:45 am]

BILLING CODE 6450–01–M

## Grant Renewal Award to University of Wisconsin

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the University of Wisconsin for continuing research efforts in support of the DOE Office of Building Energy Research programs. The Wisconsin project seeks to develop and improve solar heating and cooling systems for building applications.

**ADDRESSES:** Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer is Paul K. Kearns.

**SUPPLEMENTARY INFORMATION:** The proposed basic research will contribute to the DOE mission by assisting in the development of solar heating and cooling technologies for use in buildings.

Successful completion of this research would advance the goal of commercialization of solar heating and cooling systems. Deploying these technologies will reduce energy use in buildings which, in the U.S., accounts for about 40% of annual national energy consumption.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current research. DOE funding for the Grant is estimated at $280,000 and the anticipated period of performance is twelve (12) months.

Issued in Chicago, Illinois, on July 27, 1993.

**Alan E. Smith,**

*Director, Operations Management Support Division.*

[FR Doc. 93–19154 Filed 8–9–93; 8:45 am]

BILLING CODE 6450–01–M

## Office of Fossil Energy

**[FE Docket No. 93–71–NG]**

## Development Associates, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of an order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Development Associates, Inc. authorization to import up to 48 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independance Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 3, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–19157 Filed 8–9–93; 8:45 am]

BILLING CODE 6450–01–M

**[FE Docket No. 93–69–NG]**

## Mobil Natural Gas Inc.; Application for Blanket Authorization to Export Natural Gas to Mexico and to Export LNG to any Foreign Country

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Mobil Natural Gas Inc. (MNGI) on July 2, 1993, as amended July 22, 1993, requesting blanket authorization to export natural gas to Mexico. In addition, MNGI requests authorization to export liquefied natural gas (LNG) to

any foreign country, MNGI proposes to export a combined total of up to 200 Bcf of natural gas and LNG over a period of two years beginning on the date of first delivery after September 30, 1993, the expiration date of MNGI's existing export authorization granted by DOE/FE Opinion and Order No. 513 on June 21, 1991 (1 FE ¶ 70,459).

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 9, 1993.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Susan K. Gregerson, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–0063

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–6667

**SUPPLEMENTARY INFORMATION:** MGNI is a Delaware corporation with its principal place of business located in Houston, Texas. It proposes to export the natural gas and LNG under spot and short-term transactions, either on its own behalf or as an agent for others. MNGI states the specific terms of these arrangements will be negotiated individually, and the price will be competitive. MNGI asserts the proposed export will be accomplished using existing pipeline and LNG facilities, and no new construction will be involved. If this application is approved, MNGI will be required to file quarterly reports giving the specific details of each transaction.

MNGI's export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export arrangement is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy to promote competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those who may oppose this application, should comment on these matters as they relate to the requested export authority. MNGI asserts the domestic gas that would be exported under the proposed arrangement would not be needed in the United States market. Parties opposing this arrangement bear the burden of overcoming this assertion.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

MNGI's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on August 4, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–19162 Filed 8–9–93; 8:45 am]

BILLING CODE 6450–01–M

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**[FE Docket No. 93–78–NG]**

## Valero Industrial Gas, L.P.; Application for Blanket Authorization to Import and Export Natural Gas From and to Mexico

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 21, 1993, of an application filed by Valero Industrial Gas, L.P. (Vigas) requesting blanket authorization to import and export up to a combined total of 300 billion cubic feet (Bcf) of natural gas from and to Mexico over a two-year term beginning on the date of first delivery after October 22, 1993, (the expiration date of Vigas' existing authorization granted by DOE/FE Order No. 537, 1 FE ¶ 70,485 (October 23, 1991)). Vigas states it would use existing pipeline facilities to transport the gas.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 9, 1993.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

**FOR FURTHER INFORMATION CONTACT:**

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5567

**SUPPLEMENTAL INFORMATION:** Vigas, a natural gas marketer, is a Delaware corporation with its principal place of business in San Antonio, Texas. Vigas states that the proposed exported natural gas would be sole primarily to Petroleos Mexcicanos (Pemex) or its subsidiaries. The proposed imported natural gas would be purchased from Pemex of Pemex subsidiaries. Under the authority requested, Vigas would import and export the gas under spot and short-term transactions, either on its own behalf or as the agent for others. The specific terms of the arrangements, including the price and volumes, would be negotiated individually. Vigas asserts that there is no current need in the United States for the gas that would be exported under the proposed arrangements.

The decision on Vigas' request for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing Vigas' export proposal, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. Vigas asserts that the proposed imports would be competitive and their is no current need for the domestic gas that would be exported. Parties opposing Vigas' application bear the burden of overcoming these assertions.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vigas' application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 4, 1993.

**Clifford P. Tomaszewski,**

*Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–19161 Filed 8–9–93; 8:45 am]

BILLING CODE 6450–01–M

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**[Docket No. FE C&E 93–23—Certification Notice—123]**

## Filing Certification of Compliance: Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** Central Florida Power, L.P. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586–9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to

operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the Federal Register that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

*Owner:* Central Florida Power, L.P.
*Operator:* Destec Operating Company
*Location:* Ft. Meade, Florida
*Plant Configuration:* Combined cycle cogeneration
*Capacity:* 212 megawatts
*Fuel:* Natural gas
*Purchasing Utilities:* Florida Power Corporation
*Expected In-service Date:* Late 1994

Issued in Washington, DC August 4, 1993.

Anthony J. Como,

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93–19158 Filed 8–9–93; 8:45 am]

BILLING CODE 6450–01–M

## Western Area Power Administration

### Intent To Prepare an Environmental Impact Statement on the Proposed Sacramento 2004 Power Marketing Program

**AGENCY:** Western Area Power Administration, Department of Energy (DOE).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, et seq., the Council on Environmental Quality regulations for implementing NEPA, 40 CFR parts 1500–1508, and the DOE NEPA implementing regulations, 10 CFR part 1021, Western Area Power Administration (Western) intends to prepare an environmental impact statement (EIS) on electric power marketing activities by Western's Sacramento Area Office (SAO) extending beyond the year 2004. The EIS on the proposed 2004 power marketing program will analyze impacts and benefits to the natural and human environment including direct, indirect, and cumulative environmental impacts. This process may result in a post-2004 power marketing program that has substantially changed from SAO's present (pre-2004) power marketing program. The post-2004 power marketing program EIS will analyze alternative power marketing options and identify a preferred power marketing program, including any associated mitigating measures to avoid or reduce potential environmental impacts. The NEPA review process will be integrated with Administrative Procedure Act (5 U.S.C. 553) requirements, resulting in proposed and final rules that will be published in the Federal Register (FR). The final power marketing program will implement the decisions reached in the EIS process through the execution of power contracts with Western's customers.

The initial scoping meetings will include an afternoon session from 2 p.m. to 5 p.m., and an evening session from 7 p.m. to 9 p.m. at each location listed above. The afternoon session will feature an informal open house setting in which interested persons will be able to meet one-on-one with Western staff to ask questions and review power marketing descriptive materials and informative handouts at their leisure. The evening sessions will be more formally structured with a brief series of presentations explaining Western's electric power marketing activities to the audience, followed by a public comment period. The interested public will have the opportunity to sign up for the EIS mailing list at these meetings. If additional public meetings follow, they will be announced through letters to interested parties on the mailing list, news releases, and a notice in the FR. Scoping is expected to be completed by November 1993. Written comments on the scope of the EIS for the proposed power marketing program must be received by Western no later than November 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** To be placed on the EIS mailing list, for information on EIS progress, for more information about the scoping meetings, or to submit comments call or write: Mr. Jerry Toenyes, Deputy Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825, (916) 649–4455.

Persons on the EIS mailing list will receive update mailouts informing them of project developments. General information about Western and its activities can also be obtained from this source.

For further information on DOE's NEPA review procedures or status of a NEPA review, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** Western, established in 1977 under the DOE Organization Act, 42 U.S.C. 7152, markets and transmits Federal electric power in 15 western States. SAO presently markets the hydropower generated by the Central Valley Project (CVP) and the Washoe Project to approximately 80 wholesale customers in northern and central California and northern Nevada. In 2004, SAO's firm power sales contracts will expire. In addition, Western's contract with Pacific Gas and Electric Company, which provides transmission service to many of its customers along with hydro integration and firming services, will expire in 2004. The EIS will assess the environmental impacts associated with power marketing alternatives that will extend beyond the year 2004. Because new power marketing contracts could be very different from existing contracts, many electric utilities that rely on Western's power as a resource may need to plan and make contractual arrangements for or develop other sources of power. The NEPA review (EIS) process for the new power marketing program is being undertaken at this time because Western's customers need sufficient time to secure other resources if necessary.

Western's power resources are also subject to change. Prior to the expiration date of existing contracts, Western will develop a marketing program consistent with its statutory obligations. Determination of the electrical capacity and energy to be marketed will be influenced by expected generation at reservoirs which have water storage and releases controlled by the Bureau of Reclamation (Reclamation) within the CVP in California. Pursuant to title 34 of Public Law 102–575, the Central Valley Project Improvement Act of 1992, Reclamation is presently preparing a programmatic EIS addressing CVP improvements stipulated in Public Law 102–575 and potential changes in CVP operations and water allocations. This programmatic EIS, scheduled for completion in October 1995, may result in modifications to CVP facilities and operations that would affect the timing and quantity of electric power generated by the CVP. Such changes may, in turn, affect electric power services to be marketed by Western. Since Western is a Cooperating Agency for Reclamation's EIS, and Reclamation is likely to be a Cooperating Agency for Western's EIS, the two agencies will endeavor to support each other's studies while avoiding duplication.

Western's EIS process is anticipated to occur over a 36-month period and will include a series of public

information and scoping meetings, and coordination with appropriate Federal, State, and local government agencies. Public review and comment periods will be announced through letters to interested parties, news releases, and notices in the FR. There will be a comment period for the draft EIS of at least 60 days. The Record of Decision (ROD) is expected to be signed in 1996. A subsequent FR notice will announce the administrative process to implement the ROD.

Issued in Washington, DC, July 30, 1993.

**Peter N. Brush,**

*Acting Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 93–19160 Filed 8–9–93; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket Nos. ER93–814–000, et al.]**

### Puget Sound Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Puget Sound Power & Light Company**

[Docket No. ER93–814–000]

August 2, 1993.

Take notice that on July 28, 1993, Puget Sound Power & Light Company (Puget) tendered for filing 1993–1994 Operating Procedures under the Pacific Northeast Coordination Agreement (PNCA).

Puget states the 1993–94 Operating Procedures relate to service under the PNCA. A copy of the filling was served upon the parties to the PNCA.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**2. Niagara Mohawk Power Corporation**

[Docket No. ER93–811–000]

August 2, 1993.

Take notice that on July 26, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Chicopee Municipal Lighting Plant, (Chicopee) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93–313–000. Niagara Mohawk's filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its July 16, 1993 filing of the proposed Service Agreement with Chicopee, Niagara Mohawk requests an effective date for this Service Agreement of July 16, 1993, the date of filing with FERC.

A copy of this filing has been served upon Chicopee and the New York State Public Service Commission.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**3. Northern Indiana Public Service Company**

[Docket No. ER92–649–000]

August 2, 1993.

Take notice that on July 29, 1993, Northern Indiana Public Service Company tendered for filing Amendment No. 5 to its filing which was made on June 17, 1992, in Docket No. ER92–649–000.

This filing was made in order to extend facilities to Indiana Municipal Power Agency's (IMPA).

During Staff's review of this filing they have asked questions about the proposed project and the rates and charges that Northern Indiana Public Service Company has proposed to change to recover the cost of these new facilities.

This filing is being made to respond to Staff's questions.

Copies of this filing have been served upon all of the parties and the Indiana Utility Regulatory Commission.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**4. New York State Electric & Gas Corporation**

[Docket No. ER93–816–000]

August 2, 1993.

Take notice that New York State Electric & Gas Corporation (NYSEG) on July 28, 1993, tendered for filing, pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulations, 18 CFR 35.12, as an Initial Rate Schedule, an agreement with Niagara Mohawk Power Corporation (Niagara Mohawk). The agreement provides for Niagara Mohawk's payments to NYSEG associated with NYSEG's continued operation of a tie between NYSEG's South Perry Substation and Niagara Mohawk's Golah Substation.

NYSEG requests an effective date of December 11, 1973, and, therefore, requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon Niagara Mohawk and on the Public Service Commission of the State of New York.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**5. Pennsylvania Power & Light Company**

[Docket No. ER93–813–000]

August 2, 1993.

Take notice that on July 27, 1993, Pennsylvania Power & Light Company (PP&L) tendered for filing a Supplement, dated as of June 28, 1993, ("Third Supplemental Agreement"), to the Capacity Credit Sales Agreement, dated February 15, 1991, between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company, Pennsylvania Electric Company and Metropolitan Edison Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 102. The Third Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 11, 1993, in Docket No. ER93–508–000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1993.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board of Regulatory Commissioners.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**6. Pennsylvania Power & Light Company**

[Docket No. ER93–812–000]

August 2, 1993.

Take notice that on July 27, 1993, Pennsylvania Power & Light Company (PP&L) tendered for filing a Supplement, dated as of June 28, 1993, ("Third Supplemental Agreement"), to the Capacity and Energy Sales Agreement, dated February 15, 1991, between PP&L and GPU Service Corporation, as agent for Jersey Central Power & Light Company, Pennsylvania Electric Company and Metropolitan Edison Company, which is on file with the Commission as PP&L's Rate Schedule FERC No. 102. The Third Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the

Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 11, 1993, in Docket No. ER93-505-000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1993.

PP&L states that a copy of its filing was served on GPU Service Corporation, the Pennsylvania Public Utility Commission, and the New Jersey Board of Regulatory Commissioners.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**7. New England Power Company**

[Docket No. ER93-810-000]

August 2, 1993.

Take notice that New England Power Company (NEP) on July 26, 1993, tendered for filing a proposed supplement to its Service Agreement No. 54 with the Taunton, Massachusetts, Municipal Lighting Plant (Taunton) under NEP's FERC Electric Traffic, Original Volume No. 3. The proposed supplement would permit NEP to transmit up to 20,000 kilowatts of power that Taunton may purchase form Central Vermont Public Service Corporation.

NEP seeks a waiver of notice so that the proposed supplement may become effective on September 1, 1993.

A copy of the filing has been served upon Taunton.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**8. Northern States Power Company (Wisconsin)**

[Docket No. ER93-783-000]

August 2, 1993.

Take notice that on July 26, 1993, Northern States Power Company, Eau Claire, Wisconsin (NSPW) tendered for filing a new wholesale electric service agreement dated April 12, 1993, between NSPW and the City of Wakefield (City), a municipal corporation in Gogebic County, Michigan. The City currently purchases power and energy from NSPW under an agreement by and between Lake Superior District Power Company and the City dated September 1, 1977, which agreement was assigned to NSPW on September 1, 1985.

NSPW requests an effective date of September 1, 1993. NSPW states that, on the effective date of the new agreement, the September 1, 1977, agreement will be terminated. NSPW also states that the April 12, 1993, agreement will not affect the rates charged by NSPW for wholesale electric service to the City.

A copy of the filing was served upon the City and the Public Service Commission of Michigan.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**9. Southern California Edison Company**

[Docket No. ER93-552-000]

August 2, 1993.

Take notice that on July 23, 1993, Southern California Edison Company (Edison) tendered for additional information which was requested by Commission Staff in Docket No. ER93-552-000.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**10. Iowa Electric Light and Power Company**

[Docket No. ER93-262-000]

August 2, 1993.

Take notice that Iowa Electric Light and Power Company (Iowa Electric), on July 28, 1993, tendered for filing a second Amendment to its December 7, 1992 filing in the above docket. The Amendment revises Service Schedule C (Short-Term), D (General Purpose Energy) and E (Limited Term Power) to the Interconnection Agreement between Iowa Electric and Central Illinois Public Service Company by including revenue caps on the proposed rates for such services.

Copies of this filing have been sent to Central Illinois Public Service Company, the Iowa State Utilities Board, and the Illinois Commerce Commission.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**11. San Diego Gas & Electric Company**

[Docket No. ER93-424-000]

August 2, 1993.

Take notice that on July 26, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing an amendment to its earlier filing of a Coordination of Service Agreement (Agreement) between SDG&E and Louis Dreyfus Electric Power, Inc. (LDEP).

In the amended filing SDG&E has withdrawn the transmission service, which would have been provided by either of the parties.

SDG&E requests that the Commission allow the Agreement to become effective at the earliest possible date.

Copies of the filing were served upon the Pubic Utilities Commission of the State of California and LDEP.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**12. Arizona Public Service Company**

[Docket No. ER93-815-000]

August 2, 1993.

Take notice that on July 28, 1993, Arizona Public Service Company (APS) tendered for filing revised Exhibit I, a proposed extension to the Lease Power Agreement between APS and Electrical District No. 3 (District) (APS-FPC Rate Schedule No. 12).

A copy of this filing has been served on the District and the Arizona Corporation Commission.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**13. Otter Tail Power Company**

[Docket No. ER93-590-000]

August 2, 1993.

Take notice that on July 26, 1993, Otter Tail Power Company (OTP) tendered for filing on behalf of itself an amendment to its June 2, 1993 amendment to its April 28, 1993 application for changing the limit on its percentage adder in rates for transmission service schedules setting rates, terms, and conditions for sales affected by the change.

OTP states that copies of the amendment have been provided to the Mid-Continent Area Power Pool and to the Pubic Service Commissions of Minnesota, North Dakota and South Dakota.

*Comment date:* August 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

**14. Puget Sound Power & Light Company**

[Docket No. ER93-821-000]

August 2, 1993.

Take notice that on July 19, 1993, Puget Sound Power & Light Company (Puget) tendered or filing copies of the Executed Emergency Temporary Interconnection Agreement between Puget and Public Utility District No. 1 of Grant County and invoices for work performed under the interconnection agreement by Puget.

*Comment date:* August 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

**15. Idaho Power Company**

[Docket No. ER93–819–000]

August 2, 1993.

Take notice that on July 28, 1993, Idaho Power Company (Idaho Power) tendered for filing two Service Agreements to Idaho Power's FERC Electric Tariff Second Revised Volume No. 1.

*Comment date:* August 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

**16. Central Power and Light Company**

[Docket No. ER93–818–000]

August 2, 1993.

Take notice that on July 28, 1993, Central Power and Light Company (CPL) tendered for filing an Agreement for Transmission Wheeling Service between CPL and Southwestern Electric Service Company (SESCO) in unexecuted form. Under the Agreement, CPL will provide SESCO with transmission wheeling service for firm capacity and associated energy that SESCO will purchase from the Lower Colorado River Authority. CPL requests that the Agreement be accepted to become effective as of August 2, 1993.

Copies of the filing have been served on SESCO and the Public Utility Commission of Texas.

*Comment date:* August 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

**17. West Texas Utilities Company**

[Docket No. ER93–817–000]

August 2, 1993.

Take notice that on July 28, 1993, West Texas Utilities Company (WTU) tendered for filing an Agreement for Transmission Wheeling Service between WTU and Southwestern Electric Service Company (SESCO) in unexecuted form. Under the Agreement, WTU will provide SESCO with transmission wheeling service for firm capacity and associated energy that SESCO will purchase from the Lower Colorado River Authority. WTU requests that the Agreement be accepted to become effective as of August 2, 1993.

Copies of the filing have been served on SESCO and the Public Utility Commission of Texas.

*Comment date:* August 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

**18. New England Power Company**

[Docket No. ER93–822–000]

August 2, 1993.

Take notice that on July 29, 1993, New England Power Company (NEP) tendered for filing executed copies of its Service Agreements with Fitchburg Gas & Electric and UNITIL Power Corp. under NEP's FERC Electric Tariff No. 6. According to NEP, the Commission had previously made the Service Agreements effective as of April 1, 1993 in Docket No. ER93–348–000.

*Comment date:* August 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

**19. Portland General Electric Company**

[Docket No. ER93–45–000]

August 2, 1993.

Take notice that on July 29, 1993, Portland General Electric Company filed an application under Section 204 of the Federal Power Act requesting authorization to issue not more than $200 million of short-term debt on or before October 1, 1995, with a final maturity date no later than October 1, 1996.

*Comment date:* August 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

**20. Niagara Mohawk Power Corporation**

[Docket No. ER93–825–000]

August 3, 1993.

Take notice that on July 29, 1993, Niagara Mohawk Power Corporation, tendered for filing an agreement between Niagara Mohawk and Sithe/Independence Power Partners, L.P. (Sithe) dated March 9, 1992 providing for the terms and conditions of an interconnection between Sithe's cogeneration facility and Niagara Mohawk's transmission system.

The effective date of March 9, 1992 is requested by Niagara Mohawk.

Copies of the filing were served upon Sithe and the New York State Public Service Commission.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**21. Entergy Services, Inc.**

[Docket No. ER93–820–000]

August 3, 1993.

Take notice that on July 28, 1993, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company (AP&L), filed: (1) The September 25, 1985, December 16, 1991, March 15, 1992, May 7, 1992, and December 11, 1992 Amendatory Agreements which superseded the August 20, 1954 agreement (Blakely Agreement) between the United States of America, acting through the Secretary, Department of the Interior, as represented by the Administrator, Southwestern Power Administration, a bureau of the Department of the Interior (SPA), and AP&L; and (2) the January 10, 1977, December 16, 1991, March 15, 1992, May 7, 1992, and December 11, 1992 Amendatory Agreements which superseded the May 14, 1971 agreement (DeGray Contract) between AP&L and the SPA. Entergy Services states that, while retaining most of the terms of the Blakely Agreement and the DeGray Contract, the superseding Amendatory Agreements have either changed the delivery of power and energy or changed the term of service. According to Entergy, the Amendatory Agreements to the Blakely Agreement and the DeGray Contract provide for the disposition of hydroelectric power and energy generated at the Blakely Mountain Dam Reservoir Project and the DeGray Dam Reservoir Project.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**22. The Washington Water Power Company**

[Docket No. ER93–834–000]

August 3, 1993.

Take notice that on July 30, 1993, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.11 a rate revision for the Transmission Service Agreement (Agreement) between the Washington Water Power Company and Montana Power Company (MPC). WWP states that WWP provides MPC with 105 MW of firm transmission service from the WWP/MPC point of interconnection near the Burke 115 kV Switching Station to the WWP/Bonneville Power Administration 230 kV point of interconnection at the Noxon Switchyard. WWP requests that the Commission (a) accept the rate change for the 105 MW firm transmission service portion of the Agreement, effective as of October 1, 1993.

A copy of the filing was served upon Montana Power Company.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**23. Public Service Company of New Mexico**

[Docket No. ER93–824–000]

August 3, 1993.

Take notice that on July 29, 1993, Public Service Company of New Mexico (PNM) submitted for filing a 1993–1994 Power Sale Agreement (Agreement) between Public Service Company of Colorado (PSCo) and PNM. Under the terms provided for in the Agreement, PNM will provide PSCo with up to 75 MW of capacity and associated energy

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beginning October 1, 1993 and ending September 30, 1994.

Copies of the filing have been served upon PSCo and the New Mexico Public Utility Commission.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**24. Pacific Gas and Electric Company**

[Docket No. ER93-829-000]

August 3, 1993.

Take notice that on July 30, 1993, Pacific Gas and Electric Company tendered for filing an amendment to PG&E Rate Schedule FERC No. 79, for service to the Western Area Power Administration (Western). This amendment, in the form of Contract No. 93-SAC-18008, entitled United States Department of Energy Western Area Power Administration Central Valley Project, California Metering and Power Accounting Contract With Pacific Gas and Electric Company (Metering Agreement), sets forth special delivery and metering procedures to facilitate PG&E's transmission service to Western for the delivery of federal Central Valley Project (CVP) power to the Trinity County Public Utilities District, California (TCPUD). Such transmission service has been and will continue to be provided under the terms of Contract No. 14-06-200-2948A between PG&E and Western, subject to the modifications in the Metering Agreement.

This Metering Agreement is part of the settlement to TCPUD's condemnation of certain PG&E facilities, which also involves merging the Hayfork Valley Public Utility District (HVPUD) into TCPUD. PG&E has requested a waiver of the Commission's regulations to permit this agreement to become effective on July 1, 1993, the date of ownership transfer to TCPUD of the PG&E facilities being condemned.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**25. The Washington Water Power Company**

[Docket No. ER93-833-000]

August 3, 1993.

Take notice that on July 30, 1993, The Washington Water Power Company (WWP) tendered for filing copies of the Ninth Amendment to an Exchange Agreement with Puget Sound Power & Light Company (Puget) which provides for the exchange of steam-electric generation which, because of plant locations and load area locations, results in substantial savings in both transmission service cost and in transfer losses. The savings resulting therefrom are shared equally by WWP and Puget under the terms of the Exchange Agreement.

The Ninth Amendment shows the calculation of estimated costs and benefits for the 12-month period beginning October 1, 1993. The Ninth Amendment reflects the effect of the Bonneville Power Administrations recently announced transmission rate increase which will be effective October 1, 1993. WWP estimates that the equal sharing of benefits under the Exchange Agreement will result in payments by Puget to WWP of $2,638,224 during the 12 month period commencing October 1, 1993.

Copies of the filing were served upon Puget.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**26. Philadelphia Electric Company**

[Docket No. ER93-702-000]

August 3, 1993.

Take notice that on July 30, 1993, Philadelphia Electric Company (PECO) tendered for filing an Amendment to its June 8, 1993 filing, in which PECO had submitted a Supplemental Agreement dated April 5, 1993 to the Interconnection Facilities Agreement dated February 19, 1965 between PECO and Pennsylvania Power & Light Company (PL). The Amendment to the Filing provides further explanation of and support for the Supplemental Agreement. PECO requests waiver of the Commission's notice requirements and asks that the Commission allow the Supplemental Agreement to become effective on August 12, 1993 which is the date the Supplemental Agreement would have become effective under the initial filing.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E end of this notice.

**27. Pennsylvania Power & Light Company**

[Docket No. ER93-827-000]

August 3, 1993.

Take notice that on July 29, 1993, Pennsylvania Power & Light Company (PP&L), tendered for filing a Supplement, dated as of July 28, 1993, (First Supplemental Agreement), to the Capacity Credit Sales Agreement, dated March 15, 1993, between PP&L and Delmarva Power & Light Company (DP&L), which is on file with the Commission as PP&L's Rate Schedule FERC No. 114. The First Supplemental Agreement provides for a revised Installed Capacity Rate under the Agreement to reflect a revision in the rate for contract capacity under the Pennsylvania-New Jersey-Maryland Interconnection Agreement which was accepted for filing by the Commission on May 11, 1993, in Docket No. ER93-508-000.

PP&L requests waiver of the notice requirements of section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the proposed rate schedule can be made effective as of June 1, 1993.

PP&L states that a copy of its filing was served on DP&L, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Delaware Public Service Commission, and the Virginia State Corporation Commission.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**28. Niagara Mohawk Power Corporation**

[Docket No. ER93-831-000]

August 3, 1993.

Take notice that on July 30, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and the Village of Bergen, New York (Bergen). This agreement provide for a new transmission arrangement and also provide for a power sales agreement from Niagara Mohawk to satisfy Bergen's electrical requirements in excess of its NYPA purchases.

Copies of this filing were served upon Bergen and the New York State Public Service Commission.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**29. Central Power and Light Company**

[Docket No. ER93-828-000]

August 3, 1993.

Take notice that on July 29, 1993, Central Power and Light Company (CPL), tendered for filing a Capacity Sales Agreement (Agreement) between CPL and Southwestern Electric Service Company (SESCO).

Under the terms of the Agreement, CPL will sell electric power and energy during the period beginning with the Effective Date of the Agreement through June 30, 1993.

CPL requests waiver of the notice requirement in order that the Agreement may become effective as of August 2, 1993.

Copies of the filing were served upon SESCO and the Public Utility Commission of Texas.

*Comment date:* August 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

**30. Carolina Power & Light Company**

[Docket No. ER93-635-000]

August 3, 1993.

Take notice that on July 30, 1993, Carolina Power & Light Company (CP&L) tendered for filing with the Commission the change outlined below to its agreement with Brunswick EMC and South River EMC.

1. *Brunswick EMC—Chadbourn-Peacock 115 KV*—Increase in metered voltage from 12 kV to 69 kV.
2. *Brunswick EMC—Hallsboro 115 kV*—Installation of a new point of delivery.
3. *Brunswick EMC—Southport 230 kV*—Installation of a new point of delivery including special provisions for providing facilities for metering pulse information.
4. *South River EMC—Stedman 115 kV*—Increase in metered voltage from 12 kV to 115 kV, new 115 kV tap location, and special provisions for providing facilities for metering pulse information.

The Company requests that the notice period be waived and that these supplements be made effective coincident with the effective dates set forth in the Exhibit A's; however, the Company will not begin billing for the new additional facilities until the date the FERC accepts and approves this filing.

A copy of this filing has been sent to the affected parties, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**31. PacifiCorp**

[Docket No. ER93-723-000]

August 3, 1993.

Take notice that on July 30, 1993, PacifiCorp, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a request for a thirty (30) day deferral of Commission action under this Docket to allow PacifiCorp adequate time to prepare cost support for overheads associated with PacifiCorp's actual costs are requested by Commission's staff.

Copies of this filing were supplied to Western and the Wyoming Public Service Commission.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

**32. Arizona Public Service Company**

[Docket No. ER93-832-000]

August 3, 1993.

Take notice that on July 30, 1993, Arizona Public Service Company (APS or Company) tendered for filing the following agreements:

(1) Contract Relating to Area of Service and For Furnishing Electric Service between APS and United States Department of the Interior Bureau of Indian Affairs on behalf of the San Carlos Irrigation Project (SCIP);
(2) Wholesale Power Supply Agreement between APS and United States of America Bureau of Indian Affairs on behalf of SCIP;
(3) Rate Schedule for Transmission Service between APS and the United States of America Bureau of Indian Affairs on behalf of SCIP.

Additionally, enclosed for filing were the following proposed Notices of Cancellation:

(1) APS–FERC Rate Schedule No. 193 (Service Agreement and Service Schedules A, B, C, and D, between APS and the San Carlos Irrigation and Drainage District);
(2) APS–FERC Rate Schedule No. 194 (Service Agreement and Service Schedules A, B, C, and D, between APS and the Gila River Indian Community);
(3) APS–FERC Rate Schedule No. 195 (Service Agreement and Service Schedules A, B, C, and D, between APS and the San Carlos Apache Tribe);
(4) APS–FERC Rate Schedule No. 196 (Reciprocal Distribution Agreement between APS and Trico Electric Cooperative, Inc.);
(5) APS–FERC Rate Schedule No. 197 (Oracle Junction Substation Use Agreement between APS and Arizona Electric Power Cooperative, Inc.).

The effect of this filing is to reinstitute currently effective service to the SCIP under FPC/FERC Rate Schedule Nos. 8, 66, and 179 which are scheduled to terminate on July 31, 1993 as a result of a Commission letter order in Docket No. ER93-713-000.

APS filings made in FERC Docket Nos. ER93-713-000 (Filing of Proposed Jurisdictional Agreements Related to the Divestiture of the San Carlos Irrigation Project (SCIP) Electric System (Divestiture) and Notices of Cancellation of APS–FPC/FERC Rate Schedule Nos. 8, 66, 179) were necessitated by the San Carlos Indian Irrigation Project Divestiture Act of 1991 (Public Law No. 102-231) (the Act). Pursuant to the terms of the Act, all parties were required to agree on all terms and receive all necessary approvals on or before July 31, 1993 or all contracts entered into pursuant to the Act would become null and void. Because one of the parties to the Divestiture rejected making the necessary approvals, all contracts entered into pursuant to the Divestiture are now a nullity. Therefore, the Company has filed new Agreements to allow for the continuation of services currently being provided to SCIP and requested the termination of Agreements related to the Divestiture that were previously accepted by the Commission in Docket No. ER93-713-000.

Copies of this filing have been served on the parties as well as the Arizona Corporation Commission.

*Comment date:* August 18, 1993, in accordance with Standard Paragraph E end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-19070 Filed 8-9-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. OR93-5-000]

**Chevron U.S.A. Products Company v. SEPP, L.P.; Complaint**

August 5, 1993.

Take notice that on August 3, 1993, pursuant to section 13(1) of the Interstate Commerce Act (ICA) (49 App. U.S.C. 13(1) (1988)) and Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), Chevron U.S.A. Products Company filed a compliant against SFPP, L.P.

Chevron alleges that SFPP has violated and continues to violate sections 1, 2, 3, 6, 7, and 41 of the ICA by: (1) establishing and charging unjust

and unreasonable tariff rates on its West Line System, specifically the rates for transportation from Watson, East Hynes and Norwalk established in FERC Tariff No. 15, and the rates established in FERC Tariff Nos. 16, 17, and 18; (2) by charging a fee for what Chevron claims is a transportation service that is not established in a tariff, specifically a gathering charge for product transported through its Watson facilities; (3) by implementing a prorationing policy outside of its tariffs; and (4) by changing the direction of flow in its 6-inch pipeline between Phoenix and Tucson pursuant to an agreement with ARCO Products Company.

Chevron requests an award of damages, including reparations for the period beginning two years preceding the filing of its complaint. Chevron also requests that this complaint be consolidated with the ongoing proceeding in Docket No. OR92–8–000.

Any person desiring to be heard or to protest Chevron's complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules 214 and 211 (18 CFR 385.214 and 211). All such motions and protests should be filed on or before August 20, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to Chevron's complaint must be filed on or before August 20, 1993.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93–19115 Filed 8–9–93; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[OMS–FRL–4690–9]

## Final Agency Actions Regarding the Motor Vehicle Provisions of the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Mobile Source Final Agency Actions.

**SUMMARY:** This notice announces certain final Agency actions taken in conjunction with EPA's Clean Air Act (Act) mobile source program. In these final actions, EPA determined whether specific vehicles should be deemed not a motor vehicle and therefore excluded from the operation of the Act pursuant to 40 CFR Part 85 Subpart R.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tiffany Schauer, Attorney/Advisor, Manufacturers Operations Division, (6405J) Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 233–9298.

**SUPPLEMENTARY INFORMATION:** EPA has determined that all of the actions summarized below are final. Where available, the specific date on which the action was taken is indicated.

### Judicial Review

For persons who have not received prior actual notice of these final actions, a timely petition must be filed on or before 60 days after publication of this notice in the **Federal Register**. For persons who previously received actual notice of these final actions, a timely petition must be filed on or before 60 days from receipt of actual notice or from the date the action became final, whichever is later. This notice is published to provide information to the general public on EPA's actions and does not establish an additional time period for judicial review petitions brought by persons who have received prior actual notice of such final action.

The final Agency actions described in this notice are nationally applicable, therefore, under the first sentence of section 307(b)(1) of the Act a petition for review could only be filed in the United States Court of Appeals for the District of Columbia Circuit. Under section 307(b)(2) of the Act, failure to file a timely petition for review for any of these final actions will preclude a later challenge in civil or criminal proceedings brought by EPA to enforce these actions.

The following EPA actions regarding motor vehicles have become final:

1. By letter dated January 27, 1992, EPA granted Parker Trading Company's request that its Daihatsu Hi-Jet vehicles be deemed not a motor vehicle and excluded from the Act under 40 CFR 85.1703(a). Section 85.1703(a) provides that a vehicle may be deemed not a motor vehicle and excluded from the Act if it: (1) Cannot exceed 25 miles per hour; or (2) lacks features associated with safe and practical highway use; or (3) exhibits features rendering street use impractical or unlikely. EPA granted the request because the vehicles included a 25 M.P.H. governor and lacked a third and fourth gear.

2. By letter dated June 26, 1991, EPA determined that the following vehicles manufactured by Badger Construction Equipment Company (Badger) did not qualify for an exclusion under 40 CFR 85.1703(a): HYDROSCOPIC MODELS: 300 6X4, 300 6X6, 460 6X4, 460 6X6, 444 4X2, 444 4X4, 666 6X4, 666 6X6, and INSLEY MODELS: 600 6X4, and 600 6X6. Badger contended that the vehicles' size and weight rendered them impractical for street use. EPA, however, denied Badger's request for exclusion because the vehicles' gross vehicle weight did not exceed the Federal weight and dimensional limitation for vehicles using the Interstate Highway System.

In the same action, however, EPA granted exclusions for the following vehicles manufactured by Badger because their gross vehicle weight exceeded the Federal weight and dimensional limitations: HYDROSCOPIC MODELS: 888 6X4, 888 6X6, INSLEY MODELS: 800 6X4, 800 6X6, HYDROSCOPIC MODELS (W/ STABILIZERS): 666 6X4, 666 6X6, 888 6X4, 888 6X6, BURRO MODELS: 66 6X4, and 66 6X6.

3. On October 10, 1990, El Al Israel Airlines Ltd. (El Al) sought an exclusion for an International Harvester model T–800 aircraft tow tractor under 40 CFR 85.1703(a). El Al asserted that the T–800 could not exceed 17.4 M.P.H. and that the vehicle was impractical for street use. By letter dated October 19, 1990, EPA granted the request because the T–800 model's size and gross vehicle weight exceeded the Federal weight and dimensional limitation for vehicles using the Interstate Highway System.

4. Cummins Engine Company, Inc., (Cummins) sought an exclusion for the Walter Airport Snow Fighter under 40 CFR 85.1703(a). Cummins contended that the Snow Fighter, equipped with a 28-foot wide snow blade and a ballast box, was impractical for street use. By letter dated June 21, 1990, EPA granted the request because the Walter Airport Snow Fighter's 28-foot snow blade and gross vehicle weight exceeded the Federal weight and dimensional limitation for vehicles using the Interstate Highway System.

5. By letter dated February 22, 1990, EPA denied U.S. Army Tank-Automotive Command's request for an exclusion for the proposed Small Emplacement Excavator (SEE) under 40 CFR 85.1703(a). EPA denied the request because the vehicles were designed to be driven on paved roads in excess of 25 M.P.H., and did not meet the requirements of section 40 CFR 85.1703(a) for an exclusion.

6. By letter dated January 31, 1990, EPA excluded seventy-five vehicles manufactured by Cushman Inc. (Cushman) under 40 CFR 85.1703(a) because they could not exceed a

maximum speed of 25 M.P.H. In the same action, however, EPA denied Cushman's request to exclude vehicle models 898452 (with modification 677) and 898458. Cushman asserted that models 898452 (with modification 677) and 898458 should be excluded under 40 CFR 85.1703(a) because they lacked various safety features rendering them impractical for street use. EPA denied the exclusion request because the vehicles could be equipped with features typical of on-road vehicles and they were similar to Cushman three-wheeled models that are certified to meet motorcycle emissions standards.

7. By letter dated December 12, 1990, EPA denied Steyr-Daimler-Puch's request to exclude the Pinzgauer 6X6 model under 40 CFR 85.1703(a). EPA denied the request because the vehicles exhibited several features facilitating safe and efficient highway use, and did not meet the requirements of section 40 CFR 85.1703(a) for an exclusion.

8. By letter dated June 24, 1991, EPA denied a request to exclude a Porsche Carerra 4 Lightweight Race Car, S/N 964–001 under 40 CFR 85.1703(a). In April 1991, G.B. Freight Services, Inc., applied for EPA's prior written approval to admit the vehicle into the U.S. as a racing vehicle. Racing vehicles are excluded from the Act if they are not motor vehicles as defined in section 216(2) of the Act, which provides that motor vehicles are vehicles designed for transporting persons or property on a street or highway. EPA denied the request because the Porsche Carerra 4 Lightweight Race Car was capable of being driven on the streets and highways, and did not meet the requirements of section 40 CFR 85.1703(a) for an exclusion.

9. By letter dated March 2, 1992, EPA granted a request to exclude a modified Porsche Carerra 4 Lightweight Race Car, S/N 964–015 under 40 CFR 85.1703(a). Mr. Michael Amalfitano applied for EPA's prior written approval to admit the vehicle into the U.S. as a racing vehicle. EPA excluded the vehicle because, as currently modified, the vehicle required economically impractical reverse engineering to operate the vehicle on a street or highway.

Dated: August 3, 1993.

**Robert D. Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 93–19126 Filed 8–9–93; 8:45 am]

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[FRL–4659–4]

## Public Water System Supervision Program Revision for the State of New Jersey

**AGENCY:** United States Environmental Protection Agency (USEPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the State of New Jersey is revising its approved Public Water System Supervision Primacy Program. The State of New Jersey has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR) for the Surface Water Treatment Rule (SWTR) promulgated by USEPA on June 29, 1989 (54 FR 27486).

The USEPA has determined that New Jersey's SWTR regulations are no less stringent than the corresponding Federal regulations and that New Jersey continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, the USEPA has determined to approve the State of New Jersey's requested revision to its Public Water System Supervision Primacy Program for compliance with the NPDWR for the Surface Water Treatment Rule.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his/her motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;
(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing;
(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9 a.m and 4:30 p.m., Monday through Friday, at the following offices:

Bureau of Safe Drinking Water, Division of Water Resources, New Jersey Department of Environmental Protection and Energy, P.O. Box CN–029, Trenton, New Jersey 08625

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

For further information, you may contact: Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

(Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR)

Dated: July 23, 1993.

**Kathleen C. Callahan,**

*Acting Regional Administrator, EPA, Region II.*

[FR Doc. 93–18973 Filed 8–9–93; 8:45 am]

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[FRL–4690–6]

## Proposed Maximum Pressures for Rule-Authorized Enhanced Recovery Injection Wells in Michigan—Second Group Fields

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed maximum injection pressure in fields with rule-authorized enhanced recovery injection wells in Michigan—second group fields.

**SUMMARY:** The United States Environmental Protection Agency (USEPA or Agency) is proposing pressure gradients for calculating the maximum allowable liquid injection pressure for rule-authorized Class II enhanced recovery injection wells in six Michigan fields. Therefore, operators of rule-authorized enhanced recovery wells in the six fields must limit their liquid injection pressure as directed in this notice, if the notice is finalized as proposed. After final publication in the **Federal Register**, the notice will become part of the applicable Underground

Injection Control program for the State of Michigan, administered by Region 5 of USEPA, promulgated under the provisions of the Safe Drinking Water Act.

**DATES:** The USEPA requests public comments on today's proposed rules. Comments will be accepted until September 9, 1993. Notice is also being given to persons on a state-wide mailing list who have indicated an interest in Class II injection wells in Michigan. To request that a public hearing be held, contact the person listed below.

**ADDRESSES:** The technical basis for each of the proposed maximum pressures is found in the Administrative Record for this action, which is available for viewing at the USEPA Region 5 office listed below. A packet of materials summarizing the basis is also available for viewing in Roscommon, Michigan. The location can be obtained from the person listed as the contact for further information below. Submit written comments to: USEPA Region 5 (WD–17J), Underground Injection Control Section, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, Attn: Richard J. Zdanowicz, Chief.

**FOR FURTHER INFORMATION CONTACT:** Leah Evison, Underground Injection Control Section, Water Division, (312) 886–6556, 17th floor Metcalfe Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Underground Injection Control program for the State of Michigan is administered by the USEPA. Federal regulations at 40 CFR 147.1154 stipulate that the Regional Administrator shall establish maximum injection pressures for rule-authorized enhanced recovery injection wells in Michigan fields, after proper notice and opportunity for public comment and public hearing. This notice concerns liquid injection in six State-approved enhanced recovery fields in Michigan. The Region established maximum pressures for 14 additional fields in 1992 and intends to propose pressures for the remaining fields with rule-authorized enhanced recovery wells in the coming months. To establish these pressures, USEPA used instantaneous shut-in pressures (ISIP) and step rate test results from the injection zones of enhanced recovery injection wells in the given fields. Additional background information is found in a **Federal Register** notice dated September 11, 1992 (57 FR 41751).

## II. Proposed Maximum Pressures

As was established for the first group of Michigan fields, USEPA today proposes that rule-authorized, enhanced recovery, injection wells in the additional fields listed in this notice operate below a maximum liquid injection pressure calculated using the following formula:

$$Pm=(FPG-0.433\ Sg)d$$

where

Pm=injection pressure at the wellhead (psi)
FPG=fracture pressure gradient from Table 1 (psi/ft)
Sg=specific gravity of the injection fluid (dimensionless)
d=depth to top of injection zone (ft)

## III. Alternative Maximum Pressures

Federal regulations make two provisions for owners and operators who wish to operate at pressures above those defined above in two ways. First, after this notice is finalized, owners and operators may submit a request that the USEPA establish an alternative maximum pressure for a particular field and formation. This request may allow injection at higher pressures if the operator can demonstrate to the satisfaction of the Agency that the desired injection pressure will not fracture the confining layer adjacent to the lowermost USDW and that there will be no migration of fluids into a USDW. The Agency may grant such a request after notice and opportunity for public comment and a public hearing, according to the provisions of 40 CFR part 124.

Second, if this request is denied, the owner or operator may apply for a UIC permit under 40 CFR 144.25(c). The final permit decision, including permit conditions which the owner or operator considers to be inappropriate, may be subject to administrative review pursuant to 40 CFR 124.19. To be added to a mailing list to receive notice of Agency decisions in Michigan regarding Alternative Maximum Pressures or Class IIR permits, contact USEPA, Region 5 Underground Injection Control Section at the address given above.

## IV. Notice to Owners and Operators

After this notice is finalized, USEPA will send certified written notices to owners and operators informing them of the applicable formula to be used in determining the maximum allowable liquid injection pressure. Thereafter, owners and operators who exceed the injection pressure established under the formula or the alternative maximum pressure approved by USEPA will be considered in violation of 40 CFR 147.1154(a), and may be subject to enforcement action, including the assessment of civil penalties and the issuance of compliance orders. If an owner or operator does not receive a certified written notice from USEPA within thirty (30) days after the final notice is published in the **Federal Register**, he or she should immediately contact USEPA, Region 5 at the telephone number given above, to avoid the possibility of violating UIC regulations.

Dated: July 29, 1993.

**Dale S. Bryson,**

*Director, Water Division, Region 5, U.S. Environmental Protection Agency.*

TABLE 1.—FRACTURE PRESSURE GRADIENT VALUES

| Field | Formation | County | Township/range/section | FPG (psi/ft) |
|---|---|---|---|---|
| Enterprise | Richfield | Missaukee | T23N, R4W, S18 and T23N, R5W, S10–14 | 1.10 |
| Hamilton | Richfield | Clare | T19N, R3W, S5–8 and T19N, R4W, S1, 2 and T20N, R4W, S35, 36. | 1.06 |
| Manistee | Niagaran | Manistee | T22N, R17W, S36 | 0.82 |
| East Norwich | Richfield | Missaukee | T24N, R5W, S1–4, 9–12 and T24N, R4W, S6, 7, 18. | 1.08 |
| St. Helen | Richfield | Roscommon | T24N, R1W, S16, 19–21, 27–30 | 1.16 |
| West Branch | Dundee | Ogemaw. | | |
| West Branch Unit[1] | | | T22N, R2E, S21, 26–28, 33–36 and T21N, R2E, S2. | 1.03 |
| Country Club Unit | | | T22N, R1E, S13, 24 and T22N, R2E, S18–21, 29 | 0.91 |

[1] Exclusive of West Branch 28 Unit, to be proposed at a later date.

[FR Doc. 93–19130 Filed 8–9–93; 8:45 am]
BILLING CODE 6560–60–P

[FRL–4691–1]

## Workshops Sponsored Committees of the Grand Canyon Visibility Transport Commission

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Notice of meetings.

**SUMMARY:** The United States Environmental Protection Agency (U.S. EPA) is announcing two meetings related to the Grand Canyon Visibility Transport Commission (Commission).

The first meeting will be a workshop sponsored by the Meteorological Subcommittees of the Commission's Technical Committee to discuss the scientific principle of clean air corridors. The purpose of this workshop will be to evaluate the existence of clean air corridors as a source of good visibility for parks and wilderness areas on the Colorado Plateau.

The second will be a workshop sponsored by the Alternatives Assessment Committee. The workshop will condense the results of an earlier Commission workshop on developing visibility management options. The workshop will be held August 18–20, 1993.

The Commission was established by the EPA on November 13, 1991 (see 56 FR 57522, November 12, 1991). The committees were established by the Commission by approval of a work plan at its June 21, 1992 meeting (see 56 FR 24790, June 11, 1992, and 56 FR 38633, August 26, 1992). Participation in both workshops is by invitation. However, the workshops are open to the general public. These meetings are not subject to provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

**DATES:** The Meteorological Subcommittee workshop on clean air corridors will be held on August 16 and 17, 1993 beginning at 8:30 a.m., PDT. The Alternatives Assessment workshop on emissions management options and evaluation criteria will be held on August 18–20, 1993 at 1 p.m., PDT.

**ADDRESSES:** The Meteorological Subcommittee workshop will be held at the University of Nevada Lecture Building, Lecture Room 3, Reno, Nevada. The Alternatives Assessment workshop will be held at the University Inn, 1001 N. Virginia Street, Reno, Nevada.

**FOR FURTHER INFORMATION CONTACT:** Mr. John T. Leary, Project Manager for the Grand Canyon Visibility Transport Commission, Western Governors' Association, 600 17th Street, Suite 1705, South Tower, Denver, Colorado 80202; telephone number (303) 623–9378; facsimile machine number (303) 534–7309.

Dated: August 4, 1993.

**Robert D. Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 93–19127 Filed 8–9–93; 8:45 am]
BILLING CODE 6560–60–P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 2, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

*OMB Number:* 3060–0079

*Title:* Application for an Amateur Club, RACES* or Military Recreation Station License (*Radio Amateur Civil Emergency Service)

*Form Number:* FCC Form 610–B

*Action:* Revision of a currently approved collection

*Respondents:* Non-profit institutions

*Frequency of Response:* On occasion reporting requirement

*Estimated Annual Burden:* 2,000 responses; .084 hours average burden per response; .084 hours total annual burden

*Needs and Uses:* FCC Rules require applicants to file FCC Form 610–B for new, modified, or renewed Amateur Club, Radio Amateur Civil Emergency Service (RACES), or Military Recreation station license. The Commission amended its Amateur Service Rules, Report and Order, FCC 93–249, effective July 19, 1993, to establish Station Call Sign Administrators who will issue new and renewed licenses to Amateur Clubs and Military Recreation groups. Prior to this rule change, no new Club or Military Recreation station licenses were issued. FCC Form 610–B is being modified to accommodate licensing of new stations. The data is used by Call Sign Administrators and Commission staff to determine if the applicant is eligible for an Amateur Club, RACES, or Military Recreation Station license. This document is used in issuing authorizations of service in the Amateur Radio Service. Information obtained from this form is vital to maintain an acceptable database.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–19057 Filed 8–9–93; 8:45 am]
BILLING CODE 6712–01–M

[PR Docket No. 93–132; DA 93–862]

## Private Land Mobile Radio Services; Kentucky Public Safety Plan

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Kentucky (Region 17). As a result of accepting the Plan for Region 17, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

**EFFECTIVE DATE:** August 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–5497.

**SUPPLEMENTARY INFORMATION:**

### Order

Adopted: July 28, 1993.
Released: August 3, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 28, 1993, Region 17 (Kentucky) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Kentucky.

2. The Kentucky Plan was placed on Public Notice for comments due on June 14, 1993, 58 FR 28018 (May 12, 1993). The commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Kentucky and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87-112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Kentucky.

4. Therefore, we accept the Kentucky Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Kentucky may commence immediately.

Federal Communications Commission.

**Ralph A. Haller,**

*Chief, Private Radio Bureau.*

[FR Doc. 93-19050 Filed 8-9-93; 8:45 am]

BILLING CODE 6712-01-M

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**Travel Reimbursement Program; April 30, 1993—June 30, 1993 Summary Report**

| | |
|---|---|
| Total Number of Sponsored Events | 29 |
| Total Number of Sponsoring Organizations | 26 |
| Total Number of Different Commissioners/ Employees Attending | 37 |
| Total Amount of Reimbursement Expected: | |
| Transportation | $22,845.89 |
| Subsistence | 22,042.45 |
| Other Expenses | 4,214.62 |
| Total | 49,102.96 |

*Sponsoring Organizations:* America's Carriers Telecommunications Association, ACTA, 240 Spring Wind Way, Casselberry, Florida 32707
*Date of the Event:* April 25–28, 1993
*Description of the Event:* ACTA Conference, Asheville, North Carolina.
*Commissioners Attending:* None.
*Other Employees Attending:*
Kathleen Q. Abernathy—Legal Advisor to the Chairman.
Sara F. Seidman—Special Assistant to General Counsel.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $742.00 |
| Subsistence | 202.14 |
| Other Expenses | 119.75 |
| Total | 1,063.89 |

*Sponsoring Organizations:* APCO, Jay Morrision, SNOPAC 911, 3000 Rockefeller Room 118, Everett, Washington 98201
*Date of the Event:* June 10, 1993
*Description of the Event:* 1993 Northwest APCO Training Seminar, Wenatchee, Washington.
*Commissioners Attending:* None.
*Other Employees Attending:* Gary P. Soulsby—Engineer In Charge, Seattle, Washington, POB.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $.00 |
| Subsistence | 132.00 |
| Other Expenses | 32.50 |
| Total | 164.50 |

*Sponsoring Organizations:* BCR Enterprises, 950 York Road, Suite 203, Hinsdale, Illinois 60521
*Date of the Event:* May 18–20, 1993
*Description of the Event:* Wireless Datacomm '93 Conference and Exhibition, San Jose, California.
*Commissioners Attending:* None.
*Other Employees Attending:* Robert F. Cleveland—Physical Scientist, Office of Engineering and Technology.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $439.00 |
| Subsistence | 291.50 |
| Other Expenses | 34.00 |
| Total | 764.50 |

*Sponsoring Organization:* Broadcast Promotion and Marketing Executives, 6255 Sunset Boulevard, Suite 624, Los Angeles, California 90028
*Date of the Event:* June 13–14, 1993
*Description of the Event:* Children's Issues Panel, Orlando, Florida.
*Commissioners Attending:* None.
*Other Employees Attending:* John C. Hollar—Senior Legal Advisor to Commissioner Duggan
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $393.00 |
| Subsistence | 113.50 |
| Other Expenses | 24.00 |
| Total | 530.50 |

*Sponsoring Organization:* Colorado Cable Television Association, 1600 Sherman, Suite 1110, Denver, Colorado 80203
*Date of the Event:* May 12–14, 1993
*Description of the Event:* "Women In Cable" Group, Denver, Colorado
*Commissioners Attending:* None.
*Other Employees Attending:* Robert Corn-Revere—Legal Assistant to Chairman Quello
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $339.00 |
| Subsistence | 233.50 |
| Other Expenses | 36.25 |
| Total | 608.75 |

*Sponsoring Organization:* Deloitte & Touche Tohmatsu International, 100 Peachtree Street, Suite 1700, Atlanta, Georgia 30303
*Date of the Event:* May 18–19, 1993
*Description of the Event:* 1993 Accounting and Auditing Telecommunications Industry Training Seminar, Toronto, Canada.
*Commissioners Attending:* None.
*Other Employees Attending:* Kenneth M. Ackerman—Acting Chief, Accounting Systems Branch, Common Carrier Bureau
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $375.99 |
| Subsistence | 180.63 |
| Other Expenses | 72.00 |
| Total | 628.62 |

*Sponsoring Organization:* Electronics Industries Association, Government and Legal Affairs, Consumer Electronics Group, 2001 Pennsylvania Avenue, NW., Washington, DC 20006
*Date of the Event:* June 2–6, 1993
*Description of the Event:* 1993 Summer International Consumer, Consumer Electronic Show (CES), Chicago, Illinois.
*Commissioners Attending:* None.
*Other Employees Attending:*
Thomas P. Stanley—Chief Engineer, Office of Engineering & Technology.
David E. Wilson—Electronics Engineer, Office of Engineering & Technology.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $675.00 |
| Subsistence | 1,240.96 |
| Other Expenses | 65.00 |
| Total | 1,980.96 |

*Sponsoring Organization:* Leibowitz and Spencer, Florida Association of Broadcasters, Sunbank International Center, One Southeast Third Avenue, Miami, Florida 33131
*Date of the Event:* June 23–27, 1993
*Description of the Event:* Florida Association of Broadcasters Annual Convention, Miami, Florida.
*Commissioners Attending:* None.
*Other Employees Attending:*
Richard M. Smith—Chief, Field Operations Bureau.
Roy J. Stewart—Chief, Mass Media Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $650.00 |
| Subsistence | 643.00 |
| Other Expenses | 84.59 |
| Total | 1,377.59 |

*Sponsoring Organization:* Federal Communications Bar Association (FCBA), 1150 Connecticut Avenue NW., suite 1050, Washington, DC 20036
*Date of the Event:* May 14–16, 1993
*Description of the Event:* 1993 FCBA Annual Seminar, Hot Springs, Virginia.
*Commissioners Attending:* None.
*Other Employees Attending:*
Robert E. Branson—Senior Advisor to Commissioner Andrew C. Barrett.
Randall S. Coleman—Legal Advisor to

Commissioner Ervin S. Duggan.
Robert L. Corn-Revere—Senior Advisor to Chairman James H. Quello.
John C. Hollar—Senior Legal Advisor to Commissioner Ervin S. Duggan.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $.00 |
| Subsistence | 679.14 |
| Other Expenses | 768.38 |
| Total | 1,447.52 |

*Sponsoring Organization:* Granville T. Woods Association (GTW), Minority Management Association (MMA) of New England Telephone Company, P.O. Box 2308, Boston, Massachusetts 02107
*Date of the Event:* June 24, 1993
*Description of the Event:* GTW First Annual Meeting, New York City, New York.
*Commissioners Attending:* None.
*Other Employees Attending:*
Patrice Gray Smith—Deputy Director for Policy, PIRS, Associate Managing Director.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $133.00 |
| Subsistence | .00 |
| Other Expenses | 54.00 |
| Total | 187.00 |

*Sponsoring Organization:* Hong Kong University of Science and Technology, Clear Water Bay, Kowloon, Hong Kong.
*Date of the Event:* March 30–April 5, 1993
*Description of the Event:* Workshop on Video Technology/HDTV, Hong Kong.
*Commissioners Attending:* None.
*Other Employees Attending:*
Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $1,317.45 |
| Subsistence | 977.15 |
| Other Expenses | 43.33 |
| Total | 2,337.93 |

*Sponsoring Organization:* Indiana Broadcasters Association, 11595 North Meridian Street, Suite 300, Carmel, Indiana 46032
*Date of the Event:* April 6–8, 1993
*Description of the Event:* IBA/KBA Spring Conference '93, French Lick, Indiana.
*Commissioners Attending:* James H. Quello—Chairman.
*Other Employees Attending:* None.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $360.00 |
| Subsistence | 149.42 |
| Other Expenses | 44.09 |
| Total | 553.51 |

*Sponsoring Organization:* KMB Associates Inc., 437 3rd Avenue N., Tierra Verde, Florida 33715
*Date of the Event:* April 19–21, 1993
*Description of the Event:* KMB Video Journal Conference, St. Petersburg, Florida.
*Commissioners Attending:* None.
*Other Employees Attending:* Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $350.00 |
| Subsistence | 8.50 |
| Other Expenses | 36.75 |
| Total | 395.25 |

*Sponsoring Organization:* National Association of Broadcasters (NAB), 1771 N Street, NW., Washington, DC 20036
*Date of the Event:* April 19–22, 1993
*Description of the Event:* NAB's 93 Annual Convention, Las Vegas, Nevada.
*Commissioners Attending:*
James H. Quello—Chairman.
Ervin S. Duggan—Commissioner.
*Other Employees Attending:*
Lauren J. Belvin—Director, Office of Legislative Affairs.
Robert L. Corn-Revere—Senior Advisor to Chairman James H. Quello.
Larry D. Eads—Chief, Audio Services Division, Mass Media Bureau.
Brian F. Fontes—Chief of Staff, to Chairman James H. Quello.
John C. Hollar—Senior Legal Advisor to Commissioner Ervin S. Duggan.
Charles W. Kelley—Chief, Enforcement Division, Mass Media Bureau.
Robert M. Pepper—Chief, Office of Plans and Policy.
Richard M. Smith—Chief, Field Operations Bureau.
Roy J. Stewart—Chief, Mass Media Bureau.
Alexandra M. Wilson—Attorney Advisor, Mass Media Bureau.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $3,689.00 |
| Subsistence | 5,246.80 |
| Other Expenses | 693.35 |
| Total | 9,629.15 |

*Sponsoring Organization:* National Association of Business and Educational Radio (NABER), 1501 Duke Street, Alexandria, Virginia 22314
*Date of the Event:* May 12–14, 1993
*Description of the Event:* Annual Mobile Communications Conference, San Antonio, Texas.
*Commissioners Attending:* None.
*Other Employees Attending:* Ralph A. Haller—Chief, Private Radio Bureau.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $ 327.00 |
| Subsistence | 109.00 |
| Other Expenses | 29.50 |
| Total | 465.50 |

*Sponsoring Organization:* National Alliance for Media Arts and Cultures (NAMAC), 1130 S. Wabash Avenue, suite 400, Chicago, Illinois 60605
*Date of the Event:* June 3–6, 1993
*Description of the Event:* National Conference "Rewiring Our Networks", Chicago, Illinois.
*Commissioners Attending:* None.
*Other Employees Attending:* Byron F. Marchant—Legal Advisor to Commissioner Andrew C. Barrett.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $ 298.00 |
| Subsistence | 121.29 |
| Other Expenses | 71.00 |
| Total | 490.29 |

*Sponsoring Organization:* National Cable Television Association, 1724 Massachusetts Avenue NW., Washington, DC 20036
*Date of the Event:* June 6–9, 1993
*Description of the Event:* 42nd Annual Convention and Exposition, San Francisco, California.
*Commissioners Attending:*
James H. Quello—Chairman.
Ervin S. Duggan—Commissioner.
*Other Employees Attending:*
Robert L. Corn-Revere—Senior Advisor to Chairman James H. Quello.
Diane L. Hofbauer—Attorney Advisor, Office of Legislative Affairs.
John C. Hollar—Senior Legal Advisor to Commissioner Ervin S. Duggan.
William H. Johnson—Deputy Chief, Mass Media Bureau.
Byron E. Marchant—Legal Advisor to Commissioner Andrew C. Barrett.
Linda L. Oliver—Legal Advisor to Commissioner Ervin S. Duggan.
Ronald Parver—Chief, Cable Television Branch, Mass Media Bureau.
Robert M. Pepper—Chief, Plans and Policy.
Thomas P. Stanley—Chief Engineer Office of Engineering and Technology.
Roy J. Stewart—Chief, Mass Media Bureau.
Alexandra M. Wilson—Attorney Advisor, Mass Media Bureau.
John P. Wong—Assistant Chief, Cable Television Branch, Mass Media Bureau.

*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $ 7,328.00 |
| Subsistence | 7,251.50 |
| Other Expenses | 1,132.31 |

| | |
|---|---|
| Total | 15,711.81 |

*Sponsoring Organization:* New Jersey Broadcasters Association (NJBA), 9 Davison Avenue, Jamesburg, New Jersey 08831
*Date of the Event:* June 6—8, 1993
*Description of the Event:* 47th Annual Convention of the NJBA, Atlantic City, New Jersey.
*Commissioners Attending:* None.
*Other Employees Attending:*
Charles W. Kelley—Chief, Enforcement Division, Mass Media Bureau.
Roderick K. Porter—Deputy Chief, Mass Media Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $93.00 |
| Subsistence | 450.34 |
| Other Expenses | 84.00 |
| Total | 627.34 |

*Sponsoring Organization:* Pennsylvania Association of Broadcasters (PAB), P.O. Box 4669, Harrisburg, Pennsylvania 1711
*Date of the Event:* June 17—19, 1993
*Description of the Event:* Citizenship Award, Hershey, Pennsylvania.
*Commissioners Attending:* James H. Quello—Chairman.
*Other Employees Attending:* None.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $.00 |
| Subsistence | 138.50 |
| Other Expenses | .00 |
| Total | 138.50 |

*Sponsoring Organization:* Bellcore (SCIS), LCC 2E–235, 290 West Mt. Pleasant Avenue, Livingston, New Jersey 07039
*Date of the Event:* May 13, 1993
*Description of the Event:* Annual User Meeting, Tampa, Florida.
*Commissioners Attending:* None.
*Other Employees Attending:* Stanley P. Wiggins—Senior Attorney, Tariff Division, Common Carrier Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $350.00 |
| Subsistence | 94.50 |
| Other Expenses | 24.93 |
| Total | 469.43 |

*Sponsoring Organization:* Society of Cable Television Engineers (SCTE), 669 Exton Commons, Exton, Pennsylvania 19341
*Date of the Event:* April 22—23, 1993
*Description of the Event:* Cable-Tec Expo '93, Workshop, "One-on-One with the FCC", Orlando, Florida.
*Commissioners Attending:* None.
*Other Employees Attending:*
Michael L. Lance—Electronics Engineer, Cable Branch, Mass Media Bureau.
John P Wong—Electronics Engineer, Cable Branch, Mass Media Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $786.00 |
| Subsistence | 992.00 |
| Other Expenses | 140.00 |
| Total | 1,918.00 |

*Sponsoring Organization:* Southwestern Bell Corporation-Washington, Inc., John Millico, One Bell Plaza, Room 2604, Dallas, Texas 75202
*Date of the Event:* April 19—23, 1993
*Description of the Event:* Accounting Witness Conference, Santa Fe, New Mexico.
*Commissioners Attending:* None.
*Other Employees Attending:* Gerald P. Vaughn—Deputy Chief, Operations, Common Carrier Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $407.00 |
| Subsistence | 390.58 |
| Other Expenses | 189.57 |
| Total | 987.15 |

*Sponsoring Organization:* Technonet Asia, Owen Road, P.O. Box 0165, Singapore 9121
*Date of the Event:* March 25—April 1, 1993
*Description of the Event:* "Understanding U.S. FCC Requirements & Compliance", Singapore.
*Commissioners Attending:* None.
*Other Employees Attending:* Julius P. Knapp—Chief, Authorization and Evaluation Division, Office of Engineering and Technology.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $1,663.45 |
| Subsistence | 1,208.50 |
| Other Expenses | 70.94 |
| Total | 2,942.89 |

*Sponsoring Organization:* Triangle J Council of Governments (TJCOG), 100 Park Drive, P.O. Box 12226, Research Triangle Park, North Carolina 27709
*Date of the Event:* June 15, 1993
*Description of the Event:* TJCOG Cable TV Workshop, Chapel Hill, North Carolina.
*Commissioners Attending:* None.
*Other Employees Attending:* Alexandra M. Wilson—Attorney Advisor, Mass Media Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $252.00 |
| Subsistence | .00 |
| Other Expenses | 14.50 |
| Total | 266.50 |

*Sponsoring Organization:* United States Telephone Association (USTA), 900 19th Street, NW., Suite 800, Washington, DC 20006
*Date of the Event:* June 29—30, 1993
*Description of the Event:* Three-Way Depreciation Meetings, Savannah, Georgia.
*Commissioners Attending:* None.
*Other Employees Attending:* Edward B. Clopton Jr.—Public Utilities Specialist, Depreciation Rates Section, Common Carrier Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $391.00 |
| Subsistence | 173.00 |
| Other Expenses | 43.28 |
| Total | 607.28 |

*Sponsoring Organization:* United States Telephone Association (USTA), 900 19th Street, NW., Suite 800, Washington, DC 20006.
*Date of the Event:* April 18–21, 1993.
*Description of the Event:* Three-Way Depreciation Meetings, Indianapolis, Indiana.
*Commissioners Attending:* None.
*Other Employees Attending:* Edward B. Clopton Jr.—Public Utilities Specialist, Depreciation Rates Section, Common Carrier Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $358.00 |
| Subsistence | 303.00 |
| Other Expenses | 32.40 |
| Total | 693.40 |

*Sponsoring Organization:* United States Telephone Association (USTA), 900 19th Street, NW., Suite 800, Washington, DC 20006.
*Date of the Event:* May 17–20, 1993.
*Description of the Event:* Three-Way Depreciation Meetings, Seattle, Washington.
*Commissioners Attending:* None.
*Other Employees Attending:* Fatina K. Franklin—Chief, Depreciation Rates Section, Common Carrier Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $399.00 |
| Subsistence | 373.00 |
| Other Expenses | 89.75 |
| Total | 861.75 |

*Sponsoring Organization:* United States Telephone Association (USTA), 900 19th Street, NW., Suite 800, Washington, DC 20006.
*Date of the Event:* April 5–8, 1993.
*Description of the Event:* Three-Way Depreciation Meetings, Nashville, Tennessee.
*Commissioners Attending:* None.
*Other Employees Attending:* Fatina K. Franklin—Chief, Depreciation Rates Section, Common Carrier Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | $331.00 |
| Subsistence | 179.00 |
| Other Expenses | 57.50 |
| Total | 567.50 |

*Sponsoring Organization:* Washington State Association of Broadcasters (WSAB), Davis Wright Tremaine Law Offices, 701 Pennsylvania Avenue, NW., Suite 800, Washington, DC 20004.
*Date of the Event:* May 24, 1993.
*Description of the Event:* WSAB's 1993 Annual Conference, Seattle, Washington.
*Commissioners Attending:* None.
*Other Employees Attending:* Barbara A. Kreisman—Chief, Video Services, Division, Mass Media Bureau.
*Amount of Reimbursement:*

| | |
|---|---|
| Transportation | 399.00 |
| Subsistence | 160.00 |
| Other Expenses | 126.95 |
| Total | 685.95 |

Federal Communications Commission.
**William F. Caton,**
*Acting Secretary.*
[FR Doc. 93–19058 Filed 8–9–93; 8:45 am]
BILLING CODE 6712–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

### Kansas; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.
**EFFECTIVE DATE:** August 3, 1993.
**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

Sedgwick and Sumner Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Dennis H. Kwiatkowski,**
*Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.*
[FR Doc. 93–19121 Filed 8–9–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–995–DR]

### Missouri; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.
**EFFECTIVE DATE:** August 1, 1993.
**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Missouri, dated July 9, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 1993:

Audrain, Cass, Clinton, Dekalb, Grundy, Hickory, Jasper, Knox, Linn, Mercer, Morgan, and Randolph Counties for Individual Assistance
City of Kansas City for Individual Assistance and Public Assistance
Andrew, Barry, Bates, Boone, Camden, Cape Girardeau, Clark, Chariton, Daviess, Franklin, Gentry, Gasconade, Harrison, Howard, Jackson, Lewis, McDonald, Miller, Montgomery, Moniteau, Newton, Osage, Perry, Platte, Warren, and Worth Counties for Public Assistance. (Already designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Dennis H. Kwiatkowski,**
*Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.*
[FR Doc. 93–19119 Filed 8–9–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–998–DR]

### Nebraska; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.
**EFFECTIVE DATE:** August 2, 1993.
**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

Chase, Hayes, and Johnson Counties for Individual Assistance and Public Assistance
Cass County for Public Assistance. (Previously designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Dennis H. Kwiatkowski,**
*Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.*
[FR Doc. 93–19122 Filed 8–9–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–998–DR]

### Nebraska; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).
**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Nebraska, (FEMA–998–DR), dated July 19, 1993, and related determinations.
**EFFECTIVE DATE:** August 3, 1993.
**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.
**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Nebraska dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

Dundy, Furnas, Harlan, Merrick, and Saline Counties for Individual Assistance and Public Assistance
Sarpy County for Public Assistance. (Previously designated for Individual Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Dennis H. Kwiatkowski,**
*Assistant Associate Director, Disaster Assistance Programs State and Local Programs and Support.*
[FR Doc. 93–19123 Filed 8–9–93; 8:45 am]
BILLING CODE 6718–02–M

[FEMA–999–DR]

## South Dakota; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–999–DR), dated July 19, 1993, and related determinations.

**EFFECTIVE DATE:** August 3, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of South Dakota dated July 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 19, 1993:

Aurora, Campbell, Clark, Corson, Edmunds, and Hand Counties for Individual Assistance and Public Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Dennis H. Kwiatkowski,**

*Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support.*

[FR Doc. 93–19120 Filed 8–9–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

## Wisconsin; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), dated July 2, 1993, and related determinations.

**EFFECTIVE DATE:** August 2, 1993.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Wisconsin dated July 2, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 1993:

Richland County for Individual Assistance

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

**Dennis H. Kwiatkowski,**

*Assistant Associate Director, Disaster Assistance Program, State and Local Programs and Support.*

[FR Doc. 93–19118 Filed 8–9–93; 8:45 am]

BILLING CODE 6718–02–M

## FEDERAL MARITIME COMMISSION

### Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Great Hawaiian Properties Corp. (d/b/a American Hawaii Cruises) and Great Hawaiian Cruise Line, Inc., 550 Kearny Street, San Francisco, California 94108

Vessels: CONSTITUTION and INDEPENDENCE

Dated: August 4, 1993.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–19104 Filed 8–9–93; 8:45 am]

BILLING CODE 6730–01–M

### Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Great Hawaiian Properties Corp. (d/b/a American Hawaii Cruises), Great Hawaiian Cruise Line, Inc. and Great Constitution Ship Co., 550 Kearny Street, San Francisco, California 94108

Vessel: CONSTITUTION

Great Hawaiian Properties Corp. (d/b/a American Hawaii Cruises), Great Hawaiian Cruise Line, Inc. and Great Independence Ship Co., 550 Kearny Street, San Francisco, California 94108

Vessel: INDEPENDENCE

Dated: August 4, 1993.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 93–19105 Filed 8–9–93; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Radio Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071293 AND 072393

| Name of Acquiring Person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Haftpflichtverband der Deutschen Industrie, LSW Holding Corporation, LSW Holding Corporation | 93–1178 | 07/12/93 |
| Compagnie des Machines Bull, Packard Bell Electronics, Inc., Packard Bell Electronics, Inc. | 93–1230 | 07/12/93 |
| S.C.R.—Sibelco S.A., Watts, Blake, Bearne & Co. PLC, Watts, Blake, Bearne & Co. PLC | 93–1242 | 07/12/93 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 071293 AND 072393—Continued

| Name of Acquiring Person, name of acquired person, name of acquired entity | PMN No. | Date terminated |
|---|---|---|
| Capital Cities/ABC, Inc., NewCity Communications, Inc., NewCity Communications of Atlanta, Inc. | 93-1253 | 07/12/93 |
| Unocal Corporation, Enron Corp., Enron Oil & Gas Company | 93-1266 | 07/12/93 |
| Shimizu Corporation, Simizu Corporation, Tempe Buttes Hotel Limited Partnership | 93-1267 | 07/12/93 |
| Grow Group, Inc., Standard Brands Paint Company, Zynolyte Products Company | 93-1281 | 07/12/93 |
| AMERCO, Sophia M. Shoen, Sophmar, Inc. | 93-1282 | 07/12/93 |
| The Dow Chemical Company, Joseph Ashkin, Rugby-Darby Group Companies, Inc. | 93-1287 | 07/12/93 |
| Paramount Communications Inc., Cox Enterprises, Inc., WKBD, Inc. | 93-1289 | 07/12/93 |
| Amoco Corporation, Pennzoil Company, Pennzoil Company | 93-1290 | 07/12/93 |
| General Motors Corporation, Morgan Stanley Group Inc., Sweetheart Holdings Inc. | 93-1296 | 07/12/93 |
| American Industrial Partners Capital Fund, L.P., Morgan Stanley Group Inc., Sweetheart Holdings Inc. | 93-1298 | 07/12/93 |
| State Automobile Mutual Insurance Company, Royal Insurance Holdings plc, Milbank Insurance Company | 93-1312 | 07/12/93 |
| Saratoga Partners II, L.P., FSC Holdings Corporation, FSC Holdings Corporation | 93-1313 | 07/12/93 |
| Hellman & Friedman Capital Partners II, L.P., Cellular Information Systems, Inc. Debtor-in-Possession, C.I.S. of Lincoln, N.M., Inc. | 93-1316 | 07/12/93 |
| City Hotels, S.A., Great Western Financial Corporation, Great Western Financial Corporation | 93-1319 | 07/12/93 |
| Saratoga Partners II, L.P., Paper Mill Investments Pty., Ltd., FSC Paper Company, L.P. | 93-1320 | 07/12/93 |
| WMX Technologies, Inc., EnClean, Inc., EnClean, Inc. | 93-1326 | 07/12/93 |
| New England Frozen Foods, Inc., Bruce Ginsberg, International Ice Cream Corporation | 93-1310 | 07/13/93 |
| Bruce Ginsberg, New England Frozen Foods, Inc., New England Frozen Foods, Inc. | 93-1311 | 07/13/93 |
| Storage Technology Corporation, Amperif Corporation, Amperif Corporation | 93-1186 | 07/14/93 |
| Estate of Charles A. Sammons, Cardinal Communications, Inc., Cardinal Communications, Inc. | 93-1213 | 07/14/93 |
| Kennametal Inc., Bayerische Vereinsbank AG, Hertel AG | 93-1215 | 07/14/93 |
| Citicorp, Westinghouse Electric Corp., Zatarain's Partnership | 93-1224 | 07/14/93 |
| Sage Alerting Systems, Inc., Cleary Co., Cleary Co. | 93-1288 | 07/14/93 |
| Sunrise Medical, Inc. Homecare Holdings, Inc., Homecare Holdings, Inc. | 93-1304 | 07/14/93 |
| Estate of Peter Sharp, Avatar Holdings Inc., Avatar Holdings Inc. | 93-1217 | 07/15/93 |
| Arethusa (Off-Shore) Limited, Mr. Tore Staubo, Stadrill 4 KS | 93-1221 | 07/15/93 |
| Kenneth R. Thomson, RLM Investments, Inc., The E. H. Boeckh Company | 93-1254 | 07/15/93 |
| Acceptance Insurance Companies Inc., The Redland Group, Inc., The Redland Group, Inc. | 93-1264 | 07/15/93 |
| United Technologies Corporation, C. Daniel Elliott, Resource Distributing, Inc. | 93-1303 | 07/15/93 |
| Lumbermens Mutual Casualty Company, Kemper Corporation, Kemper Reinsurance Company and National Loss Control | 93-1227 | 07/17/93 |
| Bally Manufacturing Corporation, Bally's Grand, Inc. (Debtor-in Possession), Bally's Grand, Inc. (Debtor in Possession) | 93-1255 | 07/19/93 |
| Shimizu Corporation, The Westcor Company Limited Partnership, Tempe Buttes Hotel Limited Partnership | 93-1293 | 07/19/93 |
| Southern Jitney Jungle Company, McLemore's Wholesale & Retail Stores, Inc., McLemore's Wholesale & Retail Stores, Inc. | 93-1331 | 07/19/93 |
| Cook Inlet Region, Inc., Cook Inlet Inlet Region, Inc., Cook Inlet Communications, L.P. | 93-1333 | 07/19/93 |
| Acadia Partners, L.P., Specialty Foods Acquisition Corporation, Specialty Foods Acquisition Corporation | 93-1336 | 07/19/93 |
| Tribune Company, Harvey B. Plotnick, PFM Holding Corporation | 93-1341 | 07/19/93 |
| Group Financial Partners, Inc., Philips N.V., Philips Electronics North American Corporation | 93-1295 | 07/20/93 |
| Stupp Bros., Inc., Kenny W. Wilson, Hammert's Iron Works, Inc., | 93-1306 | 07/20/93 |
| Kinross Gold Corporation, The RTZ Corporation PLC, NERCO DeLamar Company | 93-1316 | 07/20/93 |
| Longs Drug Stores Corporation, Bill's Druge, Inc., Bill's Druge, Inc. | 93-1345 | 07/20/93 |
| The Goldman Sachs Group, L.P., Energy Service Company, Inc., Energy Service Company, Inc. | 93-1343 | 07/21/93 |
| Chemical Bank Obligations Trust, Energy Service Company, Inc., Energy Service Company, Inc. | 93-1344 | 07/21/93 |
| Leggett & Platt, Incorporated, Momentum Distribution Inc., VWR Textiles & Supplies Inc. | 93-1272 | 07/22/93 |
| Hanes Holding Company/Newco, Momentum Distribution, Inc., VWR Textiles & Supplies Inc. | 93-1273 | 07/22/93 |
| Leggett & Platt, Incorporated, Hanes Holding Company, Hanes Holding Company | 93-1276 | 07/22/93 |
| Ronald O. Perelman, Reebok International Ltd., Boston Whaler, Inc. | 93-1294 | 07/22/93 |
| SunAmerica Inc., MAAF Assurance (Mutuelle d'Assurance Artisanale/France, New California Life Holdings, Inc. | 93-1348 | 07/22/93 |
| Western Gas Resources, Inc., The Morgan Stanley Leveraged Equity Fund II, L.P., Mountain Gas Resources, Inc. | 93-0891 | 07/23/93 |
| WICOR, Inc., Carr-Griff, Inc., Carr-Griff, Inc. | 93-1300 | 07/23/93 |
| Citation Insurance Group, Madison Capital, Inc., Madison Capital, Inc | 93-1306 | 07/23/93 |
| United Dominion Industries Limited, KKR Associates, L.P., The Marley Company | 93-1346 | 07/23/93 |
| National Power PLC, Transco Energy Company, Transco Energy Ventures Company | 93-1347 | 07/23/93 |
| Equifax Inc., Integratec, Inc., Integratec Performance Corporation Inc., | 93-1352 | 07/23/93 |
| Coda Energy, Inc., Mobil Corporation, Mobil Oil Corporation | 93-1358 | 07/23/93 |
| Morgan Keegan, Inc., Capitol Securities Group, Inc., Capitol Securities Group, Inc. | 93-1371 | 07/23/93 |
| Joseph Littlejohn & Levy Fund, L.P., Richard Duchossois, Duchossois Communications Company | 93-1377 | 07/23/93 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–19134 Filed 8–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C-3443]

**Sharper Image Corporation, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a San Francisco-based retail chain and mail order company and its present from making false or unsubstantiated advertising claims for a telephone tap detector (Tap Detector V), an exercise device (Chest Maximizer), and an anti-fatigue nutritional supplement (Essential Factors) or similar products.

**DATES:** Complaint and Order issued June 28, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:** C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, Illinois 60603, (312) 353–8156.

**SUPPLEMENTARY INFORMATION:** On Tuesday, April 20, 1993, there was published in the **Federal Register**, 58 FR 21307, a proposed consent agreement with analysis In the Matter of Sharper Image Corporation, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–19133 Filed 8–9–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C-3449]

**American Industrial Real Estate Association, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Los Angeles area multiple listing service ("MLS") specializing in industrial properties from conditioning broker membership in the MLS on being primarily engaged in industrial real-estate brokerage, or on the amount of industrial real-estate experience the brokers have, or on the dollar volume of their business. In addition, the agreement prohibits the respondents from restricting any broker's offering or accepting any exclusive agency listing, or requiring disclosure of commissions that deviate from normal commission rates.

**DATES:** Complaint and Order issued July 6, 1993.[1]

**FOR FURTHER INFORMATION CONTACT:** Paul Roark, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13200, Los Angeles, CA 90024. (213) 575–7890.

**SUPPLEMENTARY INFORMATION:** On Wednesday, November 13, 1991, there was published in the **Federal Register**, 56 FR 57648, a proposed consent agreement with analysis In the Matter of American Industrial Real Estate Association, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60 days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–19132 Filed 8–9–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga and Starek are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[File No. 931 0071]

**McCormick & Company, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the largest spice and seasonings company in the U.S. to divest enough specially-bred seeds to produce a total of 100 million pounds of low-water onions suitable for dehydration, and to provide the Commission-approved acquirer certain technical assistance for one year. In addition, the consent agreement would require the respondent to agree to the appointment of a trustee to complete the divestiture, if it failed to do so in the specified time-frame.

**DATES:** Comments must be received on or before October 12, 1993.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Claudia Higgins or Ann Malester, FTC/S–2308, Washington, DC 20580. (202) 326–2682.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order**

The Federal Trade Commission ("Commission"), having initiated an investigation of the Acquisition by McCormick & Company, Inc., ("McCormick") of certain assets of Haas Foods, Inc., ("Haas Foods") a wholly-owned subsidiary of John I. Haas, Inc., and it now appearing that McCormick, hereinafter sometimes referred to as "proposed respondent", is willing to enter into an Agreement Containing

Consent Order ("Agreement") to divest certain assets, cease and desist from certain acts, and to provide for certain other relief,

It is hereby agreed by and between McCormick, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its principal offices located at 18 Loveton Circle, Sparks, Maryland 21152.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceedings unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and cease and desist, and for other relief in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the agreement or the Order may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed Complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

*Order*

I

As used in this order, the following definitions shall apply:

A. "McCormick" means McCormick & Company, Inc., a corporation organized, existing, and doing business under and by the virtue of the laws of Maryland, its predecessors, subsidiaries, divisions, groups and affiliates controlled by McCormick and their respective directors, officers, employees, agents and representatives acting on behalf of McCormick, and their successors and assigns.

B. "Gilroy" means Gilroy Foods, Inc., a subsidiary of McCormick.

C. "Haas Foods" means Haas Foods, Inc., a subsidiary of John I. Haas, a corporation organized, existing, and doing business under and by virtue of the laws of Delaware.

D. "Commission" means the Federal Trade Commission.

E. "Acquisition" means the acquisition by Gilroy of certain assets of Haas Foods relating to the production of dehydrated onions, which assets are the subject of an asset purchase agreement dated March 19, 1993.

F. "Acquirer" means the person to whom McCormick divests the assets herein ordered to be divested.

G. "Crop Year" means the year in which a crop is harvested.

H. "Onions Suitable For Dehydration" means any variety of onions that has been used by McCormick or Haas Foods for production of dehydrated onion products in crop years 1990 to 1993 and that has an average soluble solids content of no less than the average soluble solids content achieved by McCormick's entire production crop for the crop years of 1990 through 1992, exclusive of the crop acquired through the Acquisition.

I. "Seed Bank" means:

1. A quantity of onion seeds of one or more varieties of Onions Suitable For Dehydration in volumes sufficient to yield at least fifty (50) million pounds of Onions Suitable For Dehydration during crop year 1994 (or, if a trustee is appointed under the terms of Paragraph III, during the crop year in which divestiture occurs), plus a quantity of onion seed (or, in the case of hybrid varieties, the genetic stock) of one or more varieties of Onions Suitable For Dehydration sufficient to yield at least five thousand pounds of additional onion seed for planting in a future crop year, said onion seed and/or genetic stock to be made available by McCormick during 1993 (or if a trustee is appointed under the terms of Paragraph III, during the crop year in which divestiture occurs); and

2. A quantity of onion seeds of one or more varieties of Onions Suitable For Dehydration sufficient to yield at least fifty (50) million pounds of Onions Suitable for Dehydration during crop year 1995 (or if a trustee is appointed under the terms of Paragraph III, during the year in which divestiture occurs), said onion seed to be made available by McCormick during 1994 (or if a trustee is appointed under the terms of Paragraph III, during the year in which divestiture occurs).

To the extent that hybrid onion seeds are included in the Seed Bank, the genetic stock for such hybrid seeds shall also be included in the Seed Bank. The specific varieties of seeds to be contained in the Seed Bank may vary based on the growing areas to be used by the Acquirer.

II

*It is ordered that:* A. McCormick shall contract to divest, absolutely and in good faith, by auction or otherwise, within four (4) months of the date this Order becomes final, a Seed Bank. Delivery of that part of the Seed Bank specified in Paragraph I.I.1, shall be made within four (4) months of the date this Order becomes final. Delivery of that part of the Seed Bank specified in

Paragraph I.I.2 may be made up to twelve months following the initial delivery, so long as such later delivery is made at least thirty days prior to the planting date identified by the Acquirer.

B. McCormick shall divest the Seed Bank only to a person that receives the prior approval of the Commission and only in a manner that is consistent with the purposes of this order and that receives the prior approval of the Commission. The purposes of the divestiture of the Seed Bank are: (1) To provide the means for establishing an ongoing, viable enterprise to replace the competitive entity eliminated by the Acquisition, as alleged in the Commission's Complaint; and (2) to remedy the lessening of competition resulting from the Acquisition, as alleged in the Commission's Complaint.

C. Upon reasonable advance notice, McCormick shall make employees available to provide technical assistance and advice with respect to the dehydrated onion business to the technical personnel of the Acquirer on an "as needed" basis during normal business hours; *provided*, however, that McCormick shall be obligated by this Order to provide, at the request of the Acquirer, such assistance and advice for no more than one (1) year after delivery of that part of the Seed Bank specified in Paragraph I.I.1 and for no more than sixteen hours per month during the first two months after that delivery and for no more than six hours per month during later months. McCormick may require reimbursement from the Acquirer for all its out-of-pocket expenses incurred in providing such assistance and advice to the Acquirer. McCormick shall have no obligation to provide the technical assistance and advice required by this paragraph at its facilities located in Gilroy, California. The purpose of providing the technical assistance and advice is to provide the means for establishing an ongoing, viable enterprise to replace the competitive entity eliminated by the Acquisition.

III

*It is further ordered that:*

A. If McCormick has not divested the Seed Bank, absolutely and in good faith and with the Commission's prior approval within the four-month period provided for in Paragraph II, McCormick shall consent to the appointment of a trustee by the Commission to divest the Seed Bank. In the event the Commission or the Attorney General brings an action pursuant to section 5 (*l*) of the Federal Trade Commission Act, 15 U.S.C. 45 (*l*), or any other statute enforced by the Commission, for any violation of this Order, McCormick shall consent to the appointment of one or more trustees in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5 (*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by McCormick to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A of this Order, McCormick shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of McCormick, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If McCormick has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission of the identity of any proposed trustee, McCormick shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to divest the Seed Bank.

3. The trustee shall have twelve (12) months from the date of appointment to divest the Seed Bank. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the twelve (12) month divestiture period for the Seed Bank may be extended; *provided*, however, the Commission may only extend the twelve (12) month divestiture period for up to an additional twelve (12) months.

4. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to the Seed Bank, or any other relevant information, as the trustee may reasonably request. McCormick shall cooperate with any reasonable request of the trustee. McCormick shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Seed Bank. Any delays in divestiture caused by McCormick shall extend the time for divestiture under Paragraph III.B.3 in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to McCormick's absolute and unconditional obligation to divest at no minimum price and the purposes of the divestiture as stated in Paragraph II.B, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available with each prospective Acquirer for the divestiture of the Seed Bank. The divestiture shall be made in the manner set out in Paragraph II; *provided*, however, if the trustee receives bona fide offers from more than one Acquirer, and if the Commission determines to approve more than one such Acquirer, the trustee shall divest to the Acquirer selected by McCormick from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of McCormick, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of McCormick, a seed broker and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of McCormick and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a Commission arrangement contingent on the trustee's divesting the Seed Bank.

7. McCormick shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

8. Within thirty (30) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, McCormick shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to

accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Seed Bank.

12. The trustee shall report in writing to McCormick and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV

*It is further ordered that,* Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until McCormick has fully complied with the provisions of Paragraphs II and III of this Order, McCormick shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, or has complied with those provisions. McCormick shall include in its compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for the divestiture of the Seed Bank, including the identity of all parties contacted or that have contacted McCormick. McCormick also shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture of the Seed Bank.

V

*It is further ordered that,* For a ten (10) year period beginning on the date this Order becomes final, McCormick shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

(a) Any equity or other ownership interest in, or the whole or any part of the stock or share capital of, any person or business that has been engaged in any way in the production of more than 2.5 million pounds of dehydrated onion products for sale in the United States during the twelve (12) months prior to the acquisition; or,

(b) Any assets that were used within the previous twelve (12) months in the production of dehydrated onion products for sale in the United States by a person who produced more than 2.5 million pounds of dehydrated onion product during a twelve (12) month period for sale in the United States; *provided,* however, that nothing in this Order shall prohibit McCormick from acquiring: (1) Seeds, onions or dehydrated onion products necessary, in the ordinary course of business, to fulfill its obligations to its customers; (2) dehydrators of other than the belt type being used by onion dehydrators in the United States; or (3) additional equity or other ownership interest in Deshidratadora, S.A. de C.V., a corporation organized and existing under the laws of the United Mexican States, Alimentos Deshidratados Del Bajio, S.A. de C.V, a company organized and existing under the laws of the United Mexican States, or Giza National Dehydration Company, a corporation organized and existing under the laws of the Arab Republic of Egypt. One year from the date this Order becomes final and annually thereafter for nine years on the anniversary date of this Order, McCormick shall file with the Secretary of the Federal Trade Commission a verified written report of its compliance with this Paragraph.

VI

*It is further ordered that,* For the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to McCormick, McCormick shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of McCormick relating to any matters contained in this consent order; and

B. Upon five (5) days notice to McCormick, and without restraint or interference from McCormick, to interview officers or employees of McCormick, who may have counsel present, regarding such matters.

*It is further ordered,* That McCormick shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, and any other change that may affect compliance obligations arising out of the Order.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission ("Commission") has accepted provisionally an agreement containing a proposed Consent Order from McCormick & Company, Inc., ("McCormick") under which McCormick would divest a seed bank containing high quality onion seeds that have been specially bred for the purpose of producing dehydrated onions. The seed bank would contain enough seeds to produce fifty million pounds of onions suitable for dehydration in each of two successive crop years. It would also include enough seeds to produce five thousand more pounds of seeds for use by the acquiring company for future crops.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested people. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On March 19, 1993, McCormick acquired the dehydrated onion business of Haas Foods, Inc., a wholly-owned subsidiary of John I. Haas, Inc. The proposed complaint alleges that the acquisition constituted a violation of section 7 of the Clayton Act, as amended, 15 U.S.C. 18 and section 5 of the FTC Act, as amended, 15 U.S.C. 45 in the market for the production and sale of dehydrated onion products in the United States. The proposed Consent Order would settle the alleged violation by providing a means for establishing an ongoing, viable enterprise to replace the competitive entity eliminated by the Acquisition and to remedy the lessening of competition resulting from the Acquisition. New entry into this market requires sufficient quantities of seeds for onions suitable for dehydration. Divestiture of the seed bank is intended to overcome this impediment to new entry.

The proposed Consent Order provides that within four (4) months of the Order becoming final, McCormick shall divest the seed bank to a company approved by the Commission and provide technical assistance regarding the dehydrated onion business to the purchasing company. If divestiture is completed within the four month period, the acquirer will have seeds available in time for the spring 1994 planting season. In the event that McCormick has not divested the seed bank in four (4) months, the proposed Consent Order provides that McCormick shall consent to the appointment by the Commission of a trustee to divest the seed bank. The trustee will have twelve months to locate a company interested in the seed bank.

Under the provisions of the proposed Order, McCormick is also required to provide to the Commission a report of its compliance with the divestiture provisions of the Order within sixty (60) days following the date this Order

becomes final, and every sixty (60) days thereafter until McCormick has completely divested the seed bank. Except in limited circumstances, the proposed Order will also require McCormick to cease and desist for ten (10) years from acquiring, without Federal Trade Commission approval, any interest in companies that are part of the United States dehydrated onion market or assets from a company in the dehydrated onion market that were used during the previous year to produce dehydrated onion products for sale in the United States. One year from the date the Order becomes final and annually thereafter for nine (9) years, McCormick will be required to provide to the Commission a report of its compliance with the cease and desist provision of the proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 93–19135 Filed 8–9–93; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research

### Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of August 1993:

*Name:* Subcommittee on AHCPR-Supported Clinical Practice Guideline for Chronic Pain: Headache.

*Date and Time:* August 17, 1993, 9 a.m.

*Place:* Willco Building, 6000 Executive Boulevard, suite 310 Conference Room, Rockville, Maryland 20852.

This meeting will be closed to the public.

*Purpose:* The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this contract is to develop and update the clinical practice guideline in addition to developing medical review criteria, standards of practice, and performance measures regarding chronic pain: headache.

*Agenda:* The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Contracts Management Branch, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 594–2441.

**Note:** Due to unforeseen circumstances, arrangements for this meeting were delayed. Consequently, more timely notification was not possible.

Dated: August 2, 1993.

**J. Jarrett Clinton,**

*Administrator.*

[FR Doc. 93–19111 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–90–U

### Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of August 1993:

*Name:* Subcommittee on AHCPR-Supported Clinical Practice Guideline for Nosocomial Urinary Tract Infections.

*Date and Time:* August 19–20, 1993, 9 a.m.

*Place:* Willco Building, 6000 Executive Boulevard, suite 310 Conference Room, Rockville, Maryland 20852.

This meeting will be closed to the public.

*Purpose:* The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this contract is to develop and update the clinical practice guideline in addition to developing medical review criteria, standards of practice, and performance measures regarding nosocomial urinary tract infections.

*Agenda:* The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Contracts Management Branch, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, Suite 601, Rockville, Maryland 20852, (301) 594–2441.

**Note:** Due to unforeseen circumstances, arrangements for this meeting were delayed. Consequently, more timely notification was not possible.

Dated: August 2, 1993.

**J. Jarrett Clinton,**

*Administrator.*

[FR Doc. 93–19112 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–90–U

## Centers for Disease Control and Prevention

**[CRADA 93–005]**

### Cooperative Research and Development Agreement

**AGENCY:** Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, announces the opportunity for potential collaborators to submit proposals for entering into a Cooperative Research and Development Agreement (CRADA) to develop an antibacterial peptide constructed of 11 amino acids capable of killing *in vitro* and *in vivo* a broad spectrum of bacterial strains, representing gram positive and negative genera.

It is anticipated that inventions which arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA. CDC may provide staff, facilities, equipment, and supplies to the project. There is a single restriction in this exchange: CDC

MAY NOT PROVIDE FUNDS to the other participants in the CRADA.

**DATES:** This opportunity is available until September 9, 1993. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

**FOR FURTHER INFORMATION CONTACT:**

*Technical:* Edwin Ades, Ph.D., Biologic Products Branch, Scientific Resources Program, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop D–34, Atlanta, GA 30333, telephone (404) 639–3720.

*Business:* Greg Jones, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, telephone (404) 639–2434.

**SUPPLEMENTARY INFORMATION:** Isolation of the antibacterial peptide is currently achieved from cell culture. The collaborator and CDC will jointly support research aimed at structure identification, synthesis, cloning, large scale production, and further development of the peptide. Future collaboration may be sought for clinical trials and other applications for the peptide.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan;
2. Adequacy of the personnel to characterize and produce the peptide;
3. Adequacy and availability of the facilities and equipment;
4. Evidence of scientific credibility; and
5. Evidence of commitment and ability to develop the antibacterial peptide.

This CRADA is proposed and implemented under the Federal Technology Transfer Act of 1986: Public Law 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333.

Dated: August 4, 1993.

**Robert L. Foster,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–19087 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–18–P

**[Program Announcement Number 331]**

## Resident Postdoctoral Research Program

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds to provide assistance for developing and conducting a Resident Postdoctoral Research Program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Immunization and Infectious Diseases. (For ordering a copy of Healthy People 2000, see the section **Where to Obtain Additional Information.**)

### Authority

This program is authorized under Sections 301, 317(k)(1), and 317(k)(3) [42 U.S.C. 241, 247b(k)(1), and 247b(k)(3)] of the Public Health Service Act, as amended. Applicable program regulations are found in 42 CFR part 51b, Project Grants for Preventive Health Services and 42 CFR part 52, Grants for Research Projects.

### Eligible Applicants

Assistance will be provided to public, private, non-profit scientific organizations. Eligible applicants must be national in scope, devoted to scientific pursuits in all areas of microbiology that relate to infectious diseases, including general, clinical, medical, environmental, animal virology, molecular microbiology, immunology and medical technology, and have experience in administering postdoctoral training programs in medical microbiology and public health microbiology which are designed to assist associates conducting microbiologic research to solve medical and public health problems.

### Availability of Funds

Approximately $1,000,000 is available in FY 1993 to fund one award. It is expected that the award will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

### Purpose

The purpose of this cooperative agreement is to assist in the development of a Resident Postdoctoral Research Program which emphasizes microbiology related to infectious disease prevention and control with particular emphasis at the molecular level. Areas of investigation must be within the public health mission of the National Center for Infectious Diseases (NCID)/CDC. Specifically, these areas are: Viral and rickettsial infections, nosocomial infections, acquired immunodeficiency syndrome, vector-borne infectious diseases, respiratory and food-borne bacterial diseases, sexually transmitted diseases, parasitic diseases, and other diseases or conditions relevant to the disciplines of bacteriology, virology, parasitology, medical entomology, mycology, immunology, and pathology. The recipient must be able to provide support for postdoctoral scientists of unusual ability and promise or proven achievement by giving them an opportunity to conduct applied and operational research on significant public health problems identified with these research interests.

### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Develop and conduct a Resident Postdoctoral Research Program in microbiology to support development of new approaches, methodologies, and knowledge in infectious disease prevention and control.
2. Promote a wide distribution of the program announcement. Endeavor to contribute to the racial and gender diversity of the program by assuring a wide distribution of the program announcement among eligible women and minority postdoctoral scientists.
3. Identify and approve advisers and postdoctoral scientists.
4. Develop a pre- and post-application review and approval process. Based on this review process, select applicants to be awarded associateships.
5. Provide administrative support to associates during their tenure, including the payment of a stipend and reimbursement of expenses for professional travel.
6. Develop a plan for monitoring progress and achieving goals of the program.

7. Conduct site visits for the periodic review of existing programs.

*B. CDC Activities*

1. Provide assistance in the development of a Resident Postdoctoral Research Program.
2. Provide scientific advisors.
3. Assist in review of potential research proposals and provide comments and/or suggested changes in the scope or method of the research.
4. Review publications and presentations resulting from research investigations conducted under the program.
5. Assist in the development of a plan for monitoring progress of the program and achieving program goals.

**Evaluation Criteria**

The applications will be reviewed and evaluated based on the following weighted criteria:

1. The extent to which the applicant describes the history of the organization for promoting the science of microbiology as it relates to infectious diseases. The extent to which the applicant has promoted the science of microbiology by conducting regular national meetings and workshops devoted to current topics. The extent to which the applicant documents experience in education and training in microbiology. (20 points)

2. The extent to which the applicant provides evidence of staff and program expertise. The extent to which the applicant provides evidence of a plan to actively promote racial and gender diversity in recruiting and placing postdoctoral associateship candidates. (20 points)

3. The extent to which the applicant describes experience in managing a postdoctoral associateship program. (20 points)

4. The extent to which the proposed plan, including the review process for the selection of candidates, addresses the program goals and objectives. (20 points)

5. The quality of the proposed plan for monitoring scientific progress in relation to program activities and objectives. (20 points)

6. The extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds. (not scored)

**Executive Order 12372 Review**

Applications are not subject to review as governed by Executive Order 12372 (45 CFR part 100), "Intergovernmental Review of Federal Programs."

**Public Health System Reporting Requirements**

This program is not subject to the Public Health System Reporting Requirements.

**Catalog of Federal Domestic Assistance Number**

The Catalog of Federal Domestic Assistance Number is 93.283.

**Other Requirements**

*Paperwork Reduction Act*

Projects that involve the collection of information from ten or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided which demonstrates that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

**Application Submission and Deadline**

The original and two copies of the application PHS Form 5161–1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, on or before September 8, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. received on or before the deadline date; or

b. sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**Where to Obtain Additional Information**

A complete program description, information on application procedures, an application package and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, telephone (404) 842–6508.

Programmatic technical assistance may be obtained from Joseph E. McDade, Ph.D., Associate Director for Laboratory Science, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333, telephone (404) 639–3967.

Please refer to Announcement Number 331 when requesting information regarding this program.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 4, 1993.

**Robert L. Foster,**

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93–19217 Filed 8–9–93; 8:45 am]
BILLING CODE 4160–18–P

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**Food and Drug Administration**

**[Docket No. 93E–0105]**

**Determination of Regulatory Review Period for Purposes of Patent Extension; Imitrex™ Injection**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Imitrex™ Injection and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce,

for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Karin L. Bolte, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Imitrex™ Injection. Imitrex™ Injection (sumatriptan succinate) is indicated for the acute treatment of migraine attacks with or without aura. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Imitrex™ Injection (U.S. Patent No. 4,816,470) from Glaxo Group Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 18, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Imitrex™ Injection represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Imitrex™ Injection is 1,869 days. Of this time, 958 days occurred during the testing phase of the regulatory review period, while 911 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: November 18, 1987. The applicant claims March 29, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND was placed on clinical hold March 24, 1987, and was removed from clinical hold on November 18, 1987. Therefore, the IND effective date is November 18, 1987.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: July 2, 1990. The applicant claims June 29, 1990, as the date the new drug application (NDA) for Imitrex™ Injection (NDA 20–080) was initially submitted. However, FDA records indicate that NDA 20–080 was initially submitted on July 2, 1990.

3. *The date the application was approved*: December 28, 1992. FDA has verified the applicant's claim that NDA 20–080 was approved on December 28, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 9 months of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 12, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 3, 1993.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 93–19049 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–01–F

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**[Docket No. 93E–0131]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; Omniscan™ Injection

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Omniscan™ Injection and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John Ensign, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was

marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Omniscan™ Injection. Omniscan™ Injection (gadodiamide) is indicated for intravenous administration with magnetic resonance imaging in adult patients to provide contrast enhancement in those central nervous system lesions with abnormal vascularity or those thought to cause abnormalities in the blood-brain barrier. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Omniscan™ Injection (U.S. Patent No. 4,687,659) from Nycomed Salutar, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated April 1, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Omniscan™ Injection represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Omniscan™ Injection is 1,520 days. Of this time, 700 days occurred during the testing phase of the regulatory review period, while 820 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* November 12, 1988. The applicant claims November 8, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 12, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: October 12, 1990. FDA has verified the applicant's claim that October 12, 1990, was the date that the new drug application (NDA 20–123) was initially submitted.

3. *The date the application was approved*: January 8, 1993. FDA has verified the applicant's claim that NDA 20–123 was approved on January 8, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 874 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 12, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 2, 1993.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 93–19047 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93E–0171]

## Determination of Regulatory Review Period for Purposes of Patent Extension; PCD™ Tachyarrhythmia Control Device Model 72171B

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for PCD™Tachyarrhythmia Control Device Model 72171B and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination

of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device PCD™ Tachyarrhythmia Control Device Model 72171B. PCD™ Tachyarrhythmia Control Device Model 72171B is an implantable, multiprogrammable, automatic tachyarrhythmia control device designed to automatically detect episodes of ventricular tachycardia (VT) or ventricular fibrillation (VF) and deliver therapies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for PCD™ Tachyarrhythmia Control Device Model 72171B (U.S. Patent No. 4,052,991) from Medtronic, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated May 24, 1993, advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of PCD™ Tachyarrhythmia Control Device Model 72171B represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for PCD™ Tachyarrhythmia Control Device Model 72171B is 912 days. Of this time, 208 days occurred during the testing phase of the regulatory review period, while 704 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun:* August 16, 1990. FDA has verified the applicant's claim that the IDE required under section 520(g) of the Federal Food, Drug, and Cosmetic Act became effective on August 16, 1990.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act:* March 11, 1991. The applicant claims March 8, 1991, as the date the premarket approval application (PMA) for PCD™ Tachyarrhythmia Control Device Model 72171B (PMA P900061) was initially submitted. However, FDA records indicate that PMA P900061 was initially submitted on March 11, 1991.

3. *The date the application was approved:* February 11, 1993. FDA has verified the applicant's claim that PMA P900061 was approved on February 11, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks two years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 12, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 3, 1993.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 93–19046 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–01–F

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**[Docket No. 93E–0090]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; TILADE®

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for TILADE® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John S. Ensign, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TILADE® (nedocromil sodium). TILADE® is indicated for maintenance therapy in the management of patients with mild to moderate bronchial asthma. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TILADE® (U.S. Patent No. 4,474,787) from Fisons plc, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated March 11, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the

approval of TILADE® represented the first commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TILADE® is 3,495 days. Of this time, 1,365 days occurred during the testing phase of the regulatory review period, while 2,130 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* June 8, 1983. The applicant claims March 8, 1983, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND was placed on clinical hold on March 4, 1983, and was removed from hold on June 8, 1983. Therefore, the IND effective date is June 8, 1983.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 3, 1987. The applicant claims February 27, 1987, as the date the new drug application (NDA) for TILADE® (NDA 19–660) was initially submitted. However, FDA records indicate that NDA 19–660 was initially submitted on March 3, 1987.

3. *The date the application was approved:* December 30, 1992. FDA has verified the applicant's claim that NDA 19–660 was approved on December 30, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 12, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 7, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 3, 1993.

**Stuart L. Nightingale,**

*Associate Commissioner for Health Affairs.*

[FR Doc. 93–19048 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–01–F

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[Docket No. 93N–0284]

## Lyphomed, Division of Fujisawa USA, Inc.; Withdrawal of Approval of a New Drug Application

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) held by Lyphomed, Division of Fujisawa USA, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160–1002 (Lyphomed). FDA is withdrawing approval of this application because of questions raised about the reliability of the data and information submitted to FDA in support of the application. Marketing of the drug has been discontinued, and Lyphomed has waived its opportunity for a hearing.

**EFFECTIVE DATE:** August 10, 1993.

**FOR FURTHER INFORMATION CONTACT:** Tamar Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** Recently, FDA became aware of discrepancies concerning the data used to support approval of the following NDA held by Lyphomed:

NDA 19–229, Zinc Sulfate Injection, 1 milligram per milliliter (mg/mL), 10 and 30 mL vials.

Lyphomed has identified discrepancies in data submitted to obtain approval of the application listed above, which have raised questions about the reliability of the data. Subsequently, in a letter dated June 1, 1992, Lyphomed requested withdrawal of this NDA.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA listed above, and all amendments and supplements thereto, is hereby withdrawn, effective August 10, 1993. Distribution of drug products in interstate commerce without an approved application is unlawful.

Dated: July 28, 1993.

**Carl C. Peck,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 93–19113 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–01–F

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[Docket No. 93M–0251]

## Tosoh Medics, Inc.; Premarket Approval of AIA-PACK PA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Tosoh Medics, Inc., Foster City, CA, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the AIA-PACK PA. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of July 7, 1993, of the approval of the application.

**DATES:** Petitions for administrative review by September 9, 1993.

**ADDRESSES:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1034.

**SUPPLEMENTARY INFORMATION:** On April 24, 1992, Tosoh Medics, Inc., Foster City, CA 94404, submitted to CDRH a premarket approval application (PMA) for the AIA-PACK PA. The AIA-Pack PA is designed for *in vitro* diagnostic use only for the quantitative measurement of prostate specific antigen in serum to be used to aid in the management of patients with prostatic cancer. In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this PMA was not referred to the Immunology Devices Panel, an FDA advisory panel, for review and

recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On July 7, 1993, CDRH approved the application by letter to the applicant from the Deputy Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

**Opportunity for Administrative Review**

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 9, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 29, 1993.

**Elizabeth D. Jacobson,**

*Deputy Director for Science, Center for Devices and Radiological Health.*

[FR Doc. 93–19045 Filed 8–9–93; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N–93–3553]

### Notice of Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements, described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

**DATES:** Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

**Authority:** Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 30, 1993.

**Kay Weaver,**

*Acting Director, IRM Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Proposal:* Youthbuild Program (FR–3450 and FR–3451)

*Office:* Community Planning and Development

*Description of the Need for the Information and its Proposed Use:* The Youthbuild Program requires collection of information for an application, quarterly progress reports and completion reports. The data will be used to rate and rank applications for funding and to monitor progress and record accomplishments.

*Form Number:* HUD–40200, 40200A, 40201, 40202, and 40203

*Respondents:* State or Local Governments and Non-profit Institutions

*Frequency of Submission:* Quarterly and Annually

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 300 | | 1 | | 45 | | 13,500 |

*Total Estimated Burden Hours:* 13,500
*Status:* New
*Contact:* Michael McMahon, HUD, (202) 708–2035, Angela Antonelli, OMB, (202) 395–6880

Dated: July 30, 1993.

*Proposal:* Notice of Funding Availability for the Federally Assisted Low-Income Housing Drug Elimination Grant Program FY–1993 (FR–3235)

*Office:* Housing

*Description of the Need for the Information and its Proposed Use:* The information collected is needed so that housing owners may apply for grants to use in eliminating drug-related crime in Federally assisted low-income housing. The application process includes developing a plan, seeking tenant comments, certifying compliance with HUD requirements, and outlining a comprehensive drug prevention program.

*Form Number:* SF–424, 424A, HUD–50070, and 2880

*Respondents:* State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions

*Frequency of Submission:* One-time

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 1,000 | | 1 | | 40 | | 40,000 |

*Total Estimated Burden Hours:* 40,000
*Status:* Revision
*Contact:* Lessley D. Wiles, HUD, (202) 708–0216, Angela Antonelli, OMB, (202) 395–6880

Dated: July 28, 1993.

*Proposal:* Multifamily Insurance Benefit Package

*Office:* Housing

*Description of the Need for the Information and its Proposed Use:* Form HUD–2742 will be used by lenders, who are participating in the multifamily insurance program and are entitled to insurance benefits, to present a claim for insurance benefits. Forms HUD–2744A through E will be used to collect the information required by the statutory provisions and regulations so that an expeditious examination and correct claim settlement can be made.

*Form Number:* HUD–2742, HUD–2744A, B,C,D and E

*Respondents:* State or Local Governments and Businesses or Other For-Profit

*Frequency of Submission:* On Occasion

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Annual Report | 300 | | 1 | | 3.5 | | 1,050 |

*Total Estimated Burden Hours:* 1,050
*Status:* Extension
*Contact:* Betty Belin, HUD, (202) 401–2168, Angela Antonelli, OMB, (202) 395–6880

Dated: July 28, 1993.

*Proposal:* Procedures for Appealing Section 8 Rent Adjustments

*Office:* Housing

*Description of the Need for the Information and its Proposed Use:* When the rent increase requests of certain cooperative, subsidized, and 202 projects are denied, in full or in part, owners may submit to HUD an appeal letter outlining the basis for the appeal.

*Form Number:* None

*Respondents:* Businesses or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions

*Frequency of Submission:* On Occasion

*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Appeal Letter | 1,250 | | 1 | | 2 | | 2,500 |

*Total Estimated Burden Hours:* 2,500
*Status:* Extension
*Contact:* Jame J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–680

Dated: July 28, 1993.

*Proposal:* Preference in the Provision for Families who are Occupying Substandard Housing, Involuntarily Displaced or Paying More than 50 percent of Family Income for Rent (FR–3122)

*Office:* Public and Indian Housing

*Description of the Need for the Information and Its Proposed Use:* The information collected is used by Public Housing Authorities (PHAs) to determine whether prospective tenants are eligible for preference in obtaining housing because they are occupying substandard housing, involuntarily displaced, or paying more than 50 percent of their family income for rent. HUD will use the information to determine if PHAs are properly administering the programs.

*Form Number:* None

*Respondents:* Individuals or Households, State or Local Governments, and Non-Profit Institutions

*Frequency of Submission:* On Occasion

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Public Housing Authorities: | | | | | | | |
| Inform Applicants of Federal Preference | 3,300 | | 1 | | 3.3 | | 10,890 |
| Develop Procedures | 330 | | 1 | | 12 | | 3,960 |
| Applicants Qualification: | | | | | | | |
| Documents | 130,000 | | 1 | | 1 | | 130,000 |
| Verify Eligibility | 3,300 | | 3.9 | | 1 | | 128,700 |
| Government Agencies, Private Landlords: | | | | | | | |
| Certify Basis for Preference Determination | 10,000 | | 13 | | .25 | | 32,500 |
| Meeting Criteria | 3,300 | | 3.9 | | 1 | | 12,870 |

*Total Estimated Burden Hours:* 318,920
*Status:* Reinstatement
*Contact:* Edward C. Whipple, HUD (202) 708–1015, Angela Antonelli, OMB, (202) 395–6880.

Dated: July 28, 1993.

*Proposal:* Lead-Based Paint Liability Insurance Coverage for Housing Authorities (FR–3275)

*Office:* Public and Indian Housing
*Description of the Need for the Information and its Proposed Use:* In order to comply with the Annual Contributions Contract, PHAs/IHAs must have insurance to protect the PHA/IHA from claims involving the testing for and abatement of Lead-Base Paint. This rule prescribes the nature and quality of insurance needed to protect the PHA/IHA and the contractor performing such work.
*Form Number:* None
*Respondents:* State or Local Governments
*Frequency of Submission:* Annually
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 200 | | 1 | | 17 | | 33 |

*Total Estimated Burden Hours:* 33
*Status:* New
*Contact:* Arthur Methvin, HUD, (202) 708–1872, Angela Antonelli, OMB, (202) 395–6880.

Dated: July 28, 1993.

*Proposal:* Notice of Intent to Extend Low-Income Affordability Restrictions (ELIHPA)

*Office:* Housing
*Description of the Need for the Information and its Proposed Use:* An owner of eligible lower-income housing seeking to prepay its mortgage or to negotiate changes in the terms of the mortgage must file a "Notice of Intent" with HUD.
*Form Number:* HUD–9806B
*Respondents:* Individuals or Households; State a Local Governments; Businesses or Other For-Profit; Federal Agencies or Employees and Non-Profit Institution
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–9806B | 50 | | 1 | | .5 | | 25 |

*Total Estimated Burden Hours:* 25
*Status:* New
*Contact:* Kevin J. East, HUD, (202) 708–2300, Angela Antonelli, OMB, (202) 395–6880

*Dated:* July 28, 1993.

*Proposal:* Monthly Report of Excess Income

*Office:* Housing
*Description of the Need for the Information and its Proposed Use:* Owners of Section 236 insured and uninsured projects are required by law to pay to HUD the total rental charges collected that are in excess of the basic rents approved for all occupied units. Owners use the HUD–93104/A to compute any required payment due HUD.
*Form Number:* HUD–93104 and 93104A
*Respondents:* Business or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions
*Frequency of Submission:* Monthly
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD Forms HUD–93104/A | 4,523 | | 12 | | 0.5164 | | 28,043 |
| Recordkeeping | 54,276 | | 1 | | .5 | | 27,138 |

*Total Estimated Burden Hours:* 55,181
*Status:* Extension

*Contact:* James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6800

*Dated:* July 28, 1993.

*Proposal:* Pet Ownership in Assisted Rental Housing for the Elderly or

Handicapped (24 CFR parts 243, 511, 842, and 942)
*Office:* Housing
*Description of the Need for the Information and its Proposed Use:* Section 227 of the Housing and Urban-Rural Recovery Act of 1983 provides that no owner of manager of federally assisted rental housing for the elderly or handicapped may prohibit a tenant from having common household pets in the tenant's dwelling unit, or discriminate against any person regarding admission to such housing because of ownership or presence of a pet in the person's dwelling unit.
*Form Number:* None
*Respondents:* Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Notice of Tenants | 6,000 | | 1 | | 0.167 | | 1,004 |
| Registration of Pets | 20,000 | | 1 | | .25 | | 5,000 |
| Consultation | 500 | | 1 | | 1.63 | | 815 |
| Violation/Removals | 2,000 | | 1 | | .167 | | 334 |

*Total Estimated Burden Hours:* 7,153
*Status:* Extension
*Contact:* James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, (202) 395–6880
*Dated:* July 28, 1993.

*Proposal:* HUD Systems for Approval of Single Family Housing in New Subdivisions (FR–3095)
*Office:* Housing
*Description of the Need for the Information and Its Proposed Use:* HUD requires the builder to complete a certification (HUD–92541) that notes any adverse site/location factors on the property. HUD needs this information so that they will not insure a mortgage on a property where site/location conditions will pose of a health or safety risk to the occupant or will adversely affect the continued marketability of the property.
*Form Number:* HUD–92541
*Respondents:* Businesses or Other-For-Profit
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 800 | | 82 | | .25 | | 16,400 |

*Total Estimated Burden Hours:* 16,400
*Status:* New
*Contact:* Bud Carter, HUD, (202) 708–2700, Angela Antonelli, OMB, (202) 395–6880
Dated: July 22, 1993.

*Proposal:* Contract and Subcontract Activity Reporting
*Office:* Community Planning and Development
*Description of the Need for the Information and Its Proposed Use:* Executive Orders 22625 and 12432 state that this report is to be prepared by the grantees to provide data on expended dollars and to provide verifiable minority business enterprise (MBE) data. This information will enable the Department to monitor and evaluate MBE activities against the total program activity and the designated MBE goals.
*Form Number:* HUD–2516
*Respondents:* State or Local Governments
*Frequency of Submission:* Semi-annually
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–2516 | 800 | | 1 | | 2 | | 1,600 |

*Total Estimated Burden Hours:* 1,600
*Status::* Reinstatement
*Contact:* Phyllis J. Shanks, HUD, (202) 708–3176, Angela Antonelli, OMB, (202) 395–6880.
Dated: July 28, 1993.

*Proposal:* Performance Funding System: Cooling Degree Days (FR–2971)
*Office:* Public and Indian Housing
*Description of the Need for the Information and Its Proposed Use:* Housing Authorities will apply a Cooling Degree Day Factor when calculating operating subsidiary eligibility of utilities.
*Form Number:* None
*Respondents:* State or Local Governments
*Frequency of Submission:* Annually
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 1,486 | | 1 | | 1.50 | | 2,229 |

*Total Estimated Burden Hours:* 2,229
*Status:* New
*Contact:* John T. Comerford, HUD, (202) 708–1872, Angela Antonelli, OMB, (202) 395–6880

Dated: July 28, 1993.

*Proposal:* Employment Opportunities for Low and Very Low-Income Persons (FR–2898)
*Office:* Fair Housing and Equal Opportunity
*Description of the Need for the Information and Its Proposed Use:* The information collection will facilitate the collection of Section 3 information to assess the impact of HUD-assisted activities on enhancing the employment opportunities for lower income persons and the use of businesses located in the area of the assisted project.
*Form Number:* HUD–60002 and HUD–2516
*Respondents:* State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
*Frequency of Submission:* Annually and Recordkeeping
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 133,403 | | 1 | | 2 | | 266,806 |
| Recordkeeping | 133,403 | | 1 | | 2 | | 266,806 |

*Total Estimated Burden Hours:* 533,612
*Status:* New
*Contact:* Maxine B. Cunningham, HUD, (202) 708–2251, Angela Antonelli, OMB, (202) 395–6880

Dated: July 28, 1993.

*Proposal:* Financial Standards for Housing Authority-owned Insurance Entities (FR–3023)
*Office:* Public and Indian Housing
*Description of the Need for the Information and Its Proposed Use:* The purpose of this information collection is to permit Public Housing Agencies/Indian Housing Authorities (PHAs/IHAs) to select an insurance provider without complying with the competitive selection process if the provider is a PHA-owned nonprofit insurance entity. It also establishes standards for HUD approval of these nonprofit insurance entities from which PHAs/IHAs may obtain insurance coverage without competitive selection.
*Form Number:* None
*Respondents:* State of Local Governments
*Frequency of Submission:* Annually
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 21 | | 1 | | 9.24 | | 194 |

*Total Estimated Burden Hours:* 194
*Status:* New
*Contact:* Arthur Methvin, HUD, (202) 708–1872, Angela Antonelli, OMB, (202) 395–6880.

Dated: July 28, 1993.

*Proposal:* Mortgage Lender/Servicer EDI Profile Survey
*Office:* Administration
*Description of the Need for the Information and Its Proposed Use:* HUD is seeking Mortgage Lenders and Servicer of FHA-insured mortgage portfolios to participate in an Electronic Data Interchange (EDI) Program that will enable submission of mortgage insurance claims directly to HUD via EDI. An EDI Profile Survey is proposed for use in determining the interest and capability of mortgage lenders to join this program.
*Form Number:* None
*Respondents:* Businesses or Other For-Profit
*Frequency of Submission:* One-time
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Survey | 13,125 | | 1 | | 1 | | 13,125 |

*Total Estimated Burden Hours:* 13,125
*Status:* New
*Contact:* Rex D. Gavin, HUD, (202) 708–0306, Angela Antonelli, OMB, (202) 395–6880

Dated: July 28, 1993.

*Proposal:* Residential Antidisplacement and Relocation Assistance Plan (24 CFR part 43) (FR–3449)
*Office:* Community Planning and Development
*Description of the Need For the Information and Its Proposed Use:* The rule implements Section 220 of the Housing and Community Development Act (HCD) of 1992. This rule adds a requirement that a recipient funded under the HOME Program must certify under its 1992 Comprehensive Housing Affordability Strategy (CHAS) that it is following a "residential antidisplacement and relocation assistance plan." This plan must be equivalent to that required for the Community Development Block Grant Program under Section 104(d) of the HCD Act of 1974, as amended.
*Form Number:* None
*Respondents:* State or Local Governments
*Frequency of Submission:* On Occasion and Recordkeeping
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 50 | | 1 | | 40 | | 2,000 |
| Recordkeeping | 435 | | 1 | | 12 | | 5,220 |

*Total Estimated Burden Hours:* 7,220
*Status:* New
*Contact:* H.J. Huecker, HUD, (202) 708–0336, Angela Antonelli, OMB, (202) 395–6880
Dated: July 22, 1993.
*Proposal:* Annual Inspection of Insured Projects
*Office:* Housing
*Description of the Need For the Information and Its Proposed Use:* The Department's Mortgage insurance programs require mortgagees to annually inspect each insured project and provide the Department and the project owner a report on that inspection. This format establishes standards which all mortgagees must comply with when conducting these inspections.
*Form Number:* HUD–9822
*Respondents:* Businesses or Other For-Profit and Non-Profit Institutions
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–9822 | 15,000 | | 1 | | 2 | | 30,000 |

*Total Estimated Burden Hours:* 30,000
*Status:* Extension
*Contact:* James J. Tahash, HUD, (202) 708–3944, Angela Antonelli, OMB, (202) 395–6880
Dated: July 22, 1993.
*Proposal:* Criteria for Acceptability of Insured 10-Year Protection Plans
*Office:* Housing
*Description of the Need For the Information and Its Proposed Use:* This information is needed for the Department to identify criteria for acceptance of insured housing performance warranties. It is used to protect HUD and homeowners with HUD-insured financing against major dwelling defects.
*Form Number:* None
*Respondents:* Annually
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 10 | | 1 | | 26 | | 260 |

*Total Estimated Burden Hours:* 260
*Status:* Revision
*Contact:* Kenneth L. Crandall, HUD, (202) 708–2720, Angela Antonelli, OMB, (202) 395–6880
Dated: July 20, 1993.
*Proposal:* Survey of Market Absorption of New Apartment Buildings (SOMA)
*Office:* Policy Development and Research
*Description of the Need for the Information and its Proposed Use:* The survey measures the rate at which different types of new rental and condominium apartments are absorbed, i.e., taken off the market. It provides a basis for analyzing the degree to which apartment building activity is meeting present and future needs.
*Form Number:* None
*Respondents:* Businesses or Other For-Profit
*Frequency of Submission:* On Occasion and Quarterly
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 12,000 | | 1 | | .3 | | 3,600 |

*Total Estimated Burden Hours:* 3,600
*Status:* Extension
*Contact:* Connie Casey, HUD, (202) 708–1060, Angela Antonelli, OMB, (202) 395–6880
Dated: July 1, 1993.
*Proposal:* Monthly Digest of Current Housing Situation
*Office:* Housing
*Description of the Need for the Information and its Proposed Use:* The survey will provide a timely series of comprehensive information detailing interest rates and the availability of financing for FHA–insured and conventional first mortgage home loans as well as trends in the home construction market, as required by the 1983 Housing Act pertaining to Section 235 loans.
*Form Number:* HUD–2499
*Respondents:* Businesses or Other For-Profit
*Frequency of Submission:* Monthly
*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–2499 | 300 | | 12 | | .167 | | 601 |

*Total Estimated Burden Hours:* 601
*Status:* Revision
*Contact:* Jim Schneider, HUD, (202) 755–7470, Angela Antonelli, OMB, (202) 395–6880

Dated: July 1, 1993.

*Proposal:* Evaluation of the HOPE 3 Program
*Office:* Policy Development Research
*Description of the Need for the Information and its Proposed Use:* The information collection is necessary to support a national evaluation of the HOPE 3 Program. It will involve a mail survey of local governments and non-profit institutions that received HOPE 3 Grants in 1992, site visits to a sample of 26 grantees, and a telephone survey of 320 homebuyers who purchased homes through this program.
*Form Number:* None
*Respondents:* Individuals or Households, State or Local Governments
*Frequency of Submission:* One-time
*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 974 | | 1 | | 0.537 | | 523 |

*Total Estimated Burden Hours:* 523
*Status:* New
*Contact:* Ruth Alahydoian, HUD, (202) 708–0574, Angela Antonelli, OMB, (202) 395–6880

Dated: June 30, 1993.

*Proposal:* Report on Program Utilization—Section 8 Moderate Rehabilitation
*Office:* Public and Indian Housing
*Description of the Need for the Information and Its Proposed Use:* The form is used by HUD to monitor Public Housing Agency's (PHA) progress in implementing the Moderate Rehabilitation Program and as a means of approving PHA requisitions for funds. Also, the form will assist HUD in identifying those projects where a reduction in the number of units under an Annual Contributions Contract (ACC) is required due to underutilization by the PHA.
*Form Number:* HUD–52685
*Respondents:* State or Local Governments
*Frequency of Submission:* Annually
*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Form HUD–52685 | 600 | | 4 | | .5 | | 1,200 |

*Total Estimated Burden Hours:* 1,200
*Status:* Extension
*Contact:* A.M. Bell, HUD, (202) 708–7424, Angela Antonelli, OMB, (202) 395–6880

Dated: July 22, 1993.

*Proposal:* Direct Endorsement Underwriter/HUD Reviewer Analysis of Appraisal Report
*Office:* Housing
*Description of the Need for the Information and Its Proposed Use:* Form HUD–54114 is necessary to provide the reviewer with a consistent method of documenting the analysis and acceptability of the approval report. The information collected is used by HUD in monitoring the quality of the lender's analysis of the appraisal report, identify areas of weakness for future training, and to remove lenders that consistently exhibit careless underwriting and subsequently effect a potential risk to the Department.
*Form Number:* HUD–54114
*Respondents:* Businesses or Other For-Profit
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | x | Frequency of response | x | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Form HUD–54114 | 375,000 | | 1 | | .5 | | 18,750 |

*Total Estimated Burden Hours:* 18,750
*Status:* Extension
*Contact:* Susan Hoyer, HUD, (202) 708–2700, Dick Manuel, HUD, (202) 708–2700, Angela Antonelli, OMB, (202) 395–6880

Dated: July 22, 1993.

*Proposal:* Background Data on Request for Assignment of Mortgage to HUD
*Office:* Housing
*Description of the Need for the Information and Its Proposed Use:* Form HUD–92206 supplies the information needed to evaluate a homeowner's eligibility under the Department's Home Mortgage Assignment Program. The mortgage company will complete the form when a homeowner is being considered for an assignment.
*Form Number:* HUD–92206
*Respondents:* Businesses or Other For-Profit
*Frequency of Submission:* On Occasion
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD-92208 | 13,000 | | 5 | | .5 | | 32,500 |

*Total Estimated Burden Hours:* 32,500
*Status:* Extension
*Contact:* James Sorrentino, HUD, (202) 708–3664, Angela Antonelli, OMB, (202) 395–6880

Dated: July 22, 1993.

*Proposal:* Mortgagee Questionnaire
*Office:* Housing

*Description of the Need for the Information and Its Proposed Use:* The information collected on form HUD–9800 provides an overview of the mortgagee's operations for servicing HUD-insured single family mortgages. HUD uses this information to forecast possible weaknesses in a servicing operation prior to an on-site review of the mortgagee's office procedures.

*Form Number:* HUD–9800
*Respondents:* Businesses or other For-Profit
*Frequency of Submission:* Biennially
*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Form HUD–9800 | 2,800 | | .1428 | | 1.5 | | 600 |

*Total Estimated Burden Hours:* 600
*Status:* Revision
*Contact:* Ted Green, HUD, (202) 708–1719, Angela Antonelli, OMB, (202) 395–6880

Dated: July 22, 1993.
[FR Doc. 93–19100 Filed 8–9–93; 8:45 am]
BILLING CODE 4210–01–M

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[Docket No. I–93–162]

## Draft Environmental Impact Statement: City of Oakland, Office of Housing and Neighborhood Development, Martin Luther King, Jr. Plaza Project

The Department of Housing and Urban Development gives notice that the City of Oakland, California, Office of Planning and Building—Environmental Division has prepared a combined draft Environmental Impact Report/ Environmental Impact Statement (EIR/ EIS) for the Martin Luther King, Jr. Plaza Project as described in the appendix to this notice. This notice is in accordance with regulations of the Council on Environmental Quality under its rule (40 CFR part 1500).

Interested individuals, government agencies, and private organizations are invited to comment on the Draft Environmental Impact Report/Draft Environmental Impact Statement concerning the project to the specified person or address indicated in the appropriate part of the appendix.

Particularly solicited are comments on the draft EIR/EIS and the major issues identified in the appendix.

Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid in the EIR/EIS effort as a "cooperating agency."

This notice shall be effective until September 20, 1993.

Dated: August 4, 1993.

**Richard H. Broun,**

*Director, Office of Environment and Energy.*

### Appendix

A combined Draft Environmental Impact Report/Environmental Impact Statement has been completed and accepted for the proposed action described below. Comments on the Draft EIR/EIS are requested and will be accepted by the contact person until September 20, 1993. A public hearing on the Draft EIR/EIS is scheduled for Wednesday, September 1, 1993 at the Lakeside Garden Center, 666 Bellevue Avenue, Oakland, CA 94610. The purpose of the hearing is to solicit comments from the public on the Draft EIR/EIS and particularly on the environmental impact issues identified below.

*Title of Action:* Martin Luther King, Jr. Plaza Project

*Description of Action:* The Draft Environmental Impact Report/ Environmental Impact Statement examines the social, economic and environmental impacts on the City of Oakland and its environs of the proposed redevelopment, reuse and limited preservation of the former University High School and Merritt College site for multiple uses. This project is located on a site in Oakland bounded by Martin Luther King, Jr. Way, Aileen Street, Dover Street and 58th Street. The entire 8.99 acre site is listed on the National Register of Historic Places. The City envisions the site used for housing (or, alternatively, for a medical facility) in conjunction with community services, open space and retail uses. Key objectives of the project include: (1) Preservation of the main building on the site; (2) allocation of a significant portion of the existing building to community services; (3) inclusion of retail and job-producing functions in the mix of uses on the site; (4) preservation of existing neighborhood scale and density in new construction, particularly on the former athletic field; and (5) provision of a small neighborhood park.

The combined EIR/EIS analyzes potential environmental effects of five alternative projects. The alternative projects described here are illustrative of varying options for development, enabling an evaluation of the full range of impacts identified within the EIR/EIS alternatives.

Alternative 1 is the No Project alternative, consideration of which is required by the California Environmental Quality Act (CEQA) and by the National Environmental Policy Act (NEPA). The project site would remain in its current unused state under this alternative. Alternative 2 would allow the highest density of conventional housing, along with the largest square footage of retail uses. Alternative 3 would involve a medical rehabilitation facility, along with a variety of community service uses. Alternative 4 would devote the majority of the academic building to housing for senior citizens. It would also provide studio apartments for senior citizens, a senior center, a child care center, and other community space. Alternative 5 would preserve all existing buildings on the site, and would devote the site to low-density housing and community services. This alternative would not require any building demolition.

*Location:* City of Oakland, Alameda County, California.

*Potential Environmental Impacts:* Land use impacts; open space losses; visual and urban design effects; population and housing impacts; traffic, circulation and parking effects; air quality impacts; noise impacts, geologic, seismic and hydrologic effects; hazardous materials, public service and utility effects; impacts to vegetation and wildlife; cultural resource effects; energy impacts; and impacts related to socioeconomic factors. Most of these impacts would be reduced to a level of insignificance following implementation of proposed mitigation measures.

The Draft Environmental Impact/Report Environmental Impact Statement will be published on or about August 6, 1993 and will be on file at 1330 Broadway, Third Floor, Oakland, CA. 94612 and available for public inspection, or copies may be obtained at the same address, upon request.

*Contact Person:* Anu Raud, Environmental Review Coordinator.

*Telephone Number:* (510) 238–6346.

[FR Doc. 93–19102 Filed 8–9–93; 8:45 am]

BILLING CODE 4210–33–M

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## Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3611; FR–3490–C–02]

## HOPE for Homeownership of Single Family Homes Program (HOPE 3); Notice of Fund Availability; Correction

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice of fund availability; Correction.

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**SUMMARY:** On July 7, 1993 (58 FR 36546), the Department published in the **Federal Register**, a Notice of Fund Availability (NOFA) that announced the availability of $86 million in funding for implementation grants for the HOPE for Homeownership of Single Family Homes Program (HOPE 3). Since the publication of that notice, it has been noted that some of the Field Office addresses and telephone numbers contain errors. Therefore, in order to avoid further confusion, the purpose of this document is to publish a corrected listing of all Field Office addresses and telephone numbers.

Also, for the convenience of the applicants, the "**DATES**" and "**ADDRESSES**" sections are being republished with this correction notice.

**DATES:** Applications for implementation grants for the HOPE 3 program must be received in the appropriate HUD Field Office by 4 p.m. local time on September 3, 1993. Applications may be hand delivered to the appropriate HUD Field Office no later than 4 p.m. local time on the deadline date. Applications sent by facsimile (FAX) will not be accepted. HUD will not waive this deadline for actual submission for any reason.

**ADDRESSES:** An original and two copies of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality or area in which the proposed program is located. Applications should be addressed to the attention of: Director, Community Planning and Development Division. A list of HUD Field Offices appears at the end of this NOFA. Applicants must submit their applications to the CPD Division in the correct Field Office, including applicants in States with more than one Field Office. For applications submitted by Indian tribes and IHAs, the correct Field Office is the CPD Division in the office listed at the end of the NOFA with jurisdiction over the geographic area covered by the application. Indian tribes and IHAs should not submit their applications to the Office of Indian Programs or Indian Programs Division. Applicants should contact their local office to confirm the appropriate place for submission. Failure to submit an application to the correct Field Office in accordance with the above procedures will result in disqualification of the application.

**FOR FURTHER INFORMATION CONTACT:** John Garrity, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7158, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0324; (TDD (202) 708–2565). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** Accordingly, in FR Doc. 93–15493, a Notice of Fund Availability for HOPE for Homeownership of Single Family Homes Program (HOPE 3), published in the **Federal Register** on July 7, 1993 (58 FR 36546), the Field Office addresses beginning on page 36551, in the first column, are corrected by republishing the list in its entirety, to read as follows:

### HUD Field Offices

*Alabama:* Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, suite 300, Birmingham, AL 35209–3144; (205) 290–7645, (TDD) (205) 290–7624.

*Alaska:* Colleen Craig, 949 East 36th Avenue, suite 401, Anchorage, AK 99508–4399; (907) 271–4684, (TDD) (907) 271–4328.

*Arizona:* Diane Domzalski, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754, (TDD) (602) 379–4461.

*Arkansas:* Billy M. Parsley, 425 West Capitol Avenue, suite 900, Little Rock, AR 72201–3488; (501) 324–5375, (TDD) (501) 324–5405.

*California*

(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235, (TDD) (213) 251–7038.

(Northern) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576, (TDD) (415) 556–8357.

*Colorado:* Barbara Richards, Exec. Tower Bldg., 1405 Curtis Street, Denver, CO 80202–2349; (303) 844–3811, (TDD) (303) 844–6158.

*Connecticut:* Daniel Kolesar, 330 Main Street, Hartford, CT 06106–1860; (203) 240–4506, (TDD) (203) 240–4665.

*Delaware:* John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665, (TDD) (215) 597–5564.

*District of Columbia:* (including Northern Virginia and Montgomery and Prince George's Counties, Maryland): James H. McDaniel, 820 First St., NE., Washington, DC 20002; (202) 275–0994, (TDD) (202) 275–0772.

*Florida:* James N. Nichol, 301 West Bay Street, suite 2200, Jacksonville, FL 32202–5121; (904) 232–3588, (TDD) (904) 232–1241.

*Georgia:* Charles N. Straub, Russell Fed. Bldg., room 270, 75 Spring St., SW., Atlanta, GA. 30303–3388; (404) 331–5139, (TDD) (404) 730–2654.

*Hawaii:* Patti A. Nicholas, 7 Waterfront Plaza, suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327, (TDD) (808) 541–1356.

*Idaho:* John G. Bonham, 520 SW. 6th Ave., Portland, OR 97204–1596; (503) 326–7016, (TDD) (503) 326–3656.

*Illinois:* Richard Wilson, Ralph Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, IL 60604–3507; (312) 353–1696, (TDD) (312) 353–7143.

*Indiana:* Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169, (TDD) (317) 226–7081.

*Iowa:* Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144, (TDD) (402) 492–3183.

*Kansas:* Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184, (TDD) (913) 236–3972.

*Kentucky:* Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394, (TDD) (502) 582–5139.

*Louisiana:* Greg Hamilton. 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212, (TDD) (504) 589–7236.

*Maine:* David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640, (TDD) (603) 666–7518.

*Maryland* (except Montgomery and Prince Georges Counties): Harold Young, 5th Floor, City Crescent Bldg., 10 S. Howard Street, Baltimore, MD 21201–2505, (410) 962–2520, (TDD) (410) 962–1857.

*Massachusetts:* Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342, (TDD) (617) 565–5453.

*Michigan:* Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343, (TDD) (313) 226–7180.

*Minnesota:* Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019, (TDD) (612) 370–3186.

*Mississippi:* Jeanie E. Smith, Dr. A.H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269–1096; (601) 965–4765, (TDD) (601) 965–4171.

*Missouri*

(Eastern): David H. Long, Robert A. Young Fed. Bldg., 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524, (TDD) (314) 539–6331.

(Western): Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184, (TDD) (913) 236–3972.

*Montana:* Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811, (TDD) (303) 844–5156.

*Nebraska:* Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Road, Omaha, NE 68154–3955; (402) 492–3144, (TDD) (402) 492–3183.

*Nevada*

(Las Vegas, Clark Cnty.): Diane Domzalski, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754, (TDD) (602) 379–4461.

(Remainder of state): Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576, (TDD) (415) 556–8357.

*New Hampshire:* David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640, (TDD) (603) 666–7518.

*New Jersey:* Frank Sagaresa, Military Park Bldg., 60 Park Pl., Newark, NJ 07102–5504; (201) 877–1778, (TDD) (201) 877–6649.

*New Mexico:* R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483, (TDD) (817) 728–5447.

*New York*

(Upstate): Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768, (TDD) (716) 846–5787.

(Downstate): Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885, (TDD) (212) 264–0927.

*North Carolina:* Charles T. Ferebee, 2306 West Meadowview Road, Greensboro, NC 27407, (919) 547–4005, (TDD) (919) 547–4055.

*North Dakota:* Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811, (TDD) (303) 844–5156.

*Ohio:* Jack E. Riordan, 200 N. High St., Columbus, OH 43215–2499; (614) 469–6743, (TDD) (614) 469–6694.

*Oklahoma:* Katie Worsham, Murrah Fed. Bldg., 200 NW. 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973, (TDD) (405) 231–4891.

*Oregon:* John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596; (503) 326–7018, (TDD) (503) 326–3656.

*Pennsylvania*

(Western): Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493, (TDD) (412) 644–5747.

(Eastern): John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665, (TDD) (215) 597–5564.

*Puerto Rico:* Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576.

*Rhode Island:* Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342, (TDD) (617) 565–5453.

*South Carolina:* Louis E. Bradley, Strom Thurmond Fed. Bldg., 1835 Assembly St., Columbia, SC 29201–2480; (803) 765–5564, (TDD) (803) 253–3071.

*South Dakota:* Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811, (TDD) (303) 844–5158.

*Tennessee:* Virginia Peck, John J. Duncan Fed. Bldg., Room 312, 710 Locust St., Knoxville, TN 37902–2526; (615) 545–4396, (TDD) (615) 545–4379.

*Texas*

(Northern): R. D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth TX; 76113–2905; (817) 885–5483, (TDD) (817) 728–5447.

(Southern): John T. Maldonado, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (210) 229–6820, (TDD) (210) 229–6885.

*Utah:* Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811, (TDD) (303) 844–6158.

*Vermont:* David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640, (TDD) (603) 666–7518.

*Virginia* (except Northern Virginia): Joseph Aversano, The 3600 Centre, 3600 West Broad St., P.O. Box 90331, Richmond, VA 23230–0331; (804) 771–2721, (TDD) (804) 771–2820.

*Washington:* John Peters, Fed'l Office Bldg., 909 First Ave., suite 200, Seattle, WA 98104–1000; (206) 220–5150, (TDD) (206) 553–4405.

*West Virginia:* Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493, (TDD) (412) 644–5747.

*Wisconsin:* Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., suite 1380, Milwaukee, WI 53203–2289; (414) 297–3113.

*Wyoming:* Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811, (TDD) (303) 844–6156.

Dated: August 4, 1993.

**Myra L. Ranslck,**

*Assistant General Counsel for Regulations.*

[FR Doc. 93–19103 Filed 8–9–93; 8:45 am]

BILLING CODE 4210–59–P

## Office of the Assistant Secretary for Public and Indian Housing

**[Docket No. N–93–3650; FR–3562–N–01]**

## Announcement of Award (NOAOA)

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing.

**ACTION:** Notice of announcement of award.

**SUMMARY:** The United States Department of Housing and Urban Development (HUD) and Carroll Buracker & Associates, Inc (grantee) have entered into a grant agreement for $782,751.00 of Public and Indian Housing Drug Elimination Program Technical Assistance funds to assess the delivery of police services within public housing police departments and in cities without public housing police departments and to develop standard measurements of crime elimination for housing authorities.

**FOR FURTHER INFORMATION CONTACT:** Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

**SUPPLEMENTARY INFORMATION:**

### I. Authority

The Public and Indian Housing Drug Elimination Program is authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), and regulations at 24 CFR part 961).

### II. Federal Fiscal Year 1993 Funding

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 6, 1992, Public Law 102–389) (93 App. Act) appropriated $175,000,000, to remain available until expended, for the Drug Elimination Program and for drug information clearinghouse services (42 U.S.C. 11921–11925) for FY 1993. Of this amount, $5,225,000 is to be used for grants, contracts, or other technical assistance and training for or on behalf of public housing agencies, Indian housing authorities and resident organizations (including the costs of necessary travel for participants in such training).

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing details concerning the recipients of funding awards, as follows:

**Grant Recipient**

Recipient Contact Person: Carroll Buracker
Telephone Number: (703) 564–1500
Address: 1881 College Avenue, Suite 100, Harrisonburg, Virginia 22801
Amount Awarded: $782,751.00

(In general, purpose of grant) General Objectives:

Conduct an assessment of crime indicators/measurements that can be used in public housing authorities.

Conduct an analysis of service delivery in public housing developments; comparing those with PHA police and those without PHA police.

Develop a document that can be utilized as the basis for a model contract to be used by housing authorities in cities to assure coordinated law enforcement and security services.

Provide technical assistance to assist in implementing recommendations and mediating relationships.

Dated: June 28, 1993.

**Joseph Shuldiner,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 93–19099 Filed 8–9–93; 8:45 am]

BILLING CODE 4210–33–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–060–5440–10 ZDAF]**

### Proposed Plan Amendment, Land Exchange and Right-of-Way for Bolo Station Landfill, San Bernardino County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare Supplemental Draft Environmental Impact Statement.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management and the County of San Bernardino will prepare a joint Federal-County Supplemental Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for a proposed land-exchange, right-of-way and plan amendment to the California Desert Conservation Area Plan for the Rail-Cycle proposed Class III Bolo Station landfill disposal site, near Amboy, California. Additional information on Air Quality, Geology and Groundwater has been developed which was not available in the draft EIS/EIR, distributed for public review in December, 1992. For this reason, a supplement to the draft EIS/EIR is being prepared for public review.

**DATES:** Written comments will be accepted, if received on or before September 7, 1993. The address for written comments is given before.

**ADDRESSES:** For further information, contact Douglas Romoli, Bureau of Land Management, California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507.

Dated: August 3, 1993.

**Jean Rivers-Council,**

*Acting District Manager.*

[FR Doc. 93–19085 Filed 8–9–93; 8:45 am]

BILLING CODE 4310–40–M

**[AK–967–4230–08; AA–8447–A2]**

### Alaska Native Claims Selection Cancellation

On August 2 , 1993, in accordance with the provisions of title 43 Code of Federal Regulations subpart A, § 4.5, the Secretary of the Interior, assumed jurisdiction over the decision of July 28, 1993, issued by the Bureau of Land Management, Alaska State Office, approving conveyance of lands to The Eyak Corporation under village selection application AA–8447–A2 filed pursuant to sec. 12(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1601. *et seq.* The Secretary has affirmed the Bureau of Land Management's decision in this matter as final for the Department of the Interior effective August 2, 1993.

Notice of the decision published August 2, 1993, is hereby cancelled. No further publications will occur.

**Terry R. Hassett,**

*Chief, Branch of KCS Adjudication.*

[FR Doc. 93–19040 Filed 8–9–93; 8:45 am]

BILLING CODE 4310–JA–P

### Fish and Wildlife Service

### Wild Bird Conservation Act (Act) of 1992; Prohibition on the Import of Certain Species of Exotic Birds to the United States, Based on Quotas

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** Prohibition based on Importation Quotas: The U.S. Fish and Wildlife Service (Service) is notifying the public that, for certain species of exotic birds listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the importation quota pursuant to the Wild Bird Conservation Act of 1992 has been met, and no more birds of that species can be imported into the United States in the absence of further administrative action by the Service.

**DATES:** This notice is effective August 10, 1993.

**ADDRESSES:** Requests for information should be sent to: Director, U.S. Fish and Wildlife Service, c/o Mr. Marshall P. Jones, Chief, Office of Management Authority, 4401 N. Fairfax Dr., room 432, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Dr. Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358–2093.

**SUPPLEMENTARY INFORMATION:** On October 23, 1992, the Wild Bird Conservation Act (Act) of 1992 (16 U.S.C. 4901–4916) was signed into law, the purposes of which include promoting the conservation of exotic birds by: Ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment; and assisting wild bird conservation and management programs in countries of origin. On December 4, 1992, the Service published a Notice in the **Federal Register** announcing the effects of the Act, including the implementation of an importation quota for all species of exotic birds (as defined by the Act) listed in any Appendices to CITES. The **Federal Register** notice of December 4, 1992, listed the importation quotas for each species covered by the Act. On April 16, 1993, the Service published a Notice in the **Federal Register** (58 FR 19840) listing species for which the quota had been met.

Pursuant to section 105(d) (16 U.S.C. 4904), "Limitation on Number Imported During First Year," the Act directs the Secretary to prohibit the importation into the United States of the following species of exotic birds listed in the Appendices to CITES, for which the statutorily-defined quota has been met or exceeded:

*Agapornis nigrigenis**
*Agapornis pullaria*
*Amadina fasciata**
*Amazona finschi**
*Ara macao*
*Aratinga canicularis*
*Balaeniceps rex*

*Barnardius barnardi*
*Cacatua leadbeateri*
*Cacatua tenuirostris*
*Charmosyna josefinae**
*Columba livia*
*Corythaeola cristata*
*Estrilada melpoda **
*Estrilada troglodytes**
*Falco biarmicus*
*Forpus coelestis*
*Forpus passerinus*
*Lonchura cucullata**
*Neophema pulchella**
*Neopsittacus musschenbroekii*
*Otus leucotis*
*Poicephalus senegalus*
*Psephotus haematogaster**
*Psittacula longicauda*
*Purpureicephalus spurius*
*Pyrrhura picta*
*Uraeginthus bengalus*

The bird species enumerated above include those listed in the **Federal Register** notice of April 16, 1993; those identified with "*" are additions to the list since April 16, 1993. The Service hereby prohibits the importation of the exotic birds enumerated above, subject to future administrative action under sections 106, 107, or 112 of the Act.

Pursuant to section 106 of the Act (16 U.S.C. 4905), "List of Approved Species", the aforementioned species and those prohibited as per the **Federal Register** notice of December 4, 1992, cannot be imported into the United States unless they are placed on a list of approved species or approved breeding facilities, or unless a permit is issued under section 112 of the Act. The Service published a Notice of Intent to promulgate regulations in the **Federal Register** of December 4, 1992, which includes regulations to promulgate the aforementioned list of approved species. No species can be placed on an approved list, nor can permits be issued for exemptions authorized under the Act, until those regulations are promulgated.

**AUTHOR:** The primary author of this notice is Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority.

Dated: July 14, 1993.

**Richard N. Smith,**

*Acting Director.*

[FR Doc. 93–19042 Filed 8–9–93; 8:45 am]

BILLING CODE 4310-55-M

## National Park Service

### Missouri National Recreational River Advisory Group; Meeting

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

**MEETING DATE AND TIME:** September 15, 1993; 1:30 p.m. until 4:30 p.m.

**ADDRESSES:** Springfield Golf Course, Springfield Marina (east of Highway 37), Springfield, South Dakota.

Agenda topics include: an update and discussion on the status of the Missouri Recreational River General Management Plan presented by the National Park Service; the opportunity for public comment, and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

**FOR FURTHER INFORMATION CONTACT:** Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, (402) 336–3970.

**SUPPLEMENTARY INFORMATION:** The advisory Commission was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the recreational river. The Missouri National Recreational River is the 39-mile, free-flowing segment of the Missouri River from Fort Randall Dam to the vicinity of Springfield in South Dakota.

Dated: July 27, 1993.

**Don H. Castleberry,**

*Regional Director, Midwest Region.*

[FR Doc. 93–19109 Filed 8–9–93; 8:45 am]

BILLING CODE 4310-70-P

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 31, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by August 25, 1993.

**Beth M. Boland,**

*Acting Chief of Registration, National Register.*

**ARIZONA**

**Yavapai County**

*Dunning, Charles H., Log Cabin*, 611 Boulder Dr., Prescott, 93000870

**FLORIDA**

**Polk County**

*Mountain Lake Estates Historic District*, US 27A N of Lake Wales, Lake Wales vicinity, 93000871

**MICHIGAN**

**Eaton County**

*First Congregational Church*, 106 S. Bostwick St., Charlotte, 93000872

**MISSOURI**

**Taney County**

*Branson City Park Historic District (Taneycomo Lakefront Tourism Resources of Branson MPS)*, Jct. of St. Limas and Oklahoma Sts., Branson, 93000874

*Sammy Lane Resort Historic District (Taneycomo Lakefront Tourism Resources of Branson MPS)*, 320 E. Main St., Branson, 93000875

**NEW JERSEY**

**Burlington County**

*Evans-Cooper House (Evesham Township MPS)*, N. Elmwood Rd. between NJ 70 and Marlton Pike, Evesham Township, Pine Grove, 93000868

*Evens, Thomas and Mary, House (Evesham Township MPS)*, S. Elmwood Rd., Evesham Township, Pine Grove, 93000867

*Inskeep, John, Homestead (Evesham Township MPS)*, 70 N. Locust Rd., Evesham Township, Marlton, 93000866

**NEW YORK**

**Clinton County**

*Valcour Island Lighthouse*, Valcour Island, Lake Champlain, Peru, 93000873

**OHIO**

**Columbiana County**

*South Lincoln Avenue Historic District*, S. Lincoln Ave., roughly between Pershing and Summit Sts., Salem, 93000876

**Hamilton County**

*Twentieth Century Theatre*, *3023–3025 Madison Rd., Cincinnati, 93000879*

**Seneca County**

*Pleasant Ridge United Methodist Church and Cemetery*, Jct. of OH 101 and Co. Rd. 38, Tiffin vicinity, 93000880

*Springdale*, 318 Sycamore St., Tiffin, 93000878

**Trumbull County**

*Well–Clark–Strouss House*, 50 Warner Rd. at Logan Rd., Youngstown vicinity, 93000877

**SOUTH DAKOTA**

**Brookings County**

*Experimental Rammed Earth Machine Shed*, South Dakota State University campus, NW corner, Brookings, 93000869

[FR Doc. 93–19110 Filed 8–9–93; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB–167 (Sub-No. 1124X)]**

### Exemption; Consolidated Rail Corporation—Abandonment Exemption—Between Cedar Hollow and Devault, in Chester County, PA

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 2.5 miles of rail line (Cedar Hollow Branch), in Chester County, PA. The track in question extends from Cedar Hollow at approximately milepost 0.0± to Devault at approximately milepost 2.5±.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or a State or local Government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports, 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 9, 1993 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 20, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 13, 1993. Interested parties may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 29, 1993.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay of the abandonment exemption on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–19062 Filed 8–9–93; 8:45 am]

BILLING CODE 7035–01–M

**[Docket No. AB–167 (Sub-No. 1118X)]**

### Exemption; Consolidated Rail Corporation—Abandonment Exemption—Between Chesterbrook and Cedar Hollow, in Chester County, PA

Consolidated Rail Corporation has filed a notice of exemption under 49 CFR Part 1152 subpart F—Exempt Abandonments to abandon approximately a 0.85-mile line of railroad between Chesterbrook (milepost 9.8±) and Cedar Hollow milepost 10.65±), in Chester County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on September 9, 1993, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this

Continued

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 20, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 13, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 93–19084 Filed 8–9–93; 8:45 am]

BILLING CODE 7035–01–M

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[Docket No. AB–381 (Sub-No. 2X)]

## Exemption; Red River Valley and Western Railroad Company—Abandonment Exemption—In Cass and Barnes Counties, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 8.7-mile line of railroad between milepost 18.7, near Alice, in Cass County, ND, and milepost 27.4, near Lucca, in Barnes County, ND.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 1050(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 9, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by August 20, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 30, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles H. Clay, One Financial Plaza, suite 2110, 120 South Sixth Street, Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by August 13, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 2, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

*Secretary.*

[FR Doc. 93–19083 Filed 8–9–93; 8:45 am]

BILLING CODE 7035–01–M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

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## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

**New Collection**

(1) Executive Training for Women in Corrections.
(2) No form number. National Institute of corrections.
(3) One-time response.
(4) State or Local Governments, Federal agencies or employees. This project will examine correctional organizational environments, barriers to the promotion of women, expectations of leaders regarding future direction and executive skills, and current executive and leadership skills to determine needs and gaps in skills as key inputs in the design of a training program for women currently in management positions in corrections.
(5) 180 annual responses at .75 hours per response.
(6) 135 annual burden hours.
(7) Not applicable under 3504(h).
(1) Reporting on Psychotropic Substances.
(2) No form number. Drug Enforcement Administration.
(3) Annually.
(4) Businesses or other for-profit. Pursuant to the Economic and Social Council of the United Nations Resolution (1991/44) under the UN Convention on Psychotropic Substances, the United States must provide to the International Narcotics Control Board of the UN certain information concerning psychotropic substances. This information collection will provide the necessary data to be reported to the UN.
(5) 750 annual responses at 1 hour per response.
(6) 750 annual burden hours.
(7) Not applicable under 3504(h).

***Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection***

(1) Application for Employment Authorization.
(2) Form I–765. Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. The information obtained through this collection will be used to determine the eligibility for employment authorization under 8 CFR 274a. 12 (a) or (c). The issuance of employment documentation will also be based upon information provided in this collection.
(5) 1,000,000 annual responses at 1 hour per response.
(6) 1,000,000 annual burden hours.
(7) Not applicable under 3504(h).
Public comment on these items is encouraged.

Dated: August 4, 1993.

**Lewis Arnold,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 93–19107 Filed 8–9–93; 8:45 am]

BILLING CODE 4410–36–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met:

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or thread thereof, and to the absolute decline in sales or production

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–28,613; American International Manufacturing Co., Fort Worth, TX*
*TA–W–28,816; Quality Assurance Systems, Inc.*
*TA–W–28,697; Agrico Chemical Co., Mulberry, FL*
*TA–W–28,584; Kobelco Stewart Bolling, Hudson, OH*

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

*TA–W–28,729; Mountain Fir Chips Co., The Dalles, OR*

Increased imports did not contribute importantly to worker separations at the firm:

*TA–W–28,684; Silgan Plastics Corp., Technology Div., Stonington/Deep River, CT*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–28,529; Neenah Foundry Co., Plant #1, Neenah, WI*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–28,801; Gage Marketing Group, El Paso, TX*

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

*TA–W–28,691; Exxon Co., USA Bayway Refinery, Linden, NJ*

U.S. imports of refined petroleum products declined absolutely and relative to domestic shipments in the period April 1992 through March 1993 as compared to a year earlier.

*TA–W–28,612; Black Clawson Co., Watertown, NY*

U.S. imports of paper industry machinery decreased both absolutely and relative to production in 1992 compared with 1991.

*TA–W–28,804; Digicon Geophysical Corp., Houston, TX*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA–W–28,780; Klerks Plastic, Middlesex, NJ*

The investigation revealed that criterion (2) has not been met. Sales or

production did not decline during the relevant period as required for certification.

*TA-W-28,504; Ranken Energy Corp., Edmond, OK*

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

*TA-W-28,723; Allied Signal Aerospace, Eatontown, NJ*

U.S. imports of power generators for military applications are negligible.

*TA-W-28,695; Ambar, Inc., Lafayette, LA*

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number of proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

*TA-W-28,709; U.S. Agri-Chemicals Corp., Ft. Meade, FL*

U.S. imports of di-ammonium phosphate (DAP) were negligible relative to U.S. production in the relevant time period.

*TA-W-28,500, TA-W-28,500A, TA-W-28,500B; Coastal Refining & Marketing—Kansas Coastal Derby Refineries, Wichita, KS, Augusta, KA and El Dorado, KS*

U.S. imports of refined petroleum products declined in the April 1992 through March 1993 compared to the same period a year earlier.

**Affirmative Determinations**

*TA-W-28,719; Celebrations, Inc., Bronx, NY*

A certification was issued covering all workers separated on or after May 3, 1992.

*TA-W-28,696; Allied-Signal, Inc., Rumford, RI*

A certification was issued covering all workers separated on or after June 1, 1993.

*TA-W-28,792; Pyke Manufacturing Co., Cutting Room, Manti, UT*

A certification was issued covering all workers separated on or after June 11, 1992.

*TA-W-28,587; Columbia Footwear Corp., Hazleton, PA*

A certification was issued covering all workers engaged in the production of Mens's & Ladies' casual footwear separated on or after July 3, 1993.

*TA-W-28,662; Chalk Line, Inc., Carrollton, GA*

A certification was issued covering all workers separated on or after March 2, 1992.

*TA-W-28,742 and TA-W-28,743; Marathon Oil Co., Markham, TX and Stinton, TX*

A certification was issued covering all workers separated on or after May 27, 1992.

*TA-W-28,718; Cyrus Sierrita Corp., Green Valley, AZ*

A certification was issued covering all workers separated on or after May 13, 1992.

*TA-W-28,619; Digital Equipment Corp., Westerfield, MA*

A certification was issued covering all workers separated on or after April 20, 1992.

*TA-W-28,735; Smith Nephew & Perry, Carrollton, OH*

A certification was issued covering all workers separated on or after May 25, 1992.

*TA-W-28,641; Dynamic Closures Ltd, Massena, NY*

A certification was issued covering all workers separated on or after April 28, 1992.

*TA-W-28,660; Cynthia Sue, Inc., Swoyersville, PA*

A certification was issued covering all workers separated on or after May 10, 1992.

*TA-W-28,687; Optek Technology, Inc., Mineral Wells, TX*

A certification was issued covering all workers engaged in the production of melfs separated on or after May 25, 1992. Also, workers engaged in the production of diode seals and pin rolls are denied.

*TA-W-28,705; Mecon Manufacturing, Inc., Oxford, ME*

A certification was issued covering all workers separated on or after May 6, 1992.

*TA-W-28,747, TA-W-28,747A; Glenbrook Nickel Co., Riddle, OR and Coos Bay, OR*

A certification was issued covering all workers separated on or after May 28, 1992.

I hereby certify that the aforementioned determinations were issued during the month of July 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: July 30, 1993.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 93-19142 Filed 8-9-93; 8:45 am]

BILLING CODE 4510-30-M

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## Secretary of Labor

**[Secretary's Order 2-93]**

## Establishment of the Office of the American Workplace and the Delegation of Authority and Assignment of Responsibilities

July 21, 1993.

1. *Purpose.* To establish the Office of the American Workplace, and to delegate authority and assign responsibilities in the Department of Labor for the implementation and administration of its programs.

2. *Background.* A high-skill, high-wage economy is dependent not only on improving the skills of its workforce, but redesigning its public and private sector workplaces for high performance. High-performance workplaces, driven by innovation, quality, and customer satisfaction, require front-line workers, managers, union leaders, and public officials to adopt new outlooks, undertake new roles, and acquire new skills. The creation of the Office of the American Workplace is designed to provide a national focal point for achieving the Secretary of Labor's goal of encouraging the creation of high-performance work practices and policies.

This Order delegates authority and assigns responsibilities to the Assistant Secretary for the American Workplace. Further, this Order recognizes the need to elevate the labor-management relations functions in the Department to a level of greater visibility and influence to meet the economic challenges facing employers and workers in the 1990's and beyond.

3. *Establishment.* There is hereby established in the Department of Labor the Office of the American Workplace, which is headed by an Assistant Secretary who shall report to the Secretary of Labor. The Office of the American Workplace will:

a. Promote innovative and highly productive relations among managers, labor unions, and professional organizations and administer statutory employee protections;

b. Encourage the development of work organization technology, and performance measurements that enhance the skill, involvement, and commitment of front-line employees; and,

c. Safeguard the financial integrity and internal democracy of American labor unions, help unions improve their organizational and administrative effectiveness, and ensure that required reports are filed by unions, their officers and employees, employers, labor relations consultants, and surety companies and are available for public disclosure.

4. *Delegation of Authority and Assignment of Responsibilities*—a. *The Assistant Secretary for the American Workplace* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the labor-management policies, programs, and activities of the Department of Labor, including those functions required by statute to be performed by the Secretary of Labor in relation to:

(1) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401, *et seq.*;

(2) Section 701 (Standards of Conduct for Labor Organizations) of the Civil Service Reform Act of 1978, 5 U.S.C. 7120;

(3) Section 1017 of the Foreign Service Act of 1980, 22 U.S.C. 4117;

(4) Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1209;

(5) The employee protection provisions of the Federal Transit Act;

(6) Section 405(a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565(a), (b), (c), and (e);

(7) Title I of the Redwood National Park Expansion Act of 1978, as specified in section 4.a. of Secretary's Order 4–89, as amended by this Order;

(8) Title II of the Redwood National Park Expansion Act of 1978, as specified in Secretary's Order 6–78, as amended by this Order;

(9) Section 43(d) of the Airline Deregulation Act of 1978, as specified in Secretary's Order 1–79, as amended by this Order;

(10) Such Federal acts as the Secretary of Labor may assign; and,

(11) Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 2–90 (Office of the Inspector General).

b. *The Assistant Secretary for Administration and Management* is assigned responsibility, in accordance with applicable appropriations enactments, for assuring an orderly and equitable transfer and realignment of resources associated with the programs and functions of the Office of the American Workplace, including assurance of consultation and negotiation, as appropriate, with representatives of the affected employees. The Assistant Secretary for Administration and Management is responsible also for providing or assuring that appropriate administrative and management support is furnished, as required, for the efficient and effective operation of these programs.

c. *The Solicitor of Labor* shall have the responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutes listed in section 4.a. above and the activities described in section 5 below. The bringing of legal proceedings under the statutes listed in section 4.a., the representation of the Secretary of Labor and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate are delegated exclusively to the Solicitor of Labor.

5. *Organization of the Office of the American Workplace.* There are hereby established within the Office of the American Workplace the following organizational units:

a. *The Office of Labor-Management Programs* is established to assist the Assistant Secretary for the American Workplace, except as otherwise provided by this Order, in carrying out labor-management relations programs to build effective workplace partnerships among managers, unions, and other employee organizations; in establishing labor-management outreach networks that will encourage the dissemination of these practices among employers and employees through conferences, training programs, and information exchanges; in coordinating Federal, State, and local government programs which promote labor-management cooperation in conjunction with government organizations such as the Federal Mediation and Conciliation Service and the Federal Labor Relations Authority; and in administering certain employee protection programs, including the carrying out of the authorities and responsibilities delegated by the Secretary of Labor by subparagraphs (5) through (9) of section 4.a. of this Order.

b. *The Office of Work and Technology Policy* is established to promote the increased use of innovative workplace practices; integration of technology and human resource policies; and the development of new measurements of workplace performance—with the goal of enhancing the long-term performance of American business, and the skills, job opportunities, and standard of living of American workers. The Office of Work and Technology Policy shall assist the Assistant Secretary for the American Workplace, except as otherwise provided by this Order, in carrying out the programs and activities to (1) promote the use of measures of high performance work practices by investors, managers, directors, and unions; (2) identify specific workplace practices associated with successful companies and promote the diffusion of these practices; (3) establish with the Department of Labor's Employment and Training Administration and the Department of Commerce a workplace extension service to assist managers and workers to restructure their workplaces; and, (4) establish a clearinghouse of information on innovative workplace practices and networks of managers, labor leaders, academics, and other parties involved with the development of best practice organizations.

c. *The Office of Labor-Management Standards* is established to assist the Assistant Secretary for the American Workplace, except as otherwise provided by this Order, in carrying out the authorities and responsibilities assigned to the Assistant Secretary by subparagraphs (1) through (4) of section 4.a. of this Order.

6. *Directives Affected*—a. *Background:* This Secretary's Order delegates the authority and assigns the responsibilities to the Assistant Secretary for the American Workplace that were either:

(1) previously transferred to the Assistant Secretary for Employment Standards from the former Assistant Secretary for Labor-Management Standards by Secretary's Order 9–92; or

(2) previously transferred to the Assistant Secretary for Employment and Training from the former Deputy Under Secretary for Labor-Management Relations and Cooperative Programs by Secretary's Order 8–92.

b. To accomplish the delegation described in section 6.a. of this Order, the following directives are affected as follows:

(1) Secretary's Order 1–93 is amended to delete subparagraphs (29) and (30) of section 3.a.;

(2) Secretary's Order 10–92 is revoked;

(3) Section 4.a. of Secretary's Order 4–89, as amended most recently by Secretary's Order 8–92, is amended to delete the reference to the Assistant Secretary for Employment and Training and substitute in its place a reference to

the Assistant Secretary for the American Workplace;

(4) Secretary's Order 6–78, as amended most recently by Secretary's Order 8–92, is amended to delete the references in sections 4.a., 4.c., 5 and 7 to the Assistant Secretary for Employment and Training and substitute in their place references to the Assistant Secretary for the American Workplace;

(5) Secretary's Order 1–79, as amended most recently by Secretary's Order 8–92, is amended to delete the references in sections 4.b. and 4.c. to the Assistant Secretary for Employment and Training and substitute in their place references to the Assistant Secretary for the American Workplace; and,

(6) Secretary's Order 8–92 is revoked.

c. Secretary's Order 2–92 is revoked and subparagraph 3.a. (31) in Secretary's Order 1–93 is deleted as directed by Executive Order 12836 dated February 1, 1993.

d. All actions previously taken by either the Assistant Secretary for Labor-Management Standards or the Assistant Secretary for Employment Standards with regard to the Office of Labor-Management Standards, the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs with regard to the Bureau of Labor-Management Relations and Cooperative Programs, or the Assistant Secretary for Employment and Training with regard to the Division of Statutory Programs shall remain in full force and effect, except as they may hereafter be modified or revoked, and the Assistant Secretary for the American Workplace shall be the legal successor in relation to such actions.

7. *Reservation of Authority.* The submission of reports and recommendations to the President and the Congress concerning the administration of the statutes listed in section 4.a. above is reserved to the Secretary.

8. *Redelegation of Authority.* The authority delegated and responsibilities herein assigned may be further redelegated.

9. *Effective Date.* This Order is effective immediately.

**Robert B. Reich,**

*Secretary of Labor.*

[FR Doc. 93–19143 Filed 8–9–93; 8:45 am]

BILLING CODE [illegible]

## NATIONAL COMMISSION ON MANUFACTURED HOUSING

### Meeting

**AGENCY:** National Commission on Manufactured Housing.

**ACTION:** Notice of meeting.

**SUMMARY:** In announces with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

**DATE:** August 19, 1993, 8:30 a.m.–5:30 p.m., Public Hearing; August 20, 1993, 8:30 a.m.–3 p.m., Full Commission Meeting.

**ADDRESS:** Holiday Inn By the Bay, 88 Spring Street, Portland, ME 04101.

**FOR FURTHER INFORMATION CONTACT:** Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 302 N. Fairfax Street, Suite 110, Alexandria, VA 22314 (703) 603–0440.

**TYPE OF MEETING:** Open.

**Carmelita R. Pratt,**

*Administrative Officer.*

[FR Doc. 93–19068 Filed 8–9–93; 8:45 am]

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## NATIONAL SCIENCE FOUNDATION

### Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by September 3, 1993. Comments may be submitted to:

*(A) Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone.

Comments may also be submitted to:

*(B) OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

*Title:* Higher Education Survey "Survey of Financial Aid at Higher Education Institutions."

*Affected Public:* Non-Profit Institutions.

*Respondents/Reporting Burden:* 567 respondents; One hour per response.

*Abstract:* This survey will assist the Department of Education in developing new systems for higher education institutions to use in reporting on the status of financial aid to provide advance warning when reporting changes are needed.

Dated: August 4, 1993.

**Herman G. Fleming,**

*Reports Clearance Officer.*

[FR Doc. 93–19067 Filed 8–9–93; 8:45 am]

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### Permit Application Received Under the Antarctic Conservation Act of 1978

August 4, 1993.

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 2, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Forhan at the above address or (202) 357–7817.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

**1. Applicant**

Antarctic Support Associates, 61 Inverness Drive East, suite 300, Englewood, CO 80112.

**Activity for Which Permit Requested**

Taking. Museum displays to aid scientific research and education. Antarctic Support Associates needs an ACA permit to display salvaged skua specimen found dead in the McMurdo region during the 1992 and 1993 summer seasons. The skuas will be displayed at the library/conference area in the Crary Science and Engineering Center (CSEC) where they will contribute to the scientific resources of the CSEC.

**Location**

McMurdo Station, Antarctica.

**Dates**

September 15, 1993–March 31, 1996.

**Thomas F. Forhan,**

*Permit Office, Office of Polar Programs.*

[FR Doc. 93–19079 Filed 8–9–93; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Availability of Draft Application Format and Content Guidance and Review Plan and Acceptance Criteria for Non-Power Reactors

The U.S. Nuclear Regulatory Commission (NRC) is in the process of developing for non-power reactors (NPRs) a "Format and Content for Applications for the Licensing of Non-Power Reactors" (F&C) and a "Safety Analysis Report Review Plan and Acceptance Criteria for Non-Power Reactors" (SRP). The NRC has made available drafts of Chapter 5, Reactor Coolant and Associated Systems, and Chapter 14, Technical Specifications, of the F&C and SRP documents for comment. Periodically, over the next 16 months, other draft chapters will be made available for comment.

Copies of these chapters have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. Single copies of these documents may be requested in writing from Alexander Adams, Jr., Senior Project Manager, U.S. Nuclear Regulatory Commission, OWFN MS: 11–B–20, Washington, DC 20555. Comments on these chapters should be sent by June 1, 1994 to the Director, Non-Power Reactors and Decommissioning Project Directorate at the above address.

Dated at Rockville, Maryland this 3rd day of August 1993.

For the Nuclear Regulatory Commission.

**Seymour H. Weiss,**

*Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–19150 Filed 8–9–93; 8:45 am]

BILLING CODE 7590-01-M

### Northeast Nuclear Energy Co., Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–336]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would modify the Millstone 2 Technical Specifications to accommodate a proposed modification in Region C of the Spent Fuel Storage Pool. The modification would introduce neutron absorbing (poison) rodlets (pins) into the stored fuel and increase the required burnup in Region C to permit removal of cell blocking devices that are located in the fourth location of the 3-out-of-4 configuration. Three rodlets in spent fuel assemblies, where required, would be located in opposite corner and center control rod guide tubes. The modification would add 234 cell locations for the storage of spent fuel assemblies and consolidated spent fuel boxes.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposal changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Final Safety Analysis Report (FSAR) Chapter 14 accidents previously analyzed that are relevant to fuel in the spend fuel pool (SEP) are:

a. Fuel Handling accident (FSAR 14.7.4)

b. Spent Fuel Cask Drop accident (FSAR 14.7.5)

The addition of poison pins removal of blocking devices will not have any effect on the probability of occurrence of either of these two previously analyzed accidents. Both the radiological and critically consequences of these two accidents must be considered. An assessment of the criticality aspects of these two accidents was performed to ensure that the ≤.95 $K_{eff}$ criterion was not violated. The criticality analyses show that under normal and accident conditions, this criterion is not violated. There is no change in the radiological consequences of the dropped fuel assembly accident since the installation of poison pins will not change the damage caused by the fuel assembly drop. The cask drop accident has been reanalyzed for the radiological consequences due to the change in fuel storage capacity in the "targeted footprint area." The calculated radiological consequences from the rupture of one-year-old fuel assemblies in the cask drop footprint (782 assemblies) is bounded by the current analysis. The thyroid dose is zero, since all of the iodine has decayed. The whole body dose calculated value is 0.007 roentgen equivalent man (REM). This is less than the limiting dose presented in the PSAR of 0.241 REM for the rupture of 587 assemblies with 120 days decay. All of the above consequences are less than 1 percent of the 10CFR100 limit. Based on this analysis, the decay time was increased from 120 days to 1 year for fuel within the footprint area, prior to allowing a cask to be brought to the refueling floor.

Fuel/fuel rack and fuel pool qualifications have been evaluated and determination to be unaffected by this change. The mechanical design configuration of the rodlets is similar to the shape, size, and weight of a control element assembly (CEA) finger. The rodlets are approximately 0.87 inch outside diameter (OD) borated stainless steel, with a boron content of 2 weight percent (w/o). The OD of the poison rodlet is approximately 0.75 inch longer than a CEA finger. The weight of three poison rodlets is less than that of a CEA. The material (borated stainless steel) is American Society for Testing and Materials (ASTM) approved and has been licensed by the NRC for use in spent fuel storage technologies and

spent fuel pools. The thermal considerations of fuel are unaffected by the presence of the rodlets because the guide tube is designed for the presence of a CEA; therefore, it is not a primary coolant flow area. The fuel rack normal thermal cooling and malfunction blocked cooling scenarios are unaffected by the presence of the rodlets in the fuel assembly. The fuel pool cooling scenarios of normal, abnormal, single-active failure, and loss of forced cooling are unaffected by the increase in intact fuel storage resulting from the rodlets because License Amendment No. 128, dated March 31, 1988, accounted for an intact spent fuel inventory decay heat history to a maximum of 1965 fuel assemblies. Therefore, the pool cooling scenarios are bounded by previous licensed analyses. The structural effect of the weight of the rodlet on the fuel/fuel rack/fuel pool structural interfaces and drop qualifications are unaffected because, with respect to the fuel, the combined weight of three rodlets is less than the weight of a CEA. With respect to the fuel rack and fuel pool structural interfaces, they are bounded by the weight of a consolidated fuel storage box (-2500 lbs.) in every one of the 1346 storage locations per License Amendment No. 128, dated March 31, 1988. Therefore, this proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident than any previously evaluated.

The removal of the blocking devices could not create the possibility of a new or different type of accident. The blocking devices were never credited in any analysis. These were considered as a backup to administrative control. The storage of additional fuel assemblies could not create the possibility of a new or different type of accident. Accidental withdrawal of the poison pins is not possible since special tooling is required to remove them, and they are completely contained within the guide tubes of the designated assemblies. Misloading of the poison pins is prevented due to the design of the installation equipment, strict procedural controls, and double verification that will be in place to ensure the poison pins are installed properly. The use of burnup versus enrichment curves has already been used in the Millstone Unit No. 2 SFP and, therefore, does not create the possibility of a new or different type of accident.

All failure modes that cause an accident have been evaluated (design bases, fuel handling, and cask drop accidents). A new failure mode that could represent a new unanalyzed accident has not been identified.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

All conditions that constitute a malfunction have been evaluated (fuel/fuel rack/fuel pool structural interface qualifications). A new condition that represents a malfunction has not been identified. Therefore, no new malfunction has been created.

3. Involve a significant reduction in a margin of safety.

The margin of safety for criticality is the 0.95 $K_{eff}$ criterion for normal and accident conditions. The criticality analyses show that under normal and accident conditions, 0.95 $K_{eff}$ or less is maintained.

The mechanical properties and weight of the fuel assemblies remain essentially unchanged. The fuel racks are freestanding, and with the inclusion of the weight of the three rodlets per assembly, the original mechanical and thermal analyses of the fuel assembly/fuel rack and fuel pool building interfaces currently approved by License Amendment No. 128, dated March 31, 1988, remain valid and conservative. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, The Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the

proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06360–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, proceeded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated May 14, 1993, and supplements dated June 10, 1993, and July 16, 1993, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 4th day of August 1993.

For the Nuclear Regulatory Commission.

**Guy S. Vissing,**

*Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 93–19151 Filed 8–9–93; 8:45 am]

BILLING CODE 7590–01–M

VOL 58 ISS 152 AG 10 1993 UMI

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-32710; File No. SR-GSCC-93-05]

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Conditions for the Release of Confidential Data

August 2, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 18, 1993, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify GSCC Rule 29, Release of Clearing Data, to permit clearing data to be released to the Federal Reserve Bank of New York ("FRBNY") and other persons that perform a regulatory or oversight function related to the government securities marketplace. The proposed rule change also would modify GSCC Rule 29 to require an entity requesting clearing data to represent in writing that the data will not be re-distributed to any other entity without GSCC's consent.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) GSCC's current rule on the release of "clearing data"[2] regarding a GSCC member is that, absent valid legal process, GSCC will release such data only to that member (or to the Commission upon request). The exceptions to this rule are as follows (each requires a written request to GSCC):

- GSCC may provide clearing data on a common member to another self-regulatory organization (such as the National Securities Clearing Corporation, the New York Stock Exchange, or the National Association of Securities Dealers).
- GSCC may provide clearing data to an "appropriate regulatory agency"[3] (such as the Comptroller of the Currency or the Board of Governors of the Federal Reserve System) with regard to a member that is primarily regulated by such agency.
- GSCC may provide clearing data to other entities if the data is in a form such that it is not identifiable to any particular member of group of members.

GSCC is proposing additional language that would clarify its ability to disclose, under certain specified circumstances, information to other entities that perform a market regulatory, surveillance, or oversight function. First, GSCC would be permitted to release clearing data to the FRBNY, if management determines that all of the following circumstances are present.

- There has been a showing by the FRBNY of a legitimate need for such data, related to its market surveillance function.
- Any data provided by GSCC will be used solely for market surveillance purposes.
- The informational request is made in writing and with sufficient specificity.
- If the data is specific to a particular member, the member has been notified of the request and has been given the opportunity to present to GSCC any objections to the request. (This prerequisite will not apply if valid legal process prohibits GSCC from informing the member of the request for data.)
- If the data is specific to a particular member, there has been a showing by the FRBNY that it has unsuccessfully attempted to obtain the data directly from the member. (This prerequisite will not apply if valid legal process prohibits FRBNY from contacting the member regarding the request for data.)

Also, GSCC would be permitted to release clearing data to other third parties that perform a regulatory or oversight function related to the government securities marketplace, if it determines, and the Membership and Standards Committee of the Board of Directors of GSCC concurs, that all of the following circumstances are present:

- There has been showing by the requesting party of a legitimate need for such data that is related to such party's market regulatory or oversight functions.
- Any data provided by GSCC will be used solely for market regulatory or oversight purposes.
- The informational request is made in writing and with sufficient specificity.
- If the data is specific to a particular member, the member has been notified of the request and has been given the opportunity to present to GSCC any objections to the request. (This prerequisite will not apply if valid legal process prohibits GSCC from informing the member of the request for data.)
- If the data is specific to a particular member, there has been a showing by the party requesting the data that it had unsuccessfully attempted to obtain the data directly from the member. (This prerequisite will not apply if valid legal process prohibits the requesting party from contacting the member regarding the request for data.)

In addition, the filing clarifies that as a prerequisite to providing clearing data to a person, other than the member or the Commission, that person must represent in writing that only that person will use the data and that the data will not be redistributed or disseminated to any other entity without GSCC's prior consent.

(b) The proposed rule change will clarify GSCC's ability to disclose information to entities that perform a market regulatory, surveillance, or oversight function. This will contribute to the ability of GSCC and those other entities to ensure a safe and sound settlement process in the government securities marketplace. Thus, GSCC believes that the proposed rule changes are consistent with the requirements of section 17A of the Act and the rules and regulations thereunder.

[2] Clearing data is defined essentially to include any data relating to a member's trading activity that is held or produced by GSCC.

[3] Under GSCC's rules, "Appropriate Regulatory Agency" has the meaning given to it in Section 3(a)(34)(C) of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the rule filing, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments it receives on this matter.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–93–05 and should be submitted by August 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–19091 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32709; File No. SR–ICC–93–8]**

**Self-Regulatory Organizations; The Intermarket Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Automatic Exercise Procedures**

August 2, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 21, 1993, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ICC. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

This proposed rule change eliminates the requirement that a New York Futures Exchange ("NYFE") option be in the money by at least sixty points (*i.e.*, $300) before ICC's automatic exercise procedures are triggered.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ICC included statements concerning the purpose of and statutory basis for the proposed change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The purpose of this rule change is to conform ICC Rule 1104, which sets forth ICC's automatic exercise procedures with respect to options on futures contracts traded on the NYFE, to an amendment made by NYFE to its Rule 2110, which sets forth NYFE's automatic exercise procedures with respect to such NYFE options. NYFE's amendment eliminated the requirement that an option be in the money by at least sixty points (*i.e.*, $300) before the automatic exercise provisions are triggered. The Commodity Futures Trading Commission ("CFTC") already has approved NYFE's amendment.

ICC believes that the proposal is consistent with the requirements of Section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of options transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

ICC does not believe that the proposed rule change will impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

ICC has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and the Commission's order temporarily approving ICC's registration as a securities clearing agency because the filing primarily relates to ICC's futures clearing activities and does not otherwise concern the clearance and settlement of securities positions and the safeguarding of securities and related funds.[2] At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Those wishing to make a written submission should file six copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, subsequent amendments, written

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR 39556 [File No. SR–ICC–600–21] n.15.

statements with respect to the proposed change that are filed with the Commission, and written communications relating to the proposal between the Commission and any persons, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of ICC. All submissions should refer to File No. SR–ICC–93–6 and should be submitted by August 31, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–19093 Filed 8–9–93; 8:45 am]

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**[Release No. 34–32708; File No. SR–OCC–93–13]**

## Self-Regulatory Organizations; The Options Clearing Corp.; Order Approving a Proposed Rule

August 2, 1993.

In the Matter of Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Expand the Cross-Margin Program between The Options Clearing Corporation and the Kansas City Board of Trade Clearing Corporation to Include Non-proprietary Positions of Market Professionals.

On May 20, 1993, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–93–13) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on July 6, 1993, to solicit comments from interested persons.[2] On July 1, 1993, OCC filed Amendment No. 1 and on July 15, 1993, OCC filed Amendment No. 2 to the rule change.[3] No comments were received. As discussed below, this order approves the proposal.

### I. Description

OCC's rule change expands the cross-margining program between OCC and the Kansas City Board of Trade Clearing Corporation ("KCC") to include non-proprietary positions carried by participating clearing members on behalf of market professionals.[4]

When OCC originally filed for the cross-margining program, it requested that the Commission approve both a proprietary and a non-proprietary cross-margining program.[5] Because KCC acquiesced to a request by the Commodity Futures Trading Commission ("CFTC") to implement a proprietary cross-margining program initially and to seek expansion of the program later, OCC amended the filing and requested that the Commission consider only the proprietary portion of the filing.[6] On February 26, 1992, the Commission approved the OCC/KCC proprietary cross-margining program.[7] OCC has now been advised by KCC that KCC wants to expand the cross-margining program to include non-proprietary positions. The CFTC has approved the expansion.

The proposed OCC/KCC cross-margining program parallels the existing non-proprietary cross-margining program between OCC and the Chicago Mercantile Exchange ("CME") and the Amended and Restated Cross-Margining Agreement between OCC and KCC ("OCC/KCC XM Agreement") is substantially similar to the Amended and Restated Cross-Margining Agreement between OCC and CME ("OCC/CME XM Agreement").[8] The differences between the two programs and agreements are set forth below.

First, the List of Eligible Contracts, which is set forth as Exhibit A to the OCC/KCC XM Agreement, is tailored for the OCC/KCC cross-margining program. The List of Eligible Contracts reflects that in addition to OCC-cleared put and call options on the Value Line Index and KCC-cleared futures on the Value Line Index, which were the original Eligible Contracts under the OCC/KCC proprietary cross-margining program, OCC-cleared put and call options on the S&P MidCap 400 Index, Russell 2000 Index, and Wilshire Small Cap Index and KCC-cleared put and call options on the futures on the Value Line Index and futures and put and call options on the futures on the MiniValue Line Index have been added as Eligible Contracts.[9]

Second, the OCC/KCC XM Agreement does not contain provisions for "super margins" because KCC does not impose such margin requirements on its clearing members. OCC has always maintained that super margins are not essential to cross-margining, and the Commission has approved another OCC cross-margining program that does not impose such requirements.[10]

Third, the term affiliate has been defined in the OCC/KCC XM Agreement to conform to the definition set forth in the OCC/ICC/CME trilateral cross-margining agreement.[11] The definition in the OCC/KCC Agreement focuses on the relationship between the affiliates as opposed to the status of an account carried by affiliates for one another.[12]

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[3] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 32533 (June 28, 1993), 58 FR 36238 [File No. SR–OCC–93–13].

[3] The amendments made technical clarifications to the proposal.

[4] Under the non-proprietary cross-margining program between OCC and KCC, market professionals are defined as (1) any market-maker, specialist, or registered trader as defined in the OCC Rules and (2) any Kansas City Board of Trade ("KCBT") member or affiliated exchange member, to the extent he or it is trading for his or its own account and not for others; provided that such market-maker, specialist, registered trader, KCBT member, or affiliated exchange member actively trades for his or its own account eligible contracts cleared by each clearing organization.

[5] Securities Exchange Act Release No. 30064 (December 11, 1991), 56 FR 65789 [File No. SR–OCC–91–09] (notice of filing of proposed rule change to establish OCC/KCC cross-margining program).

[6] Letter from James C. Yong, Deputy General Counsel, OCC, to Jerry W. Carpenter, Chief, Branch of Clearing Agency Regulation, Division of Market Regulation, Commission (February 21, 1992).

[7] Securities Exchange Act Release No. 30413 (February 26, 1992), 57 FR 7830 [File No. SR–OCC–91–09] (order approving the OCC/KCC proprietary cross-margining program).

[8] For a description of the OCC/CME cross-margining program, refer to Securities Exchange Act Release Nos. 27296 (September 28, 1989), 54 FR 41195 [File No. SR–OCC–89–01] (order approving OCC/CME proprietary cross-margining) and 29901 (November 26, 1991), 56 FR 61458 [File No. SR–OCC–90–01] (order approving OCC/CME non-proprietary, market professional cross-margining).

[9] In Securities Exchange Act Release No. 32020 (March 19, 1993), 58 FR 16436 [File No. SR–OCC–93–05] (notice and order granting accelerated approval), the Commission approved for cross-margining under the OCC/KCC proprietary cross-margining program the creation of a small capitalization index product group which includes the S&P MidCap 400 Index, Russell 2000 Index, Value Line Index, MiniValue Line Index, and the Wilshire Small Cap Index.

[10] Securities Exchange Act Release No. 31414 (November 6, 1992), 57 FR 53943 [File No. SR–OCC–92–22] (order approving OCC/Comex non-proprietary cross-margining program).

[11] Securities Exchange Act Release No. 32534 (June 28, 1993), 58 FR 36234 [File Nos. SR–OCC–92–28 and SR–ICC–93–05] (order approving the trilateral cross-margining agreement between OCC, ICC, and CME).

[12] The definition of affiliate as set forth in the original OCC/CME Amended Agreement stated that each entity must be a person whose account with the other entity would not be the account of a customer. This definition was originally adopted in the context of proprietary cross-margining and was intended to insure the appropriateness under Commission and CFTC rules and regulations of commingling funds beneficially owned by each of the pair of affiliates in a proprietary cross-margining account. However, there is no legal necessity for this definition to focus on the status of an account (*i.e.*, proprietary or customer) carried by one affiliate for the other. Therefore, in order to eliminate confusion, the definition of affiliate is based on the relationship of the entities (*i.e.*, control of one entity over the other or the entities being under common control). The OCC/KCC XM Agreement defines affiliate, when used in respect of an OCC clearing member or a KCC clearing

Fourth, Section 3 of the OCC/KCC XM Agreement, Establishment of XM Pledge Accounts in the OCC/CME XM Agreement, intentionally has been left blank. Clearing members participating in the OCC/KCC cross-margining program are not permitted to designate any cross-margin account as a cross-margin pledge account.

Fifth, the language in section 6 of the OCC/KCC XM Agreement, Forms of Initial Margin and Method of Holding Initial Margin, provides that securities deposited as initial margin in the OCC/KCC cross-margining program shall be valued in accordance with OCC's Rule 604(d). Rule 604(d) now requires common stock deposited as margin to be valued at 50% of current market value. The language of Section 6 allows the valuation rate used in OCC Rule 604(d) always to be used as the valuation rate for common stock deposited as initial margin for a cross-margin account without the need for an amendment to the OCC/KCC XM Agreement should the Rule 604(d) valuation rate change.[13]

## II. Discussion

The Commission believes that the proposal is consistent with the purposes and requirements of section 17A of the Act.[14] Sections 17A(b)(3)(A) and (F) require that a clearing agency be structured and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds and securities in its custody and control or for which it is responsible.[15] Furthermore, in section 17A(a)(2)(A)(ii) Congress called for the establishment of linked or coordinated facilities for the clearance and settlement of transactions in securities, securities options, futures contracts, and options on futures and commodities.[16] For the reasons set forth below, the Commission finds that OCC's proposal is consistent with these statutory directives.[17]

Since it granted approval of the first cross-margining program in 1988,[18] the Commission repeatedly has found that cross-margining programs are consistent with clearing agency responsibilities under section 17A of the Act. As the Commission previously noted, cross-margining programs, among other things, tend to enhance clearing member and systemic liquidity both in times of normal trading and in times of stress.[19] Under routine trading, clearing members who participate in a cross-margining program have lower initial margin deposits. Reduced margin requirements help clearing members manage their cash flow by increasing available case to be used for other purposes. In times of market stress and high volatility, lower initial margin requirements could prove crucial in maintaining the liquidity of clearing members and thus would enhance liquidity in the market as a whole. By enhancing market liquidity, cross-margining arrangements remove impediments to and help perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.[20]

In addition, the Commission consistently has indicated that by more accurately reflecting a clearing member's portfolio risk, cross-margining arrangements enhance clearing member liquidity and thereby reduce the risk that clearing members will become insolvent in times of extreme market stress. Enhancing clearing member liquidity thus promotes the safety of the entire clearance and settlement system by increasing the liquidity of individual participants and thereby decreasing the threat of a ripple effect of insolvencies caused by the demise of a major market participant.

Cross-margining also enhances the security of the clearing system because when an obligation is hedged[21] by a position based on the same underlying asset, any decrease in the value of one position will be offset by a corresponding increase in the value of the other position. The main difference between the previously approved OCC/KCC proprietary cross-margin program and the non-proprietary cross-margin program being approved in this order is that under the non-proprietary cross margin program the clearing members receive margin benefits for not only the clearing members' own positions but also for the positions of market professionals that the clearing members carry in the non-proprietary cross-margining account.

Unlike a clearing member's proprietary positions, where the clearing member controls the establishment and liquidation of the position, a non-proprietary position presents the risk that a market professional could affect the clearing member adversely by liquidating one side of the combined position. To reduce OCC's risk exposure, OCC has a series of safeguards, which have been subject to Commission review, designed to reduce the risk that a clearing member poses to the system.[22] These

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member, as a person or entity that directly or indirectly controls such clearing member or that is directly or indirectly controlled by or under common control with such clearing member. Ownership of 10% or more of the common stock of the relevant entity will be deemed prima facie to give control of that entity. OCC/KCC XM Agreement, Section 1(s) and letter from James C. Yong, Deputy General Counsel, OCC, to Jonathan Kallman, Associate Director, Division of Market Regulation, Commission (July 7, 1992).

[13] OCC has filed a proposed rule change with the Commission whereby OCC would be permitted to value debt and equity securities deposited as margin at 70% of their current market values rather than at 50%. Securities Exchange Act Release No. 31169 (September 17, 1992), 57 FR 43041 [File No. SR–OCC–92–13] (notice of filing of a proposed rule change).

[14] 15 U.S.C. 78q–1 (1988).

[15] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988).

[16] 15 U.S.C. 78q–1(a)(2)(A)(ii) (1990). Congress added this section to the Act by enacting the Market Reform Act of 1990. Pub. L. No. 101–432, 104 Stat. 963 (1990). For a detailed discussion of the progress toward coordination or linkage in the national clearance and settlement system, refer to Commission, Report on Progress Toward Establishing Linked or Coordinated Facilities for Clearance and Settlement of Transactions in Securities, Options, and Futures (March 5, 1993).

[17] For a general discussion of the benefits of cross-margining, refer to Securities Exchange Act Release Nos. 27296 and 29991, *supra* note 8.

[18] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39567 (approving non-proprietary X–M program between OCC and ICC).

[19] *E.g.*, Securities Exchange Act Release Nos. 30413 (February 26, 1992), 57 FR 7630 (order approving OCC/Kansas City Board of Trade Clearing Corporation cross-margining program for proprietary positions); 29991 (November 26, 1991), 56 FR 61458 (order approving expansion of OCC/CME cross-margining program to include positions held for market professionals); 29888 (October 31, 1991), 56 FR 56680 (order approving OCC/Board of Trade Clearing Corporation cross-margining program for proprietary positions); 27296 (September 26, 1989), 54 FR 41195 (Order approving OCC/CME Cross-margining program for proprietary positions).

[20] Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improvements to the clearance and settlement system, such as those provided by cross margining arrangements, would "help ensure that a securities market failure does not become a credit market failure." The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 28, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[21] In this order, the terms hedge and offset refer to futures and options positions that closely correlate so that possible losses in one instrument can be reduced by possible gains in another instrument (e.g., a long futures contract on the Standard and Poor's 500 Index with a long put option contract on the Standard and Poor's 500 Index). Use of the terms hedge and offset in this order should not be read as necessarily defining or interpreting hedge or offset as those terms are defined in the Act, The commodity Exchange Act, Bankruptcy Code, or any of the rules and regulations thereunder.

[22] Among others, these safeguards include OCC's: (1) Stock Clearing Fund and Non-Equity Securities Clearing Fund (Securities Exchange Act Release No. 27410 (October 31, 1989), 54 FR 46668 [File No. SR–OCC–89–06]); (2) Theoretical Intermarket Margining System ("TIMS") which employs option price theory to identify and measure market risk and to calculate margin requirements (Securities Exchange Act Release No. 32388 (May 28, 1993), 58 FR 31989 [File No. SR–OCC–90–06]); (3)

Continued

procedural safeguards, in conjunction with minimum capital qualifications established by OCC, provide a basis for approval of the proposed non-proprietary cross-margining program.[23]

The Commission believes that the interrelationships between the financial markets and the need for a system of margining which reflects the true risk of combined portfolios justifies cross-margining of futures and options positions. Because the non-proprietary cross-margining program being approved by this order both helps to further such a system of margining and is open to all OCC and KCC members that choose to participate, the Commission believes the non-proprietary cross-margining program is fully consistent with section 17a of the Act and, therefore, is approving OCC's proposed rule change.

## III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.[24]

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (File No. SR–OCC–93–13) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[26]

**Margaret H. McFarland,**

*Deputy Secretary.*

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Concentration Monitoring System which enables OCC to analyze and address risks resulting from concentrated, undiversified options portfolios (Division, Commission, Market Analysis of October 13 and 16, 1989, at 137–42 (December 1990)); (4) Risk Management System which generally allows OCC to evaluate the risks associated with the entire stock, options, and futures portfolios held by its clearing members (Securities Exchange Act Release No. 30348 (February 6, 1992); 57 FR 5195 [File No. SR–OCC–91–17]); (5) valued securities program eligibility standards for stock and corporate debt which help to ensure that a clearing member's stocks deposited as margin will have an active, liquid market to permit their sale or pledge in the event of a member default (Securities Exchange Act Release No. 29378 (August 16, 1991), 56 FR 41873 [File No. SR–OCC–88–03]); and (6) valued securities program concentration ratio which limits the amount of stock of any one issuer that can be held in an account to ten percent of the margin requirement for the account (*id.*).

[23] OCC requires that each clearing member shall have an initial net capital of not less than $1,000,000 and that the aggregate principal amount of the clearing member's satisfactory subordination agreements, other than such agreements which qualify as equity capital under Commission Rule 15c3–1(d) [17 CFR 240.15c3–1(d) (1992)], shall not initially exceed 70% of the clearing member's debt-equity total. OCC Rule 301(a).

[24] 15 U.S.C. 78q–1 (1988).

[25] 15 U.S.C. 78s(b)(2) (1988).

[26] 17 CFR 200.30–3(a)(12) (1992).

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**[Release No. 34–32702; File No. SR–PSE–92–24]**

## Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Rule 12, Arbitration, of the Rules of the PSE

July 30, 1993.

## I. Introduction

On August 13, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 12, Arbitration, of the Rules of the PSE. On September 1, 1992, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change to clarify certain language in the proposed amendments relating to simplified arbitration for public customers, initiation and adjournment of arbitration proceedings, and pre-dispute arbitration agreements.[3] On November 10, 1992, the PSE submitted to the Commission Amendment No. 2 to the proposed rule change to make further clarifications in the proposed amendment regarding initiation of proceedings.[4] On December 4, 1992, the PSE submitted to the Commission Amendment No. 3 to the proposed rule change to correct clerical errors in Amendment No. 2 regarding consolidation of claims.[5] On February 26, 1993, the PSE submitted to the Commission Amendment No. 4 to the proposed rule change which added language concerning the timing of the Director of Arbitration's determination regarding consolidation of claims.[6] The PSE states that all of the proposed rule changes reflect amendments to the Uniform Code of Arbitration ("Uniform Code") approved by the Securities Industry Conference on Arbitration ("SICA").[7]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Betsy Prout, Staff Attorney, Commission, dated August 28, 1992.

[4] See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Betsy Prout, Staff Attorney, Commission, dated November 4, 1992.

[5] See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Betsy Prout, Staff Attorney, Commission, dated November 20, 1992.

[6] See letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Sharon Lawson, Assistant Director, Commission, dated February 26, 1993.

[7] SICA is comprised of a representative from each self-regulatory organization ("SRO") that administers an arbitration program, a representative of the securities industry, and four representatives of the public. The SROs that administer an arbitration program are the New York, American, Boston, Cincinnati, Chicago, Pacific, and Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board.

The proposed rule change, together with Amendment Nos. 1, 2, 3 and 4, was published for comment in Securities Exchange Act Release No. 32037 (March 23, 1993), 58 FR 16566 (March 29, 1993). No comments were received on the proposal.

## II. Description of the Proposals

The following is a summary of the proposed changes to Rule 12, Arbitration, of the PSE Rules:

*Rule 12.1(d) Referral of Claims*

Proposed new subsection (d) of Rule 12.1 would permit the Exchange to refer a claim, with the claimant's consent, to the SRO where the subject transaction occurred. This amendment is proposed to enable the Exchange to distribute cases more evenly to the SRO where the transactions occurred.

*Rule 12.1(e), 12.34(5) Class Action Claims*

The proposed Rule relating to class actions provides that class actions are ineligible for submission to arbitration. The proposal would enable brokerage customers to pursue class action claims against their broker-dealers in court notwithstanding any arbitration agreement they might have signed. The proposed Rule also provides that any claim filed by a member or members of a putative or certified class action is ineligible for arbitration at the Exchange if the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to a non-self-regulatory organization arbitration forum for class-wide arbitration. However, the proposed Rule provides that such claims shall be eligible for arbitration in accordance with the proposed Rule or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has compiled with any conditions for withdrawing from the class prescribed by the court.

Proposed Rule 12.34(5) would require that all new predispute arbitration agreements with customers include a statement regarding the ineligibility of class actions for submission to arbitration in accordance with the provisions of proposed Rule 12.1(e).

*Rule 12.2 Discovery in Simplified Arbitration Cases*

Currently, the PSE does not have separate provisions dealing with discovery in Simplified Cases (claims under $10,000). The proposed amendment to Rule 12.2 would refer the parties to Rule 12.14, General Provisions Governing Pre-Hearing Procedures, for cases in which an oral hearing has been requested and would provide shorter time frames for cases administered on the basis of the pleadings alone. Specifically, Rule 12.2(h)(iii) would provide that, in simplified arbitration cases, if no hearing is demanded or consented to, all requests for document production should be submitted in writing to the Director of Arbitration within ten business days of notification of the identity of the arbitrator selected to decide the case. The proposal also would require the requesting party to serve simultaneously its requests for document production on all parties. Any response or objection to the requested document production would have to be served on all parties and filed with the Director of Arbitration within five business days of receipt of the requests for production. The selected arbitrator would be empowered to resolve all requests under these procedures on the papers submitted.

*Rule 12.13(c) Service and Filing with the Director of Arbitration*

The PSE proposes to amend Rule 12.13(c) to specify that filing with the Director of Arbitration must be made on the same date as service. This amendment would ensure that parties send their documents to the Exchange at the same time that they are sent to the other parties.

*Rule 12.13(d)(2) and (d)(3) Consolidation*

This amendment would codify and clarify the Director of Arbitration's power to make a preliminary determination regarding consolidation of claims for hearing and award purposes. The amendment also would provide that in arbitrations where there are multiple claimants, respondents, or third party respondents, the Director's preliminary determination whether parties should proceed in the same or separate arbitrations would be considered subsequent to the filing of all responsive pleadings.

Existing Rule 12.13(d)(3) would be renumbered as Rule 12.13(d)(4). Amendments to this subsection would require the arbitration panel to make further determinations with respect to joinder or consolidation, and would substitute the word "joinder" in the place of "joining."[8]

*Rule 12.18(a) Adjournments*

The PSE proposes to amend its rule concerning fees for adjournments to conform to changes made by SICA. The current rule provides that a party requesting an adjournment after arbitrators have been appointed must deposit a fee equal to the initial deposit of hearing session fees for the first adjournment, and twice the initial deposit of hearing session fees, not to exceed $1000, for a second or subsequent adjournment. Arbitrators may waive the fee or in their awards may direct the return of the adjournment fee. As amended, Rule 12.18(b) would provide that the Director of Arbitration can waive the fee, that the arbitrators also can waive or order a refund of the fee, and that the fee would be returned if the adjournment is not granted. The PSE states that waivers should be considered on a case by case basis.

*Rule 12.23 Interpretation of Rule 12 and Enforcement of Arbitration Rulings*

This amendment would codify and clarify the arbitrators' existing power to take appropriate action to enforce their rulings in the event of non-compliance by a party. Amended Rule 12.23 would specify that such interpretations and actions to obtain compliance shall be final and binding upon the parties.

Currently, sanctions for non-compliance are not always ordered or requested because arbitrators and parties may be unaware of an arbitrator's power. The Uniform Code is silent with respect to this issue. The PSE states that the amendment will apply mainly in the area of failure to comply with discovery requests.

The PSE states that its objective in making these amendments is to make PSE's Rule 12, Arbitration, consistent with the SICA Uniform Code. The PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by ensuring that members and member organizations and the public have an impartial forum for resolution of their disputes.

## III. Discussion

The Commission has considered the Exchange's proposed rule change and finds that, for the reasons set forth below, the proposals are consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b)(5) of the Act. Section 6(b)(5) of the Act requires than an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Commission believes that, because these proposed rules should aid in the just resolution of disputes between investors and broker-dealers, the proposal should further the objectives of section 6(b)(5) of the Act. The Commission also believes, for the reasons set forth below, that the proposed rule change furthers the public interest by improving the speed and efficiency of the arbitration process, while at the same time maintaining the traditional qualities of arbitration.

*Referral of Claims*

The Commission believes that the proposed amendment to Rule 12.1(d), which would permit the PSE to refer, with the claimant's consent, arbitration claims which arise in a readily identifiable market to the arbitration forum for that market should provide for a more efficient allocation of claims among the various SROs. This, in turn, should result in a more efficient allocation of the Exchange's arbitration resources and a more timely resolution of the parties' disputes.

*Class Actions*

The Commission believes that the PSE's proposed rule relating to class action claims is an important initiative to protect investors and the public interest. In the past, individuals who attempted to certify class actions in litigation were subject to the enforcement of their separate arbitration contracts by their broker-dealers. Without access to class actions in appropriate cases, both investors and broker-dealers have been put to the expense of wasteful, duplicative litigation. The proposed rule would prevent this practice. In addition, proposed PSE Rule 12.34(5) will ensure that arbitration agreements clearly state that class action claims are specifically outside the scope of arbitration contracts entered into by members.

Based on the above, the Commission believes that the PSE's proposal to permit certified class actions to proceed in court, while allowing individual claimants who elected not to participate in the class, or who withdrew from the class, to arbitrate should increase customer confidence in the markets and

[8] The title of Rule 12.13(d) would be amended to change "Joining" to "Joinder" and to include reference to "Multiple Parties."

[9] 15 U.S.C. 78f(b)(5) (1988).

promote the efficient resolution of disputes for both investors and broker-dealers.

*Discovery in Simplified Arbitration Cases*

The Commission believes that the proposed amendments to Rule 12.2, Simplified Arbitration for Public Customers, should improve the procedures for administering arbitration cases involving claims under $10,000. As noted above, the proposed amendment to Rule 12.2(h)(i) provides that, if a hearing is demanded or consented to, PSE Rule 12.14, General Provisions Governing Pre-Hearing Proceedings, applies. If, however, no hearing is demanded or consented to with regard to simplified arbitration, the proposal provides for shorter document production periods, including the requirement that all such requests be submitted in writing to the Director of Arbitration within ten business days of notification of the identity of the arbitrator selected to decide the case, and that the party requesting document production shall serve its requests on all interested parties simultaneously.

The Commission believes that the PSE's adoption of this rule should improve the PSE's simplified arbitration procedures by establishing clear procedures for discovery requests and document production, and should therefore assist in the speedy and efficient resolution of arbitration cases involving small claims. Similarly, because the proposed amendment to Rule 12.2 would require that the requesting party, rather than the Exchange, serve all parties simultaneously with any requests for document production, the Commission believes that the proposal should save administrative time and costs while continuing to ensure that all parties receive adequate notice concerning requests for documents.

*Service and Filing with the Director of Arbitration*

The Commission believes that the proposal should promote efficiency in the PSE's arbitration procedures by amending PSE Rule 12.13(c), Service and Filing with the Director of Arbitration, to provide that filing with the Director of Arbitration shall be made on the same date as service. In so doing, the Commission believes that the proposal should encourage efficient filings with the Exchange and service on parties, thereby assisting in the timely resolution of arbitration cases.

*Consolidation*

The Commission believes that the proposed amendments to Rule 12.13 should facilitate the consolidation in appropriate cases of claims by investors with similar allegations against their broker-dealers and associated persons. The proposal empowers the Director of Arbitration with preliminary authority to determine whether claims filed separately are related. Under the proposal, all final determinations with respect to joinder appropriately will continue to be made by the arbitration panel.

*Adjournments*

The Commission believes that the proposed amendment to the PSE's adjournment fee rule is consistent with section 6(b)(4) of the Act, which requires, among other things, that the rules of an exchange provide for the equitable allocation of reasonable fees among its members and other persons using its facilities.[10] Specifically, by empowering the Director of Arbitration with the authority to waive the adjournment fee, by empowering the arbitrators with the authority to waive or order a refund of the fee, and by providing that the fee would be returned if the adjournment is not granted, the proposed rule provides for the reasonable and rational allocation of fees.

*Interpretation of Rule 12 and Enforcement of Arbitration Rulings*

The Commission believes that the amendment to PSE Rule 12.23, Interpretation of Rule 12 and Enforcement of Arbitrator Rulings, should clarify the arbitrators' existing authority to enforce their rulings. The Commission believes that it is appropriate to amend Rule 12.23 to affirm the arbitrators' authority to take appropriate action to obtain compliance with any of their rulings and to provide that such interpretations and actions to obtain compliance are final and binding on the parties. The proposed amendment should raise customer confidence in the arbitration process by assuring that those individuals who utilize the PSE's arbitration forum comply with the arbitrator's rulings.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-19088 Filed 8-9-93; 8:45 am]

BILLING CODE 8010-01-M

[10] 15 U.S.C. 78(b)(4) (1988).

**[Release No. 34-32718; File No. SR-NASD-93-39]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Composition of Extended Hearing Committees in Disciplinary Proceedings

August 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 28, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended on August 3, 1993,[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article II, Section 6(c) of the NASD Code of Procedure ("Code) to clarify that former Market Surveillance Committee members are eligible for service on Extended Hearing Committees. Below is the text of the proposed rule change. Proposed new language is italicized.

**Code of Procedure Article II.—Hearing Panels**

Sec. 6.

* * * * *

(c) In the event of an Extended Hearing, the Committee shall appoint an Extended Hearing Committee of three or more persons, all of whom previously shall have served as members of a District Business Conduct Committee, *the Market Surveillance Committee* or the Board of Governors; provided however, that the Chairman of the District Committee *or the Market Surveillance Committee* shall have the discretion to appoint to an Extended Hearing Committee one or more current members of such bodies and to compensate any or all members of the Extended Hearing Committee at the rate then in effect for arbitrators appointed under the Code of Arbitration Procedure.

[1] See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn J. Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated August 2, 1993.

**II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Pursuant to Article II, Section 4 of the Code if a disciplinary hearing is expected to involve extensive testimony or complex evidence the matter may be designated for an Extended Hearing. Article II, section 6(c) of the Code requires the appointment of an Extended Hearing Committee to hear a matter so designated. Section 6(c) provides that persons eligible to serve on such Committees are current or former members of the District Business Conduct Committee or the Board of Governors.

While the NASD's rules generally treat the Market Surveillance Committee as the equivalent of a District Business Conduct Committee,[2] Section 6(c) does not expressly qualify a current or former member of the Market Surveillance Committee for service on an Extended Hearing Committee. In order to correct this apparent oversight, the NASD is proposing to amend Section 6(c) to recognize that service on the Market Surveillance Committee qualifies an individual for service on an Extended Hearing Committee.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(8)[3] of the Act in that the change enhances the NASD's disciplinary procedures contributing to the procedural fairness required by the section. By amending Subsection 6(c) of the Code to clarify that former members of the Market Surveillance Committee be permitted to serve on the Extended Hearing Committees, the NASD ensures that the largest possible pool of potential panel members is available for service on the Extended Hearing Committees. Such availability contributes to the expeditious handling of such matters by the most expert available Committees.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: A. By order approve such proposed rule, or

B. Institute proceeding to determine whether the proposed rule should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-19139 Filed 8-9-93; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-32707; International Series Release No. 571; File No. SR-Phlx-93-31]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by Philadelphia Stock Exchange, Inc. Amending the Listing and Maintenance Standards

August 2, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 20, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to substantially revise its entire 800 series of rules which govern the listing and delisting of securities on the Exchange. This comprehensive rule change proposes two-tier numerical standards for original listing and maintenance of common stocks, preferred stocks, foreign shares, bonds, debentures, notes and various types of warrants. As an adjunct to the numerical standards, the Exchange also proposes qualitative standards and corporate governance policies which all companies listed on the Exchange will be required to satisfy as a condition of listing. Listing criteria are also proposed for securities of mod-sized companies or research and development companies. In the event a listed security falls below the listing criteria or otherwise fails to comply with the Exchange's listing agreement, the Phlx proposes suspension and delisting policies and procedures intended to ensure uniform treatment of issuers whose securities are subject to delisting.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included

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[2] See, e.g., Article I, Section 2(b) of the Code which defines the term "Committee" to mean either the District Business Conduct Committee or the Market Surveillance Committee, or an Extended Hearing Committee.

[3] 15 U.S.C. 78o-3 (1988).

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange's current rules governing listing and delisting of securities have remained unchanged since 1980. Pursuant to section 6(b)(5) of Act, all exchanges are charged with the responsibility of protecting investors and the public interest while simultaneously preventing unfair discrimination against issuers. Given the changes in the Exchange and the securities environment over the past thirteen years, the Exchange has been engaged in reviewing its listing standards, policies and procedures, and as a result, believes the listing and delisting standards it hereby proposes will serve to modernize and enhance the marketplace of the Exchange and protect the public interest. In this regard, this rule change supersedes both Phlx–90–07 and Phlx–92–08 which are currently pending with the Commission and which are being withdrawn concurrent with this filing.

The Phlx proposes to establish a two-tier standard for the listing of securities. While all listed issues will be traded subject to identical Exchange auction rules, issues listed pursuant the "Tier I" and "Tier II" standards may be distinguished with respect to blue sky exemptions, transaction reporting, listing fees and corresponding maintenance standards. As amended, however, both tier standards for initial and maintenance listing of securities are mandatory and non-waivable. The Exchange believes that the employment of mandatory standards, as opposed to mere guidelines, will help to prevent any appearance of unfair discrimination between issues, and will help to protect the public by permitting reliance on the integrity of the standards and preventing the listing of unqualified and potentially non-bona fide companies.

As an initial matter, Phlx Rules 800 and 801 would be amended to reflect that responsibility for administering the 800 series or rules has been assigned to the Allocation, Evaluation and Securities Committee ("Committee"). The Committee on Stock List to which the Board of Governors ("Board") previously delegated this responsibility no longer would exit. Rules 800 and 801 reflect the transfer of such authority to this Committee.

Phlx Rule 802 reflects the application procedure wherein authority for initial review of original listing applications has been delegated to the staff of the Exchange's Department of Securities. This rule change also retains language under current Rule 802 explicitly disclaiming responsibility on the part of the Exchange to rate or guarantee any listed security beyond the fact that it meets the Exchange's minimum financial criteria for listing, as determined by the Exchange, in reliance upon disclosure provided by or on behalf of the issuer.

Proposed Rules 803 and 804 constitute alternate listing criteria established in connection with the North American Securities Association, Inc. ("NASAA") Memorandum of Understanding ("MOU") and adopted by the Phlx as a basis of its Tier I listing standards.[1]

A comparison of the proposed Tier II listing standards ("Tier II Standards") to the NASAA MOU standards ("Tier I Standards") shows that the latter, in most respects, reflects materially higher quantitative criteria. Likewise, material differences exist between the Tier I and Tier II maintenance criteria for continued listing found under proposed Rule 810.

The Exchange will identify and distinguish at all times which securities were listed pursuant to the Tier I and Tier II standards. For example, Tier I securities will have the suffix ".TI" annexed to their ticker symbol and/or the closing prices in Tier I and Tier II securities will be carried in separate newspaper tables. In this regard, if a Tier I listed security fails to satisfy Tier I maintenance standards for continued listing, the issuer will be delisted. Thereafter, the issuer may seek to relist pursuant to the Exchange's Tier II standards. Moreover, if a Tier II listed security matures to the point that it could meet the Tier I standards, the issuer must apply and receive approval to list the security pursuant to the Tier I standards before the Exchange will deem such a security to be a Tier I issue.

Two-tier listing standards provide flexibility for the Phlx in pursuing various listing objectives. Such standards appear to have served well the National Association of Securities Dealers, Inc. ("NASD") with respect to developing its NASDAQ list and NASDAQ/National Market System ("NMS") securities list. The American Stock Exchange, Inc. ("Amex") recently has received the approval of the Commission to adopt listing standards for its Emerging Company Marketplace ("ECM") which *de facto* establishes a two-tier listing standard system for Amex common stocks.[2] In this regard, the Amex has indicated that mid-sized companies that may not satisfy Amex's regular listing standards could raise capital via a listing on the Amex's ECM. While the Amex proposal introduces a reduced tier of common stock listing standards, the instant Phlx proposal would establish a higher tier.

The Phlx has adopted NASAA's MOU standards as its new Tier I under Rules 803 and 804, because the Phlx views these standards to have been well-crafted to provide an exceptionally high level of investor/shareholder protection. In this regard, the Phlx has adopted not only NASAA's qualitative financial listing standards but also its substantial corporate governance standards which include requirements for independent directors (Rule 851), audit committees (Rule 849), shareholder quorums (Rule 847), common stock voting rights (Rule 812) and conflict of interest provisions (Rule 849).

Whether listing under Tier I or Tier II, the Phlx proposes that its corporate governance and qualitative standards must be satisfied by all issuers on a continuing basis. These standards are very similar to existing standards previously approved by the Commission on behalf of the Chicago Board Options Exchange, Inc. ("CBOE").[3]

*Tier I Standards.* With regard to common stock, Rule 803(a) replicates the NASAA MOU's numerical criteria applicable in original listing determinations in every aspect including net tangible assets, numbers of shareholders and shares publicly held, pre-tax income, stock price and net income.

Rule 803(b) provides the Tier I original listing criteria for preferred stock. Preferred stock issuers must satisfy the same net tangible assets and net earnings criteria applicable to

[1] The MOU criteria were approved by the NASAA membership on October 10, 1988 and published in Securities Exchange Act Release No. 26810 (December 16, 1988), 53 FR 52550 (December 28, 1988). NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[2] See Securities Exchange Act Release No. 30445 (March 5, 1992), 57 FR 8693 (March 11, 1992) (File No. SR–Amex–91–28).

[3] See Securities Exchange Act Release No. 28556 (October 19, 1990), 55 FR 43233 (October 26, 1990) (File No. SR–CBOE–90–08).

issuers of common stock. The ability of issuers to service the dividend requirements for preferred stock will also be evaluated. The requirements will differ for number of shares publicly held and aggregate market value depending on whether the issuer has common stock listed or not. Where the common stock is listed on either the Phlx, New York Stock Exchange ("NYSE") or Amex, at least 100,000 shares of preferred stock must be publicly held with an aggregate market value of at least $2 million dollars. Where the common stock is not so listed, at least 400,000 shares of preferred stock must be publicly held with an aggregate market value of at least $4 million. Differentiating on this basis reflects the Phlx's belief that companies whose securities are publicly traded have a more significant investor following and a greater demonstrated ability to raise necessary capital while meeting the contingent payment obligations associated with preferred stock and, as described below, bonds, notes and debentures. In either case, a share of preferred stock must have a minimum share price of $10.00 to be eligible for listing.

Determinations regarding the initial listing of bonds, debentures and notes under Tier I would be governed by the criteria listed under Rule 803(c). In addition to being evaluated according to the same net tangible assets and earnings standards applicable to equity issuers, the ability of these issuers to satisfy the interest and principal payments of bonds, debentures and notes as they become due would also be evaluated. Current last sale information would be required to be both publicly available and independently certifiable. As above, the aggregate market value and number of public holders varies depending on whether or not the issuer's common stock is listed and traded on either the Phlx, Amex or NYSE with the corresponding numerical values replicating those previously approved by the Commission for use by the CBOE.

In the case of warrants, issuers seeking listing under Tier I must satisfy the criteria of Rule 803(d). An issuer must meet the same net tangible assets, net earnings and distribution criteria applicable to equity issuers. Where the warrants issue is sold as part of a unit, however, a minimum of 500,000 warrants must be held by not less than 400 holders. The common stock or other securities underlying the warrants must be listed on either the Phlx, the NYSE or the Amex.

Rule 803(e) will provide the minimum criteria for listing of warrants based on market indices. This rule filing simply redesignates the previously approved material found under current Phlx Rule 803, Supplementary Material .01.[4] The same index warrant criteria will, however, now also be applicable to currency warrants.

Rule 803(f) contains criteria applicable to the listing of new and innovative products that do not fall within Rule 803 (a)-(e) but otherwise have the financial qualifications to be listed and are suitable for auction market trading. This criteria has also been previously approved and is currently found under Phlx Rule 803, Supplementary Material .02.[5]

Initial listing determinations with regard to units under Tier I or Tier II shall similarly rely on the criteria applicable to the components of the unit as individual securities. In addition, there must be at least 750,000 units outstanding with at least 500 beneficial holders.

Rule 803(g) provides criteria for contingent value rights ("CVRs") which are unsecured obligations of the issuer providing for a possible cash payment at maturity. However, such cash payment, if any, is based upon the price performance of an affiliated equity security. At maturity, the holder of a CVR is entitled to a cash payment if the market price of the related equity security is less than a pre-set target price. The target price is typically established at the time the CVR is issued. Conversely, should the market price of the related equity security equal or exceed the target price, the CVR holder is not entitled to any cash payment at maturity. The Exchange will distribute a circular to the Membership explaining specific risks associated with CVRs. The circular will emphasize the need to disclose to CVR investors the special characteristics of CVRs and will suggest that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading or after ascertaining that CVRs are suitable for the customer.

*Alternative Tier I Standards.* Rule 804 provides the alternative criteria for Tier I listing and are identical to those enumerated as alternate criteria by NASAA's MOU except for the fact that a $3 price per share standard has been added. There are certain smaller companies which, either due to the nature of their business or the amount of resources committed by the company to research and development, would not meet the standards in Rule 803 but nevertheless deserve Tier I status. Thus, those types of companies may be approved for listing under Tier I if they satisfy the criteria in Rule 804 instead of the criteria in Rule 803.

*Tier II Standards.* Rule 805 sets forth the criteria applicable to listing under the Exchange's proposed Tier II standards. Tier II standards allow companies which may not be large enough to list under Tier I, the opportunity to have their securities traded in an auction market, thereby increasing liquidity and issuer access to the investment community.

Under the proposal, issuers of Tier II listed securities would not be permitted to avail themselves of the exemption from state securities registration requirements that the Exchange intends to seek for securities listed under proposed Tier I ("blue sky exemptions"). They will, however, be exempt from registration requirements in the states where the Exchange currently has blue sky exemptions for its listed issues. The Phlx will identify and distinguish at all times which securities were listed pursuant to the Tier I and Tier II standards.

Rule 805 enumerates the proposed Tier II standards which are intended to replace the Exchange's current listing standards. Although these standards are lower than Tier I and thus, easier to meet, they are still substantially higher than the current Phlx rules. Quantitative listing criteria applicable to common stock, preferred stock, bonds and warrants have been increased by at least 50% in most cases. Additional numerical guidelines applicable to shares of a foreign issuer are proposed. Furthermore, any reference in the rule to the effect that the standards are "guidelines" which are not mandatory in every case has been deleted.

In addition to raising the standards, a number of other changes have been made to the criteria. First, the requirement for the number of shares of common stock issued and outstanding is amended to clarify that shares held by persons required to report their stock holdings under section 16(a) of the Act[6] are excluded. The number of these shares issued and outstanding is being increased from 250,000 to 750,000. Also a new $3.00 price per share standard is being added. Thus, the shares' minimum market value is being increased from $500,000 to $2,250,000.

The common stock criteria related to the number of shareholders is being revised to require 500 beneficial holders

[4] See Securities Exchange Act Release No. 28358 (August 21, 1990), 55 FR 35288 (August 28, 1990) (File No. SR–Phlx–90–07).

[5] See Securities Exchange Act Release No. 30466 (March 11, 1992) 57 FR 9301 (March 17, 1992) (File No. SR–Phlx–92–01).

[6] 15 U.S.C. 78p(a) (1988).

instead of 1000 holders of record. Experience has shown that beneficial holders give a more accurate picture of diversity of shareholders and that 1000 holders is usually an impossible standard to meet for otherwise worthy securities of small issuers.

The criteria related to net tangible assets will be increased from $1,000,000 to $1,500,000. The Exchange will determine net tangible assets by deducting both goodwill and total liabilities from total assets.

Currently, the final criteria for listing common stock is demonstrated net income for two of the last three years. That criteria would now be increased to require at least $100,000 a year for three of the last four years, or alternatively, $2,000,000 in net tangible assets. The increased net income requirement helps assure that the listing company is able to meet its financial obligations and still generate income for its operations and public shareholders. Additionally, the term "net income" is defined by Rule 805(a)(4)[7] as income after federal income taxes and before extraordinary expenditures.

Allowing the net asset alternative permits relatively new or developing companies, which are otherwise worthy but simply lack a positive income history to remain eligible for listing. With respect to such issuers, a large amount of net tangible assets better assures that the company is not merely a shell but a going concern with net income potential in the future. Thus, the alternative net tangible assets requirement for listing will be $2,000,000 as opposed to $1,500,000 required of a company with historical net income.

Rule 805(b) provides the standards for warrants. The new rule would double the number of outstanding warrants from 250,000 to 500,000 excluding, like common stock, warrants held by Section 16(a) Reporting Persons under the Act. The requirement that there be at least 500 holders of a class of equity securities which would otherwise be eligible for listing would be deleted because it is currently possible to have warrants which do not have an underlying class of equity securities. Issuers of warrants, however, will be subject, on an ongoing basis, to the same qualitative and corporate governance standards as issuers of equity securities.

Rule 805(c) sets for the the listing standards for preferred stock. The new rule would increase the number of shares outstanding from 200,000 to 500,000 and exclude section 16(a) Reporting Persons under the Act. For reasons previously stated, the holders of record standard is being changed to beneficial holders. The required number of 250 holders remains the same. In addition, the 500 holders of a class of equity securities which would otherwise be eligible for listing is being deleted because it has not been found to provide any useful information. The ability of the company to service the dividend requirements of the issue will also be considered.

Rule 805(d) states the criteria for listing bonds, debentures and notes on the Exchange. The new rule would double the principal amount outstanding to $2,000,000 while preserving the aggregate market value requirement of $1,000,000. Bonds that would trade at below par value could, therefore, be eligible for listing. A requirement of 250 beneficial holders will be substituted for a like amount of record holders under this subsection. The issuer's apparent ability to satisfy interest and principal payments upon maturity will also be evaluated by the Exchange.

The addition of listing criteria for shares of foreign issuers under Tier II are proposed as Rule 805(e). First, the shares must be either registered directly as either American Depositary Receipts ("ADRs") or American Depositary Shares ("ADSs") or they must be exempt from registration under the Act. Second, the number of shares outstanding is the same as for domestic common stock provided, however, these shares are issued and outstanding in the United States. Further, the minimum market value must be $2,500,000 as measured in U.S. dollars. Also, the requirements with respect to beneficial holders, net tangible assets and shareholder equity are the same as those applicable to issuers of domestic common stock. Finally, the share certificates must be in registered form, printed in English and capable of being delivered or transferred in this country as well as in the country of origin. If the foreign company wishes to list as ADRs, further requirements are added to facilitate trading by the pubic.

Foreign issuers may be required to meet the Exchange's corporate governance standards unless the Exchange otherwise elects to exempt the issuer from such standards. Areas in which the Exchange may exercise exemptive authority to this requirement are limited to: (1) Quarterly reporting of interim earnings; (2) composition and election of the Board of Directors; (3) shareholder approval requirements and voting rights; and (4) quorum requirements for shareholder meetings.

*Rules 806–809*

In Rule 806, the Exchange, for the first time, will specifically address the listing of initial public offerings ("IPOs"). All IMPs must be first registered with the Commission or an appropraite regulatory authority to be eligible for listing. To better assure investor protection, the issuer must also provide the Exchange with a letter of undertaking from the principal investment banker which opines that the company will meet the requisite level of shareholders, market value and price in order to be eligible for listing. Because it would be impossible to determine if a particular IPO satisfies listing criteria regarding price per share and numbers of both outstanding shares and beneficial holders before that IPO begins trading, IPOs will have a one-month grace period to meet the Exchange's applicable initial listing criteria. The Exchange will consider that an IPO has satisfied the rules if it meets the applicable criteria for a majority of trading days of that first month.

Pursuant to section 12(b) of the Act,[8] Rule 807 requires that a security approved for listing on the Exchange must be registered under the Act in addition to being registered under the Securities Exchange Act of 1933. Rule 807 is patterned on section 12(b) with respect to identification of appropriate forms to be used for registration. As Rule 807 explains, the Commission's registration of a security under section 12(b) of the Act is contingent upon certification by the Exchange of the security's approval for listing.

Rule 808 outlines the procedures an applicant should follow and the documentation it must submit when seeking Exchange listing privileges. The Securities Department staff will review applications with respect to the information applicants are required to submit and prepare a confidential listing opinion as to the eligibility of an applicant's securities for listing. The objective of the original listing application and evaluation by the Exchange as identified by Rule 808 is to assure that the companies admitted to listing have demonstrated an acceptable level of financial strength and management according to sound business principles. Towards this end, Rule 808 refers to additional qualitative factors the Exchange may consider including the nature of a company's business, the market for a company's product, whether the company is a

[7] Conversation between Michele Weisbaum, Associate General Counsel, Phlx, and Elizabeth Cosgrove, Attorney, Commission, on July 30, 1993, correcting the reference for the definition of "net income."

[8] 15 U.S.C. 78*l*(b) (1988).

going concern or the successor thereof, and the company's history and growth prospects.

The procedures set forth in Rule 808 are intended to ensure the quality and effectiveness of the Exchange's review while avoiding disparate treatment among issuers. Accordingly, documentation providing the issuer's complete financial information is required. Also any forms an issuer subject to registration and reporting requirements under Section 12(a) of the Act must file with the Commission are required to also be filed with the Exchange. Further, documentation that the security is in proper legal form and being offered pursuant to proper legal authority is mandatory. Finally, a general provision that reserves the Exchange's right to require any additional information it deems necessary for the complete evaluation of applications is included.

With respect to bonds, the initial listing application must include, in addition to the general requirements described above, a description of the bonds and a summary of the bond's indenture provisions as described fully by Rule 808(b).

Rule 809 is generally similar to current Phlx rule 804 and will explain the process an issuer should follow when requesting removal of its securities from listing on the Exchange.

*Maintenance Standards.* Rule 810 sets forth the mandatory numerical maintenance criteria which securities must satisfy on a continuous basis in order to remain listed on the Exchange. The Tier I maintenance standards are patterned on CBOE Rule 31.94. The Tier II maintenance standards are generally higher than current maintenance standards, so all issues listed prior to the adoption of these rules will be permitted six months in which time to demonstrate full compliance with all applicable maintenance criteria or be subject to delisting pursuant to Rule 811.

Maintenance reviews will be conducted quarterly and at any time when the Securities Department staff becomes aware that a company does not fully comply with the applicable numerical maintenance criteria, qualitative criteria or corporate governance standards. The Exchange's delisting process may be automatically activated by an issuer violating a specifically enumerated standard in Rule 810, however, the Phlx explicitly reserves its right to suspend trading or delist any security which may otherwise satisfy the applicable maintenance criteria but which the Exchange considers unsuitable for continued trading on the Phlx.

Rule 810(a) sets for the the numerical maintenance criteria for Tier I listed securities. Tier I listed common stock will be subject to delisting whenever any of the following events have occurred: There are less than 200,000 publicly held shares; the aggregate market value of the shares falls below $1 million; the total number of round lot holders is less than 300 and/or net tangible assets are either below $2 million in 2 of its 3 most recent fiscal years or below $4 million if the issuer has sustained losses from its continuing operations and/or net losses in 3 of its 4 most recent fiscal years.

With respect to Tier I listed preferred stock, delisting procedures shall be triggered, whenever the total number of publicly held shares is less than 50,000 or when the aggregate market value of the shares publicly held is less than $1 million.

Tier I listed bonds, debentures and notes will be subject to delisting whenever the aggregate market value or the principal amount of the bonds publicly held is less than $400,000.

Warrants listed under Tier I shall be automatically subject to delisting when the issuer no longer meets the net tangible assets and earnings criteria applicable to equity issuers; the number of publicly held shares is less than 500,000 held by less than 200 public shareholders; and/or the common stock or other securities underlying the warrants becomes delisted from either the Exchange, the NYSE or the Amex.

The maintenance standards for CVRs would require a minimum aggregate market value of publicly-held CVRs of $1,000,000. The Exchange will also consider delisting CVRs if the related equity security to which cash payment at maturity is tied is delisted. If the Exchange is trading the CVRs on an unlisted trading basis, it will consider delisting if the related equity security is delisted from the exchange on which it is listed.

Rule 810(b) provides the numerical maintenance standards applicable to Tier II listed securities. As with Tier I listed securities, the Exchange staff will conduct quarterly reviews of all issuers of Tier II listed securities and failure to satisfy any maintenance standard will automatically trigger the delisting process.

Rule 810(b)(1) provides the maintenance standards for domestic common stock listed under Tier II. Specifically, a company may be delisted if there are less than 375,000 shares issued and outstanding, if an issue's aggregate market value is less than $1,000,000, if net tangible assets are less than $1,500,000 or if the price per share is less than $1.00 for a majority of trading days in a 60 day period. Aggregate market value will be determined by averaging the last sale for each trading day during the preceding quarter. Rule 810(b)(2)–(6) describes the maintenance standards for warrants, preferred stock, bonds, units and ADRs.

In addition to the enumerated events which automatically trigger delisting, Rule 810(c) specifies other situations which may trigger suspension or delisting of securities whether listed under Tier I or Tier II standards. Examples of these types of events include unsatisfactory financial condition or operating results, failure to comply with the Exchange's listing agreement, the sale or disposal of an issuer's operating assets, or failure to pay Exchange listing fees. The determination of whether a security warrants continued trading regardless of whether the security satisfies the relevant numerical maintenance criteria is a question of facts and circumstances that must be decided by the Committee in light of the objectives of the Exchange's listing policies.

Any issuer that the staff's quarterly review determines has failed to satisfy the applicable maintenance criteria will be subject automatically to delisting proceedings in accordance with Rule 811. Rule 811 outlines the procedure that the Exchange will follow when delisting a security. The procedure described by Rule 811 is intended by the Exchange to ensure that nay issuer subject to delisting will be accorded adequate notice and hearing before final action is taken.

Delisting procedures under Rule 811 occur as follows: A company with a security subject to delisting will be furnished with a statement indicating the facts and circumstances which have caused the Exchange staff to consider delisting. The Committee may determine, upon review of a company's written response to this statement, to grant a grace period so that the company may rectify the deficiency. Where the Committee determines delisting is appropriate, the company shall be informed of the decision and its basis as well as its right to appeal from the decision to the Board. The Board will appoint an advisory committee for the purposes of hearing the appeal and rendering a suggested finding from which the Board will make its final determination. Where the decision is to delist, staff will submit an application to the Commission in accordance with section 12 of the Act.

*Rules 812–851.* Rule 812 relating to a voting rights standard for listing is renumbered from current Phlx Rule 806 and is not changed by this rule filing. The rule formalizes the Exchange policy against the continued listing of any security where the issuer takes action with the effect of nullifying, restricting or reducing the per share voting rights of holders.

Rule 813 is renumbered from current Phlx Rule 807 and is not being changed by this rule filing. Rule 813 provides that the Board may delegate to the Committee the authority to delist, admit, suspend or remove from listing any security. The rule also refers to the Committee's corresponding duty to certify to the Commission, actions taken by the Exchange in this regard.

Rules 814 and 815 comprise the Exchange's corporate disclosure policies, specifically patterned after CBOE Rules 31.24 and 31.25. The Exchange has long encouraged early and full disclosure of material corporate information by all listed companies as essential to a fair and orderly market. Rule 814 incorporates an issuer's duty to disclose as a term of the Exchange's Listing Agreement under Tier I or Tier II standards. Rule 815 provides guidelines with respect to the content and preparation of public announcements according to which the Exchange shall review press releases and other public announcements prior to dissemination. In order for the Exchange to conduct its review, Rule 815 requires that the issuer provide the Exchange all such announcements prior to release.

Rules 816 through 832 inform listed companies of Exchange policies and procedures regarding dividend and subscription rights. Rule 816 requires that a company notify the Exchange of any action taken by it with regard to dividends as this may effect share price and aggregate market value. Rule 818 expands further on Rule 816 by describing forms of notice acceptable to the Exchange when publicizing information relating to stock or cash dividends.

Many of these rules simply articulate industry standards in relation to processing and payment of stock dividends and subscription rights. These rules relate to: Accounting for stock dividends (Rule 820), the payment of cash in settlement of fraction share interests (Rule 821), settlement of transactions pursuant to a "five day delivery plan" (Rule 823), and accepted definitions of and procedures for "ex-dividend" and "ex-rights" (Rules 824–826). Rules are included explaining Exchange policy with regard to record dates (Rule 817), split ups or stock dividends on low priced issues (Rule 819), return of dividends (Rule 827) and warrants splits (Rule 822). Where a company fails to provide the Exchange notice of dividend declarations or offering of subscription rights, Rule 831 describes the Exchange action in regard to quotation of the stock and establishment of ex-dividend or ex-distribution dates, intended by the Exchange to prevent injury to shareholders caused by a rapid decrease in stock value.

Standards of corporate governance which all listed companies must adhere to are contained in Rules 833 through 850. Rule 833 articulates the Exchange's expectation that companies and their auditors abide by the rules of conduct of the American Institute of Certified Public Accountants Code of Professional Ethics. To ensure the accuracy of financial statements upon which the Exchange's listing determinations rely, Rule 834 requires that independent accountants audit such statements and where a listed company changes independent accountants, Rule 835 requires the company to notify the Exchange of such change. In order that the Exchange may monitor the financial status of listed companies, Rule 836 requires notice in the event of default of payment obligations. Rules 837 through 841 describe the form and content of annual reports acceptable to the Exchange. Rules 842 and 843 simply restate Commission rules related to quarterly reports and discuss dissemination thereof.

Listed companies will be required to hold shareholder meetings in accordance with Rules 846 through 848. Where matters of a listed company require authorization of its stockholders, Rule 848 states that a stockholders meeting is required unless, upon prior Exchange review and approval, the Exchange permits solicitation of written consents in lieu of such meeting.

Rule 849 reflects that audit committees have become accepted as a necessary and integral part of corporate boards of directors and that the Exchange believes that they should serve as a condition of listing.

In accordance with Rule 850, Exchange listed companies shall require shareholder approval of the issuance of securities in connection with officers/directors option plans, actions resulting in a change in control of the issuer or acquisition of a business or property from a director or officer, etc. Finally, Rule 851 requires Tier I listed companies to have at least two independent directors on their board.

**2. Statutory Basis**

The proposed rule change is consistent with the Act, particularly section 6(b)(5) in that the proposal "foster[s] cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities," "remove[s] impediments to and perfect[s] the mechanism of a free and open market and a national market system" and "protect[s] investors and the public interest." The proposal also is consistent with section 11A of the Act in that approval of the Tier I standards will aid in the development of the national market system by enhancing competition for equity listings.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–31 and should be submitted by August 31, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–19140 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

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## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Frozen Food Express Industries, Inc., Common Stock, $1.50 Par Value) File No. 1–10006

August 4, 1993.

Frozen Food Express Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved a resolution on May 12, 1993, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market System ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex.

The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for its Common Stock than is presently the case with the single specialist assigned to the stock on the Amex.

The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than that presently available on the Amex and less volatility in quoted prices per share when trading volume is slight.

The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock.

Furthermore, the Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before August 25, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–19090 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19608; 812–843]**

## Government Securities Equity Trust, et al.; Notice of Application

August 3, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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**APPLICANTS:** Government Securities Equity Trust (the "Trust"); Templeton, Galbraith & Hansberger Ltd. ("TGH"); Franklin/Templeton Distributors, Inc. ("FTD"); Templeton Growth Fund, Inc. and any open-end management investment companies (including any portfolios or series thereof), other than money market or no-load funds, presently advised by TGH or having as their distributor FTD or that may in the future be advised by or have as their distributor TGH or FTD or any entity controlling, controlled by, or under common control with TGH or FTD (the "Funds"), and Prudential Securities Incorporated (the "Sponsor").

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act to grant exemptions from sections 12(d)(1), 14(a), 19(b), and 22(d) of the Act and rule 19b–1 thereunder; under sections 11(a) and (c) to permit certain offers of exchange; and under section 17(d) and rule 17d–1 to permit certain affiliated transactions.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order: (a) Permitting series of the Trust to invest in shares of one of the Funds and zero coupon obligations; (b) exempting the Sponsor from having to take for its own account or place with others $100,000 worth of units in the Trust; (c) permitting the Trust to distribute capital gains resulting from redemptions of Fund shares within a reasonable time after receipt; (d) permitting waiver of any sales load otherwise applicable on Fund shares that the Trust has purchased; (e) permitting certain offers of exchange involving the Trust; and (f) permitting certain affiliated transactions involving the Trust.

**FILING DATES:** The application was filed on June 10, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 30, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Prudential Securities Incorporated, One Seaport Plaza, 199 Water Street, New York, New York 10292; Templeton, Galbraith & Hansberger Ltd., Lyford Cay, Nassau, Bahamas; Franklin/Templeton Distributors, Inc. and Templeton Growth Fund, Inc., 700 Central Avenue, P.O. Box 33030, St. Petersburg, Florida 33733–8030.

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**FOR FURTHER INFORMATION CONTACT:** Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

**Applicants' Representations**

1. The Funds are open-end management investment companies registered under the Act. TGH serves as the Funds' investment adviser, and FTD serves as the Funds' principal underwriter. Shares of the Funds are offered with front-end sales loads and, in certain instances, with contingent deferred sales charges imposed in accordance with the terms of exemptive orders. Each of the existing Funds has adopted rule 12b–1 plans.

2. The Trust will be registered under the Act as a unit investment trust and will offer units in series ("Trust Series"), each of which will contain shares of one Fund that is normally offered with a sales load and U.S. Government zero coupon obligations. The Trust's objective is to provide protection of capital while providing for capital appreciation through investments in zero coupon obligations and shares of the Funds. Each Trust Series will be organized pursuant to a trust indenture that will incorporate a master trust agreement relating to the entire Trust and that will name a qualified bank as trustee (the "Trustee").

3. Each Trust Series will be sponsored by the Sponsor, which will perform the functions typical of unit investment trust sponsors. These functions will include depositing Fund shares in the Trust; acquiring zero coupon obligations and depositing them in the Trust; arranging for the evaluation of the zero coupon obligations; offering units to the public; and maintaining a secondary market in units. The Sponsor expects to deposit in the Trust substantially more than $100,000 aggregate value of zero coupon obligations and Fund shares.

4. Trust units will be offered for sale to the public through the final prospectus by the Sponsor. Trust Series are intended to be offered to the public initially at prices based on the next asset value of the Fund shares selected for deposit in that Trust Series, plus the offering side value of the zero coupon obligations contain therein, plus a sales charge. The Trust will redeem units at prices based on the aggregate bid side evaluation of the zero coupon obligations and the net asset value of the Fund shares.

5. With the deposit of the securities in the Trust Series on the initial date of deposit, the Sponsor will have established a proportionate relationship between the principal amounts of zero coupon obligations and Fund shares in the Trust Series. The Sponsor will be permitted under the Trust Agreement to deposit additional securities, which may result in a corresponding increase in the number of units outstanding. Such units may be continuously offered for sale to the public by means of the prospectus.

6. The sales load that normally would be applicable on sales of underlying Fund shares will be waived. Moreover, the Sponsor will rebate to the Trustee any payments it receives in respect of units under any rule 12b–1 plans adopted by the Funds.

7. The Trust will be structured so that each Trust Series will contain a sufficient amount of zero coupon obligations to assure that, at the specified maturity date for such Trust Series, the purchaser of a unit would receive back the approximate total amount of the original investment in the Trust, including the sales charge. Such investor would receive more than the original investment to the extent that the underlying Fund made any distributions during the life of the Trust and/or had any value at the maturity of the Trust Series.

8. The Sponsor intends to maintain a secondary market for Trust units, but is not obligated to do so. The existence of such a secondary market will reduce the number of units tendered to the Trustee for redemption and thus alleviate the necessity of selling portfolio securities to raise the cash necessary to meet such redemptions. In the event that the Sponsor does not maintain a secondary market, the Trust Agreement will provide that the Sponsor will not instruct the Trustee to sell zero coupon obligations from any Trust Series until shares of the Fund have been liquidated in order not to impair the protection provided by the zero coupon obligations, unless the Trustee is able to sell such zero coupon obligations and still maintain at least the original proportionate relationship to unit value. The Trust Agreement also will provide that zero coupon obligations cannot be sold to meet Trust expenses.

9. The Trust has taken certain steps to reduce the impact of the termination of a Trust Series on the Fund deposited therein. First, the Trust will, with respect to all unitholders still holding units at scheduled termination and to the extent desired by such unitholders, transfer the registration of their proportionate number of Fund shares from the Trust to a registration in the investor's name in lieu of redeeming such shares. Second, the Fund will offer all such unitholders the option of investing the proceeds from the zero coupon obligations in Fund shares at net asset value (*i.e.*, without the imposition of the normal sales load). The Fund also will offer unitholders the option of investing all distributions from the Trust during the life of the Trust Series in Fund shares at net asset value. Thus, it is anticipated that many of the unitholders will become and remain direct shareholders of the Fund and that many will elect to invest their proceeds of the Trust Series in an account of the Fund.

**Applicants' Legal Analysis**

1. Section 12(d)(1) of the Act generally limits acquisition by an investment company, such as the Trust, of shares of a registered investment company, such as a Fund, in the following ways: (1) The acquiring company may not acquire more than 3% of the voting stock of the acquired company; (2) the securities of the acquired company may not amount to more than 5% of the value of the assets of the acquiring company; and (3) securities of the acquired company and all other investment companies may not have an aggregate value of more than 10% of the assets of the acquiring company.

2. A major purpose of section 12(d)(1) is to prevent the duplication of costs and other adverse consequences to investors incident to the pyramiding of investment companies. Applicants' proposal is structured to eliminate the pyramiding of expenses. No sales charge or distribution fee will be imposed on Fund shares deposited in the Trust. No investment advisory fee will be charged with respect to the Trust since it will be unmanaged, and no evaluation fee will be charged with respect to Fund shares in the Trust. Another concern addressed by section 12(d)(1) is potentially abusive control problems that could result from the concentration of voting power in a fund holding company. To address this concern, applicants have agreed that shares of a Fund that are held by a Trust will be voted by the Trustee in the same proportion as all other shares of that Fund not held by the Trust are voted. Another concern underlying section 12(d)(1) is the possibility of large-scale redemptions of shares of the underlying fund. The Trust Agreement will permit the Trust to sell shares only when

necessary to meet the redemptions or pay Trust expenses.

3. Section 14(a) of the Act requires that investment companies have $100,000 of net worth prior to making a public offering. Since the Trust will have an initial net worth in excess of $100,000 invested in zero coupon obligations and Fund shares, applicants believe that each Trust will comply with section 14(a). Applicants recognize, however, that by withdrawing certificates representing the entire beneficial ownership of the Trust, the Sponsor may be deemed to be reducing the Trust's net worth below the requirements of section 14(a). Applicants believe that an exemption is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants also intend to comply in all respects with the requirements of rule 14a–3, which provides an exemption from section 14(a), except that the Trust would not restrict its portfolio to "eligible trust securities."

4. Section 19(b) of the Act and rule 19b–1 thereunder provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. These provisions were designed to remove the temptation to realize capital gains on a frequent and regular basis and to eliminate attempts by investment advisers to time distributions to be advantageous to shareholders. Moreover, there was concern that investors would be confused by a failure to distinguish between regular distributions of capital gains and distributions of investment income. Applicants request an exemption from rule 19b–1 to the extent necessary to permit capital gains earned in connection with the redemption of Fund shares to be distributed to unitholders along with the Trust's regular distributions. The requested exemption is consistent with the purposes of section 19(b) and rule 19b–1 because the dangers of manipulation of capital gains and confusion between capital gains and regular income distributions does not exist in the Trust. The Trust and its Sponsor have substantially no control over events, other than the selection of the portfolio, which might trigger capital gains (*i.e.*, the tendering of units for redemption). Moreover, because distributions of capital are indicated in accompanying reports to unitholders as a return of principal, applicants believe that the danger of confusion is not present in the operations of the Trust.

5. Section 22(d) of the Act generally prohibits a registered investment company from selling its shares except at a current offering price described in the prospectus. In 1991, the Funds obtained exemptive relief that permits them to impose a contingent deferred sales charge ("CDSC") on the redemption of share and to waive the CDSC under certain specified circumstances. Investment Company Act Release Nos. 18391 (Nov. 4, 1991) (notice) and 18426 (Dec. 2, 1991) (order). In the present application, applicants request an additional exemption from section 22(d) to permit the waiver of any otherwise applicable CDSC where: (a) The Sponsor has purchased such shares in connection with the sale of units; (b) the proceeds of zero-coupon obligations upon termination of a Trust, and distributions from a Trust made during the existence of the Trust, have been reinvested by a unitholder in additional Fund shares; and (c) a Trust at maturity has transferred a unitholder's proportionate number of Fund shares from the Trust to a registration in the unitholder's name in lieu of redeeming such shares. Applicants believe that the waiver of the CDSC will not harm the Funds or the Funds' remaining shareholders, and represent that these waiver categories will be fully disclosed in the Funds' prospectuses.

6. Section 11(a) of the Act makes it unlawful for any registered open-end investment company or principal underwriter for such company to make certain offers of exchange on any basis other than the relative net asset value of the securities to be exchanged, unless the terms of the exchange offer have first been approved by the SEC. Section 11(c) provides that section 11(a) will be applicable to any type of exchange offer involving securities of a registered unit investment trust, irrespective of the basis of exchange. Applicants seek an order pursuant to section 11(a) and (c) approving the termination option. At the termination of the Trust, unitholders still holding units at maturity will have the option of either (a) transferring the registration of their proportionate number of Fund shares from the Trust to a registration in the investor's name, or (b) receiving a cash distribution. Such unitholders also will have the option of either (a) reinvesting the proceeds of the zero-coupon obligations in additional shares of the Fund (without imposition of the normal sales load), or (b) receiving a cash distribution. The exchange will be made on the basis of the net asset value of the Fund shares.

7. Section 17(d) of the Act and rule 17d–1 thereunder make it unlawful for any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of either of them, acting as a principal, to engage in a joint transaction with the investment company unless the joint transaction has been approved by the SEC. Applicants' proposed arrangements may be a joint transaction under these provisions. Neither the Trust nor any Fund will participate on a basis different from or less advantageous than any other participant. Applicants claim to have structured the Trust to eliminate as many potential areas of concern involving affiliated transactions as possible. There will be no duplication of sales charges or distribution fees with respect to the Fund shares and Trust units. In addition, there will be no overlap of fees for portfolio management, no management fee will be charged at the Trust level, and no evaluation fee will be assessed with respect to that portion of a Trust's portfolio represented by Fund shares. Accordingly, applicants believe that the proposed arrangements are consistent with the provisions, policies, and purposes of the Act, and that participation by each registered investment company is not on a basis less advantageous than that of other participants.

**Applicants' Conditions**

Applicants agree to the following as conditions to the granting of the requested order:

1. The Trustee will not redeem Fund shares except to the extent necessary to meet redemptions of units by unitholders, or to pay Trust expenses should distributions received on Fund shares and rebated rule 12b–1 fees prove insufficient to cover such expenses.

2. Any rule 12b–1 fees received by the Sponsor in connection with the distribution of Fund shares to the Trust will be immediately rebated by the Sponsor to the Trustee.

3. No one Trust Series will, at the time of any deposit of any Fund shares, hold as a result of that deposit, more than 10% of the then-outstanding shares of a Fund.

4. All Trust Series will be structured so that their maturity dates will be at least thirty days apart from one another.

5. Applicants will comply in all respect with the requirements of rule 14a–3, except that the Trust will not restrict its portfolio investments to "eligible trust securities."

6. Shares of a Fund which are held by a Trust Series will be voted by the

Trustee of the Trust, and the Trustee will vote all shares of a Fund held in a Trust Series in the same proportion as all other shares of that Fund not held by the Trust are voted.

7. Any shares of the Funds deposited in any Trust Series or any shares acquired by unitholders through reinvestment of dividends or distributions or through reinvestment at termination will be made without imposition of any otherwise applicable sales load and at net asset value.

8. The Funds agree to comply with rule 6c–10 as currently proposed, and as it may be reproposed, adopted or amended.

9. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of a reinvestment option will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–19094 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Release No. 19611; 811–2885]**

## Nautilus Fund, Inc.; Application for Deregistration

August 4, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

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**APPLICANT:** Nautilus Fund, Inc.

**RELEVANT ACT SECTIONS:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application on Form N–8F was filed on May 17, 1993, and amended on July 29, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 30, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 24 Federal Street, Boston, Massachusetts 02110.

**FOR FURTHER INFORMATION CONTACT:** James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

### Applicant's Representations

1. On November 13, 1978, applicant, a Massachusetts corporation, registered under the Act and filed a registration statement on Form N–8B–1 pursuant to section 8(b), as a closed-end, diversified registered investment company. On April 11, 1985, applicant filed a registration statement on Form N–1A pursuant to section 8(a) of the Securities Act of 1933 and section 8(b) of the Act, converting applicant from a closed-end to an open-end investment company. The registration statement became effective April 23, 1985.

2. On December 3, 1992, applicant's board of directors approved an agreement and plan of reorganization (the "Agreement") by and between applicant and Eaton Vance Special Investment Trust ("Special Trust") on behalf of Eaton Vance Special Equities Fund ("Special Equities Fund"). Special Equities Fund is a Massachusetts business trust and a series of Special Trust.

3. Applicant distributed proxy materials dated January 22, 1993, to its shareholders in connection with the Agreement. In approving the reorganization, applicant's board considered the lower investment advisory fee paid by Special Equities Fund in comparison to applicant, Special Equities Fund's larger asset and income base, the similarities in the investment objectives and policies of applicant and Special Equities Fund, Special Equities Fund's superior long-term investment performance in contrast to applicant's, and the fact that Special Trust, as a Massachusetts business trust, is not required by state law to hold annual meetings of its shareholders.

4. In accordance with rule 17a–8, applicant's board determined that participation in the reorganization was in the best interests of applicant and that the interests of the existing shareholders of applicant would not be diluted as a result of the reorganization.

5. Applicant's shareholders approved the Agreement at a special meeting held on March 8, 1993. As of the close of business March 12, 1993, applicant had 582,723.654 shares outstanding, with an aggregate net asset value of $7,155,183.94 and a net asset value of approximately $12.28 per share.

6. Pursuant to the Agreement, on March 15, 1993, applicant transferred all of its assets and liabilities to Special Trust on behalf of Special Equities Fund. The transfer of applicant's assets in exchange for shares of Special Equities Fund was based on the relative net asset value of the participants. Immediately thereafter, applicant distributed the Special Equities Fund shares *pro rata* to applicant's shareholders in complete liquidation.

7. Applicant and Special Equities Fund assumed their own expenses, consisting of legal and accounting services, and printing and mailing expenses, in connection with the reorganization. No brokerage commissions were incurred in connection with the reorganization.

8. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

9. On March 18, 1993, applicant filed Articles of Dissolution with the Massachusetts Secretary of State.

For the SEC, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–19136 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19613; 812–8332]**

## PaineWebber Life Insurance Company, et al.

August 4, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

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**APPLICANTS:** PaineWebber Life Insurance Company ("PaineWebber Life"), PaineWebber Life Variable Annuity Account ("Separate Account"), PaineWebber Incorporated (collectively, the "Applicants").

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 6(c) for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction from the assets of the Separate Account of the mortality and expense risk charges and the distribution expense charge imposed under certain individual flexible payment deferred variable annuity contracts (the "Contract").

**FILING DATES:** The Application was filed on March 31, 1993 and amended on June 25, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail.

Hearing requests must be received by the Commission by 5:30 p.m. on August 30, 1993 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Routier, Mackey and Johnson, P.C., 1700 K Street NW., suite 1003, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Pickholz, Attorney, at (202) 272–3046 or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

**Applicants' Representations**

1. Applicants seek an order, pursuant to section 6(c) of the 1940 Act, granting exemptions from the provisions of Sections 26(a)(2) and 27(c)(2) to allow PaineWebber Life to deduct from the assets of the Separate Account mortality and expense risk charges and a distribution expense charge imposed under certain individual flexible payment deferred variable annuity contracts ("Contracts").

2. PaineWebber Life is a stock life insurance company organized in 1956 under the laws of the State of California as Fidelity Life Insurance Company. The company was acquire by PaineWebber Holdings, Inc., a wholly owned subsidiary of PaineWebber Group, Inc., on December 31 1992 and its name was changed to PaineWebber Life Insurance Company. PaineWebber Incorporated, a broker-dealer registered under the Securities Exchange Act of 1934, is the distributor for the Contracts.

3. The Separate Account was established by PaineWebber Life on December 31, 1992, to fund variable annuity contracts. The Contracts that are the subject of the application provide for accumulation of contract values and payment of annuity benefits on a variable basis. The Contracts will be funded initially through ten Divisions of the Separate Account; each Division invests its assets in the shares of one of the investment series of the PaineWebber Series Trust.

4. The Contracts are available for retirement plans which do not qualify for the special federal tax advantages available under the Internal Revenue Code ("Non-Qualified") and for retirement plans which do qualify for the federal tax advantages available under the Internal Revenue Code. Purchase payments under the Contracts are made to the Separate Account. The minimum purchase payment for a Contract issued on a Non-Qualified basis is $5,000. Additional purchase payments may be made in amounts of at least $500. The minimum initial purchase payment for a Contract issued on a qualified basis is $1,000 and additional purchase payments may be made in amounts of at least $100.

5. Amounts allocated to the Separate Account may be transferred among its various investment divisions. The first twelve transactions effecting such transfers in any contract year are permitted without the imposition of a transfer fee. A transfer fee of $10 is assessed on the thirteenth and each subsequent transfer transaction within the contract year. There is no transfer fee imposed on transfers executed under the dollar cost averaging program offered by the Contract. Applicants represent that the transfer fee is at cost with no anticipation of profit.

6. Partial withdrawals under a Contract may be subject to a withdrawal fee equal to the lesser of $25 or 2% of the amount withdrawn. Withdrawals in excess of two per year are subject to this fee (which PaineWebber retains the right to waive). Withdrawals under the systematic withdrawal program available under the Contract are not subject to the withdrawal fee, however, an administrative processing fee of $1.50 per withdrawal will be applied to systematic withdrawals. Applicants state that the withdrawal fee is at cost with no anticipation of profit. .

7. An early withdrawal charge (contingent deferred sales charge) may be imposed in the event of withdrawal (redemption) of any portion of the contract value or upon annuitization, unless prohibited by state law. The early withdrawal charge is 5% of the amount withdrawn which represents purchase payments made five years or less prior to the date of the withdrawal. There is a free withdrawal amount each contract year equal to the sum of (1) net purchase payments that are no longer subject to the withdrawal charge and that have not previously been withdrawn, and (2) the greater of (A) 10% of the contract value as of the first valuation day of the contract year (available only after the first contract year except for withdrawals through a systematic withdrawal program) or (B) gain in the Contract on the first valuation day of the contract year. For purposes of determining the withdrawal charge, withdrawals are allocated first to any free withdrawal amount and then to net purchase payments on a last-in, first-out basis.

8. An annual contract administration charge of $20 is charged against each Contract on the anniversary of the issue date of the Contract on or prior to the annuity date. In the event that a total surrender of contract value is made other than on such anniversary, the charge will be assessed as of the date of surrender without proration. This charge reimburses PaineWebber Life for expenses incurred in establishing and maintaining records relating to the Contracts. The amount of the charge is guaranteed and cannot be increased by PaineWebber Life. This charge is at cost with no anticipation of profit and it is waived in the first and all future contract years if the total purchase payments under a contract in the first contract year is equal to or greater than $100,000..

9. If the contract owner dies prior to the annuity date, PaineWebber Life will pay a death benefit to the beneficiary upon receipt of due proof of death. The death benefit may be paid in a lump sum distribution or in the form of an annuity. Depending upon state law, the death benefit will consist of either a basic death benefit or an enhanced death benefit. The basic death benefit equals the greater of: (a) The contract value, or (b) the sum of net purchase payments less any partial withdrawals, early withdrawal charges, transfer charges and withdrawal transaction.

10. Where permitted by state law, PaineWebber Life will provide an enhanced death benefit during the accumulation phase of the Contract. The enhanced death benefit equals the greatest of (A) the contract value; or (B) the greatest of the contract values on the first Valuation Day of each 5 year period less any partial withdrawals, early withdrawal charges, transfer charges, and withdrawal transaction charges since the beginning of the 5 year period (the first 5 year period begins on the 5th contract anniversary); or (C) the sum of all amounts invested in the Separate Account Divisions accumulated at interest to a maximum of two times each net purchase payment, less any partial withdrawals, early withdrawal charges, transfer charges and withdrawal transaction charges, accumulated at interest. The interest accumulation rates for all Divisions except the Money Market Division is 6% for individual owners and 5% for joint spousal owners. The interest rate for the Money Market Division is equal to the Net Investment Factor for each valuation period. Interest accrual terminates on the owner's 75th birthday or, if joint owners exist, on the younger owner's 75th birthday.

11. The annuity rates cannot be changed under the Contract and, therefore, annuity payments will not be affected by the mortality experience (death rate) of persons receiving such payments or the general population. For assuming the risks that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates and for providing the death benefits described above prior to the annuity date, PaineWebber Life deducts a mortality risk charge from the Separate Account. The charge is deducted from each Division of the Separate Account during each valuation period at an annual rate of 1.05% of the net asset value of each Division, of which 0.20% is attributable to the enhanced death benefit payment risk, and 0.85% is attributable to the assumption of all other mortality risks described above. The charge for the enhanced death benefit will only be assessed where the enhanced death benefit is not available. Therefore, in states where the enhanced death benefit is not available (currently, North Carolina) or where annuity payments have commenced, the mortality risk charge is deducted at an annual rate of 0.85% rather than 1.05%. The mortality risk charge may not be increased under the Contract.

12. PaineWebber Life deducts an expense risk charge from each portfolio of the Separate Account during each valuation period at an annual rate of 0.40% of the net asset value of each portfolio. This charge is designed to compensate PaineWebber Life for assuming the risk that the administrative expenses will exceed the revenues from the contract administration charge. The expense risk charge may not be increased.

13. PaineWebber Life also deducts a distribution expense charge from the Separate Account during both the accumulation period and the annuity period. The charge is deducted from each Division of the Separate Account during each valuation period at an annual rate of 0.15% of the net asset value of each Division. The charge is designed to compensate PaineWebber Life for the cost of distributing the Contracts. The distribution expense charge may not be increased.

### Applicants' Legal Analysis

1. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants represent that the mortality risk is assumed by virtue of the guaranteed annuity rates and the death benefit guaranteed in the Contract. Applicants also represent that the contract administration charge will not increase regardless of the actual costs incurred. If the mortality or expense risk charges or the distribution expense charges are insufficient to cover the actual costs, PaineWebber Life will bear the loss. To the extent that the charges are in excess of actual costs, PaineWebber Life, at its discretion, may use the excess to pay distribution and other expenses.

3. Applicants assert that the mortality and expense risk charges of 1.45% (which includes all risk charges imposed under the Contracts including the 0.20% risk charge for the enhanced death benefit), or 1.25% where the enhanced death benefit is not available, are reasonable in relation to the risks assumed by PaineWebber Life under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based on their analysis of publicly available information about similar industry practices, and by taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. PaineWebber Life undertakes to maintain at its executive office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

4. Applicants assert that the mortality risk charge of 0.20% for the enhanced death benefit is reasonable in relation to the risks assumed by PaineWebber Life under the Contracts. In arriving at this determination, PaineWebber Life conducted a large number of trials at various issue ages to determine the projected cost of the enhanced death benefit. First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical accumulated values were calculated by applying the projected asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical contract owner's death during the year in question. By analyzing the results of several thousand such simulations, PaineWebber Life was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, PaineWebber Life determined that a mortality risk charge of 0.20% was a reasonable charge for the enhanced death benefit. PaineWebber Life undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge of 0.20% for the enhanced death benefit is reasonable in relation to the risks assumed by PaineWebber Life under the Contracts.

5. PaineWebber Life has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. PaineWebber Life represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion. With respect to the distribution expense charge, Applicants represent that the amount of any withdrawal charge (or distribution expense charge) imposed, when added to any distribution expense charge and

withdrawal charge previously paid, will not exceed 9% of purchase payments and that PaineWebber will monitor each contract owner's account to ensure that this limitation is not exceeded.

6. Applicants undertake to include, in the prospectus forming part of the registration statements for the Contracts under the Securities Act of 1933, as they may from time to time be amended, statements (1) describing the purpose of the distribution expense charge, and (2) that the staff of the Commission deems such charge to constitute a deferred sales charge.

7. PaineWebber Life further represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the Act.

**Conclusion**

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charges and the distribution expense charge under the Contract meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–19137 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19612; 812–8364]**

**PaineWebber Life Insurance Co., et al.; Application for Exemption**

August 4, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemptions under the Investment Company Act of 1940 ("1940 Act").

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**APPLICANTS:** PaineWebber Life Insurance Company ("PaineWebber Life"), PaineWebber Life Variable Annuity Account ("Separate Account") and PaineWebber Incorporated (collectively, the "Applicants").

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 6(c) for exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction from the assets of the Separate Account of the mortality and expense risk charges and the distribution expense charge imposed under certain individual flexible payment deferred variable annuity contracts (the "Contract").

**FILING DATES:** The Application was filed on April 22, 1993 and amended on June 25, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 30, 1993 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Routier, Mackey and Johnson, P.C., 1700 K Street NW., suite 1003, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Pickholz, Attorney, at (202) 272–3046 or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

**Applicants' Representations**

1. Applicants seek an Order, pursuant to section 6(c) of the 1940 Act, granting exemptions from the provisions of sections 26(a)(2) and 27(c)(2) to allow PaineWebber Life to deduct from the assets of the Separate Account mortality and expense risk charges and a distribution expense charge imposed under certain individual flexible payment deferred variable annuity contracts ("Contracts").

2. PaineWebber Life is a stock life insurance company organized in 1956 under the laws of the State of California as Fidelity Life Insurance Company. The company was acquired by PaineWebber Holdings, Inc., a wholly owned subsidiary of PaineWebber Inc., on December 31, 1992 and its name was changed to PaineWebber Life Insurance Company. Painewebber Incorporated, a broker-dealer registered under the Securities Exchange Act of 1934, is the distributor for the Contracts.

3. The Separate Account was established by PaineWebber Life on December 31, 1992, to fund variable annuity contracts. The Contracts that are the subject of the application provide for accumulation of contract values and payment of annuity benefits on a variable basis. The Contracts will be funded initially through ten Divisions of the Separate Account; each Division invests its assets in the shares of one of the investment series of the PaineWebber Series Trust.

4. The Contracts are available for retirement plans which do not qualify for the special federal tax advantages available under the Internal Revenue Code ("Non-Qualified") and for retirement plans which do qualify for the federal tax advantages available under the Internal Revenue Code. Purchase payments under the Contracts are made to the Separate Account. The minimum purchase payment for a Contract issued on a Non-Qualified basis is $5,000. Additional purchase payments may be made in amounts of at least $500. The minimum initial purchase payment for a Contract issued on a qualified basis is $1,000 and additional purchase payments may be made in amounts of at least $100.

5. Amounts allocated to the Separate Account may be transferred among its various investment divisions. The first twelve transactions effecting such transfers in any contract year are permitted without the imposition of a transfer fee. A transfer fee of $10 is assessed on the thirteenth and each subsequent transfer transaction within the contract year. There is no transfer fee imposed on transfers executed under the dollar cost averaging program offered by the Contract. Applicants represent that the transfer fee is at cost with no anticipation of profit.

6. Partial withdrawals under a Contract may be subject to a withdrawal transaction fee equal to the lesser of $25 or 2% of the amount withdrawn. Withdrawals in excess of two per year are subject to this fee (which PaineWebber retains the right to waive). Withdrawals under the systematic withdrawal program available under the

Contract are not subject to the withdrawal transaction fee, however, an administrative processing fee of $1.50 per withdrawal will be applied to systematic withdrawals. Applicants state that the withdrawal transaction fee is at cost with no anticipation of profit.

7. An annual contract administration charge of $30 is charged against each Contract on the anniversary of the issue date of the Contract on or prior to the annuity date. In the event that a total surrender of contract value is made other than on such anniversary, the charge will be assessed as of the date of surrender without proration. This charge reimburses PaineWebber Life for expenses incurred in establishing and maintaining records relating to the Contracts. The amount of the charge is guaranteed and cannot be increased by PaineWebber Life. This charge is at cost with no anticipation of profit and it is waived in the first and all future contract years if the total purchase payments under a contract in the first contract year is equal to or greater than $100,000.

8. If the contract owner dies prior to the annuity date, PaineWebber Life will pay a death benefit to the beneficiary upon receipt of due proof of death. The death benefit may be paid in a lump sum distribution or in the form of an annuity. Depending upon state law, the death benefit will consist of either a basic death benefit or an enhanced death benefit. The basic death benefit equals the greater of: (a) The contract value, or (b) the sum of net purchase payments less any partial withdrawals, transfer charges and withdrawal transaction charges.

9. Where permitted by state law, PaineWebber Life will provide an enhanced death benefit during the accumulation phase of the Contract. The enhanced death benefit equals the greatest of (A) the contract value; or (B) the greatest of the contract values on the first Valuation Day of each 5 year period less any partial withdrawals, transfer charges, and withdrawal transaction charges since the beginning of the 5 year period (the first 5 year period begins on the 5th contract anniversary); or (C) The sum of all amounts invested in the Separate Account Divisions accumulated at interest to a maximum of two times each net purchase payment, less any partial withdrawals, transfer charges and withdrawal transaction charges, accumulated at interest. The interest accumulation rates for all Divisions except the Money Market Division is 4% for individual owners and 6% for joint spousal owners. The interest rate for the Money Market Division is equal to the Net Investment Factor for each valuation period. Interest accrual terminates on the owner's 75th birthday or, if joint owners exist, on the younger owner's 75th birthday.

10. The annuity rates cannot be changed under the Contract and, therefore, annuity payments will not be affected by the mortality experience (death rate) of persons receiving such payments or the general population. For assuming the risks that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates and for providing the death benefits described above prior to the annuity date, PaineWebber Life deducts a mortality risk charge from the Separate Account. The charge is deducted from each Division of the Separate Account during each valuation period at an annual rate of 0.97% of the net asset value of each Division, of which 0.12% is attributable to the enhanced death benefit payment risk, and 0.85% is attributable to the assumption of all other mortality risks described above. The charge for the enhanced death benefit will only be assessed where the enhanced death benefit is available. Therefore, in states where the enhanced death benefit is not available (currently, North Carolina) or where annuity payments have commenced, the mortality risk charge is deducted at an annual rate of 0.85% rather than 0.97%. The mortality risk charge may not be increased under the Contract.

11. PaineWebber Life deducts an expense risk charge from each portfolio of the Separate Account during each valuation period at an annual rate of 0.40% of the net asset value of each portfolio. This charge is designed to compensate PaineWebber Life for assuming the risk that the administrative expenses will exceed the revenues from the contract administration charge. The expense risk charge may not be increased.

12. PaineWebber Life also deducts a distribution expense charge from the Separate Account during both the accumulation period and the annuity period. The charge is deducted from each Division of the Separate Account during each valuation period at an annual rate of 0.40% of the new asset value of each Division. The charge is designed to compensate PaineWebber Life for the cost of distributing the Contracts. The distribution expense charge may not be increased.

**Applicants' Legal Analysis**

1. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants represent that the mortality risk is assumed by virtue of the guaranteed annuity rates and the death benefit guaranteed in the Contract. Applicants also represent that the contract administration charge will not increase regardless of the actual costs incurred. If the mortality or expense risk charges or the distribution expense charges are insufficient to cover the actual costs, PaineWebber Life will bear the loss. To the extent that the charges are in excess of actual costs, PaineWebber Life, at its discretion, may use the excess to pay distribution and other expenses.

3. Applicants assert that the mortality and expense risk charges of 1.25% (excluding the 0.12% risk charge for the enhanced death benefit), or 1.37% where the enhanced death benefit is available, are reasonable in relation to the risks assumed by PaineWebber Life under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants states that these determinations are based on their analysis of publicly available information about similar industry practices, and by taking into consideration such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. PaineWebber Life undertakes to maintain at its executive office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

4. Applicants assert that the mortality risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by PaineWebber Life under the Contracts. In arriving at this determination, PaineWebber Life conducted a large number of trials at various issue ages to determine the projected cost of the enhanced death benefit. First, hypothetical asset returns were projected using generally accepted actuarial simulation methods. For each asset return pattern thus generated, hypothetical accumulated values were calculated by applying the projected

asset returns to the initial value in a hypothetical account. Each accumulated value so calculated was then compared to the amount of the enhanced death benefit payable in the event of the hypothetical contract owner's death during the year in question. By analyzing the results of several thousand such simulations, PaineWebber Life was able to determine actuarially the level cost of providing the enhanced death benefit. Based on this analysis, PaineWebber Life determined that a mortality risk charge of 0.12% was a reasonable charge for the enhanced death benefit. PaineWebber Life undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the risk charge of 0.12% for the enhanced death benefit is reasonable in relation to the risks assumed by PaineWebber Life under the Contracts.

5. PaineWebber Life has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. PaineWebber Life represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion. With respect to the distribution expense charge, Applicants represent that the distribution expense charge will not exceed 9% of purchase payments and that PaineWebber will monitor each contract owner's account to ensure that this limitation is not exceeded.

6. Applicants undertake to include, in the prospectus forming part of the registration statements for the Contracts under the Securities Act of 1933, as they may from time to time be amended, statements (1) describing the purpose of the distribution expense charge, and (2) that the staff of the Commission deems such charge to constitute a deferred sales charge.

7. PaineWebber Life further represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management investment company within the meaning of section 2(a)(19) of the Act.

**Conclusion**

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charges and the distribution expense charge under the Contract meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–19138 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19610; 811–6311]**

## Salomon Brothers Investment Funds Inc; Application for Deregistration

August 4, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

**APPLICANT:** Salomon Brothers Investment Funds Inc.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant seeks an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application on Form N–8F was filed on July 22, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 30, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 7 World Trade Center, New York, NY 10048.

**FOR FURTHER INFORMATION CONTACT:** Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

**Applicant's Representations**

1. Applicant is a Maryland Corporation and an open-end diversified management investment company registered under the Act. On May 17, 1991, applicant filed a notification of registration on Form N–8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N–1A under the Securities Act of 1933. The registration statement was never declared effective, and no offering of applicant's common stock was made.

2. Applicant has no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs. Applicant is currently in the process of dissolving as a Maryland corporation.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–19141 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

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## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Westcorp, Common Stock, $1.00 Par Value) File No. 1–9667

August 4, 1993.

Westcorp ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on June 17, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the

Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 25,1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 93–19089 Filed 8–9–93; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2669]**

### Kansas; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated July 27 and July 29, 1993 to include Osborne, Pottawatomie, and Wabaunsee Counties in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms beginning on June 23, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Ellis, Jackson, Jewell, Lyon, Nemaha, Phillips, Rooks, Russell, and Smith in Kansas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 25, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1993.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–19062 Filed 8–9–93; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2664]**

### Minnesota; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated July 19 and July 23, 1993 to include the counties of Becker, Big Stone, Clay, Lac Qui Parle, Stevens, Swift, Traverse, and Wabasha in the State of Minnesota as a disaster area as a result of damages caused by severe storms, flooding, and tornadoes beginning on May 6, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Clearwater, Douglas, Grant, Hubbard, Mahnomen, Norman, Otter Tail, Pope, Wadena, and Wilkin in Minnesota; and Roberts and Grant Counties in South Dakota.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The economic injury number for South Dakota is 793900.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 10, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1993.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–19063 Filed 8–9–93; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2671]**

### Mississippi (and Contiguous Counties in Louisiana); Declaration of Disaster Loan Area

Warren County and the contiguous counties of Claiborne, Hinds, Issaquena, and Yazoo in the State of Mississippi, and Madison and Tensas Counties in the State of Louisiana constitute a disaster area as a result of damages caused by heavy rains and flooding which occurred on July 11, 1993. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on October 1, 1993 and for economic injury until the close of business on May 2, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.625 |
| *For Economic Injury:* | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The numbers assigned to this disaster for physical damage are 267106 for Mississippi and 267206 for Louisiana. For economic injury the numbers are 797000 for Mississippi and 797100 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 1993.

**Erskine B. Bowles,**

*Administrator.*

[FR Doc. 93–19066 Filed 8–9–93; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2667]**

### Nebraska; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with Notices from the Federal Emergency Management Agency dated July 22 and July 27, 1993 to include the counties of Adams, Boyd, Butler, Clay, Colfax, Cuming, Dawson, Dodge, Douglas, Fillmore, Franklin, Frontier, Gage, Gosper, Hall, Hamilton, Jefferson, Kearney, Nemaha, Otoe, Pawnee, Phelps, Platte, Polk, Richardson, Saunders, Sherman, Stanton, and York in the State of Nebraska as a disaster area as a result of damages caused by severe storms and flooding beginning on June 23, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Boone, Custer, Furnas, Greeley, Harlan, Hayes, Hitchcock, Holt, Keya Paha, Knox, Lincoln, Madison, Merrick, Nance, Nuckolls, Pierce, Red Willow, Rock, Tyayer, Thurston, Valley, Wayne, and Webster Counties in Nebraska; and Phillips, Republic, and Smith Counties in Kansas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 17, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury numbers are 793400 for Nebraska and 793500 for Kansas.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1993.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–19060 Filed 8–9–93; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2670]**

## North Dakota; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 26, 1993, I find that the Counties of Barnes, Burleigh, Cass, Dickey, Emmons, Grant, Hettinger, Kidder, Lamoure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, and Stutsman in the State of North Dakota constitute a disaster area as a result of damages caused by severe storms and flooding beginning on June 22, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 27, 1993, and for loans for economic injury until the close of business on April 26, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Foster, Grigg, McLean, Mercer, Oliver, Sheridan, Slope, Stark, Steele, Traill, and Wells in North Dakota; and Brown, Campbell, Corson, Marshall, McPherson, and Perkins in South Dakota.

Any contiguous counties not listed herein are covered under a separate declaration for the same occurrence.

The interest rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 8.000 |
| Homeowners Without Credit Available Elsewhere | 4.000 |
| Businesses With Credit Available Elsewhere | 8.000 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |
| Others (Including Non-Profit Organizations) With Credit Available Elsewhere | 7.625 |
| *For Economic Injury:* | |
| Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 267006. For economic injury the numbers are 795500 for North Dakota, and 793800 for South Dakota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1993.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–19065 Filed 8–9–93; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2668]**

## South Dakota; Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective July 27, 1993 to include Brown, Charles Mix, Codington, Day, Deuel, Douglas, Grant, Hamlin, Marshall, Roberts, and Spink Counties in the State of South Dakota as a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on May 6, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Brule, Edmunds, Faulk, Gregory, Hand, Lyman, and McPherson in South Dakota.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 20, 1993 and for economic injury the deadline is April 19, 1994.

The economic injury number for South Dakota is 793800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1993.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–19061 Filed 8–9–93; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area #2660]**

## Wisconsin; Amendment #2, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with a Notice from the Federal Emergency Management Agency dated July 20, 1993 to include the counties of Dodge, Jefferson, Kenosha, Milwaukee, and Racine in the State of Wisconsin as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Ozaukee and Waukesha in Wisconsin may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 1, 1993 and for economic injury the deadline is April 4, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1993.

**Alfred E. Judd,**

*Acting Assistant Administrator for Disaster Assistance.*

[FR Doc. 93–19064 Filed 8–9–93; 8:45 am]

BILLING CODE 8025–01–M

## Small Business Innovation Research (SBIR) Program Policy Directive

**AGENCY:** Small Business Administration.

**ACTION:** Publication of policy directive.

**SUMMARY:** On October 28, 1992, Public Law 102–564, 106 Stat. 4249, authorized

the Small Business Technology Transfer (STTR) Pilot Program. On April 28, 1993, the Small Business Administration (SBA) published, in the Federal Register, a proposed policy directive for the STTR Pilot Program (58 FR 25883). This policy directive provides guidance to the participating Federal agencies for the general conduct of the STTR Pilot Program. Based on the comments received, the SBA has decided to make the changes discussed below and to issue the final STTR Policy Directive.

**DATES:** This policy directive is effective October 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Jack Sweeney, Deputy Assistant Administrator, Office of Innovation, Research and Technology, (202) 205–5450.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration received four comment letters on the proposed Small Business Technology Transfer (STTR) Pilot Program Policy Directive. These comments are discussed below.

One letter restricted its comments to a general supportive statement concerning the inclusion of non-profit research institutions in the program. The other three commentors restricted their remarks to generally technical suggestions.

A commenter suggested that the definition of topic and subtopic areas included in program solicitations be broadened beyond "consistent with stated agency needs" to include unsolicited proposals. The legislation prohibits the submission of unsolicited proposals in this proposal. Furthermore, the present statement was taken directly from the legislation.

This commenter also suggested that policy directive language be modified to indicate that if the Phase I idea proves infeasible, a Phase II proposal would be inappropriate. The present wording indicating that a participating agency may request a proposal, but not mandating one, would allow a Phase II proposal to be requested on Phase I projects found to be feasible.

There was concern that foreign not-for-profit research institutions would be allowed to participate in the STTR Program. However, the wording in the Stevenson-Wydler Technology Innovation Act of 1980 restricts participation to domestic research institutions. But, for clarification, we have added wording restricting participation to U.S. businesses, not-for-profit organizations, universities, and colleges.

It was suggested that the section limiting Phase II awards to those from the same agency that supported the Phase I work be relaxed. There are several factors that prohibit this change. The most significant is that this is a competitive program under the Federal Acquisition Regulations and the awarding competition occurs before Phase I, among proposals submitted to a specific agency for a specific topic. Allowing a change to another agency would, at Phase II, be an award without competition at that agency.

The policy directive, reflecting the mandate of the applicable legislation, provides several protections to the small business involved in STTR research, including protection of rights in data for a period of four years following the completion of Phase II, transfer of property purchased in the performance of an STTR award, and consideration of a potential award in light of its fairness to the small business. A commenter suggested that these benefits be extended to the participating research institution. However, in the STTR Program the award is to be made to the small business and not to the research institution. The relationship between the small business and the research institution for these matters, as well as the right to publish and copyright, is controlled by the agreement between them. Any extension to the research institution of the benefits provided to the small business, would be beyond the scope of the present law and policy directive, and would have to be contained in the agreement between the small business and the research institution, and accepted by the awarding Federal agency.

It was suggested that the concept of certification of percent of work be defined in absolute terms such as time and effort expended, percent of budget allocated, or percent of deliverables. While it is expected that the measure will be in terms of share of award, the many possible situations make any one universal measure impracticable. The participating agencies will be allowed the flexibility of determining the measure to be used in each award.

A comment was received suggesting that the awarding agency obtain a signed commitment from the research institution concerning the contractual terms that will be applicable to the institution. The present policy directive mandates that an agreement, including these terms, be negotiated between the small business awardee and the research institution and be submitted to the agency on request. It is our opinion that this is sufficient indication of the research institution's commitment.

Our review found that substitution of the words "duplicative work", for "essentially equivalent work", as suggested by a commenter, would not provide the government the necessary protection from essentially duplicative proposals. Therefore we will continue to use "essentially equivalent work".

The proposed policy directive limits proposals to 25 pages in length. A commenter suggested that the required submission of additional materials such as cooperative agreements should not be counted within that page limit. On review we agreed and have changed the policy directive to remove the page limitation for the cooperative agreements.

A commenter requested a second public comment period to review the policy directive. While a second formal period would not follow normal administrative procedures, and would delay the implementation of the program, we will always consider comments and suggestions for program operations. This commenter made the further suggestion that comprehensive check lists be employed, and that these be tied to self certifications. Presently most participating agencies use a modified check list as a cover page to accompany proposals. This process is part of an agency's procurement policy and is not controlled by the legislation or policy directive controlling the STTR Program.

There was a suggestion that the STTR Pre-Solicitation Announcement be issued farther in advance of the solicitation than is now planned. Our concern in the high technology R&D environment is that the topics proposed for projects in the STTR Program are very time sensitive and each further delay in issuing the topics will increase the likelihood that the topic could be untimely when proposals are finally received.

The remaining comments received were mostly advisory in nature or general comments and observations. Based upon the comments received, and our review of those comments, SBA has

made the technical changes indicated above.

Richard J. Shane,

*Assistant Administrator, Office of Innovation, Research and Technology.*

**Small Business Technology Transfer Program Policy Directive**

*To The Heads of Executive Departments and Establishments*

Subject: Small Business Research and Development Enhancement Act of 1992

**Small Business Technology Transfer (STTR) Pilot Program**

1. *Purpose.* To provide a policy directive for the general conduct of the Small Business Technology Transfer (STTR) Pilot Programs within the Federal government.

2. *Authority.* This policy directive is issued pursuant to the authority contained in 15 U.S.C. 638(j)—Small Business Research and Development Enhancement Act of 1992 (Pub. L. 102–564).

3. *Procurement Regulations.* It is recognized that the Federal Acquisition Regulation (FAR) may need to be modified to conform to the requirements of The Small Business Research and Development Enhancement Act of 1992 and this policy directive. Agencies responsible for these procurement regulations are encouraged to initiate such changes. Regulatory provisions pertaining to areas of SBA responsibility, as established by Public Law 102–564, will require approval of the SBA Administrator or designee. The SBA Office of Innovation, Research and Technology is the appropriate office for coordinating such regulatory provisions.

4. *Personnel Concerned.* All Federal government personnel who are involved in the administration, funding agreements and technical process of the Small Business Technology Transfer (STTR) Pilot Program.

5. *Distribution.* Federal government agencies and departments with Small Business Technology Transfer (STTR) Pilot Programs as authorized by Public Law 102–564.

6. *Originator.* U.S. Small Business Administration, Office of Innovation, Research and Technology.

Richard J. Shane,

*Assistant Administrator, SBA Office of Innovation, Research and Technology.*

Erskine Bowles,

*Administrator, U.S. Small Business Administration.*

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**Appendix**

Instructions for STTR Pilot Program Solicitation Preparation

**1. Purpose**

a. Section 9(p) of the Small Business Act (15 U.S.C. 638, as amended by Pub. L. 102–564) requires that the Small Business Administration issue a policy directive for the general conduct of the STTR Pilot Programs within the Federal Government.

b. This policy directive fulfills the statutory obligation of the legislation and provides guidance to the participating Federal agencies for the general conduct of the STTR Pilot Program. Additional instructions may be issued by the Small Business Administration (SBA) as a result of public comment or experience. These instructions will be issued as additional or replacement pages for this directive.

**2. Summary of Legislative Provisions**

a. The Small Business Research and Development Enhancement Act of 1992, Public Law 102–564, that became law on October 28, 1992, amends section 9 of the Small Business Act (15 U.S.C. 638).

Title II of this legislation, entitled the "Small Business Technology Transfer Act of 1992" (the Act), establishes the Small Business Technology Transfer Pilot Program.

(1) The Act authorizes Federal agencies to establish STTR Pilot Programs if their FY 1994, 1995, or 1996 extramural budgets for research or research and development (R/R&D) exceed stated threshold figures ($1 billion).

(2) The statutory requirements are aimed at assisting small business concerns by establishing a uniform, simplified process for the operation of the STTR Pilot Program while allowing the participating agencies flexibility in the content and operation of their individual STTR Pilot Programs.

(3) The Act authorizes each participating agency to establish an STTR Pilot Program by reserving a statutory percentage of its extramural budget to be awarded to small business concerns for R/R&D through a uniform, three-phase process.

(a) The first two phases will help agencies meet R/R&D and commercialization objectives.

(b) The third phase, where appropriate, is:

(1) To pursue commercial applications from the government-funded R/R&D in order to stimulate technological innovation and provide for the national return on investment from R/R&D and/or

(2) For further contracting or grant activities with Federal agencies through non-STTR funding agreements.

(4) The Act mandates that each agency authorized to have an STTR Pilot Program is to report annually to SBA. The Act also requires agencies with STTR Pilot Programs to report annually to the Office of Science and Technology Policy.

b. On October 28, 1992, the President signed Public Law 102–564 which authorizes the STTR Pilot Program for the fiscal years 1994, 1995, and 1996.

(1) Effective March 31, 1985, section 2732(a) of title VII of the Competition in Contracting Act of 1984, Public Law 98–369, must be read in conjunction with the procurement notice publication requirements of section 8(e) of the Small Business Act (15 U.S.C. 637(e)). Therefore, the notice publication requirements of the law apply to agencies participating in the STTR Pilot Program which use contracts as their STTR funding agreements.

(a) Any Federal executive agency intending to solicit a proposal for a contract for property or services valued above $25,000 is required to submit a notice of the impending solicitation for publication in the Commerce Business Daily. No agency shall issue its solicitation for at least 15 days from the date of the publication of the notice. The agency may not establish a deadline for submission of proposals in response to such solicitation that is earlier than 30 days after the date on which the solicitation was issued.

(b) The Competition in Contracting Act also requires that any executive agency awarding a contract for property or services valued at more than $25,000 submit a notice for publication to the

Secretary of Commerce announcing such an award for publication if a subcontract is likely to result from such contract.

(2) The following are exemptions from the notice publication requirements:

(a) In the case of agencies intending to solicit Phase I proposals for contracts in excess of $25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if he/she makes a written determination, with the consultation of the Administrator of the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.

(b) The STTR Phase II awards process is exempted.

**3. Minimizing Regulatory Burden**

a. Important objectives in implementing STTR Pilot Program procedures are to:

(1) Minimize the creation of new or complex regulations.

(2) Ensure that the program's requirements are met.

(3) Simplify and standardize application of existing regulations related to the program. The explicit nature of the STTR legislation concerning certain recognized acquisition procedures provides a strong base of authority for streamlining the process for obtaining R/R&D from small highly innovative business concerns.

(a) The above includes funding allocations, centralized STTR technology management, and routine operational implementation.

(b) Where not contrary to existing statutory requirements, each agency is authorized to establish financial procedures and financing mechanisms that it deems necessary to properly implement the STTR Pilot Program, including, but not limited to, obligating funds solely on the basis of proposal merit without regard to the purpose for which funds were originally appropriated, and transferring assessed funds to a single account to facilitate financial management, reporting, and oversight.

(c) The participating agencies are encouraged to initiate or continue their development of simplified procedures that may be used on STTR actions and to submit information concerning simplified procedures to the SBA for possible general program improvements.

b. No participating agency may promulgate a rule or relegation that is contrary to or inconsistent with the STTR legislation or this policy directive.

**4. Definitions**

a. *Small Business Technology Transfer Pilot Program (STTR)*

A pilot program under which a portion of a Federal agency's extramural research or research and development effort is reserved for award to small business concerns for cooperative research and development through a uniform process having three phases. The program is described in this directive.

b. *Research or Research and Development (R/R&D)*

Any activity that is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied.

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need.

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

c. *Cooperative Research and Development.* For the purposes of the STTR Program this means research and development conducted jointly by a small business concern and a research institution in which not less than 40 percent of the work is performed by the small business concern, and not less than 30 percent of the work is performed by the research institution.

d. *Extramural Budget.* The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of the agency in or through government-owned, government-operated facilities.

e. *Federal Agency.* An executive agency as defined in 5 U.S.C. 105, or a military department as defined in 5 U.S.C. 102 except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, § 3.4(f), or its successor orders.

f. *Funding Agreement.* Any contract, grant, or cooperative agreement entered into between any Federal agency and any small business concern for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government.

g. *Research Institution.* A U.S. research organization that is:

(1) A contractor-operated federally funded research and development center, as identified by the National Science Foundation in accordance with the government-wide Federal Acquisition Regulation issued in accordance with section 35(c)(1) of the Office of Federal Procurement Policy Act (or any successor legislation thereto), or

(2) A non-profit research institution as defined in section 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980, or,

(3) A non-profit college or university.

h. *Subcontract.* Any agreement, other than one involving an employer-employee relationship, entered into by a Federal government funding agreement awardee calling for supplies or services required solely for the performance of the original funding agreement.

i. *Socially and Economically Disadvantaged Small Business Concern.* A socially and economically disadvantaged small business concern:

(1) Is one that is at least 51 percent owned by (i) an Indian tribe or a native Hawaiian organization, or (ii) one or more socially and economically disadvantaged individuals, and

(2) Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals.

j. *Socially and Economically Disadvantaged Individual.* Presumptively a member of any of the following groups:

(1) Black Americans
(2) Hispanic Americans
(3) Native Americans
(4) Asian-Pacific Americans
(5) Subcontinent Asian Americans
(6) Other groups designated from time to time by SBA to be socially disadvantaged; or
(7) Any other individual found to be socially and economically disadvantaged by SBA pursuant to Section 8(a) of the Small Business Act, 15 U.S.C. 637(a).

k. *Small Business Concern.* A small business concern is one that, at the time of award of Phase I and Phase II funding agreements, meets the following criteria:

(1) Is independently owned and operated, is not dominant in the field of operation in which it is proposing, has its principal place of business located in the United States and is organized for profit;

(2) Is at least 51 percent owned, or in the case of a publicly owned business, at least 51 percent of its voting stock is owned by United States citizens or lawfully admitted permanent resident aliens;

(3) Has, including its affiliates, a number of employees not exceeding 500, and meets the other regulatory requirements found in 13 CFR part 121. Business concerns, other than investment companies licensed, or state

development companies qualifying under the Small Business Investment Act of 1958, 15 U.S.C. 661, et seq., are affiliates of one another when either directly or indirectly:

(a) One concern controls or has the power to control the other; or

(b) A third party or parties controls or has the power to control both.

Control can be exercised through common ownership, common management, and contractual relationships. The term "affiliates" is defined in greater detail in 13 CFR part 121. The term "number of employees" is also defined in 13 CFR part 121. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association or cooperative.

l. *Women-Owned Small Business Concern.* A small business concern that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

m. *Program Solicitation.* A formal solicitation of proposals whereby a Federal agency notifies the small business community of its R/R&D needs and interests in selected areas and requests proposals in response to these needs from small business concerns. Announcements in the **Federal Register** or the Commerce Business Daily are not to be considered substitutes for an STTR Program solicitation.

n. *United States.* The 50 states, the territories and possessions of the U.S., the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

o. *Commercialization.* The process of developing markets and producing and delivering products for sale (whether by the originating party or by others); as used here, commercialization includes both government and commercial (private sector) markets.

**5. Participating Federal Agency Expenditures for the STTR Program**

a. Each Federal agency which has an extramural budget for R/R&D in excess of $1,000,000,000 for FY 1994, 1995, or 1996, is authorized to expend with small business concerns not less than .05% of such budget in fiscal year 1994; not less than .1% of such budget in fiscal year 1995; and not less than .15% of such budget in fiscal year 1996, specifically in connection with STTR Programs which meet the requirements of the Small Business Research and Development Enhancement Act of 1992, this policy directive, and regulations issued thereunder.

b. Funding agreements with small business concerns for research or research and development which result from competitive or sole source selections other than an STTR Program shall not be considered to meet any portion of the percentage required under the STTR Program.

**6. Limitations of Participation**

a. A Federal agency shall not use any of its STTR budget for the purpose of funding administrative costs of the program including costs associated with budgetary salaries and expenses, or in the case of a small business concern or a research institution, costs associated with salaries, expenses and administrative overhead other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 25(c)(1) of the Office of Federal Procurement Policy Act.

b. Awards resulting from other than an STTR Program may not be counted toward meeting STTR Program funding levels or achievement.

c. Voluntary participation in the STTR Programs by Federal agencies not otherwise qualified for such participation may be permitted under this policy directive.

Federal agencies seeking to participate in STTR need to submit their requests to SBA. Voluntary participation requires the written approval of the SBA Assistant Administrator for Innovation, Research and Technology subsequent to review of the request.

**7. Small Business Technology Transfer Pilot Program**

a. The STTR Program is a phased process uniform throughout the Federal government of soliciting proposals and awarding funding agreements for R/R&D to meet stated agency needs or missions.

b. Each participating agency shall at lease annually issue an STTR solicitation that sets forth a substantial number of R/R&D topic and subtopic areas consistent with stated agency needs or missions. Both the list of topics and the description of the topics and subtopics shall be sufficiently comprehensive to provide a wide range of opportunity for small business concerns to participate in the agency R/R&D programs. Topics and subtopics shall emphasize the need for proposals wiht advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic shall describe the needs in sufficient detail so as to assist small business concerns in providing on-target responses, but shall not involve detailed specifications to prescribed solutions of the problems.

Unsolicited proposals or proposals not responding to stated topics or subtopics are not eligible for STTR awards.

c. Research or research and development in the STTR Program is to be conducted jointly by a small business concern and a non-profit research institution. Not less than 40 percent of the work conducted under an STTR award is to be performed by the small business concern, and not less than 30 percent of the work is to be performed by the non-profit research institution.

Also, for both Phase I and Phase II, the R/R&D work must be performed in the United States, as defined in paragraph 4.n. of this policy directive.

d. To stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the STTR Program must follow a uniform competitive process of three phases:

(1) *Phase I.* Phase I involves a solicitation of proposals to conduct feasibility related experimental or theoretical R/R&D related to described agency requirements. The object of this phase is to determine the scientific, technical and commercial merit and feasibility of the proposed cooperative effort and the quality of performance of the small business concern with a relatively small agency investment before consideration of further Federal support in Phase II.

(a) Several different proposed solutions to a given problem may be funded

(b) Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate STTR proposals shall give primary consideration to the scientific and technical merit of the proposal along with its potential for commercialization. Secondary considerations may include program balance or critical agency requirements.

(c) Agencies may include a provision requiring submission of a Phase II proposal as a deliverable item under Phase I.

(d) Efforts shall be taken by agencies to reduce the procurement time frame for Phase II awards. Agencies are encouraged to develop gap-funding methods and to address the duration of Phase II award cycles.

(2) *Phase II.* The object of Phase II is to continue the R/R&D effort from Phase I. Only awardees in Phase I are eligible to participate in Phase II. Phase I awardees are eligible for consideration of Phase II STTR funding agreements

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only at the Federal participating agency which awarded Phase I of the project. Funding shall be based upon the results of Phase I and the scientific and technical merit and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the STTR Program. Completion of the research and development may be through Phase III. The government is not obligated to fund any specific Phase II proposal. The STTR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential as evidenced by:

(a) The small business concern's record of commercializing STTR or other research,

(b) The existence of second phase funding commitments from private sector or non-STTR funding sources,

(c) The existence of third phase follow-on commitments for the subject of the research, and

(d) The presence of other indicators of commercial potential of the idea.

(3) *Phase III.* The term *third phase agreement* means a follow-on, non-STTR funded award as described in 1, 2 and 3 below. A Federal agency may enter into a third phase agreement with a small business concern for additional work to be performed during or after the second phase period. The second phase funding agreement with the small business concern may, at the discretion of the agency awarding the agreement, set out the procedures applicable to third phase agreements. The competition for Phase I and Phase II awards satisfies any competition requirement of the Competition in Contracting Act.

(a) Where appropriate, there will be a third phase which is funded by:

1. Non-Federal sources of capital for commercial applications of STTR funded research or research and development,

2. The Federal government by follow-on non-STTR awards for STTR derived products and processes for use by the Federal government,

3. Non-STTR Federal sources for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria.

(b) Agencies which intend to pursue research, research and development or production of a technology developed by a small business concern under the STTR Program will give special acquisition preference such as sole source awards to the STTR company which developed the technology. The Phase III funding agreement will be with non-STTR funds.

**8. Unilateral Actions of Participating Agencies and Departments**

a. The Act requires each participating agency to:

(1) Unilaterally determine the categories of projects to be included in its STTR Program.

(2) Release STTR solicitations in accordance with the SBA/STTR master schedule.

(3) Subject to paragraph 12, unilaterally determine research topics within its STTR solicitation(s) giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:

(a) The National Critical Technologies Panel (or its successor) in the 1991 report required under section 603 of the National Science and Technology Policy Organization and Priorities Act of 1976, and in subsequent reports issued under that authority, or

(b) The Secretary of Defense in the 1992 report issued in accordance with section 2522 of title 10, United States Code, and in subsequent reports issued under that authority.

(4) Unilaterally receive and evaluate proposals resulting from STTR solicitations and make awards.

(5) Unilaterally select awardees for its STTR funding agreements.

(6) Administer its own STTR funding agreements or delegate such administration to another agency; and inform each awardee under such agreement, to the extent possible, of the costs of the awardee that will be allowable under the funding agreement.

(7) Each funding agreement under the STRR Program shall include provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(8) Make payments to recipients of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(9) Make an annual report on the STTR Program to SBA and to the Office of Science and Technology Policy.

(10) Develop a model agreement, not later than July 31, 1993, to be approved by SBA, for allocating between small business concerns and research institutions intellectual property rights and rights if any, to carry out follow-on research, development or commercialization.

(11) Develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that federally funded research and development centers that participate in STTR agreements:

(a) Are free from organizational conflicts of interests relative to the STTR Program;

(b) Do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(c) Use outside peer review as appropriate.

(12) Develop no later than July 31, 1993, procedures for assessing the commercial merit and feasibility of STTR proposals. These procedures should consider:

(a) The small business concern's record of successfully commercializing STTR or other research;

(b) The existence of second phase funding commitments from private sector or non-STTR funding sources;

(c) The existence of third phase follow-on commitments for the subject of the research; and

(d) The presence of other indicators of the commercial potential of the idea.

**9. SBA/STTR Source File**

a. *SBA Small Business Technology Transfer (STTR) Program Source File.* The SBA will develop and maintain an STTR mailing list of interested small business concerns. In maintaining this list, SBA will adhere to the provisions of The Freedom of Information Act, The Privacy Act of 1974, 13 CFR 102.20 and 13 CFR 102.3(j). Labels from this list will be available to the Federal participating agencies for STTR solicitation purposes. Written requests containing justification for the need of labels from this mailing list should be submitted to the Office of Innovation, Research & Technology, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416. A two-week period is required to fill these requests.

b. *SBA Procurement Automated Source System (PASS).* SBA's Office of Procurement Assistance has a Procurement Automated Source System (PASS) that maintains capability profiles of small businesses interested in Federal government procurement opportunities. This system is used by Federal agencies and major prime contractors to identify small business concerns with capabilities needed by the agencies or prime contractors.

Agencies interested in accessing PASS should contact their nearest SBA Procurement Assistance Office.

c. *Federal Procurement Data System (FPDS).* Participating agencies should review FPDS data that identify small business awardees of R/R&D contracts as a potential supplement to their existing source data base.

d. *Other Sources.* Agencies may maintain their own mailing lists or use other sources.

**10. SBA Coordination of National Critical Technologies**

a. SBA will annually obtain information on the current-critical technologies from both the National Critical Technologies Panel (or its successor) and the Secretary of Defense and provide such information to the participating Federal agencies and potential STTR participants.

b. The SBA Office of Innovation, Research and Technology will contact the panel and the Department of Defense and request this data in June of each year. The data received will then be submitted by letter to each of the participating Federal agencies.

**11. SBA Coordination of STTR Solicitation Schedules**

a. The Act requires issuance of STTR (Phase I) Program solicitations in accordance with a master schedule coordinated between SBA and the Federal participating agency. The SBA organization responsible for coordination is: Office of Innovation, Research and Technology, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

b. For maximum participation by interested small business concerns, it is important that the planning, scheduling and coordination of agency STTR solicitation release dates be completed as early as practicable in order to accommodate the commencement of the fiscal year on October 1. Bunching of agency STTR solicitation release and closing dates may prohibit small business concerns from the preparation and timely submission of proposals for more than one STTR project. SBA's coordination of agency schedules will minimize the bunching of proposed release and closing dates. Participating agencies may elect to publish multiple solicitation within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

c. To accomplish the MASTER SCHEDULE coordination process, the following procedure will be followed:

(1) The SBA may publish STTR Pre-Solicitation Announcements annually. However, the STTR Pre-Solicitation Announcement will not be published for any period in which participating agencies are not soliciting proposals. The STTR solicitation release date shall not be prior to 10 days after publication of the Pre-Solicitation Announcement (PSA) which contains notice of that specific STTR solicitation.

(2) Each agency representative will notify SBA in writing of its proposed STTR solicitation release and proposal due dates for the next fiscal year on or before August 1. The SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. If all cases, final decisions will be made by SBA's Office of Innovation, Research and Technology.

**12. SBA (Phase I) STTR Program Pre-Solicitation Announcements**

a. *SBA Publication.* The SBA, as required by public law, shall prepare and publish STTR Phase I Pre-Solicitation Announcements (PSAs) covering all participating Federal agencies. Any agency solicitation announcement changes that occur prior to or after the release of the STTR PSA must immediately be reported in writing to the SBA by the agency STTR representative. If possible, announcement amendments will be released reflecting such changes. Each issue of the STTR PSA will be based upon data received from the participating agencies. However, the agencies are advised that:

(1) The publication of the STTR PSA is not intended to restrict or prohibit application of customary or other internal agency procedures designed to obtain publicity for its R/R&D programs.

(2) The STTR PSA publications by SBA shall not be interpreted as a substitute or relief vehicle for existing statutory and regulatory publication requirements related to individual or specific procurement/grant actions.

b. *STTR Pre-Solicitation Announcement (PSA) Content.* The STTR PSA will include sufficient data to effectively apprise interested small business concerns throughout the Nation of forthcoming STTR Program solicitations —thereby assisting the participating agencies in identifying prospective responsible sources. The agencies shall provide the required information to SBA no later than 30 days prior to the PSA release date in accordance with the master schedule. The following information is required:

(1) The list topics upon which R/R&D proposals will be sought. Each R/R&D topic shall have up to 10 words in its title.

(2) Agency address and/or phone number from which STTR Program solicitations can be obtained.

(3) Names, addresses, and phone numbers of agency contact points where STTR-related inquiries may be directed.

(4) Release date(s) of program solicitation(s).

(5) Closing date(s) for receipt of proposals.

(6) Estimated number and average dollar amounts or level of effort of Phase I awards to be made under the solicitation.

c. For those agencies which use both general topic and more specific subtopic designations in their STTR solicitations, the topic data to be submitted for purposes of the STTR PSA publication should accurately describe the research solicited. Rather than just announcing topic information characterized as "Chemistry" or "Aerodynamics," summarize the subtopic statements and, where appropriate, utilize National Critical Technologies.

d. The STTR PSA will also include notices of STTR conferences and seminars. Only STTR conferences/seminars sponsored by the STTR Federal participating agencies or STTR conferences/seminars sponsored or co-sponsored by the U.S. Small Business Administration will be considered for publication in the STTR Pre-Solicitation Announcement (PSA).

**13. Simplified, Standardized and Timely STTR Program Solicitations**

a. Instructions for STTR Program Solicitation Preparation. The Small Business Act requires " * * * simplified, standardized and timely STTR solicitation" (section 9(p)(2)(A)). Further, the Act requires the STTR Programs of participating agencies to use a "simplified, standardized funding process" and that the regulatory burden of participating in the STTR Programs be minimized.

b. Therefore, the instructions in the Appendix to this policy directive purposely depart from normal government solicitation format and requirements. STTR Program solicitations shall be prepared according to the attached Appendix.

c. Agencies shall provide the SBA Office of Innovation, Research and Technology, 5 copies of each solicitation and any modifications thereto no later than the date of release of the solicitation or modification to the public.

d. Non-STTR R/R&D-Related Actions. It is not intended that the STTR Program solicitation replace or be used as a substaitute for unsolicited proposals or R/R&D awards to small business

concerns authorized by existing regulations; or, are the STTR Program solicitation procedures intended to prohibit other agency R/R&D actions with small business concerns that are carried on in accordance with applicable statutory/regulatory authorizations.

**14. Simplified and Standardized STTR Funding Process**

In its requirements for the establishment of a "simplified, standardized funding process," the STTR legislation requires that specific attention be given to the following areas of STTR Program administration:

*a. Timely Receipt and Review of Proposals*

(1) Participating agencies shall establish firm schedules and review formats for appropriate distribution of the proposals for reviewing recommendations and submission to the STTR Program manager for award determinations.

(a) All activities related to Phase I proposal reviews shall normally be completed and wards made within 6 months from the closing date of the STTR solicitation.

(b) The STTR Program solicitations for Phase I will establish proposal submission dates. Related to Phase II activity, an agency may establish set proposal submission dates. However, it is anticipated that each agency will negotiate mutually acceptable proposal submission dates with individual Phase I performers, accomplish proposal reviews expeditiously, and proceed with awards.

While it is recognized that Phase II arrangements between the agency and proposer may require more detailed negotiation to establish terms acceptable to both parties, the agencies must not sacrifice the R/R&D momemtum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(c) It can be anticipated that STTR participants will submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements which are within the expertise and capability levels of the small business proposer. To the extent reasonably feasible, interagency funding duplications related to acquiring similar technology under the STTR or other Federal programs should not occur.

For this purpose, the standardized STTR Program solicitation will require the proposers to indicate the name and address of the agencies to which duplicate similiar proposals were made and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for any previous Federal government awards.

To assist in avoiding duplicate funding, each agency shall provide SBA and each participating STTR agency with a listing of Phase I and Phase II awardees including the complete address and title of the project. This information should be distributed no later than release of contract award information to the public.

*b. Review of STTR Proposals*

Agencies are encouraged to use their normal review process for STTR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, "peer" reviews, that are external to the agency, are authorized by the STTR legislation. Participating agencies are cautioned that all review procedures shall be formulated to minimize any possible conflict of interest as it pertains to proposer proprietary data. The standardized STTR solicitation will advise potential proposers that proposals may be subject to an established external review process, but that the proposer may include company designated proprietary information in its proposal.

*c. Proprietary Information Contained in Proposals*

In preparation of the standardized STTR Program solicitation as described in the Appendix of this policy directive, provisions will be included requiring confidential treatment of proprietary information to the extent permitted by law. Offerors will be discouraged from submitting information considered proprietary unless it is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be clearly identified and marked with a prescribed legend. Agencies may elect to require proposers to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text.

*d. Selection of Awardees*

Participating agencies shall establish a proposal review cycle wherein successful and unsuccessful proposers shall be notified of final award decisions within 6 months of the agency's Phase I proposal closing date.

(1) The standardized STTR Program solicitation shall:

(a) Advise Phase I proposers that additional information may be requested by the awarding to evidence awardee responsibility for project completion.

(b) Contain information advising potential offerors of basic proposal evaluation criteria for Phase I and Phase II.

(2) Phase II proposal submissions, review, and selection shall be managed by arrangements between the agency and each Phase I awardee considered for Phase II award.

Within 30 days of the date of award of funding agreements—three copies of the Technical Abstract (containing all information described in the Appendix Paragraph III, C 1–6) for Phase I and Phase II awards shall be submitted to the SBA.

*e. Certification of Size of Firm*

The Act requires that participating agencies ensure that only small business concerns are recipients of STTR awards.

Awarding documents are to include a signed statement by the awardee that the definition of a small business concern as described in Section 4 of this policy directive is met.

*f. Management of the STTR Project*

The small business concern, and not the non-profit research institution, is to provide satisfactory evidence that it will exercise management director and control of the performance of the STTR funding agreement. Regardless of the proportion of the work or funding of each of the performers under the contract, the small business concern is to be primary contractor or grantee with overall responsibility for its performance.

All agreements between the small business concern and the research institution cooperating in the STTR projects, or any business plans reflecting agreements and responsibilities between the parties during performance of Phase I or II of STTR, or for the commercialization of the resulting technology, should reflect the controlling position of the small business concern.

*g. Rights in Data Developed Under STTR Funding Agreement*

The STTR legislation provides for "retention of rights in data generated in the performance of the contract by the small business concern".

(1) The intent of the statute is to provide authority for the participating agency to protect technical data generated under the funding agreement, and to refrain from disclosing such data to competitors of the small business

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concern or from using the information to produce future technical procurement specifications that could harm the small business concern that discovered and developed the innovation until the small business concern has a reasonable change to seek patent protection, if appropriate.

(2) Therefore, except for program evaluation, participating agencies shall protect such technical data for a period of not less than 4 years from the completion of the project from which the data were generated unless the agencies obtain permission to disclose such data from the contractor or grantee. The government shall retain a royalty-free license for government use of any technical data delivered under an STTR funding agreement whether patented or not.

*h. Allocation of Rights*

A small business concern, before receiving an STTR award, must negotiate a written agreement between the small business concern and the research institution, allocating intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. The small business concern must submit this agreement to the awarding agency on request; either with the proposal or at any time thereafter. The small business concern must certify in all proposals that the agreement is satisfactory to the small business concern.

The participating agency may accept an existing agreement between the two parties if it is fair to the small business concern and does not conflict with the interests of the Federal government.

In those instances where a small business concern requests assistance in developing a written agreement, the participating agency will provide a model agreement to be used as guidance by the small business in the development of an agreement.

The model agreement provided to the small business concern should direct the parties, as a minimum, to:

(1) State specifically the degree of responsibility, and ownership of any product, process, or other invention or innovation resulting from the cooperative research. The degree of responsibility shall include responsibility for expenses and liability, and the degree of ownership shall also include the specific rights to revenues and profits.

(2) State which party may obtain U. S. or foreign patents or otherwise protect any inventions resulting from the cooperative research.

(3) State which party has the right to any continuation of research including non-STTR follow-on awards.

The Federal government will not normally be a party to any agreement between the small business concern and the research institution. Nothing in the agreement is to conflict with any provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow-on research.

*i. Title Transfer of Agency Provided Property*

Under STTR legislation, title to equipment purchased in relation to project performance with funds provided under STTR funding agreements maybe transferred to the awardee where such transfer would be more cost effective than recovery of the property by the government.

*j. Continued Use of Government Equipment*

STTR legislation directs that a small business concern participating in the third phase of the STTR Program be given continued use, as a directed bailment, of any property transferred by a Federal agency to the small business concern in the second phase of an STTR Program for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of such program.

*k. Cost Sharing*

(1) Cost participation could serve the mutual interest of the participating agencies and certain STTR awardees by helping to assure the efficient use of available resources. Cost-sharing, however, shall not normally be encouraged except where required by other statutes.

(2) Except where required by other statutes, participating agencies shall not, as a general policy, request or require cost sharing on Phase I projects. The standardized STTR Program solicitation (Appendix) will, however, provide information to prospective STTR performers concerning cost-sharing. Cost participation will not be a consideration factor in evaluation of Phase I proposals except where required by other statutes.

*l. Payment Schedules and Cost Principles*

STTR performers may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate public law. In all cases, agencies must make payment to recipients under STTR agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

All STTR funding agreements shall use, as appropriate, current cost principles and procedures authorized for use by the participating agencies. At the time of award, agencies shall inform each STTR awardee, to the extent possible, of the applicable Federal regulations and procedures which refer to the costs that generally will be allowed under funding agreements.

*m. Funding Agreement Types and Fee of Profit*

The legislative requirements for uniformity and standardization require that there be consistency in application of STTR Program provisions among participating agencies. This consistency must consider, however, the need for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to STTR Programs in the agencies. The following guidelines are for the purpose of meeting these requirements:

(1) *Funding Agreement.* The choice of type of funding agreement (contract, grant, or cooperative agreement) rests with the awarding agency but must be consistent with the guidelines in Public Law 95–224 (42 U.S.C. 501), as amended by Public Law 97–258 (31 U.S.C. 6301–6308).

(2) *Fee or Profit.* Unless expressly excluded by statute, awarding agencies are to provide for a reasonable fee or profit on STTR funding agreements, including grants, consistent with normal profit margins provided to profit-making firms for R/R&D work.

*n. Periods of Performance and Extensions*

(1) In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to extend periods of performance, increase the scope of work, or to increase the dollar amount should be minimized, except for options in the original Phase I of Phrase II awards.

(2) Phase I. Period of performance should normally be approximately 1 year except where agency needs or research plans require otherwise. Exceptions should be minimized.

(3) Phase II. Period of performance under Phase II is the subject of negotiations between the selected Phase I recipient and the awarding agency.

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However, the duration of Phase II should normally be approximately 2 years. Exceptions should be minimized.

*o. Dollar Value of Awards*

(1) The STTR legislation establishes 1-year awards for the first phase of an STTR program generally not to exceed $100,000, and 2-year awards for the second phase of an STTR Program generally not to exceed $500,000.

(2) After award of any funding agreement exceeding $100,000 for Phase I or $500,000 for Phase II, the agency STTR representative shall provide SBA with written justification of such action. The justification shall be submitted with the STTR Annual Report data. Similar justification is required for any dollar increase of a funding agreement which would bring the cumulative dollar amount to a total in excess of the aforestated amounts.

*p. Grant Authority*

The STTR legislation does not, in and of itself, convey grant authority. Each participating agency must secure grant authority in accordance with its normal procedures.

*q. Conflict of Interest*

Participating agencies are cautioned that awards made to firms owned by or employing current or previous Federal government employees could create conflicts of interest for those employees in violation of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended). Each participating agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

**15. STTR Program Annual Report to SBA**

The STTR legislation requires an annual report from the participating agencies in the program. The following paragraphs cite the dates such reports are due, the kinds of information to be included, and the number of copies to be submitted to SBA.

*a. Reporting Dates to SBA*

Reporting shall be on an annual basis and will be for the period ending September 30 of each fiscal year. The report is due to SBA by December 31 of each year. Example: The report for FY 1994 (October 1, 1993–September 30, 1994) should be submitted to SBA by December 31, 1994.

*b. Small Business Technology Transfer (STTR) Program*

(1) Agency total fiscal year, for FY 1994 and each year thereafter, extramural research and research and development total obligations as reported to the National Science Foundation pursuant to the annual Budget of the Untied States Government.

(2) STTR Program total fiscal year dollars derived by applying the statute per centum to the agencies' extramural research and research and development total obligations.

(3) STTR Program fiscal year dollars obligated through STTR Program funding agreements for Phase I and Phase II.

(4) Number of STTR individual solicitations released during the fiscal year and the number of topics and subtopics contained in each solicitation.

(5) Number of copies of each STTR solicitation distributed by the participating agency.

(6) Number of proposals received by the agency for each topic and subtopic in each STTR solicitation.

(7) For both Phase I and Phase II, the STTR awardee's name and address, research institution's name and address, dollar and percent of award performed by the small business concern and the research institution, solicitation topic and subtopic, solicitation number, project title, and total dollar amount of funding agreement. Identify minority small business, women-owned small business and Phase II awardees with a follow-on funding commitment.

(8) The names and addresses of small business concerns for whom the Phase I process exceeded the 6-month period from the closing date of the STTR solicitation to award of the funding agreement. (See 14.a.(1)(a) of this policy directive.)

(9) For an agency Phase III award using non-STTR Federal funds, to continue a Phase II project, the agency shall provide the name, address, project title and dollar amount obligated.

(10) Report the number of National Critical Technology topic or subtopic funding agreements, the percentage by number and dollar amount of total STTR awards to such National Critical Technologies.

**16. SBA Program to Monitor and Survey STTR Activity**

*a. Examples of STTR Areas to be Monitored by SBA*

(1) *STRR Funding Allocations.* Of major significance to the success of the STTR Program is the magnitude and nature of the agencies' funding allocations identified for fiscal year STTR applications. The STTR legislation explicitly relates to both the definition of the STTR effort, R/R&D (as defined in the Act and OMB Circular A–11), and the mathematical methodology for determining fiscal year participation levels for all work categorized within the statutory definitions. SBA will monitor these allocations.

(2) *STTR Program Solicitation and Award Status.* The accomplishment of scheduled STTR events, such as the release of STTR Program solicitations and the award of contract, grant, or cooperative agreements, is critical to meeting statutory mandates and to operating an effective, useful program. SBA plans to monitor these and other operational features of STTR Program implementation including the status of awards taking longer than the 6-month period set forth in 14.a.(1)(a) of this policy directive.

Except in instances where SBA assistance is requested related to a specific STTR project, contract, etc., SBA does not intend to monitor administration of the awards.

(3) *Follow-on Funding Commitments.* SBA may monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Agency Rules and Regulations.* It is essential that no implementing regulation be promulgated by the participating agencies that is inconsistent with or contradicts either the letter or intent of the legislation and this directive. SBA's monitoring activity will include review of rules and regulations and procedures generated to facilitate intra-agency STTR Program implementation.

**17. Socially and Economically Disadvantaged Small Business Concerns and Women-Owned Small Business Concerns**

To foster and encourage participation by socially and economically disadvantaged small business concerns in scientific and technological innovation, the legislation establishes as a purpose to improve the Federal government's dissemination of information concerning the Small Business Technology Transfer Program, particularly with regard to program participation by women-owned small business concerns and by socially and economically disadvantaged small business concerns.

a. To carry out this purpose of the statute, SBA and the Federal participating agencies will make outreach efforts to find and place innovative women-owned small business concerns and socially and economically disadvantaged small

business concerns in the STTR Program information system.

b. The SBA will develop, participate in, and, when appropriate and feasible, sponsor seminars for innovative women-owned small business concerns and socially and economically disadvantaged small business concerns to inform them of the STTR Program.

c. The SBA will inform women-owned small business concerns and socially and economically disadvantaged small business concerns of Federal and commercial assistance and services available for STTR Program participants.

d. While these small business concerns will be required to compete for STTR awards on the same basis as all other small business concerns, participating agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified women-owned small business concerns and socially and economically disadvantaged small business concerns to participate in their STTR Programs.

**18. STTR Program Information Notices**

A system of sharing STTR Program and policy information, the STTR Program information notice, will be used for the dissemination of Policy Directive amendments and significant items of mutual interest. Amendments to the Policy Directive will be designated as such and may be by letter. The amendments will be incorporated directly into the Policy Directive at a later date.

**Appendix—Instructions for STTR Pilot Program Solicitation Preparation**

Section 9(p) of the Small Business Act (The Act) (15 U.S.C. 638(p), as amended by Pub. L. 102–564) requires "* * * simplified, standardized and timely STTR solicitations" (section 9(p)(2)(A)). Further, the Act requires the STTR Programs of participating agencies to utilize a "uniform process" (15 U.S.C. 638(e)(6), as amended) and that the regulatory burden of participating in the STTR Programs be minimized. Therefore, the following instructions purposely depart from normal government solicitation formats and requirements. STTR solicitations will be prepared and issued as program solicitations in accordance with the following instructions.

*Limitation in Size of Solicitation*

In the interest of meeting the legislative requirements for simplified and standardized solicitations, the entire STTR solicitation with the exception of Section VIII "Research Topics," described below, shall be limited to 23 pages. There is no page limit on Section VIII, "Research Topics."

*Format*

STTR Program solicitations will be prepared in a simplified, standardized, easily read and understood format including a cover sheet, a table of contents and the following sections in the order listed (content of each section is discussed below):

I. Program Description
II. Definitions
III. Proposal Preparation Instructions and Requirements
IV. Method of Selection and Evaluation Criteria
V. Considerations
VI. Submission of Proposals
VII. Scientific and Technical Information Sources
VIII. Research Topics
IX. Submission Forms and Certifications

*Cover Sheet*

The cover sheet or title page of an STTR Program Solicitation shall clearly identify the solicitation as a Small Business Technology Transfer (STTR) Program Solicitation, identify the agency releasing the solicitation, specify date (or dates) on which proposals are due under the solicitation, and state the solicitation number.

**Instructions for Preparation of STTR Program Solicitation Section I through IX**

I. *Program Description*

A. Summarize in narrative form the invitation to submit proposals and the objectives of the STTR Program.

B. Describe in narrative form the agency's STTR Program including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only.

C. Describe program eligibility, as follows:

*Eligibility.* Each concern submitting a proposal must qualify as a small business concern for R/R&D purposes at the time of award. The small business concern will submit a proposal for cooperative research and development with a non-profit research institution as defined in section 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701), and which includes Federally Funded Research and Development Centers as identified by the National Science Foundation in accordance with the governmentwide Federal Acquisition Regulations.

For both Phase I and Phase II, the R/R&D work must be performed in the United States.

D. List name, address and telephone number of agency contacts for general information on the STTR Program solicitation.

II. *Definitions*

Whenever terms are used that are unique to either the STTR Program, a specific STTR solicitation or a portion of a solicitation, they will be defined in a separate section entitled "Definitions." As a minimum, the definitions of "small business concern", "socially and economically disadvantaged small business concern", "cooperative research", "research institution", "women-owned small business concern", and "subcontract" as stated in Paragraph 4 of this policy directive shall be included.

III. *Proposal Preparation Instructions and Requirements*

The purpose of this section is to inform the proposer on what to include in his or her proposal and to set forth limits on what may be included. It should also provide guidance to assist proposers in improving the quality and acceptance of proposals particularly to firms that may not have previous government experience.

A. *Limitations on Length of Proposal.* Include at least the following information:

1. STTR Phase I proposals shall not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments. Pages should be of standard size (8½" x 11"; 21.6 cm x 27.9 cm) and should conform to the standard formatting instructions; in particular, 2.5 cm (1 inch) margins and type no smaller than 10 point font size.

**Note:** A small business concern, before receiving an STTR award, must negotiate a written agreement between the small business concern and the research institution as discussed in 14h. While an agency may require this agreement to be submitted at the time of proposal, it is not considered to be part of the proposal and is not subject to the page limitation.

2. A notice that no additional attachments, appendices or references beyond the 25-page limitation shall be considered in proposal evaluation and that proposals in excess of the 25-page limitation shall not be considered for review or award.

B. *Proposal Cover Sheet.* Every proposer will be required to include at least the following information on the first page of proposals. Items 9 and 11 are for statistical purposes only.

1. Agency and Solicitation Number.
2. Topic Number.
3. Subtopic Number.
4. Topic Area.
5. Project Title.
6. Name and Complete Address of Firm.
7. Name and Complete Address of Research Institution.
8. Small Business Certification as follows:

"The above concern certifies it is a small business concern and meets the definition as stated in this solicitation."

9. Socially and Economically Disadvantaged Small Business Concern Certification as follows:

"The above concern certifies that it ____ does ____does not qualify as a socially and economically disadvantaged small business concern and meets the definition as stated in this solicitation."

10. The small business concern will certify that at least 40 percent of the work is to be performed by the small business concern and at least 30 percent of the work is to be performed by the research institution as follows:

"The above concern certifies that it will perform ____percent of the work and the research institution will perform ____percent of the work under this funding agreement."

11. Women-owned Small Business Concern Certification as follows:

The above concern certifies that it ____ does ____does not qualify as a women-owned small business concern and meets the definition as stated in this solicitation.

12. A disclosure permission statement such as follows may be included at the discretion of the funding agency:

"Will you permit the government to disclose the title and technical abstract of

your proposed project, plus the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to concerns that may be interested in contacting you for further information?" Yes ___No ___

13. Signature of a company official of the proposing small business concern and that individual's typed name, title, address, telephone number, and date of signature.

14. Signature of Principal Investigator or Project Manager and that individual's typed name, organization, title, address, telephone number, and date of signature.

15. Legend for proprietary information as described in the "Considerations" section of this program solicitation is appropriate.

C. *Abstract or Summary.* Proposers will be required to include a one-page project summary of the proposed R/R&D including at least the following:

1. Name and address of small business concern.

2. Name and address of cooperative research institution.

3. Name and title of principal investigator or project manager.

4. Agency name, solicitation number, solicitation topic and subtopic.

5. Title of project.

6. Technical abstract, limited to two hundred words.

7. Summary of the anticipated results and implications of the approach (both Phases I and II).

8. Summary of the potential commercial applications of the research.

D. *Technical Content.* STTR Program solicitations shall require as a minimum the following to be included in proposals submitted thereunder:

1. *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

2. *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

3. *Phase I Work Plan.* A detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in D.2. above. The methods planned to achieve each objective or task should be discussed in detail. The work plan will specifically address the amount and type of work to be performed by the small business concern and by the research institution.

4. *Related Research or Research and Development.* Describe significant R/R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing small business concern. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The proposer must persuade reviewers of his or her awareness of key recent R/R&D conducted by others in the specific topic area.

5. *Key Personnel and Bibliography of Directly Related Work.* Identify key personnel involved in Phase I including their directly related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet the proposal size limitation.

6. *Relationship with Future Research or Research and Development.*

a. State the anticipated results of the proposed approach if the project is successful (Phase I and II).

b. Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

7. *Facilities.* A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.

8. *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted.

a. If such involvement is intended, it should be described in detail.

9. *Potential Post Applications.* Briefly describe:

a. Whether and by what means the proposed project appears to have potential commercial application.

b. Whether and by what means the proposed project appears to have potential use by the Federal government.

10. *Similar Proposals or Awards.* A firm may elect to submit proposals for essentially equivalent work under other Federal program solicitations, or may have received other Federal awards for essentially equivalent work. In these cases, a statement must be included in each such proposal indicating:

a. The name and address of the agencies to which proposals were submitted or from which awards were received.

b. Date of proposal submission or date of award.

c. Title, number, and date of solicitations under which proposals were submitted or awards received.

d. The specific applicable research topics for each proposal submitted or award received.

e. Titles of research projects.

f. Name and title of project manager or principal investigator for each proposal submitted or award received.

E. *Cost Breakdown/Proposed Budget.* The solicitation will require the submission of simplified cost or budget data.

F. *Allocation of Rights.* The solicitation will require that a small business concern negotiate a written agreement between the small business concern and the research institution allocating intellectual property rights and rights, if any, to carry out follow-on research, development or commercialization.

G. *Written Cooperative Agreement.* The proposing small business concern is to provide an original of the agreement between the small business concern and the research institution. The agreement is to include the signature of an official of the small business concern and the signature of an official of the research institution.

IV. *Method of Selection and Evaluation Criteria*

A. *Standard Statement.* Essentially the following statement shall be included in all STTR Program solicitations:

All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the proposed approaches to the same topic or subtopic.

Phase II proposals may only be submitted by Phase I award winners within the same agency.

B. *Evaluation Criteria.* 1. The agency in its evaluation process shall develop a standardized method that will consider as a minimum the following factors:

a. The technical approach and the anticipated agency and commercial benefits that may be derived from the research.

b. The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic or subtopics.

c. The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.

d. Qualifications of the proposed principal/key investigators supporting staff and consultants.

e. In Phase II, evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:

(1) The small business concern's record of commercializing STTR or other research,

(2) The existence of second phase funding commitments from private sector or non-STTR funding sources,

(3) The existence of third phase follow-on commitments for the subject of the research, and,

(4) The presence of other indicators of commercial potential of the idea.

2. The factors in subparagraph B.1. and other appropriate evaluation criteria, if any, shall be specified in the "Method of Selection" section of STTR Program solicitations.

C. *Peer Review.* If it is contemplated that as a part of STTR proposal evaluation external peer review will be used, the program solicitation must so indicate.

D. *Release of Proposal Review Information.* After final award decisions have been announced, the technical evaluations of the proposer's proposal may be provided to the proposer. The identity of the reviewer shall not be disclosed.

V. Considerations

This section shall include, as a minimum, the following information:

*A. Awards*

Indicate the estimated number and type of awards anticipated under the particular

STTR Program solicitation in question including:

1. Approximate number of Phase I awards expected to be made.

2. Type of funding agreement, i.e., contract, grant or cooperative agreement.

3. Whether fee or profit will be allowed.

4. Cost basis of funding agreement, e.g., grant, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.

5. Information on the approximate average dollar value of awards for Phase I and Phase II.

*B. Reports*

Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.

*C. Payment Schedule*

Specify the method and frequency of progress and final payment under Phase I and Phase II agreements.

*D. Innovations, Inventions and Patents*

1. Limited Rights Information and Data

a. *Proprietary Information.* Essentially the following statement shall be included in all STTR solicitations:

Information contained in unsuccessful proposals will remain the property of the proposer. The government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements.

If proprietary information is provided by a proposer in a proposal which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law, provided this information is clearly marked by the proposer with the term "confidential proprietary information" and provided the following legend appears on the title page of the proposal:

"For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this proposer as a result of or in connection with the submission of this data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement. This restriction does not limit the government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages —— of this proposal."

Any other legend may be unacceptable to the government and may constitute grounds for removing the proposal from further consideration and without assuming any liability for inadvertent disclosure. The government will limit dissemination of such information to within official channels.

*b. Alternative to minimize proprietary information.* Agencies may elect to instruct proposers to:

(1) Limit proprietary information to only that absolutely essential to their proposal.

(2) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

*c. Rights in data developed under STTR funding agreements.* To notify the small business concern of the policy stated in Para. 14.g. of this policy directive, essentially the following statement will be included in all STTR Program solicitations:

"These STTR data are furnished with STTR rights under Contract No. ____ (and subcontract ____ if appropriate). For a period of ____ years (at least 4 years) after acceptance of all items to be delivered under this contract, the government agrees to use these data for government purposes only, and they shall not be disclosed outside the government (including disclosure for procurement purposes) during such period without permission of the contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support contractors. After the aforesaid ____ year (at least 4 years) period the government has a royalty-free license to use, and to authorize others to use on its behalf, these data for government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part."

*d. Copyrights.* Include an appropriate statement concerning copyrights and publications; for example:

"With prior written permission of the contracting officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal government and requires that each publication contain an appropriate acknowledgement and disclaimer statement."

*e. Patents.* Include an appropriate statement concerning patents; for example:

"Small business concerns normally may retain the principal worldwide patent rights to any invention developed with government support. The government receives a royalty-free license for Federal government use, reserves the right to require the patentholder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the government will not make public any information disclosing a government-supported invention for a ____ year (at least 4 years) period to allow the awardee a reasonable time to pursue a patent."

*E. Cost-Sharing*

Unless in conflict with another statute, include a statement essentially as follows:

"Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal."

Where cost-sharing is required by statute, include an appropriate statement.

*F. Profit or Fee*

Include a statement on the payment of profit or fee on awards made under the STTR Program solicitation.

*G. Joint Ventures or Limited Partnerships*

Include essentially the following language:

"Joint ventures and limited partnerships are eligible to participate provided the entity created qualifies as a small business as defined in this program solicitation."

*H. Research and Analytical Work*

Include essentially the following statement:

"The STTR Pilot Program is a cooperative research or research and development effort conducted jointly by a small business concern and a research institution in which not less than 40 percent of the work is performed by the small business concern and not less than 30 percent of the work is performed by the research institution."

*I. Contractor Commitments*

To meet the legislative requirement that STTR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in STTR funding agreements shall not be included in full or by reference in STTR Program solicitations. Rather, proposers shall be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from STTR Program solicitations. Essentially, the following statement shall be included in the "Consideration" section of STTR Program solicitations:

"Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list should not be understood to represent a complete list of clauses to be included in Phase I funding agreements, or to be specific wording of such clauses. Copies of complete terms and conditions are available upon request."

*J. Summary Statements*

The following are illustrative of the type of summary statements to be included immediately following the statement in the subparagraph I. These statements are examples only and may vary depending upon the type of funding agreement.

1. *Standards of Work.* Work performed under the funding agreement must conform to high professional standards.

2. *Inspection.* Work performed under the funding agreement is subject to government inspection and evaluation at all times.

3. *Examination of Records.* The Comptroller General or other Federal auditor organization shall have the right to examine any directly pertinent records of the awardee involving transactions related to this funding agreement.

4. *Default.* The government may terminate the funding agreement if the contractor fails to perform the work contracted.

5. *Termination for Convenience.* The STTR funding agreement may be terminated at any time by the government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

6. *Disputes.* Any dispute concerning the funding agreement which cannot be resolved by agreement shall be decided by the contracting officer with right of appeal.

7. *Contract Work Hours.* The awardee may not require an employee to work more than eight hours a day or forty hours a week unless the employee is compensated accordingly (e.g., overtime pay).

8. *Equal opportunity.* The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

9. *Affirmative Action for Veterans.* The awardee will not discriminate against any employee or application for employment because he or she is a disabled veteran or veteran of the Vietnam era.

10. *Affirmative Action for Handicapped.* The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

11. *Officials Not To Benefit.* No government official shall benefit personally from the STTR funding agreement.

12. *Covenant Against Contingent Fees.* No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bonafide employees or commercial agencies maintained by the awardee for the purpose of securing business.

13. *Gratuities.* The funding agreement may be terminated by the government if any gratuities have been offered to any representative of the government to secure the contract.

14. *Patent Infringement.* The awardee shall report each notice or claim of patent infringement based on the performance of the funding agreement.

*K. Additional Information*

Information pertinent to an understanding of the administration requirements of STTR proposals and funding agreements not included elsewhere shall be included in this section. As a minimum, statements essentially as follows shall be included under "Additional Information" in STTR Program solicitations:

1. This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting STTR funding agreement, the terms of the funding agreement are controlling.

2. Before award of an STTR funding agreement, the government may request the proposer to submit certain organizational, management, personnel and financial information to assure responsibility of the proposer.

3. The government is not responsible for any monies expended by the proposer before award of any funding agreement.

4. This program solicitation is not an offer by the government and does not obligate the government to make any specific number of awards. Also, awards under the STTR Program are contingent upon the availability of funds.

5. The STTR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals shall not be accepted under the STTR Program in either Phase I or Phase II.

62. If an award is made pursuant to a proposal submitted under this STTR Program solicitation, the contractor or grantee or party to a cooperative agreement will be required to certify that he or she has not previously been, nor is currently being, paid for essentially equivalent work by any agency of the Federal government.

VI. *Submission of Proposals*

A. This section shall clearly specify the closing date on which all proposals are due to be received.

B. This section shall specify the number of copies of the proposal that are to be submitted.

C. This section shall clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

D. This section may include other instructions such as the following:

1. *Bindings.* Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

2. *Packaging.* All copies of a proposal should be sent in the same package.

VII. *Scientific and Technical Information Sources*

Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available shall be included in a separate section of the solicitation entitled "Scientific and Technical Information Sources."

VIII. *Research Topics*

Describe the R/R&D topics and subtopics for which proposals are being solicited sufficiently to inform the proposer of technical details of what is desired while leaving sufficient flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the STTR Programs.

IX. *Submission Forms and Certifications*

Up to three copies each of proposal preparation forms necessary to the contracting and granting process may be required. This section may included Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals.

This section may also include certifying forms required by legislation, regulation or standard operating procedures, to be submitted by the proposer to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

[FR Doc. 93–19059 Filed 8–9–93; 8:45 am]
BILLING CODE 0000–01–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Notice No. 93–18]

### Safety Advisory: Rupture of a High Pressure Aluminum SCUBA Cylinder (300 PSIG Marked Service Pressure)

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Safety advisory notice.

**SUMMARY:** This is to notify the public that RSPA is investigating the rupture of an aluminum self-contained underwater breathing apparatus (SCUBA) cylinder which, while marked with DOT permit number "SP 6498", appears not to have been manufactured under that marked special permit. The cylinder was also falsely marked with a retested's identification number (RIN). Persons are reminded that serious personal injury, death, and/or property damage could result from rupture of a cylinder. Cylinders of unknown or questionable origin, or which may not have been retested in compliance with the Hazardous Materials Regulations (49 CFR parts 171–180) (HMR), should not be used.

**FOR FURTHER INFORMATION CONTACT:** Irving R. Abis, telephone (202) 366–4700, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Office hours are: 8:30 a.m. to 5 p.m., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** RSPA has been notified of the violent rupture of a SCUBA cylinder stamped "SP 6498" and marked with the RIN

B 4
X Y
8 7

where:

X = month of interest
Y = year of retest.

The cylinder, with a marked service pressure of 3000 psig, ruptured/fragmented into multiple pieces while it was being charged, resulting a serious injuries (one critical) to several employees of a dive shop located near Savannah, Georgia.

The cause of the cylinder rupture has not been determined, but it appears that this cylinder, while stamped "SP 6498",

was not manufactured under that special permit. Additionally, it appears that the RIN marked on the cylinder which indicates that the cylinder was successfully retested in January, 1993, was fraudulently applied to the cylinder by someone other than the requalification facility to which the RIN was assigned. The RIN is validly issued to a requalification facility located in California; however, it appears that this cylinder was never presented to the retester for inspection and retest, and the RIN was applied without the knowledge or consent of the retester, and the cylinder may not have been actually retested as marked.

RSPA's preliminary investigation of the incident, including an examination of the marks on the ruptured cylinder, indicates that all of the markings (special permit number, inspection agency mark, retest date, and retested identification) may be false. For example, the cylinder was marked to indicate it was manufactured in 1968 which was three (3) years prior to the issuance of DOT SP 6498.

Users, fillers, and retesters of SCUBA cylinders are reminded that serious personal injury, death, and/or property damage could result from the rupture of an unauthorized, nonspecification cylinder which has not been retested in compliance with the HMR. Accordingly, all persons owning, using, or having access to SCUBA cylinders should examine those cylinders immediately to ensure that they bear the proper cylinders immediately to ensure that they bear the proper specification markings.

Persons finding cylinders with improper specification markings should immediately take the following precautions:

1. If a cylinder has been filled, its entire contents should be vented in order to relieve internal pressure.

2. The vented cylinders should be rendered unusable by drilling or punching a hole in the cylinder wall, or conspicuously marking "CONDEMNED" on the cylinders or, at a minimum, segregating the cylinder from all other cylinders, and placing them in a secure area, and marking them conspicuously with a tag or label indicating they may not be used.

3. Under no circumstances should any of the cylinders in question be filled, refilled, or used for any purpose other than scrap.

4. Any person in possession of such a cylinder should contact Mr. Irving R. Abis at the above phone number.

Persons finding SCUBA cylinders bearing a RIN of

B 4
X Y
8 7

where:

X = month of interest
Y = year of retest.

should immediately take the following precautions:

1. If the cylinder has been filled, its entire contents should be vented in order to relieve internal pressure.

2. The vented cylinders should be taken to a DOT-authorized cylinder retest facility for visual reinspection and hydrostatic retest to determine compliance with the HMR.

3. Under no circumstances should the cylinders be filled, refilled or used for any purpose other than scrap, absent a reinspection and retest by a DOT-authorized facility.

4. Any person in possession of such a cylinder should contact Mr. Irving R. Abis at the above phone number.

It is further recommended that persons finding cylinders with improper specification markings or potentially fraudulent RIN markings should contact the owner, company, or distributor from whom they were obtained, for their disposition.

Issued in Washington, DC on August 4, 1993.

**Alan I. Roberts,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 93–19041 Filed 8–9–93; 8:45 am]

BILLING CODE 4910-60-M

## Federal Transit Administration

### Transit Technology Program: Advisory Committee Meeting

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of meeting—date change.

**SUMMARY:** This notice is to reschedule the meeting of the Federal Transit Administration's (FTA) Transit Industry Technology Development Advisory Committee as announced in the Federal Register on July 6, 1993 at 58 FR 36244. That meeting, originally scheduled for August 18, 1993, will now be held on August 31, 1993.

The discussions will focus on the general condition of the transit equipment market, legislative and institutional barriers to transit industry growth, methods of stimulating technological innovation, defense conversion opportunities, and how the Department can facilitate increased U.S. production of rail and transit equipment for both domestic consumption and export.

**MEETING DATE:** The meeting will take place August 31, 1993, 9 a.m. to 4:30 p.m.

**ADDRESSES:** The Advisory Committee meeting will be held in room 2230 at the U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey G. Mora, Federal Transit Administration, Office of Technical Assistance and Safety, (202) 366–0215.

**PROCEDURES:** The FTA will provide interpreters for persons with hearing disabilities, if requested by August 27, 1993. All meetings of the Transit Industry Technology Development Advisory Committee will be open to the public.

Issued on: August 6, 1993.

**Grace Crunican,**

*Deputy Administrator.*

[FR Doc. 93–19287 Filed 8–6–93; 4:01 pm]

BILLING CODE 4910-57-M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 152
Tuesday, August 10, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, August 17, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, NW., Washington, DC 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: Docket No. 38302S, *United States Department of Energy and the United States Department of Defense v. Baltimore & Ohio Railway Company, et al.* and Docket No. 38376S, *United States Department of Energy and the United States Department of Defense v. Aberdeen & Rockfish Co., et al.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Public Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,
*Secretary.*

[FR Doc. 93–19258 Filed 8–6–93; 3:34 pm]
BILLING CODE 7035-01-M

VOL 58 ISS 152 AG 10 1993 UMI

# Corrections

Federal Register
Vol. 58, No. 152
Tuesday, August 10, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NV-930-4210-05; N-53051]

### Realty Action: Lease/Purchase for Recreation and Public Purposes, Clark County, NV

*Correction*

In notice document 93-16722 appearing on page 38137 in the issue of Thursday, July 15, 1993, make the following corrections:

1. On page 38137, in the first column, under SUMMARY, in the seventh line, and in the first paragraph under the land description, in the seventh line, "Public Purposes Act" was misspelled.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

[Airspace Docket No. 92-AWA-8]

### Proposed Establishment of Class C Airspace; Asheville Regional Airport; NC

*Correction*

In proposed rule document 93-17362 beginning on page 39479 in the issue of Friday, July 23, 1993, make the following corrections:

1. On page 39481, in the third column, under Costs, in the first paragraph, in the next to last line, "and" should read "are".

2. On page 39482, in the 2d column, in the last full paragraph, in the 8th line "includes" should read "include", in the 20th line "215,086." should read "215,068.", and in the 23d line "or" should read "for".

BILLING CODE 1505-01-D

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 3

RIN 2900-AF88

### Evidence Requirements

*Correction*

In rule document 93-16599 beginning on page 37856 in the issue of Wednesday, July 14, 1993, make the following correction:

### § 3.203 [Corrected]

1. On page 37857, in the second column, in § 3.203(c), in the sixth line, "with" should read "which".

BILLING CODE 1505-01-D

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federal register

Tuesday
August 10, 1993

Part II

# Department of Education

34 CFR Part 614
College Facilities Loan Program; Rule

VOL 58 ISS 152 AG 10 1993 UMI

DEPARTMENT OF EDUCATION

34 CFR Part 614

RIN 1840-AB61

## College Facilities Loan Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the College Facilities Loan Program. The program provides low-interest loans to assist institutions of higher education or higher education building agencies with the construction, reconstruction, or renovation of housing, undergraduate and graduate academic facilities, and other educational facilities.

The regulations implement changes made in the program by the Higher Education Amendments of 1992, as well as make other changes to improve the administration and management of the program. Specifically, the regulations revise eligibility conditions, selection criteria, and other terms and conditions for the award of loans under the program.

EFFECTIVE DATE: These regulations take effect either September 24, 1993 or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Sarah E. Babson, U.S. Department of Education, 400 Maryland Avenue SW, room 3022, ROB-3, Washington, DC 20202-5339. Telephone: (202) 708-6865. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The College Facilities Loan Program furthers the objectives of National Education Goal 5 by enabling institutions to provide facilities for programs that will enable Americans to acquire the skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Higher Education Amendments of 1992 reauthorized and revised the College Facilities Loan Program. The program is now authorized by title VII, part C of the Higher Education Act of 1965, as amended. In view of the statutory changes that were made to the program, the Secretary is revising existing regulations to conform to the applicable statutory changes, as well as to make other changes to improve the administration and management of the program.

On April 13, 1993, the Secretary published a notice of proposed rulemaking for this program in the Federal Register (58 FR 19298).

As a result of a comment received, the points for the selection criteria for construction of new academic facilities have been redistributed to give more weight to the use of existing facilities, and less weight to relative impact of the project.

### Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, two parties submitted comments on the proposed regulations. Two of the comments suggested changes the Secretary is not legally authorized to make. An analysis of the other comments and of the changes in the regulations since publication of the NPRM follows.

*Selection Criteria*

*Comment:* One commenter objected to the measure of relative impact of the project as a selection criterion for new construction and renovation of academic facilities. The commenter objected that the ratio used could have a perverse impact of ranking institutions with little substandard space above those with a large amount of substandard facilities. The commenter also noted that the criterion may not be relevant for new academic facilities where this criterion received the greatest number of points.

*Discussion:* Relative impact of project is a new selection criterion, which measures the proportion of an institution's need for new or upgraded academic facilities that will be met by the project. The measure is defined as the relative amount of substandard space eliminated by the project, and the highest score is given where the proportion of substandard space eliminated to the amount of substandard academic space at the institution is greatest. It is true that in some instances a school with relatively less substandard space may receive more points on this criterion if its project eliminated a larger proportion of the substandard space. For renovation projects, however, there is an additional criterion that measures relative amount of substandard space that receives an equal number of points. This criterion will serve to offset any potential perverse impact. For new academic facilities, the criterion was intended to be an indirect measure of need for new facilities by considering the extent to which obsolete buildings would be replaced. The criterion does receive the greatest number of points, even though there is no direct relationship between the construction of new facilities and the elimination of substandard facilities. Use of existing facilities measures overcrowding. This would appear to be the best direct and quantifiable measure of need for new facilities.

*Changes:* In the selection criteria for the construction of new academic facilities, the points assigned to Use of existing facilities will be increased to 50 and the points assigned to Relative impact of the proposed project will be decreased to 20.

*Loan Level*

*Comment:* The other commenter objected to reducing the maximum loan level from $3,000,000 to $2,000,000.

*Discussion:* Over the last several years, the amount made available by Congress for loans has dropped about 50 percent. This trend is not expected to change. The Department has been able to finance only about 10 percent of the applications received. The demand for loans is expected to increase since graduate institutions are now eligible to apply for loans. The Department is committed to increasing access to education as part of its mission. These factors, together with a new statutory requirement that an institution finance 20 percent of the project cost from non-Federal sources, will expand Federal assistance without hampering the viability of funded projects.

*Changes:* No change has been made.

### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Assessment of Educational Impact**

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is gathered by or is available from any other agency or authority of the United States.

**List of Subjects in 34 CFR Part 614**

Colleges and universities, Education, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements.

Dated: August 2, 1993.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.142—College Facilities Loan Program)

The Secretary amends title 34 of the Code of Federal Regulations by revising part 614 to read as follows:

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**Authority:** 20 U.S.C. 1132d-1132d-3, unless otherwise noted.

### Subpart A—General

**§ 614.1 What is the College Facilities Loan Program?**

The College Facilities Loan Program provides low-interest loans to assist institutions of higher education or higher education building agencies to construct, reconstruct, or renovate housing, academic facilities, and other educational facilities for students and faculty.

(Authority: 20 U.S.C. 1132d)

**§ 614.2 Who is eligible to receive a loan?**

The following are eligible to receive a loan under this part:

(a) A public or private non-profit institution of higher education.

(b) A higher education building agency.

(Authority: 20 U.S.C. 1132d–3)

**§ 614.3 What types of projects may the Secretary fund?**

The Secretary approves loans for projects that enable institutions of higher education or higher education building agencies to construct, reconstruct, or renovate—

(a) Housing facilities for students and faculty;

(b) Undergraduate and graduate academic facilities; or

(c) Other educational facilities.

(Authority: 20 U.S.C. 1132d–2)

**§ 614.4 What priorities does the Secretary establish?**

(a) The Secretary gives priority to the renovation or reconstruction of older undergraduate and graduate academic facilities that have gone without major renovation or reconstruction for an extended period.

(b) In addition, each year the Secretary may establish as a priority the following:

(1) One or more of the activities (or a combination of activities) listed in § 614.3.

(2) Replacement or repair of facilities damaged by a major disaster, as declared by the President.

(c) The Secretary announces these priorities in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 1132d)

**§ 614.5 What regulations apply?**

The following regulations apply to the College Facilities Loan Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), subparts D and P.

(2) 34 CFR part 75 (Direct Grant Programs), §§ 75.105 and 75.600–75.616.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part.

(Authority: 20 U.S.C. 1132d–1)

**§ 614.6 What definitions apply?**

(a) *Definitions in the Act.*

(1) The following terms used in this part are defined in section 734 of the Act:

Development cost (housing and other educational facilities)
Housing
Institution of higher education or higher education building agency

Other educational facilities
Undergraduate and graduate academic facilities

(2) The following terms used in this part are defined in section 782 of the Act:

Academic facilities
Construction
Development cost (academic facilities)
Reconstruction or renovation

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal year
Nonprofit
Private
Public
Recipient
Secretary
State
Supplies

(c) *Revised EDGAR definitions.* The following terms defined in EDGAR, 34 CFR 77.1, are redefined for this part as follows:

*Acquisition* means taking ownership of property through purchase at fair market value.

*Equipment* means non-expendable personal property having a useful life of more than ten years—including machinery, fixtures, and other items necessary for maintenance and operation of a facility—but excluding books, instructional materials, and other items involving current operating expenses such as fuel, supplies, and serviceable parts. Equipment may consist of—

(i) Built-in equipment, which is a permanent part of a facility; and

(ii) Initial equipment, which includes furniture and other necessary and appropriate items for the functioning of a facility, taking into account the specific purposes of the facility.

*Project* means the construction activity that is proposed for funding by an applicant under this program.

(d) *Other definitions.* The following definitions also apply to this part:

*Act* means the Higher Education Act of 1965, as amended. Unless otherwise indicated, references to titles in this part are to titles of the Act.

*Assignable area* means the square footage of floor space in facilities that is designated and available for assignment to specific functional purposes, but does not include—

(i) Areas used for general circulation within a building;

(ii) Areas for public washrooms;

(iii) Areas for building maintenance or custodial services; or

(iv) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures.

*Design capacity,* with respect to housing, means the number of occupants a building was originally designed to house or, if fewer, the maximum number of occupants permitted by current State or local building codes.

*Faculty* means members of the faculty and their families.

*Full-time enrollment* means the number of full-time undergraduate and graduate students enrolled for the most recent fall semester, as reported by the institution of higher education to the National Center for Education Statistics of the Department in its annual Integrated Postsecondary Education Data Systems (IPEDS) survey.

*Gross area* means the total square footage of floor space within the outside faces of exterior walls in the facilities, including common areas such as halls and stairways, public washrooms, and areas for building maintenance and utilities.

*Major renovation* means reconstruction or renovation with a total development cost in excess of $250,000.

*Part-time enrollment* means the number of part-time undergraduate and graduate students enrolled for the most recent fall semester, as reported by the institution of higher education to the National Center for Education Statistics of the Department in its annual IPEDS survey.

*Substandard facilities* means facilities that are owned or leased by an institution of higher education that fail to meet current applicable State or local building code requirements.

(Authority: 20 U.S.C. 1132d–1)

## Subpart B—How Does One Apply for a Loan?

### § 614.10 How does one submit an application?

An applicant for a loan shall submit an application to the Secretary at the time, in the manner, and containing the information required by the Secretary.

(Authority: 20 U.S.C. 1132d–1(c))

### § 614.11 What evidence, assurances, and opinions of counsel are required of the applicant institution?

An applicant shall submit to the Secretary, as part of its application, the following evidence, assurances, and opinions of counsel:

(a) Satisfactory evidence that the applicant has or will have an interest in the project site based on title or lease (including the right of access) that is sufficient to ensure the applicant's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(b) Satisfactory evidence that the applicant has the necessary legal authority to—

(1) Finance, construct, reconstruct, or renovate and maintain the proposed facilities;

(2) Apply for and receive the proposed loan; and

(3) Pledge or mortgage any assets or revenues to be given as security for the proposed loan.

(c) Satisfactory assurance that if the applicant accepts the loan, the applicant will comply with the terms and conditions for repayment of the loan.

(d) Satisfactory assurance that the applicant will secure the loan in a manner the Secretary finds will reasonably assure repayment. The security may be one or a combination of methods listed in § 614.28.

(e) Satisfactory assurance that the applicant will not sell, mortgage, encumber, or lease to others during the life of the loan the facility aided by the loan without the consent of the Secretary.

(f) Legal opinions by bond counsel or legal counsel with respect to—

(1) The legal sufficiency of the note or the bond issue that the applicant proposes to offer to secure the loan;

(2) The legal authority of the applicant to offer the note or bond issue and secure it by the proposed collateral; and

(3) The legal sufficiency of the debt instrument and collateral on delivery.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d–1(c))

### § 614.12 What conditions of eligibility apply?

(a) (1) An applicant may submit only one application for a loan in any fiscal year.

(2) For purposes of paragraph (a)(1) of this section, the Secretary considers as a separate applicant a branch campus of a multicampus institution if that campus has its own Employer Identification Number (EIN) or Federal Interagency Committee on Education (FICE) number.

(b) The Secretary considers a project eligible to receive assistance only if the applicant has not contracted for construction before filing its loan application.

(c) The Secretary does not approve another college facilities loan

authorized under part C, title VII, of the Higher Education Act for any facility on the campus of an institution of higher education until five years after the date on which a previous loan reservation for a facility on that campus was made, unless the loan is intended to be used to construct or reconstruct a facility damaged as a result of a major disaster, as declared by the President. The limitation provided for in this paragraph applies only to loans authorized under part C, title VII, of the HEA.

(d) The Secretary does not approve a loan to an institution that is—

(1) Delinquent on a loan previously made under the Act, or under title IV of the Housing Act of 1950, whether or not the Secretary has agreed to any deferment; or

(2) In default of any other obligation made under any other Federal program.

(e) The Secretary does not approve a loan to an institution that is financially insolvent or that is not able to demonstrate that it has the capacity to meet the debt service requirements to repay the loan.

(Authority: 20 U.S.C. 1132d–(b), 1132d–1(c))

## Subpart C—How Does the Secretary Make a Loan?

### § 614.20 How does the Secretary evaluate an application?

The Secretary evaluates an application for a loan to construct, reconstruct or renovate—

(a) Undergraduate and graduate academic facilities according to the criteria in § 614.21;

(b) Housing facilities according to the criteria in § 614.22; and

(c) Other educational facilities according to the criteria in § 614.23.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d–1(c))

### § 614.21 What selection criteria are used to evaluate applications for loans for academic facilities?

(a) The Secretary evaluates each application for a loan to construct new academic facilities according to the following criteria:

(1) *Use of existing academic facilities.* (50 points)

(i) The Secretary assesses the extent to which the institution makes use of its existing undergraduate and graduate academic facilities by considering the amount of assignable square feet in those facilities per student, as calculated by dividing the assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(ii) The Secretary assigns the highest scores to institutions with the smallest amount of assignable square feet per student.

(2) *Relative impact of project.* (20 points)

(i) The Secretary considers the extent to which the new facilities will reduce the amount of assignable square feet of substandard facilities as measured by dividing the assignable square feet of substandard facilities eliminated as a result of the project by the assignable square feet of substandard academic facilities.

(ii) The Secretary assigns the highest scores to institutions with the largest percentage of substandard facilities eliminated by the project.

(3) *Enrollment of low-income students.* (20 points)

(i) The Secretary considers the extent to which the institution serves large numbers and percentages of low-income students.

(ii) The Secretary assigns up to ten points to institutions with the largest number of students receiving Pell Grants, as calculated by the sum of the full-time enrollment and one-third of the part-time enrollment receiving those grants.

(iii) The Secretary assigns up to ten points to institutions with the largest percentage of students receiving Pell Grants, as calculated by dividing the sum of the full-time enrollment and one-third of the part-time enrollment receiving those grants by the sum of the full-time enrollment and one-third of the part-time enrollment.

(4) *Financial need.* (10 points)

(i) The Secretary considers the total current funds revenues per undergraduate and graduate student, as calculated by dividing the amount of revenues by the sum of the full-time enrollment and one-third of the part-time enrollment. These revenues must be based on data reported in the annual National Center for Education Statistics' Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(ii) The Secretary assigns the highest scores to institutions with the lowest revenues per student.

(b) The Secretary evaluates each application for a loan to reconstruct or renovate undergraduate and graduate academic facilities according to the following criteria:

(1) *Period of time since last major renovation.* (30 points)

(i) The Secretary considers the period of time that the academic facilities in the project have gone without major renovation or reconstruction.

(ii) The Secretary assigns the highest scores to the facilities that have gone the longest time without major renovation or reconstruction.

(2) *Relative amount of substandard facilities.* (20 points)

(i) The Secretary considers the extent to which the institution's undergraduate and graduate academic facilities are substandard as measured in terms of a percentage obtained by dividing the amount of assignable square feet of substandard academic facilities by the assignable square feet in the institution's existing academic facilities.

(ii) The Secretary assigns the highest scores to institutions with the highest relative percentage of substandard facilities.

(3) *Relative impact of project.* (20 points)

(i) The Secretary considers the extent to which the facilities in the project will reduce the amount of assignable square feet of academic facilities at the institution that are substandard by dividing the assignable square feet of substandard academic facilities eliminated by the project by the assignable square feet of substandard academic facilities at the institution.

(ii) The Secretary assigns the highest scores to institutions with the largest percentage of substandard facilities eliminated by the project.

(4) *Enrollment of low-income students.* (20 points)

(i) The Secretary considers the extent to which the institution serves large numbers and percentages of low-income students.

(ii) The Secretary assigns up to ten points to institutions with the largest number of students receiving Pell Grants, as calculated by the sum of the full-time enrollment and one-third of the part-time enrollment receiving those grants.

(iii) The Secretary assigns up to ten points to institutions with the largest percentage of students receiving Pell Grants, as calculated by dividing the sum of the full-time enrollment and one-third of the part-time enrollment receiving those grants by the sum of the full-time enrollment and one-third of the part-time enrollment.

(5) *Financial need.* (10 points)

(i) The Secretary considers the total current funds revenues per undergraduate and graduate student, as calculated by dividing the amount of revenues by the sum of the full-time enrollment and one-third of the part-time enrollment. These revenues must be based on data reported in the annual National Center for Education Statistics' Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(ii) The Secretary assigns the highest scores to institutions with the lowest revenues per student.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.22 What selection criteria are used to evaluate applications for loans for housing facilities?**

The Secretary uses the following criteria to evaluate a loan application for housing facilities:

(a) *Use of existing housing.* (20 points)

(1) The Secretary considers the extent to which the institution makes effective use of the undergraduate and graduate student housing space that it owns or leases as measured by the number of assignable square feet per student occupant.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of assignable square feet per student occupant.

(b) *Housing deficiency.* (15 points)

(1) The Secretary considers the extent to which the institution has a housing deficiency as measured by the number of accommodations required to—

(i) Eliminate overcrowding of undergraduate and graduate students; that is, occupancy of housing facilities owned or leased by the institution that is in excess of design capacity;

(ii) Provide accommodations for undergraduate and graduate students living in substandard housing that is owned or leased by the institution; and

(iii) Provide accommodations for undergraduate and graduate students denied housing but registered for classes for the opening fall semester preceding the date of application.

(2) The Secretary assigns the highest scores to institutions with the greatest housing deficiency.

(c) *Relative housing deficiency.* (15 points)

(1) The Secretary considers the extent to which the institution has a relative housing deficiency as measured in terms of a percentage obtained by dividing the total housing deficiency in § 614.22(b) by the institution's total undergraduate and graduate full-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the highest relative housing deficiency.

(d) *Impact of the proposed project.* (10 points)

(1) The Secretary considers the impact of the proposed project as measured by the number of student accommodations the institution proposes to construct, reconstruct, or renovate.

(2) The Secretary assigns the highest scores to institutions constructing, reconstructing, or renovating the largest number of accommodations.

(e) *Relative impact of the proposed project.* (10 points)

(1) The Secretary considers the relative impact of the proposed project as measured by the percentage obtained by dividing the number of accommodations to be provided by the project by the total housing deficiency obtained under § 614.22(b).

(2) The Secretary assigns the highest scores to institutions with the highest relative impact, not to exceed 100 percent.

(f) *Enrollment of low-income students.* (20 points)

(1) The Secretary considers the extent to which the institution serves large numbers and percentages of low-income students.

(2) The Secretary assigns up to ten points to institutions with the largest number of students receiving Pell Grants, as calculated by the sum of the full-time enrollment and one-third of the part-time enrollment receiving those grants.

(3) The Secretary assigns up to ten points to institutions with the largest percentage of students receiving Pell Grants, as calculated by dividing the sum of the full-time enrollment and one-third of the part-time enrollment receiving those grants by the sum of the full-time enrollment and one-third of the part-time enrollment.

(g) *Financial need.* (10 points)

(1) The Secretary considers the total current funds revenues per undergraduate and graduate student, as calculated by dividing the amount of revenues by the sum of the full-time enrollment and one-third of the part-time enrollment. These revenues must be based on data reported in the annual National Center for Education Statistics' Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest revenues per student.

(h) If an applicant does not have any existing housing facilities, the Secretary evaluates the application on the basis of criteria in paragraphs (d), (e), (f), and (g) of this section and assigns the points as follows:

(1) Impact of the proposed project as measured in § 614.22(d). (35 points)

(2) Relative impact of the proposed project as measured by dividing the impact of the proposed project obtained under § 614.22(d) by the total full-time enrollment. (35 points)

(3) Enrollment of low-income students as measured in § 614.22(f). (20 points)

(4) Financial need as measured in § 614.22(g). (10 points)

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d-1(c))

**§ 614.23 What selection criteria are used to evaluate applications for loans for other educational facilities?**

The Secretary evaluates each application for a loan for other educational facilities according to the following criteria:

(a) *Use of existing other educational facilities.* (20 points)

(1) The Secretary assesses the extent to which the institution makes use of its existing other educational facilities by considering the amount of assignable square feet in those facilities per student, as calculated by dividing the total assignable square feet by the sum of the full-time enrollment and one-third of the part-time enrollment.

(2) The Secretary assigns the highest scores to institutions with the smallest amount of square feet per student.

(b) *Relative amount of substandard facilities.* (20 points)

(1) The Secretary considers the extent to which the institution's other educational facilities are substandard as measured in terms of a percentage obtained by dividing the amount of assignable square feet of substandard other educational facilities by the total existing assignable square feet of other educational facilities.

(2) The Secretary assigns the highest scores to institutions with the highest relative amount of substandard facilities.

(c) *Relative impact of project.* (30 points)

(1) The Secretary considers the extent to which the facilities in the project will reduce the amount of assignable square feet of substandard other educational facilities by dividing the assignable square feet of substandard other educational facilities eliminated by the project by the assignable square feet of substandard other educational facilities at the institution.

(2) The Secretary assigns the highest scores to institutions with the largest percentage of substandard facilities eliminated by the project.

(d) *Enrollment of low-income students.* (20 points)

(1) The Secretary considers the extent to which the institution serves large numbers and percentages of low-income students.

(2) The Secretary assigns up to ten points to institutions with the largest number of students receiving Pell Grants, as calculated by the sum of the full-time enrollment and one-third of

the part-time enrollment receiving those grants.

(3) The Secretary assigns up to ten points to institutions with the largest percentage of students receiving Pell Grants, as calculated by dividing the sum of the full-time enrollment and one-third of the part-time enrollment receiving those grants by the sum of the full-time enrollment and one-third of the part-time enrollment.

(e) *Financial need.* (10 points)

(1) The Secretary considers the total current funds revenues per undergraduate and graduate student, as calculated by dividing the amount of revenues by the sum of the full-time enrollment and one-third of the part-time enrollment. These revenues must be based on data reported in the annual National Center for Education Statistics' Integrated Postsecondary Education Data Systems survey for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to institutions with the lowest revenues per student.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d-1(c))

**§ 614.24 What funding limitations apply?**

(a) The Secretary awards not more than 12.5 percent of the amount of the funds provided under this part to educational institutions within any one State.

(b) The maximum loan that the Secretary makes to an eligible applicant is $2,000,000.

(c) The minimum loan that the Secretary makes to an eligible applicant is $250,000.

(d) A loan under this program may not exceed 80 percent of the total eligible development cost of the project as determined by the Secretary; 20 percent of the total eligible development cost must be provided from non-federal sources.

(e)(1) The Secretary makes a loan only if the Secretary finds that the applicant is unable to secure from other sources a loan with terms and conditions equally as favorable as the terms and conditions applicable to loans under this part.

(2) To assist the Secretary in making this determination, the applicant shall comply with any procedures the Secretary may require, including public advertising for bids, if bonds are to be issued.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d)

**§ 614.25 What additional factors does the Secretary consider?**

(a) The Secretary awards additional points to an institution located in Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands that has applied for assistance under this program.

(b) The additional points equal 10 percent of the points the institution's application otherwise received.

(Authority: 20 U.S.C. 1144a)

**§ 614.26 What are the length and maturity of loans?**

(a) (1) The maximum repayment period for a loan under this program is 30 years, unless the Secretary finds that a longer repayment period is necessary.

(2) In no case may a loan repayment period exceed the lesser of 50 years or the estimated useful life of the facilities to be constructed, reconstructed, renovated, or purchased with the proceeds.

(b) Loans must bear interest at a rate not to exceed 5.5 percent per annum or the total of one-quarter of 1 percent per annum added to the rate of interest paid by the Secretary on funds obtained from the Secretary of the Treasury, whichever is lower.

(c) Unless the Secretary authorizes otherwise—

(1) The borrower must repay the loan semi-annually in substantially level total annual installments of principal and interest;

(2) The Secretary may approve a loan that does not mature serially if that type of loan is necessary to be compatible with a borrower's total financial planning; and

(3) For a reasonable period of time—normally not exceeding two years following the closing of the loan—the Secretary may permit a borrower to make payments of interest only.

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.27 What is required in a loan agreement?**

(a) The Secretary prepares and sends a loan offer to an applicant if—

(1) The application meets all requirements of the Act and the regulations in this part; and

(2) The Secretary approves the project and reserves funds for it.

(b) The loan offer—

(1) Contains the terms and conditions for the loan including financial reporting requirements; and

(2) Is conditioned on the acceptance of these terms and conditions.

(c) The accepted loan offer constitutes the agreement between the Secretary and the applicant for the loan.

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.28 What kinds of security are required for the loan?**

(a) A borrower shall evidence its loan by either a note or bonds issued by the borrower and secured by a mortgage, a trust indenture, project revenues, other revenue sources, or any combination thereof.

(b) If the Secretary determines that additional security is needed to assure loan repayment, the Secretary may require one or more of the following:

(1) A pledge of income from endowment funds;

(2) A pledge of securities;

(3) A mortgage on other facilities or real property; or

(4) A guarantee of the payment of principal and interest by a third party.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.29 What evidence of an approved debt instrument is required?**

After signifying to the Secretary its acceptance of a loan offer, a borrower shall furnish to the Secretary evidence of indebtedness in the form the Secretary prescribes in the loan agreement and in accordance with the terms and conditions of the loan agreement.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.30 When does loan closing take place?**

Loan closing occurs, at a time and date determined by the Secretary, after the award of all prime construction contracts and before the disbursement of any loan proceeds.

(Authority: 20 U.S.C. 1132–d–1(c))

## Subpart D—What Conditions Must be Met After an Award?

**§ 614.40 What conditions must be met before construction can begin?**

The loan agreement must be fully executed, and the Secretary must concur in the award of all prime construction contracts before construction can begin.

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.41 When must construction begin?**

An applicant must begin construction within 18 months of the date on which the Secretary made a loan reservation for a project, unless the applicant provides documentation that a delay beyond the 18 months is the result of circumstances beyond the applicant's control.

(Authority: 20 U.S.C. 1132d–1(c))

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**§ 614.42 What are the general rules for determining eligible development costs?**

The Secretary determines eligible development costs by assessing the reasonableness and appropriateness of costs that would be incurred by the project, taking into account—

(a) The timing of when certain costs would be incurred by the applicant; and

(b) The applicant's compliance with the regulations in this part.

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.43 What are ineligible development costs?**

(a) The Secretary excludes from eligible development costs any costs for construction, reconstruction, or renovation if the contract was entered into before the Secretary executed the loan agreement and before the Secretary concurred in the award of the contract, except in cases where there is a threat to life or limb or there is a natural disaster related to the construction project.

(b) In cases of threat to life or limb or natural disaster, the Secretary, in determining the eligibility of costs incurred prior to execution of a loan agreement and the approval of a construction contract, requires that the applicant provide a certification from a licensed professional architect or engineer that construction is necessary and appropriate.

(c) The Secretary excludes from eligible development costs any costs incurred for—

(1) Land acquired before the applicant files the application;

(2) A structure acquired before the applicant files the application;

(3) Equipment procured before the Secretary executes the loan agreement;

(4) Ineligible facilities included in the total development costs; and

(5) Administrative overhead or other indirect costs.

(Authority: 20 U.S.C. 1132d–3(d))

**§ 614.44 What are the requirements with respect to a construction account?**

(a) A borrower shall maintain a separate account known as the Construction Account in order to account for—

(1) The proceeds of the sale of the bonds or notes; and

(2) All other money that the borrower will use in paying for the construction of the approved project.

(b) The borrower shall document all expenditures for construction, rehabilitation or acquisition through the Construction Account.

(c) Recordkeeping for this account must be in accordance with generally accepted accounting principles.

(d) The borrower may invest the funds in the Construction Account, unless otherwise prohibited by State or local law.

(e) Any interest earned on the investment of idle funds in the Construction Account during the construction period must be deposited in the Construction Account. The interest must be credited against the interest expense accruing during the construction period. In the event that interest earned exceeds interest expense, the excess must be used to reduce the outstanding principal amount of the loan.

(f) Interest expense incurred in connection with interim financing may be considered an eligible project development cost.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.45 What are the procedures for loan disbursement?**

The borrower shall submit requests for loan disbursement on forms prescribed by the Secretary and shall furnish to the Secretary any additional information the Secretary may request.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.46 How must the balance remaining in the construction account be disposed of?**

Upon full settlement with all contractors, suppliers, and other parties to whom it has incurred obligations under the project, a borrower must dispose of any money remaining in the construction account in accordance with the provisions of the loan agreement.

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.47 How is the determination of final approved development costs made?**

(a) For the purpose of determining the final approved development costs, the Secretary may permit a borrower to use—in place of an audit by the Federal Government—a certificate of project costs prepared on forms prescribed by the Secretary and executed by the borrower.

(b) (1) In conjunction with the Secretary's determination of final approved development costs, the borrower shall submit to the Secretary whatever documentation the Secretary requires.

(2) This documentation may include, but is not limited to, a certificate of actual cost—in a form prescribed by the Secretary—showing the actual cost to the borrower for construction, architectural, legal, and other items of expense approved by the Secretary.

(3) If the Secretary determines that the approved loan exceeds 80 percent of the eligible development cost, the borrower shall prepay the amount due at the next interest payment date.

(Approved by the Office of Management and Budget under control number 1840–0580)

(Authority: 20 U.S.C.1132d–1)

**§ 614.48 How must pledged revenues be applied?**

(a) A borrower that has pledged project revenues—either net or gross—as security for its loan must deposit all pledged revenues in a separate fund in accordance with the terms of the loan agreement.

(b) This fund is known as the Revenue Fund.

(c) The borrower shall make repayments on the loan from this fund in accordance with the terms of the loan agreement.

(Authority: 20 U.S.C. 1132d–1(c))

**§ 614.49 What are borrowers' non-financial obligations?**

In addition to its financial obligations under the loan agreement, a borrower under this program must—as required in the loan agreement—agree to—

(a) Maintain its status as an eligible educational institution, including its accreditation;

(b) Use the project for the purpose or purposes for which the loan was made, unless the Secretary approves a change of purpose;

(c) Maintain insurance on the project facilities;

(d) Repair and maintain the project facilities; and

(e) Never use the project facilities for religious worship or a sectarian activity or for a school or department of divinity.

(Authority: 20 U.S.C. 1132d–1(c))

**Subpart E—[Reserved]**

**Subpart F—What Conditions Must Be Met for a Discounted Prepayment of a Loan?**

**§ 614.60 How does the Secretary provide for a discounted prepayment of a loan?**

(a) (1) The Secretary may provide a discount for prepayment in full of a college facilities loan in an amount determined to be in the best financial interests of the Federal Government for institutions that meet the conditions established in paragraph (b) of this section.

(2) The discount is applicable both to loans in current payment status and to loans in default as long as an institution

does not become delinquent or in default on its loans after October 1, 1992. The Secretary reviews proposals from institutions with defaulted loans separately from those in current payment status in order to provide institutions in default all possible guidance in accomplishing the prepayment of their college facilities loans.

(b) The Secretary may approve a proposal from an institution for discounted prepayment of a college facilities loan if—

(1) The prepayment is made from non-Federal sources;

(2) The prepayment is made on a loan issued before October 1, 1992 and outstanding for at least five years;

(3) The prepayment is not derived from proceeds of obligations, the income of which is exempt from taxation under the Internal Revenue Code of 1986; and

(4) The prepayment is in an amount determined in accordance with paragraph (c) of this section.

(c) The Secretary determines the amount of a prepayment for a loan based on—

(1) Current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to that of the loan to be prepaid;

(2) Current fair market value of outstanding marketable obligations that are of comparable quality to that of the loan to be prepaid;

(3) Current and anticipated administrative costs incurred by the Secretary in servicing the loan to be prepaid; or

(4) Current net proceeds that the Secretary would receive from nongovernmental investors if the loan to be prepaid were purchased by those investors on the open market.

(Authority: 20 U.S.C. 1132d–1e)

[FR Doc. 93–19075 Filed 8–9–93; 8:45 am]

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Part III

# Department of Defense

## Federal Aviation Administration

**Draft Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over the State of New Jersey; Extension of Comment Period; Notice**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 26987]

## Draft Environmental Impact Statement; Effects of Changes of Aircraft Flight Patterns Over the State of New Jersey; Extension of Comment Period

**AGENCY:** Federal Aviation Administration [FAA], DOT.

**ACTION:** Extension of the Comment Period.

**SUMMARY:** On November 12, 1992, the FAA issued a Draft Environmental Impact Statement (DEIS) to assess the impact of changes in aircraft flight patterns caused by the implementation of the Expanded East Coast Plan (EECP) over the State of New Jersey for public review and comment. The DEIS evaluates the EECP and alternatives to its continued use. (See 57 FR 54282, November 17, 1992.)

In December, 1992, the FAA extended the period for public comment from January 22, 1993 to March 5, 1993 because of the Technical complexity of the DEIS. (See 57 FR 61478, December 24, 1992.) On March 15, 1993 the FAA reopened the comment period through June 14, 1993 due to a request from the New Jersey Citizens for Environmental Research (NJCER) and a joint request from the Governor of New Jersey and the Chairman of the Port Authority of New York and New Jersey. In response to a request from NJCER the FAA extended the comment period through August 6, 1993. (See 58 FR 33138, June 15, 1993.)

In response to an additional request from NJCER the FAA is reopening the comment period from August 10 through October 8, 1993. This request is supported by the Governor of New Jersey and the Chairman of the Port Authority of New York and New Jersey.

**COMMENT PERIOD:** The comment period is reopened from August 10 through October 8, 1993.

**ADDRESSES:** Written comments on the document should be addressed to: Federal Aviation Administration, Office of the Chief Counsel: Docket Number 26987, 800 Independence Avenue SW., Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:** The FAA will consider and respond to all comments directly within the scope of the DEIS. The most useful comments are those which provide facts and analyses to support the reviewer's recommendations or conclusions. The FAA will consider comments received after the close of the comment period to the extent practicable. The FAA will issue a final EIS that includes corrections, clarifications and responses to comments on the DEIS.

Issued in Washington, DC, on August 6, 1993.

**David J. Hurley,**

*Director, Air Traffic System Management.*

[FR Doc. 93–19302 Filed 8–6–93; 4:25 pm]

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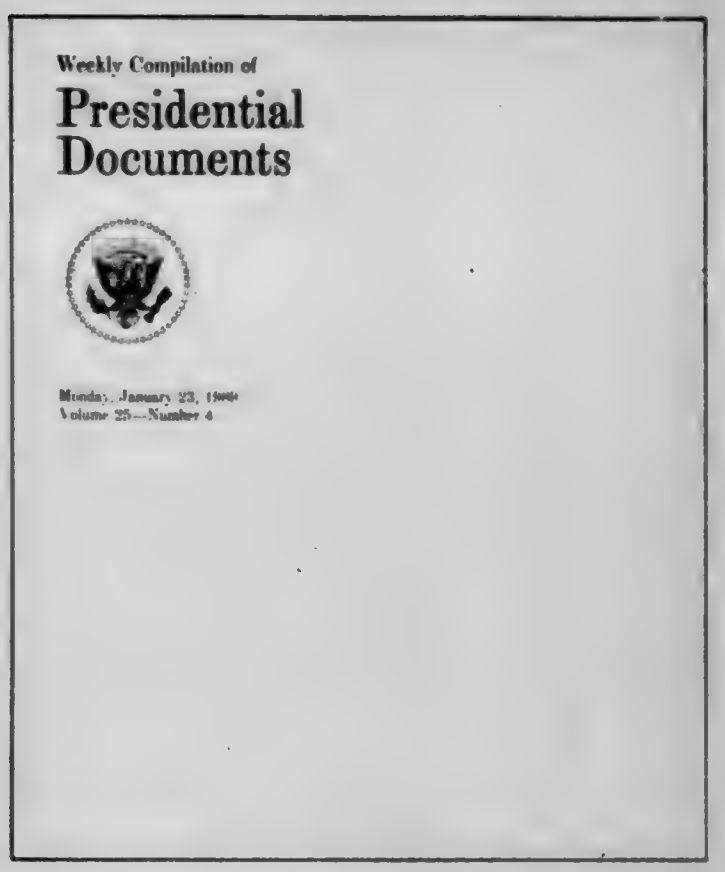


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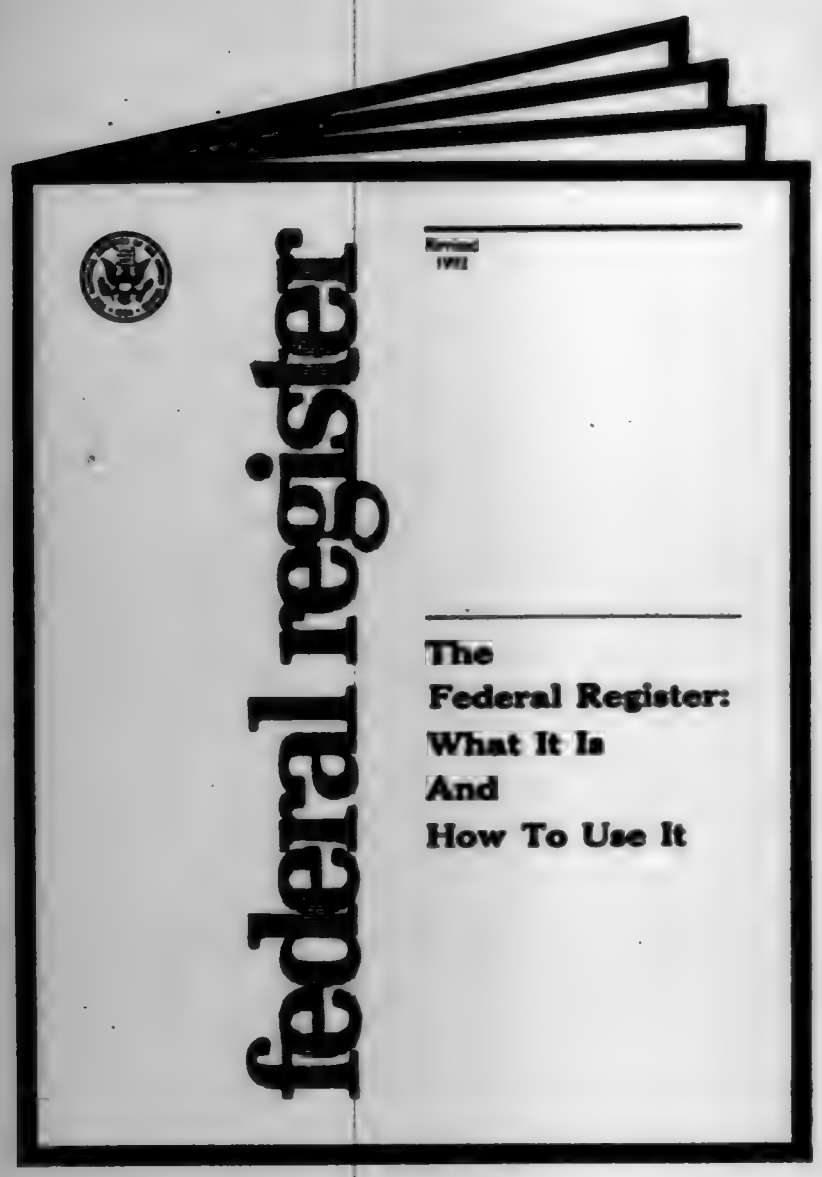


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